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6 **IN THE UNITED STATES DISTRICT COURT**  
7 **FOR THE DISTRICT OF ARIZONA**  
8

9 USI Insurance Services LLC,

No. CV-23-00192-PHX-SMB

10 Plaintiff,

**ORDER**

11 v.

12 Alliant Insurance Services Incorporated, et  
13 al.,

14 Defendants.

15 Pending before the Court is Plaintiff USI Insurance Services LLC’s (“USI”) Motion  
16 for a Preliminary Injunction (“Motion”) (Doc. 2), as amended by the Amended Complaint  
17 (Doc 52). Defendants Alliant Insurance Services, Inc. (“Alliant”), William J. Havard  
18 (“Havard”), Jane Doe Havard, Robert Engles (“Engles”), and Jane Doe Engles filed a  
19 Response to the original Motion (Doc. 18) but have yet to file an Answer. The Court held  
20 a two-day evidentiary hearing April 25–26, 2023 and closing arguments on May 2, 2023.  
21 Having considered the briefing, arguments, evidence, and relevant law, the Court will deny  
22 USI’s Motion.

23 **I. BACKGROUND**

24 This case resulted from Havard and Engles’ swift transition from their employment  
25 at USI to new positions with Alliant. USI provides insurance, risk management, and related  
26 services. (Doc. 2 at 3.) USI employs insurance brokers called “producers” to “identify,  
27 solicit, and service clients and develop and foster relationships with those clients.” (*Id.*)  
28 Havard and Engles began working as producers for USI in 2017. (*Id.* at 4.) On January

1 24 and 25, 2023, Havard, Engles, and defendants Jenise Purser and Justin Walsh—who  
2 worked on Havard and Engles’ team at USI—resigned from USI. (Doc. 52 at 25–26.)  
3 These defendants immediately began working for Alliant, in similar roles. (*Id.* at 27.)

4 On January 30, 2023, USI sought a temporary restraining order and a preliminary  
5 injunction to prevent Alliant from: (1) encouraging or facilitating any USI employee with  
6 a 60-day notice provision in their employment agreement from immediately terminating  
7 his or her employment; (2) directly or indirectly causing any former USI employee to  
8 breach the restrictive covenants from their employment agreements; (3) employing Havard  
9 and Engles during the 60-day notice period from their employment agreements. (Doc. 2 at  
10 1–2.) USI also sought to enjoin Havard and Engles from working for Alliant within the  
11 60-day period and “further breaching the post-employment restrictive covenants”  
12 described in their employment agreements. (*Id.* at 2.) On February 9, 2023, this Court  
13 granted USI’s request in part and enjoined Alliant from encouraging or facilitating any USI  
14 employee whose employment agreement included a 60-day notice provision from  
15 immediately terminating his or her employment. (Doc. 22 at 15–16.) The Court denied all  
16 of USI’s other requests and set a preliminary injunction hearing, which was held on April  
17 25 and 26. The Court makes the following factual findings from that hearing.

## 18 **II. FACTUAL FINDINGS**

### 19 **A. Employment Agreements**

20 USI acquired Wells Fargo Insurance Services USA, Inc. in 2017. (Docs. 104 at 153;  
21 Ex. 2 at 1; Ex. 62 at 1.) Both Havard and Engles worked for Wells Fargo when USI  
22 acquired it (Ex. 2 at 1; 62 at 1), and they became producers<sup>1</sup> for USI. (Doc. 104 at 153–  
23 54.) Their primary focus as producers was to “source new clients, take care of relationships  
24 with existing clients, build goodwill in the community, [and] connect with centers of  
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26 <sup>1</sup> Engles received a demotion in August or September 2022 to the position of “producer  
27 account executive.” (Doc. 105 at 106–07.) USI’s representative, Benjamin Greer, testified  
28 that the responsibilities and expectations were essentially the same for the two roles, but  
the producing account executives had lower commission percentages and lower  
expectations for outreach. (Doc. 104 at 154–55.)

1 influence with insurance carriers.” (*Id.*) Havard specifically worked as the head of USI’s  
2 Phoenix environmental pollution liability team, while Engles specialized in commercial  
3 property and casualty. (*Id.*)

4 Havard and Engles signed nearly identical employment agreements with USI.  
5 Justin Walsh and Jenise Purser, members of Havard’s environmental liability service team  
6 that supported Havard’s USI clientele (*see* Docs. 105 at 159, 194, 216), signed similar  
7 agreements. However, Walsh and Purser’s employment agreements did not include a 60-  
8 day notice provisions as a condition of resignation, whereas Havard and Engles’ did. (Ex.  
9 2; 62; 86; 206.) The relevant terms from those agreements are as follows:

10 • ***Confidentiality During and Following Term.*** During the Term and for five  
11 (5) years after Producer is no longer employed ... for any reason, they will  
12 not use or disclose any Confidential Information of the Company, any  
13 Predecessor or any USI Company except under limited circumstances...  
14 [outlined in the agreements].

