



IN THE DISTRICT COURT OF CLEVELAND COUNTY

STATE OF OKLAHOMA } S.S.
STATE OF OKLAHOMA }
CLEVELAND COUNTY }

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

) FILED

) DEC 13 2018

) Plaintiff,

vs.

) In the office of the
Court Clerk MARILYN WILLIAMS

) Case No. CJ-2017-816

) PURDUE PHARMA L.P., et al.,

) The Honorable Thad Balkman

) Defendants.

) Special Master: William Hetherington

**COMBINED REPLY OF NON-PARTIES F.A.T.E., INC. AND
LAMPSTAND MEDIA, LLC IN SUPPORT OF
MOTIONS TO QUASH SUBPOENAS DUCES TECUM**

Purdue’s Omnibus Response to Non-Parties F.A.T.E., Inc.’s and Lampstand Media, LLC’s Motions to Quash Subpoena Duces Tecum (“Response”) only underscores the true reason why Purdue is seeking documents from F.A.T.E., Inc. - Fighting Addiction Through Education (“FATE”) and Lampstand Media, LLC (“Lampstand”): to harass Reggie Whitten and the charitable organization he has worked for nearly a decade to develop. Countless other documentaries and films have been made by networks or production companies on the genesis of the opioid epidemic,¹ but Purdue acknowledges it is only interested in FATE because “FATE, unlike the other entities and media outlets mentioned, is funded and run by private counsel for the State in this litigation.” See Response at p. 3. In other words, it is solely the involvement of Mr. Whitten which serves as the basis for Purdue’s interest in these documents. None of the information Purdue is seeking will actually aid in its defenses of the State’s claims, and the

¹ Just a few examples of these documentary films include *This Drug May Kill You* by HBO, *Do No Harm* by the Media Policy Center, *Understanding the Opioid Epidemic* by PBS, *Chasing the Dragon* by Get Smart About Drugs, *Searching for a Fix* by WRAL and Capital Broadcasting Company, *Addiction* by NOVA, *Recovery Boys* by Netflix, *Battling Opioids* by Pennsylvania Media Outlets, *Everyday Americans: Meet the Opioid Demon* by BBC, and *Painkiller: Inside the Opioid Crisis* by TELUS.

Subpoenas should be quashed as overly broad, unduly burdensome, and served solely for purposes of harassment.

First, Purdue's Response is replete with misleading statements about the State's purported "sponsorship" of Killing Pain. Purdue argues the film is a "state-sponsored comprehensive media campaign purposefully directed at Oklahoma citizens and purposefully orchestrated to extend the State's position in this case via social media." Response at p. 5. Purdue further argues it "has reason to believe" Killing Pain was "partly funded and sponsored by the State government..." *Id.* at p. 11. **To be clear, the State had nothing whatsoever to do with the funding or production of this film.**² See *Ex. 1, Watson Aff. at ¶ 6; Ex. 2, Hargrave Aff. at ¶¶ 6-7.*

Since FATE's inception in 2009, Mr. Whitten has planned on producing a FATE documentary about addiction. See *Ex. 1, Watson Aff. at ¶¶ 2-3; Ex. 2, Hargrave Aff. at ¶¶ 3-4.* FATE's relationship with Lampstand began in 2010, and Lampstand produced many videos for FATE to use in speeches across Oklahoma—footage which Mr. Whitten always intended to use in a future documentary on addiction. *Ex. 2, Hargrave Aff. at ¶¶ 3-4.* Mr. Whitten discussed his plans with Lampstand back in 2010. *Ex. 1, Watson Aff. at ¶ 4; Ex. 2, Hargrave Aff. at ¶ 5.* By 2017, due to the State's current opioid crisis, it only made sense for the first FATE documentary to be about opioid addiction. In early 2017, months before the State decided to file this litigation and before Mr. Whitten's law firm was ever retained, FATE instructed Lampstand to produce the film. See *Ex. 2, Hargrave Aff. at ¶ 5.* Mr. Whitten's desire to create this film had nothing to do with this lawsuit, and it would have been produced with or without its filing. See *Ex. 1, Watson*

