

**ONTARIO
SUPERIOR COURT OF JUSTICE**

B E T W E E N:

DUCA FINANCIAL SERVICES CREDIT UNION LTD.

Applicant

and

2460467 ONTARIO INC.

Respondent

**IN THE MATTER OF AN APPLICATION PURSUANT TO 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**

SUPPLEMENTARY RESPONDENT APPLICATION RECORD

August 6, 2024

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-2-

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Lawyers for the Applicant

AND TO: SERVICE LIST

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INDEX

TAB	DOCUMENT	DATE
1.	Supplementary Affidavit of Kamal Patel	Sworn August 6, 2024
<i>Exhibits to the Affidavit of Kamal Patel sworn August 6, 2024</i>		
A.	Commercial Mortgage Commitment Letter from 2587410 Ontario Inc.	August 2, 2024
B.	Agreement of purchase and sale between 2460467 Ontario Inc., as vendor, and 2809211 Ontario Inc., as purchaser	August 6, 2024

TAB 1

Court File No. CV-24-00096502-0000

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SUPPLEMENTARY AFFIDAVIT OF KAMAL PATEL
(sworn August 6, 2024)

I, Kamal Patel, of the City of Kitchener, in the Province of Ontario, **MAKE OATH AND**

SAY:

1. I am the principal of the Respondent, 2460467 Ontario Inc. (“**246**”), the registered owner of the property municipally known as 240 Yeomans Street, Belleville, Ontario, and legally described as:

PIN: 40454-0002 (LT)

Description: PCL 14-2 SEC 92 (BELLEVILLE); LT 14 PL 92 THURLOW; LT 21 PL 92 THURLOW; PT LT 15 PL 92 THURLOW; PT LT 20 PL 92 THURLOW; PT UNION ST PL 92 THURLOW; PT RAILROAD ST PL 92 THURLOW; PT YEOMANS ST PL 92 THURLOW PT 1, 2 & 3 21R18413; S/T EASEMENT OVER PT 2 21R18413 IN FAVOUR OF PT 1,2,3 21R18018 EXCEPT PT 1,2,3 21R18413 AS IN HT33628; S/T EASEMENT OVER PT 1,2,3 21R22303 IN FAVOUR OF PT 1,2,3 21R18018 EXCEPT PT 1,2,3 21R18413 AS IN HT33628; T/W EASEMENT OVER PTS 1,2,3 21R22307 AS IN HT33628;

-2-

BELLEVILLE; COUNTY OF HASTINGS; SUBJECT TO AN
EASEMENT IN GROSS AS IN HT292181

(the "**Property**"), which is subject to a Cameron Stephens Mortgage Capital Ltd. ("**CSMC**") mortgage security, which was assigned to the Applicant, Duca Financial Services Credit Union Ltd. (the "**Applicant**"), and, as such, have knowledge of the matters hereinafter deposed.

2. The contents of this Affidavit are based on my own personal knowledge unless otherwise indicated, and where I have stated that I obtained information from a third party, as set out herein, I verily believe that information to be true.

3. I swore an Affidavit on July 31, 2024, in response to the application brought by the Applicant to appoint the receiver, KSV Restructuring Inc. on the Property. I swear this Affidavit to supplement my affidavit.

4. On August 2, 2024, the private lender, 2587410 Ontario Inc., provided a commitment letter to advance the sum of \$8,231,250.00 for a construction first mortgage to refinance on the Property. The advance date of the commitment letter is August 30, 2024. I attach hereto and mark as **Exhibit "A"** a copy of the commitment letter.

5. Furthermore, 246 has entered into an agreement of purchase of sale for the Property with the purchaser, 2809211 Ontario Inc., in the event refinancing with the private lender does not proceed. The purchase price of the Property [REDACTED] and provides 246 with the irrecoverable and unilateral right to terminate the agreement without any penalty. Attached hereto and marked as **Exhibit "B"** is a copy of the agreement of purchase and sale between 246, as vendor, and 2809211 Ontario Inc., as purchaser, dated August 6, 2024.

-3-

6. In light of the above, I verily believe it is not appropriate, just, or convenient to appoint the receiver as the Respondent has secured refinancing to fully discharge the sum owing to the Applicant. Alternatively, the sale of the Property will be sufficient in order to fully pay the Applicant its mortgage, including interest accrued to date.

7. I swear this Affidavit to oppose the appointment of a receiver and for no other or improper purpose.

SWORN by Kamal Patel of the City of Kitchener, in the Province of Ontario, before me at the City of Toronto, in the Province of Ontario, on August 6, 2024, in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.

Commissioner for Taking Affidavits
(or as may be)

KHALED GHEDDAI

KAMAL PATEL

EXHIBIT A

THIS IS EXHIBIT "A" REFERRED TO IN THE
AFFIDAVIT OF KAMAL PATEL
SWORN THIS 6 AUGUST 2024

A handwritten signature in blue ink, appearing to read 'Khaled Gheddai', written over a horizontal line.

A Commissioner for taking Affidavits

Khaled Gheddai



August 2, 2024

Commercial Mortgage Commitment Letter

Dear Kamal Patel,

I am pleased present to you a commitment letter for a 1st mortgage refinance with a private lender as of August 2, 2024, with applicable conditions.

Borrower: 2460467 Ontario Inc.

Attention: Kamal Patel

Property Address: 240 Yeomans St, Belleville, ON

Product/ Rate Available: 15% per annum for 1 year Fixed

Mortgage Approval Amount: \$8,231,250.00

Closing Date: August 30th, 2024,

The borrower(s) are responsible to meet the lender's guidelines and conditions before the closing of this mortgage. There may be additional fees including but not limited to lender fees, commitment fees broker fee, administration fee etc. attached to the mortgage. Your approval rate may expire or vary at the lender's discretion.

If you have any questions, please do not hesitate to contact me.

Thank You,

Chirag Parikh
Mortgage Broker
M19002514

Commercial Mortgage Loan Commitment Letter

2460467 Ontario Inc.
29 Idle Ridge Crescent
Kitchener, ON
N2A 3W3

August 02, 2024

Chirag Parikh
Mortgage Broker
Centum Financial Services LP-CP

Subject: Yeo Towns, Belleville
2460467 Ontario Inc.

Construction First mortgage refinance for the following properties:

240 Yeomans Street
Belleville, Ontario.

2.29-acre site which has partial built-up of 62 stacked townhomes development with 61, 726 SFT NSA and 93 parking spaces.
(Hereinafter known as the "Properties")

Dear Sir.

With reference to your request, we hereby provide our temporary bridge loan commitment to your request as noted below:

Borrower(s): 2460467 Ontario Inc.

Security: A satisfactory first mortgage charge on the following properties:

- 240 Yeomans Street, Belleville, Ontario and all the works completed to date

Guarantees: A satisfactory package of corporate guarantees from the following:

- All borrowing corporations
- Personal joint & several guarantees of all directors and beneficial owners of respective corporations with appropriate independent legal opinions.

Amount: \$8,231,250.00 (Eight Million, Two Hundred Thirty-One Thousand & Two Hundred Fifty dollars) inclusive of interest reserves, legal fees, lender's fees & broker fees.

Use of Funds:

Uses	Amount
1 st mortgage: 240 Yeomans St, Belleville, ON	\$7,500,00.00
Lenders Fee	\$375,000.00
Brokers Fee	\$75,000.00
Interest Reserves	\$281,250.00
Total Disbursements:	\$8,231,250.00

Additionally, the funds will be used to provide interest reserve, lender's fee, broker's fee, legal fees, and any other fees incurred in the transaction. Any shortfall will be provided by the Borrower.

Term: Three (3) months from date of closing with option to extend two more months subject to prepayment of 1% of loan amount as a renewal fees per month.

Interest: 15% per annum

Amortization: Interest only

Funding Date: August 30th, 2024

Lenders fees: 5% of principle amount (\$375,000.00)

Brokers fees: 1% of principle amount (\$75,000.00)

Interest Reserve:

An interest reserve amount of Two Hundred Eighty-One Thousand Two Hundred Fifty Dollars (\$281,250.00) will be withheld from the Loan advance at the time of closing. The amount will be applied towards monthly interest payments of the Loan. Upon the depletion of the interest reserve, the Borrower/Guarantor will be liable for all interest payments of the Loan.

The Borrower undertakes to replenish the Interest reserve account in the event of a shortfall to pay for the monthly payments of the Loan. In the event the Loan is repaid before the maturity of the Loan, subject to the terms of the Repayment clause of the Loan, any unutilized amounts held in the Interest Reserve account will be credited to the Borrower.

CONDITIONS PRECEDENT:

PLEASE NOTE: Funds for this Loan will not be advanced by the Lender until all the following conditions are met and maintained. The Lender may terminate the Commitment or decline to advance all or any part of the mortgage at the Lender's sole and absolute discretion.

1. A current dated "as-completed work" & "cost to complete balance of works" required from Fusion Corp.
2. A current date reliance letter is required from land appraisal for the properties in favor of the Lender.
3. A payout statement is required by August 14th, 2024.
4. A copy of all environmental report(s) along with the current dated reliance letter is required. (Report submitted, reliance letter pending)
5. This financing shall be done at the sole and absolute discretion of the Lender.
6. A copy of certified personal net worth statement satisfactory to the Lender shall be provided for all directors and shareholders of the Borrower. (Submitted and satisfactory)
7. Property is to be free and clear of all encumbrances except mortgages & liens as disclosed.
8. To accept these terms, this Mortgage Commitment must be signed by all parties and returned to the Lender.
9. The Lender requires the Borrower's Solicitor name and address (Mr. William Friedman).
10. The Lender requires a valid photo ID for all Borrowers and Guarantors
11. The Lender requires evidence that the property taxes for all properties is up to date and in good standing. A tax certificate shall be provided by the Borrower by Aug 14, 2024.
12. Evidence of Properties insurance in form and substance satisfactory to the Lender. Guaranteed replacement clause required.
13. Operating statement for the property for the past two fiscal year ends. Current financial statements, net worth statements, and credit references of the Borrower and each Guarantor. By executing this Commitment Letter, the Borrower and Guarantor authorizes the Lender, its nominees, assignees, partners and/or representatives, to obtain credit bureau reports on them for the purpose of determining creditworthiness of the Borrower and Guarantor associated with this Loan, and for the purposes of assessing the ongoing creditworthiness of the Borrower and Guarantor in connection with any annual reviews which may be conducted.

14. Organizational Chart showing the ownership structure of the Borrower including details of the beneficial owners of the Property.
15. A satisfactory exit strategy to repay this loan shall be provided by Aug 14, 2024. This shall include but not limited to a letter of intent from perspective lenders and/or JV partners who could provide corporate guarantees to the new loan.

CONDITIONS FOR SOLICITOR:

16. First charge(s) on the Properties to be registered in the name of choice of the Lender.
17. The Properties are to be free and clear of all encumbrances.
18. Lender's Title insurance for the Properties in a form satisfactory to the Lender`s solicitor.
19. Monthly payments will be made via Preauthorized Payments (“PAP”). Borrower/Guarantor to provide a copy of a void cheque (not applicable for the months where an Interest Reserve is maintained for the Loan)
20. Environmental Indemnity for the Property to be provided by the Borrower.

