

From: (b) (7)(C)

Sent: Wednesday, April 06, 2011 12:06 PM

To: All Assistant Directors; All Deputy Assistant Directors; All Special Agents in Charge

Subject: ADDITIONAL INSTRUCTIONS FOR DOCUMENT PRODUCTION RELATED TO OPERATION FAST AND FURIOUS

Attachments: OIG.FF document request 3-25-11.pdf; OIG and HCOGR Verification.docx; HCOGRDOCLIST.docx

On March 21, 2011, the Acting Inspector General (IG) for the Department of Justice advised Acting Director Melson that the IG's Oversight and Review Division recently initiated a review of certain ATF firearms trafficking investigations. In a March 21 memo, the Assistant IG for the Oversight and Review Division stated that the review would cover the matter known as Operation Fast and Furious, and other investigations with similar objectives, methods, and strategies. On March 25, 2011, Acting Director Melson received the attached request for documents and information relating to the IG review of certain firearms trafficking investigations.

On March 28, 2011, AD Stinnett sent each of you instructions on how to respond to the March 25, 2011 document request. She also sent each of you a document preservation request relative to Operation Fast and Furious.

On March 31, 2011 the House Committee on Oversight and Government Reform (HCOGR) issued a subpoena for documents related to Operation Fast and Furious and the FBI investigation into the death of Border Patrol Agent Brian Terry.

While the IG document request and the HCOGR subpoena are generally directed at the same investigation, they are distinctly different in their scope. To minimize the impact of these two document requests, facilitate production of responsive documents, and ensure the confidentiality of responses, we will combine them into one request and secure them electronically. (Accordingly, to the extent that AD Stinnett's March 28, 2011 asked for you to produce hard copy documents to her office, you can disregard that portion of her guidance). **The due date for the electronic production of responsive documents and certification of search is close of business Monday, April 11, 2011.**

**Regardless of any prior production of responsive documents to any entity inside or outside of ATF, everyone is required to produce any responsive documents, e-mails, etc. at this time. All responsive documents anywhere in the organization must be produced. Further, all documents must be fully produced. There is no authority for ATF to withhold records, or redact portions of records because we believe they are sensitive or confidential or privileged. The IG has statutory authority to obtain any and all records related to this review.**

ACTION ITEM FOR EACH AD AND EMPLOYEES IN EACH DIRECTORATE

Please carefully review both the attached OIG request for documents and the attached HCOGR request and forward to each office within your area of responsibility. These documents should be forwarded to each employee in every office under your supervision. While it is likely that most of the requested records will be housed at the Phoenix Field Division or Bureau headquarters, it is nonetheless critical that each SAC and HQ Official ensure a thorough search is conducted at each field and headquarters division and any responsive record is forwarded as instructed. Please err on the side of caution and be over inclusive in producing documents or information.

Also attached is a revised verification certification that covers document production for the OIG and the HCOGR which needs to be signed and dated by each SAC and HQ Official. If your division does not have responsive materials, please note "no responsive records found" on the certification and provide a copy of the signed document as instructed below. A scanned copy of this document should be placed in the division folder as described below using the naming convention of "Division\_Certification" e.g. Phoenix\_Certification. Personnel in the Office of Field Operations should also e-mail a copy of their certification to Program Analyst (b) (7)(C)

**Do not produce** any of the following documents generally described as national policy documents (Headquarters has and will produce these documents):

The 2009 ONDCP National Southwest Border Counternarcotics Strategy  
The Draft 2011 ONDCP National Southwest Border Counternarcotics Strategy  
The Department of Justice Strategy for Combating the Mexican Cartels  
The Department of Justice Firearms Manual  
Any national ATF Orders, Briefs, Handbooks, or Guides  
The ATF National Firearms Trafficking Enforcement Implementation Plan dated June 2009 and its transmittal memo  
The ATF Cartel Strategy dated September 2010 and its transmittal memo

**However**, any additional guidance on any of the above topics issued at the directorate, division, field office, or branch level must be produced.

**Do not produce** any of the following documents generally described as NFORCE documents from the Fast and Furious case file (Headquarters has and will produce these documents):

Management Logs  
Reports of Investigation  
Significant Incident Reports  
Affidavits  
Anything currently contained in the Phoenix Field Division shared drive s:\Phoenix VII\7585115-10-0004

**However**, any other responsive documents, e-mail, or communications related to Operation Fast and Furious maintained at the directorate, division, field office, or branch level must be produced.

**All production of responsive materials is to be in electronic form only as outlined below. Do not submit paper copies to headquarters. Any responsive document or other communication that is not currently in electronic form is to be scanned.**

#### PROCESS FOR EACH EMPLOYEE TO SUBMIT RESPONSIVE DOCUMENTS ELECTRONICALLY

ATF will compile all responsive documents by having employees place electronic copies of the documents into a shared computer drive. Do not produce hard copies or e-mail copies of documents to HQ.

Each employee and task force officer in ATF has been given access to a nationwide shared computer drive titled "Fast and Furious investigation." Access to this drive was automatically created when you logged in to your computer Monday, April 4, 2011.

If you have responsive documents to submit, follow the procedure below to deposit them into the shared drive in the appropriate location. If you have no responsive documents, complete your certification and return it in accordance with the instructions provided by your supervisor.

### **How to Access the Fast and Furious Investigation shared drive.**

To access this drive, place your mouse pointer over the "Start" button in the lower left corner of your screen and right click, then select "Explore."

Scroll down until you see a drive labeled "Fast and Furious Investigation." (If you do not see this drive and your computer has not been rebooted recently, you will need to log out of the network and log back in so that the network may create your access to the shared drive.)

Left click on that drive.

Scroll to your field division or Headquarters Directorate

Left Click on that folder

### **How to Create a Document Folder**

Next create a new user folder to hold your responsive documents. To do this:

Go to the top menu and select "File"

Then select "New"

Then select "Folder"

Name the new folder with your login id (network user id)

Left click on the folder you just created to enter it

Copy any responsive documents into your folder in the shared drive.

About your folder:

Only you can access your folder. No one else in your office, division, or directorate can view your submission(s).

Similarly, you cannot access anyone else's folder.

You can deposit documents into the folder, but once deposited in the folder you cannot read, rename, modify, or delete them.

### **Saving scanned documents**

If you must scan a document to submit it, please save it using the following naming convention:

Your login ID\_description\_of\_the\_document\_date of the document

Where Your login ID is your **network login ID**, followed by an underscore and the description of the document, for example, "**\_division\_firearms\_trafficking\_guidance\_memo\_**" followed by the date of the original document **201104XX** expressed as a four digit year followed by two digit month and 2 digit day

An example of a properly named scanned file might look like this:

**Atfperson\_division\_firearms\_trafficking\_guidance\_memo\_20100920**

**Phoenix Field Division personnel need not produce e-mails to the shared folder, all Phoenix employees' e-mail will be collected automatically. Each Phoenix user will receive a network notification advising them that their e-mail folders are being copied from their pc in response to this information collection. All Phoenix employees are required to cooperate with this collection process.**

## How to Save Small Quantities of Responsive E-Mails

To save a singular responsive e-mail follow these steps:

Open the e-mail

Left Click on the "Office Button" Icon in the upper left hand corner

Select "Save As"

Browse to your folder on the shared drive.

**In the Save as type: dialogue box be sure to select Outlook Message Format (\*.msg)**

Save the file directly to your folder in the shared drive.

## How to Save Large quantities of responsive E-Mails

Move all responsive e-mails to a single folder within Outlook – create a new folder if need be.

Once you have moved all responsive e-mails into the folder, highlight the folder on the folder list.

Left click "File" in the upper left hand corner of the Outlook window

In the dialogue box select "Import and Export"

In the next dialogue box select "Export to a File," then click "Next"

In the next dialogue box select "Personal Folder File (.pst)," then click "Next"

In the next dialogue box select (highlight by clicking on it) the folder where you have stored the responsive e-mails, then click "Next"

In the next dialogue box in the "Save exported file as" box, browse to your folder on the shared drive and save the .pst file containing your e-mail folder naming it using the following naming convention:

Your login ID\_email\_ff\_20110404, then click "Finish"

Where Your login ID is your **network login ID**, followed by an underscore and the letters "**\_email\_ff\_**" followed by the date you exported the file **201104XX** expressed as a four digit year followed by two digit month and 2 digit day.

Questions regarding what information to produce should be reviewed with your supervisor. If you are unable to determine how to proceed, questions may be directed to AD Melanie Stinnett in OPRSO via e-mail or at 202-648-7500

Questions regarding how to migrate data to the shared drive should be directed to the Helpdesk at 877-875-3723.

Any other questions should be addressed to (b) (7)(C) in the Office of the Director via e-mail or at 202-648-(b) (7)(C)

(b) (7)(C)

Acting Chief of Staff

Office of the Director

O: 202-648-(b) (7)(C)

C:(b) (7)(C)

HQ Room 5 S 100

\*\*\*\*\*

**NOTICE:** This e-mail message and any attached files are intended solely for the use of the addressee(s) named above in connection with official business. This communication may contain Sensitive But Unclassified information that may be statutorily or otherwise prohibited from being released without appropriate approval. Any review, use, or dissemination of this e-mail message and any attached file(s) in any form outside of the Bureau of Alcohol, Tobacco, Firearms & Explosives or the Department of Justice without express authorization is strictly prohibited.

**From:** (b) (7)(C)  
**Sent:** Thursday, April 14, 2011 4:07 PM  
**To:** (b) (7)(C)  
**Subject:** RE: ADDITIONAL INSTRUCTIONS FOR DOCUMENT PRODUCTION RELATED TO OPERATION FAST AND FURIOUS

(b) (7)(C) I thought that the (b) (7)(C) documents were submitted but haven't been able to confirm. Is this shared drive still open?

(b) (7)(C)  
Executive Assistant, EO  
(202) 648-8760 main  
(202) 648-(b) (7)(C) desk  
(202) 648-9618 fax

\*\*\*\*\*

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**From:** (b) (7)(C)  
**Sent:** Wednesday, April 06, 2011 12:34 PM  
**To:** (b) (7)(C)  
**Subject:** FW: ADDITIONAL INSTRUCTIONS FOR DOCUMENT PRODUCTION RELATED TO OPERATION FAST AND FURIOUS

All:

Please review the message below and the attachments to this message. We as the Office of the Director must also respond. Please conduct the necessary inquiries of everyone under your supervision and respond to me by the due date so I may certify for the Office of the Director. Please ensure that we check for any complaints, FOIA's, calls, etc. If you have any questions, please see me.

(b) (7)(C)  
Acting Chief of Staff  
Office of the Director  
O: 202-648-(b) (7)(C)  
C (b) (7)(C)  
HQ Room 5 S 100

\*\*\*\*\*

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**(b) (7)(C)**

Acting Chief of Staff  
Office of the Director  
O: 202-648-**(b) (7)(C)**

Employee 3

5216

C: (b) (7)(C)  
HQ Room 5 S 100

From: (b) (7)(C)  
Sent: Employee 3, April 13, 2011 1:10:41 PM  
To: (b) (7)(C)

5254

Subject: Yes: \*\*\* TEST \*\*\* Certification of Document Production and Preservation Project  
Gunrunner and Operation Fast and Furious

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**To:** (b) (6), (b) (7)(C)  
**Subject:** FW: Smith letter response  
**Attachments:** Untitled.PDF - Adobe Acrobat Pro.pdf; Smith letter response

Smiths letter is below. The current draft of the response is attached

(b) (6), (b) (7)(C)

Acting Chief of Staff  
Office of the Director  
O: 202-648-<sup>(b) (6), (b) (7)(C)</sup>  
C: (b) (6), (b) (7)  
HQ Room 5 S 100

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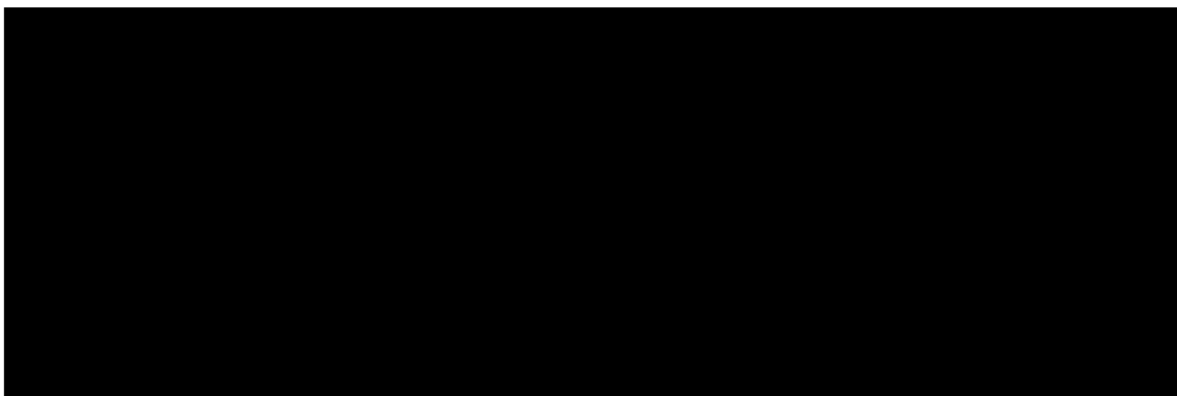
**From:** Axelrod, Matthew (ODAG) [mailto: (b) (6), (b) (7)(C)]  
**Sent:** Wednesday, March 23, 2011 9:17 PM  
**To:** Burke, Dennis (USAAZ); Cunningham, Patrick (USAAZ); Meison, Kenneth E.; Hoover, William J.; (b) (6), (b) (7)(C)  
**Subject:** Smith letter response

All,

Thanks for your patience on the response to Congressman Smith. We in ODAG are still working on the letter. No final decision has been made about what the letter will look like, but depending on what folks here decide, (b) (6), (b) (7)(C)

(b) (6), (b) (7)(C) I already have a draft paragraph to address Question #5, which I've reprinted below, but I'm not sure of the answers to the remaining ones. Could you please send me the relevant information? Thanks. I've attached the incoming letter for ease of reference.

Matt





Untitled.PDF  
- Adobe  
Acrobat  
Pro.pdf (215  
kB)

Matthew S. Axelrod  
Associate Deputy Attorney General  
Office of the Deputy Attorney General  
U.S. Department of Justice  
Desk (202) 305-0273  
Cell (202) 532-3087

**From:** Axelrod, Matthew (ODAG) [REDACTED]  
**Sent:** Wednesday, March 23, 2011 9:17:04 PM  
**To:** Burke, Dennis (USAAZ); Cunningham, Patrick (USAAZ); Melson, Kenneth E.; Hoover, William J. [REDACTED]  
**Subject:** Smith letter response

**Attachments:** Untitled.PDF - Adobe Acrobat Pro.pdf

All,

Thanks for your patience on the response to Congressman Smith. We in ODAG are still working on the letter. No final decision has been made about what the letter will look like, but depending on what folks here decide, I may need to incorporate information that addresses the Congressman's six specific questions at the end of the letter. I already have a draft paragraph to address Question #5, which I've reprinted below, but I'm not sure of the answers to the remaining ones. Could you please send me the relevant information? Thanks. I've attached the incoming letter for ease of reference.

Matt

You have also asked for information about eTrace, an important tool in ATF's work to dismantle gun trafficking. eTrace is an Internet-based system that allows participating law enforcement agencies to submit firearm traces to the ATF National Tracing Center. Authorized users can receive firearm trace results electronically, search a database of all firearm traces submitted by their individual agency, and perform analytical functions. In the last year, eTrace has gained strong new features. eTrace now accommodates data in Spanish, gives translations, and allows users to better sort and search additional data elements and images to improve weapons tracing. In the next 24 months, planned enhancements to eTrace will improve ATF's ability to monitor and map gun tracing data in real time and to share information with other federal agencies, as well as with state and local law enforcement.



Untitled.PDF  
- Adobe  
Acrobat  
Pro.pdf (212  
kB)

Matthew S. Axelrod  
Associate Deputy Attorney General  
Office of the Deputy Attorney General  
U.S. Department of Justice  
Desk (202) 305-0273  
Cell (202) 532-3087

**From:****To:** Axelrod, Matthew (ODAG) (SMO)**CC:** Melson, Kenneth E.; Hoover, William J.; McMahon, William G.; Needles, James R. [REDACTED]**Subject:** 3/22 Fast and Furious Briefing Get Backs

Following up from yesterday's discussions:

Are we aware of any times when guns were handed off to [REDACTED]

See ROI 18 – we followed some guns to a residence we later learned was associated with [REDACTED]

See also ROI 36 – [REDACTED] purchased 20 AK's. After a long surveillance, Phoenix PD conducted a traffic stop. [REDACTED] claimed ownership of the guns [REDACTED] was in the car at the time of the stop. The guns were not seized.

Did ASAC Gillette receive any complaints or feedback regarding the investigative techniques used in F&F? Per ASAC Needles, he checked with ASAC Gillette, the answer is no.

What audio exists on the video tape of the surveillance aired by CBS? The tape was reviewed. It is short, The audio on the tape is "typical surveillance audio" e.g. "They are coming out." There is no inflammatory audio. The tape ends as the surveillance pulls out of the parking lot.

Were all suspects entered in TECS? Yes, and they always have been. As of yesterday there were no hits on [REDACTED] (reference the letter from Grassley to CBP)

[REDACTED]  
Acting Chief of Staff  
Office of the Director  
O: 202-648-[REDACTED]  
C [REDACTED]  
HQ Room 5 S 100



**From:**

**To:** [REDACTED] Needles, James R.

**CC:** McMahon, William G.; Chait, Mark R.; Hoover, William J.; Melson, Kenneth E.

**Subject:** Additional Document Requests from Matt Axelrod:

All:

Matt spent the weekend reading the first 370 ROIs. He has requested the following additional documents as a result of that review:

DP

Repeat request from last week:

DP

[REDACTED]  
Acting Chief of Staff  
Office of the Director  
O: 202-648-[REDACTED]  
C: [REDACTED]  
HQ Room 5 S 100

[REDACTED]

February 1, 2011

In reviewing the news article in question concerning allegations of impropriety by either ATF or individual licensed Firearms Dealers in this matter concerning weapons purchased in Arizona that find their way into Mexico, We need to keep things in their proper perspective.

Let it be stated that while certain legislative officials not directly living here or directly familiar with this ongoing problem would suggest willful negligence on the part of federal Agencies charged with the enormous task of interdicting the flow of weapons crossing our border with Mexico, It should be known to the public that these Federal Agencies speaking strictly from my personal experience through many years act and conduct themselves in a very professional and proper manner. Any comparison to the contrary should be rejected completely.

On balance, The Mexican Cartels that use every available means at their disposal to procure any weapons to further their illegal drug trade do not run out of time or money. Federal Agencies have limited resources of money and manpower allotted to them by legislative officials who approve said budgets, While the Mexican Cartels are under no such restriction. Senator Grassley's office contacted us regarding "any" impropriety by ATF and we have stated that their exists no indication to that effect.

Lastly, It should be noted that our border is immense with Mexico and not every vehicle going into Mexico is stopped and searched for weapons, narcotics, or cash. Perhaps a more "Pro-Active" legislative approach would be to stop pointing blame at either Federal or State agencies attempting to do their job, And increase through legislation the budgets of all agencies on a more equitable level with the Drug Cartels and addition use all available means to secure our border. It appears that any State or Federal agency charged with said tasks are damned if they do, And damned if they don't. An appropriate response has to be to give them the tools to accomplish this monumental problem confronting them.



January 26, 2011

So there remains no confusion to the accuracy regarding these events culminating with the Federal Indictment and arrests Monday, And to set the record straight and assure the public, We have issued the following statement.

We have worked closely in conjunction with several Federal agencies including the Phoenix office of ATF within the guidelines of both the Southwest Border Initiative and Operation Gunrunner, as well as within the guidelines of being an existing Federal Firearms Licensed dealer, as well as many other licensed Arizona dealers as well.

Due to the sensitivity and nature of any ongoing Federal Investigation we obviously are precluded from making any further statement other than we defer respectfully to the United States Attorney's Office and the Phoenix ATF field office on our behalf for any further comment they determine appropriate at this time.

Thank You.

United States Attorney's Office  
District of Arizona

## Memorandum

**To:** Dennis K. Burke  
**From:** Emory Hurley  
**Subject:** [REDACTED]  
**Date:** January 28, 2011

The two AK-47 type rifles associated with the U.S. Border Patrol shooting, specifically two ROMARM WASR-10 7.62x39 mm rifles, Serial Numbers [REDACTED] and [REDACTED] were purchased by [REDACTED] on Friday, January 16, 2010, along with a third ROMARM WASR-10 7.62x39 mm rifle, Serial Number [REDACTED]. The three rifles were purchased in a single transaction from Federal Firearms Licensee (FFL) [REDACTED]. ATF was not notified of this purchase until Monday, January 19, 2010, when ATF received the ATF Form 4473 documenting [REDACTED] purchase of three AK-47 type rifles on January 16, 2010. These were forwarded to ATF by the FFL and the purchase is documented in **ATF ROI #67**.

[REDACTED] first known firearms purchase occurred on November 24, 2009, at FFL [REDACTED]. On that day he was in the company of another Fast and Furious suspect, [REDACTED]. On November 24, 2009 [REDACTED] purchased five (5) FN Herstal Five-Seven pistols, and [REDACTED] purchased five (5) AK-47 type rifles. On the ATF Form 4473 [REDACTED] listed his address as [REDACTED]. At the time of the purchase [REDACTED] and [REDACTED] were traveling in a 2000 Isuzu Rodeo registered to [REDACTED]. This is documented in **ATF ROI # 12**. As of this date, the five (5) FN pistols purchased by [REDACTED] on November 24, 2009, have not been recovered.

On November 25, 2009, ATF entered [REDACTED] in the ATF case management system as a suspect in the investigation. This event does not result in the creation of an ROI.

On December 12, 2009 [REDACTED] purchased five (5) ROMARM WASR-10 AK-47 type rifles from FFL [REDACTED]. ATF was notified of this purchase on December 12, 2009 when agents received the ATF Form 4473 recording the purchase. This is documented in **ATF ROI # 46**. As of this date, these five AK-47 type rifles have not been recovered.

On December 17, 2009, this AUSA, ATF Group Supervisor [REDACTED] and ATF Special Agent [REDACTED] met with [REDACTED], the owner of FFL [REDACTED]. [REDACTED] had been providing information to ATF on large firearms purchases, including large purchases of (only) long guns which do not trigger any multiple purchase reporting requirements. This information was being provided voluntarily and without compensation from ATF. [REDACTED] had expressed concerns about the cooperation he was providing and whether he was endangering himself or implicating himself in a criminal investigation.

[REDACTED] was advised by the agents and this AUSA that they could not tell him who he could or could not sell to and that they could not instruct him to make a sale in violation of the law or to refuse to make a lawful sale. He was advised by the agents that as an FFL he has to comply with all of the statutes and regulations that govern the sale and transfer of firearms and cannot sell firearms unless the required

Memo to DKB  
January 28, 2011  
Page - 2

paperwork and background check were completed. As long as the required forms were properly filled out and the FFL did not know or have a reason to know that the firearms were part of a straw purchase or intended to be used in a crime, that he could complete the transfer. [REDACTED] was also told by the agents and this AUSA that the information he provided to ATF regarding large firearms transactions, particularly sales involving only long guns, was very important and useful to ongoing ATF investigations.

During this meeting, ATF agents also described additional information that [REDACTED] or his employees might receive from purchasers which would not necessarily be required by the provisions of Chapter 44 of Title 18 to be kept in his records, but which would prove useful to ATF. This information included phone numbers or other contact information as well as license plate numbers and vehicle descriptions. As of the date of this meeting, [REDACTED] was already providing this type of information to ATF and continued to do so throughout the course of the investigation.

On January 9, 2010 [REDACTED] purchased three (3) FN Herstal Five-Seven pistols from FFL [REDACTED]. [REDACTED] ATF was not advised of this purchase by the FFL, however, on January 14, 2010, these firearms were entered into the suspect gun database by ATF Phoenix. These firearms were discovered by law enforcement on January 14, 2010, in Columbus, New Mexico, but were not traced and were returned to person carrying them. ATF Phoenix was not notified of this law enforcement contact until May 17, 2010. **ATF ROI #254.**

On January 14, 2010, in Columbus, New Mexico, (a border town), U.S. Border Patrol agents pulled over a vehicle driven by [REDACTED] with passenger [REDACTED] due to suspicious driving behavior. In the vehicle they found three AK-47 type rifles purchased by [REDACTED] three FN Herstal Five-Seven pistols purchased by [REDACTED] on January 9, 2010, from FFL [REDACTED] and two Ruger pistols purchased by another. U.S. Border Patrol agents did not observe any other criminal conduct and so returned the firearms to the occupants of the vehicle. They did not trace any of the firearms. ATF Phoenix was notified of the observation of the firearms on May 17, 2010, after ATF Las Cruces forwarded information in connection with a firearms trafficking investigation in [REDACTED] involving [REDACTED] and others. **The investigation of [REDACTED] is still on going, [REDACTED] and must be viewed as close-hold.**

On January 16, 2010 [REDACTED] purchased the three ROMARM WASR-10 AK-47 type rifles, Serial Numbers [REDACTED] and [REDACTED] as well as [REDACTED]. As detailed above, ATF was not notified of this purchase until January 19, 2010. This notification came only through the cooperation of the FFL as this long gun only purchase would not trigger any affirmative reporting requirements. **ATF ROI #67.**

On December 15, 2010 [REDACTED] was arrested for using a false address on the ATF Form 4473 on June 15, 2010. A complaint was filed on December 16, 2010, and he was indicted on January 11, 2011, for making false statements in connection with the acquisition of a firearm. On January 19, 2011, he was indicted as part of the overall Fast and Furious conspiracy.

Agents were able to determine that when [REDACTED] purchased firearms on June 15, 2010, that he no longer lived at the [REDACTED] address listed on the ATF Form 4473 and his drivers license. His

Memo to DKB  
January 28, 2011  
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drivers license was changed in August of 2010, to reflect a different address. In the course of his post arrest interview in December 2010, he admitted that he had not lived at the [REDACTED] address for two or three years. However, earlier in the investigation, agents had no reason to believe that this was not his address because his drivers license and the registration to the car that he was driving came back to the [REDACTED] address. **See ATF ROI #12.**

On March 1, 2010 [REDACTED] purchased one FN Herstal Five-Seven pistol from [REDACTED] in a single-firearm transaction. On or about March 3, 2010, this pistol was recovered by Phoenix Police in connection with a drug house in Phoenix. This was the first actual recovery of a firearm purchased by [REDACTED] **ATF ROI #107 and 156.**

**From:** (b) (7)(C)  
**Sent:** Friday, March 25, 2011 4:32 PM  
**To:** (b) (7)(C)  
**Subject:** FW: A Letter from Ranking Member Charles E. Grassley  
**Attachments:** 2011-02-16 Letter to DOJ.pdf; Grassley 020911 SL draft comments 021011.docx

**Importance:** High

Background narrative for review/use...

(b) (7)(C)

Chief, Firearms Operations Division  
ATF HQ - Room 6.S.129  
202.648 (b) (7)(C) Cell (b) (7)(C)

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\*\*\*\*\*

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**From:** McMahon, William G.  
**Sent:** Thursday, February 17, 2011 3:41 PM  
**To:** (b) (7)(C)  
**Cc:** (b) (7)(C)  
**Subject:** FW: A Letter from Ranking Member Charles E. Grassley  
**Importance:** High

(b) (7)(C)

Please see the below information put together in response to the most recent letter from Senator Grassley. Contact (b) (7)(C) or me know if you have and additional questions.

William G. McMahon  
Deputy Assistant Director (West)  
Office of Field Operations  
Office - (202) 648 (b) (7)(C)

---

**From:** (b) (7)(C)  
**Sent:** Thursday, February 17, 2011 3:24 PM

To: McMahon, William G.

Subject: FW: A Letter from Ranking Member Charles E. Grassley

Importance: High

BILL -- FOR YOUR REVIEW. IF YOU WANT TO MAKE ADJUSTMENTS OR HAVE ME DO SO, PLEASE ADVISE. OTHERWISE, THIS CAN BE SENT DIRECT TO (b) (7)(C) THANKS

\*\*\*\*\*

(b) (7)(C) As discussed reference Grassley 02-16-11. Again, I do not have access to the case data via NForce.

Page 1, Para 2:

- 1) "...approximately 103 weapons were seized according to the (b) (7)(C) indictment."

In conjunction with the Fast and Furious investigation, a group of (b) (3) (P.L. 111-117), (b) (7)(A) (b) (3) (P.L. 111-117), (b) (7)(A) A total of 372 firearms (b) (7)(A) in the database were recovered/seized in the US. The number of firearms recovered in Mexico was 195. In addition, through ATF surveillances and enforcement operations, another 230 firearms were recovered prior to being entered into the database. Therefore, 602 firearms were interdicted in the US, and 195 were recovered in Mexico, for a total of 797 firearms recovered.

- 2) "They refused to say whether the third assault rifle purchased by (b) (7)(C) January 2010...has been recovered elsewhere."

According to ATF Violent Crime Analysis Branch (VCAB) as of 02/17/2011, the Romanian WASR-10, serial (b) (3) (P.L. 111-117), (b) (7)(A) (b) (3) (P.L. 111-117), (b) (7)(A) he purchaser (b) (3) (P.L. 111-117), (b) (7)(A), (b) (7)(C)

- 3) "...whether ATF had encouraged any gun dealer to proceed with sales to known or suspected traffickers..."

In reviewing the Grassley 2/9/11 letter, it was noted that Grassley references October 2009, which predates the purchases by (b) (7)(C) Although the FFL and USAO documents reflect that (b) (7)(C) had been voluntarily providing ATF with information about potential straw purchasers/traffickers for some time, it's possible that Grassley's sources' comments refer to another FFL. When asked, the Phoenix SAC, ASAC and RAC have all indicated that no scenarios as described in Grassley's 2/9/11 letter involving (b) (7)(C) or other FFLs are known to them. As was communicated to Grassley's staff during the 2/10/2011 briefing, conversations between FFLs and ATF occur frequently, including discussions initiated by FFLs who voluntarily report information about potential straw purchasing/trafficking activity to ATF. In some occasions, FFLs may ask ATF whether they should proceed with or decline future sales to such persons. In all cases known to us, as was indicated by ATF supervisors in Phoenix, ATF provides FFLs with guidance that appropriately outlines the role, responsibility and authority of FFLs as to the completion or declination of such transactions. We are unaware of any occasions in which ATF personnel have coerced an FFL to complete apparently illegal firearms transactions or to involuntarily provide information or assistance to ATF not required by the GCA.

Documents requested:

- 1) Records of communications with the FFL: DAD McMahon is not aware of any ROIs that document such interactions with this FFL. The Management Log (which was attached to the Grassley 2/9/11 letter) reflects this 12/17/09 contact. The USAO internal memo of 1/28/11 discusses this interaction. We are not aware of any other documents/agreements involving the FFL discussions.



- 2) Reference made to 30-page memorandum: DAD McMahon advised that on/about 1/28/11, SAC Newell forwarded DAD McMahon approximately 30-31 Reports of Investigation. These reports are those in which (b) (7)(C) name appears. McMahon is not familiar with a 30-page memo from Newell. There is also a short (2 page?) briefing paper on the shooting (b) (7)(C) guns.
- 3) Presentation, approximately 200 pages long: DAD McMahon is not aware of a 200 page presentation or document. He noted that a PowerPoint document, consisting of approximately 20-30 pages, was prepared by OSI (b) (7)(C) around that time period, and he believes that GS (b) (7)(C) utilized that during a HQ briefing. This document consists of statistical charts, trafficking routes, recovery locations, and photos of suspect traffickers identifiable with various seizures.
- 4) Copies of all emails related to F&F, (b) (7)(C) CBP agent: HQ does not have awareness of or copies of these emails available at this time.

(b) (7)(C)

Chief, Firearms Operations Division  
ATF HQ - Room 6.S.129  
202.648 (b) (7)(C) Cel (b) (7)(C)

---

From (b) (7)(C)

Sent: Thursday, February 17, 2011 10:59 AM

To: McMahon, William G. (b) (7)(C) Chait, Mark R.

Subject: FW: A Letter from Ranking Member Charles E. Grassley

Importance: High

Per your request.

(b) (7)(C)

DOJ- Bureau of Alcohol, Tobacco, Firearms & Explosives  
Chief - Office of Legislative Affairs

(b) (7)(C) (mobile1)

(b) (7)(C) (mobile2)

202.648 (b) (7)(C) office)

202.648.9708 (fax)

---

From: Downey, Brian (Judiciary-Rep) [mailto:Brian\_Downey@judiciary-rep.senate.gov]

Sent: Wednesday, February 16, 2011 10:56 AM

To: (b) (7)(C) Melson, Kenneth E.; Hoover, William J.; Michalic, Vivian B.

Cc: Foster, Jason (Judiciary-Rep)

Subject: A Letter from Ranking Member Charles E. Grassley

Importance: High

Hello,

Please find attached a letter from Ranking Member Grassley. Please confirm receipt, thank you.

Sincerely,

Brian

---

Brian M. Downey  
Investigative Assistant  
U.S. Committee on the Judiciary  
Ranking Member Charles E. Grassley  
U.S. Senate  
Washington, DC  
(P) 202-224-5225

## DRAFT RESPONSES TO QUESTIONS/COMMENTS IN GRASSLEY LETTER OF 2/9/11

Page 1, Para 1: “ATF agents told my staff that the agency allowed the sale of assault rifles to known and suspected straw purchasers for an illegal trafficking ring near the southwest border.”

ATF has an open criminal investigation involving a large, illegal firearms trafficking organization associated with Mexican based drug traffickers. As part of the investigative process, ATF has identified numerous purchasers and other persons potentially and/or suspected of being engaged in the criminal activity. During the course of the investigation, non-prohibited individuals being investigated as suspected straw purchasers continued to periodically purchase firearms from federally licensed firearms dealers. Some of these purchases became known to ATF through reported multiple sales, information from licensed dealers, information from cooperating individuals, surveillances conducted by ATF, interdictions and/or gun traces by other US law enforcement agencies, and in some cases, gun recoveries and/or traces in Mexico.

Page 1, Para 2: “In that letter, the Department categorically denied that the ATF “knowingly allowed the sale of assault weapons to a straw purchaser...” The Department said that the ATF makes “every effort to interdict weapons that have been purchased illegally and prevent their transportation to Mexico.”

The omitted portion of the first statement by DOJ referenced above is “...who then transported them to Mexico – is false.” As noted by DOJ, ATF makes every effort to interdict weapons that have been purchased illegally and prevent their transportation to Mexico. Again, we have to note that all of these purchases involve non-prohibited persons following the federal firearms procedures. The fact that such persons may have made numerous purchases, including purchases of firearms identifiable as weapons of choice in Mexico or purchases involving multiple firearms, does not in itself establish a federal violation. Even if the individuals subsequently sold these firearms to another person, or if some of the firearms were recovered in crimes in the US or Mexico, additional evidence would be required to establish a violation. ATF used every available tool and every effort was made to interdict firearms in this case going south to Mexico. The number of seizures made by ATF and other US law enforcement officials reflect that.

ATF in Phoenix, prior to, during and after the GRIT operation that initiated in May 2010, conducted extensive surveillance on source FFL locations, suspect purchasers and other trafficking suspects. ATF detailed numerous agents from out-of-town and out-of-state to assist in surveillances during this case prior to the arrival of the GRIT participants, from approximately March 14 to May 3, 2010. These detailed agents worked exclusive surveillance for 7 weeks, 7 days a week, for nearly 4,000 hours of surveillance. In addition, the Phoenix Group VII personnel also conducted numerous surveillance operations prior to the arrival and after the

departure of these detailees, including during the GRIT operations. ATF Phoenix developed and maintained a detailed surveillance assignment list. In addition to physical, mobile surveillance, ATF utilized a variety of electronic surveillance methods, [REDACTED]

[REDACTED] During all of these surveillance operations, at no time did ATF knowingly conduct surveillance of any person or vehicles in which firearms “walked” into Mexico. Also, referrals were made to other US law enforcement agencies operating along the border and in Mexico.

As should be noted, even with the detailees and the additional manpower derived from the GRIT operation, ATF Phoenix could not surveil every “suspected” residence, purchaser and dealer premises on a non-stop, 24/7 basis. This was not, and is not today, the only firearms trafficking case we are working in the Phoenix area. We utilized personnel and other tools as much as possible, but when a “suspected straw purchaser” goes into their home with firearms and nothing happens for days, we must make judgments as to how to best proceed with the investigation. In this case, we were dealing with in excess of [REDACTED] “suspected straw” purchasers and other suspects. This ATF office has at least that many [REDACTED] active cases. In addition, even if we were to approach a suspected straw purchaser, we have no ability to force the person to tell us where or to whom the guns may be going. If such interviews are conducted and lead to legally acceptable responses, we must continue our investigative efforts, despite having alerted the suspect to our efforts.

Page 1, Para 3: “The ATF had been tracking [REDACTED] purchases because [REDACTED] was a suspected trafficker since at least November 2009.”

Page 2, Para 1: “The dealer who sold the weapons... met with ATF representatives and Assistant US Attorneys as early as December 17, 2009...”

Page 2, Para 1: [REDACTED]

Page 2, Para 2: [REDACTED]

In reviewing the attached documents, which appear to be redacted law enforcement sensitive ATF internal investigative reports and emails, the following was noted.

Attachment 1: [REDACTED]

Attachment 2: This redacted ATF Management Log, partially illegible, appears to document that ATF coordinated and deconflicted this investigation with other federal OCDETF agencies, including DEA and ICE, in furtherance of the overall US law enforcement efforts along the southwest border. ATF Phoenix VII is an ATF-led OCDETF Strike Force group that is collocated with other federal agencies that lead OCDETF strike force groups. It also notes the contact with the FFL on 12/17/2009.

Attachment 3: [REDACTED]

Attachment 4: The redacted email, dated 1/13/2010, reflects the entry [REDACTED] for this [REDACTED]

Attachment 5: [REDACTED]

Attachment 6: [REDACTED]

Attachment 7: [REDACTED]

Attachment 8: This redacted ATF Significant Information Report dated 12/16/2010 reports the arrest of [REDACTED]. As reported, two firearms purchased by [REDACTED] on 1/16/2010 were recovered on 12/15/2010 at the scene of a shooting incident in which a CBP officer was killed. Following the incident, ATF agents located and interviewed [REDACTED]. [REDACTED] ATF arrested [REDACTED] and filed a criminal complaint for federal firearms charges. Per USAO document (1/28/2011), the charges related to [REDACTED] providing false address information on F4473 on 6/15/2010.

Attachment 9: [REDACTED]

Page 1, Para 3 and Page 2, Para 1: "According to the whistleblowers, at least one gun dealer wanted to stop participating in sales like those to [REDACTED] sometime around October 2009. However, the ATF allegedly encouraged the dealer to continue selling to suspected traffickers and asked the dealer to forward information about the sales to the Bureau."

See the two "releases" generated by the [REDACTED] (1/26/2011 and 2/1/2011) and USAO document (1/28/2011) of that event. These documents address the nature of such interactions with FFLs, specifically [REDACTED] as to how ATF communicates with FFLs regarding their regulatory requirements, authority and independence in conducting firearms transactions, including their decision to proceed with or decline sales involving suspected straw purchasers, traffickers and prohibited persons, and their voluntary cooperation with ATF regarding suspicious purchasers.

It was noted that the Grassley letter references October 2009, which predates the purchases by [REDACTED]. Although the FFL and USAO documents reflect that [REDACTED] had been voluntarily providing ATF with information [REDACTED] it's possible that the whistleblowers' comments refer to another FFL. When asked, the Phoenix SAC, ASAC and RAC have all indicated that no scenarios as described in Grassley's letter involving [REDACTED] or other FFLs are known. Again, conversations between FFLs and ATF occur frequently, including discussions initiated by FFLs who voluntarily report information about potential straw purchasing/trafficking activity to ATF. In some occasions, FFLs may ask ATF whether they should proceed with or decline future sales to such persons. In all cases known to us, as was indicated by ATF supervisors in Phoenix, ATF provides FFLs with guidance that appropriately outlines the role, responsibility and authority of FFLs as to the completion or declination of such transactions. We are unaware of any occasions in which ATF personnel have encouraged or coerced an FFL to complete apparently illegal firearms transactions or provide information or assistance to ATF not required by the GCA.

Page 2, Para 3: "...the indictment of [REDACTED] and others references approximately 769 firearms. Of those, the indictment refers to the recovery of only about 103 weapons. So where are the other approximately 666 weapons referenced in the indictment?"

In conjunction with the Fast and Furious investigation, a group of [REDACTED] were entered into the Suspect Gun database. [REDACTED]

**From:** [REDACTED]  
**Sent:** Friday, March 25, 2011 2:42:23 PM  
**To:** Melson, Kenneth E.; Hoover, William J.  
**CC:** McDermond, James E.; Thomasson, Scot L. [REDACTED]  
**Subject:** FW: Latest CBS story - coordination

**Importance:** High

All:

Scot wanted to make sure you all got this immediately. Here is the link to the latest story posted to the CBS News website today. I have pasted the contents of the accompanying article below as well. DP

DP

Latest CBS News story:  
[http://www.cbsnews.com/8301-31727\\_162-20047027-10391695.html](http://www.cbsnews.com/8301-31727_162-20047027-10391695.html)

March 25, 2011 11:52 AM

## ATF gunwalking: Who knew, and how high up?

Posted by [Sharyl Attkisson](#) [Leave Comment](#)

by CBS News investigative correspondent Sharyl Attkisson

Since [our first report](#) in which ATF agents told us they allowed thousands of weapons to cross into Mexico, one crucial question has been: Who knew -- how high up? This week for the first time, [President Obama addressed the controversy](#). It was in an interview Tuesday evening with the Spanish language network Univision.

[Watch: Obama on "gunwalking"](#)

"Well first of all I did not authorize it. Eric Holder the Attorney General did not authorize it. He's been very clear that our policy is to catch gun runners and put 'em into jail," Mr. Obama said of the controversial ATF operation called "Fast and Furious."

"You were not even informed about it?" asked Univision reporter Jorge Ramos.

"Absolutely not," said Mr. Obama. "There may be a situation here which a serious mistake was made and if that's the case then we'll find out and well hold somebody accountable."

But who? In an exclusive interview with CBS News, the lead ATF official in Mexico at the time Darren Gil says somebody in the Justice Department did know about the case. Gil says his supervisor at ATF's Washington D.C. headquarters told him point-blank the operation was approved even higher than ATF Director Kenneth Melson.

[Gunrunning scandal uncovered at the ATF](#)

"Is the director aware of this," Gil asked the supervisor. Gil says his supervisor answered

"Yes, the director's aware of it. Not only is the director aware of it, D.O.J.'s aware of it... Department of Justice was aware of it."

Gil goes on to say senior Justice official Lanny Breuer and several of his deputies visited Mexico amid the controversy last summer, and spoke to ATF staff generally about a big trafficking case that they claimed was "getting good results." Gil says Melson, ATF's Acting Director, also visited Mexico City. Gil's Deputy Attache and his Analyst questioned Melson about the case that surrounding all the weapons showing up in Mexico. "His response was 'it's a good case, it's still going on,'" recalls Gil, "and we'll close it down as soon as we possibly can."

AK47s vs. bean bags in border drug war

As to what Melson, Breuer and the other officials knew, Senator Charles Grassley (R-Iowa) has been asking. Among other things, he has told the State Department to turn over notes and records from any Breuer visits to Mexico City in summer of 2010. But his repeated requests have so far been denied. And the officials mentioned would not speak with CBS News.

The whole controversy was exposed last month when ATF agent John Dodson and others blew the whistle to CBS News. They told us they were ordered to let assault rifles and other weapons "walk" into the hands of Mexican drug cartels in a failed attempt to take down a cartel.

Agent: I was ordered to let U.S. guns into Mexico

But if Justice Department officials knew, it's even more incredible when you find out who didn't: ATF's own agents in Mexico.

Gil first found out something was amiss in early 2010 when serial numbers from a flood of guns used in cartel crimes were all tracing back to the same case in Phoenix: "Fast and Furious." But when Gil's analyst checked ATF's computer files to find out more, he hit a brick wall.

"Not only did he not have access, I as the attache, the head agent in Mexico for ATF operations, did not have access," says Gil. He was locked out.

That was a red flag because Gil says as the senior ATF official in Mexico, it was his job to approve any ATF operation involving Mexico; and he didn't approve this one.

In fact, Gil specifically emailed his staff on Jan. 25, 2010 that no firearms would be allowed to cross into Mexico for a case without his approval. The email also stated that if he ever approved such an operation, he'd make sure the weapons were "stopped on the Mexican side of the border." They'd never be allowed to "walk" or reach the streets.

Gil didn't know it but even as he wrote that email, ATF agents in Phoenix have told CBS News they were already letting traffickers move weapons to Mexican drug cartels without stopping them. The idea was apparently to see where the guns would end up and try to build a big case.

Faced with the flow of guns and the serial number evidence tracing to Phoenix, but locked out of the computer case files, Gil says he repeatedly questioned his supervisor in Washington. He says some of the conversations became screaming and shouting matches. He says he was instructed not to tell his Mexican counterparts about the case. Gil said he inquired, "when is this case gonna shut down? The Mexicans are gonna have a fit when they find out about it." Gil says he also noted "at some point, these guns are gonna end up killing either a government of Mexico official, a police officer or military folks, and then what are we gonna do?"



Gil is the second ATF agent to tell CBS News that he specifically warned of such an outcome. Agent John Dodson says he told his superiors in Phoenix much the same. "I specifically asked one time, 'are you prepared to go to the funeral of a Border Patrol agent...are you prepared for that fact because it's only a matter of time before that happens,'" Dodson told CBS News.

That's exactly what happened. Two of the weapons, AK-47 variant assault rifles, were eventually found at the murder of Border Patrol Agent Brian Terry last December. Officials are looking into possible connections to the murder of Customs Agent Jaime Zapata in February.

Gil retired from ATF in December, in part over his objections to Fast and Furious and the way it was handled. He says he's speaking out because nobody else in charge has stepped up to explain that ATF agents in Mexico were never part of it. Yet they're now facing threats of prosecution from some Mexican politicians.

"The (Mexican) government's looking at (ATF agents) potentially bringing weapons into their country, which in many cases is an act of war." Gil says by not explaining that ATF agents in Mexico weren't part of Fast and Furious, ATF executives are putting the agents in danger. "They're leaving my guys out in Mexico alone, and they're not doing the right thing."

[REDACTED]  
Deputy Chief  
ATF - Public Affairs Division  
Direct [REDACTED]  
Main) [REDACTED]

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**Justice without express authorization is strictly prohibited.**

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**From:** Sweeney, Laura (SMO) [mailto: [REDACTED]]  
**Sent:** Friday, March 25, 2011 2:14 PM  
**To:** Thomasson, Scot L.; Wade, Drew J.  
**Cc:** Schmalzer, Tracy (SMO)  
**Subject:** Latest CBS story - coordination  
**Importance:** High

Just touching base with you guys on the latest one:

[http://www.cbsnews.com/8301-31727\\_162-20047027-10391695.html](http://www.cbsnews.com/8301-31727_162-20047027-10391695.html)

**DP**

Laura Sweeney  
Public Affairs Specialist  
Department of Justice  
laura.sweeney2@usdoj.gov  
202-514-2007

**From:** Axelrod, Matthew (ODAG) (b) (7)(C)  
**Sent:** Friday, March 25, 2011 1:09 PM  
**To:** Cunningham, Patrick (USAAZ) (b) (7)(C); Burke, Dennis (USAAZ); Melson, Kenneth E.; Hoover, William J.  
**Subject:** RE: Smith letter response

Do you guys have an ETA on when you can get me draft answers? It would be helpful to get them today, if possible. Thanks.

Matt

---

**From:** Cunningham, Patrick (USAAZ)  
**Sent:** Wednesday, March 23, 2011 9:25 PM  
**To:** (ATF); Axelrod, Matthew (ODAG); Burke, Dennis (USAAZ); Melson, Kenneth E. (ATF); Hoover, William J. (ATF)  
**Subject:** RE: Smith letter response

Matt: Likewise, we will propose answers to the questions for you tomorrow. PIC

---

**From:** (ATF)  
**Sent:** Wednesday, March 23, 2011 6:23 PM  
**To:** Axelrod, Matthew (ODAG) (SMO); Burke, Dennis (USAAZ); Cunningham, Patrick (USAAZ); Melson, Kenneth E. (ATF); Hoover, William J. (ATF)  
**Subject:** Re: Smith letter response

We're on it.

(b) (7)(C)  
Acting Chief of Staff  
ATF Office of the Director  
O: 202 (b) (7)(C)  
C: (b) (7)(C)

---

**From:** Axelrod, Matthew (ODAG)  
**To:** (b) (7)(C); Burke, Dennis (USAAZ); Cunningham, Patrick (USAAZ); Melson, Kenneth E.; Hoover, William J.  
**Sent:** Wed Mar 23 21:22:02 2011  
**Subject:** RE: Smith letter response  
Tomorrow sometime would be great. Thanks (b) (7)(C)

Matt

---

**From:** (ATF)  
**Sent:** Wednesday, March 23, 2011 9:20 PM  
**To:** Axelrod, Matthew (ODAG); Burke, Dennis (USAAZ); Cunningham, Patrick (USAAZ); Melson, Kenneth E. (ATF); Hoover, William J. (ATF)  
**Subject:** Re: Smith letter response

Matt

What is the timeline for a response to you?

(b) (7)(C)  
Acting Chief of Staff  
ATF Office of the Director

O: 202 [REDACTED]

C: [REDACTED]

---

**From:** Axelrod, Matthew (ODAG)**To:** Burke, Dennis (USAAZ) ; Cunningham, Patrick (USAAZ) ; Melson, Kenneth E.; Hoover, William J.; [REDACTED]**Sent:** Wed Mar 23 21:17:04 2011**Subject:** Smith letter response

All,

Thanks for your patience on the response to Congressman Smith. We in ODAG are still working on the letter. No final decision has been made about what the letter will look like, but depending on what folks here decide, DP [REDACTED]

DP [REDACTED] I already have a draft paragraph to address Question #5, which I've reprinted below, but I'm not sure of the answers to the remaining ones. Could you please send me the relevant information? Thanks. I've attached the incoming letter for ease of reference.

Matt



&lt;&lt;Untitled.PDF - Adobe Acrobat Pro.pdf&gt;&gt;

Matthew S. Axelrod

Associate Deputy Attorney General

Office of the Deputy Attorney General

U.S. Department of Justice

Desk (202) 305-0273

Cell (202) 532-3087

---

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**From:** Burke, Dennis (USAAZ) [Dennis.Burke@usdoj.gov]  
**Sent:** Thursday, March 24, 2011 9:38 AM  
**To:** Axelrod, Matthew (ODAG) (SMO); Cunningham, Patrick (USAAZ); Melson, Kenneth E.; Hoover, William J. [REDACTED]  
**Subject:** Re: OIG response to Grassley

Thx.

---

**From:** Axelrod, Matthew (ODAG) (SMO)  
**Sent:** Thursday, March 24, 2011 08:33 AM  
**To:** Burke, Dennis (USAAZ); Cunningham, Patrick (USAAZ); Melson, Kenneth E. (ATF); Hoover, William J. (ATF); [REDACTED] (ATF)  
**Subject:** OIG response to Grassley

In case you have not seen this---

<<Grassley Ltr\_3-21-11\_ATF's Fast Furious FINAL.PDF>>

**From:** Axelrod, Matthew (ODAG) [REDACTED]  
**Sent:** Tuesday, March 22, 2011 8:05 PM  
**To:** Melson, Kenneth E.; Hoover, William J.; [REDACTED]  
**Subject:** Grassley letters to DHS  
**Attachments:** 2011-03-15 CEG to ICE (Briefing and Documents).pdf; 2011-03-16 CEG to CBP (Briefing).pdf

Ken/Billy, [REDACTED]

Thanks again for your time today. Much appreciated. Have you guys seen these letters to DHS?

Matt

**From:** (b) (7)(C)  
**Sent:** Tuesday, March 22, 2011 3:52:31 PM  
**To:** (b) (7)(C)  
**Subject:** FW: Draft response to HJC Chairman Smith's letter of 3/9/11 re Gunrunner/  
Fast & Furious allegations - for comment asap. Thanks. FB

**Attachments:** smith gunrunner clean.docx

fyi

(b) (7)(C)  
DOJ- Bureau of Alcohol, Tobacco, Firearms & Explosives  
Chief - Office of Legislative Affairs  
(b) (7)(C) (mobile1)  
(b) (7)(C) (mobile2)  
202.648 (b) (7)(C) (office)  
202.648.9708 (fax)

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**From:** Burton, Faith (SMO) [mailto:(b) (7)(C)]  
**Sent:** Tuesday, March 22, 2011 11:57 AM  
**To:** (b) (7)(C) McDermond, James E. (b) (7)(C) Hoover, William J.; Melson, Kenneth E.  
**Cc:** Gaston, Molly (SMO); Burke, Dennis (USAAZ); Weinstein, Jason (CRM); Cunningham, Patrick (USAAZ)  
**Subject:** Draft response to HJC Chairman Smith's letter of 3/9/11 re Gunrunner/ Fast & Furious allegations - for comment asap. Thanks. FB



smith  
gunrunner  
clean.docx  
(23 kB)

**From:** (b) (7)(C)

**Sent:** Tuesday, March 22, 2011 3:25 PM

**To:** McMahon, William G.; (b) (7)(C)

**Subject:** Fw: Draft response to HJC Chairman Smith's letter of 3/9/11 re Gunrunner/ Fast & Furious allegations - for comment asap. Thanks. FB

(b) (7)(C)

Chief, Firearms Operations Division  
202 (b) (7)(C) Cell (b) (7)(C)

\*\*\*\*\*

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**From:** (b) (7)(C)

**To:** Burton, Faith (SMO); McDermond, James E.; (b) (7)(C) Hoover, William J.; Melson, Kenneth E.

**Cc:** Gaston, Molly (SMO); Burke, Dennis (USAAZ) ; Weinstein, Jason (CRM) ; Cunningham, Patrick (USAAZ)

**Sent:** Tue Mar 22 14:30:46 2011

**Subject:** RE: Draft response to HJC Chairman Smith's letter of 3/9/11 re Gunrunner/ Fast & Furious allegations - for comment asap. Thanks. FB

ATF concurs without comment.

(b) (7)(C)

*DOJ- Bureau of Alcohol, Tobacco, Firearms & Explosives*

*Chief - Office of Legislative Affairs*

(b) (7)(C) (mobile1)

(b) (7)(C) (mobile2)

202 (b) (7)(C) (office)

202 (b) (7)(C) (fax)

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**From:** Burton, Faith (SMO) [mailto:████████████████████]  
**Sent:** Tuesday, March 22, 2011 11:57 AM  
**To:** ██████████ R.; McDermond, James E.; ██████████ Hoover, William J.; Melson, Kenneth E.  
**Cc:** Gaston, Molly (SMO); Burke, Dennis (USAAZ); Weinstein, Jason (CRM); Cunningham, Patrick (USAAZ)  
**Subject:** Draft response to HJC Chairman Smith's letter of 3/9/11 re Gunrunner/ Fast & Furious allegations - for comment asap. Thanks. FB

<< File: smith gunrunner clean.docx >>

**From:** Burke, Dennis (USAAZ) [Dennis.Burke@usdoj.gov]

**Sent:** Tuesday, March 22, 2011 9:13 AM

**To:** [REDACTED]; Burton, Faith (SMO); Ron.Weich@SMOJMD.USDOJ.gov; Moran, Molly (OAG) (SMO); Axelrod, Matthew (ODAG) (SMO); Gaston, Molly (SMO); Weinstein, Jason (CRM); Sullivan, Bill (JMD); McDermond, James E.; Melson, Kenneth E.; Hoover, William J. [REDACTED]

**Subject:** Re: Rep. Poe's Hill blog....

Pregnant with inaccuracies and overall disgusting. He should just show up at the defense table for the ongoing trials of our indicted gun traffickers. We will indict the Terry murderers and this Rep is creating all kinds of eventual issues for that case w this drool.

---

**From:** [REDACTED] (ATF)

**Sent:** Tuesday, March 22, 2011 08:23 AM

**To:** Burton, Faith (SMO); Weich, Ron (SMO) <Ron.Weich@SMOJMD.USDOJ.gov>; Moran, Molly (OAG) (SMO); Axelrod, Matthew (ODAG) (SMO); Burke, Dennis (USAAZ); Gaston, Molly (SMO); Weinstein, Jason (CRM); Sullivan, Bill (JMD); McDermond, James E. (ATF); Melson, Kenneth E. (ATF); Hoover, William J. (ATF); [REDACTED] (ATF); [REDACTED] (ATF)

**Subject:** Rep. Poe's Hill blog.....

Rep. Poe's assignments:


#### COMMITTEES

- House Committee on the Judiciary
  - Subcommittee on Crime, Terrorism, and Homeland Security
  - Subcommittee on Immigration Policy and Enforcement
  - Subcommittee on Intellectual Property, Competition, and the Internet
- House Committee on Foreign Affairs
  - Subcommittee on Europe and Eurasia
  - Subcommittee on Terrorism, Nonproliferation, and Trade
  - Subcommittee on Oversight and Investigations

#### CAUCUSES

- Congressman Poe is the proud founder and co-chair of the Victim's Rights Caucus
- Congressman Poe is the co-chair of the Congressional Caucus on the European Union
- Congressman Poe is a member of the Anti-Terrorism Caucus
- Congressman Poe is a member of the Immigration Reform Caucus
- Congressman Poe is a member of the Port Security Caucus
- Congressman Poe is a member of the Conservative Caucus RSC
- Congressman Poe is a member of the RSC 10th Amendment Task Force.

- Congressman Poe is a member of the [Israel Allies Caucus](#)
- 

 [http://thehill.com/images/stories/congress\\_blog\\_2.gif](http://thehill.com/images/stories/congress_blog_2.gif)

## Stop putting guns into hands of 'narco-terrorists'

The Hill (Blog)

By Rep. Ted Poe (R-Texas) - 03/21/11 03:06 PM ET

The United States/Mexico border is a lawless warzone controlled by violent drug cartels. More than 34,000 people have been murdered in Mexico since the narco-terrorists began their reign of terror in 2006. Drugs and people are smuggled north into the United States and guns and money are flowing south, enabling the drug cartels to continue to wage their violent war.

Weapons from the United States reach the outlaws in Mexico, mostly because Mexico does not protect its own border any better than we do. Recent whistleblower allegations claim that tactics of the United States government, through the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), may be contributing to the problem of delivering weapons to the criminals in Mexico, rather than trying to fix it. I am deeply concerned about this.

Part of ATF's mission is to protect American communities from "the illegal use and trafficking of firearms." Put simply, part of ATF's duty is to make sure guns don't end up in the hands of the bad guys. Through the program "Project Gunrunner," ATF uses electronic tags to trace gun movements on both sides of the border. What has been alleged, however, is that while the program has been successful in apprehending weapons and criminals, too many guns have been intentionally let go into the hands of Mexican drug lords when it is almost guaranteed that the guns will be used in violent crimes.

We know about these allegations through a whistleblower, an ATF agent who recently came forward with troubling allegations that he was ordered by his superiors not to intercept weapons that were sold to "suspicious characters," including well-known gun suppliers for Mexican drug cartels. And that's not all -- the whistleblower alleges that ATF's Phoenix Field office knowingly allowed and facilitated the sale of over 2,500 firearms in 'straw man purchases' destined for Mexico. According to these allegations, one well-known trafficker, Jaime Avila, was allowed to purchase 3 assault weapons in Glendale, Arizona on January 16, 2010. It is also alleged that at least one of the gun dealers tried to stop selling to Avila; however, ATF asked him to continue selling guns to this criminal.

What happened next is deeply troubling. Avila went back to Mexico with the guns he had purchased and sold them to the drug cartels. The weapons travelled freely through the streets of Mexico for nearly a year. During that time, Avila continued to purchase more weapons, sending them from the United States into Mexico. We have since learned that 2 of the 3 weapons purchased by Avila were recovered at the murder scene of U.S. Border Patrol Agent Brian Terry. Apparently ATF let 2 guns get sent down into Mexico, and as a result an American citizen and federal government employee was murdered.

The murder of Brian Terry is concrete proof that ATF's system is flawed and dangerous. While Jaime Avila was arrested the day after Brian Terry's murder, the question is, why wasn't he apprehended during the 11 months before when we knew he was up to no good? Project Gunrunner is a sting operation with no sting. Guns are handed to the criminals when we know they will be used for harm. It seems that the ATF just sits back and waits to see what happens.

If these allegations are true, we have much cause for concern. It is my understanding that ATF has denied these allegations. Senator Grassley of Iowa has requested more information from the various agencies involved in

investigating Agent Terry's murder. I've been told that one letter that the Senator received back denied that ATF "knowingly allowed the sale of assault weapons to a straw purchaser" and stated that ATF makes "every effort to interdict weapons that have been purchased illegally and prevent their transportation into Mexico." However, the documentation provided to Senator Grassley, including copies of ATF's national tracing center records, seem to tell a different story.

As this investigation continues, we are left with a murdered Border Patrol Agent and his grieving family who is searching for answers. Carolyn Terry, mother of Brian Terry said, "I truly feel that our son's death is a cover-up and they hope that we will go away. That will not happen. We want to know who allowed the sale of that gun that murdered our son." The Terry family deserves to know the truth. As members of Congress, it is our job to demand a full investigation of this murder since the Department of Justice is blissfully silent about whether or not they will investigate the ATF. Agent Terry is one of many unsolved American murders in the ongoing Drug War along the Third Front, the border.

The Judiciary Committee should look into this matter to see if the ATF is contributing to the gunrunning problem in Mexico or not. Congress needs some answers. One murdered agent is one too many. In my opinion, the ATF is playing with fire.

And that's just the way it is.

Congressman Poe was a chief felony prosecutor and felony court judge in Houston, Texas for over 30 years. He currently serves on the House Judiciary and Foreign Affairs Committees as well as the Subcommittee on Immigration and Border Security

[REDACTED]  
DOJ- Bureau of Alcohol, Tobacco, Firearms & Explosives  
Chief - Office of Legislative Affairs

[REDACTED] (mobile1)  
[REDACTED] (mobile2)  
202 [REDACTED] (office)  
202 [REDACTED] (fax)

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**Briefing Paper**

**Phoenix Field Division**

**Phoenix Group VII**

**(OCDETF Strike Force/Gunrunner Group)**

**ATF Investigation 785115-10-0004**

**Operation: Fast & Furious, OCDETF No. SW-AZ-0496**

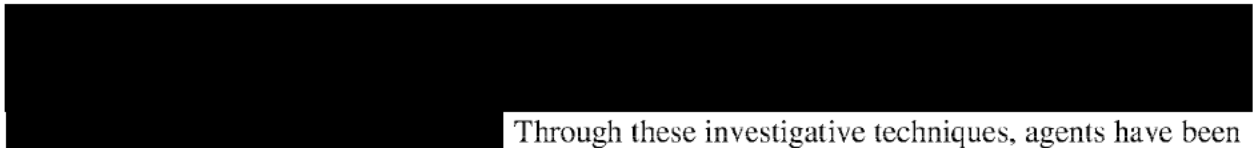
**January 14, 2011**

**Purpose:** Indictment and arrest of approximately nineteen individuals involved in firearms trafficking to Mexican Drug Trafficking Organizations/Cartels.

**Date of Operation:** January 25, 2011.

**Background:** Since October 2009, ATF, and other partners, have been investigating a firearm trafficking organization that is being funded by a drug trafficking organization (DTO) that is involved in violent criminal activity in Mexico, Southern Arizona and many other regions of the United States. These acts contribute to violations of Federal Laws to include Firearms, Narcotics, Money Laundering, and Conspiracy Laws.

Agents believe that the Phoenix-based firearm trafficking group is actively purchasing firearms through straw purchasers using bulk narcotics proceeds. From October 2009 to October 2010 agents have documented that this organization has spent approximately 1.25 million dollars in cash at various Phoenix area FFLs to acquire in excess of 1,900 firearms. The firearms are then being trafficked into Mexico.

 Through these investigative techniques, agents have been able to identify additional co-conspirators and disrupt the firearms trafficking organization by seizing numerous firearms and narcotics. To date, 278 firearms and over fifty (50) pounds of marijuana have been recovered by ATF agents in addition to the numerous firearms and narcotic seizures in Mexico related to this investigation. An additional 72 firearms have been seized by U.S. law enforcement agencies in response to information received from ATF.

**Evidence in ATF Custody:** 278 firearms, 250 “drum” magazines, thousands of rounds of various caliber ammunition.

**OPERATION DETAILS:**

**Command Post:** 3010 North 2<sup>nd</sup> Street, Phoenix, AZ (OCEDTF Strike Force location).

**Incident Commander(s):** Incident Commander ASAC Jim Needles.

**Arrest Teams:** Four arrest teams, four search teams.

**Additional ATF Support:** No additional ATF support outside the reporting division will be needed to complete the operation.

**Specialized ATF Support:** ATF Special Response Team, (SRT).

**Issues/Problems:** No issues or problems that are anticipated.

**Anticipated Seizures:** No significant seizures are anticipated during the enforcement operation.

**Media:** Acting Director Melson, SAC Newell, and United States Attorney, District of Arizona, Dennis Burke will hold a press conference at the U.S. Attorney's Office.

**Action or Follow-up:** [REDACTED]

**Participants:** ATF, IRS, DEA, ICE (HSI), USMS, Phoenix PD, USDA-OIG.

**Case Agent:** [REDACTED]  
**Telephone:** [REDACTED]

**RAC/GS:** [REDACTED]  
**Telephone:** [REDACTED]

# Report of Investigation

U.S. Department of Justice  
Bureau of Alcohol, Tobacco, Firearms and Explosives

Investigation: [REDACTED] et al	Investigation Number: 785115-10-0004	Report Number: 205
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### SUMMARY OF EVENT:

### CONTACT INTERVIEW:

[REDACTED]

### NARRATIVE:

1. [REDACTED]

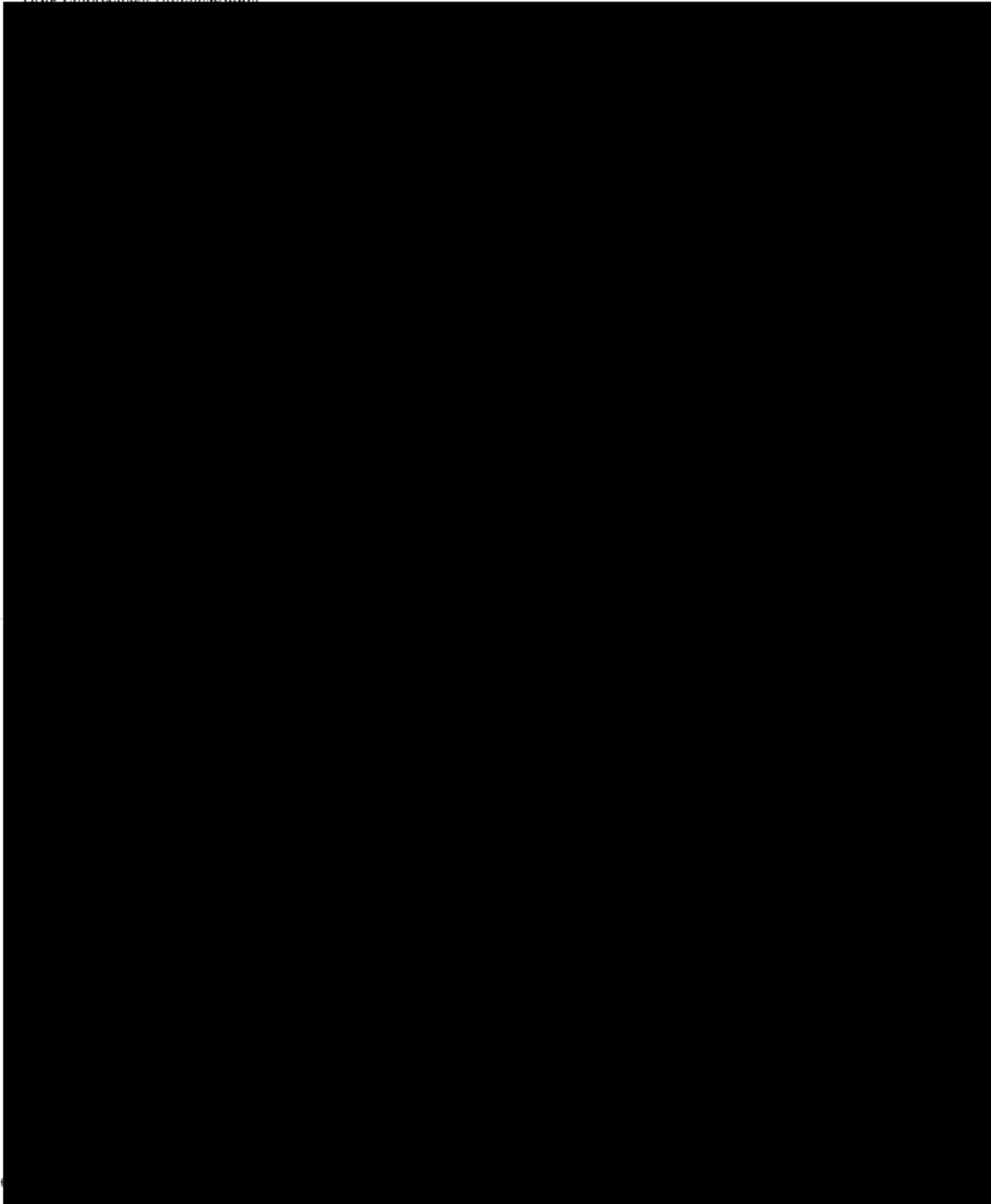
[REDACTED] This case is ongoing.

### ATTACHMENTS:

[REDACTED]

Prepared by: [REDACTED]	Title: Special Agent, Phoenix VII Field Office	[REDACTED]	Date: 4-7-2010
Authorized by: [REDACTED]	Title: Group Supervisor, Phoenix VII Field Office	[REDACTED]	Date: 4-7-10
Second level reviewer (optional): William D. Newell	Title: Special Agent in Charge, Phoenix Field Division	[REDACTED]	Date:

U.S. Department of Justice  
Drug Enforcement Administration



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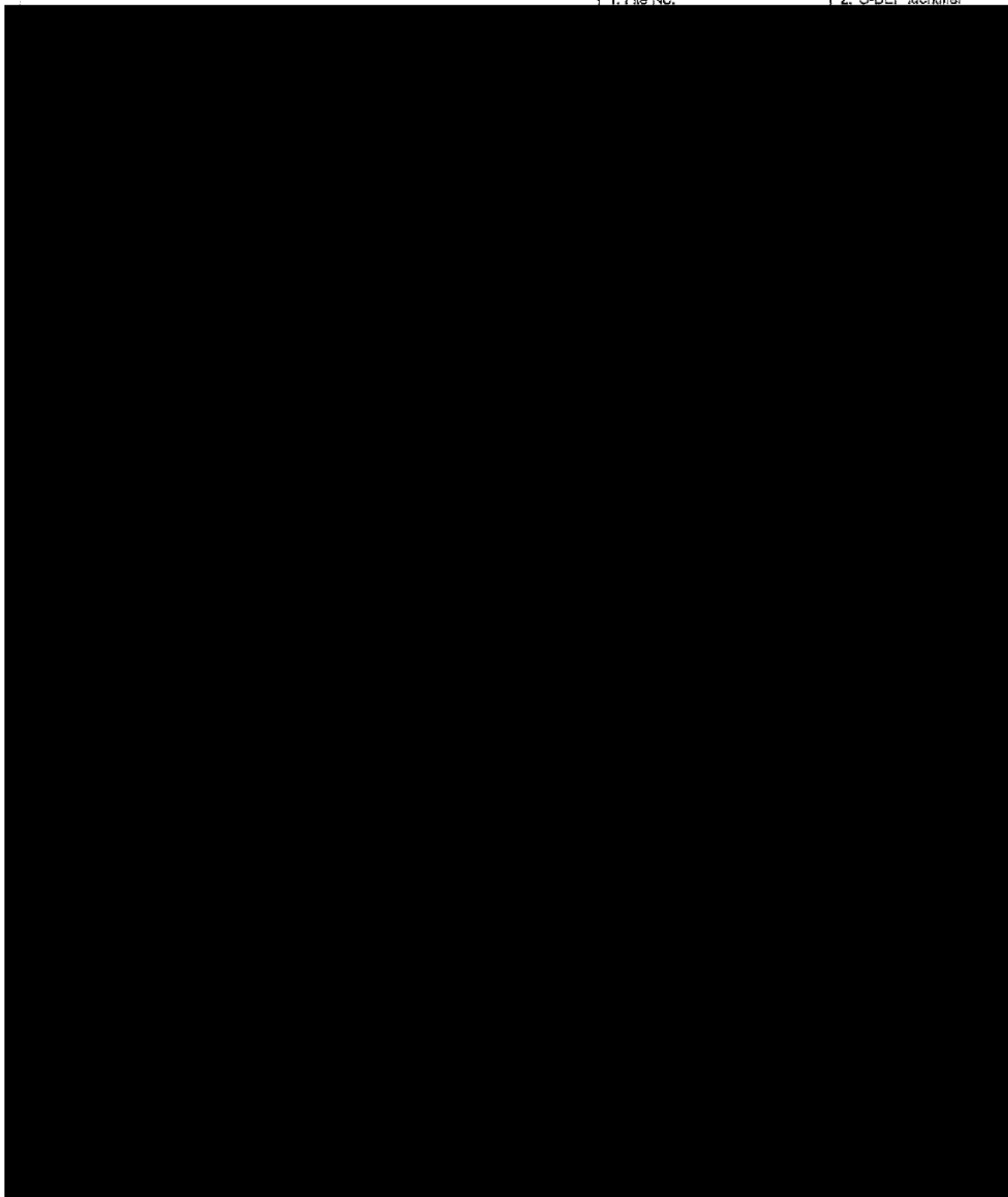
Previous edition dated 8/94 may be used.



U.S. Department of Justice  
Drug Enforcement Administration

1. File No.

2. G-DEP Identifier



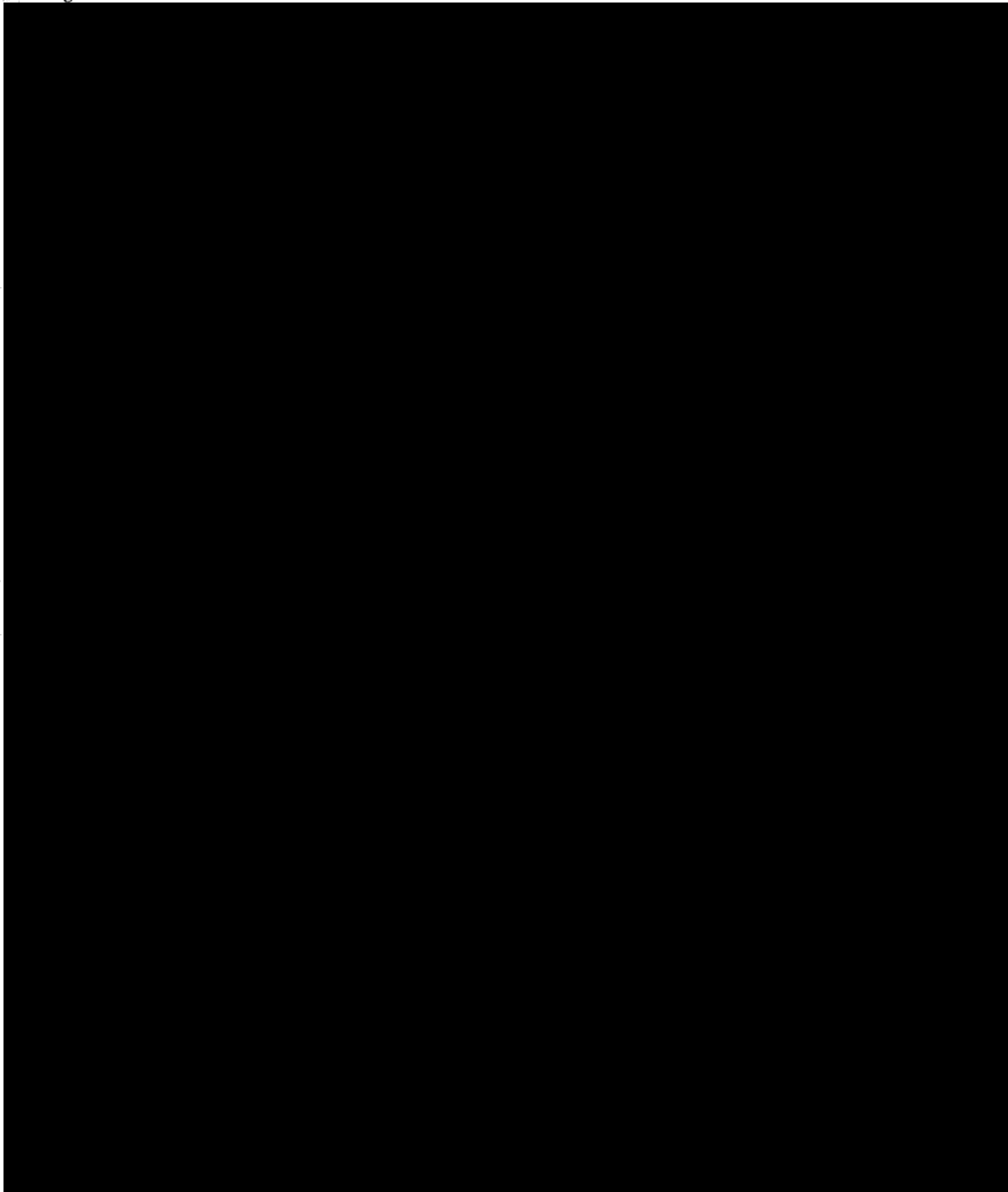
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U.S. Department of Justice  
Drug Enforcement Administration



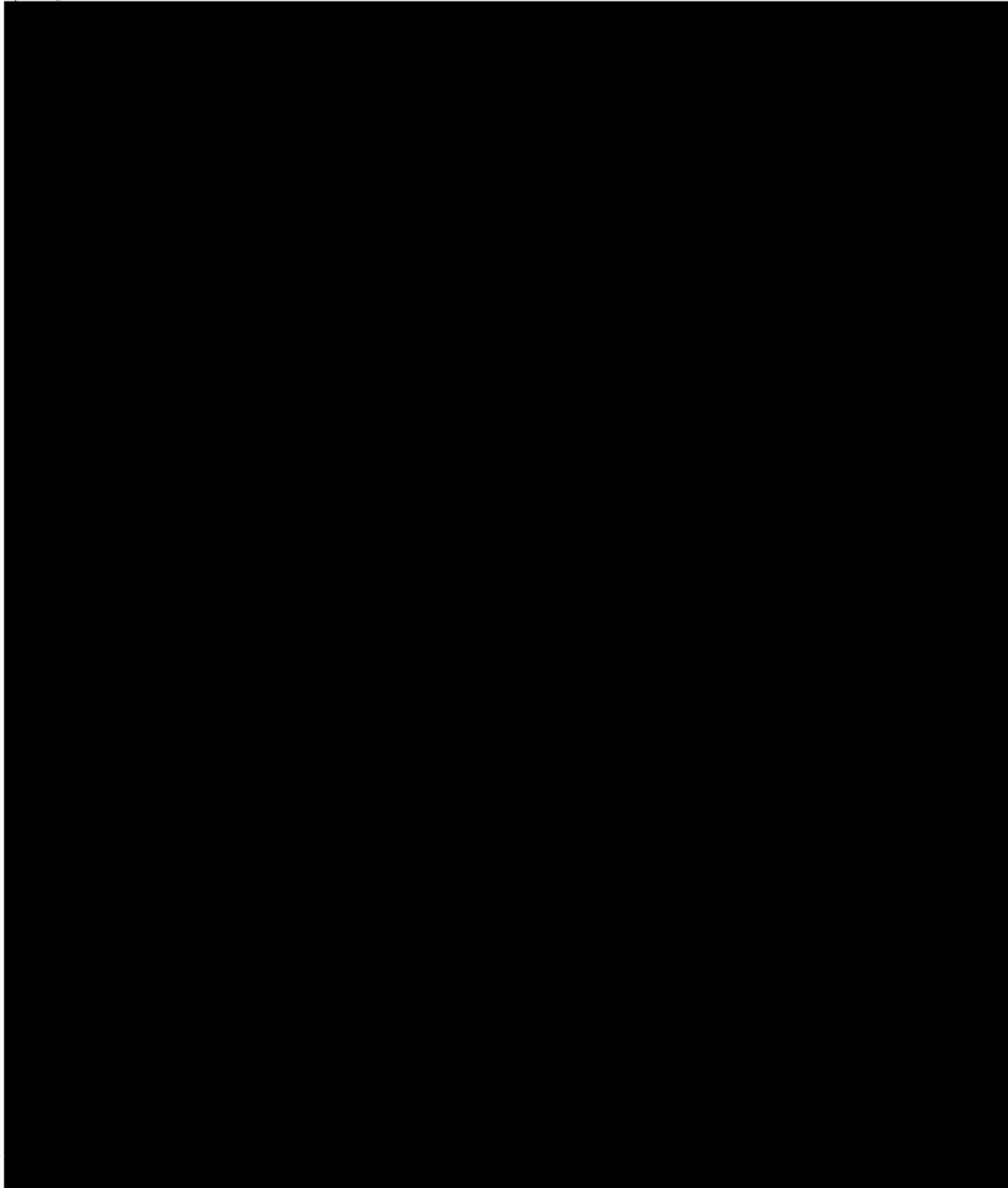
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U.S. Department of Justice  
Drug Enforcement Administration



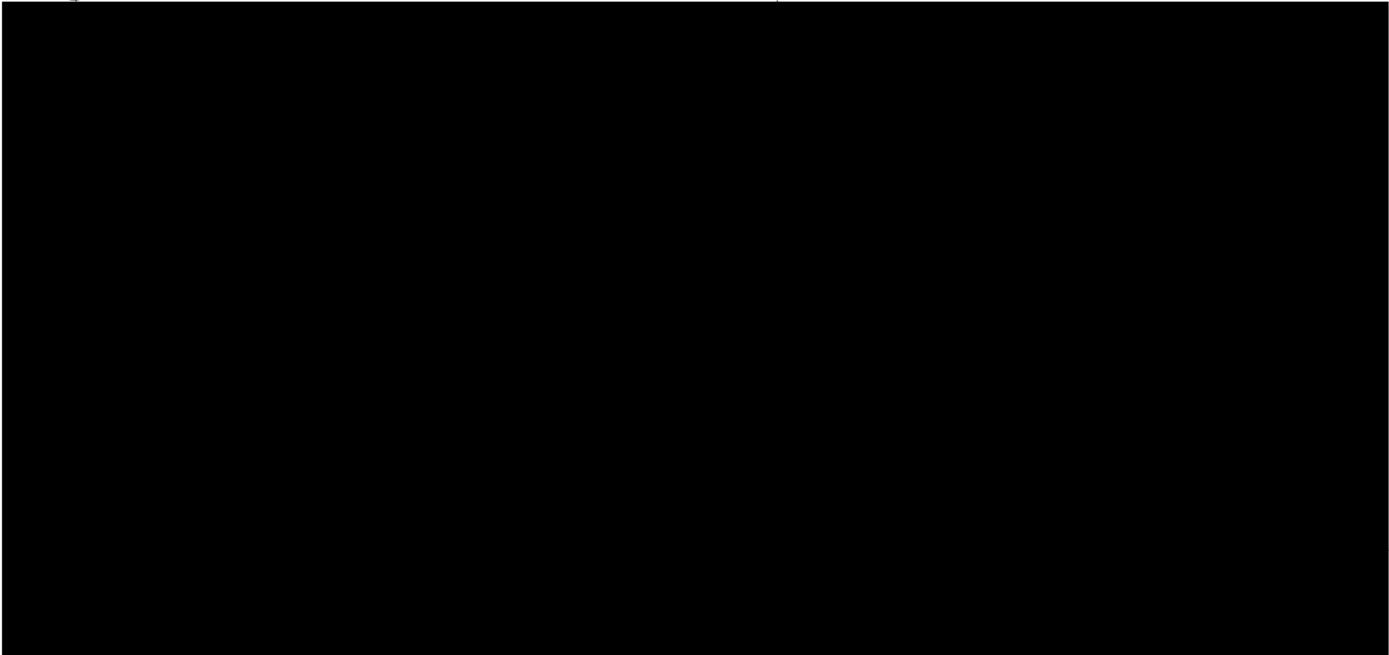
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**U.S. Department of Justice  
Drug Enforcement Administration**



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(Jul. 1996)

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**From:** [REDACTED]**Sent:** Tuesday, March 22, 2011 8:23 AM**To:** Burton, Faith (SMO); 'Weich, Ron (SMO)'; Moran, Molly (OAG) (SMO); Axelrod, Matthew (ODAG) (SMO); Burke, Dennis (USAAZ); Gaston, Molly (SMO); Weinstein, Jason (CRM); Sullivan, Bill (JMD); McDermond, James E.; Melson, Kenneth E.; Hoover, William J.; [REDACTED] [REDACTED]**Subject:** Rep. Poe's Hill blog.....


Rep. Poe's assignments:

## COMMITTEES

- House Committee on the Judiciary
  - Subcommittee on Crime, Terrorism, and Homeland Security
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  - Subcommittee on Intellectual Property, Competition, and the Internet
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 [http://thehill.com/images/stories/congress\\_blog\\_2.gif](http://thehill.com/images/stories/congress_blog_2.gif)

## Stop putting guns into hands of 'narco-terrorists'

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The United States/Mexico border is a lawless warzone controlled by violent drug cartels. More than 34,000 people have been murdered in Mexico since the narco-terrorists began their reign of terror in 2006. Drugs and people are smuggled north into the United States and guns and money are flowing south, enabling the drug cartels to continue to wage their violent war.

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Part of ATF's mission is to protect American communities from "the illegal use and trafficking of firearms." Put simply, part of ATF's duty is to make sure guns don't end up in the hands of the bad guys. Through the program "Project Gunrunner," ATF uses electronic tags to trace gun movements on both sides of the border. What has been alleged, however, is that while the program has been successful in apprehending weapons and criminals, too many guns have been intentionally let go into the hands of Mexican drug lords when it is almost guaranteed that the guns will be used in violent crimes.

We know about these allegations through a whistleblower, an ATF agent who recently came forward with troubling allegations that he was ordered by his superiors not to intercept weapons that were sold to "suspicious characters," including well-known gun suppliers for Mexican drug cartels. And that's not all -- the whistleblower alleges that ATF's Phoenix Field office knowingly allowed and facilitated the sale of over 2,500 firearms in 'straw man purchases' destined for Mexico. According to these allegations, one well-known trafficker, Jaime Avila, was allowed to purchase 3 assault weapons in Glendale, Arizona on January 16, 2010. It is also alleged that at least one of the gun dealers tried to stop selling to Avila; however, ATF asked him to continue selling guns to this criminal.

What happened next is deeply troubling. Avila went back to Mexico with the guns he had purchased and sold them to the drug cartels. The weapons travelled freely through the streets of Mexico for nearly a year. During that time, Avila continued to purchase more weapons, sending them from the United States into Mexico. We have since learned that 2 of the 3 weapons purchased by Avila were recovered at the murder scene of U.S. Border Patrol Agent Brian Terry. Apparently ATF let 2 guns get sent down into Mexico, and as a result an American citizen and federal government employee was murdered.

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Congressman Poe was a chief felony prosecutor and felony court judge in Houston, Texas for over 30 years. He currently serves on the House Judiciary and Foreign Affairs Committees as well as the Subcommittee on Immigration and Border Security



\*\*\*\*\*

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# Organized Crime Drug Enforcement Task Forces

## Investigation Initiation Form

OCDETF Investigation No.

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THE FAST AND THE FURIOUS

Operation Name

Case Attorney:      Name: AUSA Emory Hurley      Agency: USAO      Telephone: 602-514-7678      Email: Emory.Hurley@usdoj.gov

Case Agents(s):

**(b) (7)(C), (b) (6)**

# LAW ENFORCEMENT SENSITIVE



The attached information must be protected and not released to unauthorized individuals.



Investigation Initiation Form  
Organized Crime  
Drug Enforcement Task Forces

LAW ENFORCEMENT SENSITIVE

OCDETF Investigation No.

Grid for OCDETF Investigation No.

(Assigned by AUSA Coordinator)

I. Targeted Organization (N/A if name of organization is unknown)

Name: (b) (6), (b) (7)(C) Operation (Code) Name: The Fast and the Furious

II. Prospective Defendants (If more than thirty, attach "Prospective Defendants Supplement" (OCDETF Form S-3))

Name (last, first, middle initial)	Non-U.S. Citizen (indicate with an X)	Alien Registration Number	DOB	SSN	FBI #	Leadership Role (indicate with an x)
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(b) (6), (b) (7)(C)

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LAW ENFORCEMENT SENSITIVE



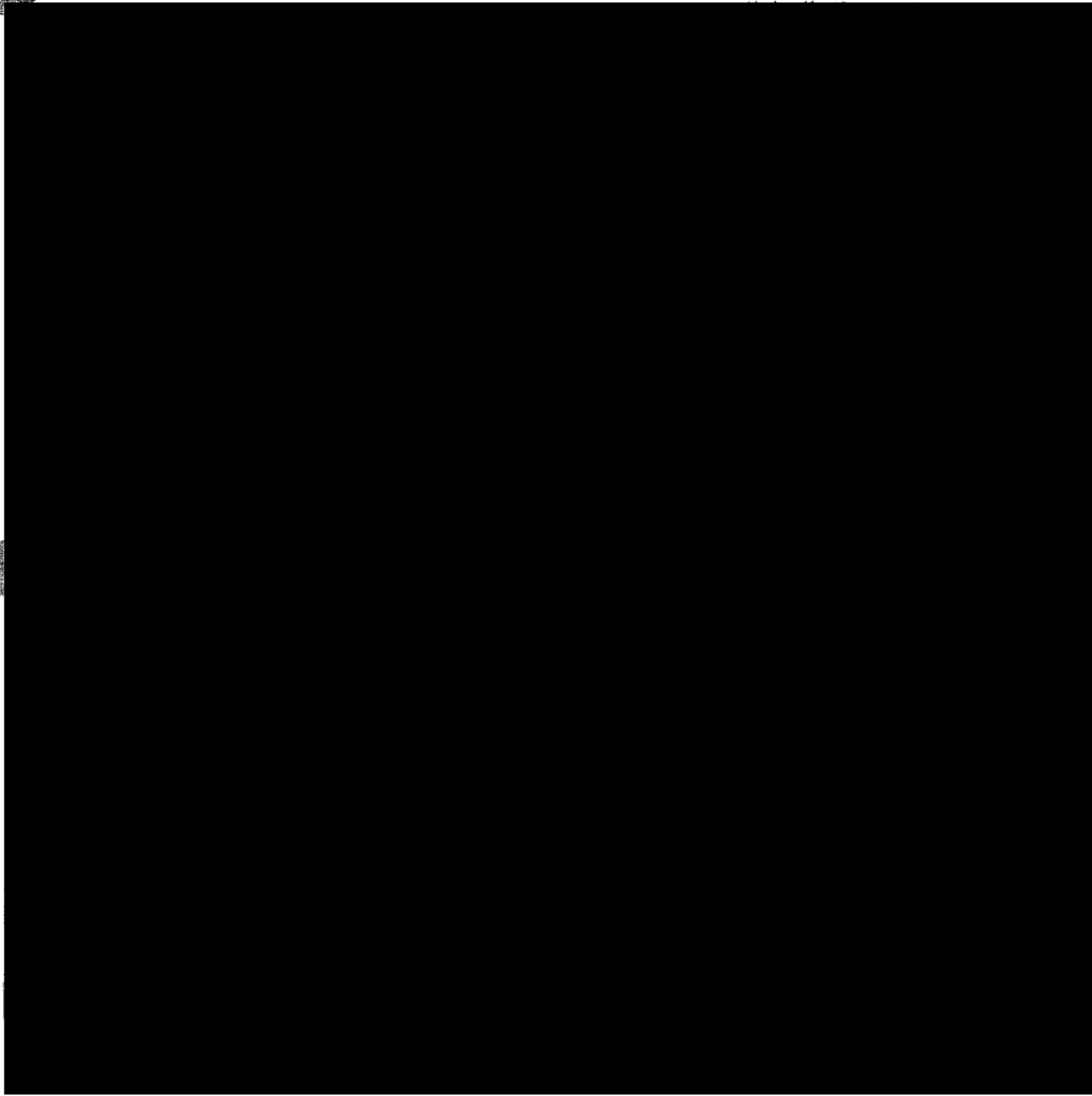


Investigation Initiation Form  
Organized Crime  
Drug Enforcement Task Forces

**LAW ENFORCEMENT SENSITIVE**

OCDETF Investigation No.

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**LAW ENFORCEMENT SENSITIVE**

Investigation Initiation Form  
Organized Crime  
Drug Enforcement Task Forces

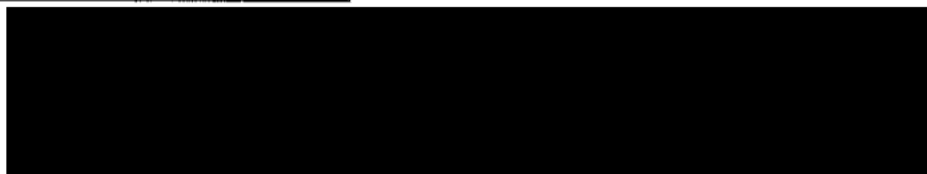
**LAW ENFORCEMENT SENSITIVE**

OCDETF Investigation No.  
[Redacted]

(Assigned by AUSA Coordinator)

**VII. REQUIRED DATABASE CHECKLIST FOR OCDETF IIF**

Name of Agent  
Agency  
Telephone Number  
OCDETF Operation Name  
Judicial District



**REQUIRED DATABASE CHECKS**

DATABASE	DATE REQUESTED	DATE COMPLETED
[Redacted]	[Redacted]	[Redacted]
[Redacted]	[Redacted]	[Redacted]
[Redacted]	[Redacted]	[Redacted]
[Redacted]	[Redacted]	[Redacted]
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[Redacted]	[Redacted]	[Redacted]
[Redacted]	[Redacted]	[Redacted]
[Redacted]	[Redacted]	[Redacted]
[Redacted]	[Redacted]	[Redacted]

**OPTIONAL DATABASE CHECKS**

While not required for OCDETF approval, please provide information, if checks were completed.

DATABASE	DATE COMPLETED
[Redacted]	[Redacted]
[Redacted]	[Redacted]
[Redacted]	[Redacted]
[Redacted]	[Redacted]
[Redacted]	[Redacted]
[Redacted]	[Redacted]

**VIII. SPECIAL OPERATIONS DIVISION (SOD) WORKSHEET**

Date Prepared: (MM/DD/YYYY)  
[Redacted]

Prepared By: [Redacted] Telephone: (b) (6), (b) (7)(C)

Current SOD Coordination: Yes  No

(If Yes) SOD Operation Name: [Redacted]

Communication Devices previously submitted to SOD: [Redacted]  
(If Yes, answer the following)

Submitted By: [Redacted] Agency: ATF Telephone: (b) (6), (b) (7)(C)  
Special Agent (b) (6), (b) (7)(C)

Date Submitted to SOD: (MM/DD/YYYY)  
[Redacted]

**COMMUNICATIONS DEVICES**

(NOT Previously Submitted to SOD)

Type of Device (Designate by letter)

- (A) Cell Phone    (B) Hard-line    (C) Pager    (D) Calling Card
- (E) Satellite    (F) FAX    (G) E-mail    (H) Other

NAME of TARGET	Type	Number (with area code)	Type	Number (with area code)	Type	Number (with area code)

**LAW ENFORCEMENT SENSITIVE**

Investigation Initiation Form  
Organized Crime  
Drug Enforcement Task Forces

Page 6

**LAW ENFORCEMENT SENSITIVE**

OCDETF Investigation No.

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(Assigned by AUSA Coordinator)

**IX. Narrative Summary** *(Number all pages, include investigation number and mark "Law Enforcement Sensitive")*

**Answer all questions below thoroughly, but concisely.**



**LAW ENFORCEMENT SENSITIVE**

Investigation Initiation Form  
Organized Crime  
Drug Enforcement Task Forces

**LAW ENFORCEMENT SENSITIVE**

OCDETF Investigation No.

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(Assigned by AUSA Coordinator)

**X. Approvals**

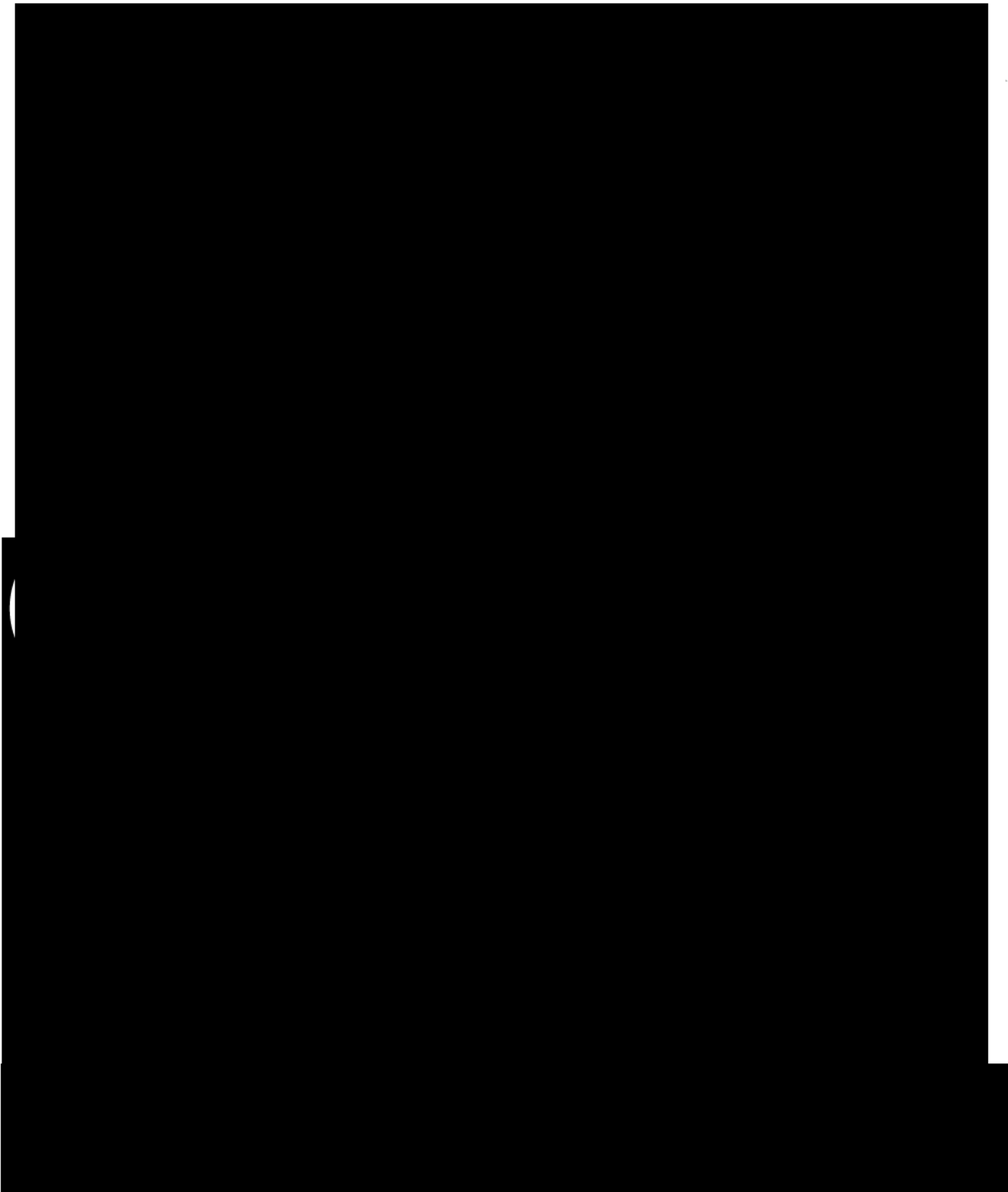


**LAW ENFORCEMENT SENSITIVE**

**LAW ENFORCEMENT SENSITIVE**

**OPERATION: THE FAST AND THE FURIOUS**

**A. BACKGROUND / FACTS ABOUT THE INVESTIGATION**



**LAW ENFORCEMENT SENSITIVE**



**LAW ENFORCEMENT SENSITIVE**

**(b) (6), (b) (7)(C)**



**LAW ENFORCEMENT SENSITIVE**

Page 2 of 7

**LAW ENFORCEMENT SENSITIVE**

**(b) (6), (b) (7)(C)**



**LAW ENFORCEMENT SENSITIVE**

Page 3 of 7

**LAW ENFORCEMENT SENSITIVE**

**(b) (6), (b) (7)(C)**



**LAW ENFORCEMENT SENSITIVE**

Page 4 of 7

**LAW ENFORCEMENT SENSITIVE**

**(b) (6), (b) (7)(C)**



**LAW ENFORCEMENT SENSITIVE**

**(b) (6), (b) (7)(C)**



**LAW ENFORCEMENT SENSITIVE**

Page 6 of 7

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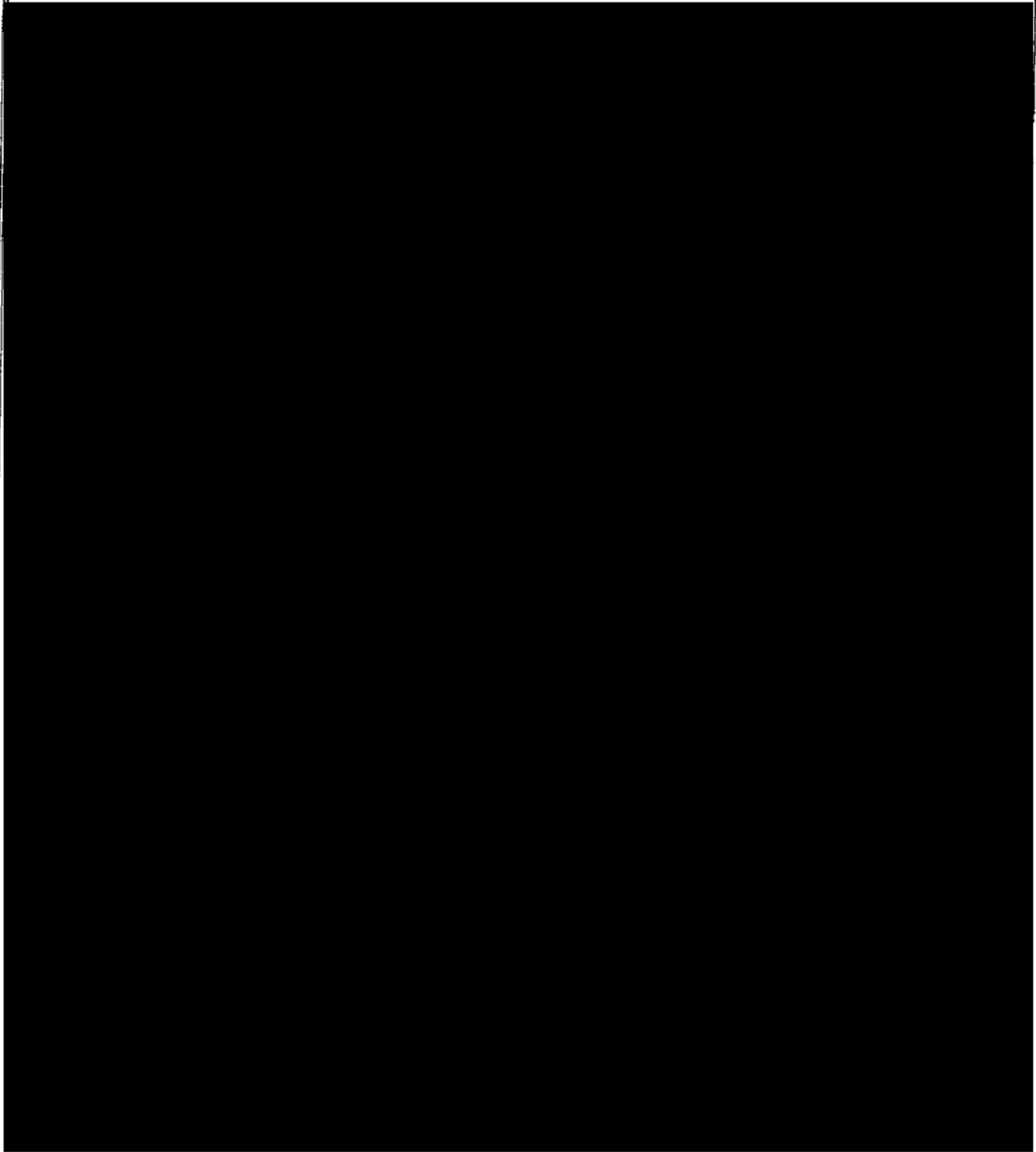
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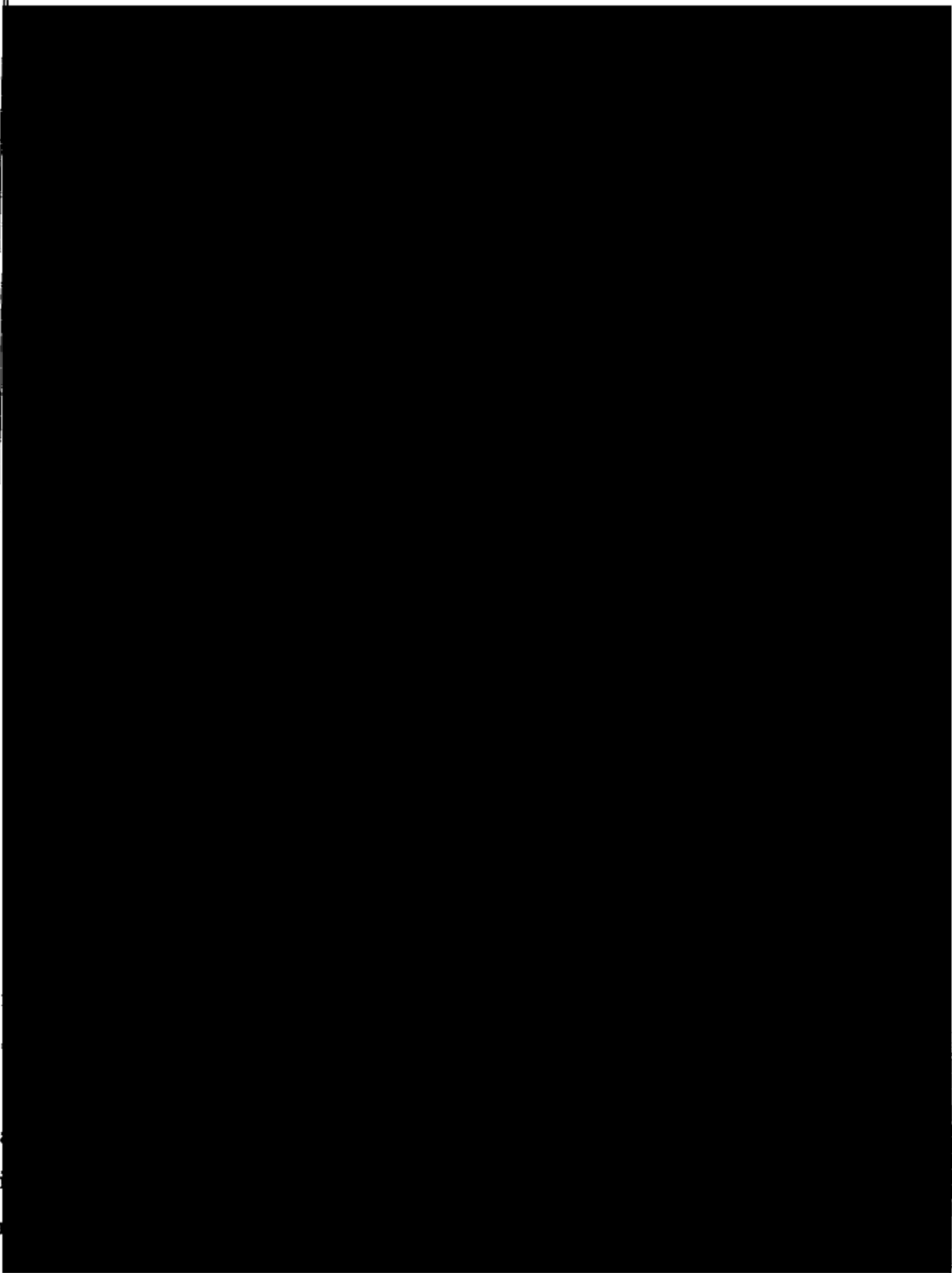
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UNITED STATES DISTRICT COURT  
DISTRICT OF ARIZONA

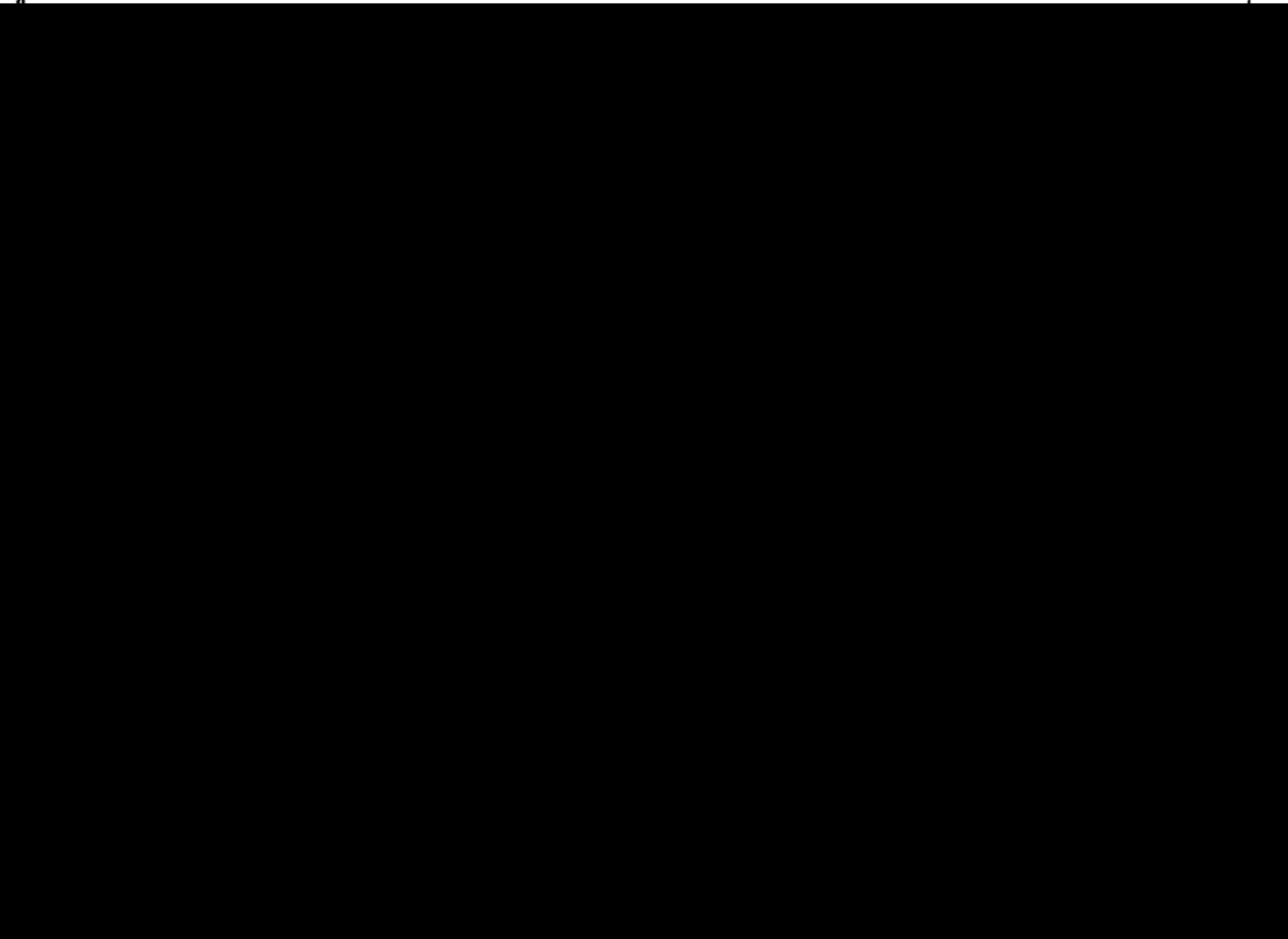


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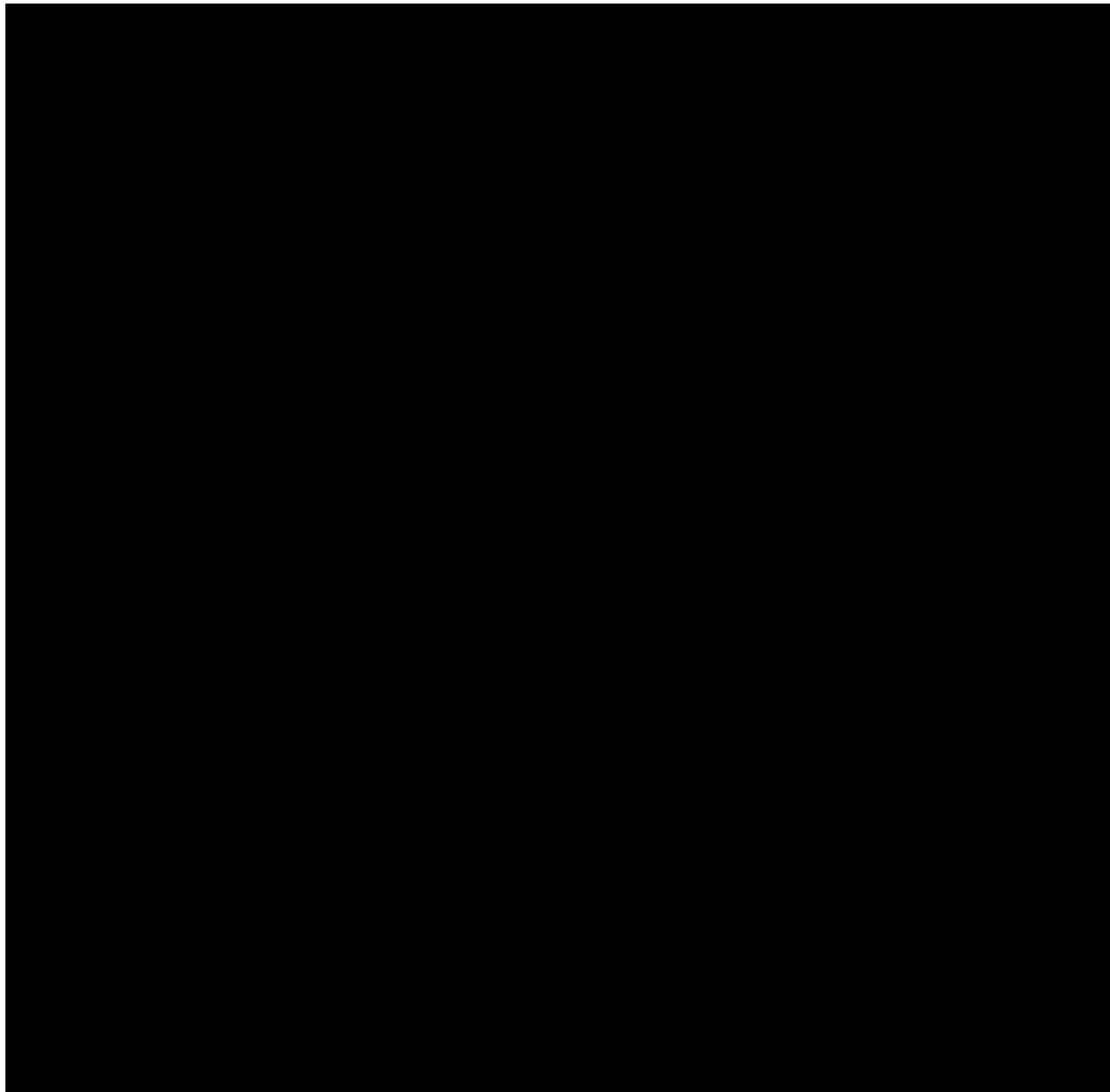




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[Return on following page.]



[Redacted]	Investigation Number: 785115-10-0004	Report Number: 205
	[Redacted]	

**SUMMARY OF EVENT:**

[Redacted]

**NARRATIVE:**

[Redacted]

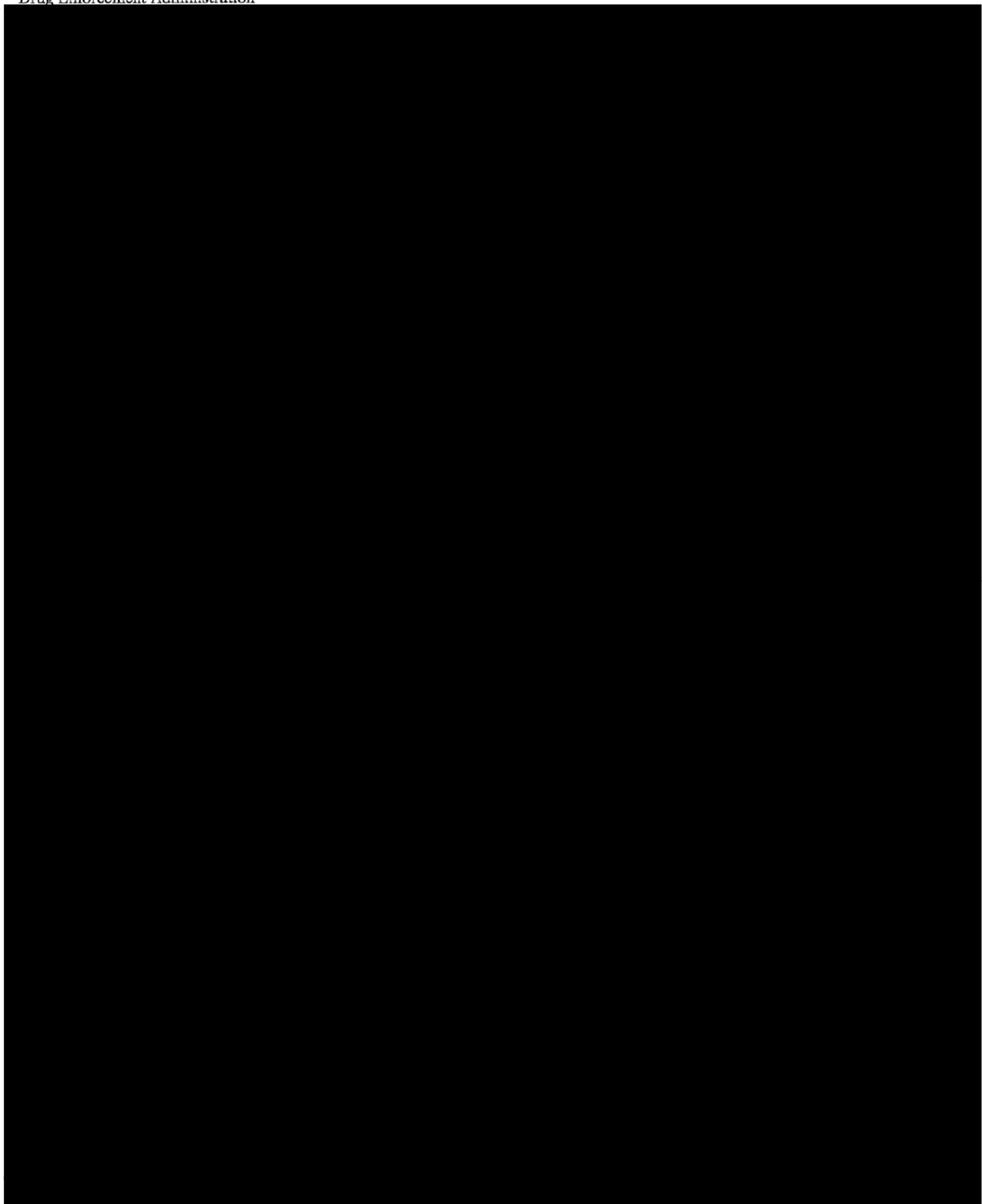
**ATTACHMENTS:**

[Redacted]

[Redacted]	Title: Special Agent, Phoenix VII Field Office	[Redacted]	Date: 4-7-2010
	Title: Group Supervisor, Phoenix VII Field Office		Date: 4-7-10
	Title: Special Agent in Charge, Phoenix Field Division		Date:

William D. Newell

U.S. Department of Justice  
Drug Enforcement Administration



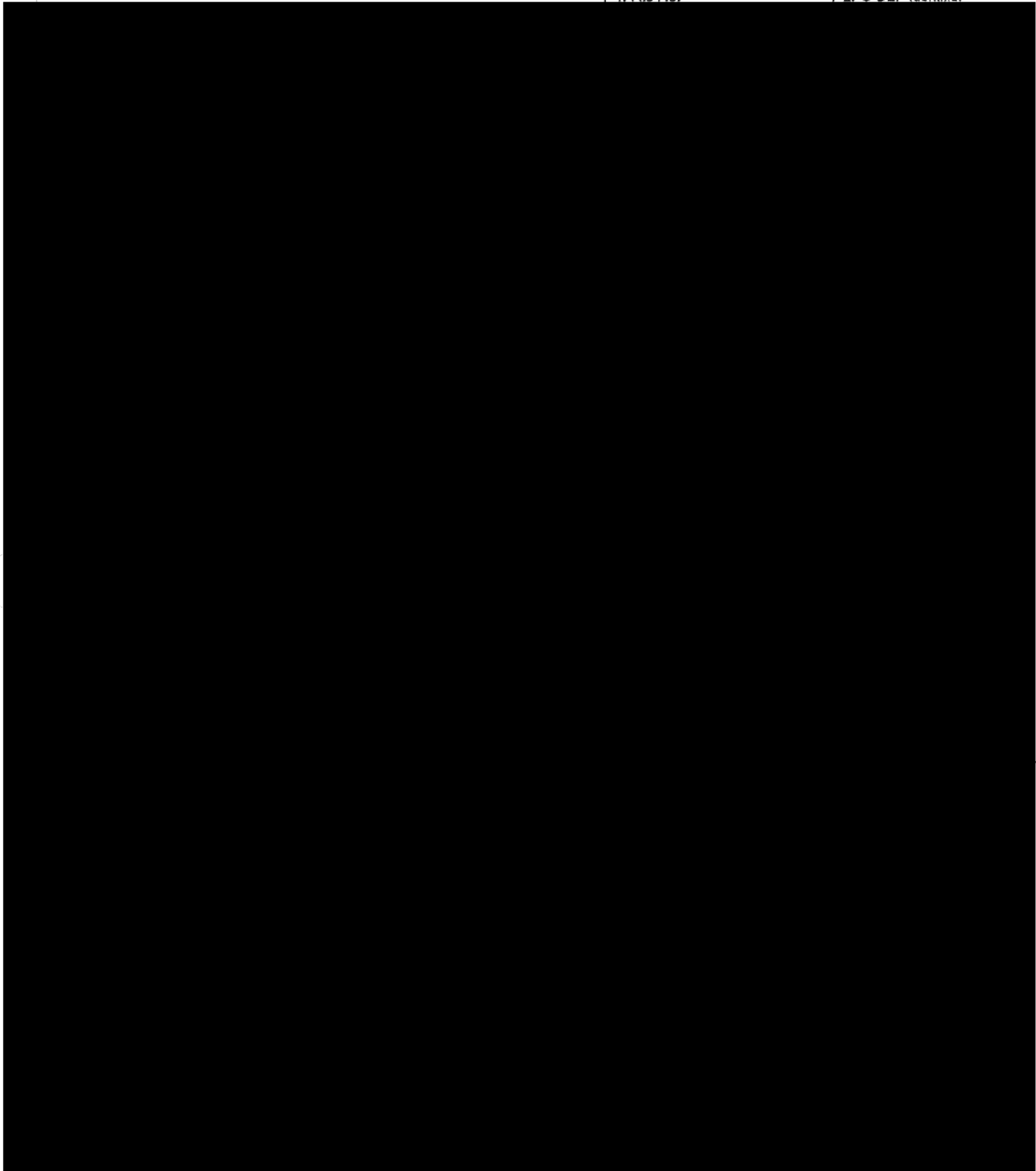
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Previous edition dated 8/94 may be used.

U.S. Department of Justice  
Drug Enforcement Administration

1. File No.

2. G-DEP Identifier



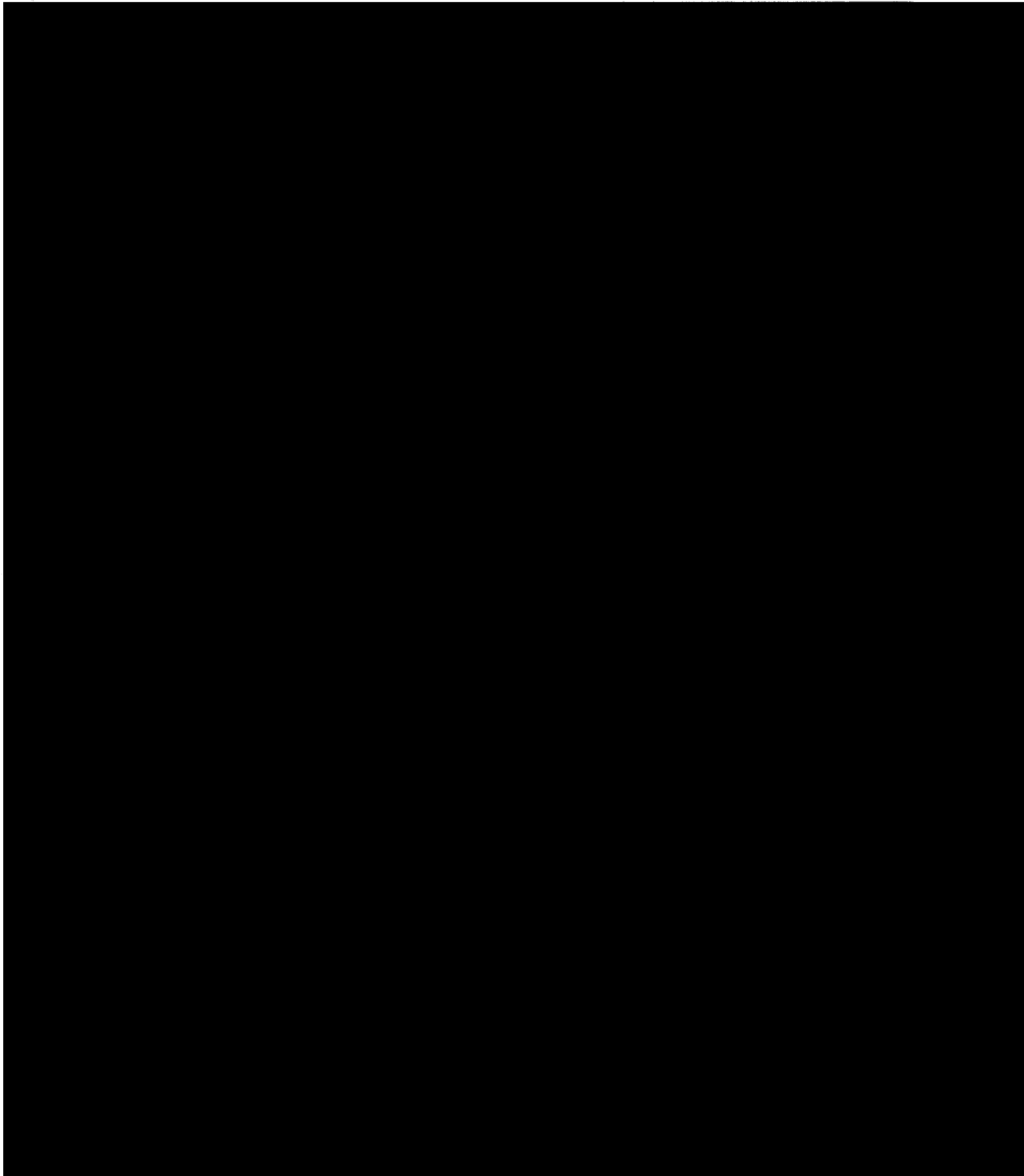
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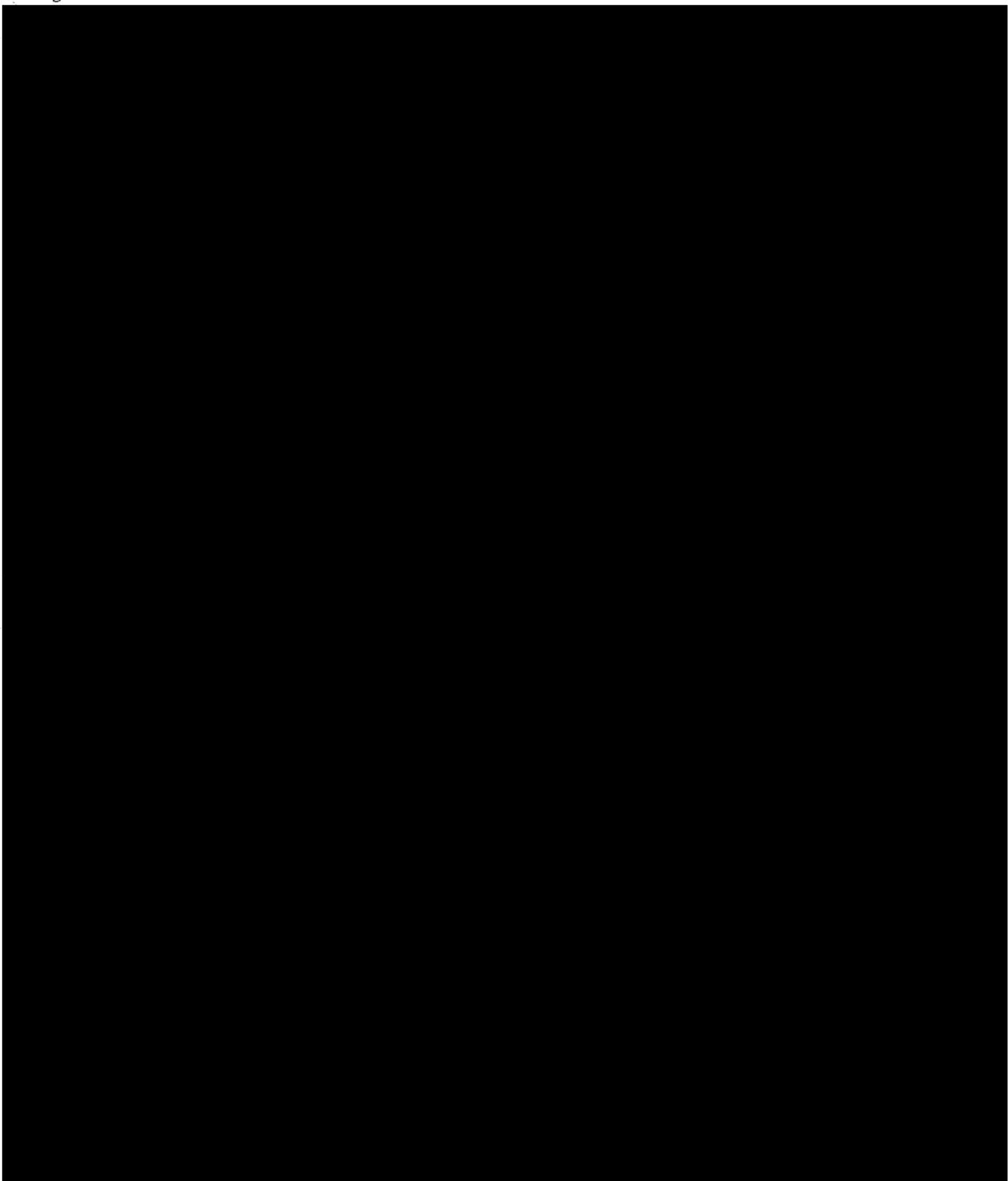
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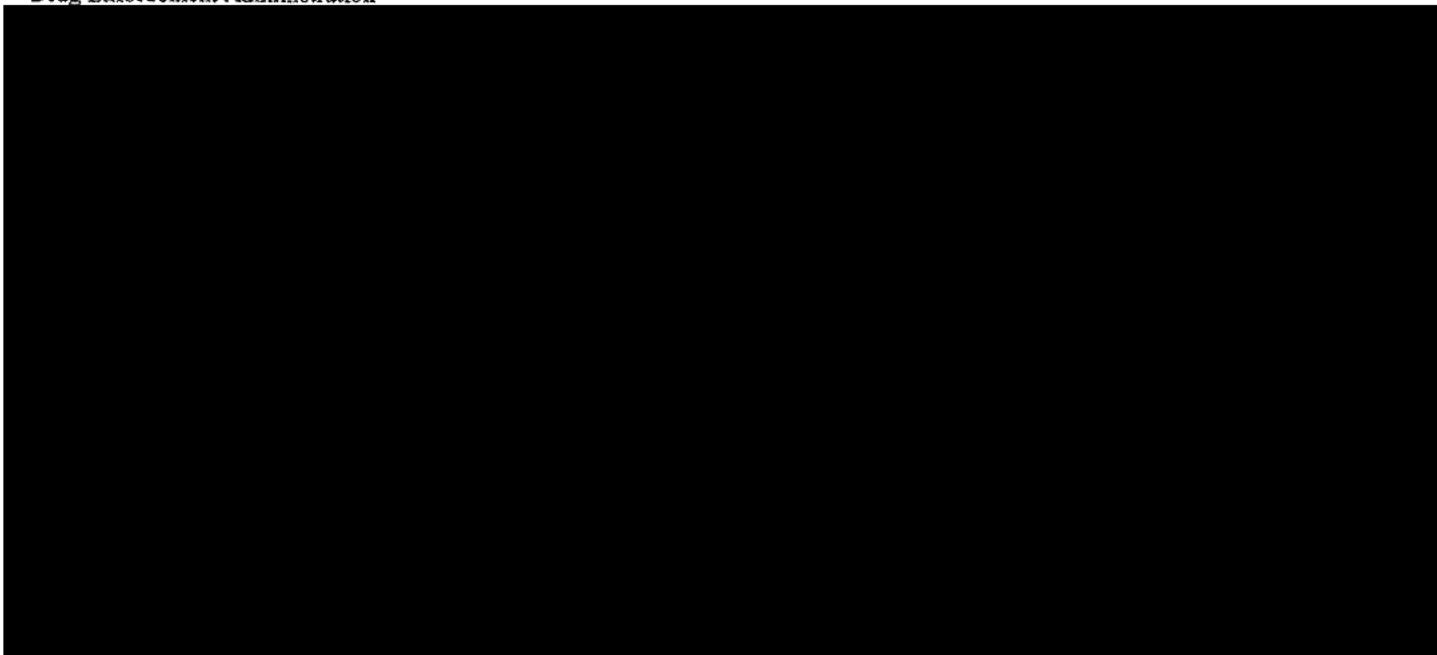
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(Jul. 1996)

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Drug Enforcement Administration

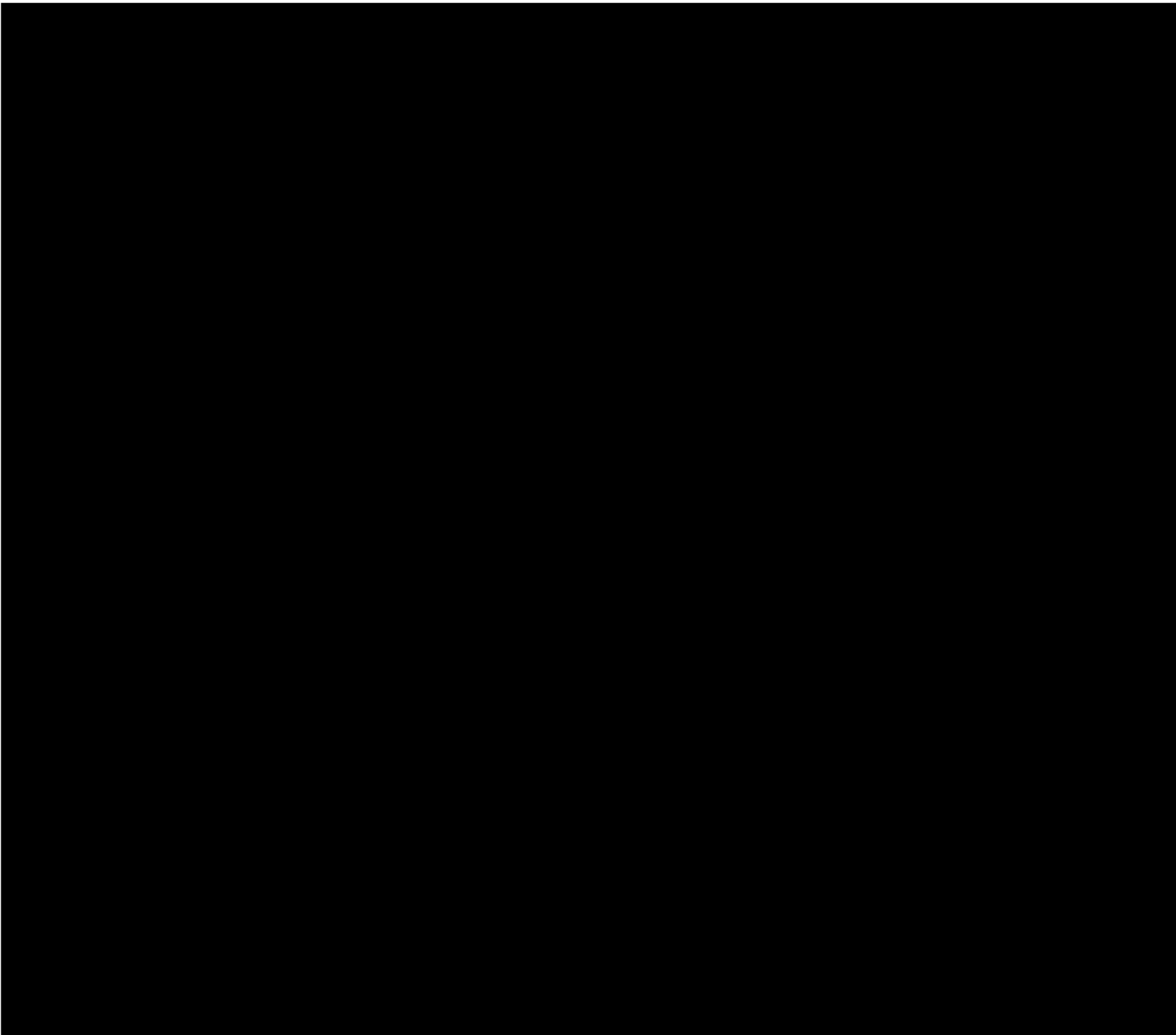




**AGENT**

In the Matter of the Search of

(Name, address or brief description of person or property to be searched)



Employee 3

Return

866

Case No.:

Date and time warrant executed:

Copy of warrant and inventory left with:

Inventory made in the presence of :

Inventory of the property taken and name of any person(s) seized:

**Certification**

I declare under penalty of perjury that this inventory is correct and was returned along with the original warrant to the designated judge.

Date: \_\_\_\_\_

\_\_\_\_\_  
*Executing officer's signature*

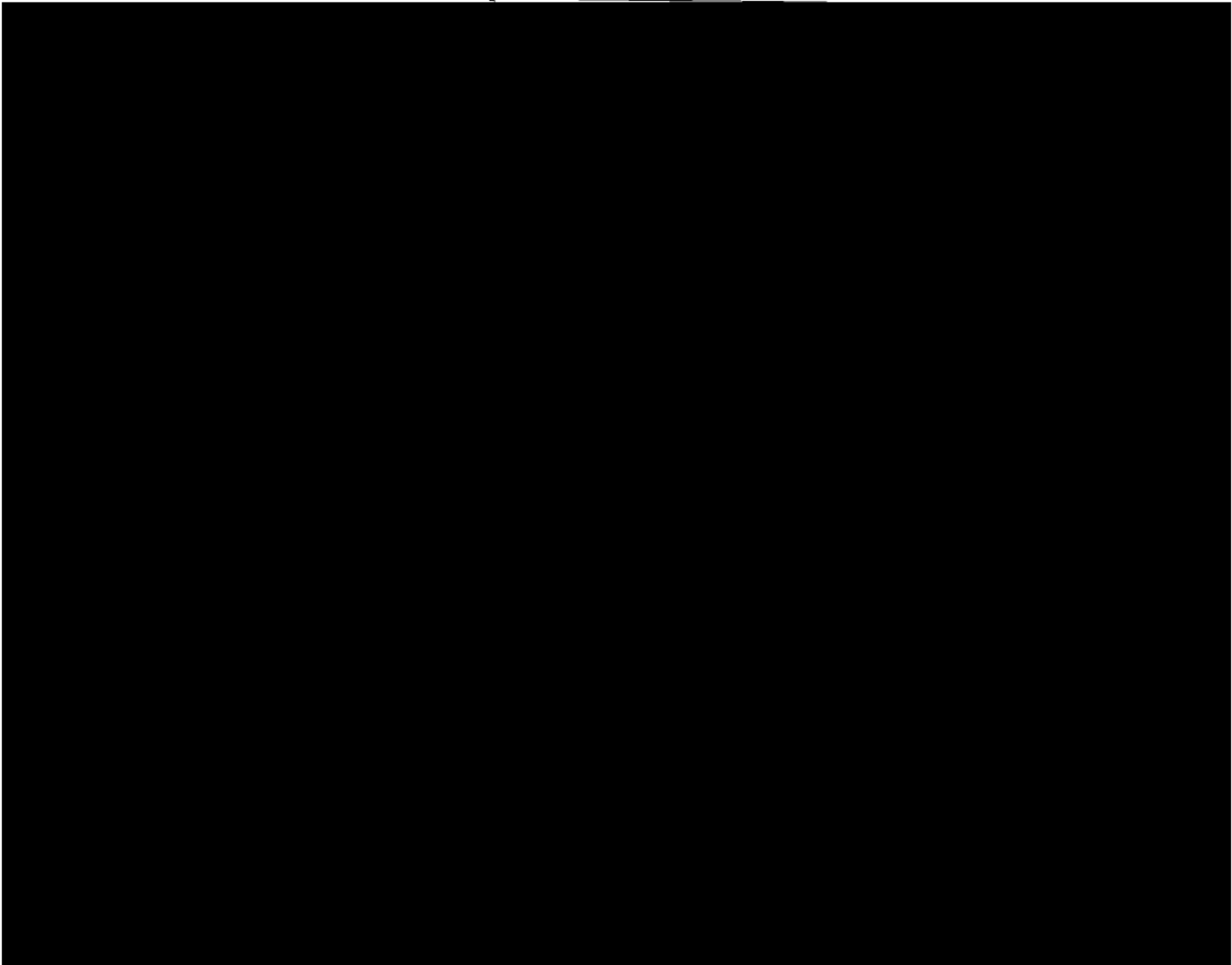
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*Printed name and title*

ATTACHMENT A



ATTACHMENT B

Description of Items to be Seized




UNITED STATES DISTRICT COURT

*District of Arizona*

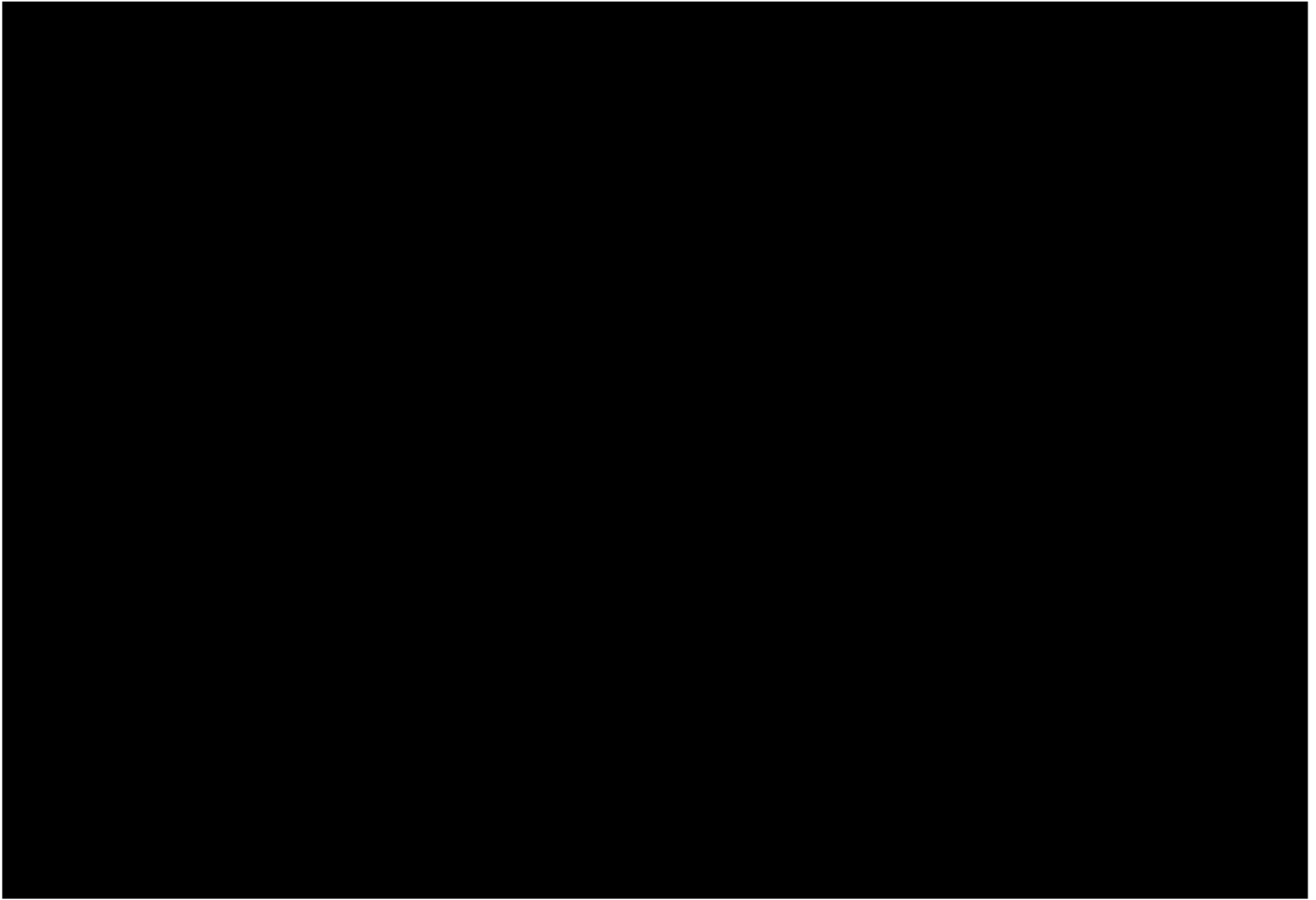
**AGENT**

In the Matter of the Search of



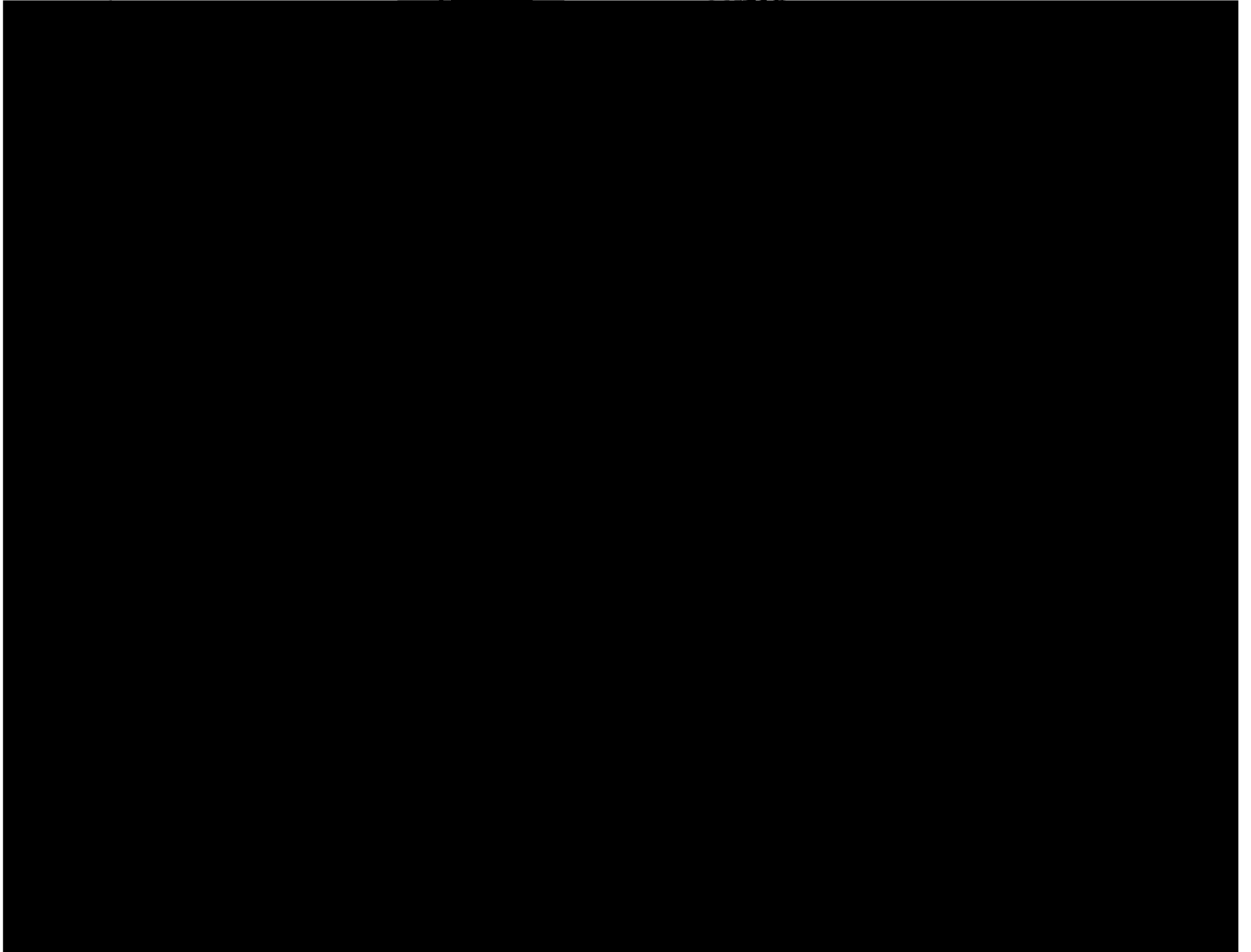
ATTACHMENT A

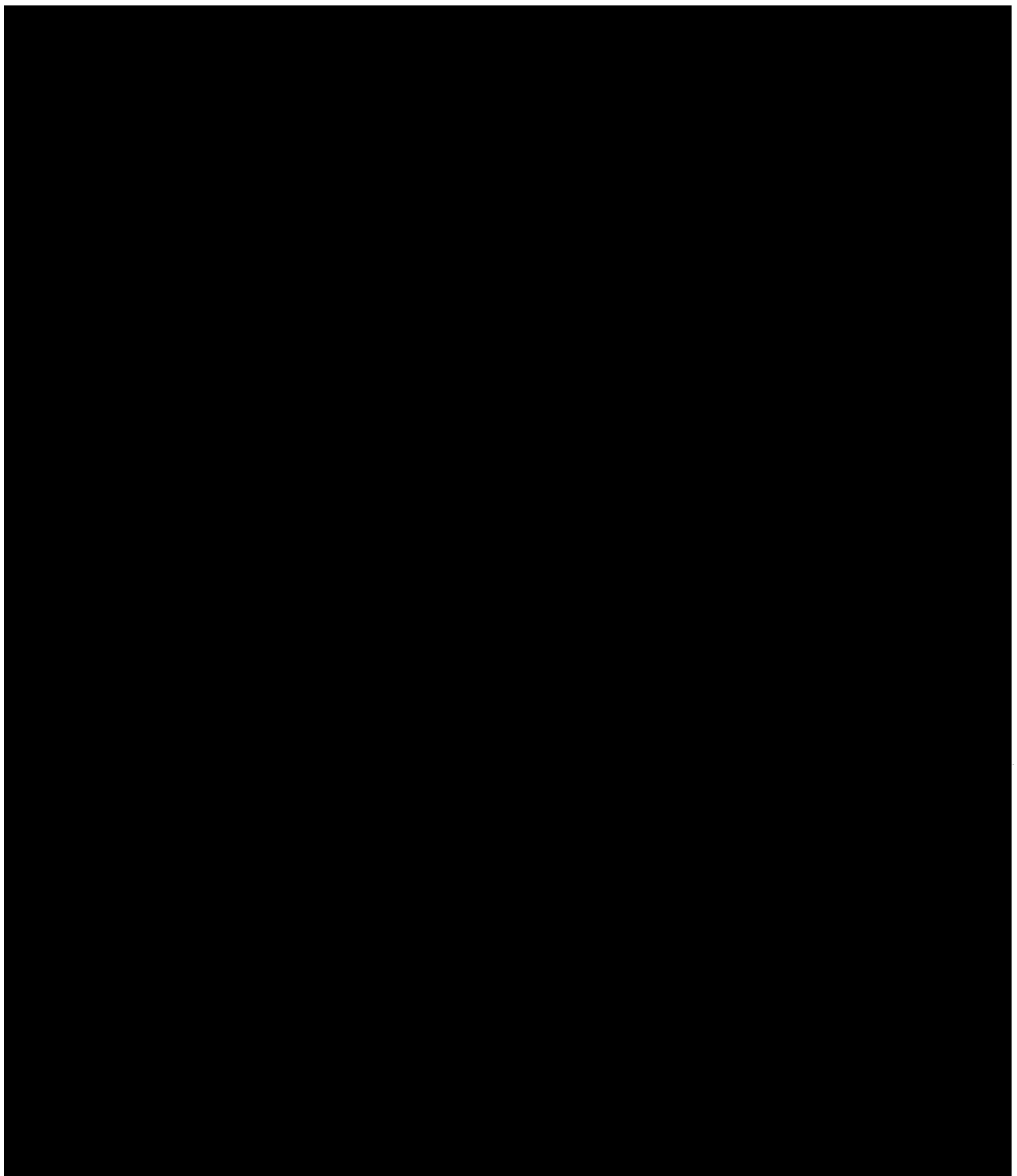
Description of Property to be Searched



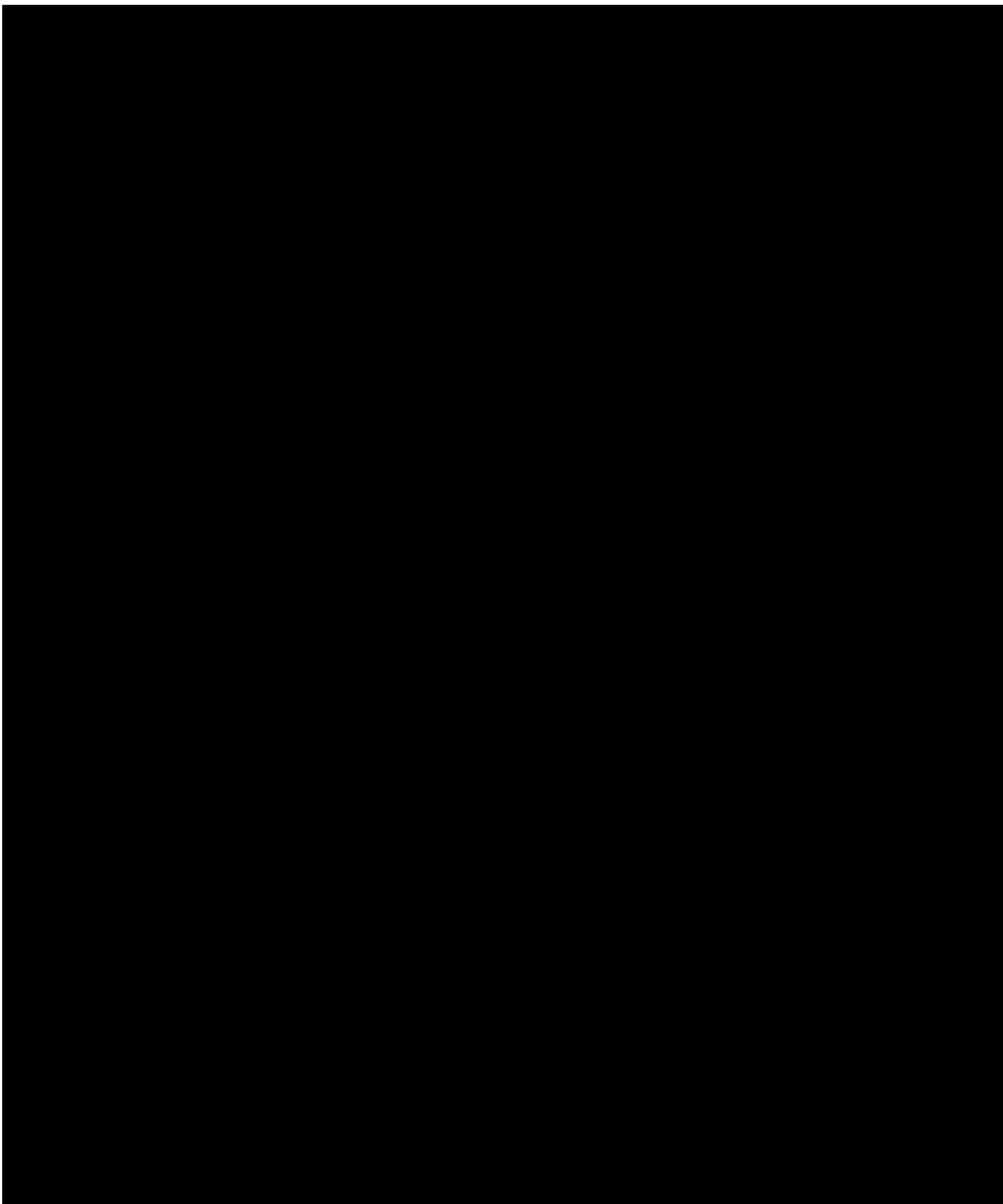
**ATTACHMENT B**

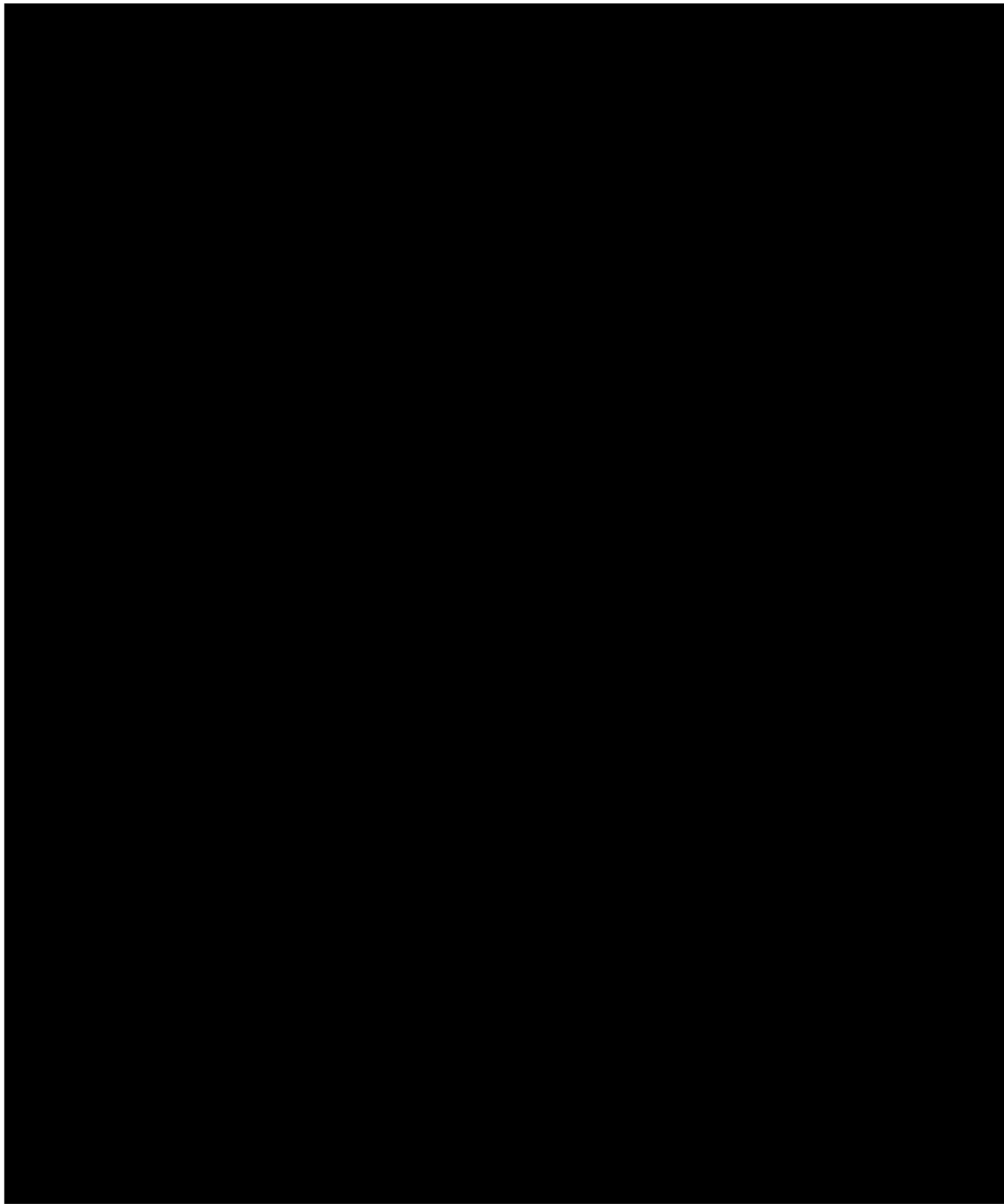
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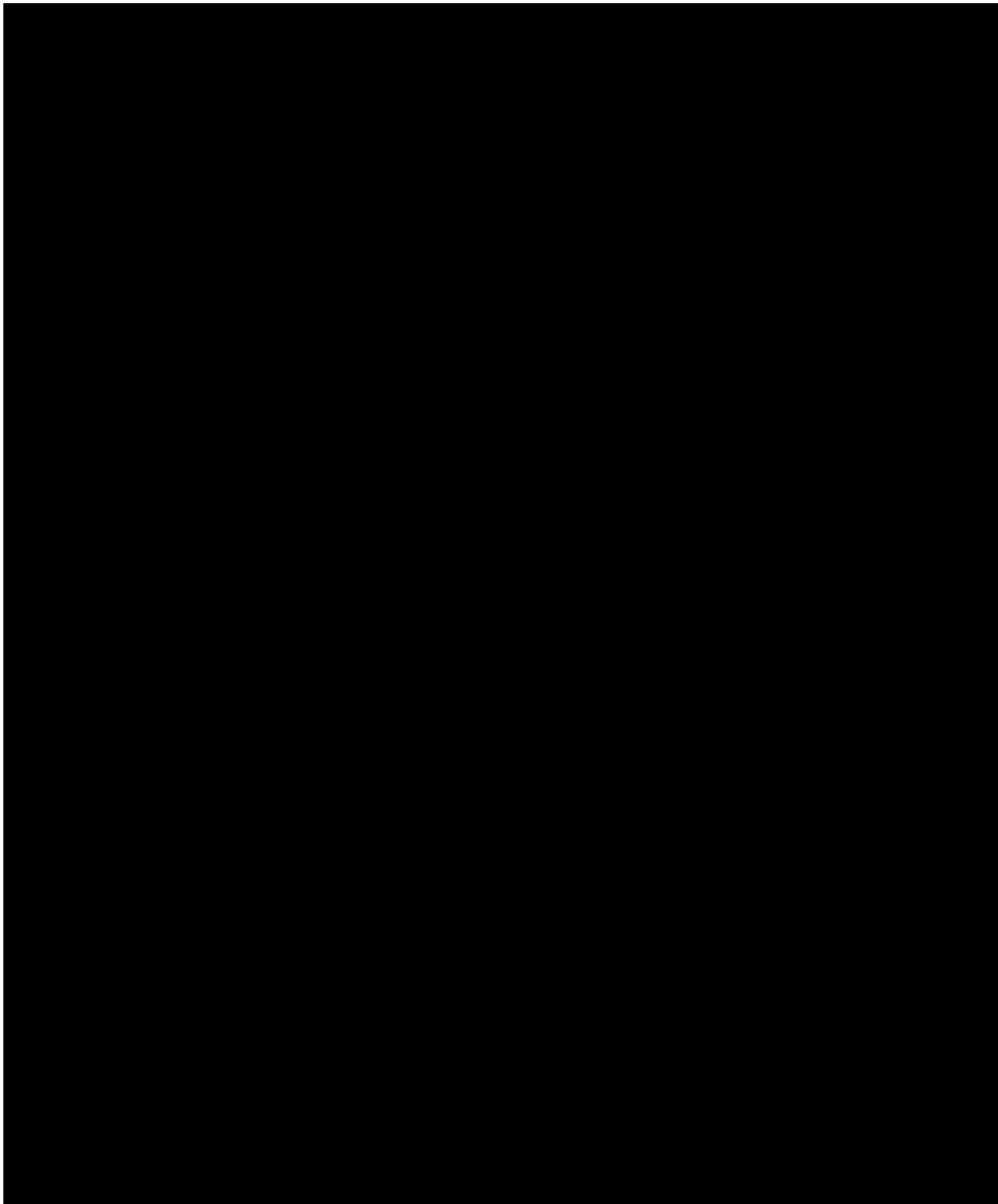


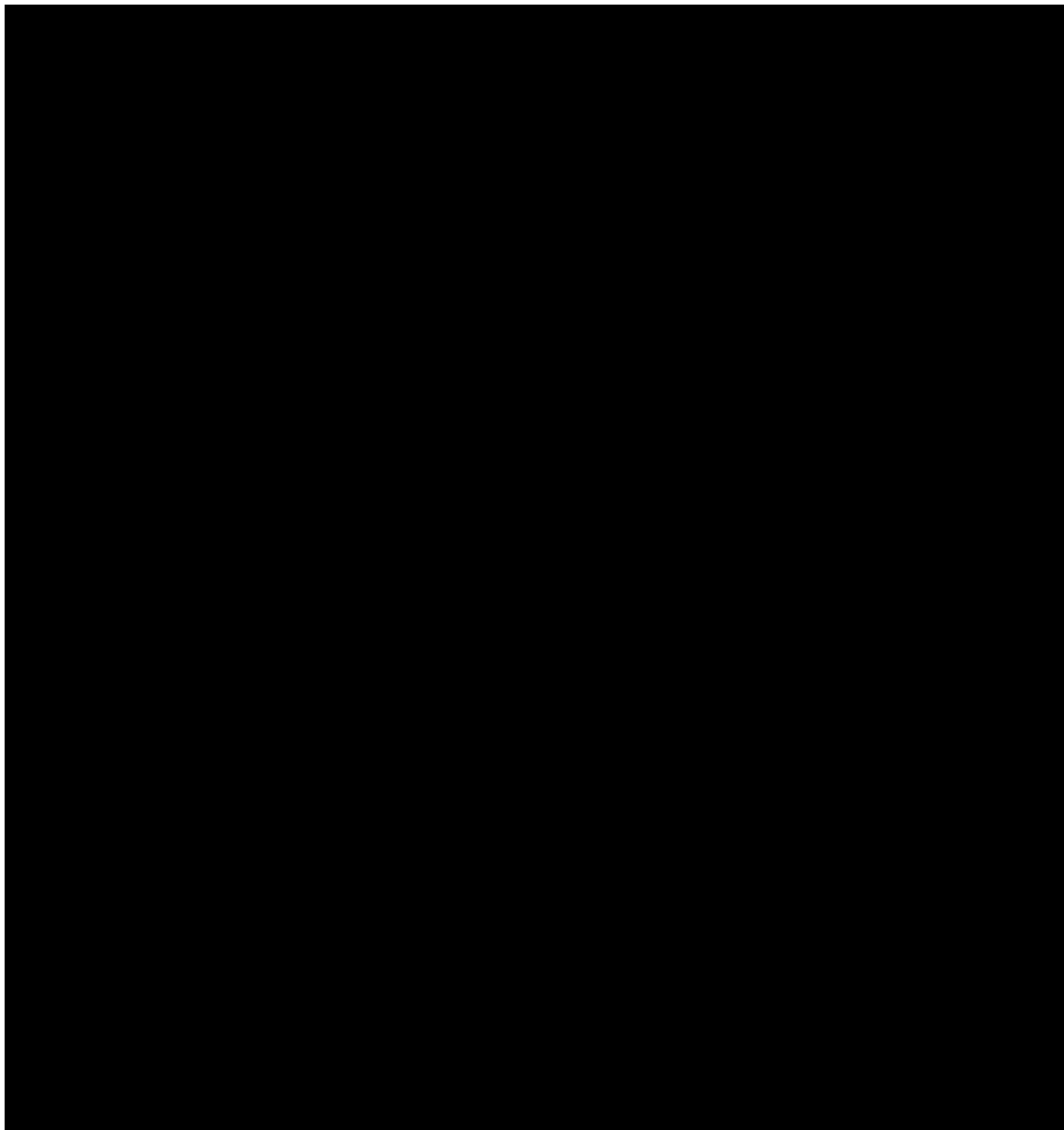


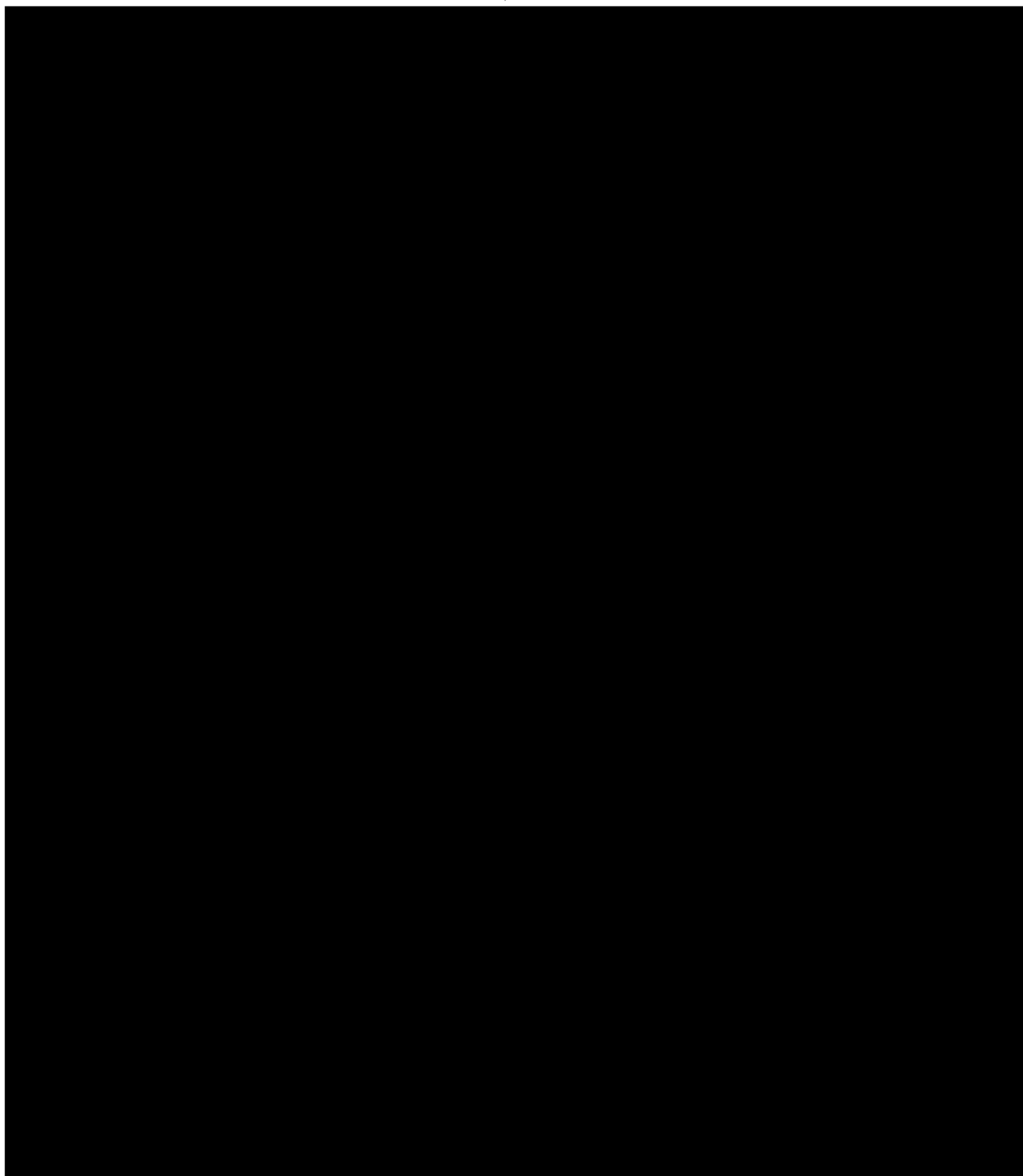


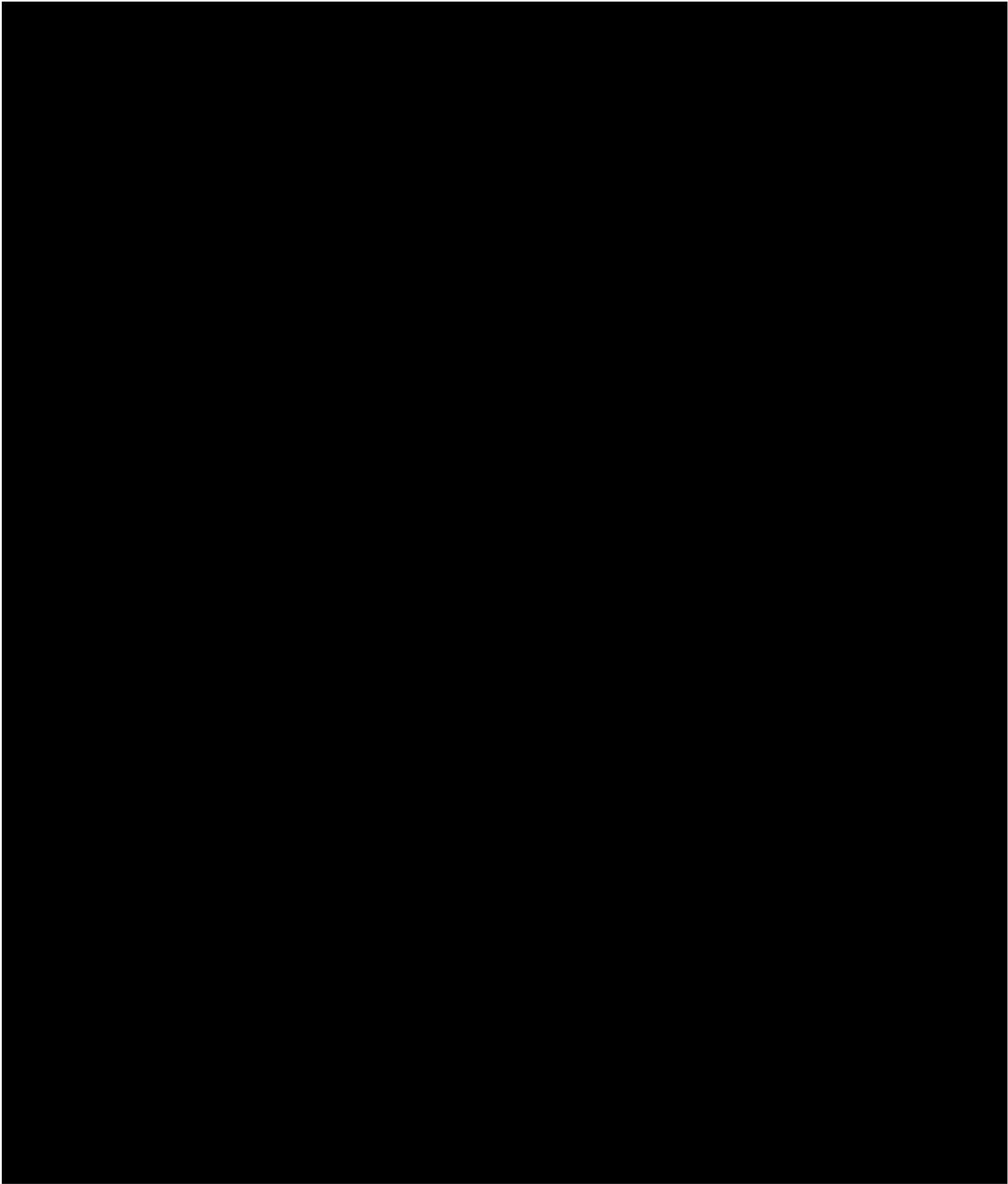


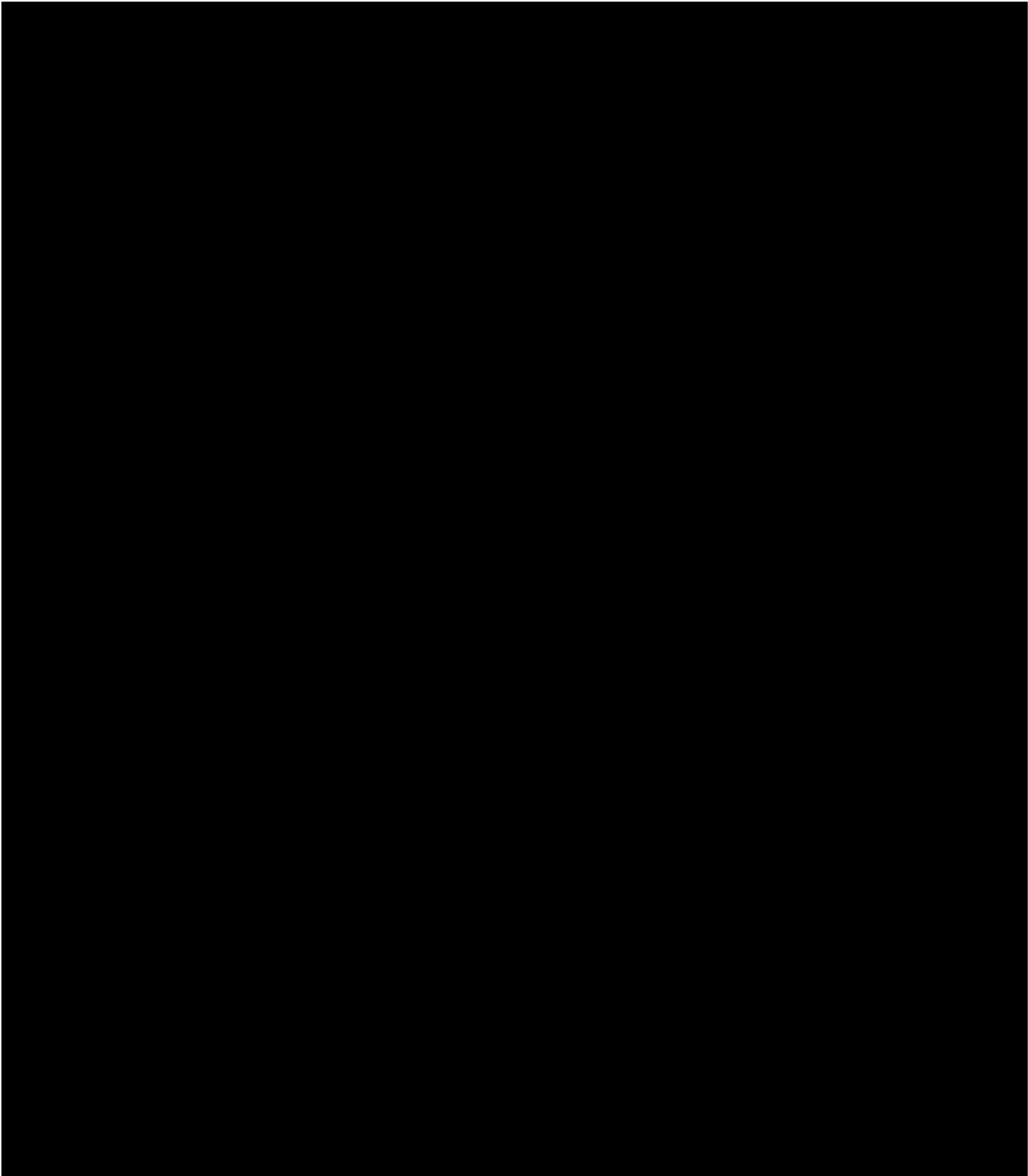


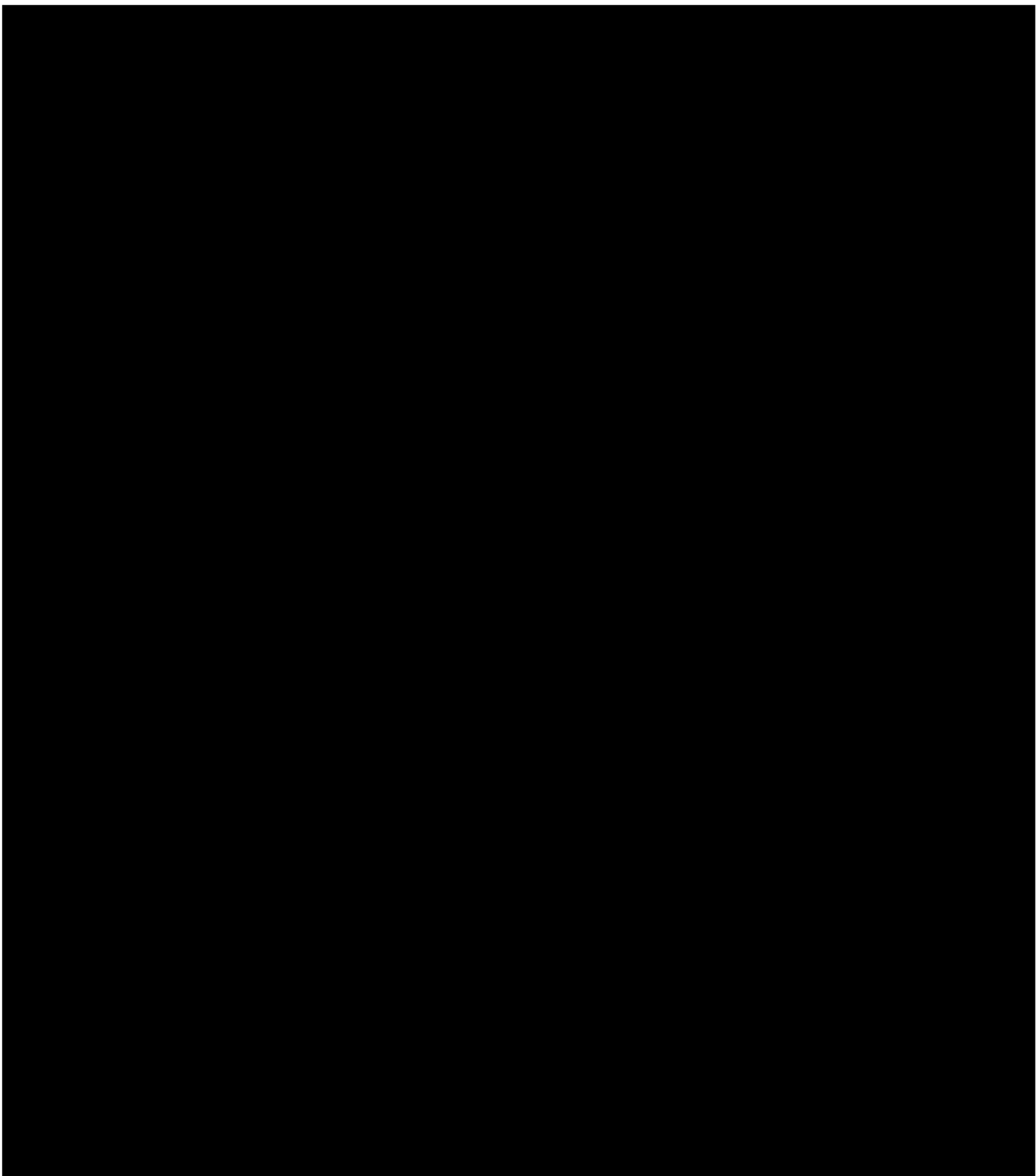






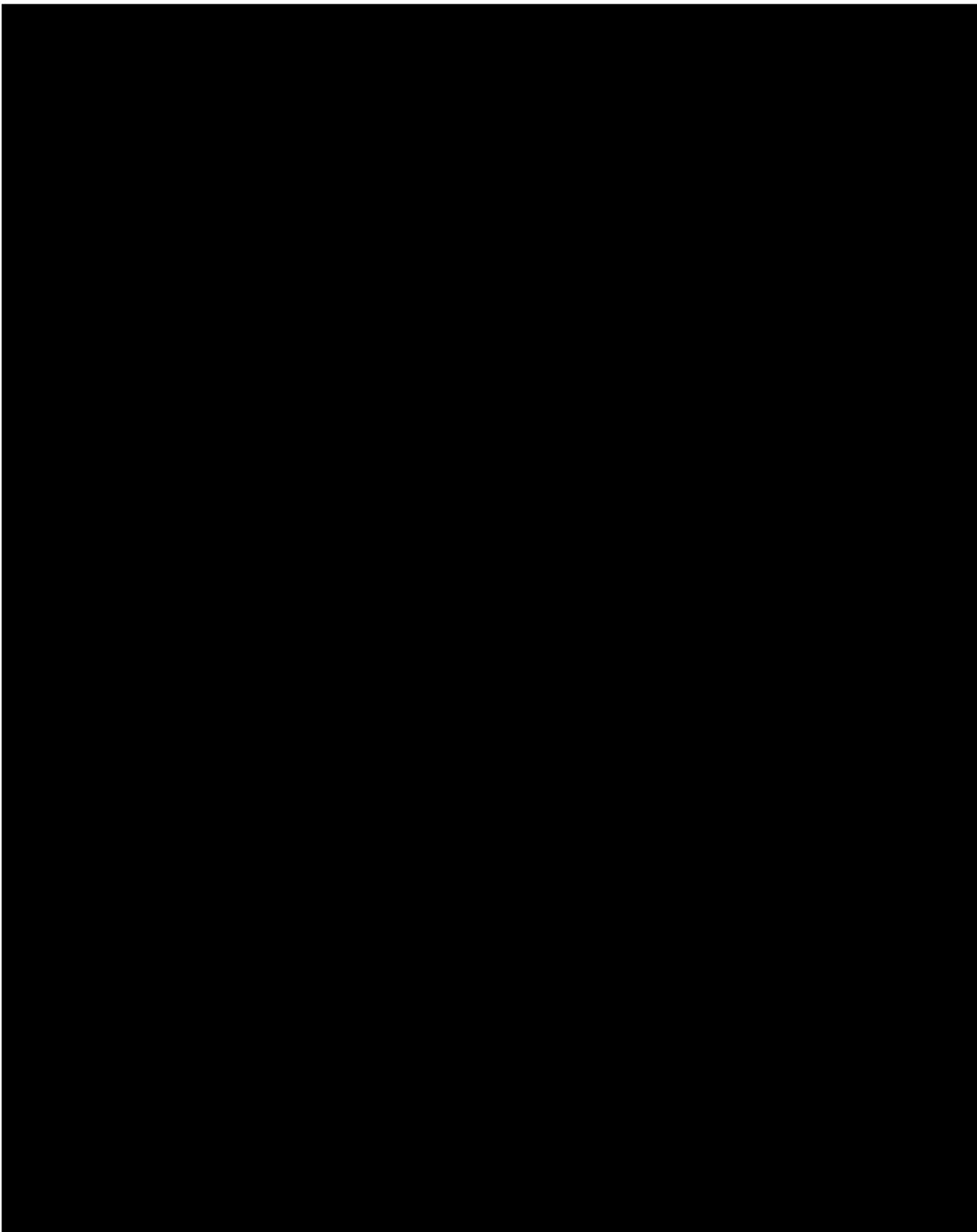


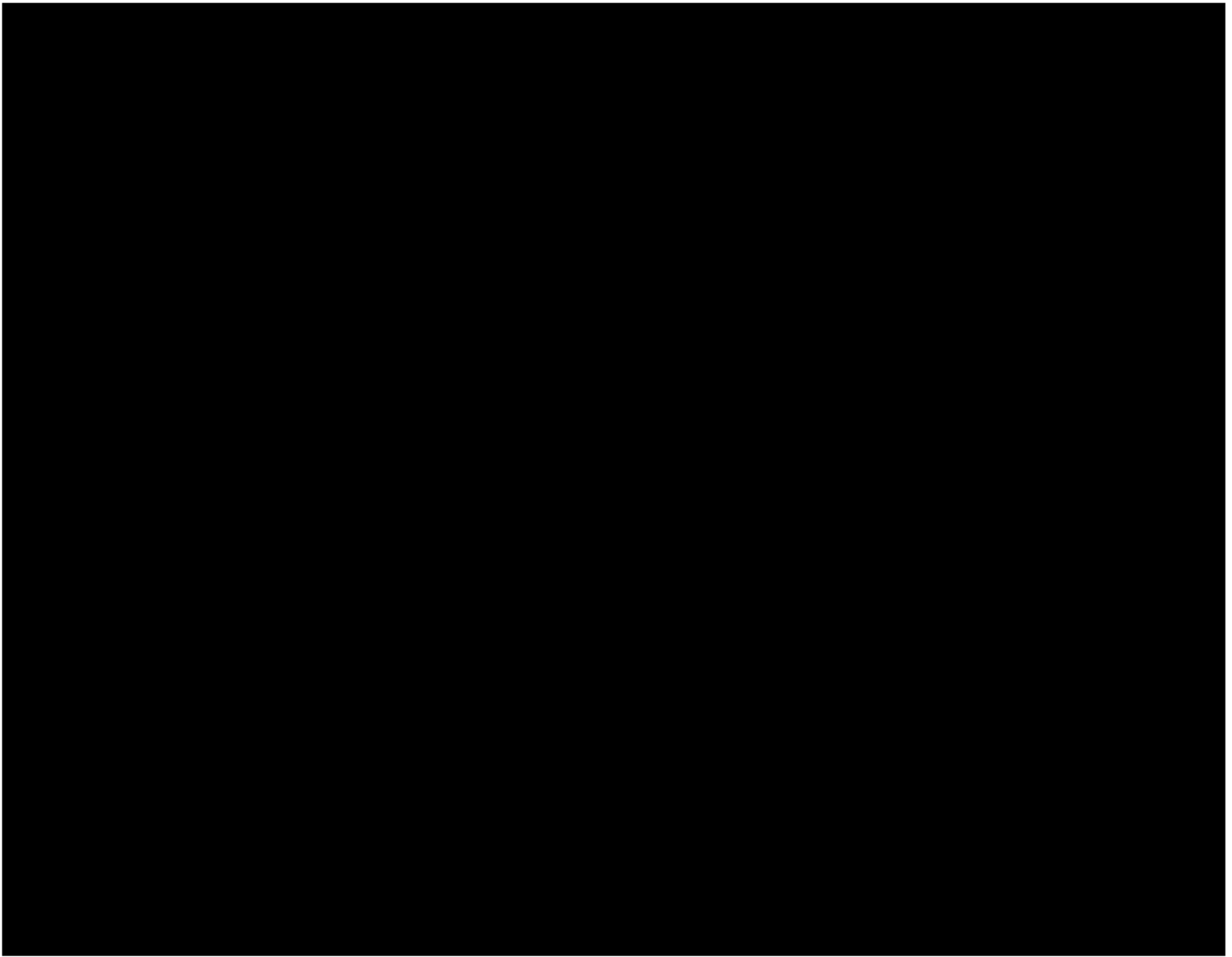












1 DENNIS K. BURKE  
United States Attorney  
2 District of Arizona

3 EMORY T. HURLEY  
Assistant United States Attorney  
State Bar Number: 014812  
4 Two Renaissance Square  
40 North Central Avenue, Suite 1200  
5 Phoenix, Arizona 85004  
Telephone (602) 514-7500  
6 [emory.hurley@usdoj.gov](mailto:emory.hurley@usdoj.gov)

7 UNITED STATES DISTRICT COURT  
8 DISTRICT OF ARIZONA  
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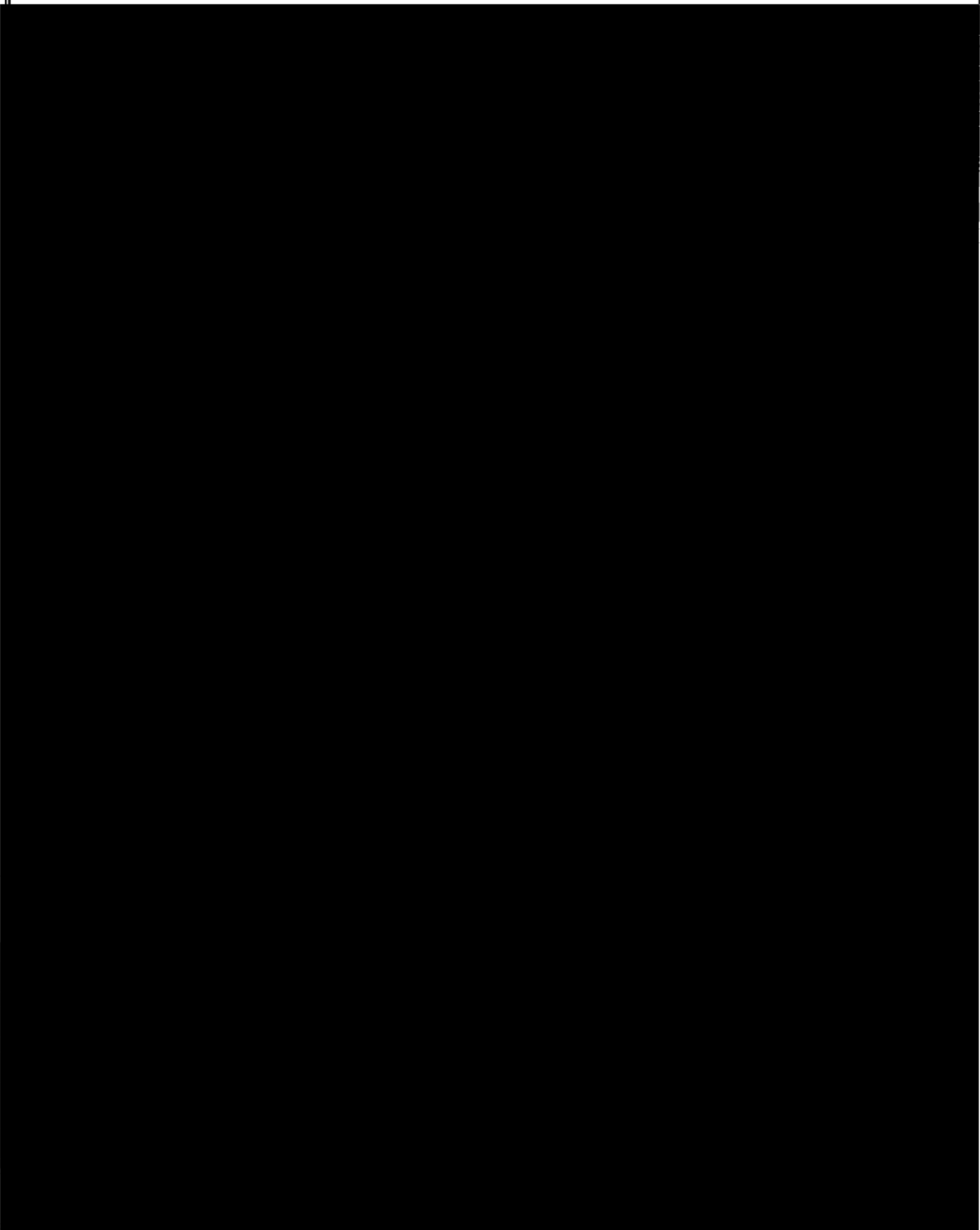


1 DENNIS K. BURKE  
United States Attorney  
2 District of Arizona

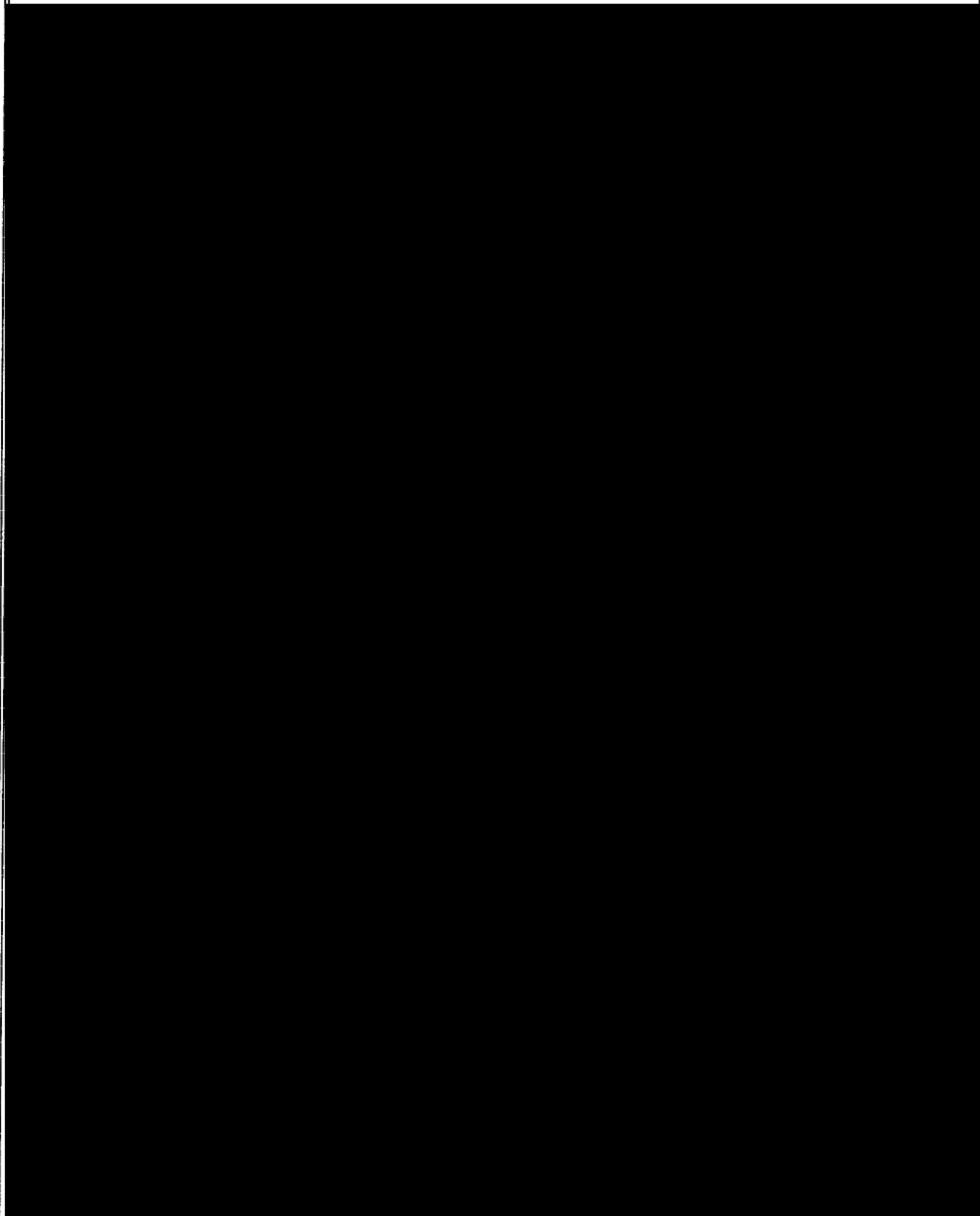
3 EMORY T. HURLEY  
Assistant United States Attorney  
State Bar Number: 014812  
4 Two Renaissance Square  
40 North Central Avenue, Suite 1200  
5 Phoenix, Arizona 85004  
Telephone (602) 514-7500  
6 [emory.hurley@usdoj.gov](mailto:emory.hurley@usdoj.gov)

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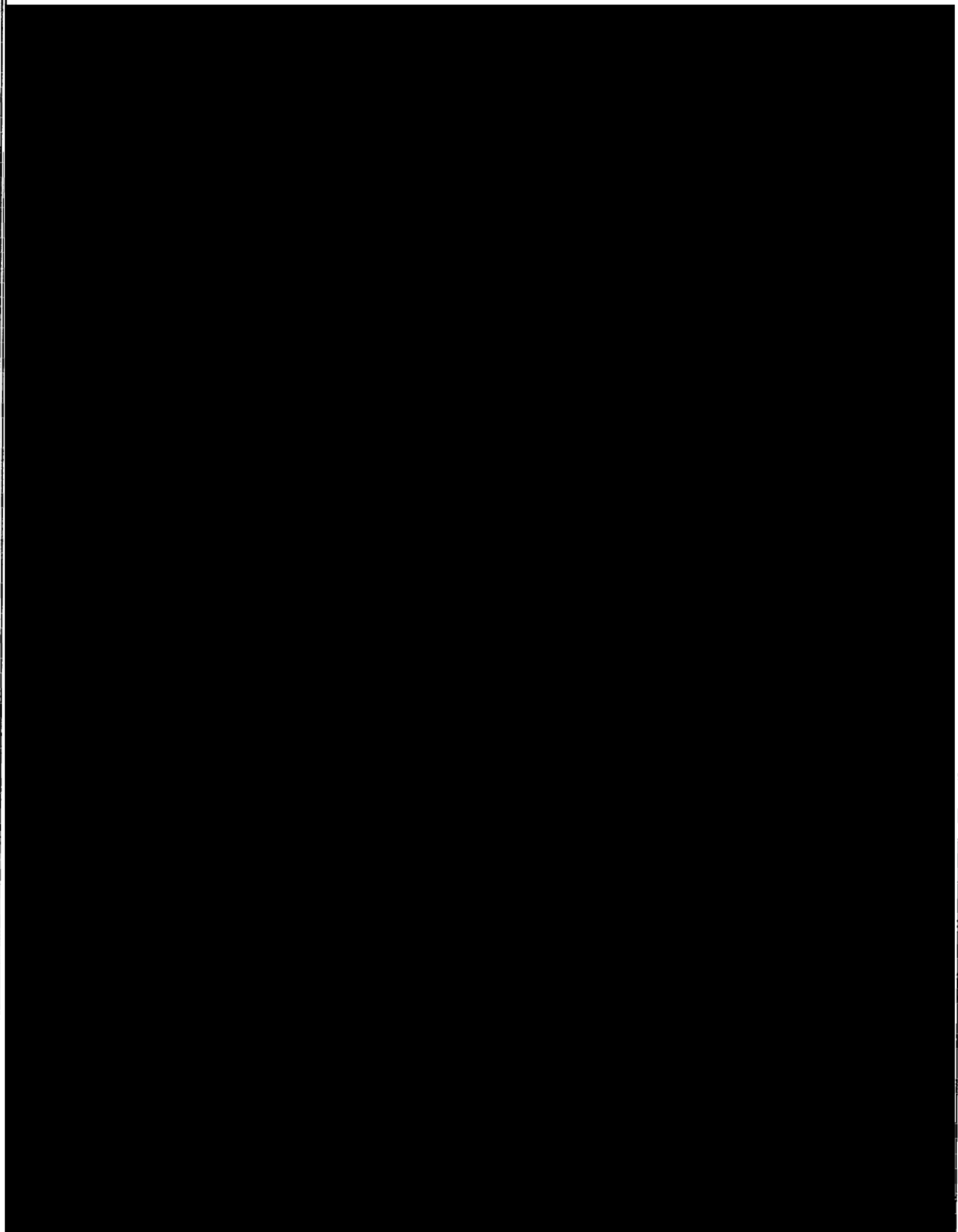


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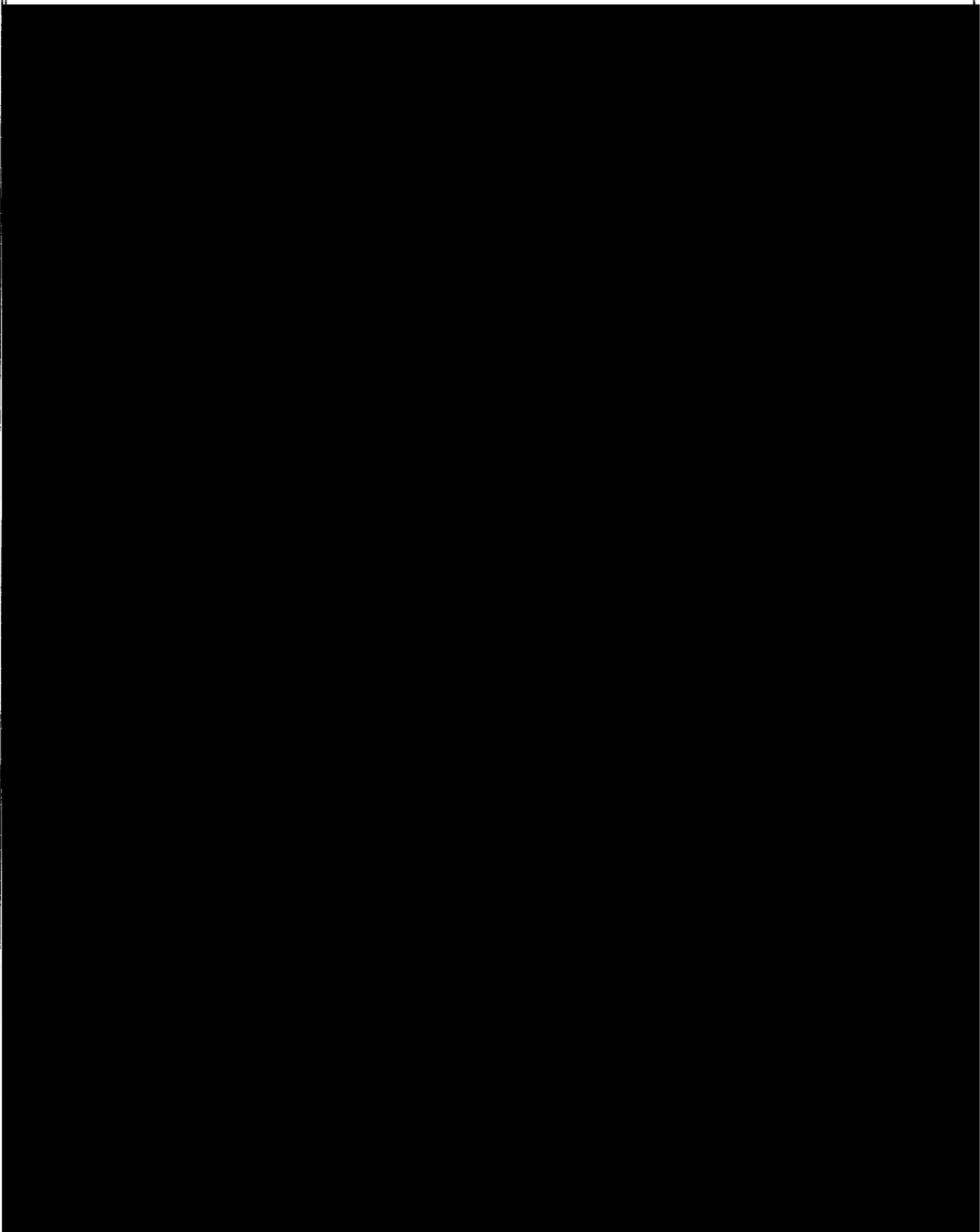




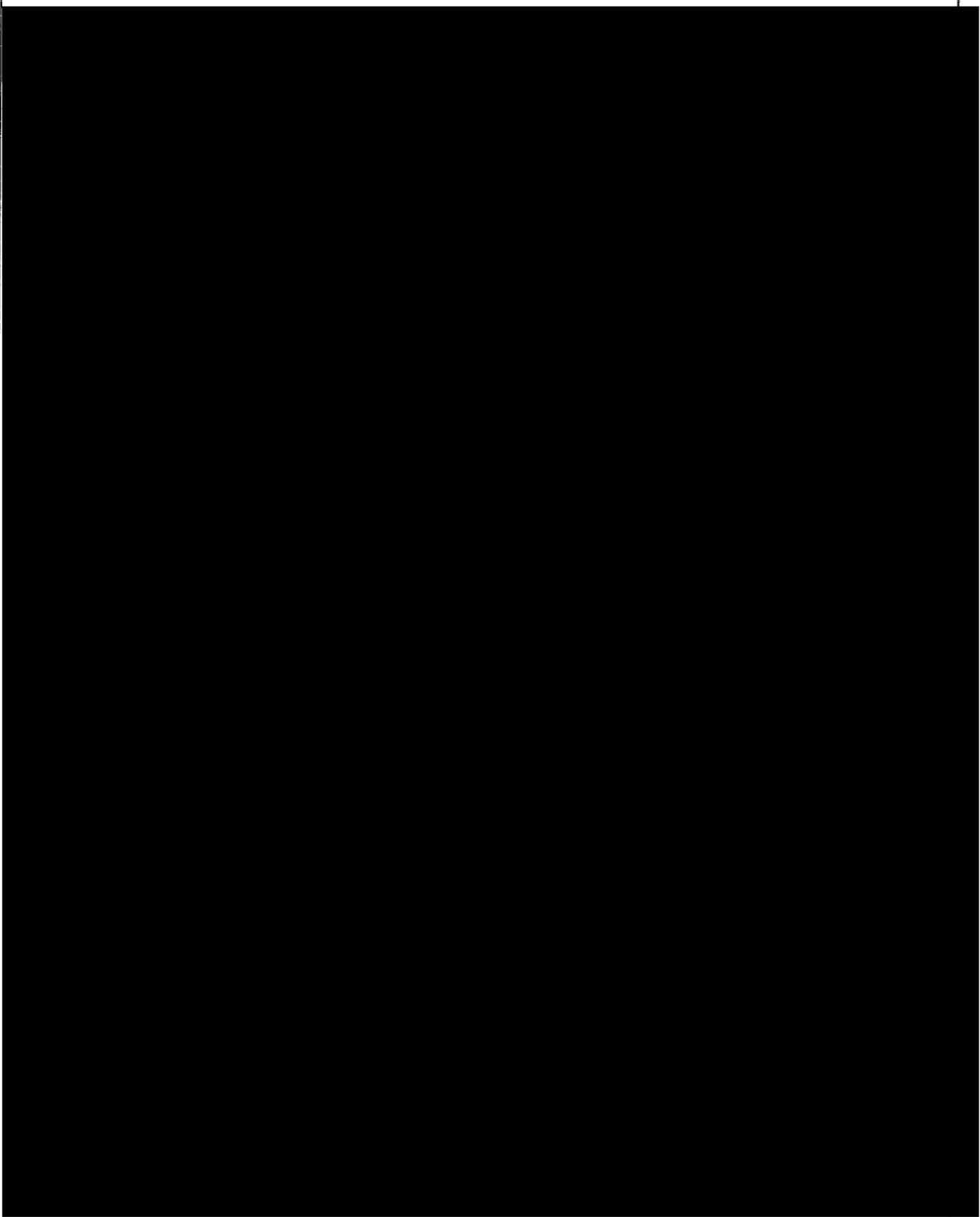
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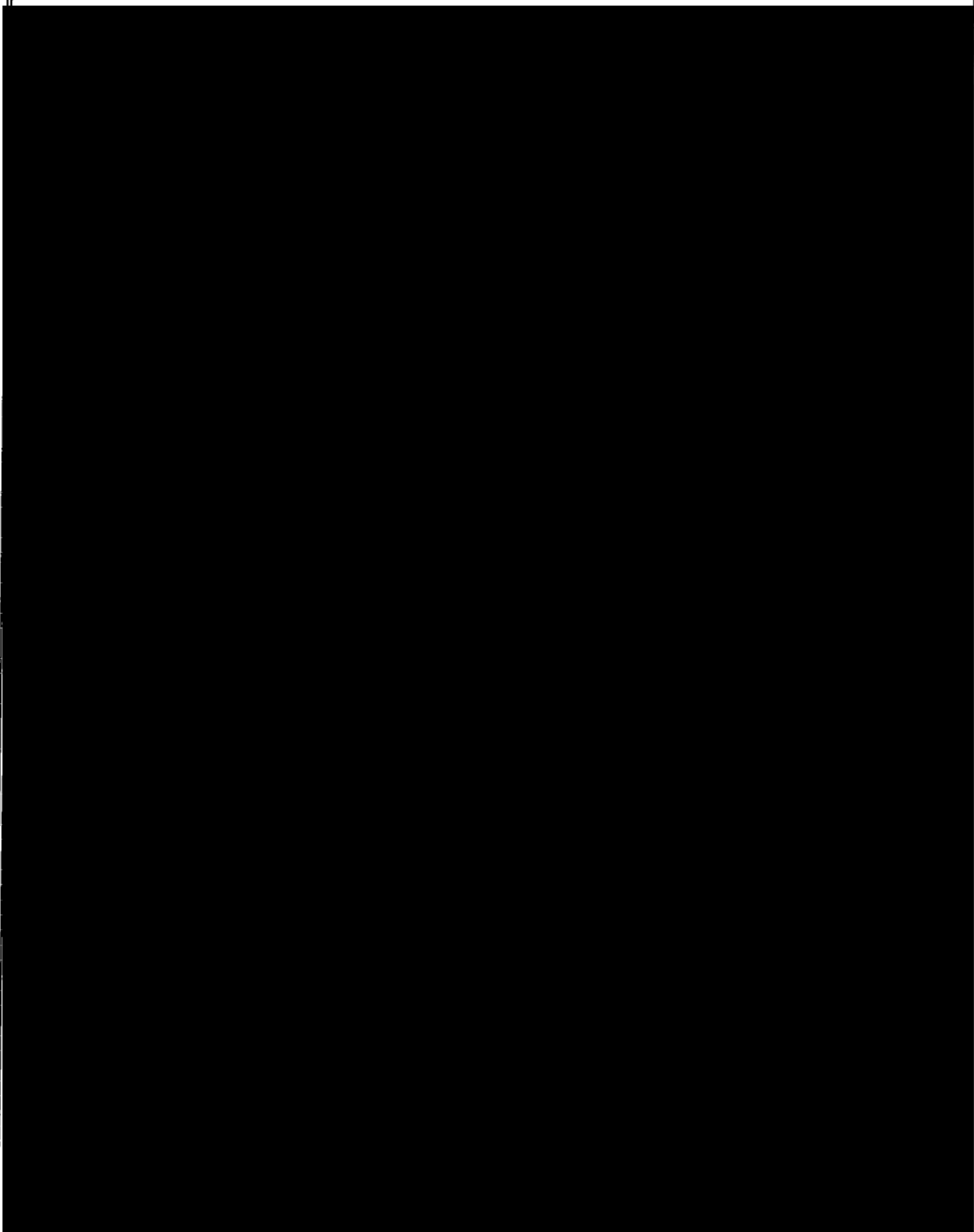
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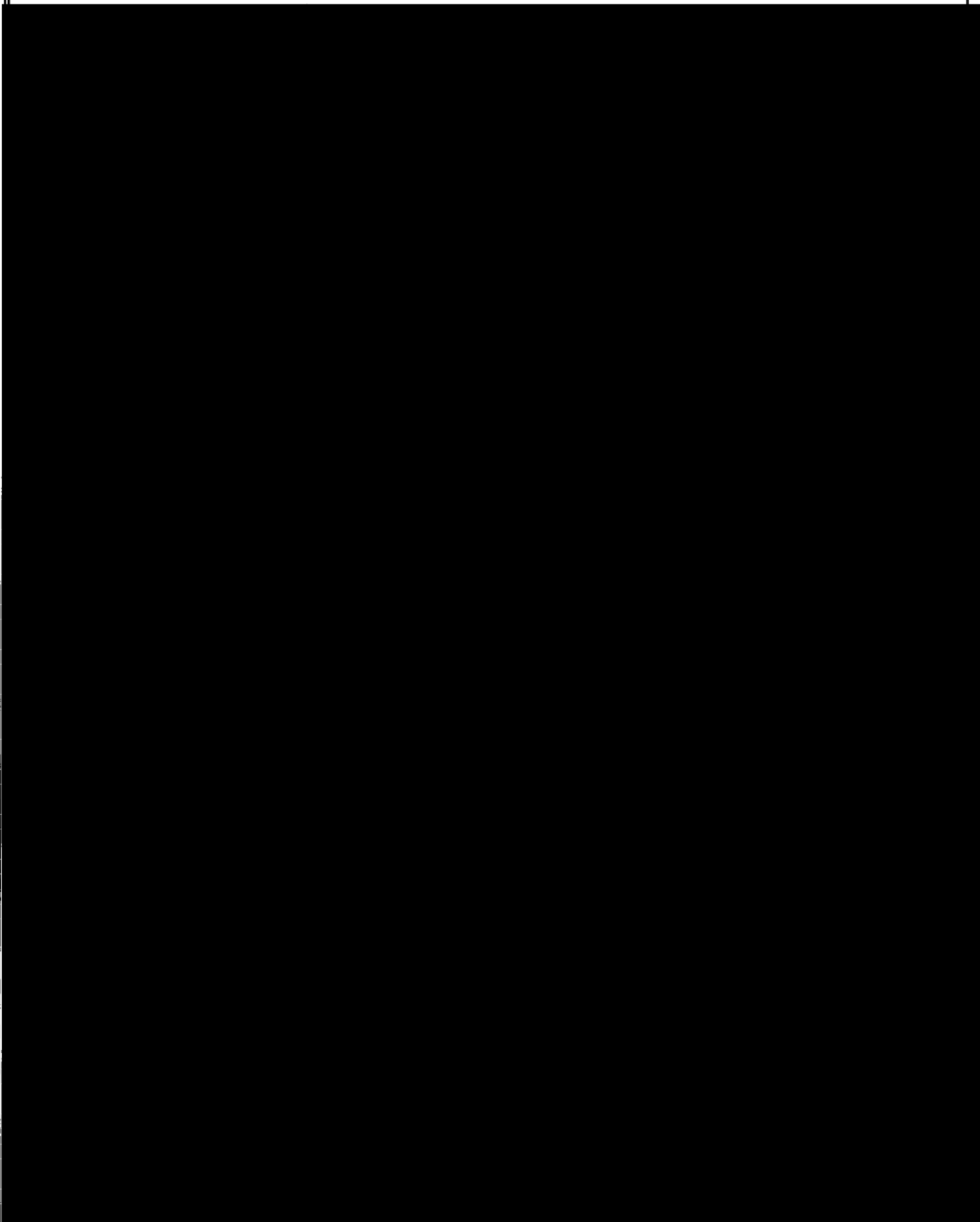
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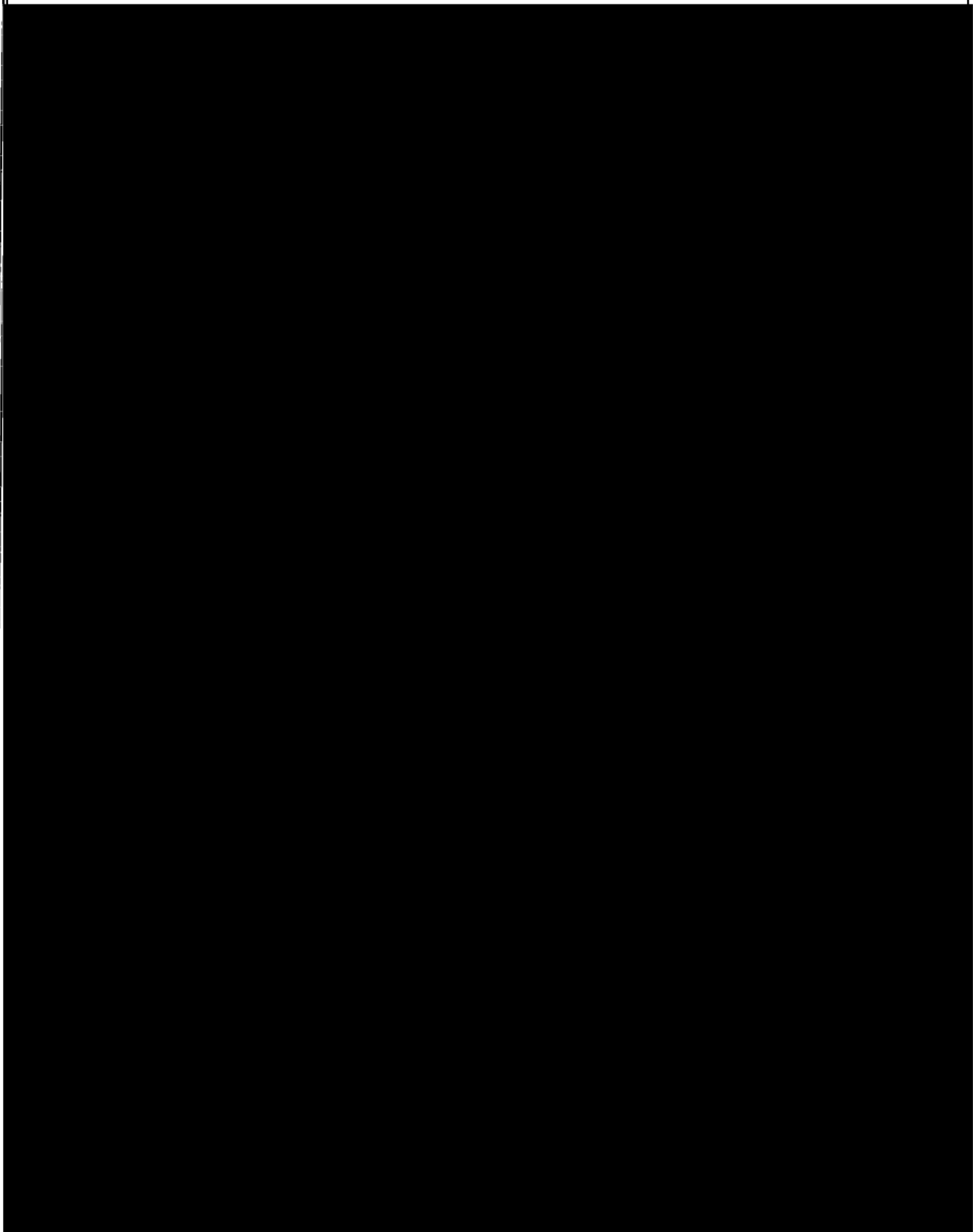


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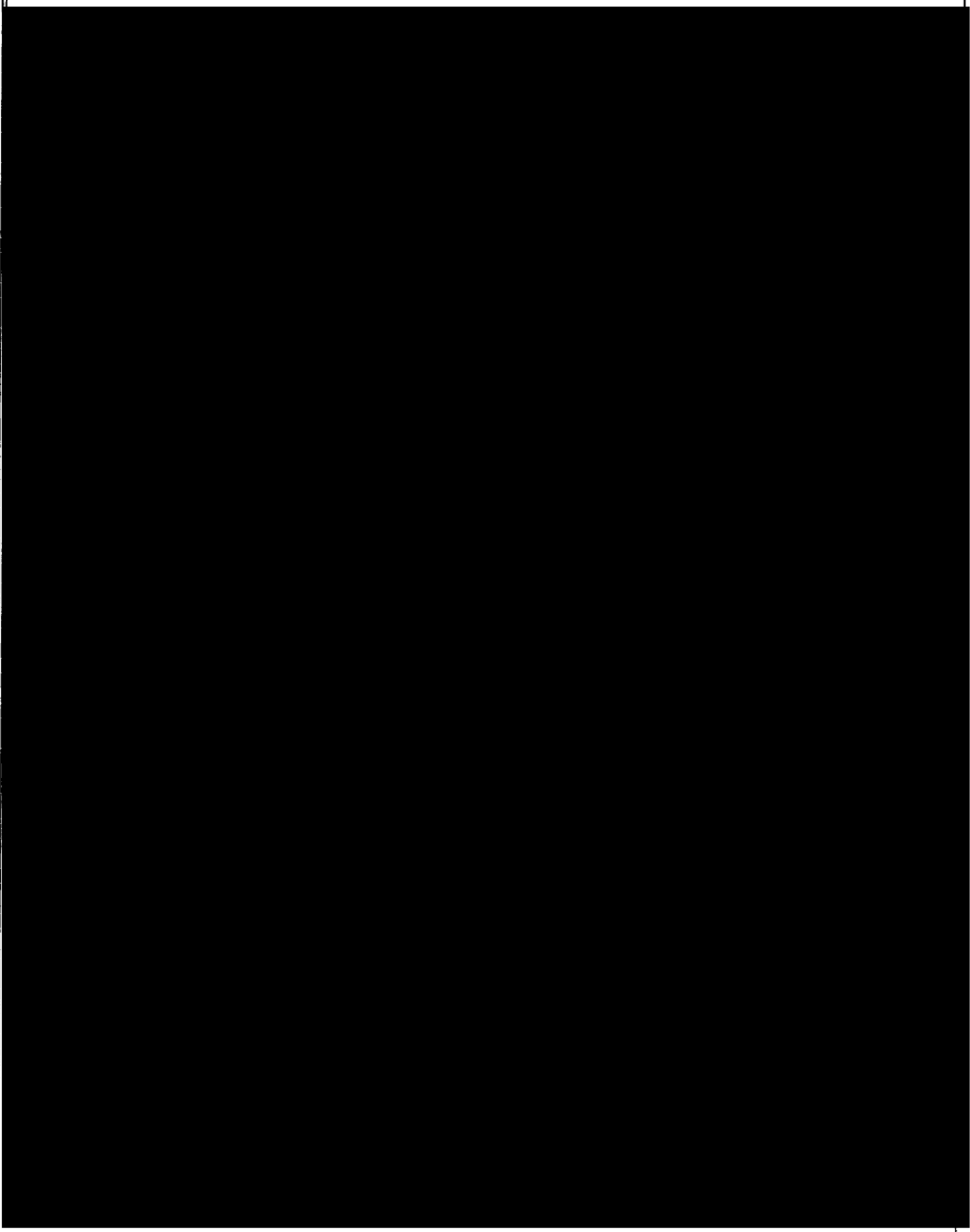


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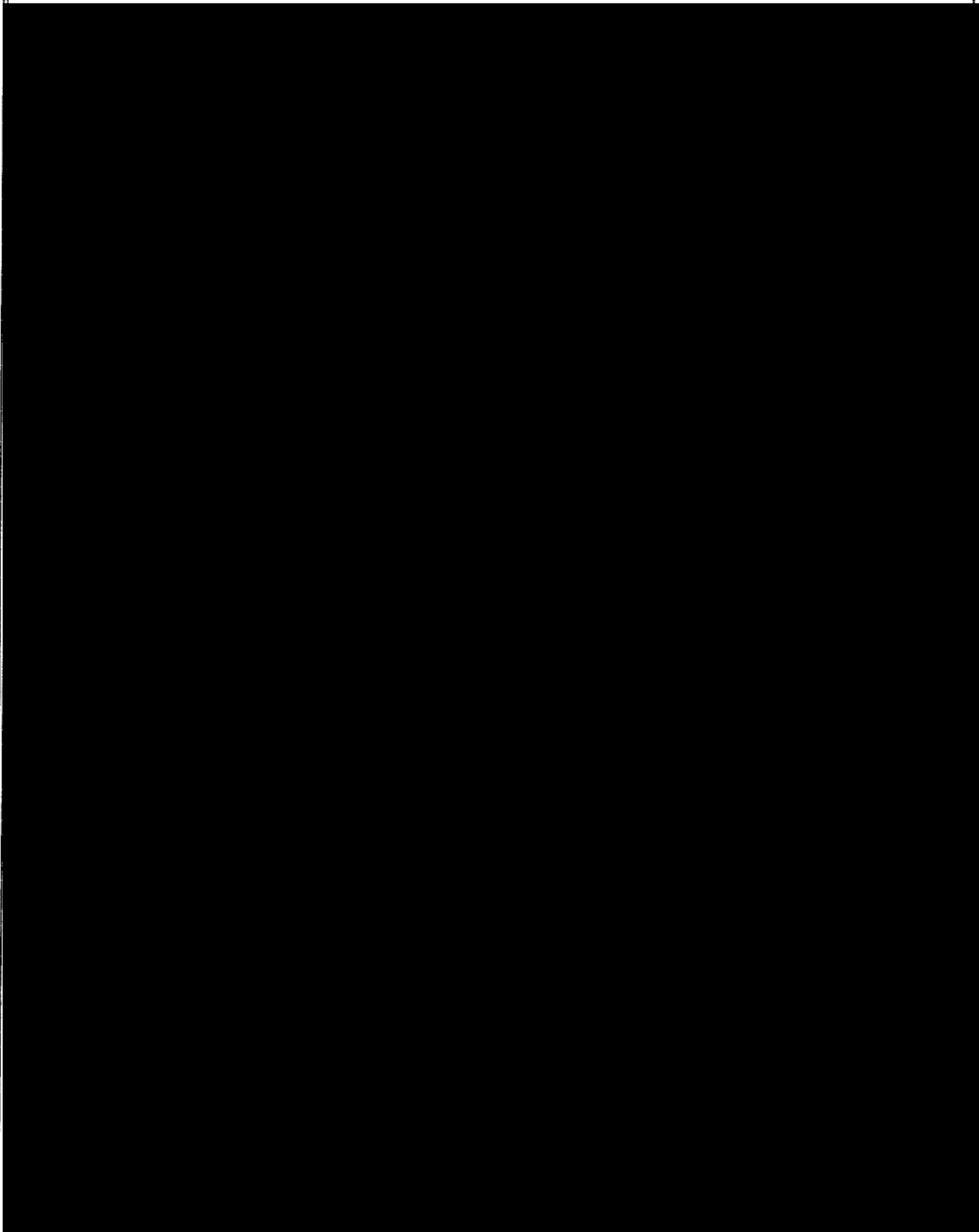
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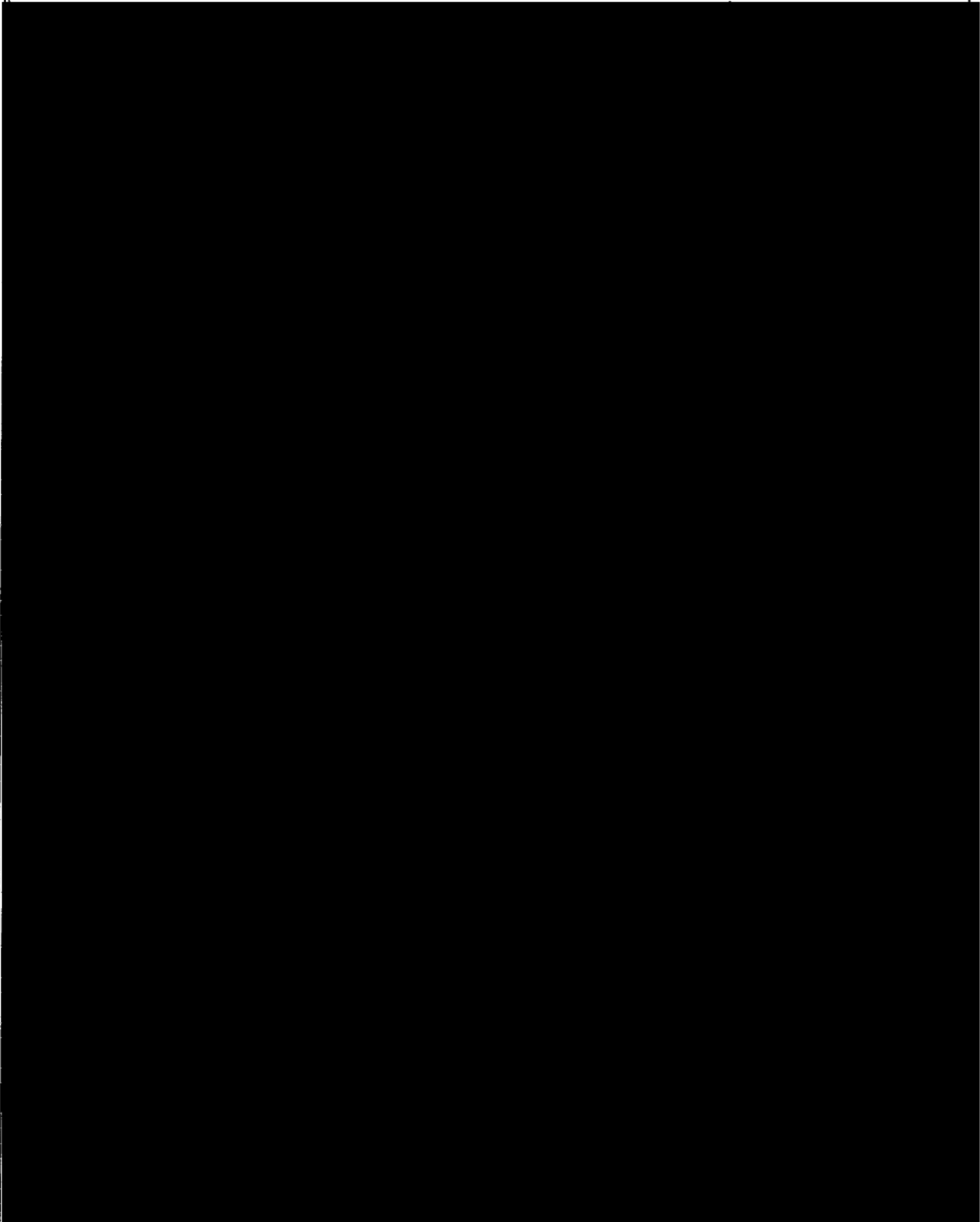


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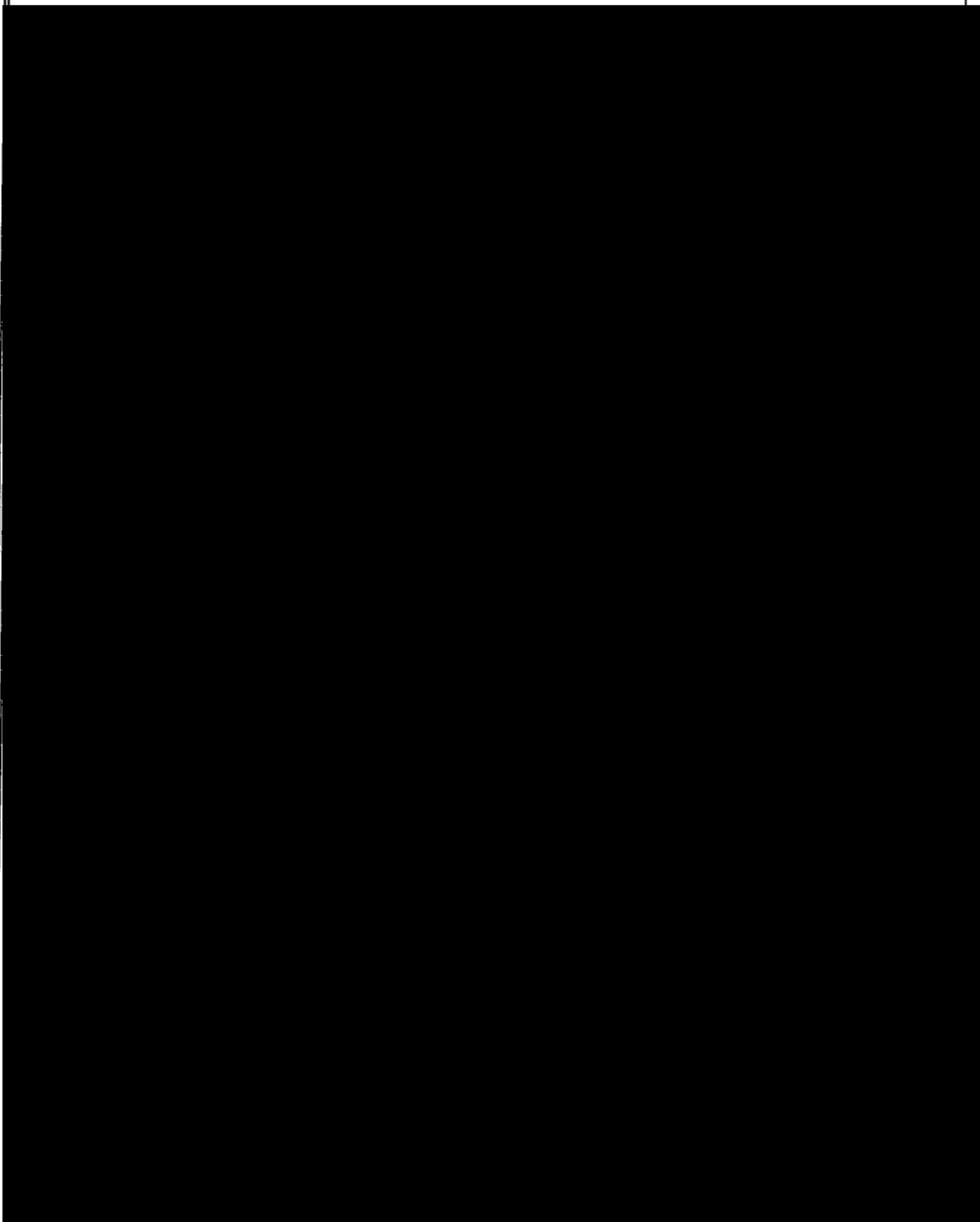