15 • ***Non-Solicitation of Clients and Active Prospective Clients....*** (a) During  
16 the Term and for two (2) years after Producer is no longer employed ... for  
17 any reason, Producer shall not, without the Company’s prior written consent,  
18 directly or indirectly, on behalf of any Competitive Business in any capacity:  
19 (i) solicit or attempt to solicit Insurance Services in competition with the  
20 Company to any Client Account; (ii) consult for any Client Account with  
21 respect to Insurance Services in competition with the Company; (iii) sign a  
22 broker of record letter with any Client Account to provide Insurance Services  
23 in competition with the Company; or (iv) induce the termination, cancellation  
24 or non-renewal of any Client Account; in each case with respect to any Client  
25 Account, which is a Client Account of the Company at the time of such  
26 solicitation, that Producer managed or regularly serviced and/or about which  
27 Producer obtained Confidential Information on behalf of the Company  
28 within the last two (2) years of Producer’s employment ....

(b) During the Term and for six (6) months after Producer is no longer  
employed... Producer shall not, without the Company’s prior written  
consent, directly or indirectly, on behalf of any Competitive Business in any  
capacity: (i) solicit or attempt to solicit Insurance Services in competition  
with the Company to any Active Prospective Client; (ii) consult for any  
Active Prospective Client with respect to Insurance Services in competition  
with the Company; or (iii) sign a broker of record letter with any Active  
Prospective Client to provide Insurance Services in competition with the  
Company; in each case with respect to any Active Prospective Client that  
Producer solicited and/or about which Producer obtained Confidential  
Information on behalf of the Company within the last six (6) months of

1 Producer's employment...

2 • ***Non-Acceptance / Non-Service of Clients and Active Prospective***  
3 ***Clients....***

4 (a) During the Term and for two (2) years after Producer is no  
5 longer employed... Producer shall not, directly or indirectly, on behalf of any  
6 Competitive Business in any capacity: (i) sell, provide, or accept any request  
7 to provide Insurance Services in competition with the Company to any Client  
8 Account; or (ii) sign or accept a broker of record letter to provide Insurance  
9 Services in competition with the Company to any Client Account; in each  
10 case with respect to any Client Account, which is a Client Account of the  
11 Company at the time of such solicitation, that Producer managed or regularly  
12 serviced and/or about which Producer obtained Confidential Information on  
13 behalf of the Company within the last two (2) years of Producer's  
14 employment hereunder.... (b) During the Term and for six (6) months after  
15 Producer is no longer employed ... Producer shall not, directly or indirectly,  
16 on behalf of any Competitive Business in any capacity: (i) sell, provide, or  
17 accept any request to provide Insurance Services in competition with the  
18 Company to any Active Prospective Client; or (ii) sign or accept a broker of  
19 record letter to provide Insurance Services in competition with the Company  
20 to any Active Prospective Client; in each case with respect to any Active  
21 Prospective Client that Producer solicited and/or about which Producer  
22 obtained Confidential Information on behalf of the Company within the last  
23 six (6) months of Producer's employment....

24 • ***Non-Interference With Employees...*** Producer agrees, during the Term  
25 and for two (2) years after Producer is no longer employed ... Producer shall  
26 not, directly or indirectly, on behalf of any Competitive Business in any  
27 capacity: (a) solicit the employment, consulting or other services of, or hire,  
28 any other employee of the Company; or (b) otherwise induce any such  
employee to leave the Company's employment or breach an employment  
agreement therewith; in each case with respect to any employee of the  
Company who is employed by the Company at the time of such solicitation  
or hiring and with whom Producer worked or obtained knowledge about as  
a result of Producer's employment with the Company....

(Doc. 2 at 5-6.) The following terms are defined in the agreement as follows:

23 (a) **“Active Prospective Client”** means any Person or group of Persons who  
24 the Company specifically solicited or had documented plans to solicit within  
25 the six (6) months preceding the termination of Producer's employment  
hereunder.

\* \* \* \*

26 (c) **“Client Account”** means the account of any client (including, without  
27 limitation, any retail insurance agent or broker, individual insured,  
28 association and any member thereof, and any insurance carrier or other entity  
to the extent third party administration claims processing or underwriting is

1 performed by the Company for such carrier or other entity) which is or was  
2 serviced by the Company in connection with the Company's business,  
3 regardless of whether such services are provided by, or through the licenses  
of the Company or any shareholder, employee or agent of the Company.

4 \* \* \* \*

5 **(e) "Competitive Business"** means any Person engaged in the production,  
6 distribution, marketing or sale of a Competitive Product. Where a  
7 Competitive Business is part of a larger business involving both competitive  
8 and non- competitive products, the terms of this Agreement shall only apply  
9 to that part of the business which involves the production, distribution,  
10 marketing or sale of a Competitive Product.

11 **(f) "Competitive Product"** means any product or service, in existence, that  
12 competes, or is reasonably anticipated to compete, in the same markets with  
13 a product or service of the Company, in existence, which Producer or the  
14 Company has sold, marketed, distributed or developed in the last two (2)  
15 years of Producer's employment with the Company, or about which the  
16 Producer has acquired Confidential Information.

