



STATE OF OKLAHOMA  
CLEVELAND COUNTY } S.S.

IN THE DISTRICT COURT OF CLEVELAND COUNTY  
STATE OF OKLAHOMA

FILED

NOV 08 2018

STATE OF OKLAHOMA, ex rel., )  
MIKE HUNTER, )  
ATTORNEY GENERAL OF OKLAHOMA, )  
 )  
Plaintiff, )  
 )  
vs. )  
 )  
PURDUE PHARMA L.P., et al., )  
 )  
Defendants. )

In the office of the  
Court Clerk MARILYN WILLIAMS

Case No. CJ-2017-816  
The Honorable Thad Balkman  
Special Master: William Hetherington

**NON-PARTY F.A.T.E., INC.'S MOTION TO QUASH  
SUBPOENA DUCES TECUM**

Pursuant to 12 O.S. § 2004.1(C), non-party F.A.T.E., Inc. - Fighting Addiction Through Education ("FATE") moves to quash the *Subpoena Duces Tecum* ("Subpoena") issued by Defendants Purdue Pharma, L.P., Purdue Pharma, Inc., and The Purdue Frederick Company Inc. (collectively, "Purdue."). [See Ex. 1, *Subpoena*.] The Subpoena seeks information irrelevant to the issues in the case, is overly broad and unduly burdensome, implicates constitutional rights of freedom of speech and association, and was issued solely for purposes of harassment.

**INTRODUCTION**

The opioid epidemic is one of the worst public health emergencies in United States history. Ten of thousands of people are denying from opioid overdoses every year, with hundreds of those deaths occurring in the State of Oklahoma. Fortunately, discussions about opioids and their impact are becoming more prevalent and citizens are becoming more educated about addiction and treatment for this terrible disease. Every local and national news media outlet across the country has covered the opioid crisis, and many production companies including CBS, HBO, PBS, BBC, Time, and Netflix, have created documentaries about the impact of the epidemic on citizens and

their communities. Countless non-profit organizations and coalitions have been created to promote and spread awareness about opioid addiction and how to recognize and treat it. All of these organizations serve to educate the public in an attempt to combat the worst public health crisis this country has ever seen.

Purdue is not seeking documents from these local and national news outlets. It is not serving subpoenas on companies like HBO and CBS, demanding all documents and research related to their news stories or movie productions. It is not demanding that the many organizations and coalitions dedicated to promoting education about opioids turn over their formation documents, research, and correspondence. It is not asking these organizations to reveal their funding sources. Purdue knows the irrelevance of such discovery to the issues in this case, knows such requests would be deemed unduly broad and overly burdensome, knows such information is in the public domain, and knows a lot of the information about the origin of this crisis comes from within its own company. Purdue is only interested in obtaining information about a single documentary: *Killing Pain*, a film presented by FATE and produced by Lampstand Story Co. (“Lampstand”).<sup>1</sup> The reason? To harass and try to intimidate the State’s lead counsel and founder of FATE, Reggie Whitten.

Mr. Whitten founded the non-profit FATE in 2009, nearly a decade ago, and long before this litigation arose. Mr. Whitten founded FATE after the death of his son, Brandon, caused by addiction ([ndepth.newsok.com/brandons-story/](http://ndepth.newsok.com/brandons-story/)). FATE is a non-profit organization formed to educate the public about addiction and to save lives ([www.fate.org](http://www.fate.org)). FATE provides education programs about addiction to elementary, middle school, and high school students. FATE also

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<sup>1</sup> Simultaneously with serving the Subpoena on FATE, Purdue served a similar subpoena on Lampstand to which Lampstand is also objecting and moving to quash. [*Ex. 2, Subpoena to Lampstand.*]

reaches out to college and university students through their abuse prevention programs and provides educational lectures to medical students and college athletes. FATE is dedicated to changing the culture of substance abuse and educating people about the realities of addiction and how it can be treated.

As part of his charity work with FATE, Mr. Whitten has shared Brandon's story and spoken about addiction to medical students, undergraduates, and student athletes at Oklahoma State University, University of Oklahoma, University of Central Oklahoma, and East Central University. He worked closely with the OSU Center for Health Sciences in its recent launch of the OSU Addiction Medicine Clinic. He also created the Brandon Whitten Institute for Addiction and Recovery at East Central University. His charitable work with the State's universities on drug prevention education is far-reaching.