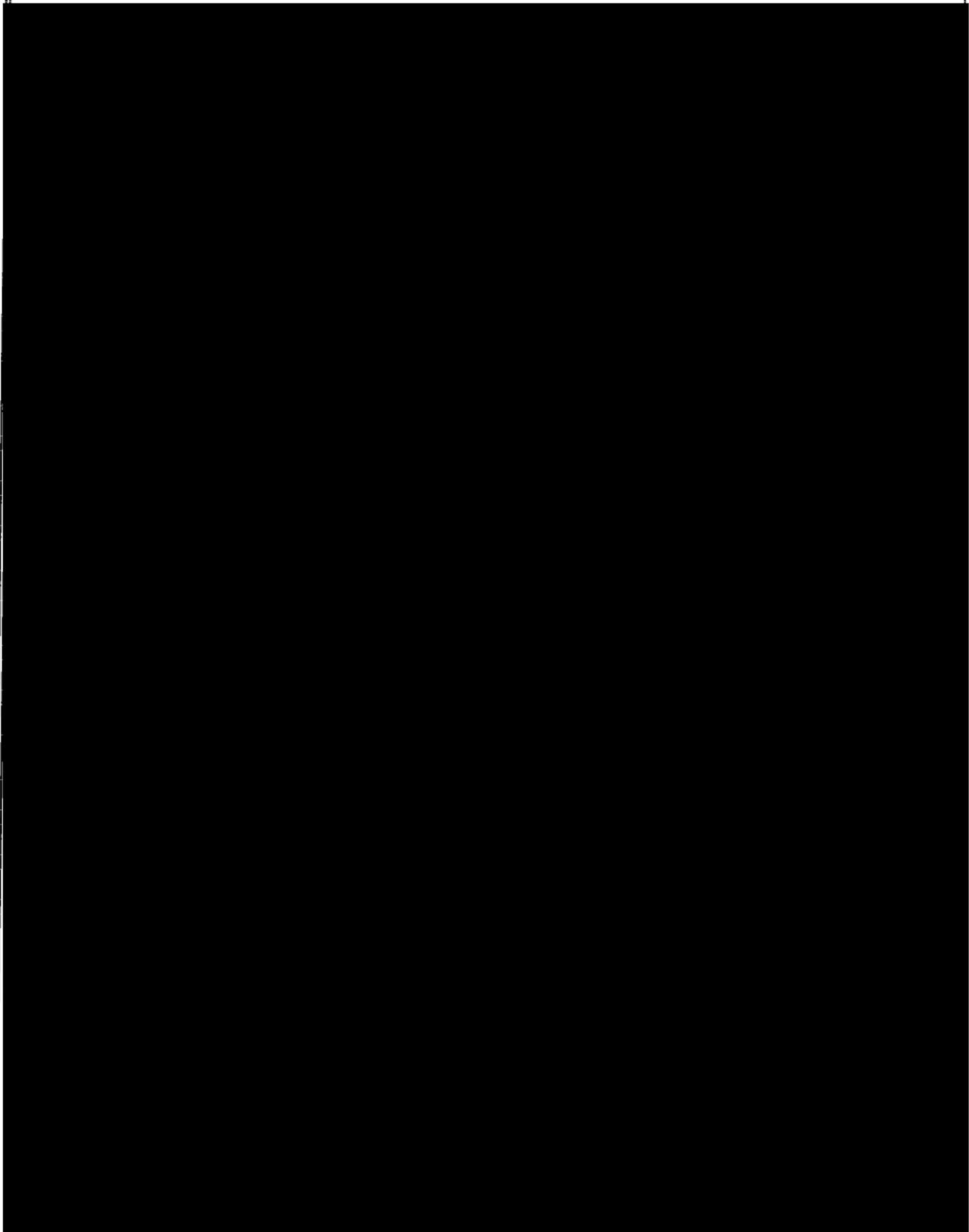
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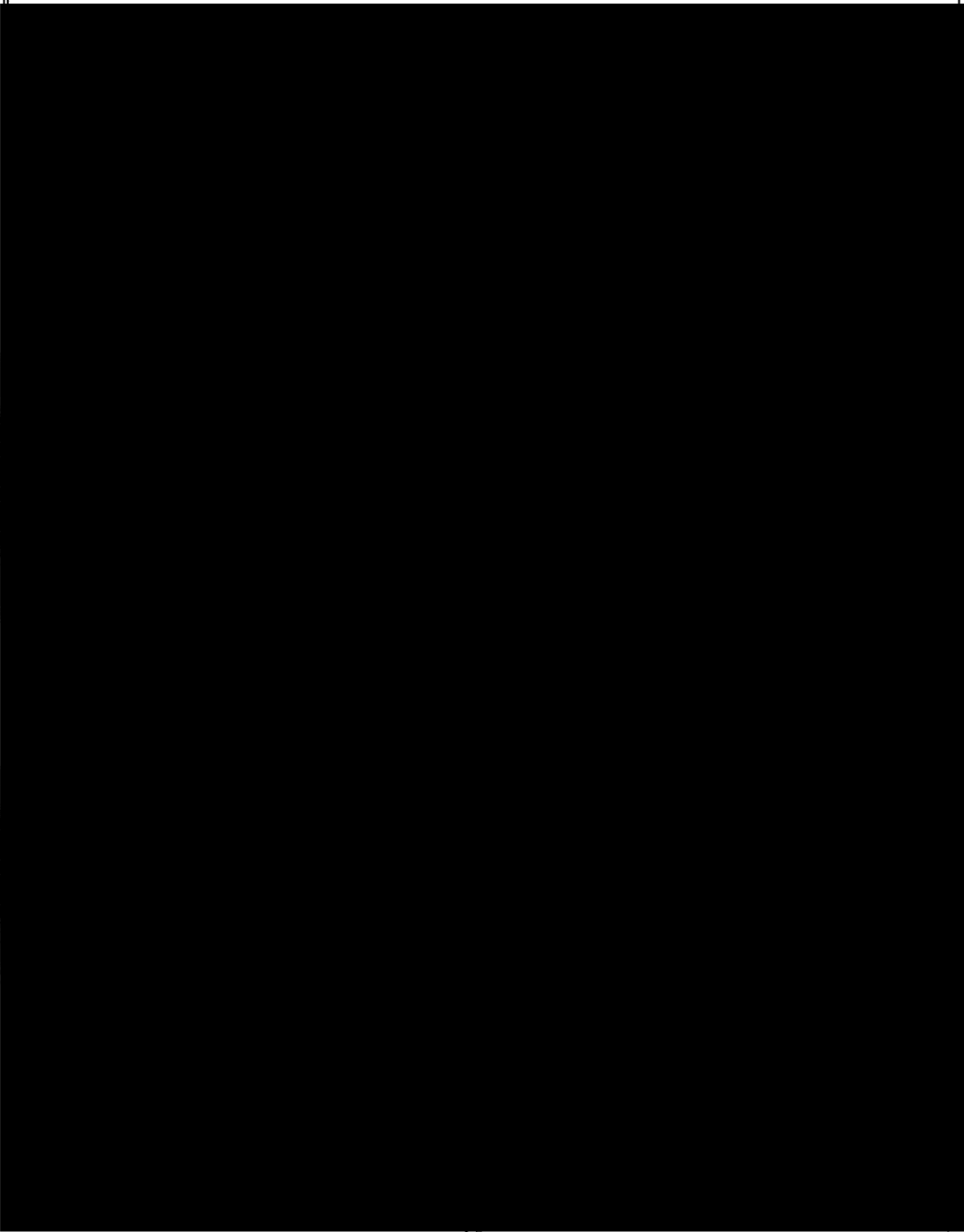
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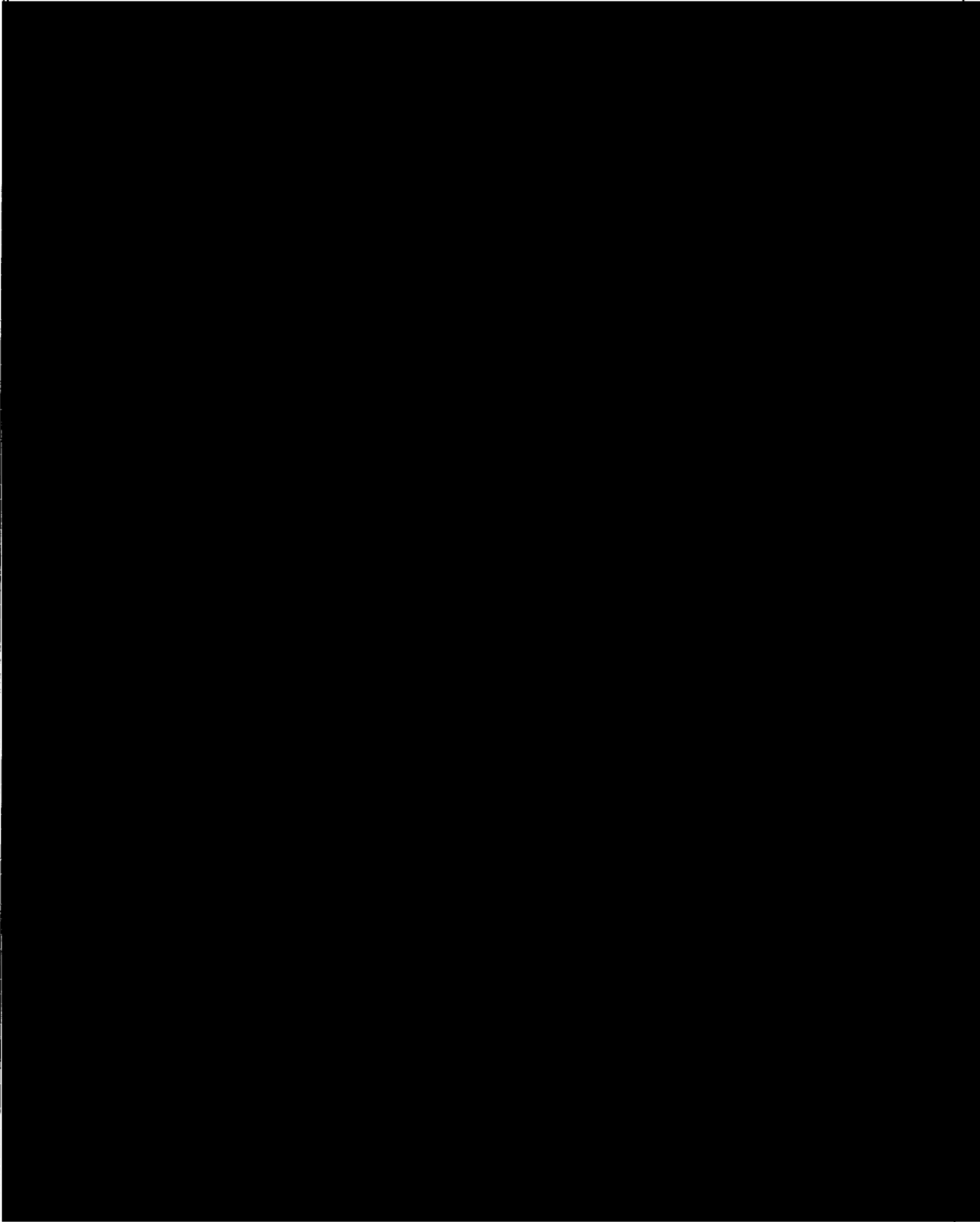
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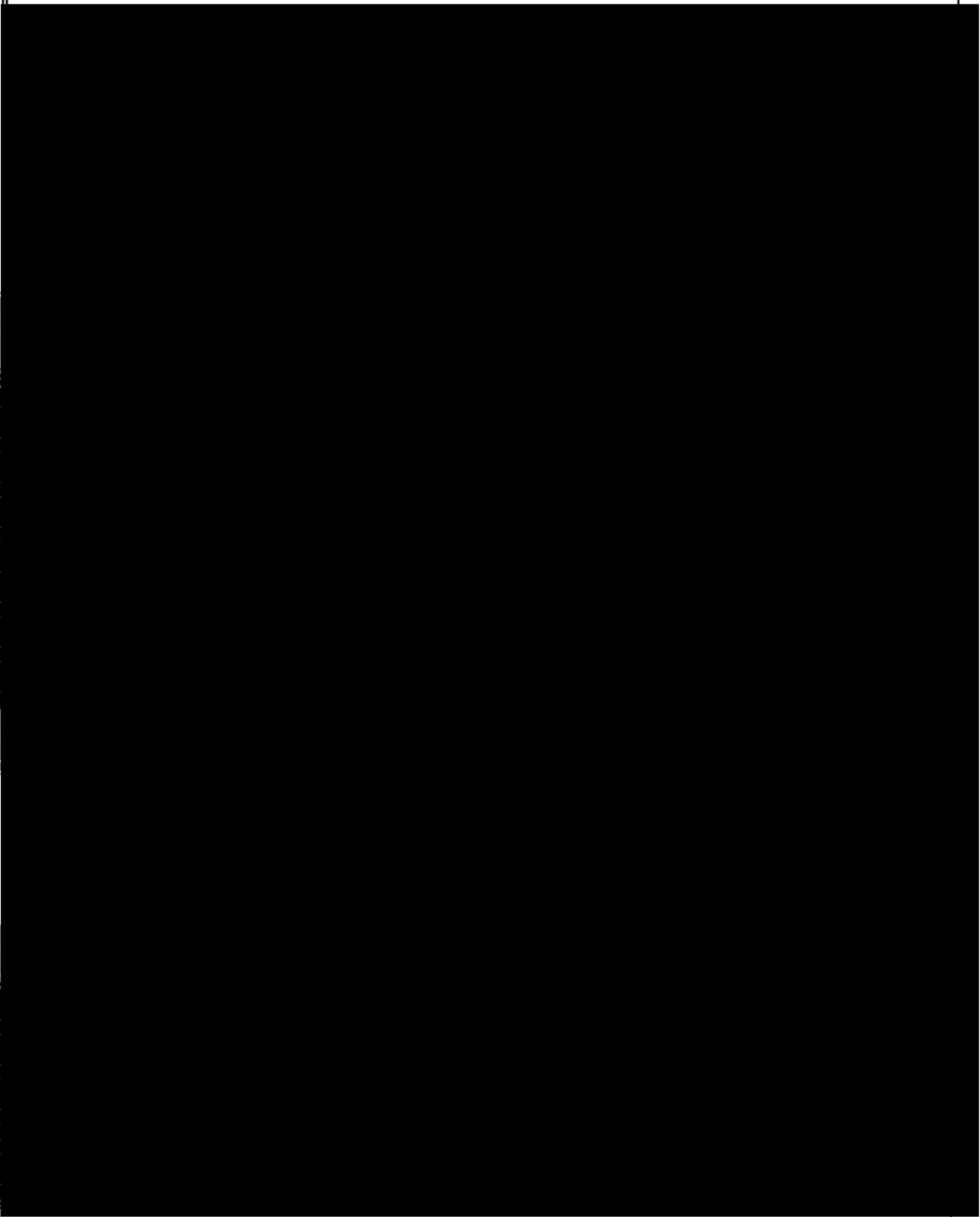
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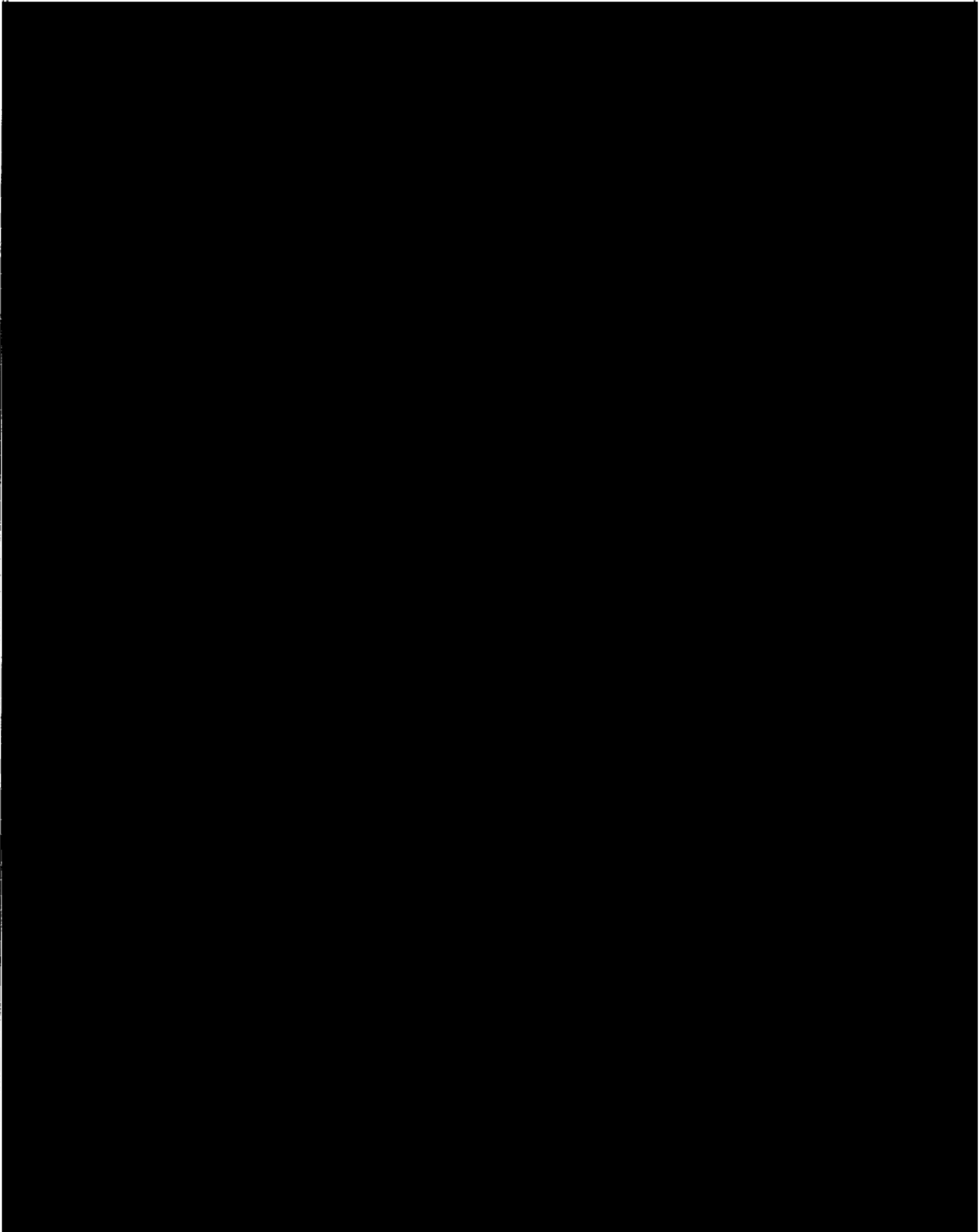
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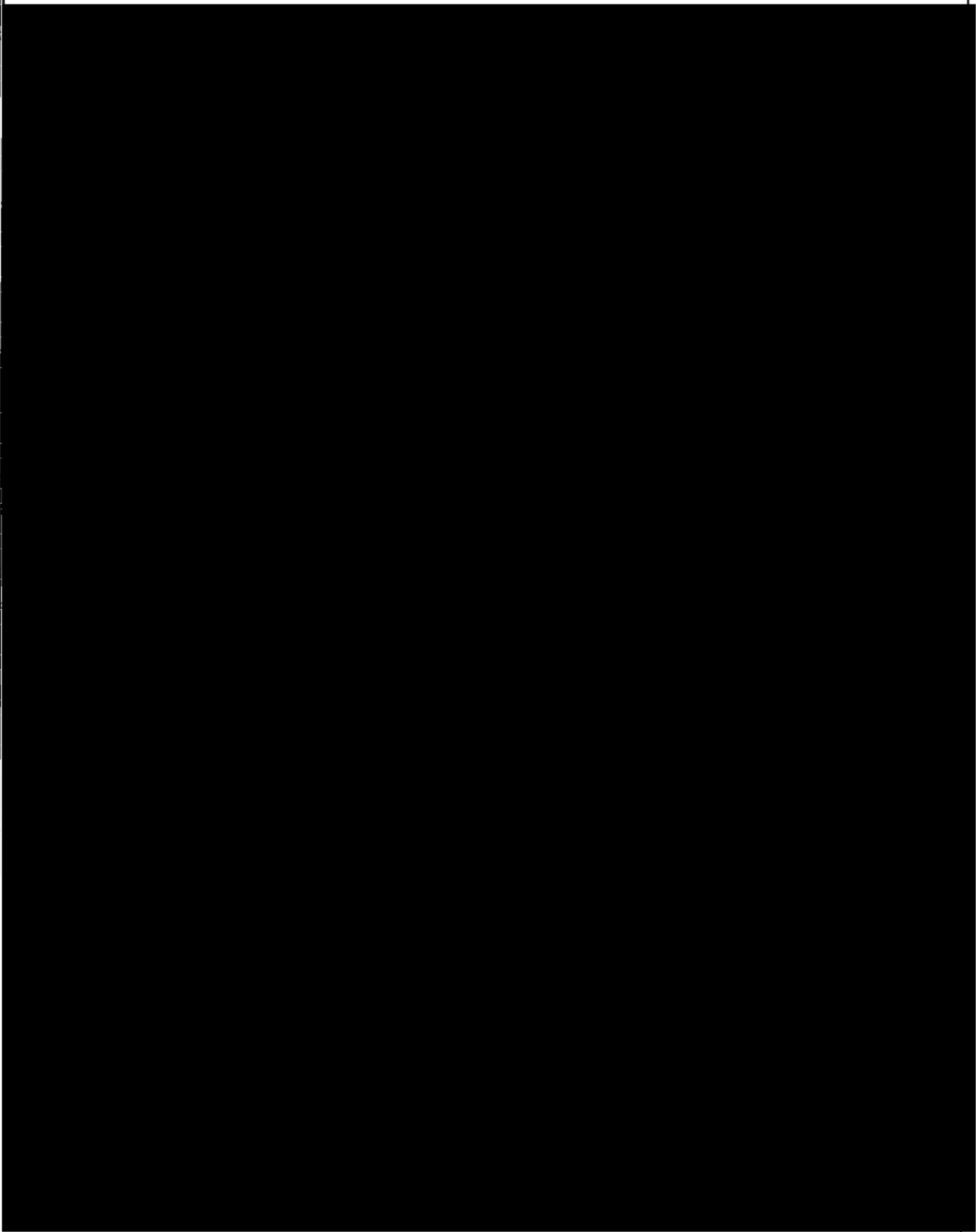
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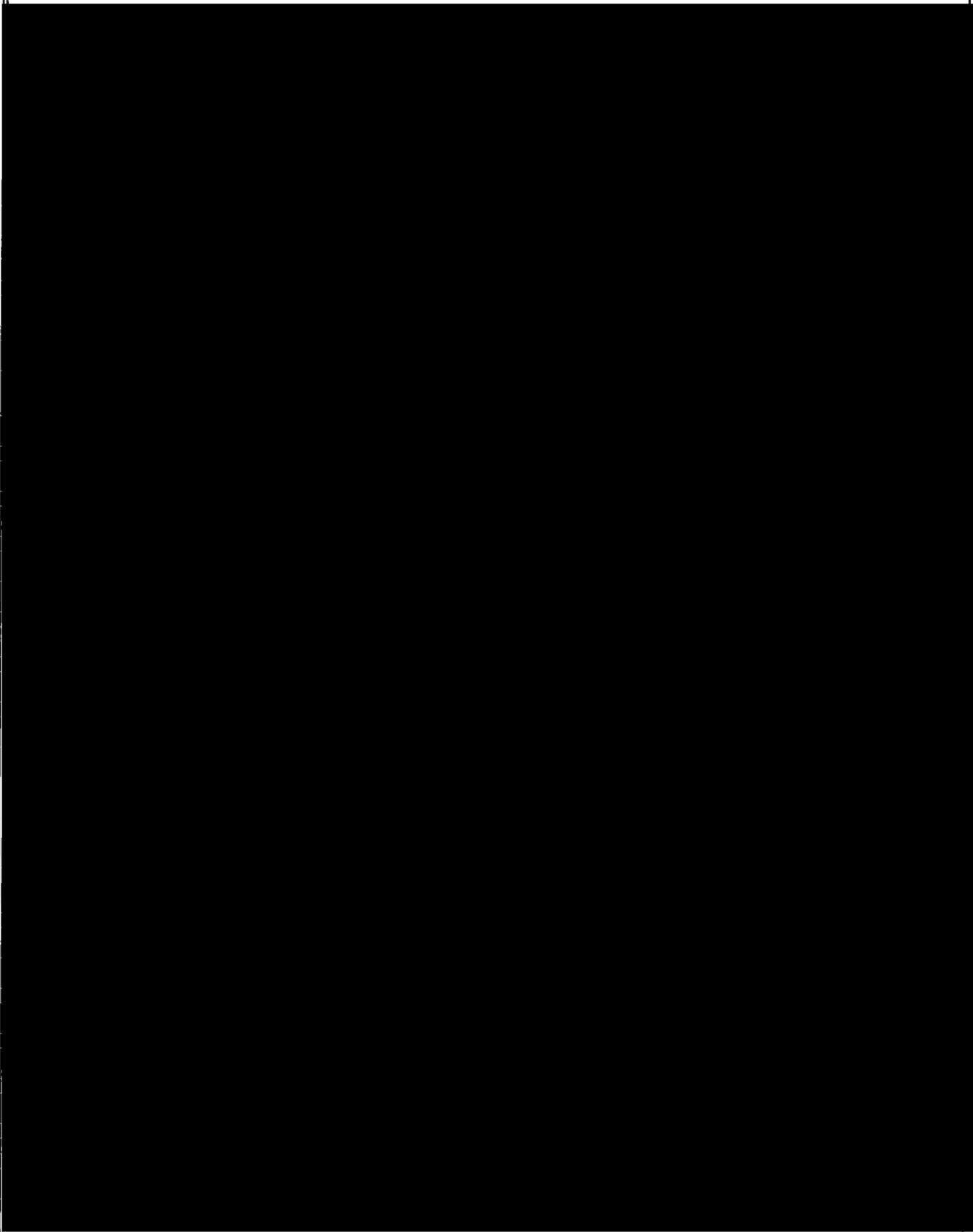


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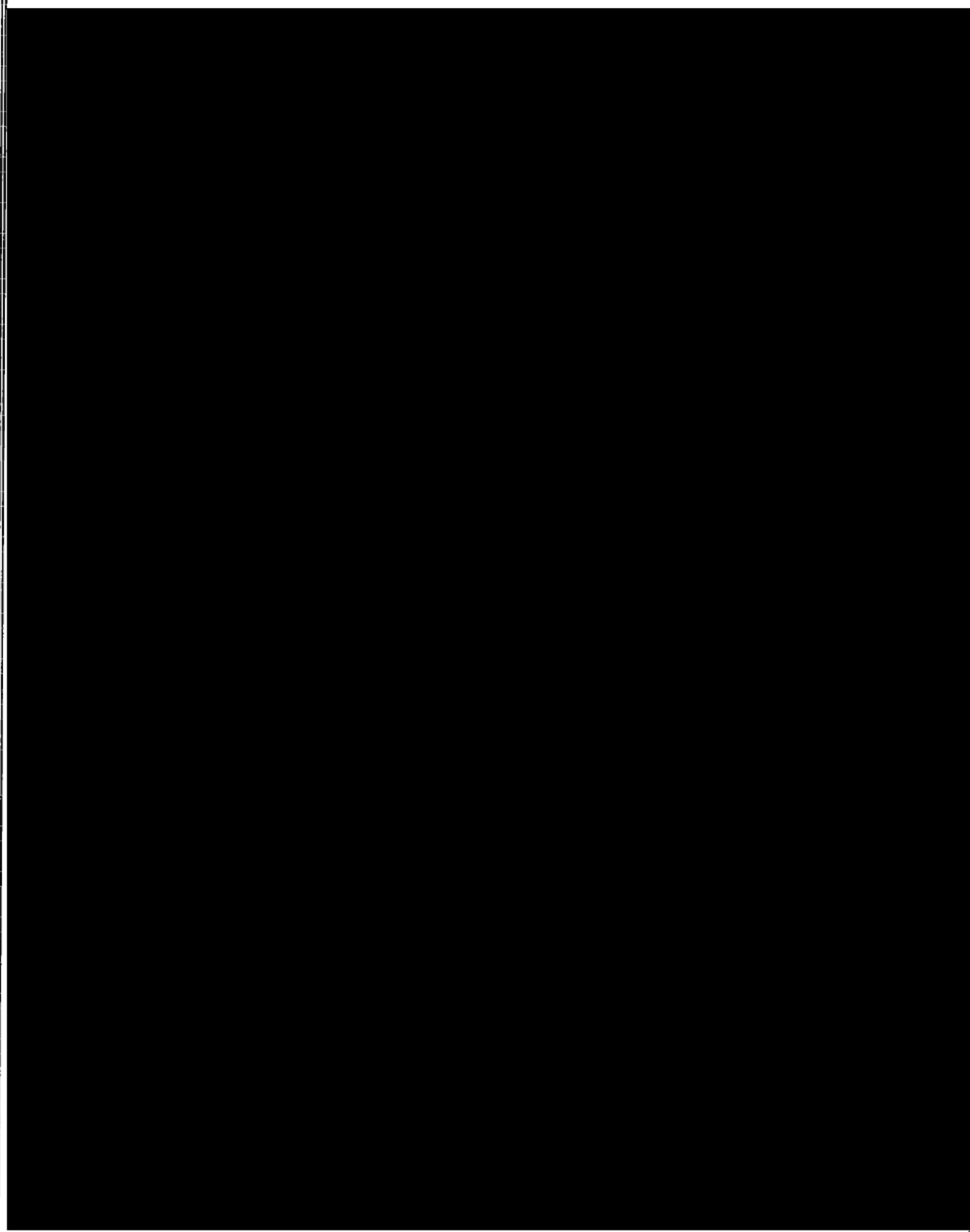




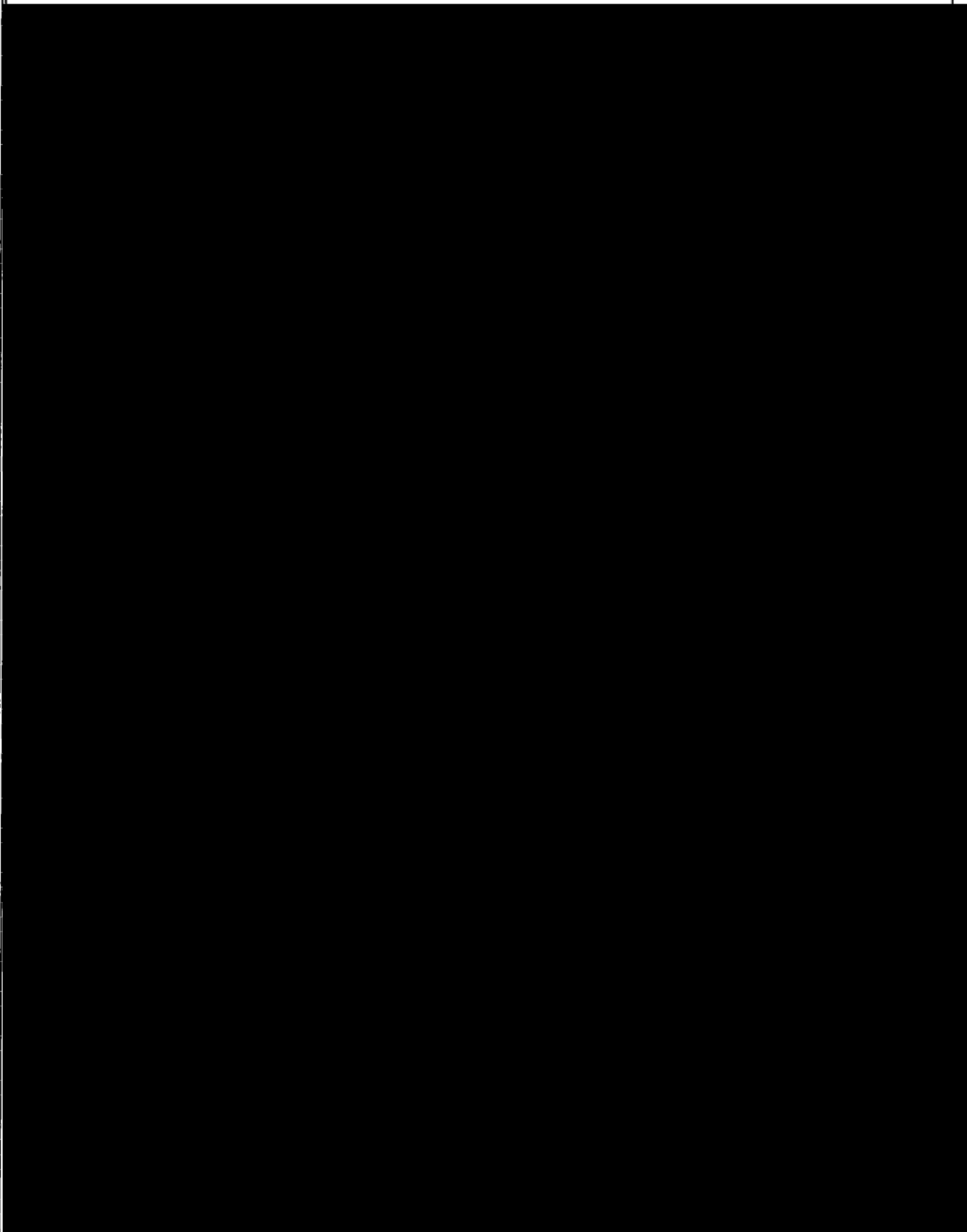
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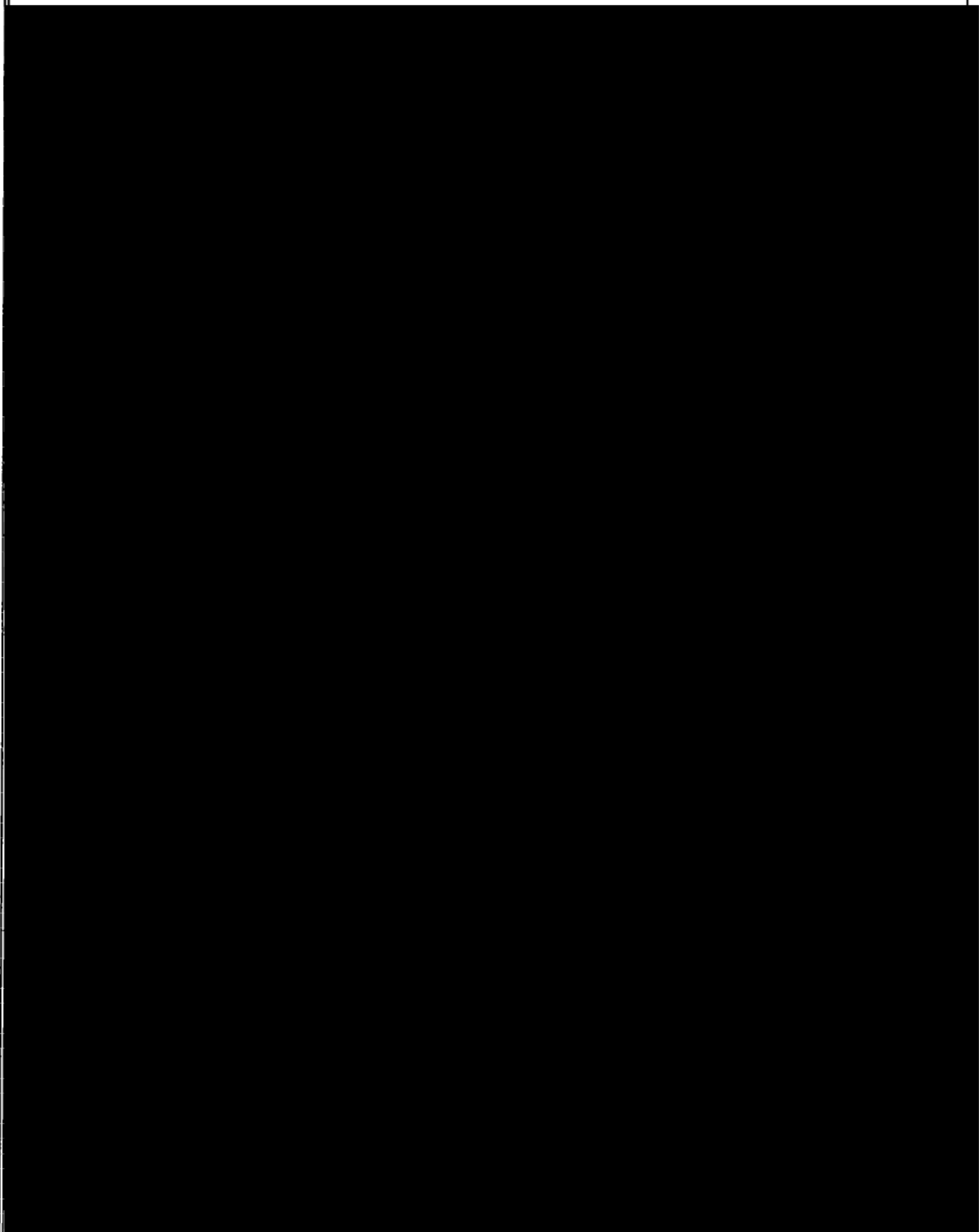
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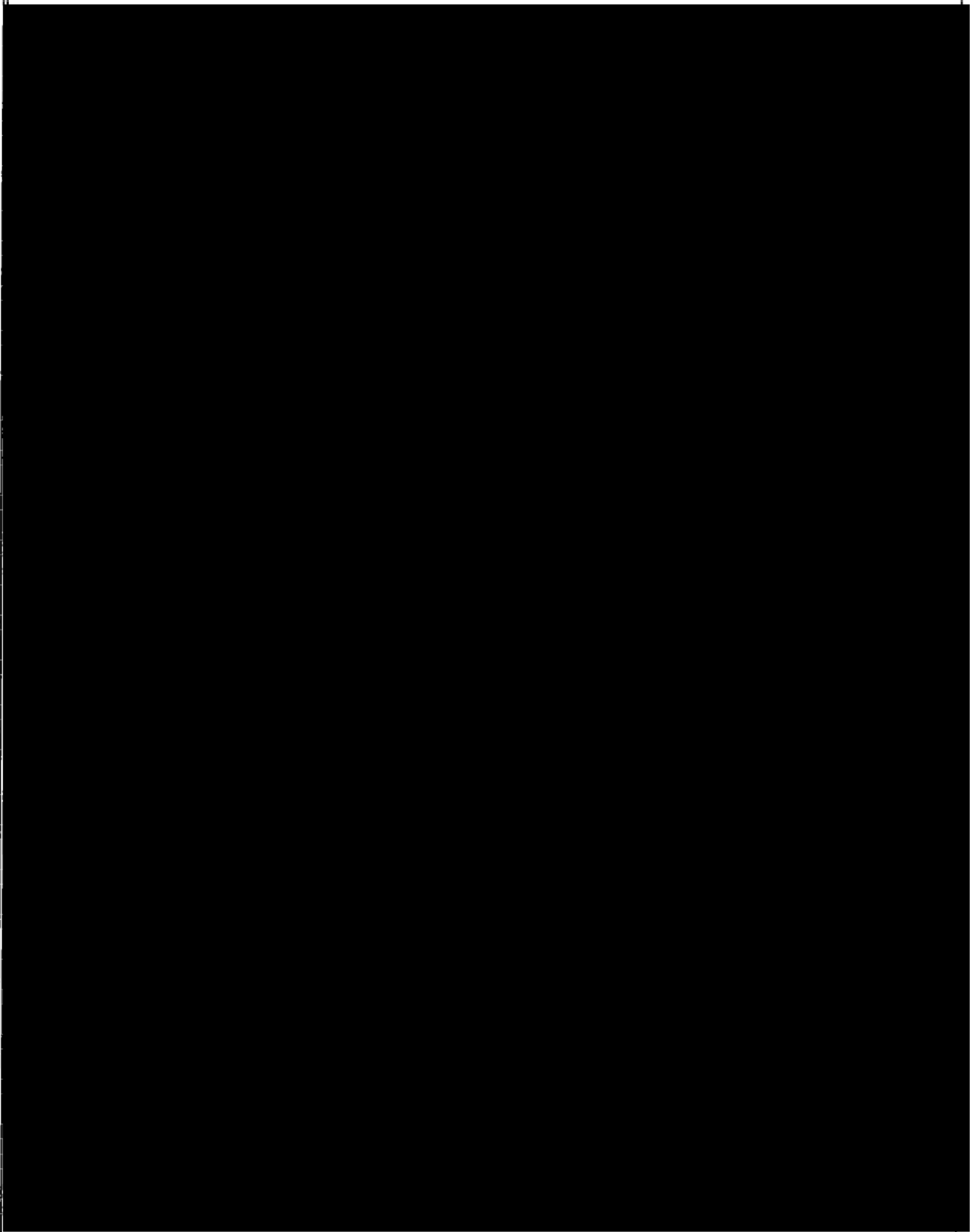
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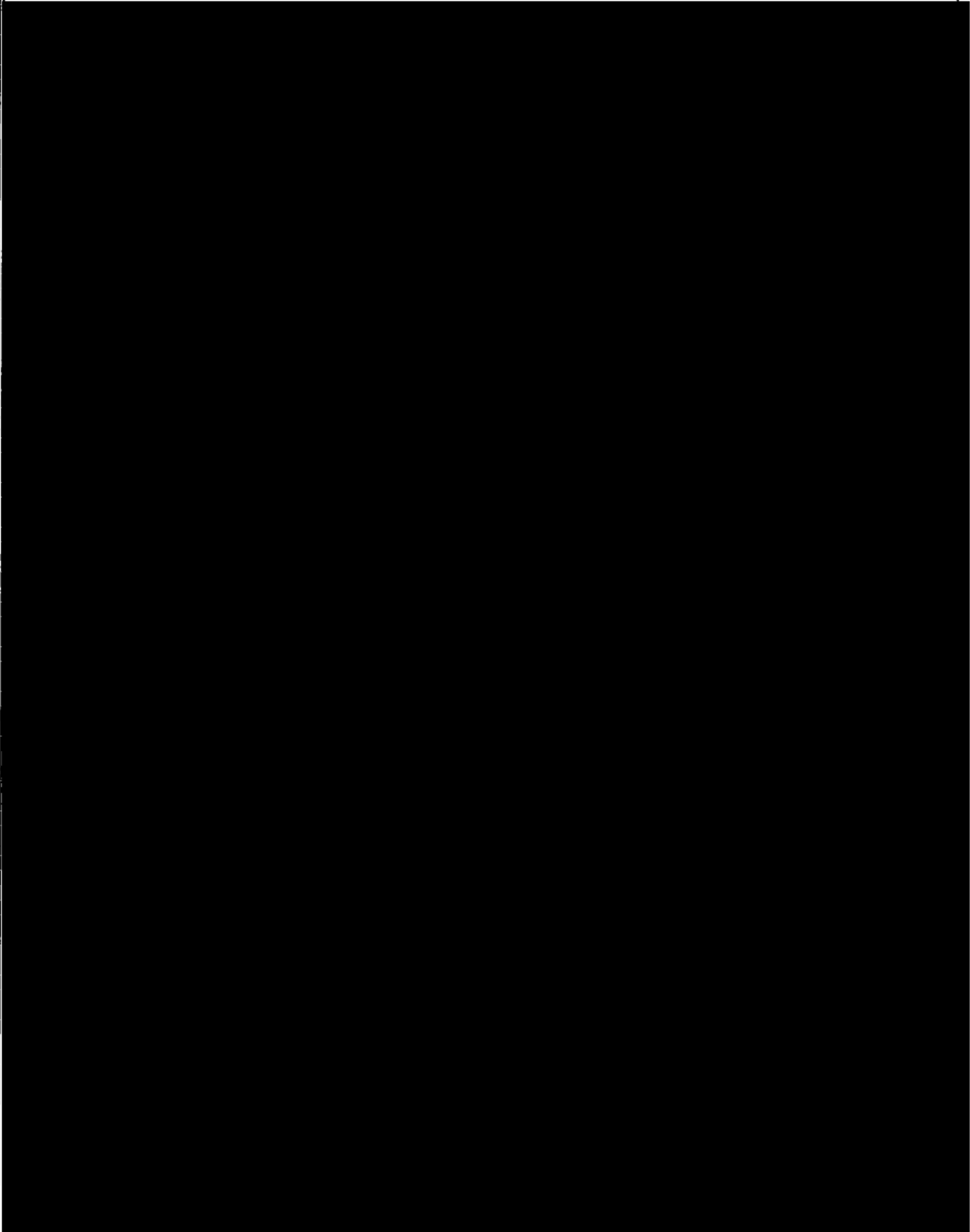
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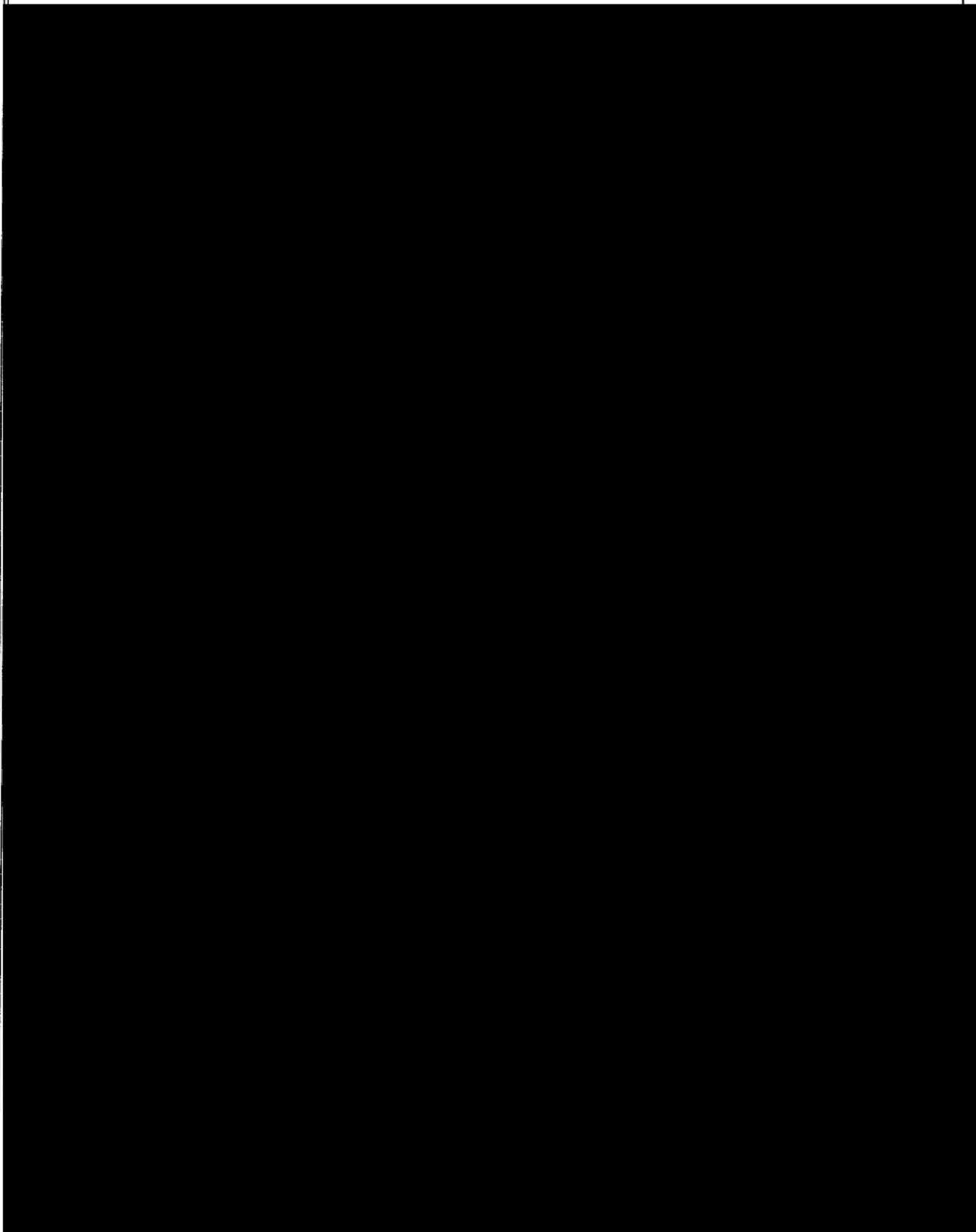
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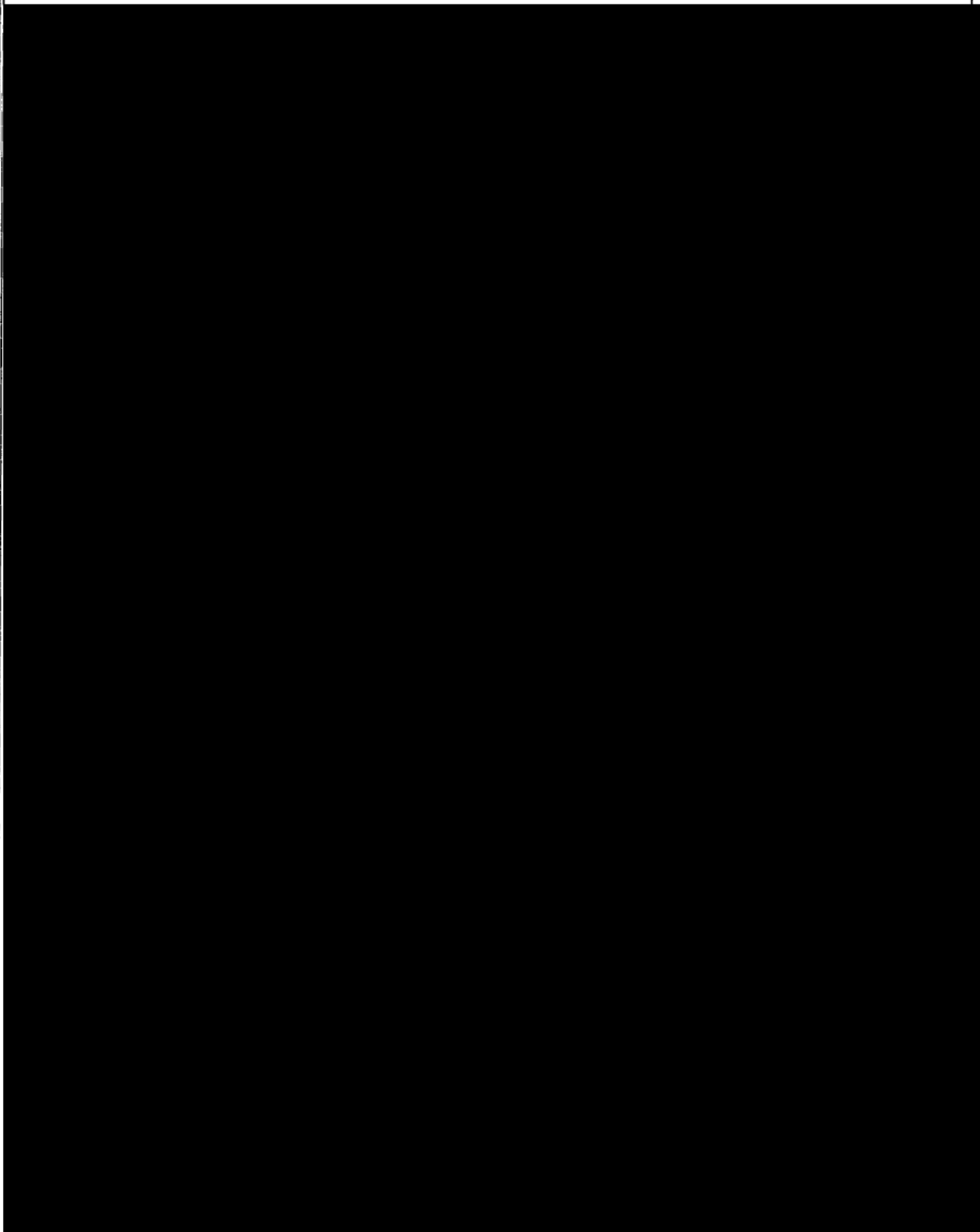
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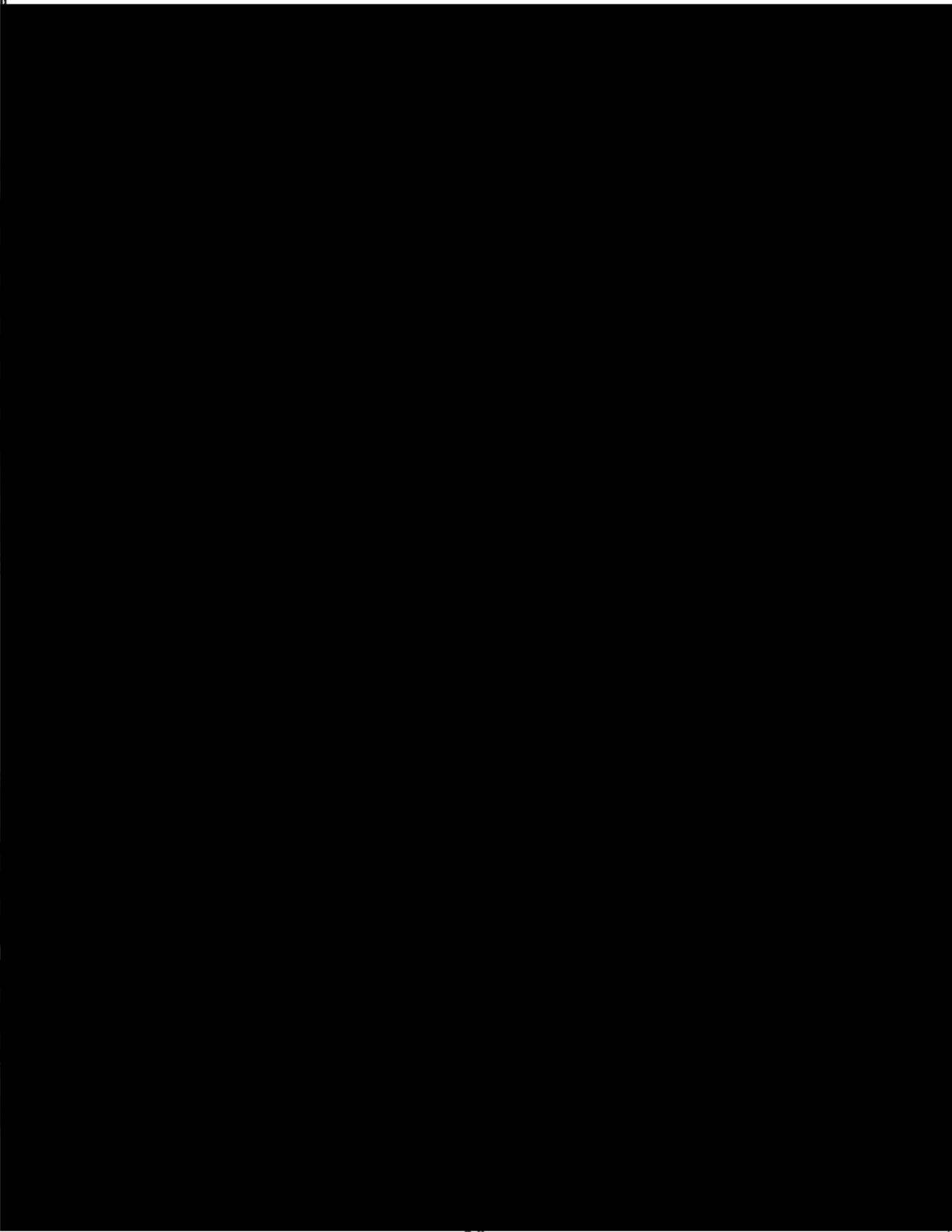


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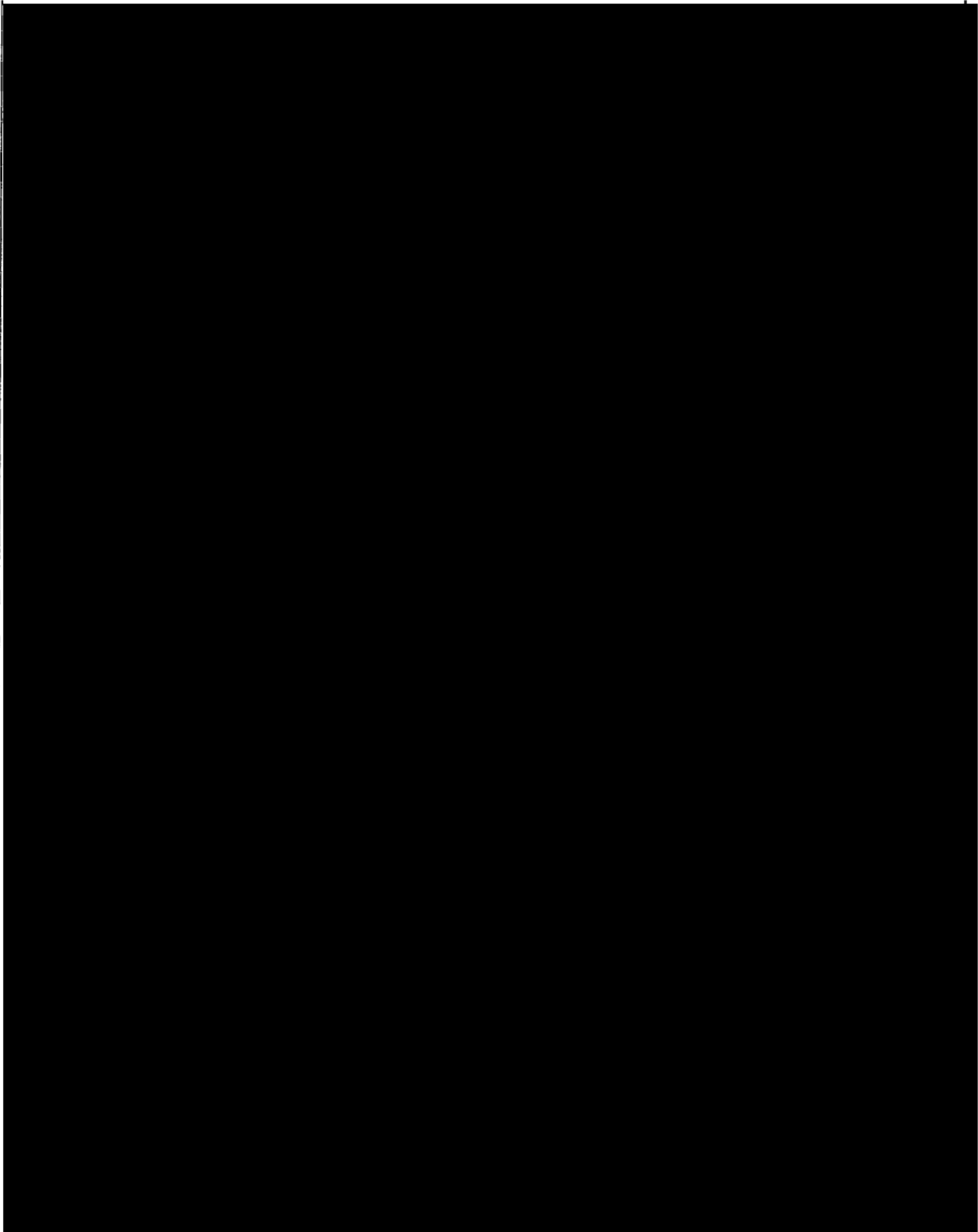




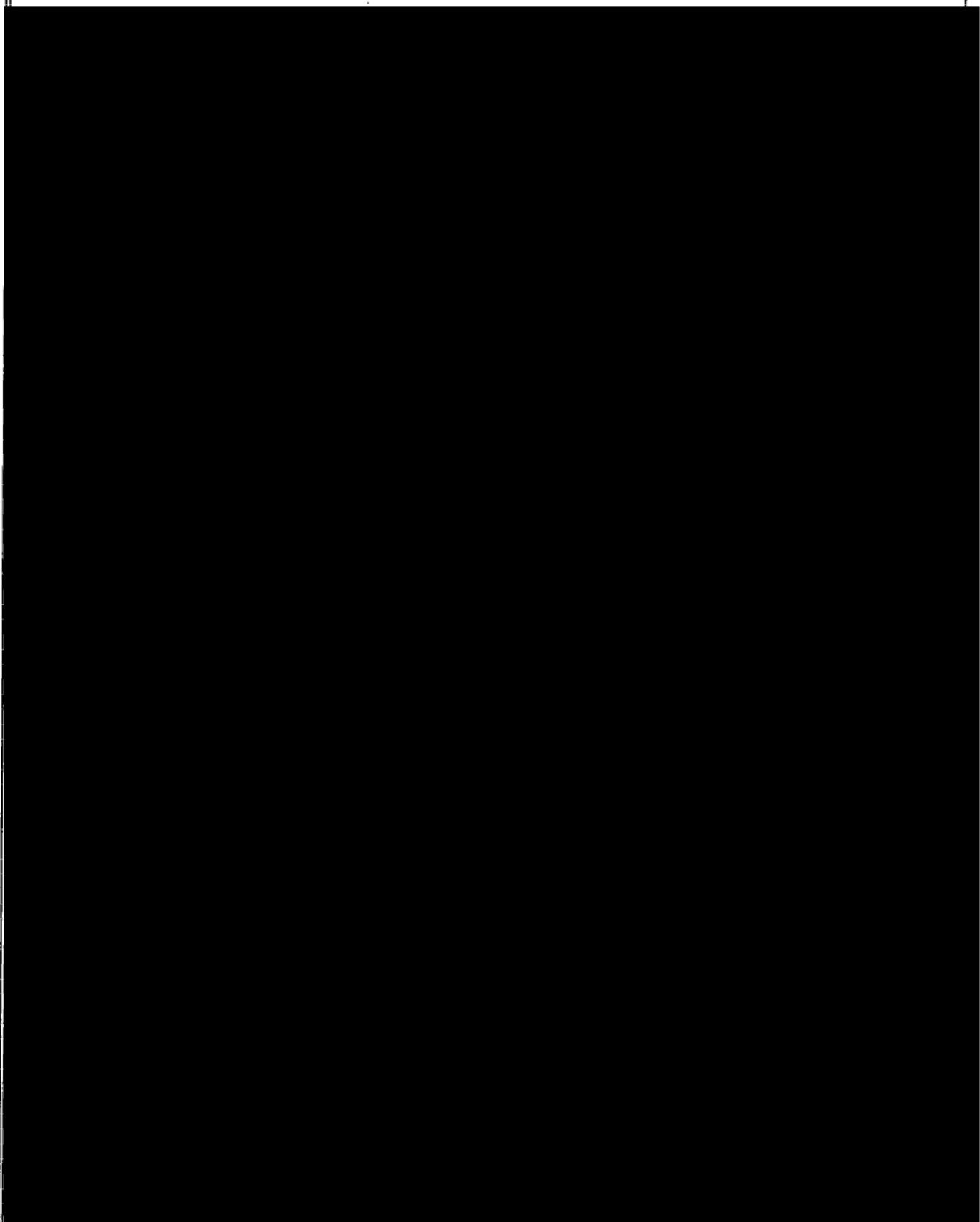
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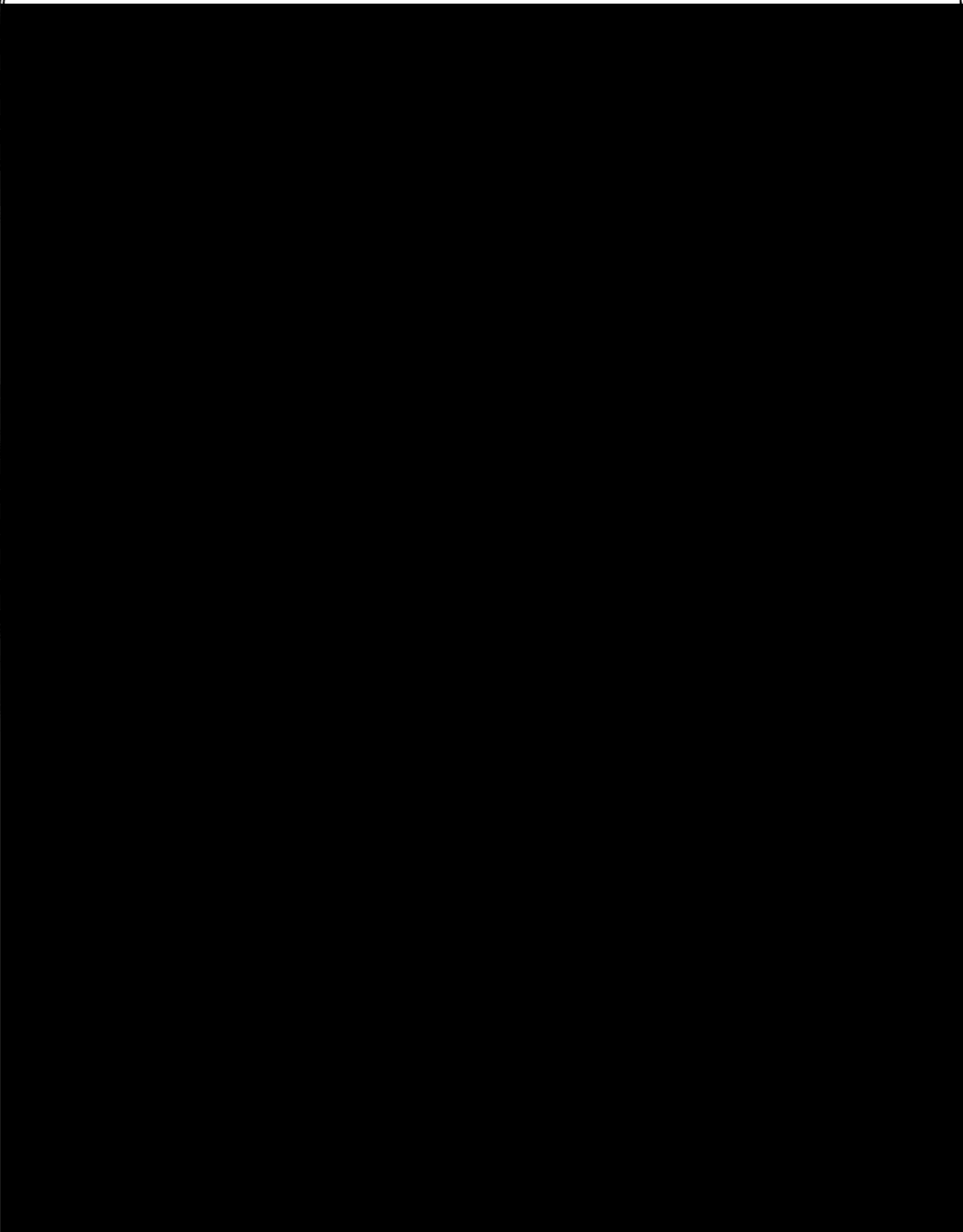
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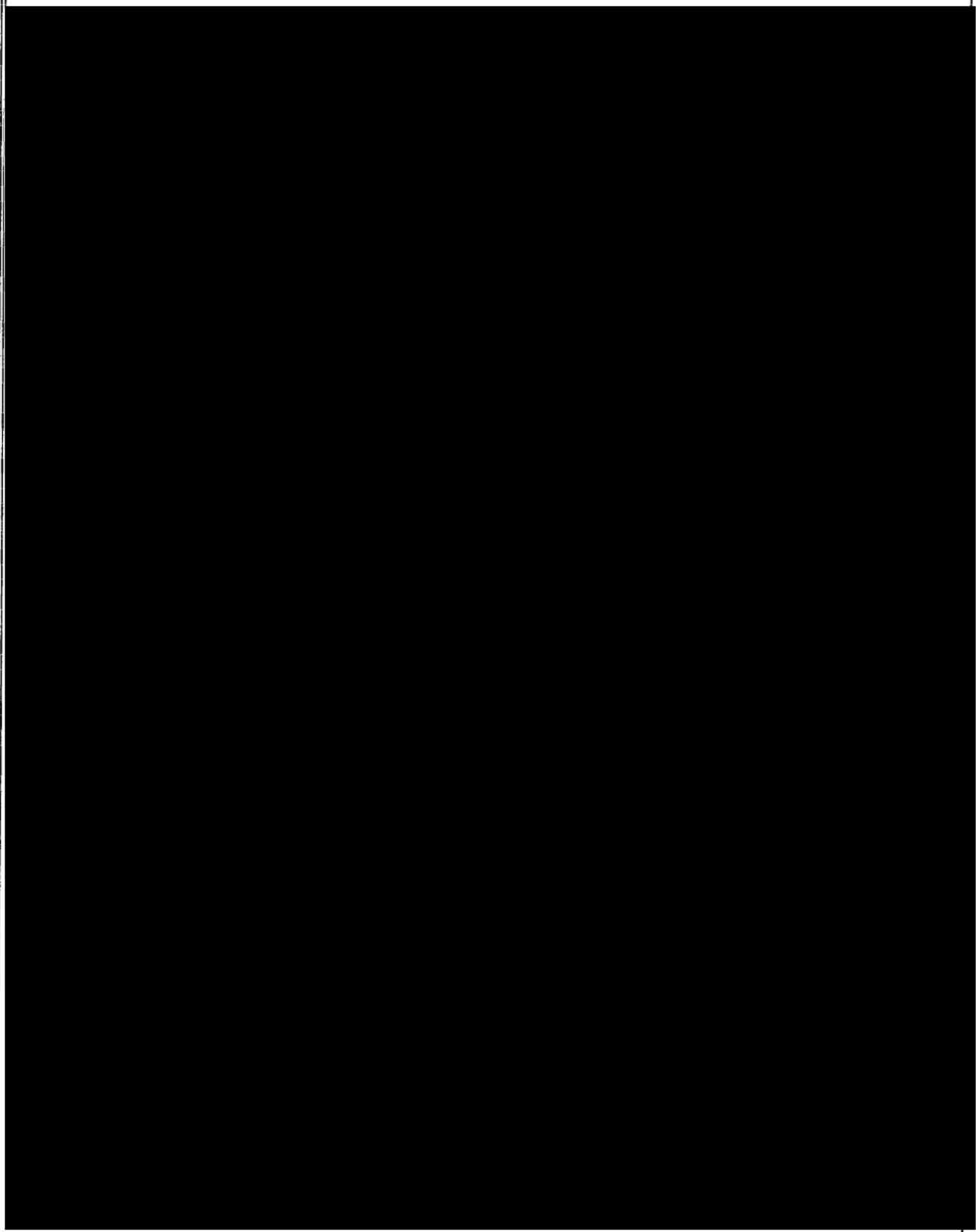
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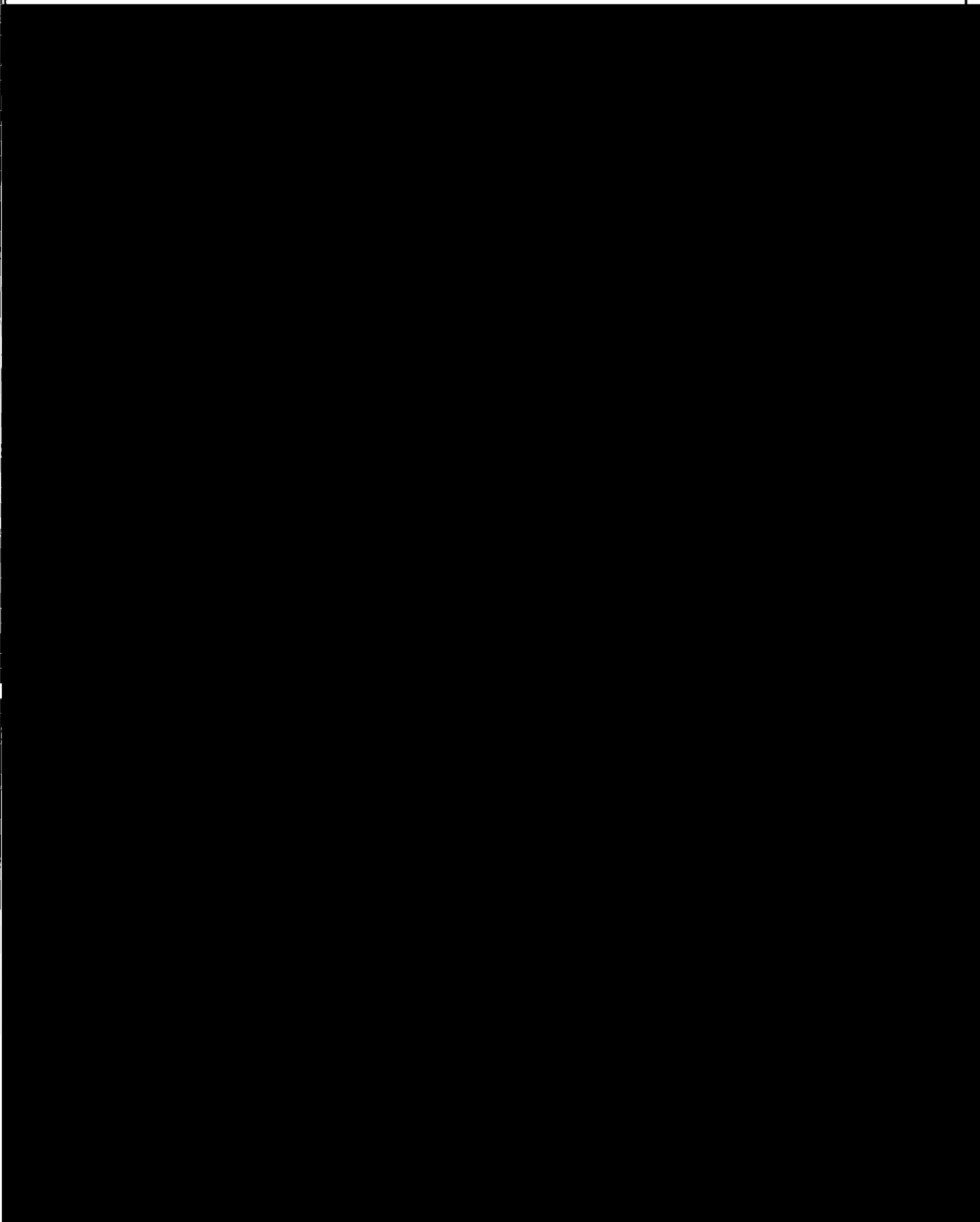
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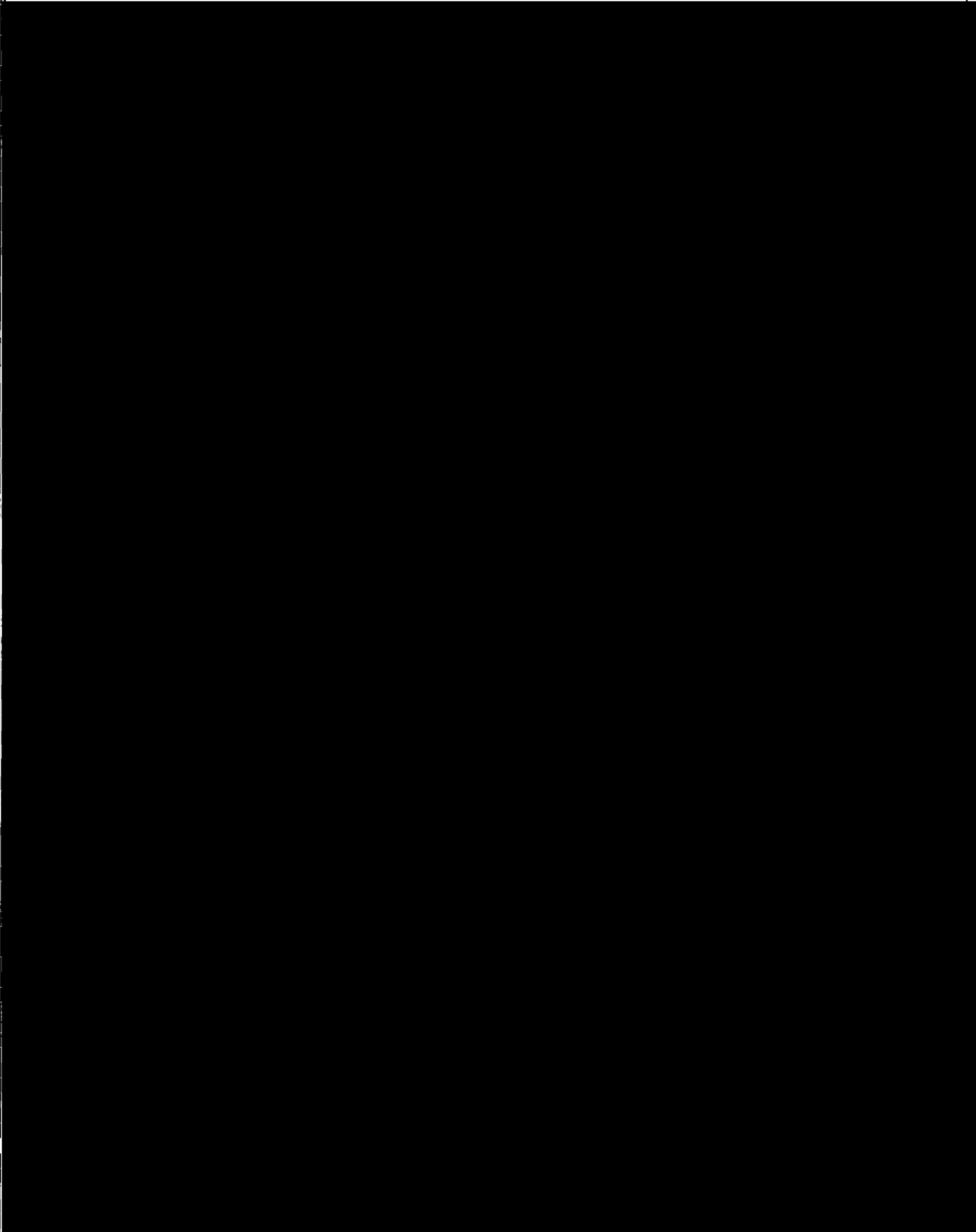
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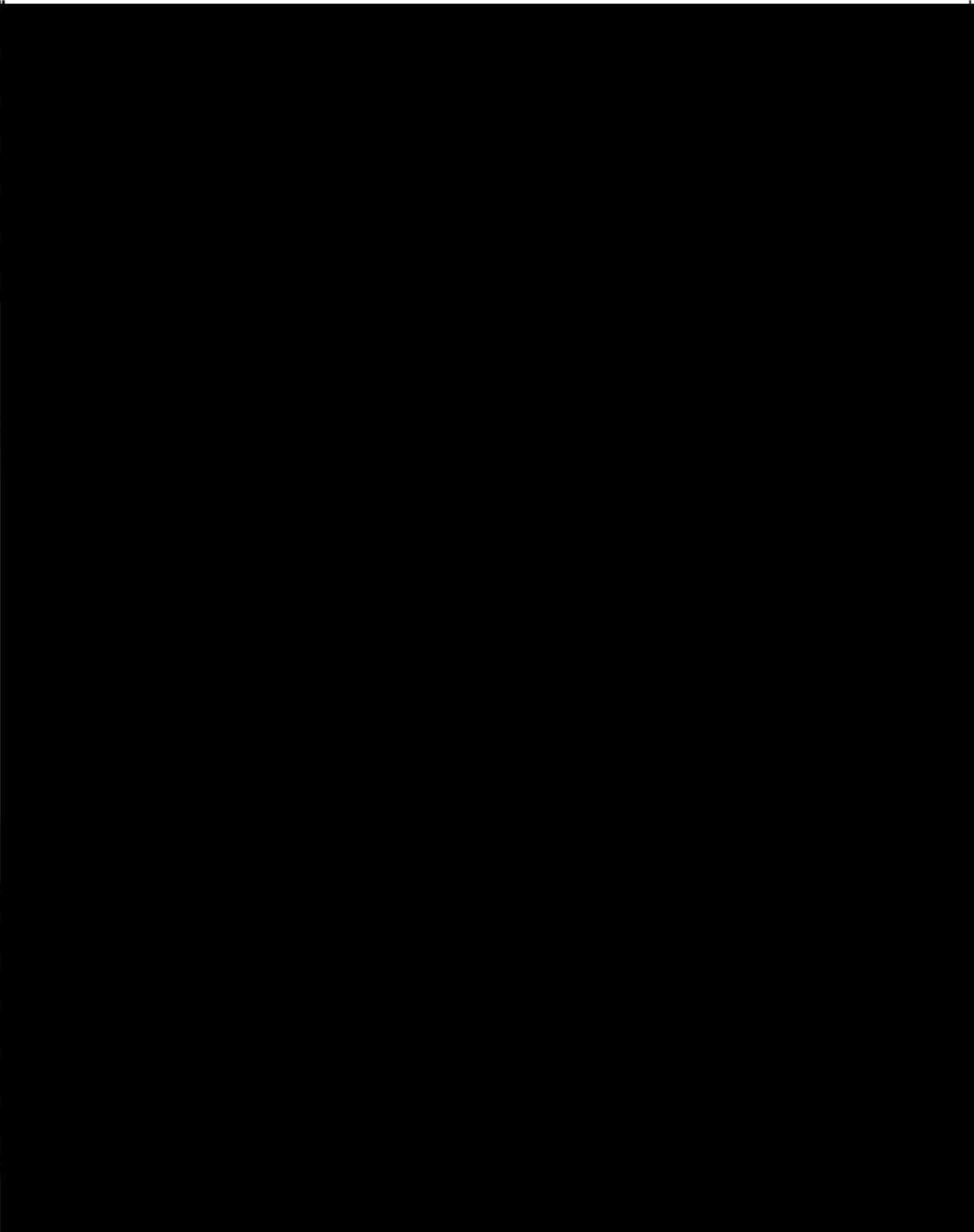
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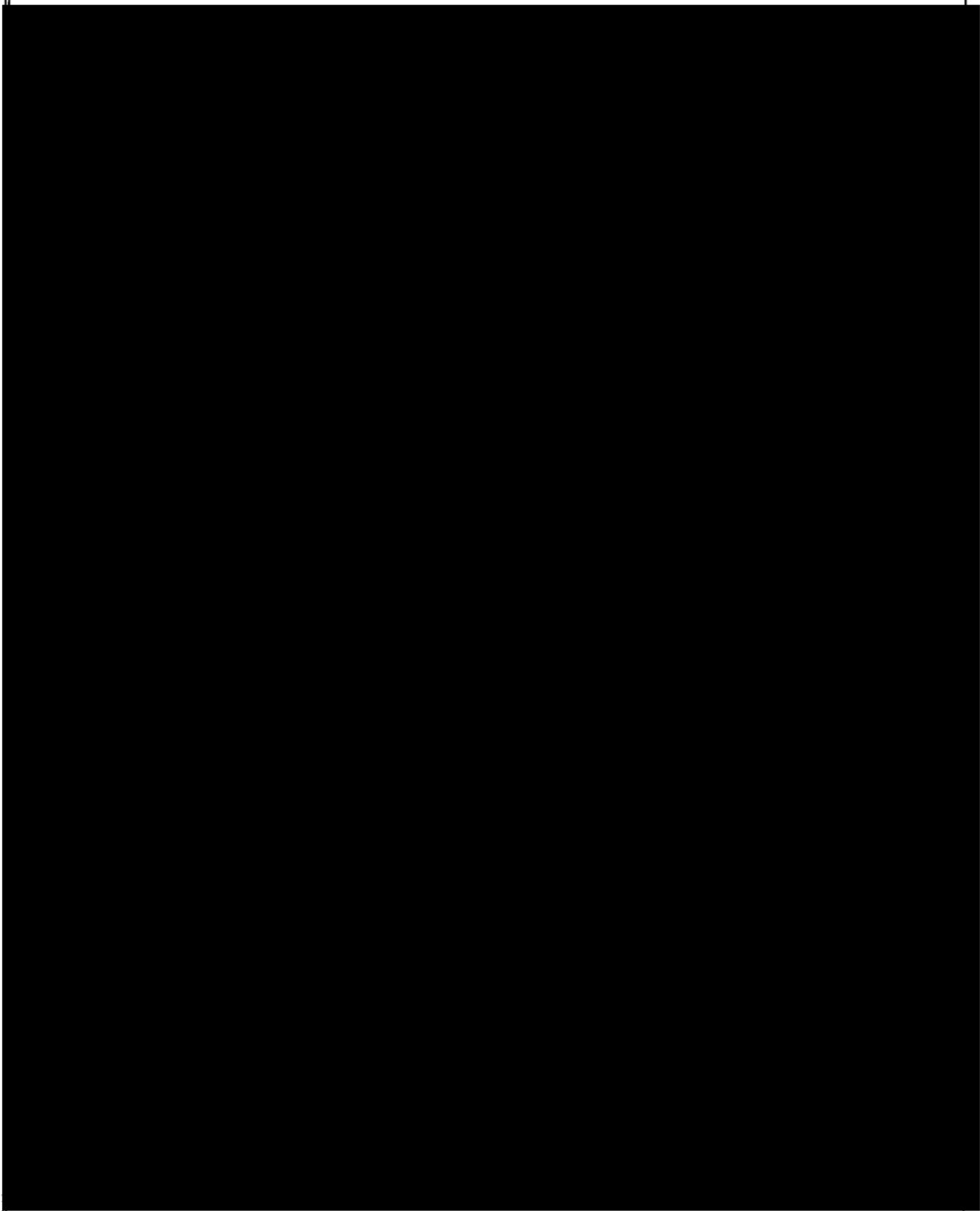


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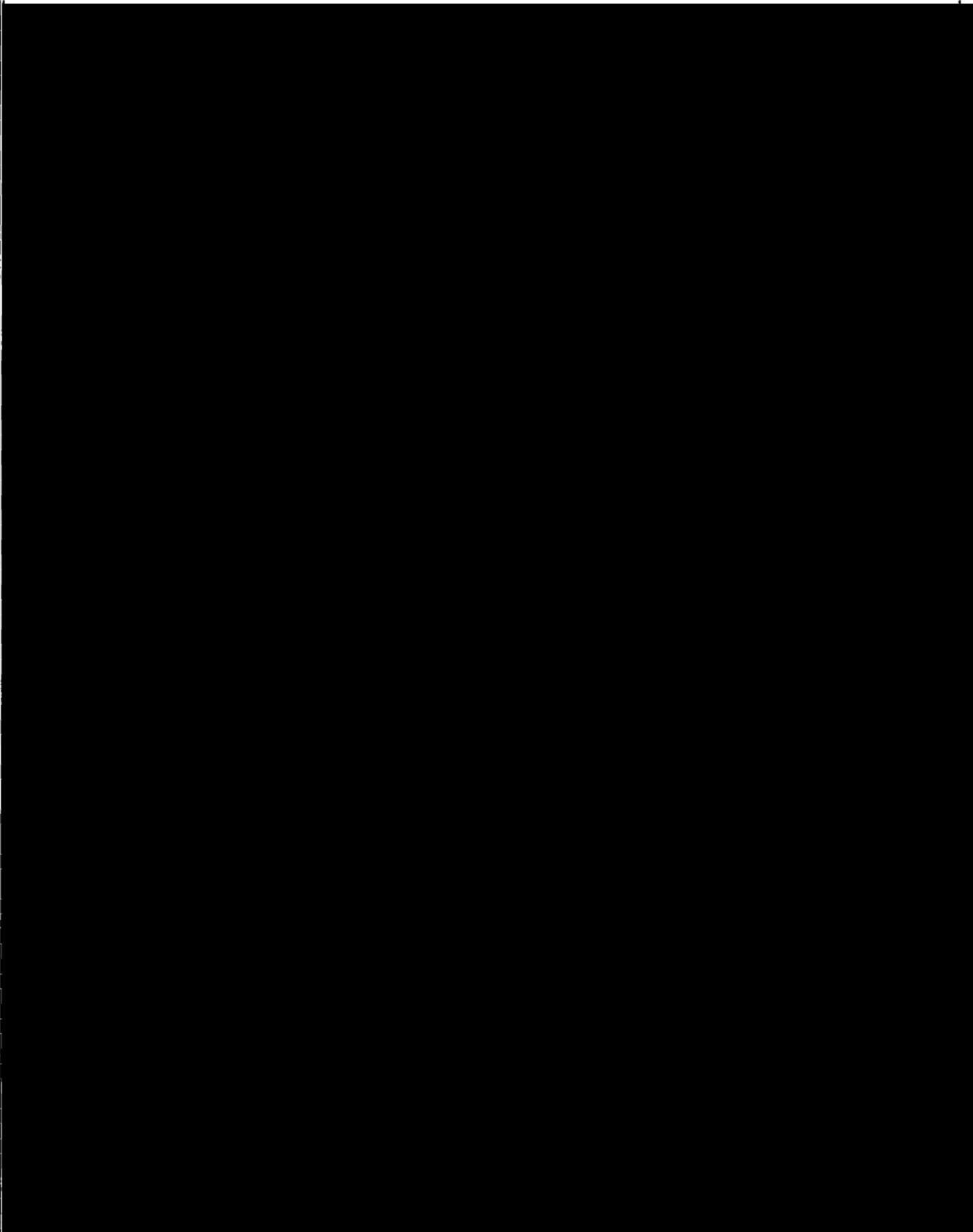




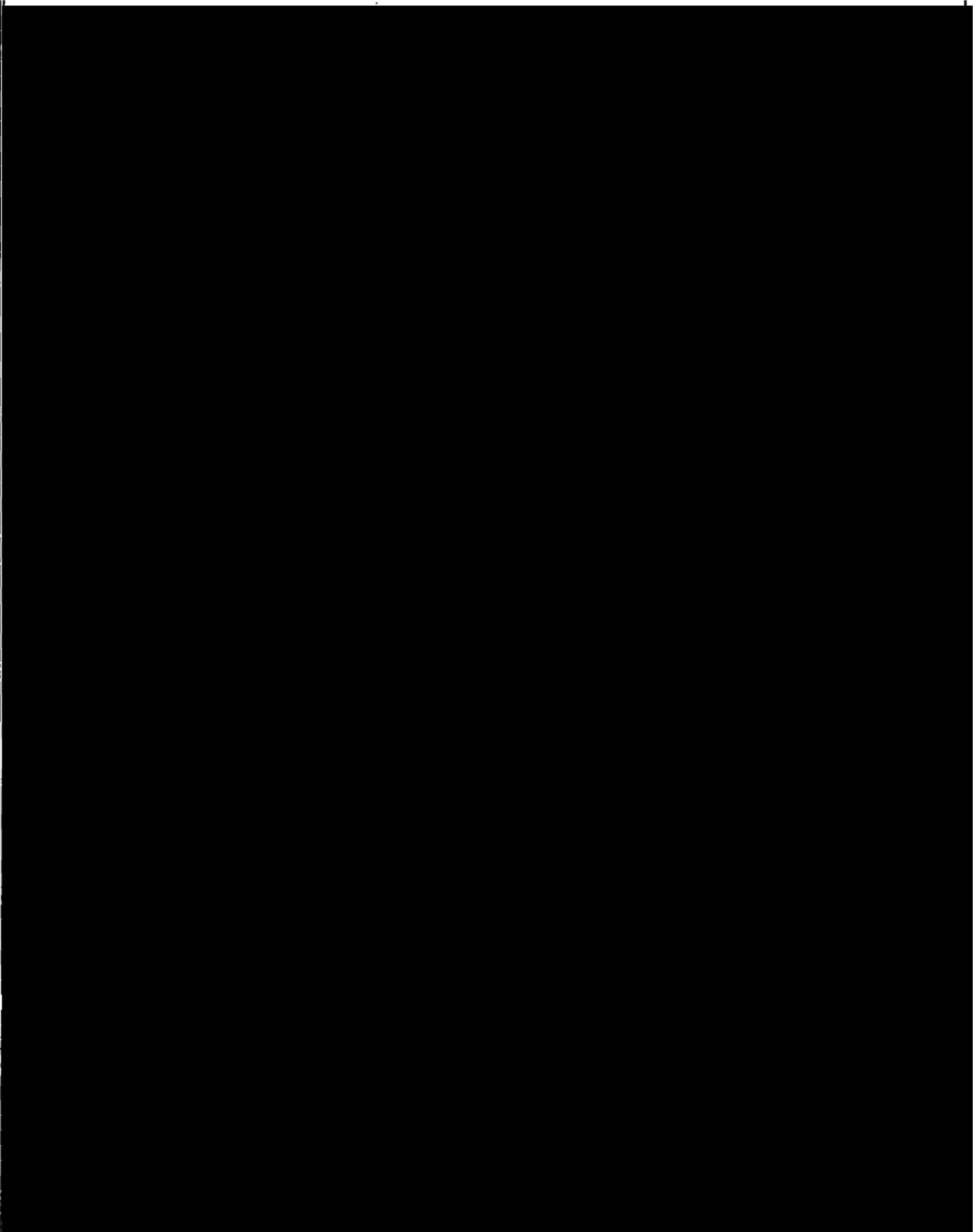
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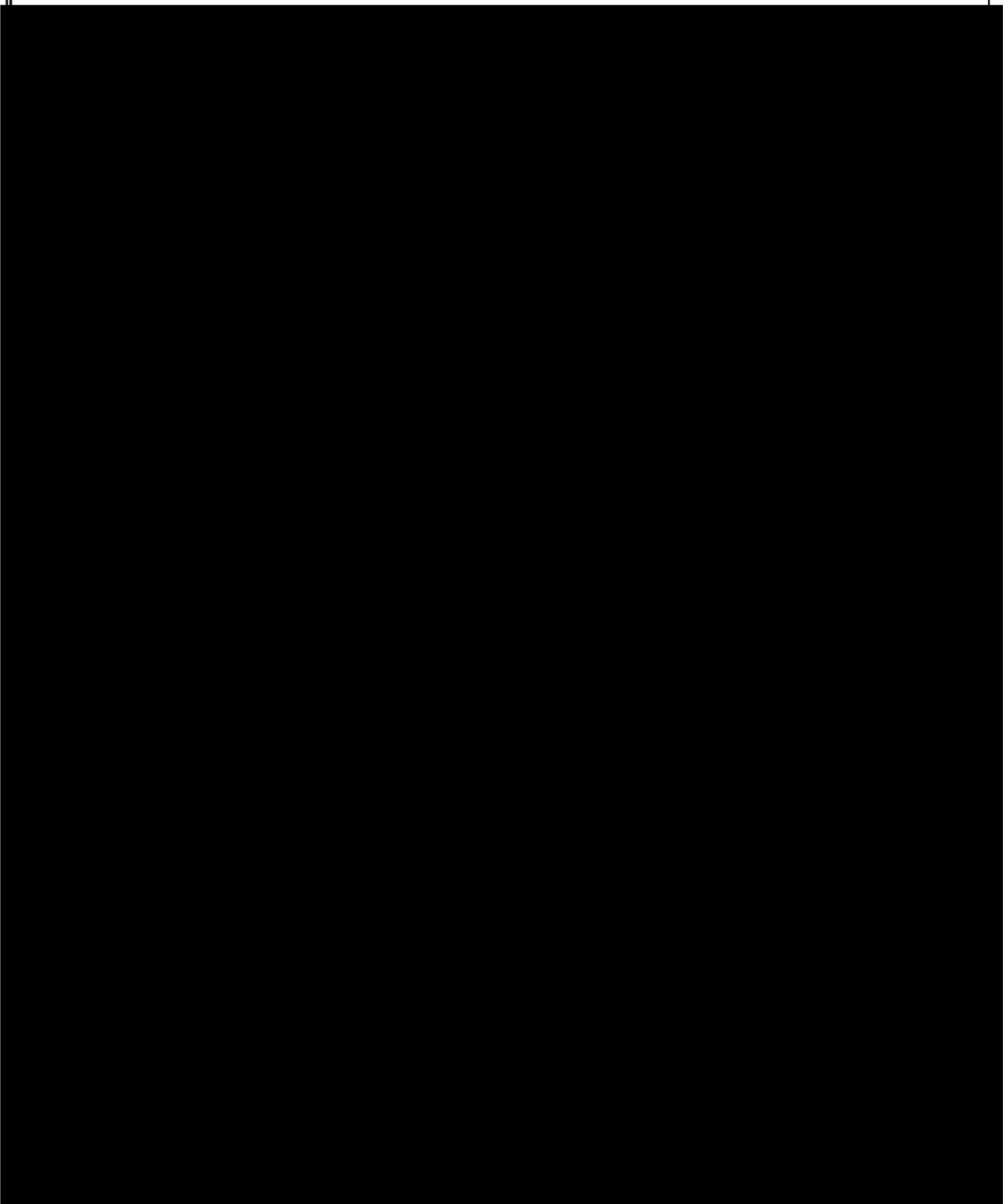
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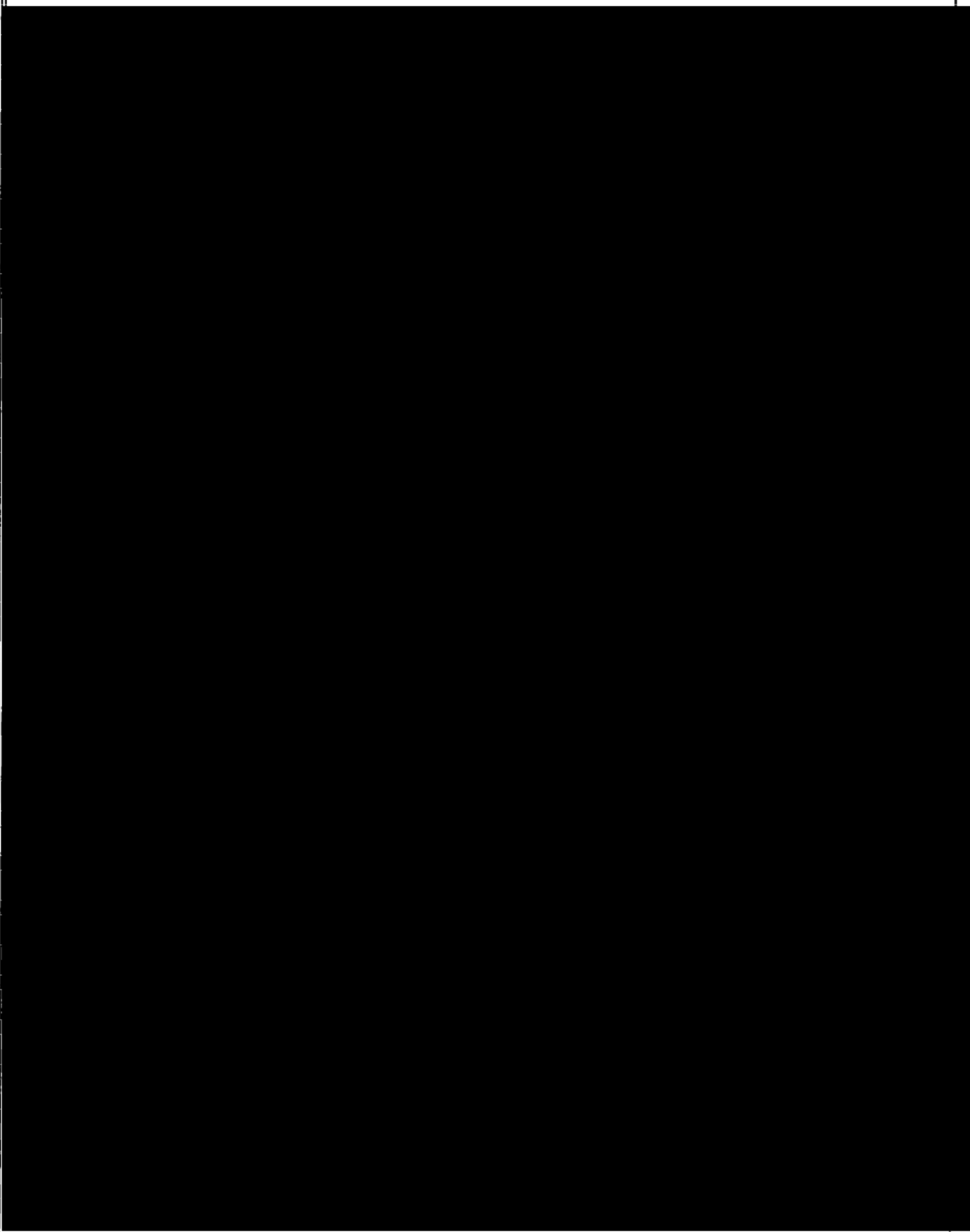
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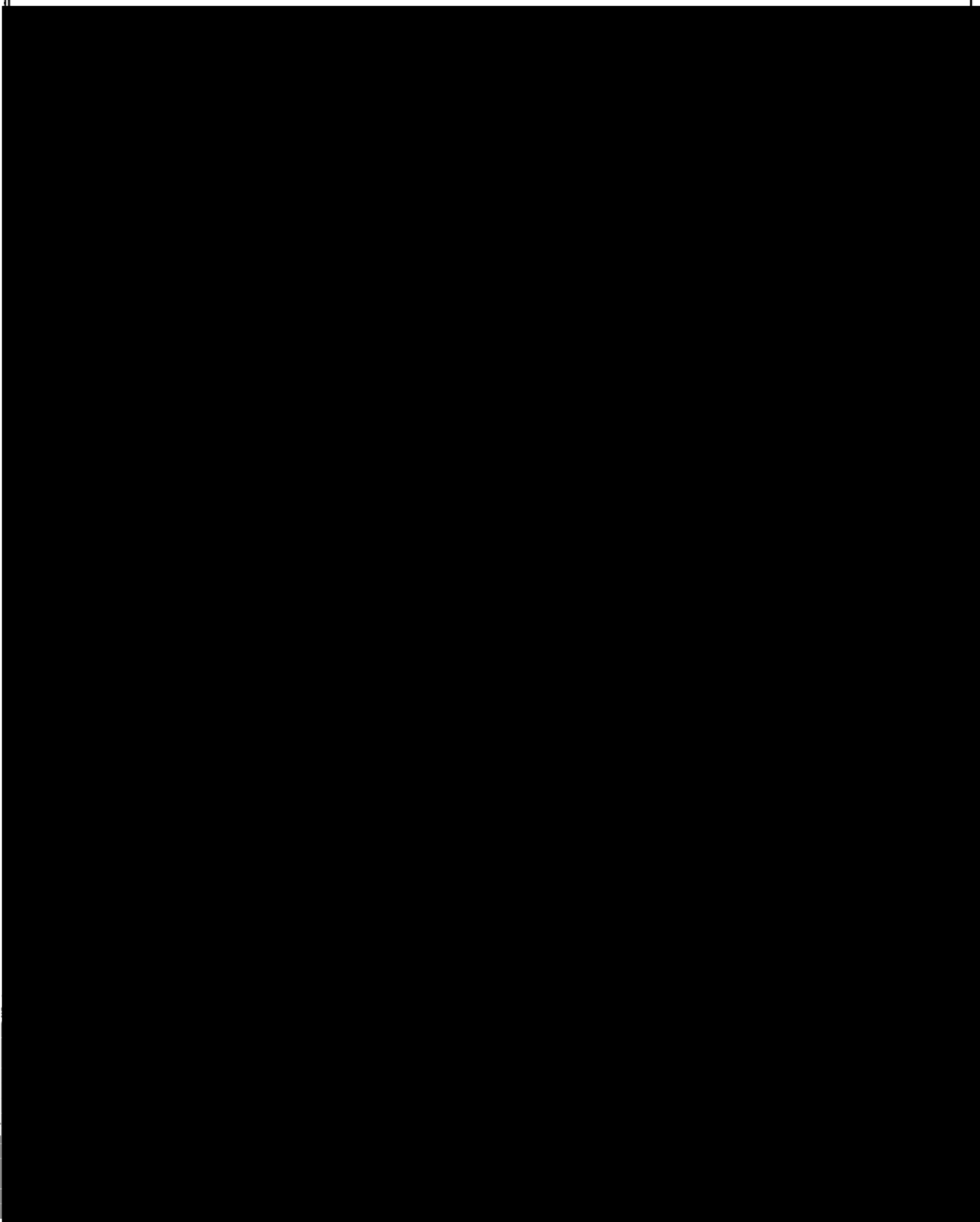
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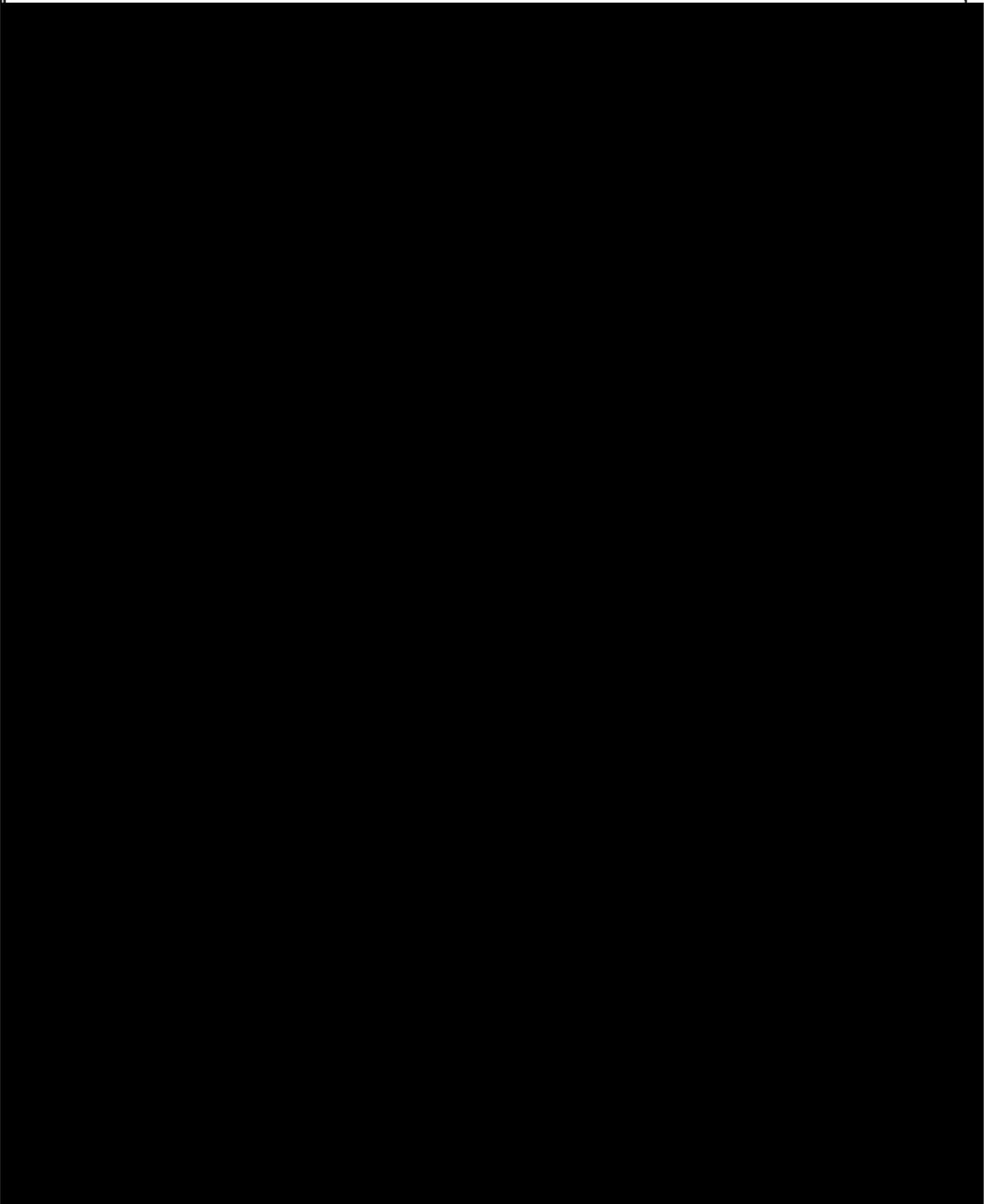
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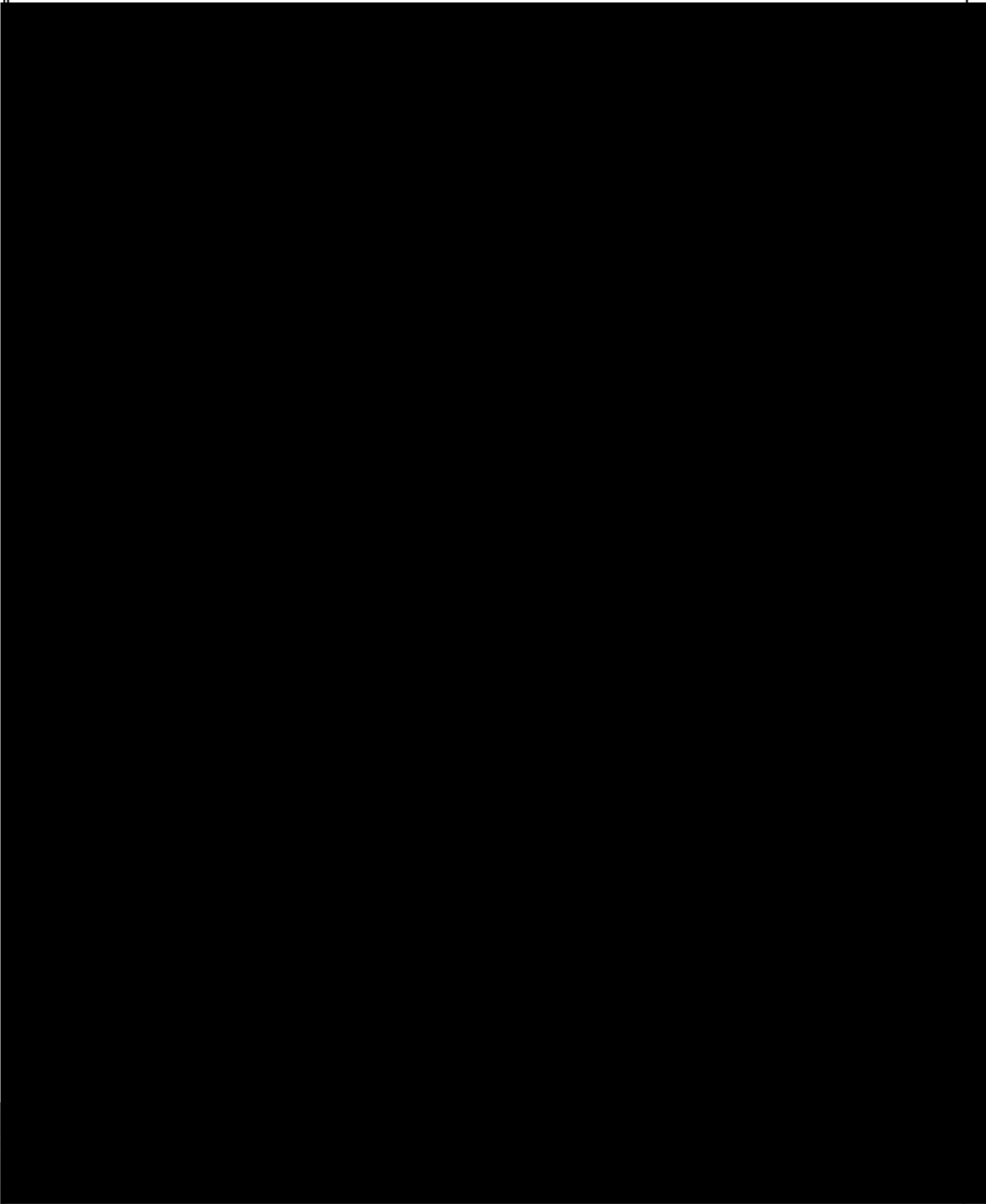


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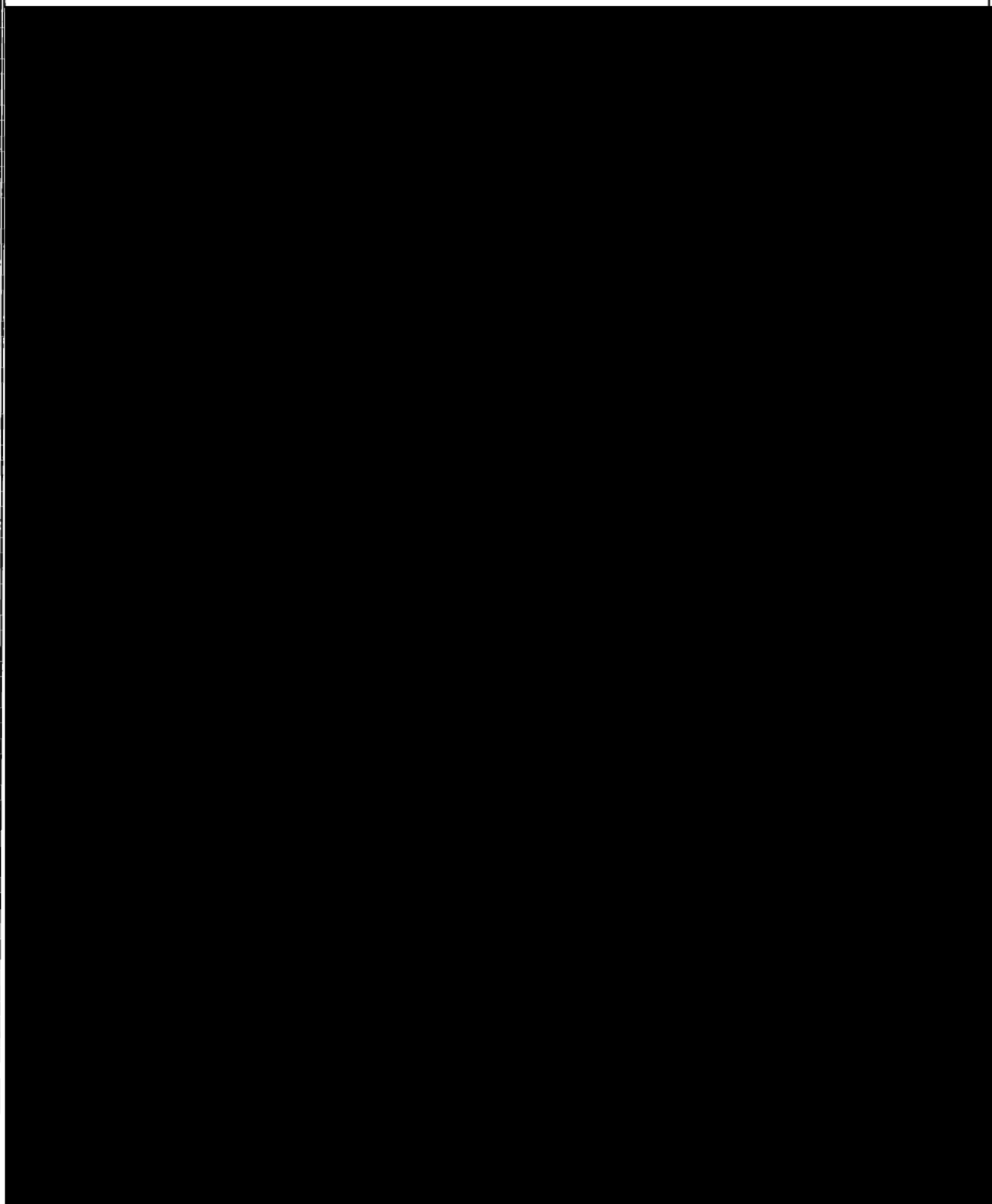
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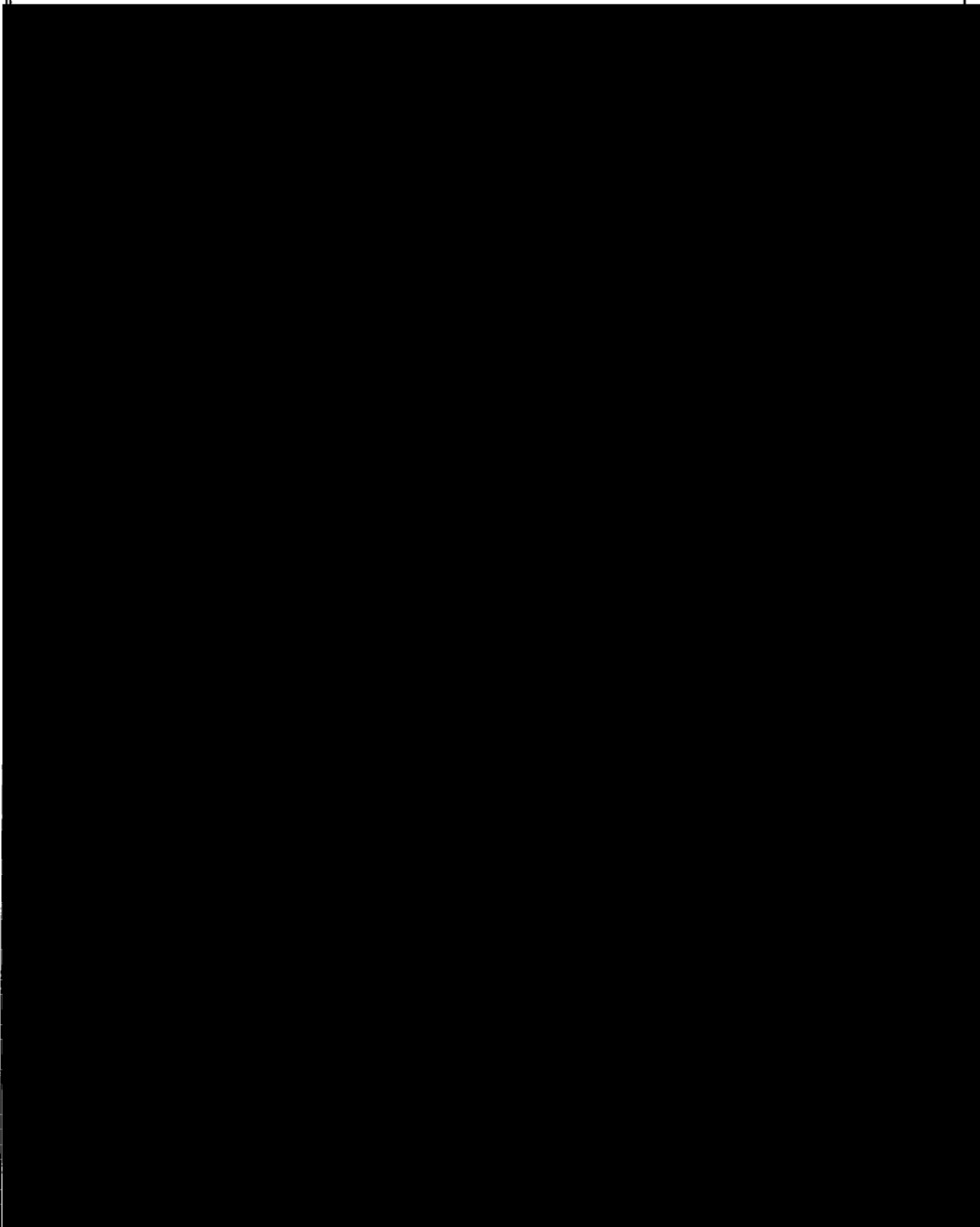
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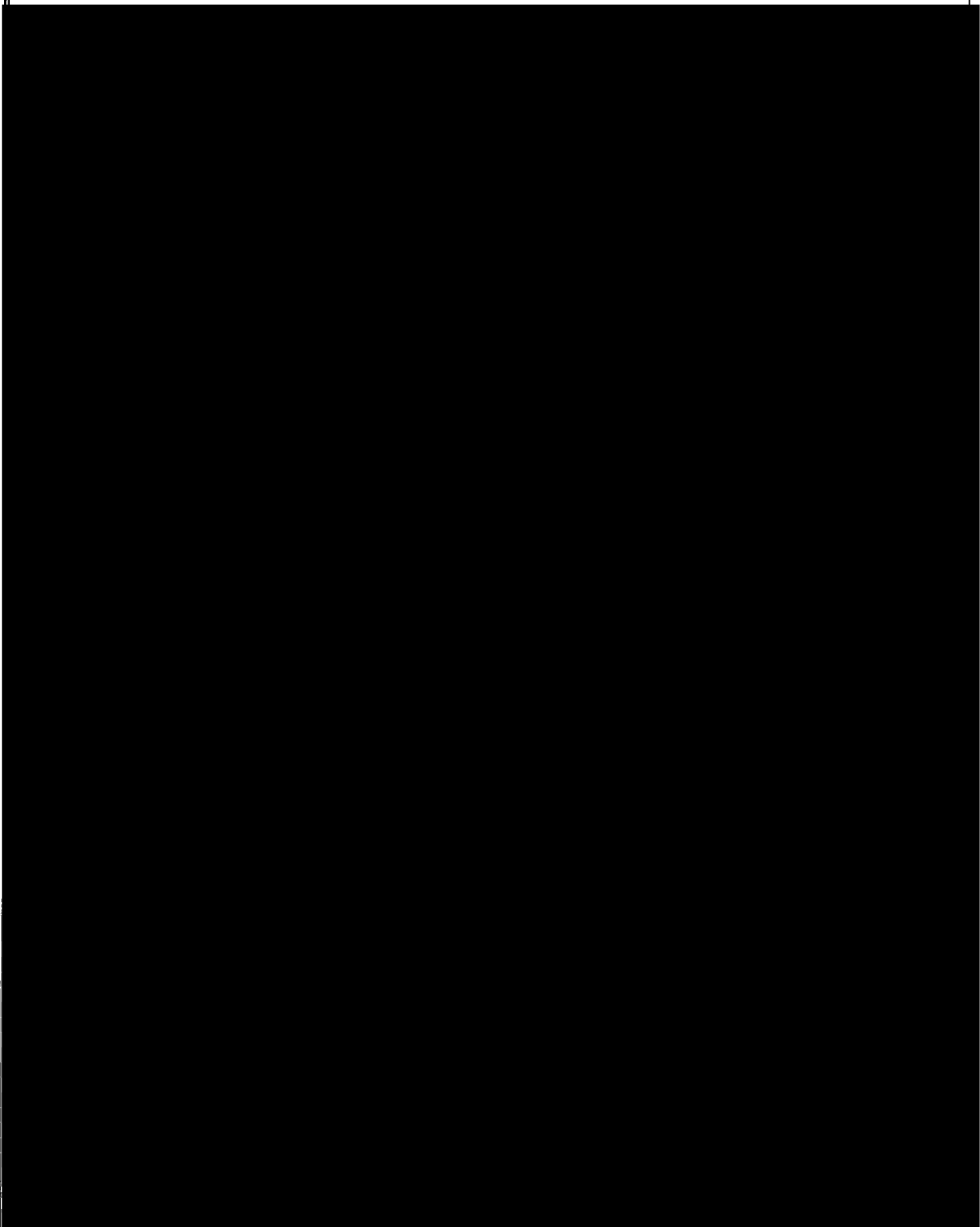
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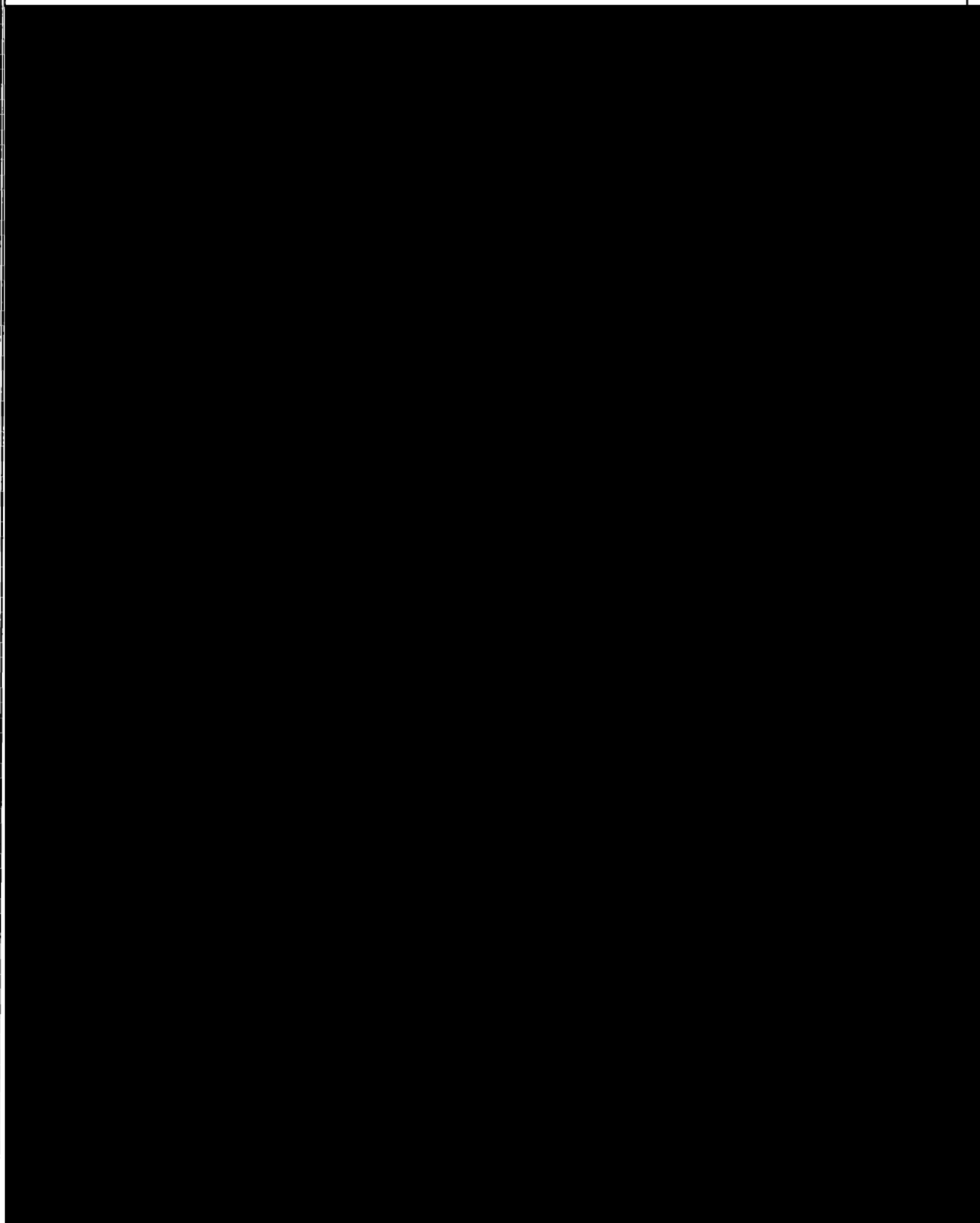
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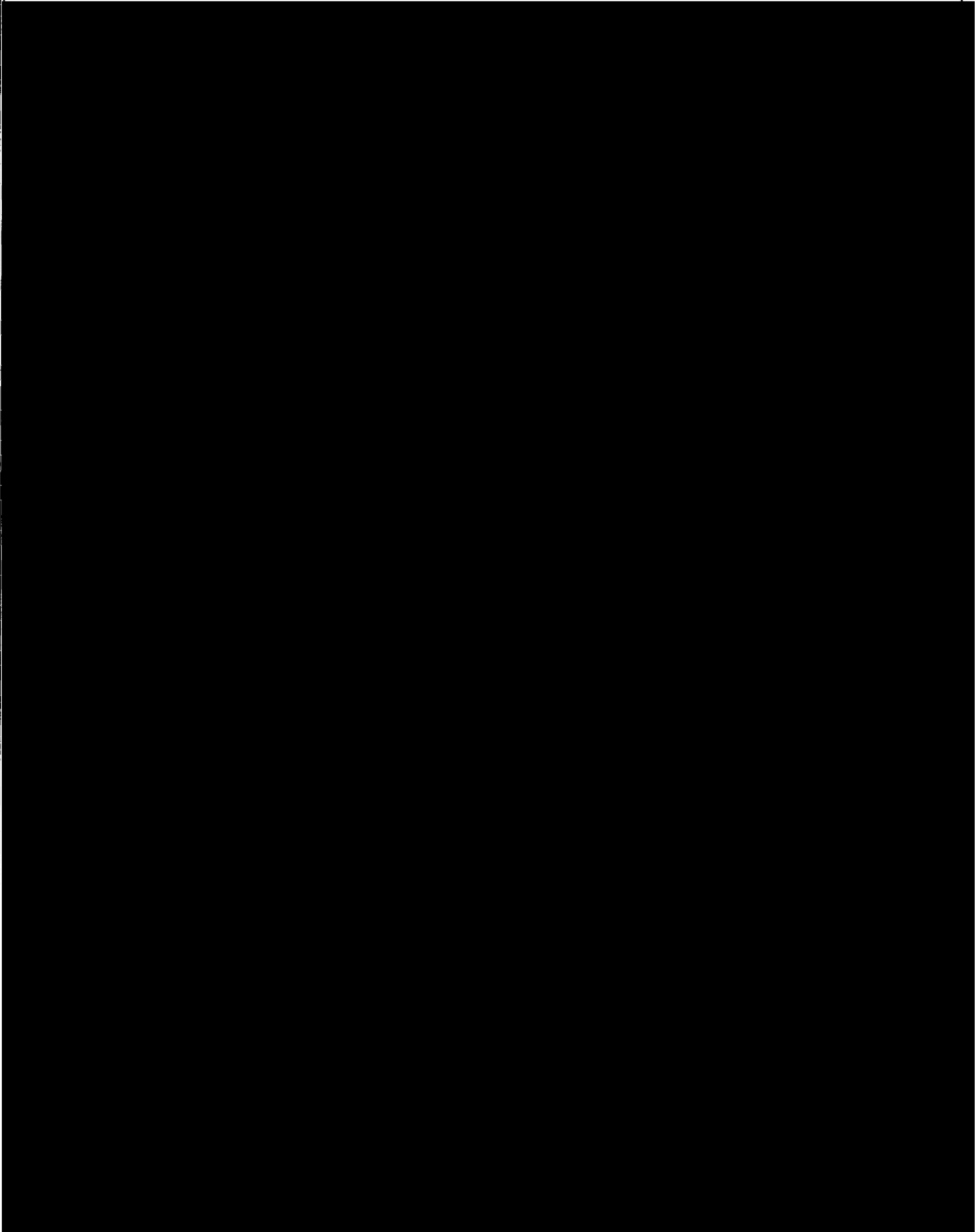
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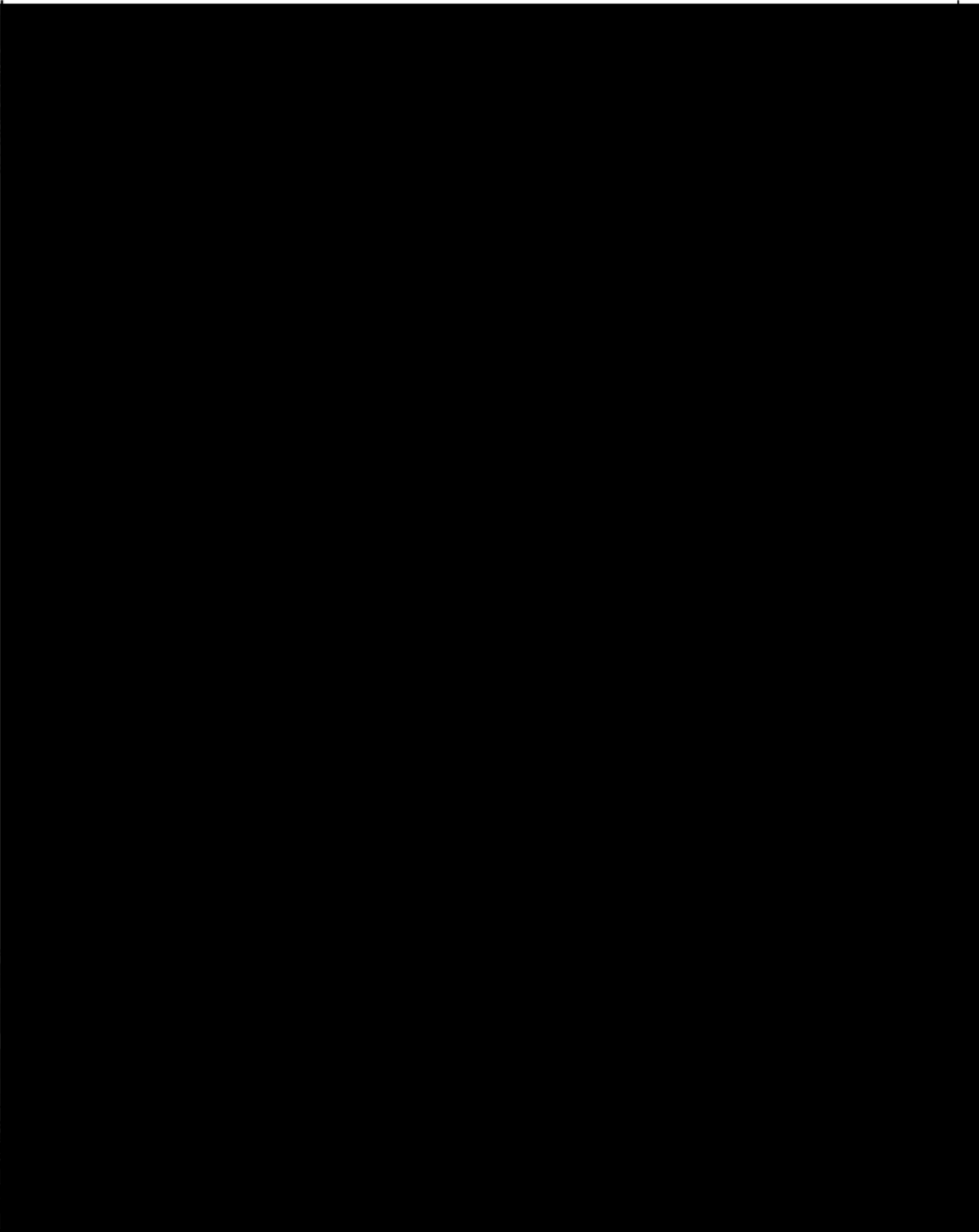
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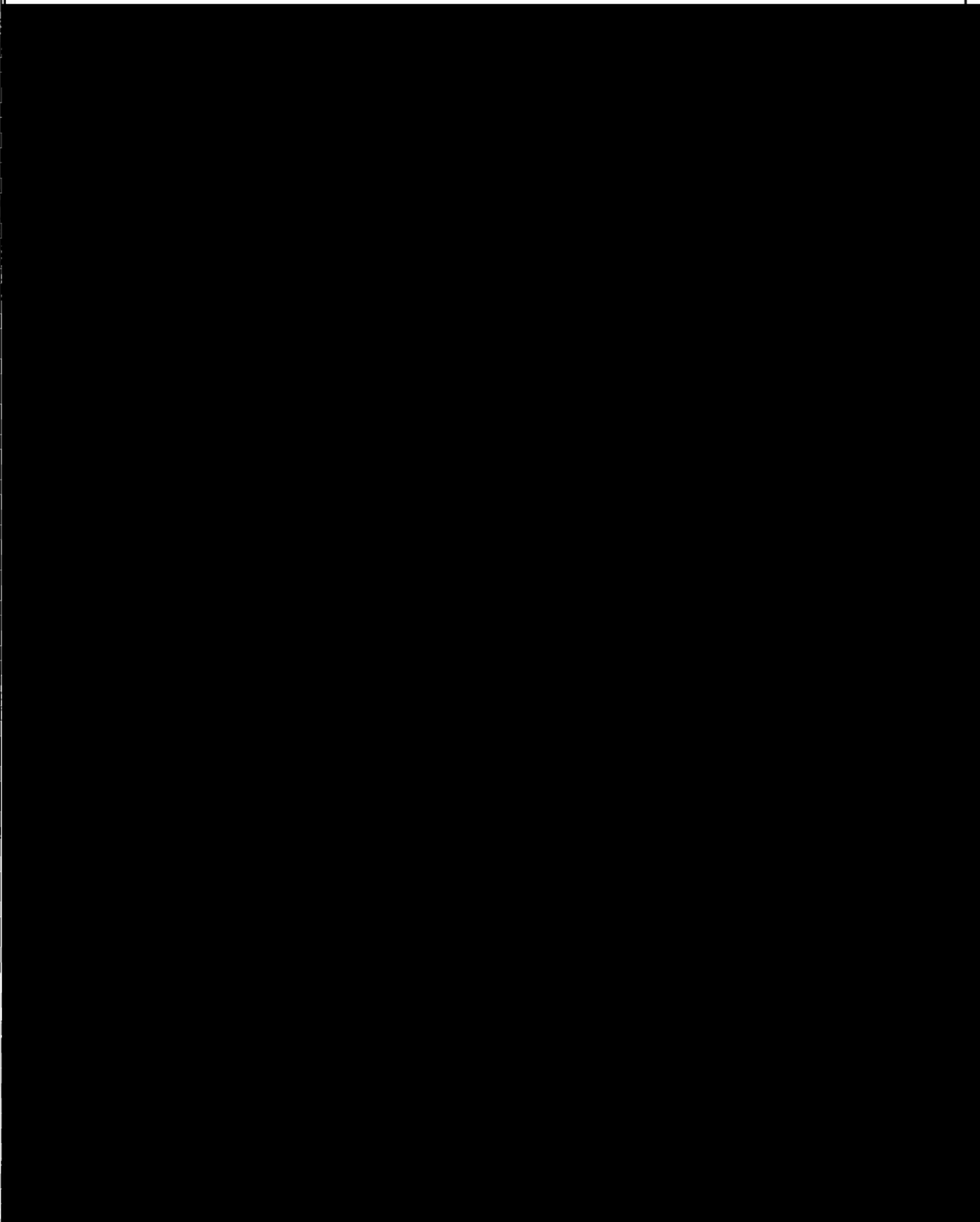
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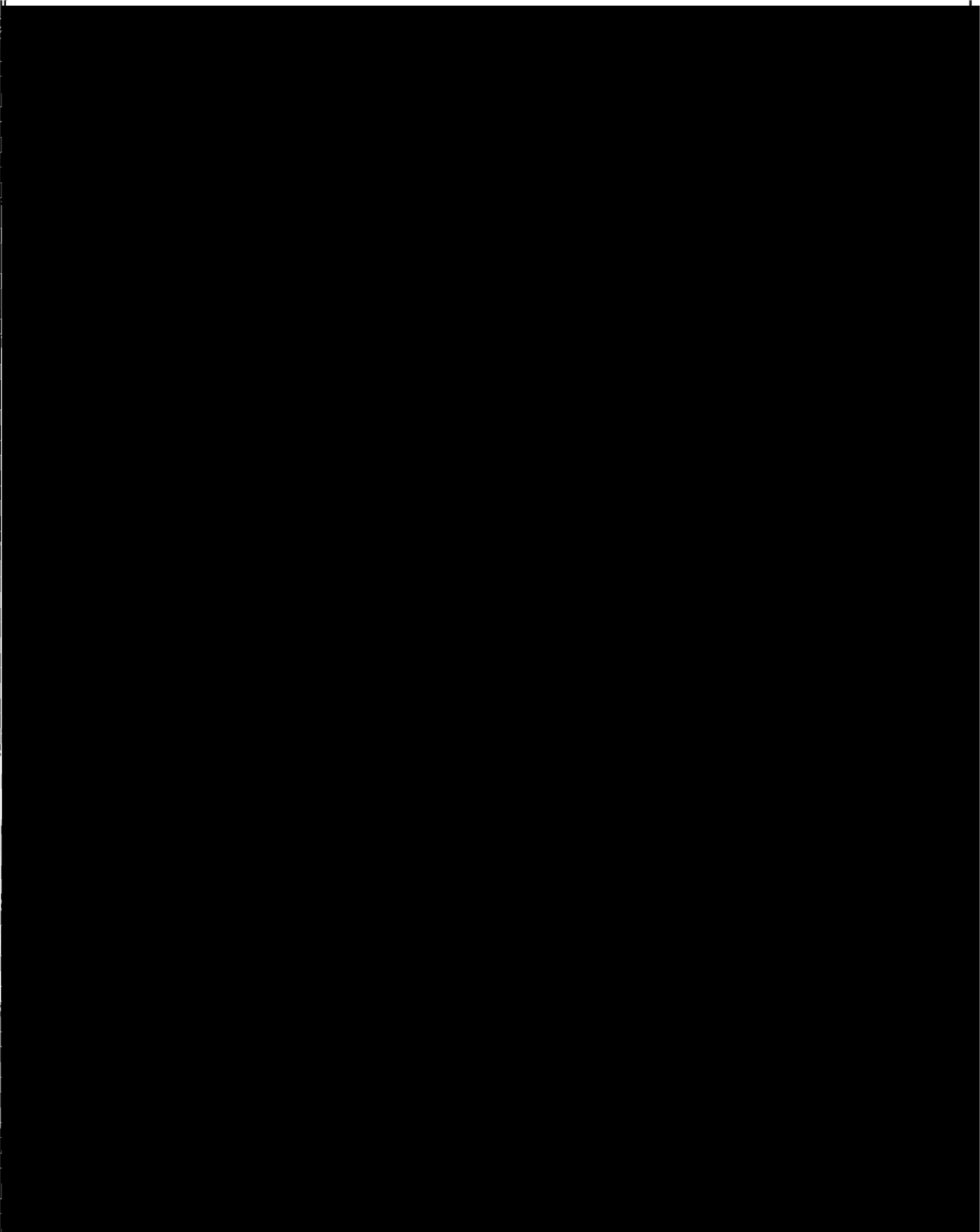


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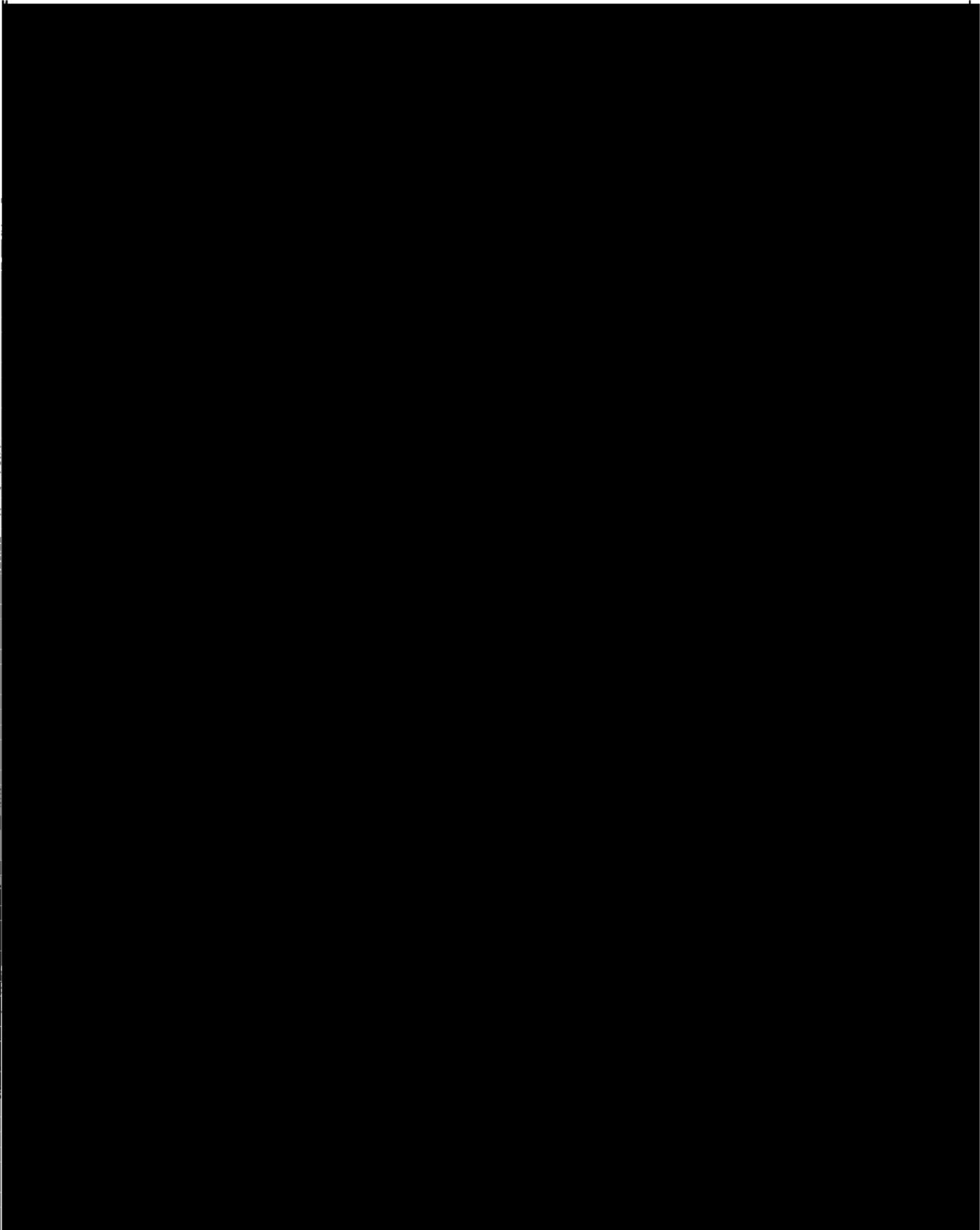




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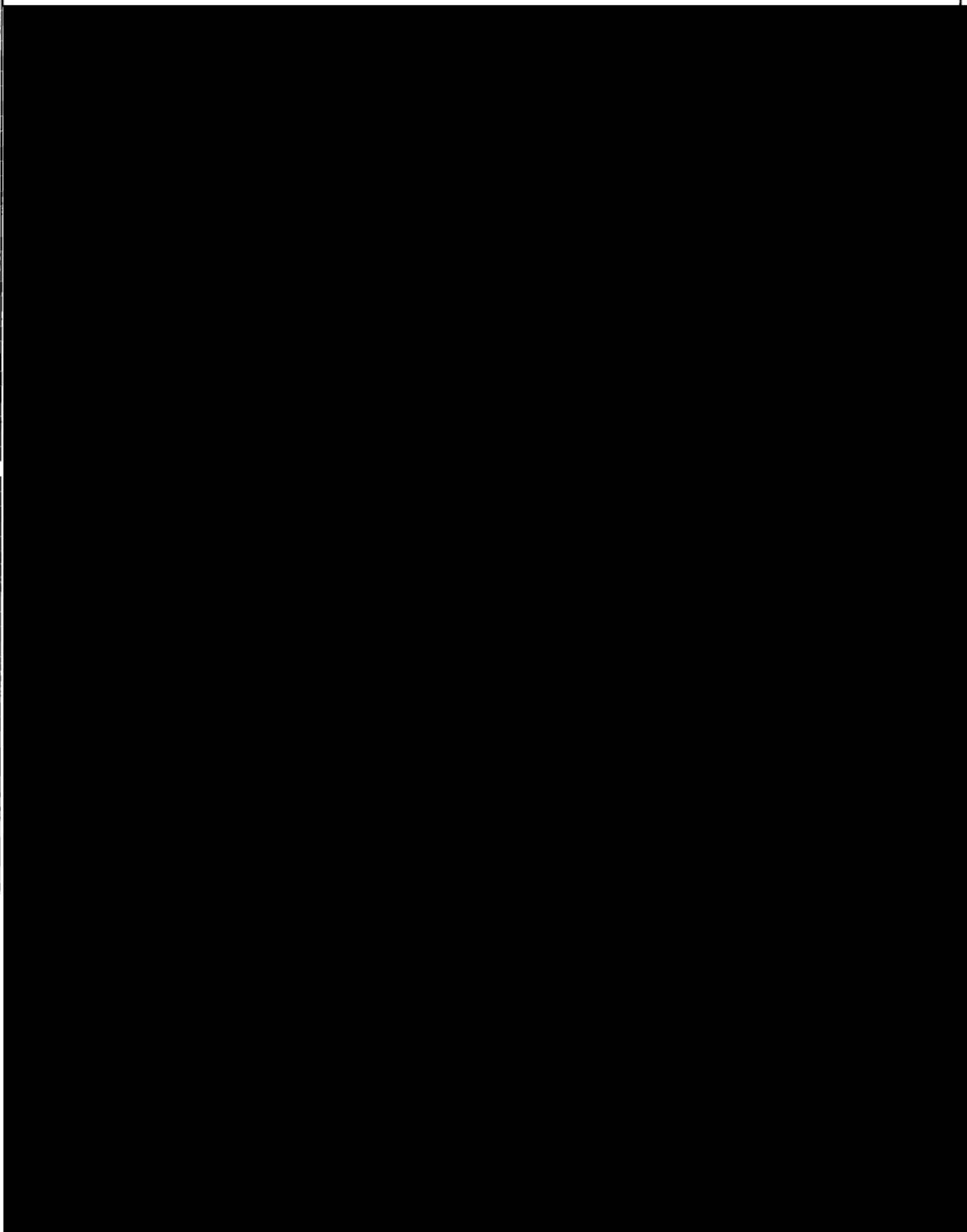
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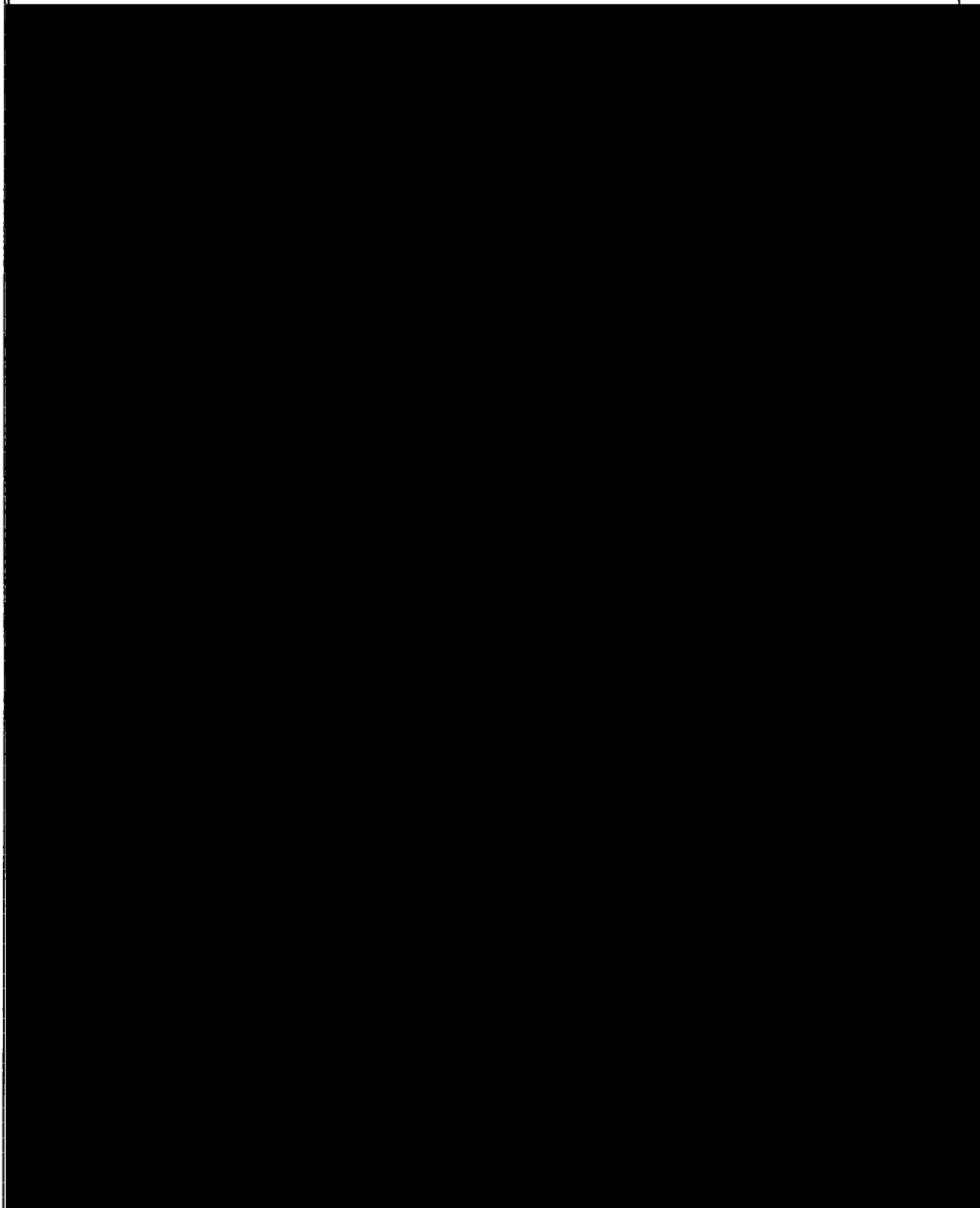
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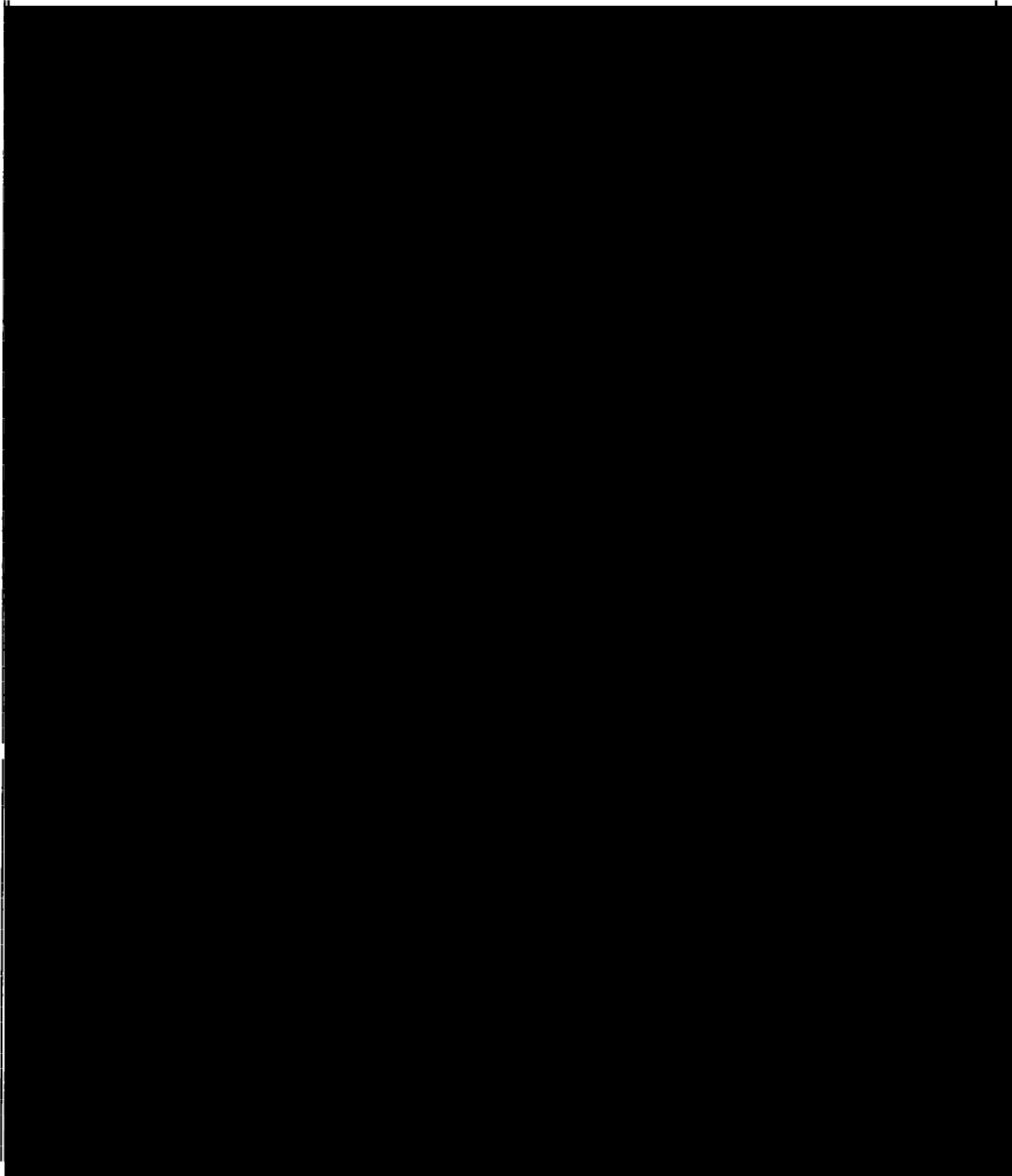
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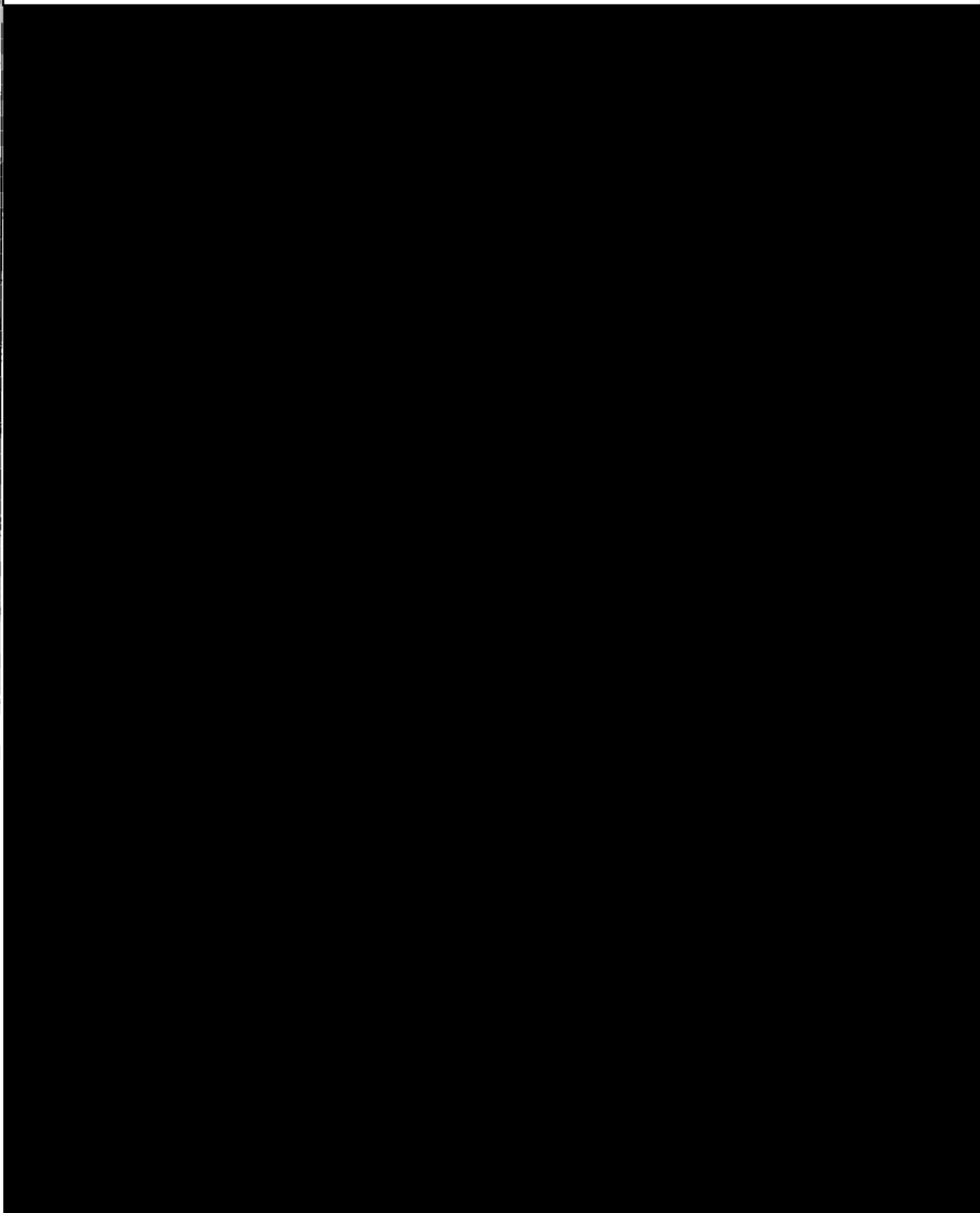
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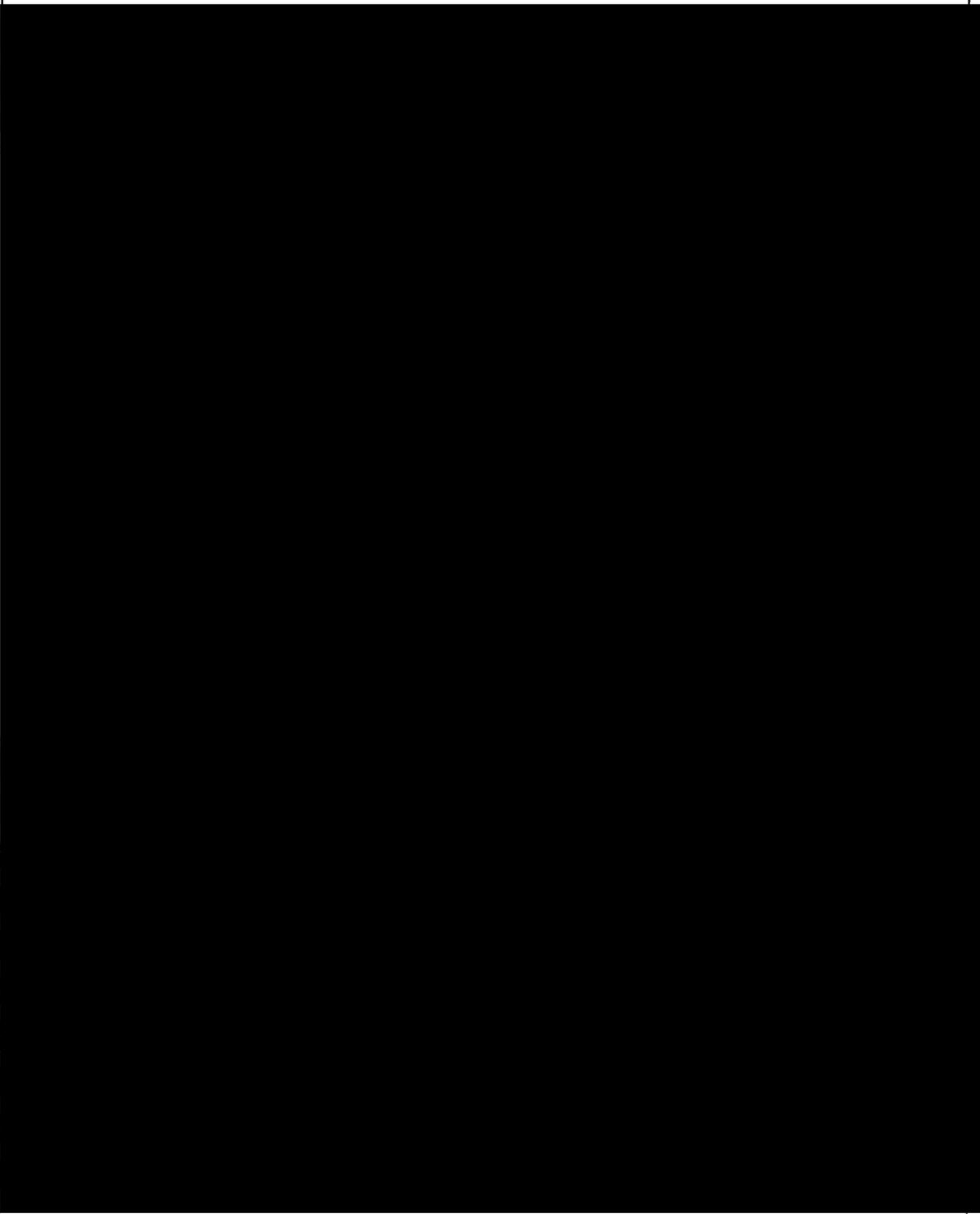
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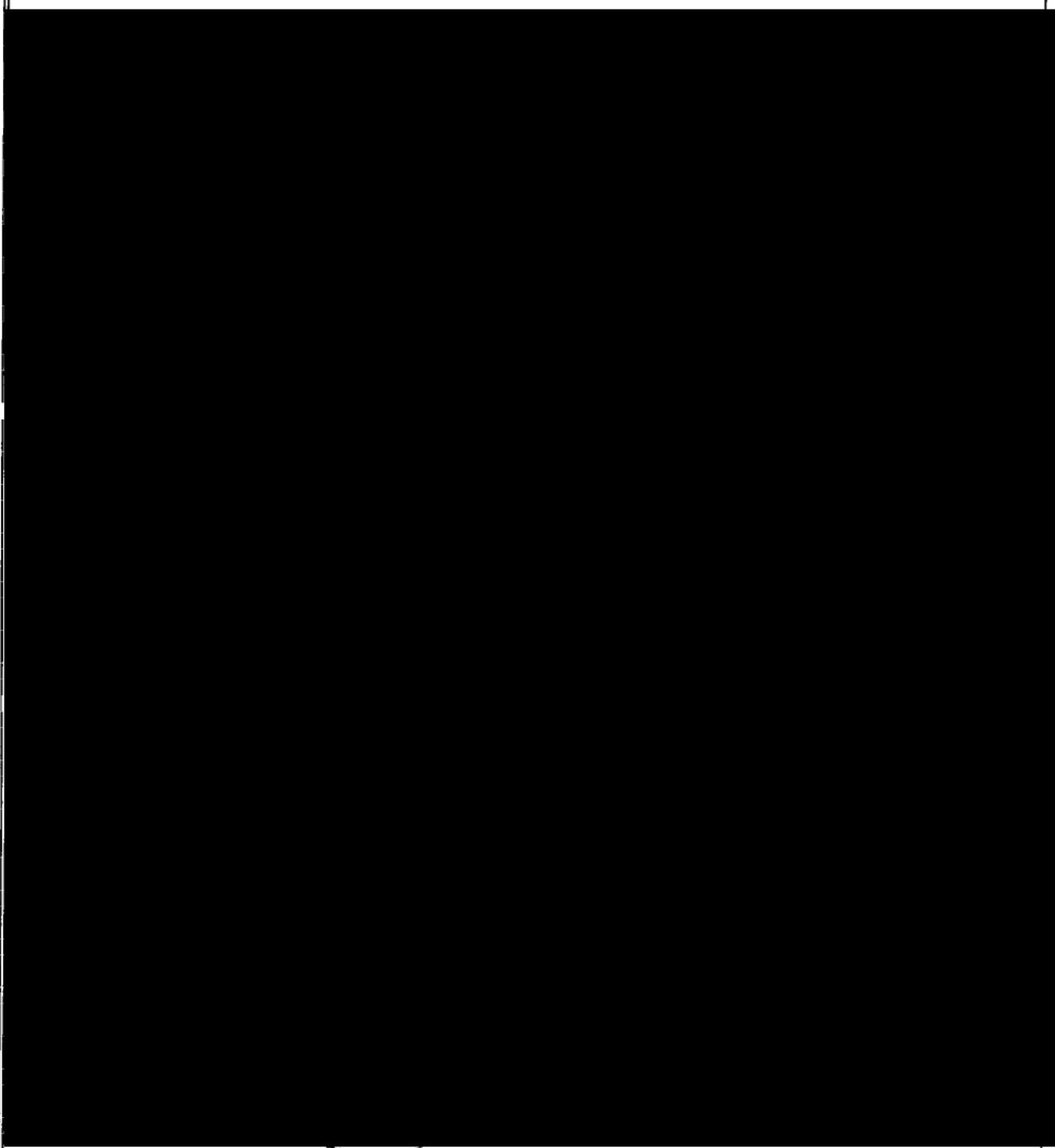
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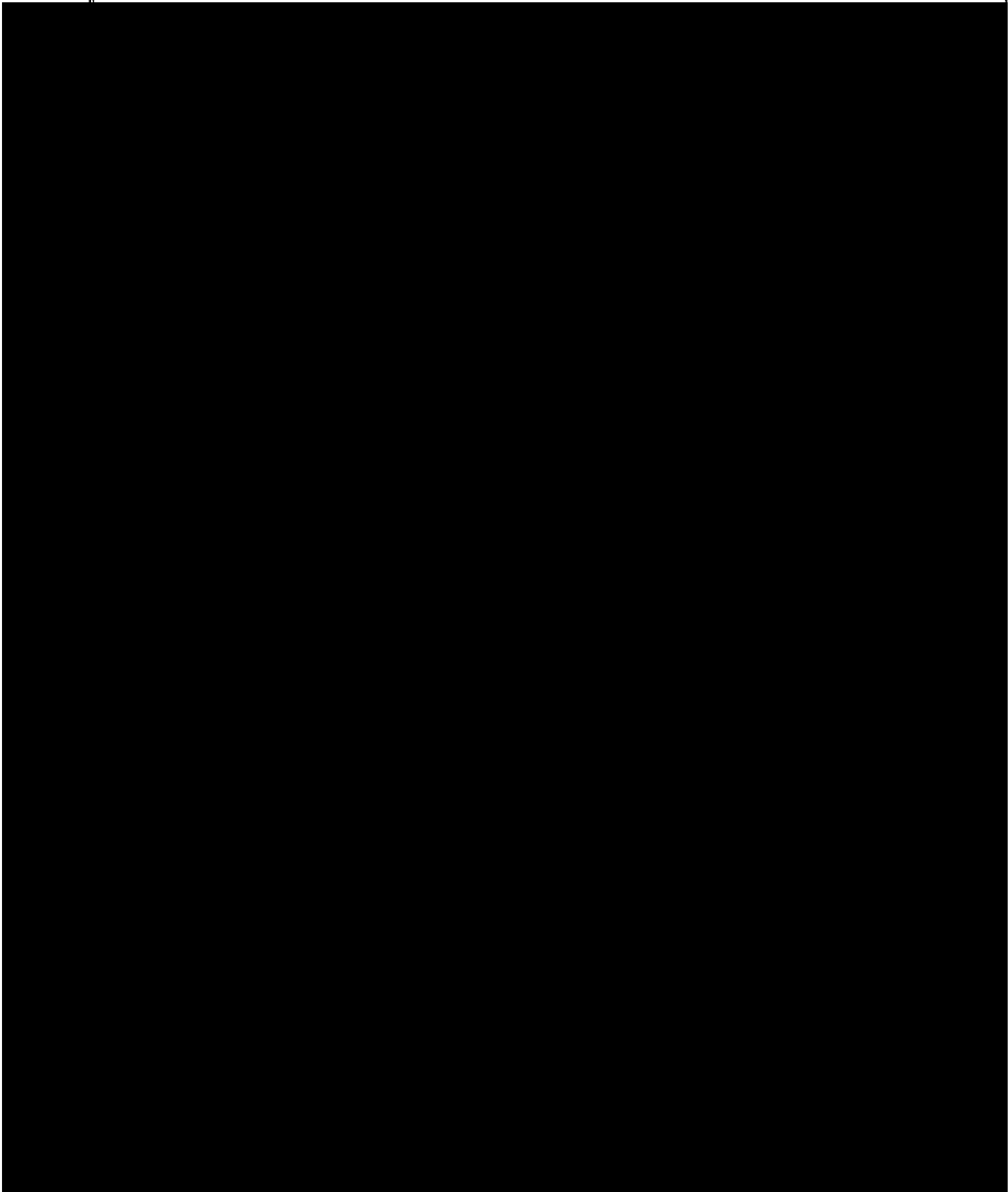
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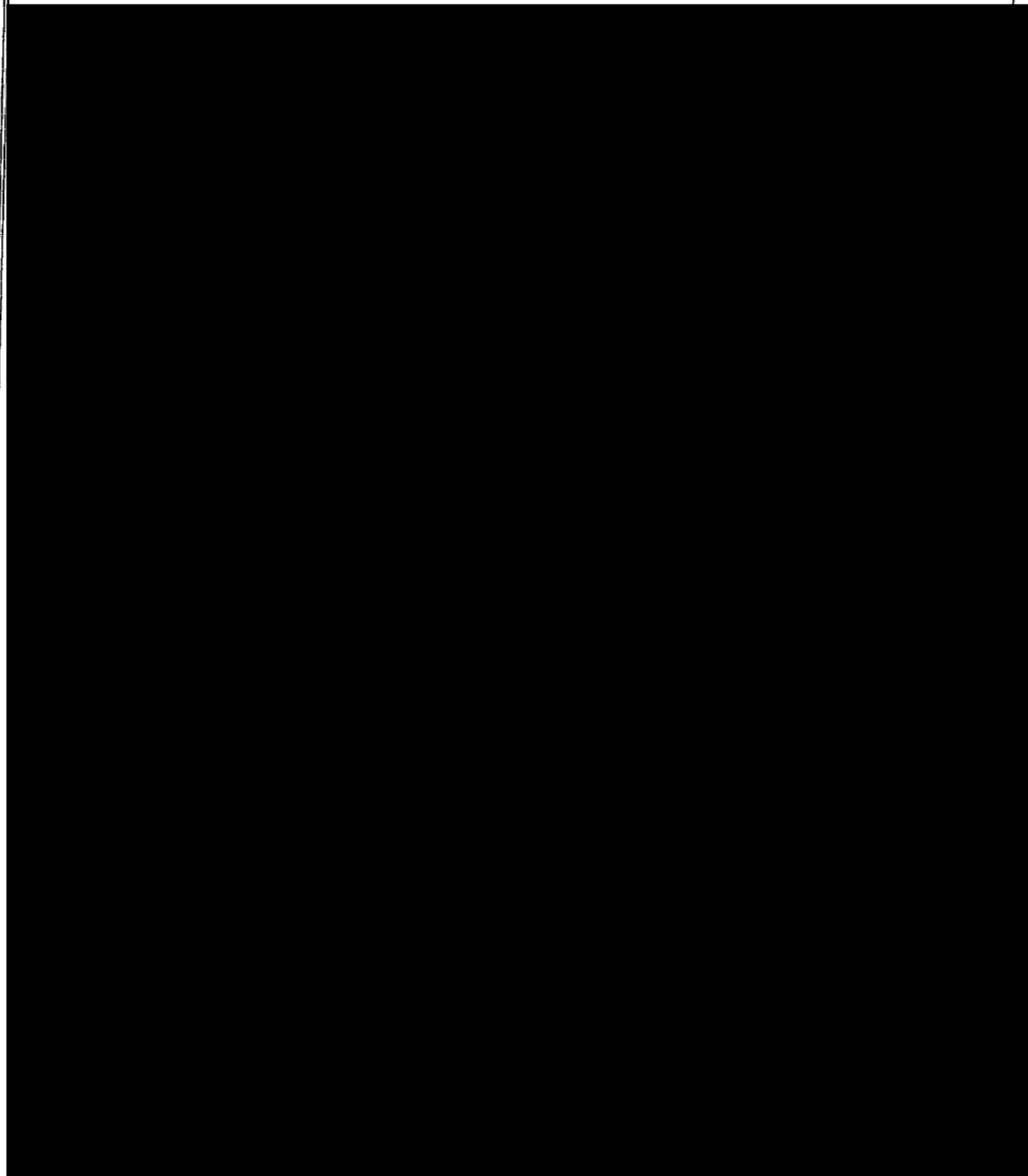
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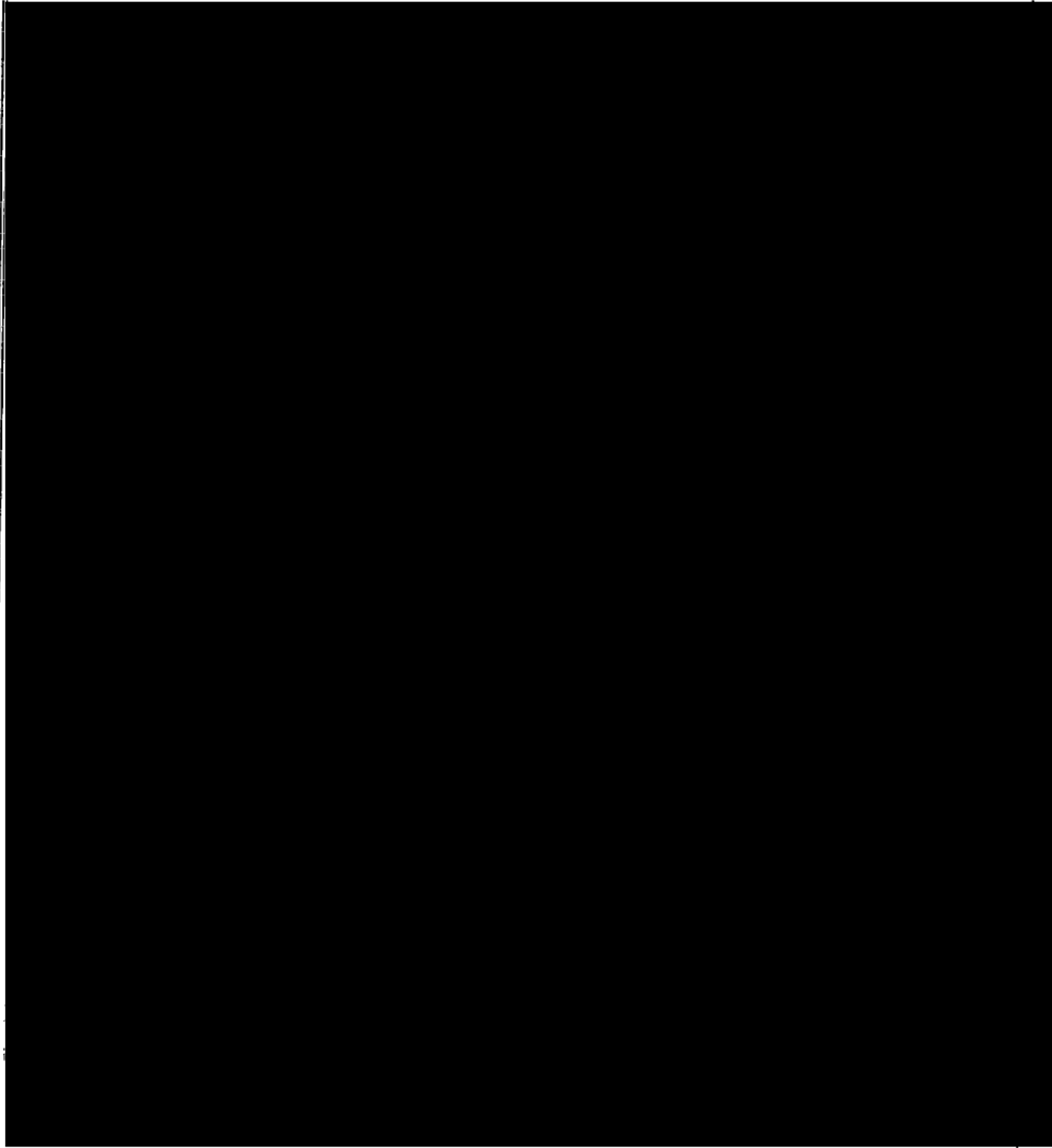
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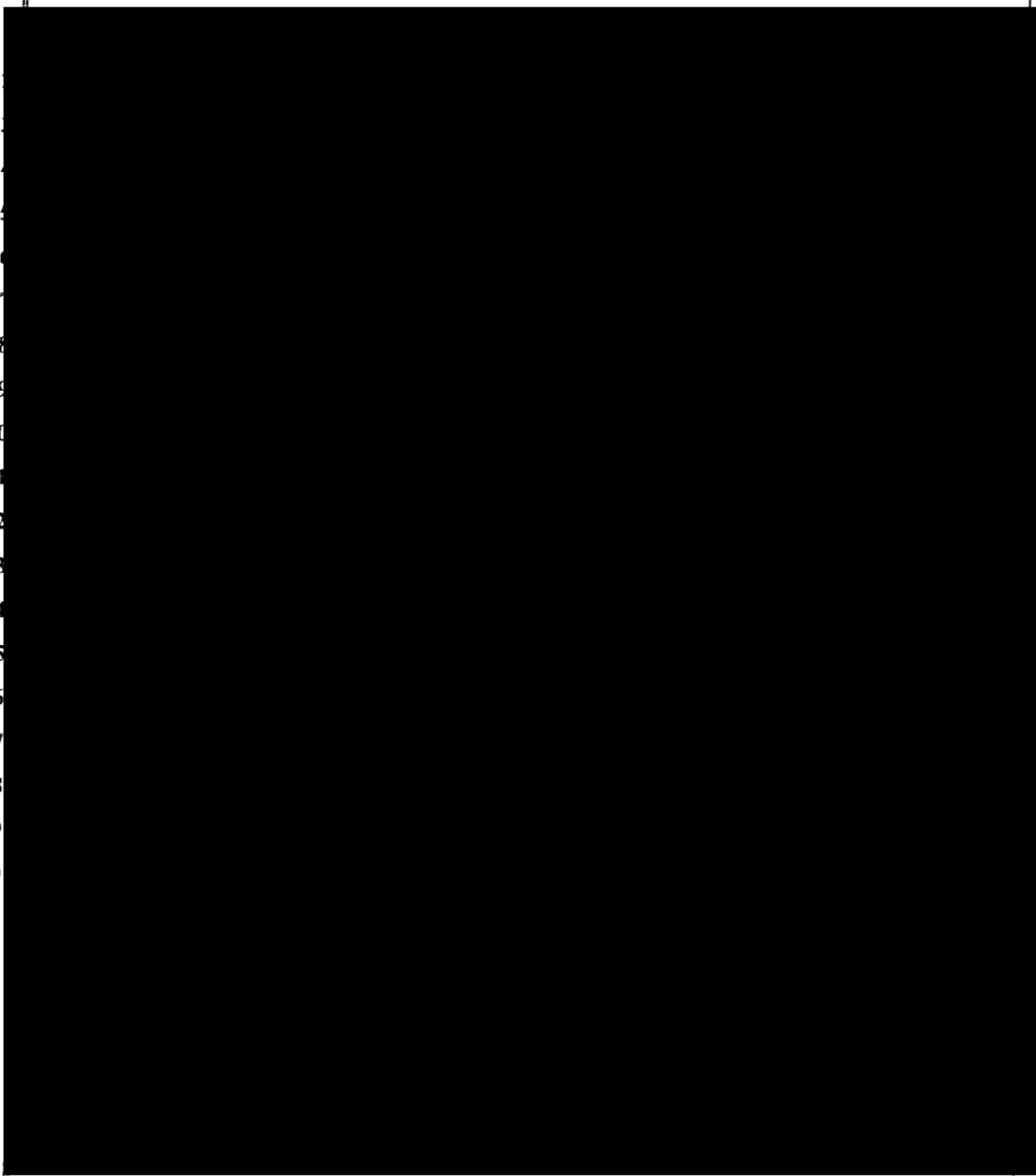


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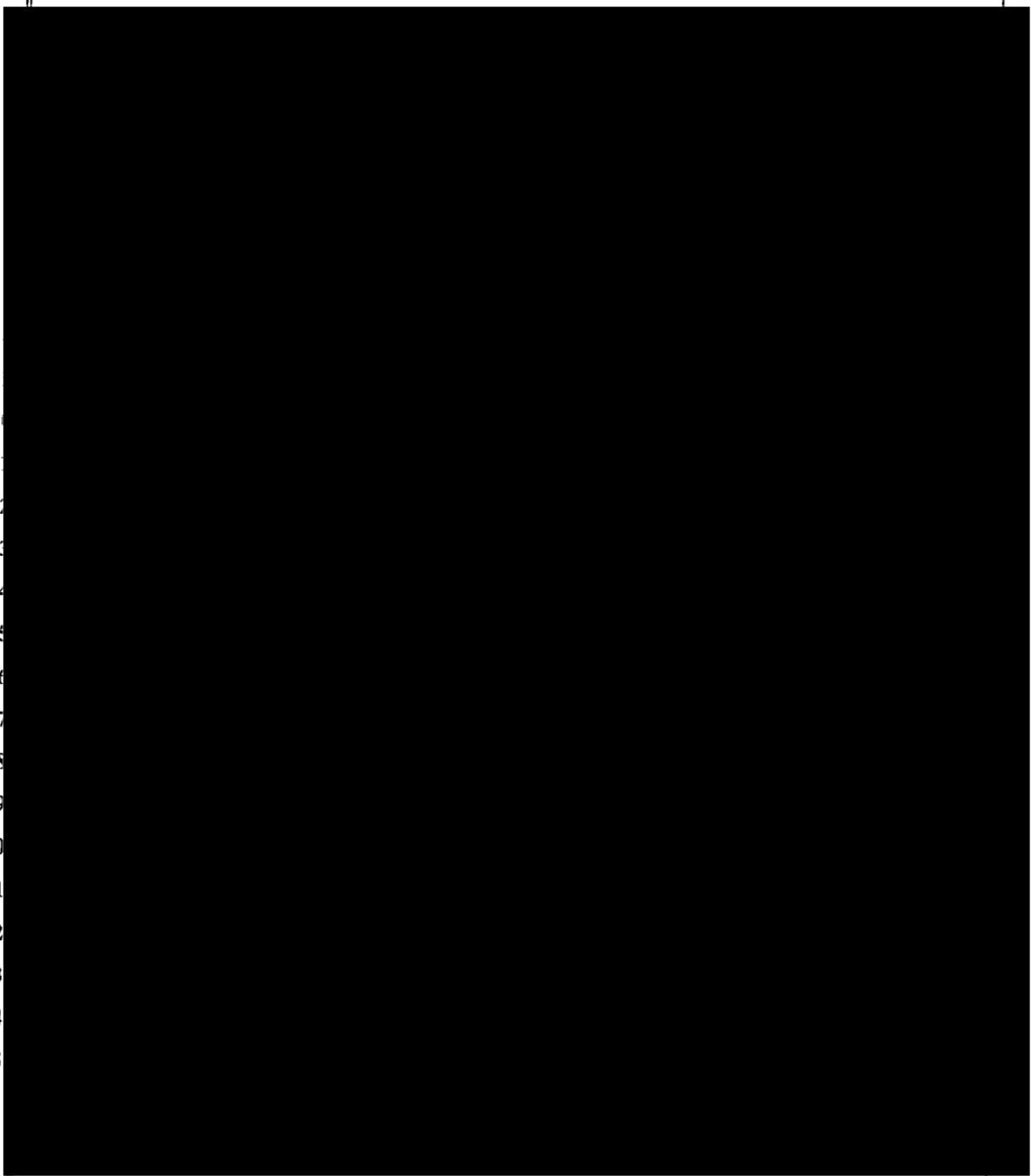




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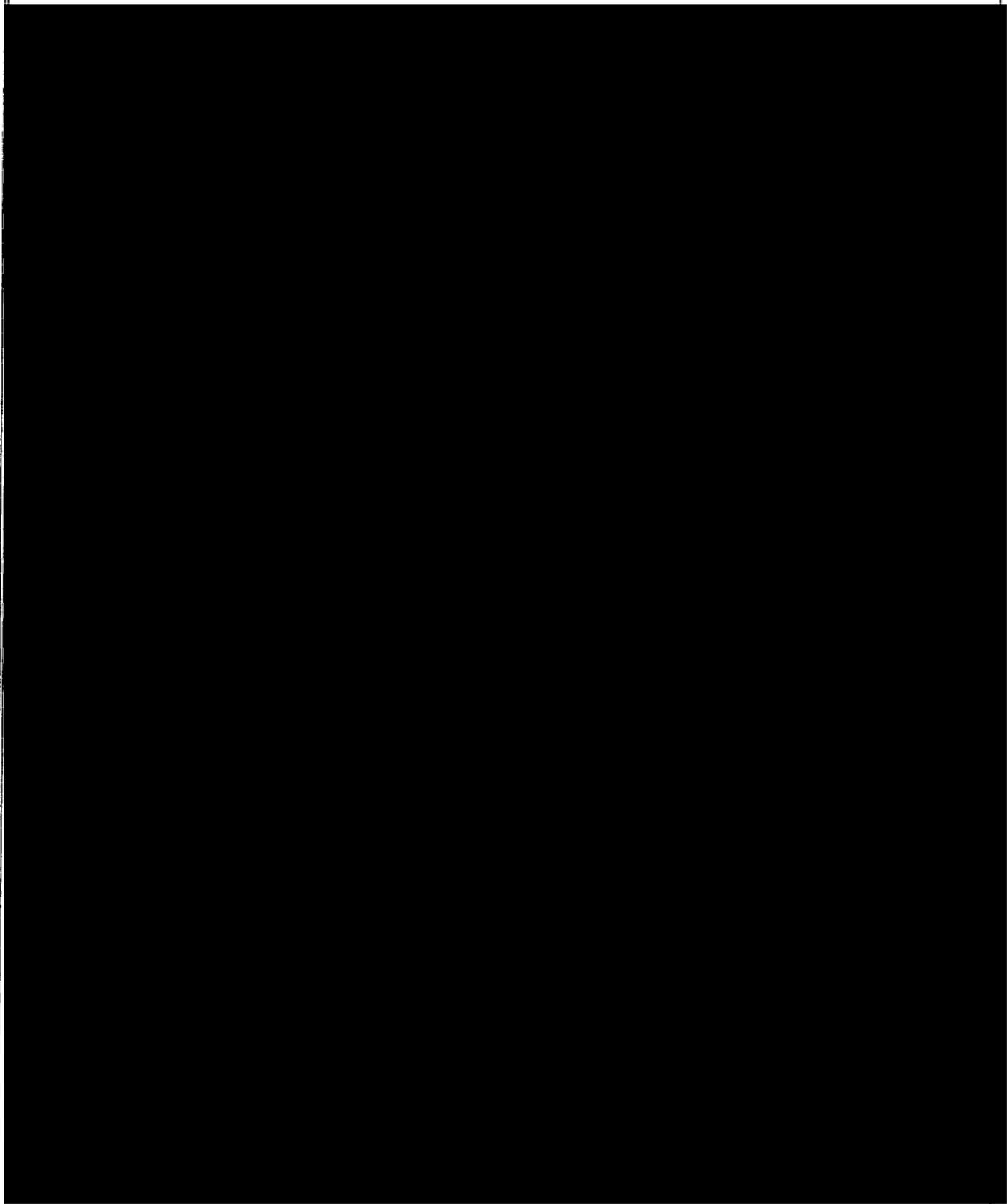


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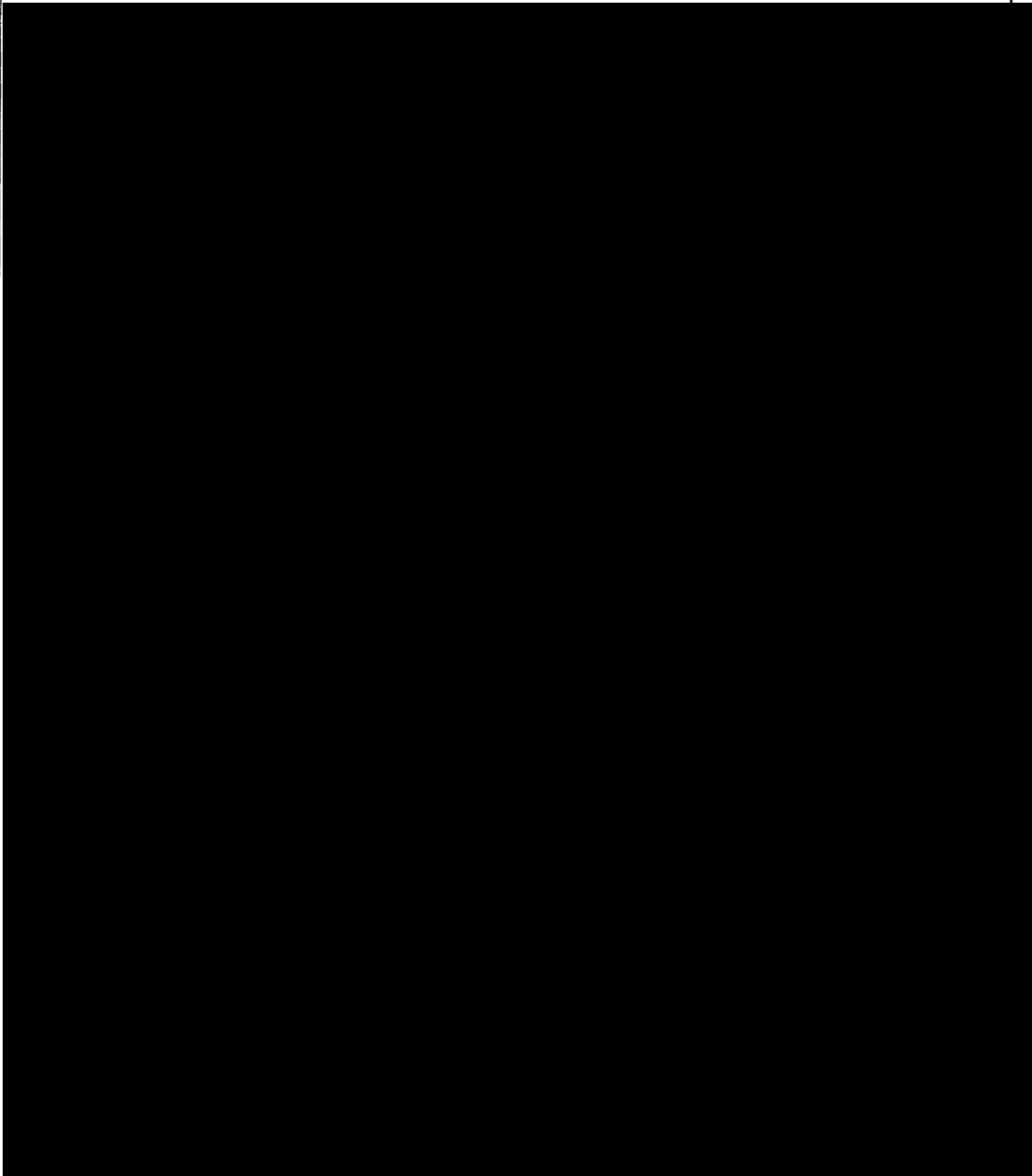




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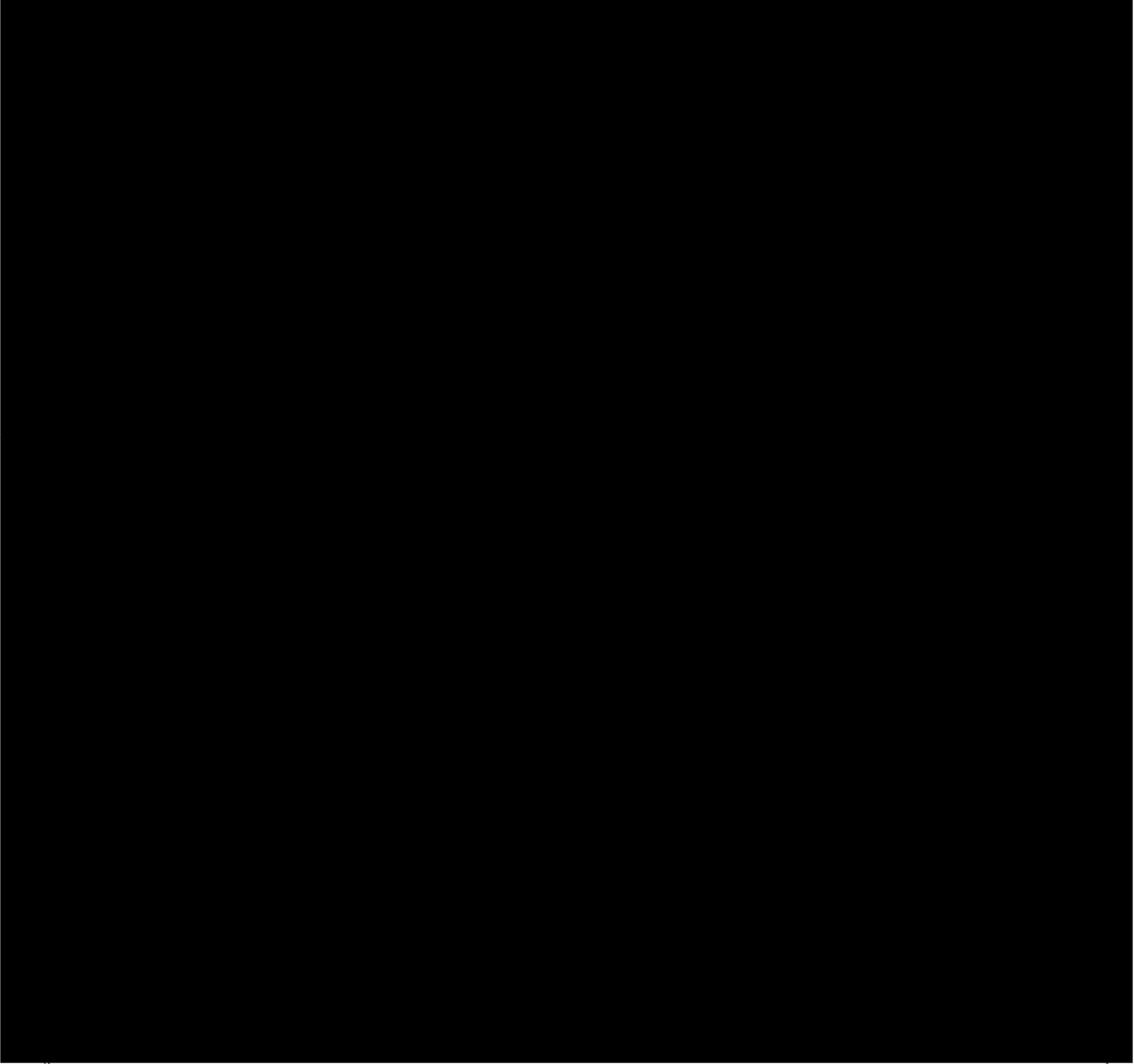


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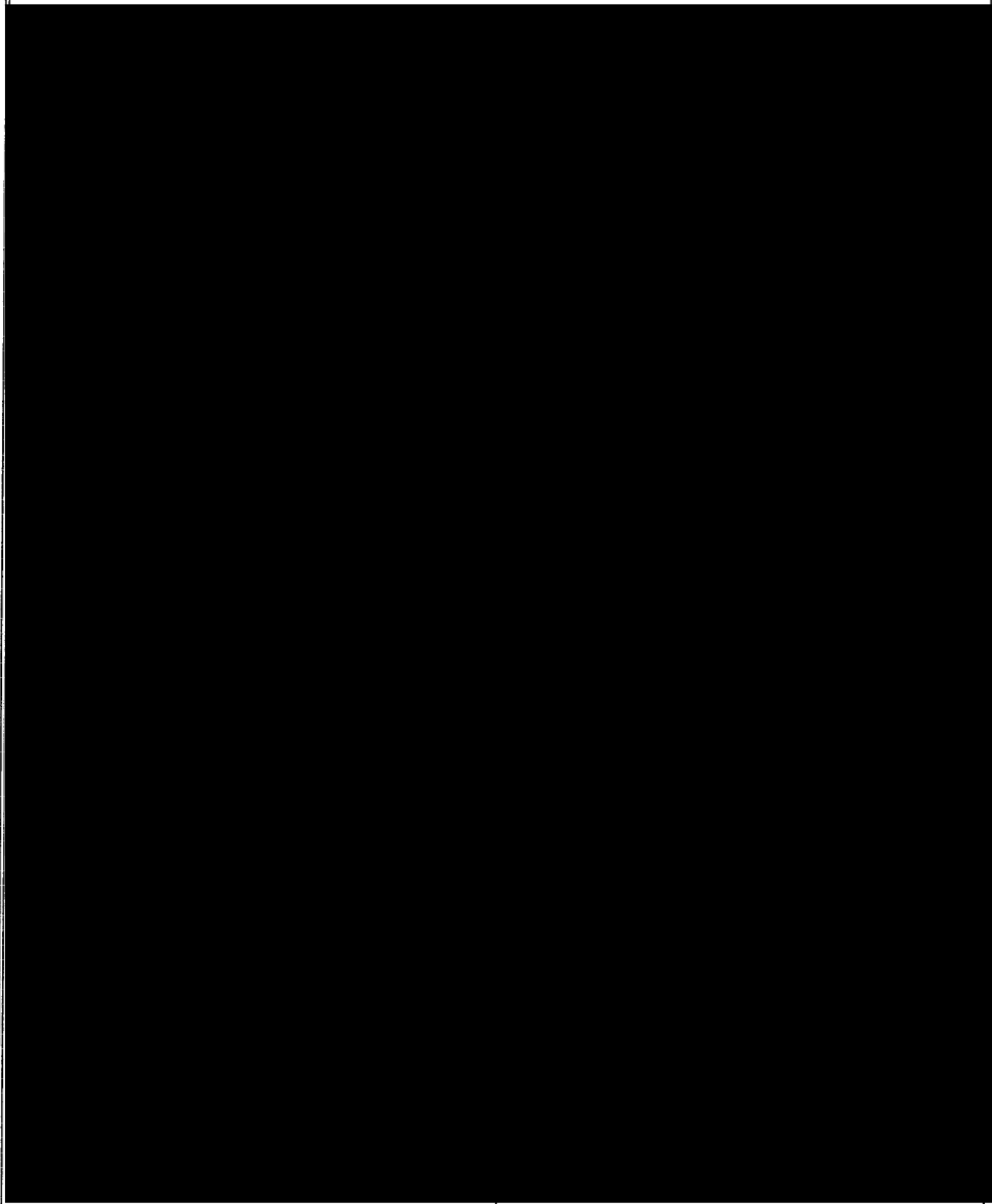


1 DENNIS K. BURKE  
United States Attorney  
District of Arizona

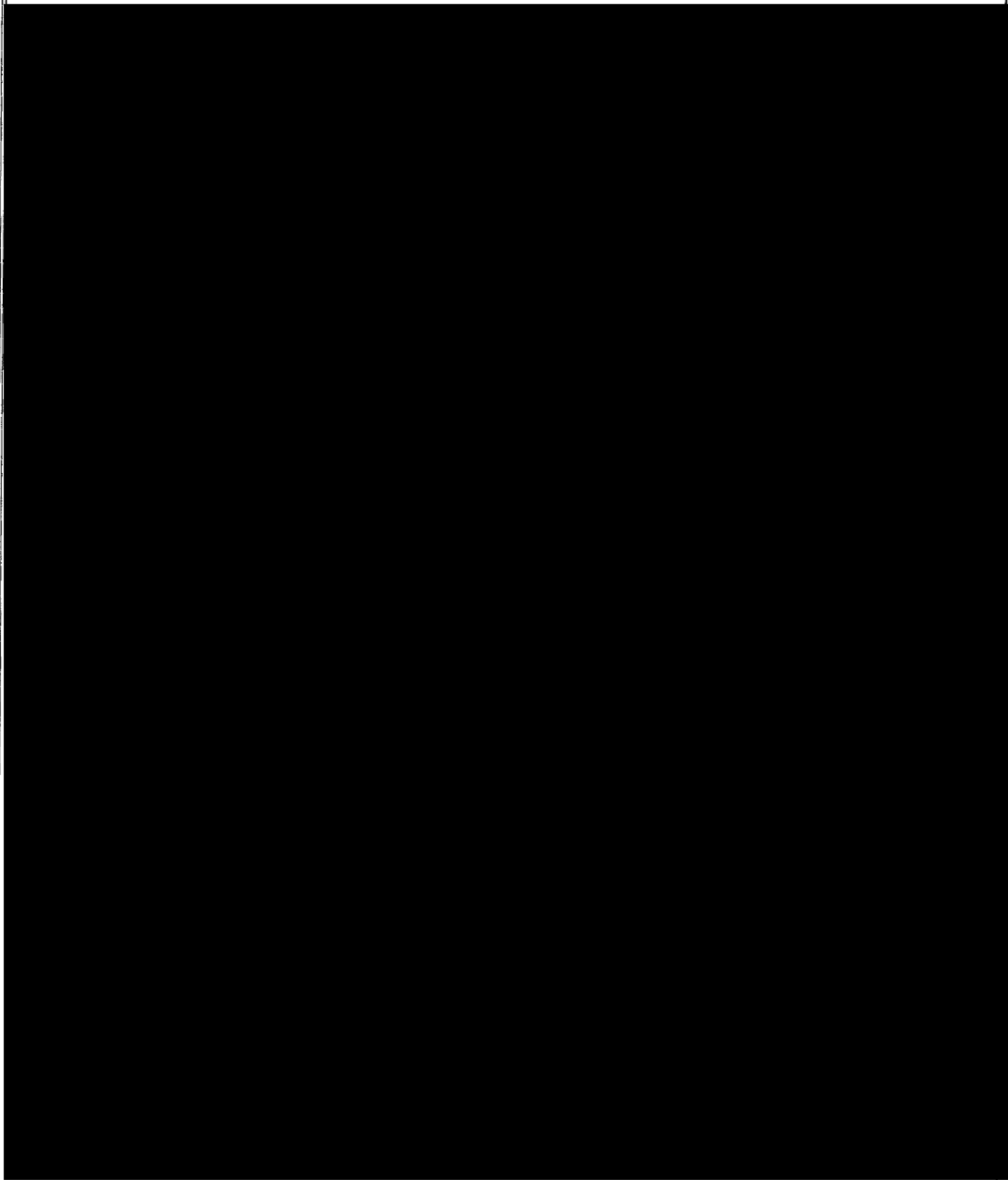
2 EMORY T. HURLEY  
3 Assistant United States Attorney  
State Bar Number: 14812  
4 Two Renaissance Square  
40 North Central Avenue, Suite 1200  
Phoenix, Arizona 85004  
5 Telephone (602) 514-7500  
emory.hurley@usdoj.gov



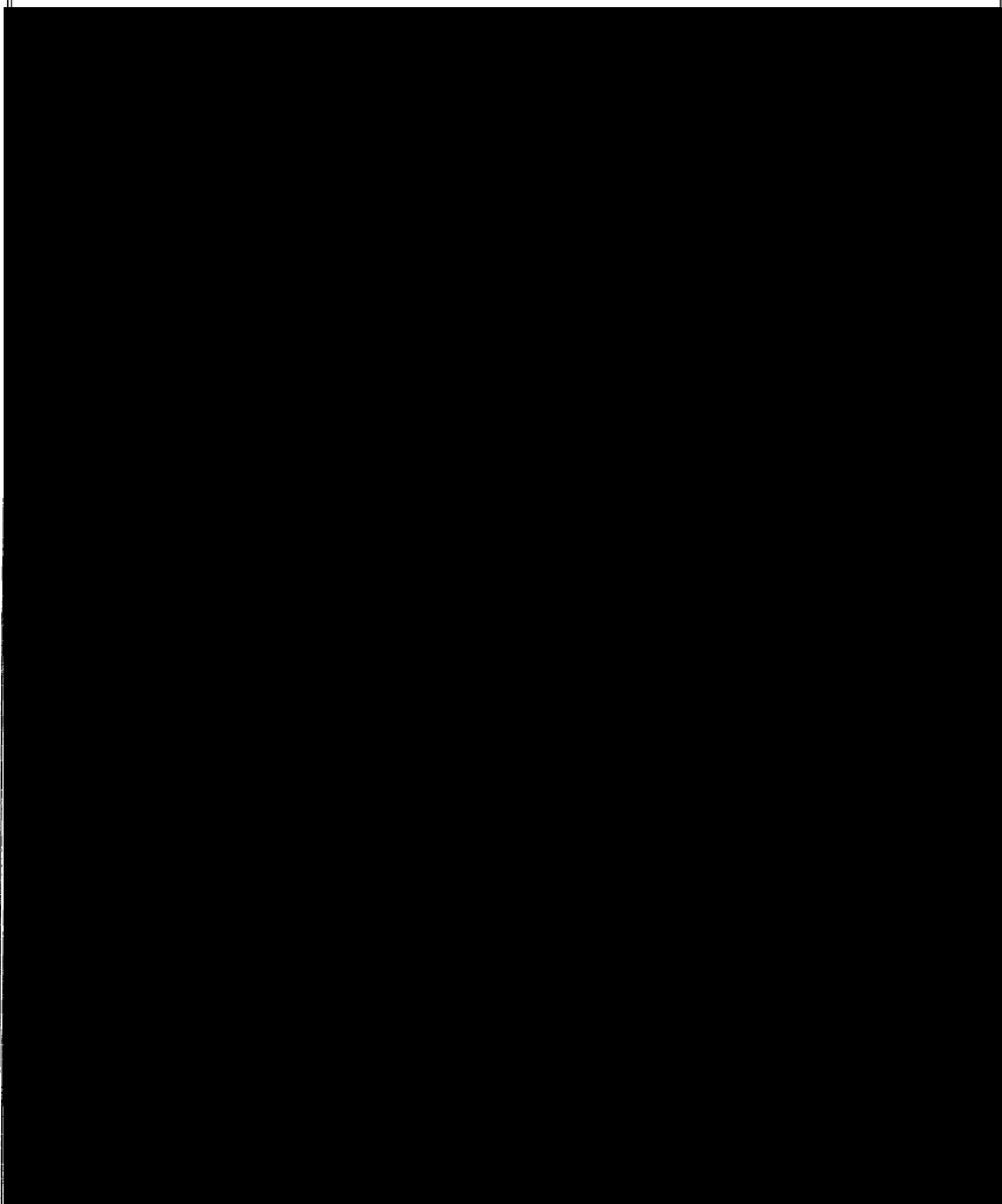
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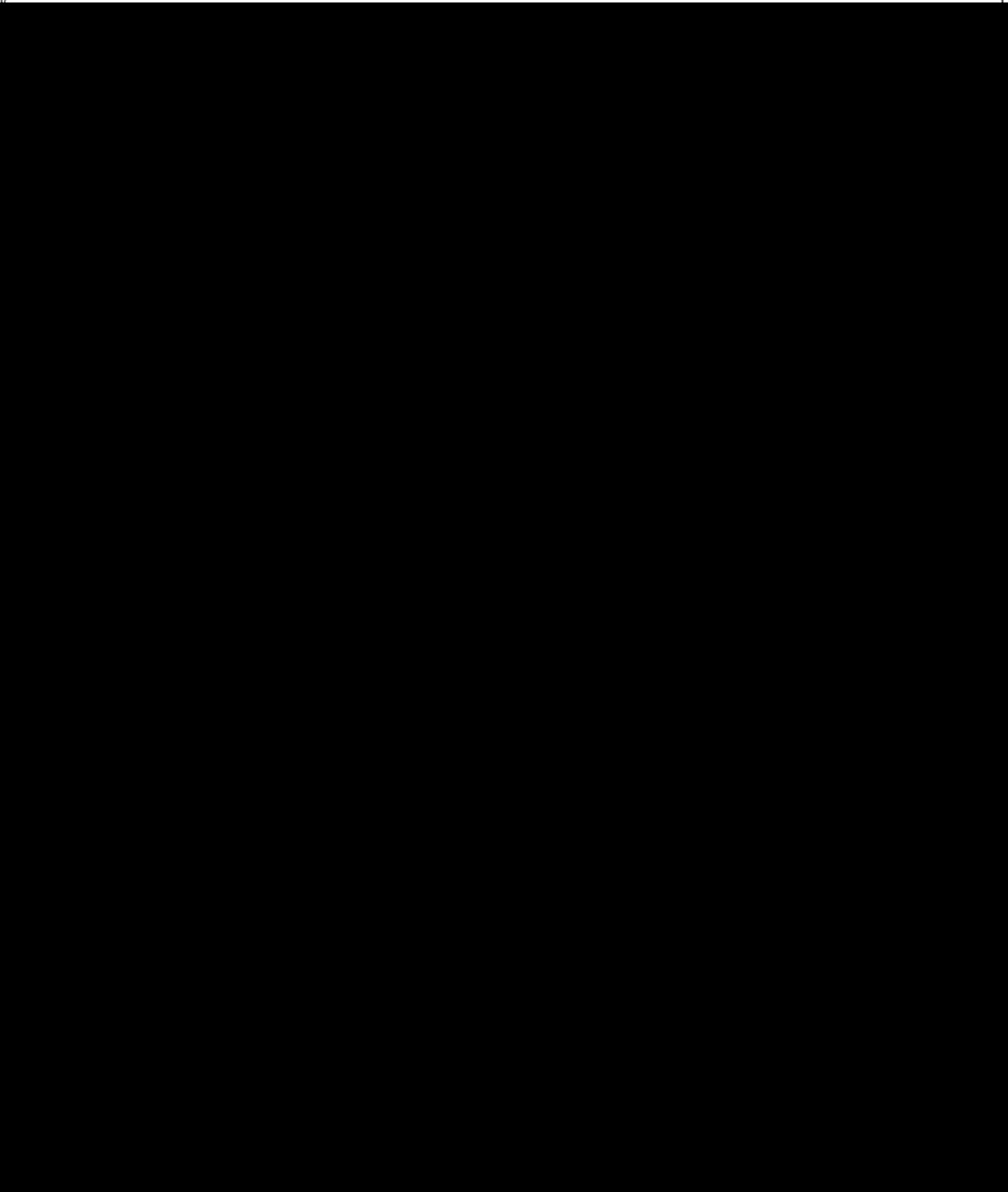
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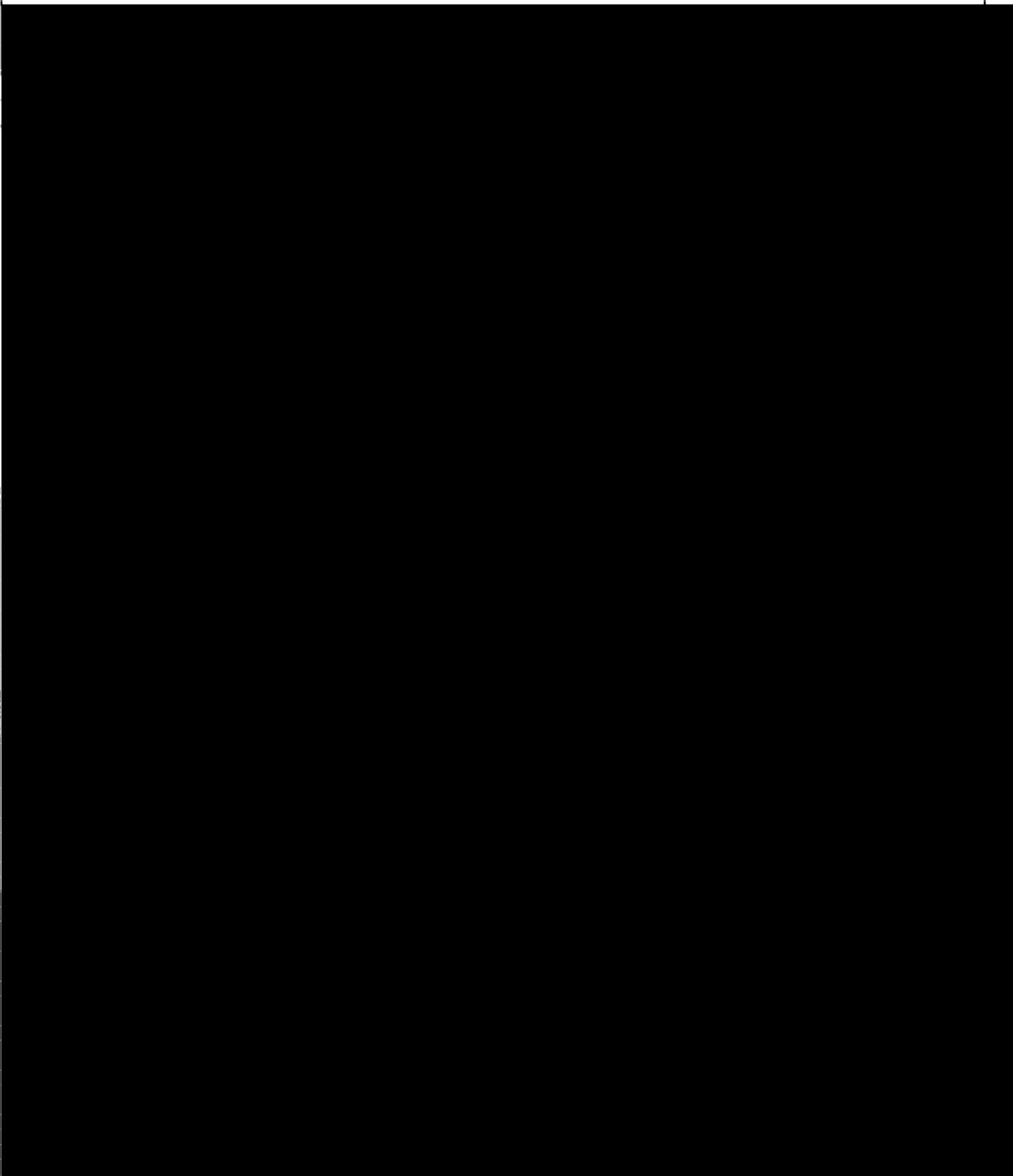
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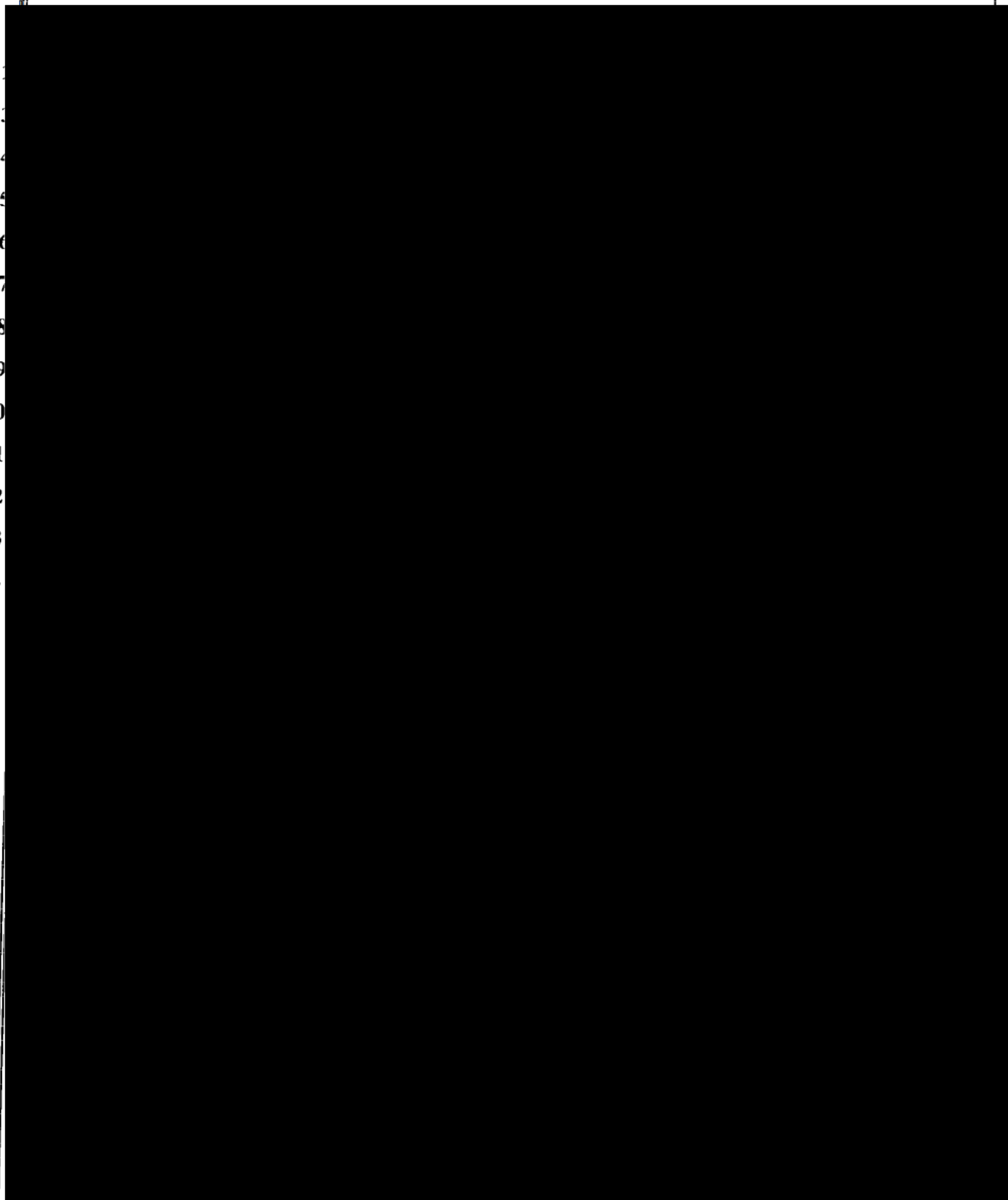
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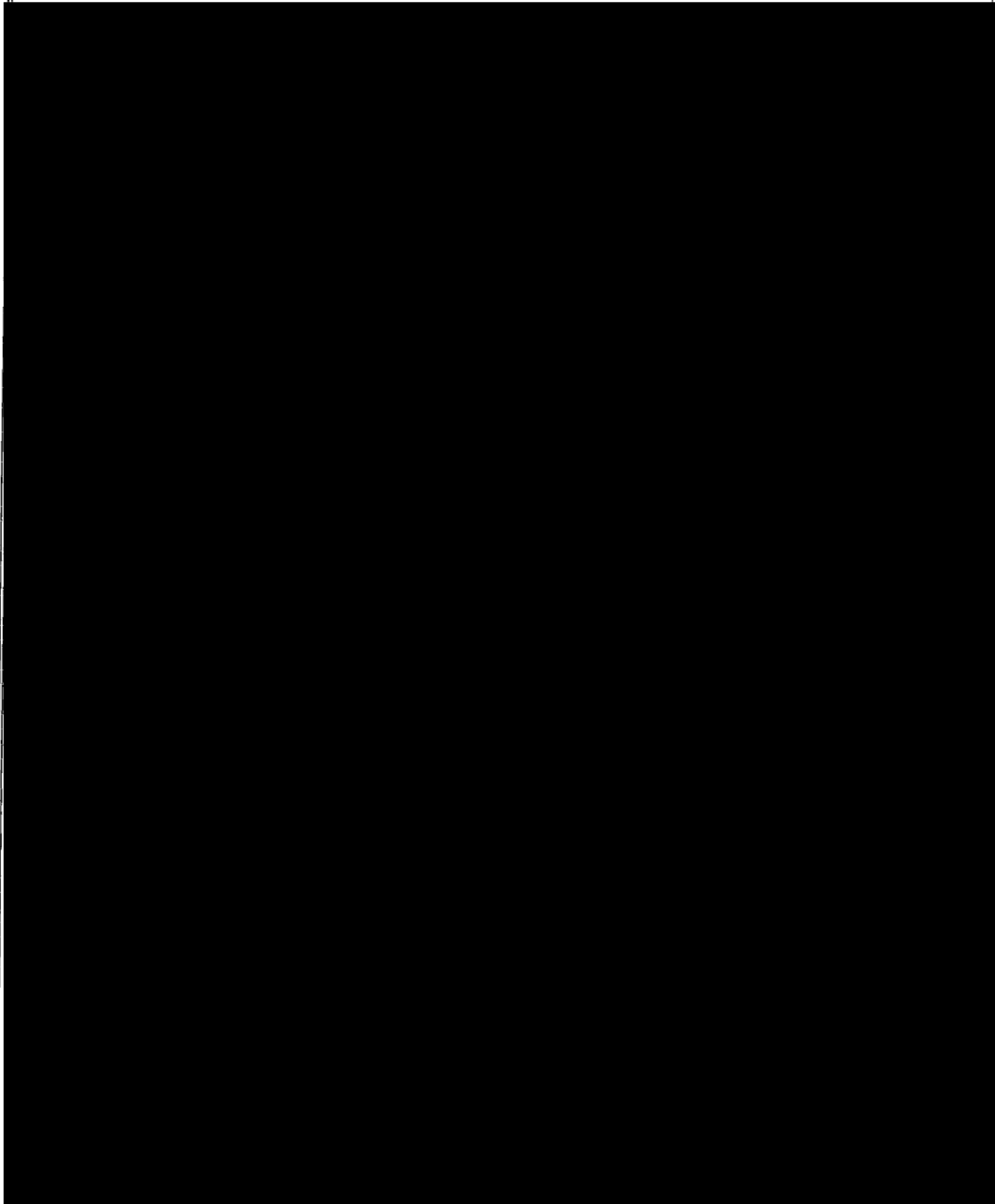






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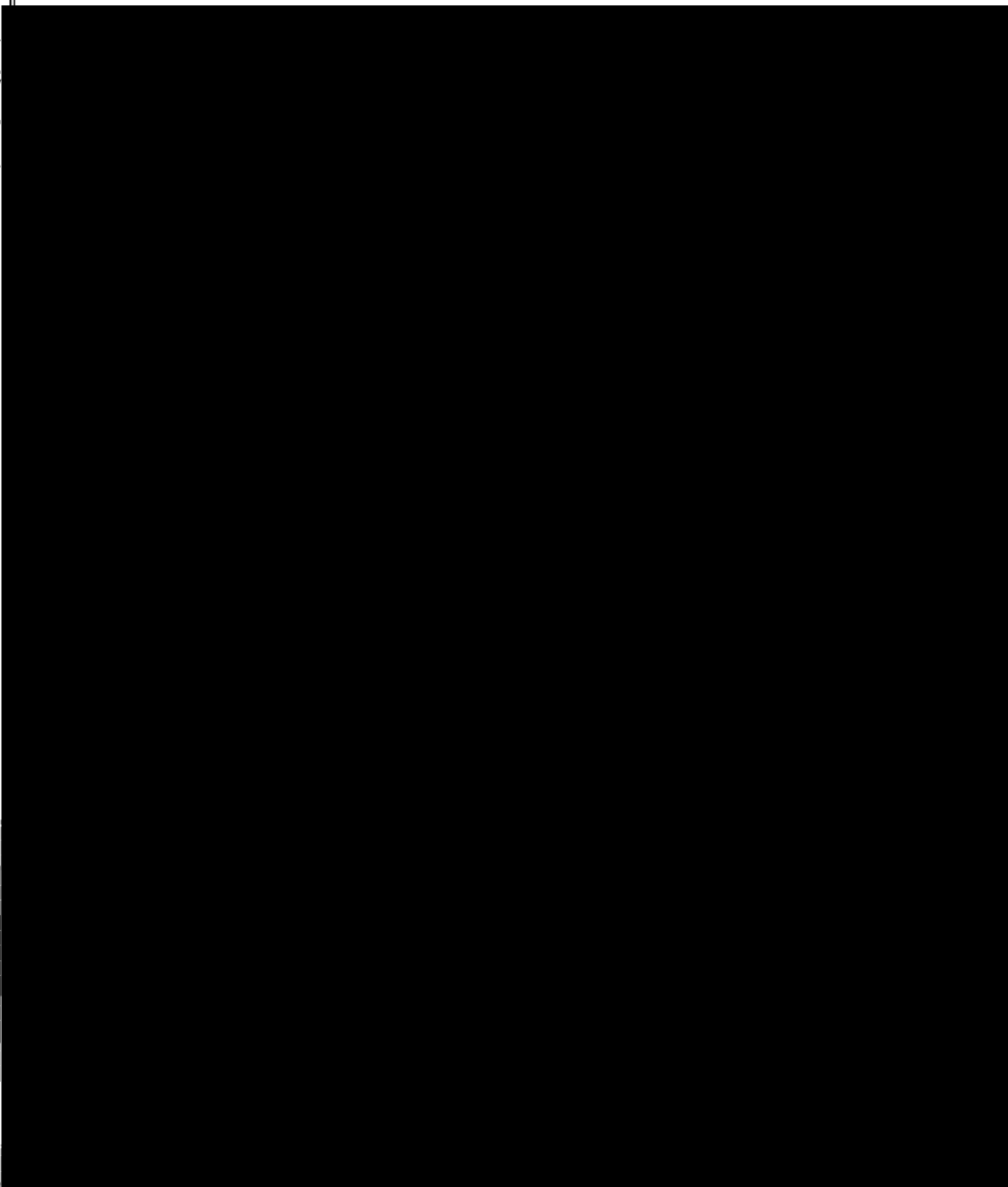
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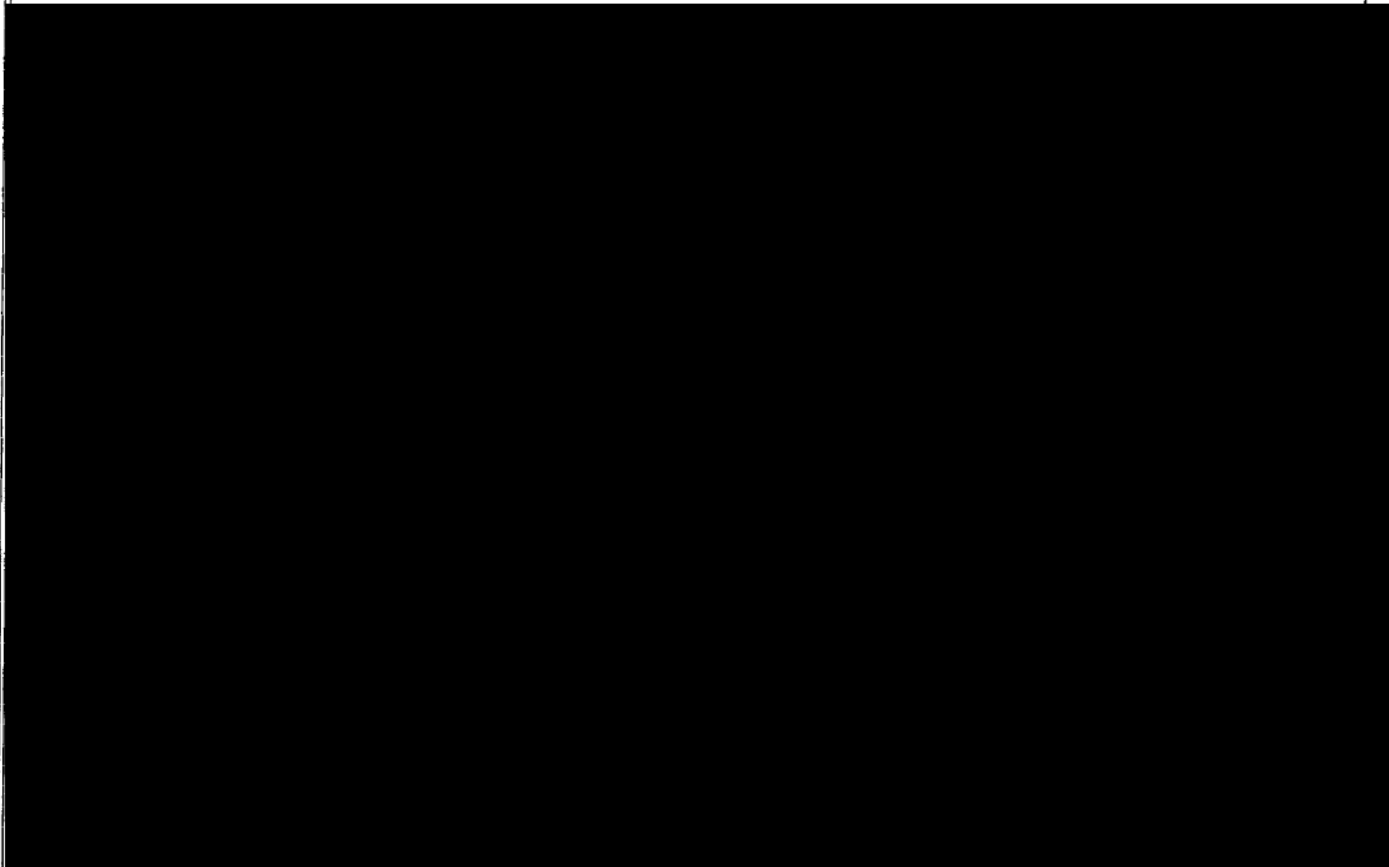




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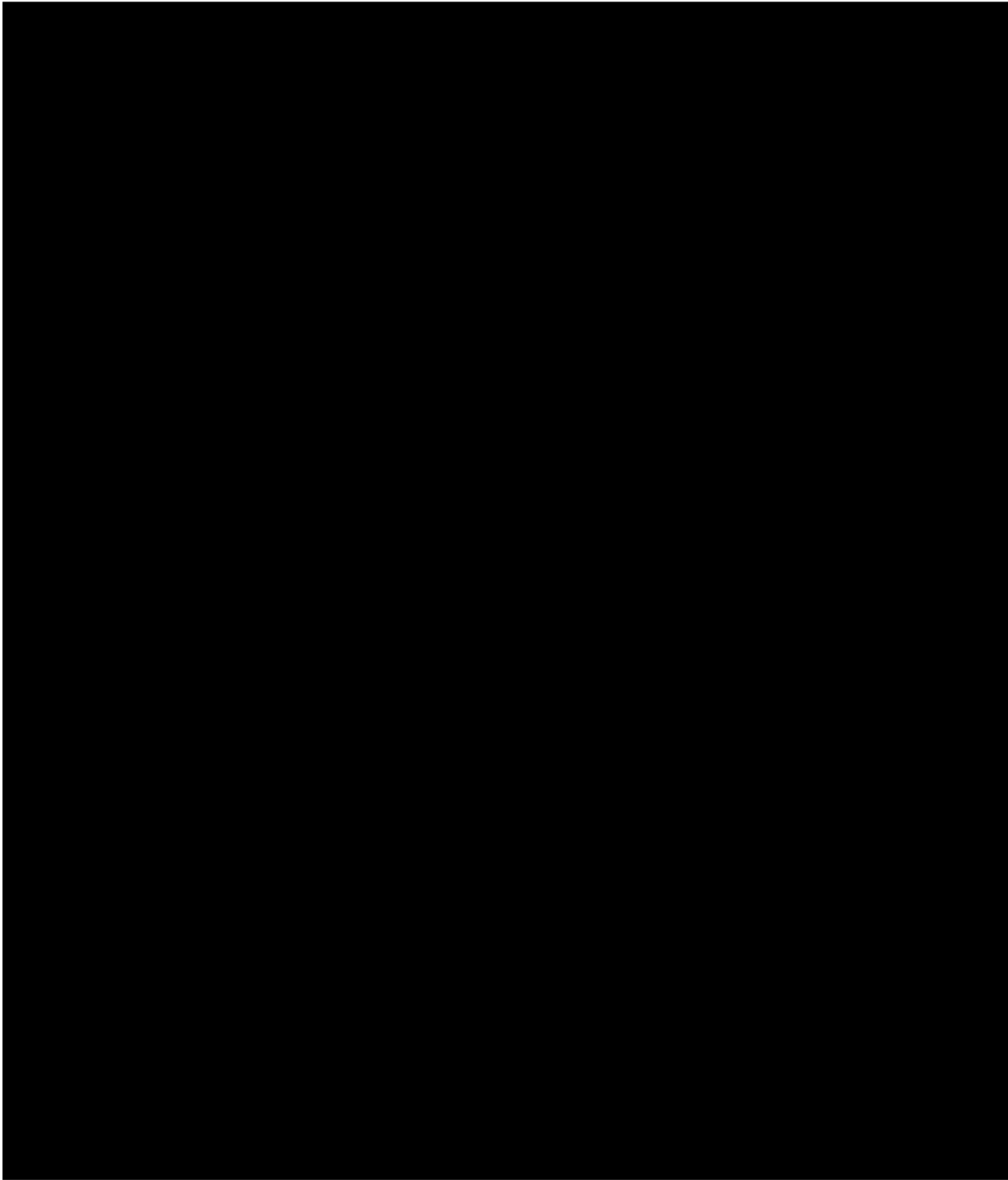


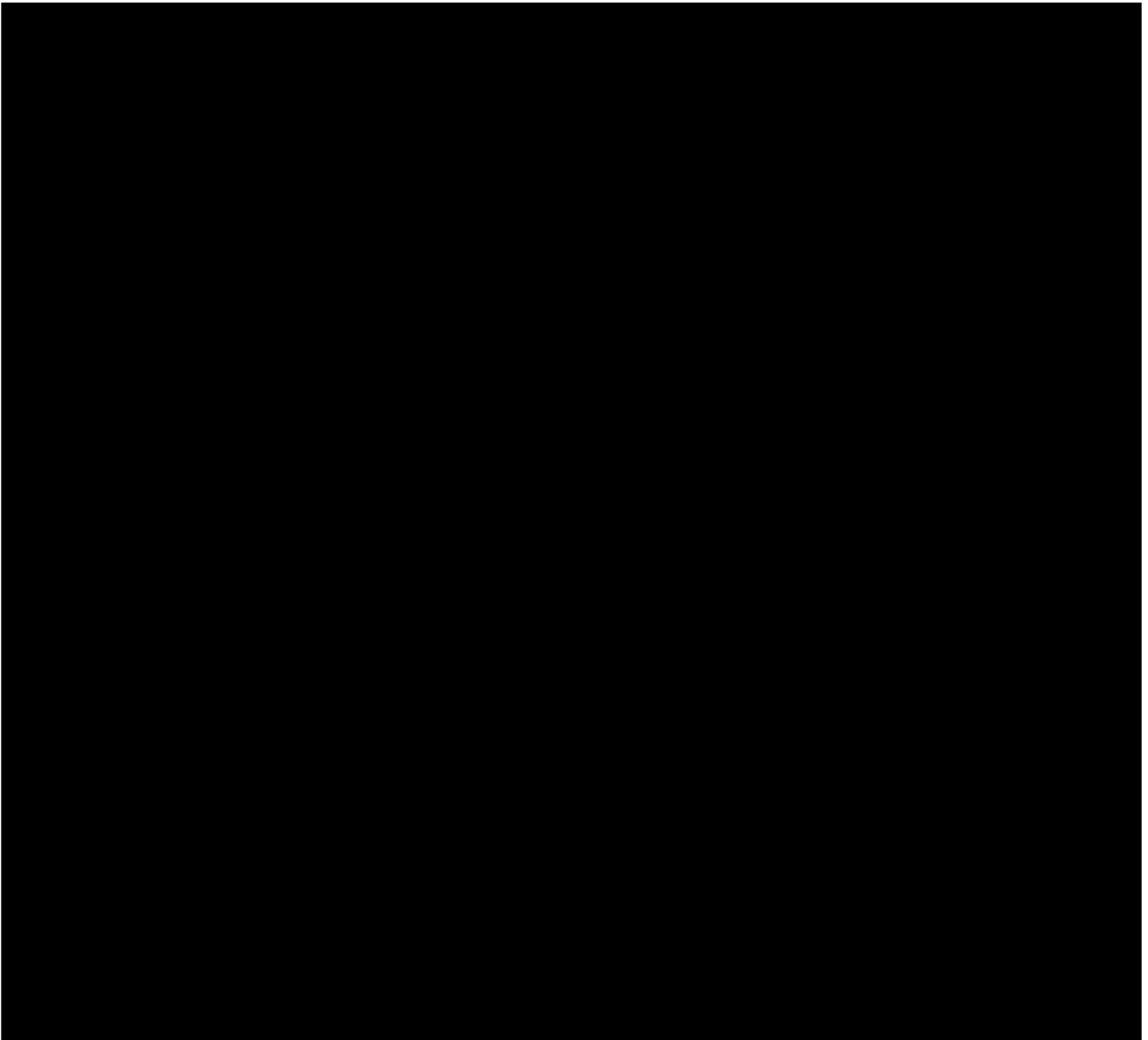
**U.S. Department of Justice**

**Criminal Division**

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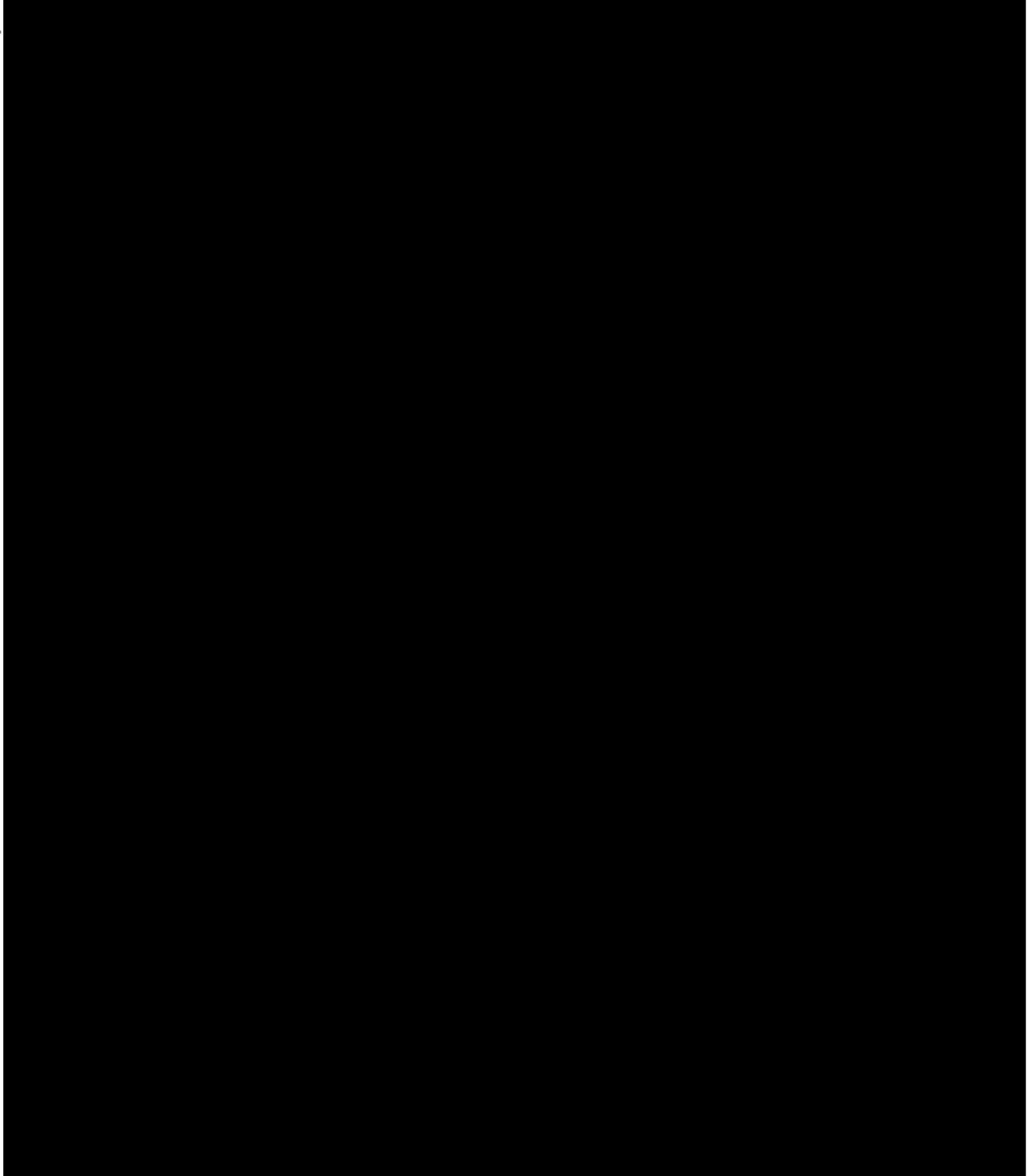
*Washington, D.C. 20530*







**Office of the Attorney General**  
Washington, D.C.

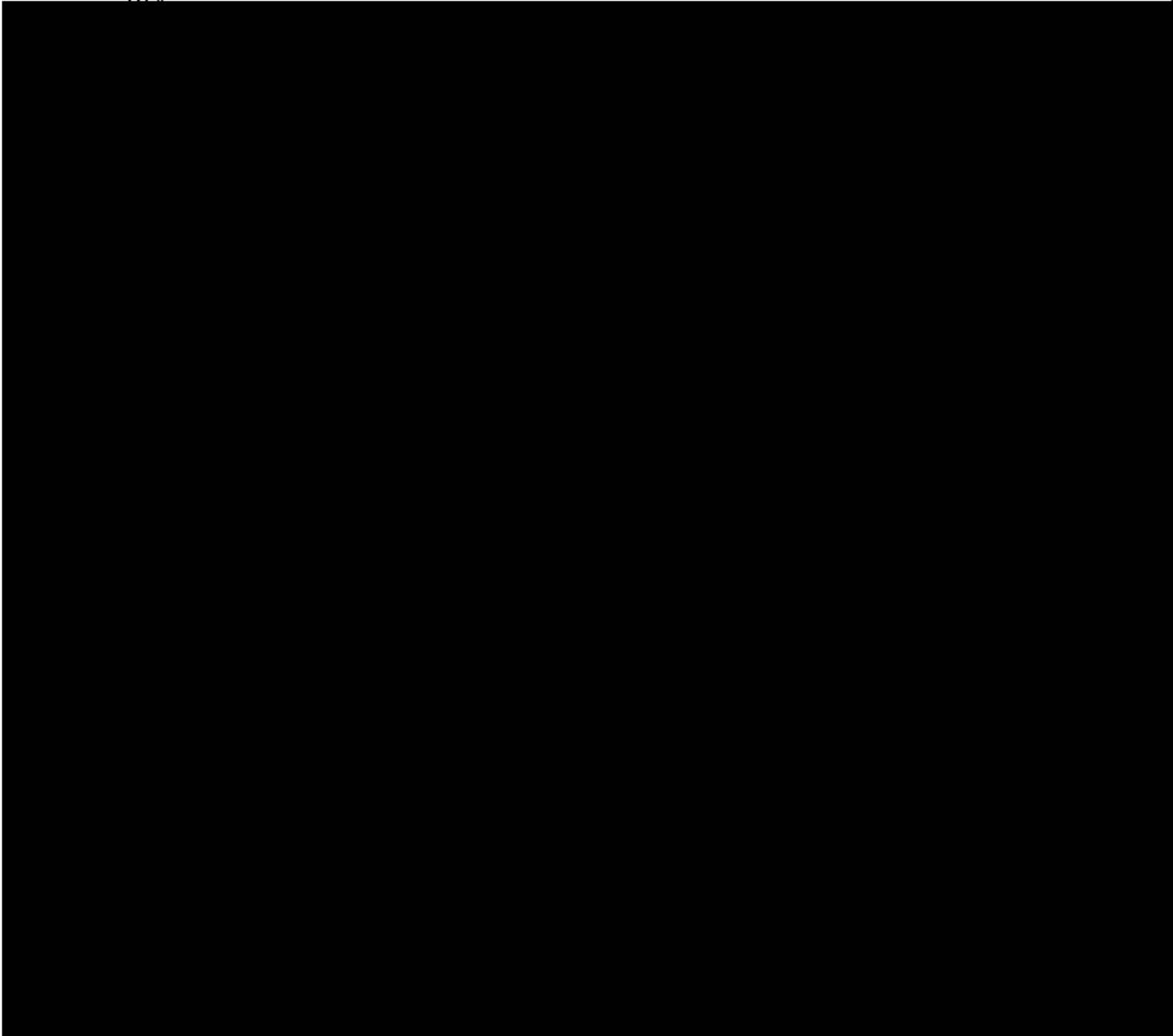


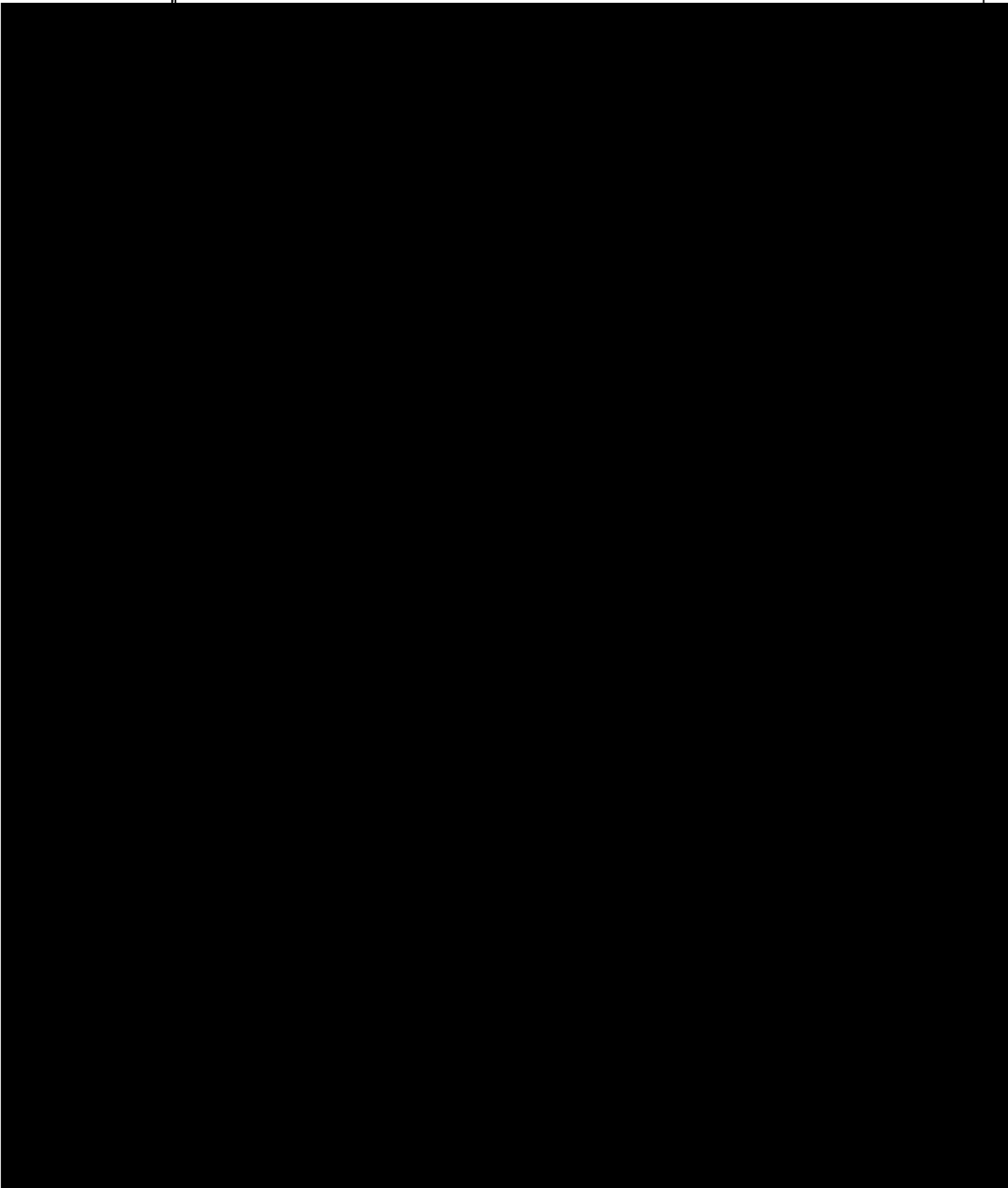


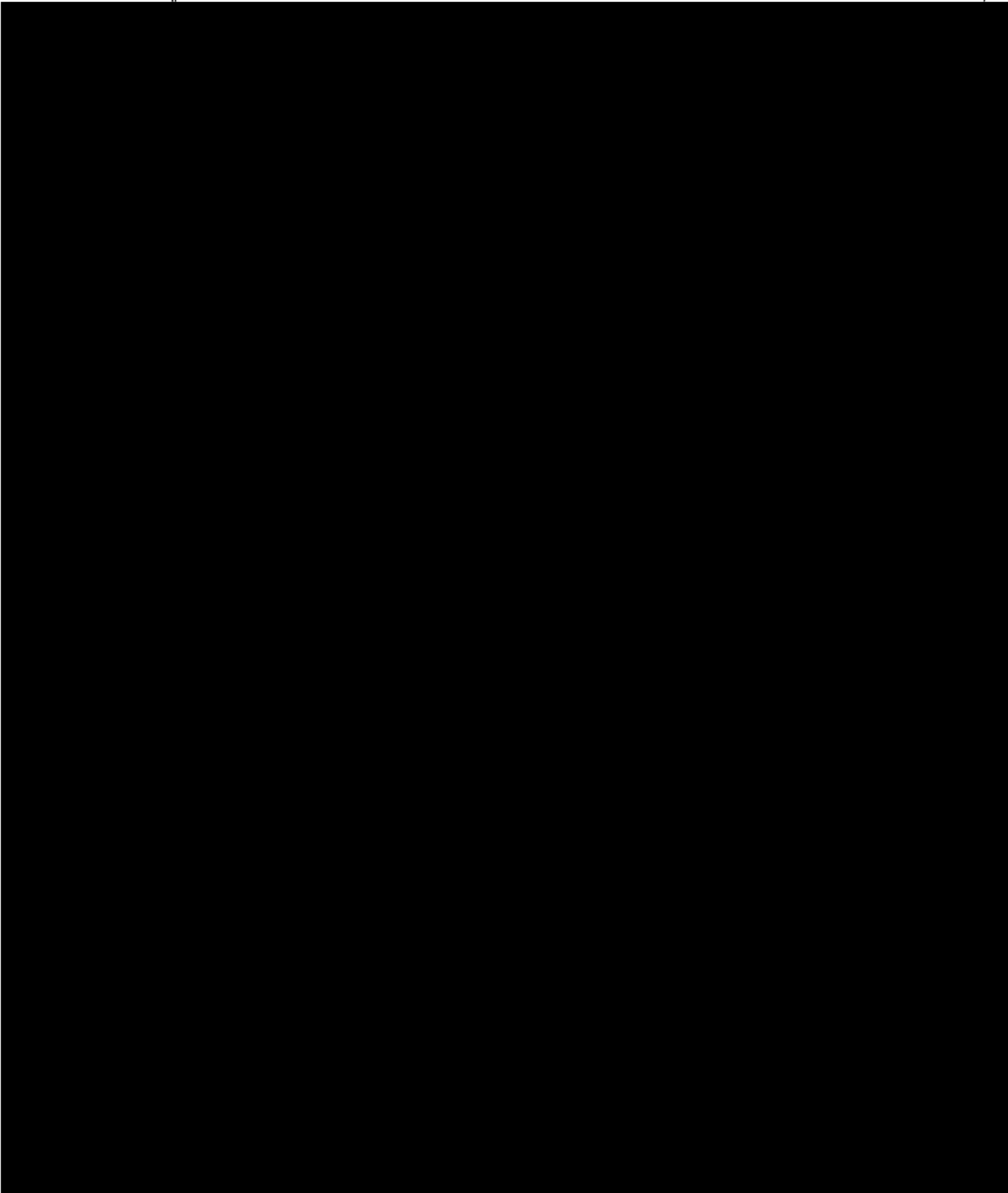
1 DENNIS K. BURKE  
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3 EMORY T. HURLEY  
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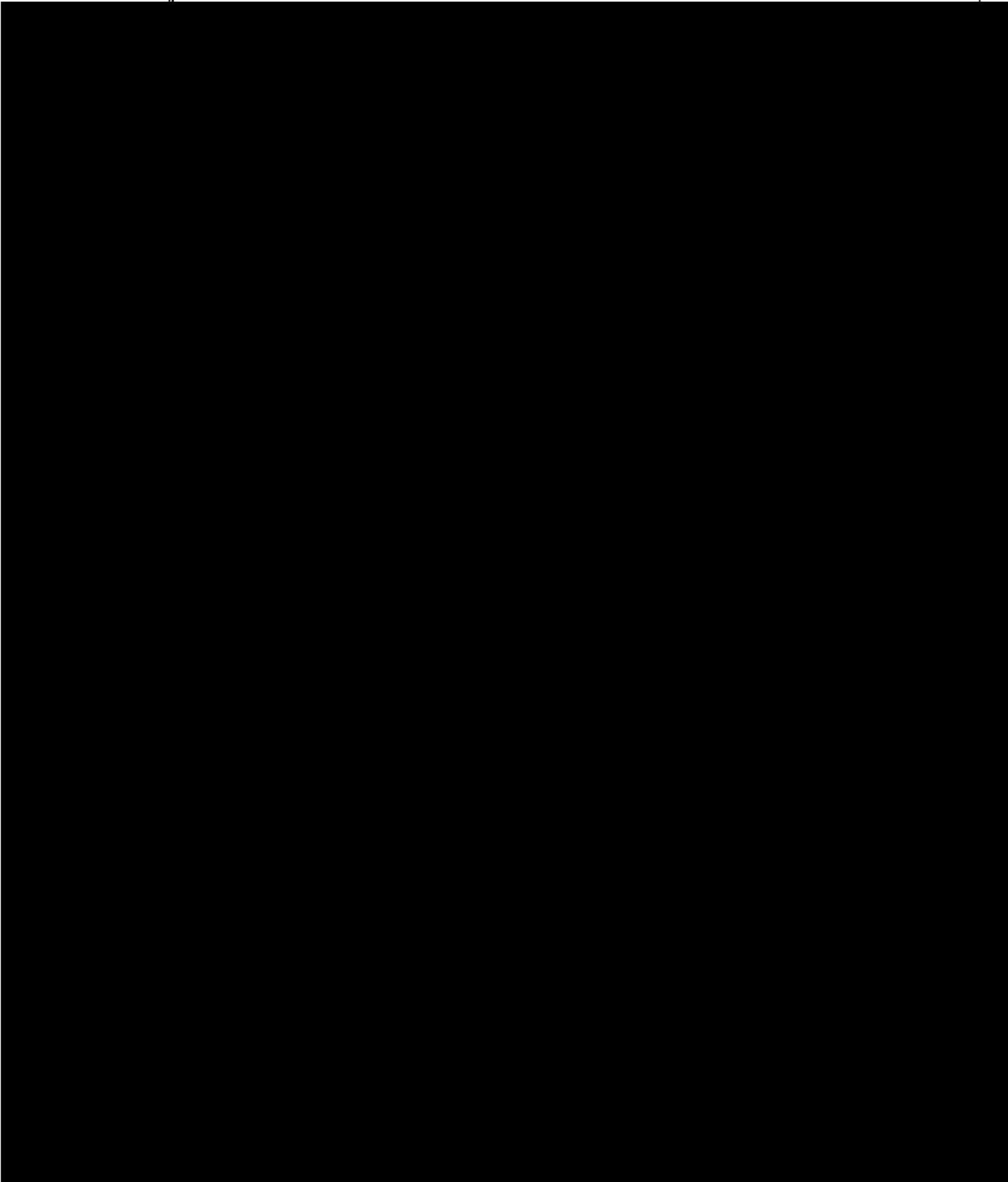
8 UNITED STATES DISTRICT COURT