17 **(g) "Confidential Information"** means... any information of the Company,  
18 any Predecessor and/or a USI Company to which Producer has access, that  
19 is not already generally available to the public ... including but not limited  
20 to: (i) the identity, authority and responsibilities of key contacts and decision-  
21 makers employed by the Client Accounts or Active Prospective Clients of  
22 the Company or any Predecessor; (ii) the types, terms and conditions of  
23 coverage and particularized insurance needs, requirements, risk  
24 specifications, preferences, expiration dates, claims and loss histories, and  
25 commission rates, fees and premiums of the Client Accounts or Active  
26 Prospective Clients of the Company or any Predecessor; (iii) the terms and  
conditions of benefits and compensation plans of the Client Accounts or  
Active Prospective Clients of the Company or any Predecessor; (iv) the  
information furnished to the Company or any Predecessor in confidence by  
any Client Account or Active Prospective Client; (v) the business plans,  
marketing strategies, and pricing structure, criteria and formulae for  
insurance and benefits products and claims management, and unpublished  
financial data and statements of the Company, its corporate affiliates or any  
Predecessor; (vi) the lists of the Client Accounts or Active Prospective  
Clients of the Company or any Predecessor, and any analyses and  
compilations thereof ... (ix) any and all other proprietary information of the  
Company, any Predecessor or a USI Company, including any information  
contained within a proprietary database....

27 \* \* \*

28 **(i) "Goodwill"** means the competitive advantage, including the expectation  
of new and/or continued patronage from Client Accounts and Active  
Prospective Clients based on the Company's or any Predecessor's investment

1 in repeated contacts, business transactions, Confidential Information, or  
2 other efforts.... \* \* \* \* (n) “Predecessor” means any Person, in its capacity  
3 as predecessor-in- interest to the assets of the Company. \* \* \* \* (q) “USI  
4 Business” means the businesses provided by the USI Companies, including,  
5 without limitation, insurance agency and brokerage, and related insurance  
6 services.

7 (Id. at 7–8.)

8 USI further asserts the parties agreed that:  
9 if a court were to find that any covenants in their respective Employment  
10 Agreements exceeded the permissible scope or limit, ‘such covenants shall  
11 be reformed to the maximum permissible time or scope limitations’ and that  
12 “[i]f a court refuses to enforce any of these covenants, in whole or in part,  
13 the unenforceable terms shall be eliminated (“blue penciled”) . . . to the  
14 minimum extent necessary to permit the remaining terms to be enforced.”

15 (Id. at 8.)

16 The relevant contract terms from Walsh and Purser’s employment  
17 agreements are as follows:

18 **4.5 *Non-Solicitation of Clients and Active Prospective Clients.*** In  
19 consideration of Employee’s employment with the Company, and for other  
20 good and valuable consideration, Employee agrees that:

21 (a) During Employee’s employment with the Company and for two (2) years  
22 after Employee is no longer employed with the Company, for any reason,  
23 Employee shall not, without the Company’s prior written consent, directly or  
24 indirectly, on behalf of any Competitive Business in any capacity: (i) solicit  
25 or attempt to solicit Insurance Services in competition with the Company to  
26 any Client Account; (ii) consult for any Client Account with respect to  
27 Insurance Services in competition with the Company; sign a broker of record  
28 letter with any Client Account to provide Insurance Services in competition  
with the Company; or (iv) induce the termination, cancellation or non-  
renewal of any Client Account; in each case with respect to any Client  
Account, which is a Client Account of the Company at the time of such  
solicitation, that Employee managed or regularly serviced and/or about  
which Employee obtained Confidential Information on behalf of the  
Company within the last two (2) years of Employee’s employment with the  
Company. If the duration herein of two (2) years after Employee is no longer  
employed with the Company is found by a court to be unreasonable, the  
Parties agree the restrictions set forth herein shall apply during Employee’s  
employment with the Company and for eighteen (18) months after Employee  
is no longer employed with the Company, for any reason. If the duration  
herein of eighteen (18) months after Employee is no longer employed with  
the Company is found by a court to be unreasonable, the Parties agree the  
restrictions set forth herein shall apply during Employee’s employment with  
the Company and for twelve (12) months after Employee is no longer  
employed with the Company, for any reason.

(b) During Employee’s employment with the Company and for six (6)  
months after Employee is no longer employed with the Company, for any  
reason, Employee shall not, without the Company’s prior written consent,

1 directly or indirectly, on behalf of any Competitive Business in any capacity:  
2 (i) solicit or attempt to solicit Insurance Services in competition with the  
3 Company to any Active Prospective Client; (ii) consult for any Active  
4 Prospective Client with respect to services in competition with the Company;  
5 or (iii) sign a broker of record letter with any Active Prospective Client to  
6 provide Insurance Services in competition with the Company; in each case  
with respect to any Active Prospective Client that Employee solicited and/or  
about which Employee obtained Confidential Information on behalf of the  
Company within the last six (6) months of Employee's employment with the  
Company.

(Doc. 52 at 17.)