OTHER:

21. A reliance letter from the appraiser to be provided by August 14th, 2024
22. An independent planner’s letter to be submitted by August 14th, 2024.
23. A copy of environmental report and reliance letter to be submitted by August 14th, 2024
24. No further encumbrances after the Lender`s registered security on the Property(ies) shall be permitted without the prior written consent of the Lender.
25. Properties taxes must be and must remain current on the Properties.
26. All zoning by-laws must be complied with, and no outstanding work orders may exist.
27. A NSF charge of \$750.00 will be charged on any cheque dishonored by the bank (NSF or otherwise).
28. Borrower and Guarantors agree not to alter / demolish or conduct any major renovations to the Property(ies) without the written consent of the Lender.
29. If the Lender goes into possession of the Property(ies), an additional monthly management fee equaling ten percent (10%) of the Loan amount will be charged to the Borrower/Guarantor.

30. Title to the Properties and the registration of the mortgage must be satisfactory to the Lender and its solicitor.
31. Execution of the Lender's standard Statement of mortgage as required under the Mortgage Brokerages, Lenders and Administrators Act, 2006.
32. This commitment may not be transferred or assigned by the Borrower/Guarantor.
33. The Borrower/Guarantor covenant and agree to take all necessary steps to cure any default under the first mortgage in a timely manner. In the event the Borrower/Guarantor, despite their best efforts, are unable to do so, the Lender shall, in its sole discretion and at its sole option be entitled to either make payments under the first mortgage and keep the same current or buy out the first mortgage. In either case the Borrower/Guarantor shall be deemed to be obligated to make payments to the Lender at the interest rate of the mortgage on the payments being made by the Lender to keep the first mortgage current or on the principal balance payout figure of the first mortgage which the Lender has advanced.
34. The Borrower/Guarantor represent and warrant that all information and materials provided to the Lender in connection with this Loan are correct and complete as of the date provided and will continue to be correct and complete on closing, failing which the Lender shall have no obligation to advance the Loan.
35. With respect to the documents required to be delivered to the Lender by the Borrower/Guarantor, the Borrower's/Guarantor's solicitor shall be required to provide the Lender and the Lender's solicitor with its opinion regarding the registration of all personal property(ies) financing statements, the due authorization, execution, delivery, creation of security interest and enforceability, which opinion shall be in form and substance acceptable to the Lender's solicitor in its sole and absolute discretion.
36. The mortgage documents will include a standard due on sale clause.
37. The mortgage documents will include standard event of default clauses.
38. The Lender shall be entitled to assign, transfer syndicate this Loan without the approval of the Borrower/Guarantor. The Lender shall have the right to disseminate information collected by the Lender of the Borrower / Guarantor and or information regarding the project as required to assign, transfer or syndicate the Loan. All documents which the Borrower(s) or Guarantor(s) and their representatives have provided in support of this Loan may be disclosed to third parties for the purposes of assigning, transferring or syndicating the Loan. Examples include pro forma financial statements, budgets, credit bureaus, personal net worth statements, etc.
39. The Borrower/Guarantor hereby irrevocably agree to indemnify and hold the Lender harmless from and against any loss, cost, liability, or expense incurred as result of the enforcement for any claims for deposit, legal and appraisal, or any other matter in relation to this Loan.
40. All third-party costs and expenses incurred whether directly or indirectly by the Lender, including without limitation legal fees and disbursements, appraisal fees, title insurance, etc. are payable

by the Borrower/Guarantor, whether or not the transaction proceeds as contemplated, and may be deducted from the proceeds of the mortgage. The Borrower/ Guarantor shall pay all costs and expenses imposed by the Lender in connection with any amendments to the mortgage or the security documents, the discharge of the mortgage, preparation of any mortgage statement, dishonored payments or similar matters during the term of the Loan.

41. Upon execution of the Commitment, the Lender Fee is earned by the Lender. If the Loan Amount is not advanced on the Date of Advance for any reason, unless solely due to the Lender's default, the Borrower/Guarantor shall be obligated to pay to the Lender the Lender Fee as well as any costs and expenses directly or indirectly charged to or incurred by or on behalf of the Lender, including legal fees and disbursements, the broker fee which is payable upon execution of the Commitment, appraisal fees, and title insurance premiums etc. which shall be by way of a charge against the Property(ies), and the Borrower/Guarantor irrevocably authorize and direct the Lender and/or the Lender's Solicitor to register said charge against the Property(ies) in amount equal to the Lender Fees and bearing interest at the Interest Rate.

BORROWER / GUARANTOR REPRESENTATION:

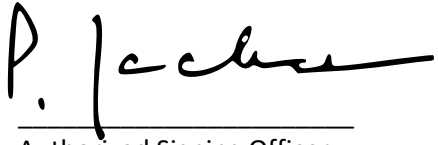
42. The borrower represents and warrants that: the Borrower and the Guarantor have the power, capacity and authority to enter this Commitment and to perform and complete the transaction contemplated herein, all of which have been duly authorized where required by all necessary corporation action and that no consents are necessary; and The Borrower and the Guarantor have not withheld any information of a material nature relating to the Property or to the Borrower or Guarantor.

BORROWER / GUARANTOR ACKNOWLEDGMENTS:

As the Borrower, you hereby acknowledge and represent the following:

43. You have considered the risks entailed in private borrowing and your broker has informed you of the risks involved in the Loan.
44. You understand that the terms and the interest rate in this Commitment may be higher and more onerous than institutional lenders.
45. You have had an opportunity to consult legal, accounting or other financial advisors.
46. You understand that if the Lender does not advance the Loan by a certain date, you may be unable to satisfy the intended purpose for the Loan; and
47. When the Loan is due, if the Lender cannot or will not renew the Loan and cannot pay the outstanding balance the Property(ies) may have to be sold to repay the Loan.

2587410 Ontario Inc.



Authorized Signing Officer

For Borrowers:



2460467 Ontario Inc.

Guarantors:

Other Shareholders as Personal Guarantors:



