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10 UNITED STATES BANKRUPTCY COURT
11 EASTERN DISTRICT OF WASHINGTON

12 In re:

13 GIGA WATT, INC., a Washington
14 corporation,

15 Debtor.

16 MARK D. WALDRON, in his capacity as the
17 duly-appointed Chapter 11 Trustee,

18 Plaintiff,

19 vs.

20 DAVID M. CARLSON and JANE DOE 1,
21 individually and on behalf of the marital
22 estate, ENTERPRISE FOCUS, INC., a
23 Washington corporation, CLEVER CAPITAL,
24 LLC, a Washington limited liability
25 company, JEFFERY FIELD, ROB TAVIS, AND
26 JANE DOES 2 THROUGH 5

Defendants.

Case No. 18-03197

The Honorable Frederick P. Corbit

FRCP 12(B)(6) MOTION TO DISMISS
PLAINTIFF'S VERIFIED COMPLAINT
AS TO DEFENDANT JEFFREY FIELD

Adv. P. No. 19-80012

1 COMES NOW Defendant Jeffery Field (“Field”), by and through his
2 attorneys of record, Ogden Murphy Wallace, P.L.L.C., and hereby moves this
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4 Court for an order dismissing Plaintiff’s Verified Complaint against him pursuant
5 to BR 7012 and FRCP 12(b)(6), for failure to state a claim. The grounds for Field’s
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7 Motion are set forth below.

8 BR 7012 allows a defendant to answer a complaint within 30 days after the
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10 issuance of the summons, but permits the defendant to file a FRCP 12(b)(6)
11 motion to dismiss in lieu of filing an answer. BR 7012.

12 FRCP 12(b)(6) allows a defendant to move for dismissal when the plaintiff’s
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14 complaint fails to state a claim against that defendant. This rule reads, “... a party
15 may assert the following defenses by motion: ... (6) failure to state a claim upon
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17 which relief can be granted.” FRCP 12(b)(6).

18 To survive dismissal, the plaintiff’s complaint must have pled sufficient
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20 factual matters, accepted as true, to state a claim to relief that is plausible on its
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22 face. This requires the plaintiff to plead more than labels, conclusions, and a
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24 formulaic recitation of the elements. Plaintiff must have pled facts. Figueroa v.
BNSF Ry. Co., 275 F. Supp. 3d 1225, 1227 (E.D. Wash. 2017).

25 Here, while Plaintiff’s Verified Complaint names Field as a defendant, it
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pleads no facts on which Plaintiff seeks to state a claim against Field. (ECF No.

1 281). Plaintiff's Verified Complaint also fails to identify any alleged cause of
2 action directed to Field, or facts supporting that cause of action. Id. Rather, it
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4 references Field in only three places, and reads as follows:

5 16. Upon information and believe [sic] Defendant, Jeffrey
6 Field, is a shareholder of Defendant Enterprise.

7 20. On January 1, 2017, Defendant Carlson, Defendant
8 Enterprise, Defendant Field and Defendant Tavis, on the one hand,
9 and Giga Watt, on the other hand, entered into that certain Bill of
10 Sale and Assignment and Assumption Agreement (the "Sale and
11 Assignment Agreement"). A copy of the Sale and Assignment
12 Agreement is attached hereto as Exhibit A.

13 22. Pursuant to the Sale and Assignment Agreement,
14 Defendants Carlson, Enterprise, Field and Tavis sold and assigned to
15 Giga Watt all of their assets, interests and good will in
16 "MegaBigPower" for a purchase price of \$3 million.

17 (ECF No. 281).

18 These pled alleged facts, if true, fail to state a claim against Field. FRCP
19 12(b)(6). While Plaintiff's Verified Complaint requests this Court enter
20 preliminary and permanent injunctive relief against all Defendants, including
21 Field, it does not plead facts on which Plaintiff would be entitled to this relief as to
22 Field. (ECF No. 281). To obtain injunctive relief, Plaintiff must plead, and then
23 prove, facts on which Field has violated a legal right of Plaintiff, which right
24 cannot be remedied by money damages. Planned Parenthood of Greater
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26 Washington & N. Idaho v. U.S. Dep't of Health & Human Servs., 328 F. Supp. 3d

1 1133, 1139 (E.D. Wash. 2018). “To be entitled to a permanent or final injunction,
2 a plaintiff must demonstrate: (1) actual success on the merits; (2) that it has
3 suffered an irreparable injury; (3) that remedies available at law are inadequate;
4 (4) that the balance of hardships justify a remedy in equity; and (5) that the public
5 interest would not be disserved by a permanent injunction.” Id. at 1139.
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8 Rather than plead facts alleging that Field violated Plaintiff’s rights,
9 Plaintiff’s Verified Complaint pleads that Defendant David Carlson and Defendant
10 Clever Capital LLC engaged in conduct violating Plaintiff’s rights and assert against
11 these two Defendants claims for constructive and/or fraudulent transfers, insider
12 preferences, breach of fiduciary duties, and turnover. Plaintiff, however, directed
13 none of these claims or factual allegations at Field. Despite this, Plaintiff’s
14 Verified Complaint states Plaintiff wants Fields enjoined and requests money
15 damages from all Defendants, presumably including Field (ECF No. 281).
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19 Again, to state a claim against Field that could entitle Plaintiff to money
20 damages or injunctive relief, Plaintiff’s Verified Complaint must plead facts to
21 support Plaintiff’s legal theories. FRCP 12(b)(6). It does not. The only facts pled
22 as to Field are that he was a shareholder in Enterprise Focus, Inc. and that
23 Enterprise Focus, Inc. assigned to the Debtor its assets. (ECF No. 281).
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1 Based on the foregoing, Plaintiff's Verified Complaint has failed to state a
2 claim against Field upon which this Court could grant Plaintiff relief. Field
3 requests that this Court dismiss Plaintiff's Verified Complaint as to Field. Field
4 consents to entry of final orders or judgment by the bankruptcy court.
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7 DATED this 21st day of May, 2019.

8 OGDEN MURPHY WALLACE, P.L.L.C.

9 By s/ Brian A. Walker

10 BRIAN A. WALKER, WSBA #26586

11 CHRISTINA M. DAVITT, WSBA #41272

12 Attorneys for Jeffrey Field
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CERTIFICATE OF SERVICE

I certify under the laws of the United States of America that on the 21st day of May, 2019, I caused to be filed **FRCP 12(B)(6) Motion to Dismiss Plaintiff's Verified Complaint as to Defendant Jeffrey Field** through CM/ECF causing a true and correct copy of the foregoing to be served electronically upon all parties of record.

DATED this 21st day of May, 2019.

s/ Brian A. Walker

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