In connection with the goals of education and empowerment, before this lawsuit was filed, FATE engaged Lampstand to produce a documentary about how opioids have impacted citizens of Oklahoma. Killing Pain contains testimonials from people adversely affected by addiction and information about the opioid epidemic obtained from publicly available sources. The film was released on August 29, 2018 and can be viewed online at [www.killingpain.com](http://www.killingpain.com) and on YouTube. It can be viewed by anyone in the world.

The Subpoena does not seek any information which is relevant to any party's claim or defense. There is nothing about FATE or Killing Pain that will aid Purdue in defending itself against the State's claims, and attempted harassment of the State's counsel and unwarranted intrusion into an organization dedicated to saving the lives of Oklahomans strikes a new low for Purdue. Moreover, the Subpoena is patently overly broad, seeks information within the public domain, requests documents already available to Purdue, and implicates constitutional rights.

There is simply no need to burden a non-profit organization with an overly broad and voluminous document production which can be obtained through other means. FATE requests the Court strike the Subpoena in its entirety.

### ARGUMENT AND AUTHORITIES

In Oklahoma, parties may not conduct discovery on matters that are irrelevant to the claims and defenses in the case. *See* 12 O.S. § 3226. This Court possesses “broad discretion” to control the discovery process to ensure that it proceeds justly and efficiently. *State ex rel. Protective Health Serv. v. Billings Fairchild Ctr., Inc.*, 2007 OK CIV APP 24, ¶ 8, 158 P.3d 484, 488. To that end, “district courts should not neglect their power to restrict discovery where justice requires protection for a party or person from annoyance, embarrassment, oppression, or undue burden or expense.” *Quinn v. City of Tulsa*, 1989 OK 112, 777 P.2d 1331, 1342 (internal citations omitted); 12 O.S. § 2004.1(C)(3). This power should be exercised here for several reasons.

First, the Subpoena is patently overly broad and seeks irrelevant documents. For example, the Subpoena seeks all organizational and formation documents for FATE. [*Ex. 1, Subpoena, Ex. A at Nos. 1-3.*] There is zero basis for requesting documents surrounding the organization and creation of FATE. This non-profit was created in 2009 and was engaged in the fight against substance abuse and addiction for years before this lawsuit was filed. FATE’s corporate documents have nothing to do with the State’s claims that Purdue engaged in a widespread campaign to falsely promote the benefits and downplay the addictive nature of opioids, nor are they relevant to Purdue’s denial of those allegations. Even more intrusive and irrelevant is Purdue’s request for FATE to produce **all funding** from **any entity** since its inception. [*Id. at No. 11* (“[a]ll documentation of funding, including, without limitation, gifts, grants, fees, payments, or other remuneration received by FATE from the State of Oklahoma or any other entity since

1996.”.)] It is impossible to fathom how FATE’s funding, especially on unrelated projects completed long before this lawsuit ever arose, is discoverable. This request is purely a fishing expedition.

Second, the production of *Killing Pain* is irrelevant to the actual claims and defenses in this lawsuit. The State did not fund or produce this film. Similar films are being created and promoted throughout the country, including by government agencies such as the CDC, all intended to educate the public on this crisis. *Killing Pain* is no different.

Third, the Subpoena implicates freedom of speech and freedom of association privileges granted by the First Amendment. “The freedom of speech and of the press guaranteed by the Constitution embraces at least the liberty to discuss publicly and truthfully all matters of public concern without previous restraint or fear of subsequent punishment.” *State ex rel. Oklahoma Bar Ass’n v. Porter*, 1988 OK 114, 766 P.2d 958, 966 (quoting *Thornhill v. Alabama*, 310 U.S. 88, 60 S.Ct. 736, 84 L.Ed. 1093 (1940)). “Freedom of association permits individuals to associate for lawful purposes and provides ‘a right to join with others to pursue goals independently protected by the [F]irst [A]mendment.’” *U.S. v. Hunter*, 739 F.3d 492, 496 (10th Cir. 2013) (quoting *U.S. v. Wilson*, 154 F.3d 658, 665 (7th Cir. 1998)). FATE should not be subjected to intrusive subpoenas merely because it was involved in the creation of an educational film on an issue of critical importance to the public. If this Subpoena stands, then theoretically any non-profit, organization, coalition, movie production company or network involved in the creation of a documentary, film or news story about opioids could be opening themselves up to burdensome discovery in this lawsuit. The slope is a slippery one.