² In fact, FATE has only received one grant from the State since its inception, and that was from the Oklahoma Department of Mental Health in 2013 used toward Oklahoma Life of an Athlete, a free program offered to Oklahoma schools through the Whitten Newman Foundation and FATE. *Ex. 2, Hargrave Aff. at ¶ 7.*

Aff. at ¶ 5; Ex. 2, Hargrave Aff. at ¶ 8. In addition, Mr. Whitten's role as lead counsel did not affect the content of Killing Pain, **nor was the lawsuit even mentioned in the film.** *See Ex. 1, Watson Aff. at ¶ 5; Ex. 2, Hargrave Aff. at ¶ 9.* Importantly, the State funded no part of Killing Pain, no State employee received payment for making an appearance in the film, and no one was ever given a script by Mr. Whitten or anyone else dictating what he or she should say on camera. *See Ex. 1, Watson Aff. at ¶ 7, Ex. 2, Hargrave Aff. at ¶ 6.* For Purdue to argue that Killing Pain is "one of the State's media arms in this litigation" is patently false. FATE's acronym stands for "Fighting Addiction Through Education," and Killing Pain is directly in line with FATE's goals. *Ex. 2, Hargrave Aff. at ¶¶ 1-2.* Moreover, Killing Pain includes discussions about addiction, treatment and support, and it is by no means solely focused on Purdue or its conduct.

Second, merely because Mr. Whitten and some of the State's expert witnesses appear in Killing Pain does not give Purdue *carte blanche* access to FATE and Lampstand's documents. FATE has been in existence for nearly a decade, and Mr. Whitten's mission to educate Oklahomans about addiction began following the death of his son in 2002. *Ex. 2, Hargrave Aff. at ¶¶ 1-3.* He has a First Amendment right to advance this cause and engage in his non-profit work, and he did not lose this right when he became lead counsel. Likewise, experts Terri White, Dr. Jason Beaman, Dr. Andrew Kolodny and Dr. Julio Rojas, all of whom appear in Killing Pain, have all dedicated their careers to educating people about the opioid epidemic. Each of their professions require them to speak to others about addiction and opioids, and nothing they say in Killing Pain is any different from the countless lectures and speeches they have given around the country. For example, Dr. Kolodny appears in several YouTube videos articulating nearly identical statements to those made in Killing Pain. Terri White recently spoke at an addiction summit sponsored by *The Oklahoman* where she addressed the same issues she addressed in the film. This is part of

their jobs, and it is part of their First Amendment rights to free speech.

Third, to burden a non-profit and a small production company with overly broad subpoenas is simply unnecessary. To the extent Purdue has questions about the involvement of Commissioner White, Dr. Beeman, Dr. Kolodny, and Dr. Rojas in the production of Killing Pain, those questions can be asked during their expert depositions. Likewise, to the extent Purdue is seeking communications between FATE or Lampstand and the State, if discoverable, those can and should be obtained from the State, a named party in this lawsuit. The cost and burden to FATE and Lampstand in responding to these Subpoenas is significant. *See Ex. 1, Watson Aff. at ¶ 9; Ex. 2, Hargrave Aff. at ¶¶ 10-12.*

Fourth, Purdue understates the extent of the documents it is requesting, arguing that it is “carefully crafted its requests” to a limited amount of Killing Pain-related information. This is not true. For example, Purdue has asked for all FATE funding documentation of any kind since before its inception, not just funding related to Killing Pain. *See Ex. 1 to FATE’s MTQ at Request No. 11.* Why? What possible relevance would FATE’s funding documents from ten years ago have to the State’s claims in this case? This lawsuit was not even contemplated until 2017. Likewise, how do financial documents relating to other FATE projects have anything to do with the issues in this case? This is a clear fishing expedition by Purdue into the finances of FATE in an attempt to harass Mr. Whitten.

Similar questions apply to Purdue’s request for the “scripts, story boards, shooting scripts, and unedited footage during the production of Killing Pain, whether used in the documentary or not.” *Ex. 2 to FATE’s MTQ at Request No. 4.* Purdue’s entire argument for Killing Pain-related documents is based on the State’s purported advancement of a “media campaign to the citizens of Oklahoma that attacks Purdue as the alleged cause of Oklahoma’s opioid abuse epidemic.” *See*

Response at pp. 1-2. If Purdue's portrayal to the public serves as the entire basis for the State's requests, what possible relevance does footage that was never released to the public have? How are storyboards or drafts never seen by Oklahomans relevant to Purdue's allegation that the State is in a campaign to negatively portray Purdue to the media? Unedited footage is the confidential, proprietary information of FATE and Lampstand, and its production is unnecessary, unwarranted, overly burdensome, and an intrusion into their privileges as journalists.