7 **4.6 Non-Acceptance / Non-Service of Clients and Active Prospective**  
8 **Clients.** In consideration of Employee's employment with the Company, and  
for other good and valuable consideration, Employee agrees that:

9 (a) During Employee's employment with the Company and for two (2)  
10 years after Employee is no longer employed with the Company, for any  
11 reason, Employee shall not, directly or indirectly, on behalf of any  
12 Competitive Business in any capacity: (i) sell, provide, or accept any  
13 request to provide Insurance Services in competition with the Company  
14 to any Client Account; or (ii) sign or accept a broker of record letter to  
15 provide Insurance Services in competition with the Company to any Client  
16 Account; in each case with respect to any Client Account, which is a Client  
17 Account of the Company at the time of such solicitation, that Employee  
18 managed or regularly serviced and/or about which Employee obtained  
19 Confidential Information on behalf of the Company within the last two (2)  
20 years of Employee's employment with the Company. If the duration herein  
of two (2) years after Employee is no longer employed with the Company  
is found by a court to be unreasonable, the Parties agree the restrictions set  
forth herein shall apply during Employee's employment with the Company  
and for eighteen (18) months after Employee is no longer employed with the  
Company, for any reason. If the duration herein of eighteen (18) months after  
Employee is no longer employed with the Company is found by a court to be  
unreasonable, the Parties agree the restrictions set forth herein shall apply  
during Employee's employment with the Company and for twelve (12)  
months after Employee is no longer employed with the Company, for any  
reason.

21 (b) During Employee's employment with the Company and for six (6)  
22 months after Employee is no longer employed with the Company, for any  
23 reason, Employee shall not, directly or indirectly, on behalf of any  
24 Competitive Business in any capacity: (i) sell, provide, or accept any request  
25 to provide Insurance Services in competition with the Company to any  
26 Active Prospective Client; or (ii) sign or accept a broker of record letter to  
provide Insurance Services in competition with the Company to any Active  
Prospective Client; in each case with respect to any Active Prospective Client  
that Employee solicited and/or about which Employee obtained Confidential  
Information on behalf of the Company within the last six (6) months of  
Employee's employment with the Company.

(Id. at 18.)

27 **B. Resignations**

28 Alliant's efforts to recruit Havard and Engles began in November 2022. Havard

1 and Engles, friends and longtime lunchmates, became open to Alliant's offers of  
2 employment after becoming dissatisfied with their positions at USI. Havard complained  
3 that USI overemphasized soliciting new clients, at the cost of his relationships with existing  
4 clients. He cited one example of USI sending his clients letters containing threats to cancel  
5 coverage despite the insurance carrier itself not threatening to do so. Engles described how  
6 USI demoted him and how that demotion resulted in his reduced compensation. Havard  
7 resigned on January 24, 2023, via email. Havard testified that he did not decide to leave  
8 USI for Alliant until the morning he submitted his resignation email. Engles discovered  
9 Havard's resignation from LinkedIn later that day. Benjamin Greer, USI's Phoenix  
10 property and casualty team lead, called a strategy meeting for the following day and invited  
11 Engles to participate. Also contemplating resigning, Engles thought it was inappropriate  
12 to attend the strategy meeting and so he submitted his own resignation email on January  
13 25, 2023.

14 Between Alliant's initial contact with Havard and Engles, and their eventual  
15 resignations, both continued to service their client accounts at USI. On January 9, 2023,  
16 Havard set up a client dinner with Revantage (client) and Beazley (insurance carrier) for  
17 later that month, on January 31. (Ex. 321 at 1–2.) On January 17, 2023, Engles had an  
18 email exchange with Greer about a potential client. (Ex. 283.) Both Havard and Engles  
19 also continued to communicate with other USI employees to service USI clients.

20 Justin Walsh and Jenise Purser's resignations followed shortly after Engles'. Both  
21 Walsh and Purser continued to service USI clients up until they resigned. Walsh sent his  
22 resume to Alliant on January 24th, 2023, the day Havard resigned. (Doc. 105 at 149.)  
23 Walsh testified that he was working on closing multiple deals when Greer scheduled the  
24 strategy meeting. (*Id.* at 195–96.) He did not attend the strategy meeting, citing his  
25 anticipation of a written offer of employment from Alliant. (*Id.* at 197.) On January 25th,  
26 2023, USI had restricted Purser's work computer access. (*Id.* at 214.) Purser told Greer  
27 that she had not planned to resign before her access was restricted, but she ultimately  
28 resigned later that day. (*Id.* at 214–15.) She emailed Greer about two client accounts that



1 required USI’s swift attention and action. (*Id.* at 50.) Walsh and Purser immediately began  
2 working for Alliant upon their resignations from USI. (*Id.* at 51, 202, 220.)

### 3 **C. Events Following Resignations**

4 The unexpected resignations of the four aforementioned employees disrupted the  
5 status quo in USI’s phoenix office. On the morning of January 26th, 2023—the business  
6 day following Engles, Walsh, and Purser’s resignations—Greer organized a team to  
7 continue USI’s service of its clients. (Doc. 104 at 171.) Greer solicited help from forty-  
8 four other USI employees across the country over a multi-week span to aid this effort,  
9 which he described as chaotic. (*Id.* at 171, 209.) Greer personally contacted Havard’s  
10 former clients and discussed one instance where USI had failed to address a client need in  
11 a timely fashion. (*Id.* at 176–78.) However, a USI employee had emailed Greer to inform  
12 him that that client urgently required assistance. (*Id.* at 178.) Greer discussed another  
13 client, Revantage, that moved its business away from USI because the risk manager “knew  
14 nobody at USI any longer.” (*Id.* at 183.) One of the other disruptions Greer described was  
15 lost mentorship opportunities for young environmental producers that in the wake of  
16 Havard’s departure were “struggling and floundering.” (*Id.* at 192.) But Greer could not  
17 identify any clients that left because of the service USI provided during this period of  
18 disruption. (Doc. 105 at 59.)