Fourth, Purdue is requesting information that can and should be requested from other sources. All the factual information contained in the film comes from public sources, including

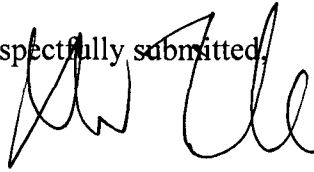
studies on the opioid epidemic, published statistics from various medical journals, and government publications. FATE did not conduct any “focus groups” or “market research” in connection with making the film. In addition, FATE’s entity information can be obtained from the Secretary of State, and its tax documents (990’s) are a matter of public record. The social media accounts for FATE and/or Killing Pain are not private pages and can be viewed by Purdue. In addition, much of this information regarding opioid sales and profits is in the hands of Defendants themselves. Purdue should not be allowed to burden a non-party with requests for information that it can obtain internally within its own company.

Fifth, the Subpoena is solely meant for purposes of harassment. Purdue is not seeking this type of information from any other media source, opioid-related non-profit, or movie production company. Purdue is not requesting information from The Oklahoman or other local or national news sources to whom the State has made statements about the opioid crisis. Purdue chose FATE because it is the life work of Mr. Whitten. The Subpoena should be seen for what it is—an attempt to distract the Court from the issues in the case and to try to dig up dirt on a charitable organization (and its founder) created to educate and help Oklahomans struggling with addiction. The Subpoena should be quashed.

### **CONCLUSION**

For the reasons set forth above, non-party FATE respectfully requests the Court quash the *Subpoena Duces Tecum* in its entirety, and for such further relief the Court deems proper.

Respectfully submitted,



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**CERTIFICATE OF SERVICE**

I certify that a true and correct copy of the above and foregoing was emailed on November 8, 2018 to:

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A handwritten signature in black ink, appearing to read "Drew Neville", written in a cursive style.

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Drew Neville

**IN THE DISTRICT COURT OF CLEVELAND COUNTY  
STATE OF OKLAHOMA**

STATE OF OKLAHOMA, ex rel., MIKE  
HUNTER, ATTORNEY GENERAL OF  
OKLAHOMA,

Plaintiff,

v.

PURDUE PHARMA L.P.; PURDUE  
PHARMA, INC.; THE PURDUE  
FREDERICK COMPANY; TEVA  
PHARMACEUTICALS USA, INC.;  
CEPHALON, INC.; JOHNSON &  
JOHNSON; JANSSEN  
PHARMACEUTICALS, INC.; ORTHO-  
McNEIL-JANSSEN  
PHARMACEUTICALS, INC., n/k/a  
JANSSEN PHARMACEUTICALS, INC.;  
JANSSEN PHARMACEUTICA, INC.,  
n/k/a JANSSEN PHARMACEUTICALS,  
INC.; ALLERGAN, PLC, f/k/a ACTAVIS  
PLC, f/k/a ACTAVIS, INC., f/k/a  
WATSON PHARMACEUTICALS, INC.;  
WATSON LABORATORIES, INC.;  
ACTAVIS LLC; and ACTAVIS PHARMA,  
INC., f/k/a WATSON PHARMA, INC.,

Defendants.

Case No. CJ-2017-816

Honorable Thad Balkman

Special Discovery Master:  
William C. Hetherington, Jr.

**SUBPOENA DUCES TECUM**

**TO: F.A.T.E., Inc.**  
**Fighting Addiction Through Education**  
**1 NE 2nd Street, Suite 201**  
**Oklahoma City, Oklahoma 73104**

**[X] YOU ARE COMMANDED** to produce and permit inspection and copying of the following documents or objects at the place, date, and time specified below:

The documents to be produced are set forth on **Exhibit "A"** attached.

