

**ONTARIO
SUPERIOR COURT OF JUSTICE
(Commercial List)**

APPLICATION UNDER SECTION 243(1) OF THE *BANKRUPTCY AND INSOLVENCY ACT*, R.S.C. 1985, c. B-3, AS AMENDED AND SECTION 101 OF THE *COURTS OF JUSTICE ACT*, R.S.O. 1990, c. C.43, AS AMENDED

BETWEEN:

**MBL ADMINISTRATIVE AGENT II LLC, as agent for POST ROAD
SPECIALTY LENDING FUND II LP (f/k/a MAN BRIDGE LANE
SPECIALTY LENDING FUND II (US) LP), and POST ROAD SPECIALTY
LENDING FUND (UMINN) LP (f/k/a MAN BRIDGE LANE SPECIALTY
LENDING FUND (UMINN) LP)**

Applicant

-and-

**TRADE X GROUP OF COMPANIES INC., 12771888 CANADA INC., TVAS INC.,
TRADEXPRESS AUTO CANADA INC., TRADE X FUND GP INC., TRADE X LP FUND
I, TRADE X CONTINENTAL INC., TX CAPITAL CORP., TECHLANTIC LTD. AND
TX OPS CANADA CORPORATION**

Respondents

REPLY MOTION RECORD

May 21, 2024

ROSEMOUNT LAW PC
150 King Street W. Suite 200
Toronto, ON M5H 1J9
Alexis Beale (LSO No. 65902W)
Tel:647-692-0222
abeale@rosemountlaw.com

Lawyers for the Moving Parties,
the Van Essen Companies

TO: SERVICE LIST

TABLE OF CONTENTS

Tab	Document	Pages
1.	Reply Affidavit of Wouter Van Essen sworn on May 21, 2024	004-013
A	Email correspondence from Mark Dunn to Alexis Beale dated April 16, 2024	014-030
B	Letter from Rosemount Law to Mark Dunn dated May 17, 2024	031-034
C	Chart listing the solicitor-client privileged emails	035-252
D	Email correspondence from Alexis Beale to Mark Dunn dated May 19, 2024	253-260
E	Example of collected litigation-privileged email	261-296
F	Email Correspondence from Mark Dunn to Alexis Beale dated April 16, 2024	297-313
G	Email correspondence from Alexis Beale to Mark Dunn dated May 19, 2024	314-322

Tab 1

Reply Affidavit of Wouter Van Essen

**ONTARIO
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Respondents

REPLY AFFIDAVIT OF WOUTER VAN ESSEN

I, **WOUTER VAN ESSEN**, of the City of Oakville in the Province of Ontario, **MAKE OATH AND AFFIRM:**

1. I am the principal of 1309767 Ontario Ltd. ("**130 Ontario**") and 2601658 Ontario Ltd. ("**260 Ontario**", and together with 130 Ontario, the "**Van Essen Companies**"), and as such, I have direct and personal knowledge of the matters deposed to herein except where stated to be on information and belief, and where so stated, I believe them to be true.

2. This reply affidavit is sworn in support of our motion seeking to stay the rights and claims of the Receiver, FTI Consulting Canada Inc., and any related parties, and for an order granting judgment in the Motion and Cross-Motion in favour of the Van Essen Companies.

A. Identification of Solicitor-Client Privileged Emails

3. The Receiver has requested that we create a list of all the allegedly privileged documents in the database so that they can challenge their privilege. We have been unable to comply with this request because the type of review required would be prohibitively costly.

4. We have asked the Receiver to take steps to identify what they have viewed. By email dated April 16, 2024 (included as **Exhibit “A”**), they refused to do so, stating:

You seem to be asking for evidence that a particular set of documents has not been reviewed, but to do that we need to know what documents are in the set. Otherwise, we would need to disclose complete details of all the searches we did and everything that was reviewed. This is problematic from both a privilege perspective (since our work is privileged) and a practicality perspective (since I'm not sure if we can compile this information).

5. I have made efforts to identify the documents and have identified the following categories, which are not comprehensive:

- a. Communications between my lawyer and I in relation to this litigation;
- b. Communications between Andrea Brinston (the Van Essen Companies' corporate counsel) and me from October 2023 onwards;
- c. Documents I stored in a folder marked “legal”; and
- d. Communications among Eric, others, and I that may be subject to litigation privilege.

6. Concerning category ‘d’ above, my counsel has made efforts to refine the category and, by letter dated May 17, 2024, suggested the following: “In the absence of perfect information on both

sides, we ask that you perform a search of all emails sent to, from or copying Wouter's techlanticconsulting.com email and produce logs of views of those. Depending on the number of results, it may be feasible for me to do a privilege review.” My counsel’s May 17, 2024, letter is included as **Exhibit “B”**.

7. By letter dated May 10, 2024 (included in Exhibit A of my Supplemental Affidavit, sworn May 10, 2024), the Receiver’s counsel identified 40 unique emails between the Van Essen Companies and our counsel, viewed by FTI Forensic and Goodman’s. These emails are all confidential and sensitive and relate to legal advice about the litigation herein. I am advised by my counsel that these emails are solicitor-client privileged (the “**Viewed SCP Privileged Emails**”).

8. My counsel and I have reviewed the Viewed SCP Privileged Emails and certain of them are not prejudicial, but the majority are. My counsel prepared the attached chart (**Exhibit “C”**), listing the Viewed SCP Privileged Emails (the “**Viewed SCP Privileged and Prejudicial Emails**”). The documents are attached but redacted to preserve privilege. The Judge will be provided with an unredacted version.

9. The Viewed SCP Privileged and Prejudicial Emails at tabs **C1 to C20** were reviewed by Goodman’s.

10. FTI Forensics viewed the SCP Privileged and Prejudicial Emails at tabs C10 and C20 to C31.

11. I also advise that they are prejudicial in the following way, which does not constitute a waiver of any privilege attaching to those documents:

- a. Tabs **C1 to C8, C10, C12 to C14, C20, C 21, C23, C25 to C29** are all in furtherance of advice regarding my companies’ Irrevocable Letter of Direction (“**ILD**”) and the nature of the interest my companies had in the sale of Wholesale

Express. The substance of this advice appears to have informed the conclusions in paragraphs 85 and 94 of the First Supplemental Report of the Receiver, dated April 3, 2024 (the “**Receiver’s First Supplemental Report**”), regarding my alleged motivations for conducting the set-off, wherein the Receiver concludes:

85. Towards the end of October, Wouter and Eric seem to have been concerned that proceeds from the Wholesale Express sale might not be sufficient to repay all of Trade X’s creditors. Wouter and Eric began to discuss with Ryan Davidson and Eric Gosselin the possibility that the ILD in favour of the Van Essen Companies might not be paid. These e-mails are attached as Appendix “33”.

[...]

94. The Receiver also understands that December 20, 2023, the same day that the Purported Set-Off is alleged to have occurred, Wholesale Express was granted protection pursuant to the *Companies’ Creditors Arrangement Act* (the “**CCAA**”). This filing likely created significant doubt (which still remains) about whether the Van Essen Companies would recover any amount pursuant to the ILD.

- b. Tabs **C5 and C14** are all in furtherance of legal advice regarding the legal characterization of my relationship and Eric Van Essen, my son’s relationship, with Techlantic Ltd. The substance of this advice appears to have informed the Receiver's allegations, in paragraph 6(c) and subsection ‘F’ of the Receiver’s First Supplemental Report, that “The Van Essen Companies and Techlantic operated as a single integrated business.”
- c. Tabs **C24, C30 and C31** are all in furtherance of legal advice regarding the business between the Van Essen Companies and Stephen Zhou. The substance of this advice appears to have informed the conclusions made by the Receiver at paragraph 6(g)

and subsection I (d) of the Receiver's First Supplemental Report. In my opinion, the emails at **C30 and C31** are especially sensitive.

- d. There are six tabs related to general legal advice and strategy, including settlement offers: **C15, C16, C17, C18, C19, C20 and C29**. The advice is prejudicial to my interests and may have impacted the Receiver's litigation strategy. In my opinion, the emails at **C14, C15 and C29** are especially sensitive.

12. In the affidavit of Mark Dunn, sworn May 17, 2024, Mr. Dunn states that one of the Viewed SCP Privileged and Prejudicial Emails, was circulated by Anita Patel of FTI Forensics to Goodman's and Mr. Bishop and Mr. Hamidi from the Receiver as it was relied on in support of a presentation given by Ms. Patel to the Receiver and Goodman's on March 28, 2024 (Dunn Affidavit, paras 142-145). Mr. Dunn advised that after he saw my counsel's name, he closed the email and deleted all the emails sent by Ms. Patel on March 28, 2024, without reading the attachments (para. 145). I assume that these emails contained other supporting documents and correspondence relied on by Ms. Patel in her presentations.

13. I am advised by my counsel that some of the Viewed SCP Privileged and Prejudicial Emails appear to have been collected from my son, Eric Van Essen's, email account. I am advised and do verily believe that Eric sent and received these emails in his capacity as a shareholder of the Van Essen Companies, acting on their behalf.

14. On May 19, 2024, my counsel emailed Mr. Dunn to ask whether it would be possible to have a copy of those emails restored so that I could evaluate their contents. From what I can gather, the email is likely the same as that identified at C31 in my spreadsheet. If it were, it would be extremely sensitive. This email is included as **Exhibit "D"**.

15. I am unsure if other Viewed SCP Privileged and Prejudicial Emails were relied on by FTI Forensics in the presentations made to the Applicant, Goodman's and the Receiver. It seems likely that they were given the conclusions ultimately made by the Receiver, noted above.

16. The Receiver's May 10 letter declined to identify any viewed litigation-privileged documents, stating that "there is no practical way for us to identify documents that may be subject to litigation privilege based on your letter." I know that litigation-privileged emails were part of the collection, but I have no idea who viewed them. An example of a collected litigation-privileged email is included as **Exhibit "E", hereto**. It has been redacted, but an unredacted version will be made available to the Judge.

17. By letter dated May 17, 2024, my counsel requested that the Receiver "perform a search of all emails sent to, from or copying Wouter's techlanticconsulting.com email and produce logs of views of those." The idea is that depending on how many viewed results there are, I will decide whether reviewing those e-mails that may be subject to litigation privilege makes sense. My counsel's May 17, 2024, letter is included as Exhibit "B". We do not yet understand how many litigation-privileged documents were reviewed, so we cannot identify whether they were prejudicial.

B. Receiver's Access to the Database

18. I understand that the Receiver wishes to regain access to the database separately from this motion. If my privileged documents can be removed, I have no problem with that.

19. By email dated April 11, 2024, Mr. Dunn proposed a procedure for "an appropriate protocol to ensure that no privileged documents are in the Receiver's database". The first proposal, that my counsel conduct a line-by-line database review, was provisionally accepted by email dated April 11, 2024. This email exchange is included as **Exhibit "F"**.

20. On April 15, 2024, the Receiver provided my lawyer with an inventory of the collection. Only then did I realize the full extent of the database and collection. My counsel has advised that the database comprises roughly 1.3 million documents, with roughly 365,000 documents that appear to have been collected from me between 2011 and 2024.

21. My counsel has also advised that even if we are able to cull the database by 95%, this review could still take 300-400 hours, and the cost would be astronomical. For that reason, we could no longer agree to conduct the review requested by the Receiver.

22. My counsel advised the Receiver of this on that same day.

23. The Receiver then suggested that FTI run searches to identify any potentially privileged documents. This proposal was problematic because we could not be assured that the privileged documents would be adequately captured. It was also unclear whether the Receiver intended this for the purposes of the motion herein or for its other work.

24. On May 2, 2024, the Receiver proposed “interim measures to mitigate the issue while that occurs”, including the segregation of documents collected from the Techlantic server. My counsel agreed that same day, subject to clarification of the proposed measures.

25. On May 13, 2024, my counsel asked if the proposed segregation had occurred. The Receiver responded, “We have not yet segregated documents or accessed the database.” It is unclear why the Receiver has not taken the described steps to gain access to the rest of the database.

26. On May 19, 2024, my counsel wrote an email summarizing the exchanges to that date and proposing the following:

Measures to sanitize the database:

- We agree that a privilege review can only be effectively conducted by the party holding the privilege (Dunn Affidavit, para. 68).
- For that reason, my client has been reluctant to agree to an approach that gives FTI responsibility for conducting the review.
- My client has concerns about the costs and work required to do a review.
- My client proposes the following to resolve ongoing concerns:
 - Emails to, from, and cc'ing a techlanticconsulting.com email account will be segregated and deemed privileged;
 - Emails filed with 'ILD' or 'legal' in the M-Source Path will be segregated and deemed privileged (including duplicates and near duplicates as identified by the relativity platform);
 - My clients will provide keyword search instructions to the walled personnel at FTI, and those keyword searches will be applied to the rest of the Techlantic Collection to identify any other potentially privileged correspondence and the results will be segregated and deemed privileged; and
 - The Receiver can decide whether it wants further refinement based on a manual review of the segregated documents. If it does, that review will be conducted by counsel for the Van Essen Companies and paid for by the Receiver.

27. The email chain referred to in paragraphs 24-26, above is included as **Exhibit “G”**. As of the date of this affidavit, we have received no response.

C. Allegation about Eric trying to Delete Emails

28. I have reviewed the allegation in paragraphs 29-31 of the Third Report of the Receiver that “Eric Tried to Delete Wouter’s Emails from the Techlantic Server”. I have discussed this allegation with Eric, and although neither of us is an IT expert, I have been advised and verily believe that when Eric wrote the email included in Appendix D to the Receiver’s Third Report, excerpted below, he was not trying to delete anything. He was attempting to reduce the software license count to save costs for the Receiver and even copied the Receiver on his email. Regardless, he did not know that the Receiver wanted to collect my emails, and, in any event, my emails were already backed up elsewhere at that time.

From: Eric van Essen
Sent: Wednesday, February 7, 2024 12:27 PM
To: Olivier L. Duguay <olivierl.duguay@mmotechno.com>
Cc: facturation@mmotechno.com; June da Costa <june@techlantic.com>; Hamidi, Kamran <Kamran.Hamidi@fticonsulting.com>
Subject: RE: Invoice - #2665 MMO Techno

Hi Oliver,

Can you please trim down licenses of Microsoft for Techlantic down to remaining staff members as well as any required credentials for you to access and help administer. Please redirect any other emails to myself and I will monitor on any topics that will help with the receivership process.

204

Also, can you please update Kamran's email as billing contact for Techlantic until further notice so he can coordinate payment directly once new invoices are issued.

Remaining staff members:

1. June
2. Eric
3. Michelle
4. Bill (last day is Friday so next week can you please automatically forwarder his emails to my email as well and turn off account as well)
5. Nikitia
6. Jaskiran
7. Carolyn

Regards,

Eric van Essen
Techlantic Ltd. | 700 Third Line, Oakville, Ontario, Canada, L6L 4B1
Office: +1-905-465-1062 x 234 Mobile: +1-289-242-6182
www.techlantic.com

Sworn remotely by Wouter Van Essen)
in the City of Vancouver in the)
Province)
of British Columbia before me at the City of)
Toronto in the Province of Ontario on)
this 21st day of May, 2024, in)
accordance with O. Reg. 431/20,)
Administering an Oath Remotely.)



Alexis Beale
Commissioner for Taking Affidavits, etc.



Wouter Van Essen

This is **Exhibit “A”** referred to in the Affidavit of Wouter Van Essen of the City of Vancouver, in the Province of British Columbia, sworn before me at the City of Toronto, in the Province of Ontario this 21st day of May, 2024, in accordance with O. Reg. 431/20 Administering Oath or Declaration Remotely



[Commissioner for Taking Affidavits] [or as may be]
ALEXIS BEALE

From: [Dunn, Mark](#)
To: [Alexis Beale](#)
Cc: [Tee, Brittni](#); [Descours, Caroline](#)
Subject: RE: Trade X Receivership
Date: April 16, 2024 10:24:49 AM

I am not sure that we are fully understanding each other, and I will try my best to clarify our position below.

The difficulty we are facing on our side is that we do not know what documents are alleged to be privileged. Your e-mail indicates that some of these e-mails are to or from you, but does not specify what (if any) other documents your clients are alleging to be privileged.

You seem to be asking for evidence that a particular set of documents has not been reviewed, but to do that we need to know what documents are in the set. Otherwise, we would need to disclose complete details of all the searches we did and everything that was reviewed. This is problematic from both a privilege perspective (since our work is privileged) and a practicality perspective (since I'm not sure if we can compile this information).

To be clear, here is what we propose:

1. You advise (whether based on the searches, inventory or both) what documents are alleged to be privileged, using the same information that would be included in a detailed schedule "B";
2. We can then assess: whether there is any dispute about privilege or who privilege belongs to (ie., Techlantic, the Van Essen Companies or both); whether any of the allegedly privileged documents were reviewed; whether any review caused (or could be reasonably alleged to cause) any prejudice; what evidence can be provided with respect to any of the above;
3. Once the two steps above are completed, we can determine what steps (if any) are appropriate to address the issue.

We want to deal with this issue expeditiously, in order to avoid any interference with the existing motion schedule and keep the matter moving forward. But I do believe that an appropriate process can certainly narrow and likely avoid any dispute.

Thanks,
Mark

Mark Dunn

He/Him
Goodmans LLP

416.849.6895 (office) 647.294.3866 (mobile)
mdunn@goodmans.ca

Bay Adelaide Centre
333 Bay Street, Suite 3400
Toronto, ON M5H 2S7
goodmans.ca

From: Alexis Beale <abeale@rosemountlaw.com>
Sent: Monday, April 15, 2024 8:56 PM
To: Dunn, Mark <mdunn@goodmans.ca>
Cc: Tee, Brittini <btee@goodmans.ca>; Descours, Caroline <cdescours@goodmans.ca>
Subject: RE: Trade X Receivership

Hi Mark,

Your communications have not confirmed whether any privileged documents have been reviewed, nor have you proposed a method to confirm that such a review has not occurred. Please provide this by tomorrow, barring which my client will have no choice but to bring this motion.

The rest of your email concerns a prospective method to guard against future disclosure. It is likely too late and we will have to seek court directions on that as well.

Kind Regards,
Alexis Beale

Alexis Beale
Rosemount Law
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abeale@rosemountlaw.com
www.rosemountlaw.com

This communication may be solicitor/client privileged and contain confidential information intended only for the person(s) to whom it is addressed. Any unauthorized disclosure, copying, other distribution of this communication or taking any action on its contents is strictly prohibited. If you have received this message in error, please notify us immediately and delete this message without reading, copying or forwarding it to anyone.

From: Dunn, Mark <mdunn@goodmans.ca>
Sent: Monday, April 15, 2024 8:01 PM
To: Alexis Beale <abeale@rosemountlaw.com>
Cc: Tee, Brittini <btee@goodmans.ca>; Descours, Caroline <cdescours@goodmans.ca>
Subject: RE: Trade X Receivership

Thank you Alexis. I had suggested that you identify the documents over which privilege is claimed. We are not looking for any information beyond what would typically be included in a detailed schedule "B" to an affidavit of documents. But, as you can appreciate, we are operating at an informational disadvantage. If you identify the documents then we can provide an informed answer to your concerns. The information in your e-mail below, for example, is new to me.

Your e-mail seems to imply that you are waiting for an answer from us by end of day tomorrow, but it is not clear what answer you are waiting for and so clarification about that would be appreciated.

In the interim I can confirm (again) that the database is currently shut down and we will give you notice before it is activated. As I previously advised, we expect that this will occur after you identify the documents

Mark Dunn

He/Him
Goodmans LLP

416.849.6895 (office) 647.294.3866 (mobile)
mdunn@goodmans.ca

Bay Adelaide Centre
333 Bay Street, Suite 3400
Toronto, ON M5H 2S7
goodmans.ca

From: Alexis Beale <abeale@rosemountlaw.com>
Sent: Monday, April 15, 2024 7:40 PM
To: Dunn, Mark <mdunn@goodmans.ca>
Cc: Tee, Brittini <btee@goodmans.ca>; Descours, Caroline <cdescours@goodmans.ca>
Subject: RE: Trade X Receivership

Good evening,

Thank you for the inventory provided at 5:50 pm. **Note that this email does not constitute waiver of privilege. It is purely for the purpose of identifying in broad categories the privileged correspondence that the Receiver has collected and presumptively reviewed.**

Upon a very preliminary review, I can advise that you have collected and presumptively reviewed not less than 150 emails to or from me related to this litigation. To make matters worse, these were collected from folders called 'legal' as per the metadata in the inventory sheet that you circulated. These folders contain other privileged correspondence. I have not had time to identify all of the other solicitor-client and litigation-privileged content and I expect that a thorough privilege review of the type required would be prohibitively costly for my clients.

As I previously advised, I will wait until EOD tomorrow and then proceed to serve my clients' motion.

In the meantime, please confirm that no one will use this database for any purpose.

Kind Regards,
Alexis Beale

Alexis Beale

Rosemount Law
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abeale@rosemountlaw.com
www.rosemountlaw.com

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From: Dunn, Mark <mdunn@goodmans.ca>
Sent: Monday, April 15, 2024 5:19 PM
To: Alexis Beale <abeale@rosemountlaw.com>
Cc: Tee, Brittini <btee@goodmans.ca>; Descours, Caroline <cdescours@goodmans.ca>
Subject: Re: Trade X Receivership

My email states that the inventory will be provided shortly.

It is hard to see how we can address the issue further on our side without knowing what documents are involved but we remain prepared to cooperate and see if we can find a reasonable solution.

If you choose to bring a motion, we will review it and respond accordingly.

Sent from my iPhone

On Apr 15, 2024, at 5:07 PM, Alexis Beale <abeale@rosemountlaw.com> wrote:

Hi Mark,

Please confirm if you are no longer providing an inventory that you previously offered and advised would be delivered today?

I advised that there are definitely litigation privileged and solicitor client privileged documents in what you have collected.

What you are sharing will simply go to the extent and unfortunately, that review may have to occur in parallel with my clients' motion even the gravity of the issue.

Kind Regards,

Alexis Beale

Alexis Beale
Rosemount Law
(647) 692-0222

www.rosemountlaw.com

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On Apr 15, 2024, at 5:02 PM, Dunn, Mark <mdunn@goodmans.ca> wrote:

Alexis,

You seem to have misunderstood our position. You asked for specific information and I answered. I did not make the statement attributed to me below.

We do not, at this stage, know what (if any) documents in the database are alleged to be privileged. That is why we offered to have FTI run searches for you, and set up an ethical screen to facilitate that. Contact information has been provided and the inventory your asked for will be provided shortly. Once we know what (if any) documents you are concerned about, we can determine how to best address any remaining concerns.

Sent from my iPhone

On Apr 15, 2024, at 4:13 PM, Alexis Beale
<abeale@rosemountlaw.com> wrote:

Mark,

Further to your email of April 12, 2024, please advise when I can anticipate FTI to contact me.

I reiterate my request in my emails of April 5 and 11 that the Receiver confirm and provide proof that neither it nor its' counsel reviewed any privileged documents. You previously refused to answer based on an assertion of privilege.

If I do not hear from you by EOD tomorrow, I will assume that you maintain this position and I will act on instructions to bring a motion to stay the Receiver's motion, among other things.

Kind Regards,
Alexis Beale

Alexis Beale
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abeale@rosemountlaw.com
www.rosemountlaw.com

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From: Dunn, Mark <mdunn@goodmans.ca>
Sent: Friday, April 12, 2024 5:25 PM
To: Alexis Beale <abeale@rosemountlaw.com>
Cc: Tee, Brittini <btee@goodmans.ca>; Descours, Caroline <cdescours@goodmans.ca>
Subject: RE: Trade X Receivership

We don't think the tone below or the accusations about

“unauthorized access” and “the prejudice that already exists” are appropriate in these circumstances. We would also like to limit further debate of these issues by e-mail. We have been (and will continue to be) prepared to work cooperatively to address any valid concerns. Suffice to say that we do not agree that there has been any unauthorized access, we are confident that there has been (and will be) no prejudice and we remain concerned about the (unexplained) delay in raising these concerns. The Receiver is very much focused on a fair and appropriate approach to these issues so that it can move forward with its mandate.

With respect to your requests for information:

1. We have already offered to provide you with an inventory, and we will provide it on Monday;
2. The entire Techlantic server was preserved but is not in our database and has not been reviewed. Only the identified mailboxes were loaded into the database. The collection occurred on January 11, February 14 and February 16 for all of the databases apart from Wouter Van Essen. Mr. (Wouter) Van Essen’s mailbox was downloaded on February 22 and February 23. I believe the download occurred later because we did not know that Mr. (Wouter) Van Essen had a Techlantic e-mail when our review began;
3. The temporary shut down occurred on April 10, but no one from Goodmans accessed the database after your letter was received. FTI was conducting certain limited reviews during this period and we will confirm what (if any) access to the database this involved.

I will be back to you on Monday with contact information for the FTI personnel who can run the searches referenced in my prior e-mail. I suspect that we will be able to have a much more productive discussion about this once you are able to tell us what (if any) allegedly privileged material is in the database.

Mark Dunn
He/Him
Goodmans LLP

Mark Dunn
He/Him
Goodmans LLP

416.849.6895 (office) 647.294.3866 (mobile)
mdunn@goodmans.ca

Bay Adelaide Centre
333 Bay Street, Suite 3400
Toronto, ON M5H 2S7
goodmans.ca

From: Alexis Beale <abeale@rosemountlaw.com>
Sent: Thursday, April 11, 2024 4:19 PM
To: Dunn, Mark <mdunn@goodmans.ca>
Cc: Tee, Brittini <btee@goodmans.ca>; Descours, Caroline <cdescours@goodmans.ca>
Subject: RE: Trade X Receivership

Mark,

Thank you for your email. It is unfortunate that you think my clients' concerns are tactical. I can assure you that they are not. My clients had no choice but to raise this concern once they determined that their privileged correspondence had been accessed. You seem to imply from your email that they ought not to have notified you, which is problematic.

It is settled law that a breach of privilege "creates a serious risk to the integrity of the administration of justice." The *Celanese* test provides that "the onus is on the party with unauthorized access to another party's privileged documents to show that there is no risk that privileged and confidential information attributable to a solicitor and client relationship will be used to the prejudice of the party possessing the privilege."

That is why I asked you to provide my client with an inventory and protocol so they could be comforted that the Receiver did not review their privileged correspondence. My client would be happy to receive any other record keeping that serves the same purpose.

Please advise immediately if the Receiver is unwilling or unable to provide the same.

Please also confirm: 1) the date when the relevant accounts were collected; 2) whether the server as a whole has been collected; and 3) the date when the

'temporary shut down' occurred.

Finally, the forward-looking procedures you suggest are acceptable, but they do not cure the prejudice that already exists.

The premise that the Receiver had no obligation to guard against unauthorized access is problematic for several reasons, but it is not productive to address them here, nor are they relevant to any legal argument.

Kind Regards,
Alexis Beale

Alexis Beale
Rosemount Law
(647) 692-0222
abeale@rosemountlaw.com
www.rosemountlaw.com

This communication may be solicitor/client privileged and contain confidential information intended only for the person(s) to whom it is addressed. Any unauthorized disclosure, copying, other distribution of this communication or taking any action on its contents is strictly prohibited. If you have received this message in error, please notify us immediately and delete this message without reading, copying or forwarding it to anyone.

From: Dunn, Mark <mdunn@goodmans.ca>
Sent: Thursday, April 11, 2024 2:36 PM
To: Alexis Beale <abeale@rosemountlaw.com>
Cc: Tee, Brittini <btee@goodmans.ca>; Descours, Caroline <cdescours@goodmans.ca>
Subject: RE: Trade X Receivership

Ms.
Beale,

I am writing in response to your e-mail below. As set

out below, we (and our client) will work with you to ensure that any privileged documents are dealt with appropriately. We do not, however, accept your assertion that there has been “unauthorized” access to any material. We also do not understand why your client has waited so long to raise its concerns, and we do not believe that those concerns should confer any procedural or substantive advantage on them.

The Timing of your client’s objection

Your client has known that the Receiver had access to Techlantic’s electronic records since the Receivership Order was granted on December 22, 2023. It grants the Receiver a broad right to access Techlantic’s electronic records. If (as you now suggest) your clients stored privileged material on Techlantic’s system then they knew that the Receiver had access to that material. Conversely, the Receiver did not know (and had no reason to suspect) that your client’s privileged material might be stored on Techlantic’s system.

Your clients have also known that the Receiver was reviewing Techlantic’s electronic records in order to understand various issues relating to its business. We advised in our February 27, 2024 letter that the Receiver had reached certain conclusions based on its review of the “contemporaneous documents”. My e-mail of February 27, 2024 specifically said that the Receiver’s supplementary report would be based on information located in Techlantic’s records including e-mails sent and received by your clients. I discussed certain specific e-mails with you during our discussions about the merits of the case around the same time.

In the circumstances, it is not clear why any *bona fide* privilege concerns were not raised earlier so that any privileged (or potentially privileged) documents could be identified and addressed.

Request for a protocol and inventory

Your comments with respect to the scope of our client's review are, with respect, not correct. The Receiver requested a download of the following e-mails from the Debtors' IT provider:

eric@techlantic.com

eric.vanessen@tradexport.com

eric@tradexport.com

june@techlantic.com

michelle@techlantic.com

ping@techlantic.com

wouter@techlantic.com

Tradex custodians were also collected, but those custodians are not directly relevant to your request.

The Receiver did not request access to any e-mails from techlanticconsulting.com. We do not believe that such e-mails are in the database provided to the Receiver, except to the extent that someone with a techlanticconsulting.com e-mail sent or received to one of the e-mail addresses listed above.

Your assertion that the Receiver reviewed all of the e-mails in the Techlantic.com domain is also not correct. The Receiver did not believe that a review of all of the Techlantic e-mails would be efficient. It conducted a targeted review of certain e-mails likely to be relevant, or to address specific issues. The specific searches performed by the Receiver and its counsel are privileged, and need not be disclosed.

It is not clear, from your e-mail, whether you are asking for a list of all of the documents that are in our database.

We are prepared to provide this to you, but we note that there are more than one million documents in the database.

With respect to your request for a “protocol”, we did not institute any protocol to identify privileged documents belonging to third parties because we had no reason to believe such documents were (or might be) in Techlantic’s possession.

Procedures

All of that said, we would be pleased to work with you to address any concerns your clients have about this issue and an appropriate protocol to ensure that no privileged documents are in the Receiver’s database. We would propose the following:

1. We are prepared to have FTI’s technology personnel run a search at your request, solely to identify privileged documents;
2. The personnel that run the search will be separate from the team that has been working on this matter for FTI, and FTI will establish an ethical wall to prevent anyone working on this matter for the Receiver from accessing the information provided to you;
3. You will provide us with a list of documents that are alleged to be privileged, in a format equivalent to Schedule “B” to an Affidavit of Documents;
4. Any documents that you identify will be segregated and removed from the database, without prejudice to the Receiver’s right to challenge any privileged designation.

We have temporarily shut down the Receiver’s document database so that it cannot be accessed while this issue is being resolved. We are not, however, prepared to pause our review indefinitely.

Mark Dunn

He/Him

Goodmans LLP

416.849.6895 (office) 647.294.3866 (mobile)

mdunn@goodmans.ca

Bay Adelaide Centre
333 Bay Street, Suite 3400
Toronto, ON M5H 2S7

goodmans.ca

From: Alexis Beale <abeale@rosemountlaw.com>
Sent: Friday, April 5, 2024 4:18 PM
To: Dunn, Mark <mdunn@goodmans.ca>; Tee, Brittini <btee@goodmans.ca>; Descours, Caroline <cdescours@goodmans.ca>
Subject: RE: Trade X Receivership

Counsel,

I note that my email of 1:08 pm should refer to the First Supplemental Report to the First Report of the Receiver, dated April 3, 2024, and not the 'Amended Responding Record.' Apologies for any confusion.

Kind Regards,

Alexis Beale

Alexis Beale

Rosemount Law

(647) 692-0222

abeale@rosemountlaw.com

www.rosemountlaw.com

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From: Alexis Beale

Sent: Friday, April 5, 2024 1:08 PM

To: Mark Dunn <mdunn@goodmans.ca>; Brittni Tee <btee@goodmans.ca>; Caroline Descours <cdescours@goodmans.ca>

Subject: Trade X Receivership

Counsel,

We have reviewed the Amended Responding Record and note that your client appears to have collected and reviewed all emails with the @techlantic.com domain and many with the @techlanticconsulting.com domain. These email domains were used by my clients for the purposes of receiving legal advice, settlement-related discussions and litigation advice and strategy, including in relation to the litigation herein. We have significant concerns regarding unauthorized access. It is trite to say

that any such access would be prejudicial and in breach of the Receiver's authority.

To address this matter effectively, we request the following information:

1. Detailed Inventory: A comprehensive list of all email accounts and any other documents collected from the servers.
1. Document Collection and Review Protocol: Details on the protocols followed for document collection and review in this case, including measures taken to identify and exclude privileged information.

Kind Regards,

Alexis Beale

Alexis Beale

Rosemount Law

(647) 692-0222

www.rosemountlaw.com

This communication may be solicitor/client privileged and contain confidential information intended only for the person(s) to whom it is addressed. Any unauthorized disclosure, copying, other distribution of this communication or taking any action on its contents is strictly prohibited. If you have received this message in error, please notify us immediately and delete this message without reading, copying or forwarding it to anyone.

***** Attention *****

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Confidentiality Notice:

This email and any attachments may be confidential and protected by legal privilege. If you are not the intended recipient, be aware that any disclosure, copying, distribution or use of the e-mail or any attachment is prohibited. If you have received this email in error, please notify us immediately by replying to the sender and then delete this copy and the reply from your system. Thank you for your cooperation.

This is **Exhibit “B”** referred to in the Affidavit of Wouter Van Essen of the City of Vancouver, in the Province of British Columbia, sworn before me at the City of Toronto, in the Province of Ontario this 21st day of May, 2024, in accordance with O. Reg. 431/20 Administering Oath or Declaration Remotely



[Commissioner for Taking Affidavits] [or as may be]

ALEXIS BEALE

Alexis Beale

t. (647) 692-0222

abeale@rosemountlaw.com

www.rosemountlaw.com

150 King Street W.

Suite 200

Toronto, ON

M5H 1J9



Rosemount Law PC

May 17, 2024

BY EMAIL

Mark Dunn
Goodmans LLP
Bay Adelaide Centre
333 Bay Street, Suite 3400
Toronto, ON M5H 2S7
mdunn@goodmans.ca

Dear Mr. Dunn,

Re: MBL Administrative Agent II LLC v. Trade X Group of Companies Inc., et al

Thank you for your email dated May 10, 2024.

Viewed Documents and Waiver of Privilege

We understand that you take the position that a document viewed does not necessarily mean that a reviewer actually viewed its contents or read the document. We propose to respond to that point once we see your affidavit evidence.

We will likewise respond to the balance of your allegations, including the alleged waiver of privilege in the context of this litigation.

In the meantime, this letter addresses the information you provided in your May 10 letter and seeks full particulars on what was reviewed, who reviewed it, and who was privy to information that flowed from that review.

Contradictory Statements Regarding Document Review

You assert that the reviewed documents did not inform the Receiver's approach to this litigation, stating that these emails were unavailable to the Receiver when the report was drafted. This is new information that expressly contrasts with statements in the Receiver's First Supplemental Report, dated April 3, 2024, which explicitly states that the Receiver's conclusions were based on its review of my emails. The report states:

12. In order to gain a further understanding of the dealings between Techlantic and 130 Ontario, the Receiver uploaded Techlantic's electronic records, including emails sent and received by certain identified custodians, into document review software and conducted a review of certain documents with the assistance of its counsel.

13. The Debtors' electronic records obtained by the Receiver include nearly one million documents. In order to assess the issues described below, the Receiver reviewed emails sent or received by Wouter Van Essen ("Wouter") from his Techlantic email address during the period from 2021-2024. The



Receiver also reviewed emails sent and received by other individuals based on certain targeted keyword searches.

Please confirm which emails were reviewed and what was relied on in the First Supplemental Report.

The Logs of Viewed Documents

As a starting point, you will recall that in my email of April 26, 2024, I advised that, “that the Schedule B you propose is incorrect as it will include mere examples. **There are also concerns that creating this document and exploring metadata will expose my client to further privilege breaches. You do not have my consent.**”

In my letter dated May 2, 2024, when I asked you to “identify, with full particulars, the extent of [the] review of any documents”, that was not an opening to create and circulate broadly the metadata associated with our clients’ privileged correspondence. Your ongoing disregard for our clients’ privilege is concerning, and our engagement on these issues does not constitute a waiver of privilege.

We have reviewed your logs and note that Tab B purports to include all emails sent to or from Wouter to me. Your letter advises that a member of FTI Forensic's technical team conducted this search and accessed the audit logs to determine if any allegedly privileged documents had been viewed. You conclude that there are 25 emails in this category.

With respect to Tab C, you state that FTI Forensic's technical team followed the same process for the second category. You include the results in Tab C. You indicate that there are 27 documents in this category.

Upon reviewing these logs, we observe that both sets contain emails to, from, and copying me. It is unclear why certain documents ended up in one set of results but not the others. We are concerned that the logs have not captured all the core solicitor-client privileged correspondence. Please advise on what basis the two logs can be distinguished and provide the search parameters given to the reviewer.

Litigation-Privileged Documents

You declined to provide any information about the litigation-privileged documents you reviewed, stating that "there is no practical way for us to identify documents that may be subject to litigation privilege based on your letter." In the absence of perfect information on both sides, we ask that you perform a search of all emails sent to, from or copying Wouter's techlanticconsulting.com email and produce logs of views of those. Depending on the number of results, it may be feasible for me to do a privilege review.¹

¹ This is not to be confused with an offer to review the database for privilege.



To be clear, any further logs with metadata about the correspondence should be sent directly from the walled-off personnel at FTI Forensic to me, at which point I will circulate a redacted version of the same to the group.

Engagement of FTI Forensic

We now understand that you had three different groups of reviewers and are drawing a distinction between FTI Consulting Inc. and FTI Forensic. We have further questions about FTI Forensic's engagement, and it would assist with our assessment if you could provide the retainer or engagement letter signed between FTI and FTI Forensic.

Details of FTI Forensic's Review and Transmission of Information

Please further particularize the content of the discussions between FTI Forensic, the Receiver, and Goodman's, where FTI Forensic communicated its factual findings. Additionally, please provide any presentations or reports transmitted from FTI Forensic to Goodman's and the Receiver. We are similarly in need of further particulars about the transmission of any of this information to the applicant. The information you provide needs to address this, and we would like to understand the extent to which the applicant was privy to the presentations or information that came from the document review or otherwise.

Affidavit Evidence

Please confirm whether Anita Patel or anyone else from FTI Forensic will swear an affidavit and, if so, what we can expect that affidavit to say.

Proposal for Tailored Relief

We continue to seek a stay of proceedings. However, we will tailor our request as appropriate to instead seek the replacement of certain personnel or other relief if the information provided satisfies us that prejudice is limited.

We look forward to your prompt response.

Regards,

Alexis Beale

cc: Daniel Rosenbluth, Paliare Roland Rothstein LLP

This is **Exhibit “C”** referred to in the Affidavit of Wouter Van Essen of the City of Vancouver, in the Province of British Columbia, sworn before me at the City of Toronto, in the Province of Ontario this 21st day of May, 2024, in accordance with O. Reg. 431/20 Administering Oath or Declaration Remotely



[Commissioner for Taking Affidavits] [or as may be]

ALEXIS BEALE

Tab	Document ID	M-Master Date	M-Email From	M-Email To	M-Email CC	Reviewer Name and Group	Type of Privilege Asserted
C01	F12484-000231639	10/27/2023 18:25	Wouter Van Essen [wouter@techlantic.com]	Andrea Brinston [andrea@brinstonbusinesslaw.com]	Eric van Essen [eric.vanessen@tradexpo rt.com]	Tee, Brittni	Solicitor-Client
C02	F12484-000231666	10/29/2023 13:27	Wouter Van Essen [wouter@techlantic.com]	Andrea Brinston [andrea@brinstonbusinesslaw.com]	Eric van Essen [eric.vanessen@tradexpo rt.com]	Dunn, Mark; Tee, Brittni	Solicitor-Client
C03	F12484-000231735	10/30/2023 10:05	Wouter Van Essen [wouter@techlantic.com]	Andrea Brinston [andrea@brinstonbusinesslaw.com]	Eric van Essen [eric.vanessen@tradexpo rt.com]	Dunn, Mark; Tee, Brittni	Solicitor-Client
C04	F12484-000237094	10/31/2023 16:47	Wouter Van Essen [wouter@techlantic.com]	Andrea Brinston [andrea@brinstonbusinesslaw.com]	Eric van Essen [eric.vanessen@tradexpo rt.com];To m C [tom@techlanticconsultin g.com]	Dunn, Mark; Tee, Brittni	Solicitor-Client
C05	F12484-000237263	10/31/2023 17:29	Wouter Van Essen [wouter@techlantic.com]	Andrea Brinston [andrea@brinstonbusinesslaw.com]	Eric van Essen [eric.vanessen@tradexpo rt.com];To m C [tom@techlanticconsultin g.com]	Tee, Brittni; Dunn, Mark	Solicitor-Client
C06	F12484-000239054	11/1/2023 8:05	Wouter Van Essen [wouter@techlantic.com]	Andrea Brinston [andrea@brinstonbusinesslaw.com]	Eric van Essen [eric.vanessen@tradexpo rt.com];To m C [tom@techlanticconsultin g.com]	Tee, Brittni	Solicitor-Client
C07	F12484-000242341	11/1/2023 12:38	Andrea Brinston [andrea@brinstonbusines slaw.com]	Wouter Van Essen [wouter@techlantic.com]	Eric van Essen [eric.vanessen@tradexpo rt.com];To m C [tom@techlanticconsultin g.com]	Tee, Brittni	Solicitor-Client

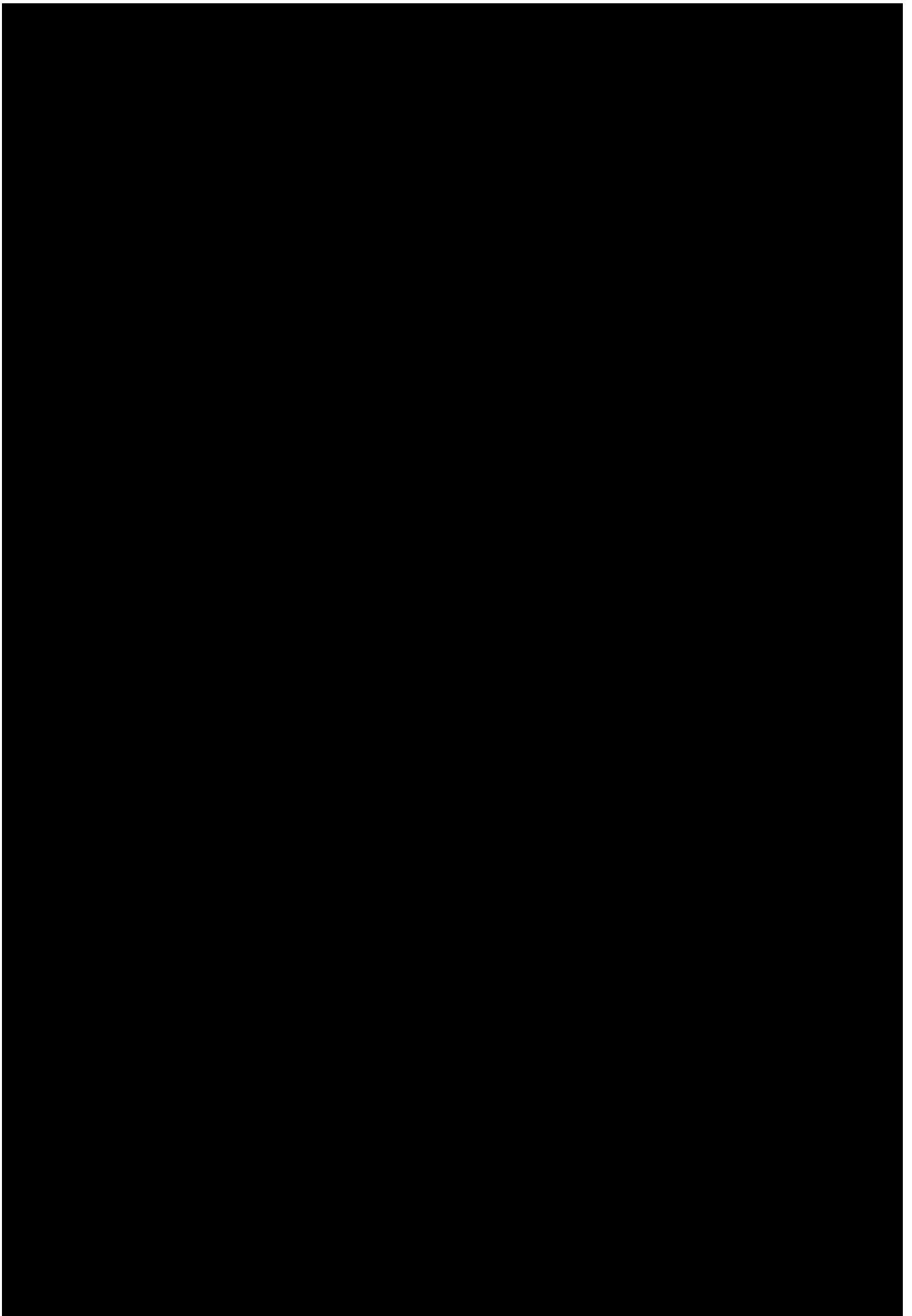
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C09	F12484-000232137	11/6/2023 8:14	Wouter Van Essen [wouter@techlantic.com]	Andrea Brinston [andrea@brinstonbusinesslaw.com]	Eric van Essen [eric.vanessen@tradexpo rt.com]	Tee, Brittni	Solicitor-Client
C10	F12484-000237350	11/18/2023 2:37	Wouter Van Essen [wouter@techlantic.com]	Andrea Brinston [andrea@brinstonbusinesslaw.com]	Eric van Essen [eric.vanessen@tradexpo rt.com]	Tee, Brittni; Love, Morgan	Solicitor-Client
C11	F12484-000794212	11/30/2023 20:32	Andrea Brinston [andrea@brinstonbusines slaw.com]	Alexis Beale [abeale@northcliffebarrist ers.ca]	Wouter Van Essen [wouter@techlanticconsu lting.com]	Sloan, Josh	Solicitor-Client
C12	F12484-000794461	1/10/2024 17:05	Wouter Van Essen [wouter@techlanticconsul ting.com]	Alexis Beale [abeale@rosemountlaw.co m]	Andrea Brinston [andrea@brinstonbusines slaw.com]; ericvaness en@gmail.com	Tee, Brittni	Solicitor-Client
C13	F12484-000794124	2/2/2024 10:20	Wouter Van Essen [/O=EXCHANGELABS/OU= EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=R ECIPIENTS/ CN=1B90 3EF489C24E8E83B50BAF2 CB7D4B2-D E54A9B3- 85]	Alexis Beale [abeale@rosemountlaw.co m]	Andrea Brinston [andrea@brinstonbusines slaw.com]; Eric van Essen [eric@smallbusinessfleets olutions.co m]	Tee, Brittni	Solicitor-Client
C14	F12484-000243529	2/13/2024 13:59	Abeale@rosemountlaw.co m	Eric van Essen [eric.vanessen@tradexport .com];To m Van Essen	Dunn, Mark; Tee, Brittni	Dunn, Mark; Tee, Brittni	Solicitor-Client

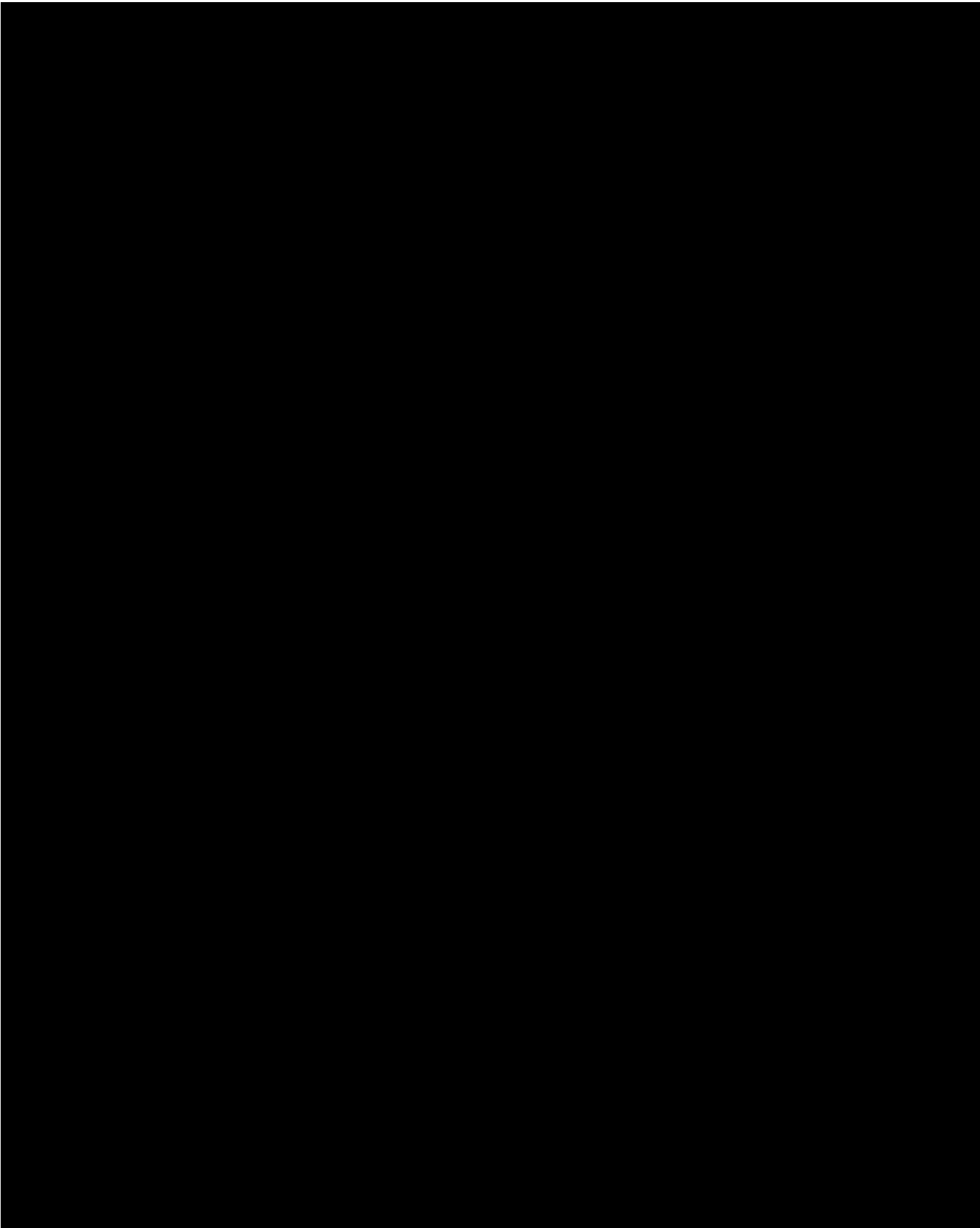
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C18	F12484-000794102	1/25/2024 16:52	Wouter Van Essen [wouter@techlanticconsulting.com]	ericvanessen@gmail.com	Tee, Brittni	Tee, Brittni	Solicitor-Client
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C22	F12484-000794280	12/12/2023 22:14	Wouter Van Essen [wouter@techlanticconsulting.com]	Andrea Brinston [andrea@brinstonbusinesslaw.com] ;Abeale@rosemountlaw.com	ericvanessen@gmail.com ;June da Costa [june@techlanticconsulting.com]	Patel, Anita	Solicitor-Client

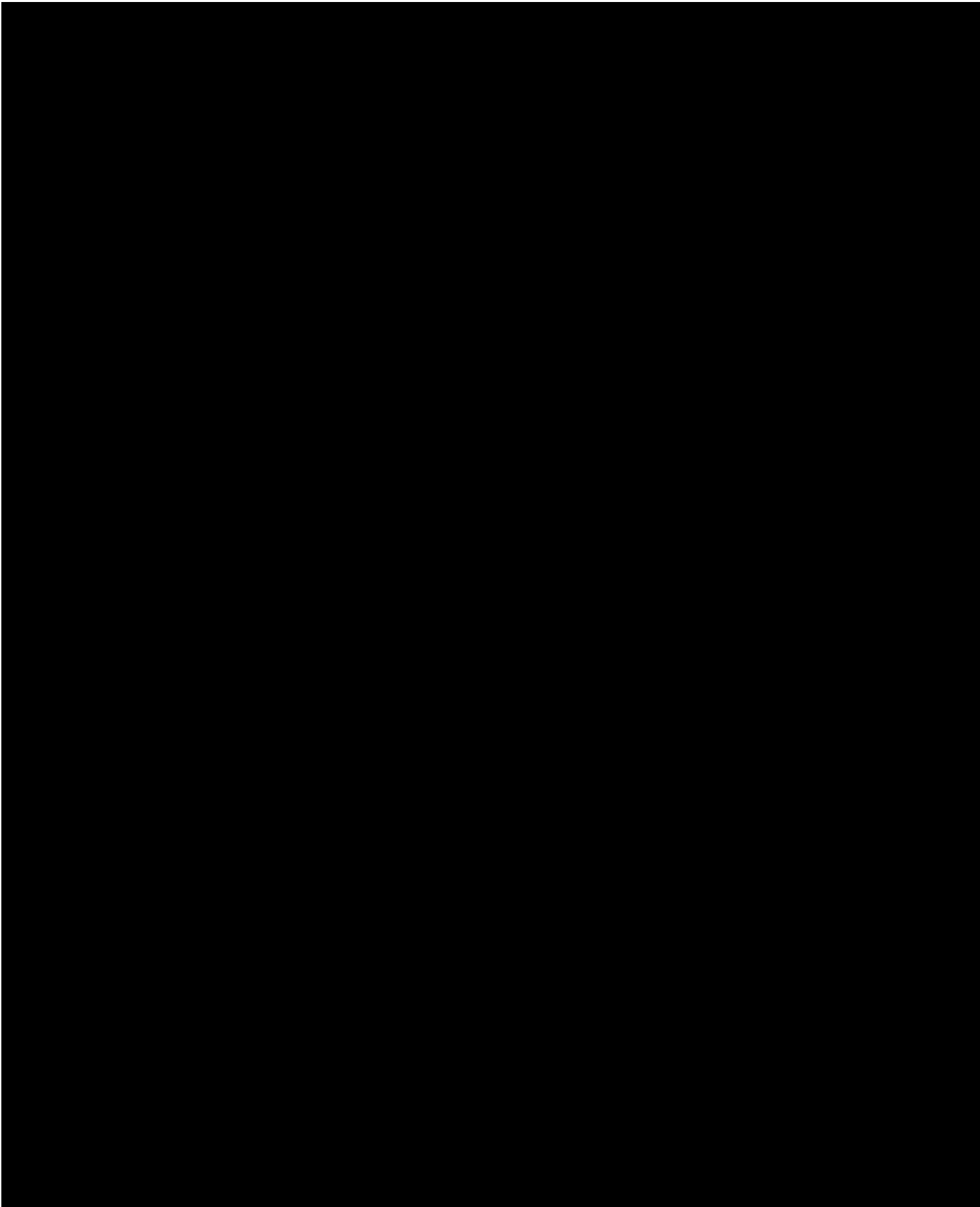
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C28	F12484-000794290	12/13/2023 21:07	Wouter Van Essen [wouter@techlanticconsulting.com]	Alexis Beale [abeale@rosemountlaw.com];Andrea Brinston [andrea@brinstonbusinesslaw.com]	Eric van Essen [ericvanessen@gmail.com]	Patel, Anita	Solicitor-Client
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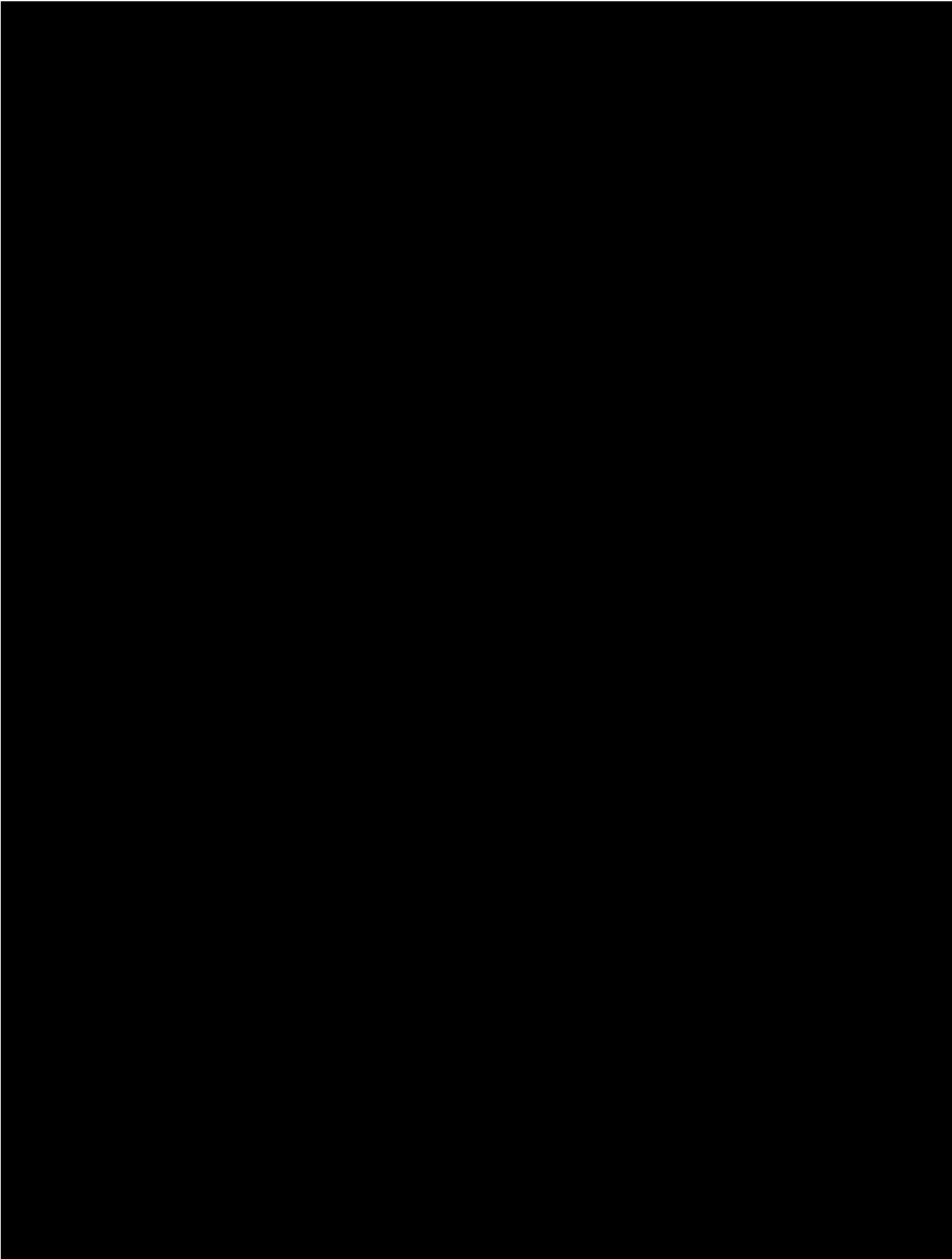
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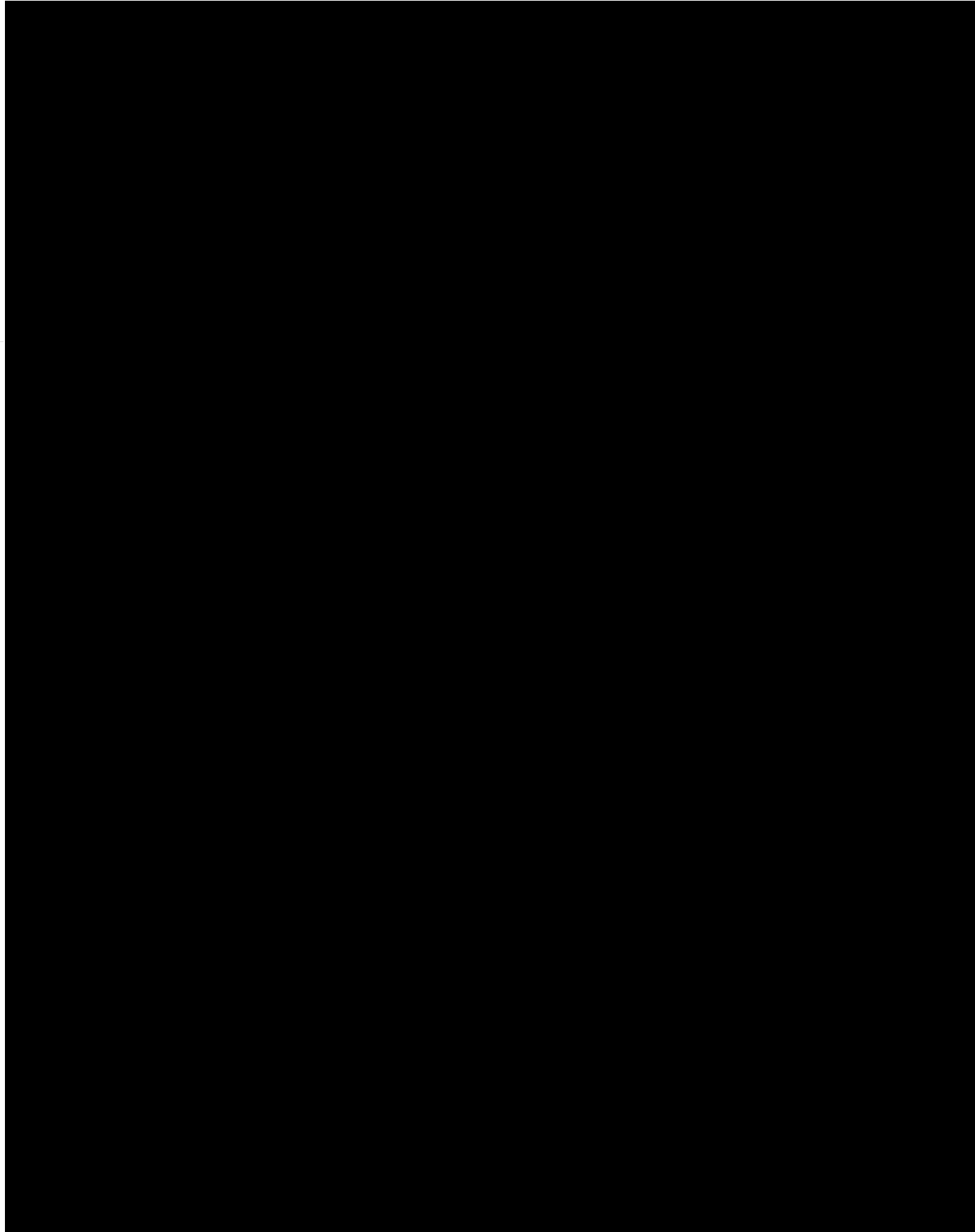
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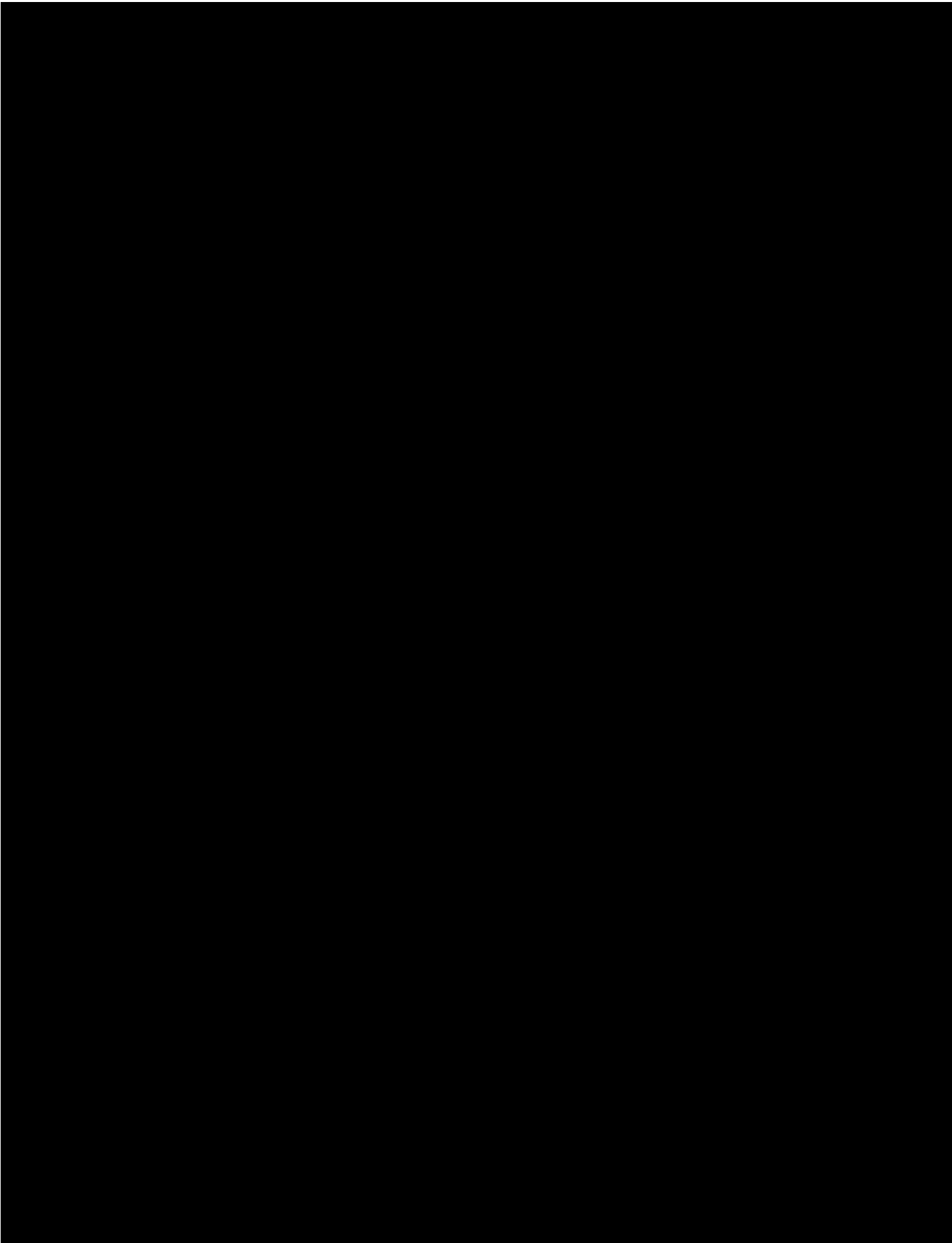


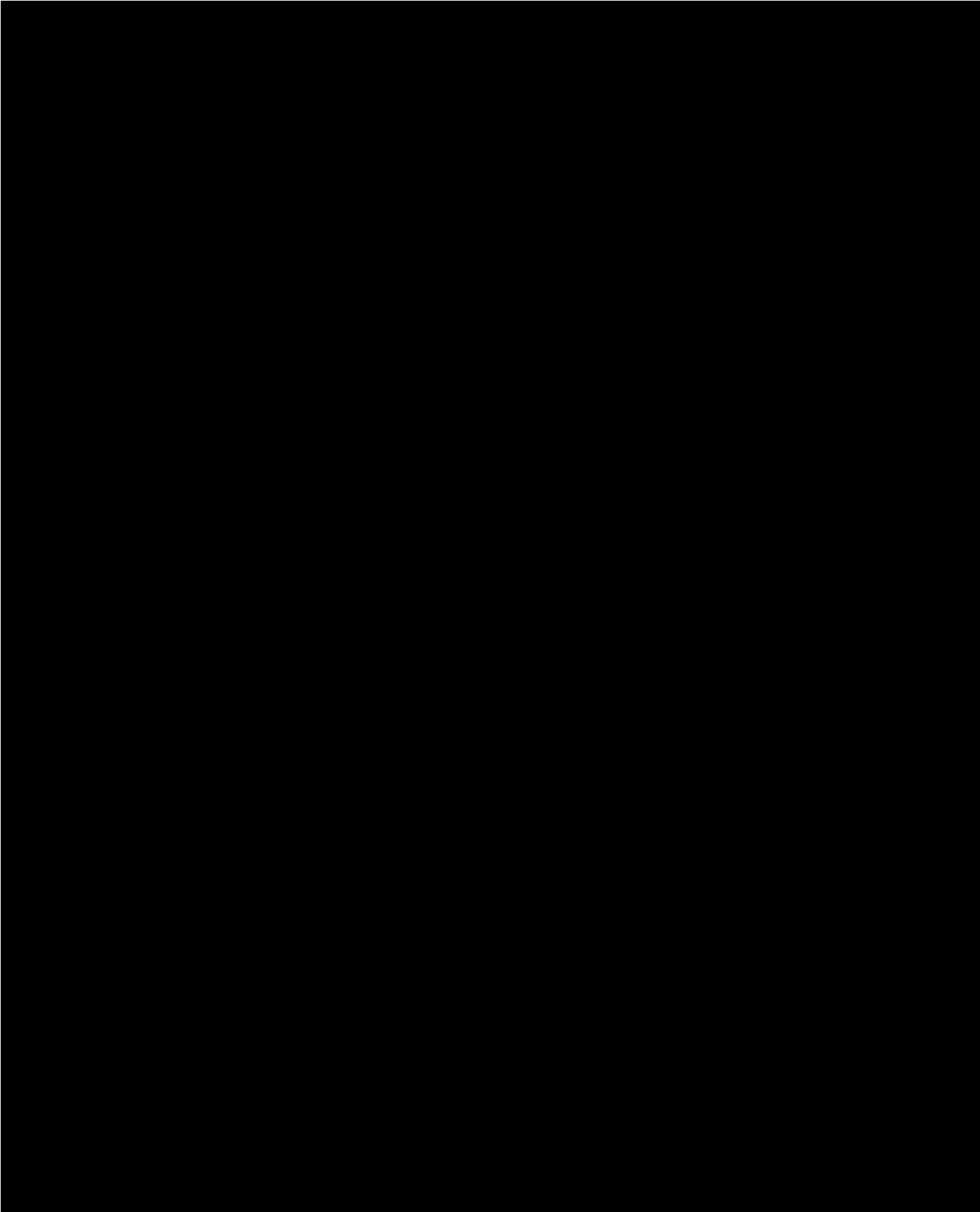






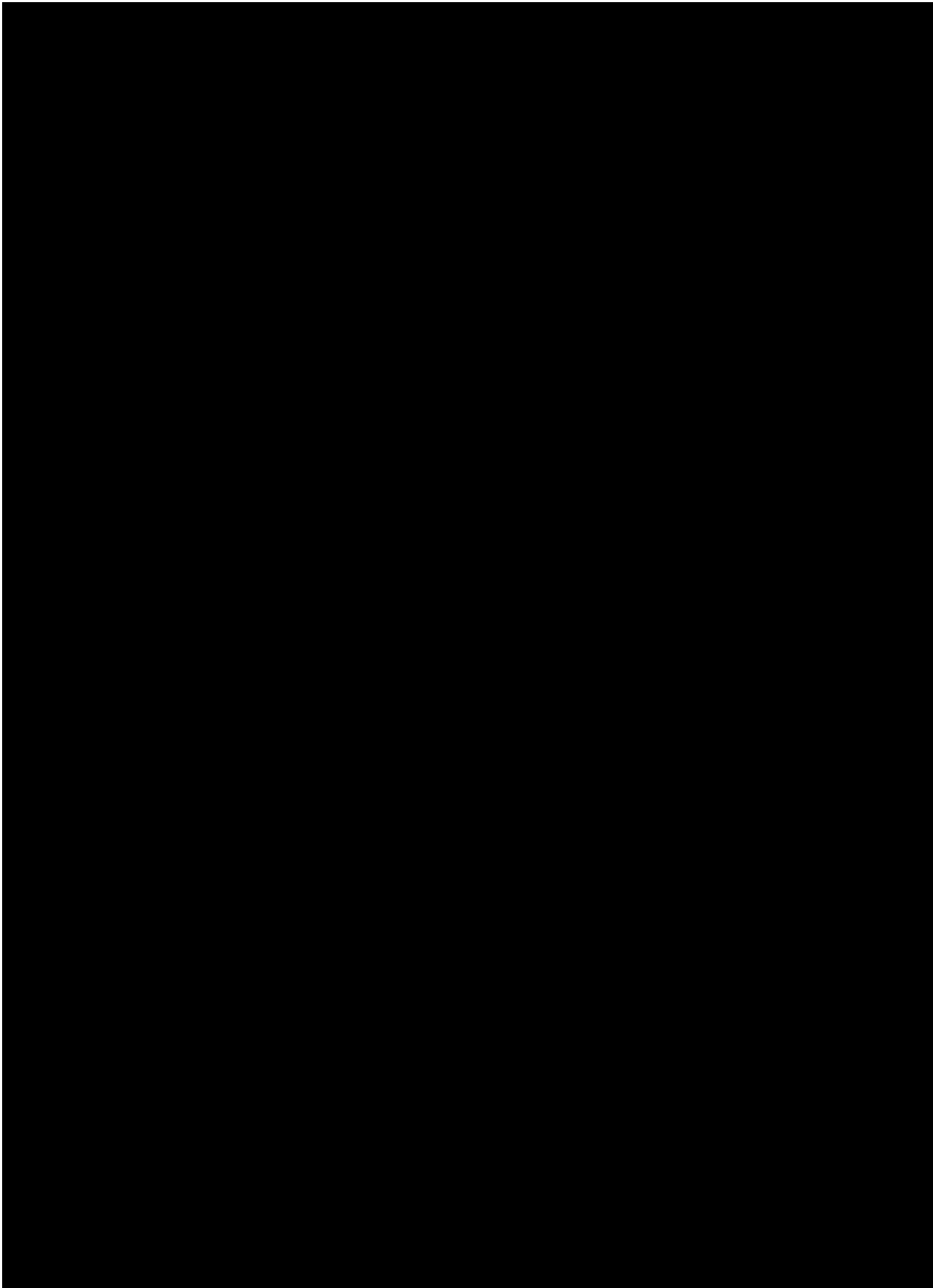


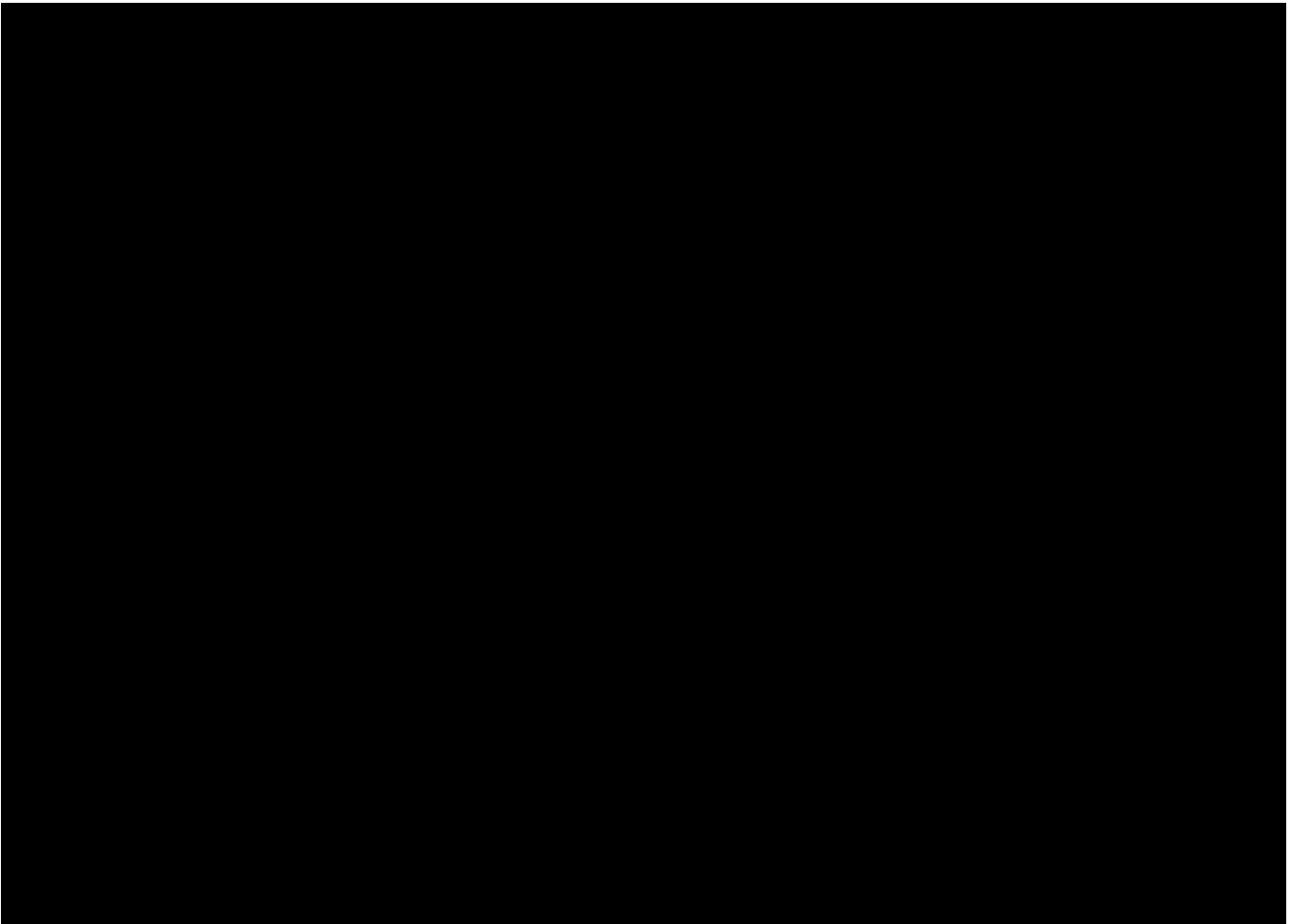




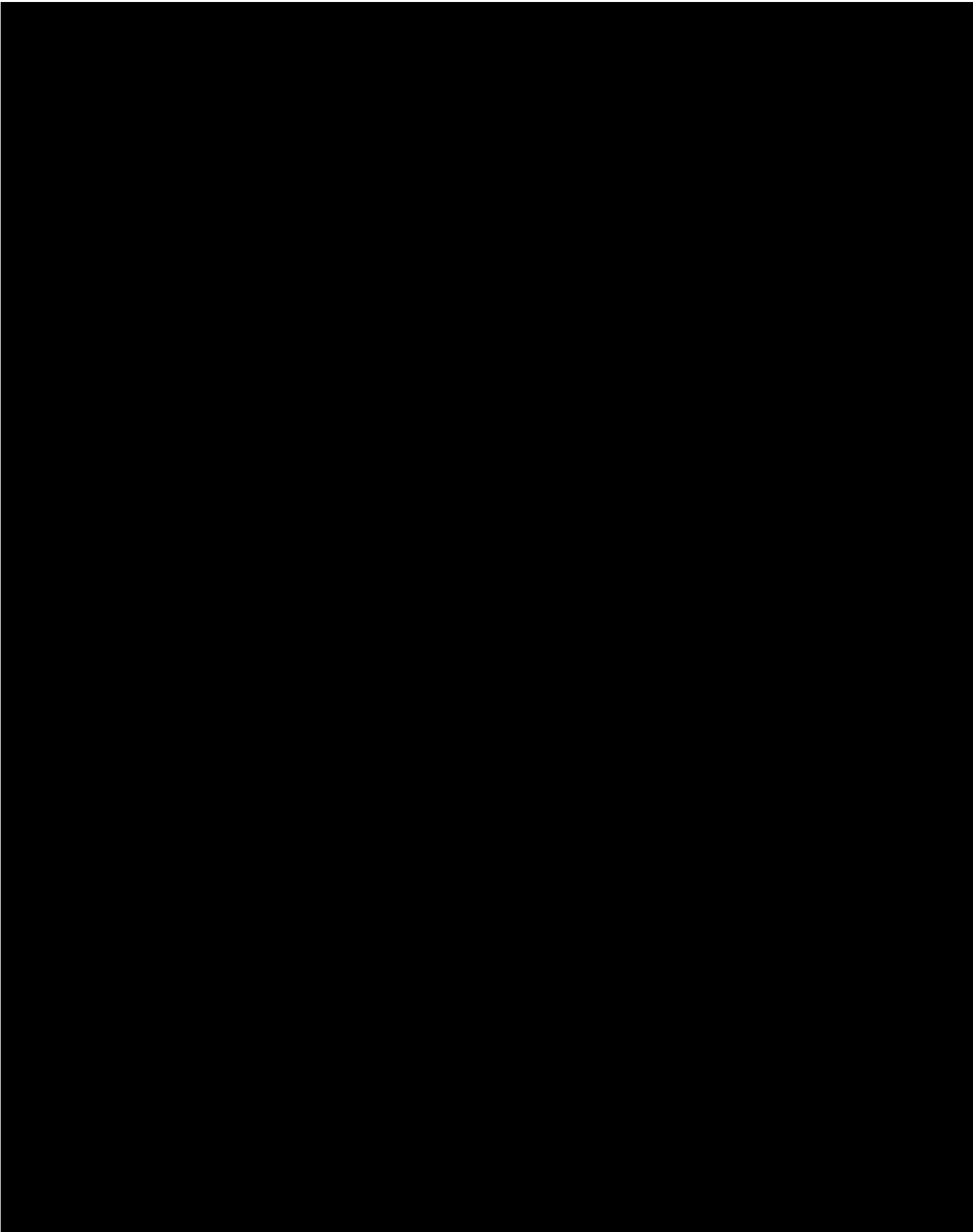


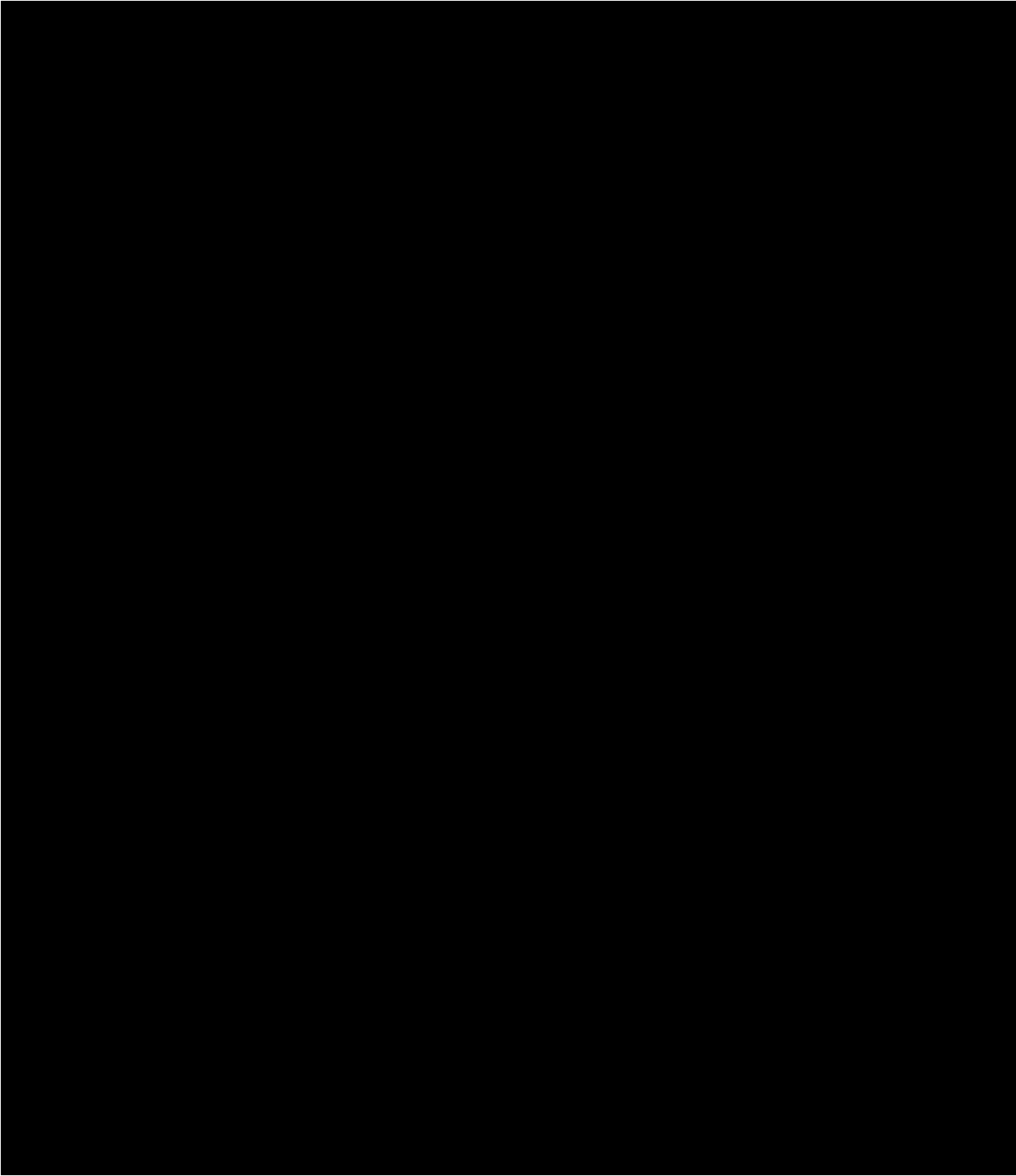
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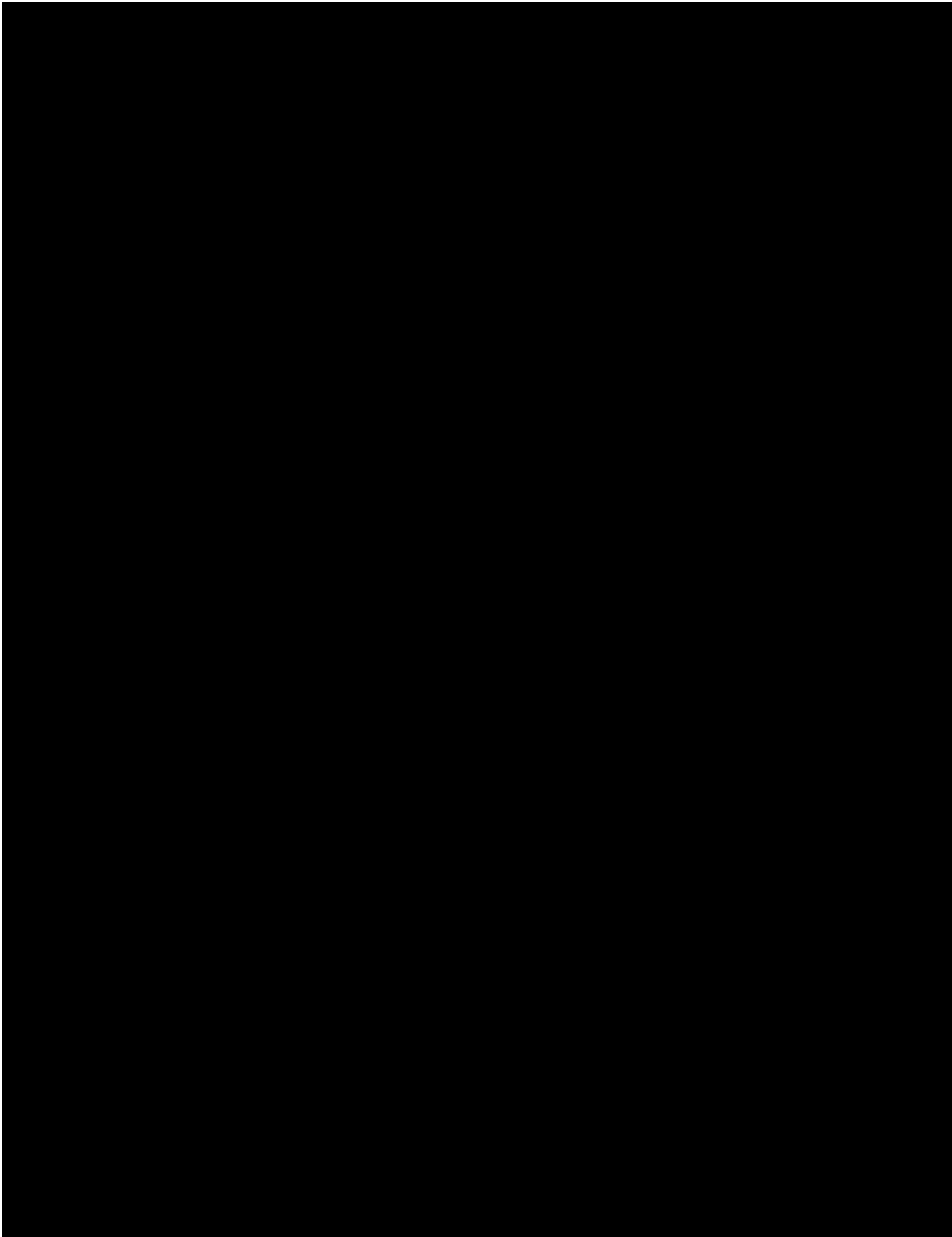


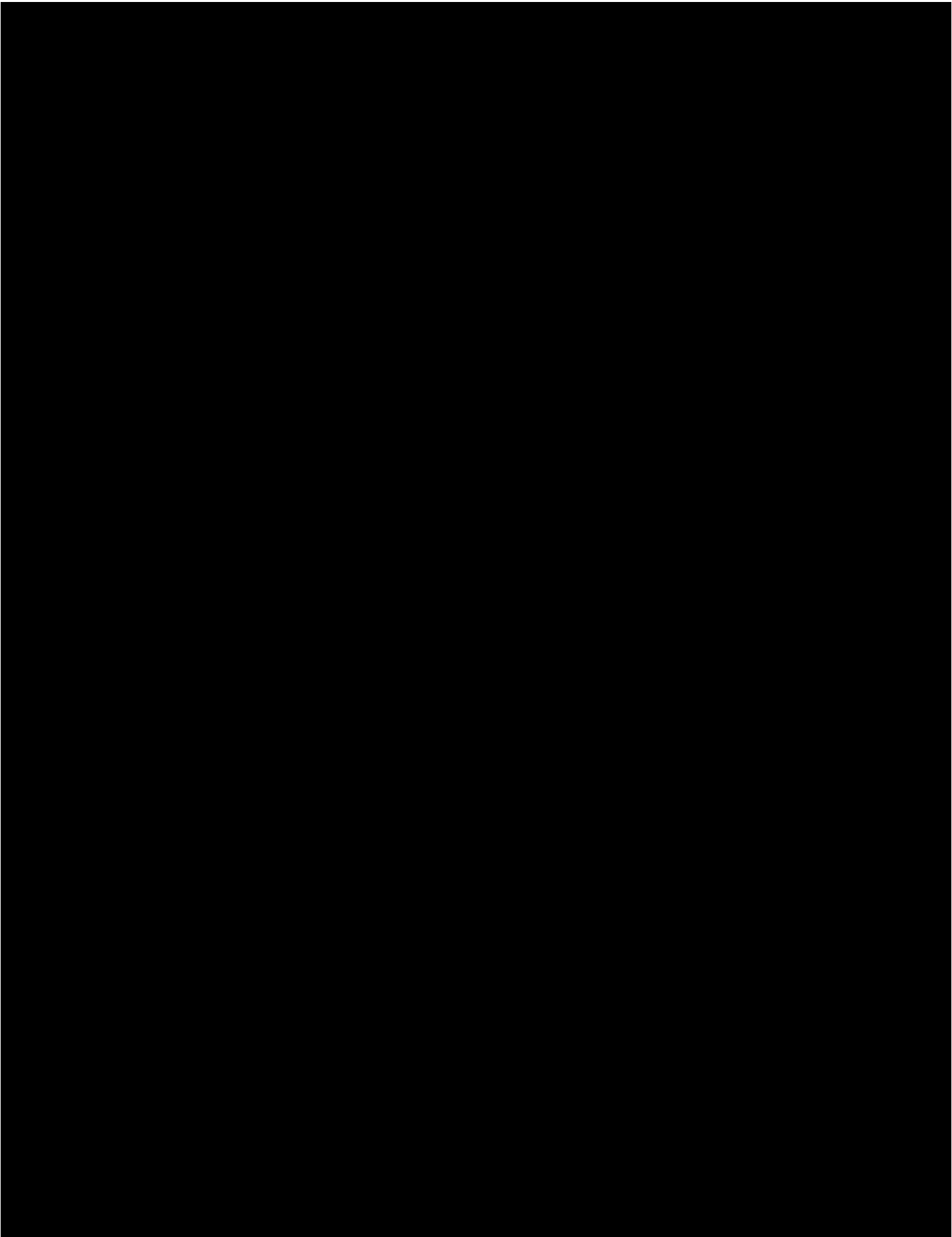
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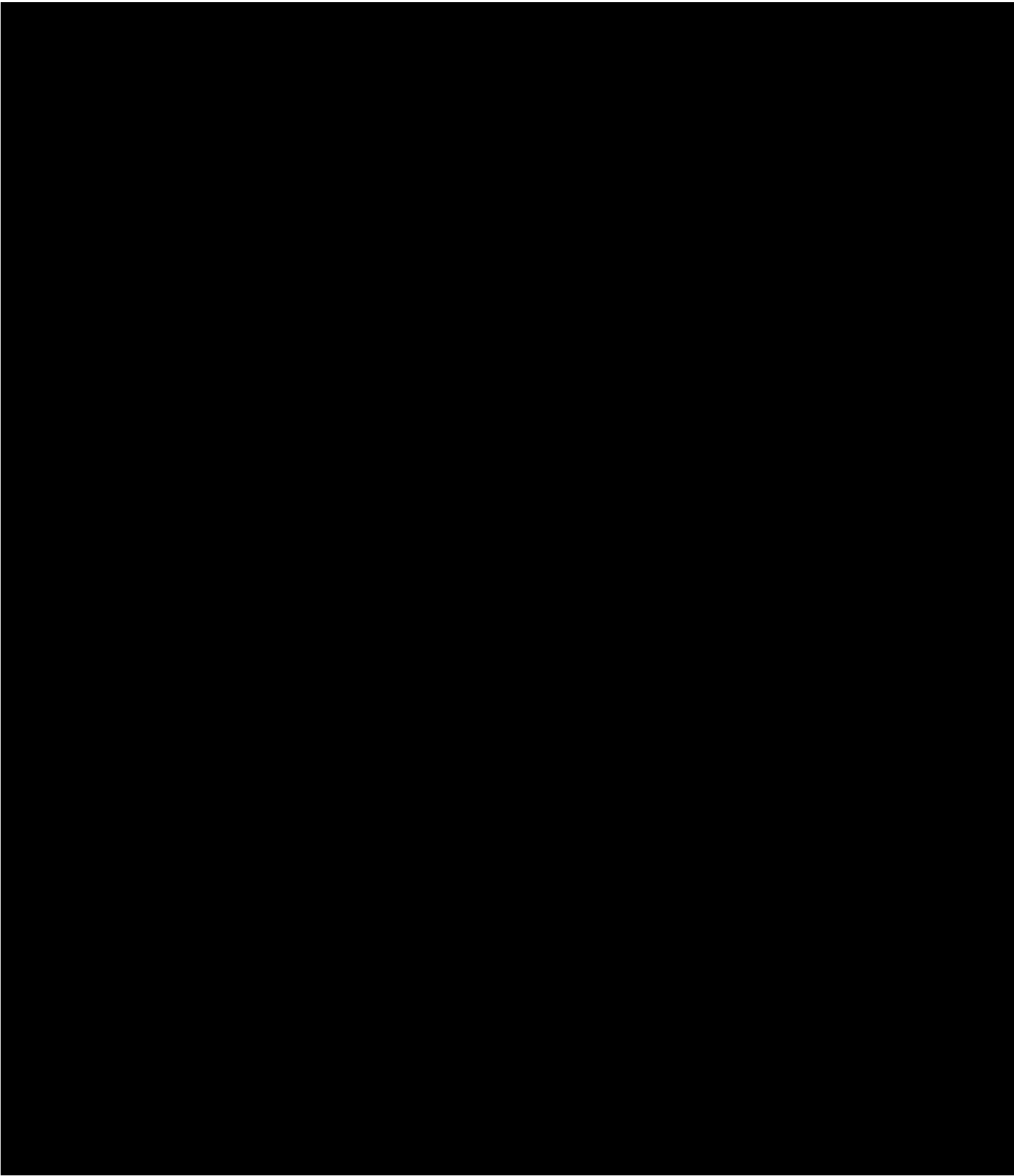




