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9 Attorneys for Defendant Jeffrey Field

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, JEFFREY FIELD, ROB TAVIS, AND
26 JANE DOES 2 THROUGH 5

Defendants.

Case No. 18-03197

The Honorable Frederick P. Corbit

DEFENDANT JEFFREY FIELD'S
RESPONSE TO CHAPTER 11 TRUSTEE'S
PRELIMINARY INJUNCTION MOTION

Adv. P. No. 19-80012

1 COMES NOW Defendant Jeffrey Field ("Field"), by and through his
2 attorneys of record, Ogden Murphy Wallace, P.L.L.C., and hereby responds to the
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4 Chapter 11 Trustee's Motion for Preliminary Injunction (ECF No. 2).

5 Field intends to appear at the Thursday, May 23, 2019 hearing set on the
6
7 Trustee's Motion to offer argument and present evidence showing that the
8 Trustee has failed to state a claim against Field in his Verified Complaint (ECF No.
9 281) and that the Trustee cannot establish the elements necessary to obtain the
10 requested preliminary relief against Field.
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12 Field believes that the evidence presented will show that while the
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14 Trustee's Verified Complaint names Field as a defendant, it pleads no facts on
15 which the Trustee seeks to state a claim against Field. (ECF No. 281). Rather, the
16 Verified Complaint references Field in only three places, and reads as follows:
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18 16. Upon information and believe [sic] Defendant, Jeffrey
19 Field, is a shareholder of Defendant Enterprise.

20 20. On January 1, 2017, Defendant Carlson, Defendant
21 Enterprise, Defendant Field and Defendant Tavis, on the one hand,
22 and Giga Watt, on the other hand, entered into that certain Bill of
23 Sale and Assignment and Assumption Agreement (the "Sale and
24 Assignment Agreement"). A copy of the Sale and Assignment
25 Agreement is attached hereto as Exhibit A.

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

1 (ECF No. 281).

2 Further, a preliminary injunction is an extraordinary and drastic remedy
3 that may be granted only upon a clear showing that the movant is entitled to such
4 relief. Mazurek v. Armstrong, 520 U.S. 968, 972 (1997). To obtain preliminary
5 injunctive relief, the Trustee must establish the following elements: (1) a
6 likelihood of success on the merits; (2) a likelihood that the Trustee will suffer
7 irreparable harm in the absence of preliminary relief; (3) that the balance of
8 equities tips in the Trustee's favor; and (4) that an injunction is in the public
9 interest. Winter v. Natural Res. Def. Council, Inc., 555 U.S. 7, 20 (2008).
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14 The Trustee cannot show a likelihood of success on the merits or likelihood
15 of irreparable harm caused by Field, because he asserts no legal theory or claim
16 against Field. To be granted the extraordinary and drastic remedy of a
17 preliminary injunction against Field, the Trustee must demonstrate, rather than
18 merely allege, the existence of an immediate threatened injury to support
19 preliminary injunctive relief. Caribbean Marine Servs. Co. v. Baldrige, 844 F.2d
20 668, 674 (9th Cir. 1988). "Speculative injury cannot be the basis for a finding of
21 irreparable harm." In re Excel Innovations, Inc., 502 F.3d 1086, 1098 (9th Cir.
22 2007). Moreover, mere financial injury will not constitute irreparable harm if
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1 adequate compensatory relief will be available in the course of litigation. Goldie's
2 Bookstore, Inc. v. Superior Court, 739 F.2d 466, 471 (9th Cir. 1984).
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4 Further demonstrating the absence of Field's possible irreparable harm to
5 the Trustee, we anticipate that Field will testify that he was an employee of
6 Enterprise Focus, Inc. In addition to drawing wages, Field worked with the hope
7 that if Enterprise Focus sold, Enterprise Focus would reward Field with some of
8 the profits from the sale. Field's duties for Enterprise Focus were to install,
9 operate, and maintain Enterprise Focus's equipment that performed bitcoin
10 mining. He was not involved in the management of Enterprise Focus. However,
11 about 1 day before Enterprise Focus signed documents for the sale of its assets to
12 Giga Watt, Enterprise Focus gave Field shares in Enterprise Focus. The next day it
13 asked Field to sign the bill of sale and assignment to Giga Watt.
14

15 After Giga Watt acquired the assets of Enterprise Focus, Field worked at
16 Giga Watt until January 2018, when Field terminated his employment. Since
17 January 2018, Field has had no involvement with Giga Watt and no involvement
18 with the TNT Facility that appears to be the focus of the Trustee's adversary
19 proceeding. Field resides in Mukilteo, Washington. He does not reside in Chelan
20 or Douglas County, Washington, and does not access or have any need to access
21 the TNT Facility or to be involved with its management or operations.
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1 Field respectfully requests that this Court deny the Trustee's Preliminary
2 Injunction Motion filed against him.
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4 DATED this 22nd day of May, 2019.

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

6 By s/ Brian A. Walker

7 BRIAN A. WALKER, WSBA #26586

8 CHRISTINA M. DAVITT, WSBA #41272

9 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 22nd day of May, 2019, I caused to be filed **Defendant Jeffrey Field’s Response to Chapter 11 Trustee’s Motion for Preliminary Injunction** through CM/ECF causing a true and correct copy of the foregoing to be served electronically upon all parties of record.

DATED this 22nd day of May, 2019.

s/ Brian A. Walker

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