**PLACE:** Law Office of Crowe & Dunlevy, P.C., Braniff Building, 324 N. Robinson Ave., Ste 100, Oklahoma City, OK 73102, where the copying/inspecting will take place

**EXHIBIT  
1**

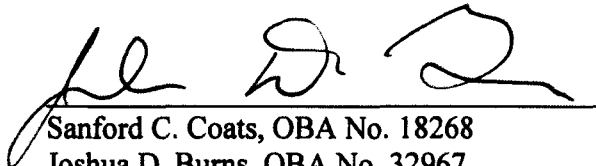
**DATE AND TIME:** November 14, 2018 at 9:00 a.m.

*It is not necessary that you appear at the date, time, and location specified if the documents are mailed to the address noted herein by the specified date and time.*

**In order to allow objections to the production of documents and things to be filed, you should not produce them until the date specified in this subpoena, and if an objection is filed, until the court rules on the objection. Electronically stored information within the scope of this subpoena should be produced in readable printed form, in the English language, to accomplish the disclosure of the electronically stored information to Plaintiff and its counsel. Unless otherwise agreed, the person commanded to produce and permit inspection, copying, testing, or sampling or any party may, within 14 days after service of the subpoena, or before the time specified for compliance, if such time is less than 14 days after service, serve written objection to the inspection, copying, testing or sampling of any or all of the designated materials or to producing electronically stored information in the form(s) requested.**

**YOU ARE ORDERED NOT TO DESTROY, TRANSFER, OR OTHERWISE DISPOSE OF ANY RECORDS WHICH MAY BE RESPONSIVE TO THIS SUBPOENA.**

Dated this 24th day of October, 2018.



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Joshua D. Burns, OBA No. 32967

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*Counsel for Purdue Pharma L.P.,  
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Frederick Company Inc.*

## **EXHIBIT "A"**

Fighting Addiction Through Education ("FATE") is required to produce and permit inspection and copying of documents and things in its possession, custody, or control that relate to the following categories of requests according to the following definitions and instructions.

### **Definitions**

The following definitions apply to this Subpoena:

1. "Fighting Addiction Through Addiction," "FATE," "You" and/or "Your" refer to the non-profit corporation F.A.T.E., Inc. – Fighting Addiction Through Education, as well as any of its past and present affiliates, operating divisions, parent corporations, subsidiaries, directors, officers, agents, employees, representatives, and all predecessors in interest.
2. "Documents" shall be given the broadest meaning permitted under the Oklahoma Rules of Civil Procedure, and includes, without limitation, communications and electronically stored information.
3. "And" and "Or" shall be construed conjunctively or disjunctively as necessary to make the request inclusive rather than exclusive.
4. "All" or "any" shall mean "any and all."
5. "Including" shall not be construed as limiting any request, and shall mean "including without limitation."

### **Instructions**

The following instructions apply to this Subpoena:

1. In responding to this subpoena, please furnish all information that is available to You or subject to Your control, including information in the possession, custody, or control of Your officers, directors, employees, representatives, consultants, agents, attorneys, accountants, or any person who has served in any such role at any time, as well as corporate parents, subsidiaries, affiliates, divisions, predecessor companies, or any joint venture to which You are a party.
2. If you cannot fully comply with any category of requested documents, comply to the maximum extent possible and explain: (a) what information you refuse to produce and (b) why full compliance is not possible. If you object to any request or subpart of a request, state with specificity the grounds for each such objection.