Per: Kamal Patel

Per: _____

Per: _____

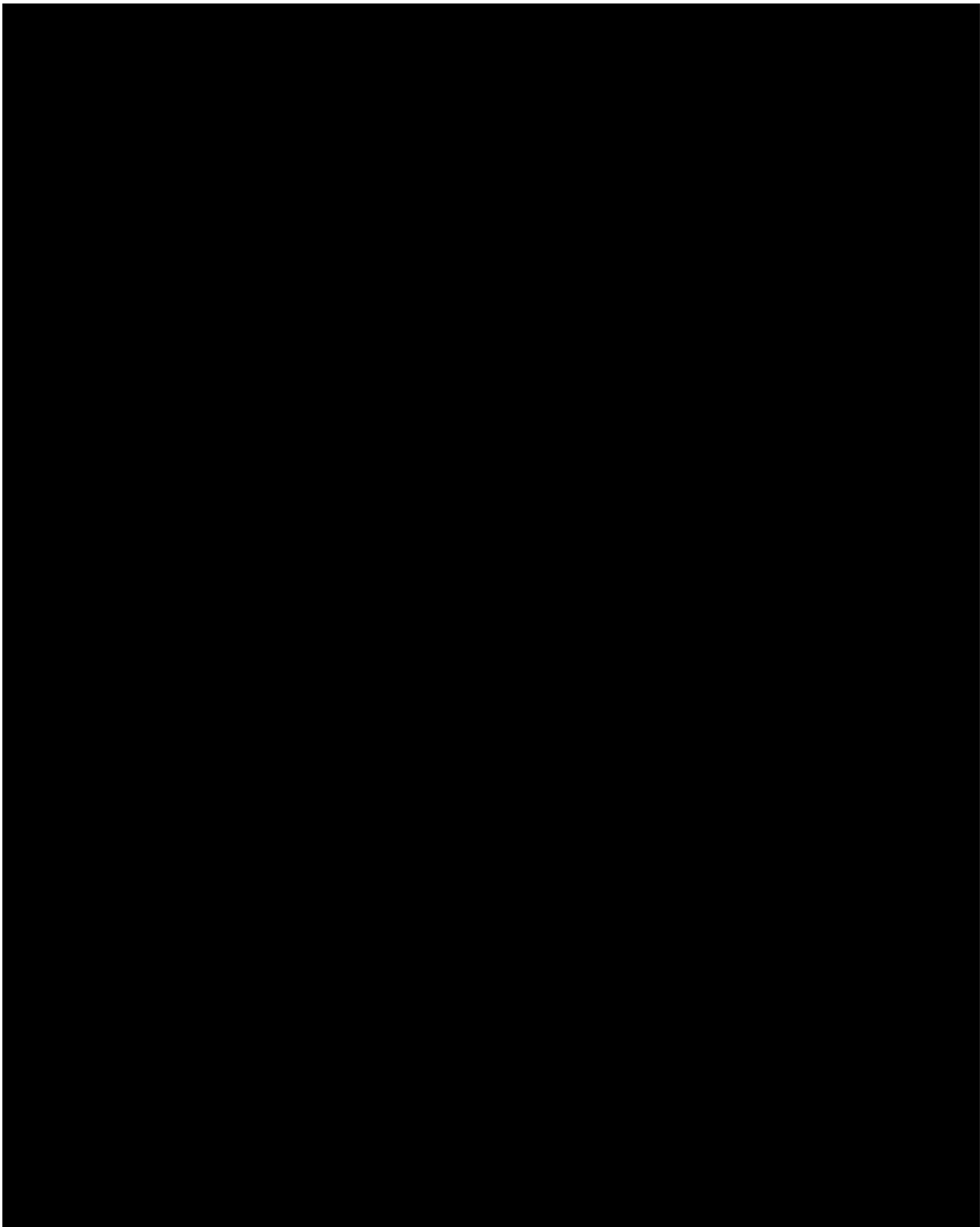
EXHIBIT B

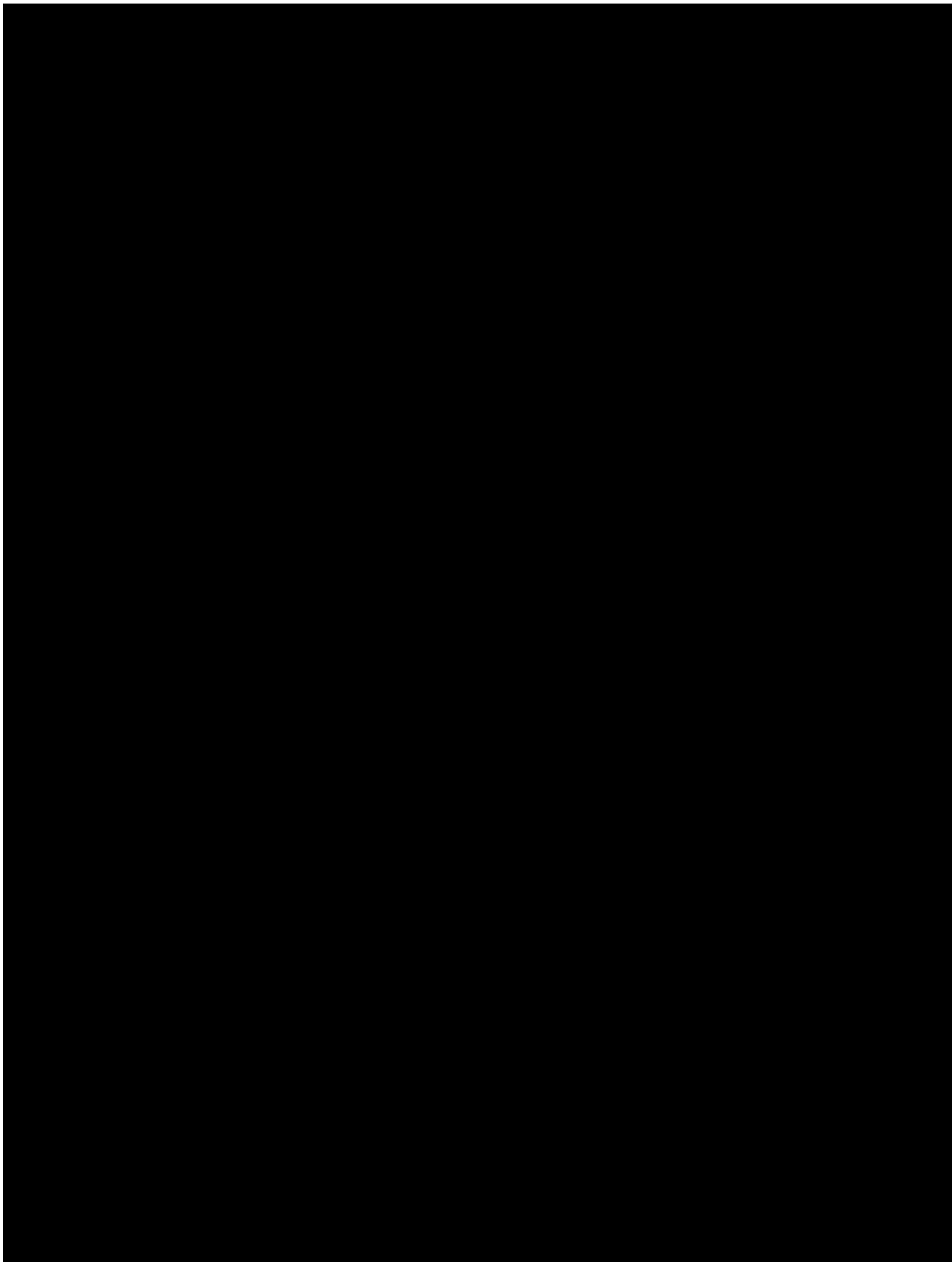
THIS IS EXHIBIT "B" REFERRED TO IN THE
AFFIDAVIT OF KAMAL PATEL
SWORN THIS 6 AUGUST 2024

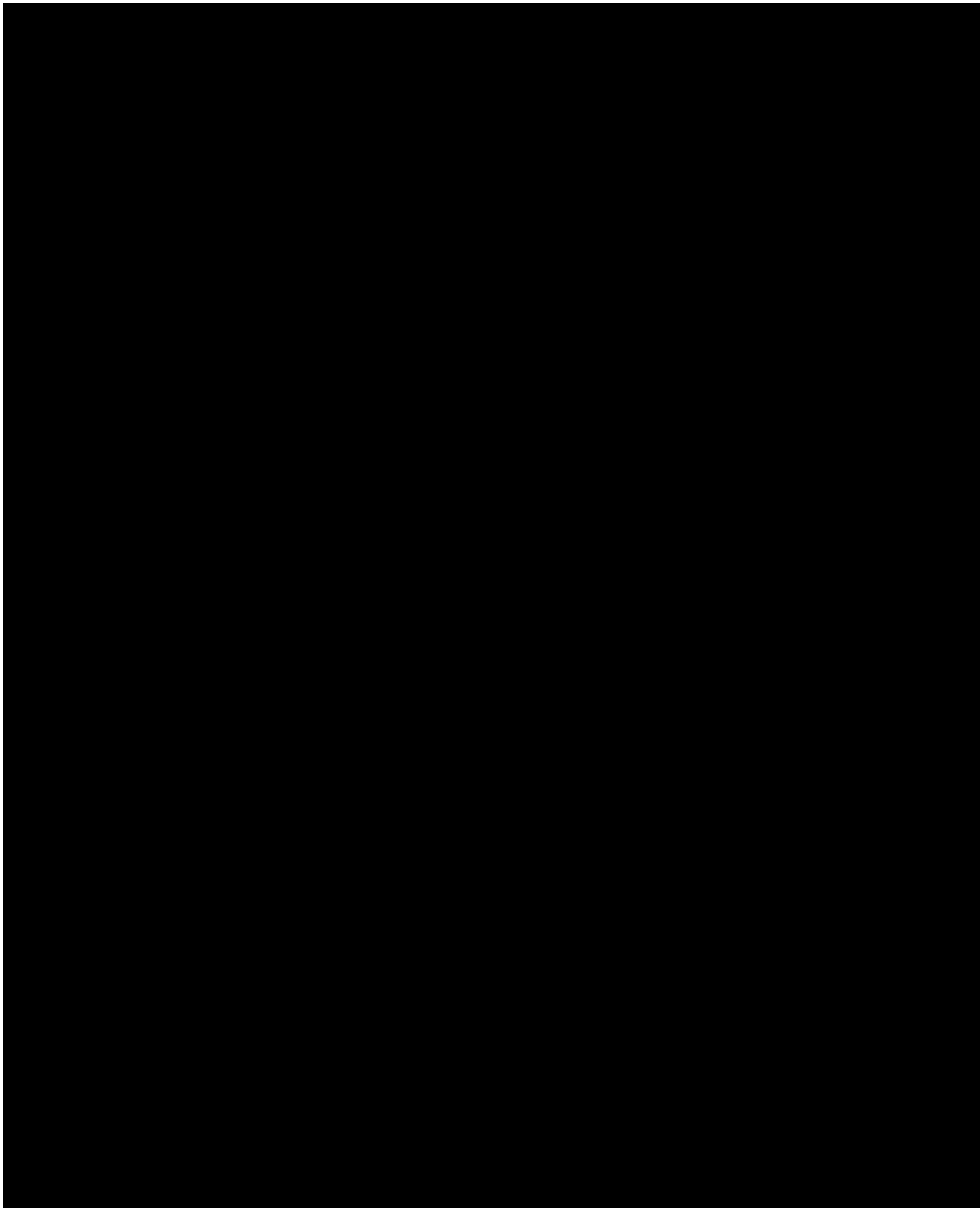
A handwritten signature in blue ink, appearing to read 'K. Gheddai', written over a horizontal line.