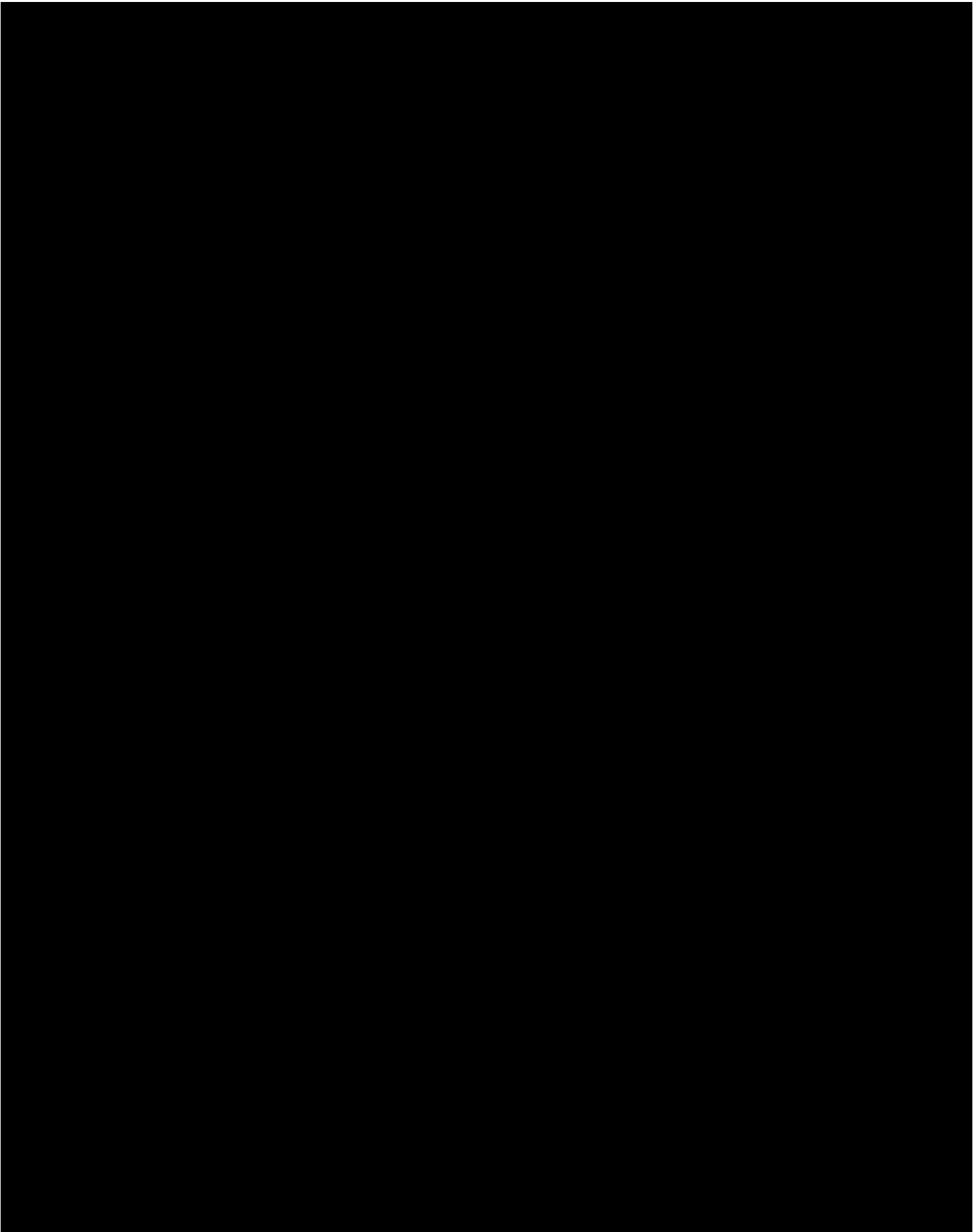
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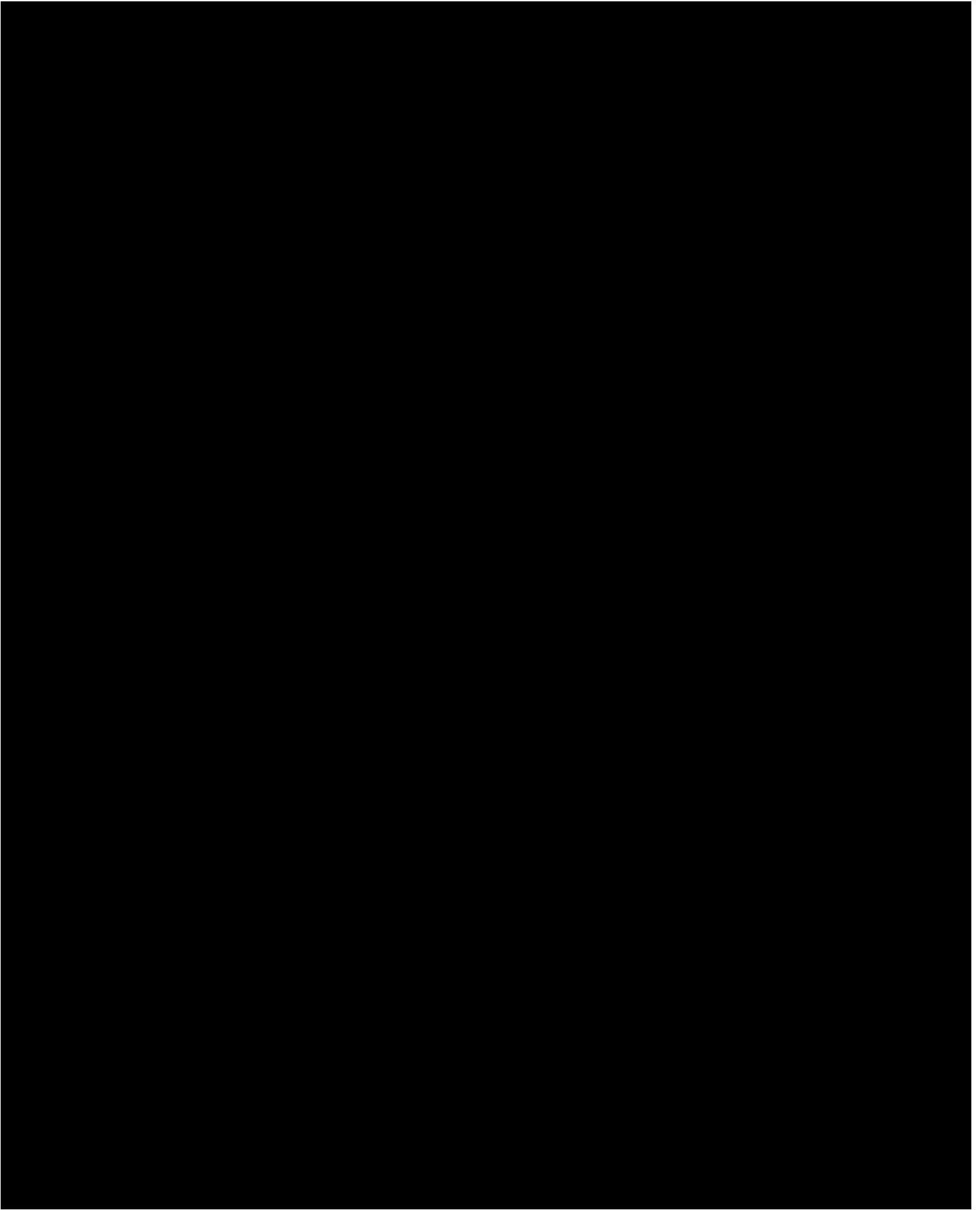


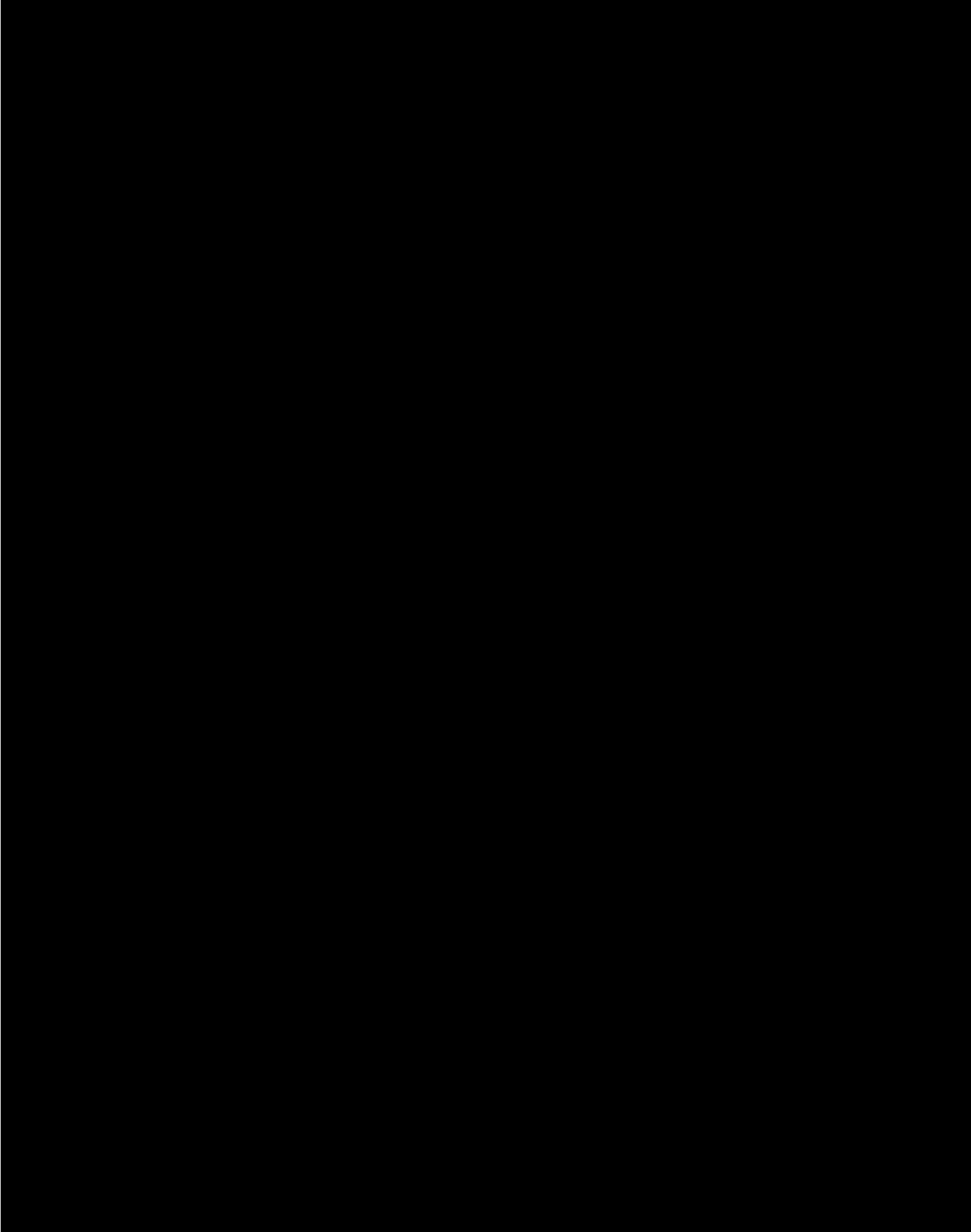


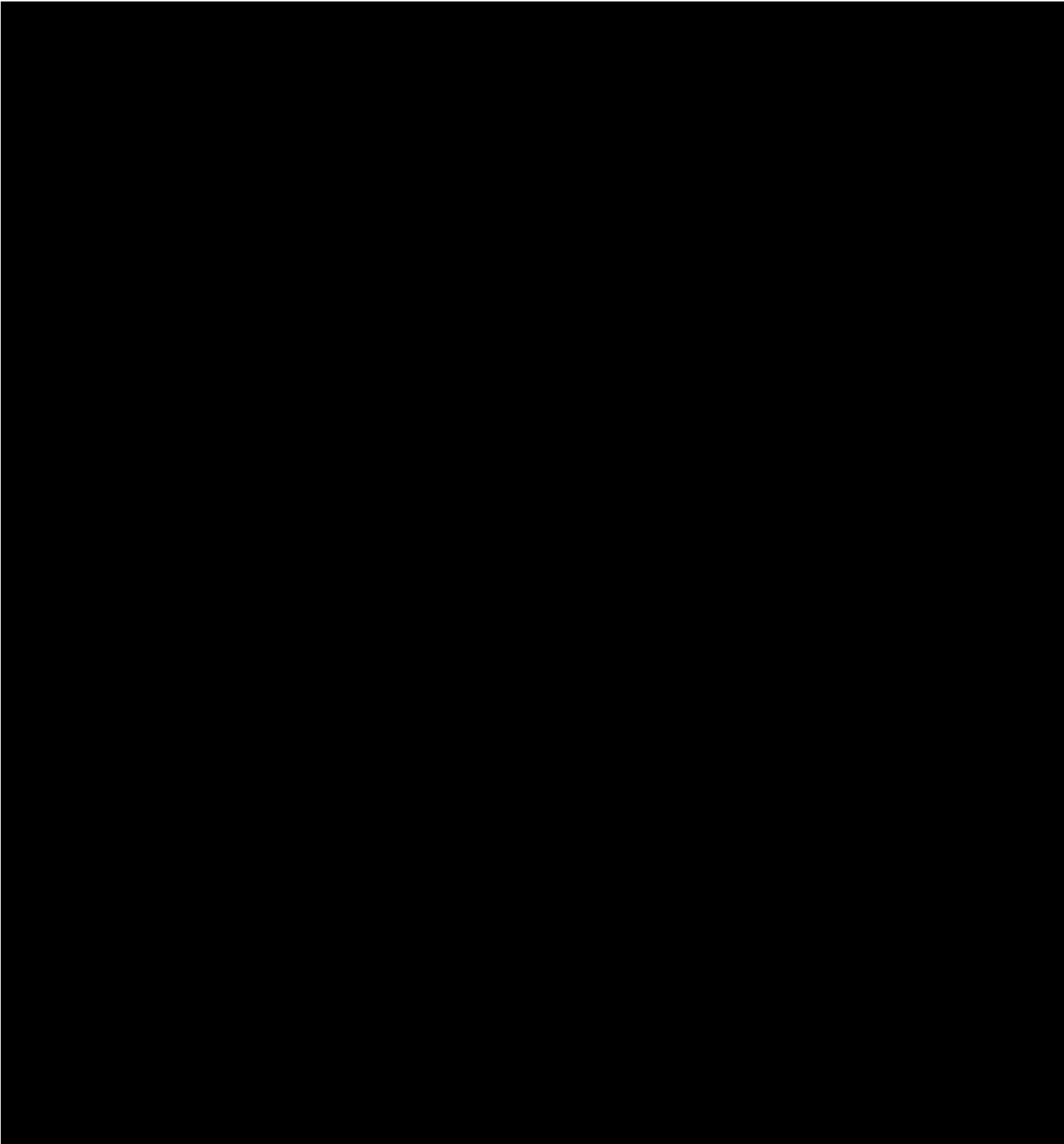


TAB C05

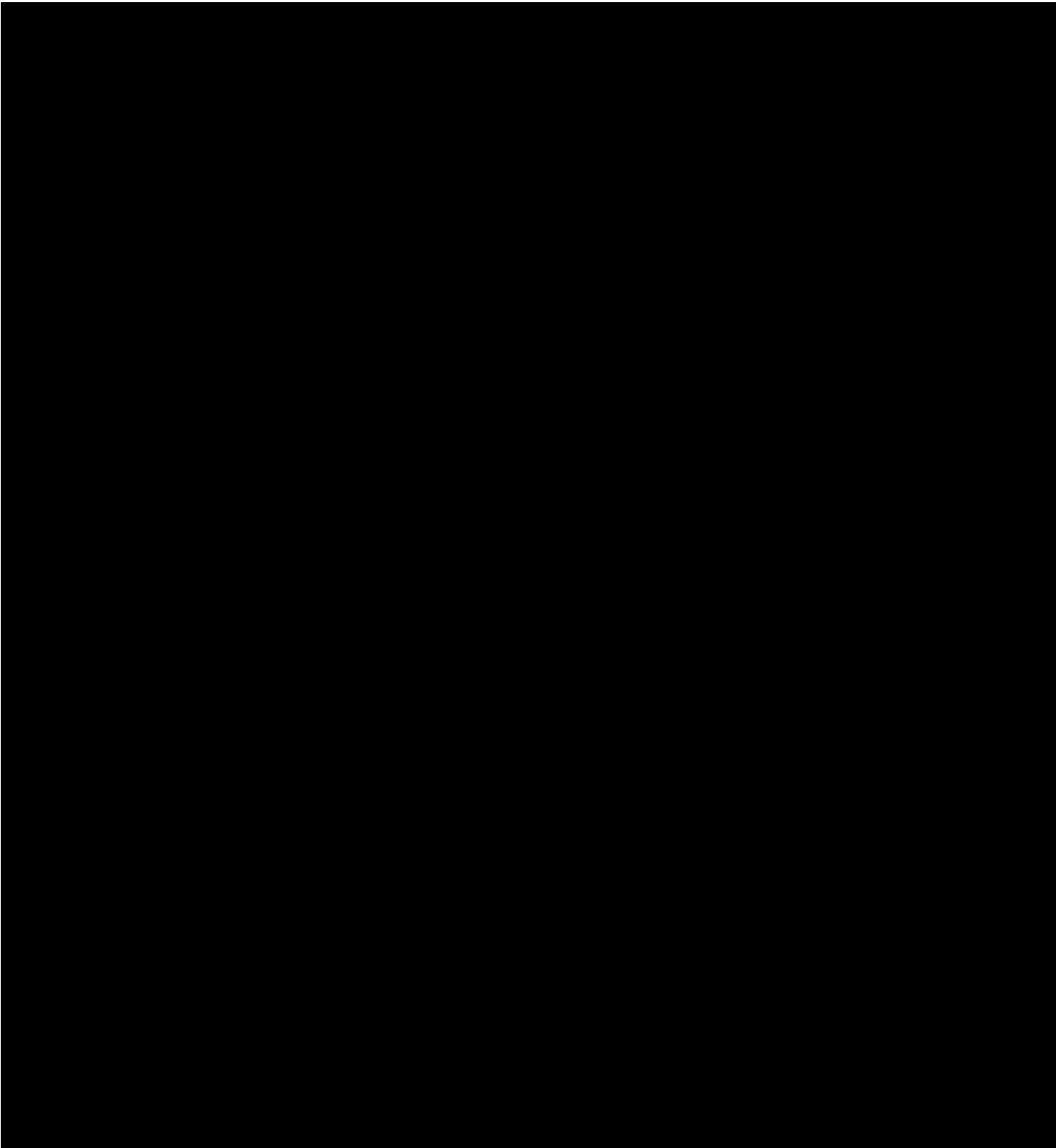




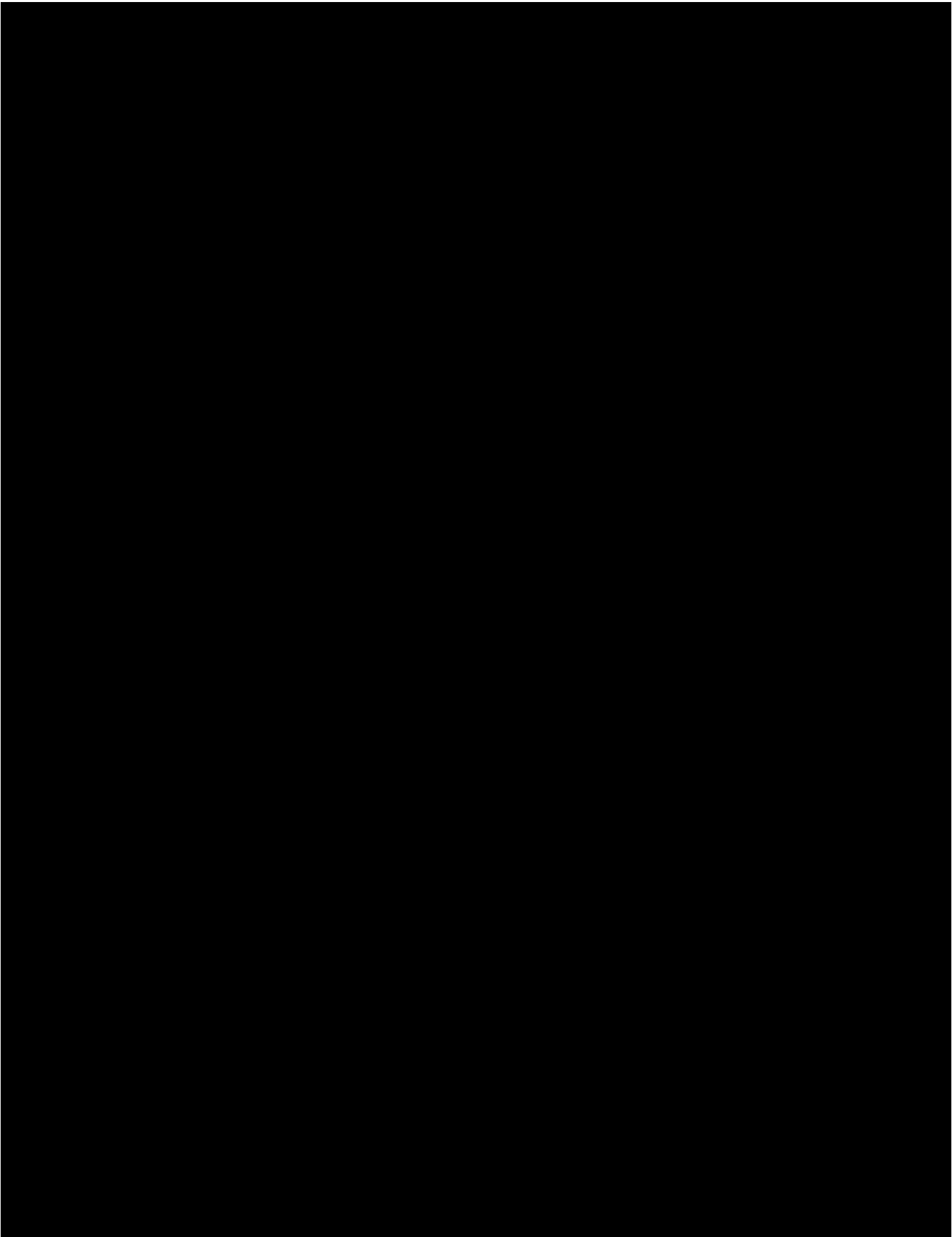




TAB C06

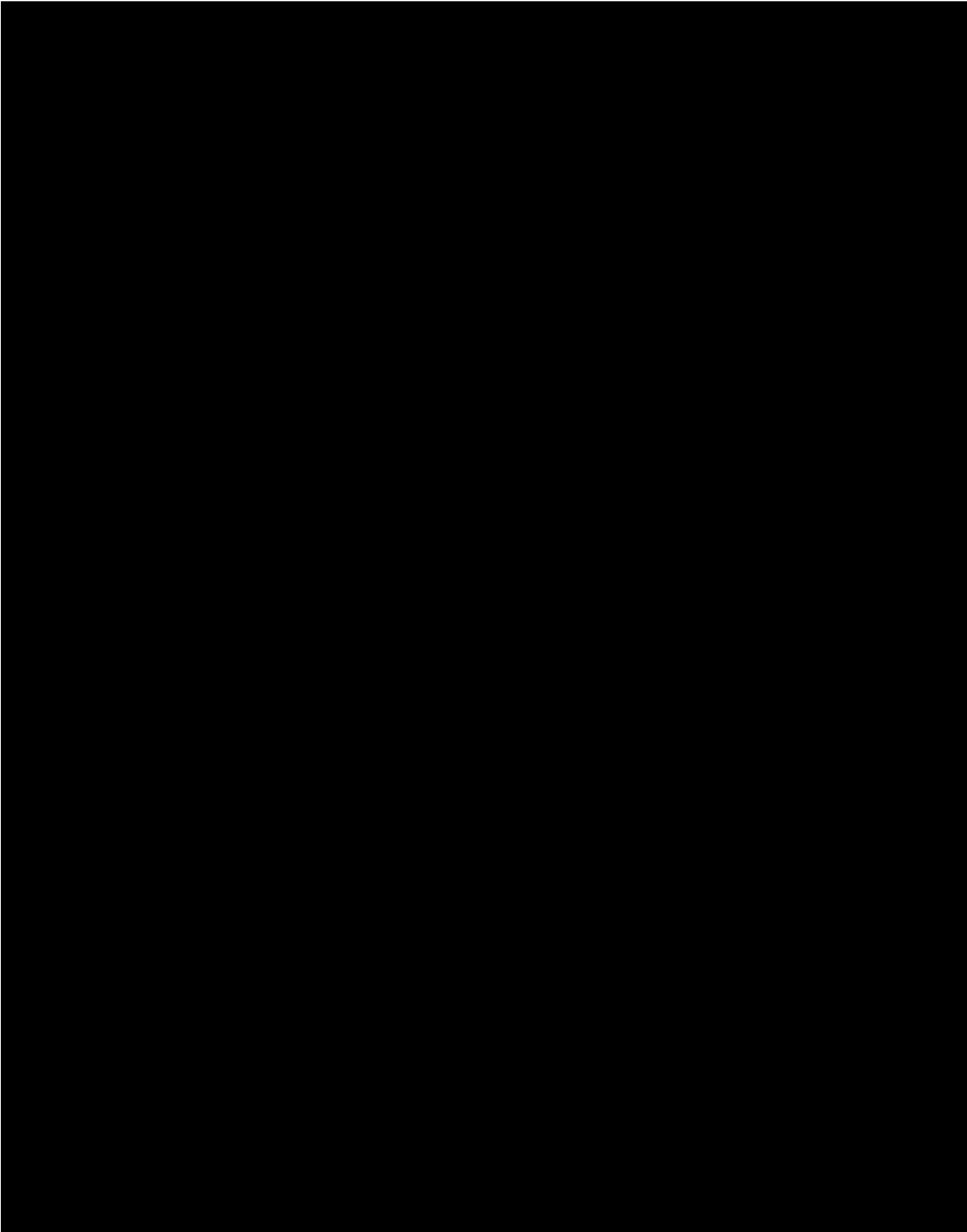


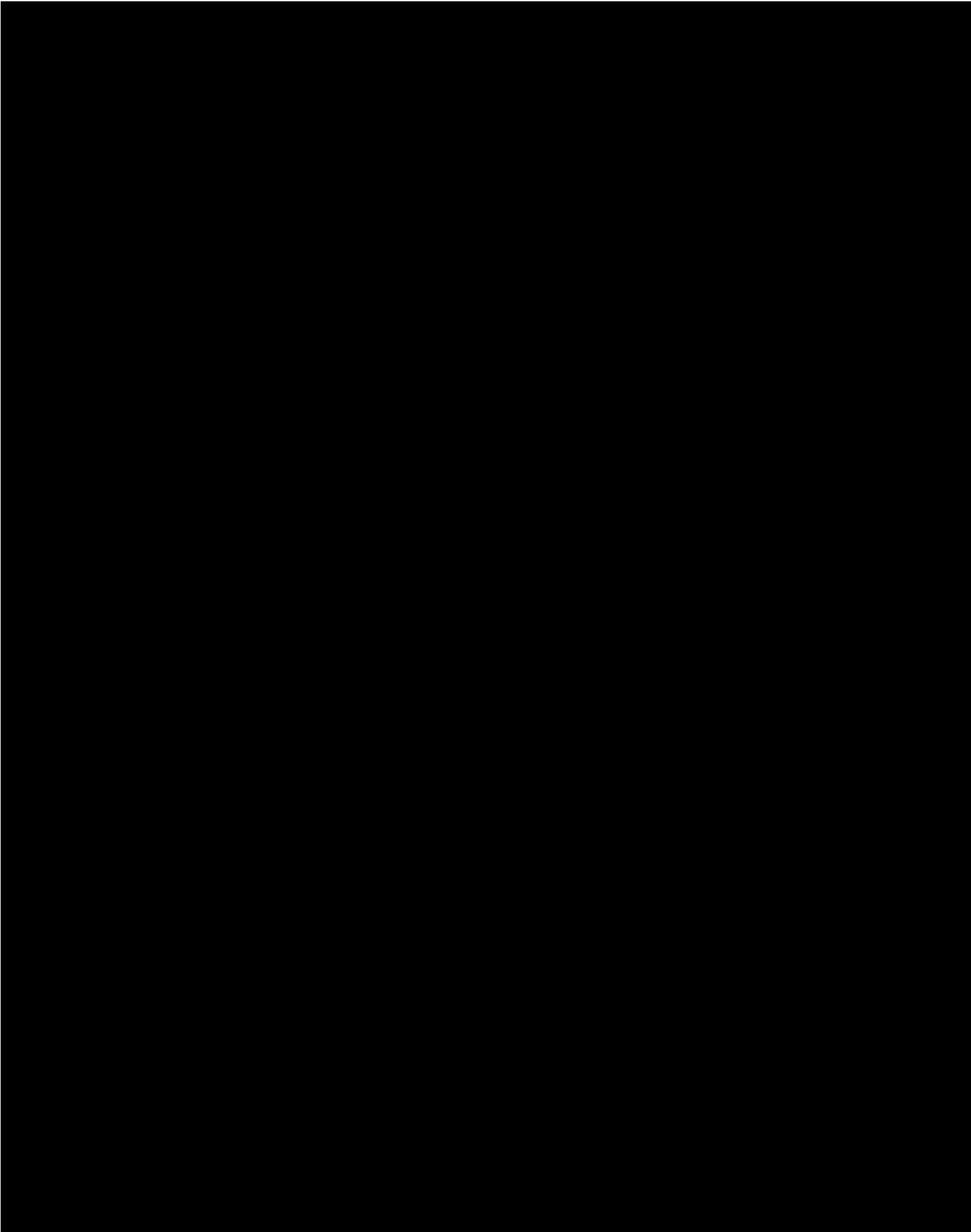
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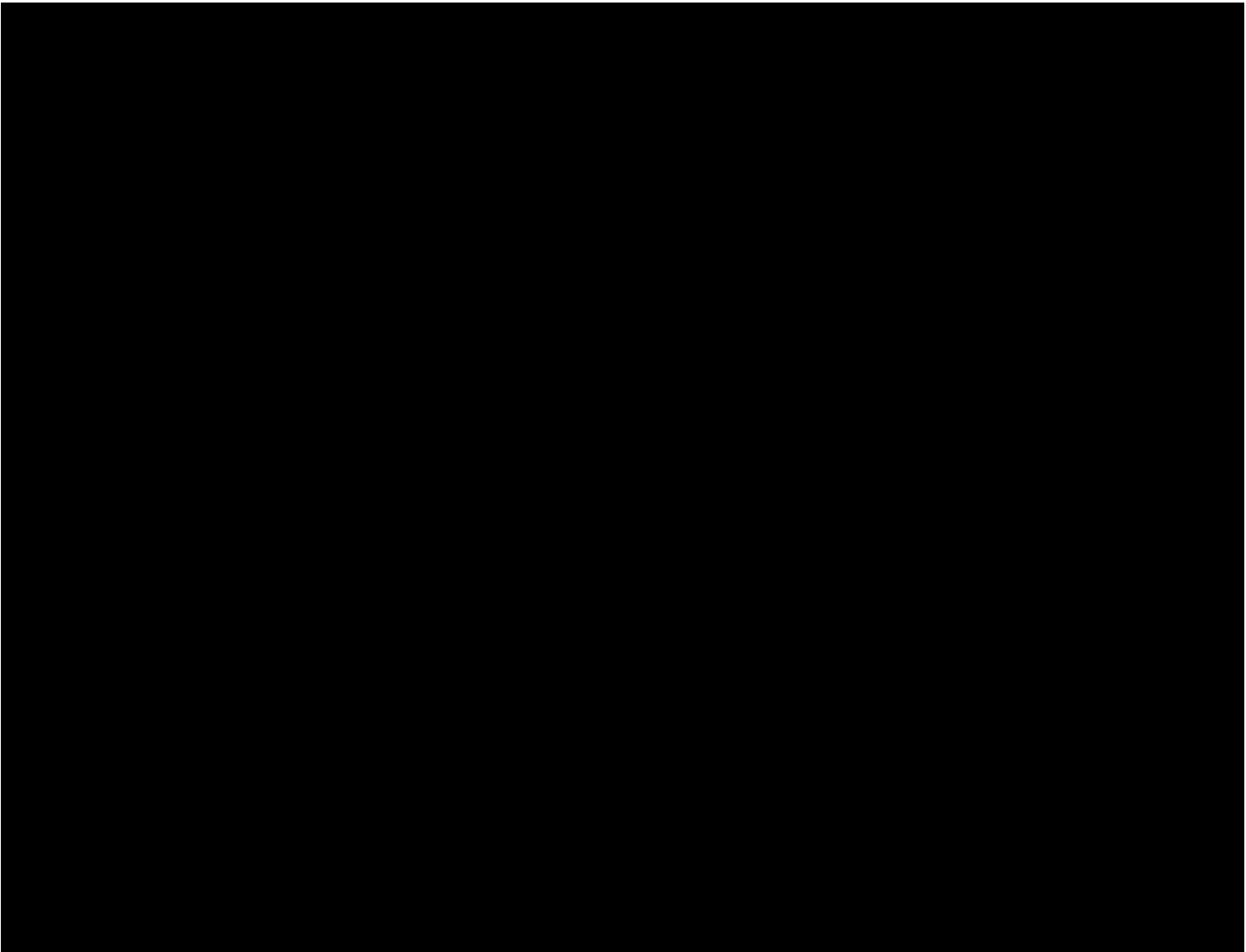
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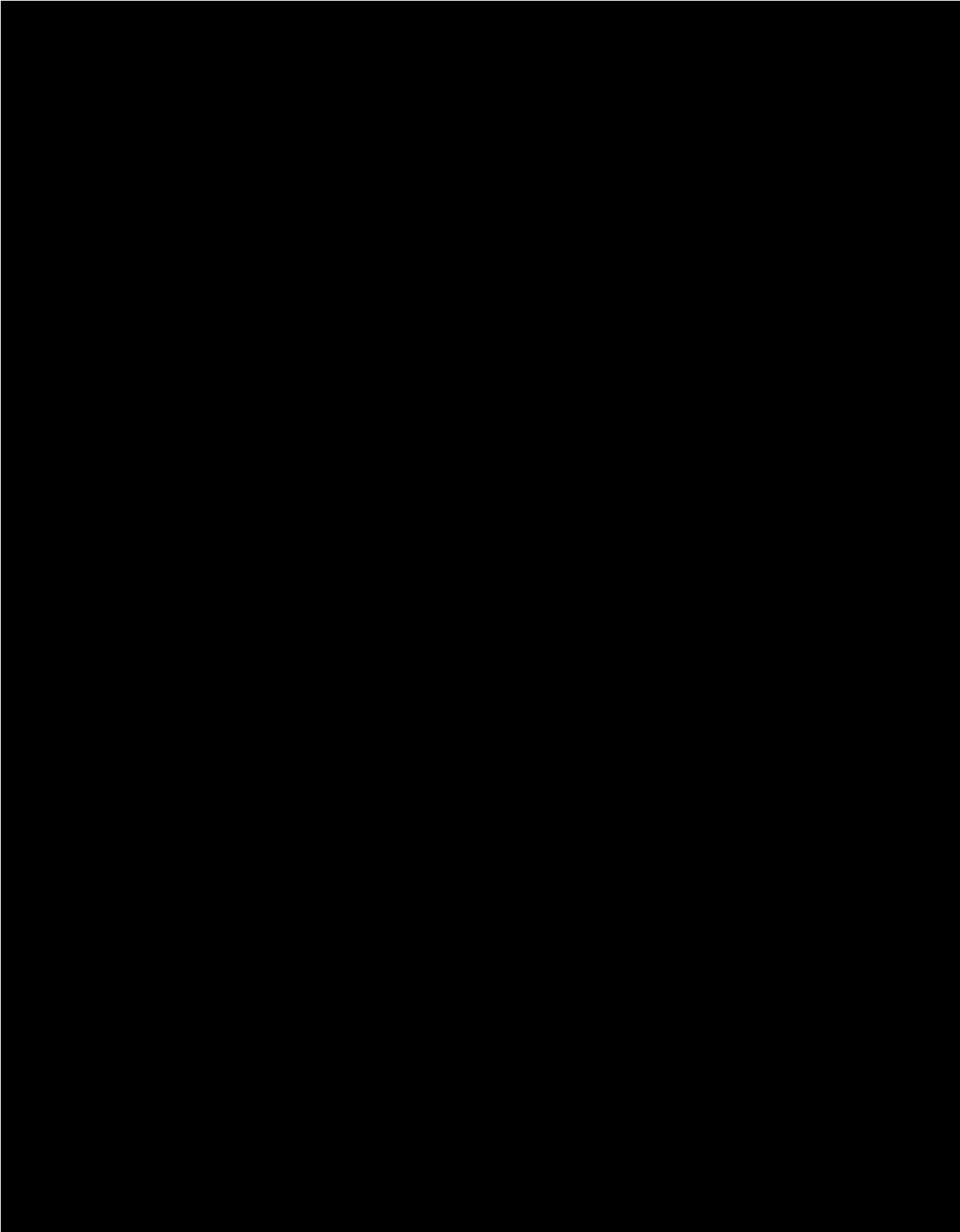


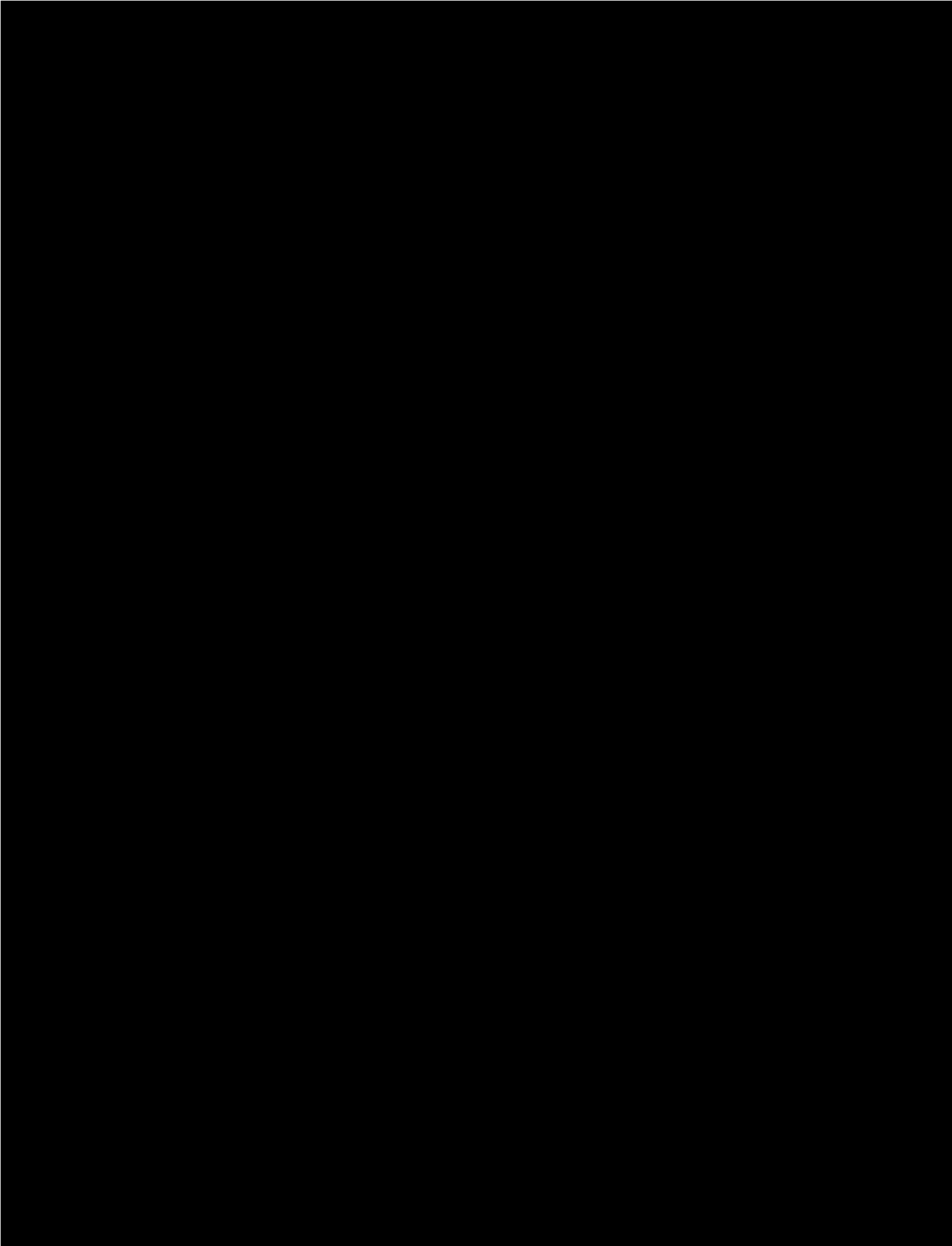


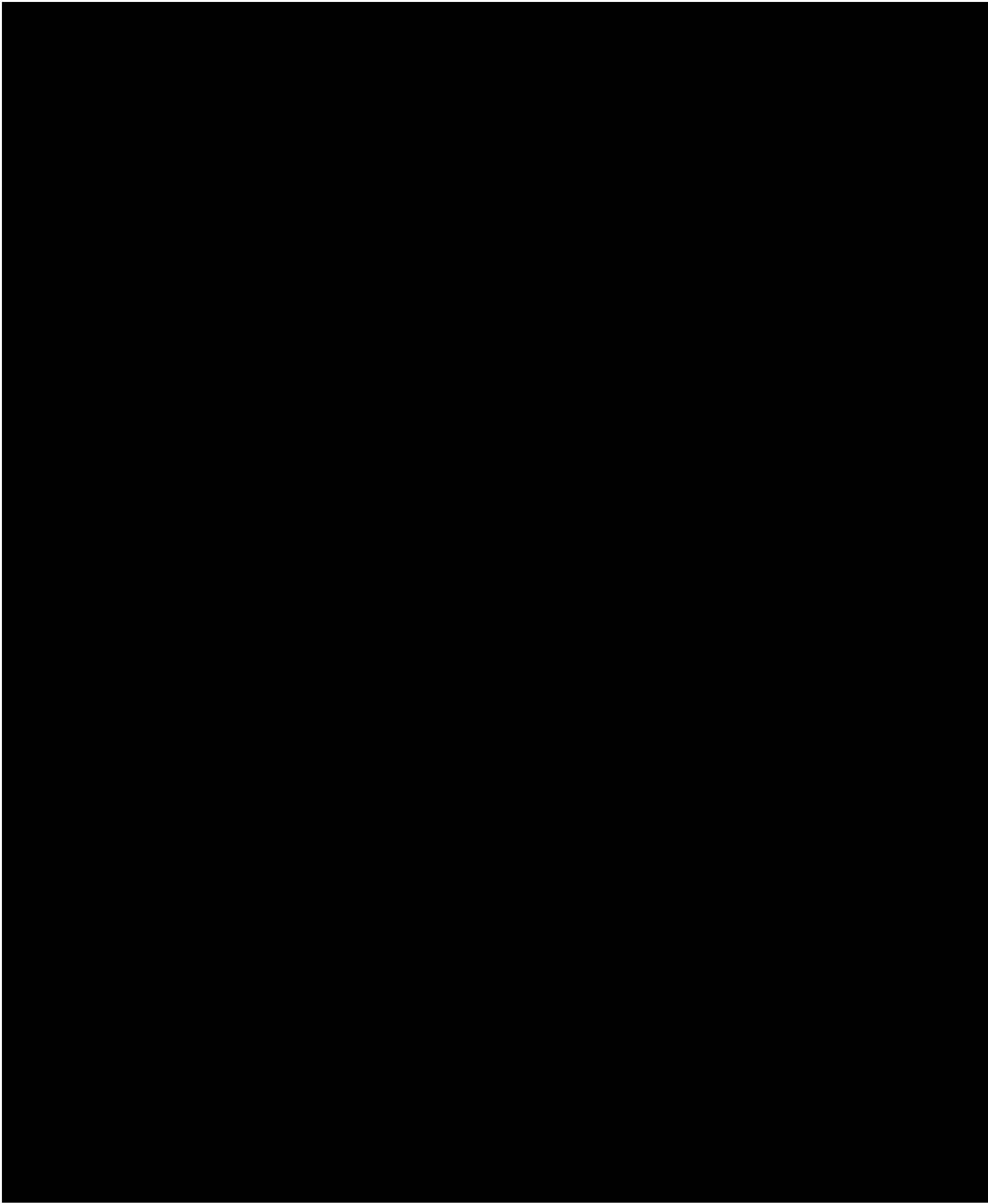
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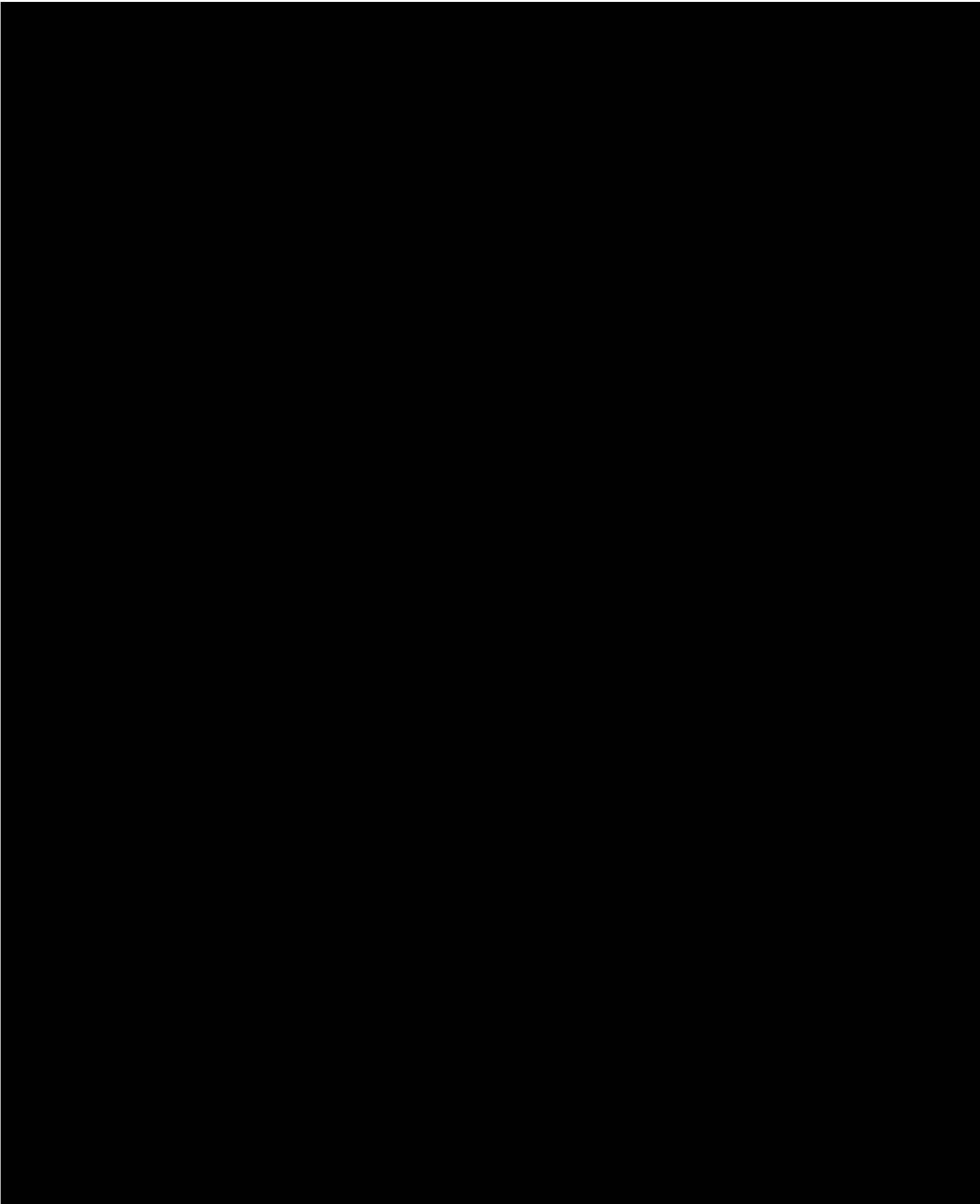


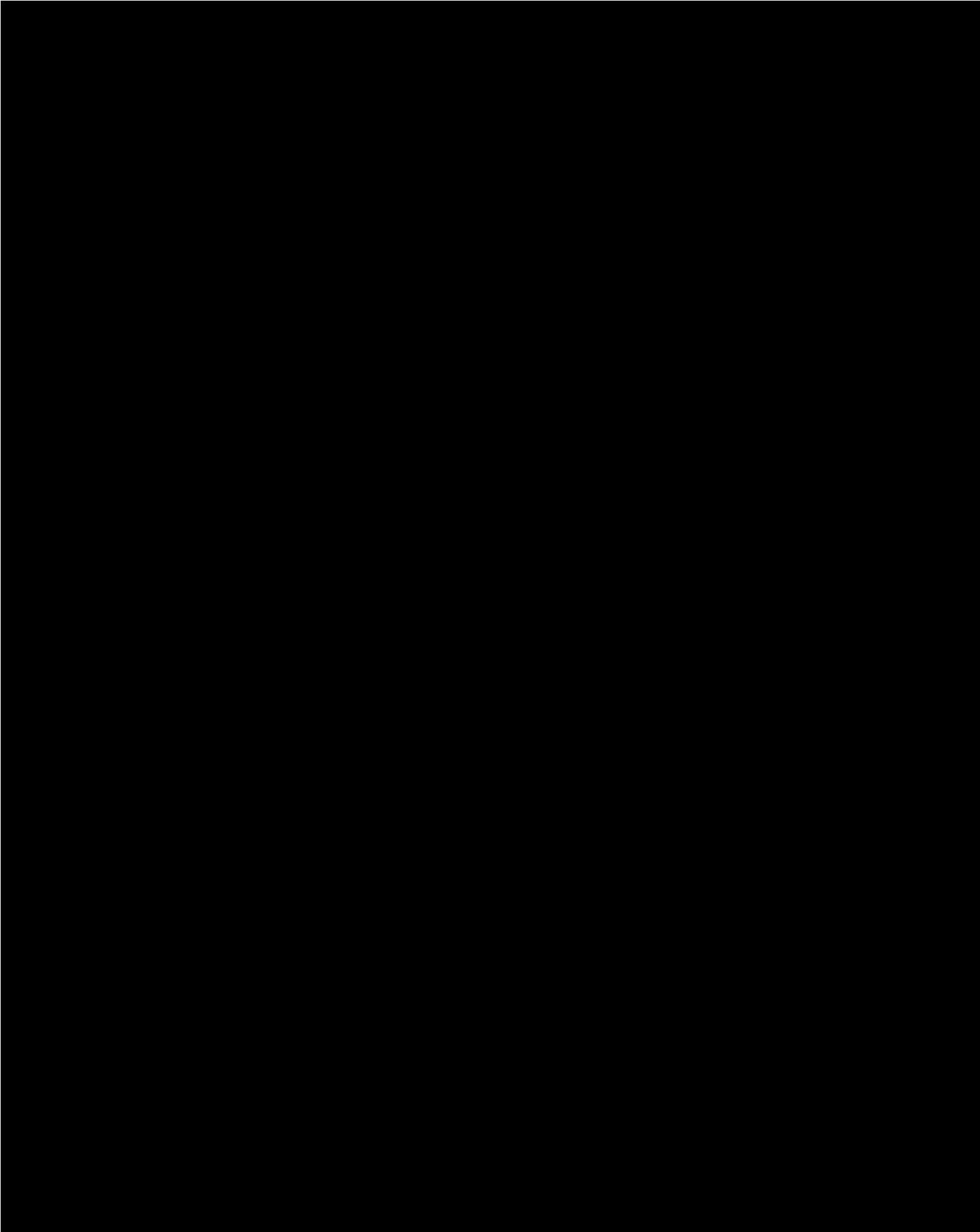
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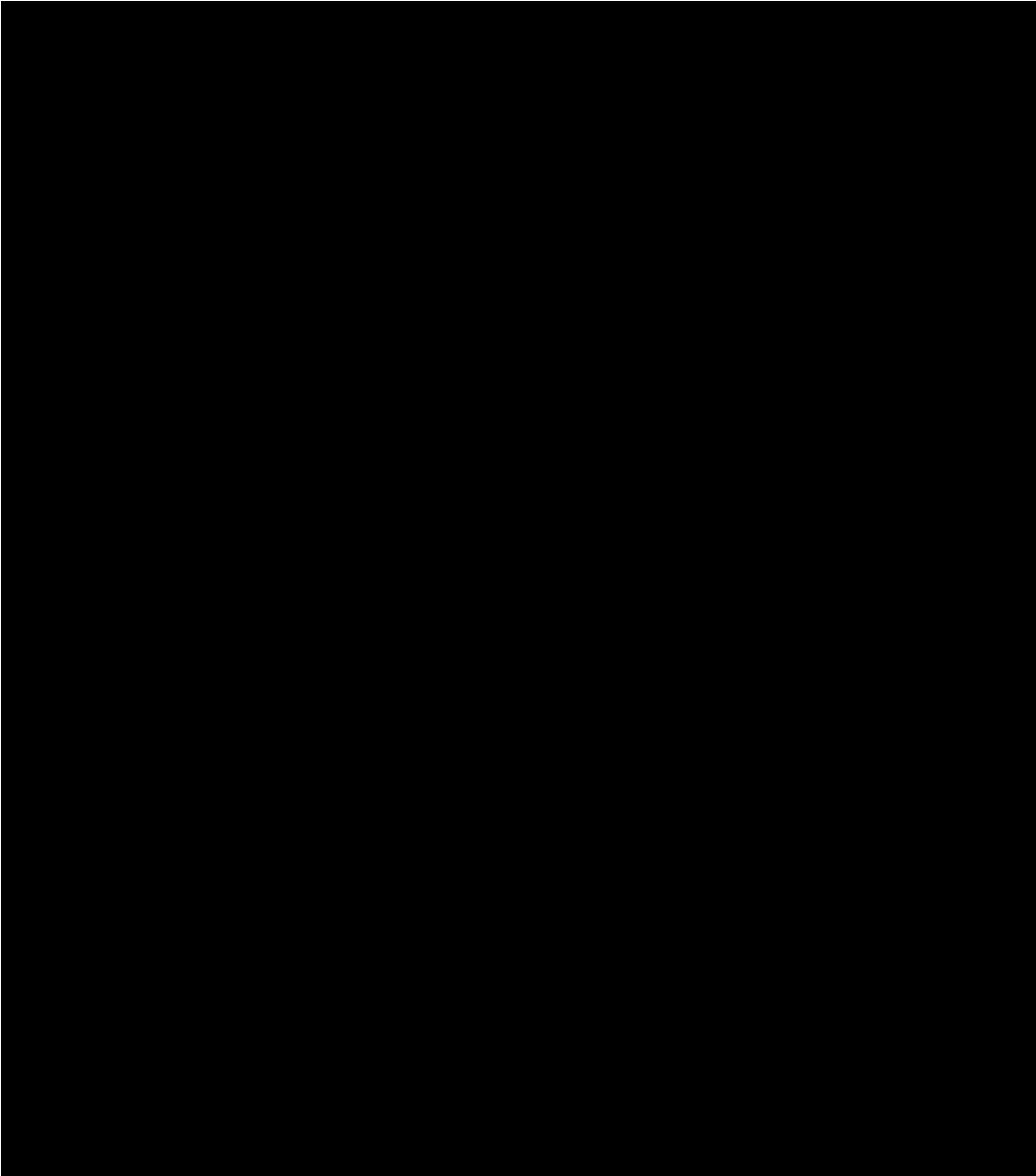




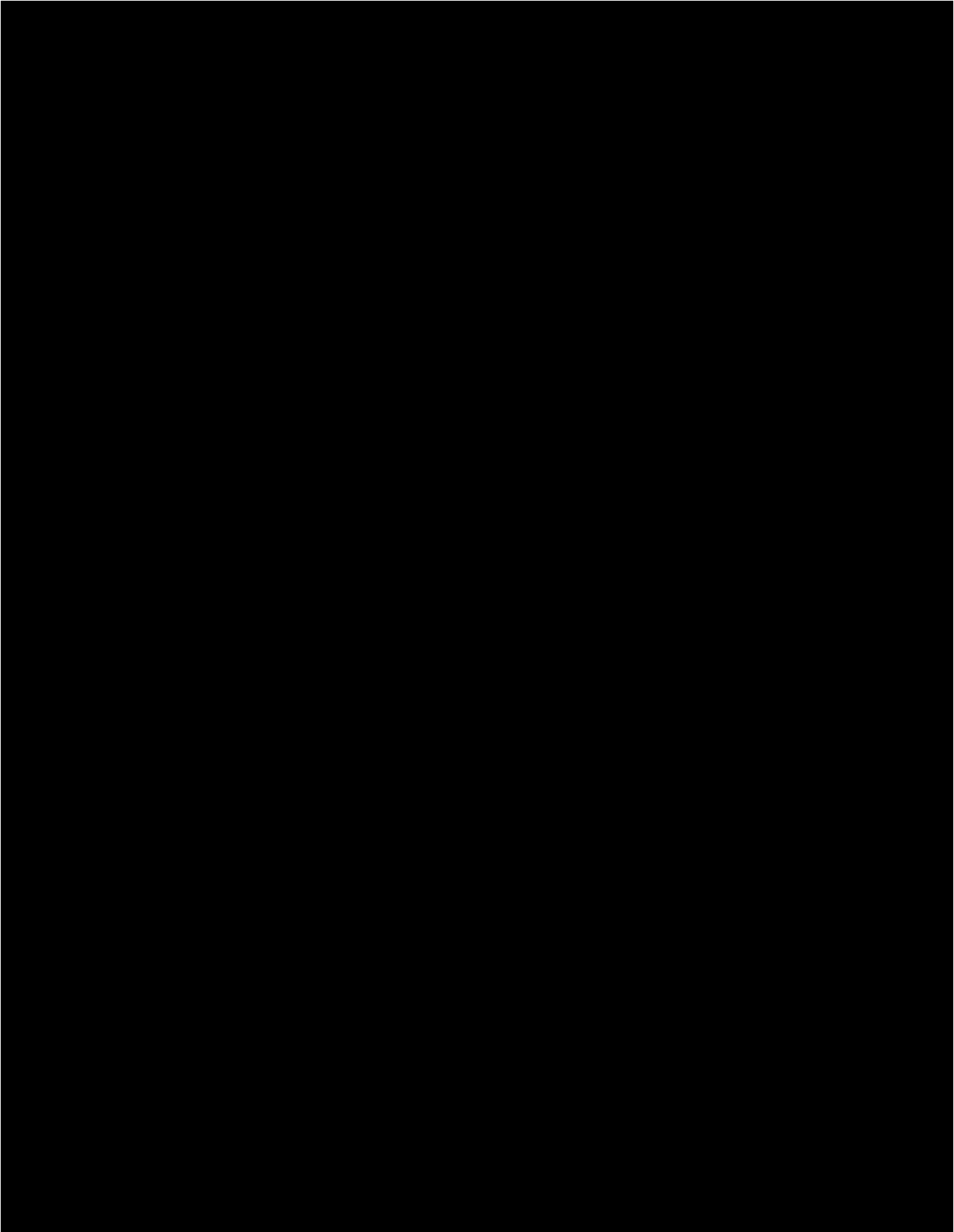


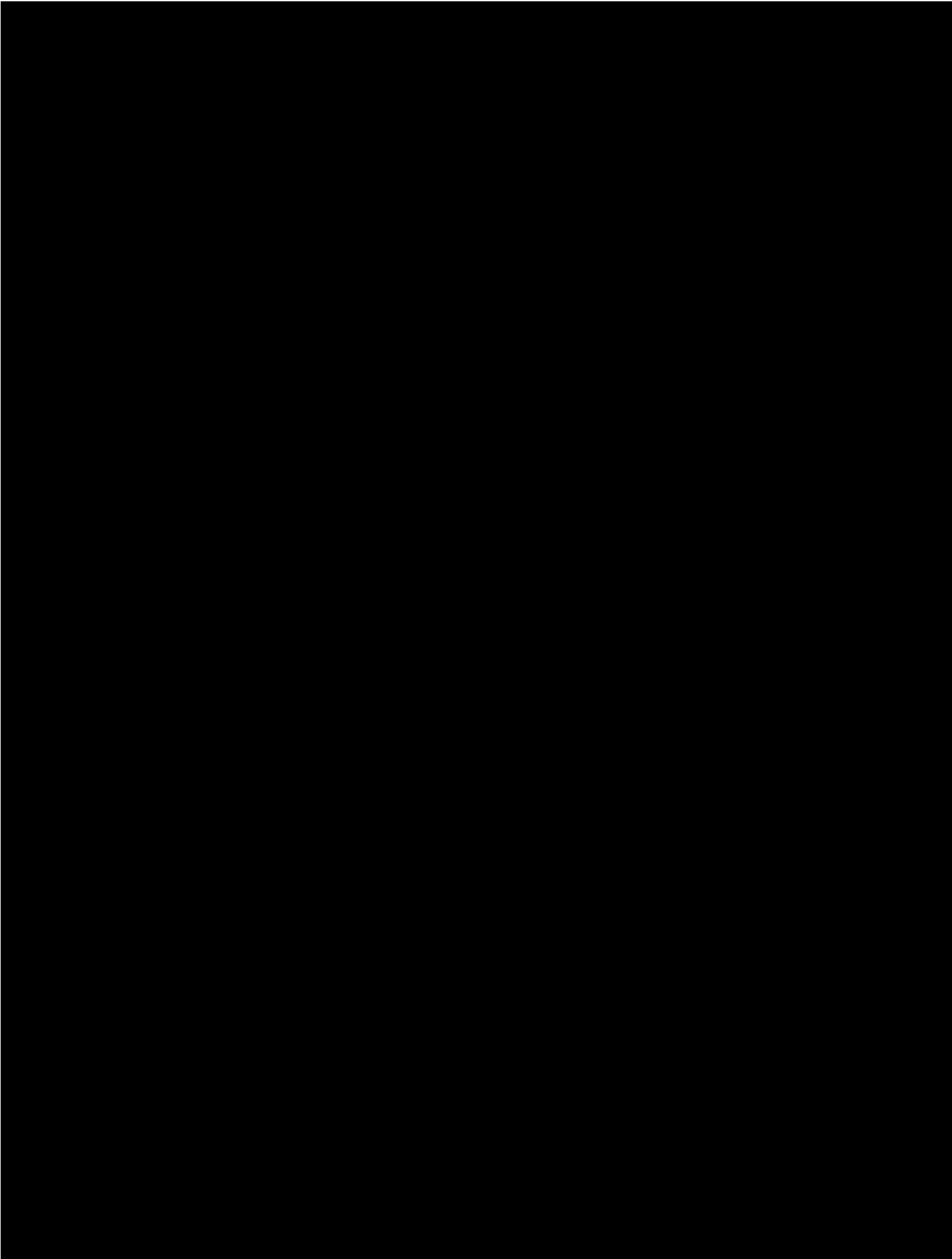


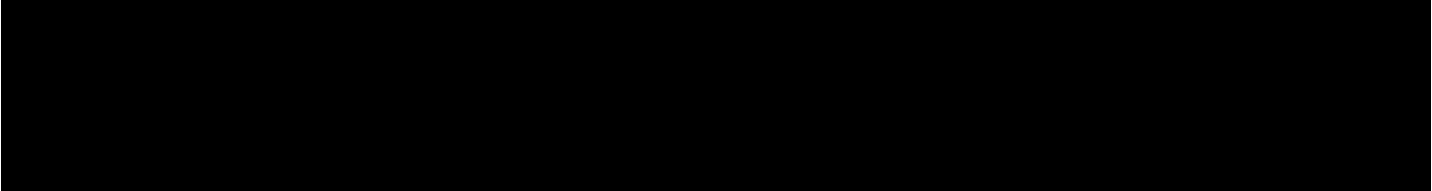
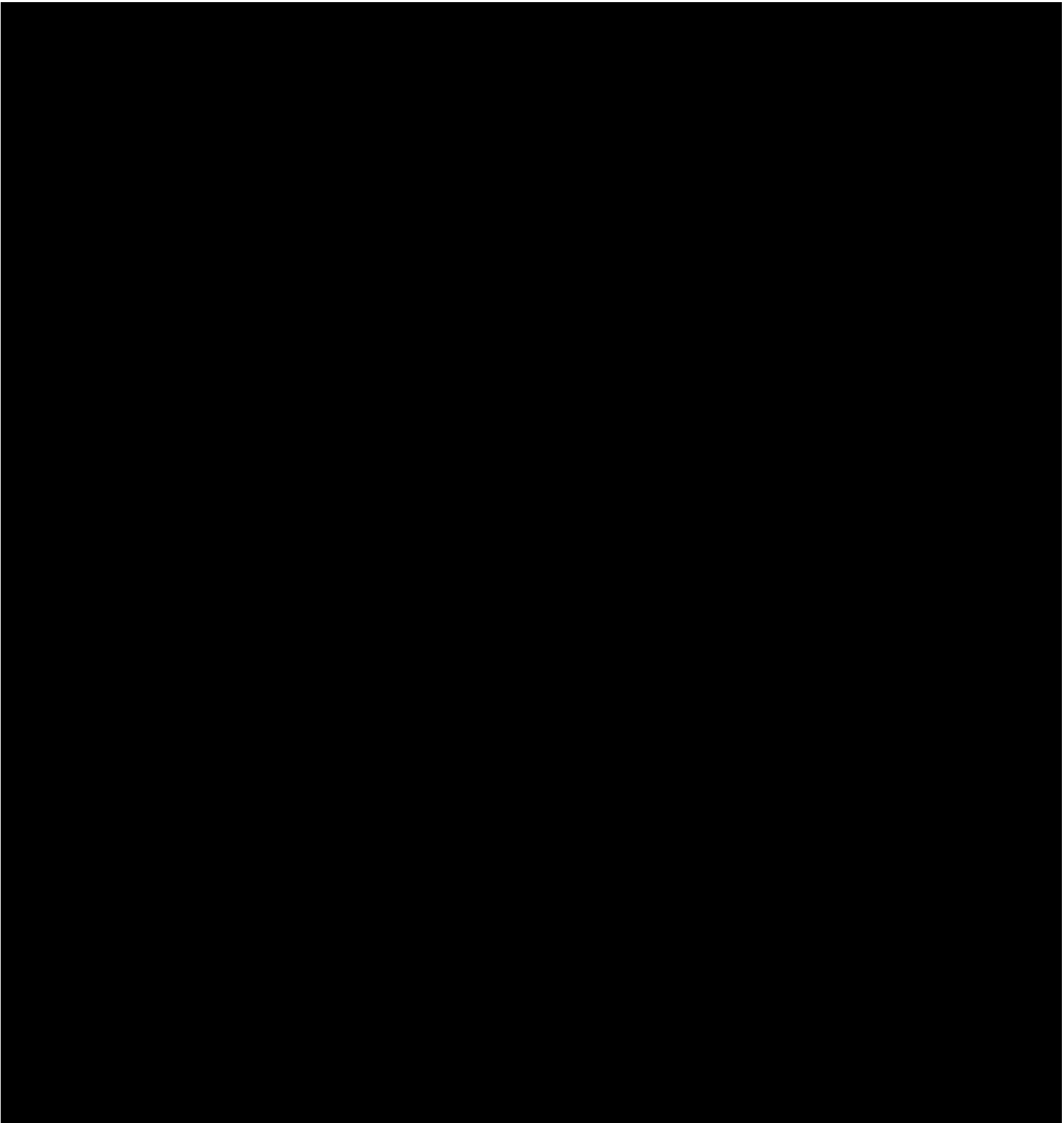


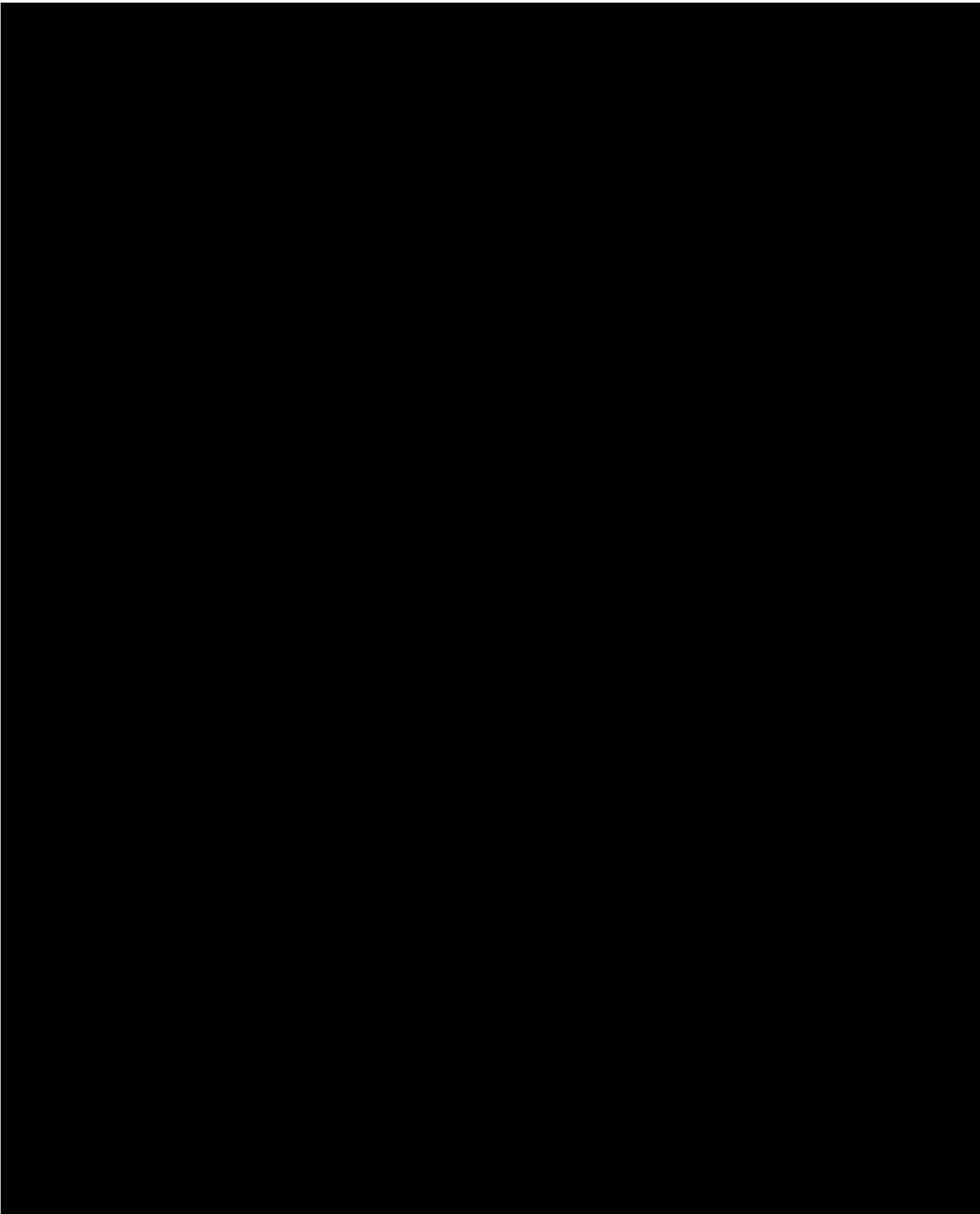


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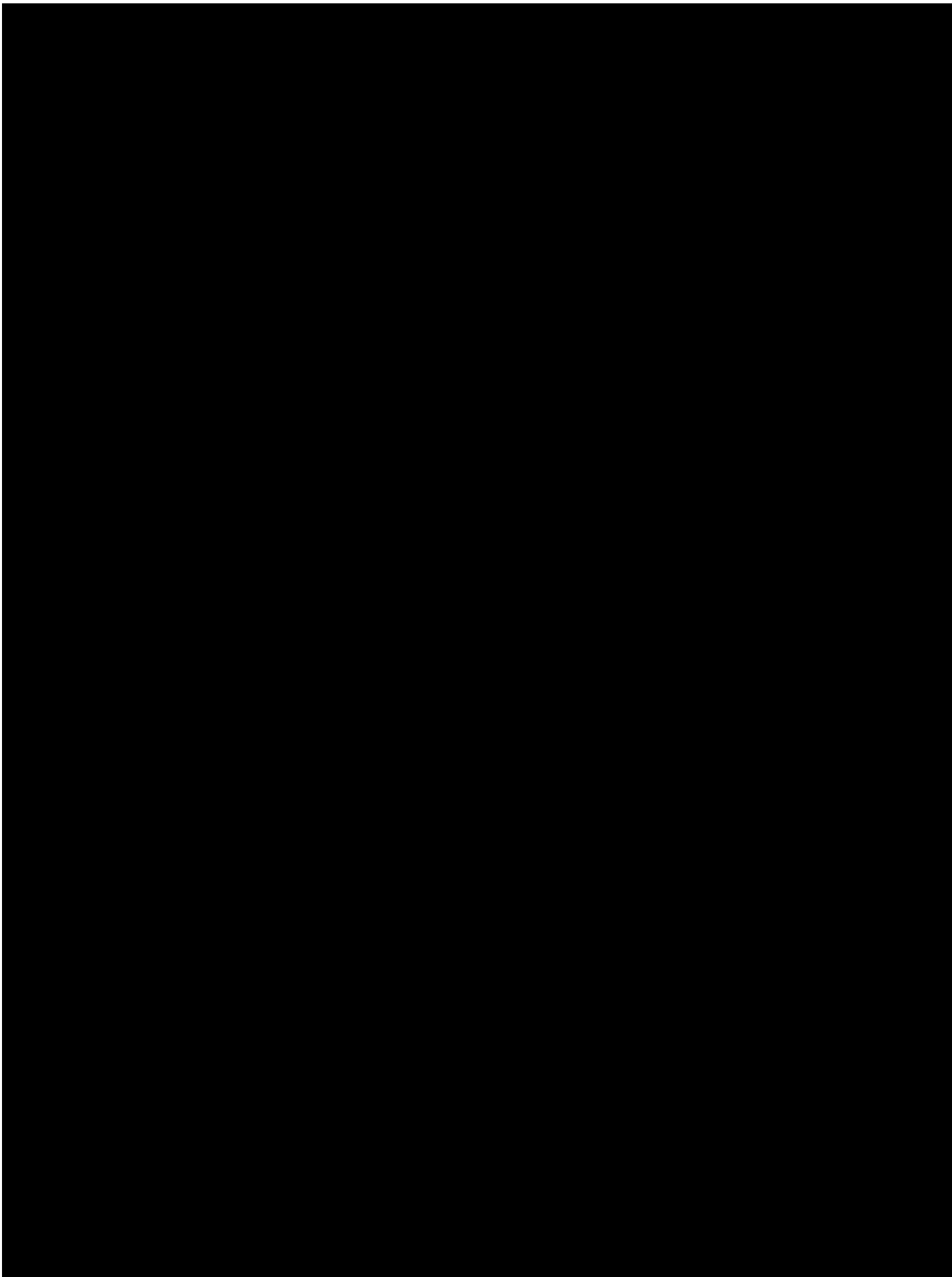


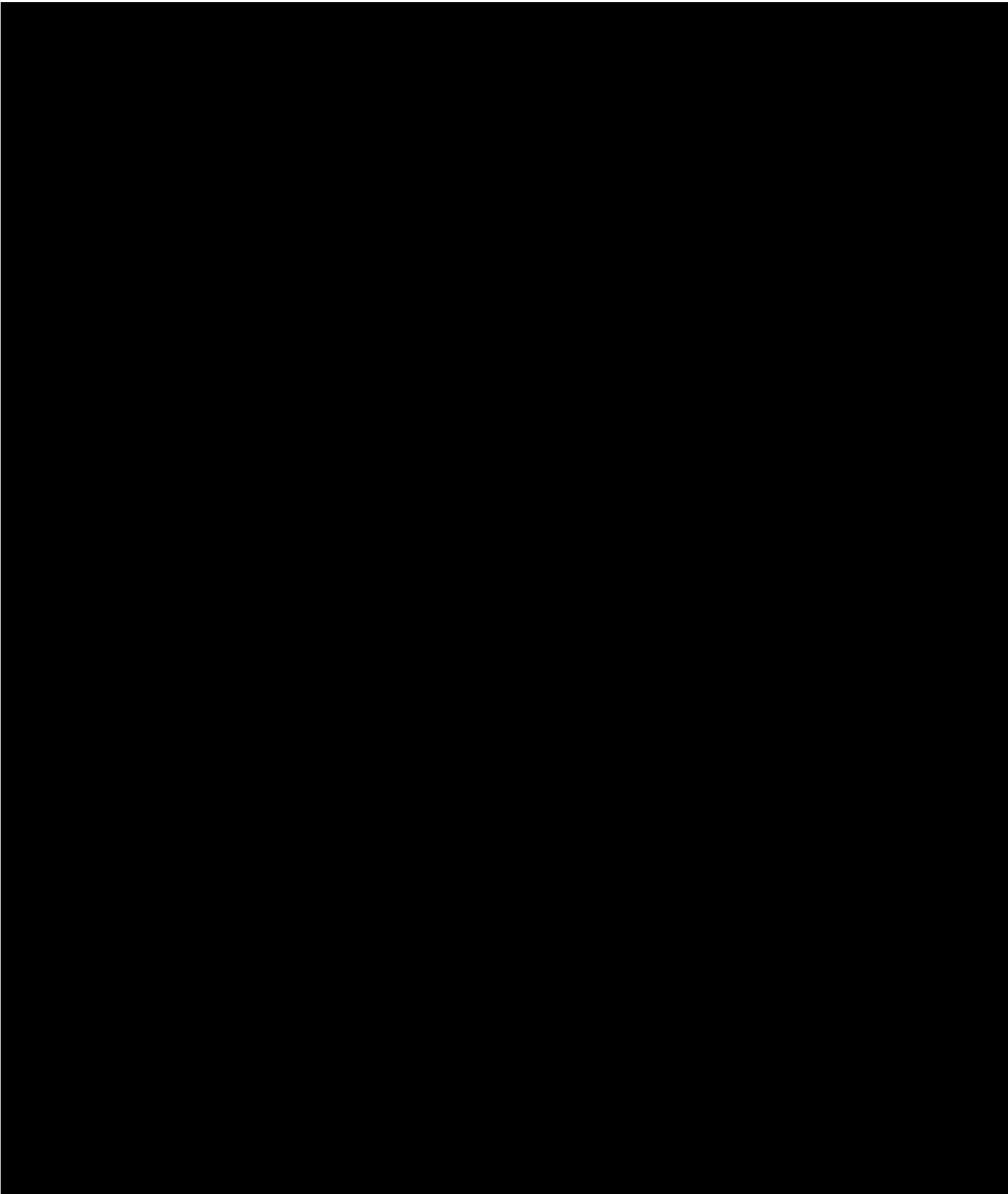


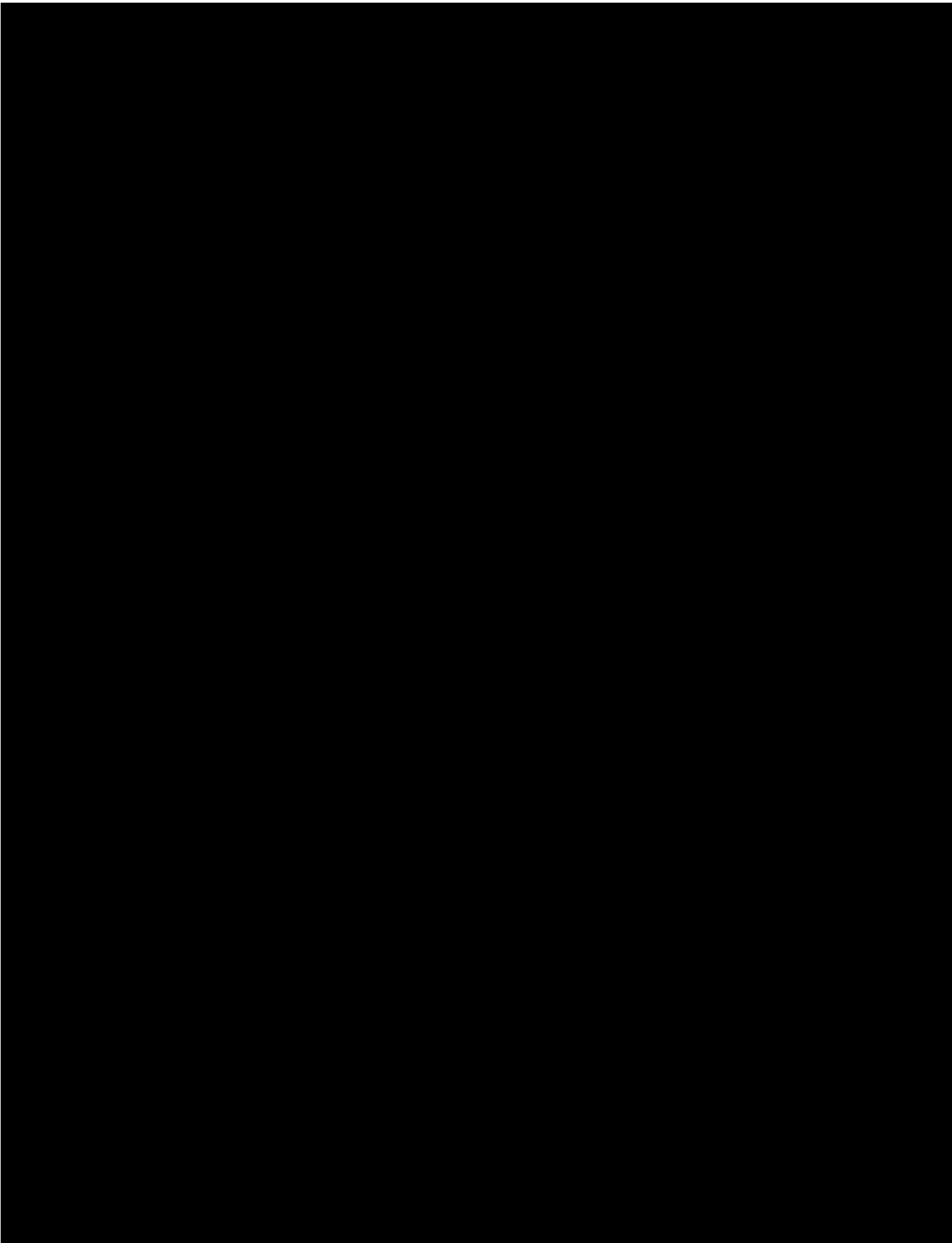


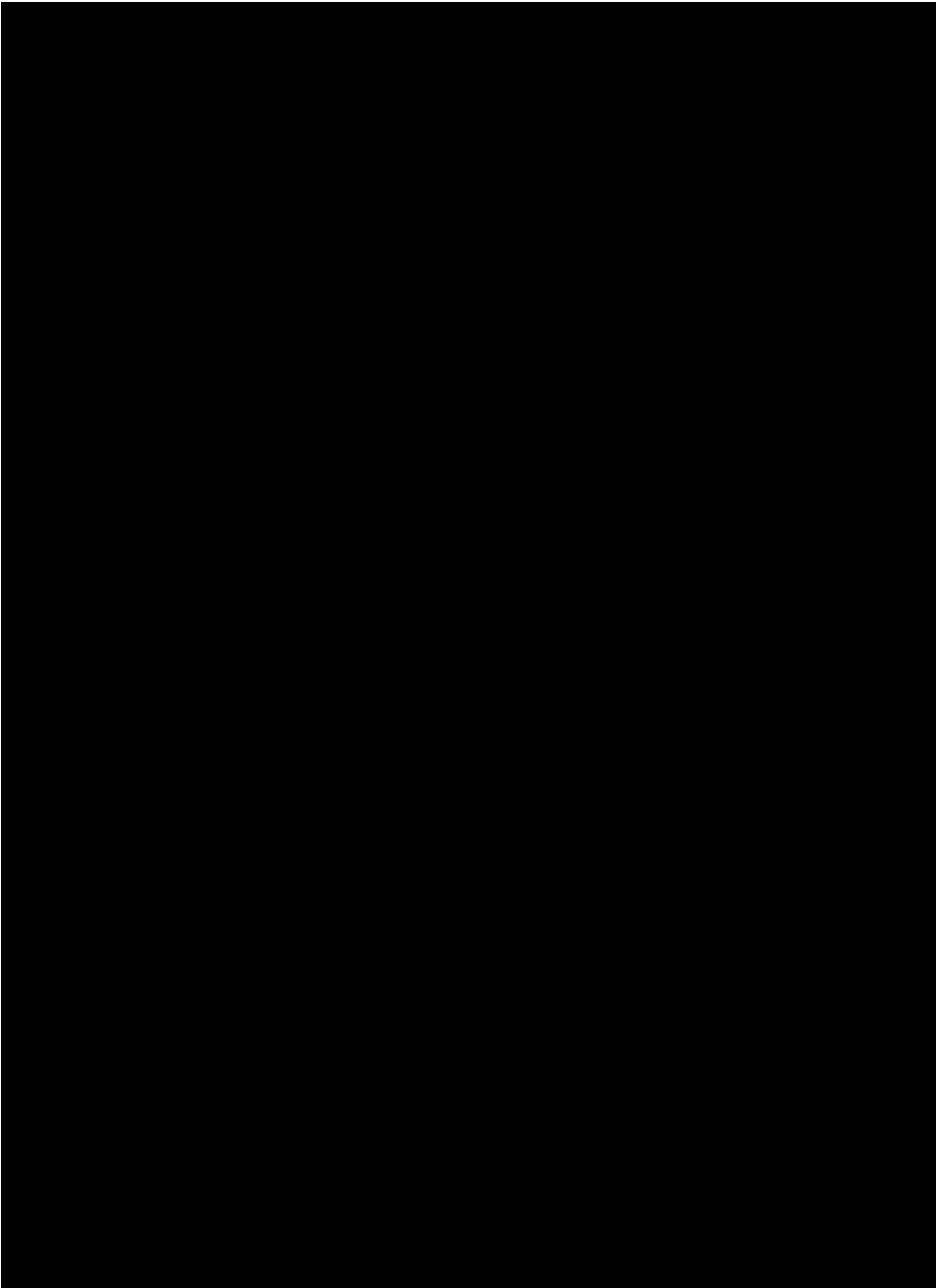


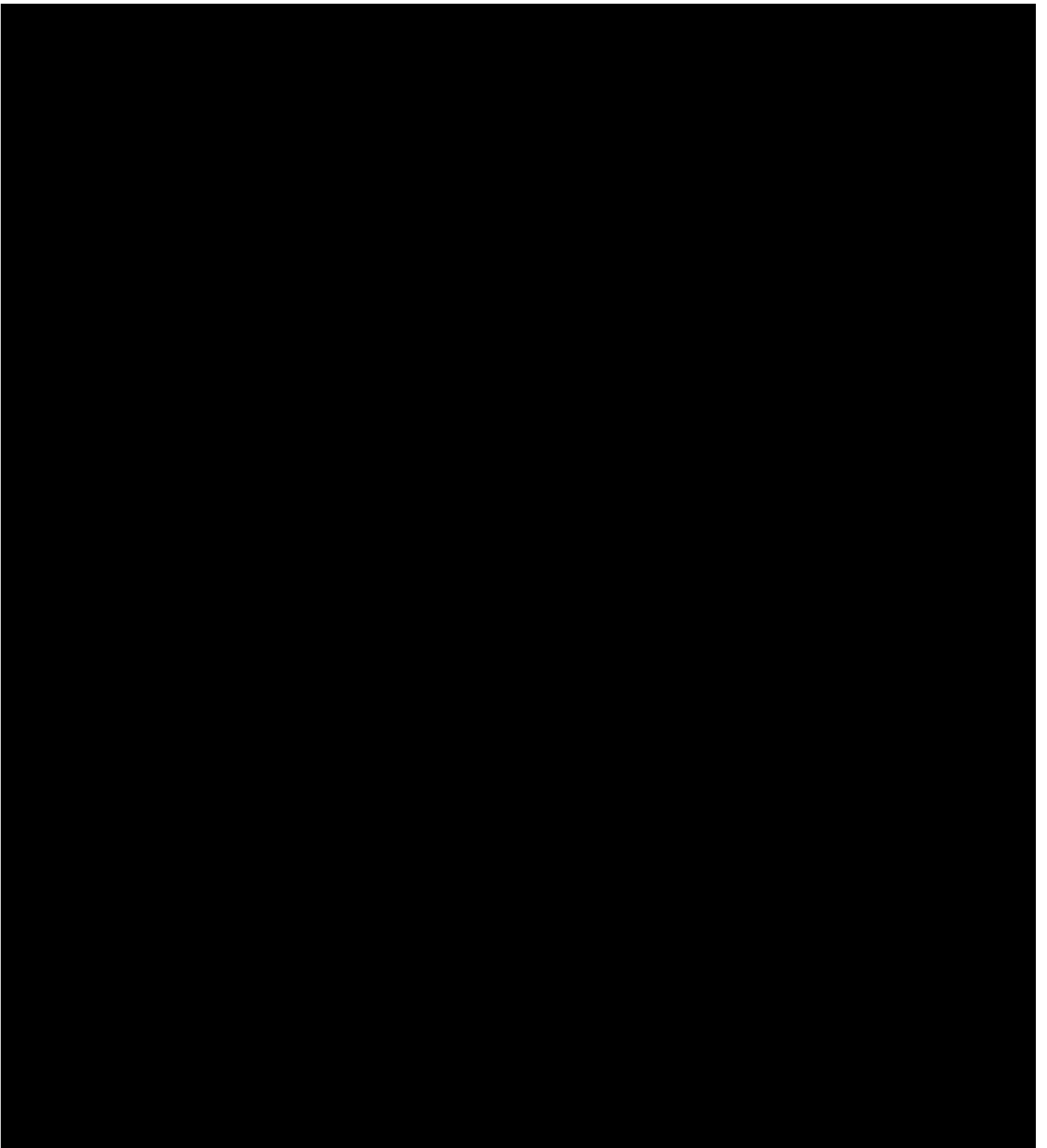
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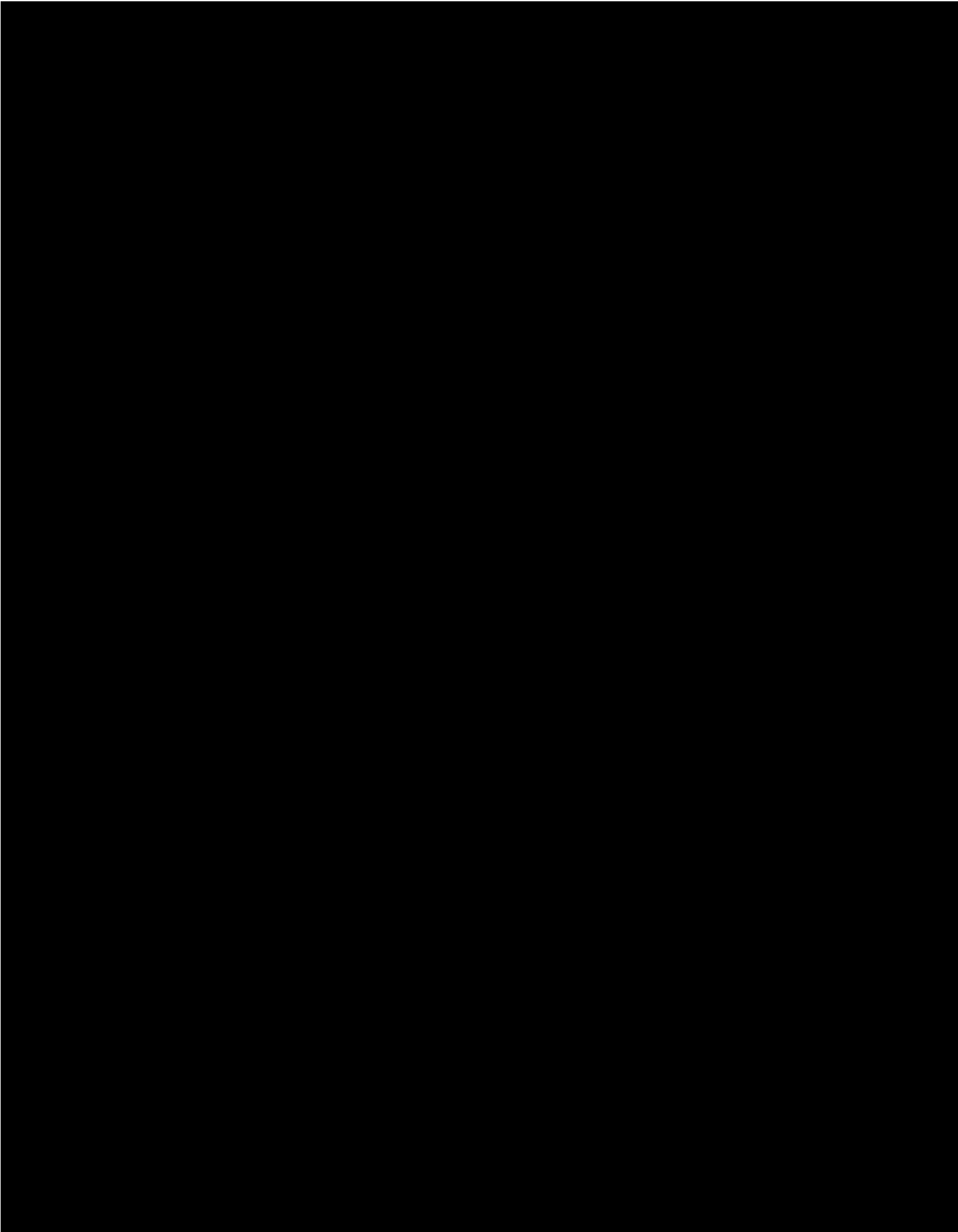