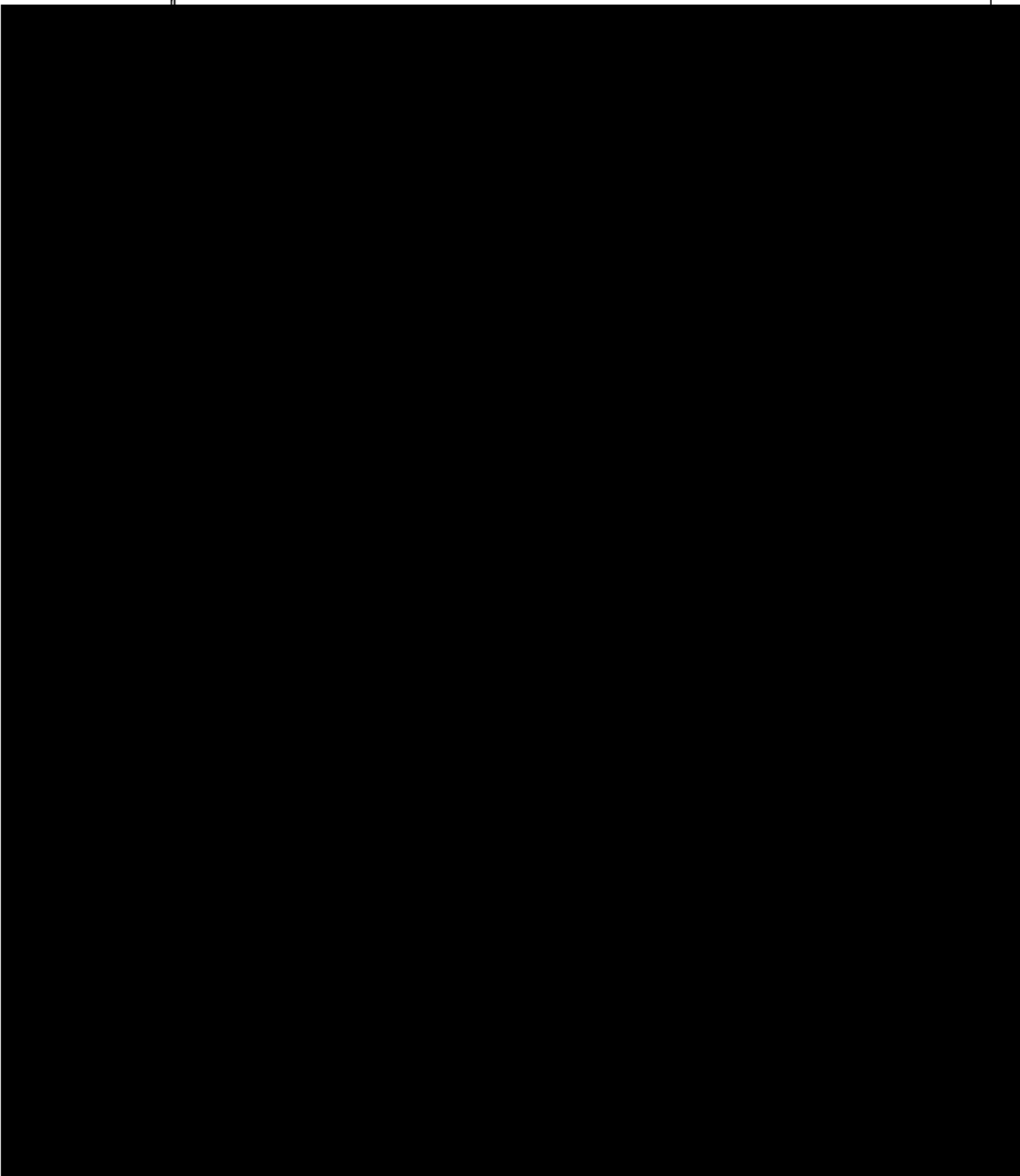
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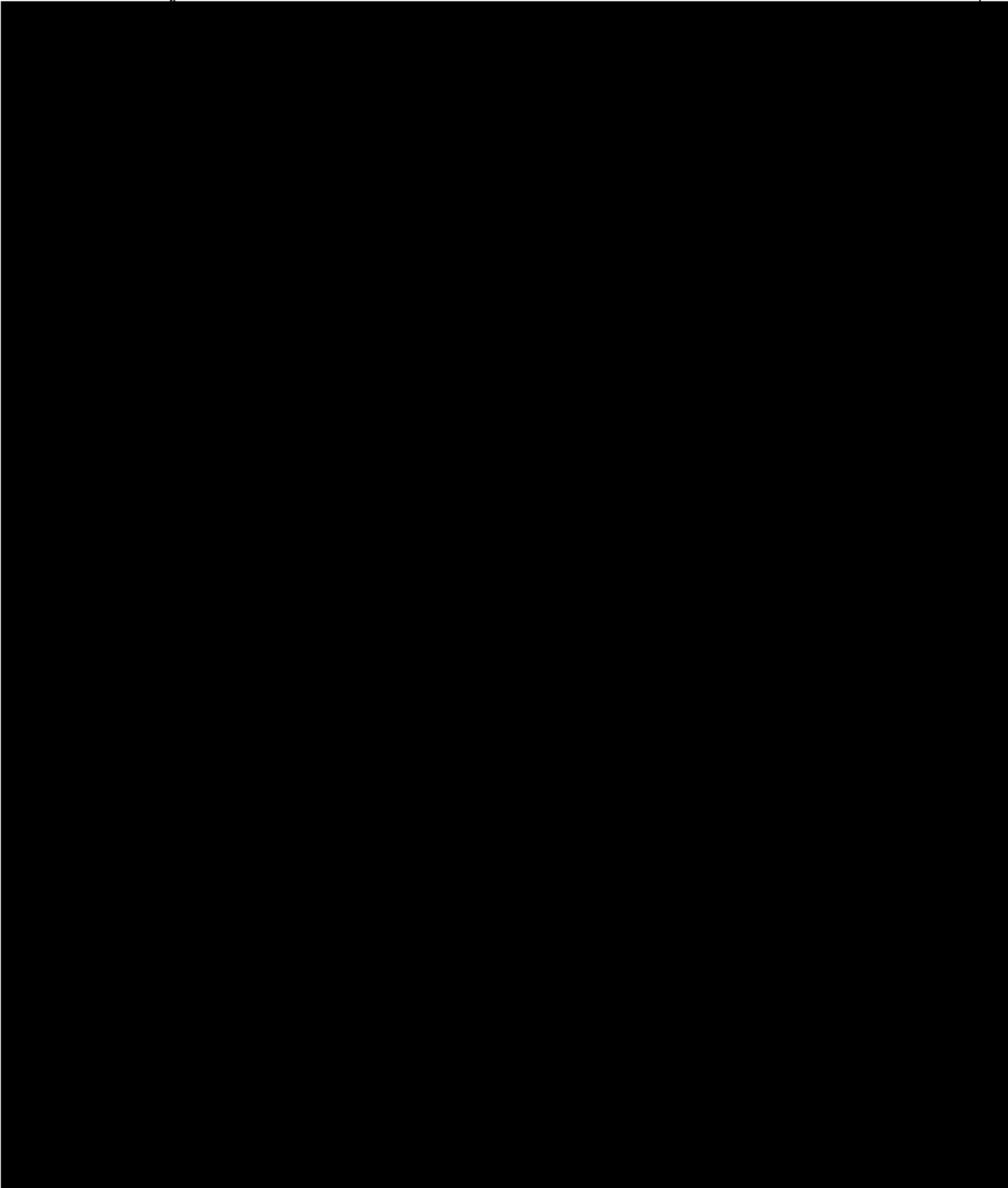