A Commissioner for taking Affidavits

Khaled Gheddai

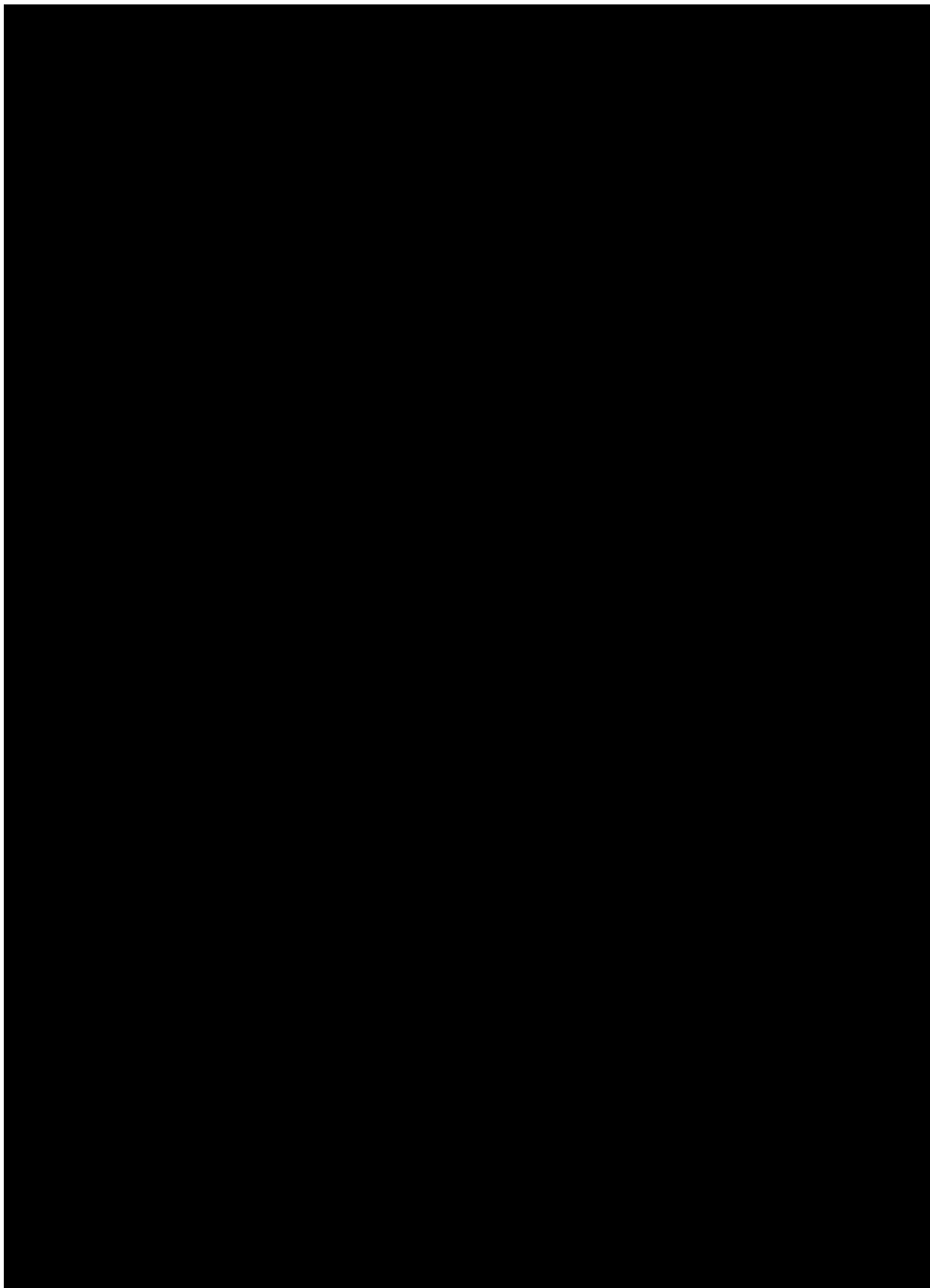


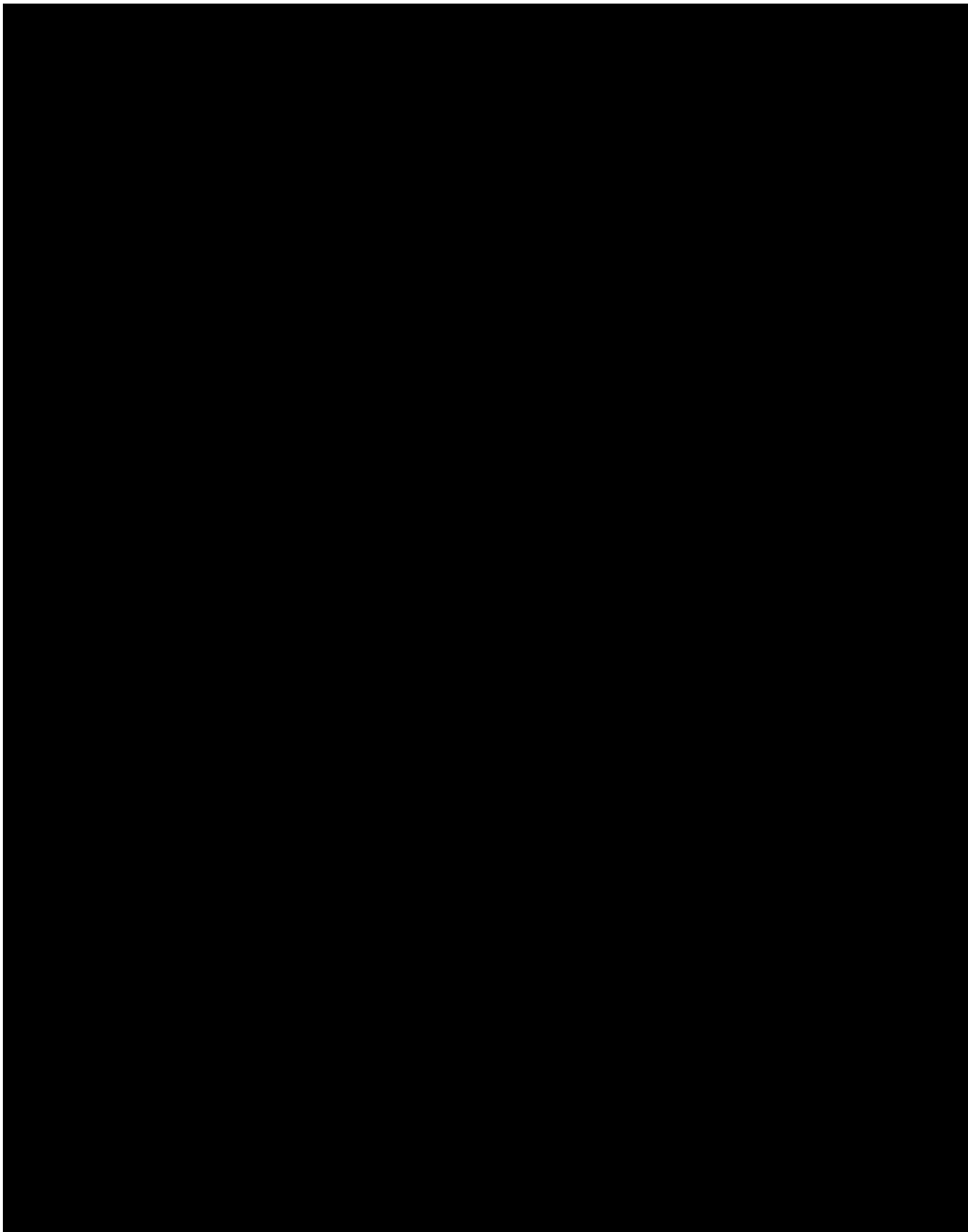




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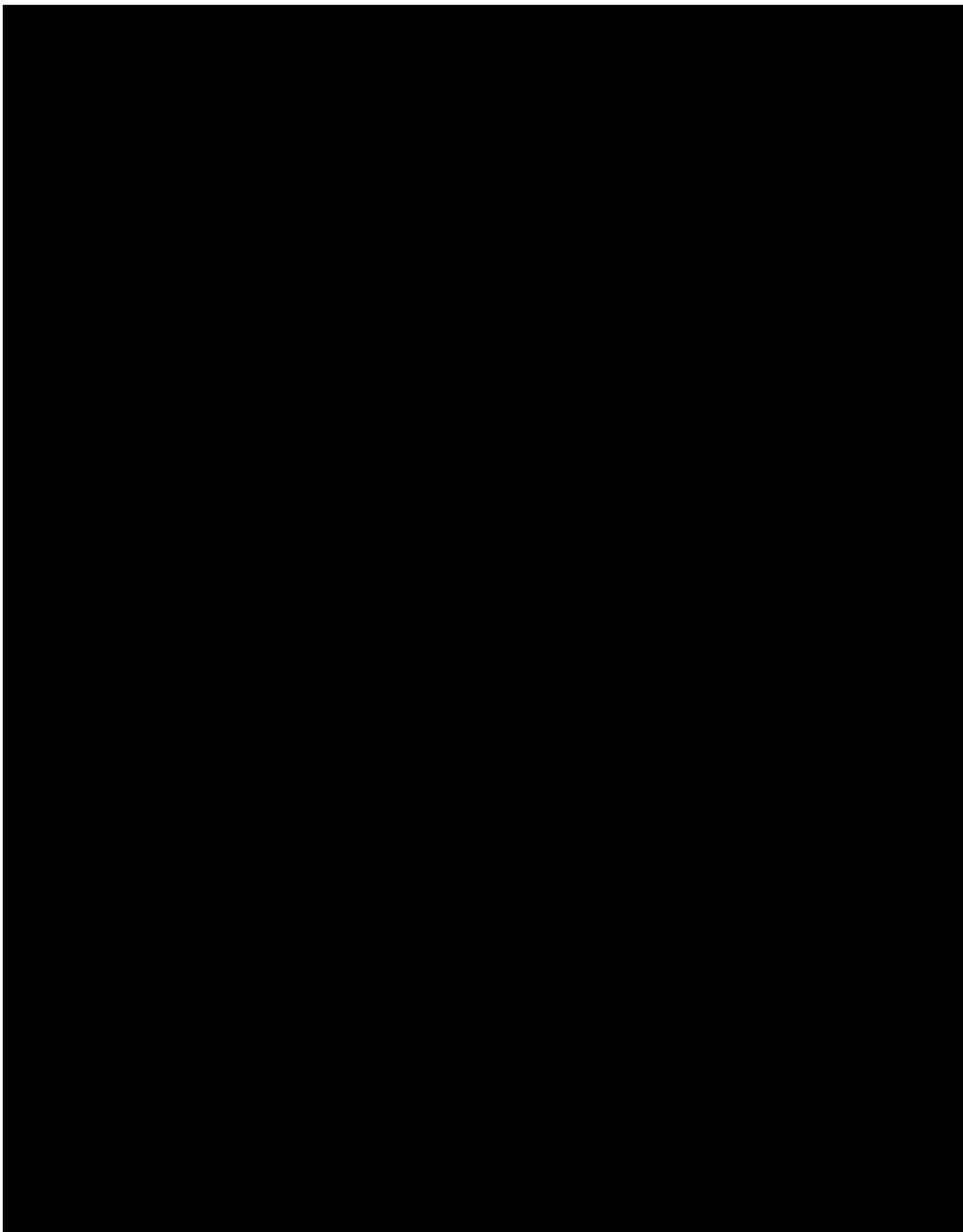
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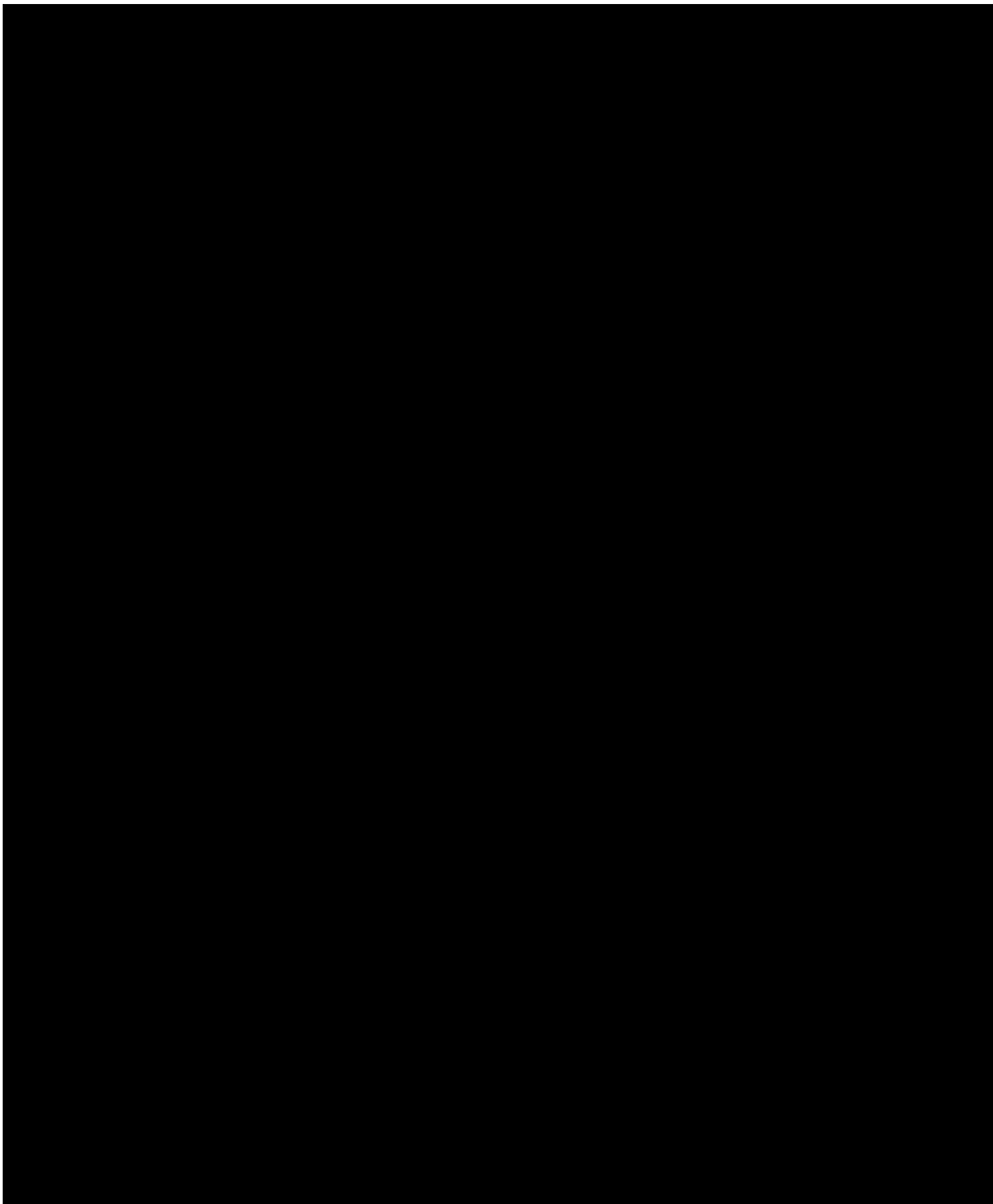