Fifth, contrary to Purdue's arguments otherwise, the holding of *Silkwood v. Kerr-McGee Corp.*, 563 F.2d 433 (10th Cir. 1977) is applicable here. Although the non-party in *Silkwood* was claiming confidentiality over his sources, the Tenth Circuit's holding is broader than that. The court considered the effect on the validity of the journalist's First Amendment right to gather and disseminate news "where the reporter is not a regular newsman." *Id.* at 436. The court stated:

True, [the non-party] is shown here to be a film maker rather than a newspaper man, although he has been in the past a free-lance writer for newspapers. His mission in this case was to carry out investigative reporting for use in the preparation of the documentary film. He is shown to have spent considerable time and effort in obtaining facts and information of the subject matter in this lawsuit, but it cannot be disputed that his intention, at least, was to make use of this in preparation of the film. It strikes us as somewhat anomalous that the appellee would argue that he is not a genuine reporter entitled to the privilege, implying a lack of ability, while at the same time they are making a major legal effort to get hold of his material. They must believe that it has promise for them in this lawsuit; otherwise, they would not be engaging in an effort of some magnitude in order to obtain [the non-party's] work product. 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...[The non-party], of course, has a legitimate interest in seeking to protect the fruits of his labor. For these reasons, we are not prepared to say that the fact that [the non-party] is not a salaried newspaper report of itself acts to deprive him of the right to seek protective relief.**

Id. at 436-37 (internal citations omitted; emphasis added). This analysis applies equally to the present case. As in *Silkwood*, the co-founder of Lampstand was previously a journalist for OETA. *See Ex. 1, Watson Aff. at ¶ 1.* He asserts the same privileges over his film-marking work as he did

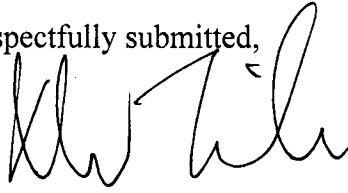
when he was a journalist. *Id.* FATE and Lampstand gathered and prepared information for Killing Pain that should not be accessible by Purdue. While the underlying factual background was obtained from public sources, the way in which they compiled this information, as well as Lampstand's unedited footage and draft storyboards, are the "fruits of Lampstand's labor" and are entitled to First Amendment protection. *See Ex. 1, Watson Aff. at ¶ 10; Ex. 2, Hargrave Aff. at ¶ 11.*

Sixth, the potential chilling effect of compelling this information cannot be overstated. All citizens, including attorneys, should be encouraged to engage in non-profit work. All citizens, including attorneys, should strive to serve on boards and other organizations that may better their community. Merely because a lawyer's involvement in a non-profit happens to align with his legal practice should not subject him or his charitable organization to intrusive discovery. In addition, educational films like Killing Pain are crucial to educating citizens on issues of societal importance. Forcing FATE and Lampstand to comply with Purdue's irrelevant discovery requests will certainly stall, if not stop, their willingness and ability to continue their mission of educating the public on addiction and prevention. *See Ex. 1, Watson Aff. at ¶ 11; Ex. 2, Hargrave Aff. at ¶¶ 10-12.* Lampstand may be unwilling and/or unable to work on FATE projects in the future, including the production of additional Killing Pain episodes. *Id.* Moreover, the press the Subpoenas recently received, as well as the costs already incurred in responding to the Subpoenas, is negatively impacting FATE's ability to conduct business and obtain funding from donors necessary to advance its mission. *See Ex. 2, Hargrave Aff. at ¶ 12.* The Subpoenas should be quashed.

For the reasons set forth above and in their respective Motions to Quash, F.A.T.E., Inc. and Lampstand Media, LLC respectfully request the Court quash the Subpoenas Duces Tecum in their

entirety, and for such further relief the Court deems proper.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Drew Neville', written over a horizontal line.

