



IN THE DISTRICT COURT OF CLEVELAND COUNTY
STATE OF OKLAHOMA

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 LAMPSTAND MEDIA, LLC'S MOTION TO QUASH
SUBPOENA DUCES TECUM**

Pursuant to 12 O.S. § 2004.1(C), non-party Lampstand Media, LLC, also known as Lampstand Story Co. ("Lampstand"), 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"). [Ex. 1, *Subpoena*.] The Subpoena seeks information irrelevant to the issues in the case, is overly broad and unduly burdensome, seeks privileged information, and was issued solely for purposes of harassment.

INTRODUCTION

Lampstand is a local film production company headquartered in Oklahoma City which produces and designs documentaries on a variety of topics. In early 2017, F.A.T.E., Inc. – Fighting Addiction Through Education ("FATE") approached Lampstand about producing a documentary about opioid addiction in Oklahoma.¹ FATE is a non-profit that was founded in 2009 by Reggie Whitten, a lawyer who also happens to be counsel for the State of Oklahoma in this lawsuit. FATE

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

reaches out to college and university students through their abuse prevention programs and provides educational lectures to medical students and college athletes. In line with the goal of FATE, the purpose of the proposed documentary was to educate Oklahomans about addiction and the stigmas associated with it. The film, Killing Pain, took more than a year and a half to make, and was released on August 29, 2018. It is available for viewing online at www.killingpain.com and on YouTube. It can be viewed by anyone in the world.

On or around October 25, 2018, Purdue served Lampstand with a Subpoena requesting anything and everything related to the creation and marketing of Killing Pain. The Subpoena includes requests for all communications with the State regarding Killing Pain, all communications with FATE, all payments or funding relating to the film, all underlying documents relating to the film, and all story boards and unedited footage for the film. None of this information will aid the parties in the prosecution or defense of this lawsuit. Rather, the Subpoena's sole purpose is to harass and try to intimidate the State's lead counsel. In addition, Purdue's requests are overly broad, unduly burdensome, and protected by the journalist's privilege and the First Amendment.

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. The Subpoena to Lampstand should be quashed for several reasons.

First, the Subpoena is meant solely for purposes of harassment. There have been countless documentaries and educational films made on the opioid epidemic and its impact on individuals and their communities. There is no shortage of local or national press about one of the largest health crises this nation has ever seen. Notably, to Lampstand's knowledge, Purdue is not seeking the film reels, draft footage, notes or funding information from these various production companies. Such information would clearly be overly burdensome and irrelevant to its defenses of the State's claims. Purdue only appears to be interested in a single film—Killing Pain—presumably because of its connections to Mr. Whitten. The Subpoena was served solely to harass, not because the information sought will actually help Purdue present its case to a jury. Purdue's motive is transparent, and the Subpoena should be quashed on this ground alone.

Second, the requests are both irrelevant and overly broad. For example, Purdue seeks “[a]ll payments to or from [Lampstand] and/or [its] affiliates, members and employees related to the documentary ‘Killing Pain.’” [*Ex. 1, Subpoena, Ex. A at No. 5.*] How is funding of a documentary possibly relevant to the State's claims that Purdue engaged in a widespread campaign to falsely promote the benefits and downplay the addictive nature of opioids? This request is intrusive and not likely to lead to the discovery of admissible evidence. The same is true with respect to Lampstand's marketing efforts with respect to the film. There is simply nothing about the promotion of Killing Pain that could aid Purdue in defending itself against claims of public nuisance, unjust enrichment, fraud, and violation of the false claims act. The Subpoena constitutes nothing more than a fishing expedition.

Moreover, the sheer volume of what Purdue is requesting outweighs any possible benefit that comes from such information. For example, Purdue is requesting “[a]ll 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.” [Ex. 1, Subpoena, Ex. A at No. 4.] The creation of this film spanned more than a year. This request is so broad and burdensome that Lampstand—a small business with limited funds—will have to shut its office doors for weeks in order to comply with Purdue’s requests. The burden and expense to Lampstand to gather and produce this amount of data, especially when the requests themselves are inherently overly broad and not likely to lead to the discovery of admissible evidence, far outweighs any potential benefit in its production.