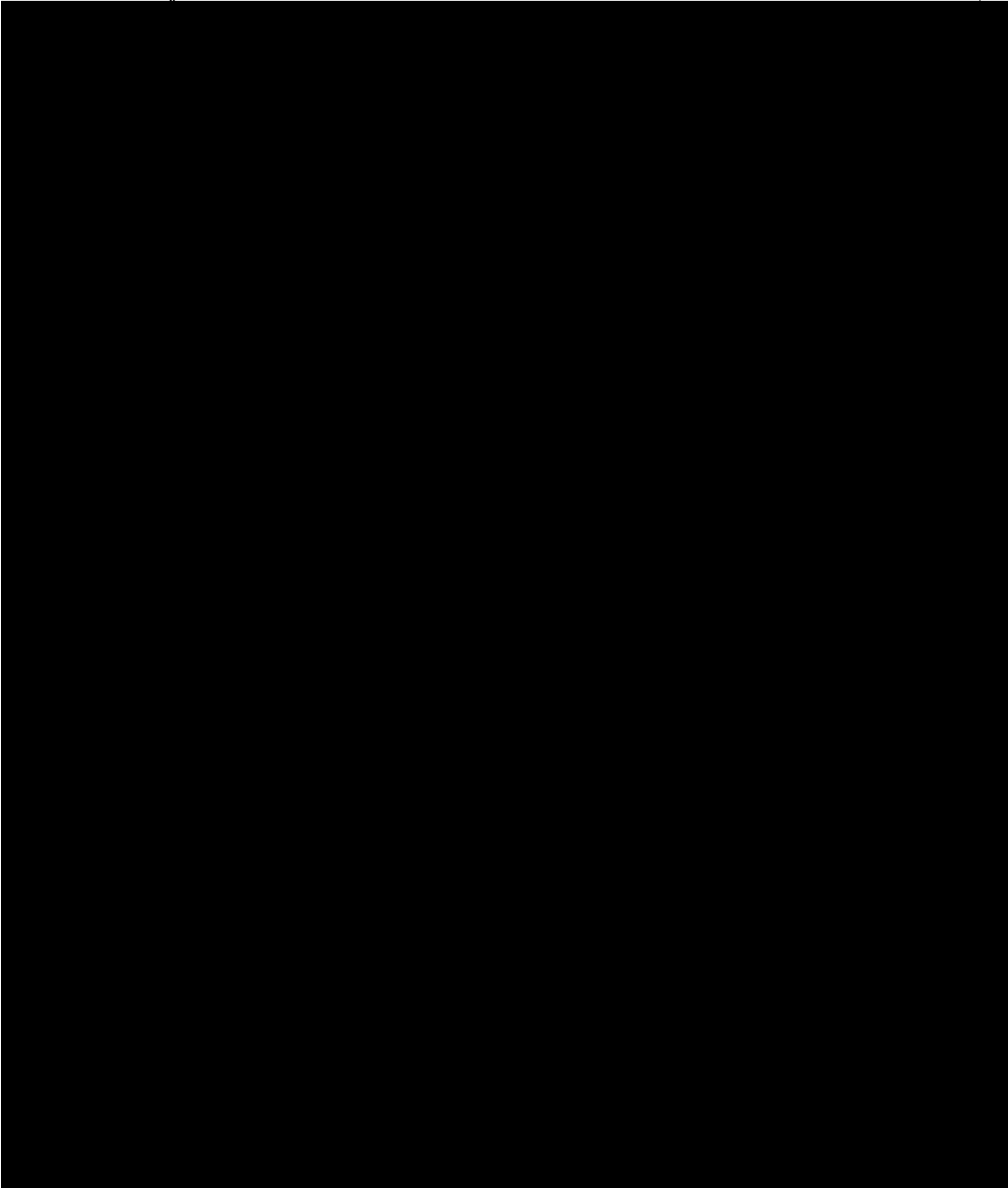


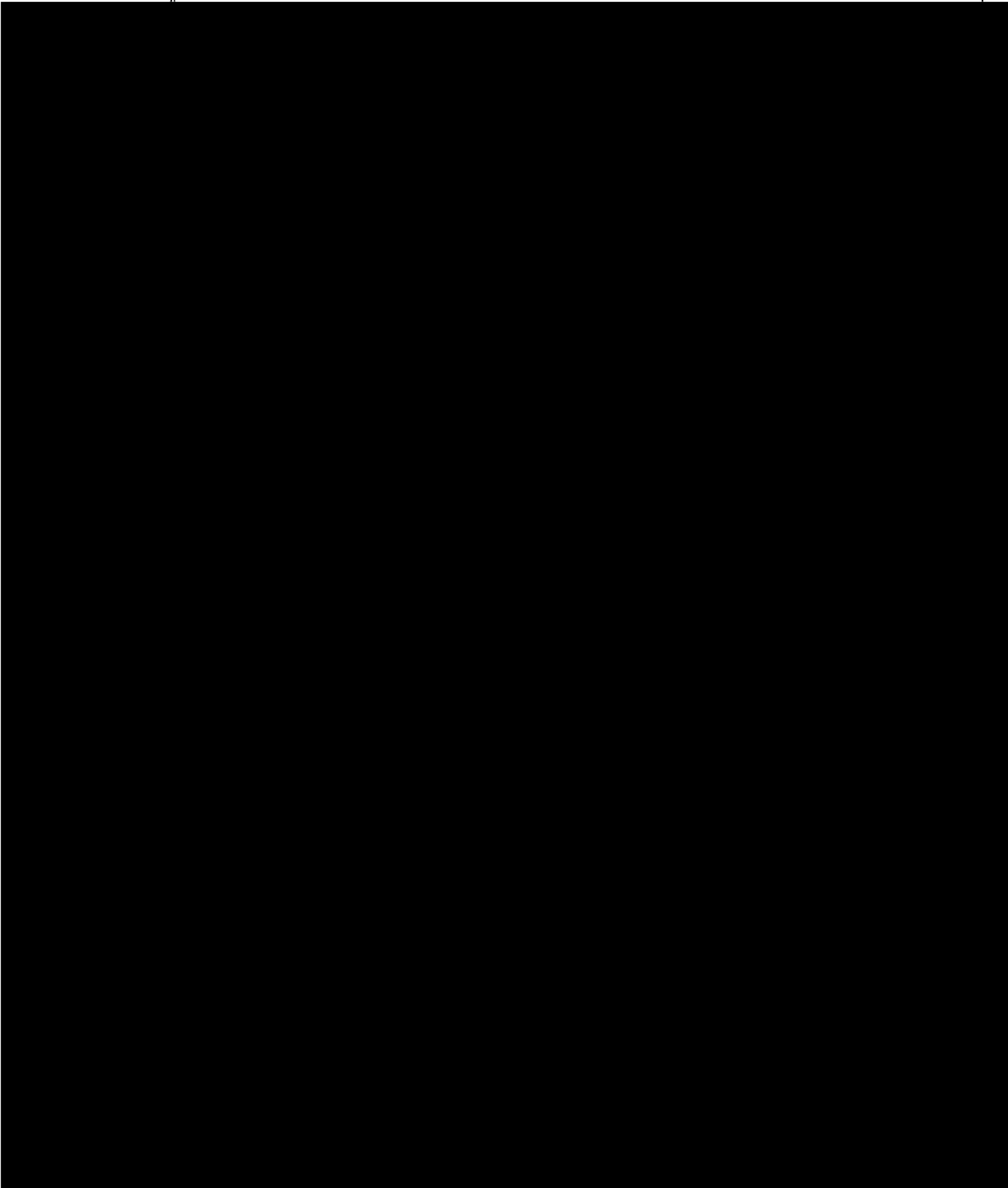




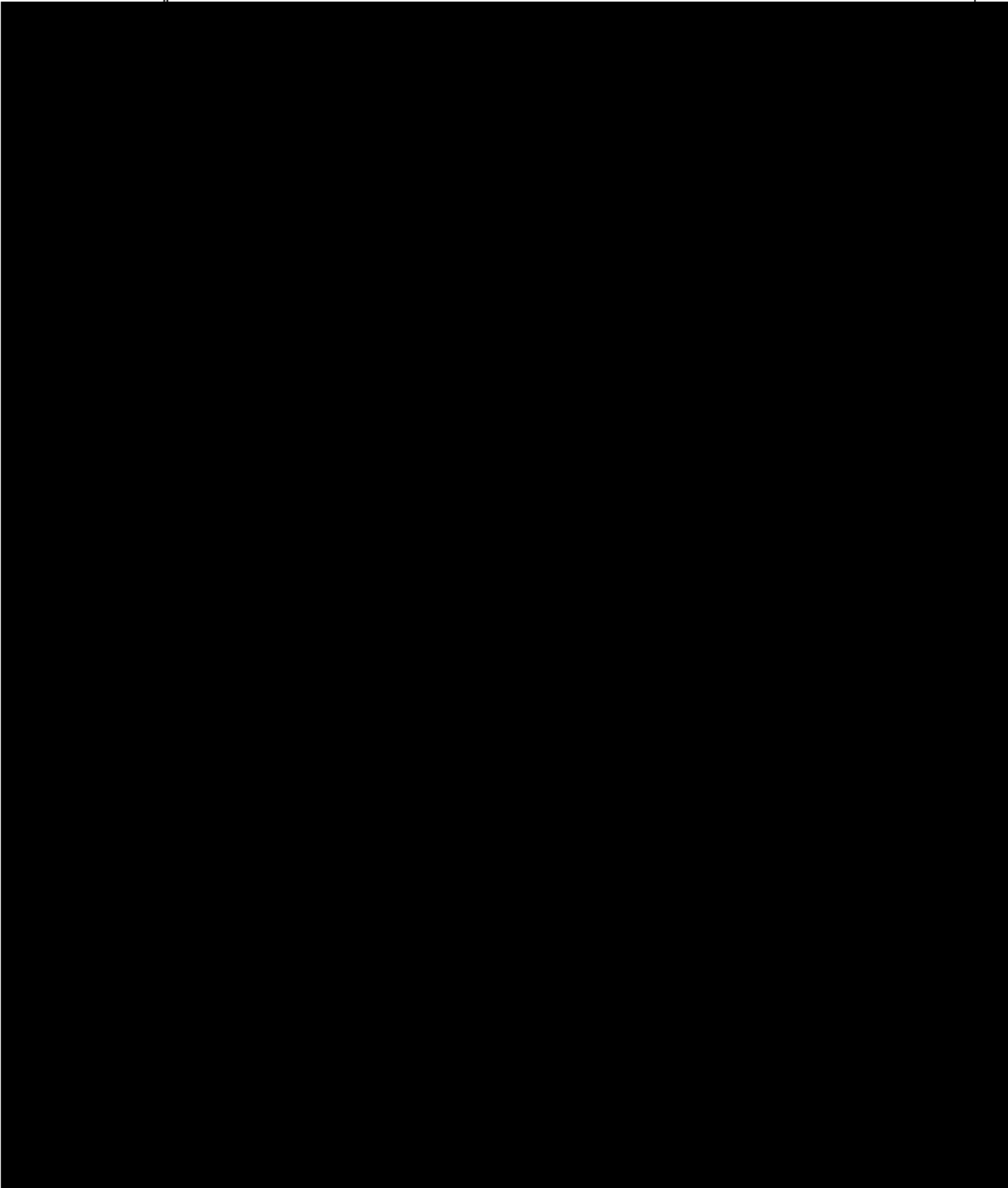


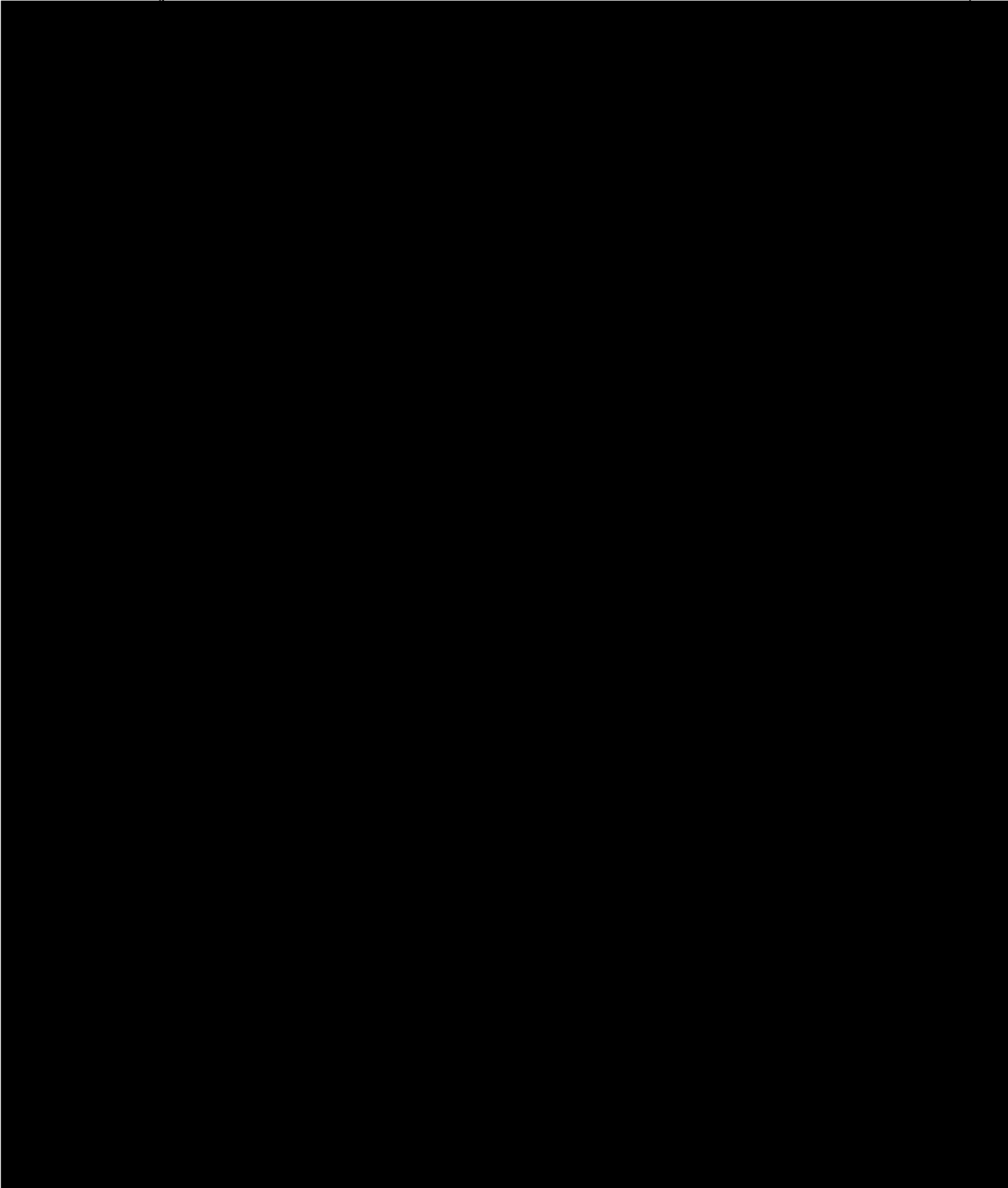


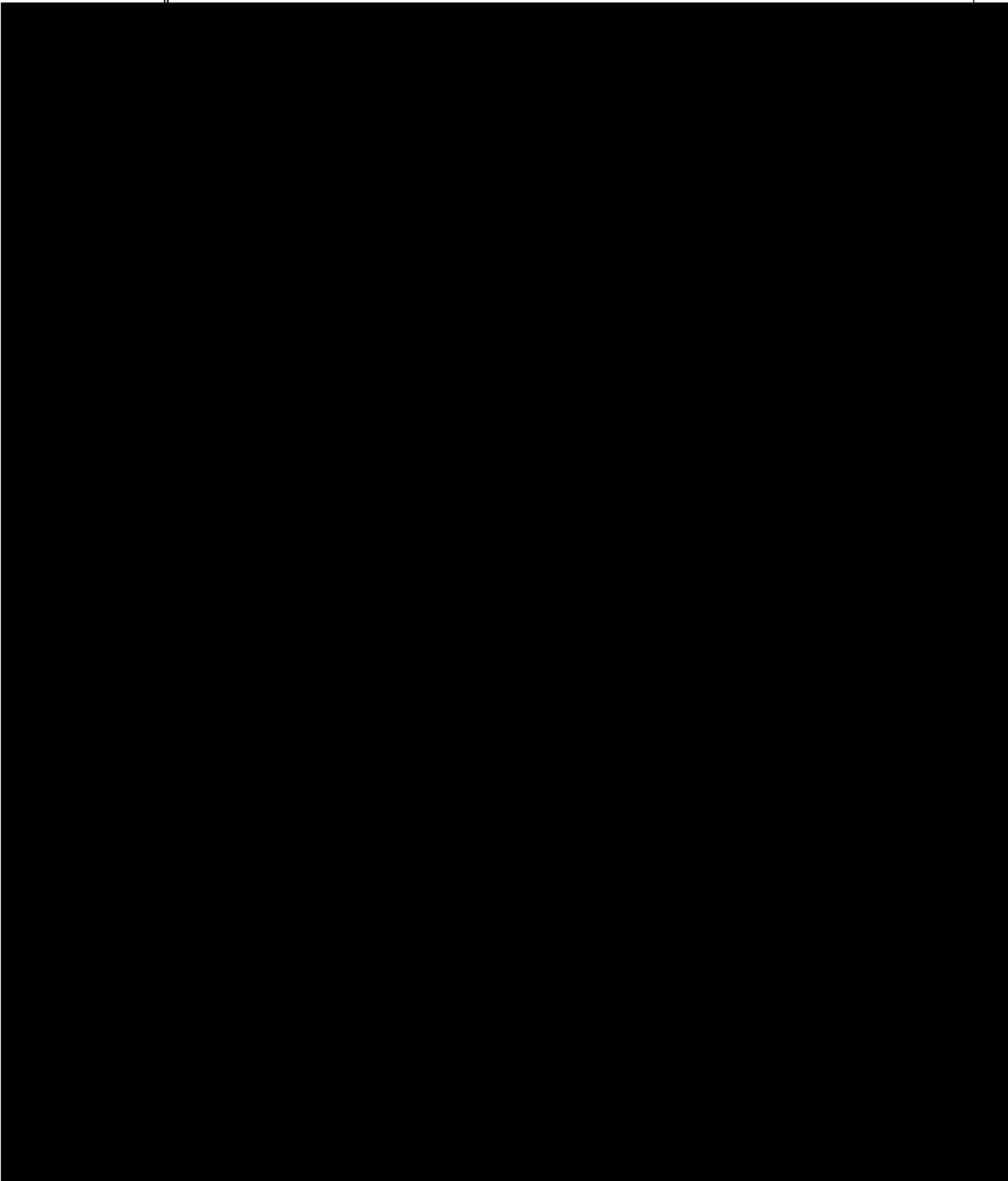


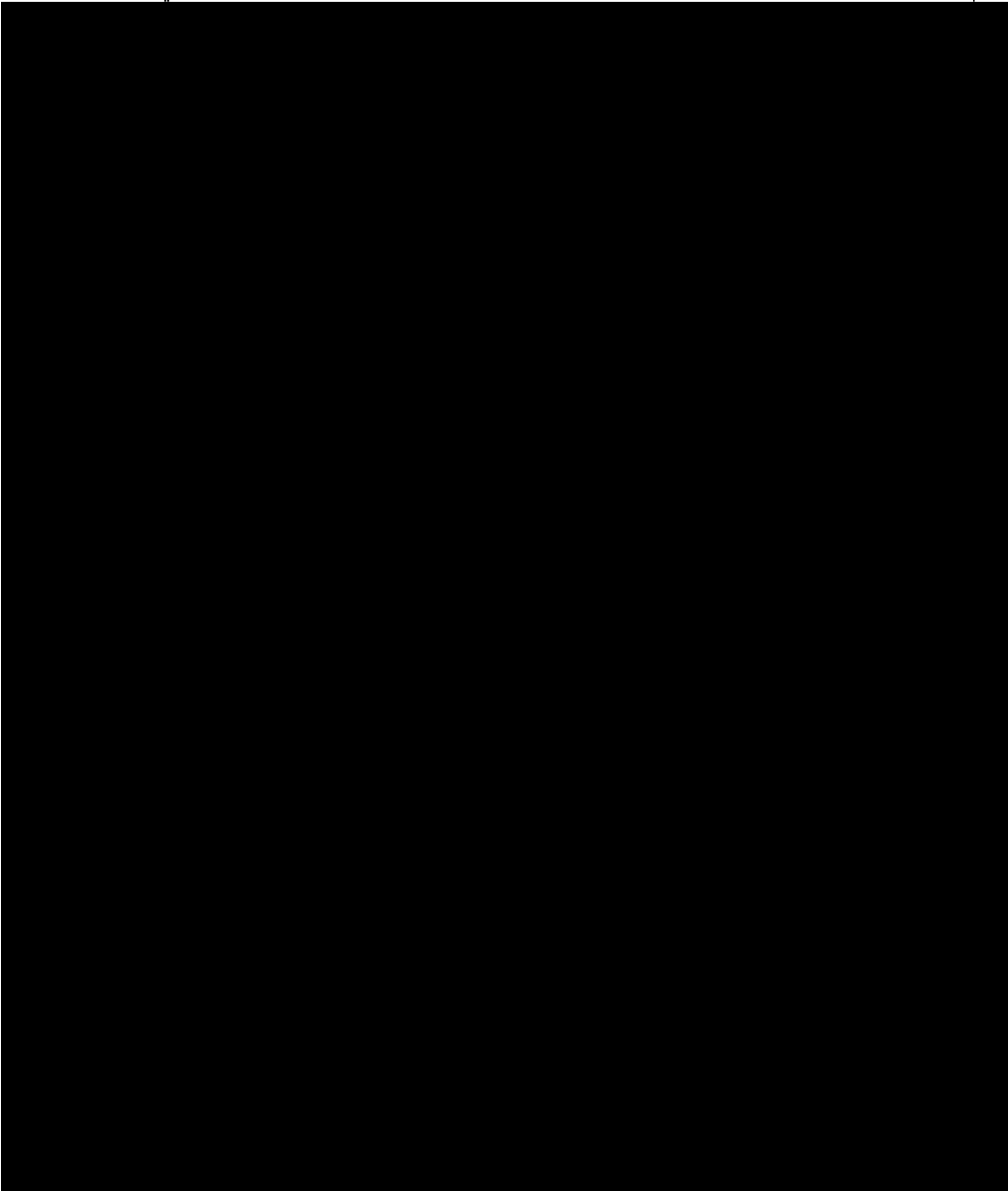


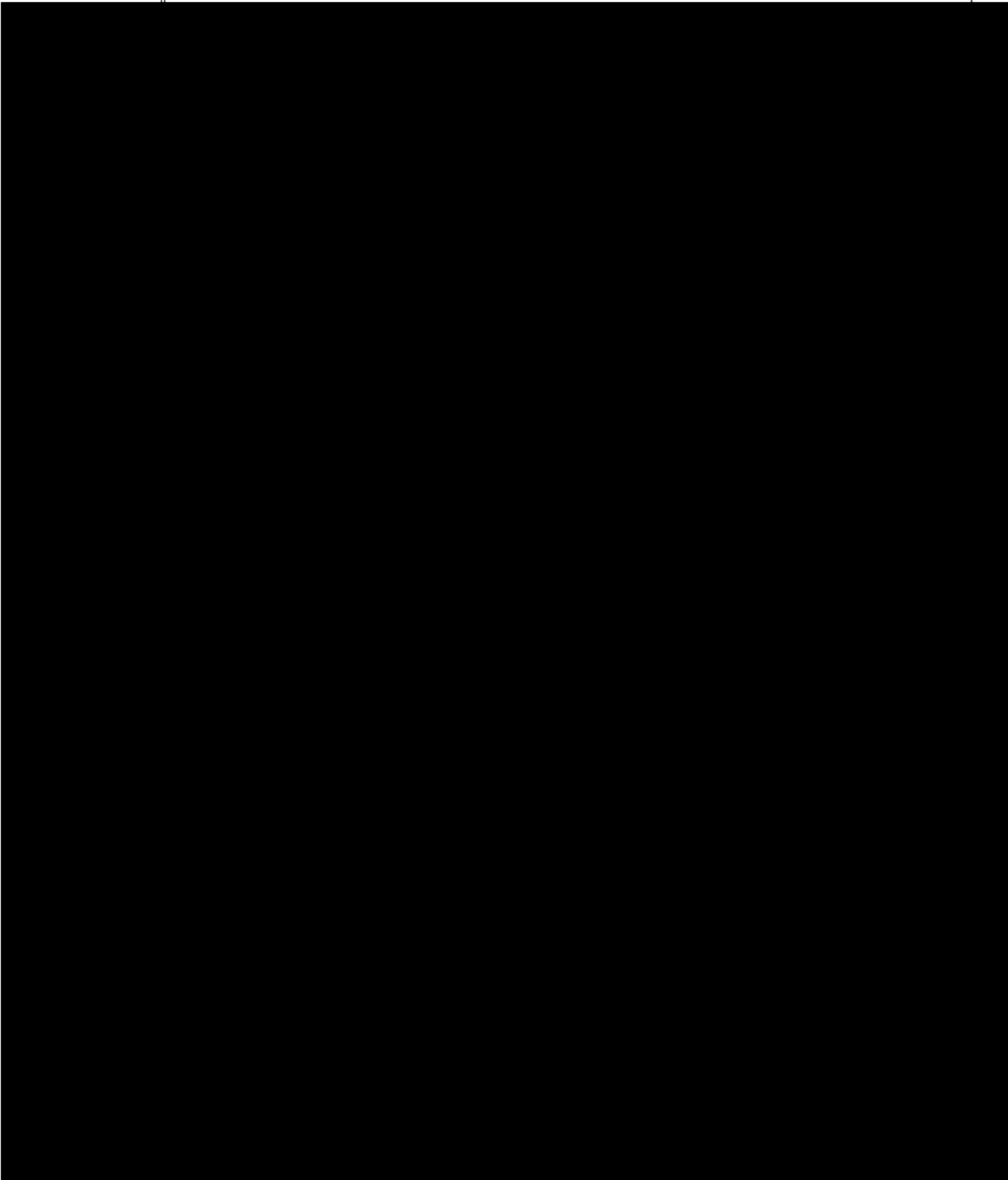


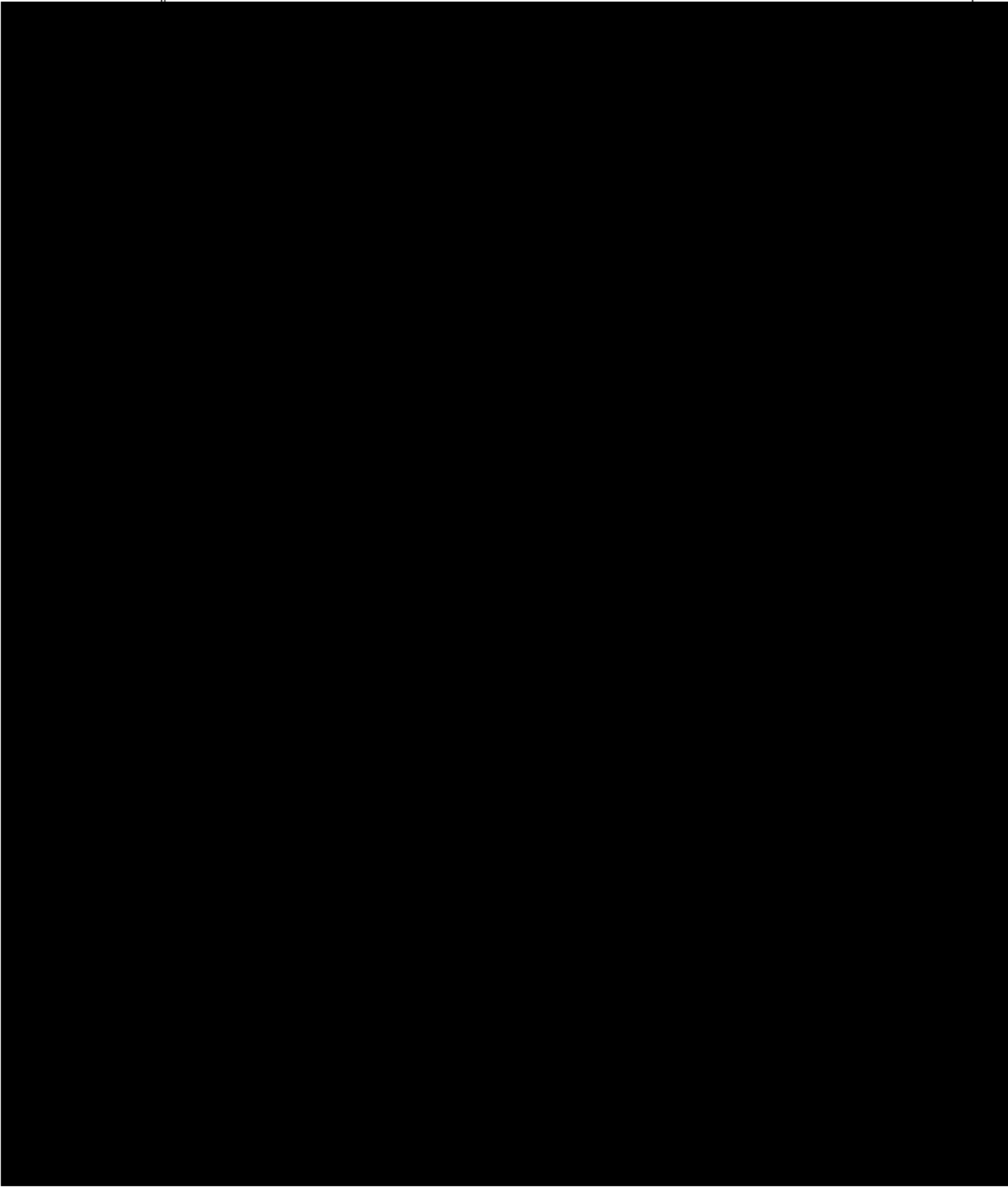


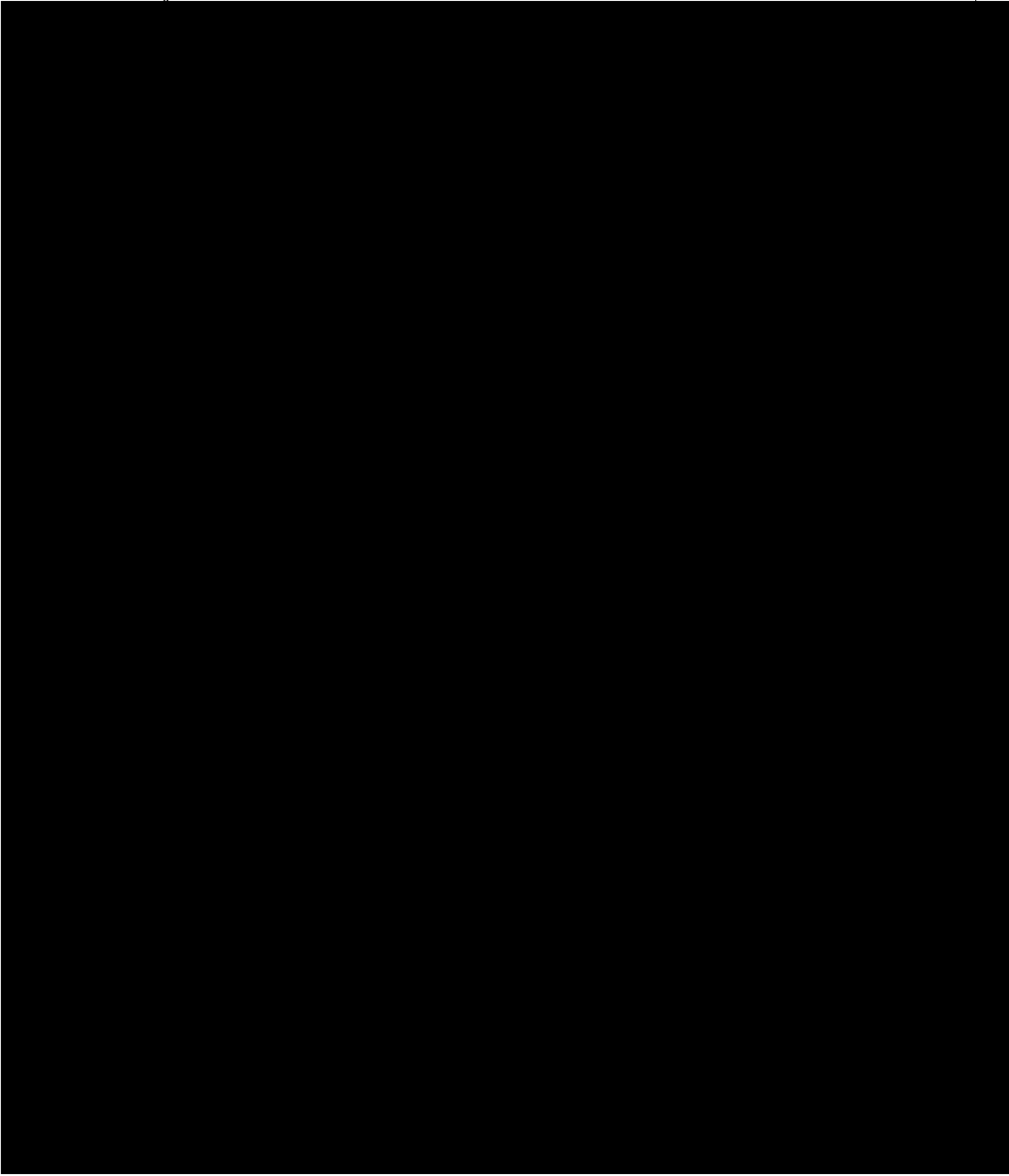


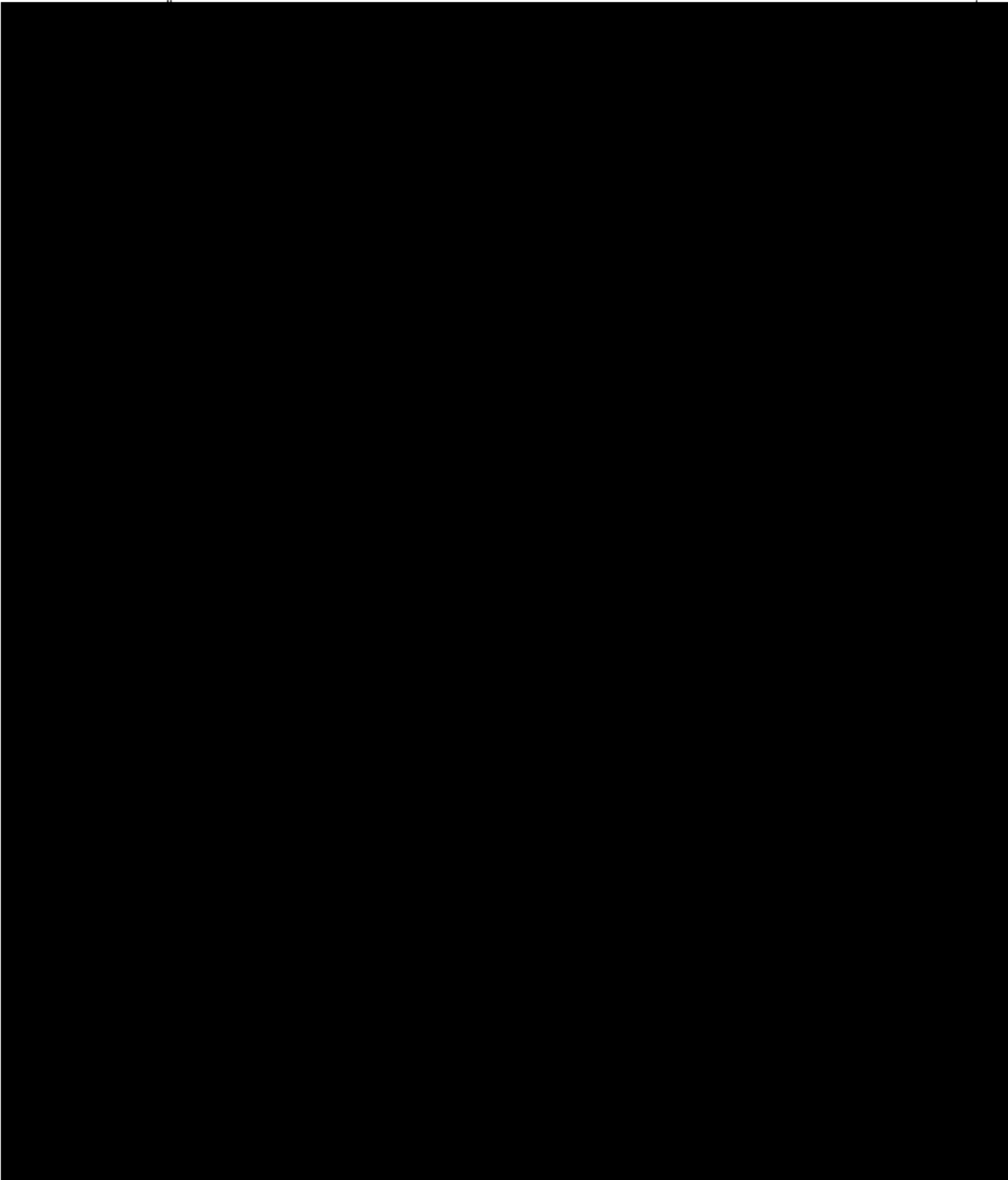




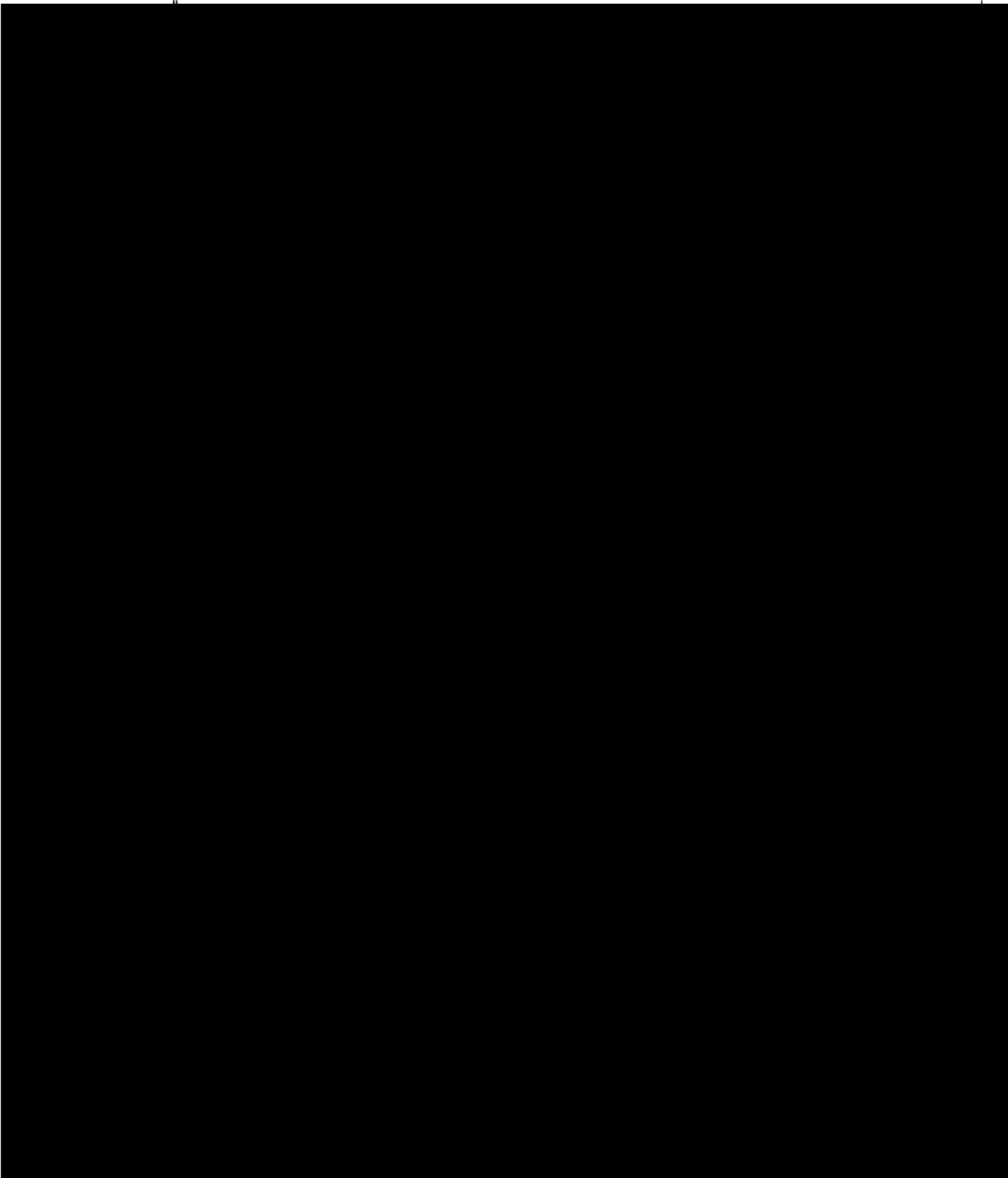


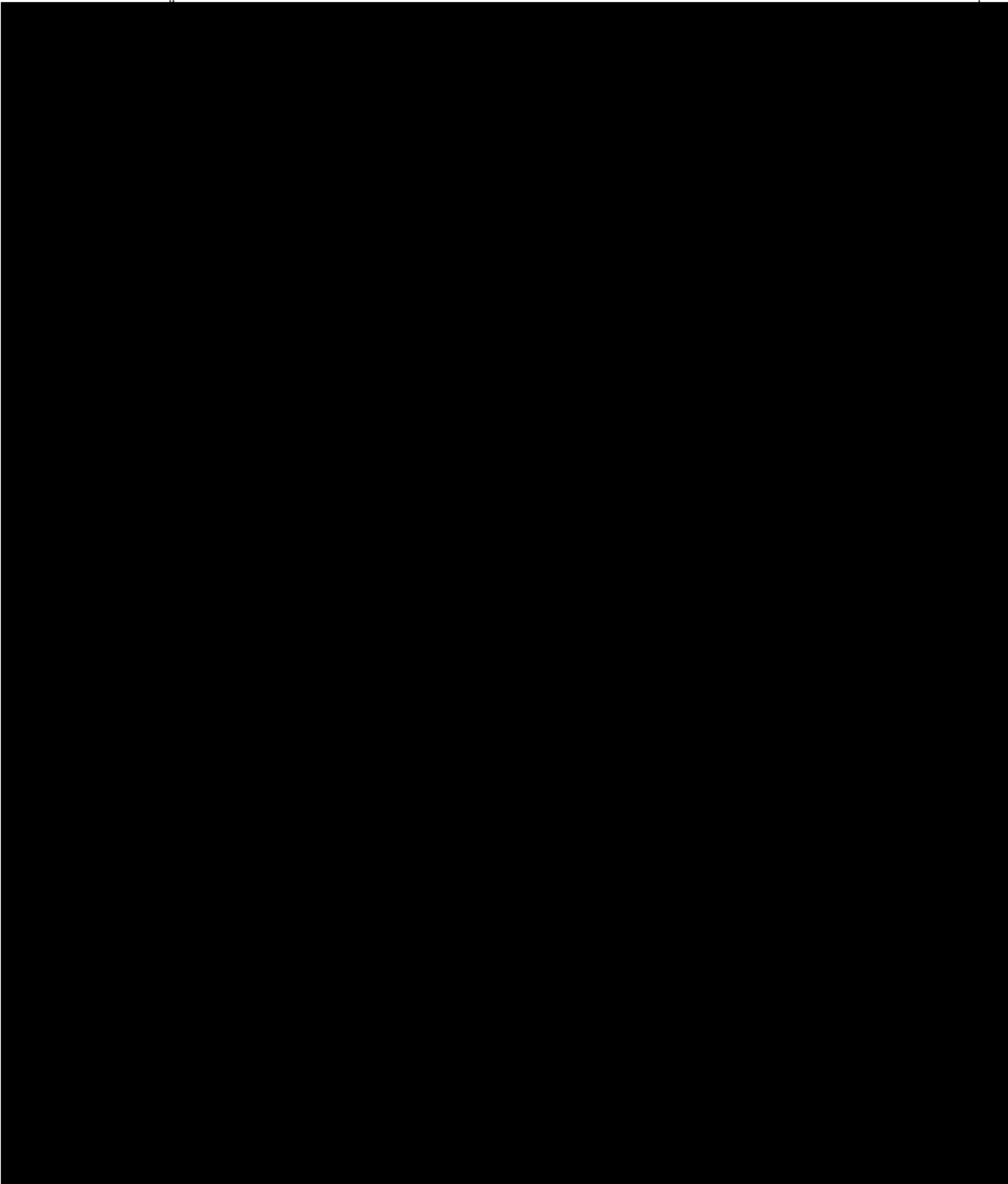


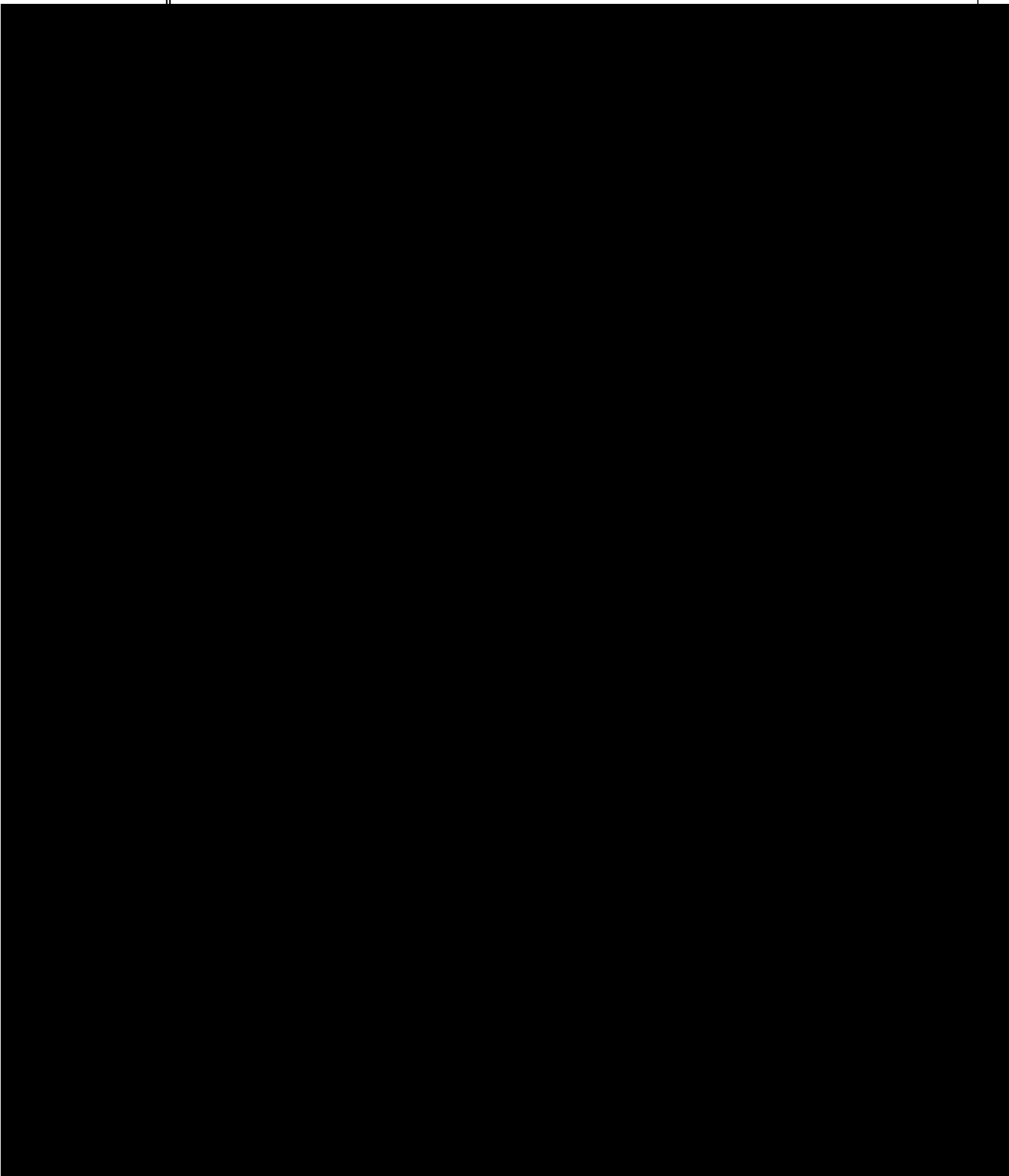


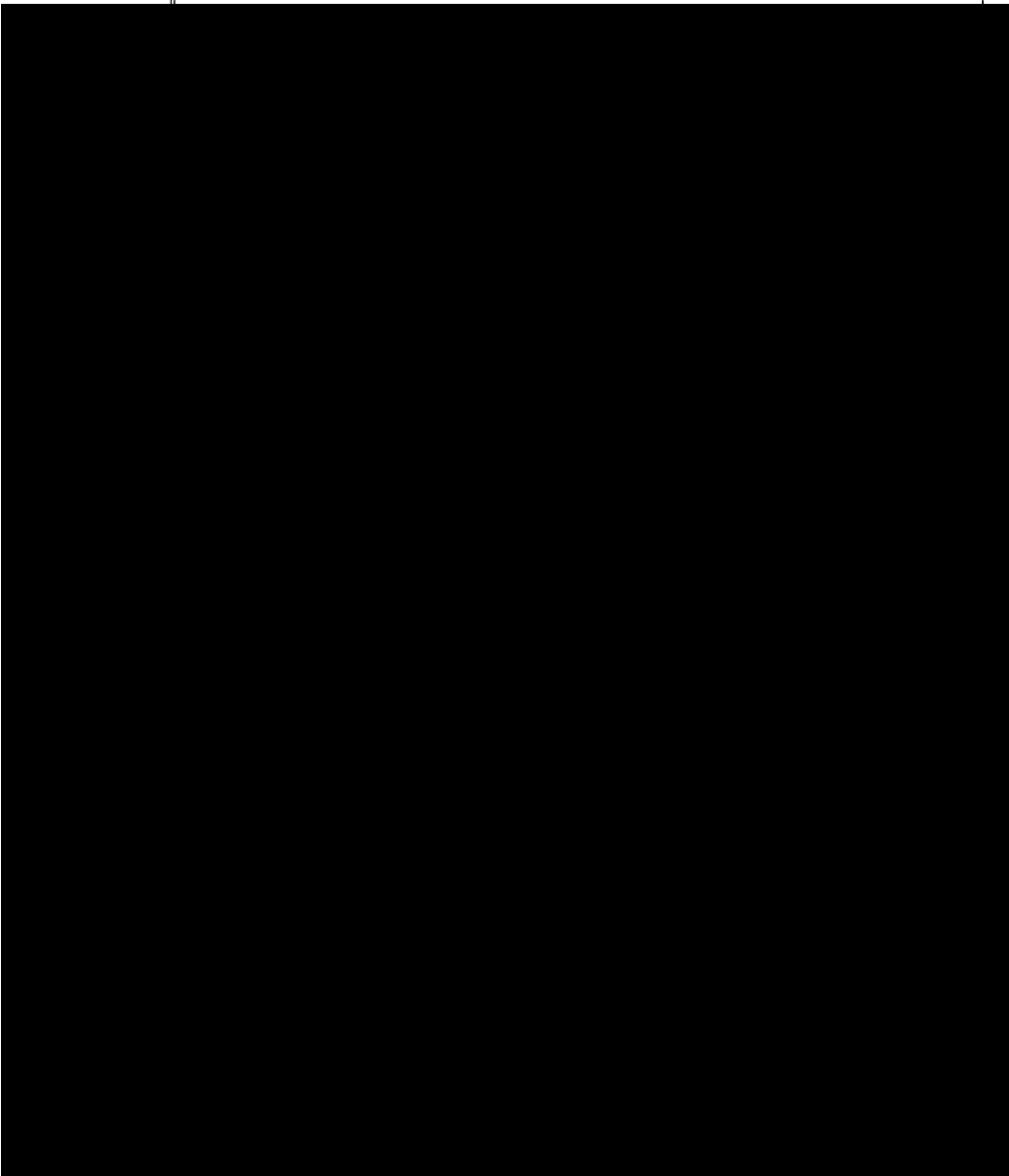


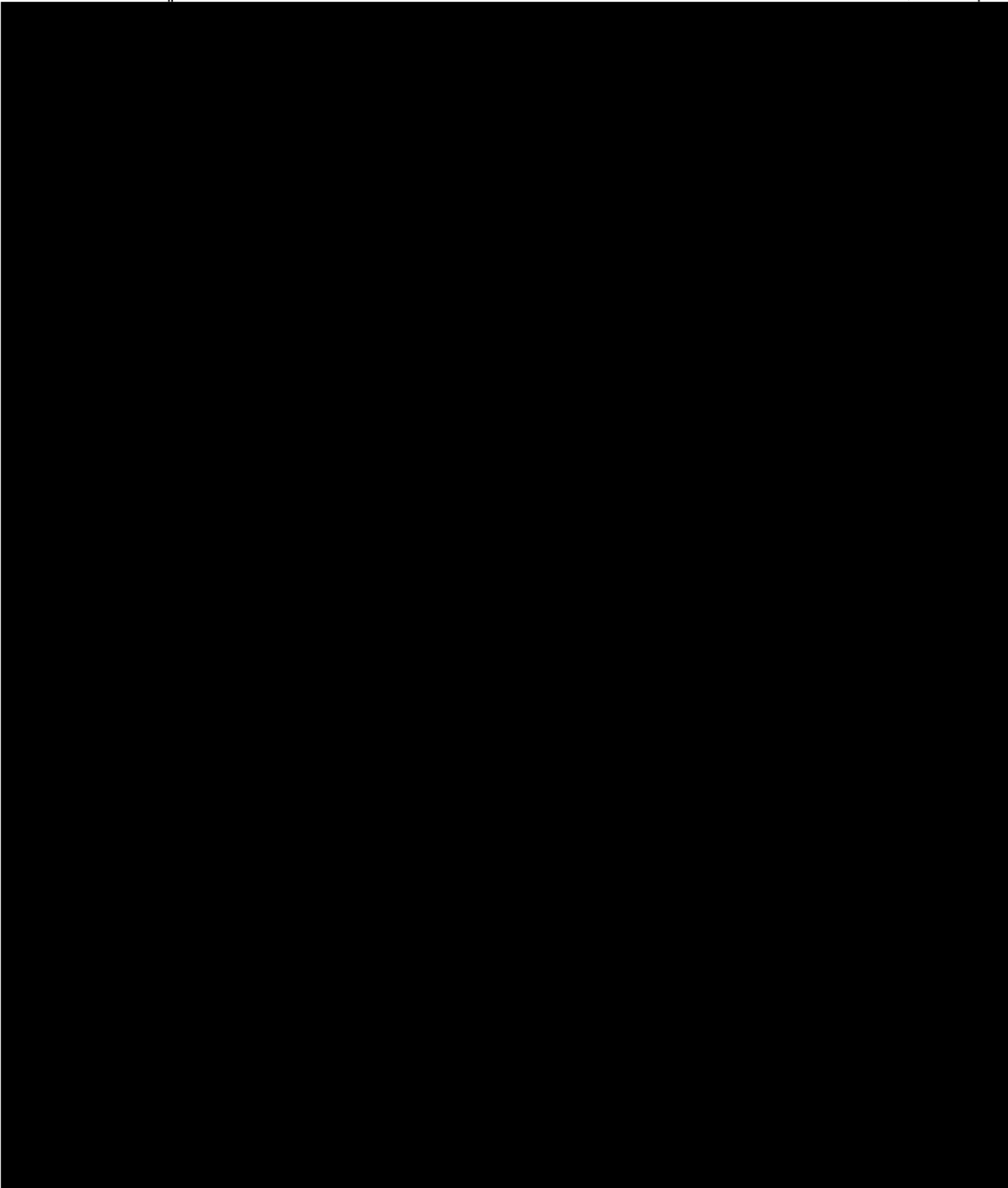


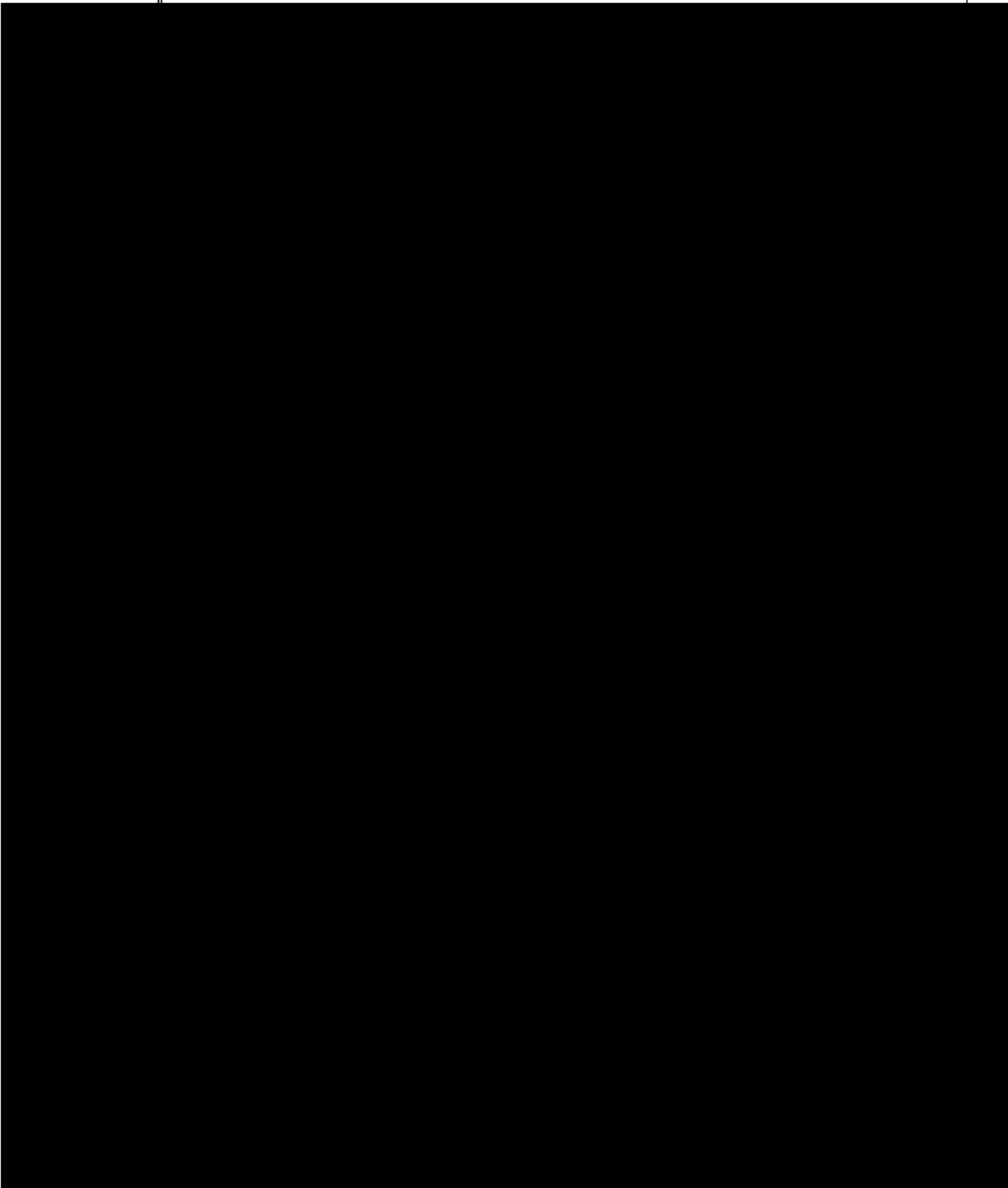


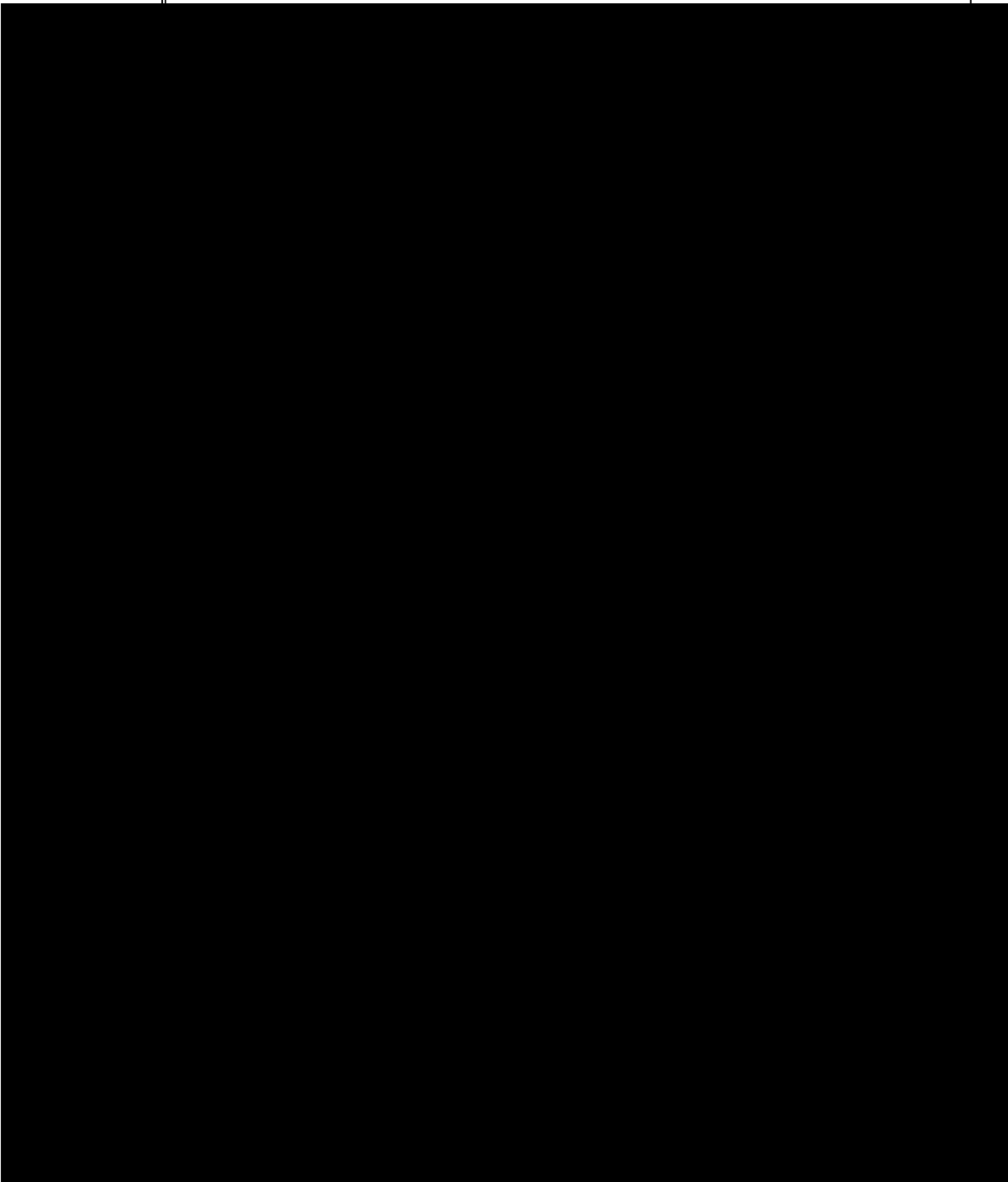


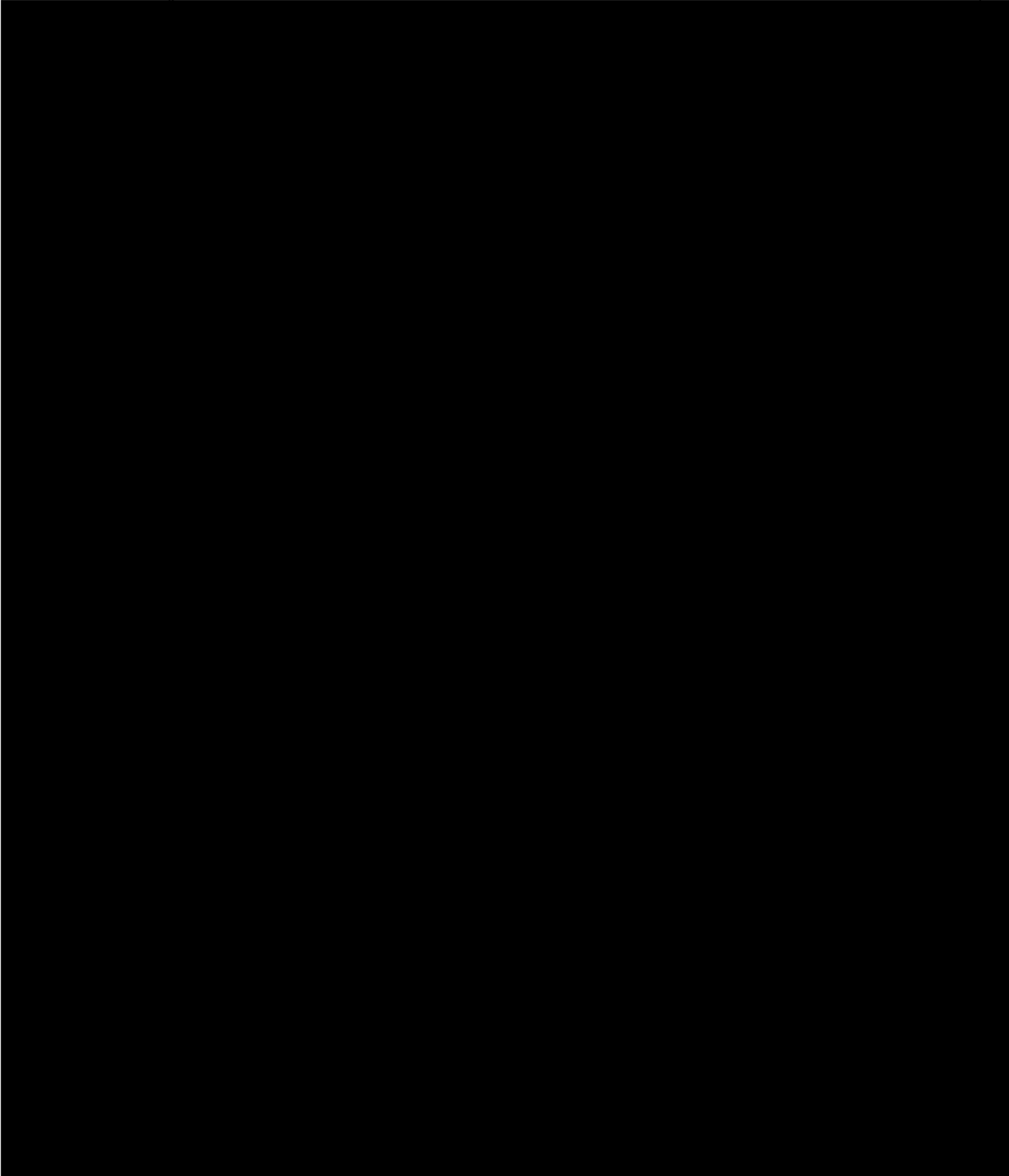




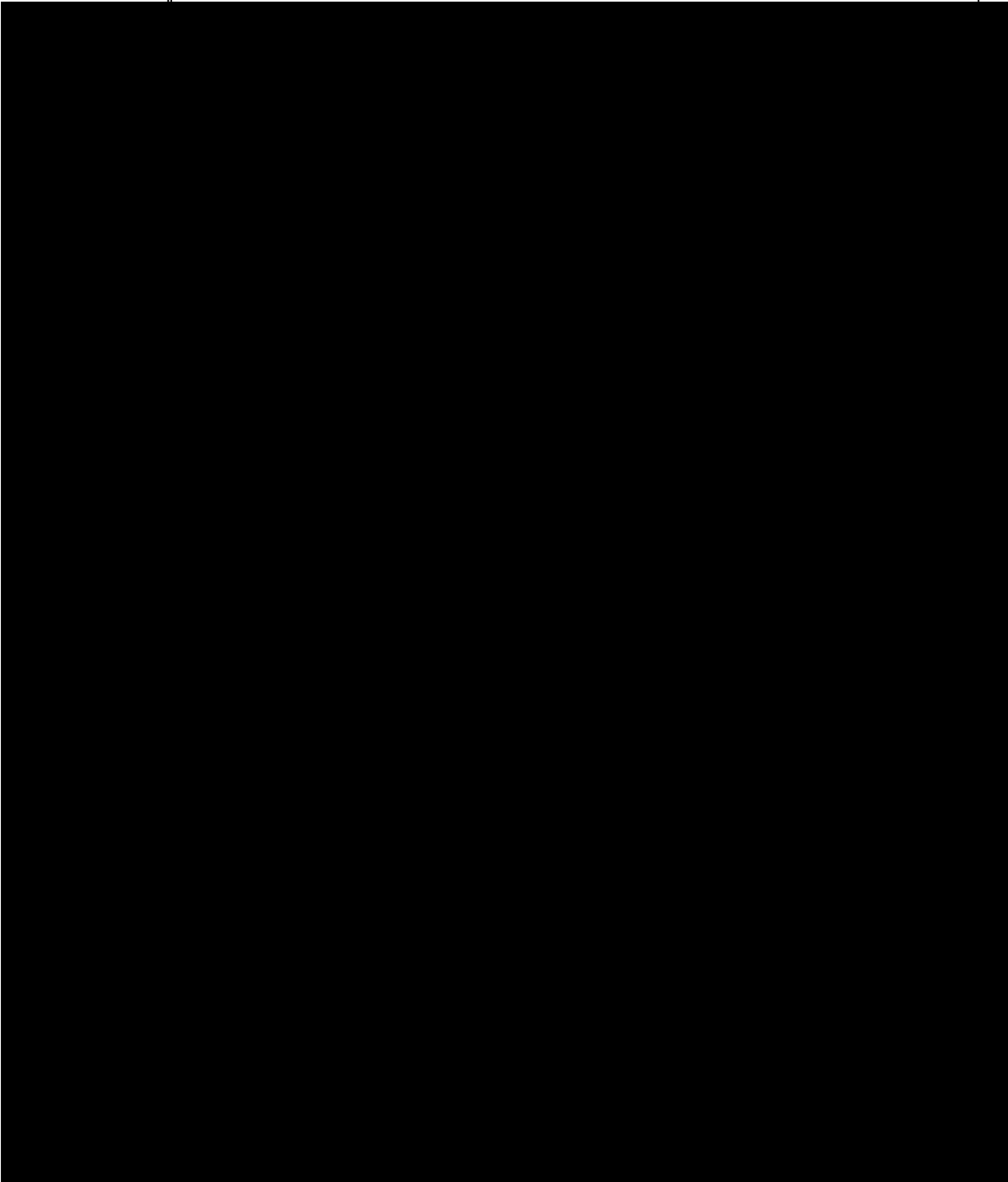


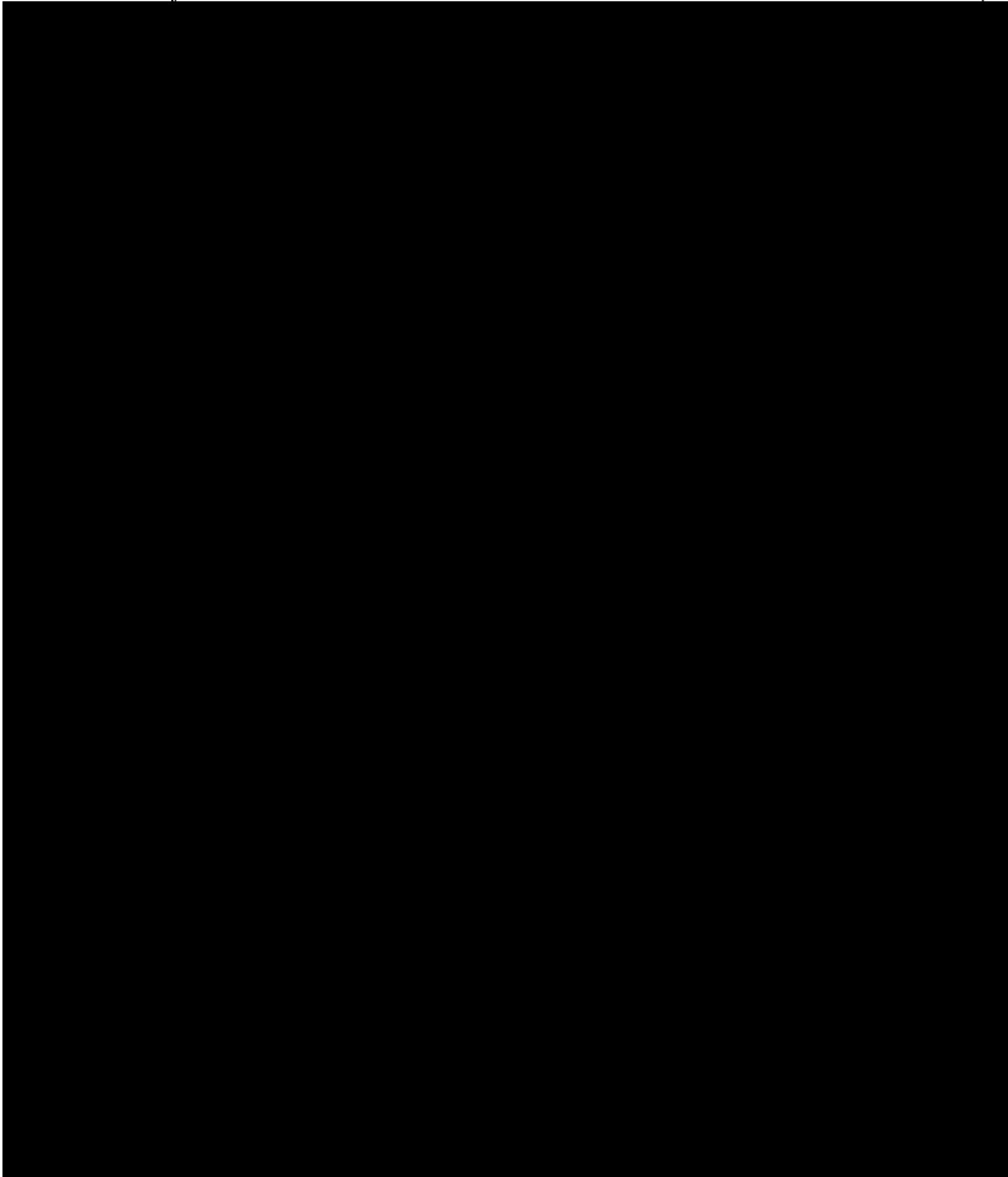


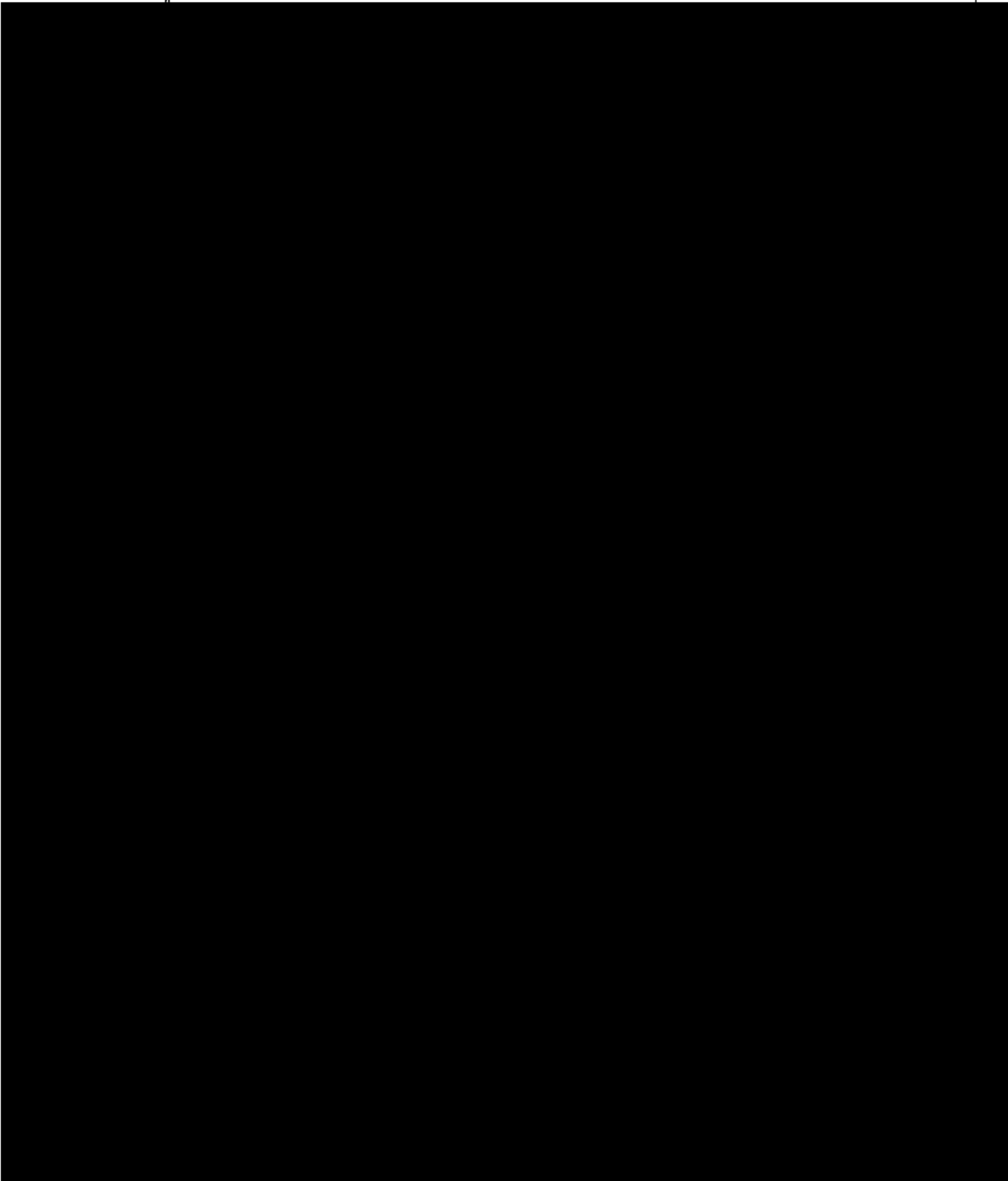


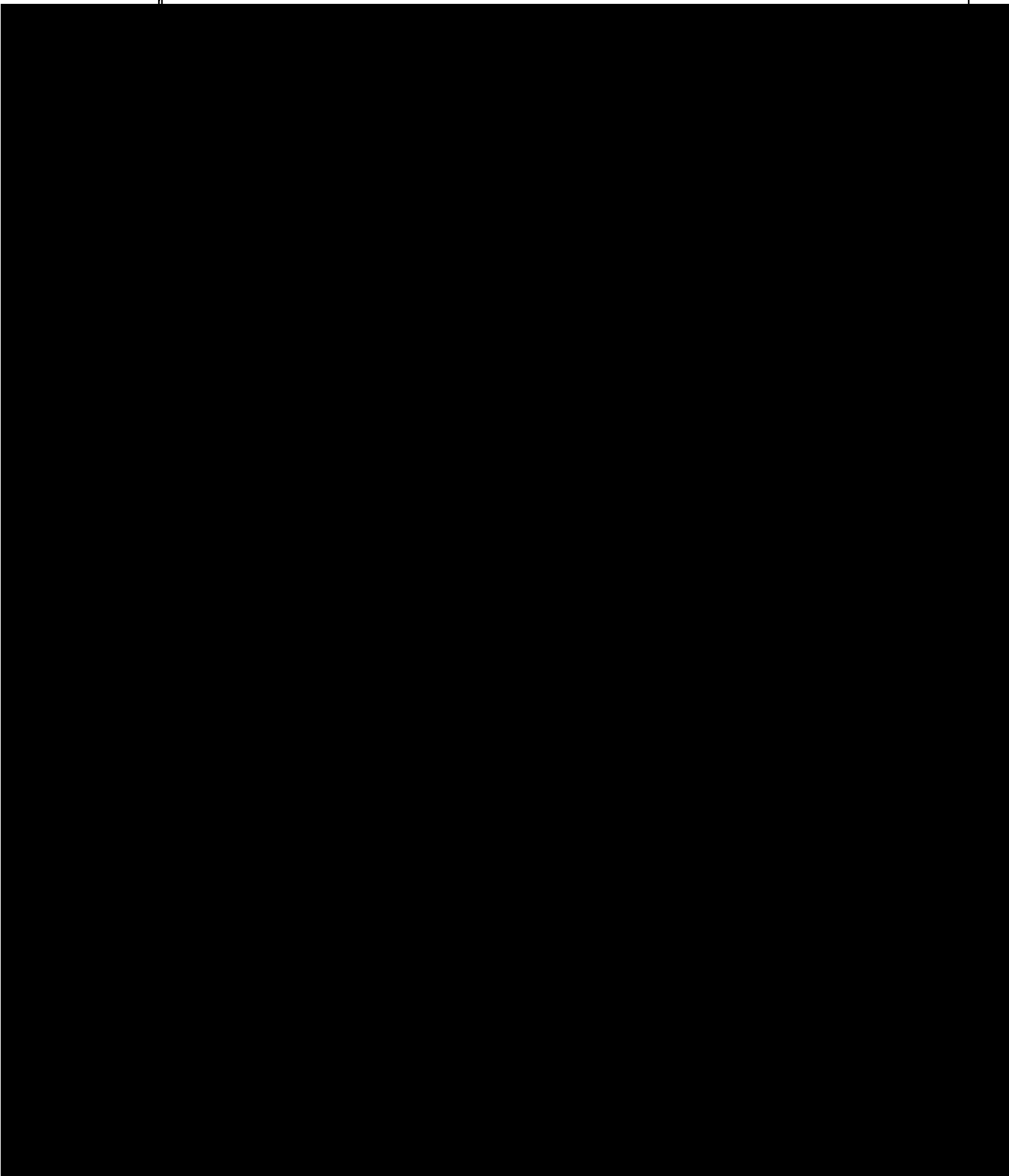


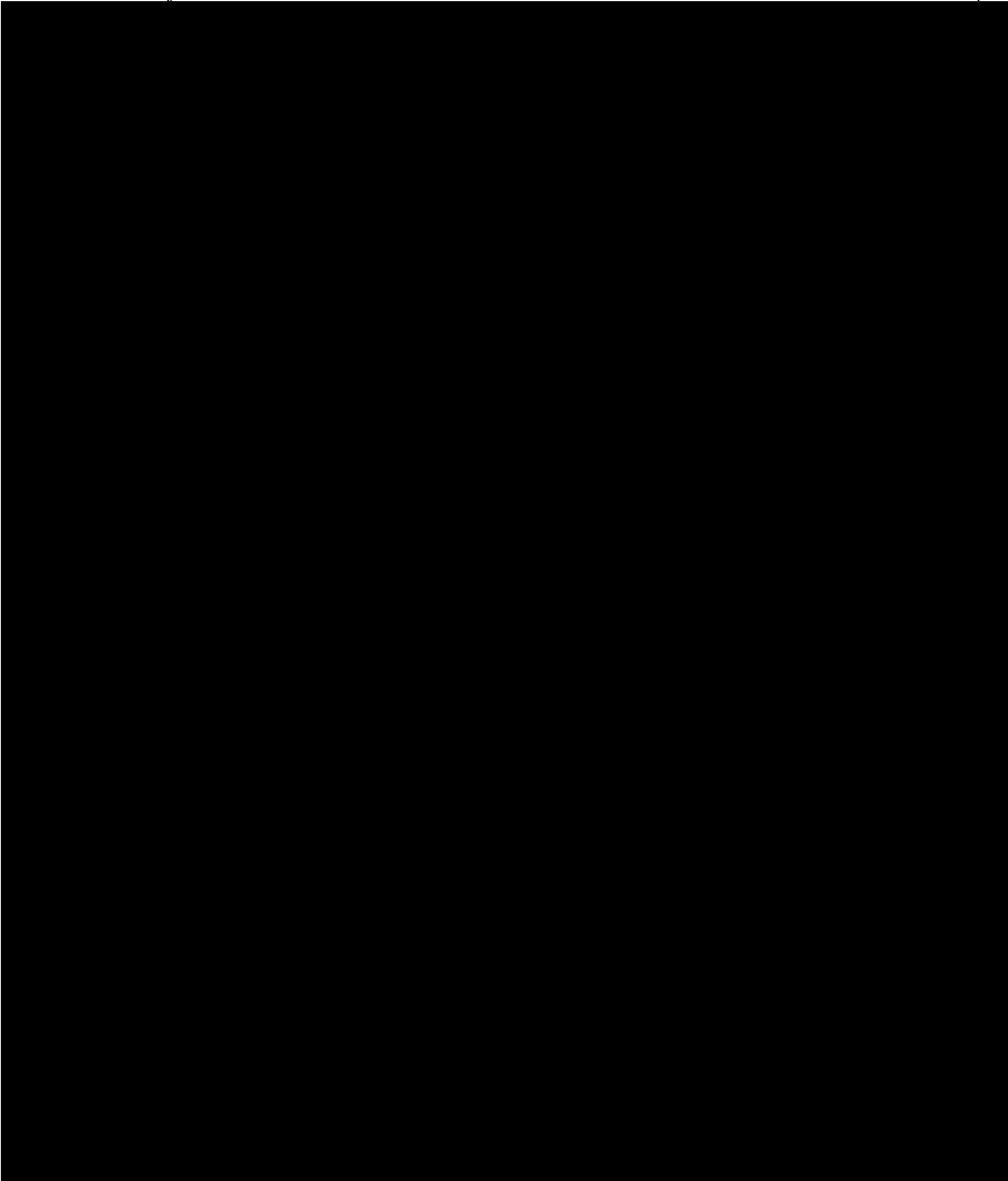


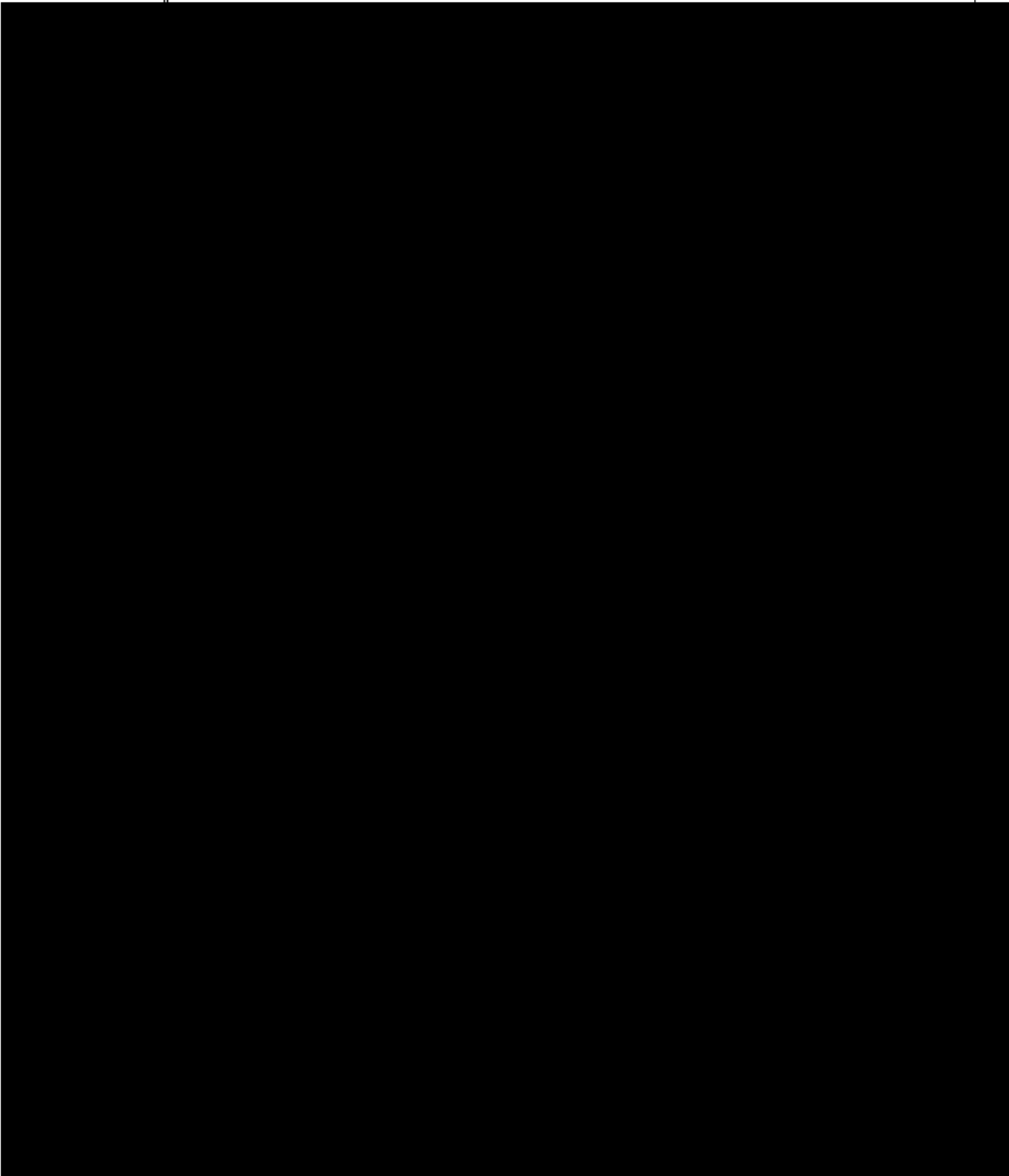


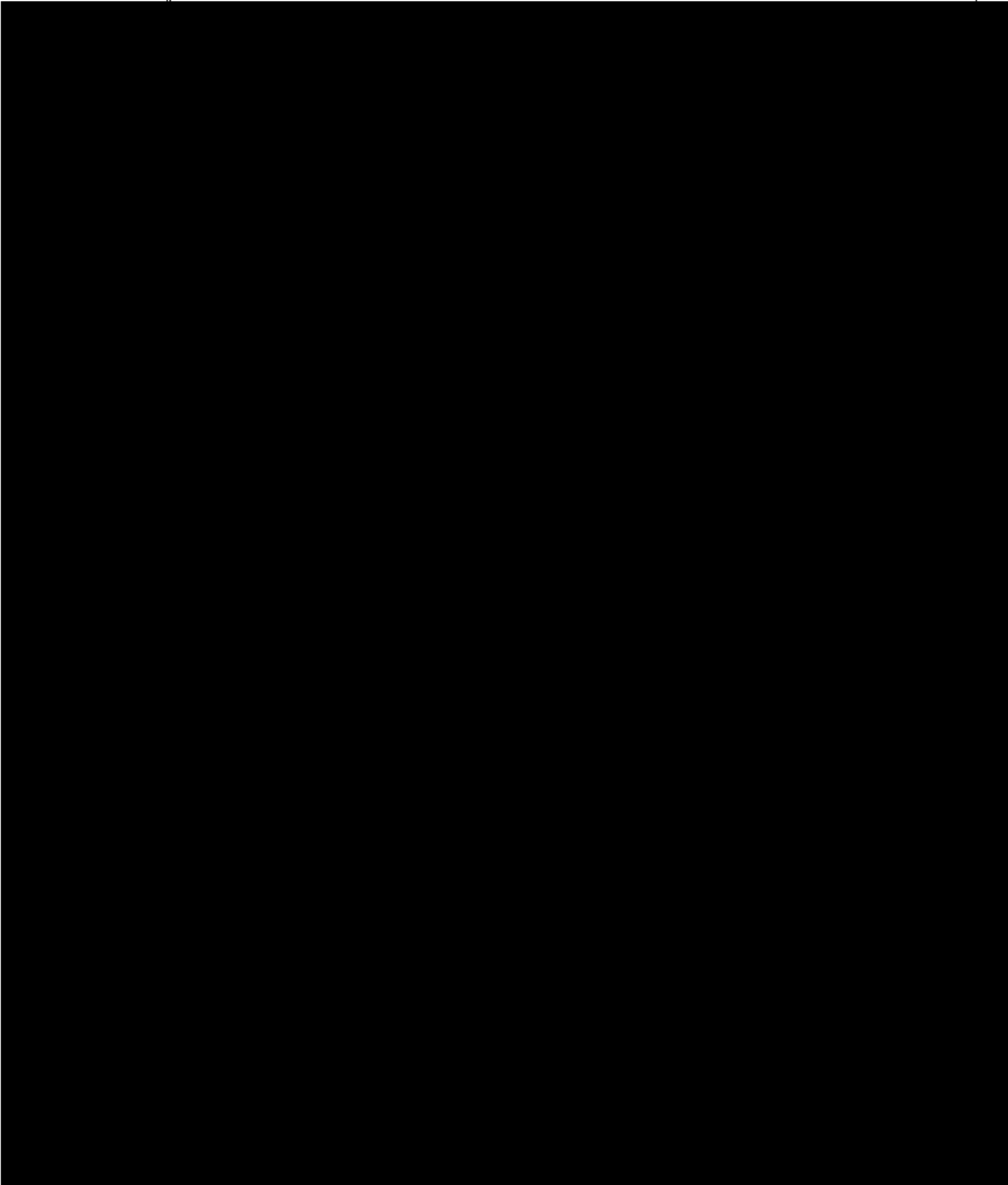


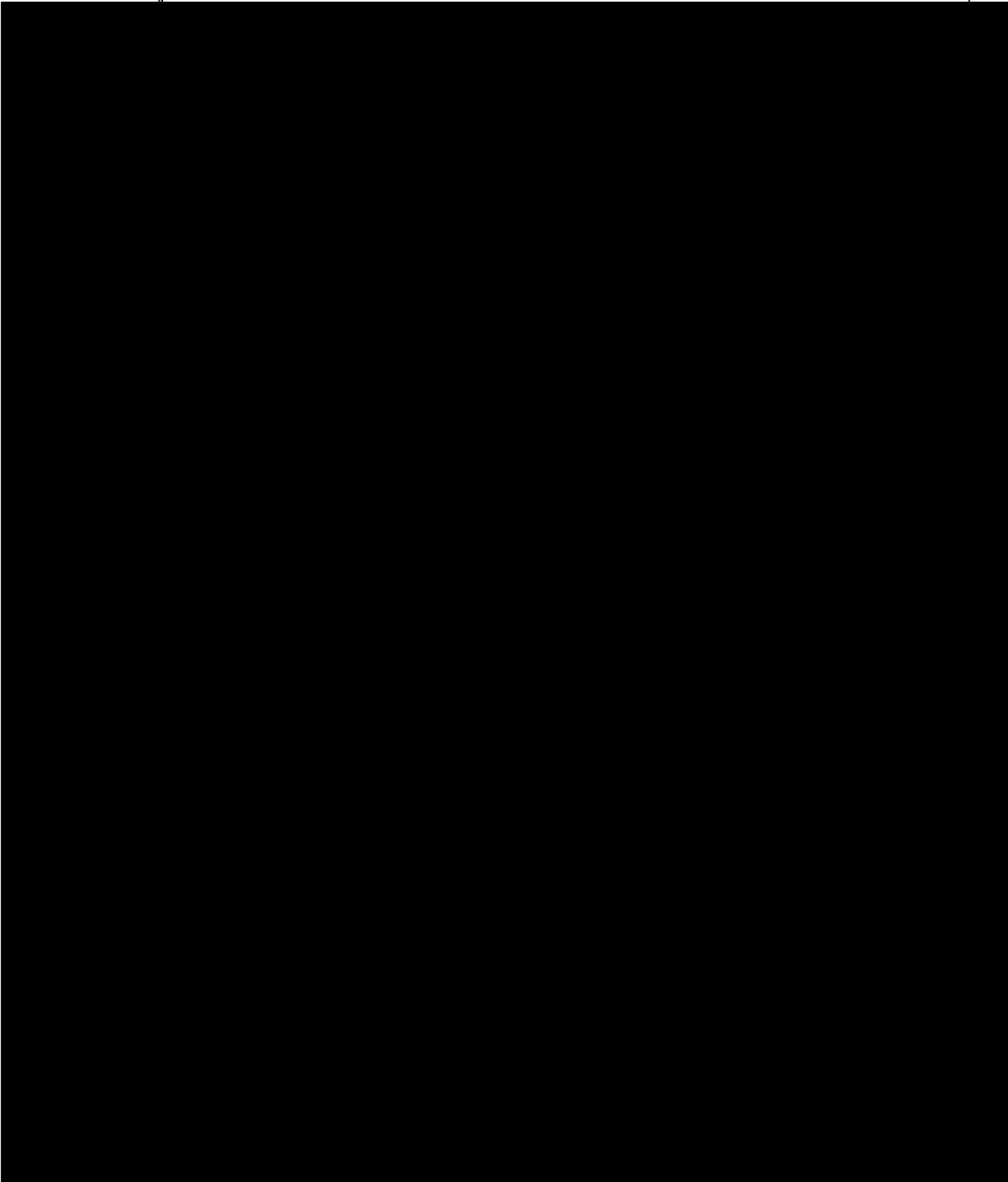




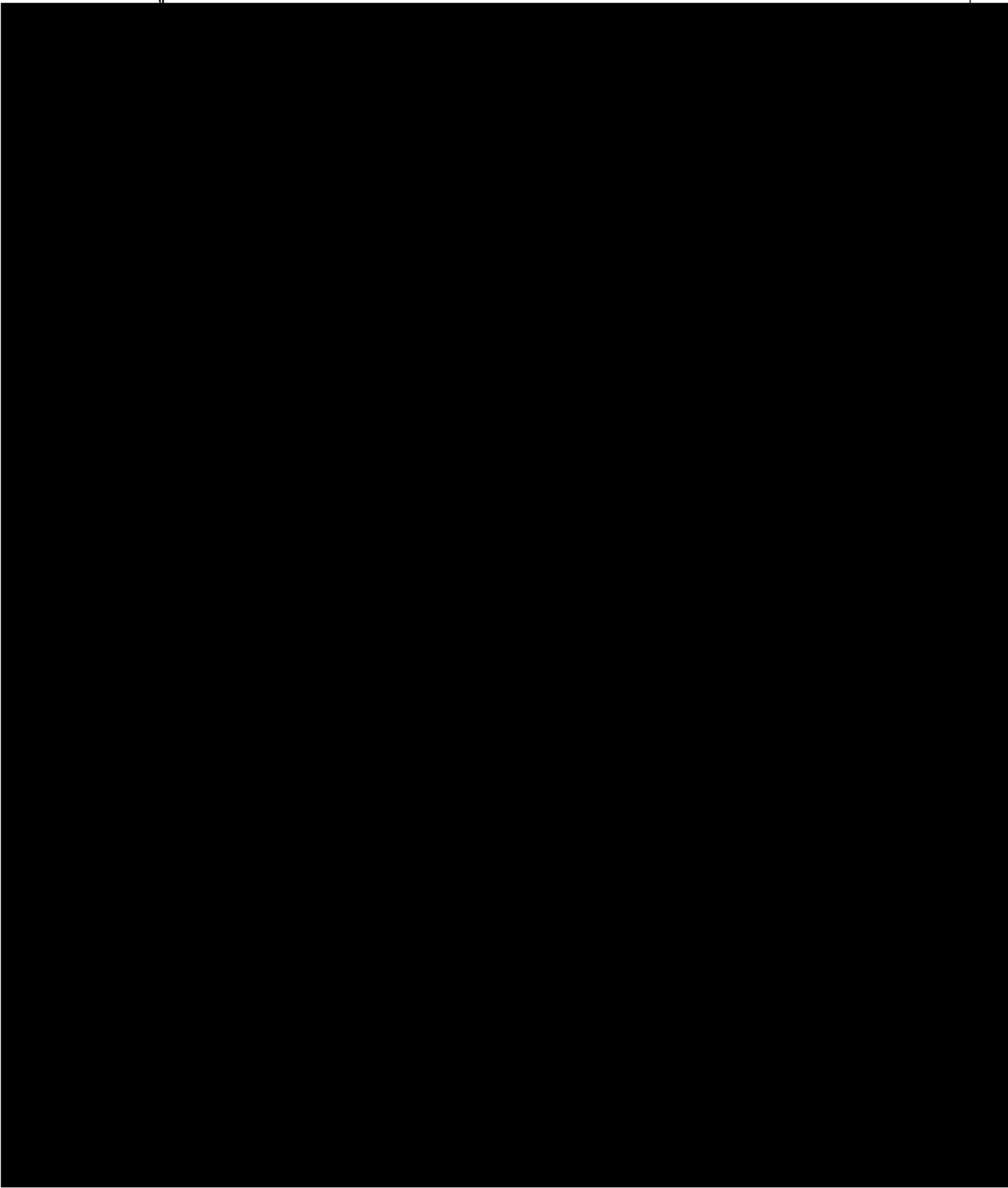


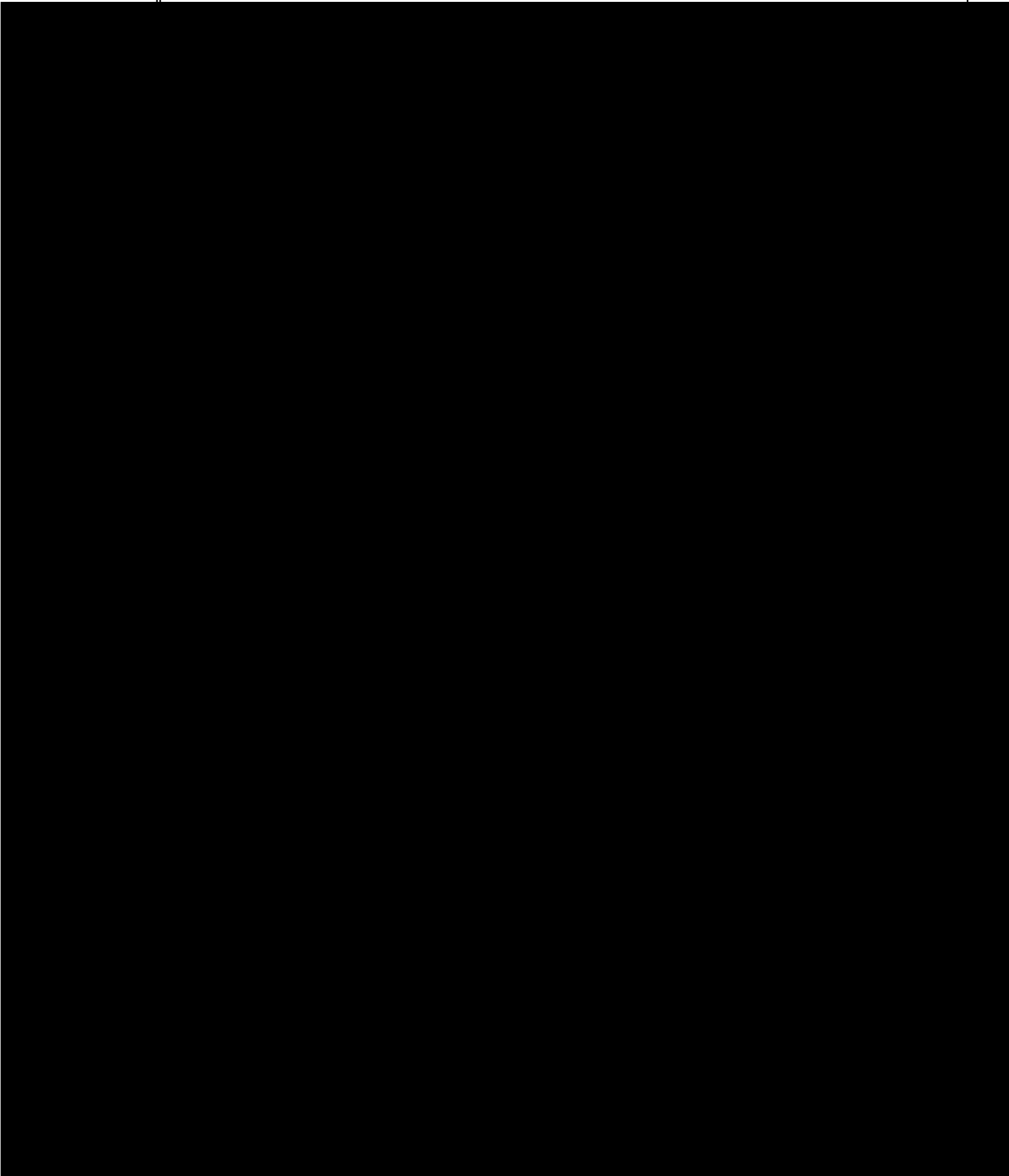


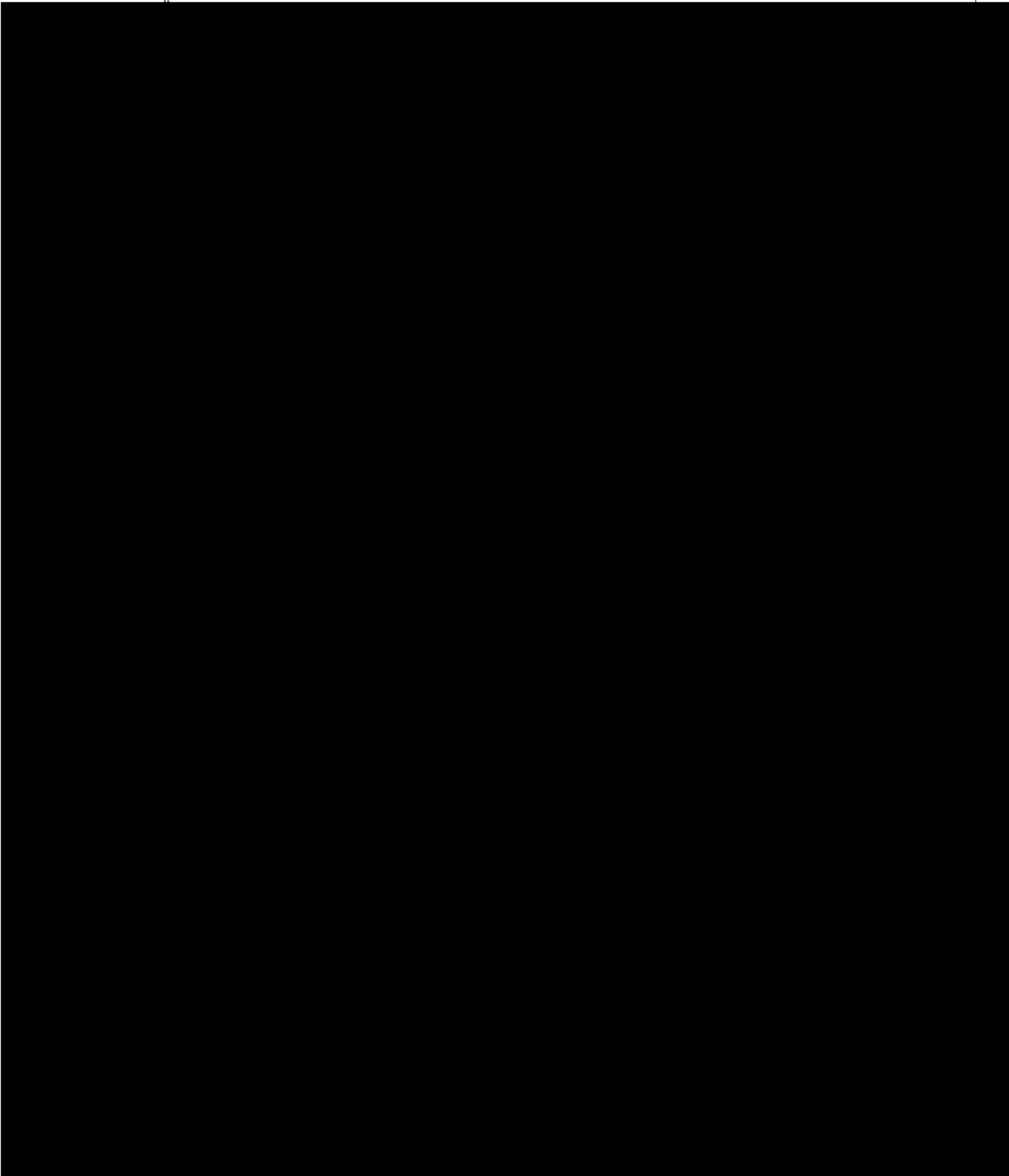


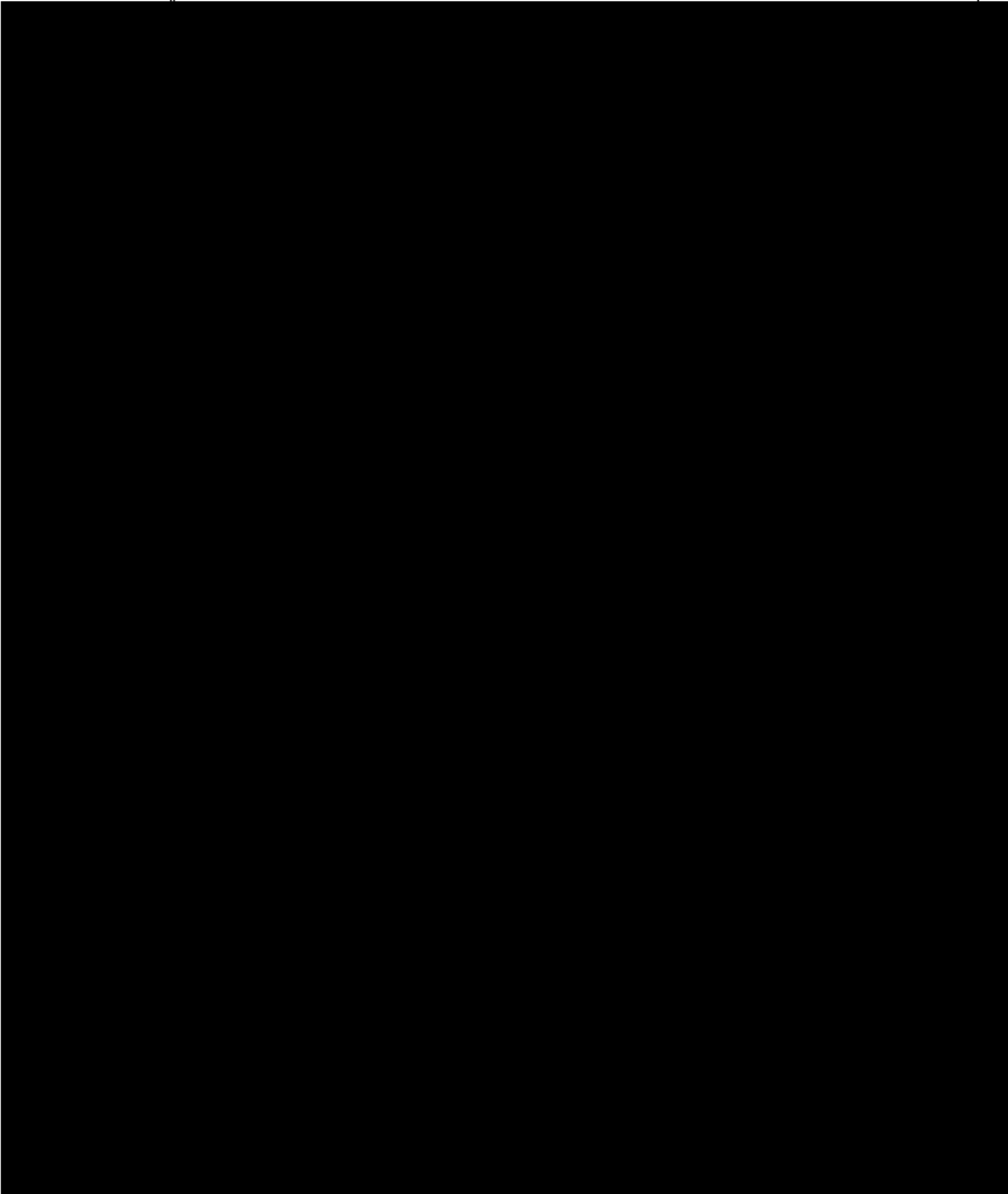


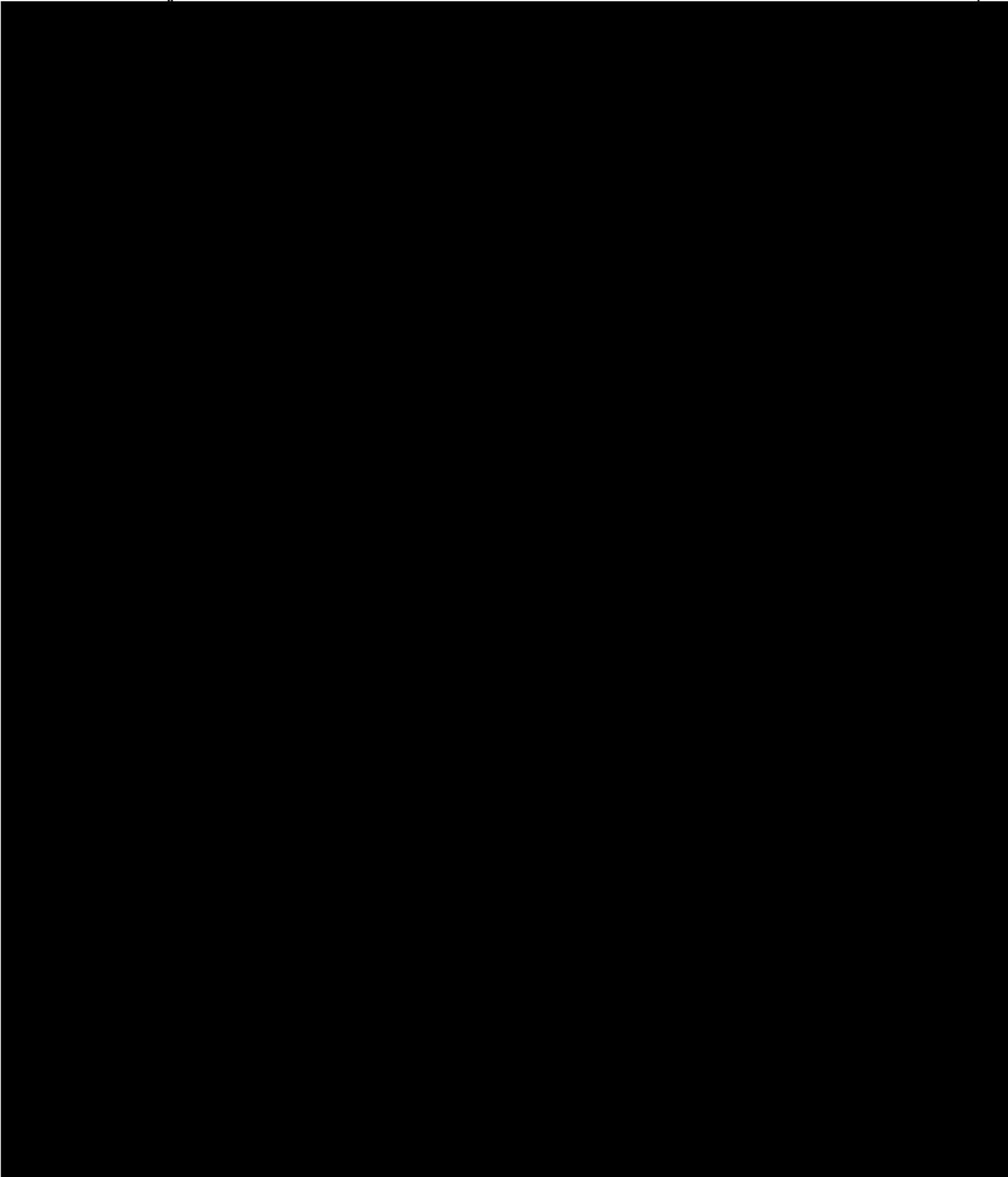


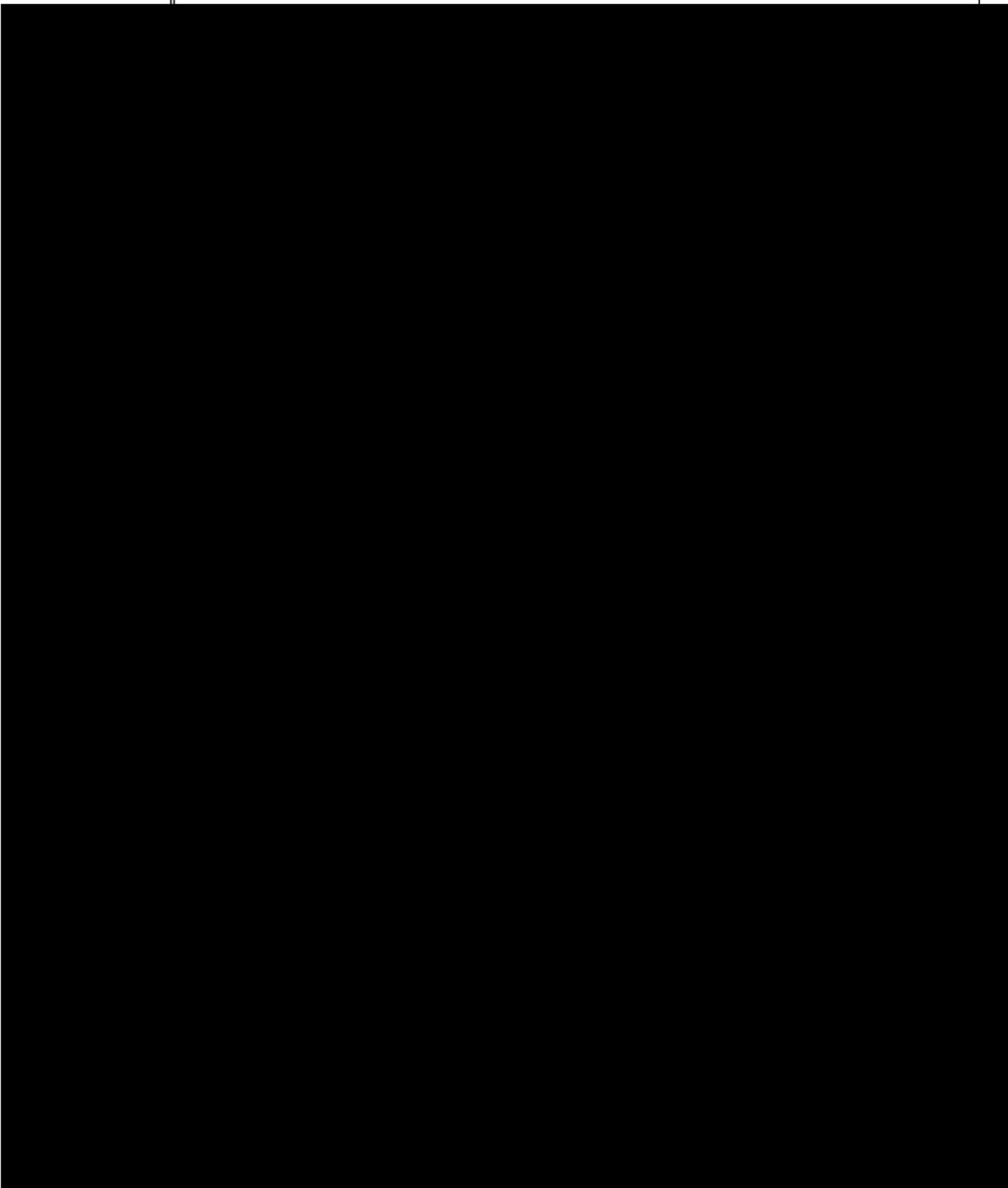


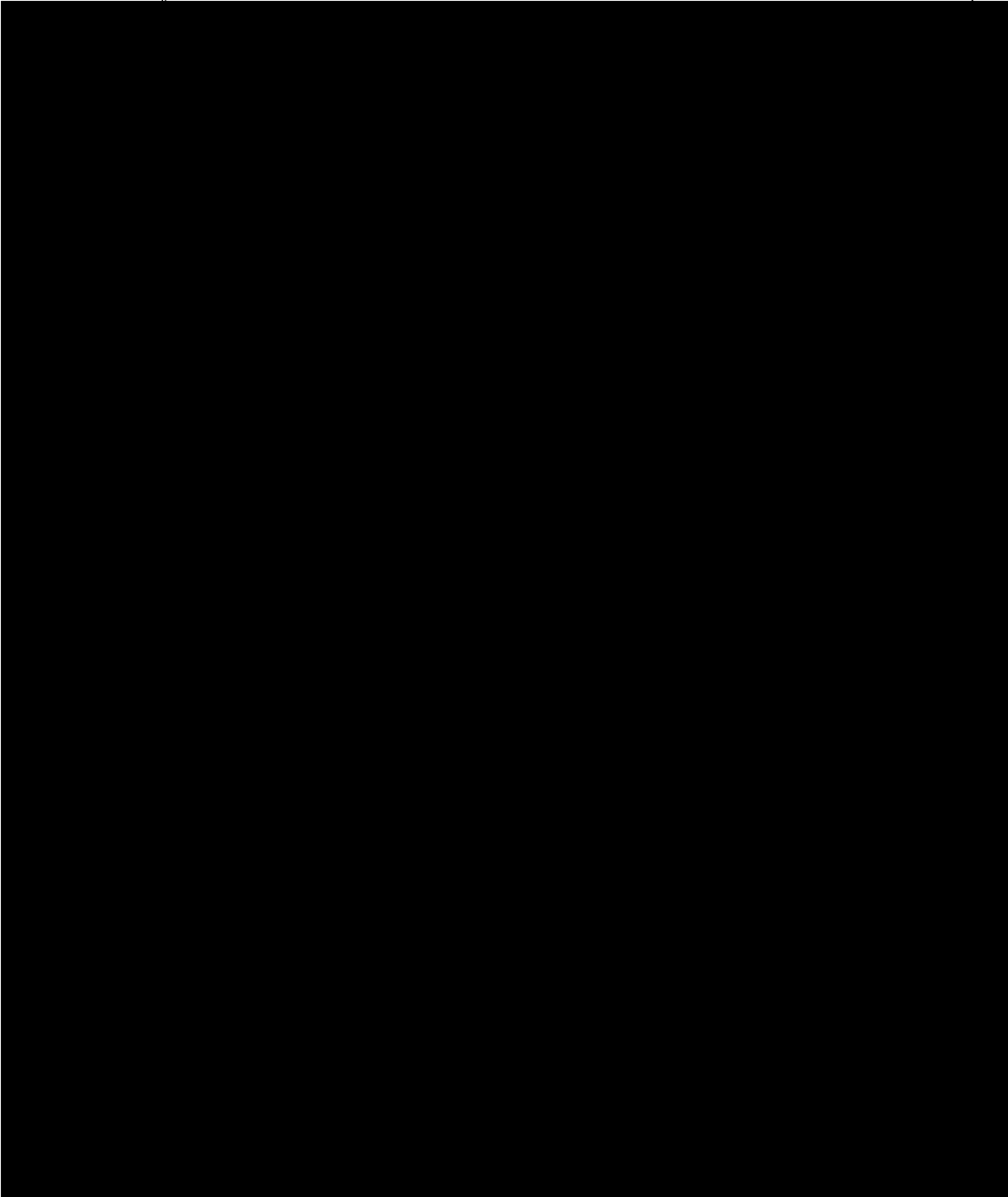


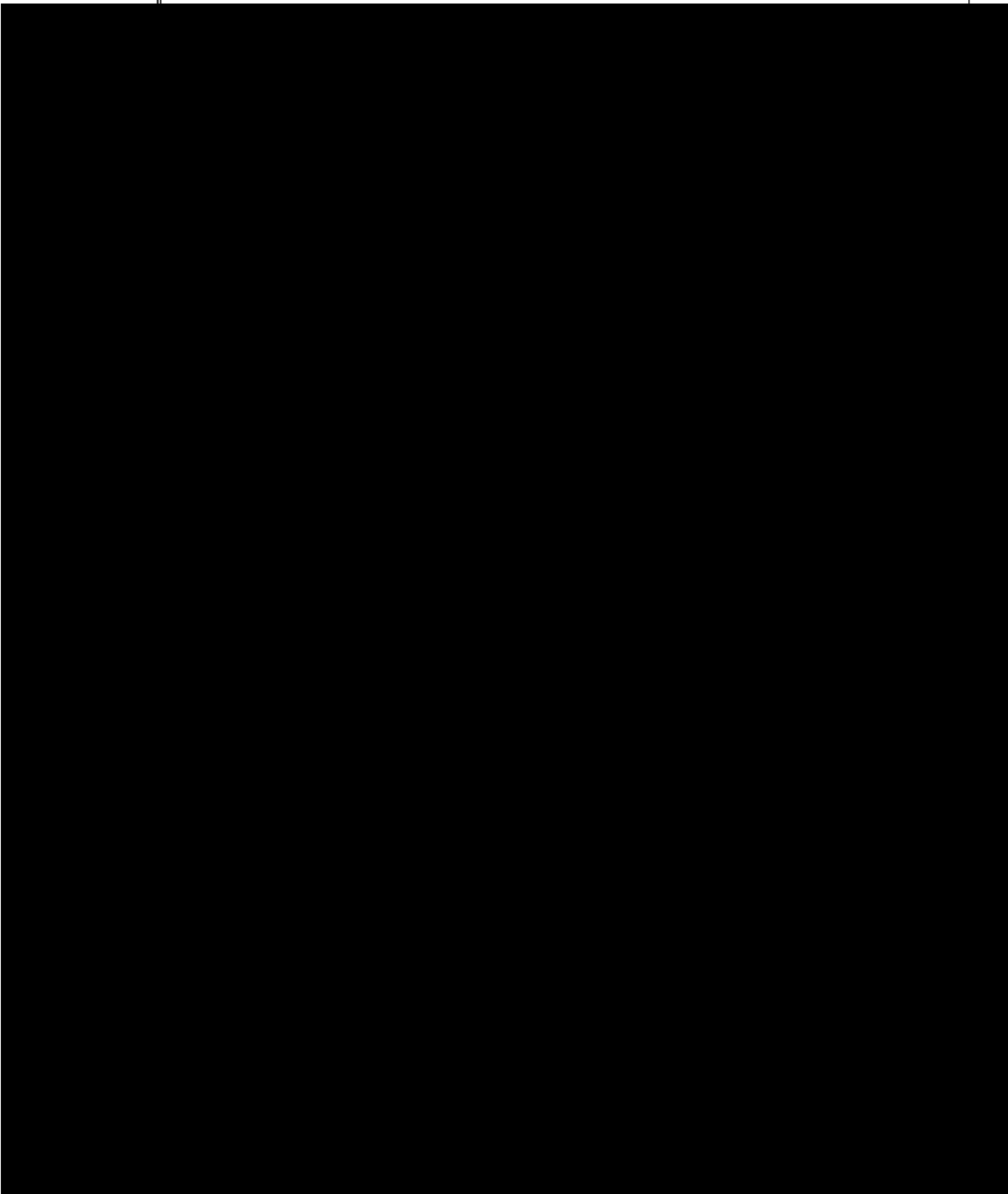




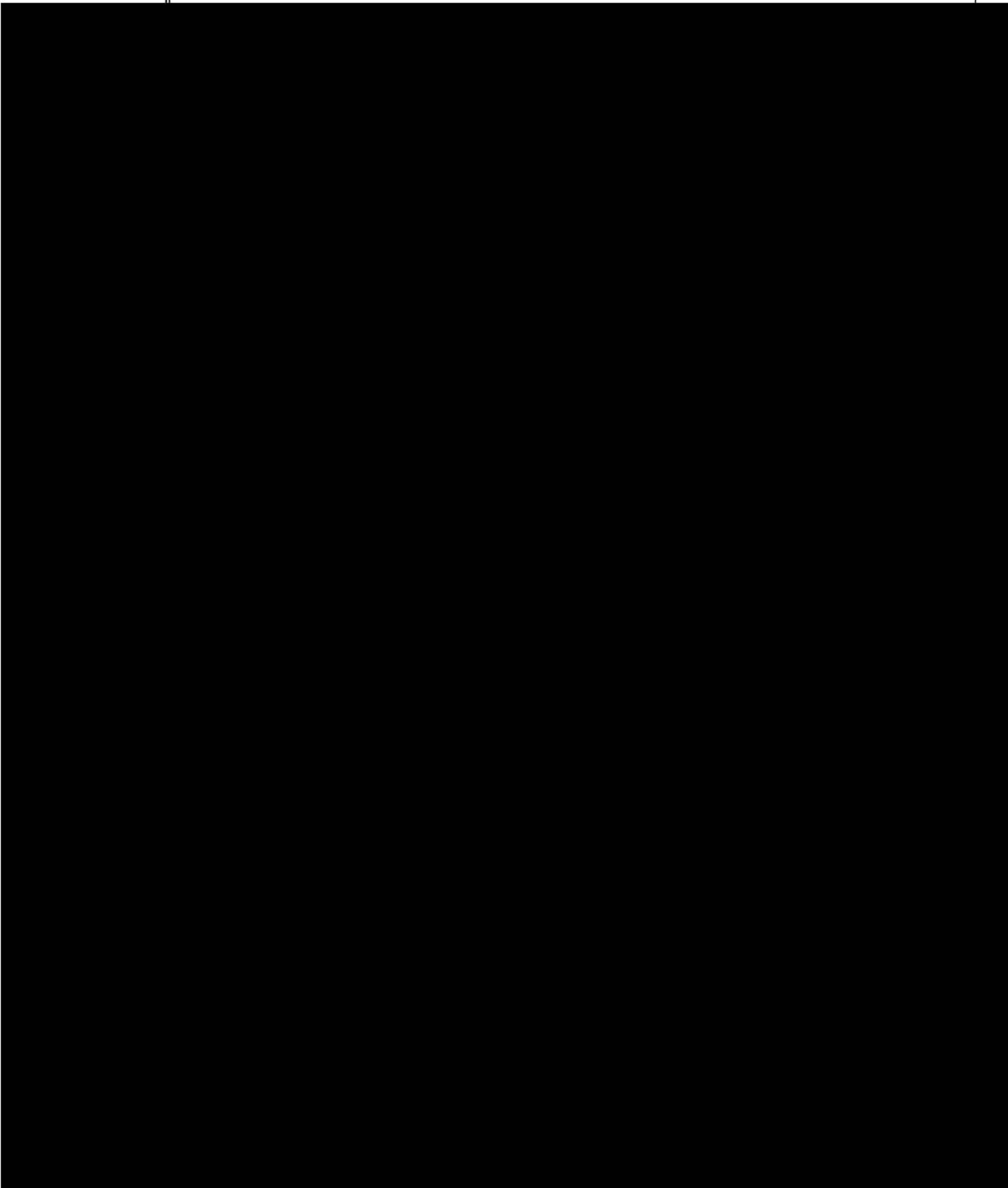


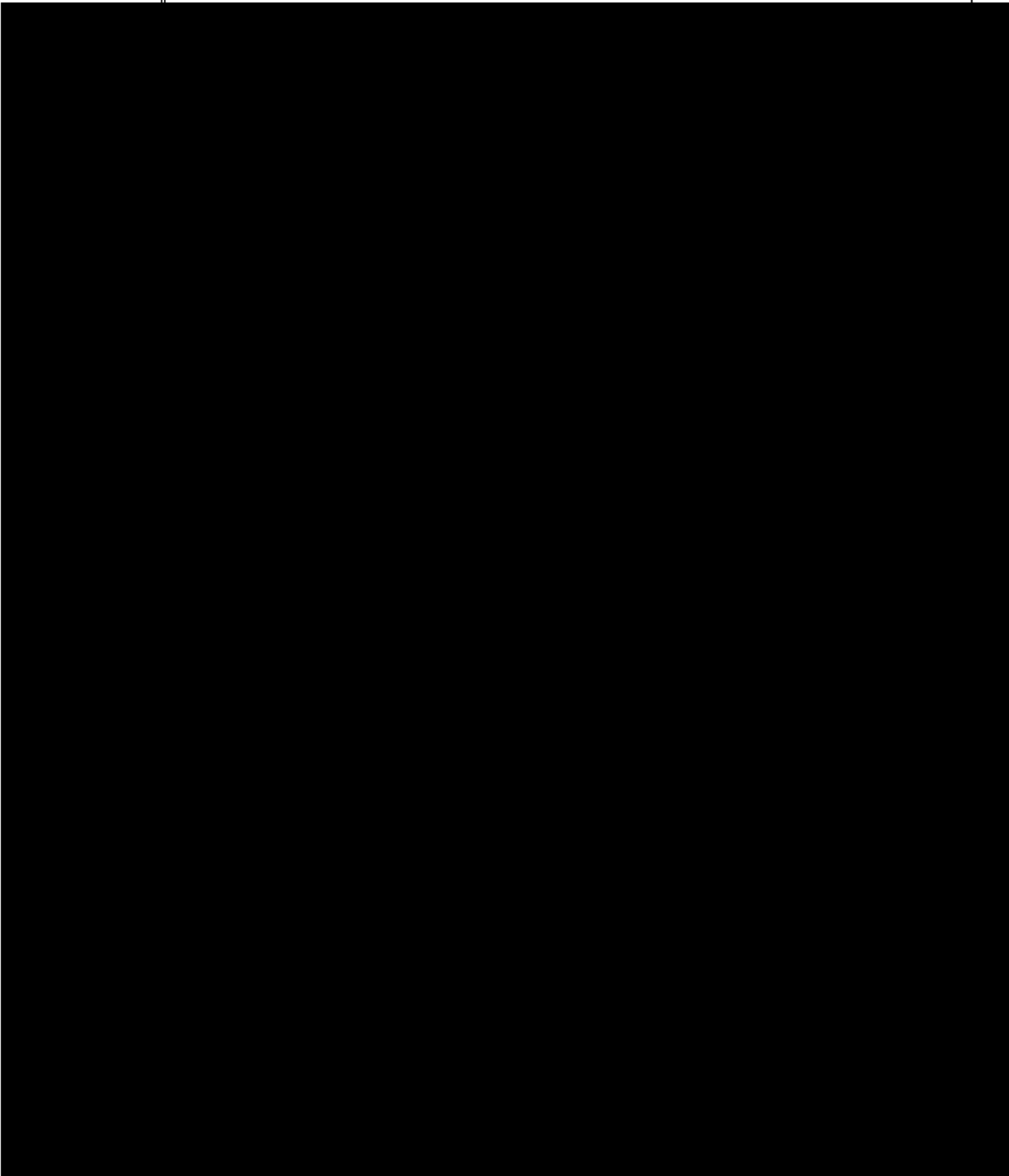


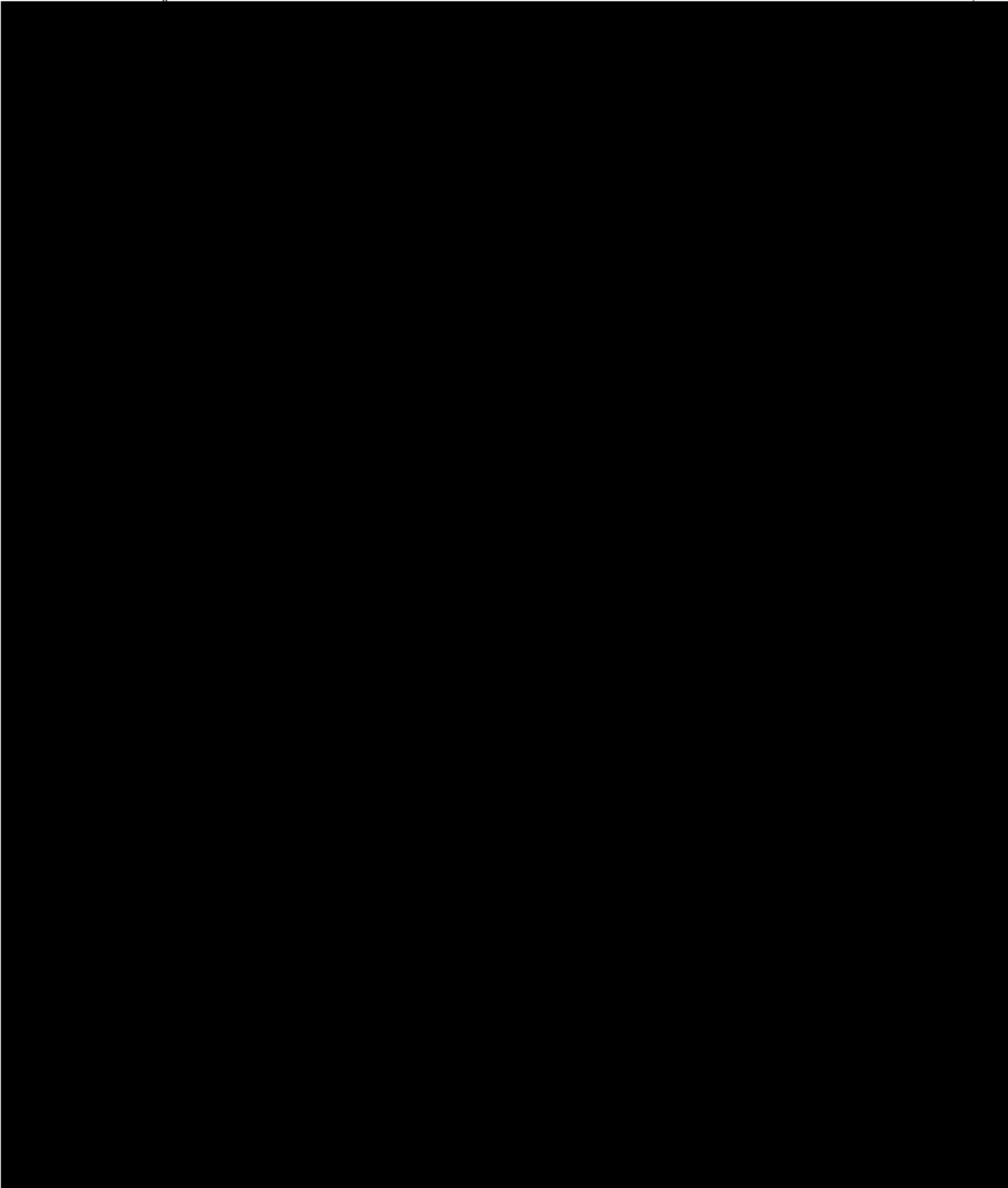


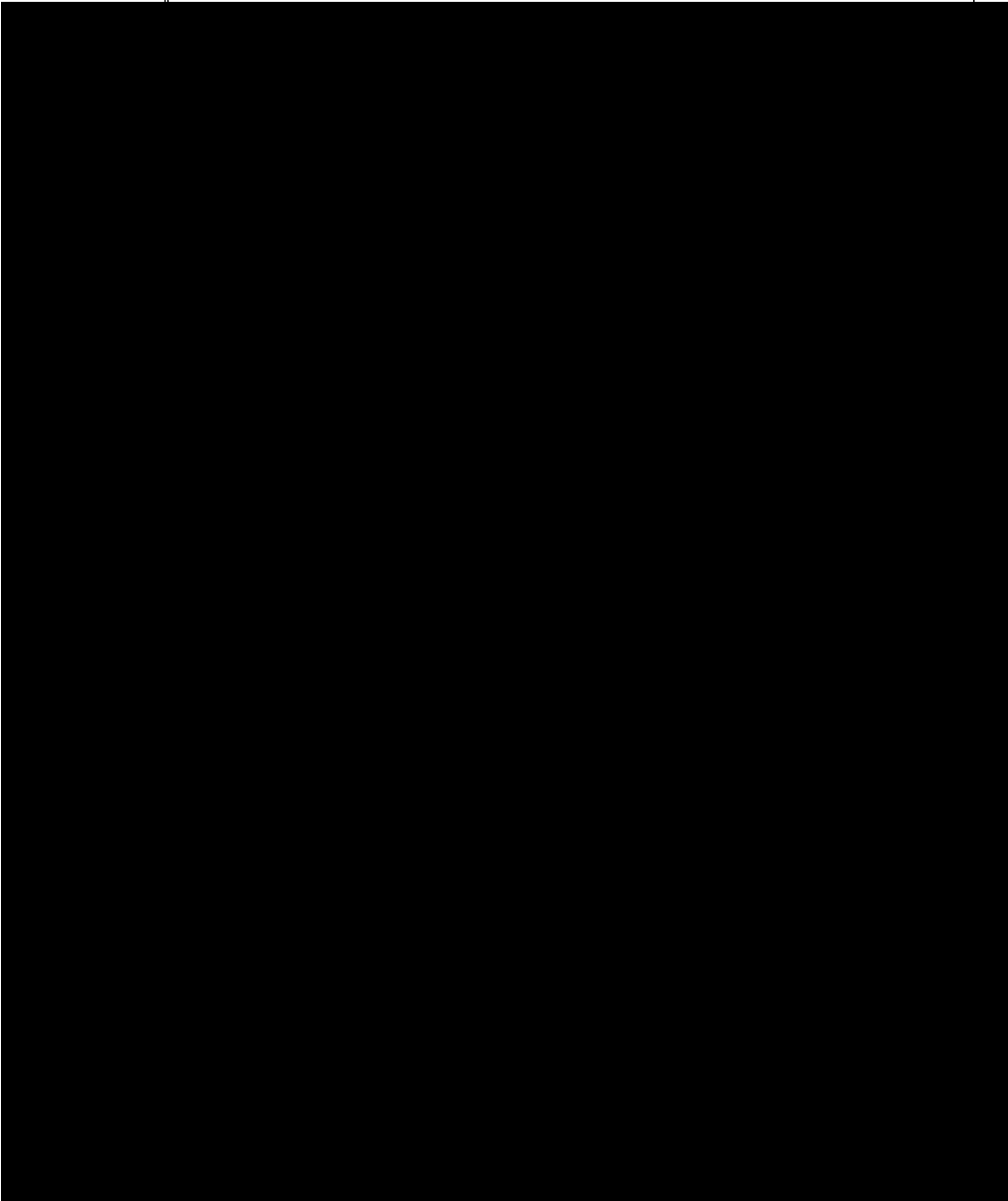


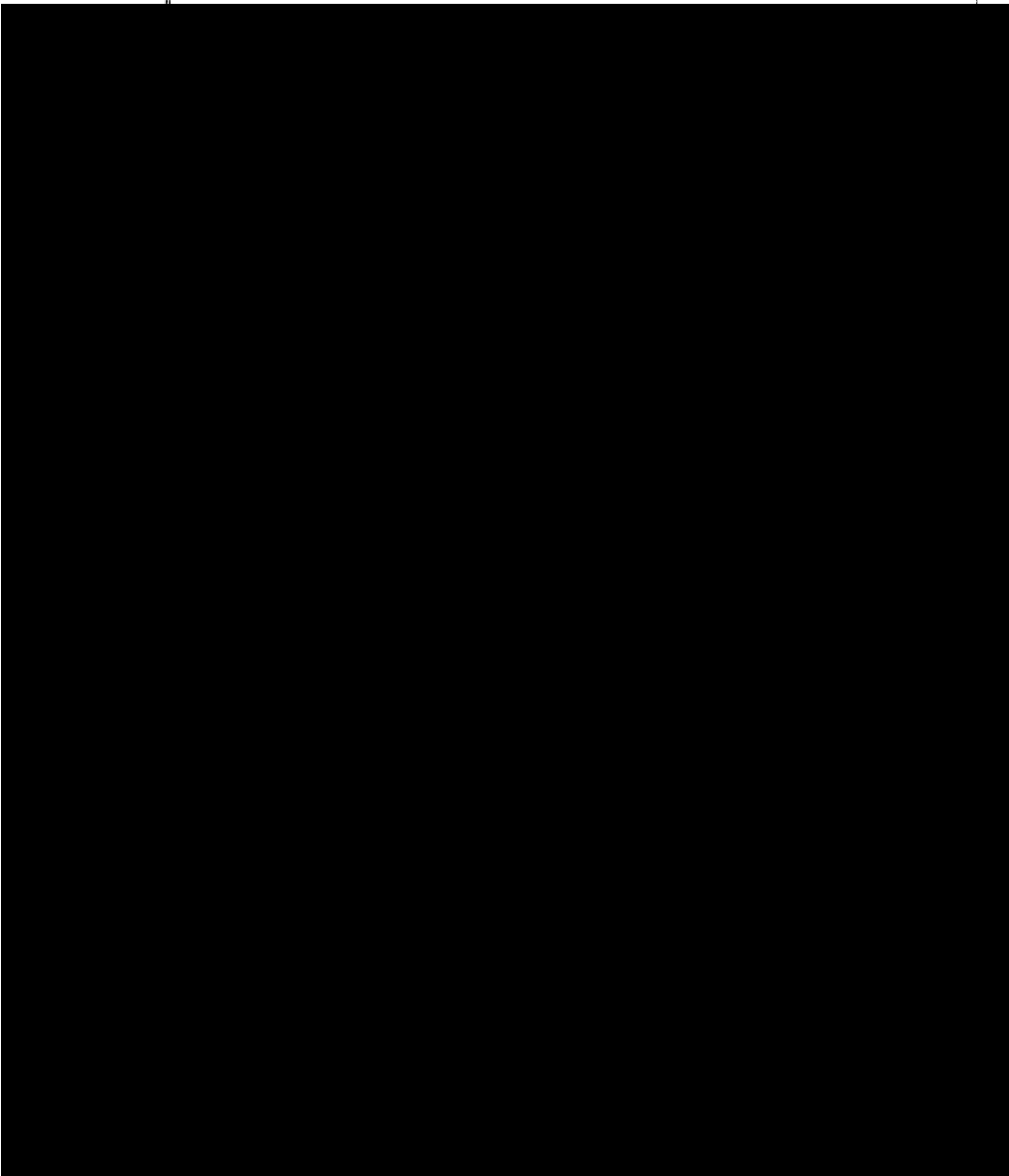


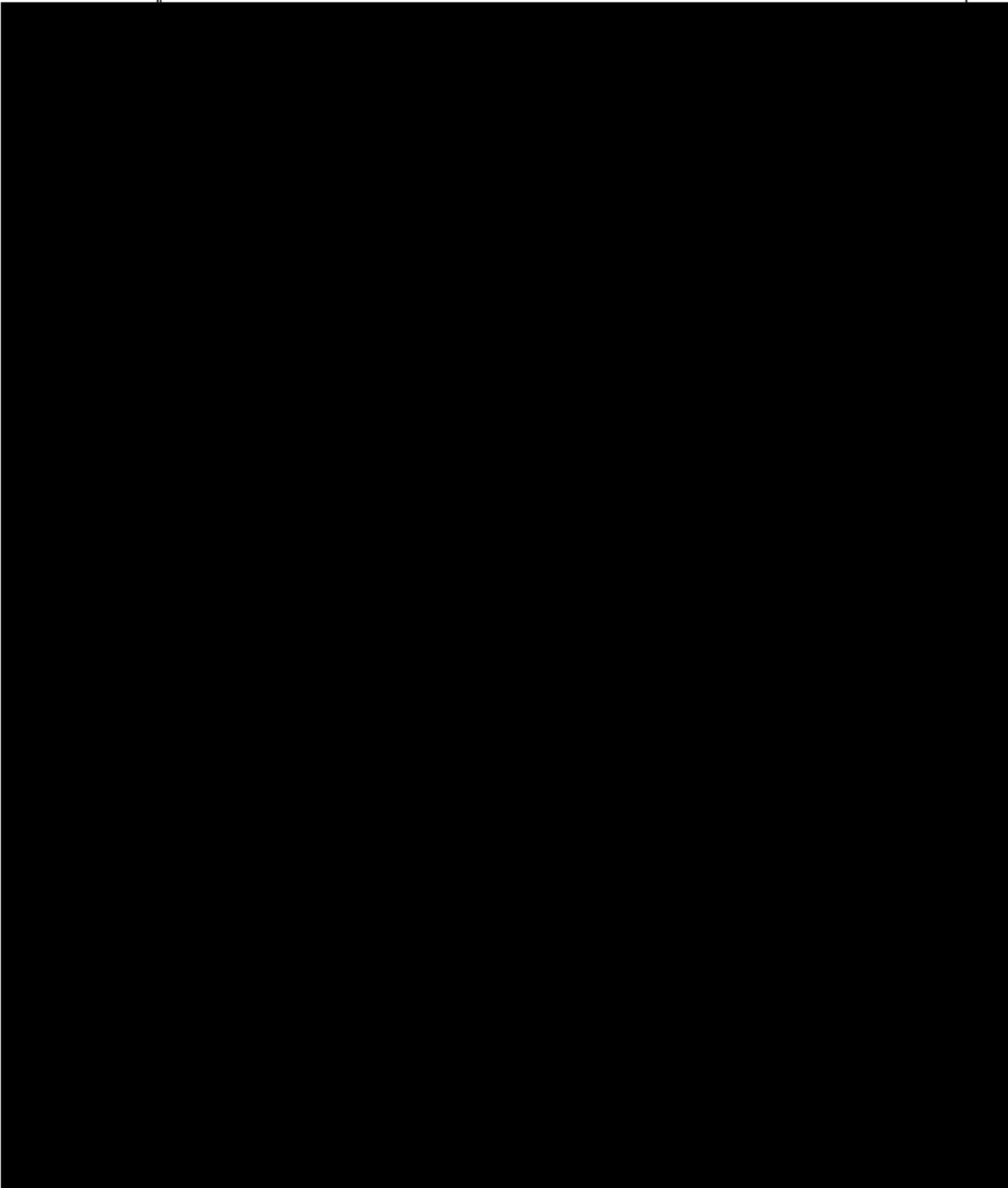


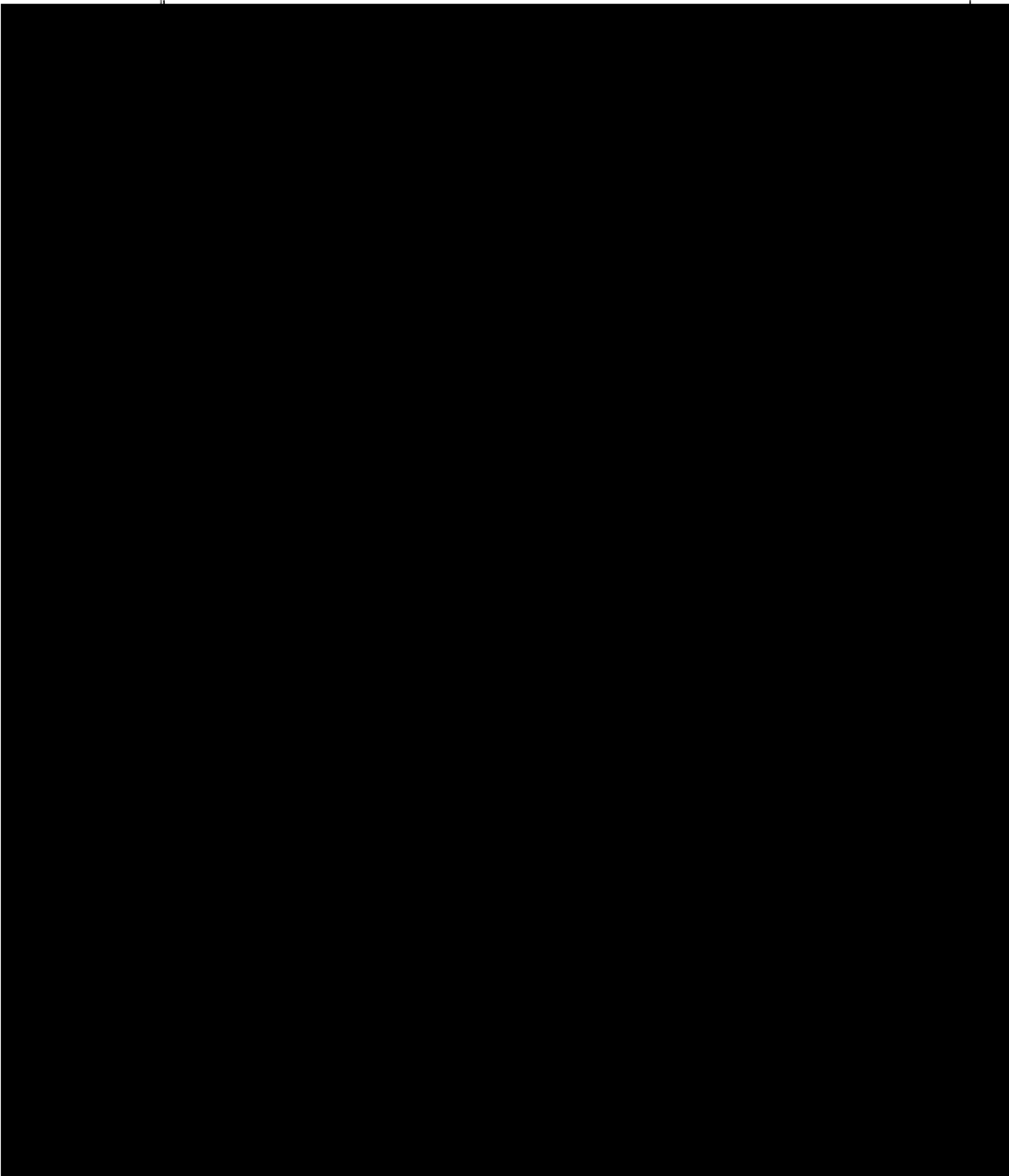


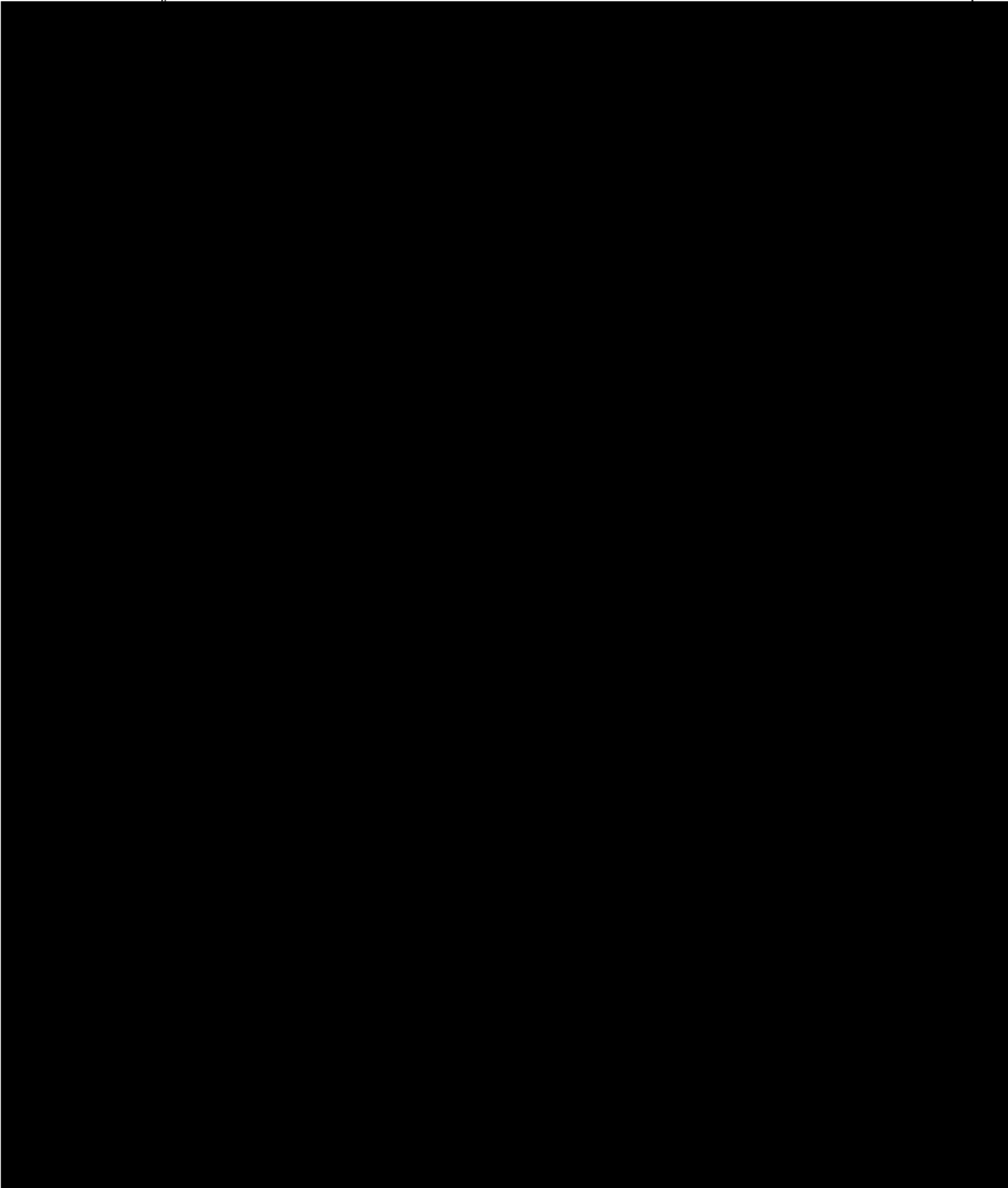




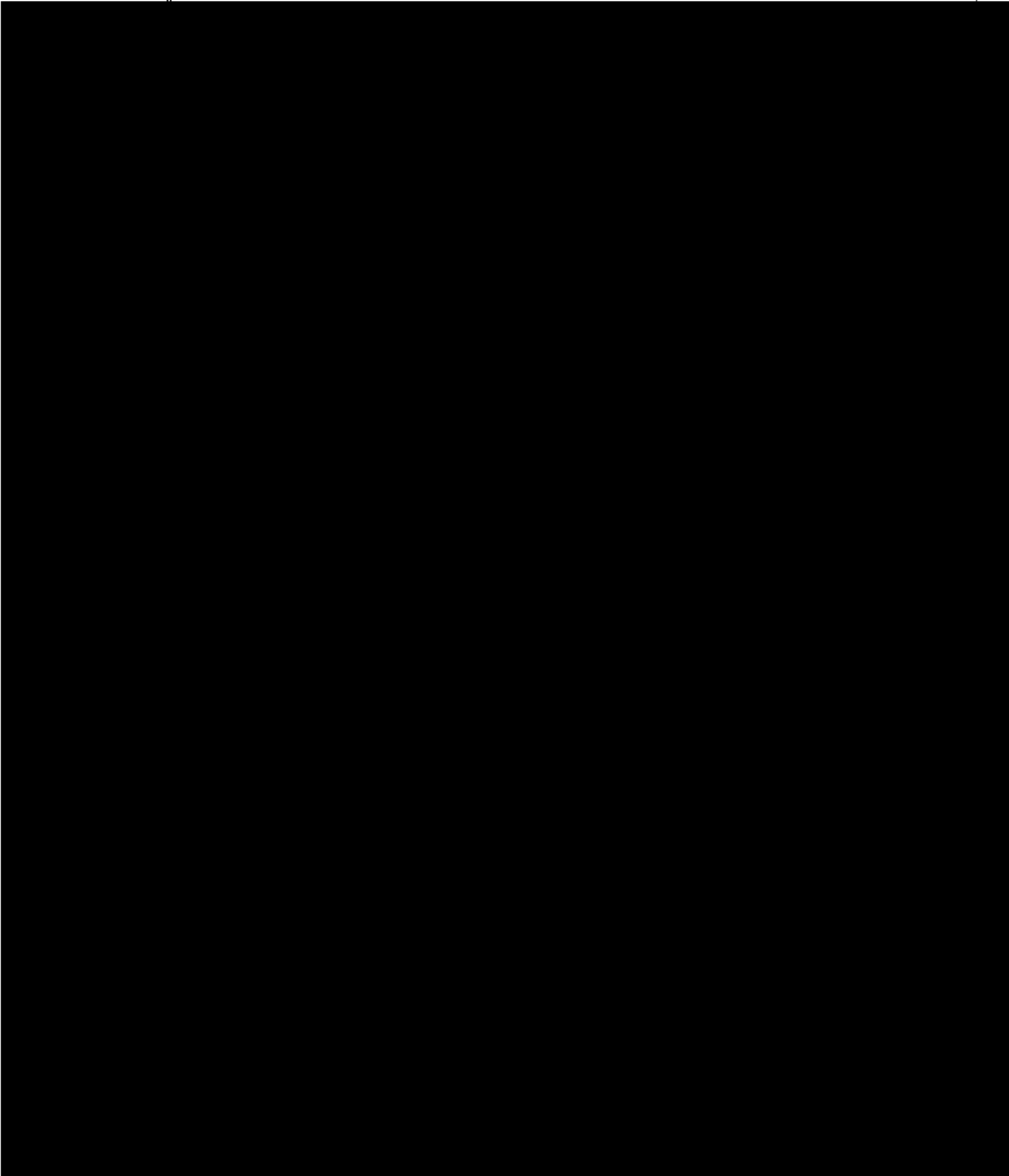


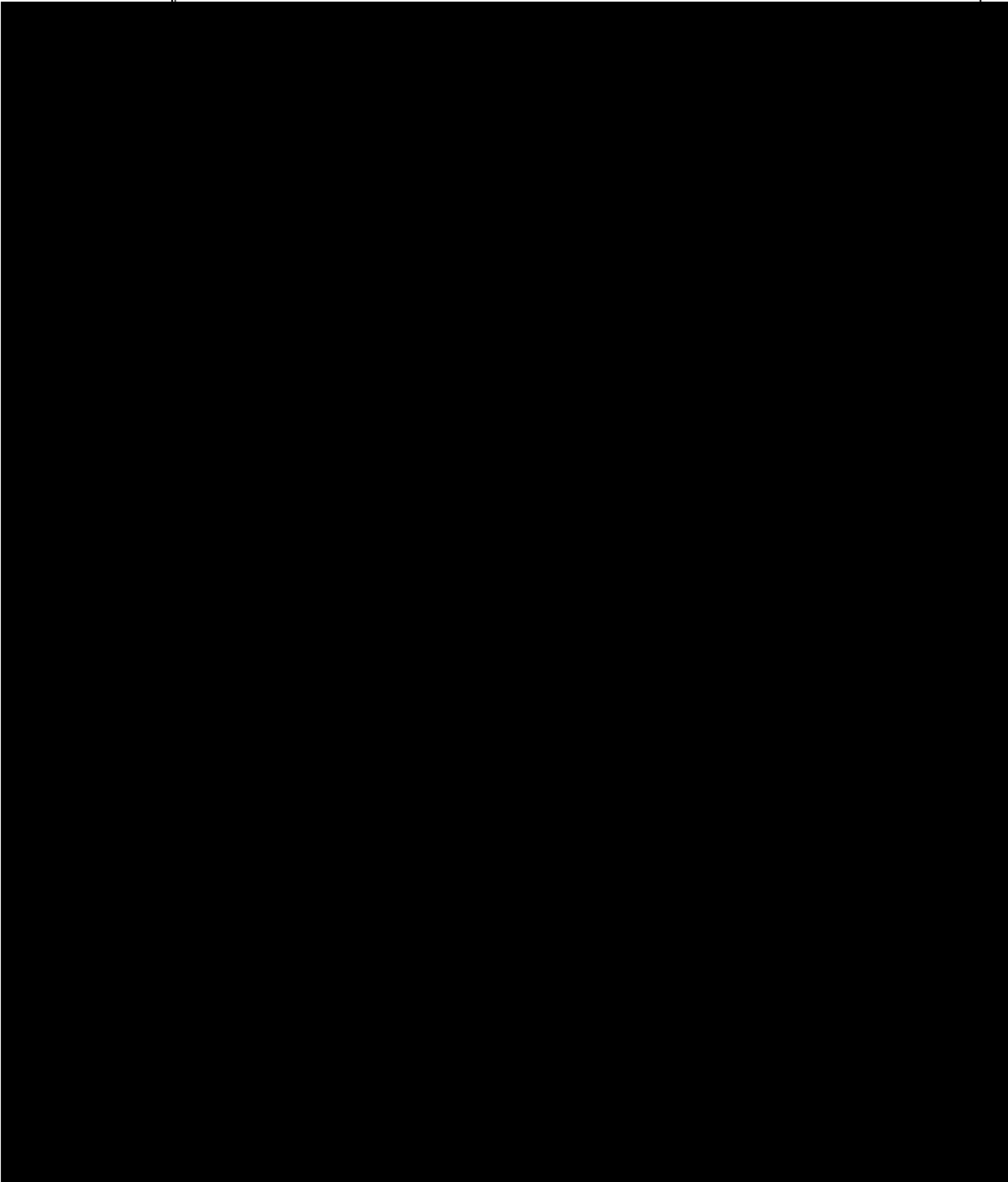


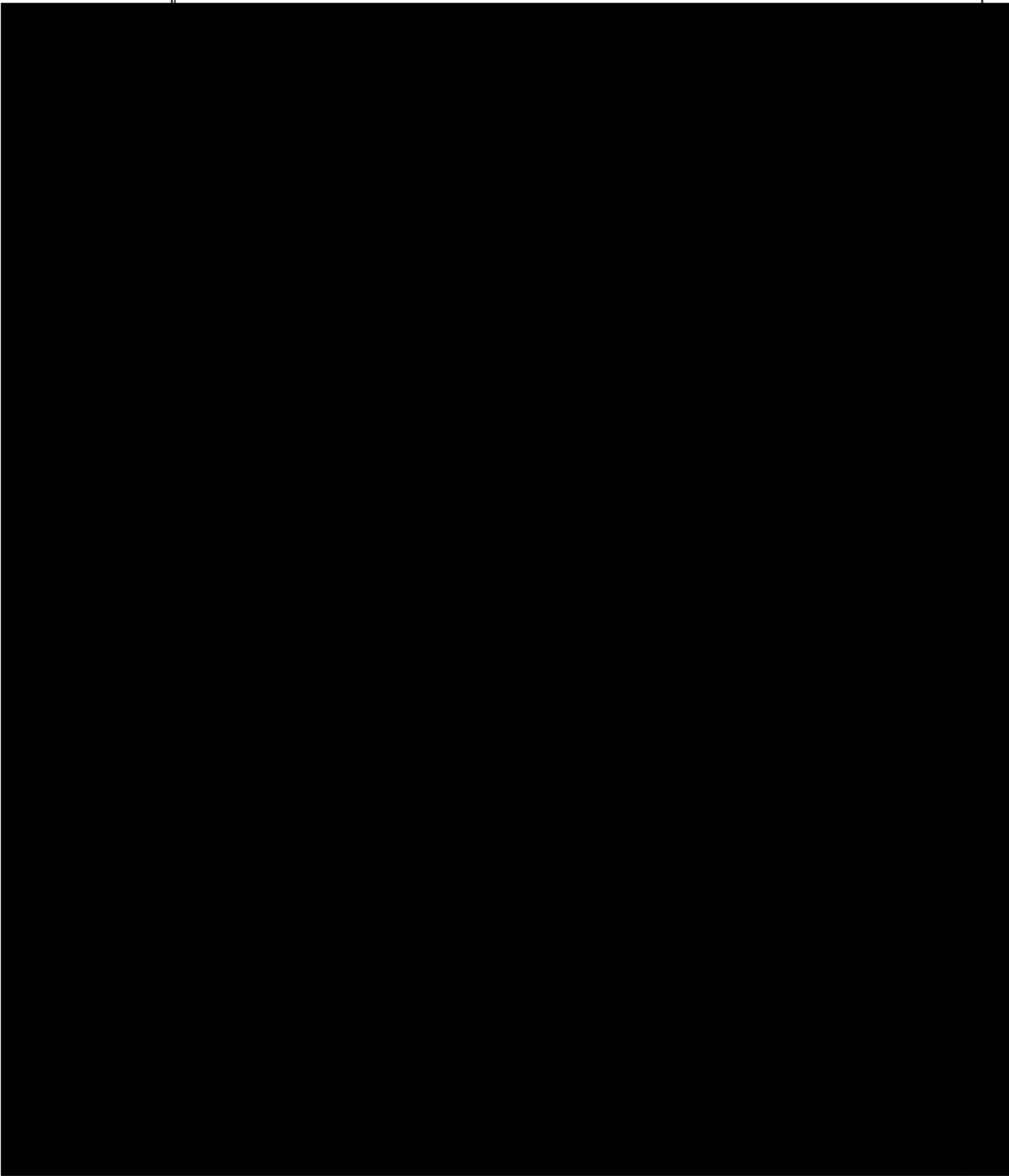


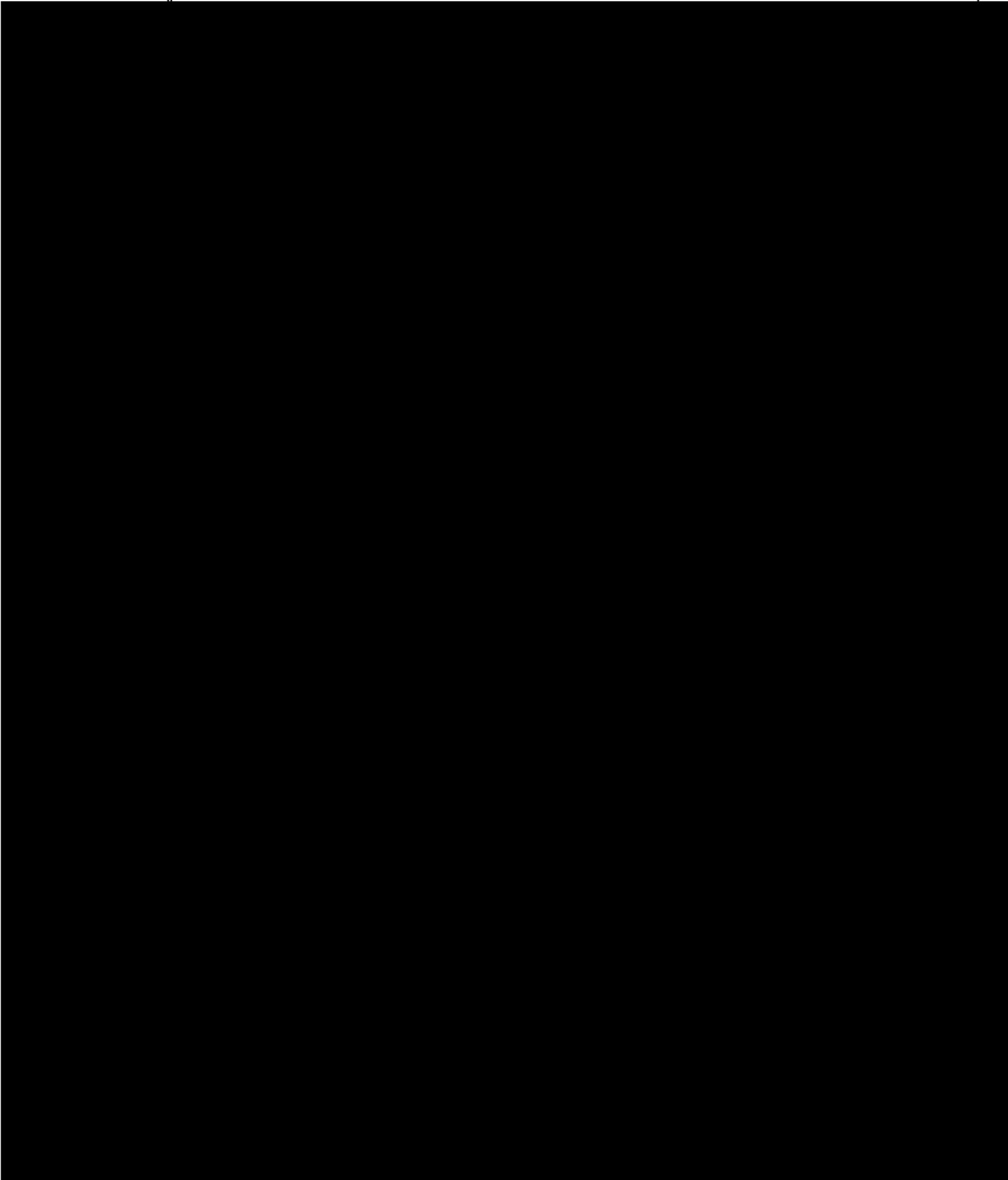


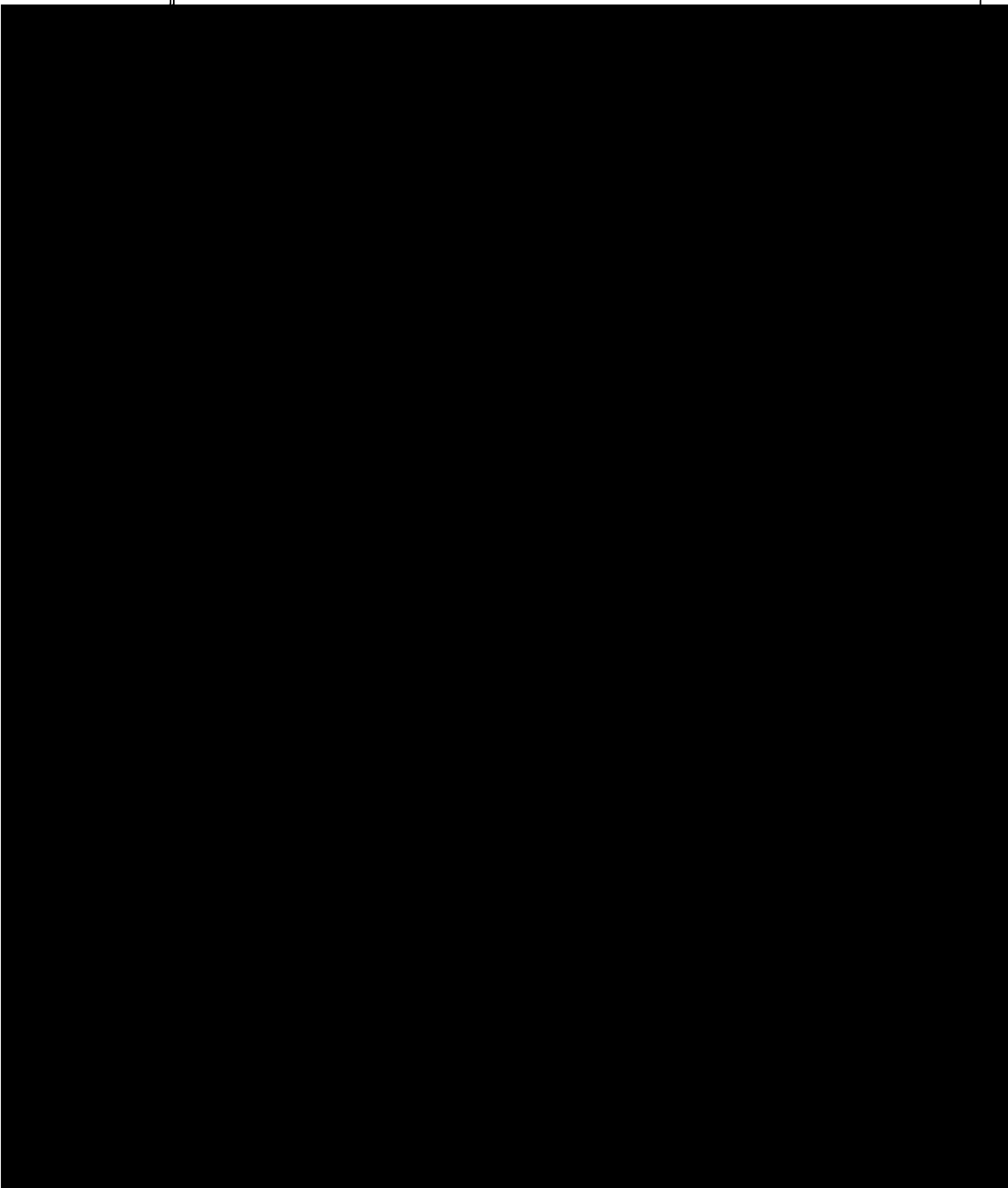


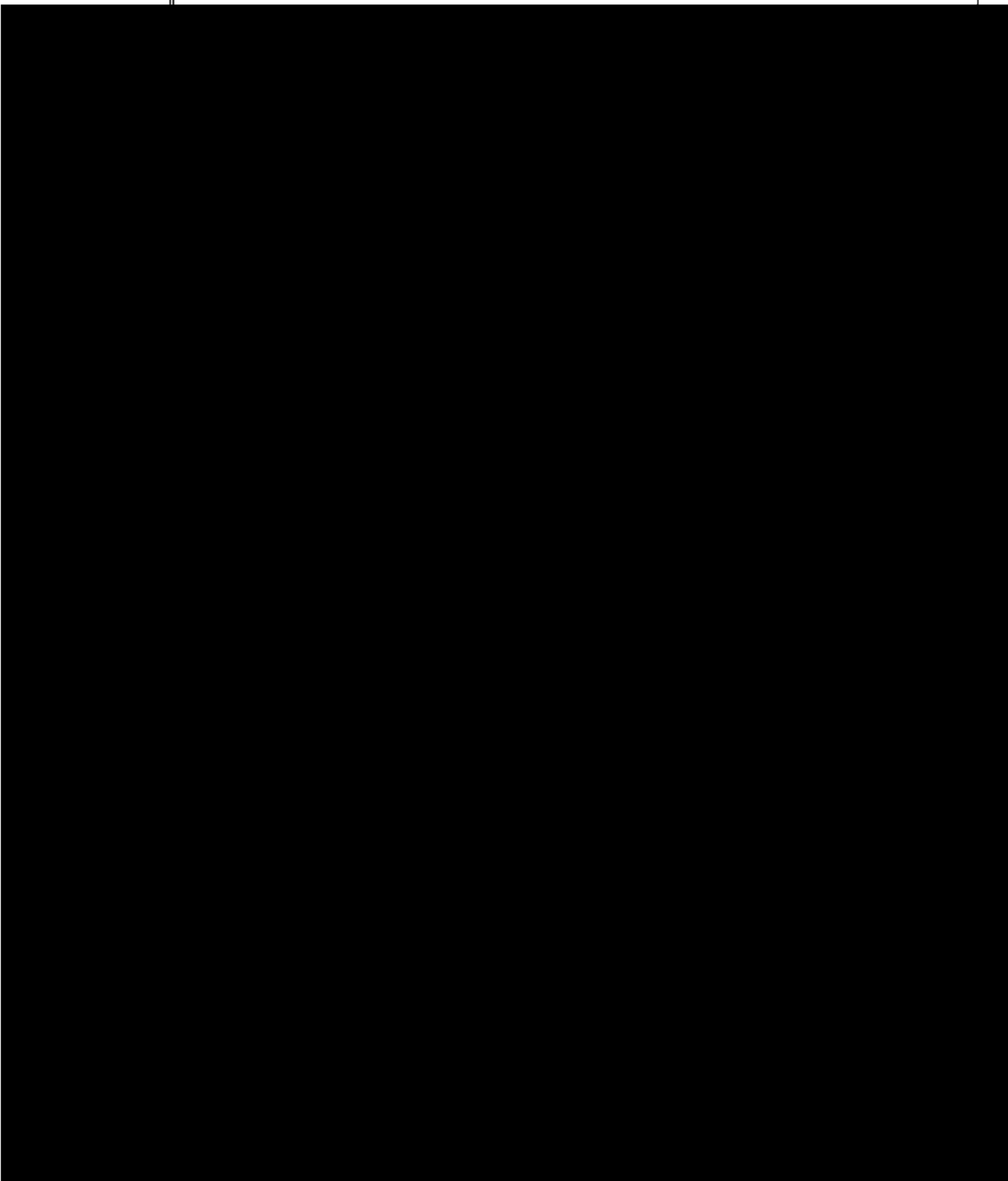


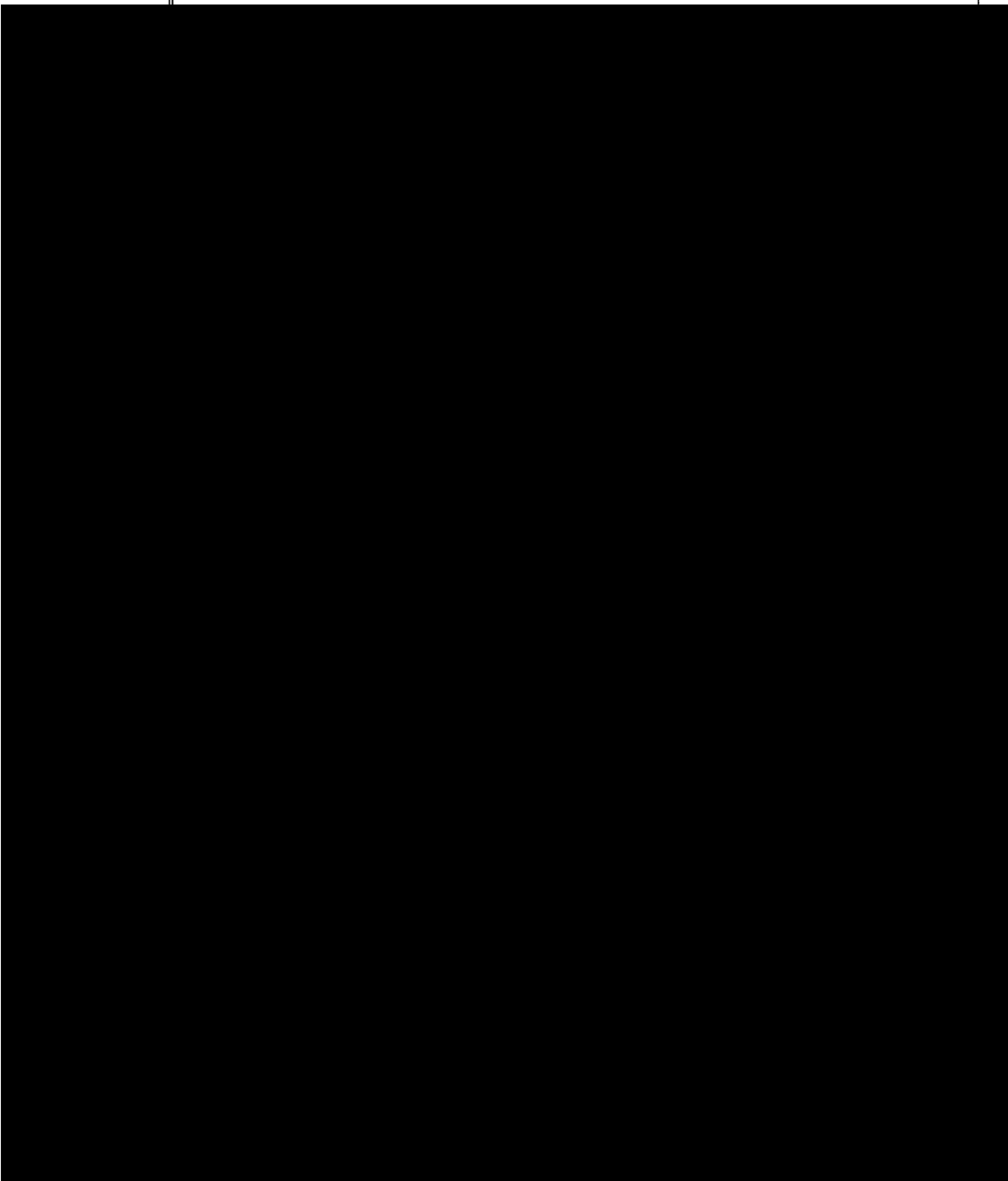


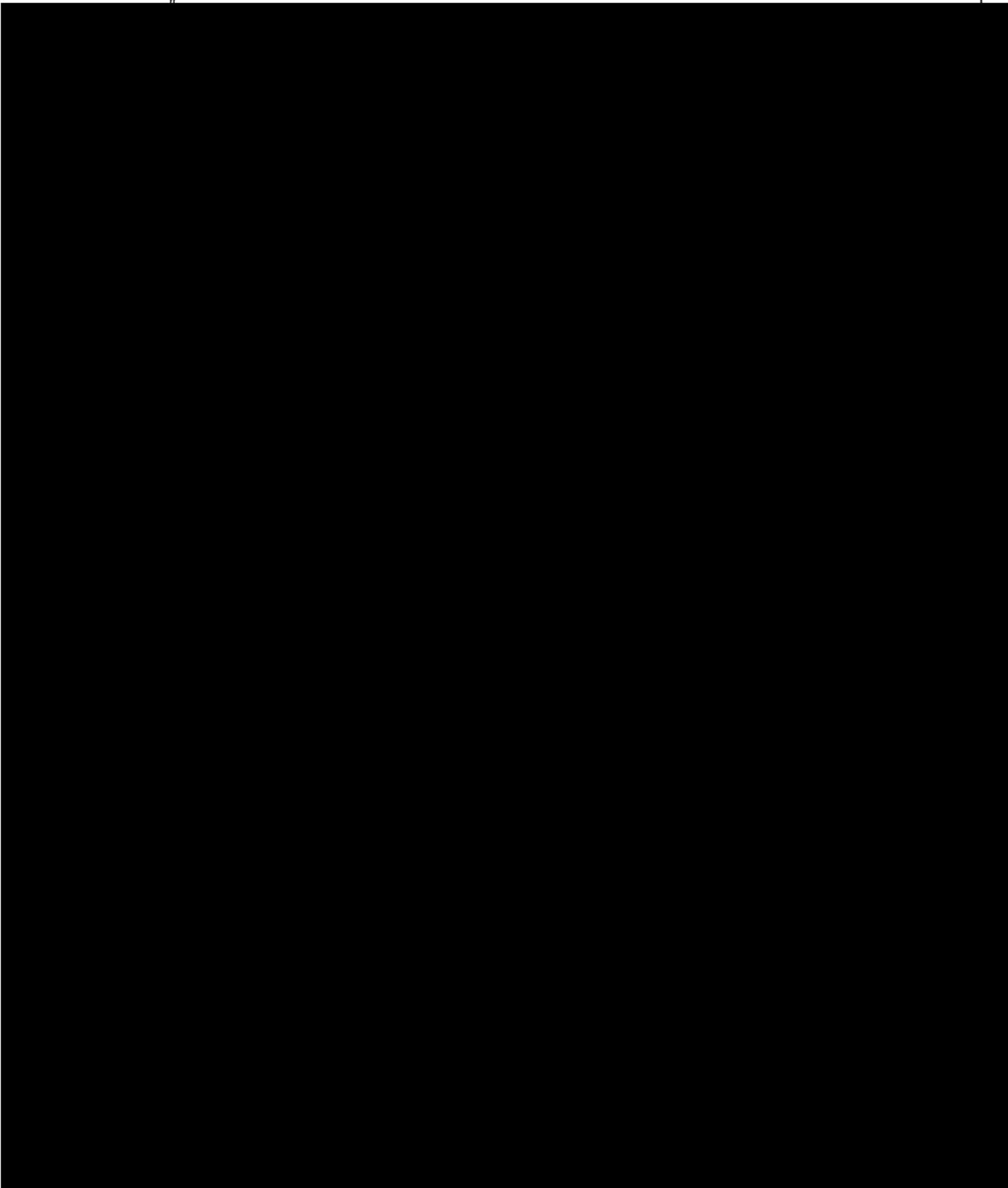




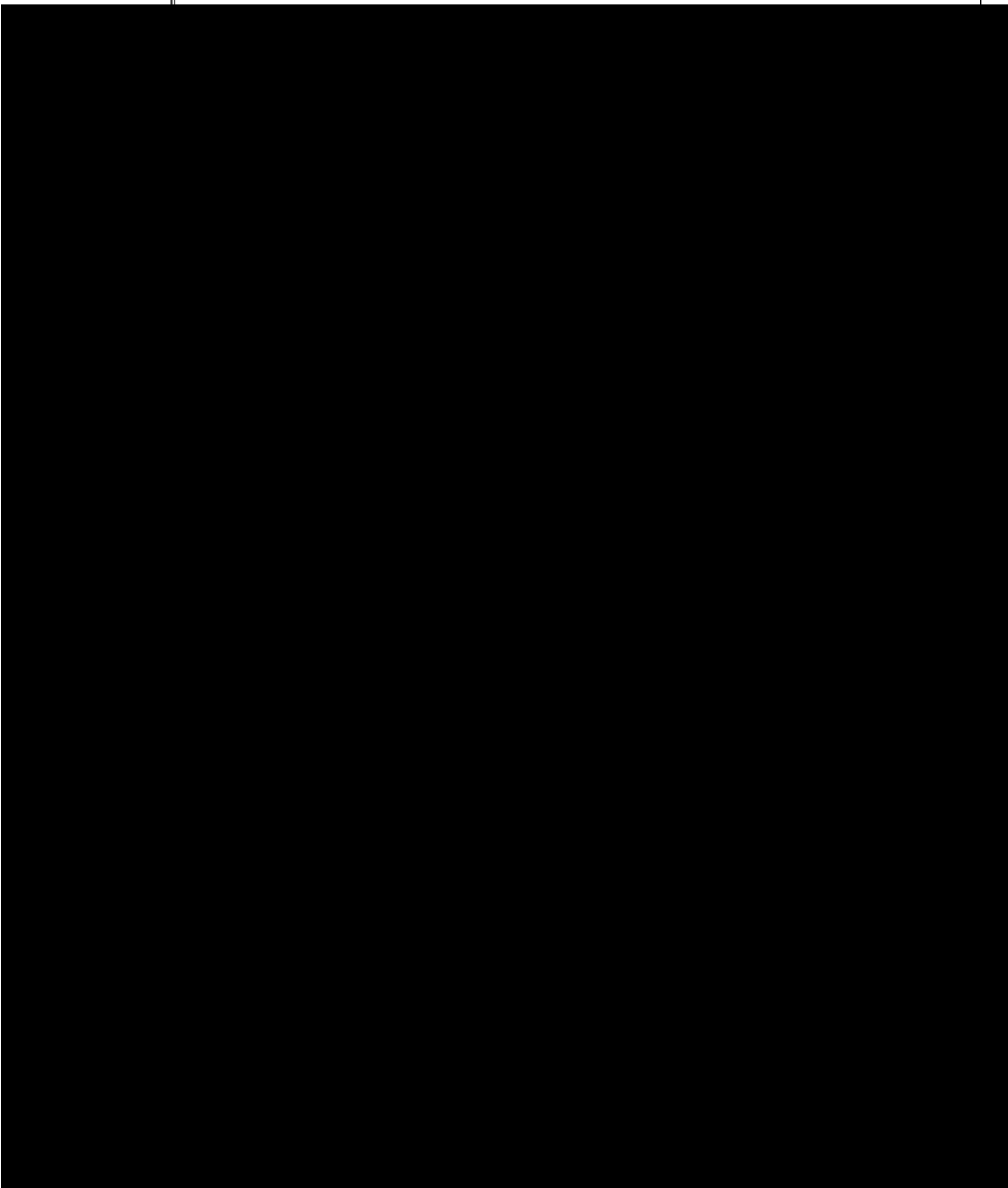


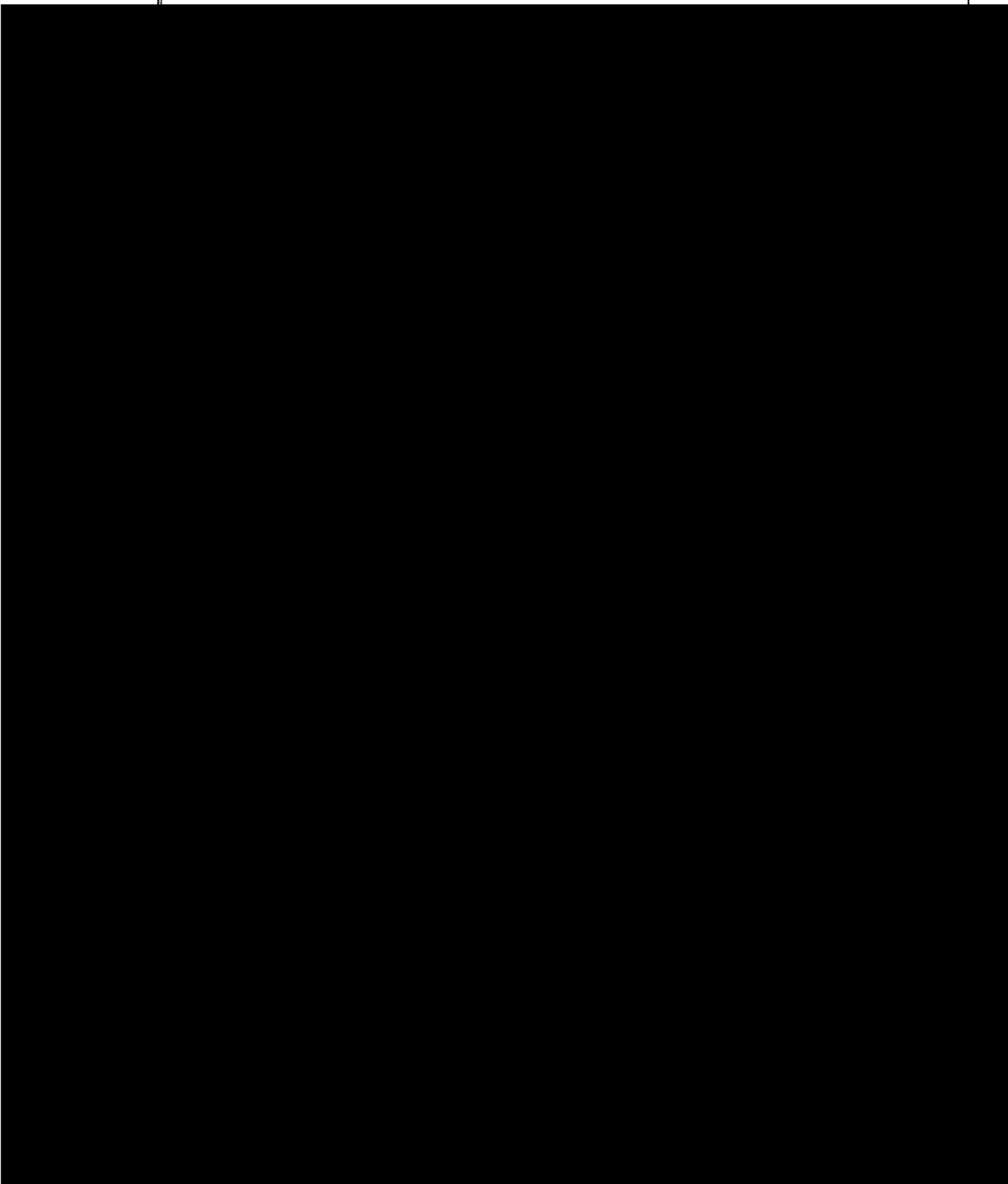


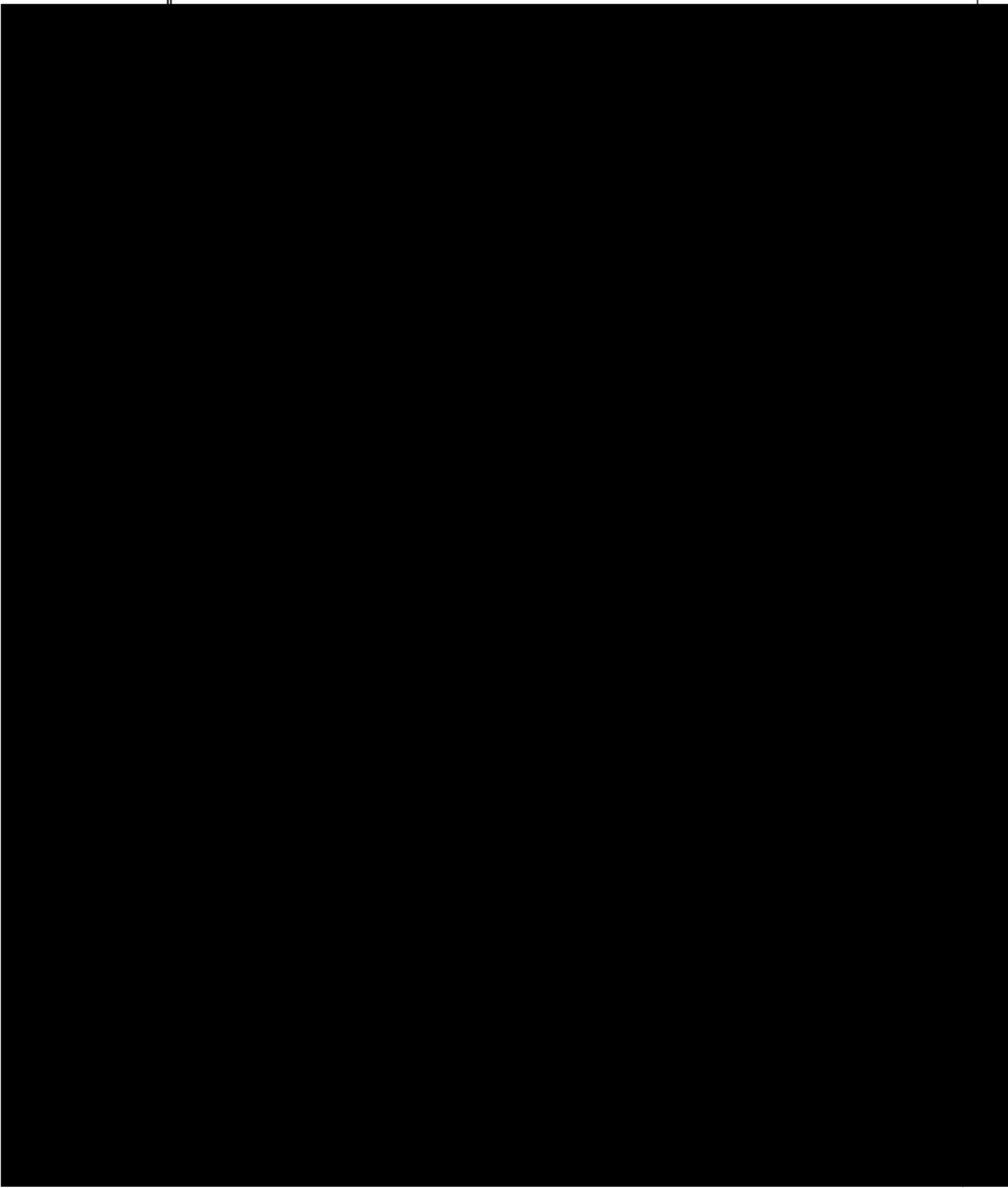


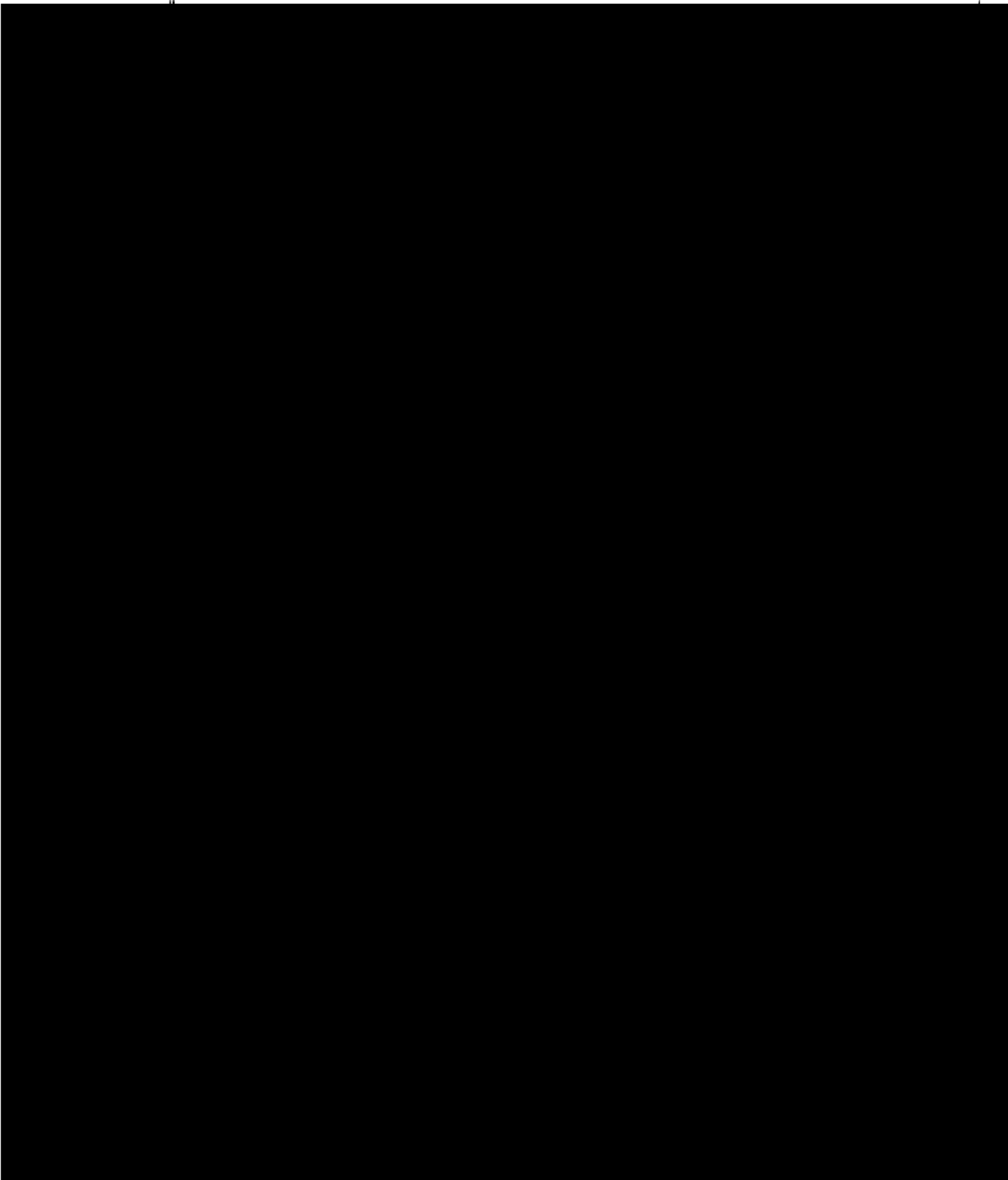


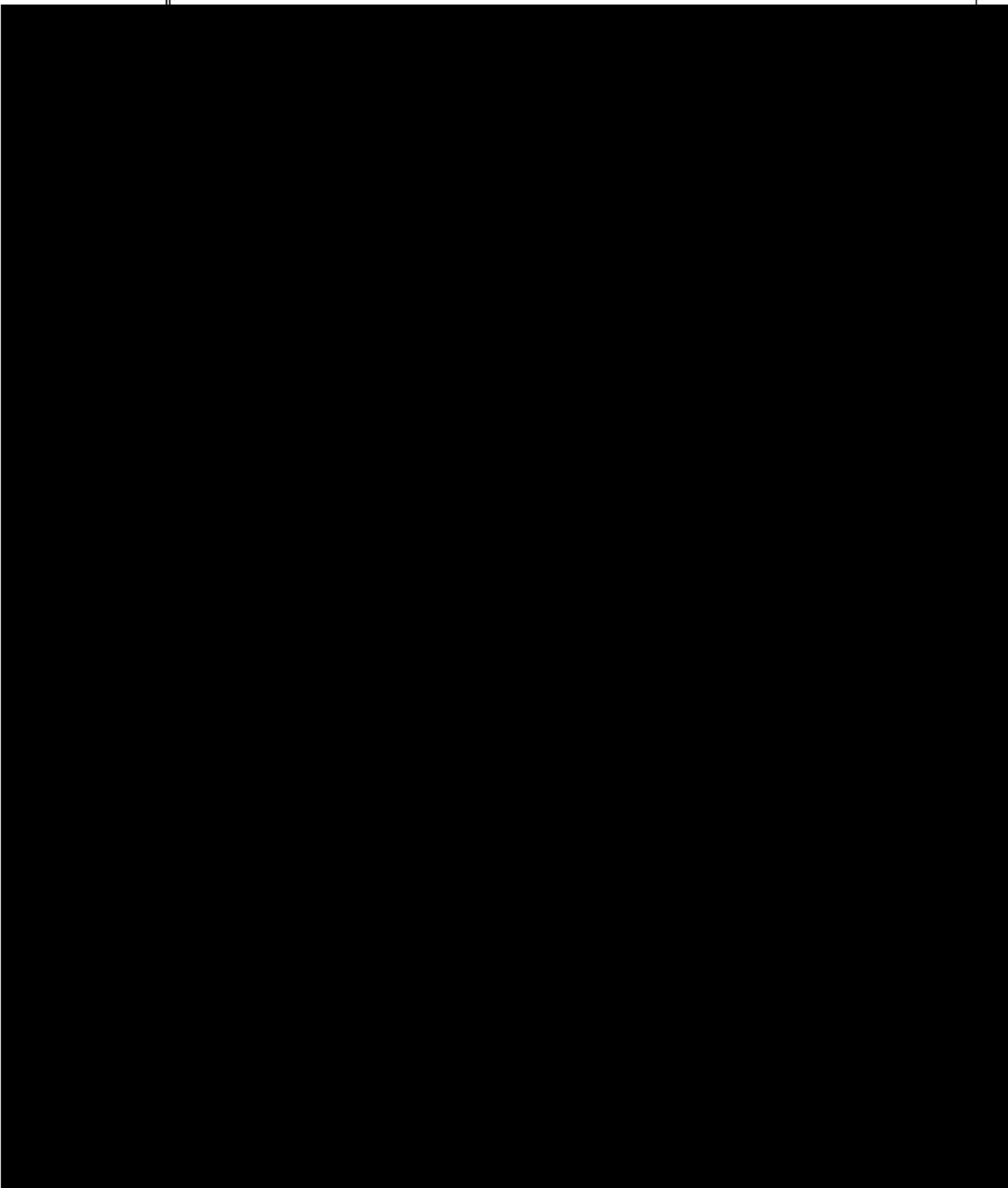


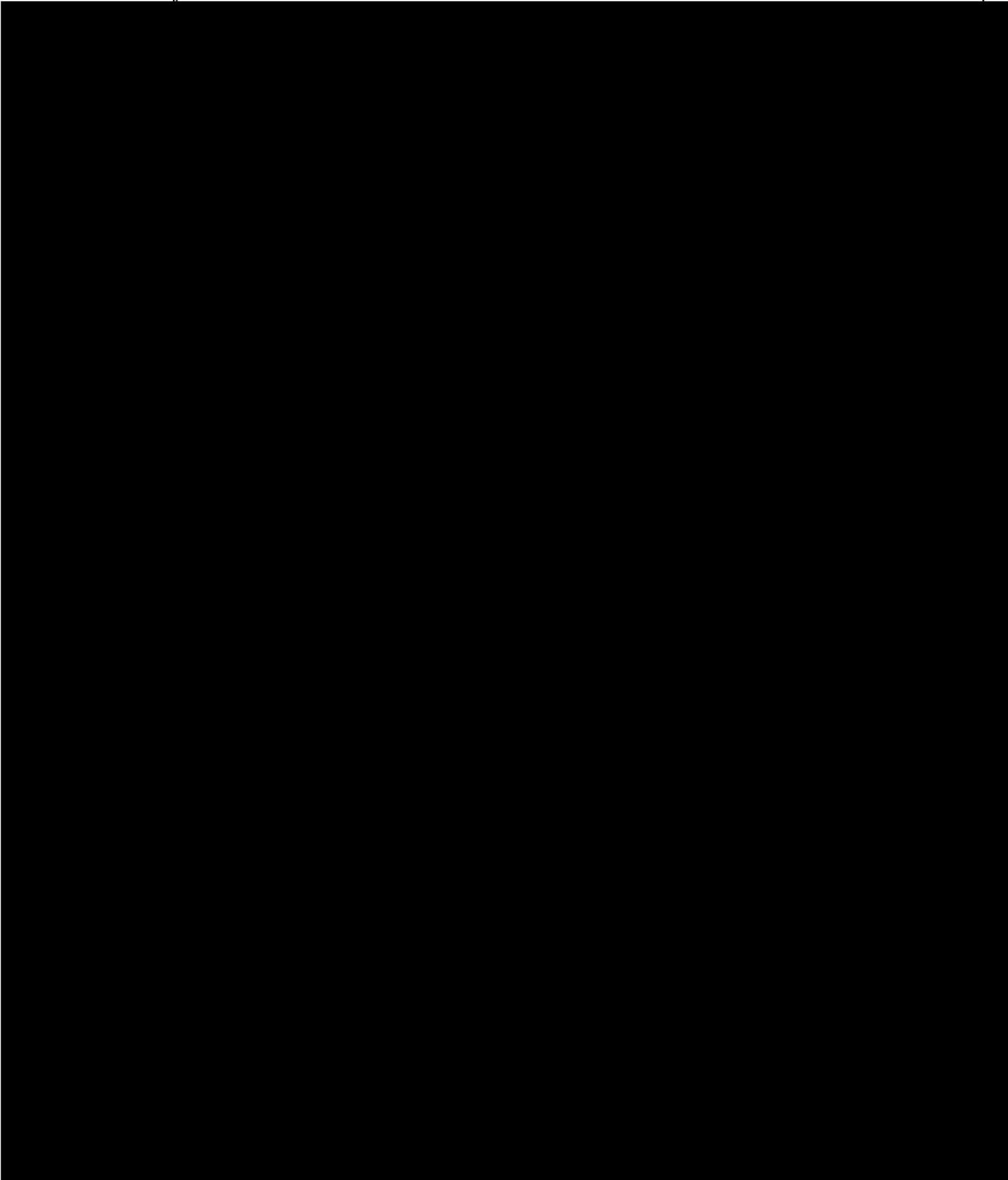


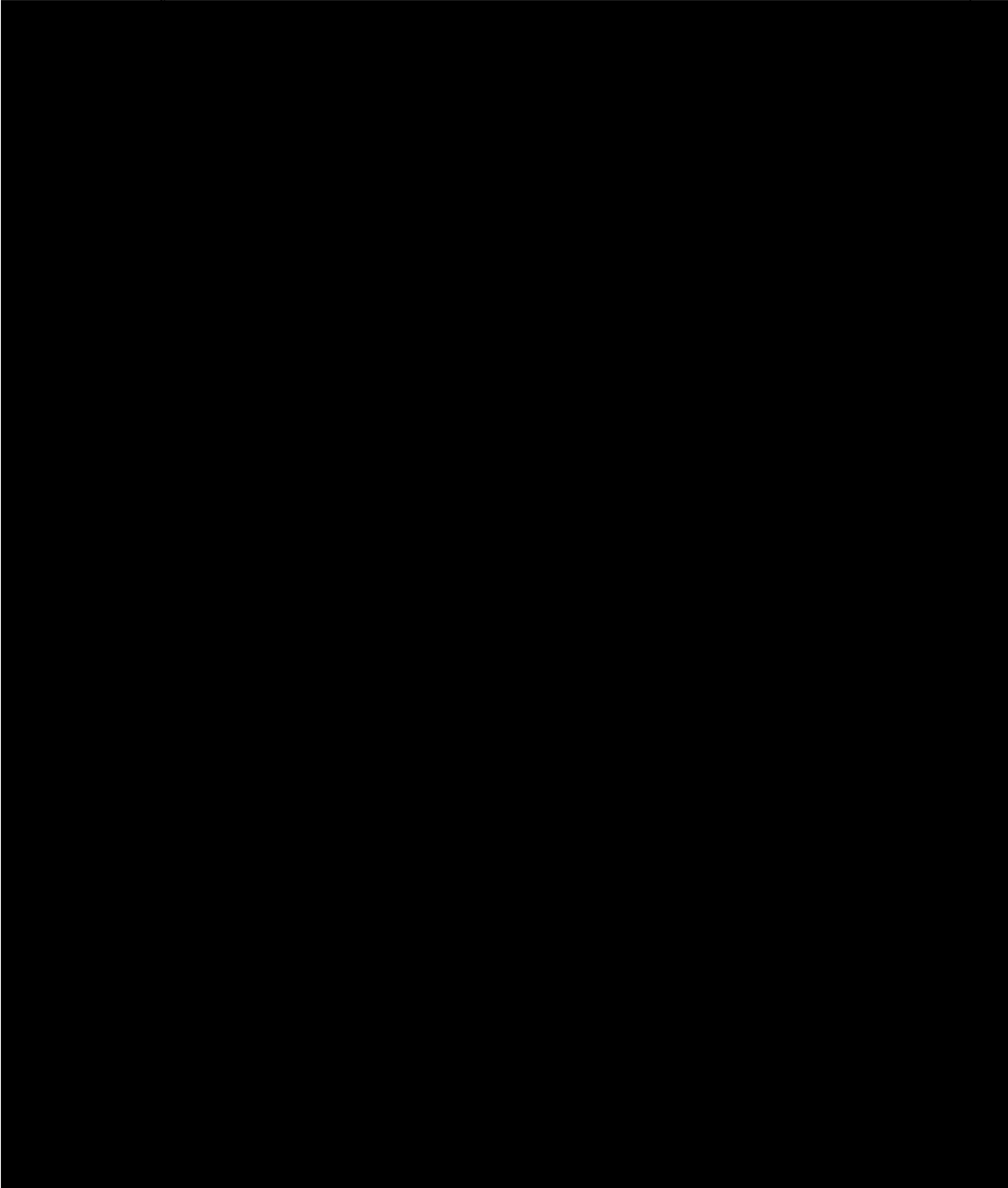


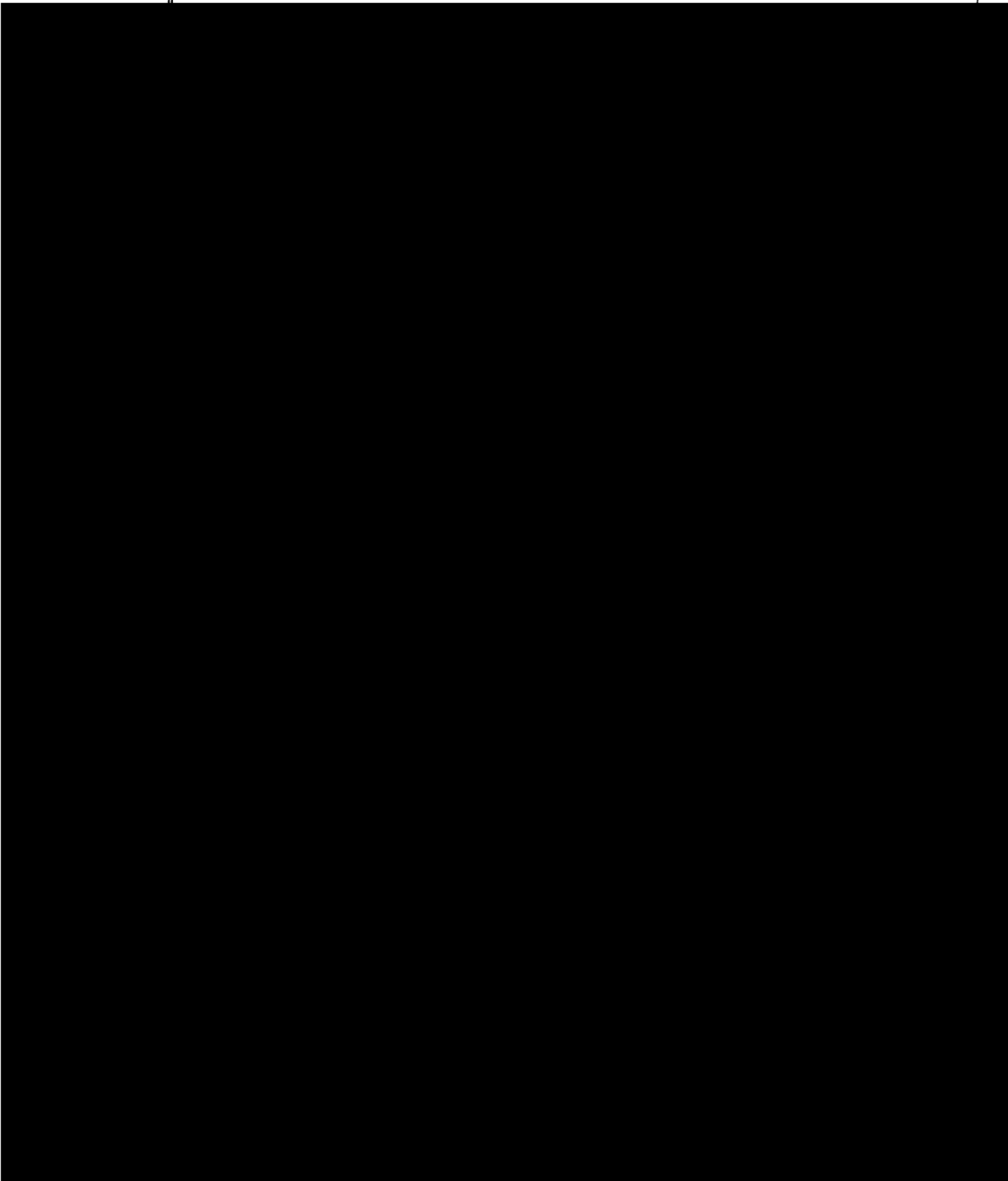




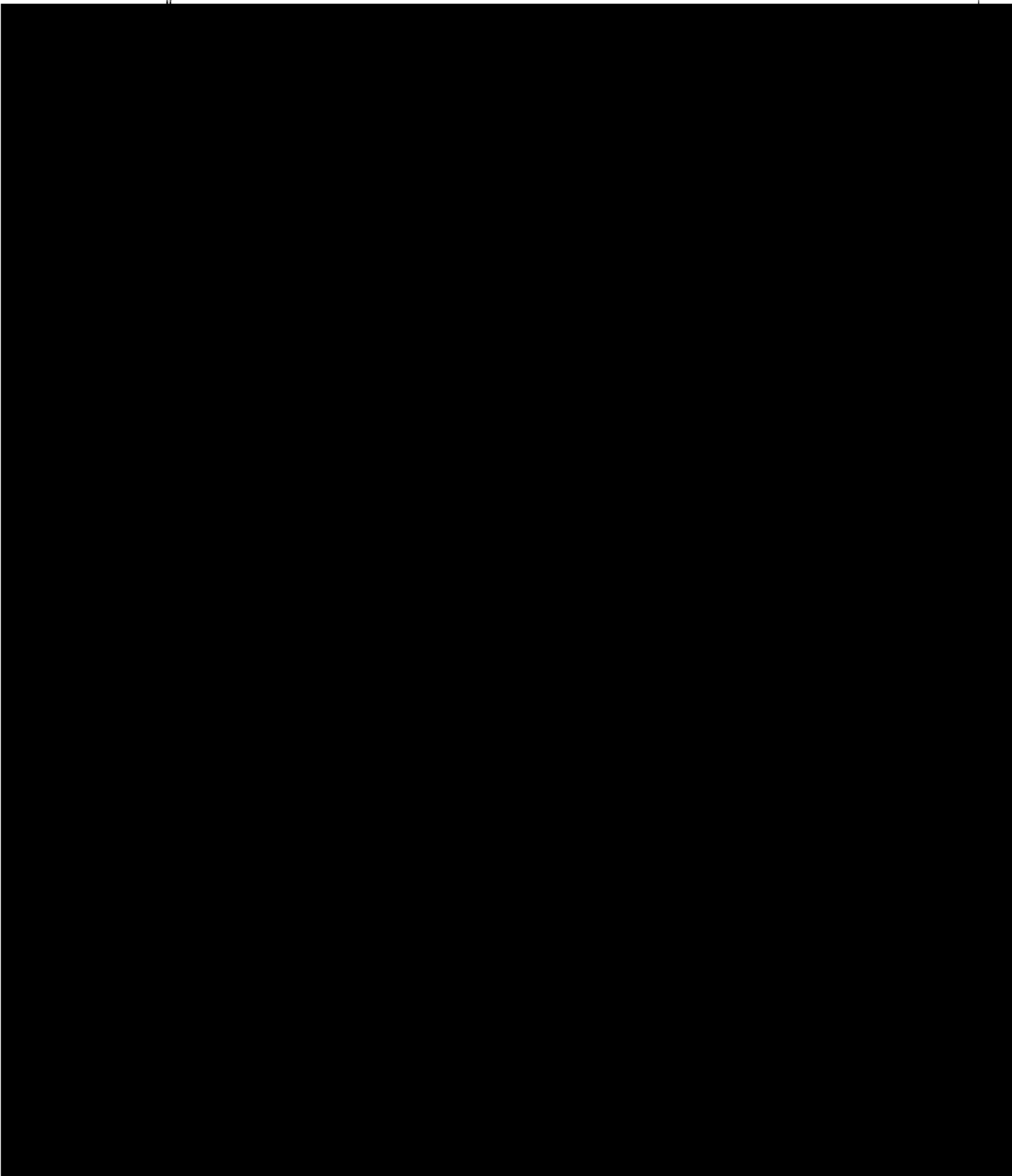


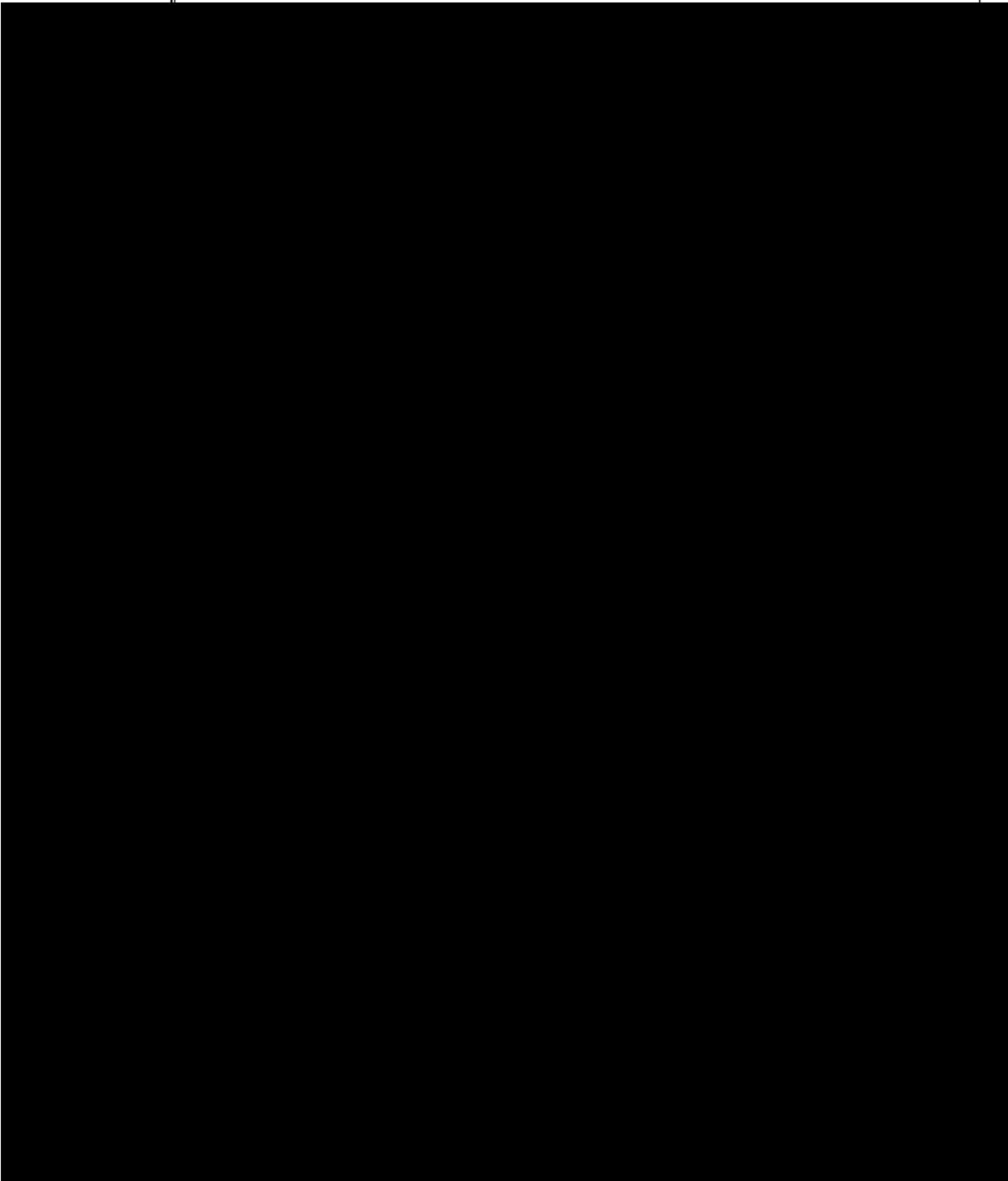


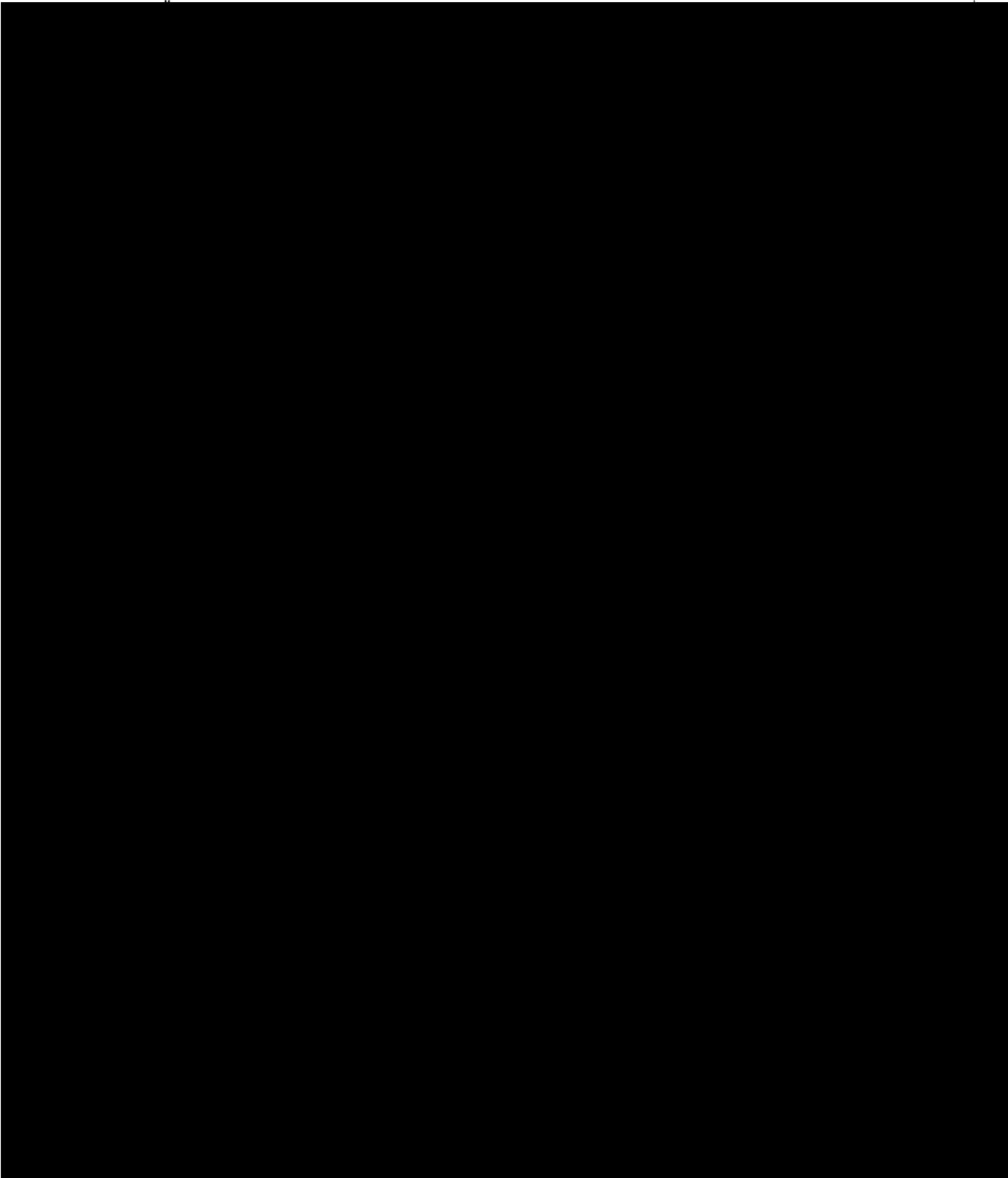


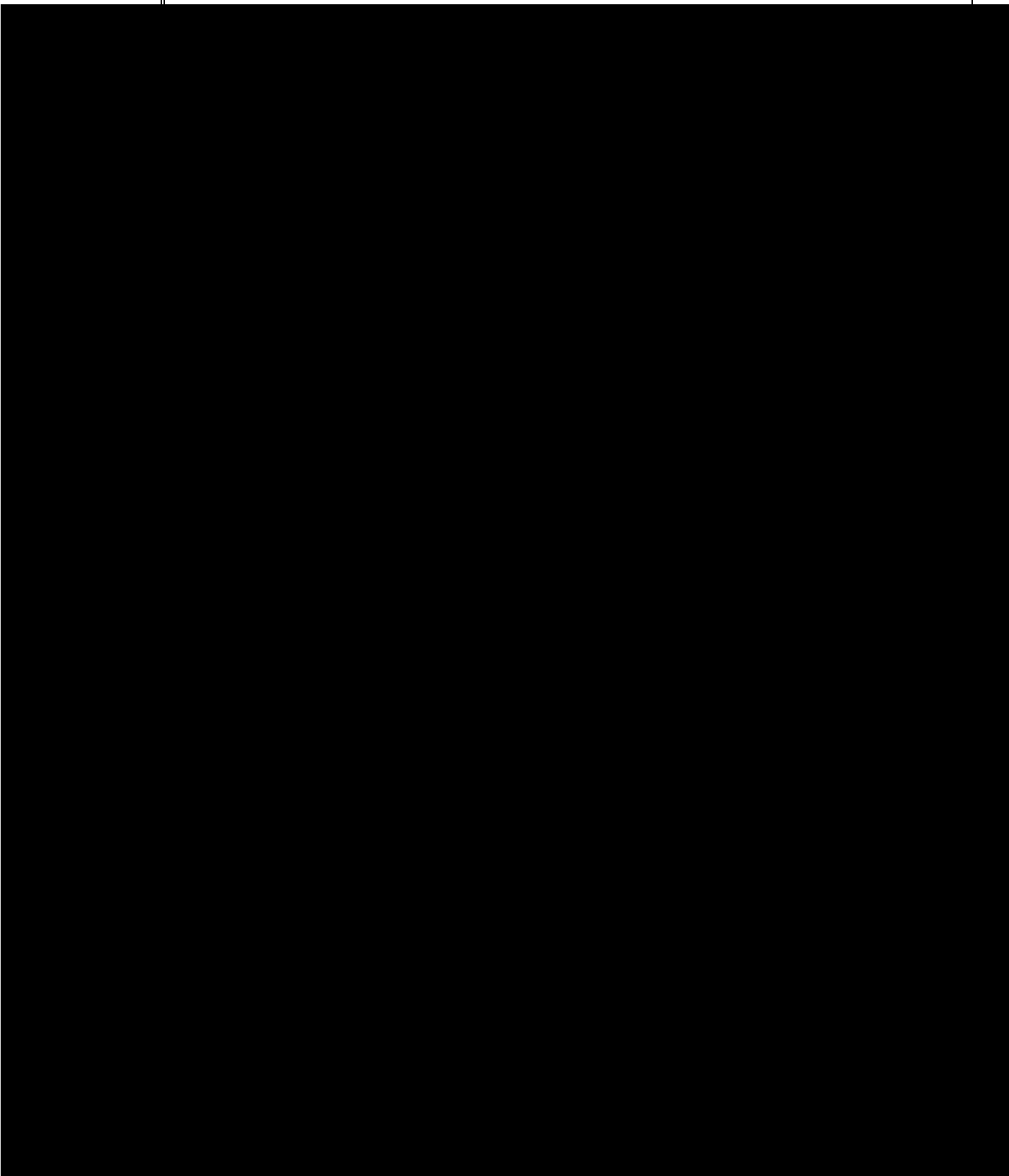


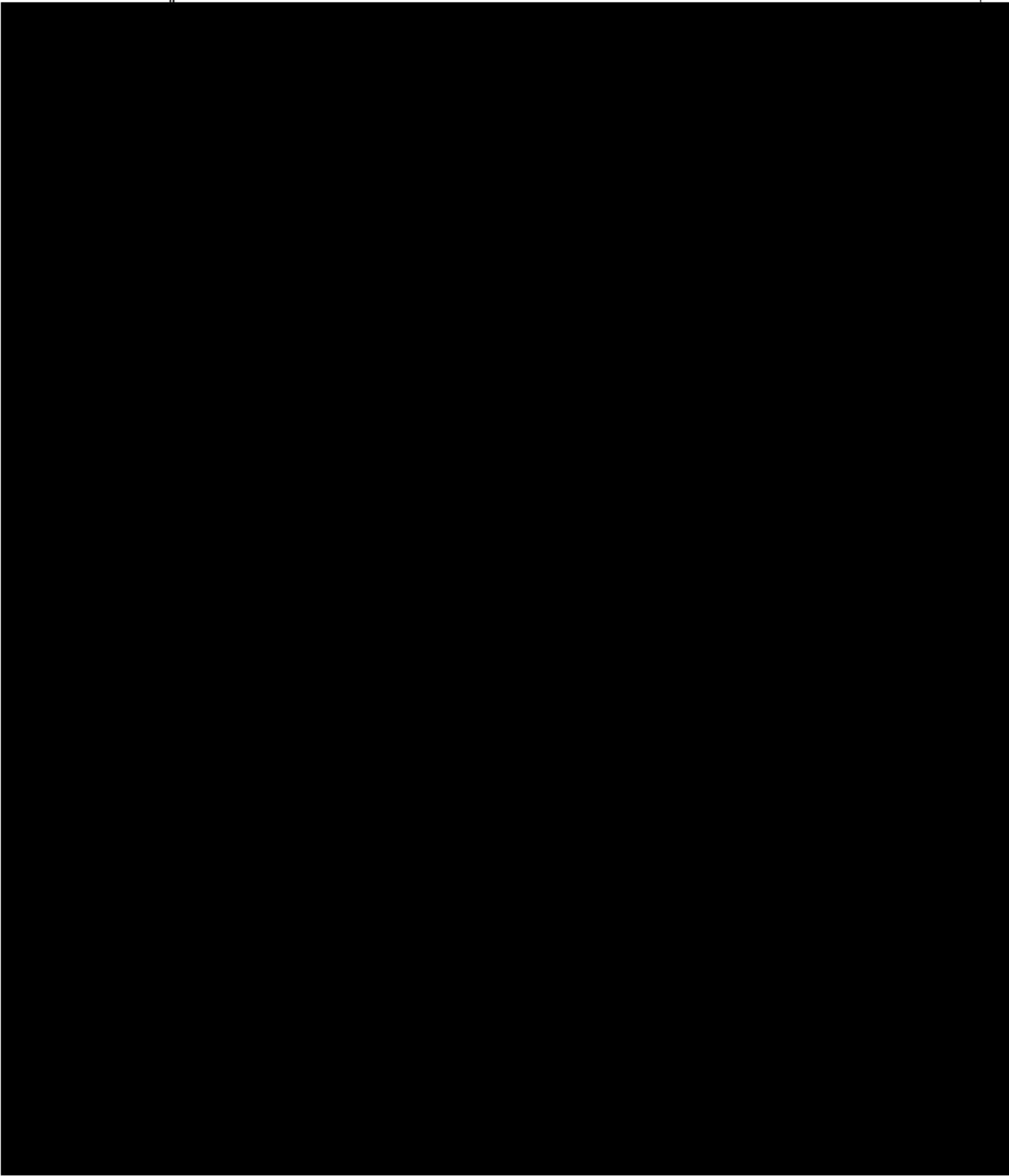


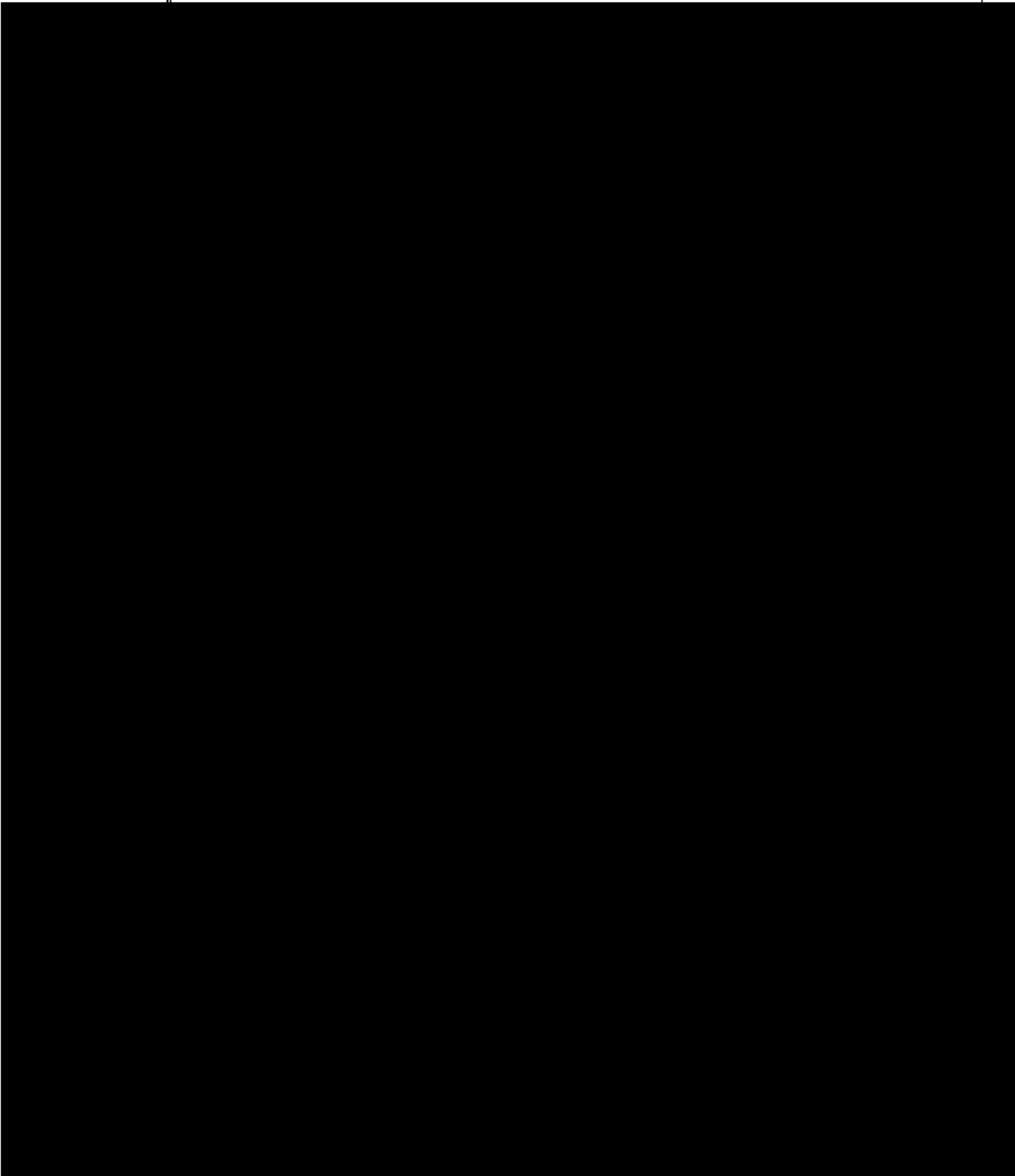


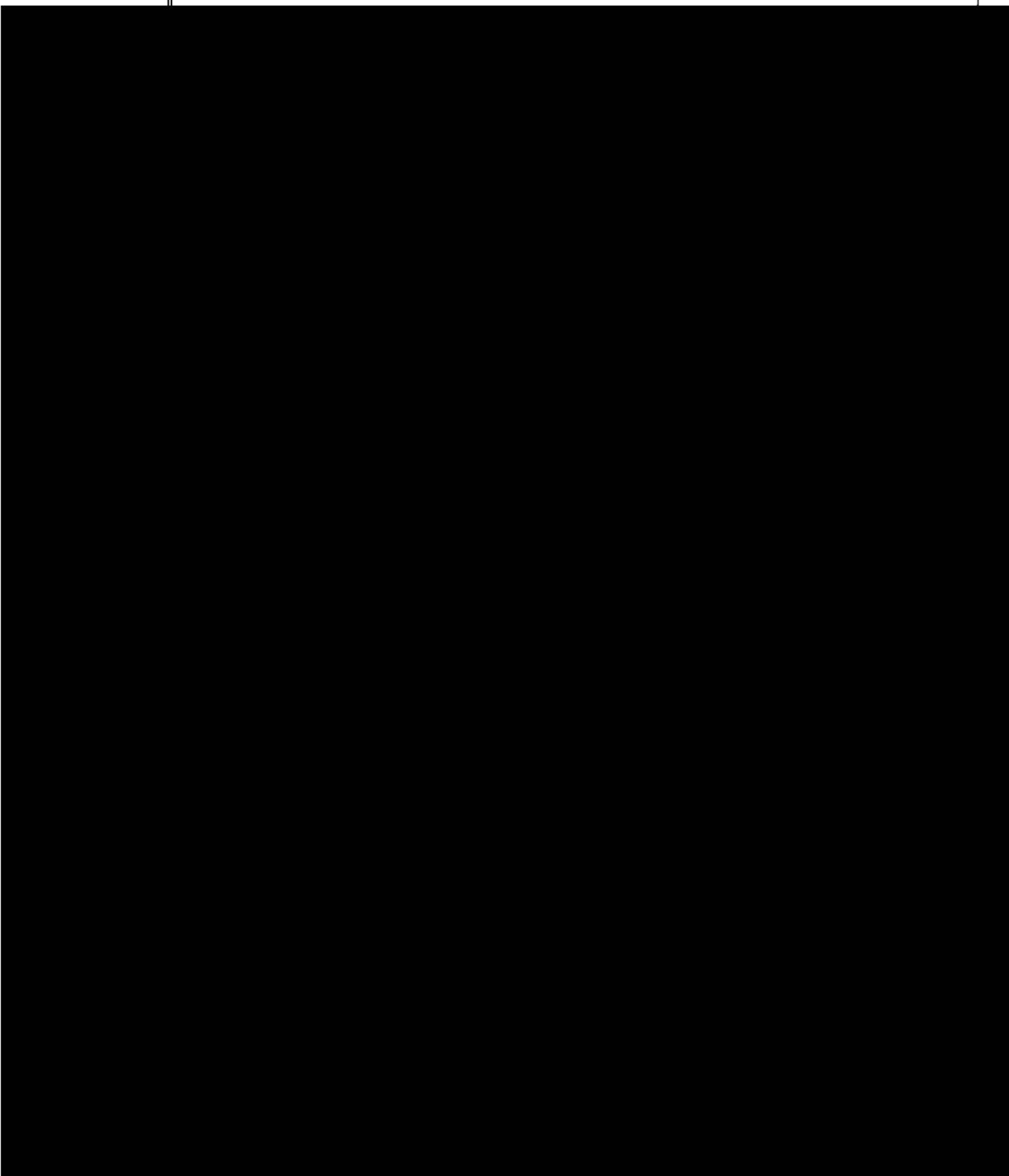


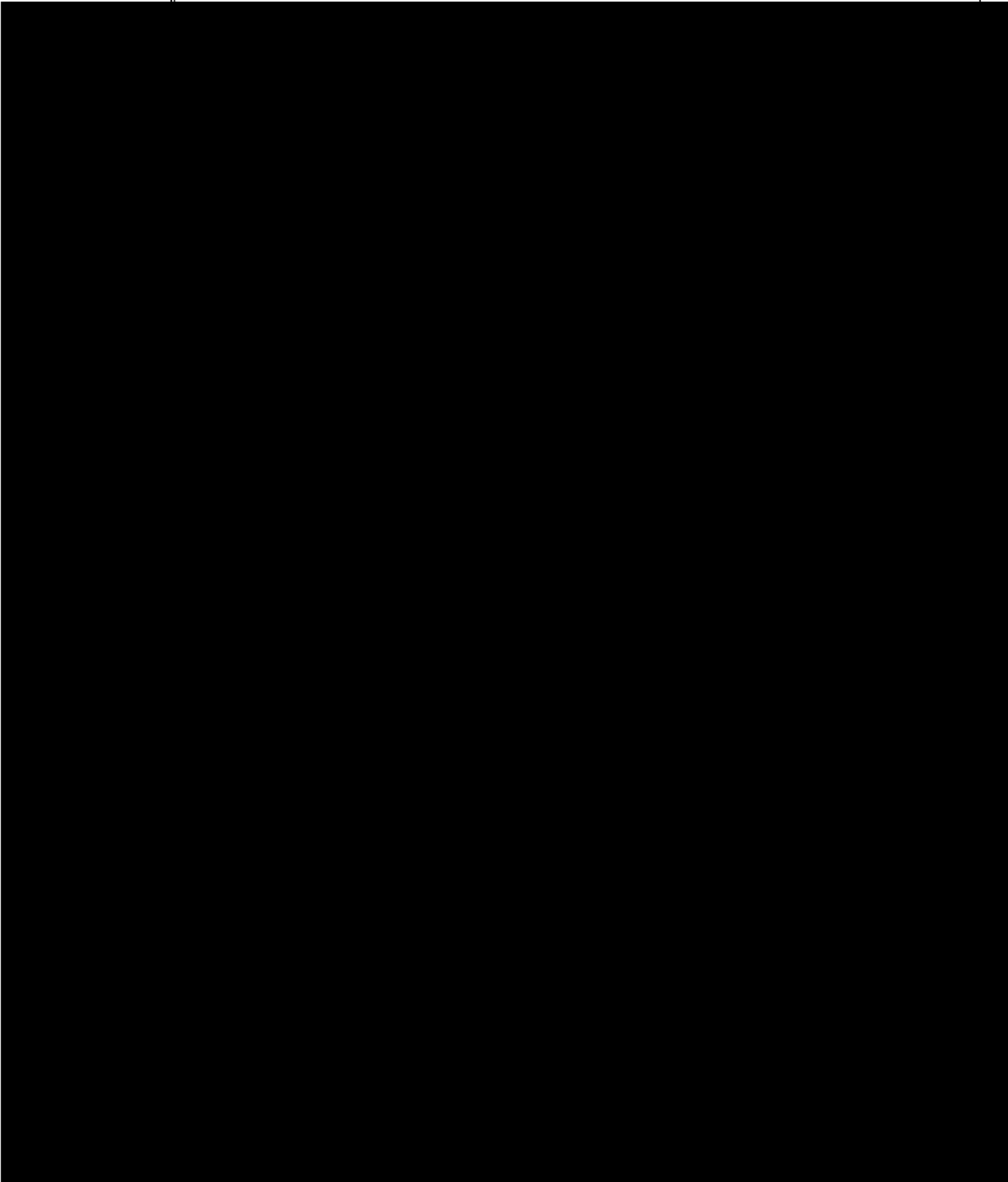






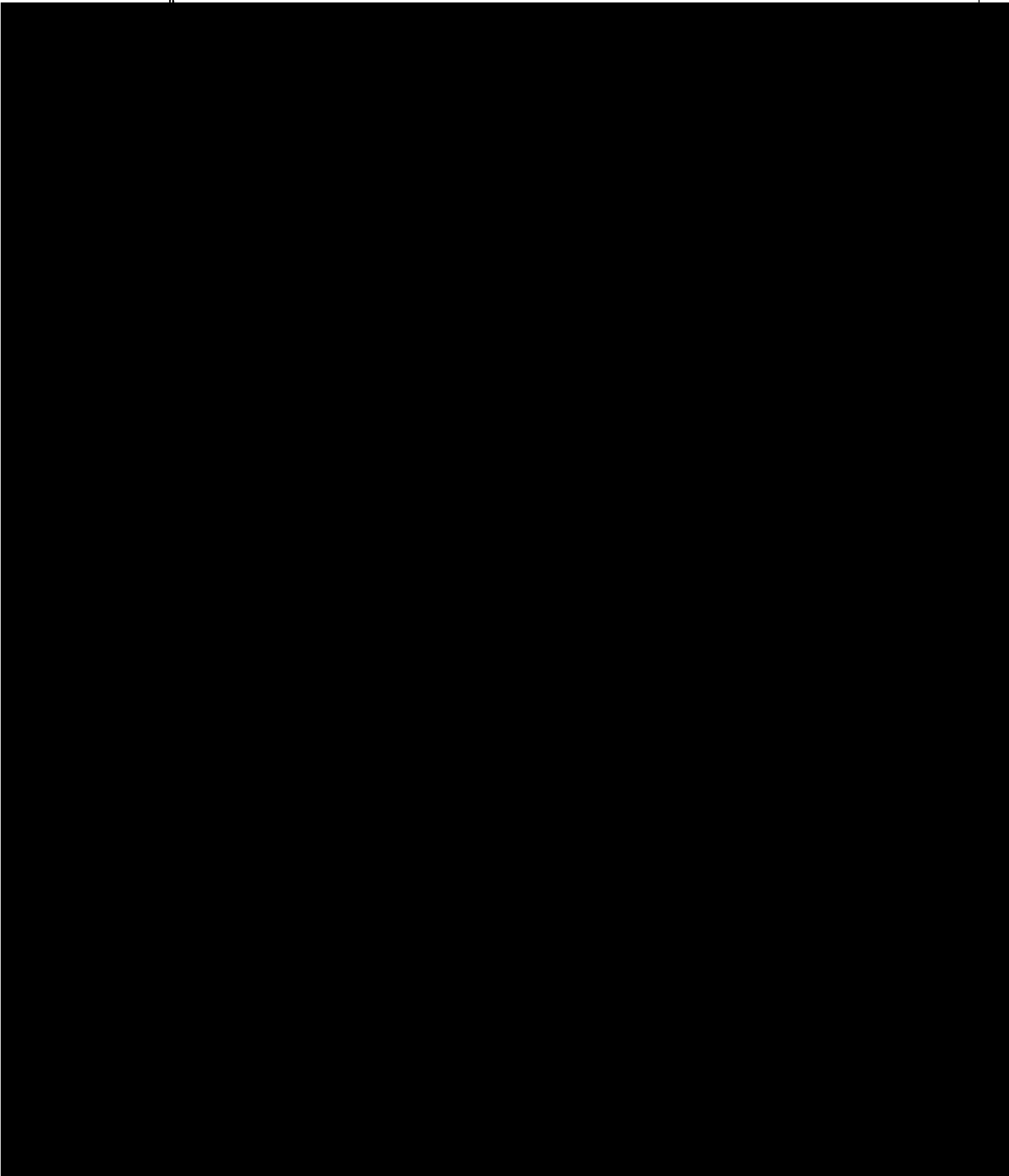


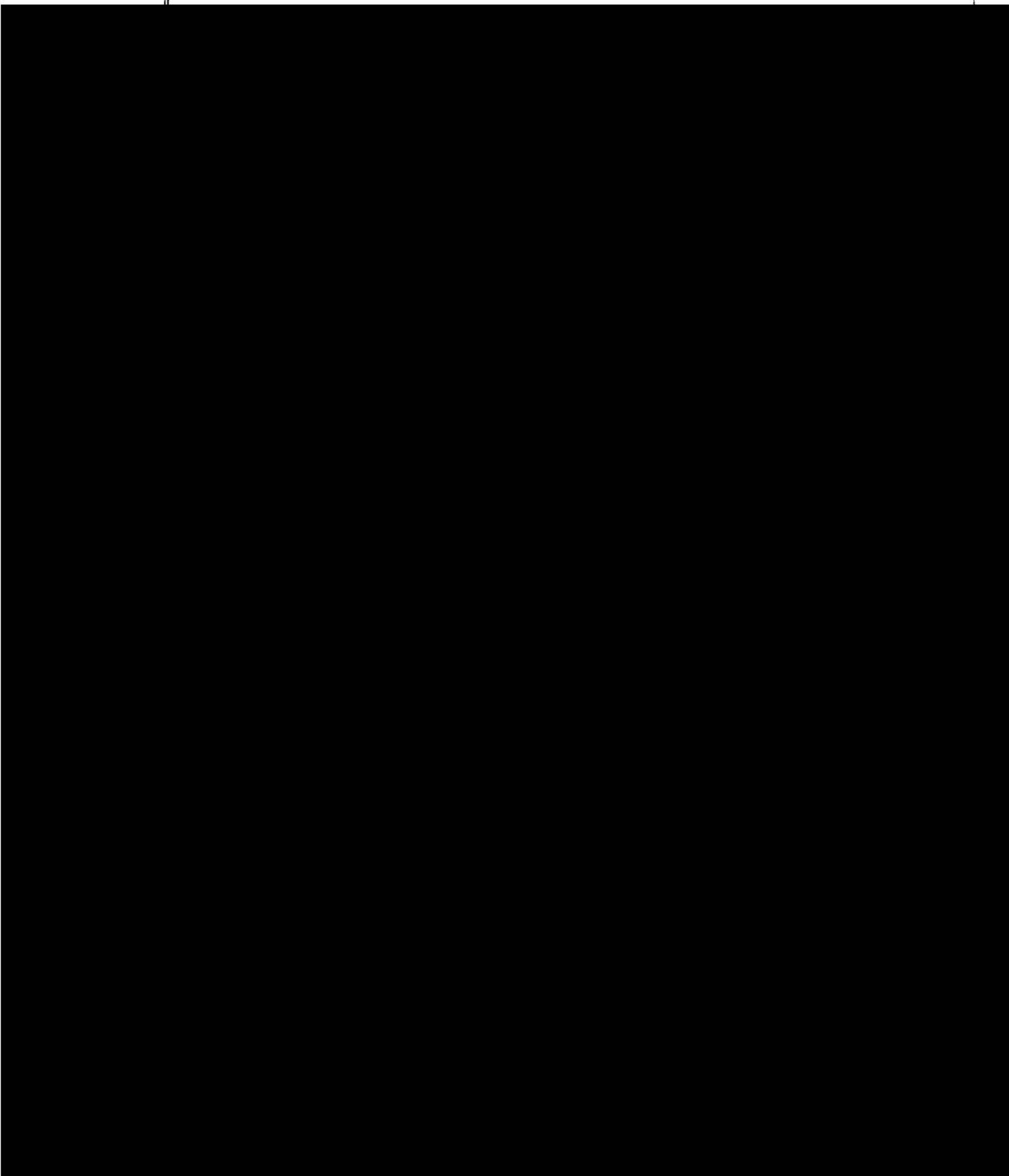


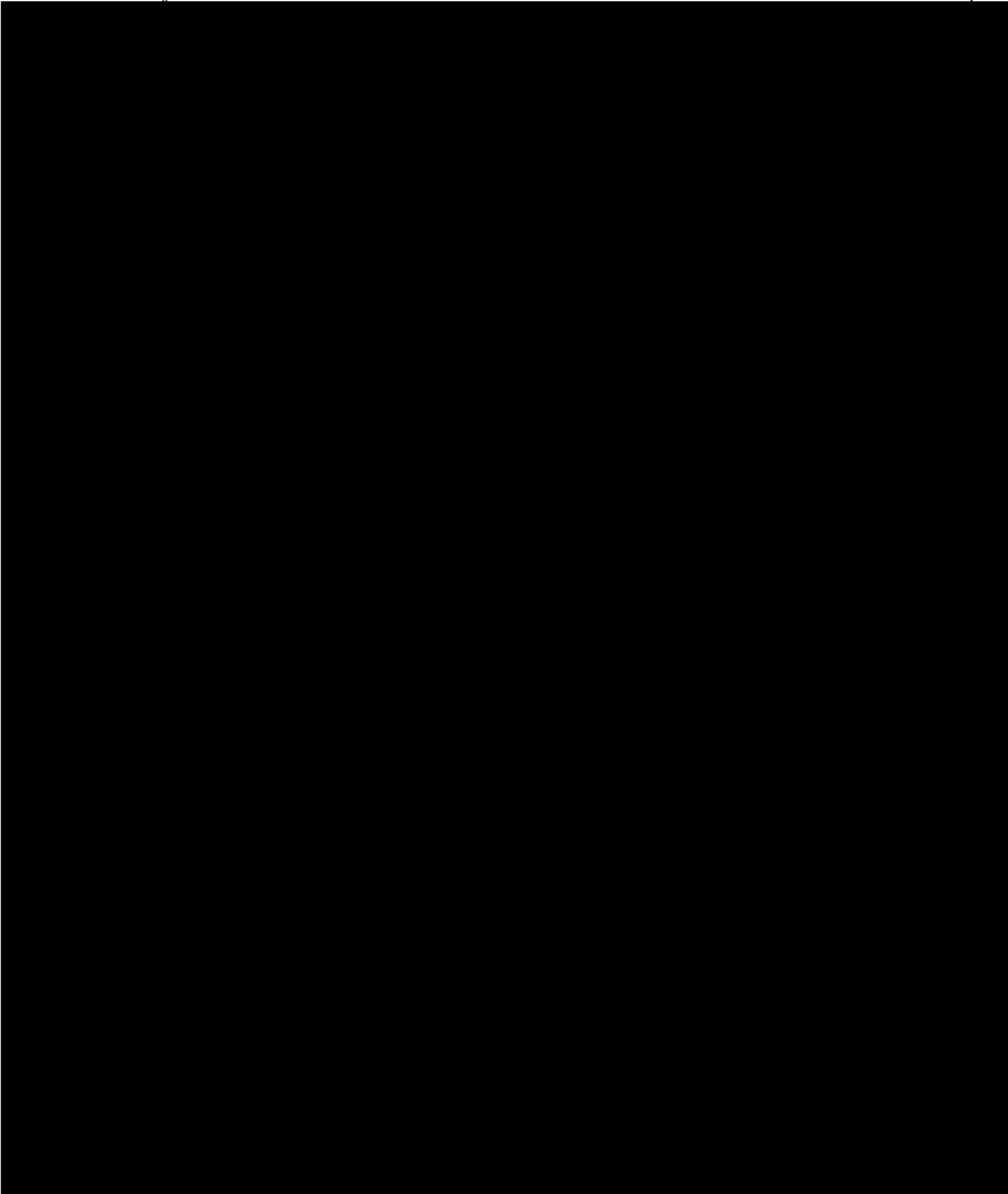


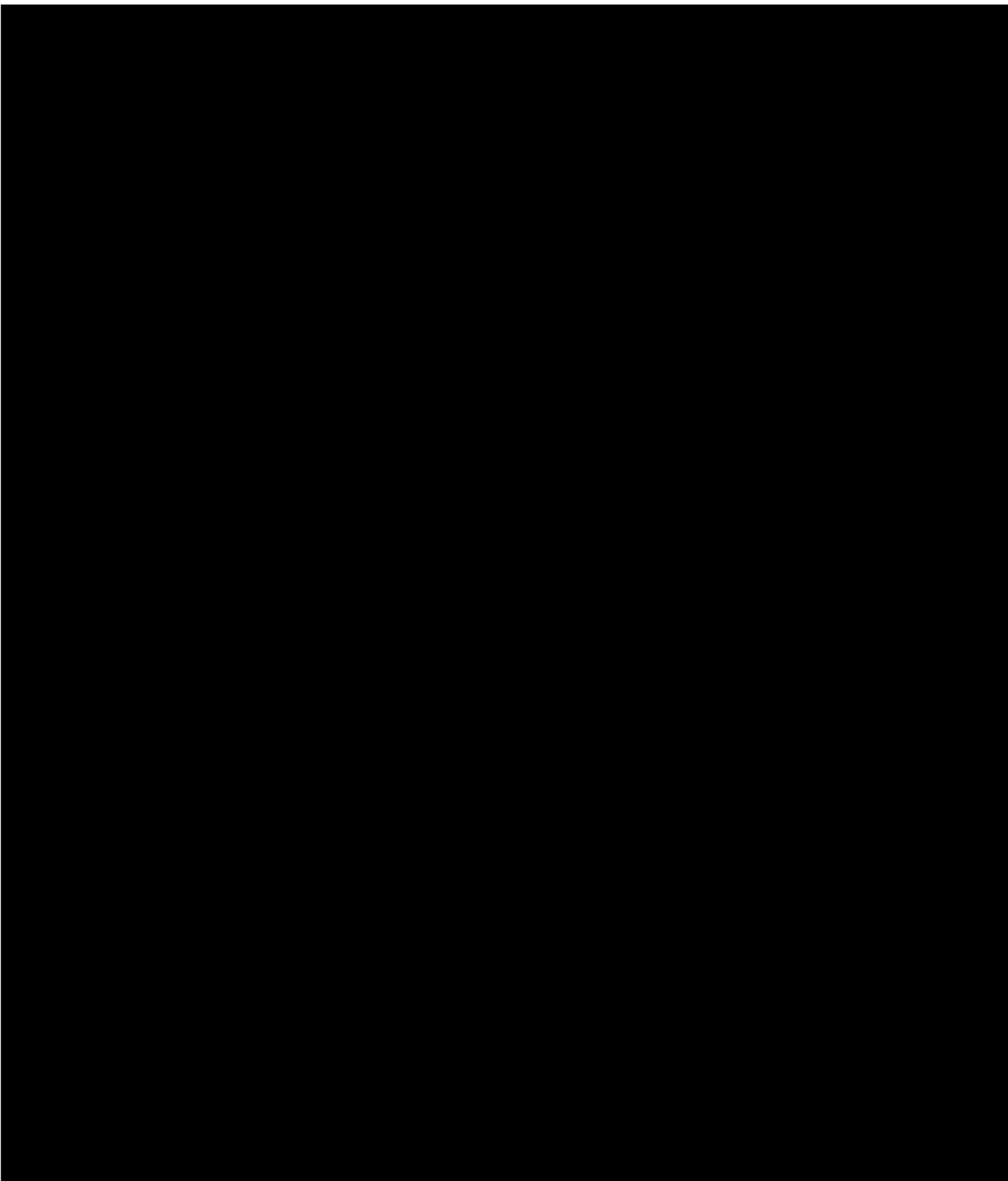


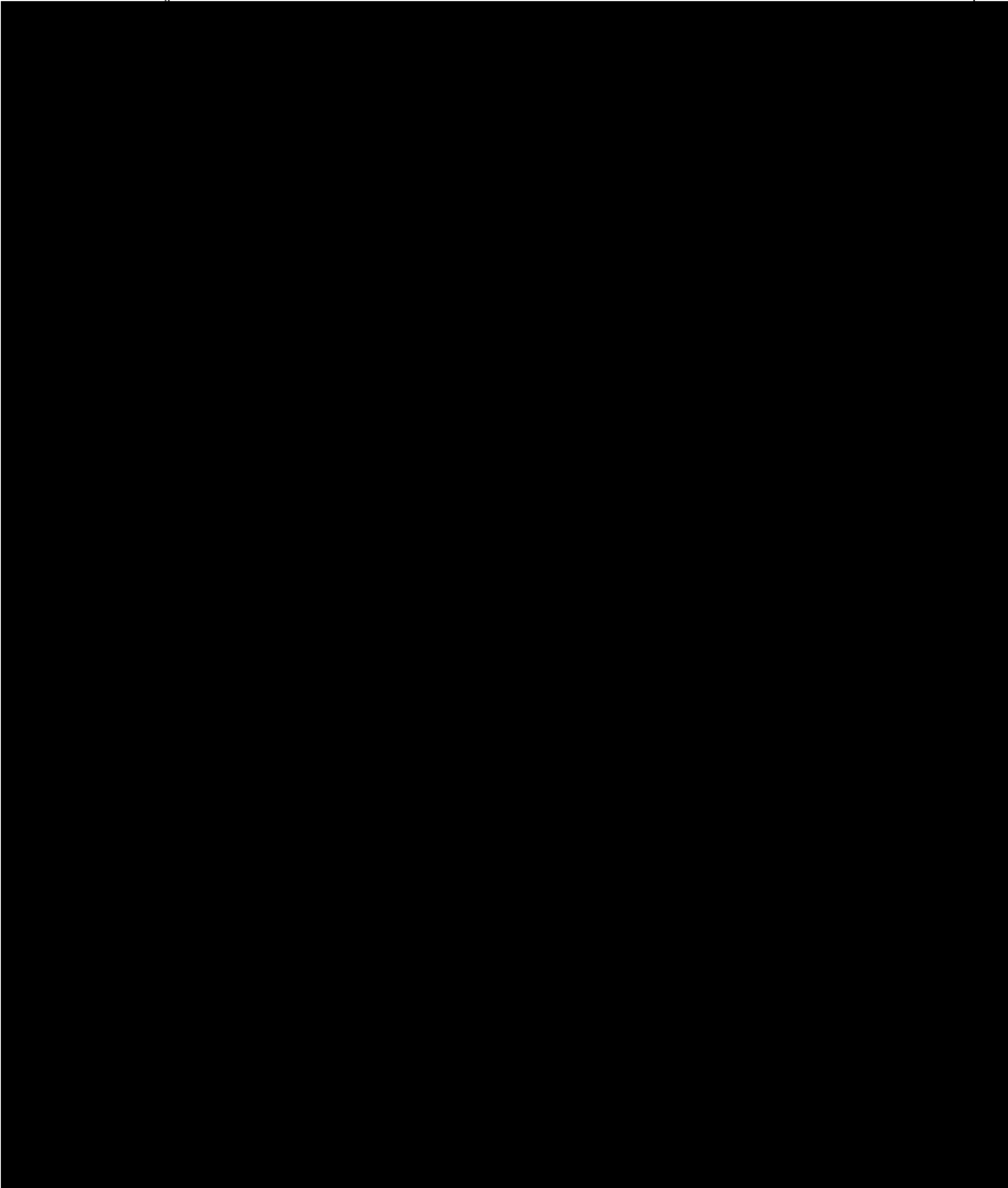


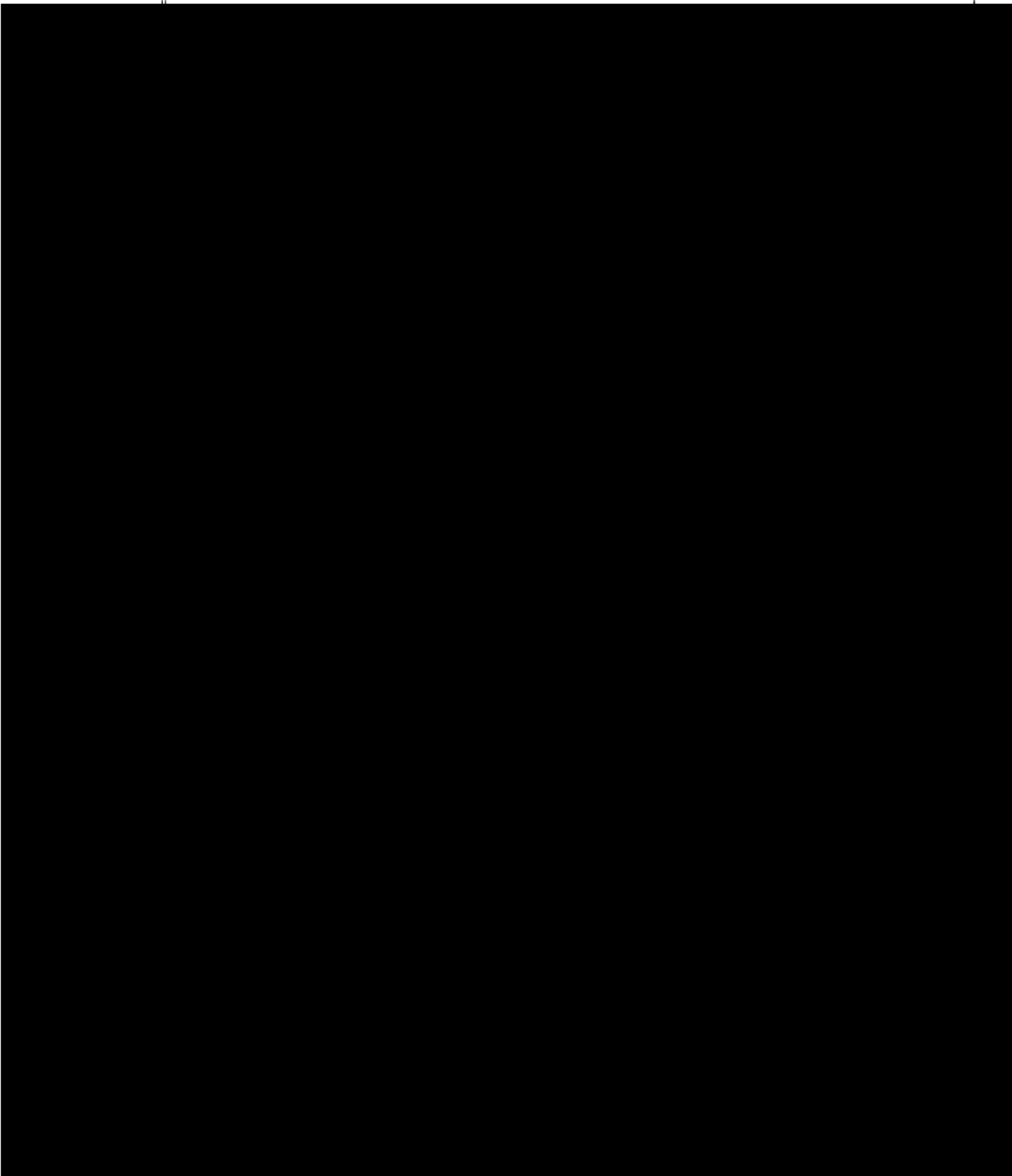


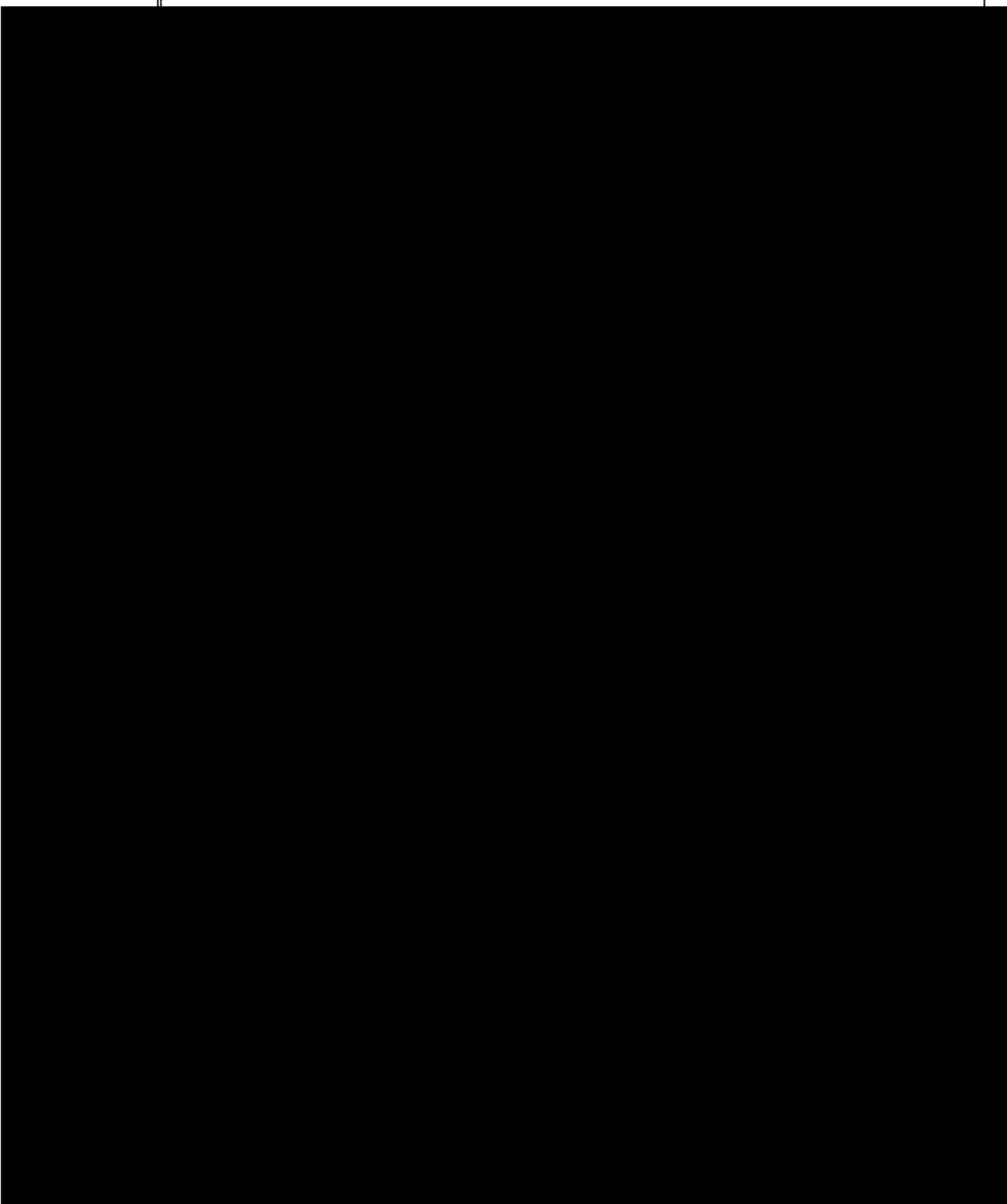




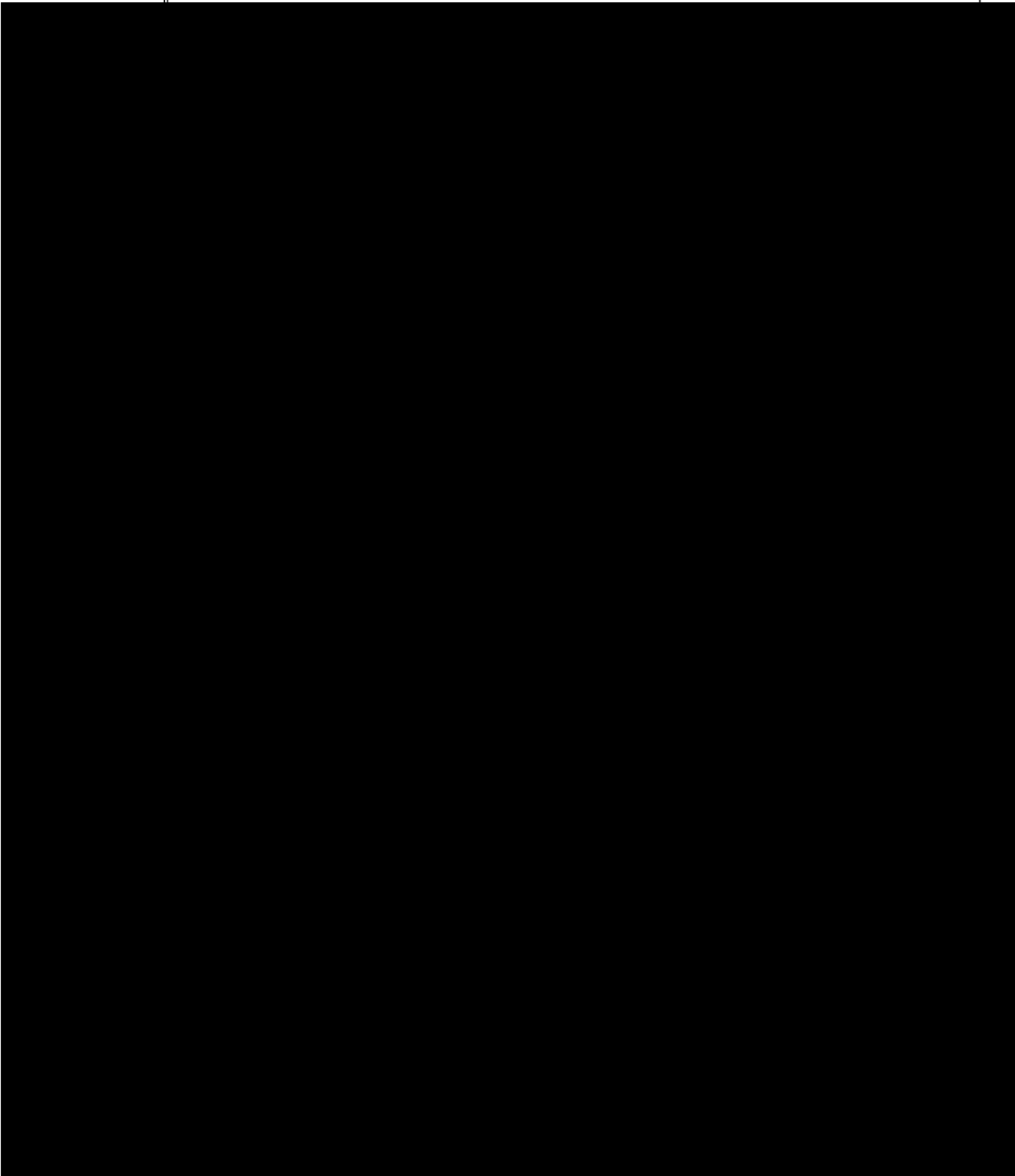


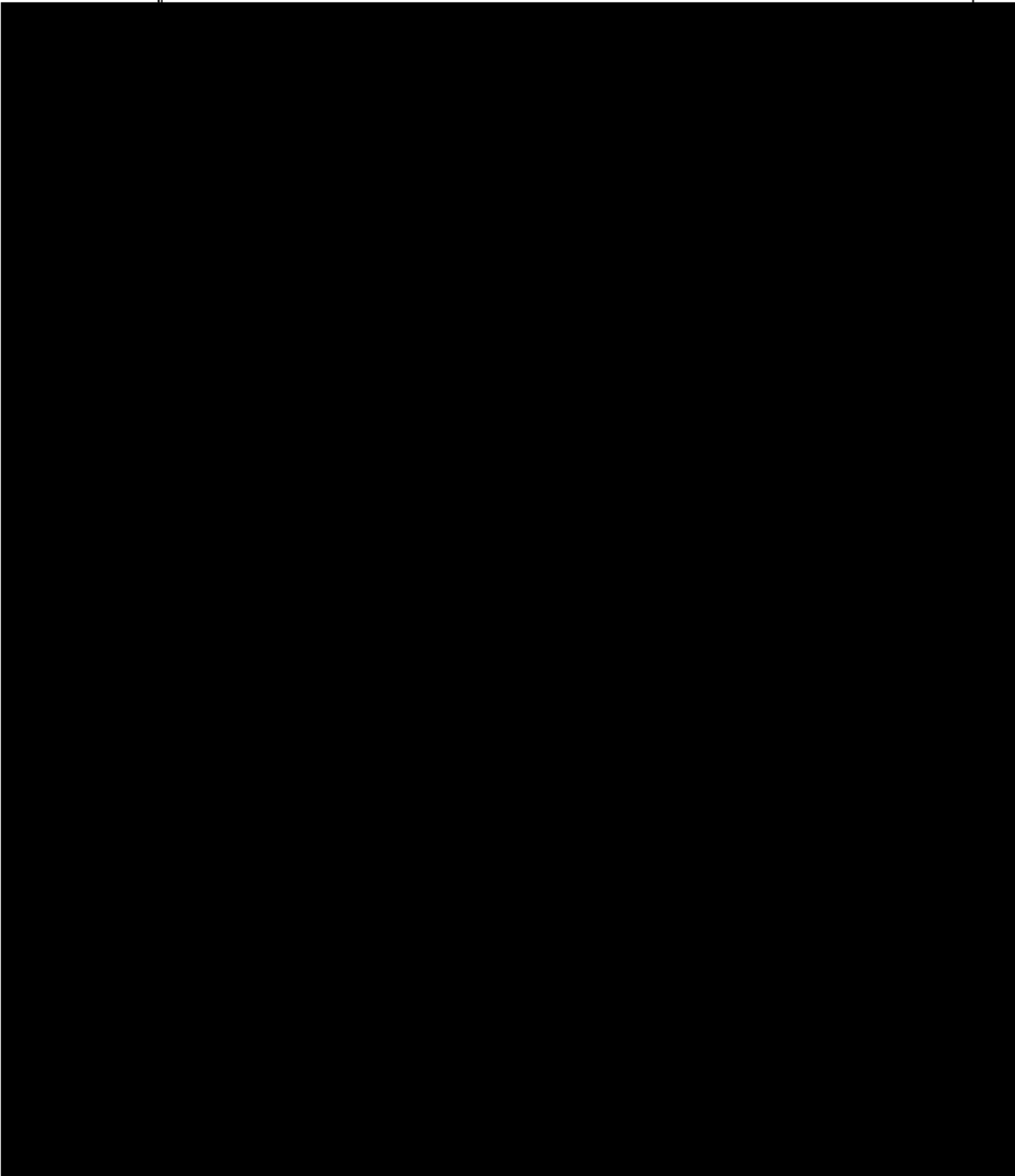


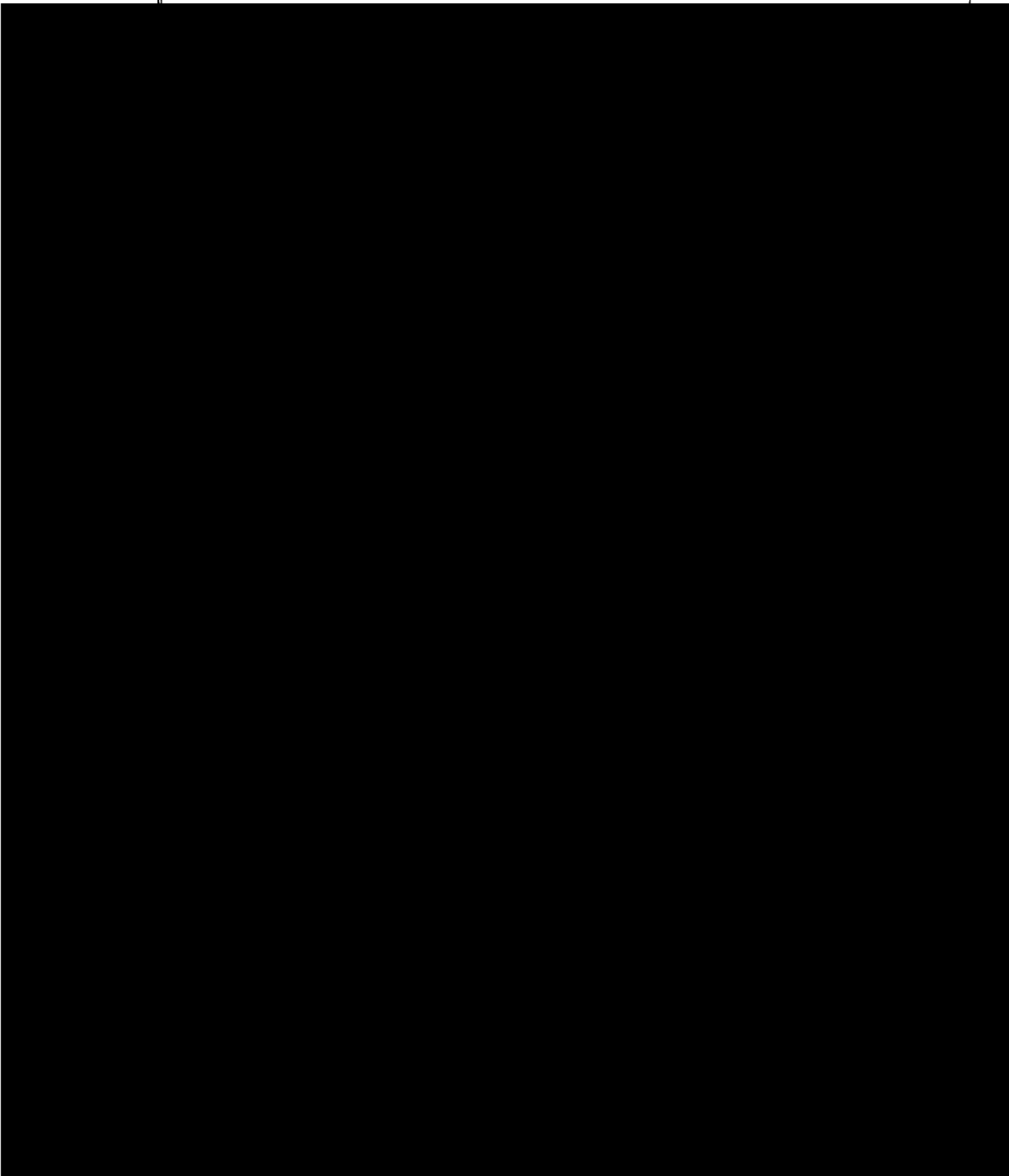


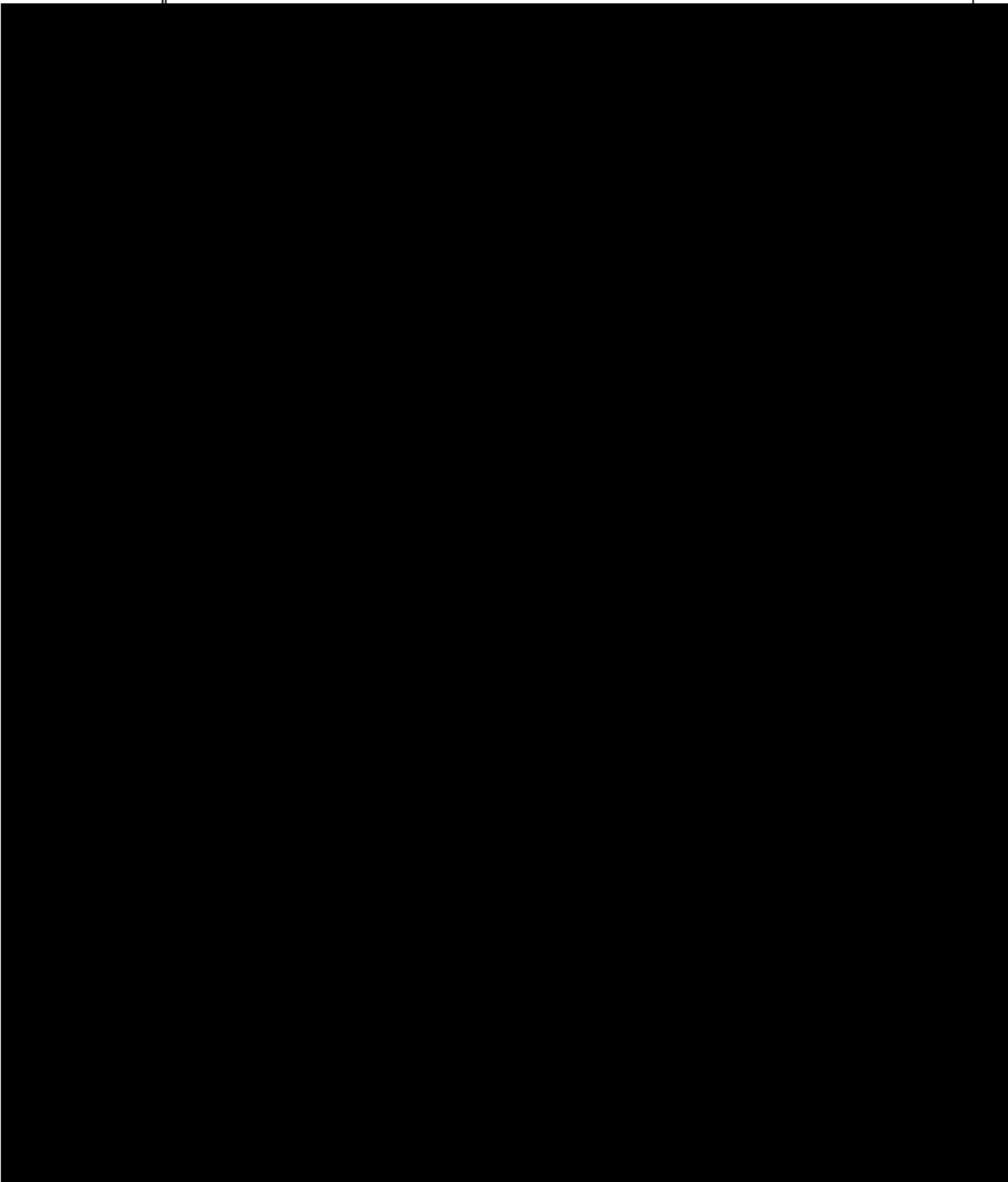


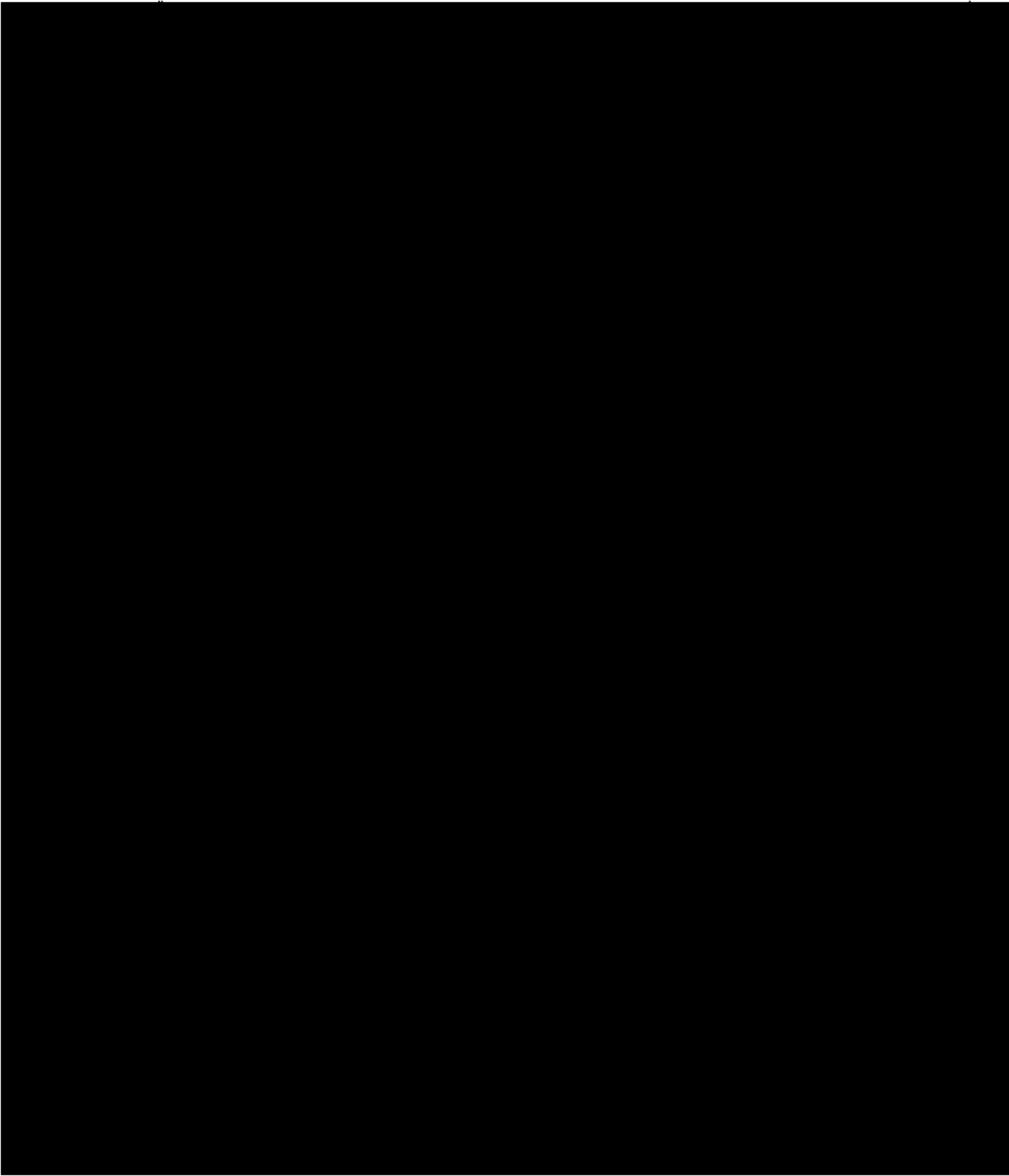


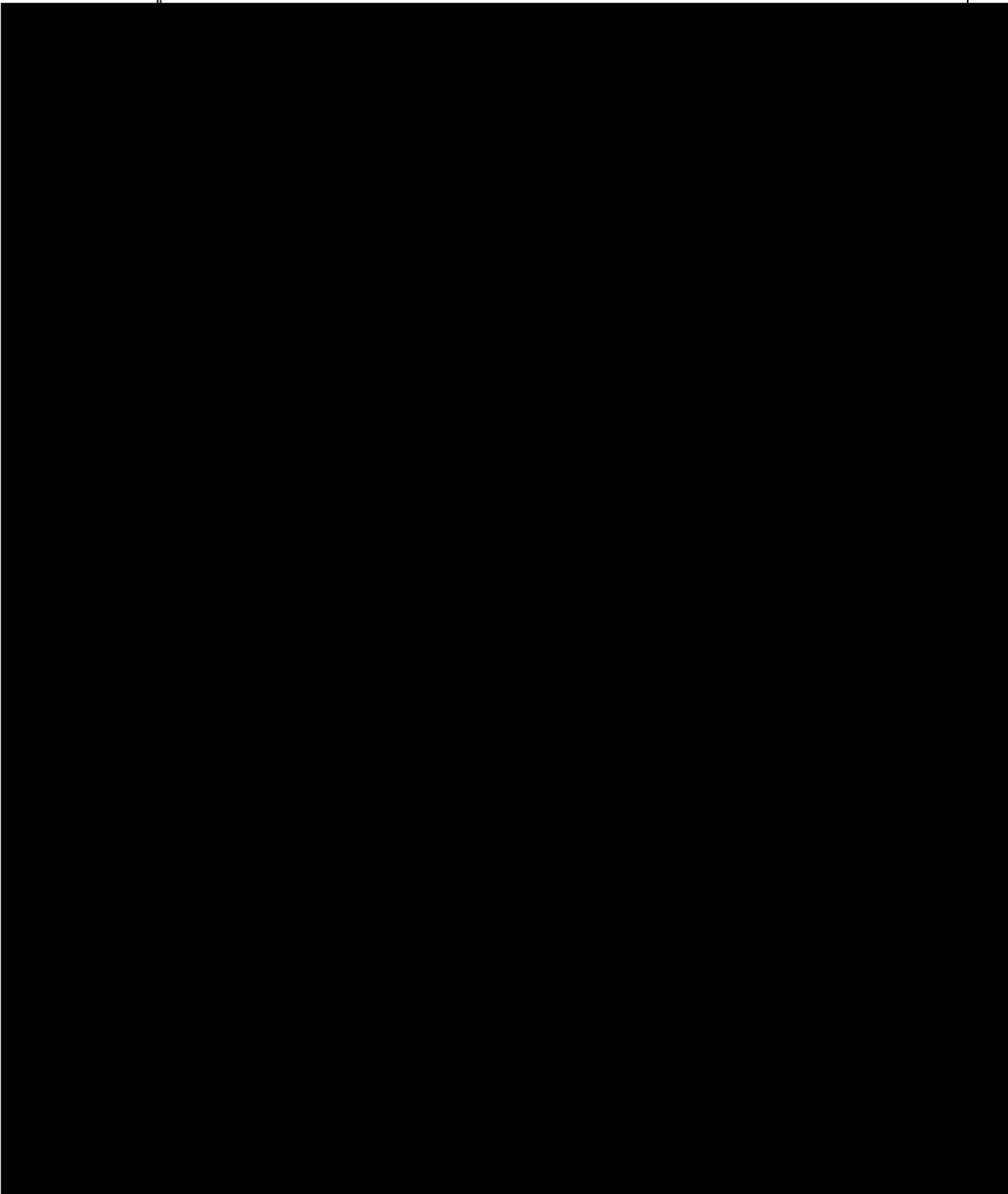


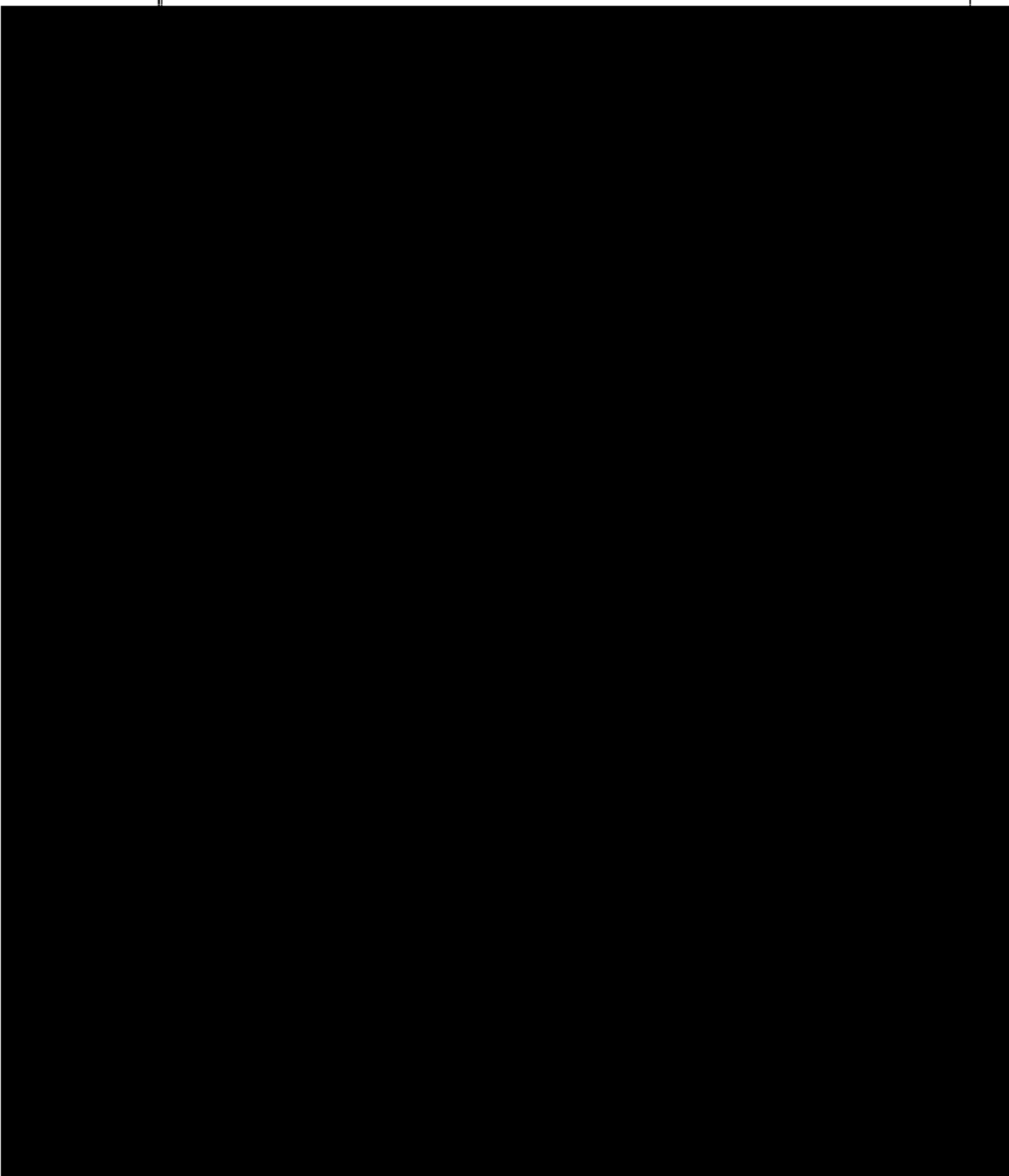


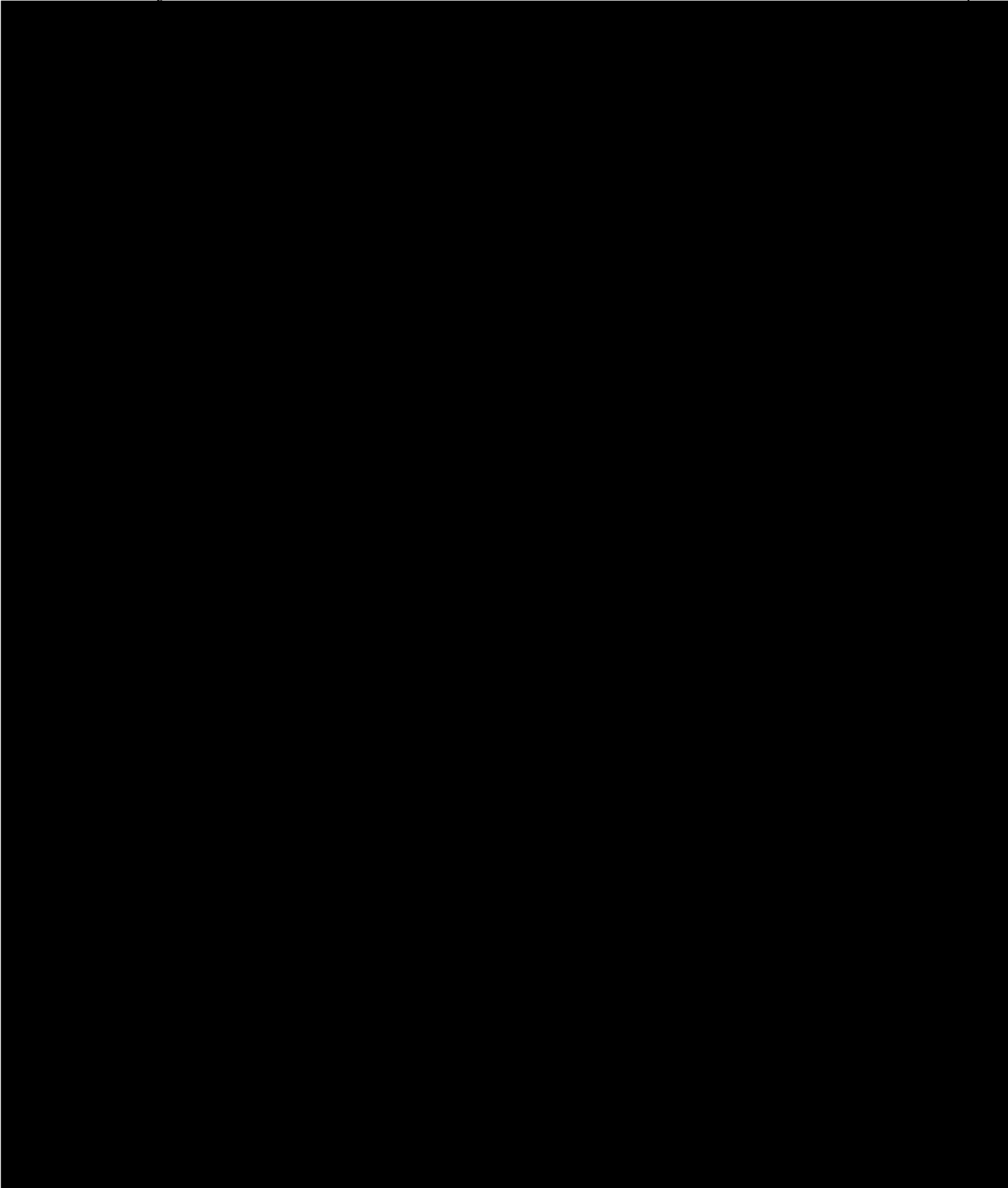




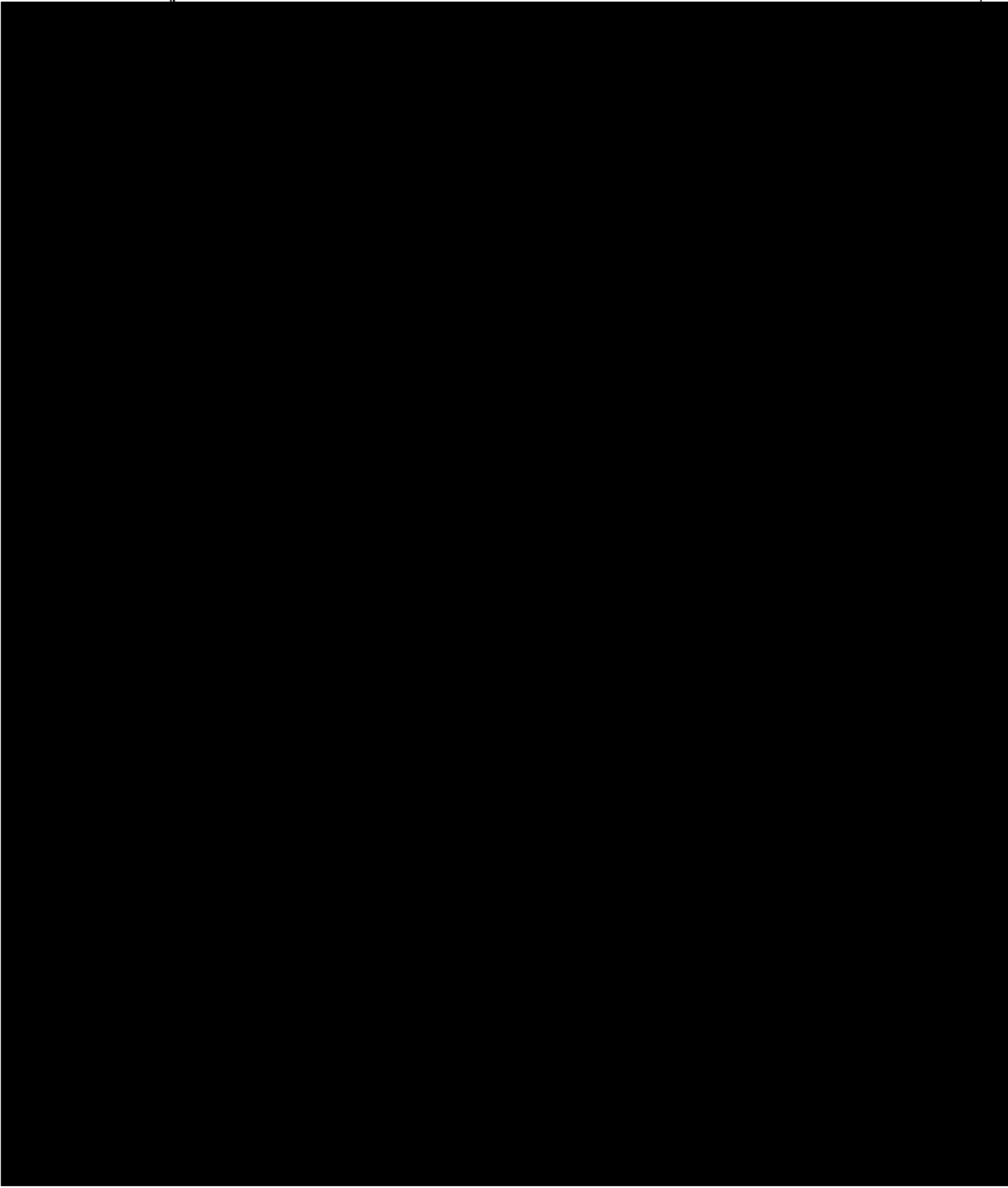


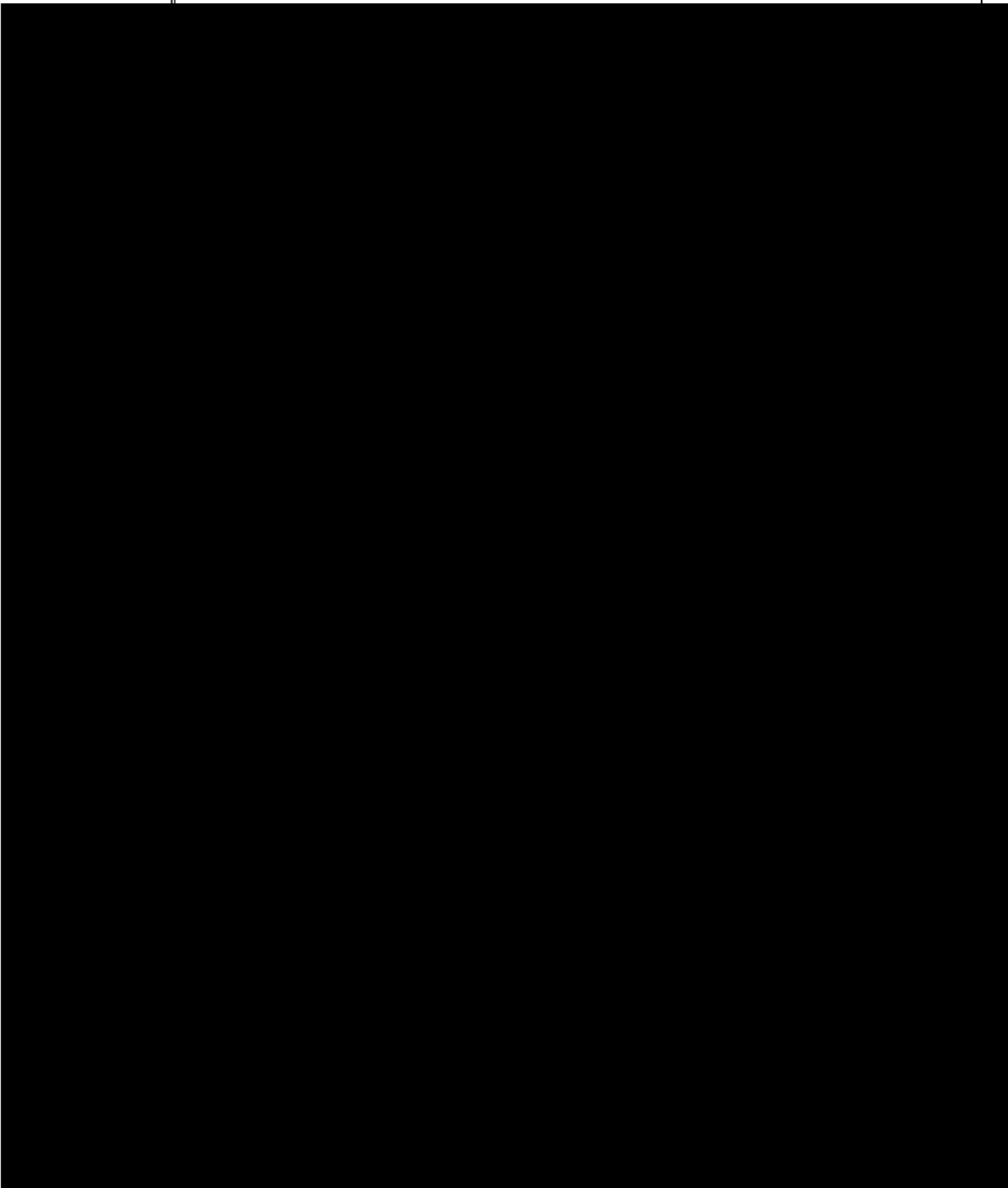


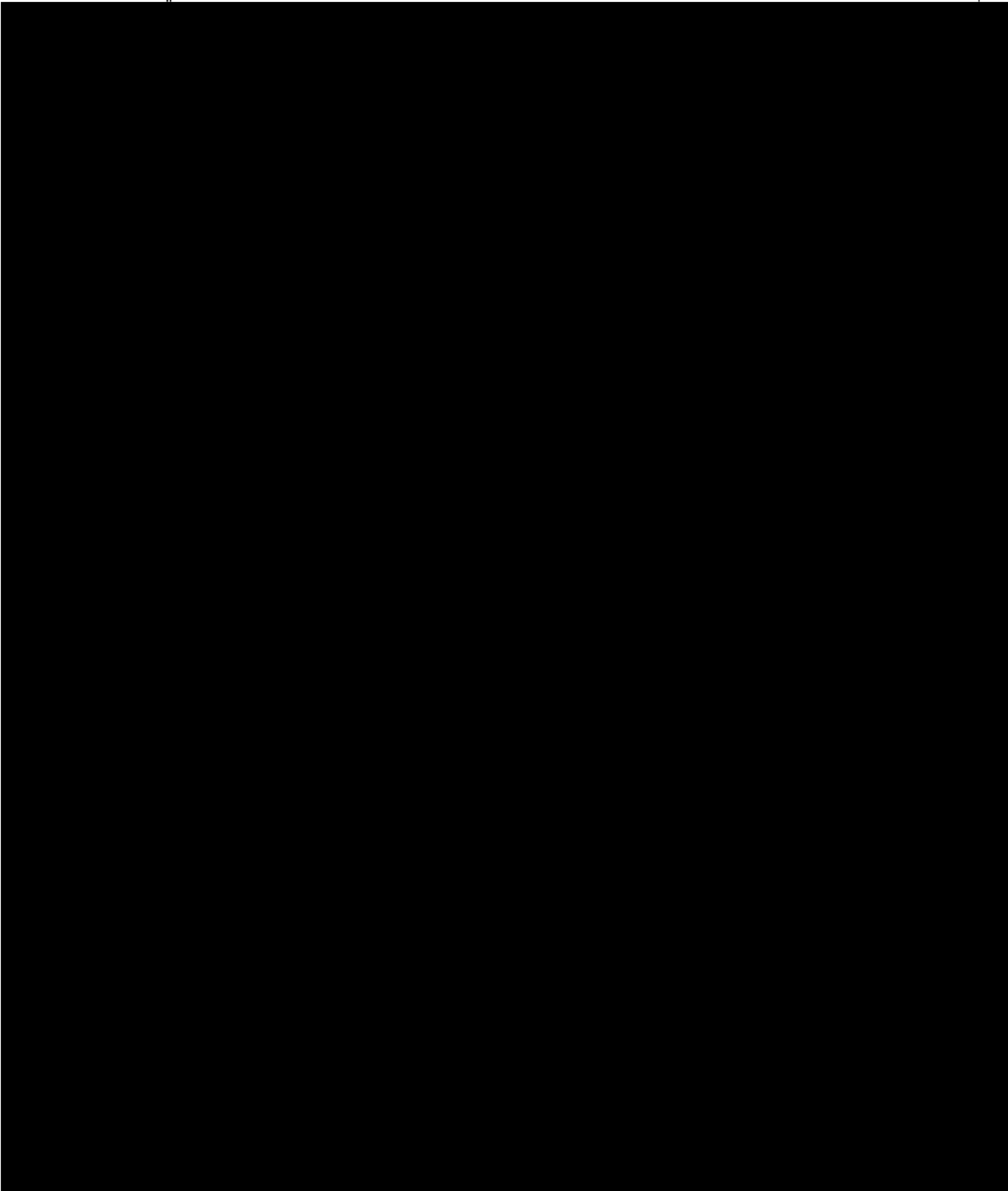


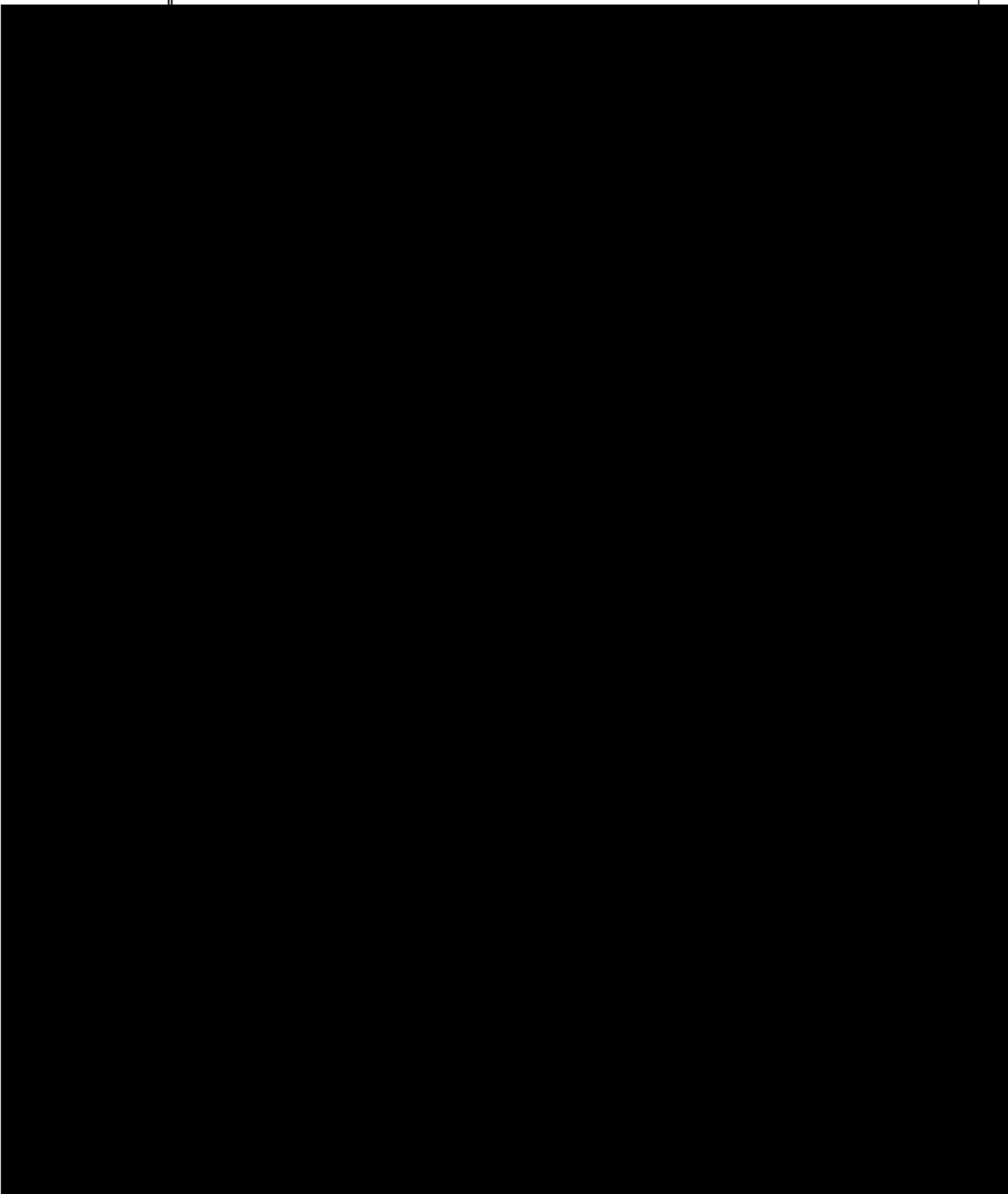


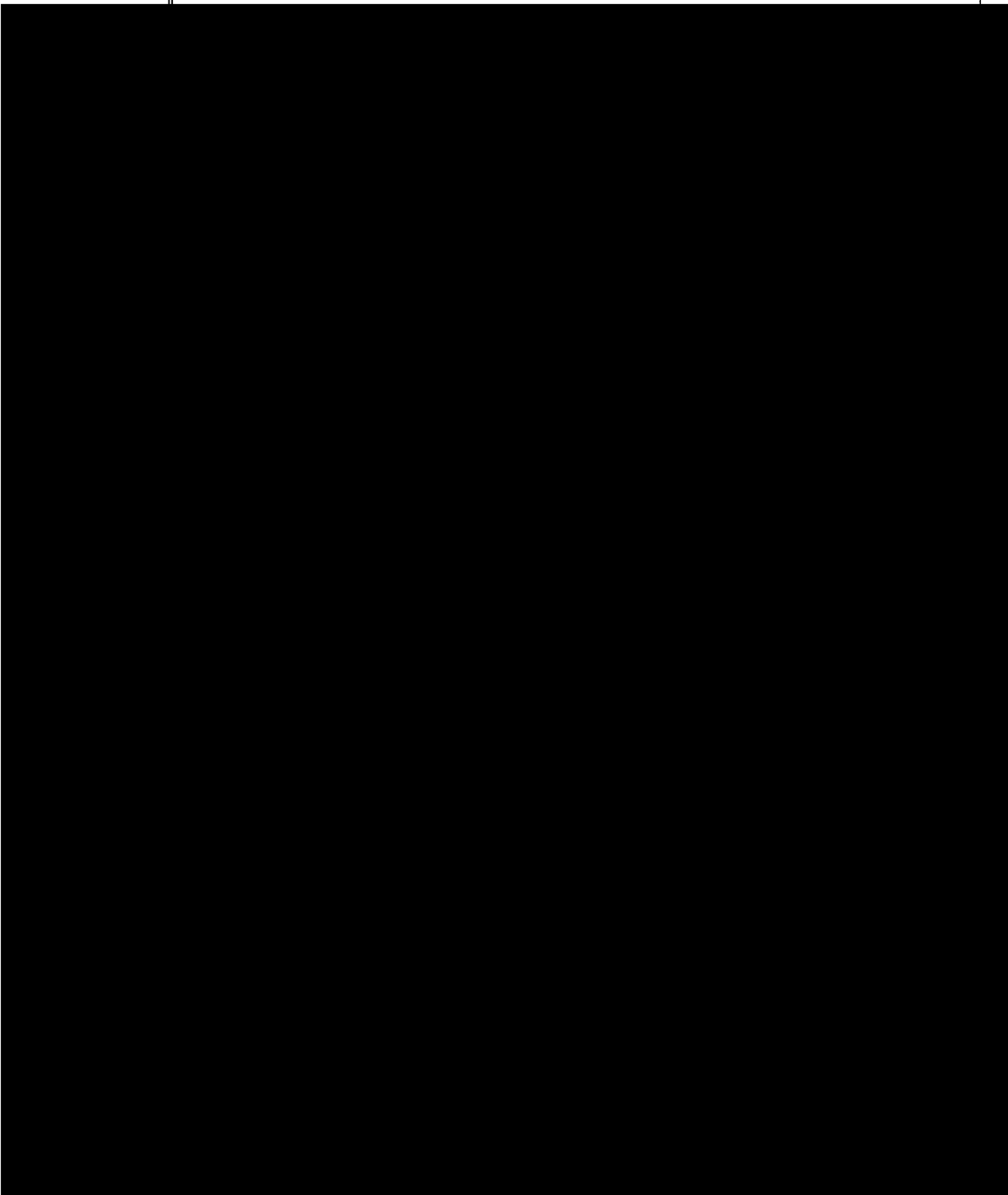


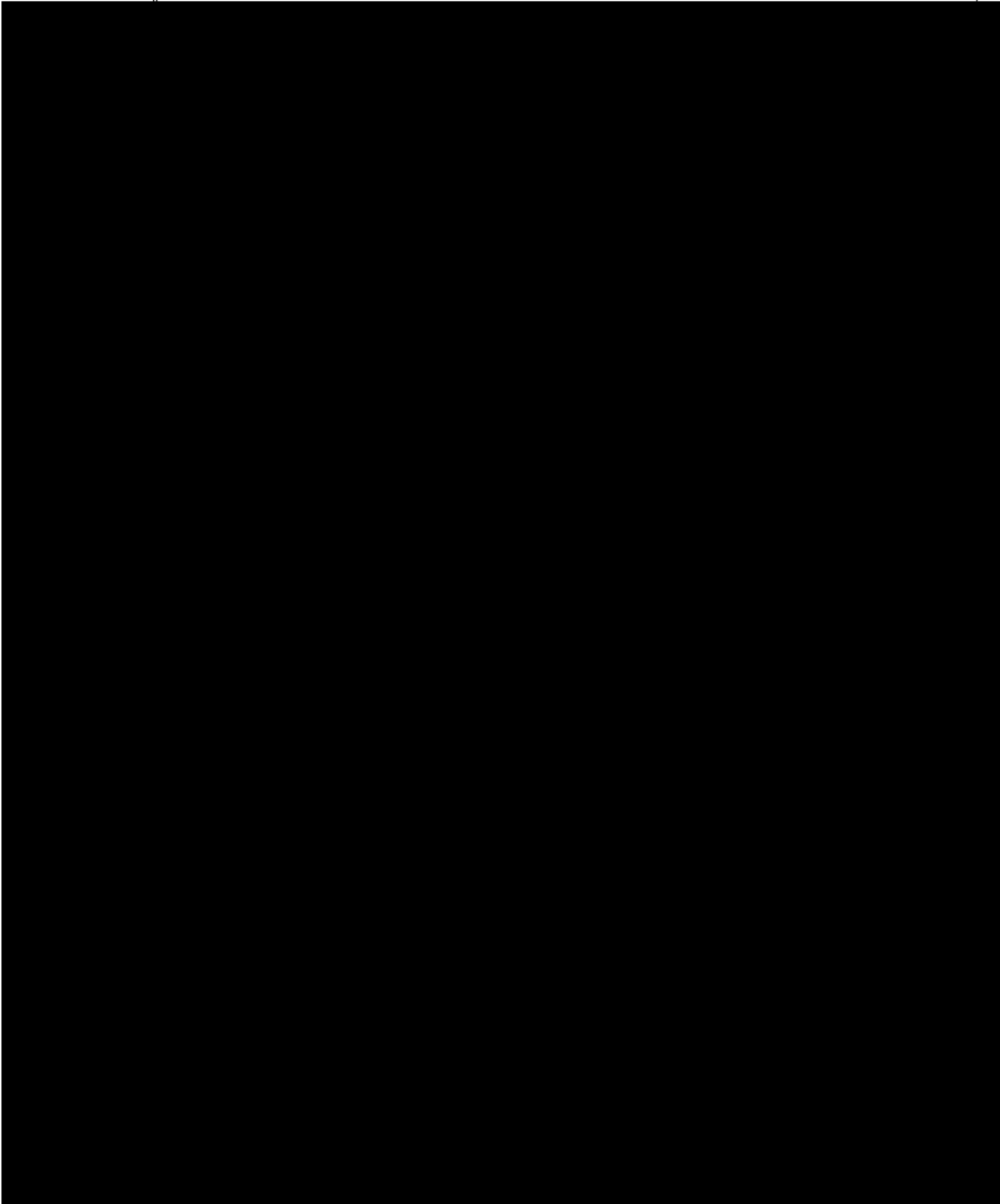


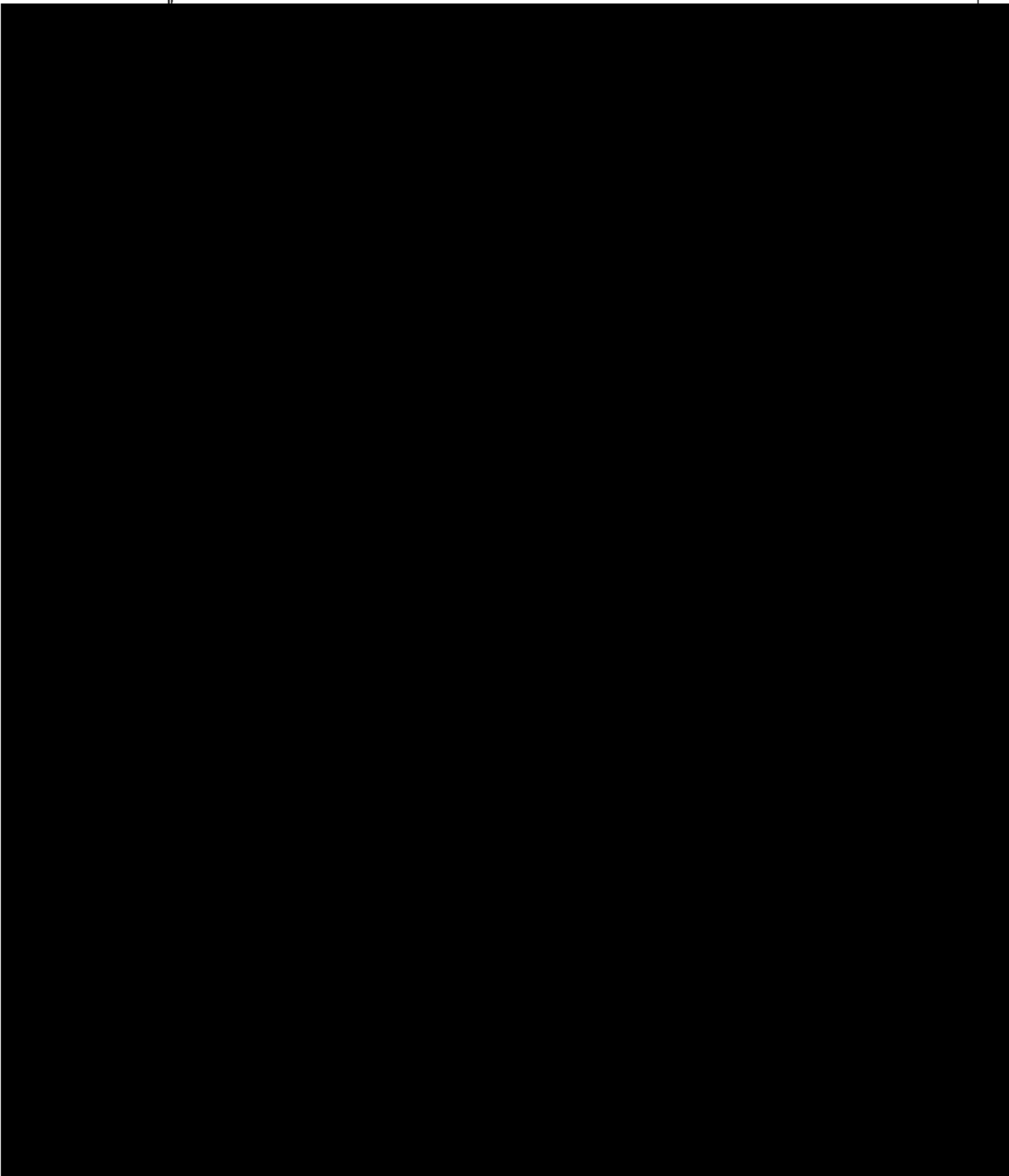


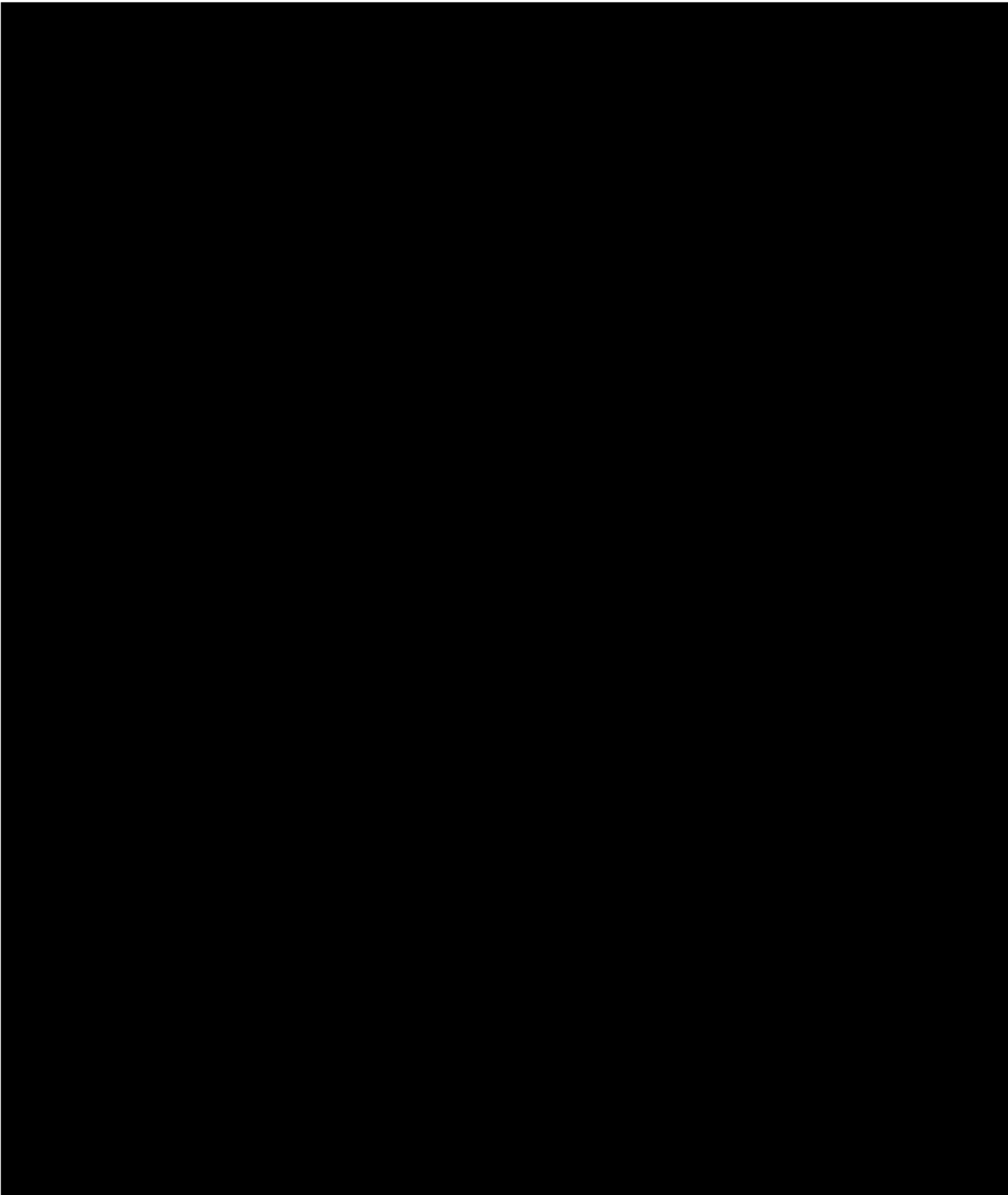




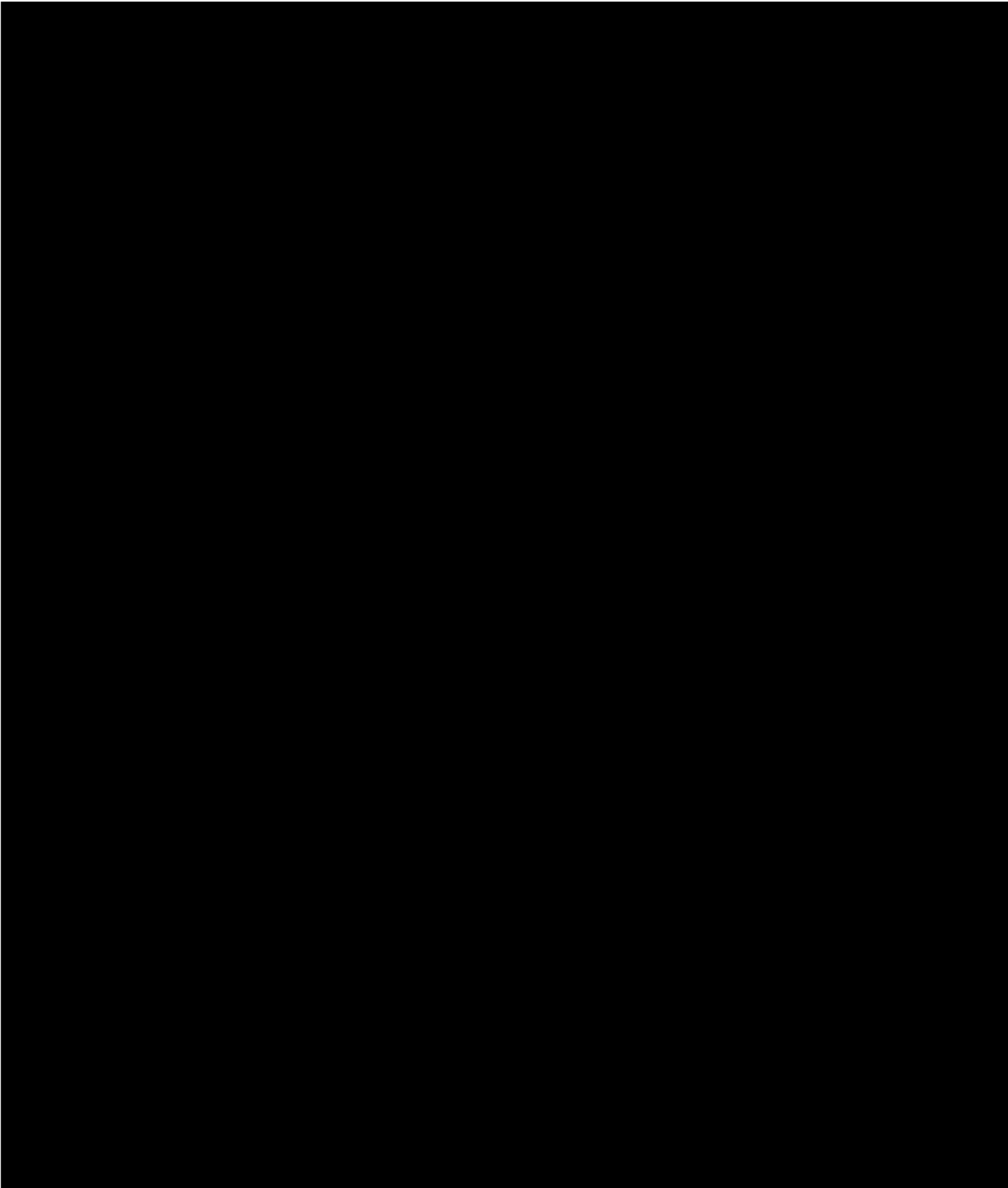










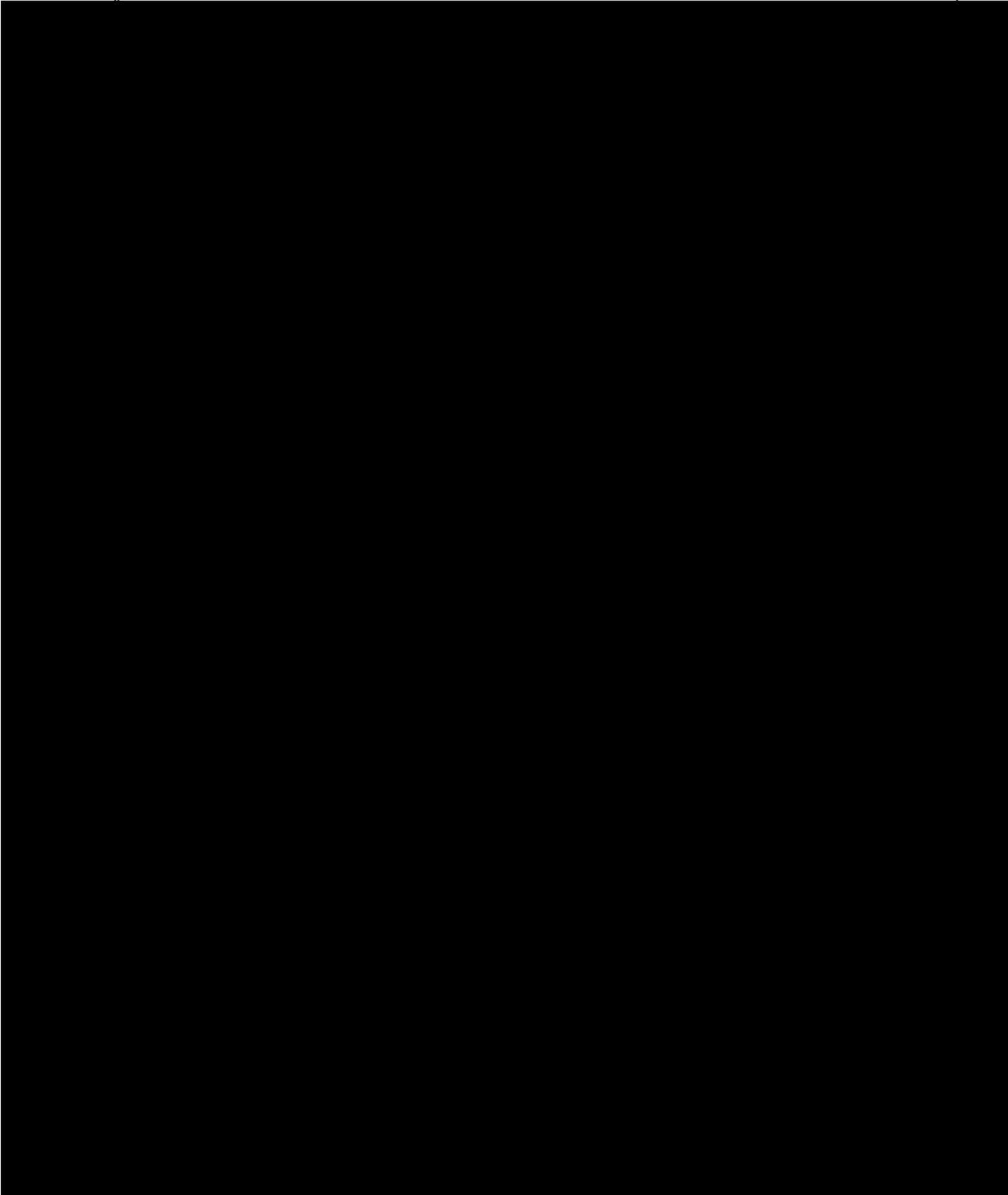


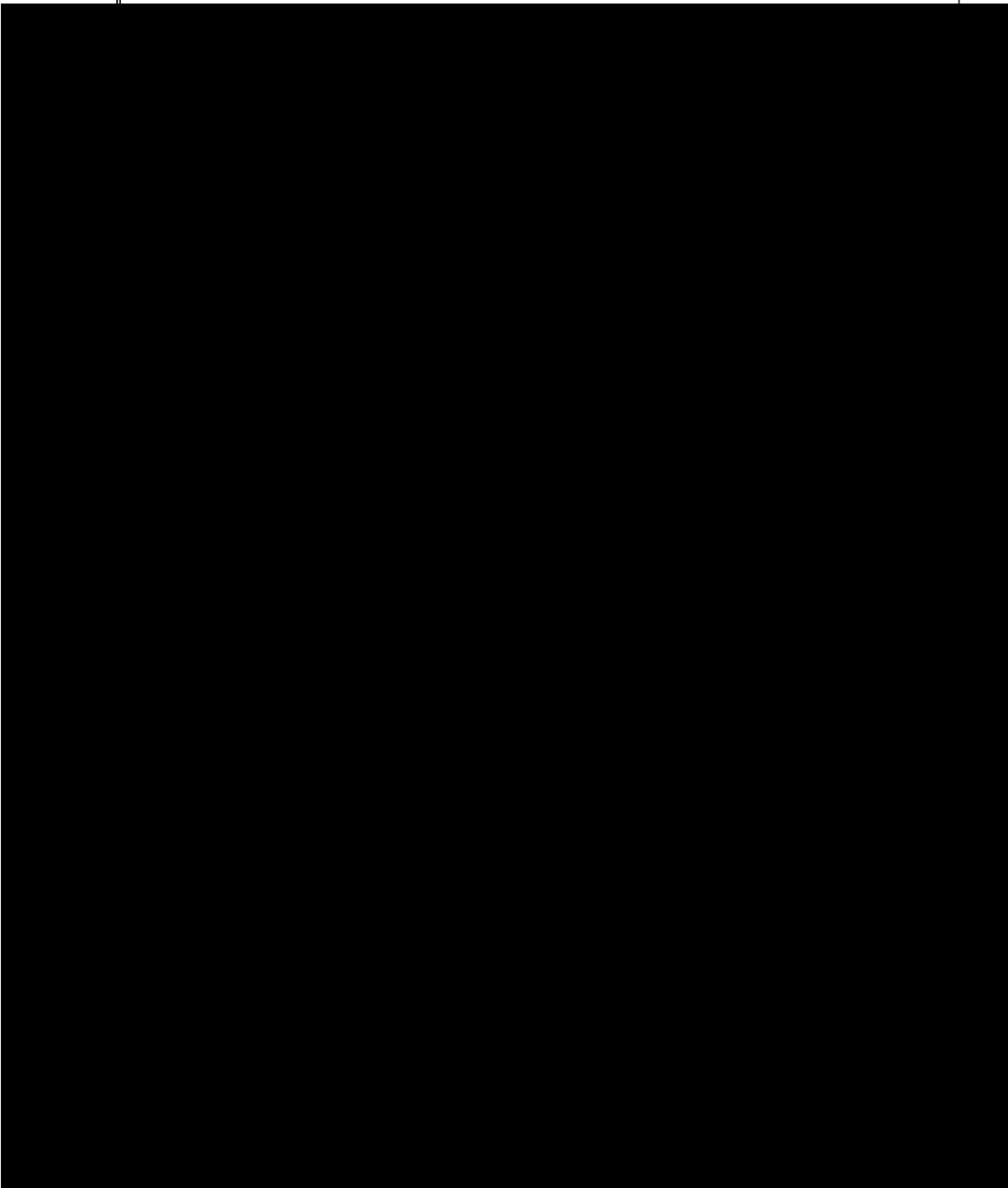
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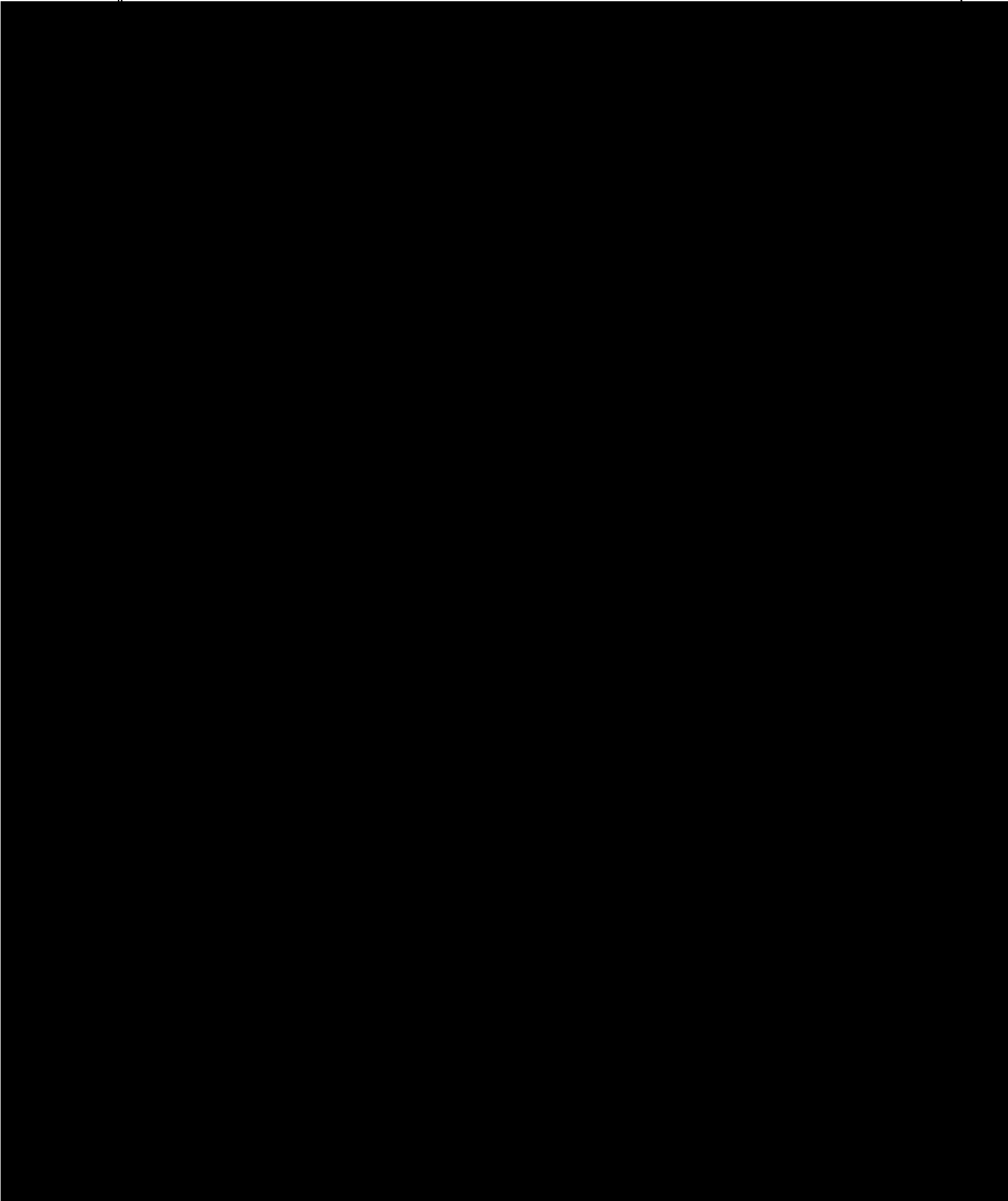
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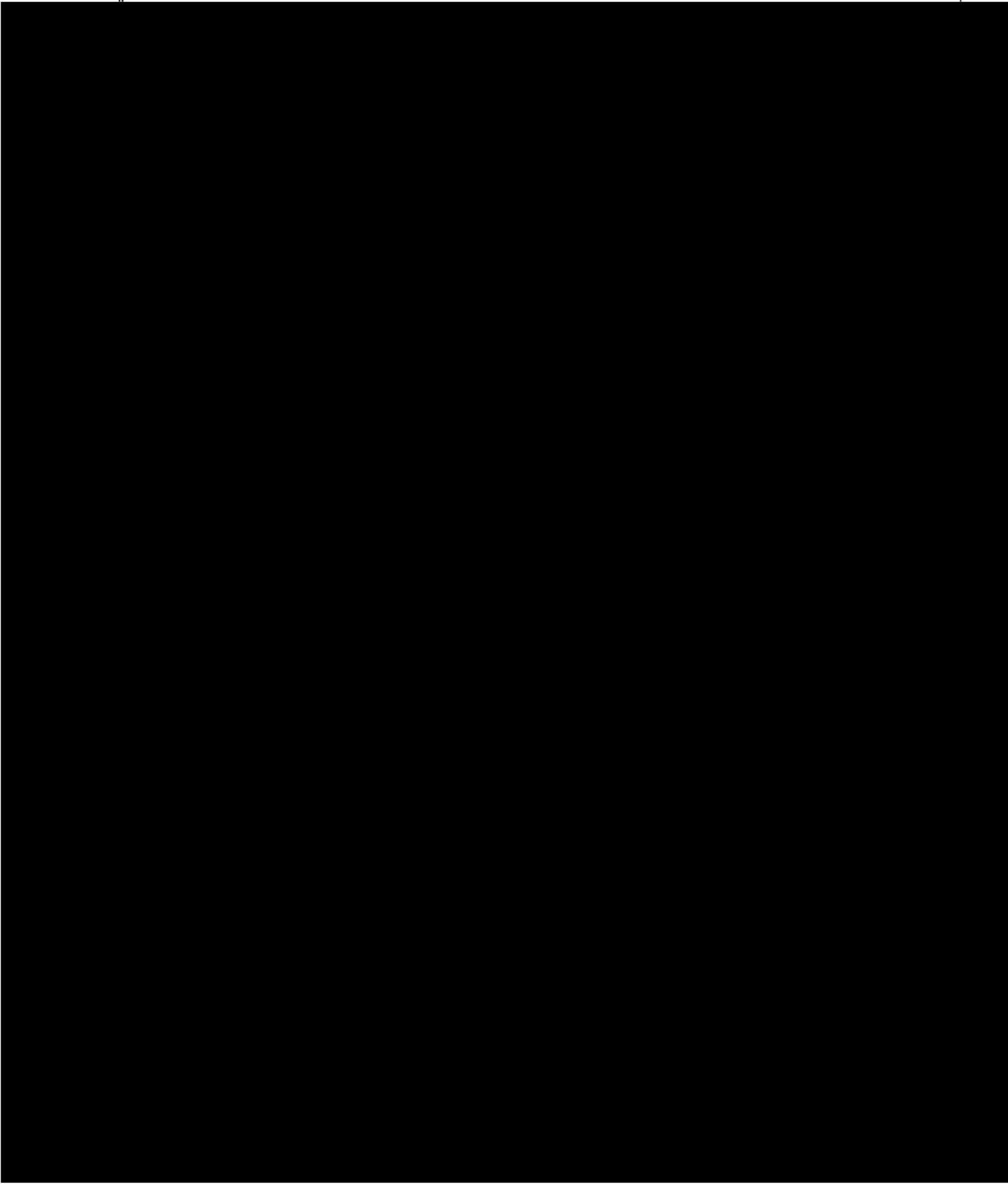
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5 Telephone (602) 514-7500  
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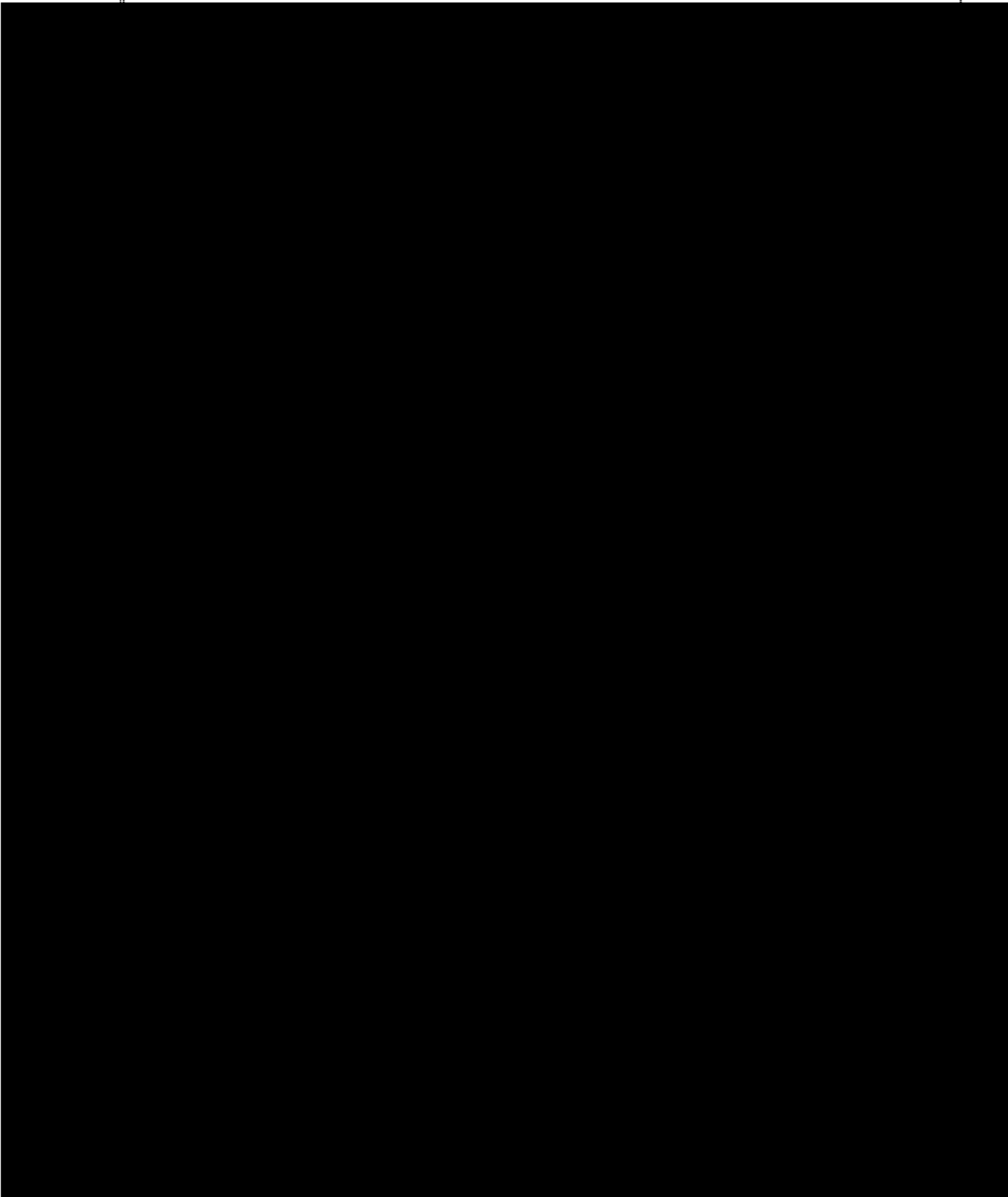
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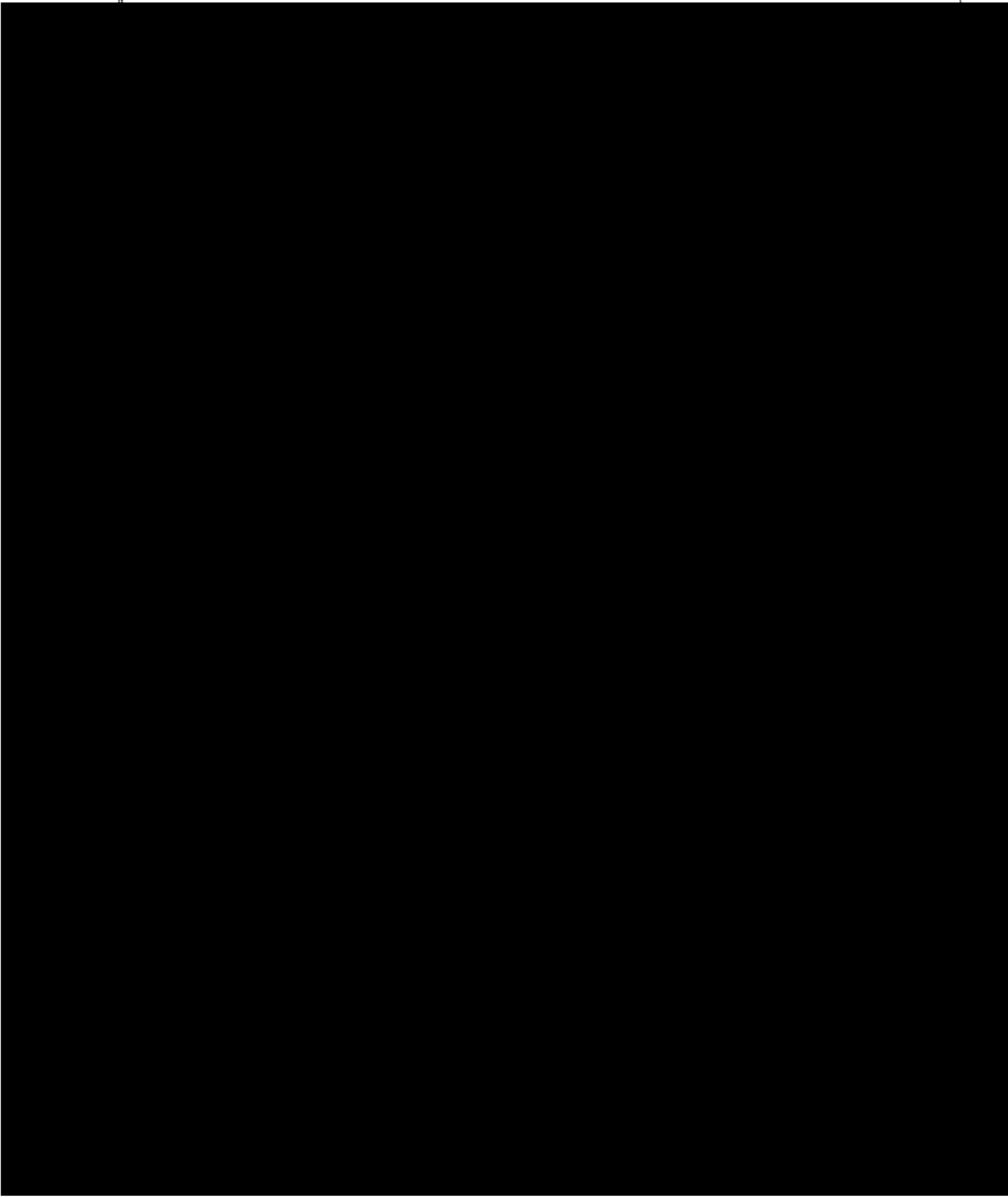




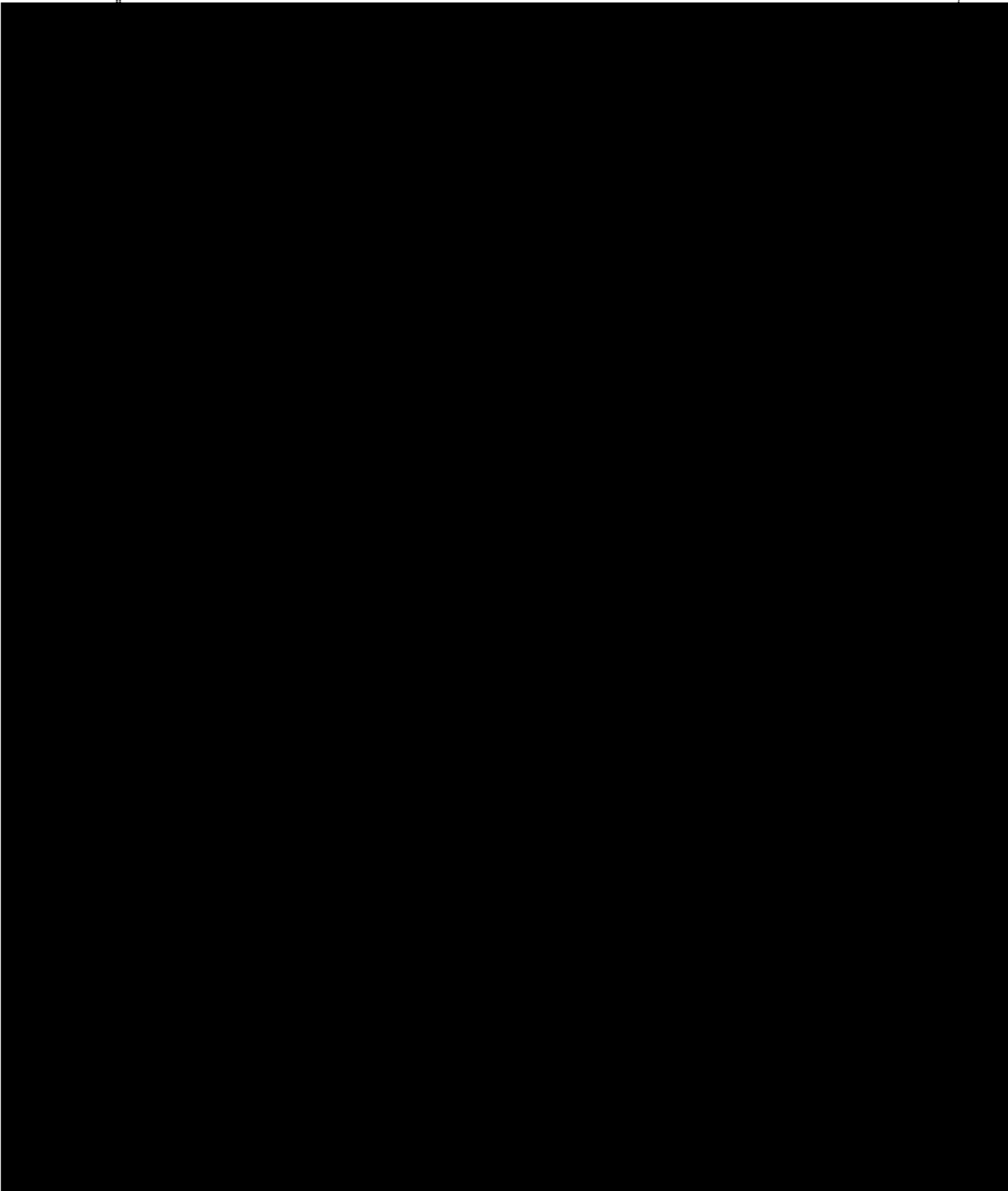


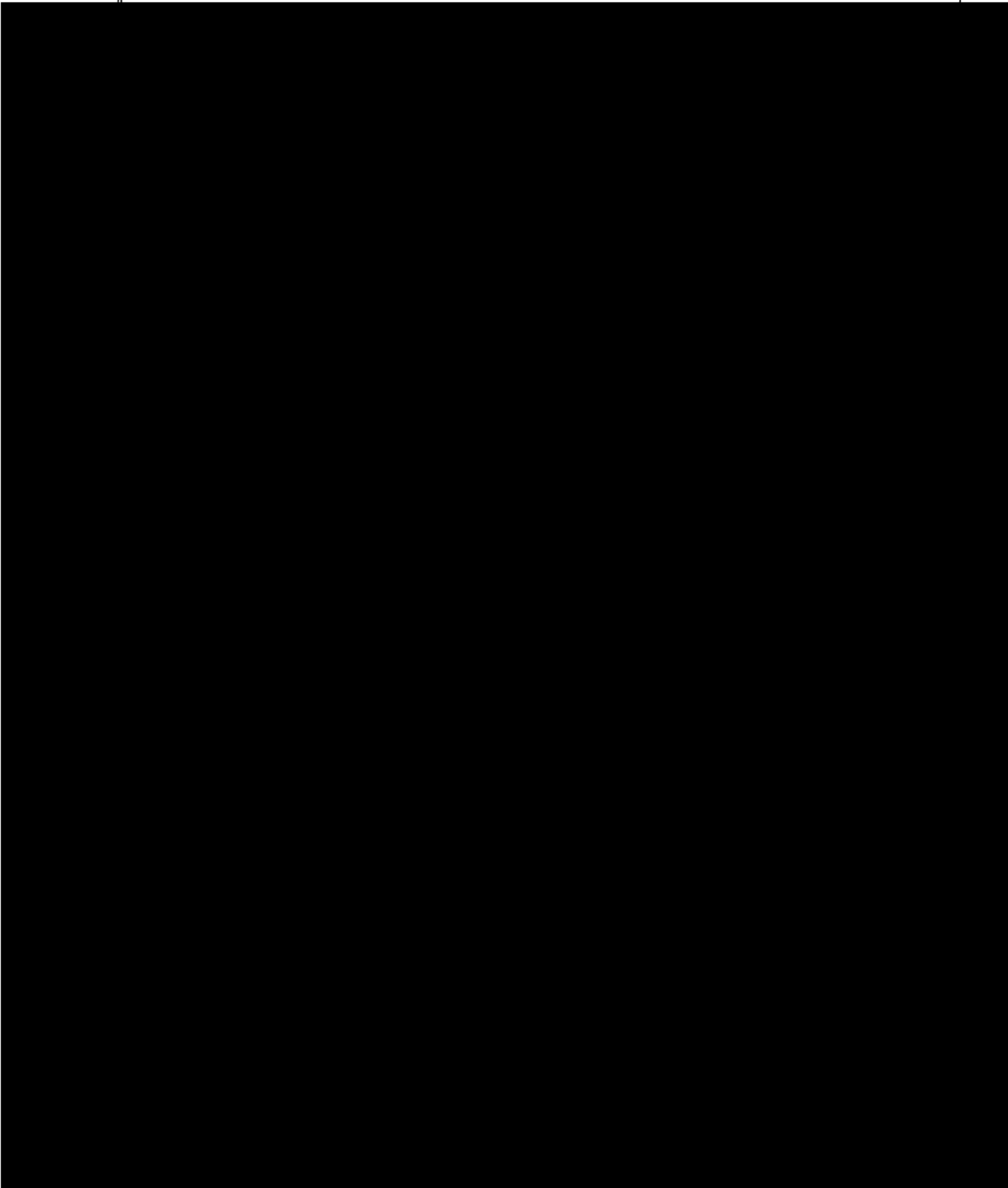


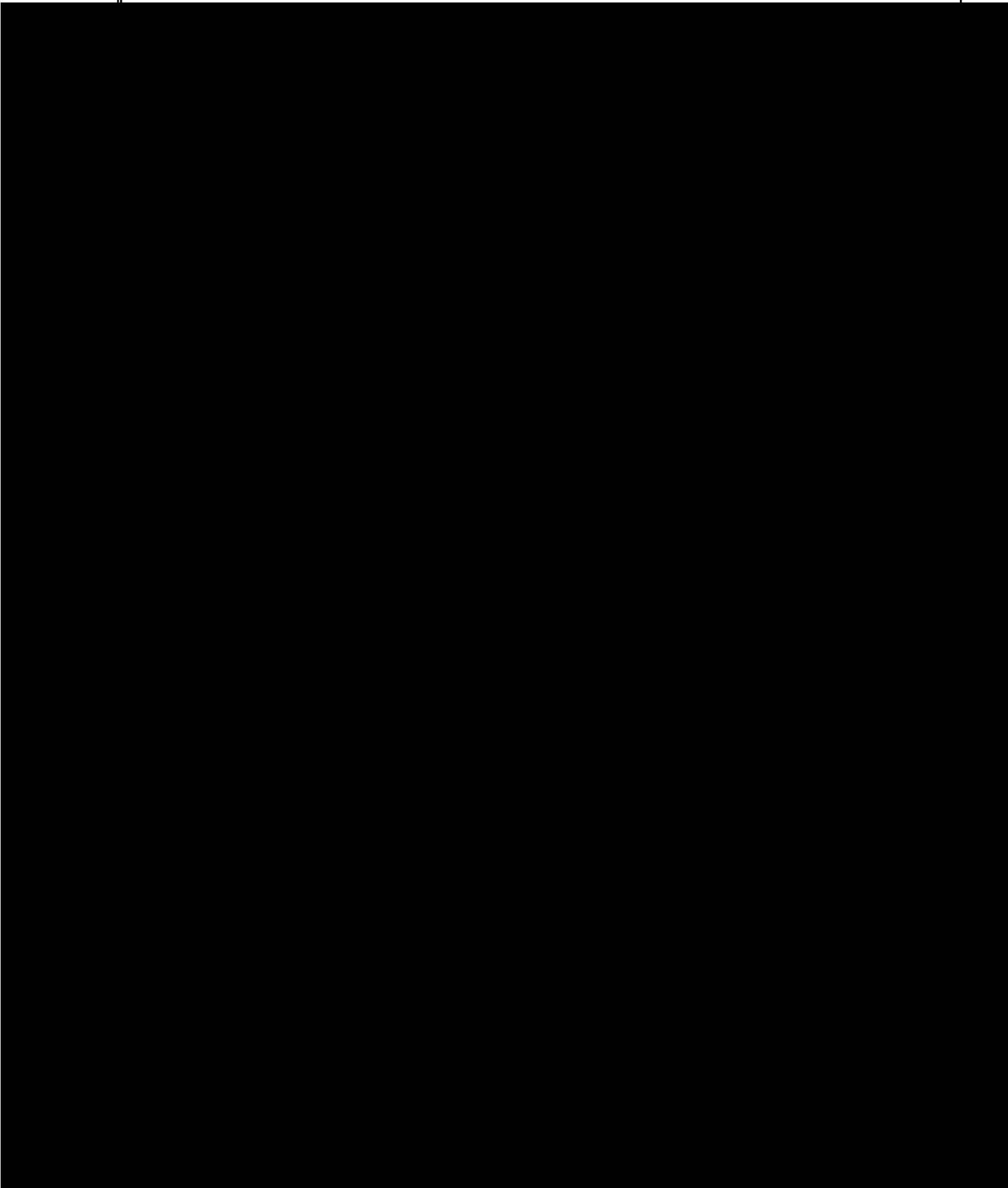


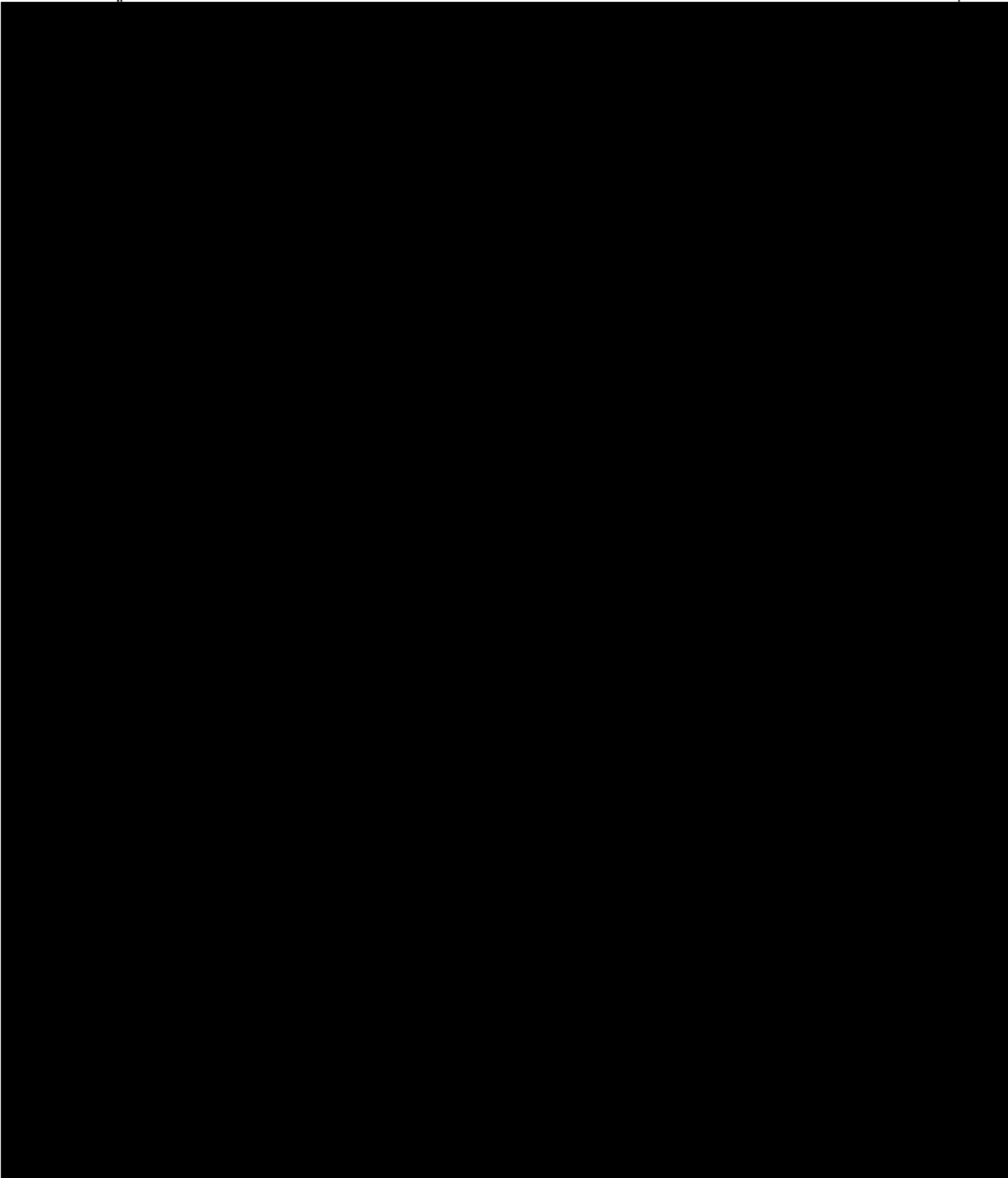


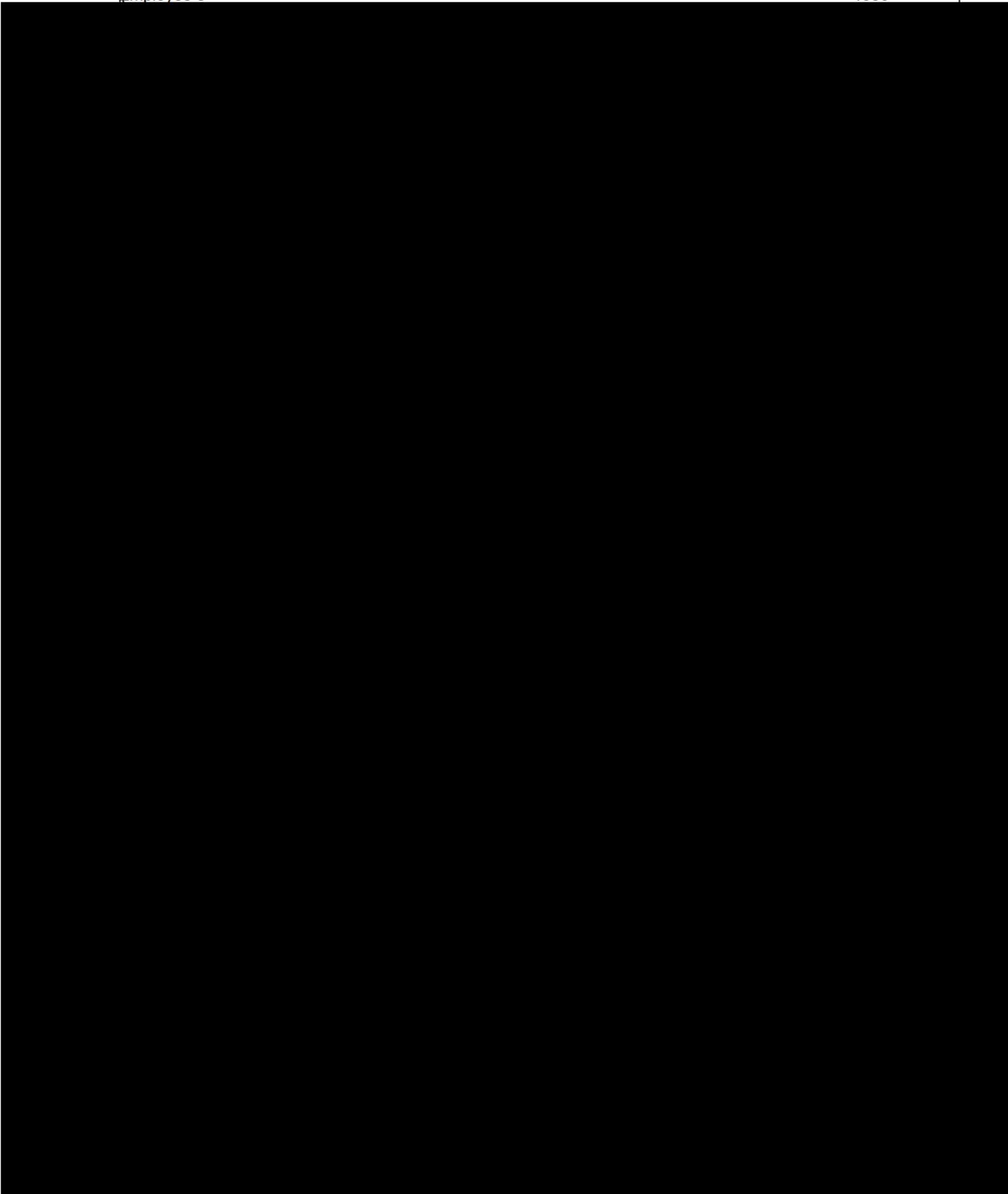


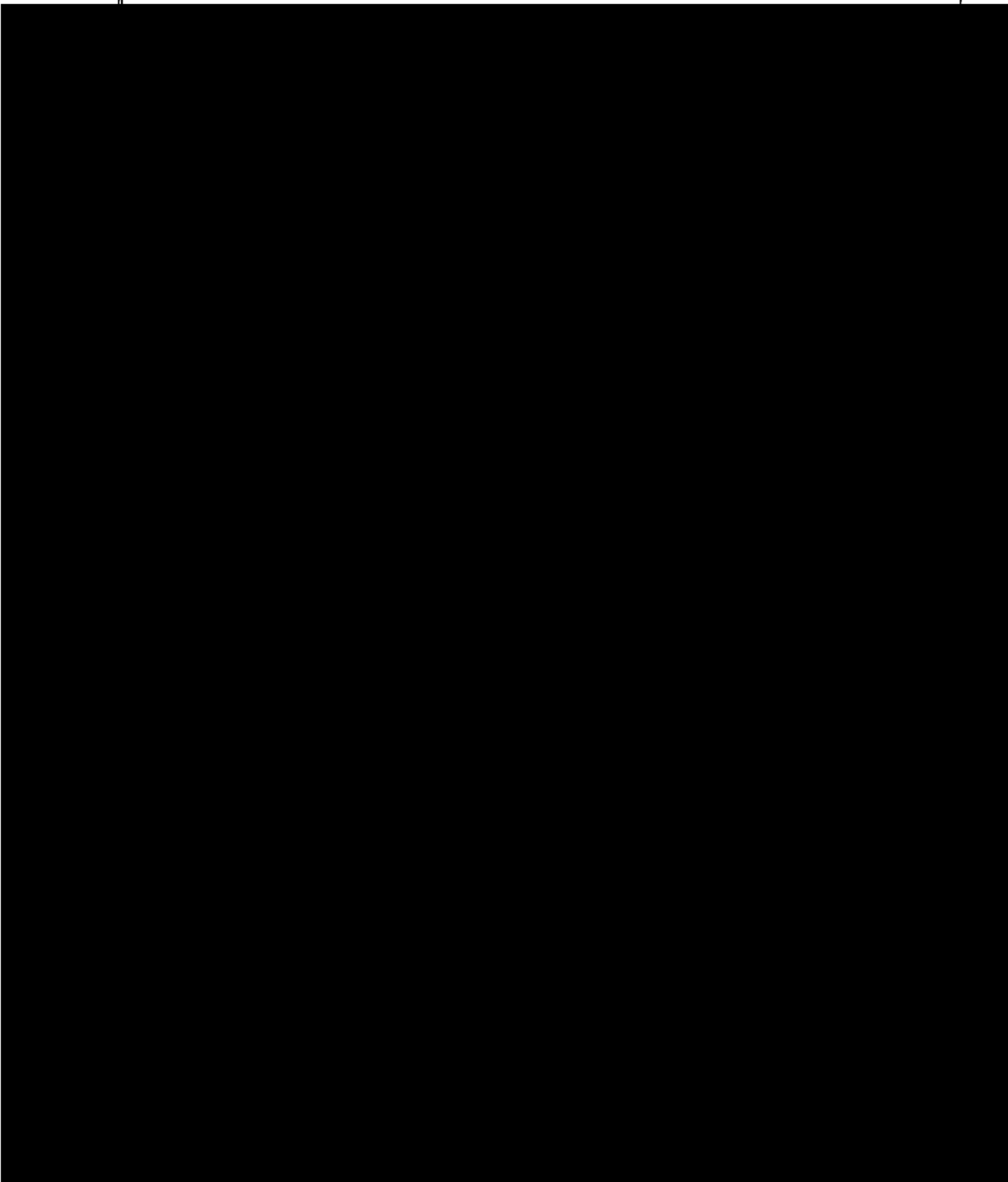


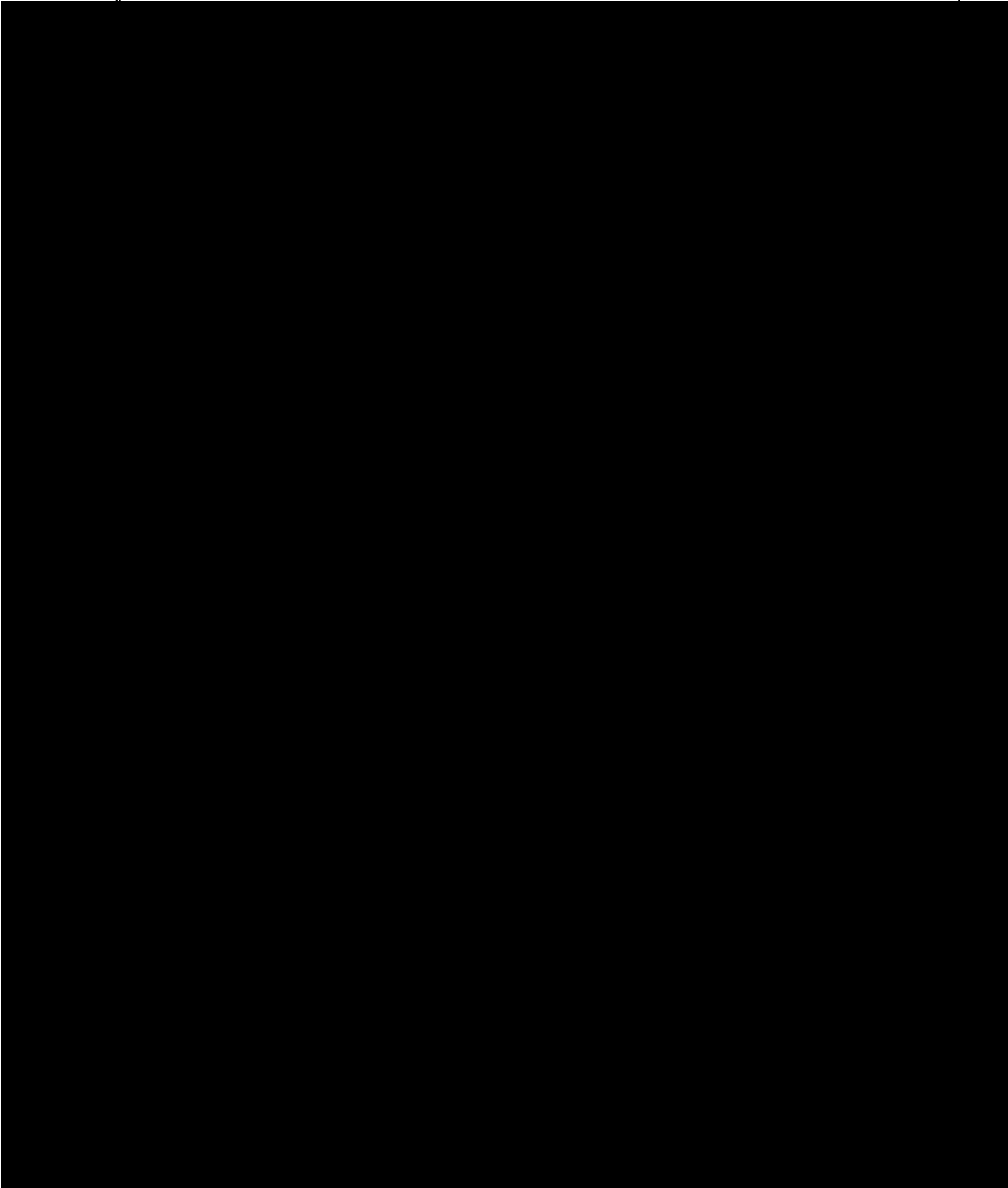


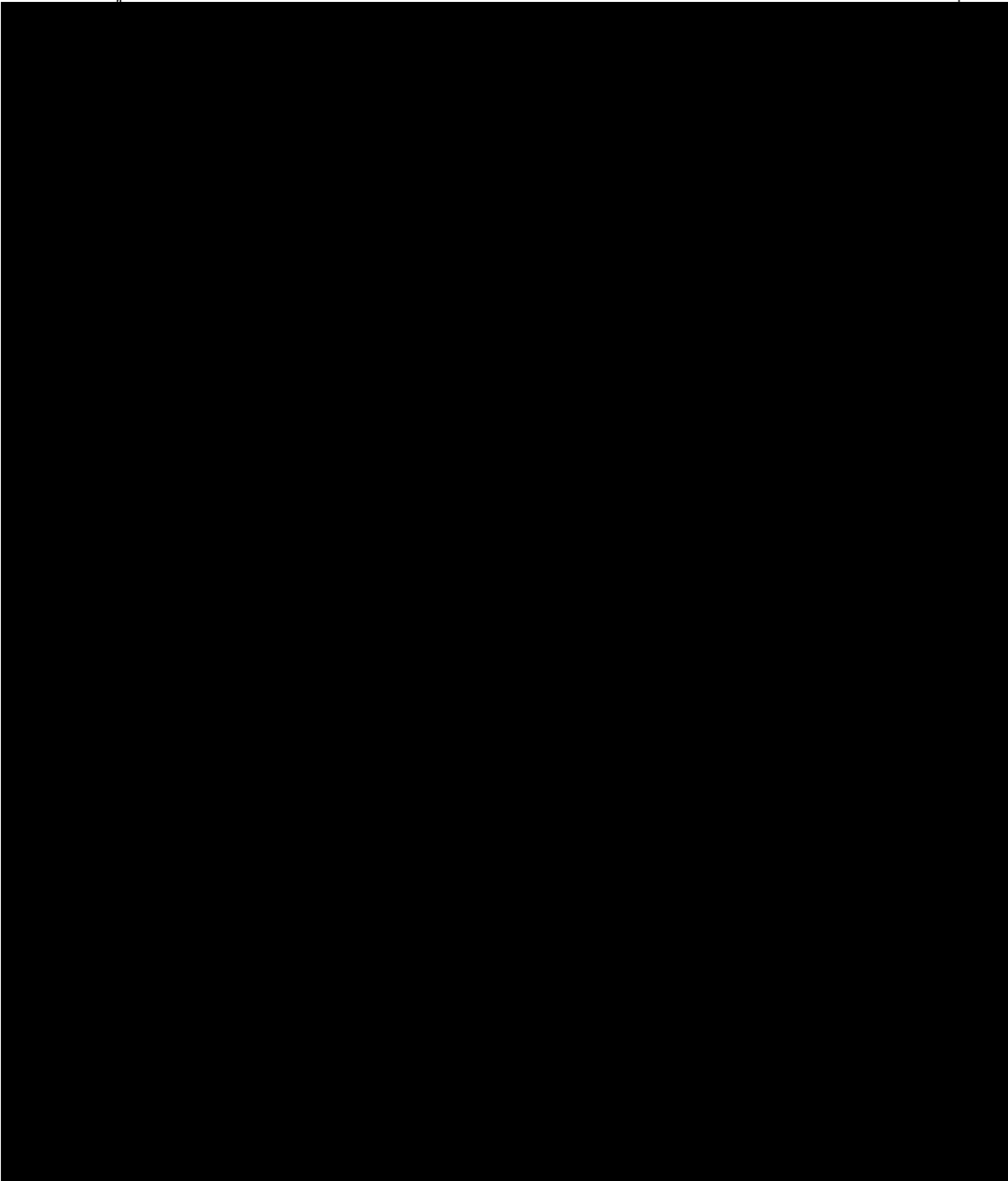




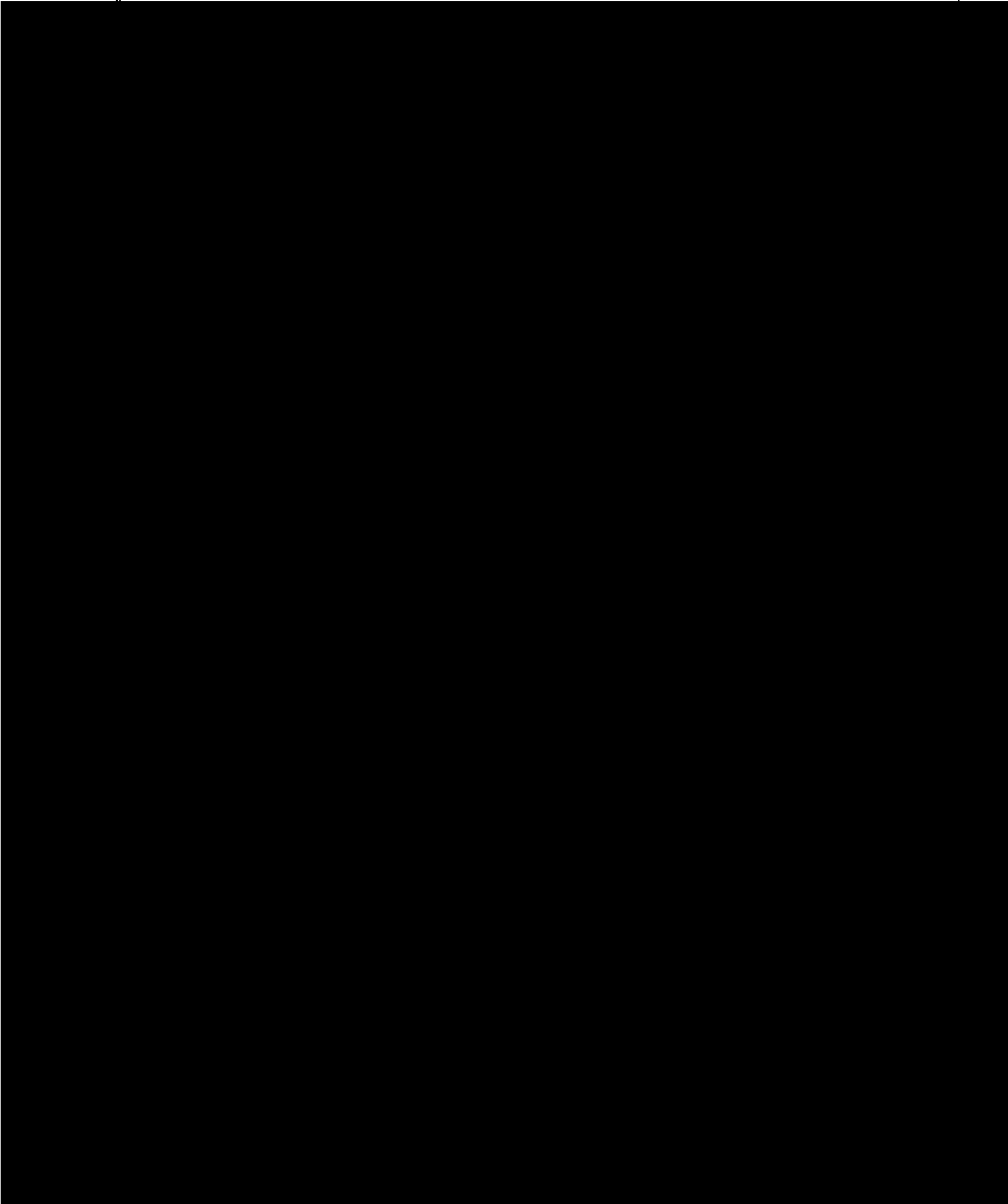


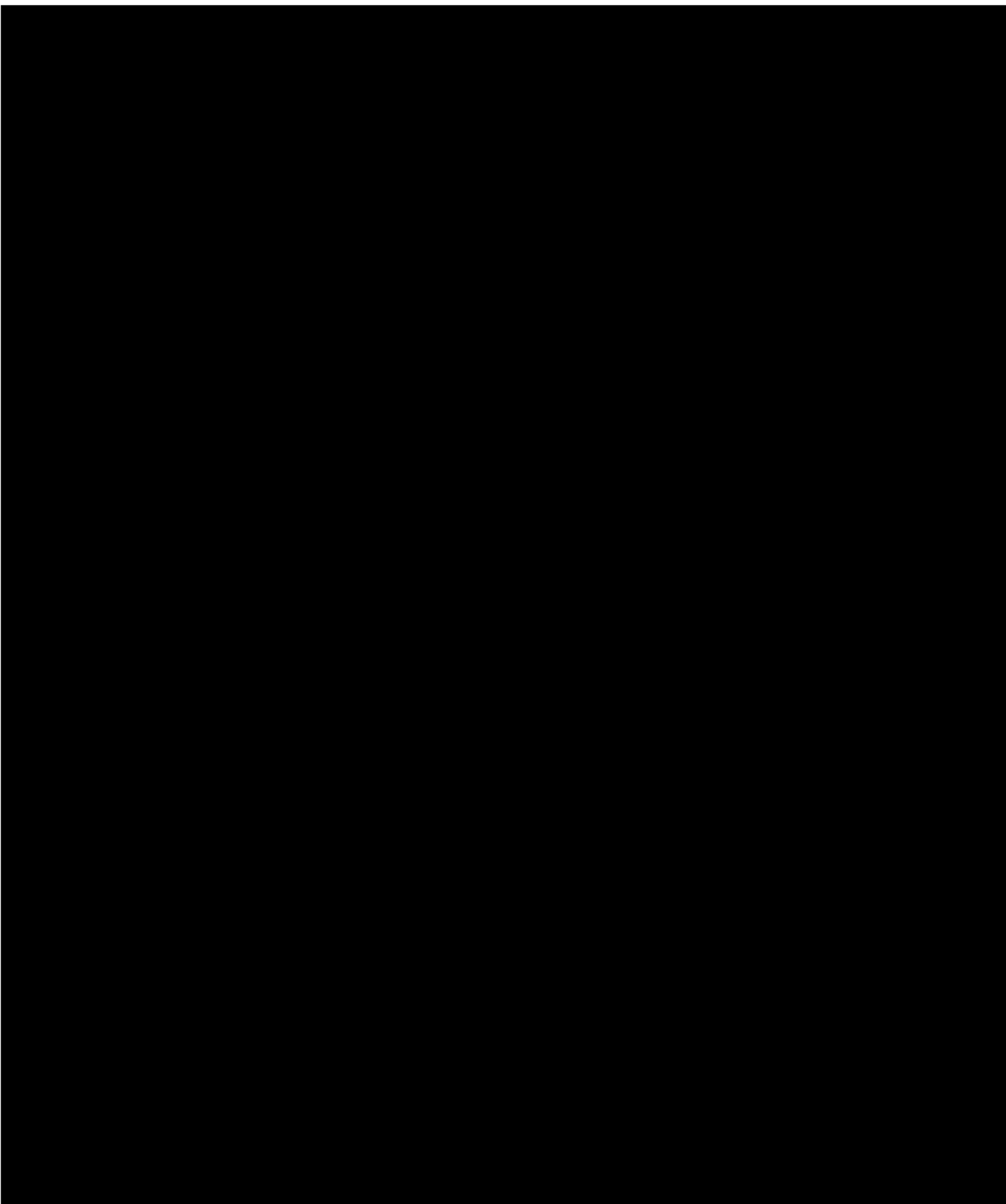


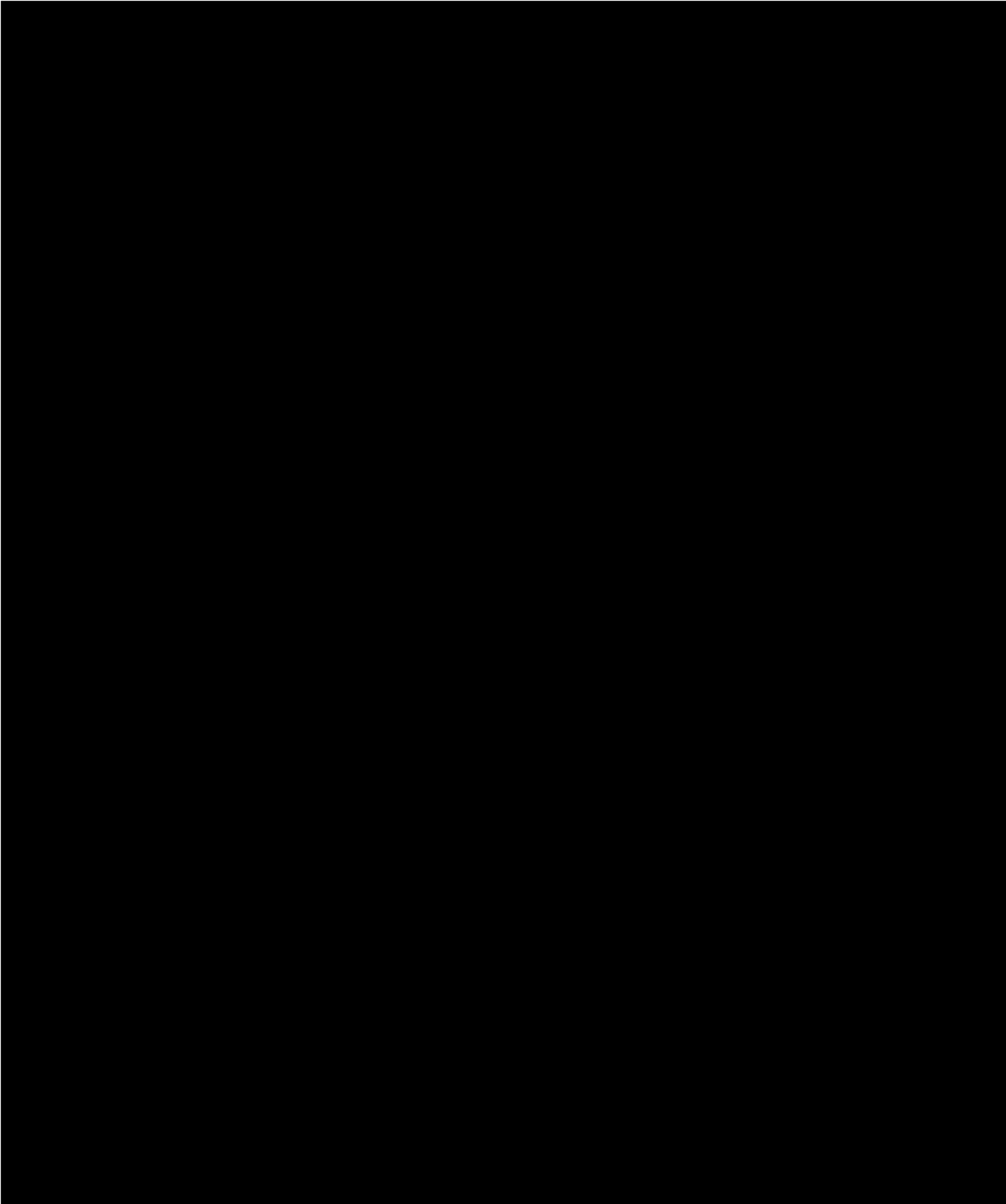


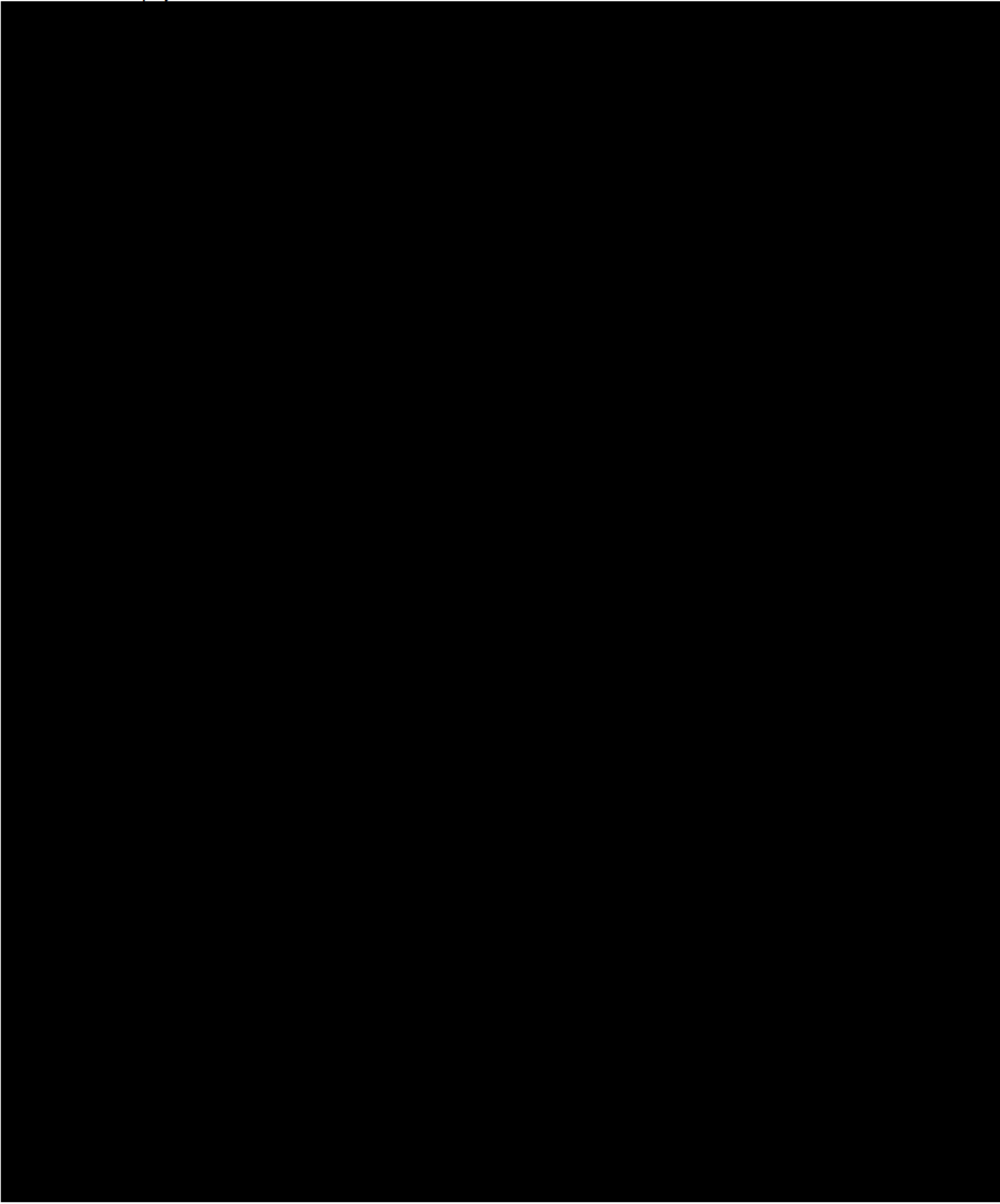


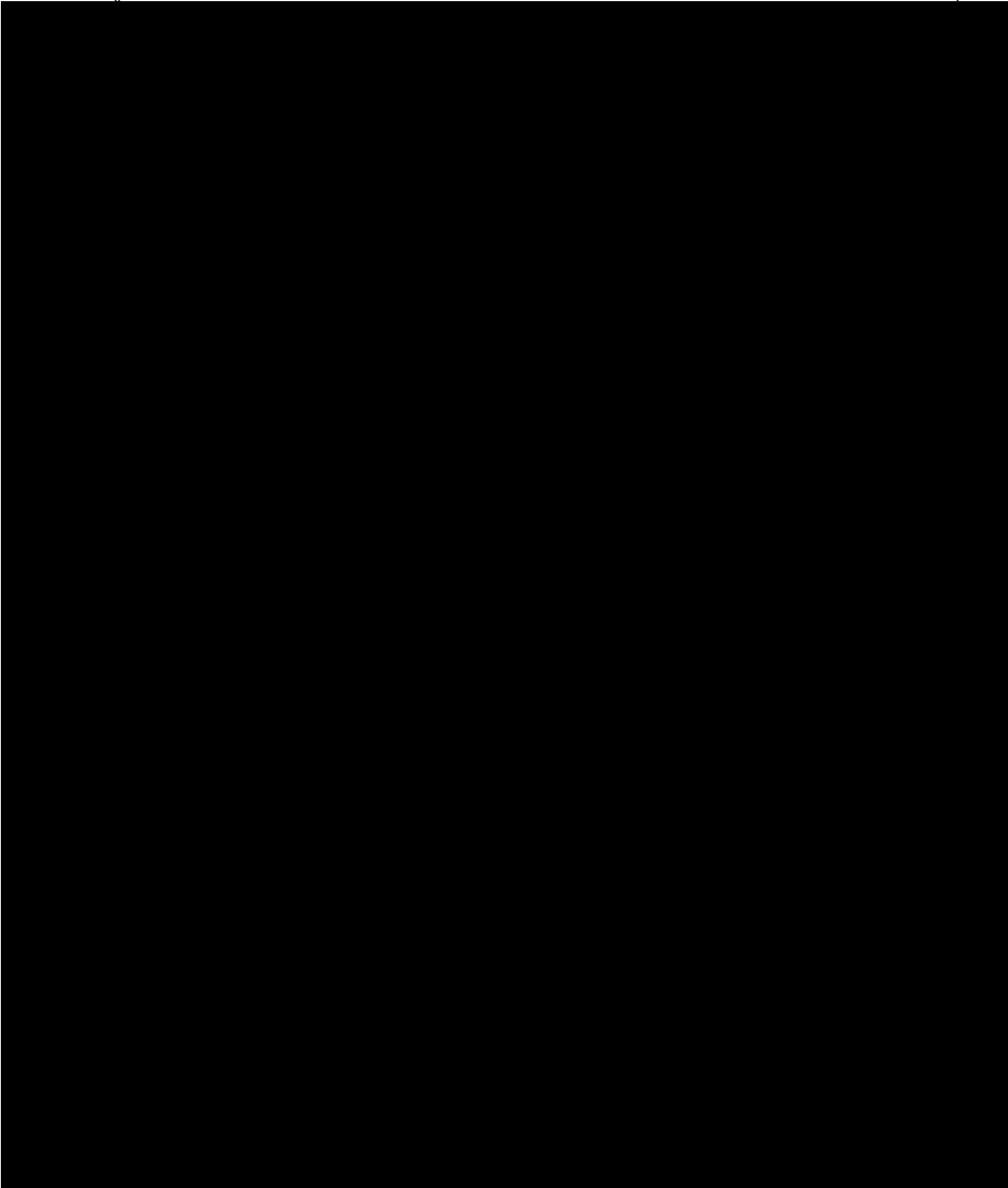


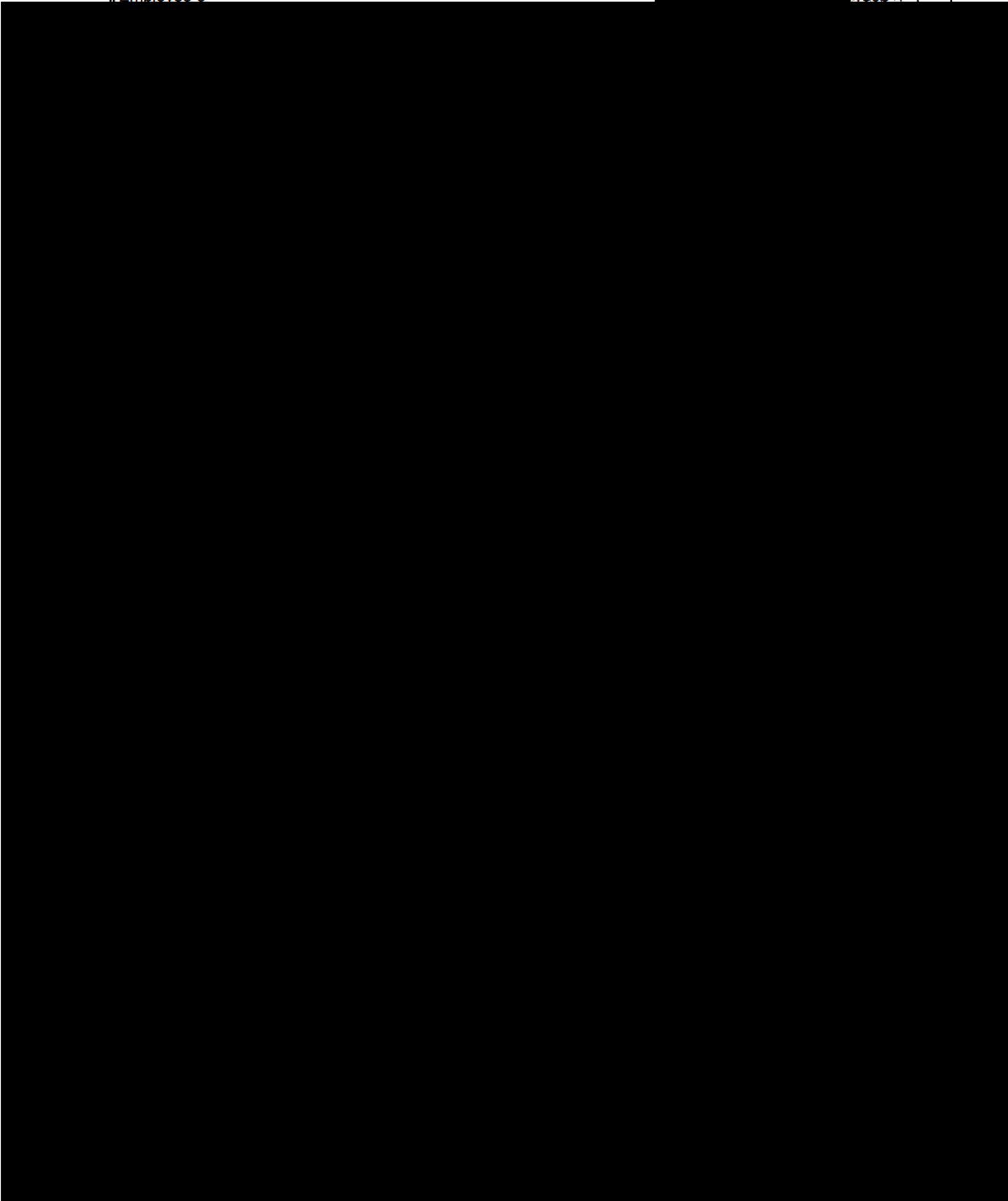


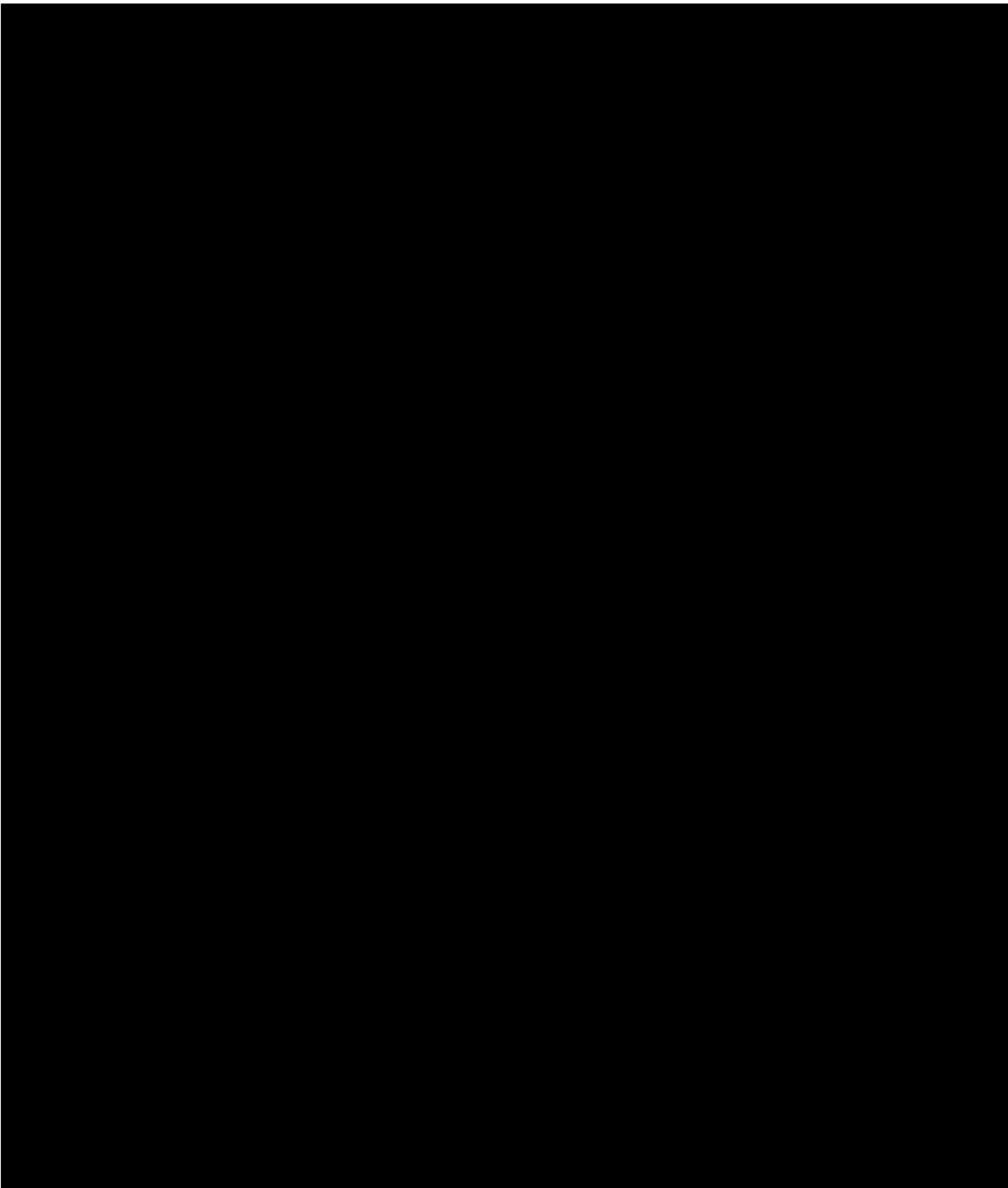


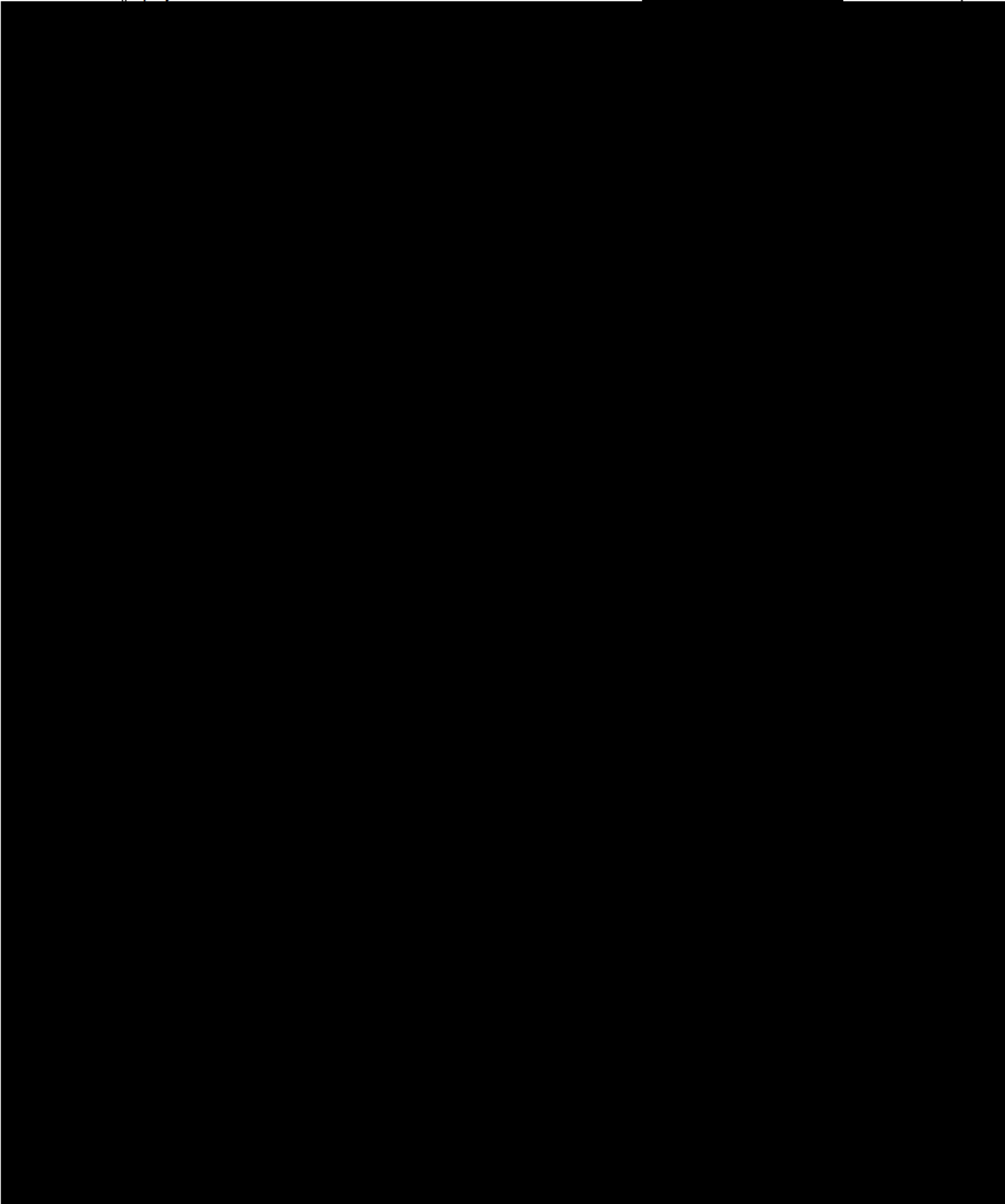




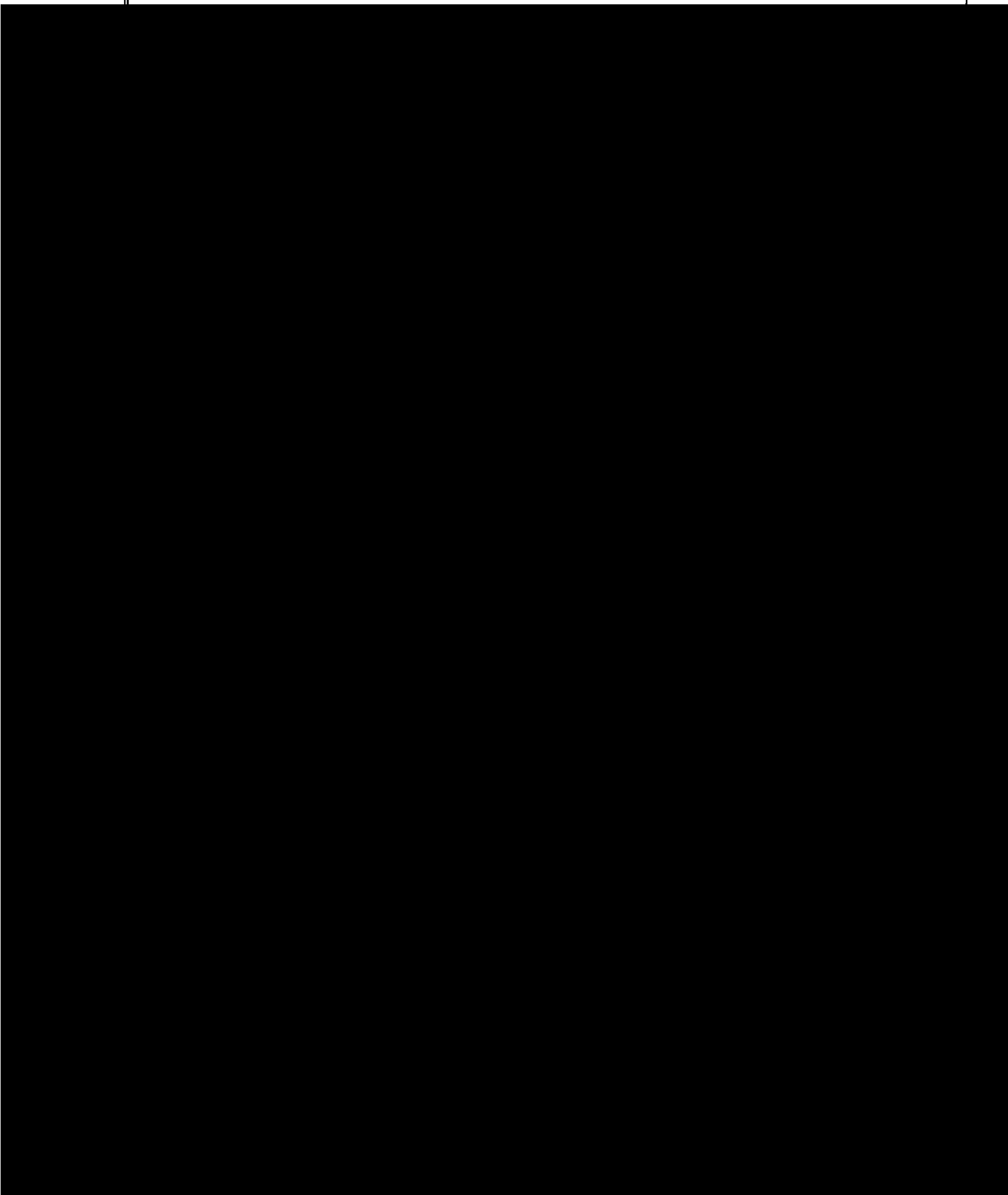








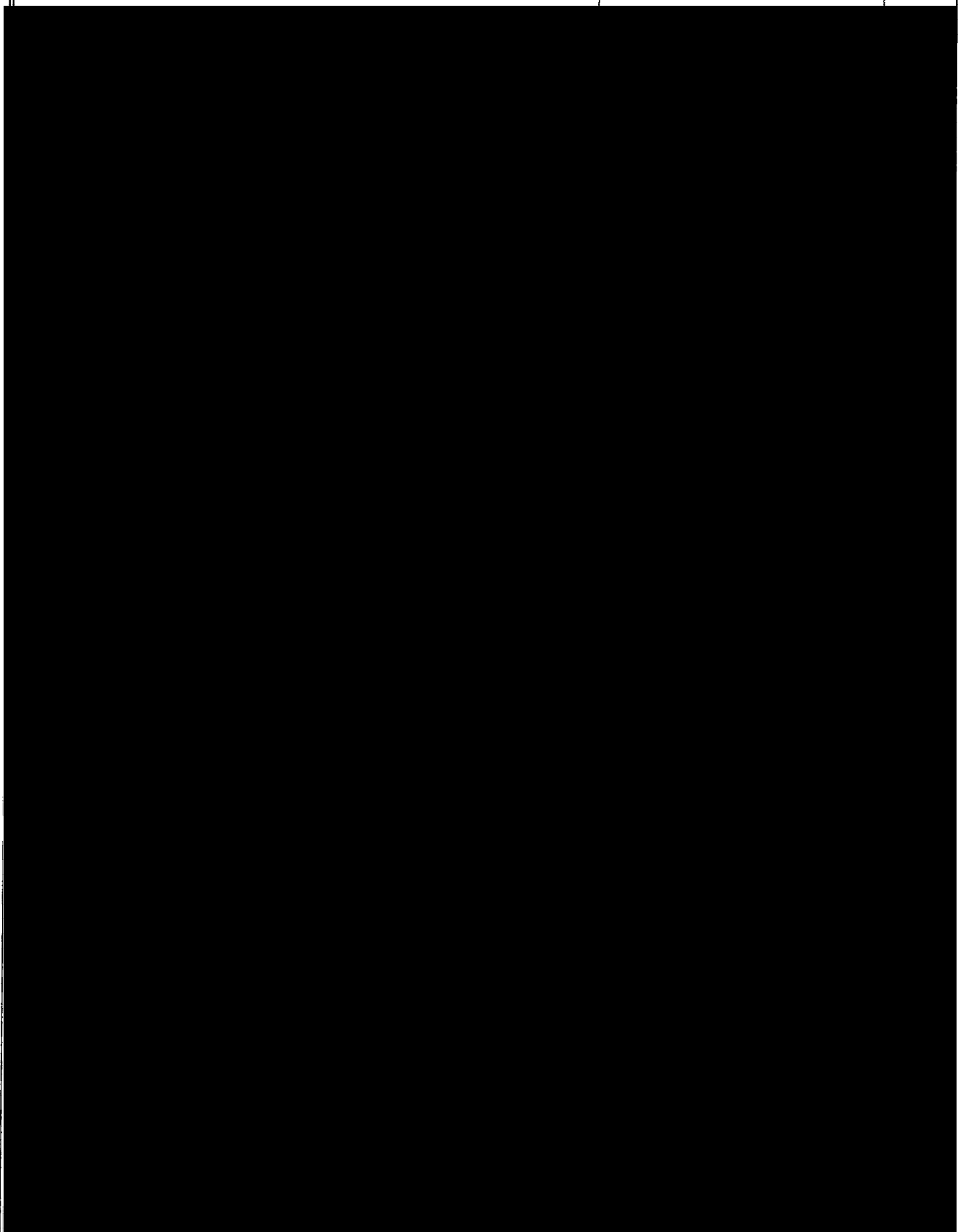




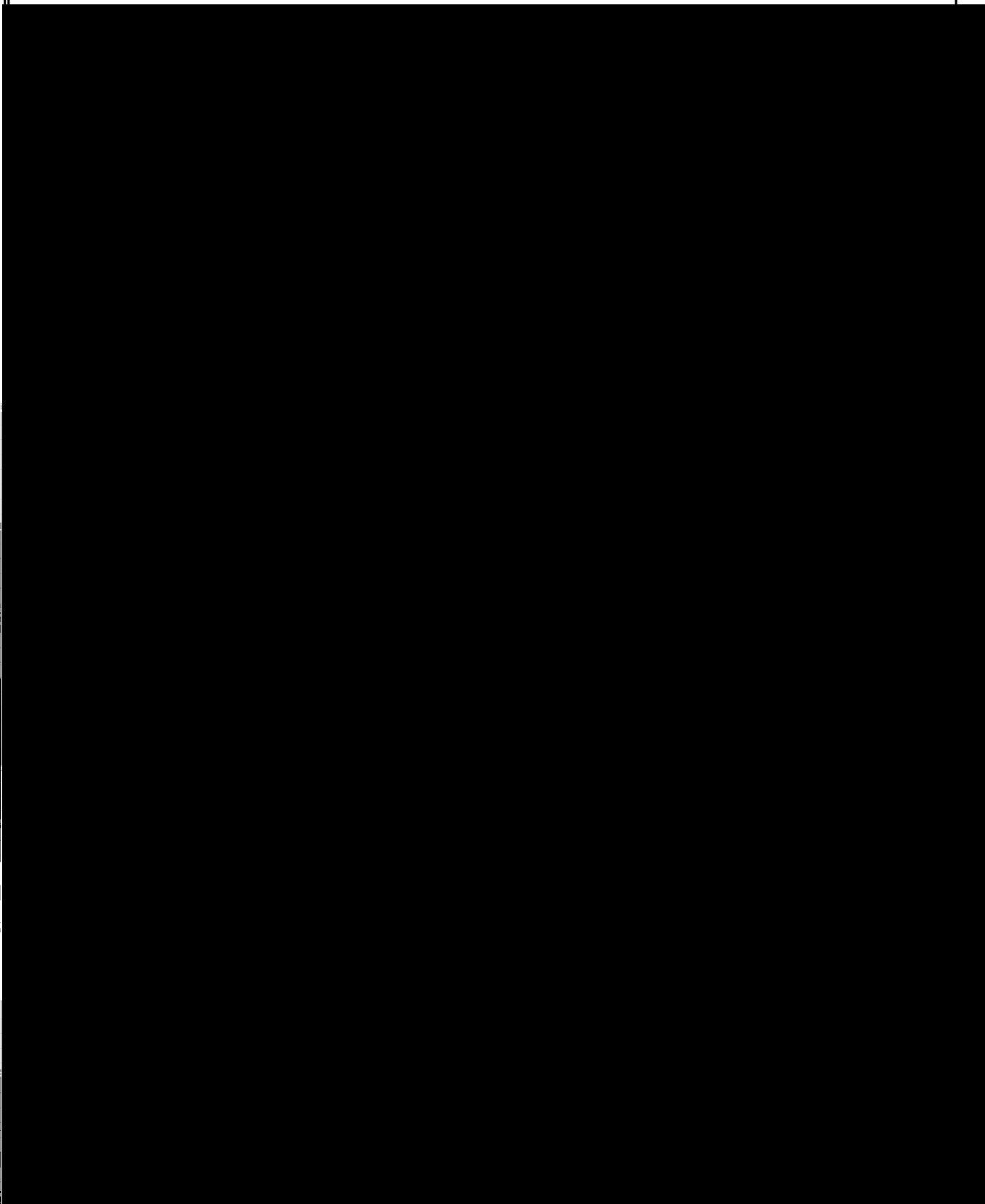
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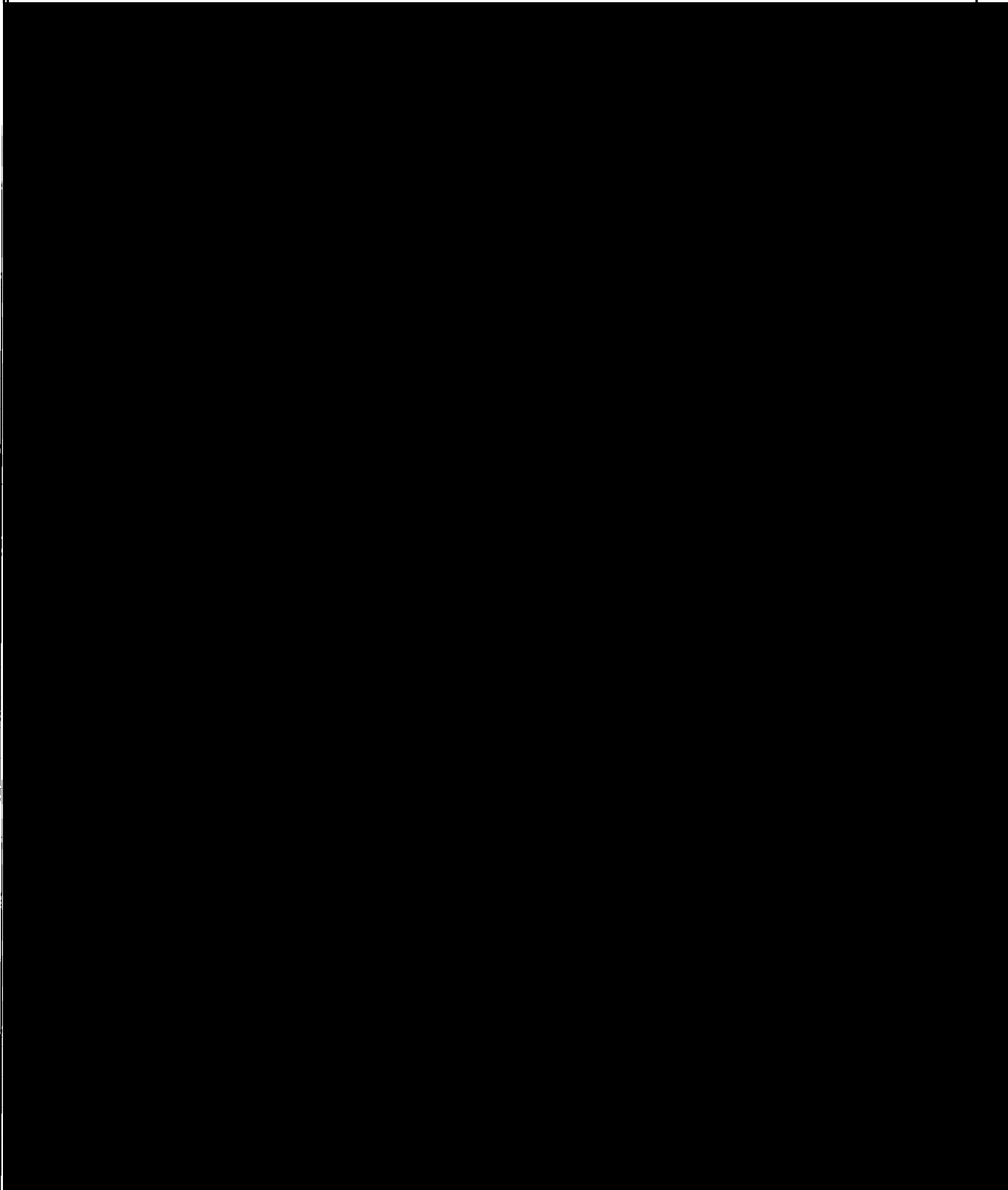
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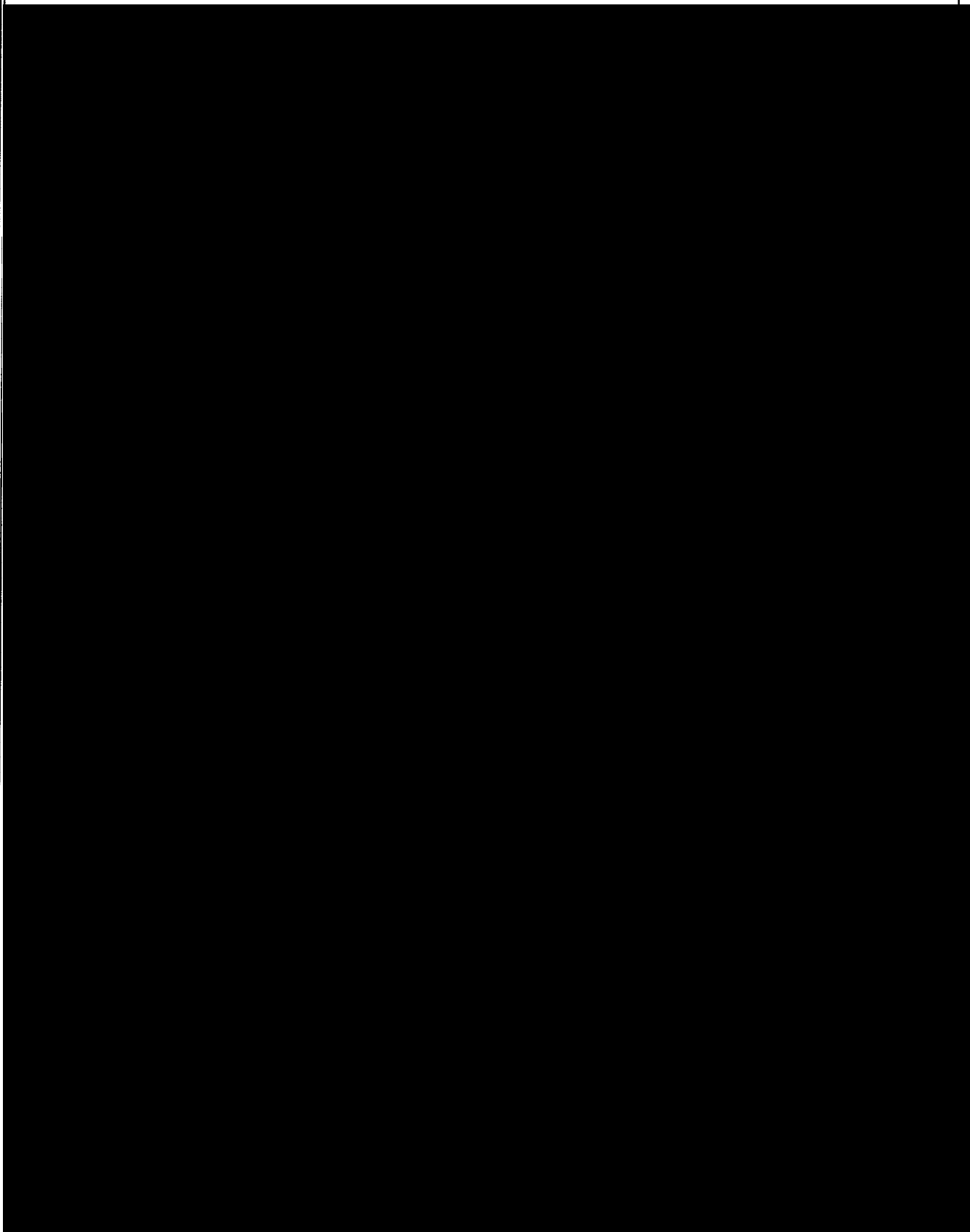
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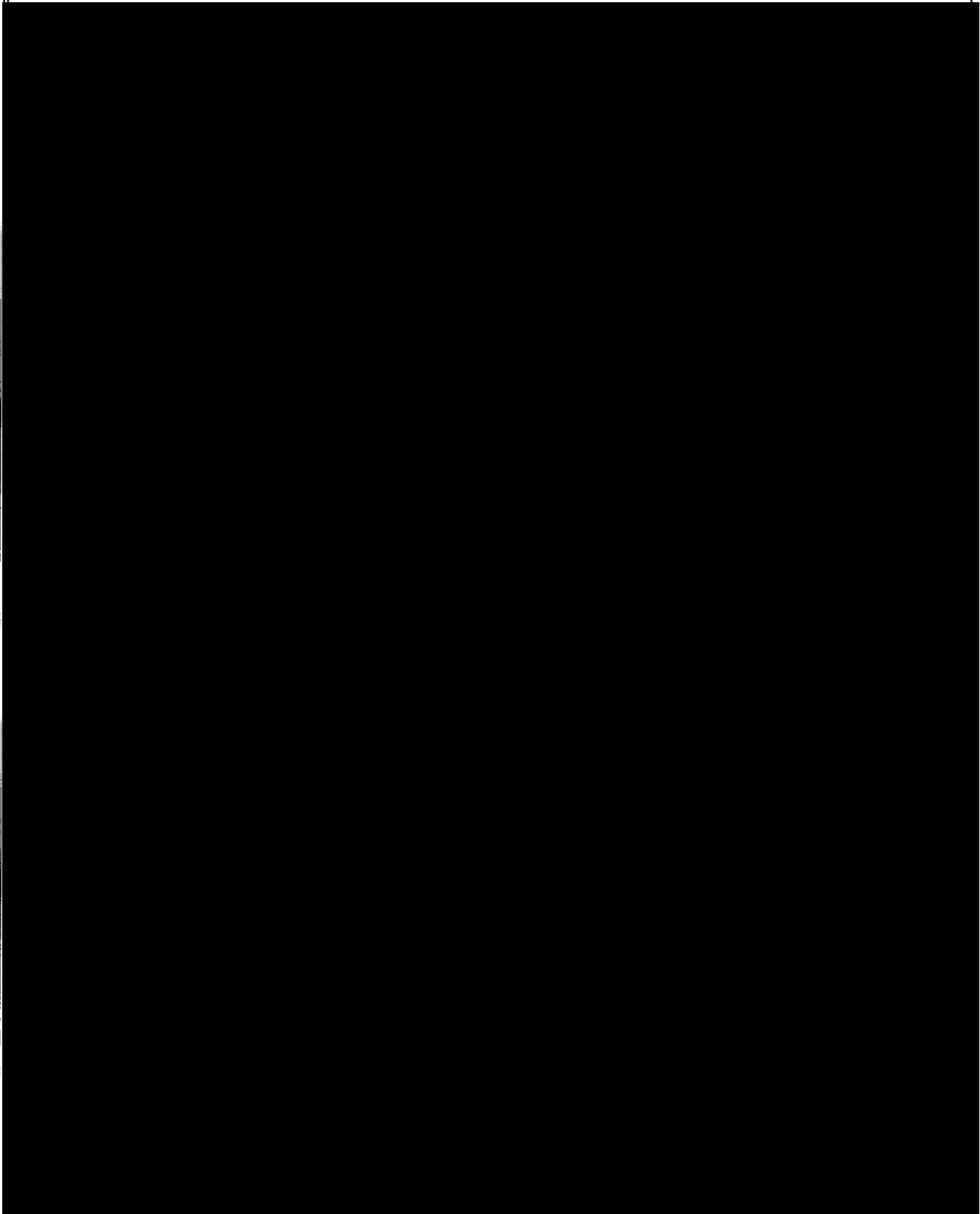
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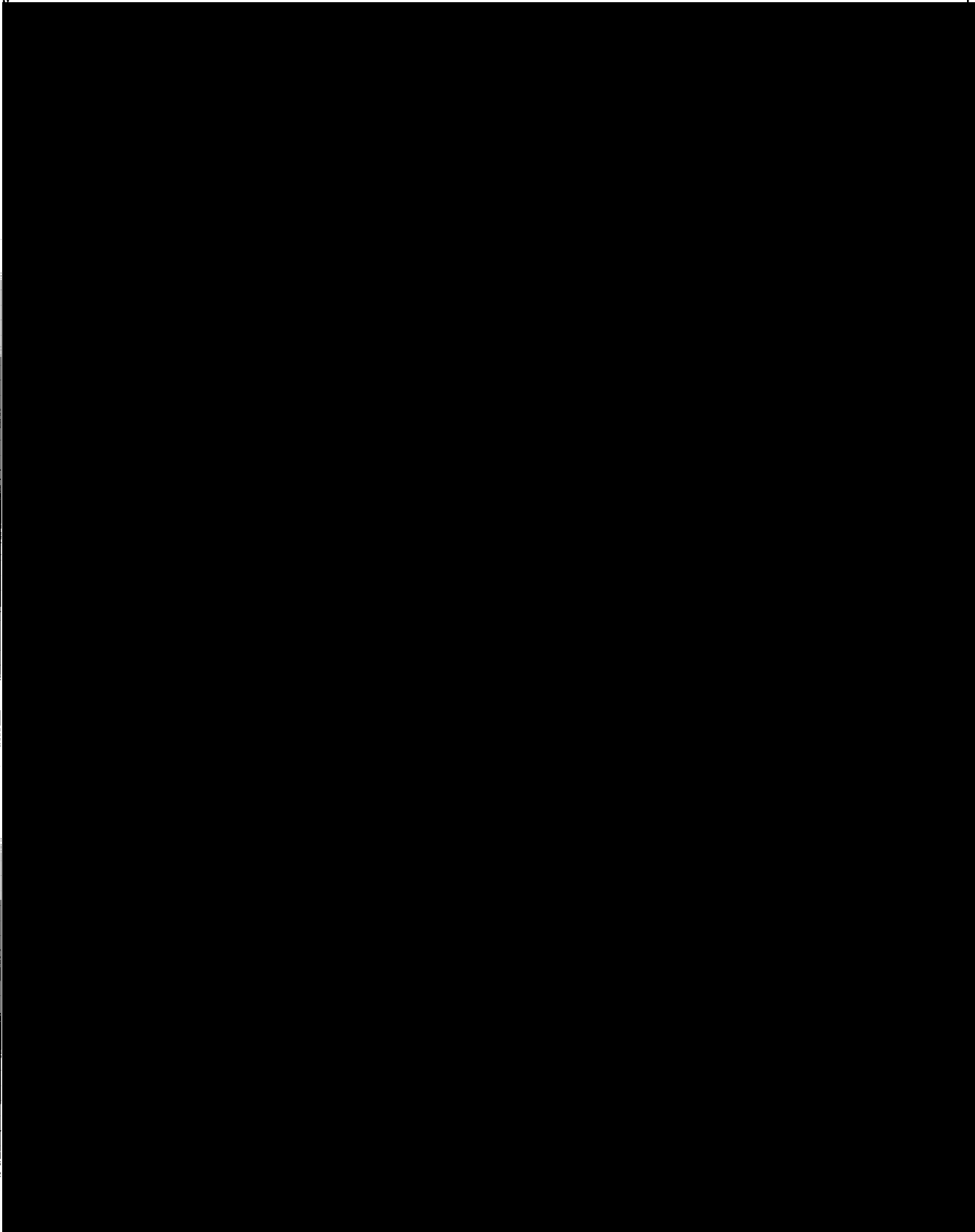
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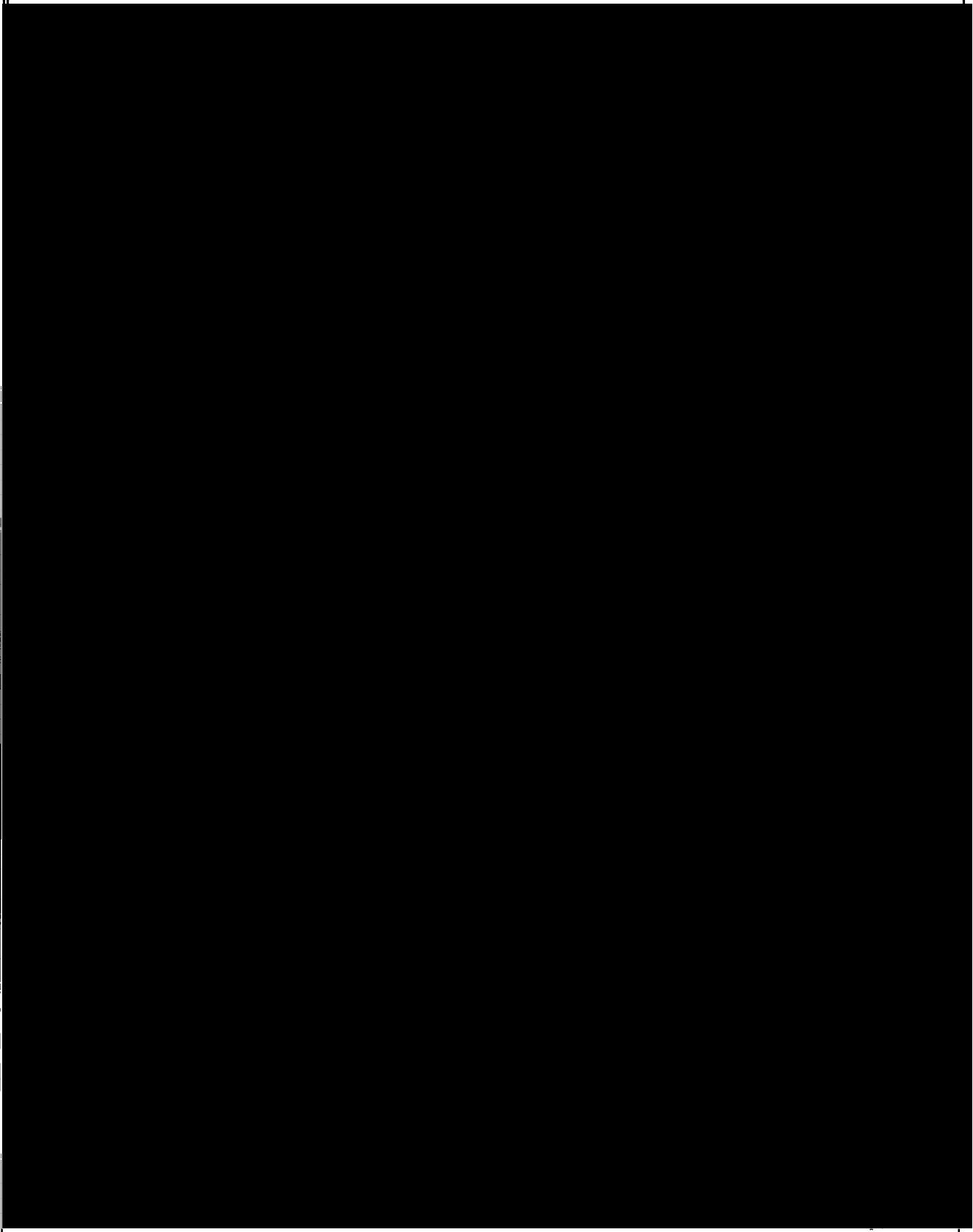
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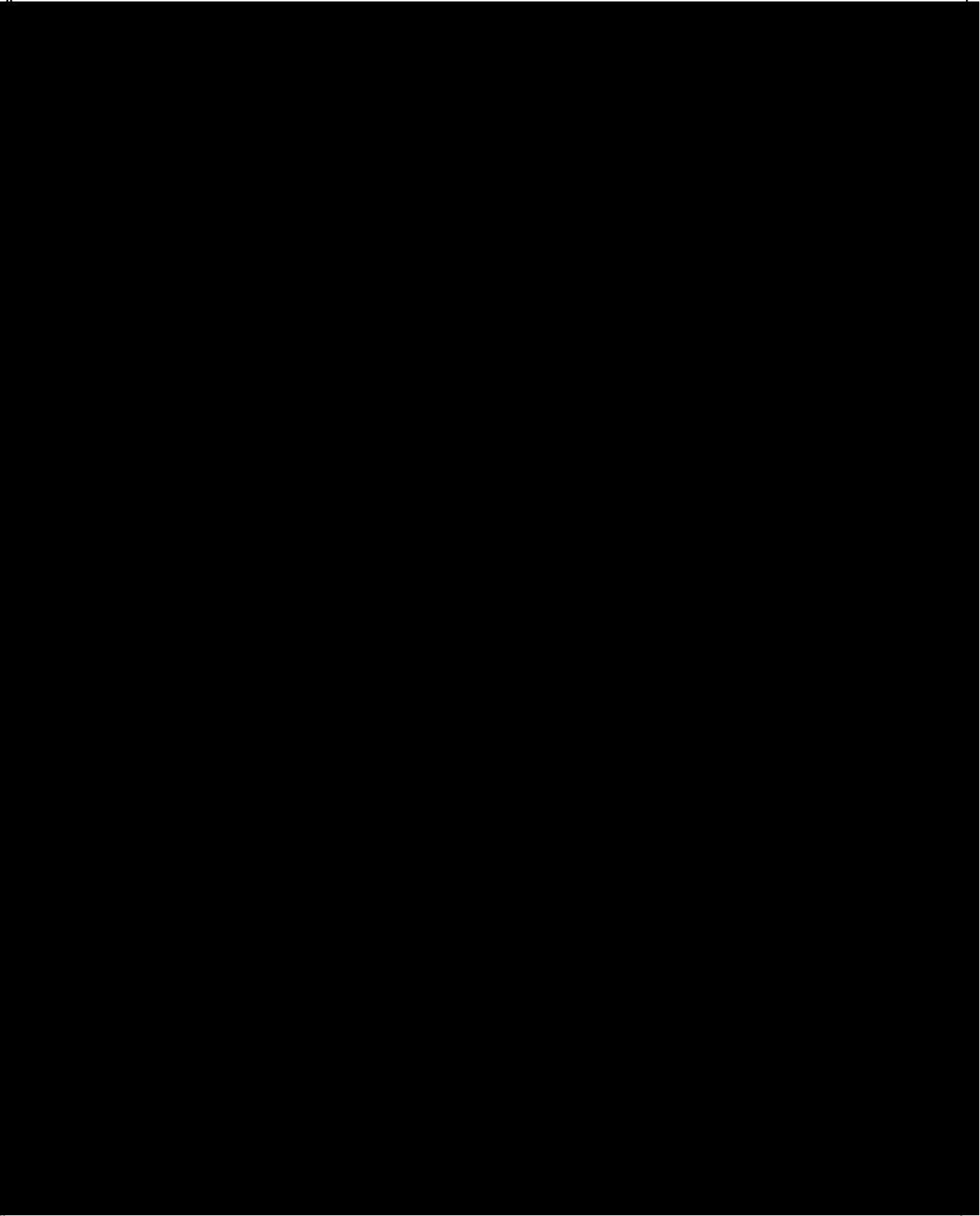


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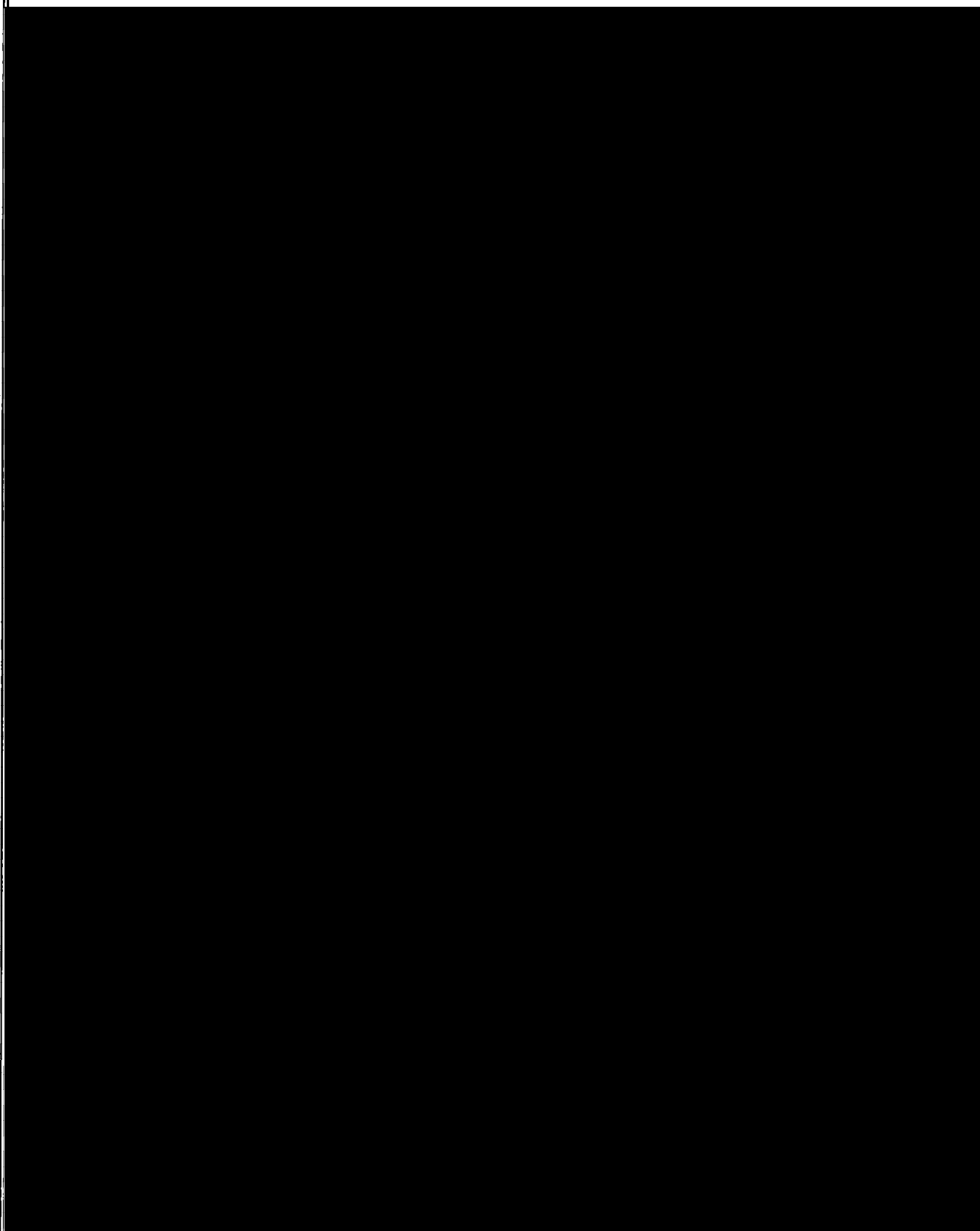




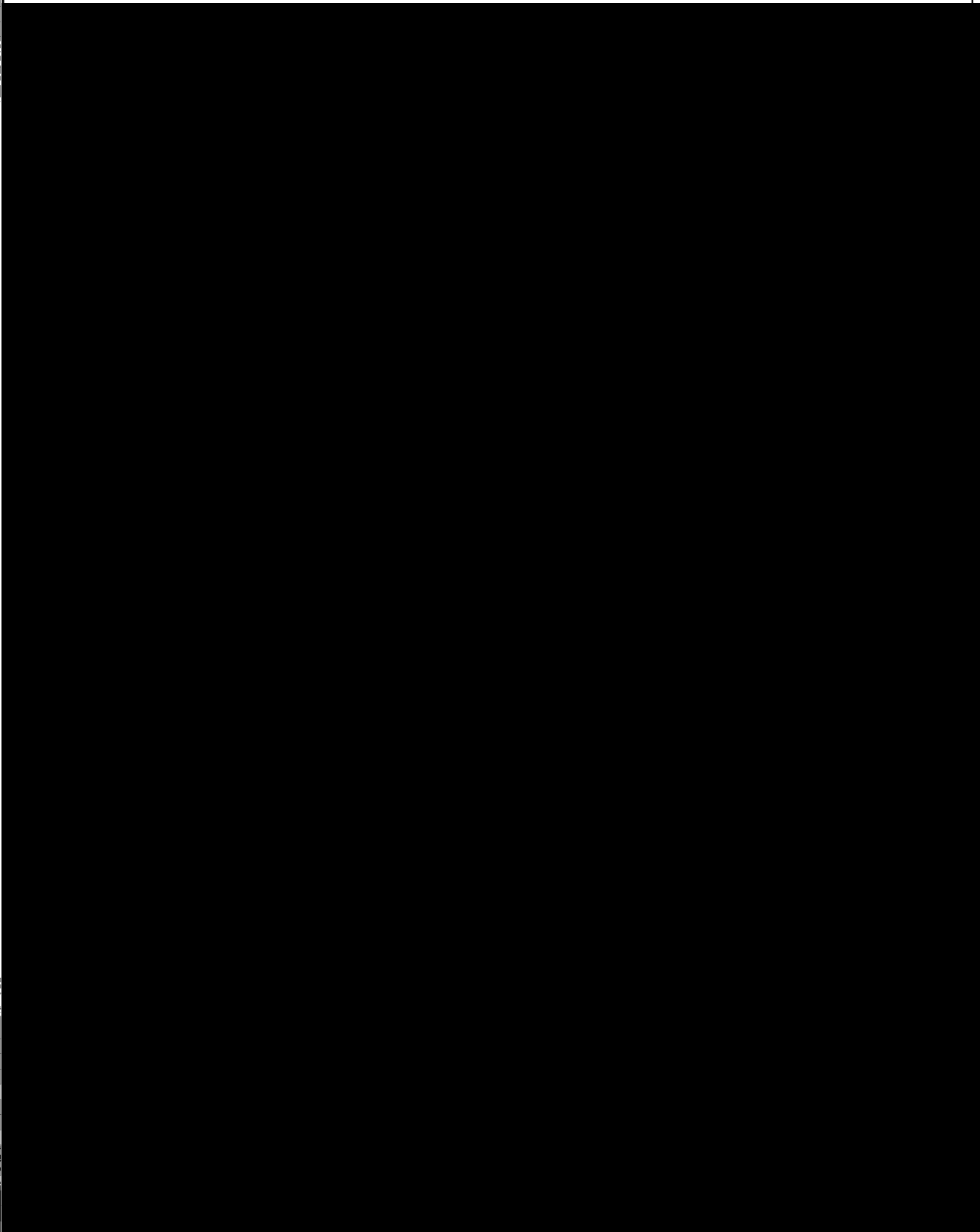
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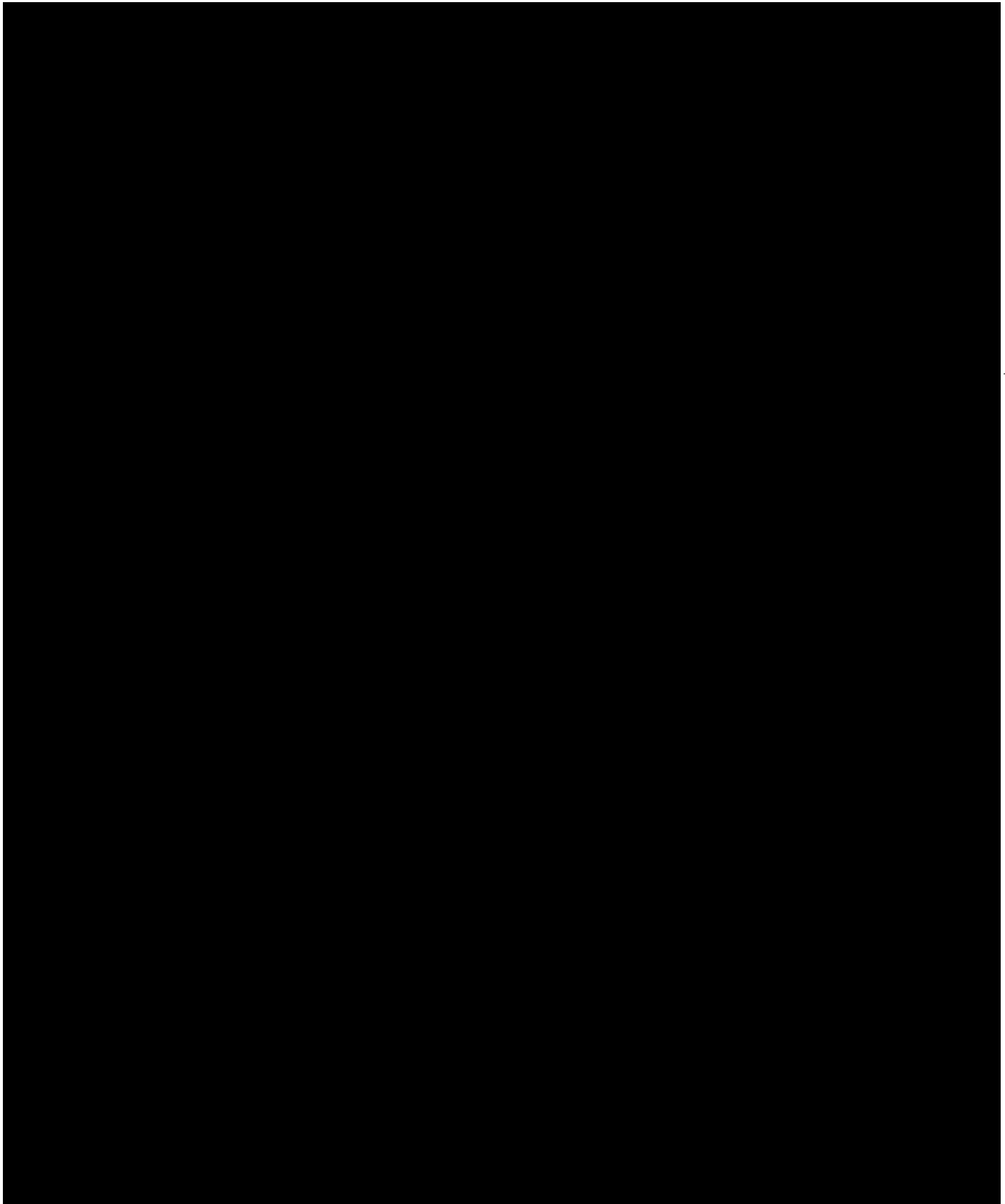


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**EXHIBIT A**

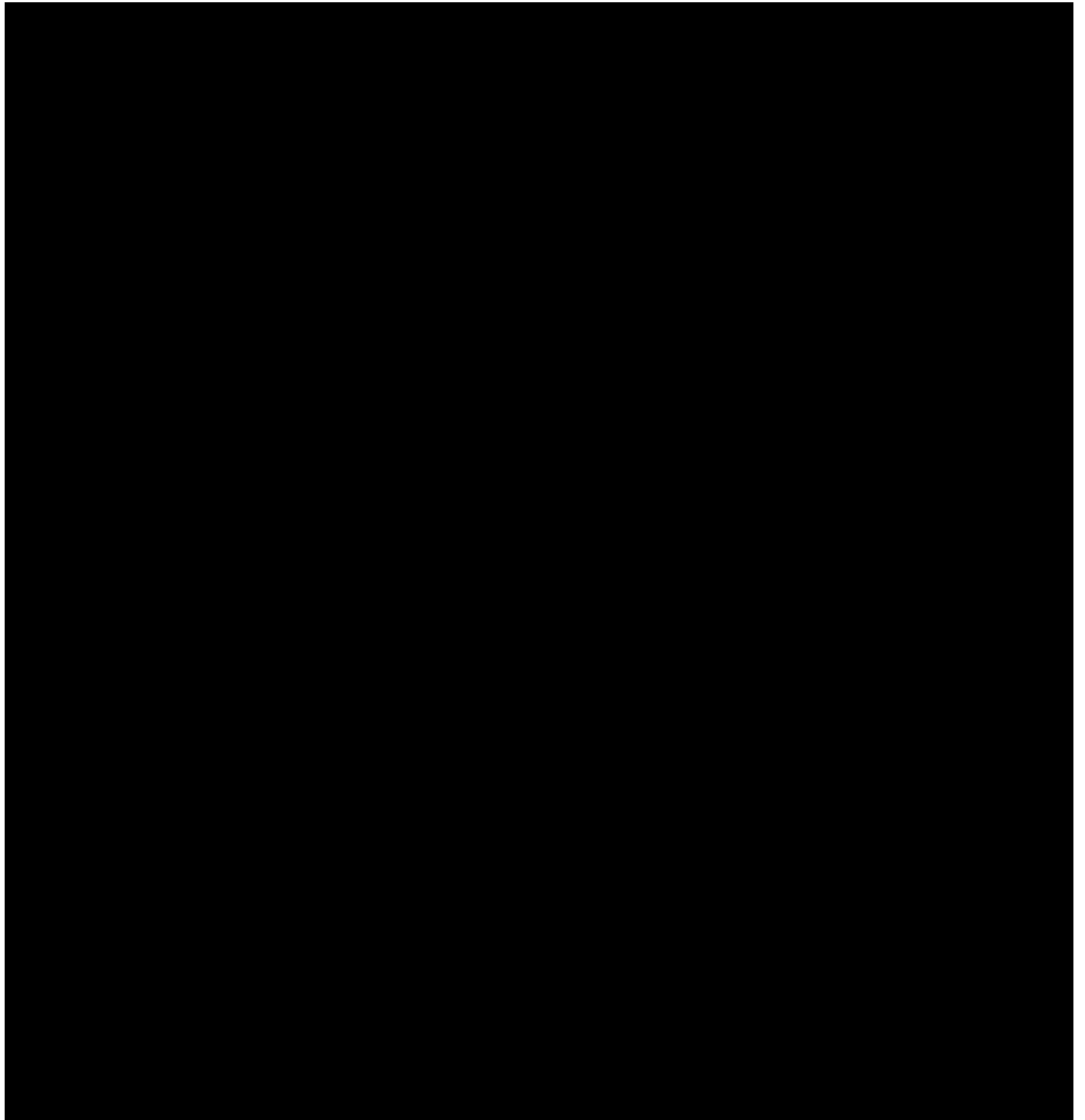


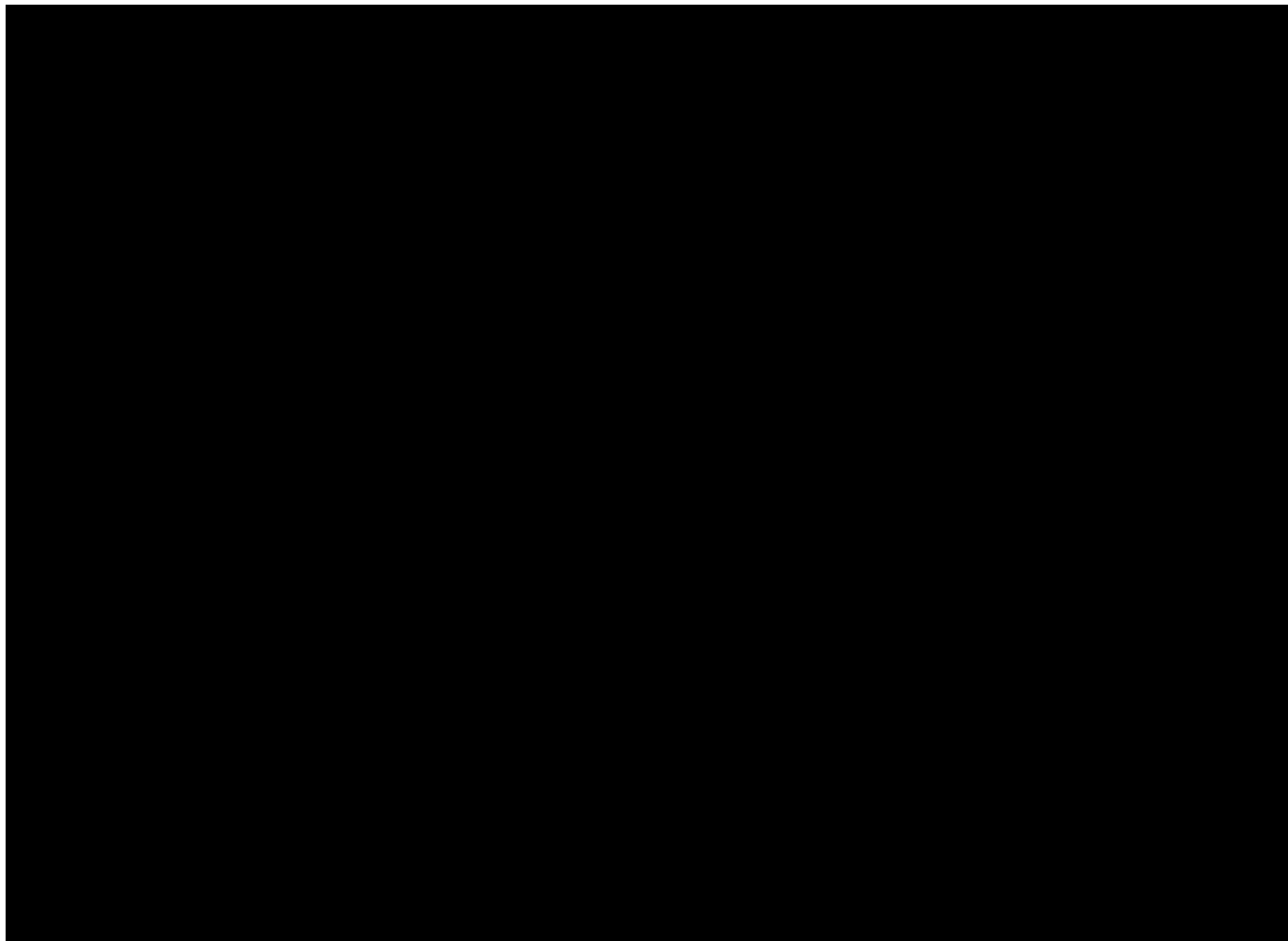


**U.S. Department of Justice**  
Criminal Division

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*Washington, D.C. 20530*





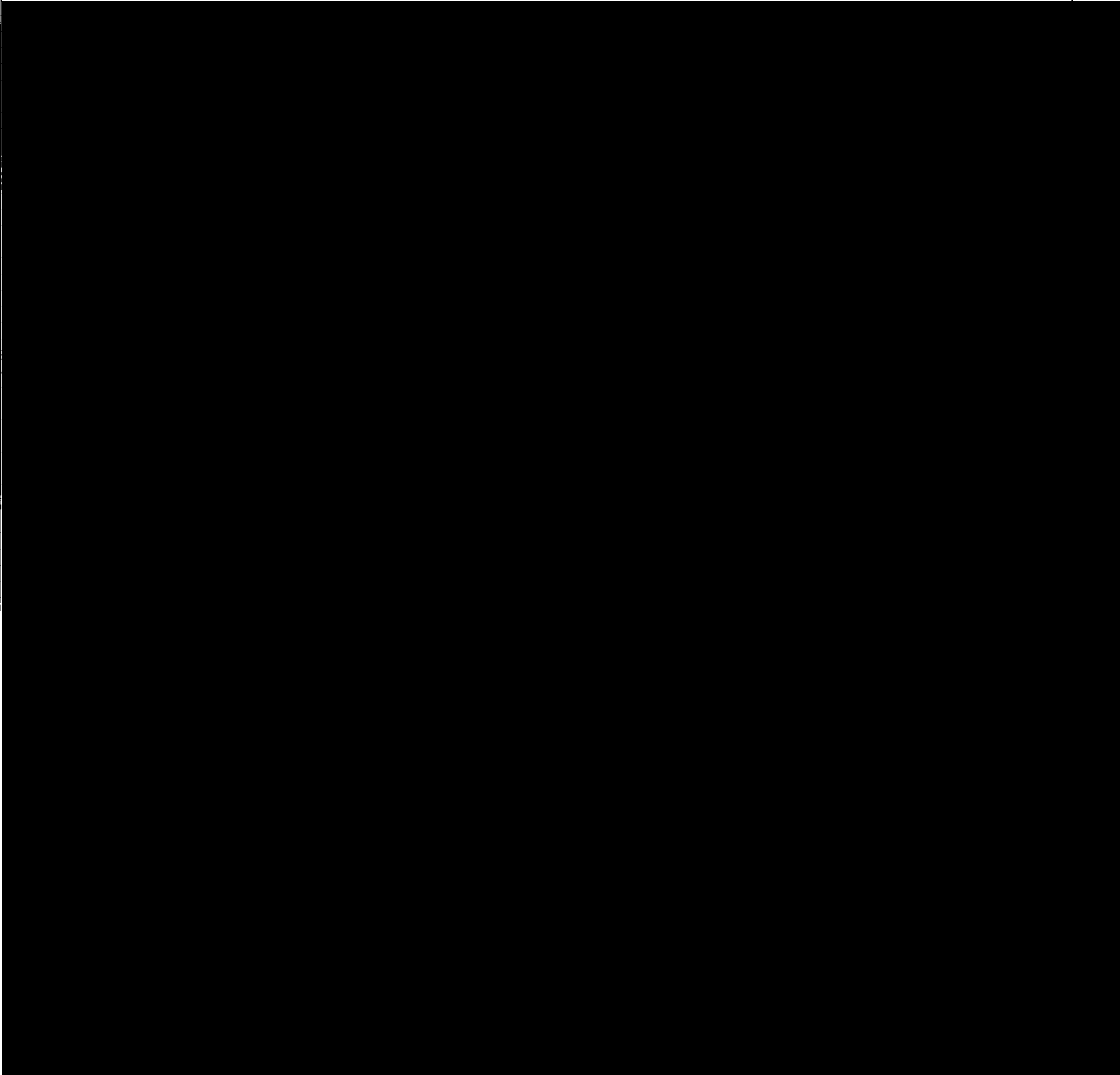


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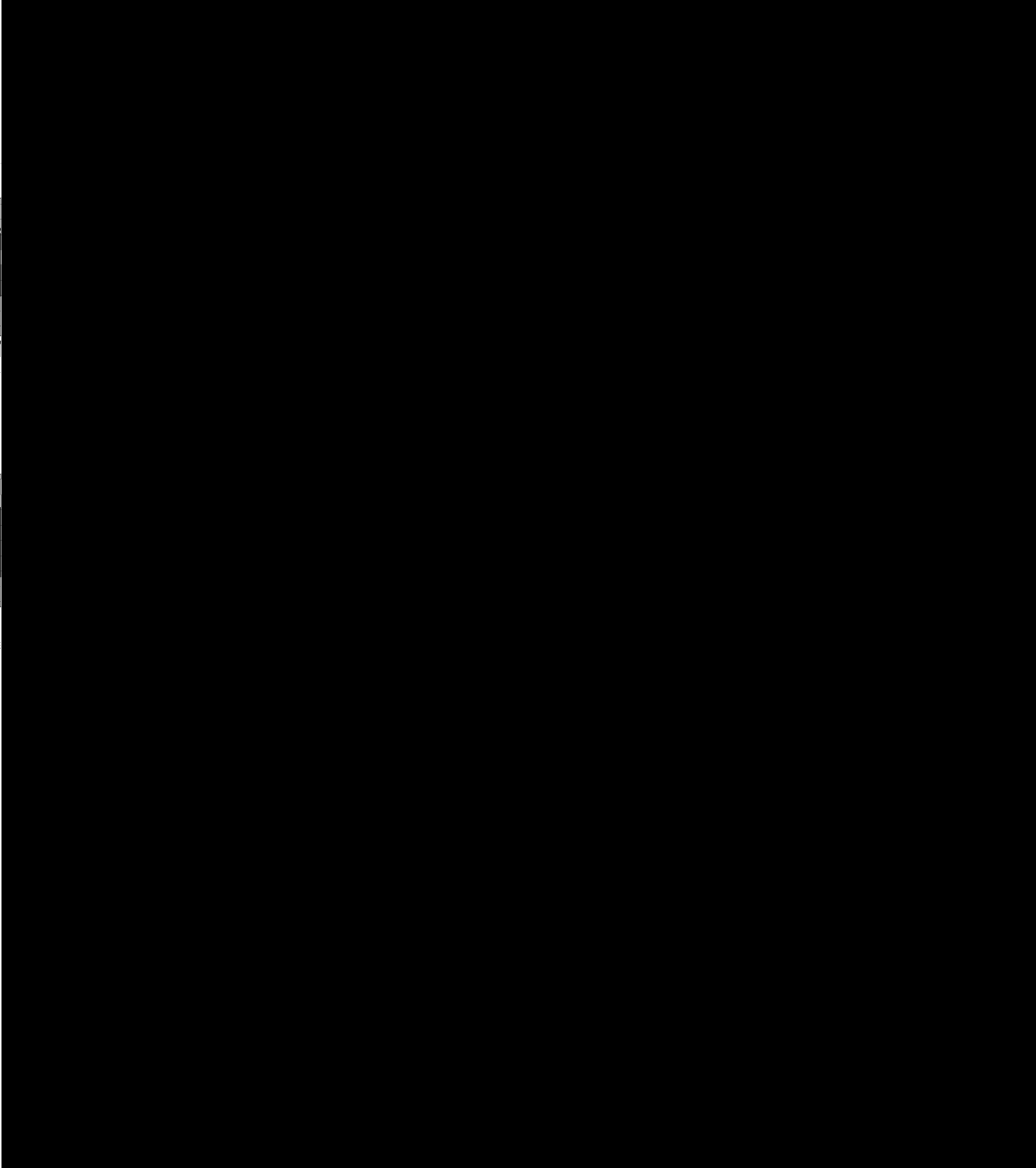
**EXHIBIT B**