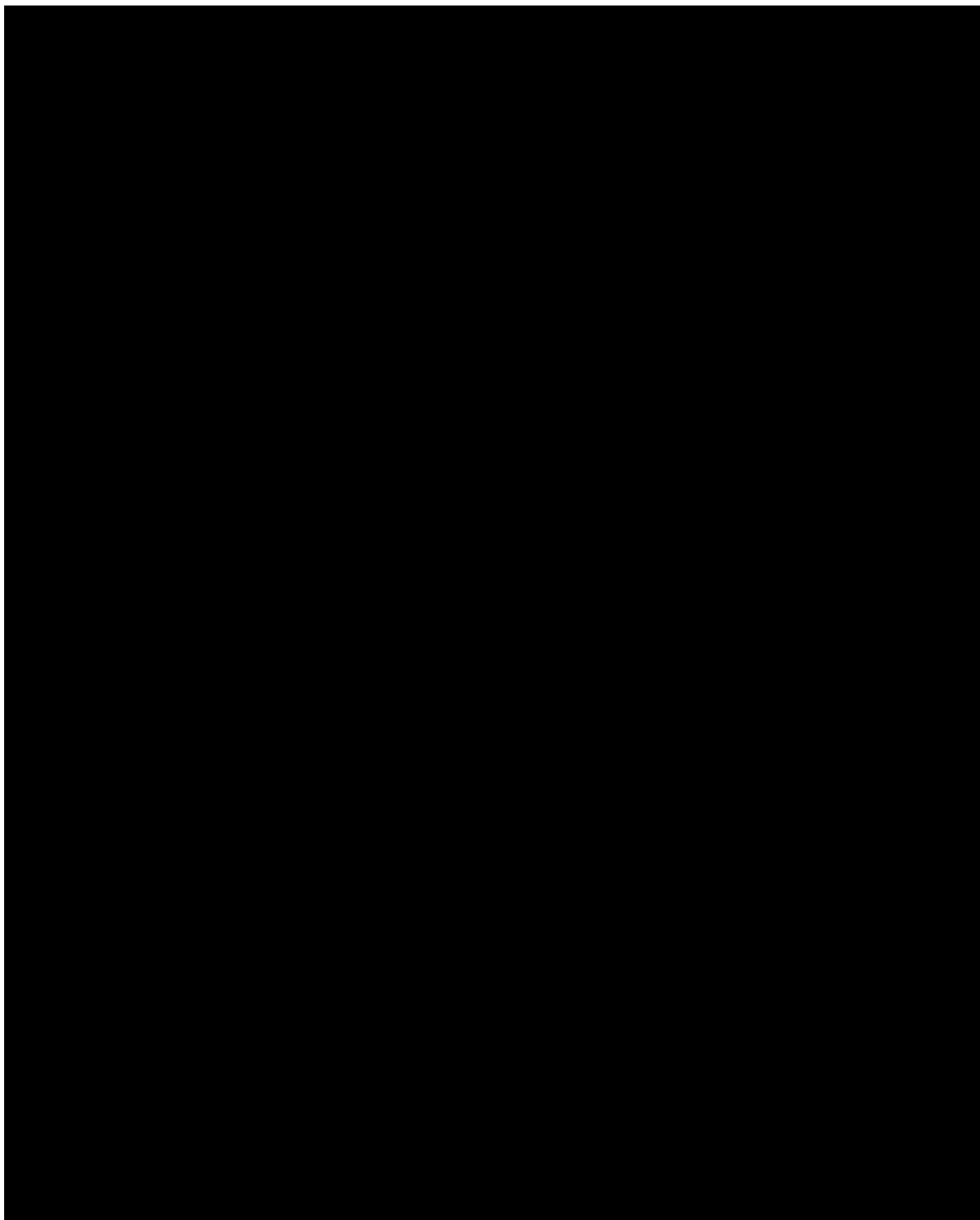


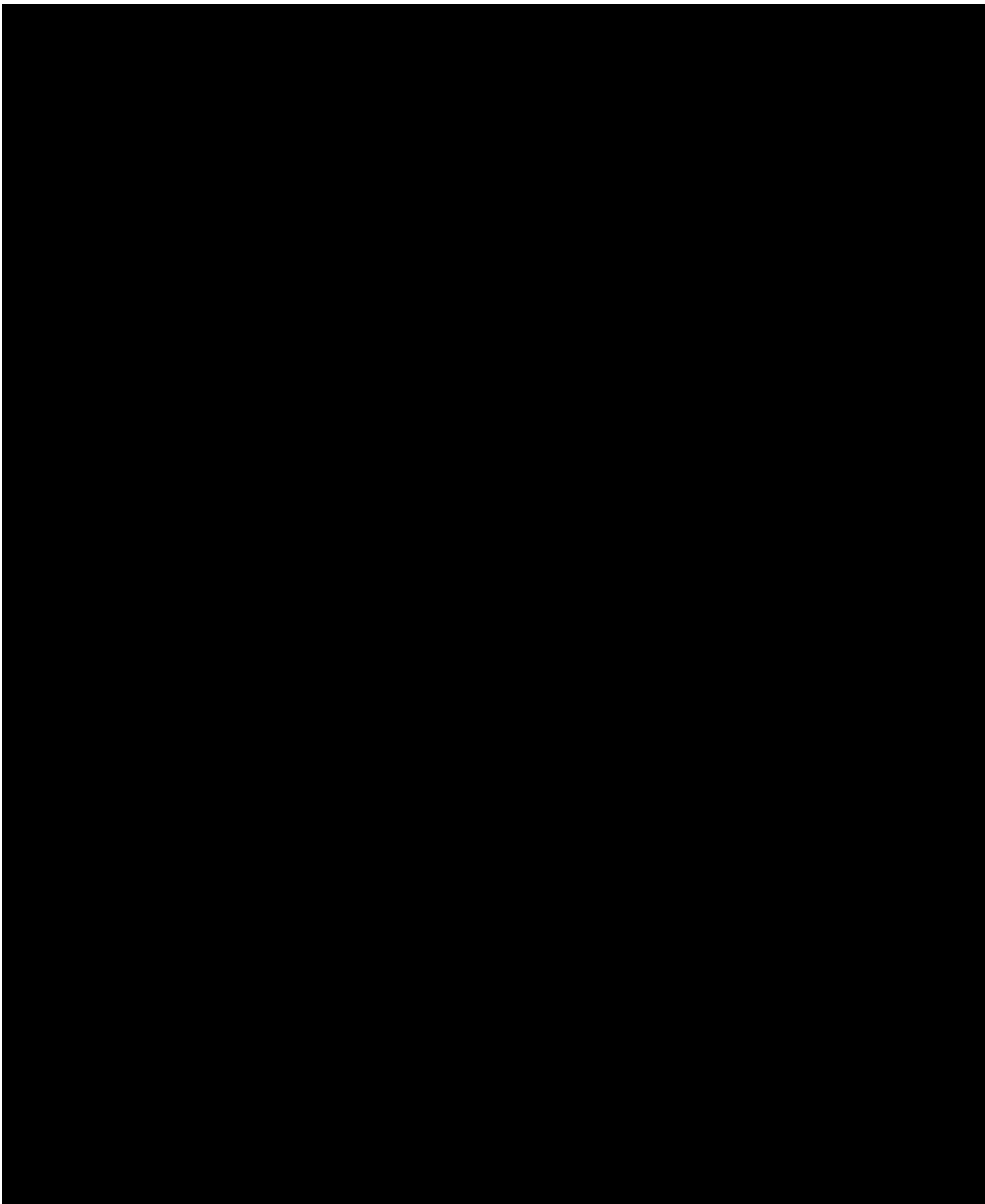
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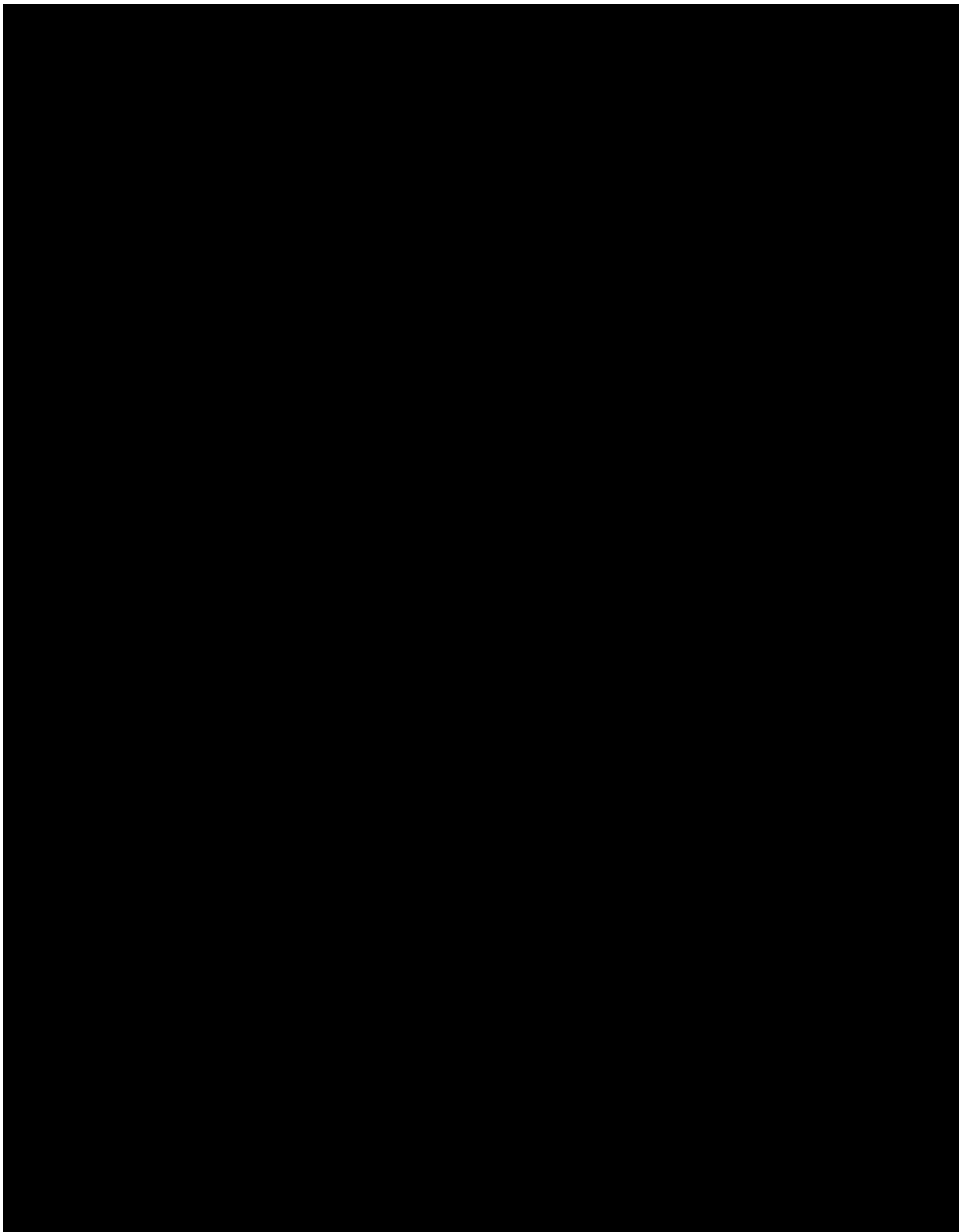
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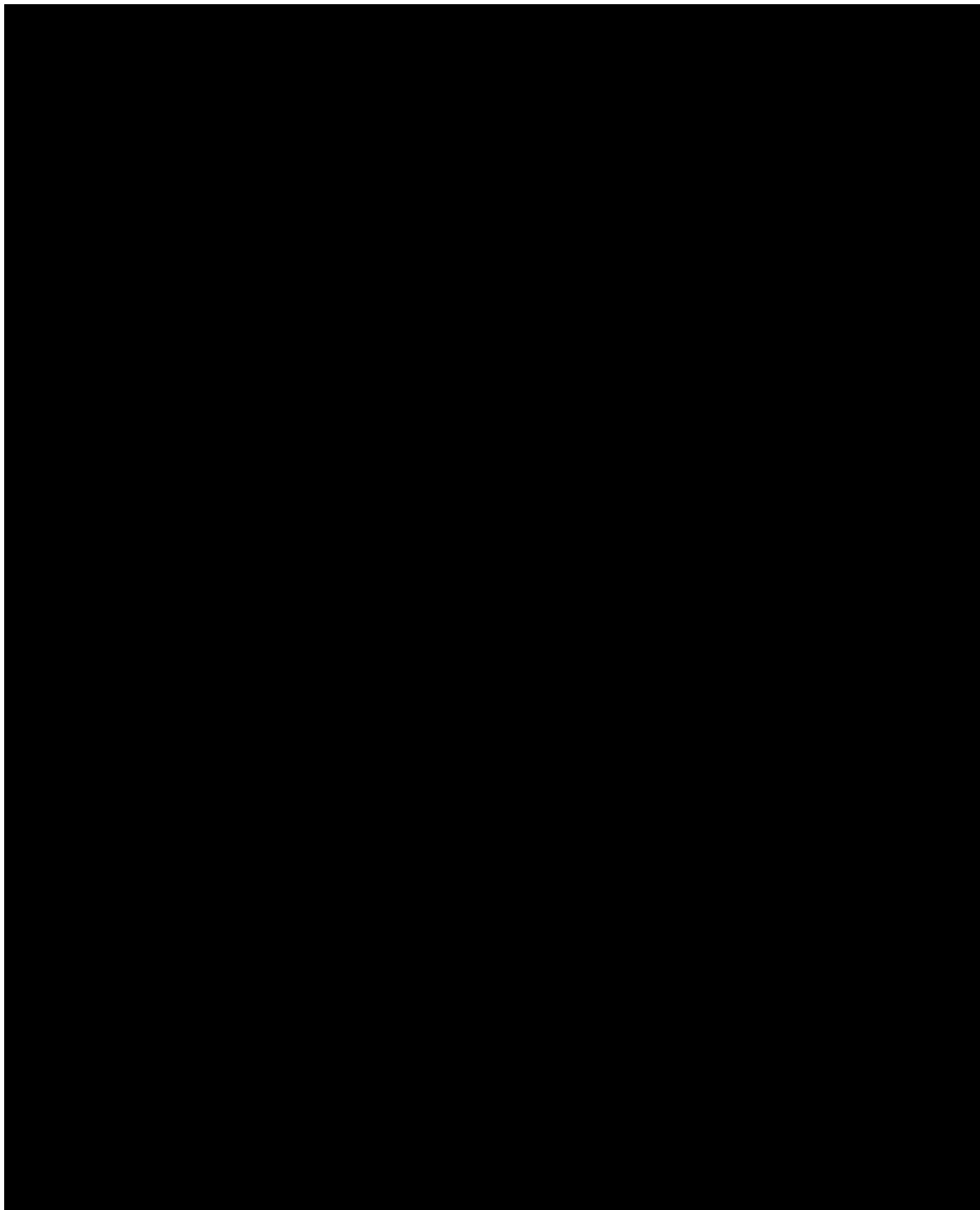