Third, the information sought is protected by the journalist’s privilege. See 12 O.S. § 2506. Documentary film-makers, as well as authors of technical publications and professional investigative books, have been permitted to claim this privilege. See, e.g., *Silkwood v. Kerr-McGee Corp.*, 563 F.2d 433, 436 (10th Cir. 1977) (a documentary filmmaker, even though “he did not regularly engage in obtaining, writing, reviewing, editing[,] or otherwise preparing news,” fell under the ambit of the federal common-law journalists’ privilege to the extent that his investigative interviews formed the basis for his documentary film); *Apicella v. McNeil Lab., Inc.*, 66 F.R.D. 78 (E.D.N.Y. 1975) (technical publications are within the scope of journalist’s privilege because the traditional doctrine of freedom of the press is the right of all types of reporters); *Shoen v. Shoen*, 5 F.3d 1289, 1293 (9th Cir. 1993) (professional investigative book author has status to claim journalist’s privilege). The process of newsgathering “is a protected, albeit qualified right under the First Amendment,” and “an individual may successfully claim the journalist’s privilege if she is involved in activities traditionally associated with the gathering and dissemination of news, even though she may not ordinarily be a member of the institutionalized press.” *In re Madden*, 151 F.3d 125, 128-29 (3d Cir. 1998) (citing *von Bulow by Auersperg v. von Bulow*, 811 F.2d 136, 142 (2d Cir. 1987)); see also *Silkwood*, 563 F.2d at 437 (“The Supreme Court has not limited the privilege

to newspaper reporting. It has in fact held that the press comprehends different kinds of publications which communicate to the public information and opinion.”) (citing *Lovell v. City of Griffin, Ga.* 303 U.S. 444, 452 (1938)); *In re Charges of Unprofessional Conduct Involving File No. 17139*, 720 N.W.2d 807, 816 (Minn. 2006) (“Courts attempting to define the scope of the class benefitting from the journalist’s privilege have interpreted the class expansively to include anyone who at the inception of the investigatory process, had the intent to disseminate to the public the information obtained through the investigation.”) (internal citations omitted). Well before this lawsuit was filed, Lampstand had the goal of producing a documentary about the opioid epidemic in Oklahoma. The entire purpose of *Killing Pain* was to educate members of the public about opioid addiction and treatment, and information Lampstand gathered or processed in connection with the film, including any draft footage or story boards, is protected by the journalist’s privilege.

Fourth, 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)). Lampstand 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

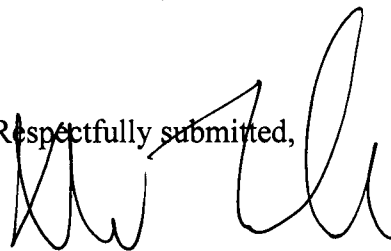
documentary, film or news story about opioids could be opening themselves up to burdensome discovery in this lawsuit. The slope is a slippery one.

Fifth, the underlying factual information contained in the film comes from various public sources, including studies on the opioid epidemic, published statistics from various medical journals, and government publications. Lampstand did not conduct any “focus groups” or “market research” in connection with making the film. In addition, the social media accounts for Lampstand and/or Killing Pain are not private pages and can be viewed by Purdue.

CONCLUSION

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

Respectfully submitted,



Drew Neville, OBA #6641
HARTZOG CONGER CASON & NEVILLE
201 Robert S. Kerr Avenue, Suite 1600
Oklahoma City, Oklahoma 73102
Telephone: (405) 235-7000
Facsimile: (405) 996-3403
dneville@hartzoglaw.com

**ATTORNEY FOR LAMPSTAND
MEDIA, LLC**

CERTIFICATE OF SERVICE

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

Michael Burrage, OBA No. 1350
Reggie N. Whitten, OBA No. 9576
WHITTEN BURRAGE
512 N. Broadway Avenue, Suite 300
Oklahoma City, OK 73102
Telephone: (405) 516-7800
Facsimile: (405) 516-7859
Emails: mburrage@whittenburragelaw.com
rwhitten@whittenburragelaw.com