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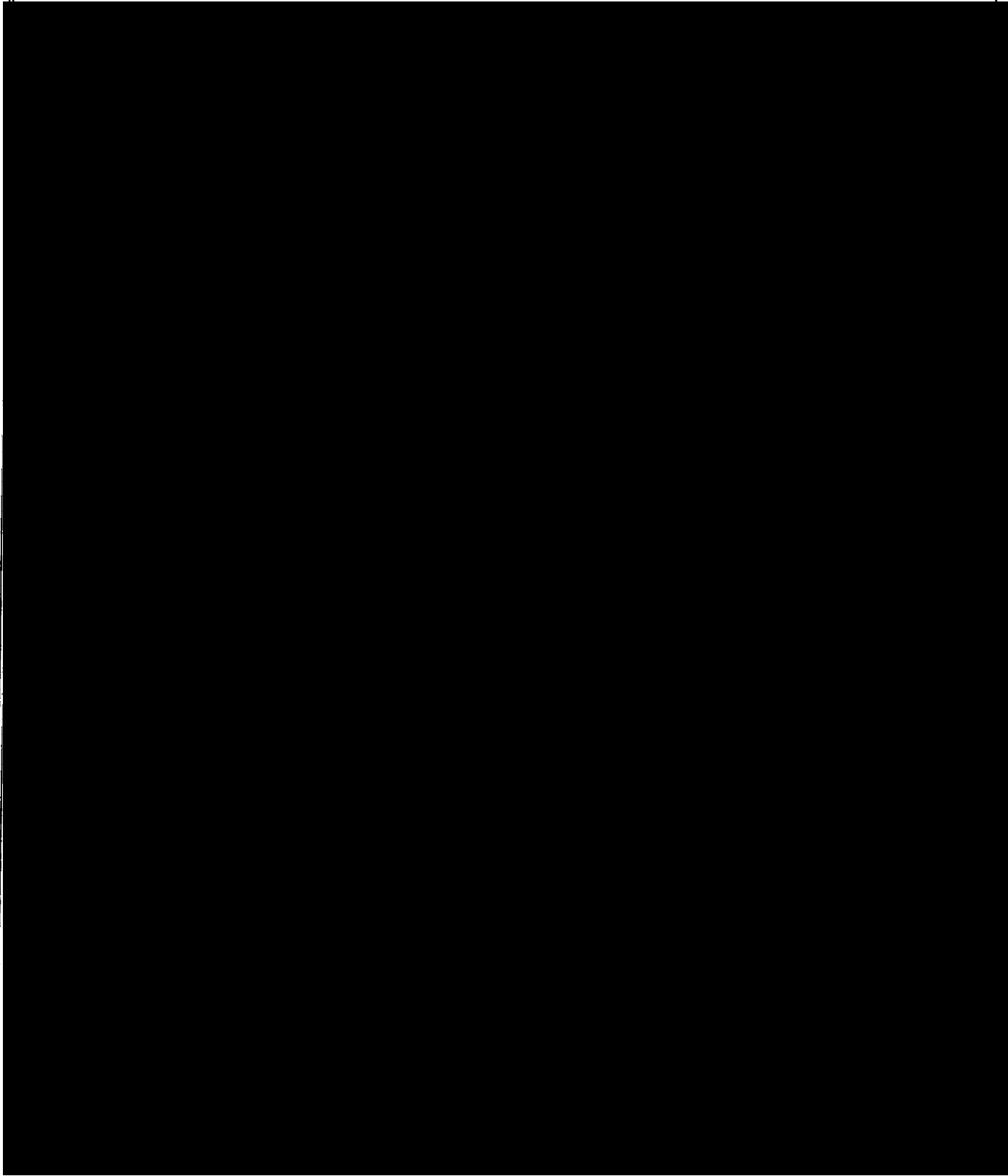
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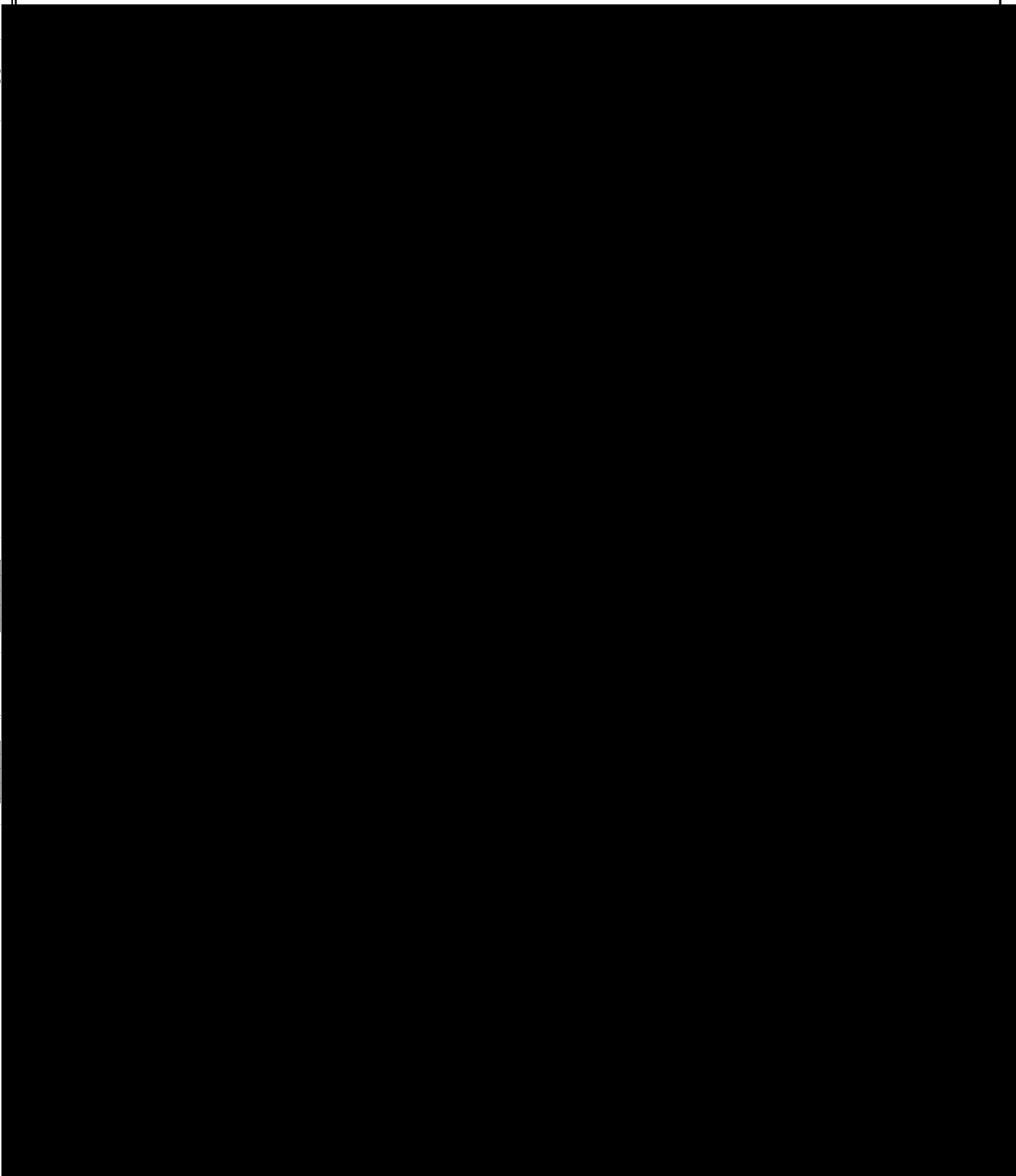
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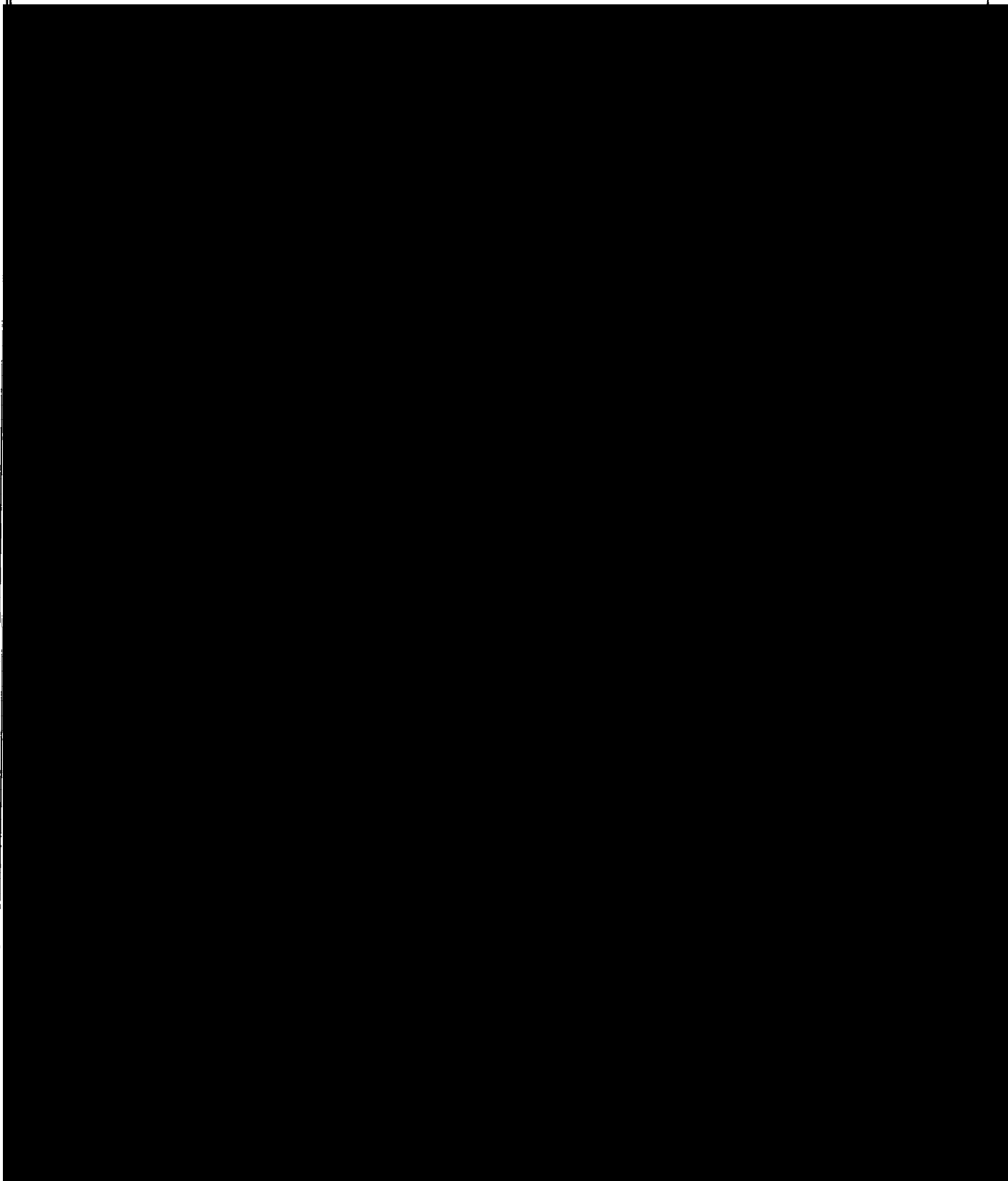
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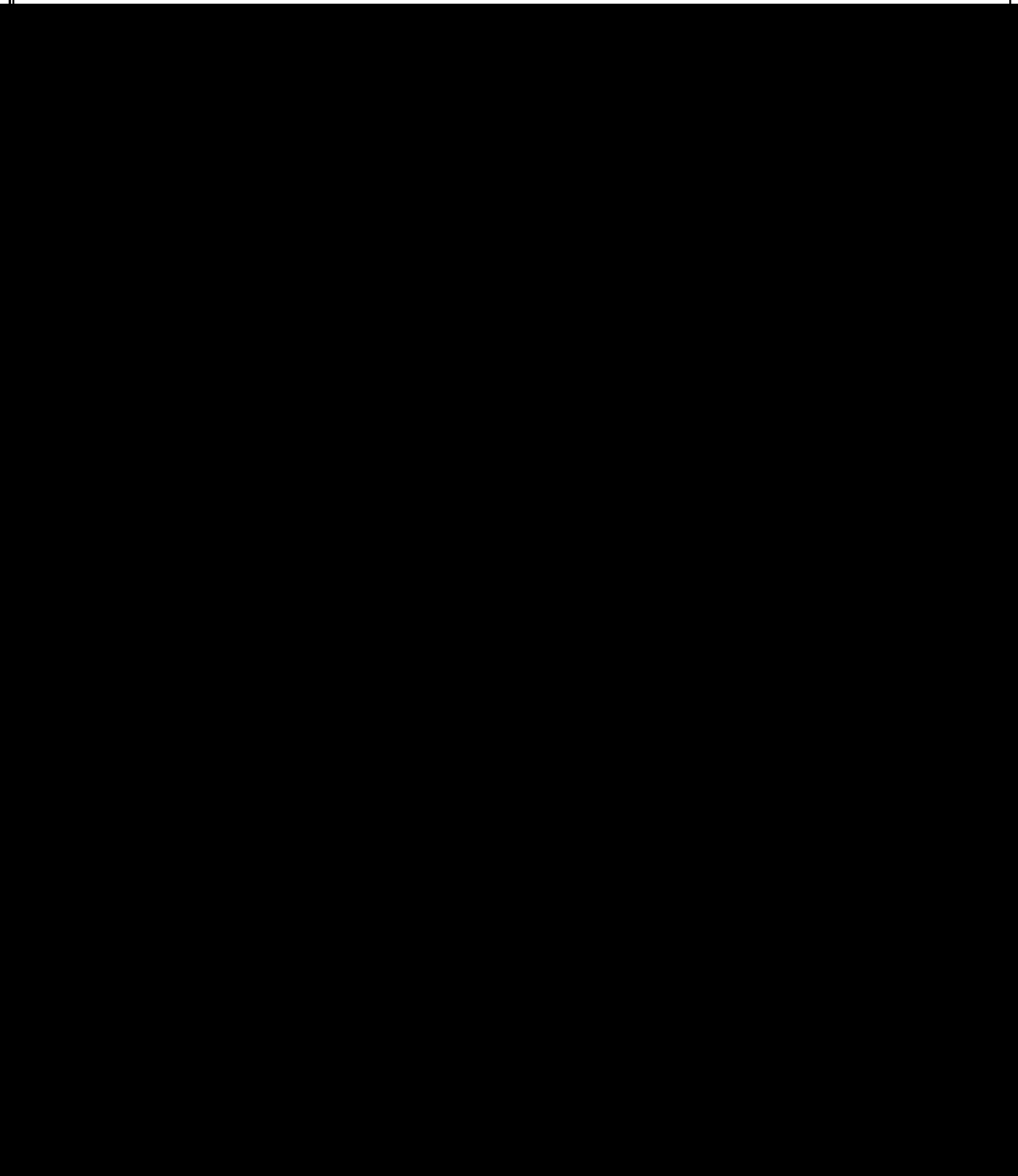
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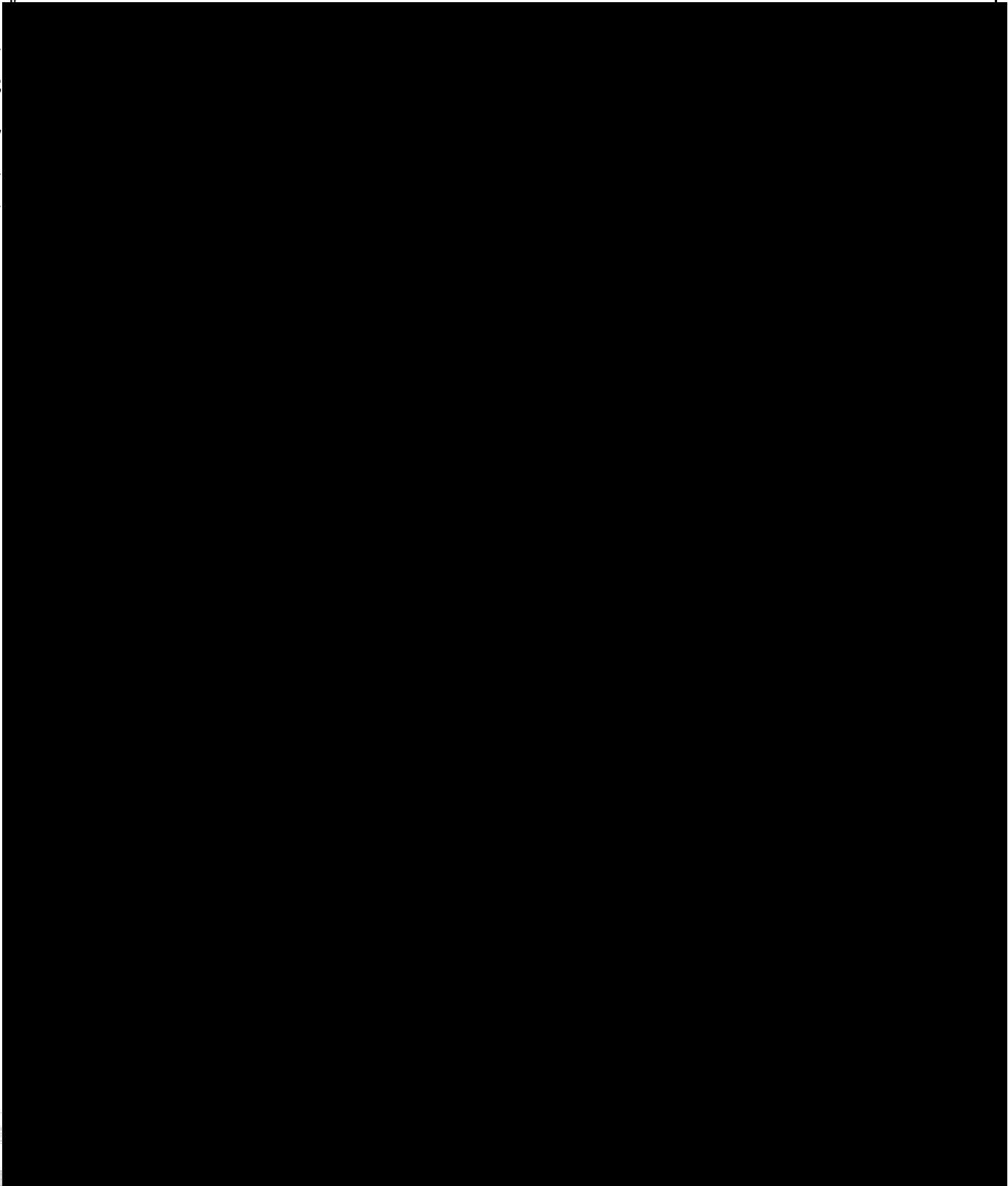
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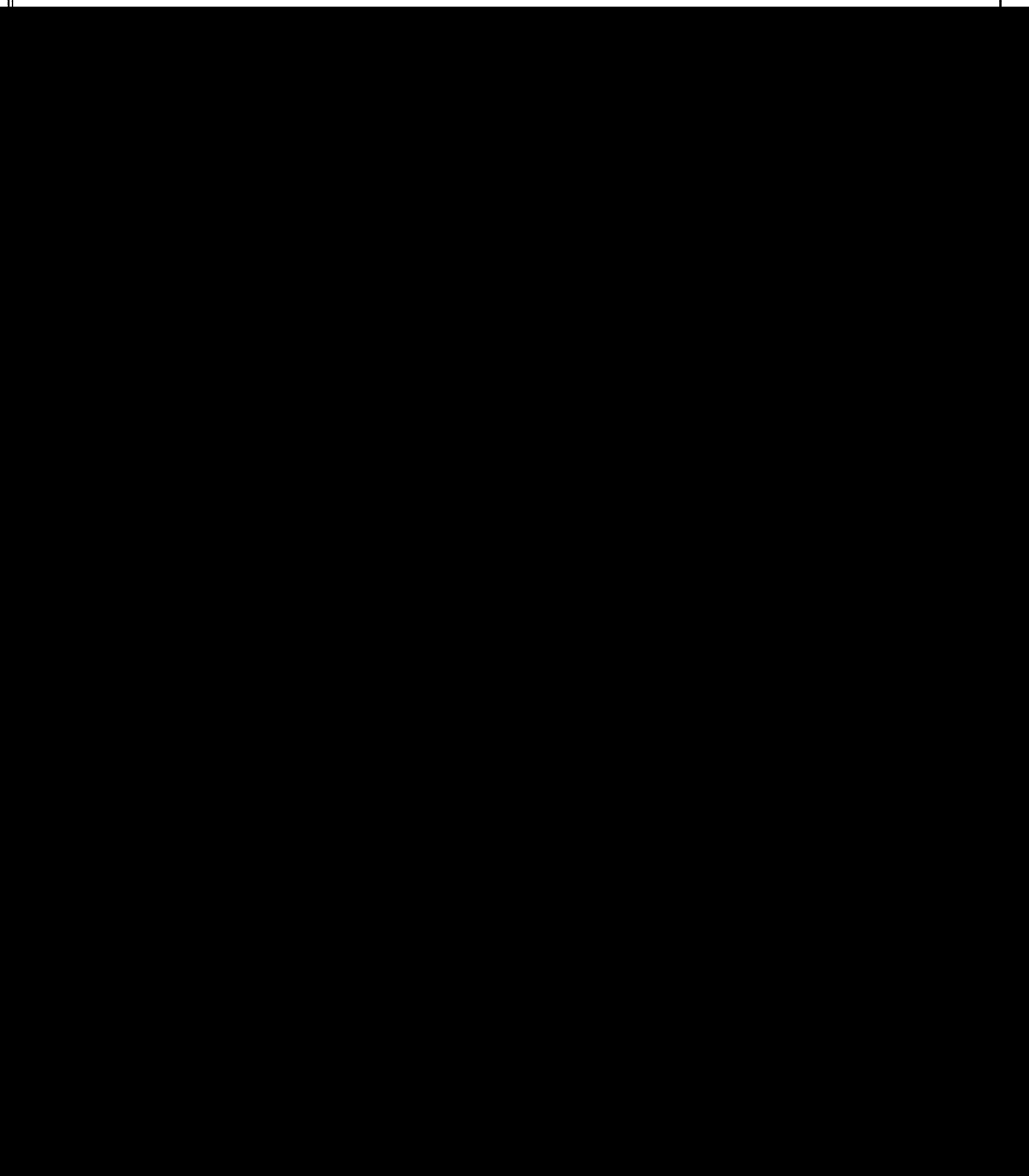


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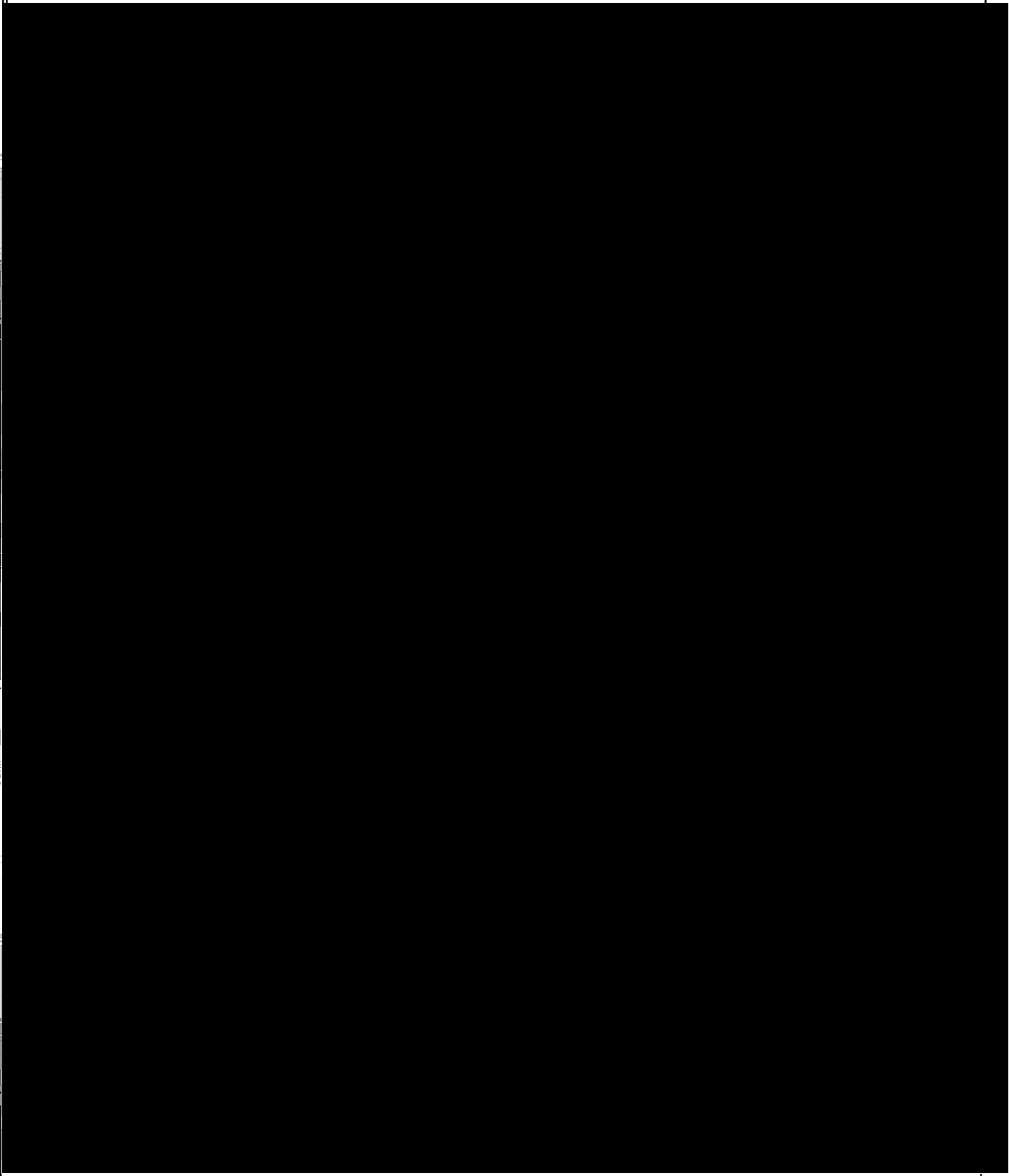


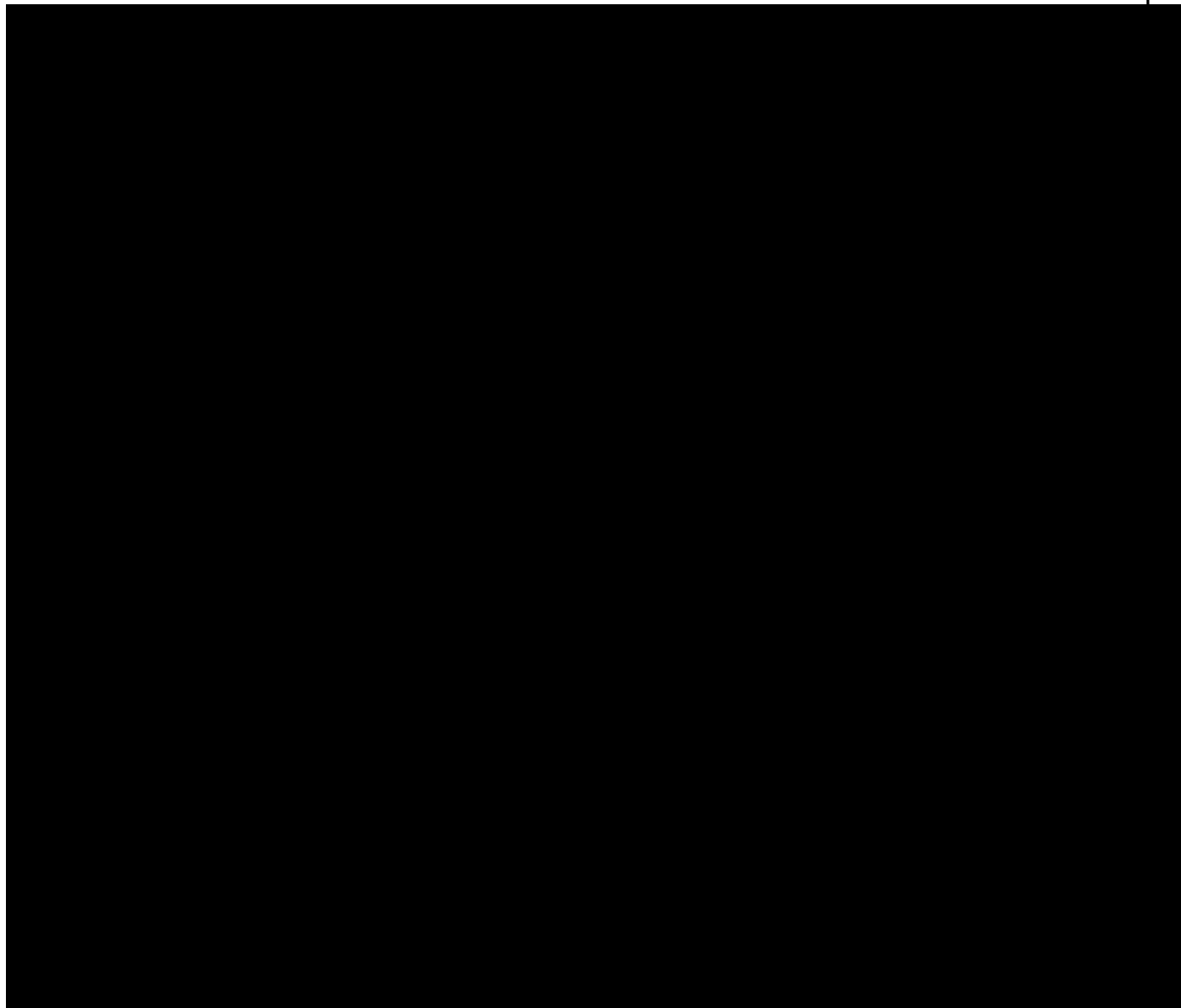


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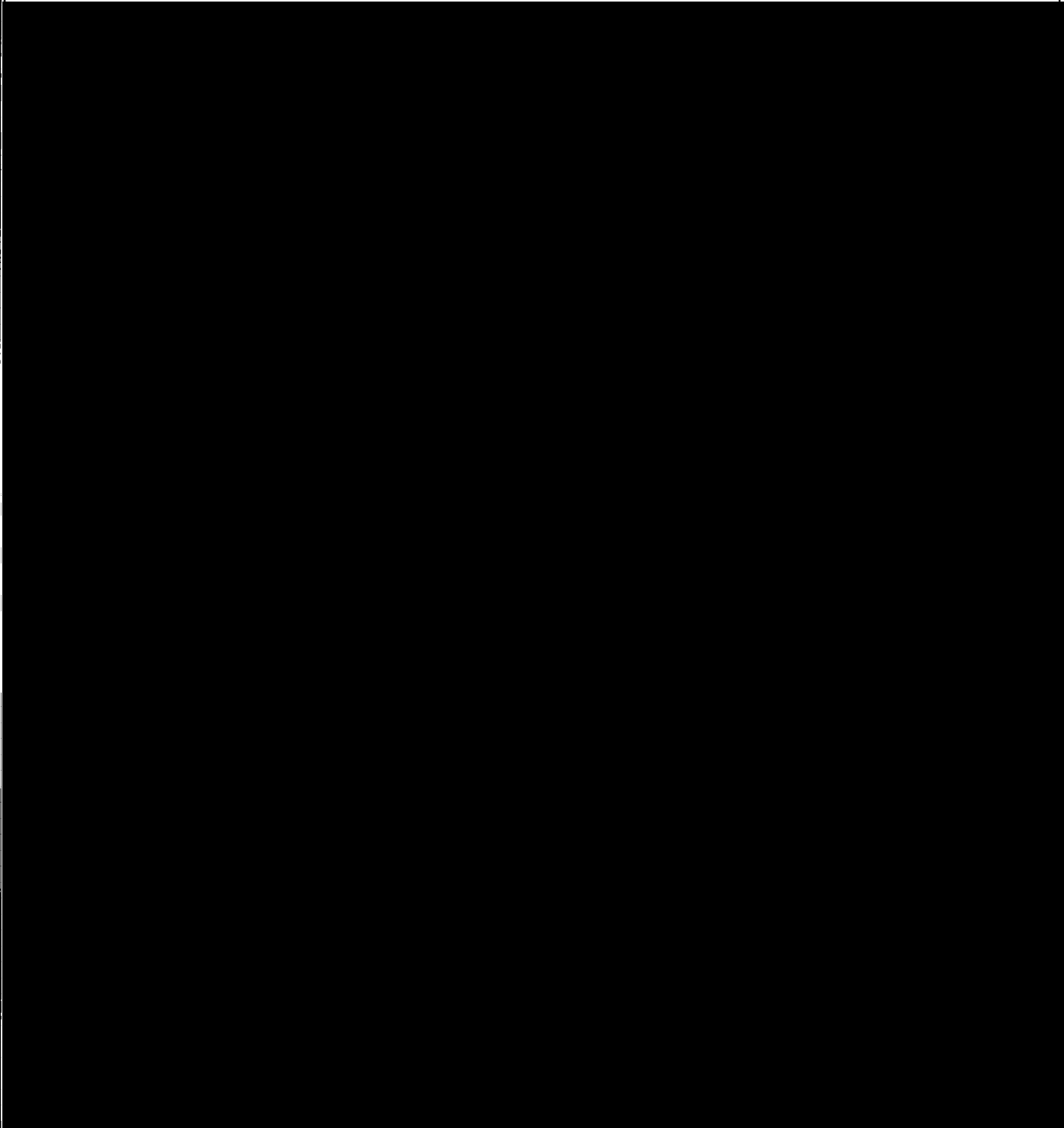
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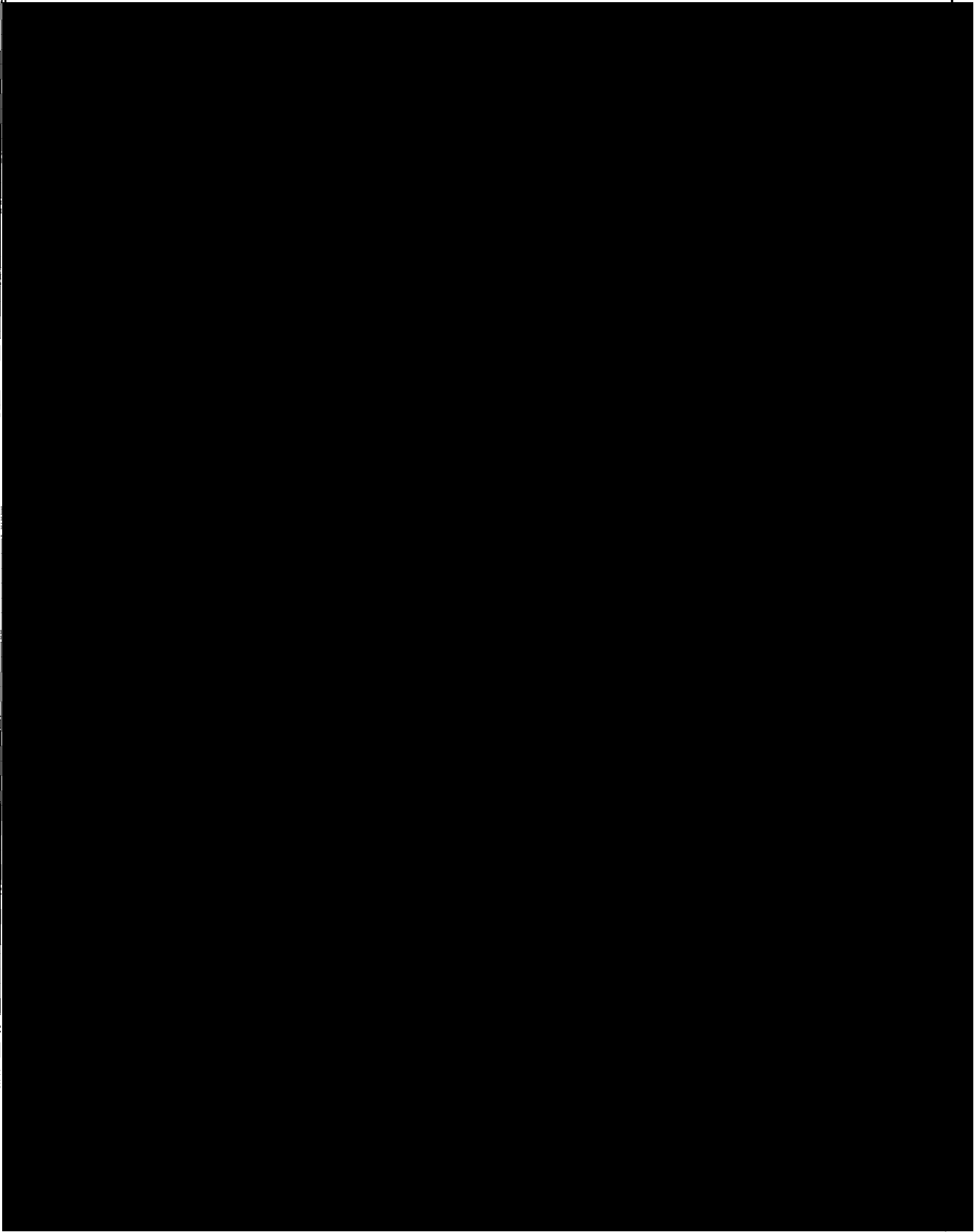


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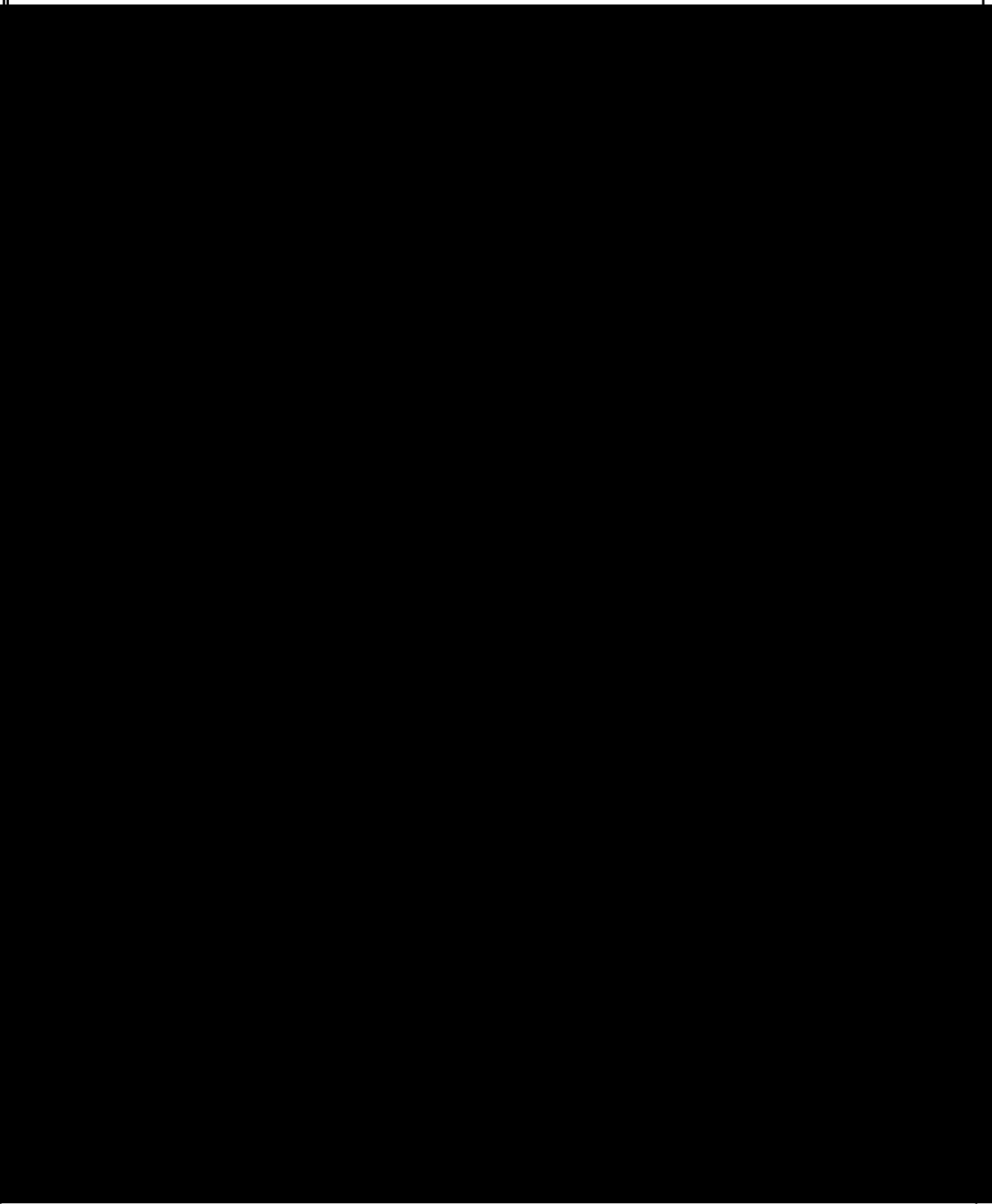
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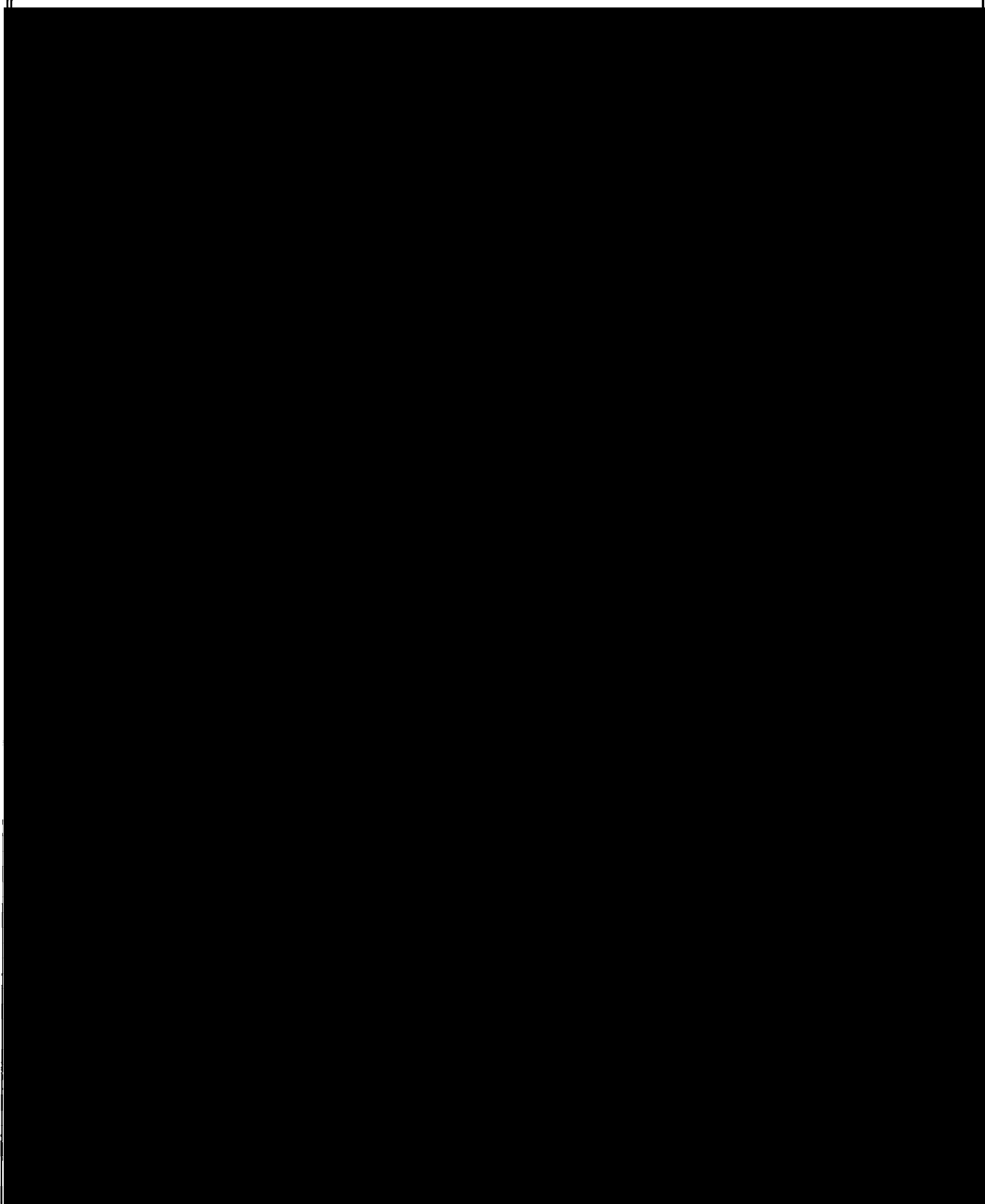
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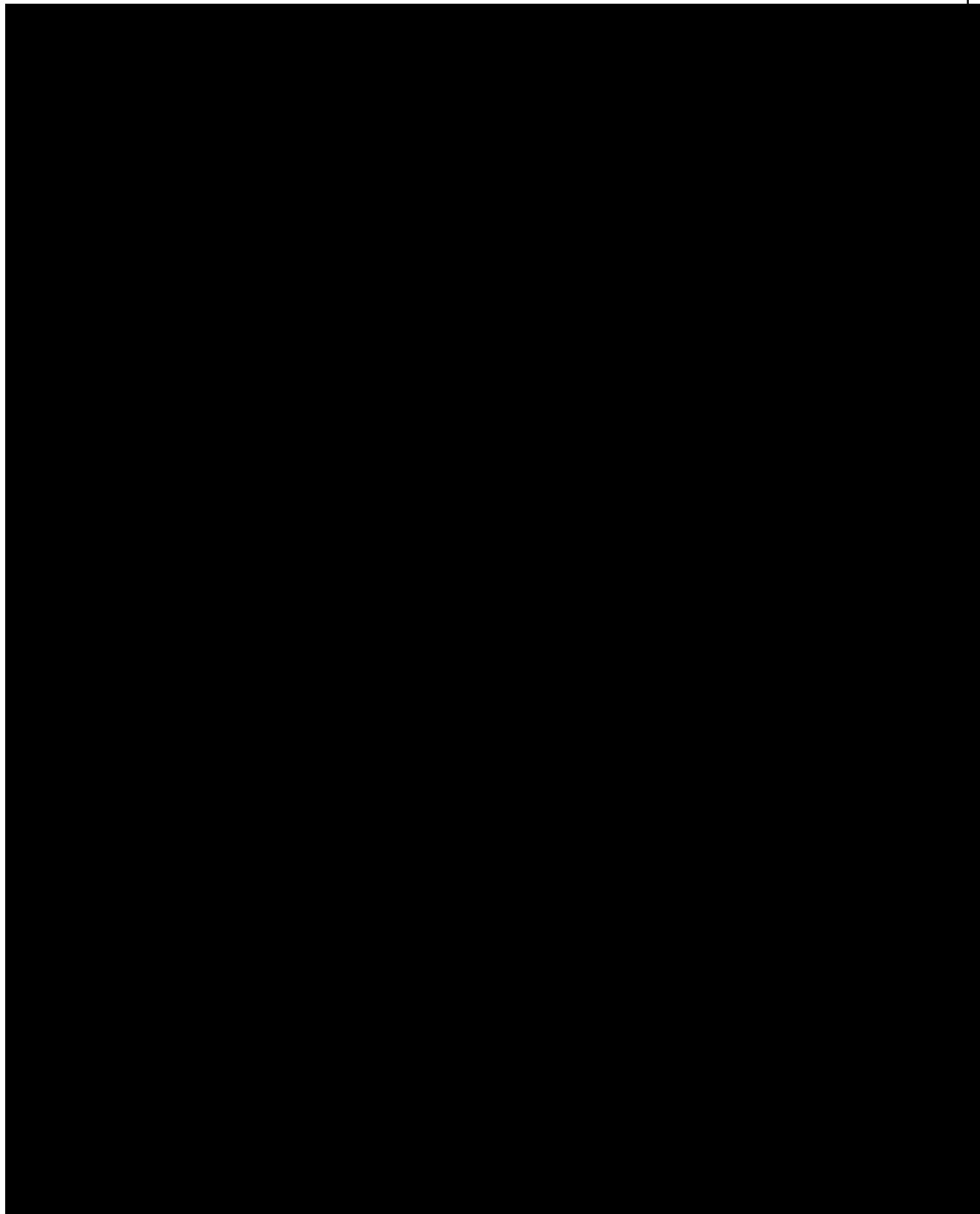
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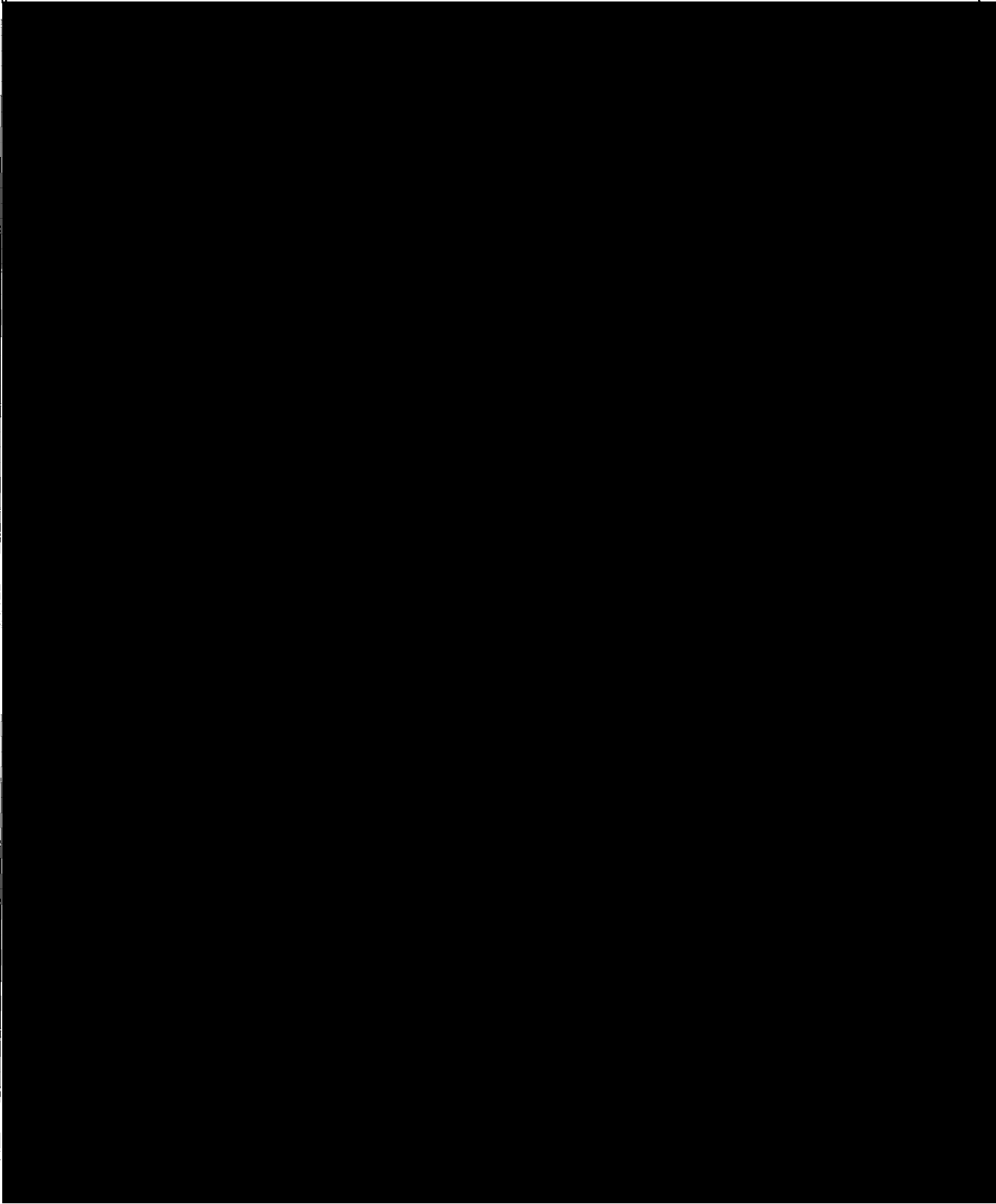


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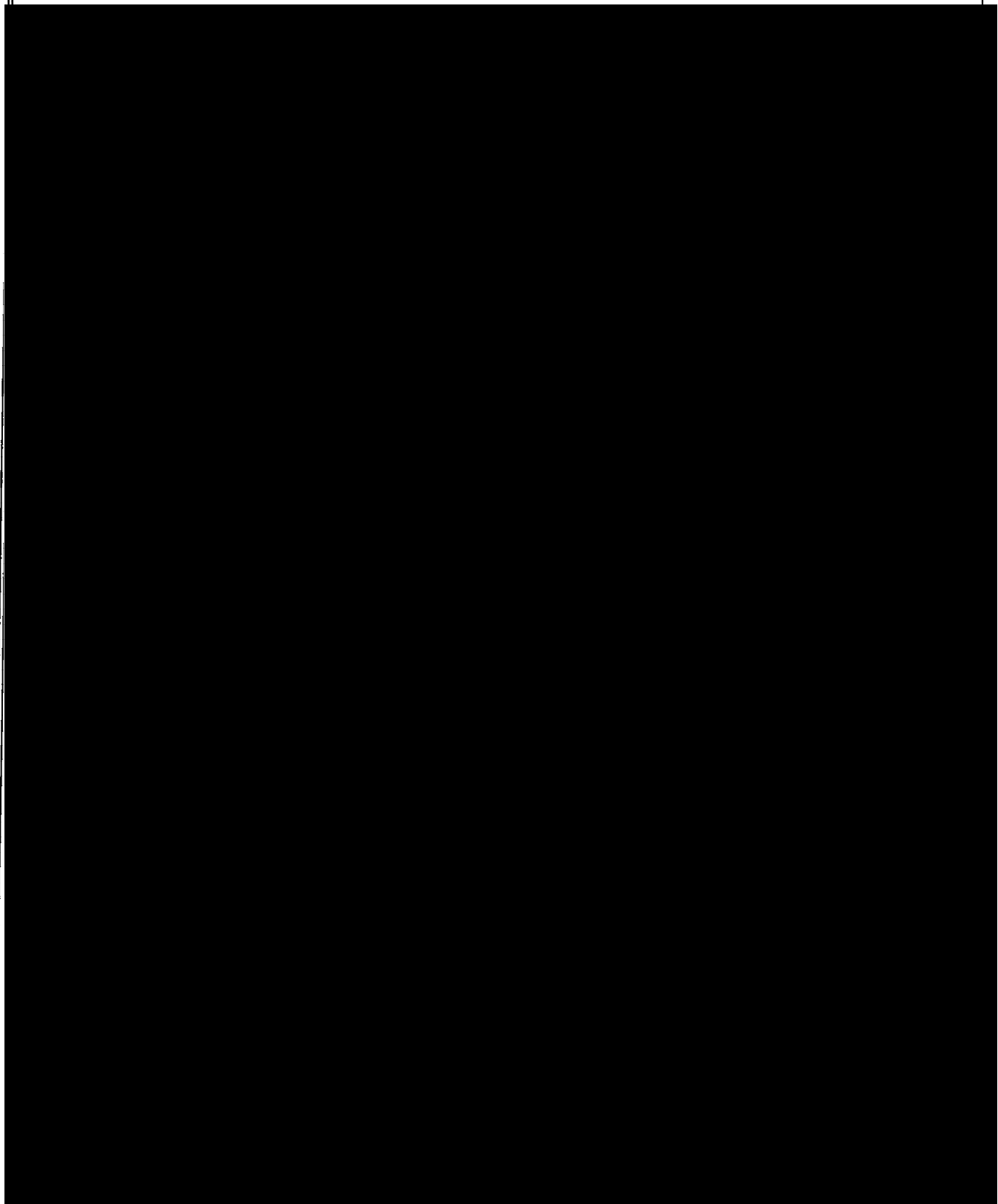




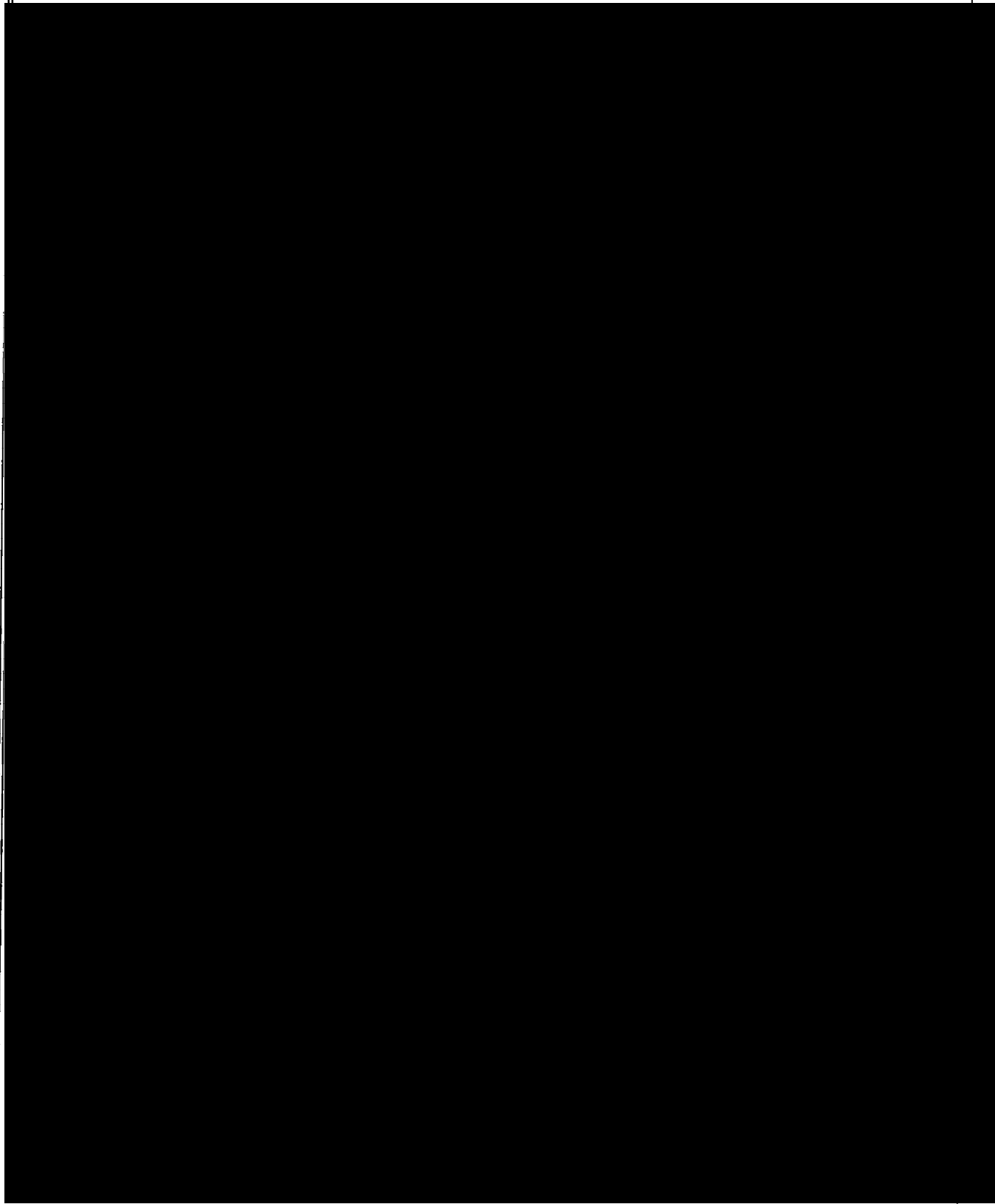
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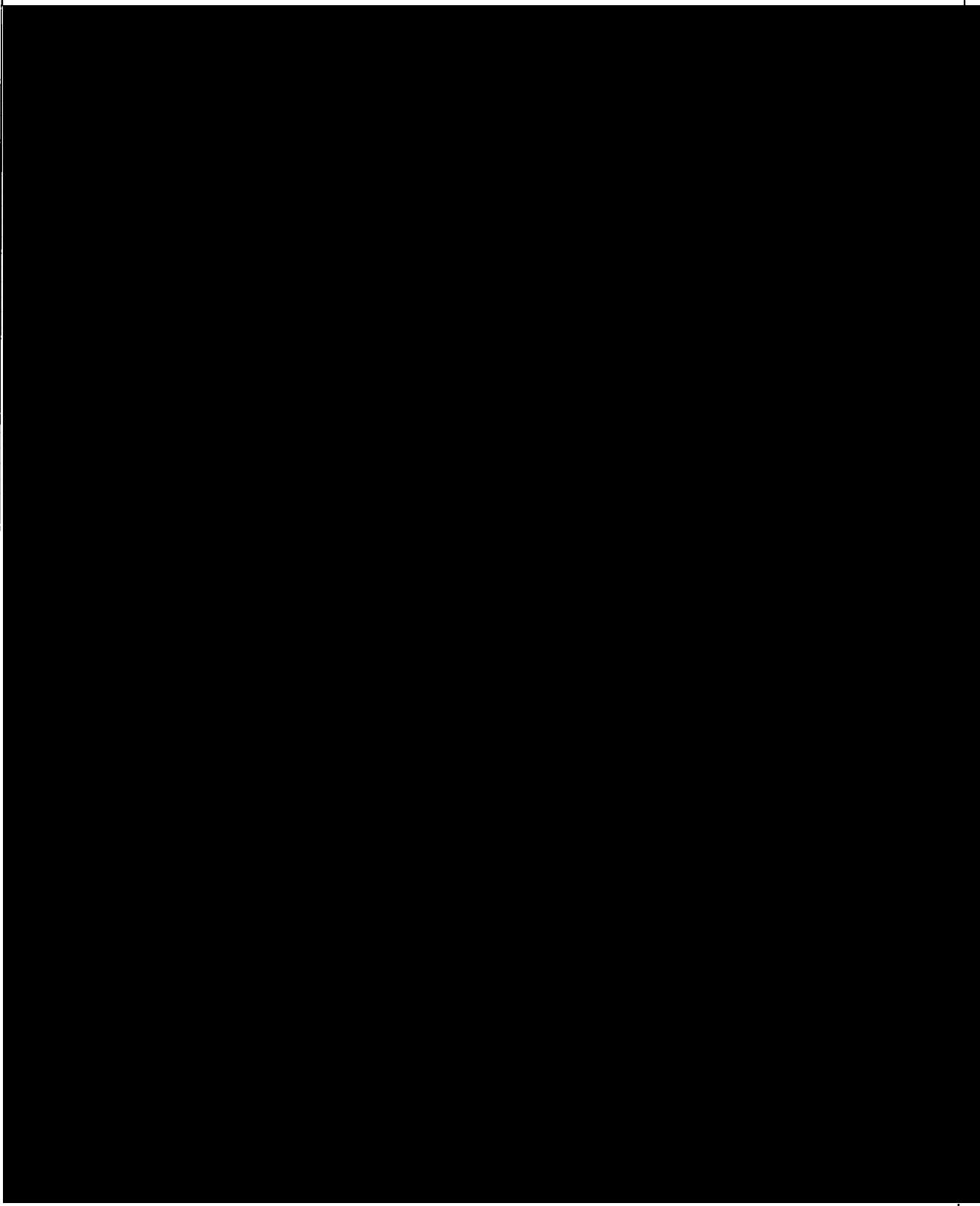
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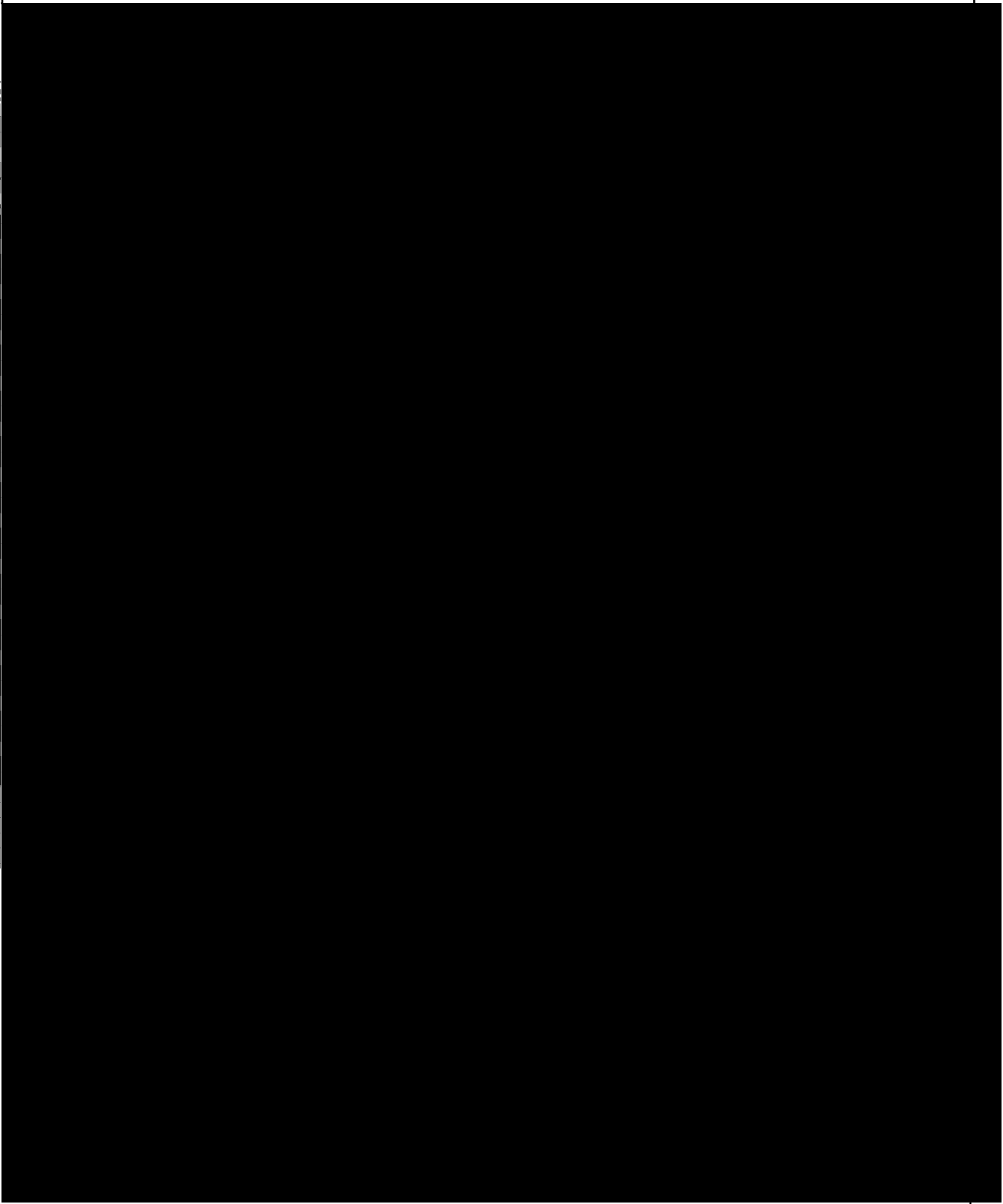
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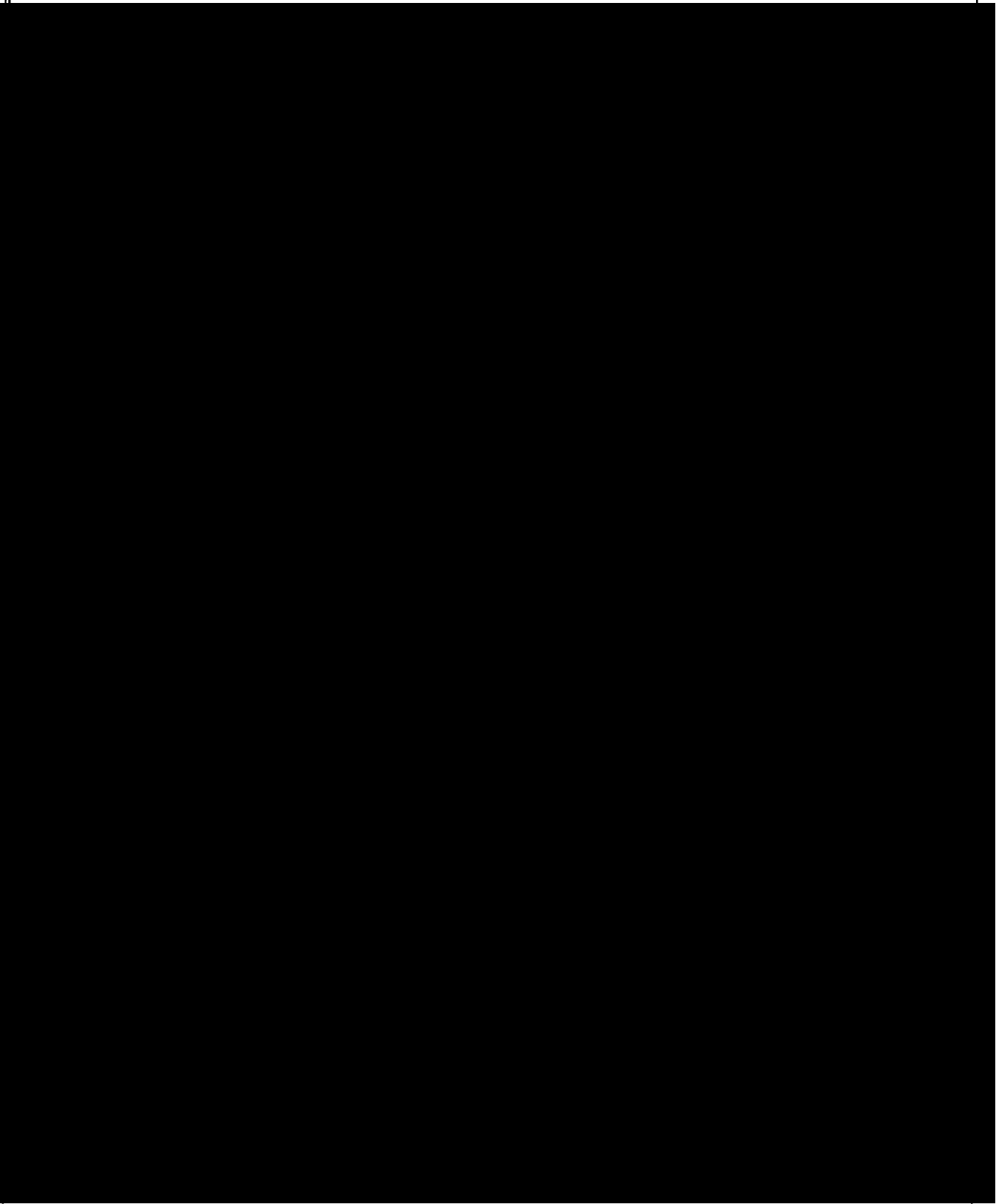
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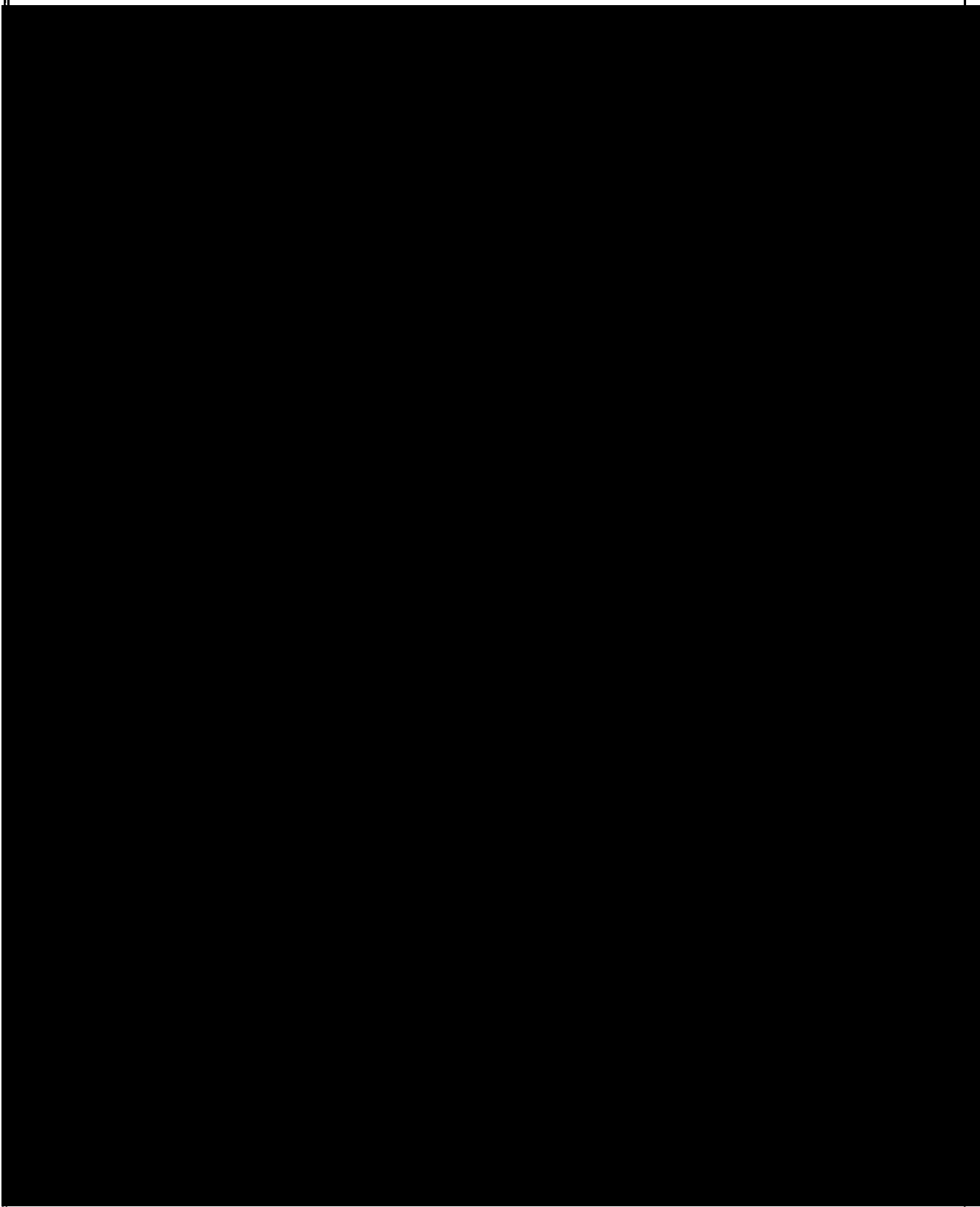
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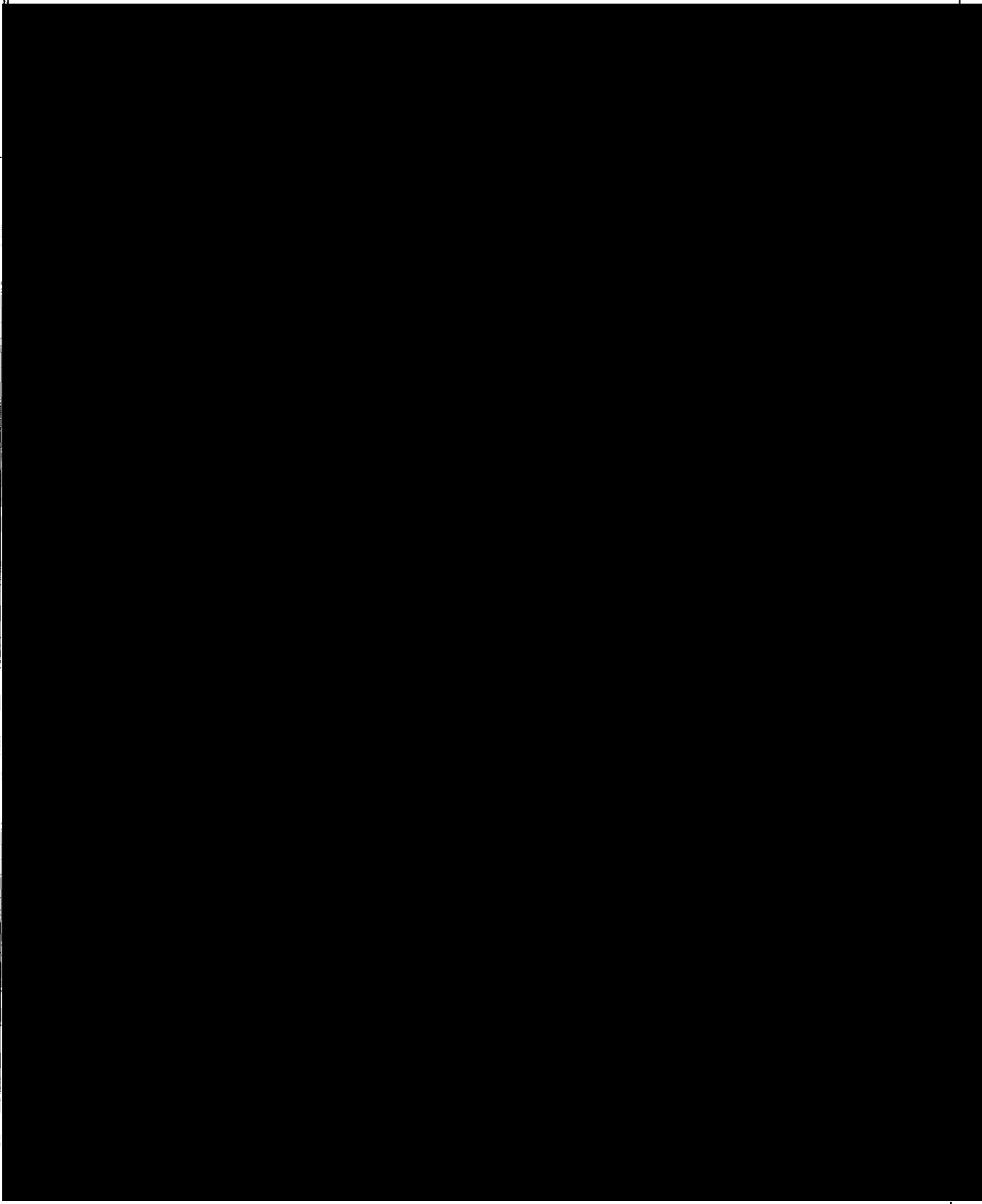
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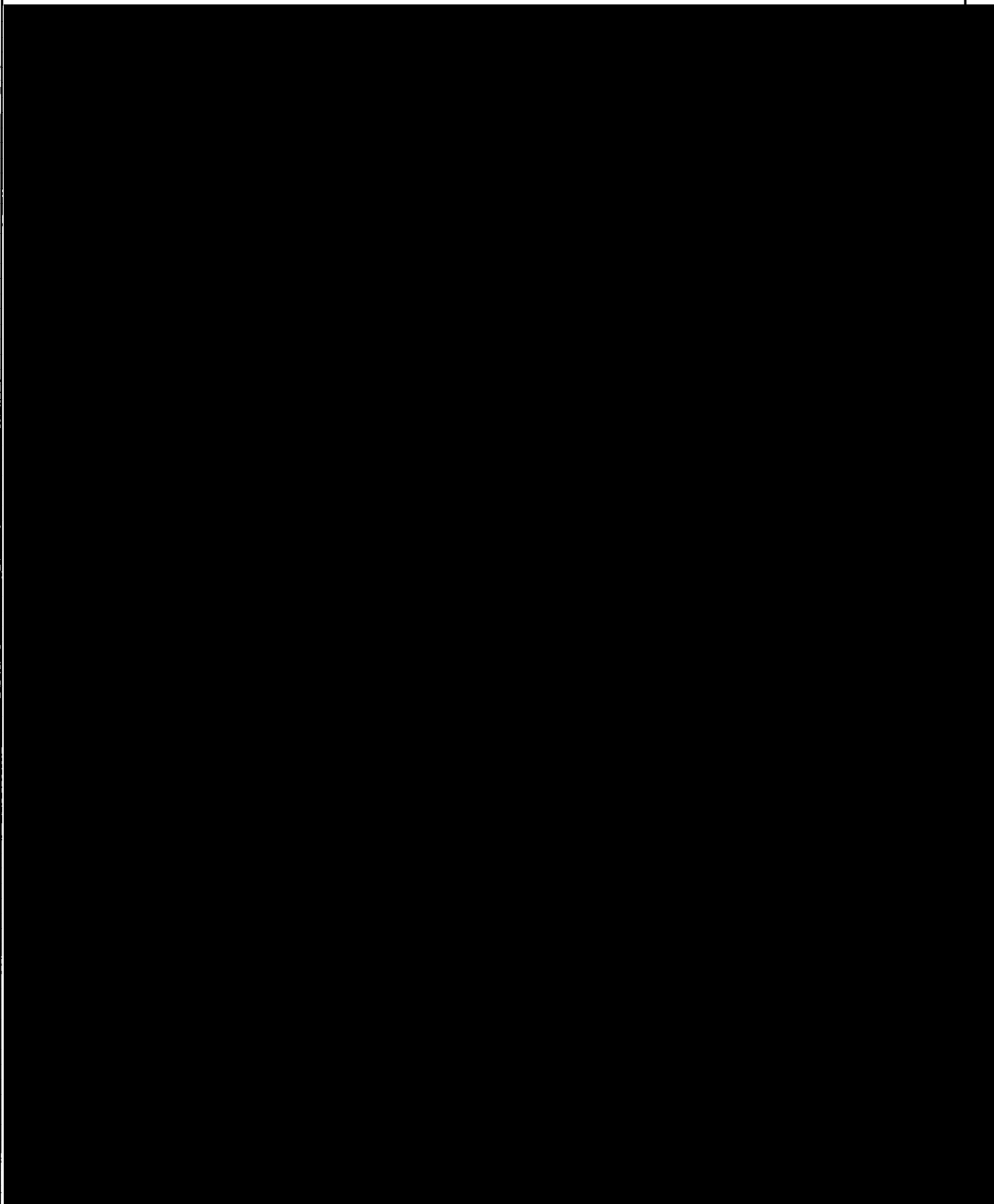


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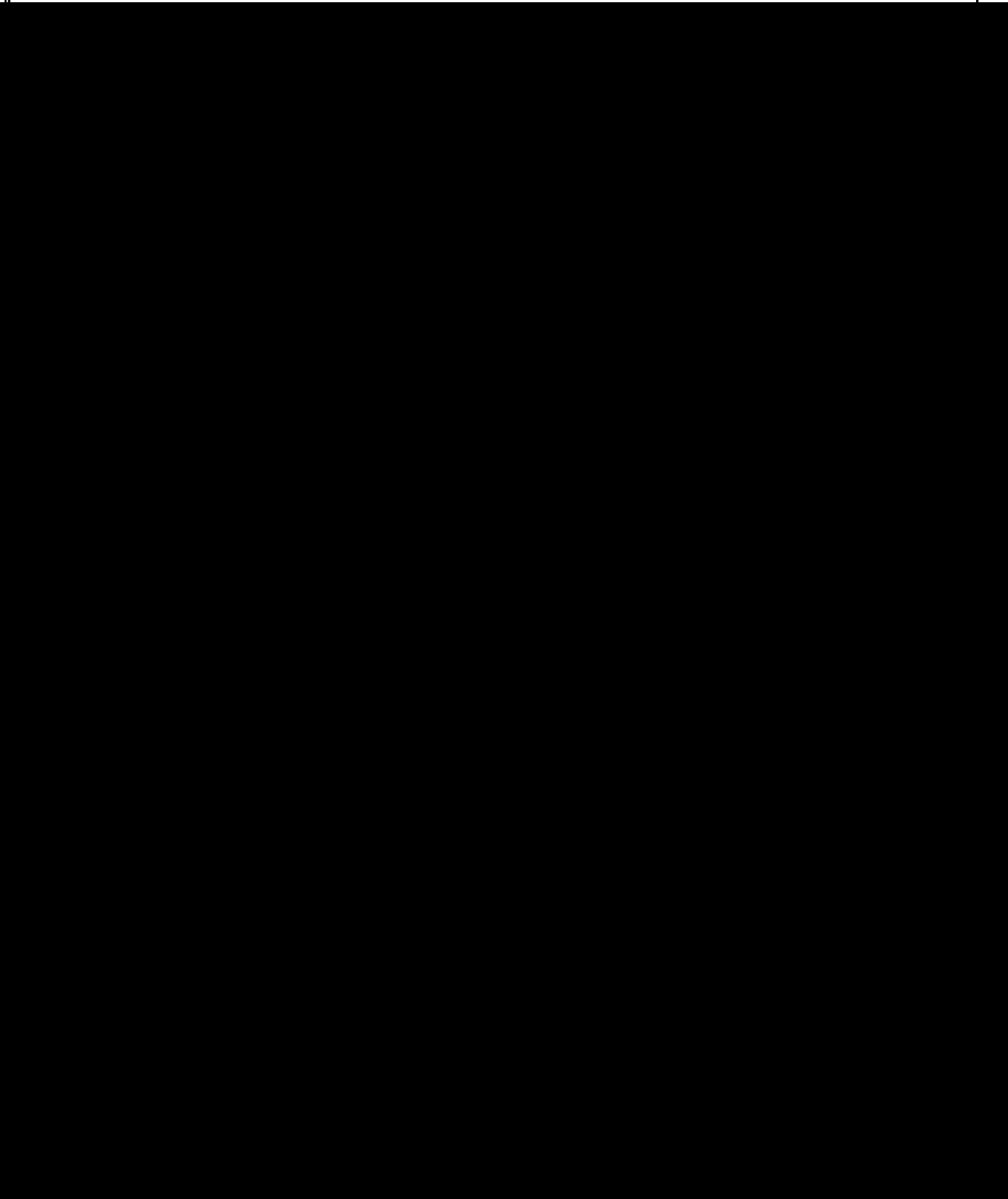




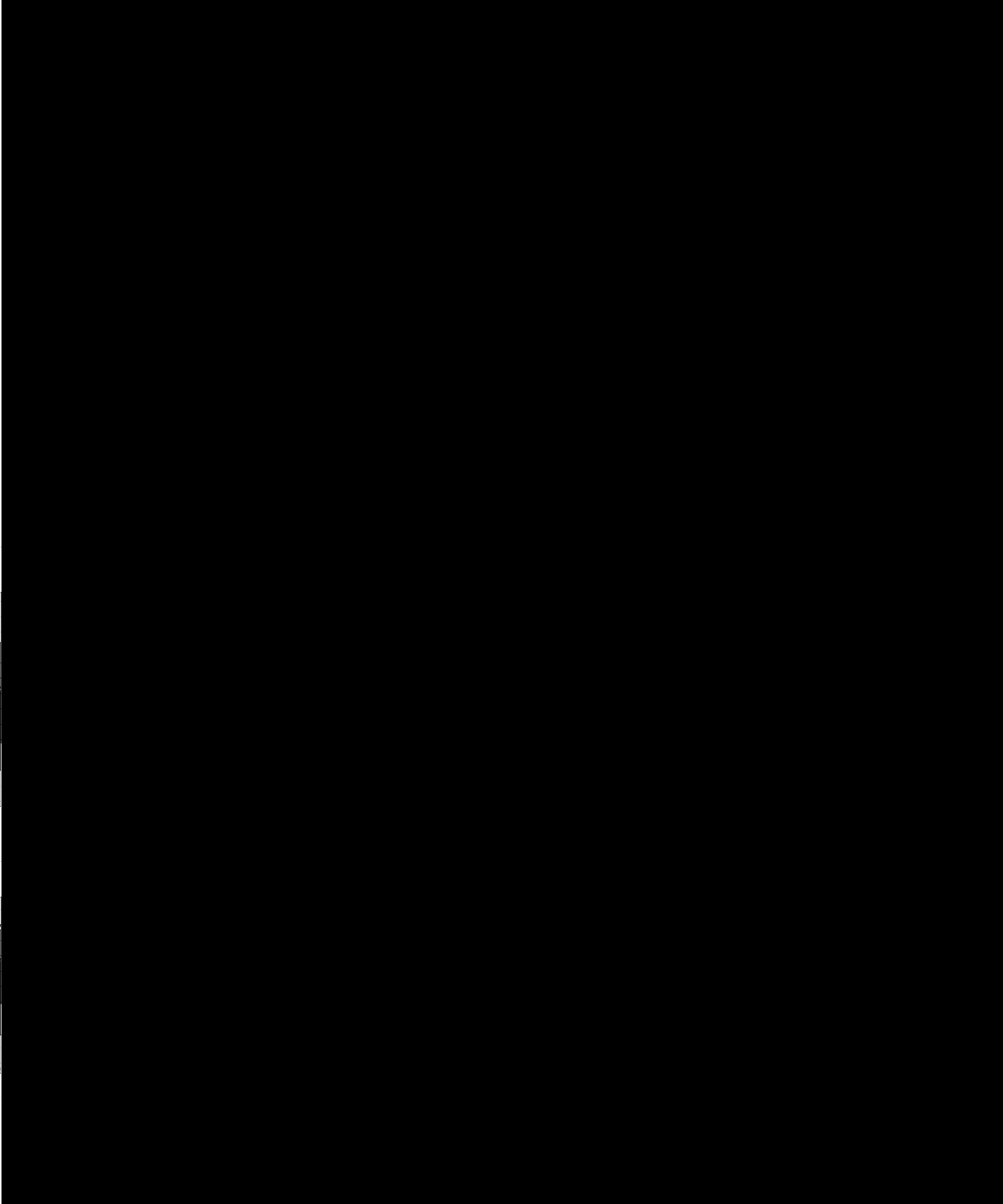
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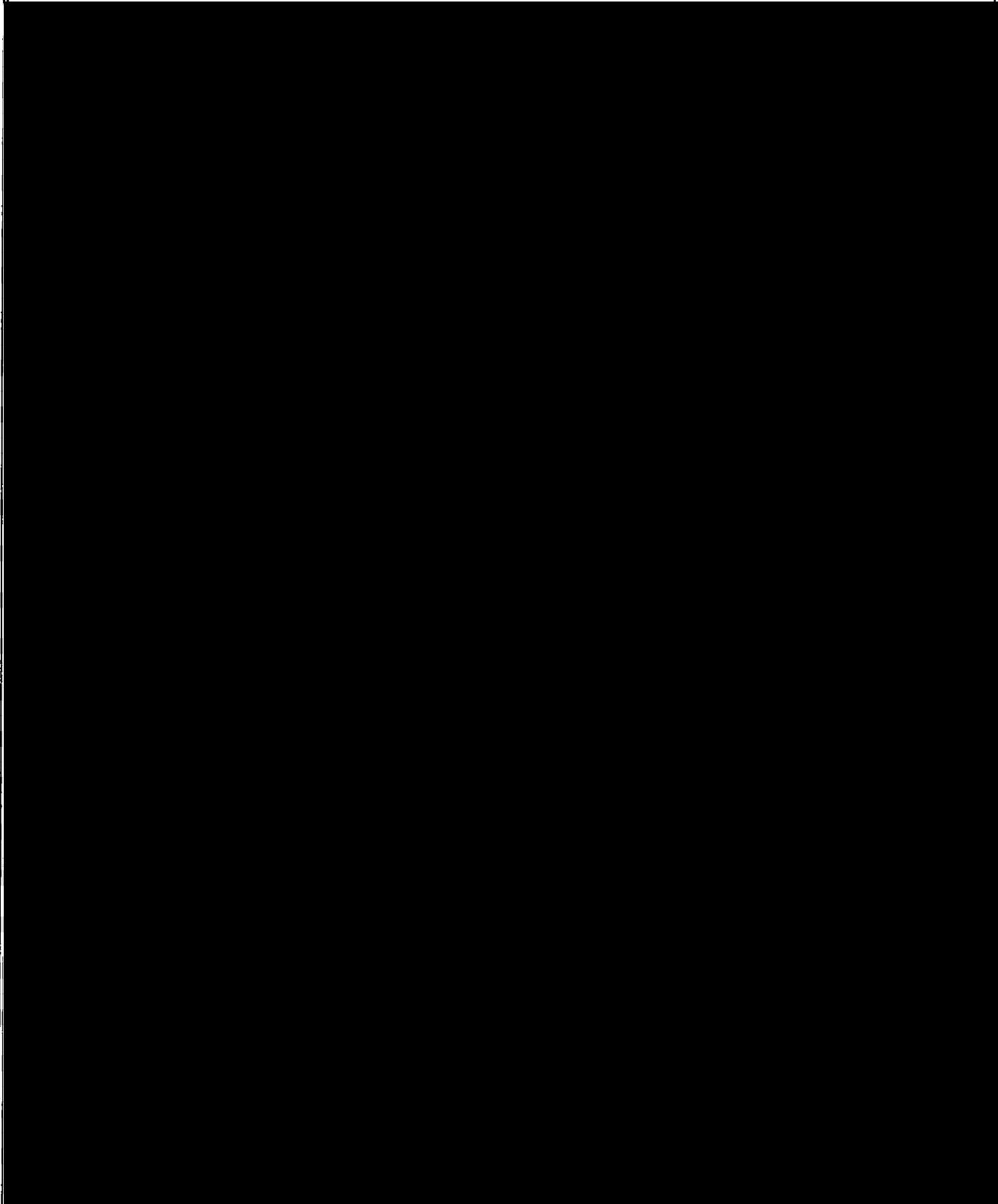
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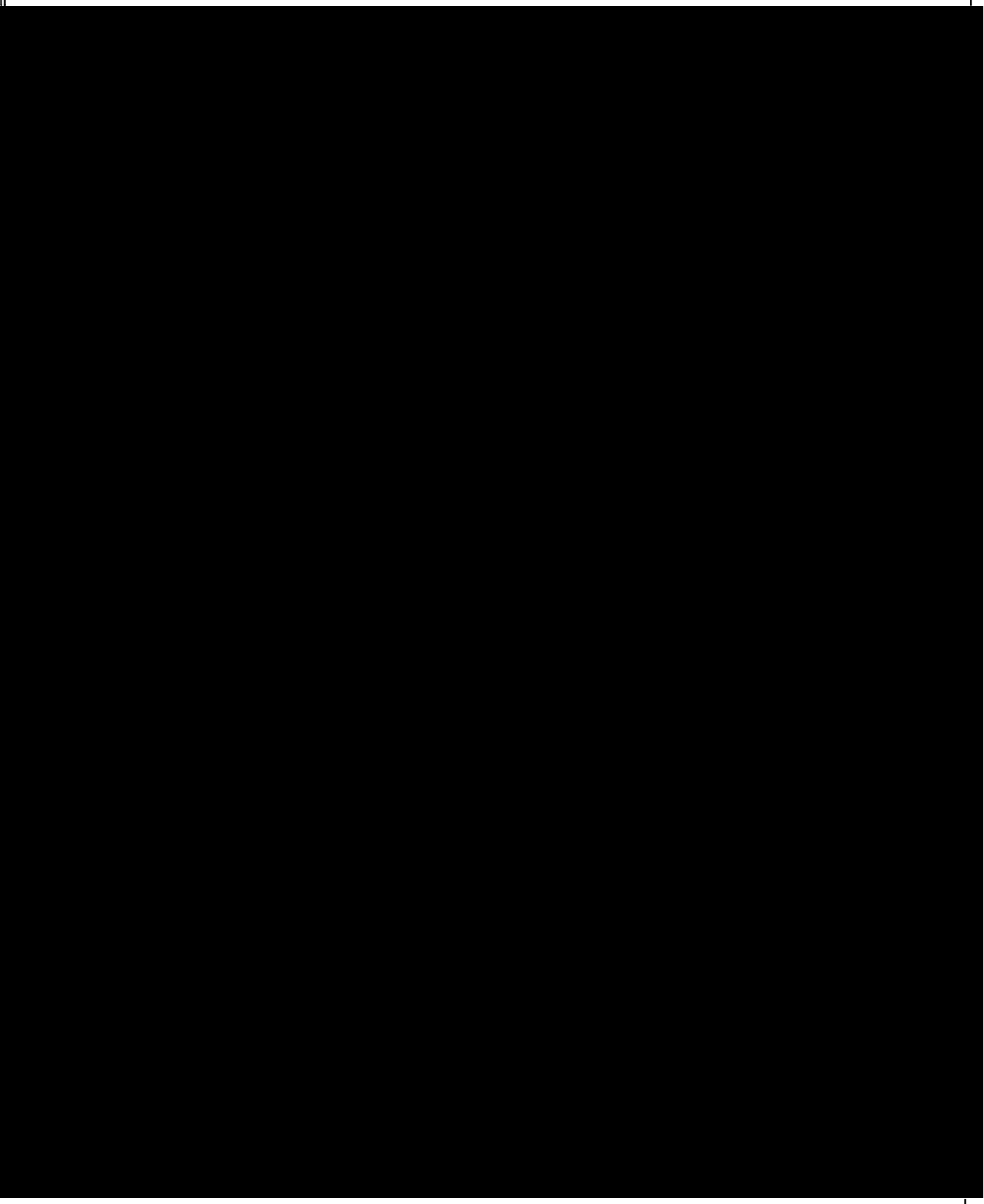
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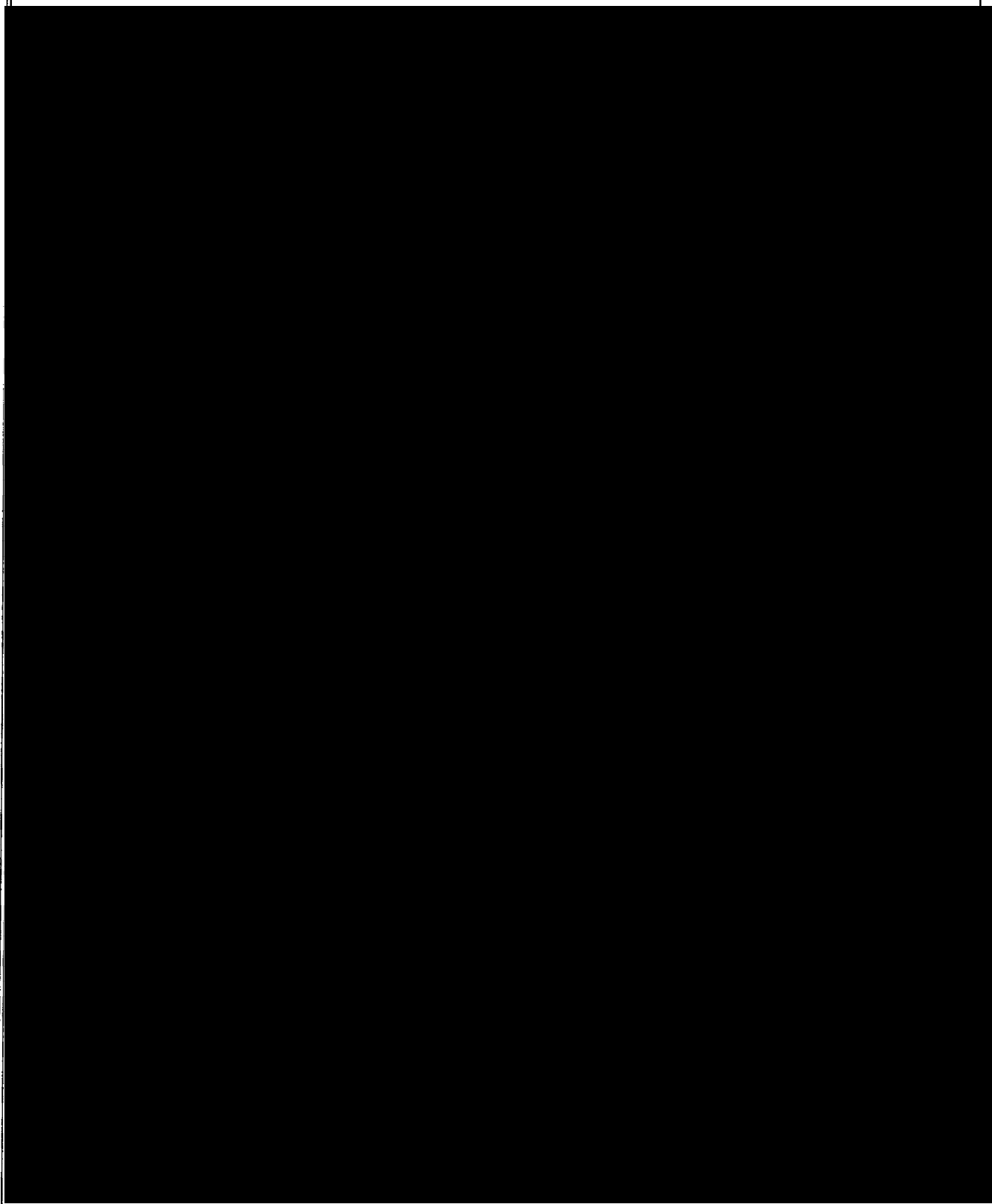
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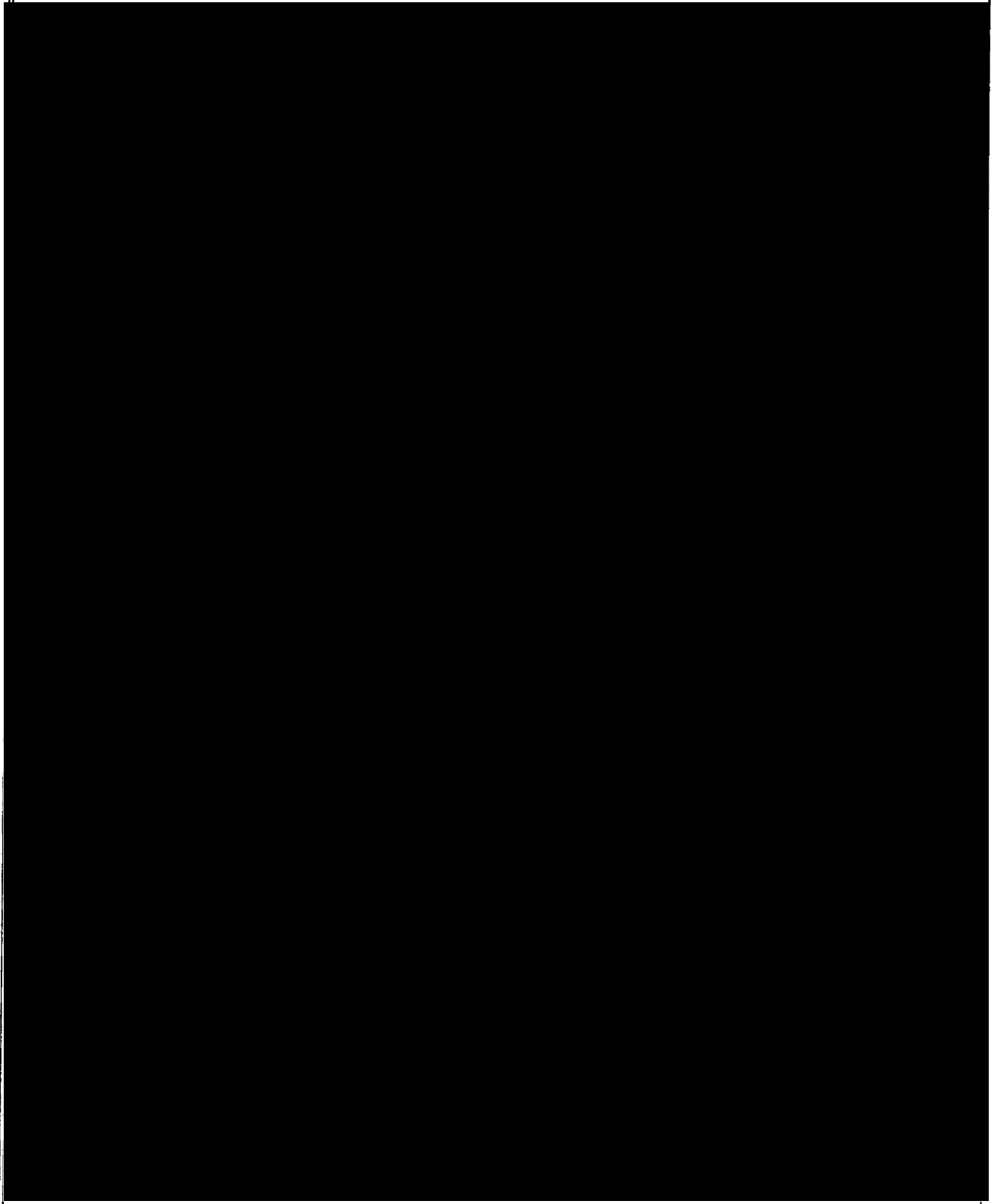
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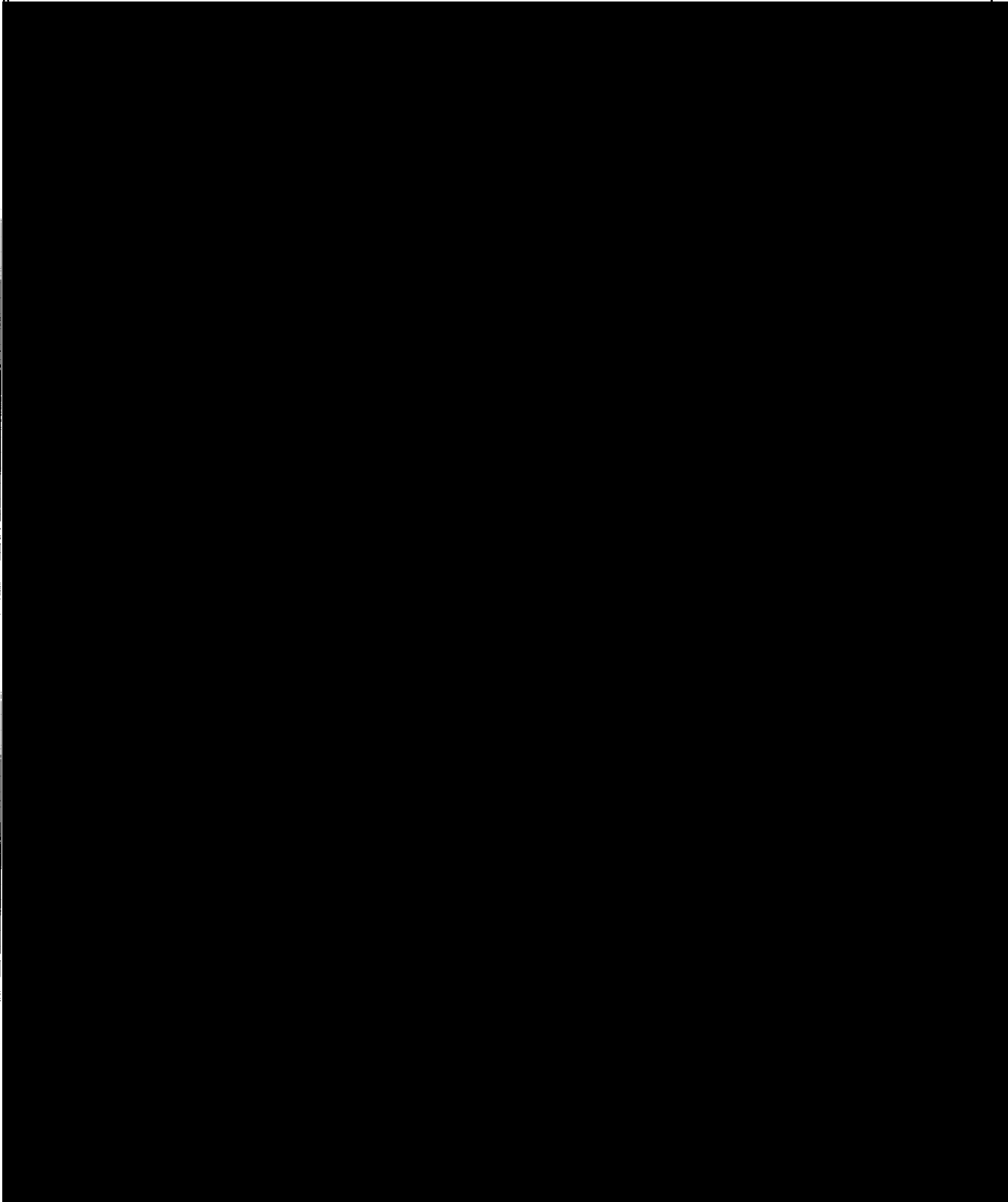
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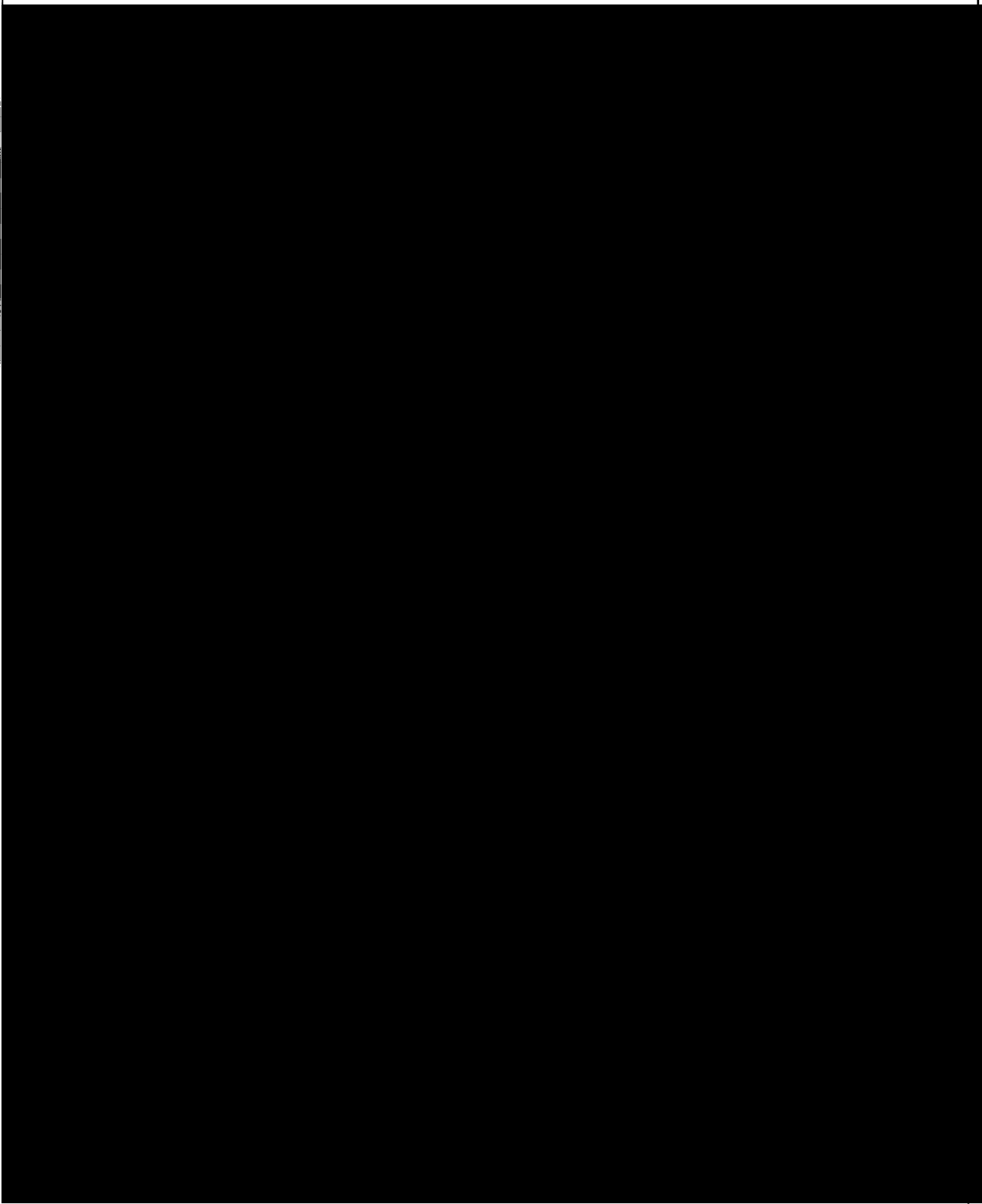


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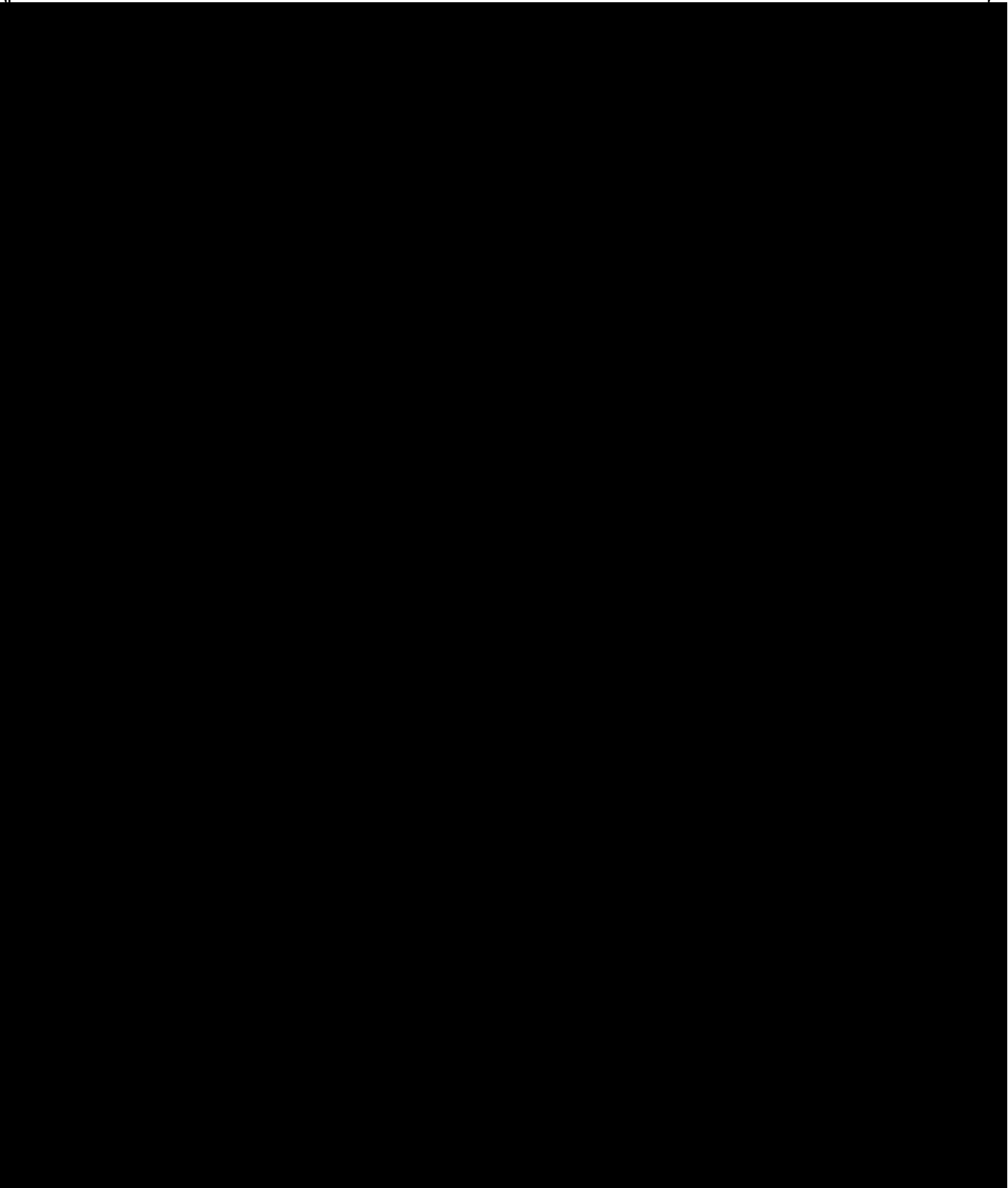




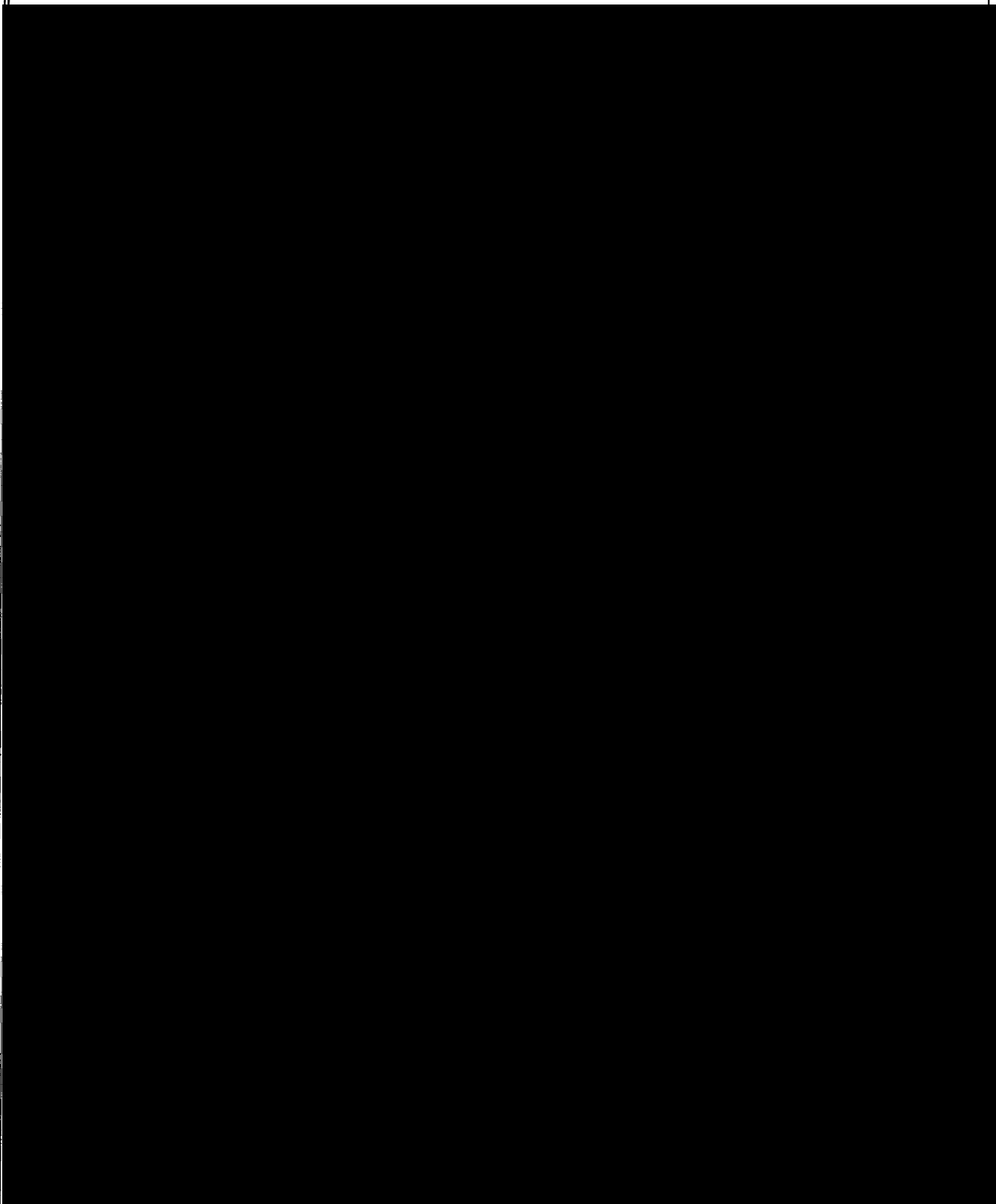
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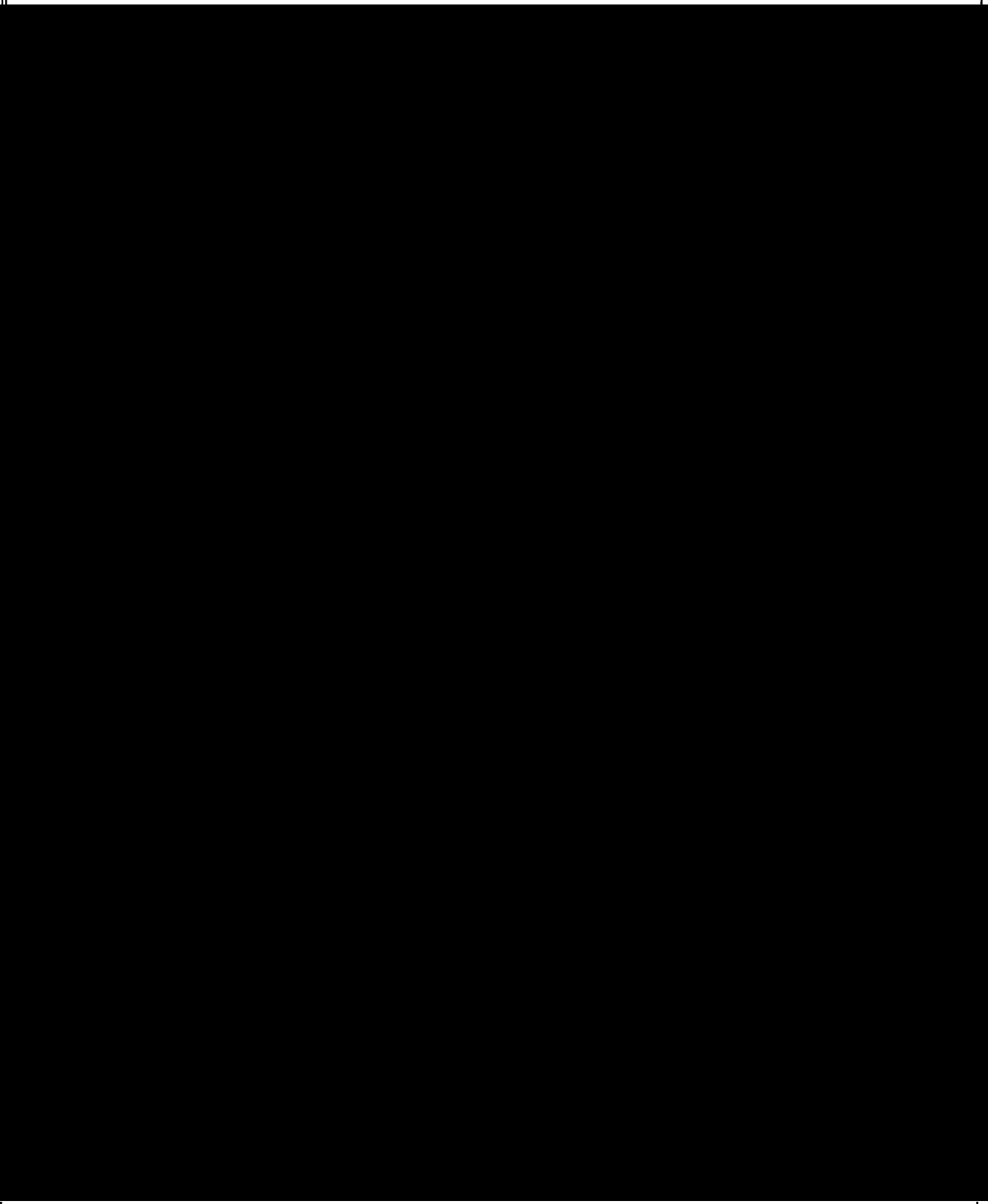
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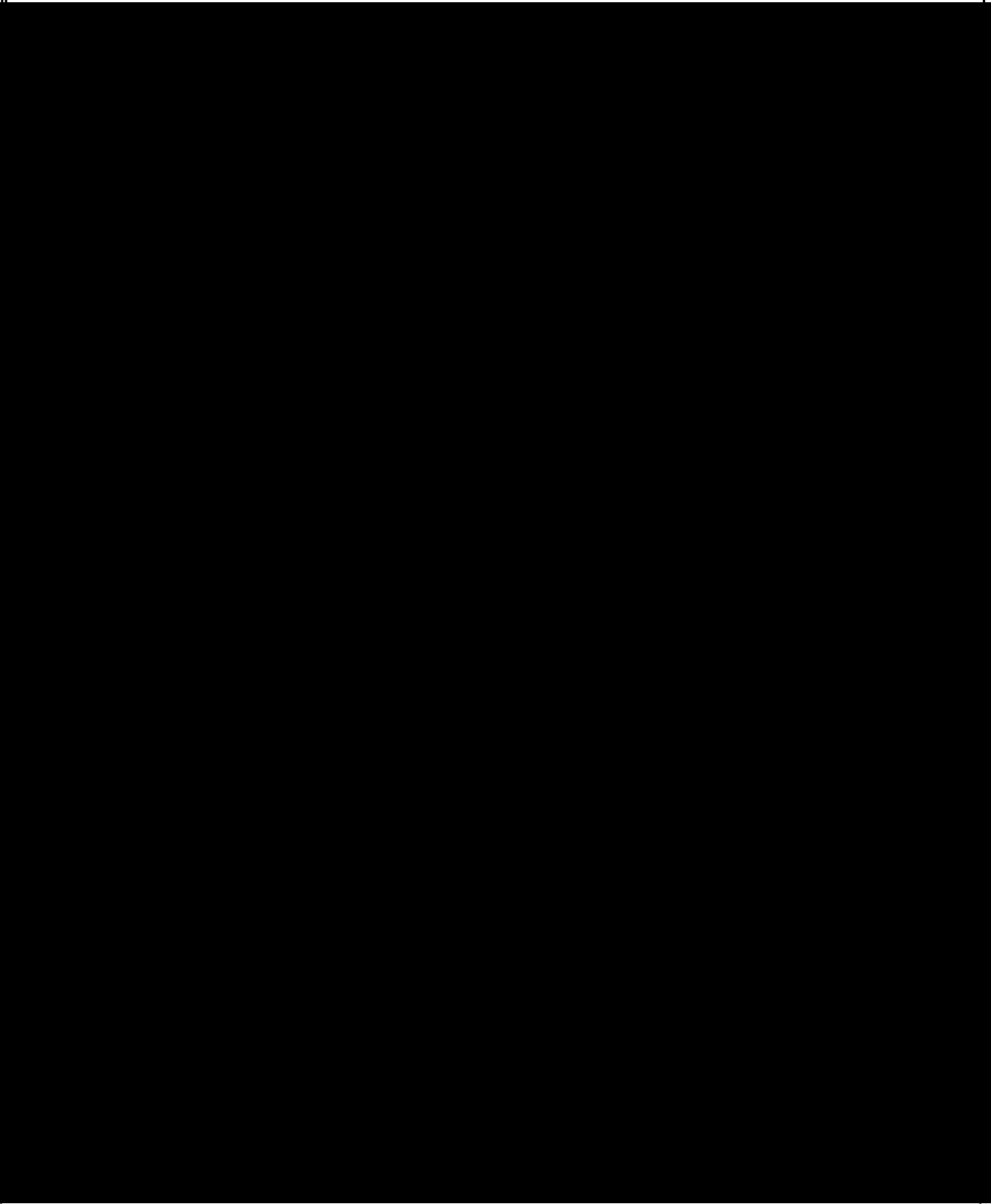
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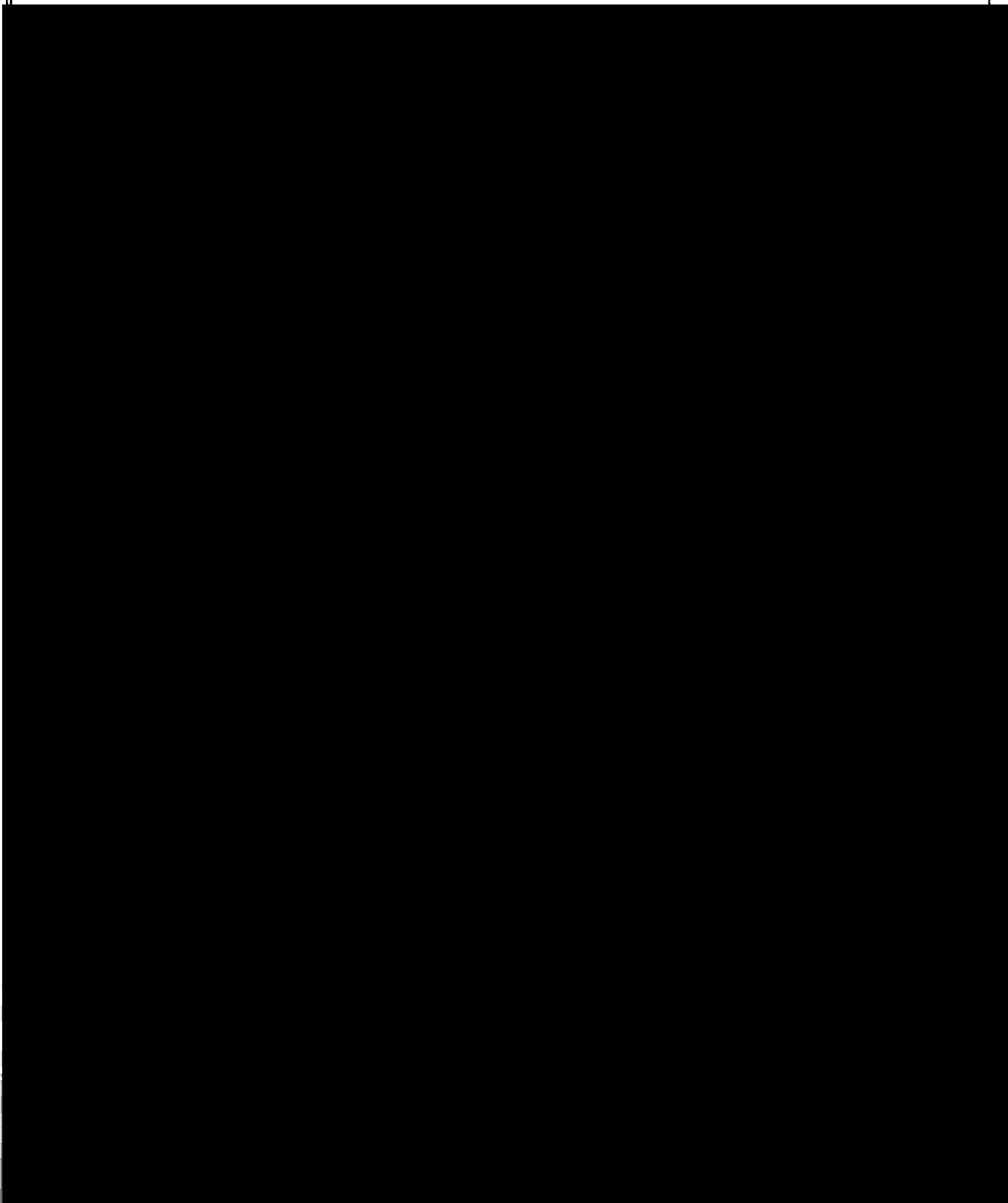
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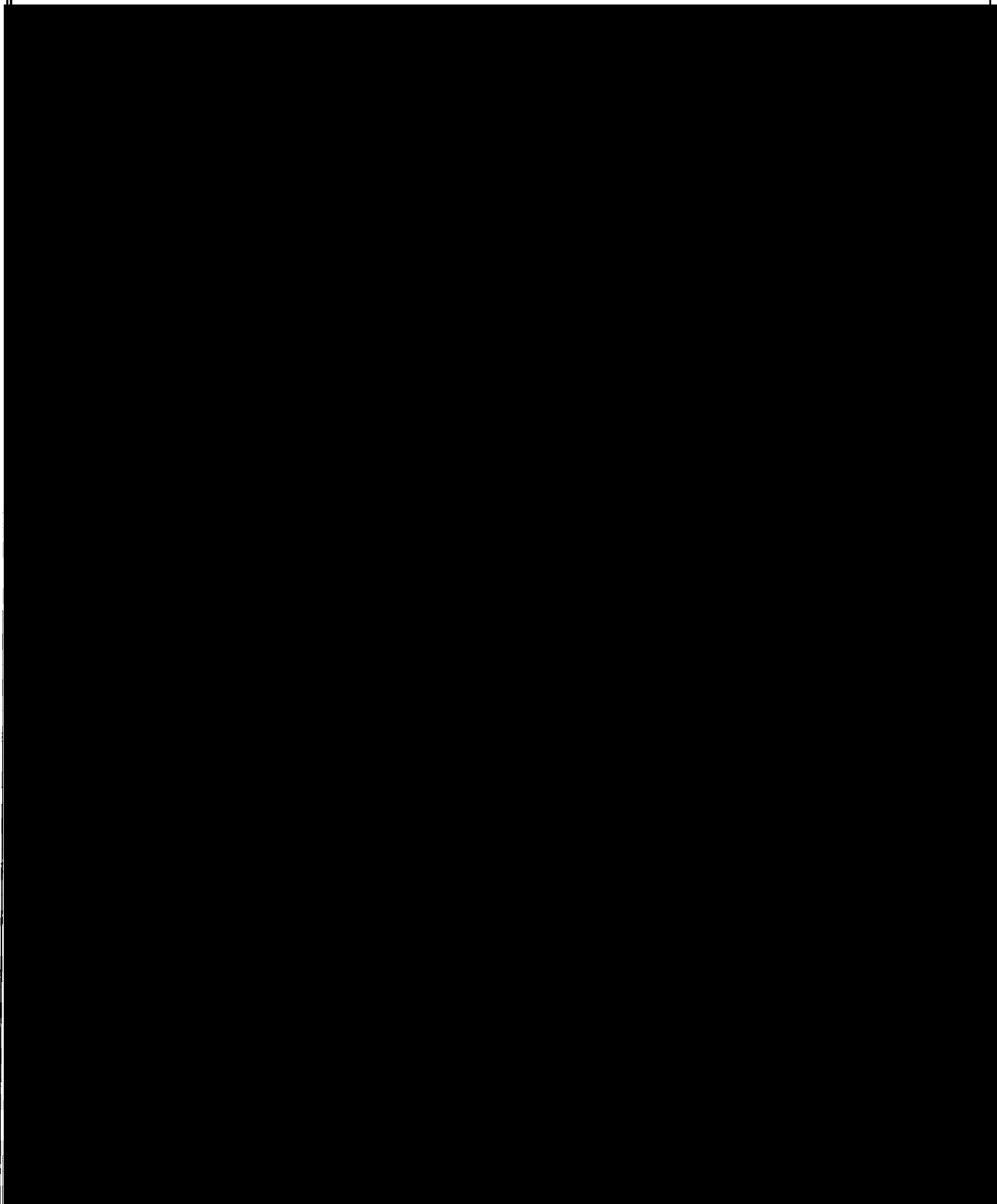
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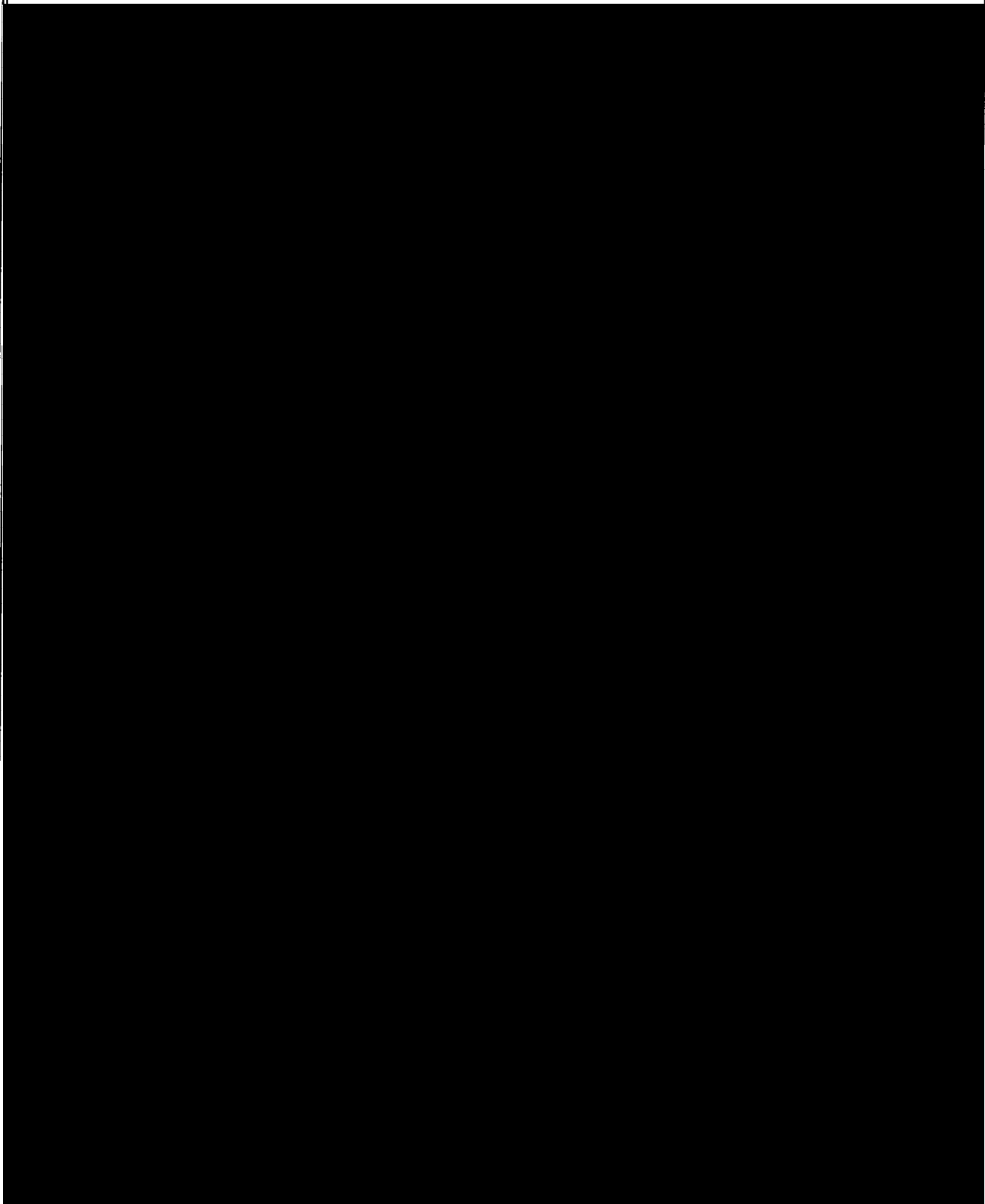
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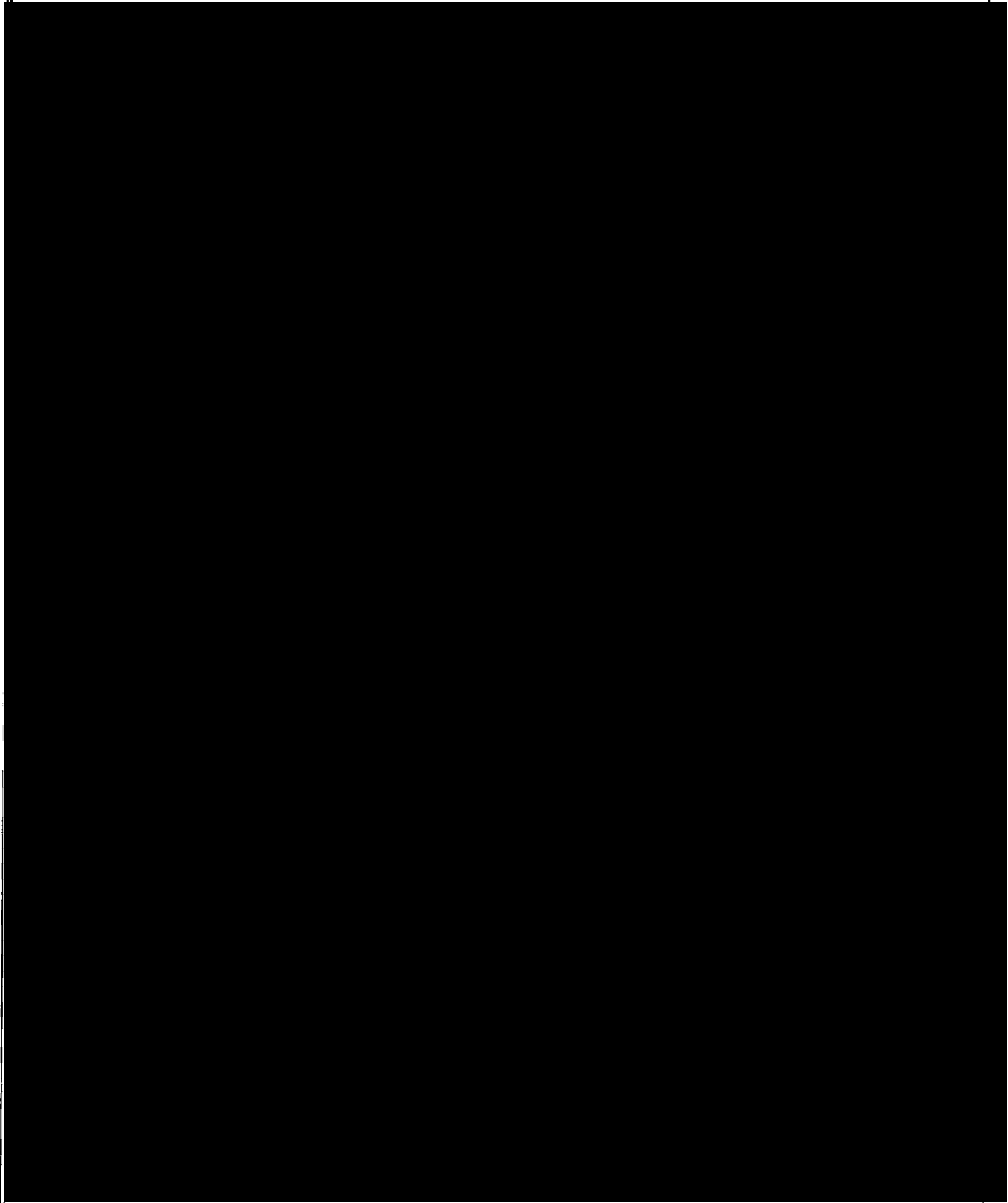


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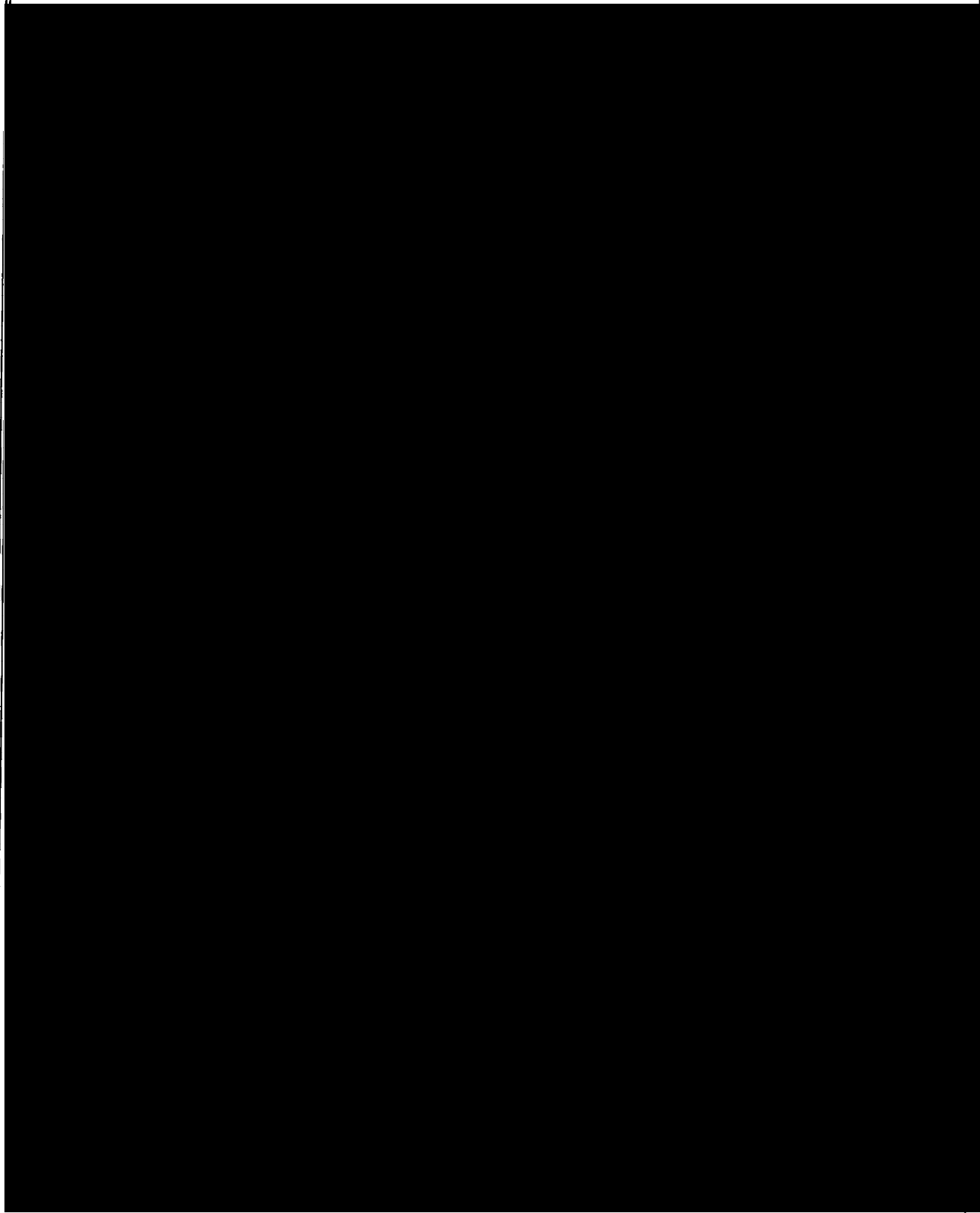




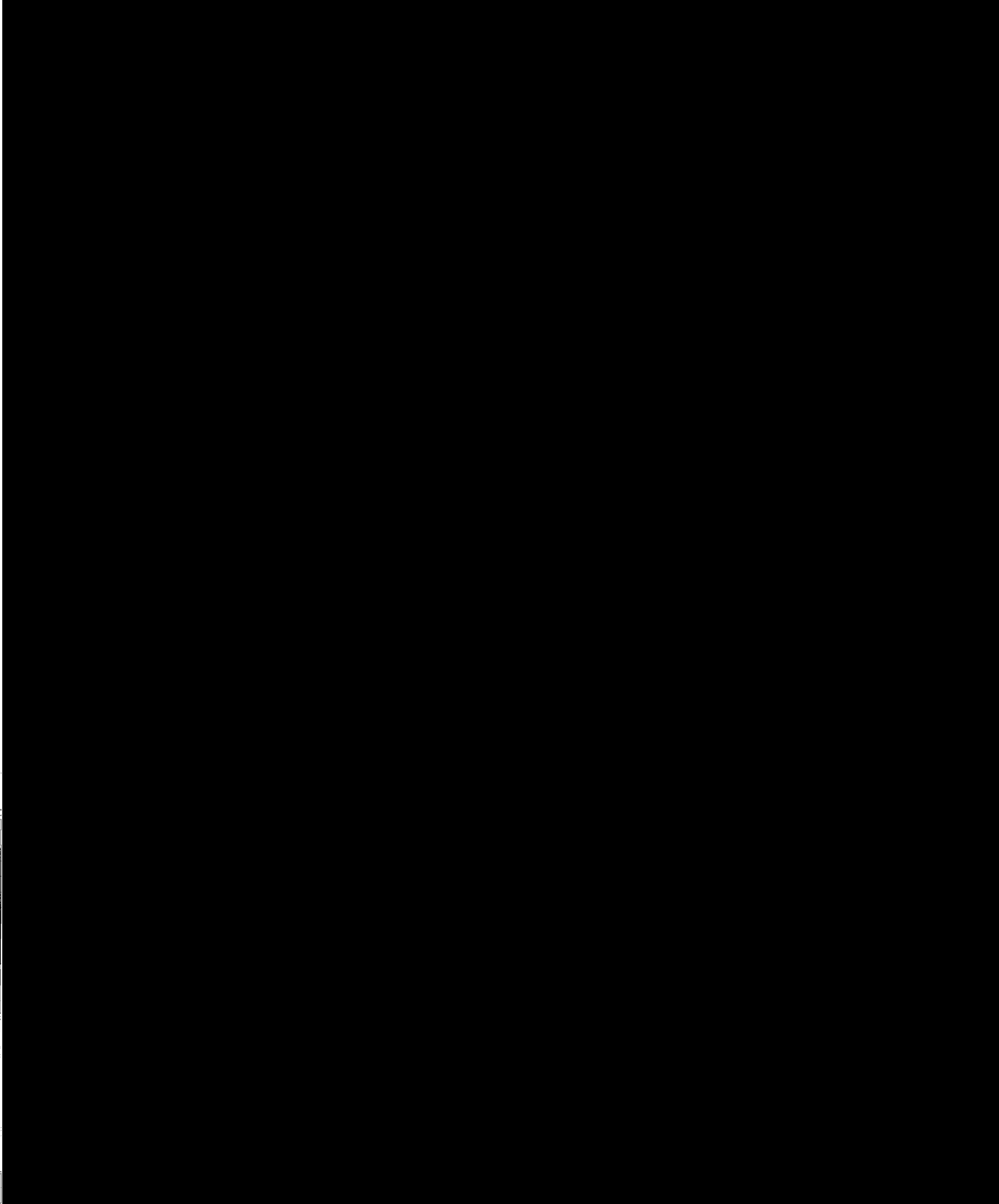
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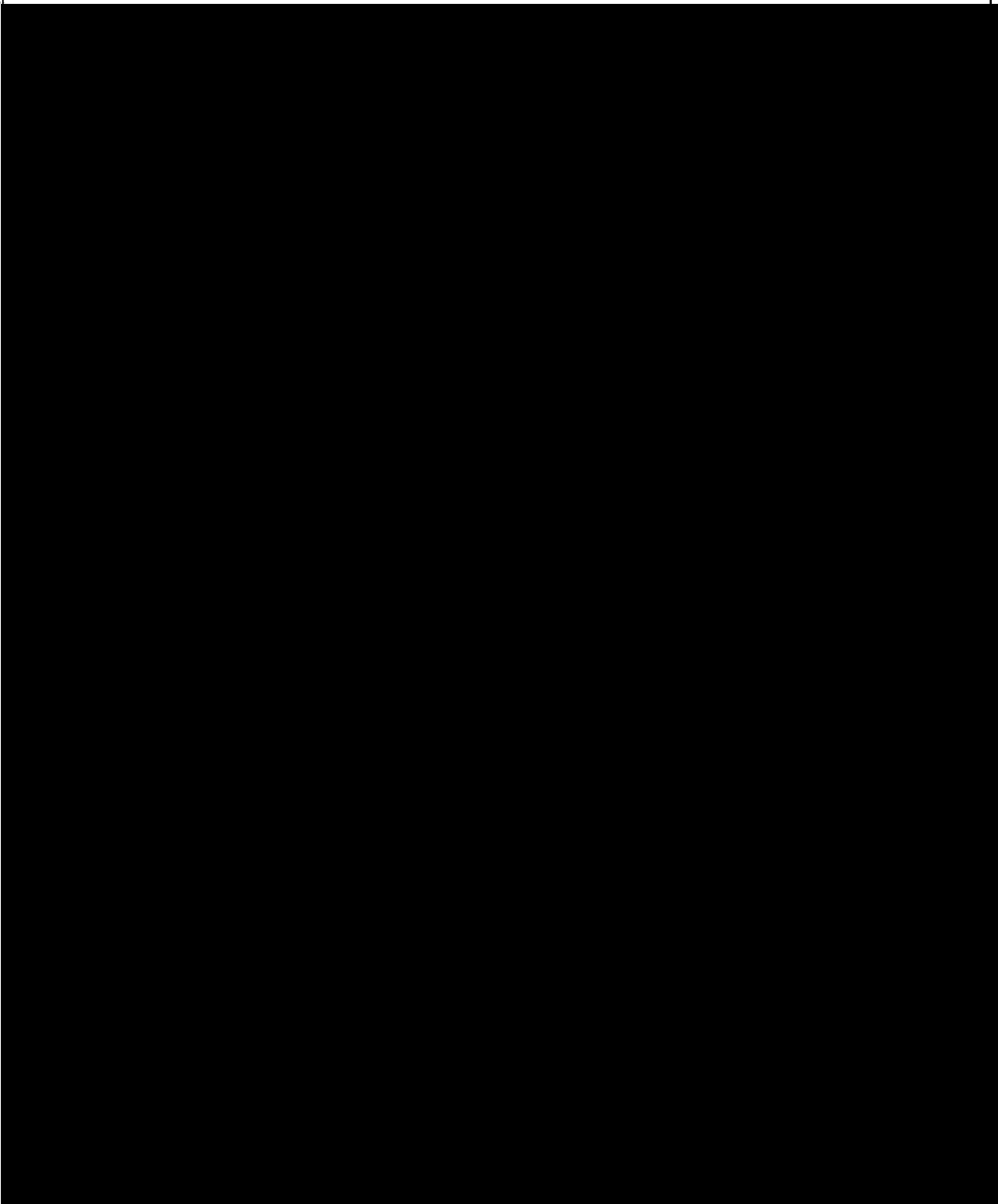
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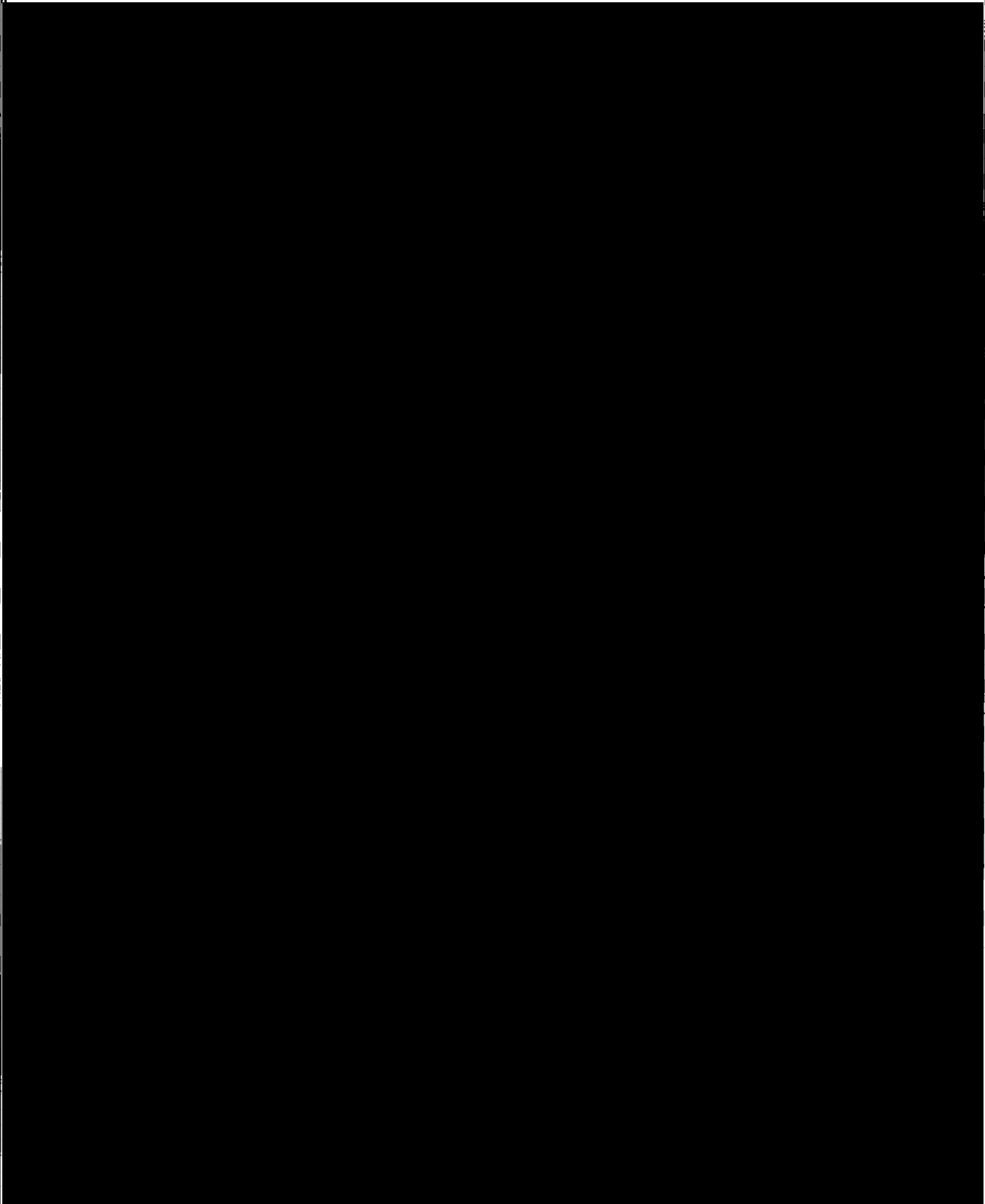
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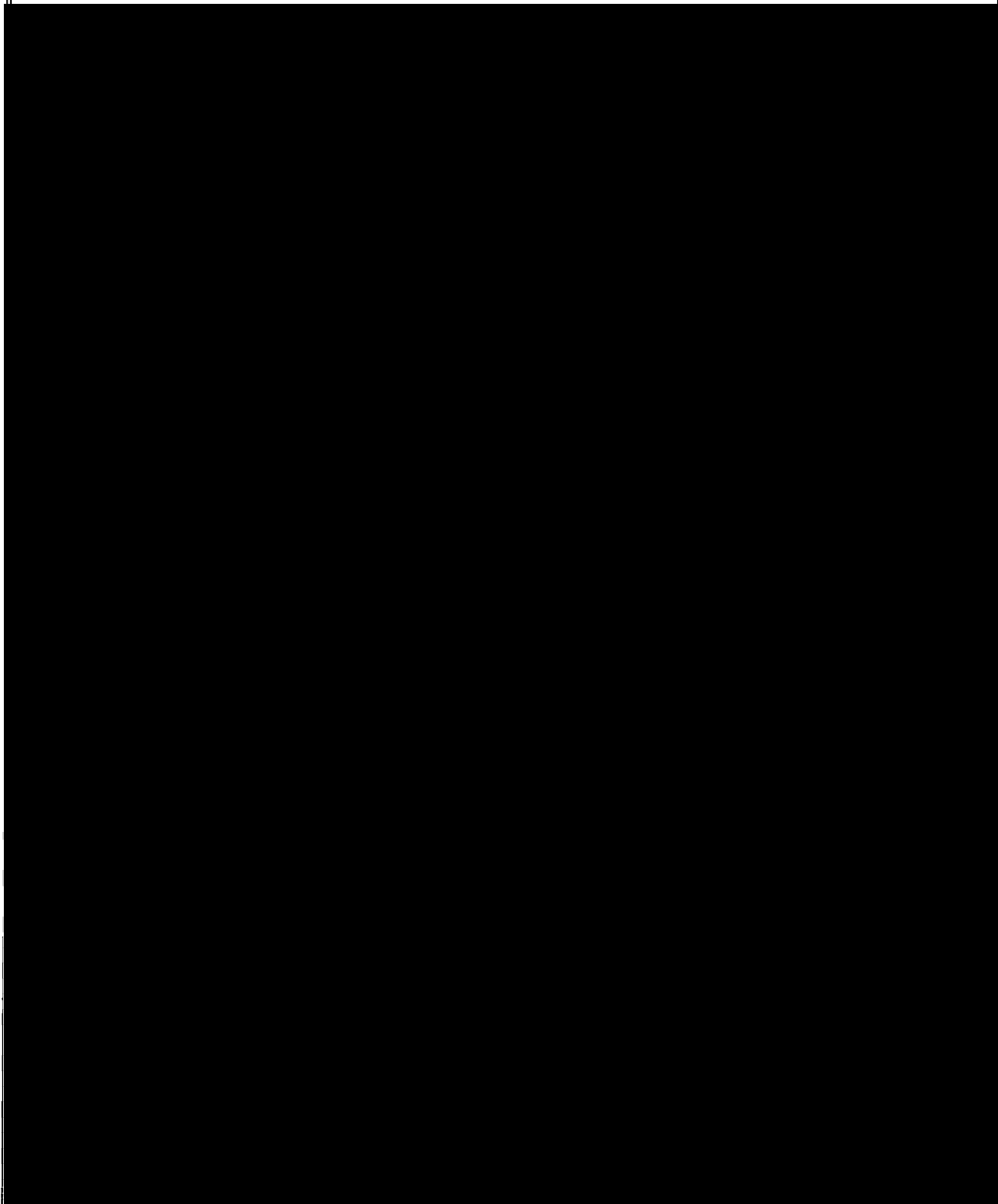
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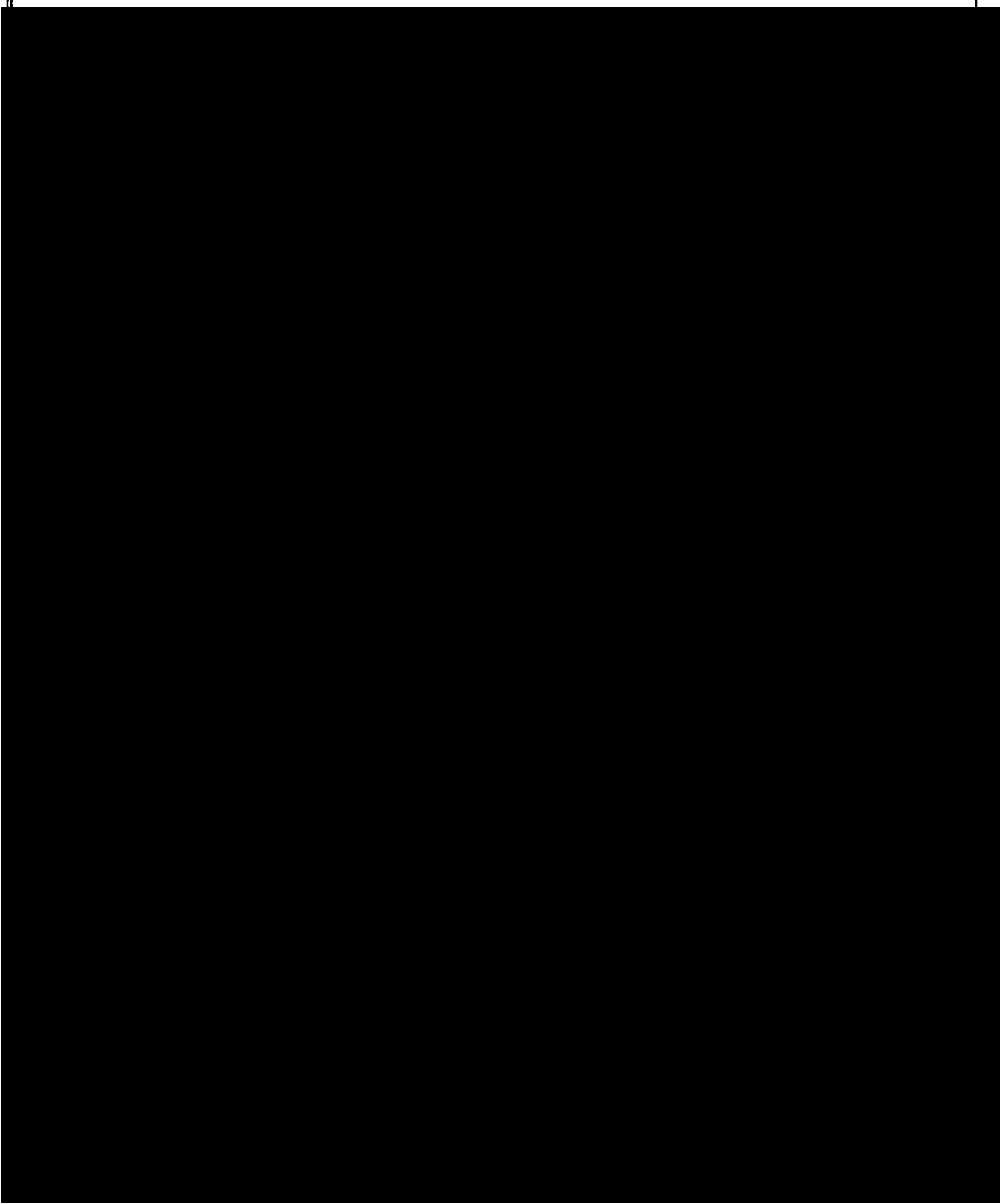
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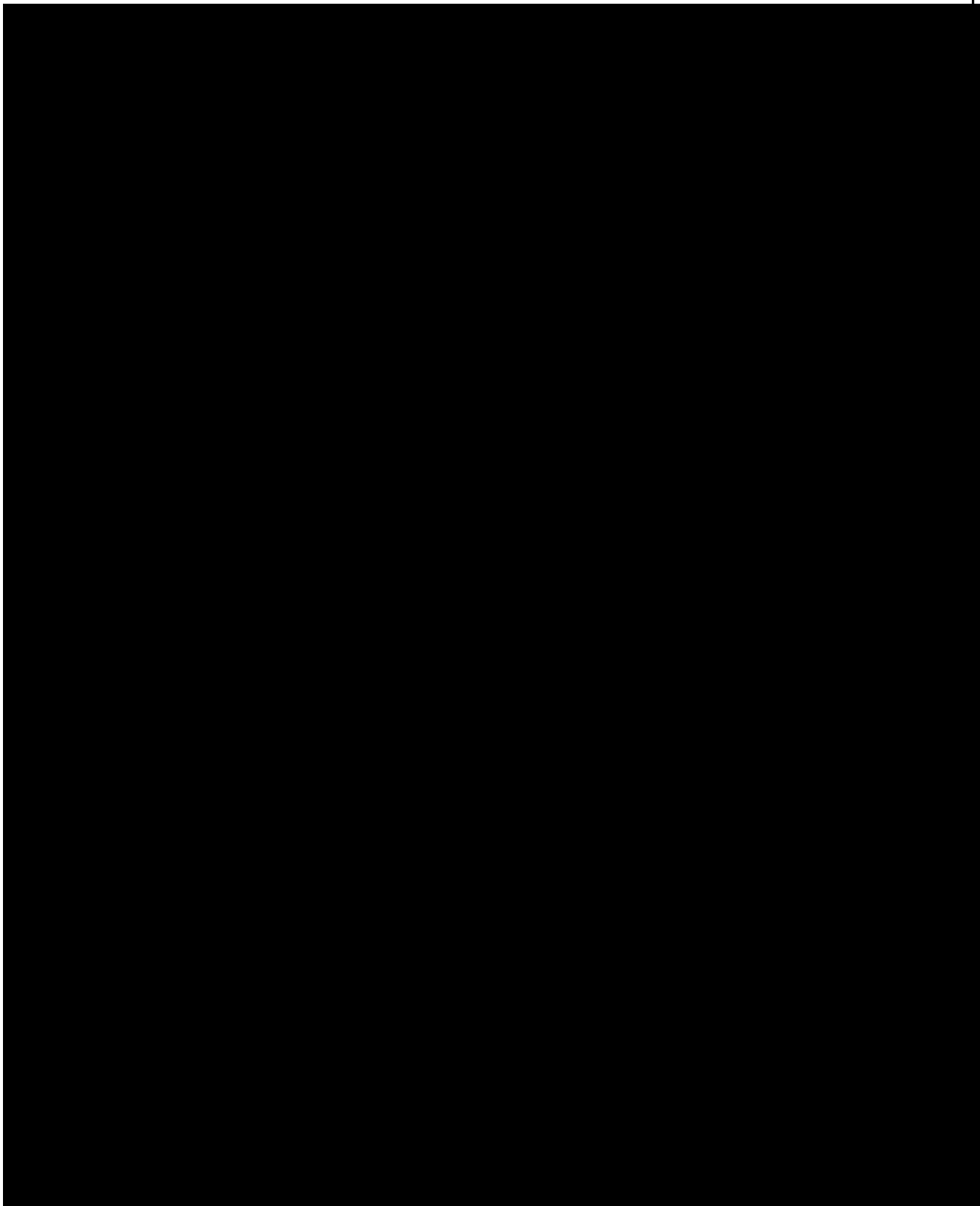
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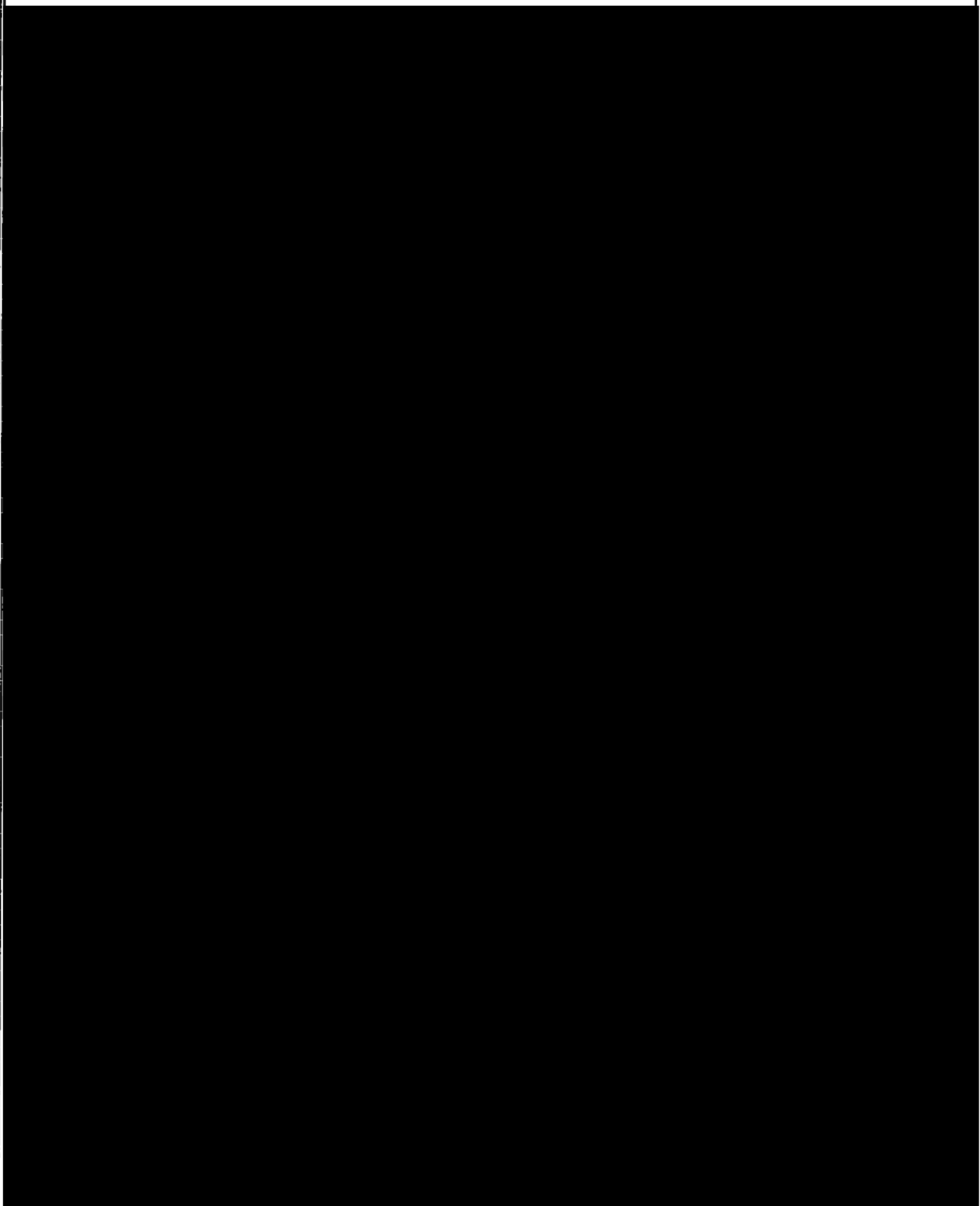


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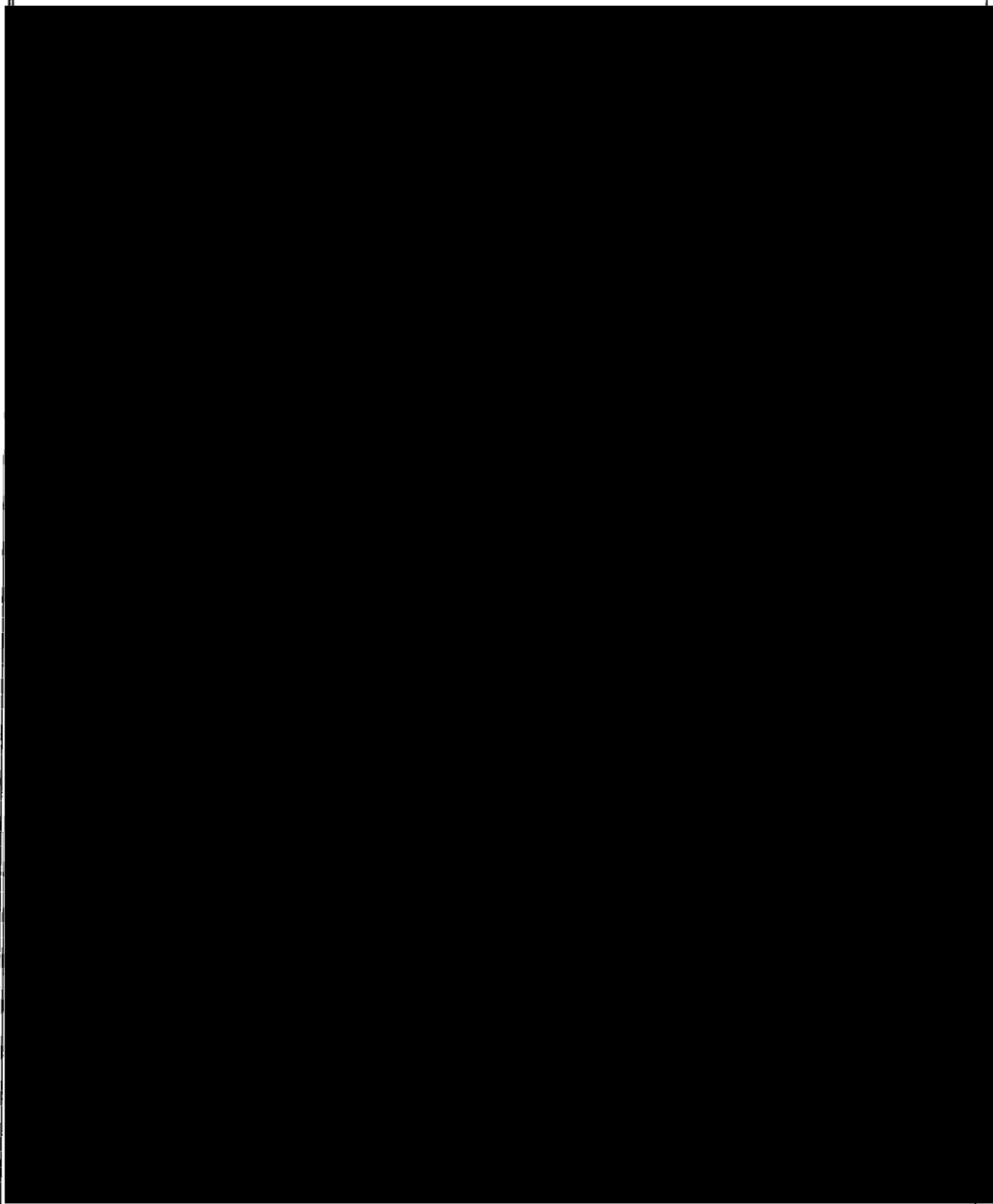




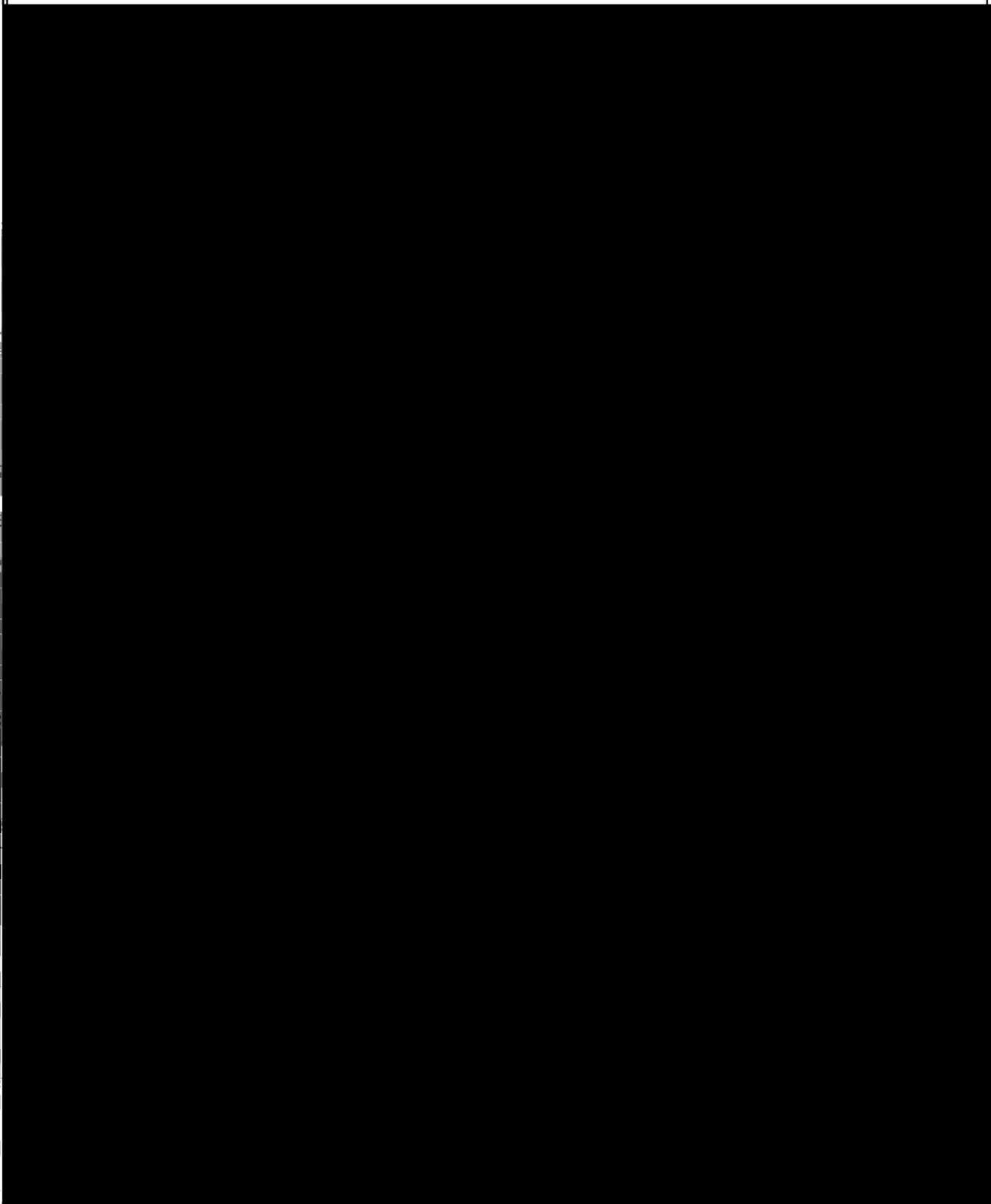
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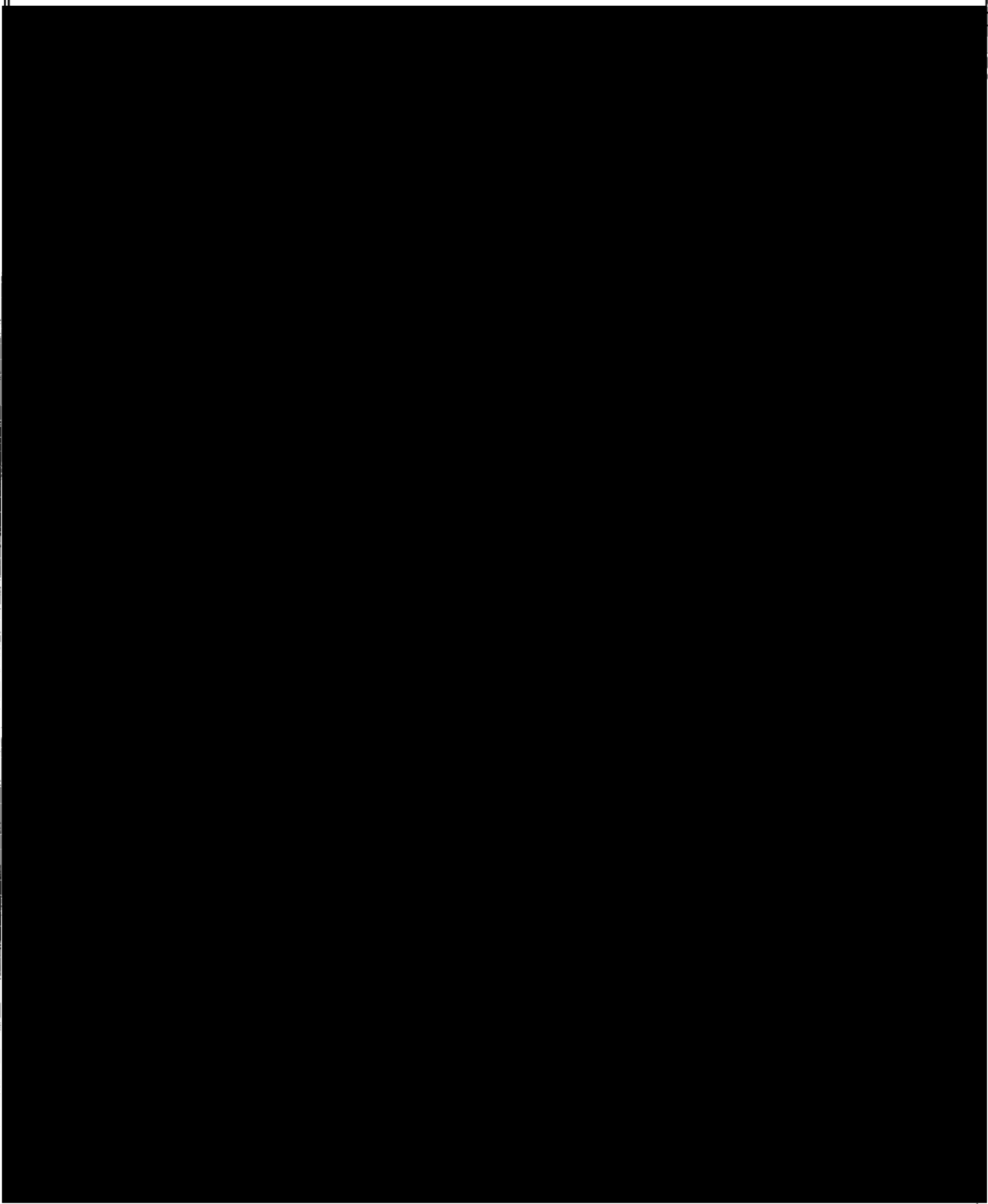
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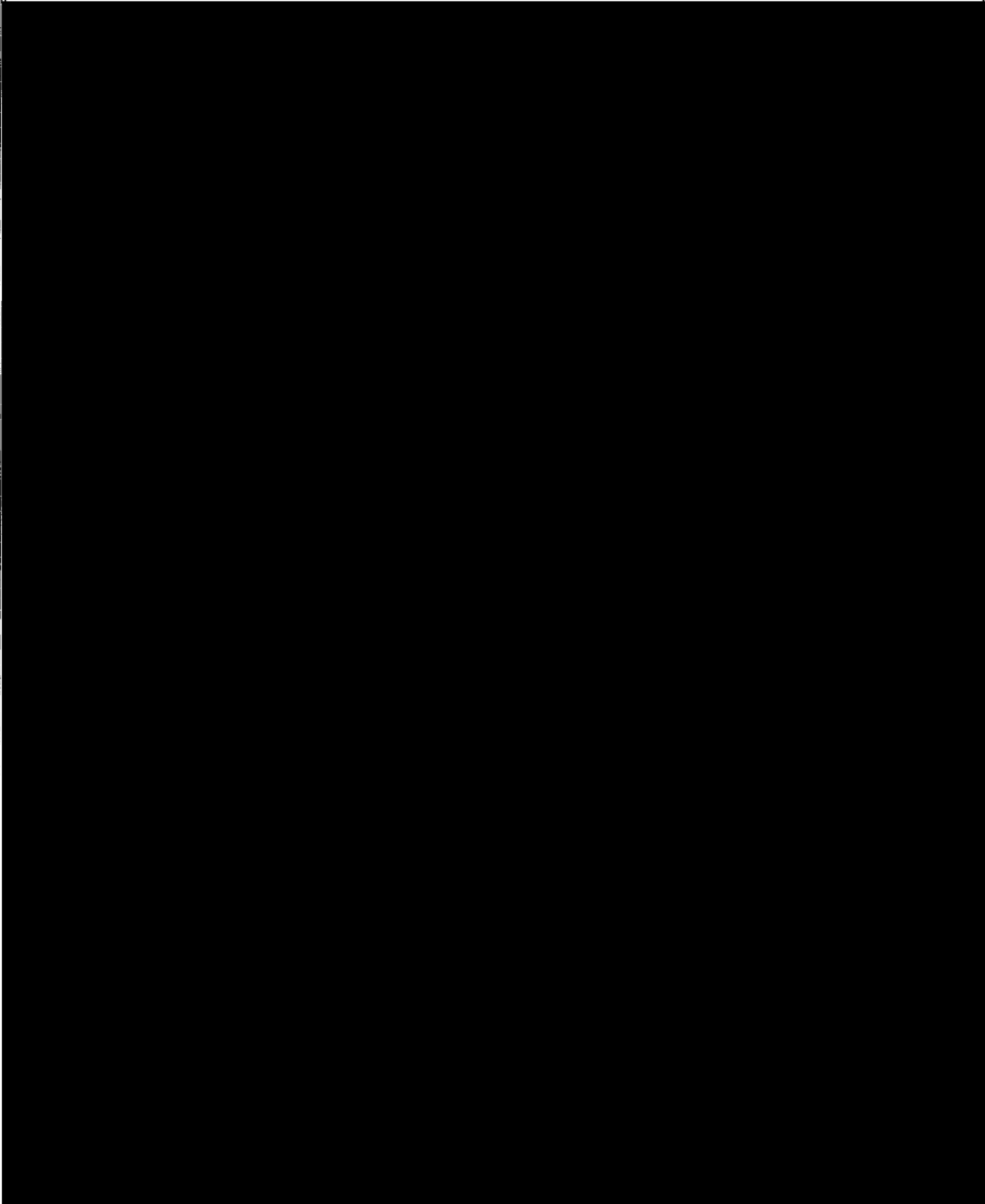
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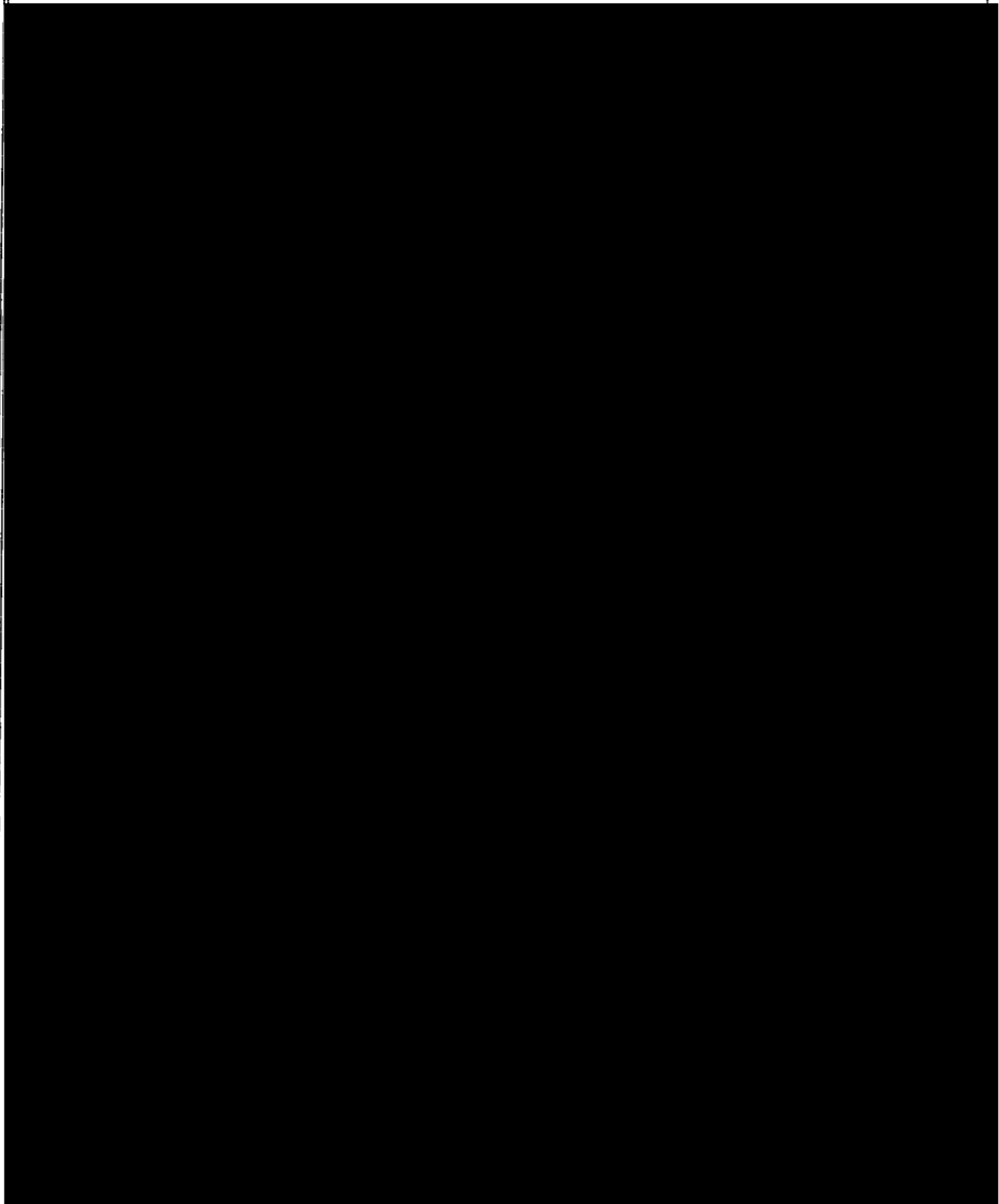
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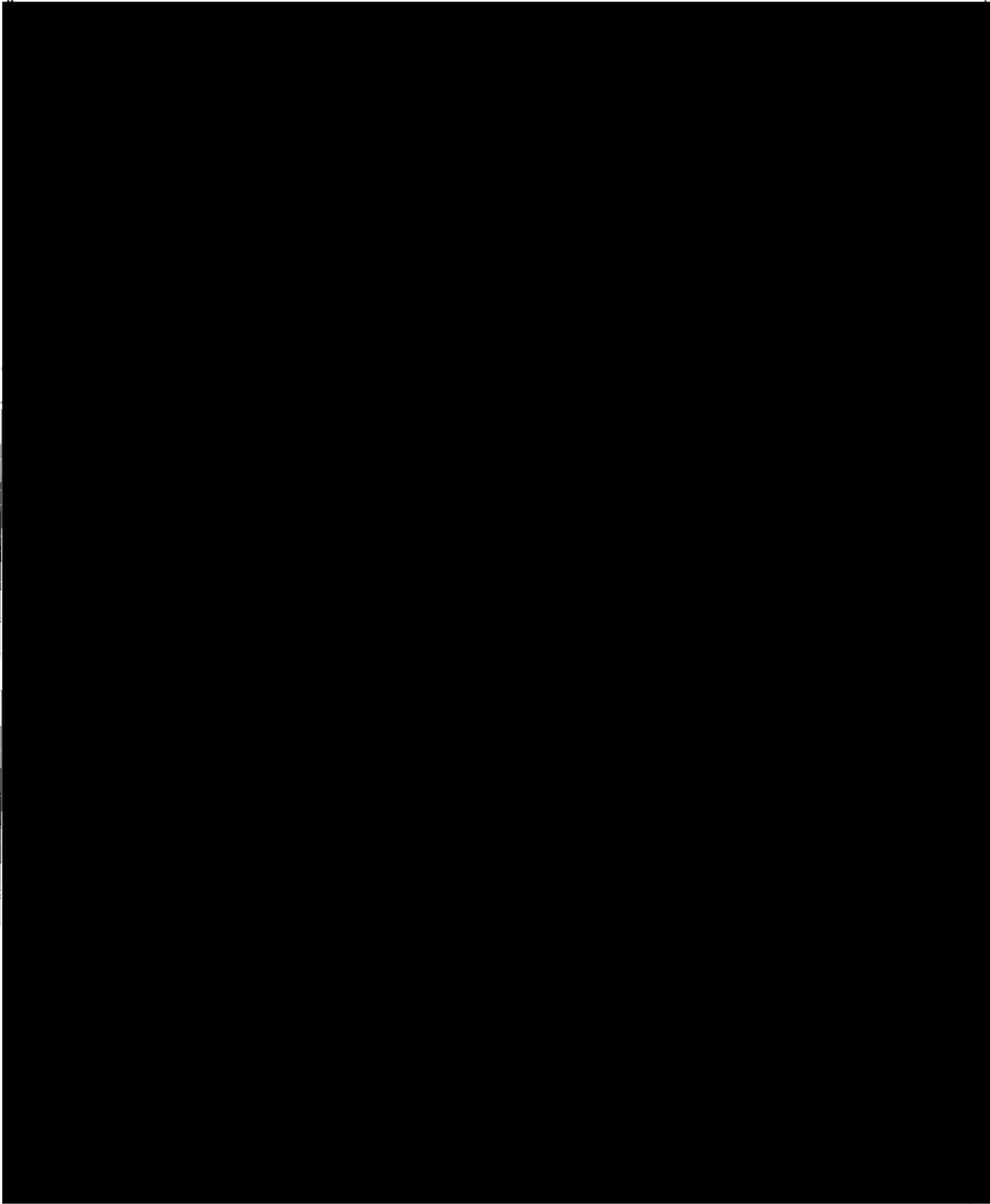
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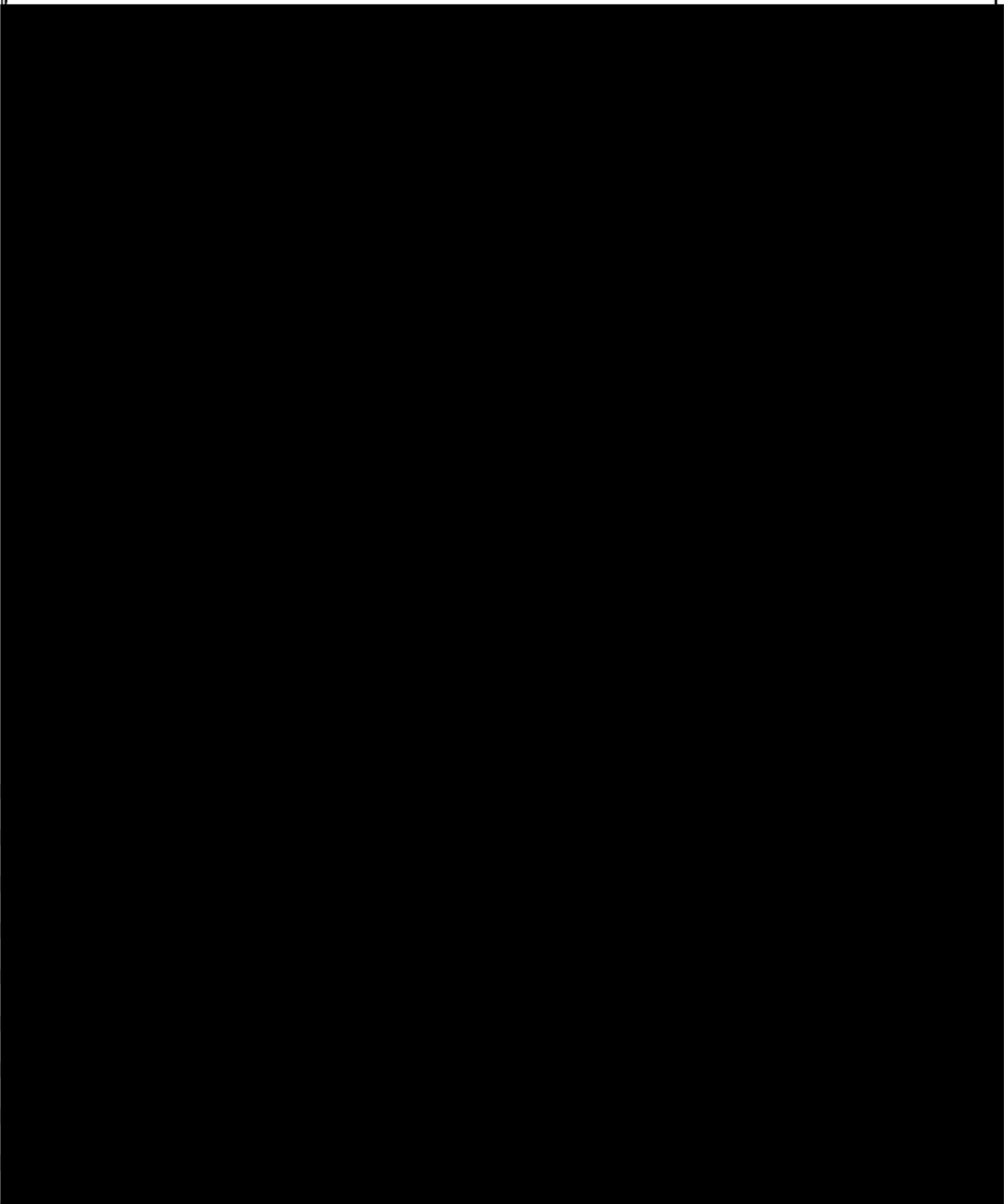
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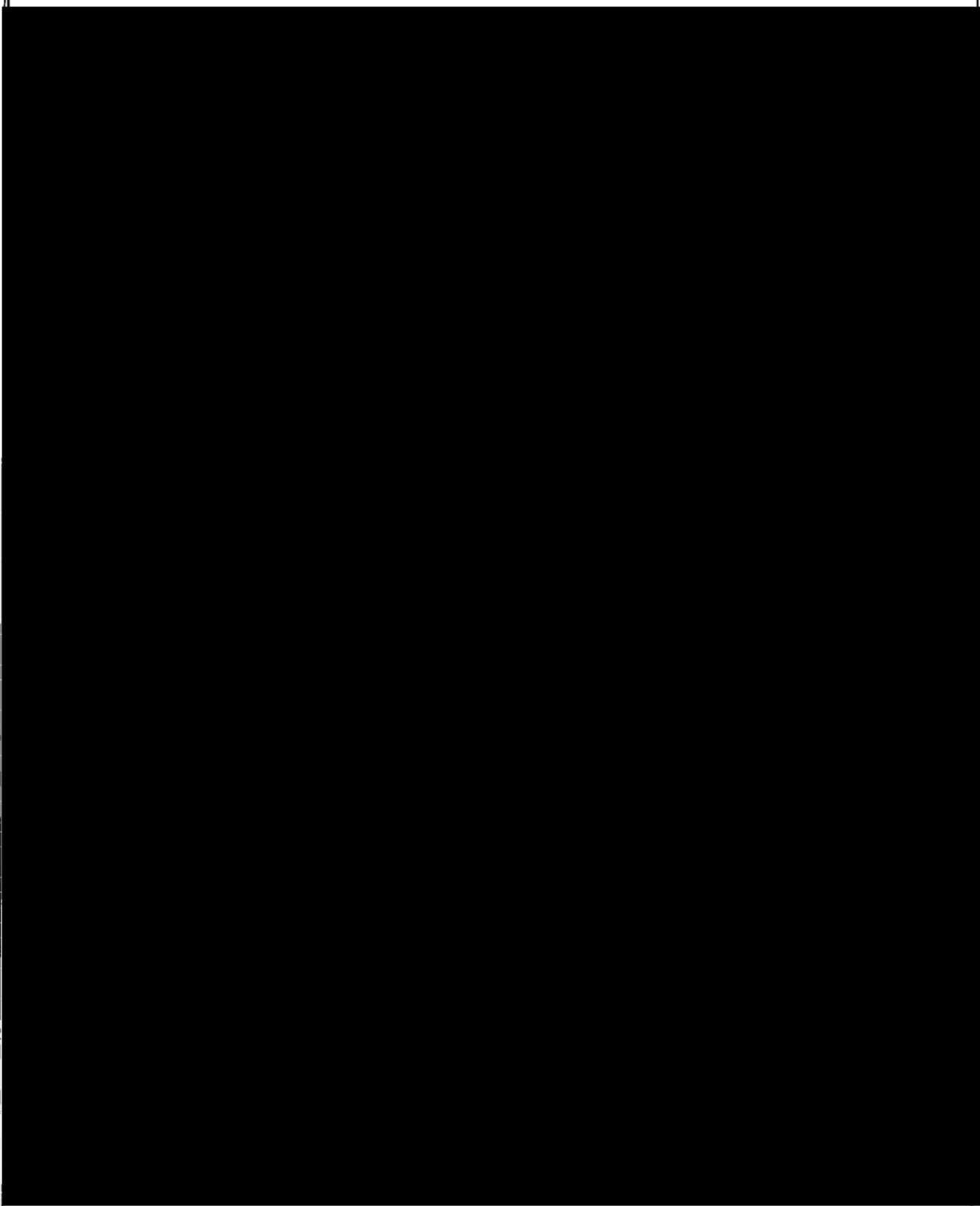


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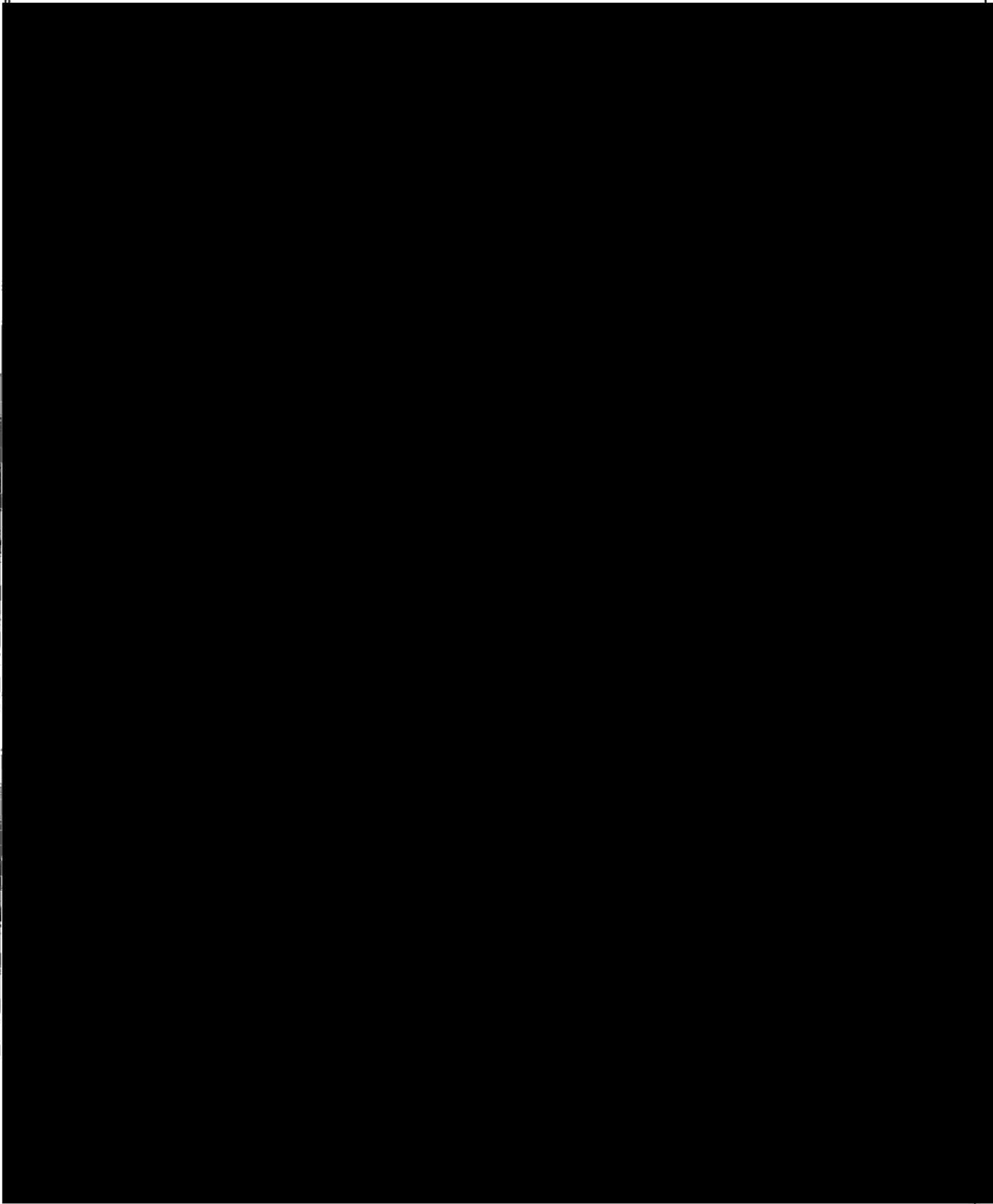




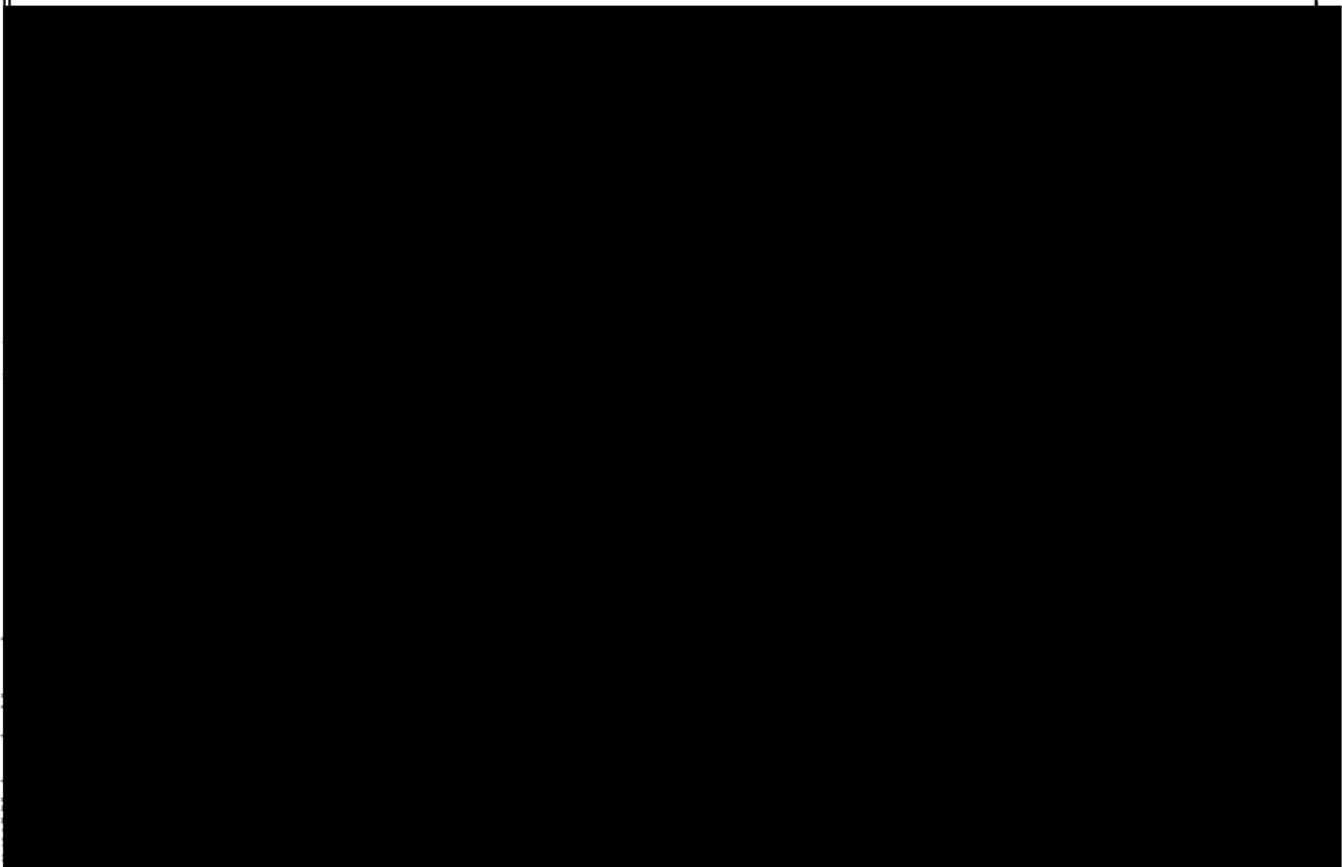
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The Fast and The Furious - [REDACTED]

*Firearm Purchases and Recoveries*

page 1 of 12

week day	# days purch	Date	Straw Purchaser	# firearms	Day Total - multiple	Month Total	# Firearms	When	Where
2009									

The Fast and The Furious [REDACTED]

*Firearm Purchases and Recoveries*

page 2 of 12

week day	# days purch	Date	Straw Purchaser	# firearms	Day Total - multiple	Month Total	# Firearms	When	Where
2009									

The Fast and The Furious [REDACTED]

*Firearm Purchases and Recoveries*

page 3 of 12

week day	# days purch	Date	Straw Purchaser	# firearms	Day Total - multiple	Month Total	# Firearms	When	Where
2009									
									

The Fast and The Furious - [REDACTED]

*Firearm Purchases and Recoveries*

page 4 of 12

week day	# days purch	Date	Straw Purchaser	# firearms	Day Total - multiple	Month Total	# Firearms	When	Where
2009									

The Fast and The Furious - [REDACTED]

*Firearm Purchases and Recoveries*

page 5 of 12

week day	# days purch	Date	Straw Purchaser	# firearms	Day Total - multiple	Month Total	# Firearms	When	Where
2009	[REDACTED]								
2010	[REDACTED]								

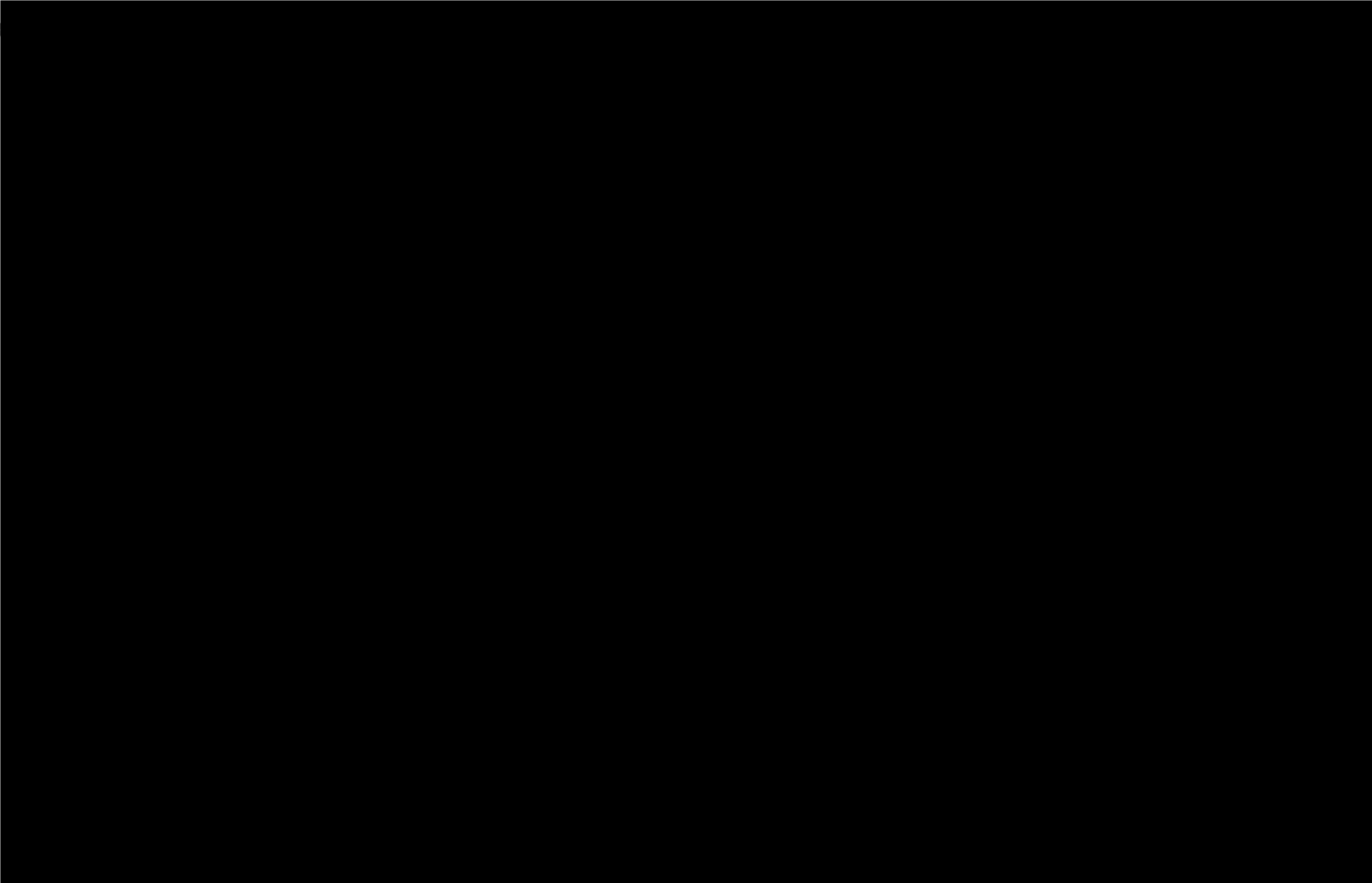


The Fast and The Furious - [REDACTED]

*Firearm Purchases and Recoveries*

page 6 of 12

week day	# days purch	Date	Straw Purchaser	# firearms	Day Total - multiple	Month Total	# Firearms	When	Where
2010									



The Fast and The Furious - [REDACTED]

*Firearm Purchases and Recoveries*

page 7 of 12

week day	# days purch	Date	Straw Purchaser	# firearms	Day Total - multiple	Month Total	# Firearms	When	Where
2010									

The Fast and The Furious - [REDACTED]

*Firearm Purchases and Recoveries*

page 8 of 12

week day	# days purch	Date	Straw Purchaser	# firearms	Day Total - multiple	Month Total	# Firearms	When	Where
2010									

The Fast and The Furious - [REDACTED]

*Firearm Purchases and Recoveries*

page 9 of 12

week day	# days purch	Date	Straw Purchaser	# firearms	Day Total - multiple	Month Total	# Firearms	When	Where
2010									

*Firearm Purchases and Recoveries*

week day	# days purch	Date	Straw Purchaser	# firearms	Day Total - multiple	Month Total	# Firearms	When	Where
2010									

*Firearm Purchases and Recoveries*

week day	# days purch	Date	Straw Purchaser	# firearms	Day Total - multiple	Month Total	# Firearms	When	Where
2010									

The Fast and The Furious - [REDACTED]

*Firearm Purchases and Recoveries*

page 12 of 12

week day	# days purch	Date	Straw Purchaser	# firearms	Day Total - multiple	Month Total	# Firearms	When	Where
2010	[REDACTED]								
	[REDACTED]								
	[REDACTED]								
2007	[REDACTED]								
2008	[REDACTED]								
2009	[REDACTED]								

February 1, 2011

In reviewing the news article in question concerning allegations of impropriety by either ATF or individual licensed Firearms Dealers in this matter concerning weapons purchased in Arizona that find their way into Mexico, We need to keep things in their proper perspective.

Let it be stated that while certain legislative officials not directly living here or directly familiar with this ongoing problem would suggest willful negligence on the part of federal Agencies charged with the enormous task of interdicting the flow of weapons crossing our border with Mexico, It should be known to the public that these Federal Agencies speaking strictly from my personal experience through many years act and conduct themselves in a very professional and proper manner. Any comparison to the contrary should be rejected completely.

On balance, The Mexican Cartels that use every available means at their disposal to procure any weapons to further their illegal drug trade do not run out of time or money. Federal Agencies have limited resources of money and manpower allotted to them by legislative officials who approve said budgets, While the Mexican Cartels are under no such restriction. Senator Grassley's office contacted us regarding "any" impropriety by ATF and we have stated that their exists no indication to that effect.

Lastly, It should be noted that our border is immense with Mexico and not every vehicle going into Mexico is stopped and searched for weapons, narcotics, or cash. Perhaps a more "Pro-Active" legislative approach would be to stop pointing blame at either Federal or State agencies attempting to do their job, And increase through legislation the budgets of all agencies on a more equitable level with the Drug Cartels and addition use all available means to secure our border. It appears that any State or Federal agency charged with said tasks are damned if they do, And damned if they don't. An appropriate response has to be to give them the tools to accomplish this monumental problem confronting them.



[REDACTED]

January 26, 2011

So there remains no confusion to the accuracy regarding these events culminating with the Federal Indictment and arrests Monday, And to set the record straight and assure the public, We have issued the following statement.

We have worked closely in conjunction with several Federal agencies including the Phoenix office of ATF within the guidelines of both the Southwest Border Initiative and Operation Gunrunner, as well as within the guidelines of being an existing Federal Firearms Licensed dealer, as well as many other licensed Arizona dealers as well.

Due to the sensitivity and nature of any ongoing Federal Investigation we obviously are precluded from making any further statement other than we defer respectfully to the United States Attorney's Office and the Phoenix ATF field office on our behalf for any further comment they determine appropriate at this time.

Thank You.

United States Attorney's Office  
District of Arizona

## Memorandum

**To:** Dennis K. Burke  
**From:** Emory Hurley  
**Subject:** [REDACTED]  
**Date:** January 28, 2011

The two AK-47 type rifles associated with the U.S. Border Patrol shooting, specifically two ROMARM WASR-10 7.62x39 mm rifles, Serial Numbers [REDACTED] and [REDACTED] were purchased by [REDACTED] on Friday, January 16, 2010, along with a third ROMARM WASR-10 7.62x39 mm rifle, Serial Number [REDACTED]. The three rifles were purchased in a single transaction from Federal Firearms Licensee (FFL) [REDACTED]. ATF was not notified of this purchase until Monday, January 19, 2010, when ATF received the ATF Form 4473 documenting [REDACTED] purchase of three AK-47 type rifles on January 16, 2010. These were forwarded to ATF by the FFL and the purchase is documented in **ATF ROI #67**.

[REDACTED] first known firearms purchase occurred on November 24, 2009, at FFL [REDACTED]. On that day he was in the company of another Fast and Furious suspect, [REDACTED]. On November 24, 2009, [REDACTED] purchased five (5) FN Herstal Five-Seven pistols, and [REDACTED] purchased five (5) AK-47 type rifles. On the ATF Form 4473, [REDACTED] listed his address as [REDACTED]. At the time of the purchase, [REDACTED] and [REDACTED] were traveling in a 2000 Isuzu Rodeo registered to [REDACTED]. This is documented in **ATF ROI # 12**. As of this date, the five (5) FN pistols purchased by [REDACTED] on November 24, 2009, have not been recovered.

On November 25, 2009, ATF entered [REDACTED] in the ATF case management system as a suspect in the investigation. This event does not result in the creation of an ROI.

On December 12, 2009, [REDACTED] purchased five (5) ROMARM WASR-10 AK-47 type rifles from FFL [REDACTED]. ATF was notified of this purchase on December 12, 2009 when agents received the ATF Form 4473 recording the purchase. This is documented in **ATF ROI # 46**. As of this date, these five AK-47 type rifles have not been recovered.

On December 17, 2009, this AUSA, ATF Group Supervisor [REDACTED] and ATF Special Agent [REDACTED] met with [REDACTED] the owner of FFL [REDACTED]. Mr. Howard had been providing information to ATF on large firearms purchases, including large purchases of (only) long guns which do not trigger any multiple purchase reporting requirements. This information was being provided voluntarily and without compensation from ATF. [REDACTED] had expressed concerns about the cooperation he was providing and whether he was endangering himself or implicating himself in a criminal investigation.

[REDACTED] was advised by the agents and this AUSA that they could not tell him who he could or could not sell to and that they could not instruct him to make a sale in violation of the law or to refuse to make a lawful sale. He was advised by the agents that as an FFL he has to comply with all of the statutes and regulations that govern the sale and transfer of firearms and cannot sell firearms unless the required

Memo to DKB  
January 28, 2011  
Page - 2

paperwork and background check were completed. As long as the required forms were properly filled out and the FFL did not know or have a reason to know that the firearms were part of a straw purchase or intended to be used in a crime, that he could complete the transfer. [REDACTED] was also told by the agents and this AUSA that the information he provided to ATF regarding large firearms transactions, particularly sales involving only long guns, was very important and useful to ongoing ATF investigations.

During this meeting, ATF agents also described additional information that [REDACTED] or his employees might receive from purchasers which would not necessarily be required by the provisions of Chapter 44 of Title 18 to be kept in his records, but which would prove useful to ATF. This information included phone numbers or other contact information as well as license plate numbers and vehicle descriptions. As of the date of this meeting, [REDACTED] was already providing this type of information to ATF and continued to do so throughout the course of the investigation.

On January 9, 2010, [REDACTED] purchased three (3) FN Herstal Five-Seven pistols from FFL [REDACTED]. [REDACTED] ATF was not advised of this purchase by the FFL, however, on January 14, 2010, these firearms were entered into the suspect gun database by ATF Phoenix. These firearms were discovered by law enforcement on January 14, 2010, in Columbus, New Mexico, but were not traced and were returned to person carrying them. ATF Phoenix was not notified of this law enforcement contact until May 17, 2010. **ATF ROI #254.**

On January 14, 2010, in Columbus, New Mexico, (a border town), U.S. Border Patrol agents pulled over a vehicle driven by [REDACTED] with passenger [REDACTED] due to suspicious driving behavior. In the vehicle they found three AK-47 type rifles purchased by [REDACTED] three FN Herstal Five-Seven pistols purchased by [REDACTED] on January 9, 2010, from FFL [REDACTED] and two Ruger pistols purchased by another. U.S. Border Patrol agents did not observe any other criminal conduct and so returned the firearms to the occupants of the vehicle. They did not trace any of the firearms. ATF Phoenix was notified of the observation of the firearms on May 17, 2010, after ATF Las Cruces forwarded information in connection with a firearms trafficking investigation in [REDACTED] involving [REDACTED] and others. **The investigation of [REDACTED] is still on going, [REDACTED] and must be viewed as close-hold.**

On January 16, 2010, [REDACTED] purchased the three ROMARM WASR-10 AK-47 type rifles, Serial Numbers [REDACTED] and [REDACTED] as well as [REDACTED]. As detailed above, ATF was not notified of this purchase until January 19, 2010. This notification came only through the cooperation of the FFL as this long gun only purchase would not trigger any affirmative reporting requirements. **ATF ROI #67.**

On December 15, 2010, [REDACTED] was arrested for using a false address on the ATF Form 4473 on June 15, 2010. A complaint was filed on December 16, 2010, and he was indicted on January 11, 2011, for making false statements in connection with the acquisition of a firearm. On January 19, 2011, he was indicted as part of the overall Fast and Furious conspiracy.

Agents were able to determine that when [REDACTED] purchased firearms on June 15, 2010, that he no longer lived at the [REDACTED] address listed on the ATF Form 4473 and his drivers license. His

Memo to DKB  
January 28, 2011  
Page - 3

drivers license was changed in August of 2010, to reflect a different address. In the course of his post arrest interview in December 2010, he admitted that he had not lived at the [REDACTED] address for two or three years. However, earlier in the investigation, agents had no reason to believe that this was not his address because his drivers license and the registration to the car that he was driving came back to the [REDACTED] address. **See ATF ROI #12.**

On March 1, 2010, [REDACTED] purchased one FN Herstal Five-Seven pistol from [REDACTED] in a single-firearm transaction. On or about March 3, 2010, this pistol was recovered by Phoenix Police in connection with a drug house in Phoenix. This was the first actual recovery of a firearm purchased by [REDACTED] **ATF ROI #107 and 156.**

**From:** (b) (7)(C), (b) (6)

**Sent:** Friday, March 25, 2011 5:55 PM

**To:** (b) (7)(C), (b) (6)

**Subject:** FW: Materials For Bill Newell and ATF in DC

**Attachments:** Gaede indictment.pdf; Chavarin.pdf; Arizmendez indictment.pdf; Molindaindictment.pdf; Manriquez indictment.pdf; 12 2 10 Ltr to USSC.PDF

**Importance:** High

(b) (7)(C), (b) (6)

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**From:** Newell, William D.

**Sent:** Sunday, March 06, 2011 7:14 PM

**To:** (b) (7)(C), (b) (6)

**Subject:** Fw: Materials For Bill Newell and ATF in DC

**Importance:** High

\*\*\*\*\*

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**From:** Cunningham, Patrick (USAAZ)

**To:** Newell, William D.; Needles, James R.

**Cc:** Burke, Dennis (USAAZ) ; Scheel, Ann (USAAZ) ; Hernandez, Rachel (USAAZ) ; Morrissey, Mike (USAAZ) ; Hurley, Emory (USAAZ) ; Kelly, Kristen (USAAZ) 6

**Sent:** Sun Mar 06 18:20:55 2011

**Subject:** Materials For Bill Newell and ATF in DC

Bill and Jim:

As you work in DC today to prepare with ATF Leadership, enclosed below are some issues and our answers we have compiled. Issues are in Green and proposed answers are in black.

Hope they are helpful. Thanks. PIC

A. *On the Status of F and F lead indictment.* 



DP

DP

DP



# DP

Press Release at:

[http://www.justice.gov/usao/az/press\\_releases/2011/PR\\_02172011\\_Macedo\\_Saucedo-Cuevas%20et%20al.pdf](http://www.justice.gov/usao/az/press_releases/2011/PR_02172011_Macedo_Saucedo-Cuevas%20et%20al.pdf)

Links to Indictments:

[http://www.justice.gov/usao/az/news\\_archive\\_2011.html](http://www.justice.gov/usao/az/news_archive_2011.html)

# DP

# DP

Press Release at:

[http://www.justice.gov/usao/az/press\\_releases/2011/PR\\_02172011\\_Macedo\\_Saucedo-Cuevas%20et%20al.pdf](http://www.justice.gov/usao/az/press_releases/2011/PR_02172011_Macedo_Saucedo-Cuevas%20et%20al.pdf)

Indictments as:

[http://www.justice.gov/usao/az/press\\_releases/2011/US\\_v\\_Rosa\\_Indictment.pdf](http://www.justice.gov/usao/az/press_releases/2011/US_v_Rosa_Indictment.pdf)

**In the Tucson Office alone there are currently five (5) pending indictments charging 23 defendants with attempting to export thousands of rounds of ammunition to Mexico and with weapons offenses. Those indictments are enclosed in PDFs.**

From: (b) (6), (b) (7)(C)

Sent: Tuesday, March 22, 2011 10:54 AM

To: (b) (6), (b) (7)(C)

Subject: FW: Border Crossing responses - WEST

Attachments: Border Operations.; Firearms crossing international border; Untitled; Questions; Denver response; Untitled; FW: HQ Request

West Divisions:

Phoenix -- [REDACTED]

Houston -- [REDACTED]

Dallas -- Negative

Denver -- Negative

Los Angeles -- Negative

San Francisco -- Negative

Seattle - Negative

(b) (7)(C), (b) (6)

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From: McMahon, William G.

Sent: Tuesday, March 22, 2011 8:44 AM

To: [REDACTED]

Subject:

Stuart,

Attached are the responses from the WEST SACs. I will get the EAST and CENTRAL to you shortly.

Thanks,

Bill

\*\*\*\*\*

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**From:** Needles, James R.  
**Sent:** Friday, March 18, 2011 6:44 PM  
**To:** McMahon, William G.  
**Subject:** Border Operations.

In January of 2010, one controlled delivery of grenade hulls, spoons and head assemblies was made to defendant [REDACTED]. [REDACTED] ATF SA's were in contact with Mexican authorities who were on the Mexican side of the border. As [REDACTED] went through the San Louie border the Mexican officials were advised however they did not stop [REDACTED].

From: Richardson, Marvin G.  
Sent: ~~Employee 3~~ Tuesday, March 17, 2011 7:10:01 PM  
To: McMahon, William G.  
Subject: Denver response

2267

Bill,

Denver's response is negative to both questions.

Take care and get some rest!

\*\*\*\*\*

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ATF8-001-001-00005394

From: [REDACTED]  
Sent: **Employee 3** March 18, 2011 6:02:00 PM  
To: McMahon, William G.  
CC: Crenshaw, Kelvin N. [REDACTED]  
Subject: Firearms crossing international border

2268

Sir, on behalf of SAC Kelvin Crenshaw, the Seattle Field Division is negative on both questions.

DOO [REDACTED]  
Supervisory Special Agent  
ATF - Seattle Field Division  
915 2nd Ave., Room 790  
Seattle, WA. 98174  
Office: [REDACTED]  
FAX: (206) 389-5829  
CELL: [REDACTED]

\*\*\*\*\*

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ATF8-001-001-00005395

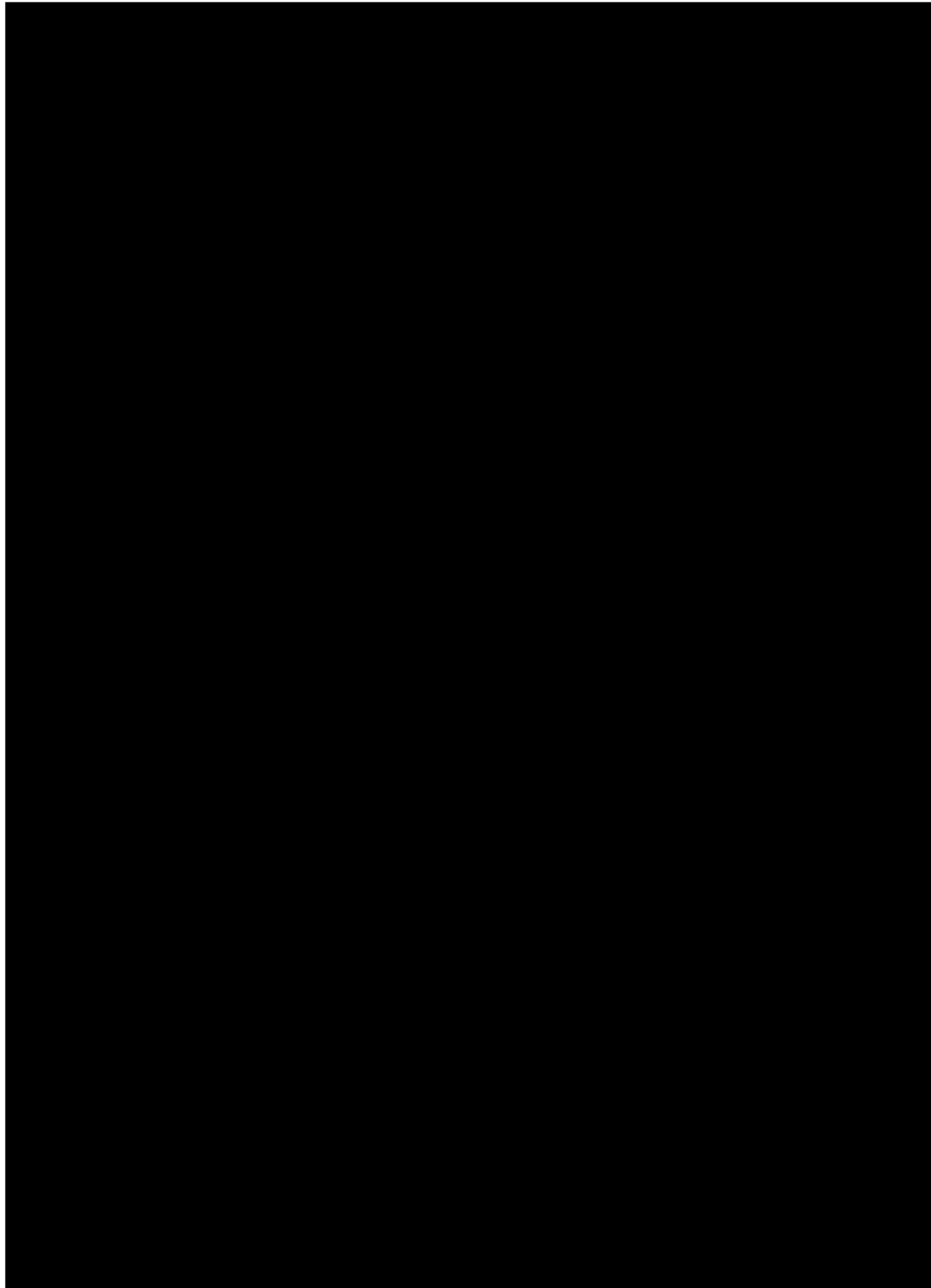




**OPERATION FN TRAFICADOR**

782025-08-0062

This investigation was initiated by Houston Group VIII (OCDETF Strike Force) Special Agents after receiving information through review of ATF Online Lead multiple sales and firearms tracing database.





**From:** [REDACTED]  
**Sent:** Thursday, March 17, 2011 8:57 PM  
**To:** McMahon, William G.  
**CC:** [REDACTED]  
**Subject:** Questions

Sir,

The San Francisco Field Division has canvassed our personnel and reports a negative response to your two questions.

Please feel free to contact me if you need additional information.

Thank you.

[REDACTED]  
Assistant Special Agent in Charge (Acting SAC)  
Bureau of Alcohol, Tobacco, Firearms and Explosives  
San Francisco Field Division  
Office: [REDACTED]  
Cell: [REDACTED]

From: Champion, Robert R.  
Sent: ~~Employee 3~~, March 17, 2011 8:58:01 PM  
To: McMahon, William G.  
Subject:

2273

Bill,

In regards to the ATF HQ. inquiry regarding International Firearms Trafficking over the last 3 years, the Dallas Field Division does not have any investigations that meet the criteria of control deliveries where FA's were allowed to cross the International Border nor have we witnessed FA's cross the International Border without taking action.

Thank you,

Robert R. Champion  
Special Agent in Charge  
Bureau of Alcohol, Tobacco, Firearms and Explosives  
Dallas Field Division  
(469) 227-██████████

\*\*\*\*\*

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**Briefing Paper****Phoenix Field Division****Phoenix Group VII****(OCDETF Strike Force/Gunrunner Group)****ATF Investigation 785115-10-0004****Operation: Fast & Furious, OCDETF No. SW-AZ-0496****January 14, 2011**

**Purpose:** Indictment and arrest of approximately nineteen individuals involved in firearms trafficking to Mexican Drug Trafficking Organizations/Cartels.

**Date of Operation:** January 25, 2011.

**Background:** Since October 2009, ATF, and other partners, have been investigating a firearm trafficking organization that is being funded by a drug trafficking organization (DTO) that is involved in violent criminal activity in Mexico, Southern Arizona and many other regions of the United States. These acts contribute to violations of Federal Laws to include Firearms, Narcotics, Money Laundering, and Conspiracy Laws.

Agents believe that the Phoenix-based firearm trafficking group is actively purchasing firearms through straw purchasers using bulk narcotics proceeds. From October 2009 to October 2010 agents have documented that this organization has spent approximately 1.25 million dollars in cash at various Phoenix area FFLs to acquire in excess of 1,900 firearms. The firearms are then being trafficked into Mexico.

[REDACTED]

Through these investigative techniques, agents have been able to identify additional co-conspirators and disrupt the firearms trafficking organization by seizing numerous firearms and narcotics. To date, 278 firearms and over fifty (50) pounds of marijuana have been recovered by ATF agents in addition to the numerous firearms and narcotic seizures in Mexico related to this investigation. An additional 72 firearms have been seized by U.S. law enforcement agencies in response to information received from ATF.

**Evidence in ATF Custody:** 278 firearms, 250 "drum" magazines, thousands of rounds of various caliber ammunition.

**OPERATION DETAILS:**

**Command Post:** 3010 North 2<sup>nd</sup> Street, Phoenix, AZ (OCEDTF Strike Force location).

**Incident Commander(s):** Incident Commander ASAC Jim Needles.

**Arrest Teams:** Four arrest teams, four search teams.

**Additional ATF Support:** No additional ATF support outside the reporting division will be needed to complete the operation.

**Specialized ATF Support:** ATF Special Response Team, (SRT).

**Issues/Problems:** No issues or problems that are anticipated.

**Anticipated Seizures:** No significant seizures are anticipated during the enforcement operation.

**Media:** Acting Director Melson, SAC Newell, and United States Attorney, District of Arizona, Dennis Burke will hold a press conference at the U.S. Attorney's Office.

**Action or Follow-up:** [REDACTED]

**Participants:** ATF, IRS, DEA, ICE (HSI), USMS, Phoenix PD, USDA-OIG.

**Case Agent:** [REDACTED]  
**Telephone:** [REDACTED]

**RAC/GS:** [REDACTED]  
**Telephone:** [REDACTED]

# Report of Investigation

U.S. Department of Justice  
Bureau of Alcohol, Tobacco, Firearms and Explosives

[Redacted] et al	Investigation Number: 785115-10-0004	Report Number: 205
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### SUMMARY OF EVENT:

### CONTACT INTERVIEW:

[Redacted]

### NARRATIVE:

1. [Redacted]

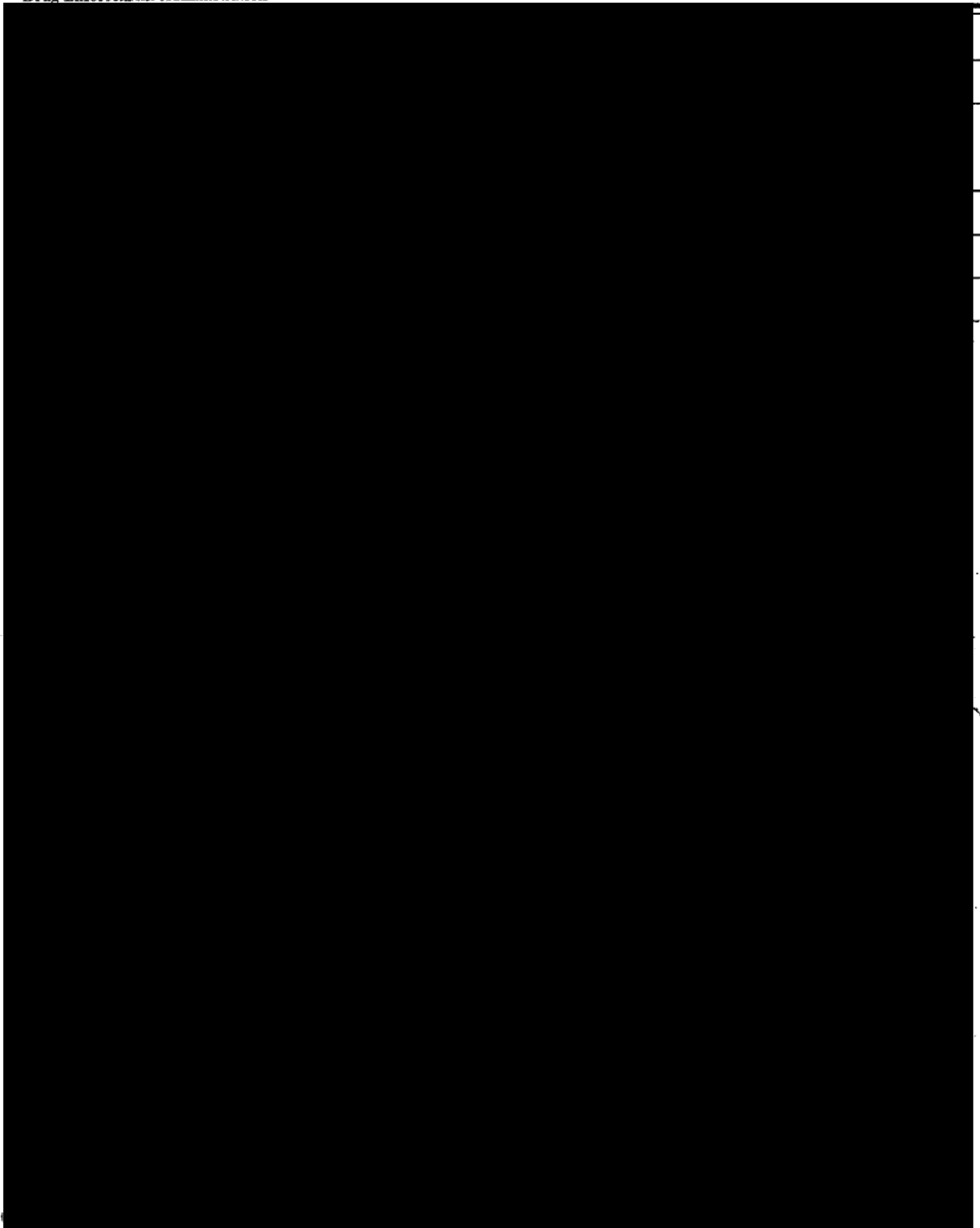
2. [Redacted] This case is ongoing.

### ATTACHMENTS:

[Redacted]

Prepared by: [Redacted]	Title: Special Agent, Phoenix VII Field Office	[Redacted]	Date: 4-7-2010
Authorized by: [Redacted]	Title: Group Supervisor, Phoenix VII Field Office	[Redacted]	Date: 4-7-10
Second level reviewer (optional): William D. Newell	Title: Special Agent in Charge, Phoenix Field Division	[Redacted]	Date:

U.S. Department of Justice  
Drug Enforcement Administration



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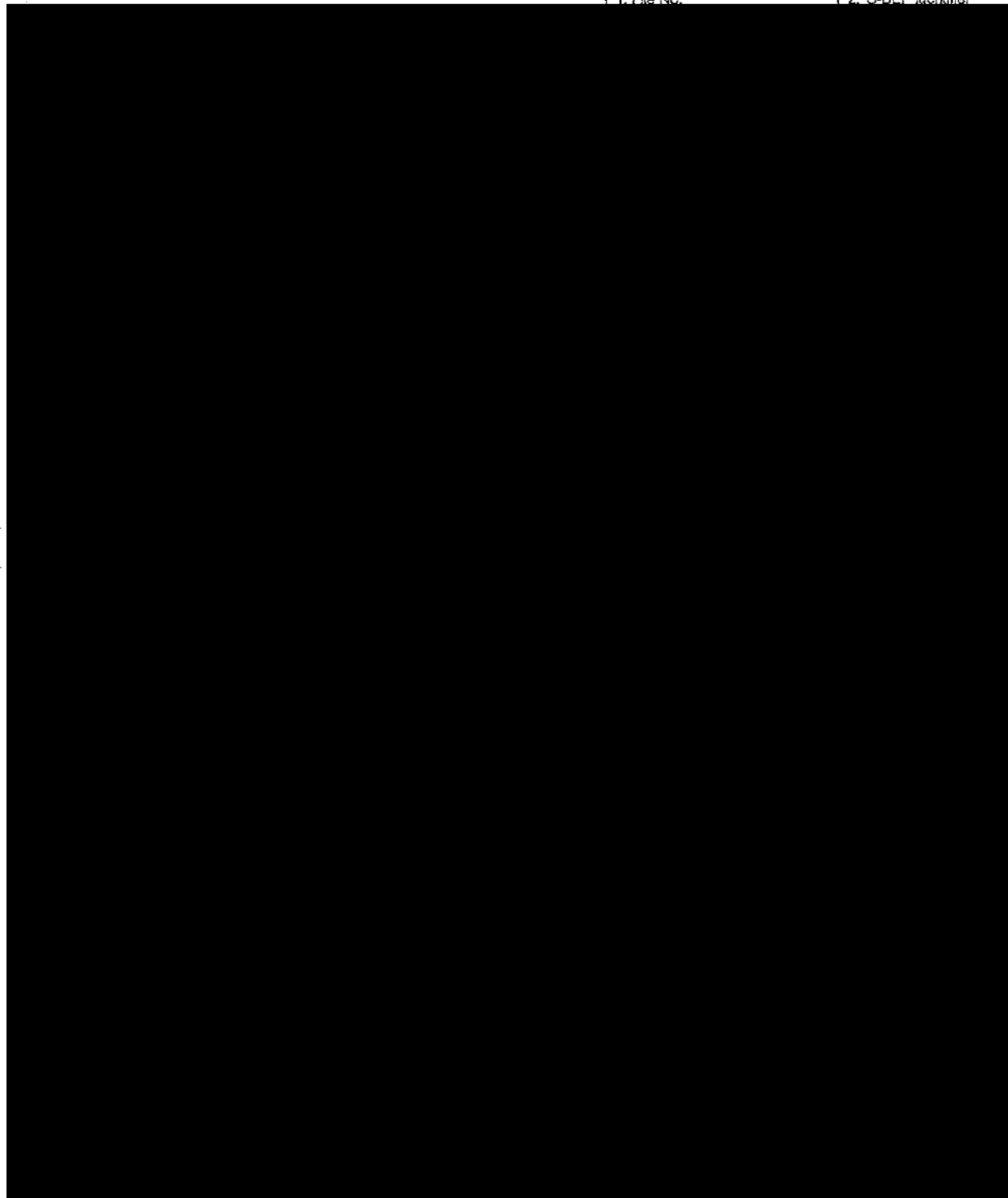
Previous edition dated 8/94 may be used.