### 19 **III. LEGAL STANDARD**

20 Under Rule 65 of the Federal Rules of Civil Procedure, a party may seek injunctive  
21 relief if it believes it will suffer irreparable harm during the pendency of an action. “A  
22 preliminary injunction is ‘an extraordinary and drastic remedy, one that should not be  
23 granted unless the movant, by a clear showing, carries the burden of persuasion.’” *Lopez*  
24 *v. Brewer*, 680 F.3d 1068, 1072 (9th Cir. 2012) (quoting *Mazurek v. Armstrong*, 520 U.S.  
25 968, 972 (1997) (emphasis omitted)); *see also Winter v. Nat. Res. Def. Council, Inc.*, 555  
26 U.S. 7, 24 (2008) (“A preliminary injunction is an extraordinary remedy never awarded as  
27 of right.”).

28 A plaintiff seeking a preliminary injunction must show that (1) he is likely to

1 succeed on the merits, (2) he is likely to suffer irreparable harm without an injunction, (3)  
2 the balance of equities tips in his favor, and (4) an injunction is in the public interest.  
3 *Winter*, 555 U.S. at 20. “But if a plaintiff can only show that there are ‘serious questions  
4 going to the merits’—a lesser showing than likelihood of success on the merits—then a  
5 preliminary injunction may still issue if the ‘balance of hardships tips sharply in the  
6 plaintiff's favor,’ and the other two *Winter* factors are satisfied.” *Shell Offshore, Inc. v.*  
7 *Greenpeace, Inc.*, 709 F.3d 1281, 1291 (9th Cir. 2013) (quoting *All. for the Wild Rockies*  
8 *v. Cottrell*, 632 F.3d 1127, 1135 (9th Cir. 2011)). Under this “serious questions” variant  
9 of the *Winter* test, “[t]he elements . . . must be balanced, so that a stronger showing of one  
10 element may offset a weaker showing of another.” *Lopez*, 680 F.3d at 1072.

#### 11 IV. DISCUSSION

##### 12 A. Likelihood of Success on the Merits

13 USI’s request for a preliminary injunction stems from its breach of contract and  
14 breach of the duty of good faith and fair dealing claims. These claims are based on the 60-  
15 day notice requirement, the non-solicitation, and non-acceptance/non-service agreements  
16 discussed above. Defendants argue the agreements are not enforceable.

17 Arizona law provides that:

18 A restrictive covenant is reasonable and enforceable when it protects some  
19 legitimate interest of the employer beyond the mere interest in protecting  
20 itself from competition such as preventing competitive use, for a time, of  
21 information or relationships which pertain peculiarly to the employer and  
22 which the employee acquired in the course of the employment.

23 *Bed Mart, Inc. v. Kelley*, 45 P.3d 1219, 1221 (Ariz. Ct. App. 2002) (cleaned up). Put  
24 differently, “[n]on-compete and non-solicitation restrictions are enforceable if they are ‘no  
25 broader than necessary to protect the employer's legitimate business interest.’” *Orca*  
26 *Commc'ns Unlimited, LLC v. Noder*, 314 P.3d 89, 95 (Ariz. Ct. App. 2013), *decision aff'd*  
27 *and ordered depublished on other grounds*, 337 P.3d 545 (2014) (quoting *Hilb, Rogal &*  
*Hamilton Co. of Ariz. v. McKinney*, 946 P.2d 464, 467 (Ariz. Ct. App. 1997)).

28 Thus, “to be enforceable, the covenant must be reasonable with respect to its  
duration, its geographic scope, and the range of employee's activities affected.” *Unisource*

1 *Worldwide, Inc. v. Swope*, 964 F. Supp. 2d 1050, 1064 (D. Ariz. 2013). Whether a  
2 restrictive covenant is reasonable is a question of law. *Valley Med. Specialists v. Farber*,  
3 982 P.2d, 1277, 1280 (Ariz. 1999). “The burden is on the party wishing to enforce the  
4 covenant to demonstrate that the restraint is no greater than necessary to protect the  
5 employer's legitimate interest, and that such interest is not outweighed by the hardship to  
6 the employee and the likely injury to the public.” *Id.* at 1286. Moreover, restrictive  
7 covenants “are strictly construed against the employer.” *Amex Distrib. Co., Inc. v.*  
8 *Mascari*, 724 P.2d 596, 600 (Ariz. Ct. App. 1986).

9 USI also requests injunctive relief based on the breach of fiduciary duty claim and  
10 tortious interference with contract.