Mike Hunter, OBA No. 4503
ATTORNEY GENERAL FOR
THE STATE OF OKLAHOMA
Abby Dillsaver, OBA No. 20675
GENERAL COUNSEL TO
THE ATTORNEY GENERAL
Ethan A. Shaner, OBA No. 30916
DEPUTY GENERAL COUNSEL
313 N.E. 21st Street
Oklahoma City, OK 73105
Telephone: (405) 521-3921
Facsimile: (405) 521-6246
Emails: abby.dillsaver@oag.ok.gov
ethan.shaner@oag.ok.gov

Bradley E. Beckworth, OBA No. 19982
Jeffrey J. Angelovich, OBA No. 19981
Trey Duck, OBA No. 33347
Drew Pate, *pro hac vice*
NIX, PATTERSON & ROACH, LLP
512 N. Broadway Avenue, Suite 200
Oklahoma City, OK 73102
Telephone: (405) 516-7800
Facsimile: (405) 516-7859
Emails: bbeckworth@nixlaw.com
jangelovich@npraustin.com

Glenn Coffee, OBA No. 14563
GLENN COFFEE & ASSOCIATES, PLLC
915 N. Robinson Ave.
Oklahoma City, OK 73102
Telephone: (405) 601-1616
Email: gcoffee@glenncoffee.com

Sanford C. Coats
Cullen D. Sweeney
CROWE & DUNLEVY, P.C.
Braniff Building
324 N. Robinson Ave., Ste. 100
Oklahoma City, OK 73102

Sheila Birnbaum
Mark S. Cheffo
Hayden A. Coleman
QUINN EMANUEL URQUHART & SULLIVAN, LLP
51 Madison Avenue, 22nd Floor
New York, New York 10010

Patrick J. Fitzgerald
R. Ryan Stoll
SKADDEN, ARPS, SLATE, MEAGHER & FLOM LLP
155 North Wacker Drive, Suite 2700
Chicago, Illinois 60606

Robert G. McCampbell
Travis J. Jett
Ashley E. Quinn
Nicholas V. Merkley
GABLEGOTWALS
One Leadership Square, 15th Floor
211 North Robinson
Oklahoma City, OK 73102-7255

Steven A. Reed
Harvey Bartle IV
Jeremy A. Menkowitz
MORGAN, LEWIS & BOCKIUS LLP
1701 Market Street
Philadelphia, PA 19103-2921

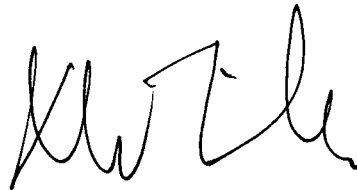
Brian M. Ercole
MORGAN, LEWIS & BOCKIUS LLP
200 S. Biscayne Blvd., Suite 5300

Miami, FL 33131

Benjamin H. Odom
John H. Sparks
ODOM, SPARKS & JONES PLLC
HiPoint Office Building
2500 McGee Drive Ste. 140
Oklahoma City, OK 7372

Charles C. Lifland
Jennifer D. Cardelus
O'MELVENY & MYERS LLP
400 S. Hope Street
Los Angeles, CA 90071

Stephen D. Brody
O'MELVENY & MYERS LLP
1625 Eye Street NW
Washington, DC 20006

A handwritten signature in black ink, appearing to read "Drew Neville", positioned above a horizontal line.

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: 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

1

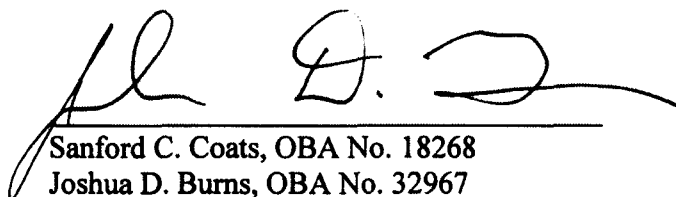
DATE AND TIME: November 14, 2018 at 9:00 a.m.

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.