U.S. Department of Justice  
Drug Enforcement Administration

1. File No.

2. G-DEP Identifier



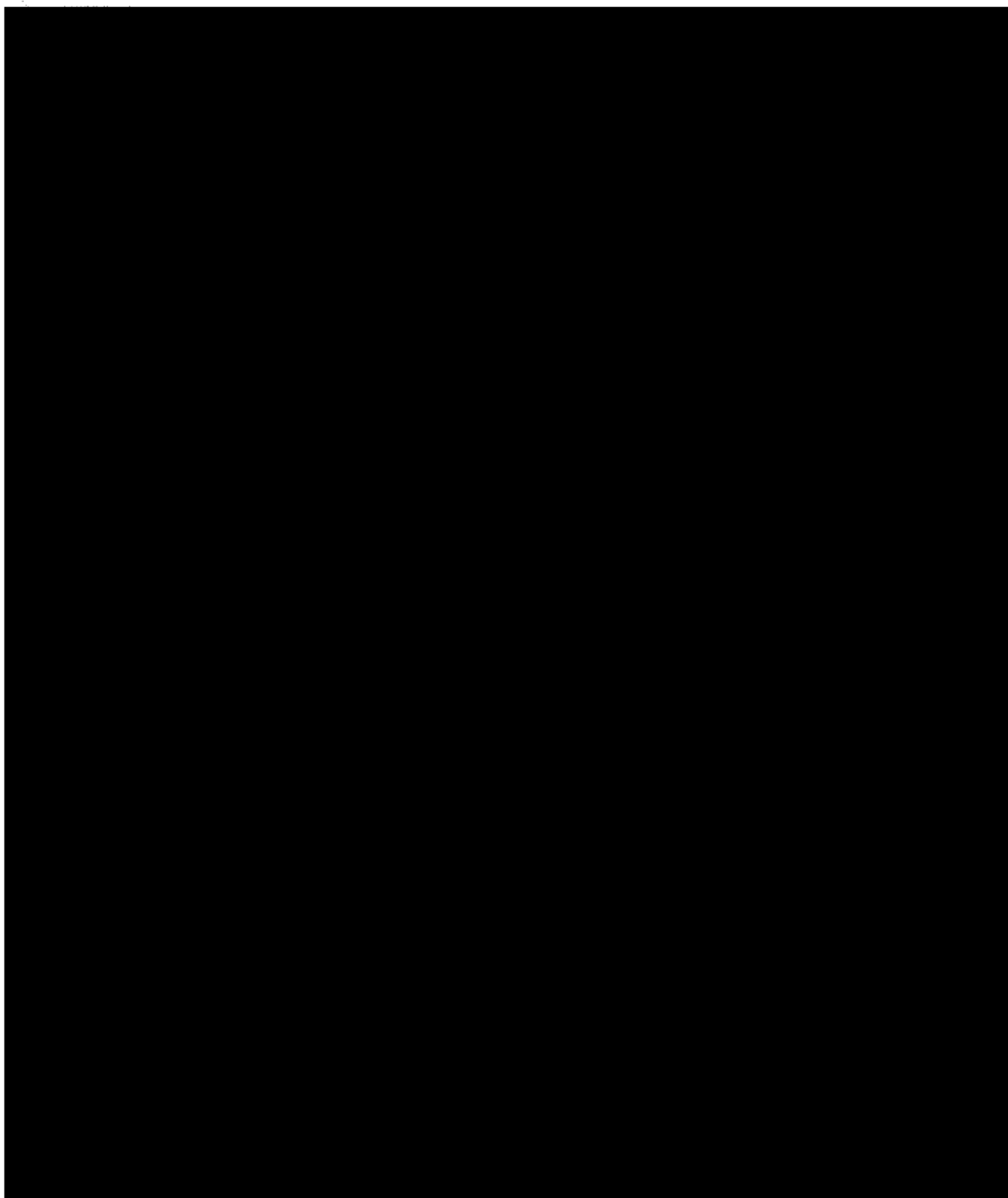
DEA Form - 6a  
(Jul. 1996)

**DEA SENSITIVE**  
Drug Enforcement Administration

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Drug Enforcement Administration



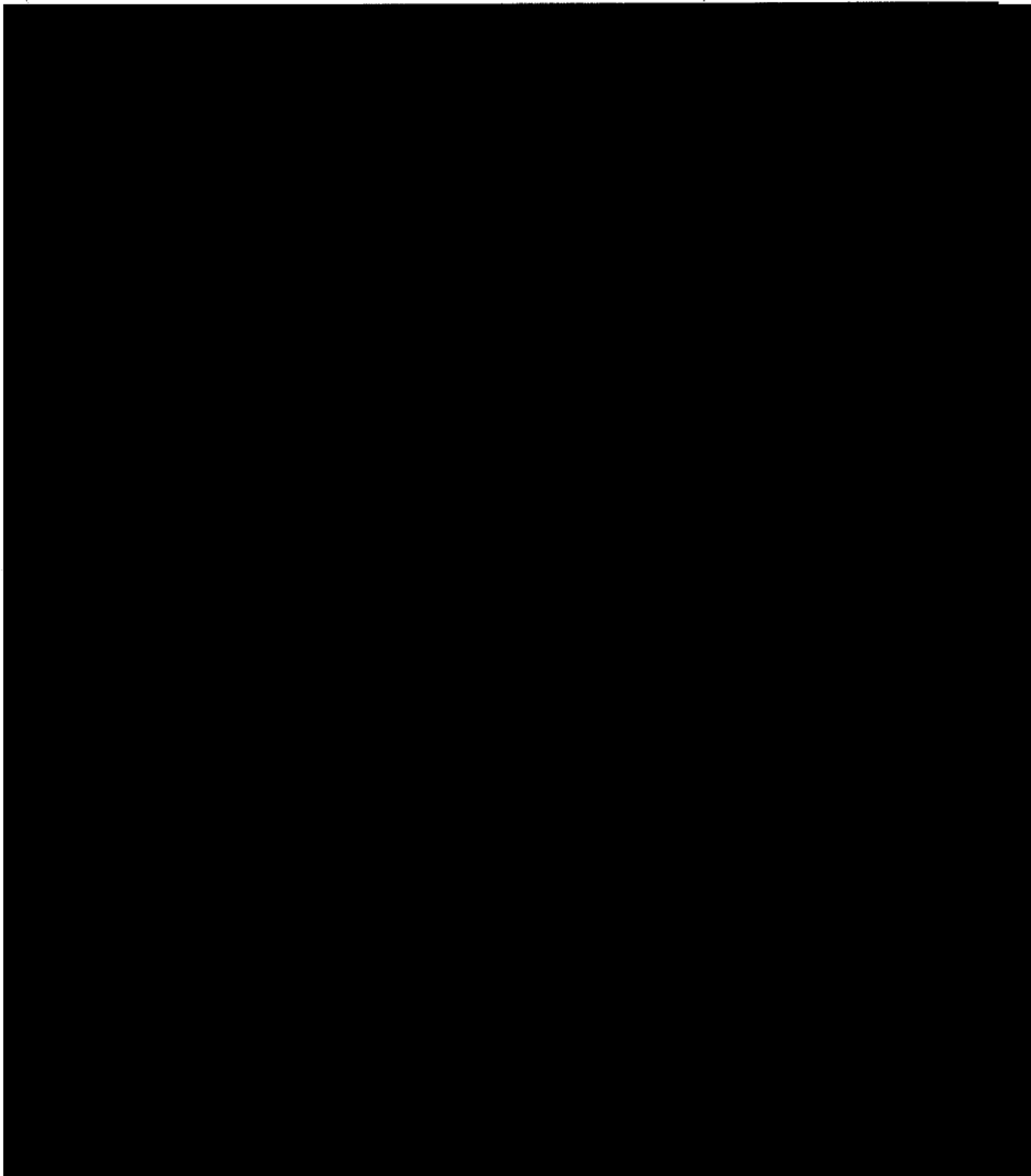
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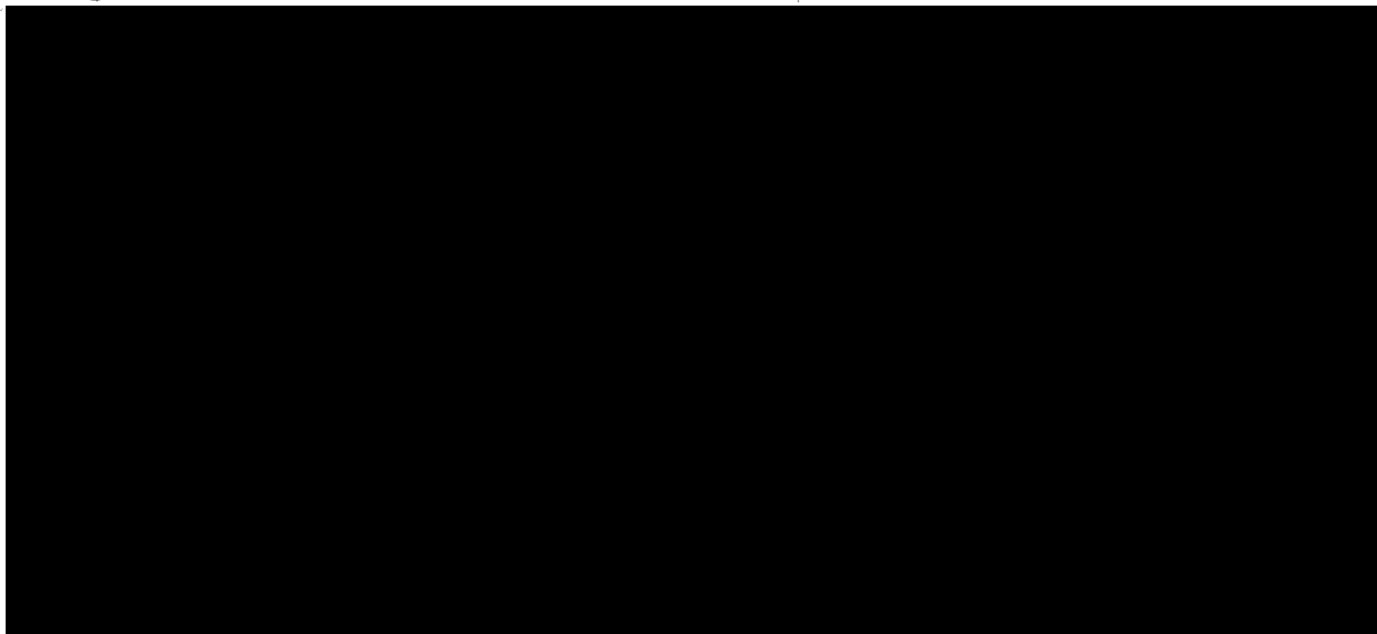
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**Drug Enforcement Administration**



DEA Form - 6a  
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Drug Enforcement Administration

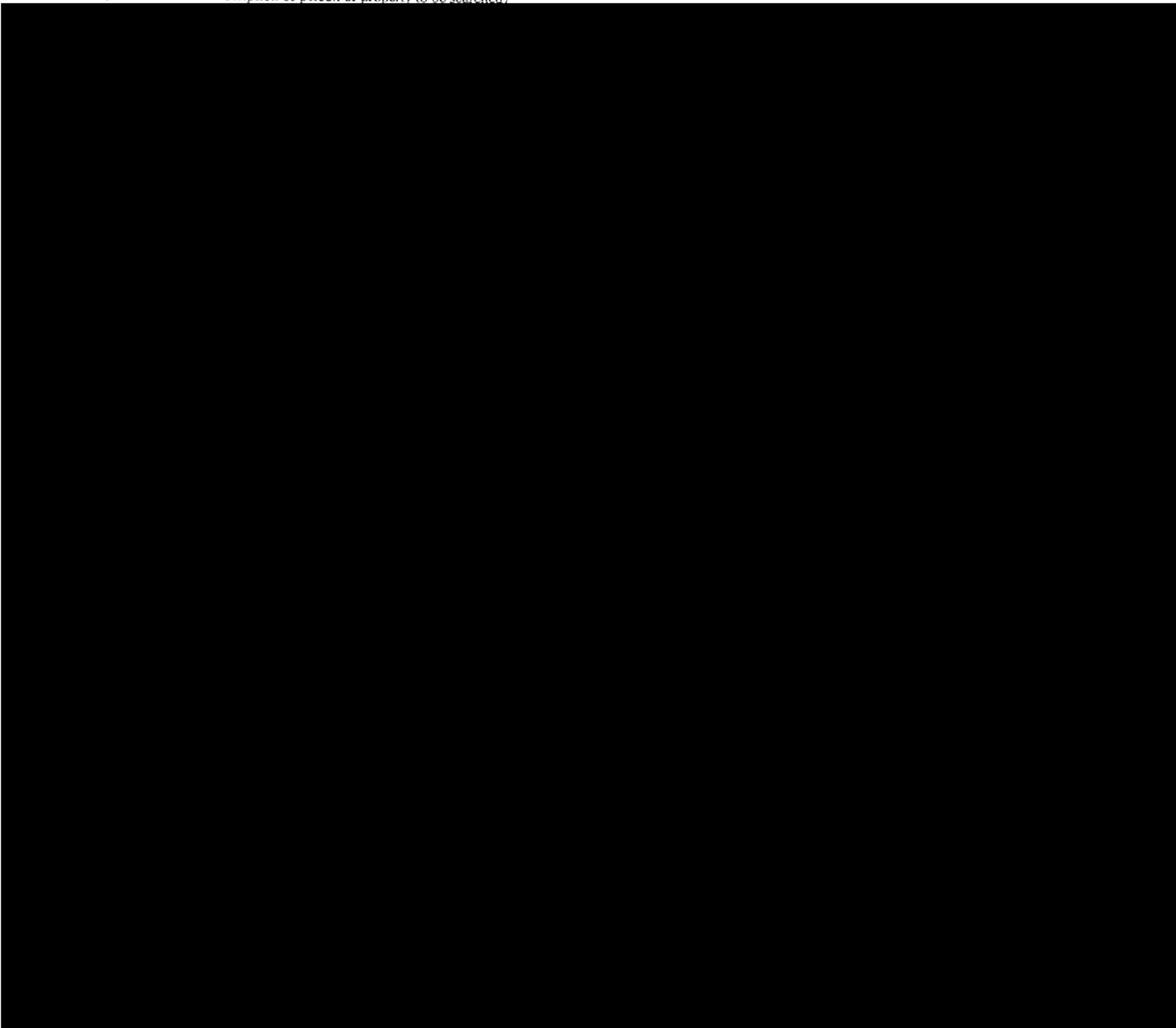
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**AGENT**

In the Matter of the Search of

(Name, address or brief description of person or property to be searched)



Employee 3

Return

2519

Case No.:

Date and time warrant executed:

Copy of warrant and inventory left with:

Inventory made in the presence of :

Inventory of the property taken and name of any person(s) seized:

**Certification**

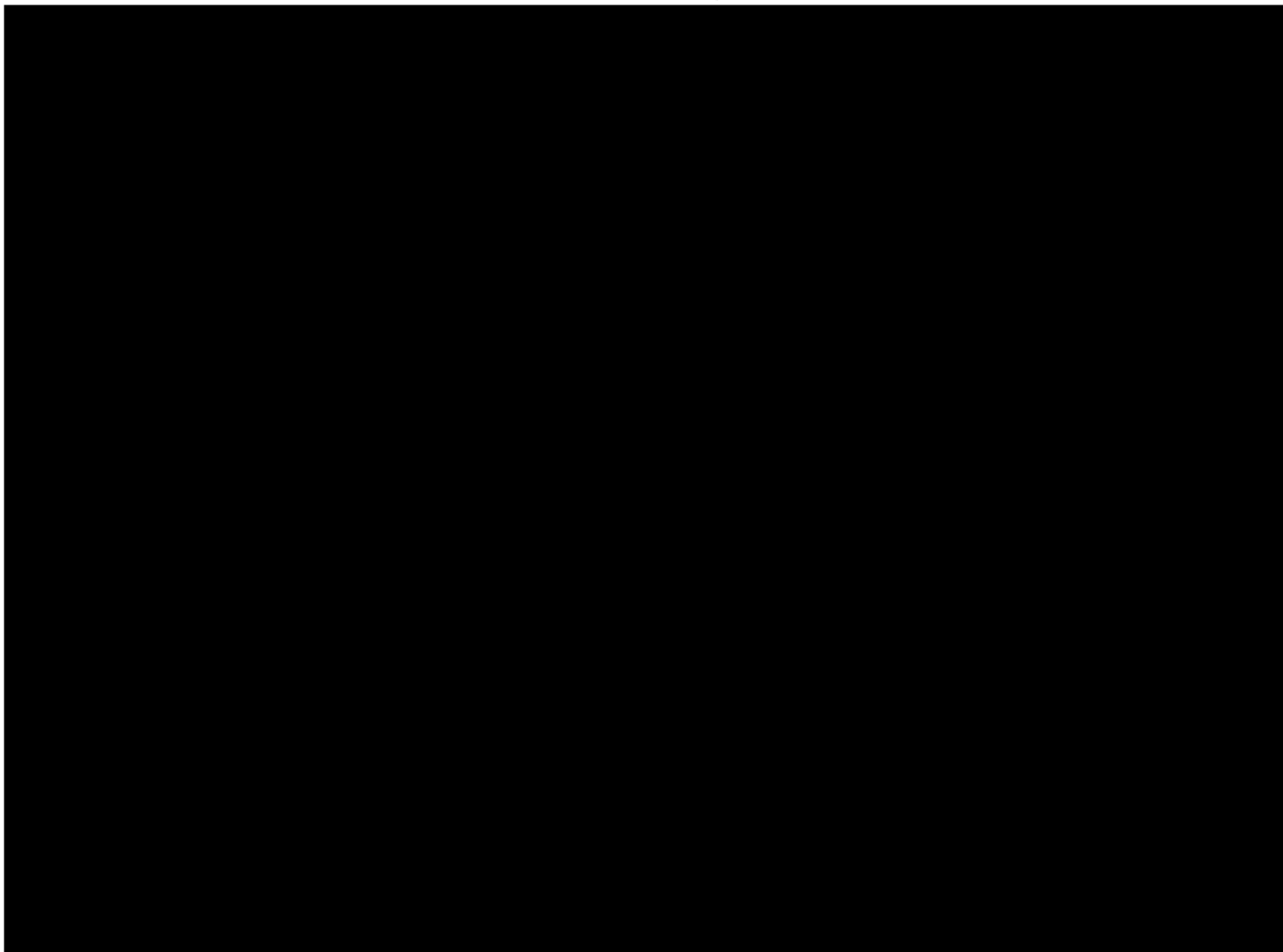
I declare under penalty of perjury that this inventory is correct and was returned along with the original warrant to the designated judge.

Date: \_\_\_\_\_

\_\_\_\_\_  
*Executing officer's signature*

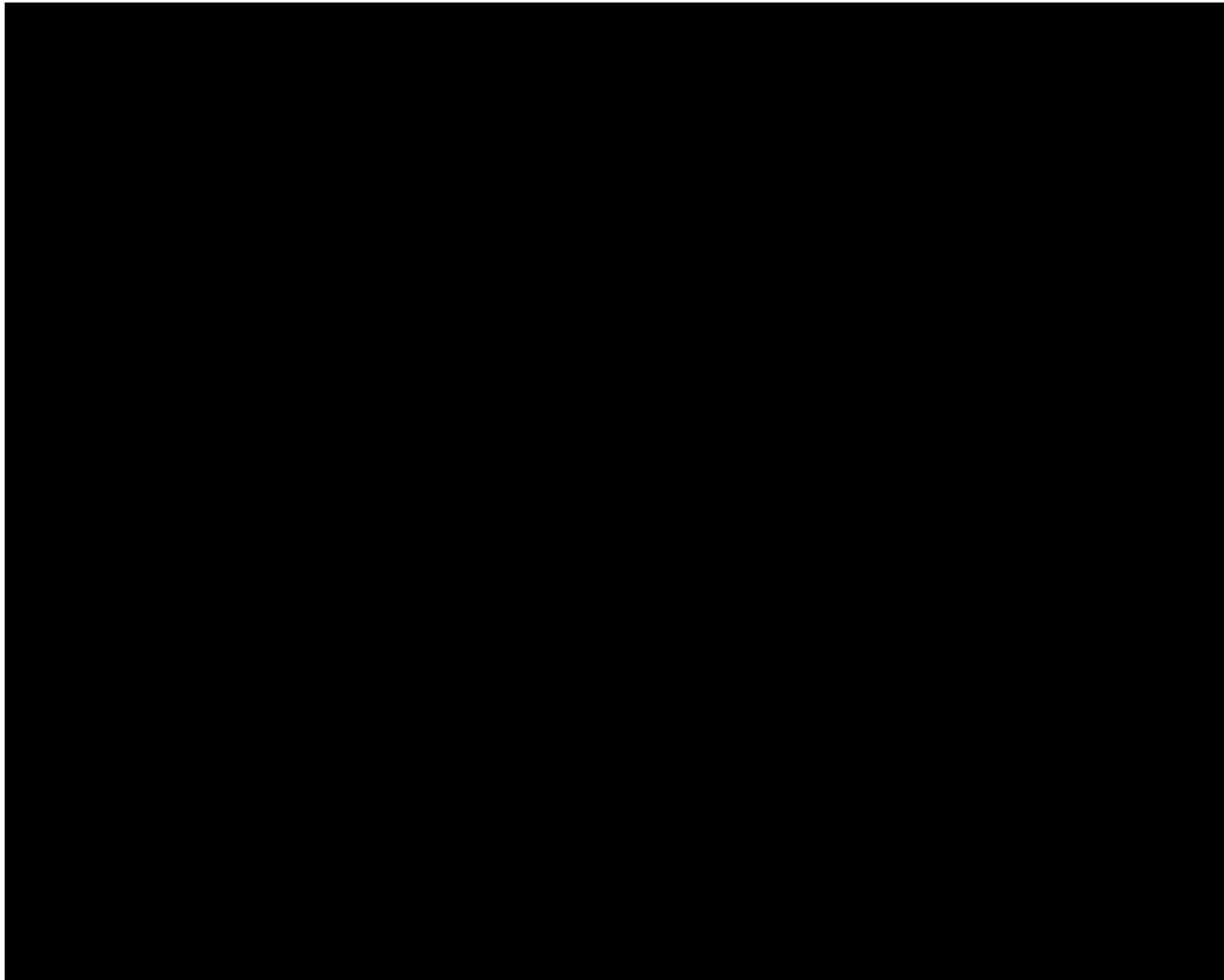
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*Printed name and title*

ATTACHMENT A



ATTACHMENT B

Description of Items to be Seized



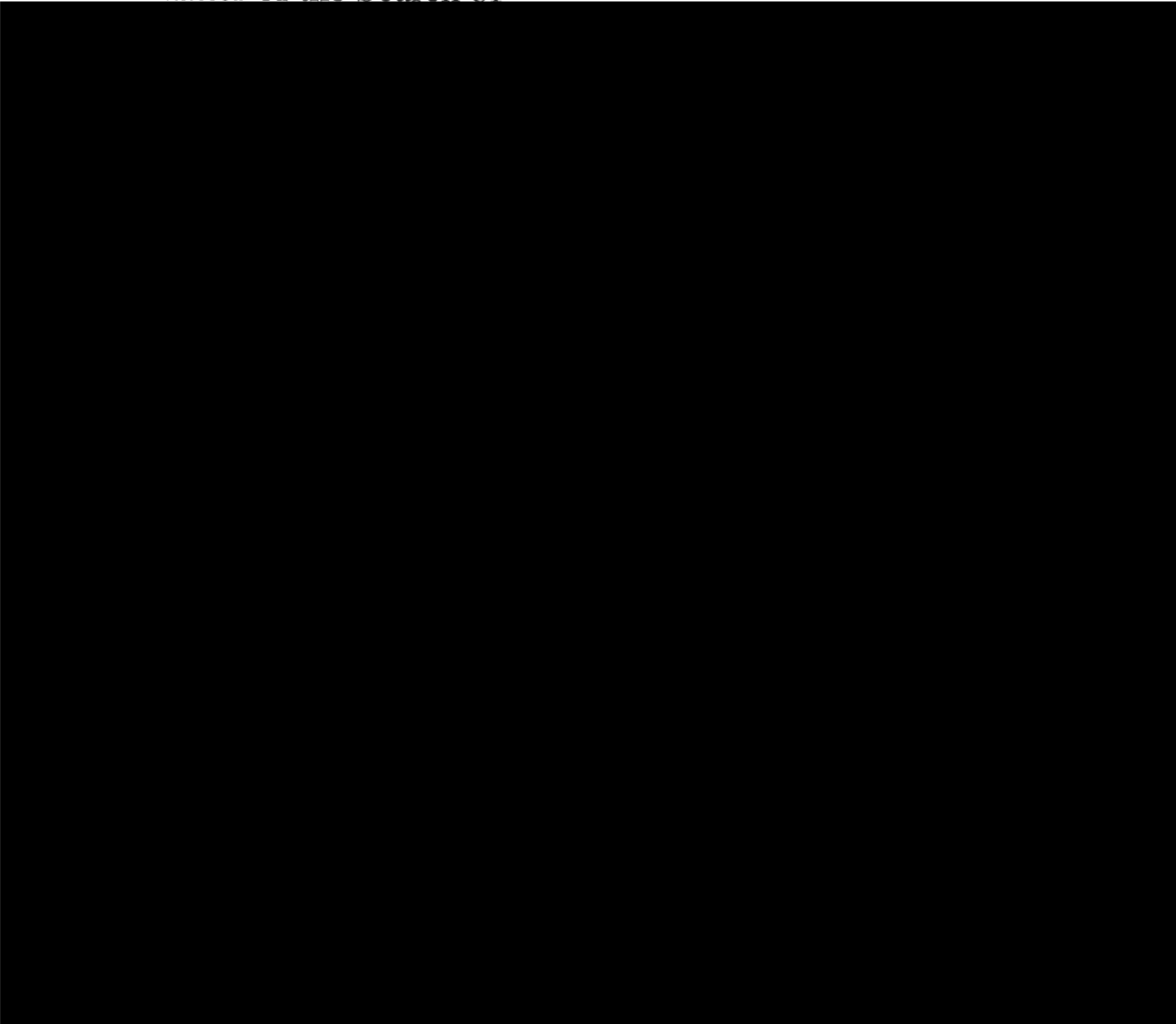


UNITED STATES DISTRICT COURT

*District of Arizona*

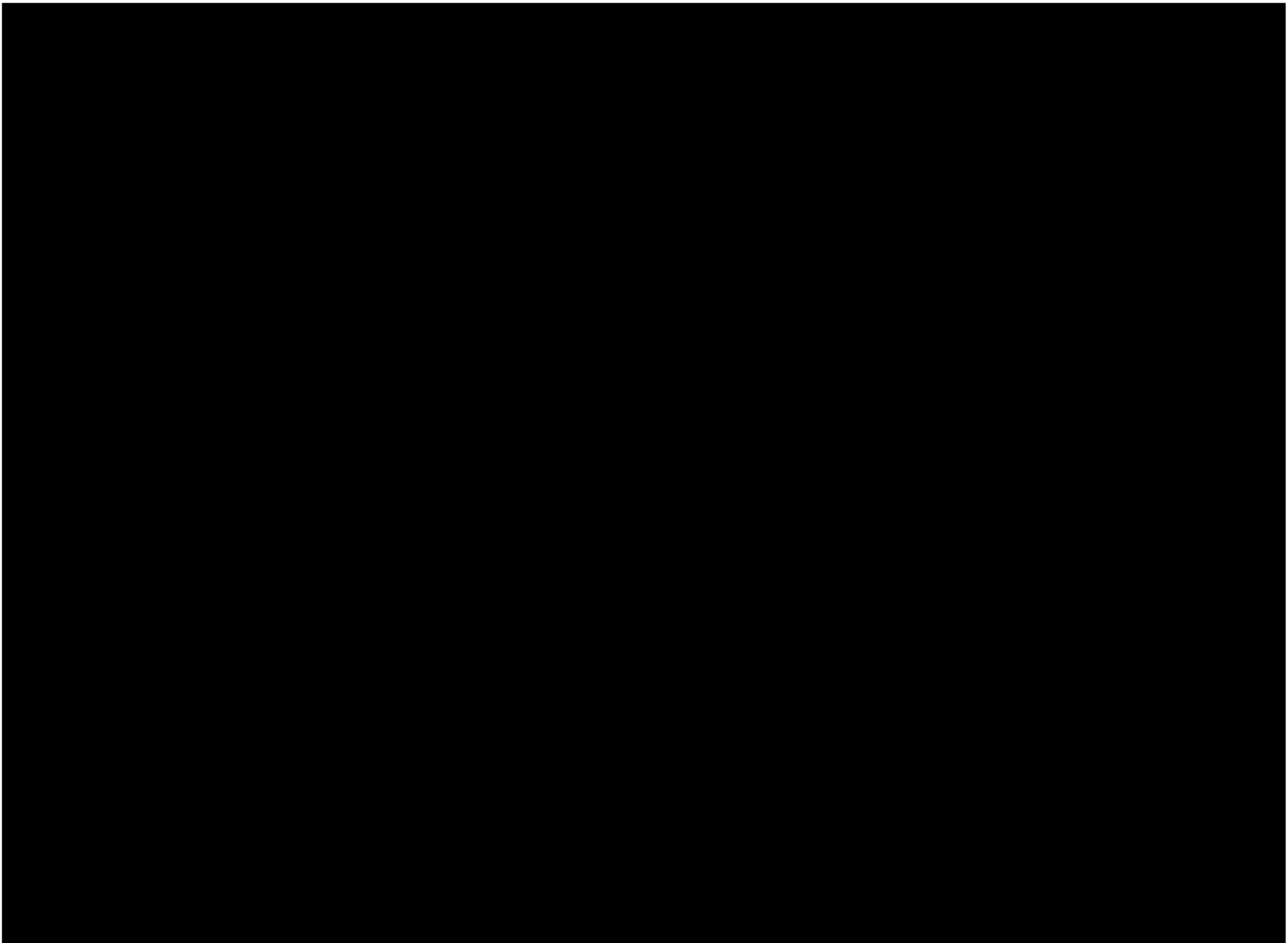
**AGENT**

In the Matter of the Search of



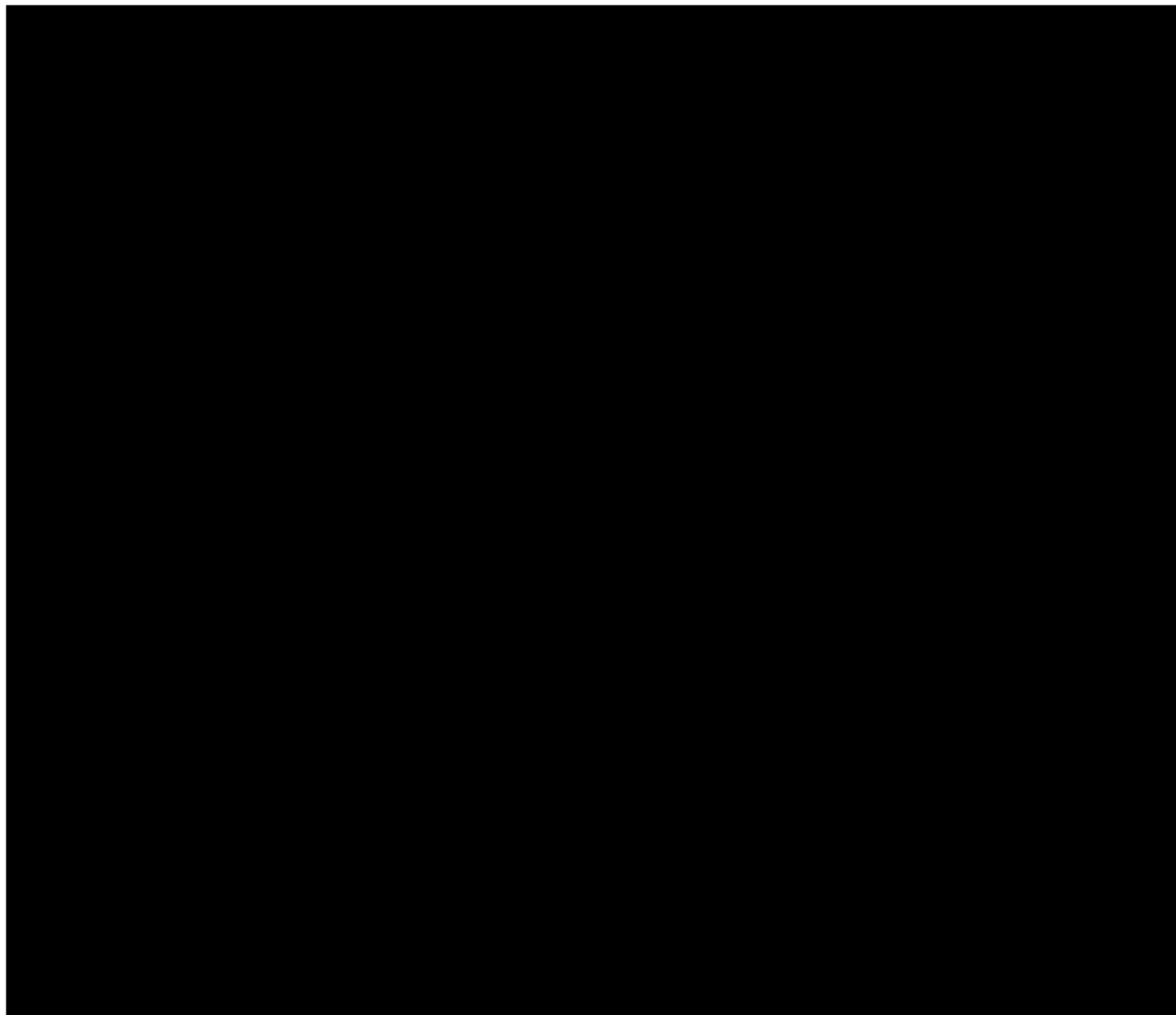
ATTACHMENT A

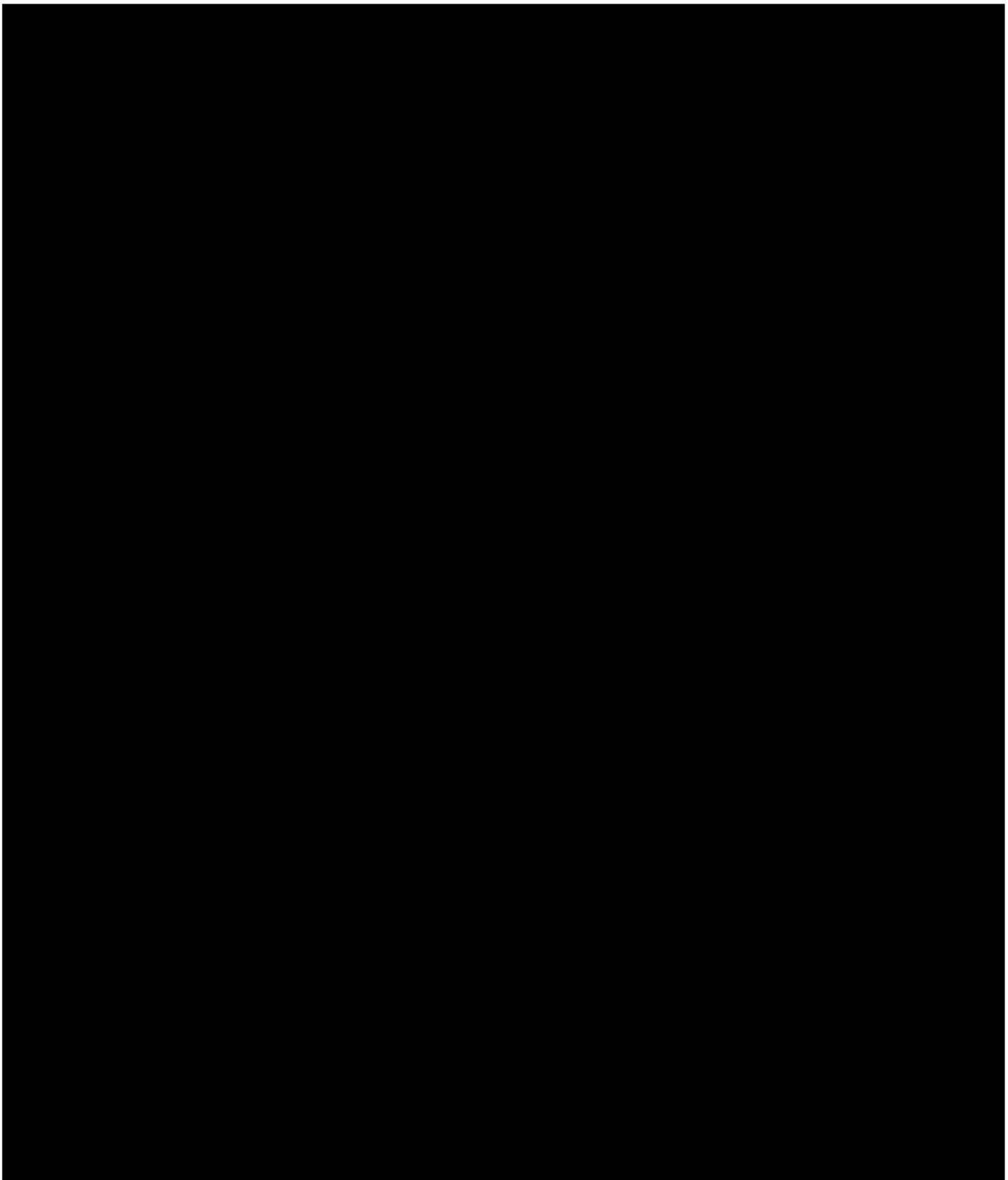
Description of Property to be Searched

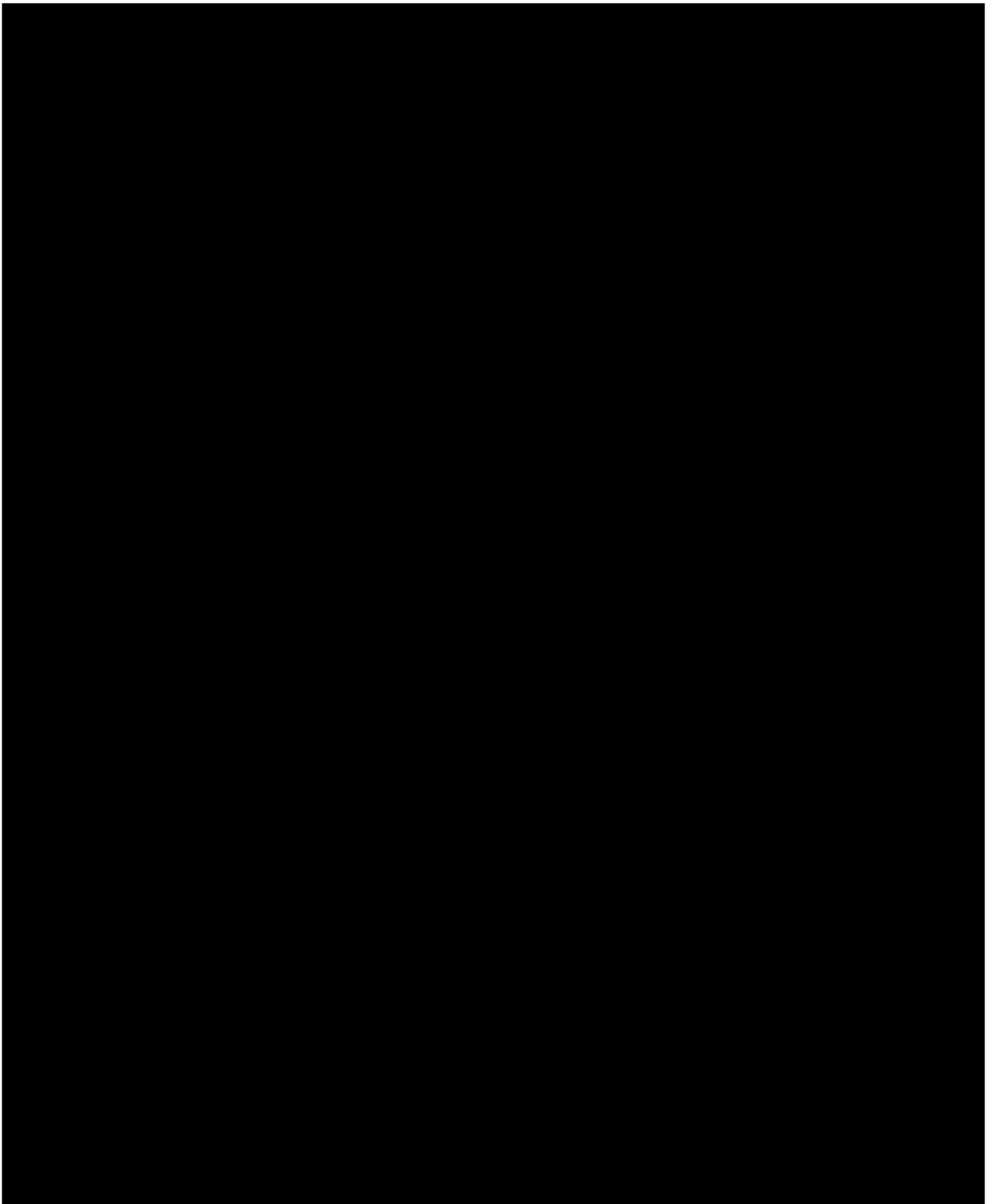


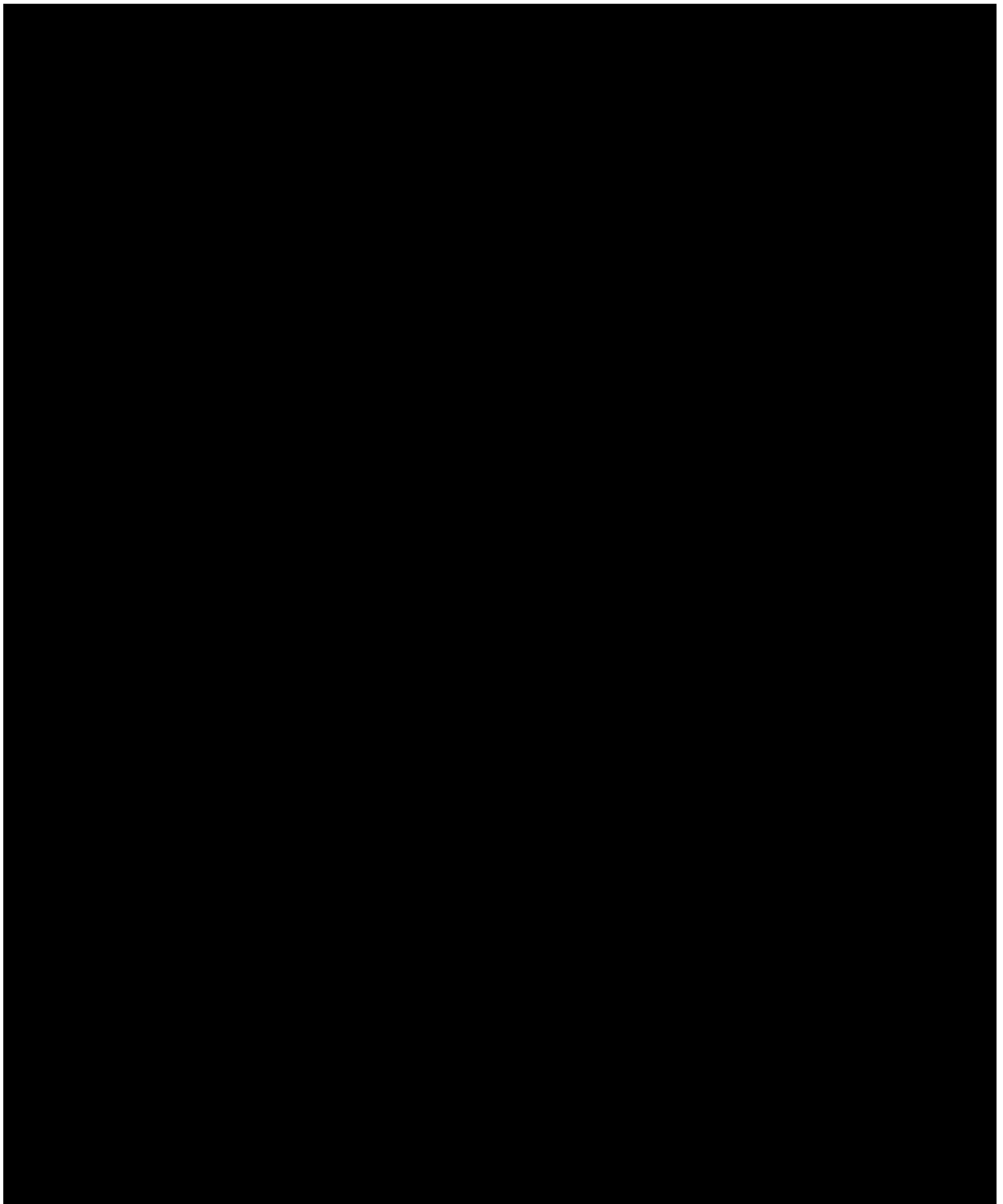
**ATTACHMENT B**

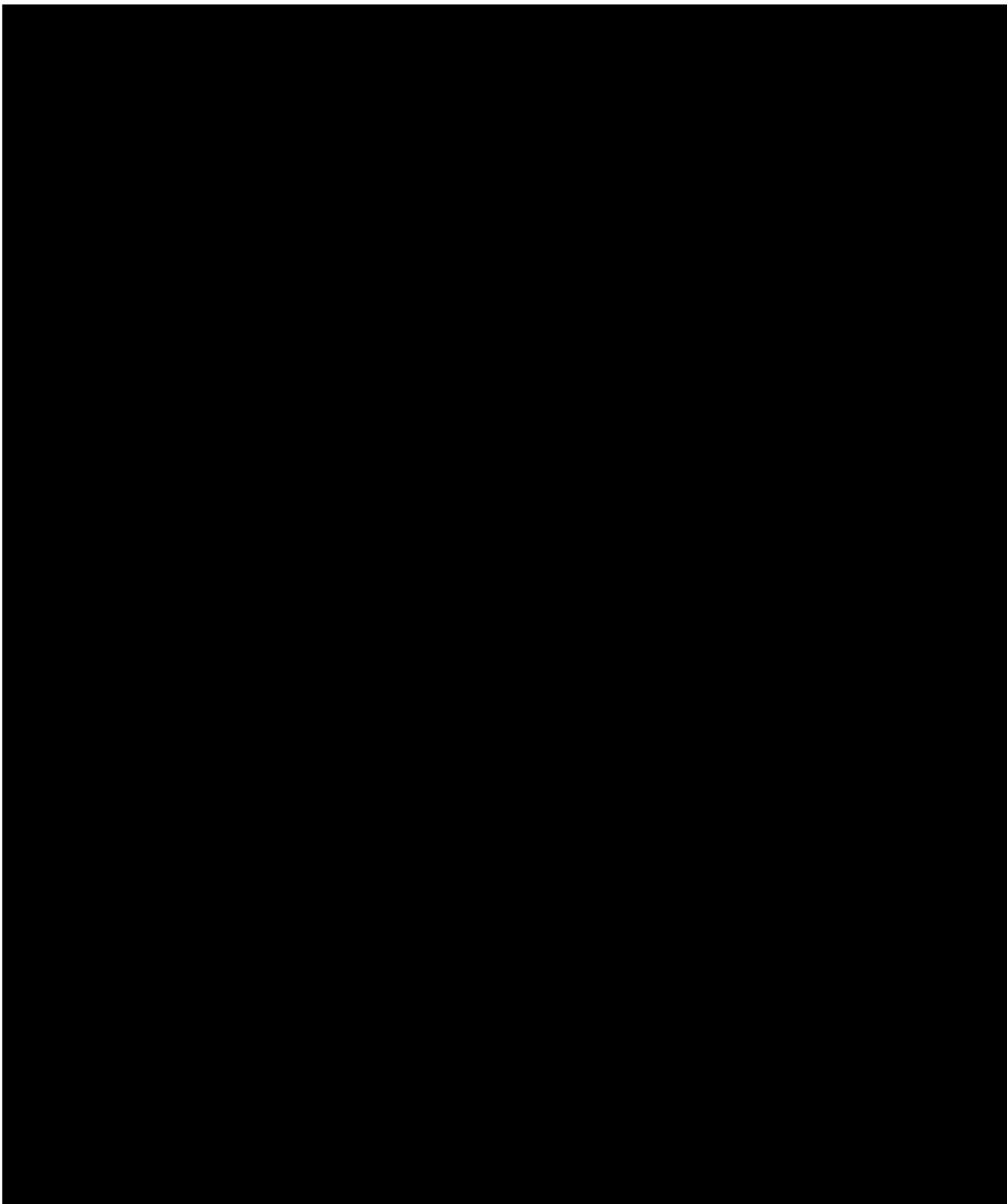
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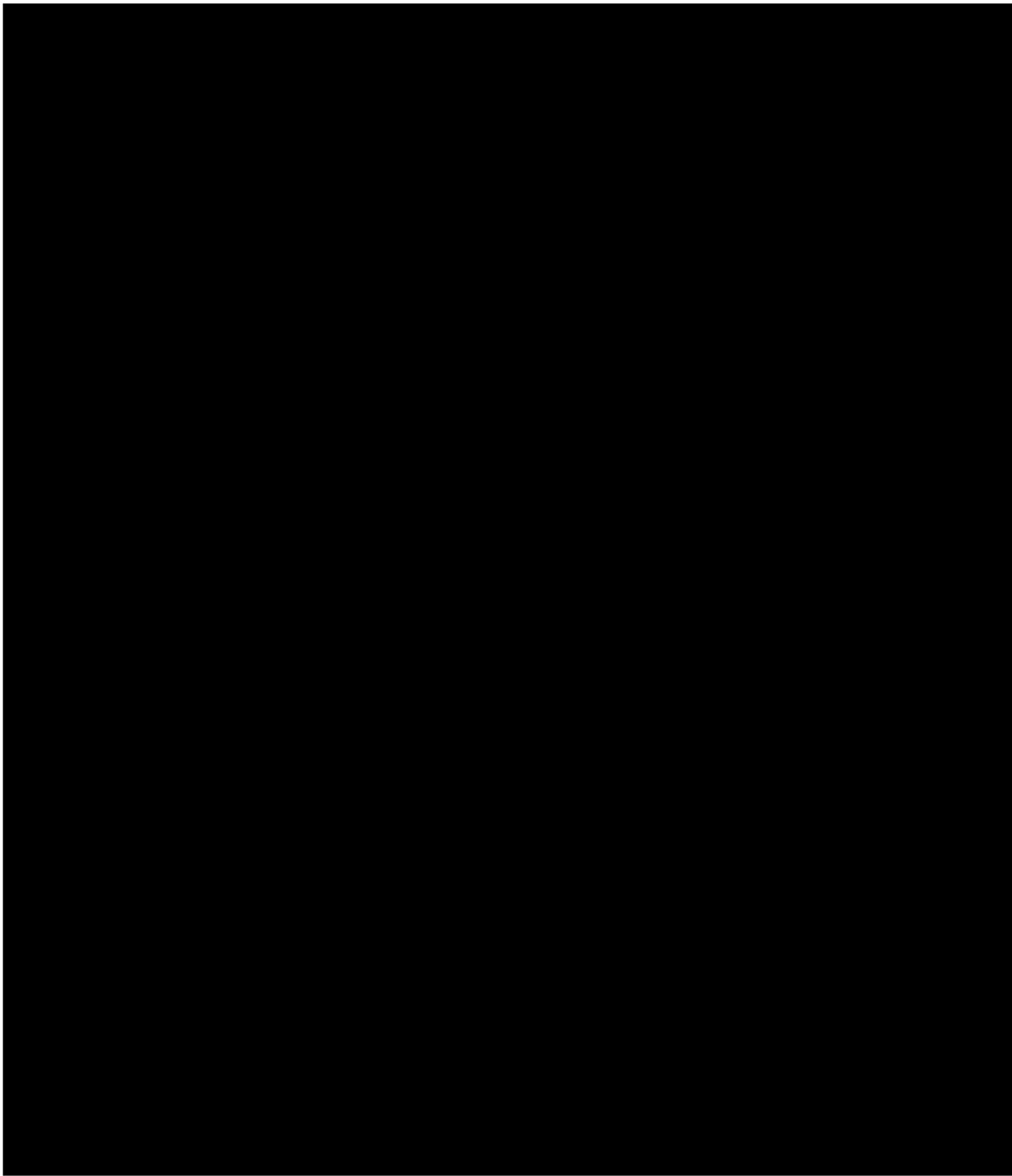




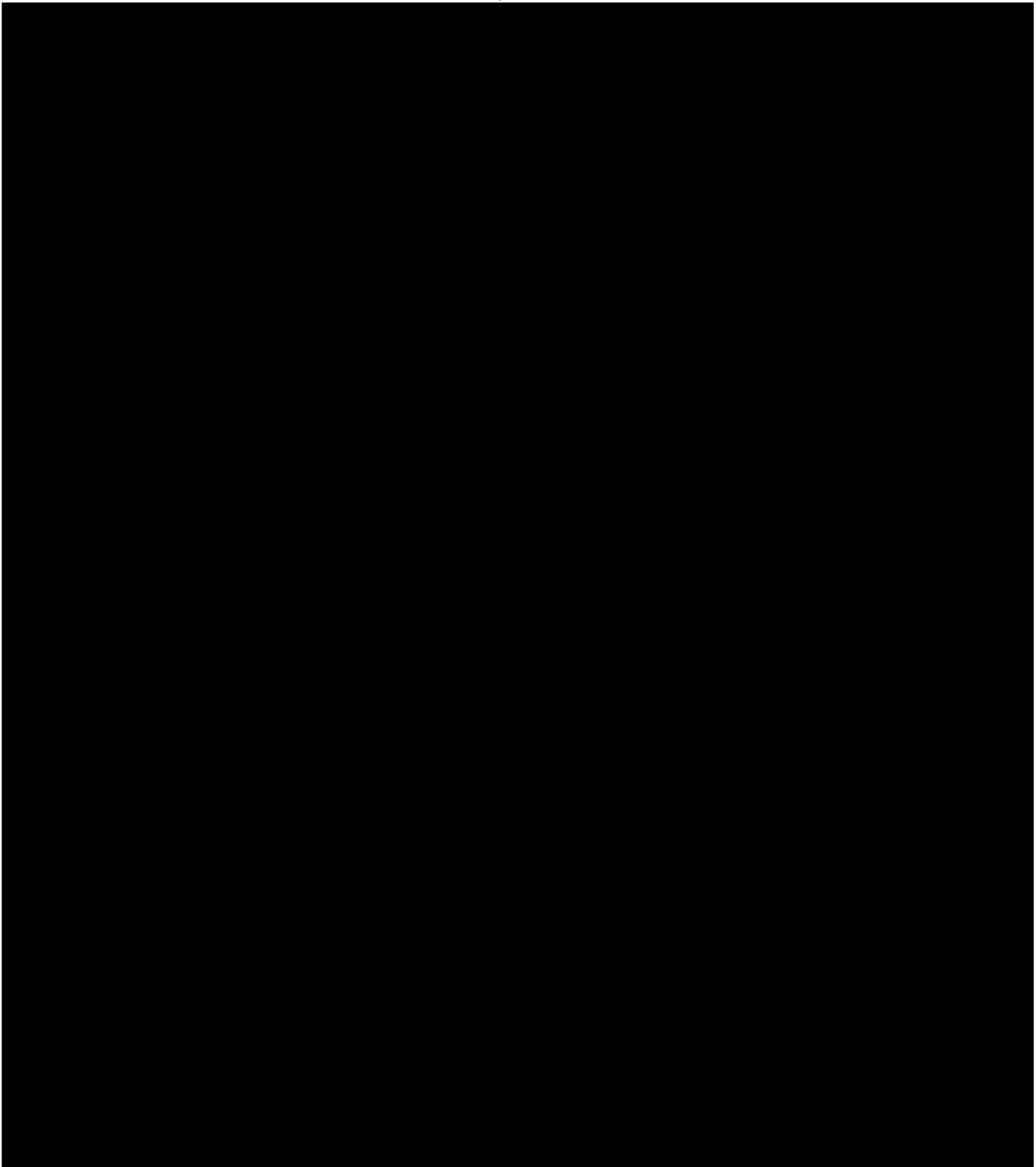


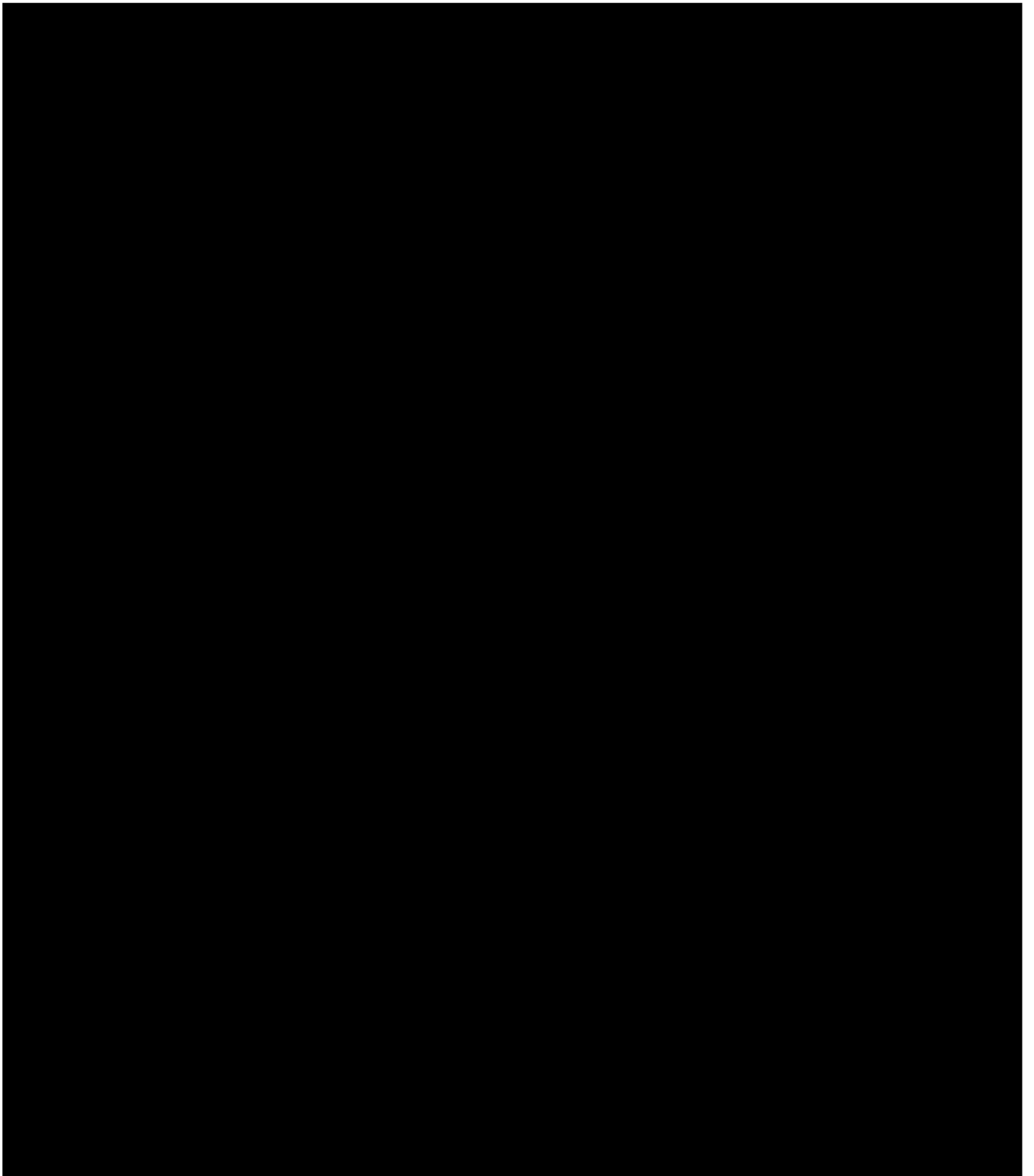


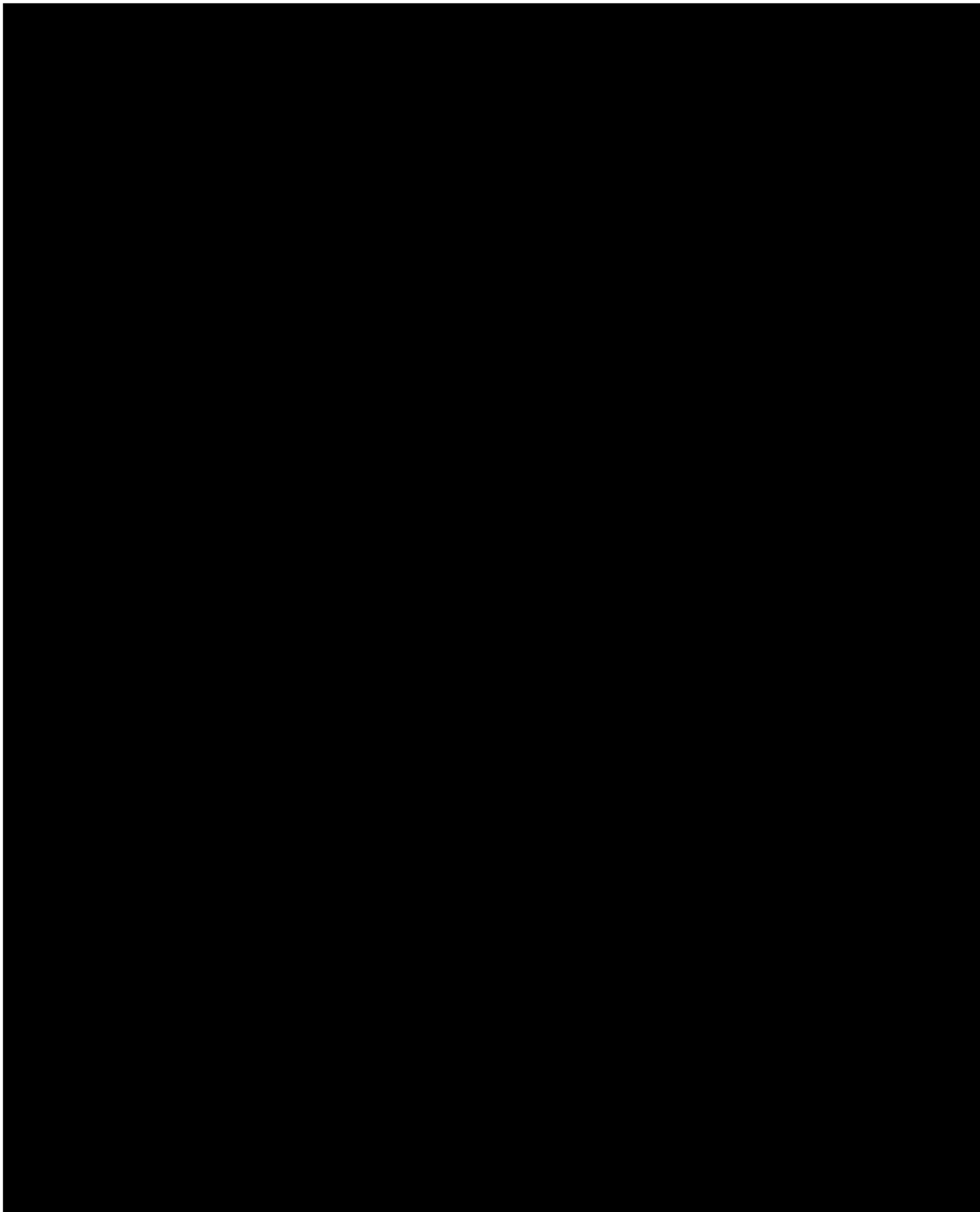


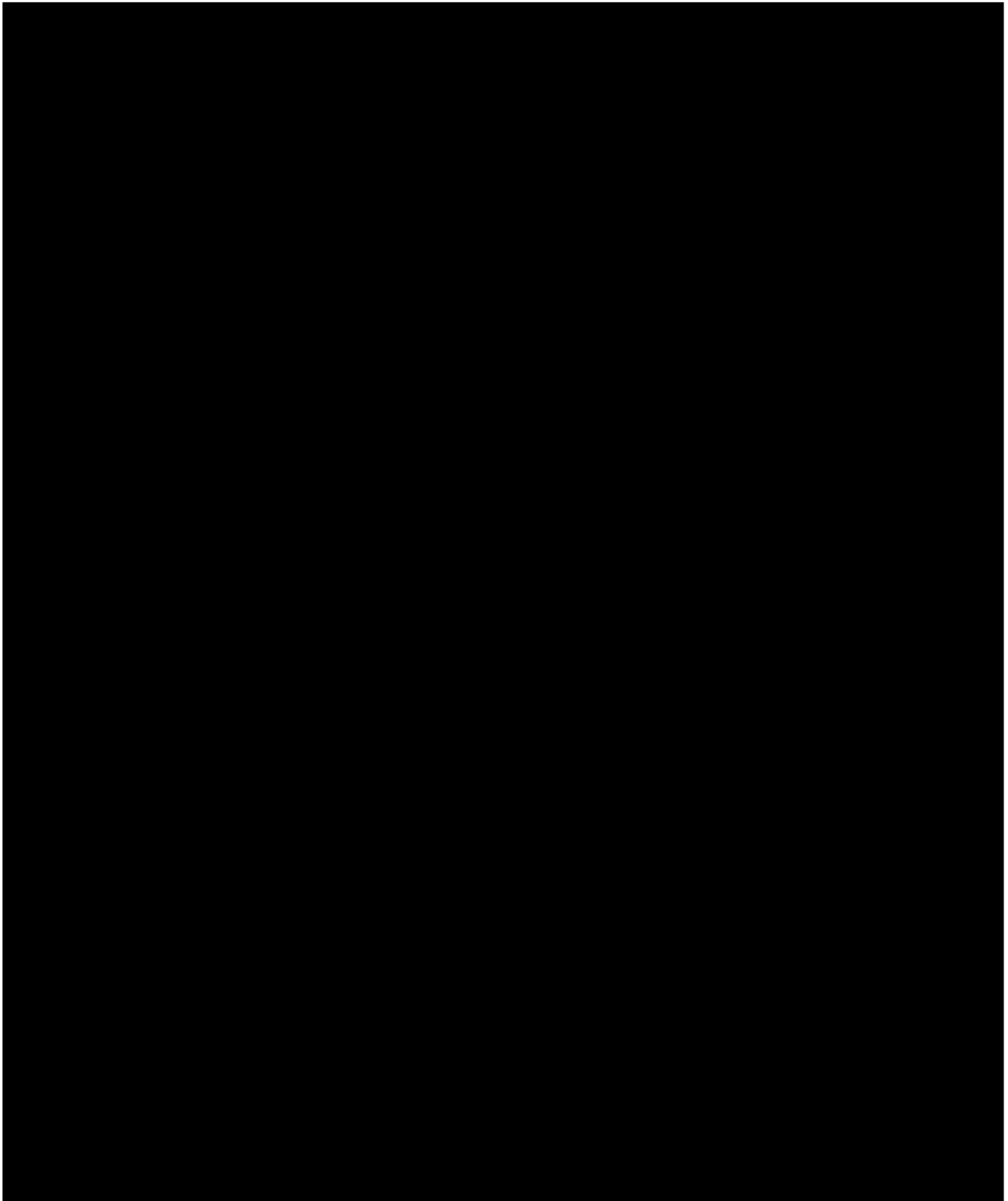


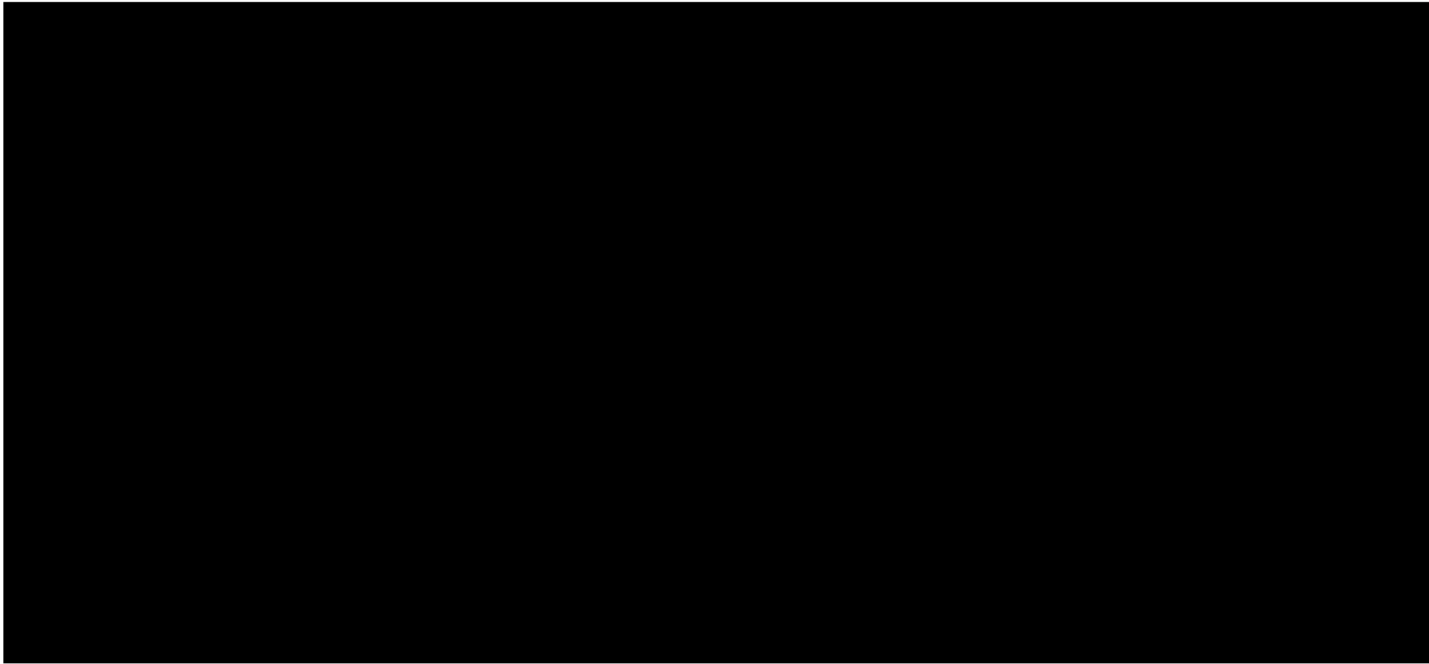


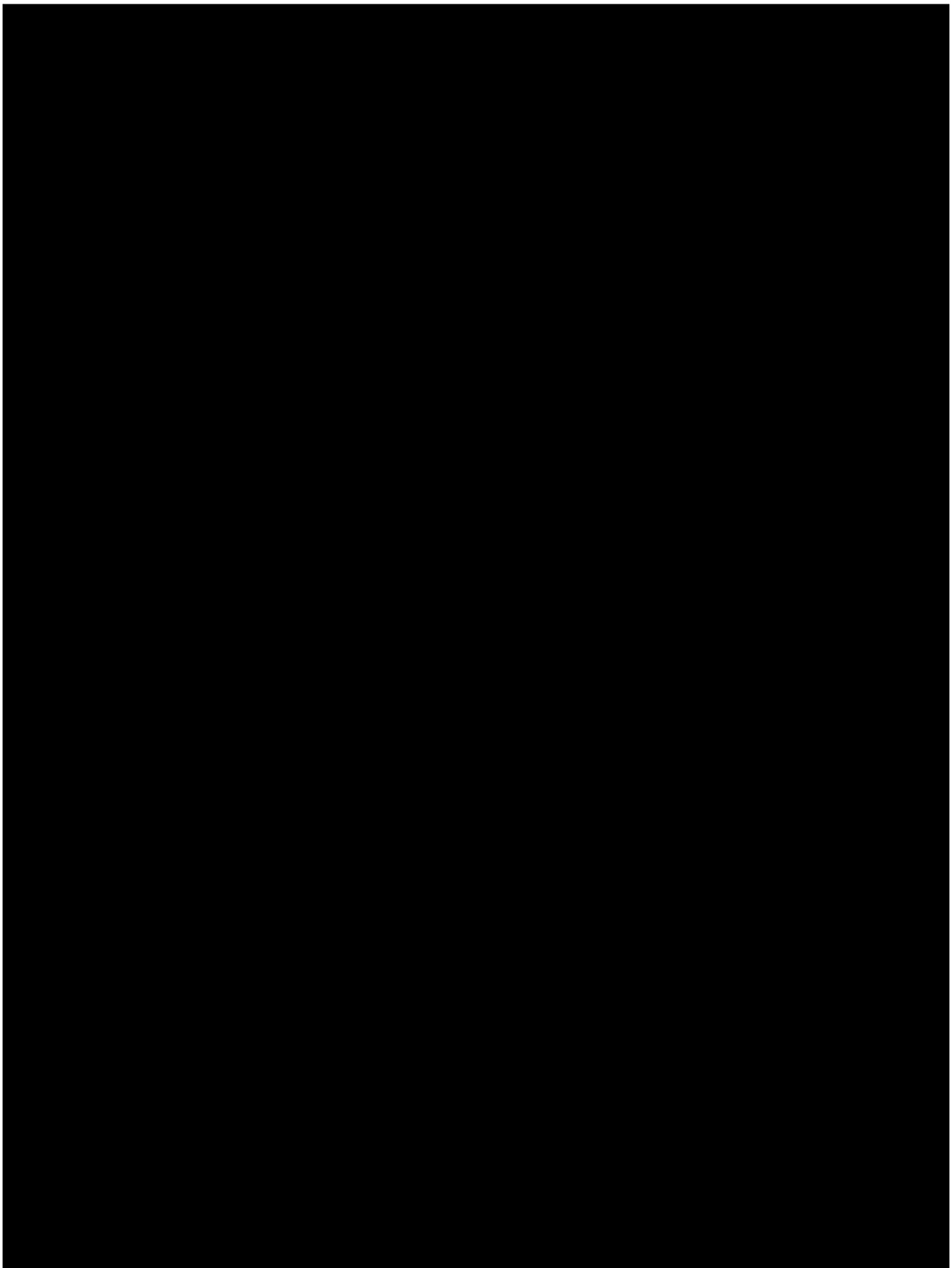


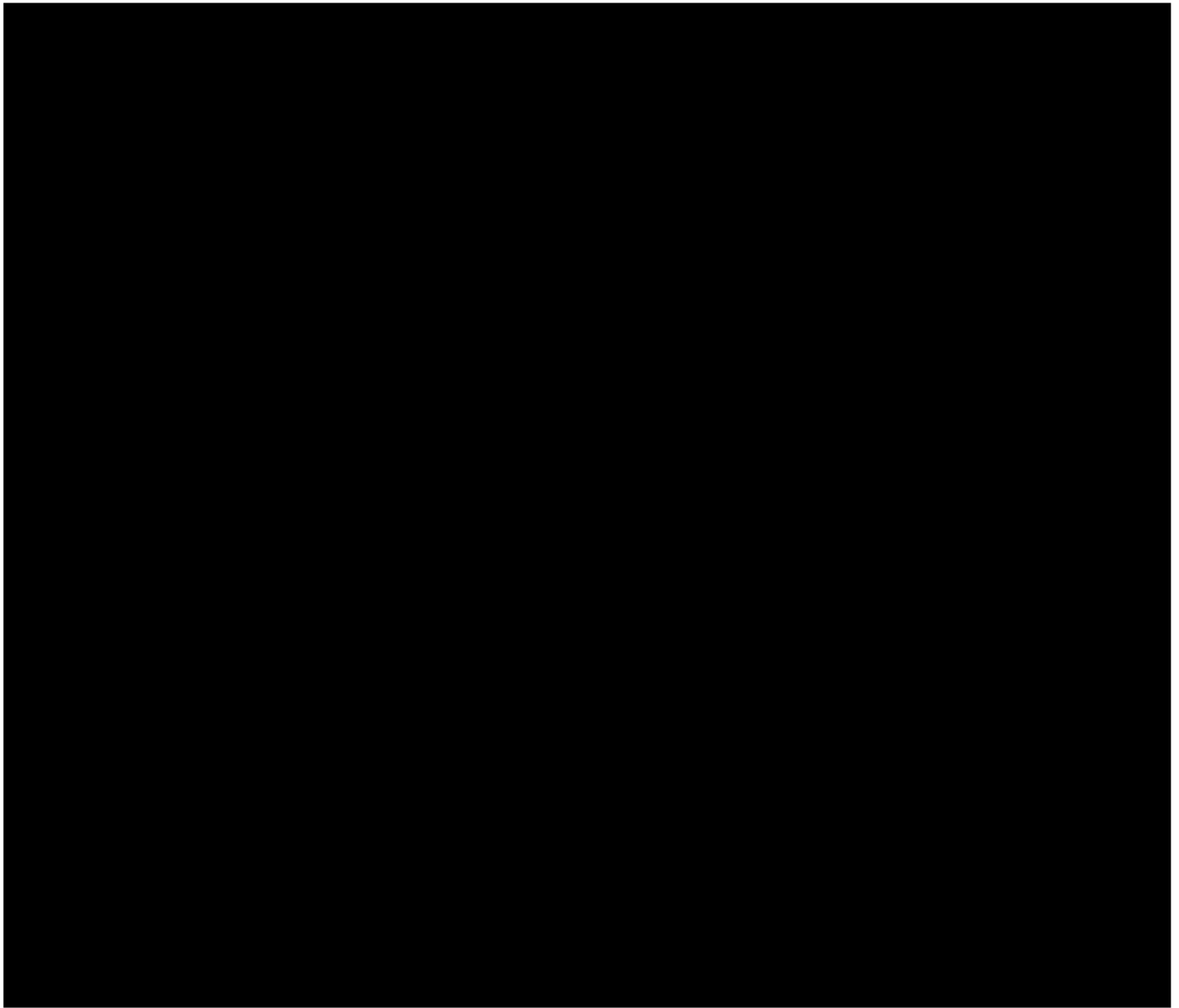








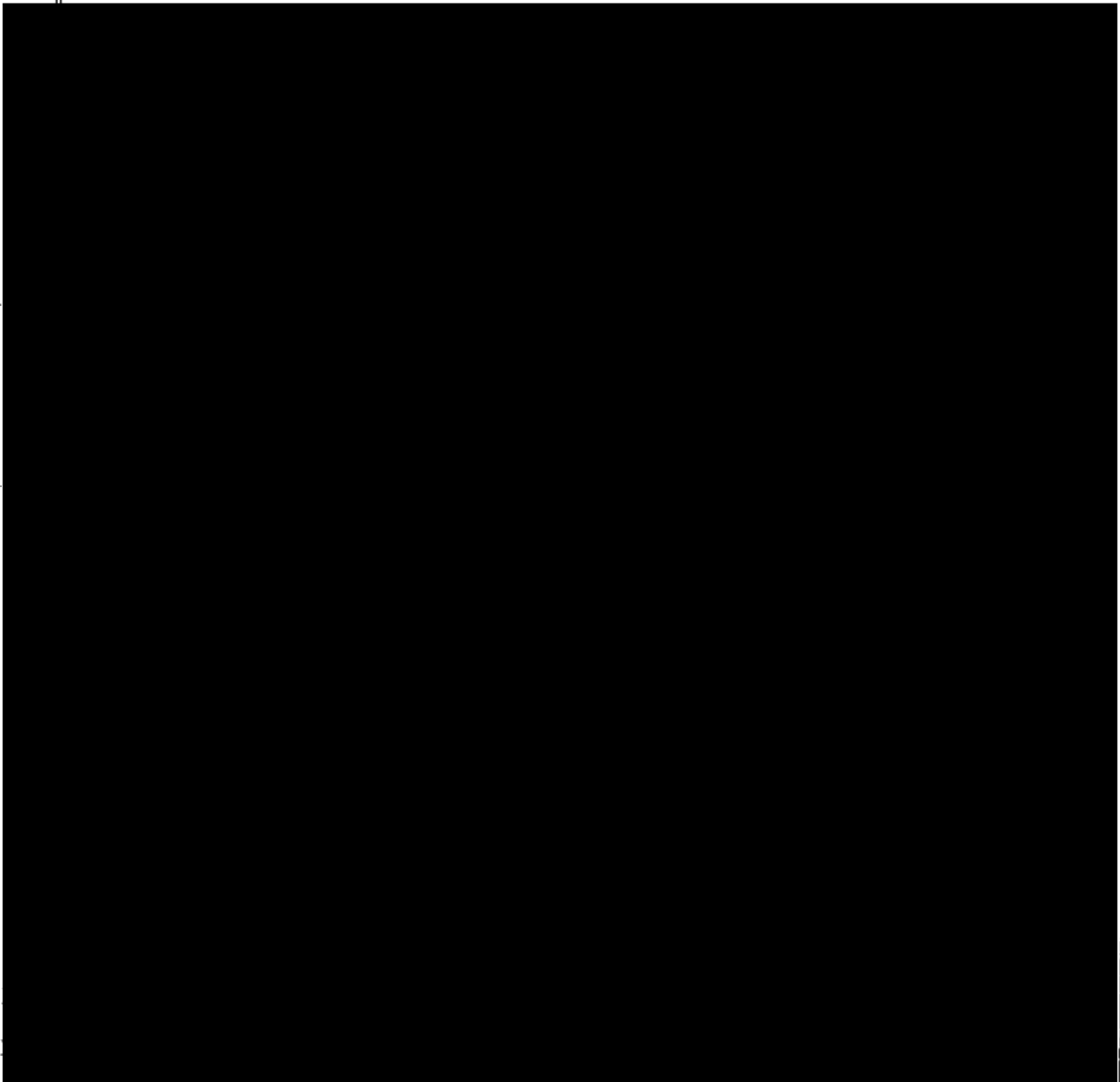




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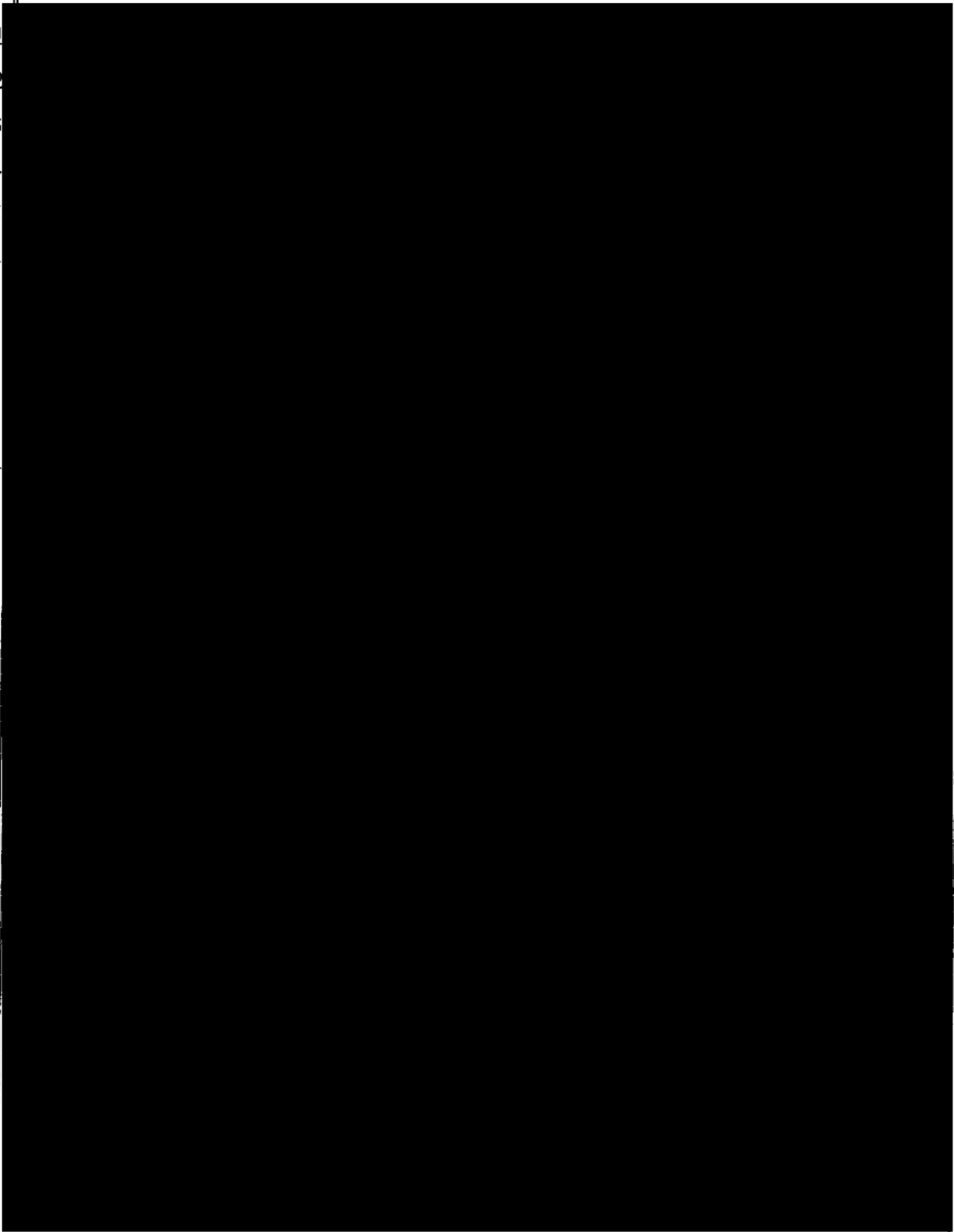
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UNITED STATES DISTRICT COURT  
DISTRICT OF ARIZONA

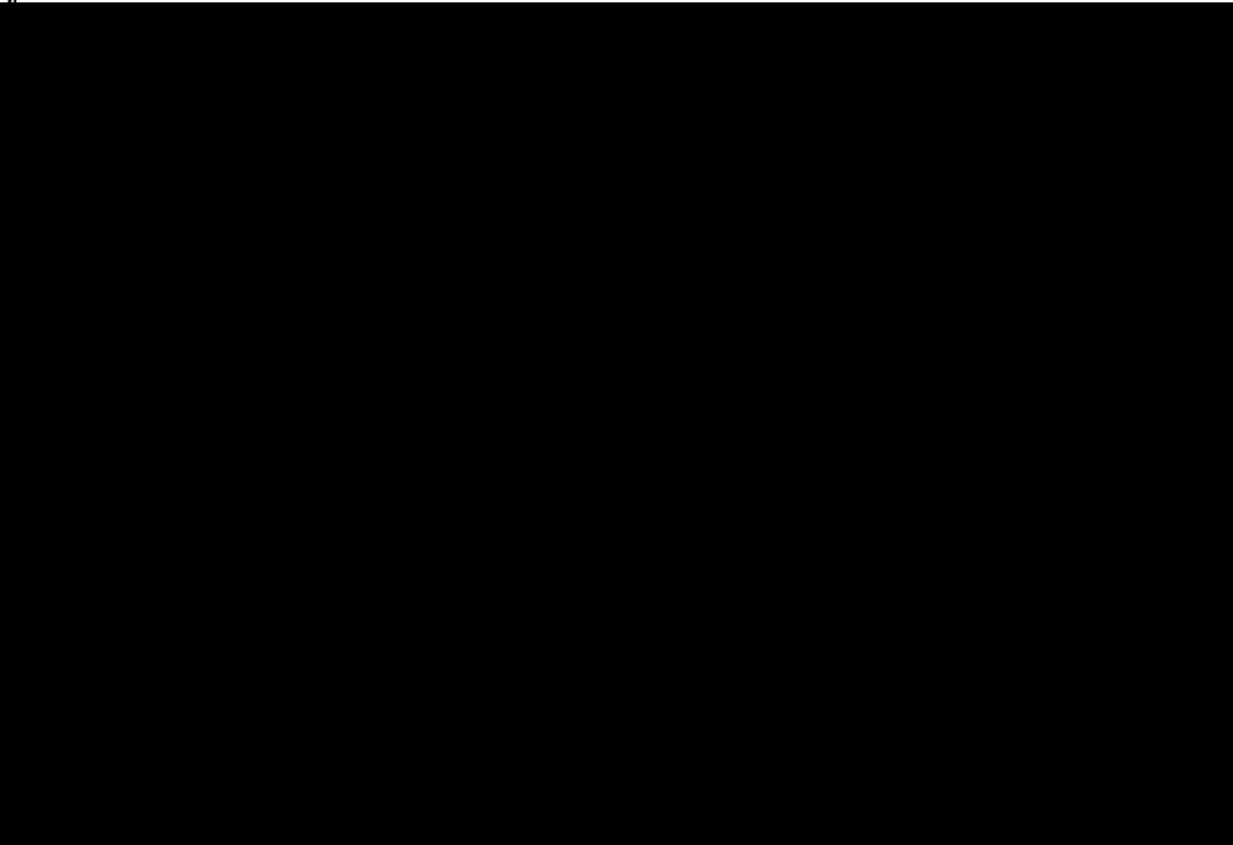




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[Return on following page.]

AO 104 (02/09) Tracking Warrant (Page 2)

Case No. \_\_\_\_\_

**Return of Tracking Warrant With Installation**

1. Date and time tracking device installed: \_\_\_\_\_
2. Dates and times tracking device maintained: \_\_\_\_\_
3. Date and time tracking device removed: \_\_\_\_\_
4. The tracking device was used from *(date and time)*: \_\_\_\_\_  
to *(date and time)*: \_\_\_\_\_

**Return of Tracking Warrant Without Installation**

1. Date warrant executed: \_\_\_\_\_
2. The tracking information was obtained from *(date and time)*: \_\_\_\_\_  
to *(date and time)*: \_\_\_\_\_

**Certification**

I declare under the penalty of perjury that this return is correct and was returned along with the original warrant to the designated judge.

Date: \_\_\_\_\_

\_\_\_\_\_  
*Executing officer's signature*\_\_\_\_\_  
*Printed name and title*

[REDACTED]	Investigation Number: 785115-10-0004	Report Number: 205
	[REDACTED]	

**SUMMARY OF EVENT:**

[REDACTED]

**NARRATIVE:**

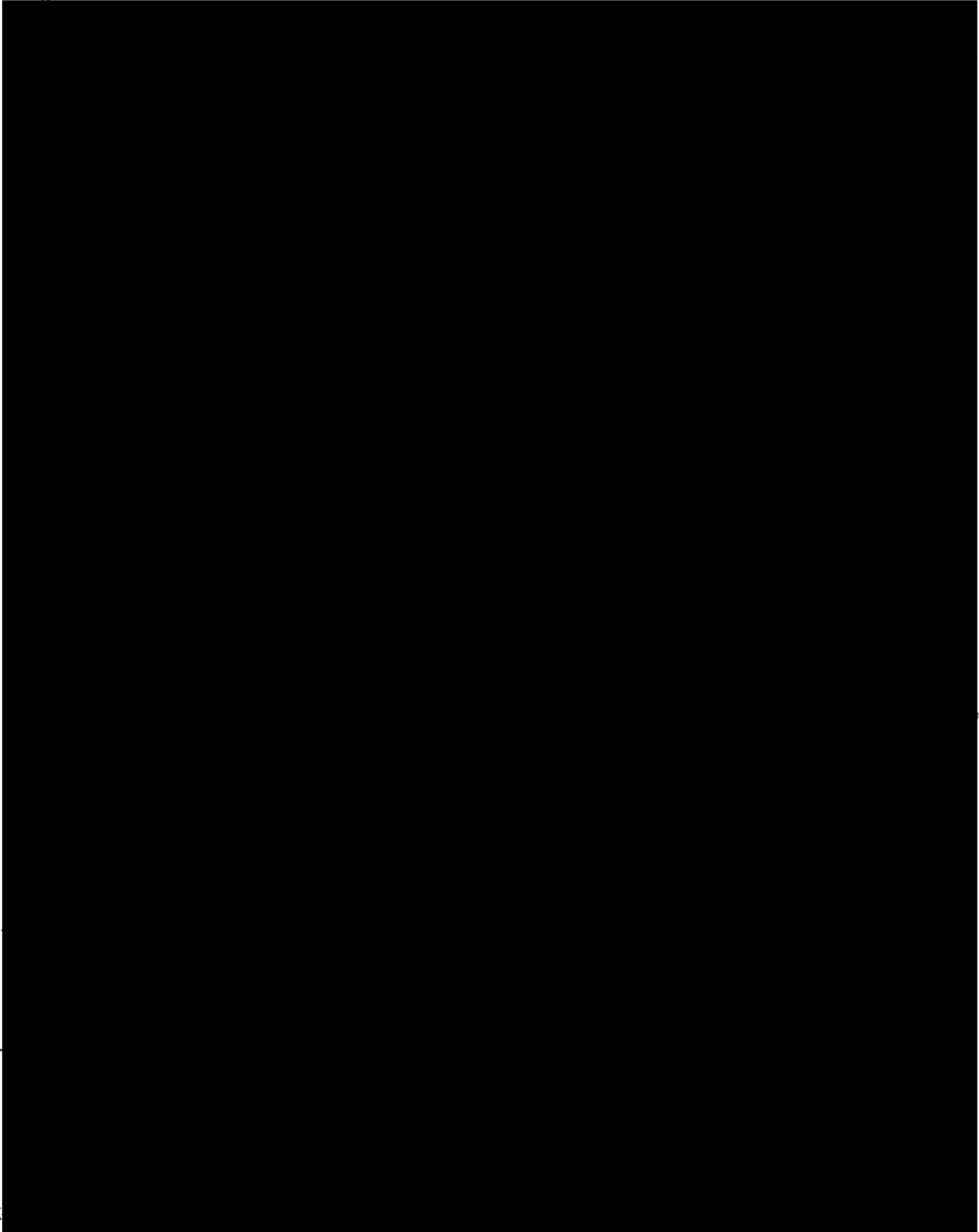
[REDACTED]

**ATTACHMENTS:**

[REDACTED]

[REDACTED]	Title: Special Agent, Phoenix VII Field Office	[REDACTED]	Date: 4-7-2010
	Title: Group Supervisor, Phoenix VII Field Office		Date: 4-7-10
Second level reviewer (optional): William D. Newell	Title: Special Agent in Charge, Phoenix Field Division	[REDACTED]	Date: [REDACTED]

U.S. Department of Justice  
Drug Enforcement Administration



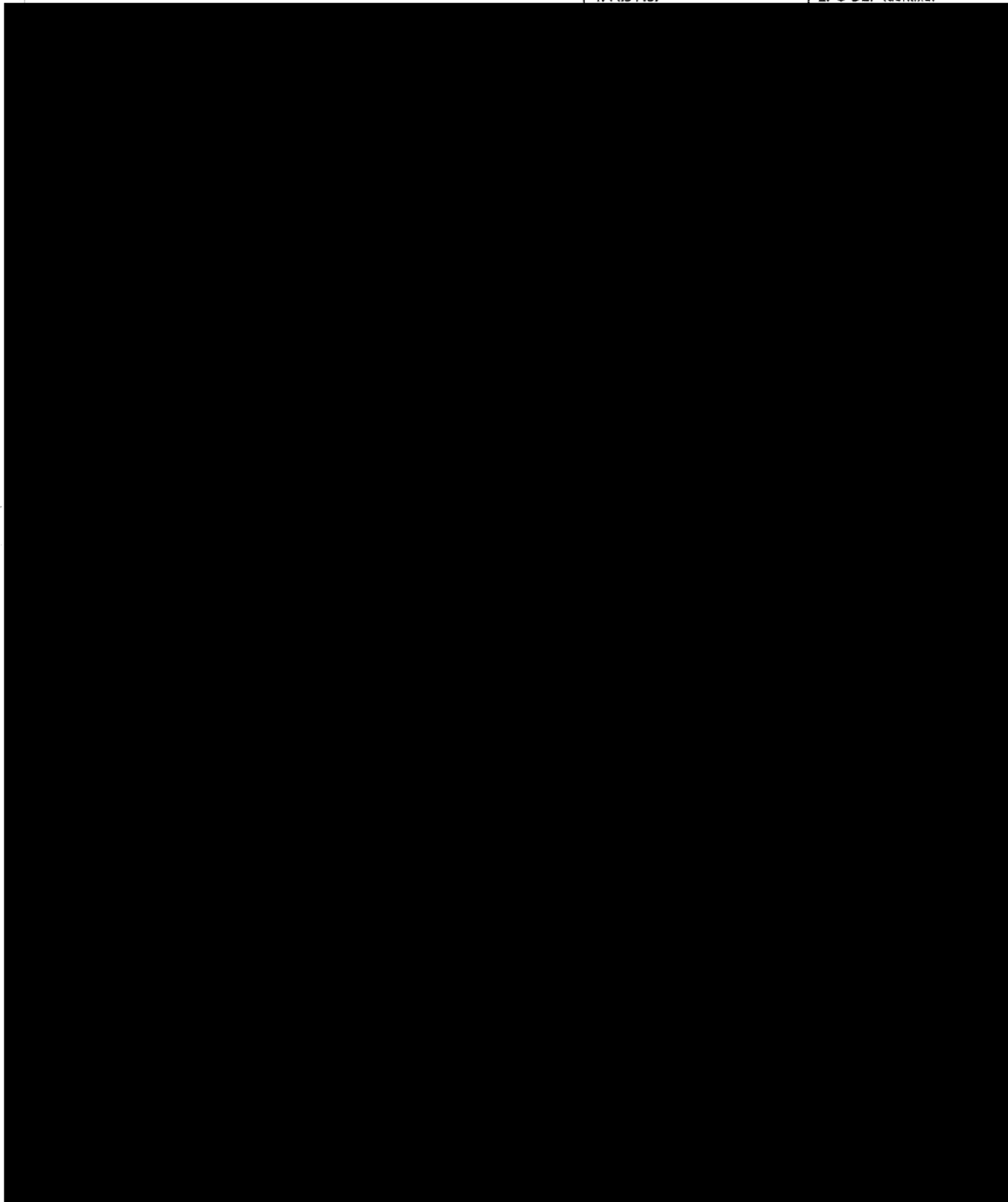
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Drug Enforcement Administration

1. File No.

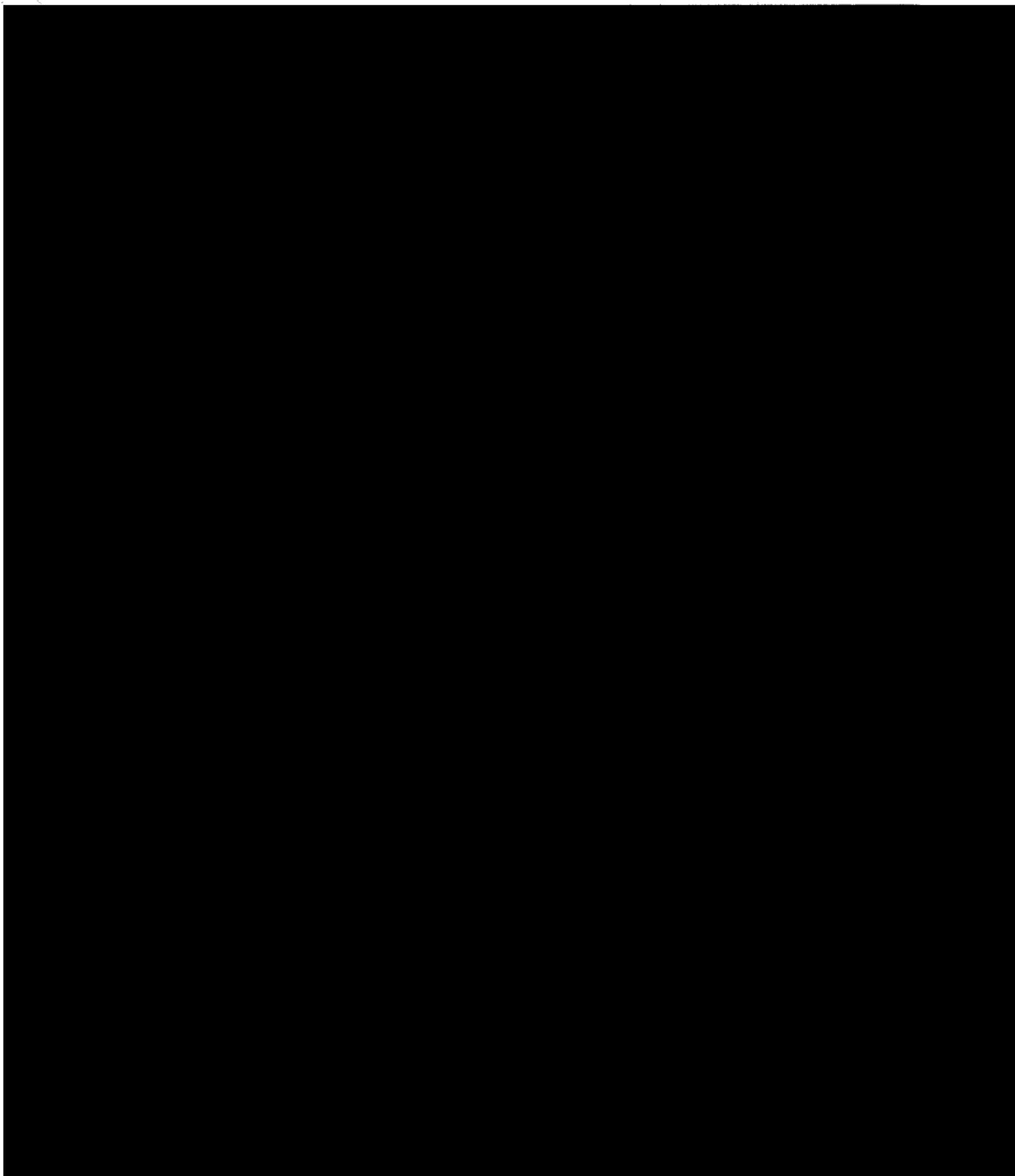
2. G-DEP Identifier



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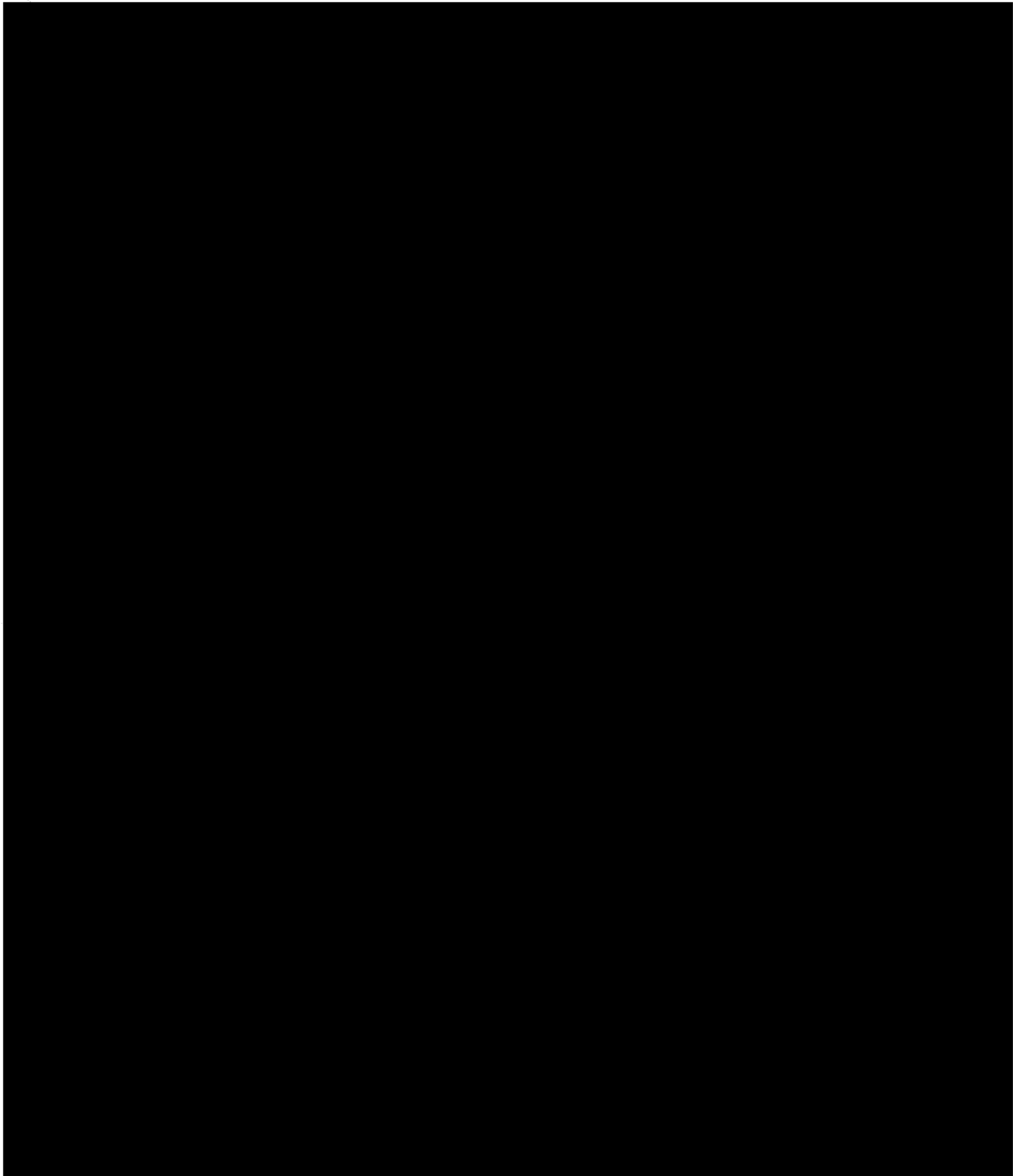
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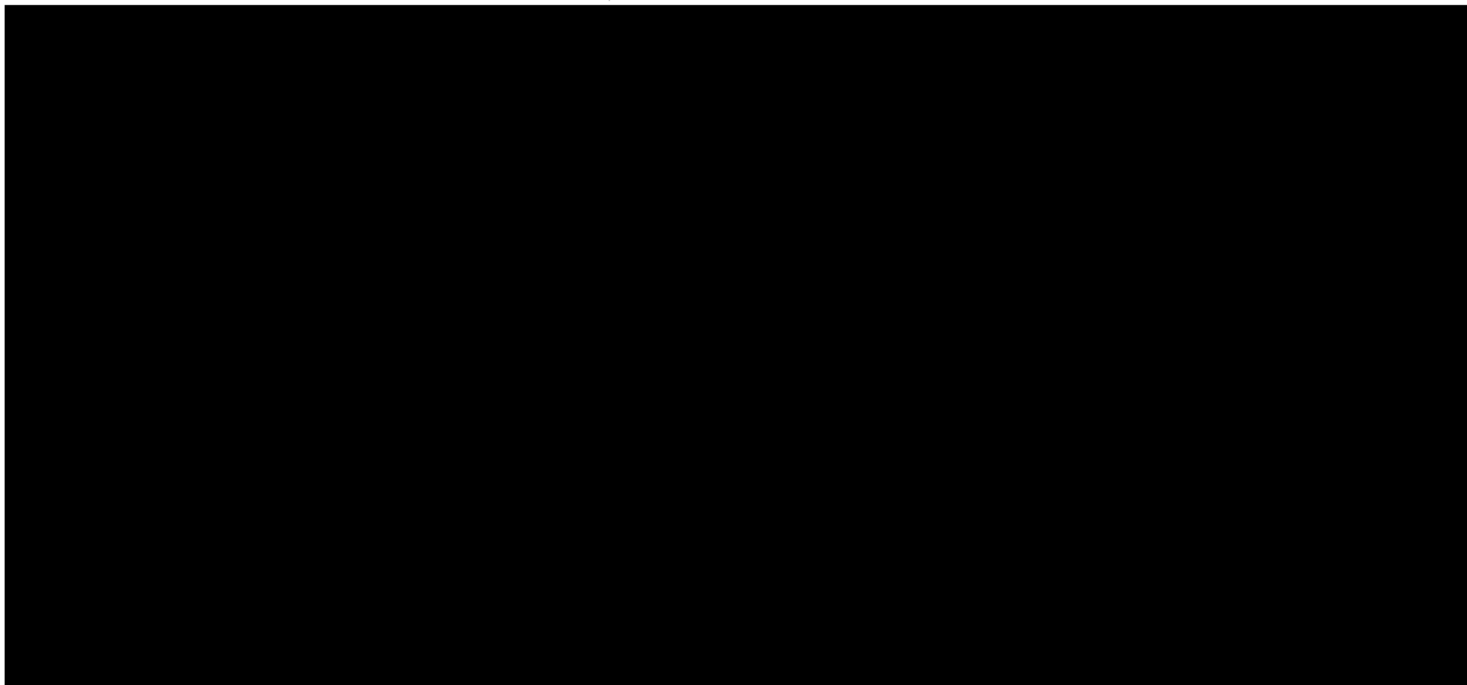
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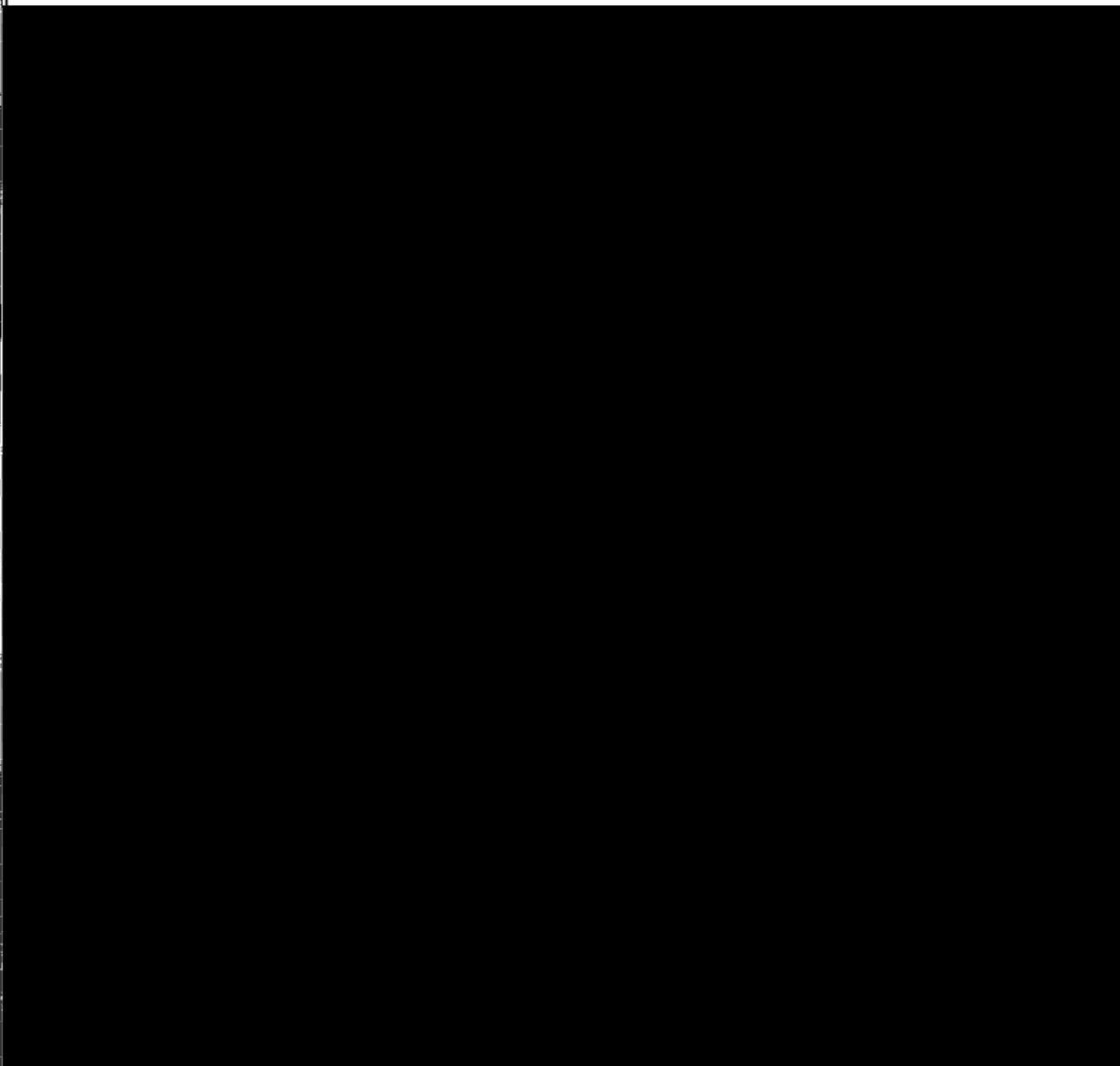
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1 DENNIS K. BURKE  
United States Attorney  
District of Arizona

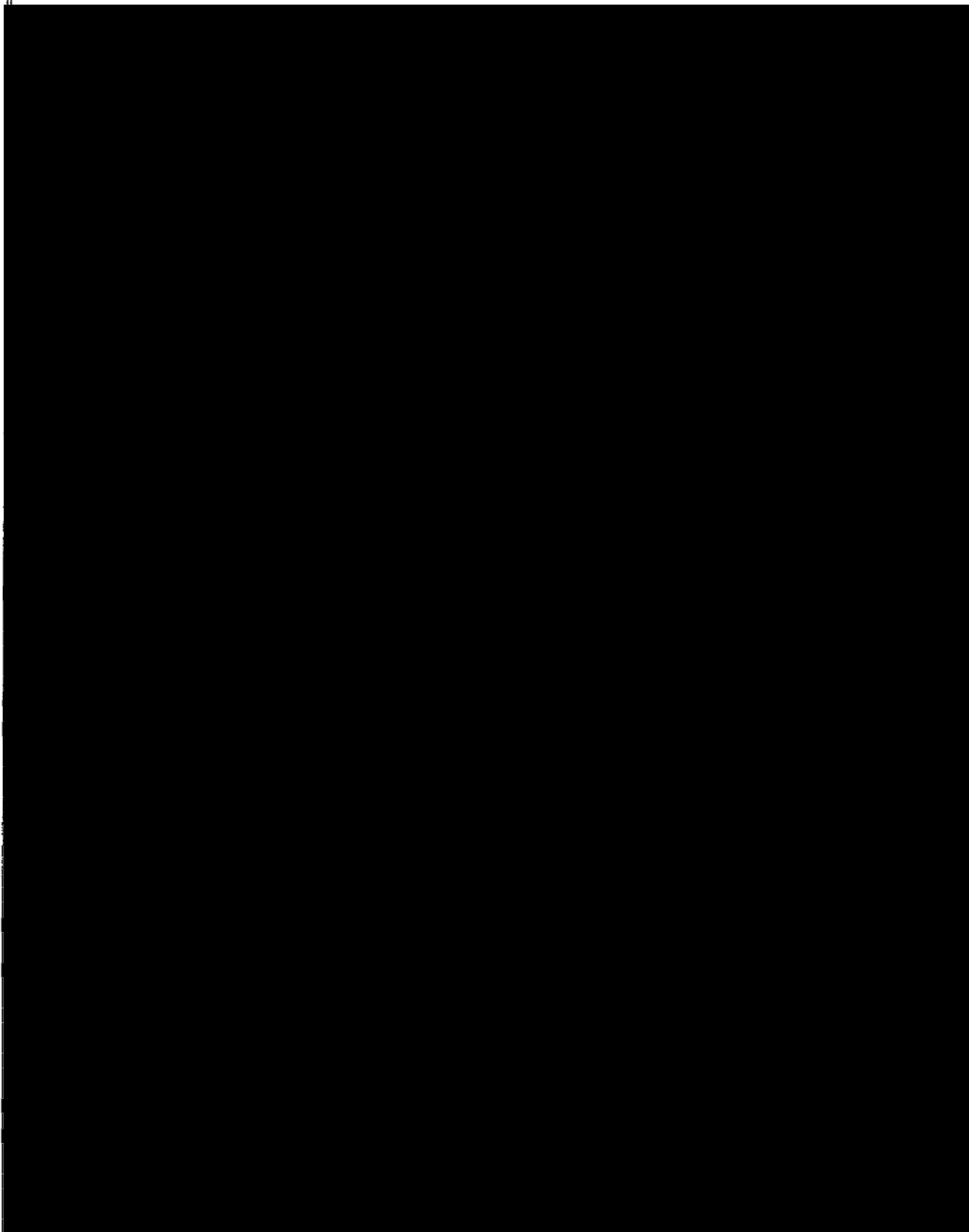
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3 EMORY T. HURLEY  
Assistant U.S. Attorney  
Arizona State Bar No. 014812  
4 Two Renaissance Square  
40 North Central Avenue, Suite 1200  
Phoenix, Arizona 85004-4408  
5 Telephone (602) 514-7500  
emory.hurley@usdoj.gov

6 UNITED STATES DISTRICT COURT  
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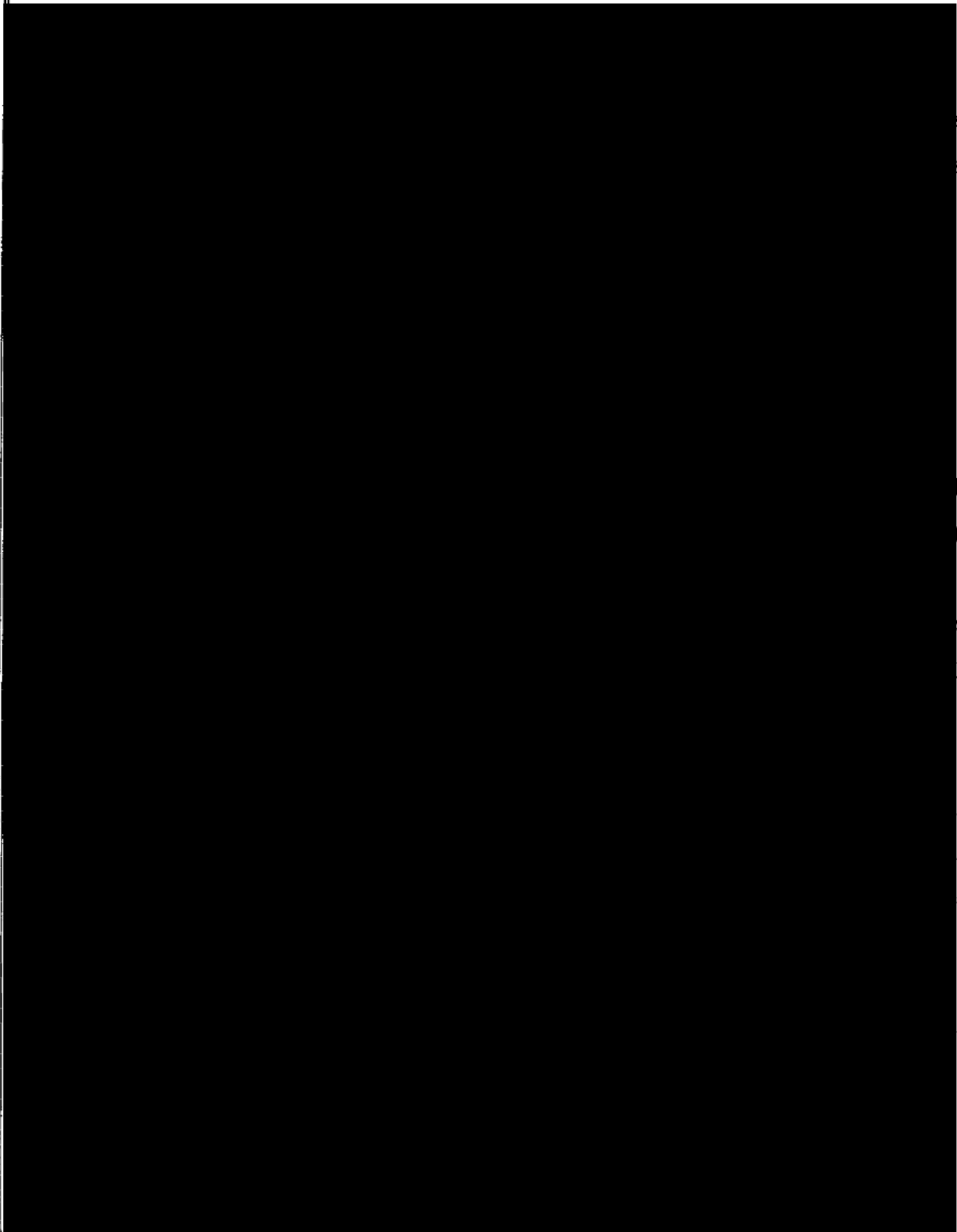


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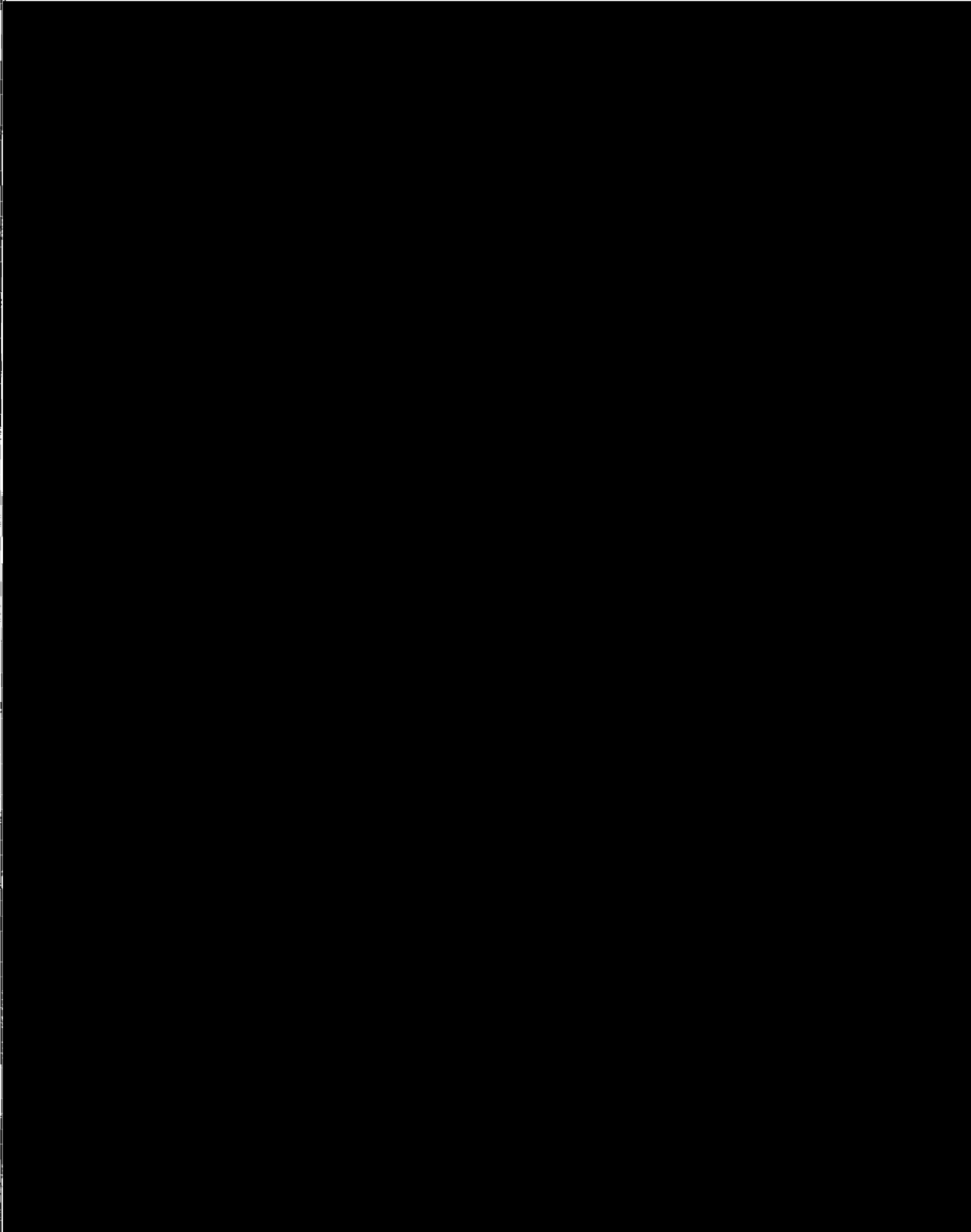


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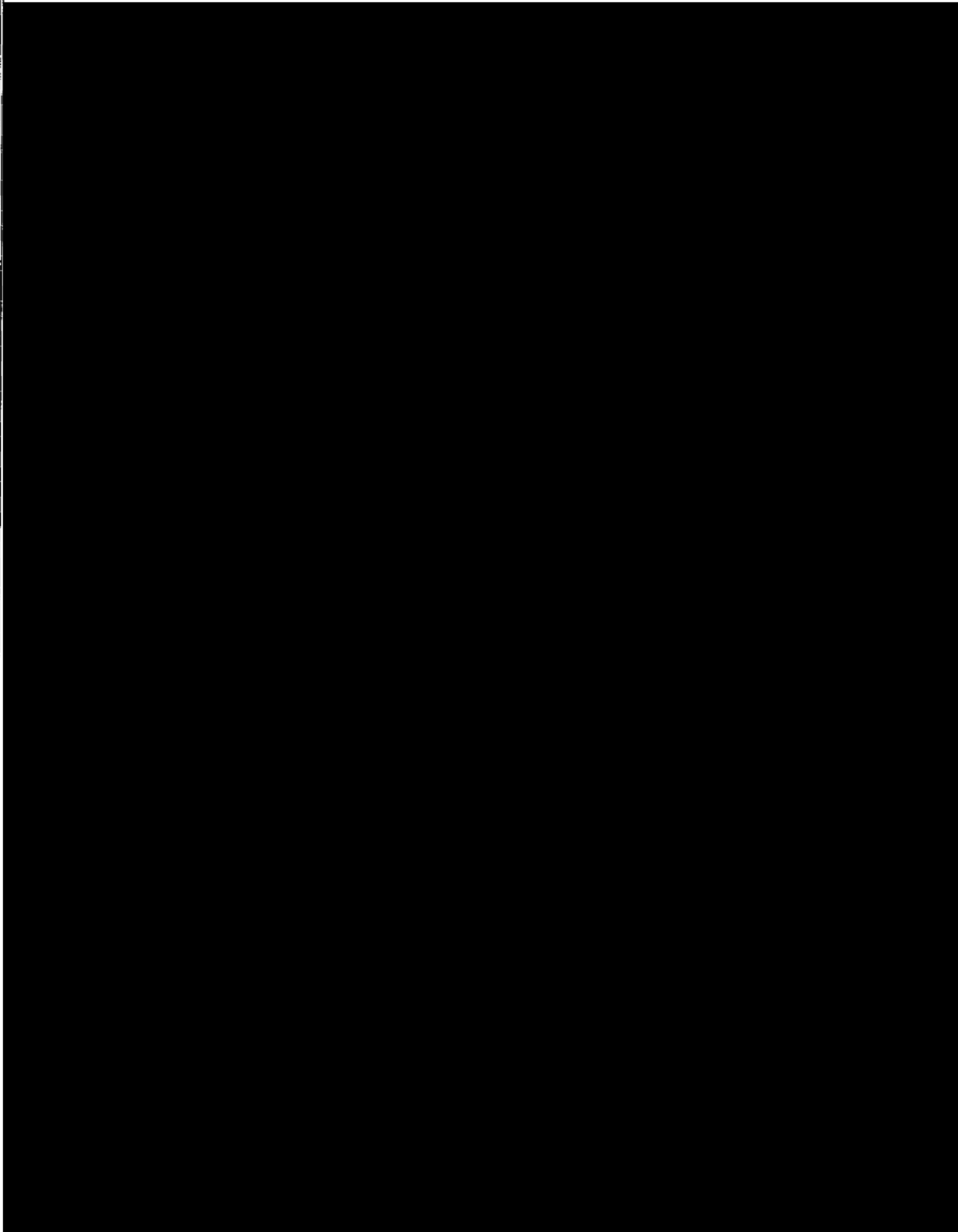
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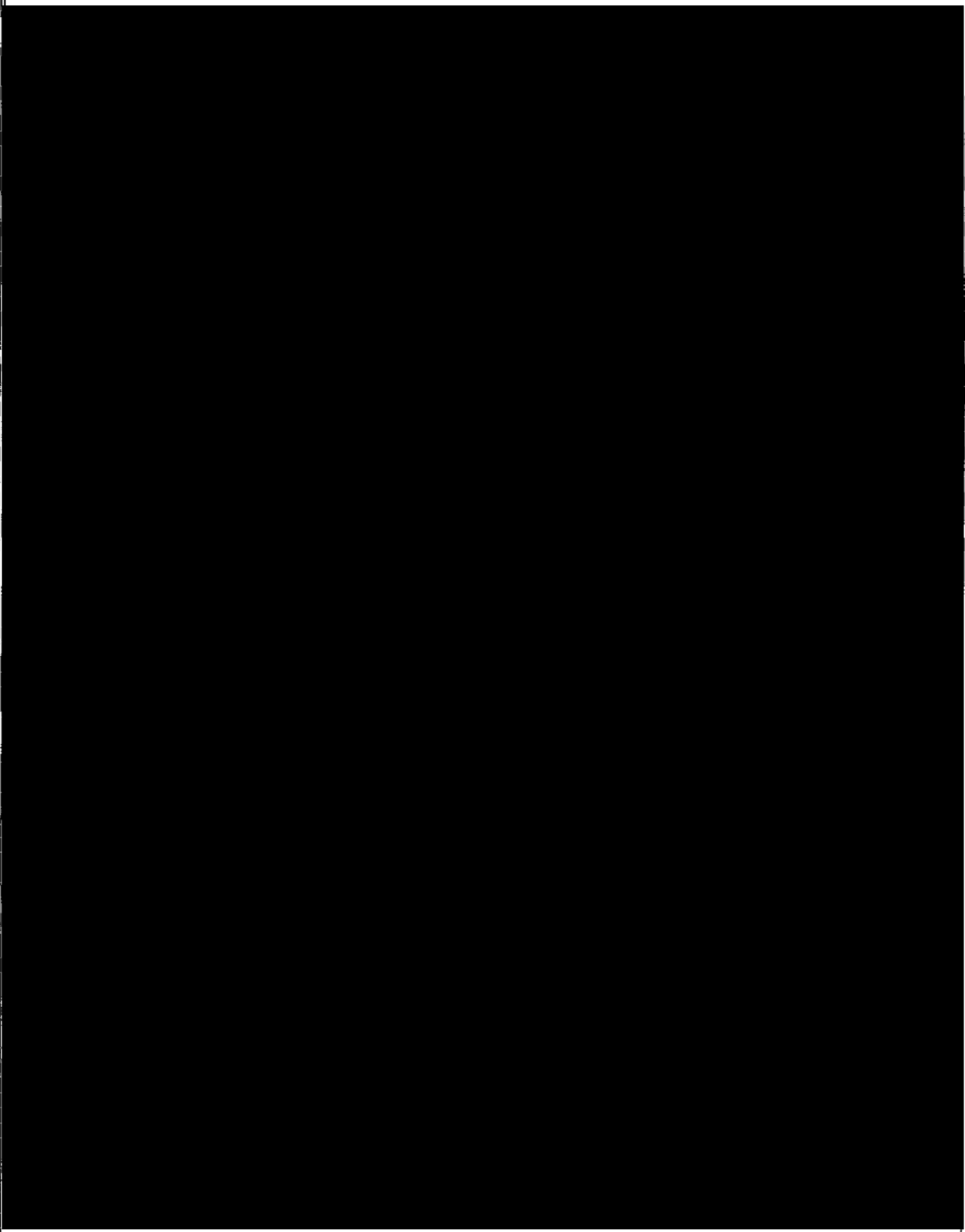
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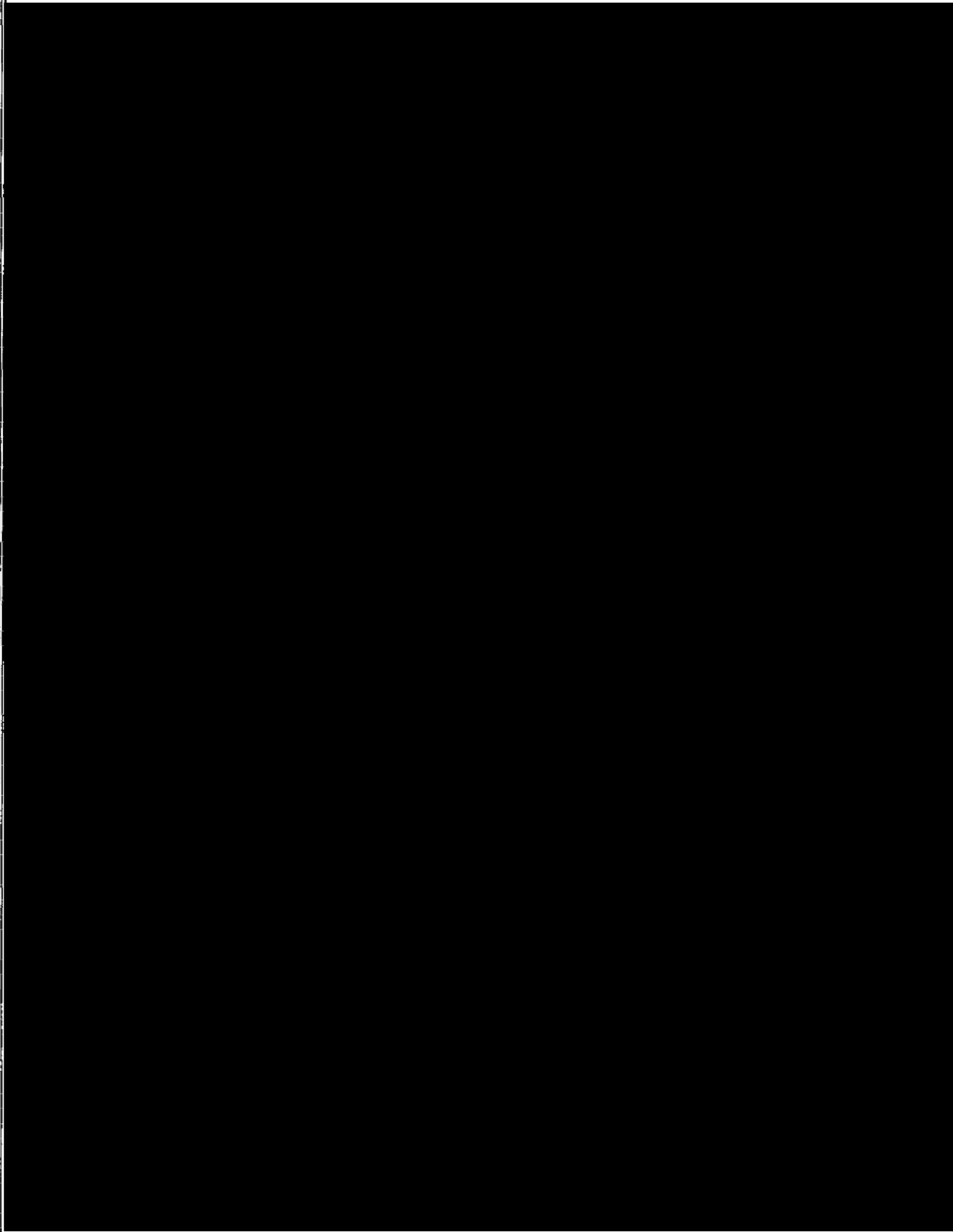
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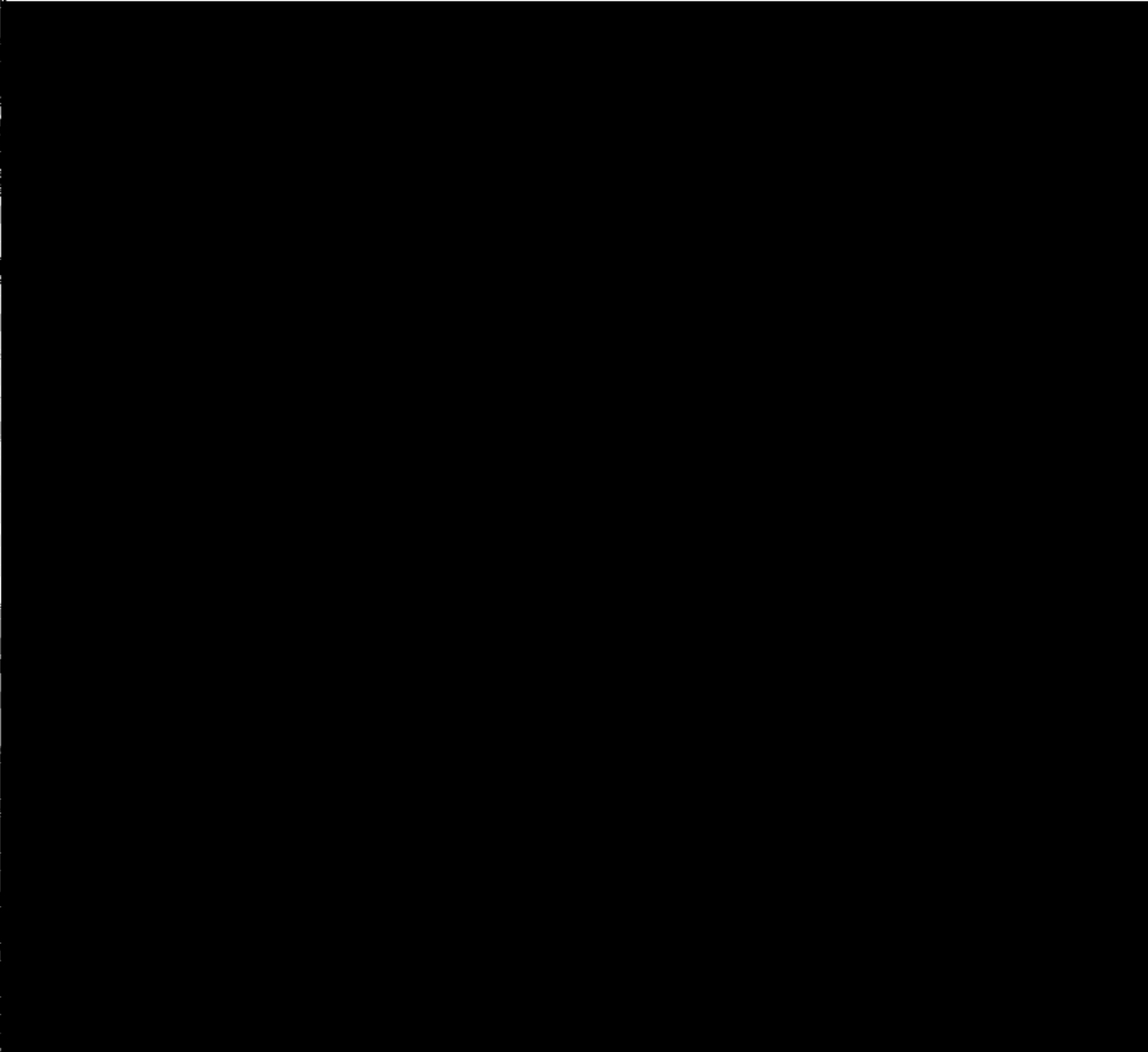
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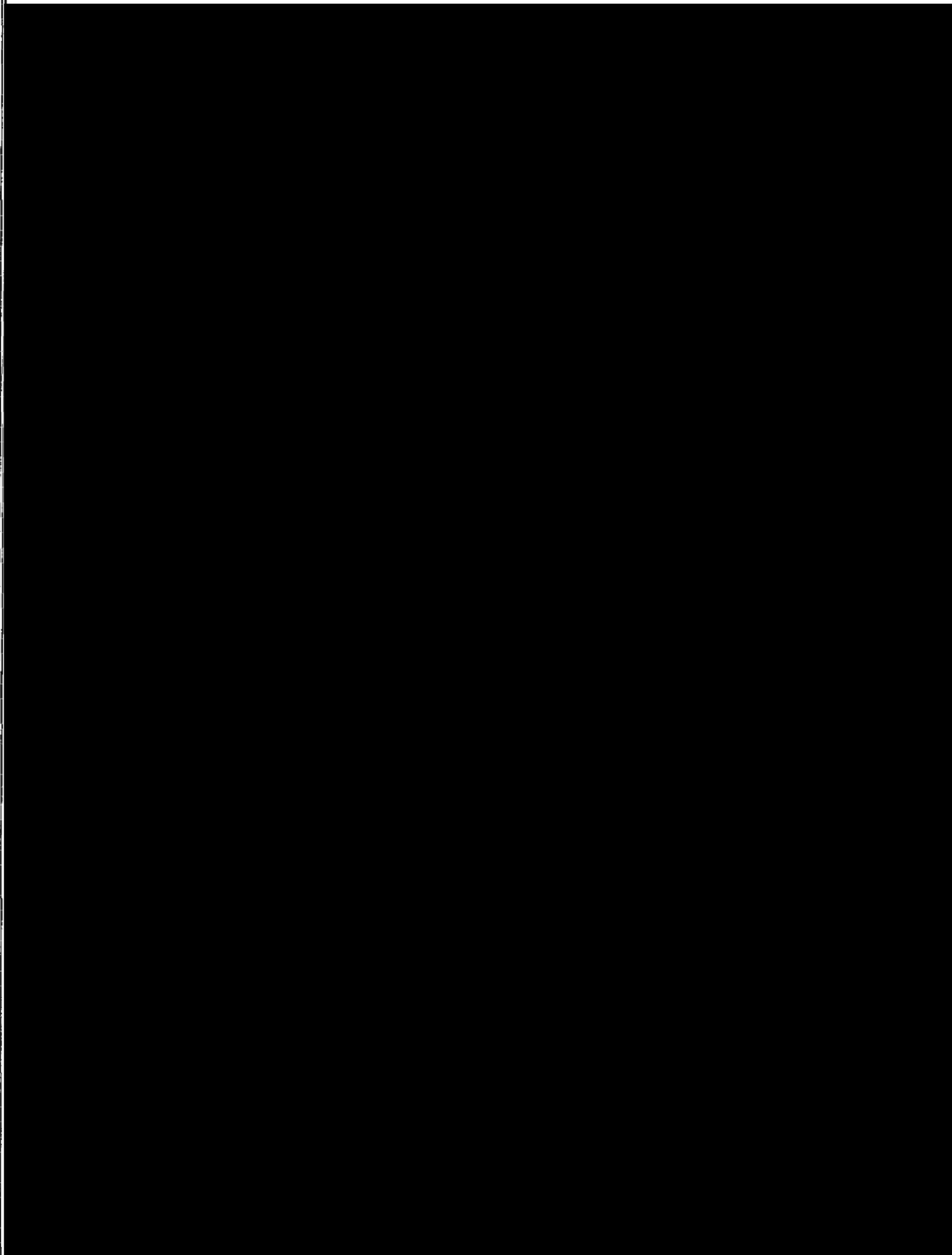
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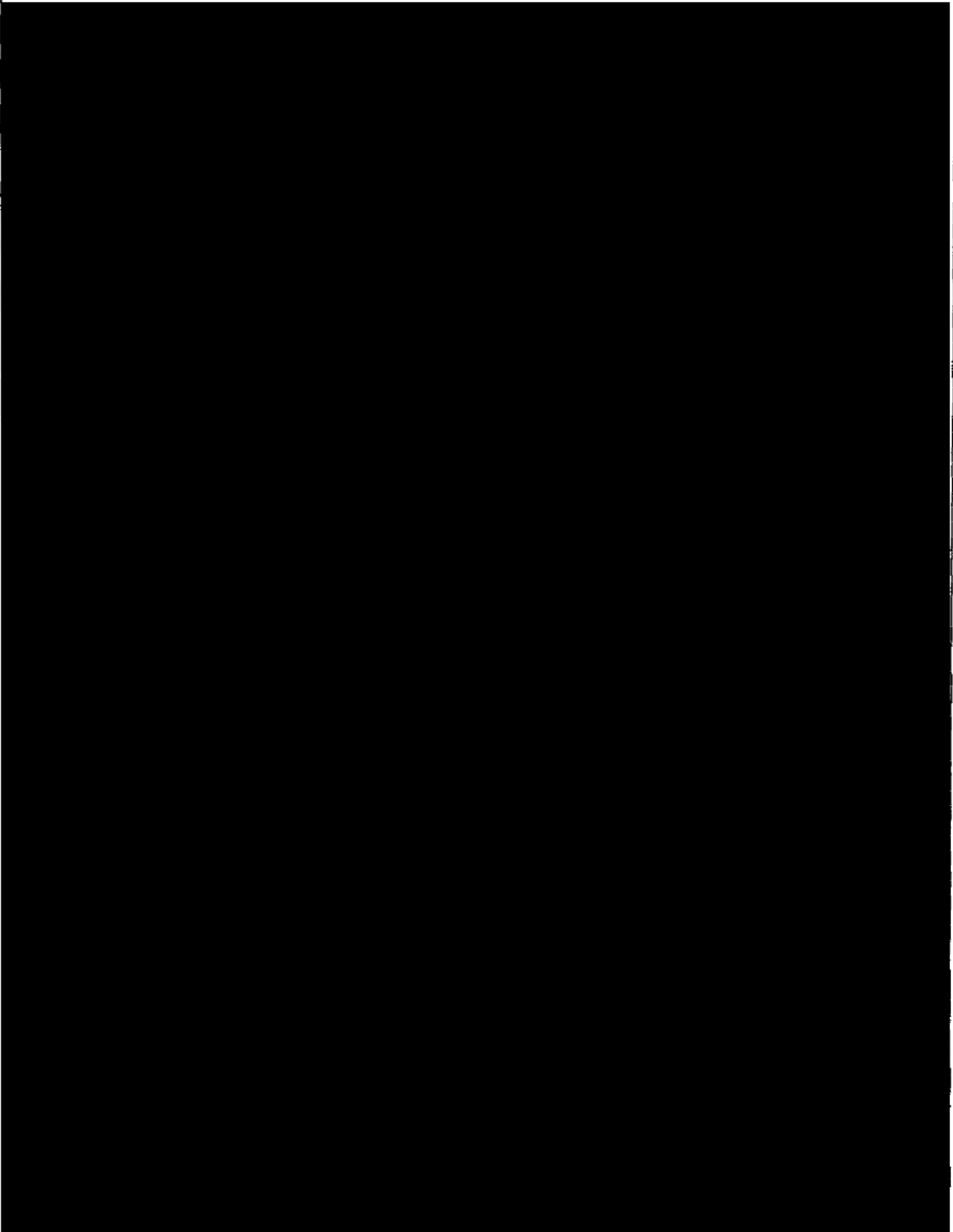
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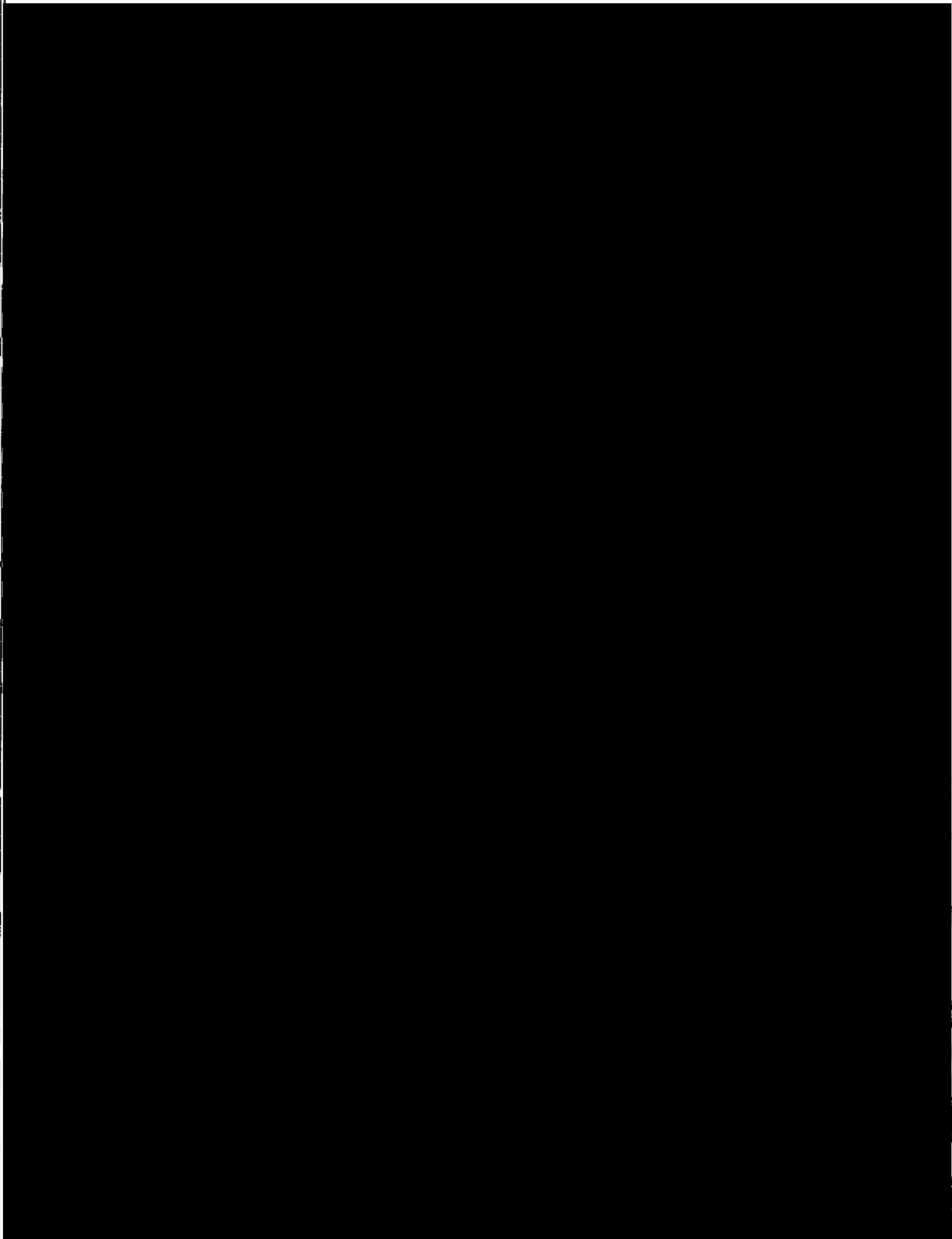


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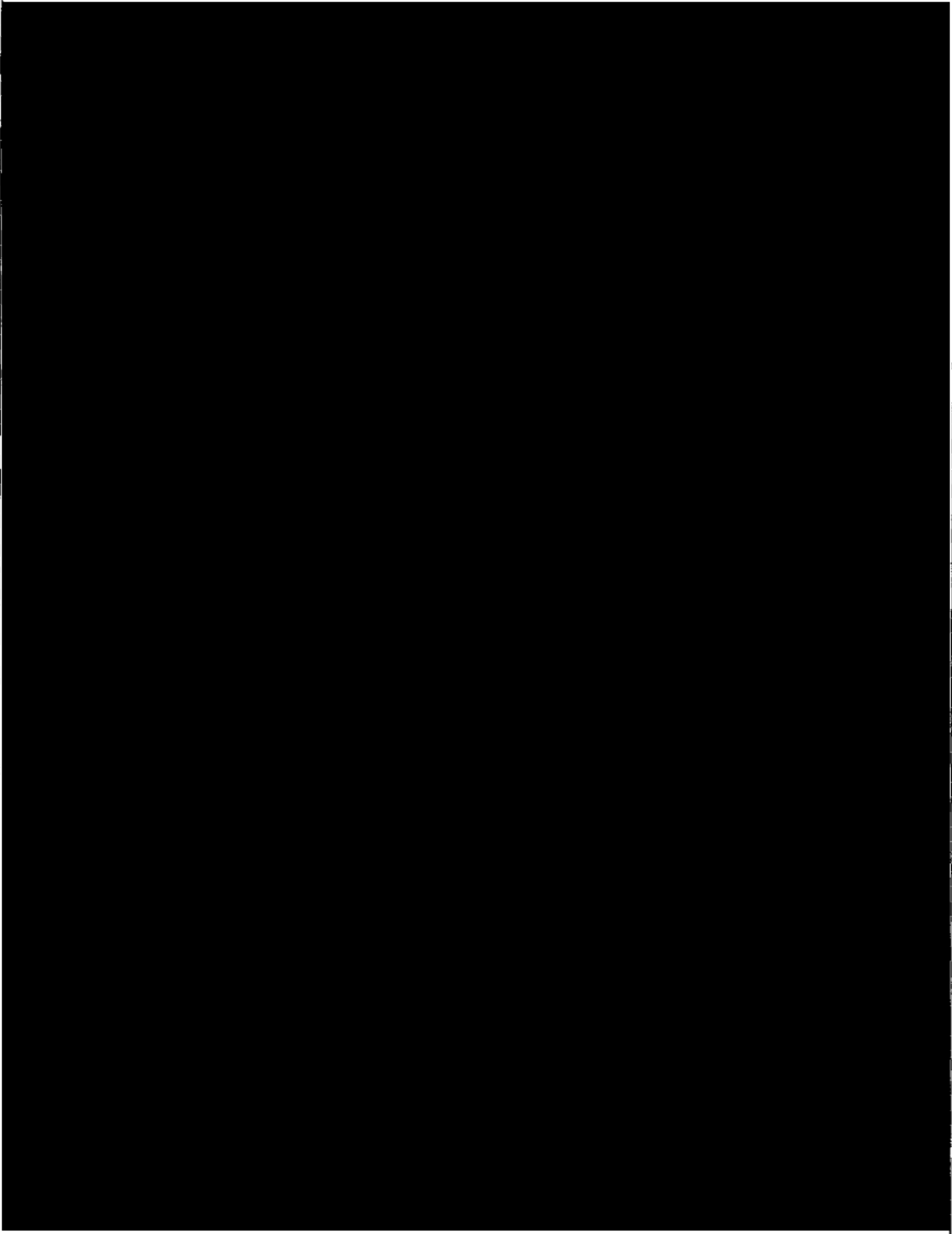


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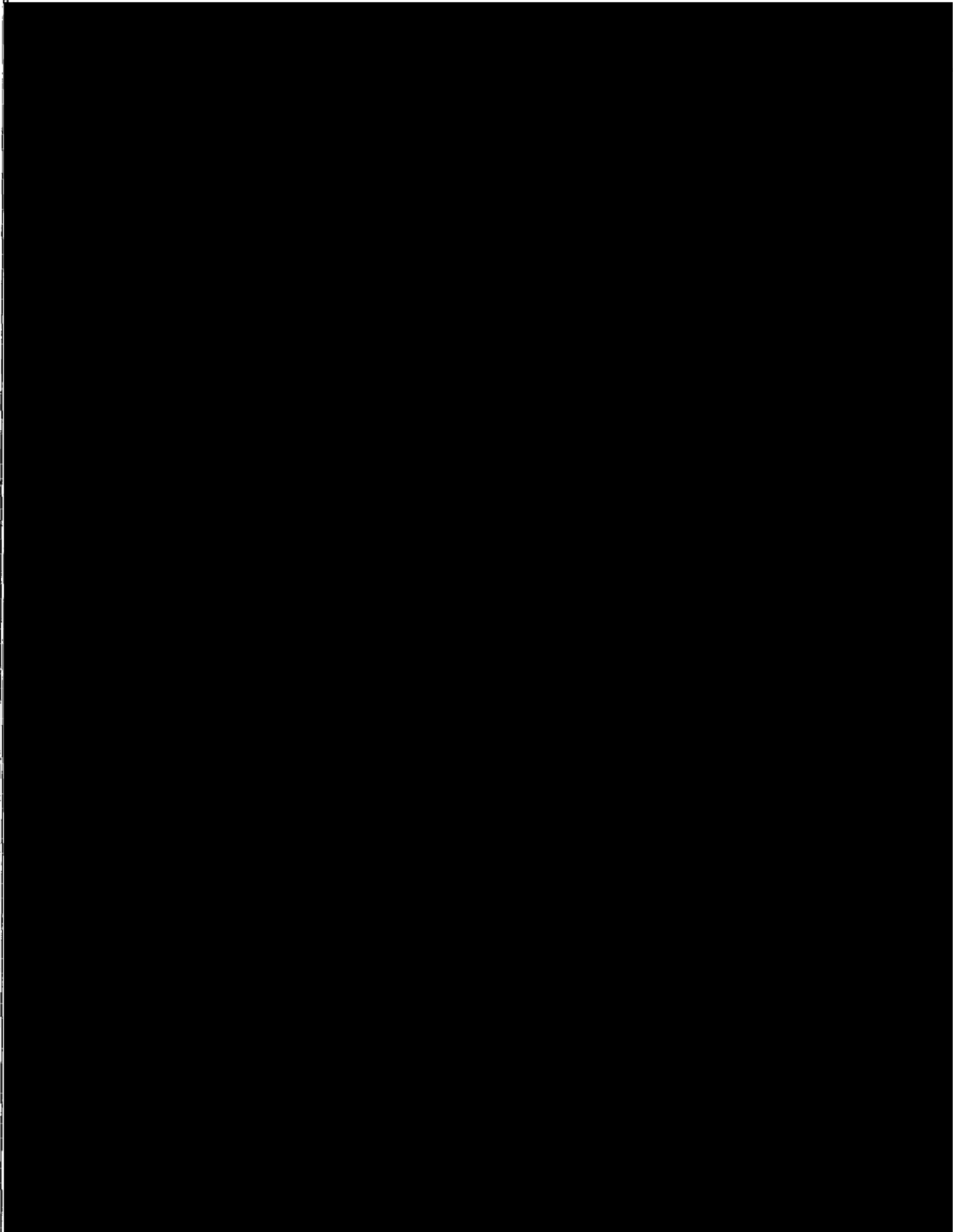
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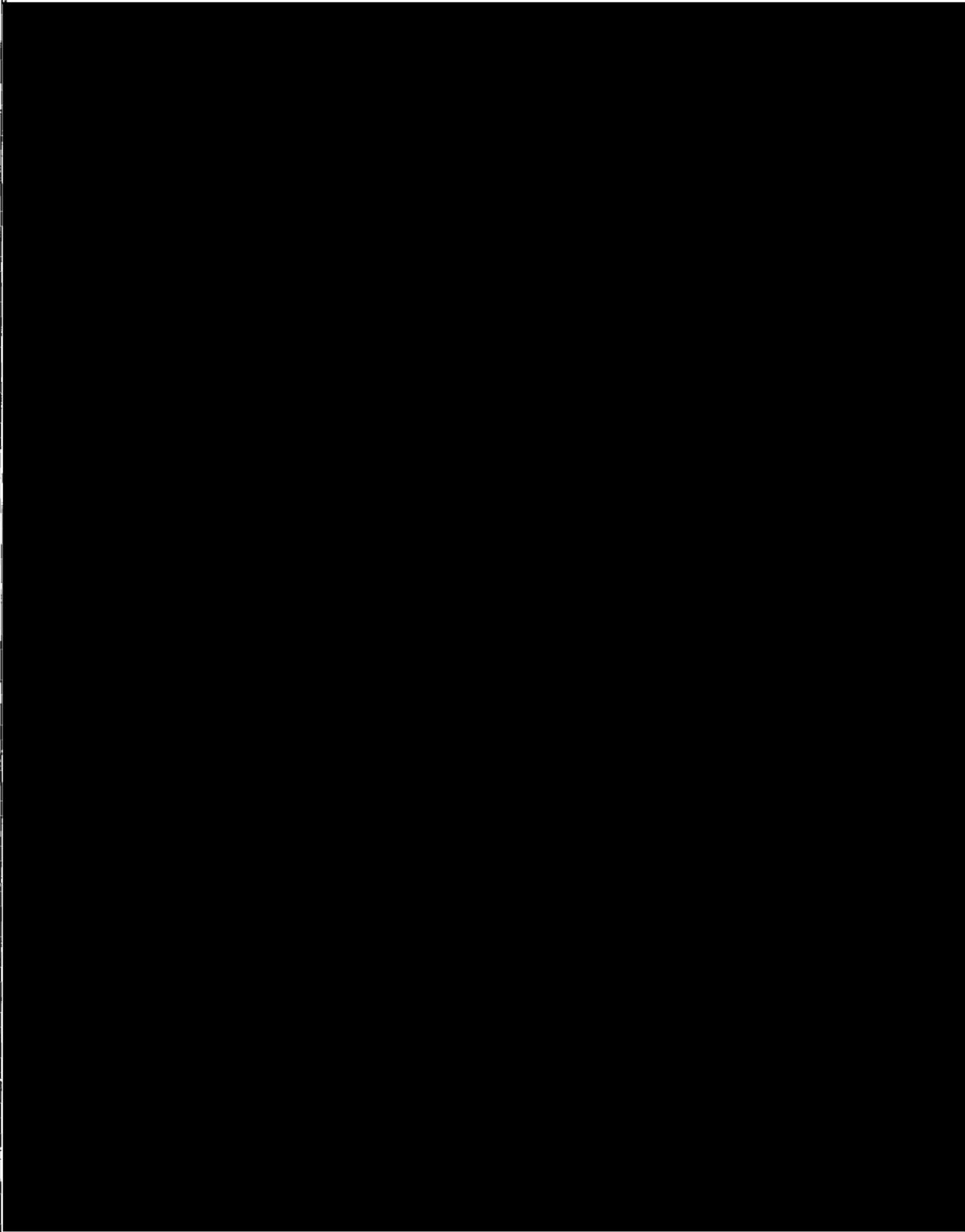
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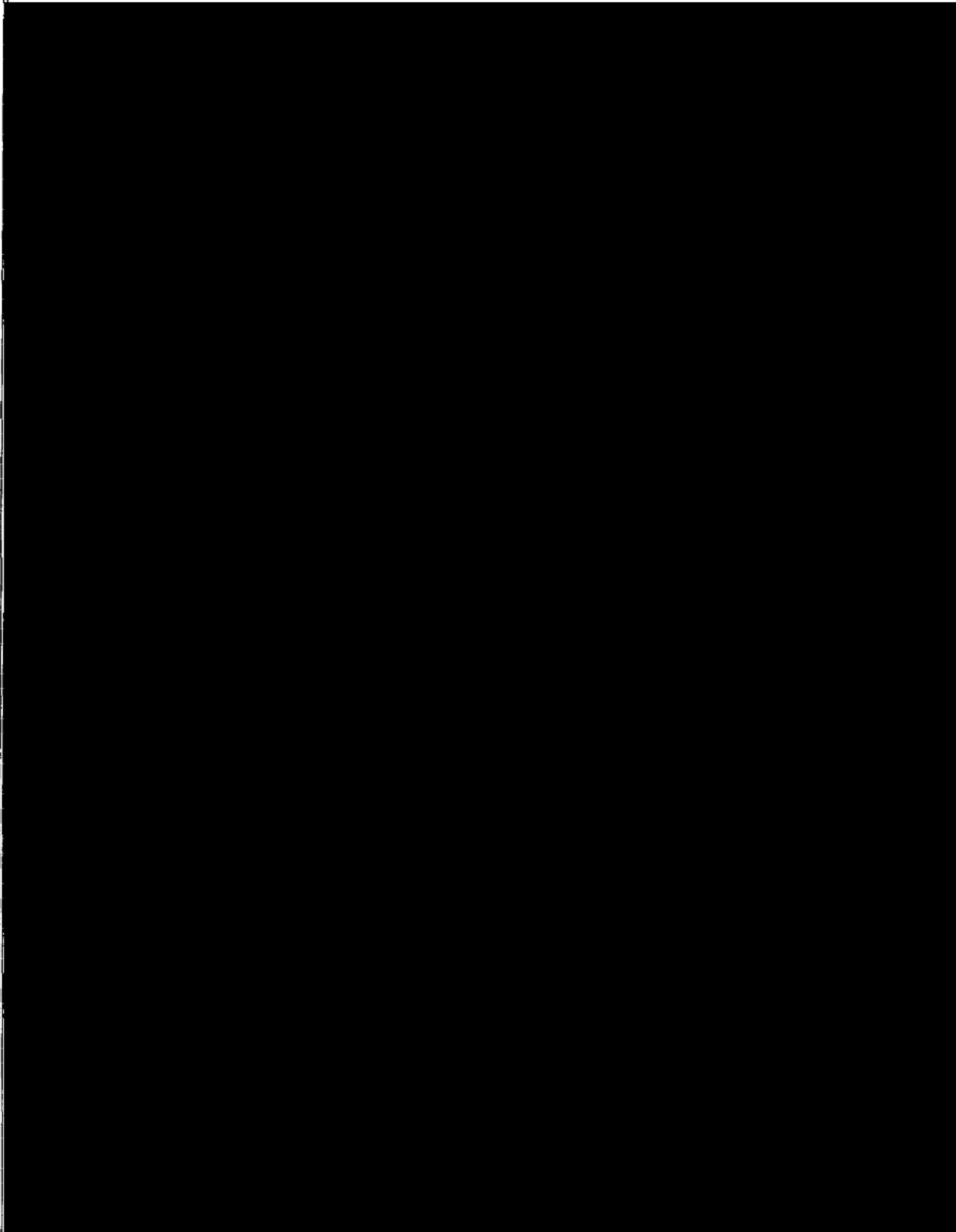
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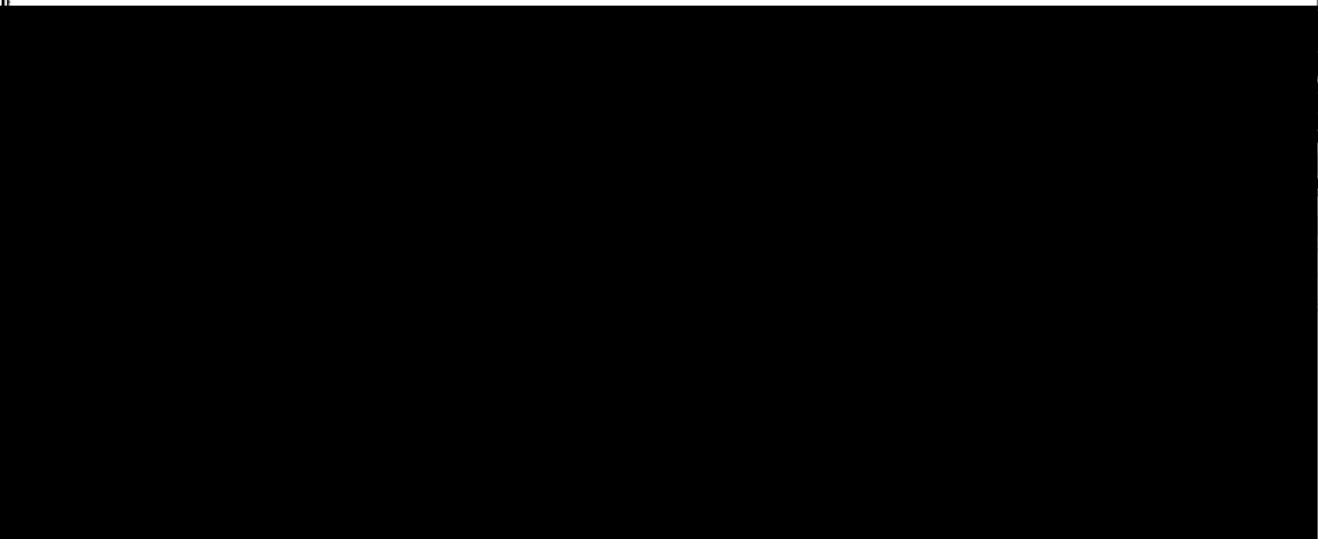


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# Organized Crime Drug Enforcement Task Forces

Investigation Initiation Form

OCDETF Investigation No.

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THE FAST AND THE FURIOUS

Operation Name

Case Attorney:

Case Agent(s):

[REDACTED]  
**(b) (6), (b) (7)(C)**

# LAW ENFORCEMENT SENSITIVE



The attached information must be protected and not released to unauthorized individuals.

Investigation Initiation Form  
Organized Crime  
Drug Enforcement Task Forces

LAW ENFORCEMENT SENSITIVE

OCDETF Investigation No.

[Grid for OCDETF Investigation No.]

(Assigned by AUSA Coordinator)

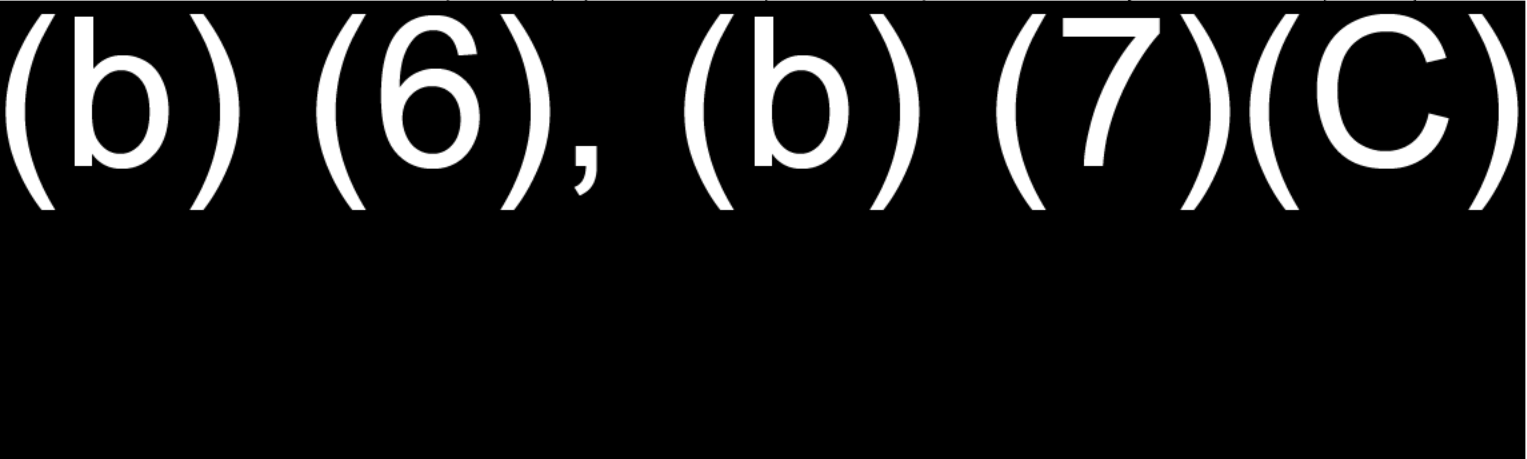


**I. Targeted Organization** (N/A if name of organization is unknown)

Name: (b) (6), (b) (7)(C) Operation (Code) Name: The Fast and the Furious

**II. Prospective Defendants** (If more than thirty, attach "Prospective Defendants Supplement" (OCDETF Form S-3))

Name (last, first, middle initial)	Non-U.S. Citizen (indicate with an X)	Alien Registration Number	DOB	SSN	FBI #	Leadership Role (indicate with an x)
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LAW ENFORCEMENT SENSITIVE

Investigation Initiation Form  
Organized Crime  
Drug Enforcement Task Forces

**LAW ENFORCEMENT SENSITIVE**

OCDETF Investigation No.

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(Assigned by AUSA Coordinator)

**III. Agency Involvement** Check all boxes which apply and enter personnel commitment and agency case numbers, if available.

Note: Agency case numbers for Federal agencies must be submitted by the time of the first Interim Report (that is, within six months of the initiation of the OCDETF investigation).

Agency	# of Full Time Personnel	# of Part Time Personnel	Agency Case Number	Associated Agency Case Number(s)
[REDACTED]				
<input type="checkbox"/>				
<input type="checkbox"/>				
<input type="checkbox"/>				

Does this investigation anticipate requesting State and Local Overtime Funding?

[REDACTED]

If yes, please indicate funding source

[REDACTED]

If yes, please indicate an estimated amount for the current fiscal year. (Note-State and Local Overtime Funding must still be submitted through the separate appropriate process for approval.)

[REDACTED]

**LAW ENFORCEMENT SENSITIVE**



Investigation Initiation Form  
Organized Crime  
Drug Enforcement Task Forces

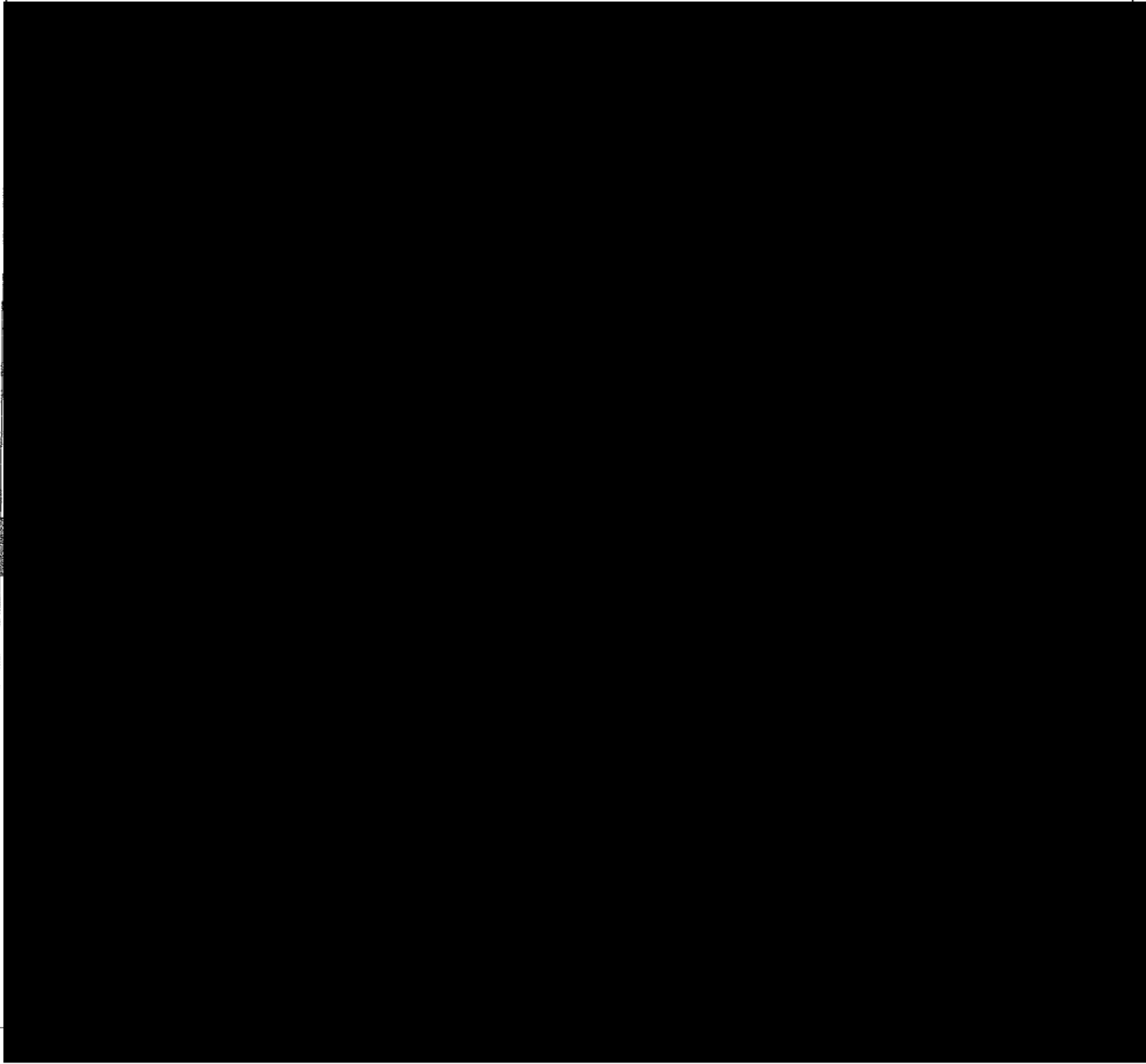
**LAW ENFORCEMENT SENSITIVE**

OCDETF Investigation No.

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(Assigned by AUSA Coordinator)

**VI. Investigative Techniques Used to Date Supervised by your District: *(check all that apply)***



**LAW ENFORCEMENT SENSITIVE**

Investigation Initiation Form  
Organized Crime  
Drug Enforcement Task Forces

LAW ENFORCEMENT SENSITIVE

OCDETF Investigation No.

[Redacted OCDETF Investigation No. grid]

(Assigned by AUSA Coordinator)

**VII. REQUIRED DATABASE CHECKLIST FOR OCDETF IIF**

Name of Agent  
Agency  
Telephone Number  
OCDETF Operation Name  
Judicial District

[Redacted information for VII. REQUIRED DATABASE CHECKLIST FOR OCDETF IIF]

**REQUIRED DATABASE CHECKS**

DATABASE	DATE REQUESTED	DATE COMPLETED
[Redacted]	[Redacted]	[Redacted]
[Redacted]	[Redacted]	[Redacted]
[Redacted]	[Redacted]	[Redacted]
[Redacted]	[Redacted]	[Redacted]
[Redacted]	[Redacted]	[Redacted]
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[Redacted]	[Redacted]	[Redacted]
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[Redacted]	[Redacted]	[Redacted]
[Redacted]	[Redacted]	[Redacted]

**OPTIONAL DATABASE CHECKS**

While not required for OCDETF approval, please provide information, if checks were completed.

DATABASE	DATE COMPLETED
[Redacted]	[Redacted]
[Redacted]	[Redacted]
[Redacted]	[Redacted]
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[Redacted]	[Redacted]
[Redacted]	[Redacted]
[Redacted]	[Redacted]

**VIII. SPECIAL OPERATIONS DIVISION (SOD) WORKSHEET**

Date Prepared: (MM/DD/YYYY)

[Redacted]

Prepared By: Special Agent (b) (6), (b) (7)(C) Agency: [Redacted] Telephone: (b) (6), (b) (7)(C)

Current SOD Coordination: [Redacted]

(If Yes) SOD Operation Name: [Redacted]

Communication Devices previously submitted to SOD: [Redacted]

(If Yes, answer the following)

Submitted By: Special Agent (b) (6), (b) (7)(C) Agency: [Redacted] Telephone: (b) (6), (b) (7)(C)

Date Submitted to SOD: (MM/DD/YYYY)

[Redacted]

**COMMUNICATIONS DEVICES**

(NOT Previously Submitted to SOD)

Type of Device (Designate by letter)

- (A) Cell Phone    (B) Hard-line    (C) Pager    (D) Calling Card
- (E) Satellite    (F) FAX    (G) E-mail    (H) Other

NAME of TARGET	Type	Number (with area code)	Type	Number (with area code)	Type	Number (with area code)

LAW ENFORCEMENT SENSITIVE

Investigation Initiation Form  
Organized Crime  
Drug Enforcement Task Forces

**LAW ENFORCEMENT SENSITIVE**

OCDETF Investigation No.

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(Assigned by AUSA Coordinator)

**IX. Narrative Summary** *(Number all pages, include investigation number and mark "Law Enforcement Sensitive")*

**Answer all questions below thoroughly, but concisely.**



**LAW ENFORCEMENT SENSITIVE**



Investigation Initiation Form  
Organized Crime  
Drug Enforcement Task Forces

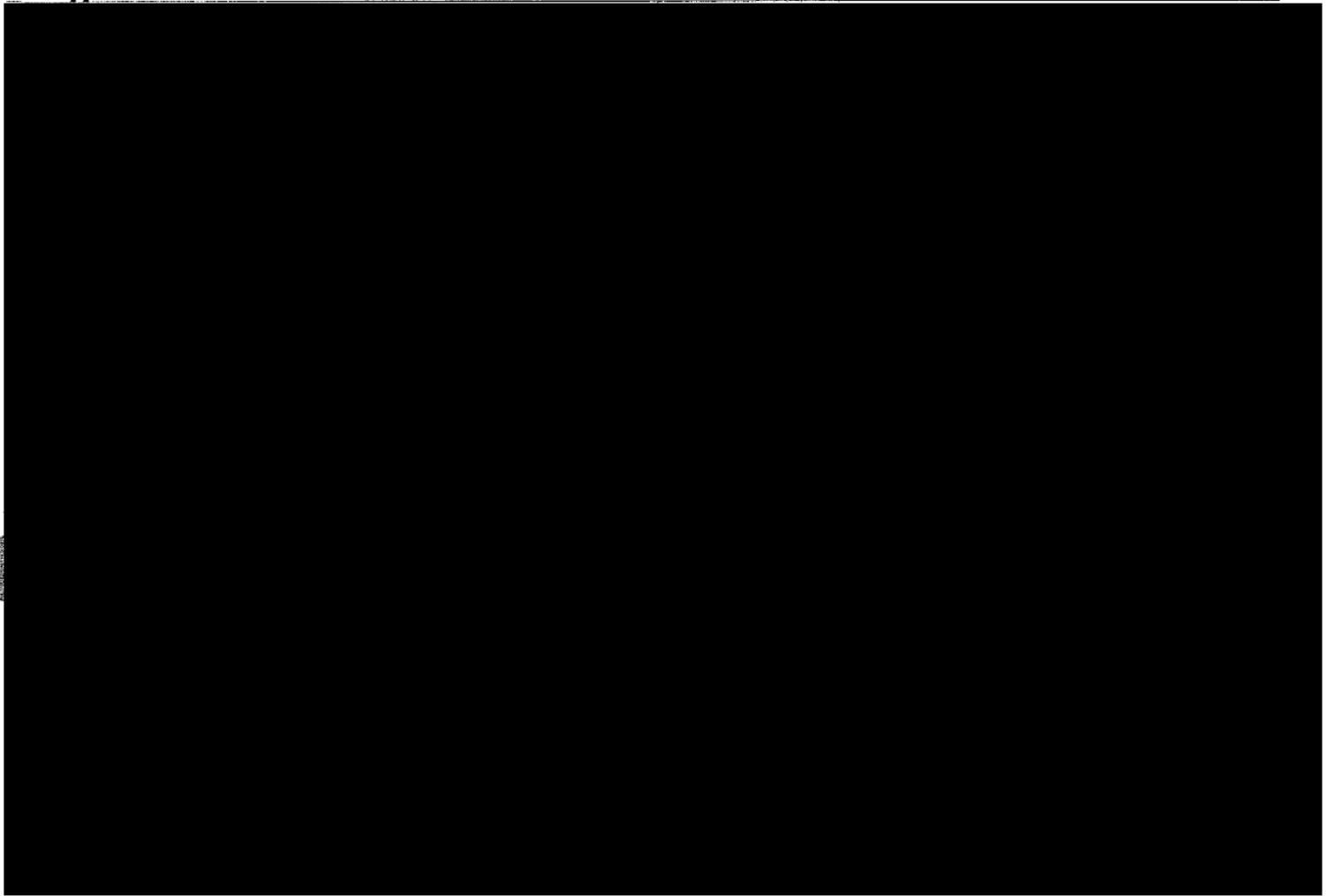
**LAW ENFORCEMENT SENSITIVE**

OCDETF Investigation No.

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(Assigned by AUSA Coordinator)

**X. Approvals**

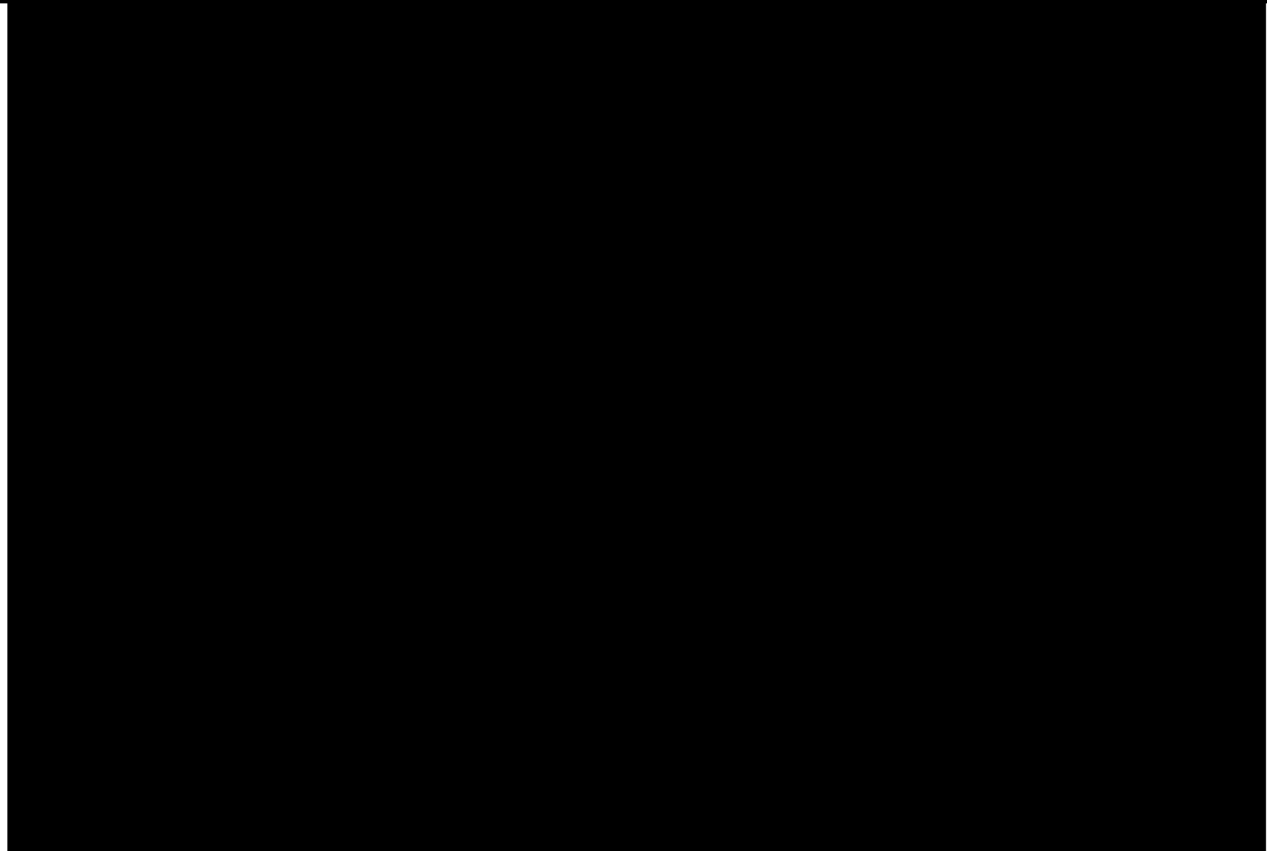
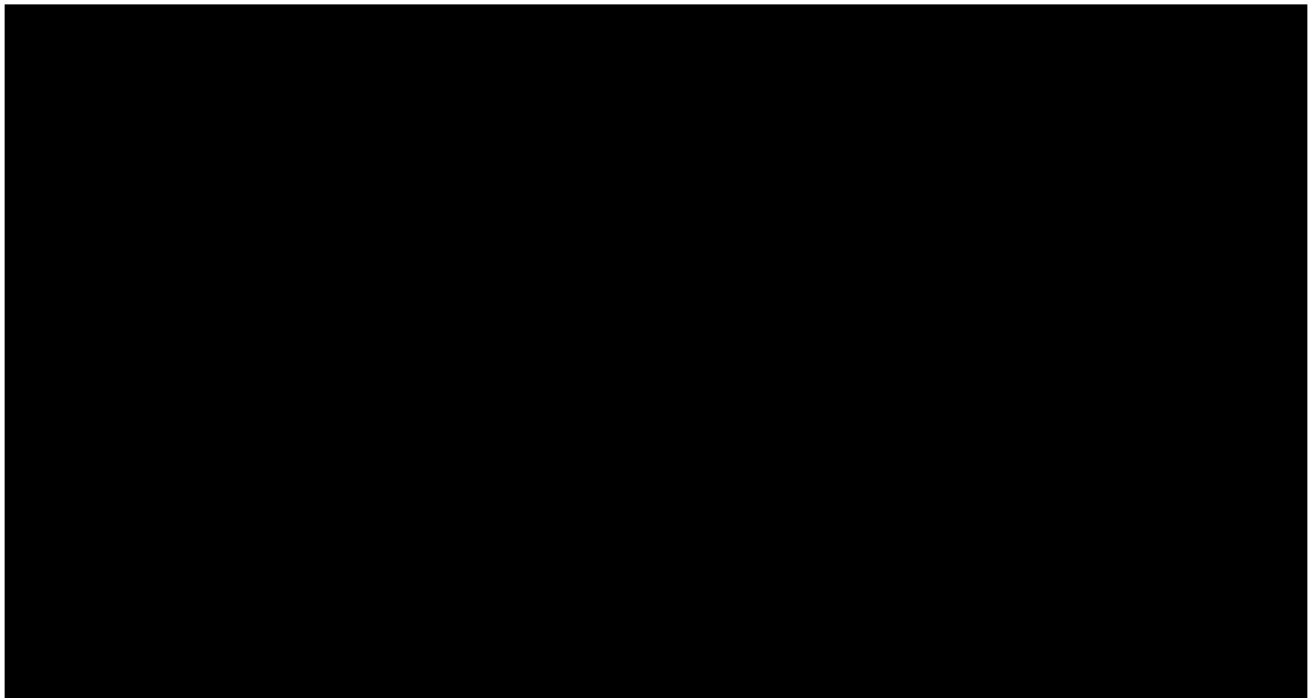


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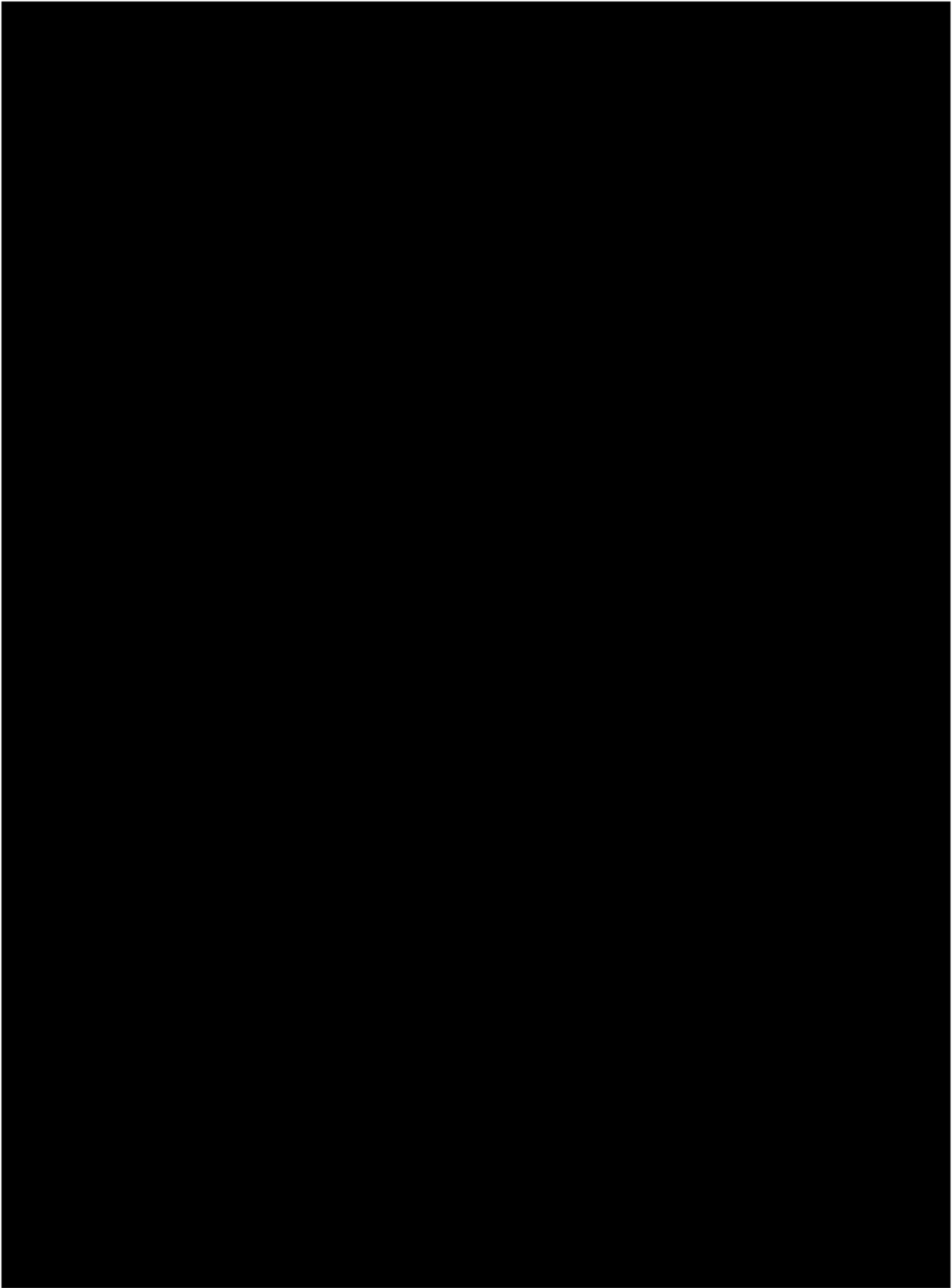
**OPERATION: THE FAST AND THE FURIOUS**

**A. BACKGROUND / FACTS ABOUT THE INVESTIGATION**



**LAW ENFORCEMENT SENSITIVE**

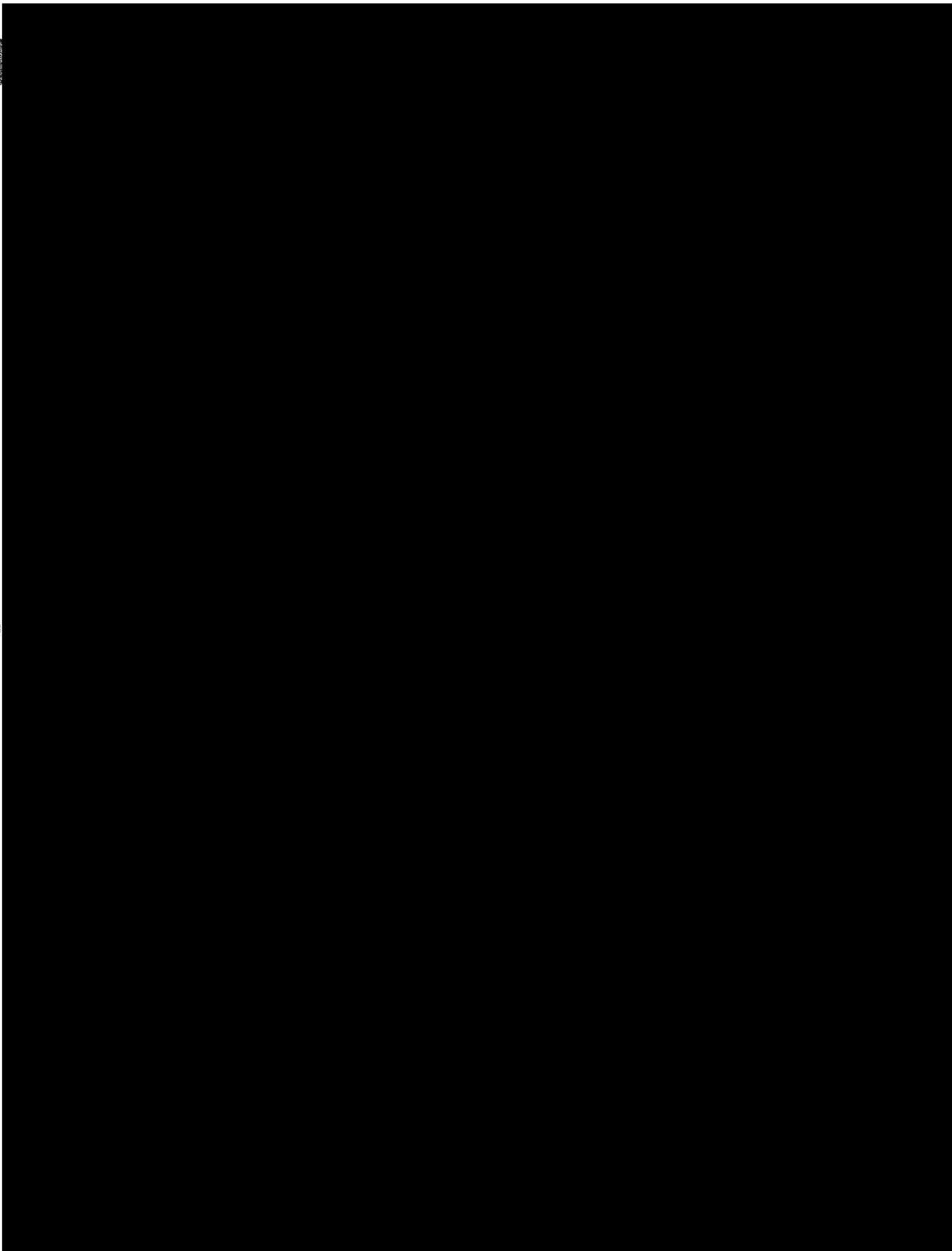
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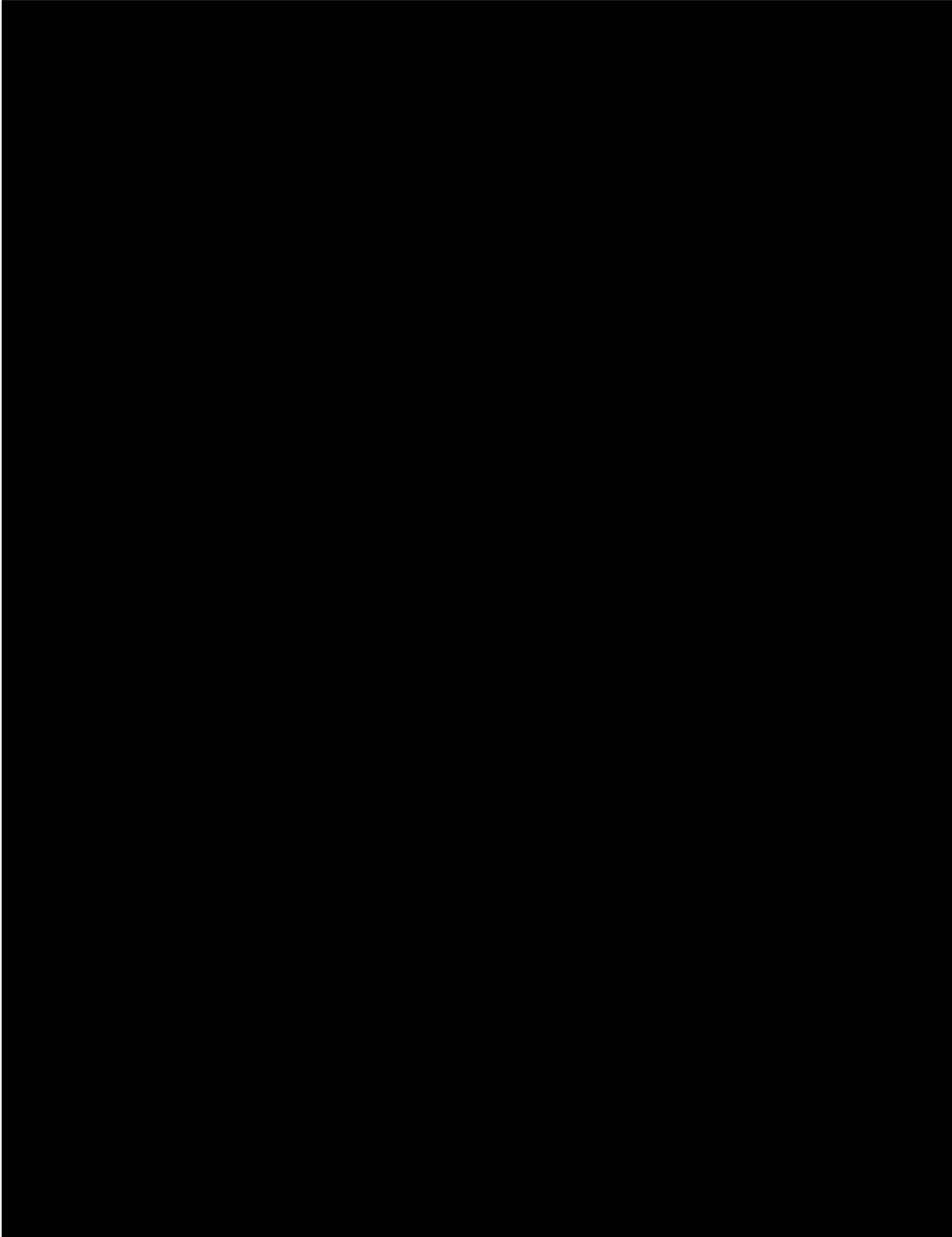
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Page 2 of 7

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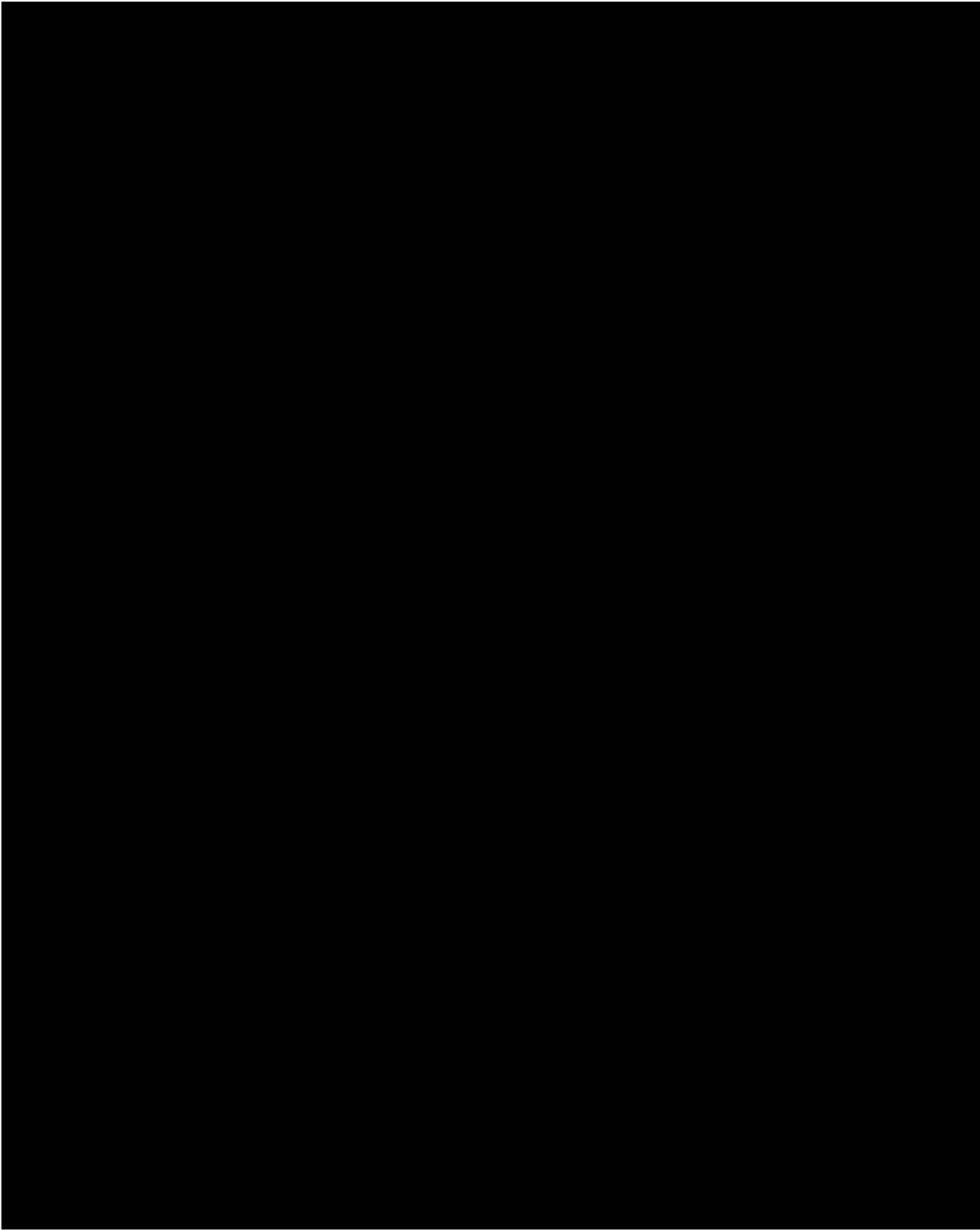


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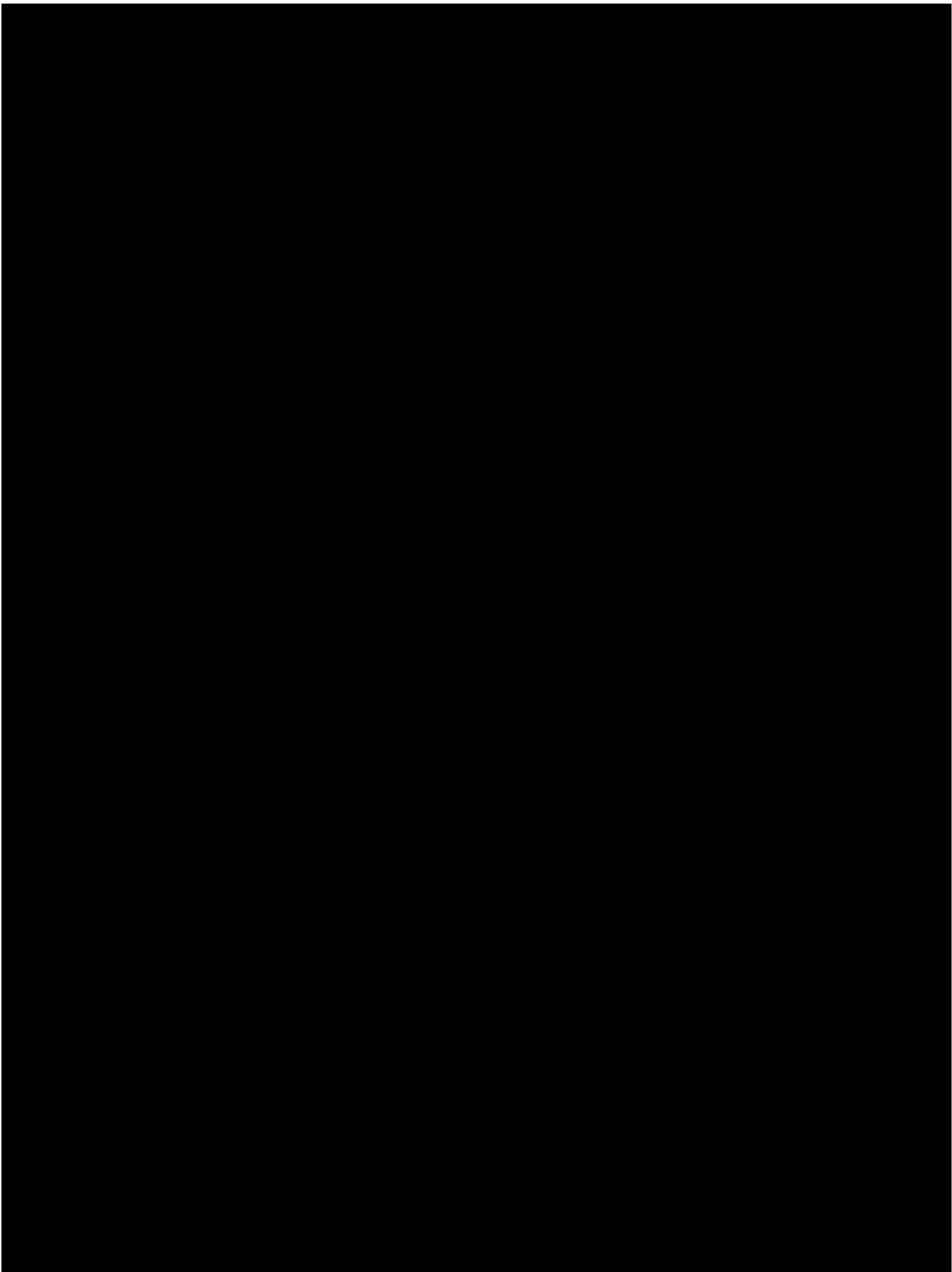


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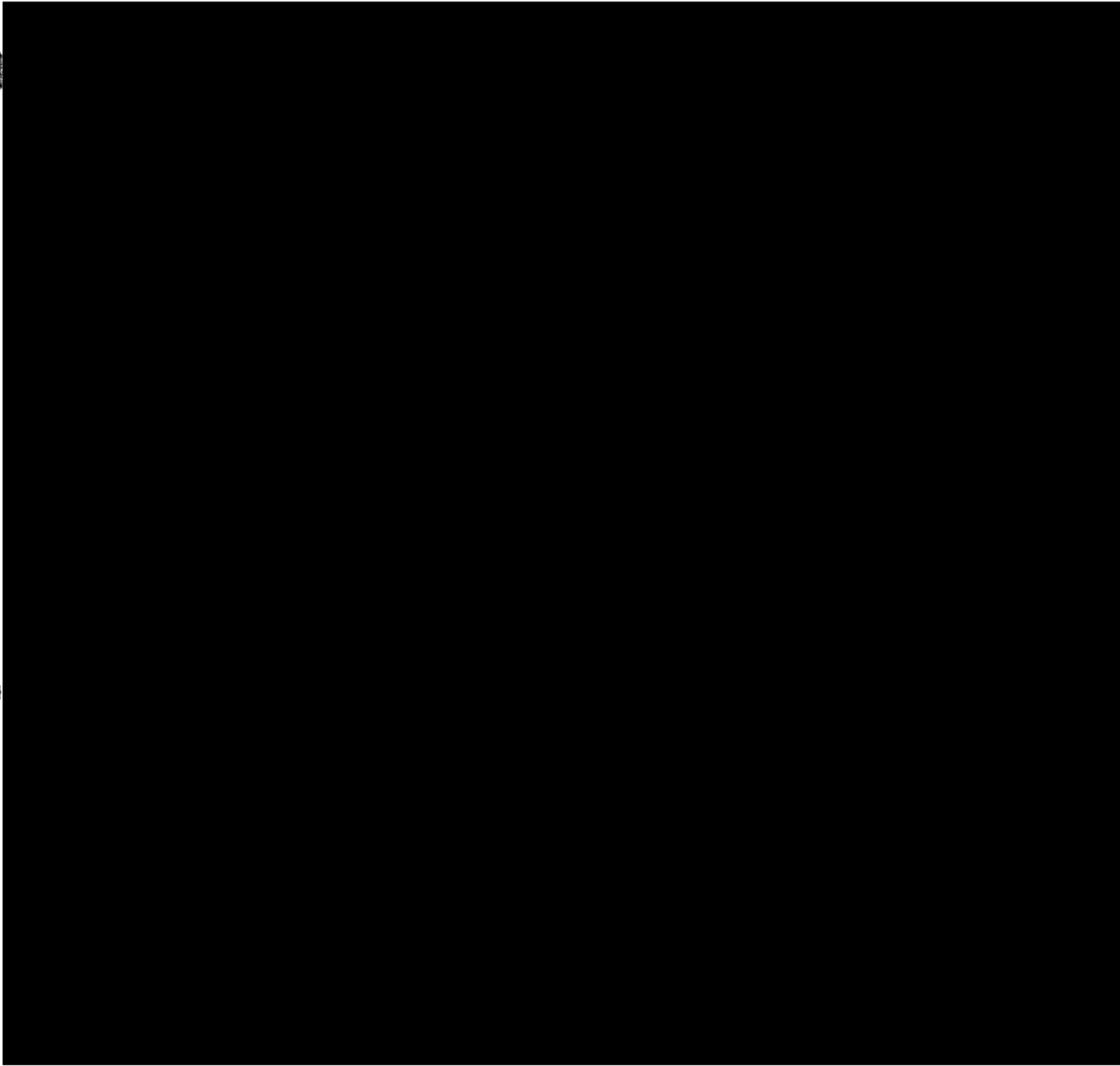
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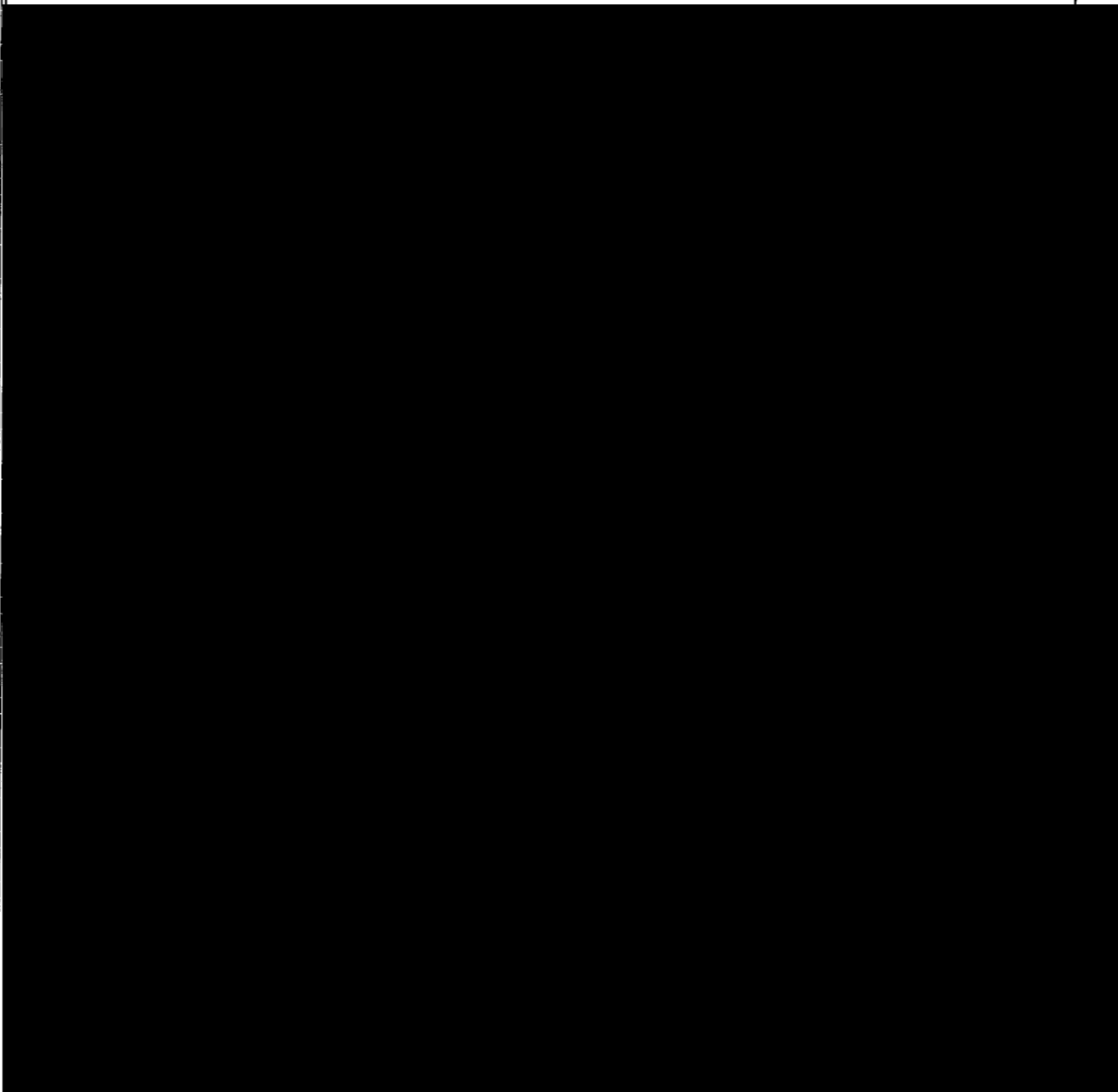




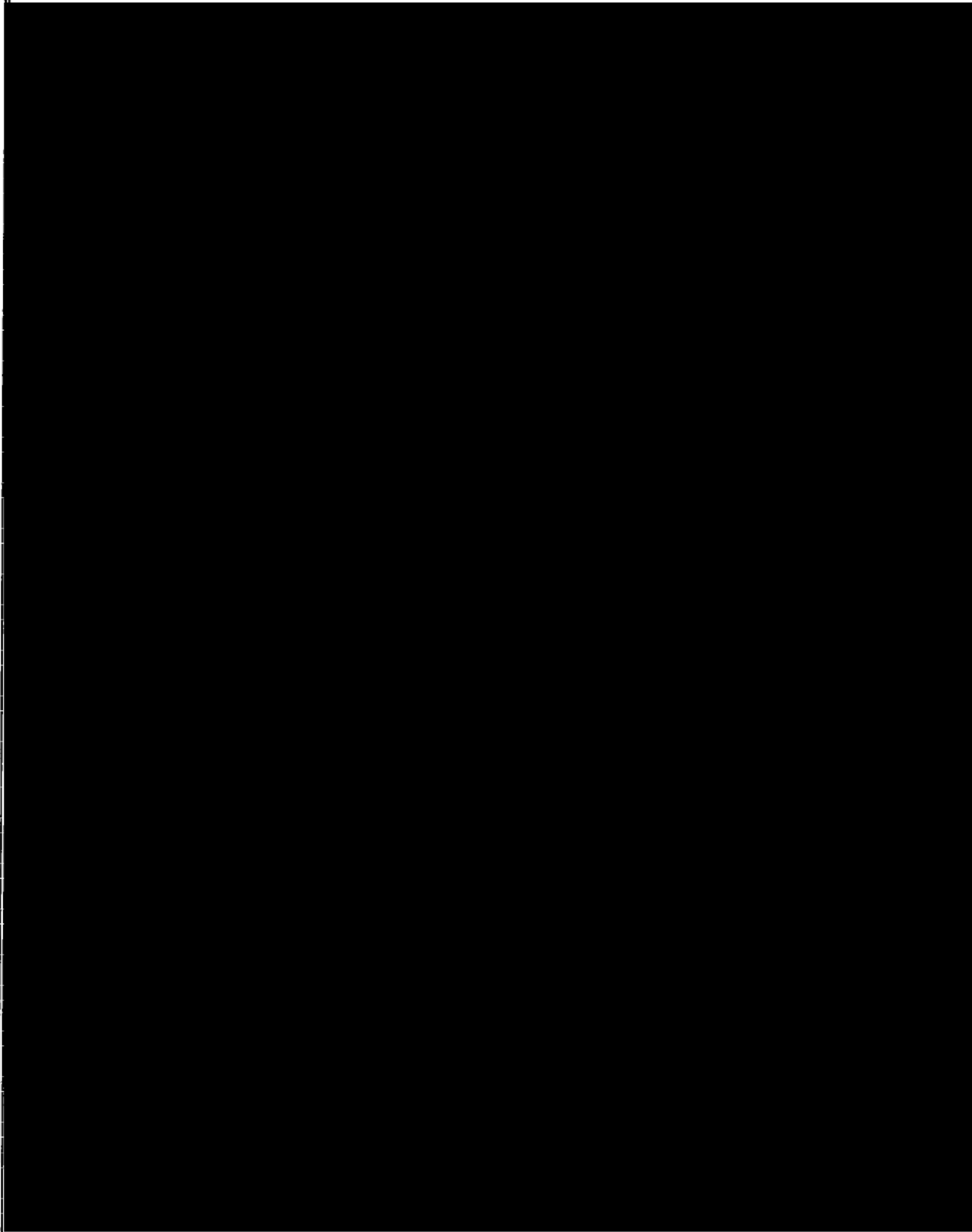
1 DENNIS K. BURKE  
United States Attorney  
2 District of Arizona

3 EMORY T. HURLEY  
Assistant United States Attorney  
State Bar Number: 014812  
4 Two Renaissance Square  
40 North Central Avenue, Suite 1200  
5 Phoenix, Arizona 85004  
Telephone (602) 514-7500  
6 [emory.hurley@usdoj.gov](mailto:emory.hurley@usdoj.gov)

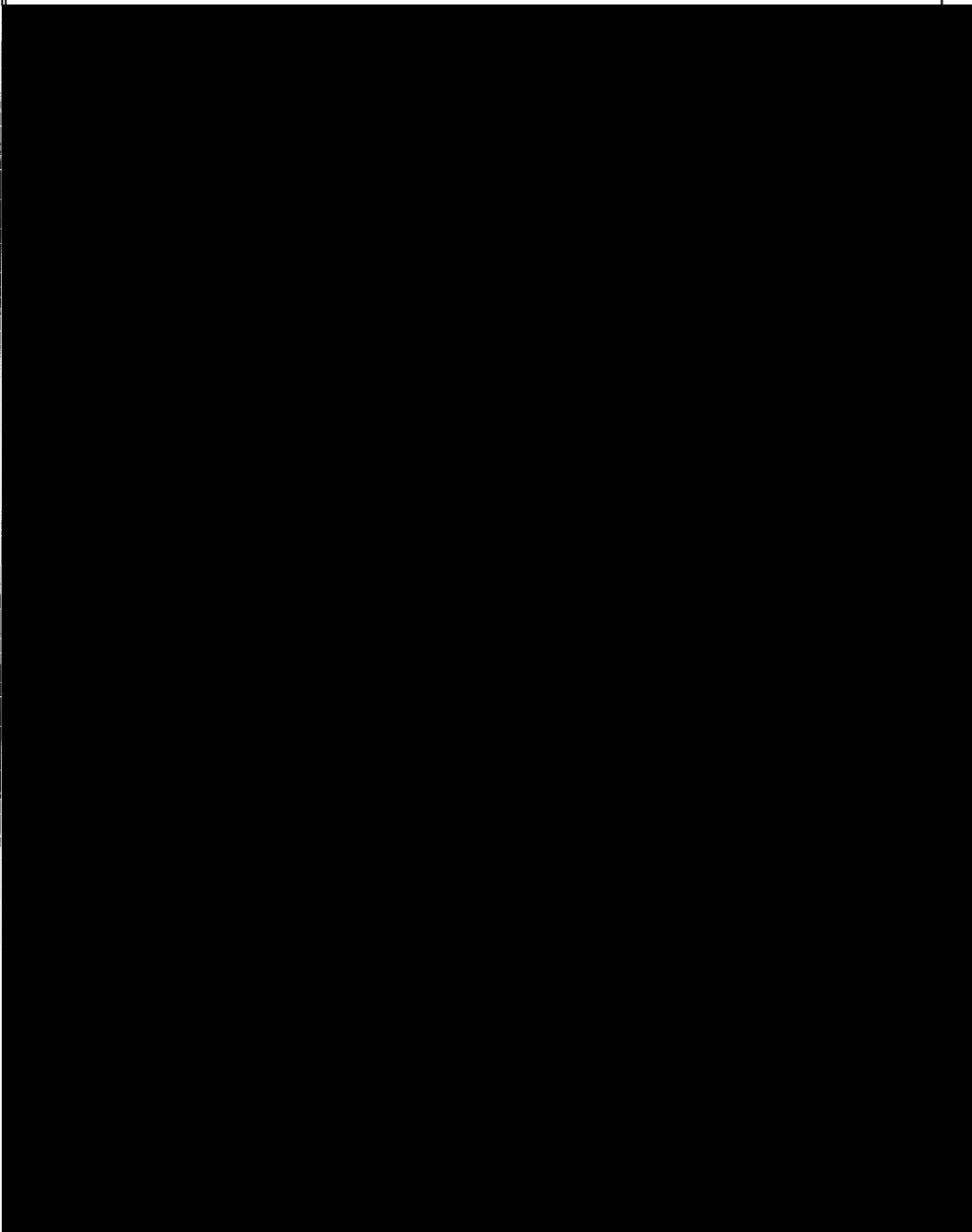
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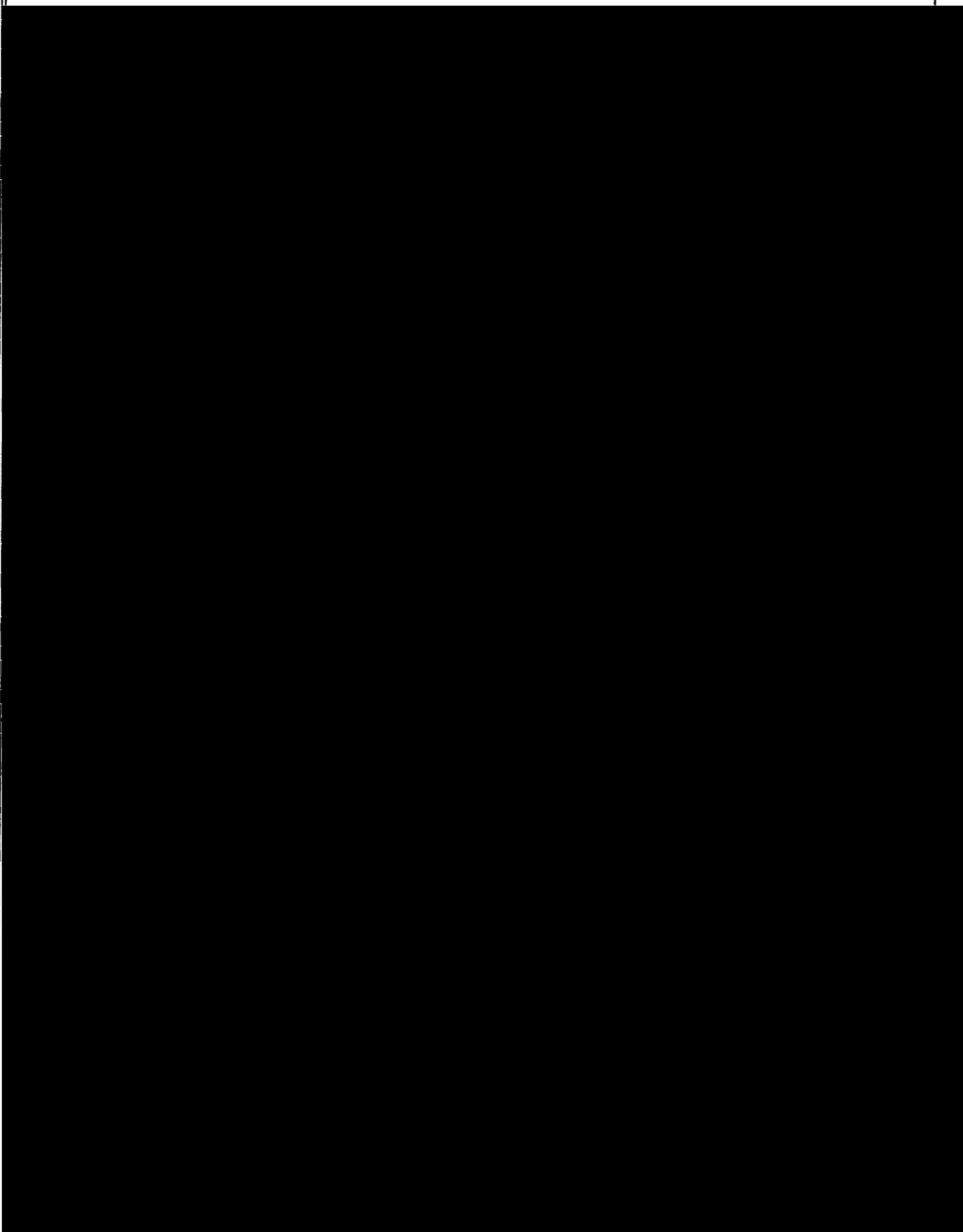
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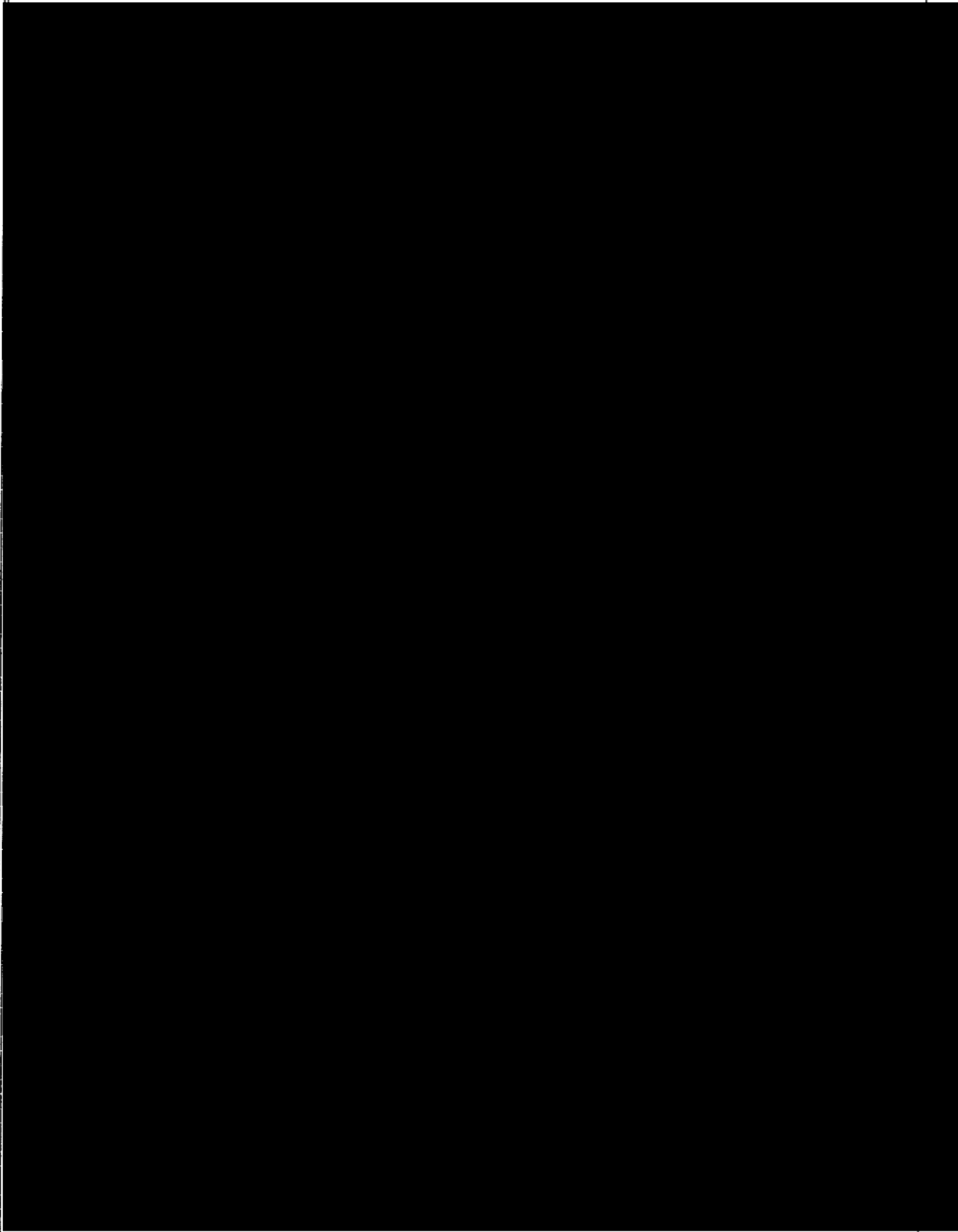
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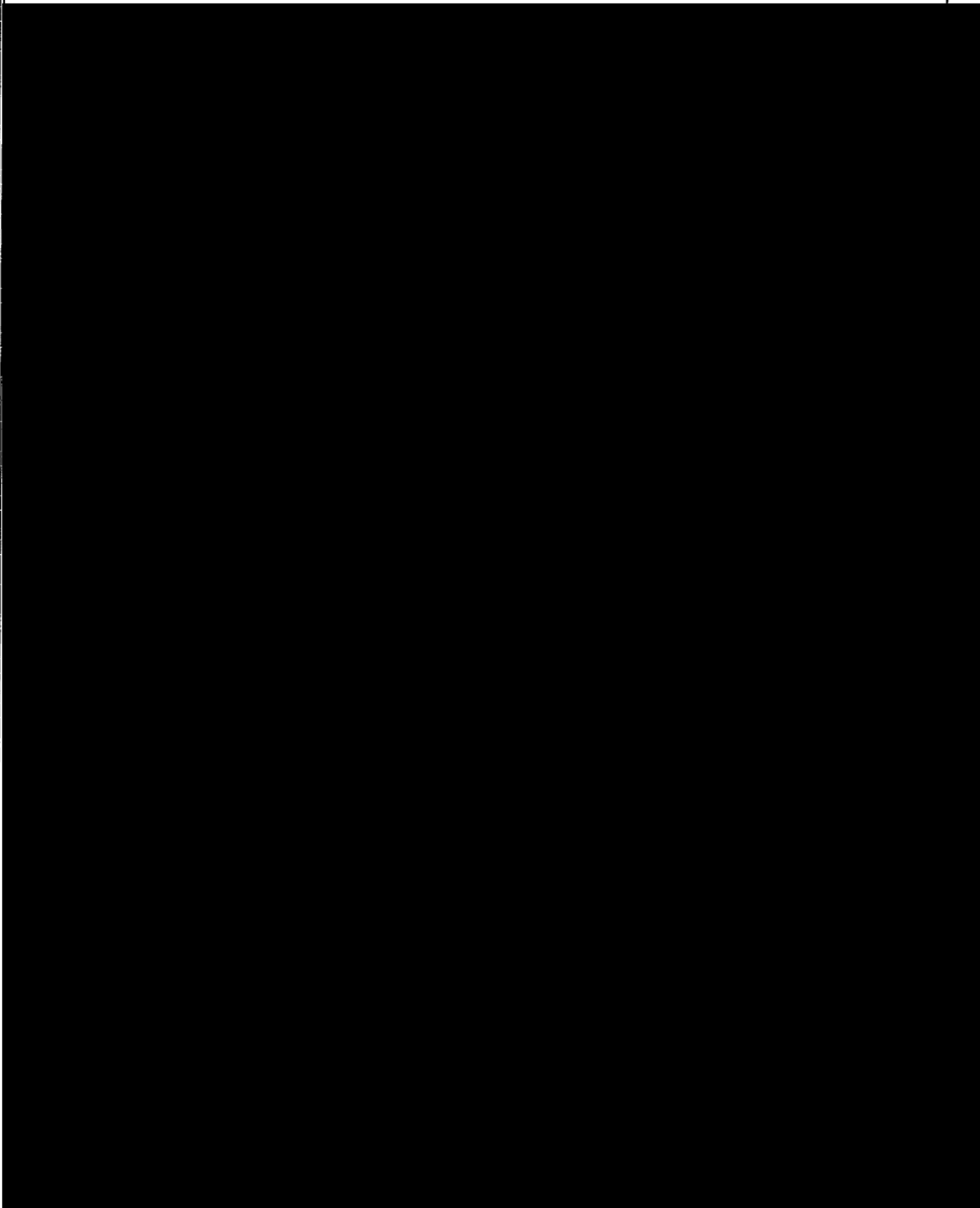
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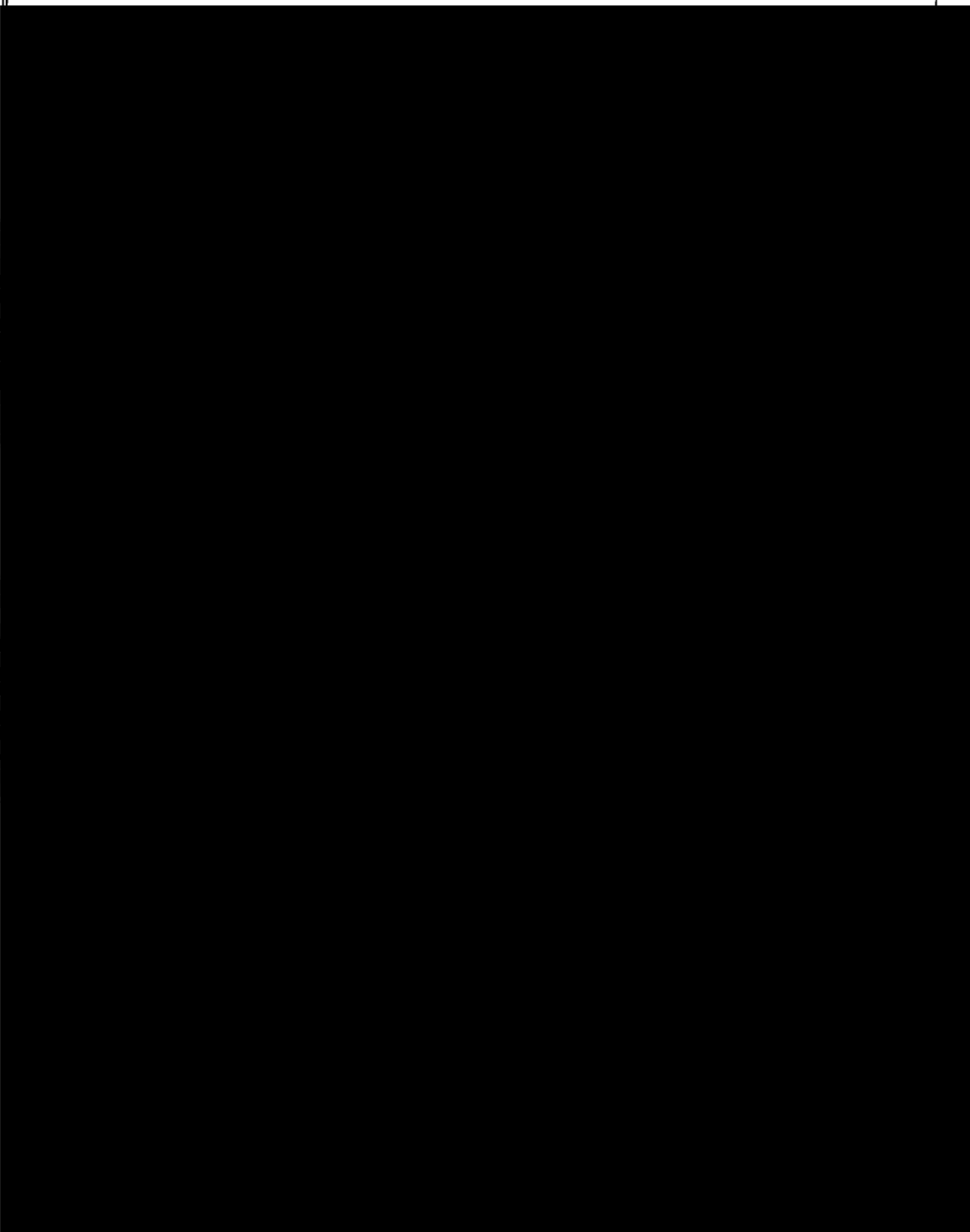
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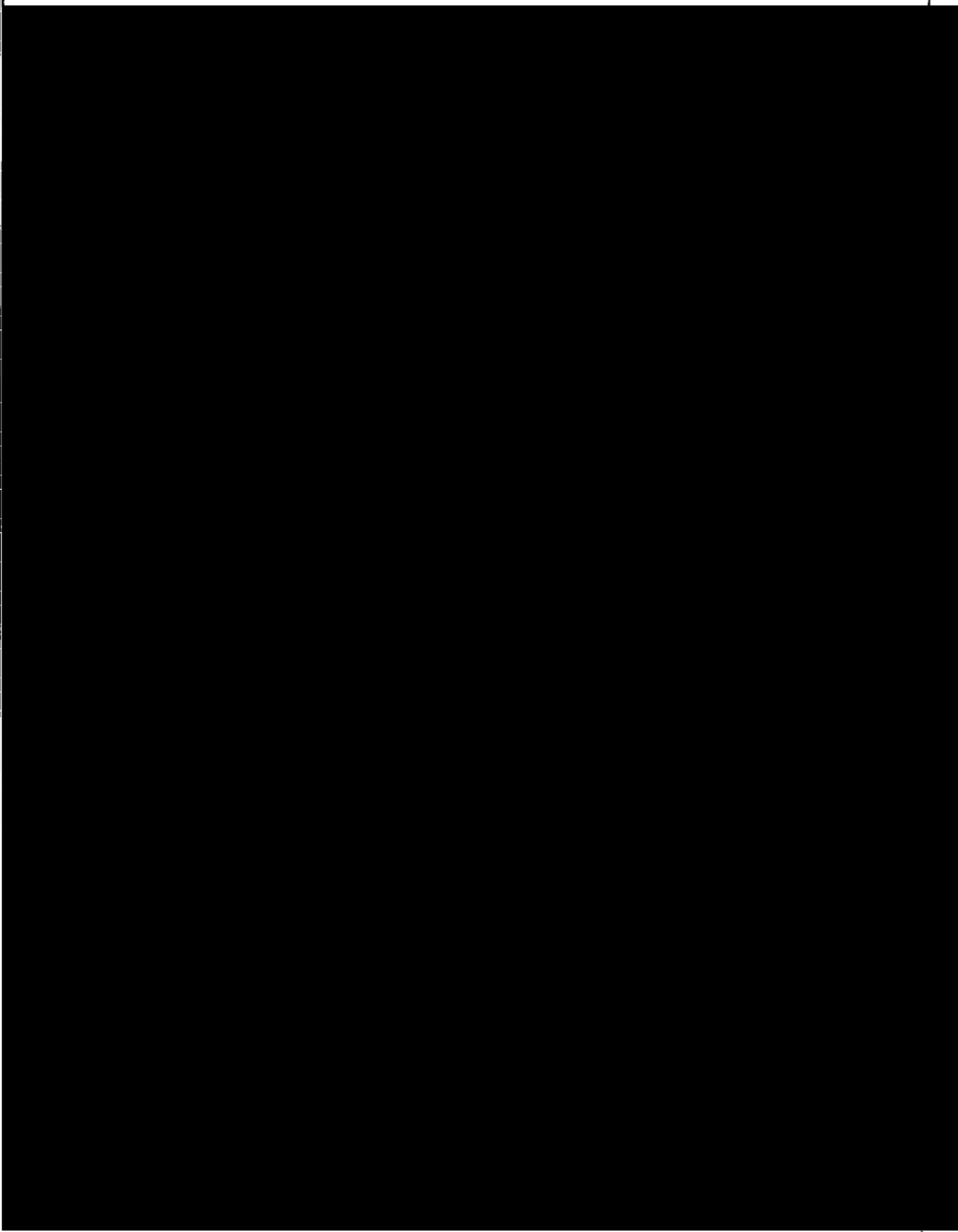
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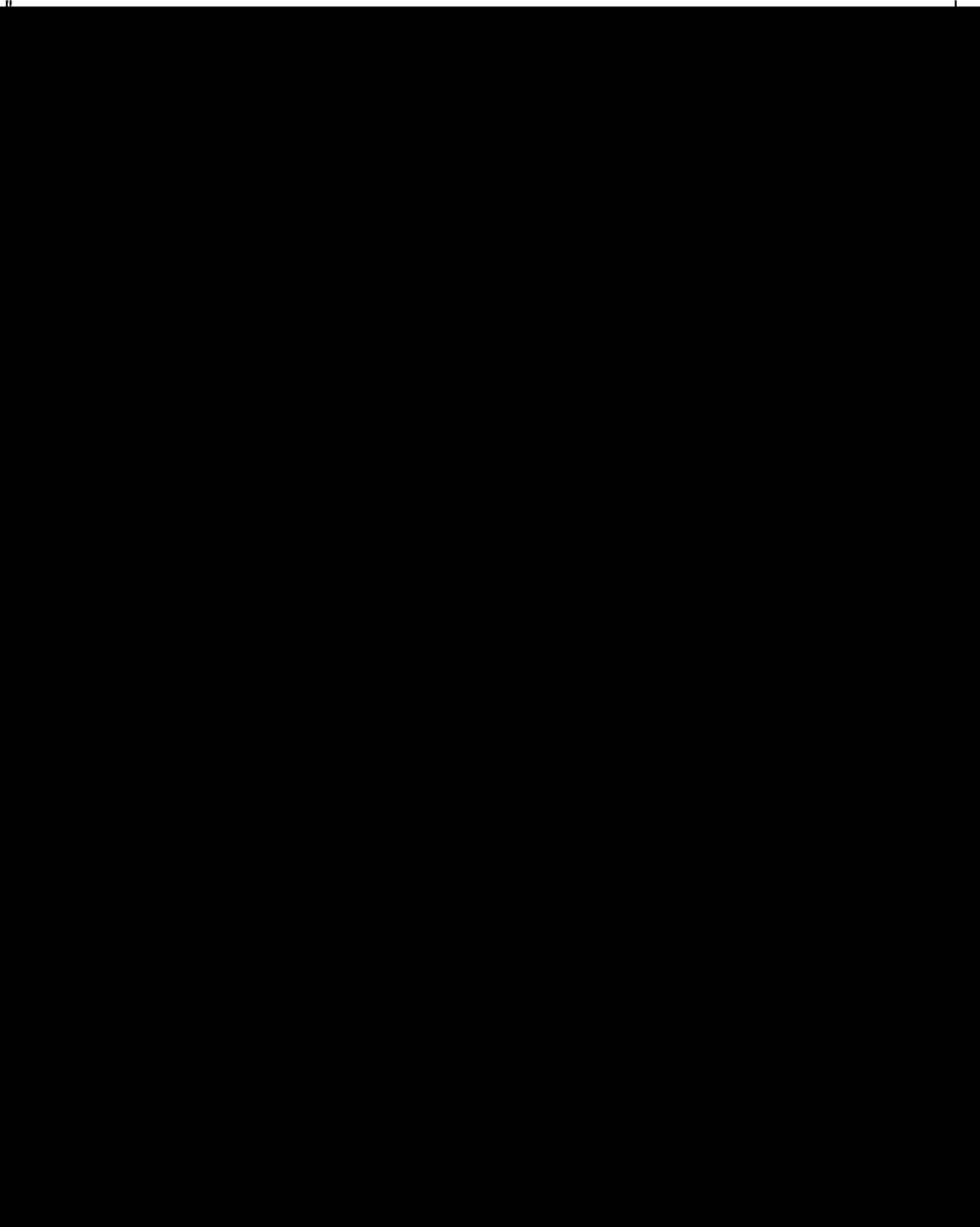


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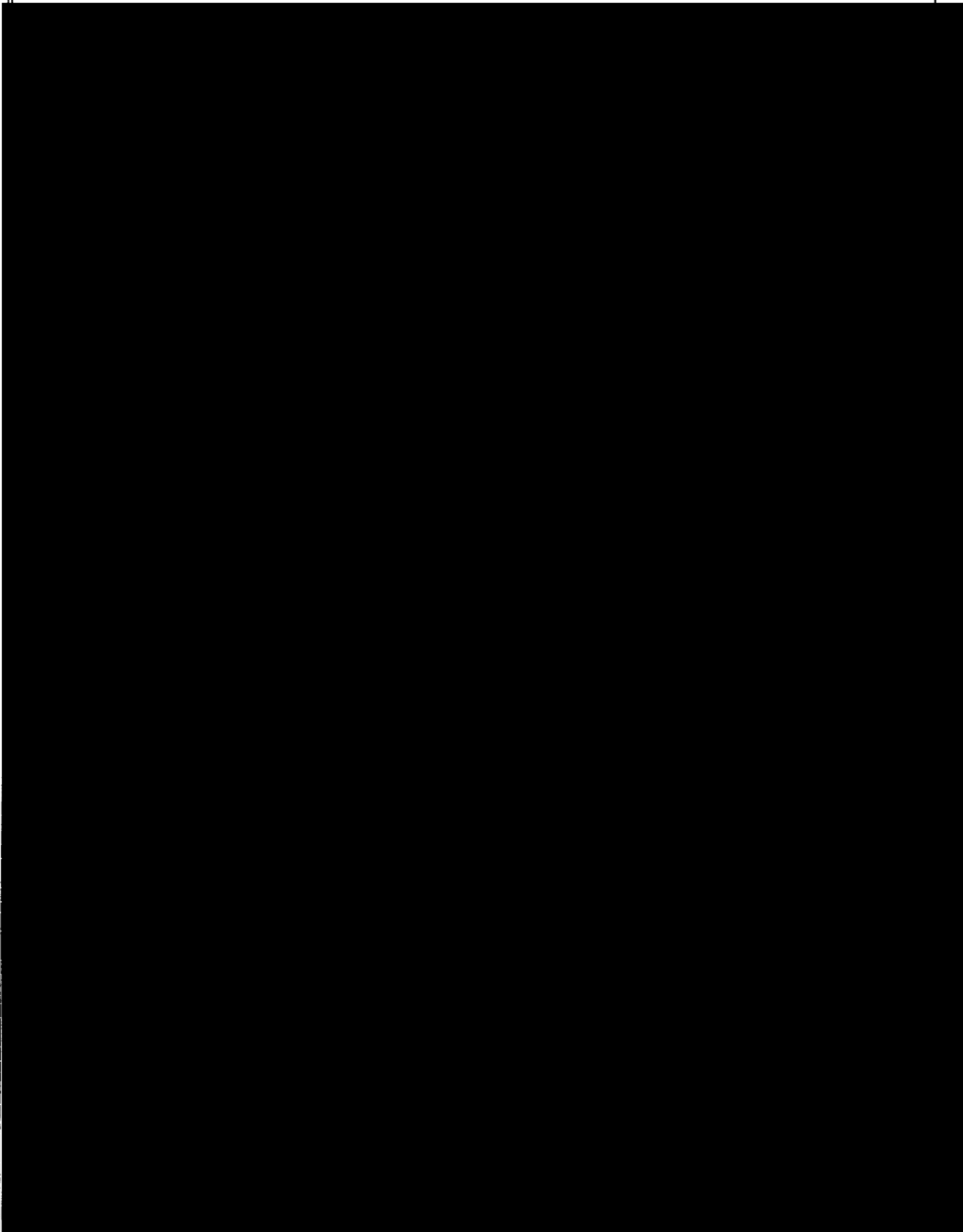