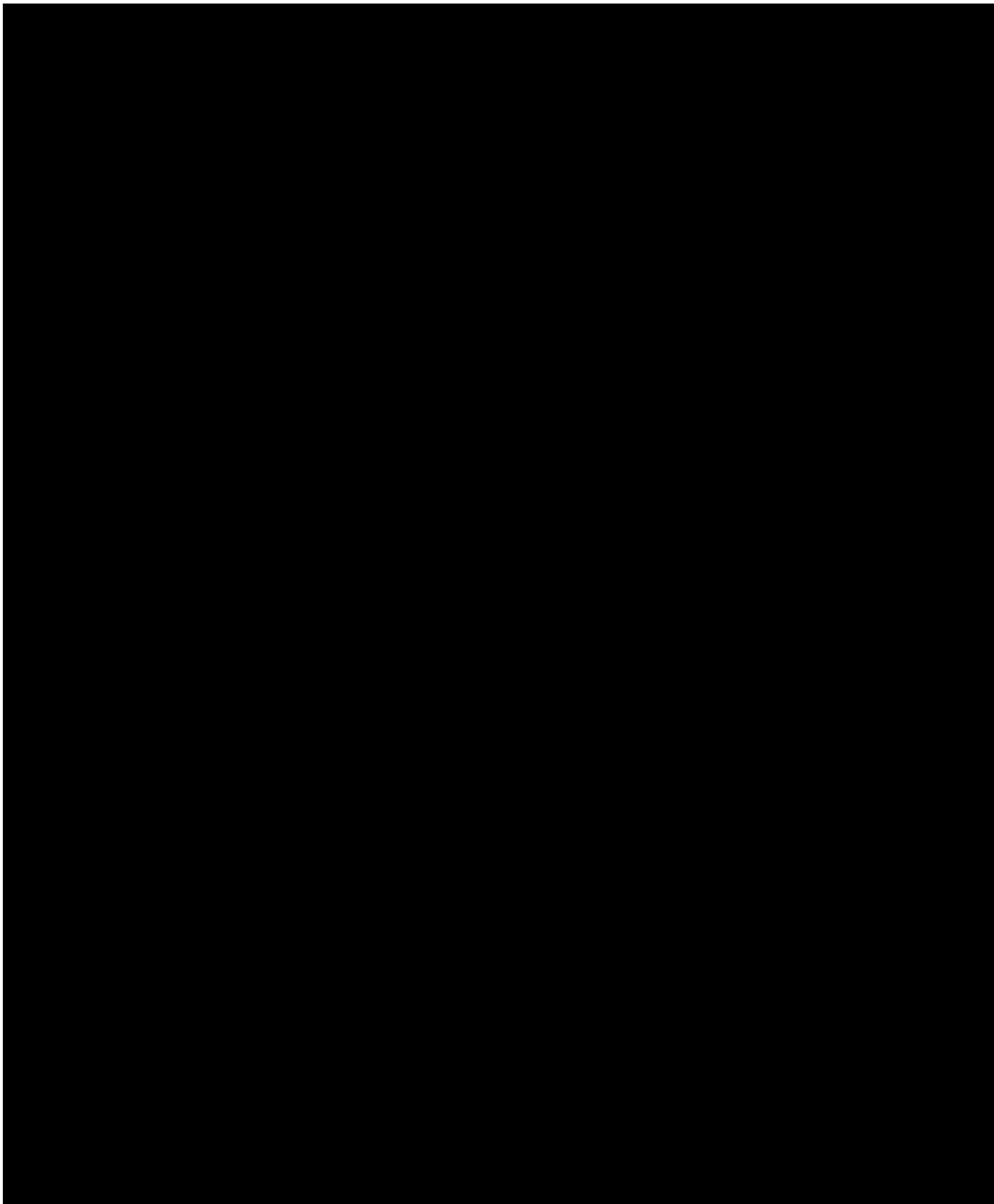






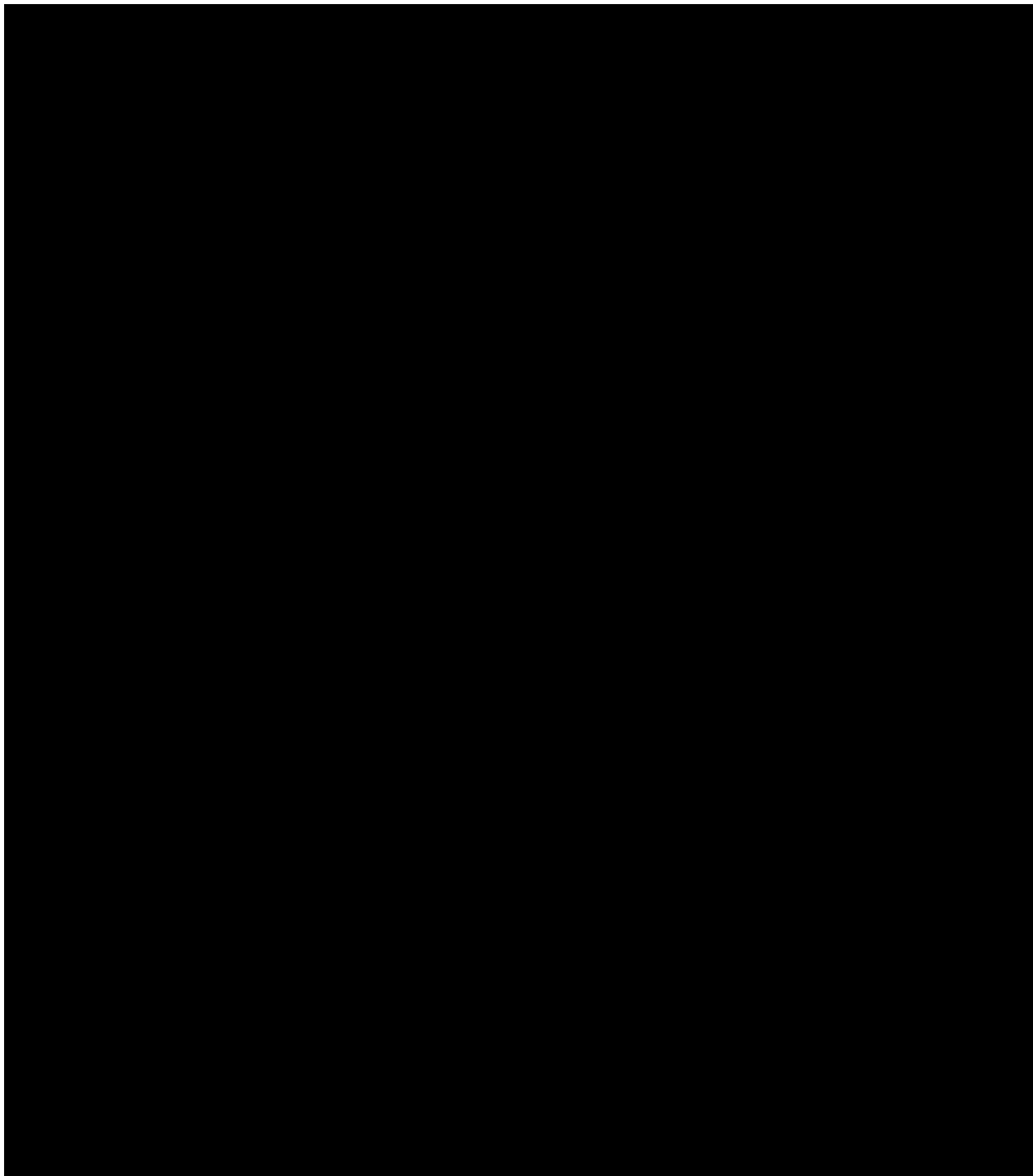




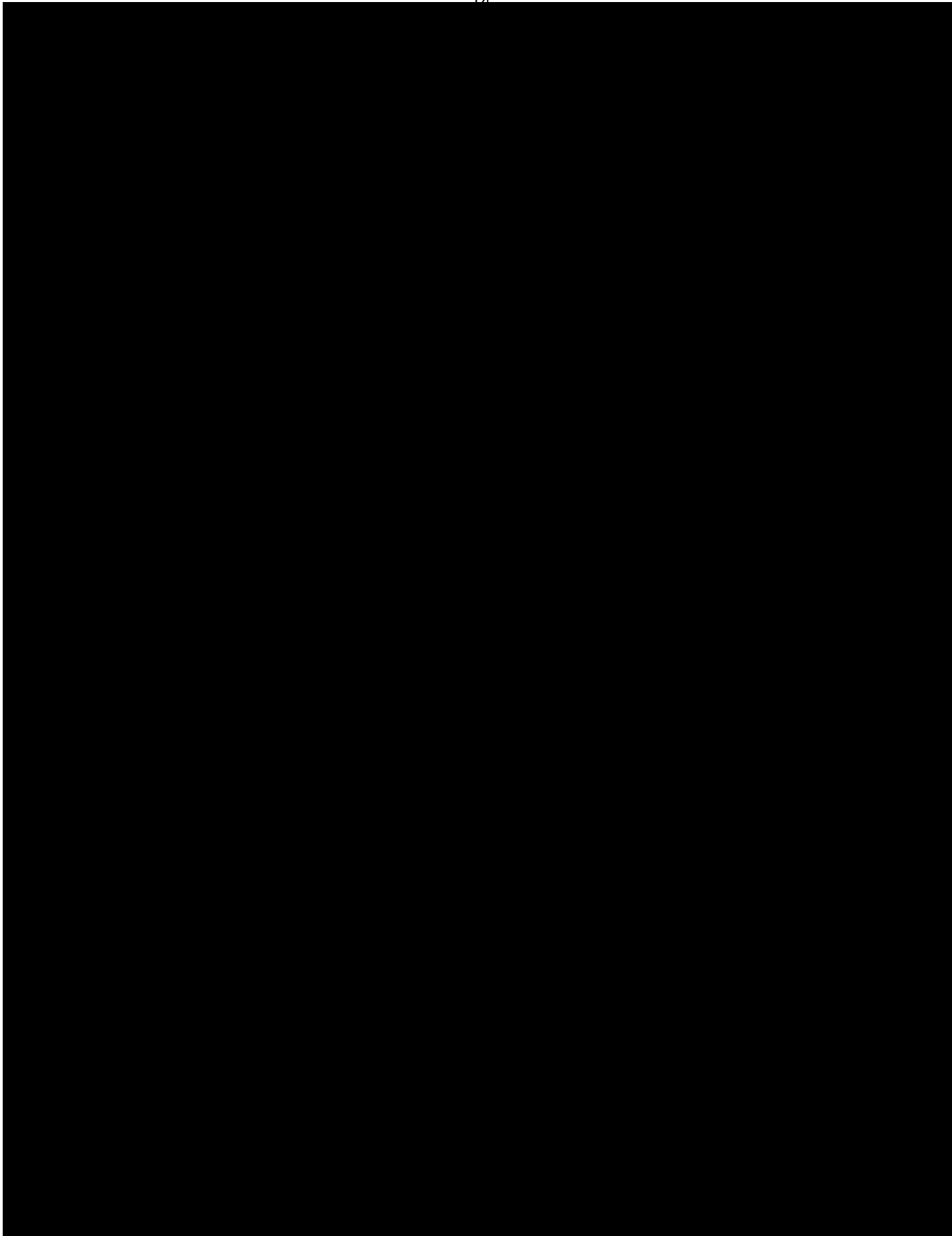


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