PLAINTIFF'S POSITION STATEMENT REGARDING
DEFENDANTS' 30(b)(6) DEPOSITION DESIGNATIONS

At the October 11, 2022, hearing on Plaintiff's Motion for Preliminary Injunction, Defendants chose not to call Tom Adkin, Alliant's 30(b)(6) witness, for in-person testimony. Instead, Defendants attempted to introduce testimony of Alliant's 30(b)(6) witness's testimony through designations of a deposition transcript. Because Rule 32 permits a party to designate and use only an adverse party's 30(b)(6) deposition in court proceedings, Plaintiff objected to Defendants' attempt to designate and introduce their own 30(b)(6) witness's deposition transcript. Fed. R. Civ. P. 32(a)(3) ("An adverse party may use for any purpose the deposition of a party or anyone who, when deposed, was the party's officer, director, managing agent, or designee under Rule 30(b)(6) or 31(a)(4).").

After argument and consideration at a break, the Court ruled that Defendants could introduce portions of Alliant's 30(b)(6) deposition transcript, but only such portions that laid a sufficient foundation to establish the witness's personal knowledge. The Court ordered that (1) Defendants identify and designate any such portions of the 30(b)(6) deposition that fit within the confines of the Court's ruling; (2) Plaintiff offer objections or counter-designations to same; and (3) the parties present to the Court any 30(b)(6) designations or objections. In accordance with the Court's directive, Defendants' submitted their designations to Plaintiff. Those designations are attached to Defendant's Position, which is Exhibit A to the Joint Cover Letter. McGriff did not designated any of Adkin's testimony as relevant and admissible for the simple reason that there is none. The parties conferred and agreed to submit their respective positions to the Court.

In short, Plaintiff takes issue with Defendants' designations because, at a fundamental level, none of the 30(b)(6) testimony contained a foundation for personal knowledge. "[L]ive witness testimony is axiomatically preferred to depositions, particularly where credibility is a central issue." *McDowell v. Blankenship*, 759 F.3d 847, 852 (8th Cir. 2014) (citing *Garcia–Martinez v. City & Cnty. of Denver,* 392 F.3d 1187, 1191–92 (10th Cir.2004)). This Court made clear that Defendants may designate and use Alliant's 30(b)(6) deposition, but only to the extent that such testimony is based on the witness's (Mr. Adkin's) personal knowledge. Defendants bear the burden of showing Mr. Adkin's testimony fits the bill. *See Garcia–Martinez,* 392 F.3d at 1191 ("The proponent of the deposition bears the burden of proving that it is admissible under Rule 32(a).").

Defendants can make no such showing. Adkin was designated as a 30(b)(6) witness, and Defendants' counsel did not question him during his deposition. Plaintiff's counsel alone questioned Defendants' 30(b)(6) witness, and thus there was no reason for Plaintiff's counsel to lay any kind of foundation for personal knowledge. Defendants cannot now propound testimony based on "personal knowledge" simply because this Court ruled that such a foundation is necessary for these designations to be admissible. In fact, looking at the Defendants' designations, none is properly supported by a foundation that Mr. Adkin was testifying as to his personal knowledge, as opposed to his knowledge as a 30(b)(6) witness.

Defendants could have questioned Mr. Adkin during his deposition; they did not. Defendants could have called Mr. Adkin to testify in-person; they did not. Defendants did not even inquire with Plaintiff or the Court whether the corporate representative could testify remotely. This

situation is Defendants' own making, and they cannot alter the 30(b)(6) deposition into something that, put simply, it is not – testimony based on personal knowledge.

DEFENDANTS' POSITION STATEMENT REGARDING
TOM ADKIN DEPOSITION DESIGNATIONS

At the Preliminary Injunction hearing held on October 11, 2022, Alliant sought to offer the testimony of Tom Adkin by deposition. Mr. Adkin, who is an Alliant Executive Vice President and Managing Director who was deposed as Alliant's corporate representative just days before the hearing, resides in Atlanta. (Dep. Tr. p. 13:5–13:8). Despite being the corporate designee, much of Mr. Adkin's deposition testimony was derived from his personal knowledge of the facts at issue in this litigation. Plaintiff objected to Mr. Adkin being offered by deposition. The Court overruled this objection to the extent that Mr. Adkin's testimony came from his personal knowledge and directed the parties to confer about the admission of deposition testimony from Tom Adkin.