Sanford C. Coats, OBA No. 18268
Joshua D. Burns, OBA No. 32967
CROWE & DUNLEVY, P.C.
Braniff Building
324 North Robinson Avenue, Suite 100
Oklahoma City, OK 73102
Tel: (405) 235-7700
Fax: (405) 272-5269
sandy.coats@crowedunlevy.com
joshua.burns@crowedunlevy.com

Of Counsel:

Sheila Birnbaum
Mark S. Cheffo
Erik Snapp
Hayden A. Coleman
Paul A. LaFata
Jonathan S. Tam

DECHERT, LLP
Three Bryant Park
1095 Avenue of the Americas
New York, New York 10036
Tel: (212) 698-3500
Fax: (212) 698-3599
sheila.birnbaum@dechert.com
mark.cheffo@dechert.com
erik.snapp@dechert.com
hayden.coleman@dechert.com
paul.lafata@dechert.com
jonathan.tam@dechert.com

*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 part 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

WHITTEN BURRAGE

Michael Burrage
Reggie Whitten
512 N. Broadway Avenue, Suite 300
Oklahoma City, OK 73102
mburrage@whittenburrage.com
rwhitten@whittenburrage.com
Counsel for Plaintiff the State of Oklahoma

NIX, PATTERSON & ROACH, LLP

Bradley E. Beckworth
Jeffrey J. Angelovich
Lloyd "Trey" Nolan Duck, III
Andrew Pate
Lisa Baldwin
512 N. Broadway Ave., Suite 200
Oklahoma City, OK 73102
bbeckworth@nixlaw.com
jangelovich@npraustin.com
tduck@nixlaw.com
dpate@nixlaw.com
lbaldwin@nixlaw.com
Counsel for Plaintiff the State of Oklahoma

ODOM, SPARKS & JONES PLLC

Benjamin H. Odom
John H. Sparks
Michael W. Ridgeway
David Kinney
HiPoint Office Building
2500 McGee Drive Ste. 140
Oklahoma City, OK 73072
odomb@odomsparks.com
sparksj@odomsparks.com
ridgewaym@odomsparks.com
kinneyd@odomsparks.com
*Counsel for Defendants Janssen
Pharmaceuticals, Inc., Johnson & Johnson,
Janssen Pharmaceutica, Inc. n/k/a/ Janssen
Pharmaceuticals, Inc., and Ortho-McNeil-*

OKLAHOMA OFFICE OF THE ATTORNEY GENERAL

Mike Hunter
Abby Dillsaver
Ethan A. Shaner
313 NE 21st St
Oklahoma City, OK 73105
abby.dillsaver@oag.ok.gov
ethan.shaner@oag.ok.gov
*Counsel for Plaintiff the State of
Oklahoma*

GLENN COFFEE & ASSOCIATES, PLLC

Glenn Coffee
915 N. Robinson Ave.
Oklahoma City, OK 73102
gcoffee@glenncoffee.com
*Counsel for Plaintiff the State of
Oklahoma*

DECHERT, LLP

Sheila Birnbaum
Mark S. Cheffo
Hayden A. Coleman
Paul A. LaFata
Jonathan S. Tam
Three Bryant Park
1095 Avenue of the Americas
New York, New York 10036
sheila.birnbaum@dechert.com
mark.cheffo@dechert.com
hayden.coleman@dechert.com
paul.lafata@dechert.com
jonathan.tam@dechert.com
*Counsel for Purdue Pharma L.P.,
Purdue Pharma Inc., and The Purdue
Frederick Company Inc.*

*Janssen Pharmaceuticals, Inc. n/k/a/ Janssen
Pharmaceuticals, Inc.*

O'MELVENY & MYERS LLP

Charles C. Lifland
Jennifer D. Cardelus
David K. Roberts
400 S. Hope Street
Los Angeles, CA 90071
clifland@omm.com
jcardelus@omm.com
droberts2@omm.com

*Counsel for Defendants Janssen
Pharmaceuticals, Inc., Johnson & Johnson,
Janssen Pharmaceutica, Inc. n/k/a/ Janssen
Pharmaceuticals, Inc., and Ortho-McNeil-
Janssen Pharmaceuticals, Inc. n/k/a/ Janssen
Pharmaceuticals, Inc.*

GABLEGOTWALS

Robert G. McCampbell
Nicholas V. Merkley
One Leadership Square, 15th Fl.
211 North Robinson
Oklahoma City, OK 73102-7255
RMcCampbell@Gablelaw.com
NMerkley@Gablelaw.com
*Attorneys for Defendants Cephalon, Inc., Teva
Pharmaceuticals USA, Inc., Watson
Laboratories, Inc., Actavis LLC, and Actavis
Pharma, Inc. f/k/a/ Watson Pharma, Inc.*