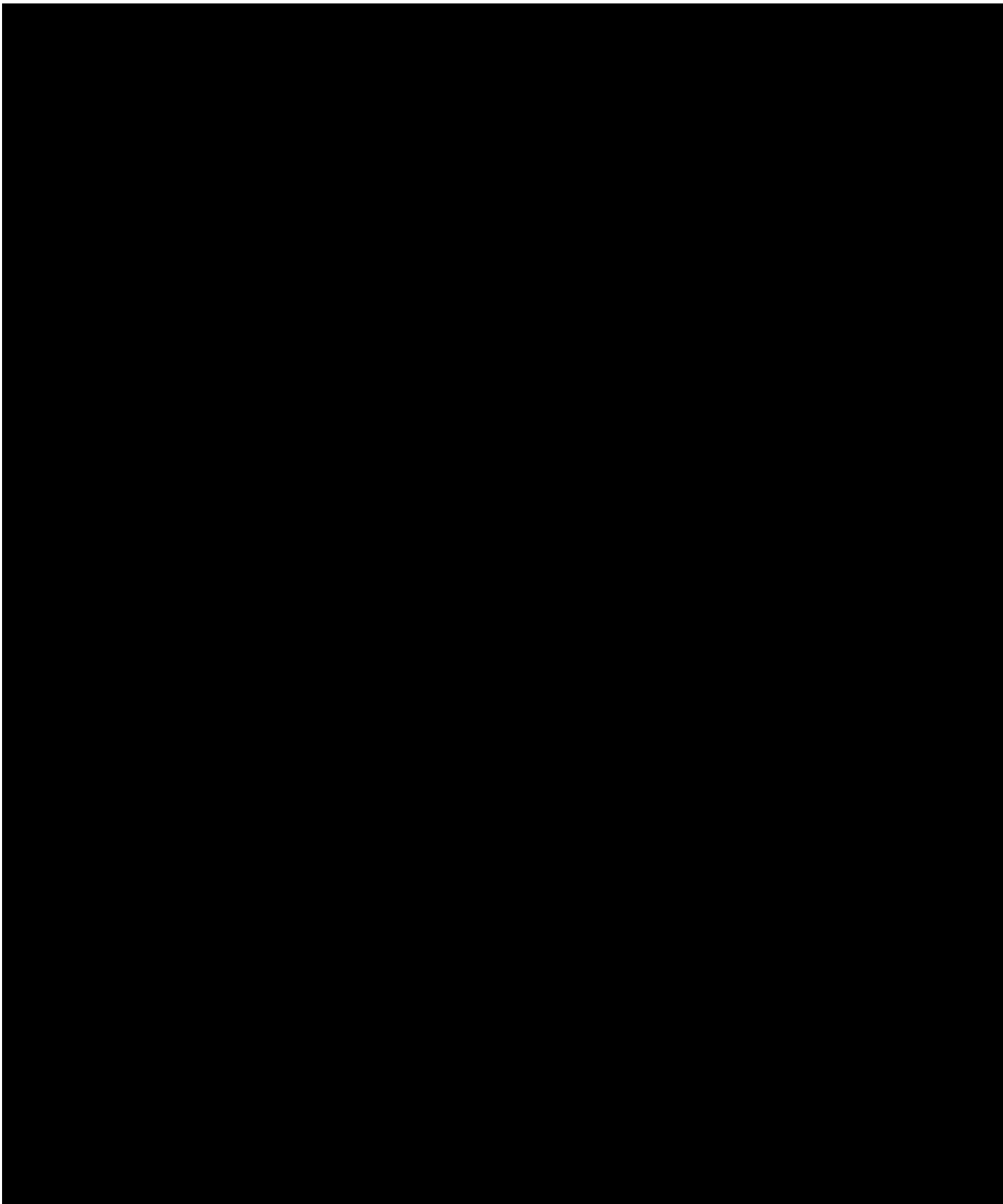


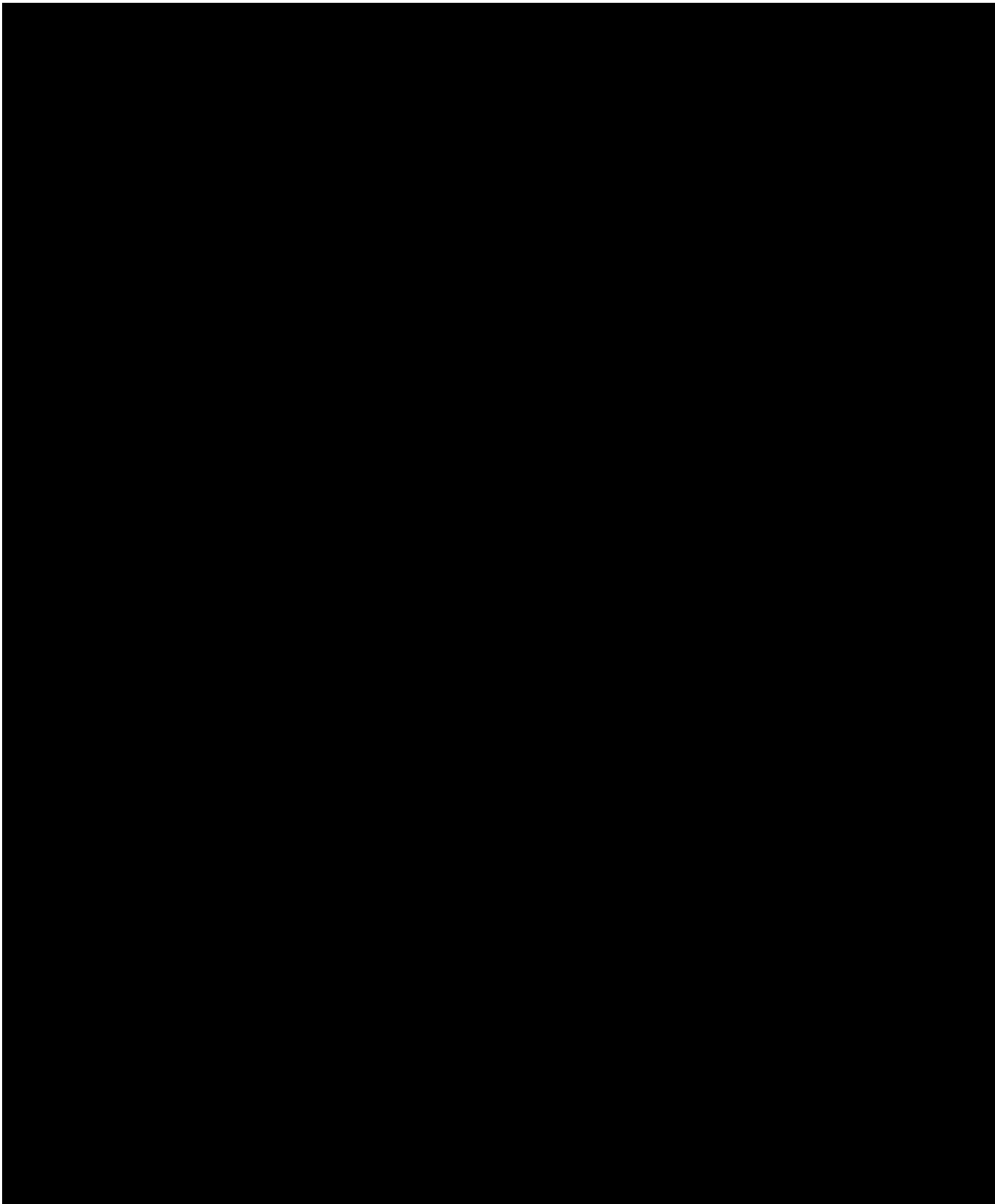
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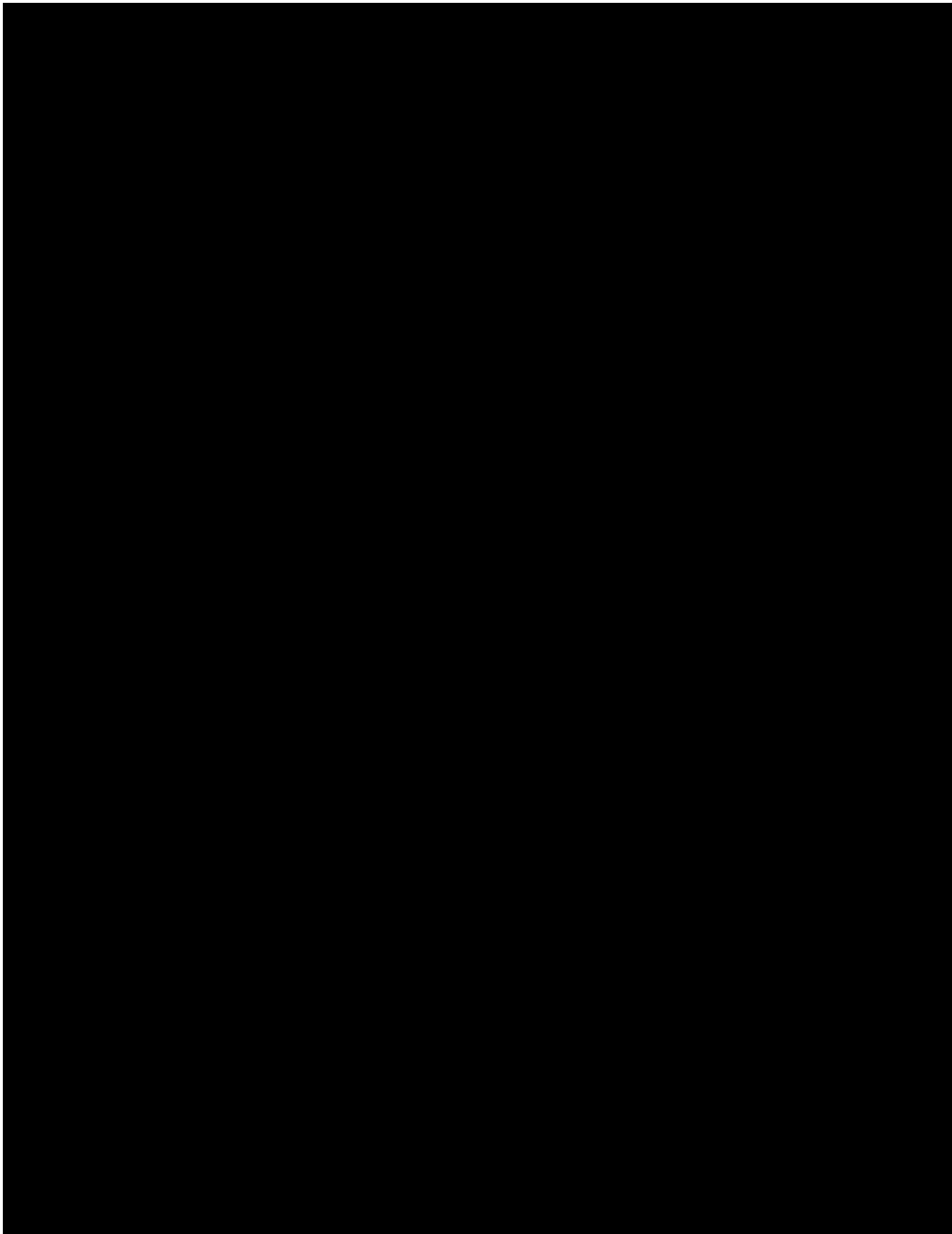