11 **i. 60-Day Notice**

12 In its TRO ruling, the Court determined that injunctive relief would be inappropriate  
13 because specific performance of the notice requirement is akin to a contract for personal  
14 services. (Doc. 22 at 10–11) (citing *Engelbrecht v. McCullough*, 292 P.2d 845, 846 (Ariz.  
15 1956)). USI did not assert during the preliminary injunction hearing that this provision  
16 *could* be enforced, and as such the Court will not address it.

17 **ii. Non-solicitation, Non-acceptance, Non-Service**

18 USI argues that Havard breached his non-solicitation agreement by soliciting at least  
19 two clients, Revantage and CBRE, to move their business to Alliant and by servicing  
20 CBRE, Store Capital, and Western National Group—former USI clients. The Revantage  
21 risk manager testified that she transitioned Revantage’s business to Alliant because she no  
22 longer knew anyone at USI. (Schultz Dep. 21:6–11; 58:14–19.) USI points to an email by  
23 CBRE employee Chris Nassa saying “[Havard’s] team is still at USI and apparently aren’t  
24 leaving until the end of the week, which is obviously confidential.” (Doc. 104 at 145; Ex.  
25 131.) However, USI submitted no evidence of Havard soliciting a client. Revantage and  
26 CBRE’s apparent intent to follow Havard, the producer with which they had developed a  
27 professional relationship, does not necessarily amount to solicitation. The Court finds no  
28 likelihood of success on this claim.

1           USI also argues that Havard breached his non-service agreement by servicing  
2 former USI clients. The metadata associated with emails and attachments to CBRE, Store  
3 Capital, and Western National Group show that Havard was the author of the cited  
4 summary reports. (Ex. 102 (Store Capital); 103 (CBRE); 104 (WNG); 105 at 217–31.)  
5 That metadata shows Havard prepared these summaries and they were not subsequently  
6 modified before being transmitted to clients. The Court thus finds a likelihood of success  
7 on the claim that Havard breached the non-service agreement based on the facts. The  
8 enforceability of this covenant is discussed below.

9           USI raises similar arguments that Engles solicited at least one client, AvAir, to move  
10 its business to Alliant. The Court disagrees. USI relies on the conduct of Eric Harper to  
11 assert that Engles’ solicitation of AvAir was indirect. Harper admitted to lying to AvAir’s  
12 point of contact, Bob Knox, about Engles inspiring the call—Harper used his proximity to  
13 Engles as a cold call technique to entice Knox’s business. (Doc. 105 at 252–53.) Harper  
14 provided a detailed description of how he discovered Knox’s phone number. (*Id.* at 254.)  
15 Knox admitted that Engles did not attempt contact Knox after Engles resigned. (Doc. 104  
16 at 22–23.) And the Court finds Engles’ testimony credible, where he stated he never asked  
17 Harper to call Knox on his behalf and that he thought Harper “was just being a salesman.”  
18 (Doc. 105 at 128.) The Court thus finds no likelihood of success on this claim.

19           USI asserts a breach of their non-service agreement because Walsh and Purser have  
20 serviced many former USI client accounts since they began working for Alliant. Walsh  
21 testified to servicing at least ten former USI clients while at Alliant. (*Id.* at 157–58.) Purser  
22 admitted she has serviced at least eleven former USI clients while at Alliant. (*Id.* at 225–  
23 26.) Alliant argues neither Walsh nor Purser serviced these clients until after the clients  
24 executed broker-of-record letters and after the rescission period expired. Alliant further  
25 argues that at that point, Alliant was no longer “in competition with” USI, meaning Walsh  
26 and Purser did not violate section 4.6 of their agreements. The Court disagrees. The  
27 evidence at the hearing showed that clients often change brokers and brokerage firms are  
28 always angling to gain new clients at a competitor’s expense. Expiration of the rescission

1 period does not end the competition. Factually, the Court finds a likelihood of success on  
2 this claim.

3 Defendants argue that the non-solicitation, non-acceptance, and non-servicing  
4 covenants are unenforceable. The Court rejects Defendants' assertion that the restrictive  
5 covenants apply only to actions taken by Wells Fargo Insurance Services. The employment  
6 agreements discuss assignment and Greer adequately testified that USI acquired all of  
7 Wells Fargo Insurance Services. However, the Court found breaches only to the non-  
8 service agreements signed by Havard, Walsh, and Purser, the Court's analysis will be  
9 limited to whether their non-servicing agreements are enforceable. Defendants argue that  
10 the non-acceptance/non-service covenant is unenforceable because it serves no legitimate  
11 interest. Alliant cites to *Getman v. USI Holdings Corp.*, No. 05-3286-BLS2, 2005 WL  
12 2183159, at \*3 (Mass. Super. Ct. Sept. 1, 2005) where a Massachusetts court held that such  
13 a provision is not enforceable. Also, in *Vulcan Steel Structures, Inc. v. McCarty*, 764  
14 S.E.2d 458, 462 (Ga. Ct. App. 2014), the Georgia Court of Appeals held that covenants  
15 restricting an employee from accepting unsolicited work from former clients are  
16 unenforceable. Arizona law does not necessarily forbid such agreements and instead  
17 requires courts to balance the employer and employee's competing interests. *See, e.g.*,  
18 *Valley Med.*, 982 P.2d at 1283-84 ("[I]n the commercial context, the employer's interest  
19 in its customer base is balanced with the employee's right to the customers. Where the  
20 employee took an active role and brought customers with him or her to the job, courts are  
21 more reluctant to enforce restrictive covenants."). The duration of restrictive covenants in  
22 the commercial context is reasonable "only if it is no longer than necessary for the  
23 employer to put a new man on the job and for the new employee to have a reasonable  
24 opportunity to demonstrate his effectiveness to the customers." *Id.* at 1284 (quoting *Amex*  
25 *Distrib. Co., Inc. v. Mascari*, 724 P.2d 596, 604 (Ariz. Ct. App. 1986)). USI did not address  
26 the enforceability of this covenant, and the Court finds these cases persuasive. Therefore,  
27 the Court preliminarily finds them unenforceable thus rendering the claims without a  
28 likelihood of success.