### **Documents to be Produced**

1. All organizational charts for Fighting Addiction Through Education ("FATE"),
2. Documents sufficient to show who owns FATE.
3. All entity formation documents for FATE.
4. All communications between FATE and any employee, agent, or representative for the State of Oklahoma related to the documentary "Killing Pain."
5. All communications between FATE and any of the individuals interviewed for, or considered for participation in, the documentary "Killing Pain."
6. All documents related to the promotion, marketing, or distribution of the documentary "Killing Pain."
7. All payments to or from FATE related to the documentary "Killing Pain."
8. All documents concerning opioids and/or pain medication provided to or created by FATE in connection with the documentary "Killing Pain."
9. All market research, focus groups, and other research, including through consultants or other outside resources, conducted in advance of the finalization of the documentary "Killing Pain."
10. All documents, memoranda, and communications related to the inception, creation, and filming of the documentary "Killing Pain," including but not limited to discussions of the sequence of the chapters and interviews in "Killing Pain, as well as the content and direction of the documentary.
11. All documentation of funding, including, without limitation, gifts, grants, fees, payments, or other remuneration received by FATE from the State of Oklahoma or any other entity since 1996.
12. All communications between FATE and any employee, agent, or representative for the State of Oklahoma related to opioids and/or pain medication.
13. All communications between FATE and employees and the Oklahoma Office of the Attorney General.
14. All documents, memoranda, messages, posts, groups, discussions, and communications related to any statement made on any social media accounts You control, including but not limited to Twitter (@KillingPainDoc; @WhatsYourFATE), Facebook (facebook.com/KillingPainDoc; facebook.com/WhatsYourFATE), Instagram (@Killingpaindoc), social networks, blogs, Internet bulletin boards, and similar forums or media, related to opioids and/or the documentary Killing Pain.

**CERTIFICATE OF SERVICE**

I hereby certify that on the 24th day of October, 2018, a true and correct copy of the foregoing Subpoena Duces Tecum was served via email upon the counsel of record listed on the attached Service List.

  
Joshua D. Burns



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**IN THE DISTRICT COURT OF CLEVELAND COUNTY  
STATE OF OKLAHOMA**

STATE OF OKLAHOMA, ex rel., MIKE  
HUNTER, ATTORNEY GENERAL OF  
OKLAHOMA,

Plaintiff,

v.

PURDUE PHARMA L.P.; PURDUE  
PHARMA, INC.; THE PURDUE  
FREDERICK COMPANY; TEVA  
PHARMACEUTICALS USA, INC.;  
CEPHALON, INC.; JOHNSON &  
JOHNSON; JANSSEN  
PHARMACEUTICALS, INC.; ORTHO-  
McNEIL-JANSSEN  
PHARMACEUTICALS, INC., n/k/a  
JANSSEN PHARMACEUTICALS, INC.;  
JANSSEN PHARMACEUTICA, INC.,  
n/k/a JANSSEN PHARMACEUTICALS,  
INC.; ALLERGAN, PLC, f/k/a ACTAVIS  
PLC, f/k/a ACTAVIS, INC., f/k/a  
WATSON PHARMACEUTICALS, INC.;  
WATSON LABORATORIES, INC.;  
ACTAVIS LLC; and ACTAVIS PHARMA,  
INC., f/k/a WATSON PHARMA, INC.,

Defendants.

Case No. CJ-2017-816

Honorable Thad Balkman

Special Discovery Master:  
William C. Hetherington, Jr.

**SUBPOENA DUCES TECUM**

**TO: Lampstand Media LLC  
2805 NW 16th Street  
Oklahoma City, OK 73107**

**[X] YOU ARE COMMANDED** to produce and permit inspection and copying of the following documents or objects at the place, date, and time specified below:

The documents to be produced are set forth on **Exhibit "A"** attached.

**PLACE:** Law Office of Crowe & Dunlevy, P.C., Braniff Building, 324 N. Robinson Ave., Ste 100, Oklahoma City, OK 73102, where the copying/inspecting will take place

**EXHIBIT**

**2**

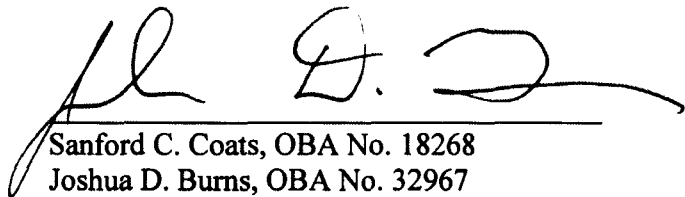
**DATE AND TIME:** November 14, 2018 at 9:00 a.m.