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CERTIFICATE OF SERVICE

I certify that a true and correct copy of the above and foregoing was emailed on December 13, 2018 to:

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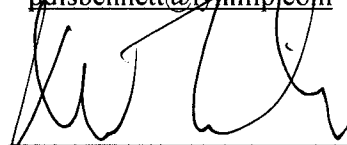
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Drew Neville

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

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

Plaintiff,)

vs.)

PURDUE PHARMA L.P., et al.,)

Defendants.)

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

AFFIDAVIT OF DEREK WATSON

STATE OF OKLAHOMA)
) ss:
COUNTY OF OKLAHOMA)

I, Derek Watson, of lawful age, being first duly sworn, depose and state as follows:

1. I am the co-owner and co-founder of Lampstand Media, LLC and Lampstand Story Co. (collectively, “Lampstand”), a film production and design company headquartered in Oklahoma City. Lampstand produces documentaries on a variety of topics for release locally, nationally, and worldwide. Prior to forming Lampstand, I worked as a journalist for OETA. I assert the same First Amendment and journalist privileges over my film-making work as I did over my work as journalist.

2. I first met Reggie Whitten, founder of F.A.T.E., Inc. – Fighting Addiction Through Education (“FATE”) in approximately 2009. Mr. Whitten, on behalf of his other non-profits, engaged Lampstand company to produce two other films, one on families who lost their sons in the war in Afghanistan (*Oklahoma’s Fallen*), and one on Sister Rosemary Nyirumbe and her work in Northern Uganda (*Sewing Hope*). I have also produced several videos for Mr. Whitten to use in connection with his FATE lectures to Oklahoma students.

3. As early as 2010, while in Uganda with Mr. Whitten, he told me he wanted to do a

film on addiction. The film had nothing to do with the State's lawsuit and was started before Mr. Whitten was involved in the lawsuit.

4. Killing Pain, a seven-series documentary, took nearly eighteen (18) months to complete. The factual background for the film came entirely from journals, books, periodicals, websites, and other publicly available sources.

5. Mr. Whitten never mentioned to me that Killing Pain had anything to do with the State's lawsuit, and the lawsuit is not mentioned at any point in the film.

6. Killing Pain was funded entirely by FATE and/or Mr. Whitten. The State of Oklahoma funded no part of Killing Pain.

7. Everyone who appeared in the film did so voluntarily. No one was compensated for his appearance, and no one was provided a script. Mr. Whitten did not dictate what people in the film said, nor did he use his position as lead counsel for the State of Oklahoma in this case to influence their statements.

8. Lampstand marketed the film on social media, including on Facebook, Twitter and Instagram. The film can be viewed on www.killingpain.com, as well as on YouTube. Although the film is about the opioid epidemic in Oklahoma, Lampstand's social media marketing efforts were not targeted at any particular county in Oklahoma.


9. Lampstand is a small, locally-owned business, and requiring compliance with Purdue's Subpoena would shut down our business for days, if not weeks.

10. Lampstand has a journalist privilege and proprietary interest in its work, including all story books, draft footage, tapes, and unedited footage of Killing Pain. This is especially true given Lampstand's intent to work with FATE on additional episodes of Killing Pain.

11. In the event Lampstand is forced to comply with Purdue's Subpoena, it will most certainly chill its willingness and ability to create additional educational films for FATE.


FURTHER AFFIANT SAYETH NOT.

Dated this 10th day of December, 2018.


Derek Watson

Subscribed to and sworn to before me this 10th day of December, 2018.




Notary Public

My Commission Expires: 01/20/19
My Commission Number: 15000492

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

STATE OF OKLAHOMA, ex rel.,)	
MIKE HUNTER,)	
ATTORNEY GENERAL OF OKLAHOMA,)	
)	
Plaintiff,)	
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vs.)	Case No. CJ-2017-816
)	The Honorable Thad Balkman
PURDUE PHARMA L.P., <i>et al.</i> ,)	
)	Special Master: William Hetherington
Defendants.)	