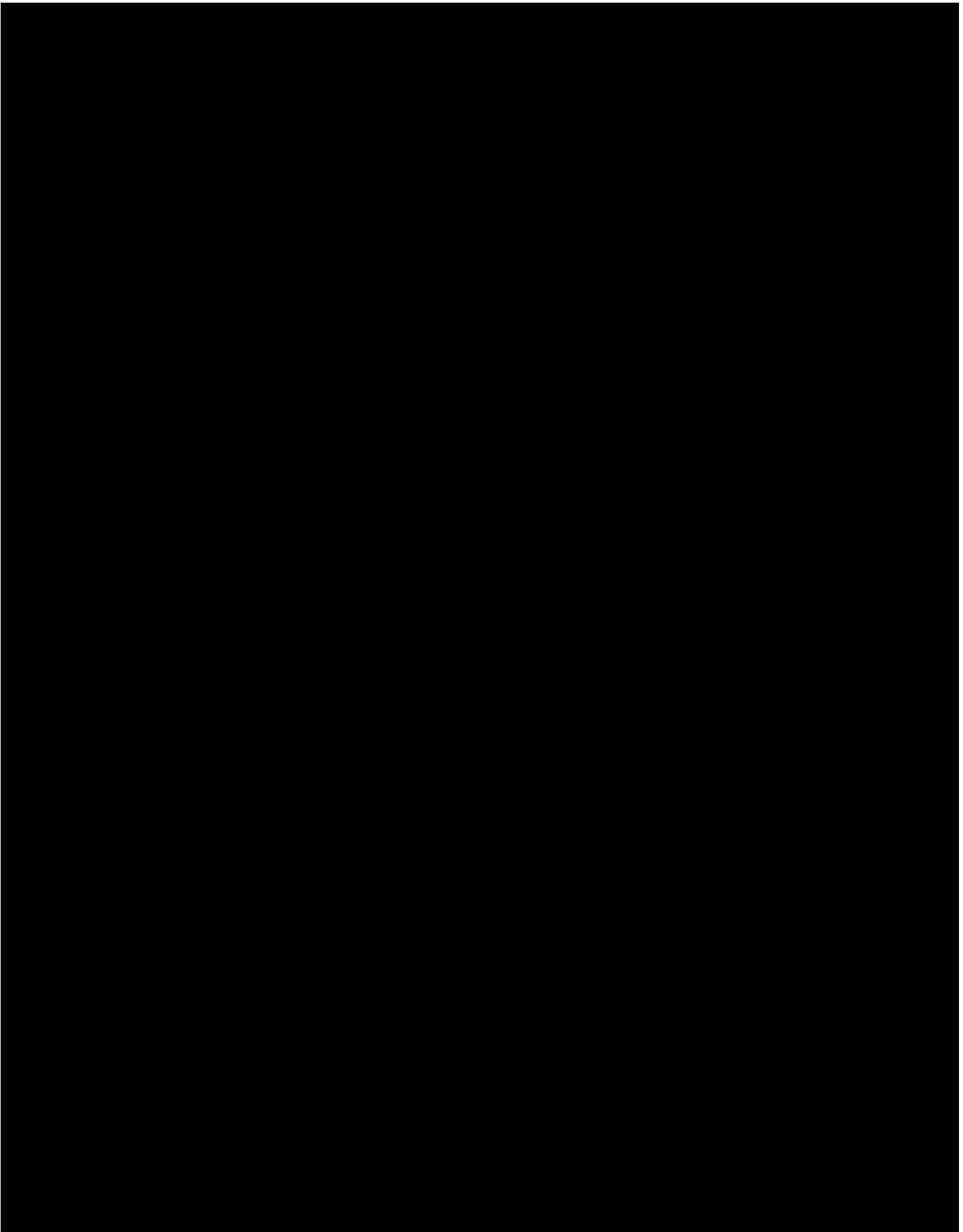


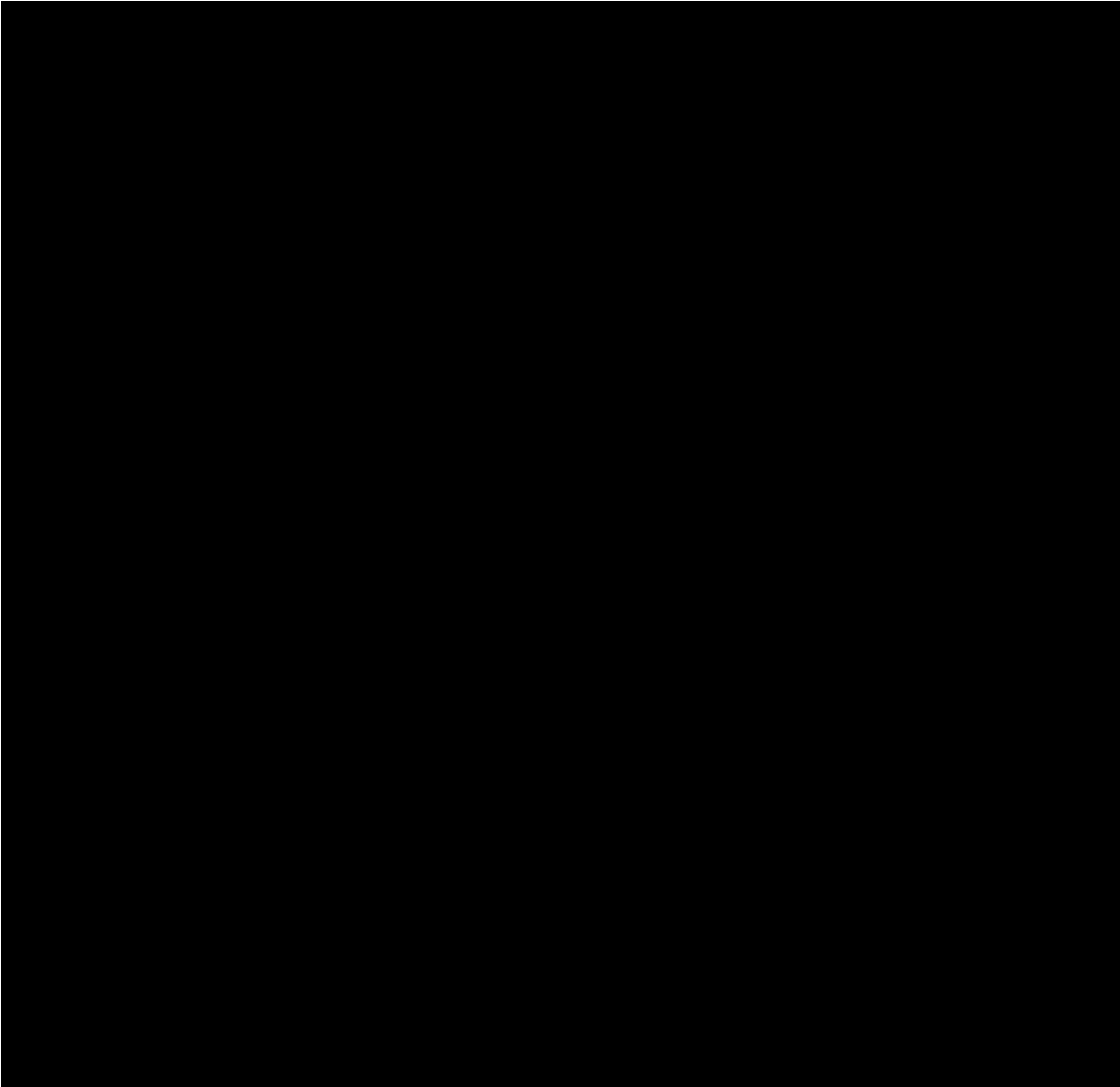


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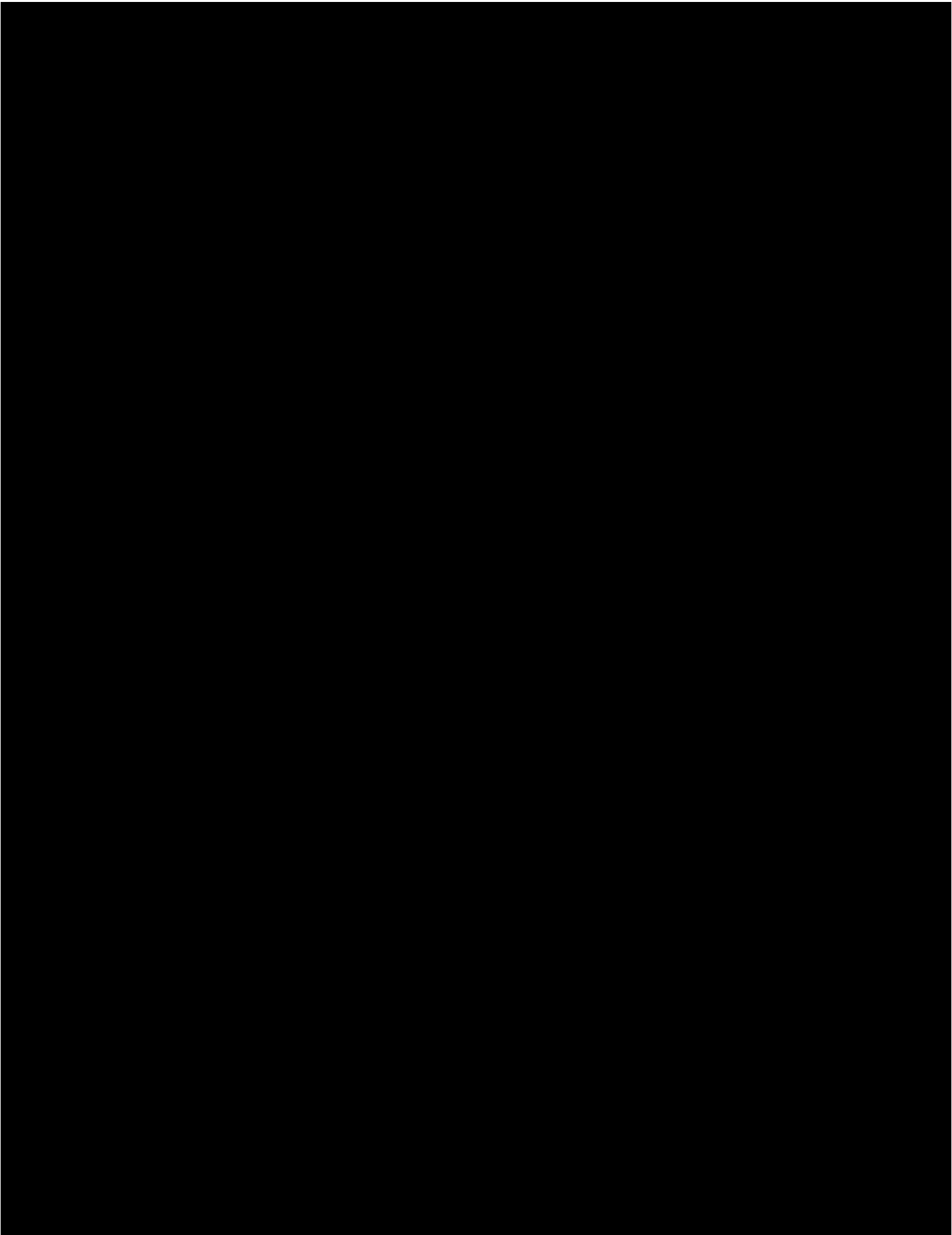
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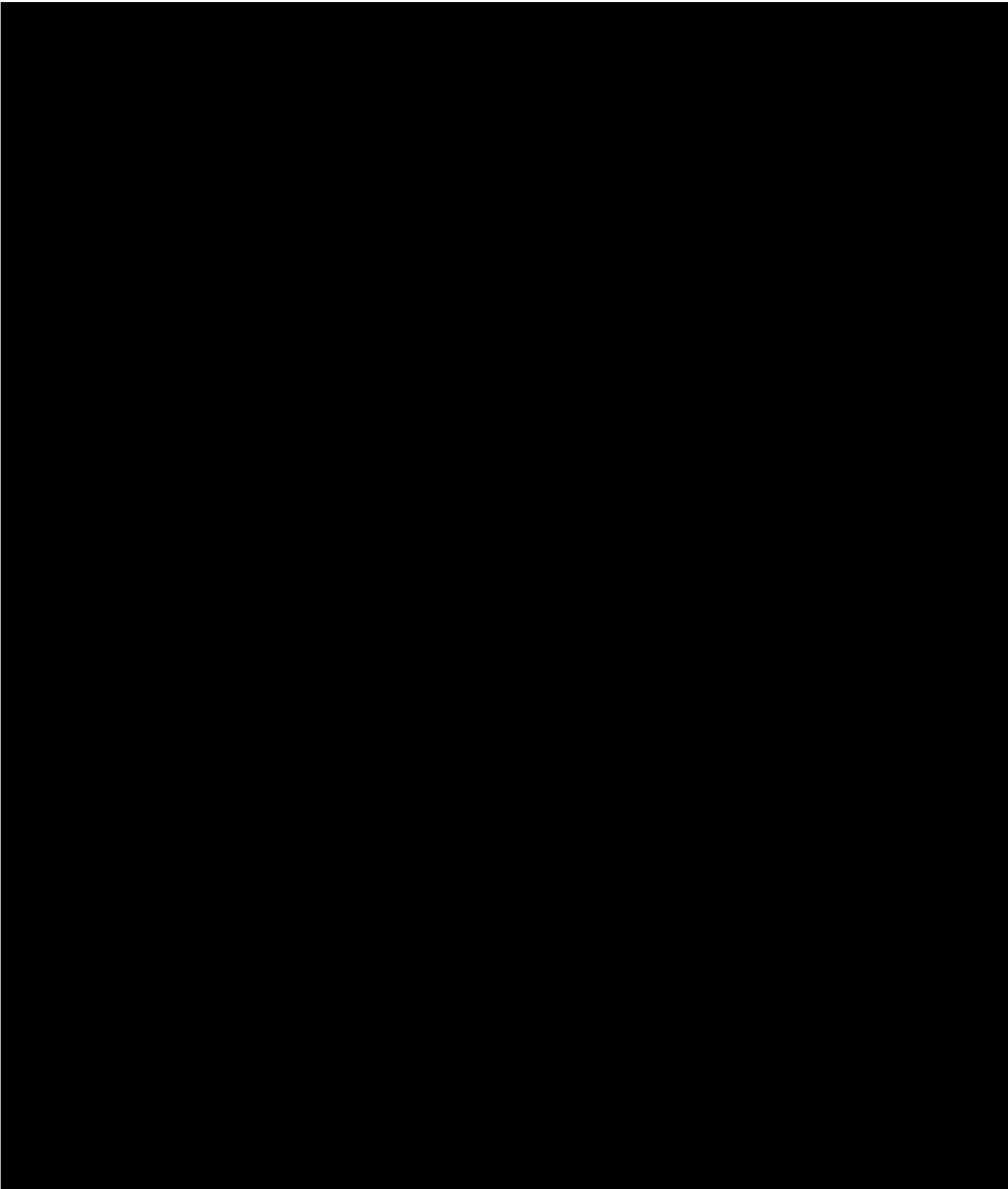


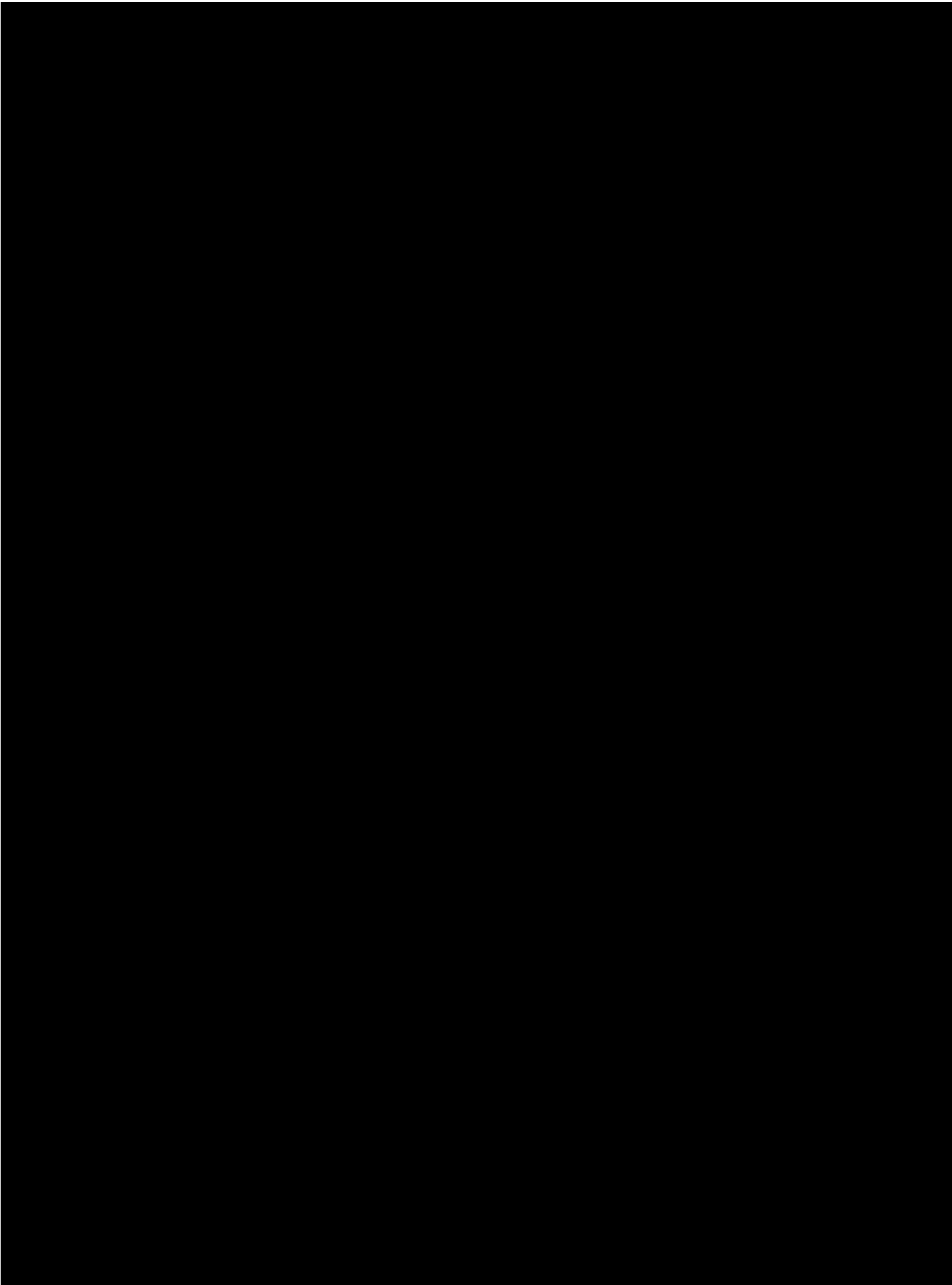


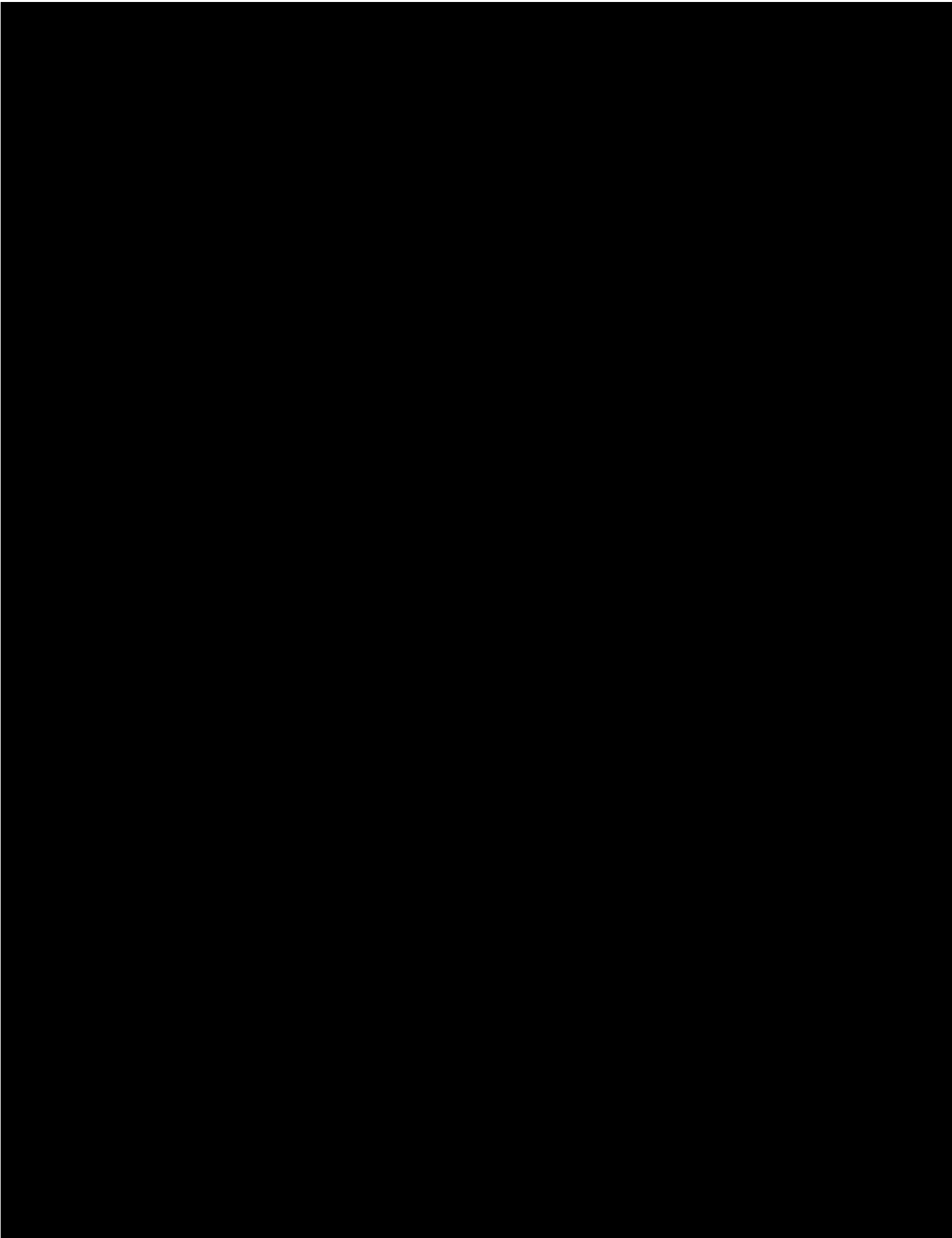


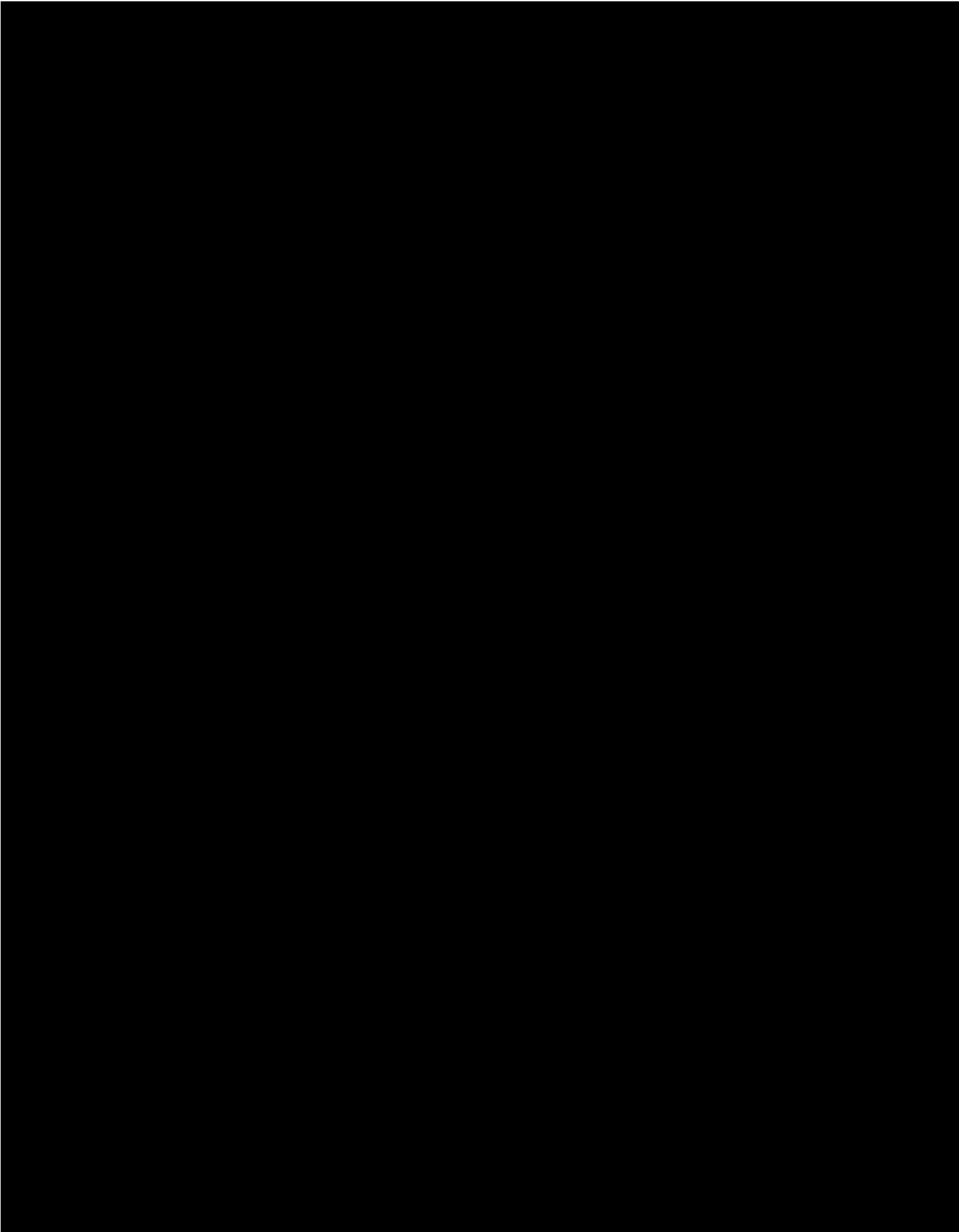
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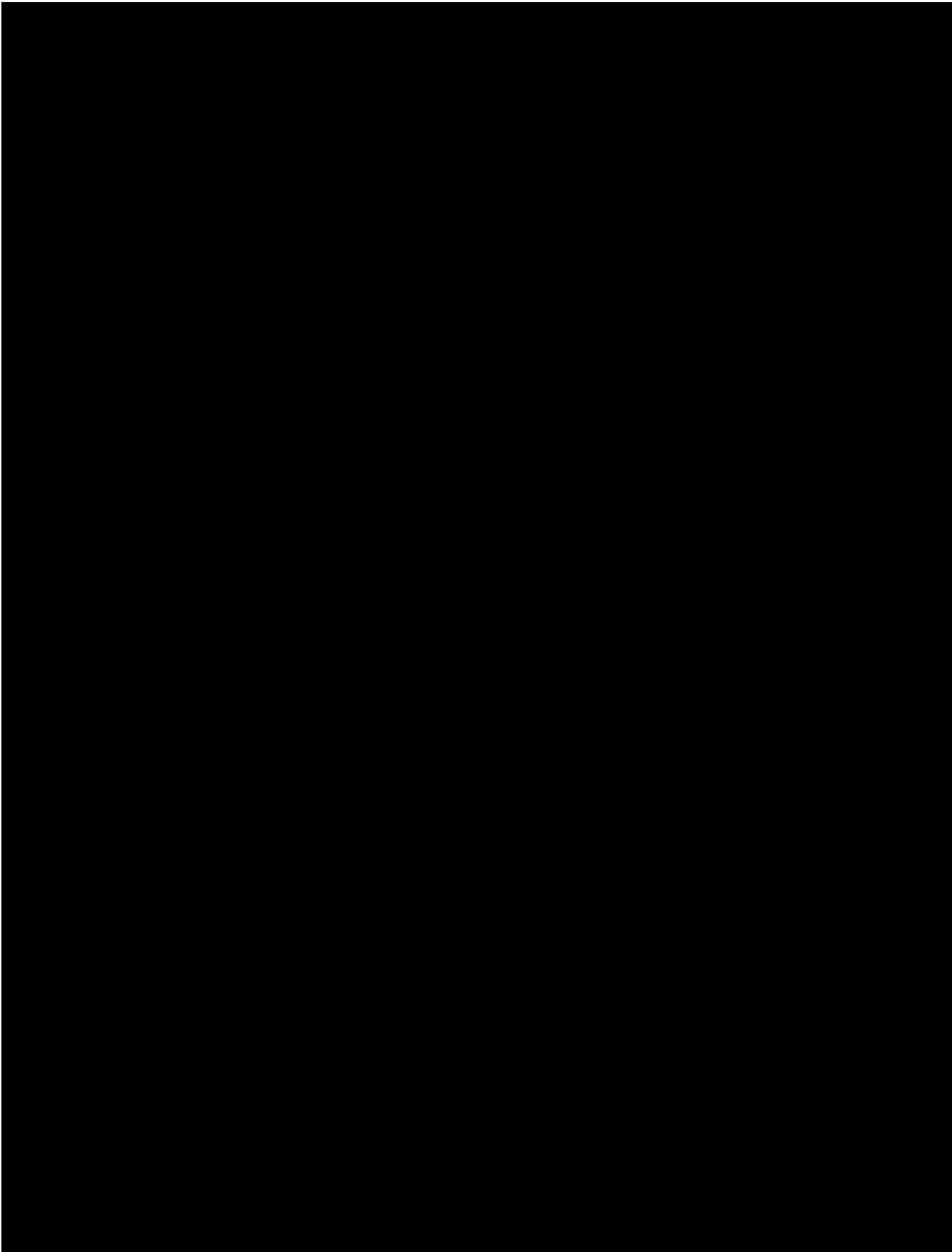


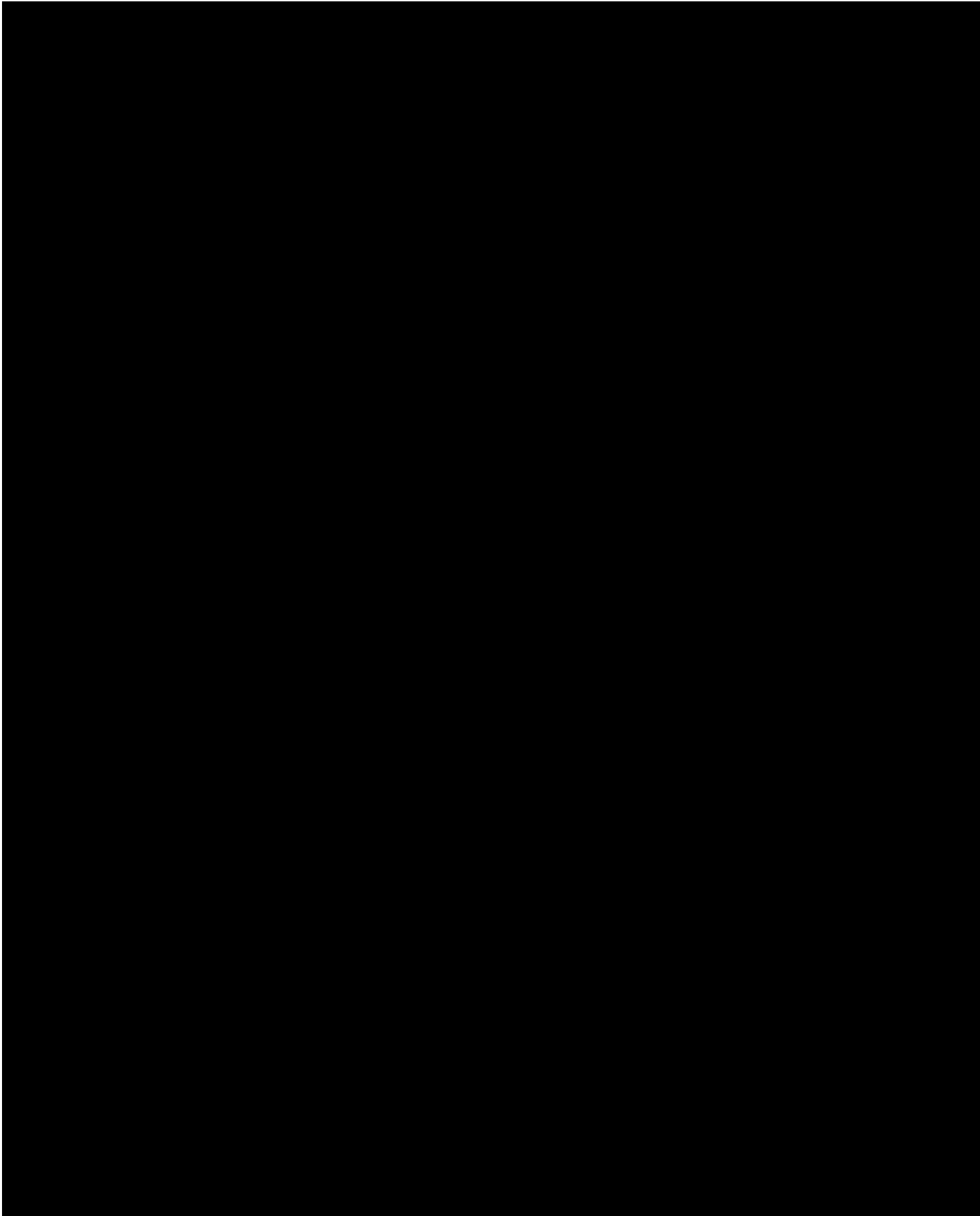


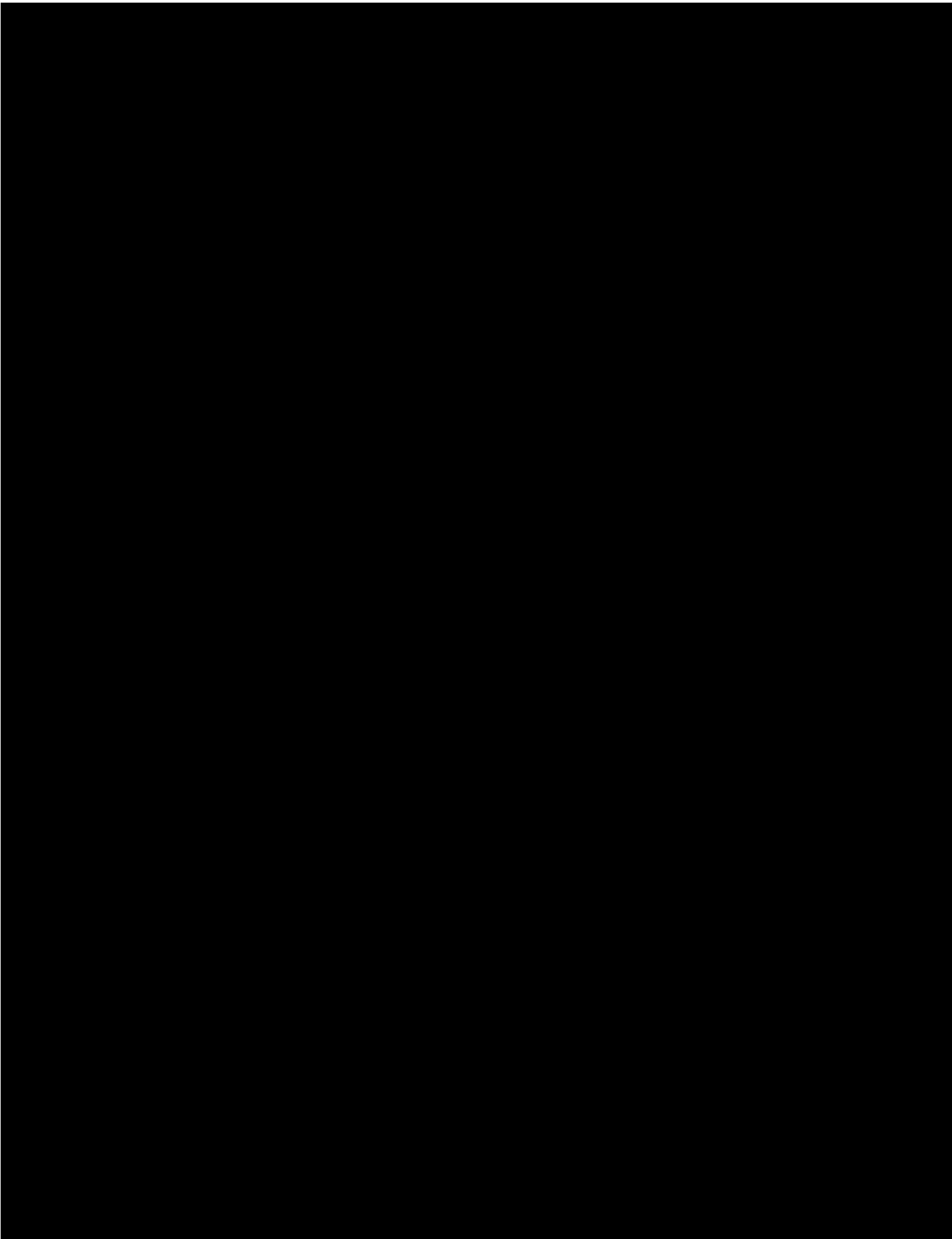


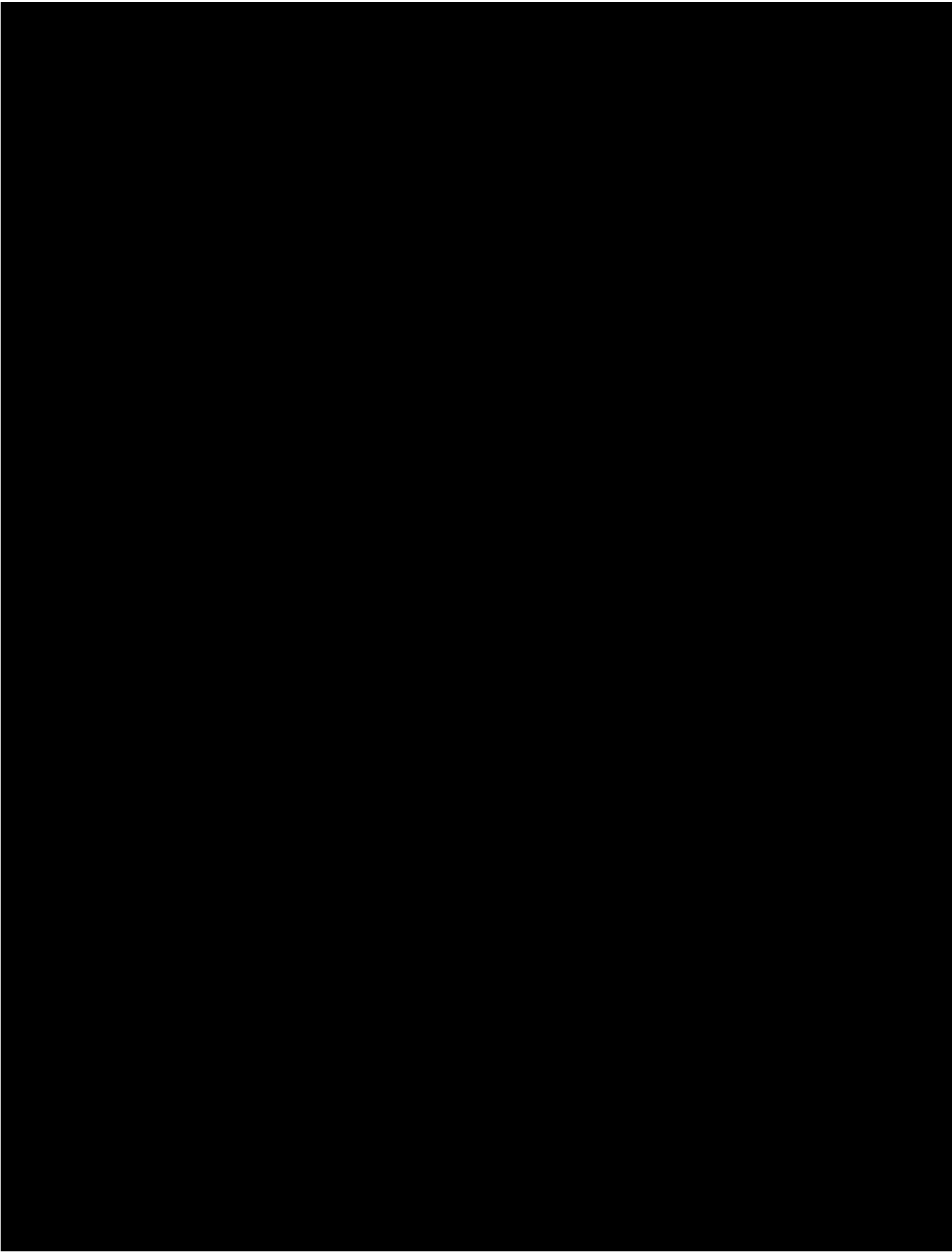


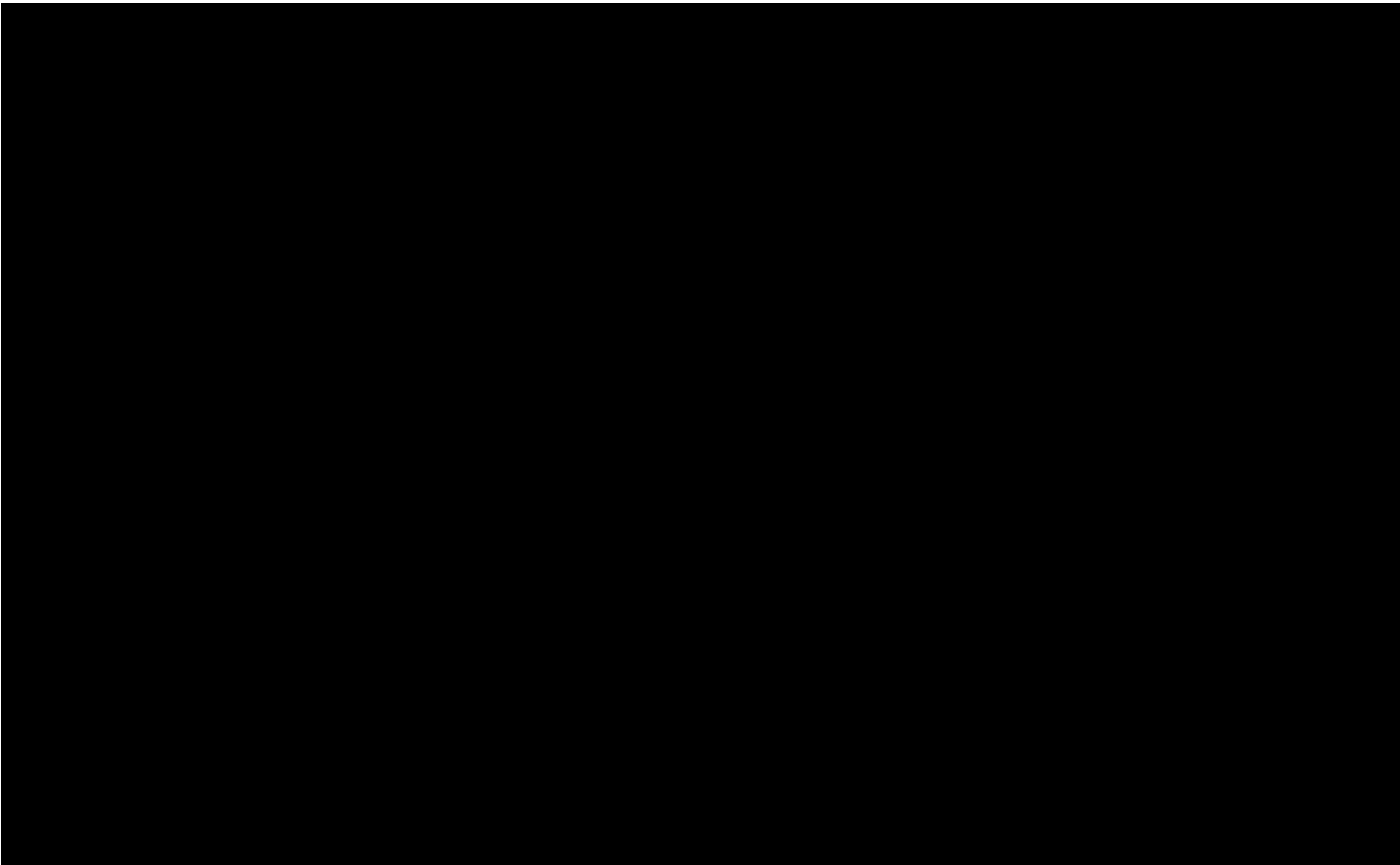




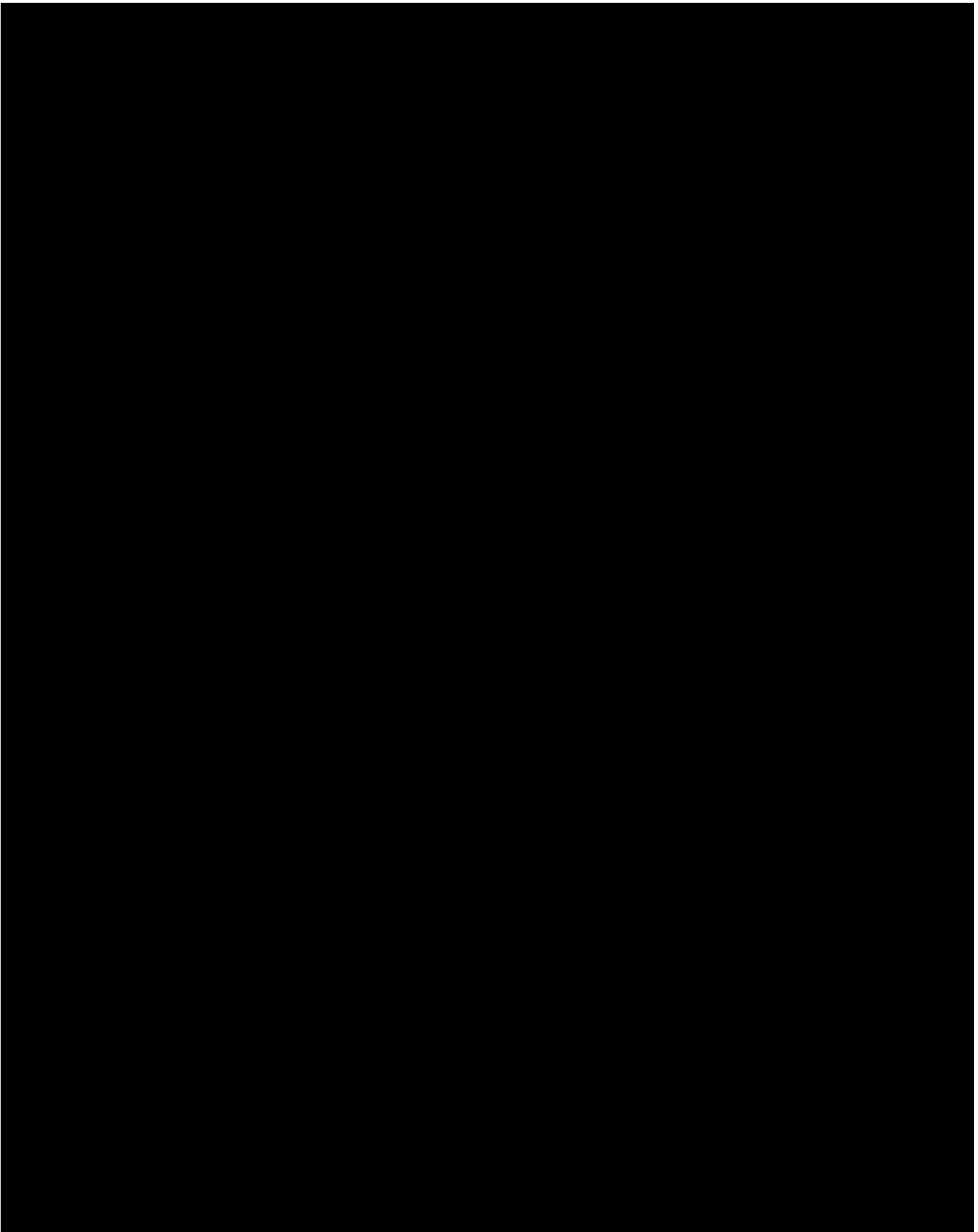




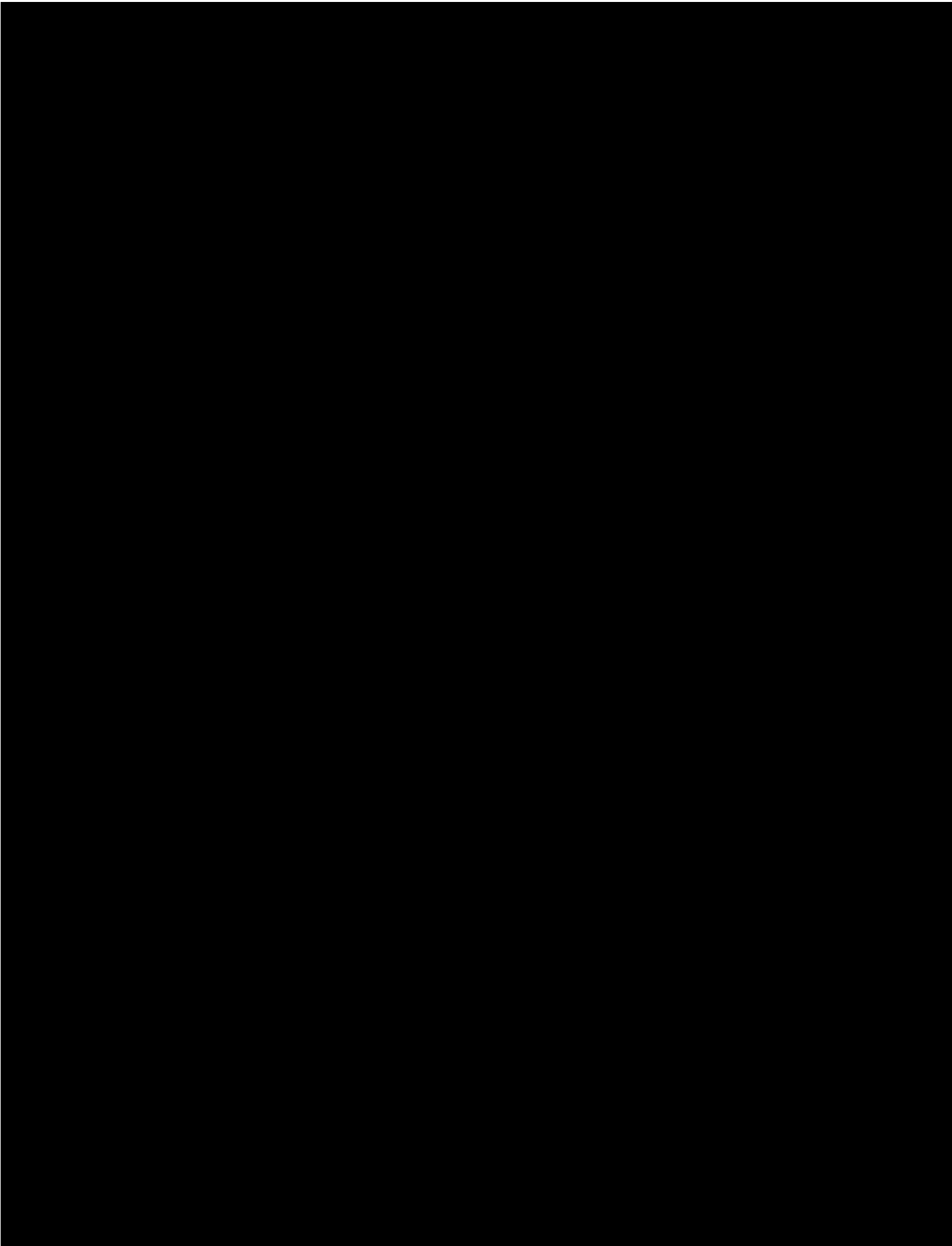


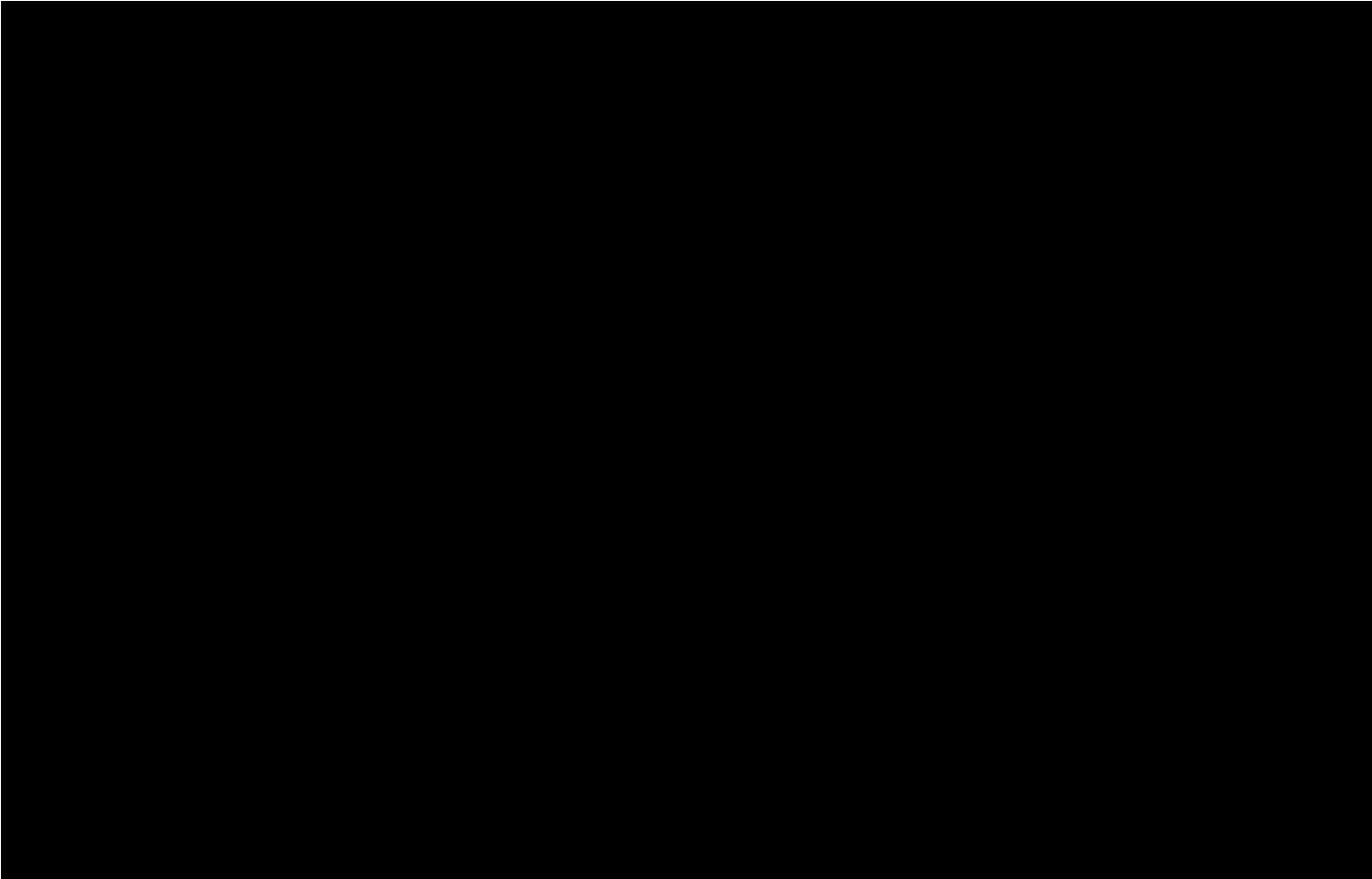


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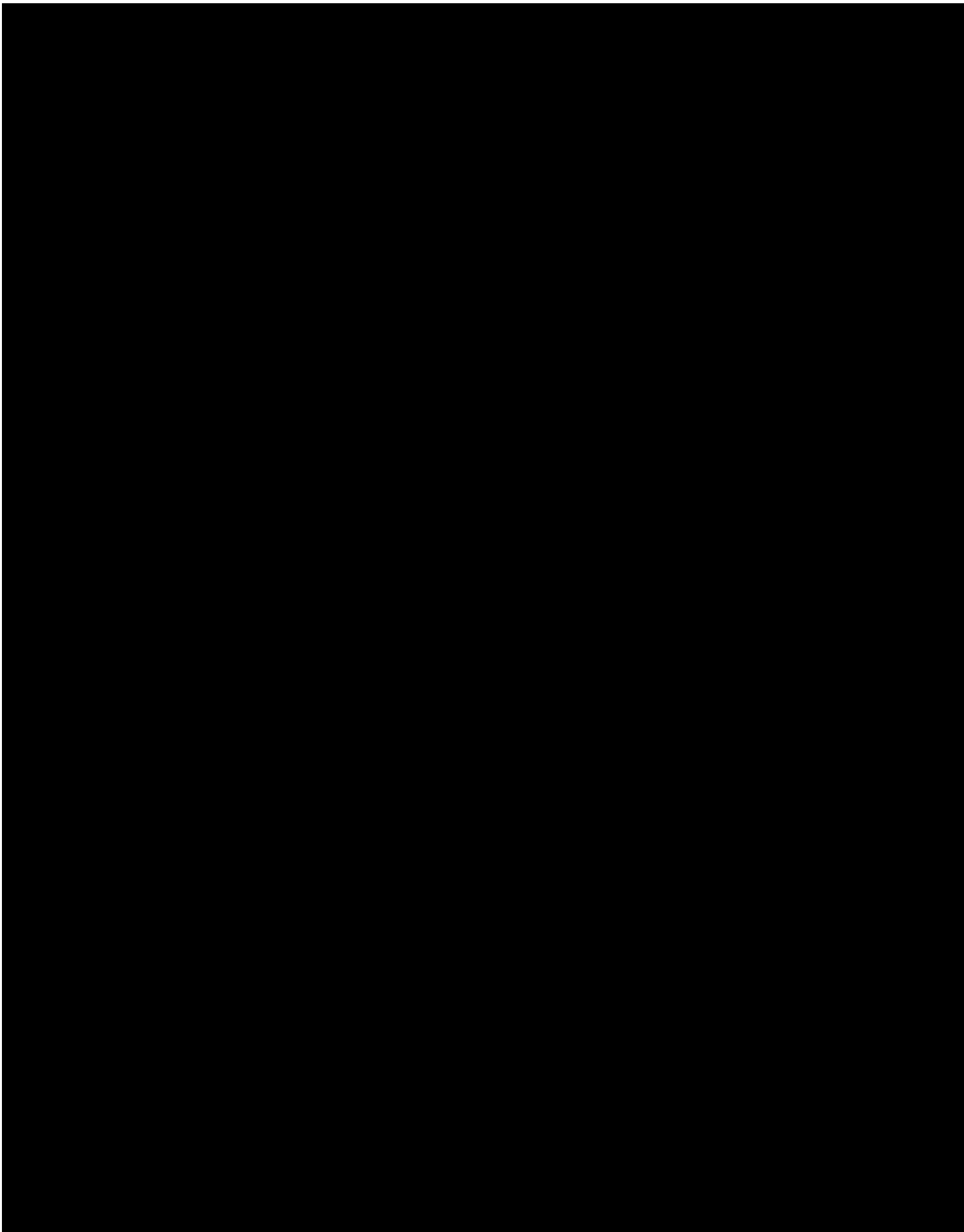


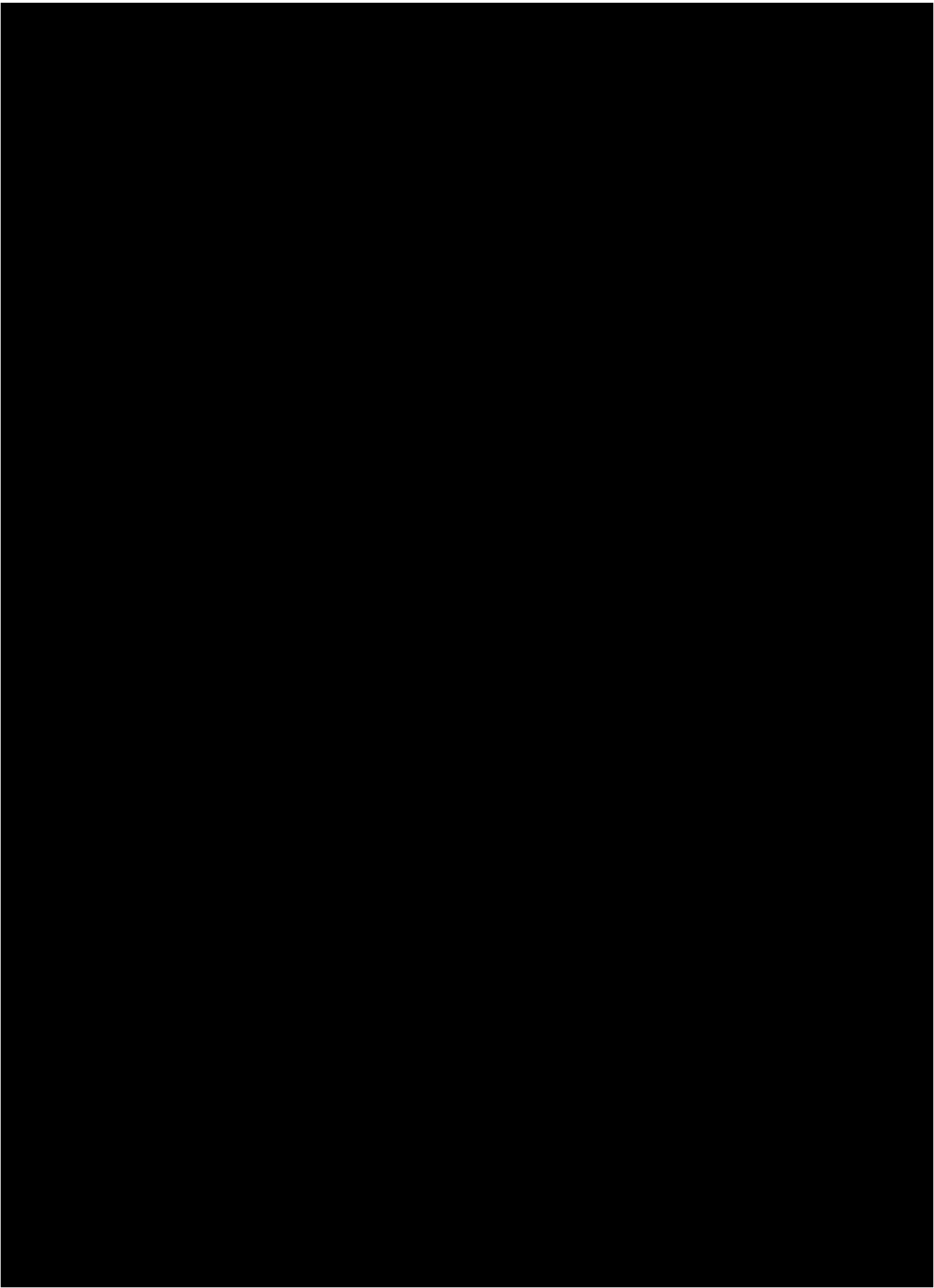
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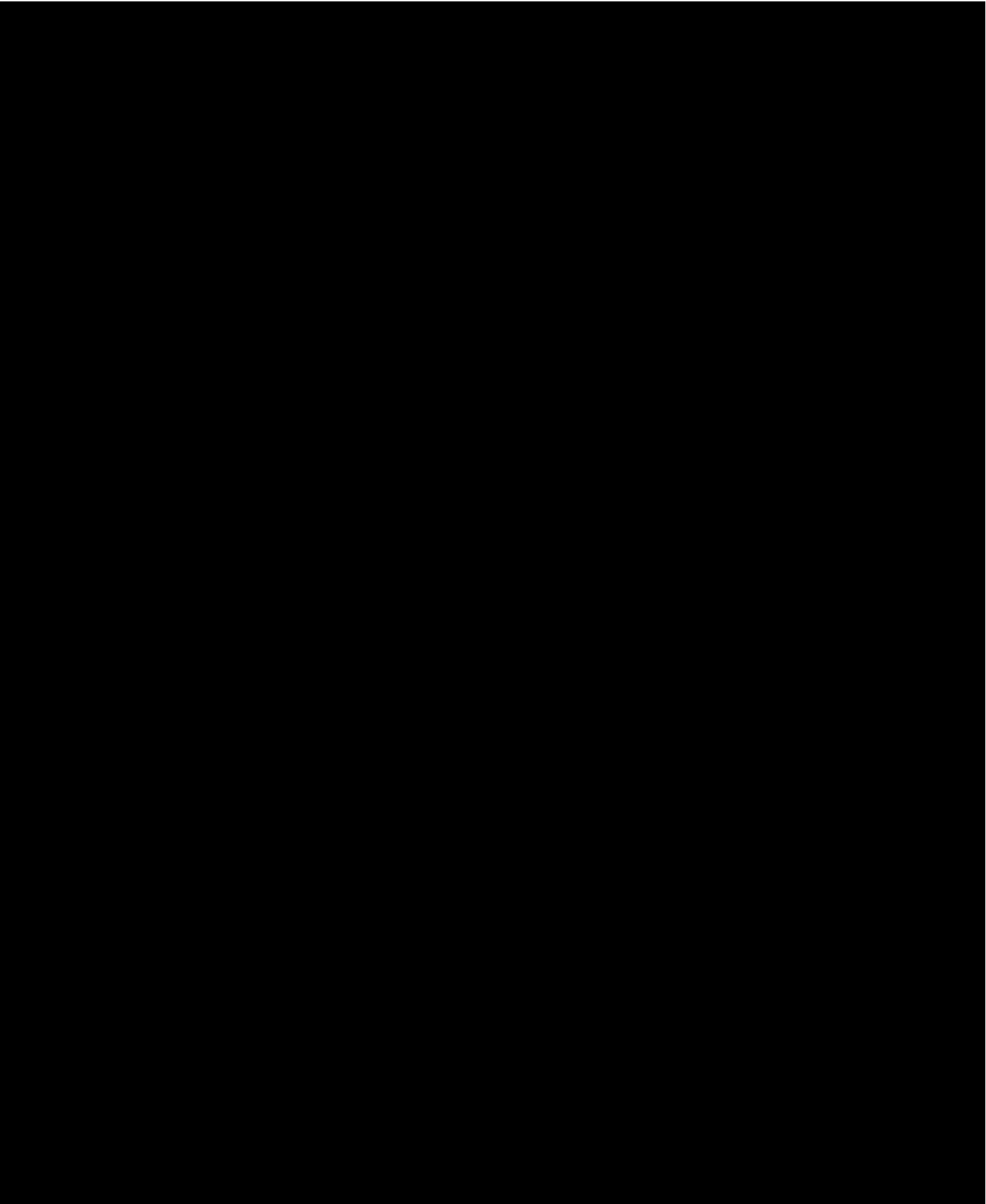




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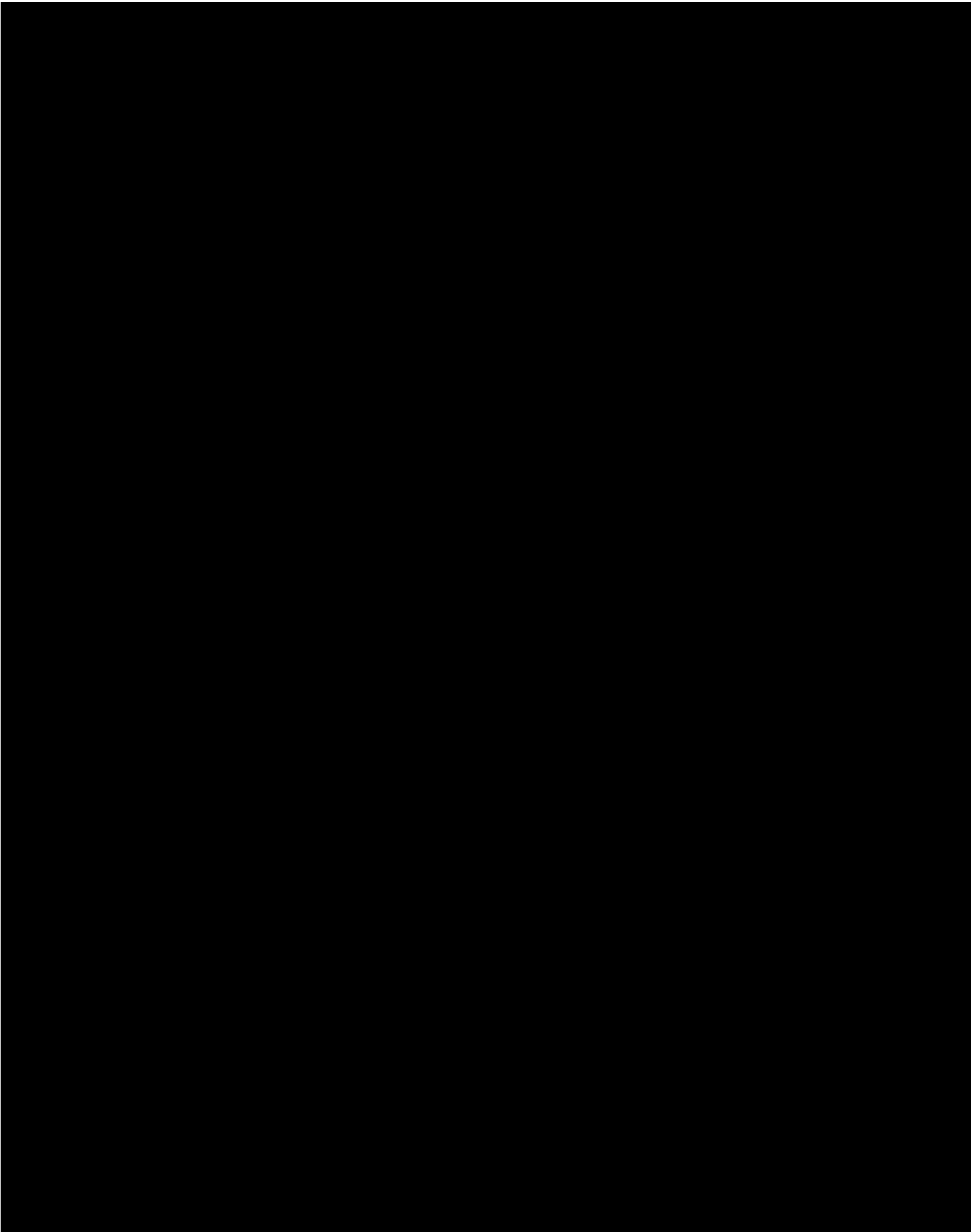


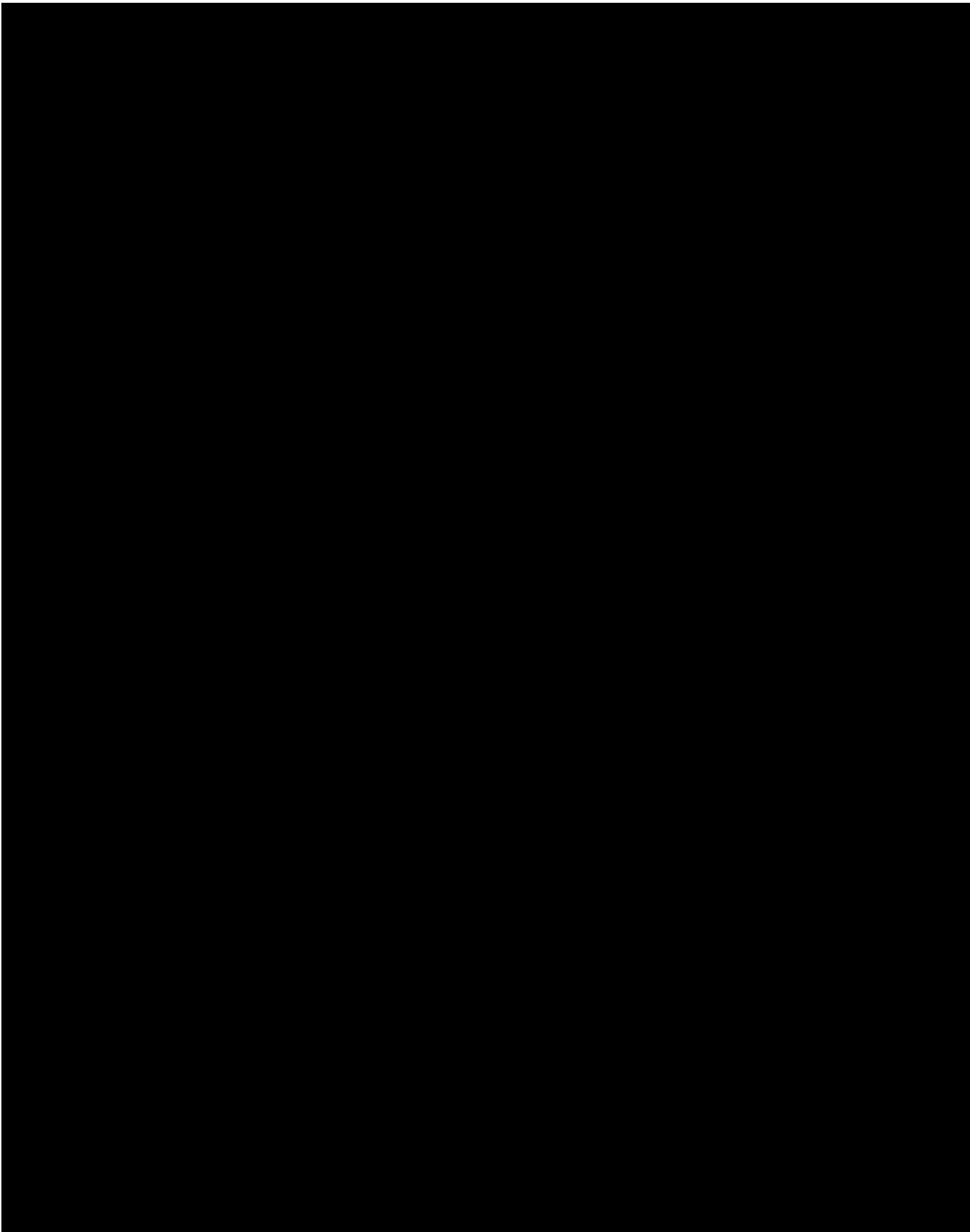




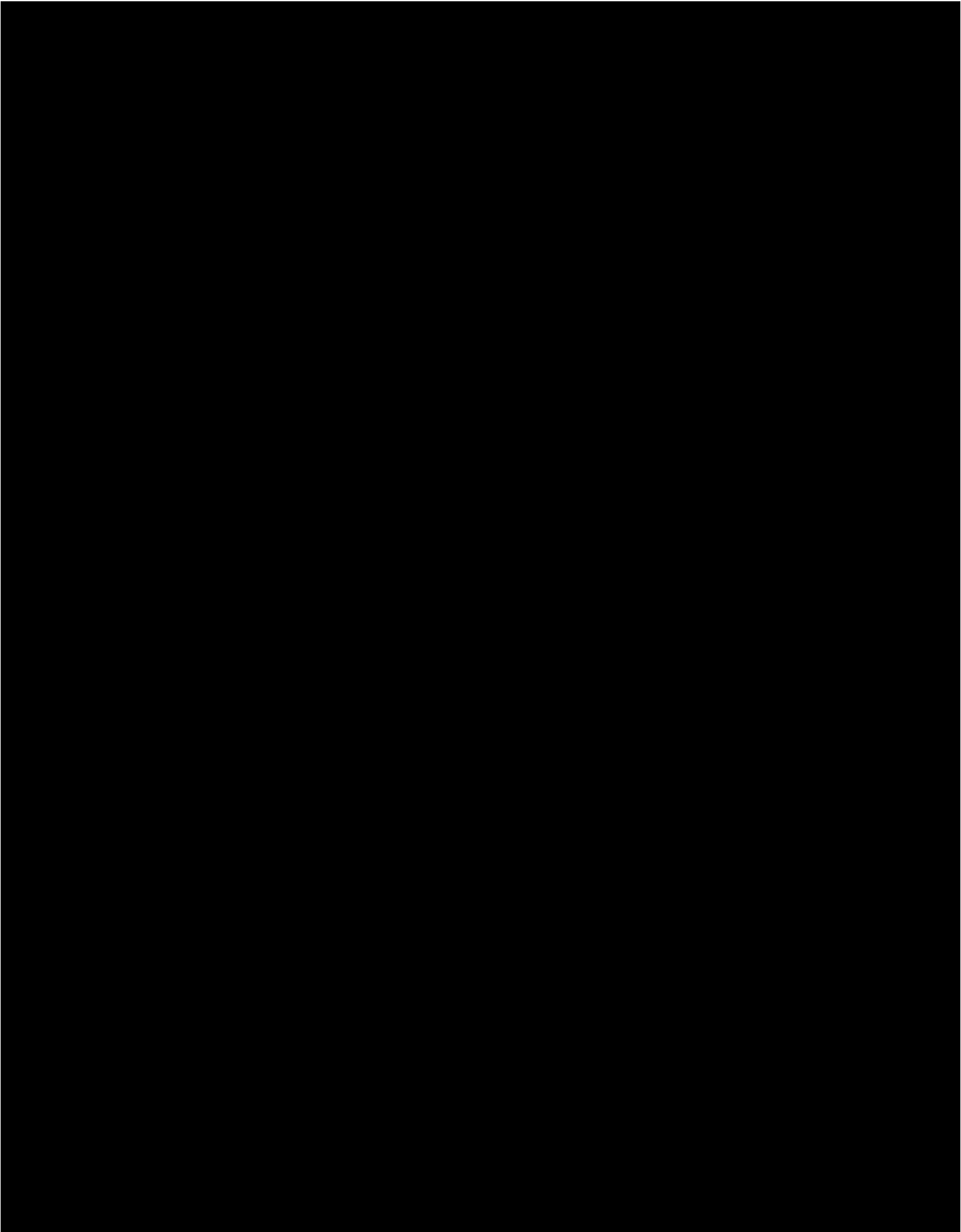


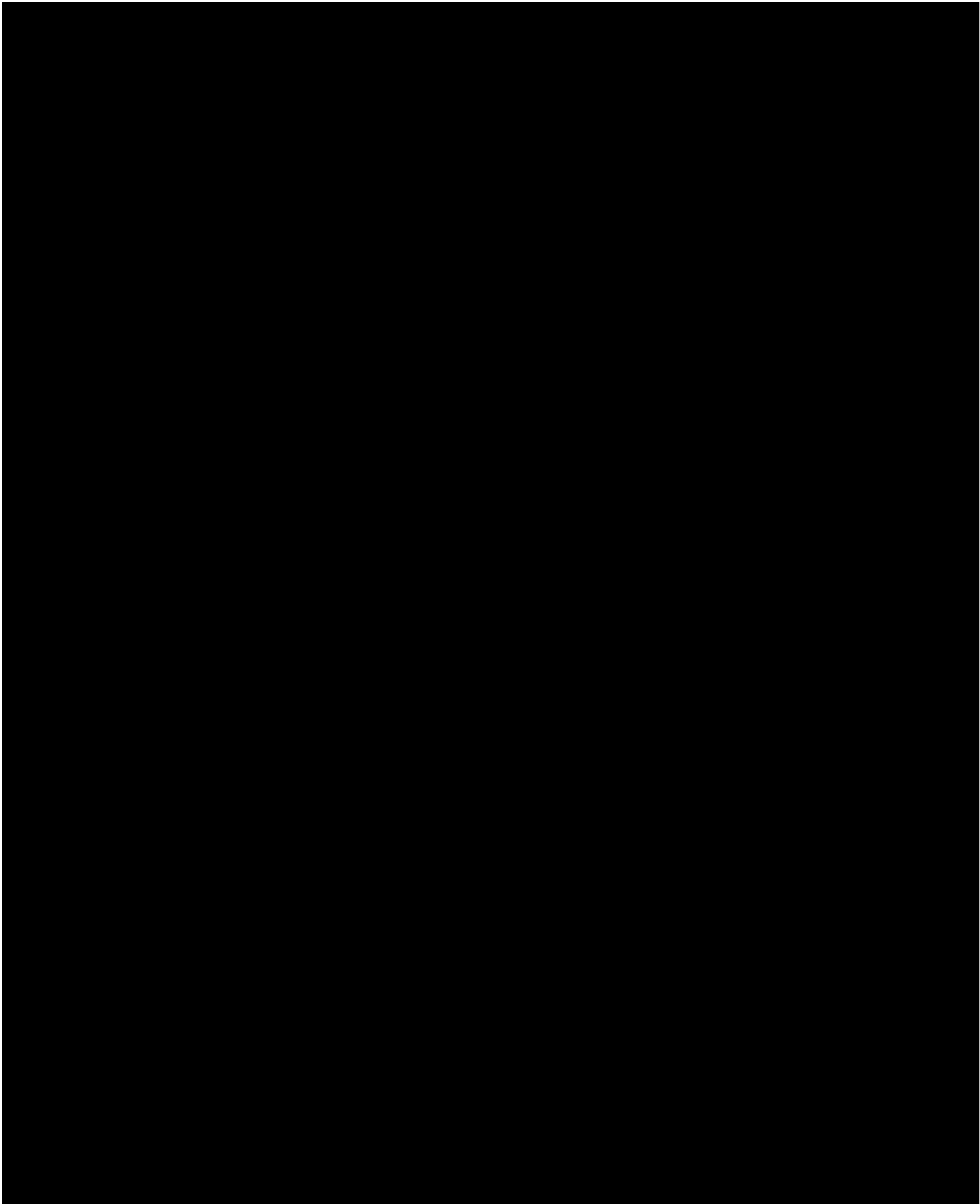
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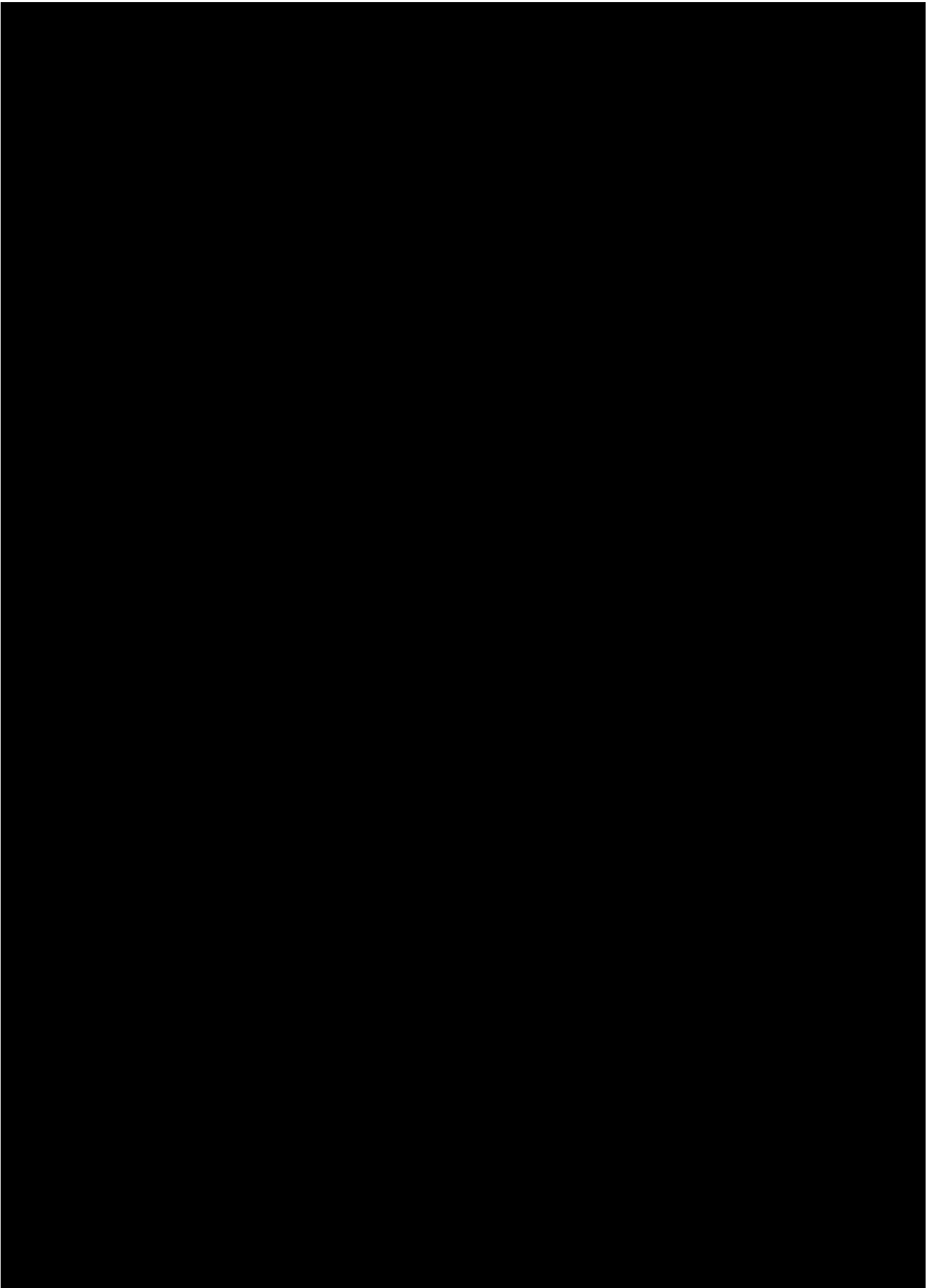


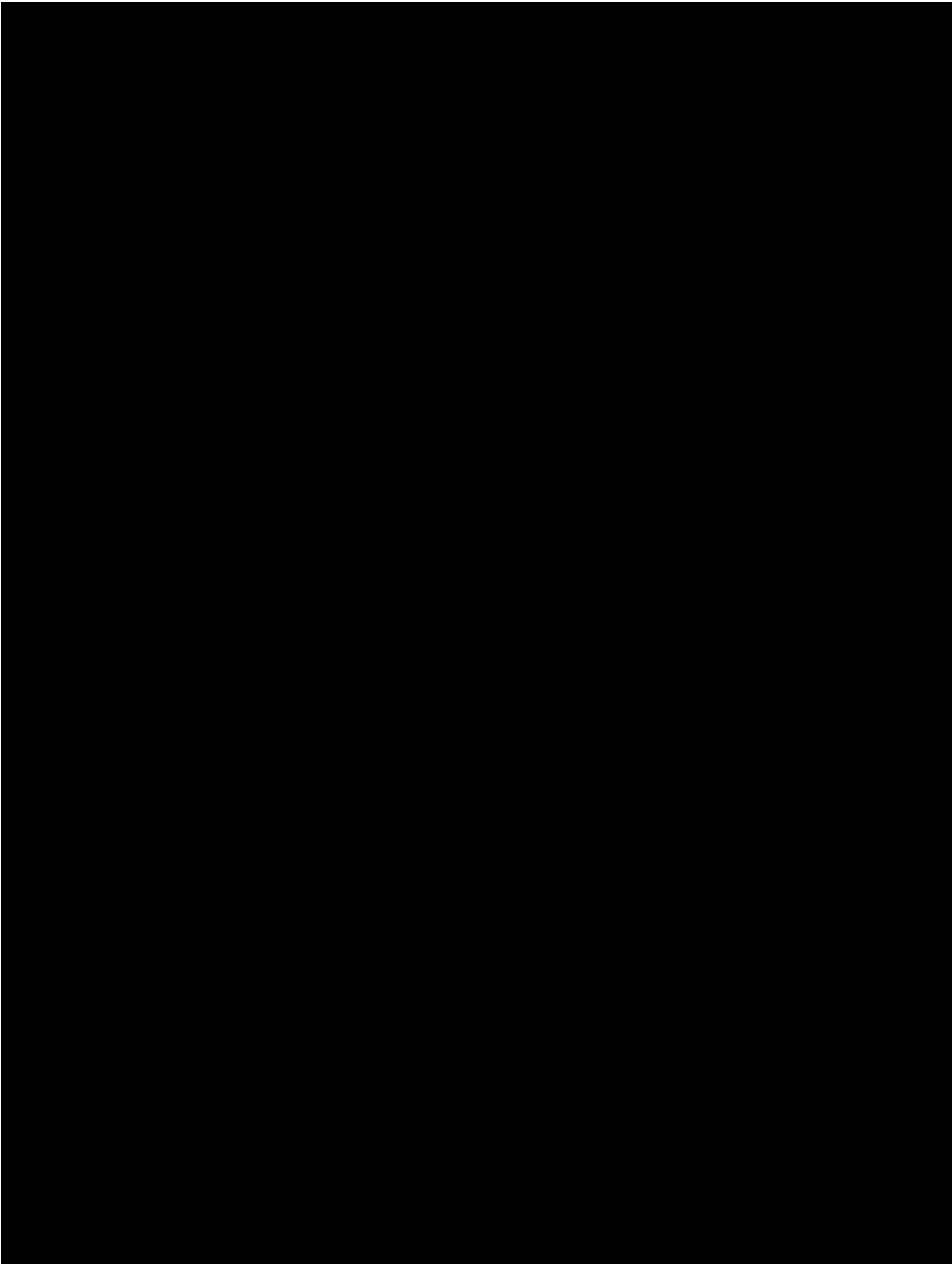


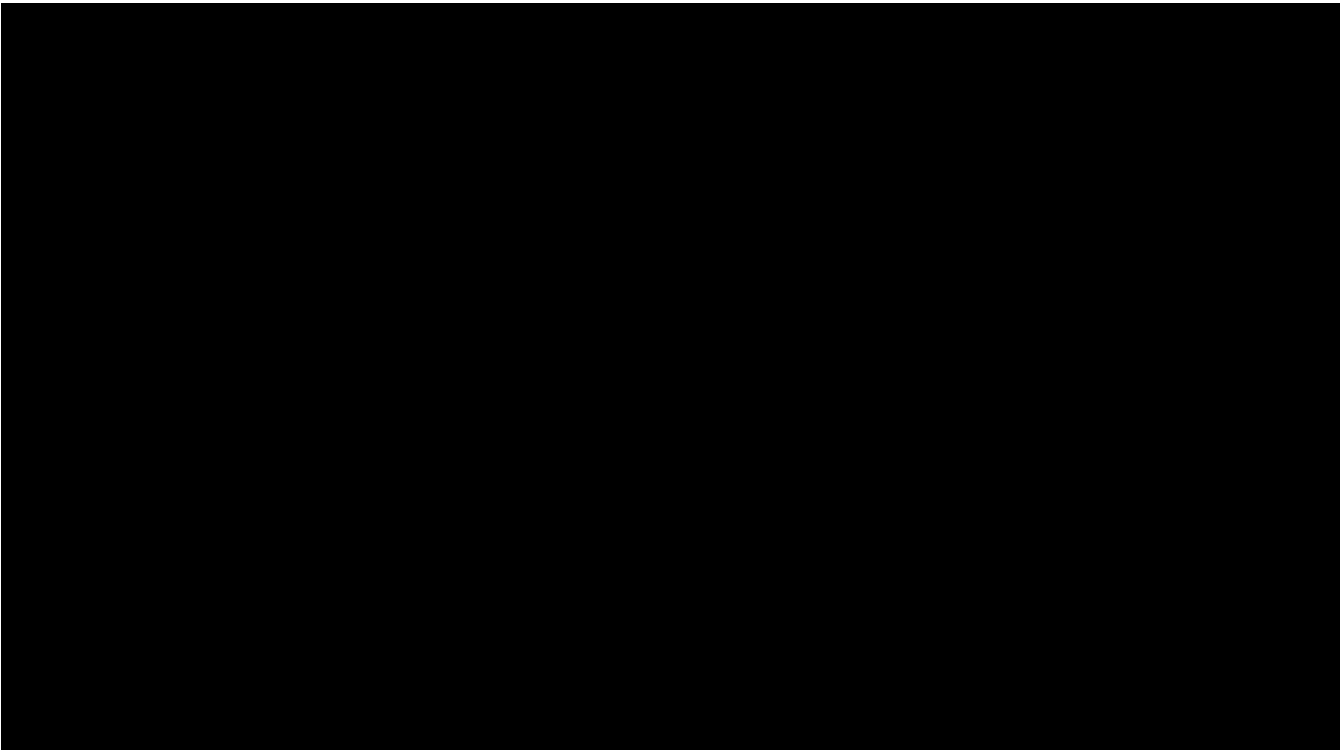
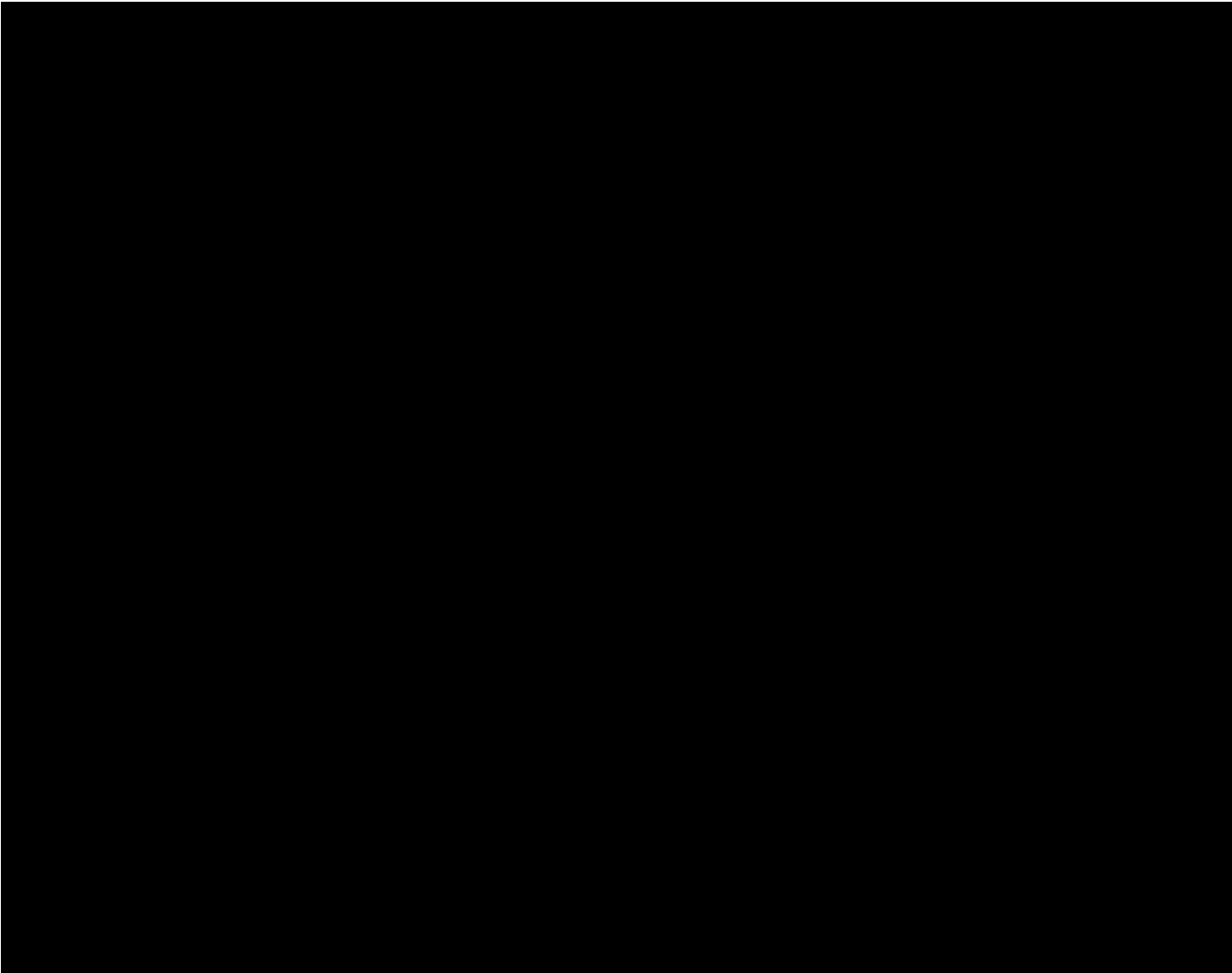
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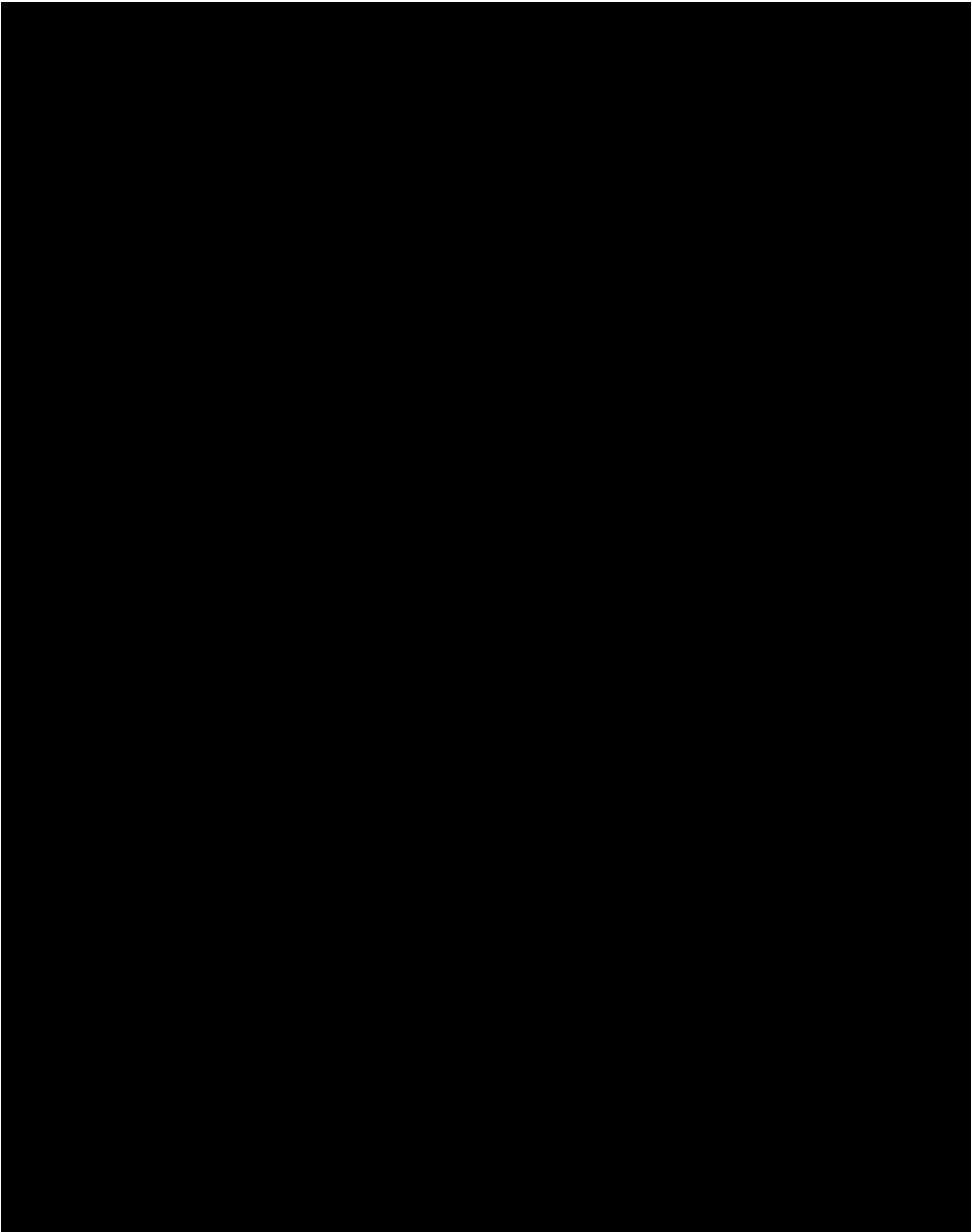