*It is not necessary that you appear at the date, time, and location specified if the documents are mailed to the address noted herein by the specified date and time.*

**In order to allow objections to the production of documents and things to be filed, you should not produce them until the date specified in this subpoena, and if an objection is filed, until the court rules on the objection. Electronically stored information within the scope of this subpoena should be produced in readable printed form, in the English language, to accomplish the disclosure of the electronically stored information to Plaintiff and its counsel. Unless otherwise agreed, the person commanded to produce and permit inspection, copying, testing, or sampling or any party may, within 14 days after service of the subpoena, or before the time specified for compliance, if such time is less than 14 days after service, serve written objection to the inspection, copying, testing or sampling of any or all of the designated materials or to producing electronically stored information in the form(s) requested.**

**YOU ARE ORDERED NOT TO DESTROY, TRANSFER, OR OTHERWISE DISPOSE OF ANY RECORDS WHICH MAY BE RESPONSIVE TO THIS SUBPOENA.**

Dated this 24th day of October, 2018.



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*Counsel for Purdue Pharma L.P.,  
Purdue Pharma Inc., and The Purdue  
Frederick Company Inc.*

## **EXHIBIT "A"**

Lampstand Media LLC is required to produce and permit inspection and copying of documents and things in its possession, custody, or control that relate to the following categories of requests according to the following definitions and instructions.

### **Definitions**

The following definitions apply to this Subpoena:

1. "Lampstand Media," "You" and/or "Your" refer to the limited liability company Lampstand Media LLC, as well as any of its past and present affiliates, operating divisions, parent corporations, subsidiaries, directors, officers, agents, employees, representatives, and all predecessors in interest.
2. "Documents" shall be given the broadest meaning permitted under the Oklahoma Rules of Civil Procedure, and includes, without limitation, communications and electronically stored information.
3. "And" and "Or" shall be construed conjunctively or disjunctively as necessary to make the request inclusive rather than exclusive.
4. "All" or "any" shall mean "any and all."
5. "Including" shall not be construed as limiting any request, and shall mean "including without limitation."

### **Instructions**

The following instructions apply to this Subpoena:

1. In responding to this subpoena, please furnish all information that is available to You or subject to Your control, including information in the possession, custody, or control of Your officers, directors, employees, representatives, consultants, agents, attorneys, accountants, or any person who has served in any such role at any time, as well as corporate parents, subsidiaries, affiliates, divisions, predecessor companies, or any joint venture to which You are a party.
2. If you cannot fully comply with any category of requested documents, comply to the maximum extent possible and explain: (a) what information you refuse to produce and (b) why full compliance is not possible. If you object to any request or subpart of a request, state with specificity the grounds for each such objection.

### **Documents to be Produced**

1. All communications between You and/or your affiliates, members, and employees and any employee, agent, or representative for the State of Oklahoma related to the documentary "Killing Pain."
2. All communications between You and/or your affiliates, members, and employees and any of the individuals interviewed for, or considered for participation in, the documentary "Killing Pain."
3. All communications between You and/or your affiliates, members, and employees and any representative of Fighting Addiction Through Education (FATE) related to the documentary "Killing Pain."
4. All drafts of scripts, story boards, shooting scripts, and unedited footage generated during the production of the documentary "Killing Pain," whether used in the final cut of the documentary or not.
5. All payments to or from You and/or your affiliates, members, and employees related to the documentary "Killing Pain."
6. All documents concerning opioids and/or pain medication provided to or created by You and/or your affiliates, members, and employees in connection with the documentary "Killing Pain."
7. All market research, focus groups, and other research, including through consultants or other outside resources, conducted in advance of the finalization of the documentary "Killing Pain."
8. All documents, memoranda, and communications related to the inception, creation, and filming of the documentary "Killing Pain," including but not limited to discussions of the sequence of the chapters and interviews in "Killing Pain," as well as the content and direction of the documentary.
9. All documents related to Your efforts to promote, market, distribute, and publicize the documentary "Killing Pain."
10. All documents, memoranda, messages, posts, groups, discussions, and communications related to any statement made on any social media accounts You control, including but not limited to Twitter (@KillingPainDoc; @lampstandmedia), Facebook (facebook.com/KillingPainDoc), Instagram (@Killingpaindoc; @lampstand), social networks, blogs, Internet bulletin boards, websites, and similar forums or media, related to opioids and/or the documentary Killing Pain.

**CERTIFICATE OF SERVICE**

I hereby certify that on the 24th day of October, 2018, a true and correct copy of the foregoing Subpoena Duces Tecum was served via email upon the counsel of record listed on the attached Service List.

  
\_\_\_\_\_  
Joshua D. Burns



## SERVICE LIST

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