AFFIDAVIT OF JEFF HARGRAVE

STATE OF OKLAHOMA)
) ss:
COUNTY OF OKLAHOMA)

I, Jeff Hargrave, of lawful age, being first duly sworn, depose and state as follows:

1. I am the Director of Operations and General Counsel for F.A.T.E., Inc. – Fighting Addiction Through Education (“FATE”), a non-profit organization founded by Reggie Whitten to educate Oklahomans about substance addiction and prevention, and I have served in this capacity since FATE’s inception in 2009. I routinely give speeches and lectures to Oklahoma students on behalf of FATE. I have also served as the Director of Operations and General Counsel for other non-profit organizations founded by Reggie, including Pros for Africa, Sewing Hope Foundation, Native Explorers, and Pros 4 Vets. I am also an attorney licensed to practice law in the State of Oklahoma since 2006.

2. FATE (www.fate.org) is one of the only non-profits focused on addiction prevention in the State of Oklahoma. The goal of FATE is to educate Oklahomans, largely adolescents, about the dangerous realities of addiction. Reggie formed FATE because his son (and my childhood best friend) Brandon lost his life to addiction in 2002.

3. Since at least 2010, Reggie intended to produce a FATE documentary about addiction.

4. FATE's relationship with Lampstand Media, LLC ("Lampstand") began many years ago when it produced two prior films (*Oklahoma's Fallen* and *Sewing Hope*) for Reggie's other non-profit organizations, as well as FATE videos used during speeches to Oklahoma students. Reggie always intended for footage from these FATE videos, the creation of which began in 2010, to be used in an addiction documentary.

5. By 2017, due to the State's current opioid health crisis, it only made sense for the first FATE documentary to focus on opioid addiction and prevention. After years of discussing the idea with Derek Watson at Lampstand, in early 2017, Reggie and I authorized him to move forward with producing the film.

6. *Killing Pain* was released August 29, 2018. *Killing Pain* was funded entirely by FATE and/or Reggie personally. Neither the State nor its employees funded any part of *Killing Pain*, and no one was compensated for his or her appearance in the film.

7. In fact, FATE has only received one grant from the State, and that was from the Oklahoma Department of Mental Health in 2013 used toward Oklahoma Life of an Athlete, a free program offered to Oklahoma schools through the Whitten Newman Foundation and FATE. None of that money was used for *Killing Pain*.

8. FATE's funding and production of *Killing Pain* would have occurred with or without the filing of this lawsuit, and its filing did not change the content of *Killing Pain*. In fact, the lawsuit is never mentioned in the film.

9. I have never heard Reggie discuss *Killing Pain* in the context of this litigation. Producing a FATE documentary on addiction has been a goal of his for many years, going back to

at least 2010.

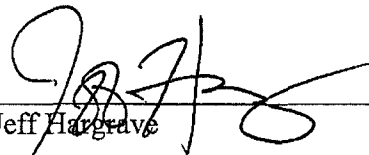
10. FATE intends to produce additional seasons of Killing Pain, addressing more than just opioid addiction. Compliance with Purdue's Subpoena Duces Tecum ("Subpoena") will mostly certainly impede FATE's ability to move forward with this plan. In addition, Lampstand's willingness to continue working with FATE is in jeopardy as a result of a similar burdensome subpoena served on Lampstand.

11. Both FATE and Lampstand have a proprietary and journalist privilege over their work related to Killing Pain. Allowing Purdue access to their correspondence, draft footage, and storyboards will have a chilling effect on FATE's journalistic ability to produce educational content and advance its mission.

12. In addition, as a non-profit operating on a very limited budget, FATE relies entirely on goodwill, reputation and donor trust to achieve its endeavors, especially in the area of financing. The recent press regarding Purdue's Subpoena to FATE, as well as the significant burden and expense involved in complying with the Subpoena, has negatively impacted FATE's ability to continue its work. FATE saves lives, and it is imperative its business operations are not further impeded by this litigation.

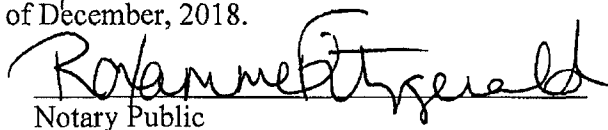
FURTHER AFFIANT SAYETH NOT.

Dated this 14th day of December, 2018.



Jeff Hargrave

Subscribed to and sworn to before me this 14th day of December, 2018.



Notary Public

My Commission Expires: 01/20/19
My Commission Number: 15000492