1           Additionally, the non-service agreements appear unreasonably broad. Havard’s  
2 non-service agreement prohibits him from providing insurance services to a USI client,  
3 accepting a broker of record letter from a USI client they regularly serviced within the past  
4 two years, for a two-year period. The agreement also prohibits for a six-month term the  
5 providing of any services to an “active prospective client” or accepting a broker of record  
6 letter for such a client. Walsh and Purser’s agreements prohibit them for two years from  
7 selling, providing, or accepting a request to provide insurance services to a USI client they  
8 regularly serviced, and they may not accept a broker of record letter. Walsh and Purser’s  
9 agreement includes two step-down provisions, lowering the temporal limits by six months  
10 (to 18 months or 12 months) if the longer durations are determined to be unreasonable.

11           The Court finds that USI has not carried its burden to establish that these restrictive  
12 covenants are enforceable. The business interest USI has repeatedly asserted is its goodwill  
13 with its clients. (*See* Doc. 52 at 5 ¶ 33.) But the Court heard considerable testimony about  
14 the hyper-competitive nature of the insurance services market and the turnover of clients  
15 and policies based on pricing, relationships, needs, etc. Greer testified that roughly 15%  
16 of insurance brokerage clients change firms annually. (Doc. 105 at 29–30.) He also  
17 testified that nearly 40% of clients in a producer’s book of business would leave USI even  
18 if the producer does not violate any restrictive covenants. (*Id.* at 31.) Considering this  
19 market turnover, the Court is currently unpersuaded that the two-year periods (or even the  
20 twelve-month step-down period in Walsh and Purser’s agreement) is sufficiently tailored  
21 to protect client goodwill. However, the Court invites additional briefing (during the  
22 dispositive motion stage, should this case so proceed) from the parties as to the  
23 enforceability of these provisions.

24           **iii. Breach of Duty of Loyalty**

25           USI did not assert the breach of the duty of loyalty during the preliminary injunction  
26 hearing, and as such the Court will not address it.

27           **iv. Tortious Interference with Contract**

28           To establish a tortious interference claim, a claimant must show: (1) a valid contract

1 or business expectancy existed; (2) the interferer had knowledge of such business contracts  
2 or expectancy; (3) there was intentional interference causing a breach of the contract or  
3 business expectancy; and (4) resultant damages. *Neonatology Assocs. v. Phx. Perinatal*  
4 *Assocs. Inc.*, 164 P.3d 691, 693 (Ariz. Ct. App. 2007).

5 USI argues Alliant interfered with the employment agreements it had with the four  
6 individual defendants. The four individual defendants' employment agreements were  
7 valid. Testimony from each of the individual defendants shows that Alliant knew they  
8 were employed at USI. Bledion Dizdari, Alliant's representative, testified that Alliant did  
9 not instruct Havard or Engles to resign effective immediately—or with 60-days' notice as  
10 contemplated in their employment agreements either—because Alliant does not provide  
11 legal advice. (Doc. 105 at 304.) Instead, Alliant recommends and financed independent  
12 legal counsel. (*Id.* at 304–05.) Defendants cite *Burns v. Talon Grp., Inc.*, to argue that USI  
13 cannot establish the third factor of its tortious interference claim because Alliant's  
14 recruitment of the individual defendants was a “legitimate competitive purpose[], and not  
15 an improper act.” No. CV 04-411 TUC JMR, 2007 WL 9724464, at \*4 n.2 (D. Ariz. Sept.  
16 30, 2007). The Court agrees that Alliant's conduct is consistent with legitimate competitive  
17 purposes, and as such USI has failed to carry its burden to establish a likelihood of success  
18 on the merits.

### 19 **B. Irreparable Harm**

20 Irreparable harm is harm for which there is no adequate remedy at law, such as  
21 money damages. *Ariz. Dream Act Coal. v. Brewer*, 757 F.3d 1053, 1068 (9th Cir. 2014).  
22 “The purpose of a preliminary injunction is not to remedy past harm but to protect plaintiffs  
23 from irreparable injury that will surely result without their issuance. Demonstrating  
24 irreparable harm is not an easy burden to fulfill.” *DTC Energy Grp., Inc. v. Hirschfeld*,  
25 912 F.3d 1263, 1270 (10th Cir. 2018) (cleaned up).