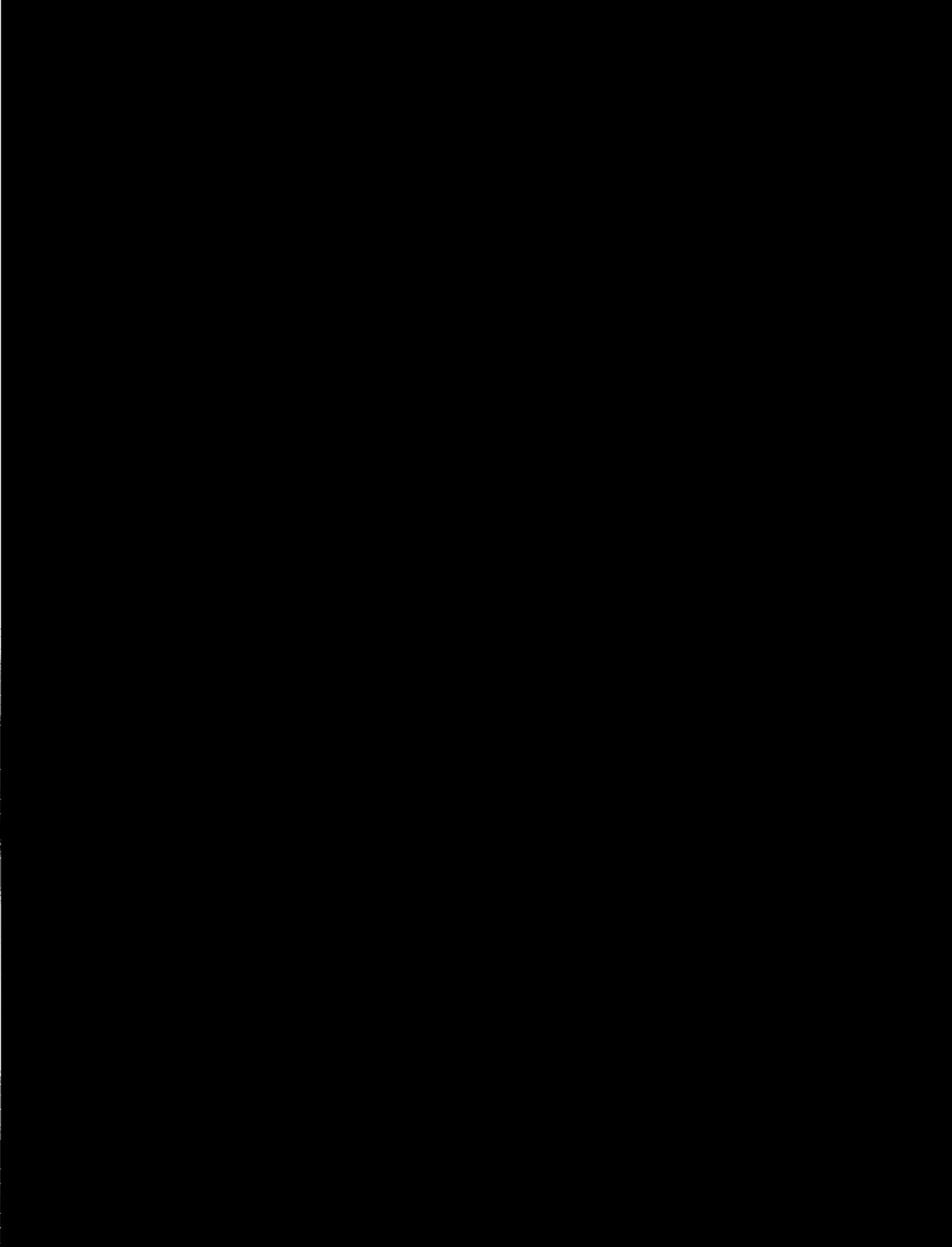
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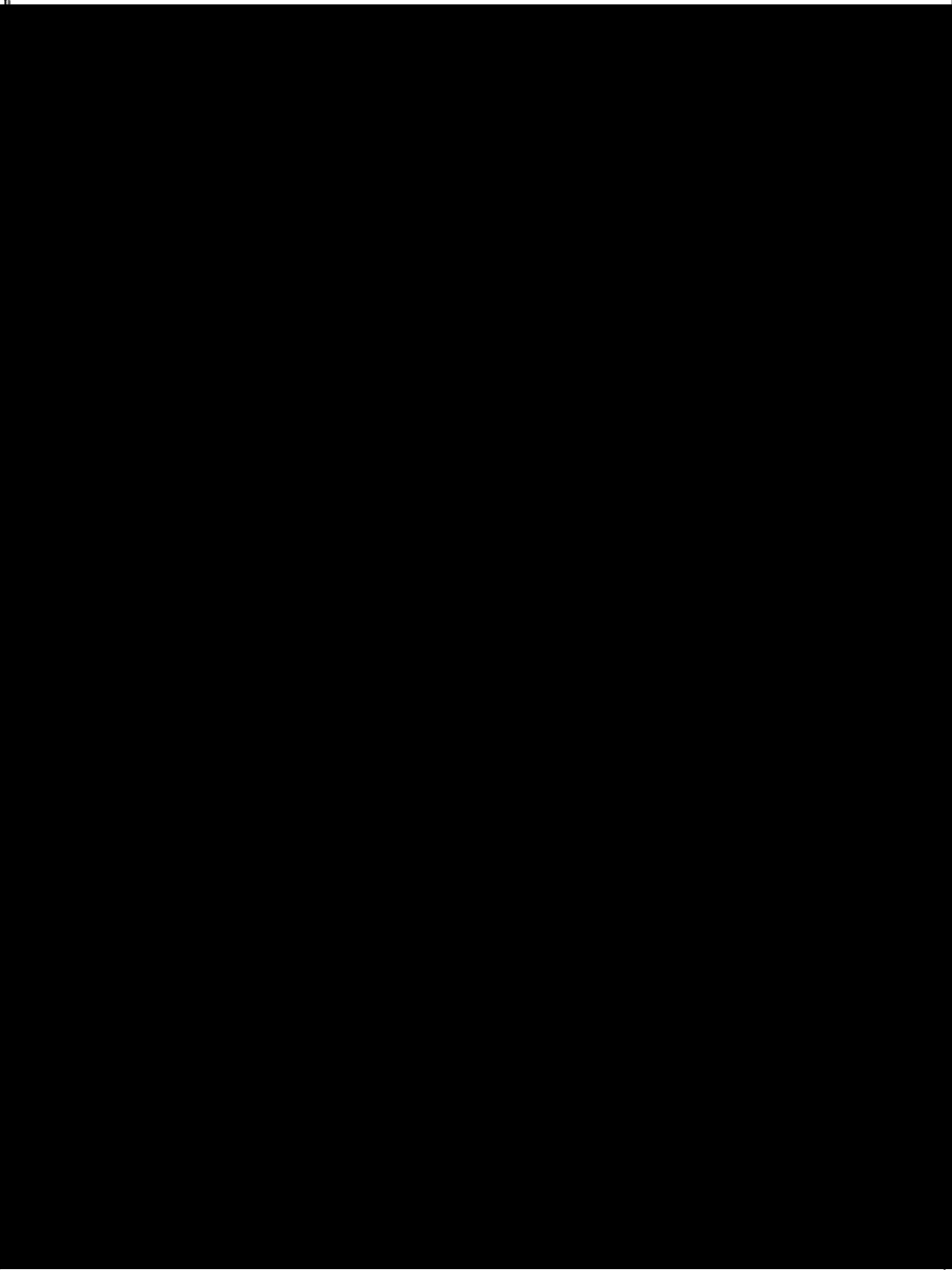
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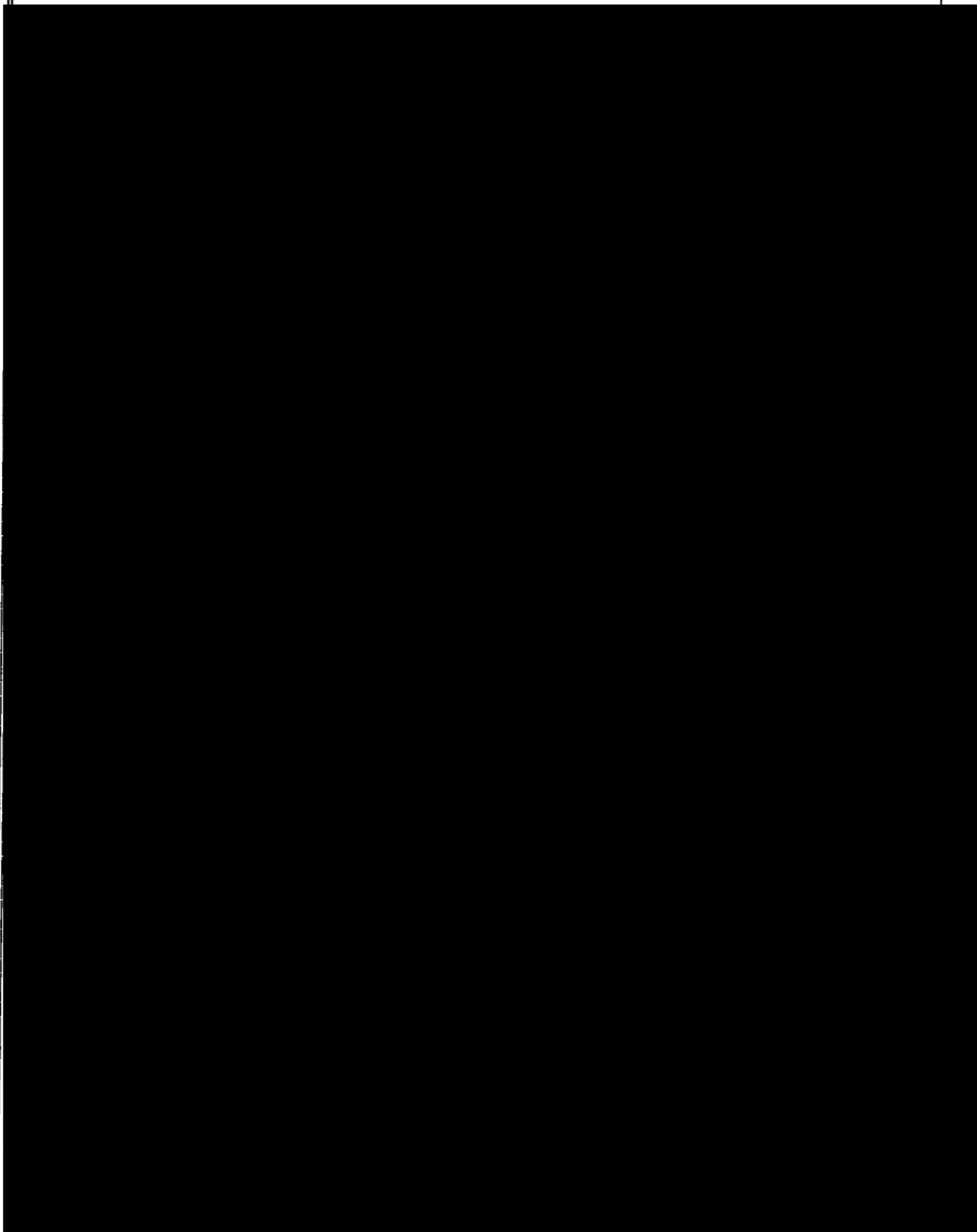
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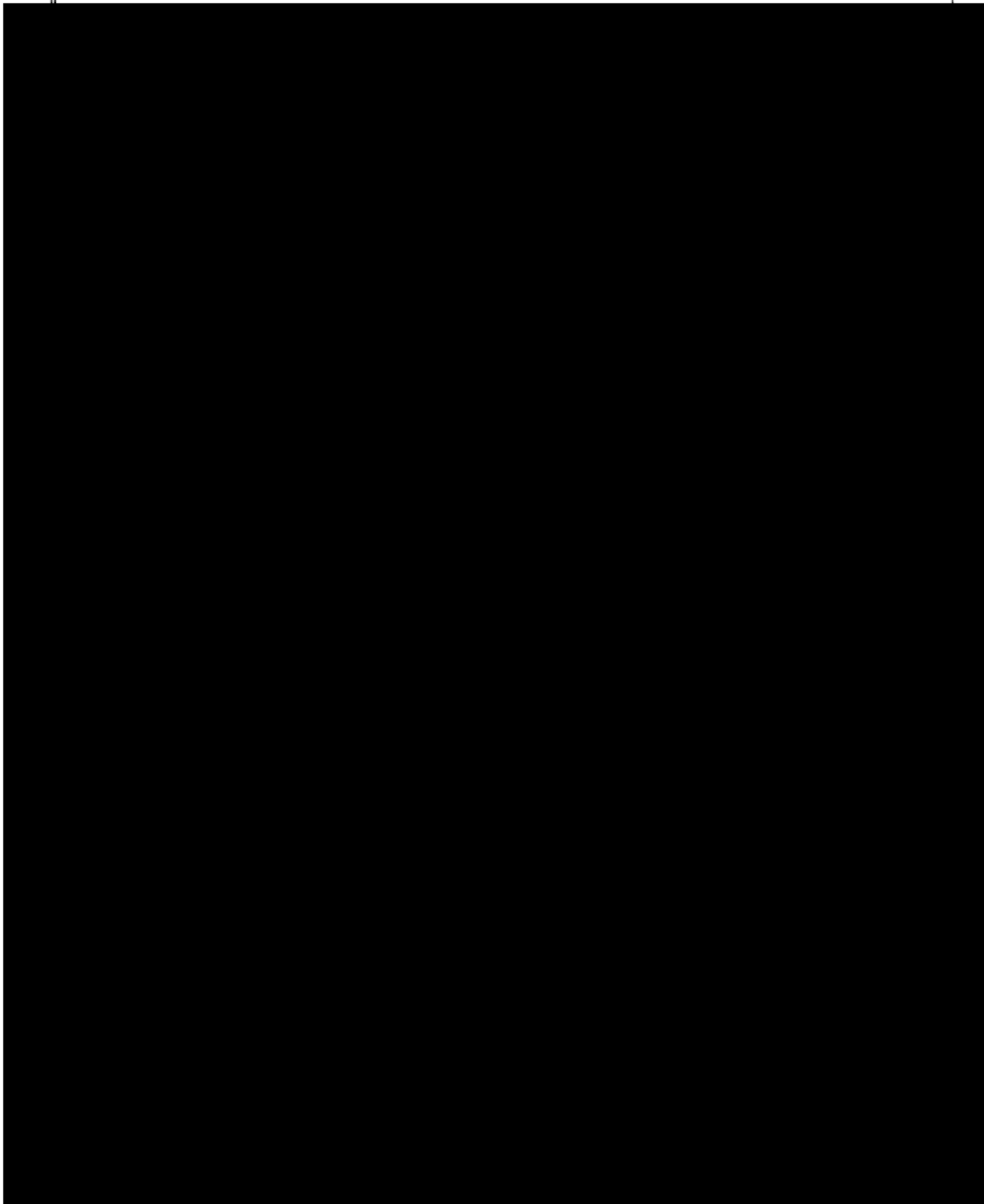


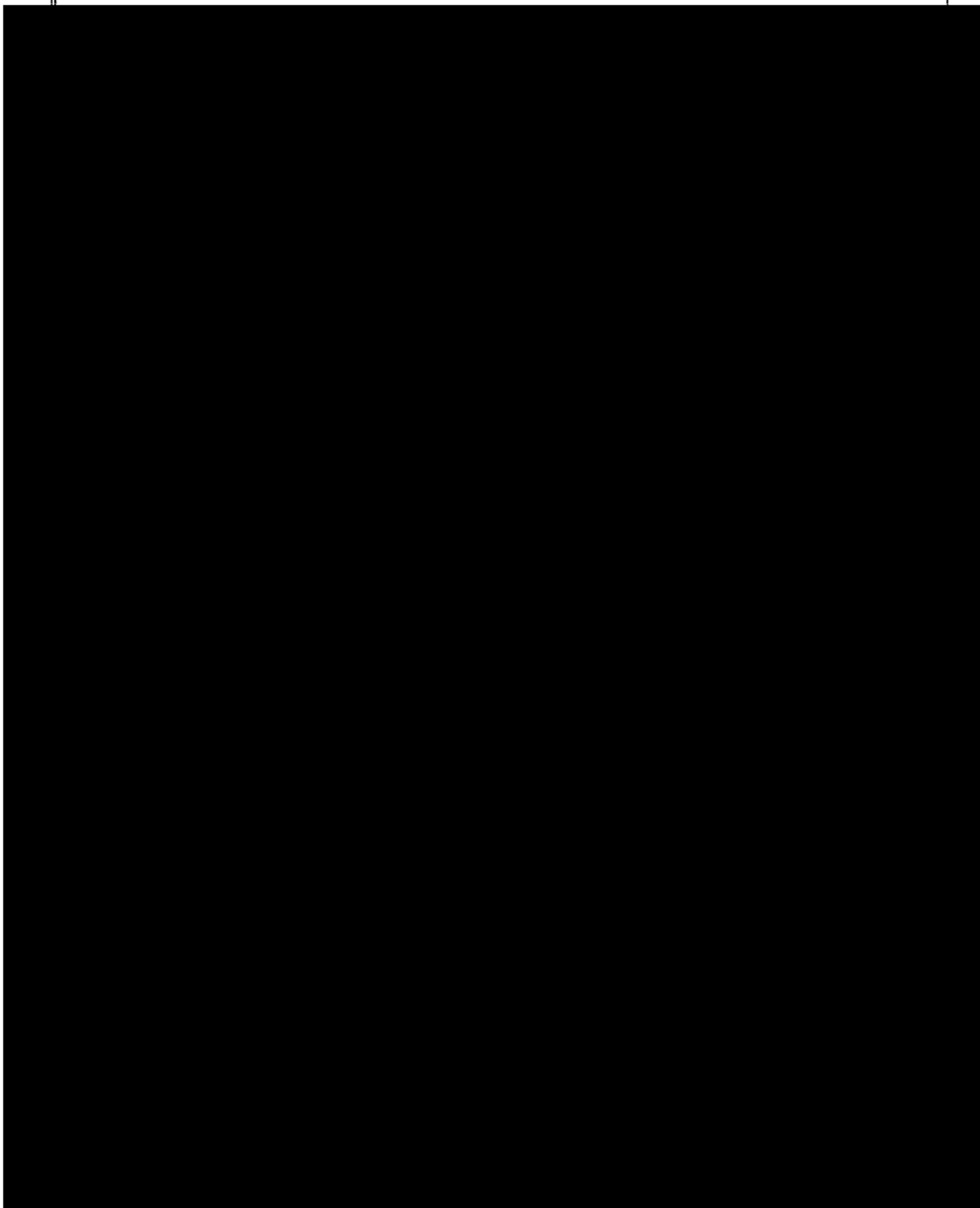
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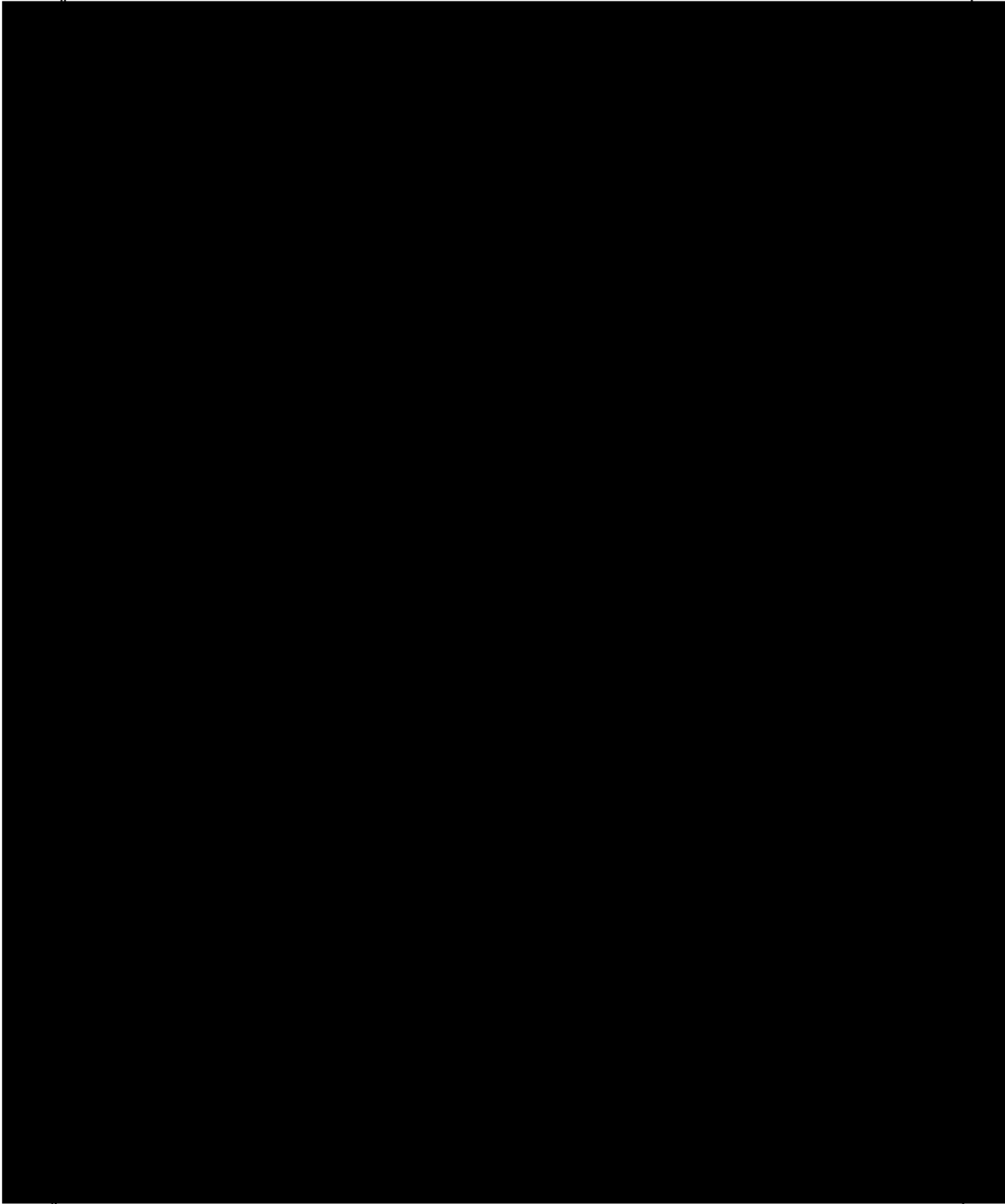


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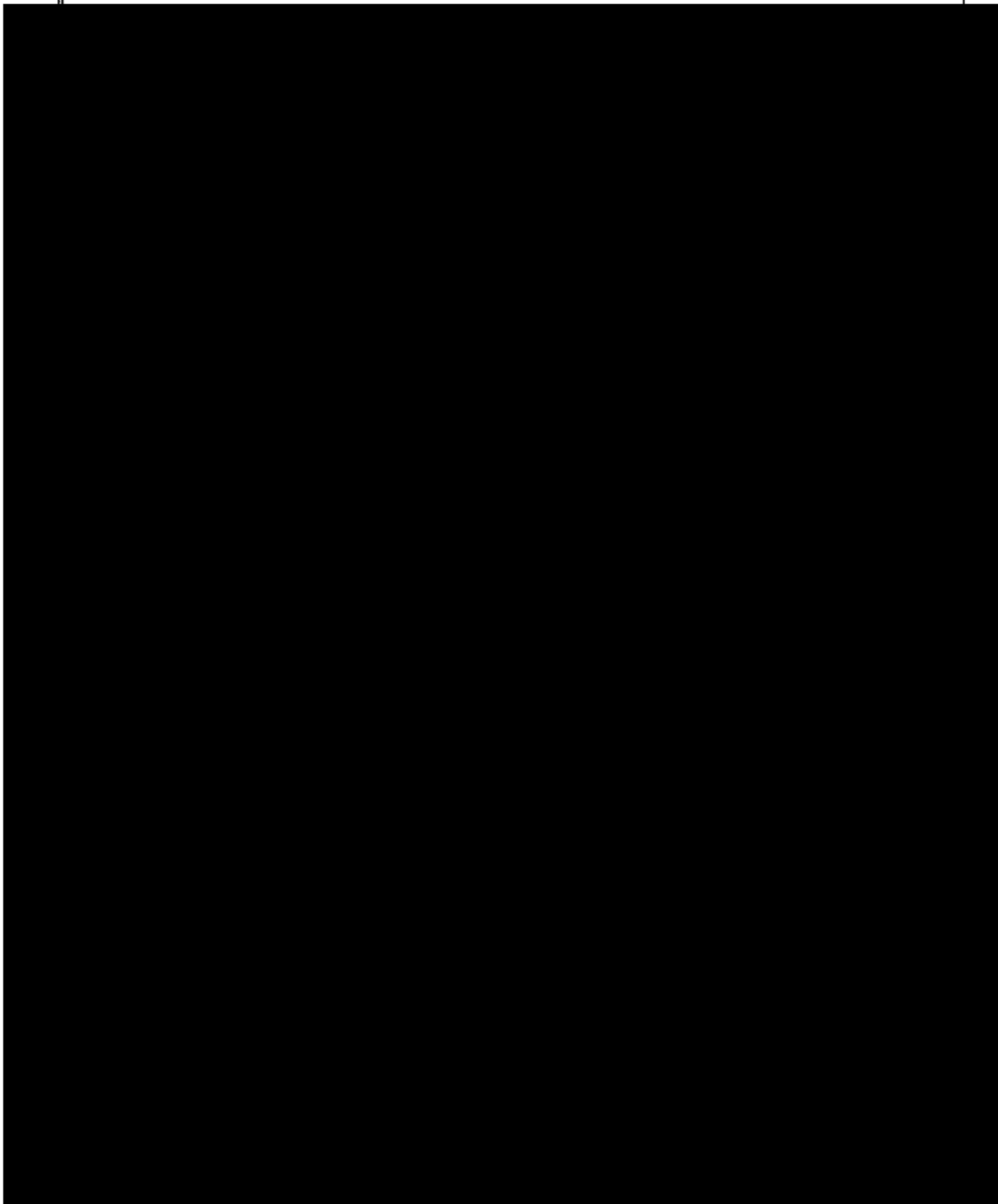


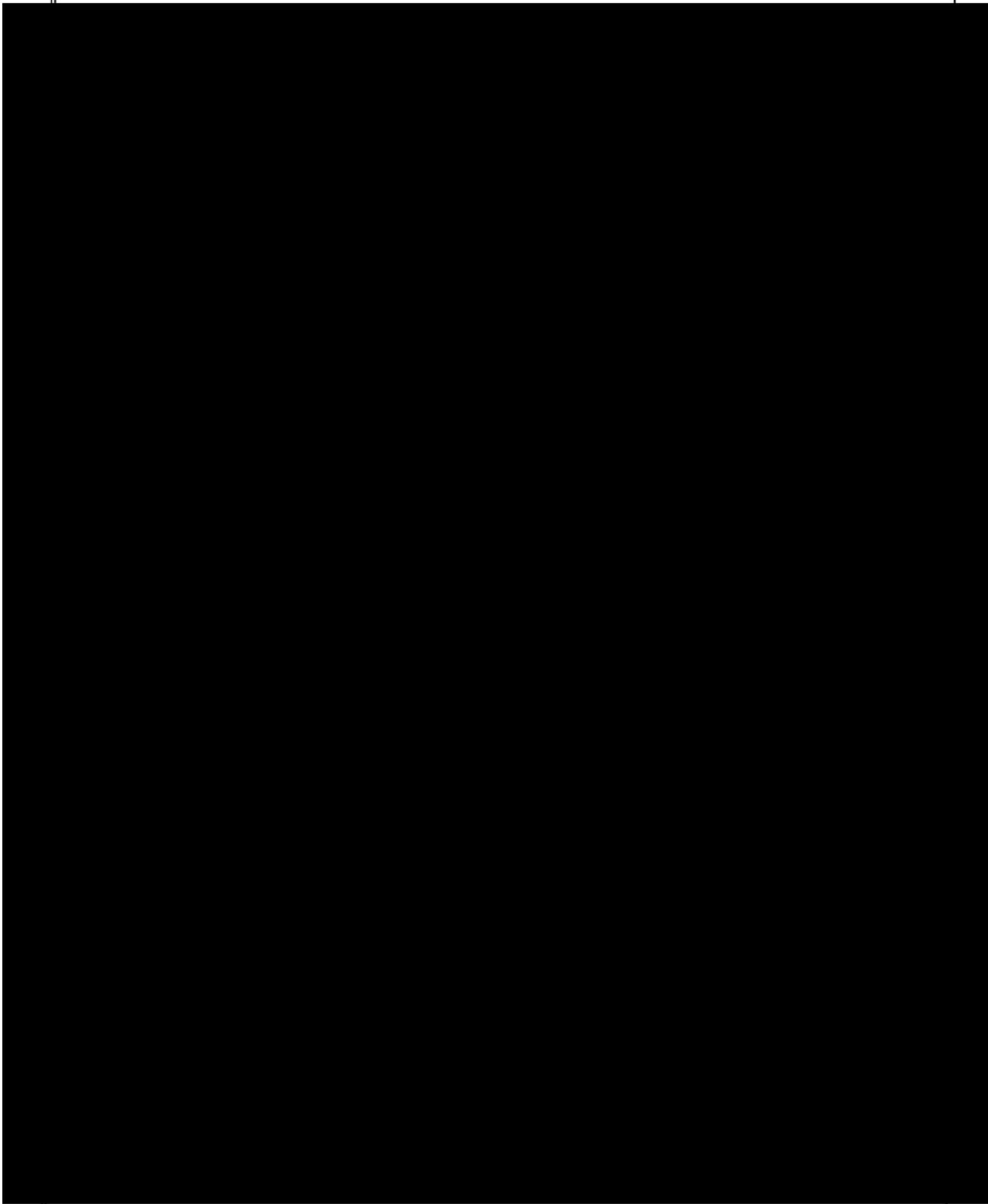


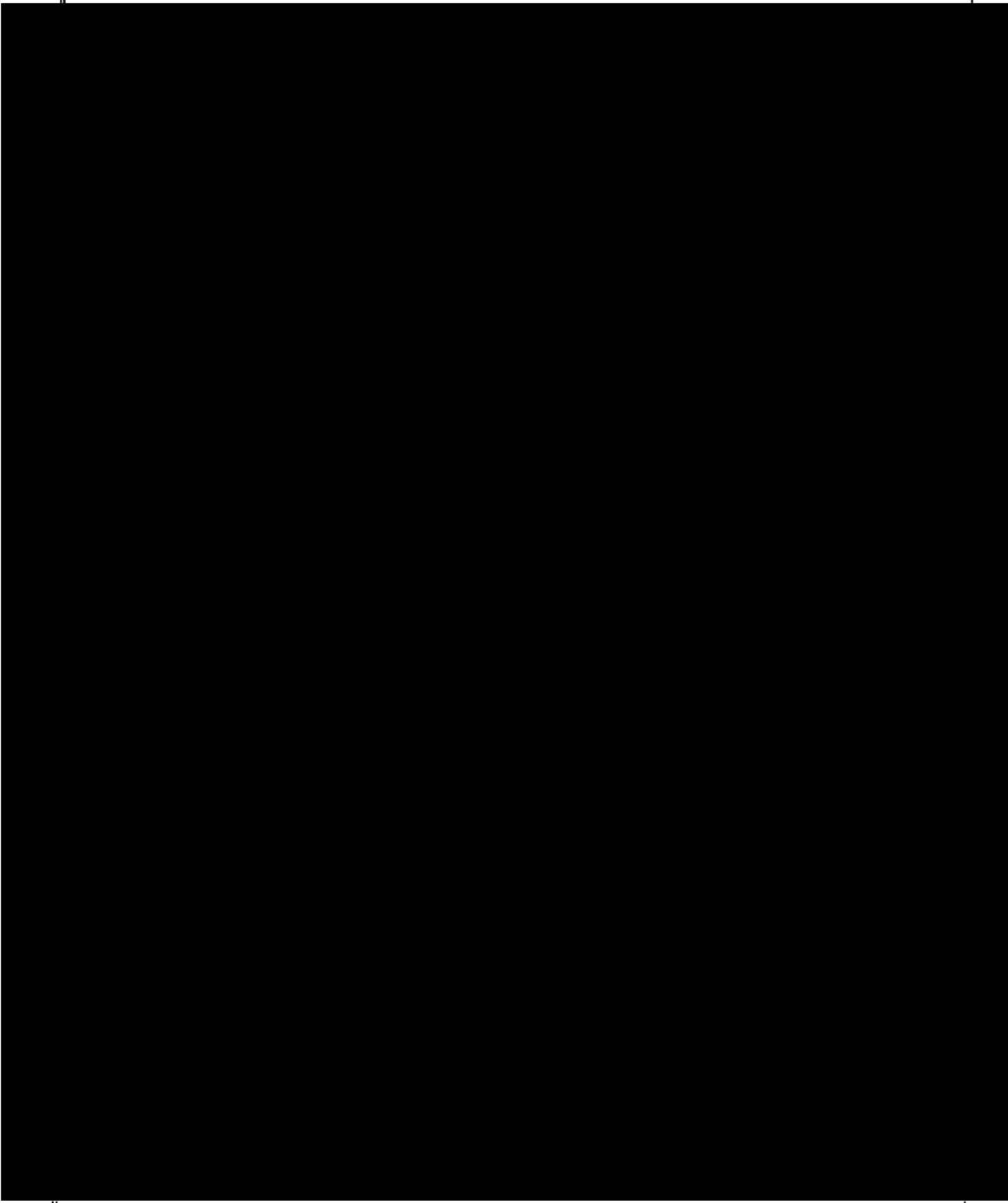


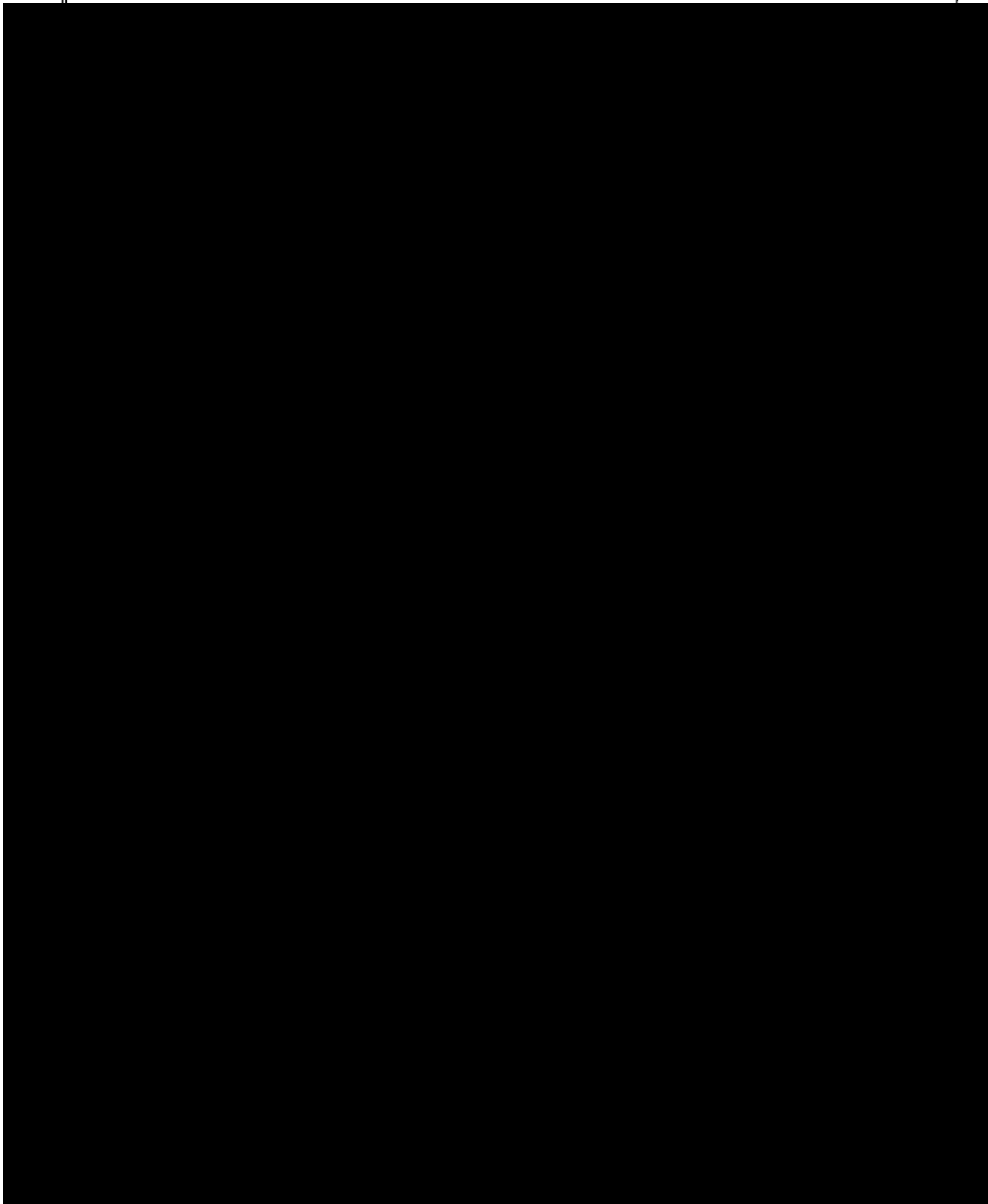


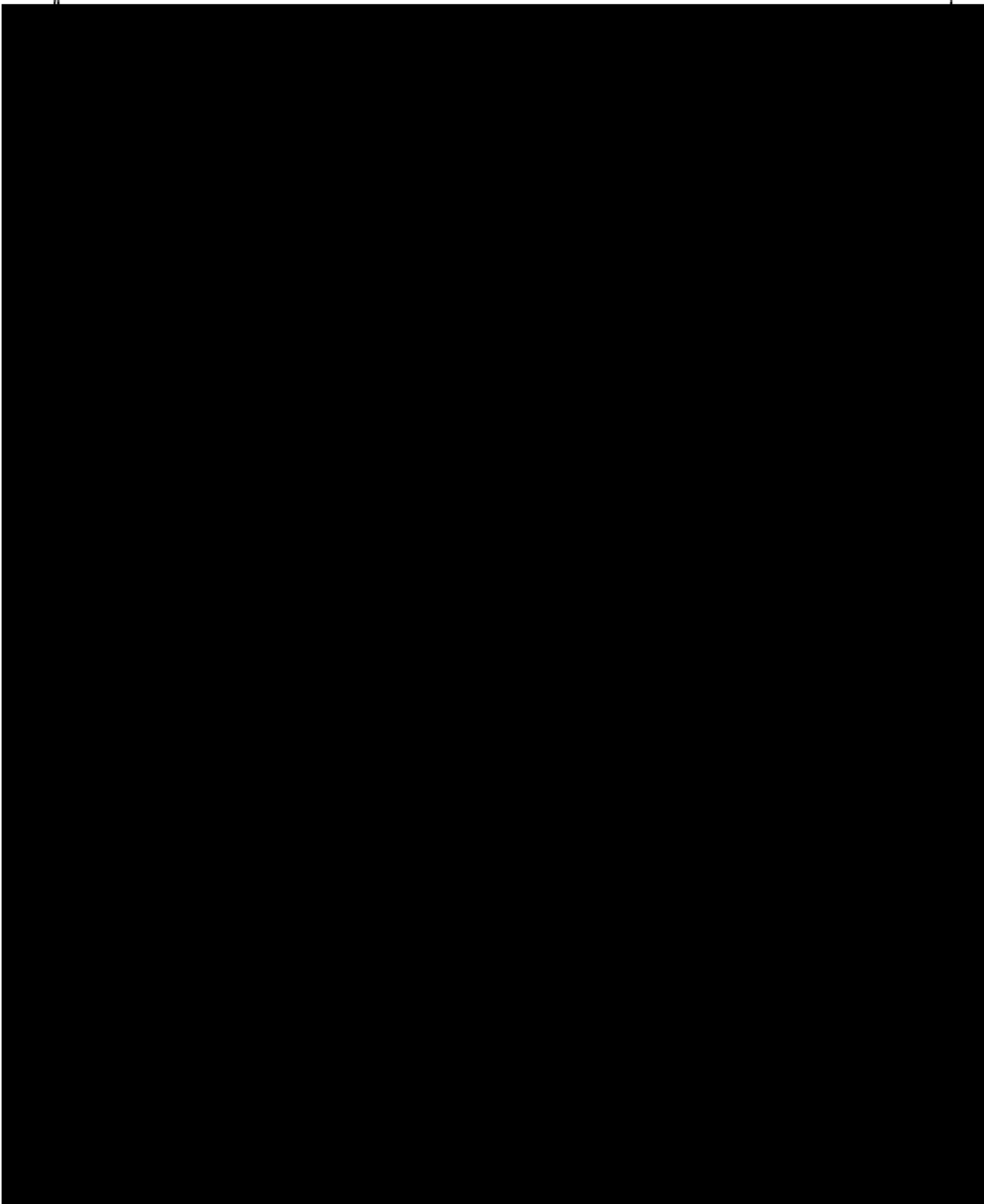


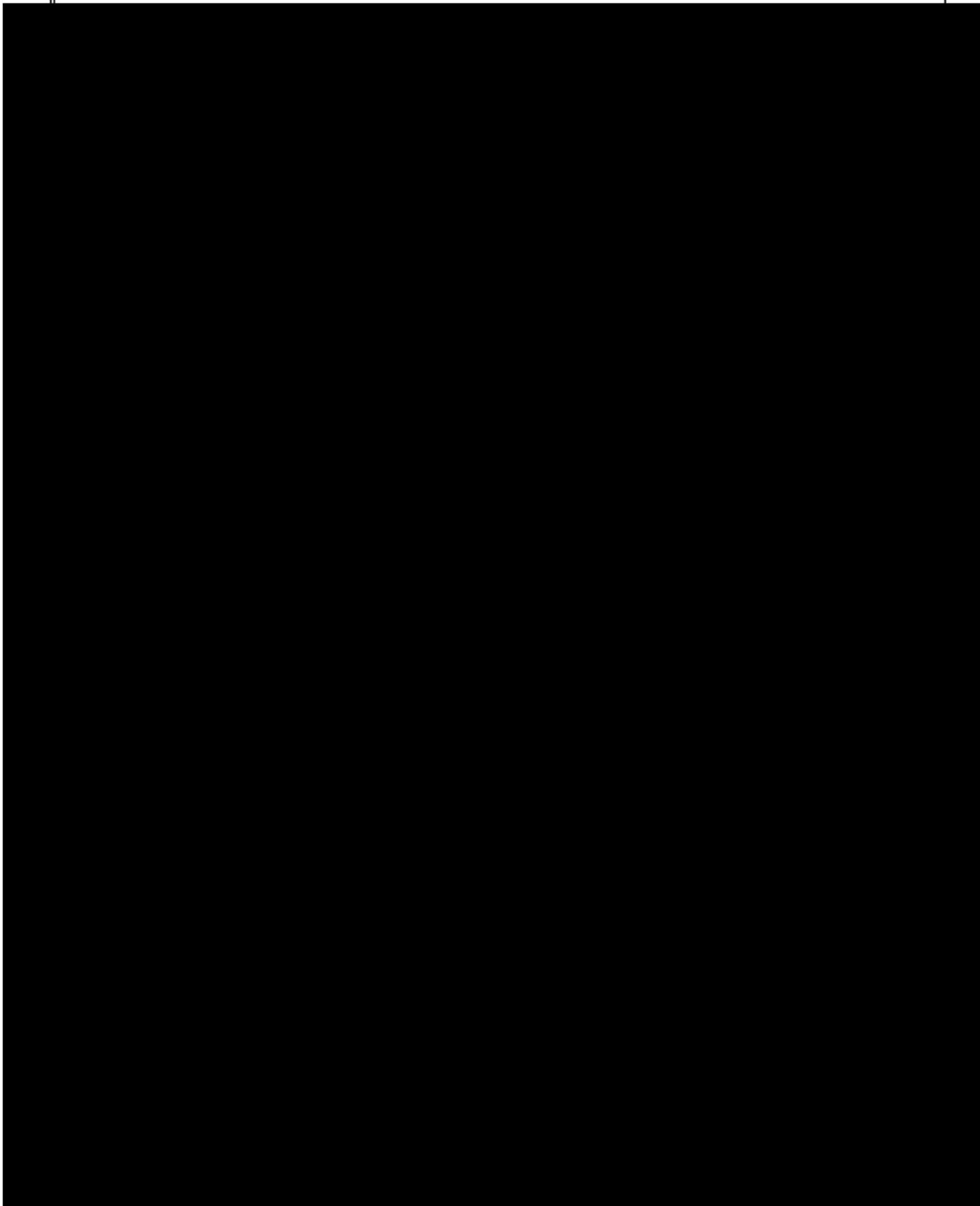


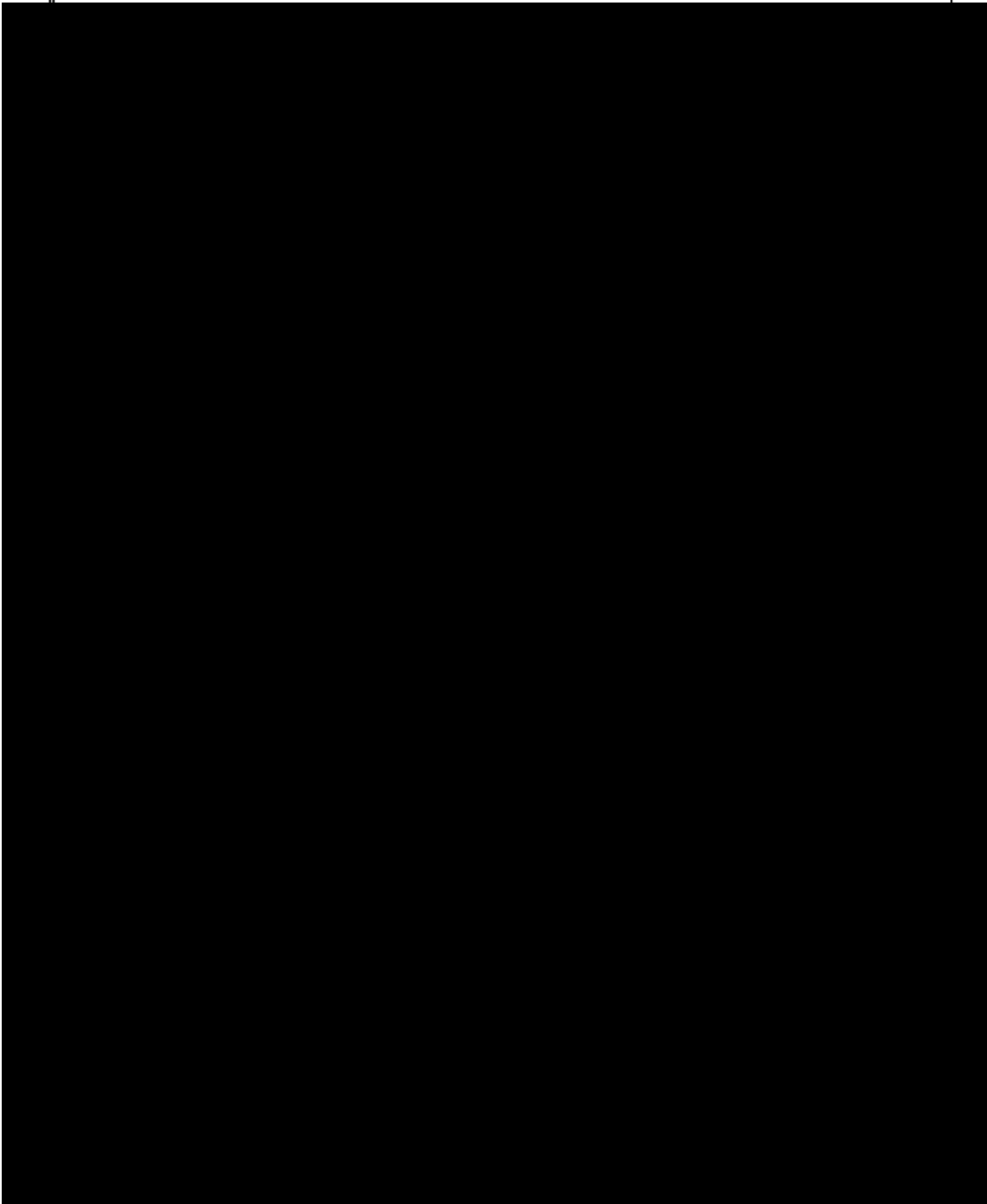


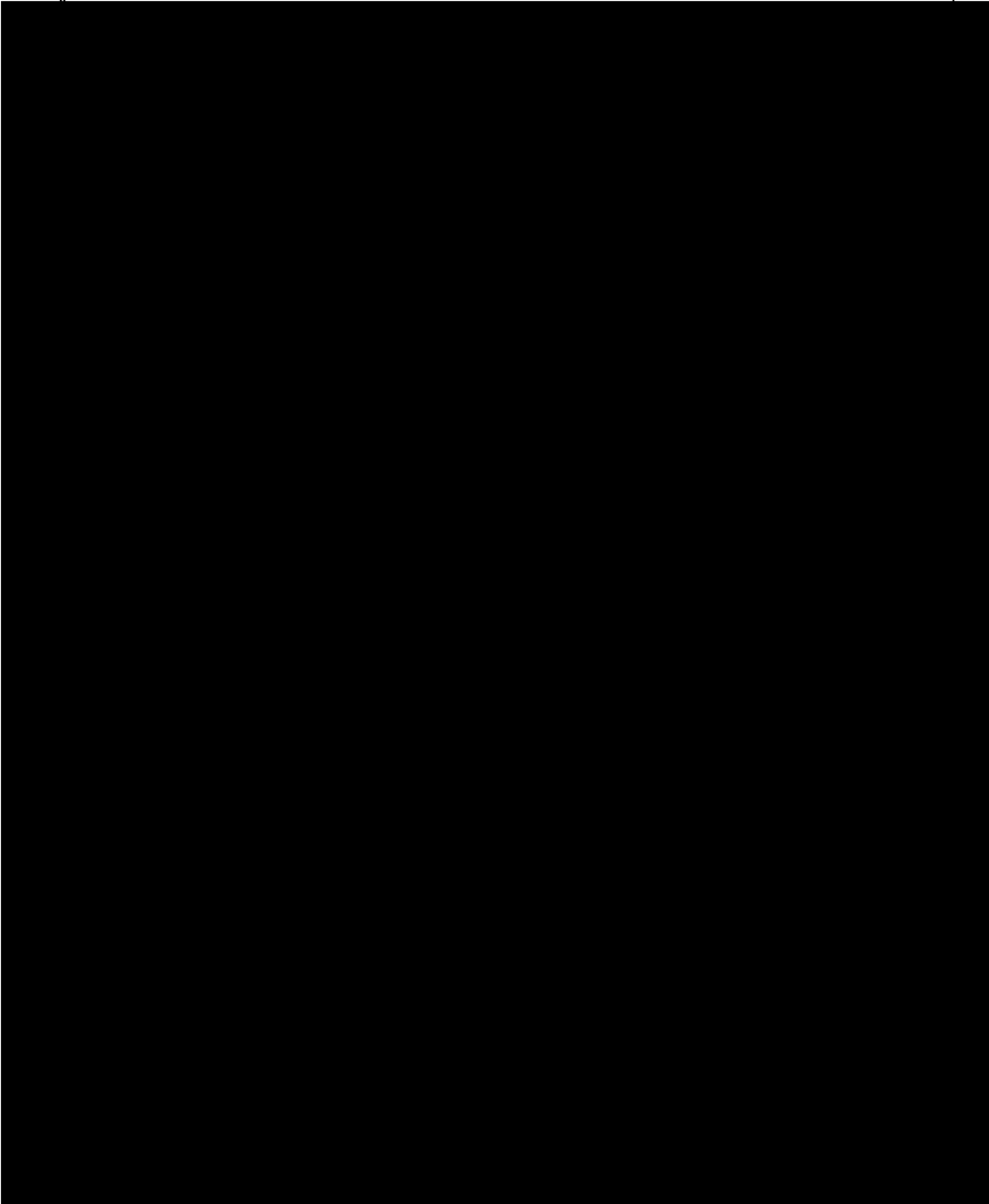




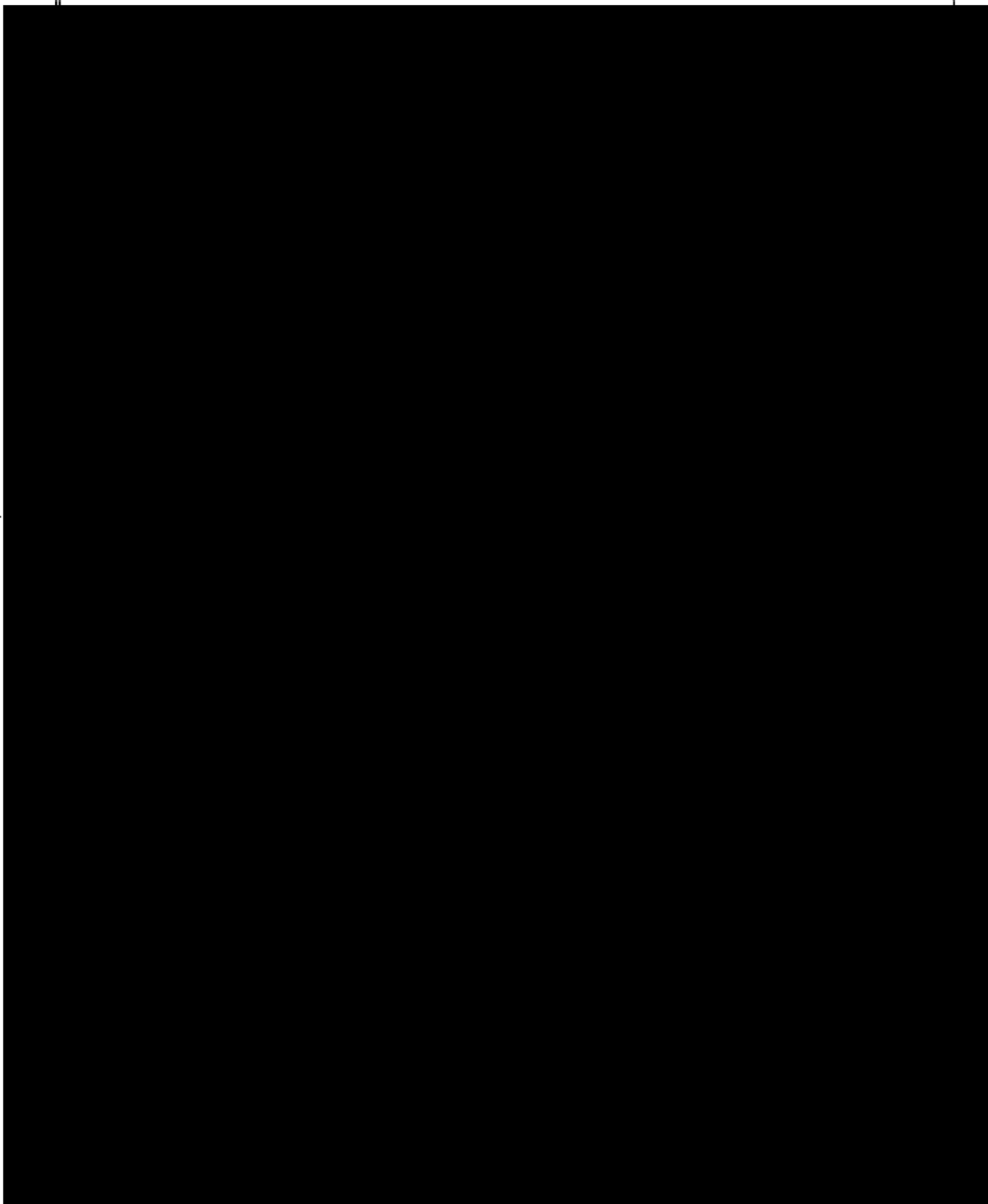


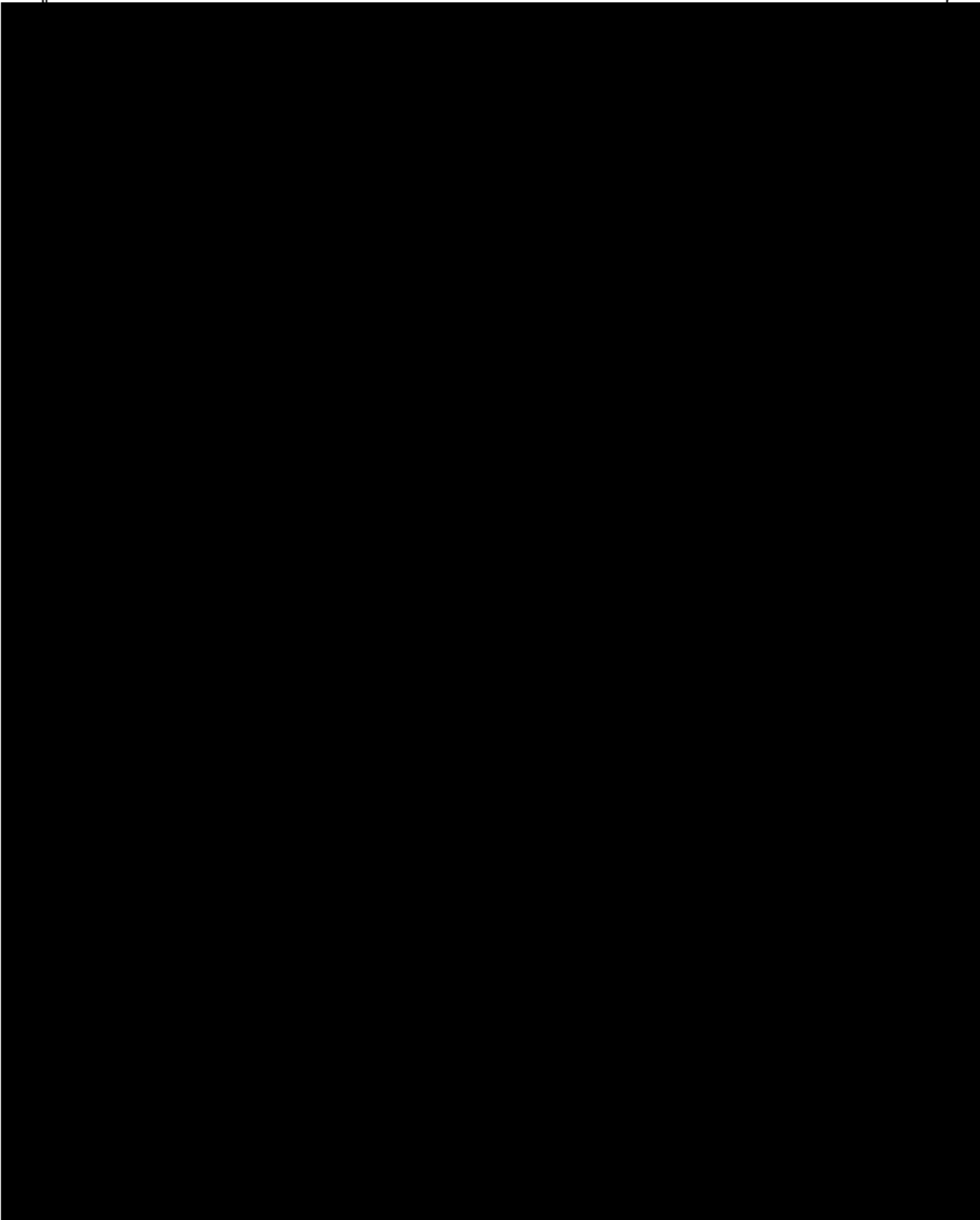


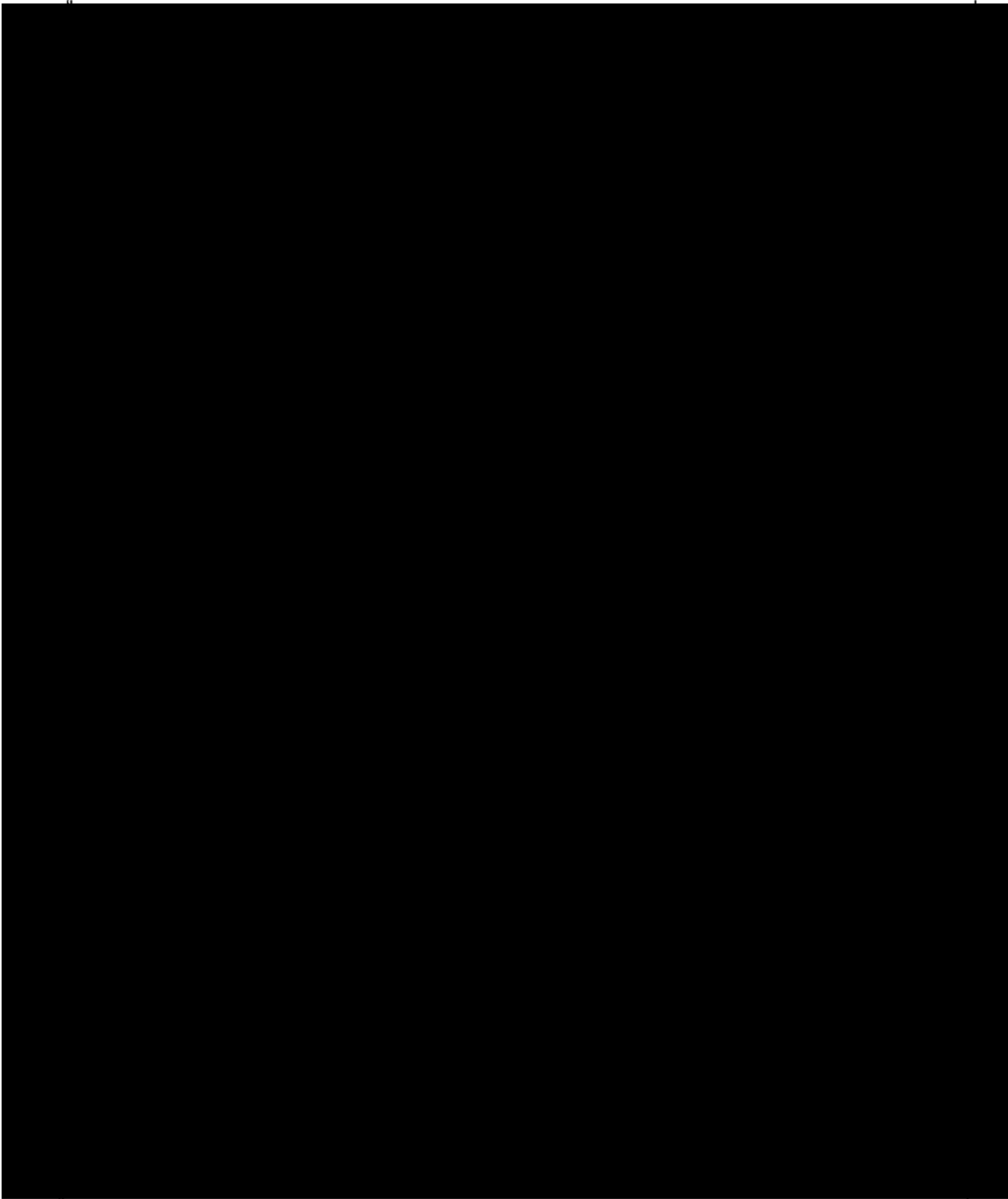


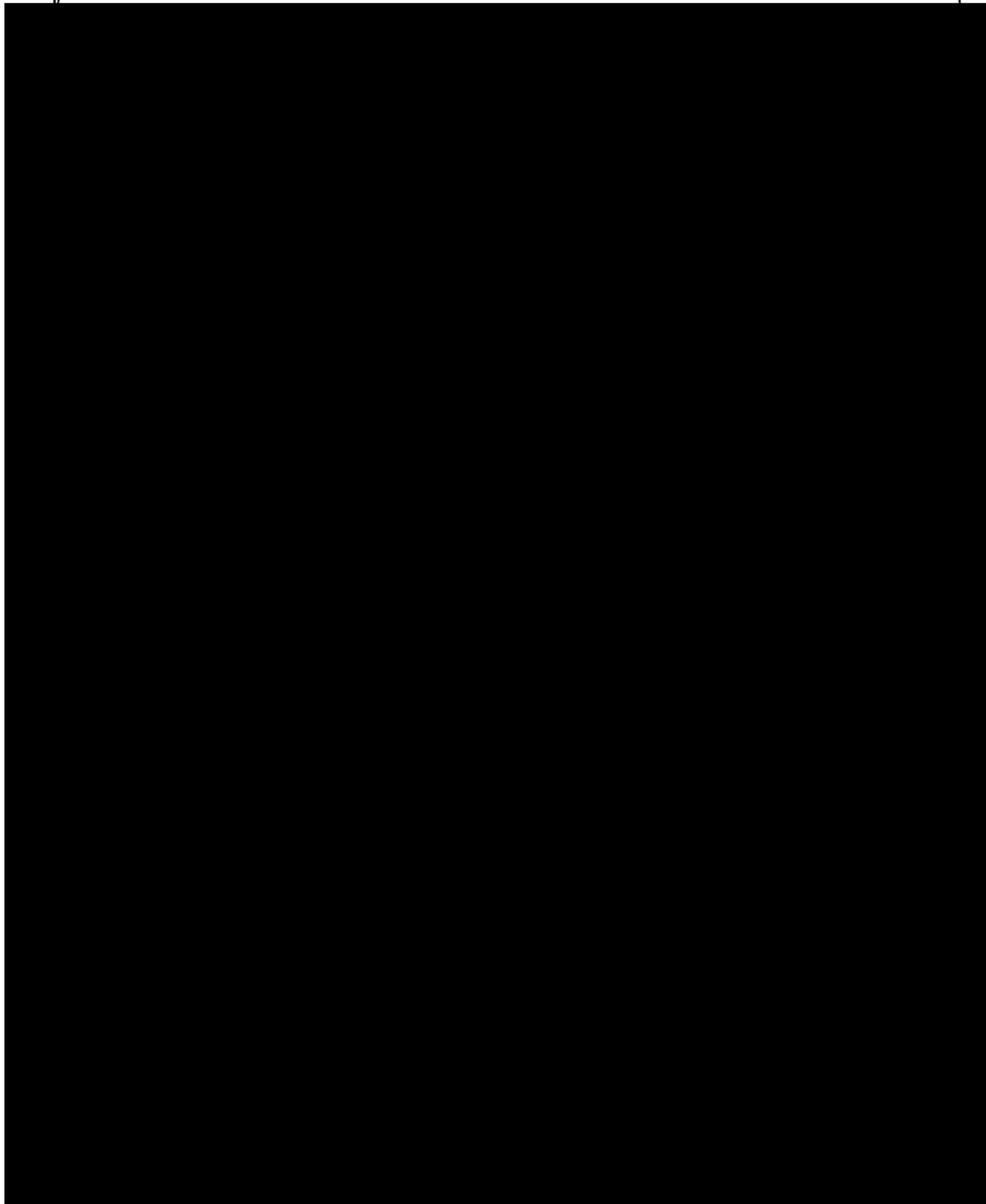


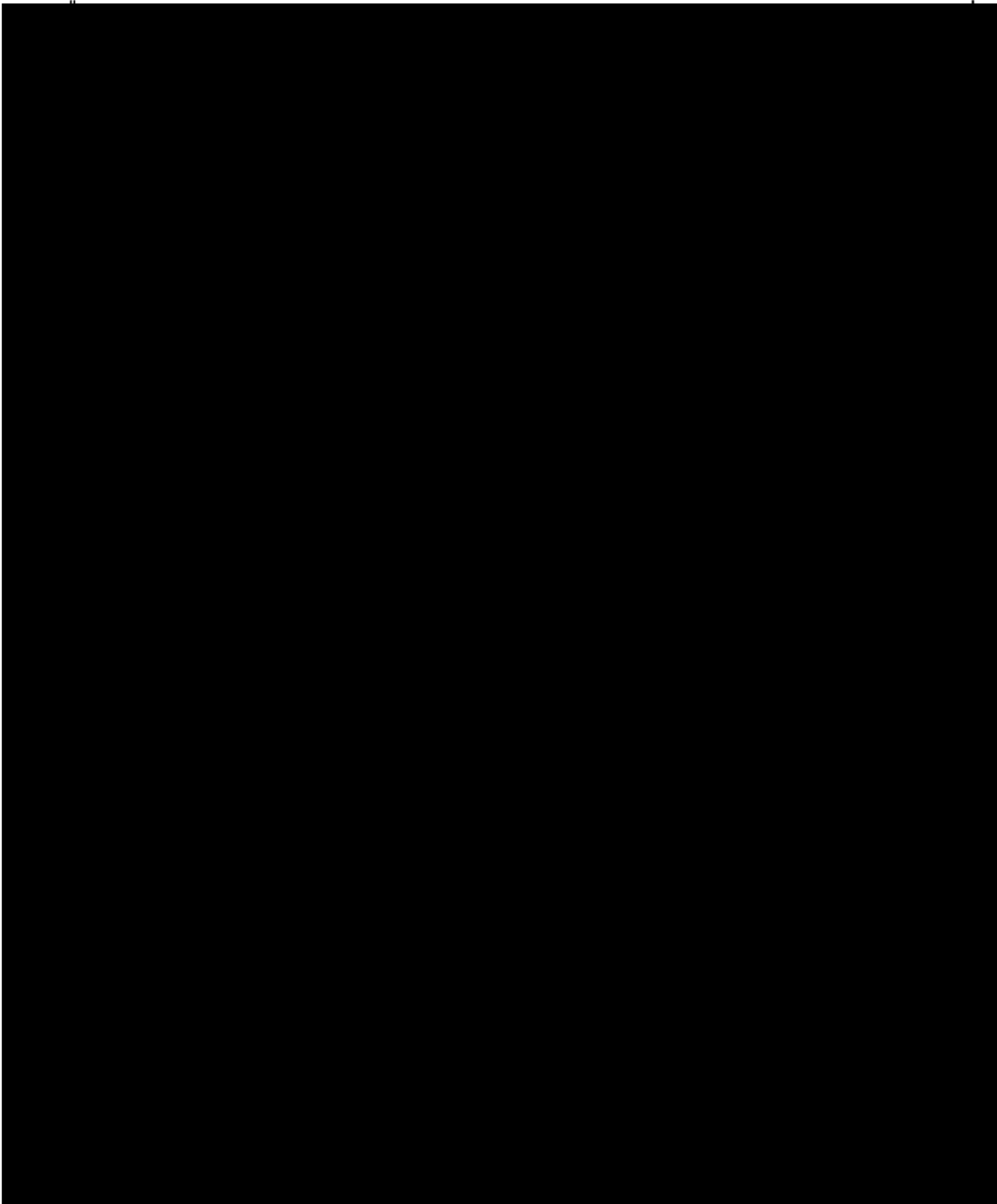


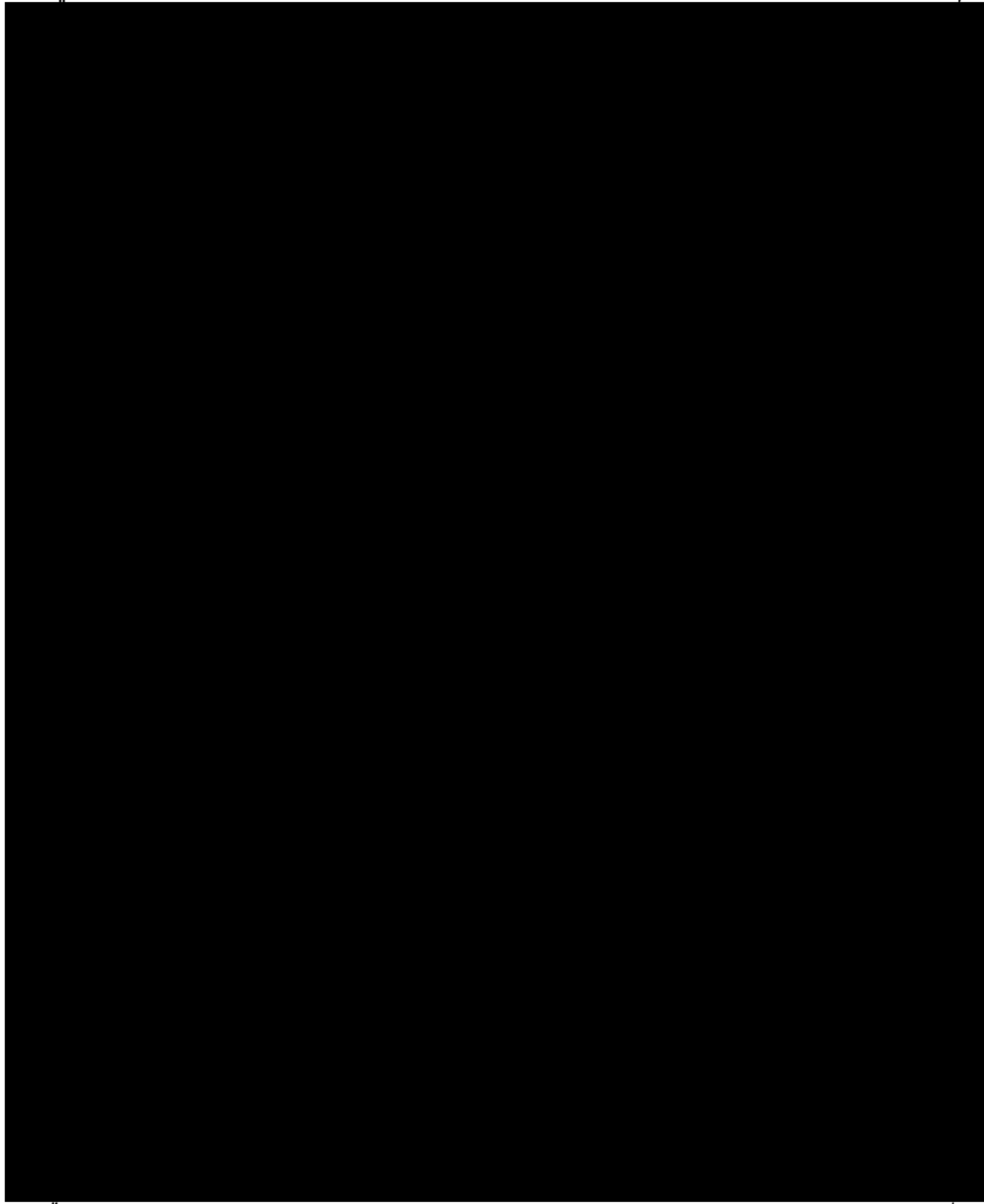


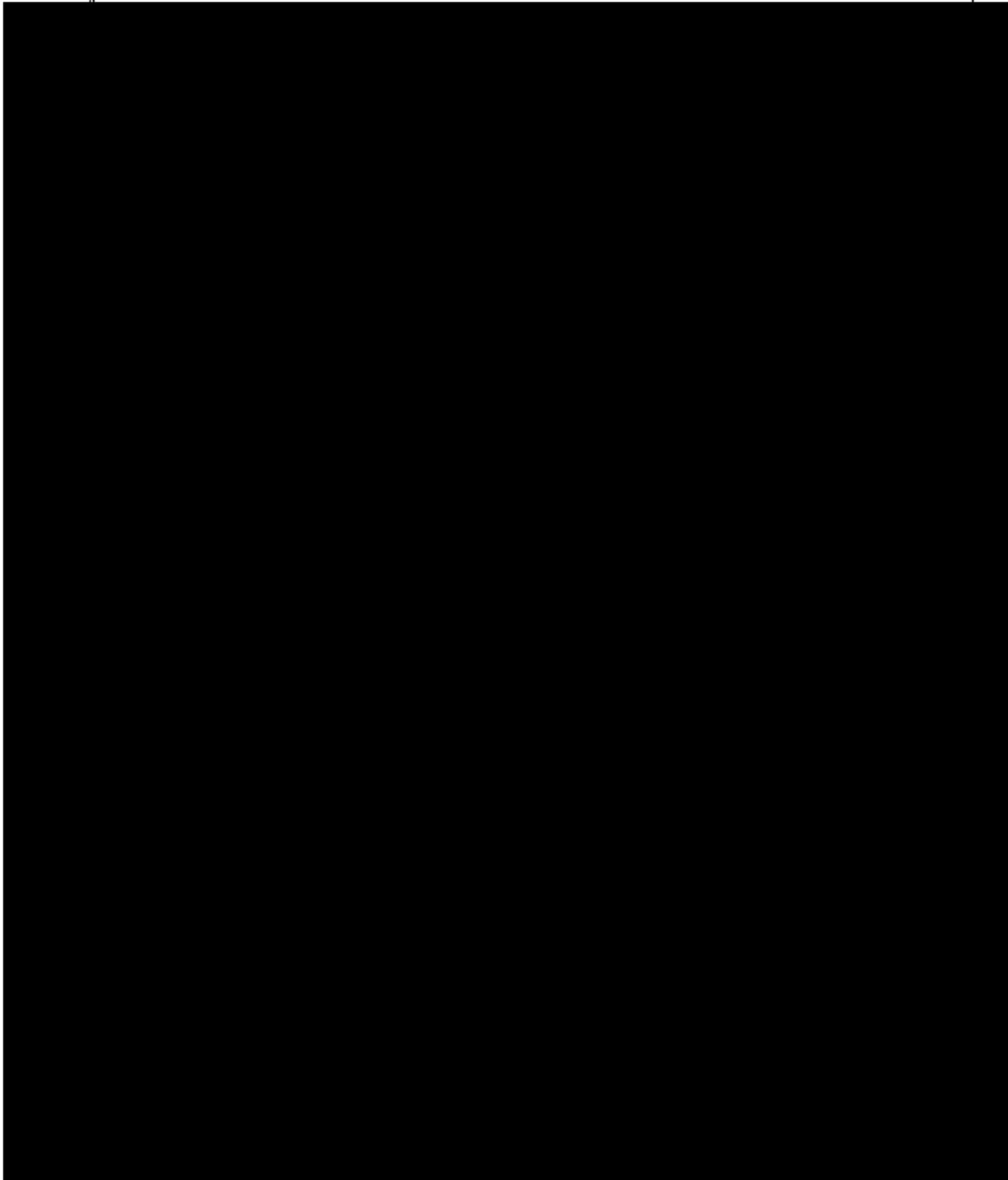


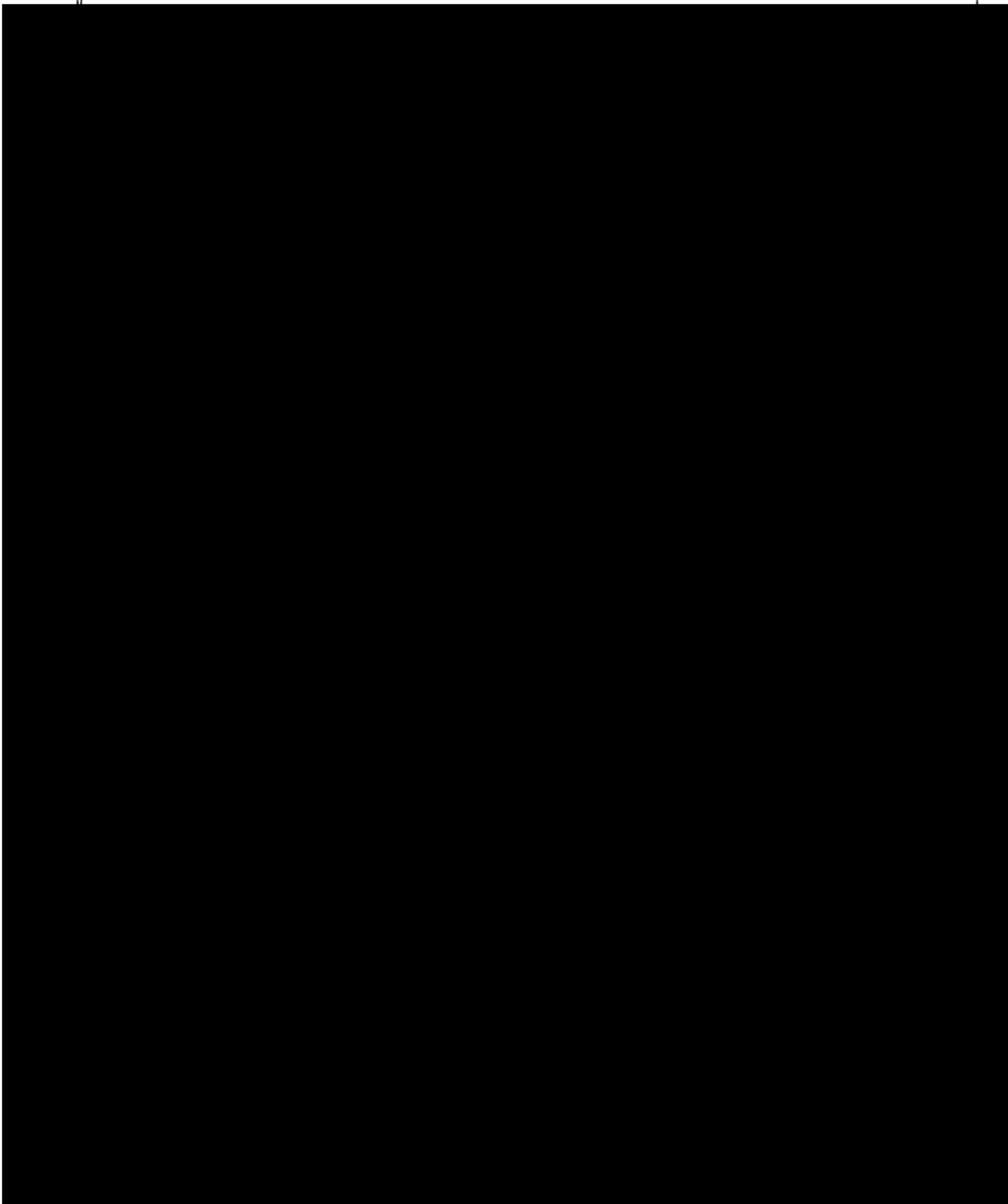




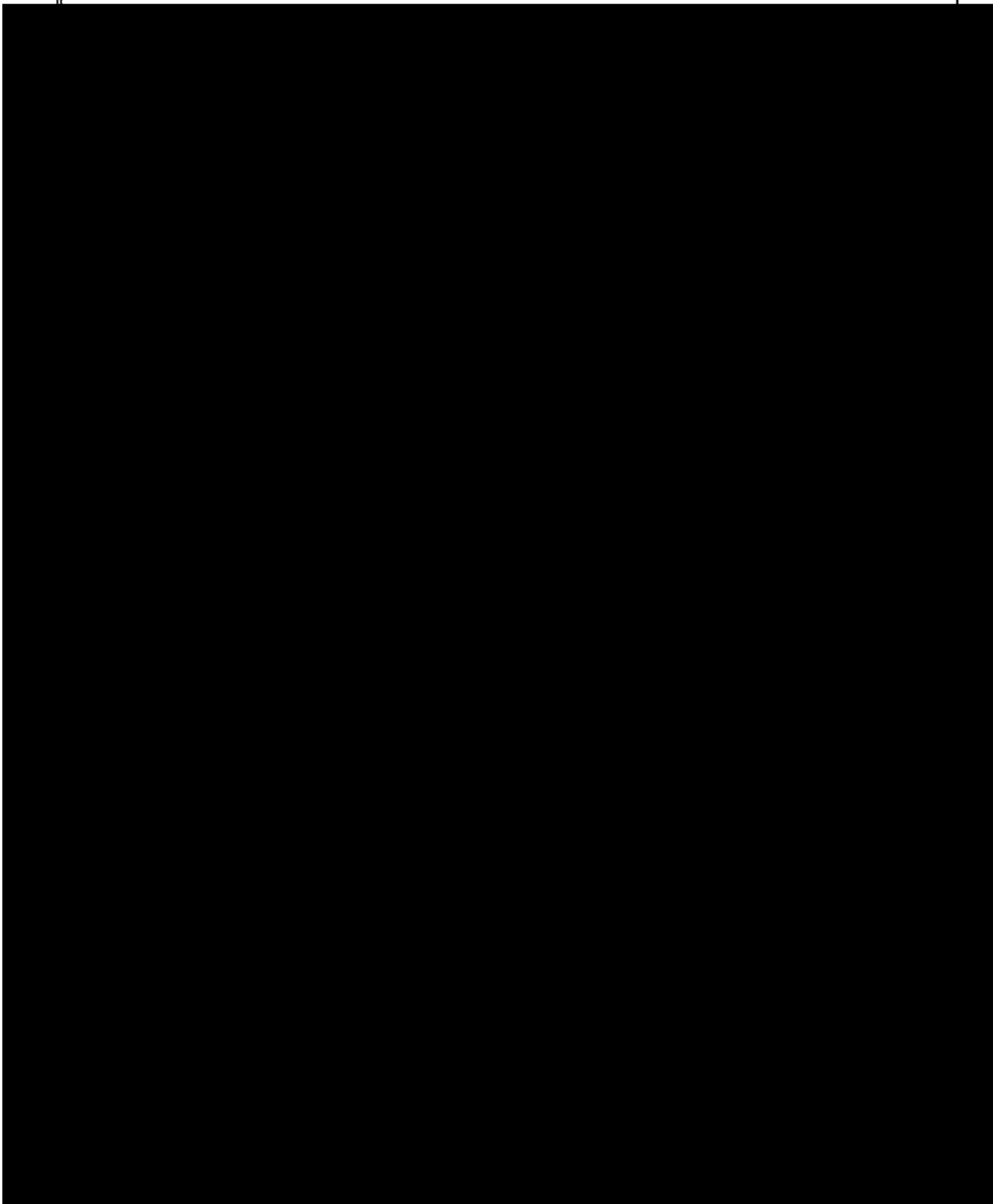


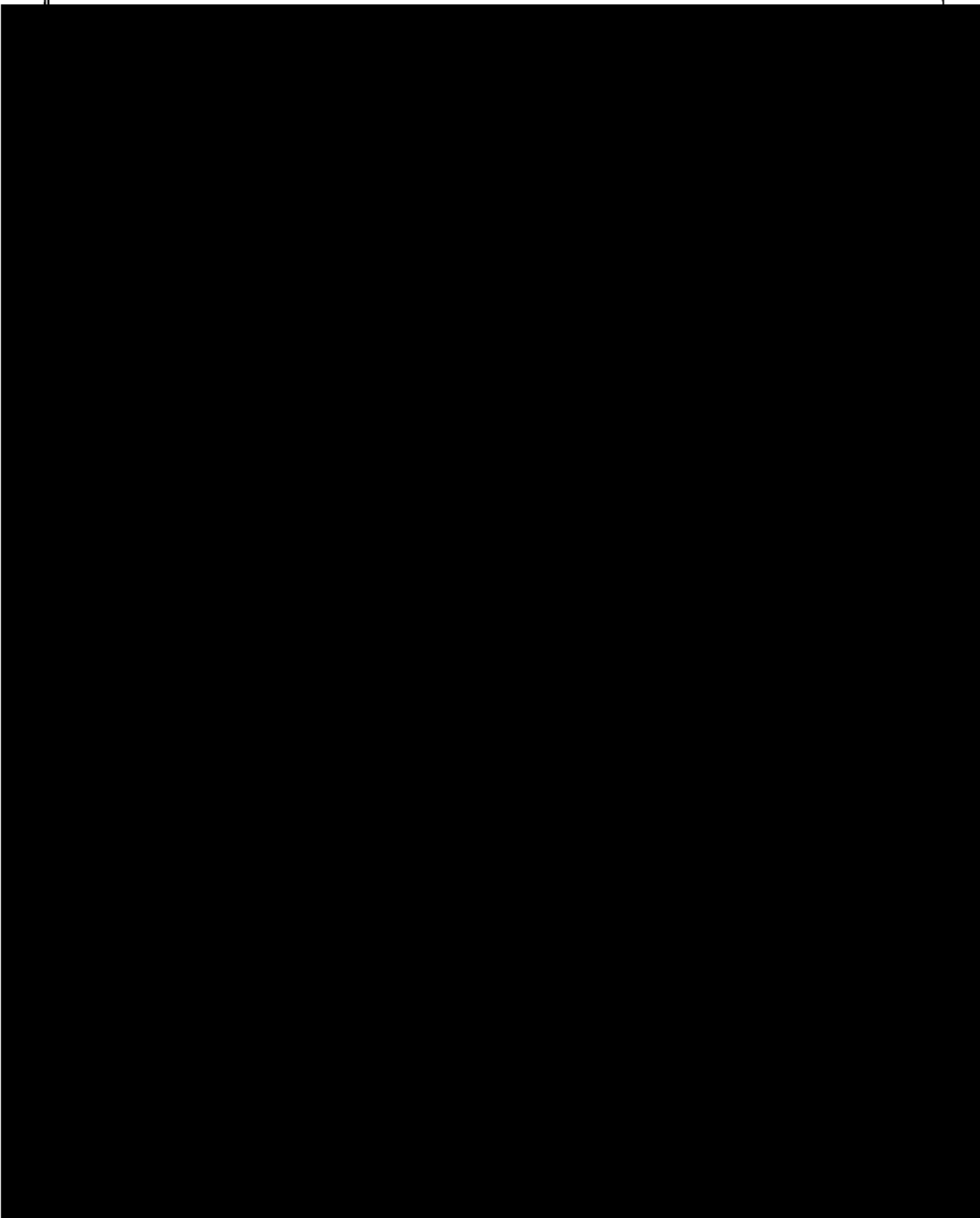


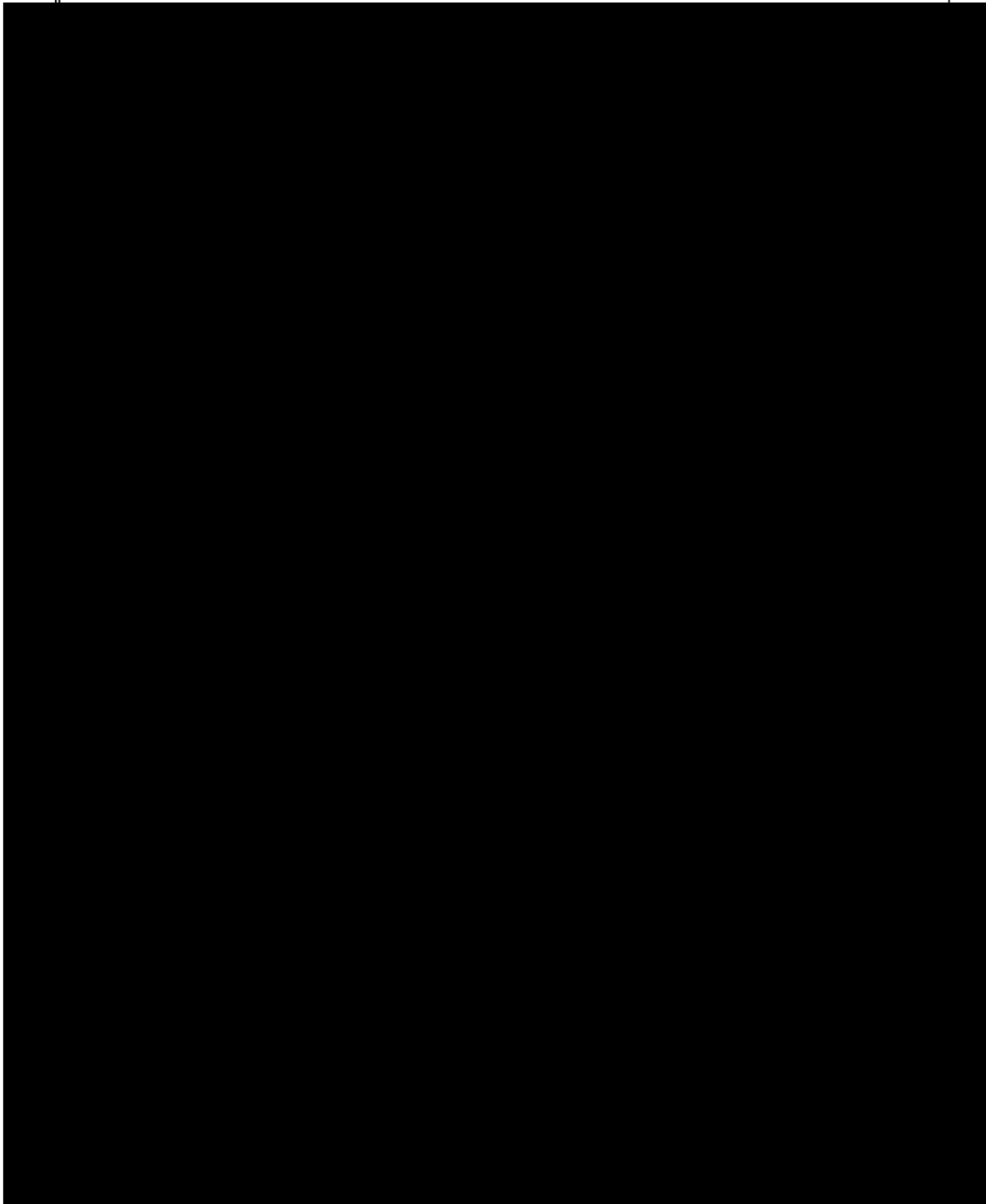


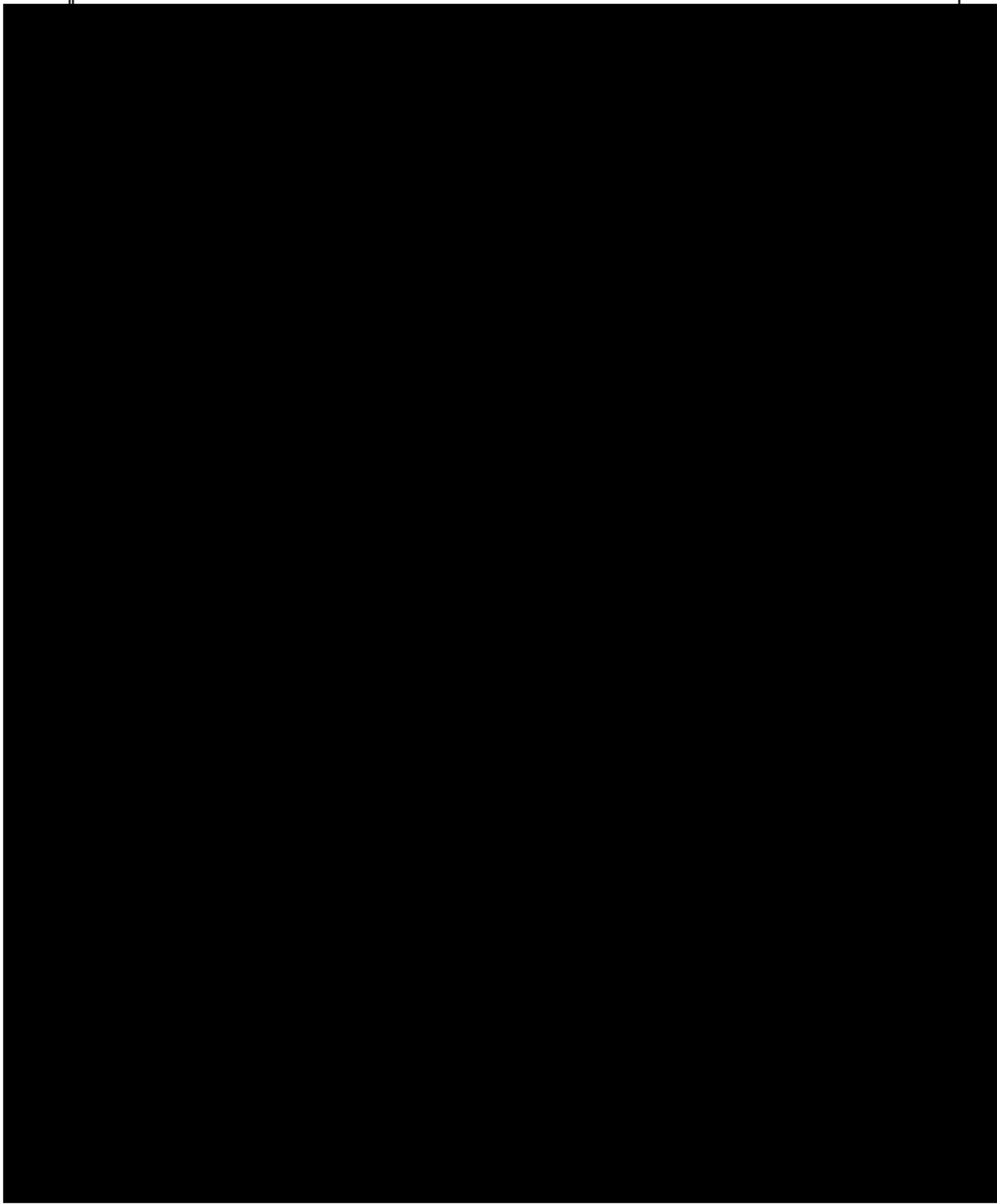


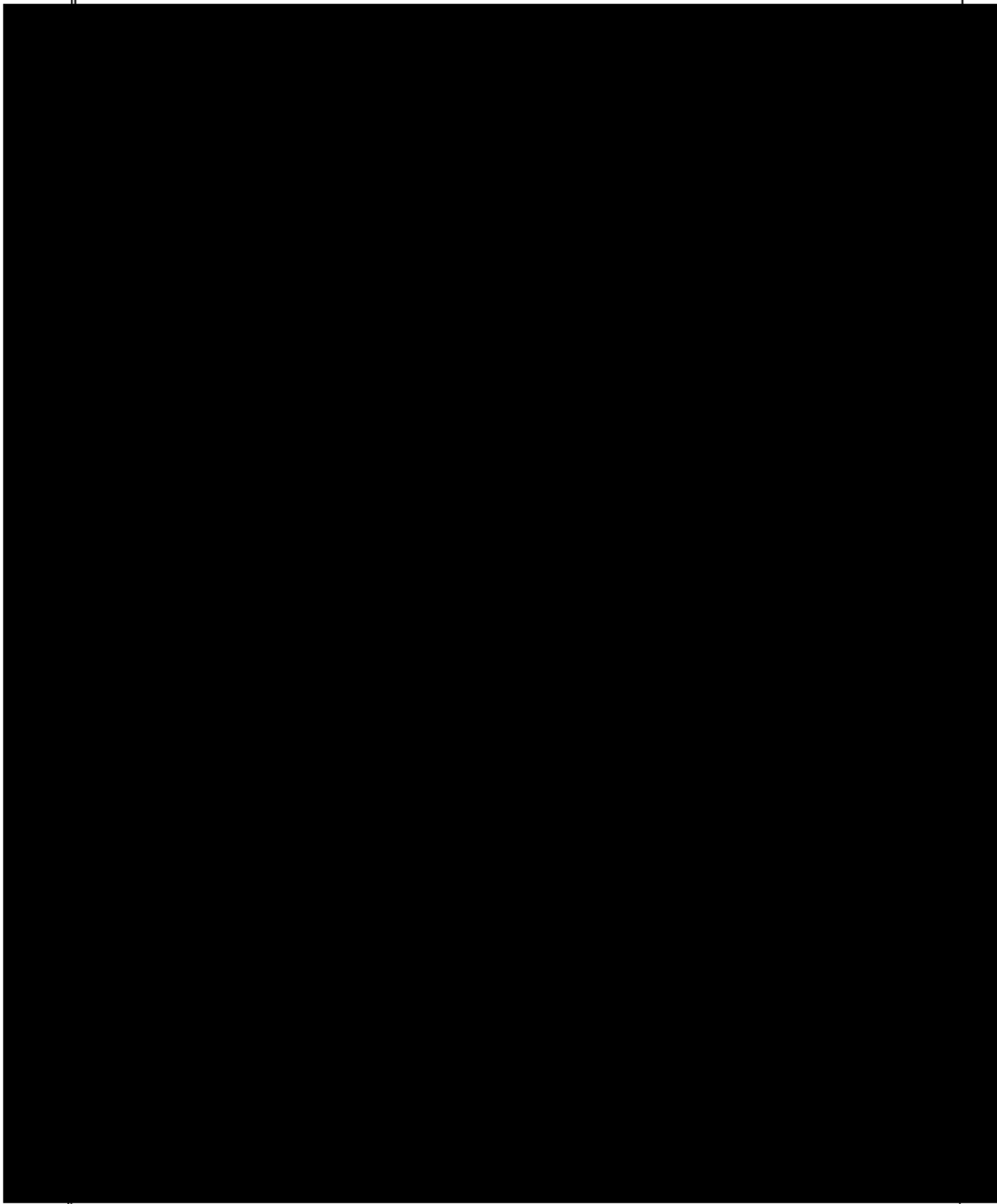


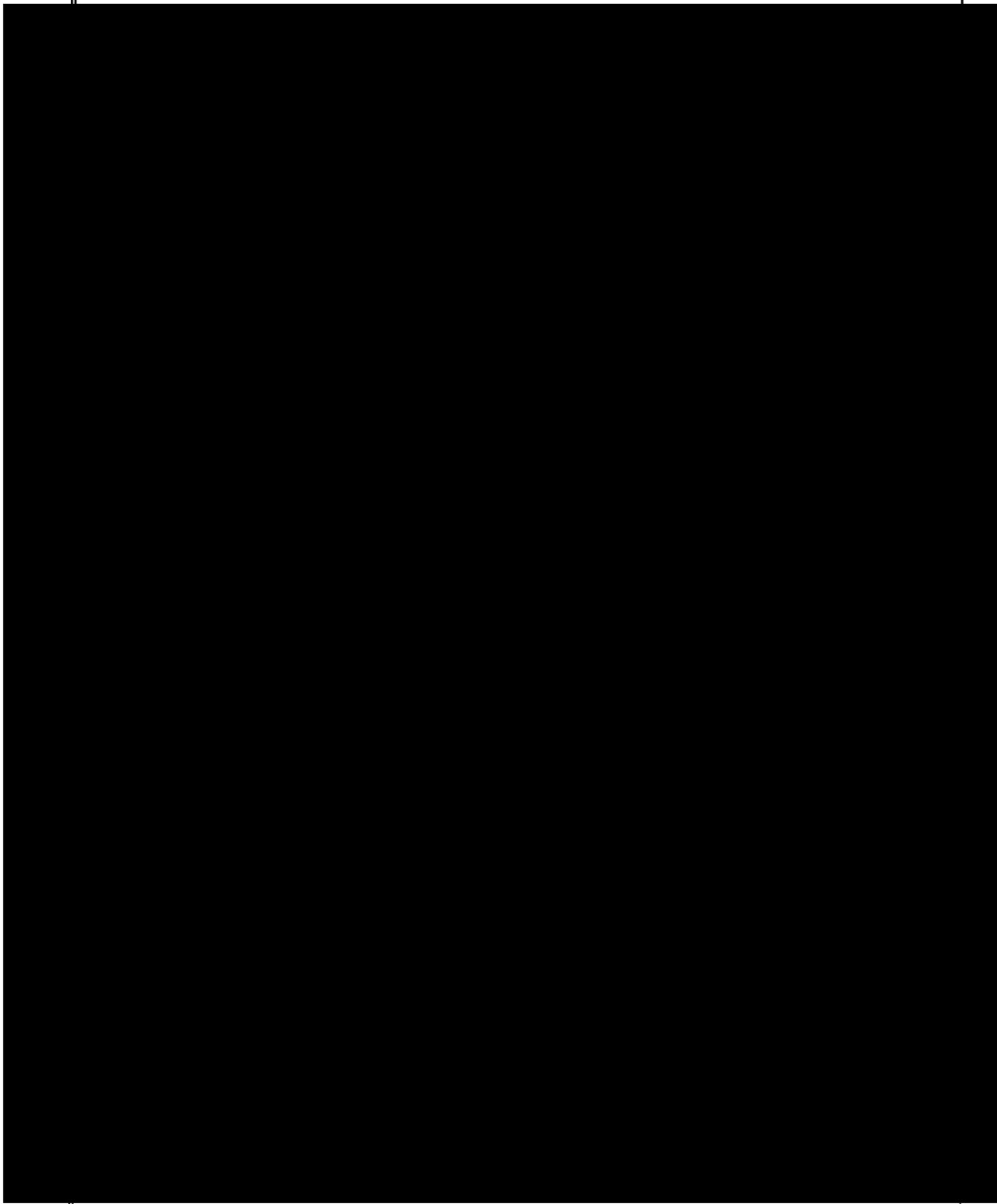


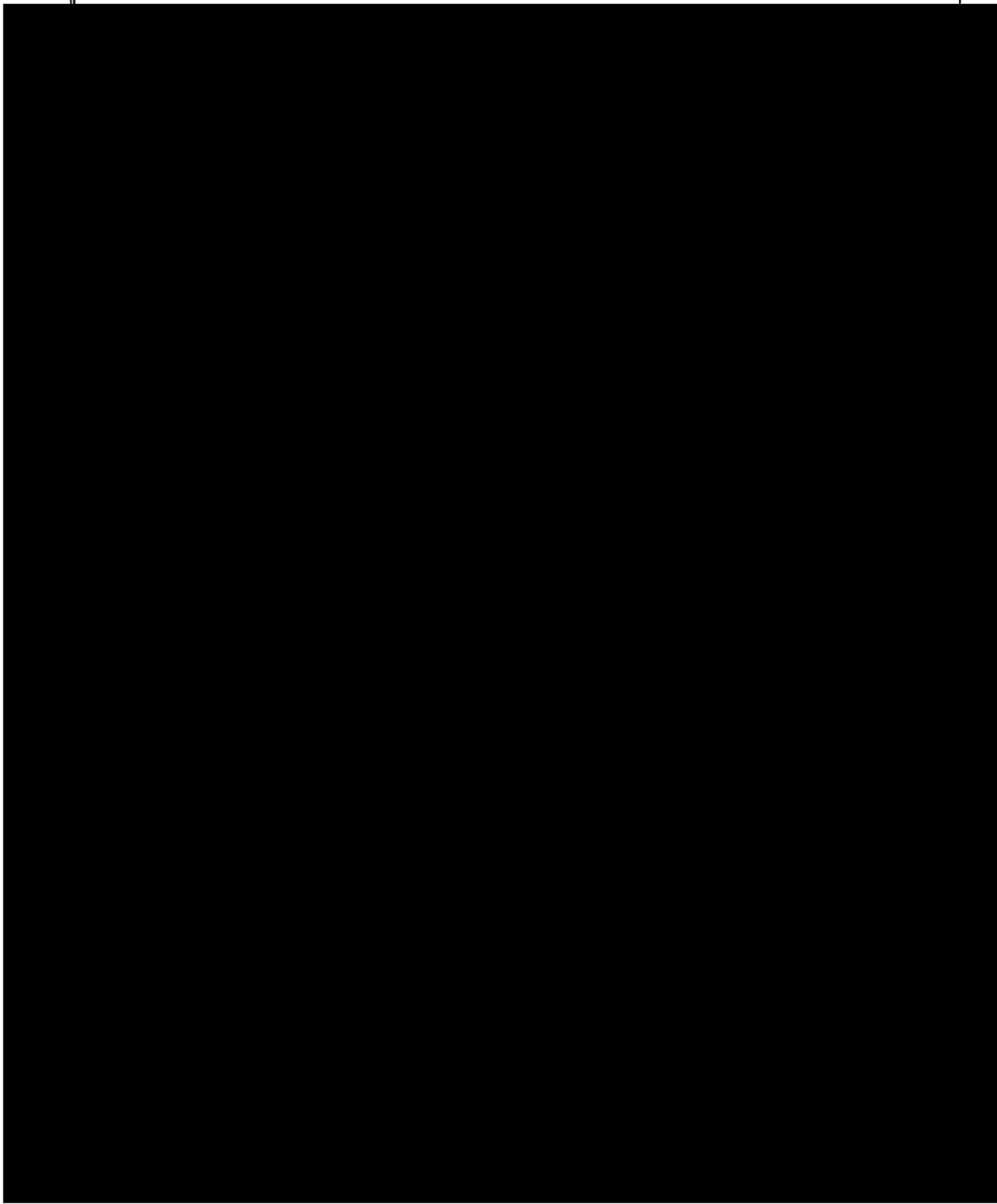


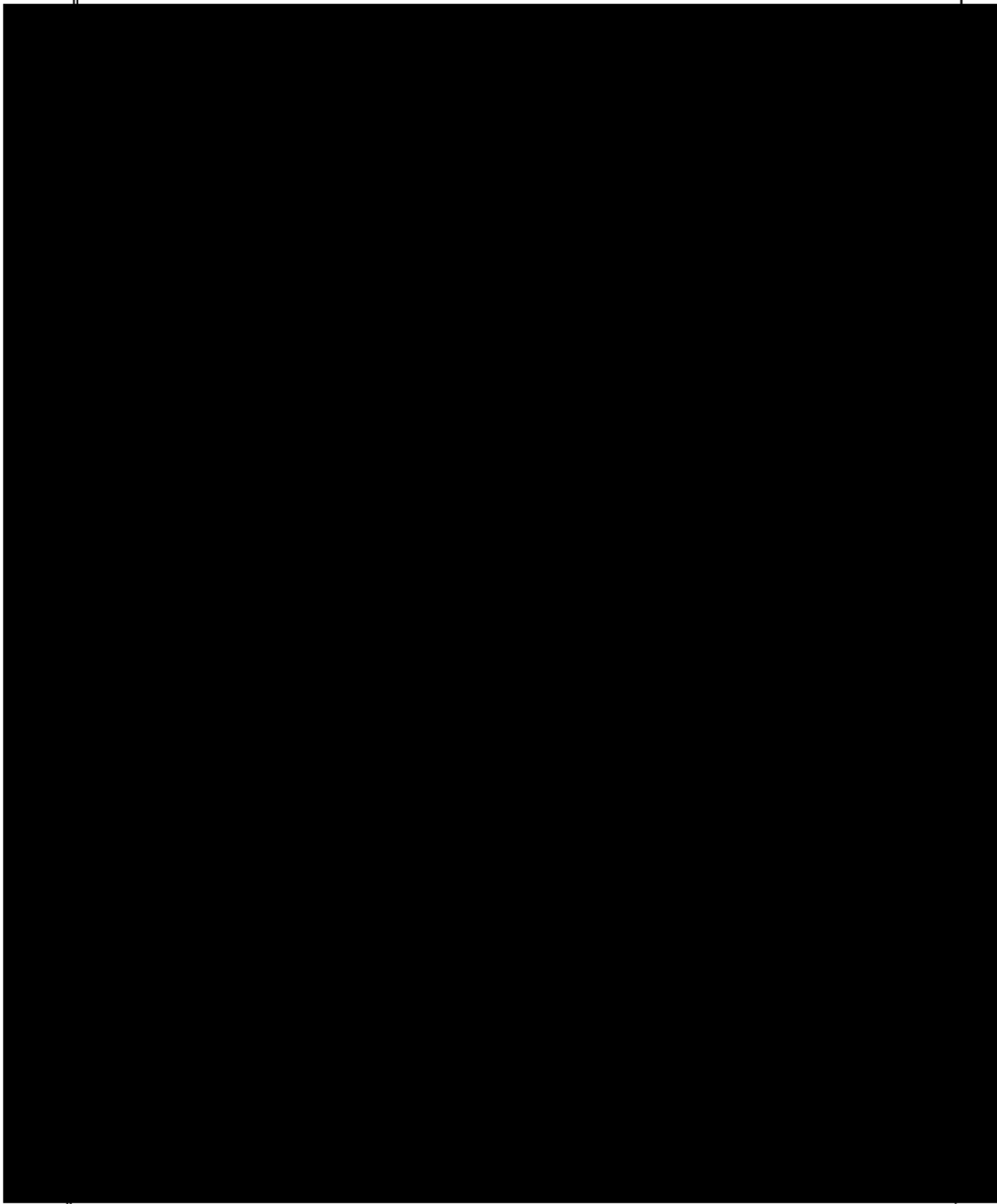




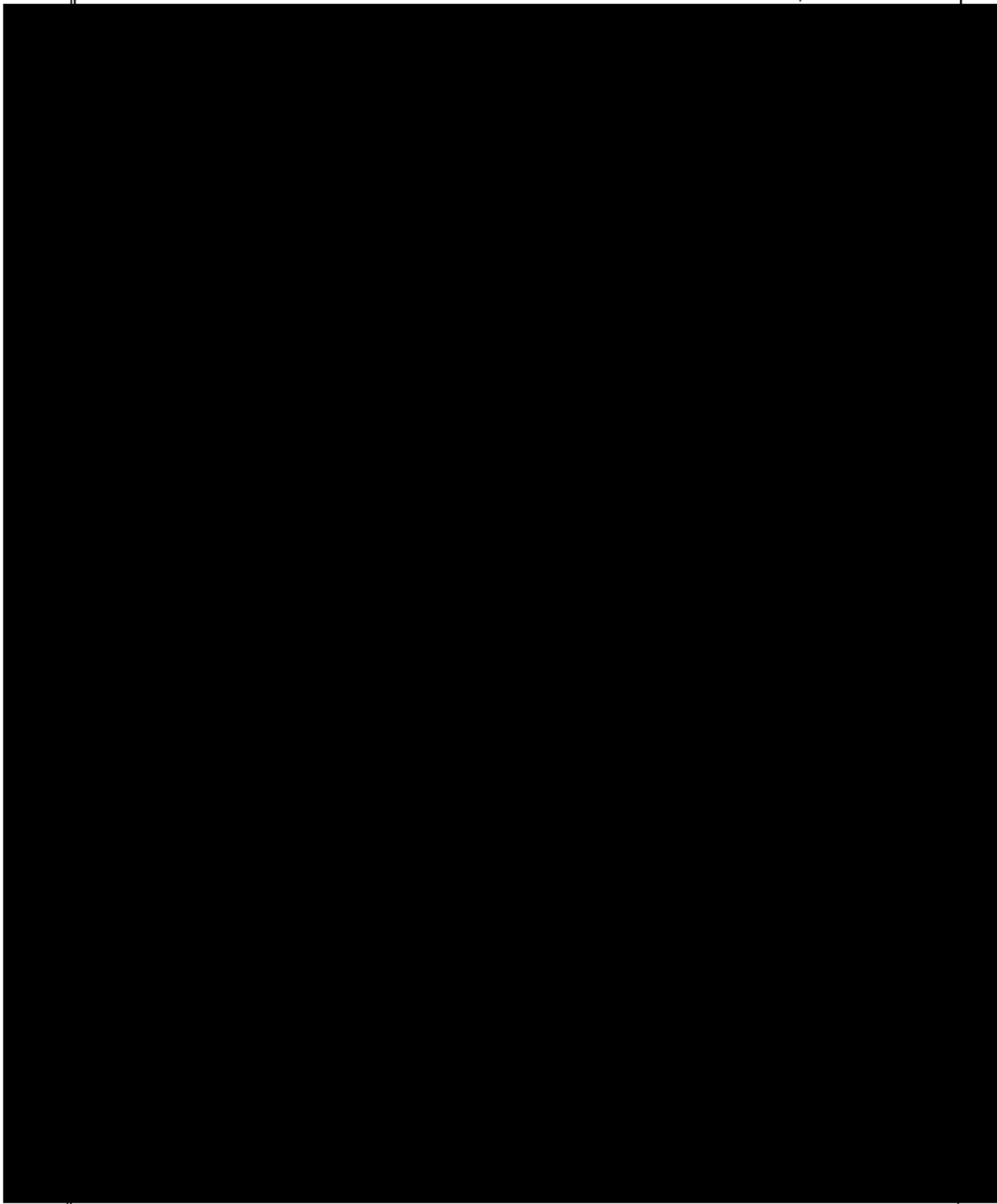


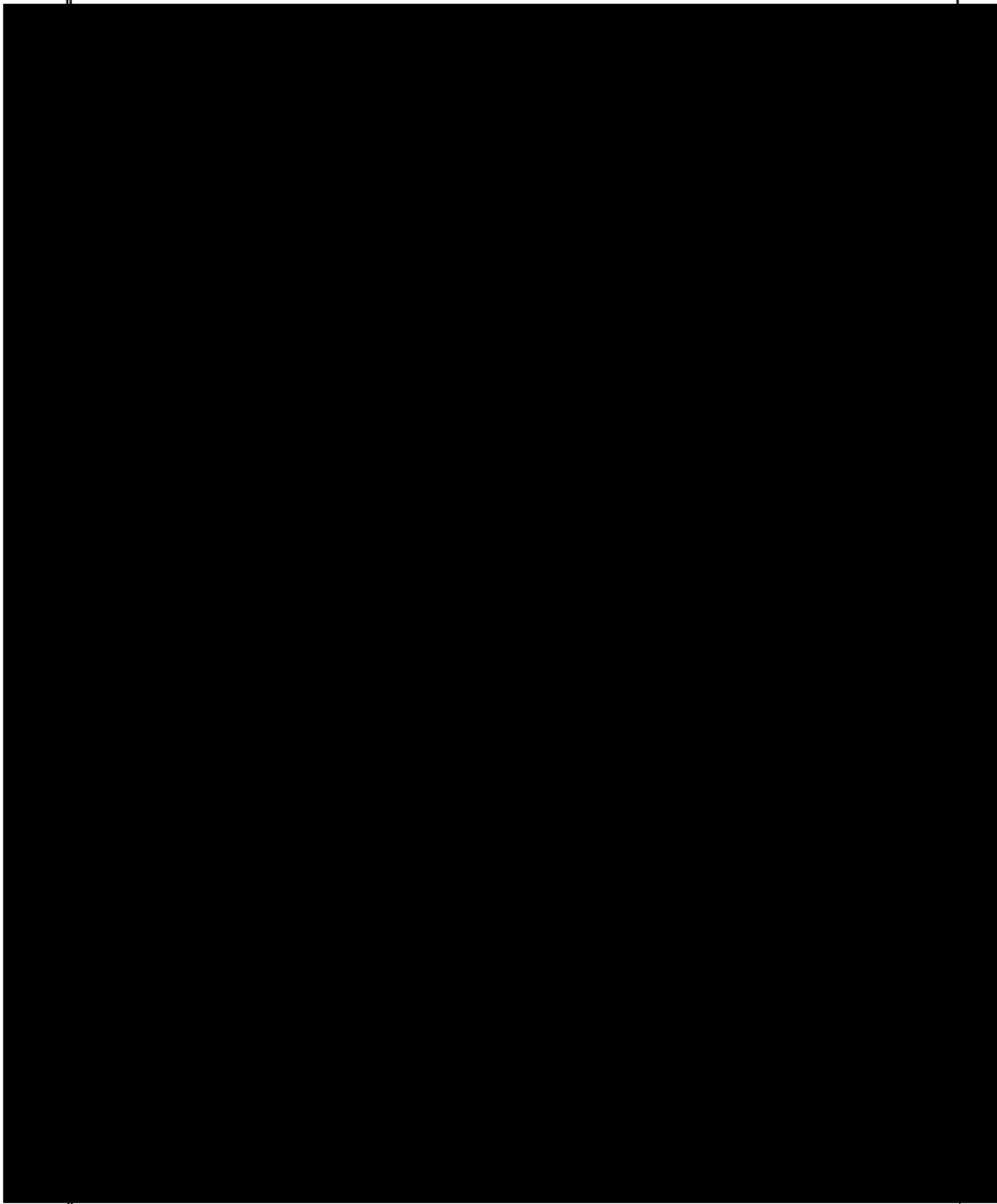


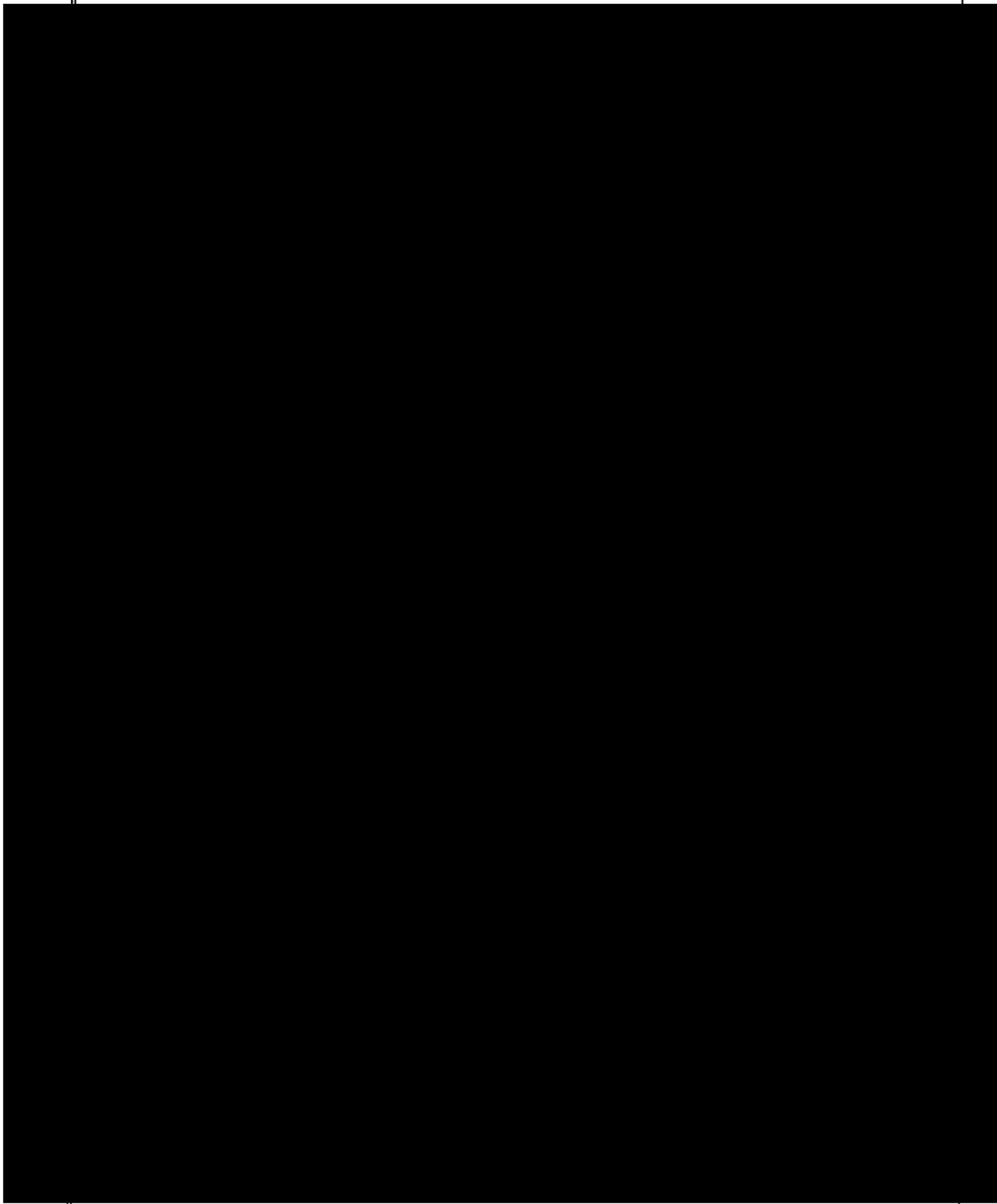


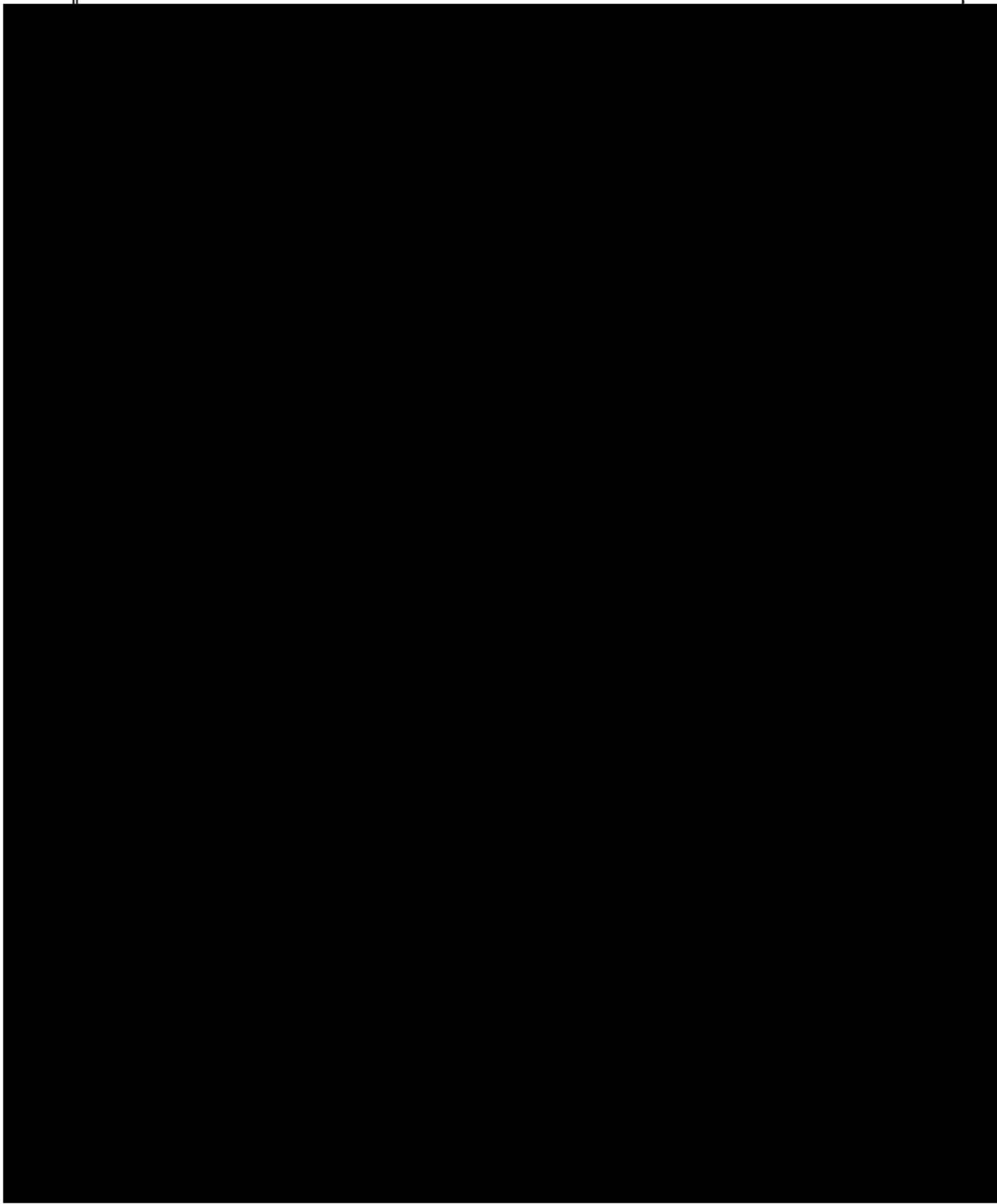


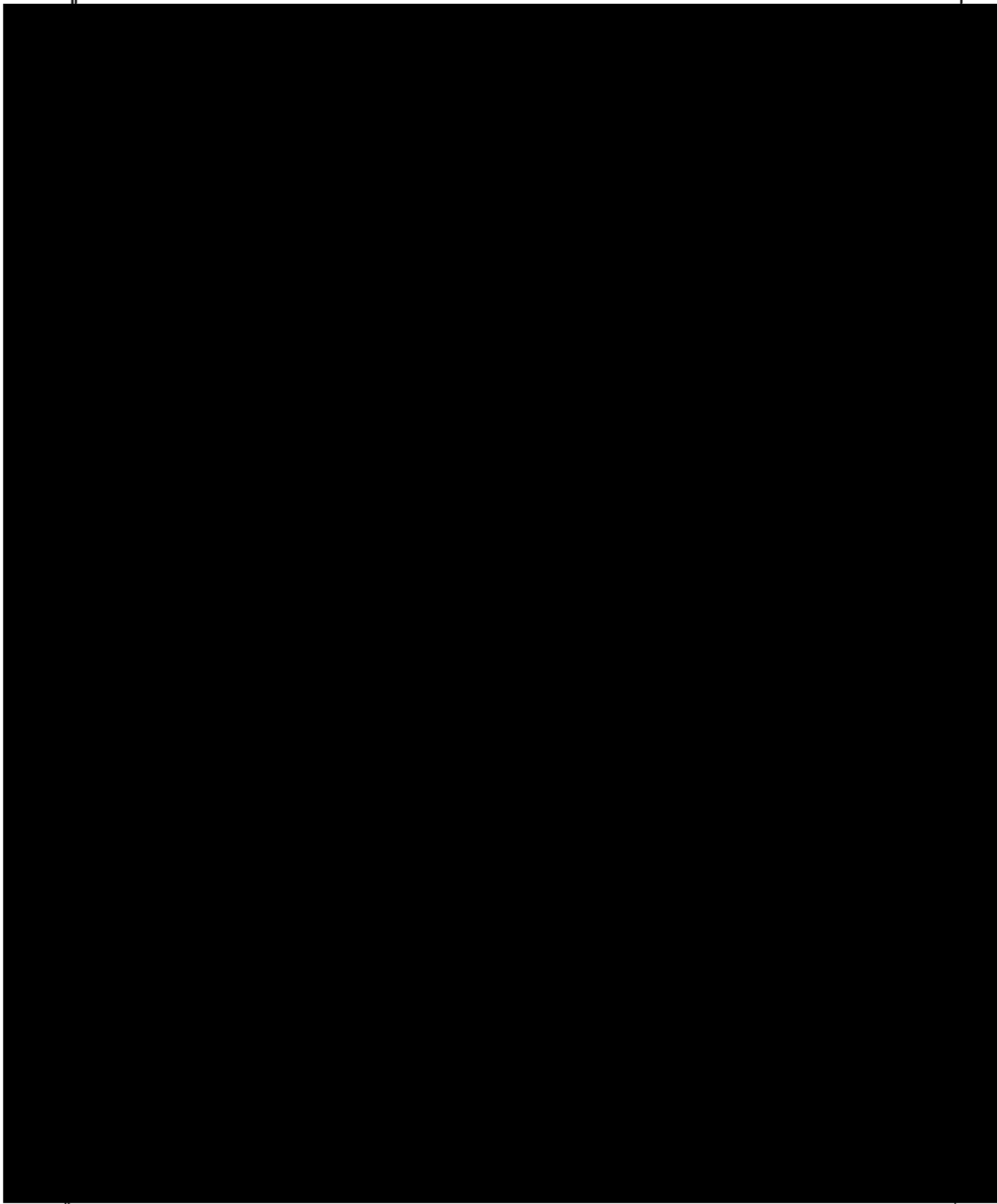


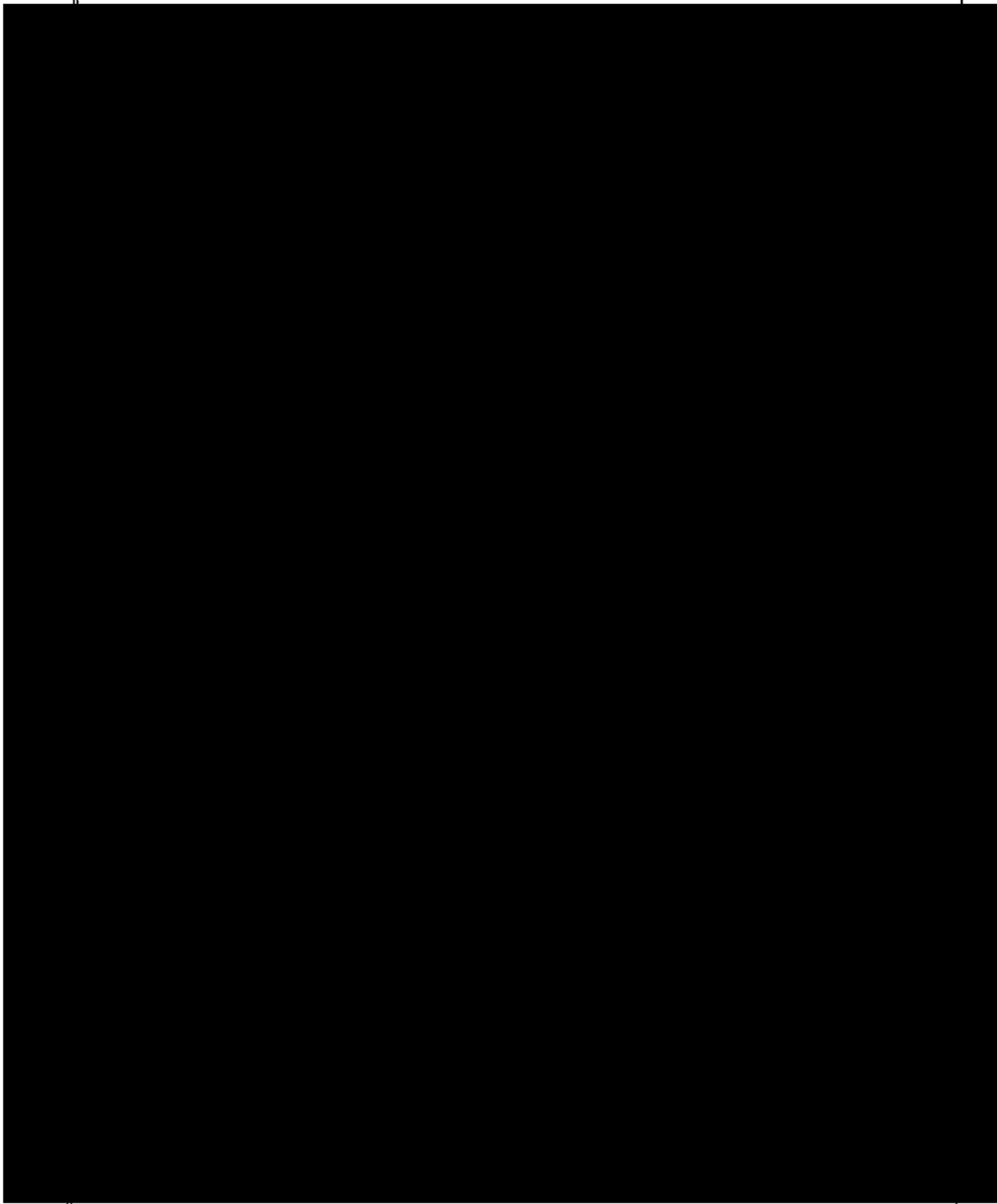


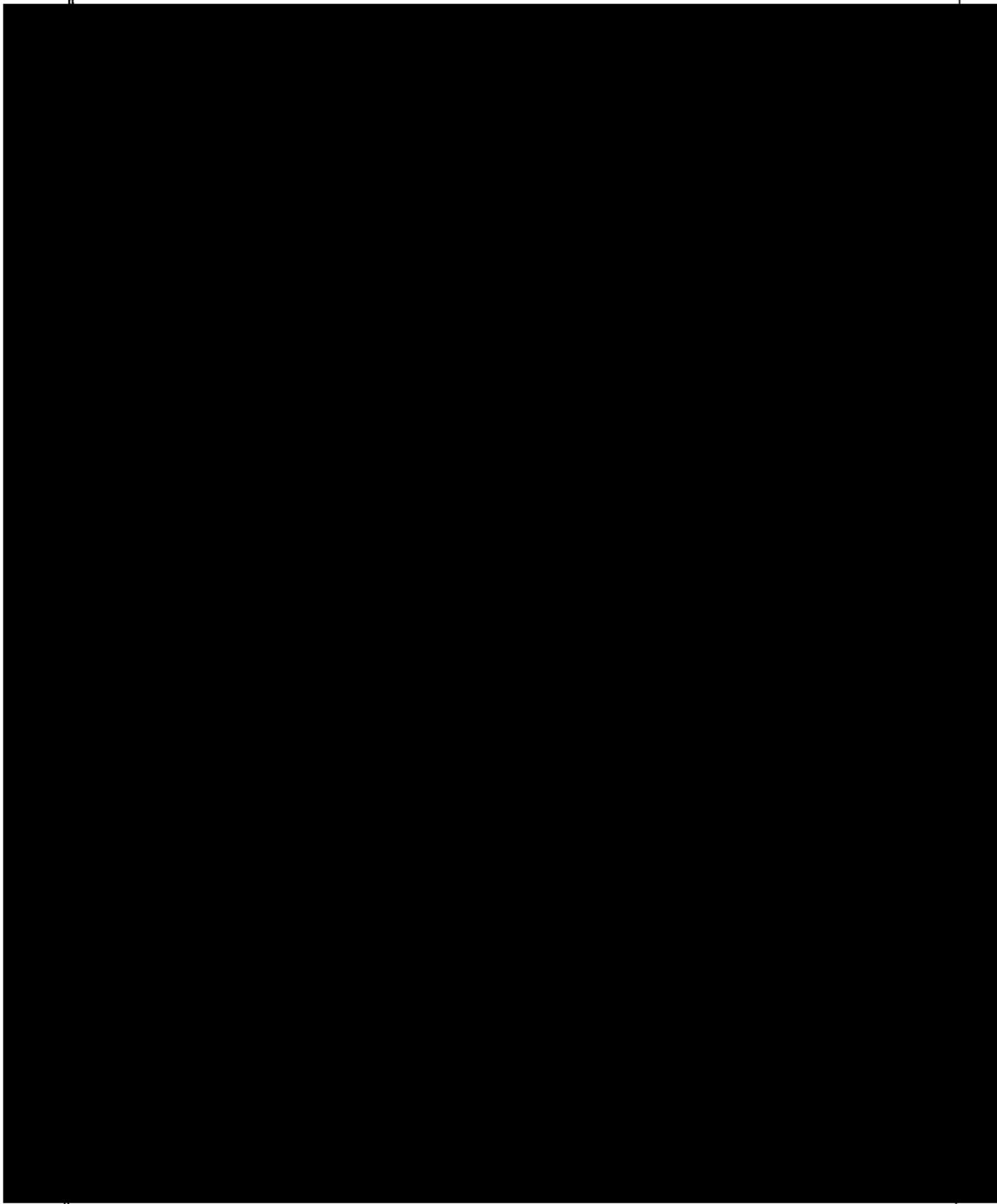


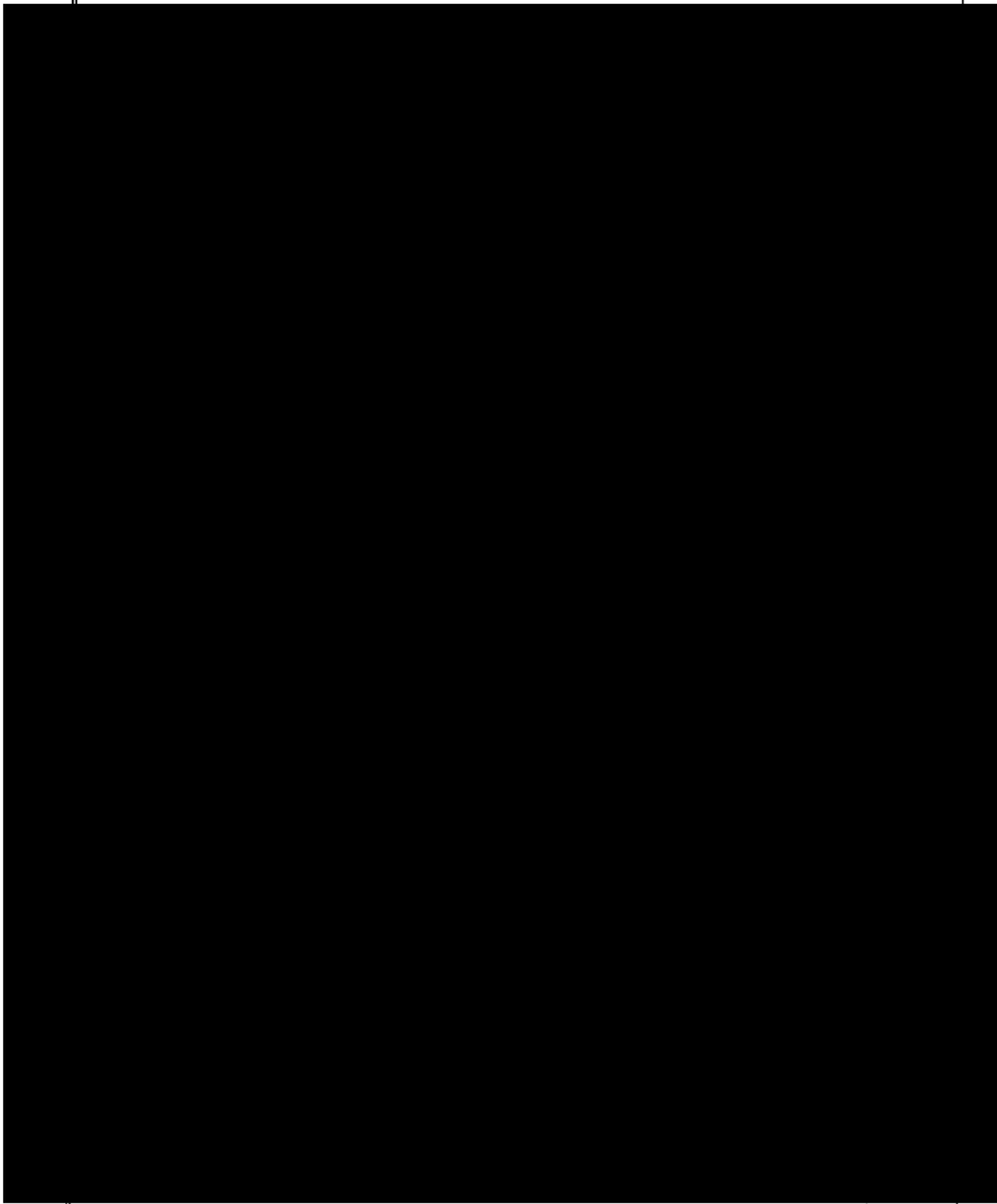




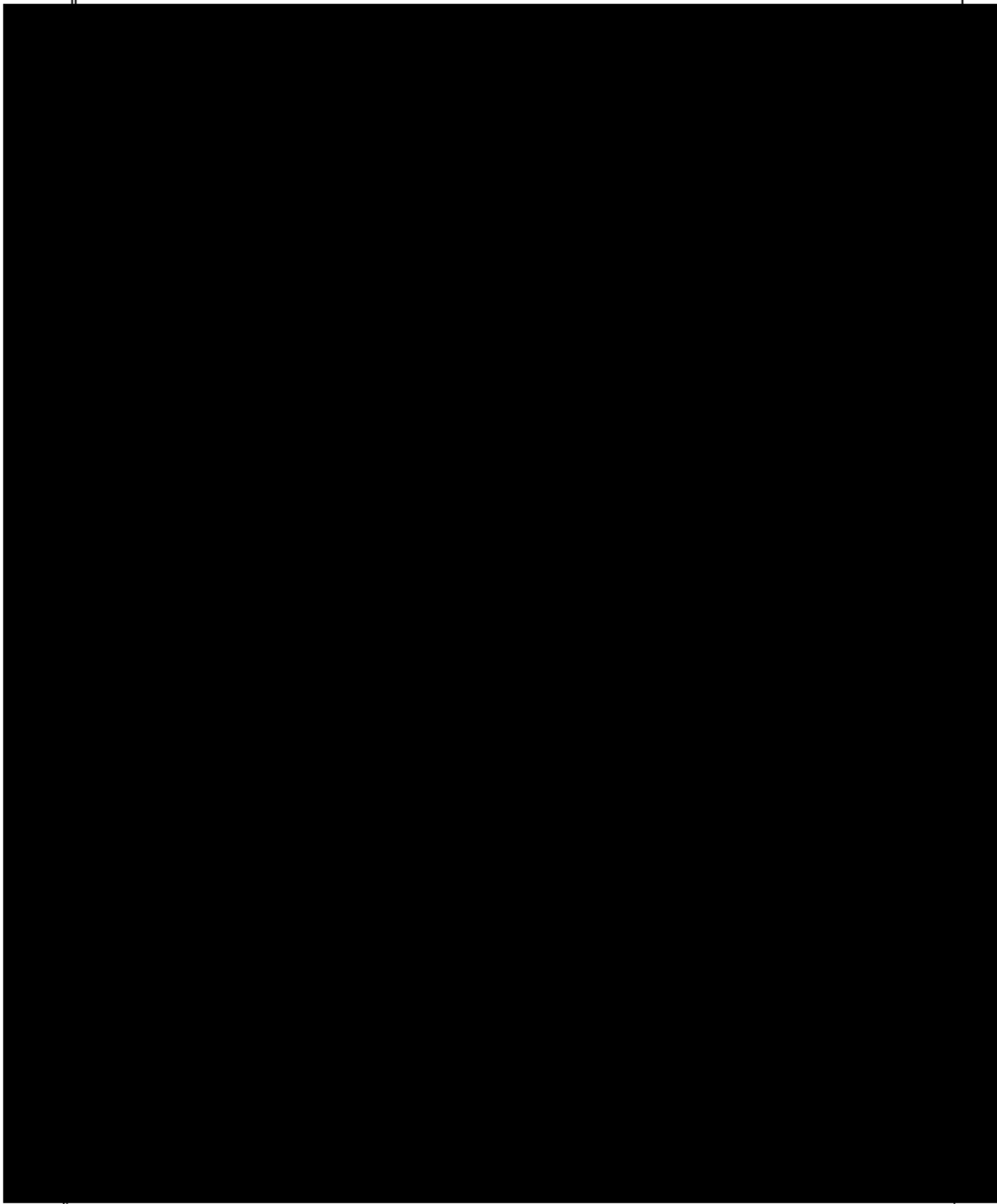


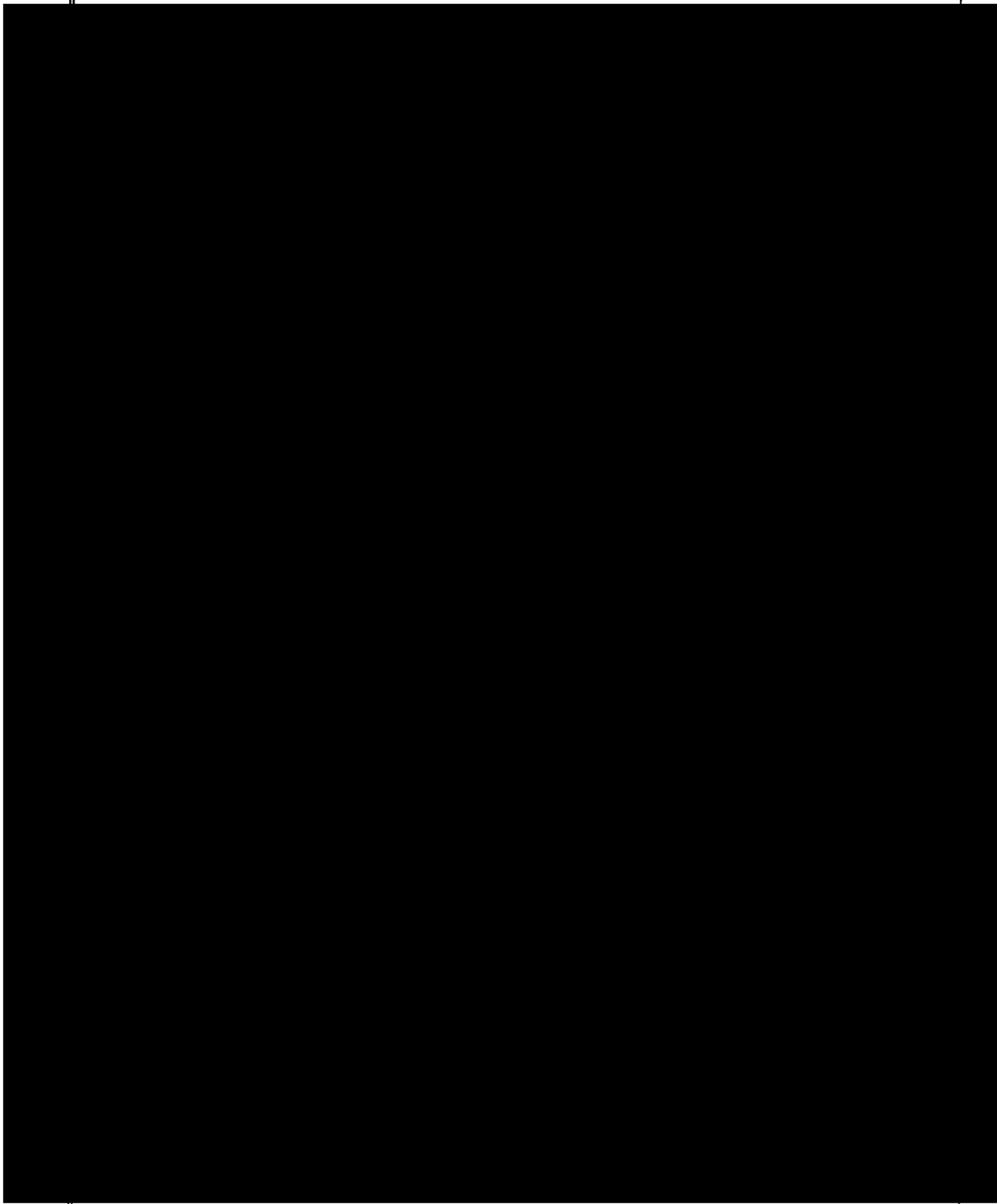


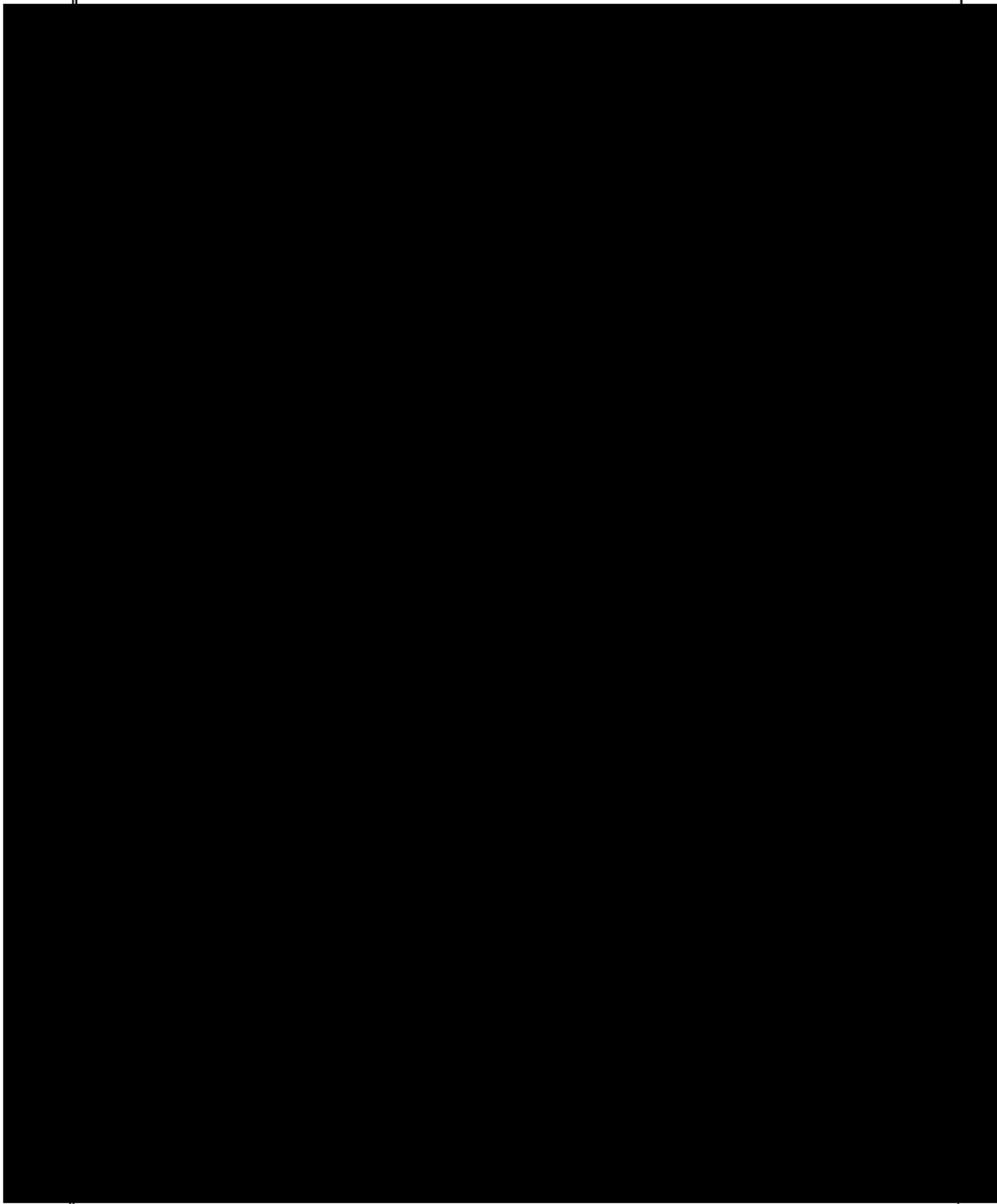


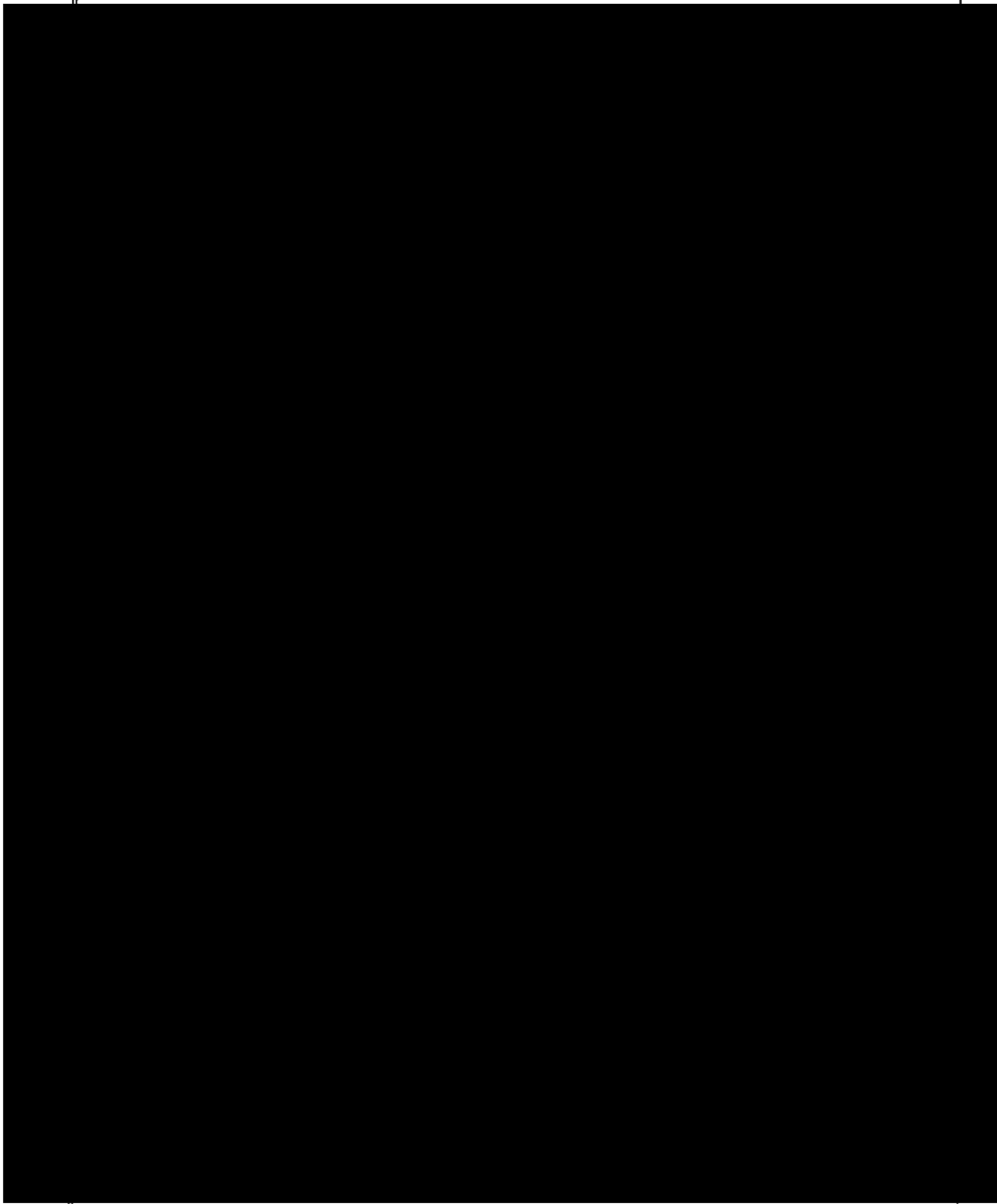


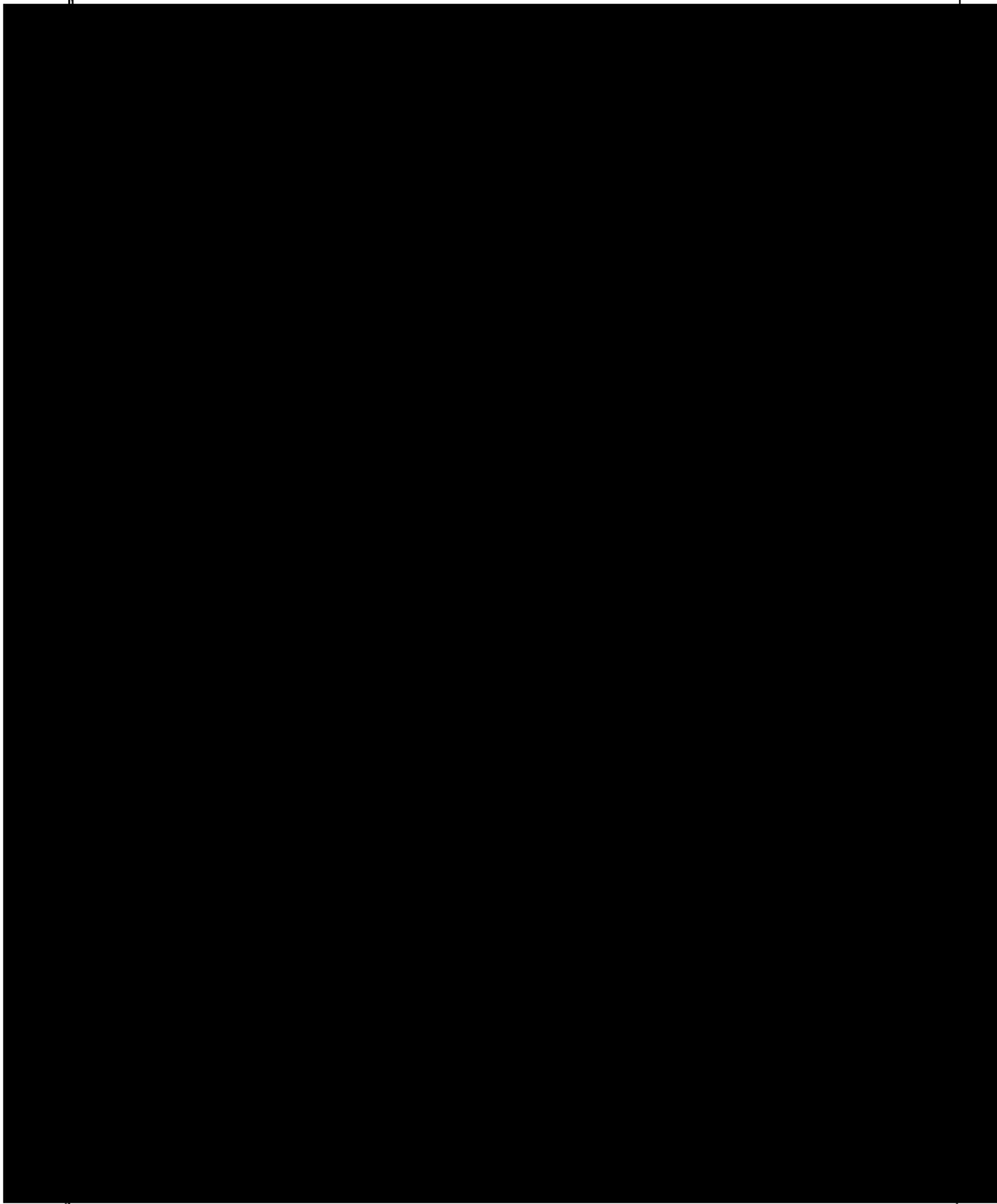


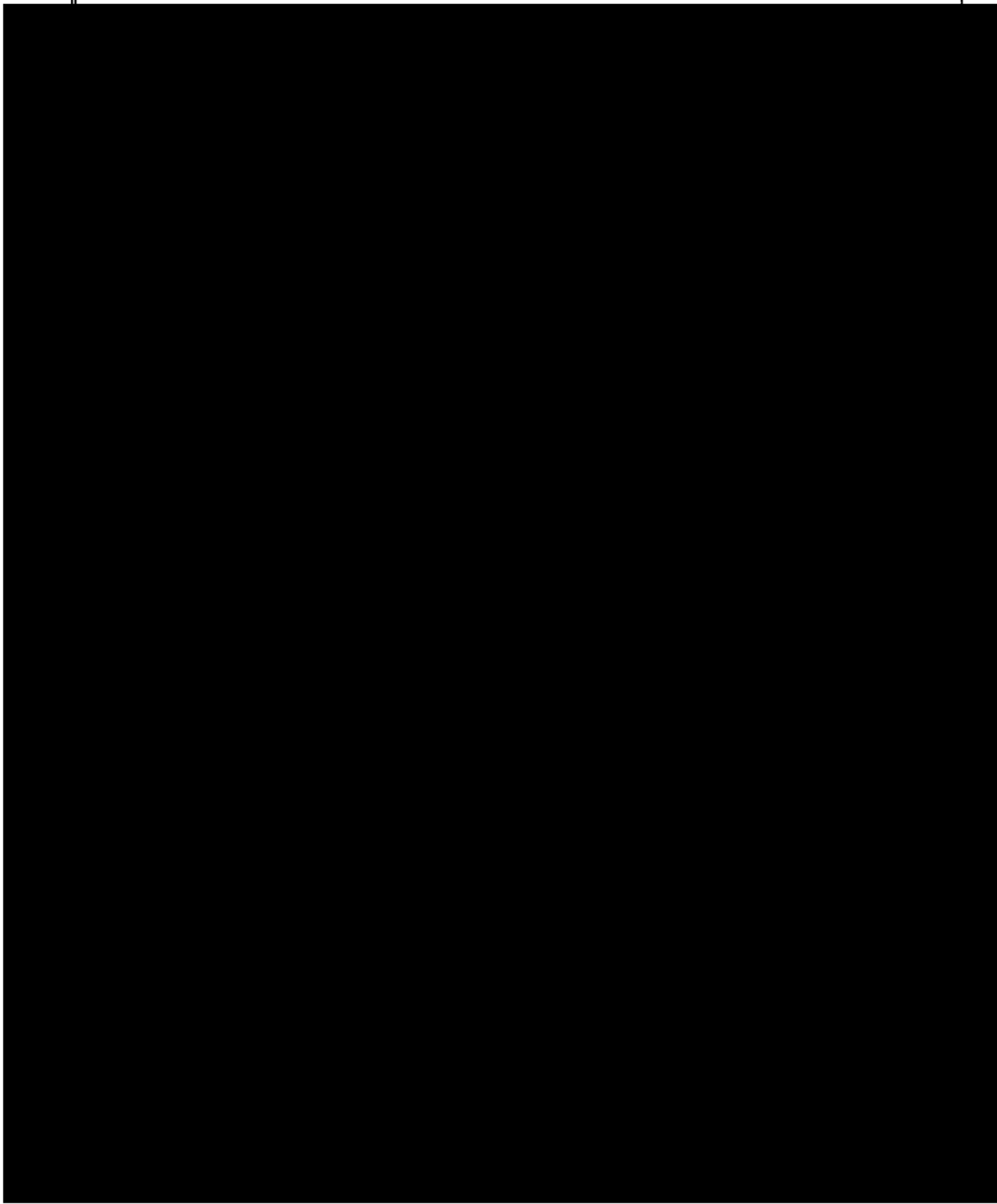


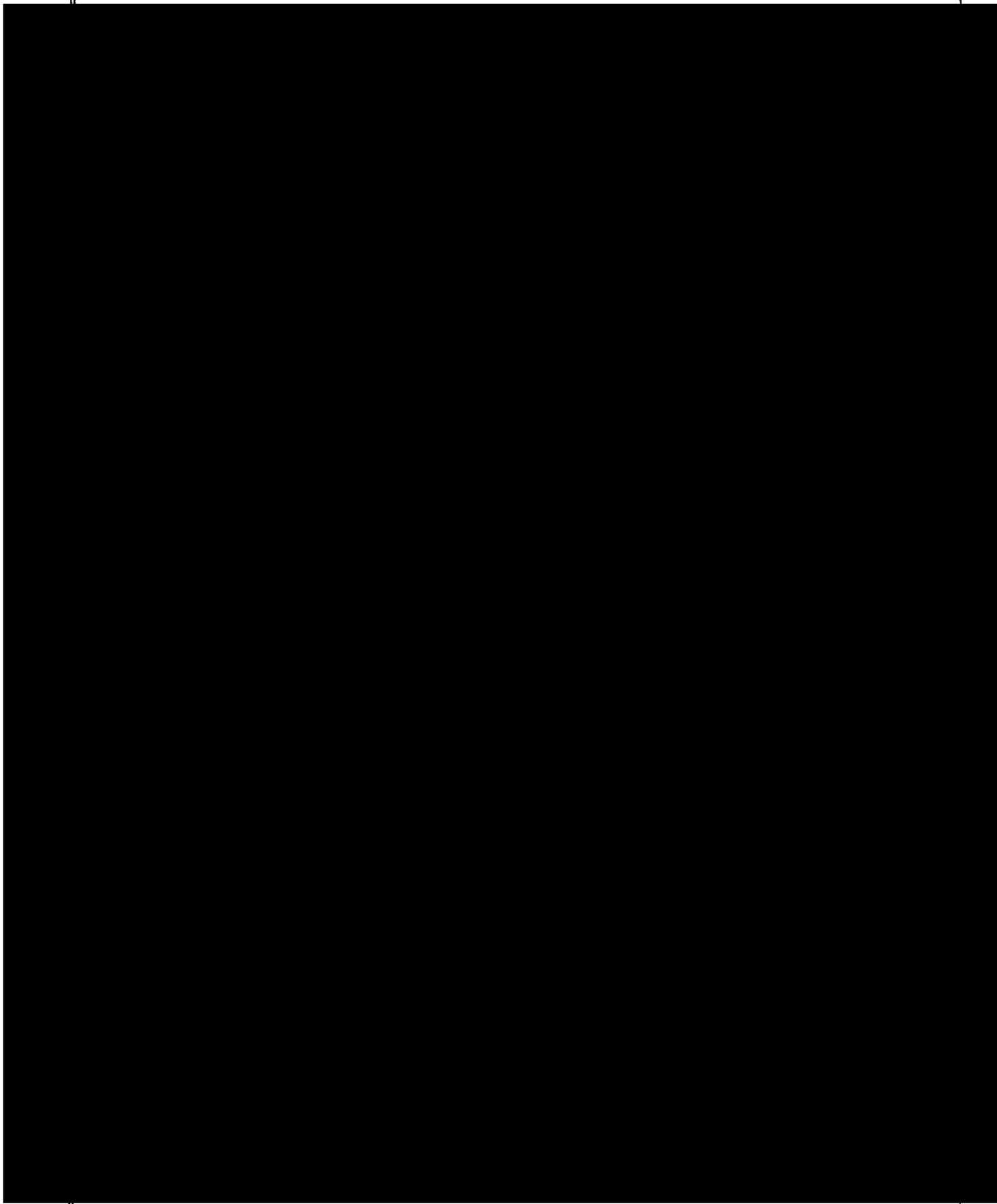


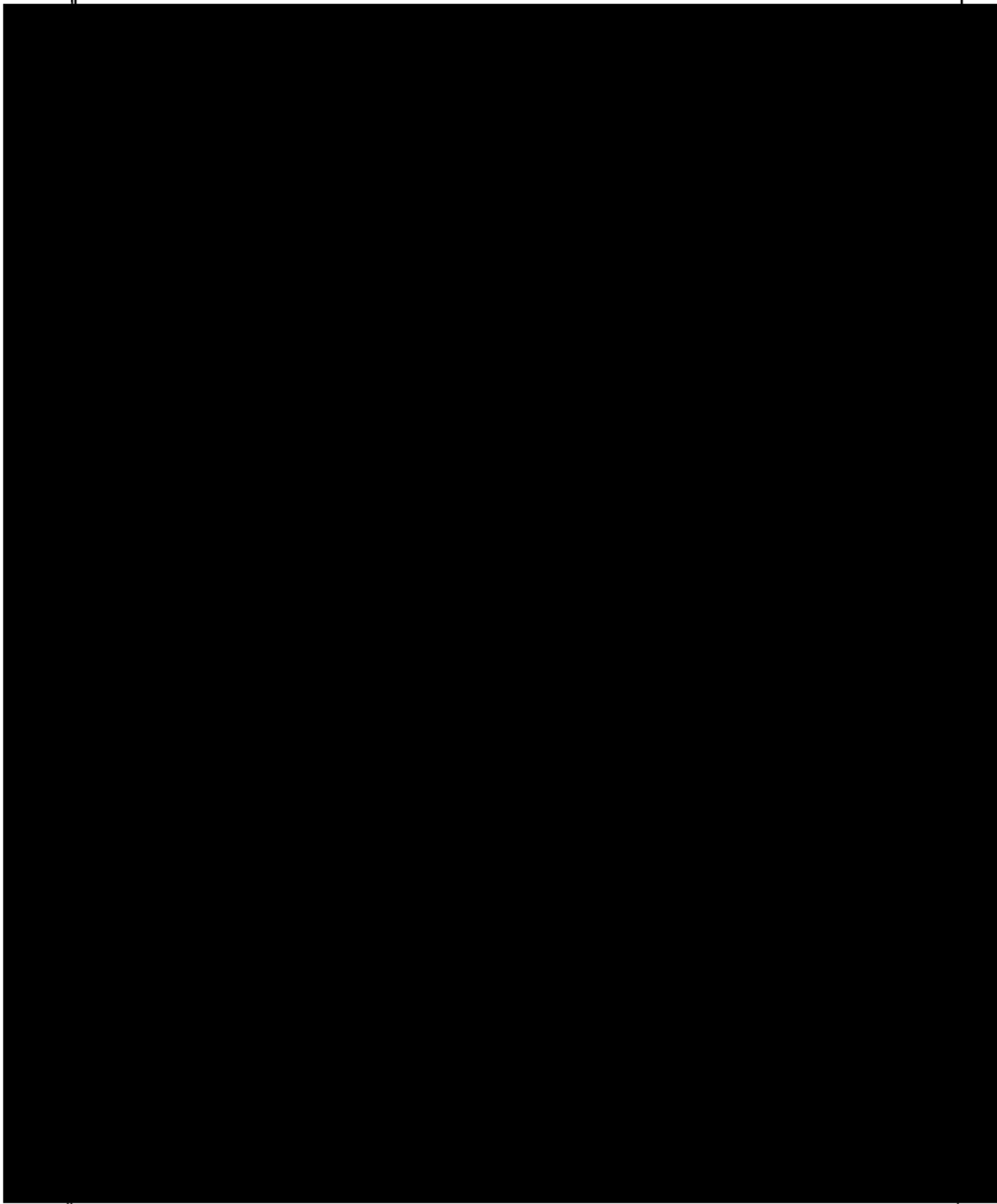




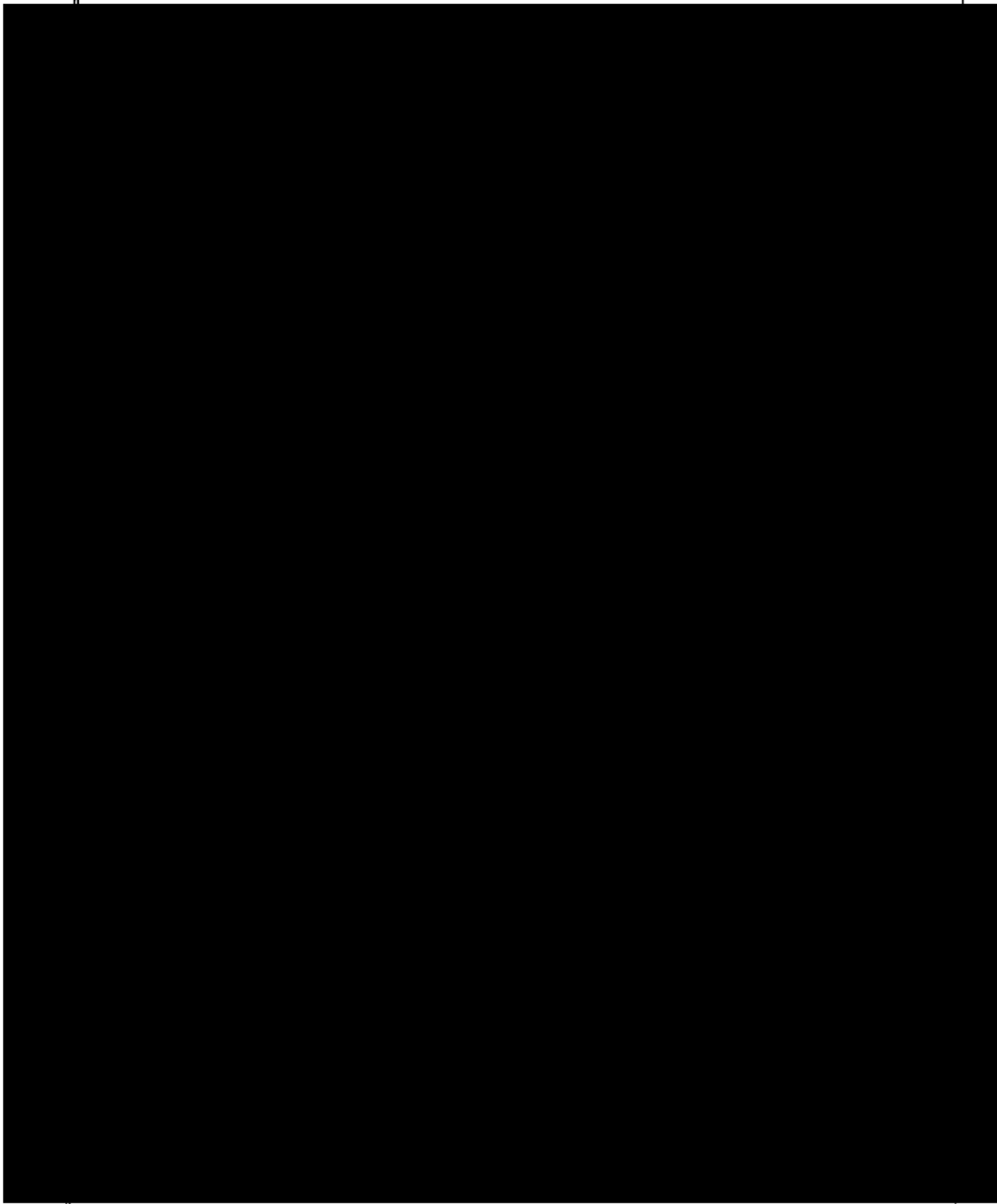


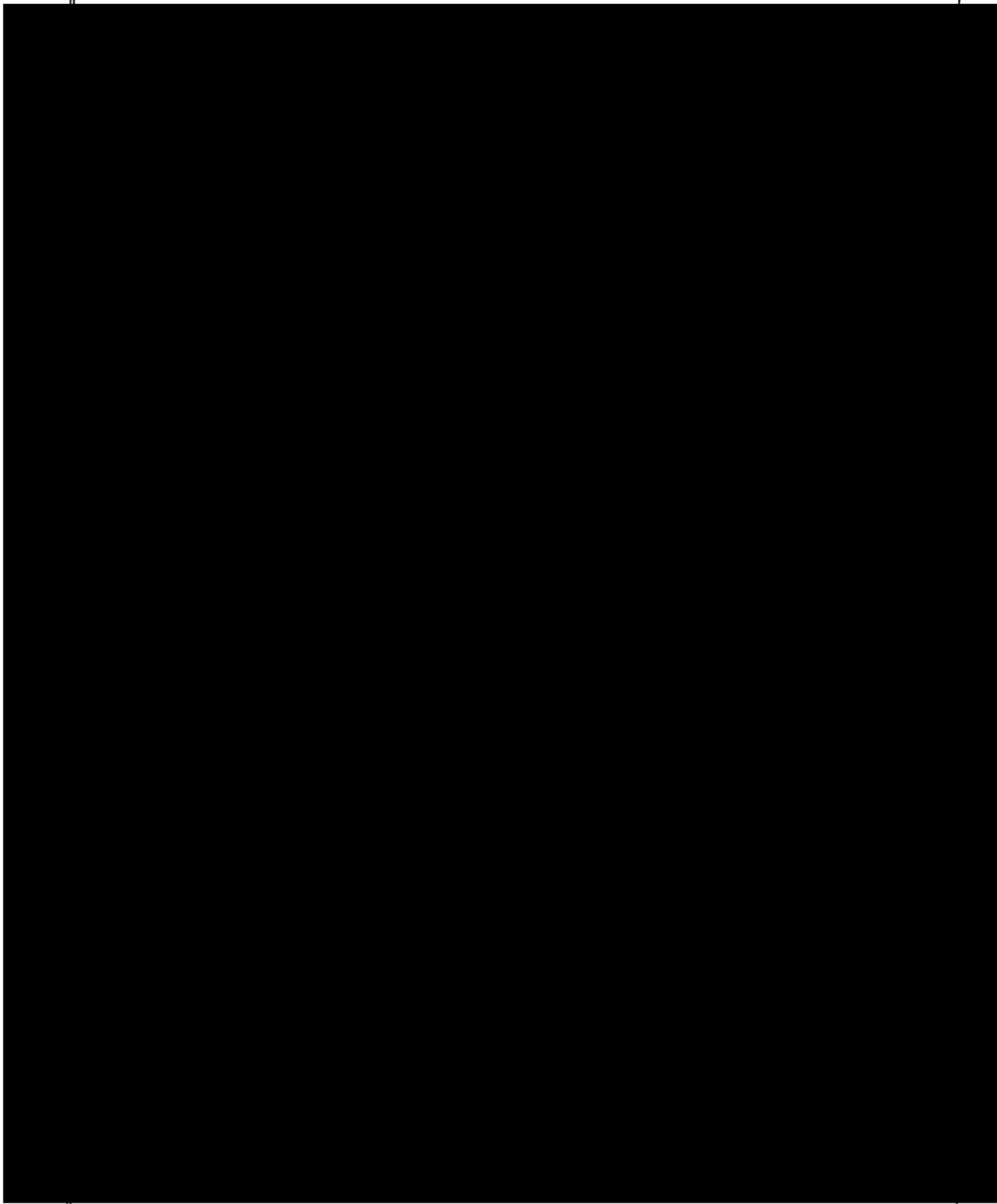


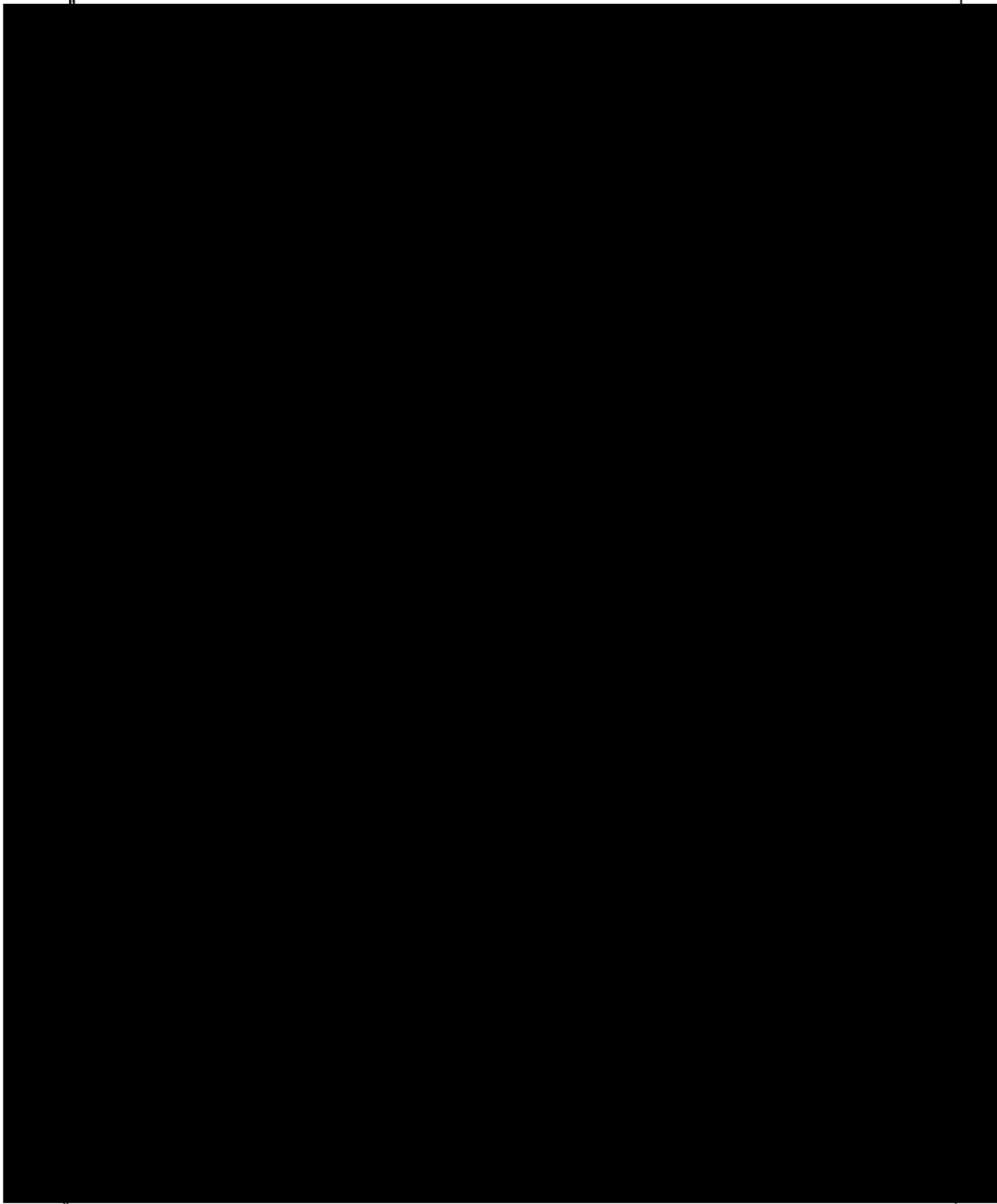


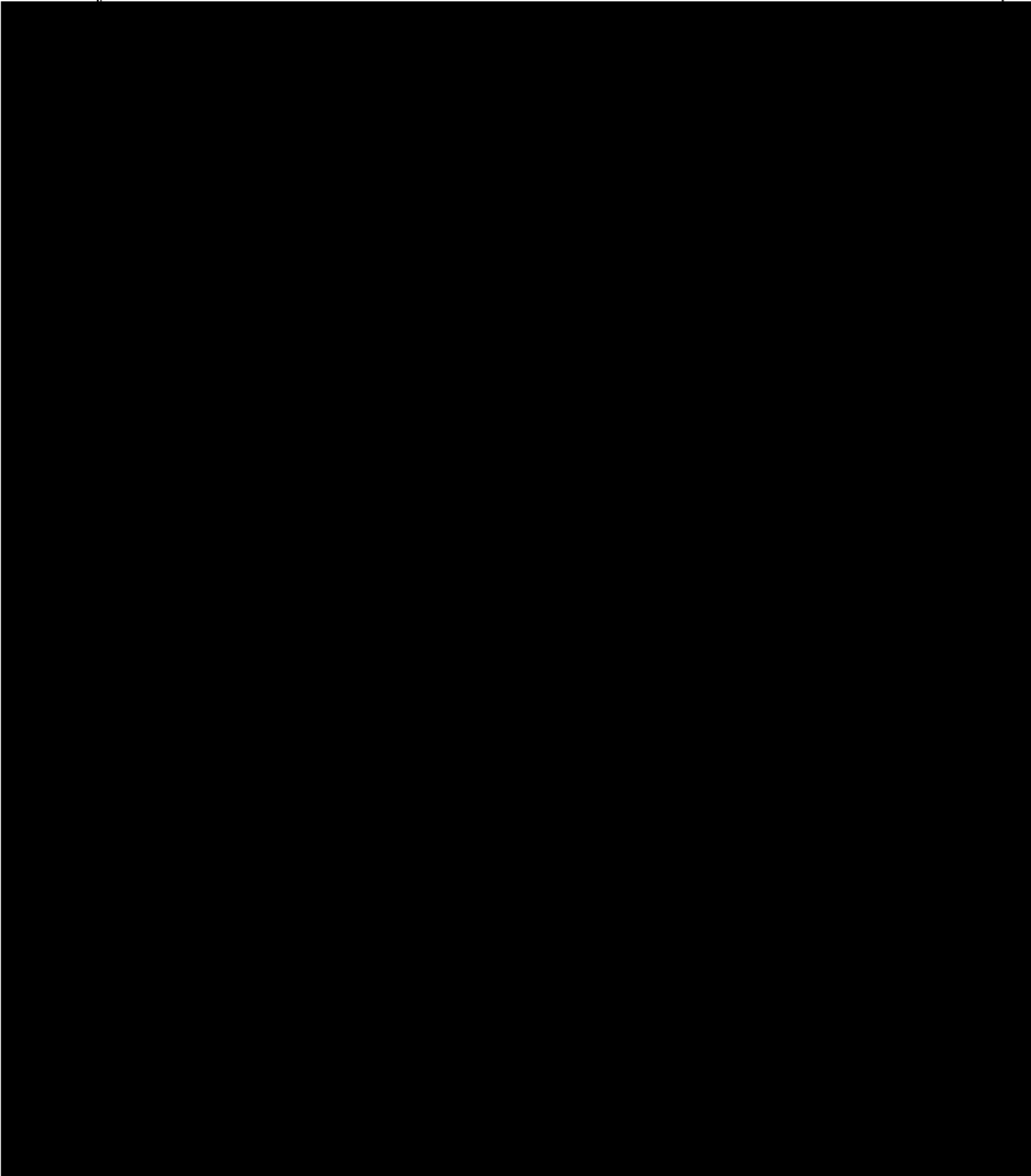


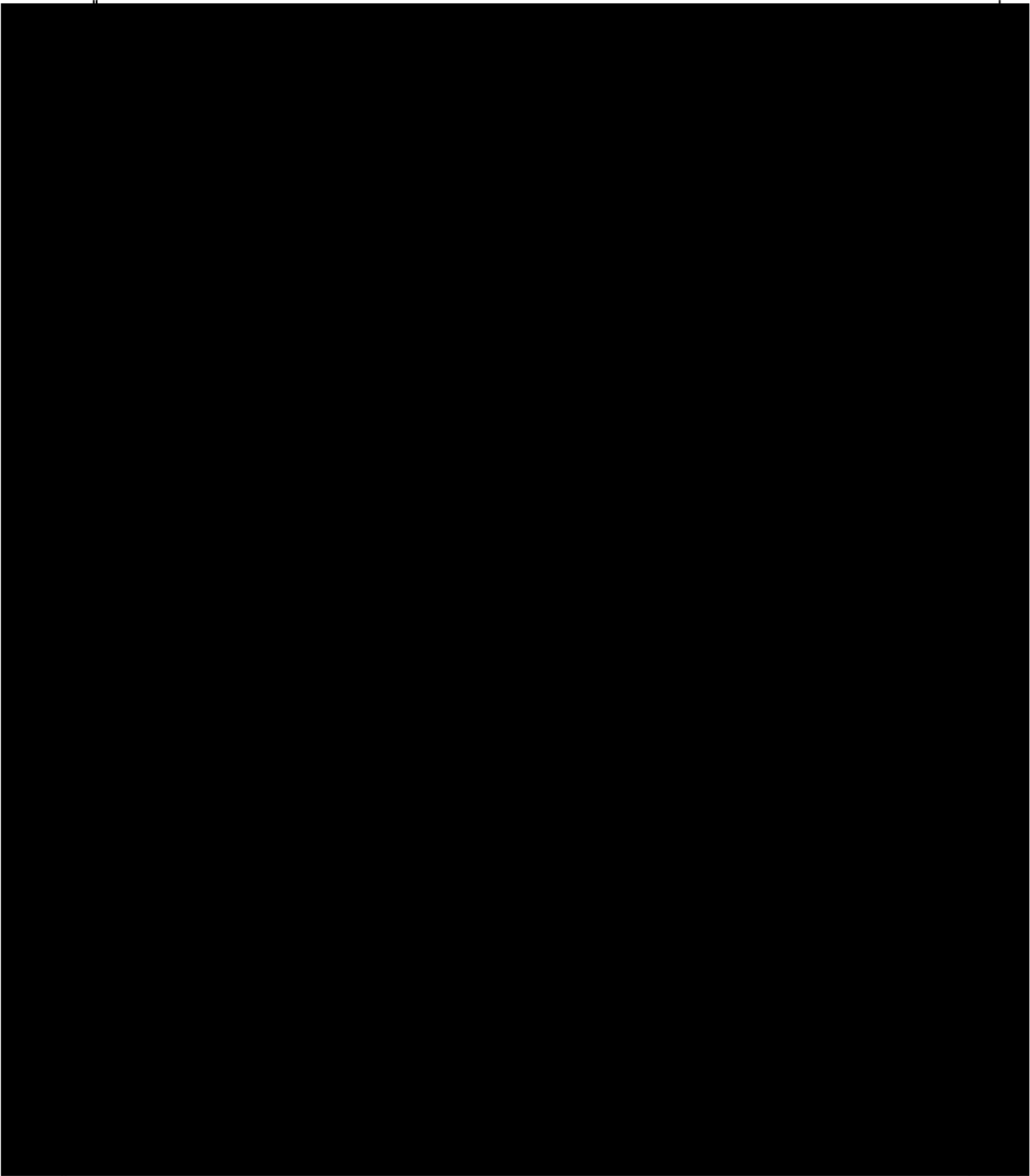


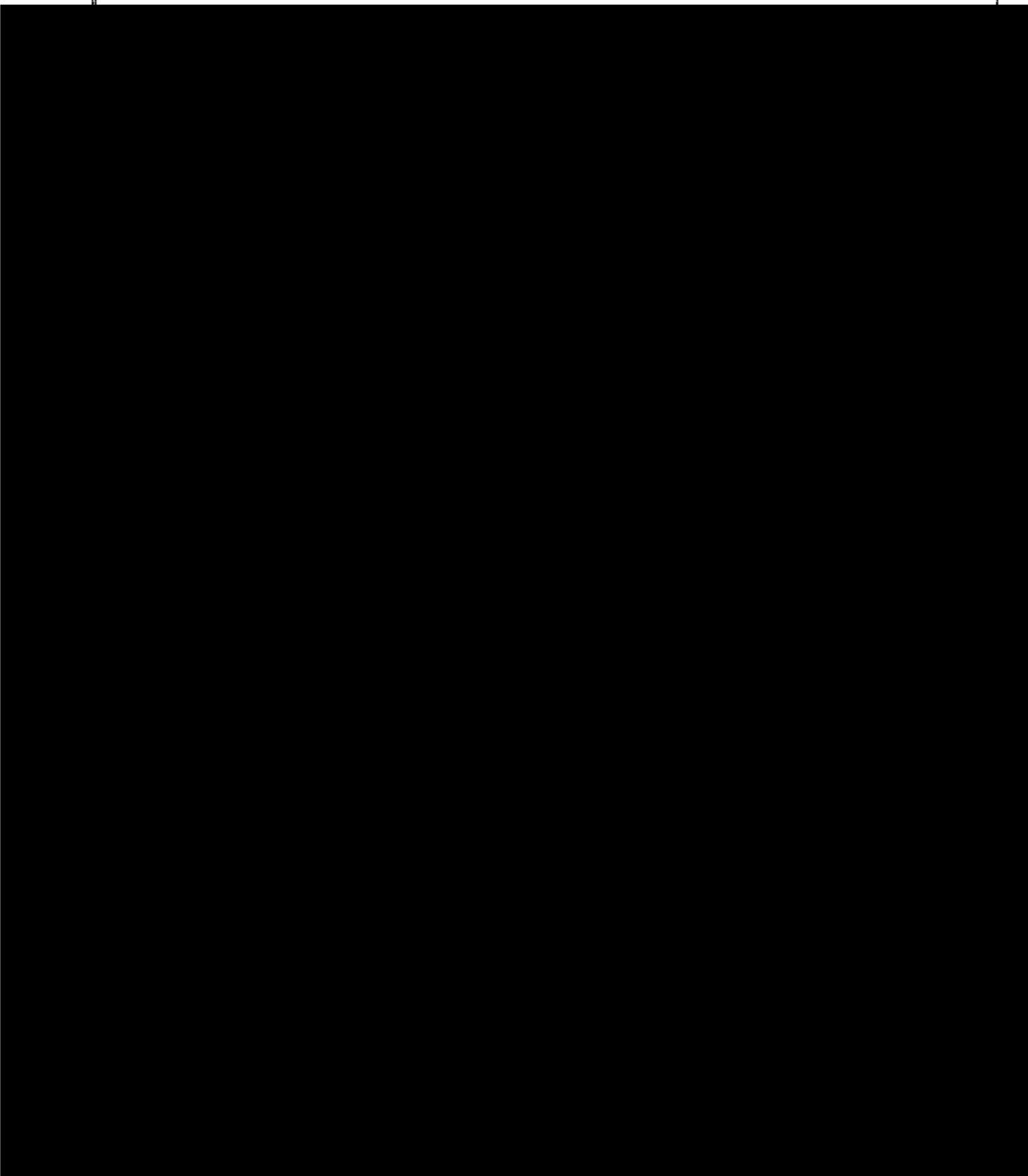


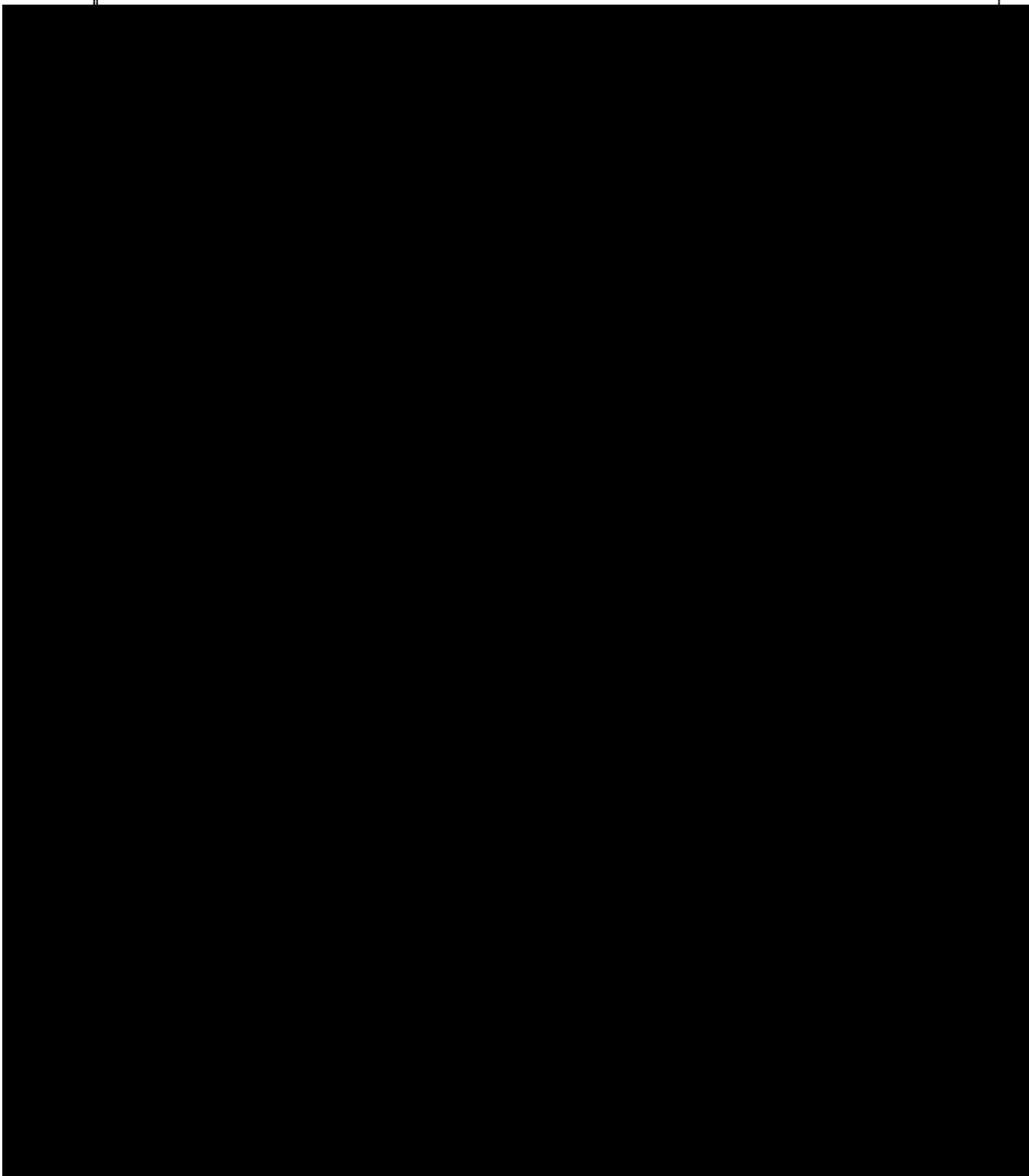


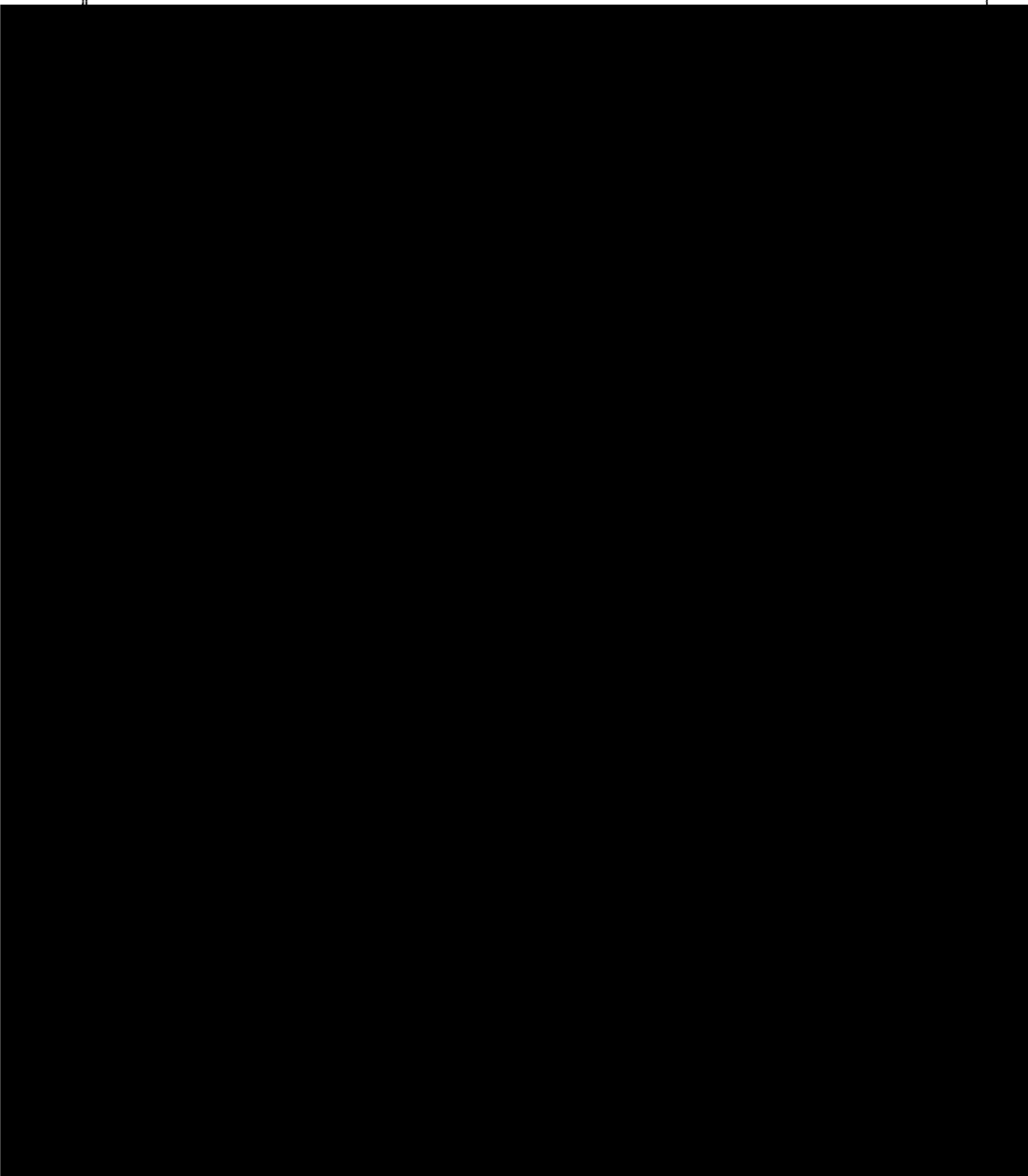




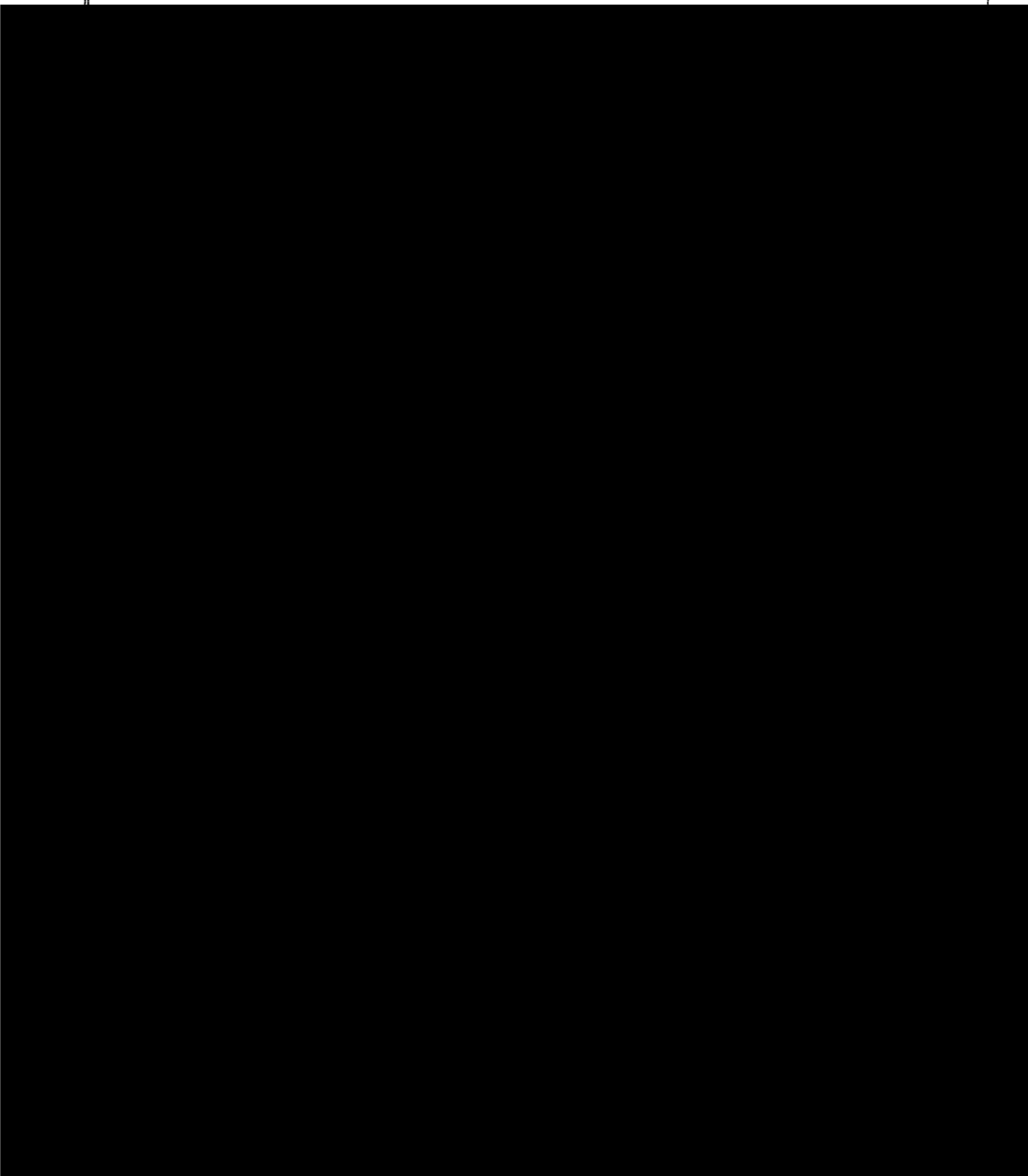


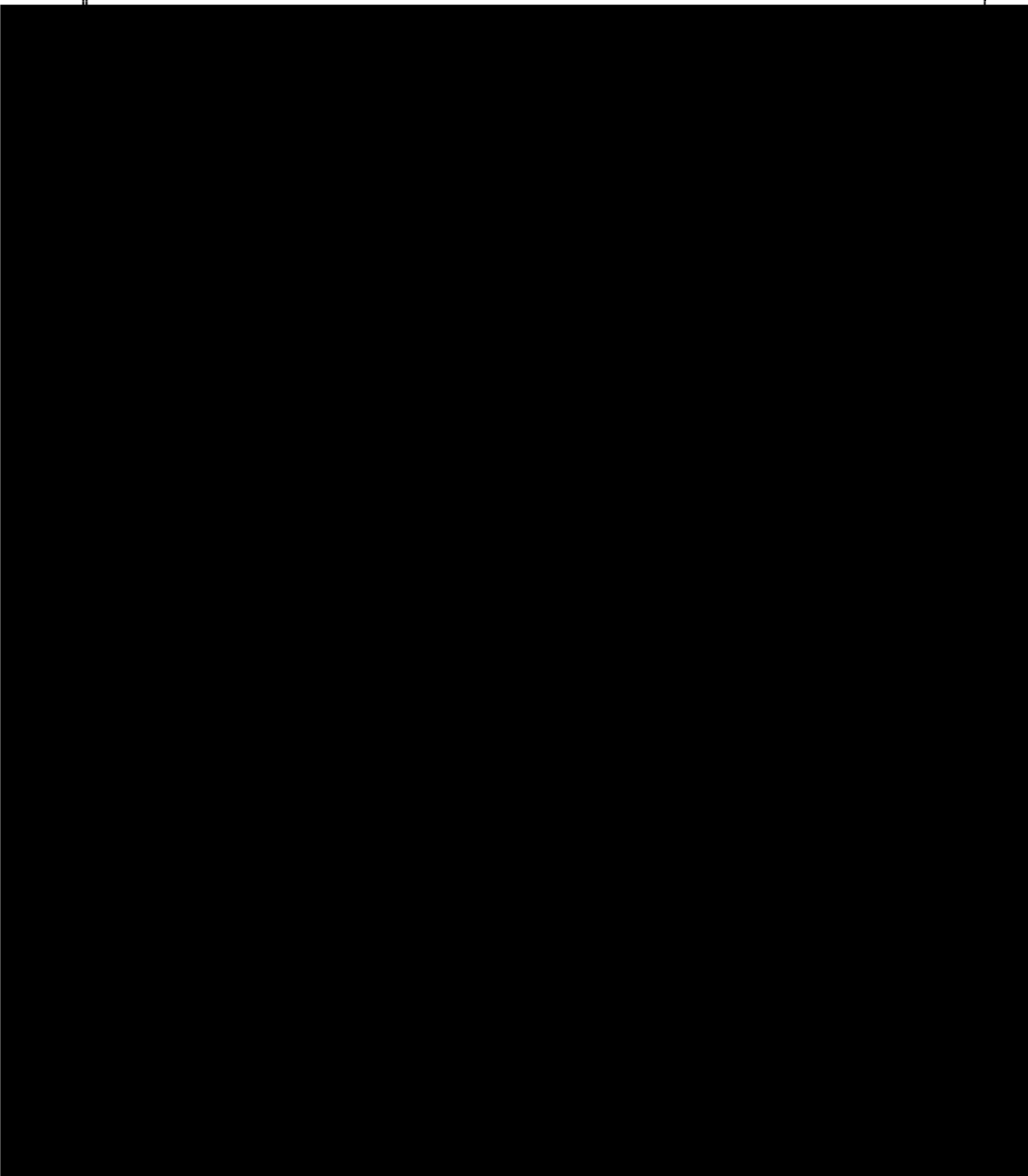


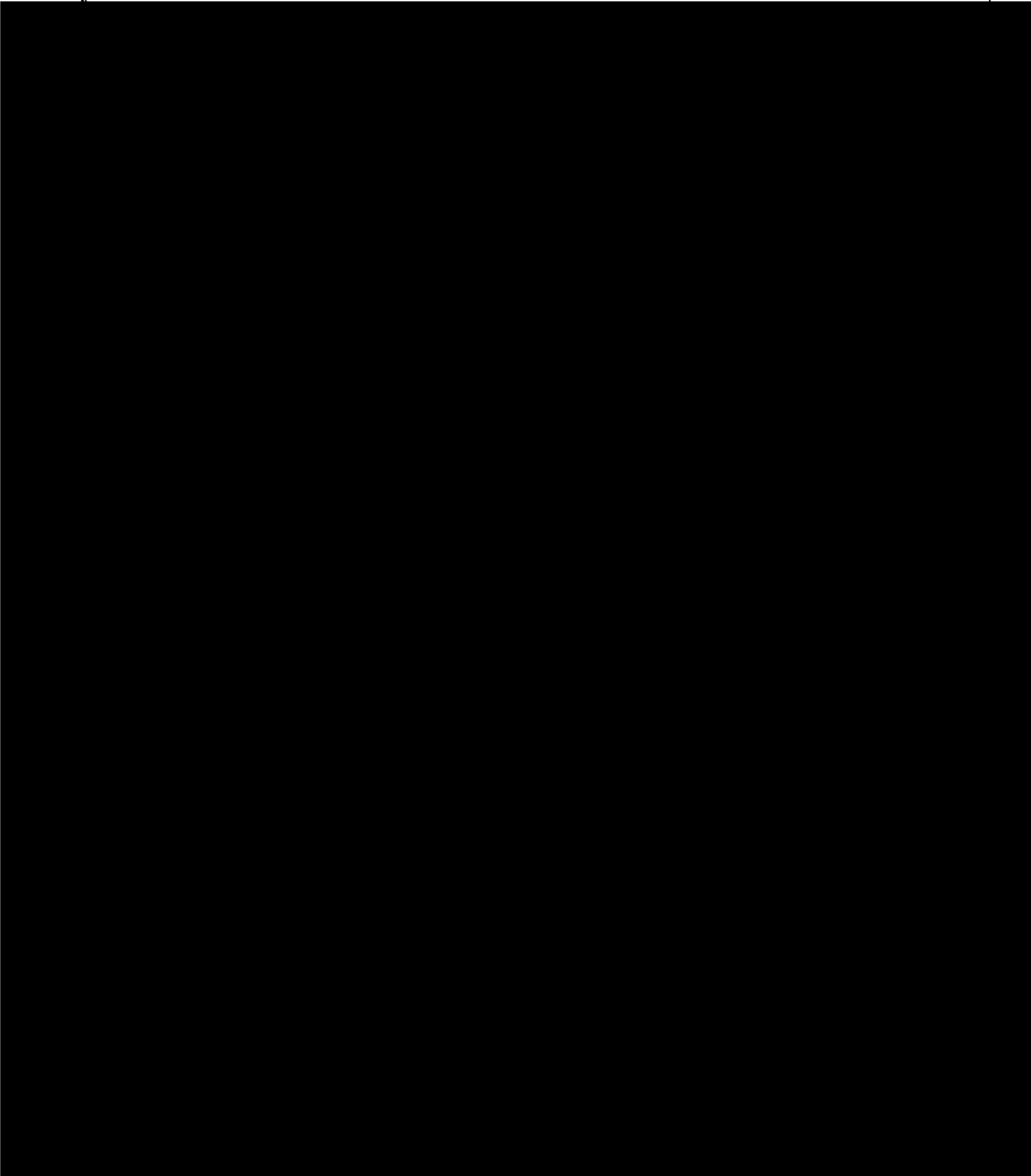


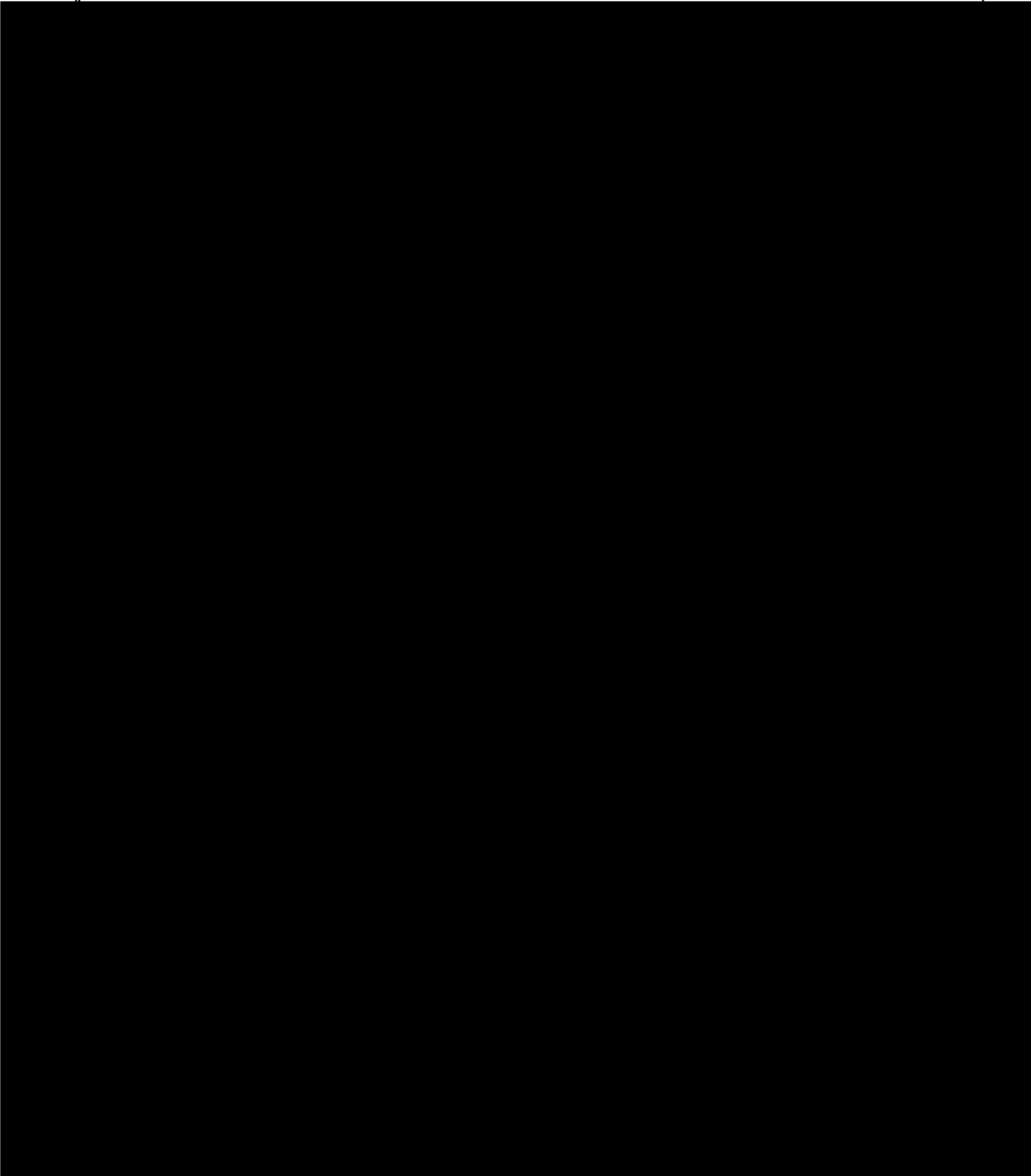


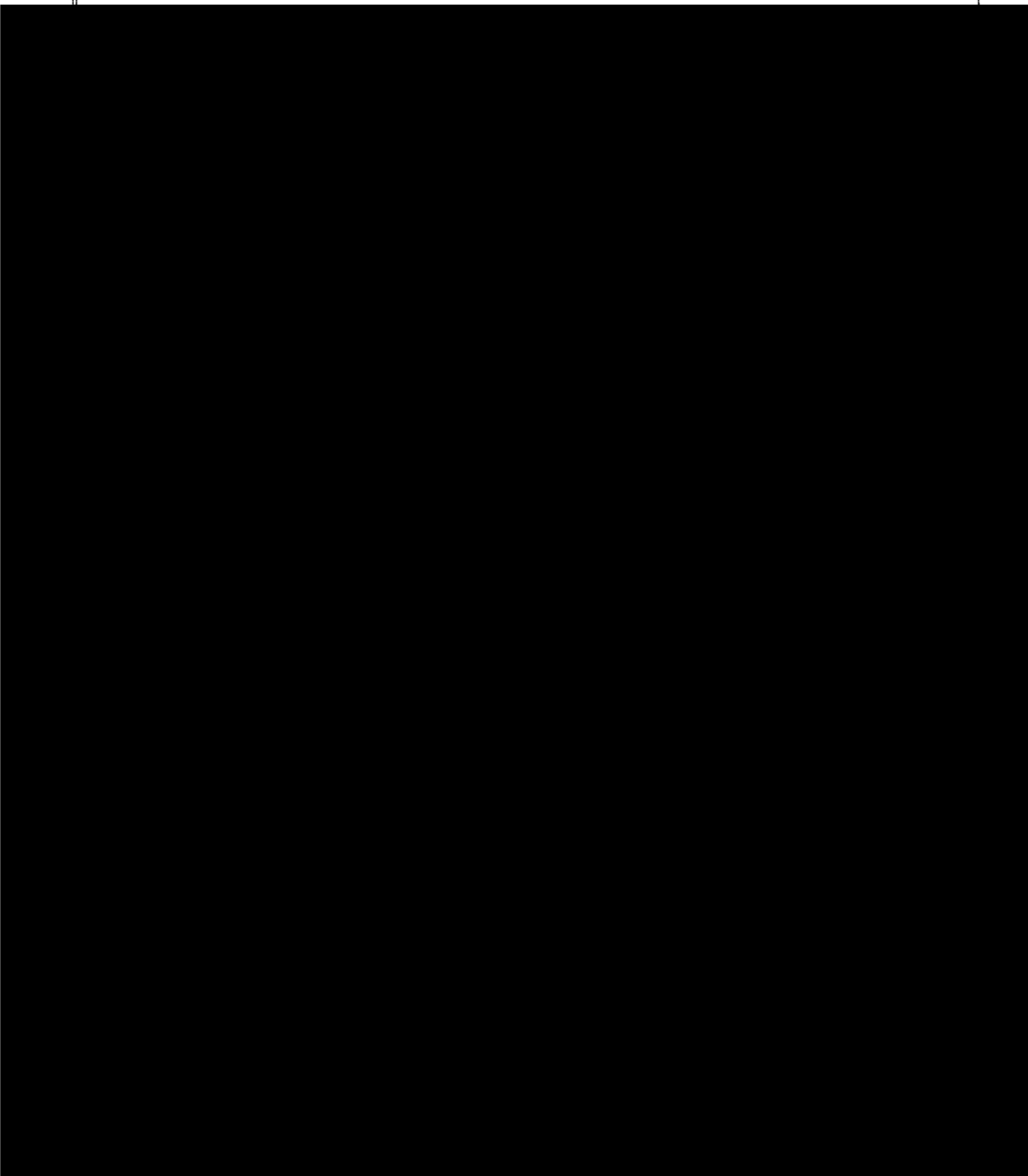






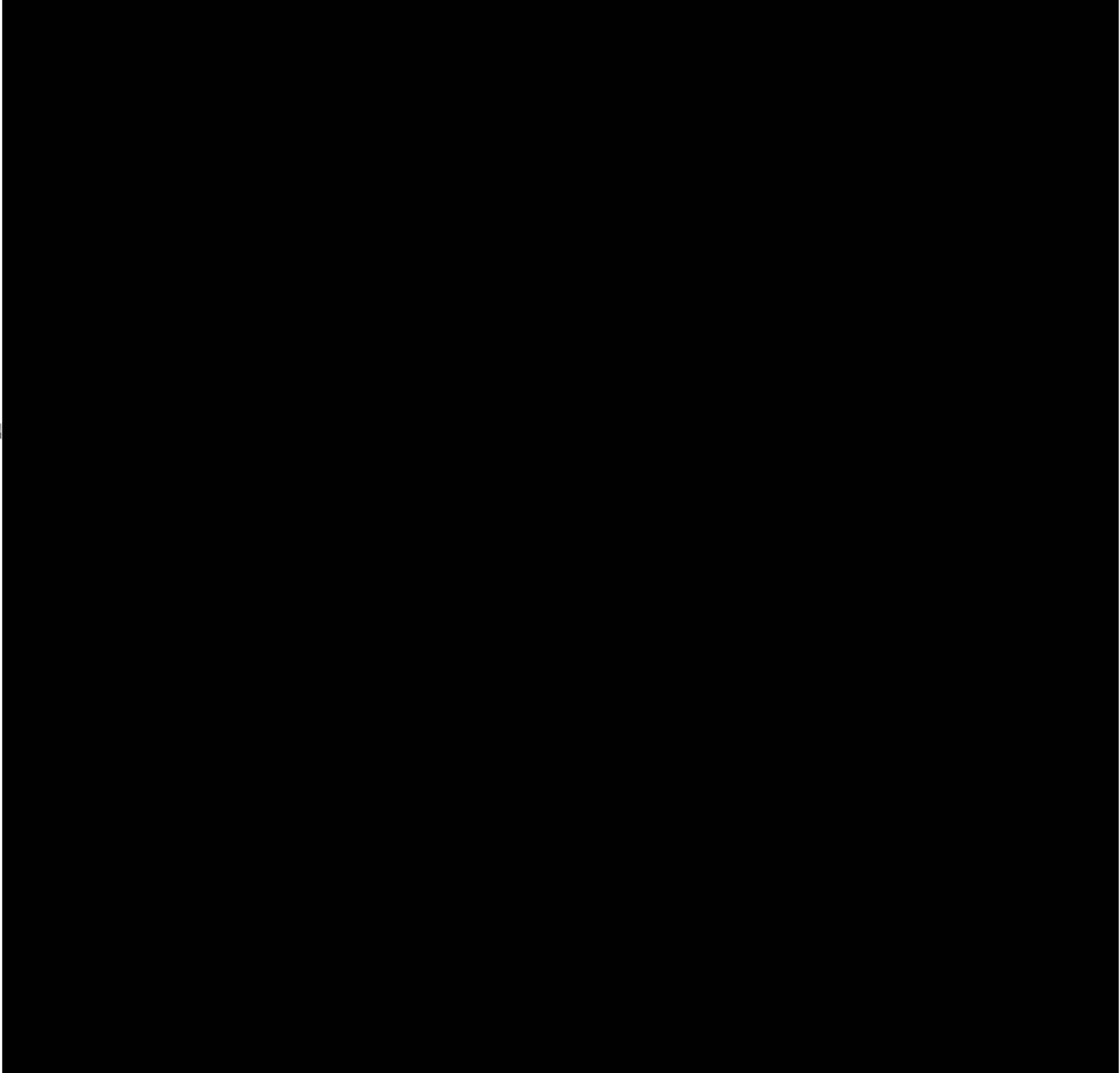


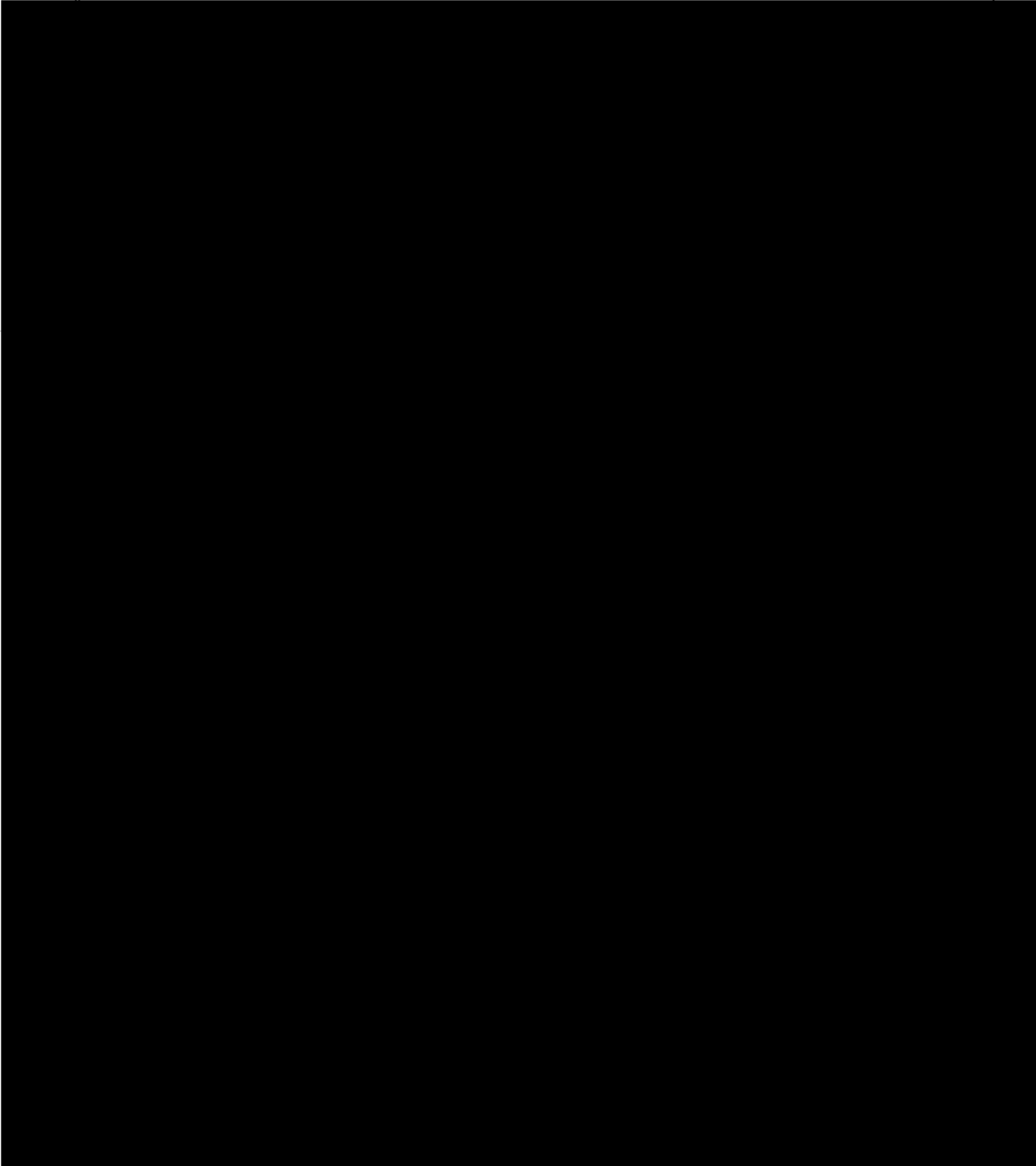


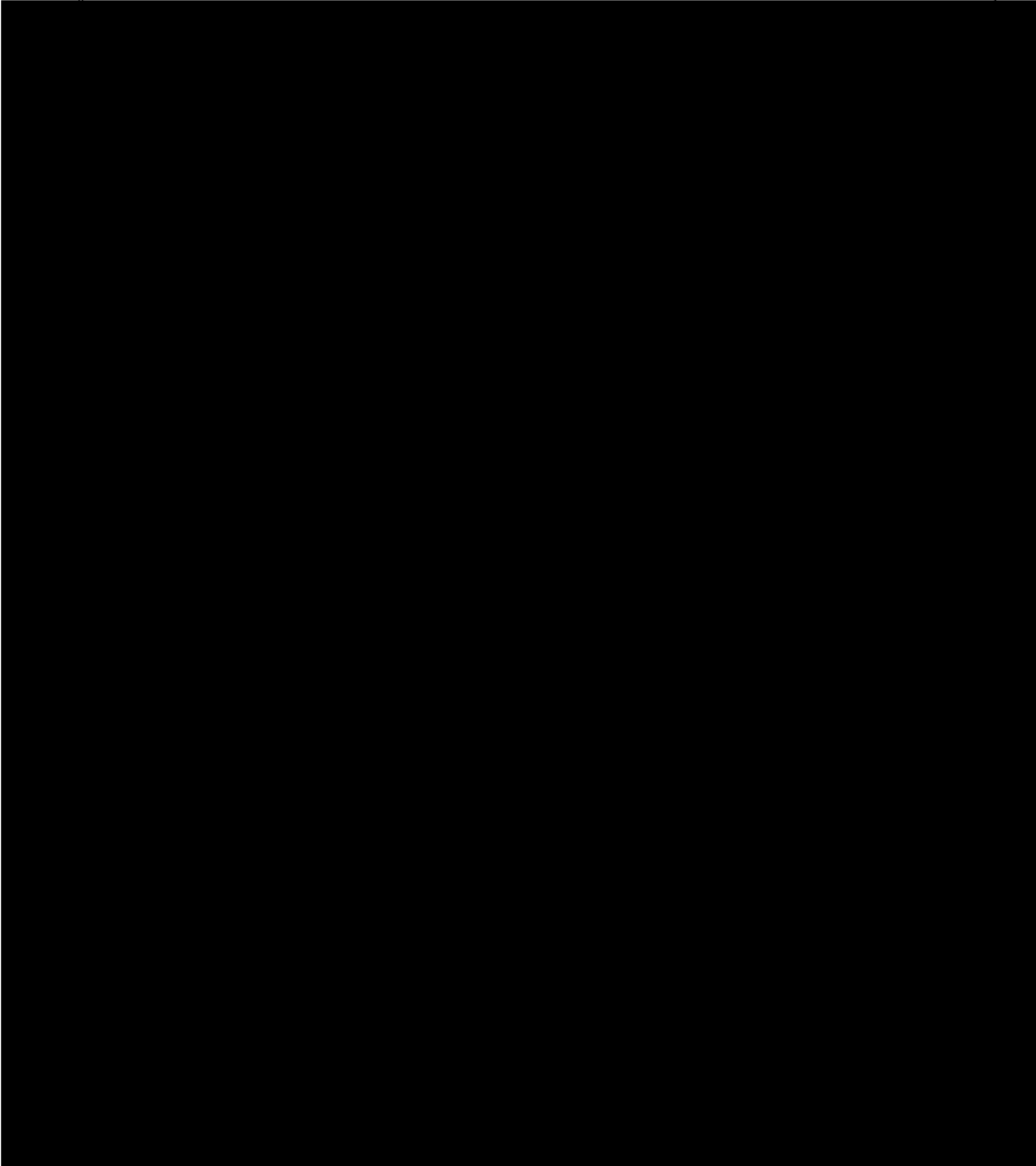


1 DENNIS K. BURKE  
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District of Arizona

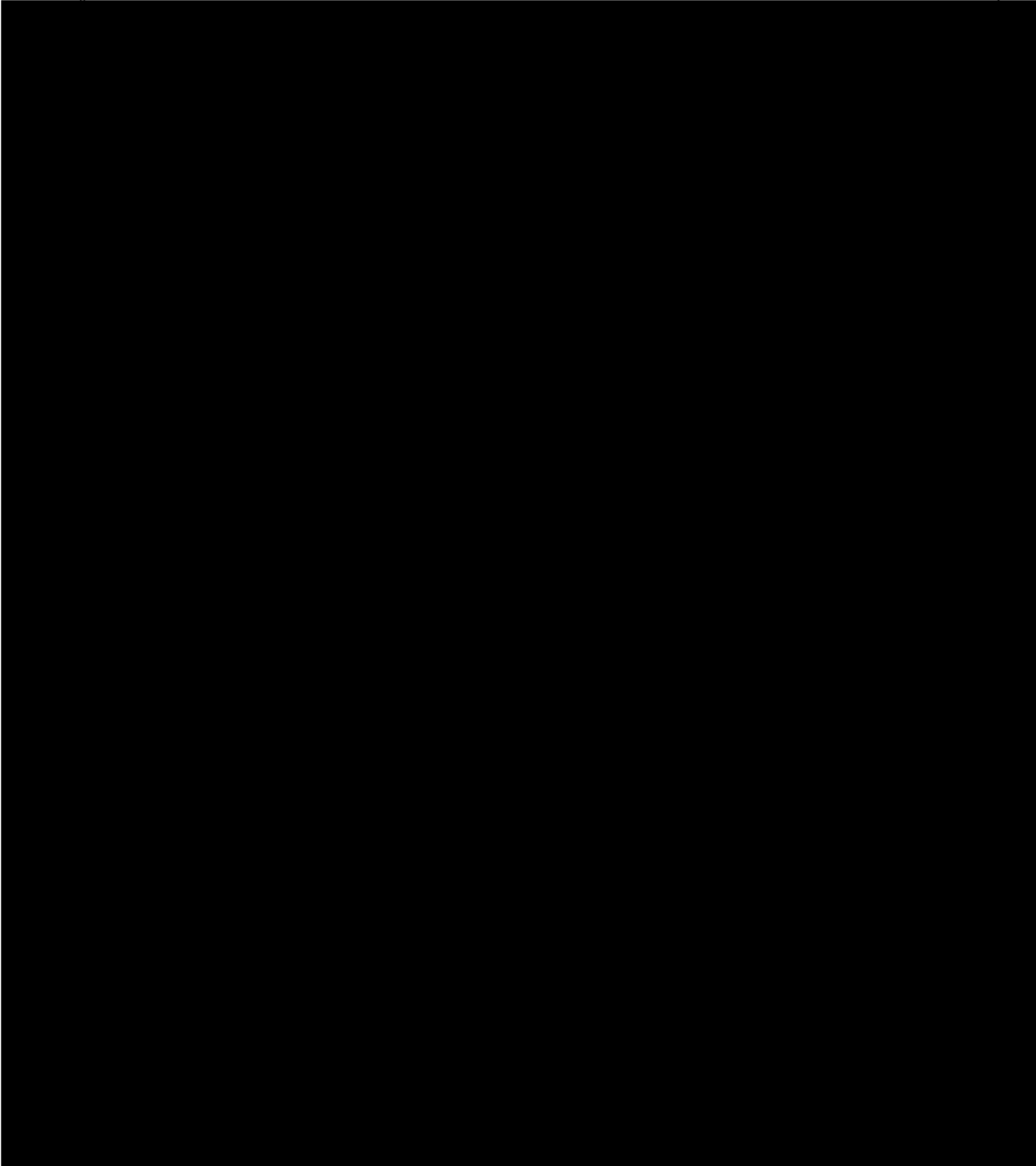
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3 EMORY T. HURLEY  
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5 Telephone (602) 514-7500  
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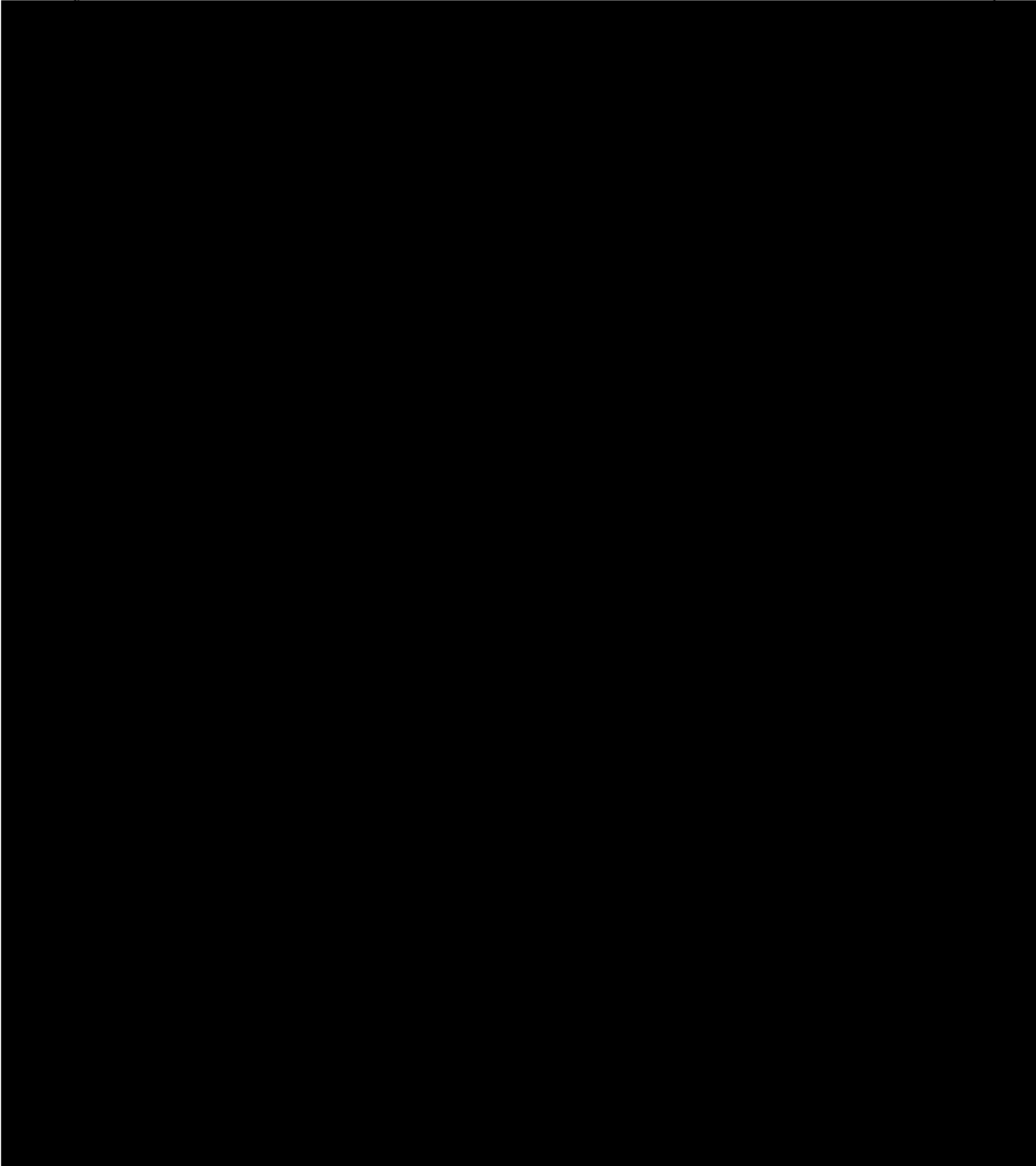