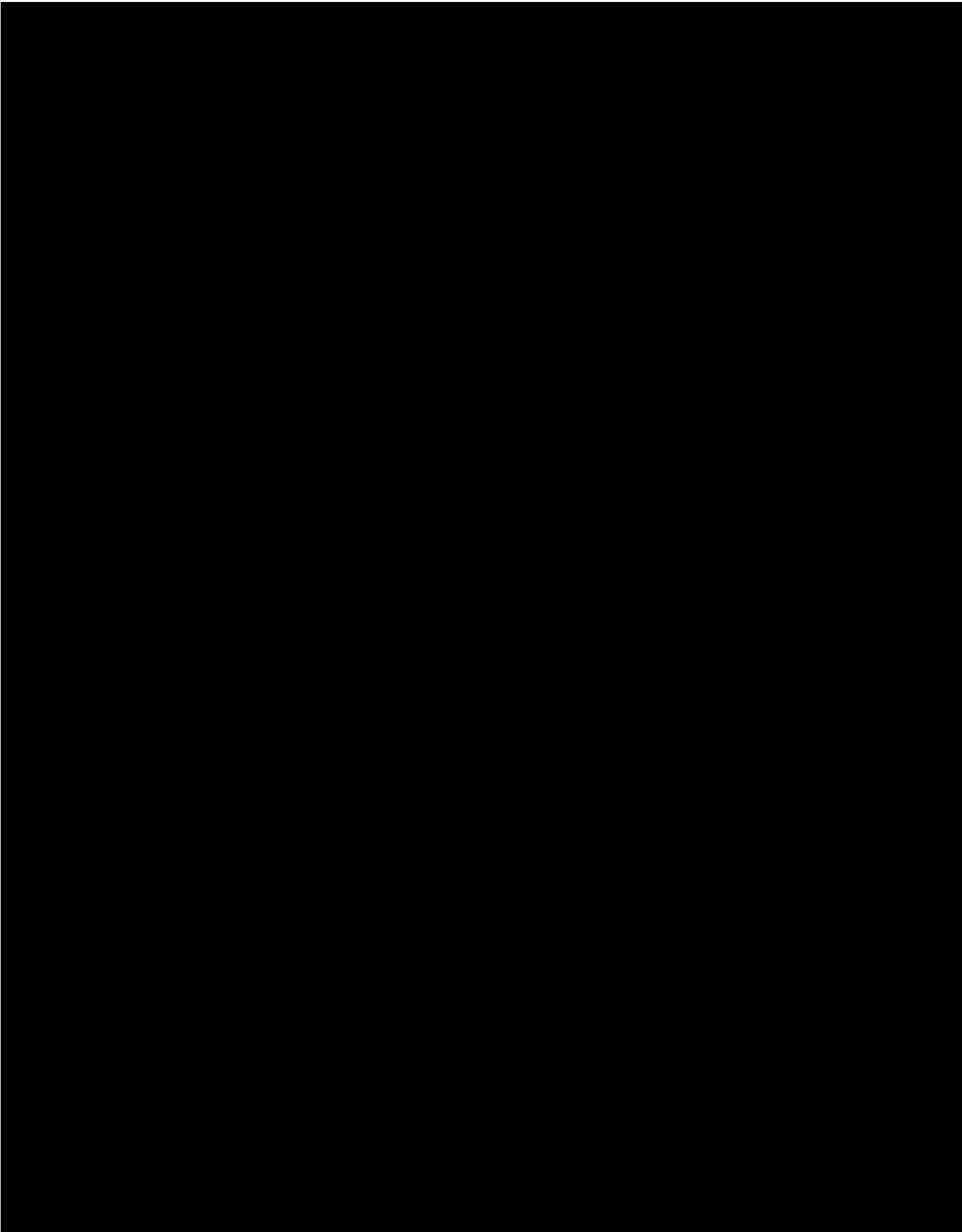




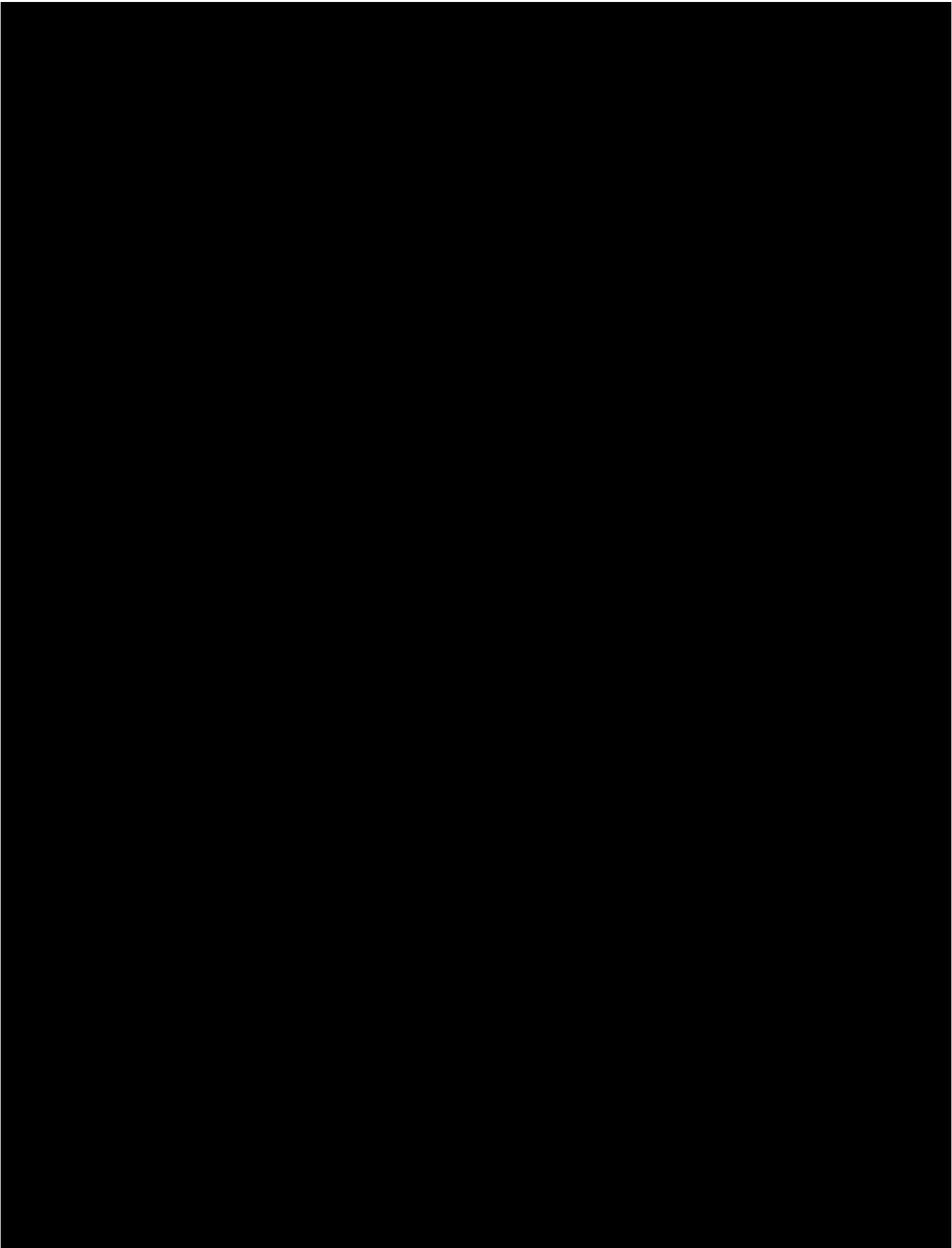


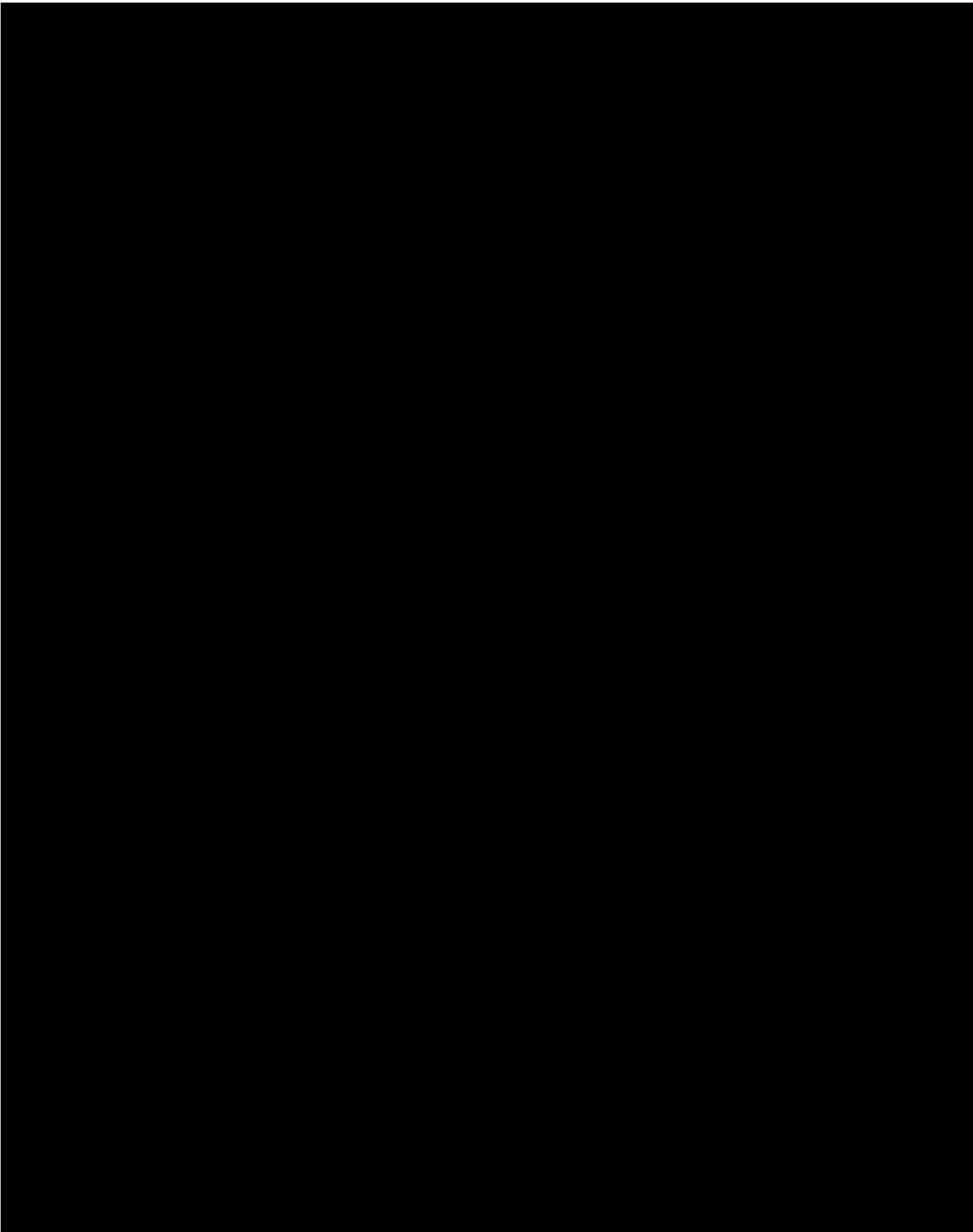


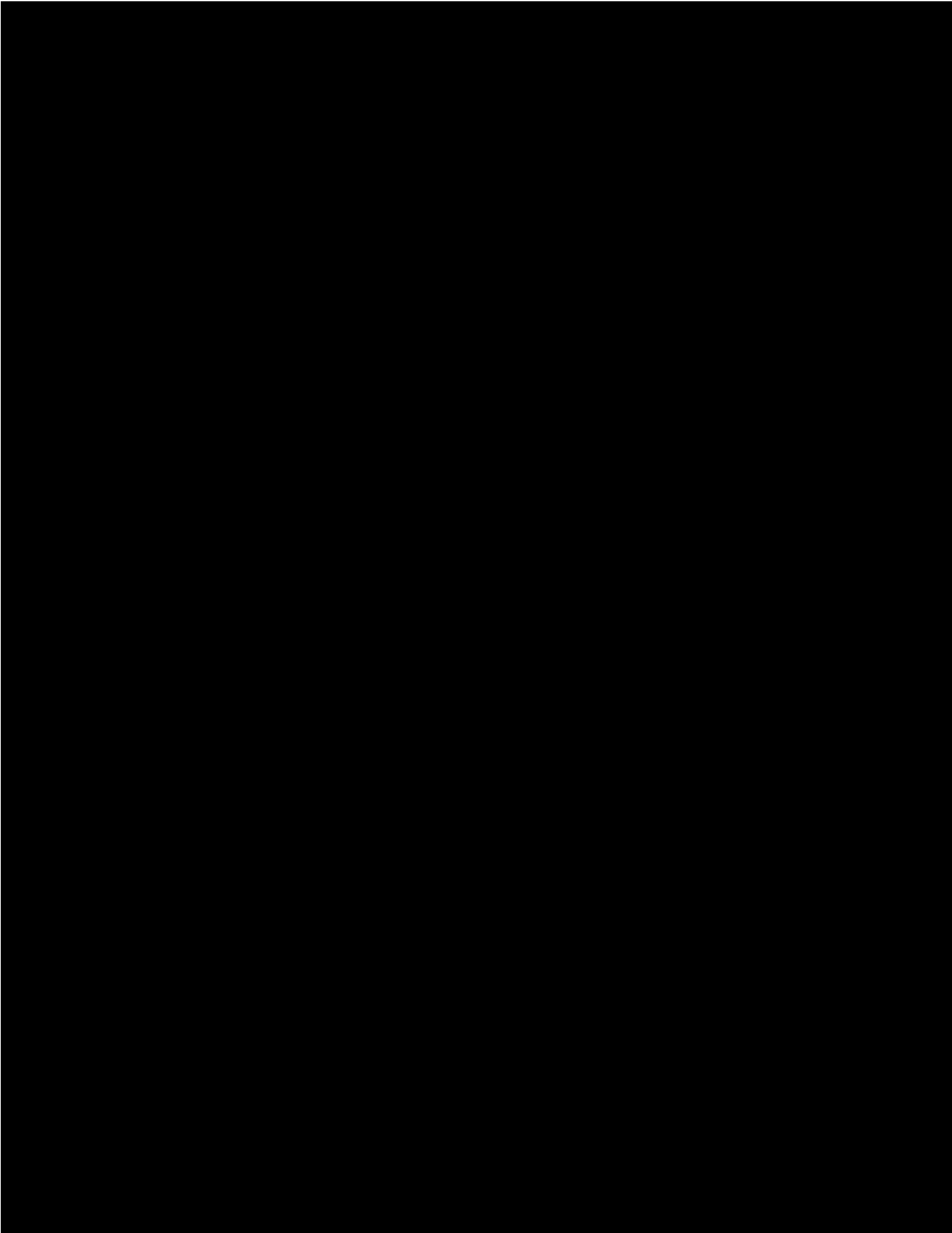


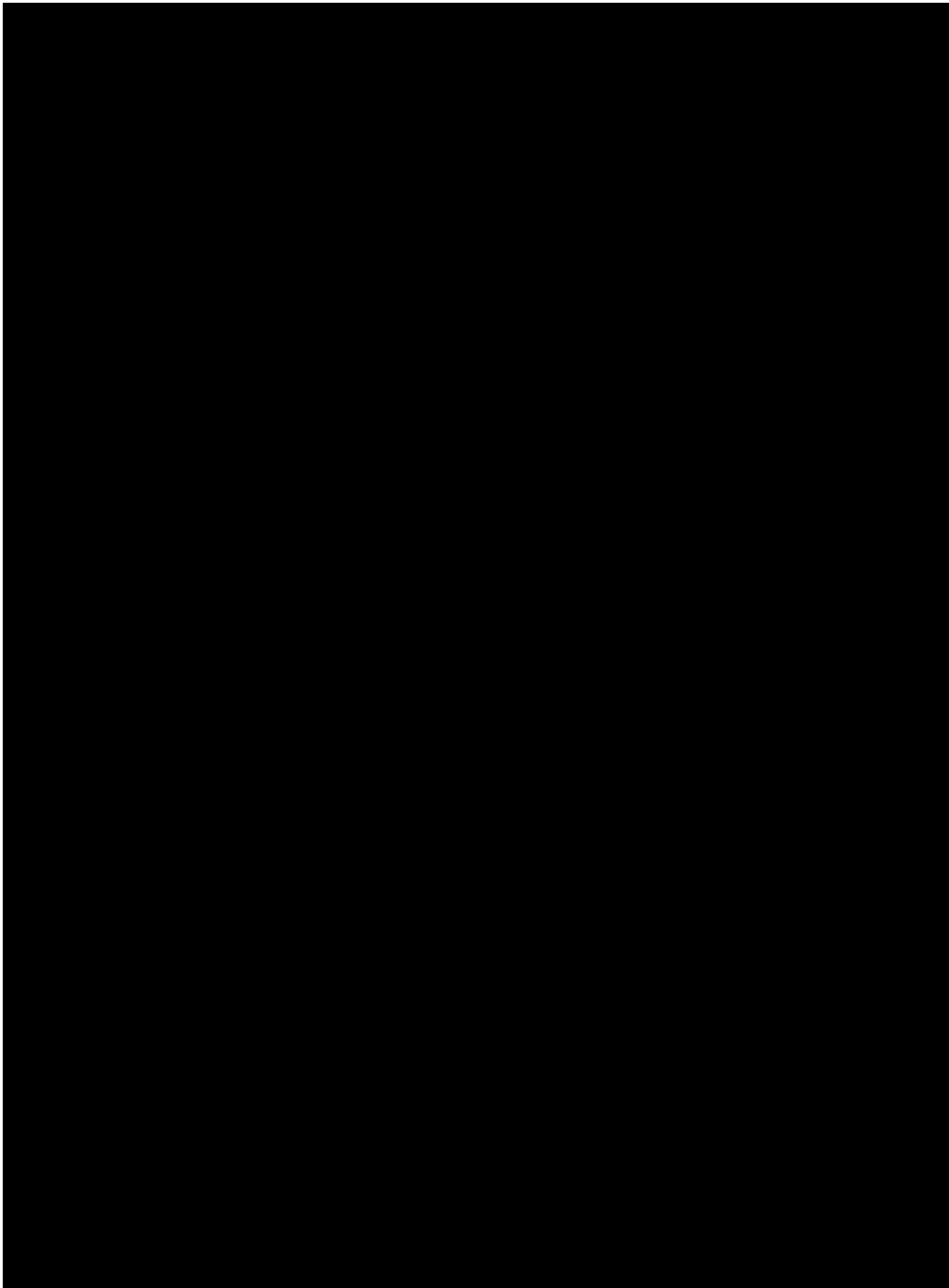


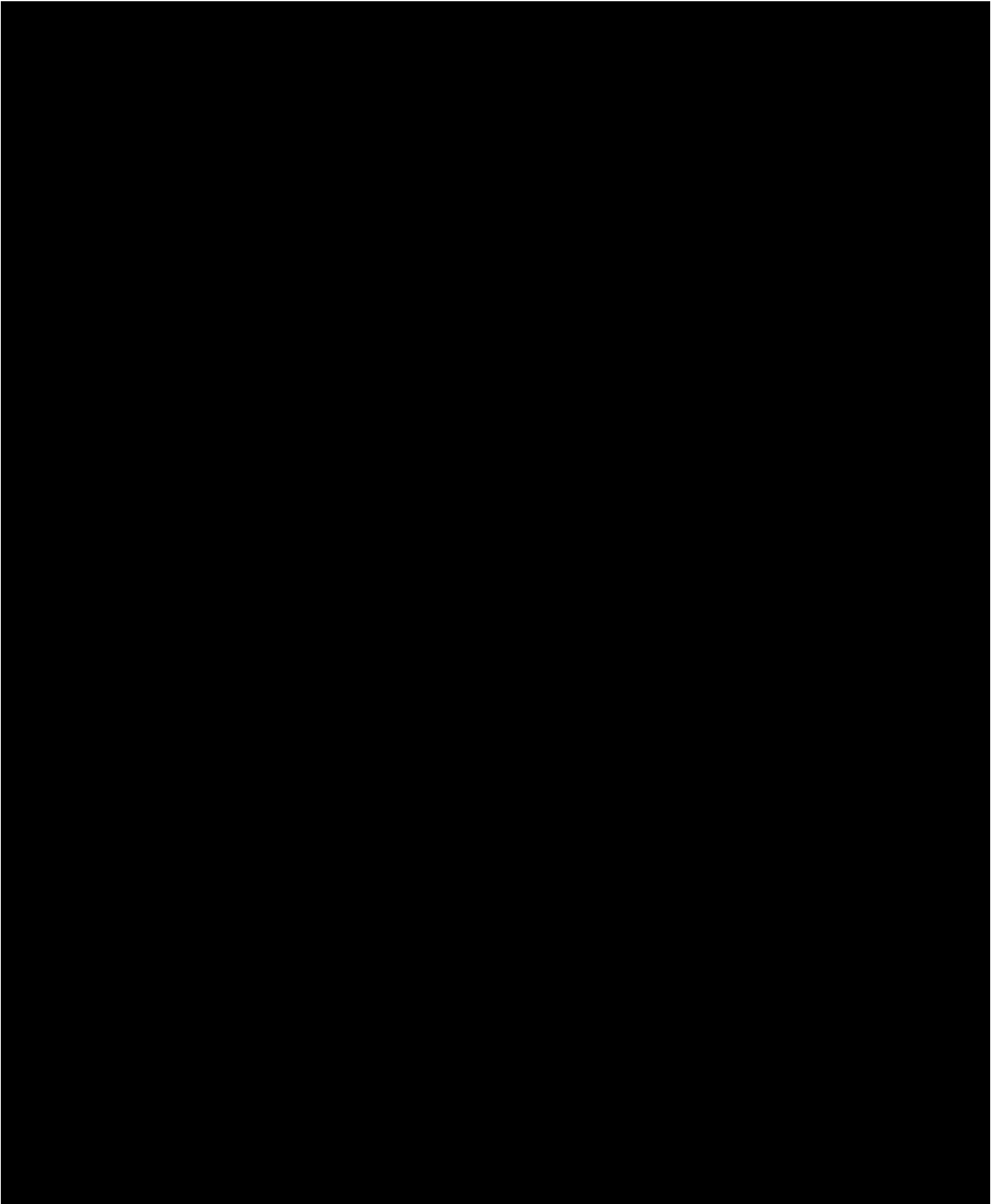
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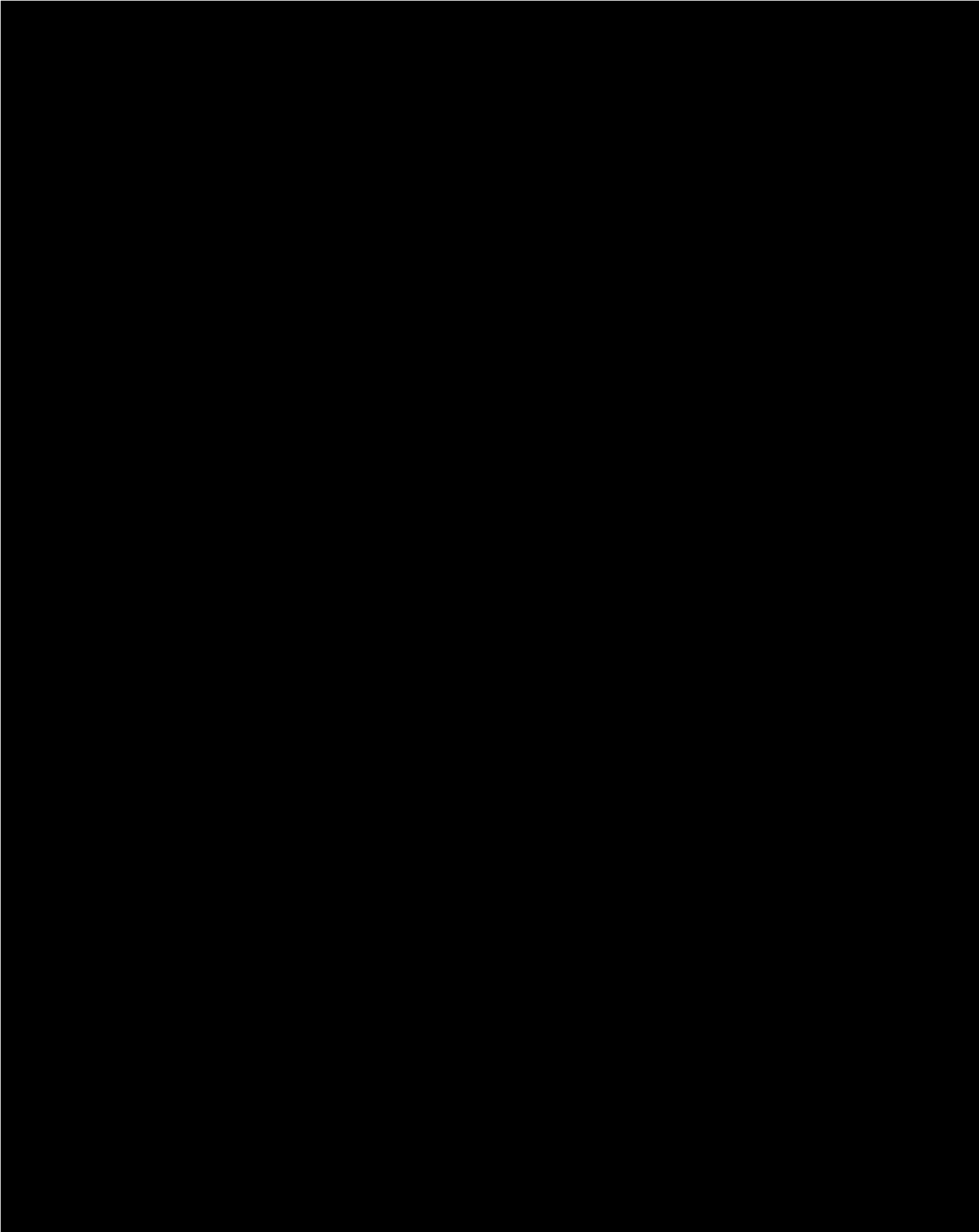


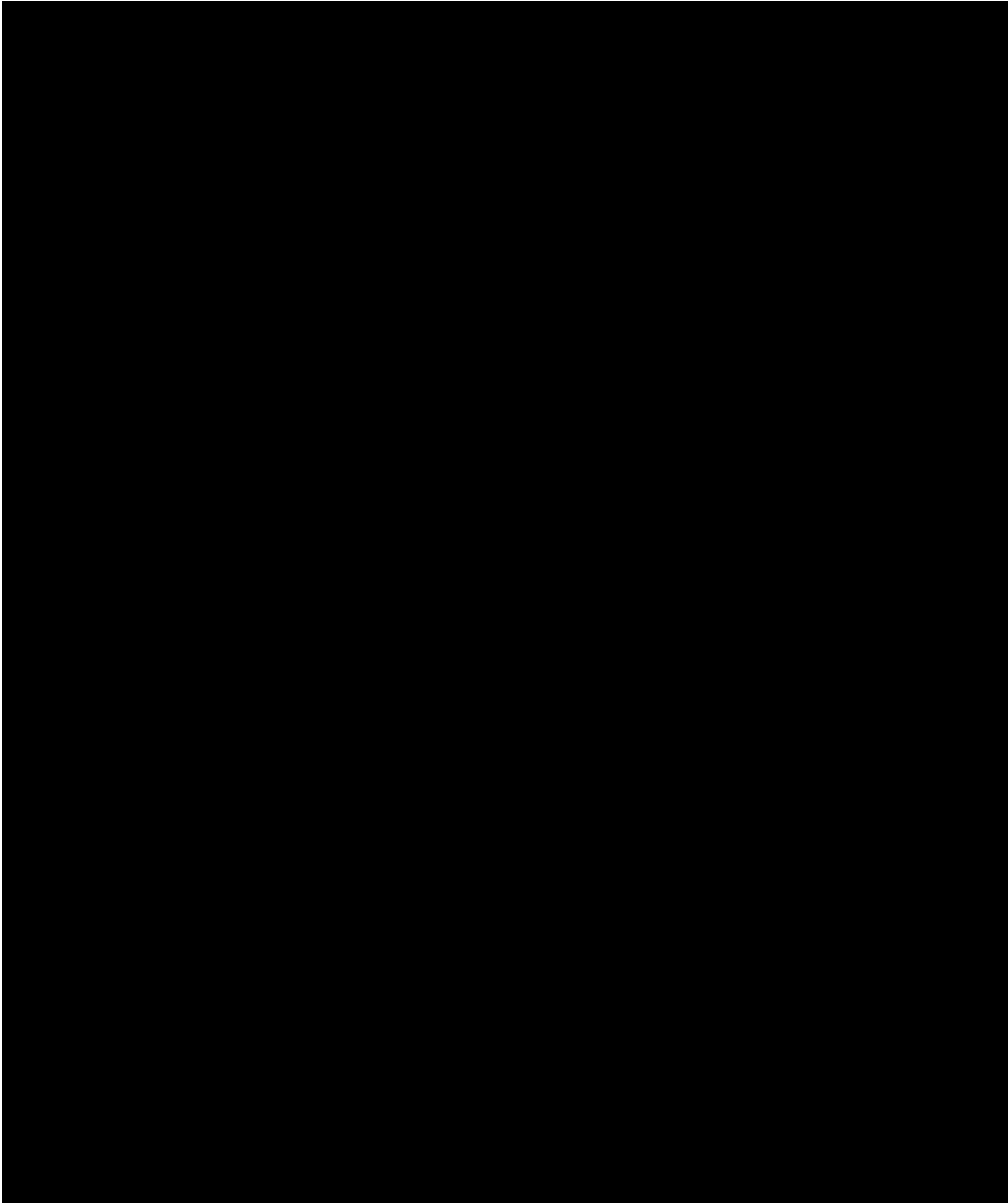


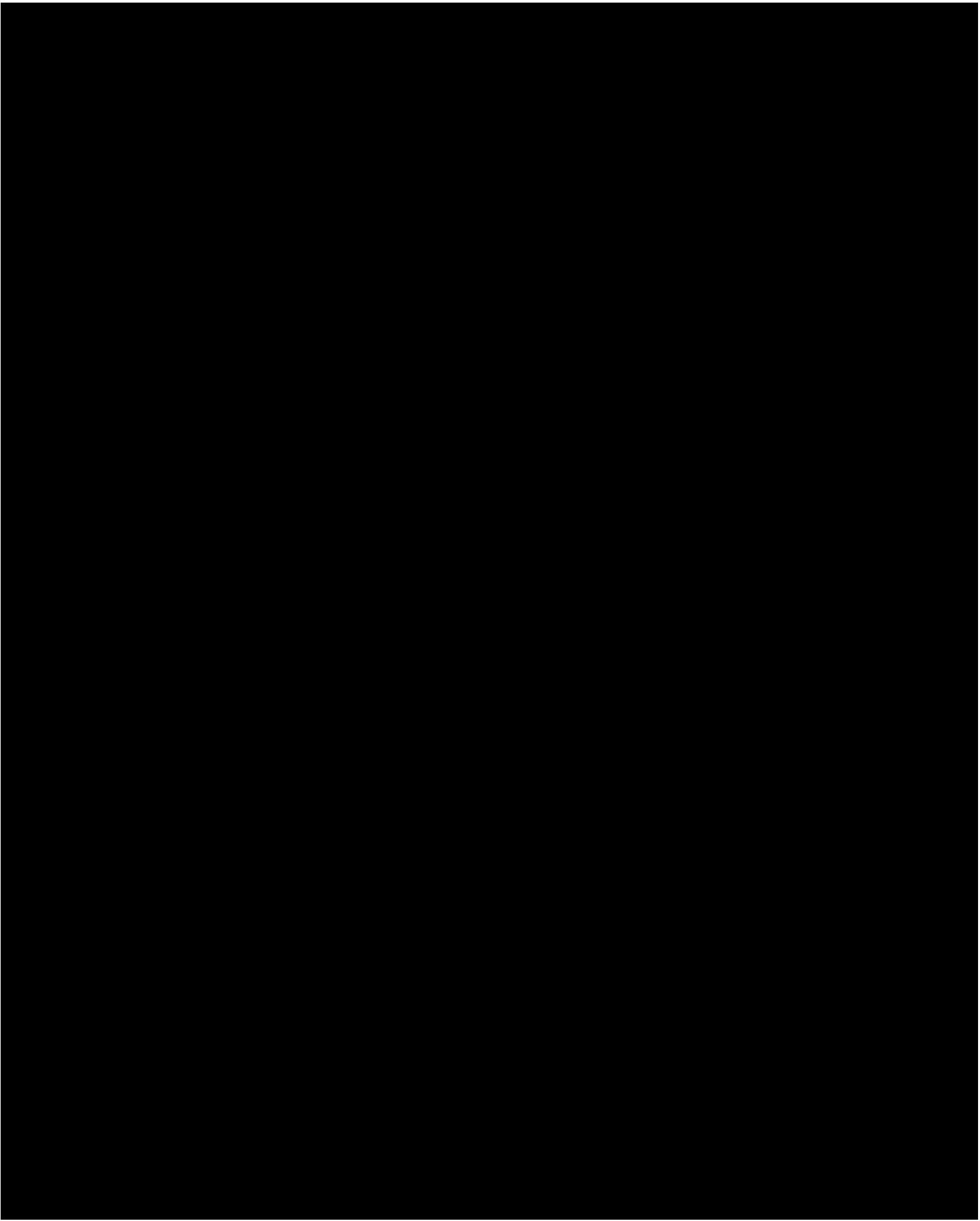


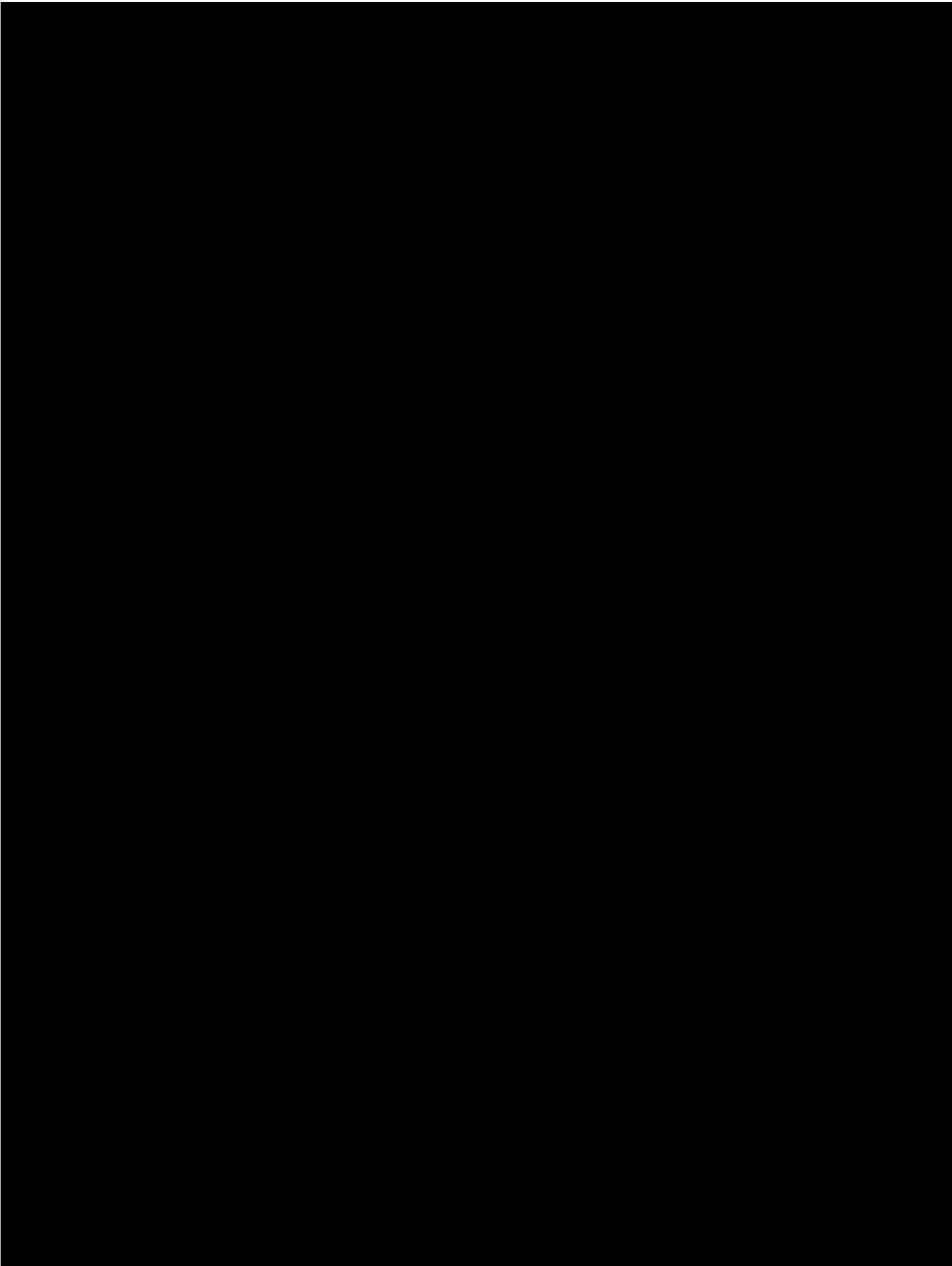


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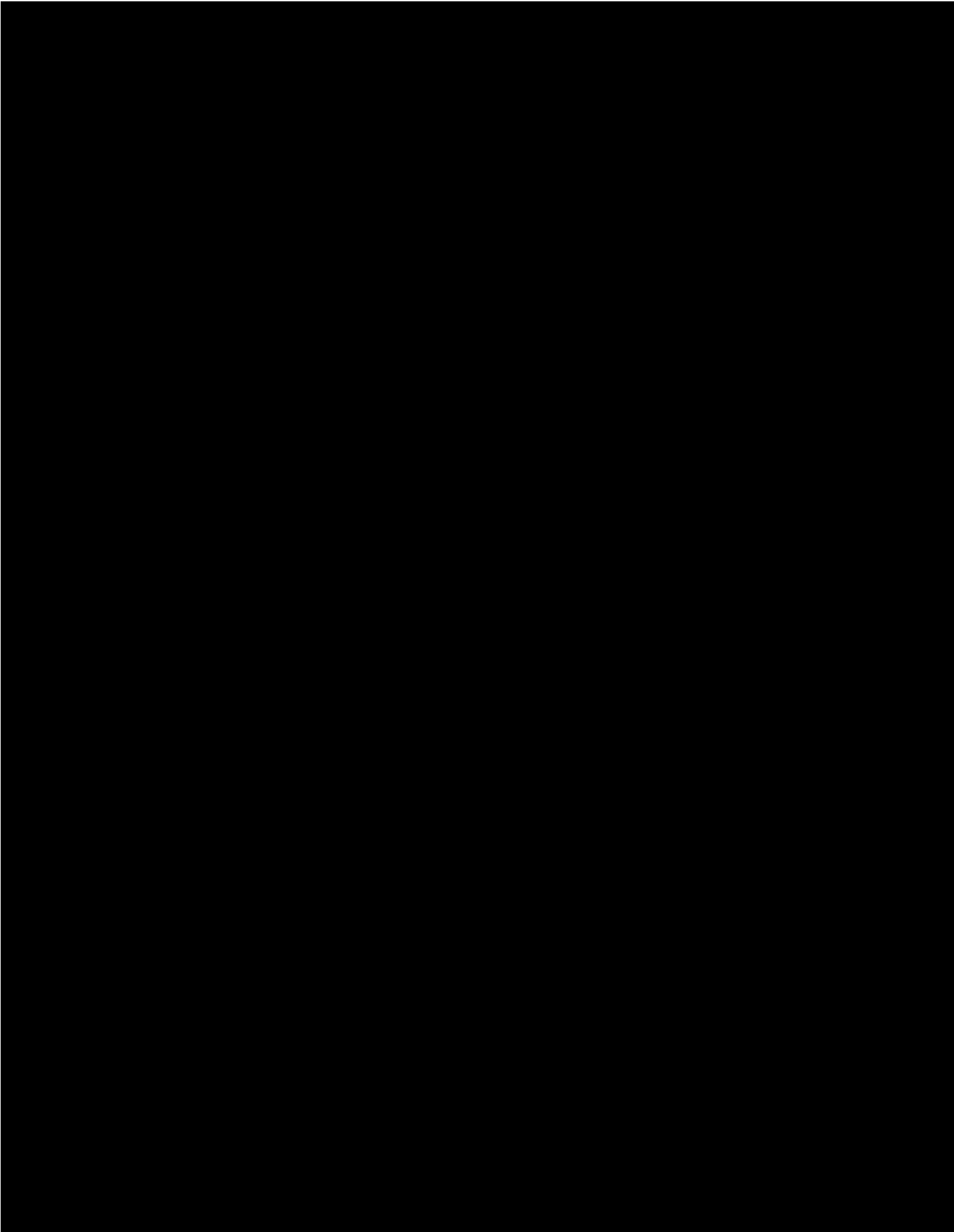


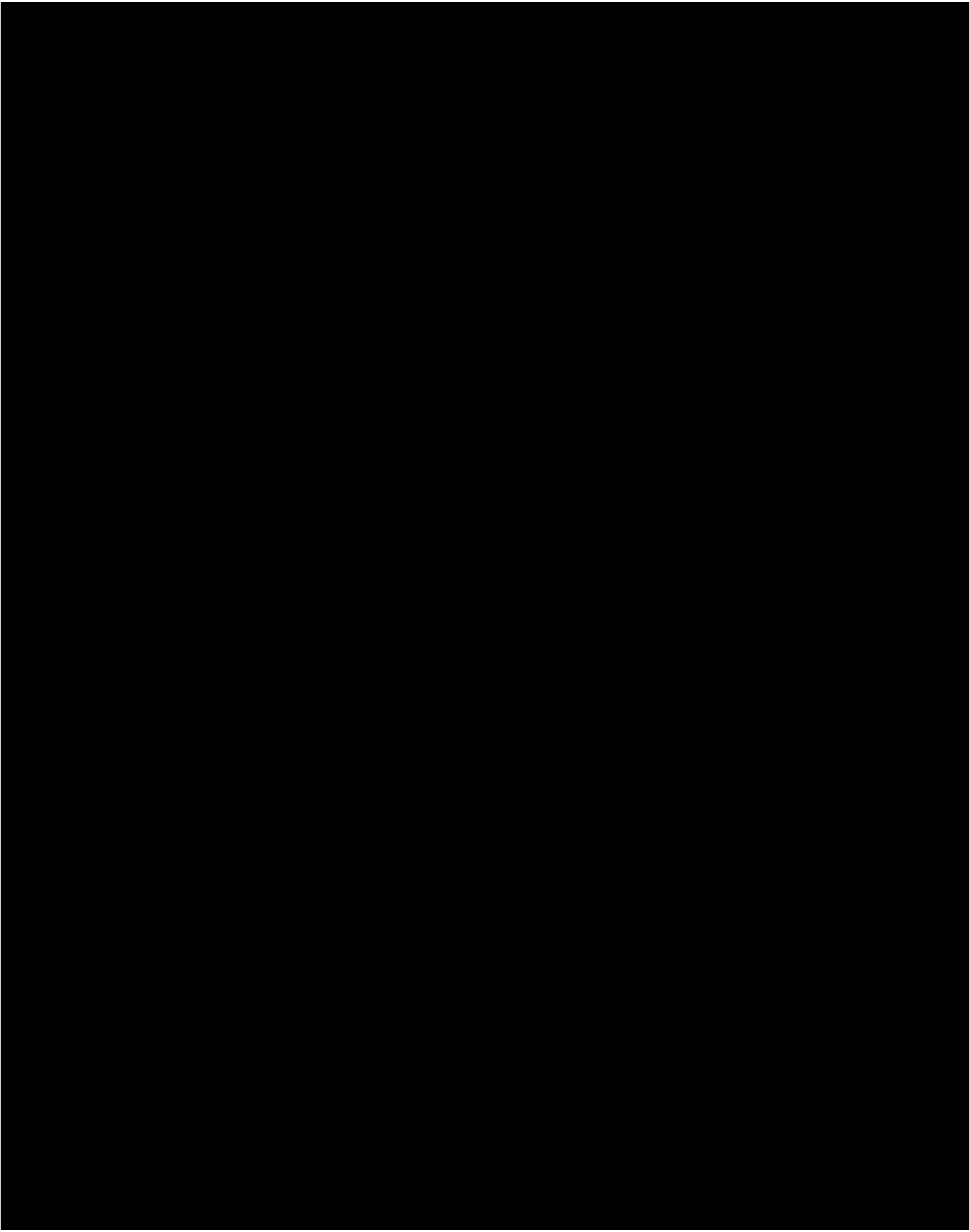
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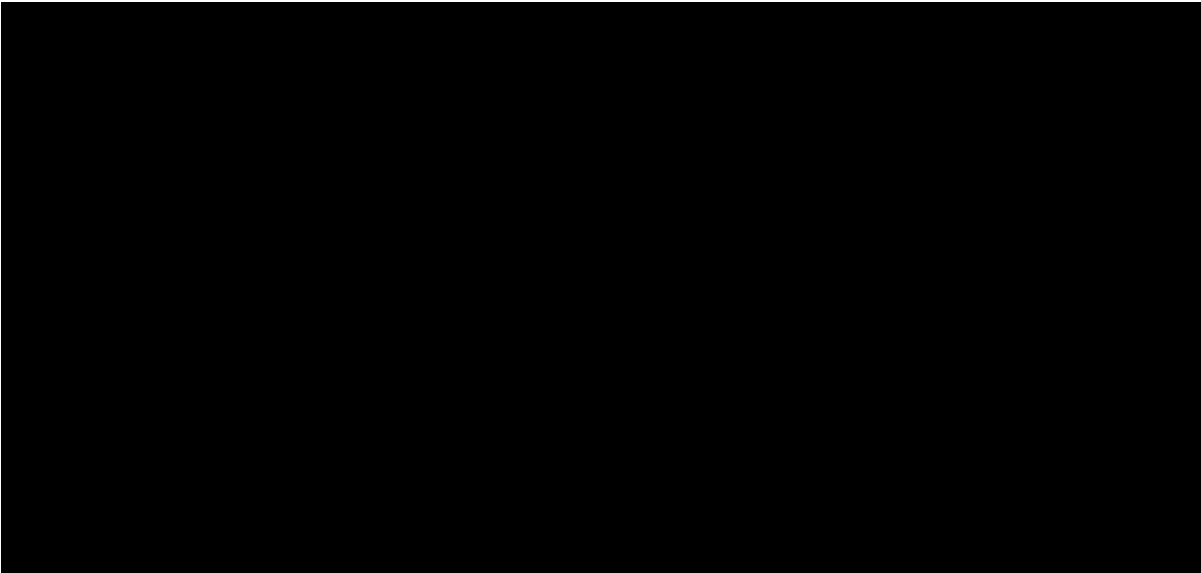
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[REDACTED]

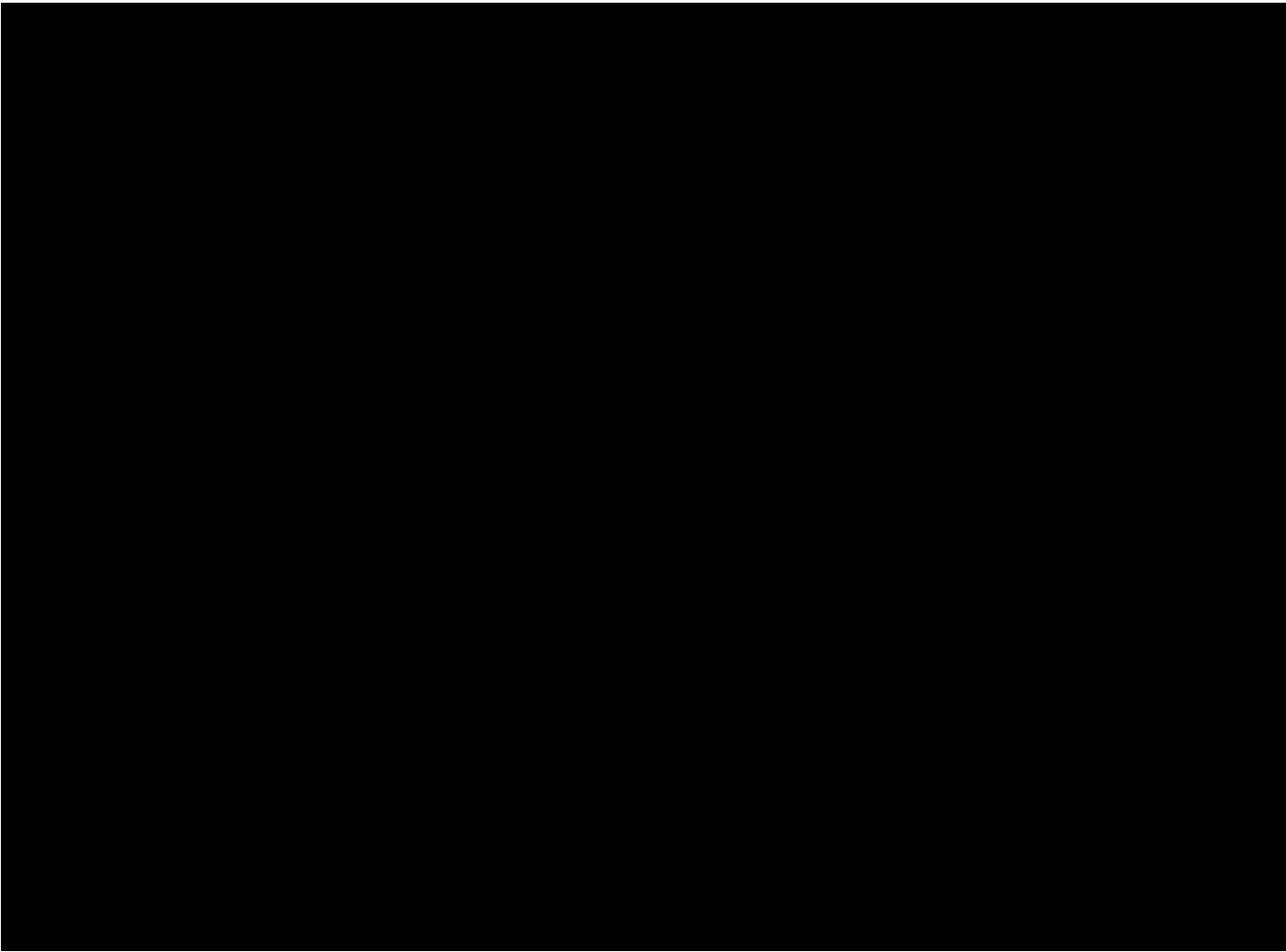
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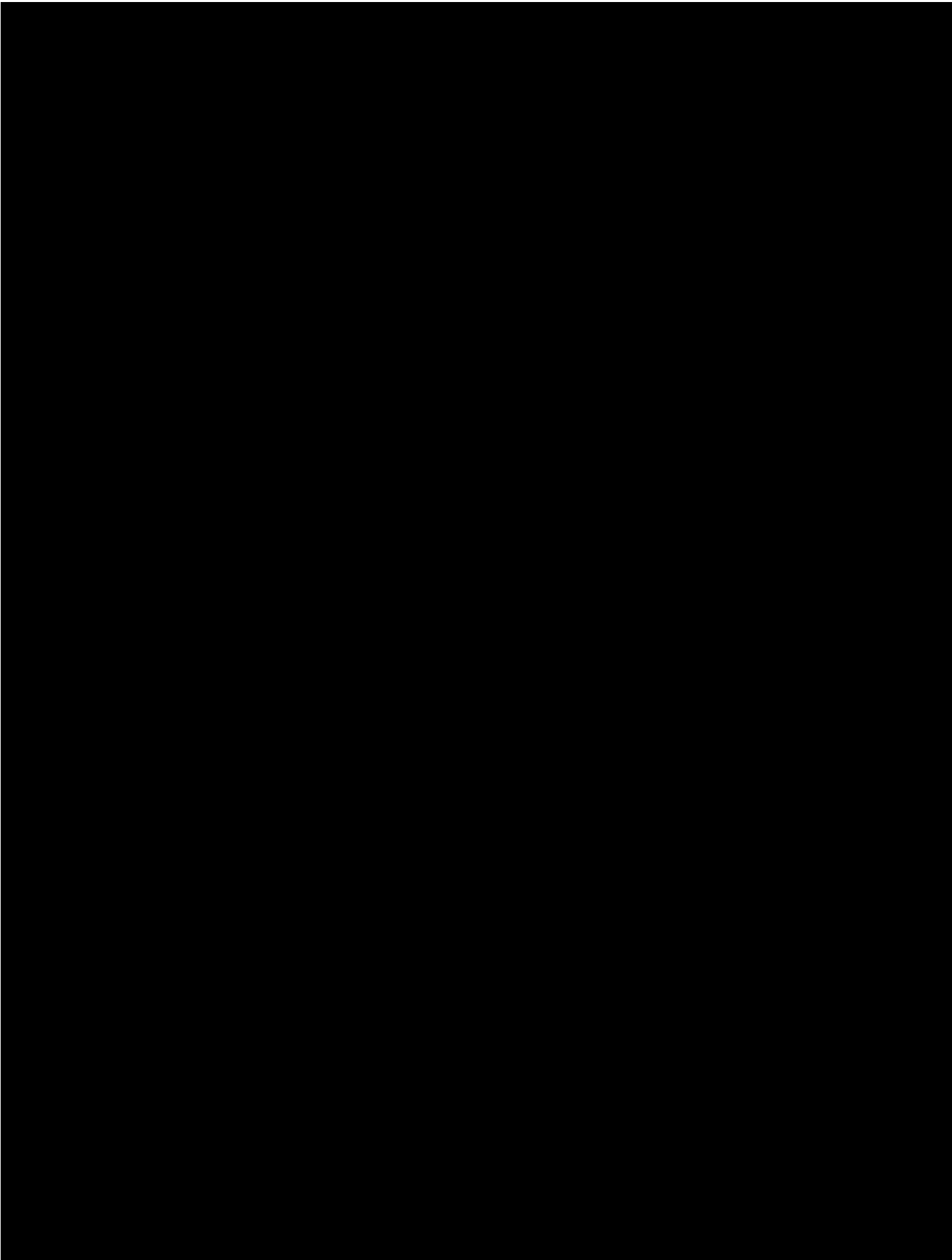


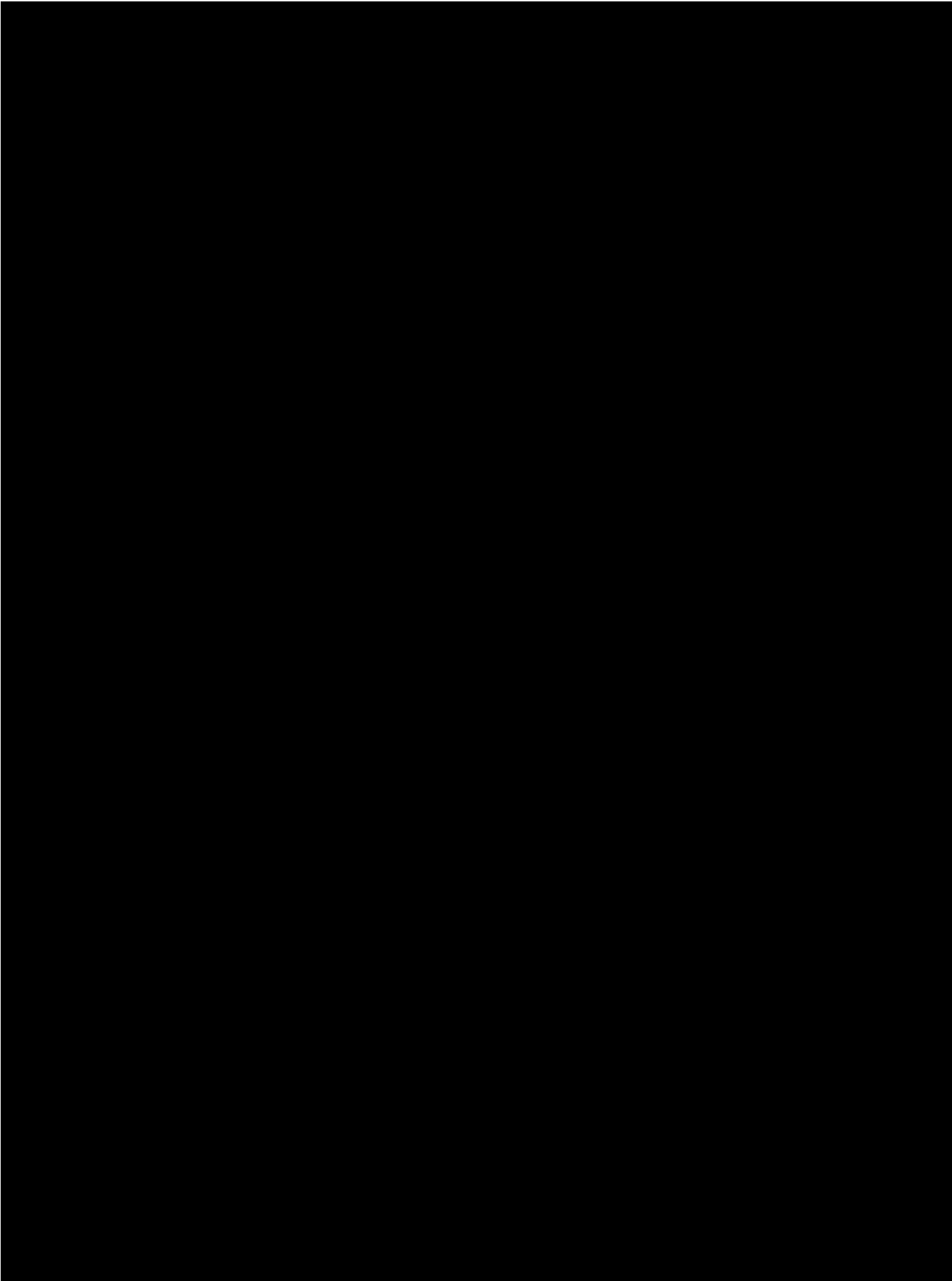


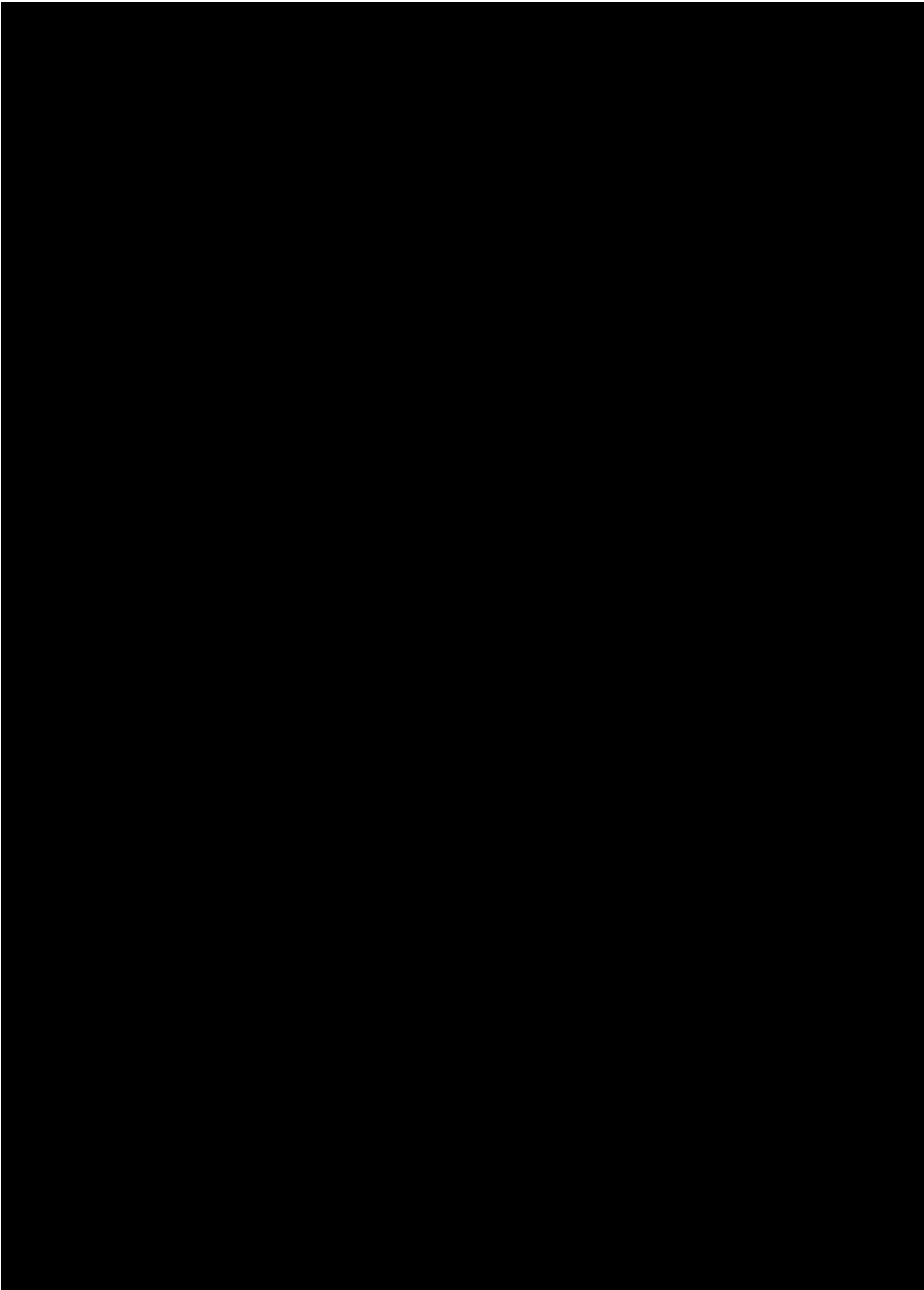
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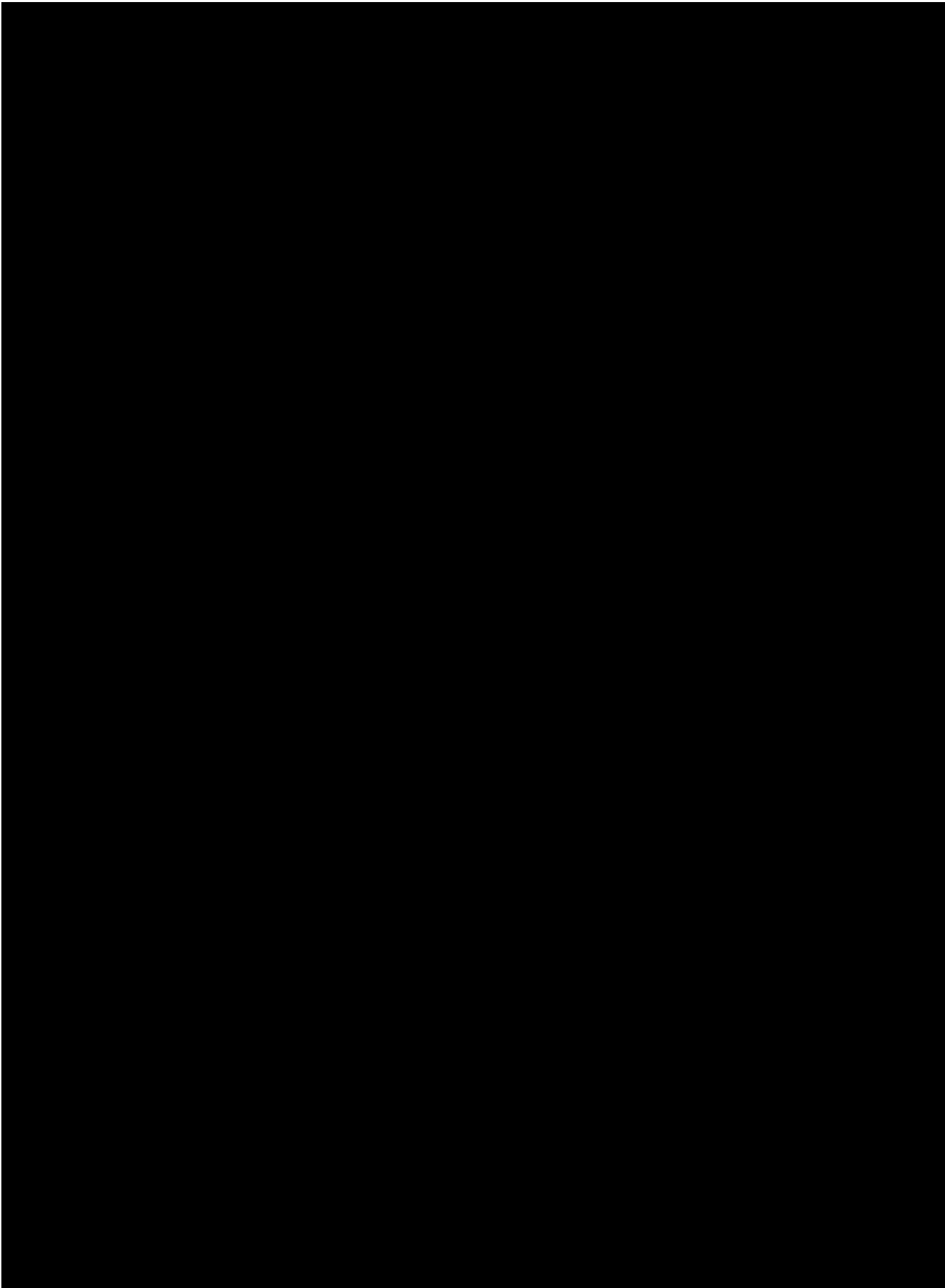


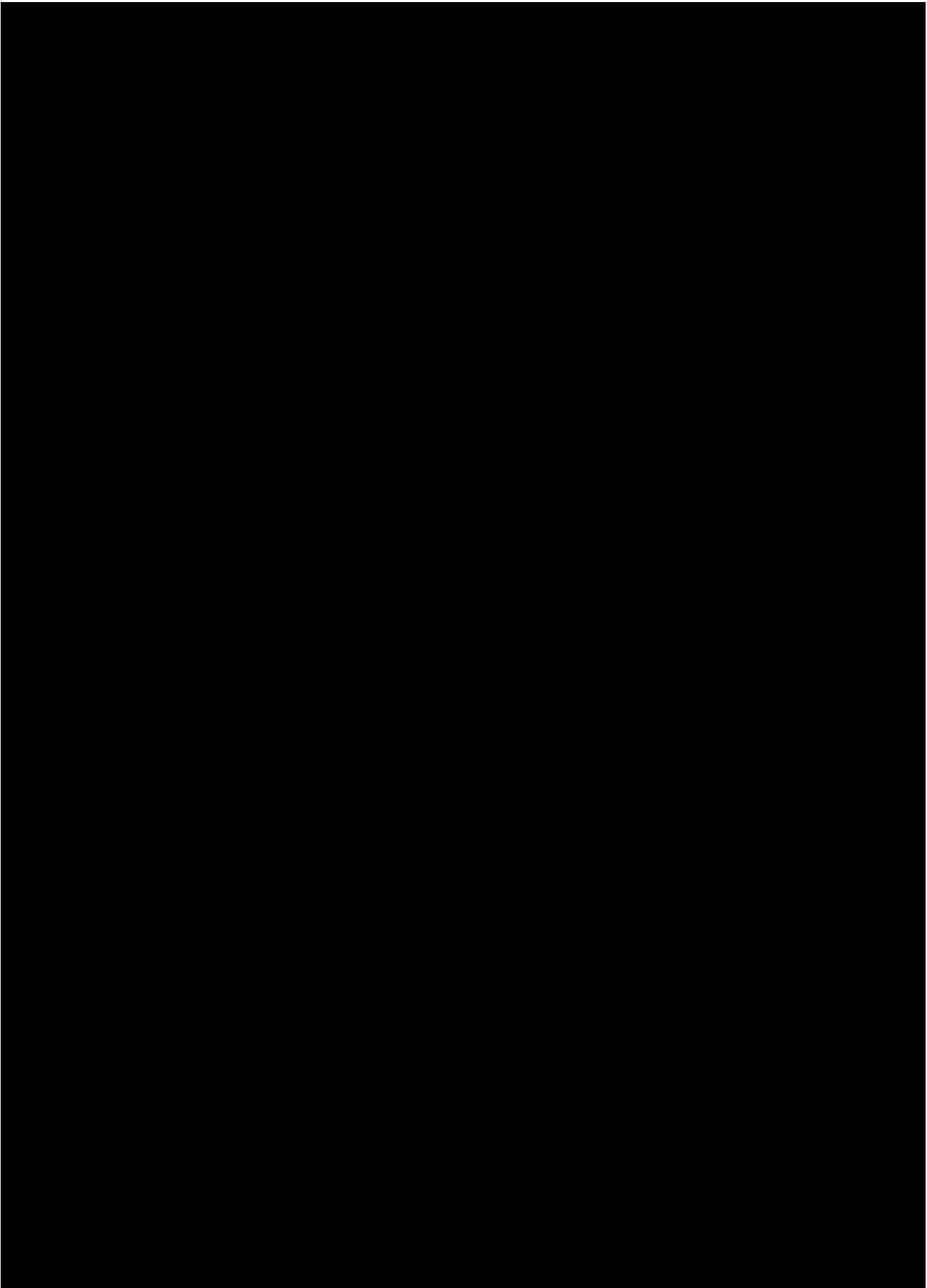
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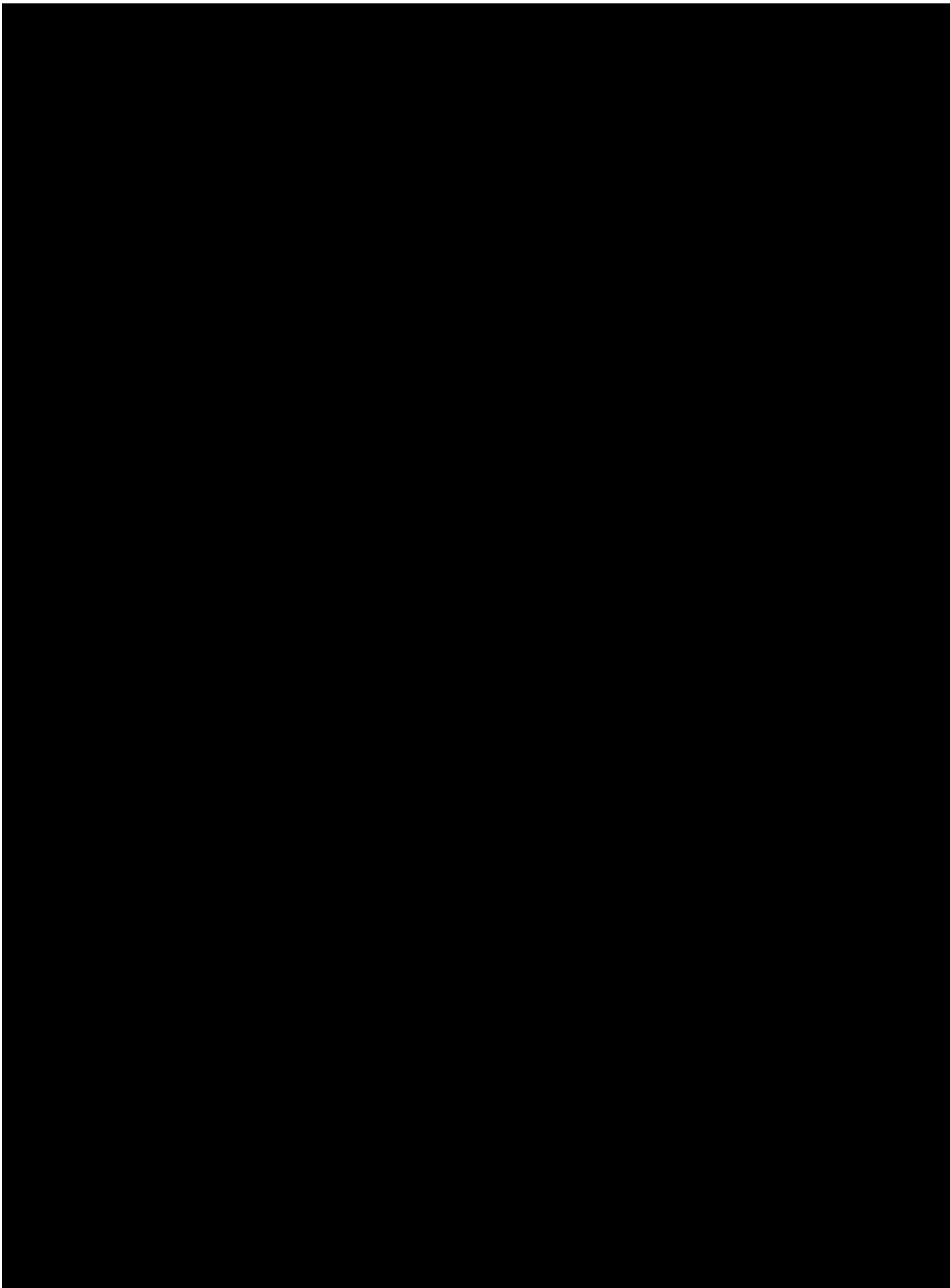