26 USI asserts it has a protectable interest in preventing Defendants from interfering  
27 with its goodwill with clients. And by violating their employment agreements, USI argues  
28 the individual defendants have damaged that goodwill. While the Court recognizes that

1 goodwill can qualify as irreparable harm, *see Rent-A-Ctr., Inc. v. Canyon Television &*  
2 *Appliance Rental, Inc.*, 944 F.2d 597, 603 (9th Cir. 1991), the Court finds no such  
3 irreparable harm has been established here. As the Court noted, *supra* Sec. II, Greer  
4 corralled many USI employees to mitigate whatever chaos resulted from the individual  
5 defendants' departures. Greer discussed the avalanche of emails he was receiving in as a  
6 result of this chaos. The one client that moved its business away from USI did so after  
7 another USI employee informed Greer that action needed to be taken on that account.  
8 Greer failed to timely respond to that client's needs. Greer also discussed lost mentorship  
9 opportunities for junior producers. No clients left because USI's service dropped to an  
10 unacceptable level, although Revantage moved its business to Alliant because Revantage's  
11 risk manager had no working relationships with the remaining USI employees. Even so,  
12 Revantage's move to Alliant is consistent with the expected loss of business Greer  
13 described as routine in the industry. As such, the Court finds that USI has not carried its  
14 burden to establish an irreparable harm.

### 15 **C. Balance of Equities**

16 "In each case, a court must balance the competing claims of injury and must  
17 consider the effect on each party of the granting or withholding of the requested relief."  
18 *Amoco Prod. Co. v. Vill. of Gambell*, 480 U.S. 531, 542 (1987); *see also Stormans, Inc. v.*  
19 *Selecky*, 586 F.3d 1109, 1138 (9th Cir. 2009) ("In assessing whether the plaintiffs have met  
20 this burden, the district court has a 'duty . . . to balance the interests of all parties and weigh  
21 the damage to each.'" (quoting *L.A. Mem'l Coliseum Comm'n v. Nat'l Football League*,  
22 634 F.2d 1197, 1203 (9th Cir.1980)).

23 Granting an injunction against the individual defendants would not prohibit them  
24 from working for Alliant. Preventing Alliant from encouraging more USI employees to  
25 leave and disregard notice provisions would not damage any parties or stifle competition.  
26 The Court finds the balance of equities favors USI.

### 27 **D. Public Interest**

28 "In exercising their sound discretion, courts of equity should pay particular regard



1 for the public consequences in employing the extraordinary remedy of injunction.” *Winter*,  
2 555 U.S. at 24 (quoting *Weinberger v. Romero-Barcelo*, 456 U.S. 305, 312 (1982))  
3 (quotation marks omitted). It is true that “[c]ourts have held that the public interest is  
4 served by protecting a company's right to proprietary information, business operations, and  
5 contractual rights,” and that “enforcing these covenants is consistent with the public policy  
6 of protecting a company's interest in its customer base from unfair competition.” *Compass*  
7 *Bank v. Hartley*, 430 F. Supp. 2d 973, 983 (D. Ariz. 2006). However, it is also true that  
8 “Arizona law does not look kindly upon restrictive covenants.” *Unisource Worldwide*, 964  
9 F. Supp. 2d at 1063. Indeed, in Arizona, “[r]estrictive covenants that tend to prevent an  
10 employee from pursuing a similar vocation after termination of employment” are especially  
11 disfavored. *GlobalTranz Enters. Inc. v. Murphy*, No. CV-18-04819-PHX-ROS, 2021 WL  
12 1163086, at \*4 (D. Ariz. 2021) (quoting *Bryceland v. Northey*, 772 P.2d 36, 39 (Ariz. Ct.  
13 App. 1989)); *see also Unisource Worldwide*, 964 F. Supp. 2d at 1063.

14 Furthermore, given that USI has not established irreparable harm, the public interest  
15 does not favor injunctive relief. *See Super Chefs, Inc. v. Second Bit Foods, Inc.*, No. CV-  
16 15-00525-SJO (FFMx), 2015 WL 12914441, \*5 (C.D. Cal. June 11, 2015) (“[G]iven that  
17 Plaintiff has not shown irreparable harm, the Court finds that a preliminary injunction has  
18 not been shown to be in the public interest.”); *Sunbelt Rentals, Inc. v. Victor*, No. C 13-  
19 4240 SBA, 2014 WL 492364, \*11 (N.D. Cal. Feb. 5, 2014) (finding that “the public interest  
20 will not be served by entering an injunction to prevent conduct which [the plaintiff] has not  
21 shown has or is likely to occur”).

22 Enforcing unenforceable covenants on former employees does not serve the public  
23 interest. However, protecting an employer from a competitor knowingly interfering with  
24 contracts is in the public interest.

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**V. CONCLUSION**

Accordingly,

**IT IS ORDERED** denying USI’s Motion for a Preliminary Injunction. (Doc. 2.)

Dated this 2nd day of June, 2023.



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Honorable Susan M. Brnovich  
United States District Judge