MORGAN, LEWIS & BOCKIUS LLP

Brian M. Ercole
200 S. Biscayne Blvd., Suite 5300
Miami, FL 33131
brian.ercole@morganlewis.com
*Attorneys for Defendants Cephalon, Inc., Teva
Pharmaceuticals USA, Inc., Watson
Laboratories, Inc., Actavis LLC, and Actavis
Pharma, Inc. f/k/a/ Watson Pharma, Inc.*

O'MELVENY & MYERS LLP

Stephen D. Brody
1625 Eye Street NW
Washington, DC 20006
sbrody@omm.com
*Counsel for Defendants Janssen
Pharmaceuticals, Inc., Johnson &
Johnson, Janssen Pharmaceutica, Inc.
n/k/a/ Janssen Pharmaceuticals, Inc.,
and Ortho-McNeil-Janssen
Pharmaceuticals, Inc. n/k/a/ Janssen
Pharmaceuticals, Inc*

MORGAN, LEWIS & BOCKIUS LLP

Steven A. Reed
Harvey Bartle IV
Rebecca Hillyer
1701 Market Street
Philadelphia, PA 19103-2921
steven.reed@morganlewis.com
harvey.bartle@morganlewis.com
rebecca.hillyer@morganlewis.com
*Attorneys for Defendants Cephalon,
Inc., Teva Pharmaceuticals USA, Inc.,
Watson Laboratories, Inc., Actavis
LLC, and Actavis Pharma, Inc. f/k/a/
Watson Pharma, Inc.*

**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:

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**EXHIBIT
2**

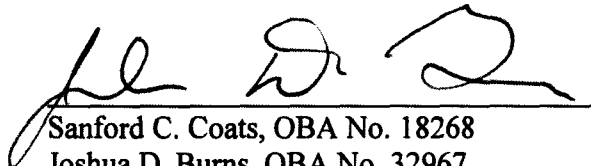
DATE AND TIME: November 14, 2018 at 9:00 a.m.

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.



Sanford C. Coats, OBA No. 18268
Joshua D. Burns, OBA No. 32967
CROWE & DUNLEVY, P.C.
Braniff Building
324 North Robinson Avenue, Suite. 100
Oklahoma City, OK 73102
Tel: (405) 235-7700
Fax: (405) 272-5269
sandy.coats@crowedunlevy.com
joshua.burns@crowedunlevy.com
cullen.sweeney@crowedunlevy.com

Of Counsel:

Sheila Birnbaum
Mark S. Cheffo
Erik Snapp

Hayden A. Coleman
Paul A. LaFata
Jonathan S. Tam
DECHERT, LLP
Three Bryant Park
1095 Avenue of the Americas
New York, New York 10036
Tel: (212) 698-3500
Fax: (212) 698-3599
sheila.birnbaum@dechert.com
mark.cheffo@dechert.com
erik.snapp@dechert.com
hayden.coleman@dechert.com
paul.lafata@dechert.com
jonathan.tam@dechert.com

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

SERVICE LIST

WHITTEN BURRAGE

Michael Burrage
Reggie Whitten
512 N. Broadway Avenue, Suite 300
Oklahoma City, OK 73102
mburrage@whittenburrage.com
rwhitten@whittenburrage.com
Counsel for Plaintiff the State of Oklahoma

NIX, PATTERSON & ROACH, LLP

Bradley E. Beckworth
Jeffrey J. Angelovich
Lloyd "Trey" Nolan Duck, III
Andrew Pate
Lisa Baldwin
512 N. Broadway Ave., Suite 200
Oklahoma City, OK 73102
bbeckworth@nixlaw.com
jangelovich@npraustin.com
tduck@nixlaw.com
dpate@nixlaw.com
lbaldwin@nixlaw.com
Counsel for Plaintiff the State of Oklahoma