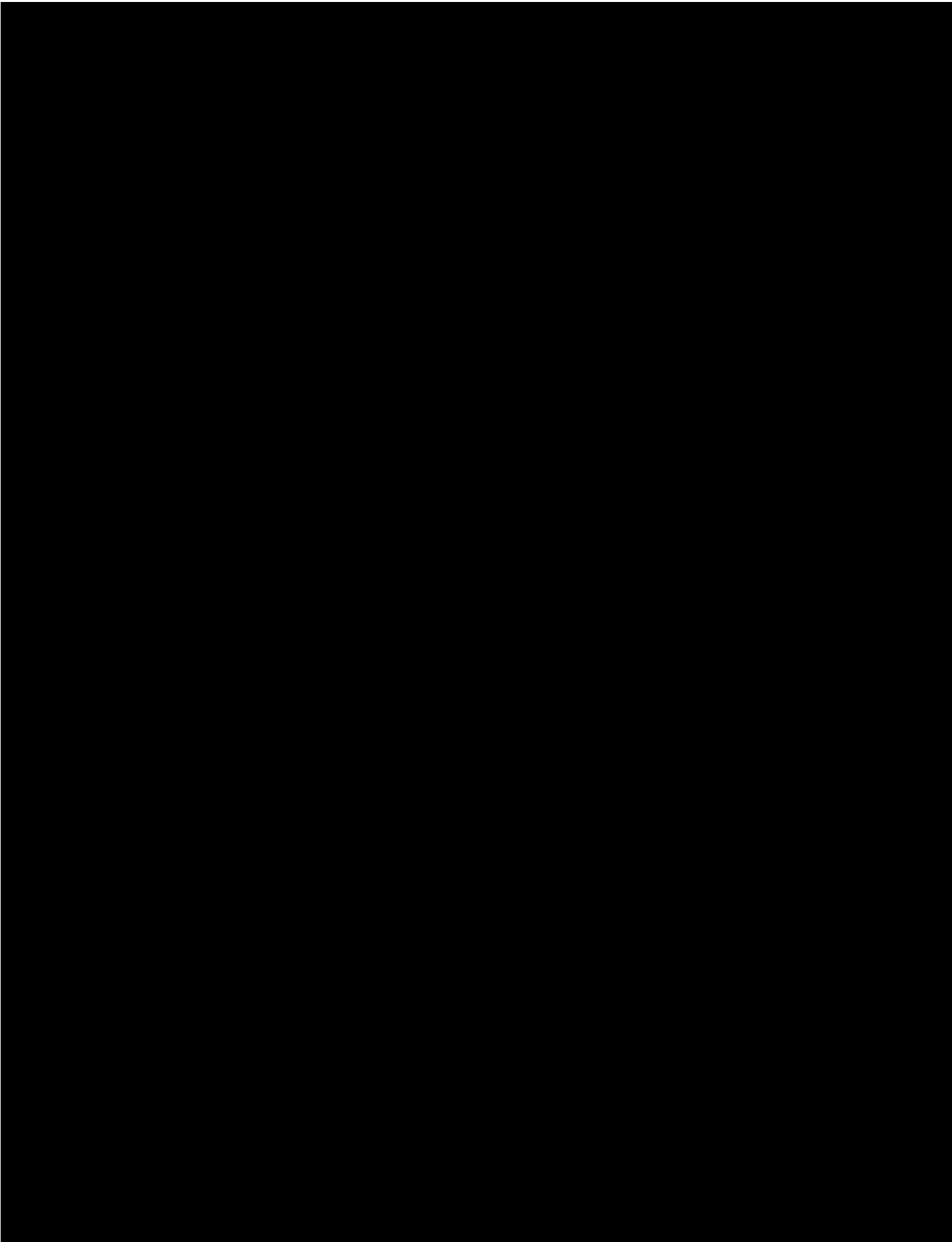


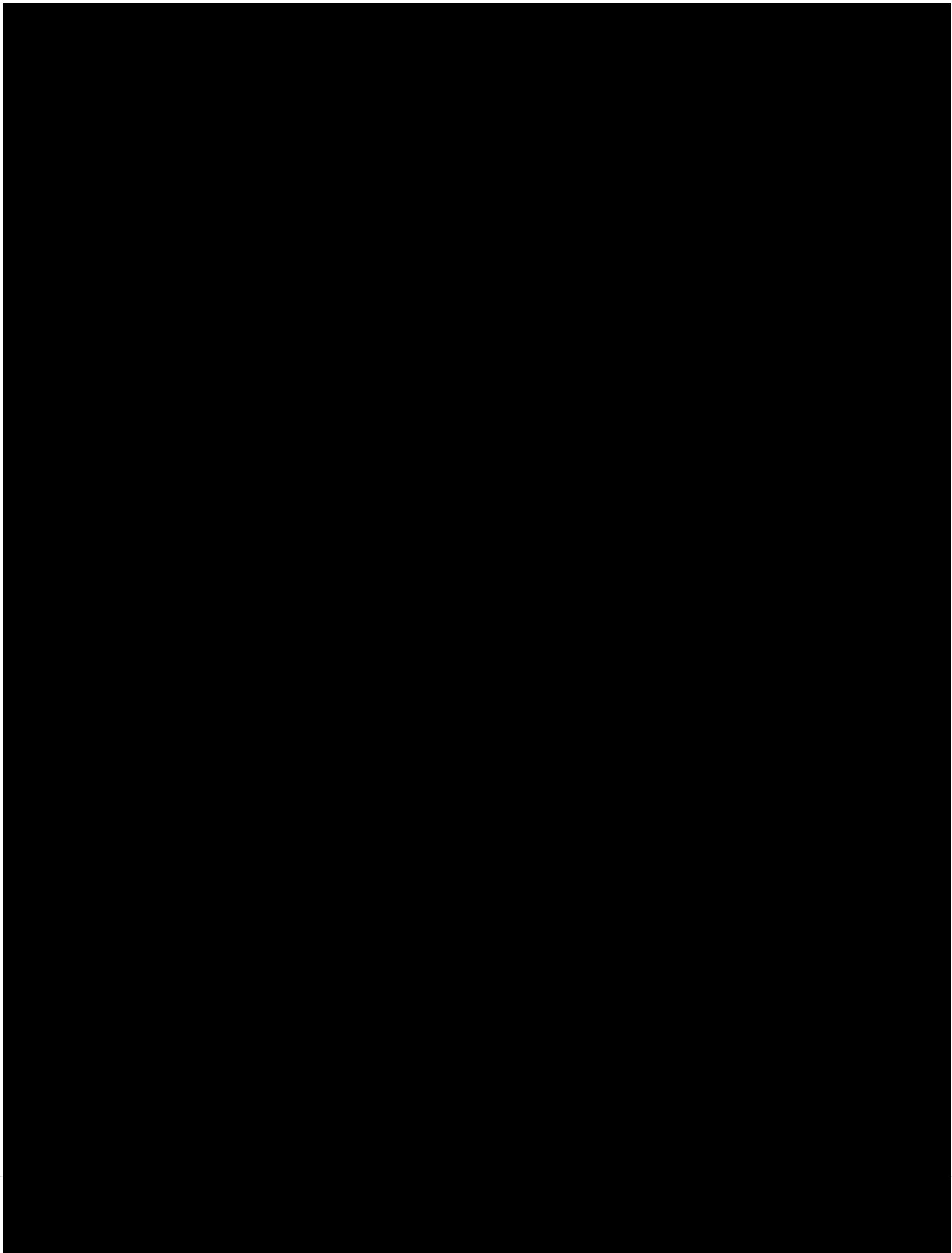


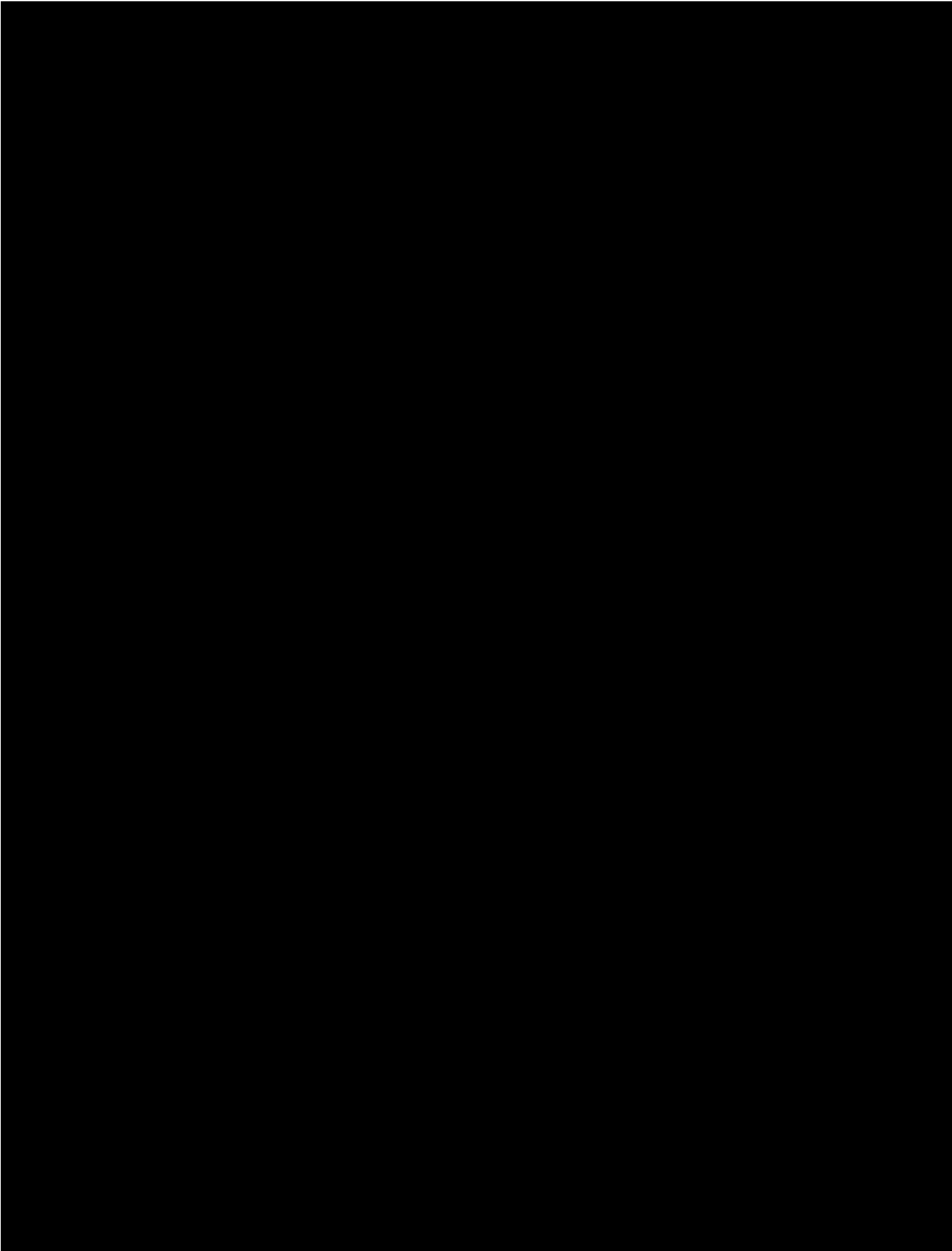


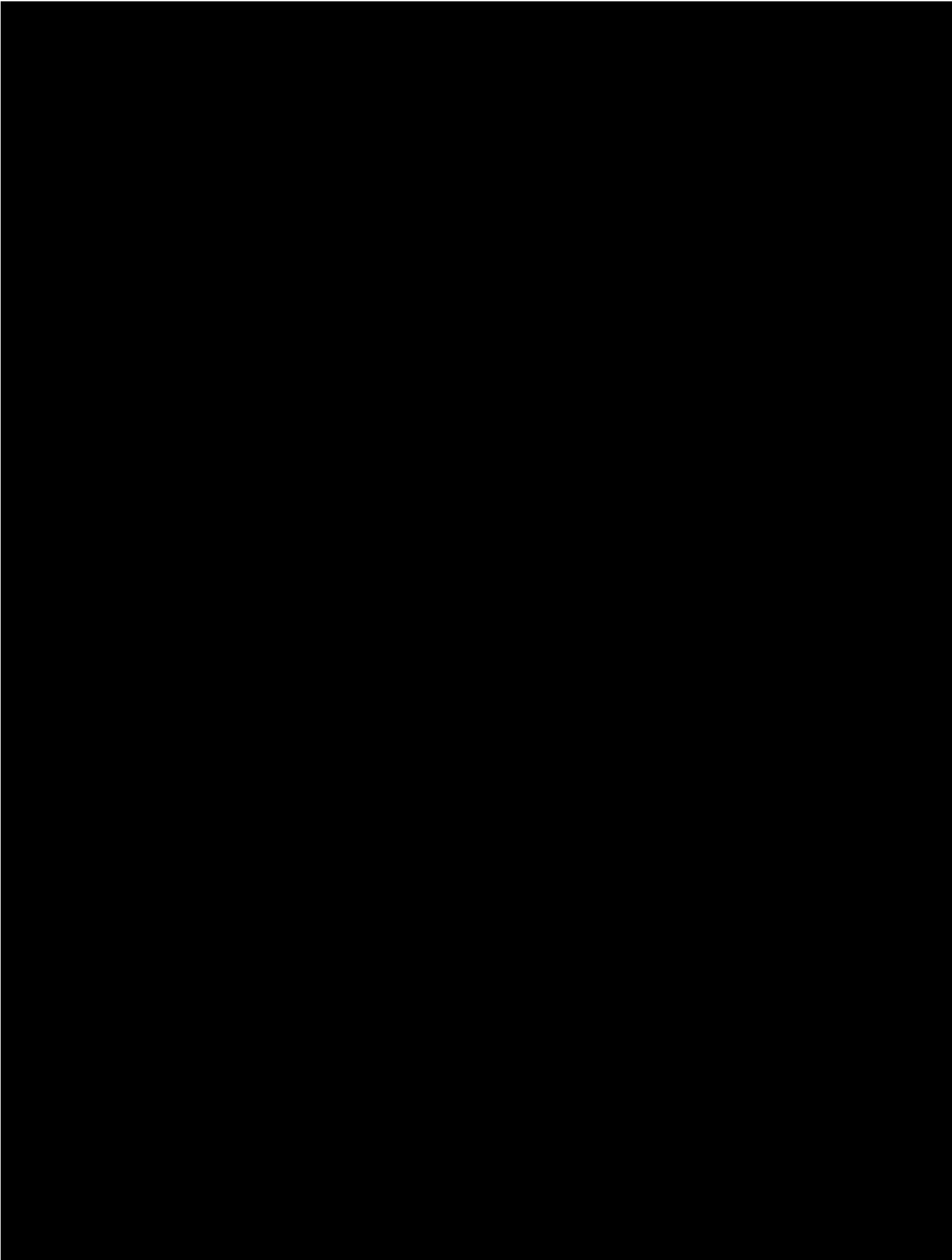


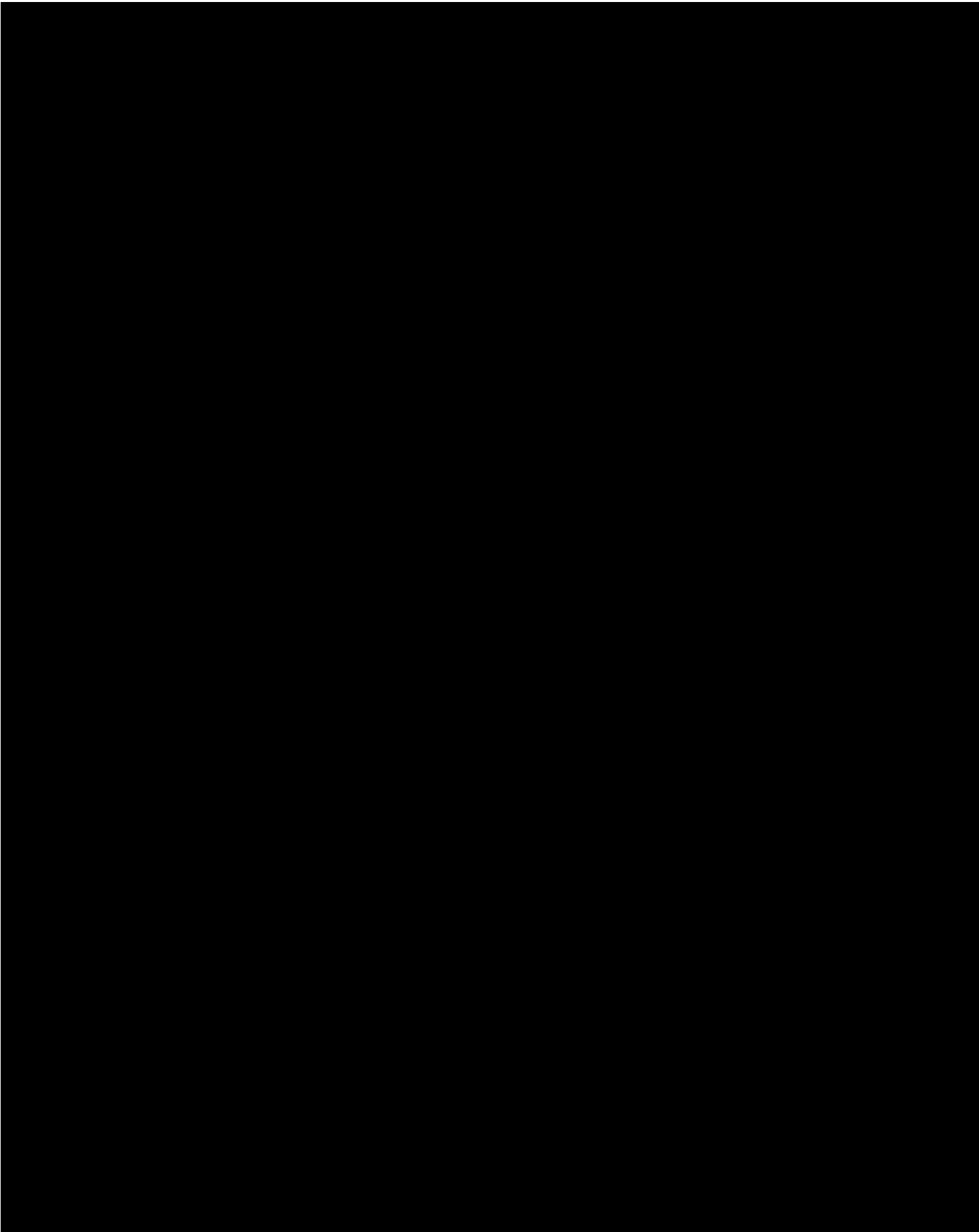


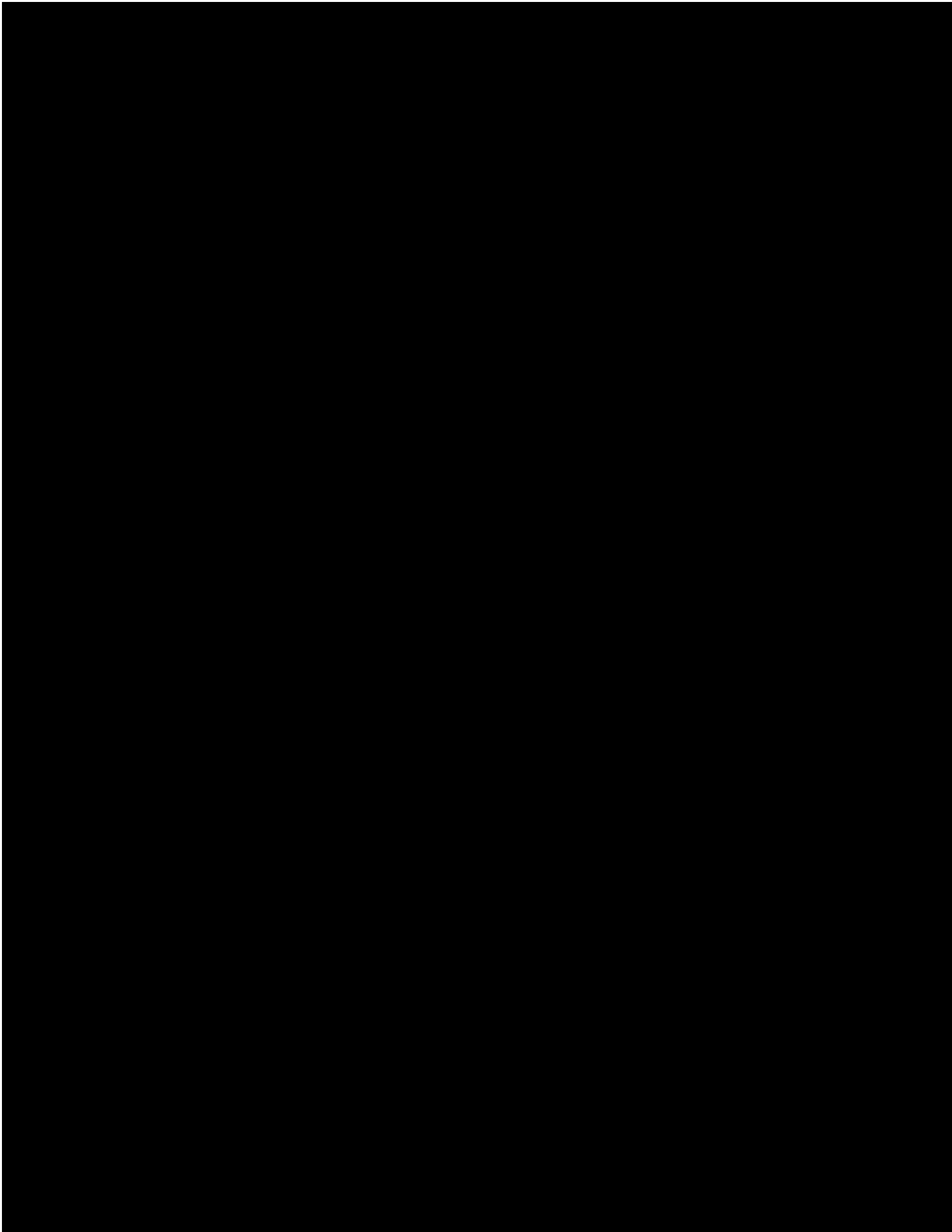


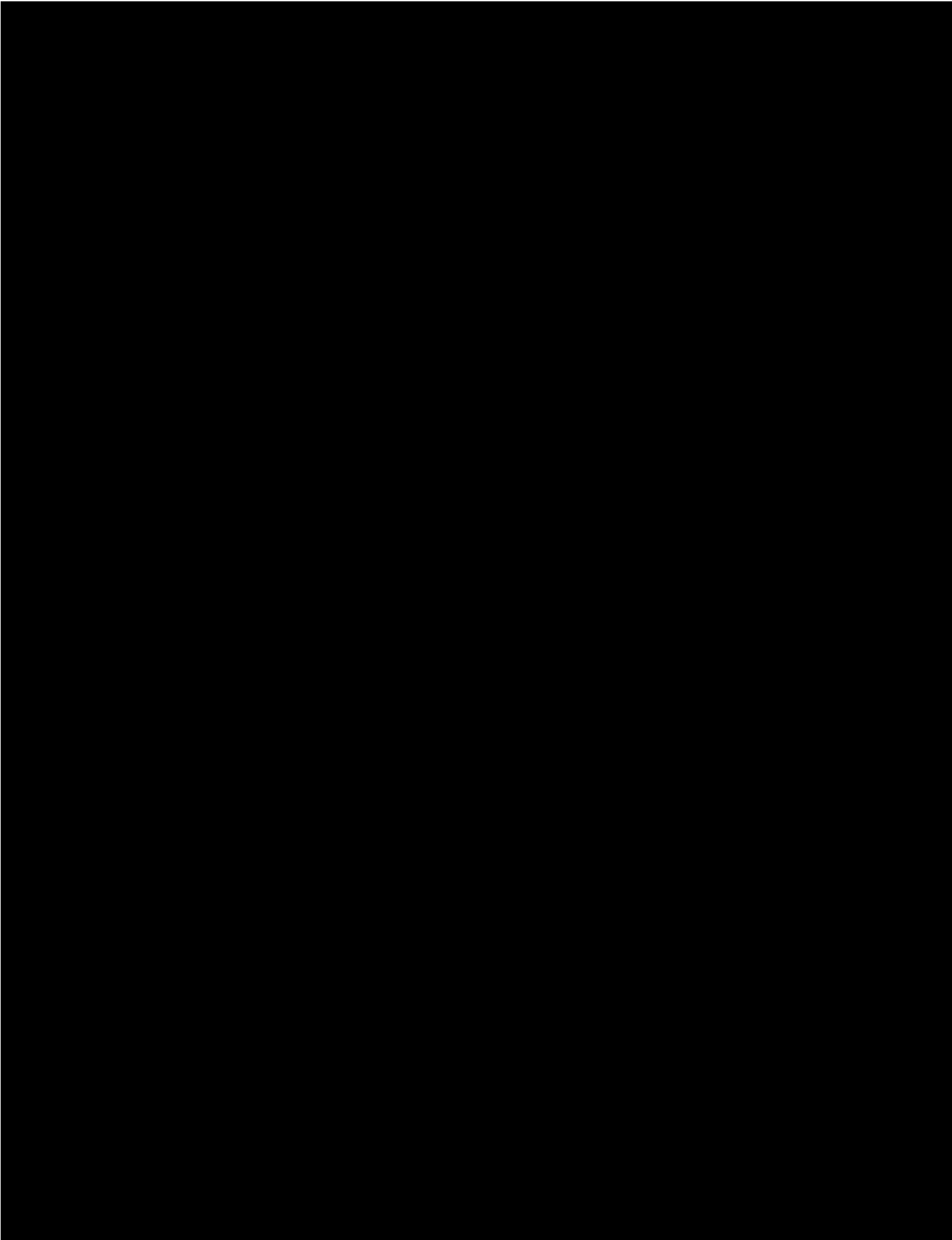


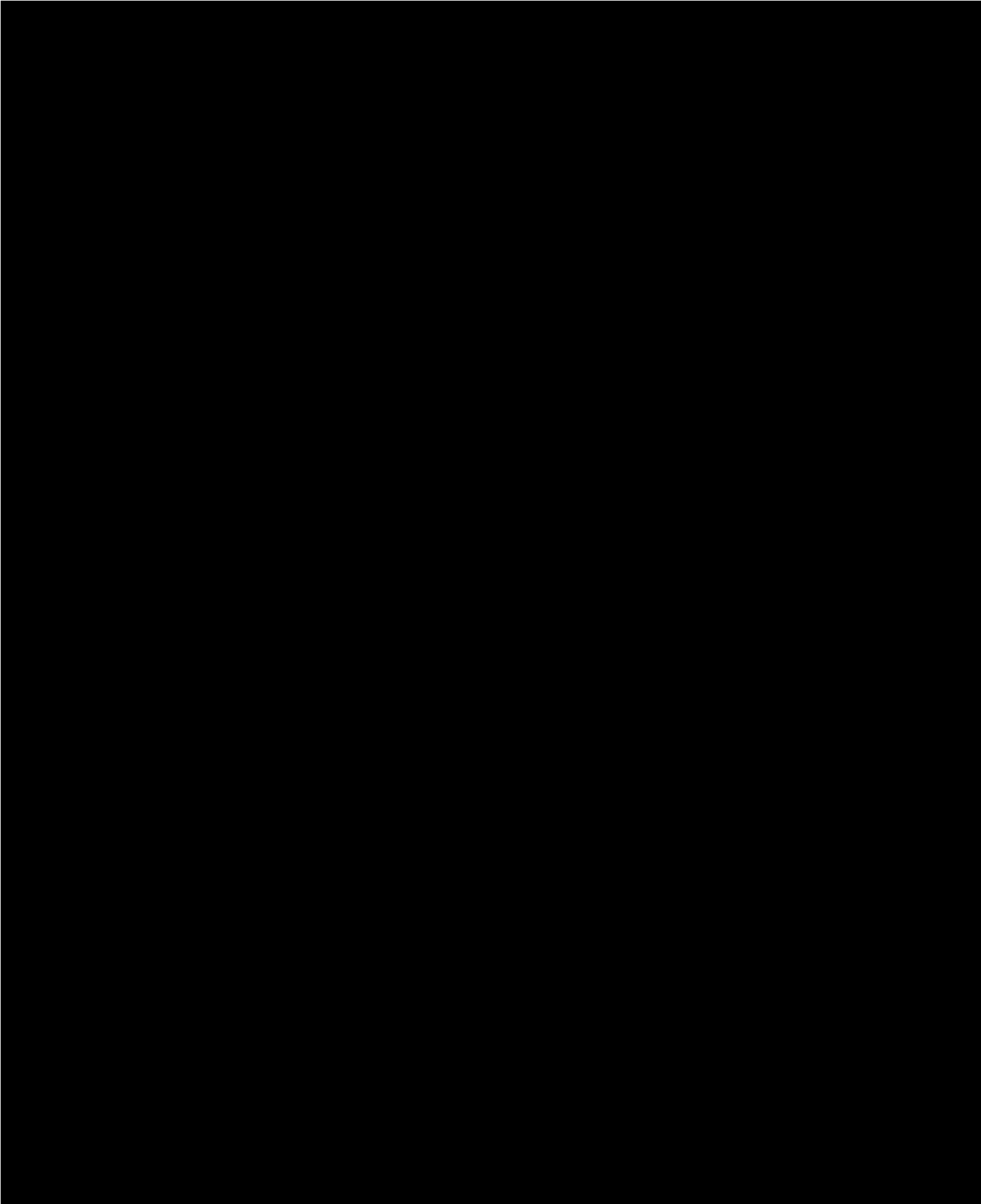


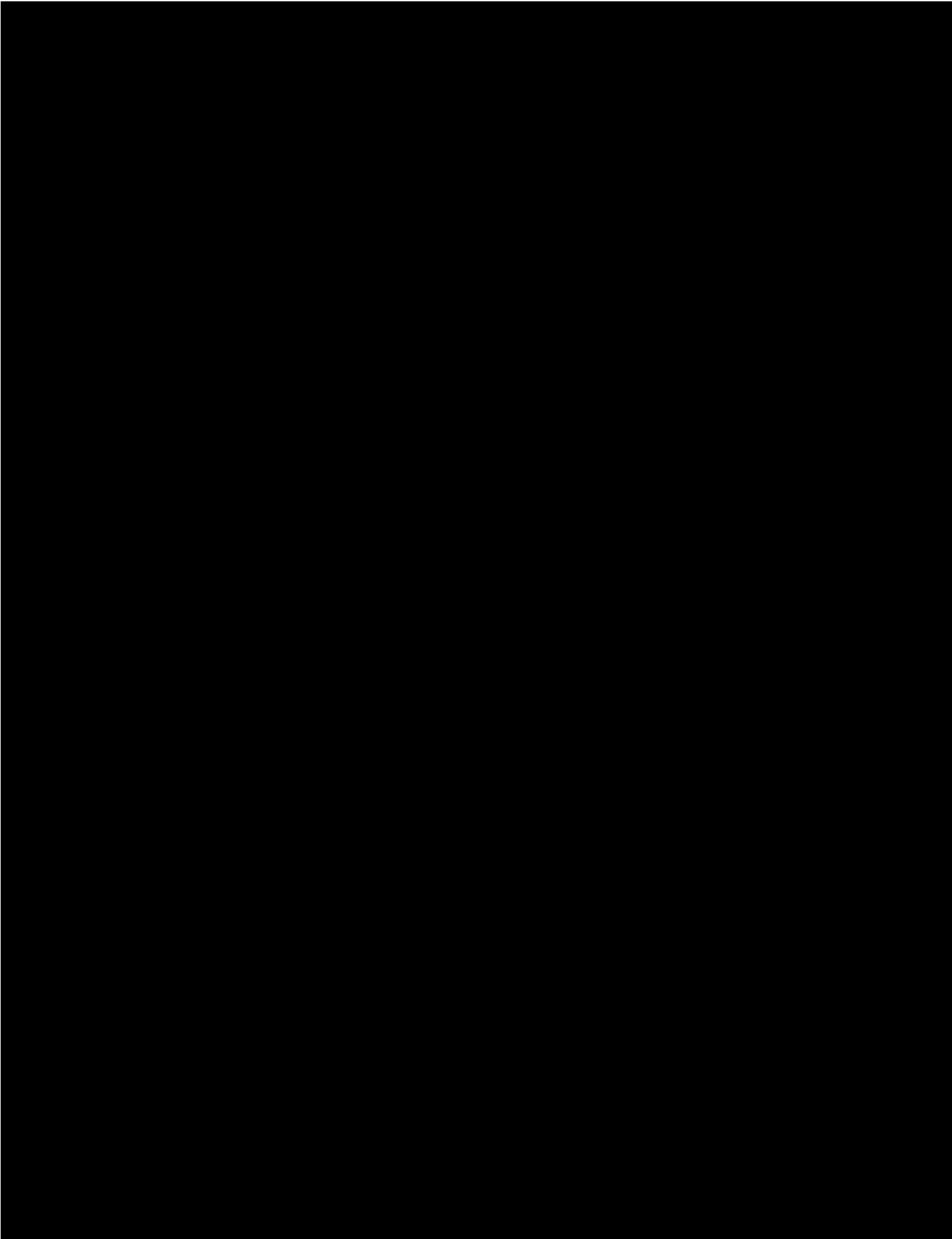


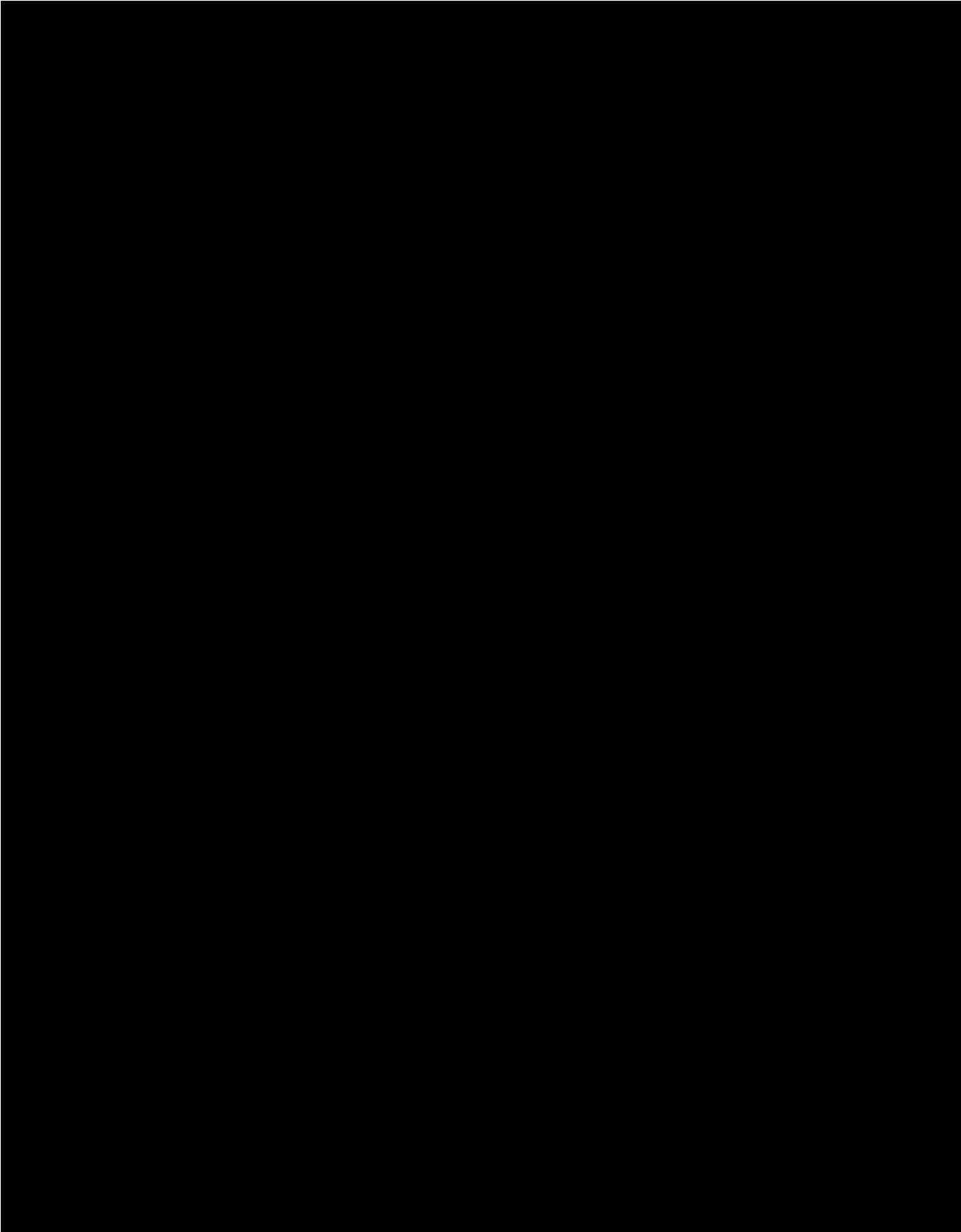


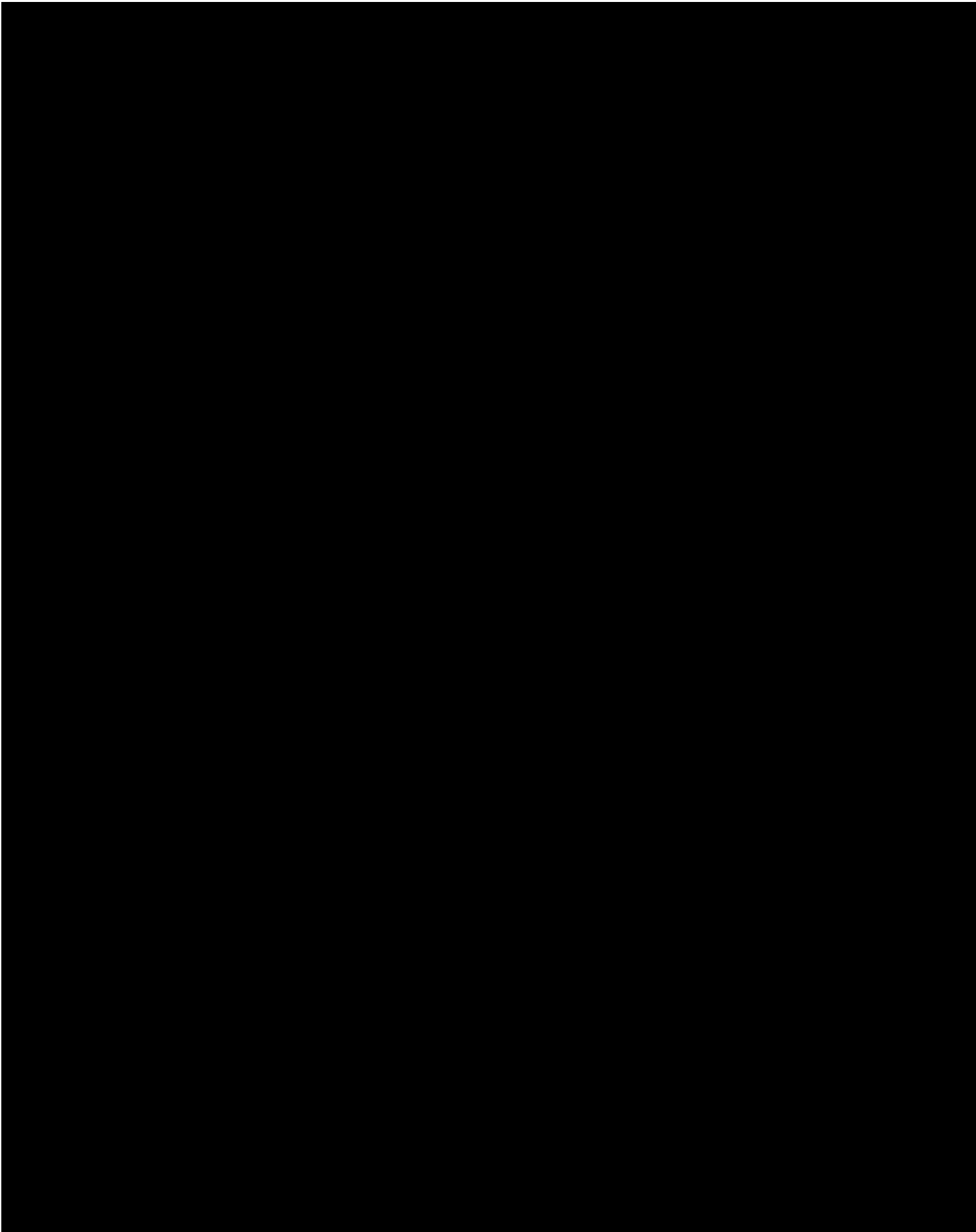


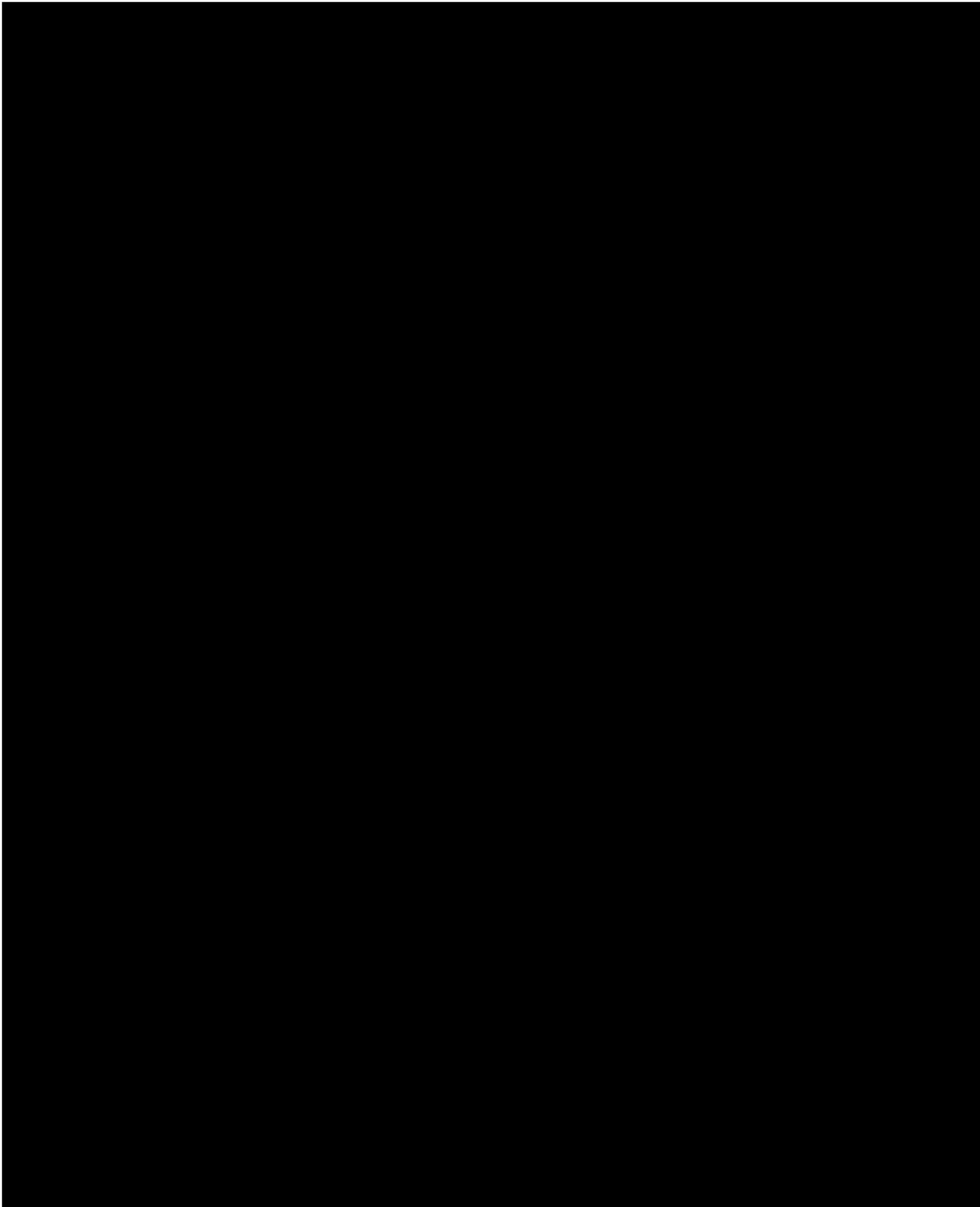


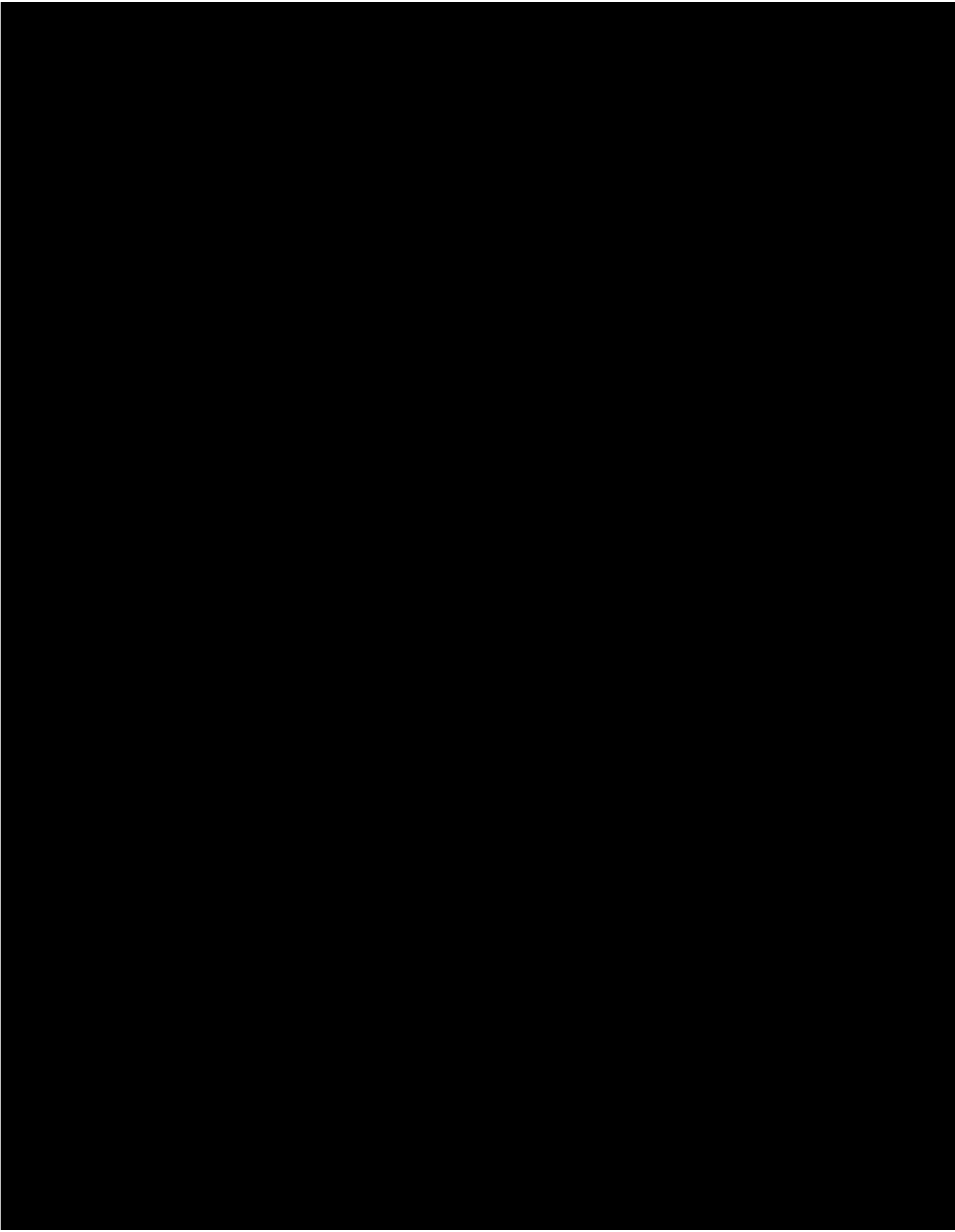


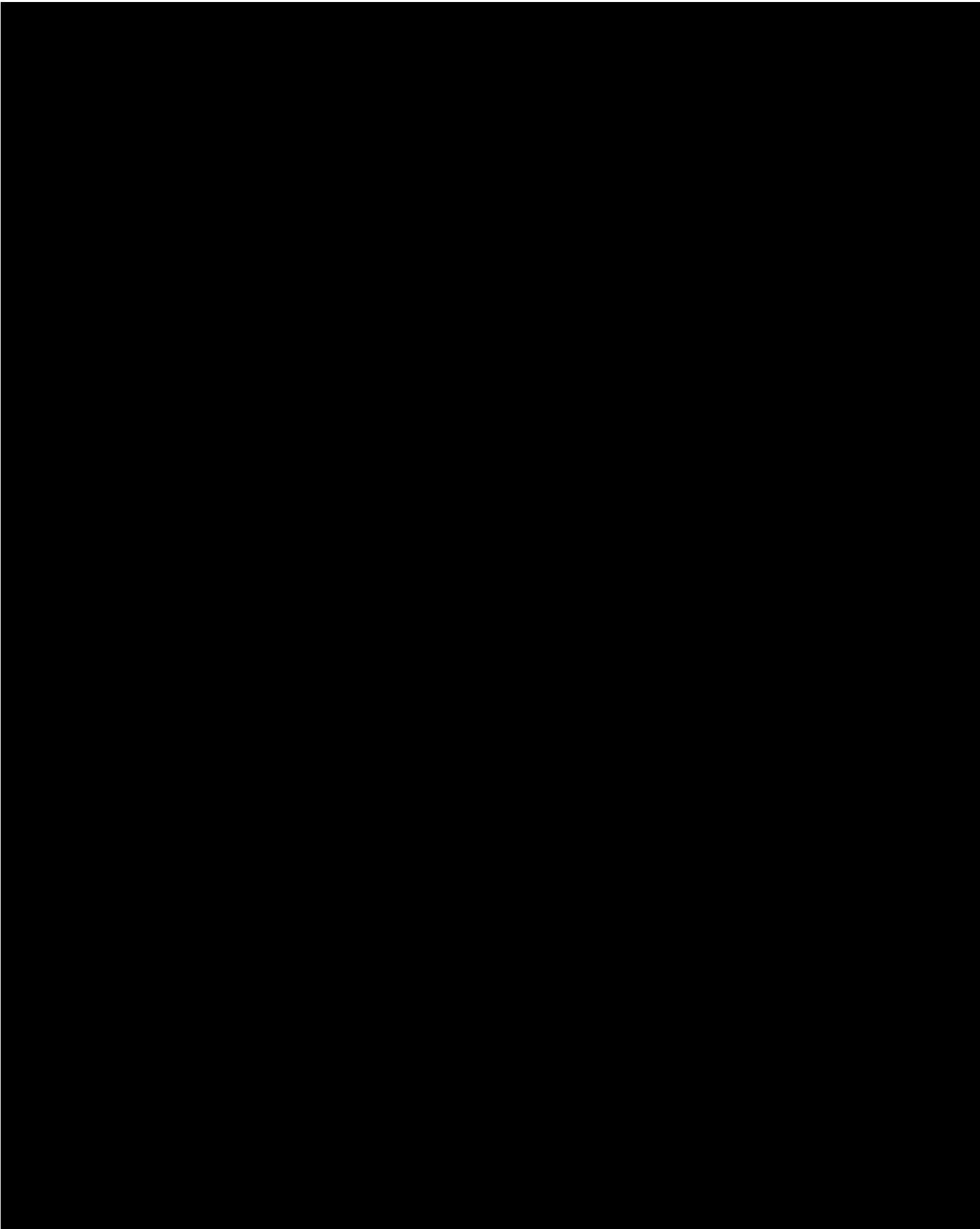


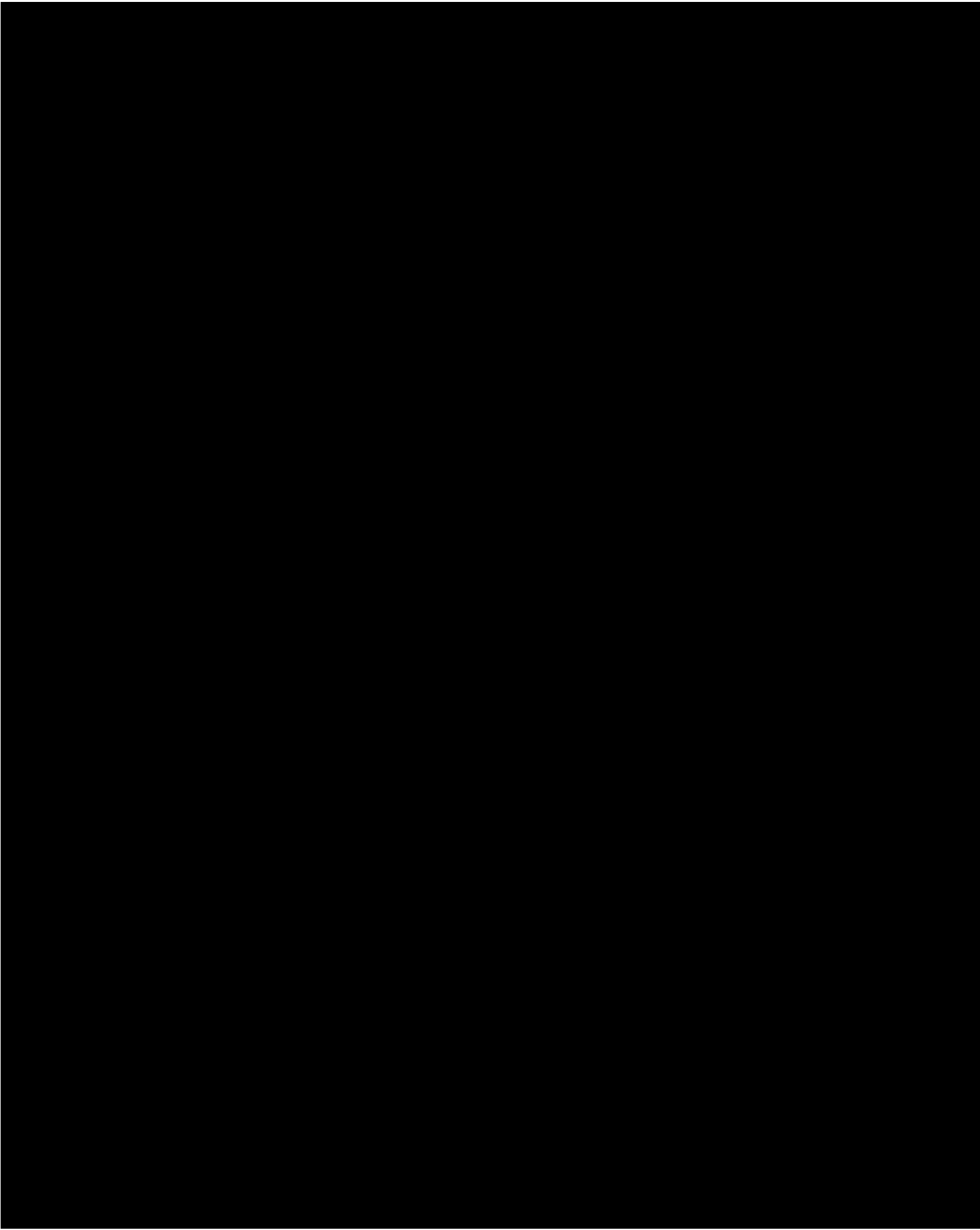


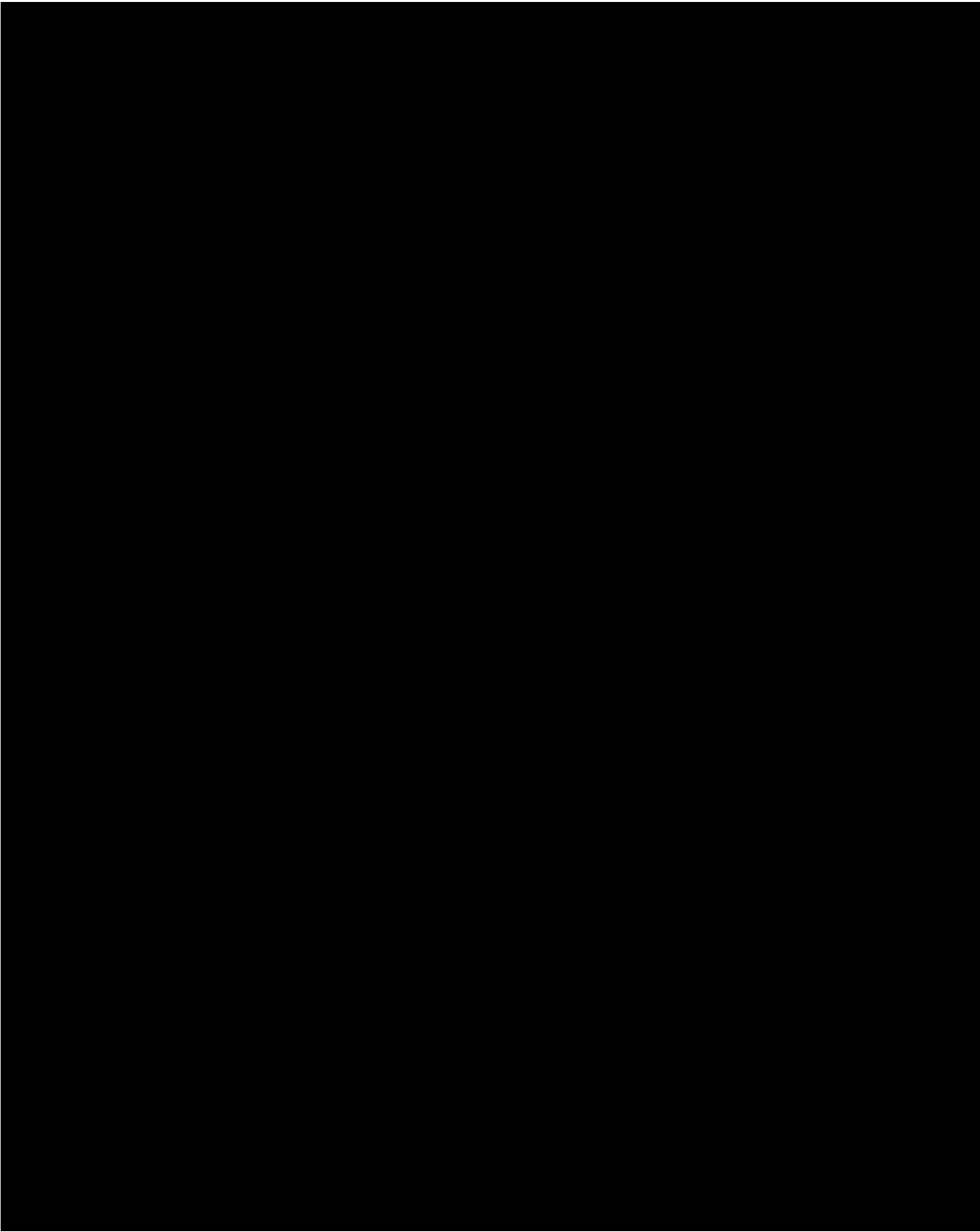


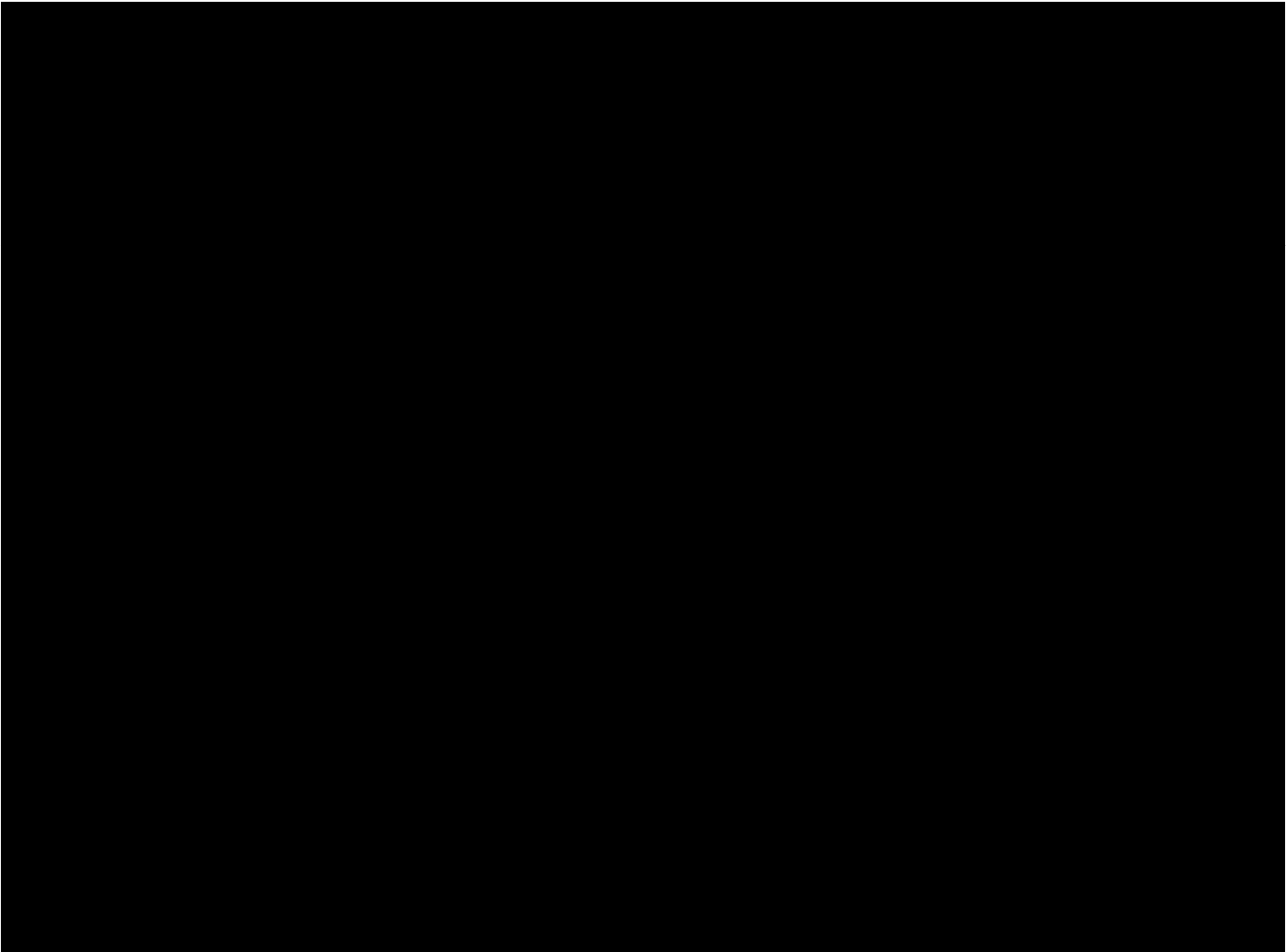




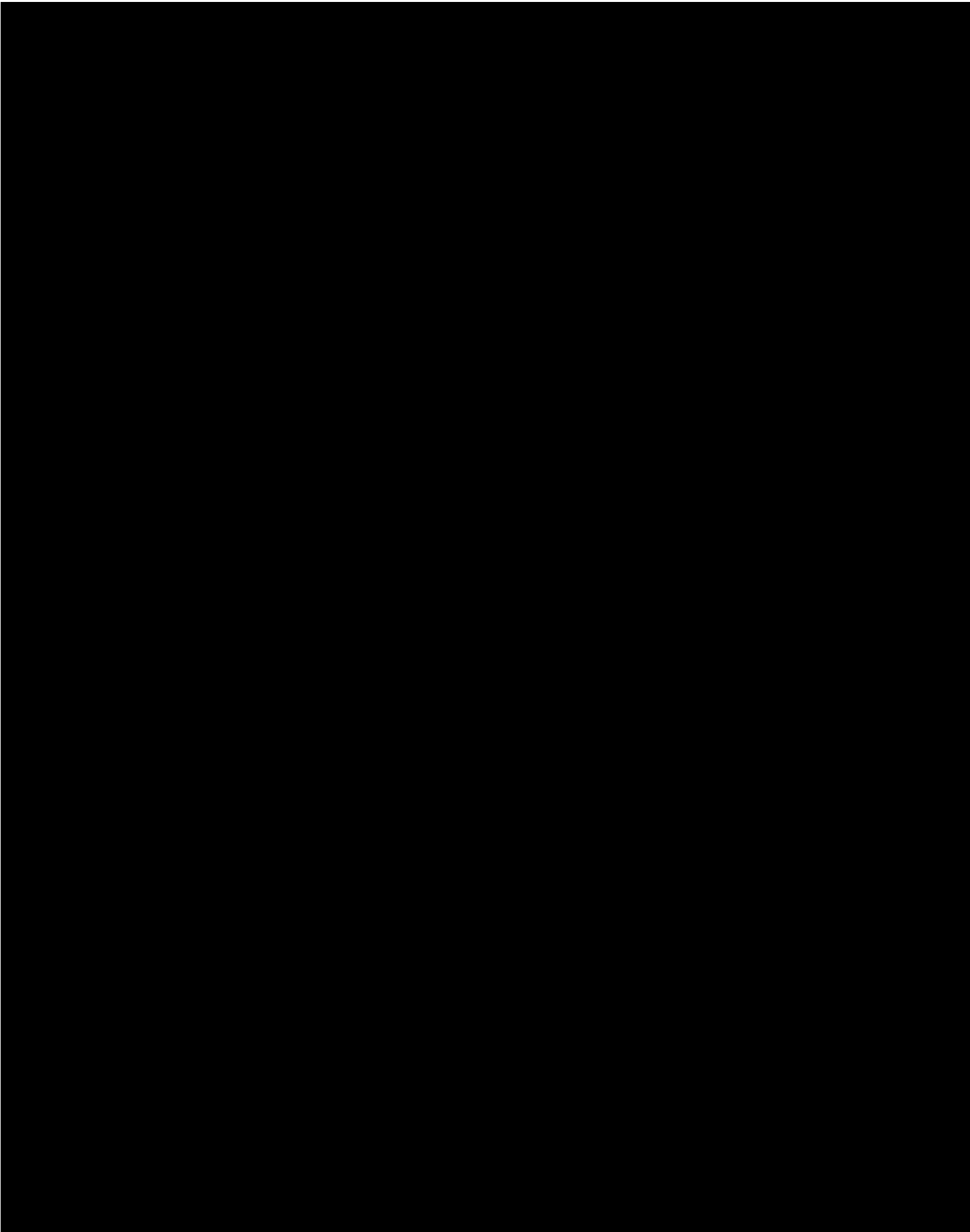


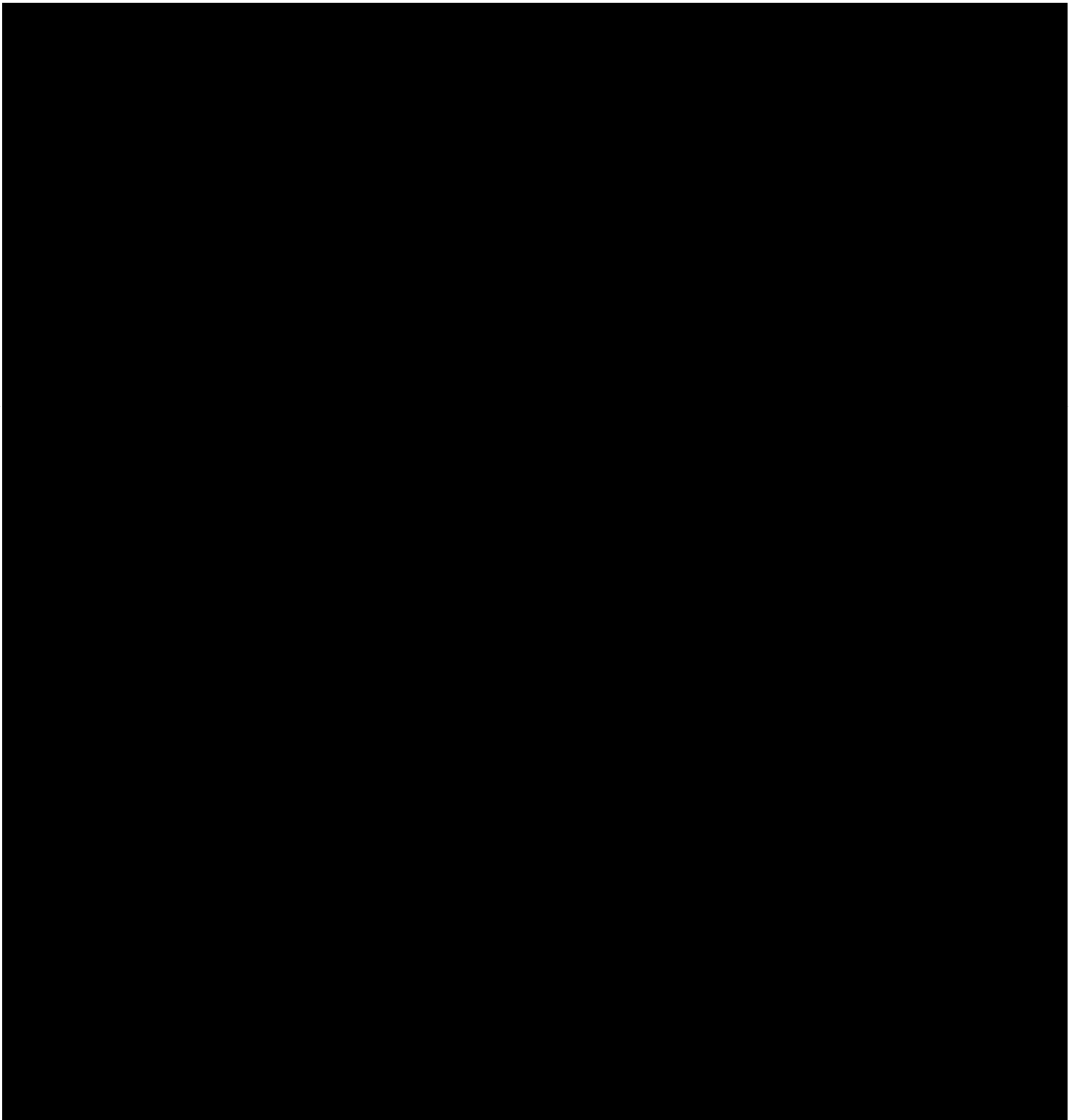




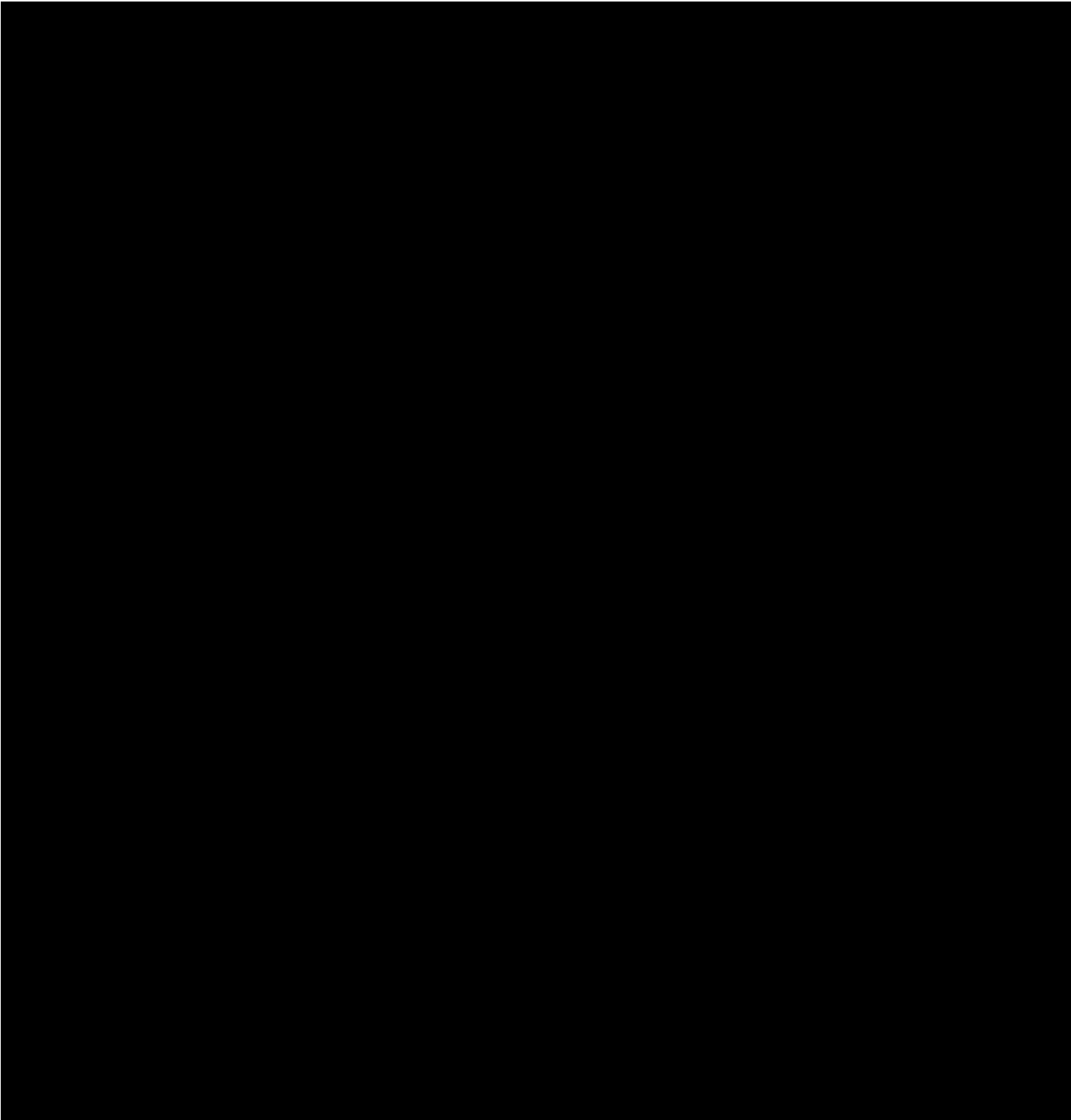


TAB C23

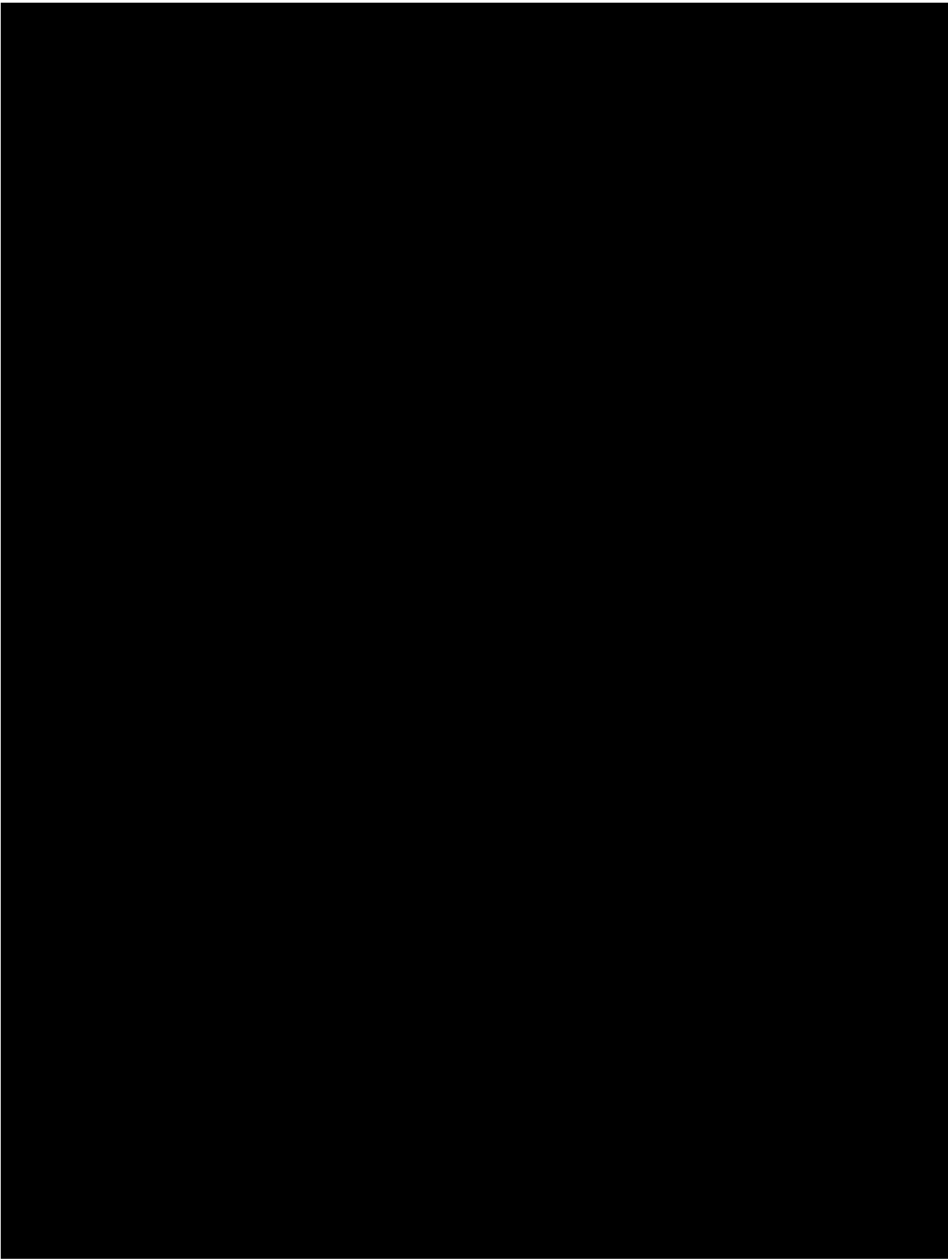


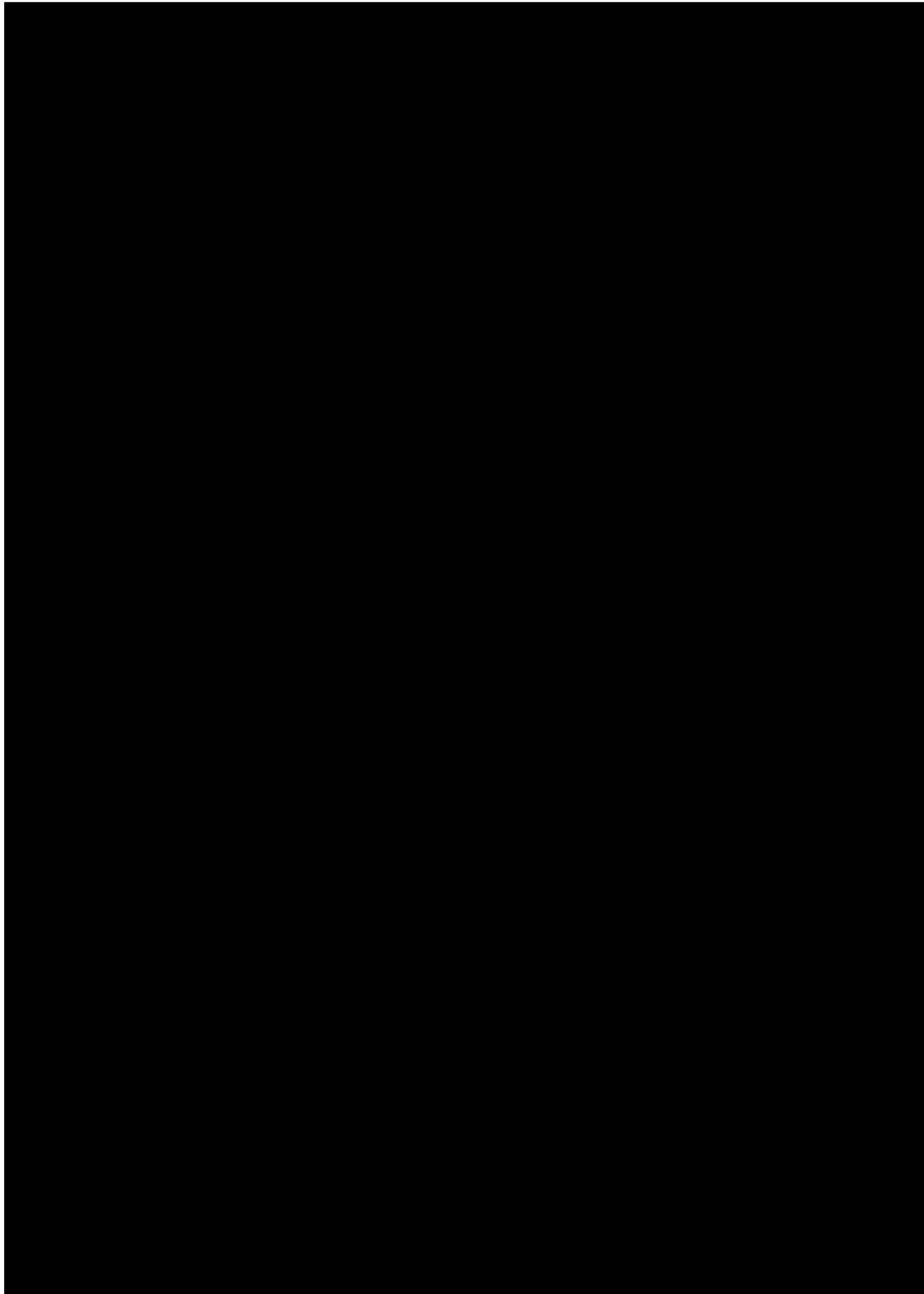


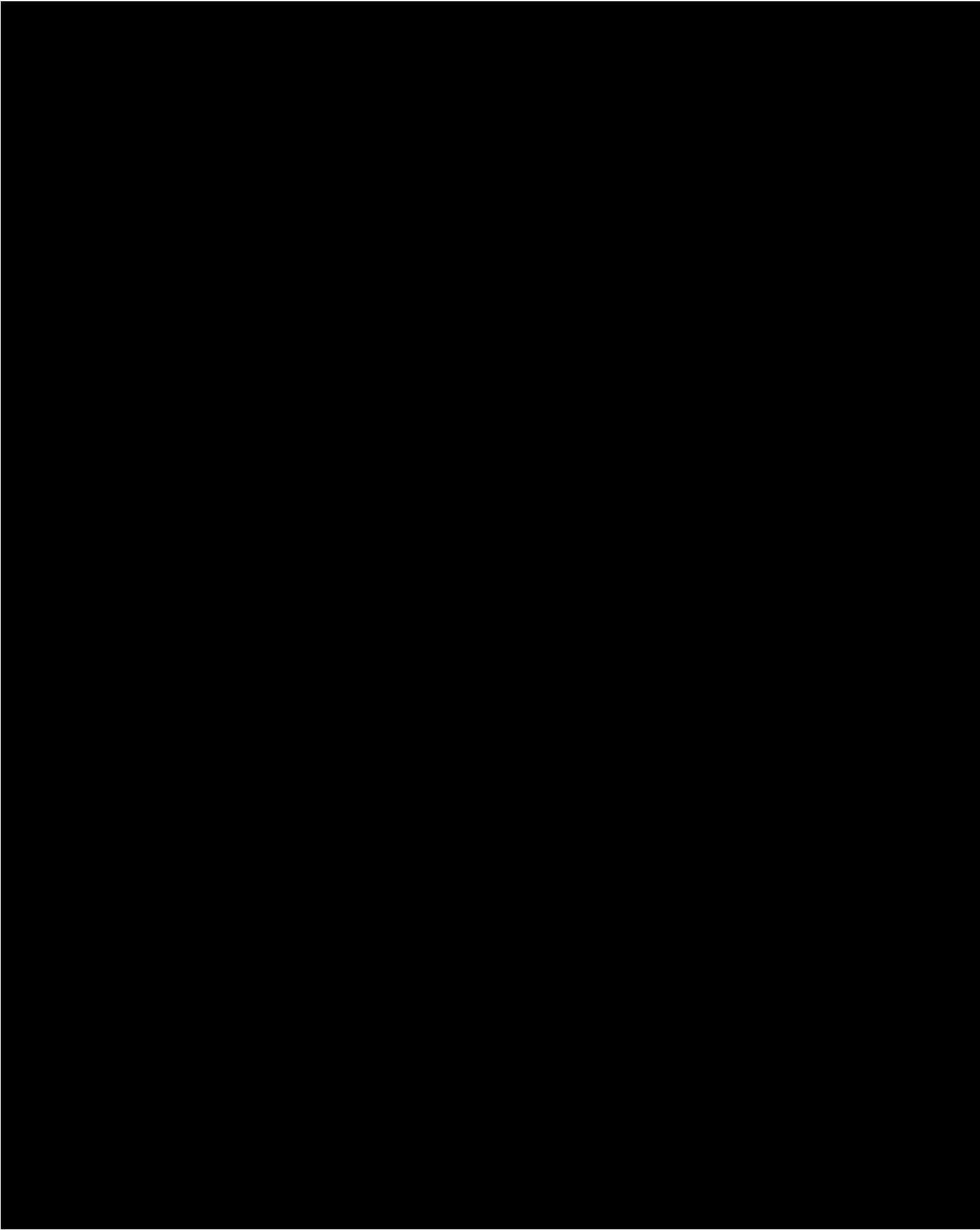
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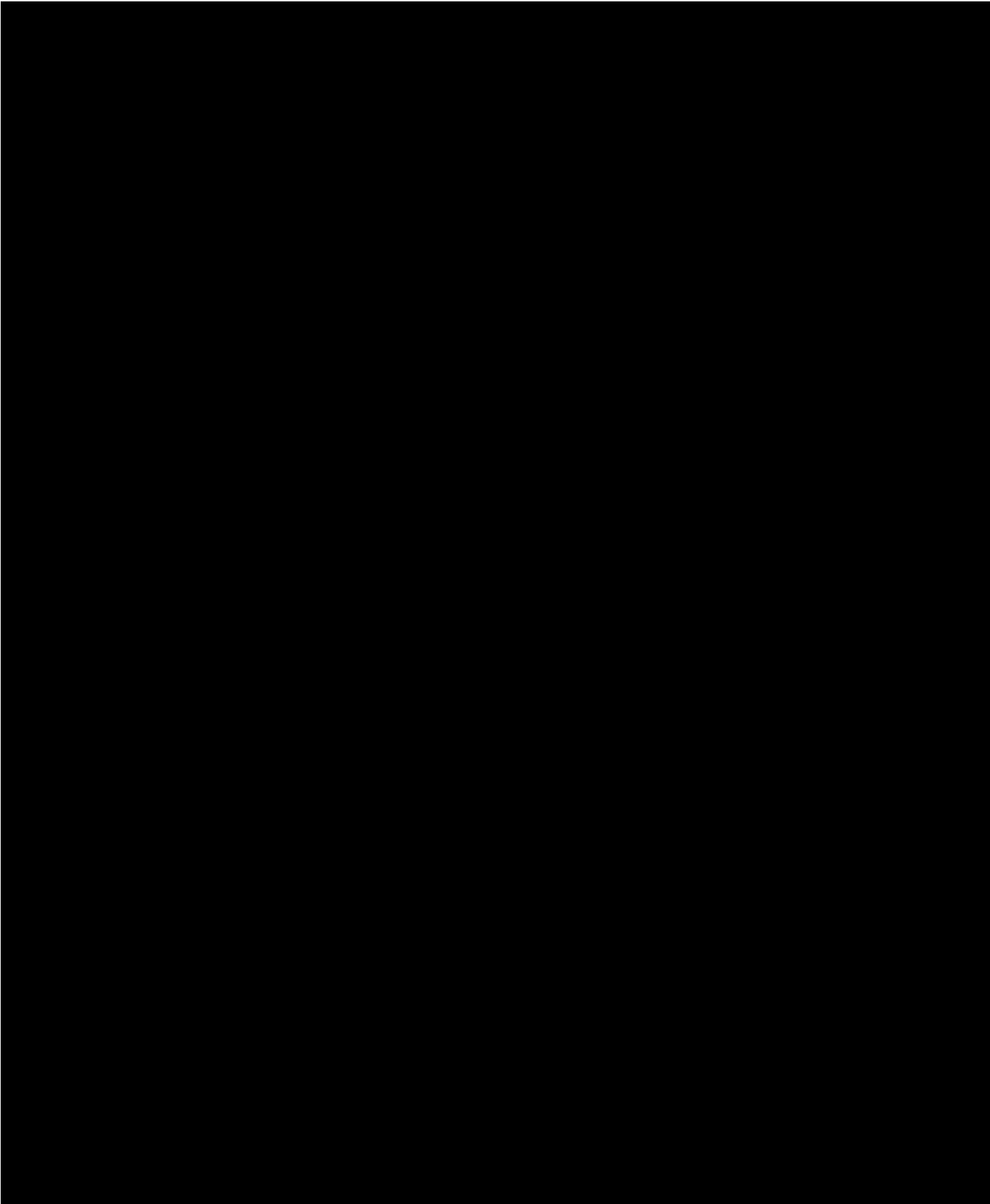


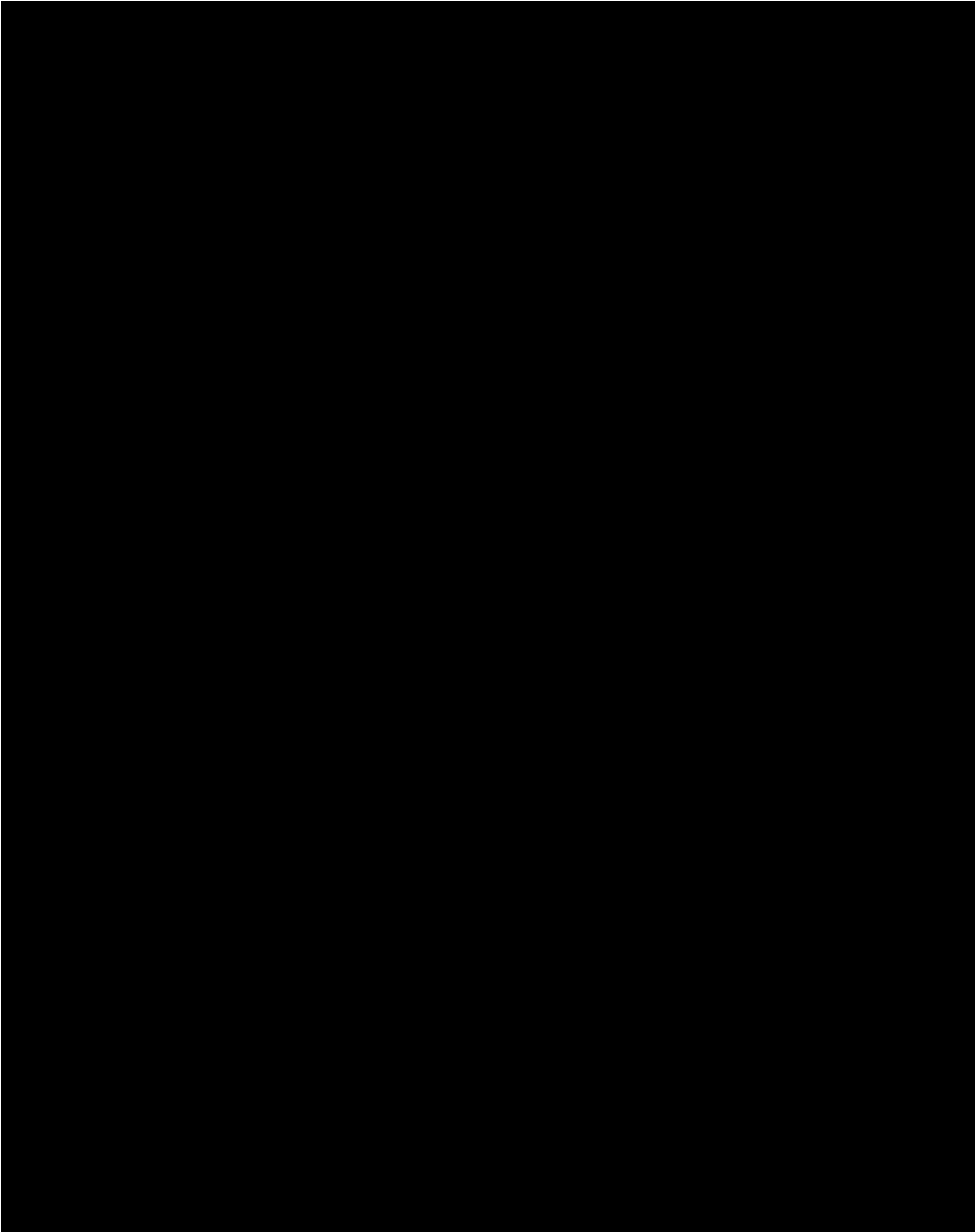
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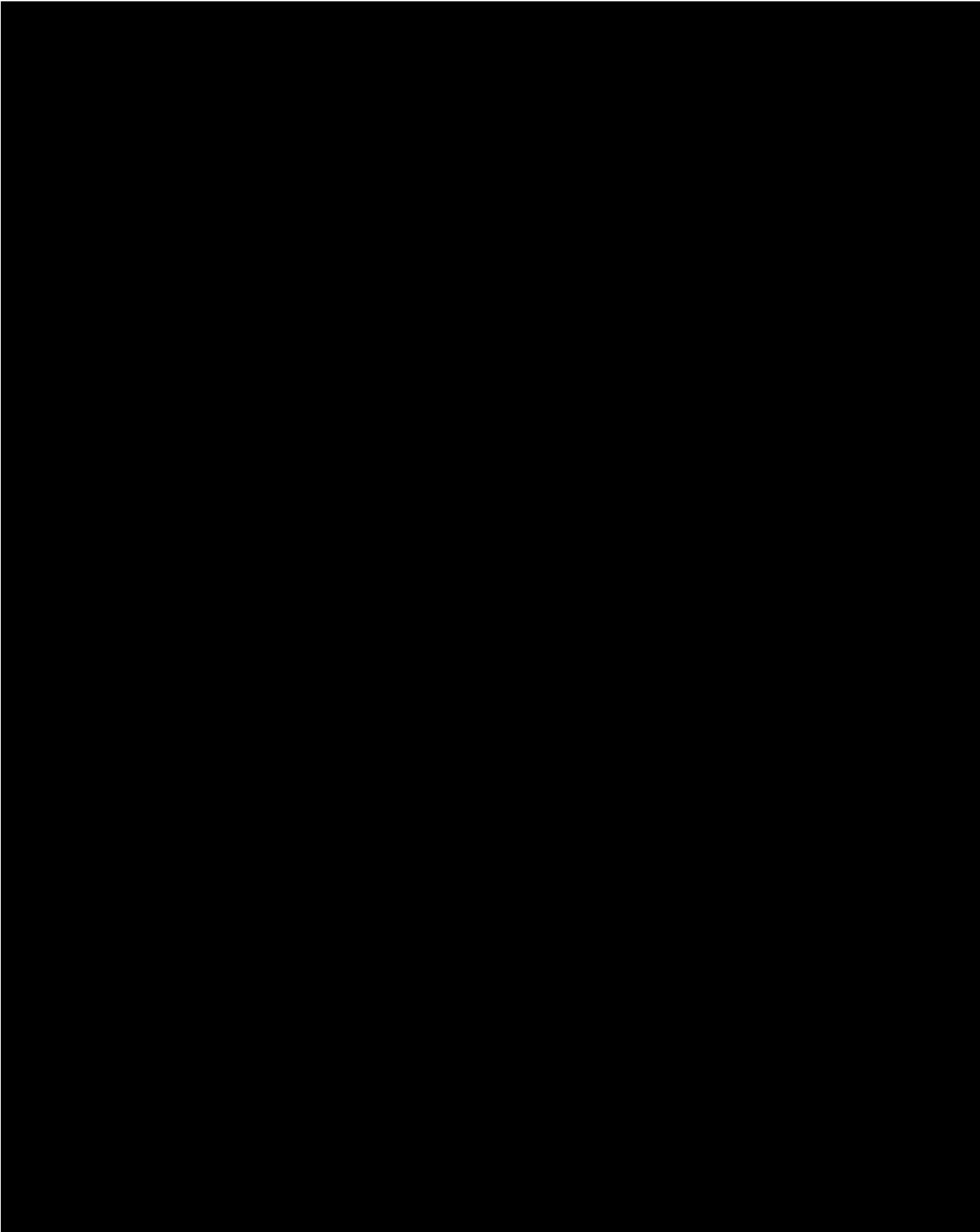


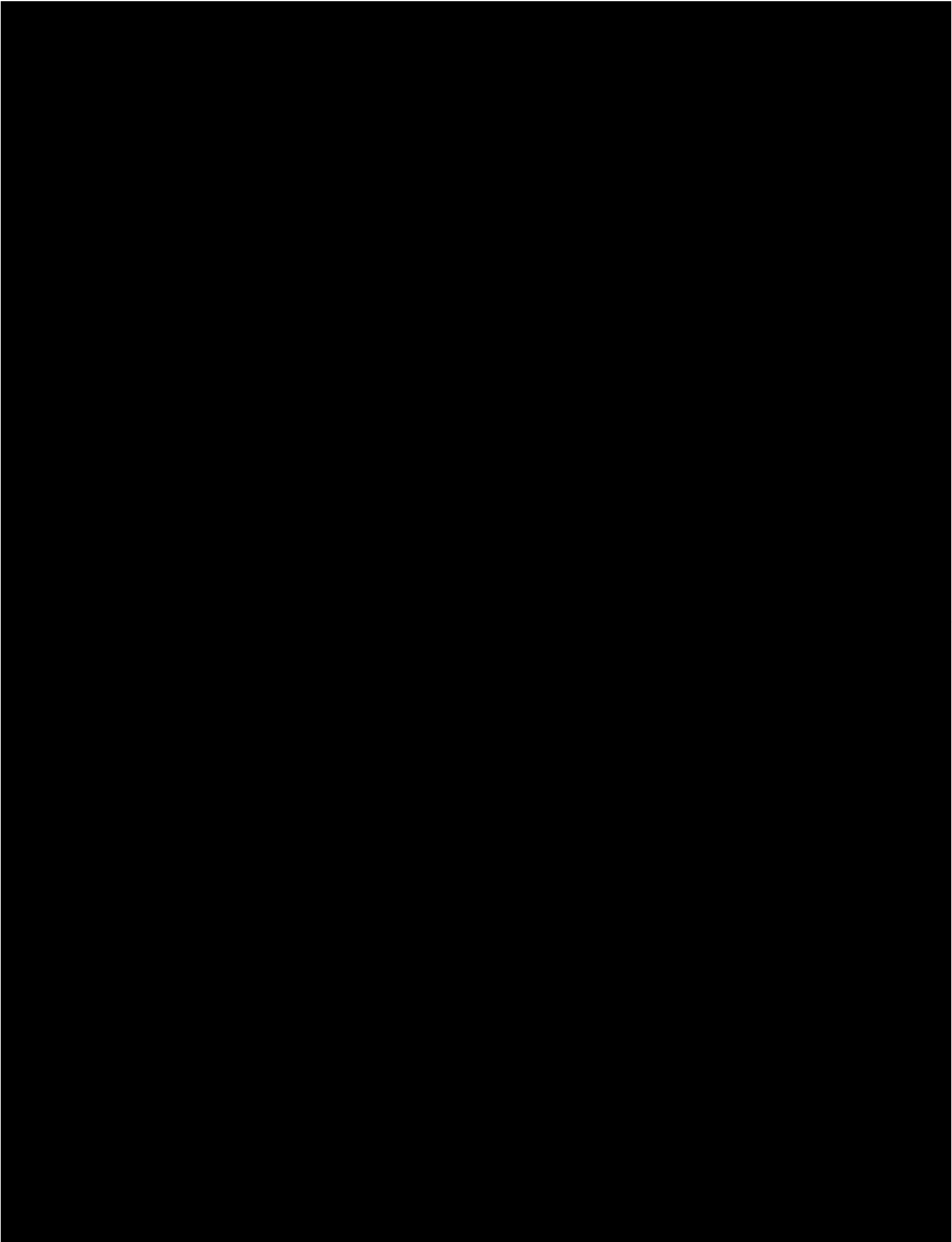


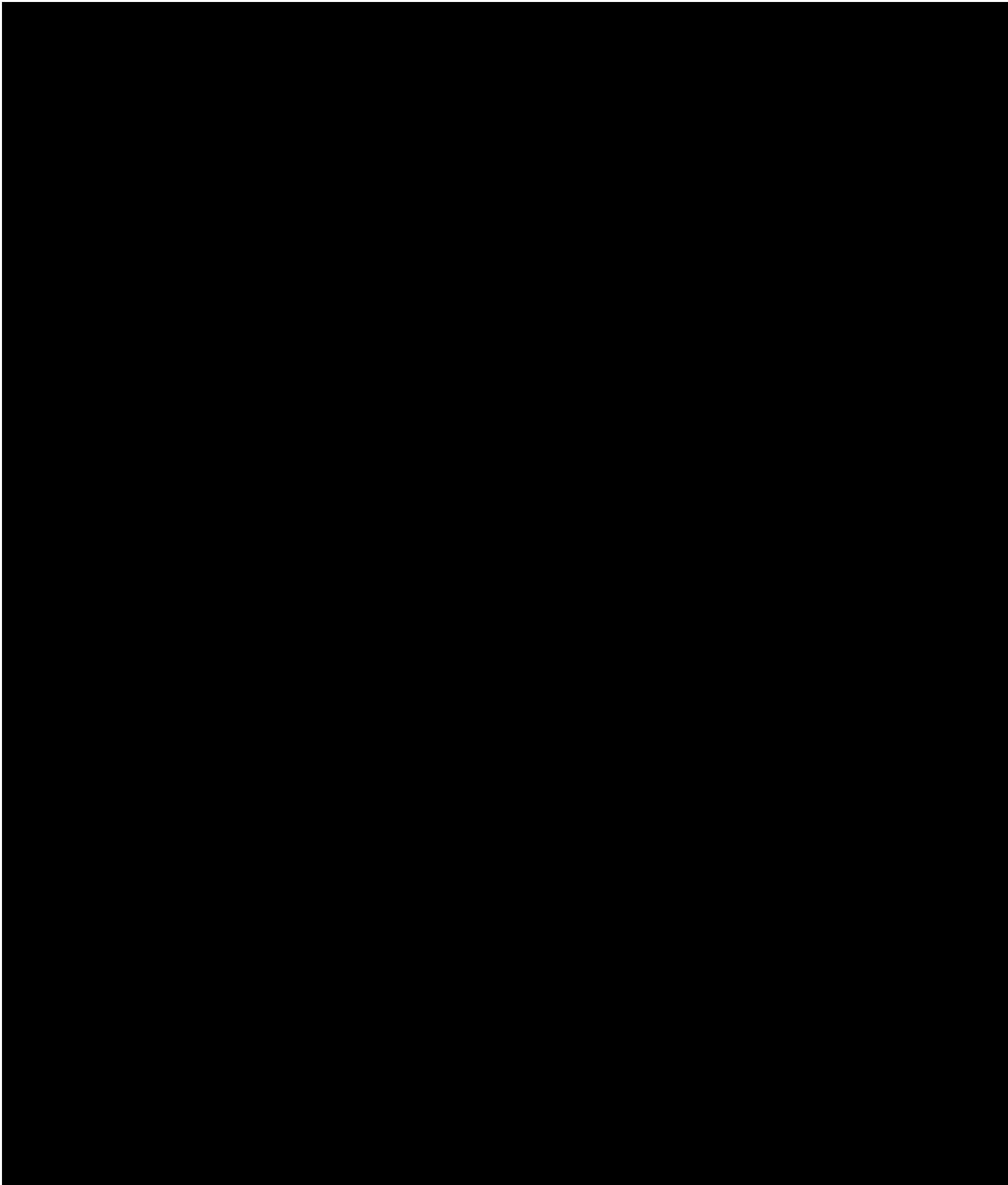


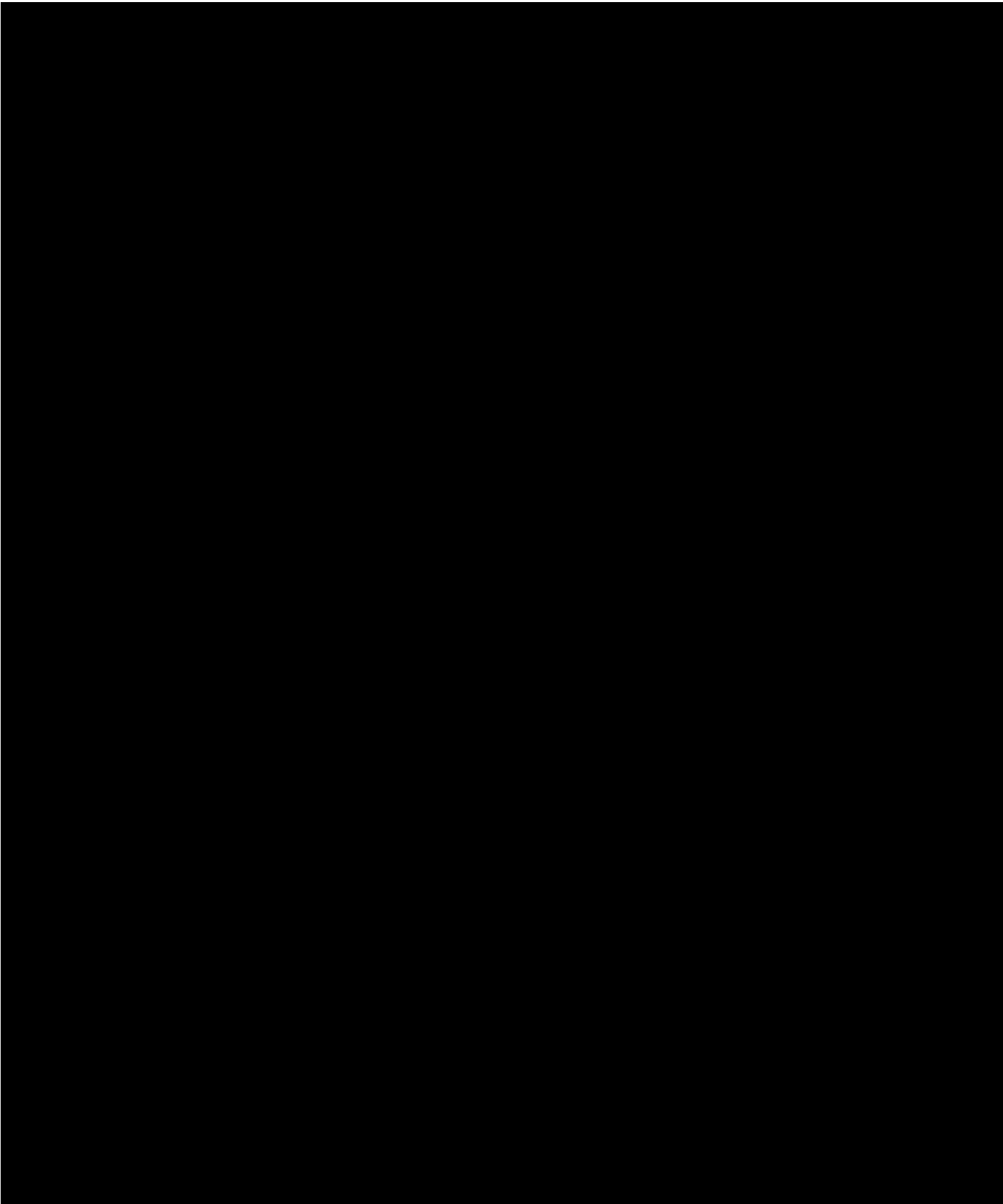




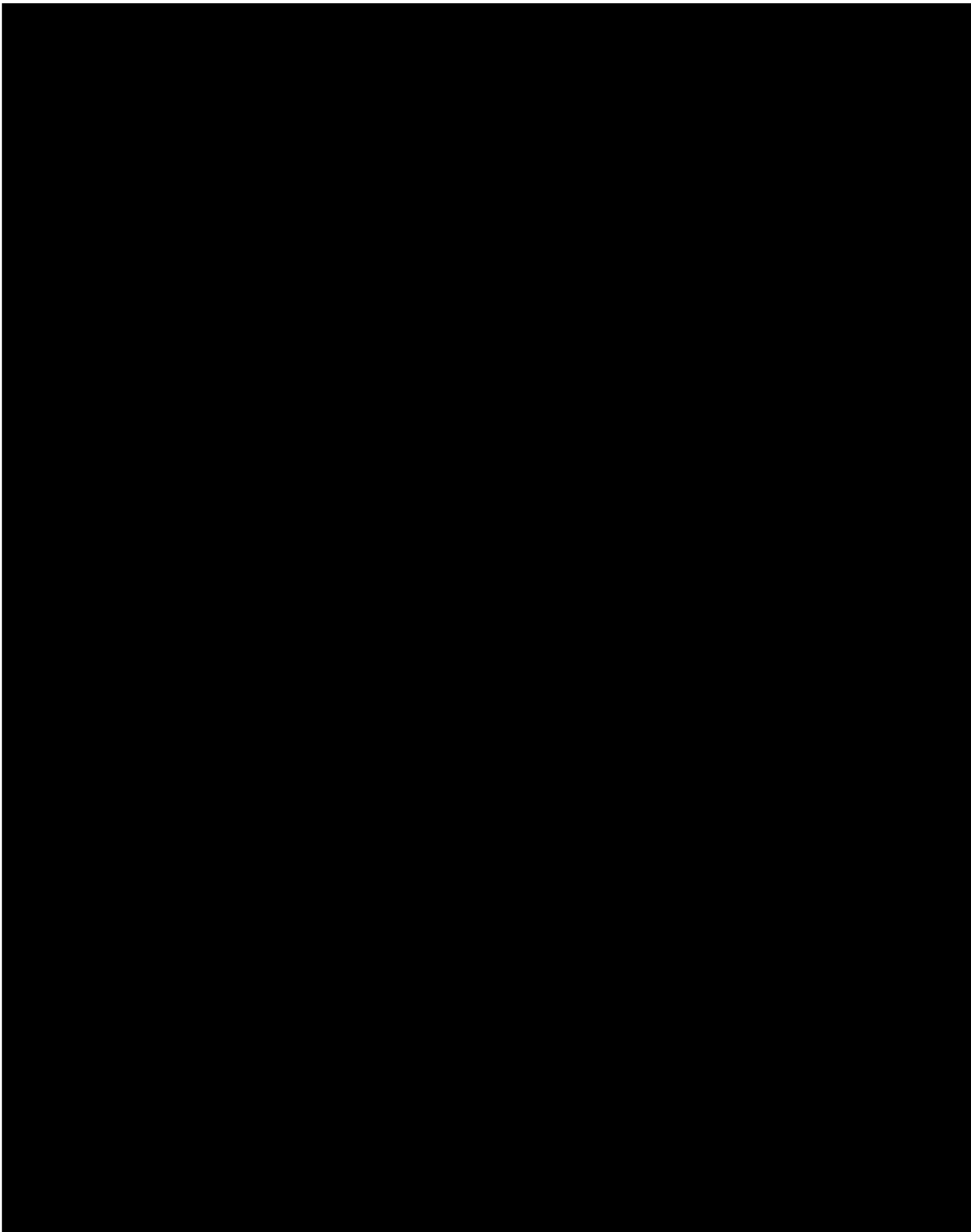


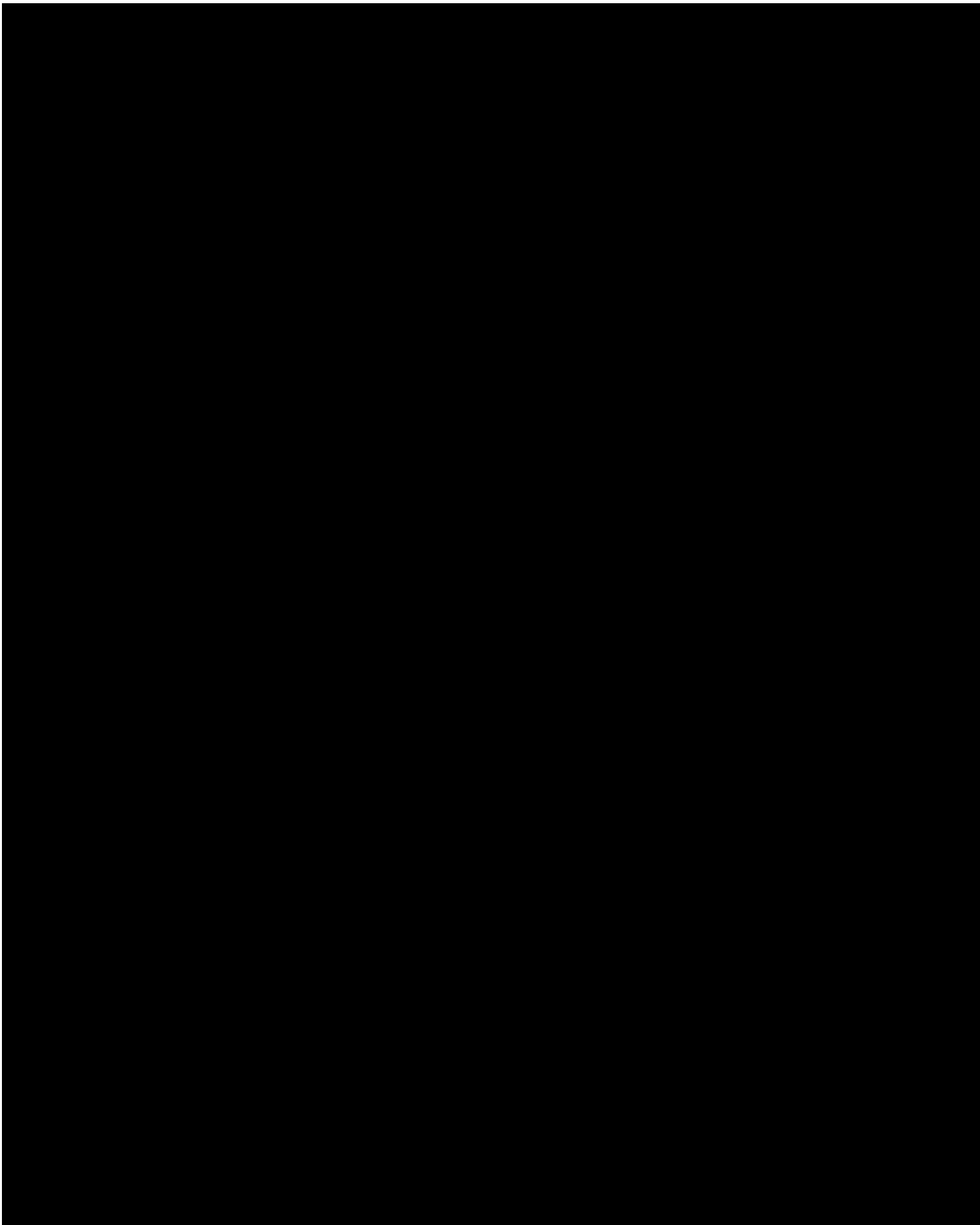


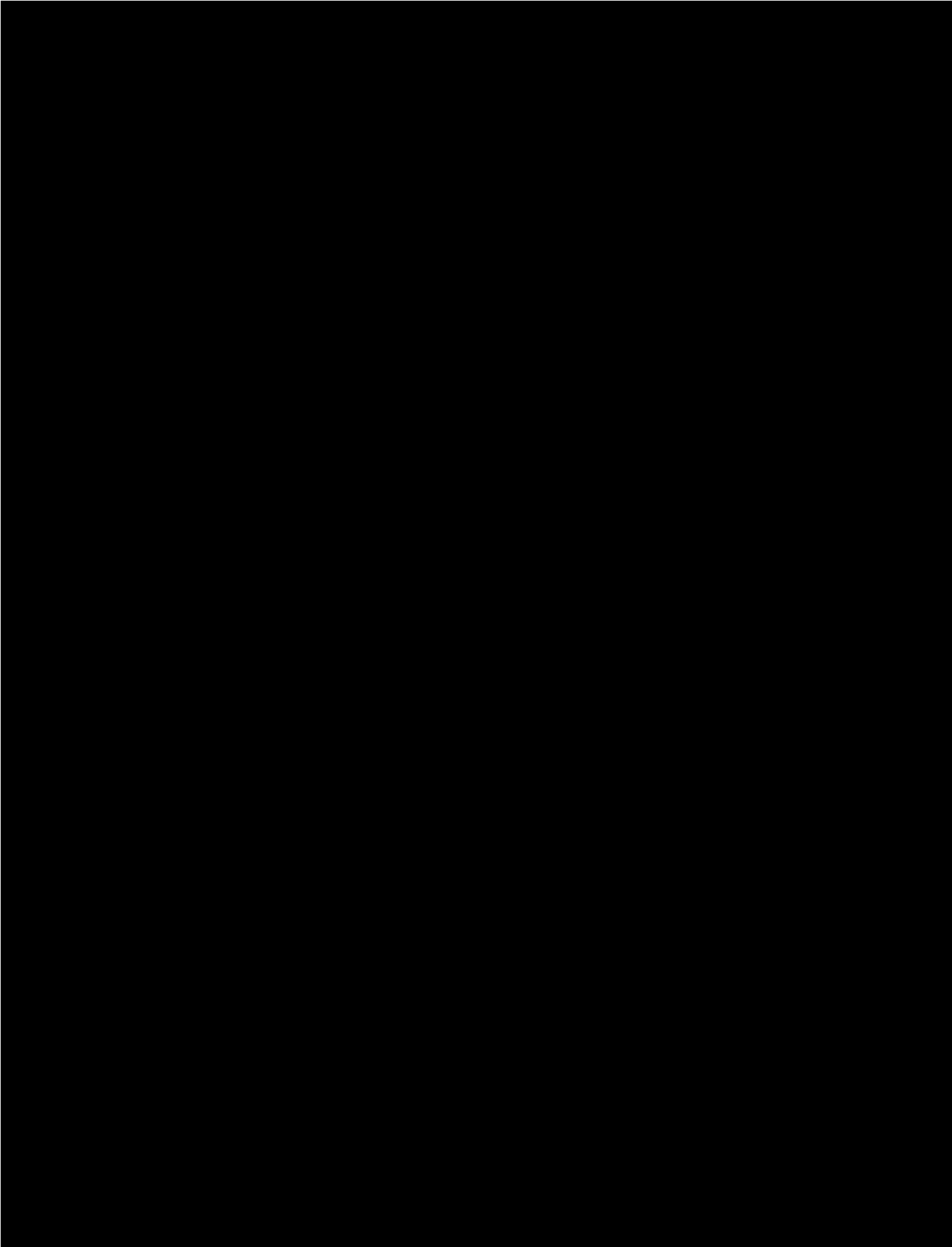


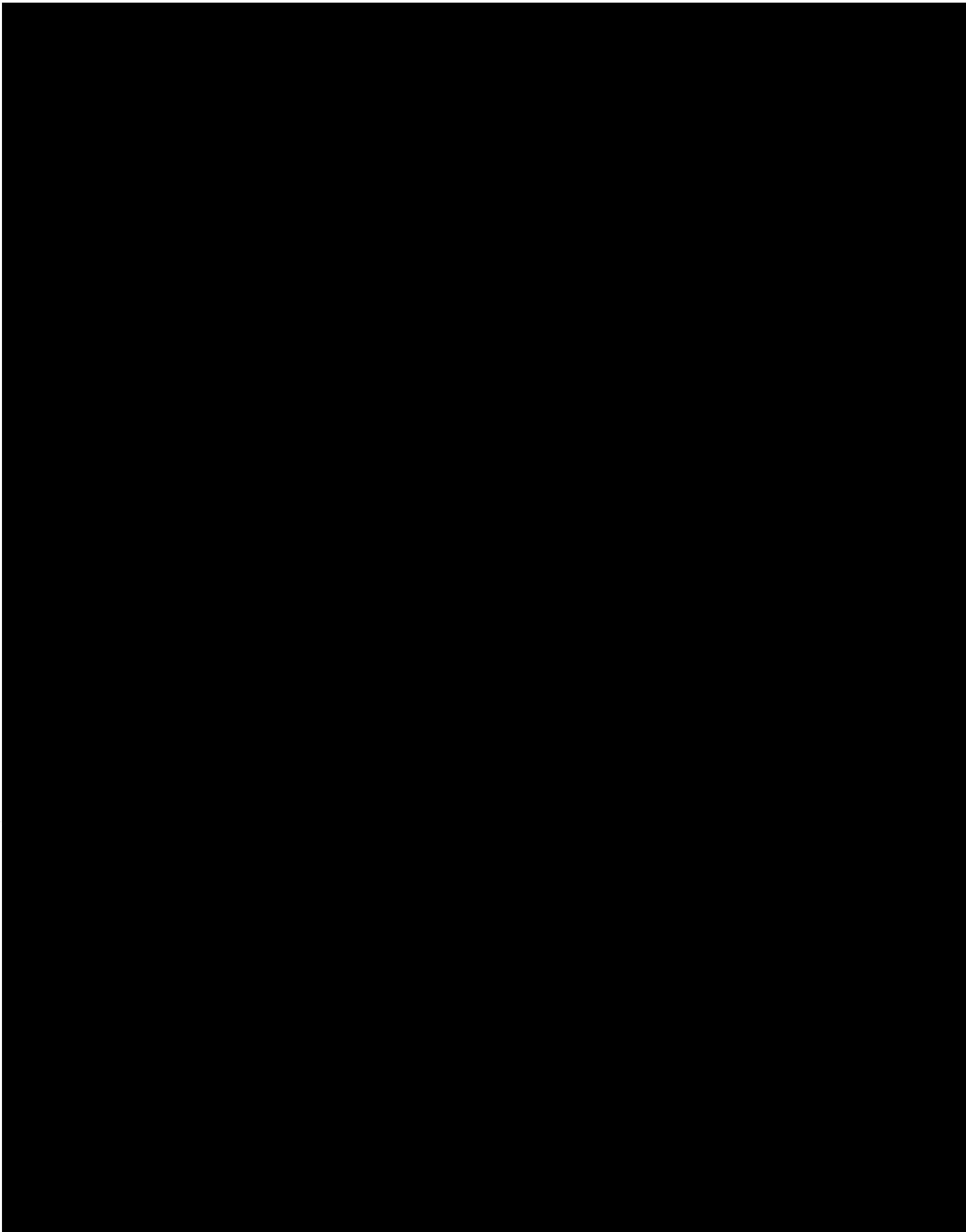


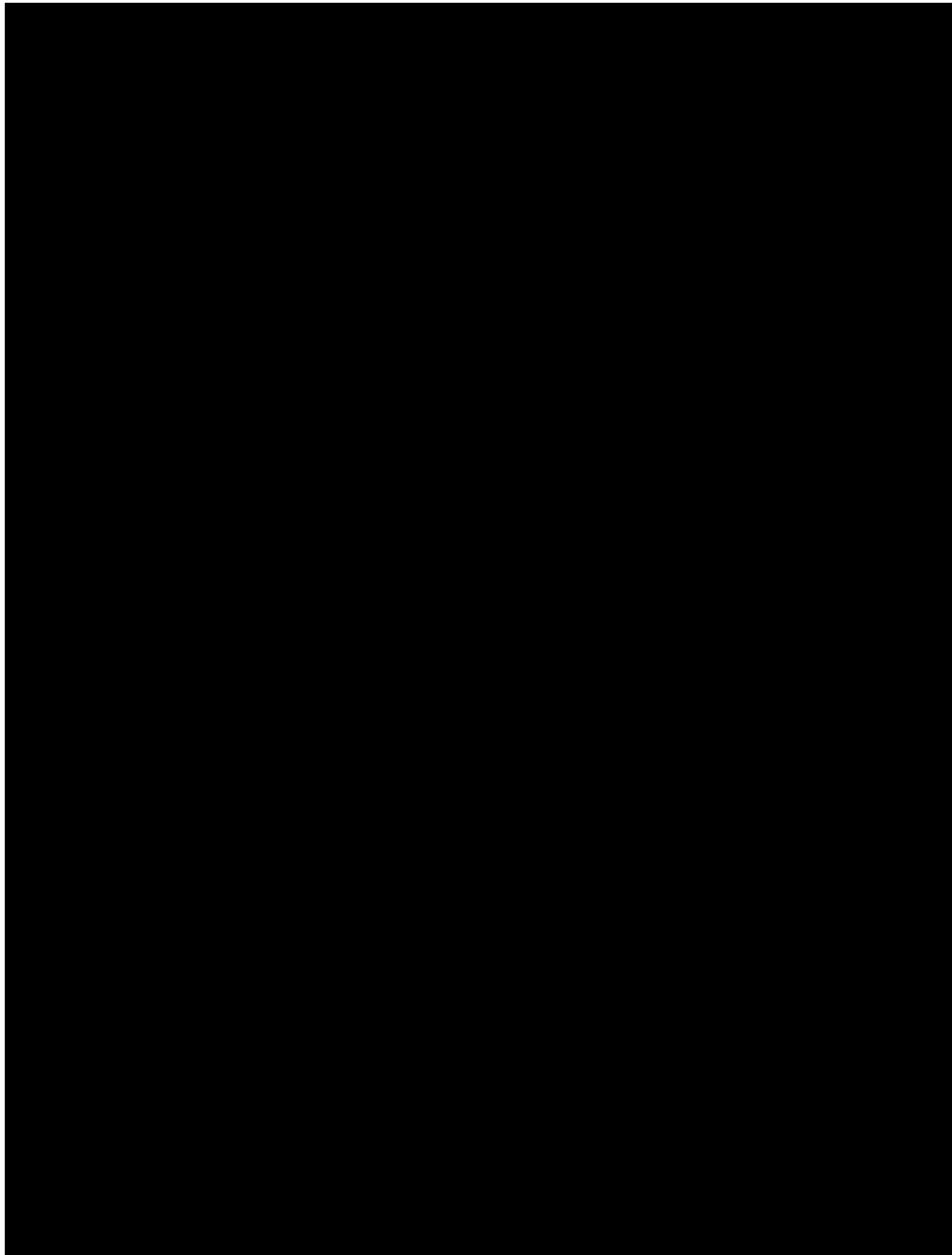
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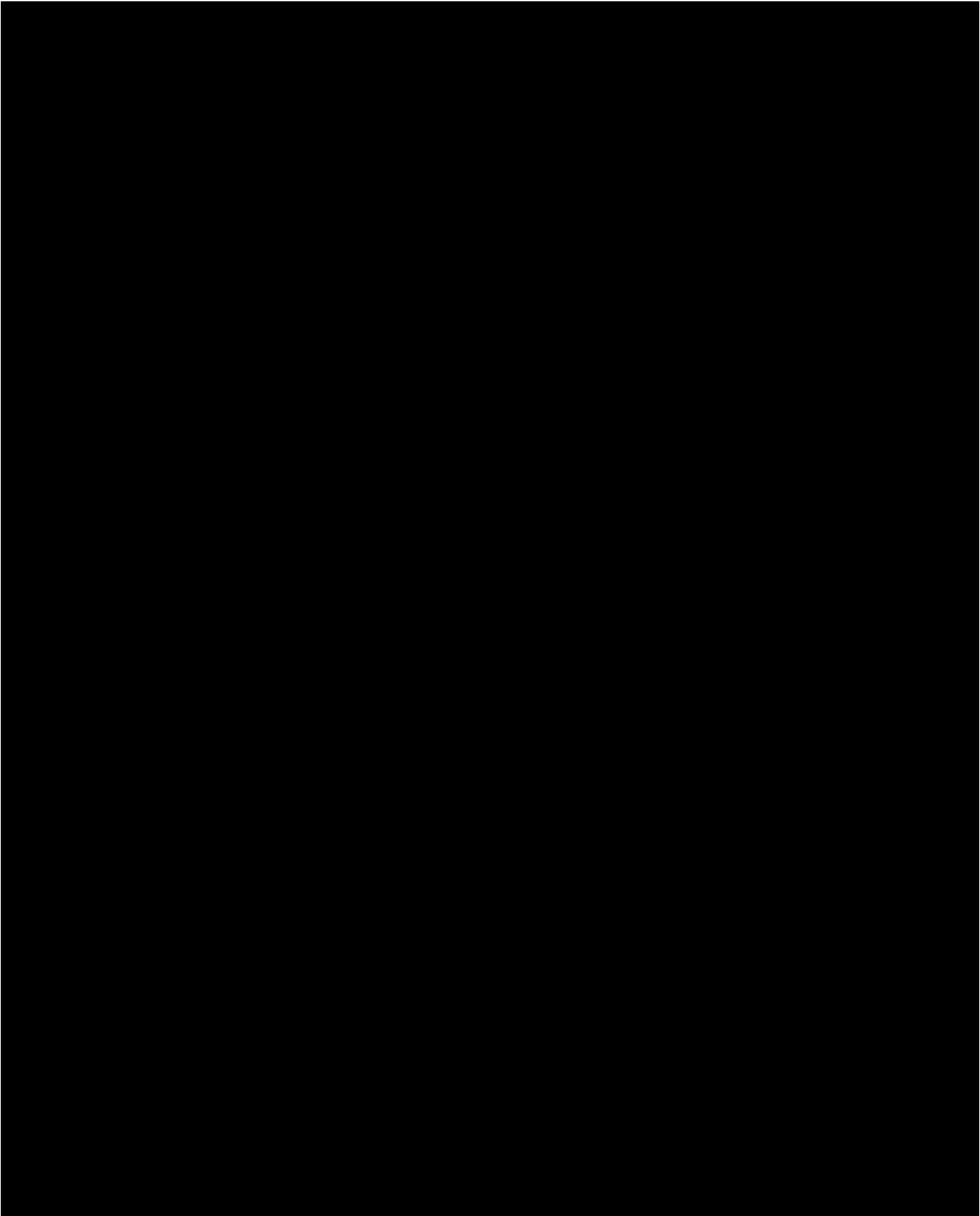