The Court has instructed that testimony based on Adkin's personal knowledge is admissible. The Court has significant discretion to weigh testimony in a preliminary injunction setting. *See Patterson v. Masem*, 774 F.2d 251, 254 (8th Cir. 1985) (citation omitted) ("Findings of fact and conclusions of law made by a court granting a preliminary injunction are not binding at trial on the merits. The haste with which preliminary injunction motions proceed and their limited purpose customarily require the relaxation of procedural safeguards and the introduction of less than all the material evidence."); *see also Kos Pharms., Inc. v. Andrx Corp.*, 369 F.3d 700, 718719 (3d Cir. May 24, 2004) (collecting cases) ("In keeping with this principle, many of our sister Circuits have recognized that 'affidavits and other hearsay materials are often received in preliminary injunction proceedings"); *Sierra Club, Lone Star Chapter v. FDIC*, 992 F.2d 545, 551 (5th Cir. 1993) (courts at preliminary injunction stage "may rely on otherwise inadmissible evidence, including hearsay"); *Flynt Distrib. Co. v. Harvey*, 734 F.2d 1389, 1394 (9th Cir. 1984) ("The urgency of obtaining a preliminary injunction . . . makes it difficult to obtain affidavits from persons who would be competent to testify at trial. The trial court may even give inadmissible evidence some weight . . . ."); *cf. Heideman v. South Salt Lake City*, 348 F.3d 1182, 1188 (10th Cir. 2003) ("The Federal Rules of Evidence do not apply to preliminary injunction hearings."). Further, courts recognize that "personal knowledge" does not require "first-hand knowledge," nor do the rules of evidence "require that personal knowledge be acquired contemporaneous with the events at issue." *City of Huntington v. AmerisourceBergen Drug Corp.*, No. 17-01362, 2022 U.S. Dist. LEXIS 26997, at *19-22 (S.D.W.V. Feb. 15, 2022) (refusing to issue a blanket order excluding 30(b)(6) testimony even at a full trial on the merits).

Adkin's testimony makes clear that he is not some distant, far-off executive without personal knowledge of the individual defendants or this case's facts and circumstances. Rather, Adkin was personally involved with the hiring of the individual defendants and has personal knowledge about that process, including through his own conversations with key individuals like Jimmy Madigan and Tom Coyne. This is simply not an instance where, by way of hypothetical, a lower-level designated representative testifies about a corporation's strategic decisions after a review of documents or download of information from a third-party. Instead, this is an instance where the corporate representative was personally knowledgeable and/or personally involved in the facts, decisions, and policies at issue as part of his role at Alliant.

Numerous aspects of Adkin's testimony—identified below—demonstrate that he has personal knowledge of those portions of his transcript that Defendants seek to have admitted.[1] The Court should accept this testimony into evidence, particularly considering the relaxed procedural and evidentiary standards applied to preliminary injunction hearings as discussed *supra*.

- Adkin testified that Jimmy Madigan and Tom Coyne reported directly to him, and that Alex Gramling and Melissa Linde report to him through Donna Baker. (Dep. Tr. p. 9:8–9:19).
- Adkin testified that he personally is "in charge of producers," like Madigan and Coyne, in the "southeast," which includes Arkansas. (Dep. Tr. p. 13:5–13:18).
- Adkin made clear that ***he*** hired Tom Coyne, (Dep. Tr. p. 15:5–15:17), and ***he*** plays a role in recruitment efforts, (Dep. Tr. p. 16:23–17:10), though he did not personally recruit Tom Coyne, (Dep. Tr. p. 17:17–17:20).
- Adkin himself got involved with pre-hire conversations involving Tom Coyne. (Dep. Tr. p. 18:20–19:2, 19:25–20:11).
- To the best of his recollection, and in addition to counsel, Adkin was involved with a review of Madigan's McGriff employment agreement. (Dep. Tr. p. 24:4–24:19).
- As someone who personally participates in Alliant's vetting process, it is clear that Adkin has personal knowledge about it. (Dep. Tr. p. 25:25–26:15).
- The same is true for conversations with new employees about compensation, (Dep. Tr. p. 39:19–39:22), and Adkin testified specifically that he was involved in compensation conversations regarding Madigan, and he described them. (Dep. Tr. 40:3–41:1, 49:7–50:9).
- Adkin personally talked with Madigan (albeit telephonically) in early January, (Dep. Tr. p. 28:13–17, 33:6–34:4), and Adkin himself was "impressed" by Madigan, (Dep. Tr. p. 36:5–36:15).
- Adkin can certainly testify with personal knowledge about his own conversations with Madigan. (Dep. Tr. 36:16–37:6).
- Likewise, Adkin can testify about his knowledge that certain information from candidates is not important. (Dep. Tr. p. 37:10–37:23).
- Given his personal experience and role with Alliant, Adkin certainly is in a position to testify about what is the "normal" process of recruiting a producer, including the recruitment of Madigan. (Dep. Tr. p. 31:15–32:10).
- Adkin was clearly testifying from his personal knowledge about how large clients, like Tyson, use multiple brokers. (Dep. Tr. p. 42:1–43:2).
- As someone involved in the hiring process of producers, Adkin was also testifying from his personal knowledge about the "prospective employee departure protocols" document shown to him during his deposition, which he had even testified about earlier before it was shown to him. (Dep. Tr. p. 54:6–55:11, 58:15–59:15).
- Likewise, Adkin was competent to testify about whether "Madigan" came up in any conversations that he had with Coyne and whether he advised Coyne on securing a BOR from Tyson. (Dep. Tr. p. 65:21–68:6).

[1] For completeness, a complete copy of Adkin's 30(b)(6) deposition transcript is attached hereto as Exhibit A. However, Defendants only seek to admit those portions that are highlighted therein.

In conclusion, McGriff's position that ***none*** of Adkin's testimony is admissible for purposes of ruling on a preliminary injunction—as distinguished from a full trial on the merits—is hyper-technical and ignores altogether the context of his testimony. In fact, as demonstrated above, it is clear that Adkin had personal knowledge concerning those portions of his corporate deposition transcript that have been designated by Defendants.