ODOM, SPARKS & JONES PLLC

Benjamin H. Odom
John H. Sparks
Michael W. Ridgeway
David Kinney
HiPoint Office Building
2500 McGee Drive Ste. 140
Oklahoma City, OK 73072
odomb@odomsparks.com
sparksj@odomsparks.com
ridgewaym@odomsparks.com
kinneyd@odomsparks.com
*Counsel for Defendants Janssen
Pharmaceuticals, Inc., Johnson & Johnson,
Janssen Pharmaceutica, Inc. n/k/a/ Janssen
Pharmaceuticals, Inc., and Ortho-McNeil-
Janssen Pharmaceuticals, Inc. n/k/a/ Janssen*

OKLAHOMA OFFICE OF THE ATTORNEY GENERAL

Mike Hunter
Abby Dillsaver
Ethan A. Shaner
313 NE 21st St
Oklahoma City, OK 73105
abby.dillsaver@oag.ok.gov
ethan.shaner@oag.ok.gov
*Counsel for Plaintiff the State of
Oklahoma*

GLENN COFFEE & ASSOCIATES, PLLC

Glenn Coffee
915 N. Robinson Ave.
Oklahoma City, OK 73102
gcoffee@glenncoffee.com
*Counsel for Plaintiff the State of
Oklahoma*

DECHERT, LLP

Sheila Birnbaum
Mark S. Cheffo
Hayden A. Coleman
Paul A. LaFata
Jonathan S. Tam
Three Bryant Park
1095 Avenue of the Americas
New York, New York 10036
sheila.birnbaum@dechert.com
mark.cheffo@dechert.com
hayden.coleman@dechert.com
paul.lafata@dechert.com
jonathan.tam@dechert.com
*Counsel for Purdue Pharma L.P.,
Purdue Pharma Inc., and The Purdue
Frederick Company Inc.*

Pharmaceuticals, Inc.

O'MELVENY & MYERS LLP

Charles C. Lifland
Jennifer D. Cardelus
David K. Roberts
400 S. Hope Street
Los Angeles, CA 90071
clifland@omm.com
jcardelus@omm.com
droberts2@omm.com
*Counsel for Defendants Janssen
Pharmaceuticals, Inc., Johnson & Johnson,
Janssen Pharmaceutica, Inc. n/k/a/ Janssen
Pharmaceuticals, Inc., and Ortho-McNeil-
Janssen Pharmaceuticals, Inc. n/k/a/ Janssen
Pharmaceuticals, Inc.*

GABLEGOTWALS

Robert G. McCampbell
Nicholas V. Merkley
One Leadership Square, 15th Fl.
211 North Robinson
Oklahoma City, OK 73102-7255
RMcCampbell@Gablelaw.com
NMerkley@Gablelaw.com
*Attorneys for Defendants Cephalon, Inc., Teva
Pharmaceuticals USA, Inc., Watson
Laboratories, Inc., Actavis LLC, and Actavis
Pharma, Inc. f/k/a/ Watson Pharma, Inc.*

MORGAN, LEWIS & BOCKIUS LLP

Brian M. Ercole
200 S. Biscayne Blvd., Suite 5300
Miami, FL 33131
brian.ercole@morganlewis.com
*Attorneys for Defendants Cephalon, Inc., Teva
Pharmaceuticals USA, Inc., Watson
Laboratories, Inc., Actavis LLC, and Actavis
Pharma, Inc. f/k/a/ Watson Pharma, Inc.*

O'MELVENY & MYERS LLP

Stephen D. Brody
1625 Eye Street NW
Washington, DC 20006
sbrody@omm.com
*Counsel for Defendants Janssen
Pharmaceuticals, Inc., Johnson &
Johnson, Janssen Pharmaceutica, Inc.
n/k/a/ Janssen Pharmaceuticals, Inc.,
and Ortho-McNeil-Janssen
Pharmaceuticals, Inc. n/k/a/ Janssen
Pharmaceuticals, Inc*

MORGAN, LEWIS & BOCKIUS LLP

Steven A. Reed
Harvey Bartle IV
Rebecca Hillyer
1701 Market Street
Philadelphia, PA 19103-2921
steven.reed@morganlewis.com
harvey.bartle@morganlewis.com
rebecca.hillyer@morganlewis.com
*Attorneys for Defendants Cephalon,
Inc., Teva Pharmaceuticals USA, Inc.,
Watson Laboratories, Inc., Actavis
LLC, and Actavis Pharma, Inc. f/k/a/
Watson Pharma, Inc.*