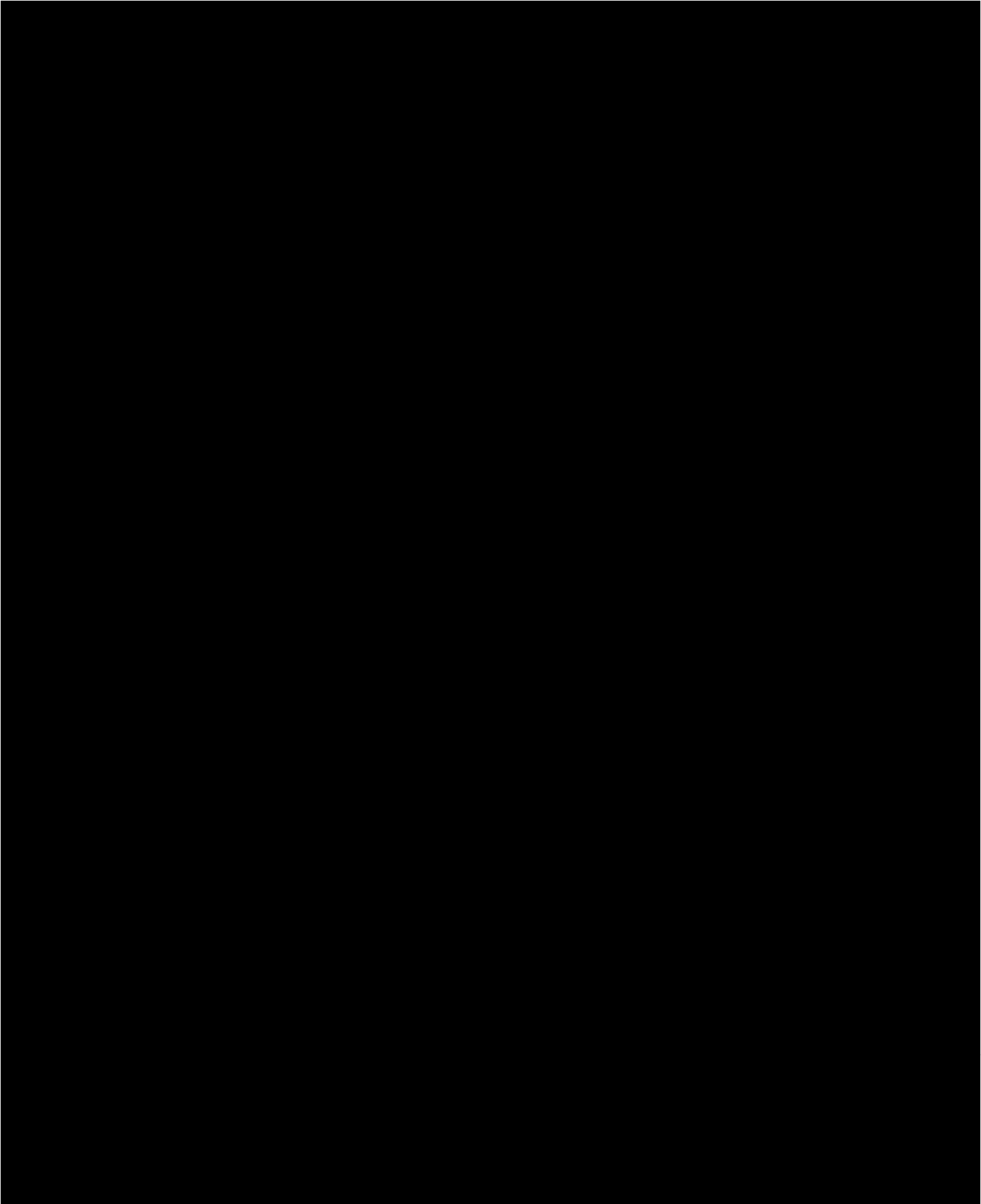


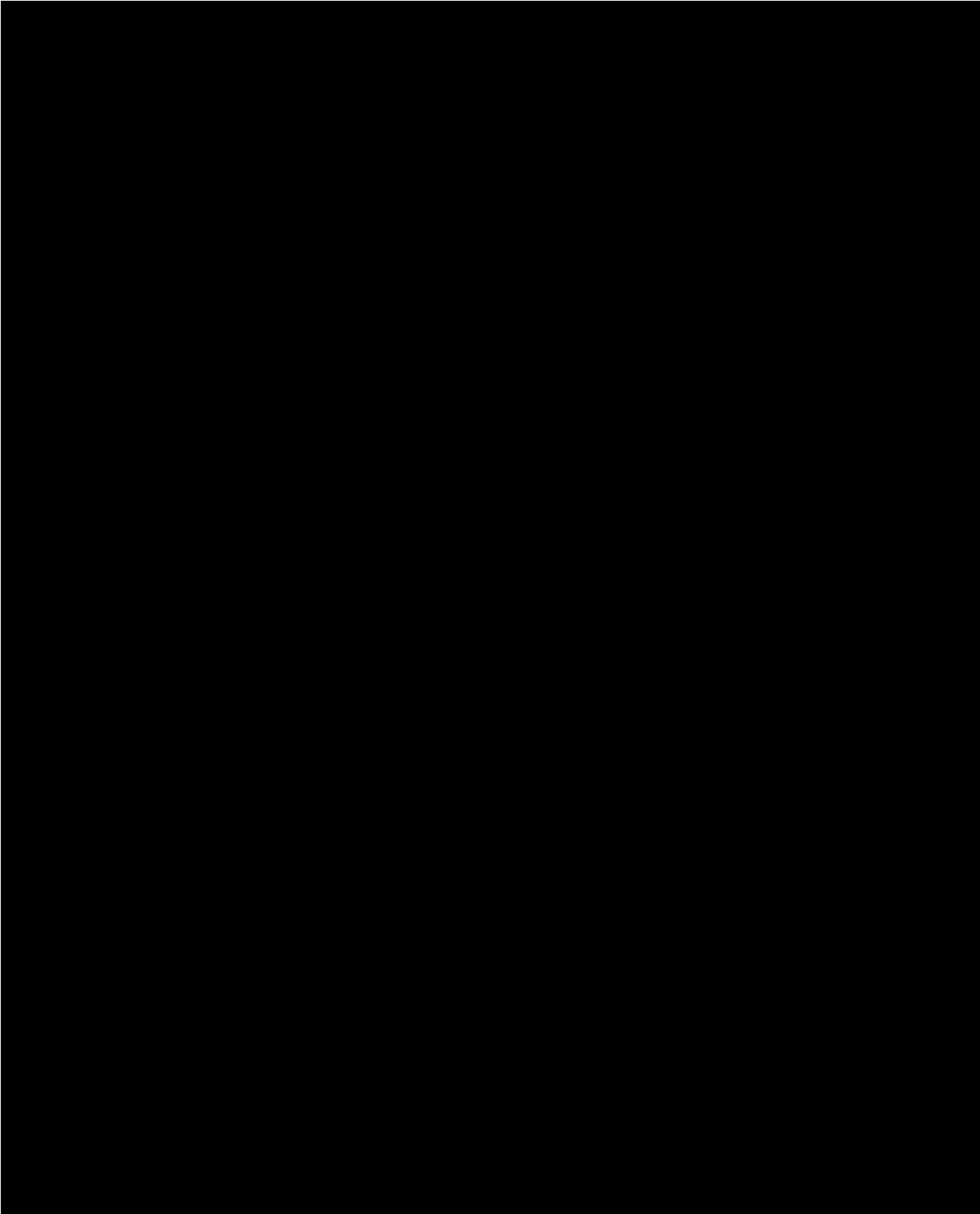


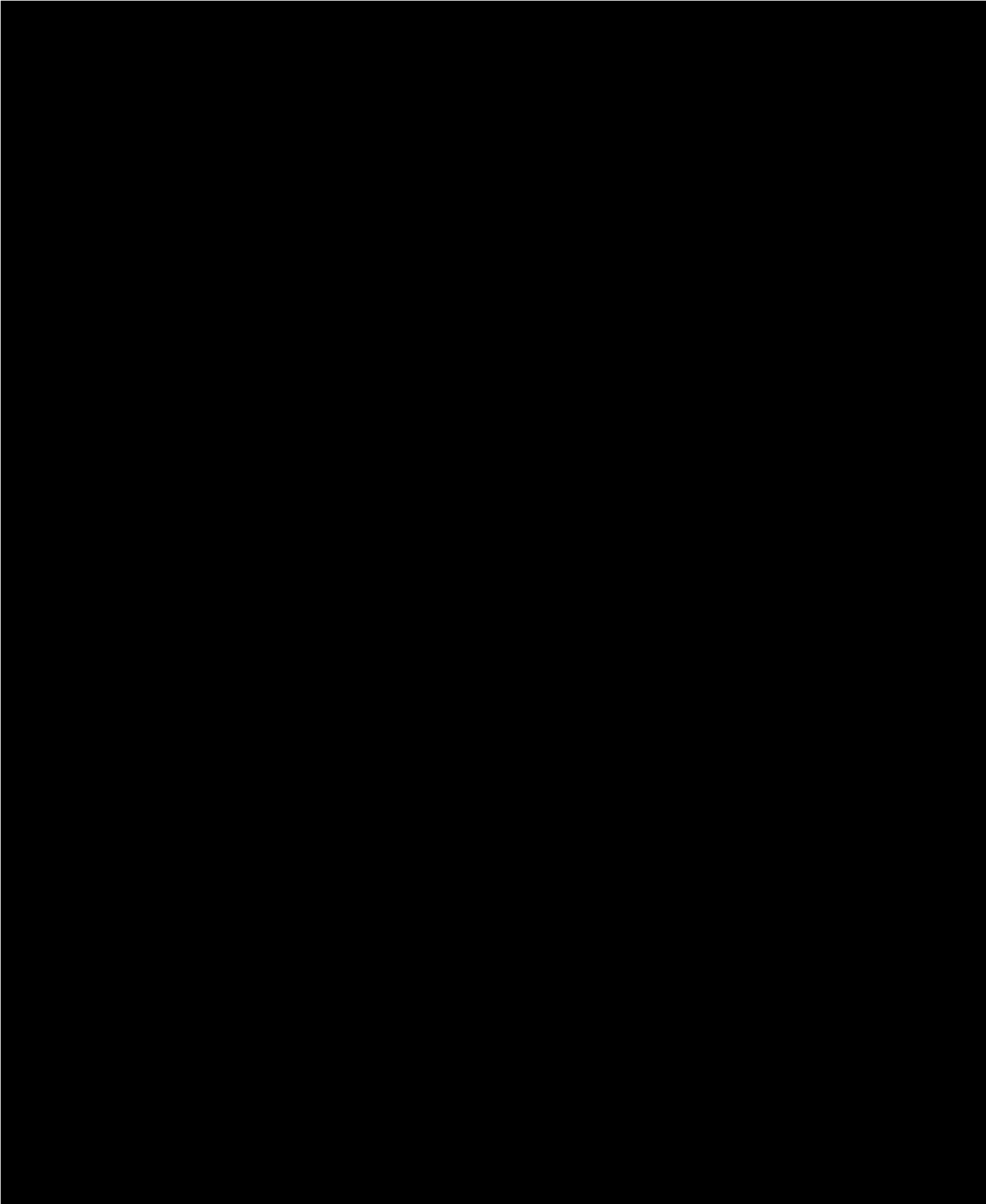


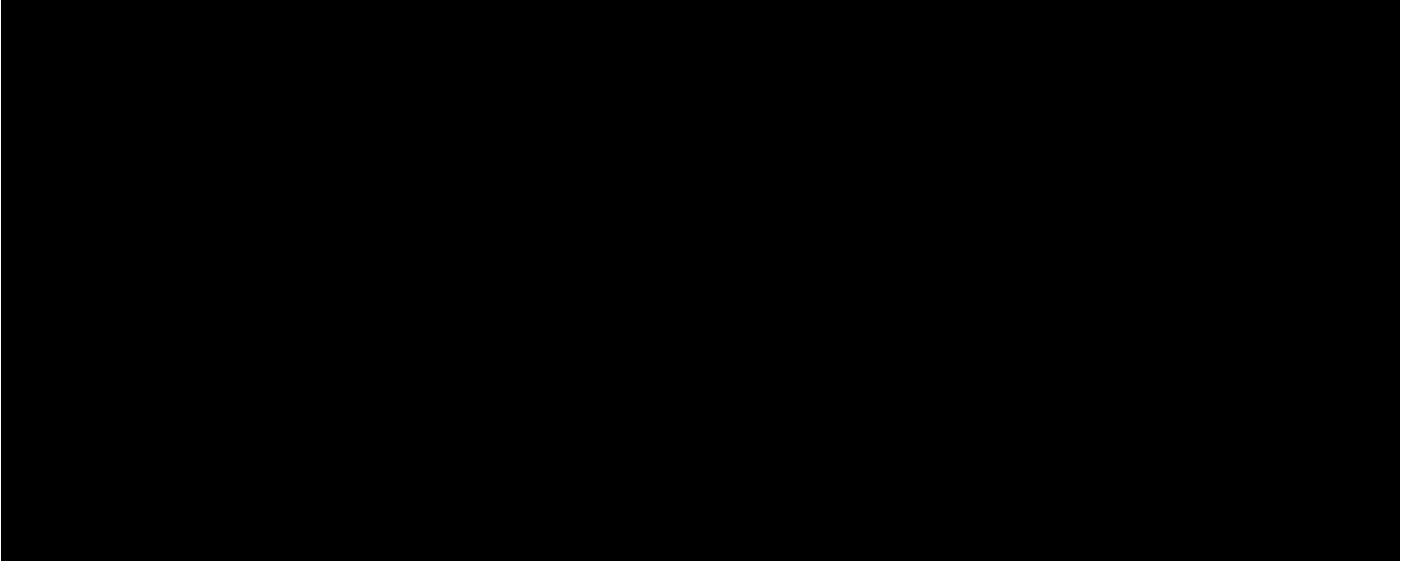




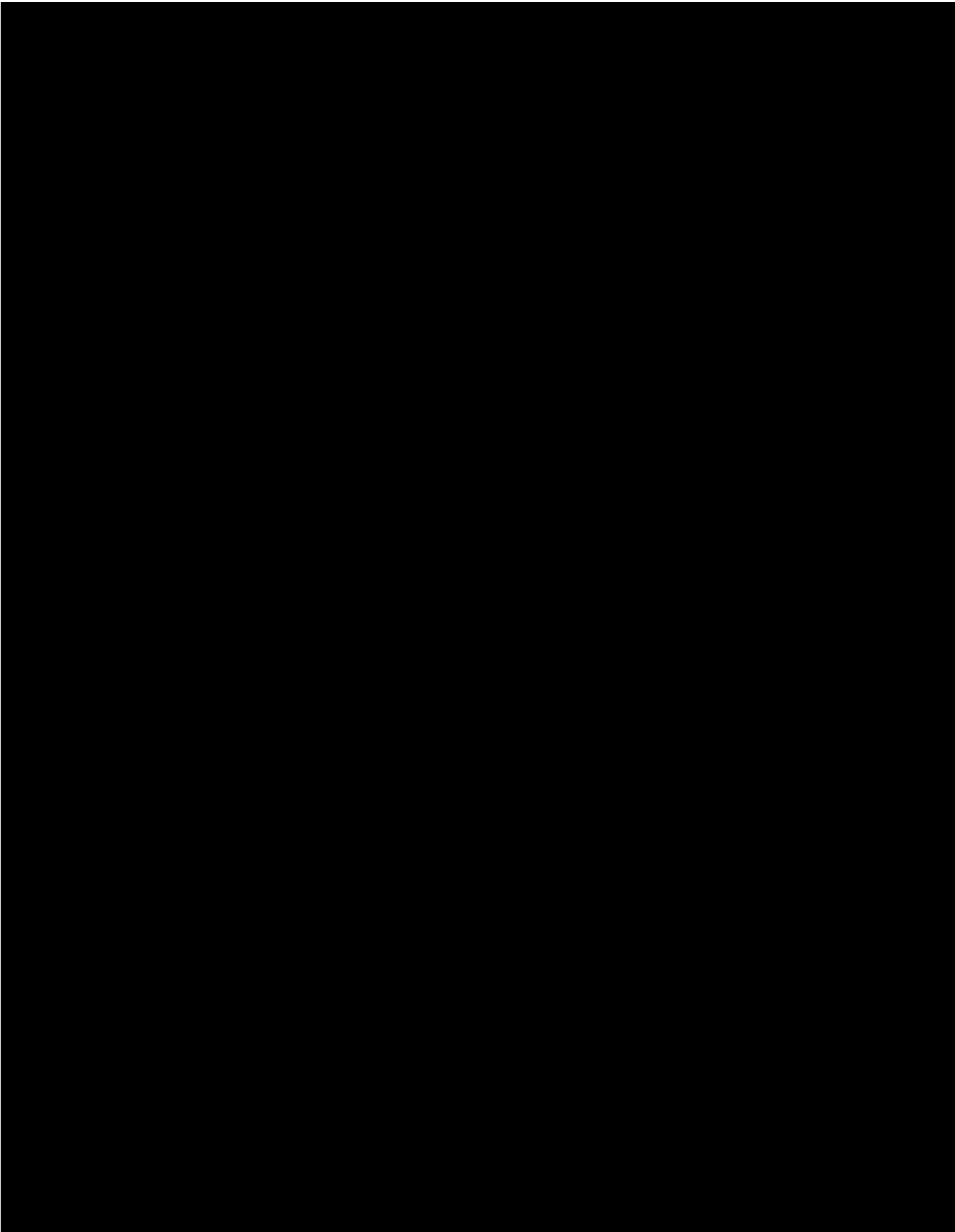


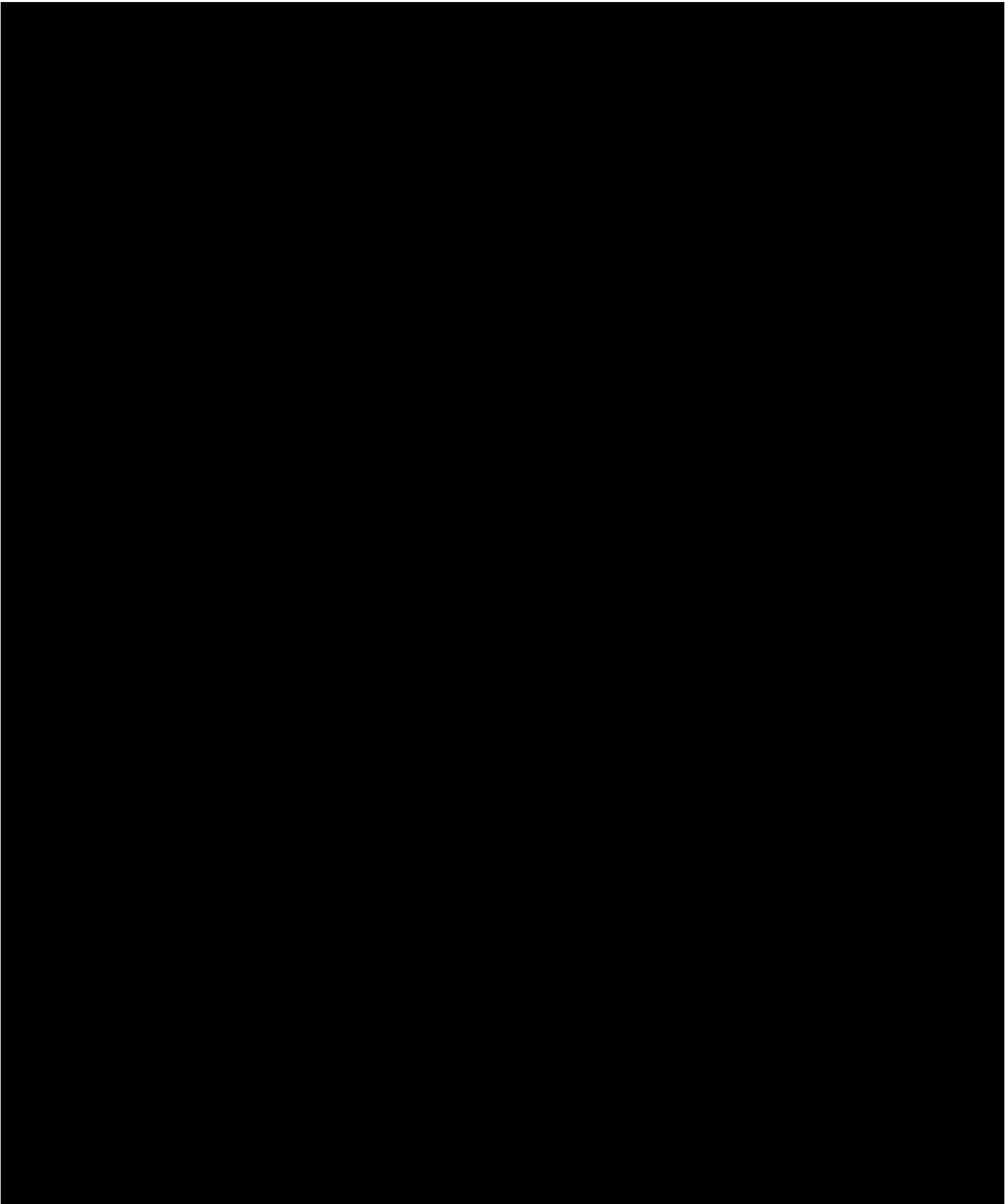


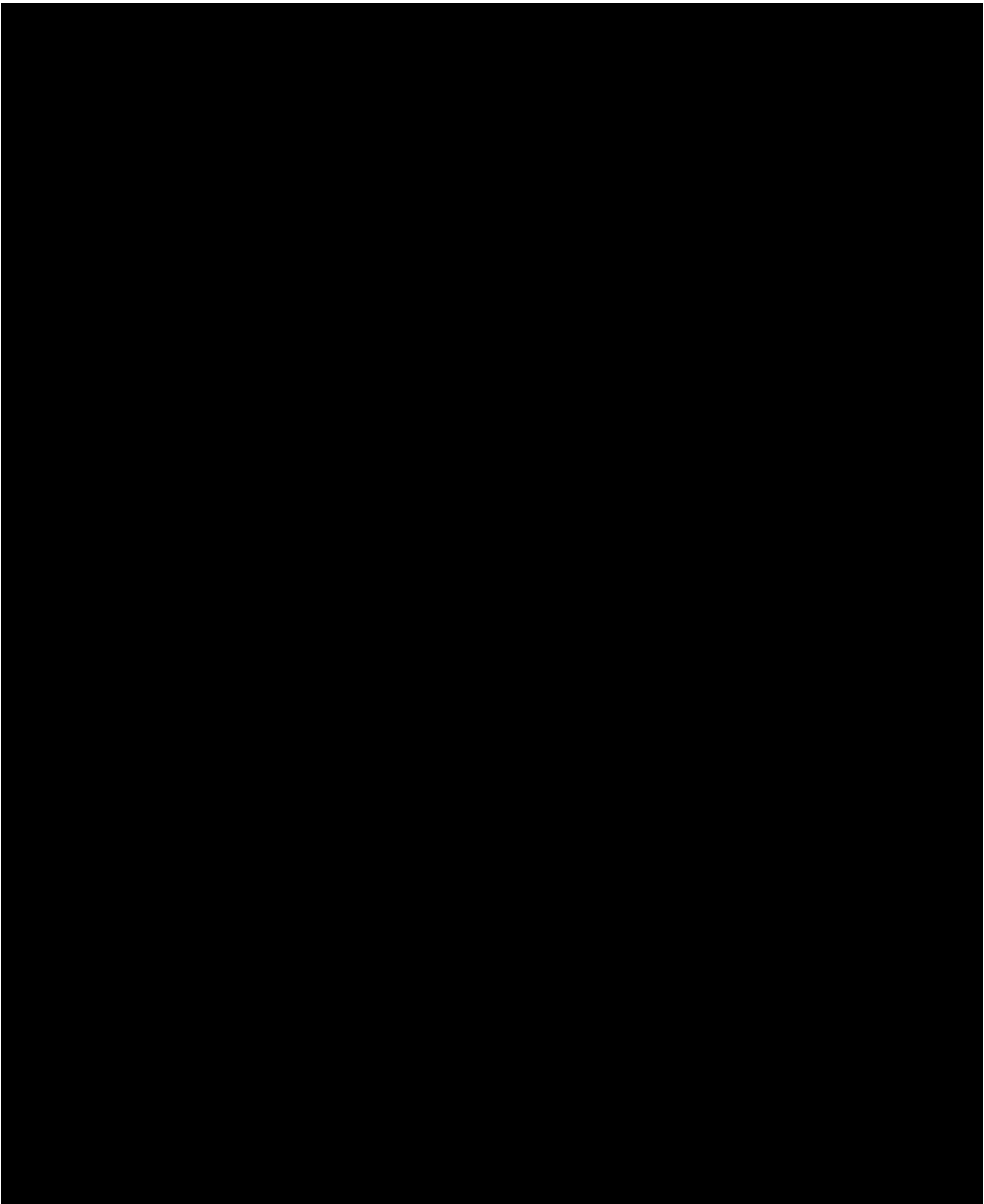


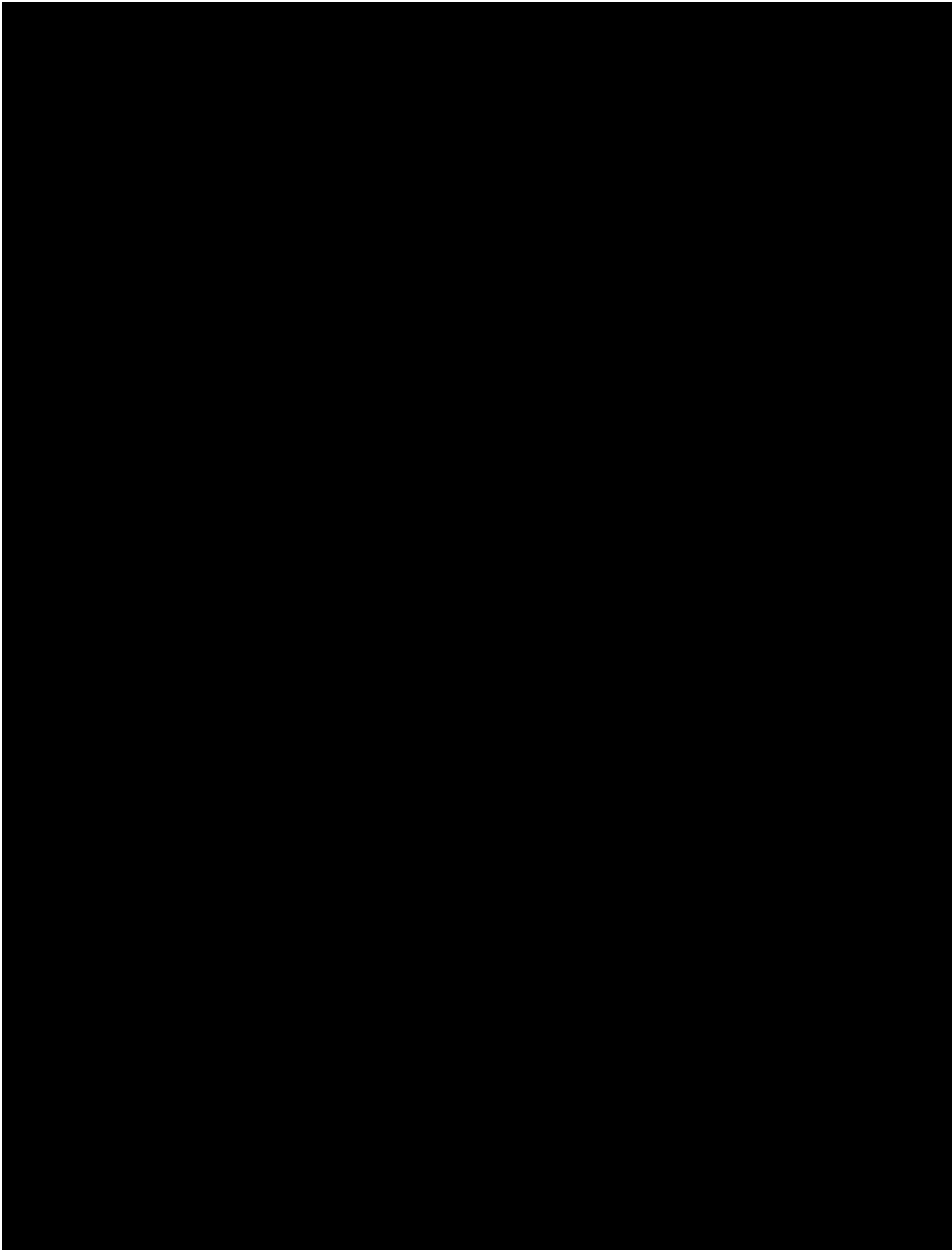


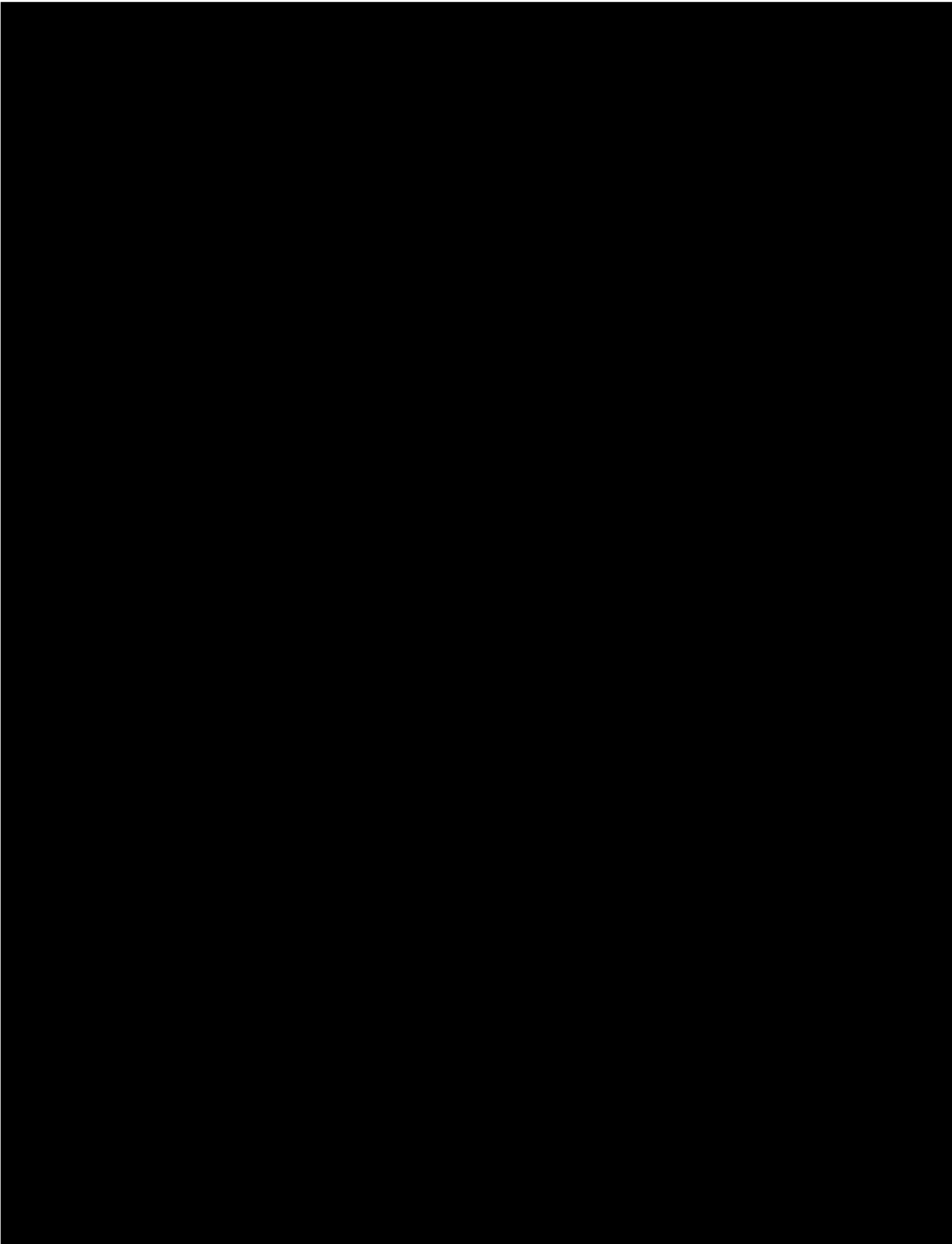
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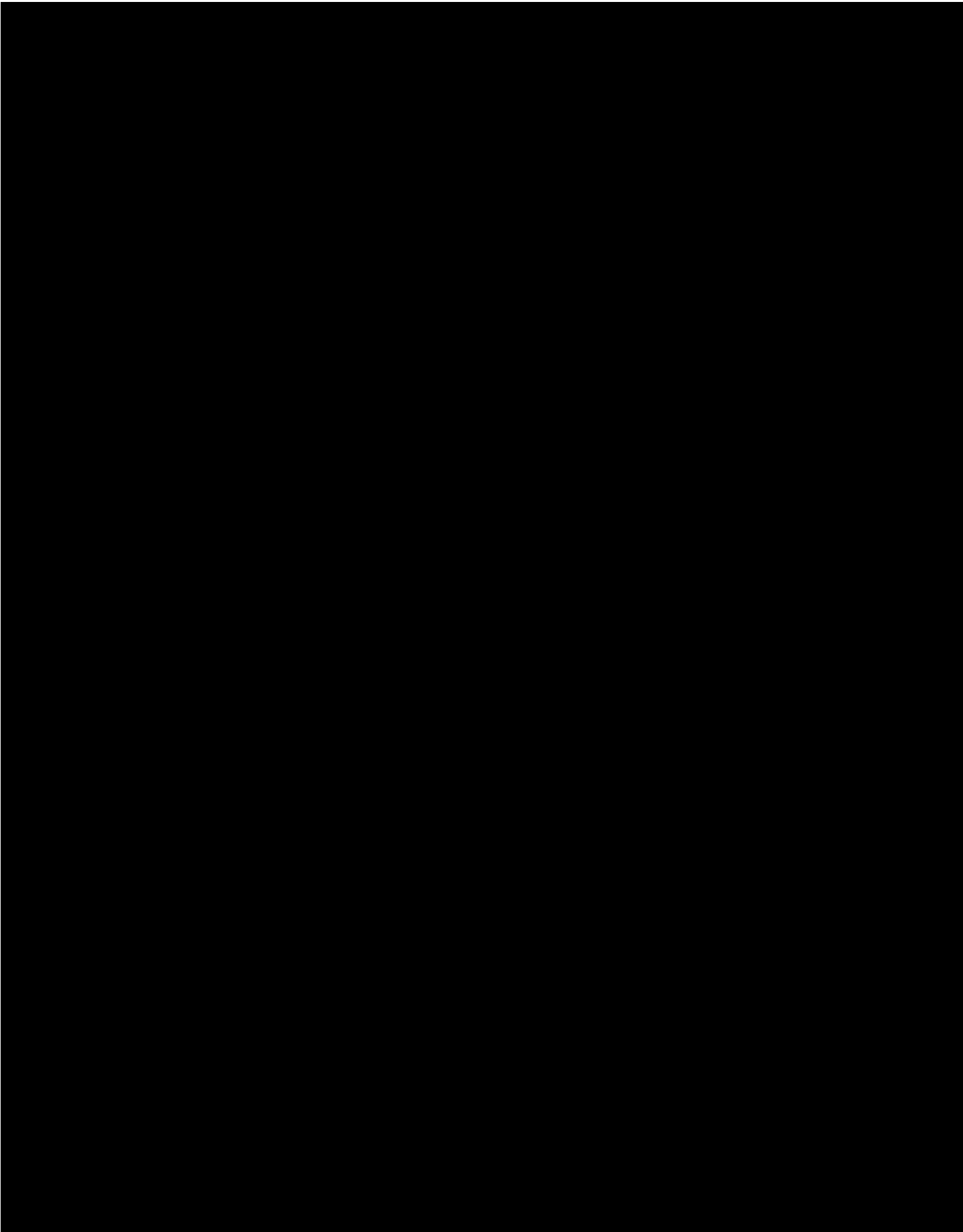


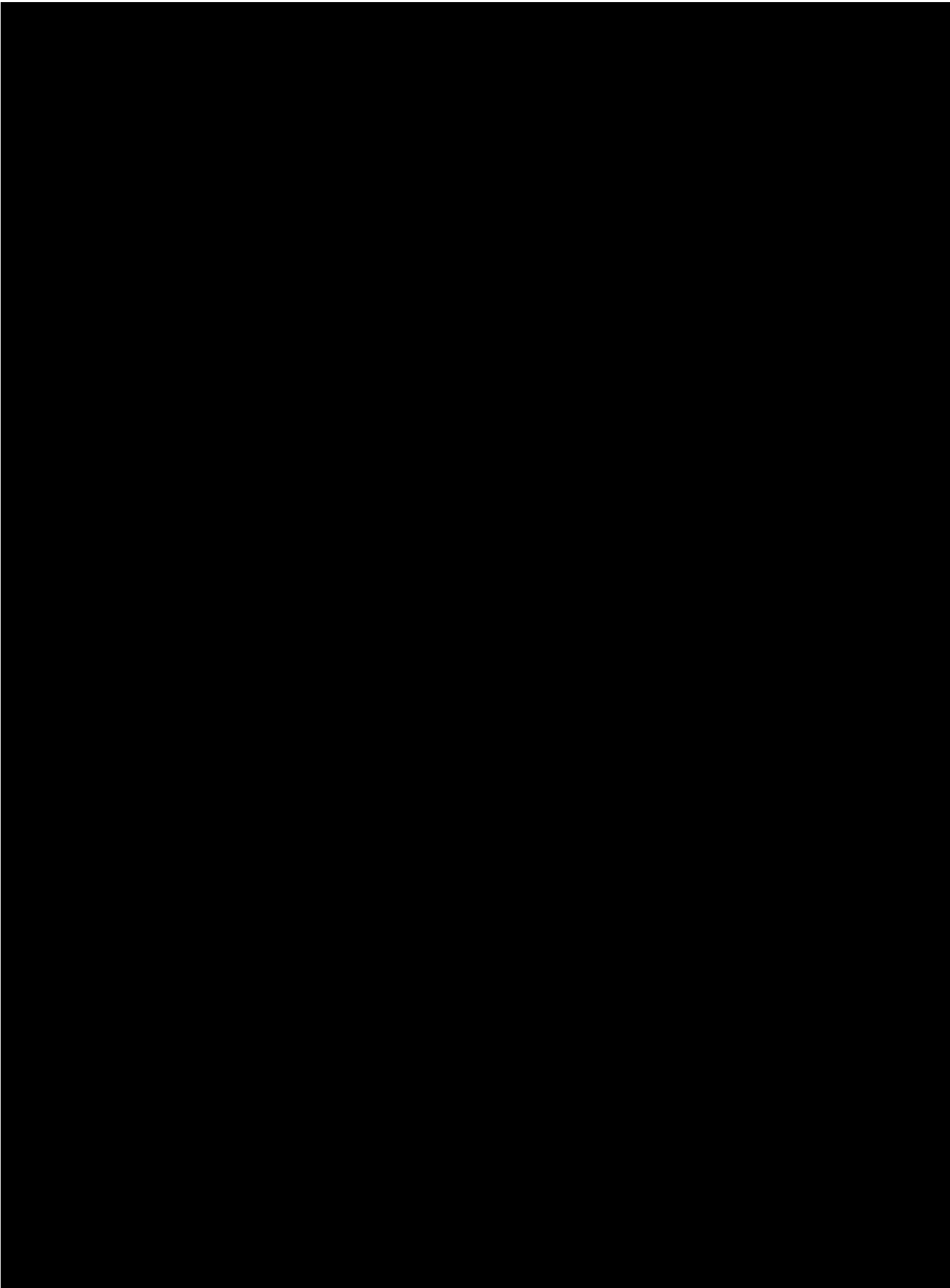


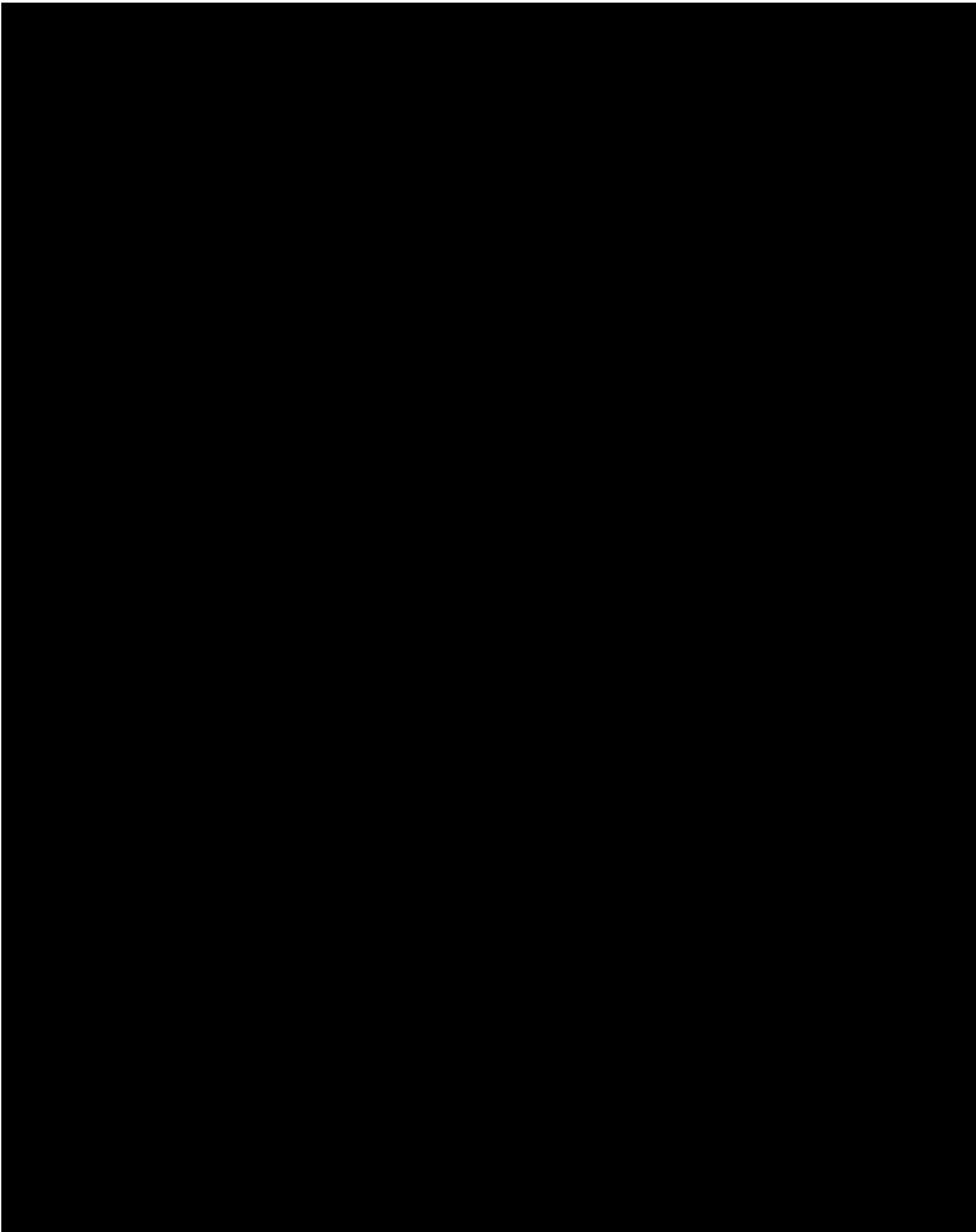


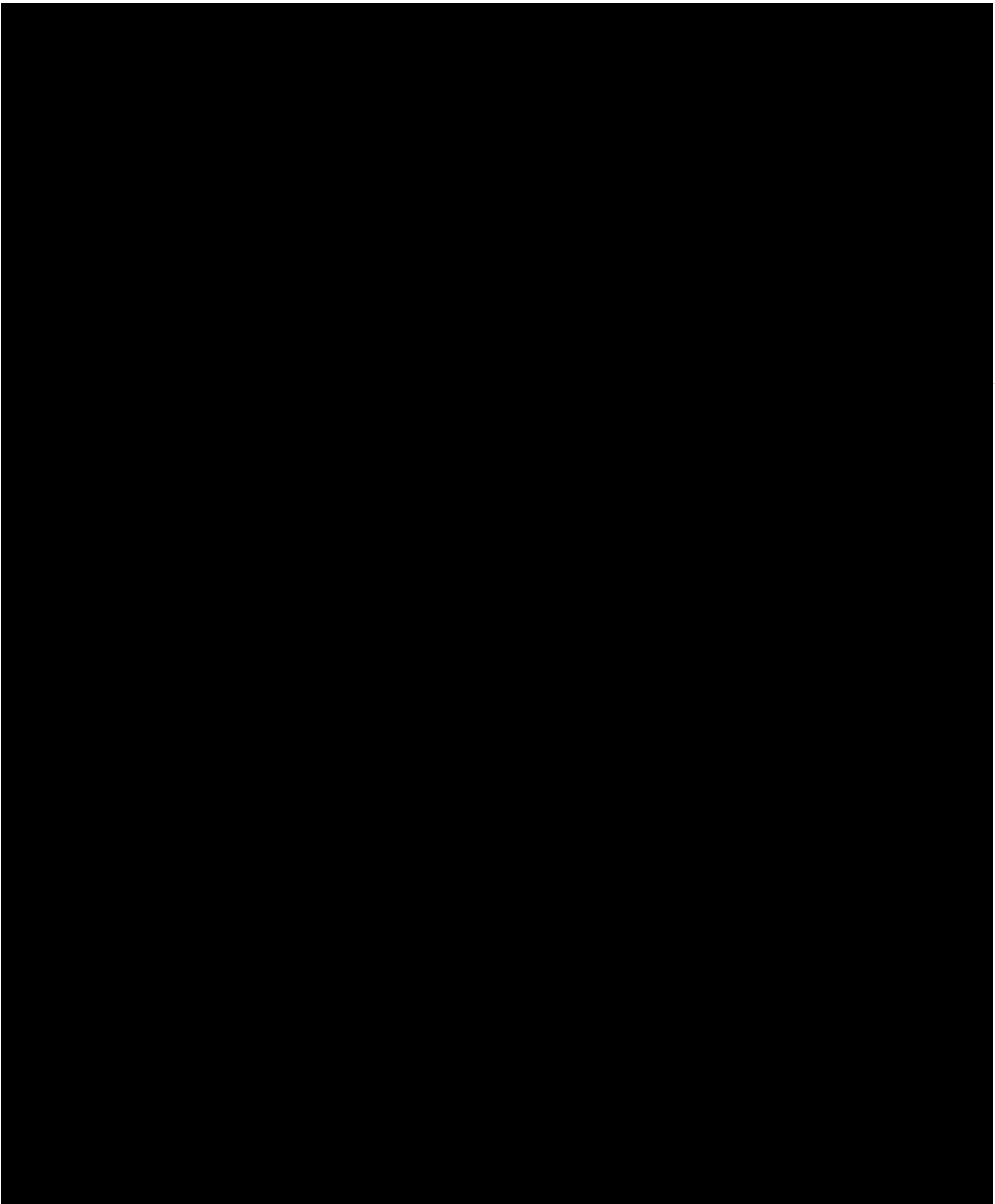


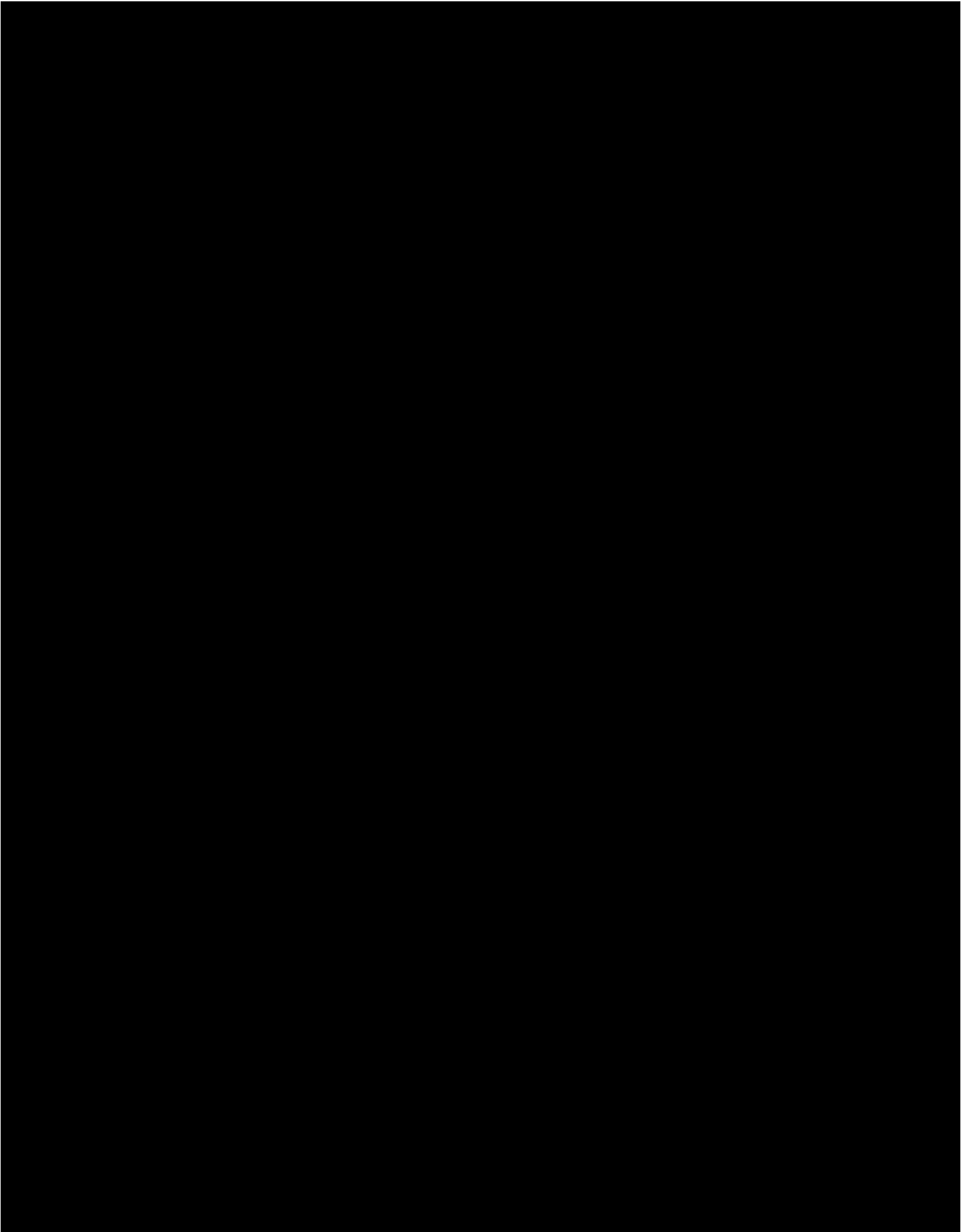












[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

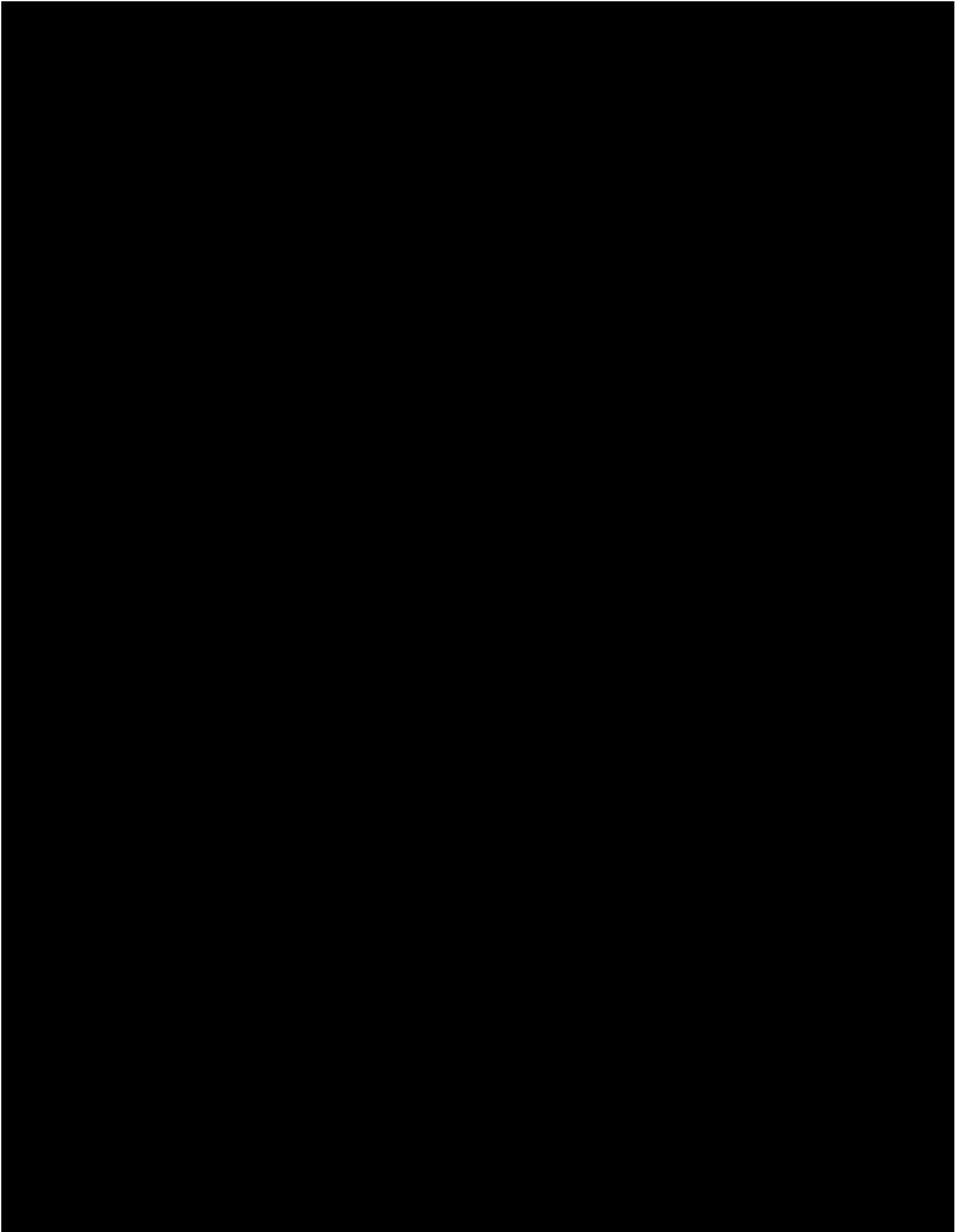
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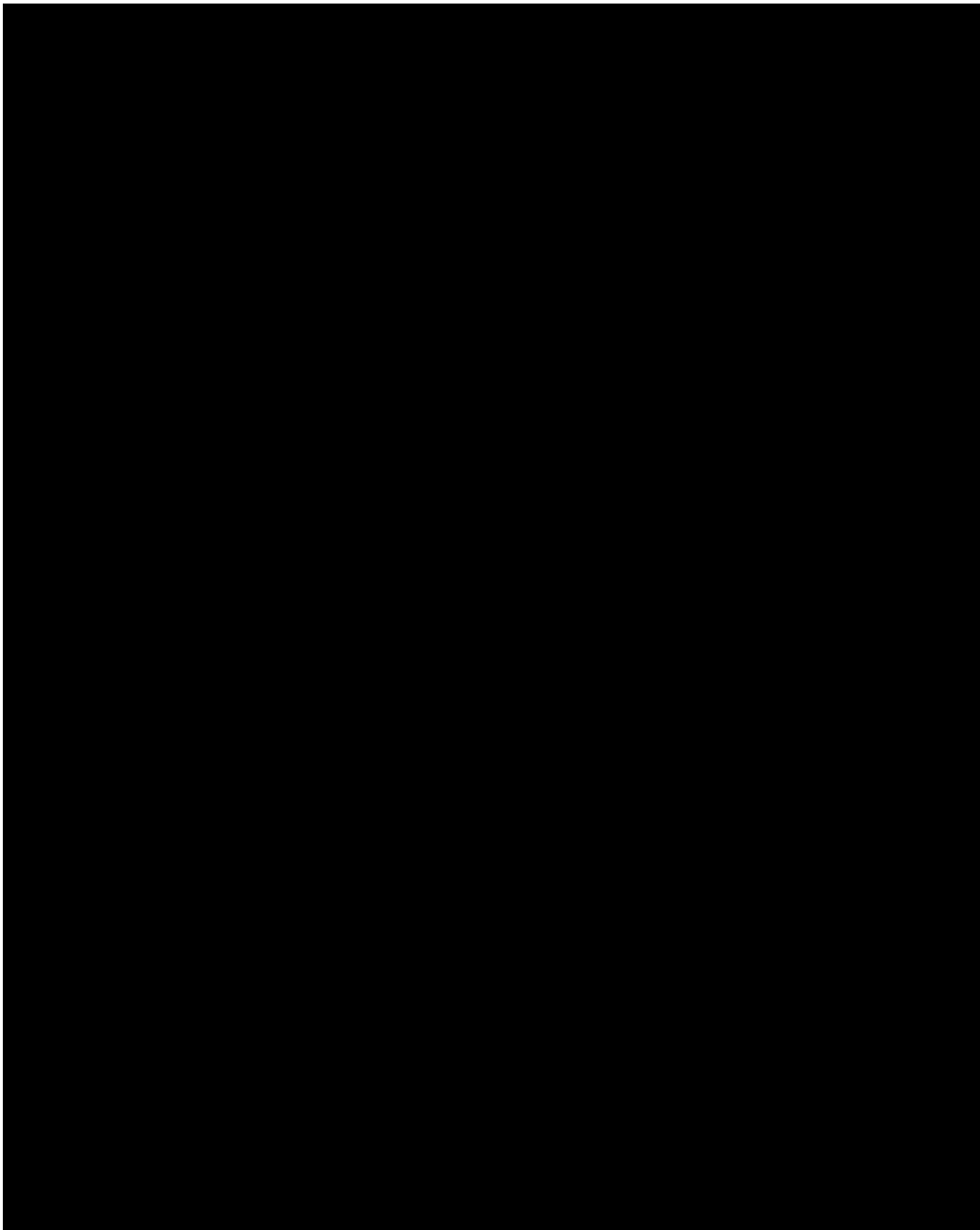
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[REDACTED]

[REDACTED]

TAB C27





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[Redacted text block]

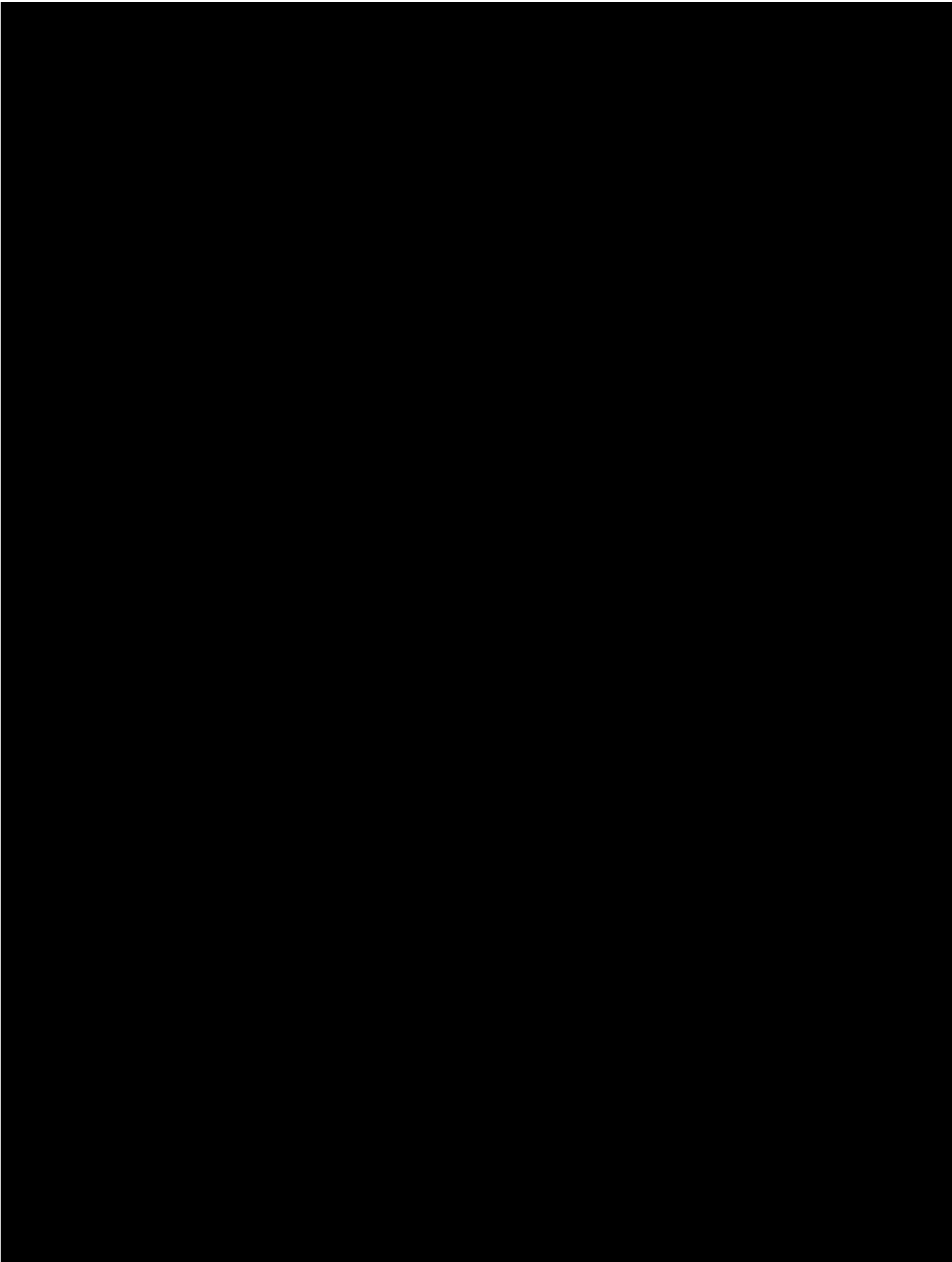
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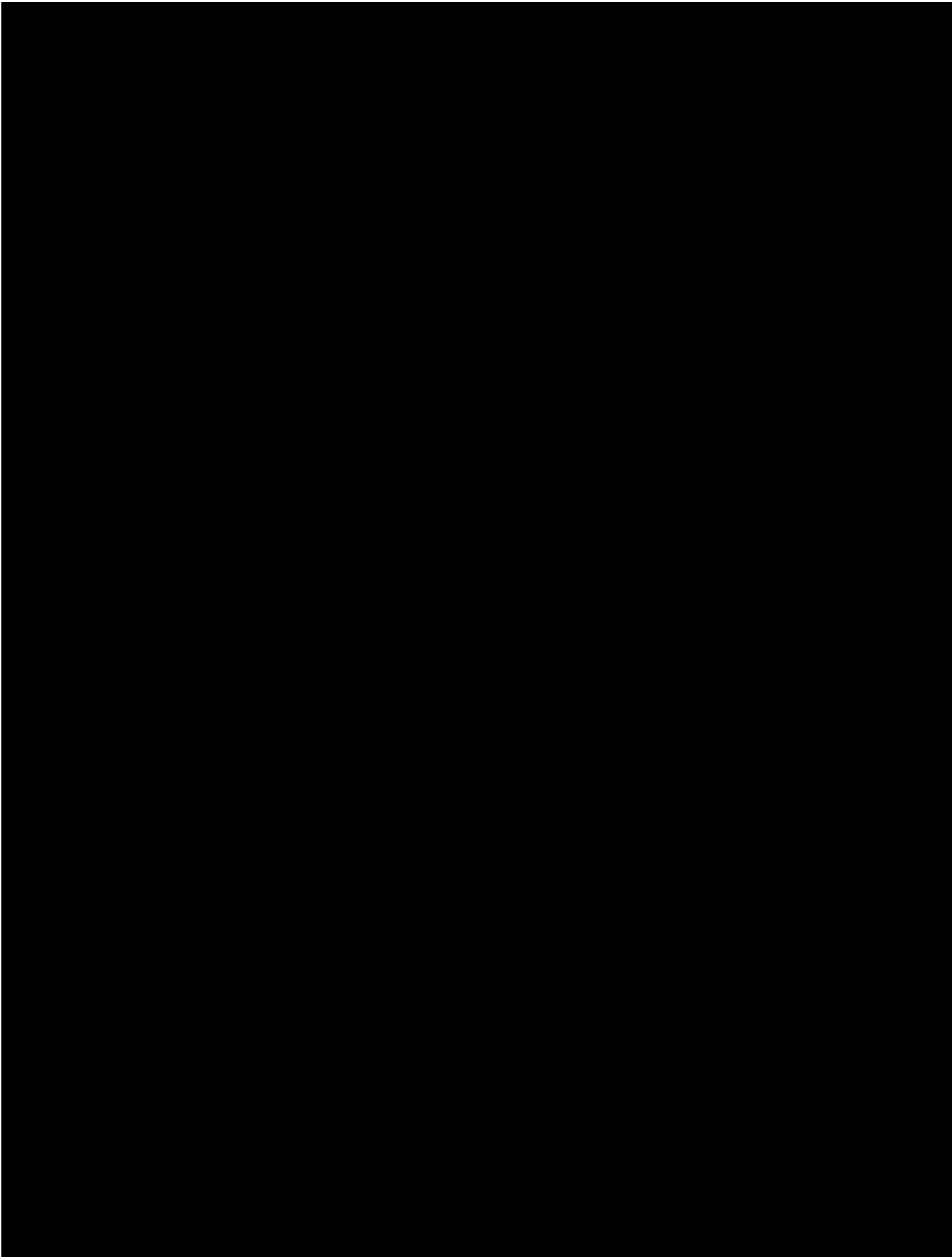
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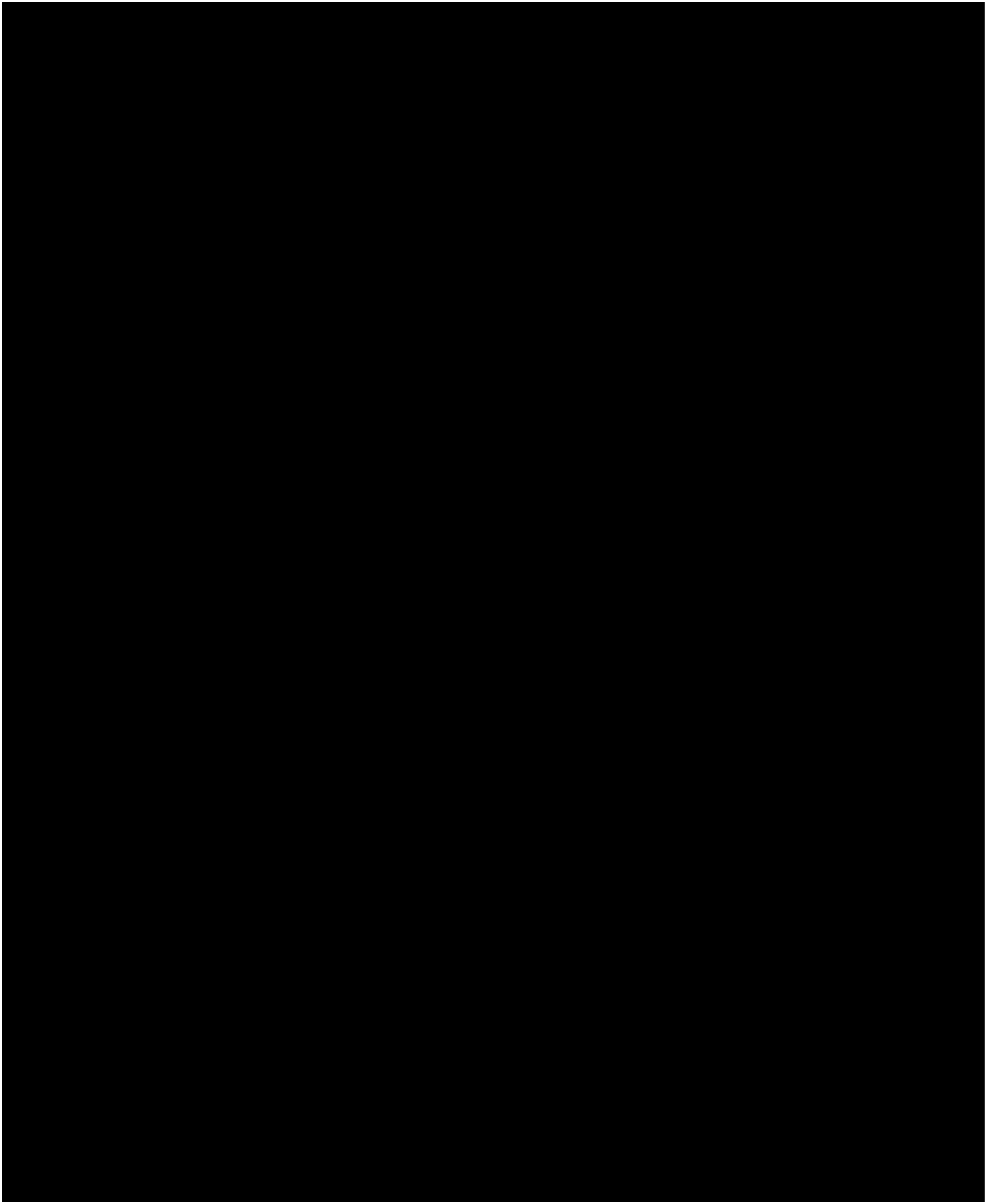
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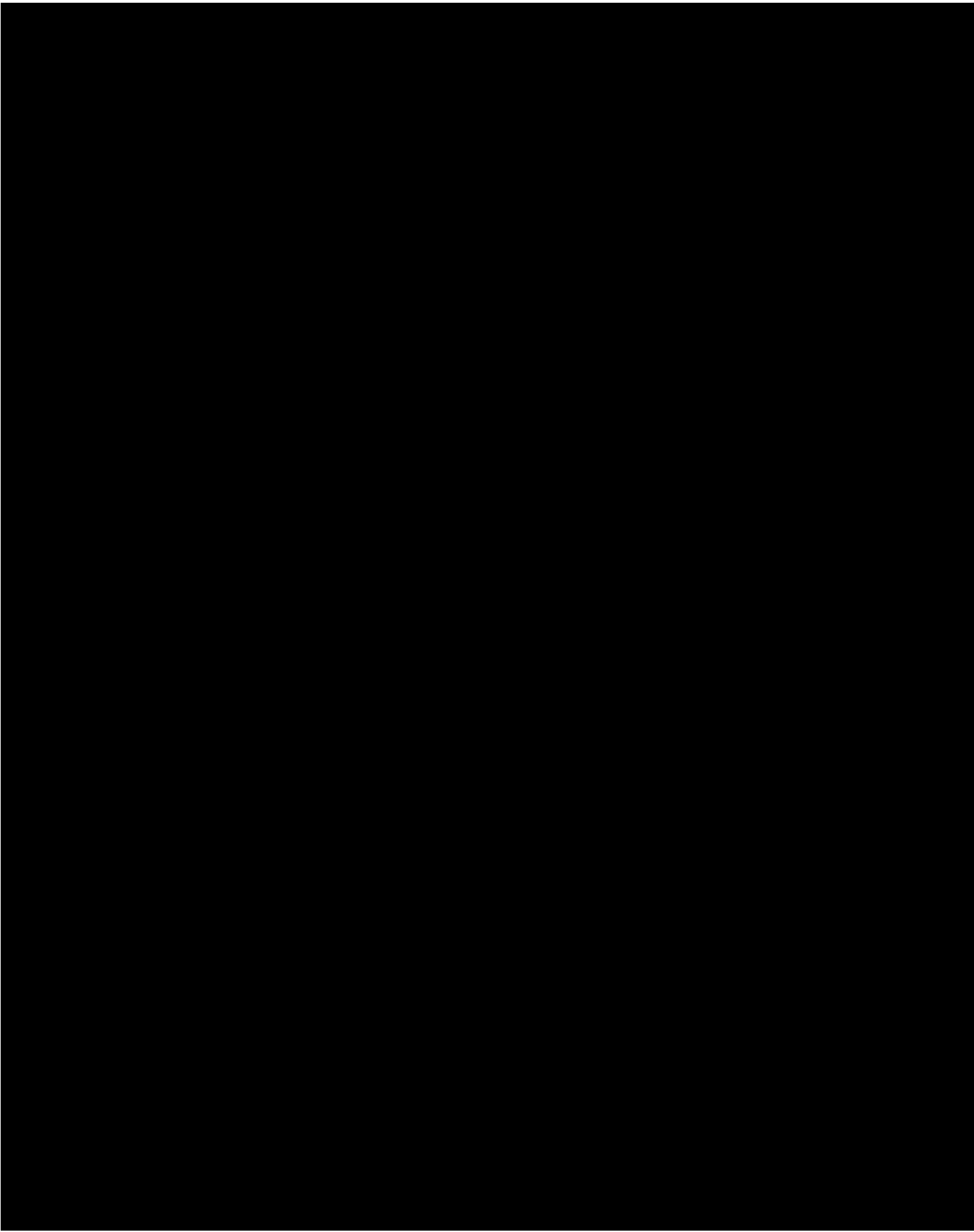
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[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

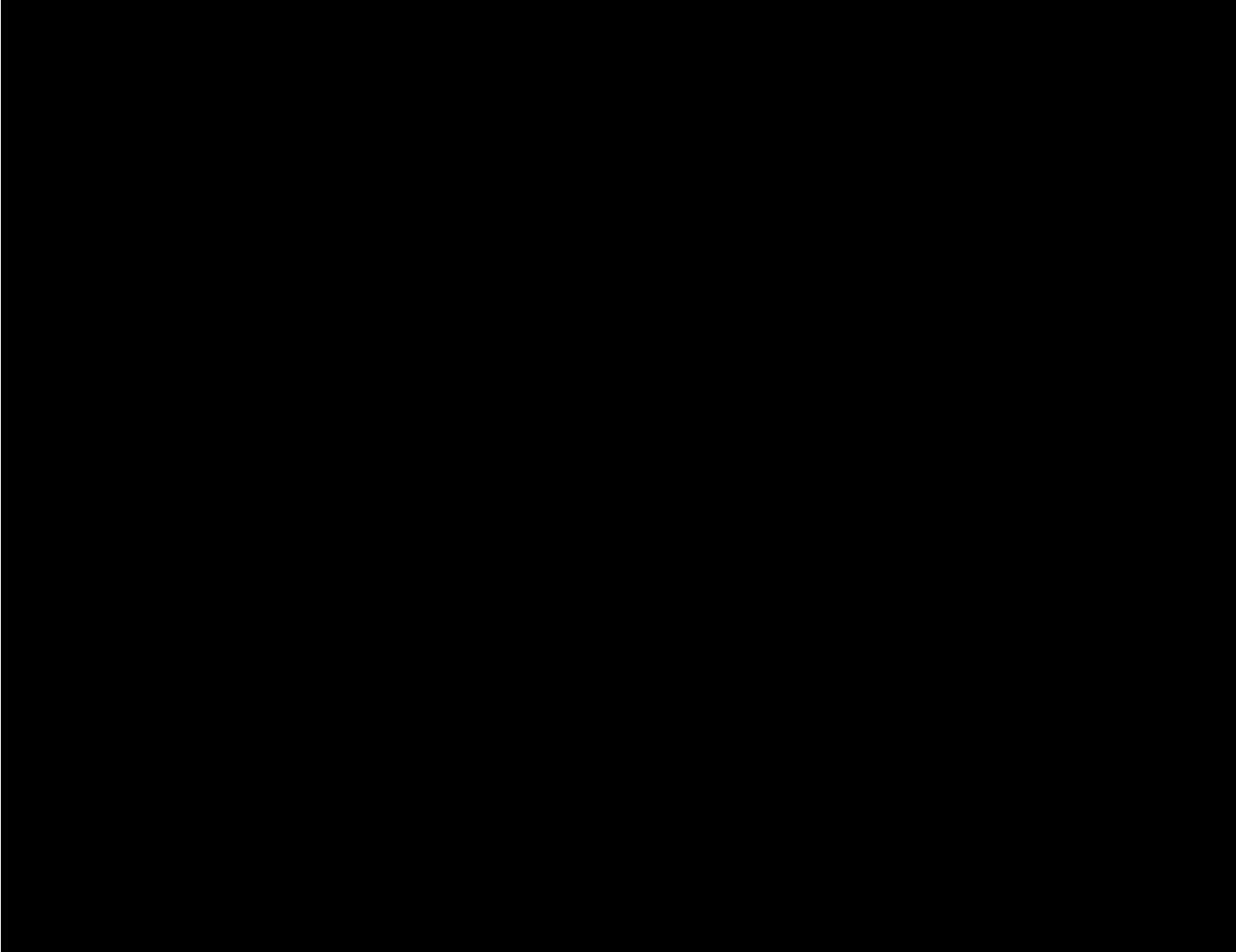
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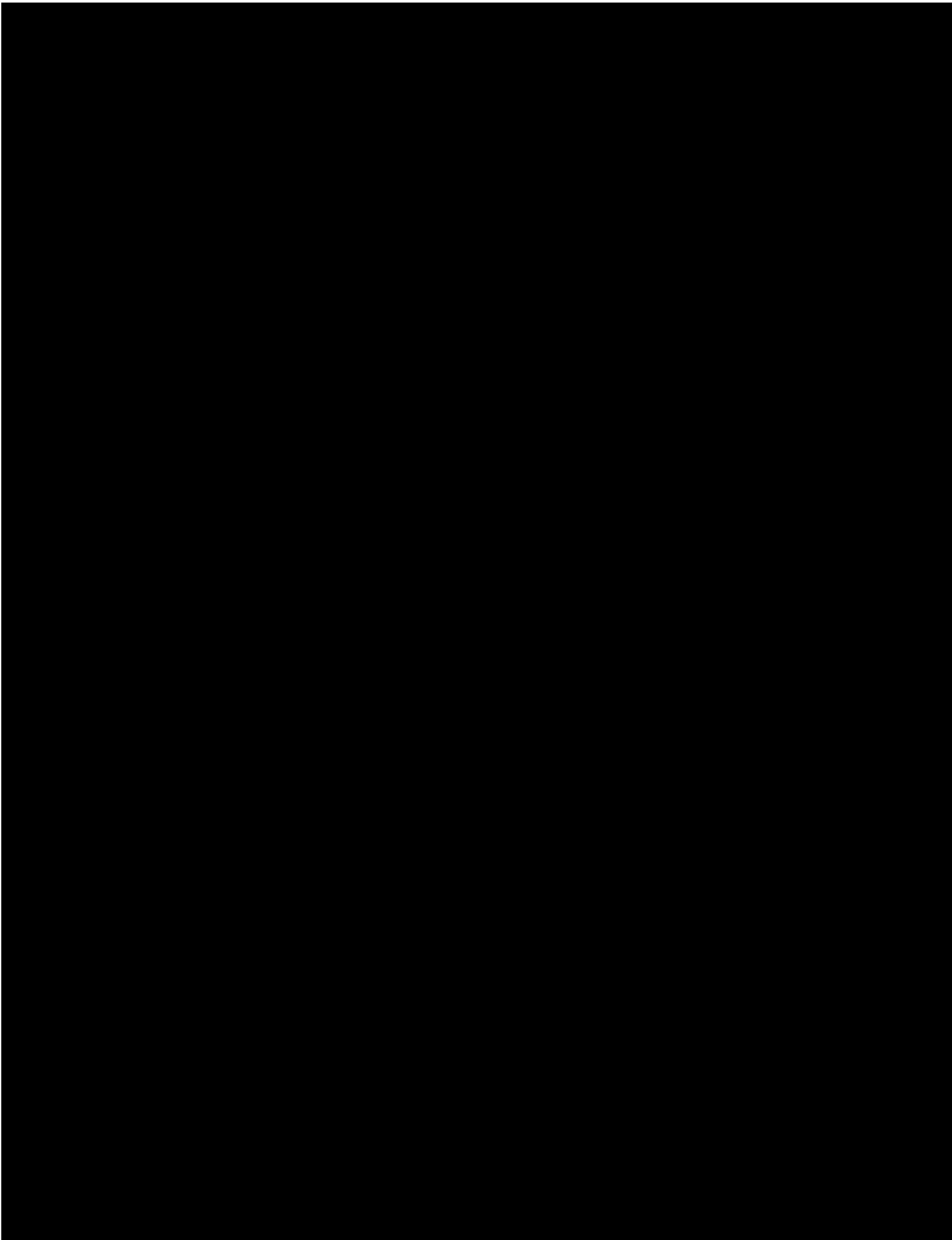
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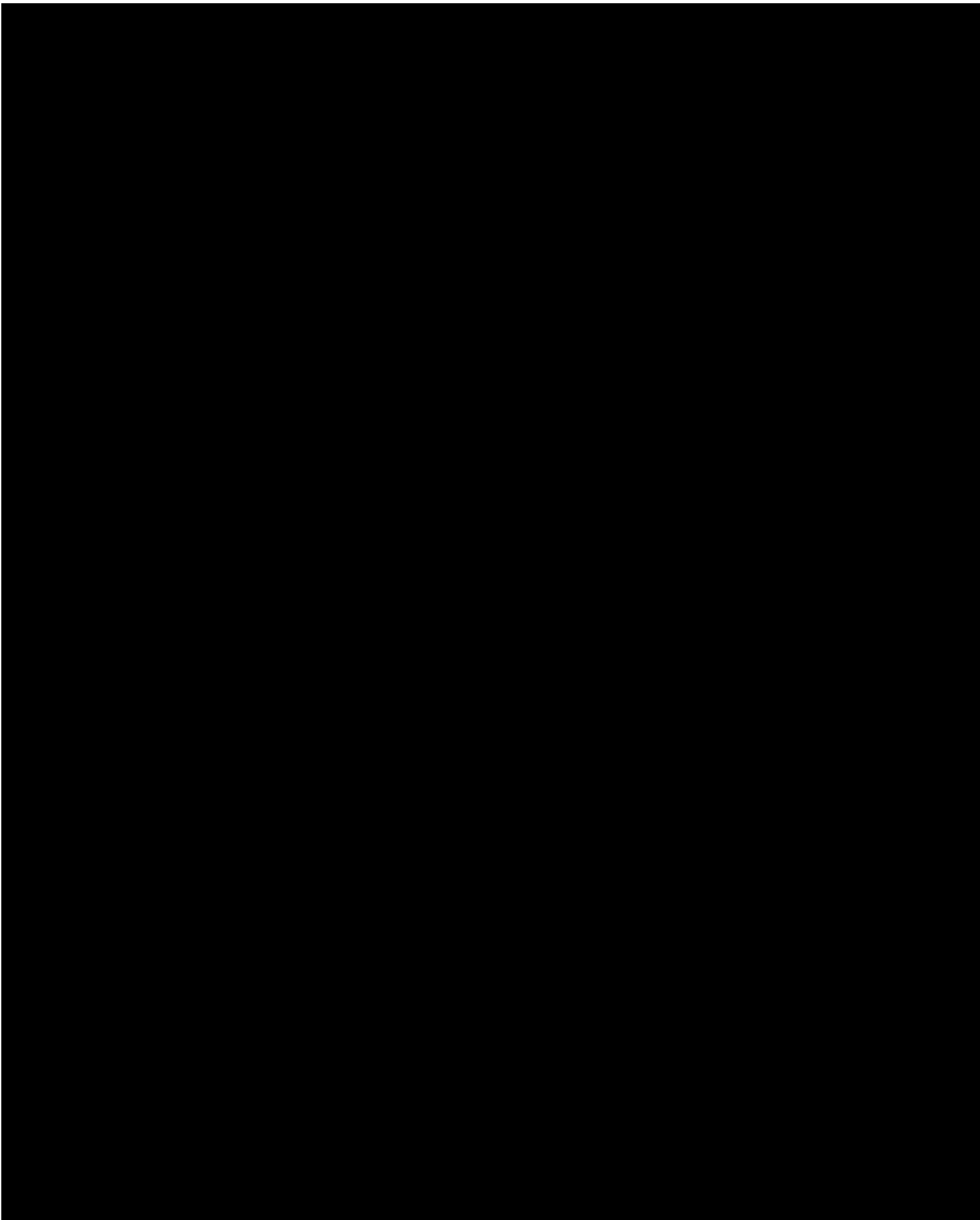
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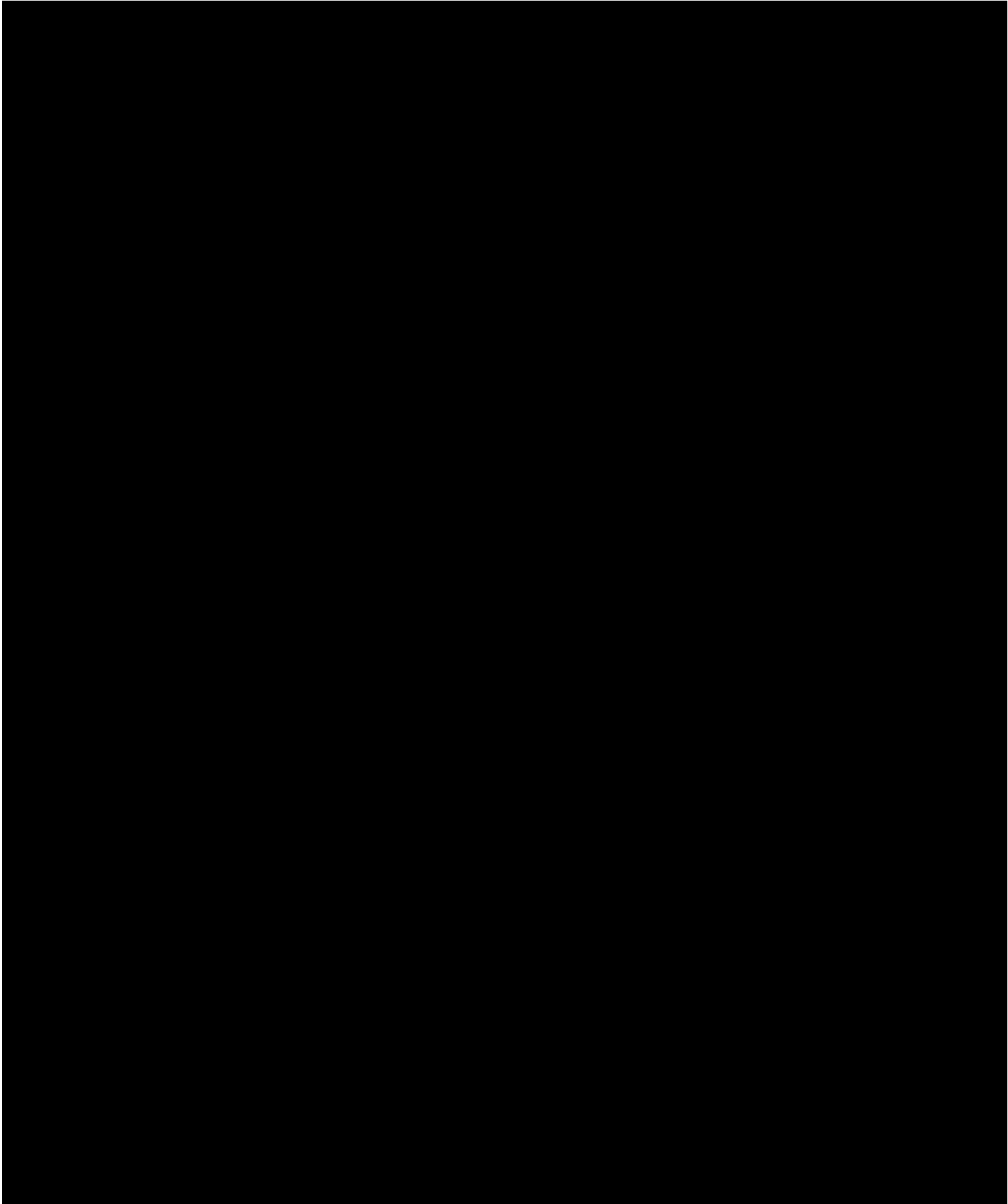
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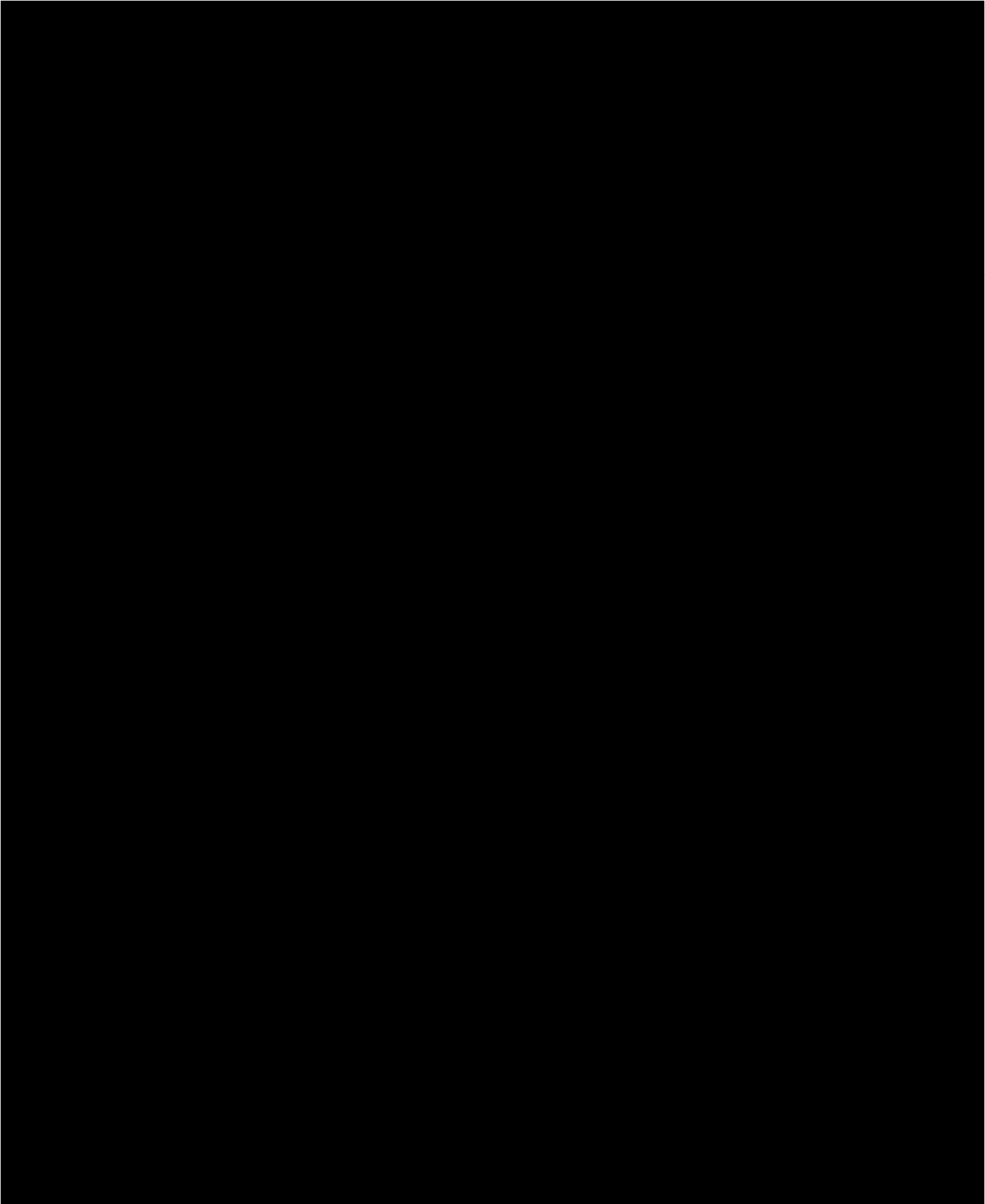