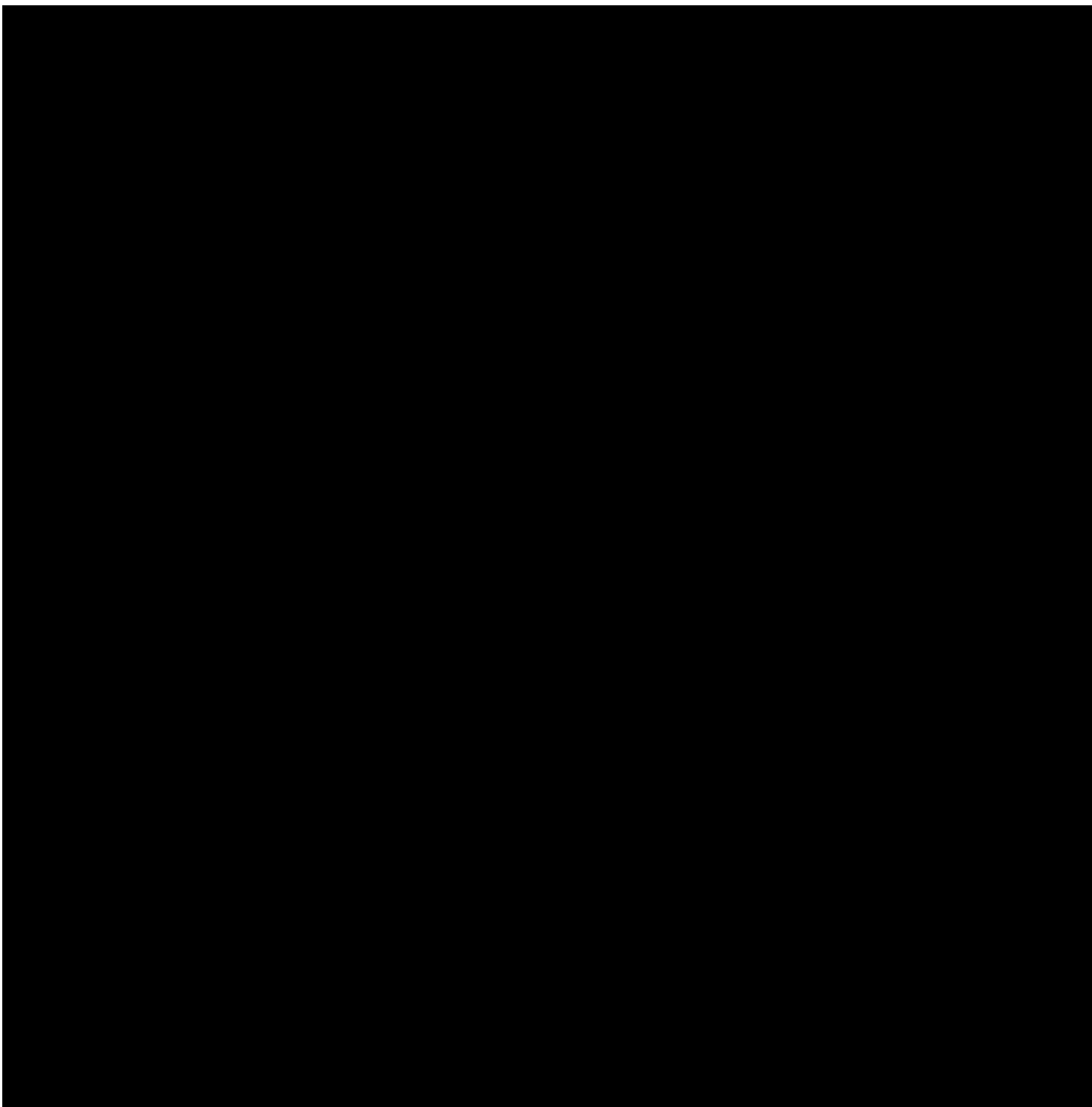
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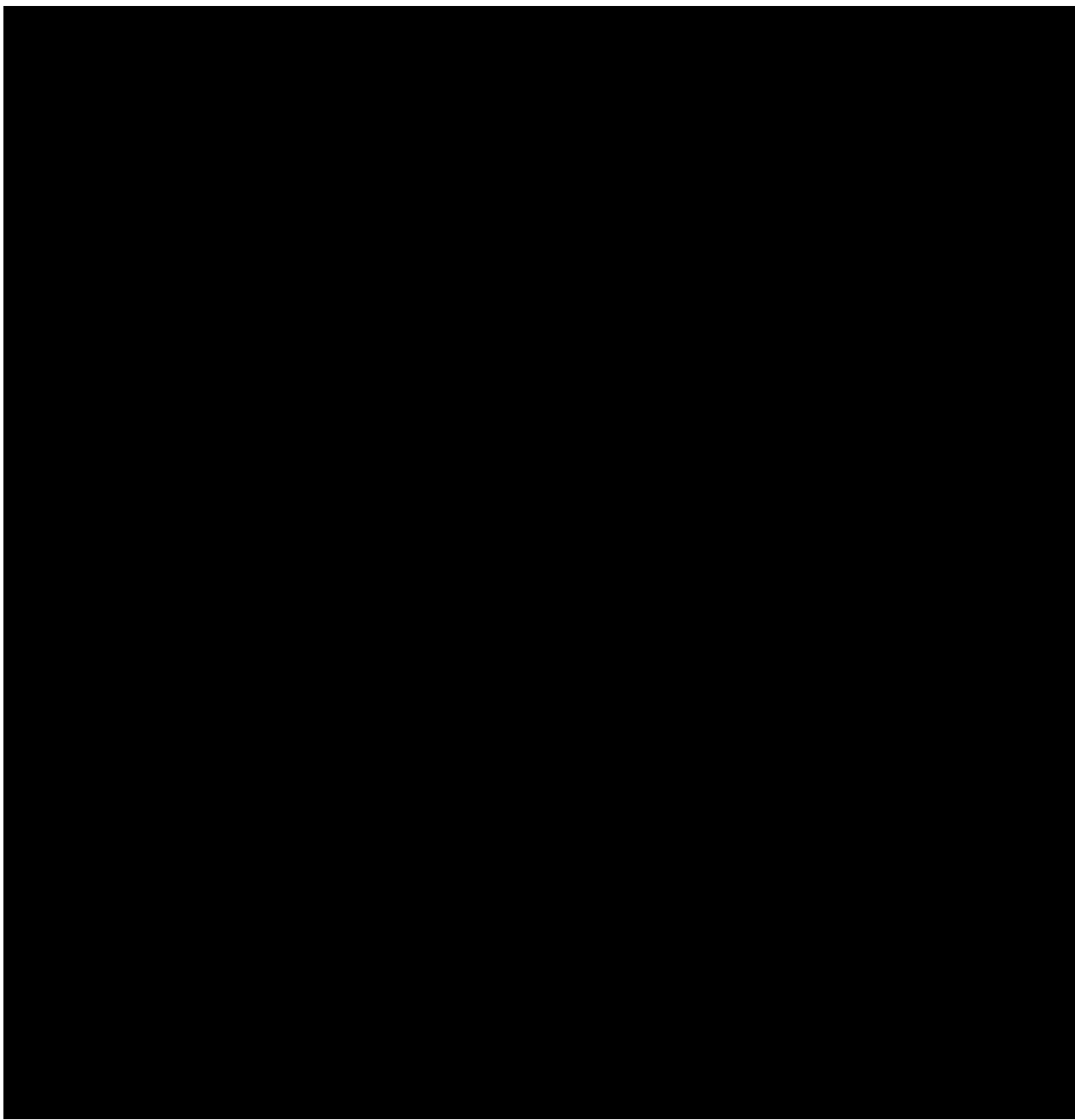
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PROCEEDING COMMENCED AT
OTTAWA

**SUPPLEMENTARY AFFIDAVIT OF KAMAL PATEL
Sworn on August 6, 2024**

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150 Ferrand Drive, Suite 800
Toronto, ON M3C 3E5

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Khaled Gheddai (LSO No. 73840B)

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kg@friedmans.ca

Lawyers for the Respondent

RCP-E 4C (May 1, 2016)

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SUPERIOR COURT OF JUSTICE**PROCEEDING COMMENCED AT
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150 Ferrand Drive, Suite 800
Toronto, ON M3C 3E5**William Friedman (LSO No. 18420U)****Khaled Gheddai (LSO No. 73840B)**Tel: (416) 496-3340
Fax: (416) 497-3809
Email: wf@friedmans.ca
kg@friedmans.ca*Lawyers for the Respondent*

RCP-E 4C (May 1, 2016)