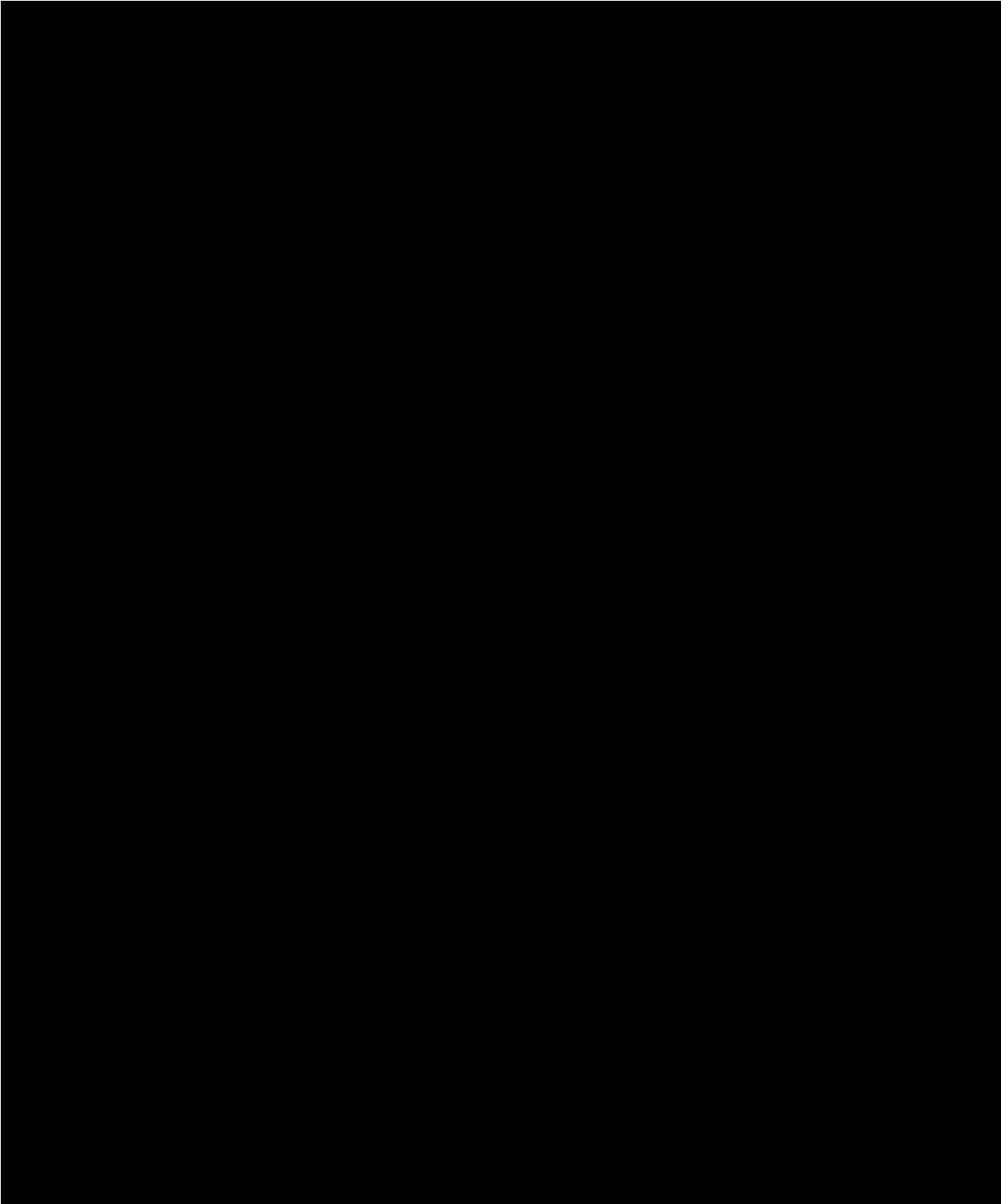
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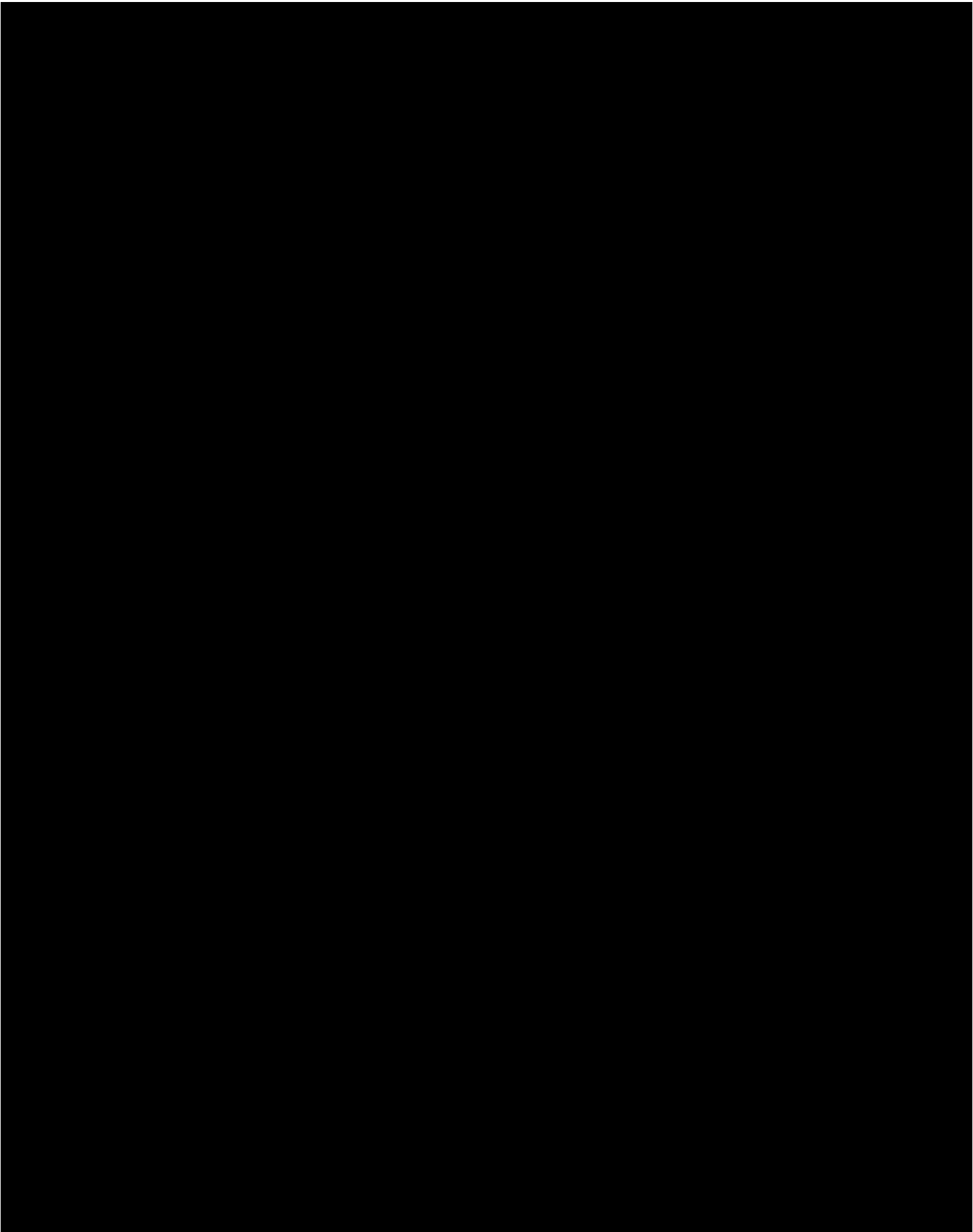


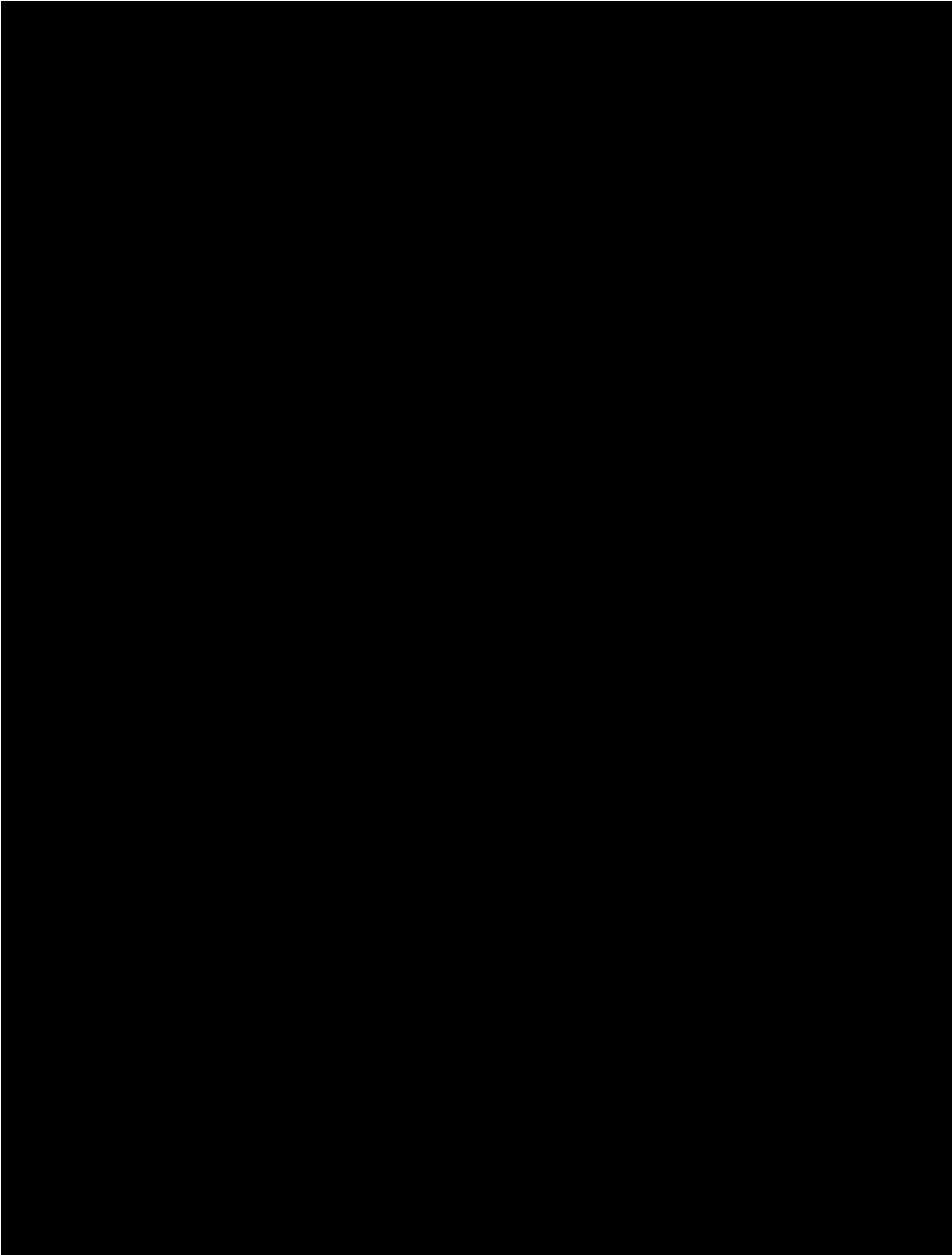


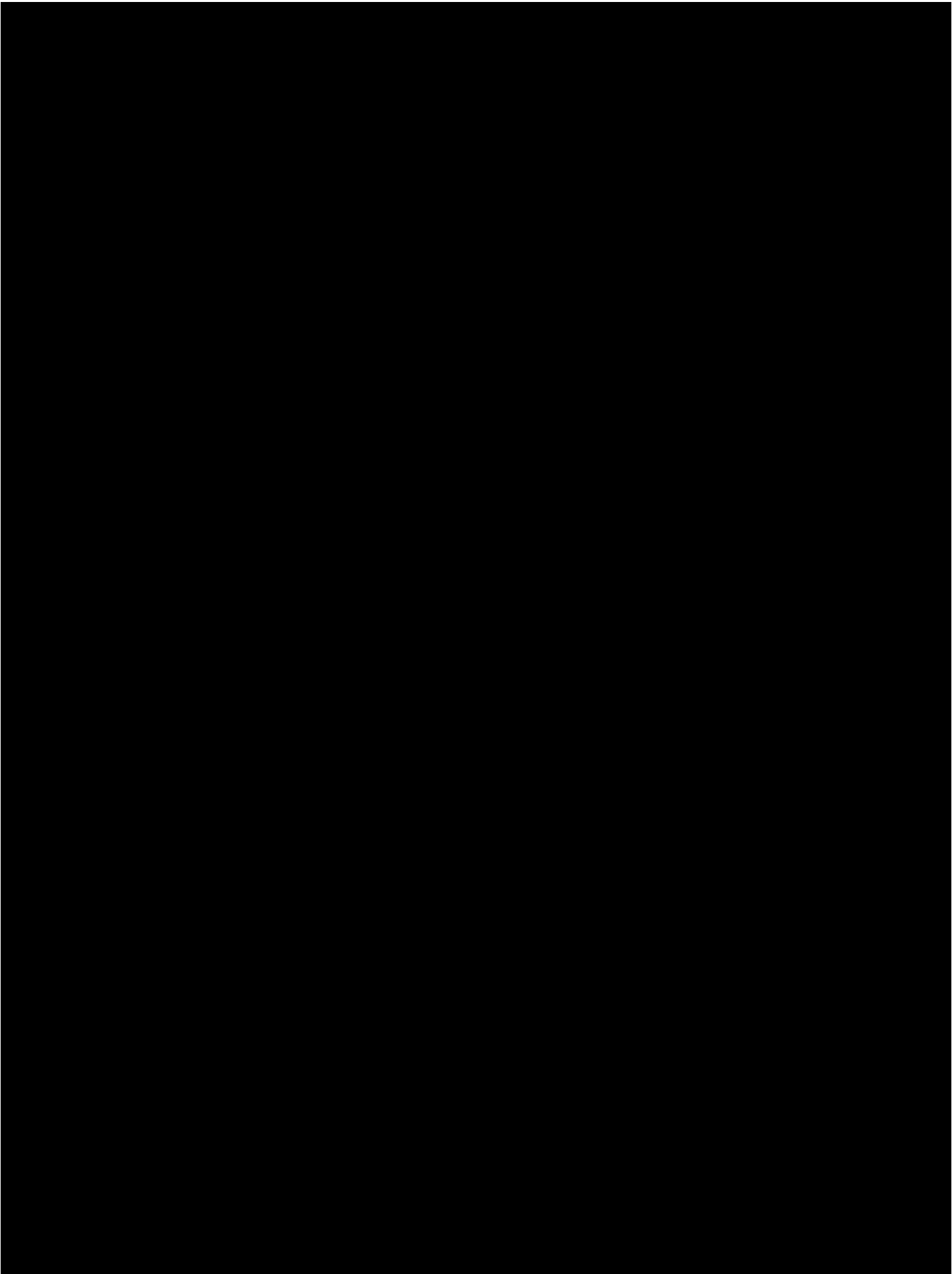


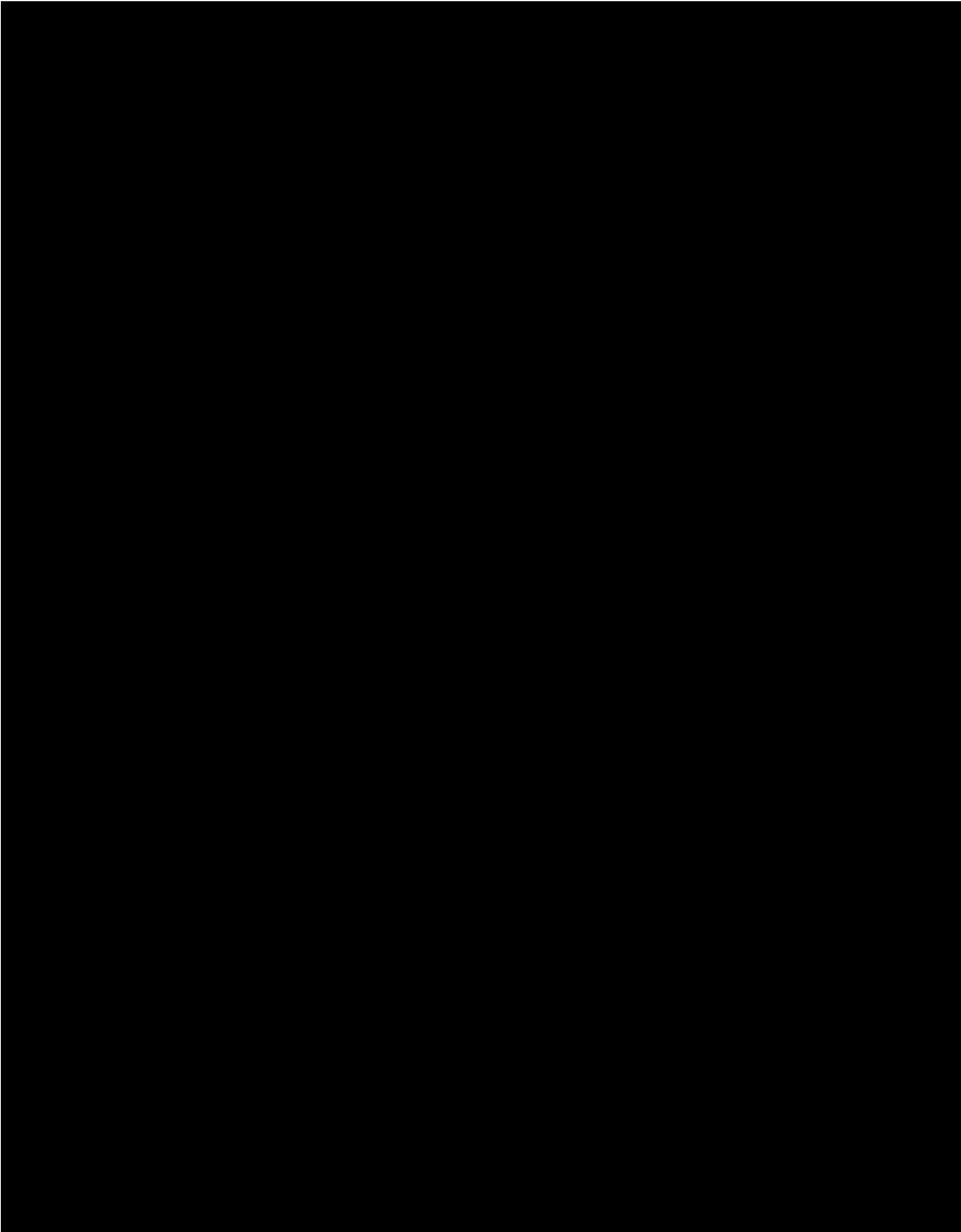


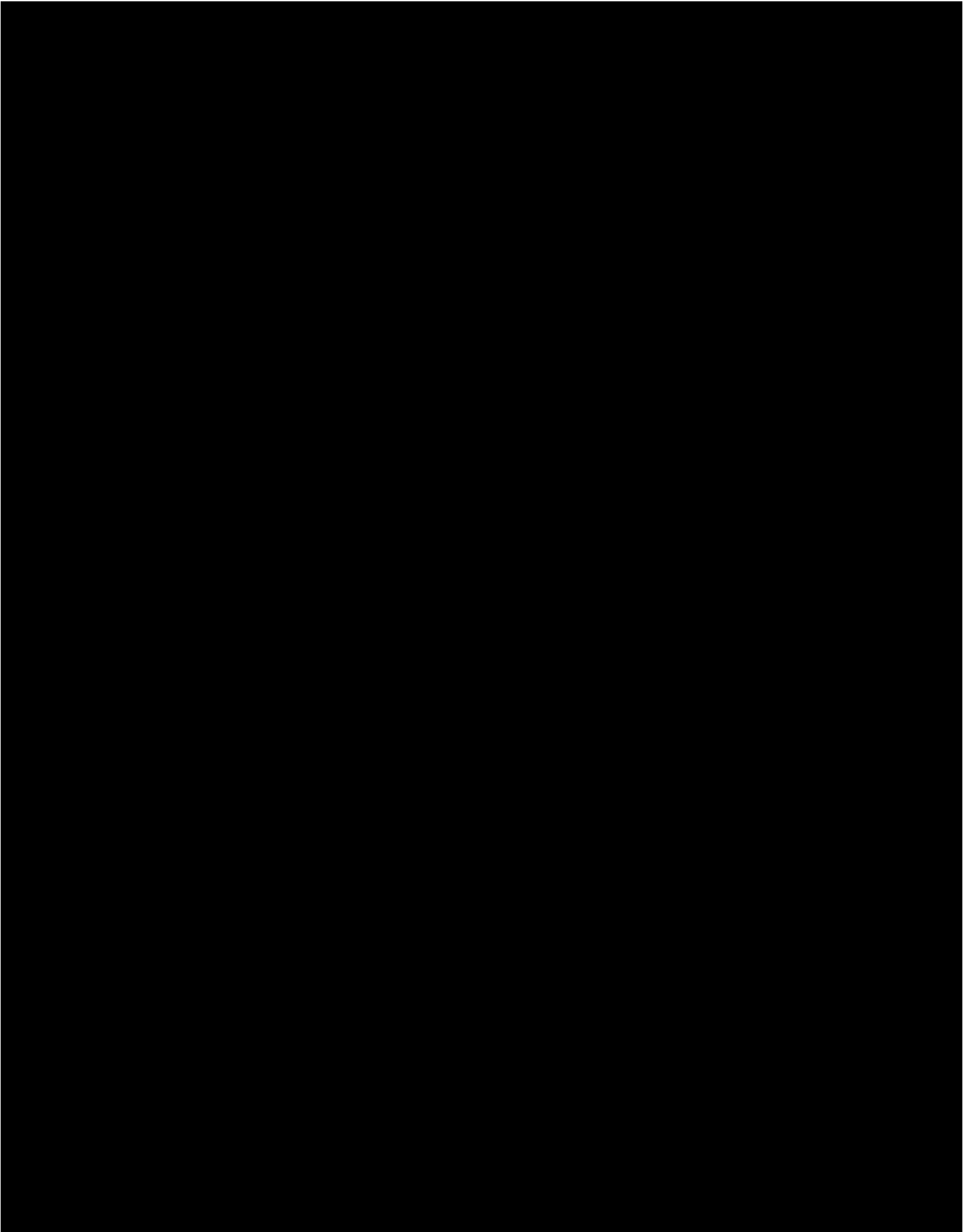


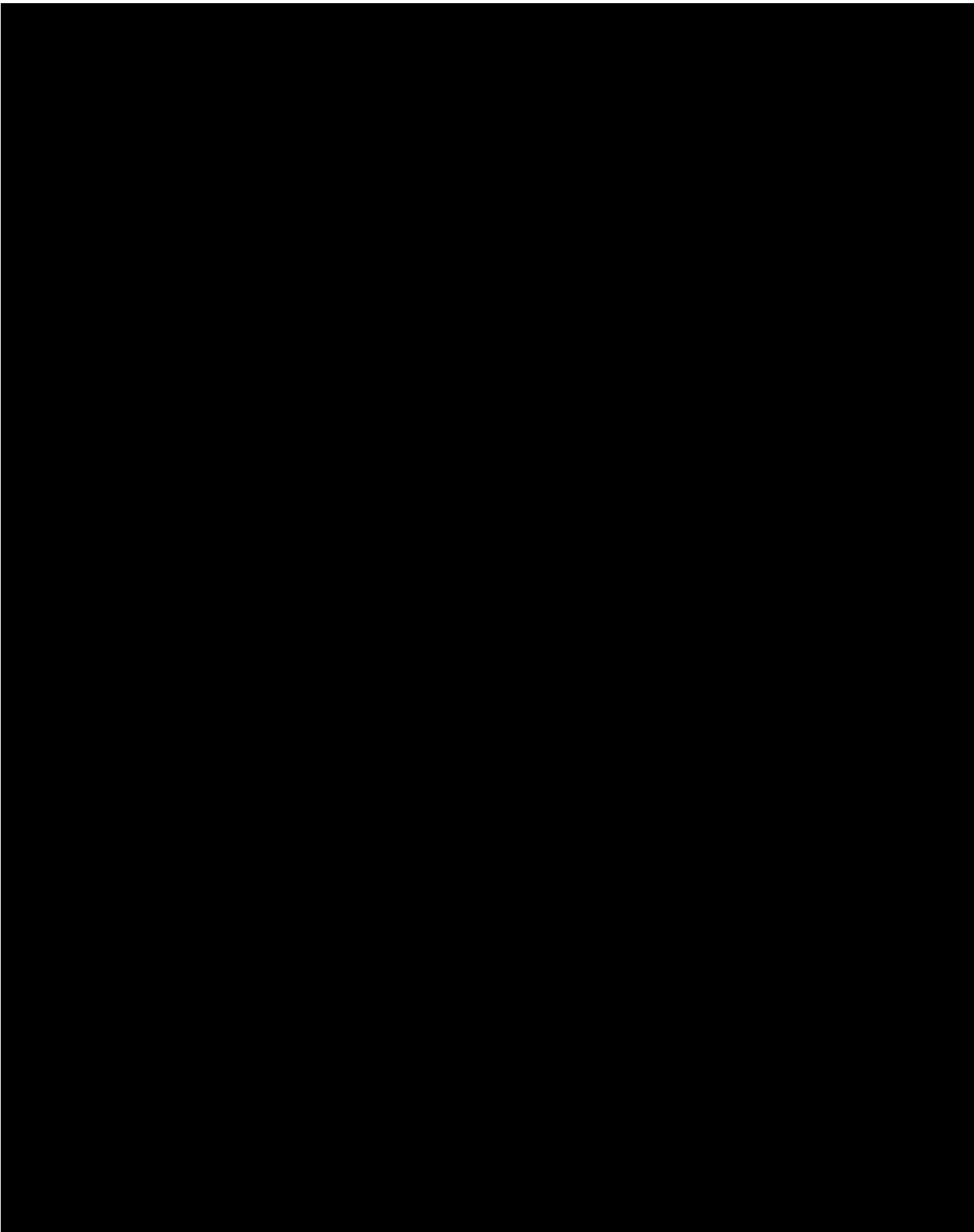


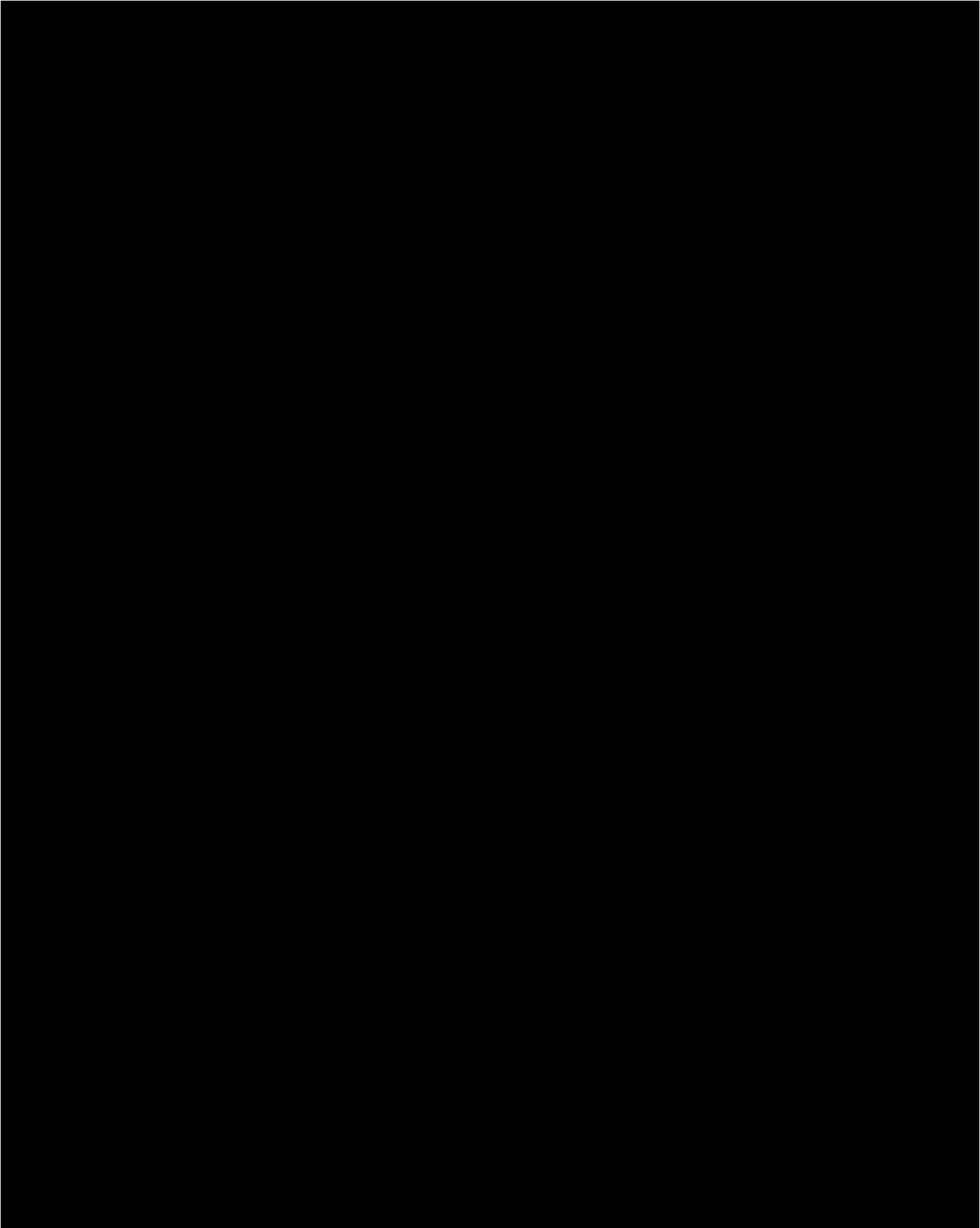


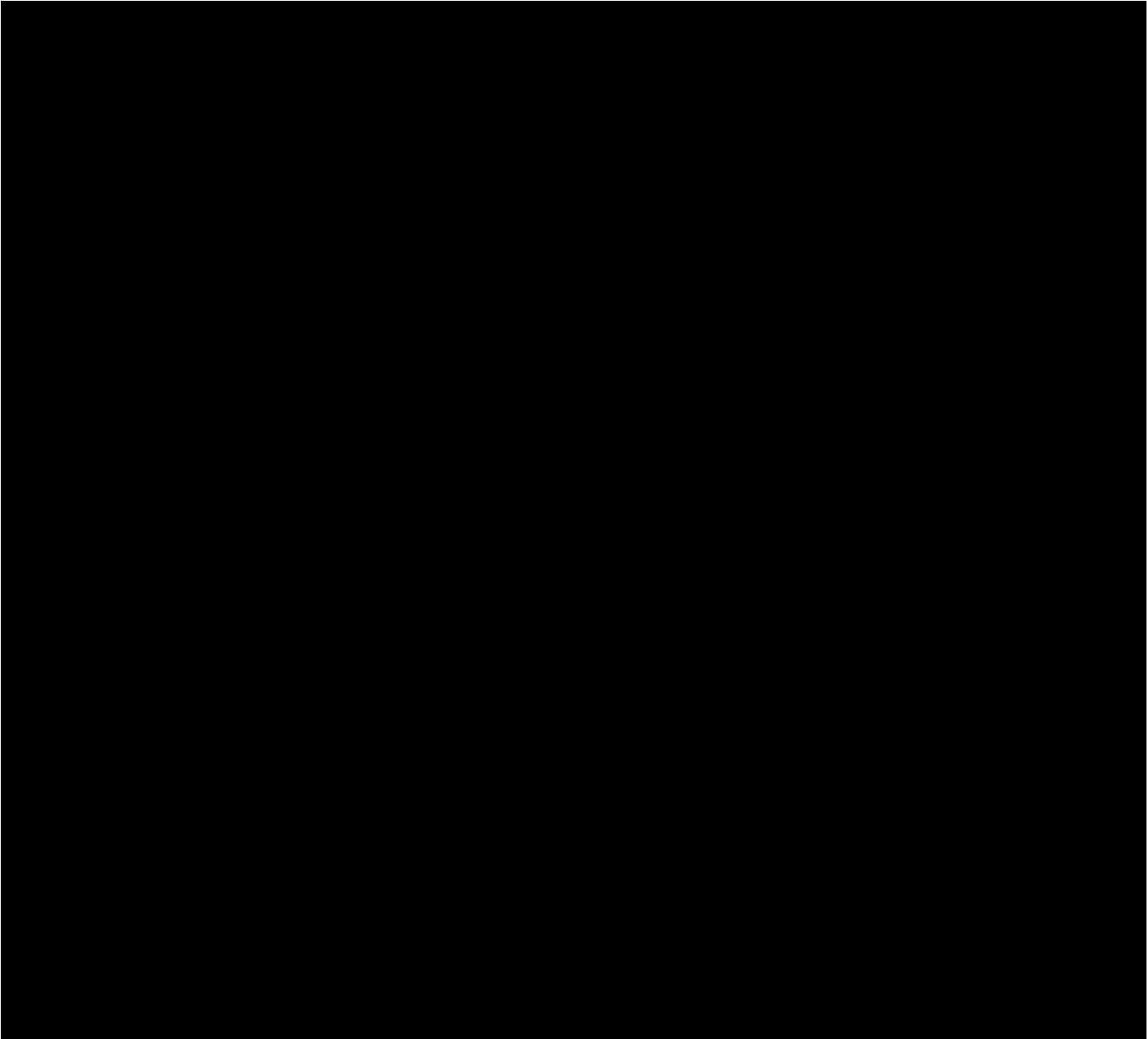




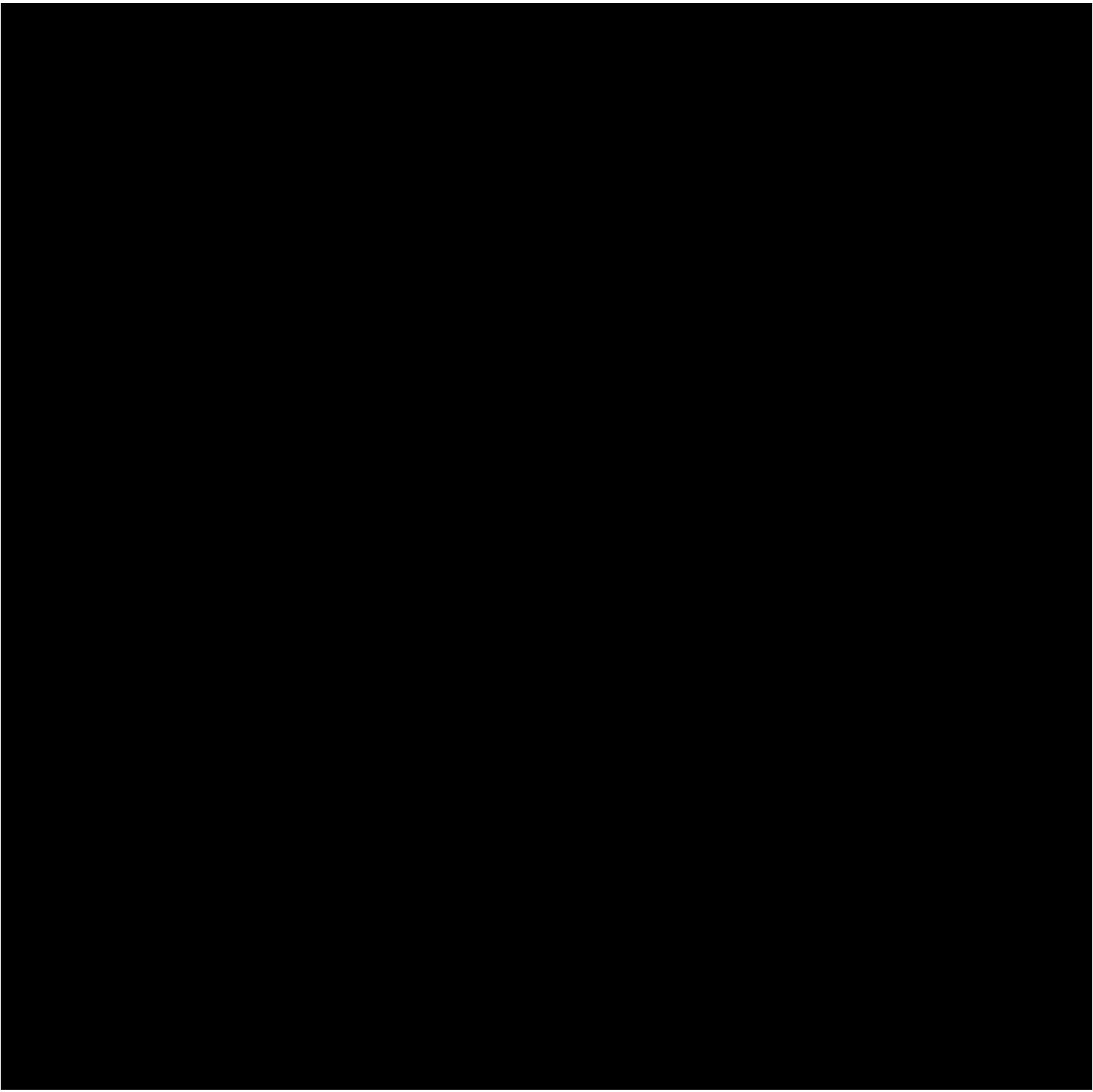




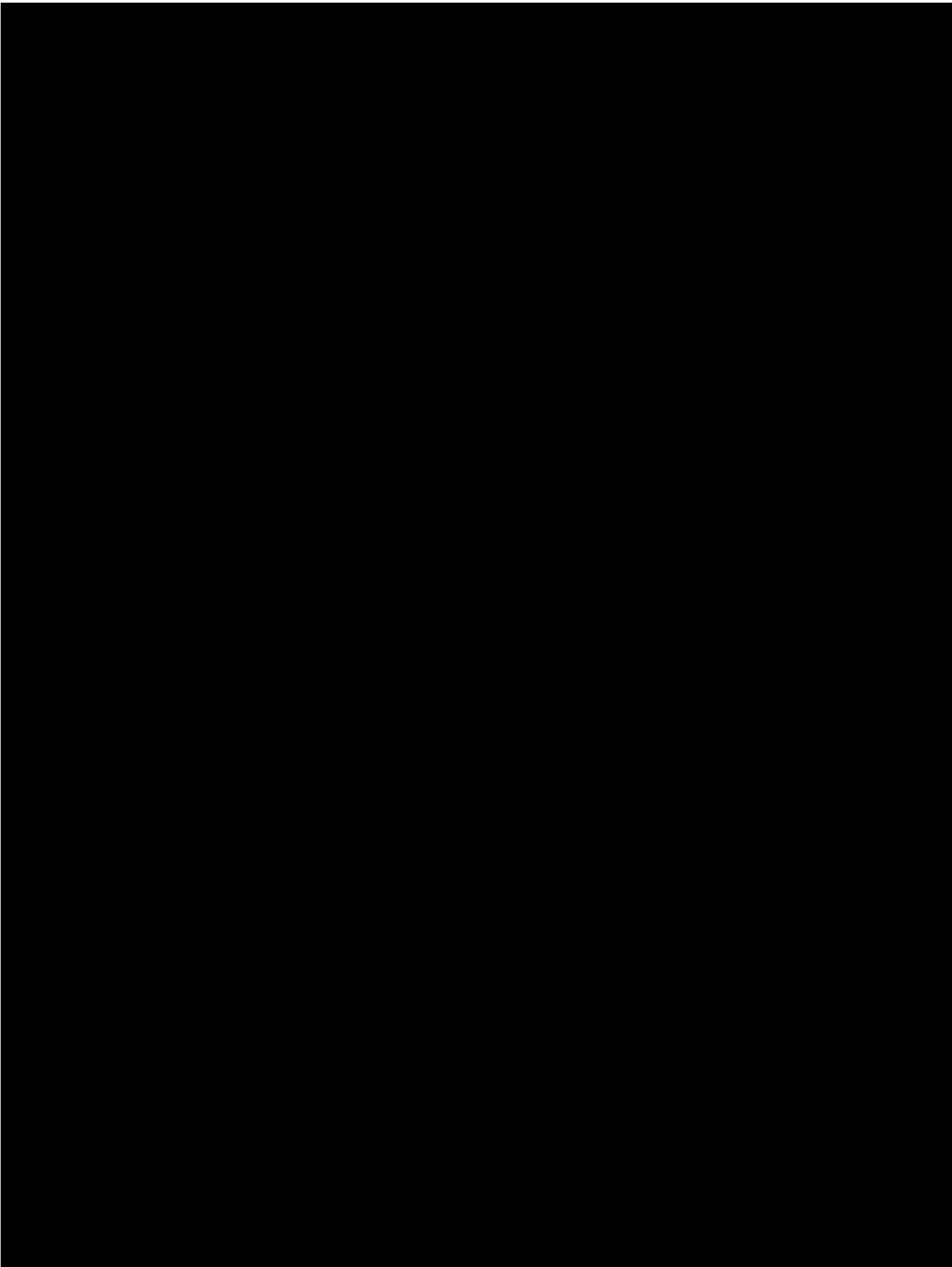


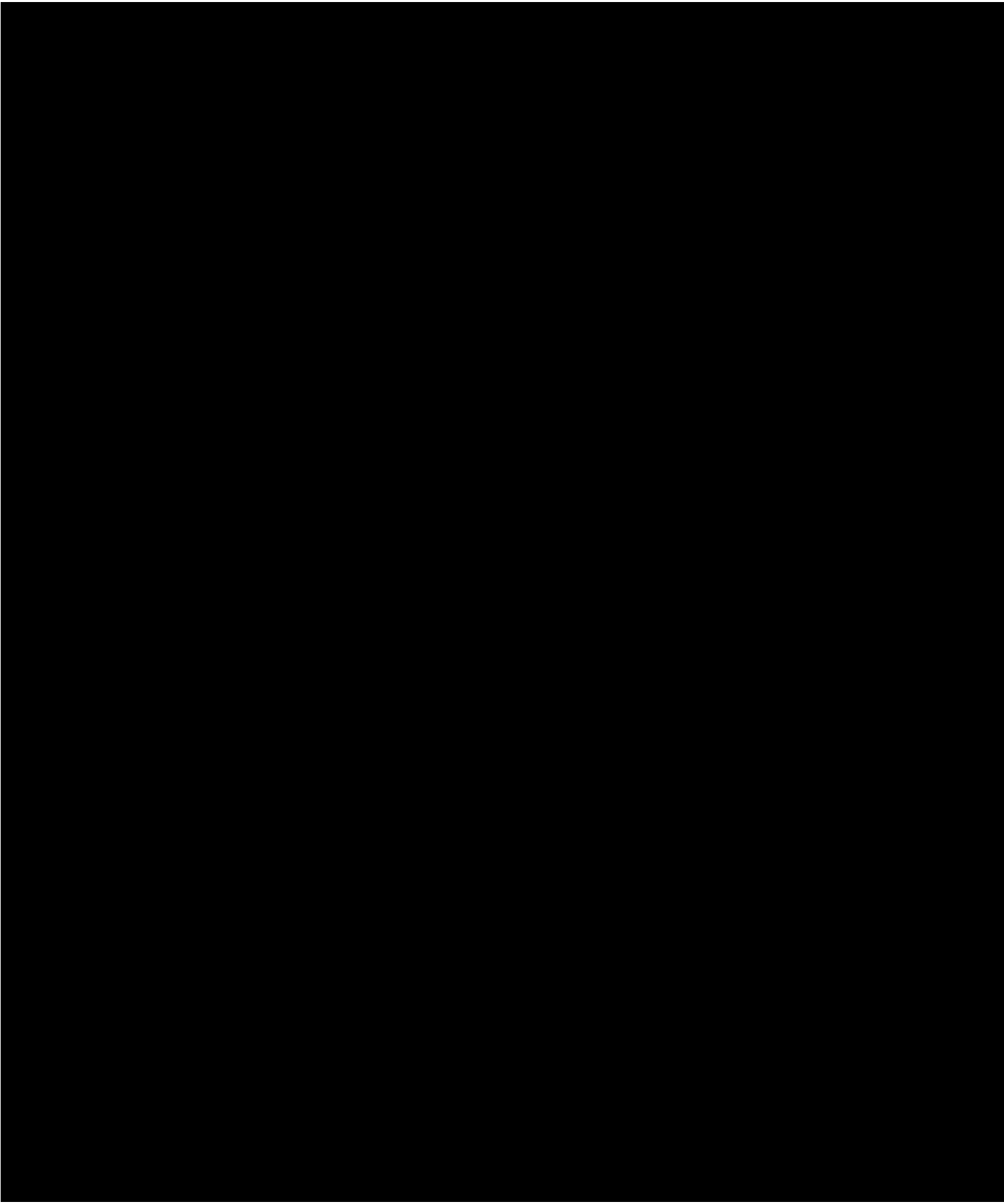


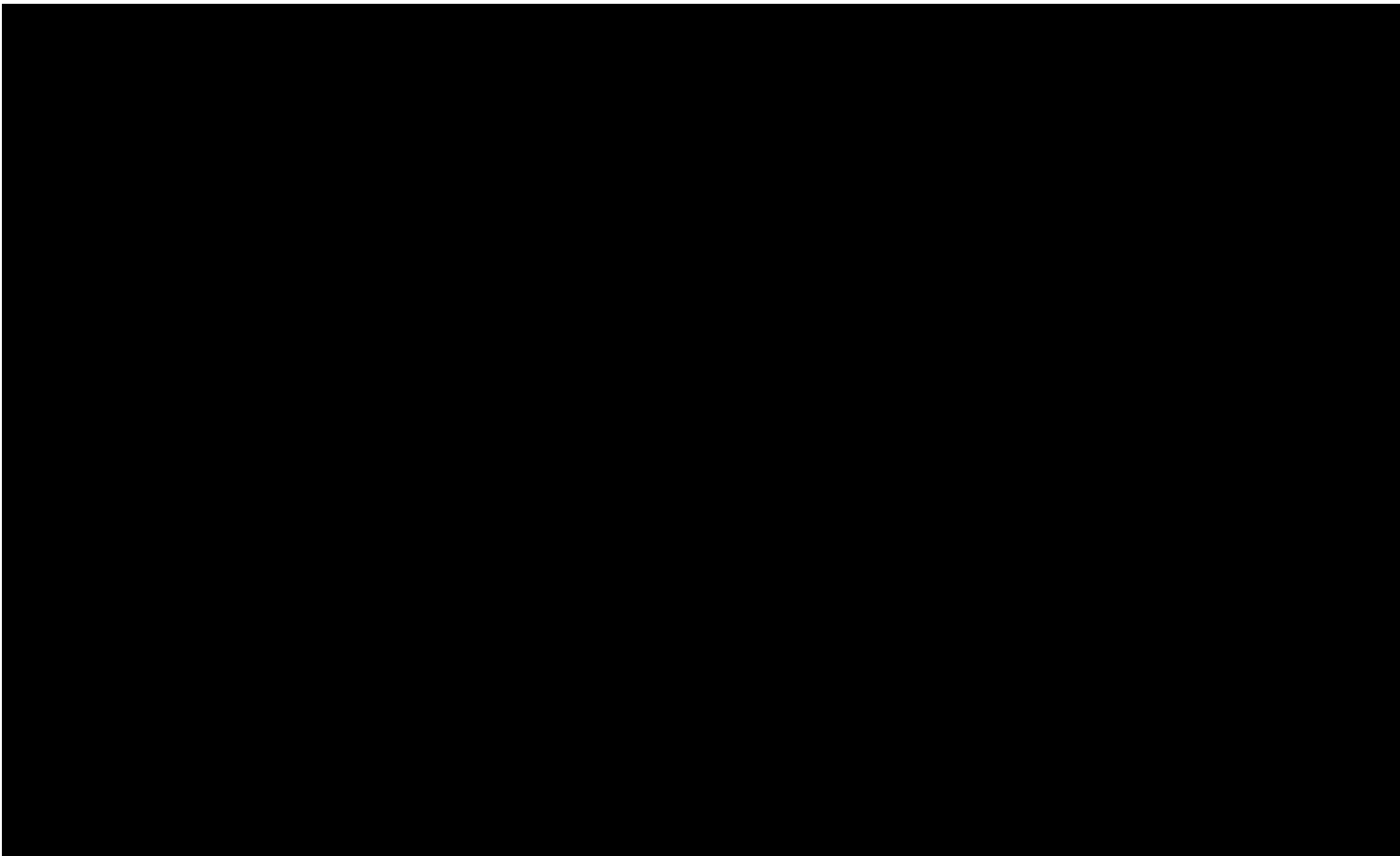
TAB C29



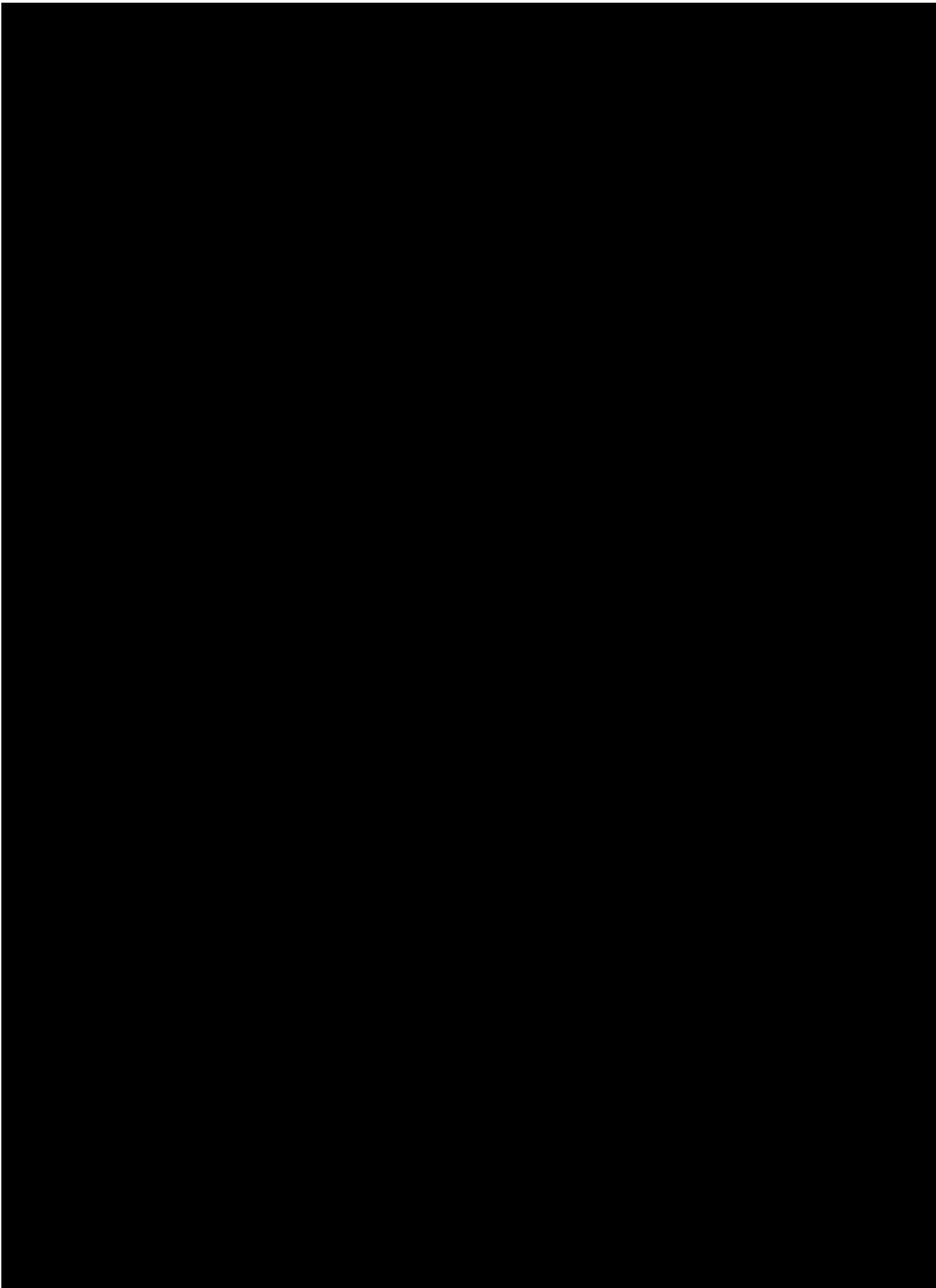
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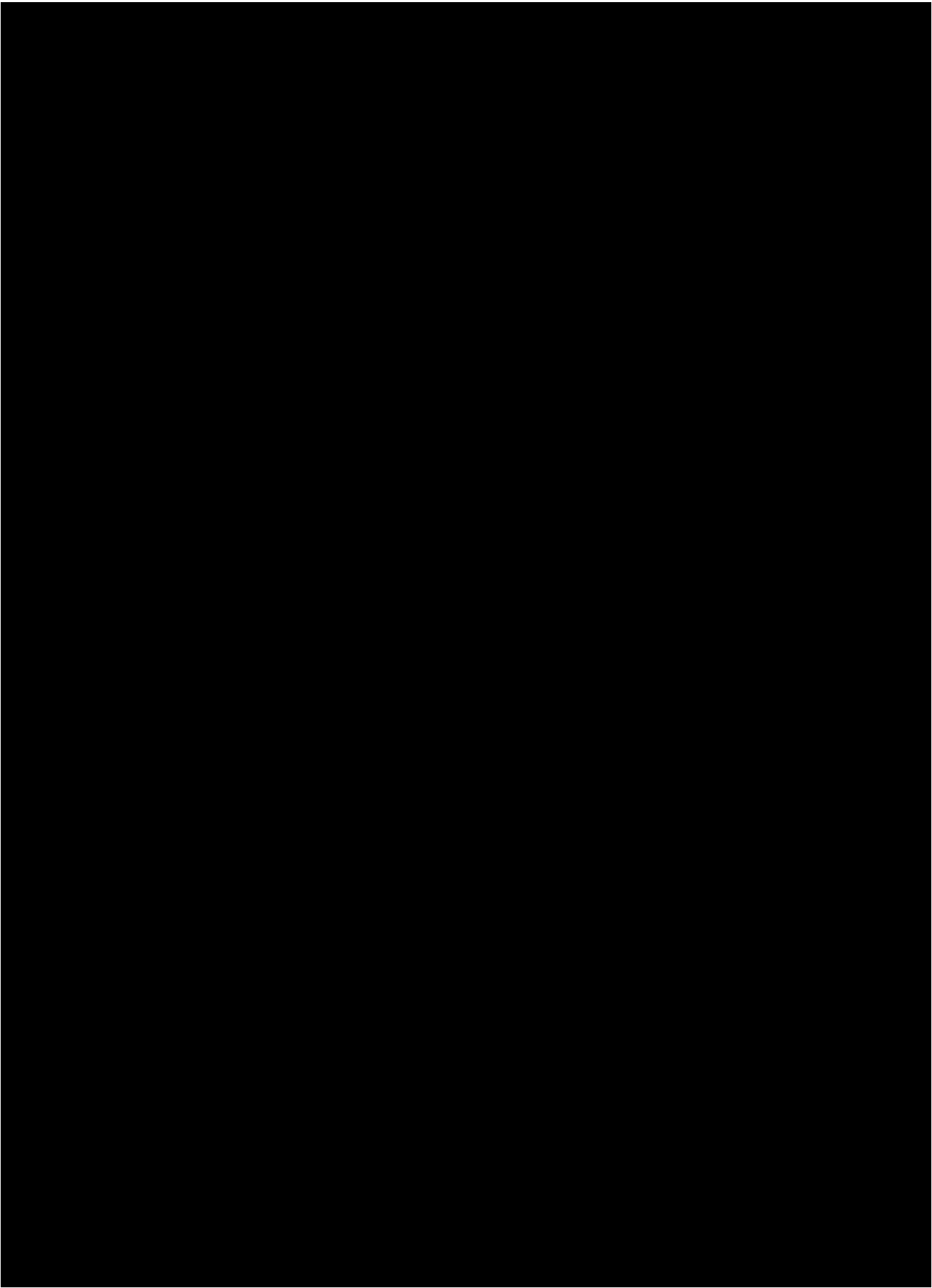


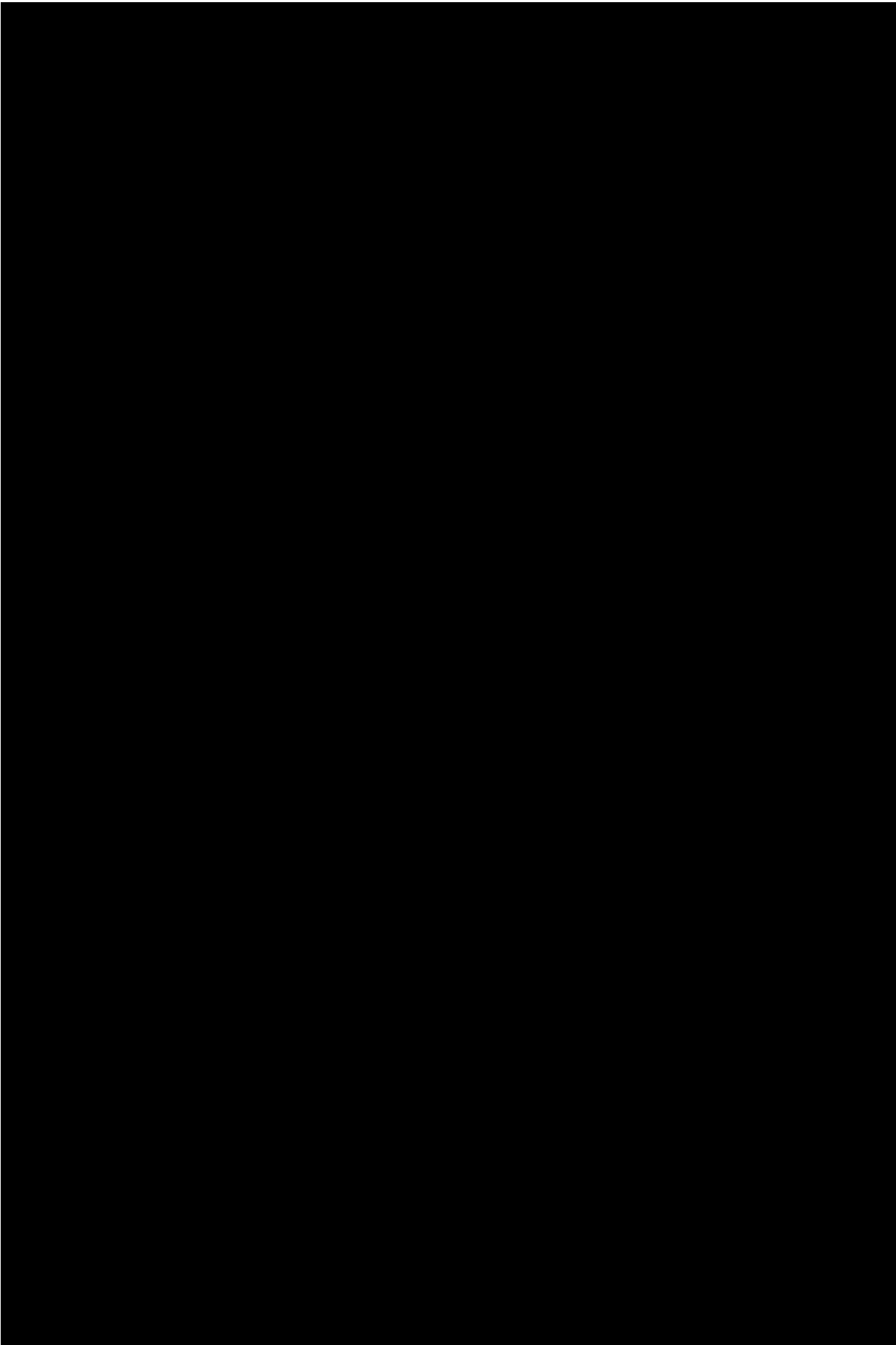


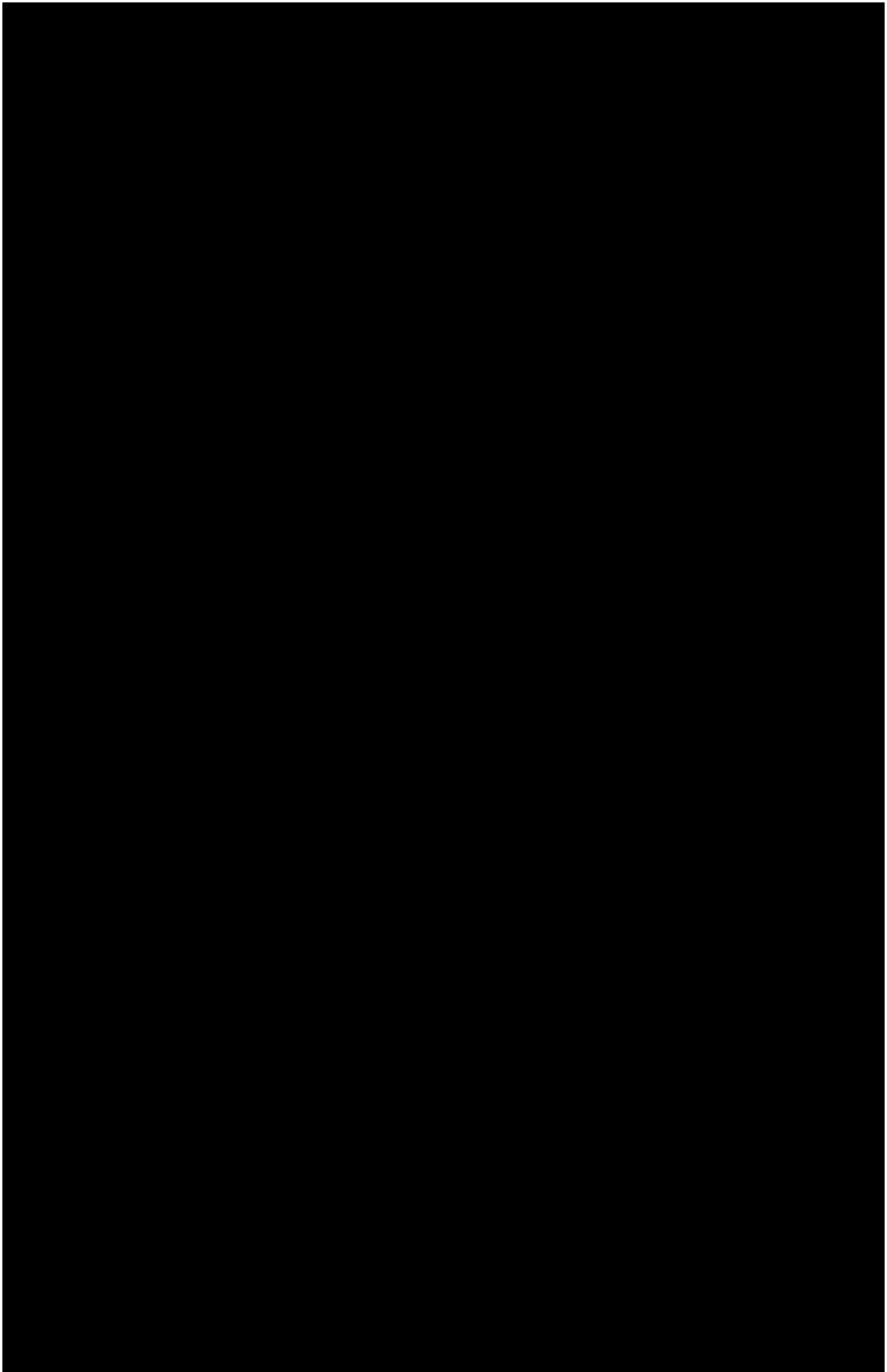


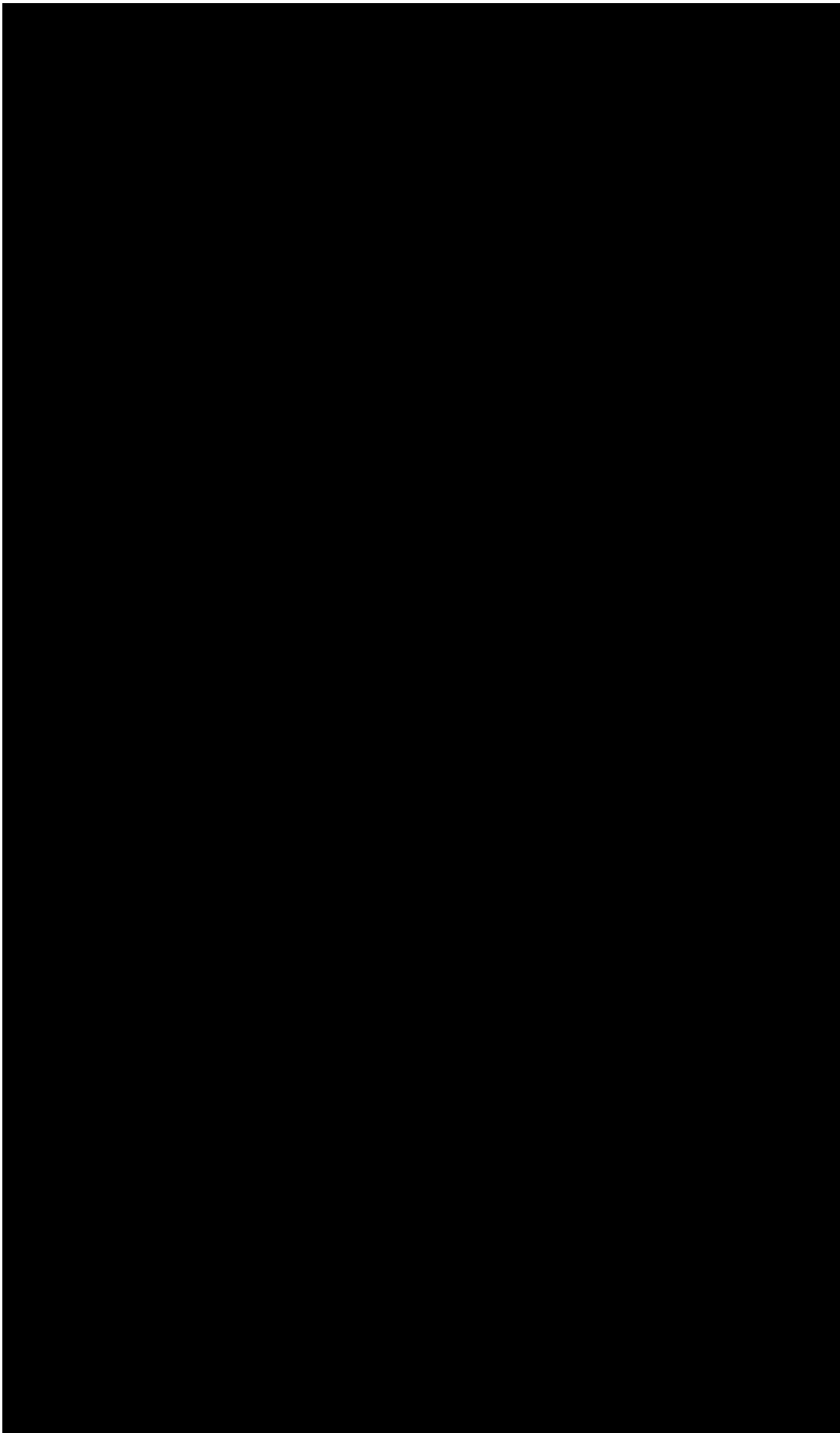
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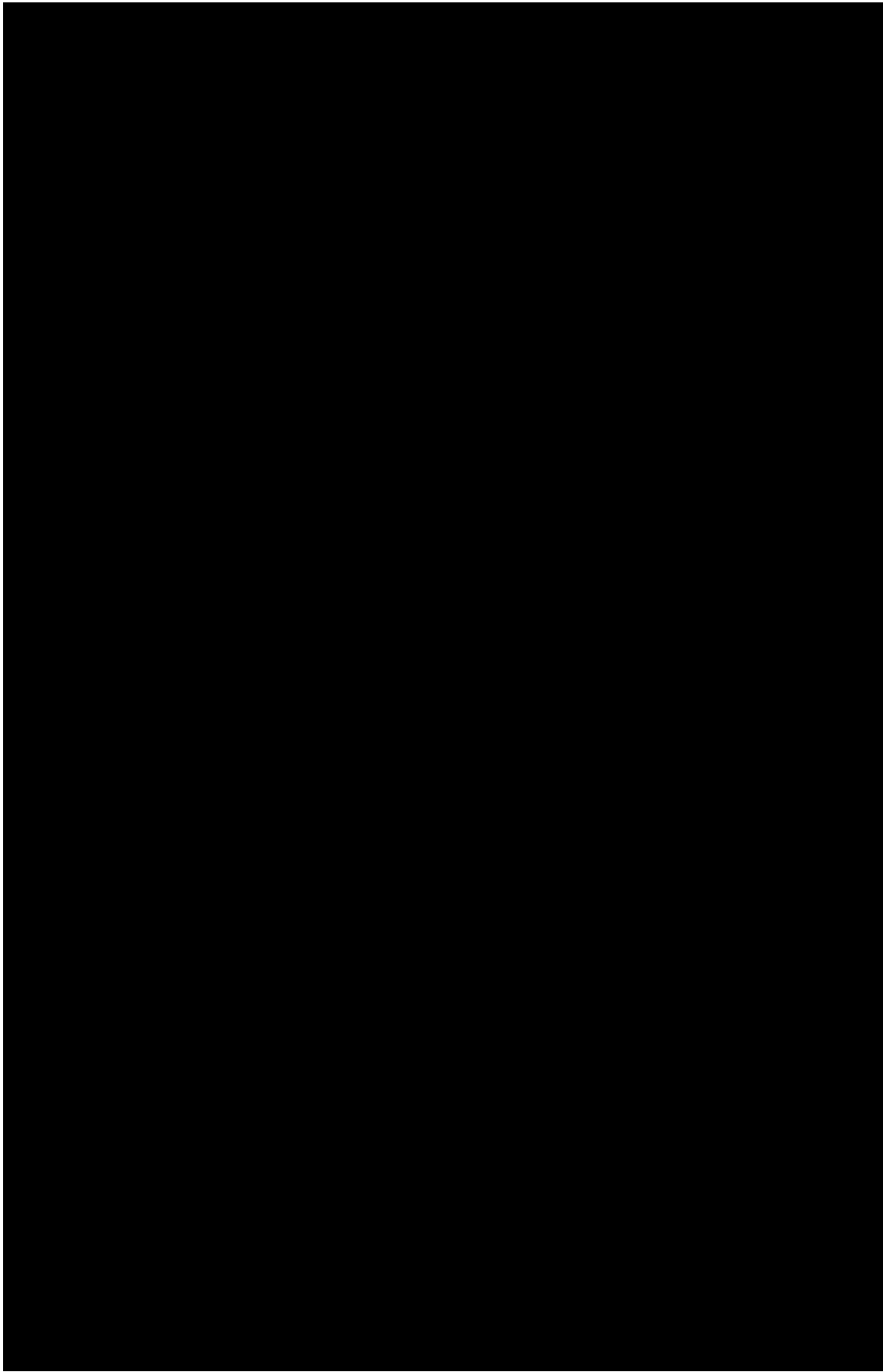












This is **Exhibit “D”** referred to in the Affidavit of Wouter Van Essen of the City of Vancouver, in the Province of British Columbia, sworn before me at the City of Toronto, in the Province of Ontario this 21st day of May, 2024, in accordance with O. Reg. 431/20 Administering Oath or Declaration Remotely



[Commissioner for Taking Affidavits] [or as may be]

ALEXIS BEALE

From: [Alexis Beale](#)
To: ["Dunn, Mark"](#)
Cc: ["Daniel.Rosenbluth@paliareroland.com"](#); [Andrew Paterson \(he/him\)](#); ["Andrew Winton"](#); ["Matt Gottlieb"](#); ["Milne-Smith, Matthew"](#); ["Tee, Brittini"](#); ["Descours, Caroline"](#)
Subject: RE: Receivership of Trade X Group of Companies Inc. et al. - Court File No. CV-23-00710413-00CL
Date: May 19, 2024 3:31:00 PM
Attachments: [image001.png](#)
[image002.png](#)
[image003.png](#)
[image004.png](#)

Counsel,

I am in receipt of your responding record and I note the reference to emails from Ms. Patel dated March 28, 2024, that included an email sent by Eric to me. I understand that the evidence is all that parties have deleted copies of these emails.

Would it be possible for the walled personnel at FTI to recover and provide a copy of this email and any other of the allegedly solicitor-client privileged emails relied on by Ms. Patel in presentations?

Kind Regards,
Alexis Beale

Rosemount Law

150 King Street West, Suite 200
Toronto, Ontario M5H 1J9
647-692-0222
abeale@rosemountlaw.com | www.rosemountlaw.com

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From: Alexis Beale
Sent: Friday, May 17, 2024 1:32 PM
To: Dunn, Mark <mdunn@goodmans.ca>
Cc: Daniel.Rosenbluth@paliareroland.com; [Andrew Paterson \(he/him\) <APaterson@durantbarristers.com>](mailto:Andrew.Paterson@durantbarristers.com); [Andrew Winton <awinton@lolg.ca>](mailto:Andrew.Winton@lolg.ca); [Matt Gottlieb <mgottlieb@lolg.ca>](mailto:Matt.Gottlieb@lolg.ca); [Milne-Smith, Matthew <MMilne-Smith@dwpv.com>](mailto:MMilne-Smith@dwpv.com); [Tee, Brittini <btee@goodmans.ca>](mailto:Tee.Brittini@goodmans.ca); [Descours, Caroline <cdescours@goodmans.ca>](mailto:cdescours@goodmans.ca)
Subject: RE: Receivership of Trade X Group of Companies Inc. et al. - Court File No. CV-23-00710413-00CL

Counsel,

Please find enclosed my correspondence of today's date.

Kind Regards,

Alexis Beale

Rosemount Law

150 King Street West, Suite 200

Toronto, Ontario M5H 1J9

647-692-0222

abeale@rosemountlaw.com | www.rosemountlaw.com

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From: Alexis Beale

Sent: Thursday, May 16, 2024 10:37 AM

To: Dunn, Mark <mdunn@goodmans.ca>

Cc: Daniel.Rosenbluth@paliareroland.com; Andrew Paterson (he/him) <APaterson@durantbarristers.com>; Andrew Winton <awinton@lolg.ca>; Matt Gottlieb <mgottlieb@lolg.ca>; Milne-Smith, Matthew <MMilne-Smith@dwpv.com>; Tee, Brittni <btee@goodmans.ca>; Descours, Caroline <cdescours@goodmans.ca>

Subject: RE: Receivership of Trade X Group of Companies Inc. et al. - Court File No. CV-23-00710413-00CL

Hi Mark,

Perhaps we use the proposal you made at paragraph 12 of your April 29th aide memoire, but with my clients filing the documents.

I am open to suggestions about how to adjust the schedule to permit for this.

12. Tendering the Allegedly Privileged Documents into evidence. In *Continental Currency Exchange Canada Inc. v. Sprott*, Justice Cavanagh and the Court of Appeal noted the importance of identifying the allegedly privileged documents that might have been accessed so that the Court can assess potential prejudice.¹⁰ The Receiver may file some or all of the Allegedly Privileged Documents on a confidential basis (without reviewing them), so that the motion judge can review them and assess prejudice (if any). This may be relevant to the scheduling of the motion, since the Judge that hears the motion may not be able to participate further in the case.

Kind Regards,

Alexis Beale

Rosemount Law

150 King Street West, Suite 200

Toronto, Ontario M5H 1J9

647-692-0222

abeale@rosemountlaw.com | www.rosemountlaw.com

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From: Dunn, Mark <mdunn@goodmans.ca>

Sent: Thursday, May 16, 2024 10:03 AM

To: Alexis Beale <abeale@rosemountlaw.com>

Cc: Daniel.Rosenbluth@paliareroland.com; Andrew Paterson (he/him) <APaterson@durantbarristers.com>; Andrew Winton <awinton@lolg.ca>; Matt Gottlieb <mgottlieb@lolg.ca>; Milne-Smith, Matthew <MMilne-Smith@dwpv.com>; Tee, Brittni <btee@goodmans.ca>; Descours, Caroline <cdescours@goodmans.ca>

Subject: RE: Receivership of Trade X Group of Companies Inc. et al. - Court File No. CV-23-00710413-00CL

Ms. Beale,

We do not have your position. You wrote in your *aide memoire* that “the timetable will have to allow for a third party or judicial review of the documents”. We do not know what specifically is being proposed or how the timetable will have to allow for that proposal, whatever it may be. We should not hear your proposal for the first time at the case conference.

Mark Dunn

He/Him

Goodmans LLP

416.849.6895 (office) 647.294.3866 (mobile)

mdunn@goodmans.ca

Bay Adelaide Centre
333 Bay Street, Suite 3400
Toronto, ON M5H 2S7
goodmans.ca

From: Alexis Beale <abeale@rosemountlaw.com>

Sent: Thursday, May 16, 2024 9:56 AM

To: Dunn, Mark <mdunn@goodmans.ca>

Cc: Daniel.Rosenbluth@paliareroland.com; Andrew Paterson (he/him) <APaterson@durantbarristers.com>; Andrew Winton <awinton@lolg.ca>; Matt Gottlieb <mgottlieb@lolg.ca>; Milne-Smith, Matthew <MMilne-Smith@dwpv.com>; Tee, Brittni <btee@goodmans.ca>; Descours, Caroline <cdescours@goodmans.ca>

Subject: RE: Receivership of Trade X Group of Companies Inc. et al. - Court File No. CV-23-00710413-00CL

Hi Mark,

I note your agreement to the timetable. Thank you.

On the issue of the voluntary disclosure of privileged documents, you have our position. This is something that will have to be addressed at the case conference.

Kind Regards,
Alexis Beale

Rosemount Law

150 King Street West, Suite 200

Toronto, Ontario M5H 1J9

647-692-0222

abeale@rosemountlaw.com | www.rosemountlaw.com

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From: Dunn, Mark <mdunn@goodmans.ca>

Sent: Wednesday, May 15, 2024 7:52 PM

To: Alexis Beale <abeale@rosemountlaw.com>

Cc: Daniel.Rosenbluth@paliareroland.com; Andrew Paterson (he/him) <APaterson@durantbarristers.com>; Andrew Winton <awinton@lolg.ca>; Matt Gottlieb <mgottlieb@lolg.ca>; Milne-Smith, Matthew <MMilne-Smith@dwpv.com>; Tee, Brittni <btee@goodmans.ca>; Descours, Caroline <cdescours@goodmans.ca>

Subject: RE: Receivership of Trade X Group of Companies Inc. et al. - Court File No. CV-23-00710413-00CL

Ms. Beale,

We are writing to confirm further to the *aide memoire* served earlier this evening, to see if we can narrow the issues to be addressed at the case conference tomorrow.

The responding parties can accept the schedule proposed at paragraph 10 of the *Aide Memoire*.

We note that we do not understand the comments about the timetable in paragraph 11 or the process being proposed. To the extent that your client intends to make some sort of proposal about “third party or judicial review” then we would appreciate hearing about it in advance of the case conference so that we can consider it and seek instructions. To be clear, our position on review of the documents is as follows:

1. The Van Essen Companies have copies of the allegedly privileged documents that were viewed by FTI Forensic or Goodmans (the “viewed documents”). They are the only party that has possession

- of the viewed documents;
2. The Van Essen Companies can choose whether to tender the viewed documents into evidence or not. We are content to have the Van Essen Companies make this decision after we serve our Responding Record;
 3. If the Van Essen Companies choose to not tender the viewed documents into evidence then LOLG need not see the viewed documents;
 4. If the Van Essen Companies choose to tender the documents into evidence and make submissions about them then the Receiver must have an opportunity to respond. LOLG will undertake to keep the documents confidential from Goodmans and the Receiver, and to have no involvement in the case going forward. The suggestion that this will cause some sort of (unspecified) prejudice is difficult to understand, given the undertakings that LOLG is prepared to give.

We will oppose any proposal that involves providing the documents to the motion judge and making submissions about them without providing them to LOLG. The Receiver is entitled to an opportunity to respond to the allegations against it, subject to shielding your clients from prejudice in future litigation. Our proposal accomplishes that.

With respect to paragraph 7, we do not understand the comment about waiting for the Receiver's proposal. The Receiver had previously made a proposal and the Van Essen Companies accepted that the proposal was appropriate to address privilege issues going forward. To be clear, we are not seeking to engage in this process for the purpose of the motion. We are looking to identify and segregate the allegedly privileged documents so that the Receiver can continue with its mandate. Your clients' evidentiary record is complete, subject only to proper reply.

Mark Dunn

He/Him
Goodmans LLP

416.849.6895 (office) 647.294.3866 (mobile)
mdunn@goodmans.ca

Bay Adelaide Centre
333 Bay Street, Suite 3400
Toronto, ON M5H 2S7
goodmans.ca

From: Alexis Beale <abeale@rosemountlaw.com>
Sent: Wednesday, May 15, 2024 3:30 PM
To: Dunn, Mark <mdunn@goodmans.ca>; Andrew Winton <awinton@lolg.ca>; Matt Gottlieb <mgottlieb@lolg.ca>; Milne-Smith, Matthew <MMilne-Smith@dwpv.com>; Tee, Brittni <btee@goodmans.ca>; Descours, Caroline <cdescours@goodmans.ca>
Cc: Daniel.Rosenbluth@paliareroland.com; Andrew Paterson (he/him) <APaterson@durantbarristers.com>
Subject: RE: Receivership of Trade X Group of Companies Inc. et al. - Court File No. CV-23-00710413-00CL

Counsel,

Please find enclosed the aide memoire of the Van Essen Companies, served upon you pursuant to the *Rules*.

Kind Regards,
Alexis Beale

Rosemount Law

150 King Street West, Suite 200

Toronto, Ontario M5H 1J9

647-692-0222

abeale@rosemountlaw.com | www.rosemountlaw.com

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From: Dunn, Mark <mdunn@goodmans.ca>

Sent: Tuesday, May 14, 2024 9:13 AM

To: Alexis Beale <abeale@rosemountlaw.com>

Cc: Andrew Winton <awinton@olg.ca>; Matt Gottlieb <mgottlieb@olg.ca>; Milne-Smith, Matthew <MMilne-Smith@dwpv.com>; Tee, Brittini <btee@goodmans.ca>; Descours, Caroline <cdescours@goodmans.ca>; Daniel.Rosenbluth@paliareroland.com; Andrew Paterson (he/him) <APaterson@durantbarristers.com>

Subject: FW: Receivership of Trade X Group of Companies Inc. et al. - Court File No. CV-23-00710413-00CL

Ms. Beale,

We are in receipt of the e-mail from Mr. Paterson below. Mr. Paterson advises that he is acting as your agent. You previously advised that Mr. Rosenbleuth and his firm are co-counsel on the motion, but Mr. Rosenbleuth is not copied on Mr. Paterson's e-mail. We would appreciate it if you could clarify what role (if any) Mr. Paterson and Mr. Rosenbleuth will have on this matter so that we can ensure that the right parties are copied on correspondence.

Thanks,
Mark

Mark Dunn

He/Him

Goodmans LLP

416.849.6895 (office) 647.294.3866 (mobile)

mdunn@goodmans.ca

Bay Adelaide Centre

333 Bay Street, Suite 3400

Toronto, ON M5H 2S7

goodmans.ca

From: Andrew Paterson (he/him) <APaterson@durantbarristers.com>

Sent: Monday, May 13, 2024 9:04 PM

To: Alexis Beale <abeale@rosemountlaw.com>; Tee, Brittini <btee@goodmans.ca>; Dunn, Mark <mdunn@goodmans.ca>; Descours, Caroline <cdescours@goodmans.ca>; Hamidi, Kamran <Kamran.Hamidi@fticonsulting.com>; Bishop, Paul <Paul.Bishop@fticonsulting.com>; nmacparland@dwpv.com; Renner, Natalie <nrenner@dwpv.com>; mchurilov@dwpv.com; john.salmas@dentons.com; Fotinos, Helen <helen.fotinos@dentons.com>; mark.freake@dentons.com; hmeredith@mccarthy.ca; tcourtis@mccarthy.ca; hmontagne@mccarthy.ca; gmartel@stikeman.com; nnouvet@stikeman.com

Cc: Alexis Beale <abeale@rosemountlaw.com>; Wanda Michie (she/her) <WMichie@durantbarristers.com>

Subject: Receivership of Trade X Group of Companies Inc. et al. - Court File No. CV-23-00710413-00CL

TO: THE SERVICE LIST


Good evening,

My name is Andrew Paterson and I am acting as agent to Alexis Beale with respect to the subject matter.

Please find attached a Supplemental Motion Record of the Van Essen Companies, served upon you pursuant to the *Rules of Civil Procedure*.

Kind regards,



Andrew Paterson
Lawyer
Phone: 613-290-6427
Email: apaterson@durantbarristers.com
www.durantbarristers.com
 

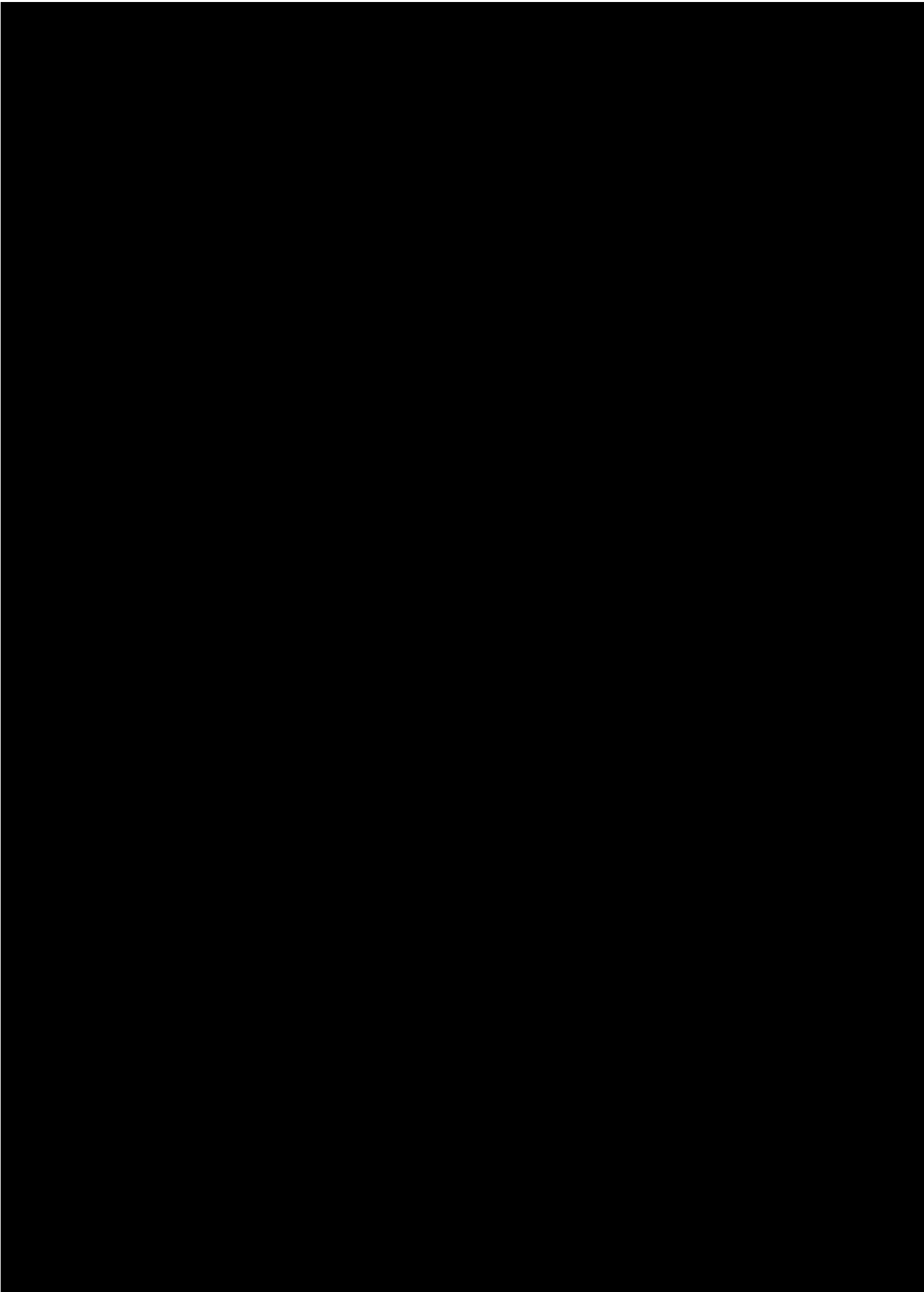
***** Attention *****

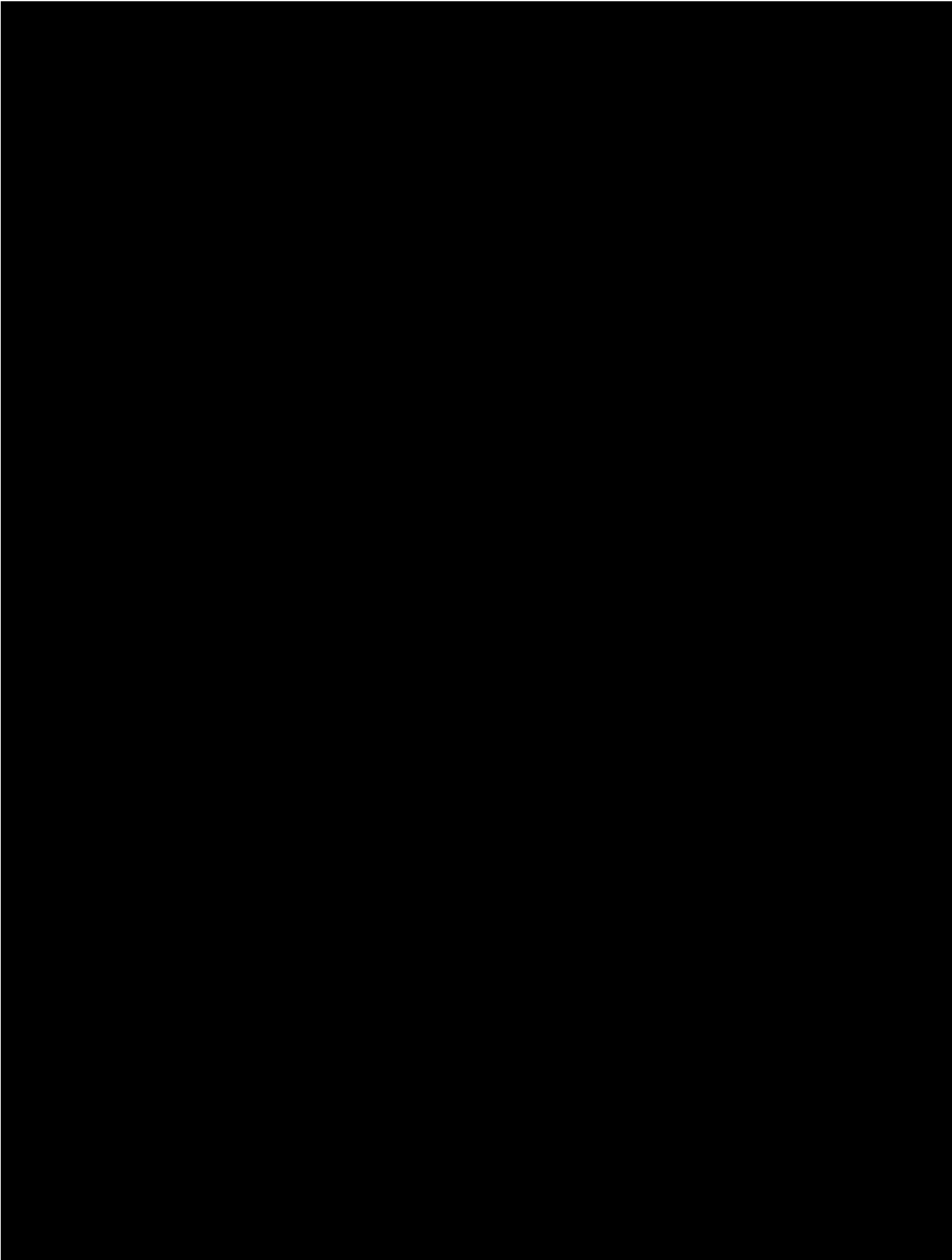
This communication is intended solely for the named addressee(s) and may contain information that is privileged, confidential, protected or otherwise exempt from disclosure. No waiver of confidence, privilege, protection or otherwise is made. If you are not the intended recipient of this communication, or wish to unsubscribe, please advise us immediately at privacyofficer@goodmans.ca and delete this email without reading, copying or forwarding it to anyone. Goodmans LLP, 333 Bay Street, Suite 3400, Toronto, ON, M5H 2S7, www.goodmans.ca. You may unsubscribe to certain communications by clicking here.

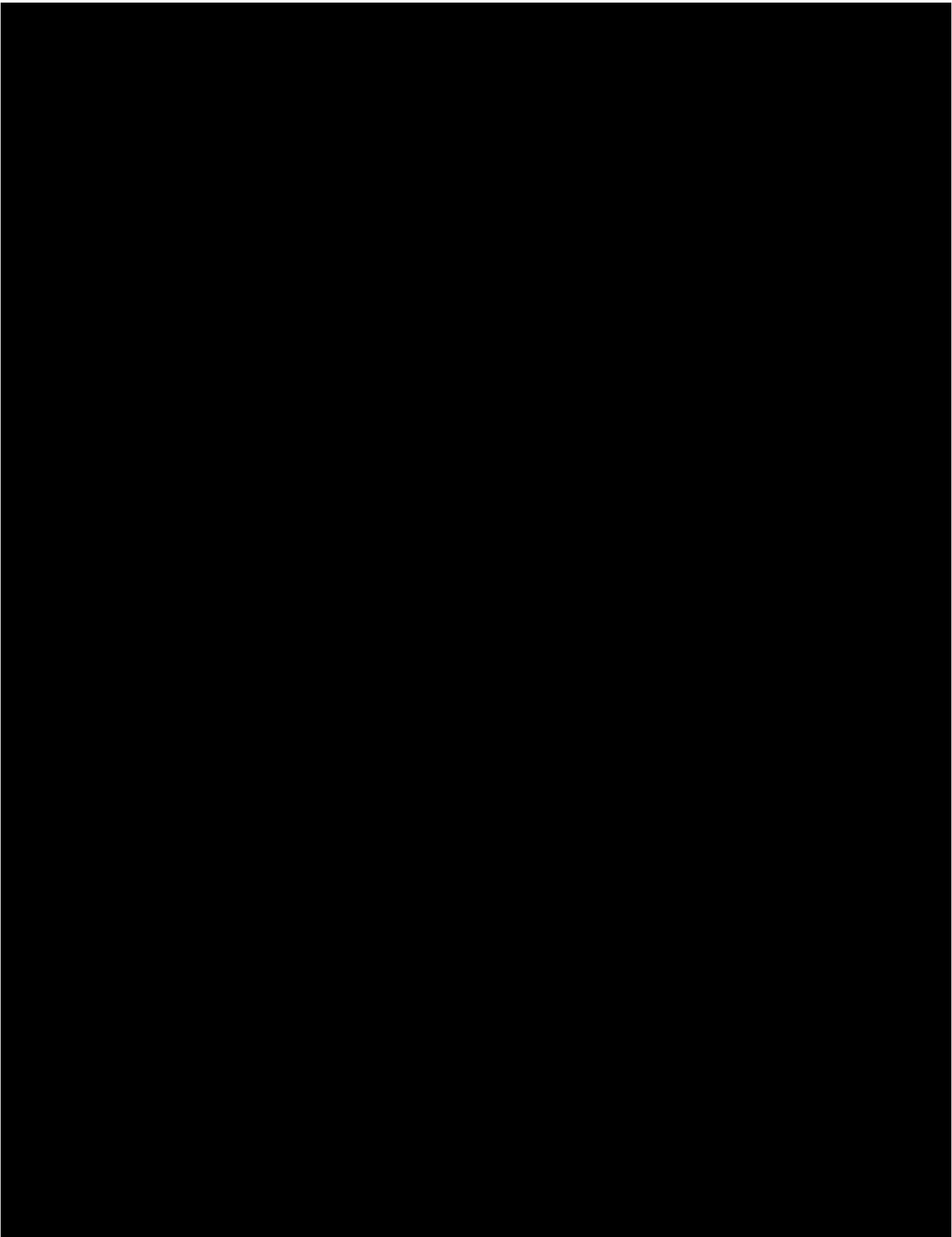
This is **Exhibit “E”** referred to in the Affidavit of Wouter Van Essen of the City of Vancouver, in the Province of British Columbia, sworn before me at the City of Toronto, in the Province of Ontario this 21st day of May, 2024, in accordance with O. Reg. 431/20 Administering Oath or Declaration Remotely

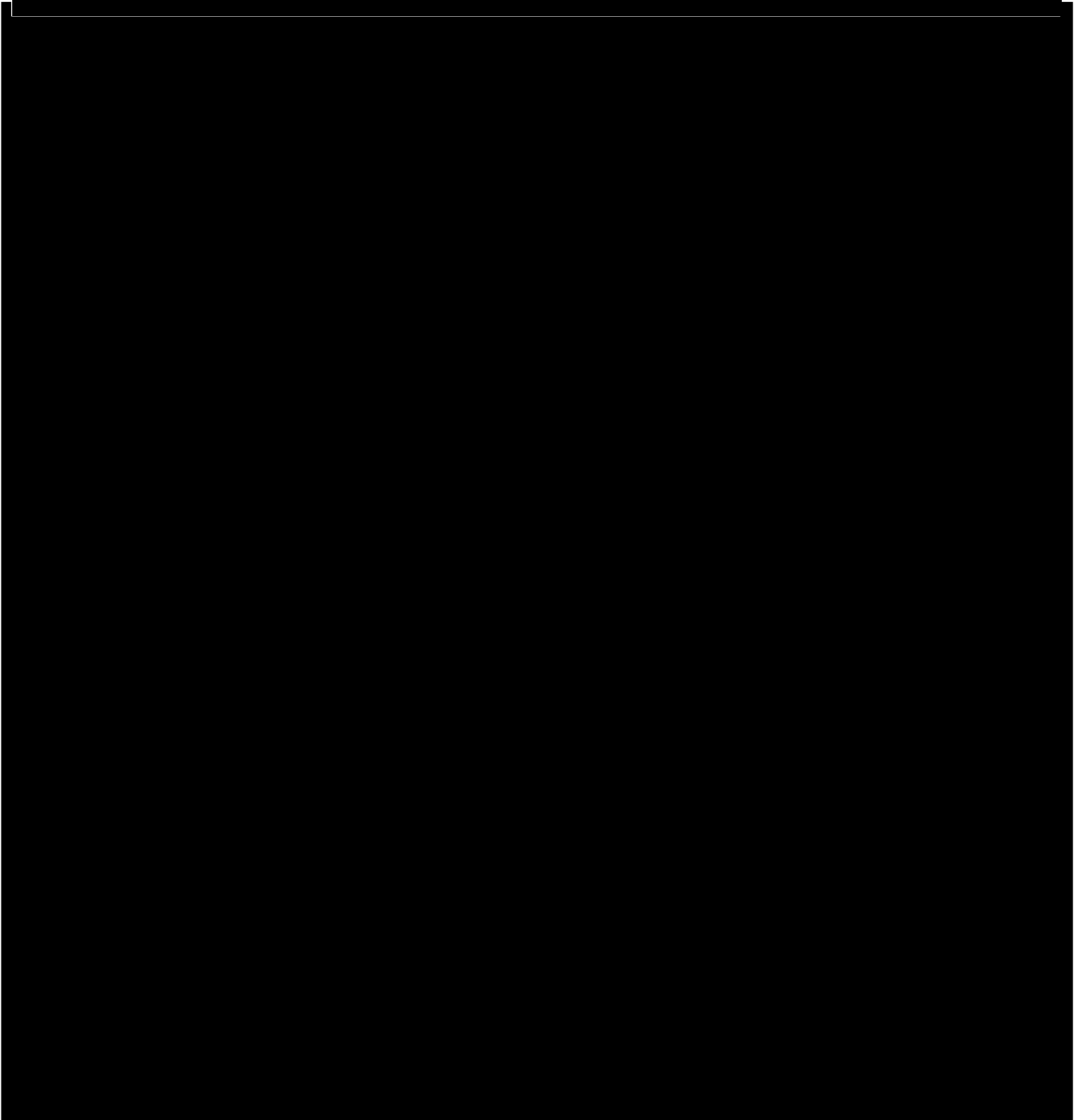
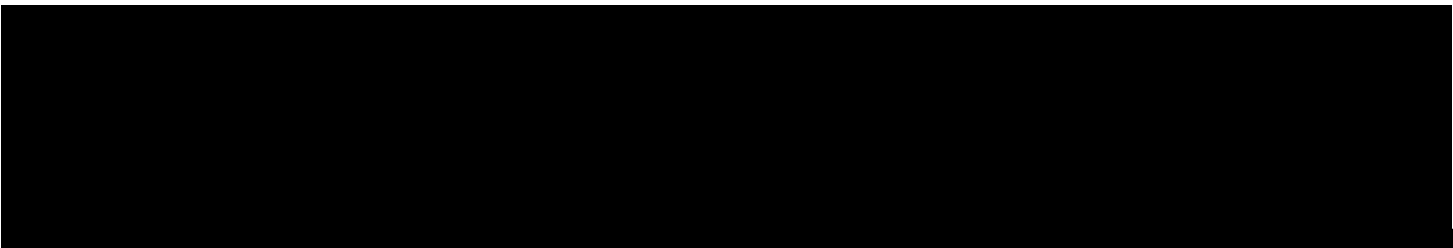


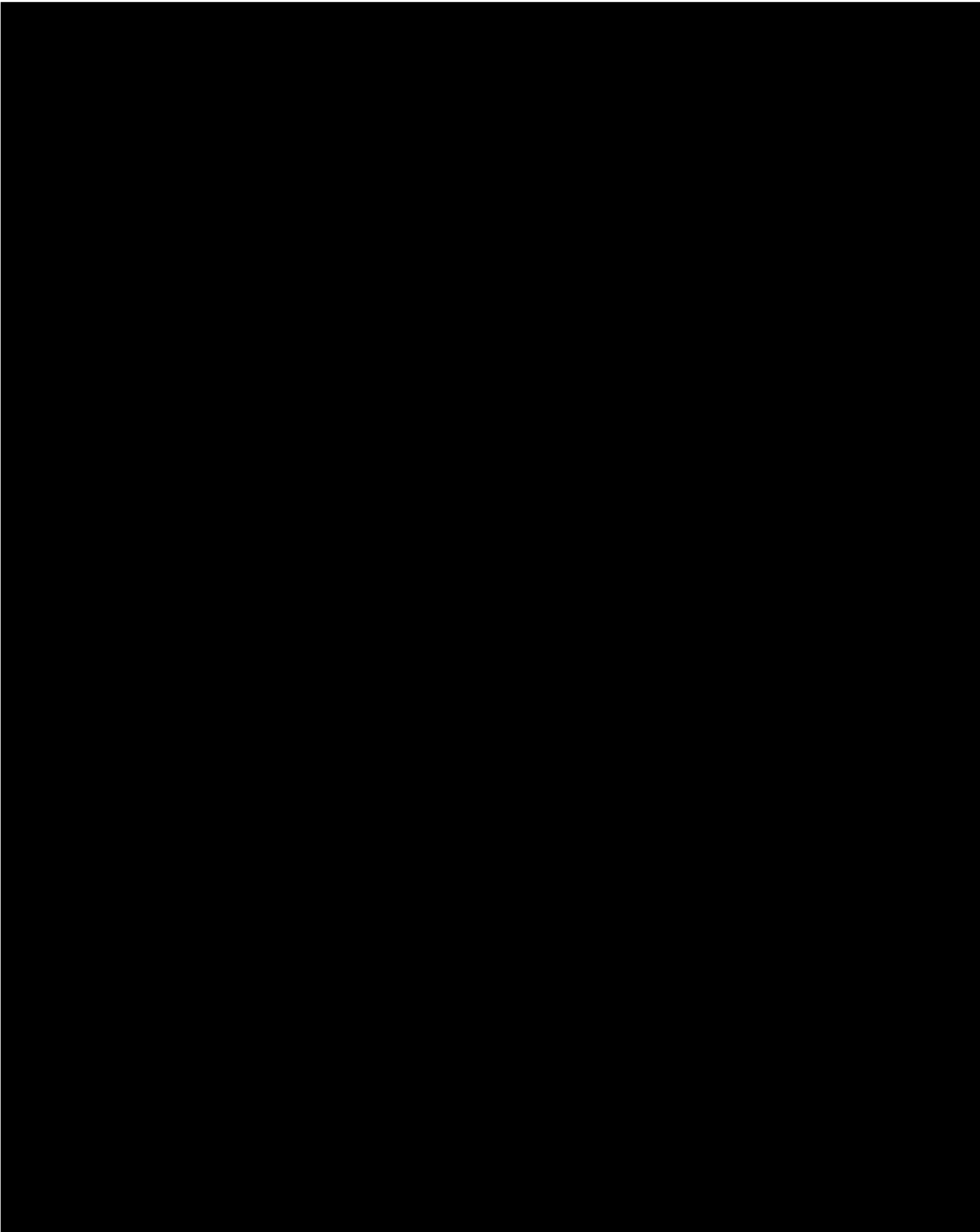
[Commissioner for Taking Affidavits] [or as may be]
ALEXIS BEALE

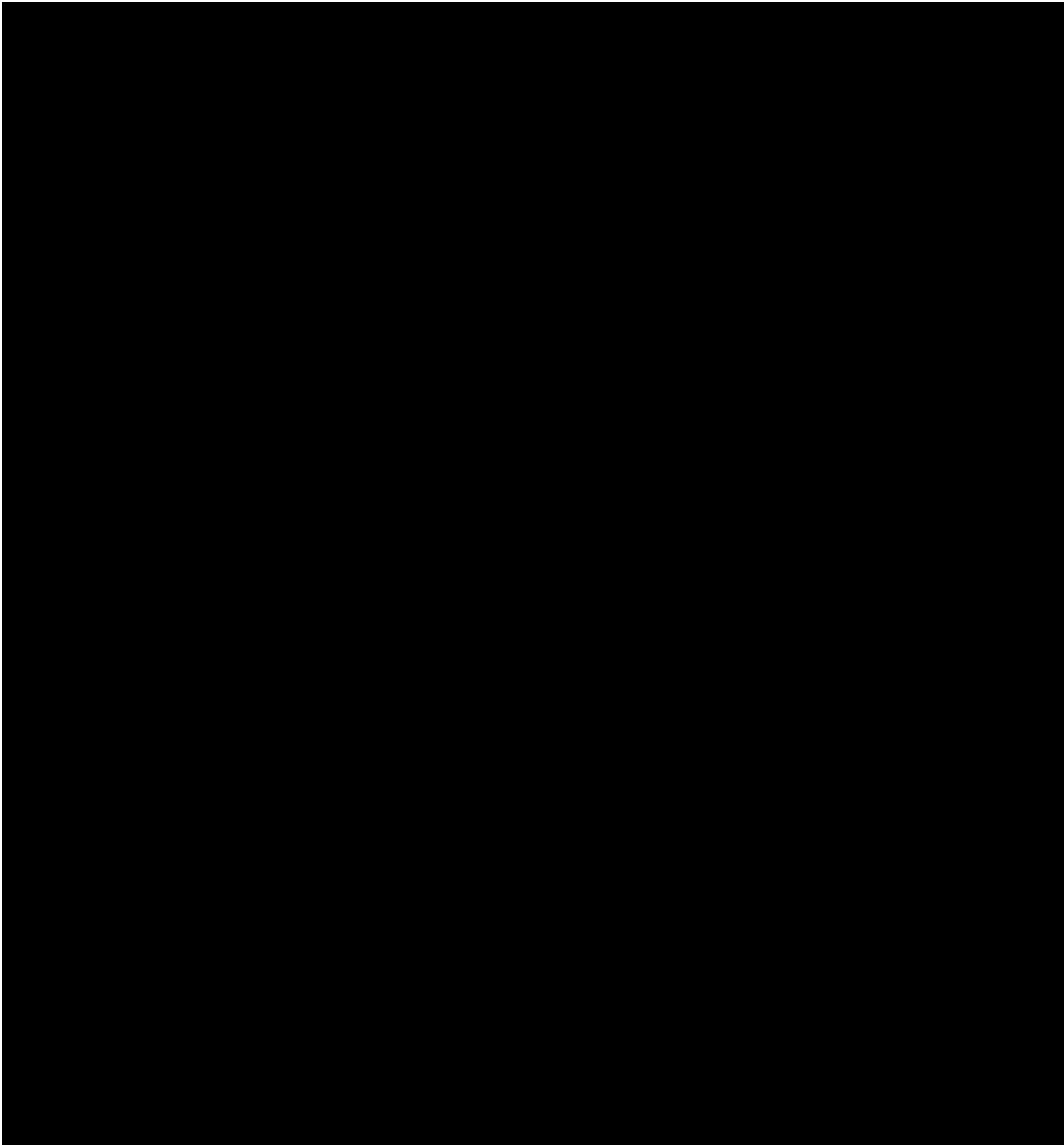


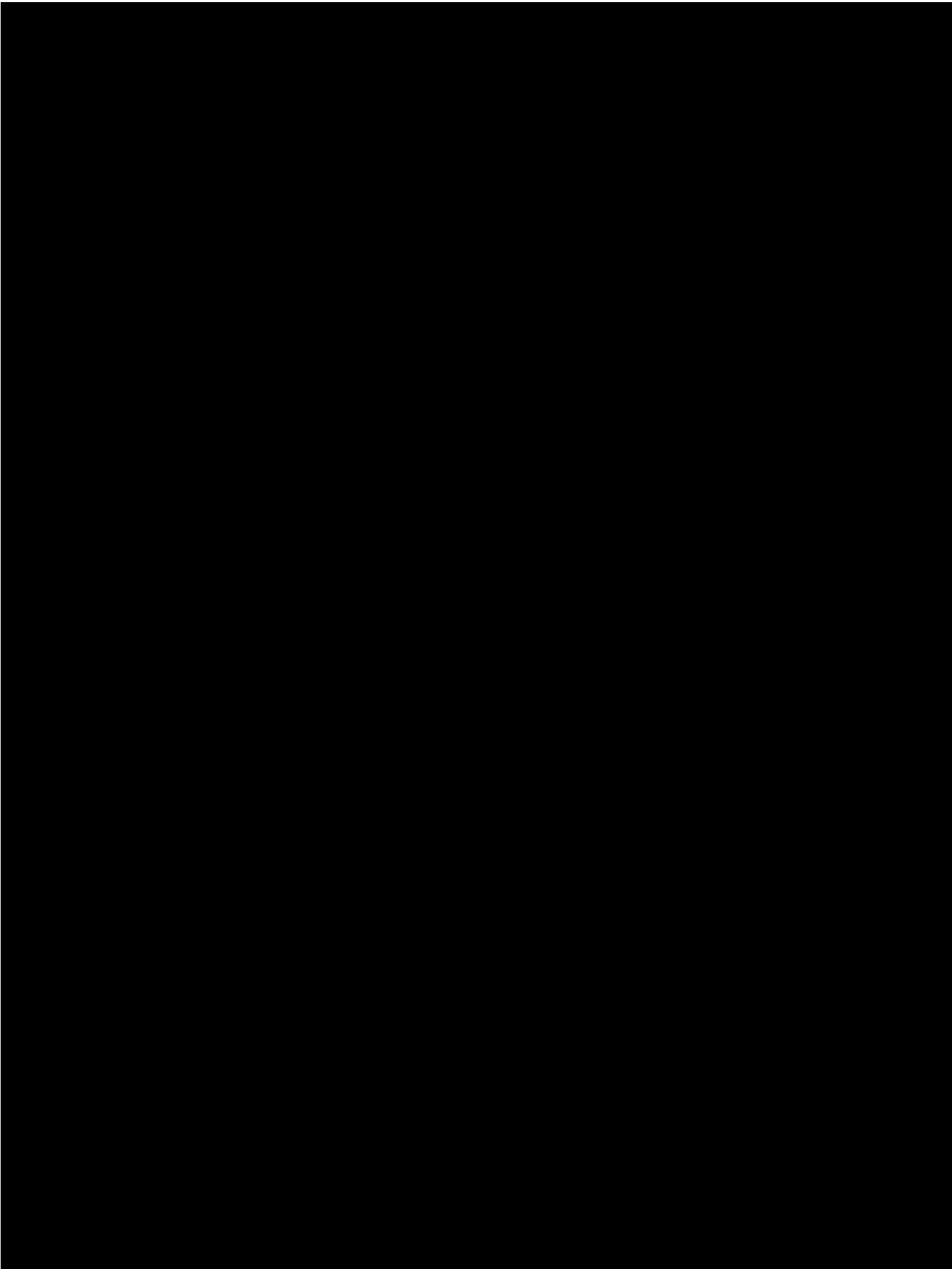


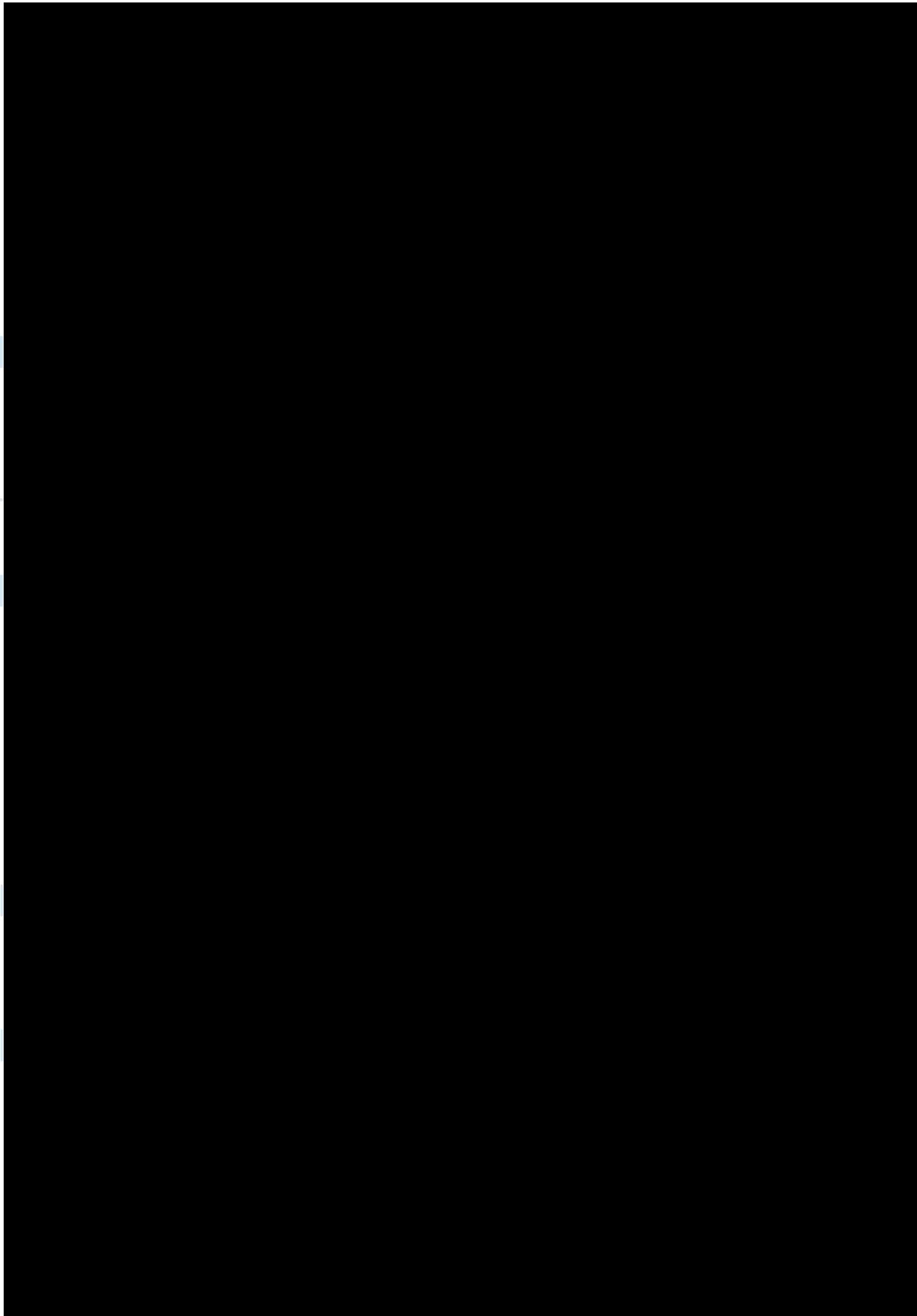












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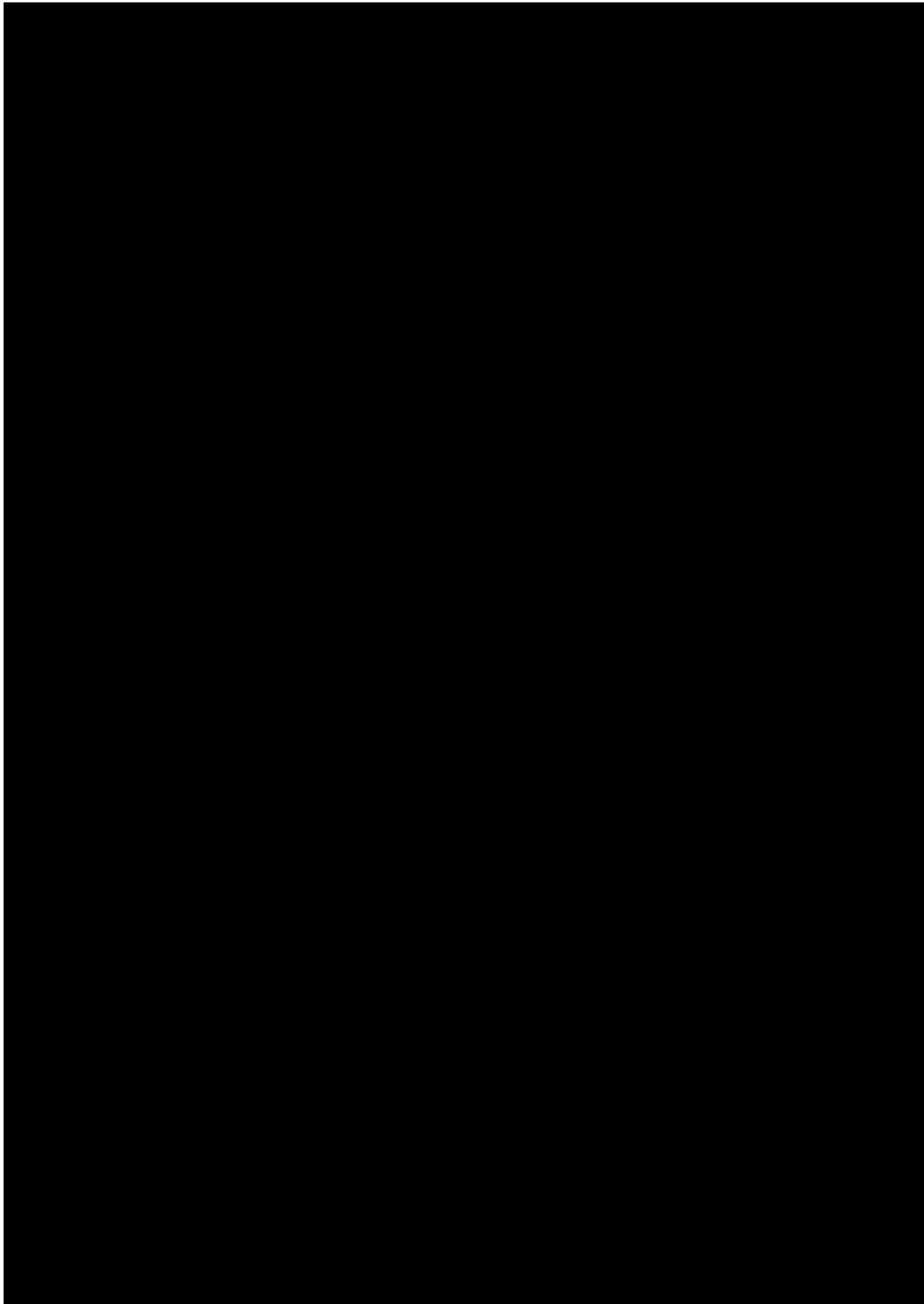
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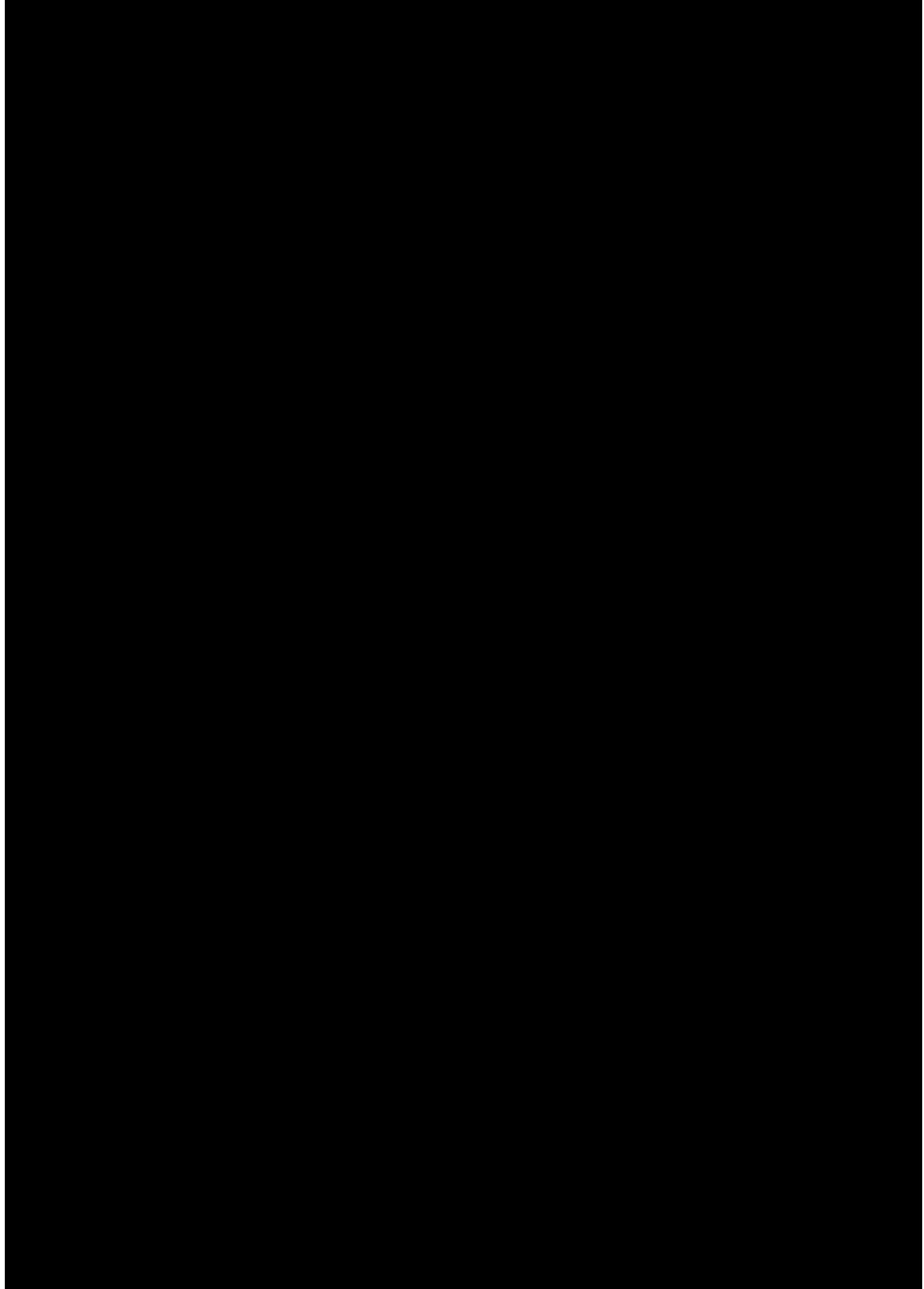
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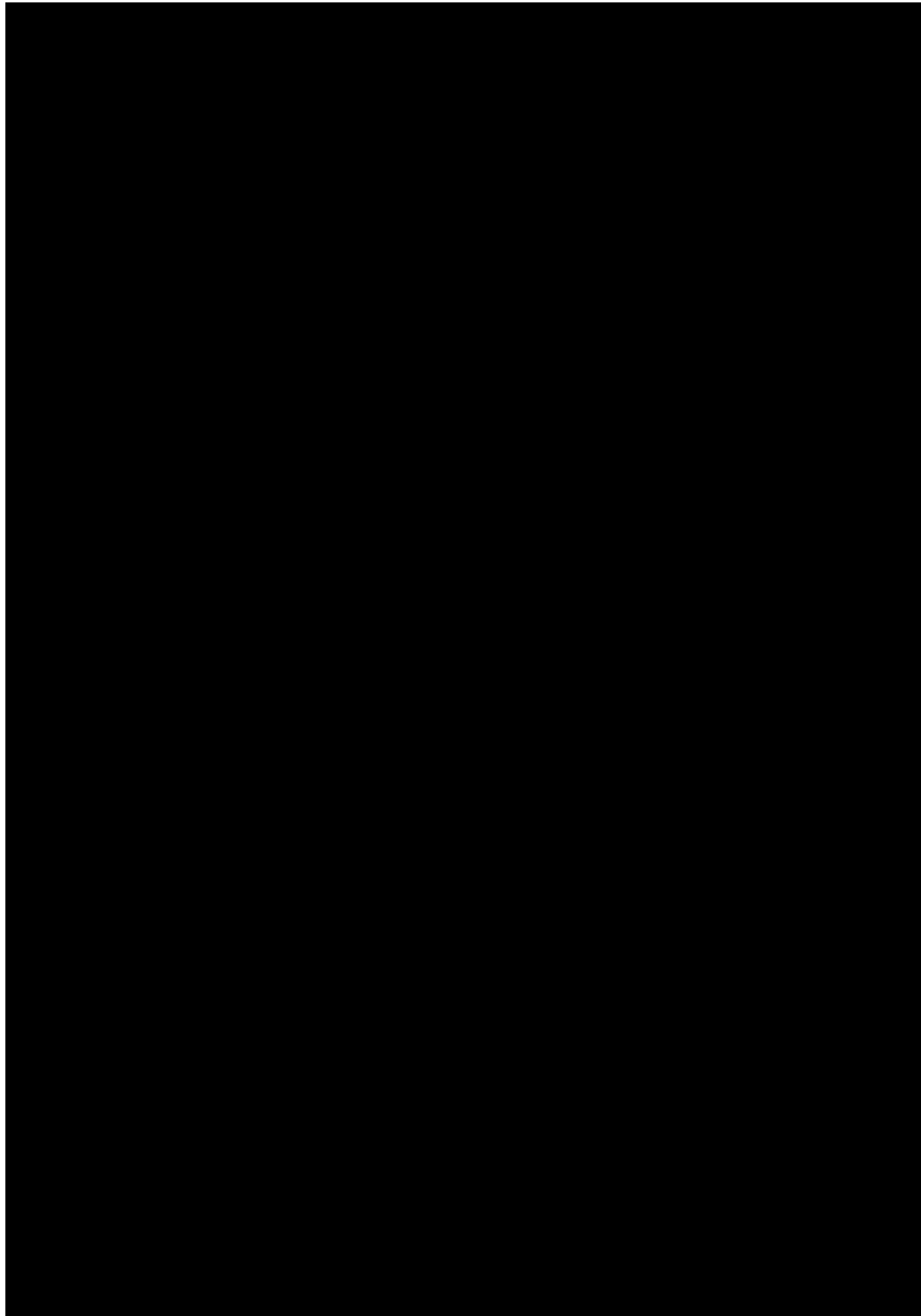
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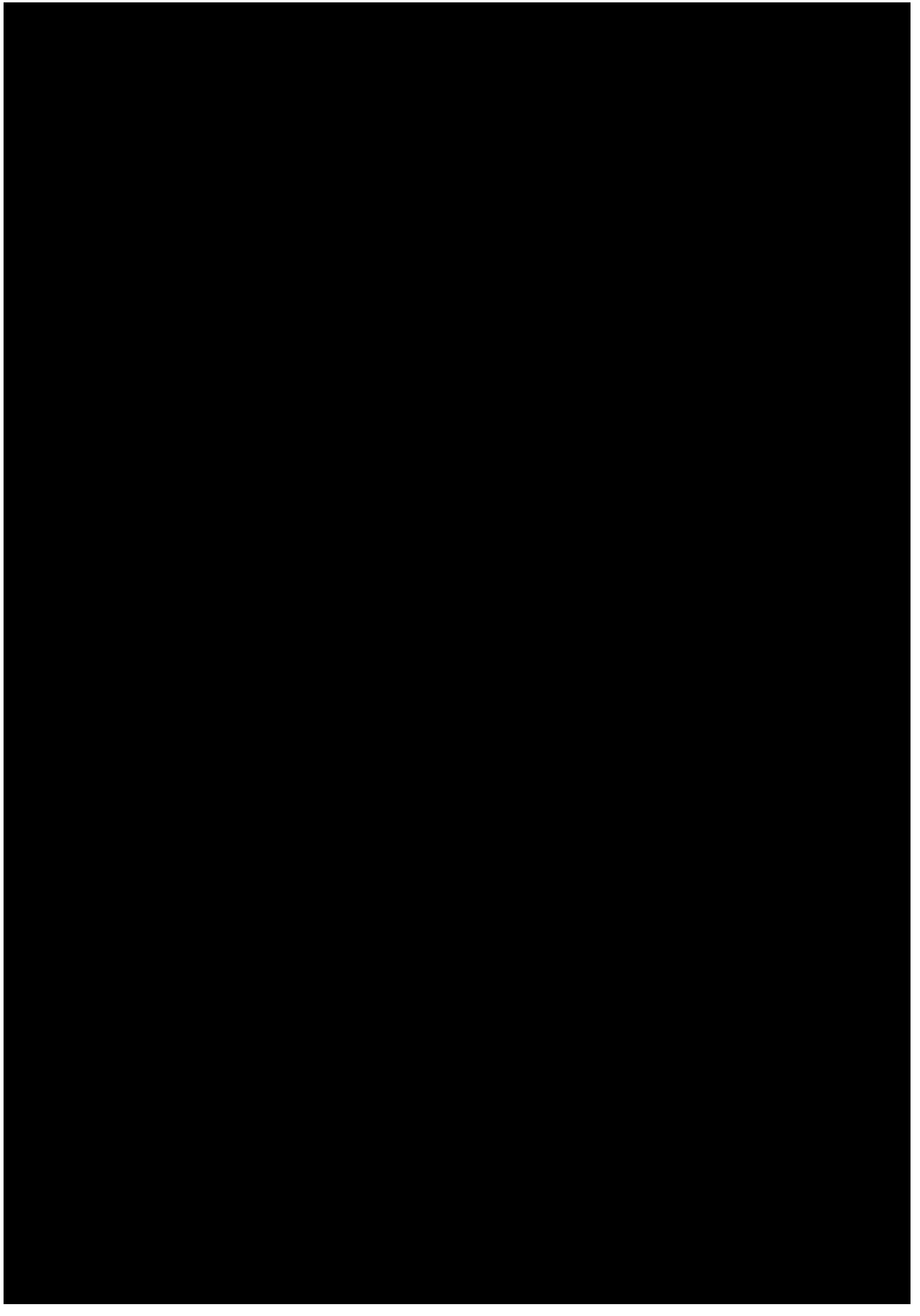
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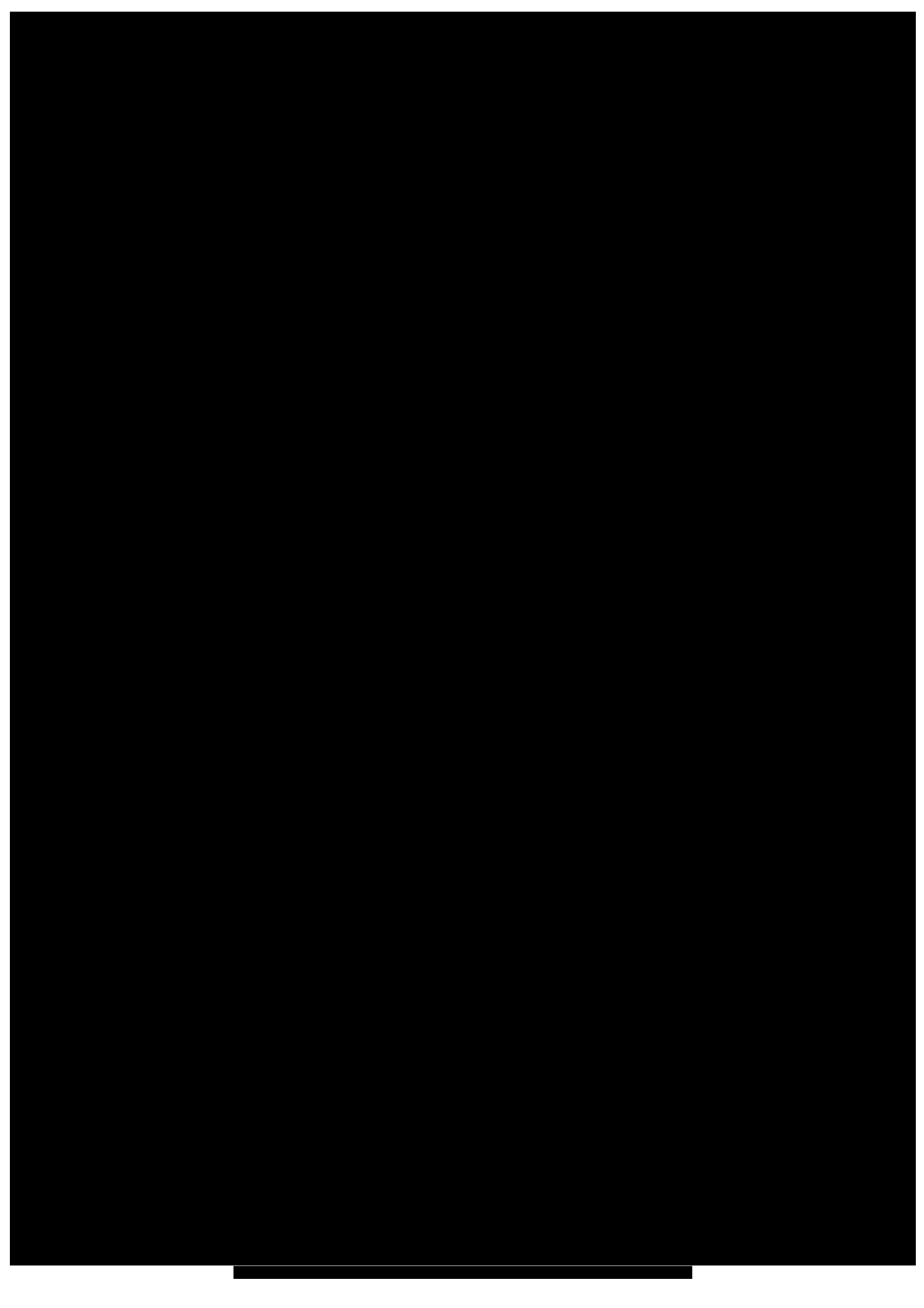
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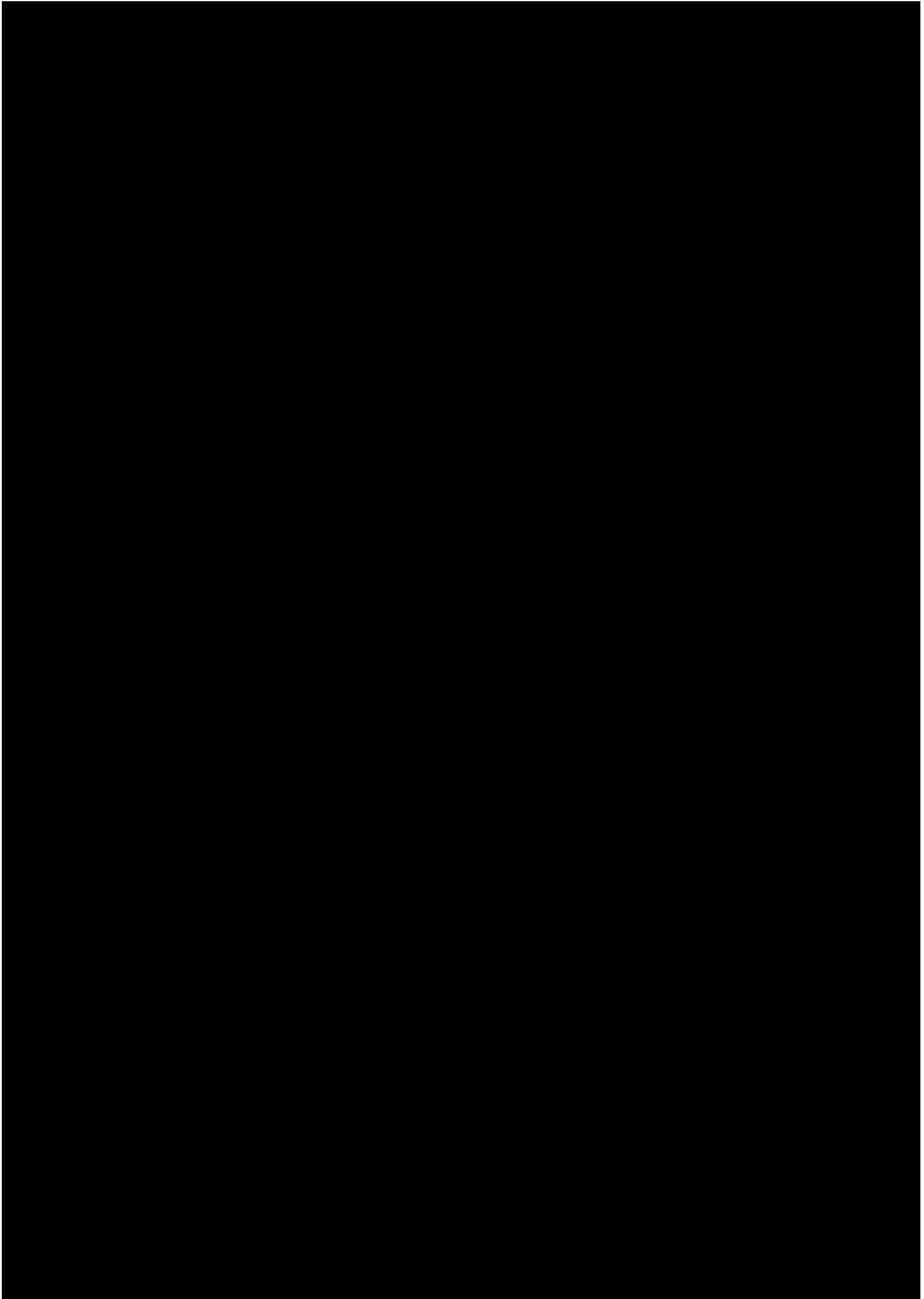
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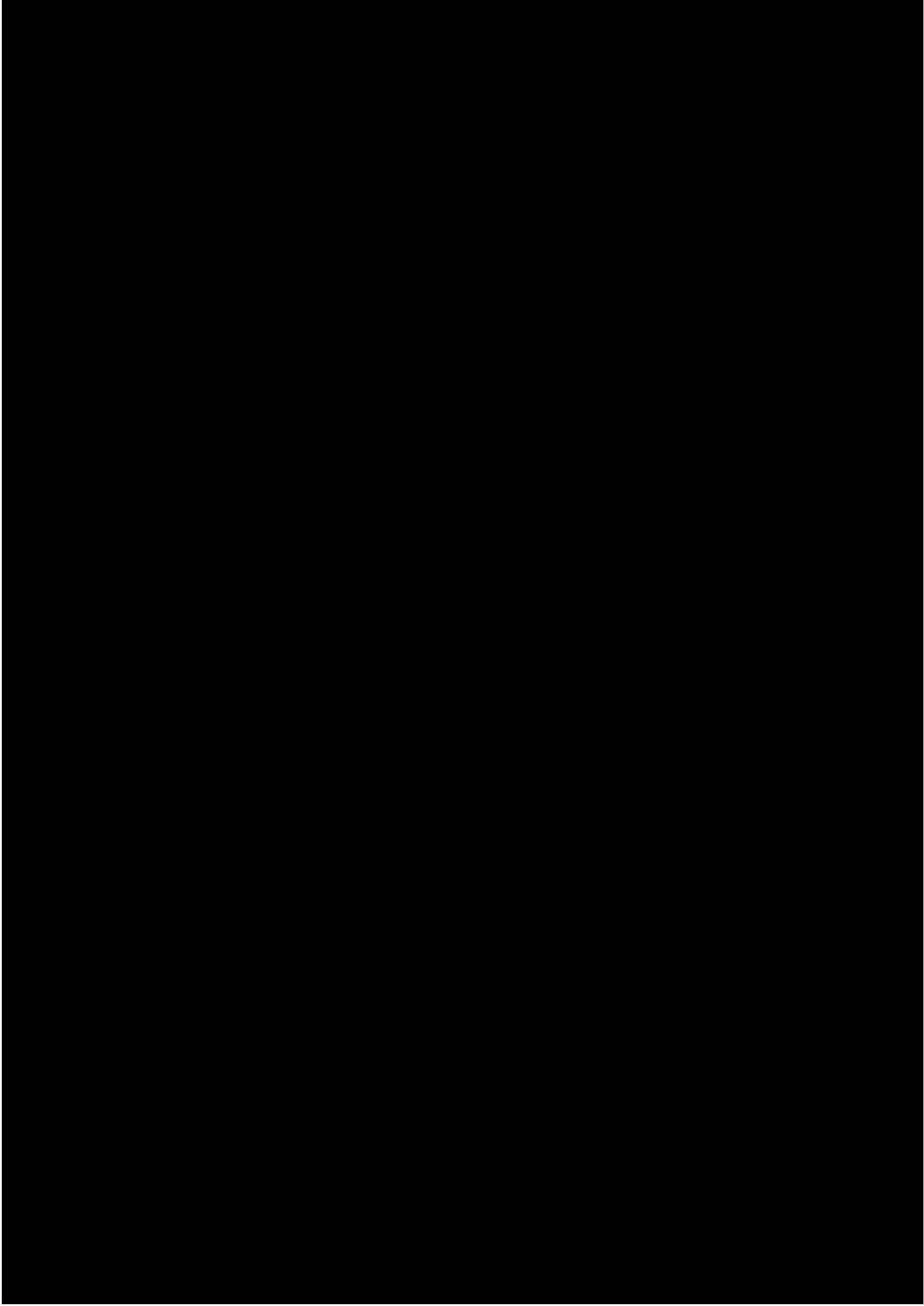
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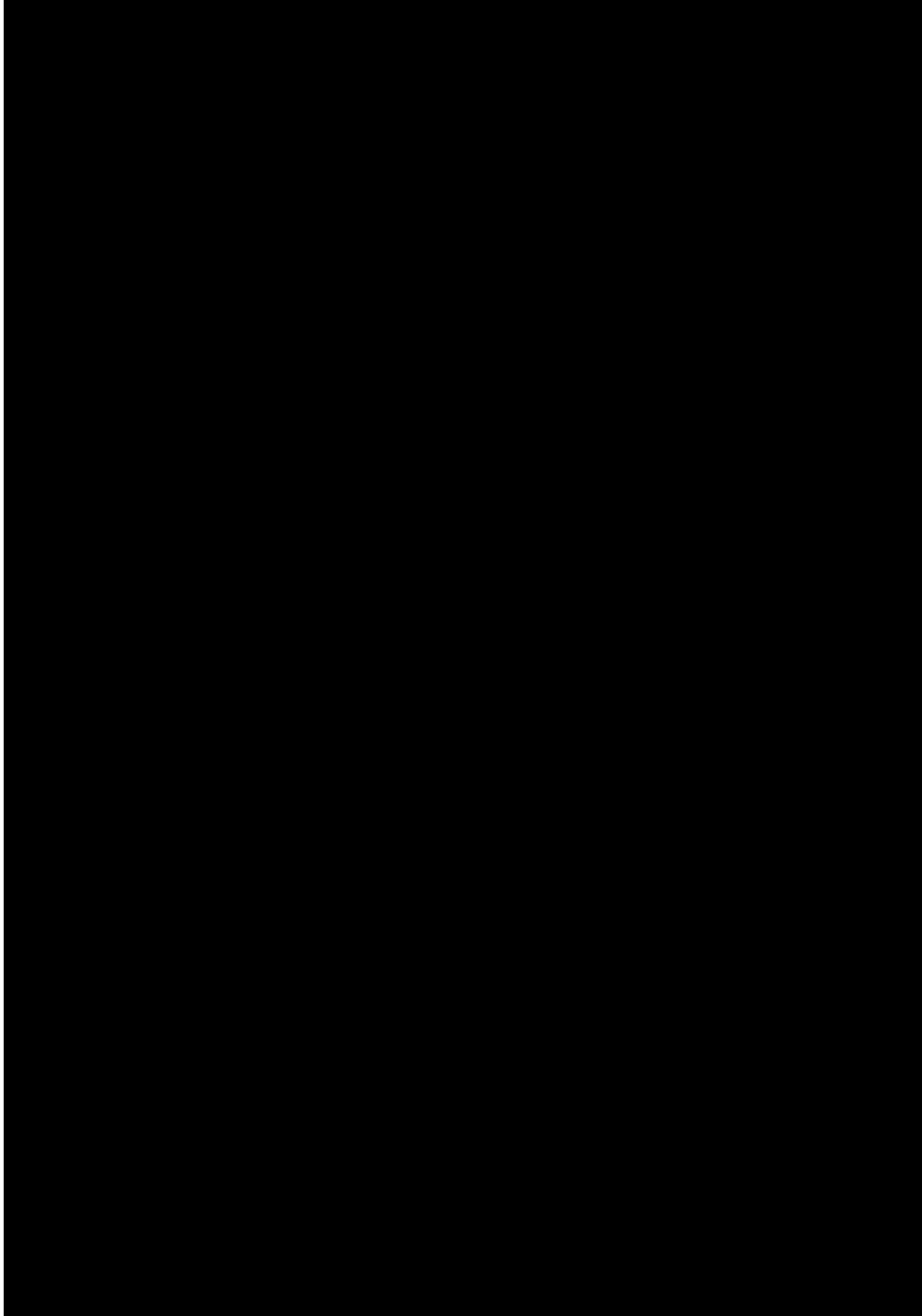
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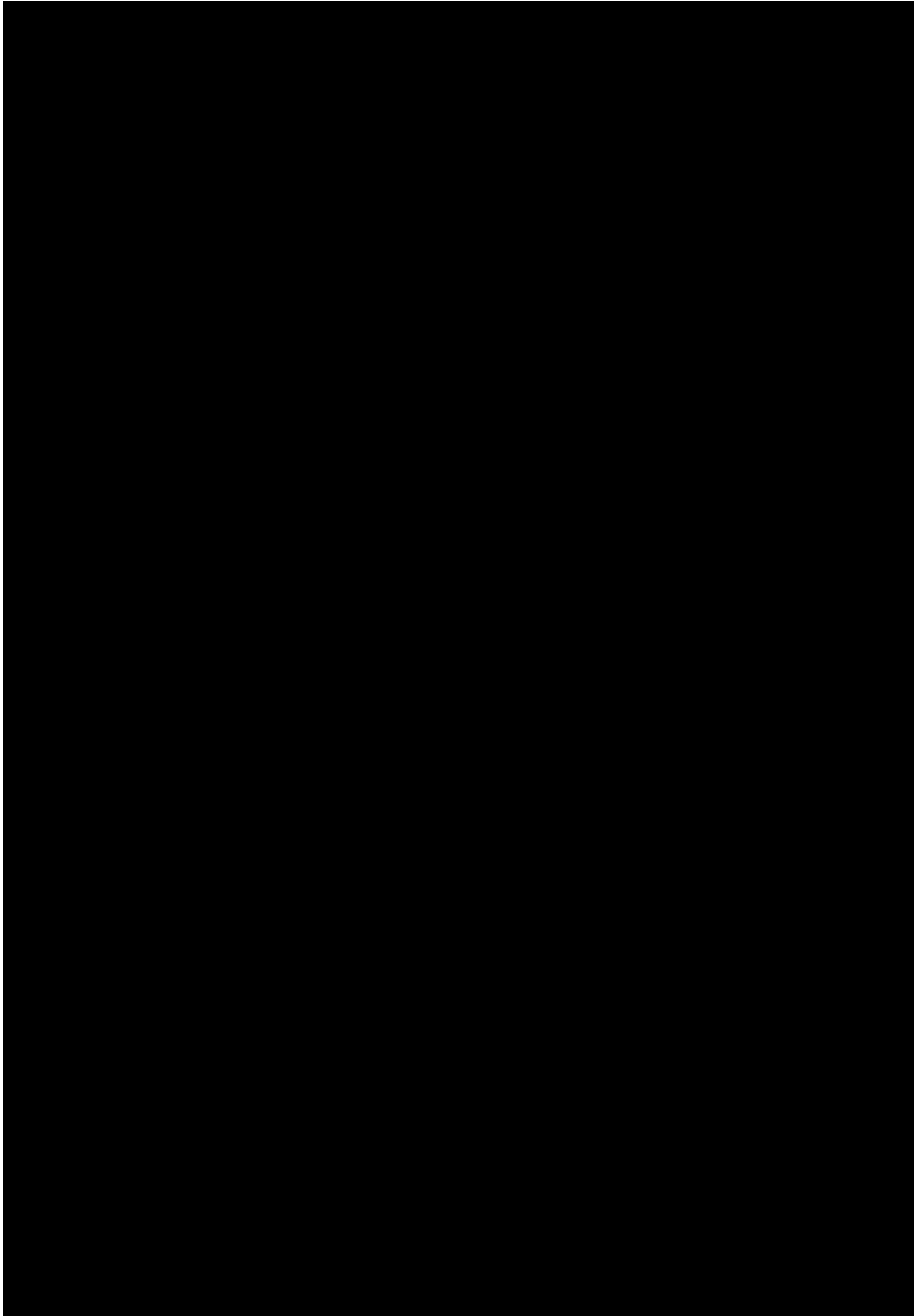
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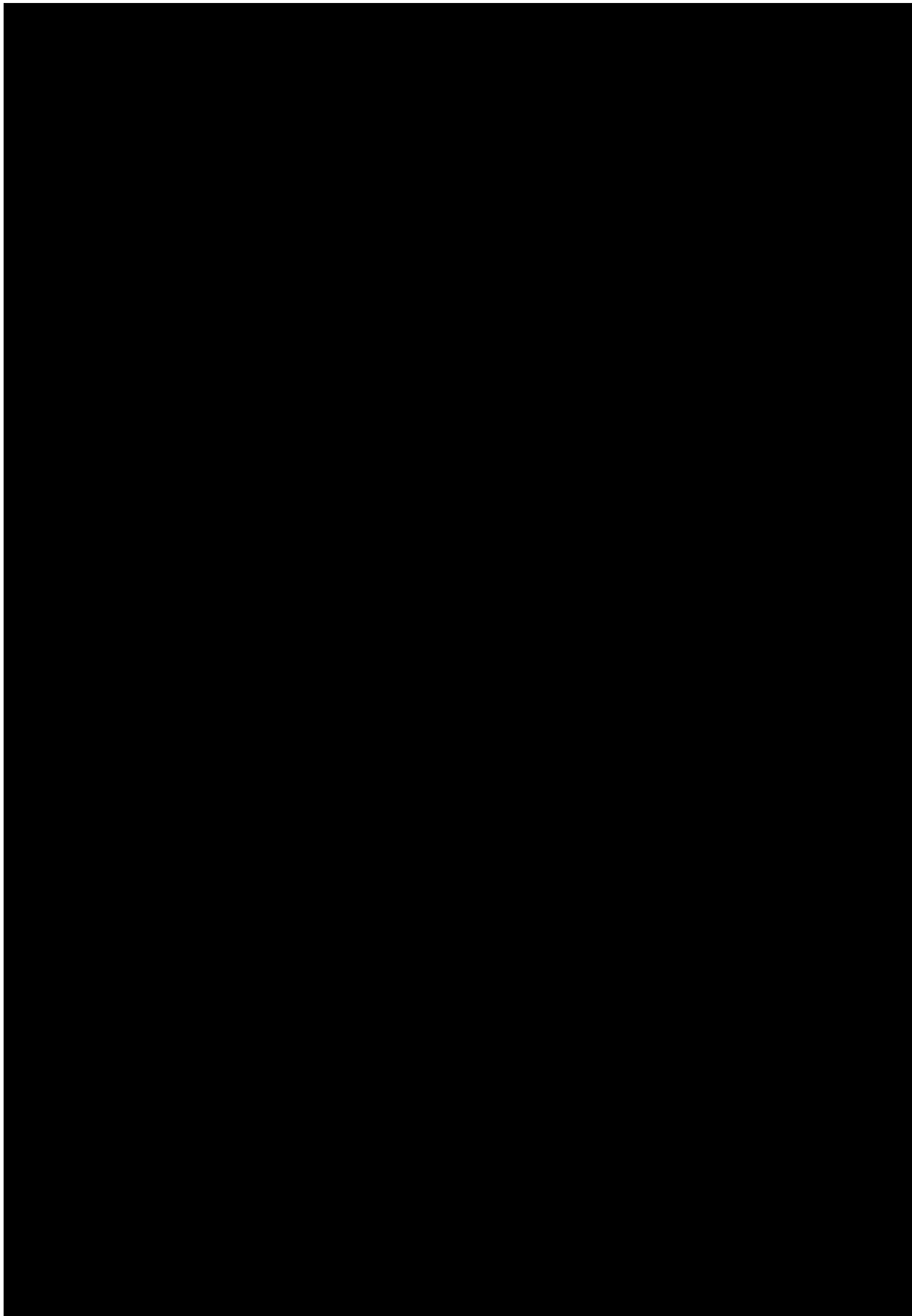
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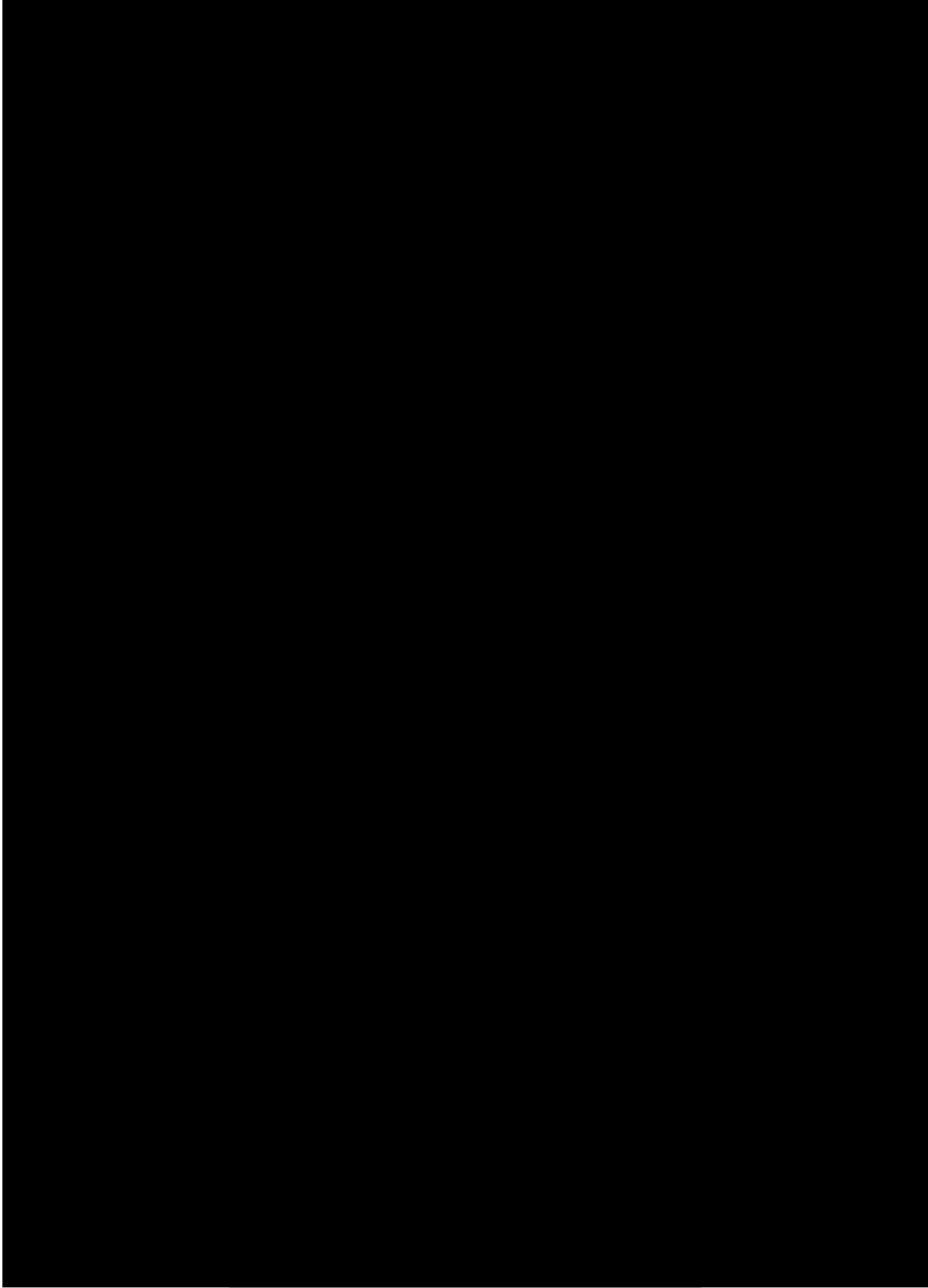
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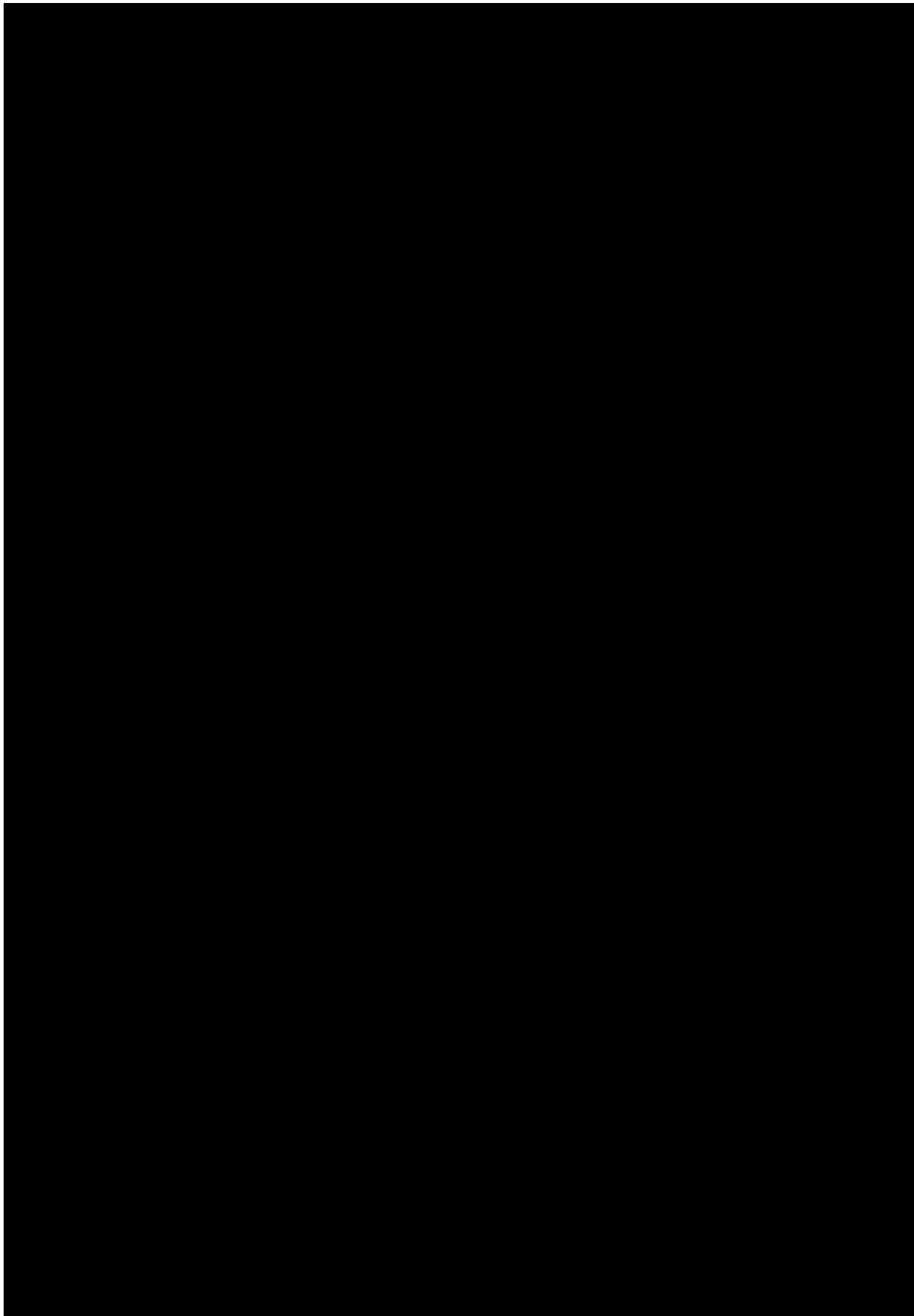
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This is **Exhibit “F”** referred to in the Affidavit of Wouter Van Essen of the City of Vancouver, in the Province of British Columbia, sworn before me at the City of Toronto, in the Province of Ontario this 21st day of May, 2024, in accordance with O. Reg. 431/20 Administering Oath or Declaration Remotely



[Commissioner for Taking Affidavits] [or as may be]

ALEXIS BEALE

From: [Dunn, Mark](#)
To: [Alexis Beale](#)
Cc: [Tee, Brittni](#); [Descours, Caroline](#)
Subject: RE: Trade X Receivership
Date: April 16, 2024 10:24:49 AM

I am not sure that we are fully understanding each other, and I will try my best to clarify our position below.

The difficulty we are facing on our side is that we do not know what documents are alleged to be privileged. Your e-mail indicates that some of these e-mails are to or from you, but does not specify what (if any) other documents your clients are alleging to be privileged.

You seem to be asking for evidence that a particular set of documents has not been reviewed, but to do that we need to know what documents are in the set. Otherwise, we would need to disclose complete details of all the searches we did and everything that was reviewed. This is problematic from both a privilege perspective (since our work is privileged) and a practicality perspective (since I'm not sure if we can compile this information).

To be clear, here is what we propose:

1. You advise (whether based on the searches, inventory or both) what documents are alleged to be privileged, using the same information that would be included in a detailed schedule "B";
2. We can then assess: whether there is any dispute about privilege or who privilege belongs to (ie., Techlantic, the Van Essen Companies or both); whether any of the allegedly privileged documents were reviewed; whether any review caused (or could be reasonably alleged to cause) any prejudice; what evidence can be provided with respect to any of the above;
3. Once the two steps above are completed, we can determine what steps (if any) are appropriate to address the issue.

We want to deal with this issue expeditiously, in order to avoid any interference with the existing motion schedule and keep the matter moving forward. But I do believe that an appropriate process can certainly narrow and likely avoid any dispute.

Thanks,
Mark

Mark Dunn

He/Him
Goodmans LLP

416.849.6895 (office) 647.294.3866 (mobile)
mdunn@goodmans.ca

Bay Adelaide Centre
333 Bay Street, Suite 3400
Toronto, ON M5H 2S7
goodmans.ca

From: Alexis Beale <abeale@rosemountlaw.com>
Sent: Monday, April 15, 2024 8:56 PM
To: Dunn, Mark <mdunn@goodmans.ca>
Cc: Tee, Brittini <btee@goodmans.ca>; Descours, Caroline <cdescours@goodmans.ca>
Subject: RE: Trade X Receivership

Hi Mark,

Your communications have not confirmed whether any privileged documents have been reviewed, nor have you proposed a method to confirm that such a review has not occurred. Please provide this by tomorrow, barring which my client will have no choice but to bring this motion.

The rest of your email concerns a prospective method to guard against future disclosure. It is likely too late and we will have to seek court directions on that as well.

Kind Regards,
Alexis Beale

Alexis Beale
Rosemount Law
(647) 692-0222
abeale@rosemountlaw.com
www.rosemountlaw.com

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From: Dunn, Mark <mdunn@goodmans.ca>
Sent: Monday, April 15, 2024 8:01 PM
To: Alexis Beale <abeale@rosemountlaw.com>
Cc: Tee, Brittini <btee@goodmans.ca>; Descours, Caroline <cdescours@goodmans.ca>
Subject: RE: Trade X Receivership

Thank you Alexis. I had suggested that you identify the documents over which privilege is claimed. We are not looking for any information beyond what would typically be included in a detailed schedule "B" to an affidavit of documents. But, as you can appreciate, we are operating at an informational disadvantage. If you identify the documents then we can provide an informed answer to your concerns. The information in your e-mail below, for example, is new to me.

Your e-mail seems to imply that you are waiting for an answer from us by end of day tomorrow, but it is not clear what answer you are waiting for and so clarification about that would be appreciated.

In the interim I can confirm (again) that the database is currently shut down and we will give you notice before it is activated. As I previously advised, we expect that this will occur after you identify the documents

Mark Dunn

He/Him
Goodmans LLP

416.849.6895 (office) 647.294.3866 (mobile)
mdunn@goodmans.ca

Bay Adelaide Centre
333 Bay Street, Suite 3400
Toronto, ON M5H 2S7
goodmans.ca

From: Alexis Beale <abeale@rosemountlaw.com>
Sent: Monday, April 15, 2024 7:40 PM
To: Dunn, Mark <mdunn@goodmans.ca>
Cc: Tee, Brittini <btee@goodmans.ca>; Descours, Caroline <cdescours@goodmans.ca>
Subject: RE: Trade X Receivership

Good evening,

Thank you for the inventory provided at 5:50 pm. **Note that this email does not constitute waiver of privilege. It is purely for the purpose of identifying in broad categories the privileged correspondence that the Receiver has collected and presumptively reviewed.**

Upon a very preliminary review, I can advise that you have collected and presumptively reviewed not less than 150 emails to or from me related to this litigation. To make matters worse, these were collected from folders called 'legal' as per the metadata in the inventory sheet that you circulated. These folders contain other privileged correspondence. I have not had time to identify all of the other solicitor-client and litigation-privileged content and I expect that a thorough privilege review of the type required would be prohibitively costly for my clients.

As I previously advised, I will wait until EOD tomorrow and then proceed to serve my clients' motion.

In the meantime, please confirm that no one will use this database for any purpose.

Kind Regards,
Alexis Beale

Alexis Beale

Rosemount Law
(647) 692-0222
abeale@rosemountlaw.com
www.rosemountlaw.com

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From: Dunn, Mark <mdunn@goodmans.ca>
Sent: Monday, April 15, 2024 5:19 PM
To: Alexis Beale <abeale@rosemountlaw.com>
Cc: Tee, Brittini <btee@goodmans.ca>; Descours, Caroline <cdescours@goodmans.ca>
Subject: Re: Trade X Receivership

My email states that the inventory will be provided shortly.

It is hard to see how we can address the issue further on our side without knowing what documents are involved but we remain prepared to cooperate and see if we can find a reasonable solution.

If you choose to bring a motion, we will review it and respond accordingly.

Sent from my iPhone

On Apr 15, 2024, at 5:07 PM, Alexis Beale <abeale@rosemountlaw.com> wrote:

Hi Mark,

Please confirm if you are no longer providing an inventory that you previously offered and advised would be delivered today?

I advised that there are definitely litigation privileged and solicitor client privileged documents in what you have collected.

What you are sharing will simply go to the extent and unfortunately, that review may have to occur in parallel with my clients' motion even the gravity of the issue.

Kind Regards,

Alexis Beale

Alexis Beale
Rosemount Law
(647) 692-0222

www.rosemountlaw.com

This communication may be solicitor/client privileged and contain confidential information intended only for the person(s) to whom it is addressed. Any unauthorized disclosure, copying, other distribution of this communication or taking any action on its contents is strictly prohibited. If you have received this message in error, please notify us immediately and delete this message without reading, copying or forwarding it to anyone.

On Apr 15, 2024, at 5:02 PM, Dunn, Mark <mdunn@goodmans.ca> wrote:

Alexis,

You seem to have misunderstood our position. You asked for specific information and I answered. I did not make the statement attributed to me below.

We do not, at this stage, know what (if any) documents in the database are alleged to be privileged. That is why we offered to have FTI run searches for you, and set up an ethical screen to facilitate that. Contact information has been provided and the inventory your asked for will be provided shortly. Once we know what (if any) documents you are concerned about, we can determine how to best address any remaining concerns.

Sent from my iPhone

On Apr 15, 2024, at 4:13 PM, Alexis Beale
<abeale@rosemountlaw.com> wrote:

Mark,

Further to your email of April 12, 2024, please advise when I can anticipate FTI to contact me.

I reiterate my request in my emails of April 5 and 11 that the Receiver confirm and provide proof that neither it nor its' counsel reviewed any privileged documents. You previously refused to answer based on an assertion of privilege.

If I do not hear from you by EOD tomorrow, I will assume that you maintain this position and I will act on instructions to bring a motion to stay the Receiver's motion, among other things.

Kind Regards,
Alexis Beale

Alexis Beale
Rosemount Law
(647) 692-0222
abeale@rosemountlaw.com
www.rosemountlaw.com

This communication may be solicitor/client privileged and contain confidential information intended only for the person(s) to whom it is addressed. Any unauthorized disclosure, copying, other distribution of this communication or taking any action on its contents is strictly prohibited. If you have received this message in error, please notify us immediately and delete this message without reading, copying or forwarding it to anyone.

From: Dunn, Mark <mdunn@goodmans.ca>
Sent: Friday, April 12, 2024 5:25 PM
To: Alexis Beale <abeale@rosemountlaw.com>
Cc: Tee, Brittini <btee@goodmans.ca>; Descours, Caroline <cdescours@goodmans.ca>
Subject: RE: Trade X Receivership

We don't think the tone below or the accusations about

“unauthorized access” and “the prejudice that already exists” are appropriate in these circumstances. We would also like to limit further debate of these issues by e-mail. We have been (and will continue to be) prepared to work cooperatively to address any valid concerns. Suffice to say that we do not agree that there has been any unauthorized access, we are confident that there has been (and will be) no prejudice and we remain concerned about the (unexplained) delay in raising these concerns. The Receiver is very much focused on a fair and appropriate approach to these issues so that it can move forward with its mandate.

With respect to your requests for information:

1. We have already offered to provide you with an inventory, and we will provide it on Monday;
2. The entire Techlantic server was preserved but is not in our database and has not been reviewed. Only the identified mailboxes were loaded into the database. The collection occurred on January 11, February 14 and February 16 for all of the databases apart from Wouter Van Essen. Mr. (Wouter) Van Essen’s mailbox was downloaded on February 22 and February 23. I believe the download occurred later because we did not know that Mr. (Wouter) Van Essen had a Techlantic e-mail when our review began;
3. The temporary shut down occurred on April 10, but no one from Goodmans accessed the database after your letter was received. FTI was conducting certain limited reviews during this period and we will confirm what (if any) access to the database this involved.

I will be back to you on Monday with contact information for the FTI personnel who can run the searches referenced in my prior e-mail. I suspect that we will be able to have a much more productive discussion about this once you are able to tell us what (if any) allegedly privileged material is in the database.

Mark Dunn
He/Him
Goodmans LLP

Mark Dunn
He/Him
Goodmans LLP

416.849.6895 (office) 647.294.3866 (mobile)
mdunn@goodmans.ca

Bay Adelaide Centre
333 Bay Street, Suite 3400
Toronto, ON M5H 2S7
goodmans.ca

From: Alexis Beale <abeale@rosemountlaw.com>
Sent: Thursday, April 11, 2024 4:19 PM
To: Dunn, Mark <mdunn@goodmans.ca>
Cc: Tee, Brittini <btee@goodmans.ca>; Descours, Caroline <cdescours@goodmans.ca>
Subject: RE: Trade X Receivership

Mark,

Thank you for your email. It is unfortunate that you think my clients' concerns are tactical. I can assure you that they are not. My clients had no choice but to raise this concern once they determined that their privileged correspondence had been accessed. You seem to imply from your email that they ought not to have notified you, which is problematic.

It is settled law that a breach of privilege "creates a serious risk to the integrity of the administration of justice." The *Celanese* test provides that "the onus is on the party with unauthorized access to another party's privileged documents to show that there is no risk that privileged and confidential information attributable to a solicitor and client relationship will be used to the prejudice of the party possessing the privilege."

That is why I asked you to provide my client with an inventory and protocol so they could be comforted that the Receiver did not review their privileged correspondence. My client would be happy to receive any other record keeping that serves the same purpose.
Please advise immediately if the Receiver is unwilling or unable to provide the same.

Please also confirm: 1) the date when the relevant accounts were collected; 2) whether the server as a whole has been collected; and 3) the date when the

'temporary shut down' occurred.

Finally, the forward-looking procedures you suggest are acceptable, but they do not cure the prejudice that already exists.

The premise that the Receiver had no obligation to guard against unauthorized access is problematic for several reasons, but it is not productive to address them here, nor are they relevant to any legal argument.

Kind Regards,
Alexis Beale

Alexis Beale
Rosemount Law
(647) 692-0222
abeale@rosemountlaw.com
www.rosemountlaw.com

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From: Dunn, Mark <mdunn@goodmans.ca>
Sent: Thursday, April 11, 2024 2:36 PM
To: Alexis Beale <abeale@rosemountlaw.com>
Cc: Tee, Brittini <btee@goodmans.ca>; Descours, Caroline <cdescours@goodmans.ca>
Subject: RE: Trade X Receivership

Ms.
Beale,

I am writing in response to your e-mail below. As set

out below, we (and our client) will work with you to ensure that any privileged documents are dealt with appropriately. We do not, however, accept your assertion that there has been “unauthorized” access to any material. We also do not understand why your client has waited so long to raise its concerns, and we do not believe that those concerns should confer any procedural or substantive advantage on them.

The Timing of your client’s objection

Your client has known that the Receiver had access to Techlantic’s electronic records since the Receivership Order was granted on December 22, 2023. It grants the Receiver a broad right to access Techlantic’s electronic records. If (as you now suggest) your clients stored privileged material on Techlantic’s system then they knew that the Receiver had access to that material. Conversely, the Receiver did not know (and had no reason to suspect) that your client’s privileged material might be stored on Techlantic’s system.

Your clients have also known that the Receiver was reviewing Techlantic’s electronic records in order to understand various issues relating to its business. We advised in our February 27, 2024 letter that the Receiver had reached certain conclusions based on its review of the “contemporaneous documents”. My e-mail of February 27, 2024 specifically said that the Receiver’s supplementary report would be based on information located in Techlantic’s records including e-mails sent and received by your clients. I discussed certain specific e-mails with you during our discussions about the merits of the case around the same time.

In the circumstances, it is not clear why any *bona fide* privilege concerns were not raised earlier so that any privileged (or potentially privileged) documents could be identified and addressed.

Request for a protocol and inventory

Your comments with respect to the scope of our client's review are, with respect, not correct. The Receiver requested a download of the following e-mails from the Debtors' IT provider:

eric@techlantic.com

eric.vanessen@tradexport.com

eric@tradexport.com

june@techlantic.com

michelle@techlantic.com

ping@techlantic.com

wouter@techlantic.com

Tradex custodians were also collected, but those custodians are not directly relevant to your request.

The Receiver did not request access to any e-mails from techlanticconsulting.com. We do not believe that such e-mails are in the database provided to the Receiver, except to the extent that someone with a techlanticconsulting.com e-mail sent or received to one of the e-mail addresses listed above.

Your assertion that the Receiver reviewed all of the e-mails in the Techlantic.com domain is also not correct. The Receiver did not believe that a review of all of the Techlantic e-mails would be efficient. It conducted a targeted review of certain e-mails likely to be relevant, or to address specific issues. The specific searches performed by the Receiver and its counsel are privileged, and need not be disclosed.

It is not clear, from your e-mail, whether you are asking for a list of all of the documents that are in our database.

We are prepared to provide this to you, but we note that there are more than one million documents in the database.

With respect to your request for a “protocol”, we did not institute any protocol to identify privileged documents belonging to third parties because we had no reason to believe such documents were (or might be) in Techlantic’s possession.

Procedures

All of that said, we would be pleased to work with you to address any concerns your clients have about this issue and an appropriate protocol to ensure that no privileged documents are in the Receiver’s database. We would propose the following:

1. We are prepared to have FTI’s technology personnel run a search at your request, solely to identify privileged documents;
2. The personnel that run the search will be separate from the team that has been working on this matter for FTI, and FTI will establish an ethical wall to prevent anyone working on this matter for the Receiver from accessing the information provided to you;
3. You will provide us with a list of documents that are alleged to be privileged, in a format equivalent to Schedule “B” to an Affidavit of Documents;
4. Any documents that you identify will be segregated and removed from the database, without prejudice to the Receiver’s right to challenge any privileged designation.

We have temporarily shut down the Receiver’s document database so that it cannot be accessed while this issue is being resolved. We are not, however, prepared to pause our review indefinitely.

Mark Dunn

He/Him

Goodmans LLP

416.849.6895 (office) 647.294.3866 (mobile)

mdunn@goodmans.ca

Bay Adelaide Centre
333 Bay Street, Suite 3400
Toronto, ON M5H 2S7

goodmans.ca

From: Alexis Beale <abeale@rosemountlaw.com>
Sent: Friday, April 5, 2024 4:18 PM
To: Dunn, Mark <mdunn@goodmans.ca>; Tee, Brittini <btee@goodmans.ca>; Descours, Caroline <cdescours@goodmans.ca>
Subject: RE: Trade X Receivership

Counsel,

I note that my email of 1:08 pm should refer to the First Supplemental Report to the First Report of the Receiver, dated April 3, 2024, and not the 'Amended Responding Record.' Apologies for any confusion.

Kind Regards,

Alexis Beale

Alexis Beale

Rosemount Law

(647) 692-0222

abeale@rosemountlaw.com

www.rosemountlaw.com

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From: Alexis Beale

Sent: Friday, April 5, 2024 1:08 PM

To: Mark Dunn <mdunn@goodmans.ca>; Brittni Tee <btee@goodmans.ca>; Caroline Descours <cdescours@goodmans.ca>

Subject: Trade X Receivership

Counsel,

We have reviewed the Amended Responding Record and note that your client appears to have collected and reviewed all emails with the @techlantic.com domain and many with the @techlanticconsulting.com domain. These email domains were used by my clients for the purposes of receiving legal advice, settlement-related discussions and litigation advice and strategy, including in relation to the litigation herein. We have significant concerns regarding unauthorized access. It is trite to say

that any such access would be prejudicial and in breach of the Receiver's authority.

To address this matter effectively, we request the following information:

1. Detailed Inventory: A comprehensive list of all email accounts and any other documents collected from the servers.
1. Document Collection and Review Protocol: Details on the protocols followed for document collection and review in this case, including measures taken to identify and exclude privileged information.

Kind Regards,

Alexis Beale

Alexis Beale

Rosemount Law

(647) 692-0222

www.rosemountlaw.com

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Confidentiality Notice:

This email and any attachments may be confidential and protected by legal privilege. If you are not the intended recipient, be aware that any disclosure, copying, distribution or use of the e-mail or any attachment is prohibited. If you have received this email in error, please notify us immediately by replying to the sender and then delete this copy and the reply from your system. Thank you for your cooperation.

This is **Exhibit “G”** referred to in the Affidavit of Wouter Van Essen of the City of Vancouver, in the Province of British Columbia, sworn before me at the City of Toronto, in the Province of Ontario this 21st day of May, 2024, in accordance with O. Reg. 431/20 Administering Oath or Declaration Remotely



[Commissioner for Taking Affidavits] [or as may be]

ALEXIS BEALE

From: [Alexis Beale](#)
To: [Dunn, Mark](#)
Cc: [Descours, Caroline](#); [Tee, Brittni](#)
Subject: RE: Tradex Database Issues
Date: May 19, 2024 2:38:00 PM

Mark,

I write regarding His Honour Justice Cavanagh's direction that we "confer to try to reach an agreement on a fair process that allows the Receiver to carry on with its duties involving other investigations."

Status Quo:

I note that my clients previously agreed to the approach you suggested to segregate all emails collected from the following custodians (to change the database settings so that e-mails gathered from these custodians cannot be accessed):

- eric@techlantic.com
- eric.vanessen@tradexport.com
- eric@tradexport.com
- june@techlantic.com
- michelle@techlantic.com
- ping@techlantic.com
- wouter@techlantic.com

We sought confirmation that this would include the techlanticconsulting.com emails, which you provided. I will refer to this as the "Techlantic Collection."

Measures to sanitize the database:

- We agree that a privilege review can only be effectively conducted by the party holding the privilege (Dunn Affidavit, para. 68).
- For that reason, my client has been reluctant to agree to an approach that gives FTI responsibility for conducting the review.
- My client has concerns about the costs and work required to do a review.
- My client proposes the following to resolve ongoing concerns:
 - Emails to, from, and cc'ing a techlanticconsulting.com email account will be segregated and deemed privileged;
 - Emails filed with 'ILD' or 'legal' in the M-Source Path will be segregated and deemed privileged (including duplicates and near duplicates as identified by the relativity platform);
 - My clients will provide keyword search instructions to the walled personnel at FTI, and those keyword searches will be applied to the rest of the Techlantic Collection to identify any other potentially privileged correspondence and the

- results will be segregated and deemed privileged; and
- The Receiver can decide whether it wants further refinement based on a manual review of the segregated documents. If it does, that review will be conducted by counsel for the Van Essen Companies and paid for by the Receiver.

Happy to discuss any of the foregoing.

Kind Regards,
Alexis Beale

Rosemount Law

150 King Street West, Suite 200
Toronto, Ontario M5H 1J9
647-692-0222
abeale@rosemountlaw.com | www.rosemountlaw.com

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From: Dunn, Mark <mdunn@goodmans.ca>
Sent: Tuesday, May 14, 2024 4:49 PM
To: Alexis Beale <abeale@rosemountlaw.com>
Cc: Descours, Caroline <cdescours@goodmans.ca>; Tee, Brittini <btee@goodmans.ca>
Subject: RE: Tradex Database Issues

Ms. Beale,

We have previously confirmed that we did not collect techlanticconsulting.com custodians. Any such e-mails are in the database because they were sent to techlantic.com or tradexport.com e-mails or saved by Wouter in his techlantic.com inbox. Wouter addresses this at paragraph 27 of the affidavit. I trust this is the express confirmation that you require.

Mark Dunn

He/Him
Goodmans LLP

416.849.6895 (office) 647.294.3866 (mobile)
mdunn@goodmans.ca

Bay Adelaide Centre
333 Bay Street, Suite 3400
Toronto, ON M5H 2S7
goodmans.ca

From: Alexis Beale <abeale@rosemountlaw.com>
Sent: Tuesday, May 14, 2024 4:11 PM
To: Dunn, Mark <mdunn@goodmans.ca>
Cc: Descours, Caroline <cdescours@goodmans.ca>; Tee, Brittini <btee@goodmans.ca>
Subject: RE: Tradex Database Issues

Hi Mark,

I am not sure what portion of the affidavit you are referring to. My client is not able to give evidence about what was collected—only your client can confirm that. Wouter is also not an IT expert. Please confirm that the techlanticconsulting emails will be segregated. I am sure you can appreciate why I require this express confirmation.

Kind Regards,
Alexis Beale

Rosemount Law
150 King Street West, Suite 200
Toronto, Ontario M5H 1J9
647-692-0222
abeale@rosemountlaw.com | www.rosemountlaw.com

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From: Dunn, Mark <mdunn@goodmans.ca>
Sent: Tuesday, May 14, 2024 3:31 PM
To: Alexis Beale <abeale@rosemountlaw.com>
Cc: Descours, Caroline <cdescours@goodmans.ca>; Tee, Brittini <btee@goodmans.ca>
Subject: RE: Tradex Database Issues

Ms. Beale,

I do not believe that anything needs to be addressed. Based on the information in the most recent affidavit, there are no techlanticconsulting.com inboxes in the database. We will ensure everything is segregated and proceed with our review.

Mark Dunn

He/Him
Goodmans LLP

416.849.6895 (office) 647.294.3866 (mobile)
mdunn@goodmans.ca

Bay Adelaide Centre
333 Bay Street, Suite 3400
Toronto, ON M5H 2S7
goodmans.ca

From: Alexis Beale <abeale@rosemountlaw.com>
Sent: Tuesday, May 14, 2024 3:25 PM
To: Dunn, Mark <mdunn@goodmans.ca>
Cc: Descours, Caroline <cdescours@goodmans.ca>; Tee, Brittni <btee@goodmans.ca>
Subject: RE: Tradex Database Issues

Hi Mark,

Do you think we should address this at the case conference? We have already agreed to your proposed approach, subject to confirmation that the segregated documents would include the techlanticconsulting.com emails.

Kind Regards,
Alexis Beale

Rosemount Law

150 King Street West, Suite 200
Toronto, Ontario M5H 1J9
647-692-0222
abeale@rosemountlaw.com | www.rosemountlaw.com

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From: Dunn, Mark <mdunn@goodmans.ca>
Sent: Monday, May 13, 2024 11:26 AM
To: Alexis Beale <abeale@rosemountlaw.com>
Cc: Descours, Caroline <cdescours@goodmans.ca>; Tee, Brittni <btee@goodmans.ca>
Subject: RE: Tradex Database Issues

We have not yet segregated documents or accessed the database.

Mark Dunn

He/Him
Goodmans LLP

416.849.6895 (office) 647.294.3866 (mobile)
mdunn@goodmans.ca

Bay Adelaide Centre
333 Bay Street, Suite 3400
Toronto, ON M5H 2S7
goodmans.ca

From: Alexis Beale <abeale@rosemountlaw.com>
Sent: Monday, May 13, 2024 11:25 AM
To: Dunn, Mark <mdunn@goodmans.ca>
Cc: Descours, Caroline <cdescours@goodmans.ca>; Tee, Brittini <btee@goodmans.ca>
Subject: Re: Tradex Database Issues

Hi Mark,

Just following up. Please confirm what documents have been segregated and as of what date?

Please also send an inventory of the segregated documents.

Kind Regards,
Alexis Beale

Alexis Beale
Rosemount Law
(647) 692-0222

www.rosemountlaw.com

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On May 8, 2024, at 9:00 PM, Alexis Beale <abeale@rosemountlaw.com> wrote:

Hi Mark,

Please confirm what the status of the below is.

Kind Regards,
Alexis Beale

Rosemount Law

150 King Street West, Suite 200

Toronto, Ontario M5H 1J9

647-692-0222

abeale@rosemountlaw.com | www.rosemountlaw.com

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From: Alexis Beale

Sent: Thursday, May 2, 2024 10:37 AM

To: Dunn, Mark <mdunn@goodmans.ca>

Cc: Descours, Caroline <cdescours@goodmans.ca>; Tee, Brittini <btee@goodmans.ca>

Subject: RE: Tradex Database Issues

Hi Mark,

Thank you for your email.

I think the approach you propose makes sense, subject to confirmation that techlanticconsulting.com emails will also be segregated.

Perhaps an approach segregating everything collected from the Techlantic servers (rather than the listed outboxes) would be more inclusive? Can you segregate on that basis? I have been looking at the 'source path' fields in the spreadsheets you sent to try an engineer a system, but I think FTI would be much more efficient.

Kind Regards,

Alexis Beale

Alexis Beale

Rosemount Law

(647) 692-0222

abeale@rosemountlaw.com

www.rosemountlaw.com

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From: Dunn, Mark <mdunn@goodmans.ca>

Sent: Thursday, May 2, 2024 9:52 AM

To: Alexis Beale <abeale@rosemountlaw.com>

Cc: Descours, Caroline <cdescours@goodmans.ca>; Tee, Brittini <btee@goodmans.ca>

Subject: Tradex Database Issues

Alexis,

I am writing to address our ongoing issues with respect to access to the Debtors' document database. As we have previously explained, the Receiver requires access to the database to move forward with its mandate. That mandate, and the database, both include significant elements that are not related to your clients.

In order to move forward while we deal with your clients' concerns, we intend to temporarily segregate all of the Techlantic custodians within the database. As we previously advised, the following outboxes were downloaded:

eric@techlantic.com

eric.vanessen@tradexport.com

eric@tradexport.com

june@techlantic.com

michelle@techlantic.com

ping@techlantic.com

wouter@techlantic.com

We intend to change the database settings so that e-mails gathered from these custodians cannot be accessed. We can then work with the remainder of the database while your clients' concerns are addressed.

We have previously explained our concerns, and tried to work with you to identify and remove the allegedly privileged documents from the database. Those

concerns remain, and will need to be addressed. These steps are interim measures to mitigate the issue while that occurs.

I do not believe that this proposal will cause any concern to (or affect) your clients, but we remain prepared to consider any concerns that your clients have.

I look forward to hearing from you.

Mark

Mark Dunn

He/Him

Goodmans LLP

416.849.6895 (office) 647.294.3866 (mobile)

mdunn@goodmans.ca

Bay Adelaide Centre

333 Bay Street, Suite 3400

Toronto, ON M5H 2S7

goodmans.ca

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Applicant

Respondents

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

Proceeding commenced at Toronto

Reply Affidavit of Wouter Van Essen

ROSEMOUNT LAW PC
150 King Street W. Suite 200
Toronto, ON M5H 1J9

Alexis Beale (LSO No. 65902W)
Tel: 647-692-0222
abeale@rosemountlaw.com

Lawyers for the Responding Parties and Moving
Parties on the Cross-Motion, the Van Essen
Companies

Applicant

Respondents

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

Proceeding commenced at Toronto

Reply Motion Record

ROSEMOUNT LAW PC
150 King Street W. Suite 200
Toronto, ON M5H 1J9

Alexis Beale (LSO No. 65902W)
Tel: 647-692-0222
abeale@rosemountlaw.com

Lawyers for the Responding Parties and Moving
Parties on the Cross-Motion, the Van Essen
Companies