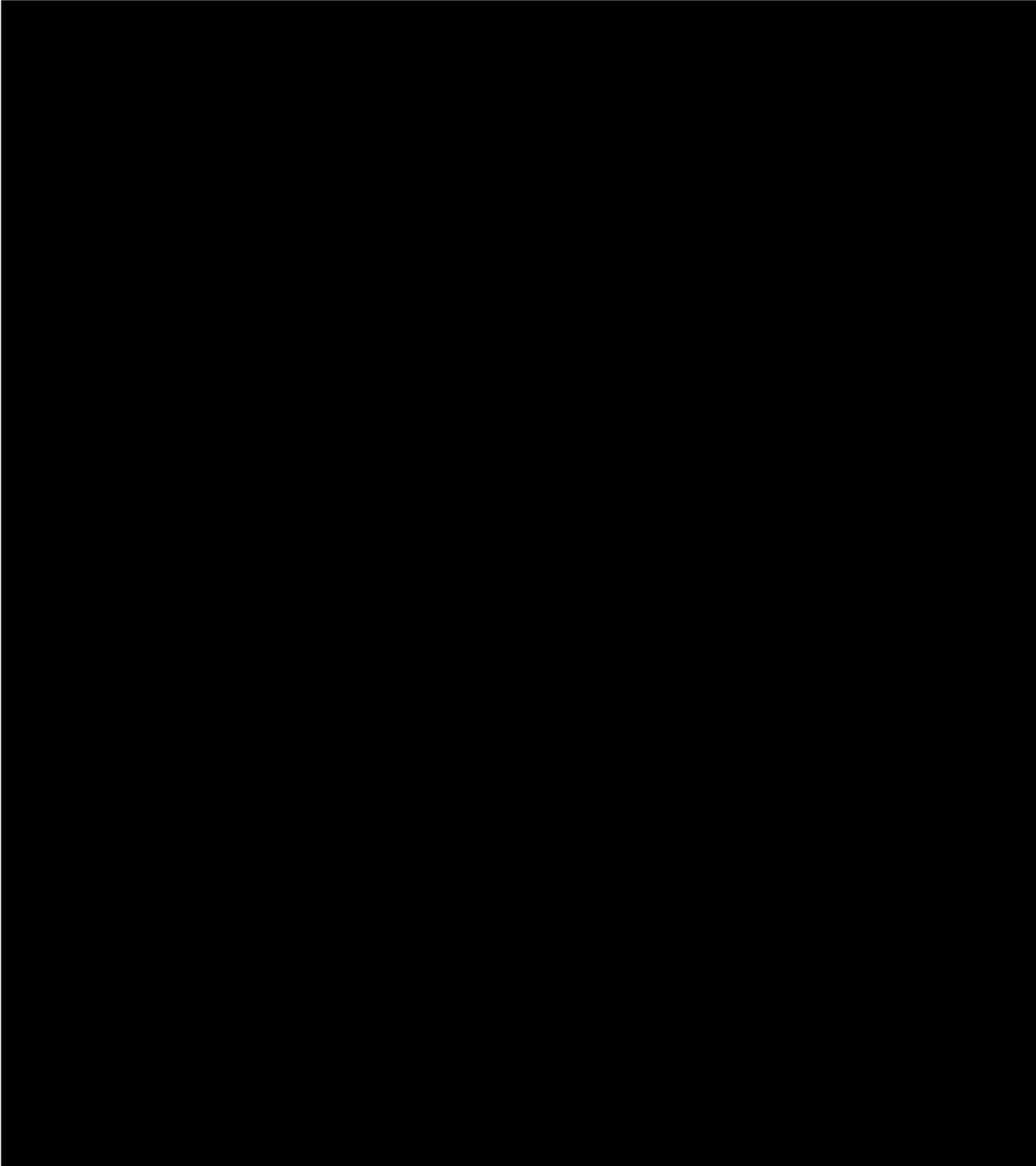


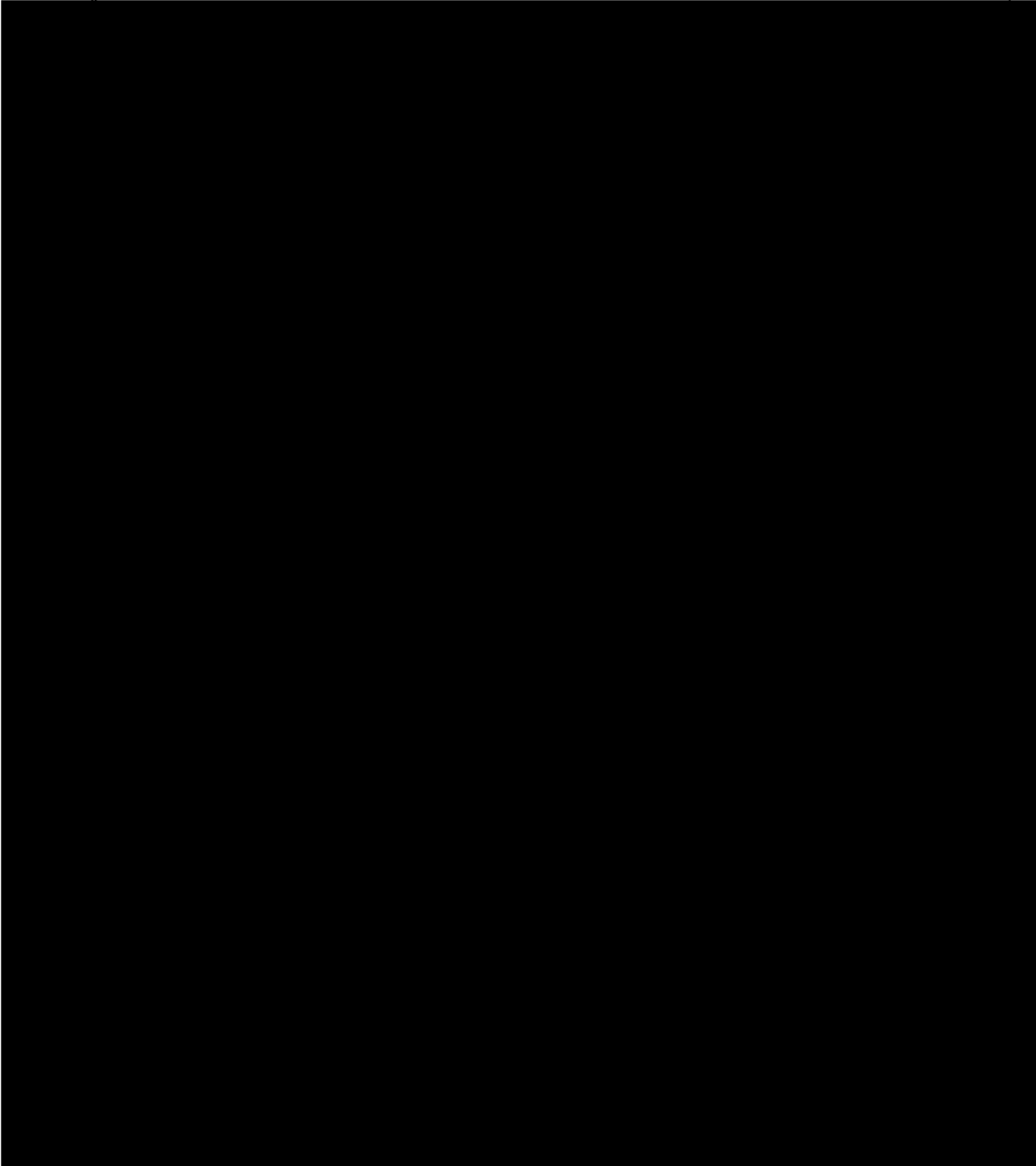


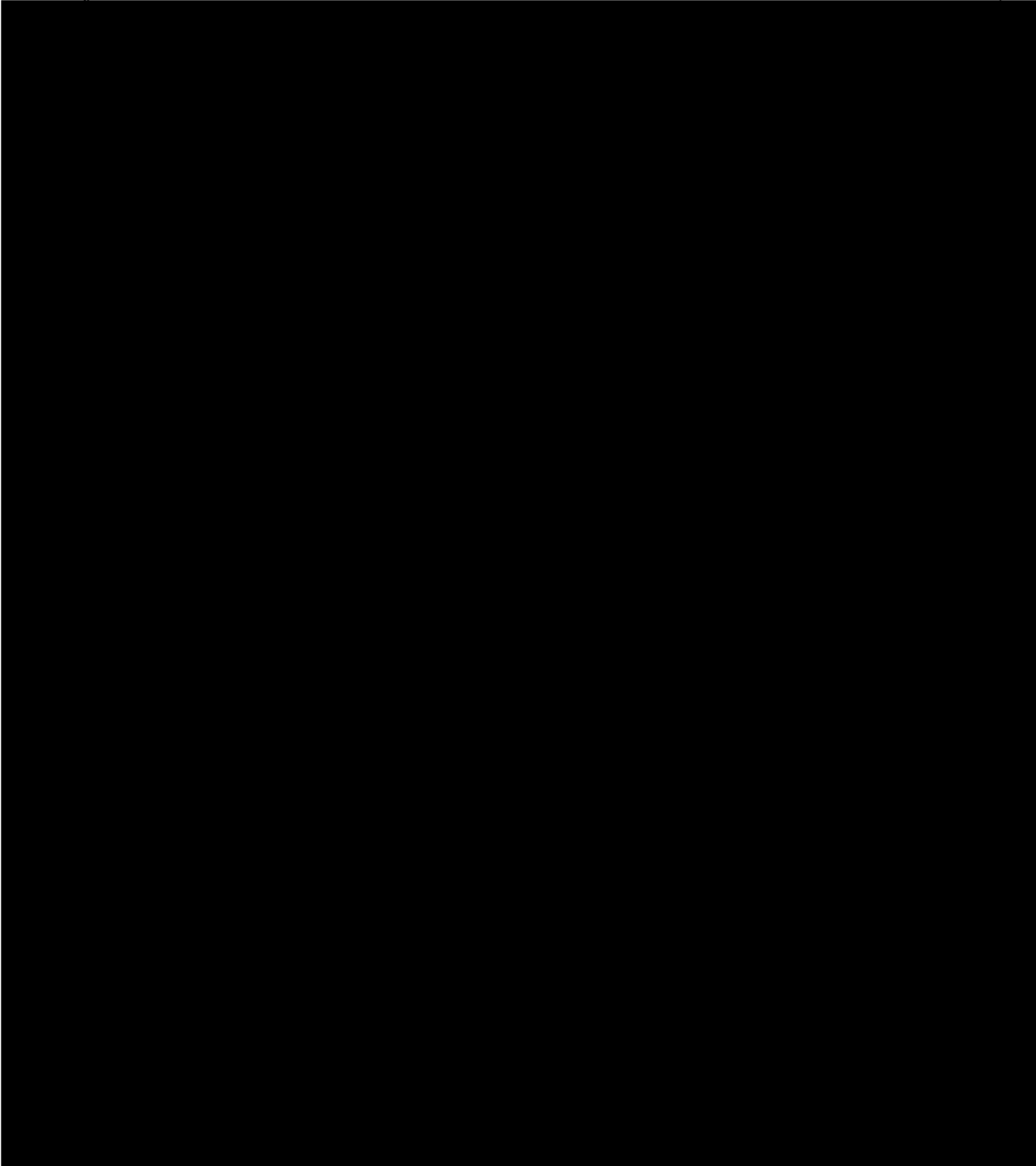


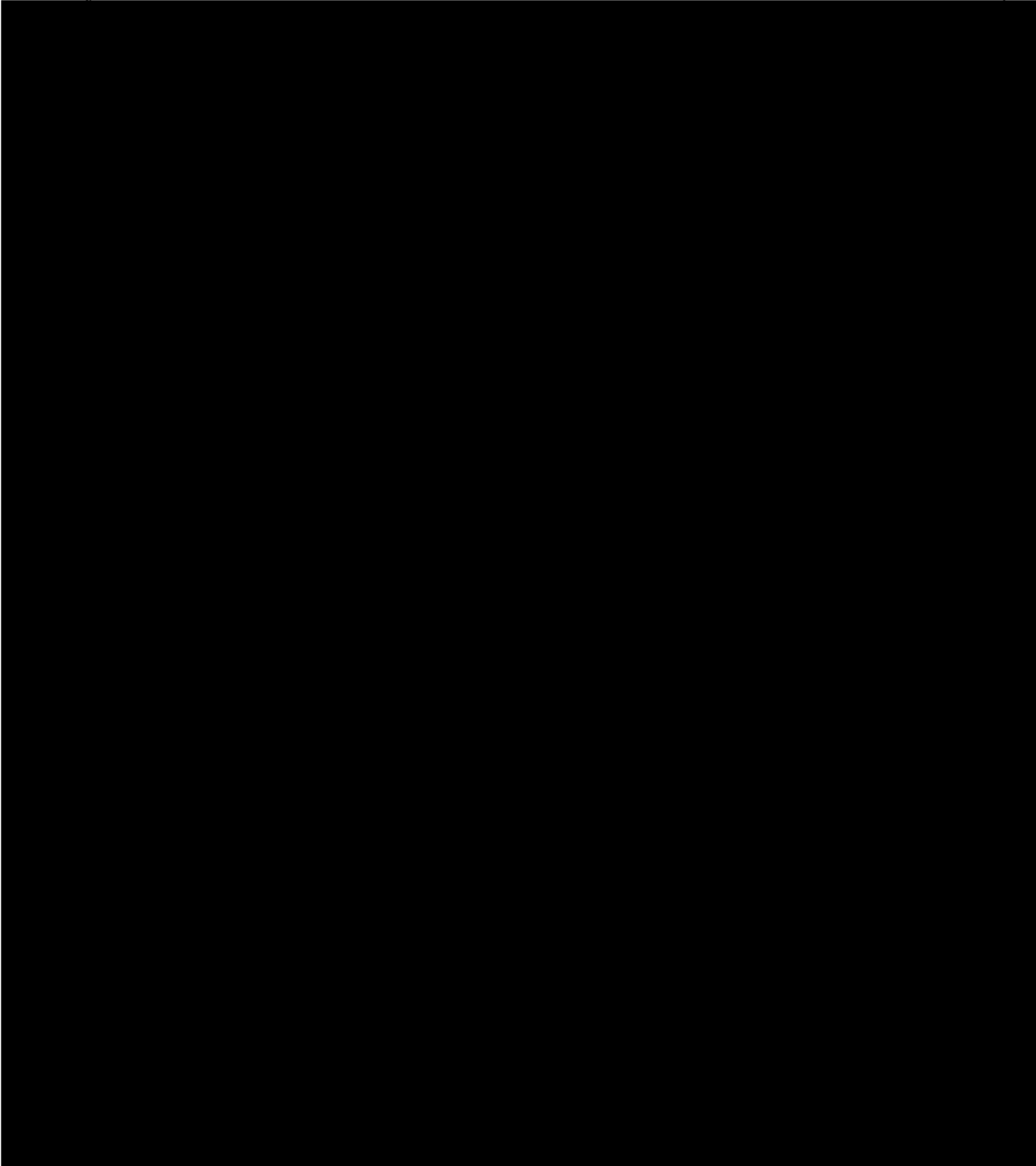


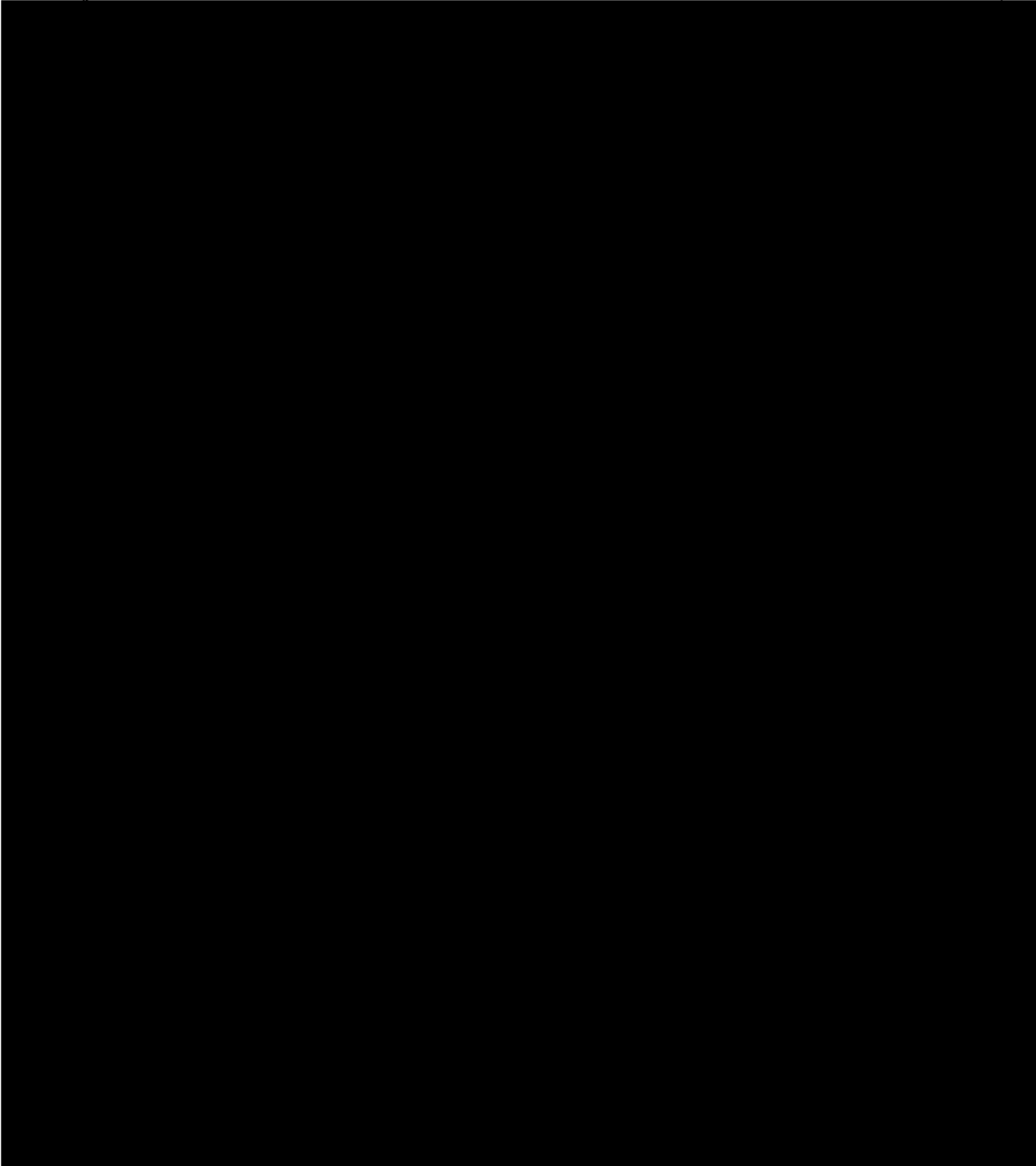


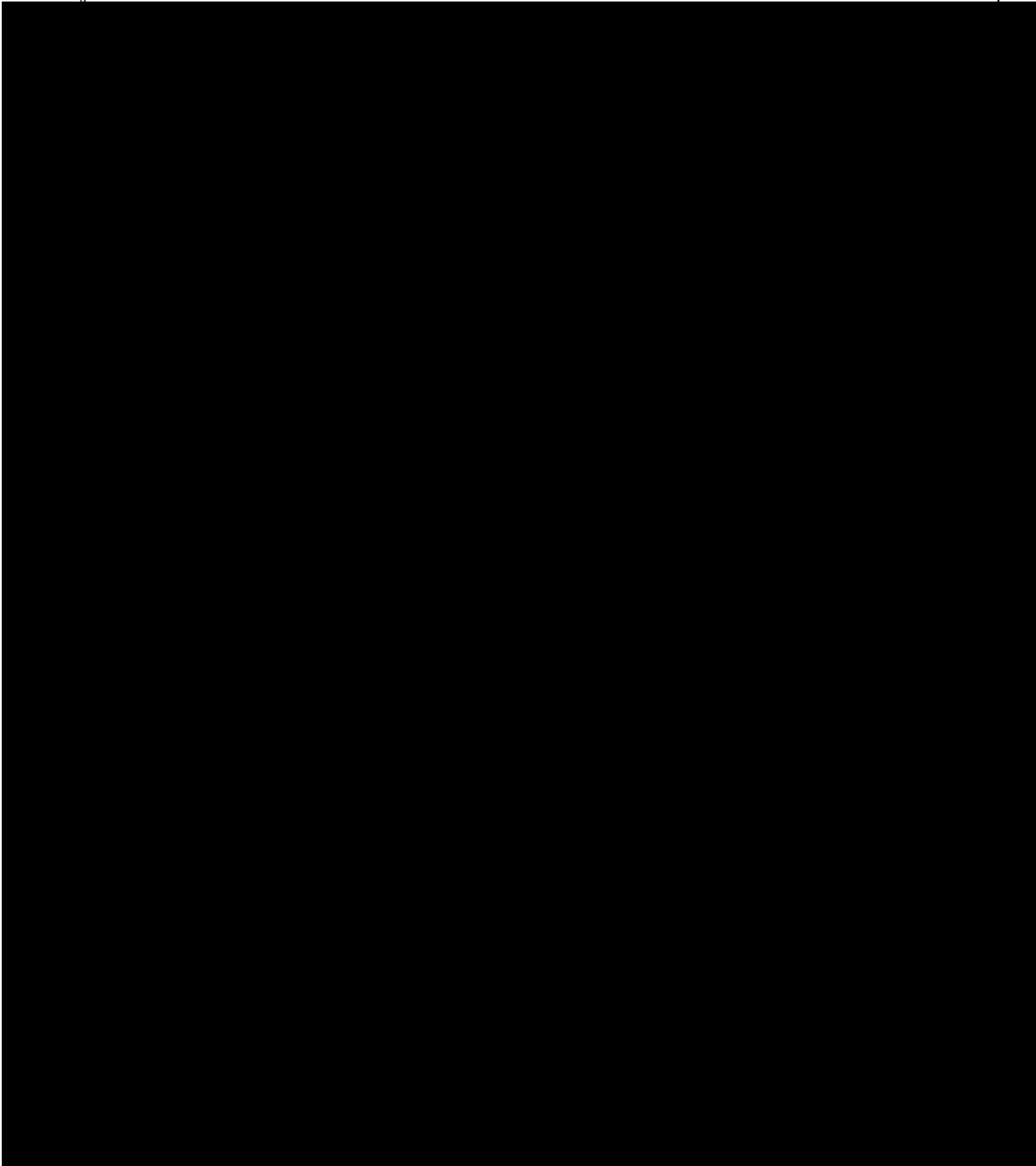














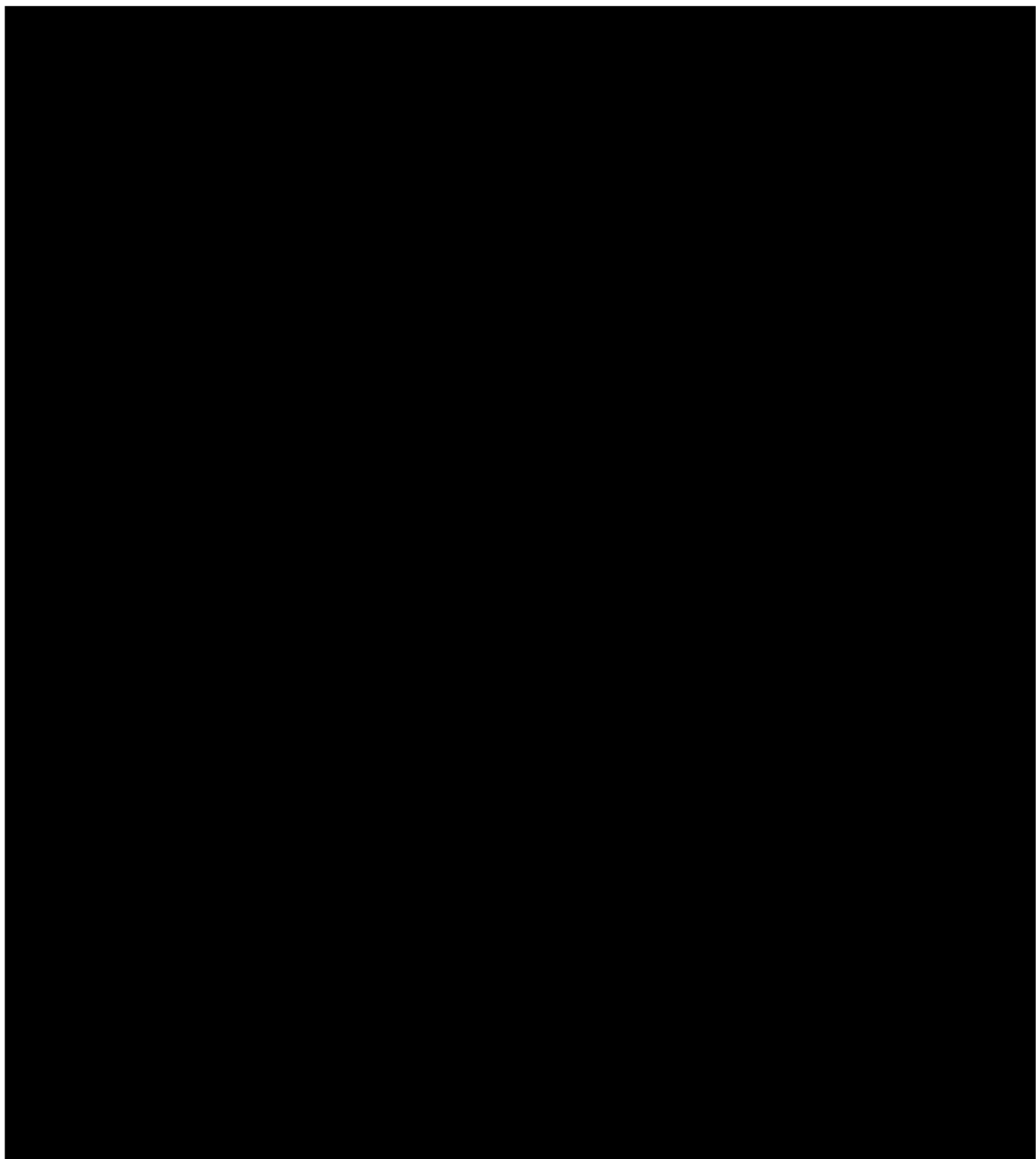


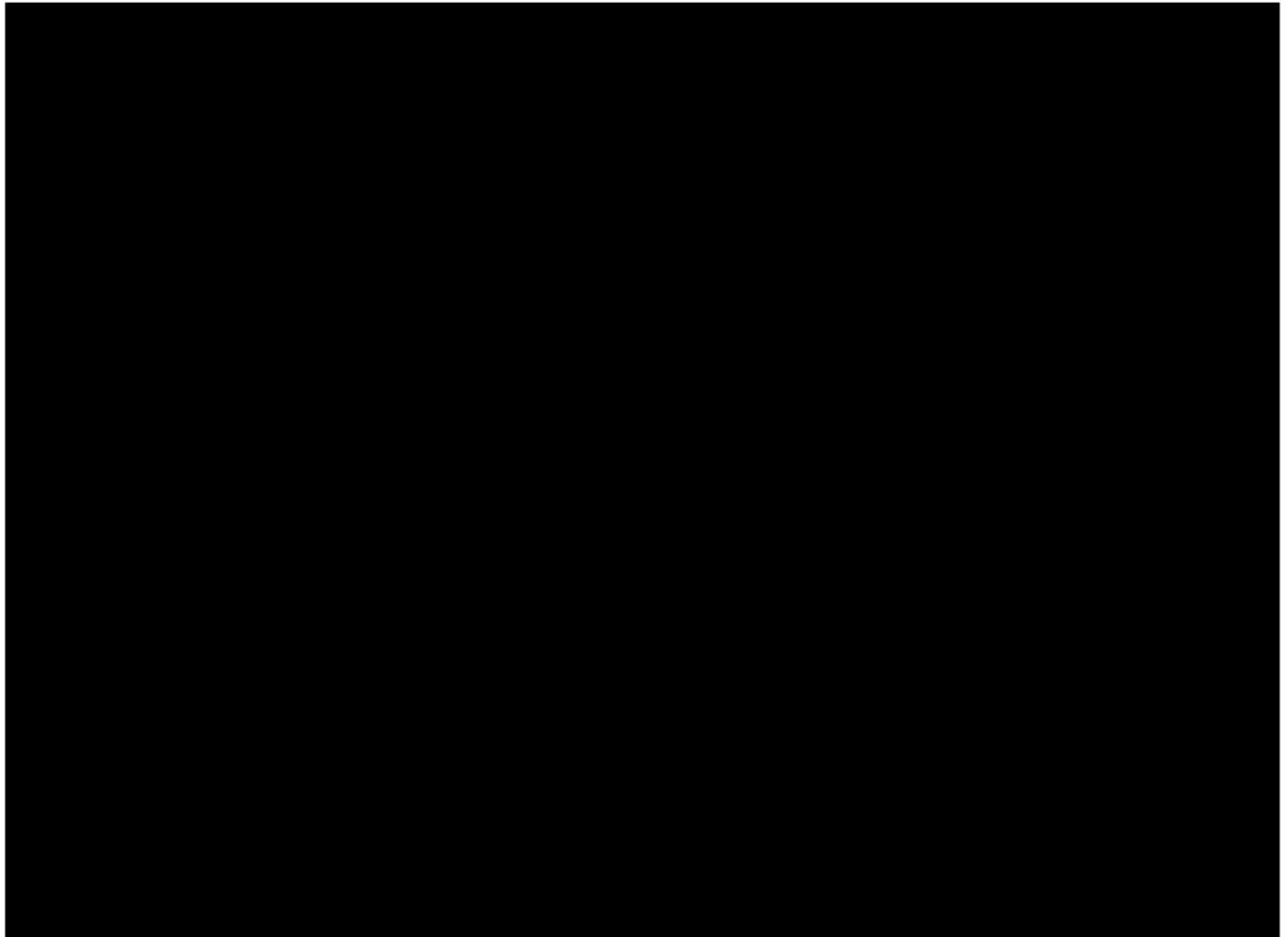
**U.S. Department of Justice**

**Criminal Division**

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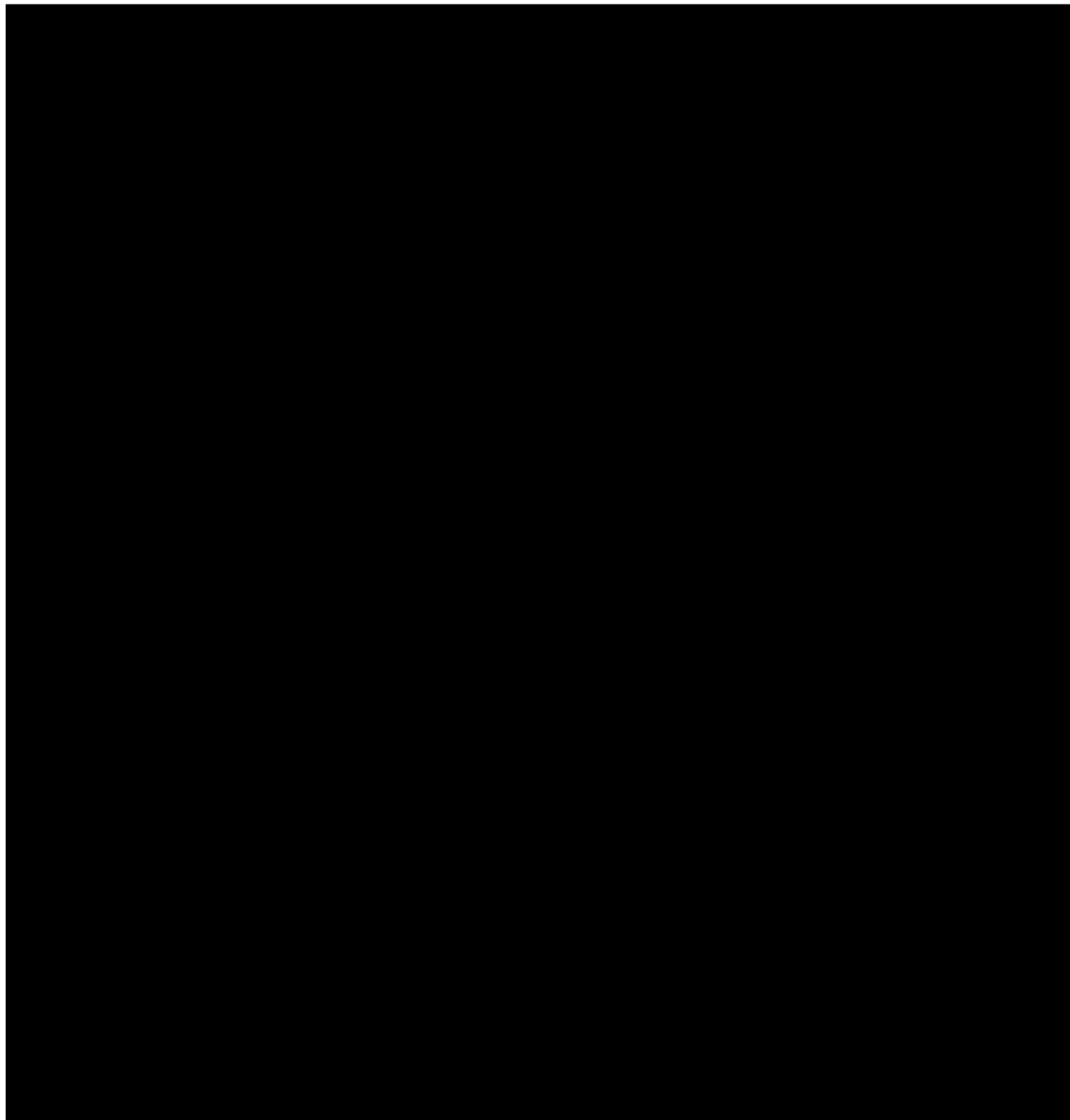
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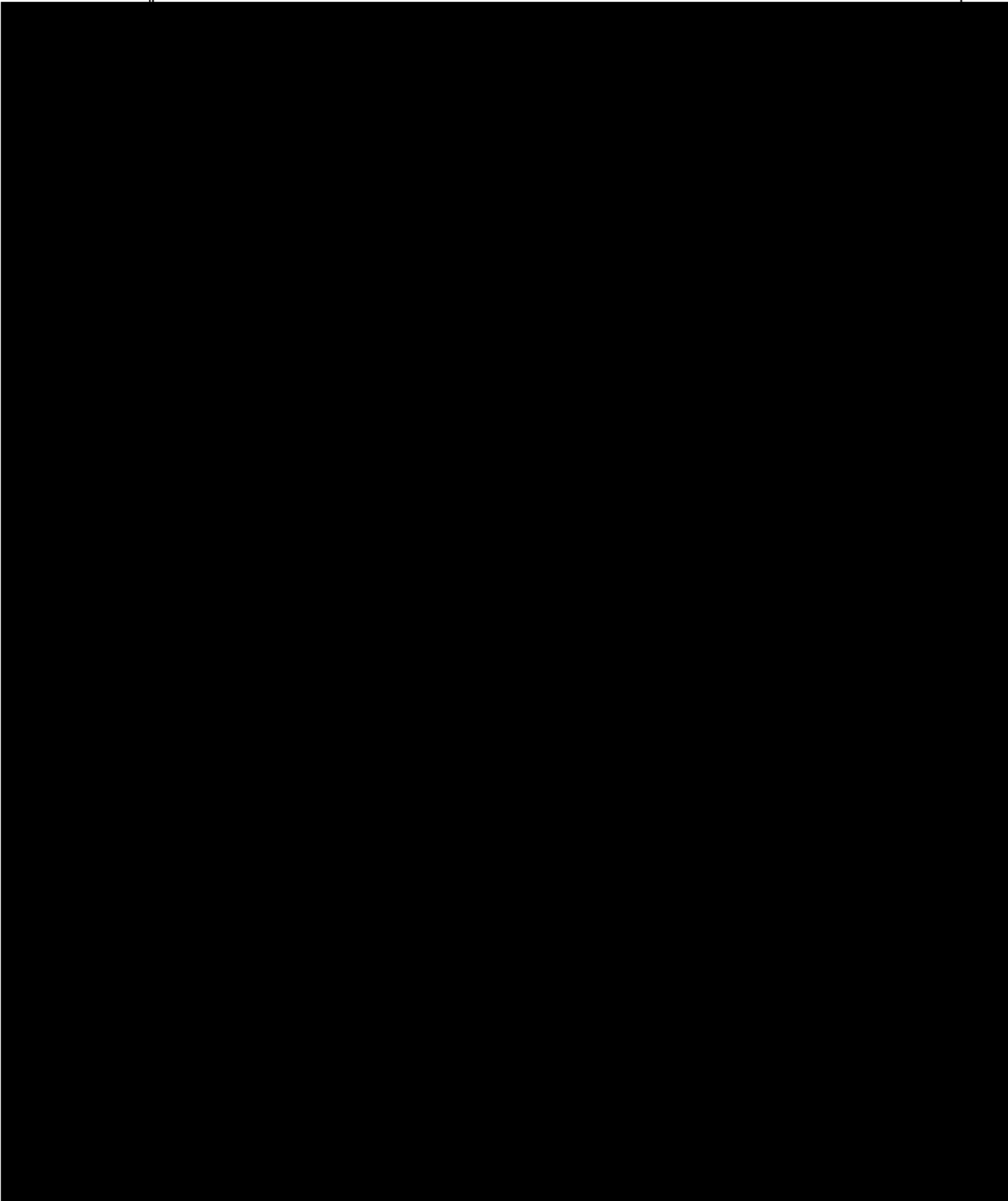


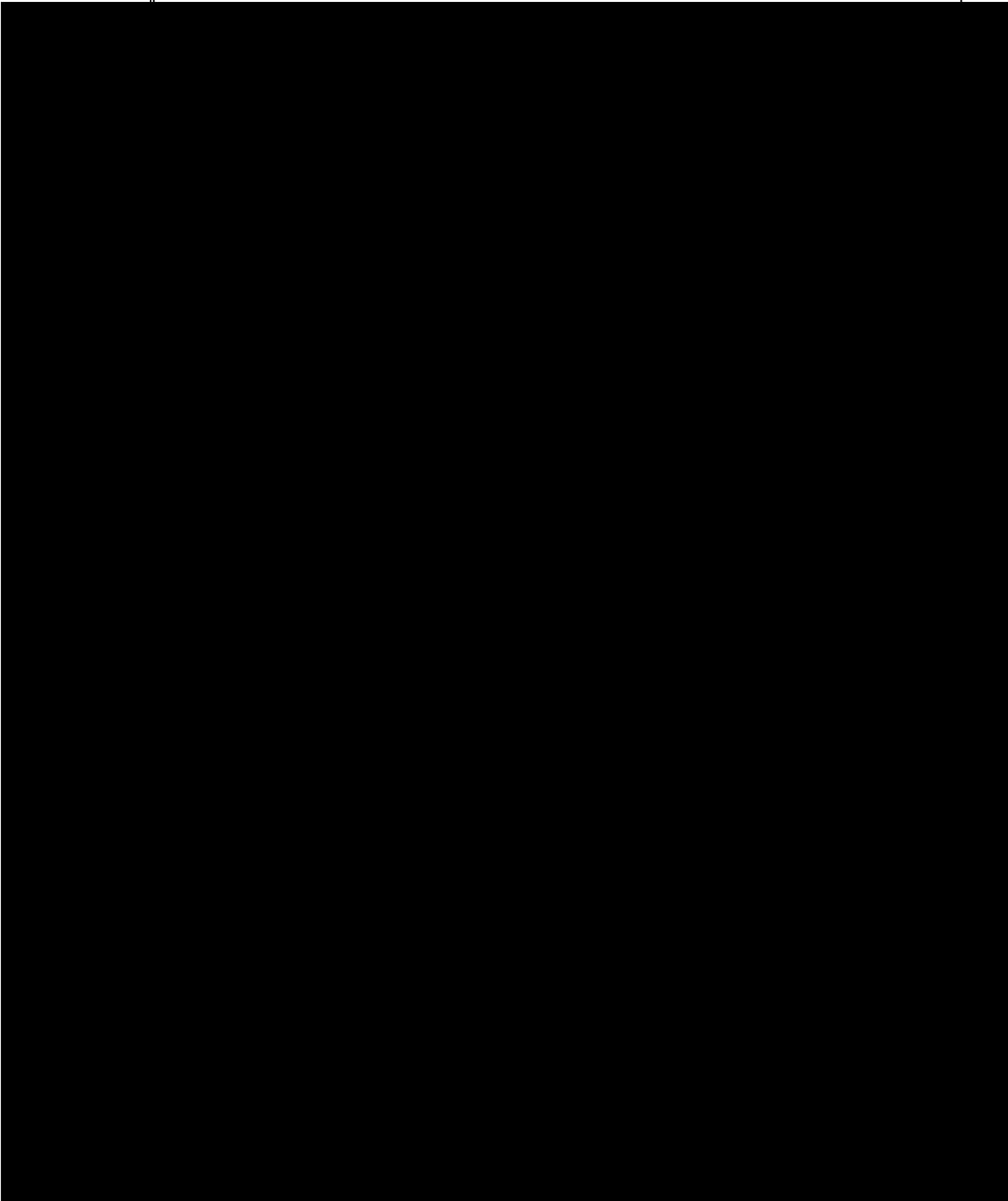
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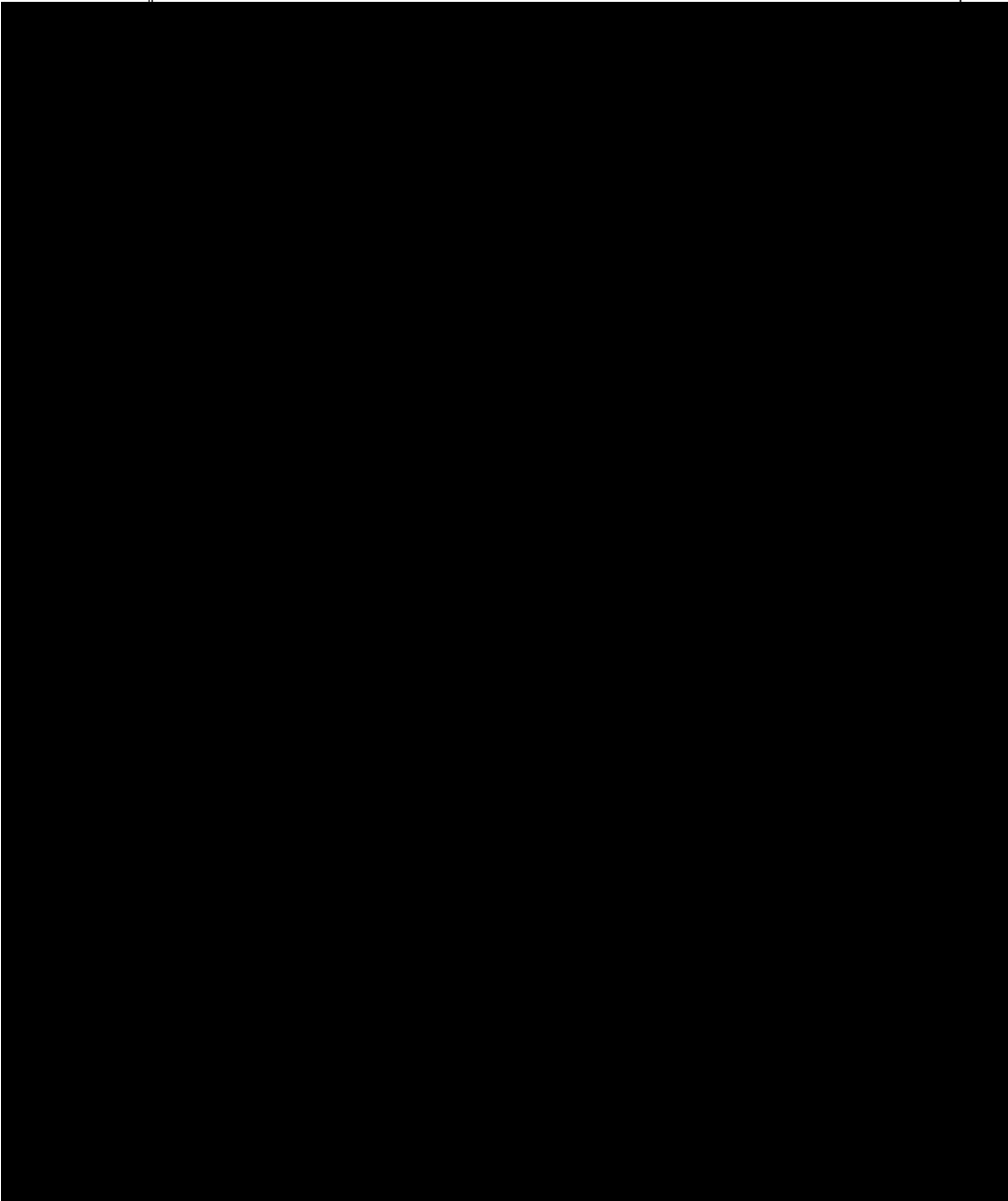


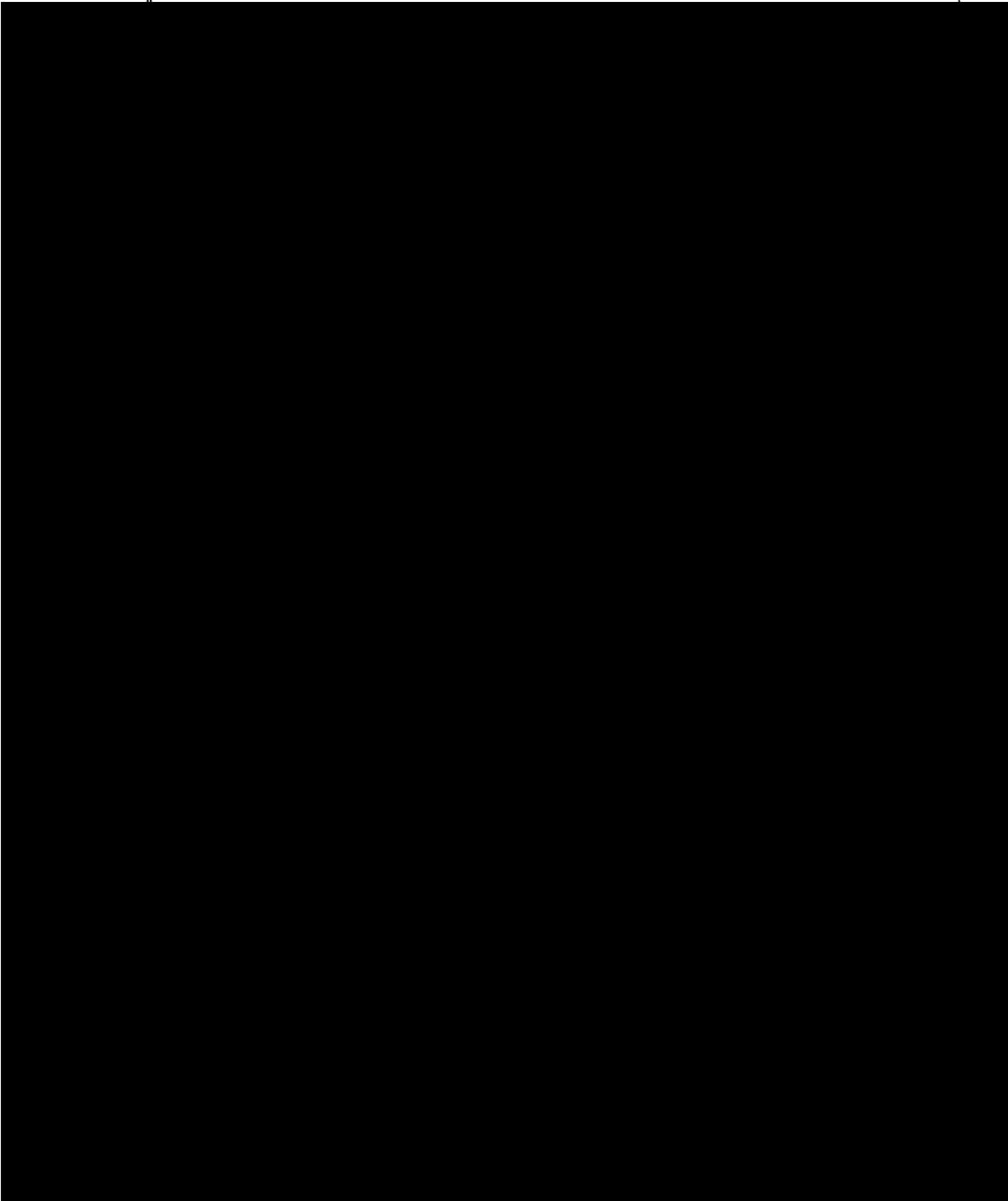
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7 UNITED STATES DISTRICT COURT  
8 DISTRICT OF ARIZONA  
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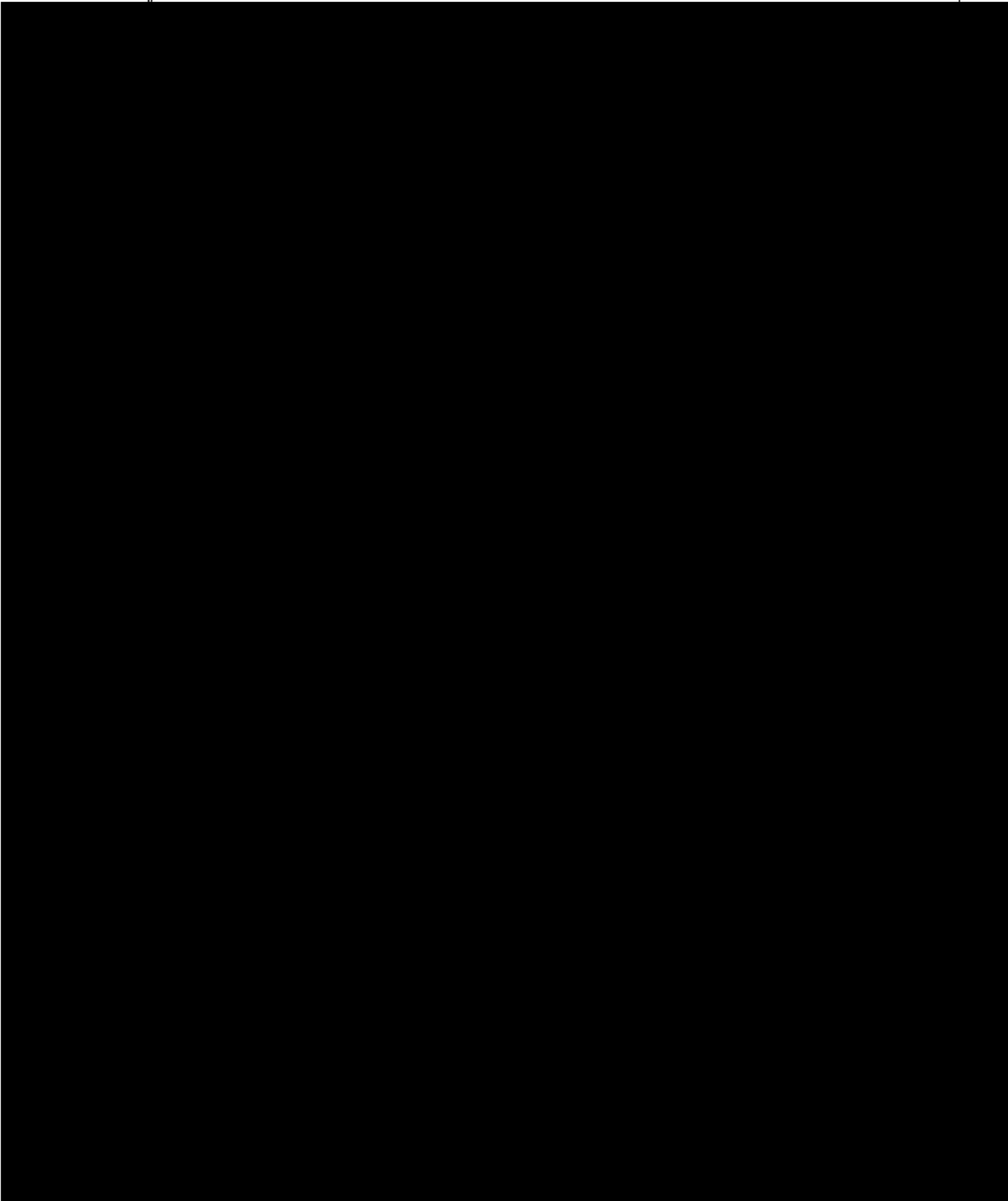


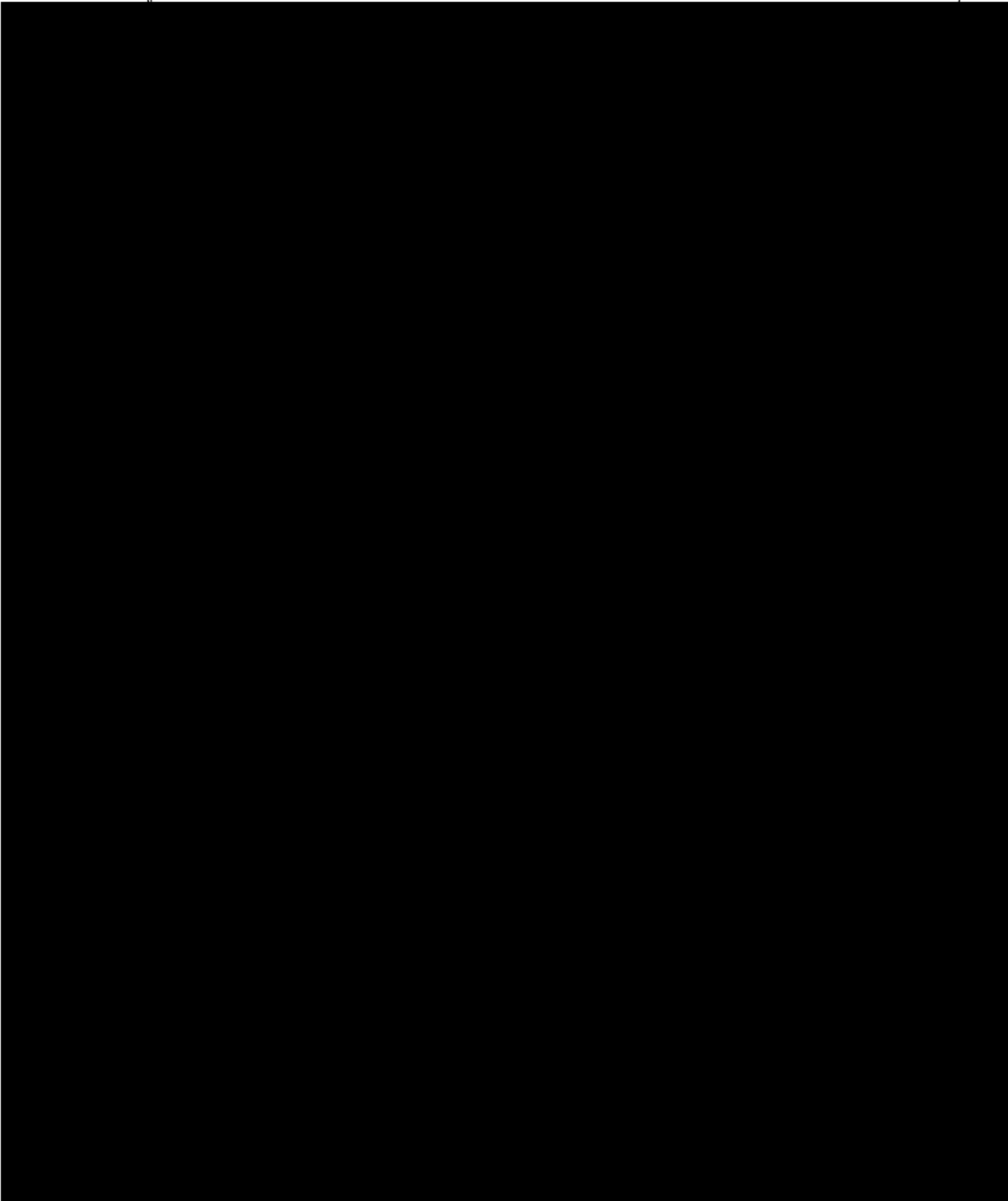


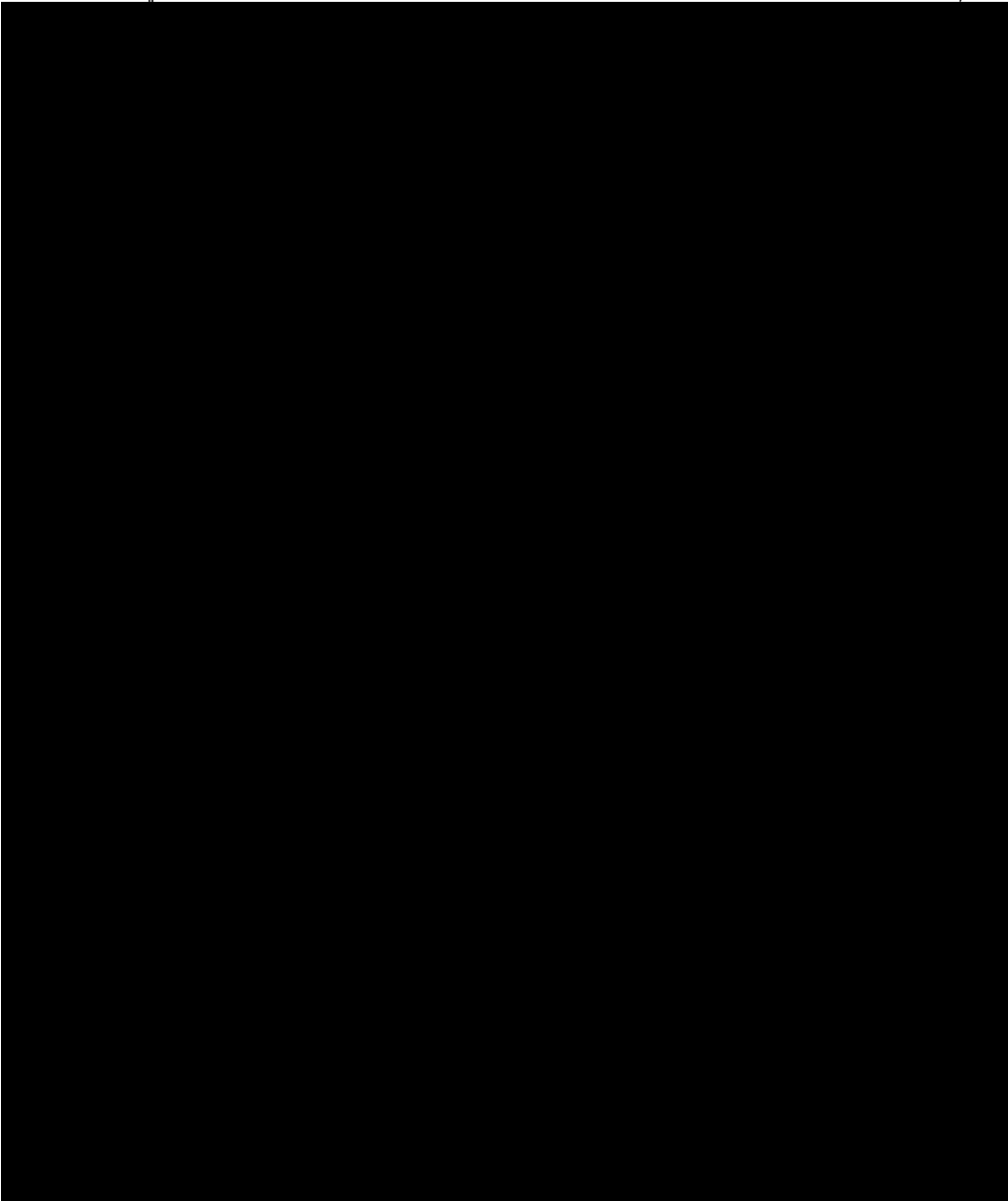


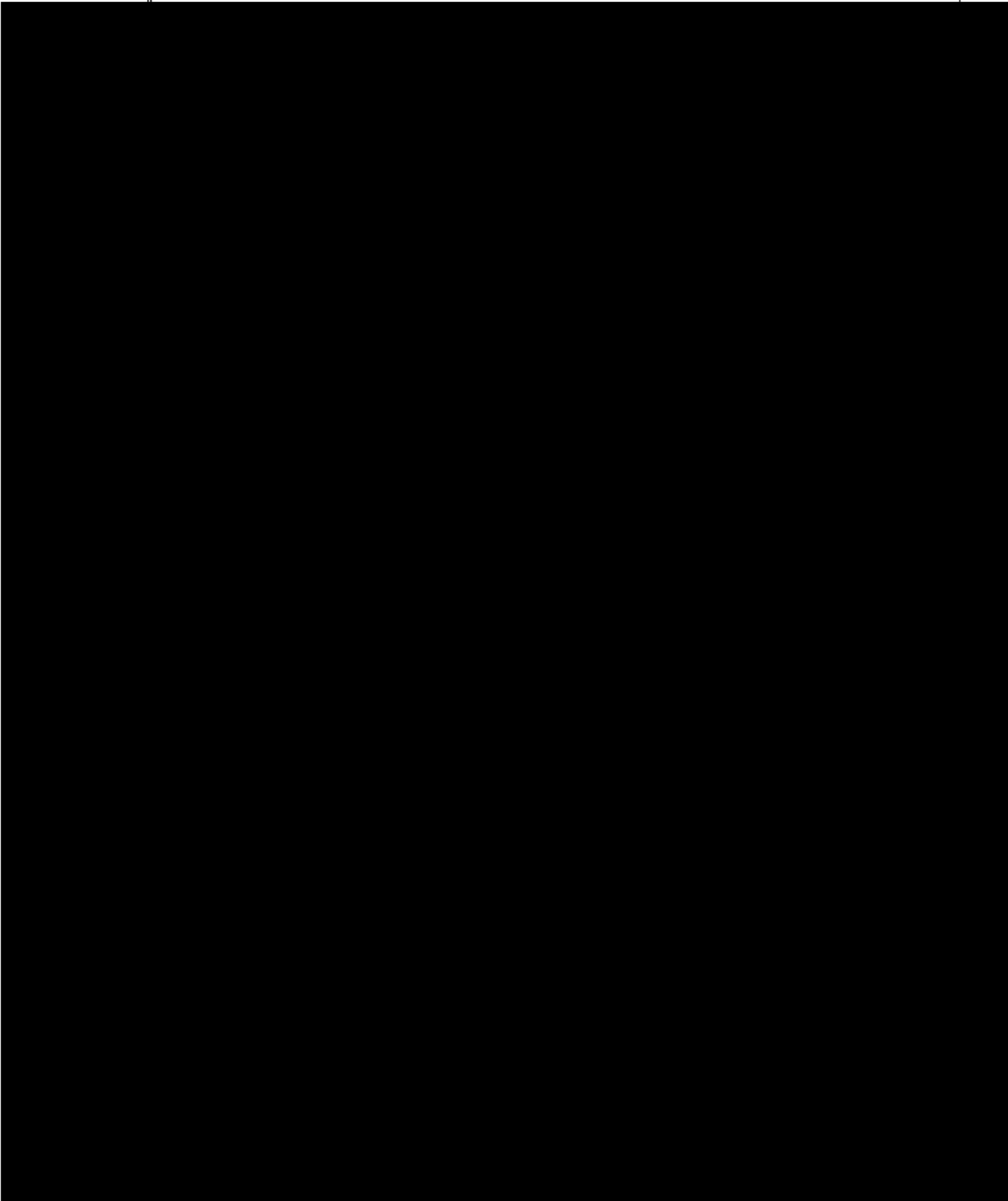


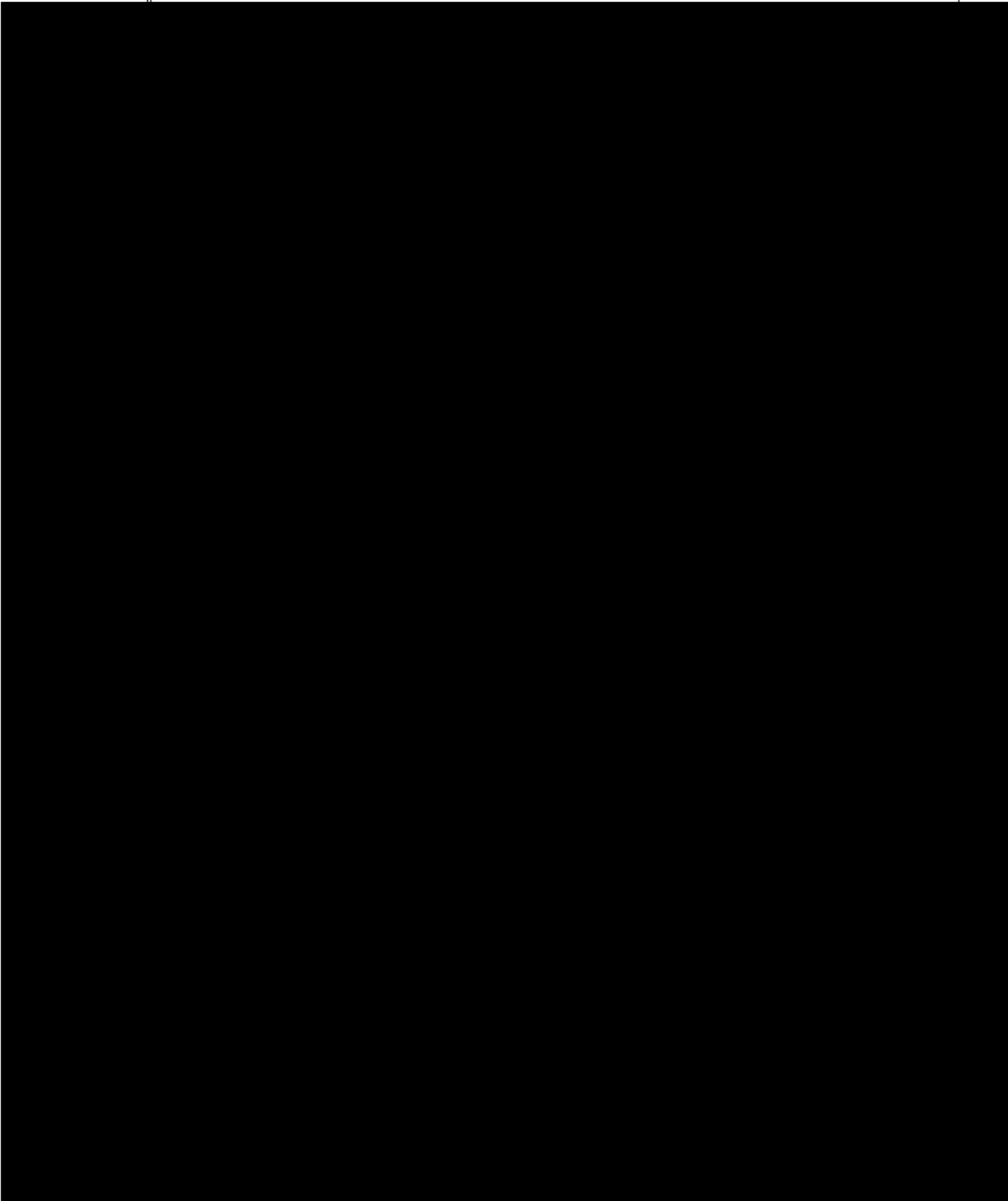


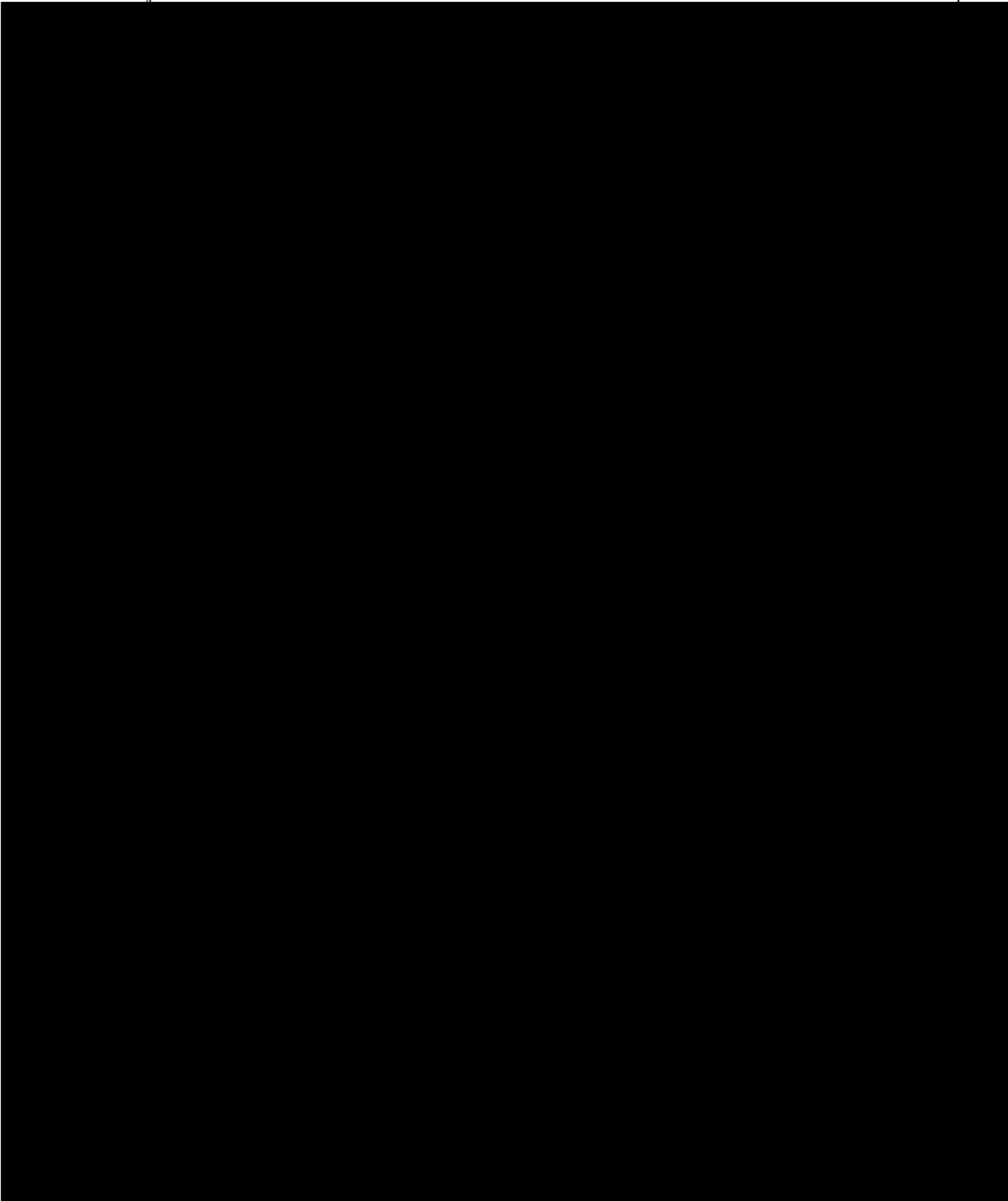


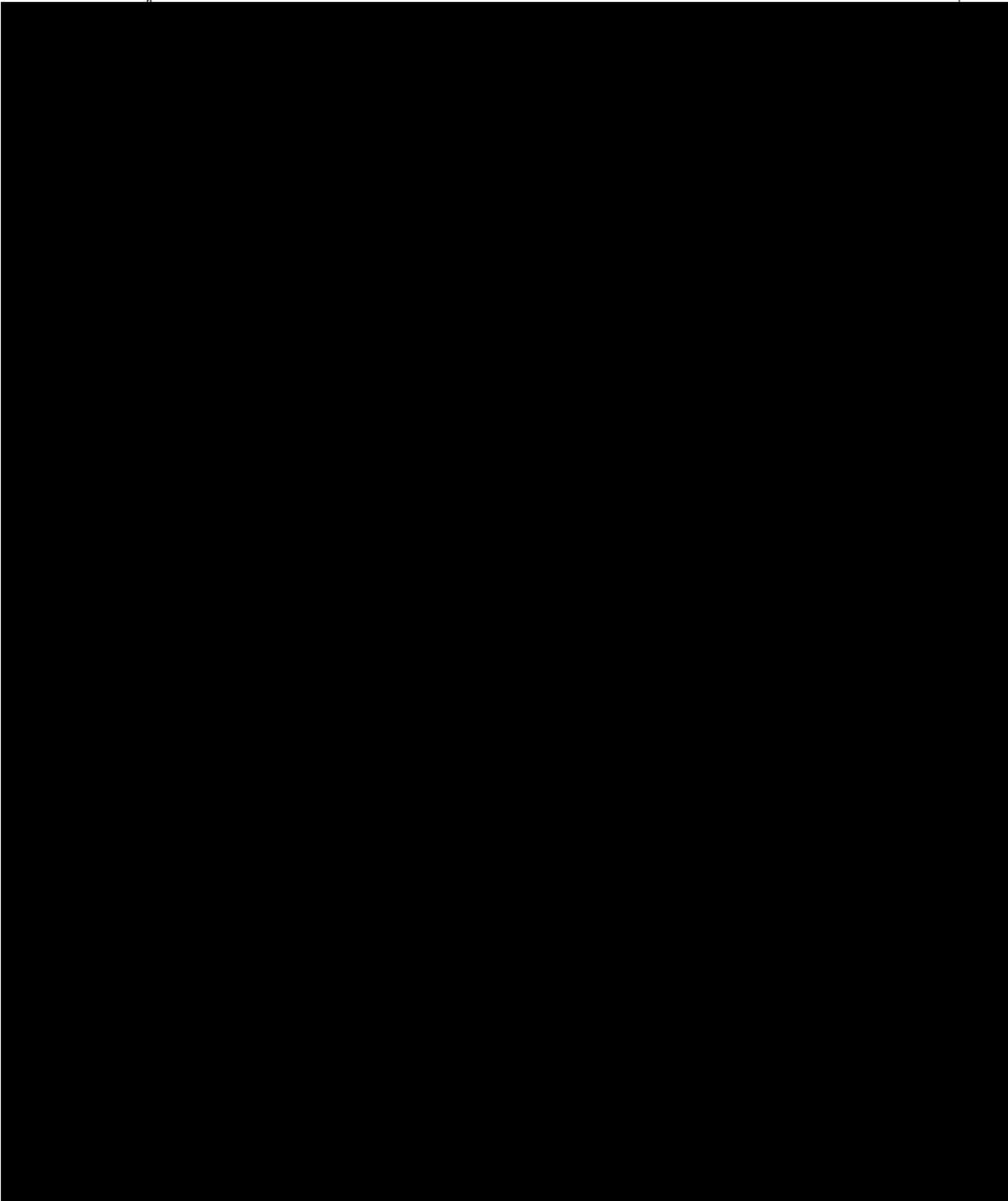


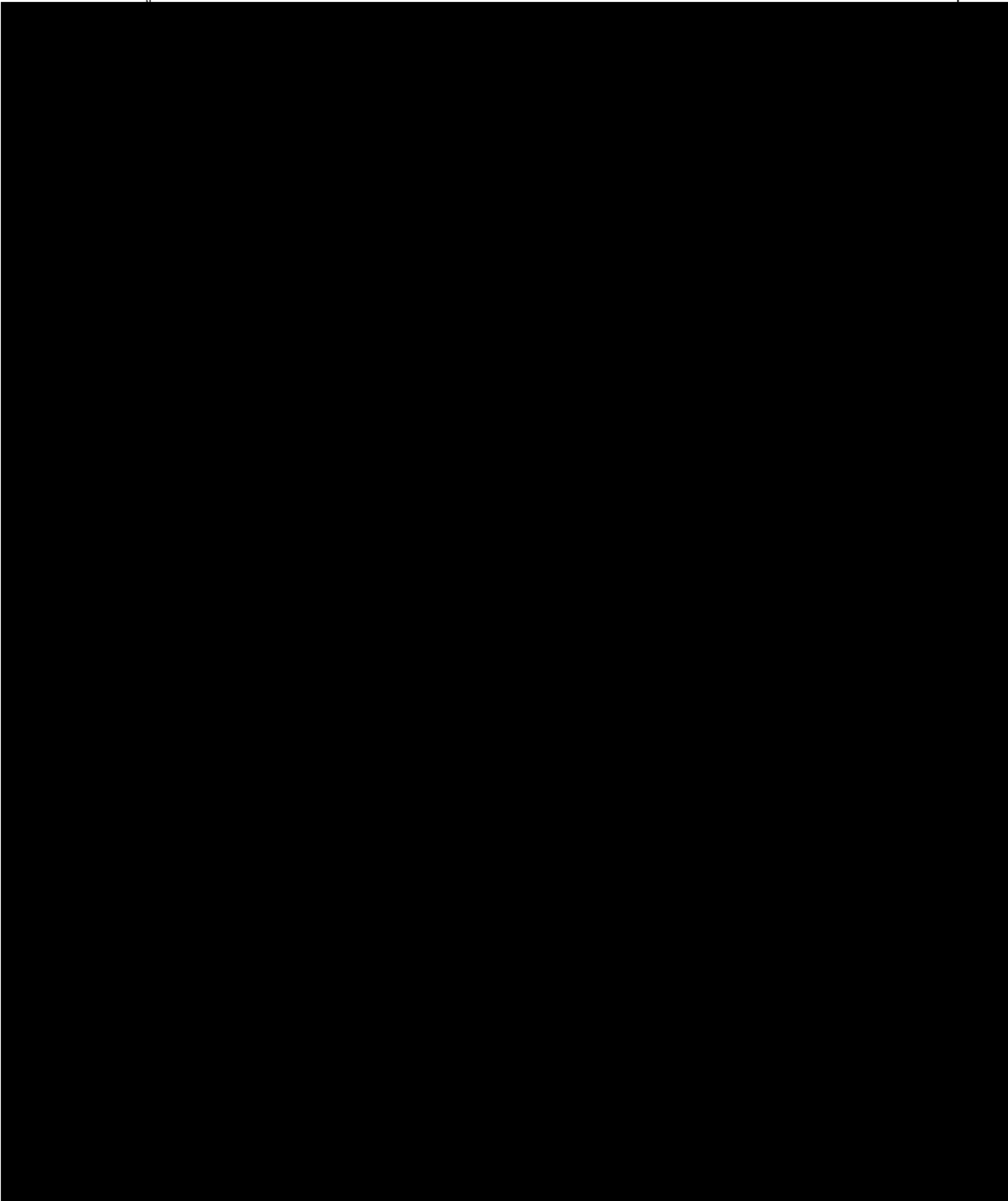




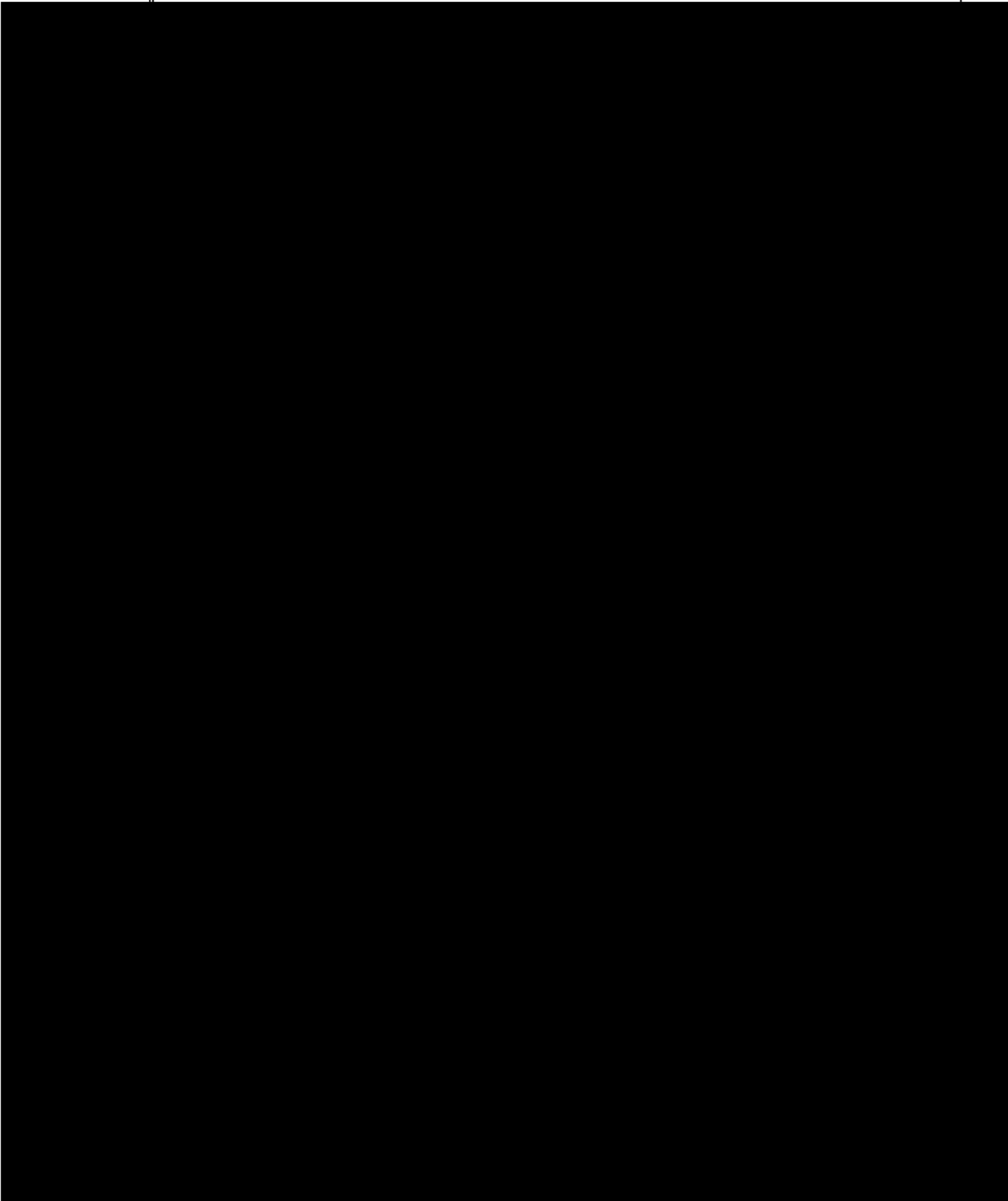


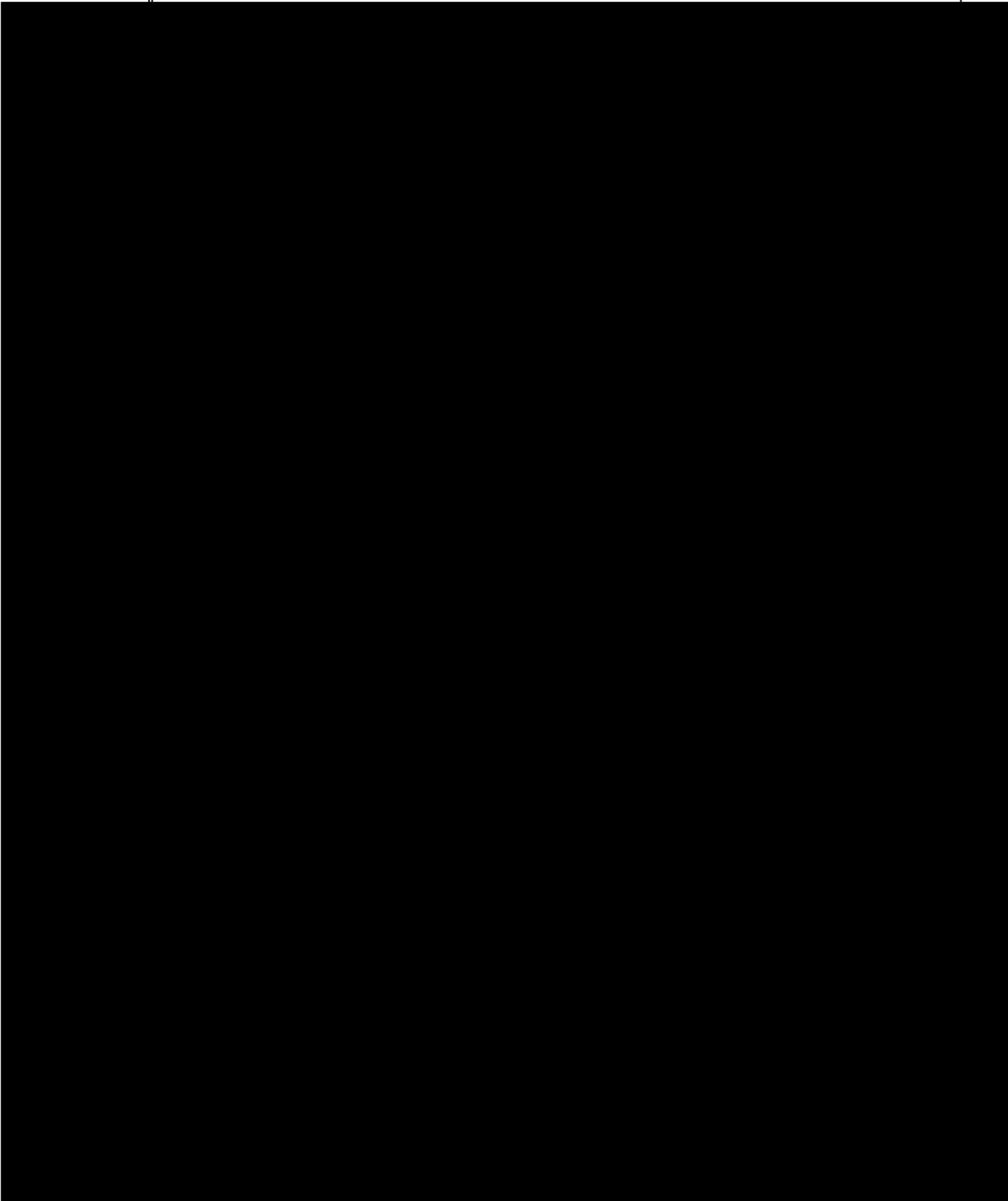


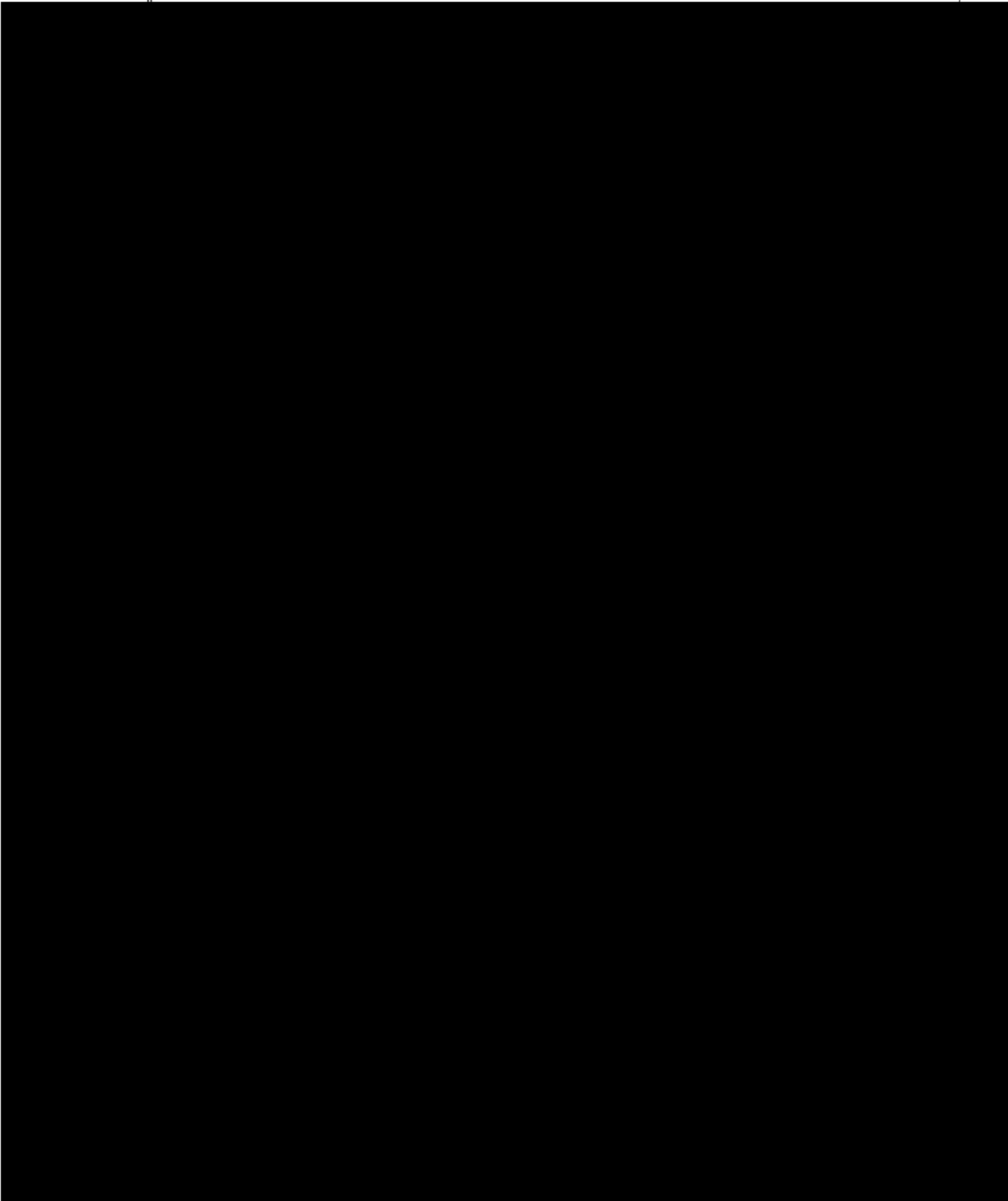


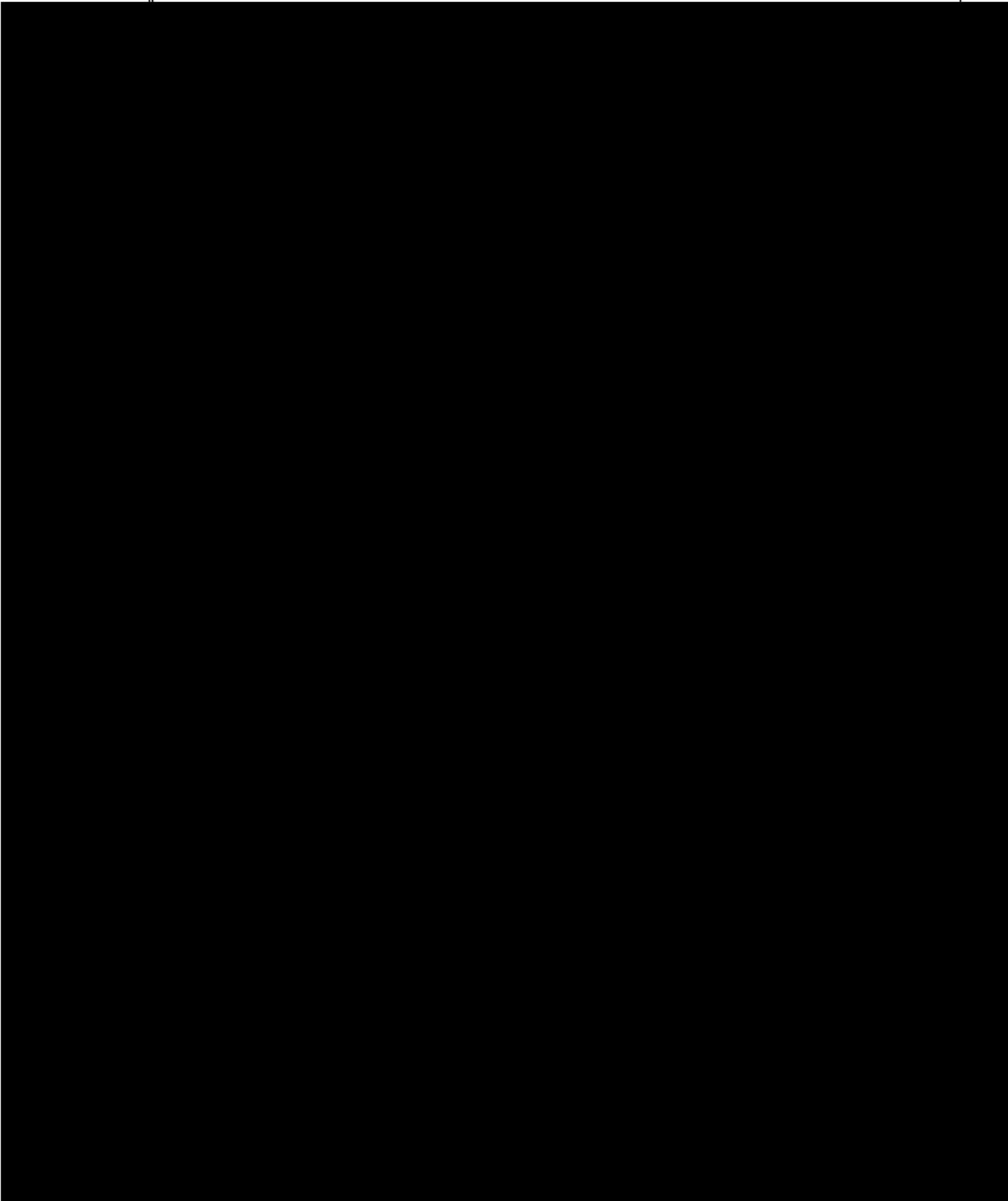


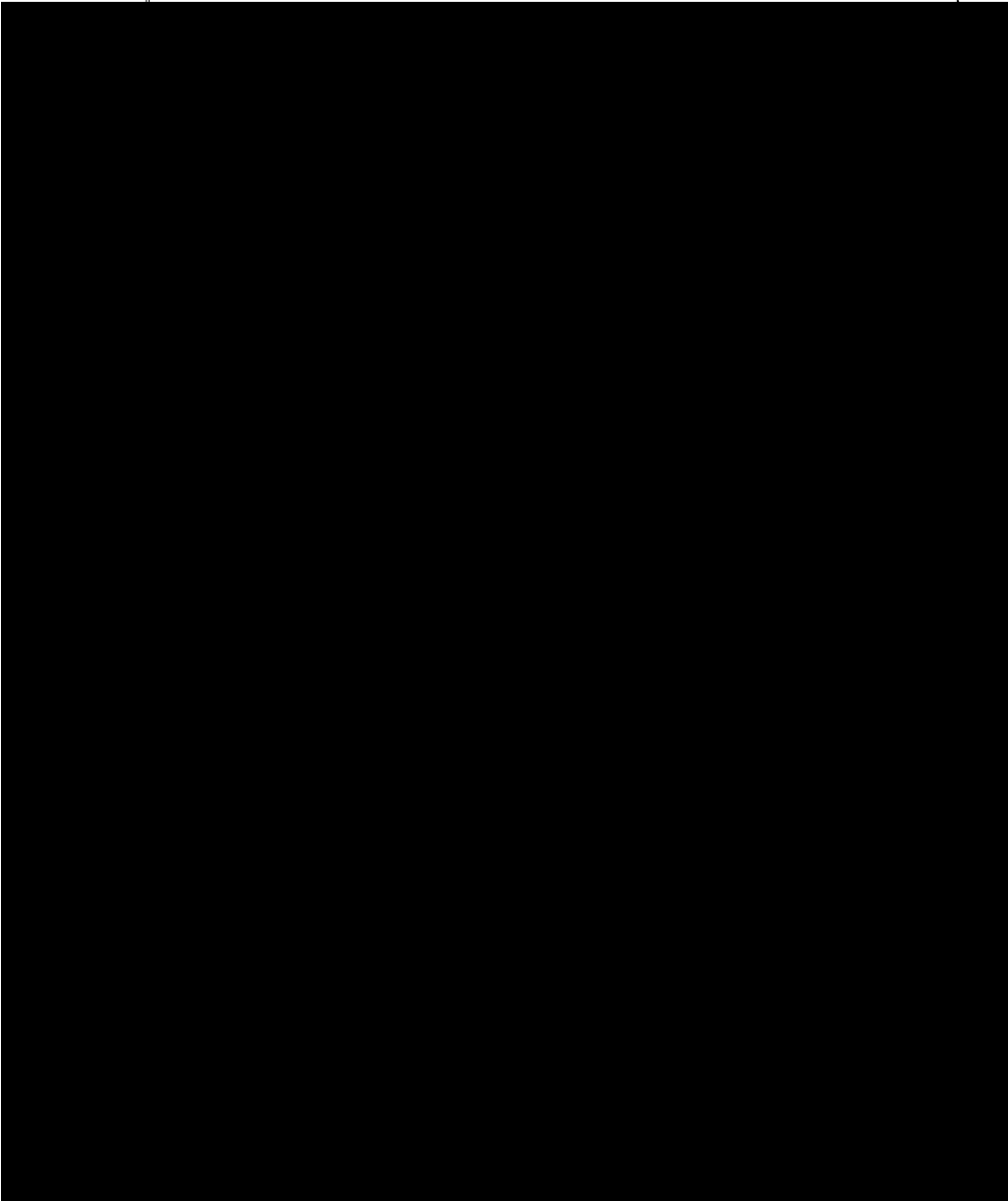


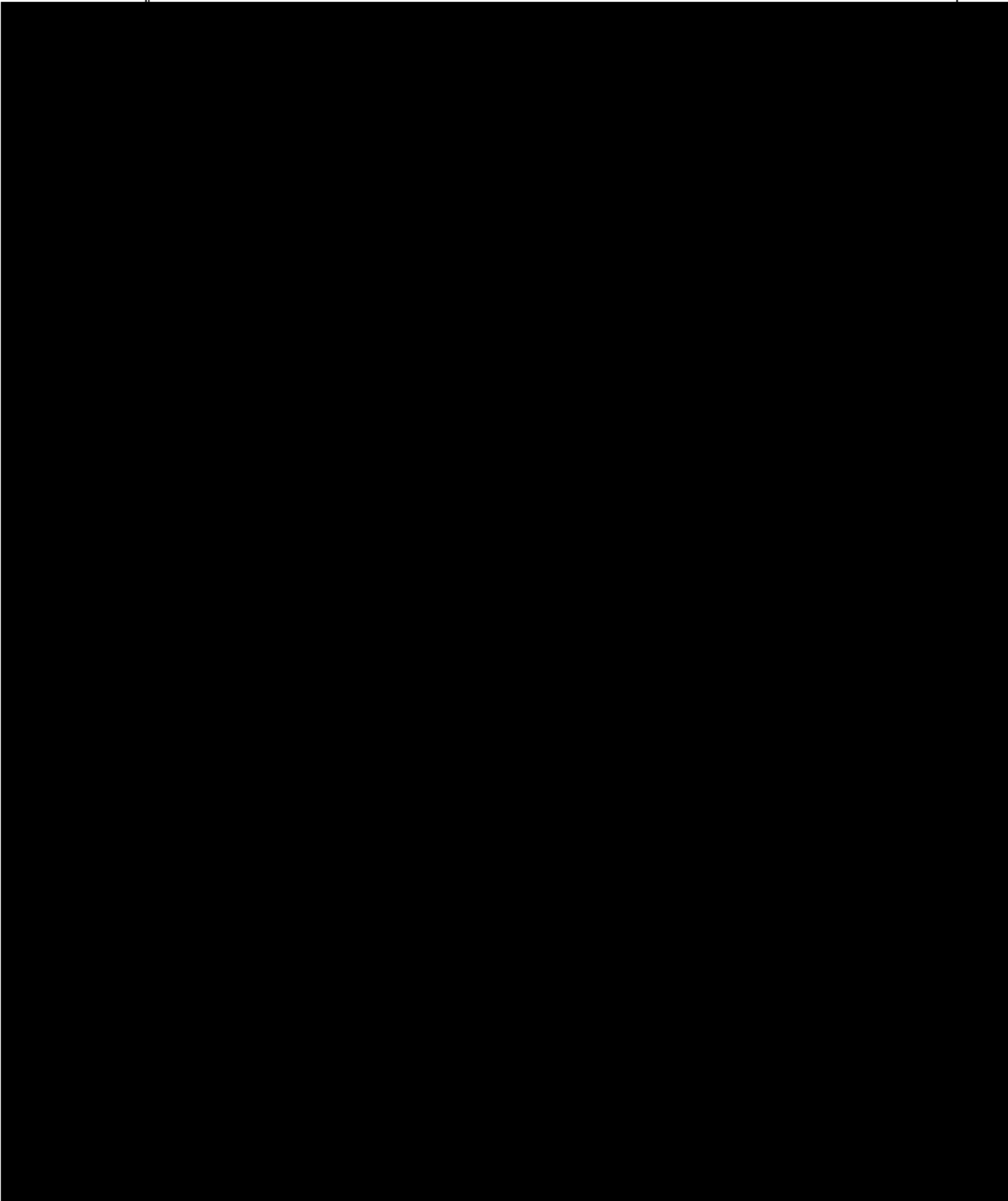


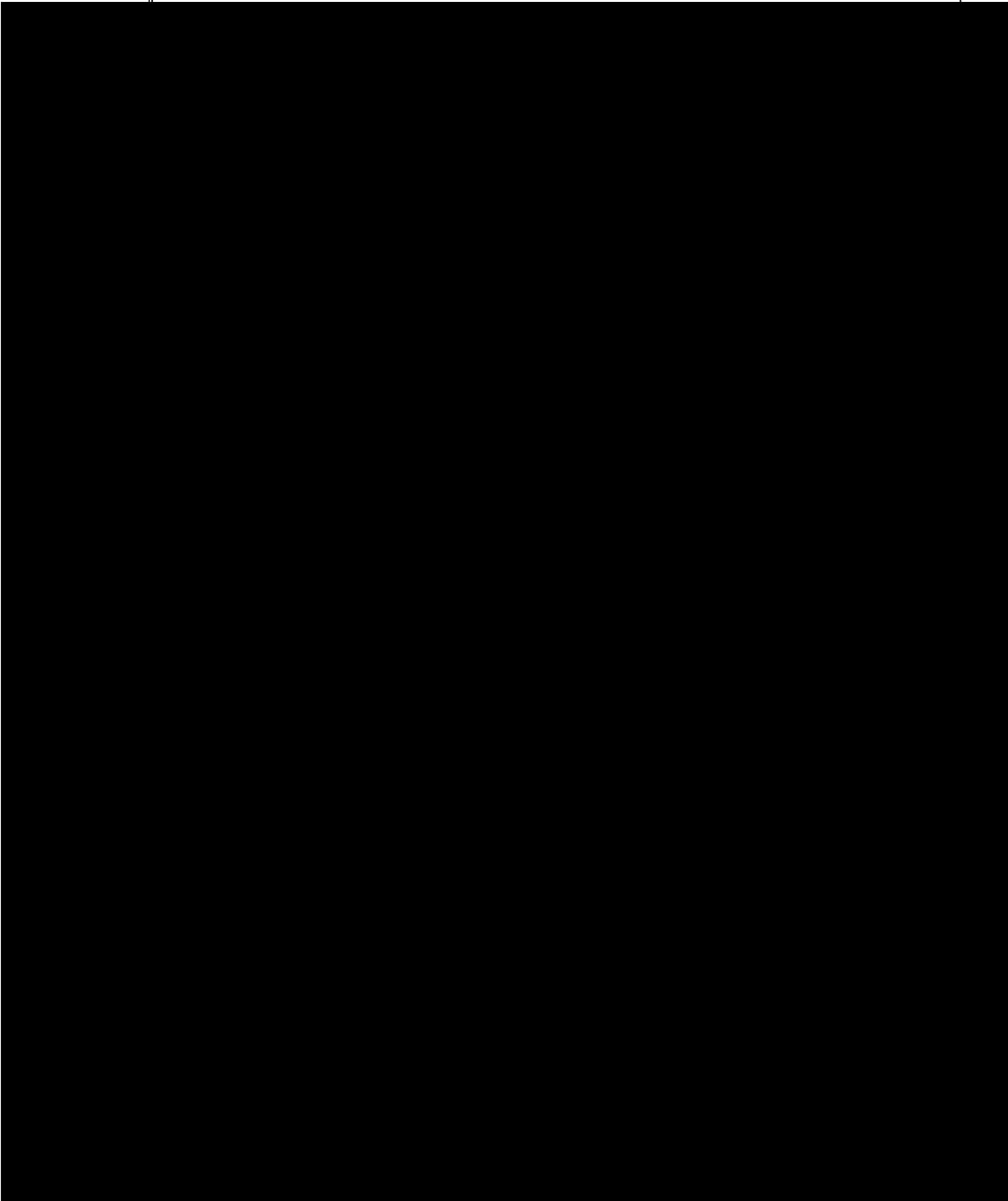


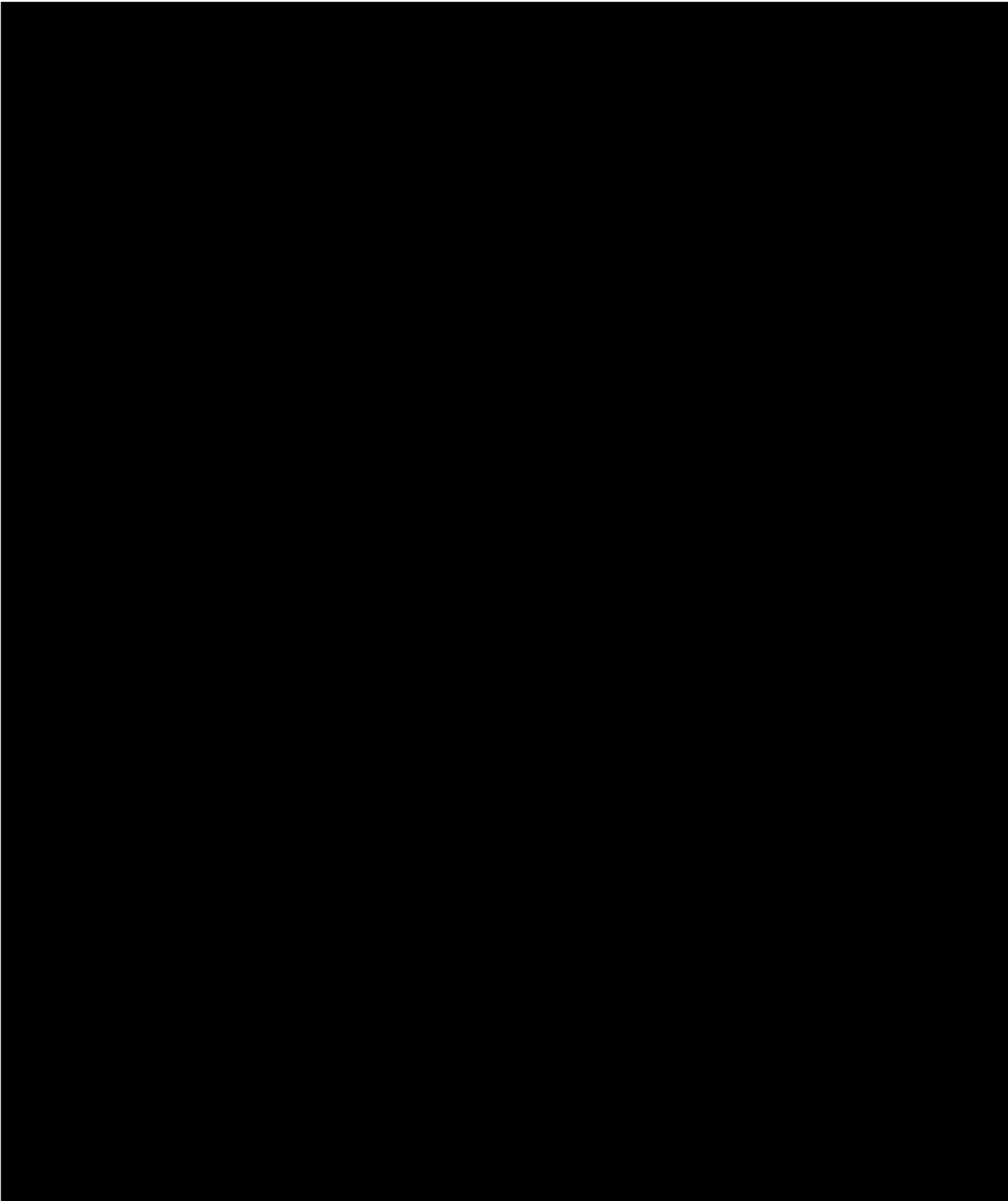




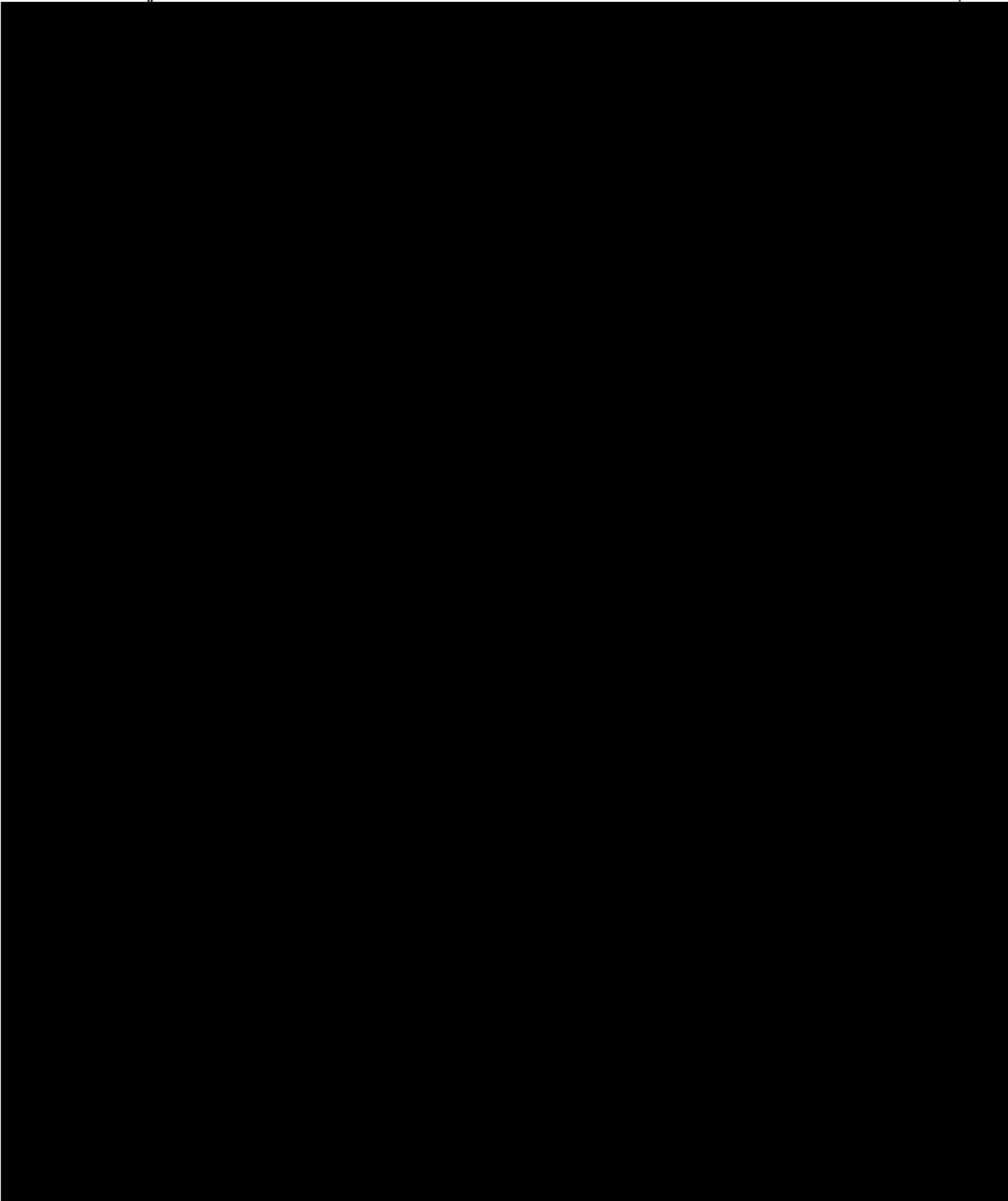


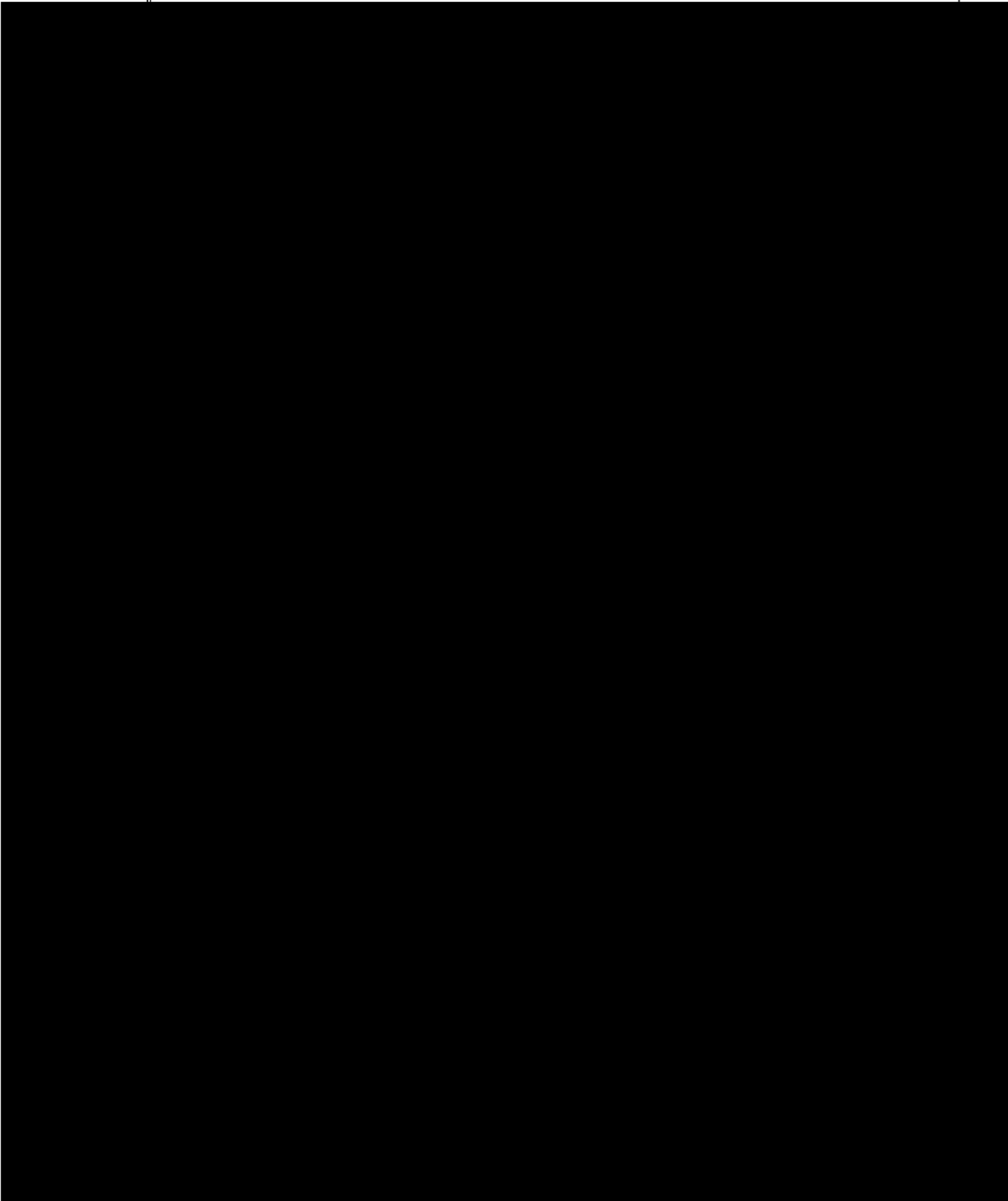


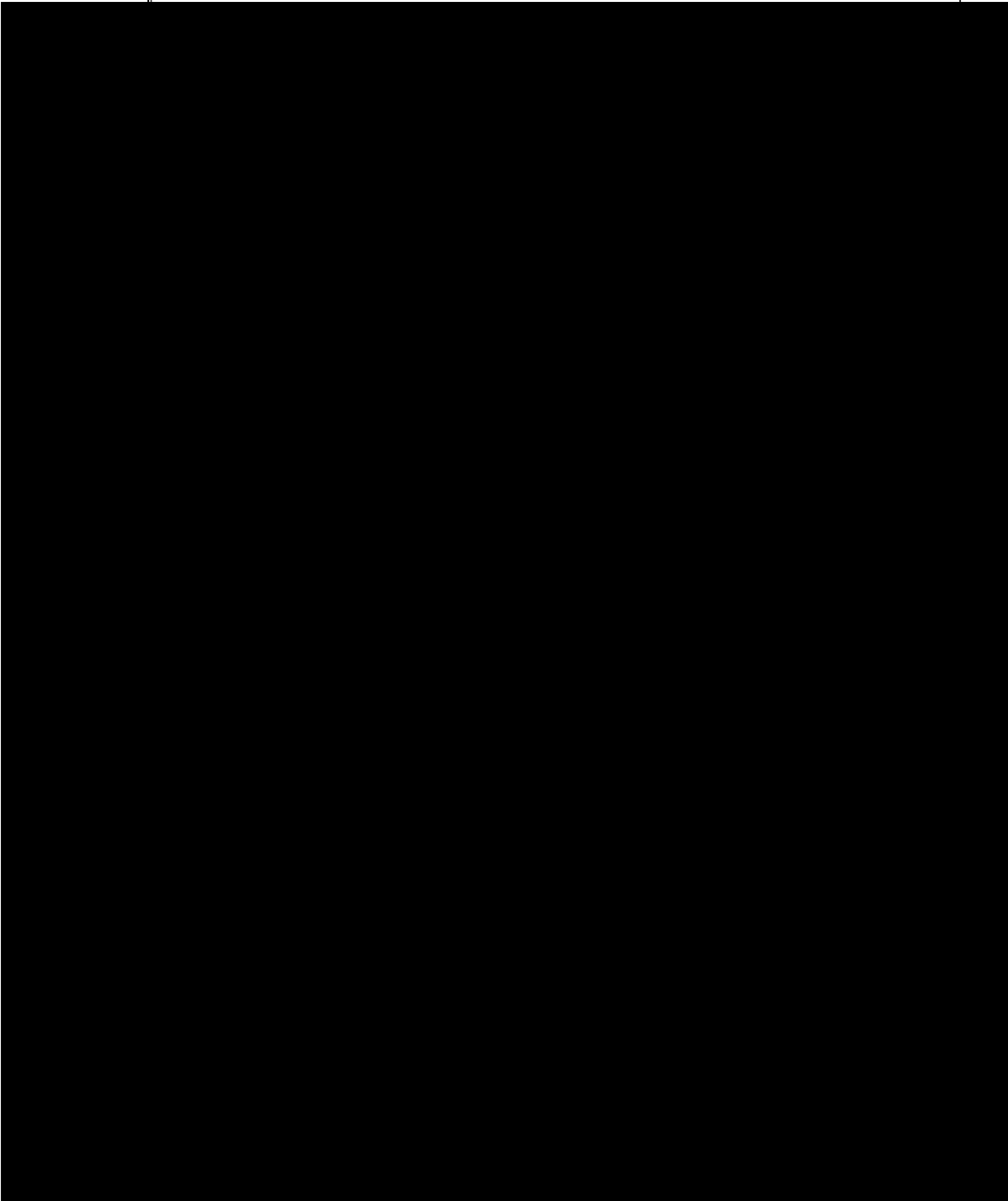


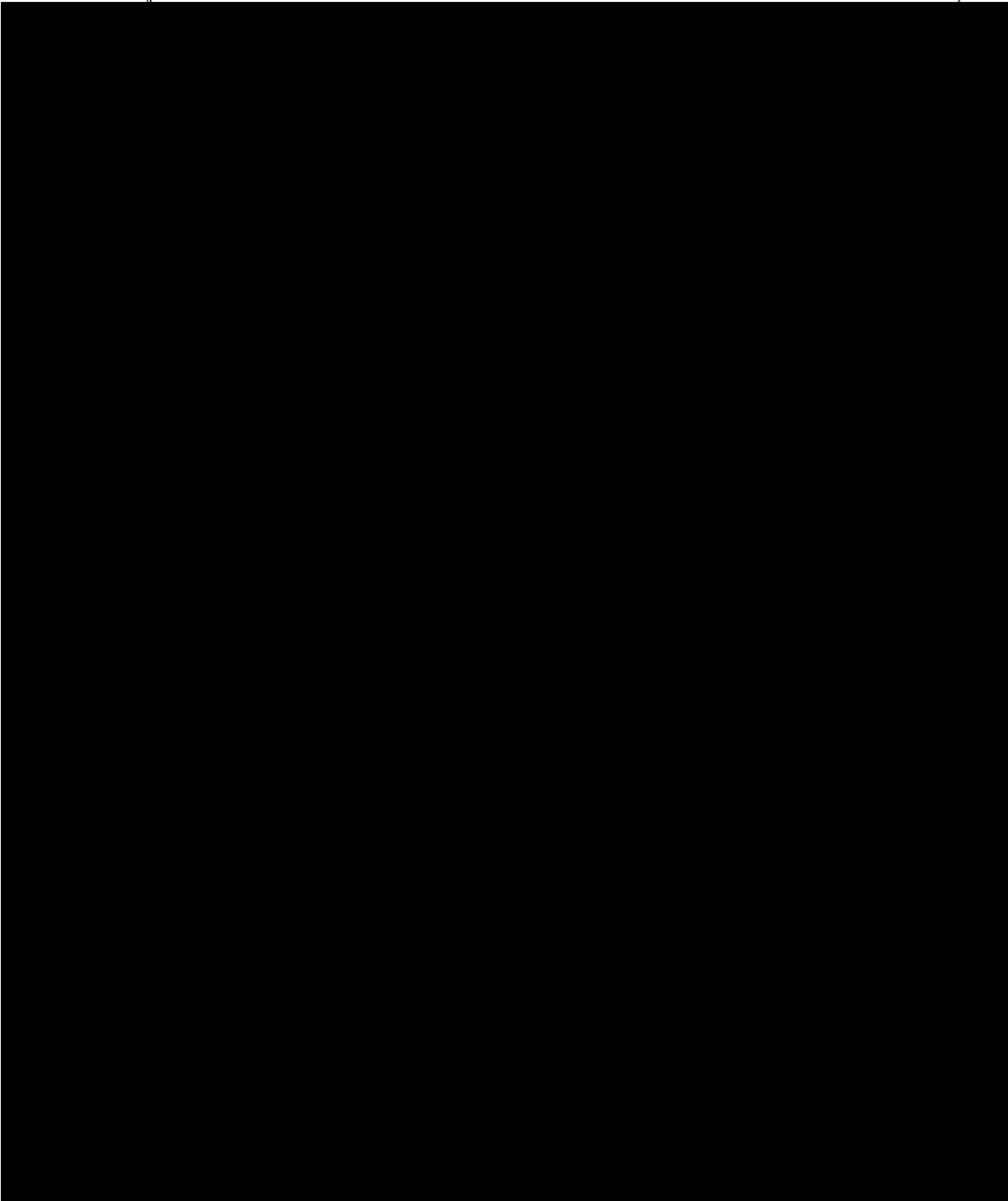


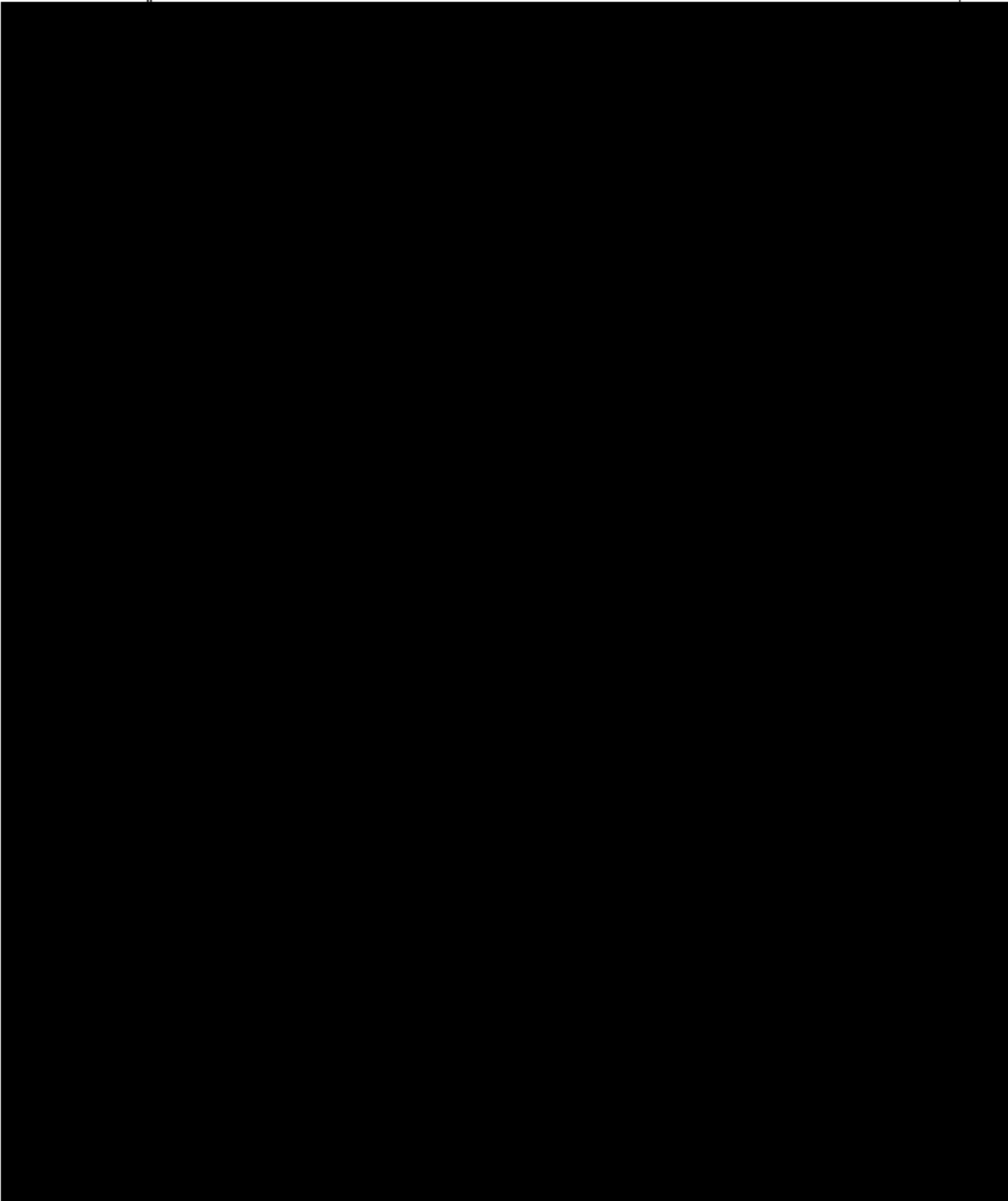


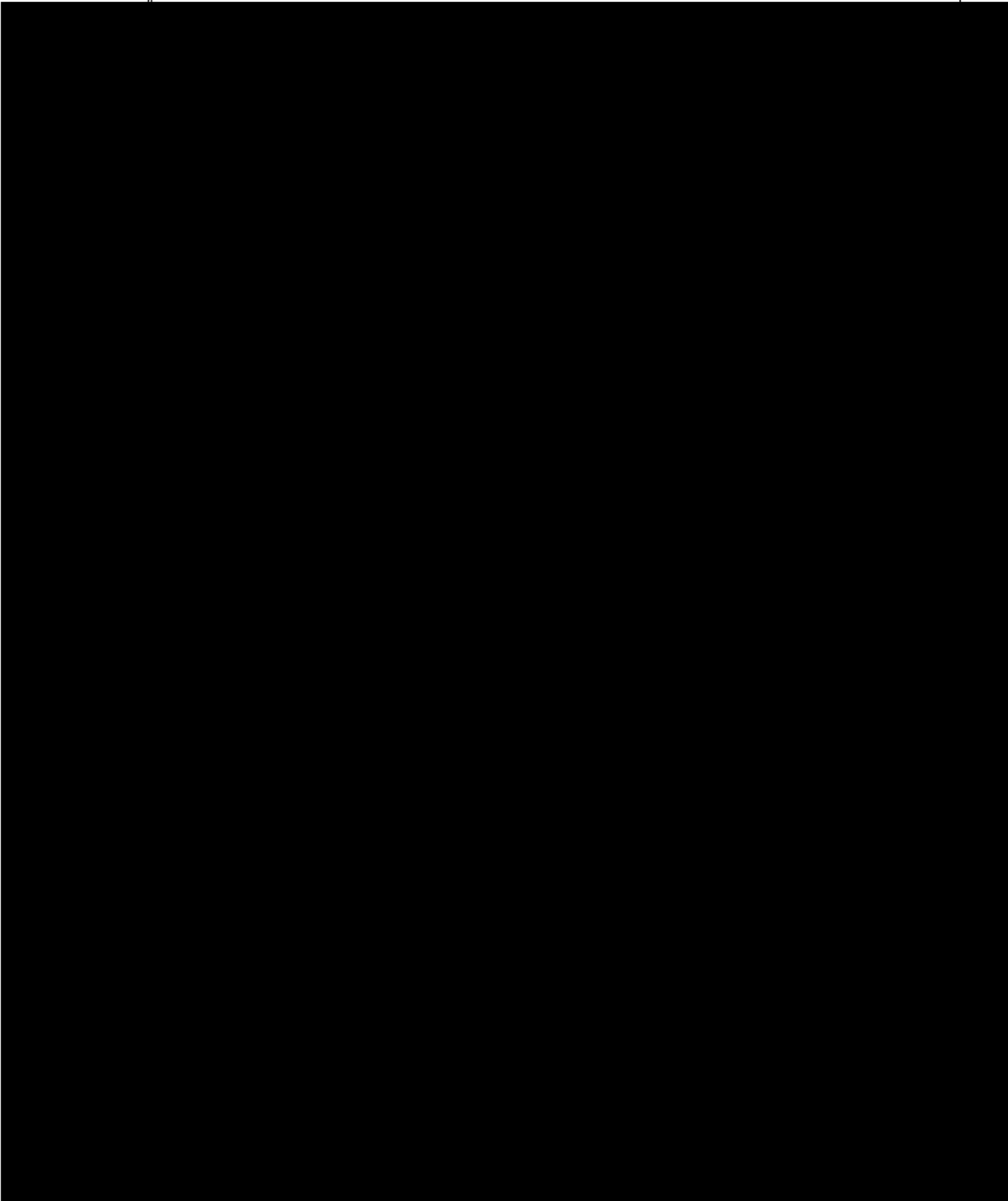


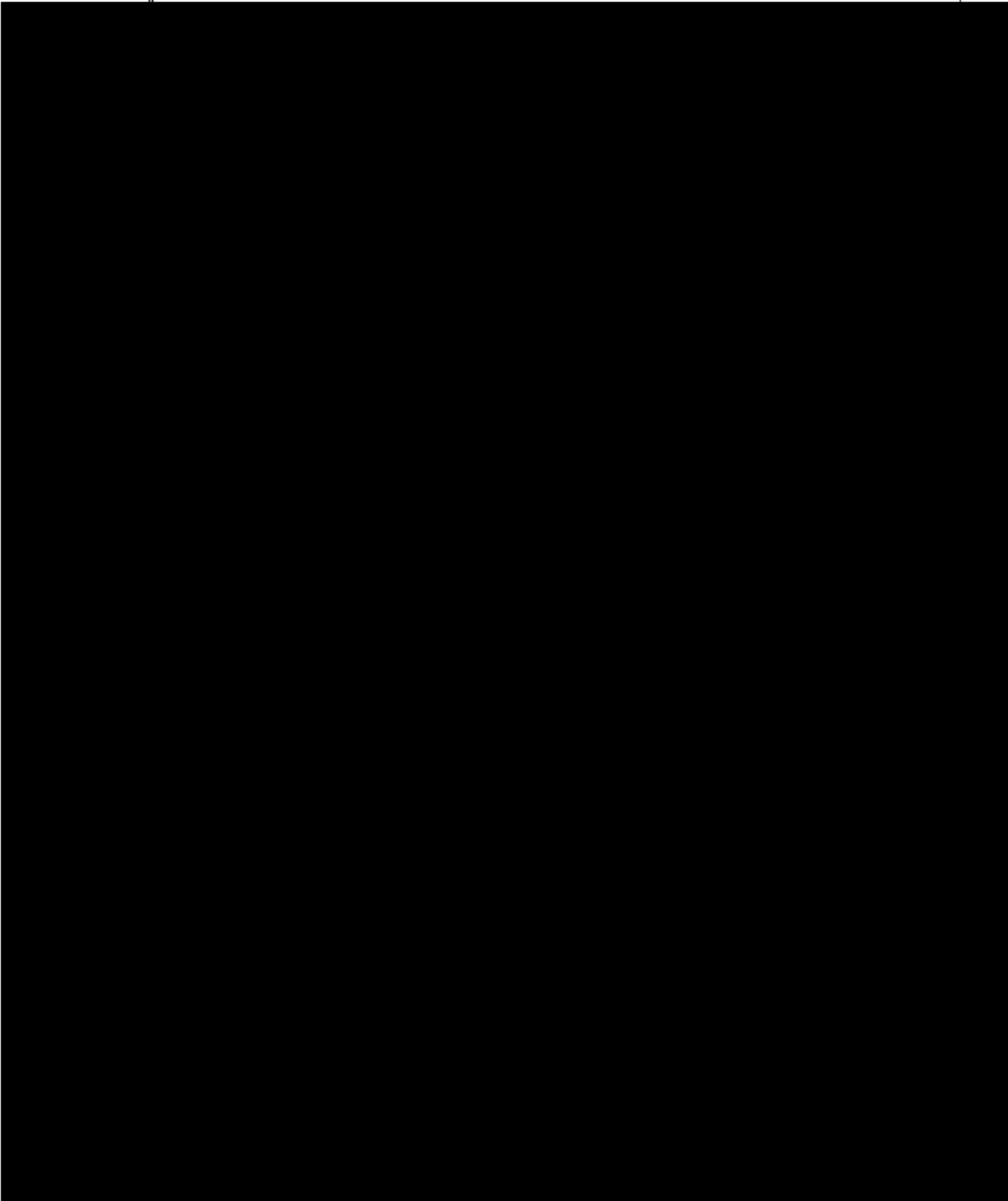


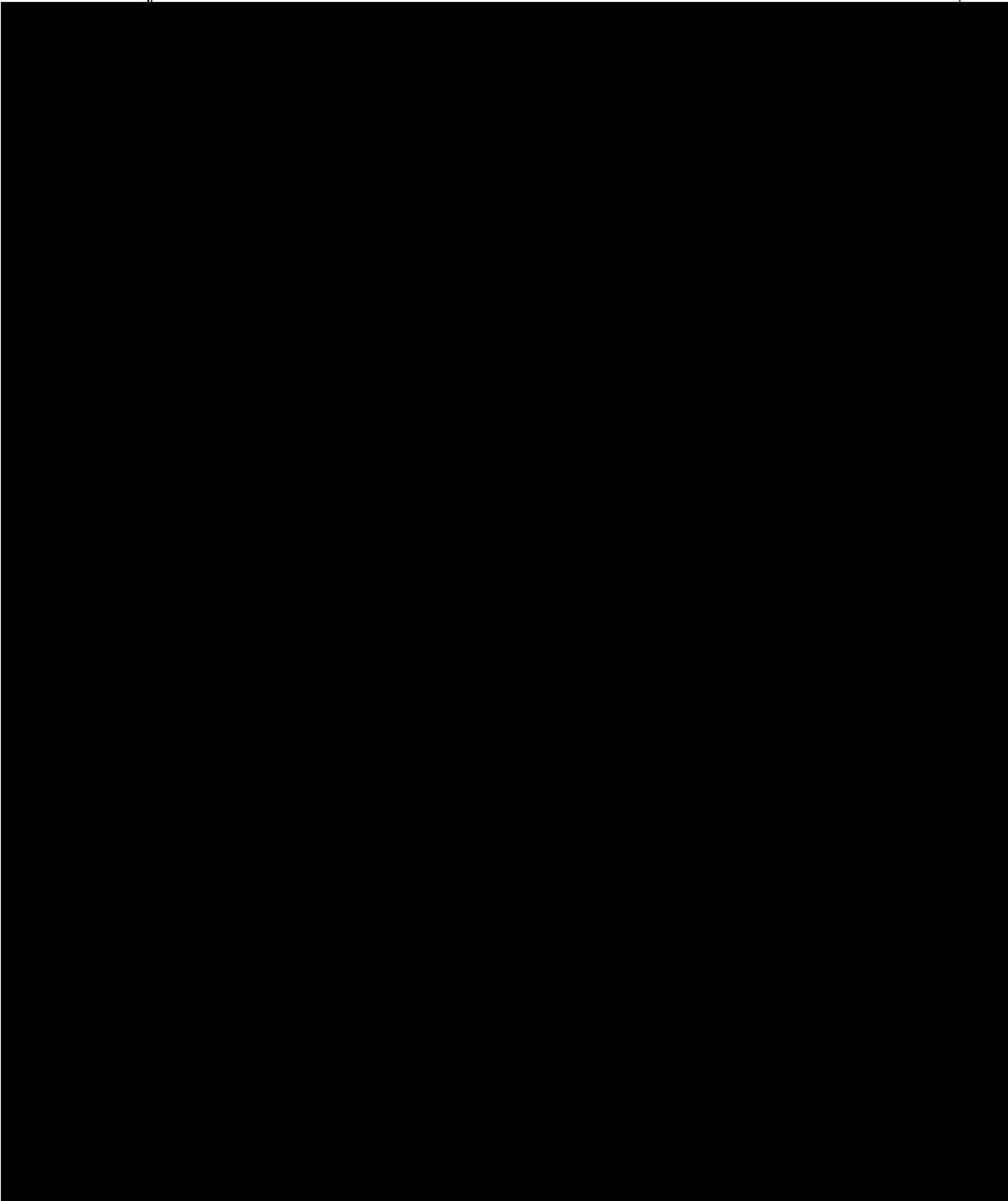




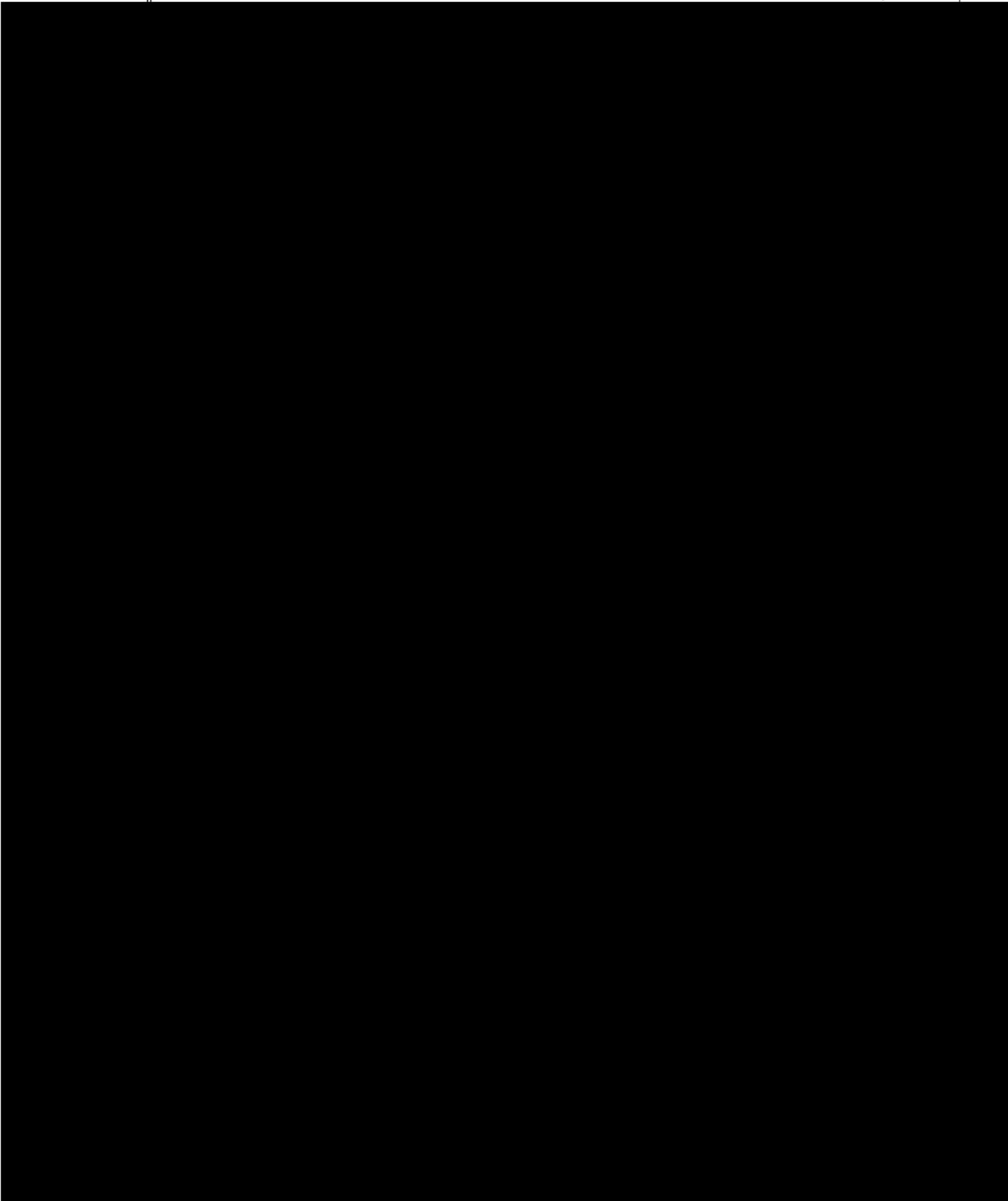


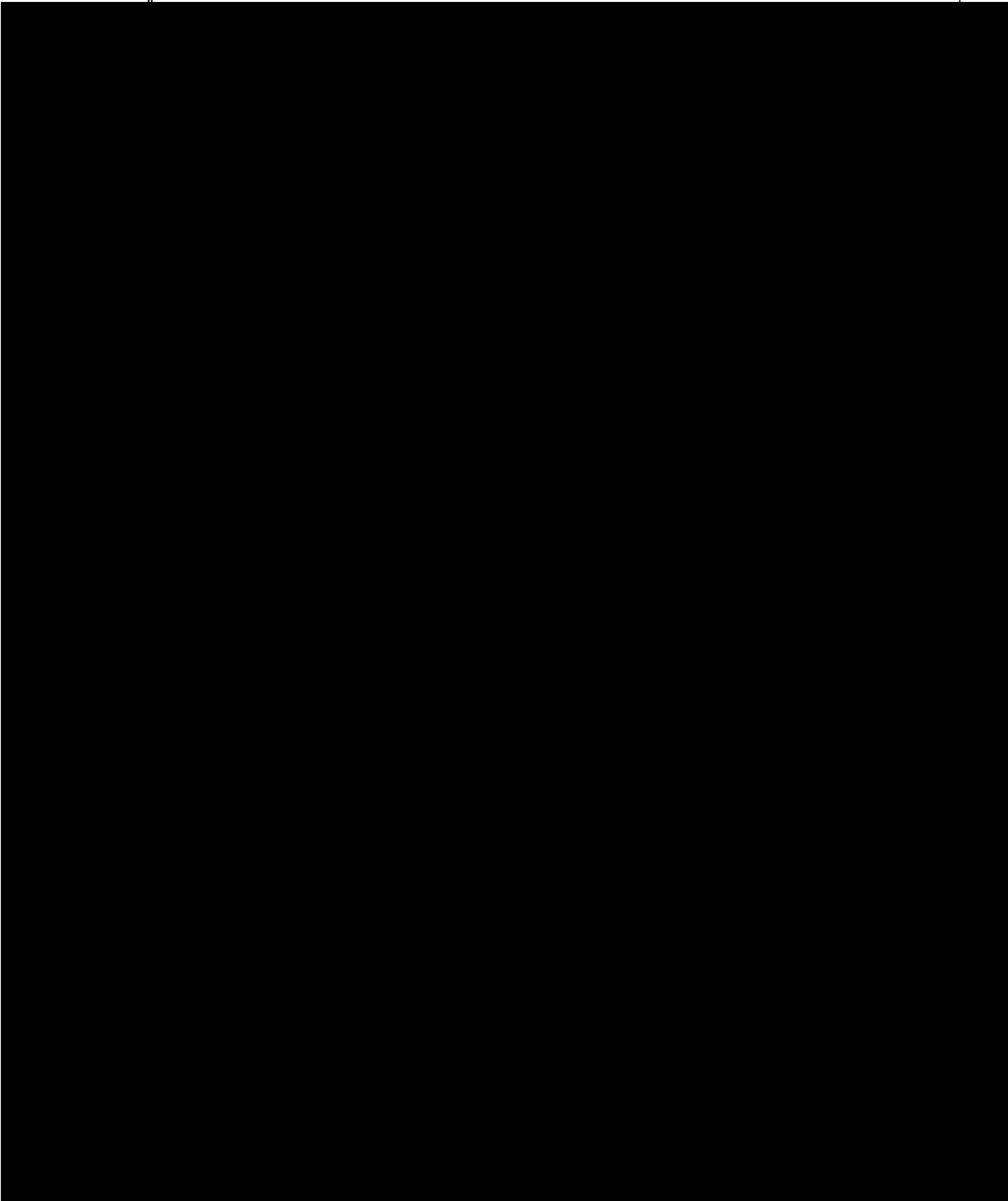


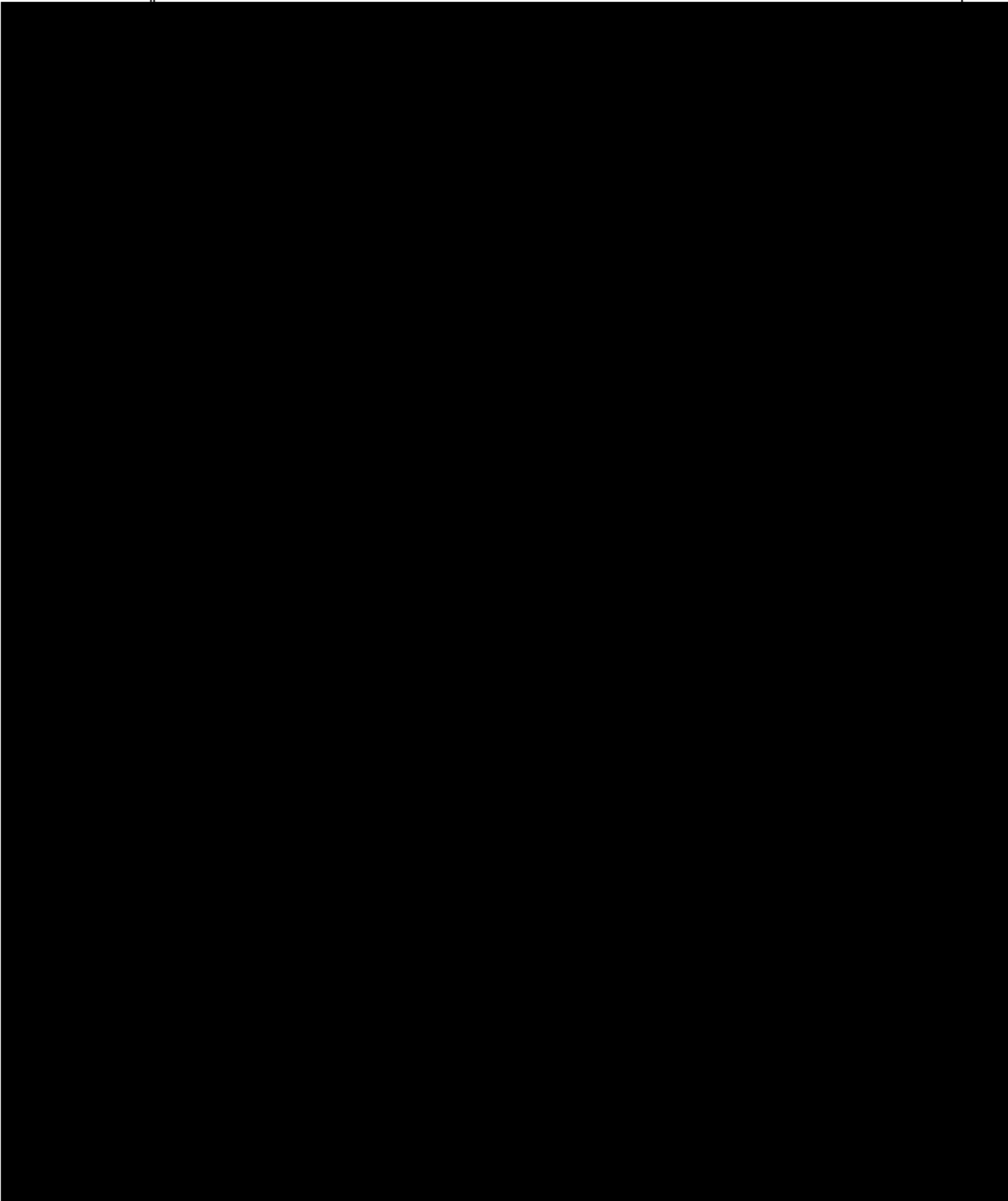


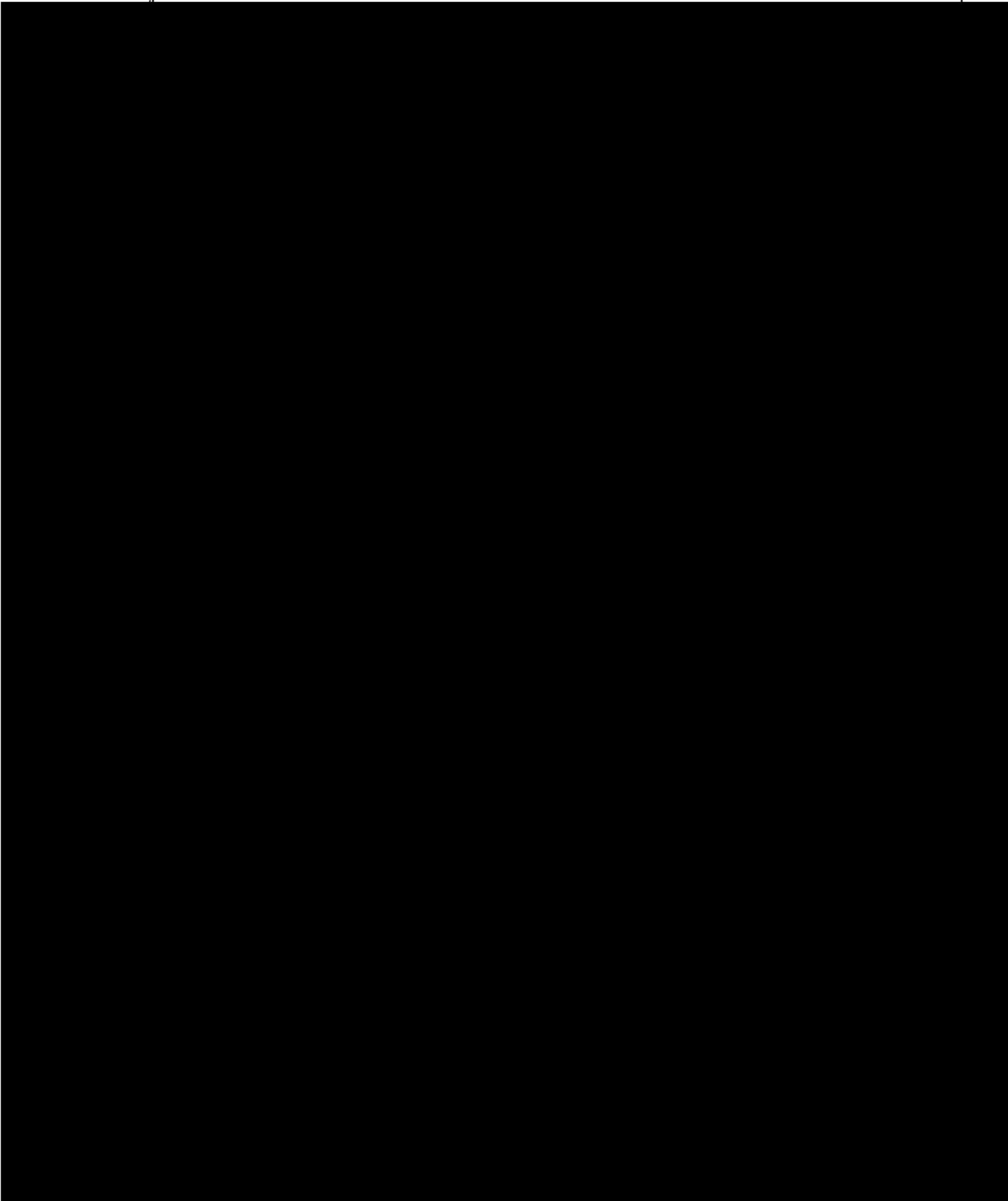


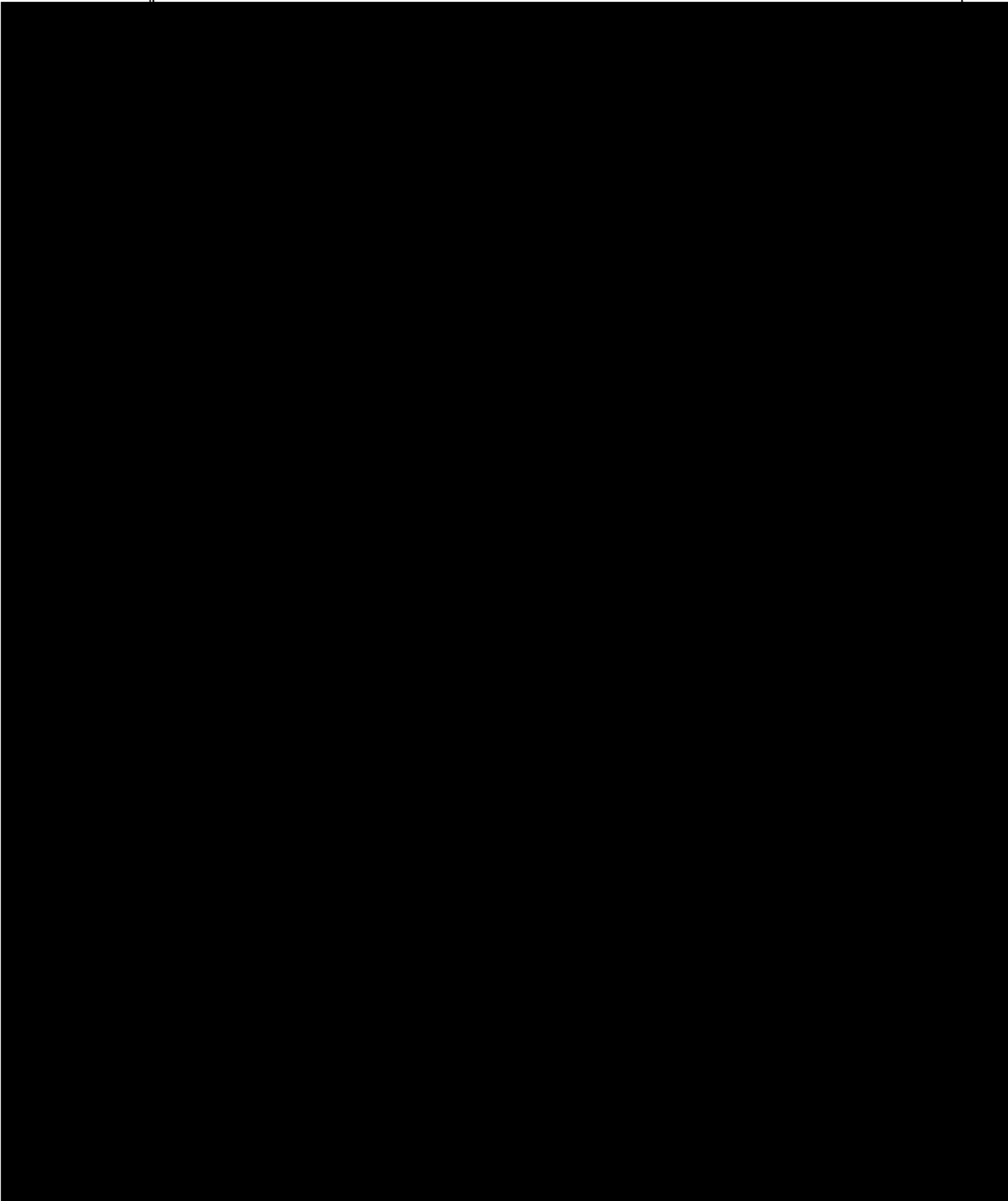


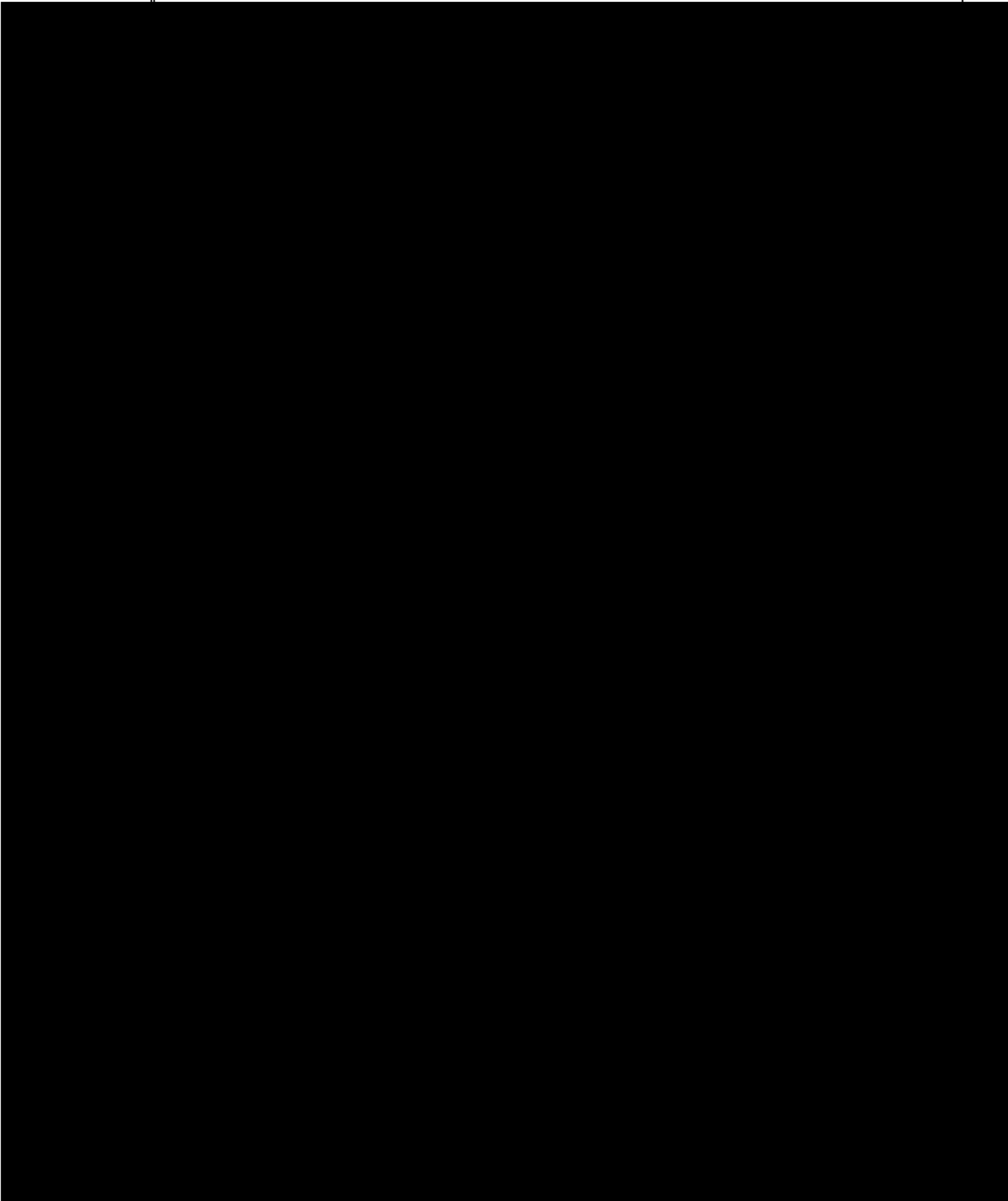


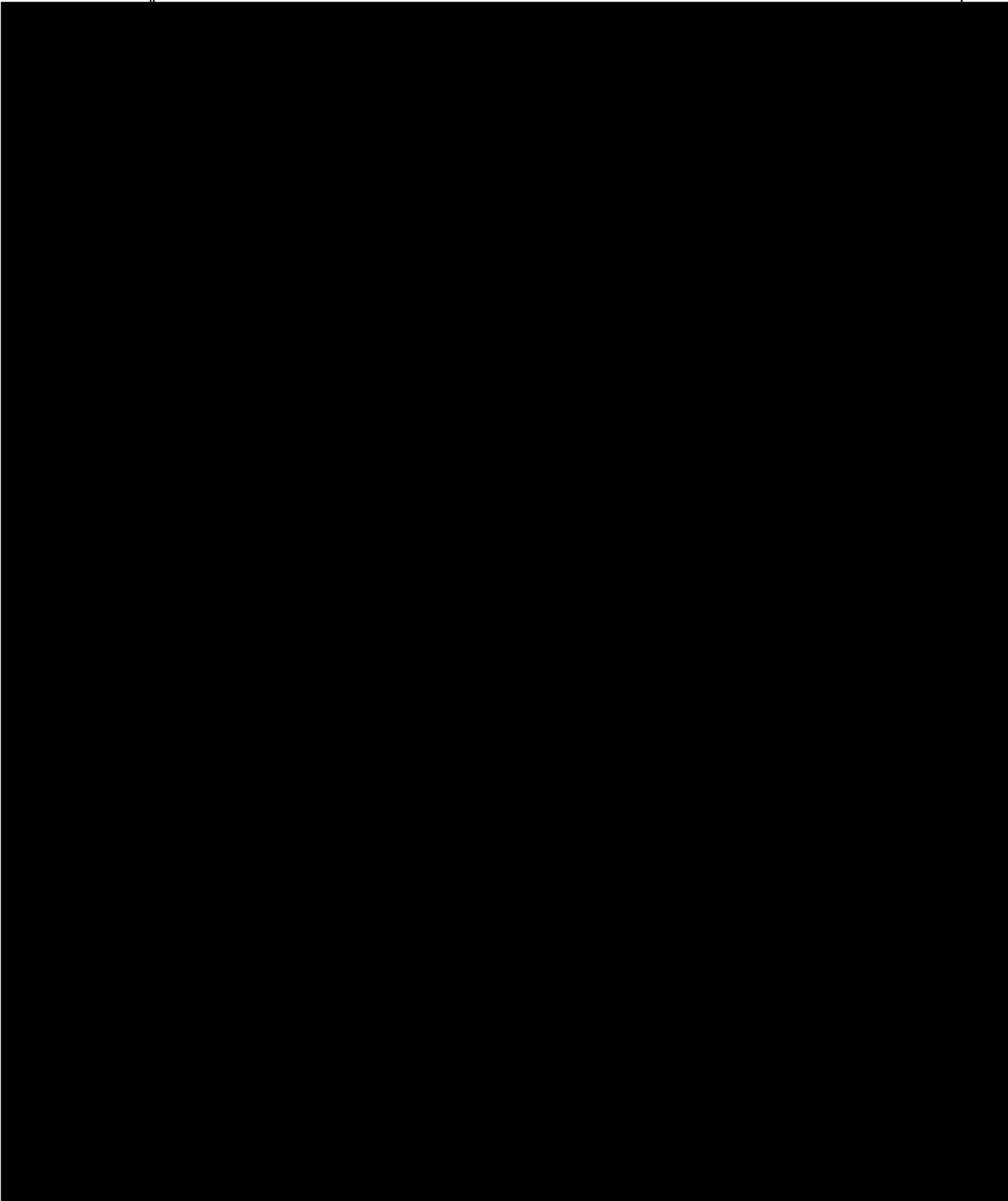


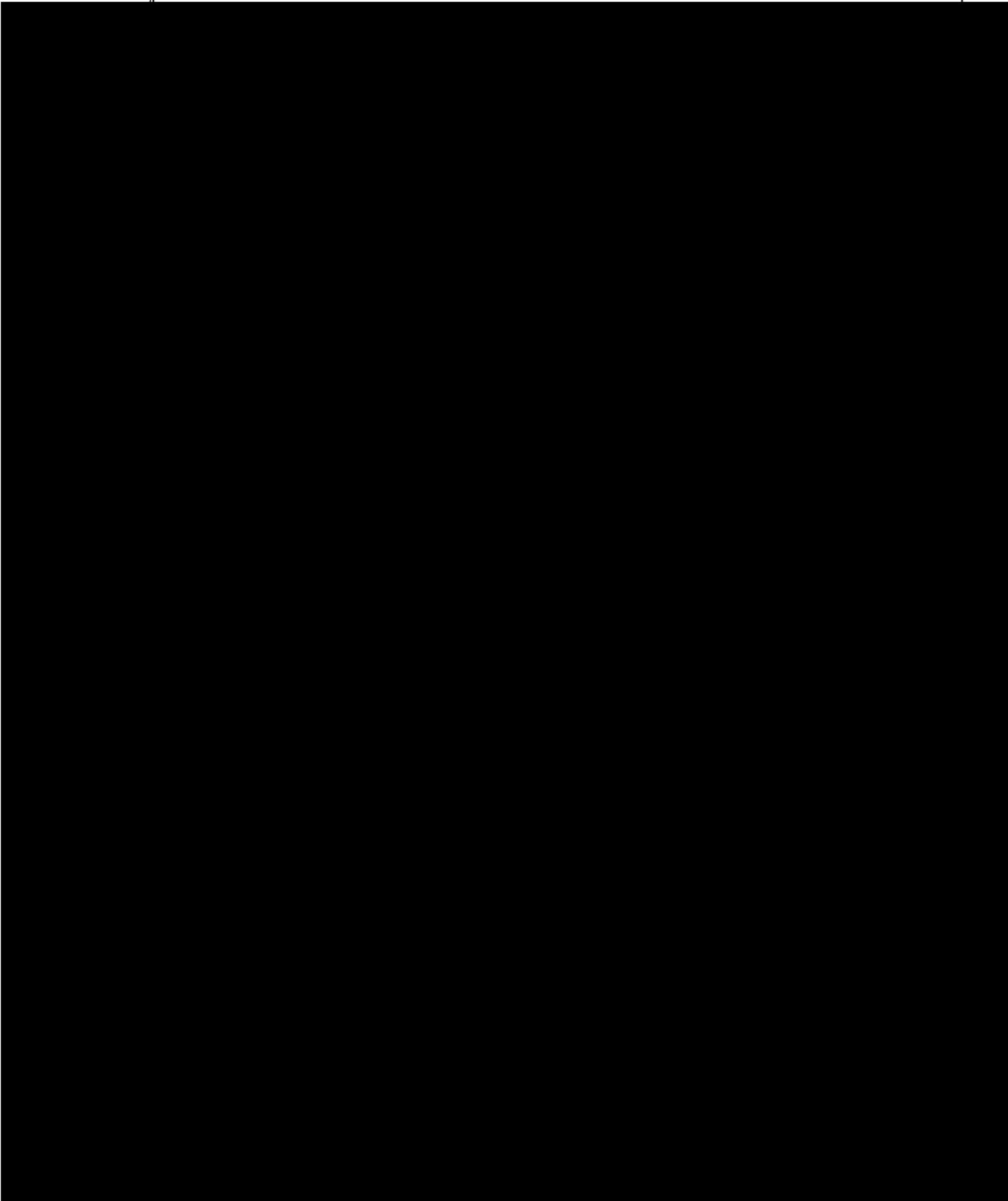




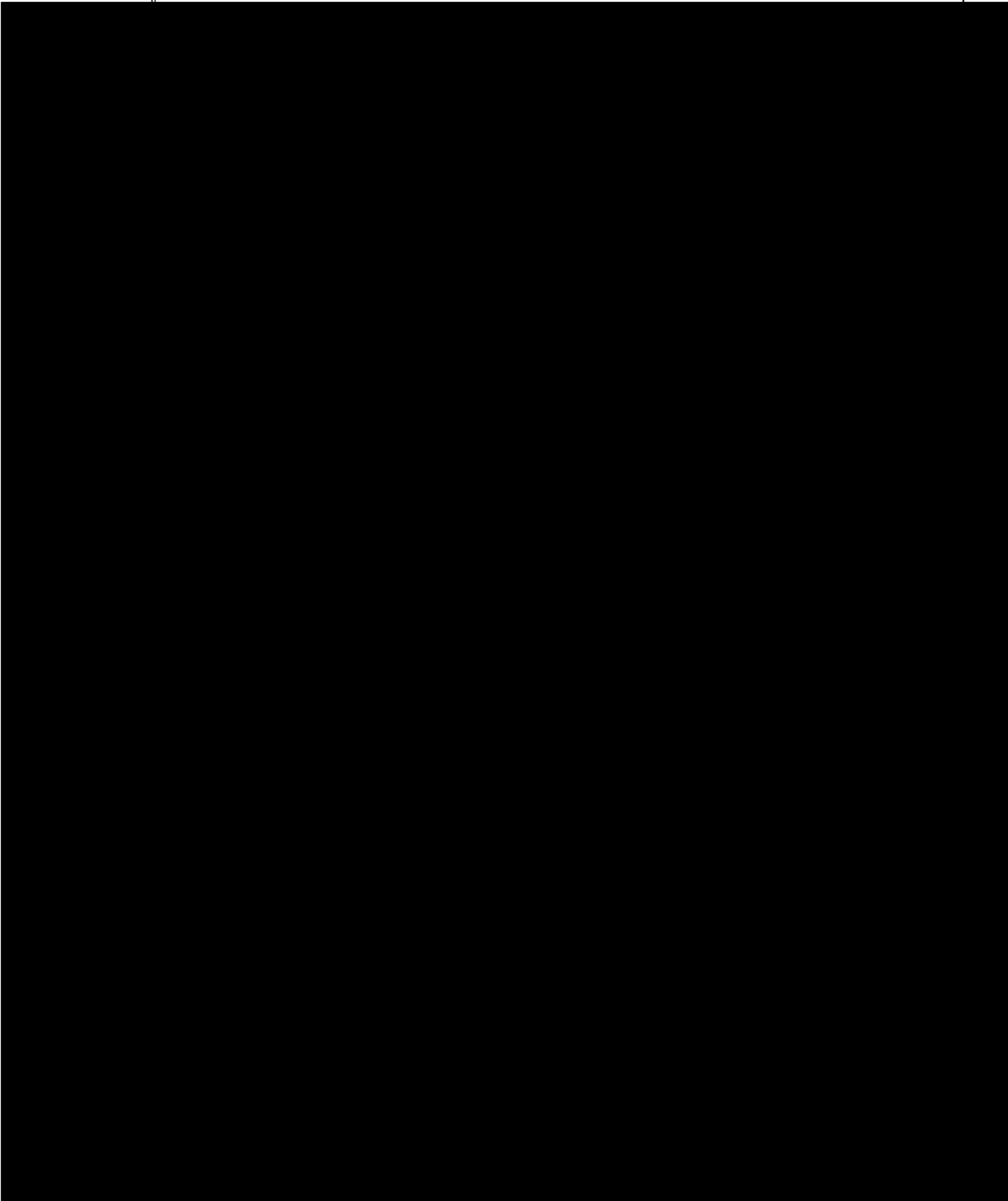


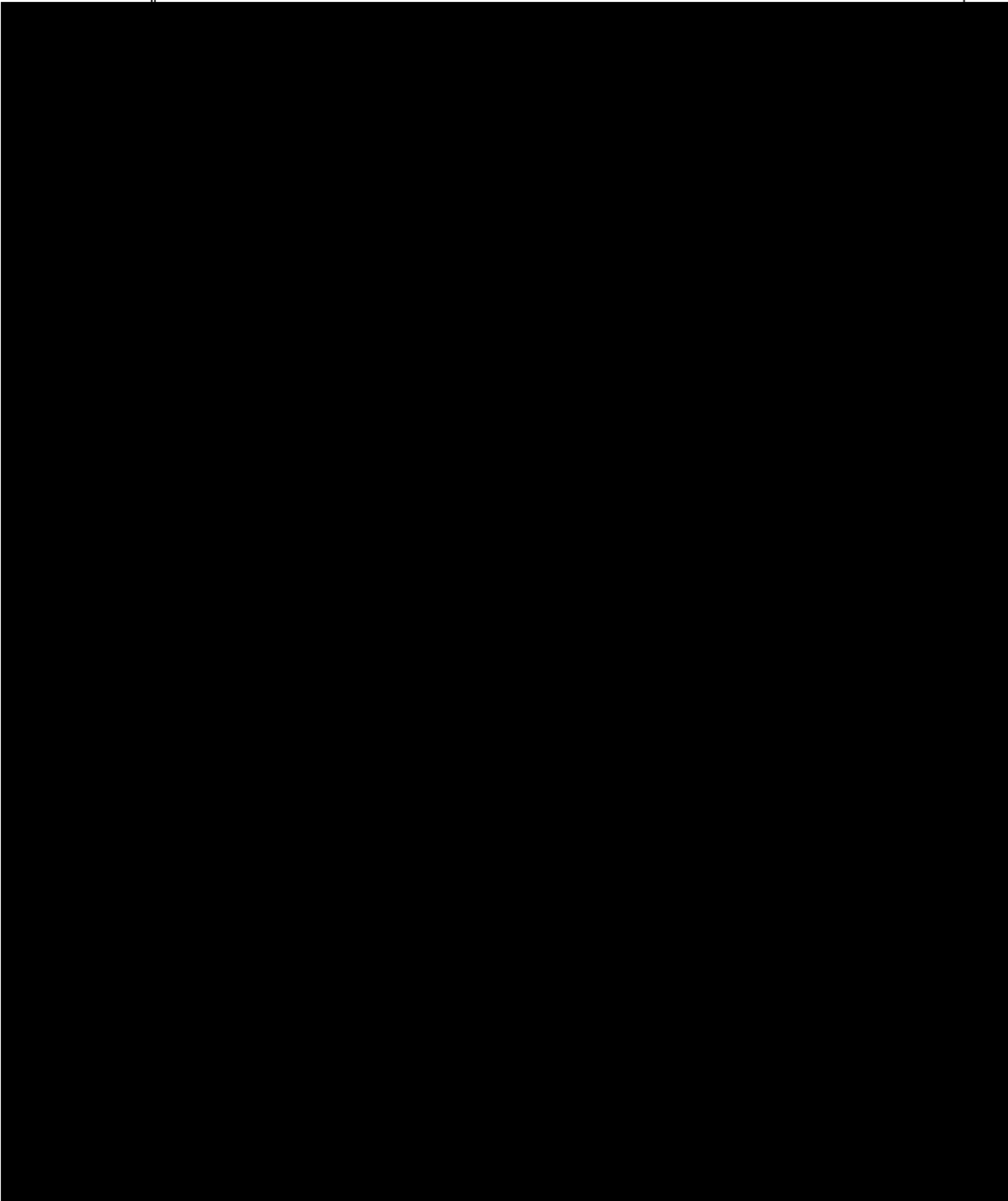


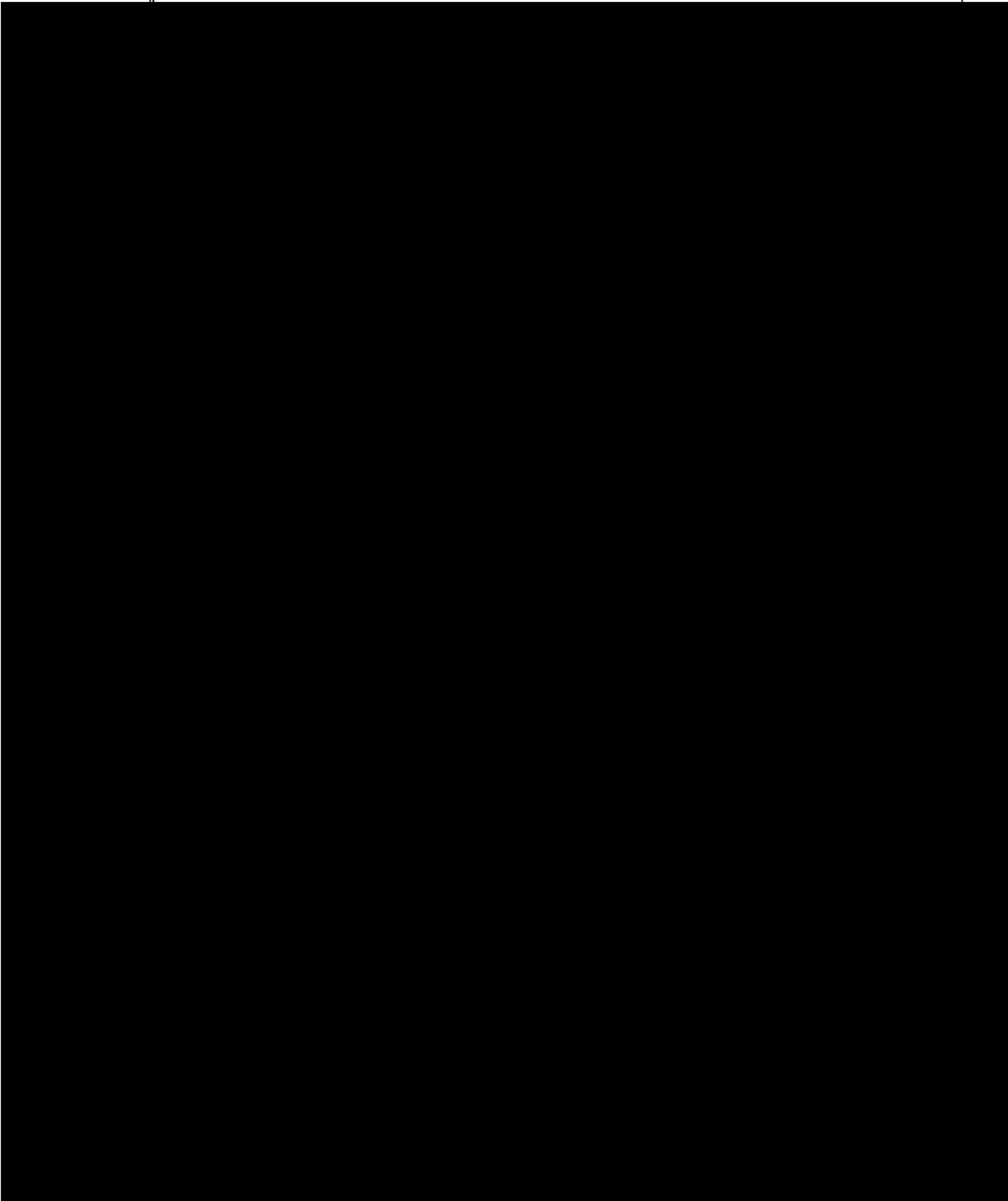


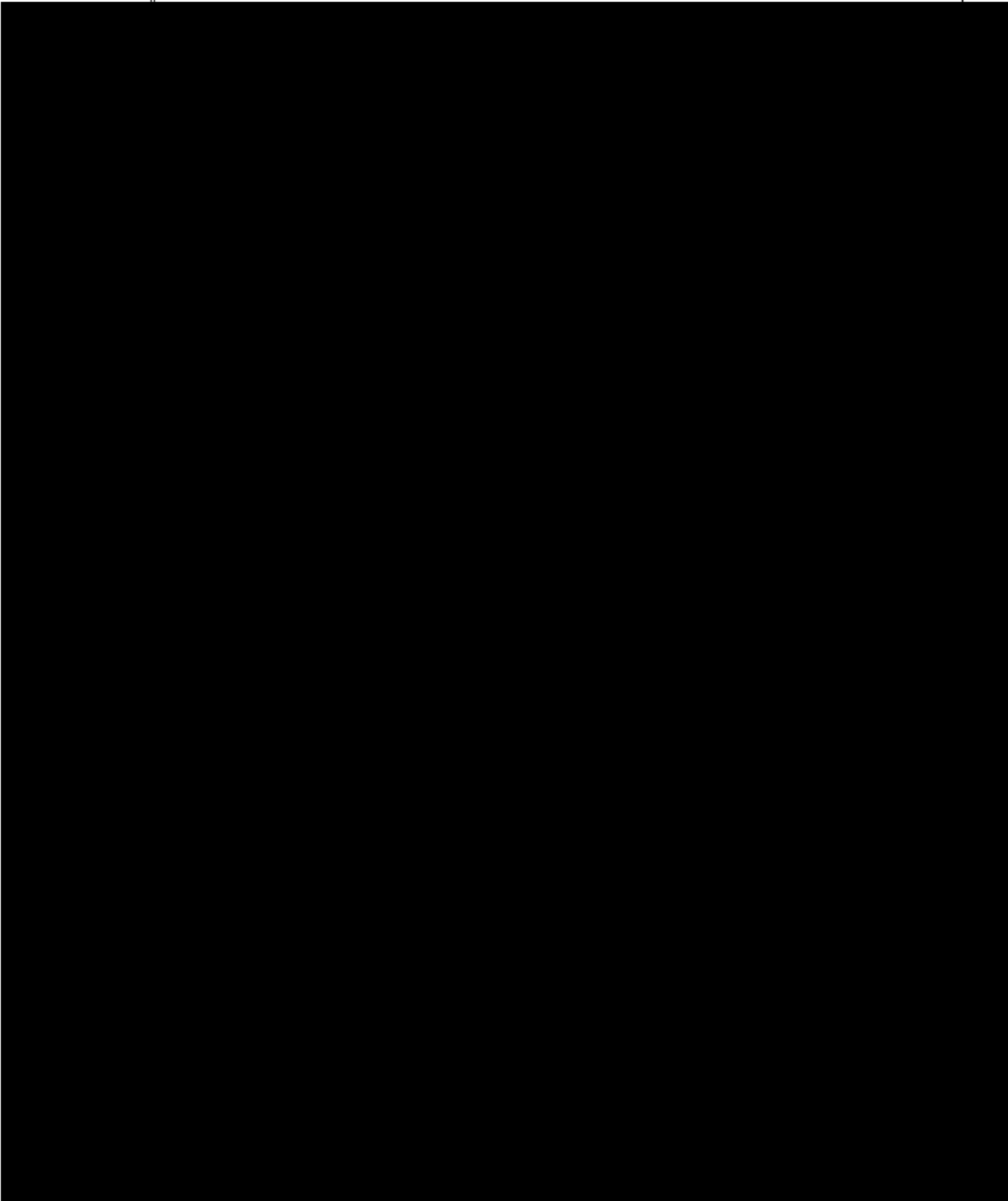


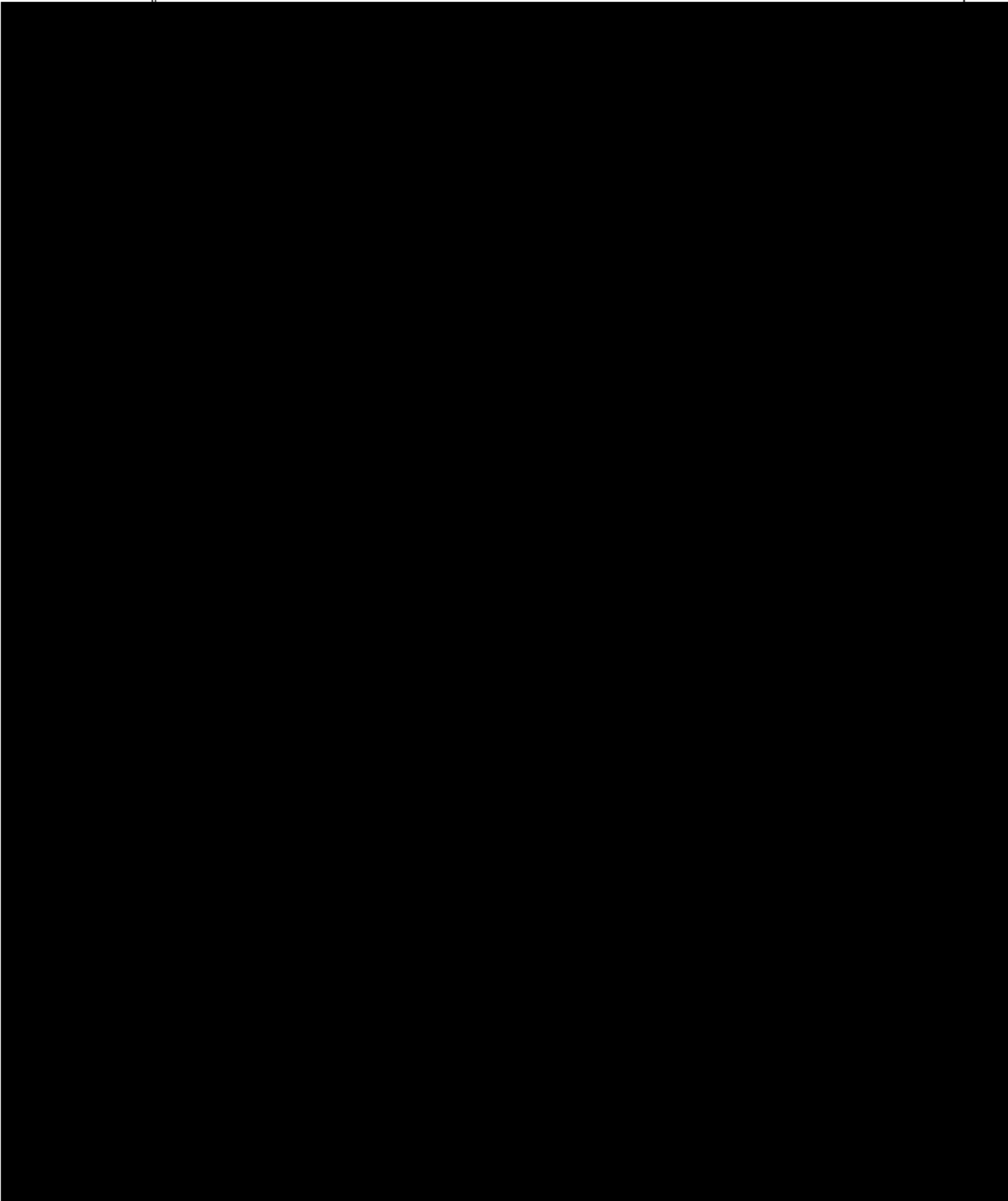


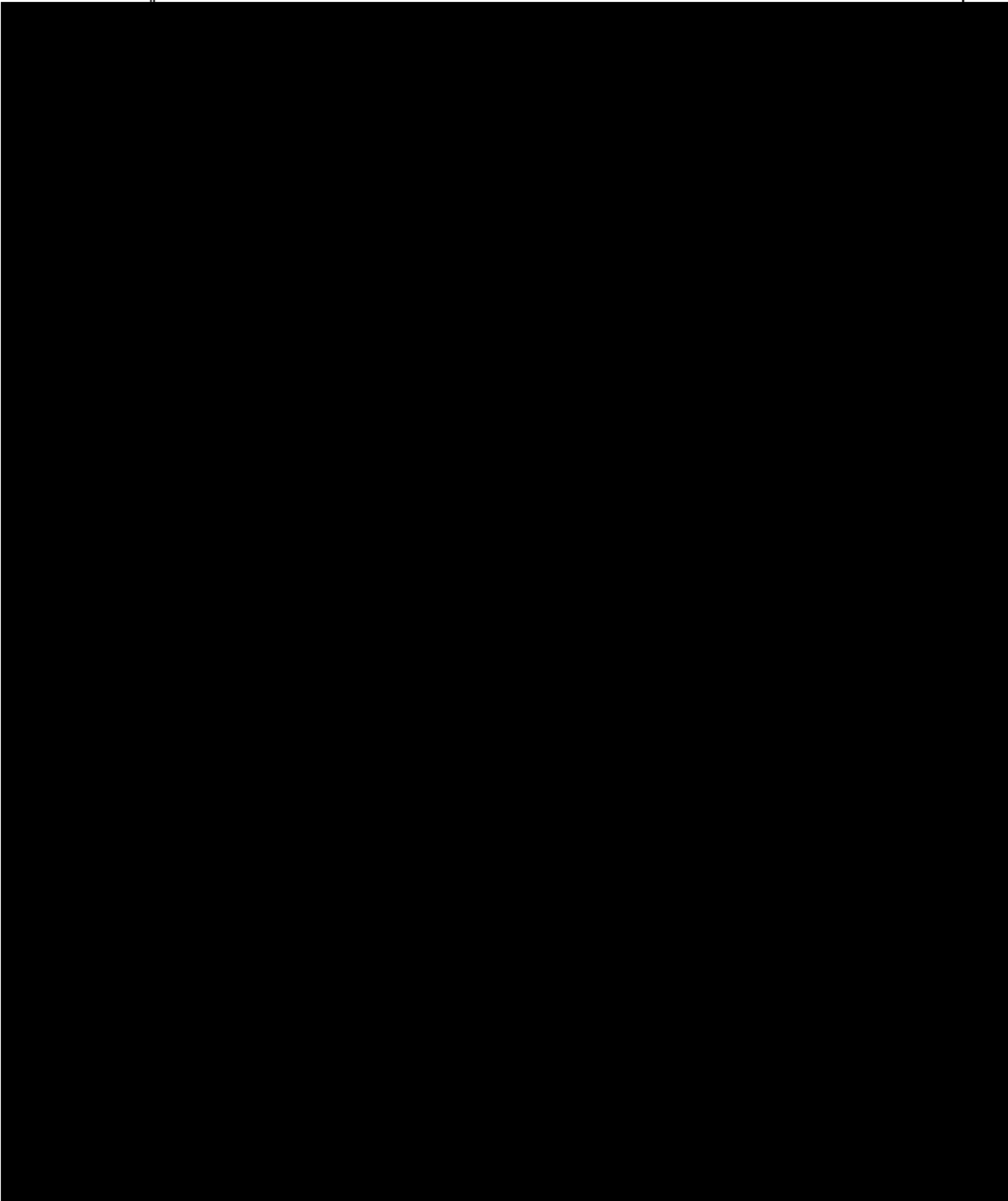


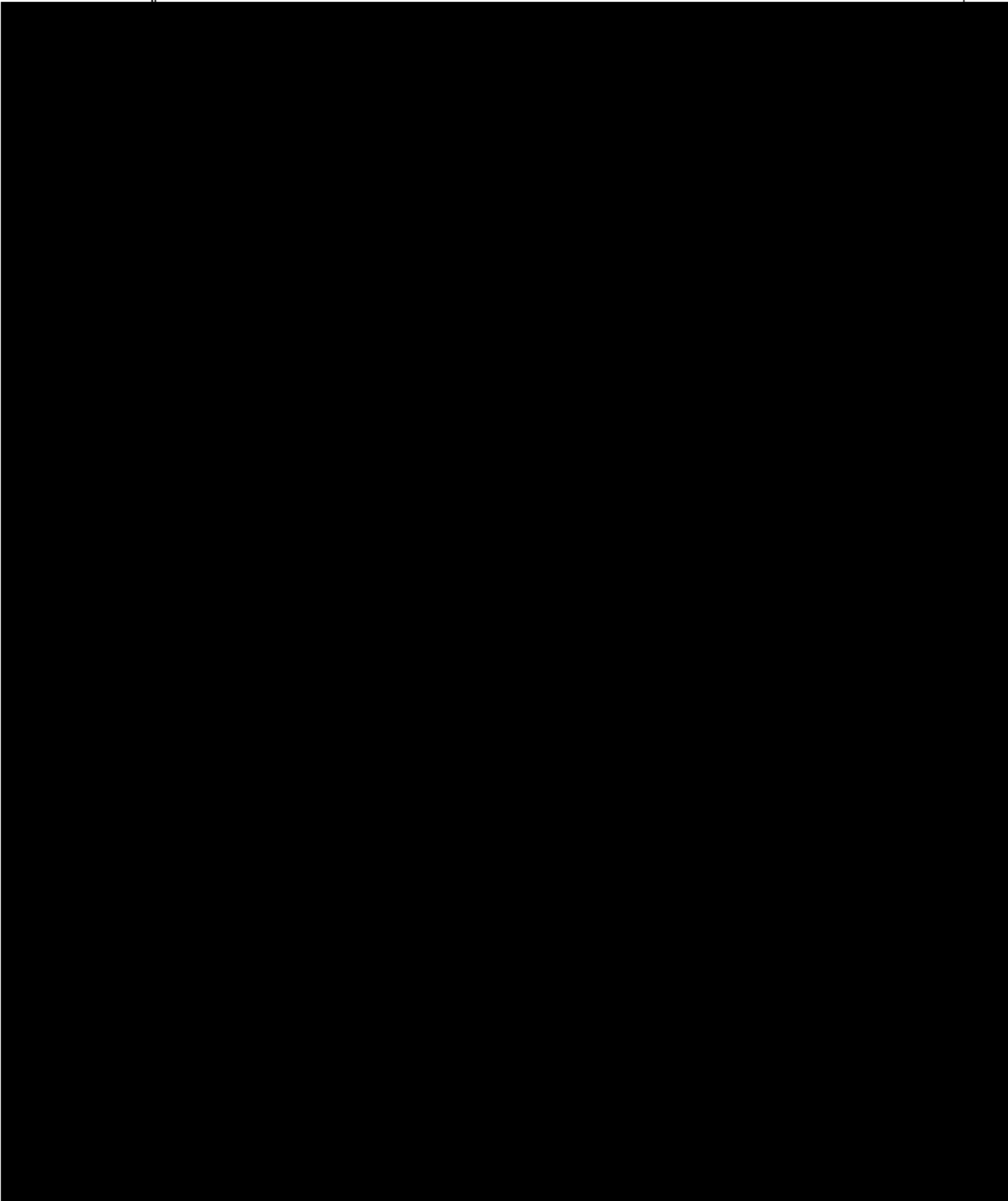


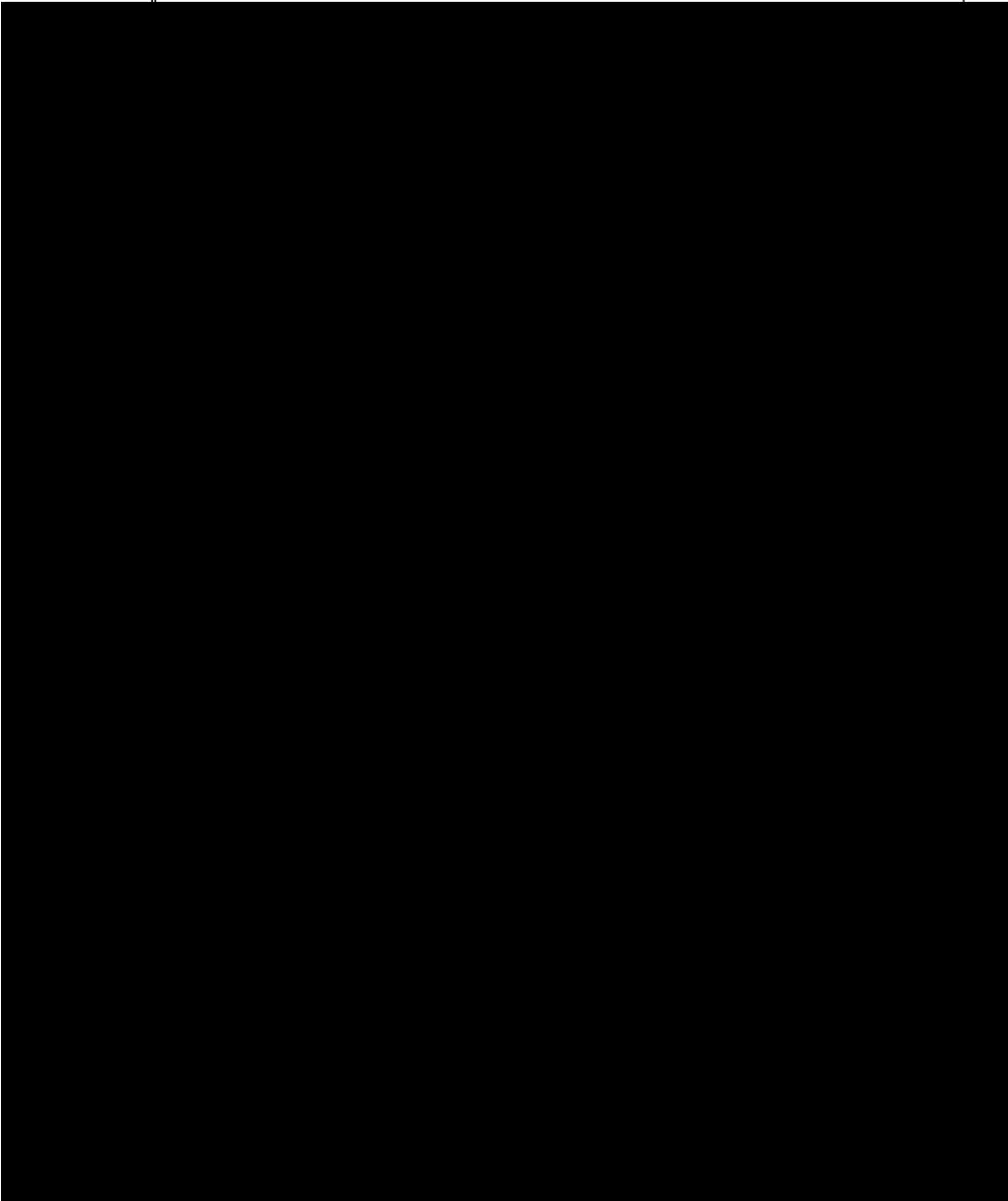




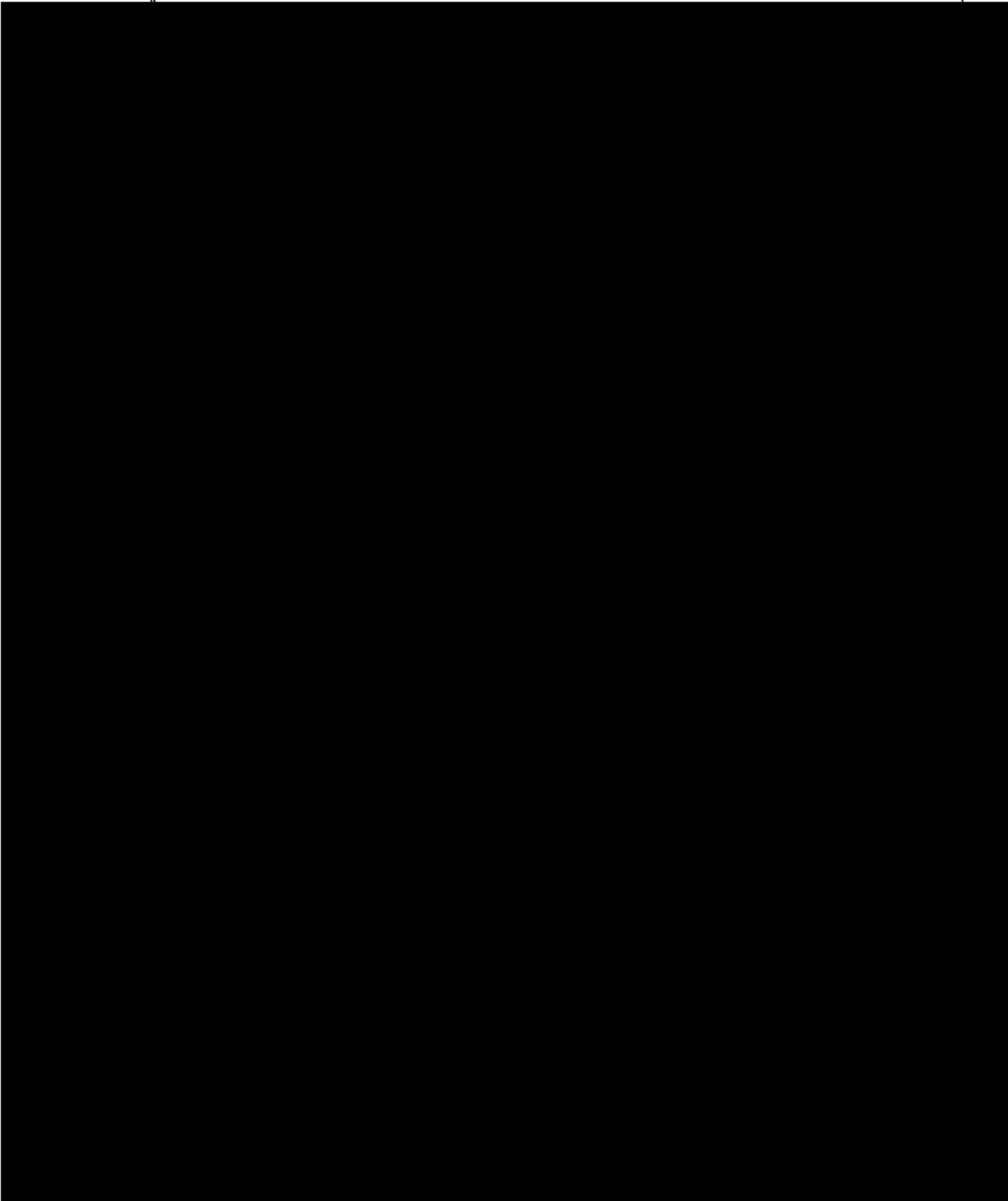


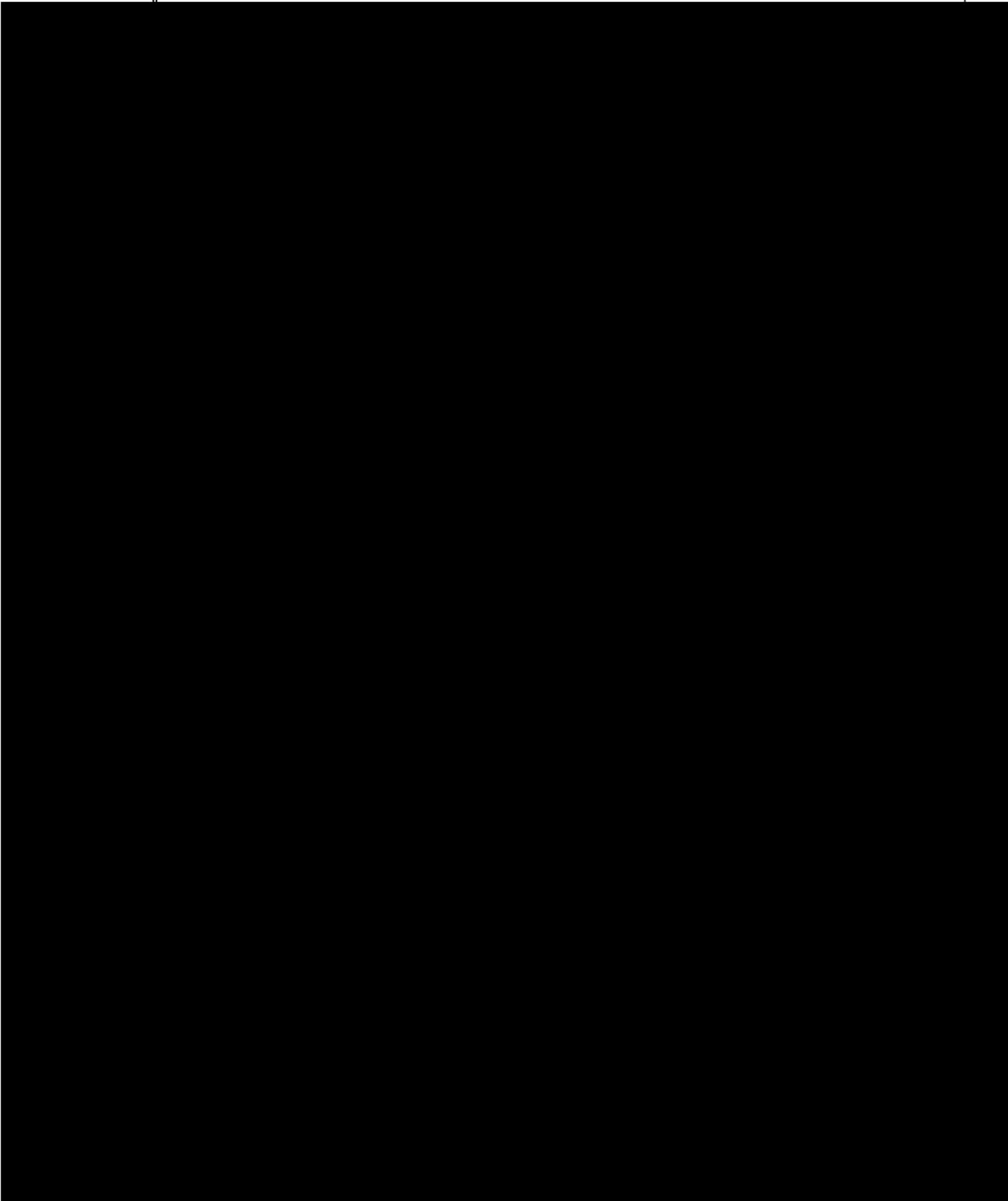


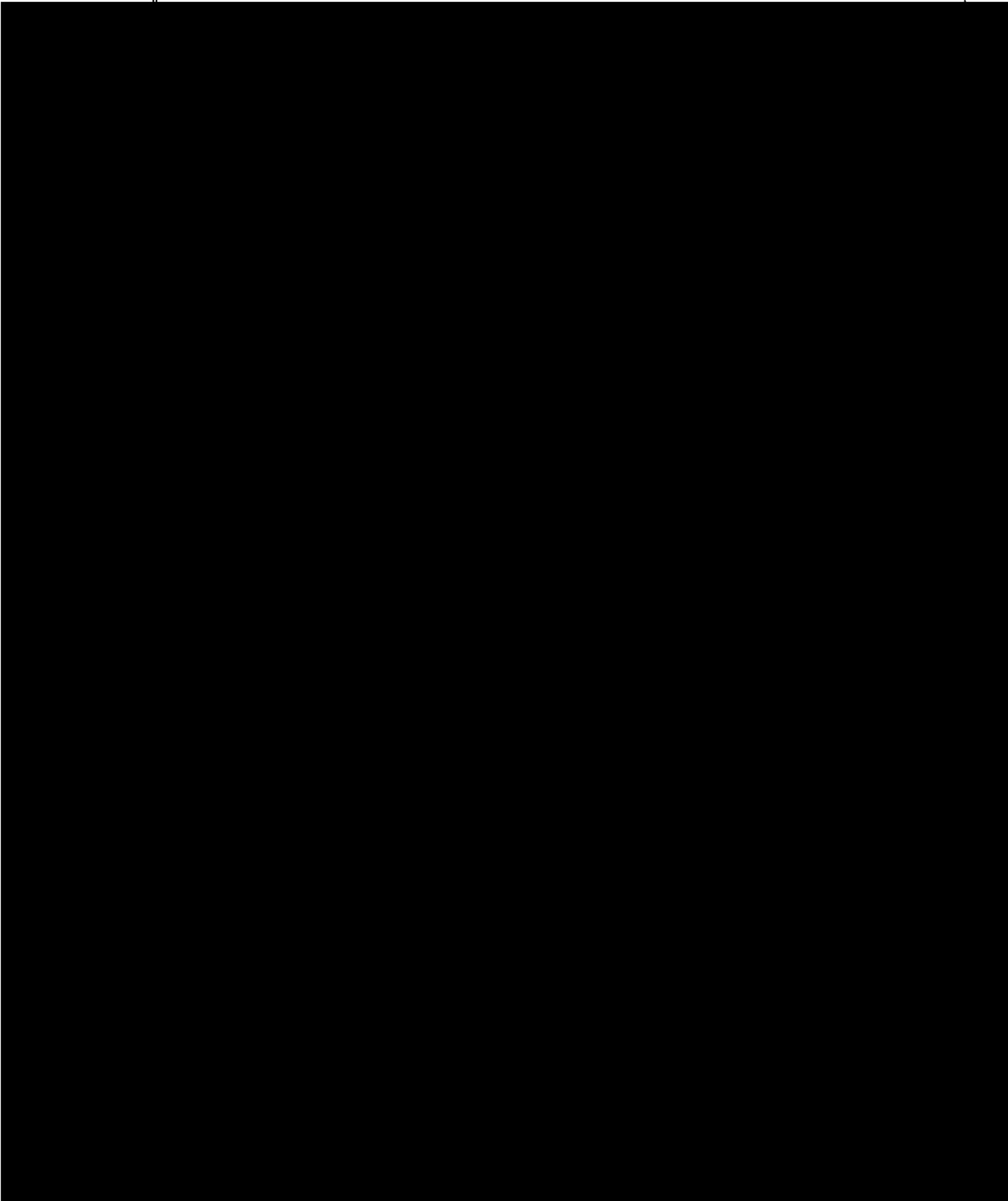


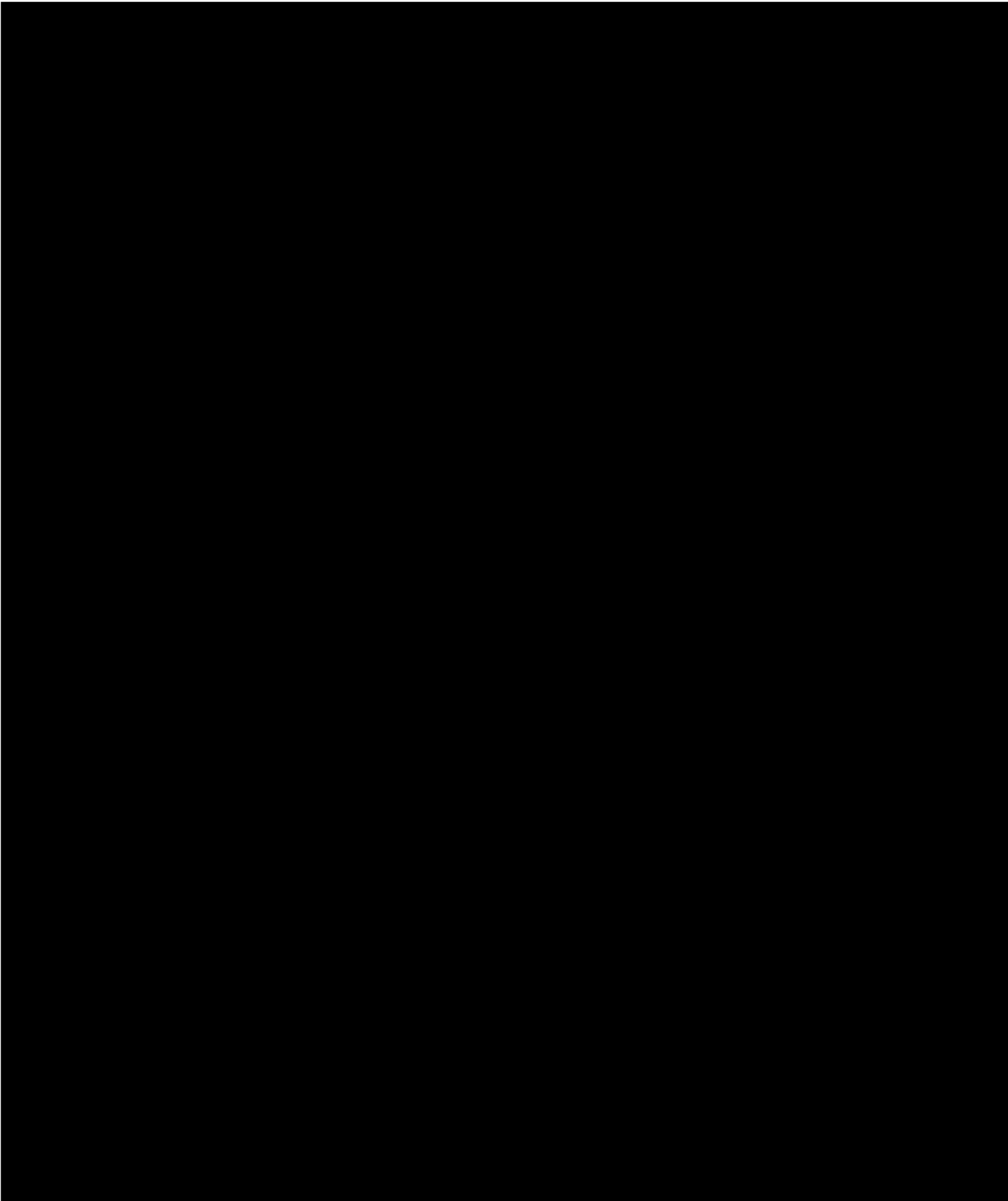


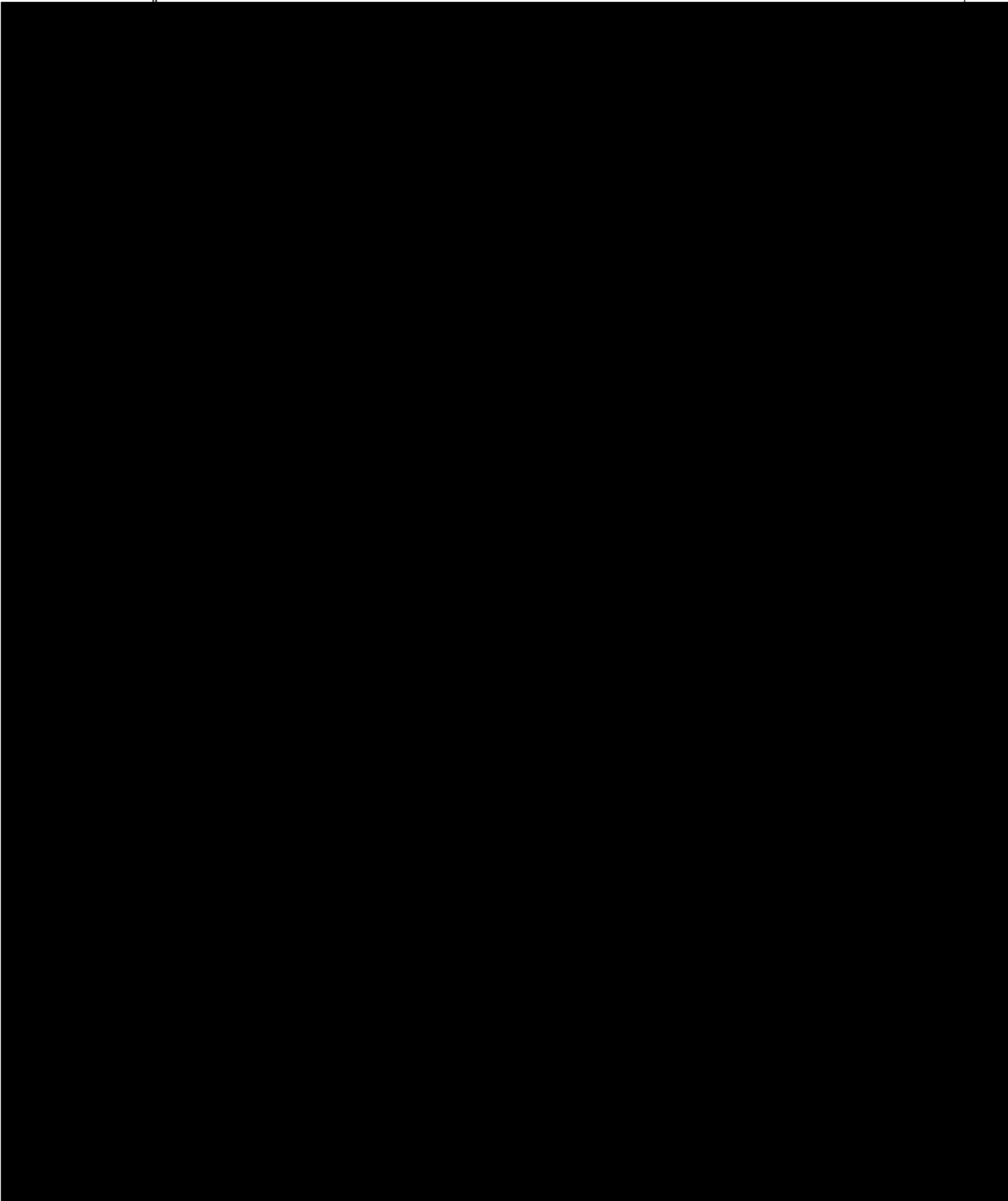


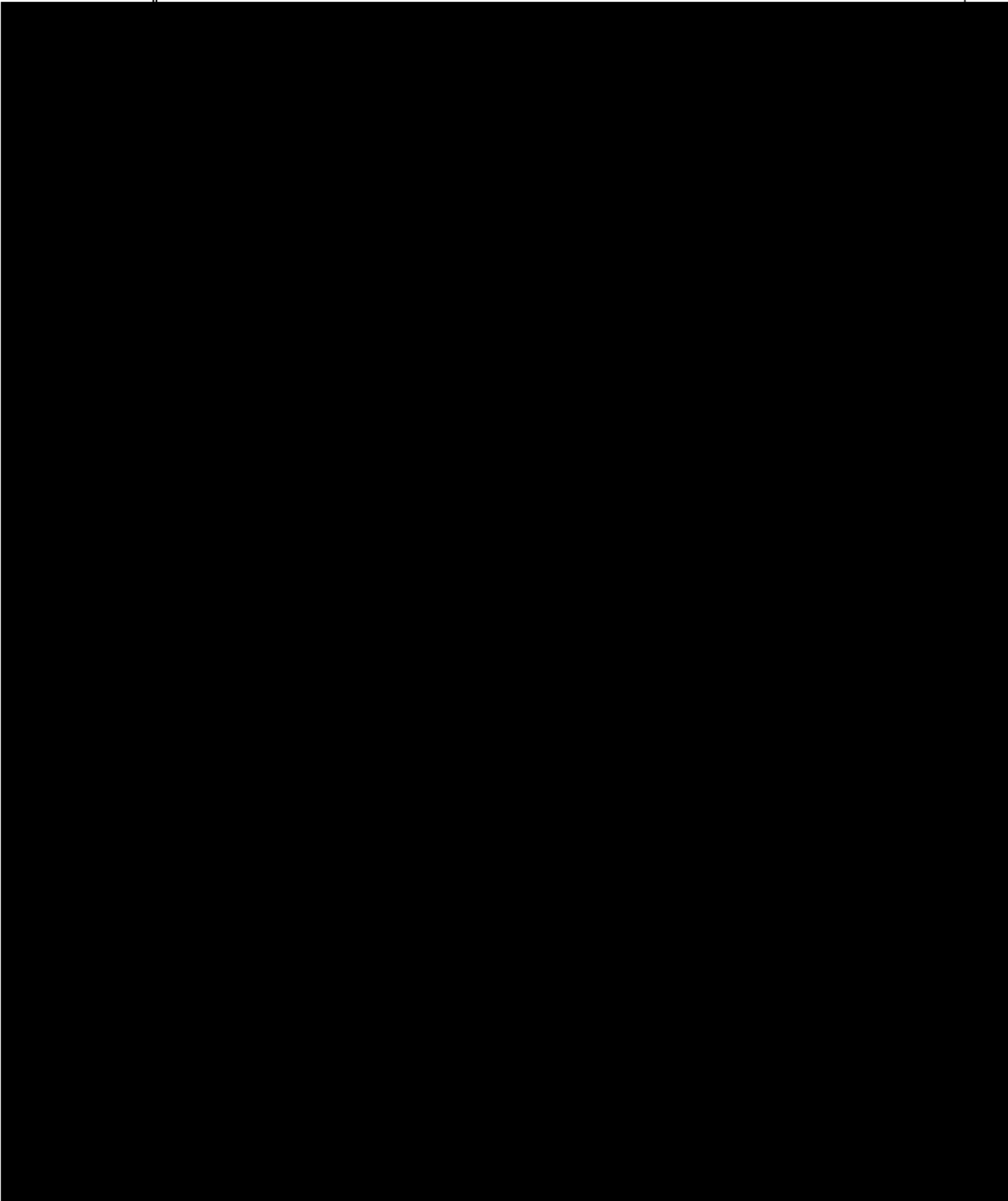


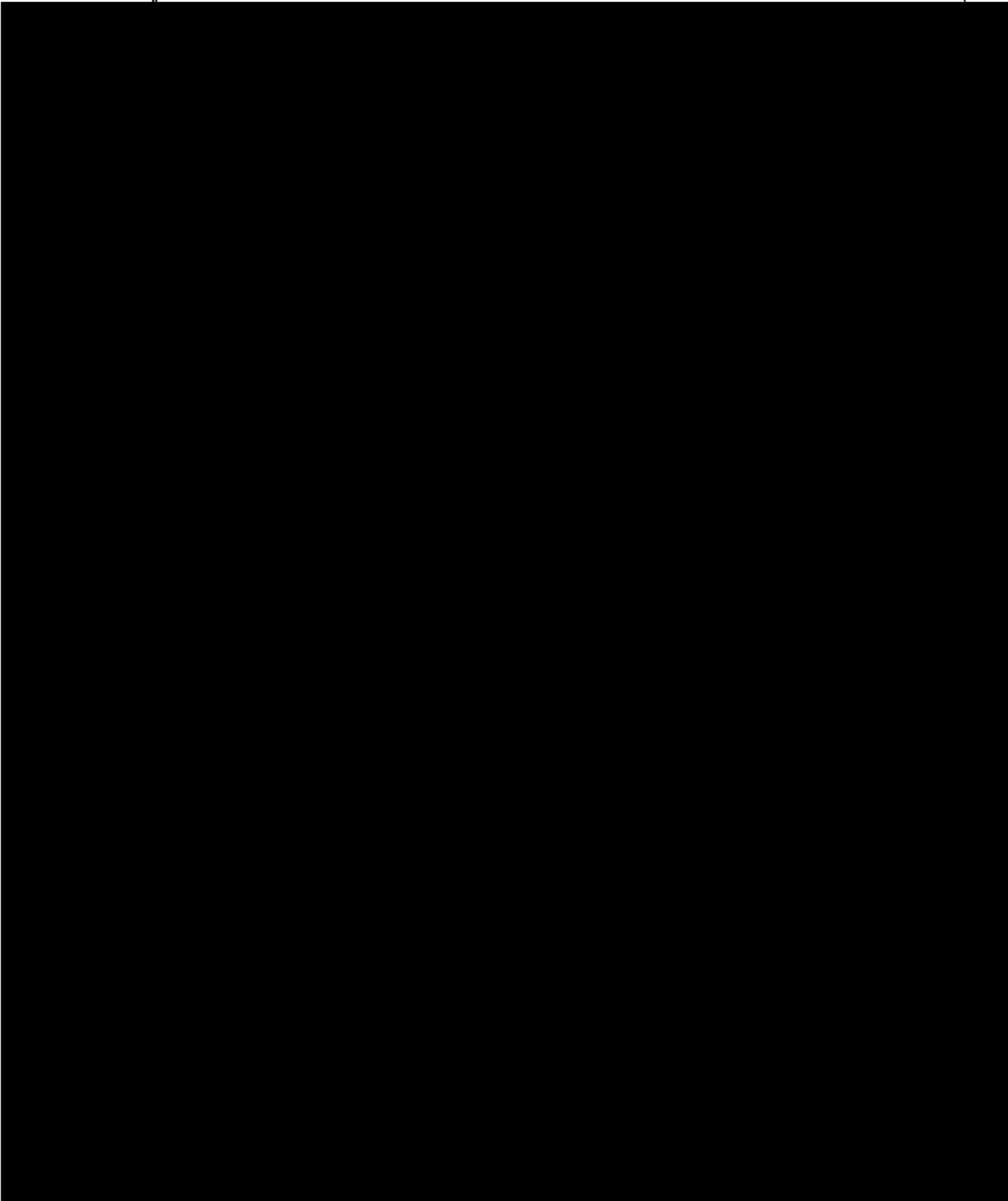


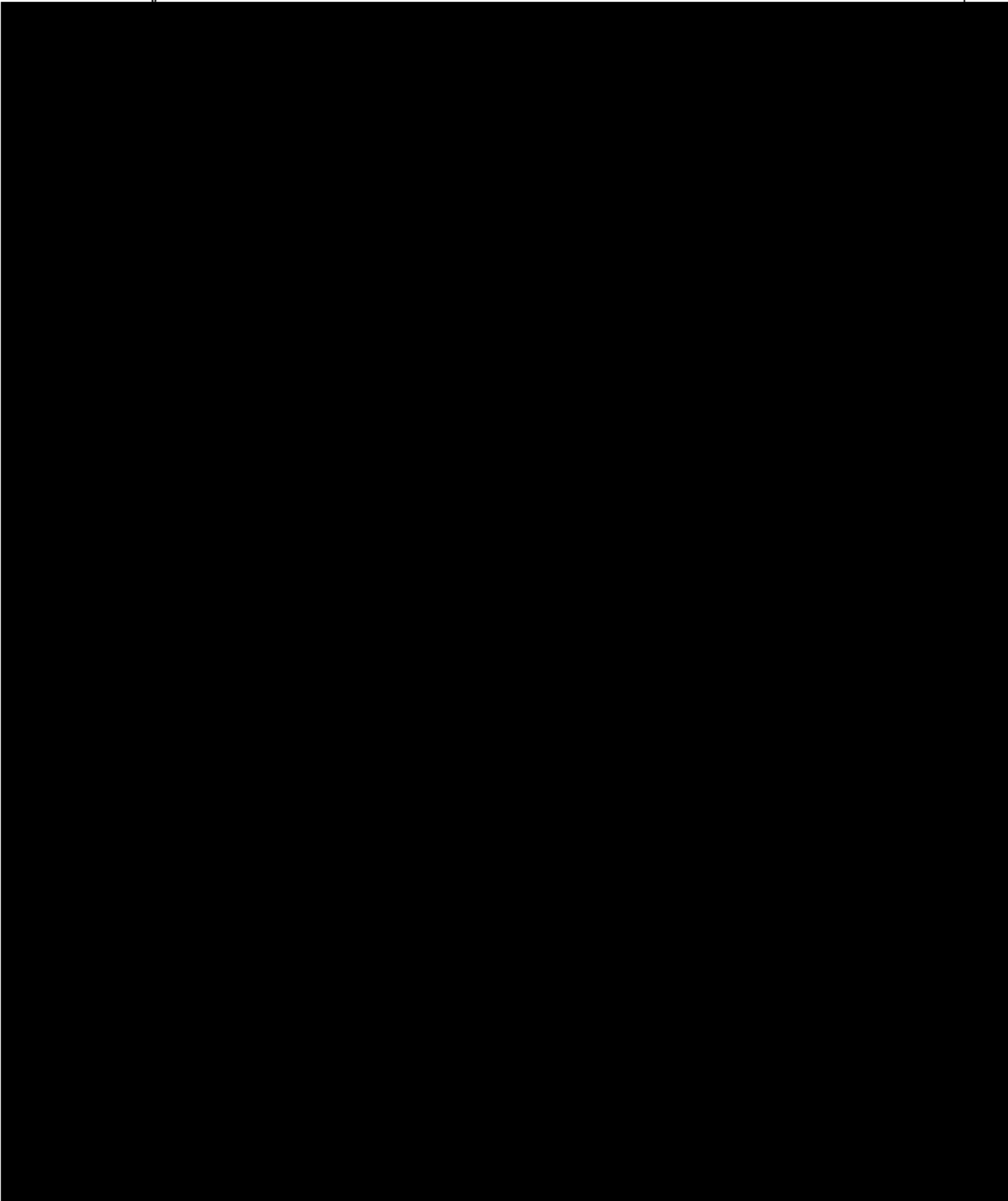




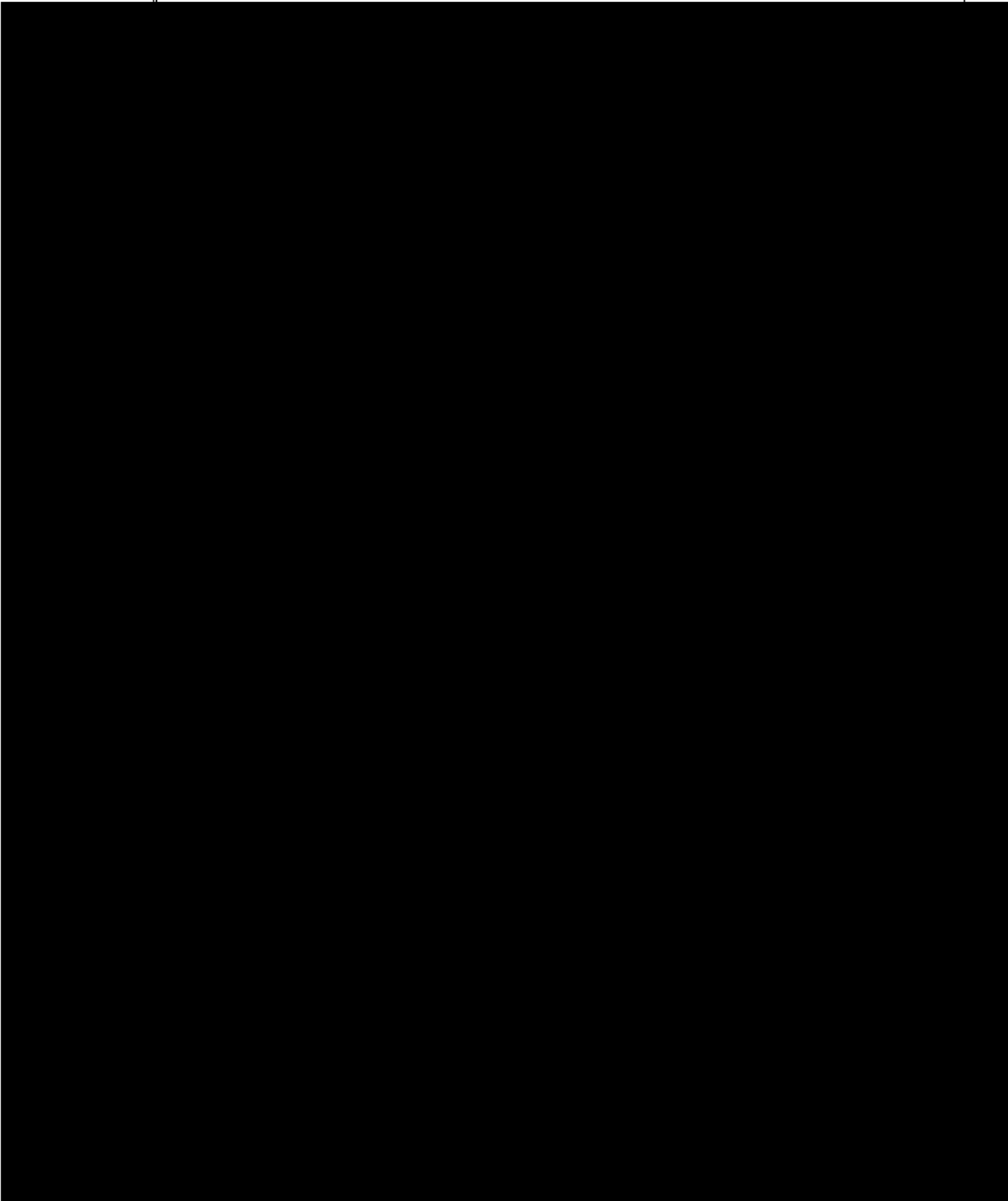


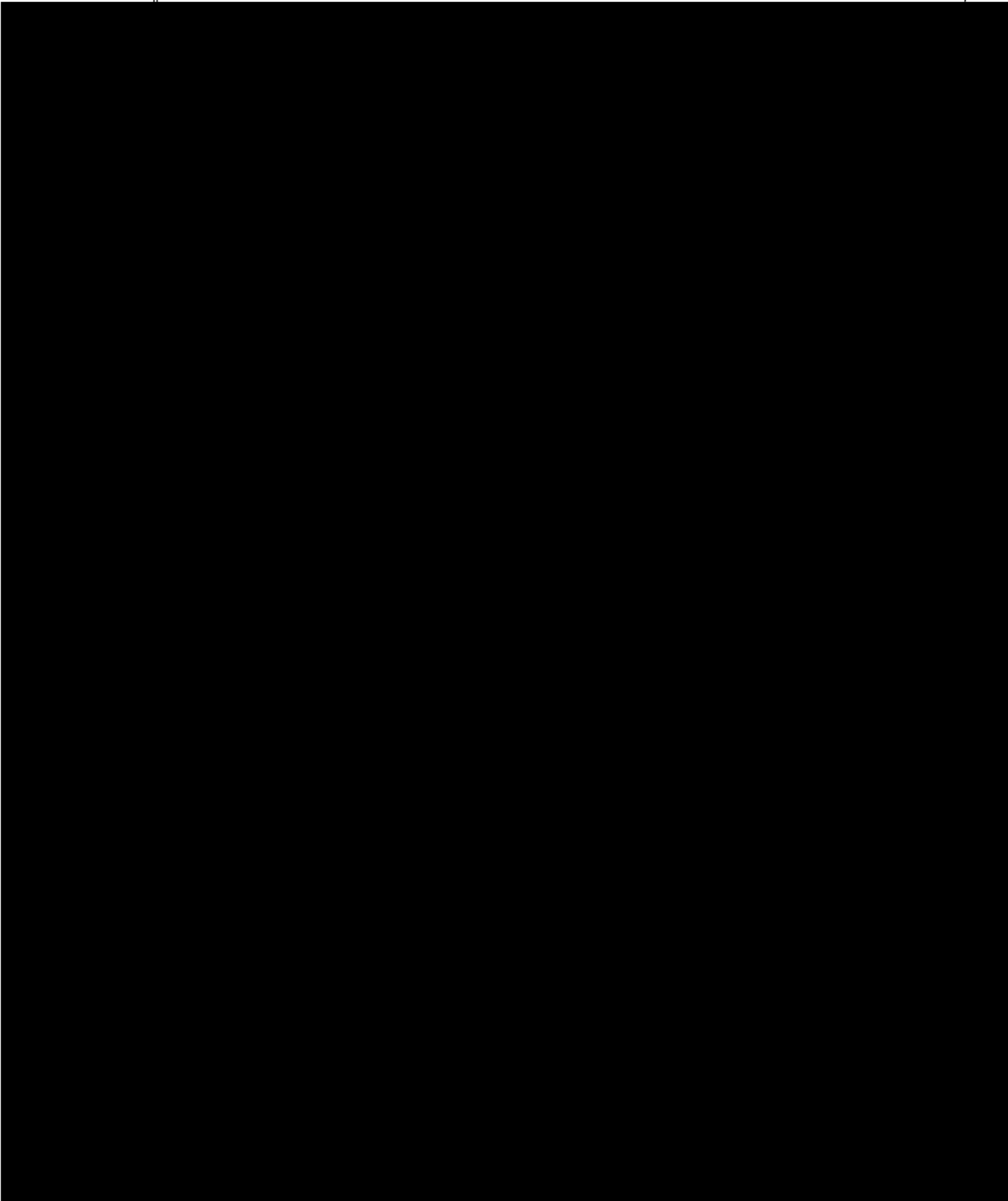


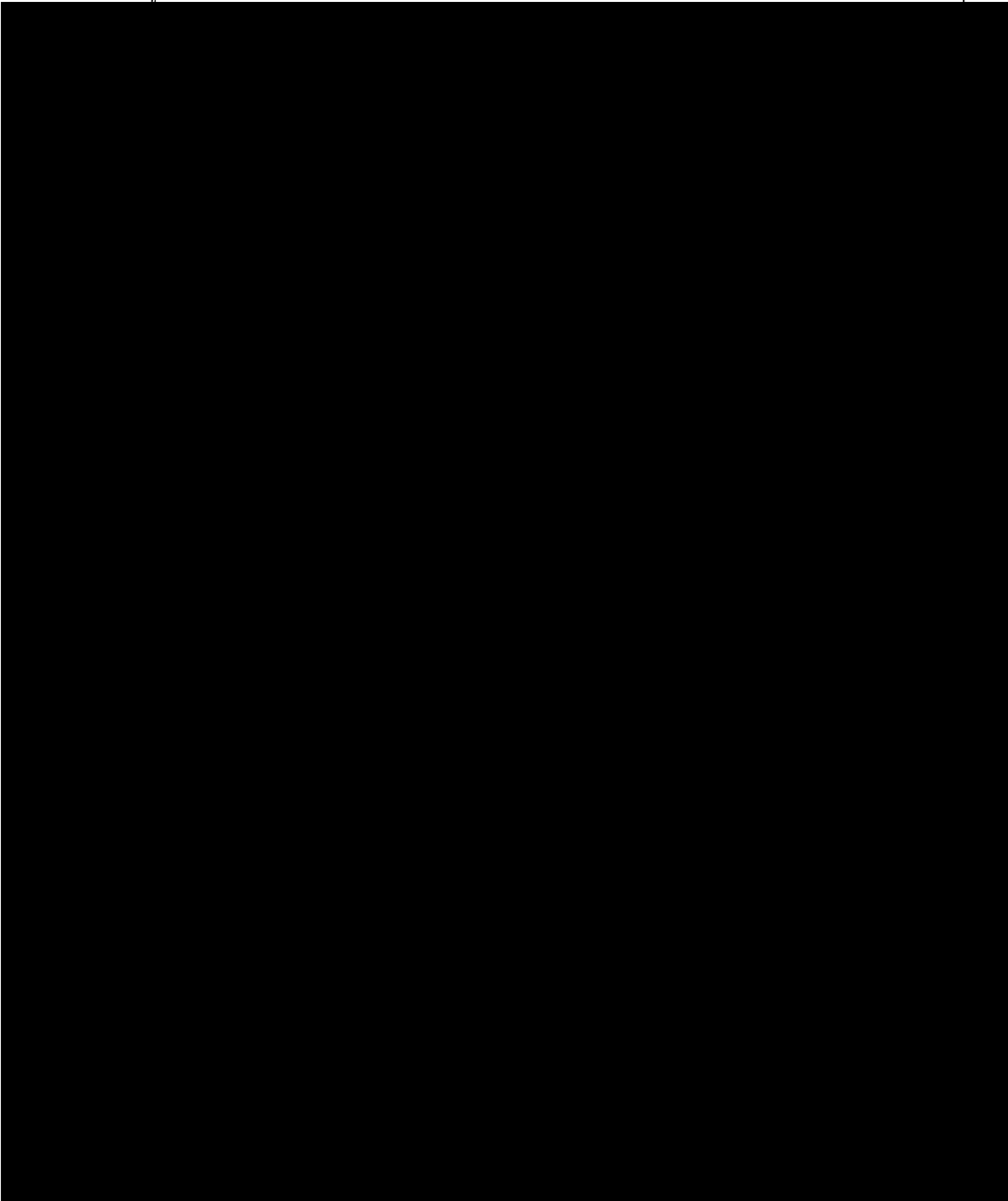


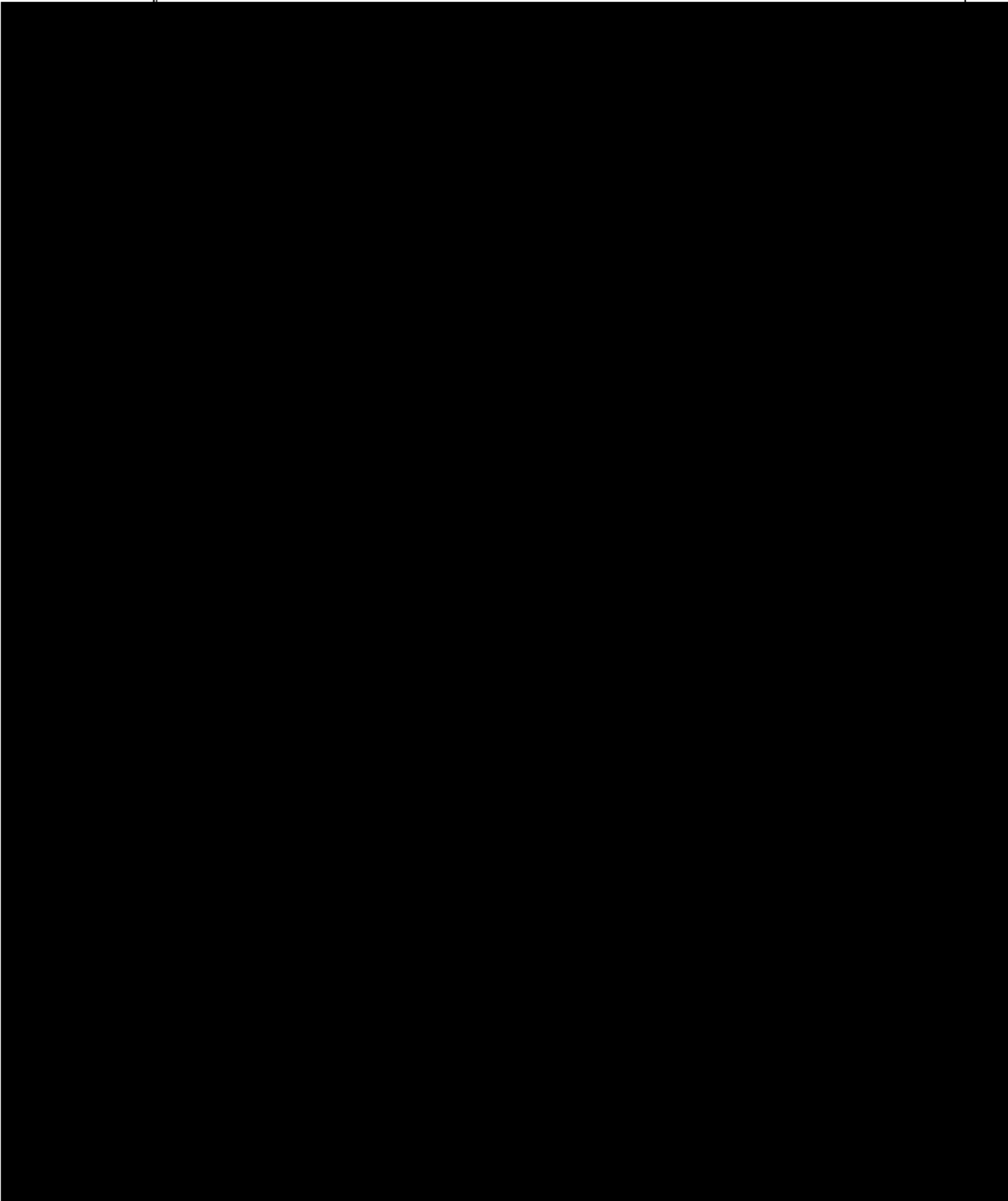


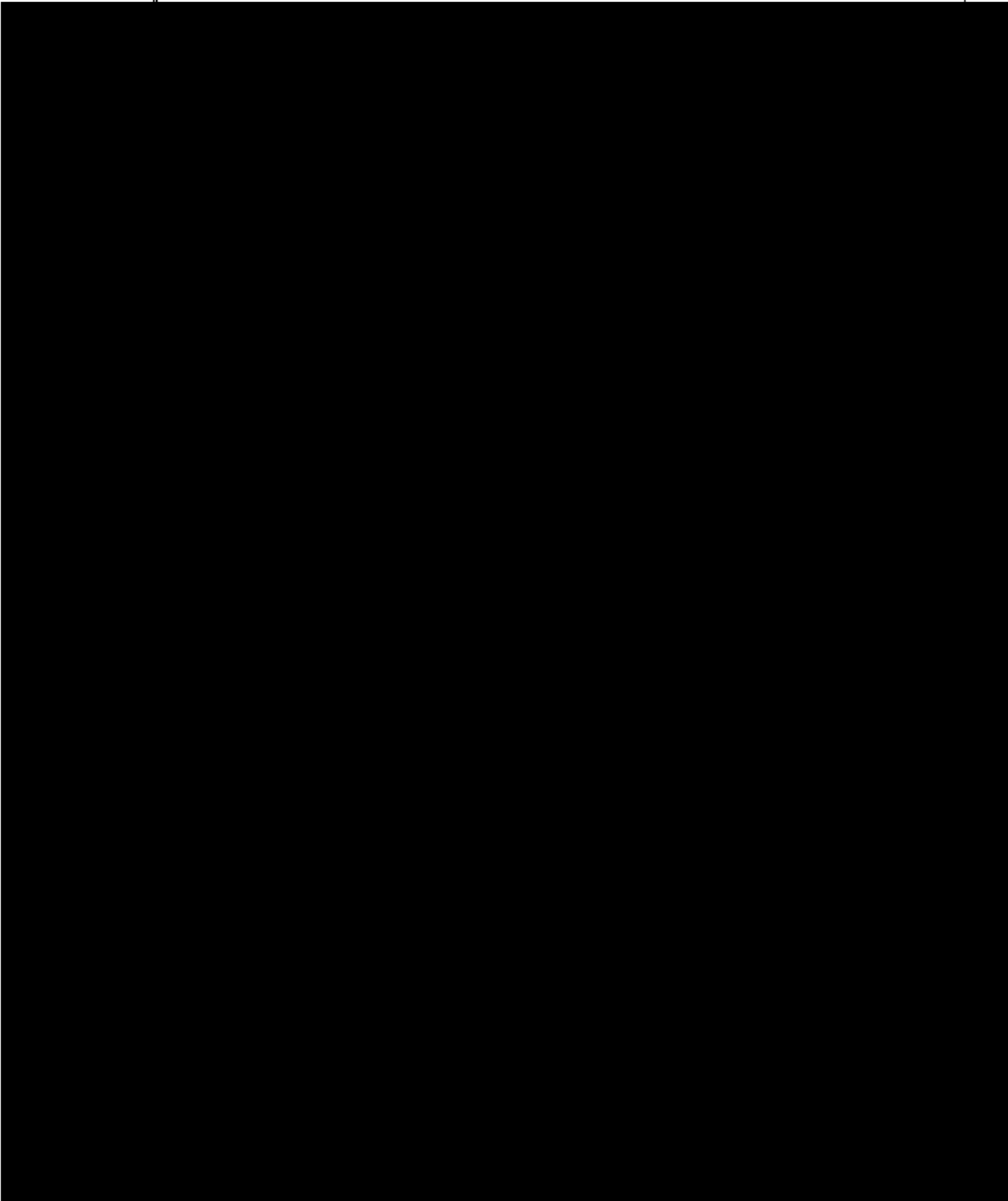


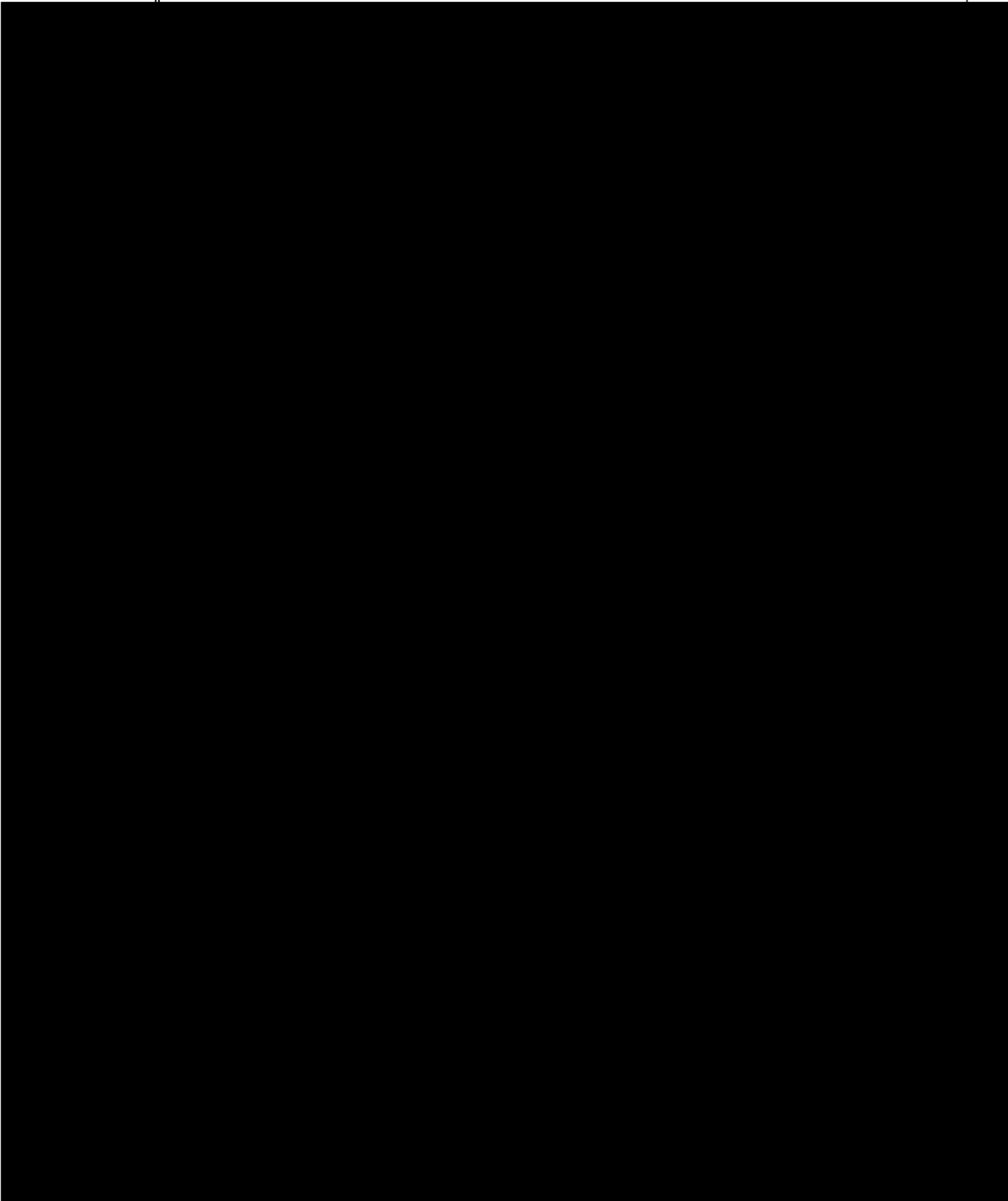


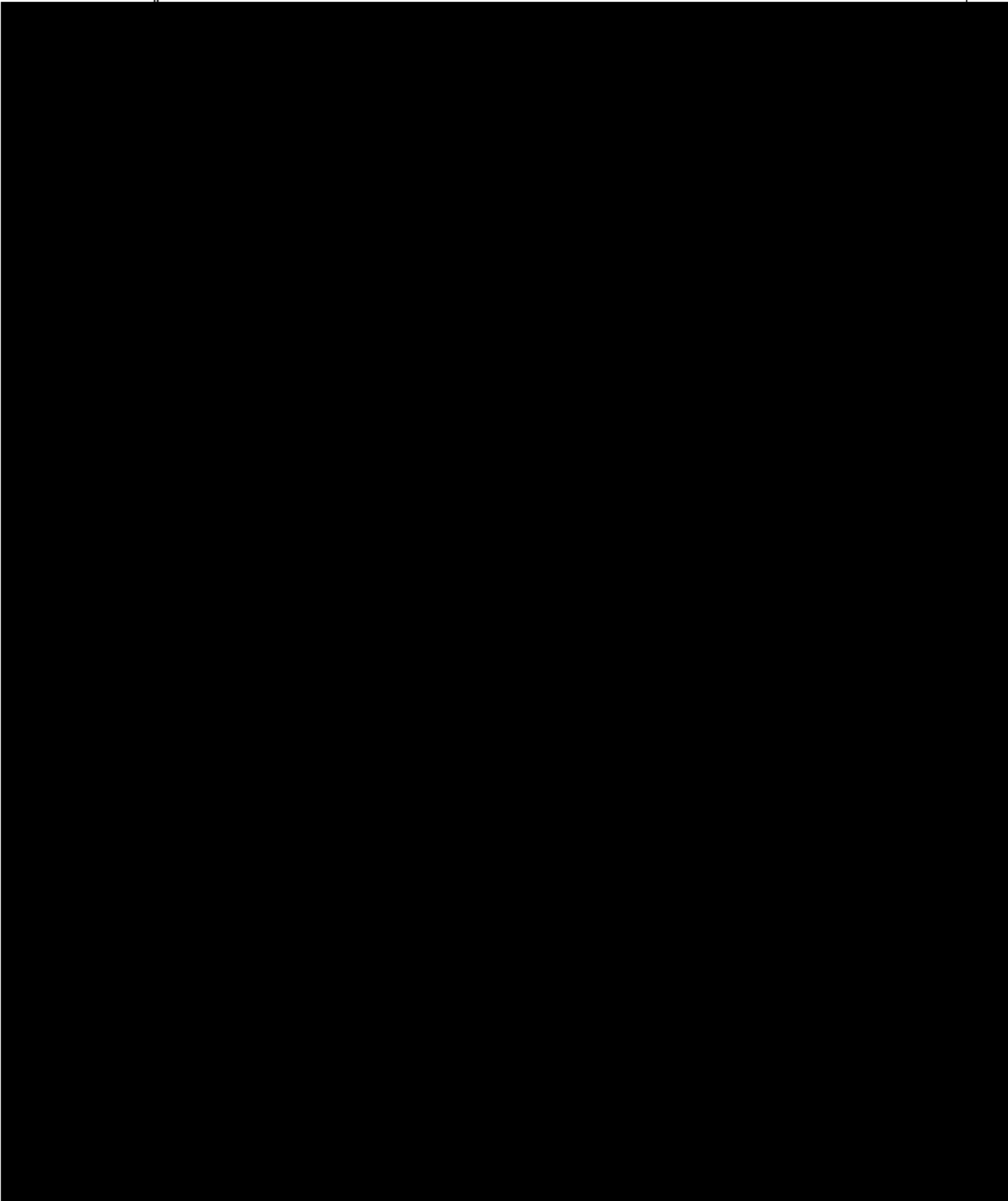


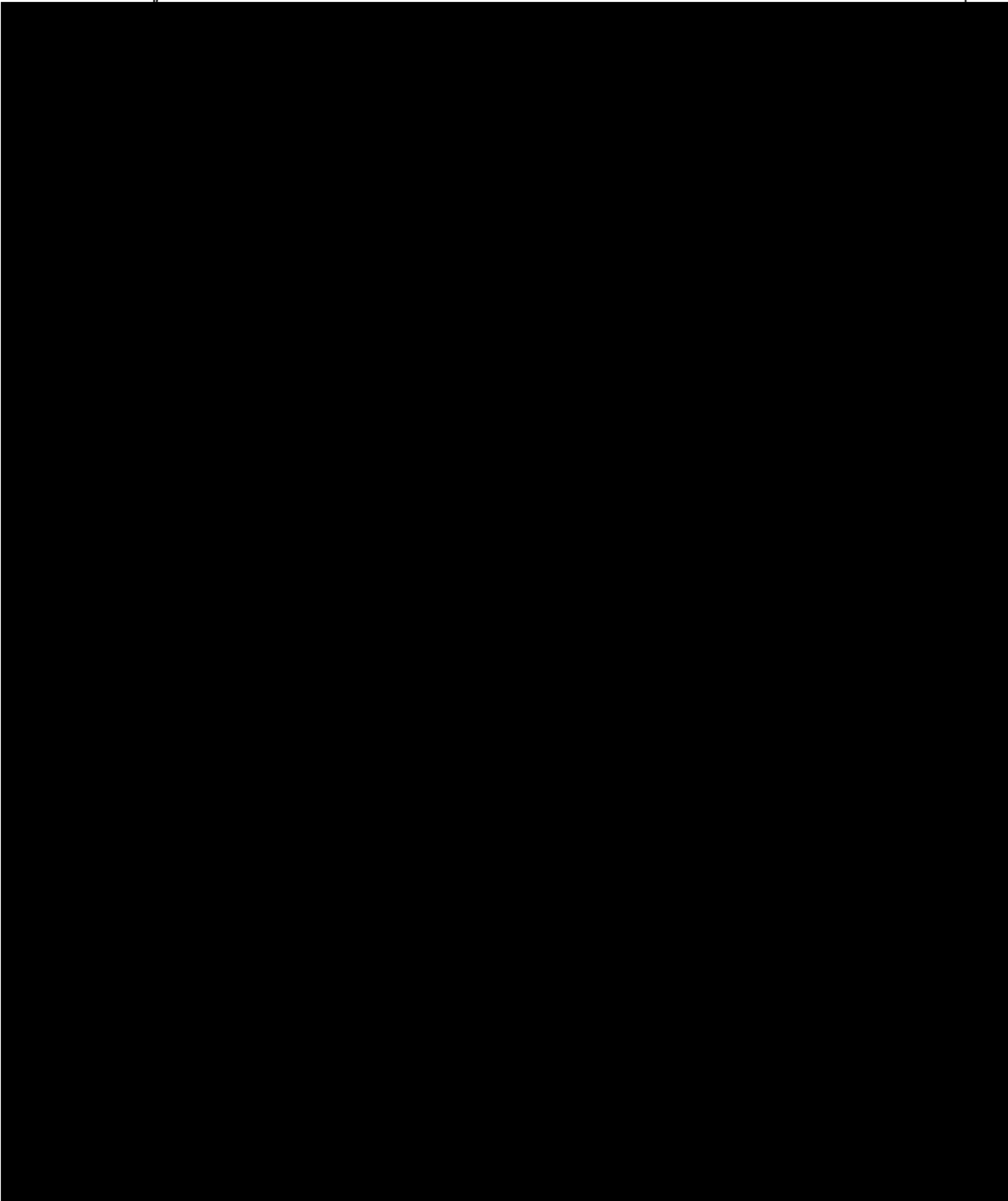




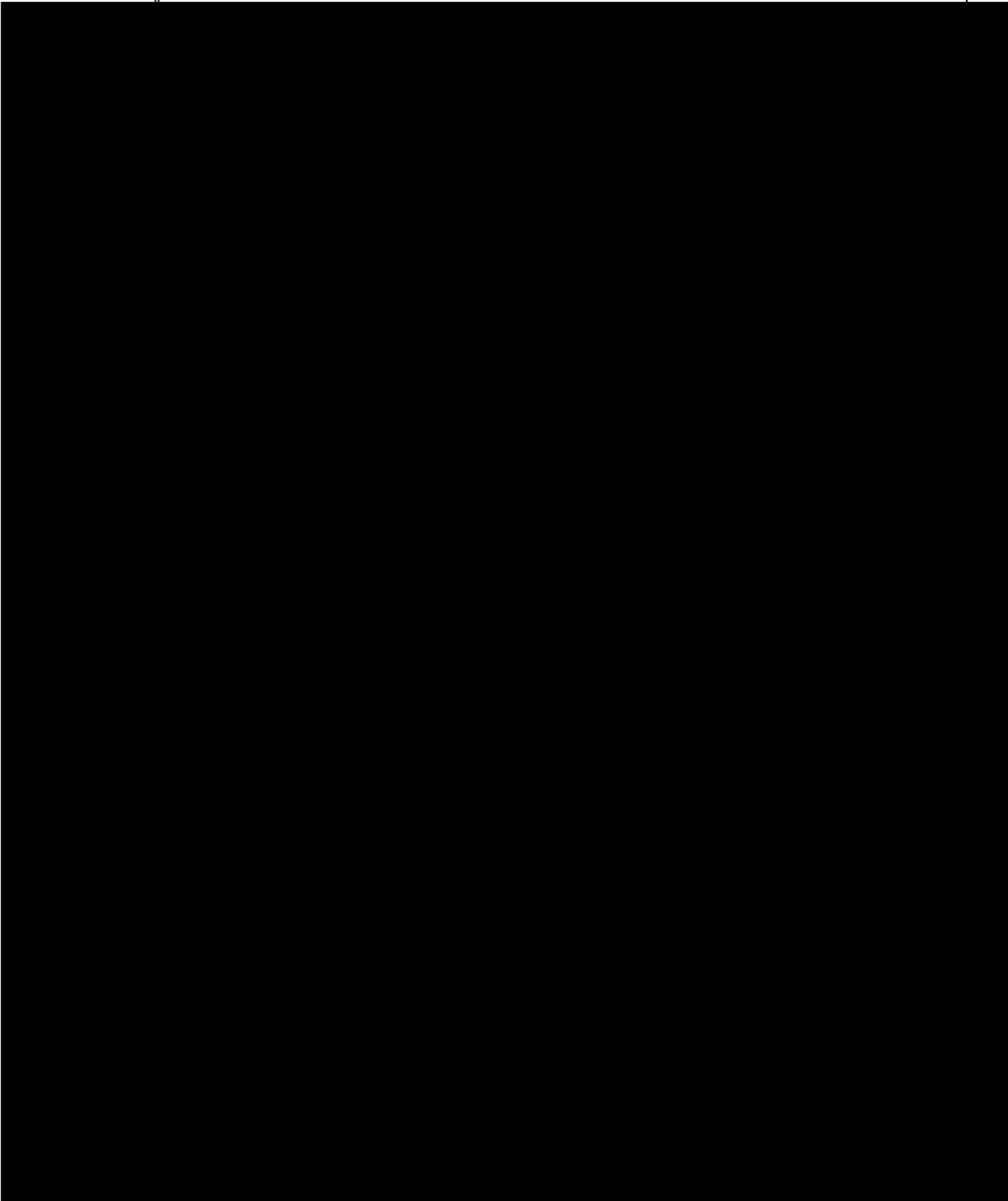


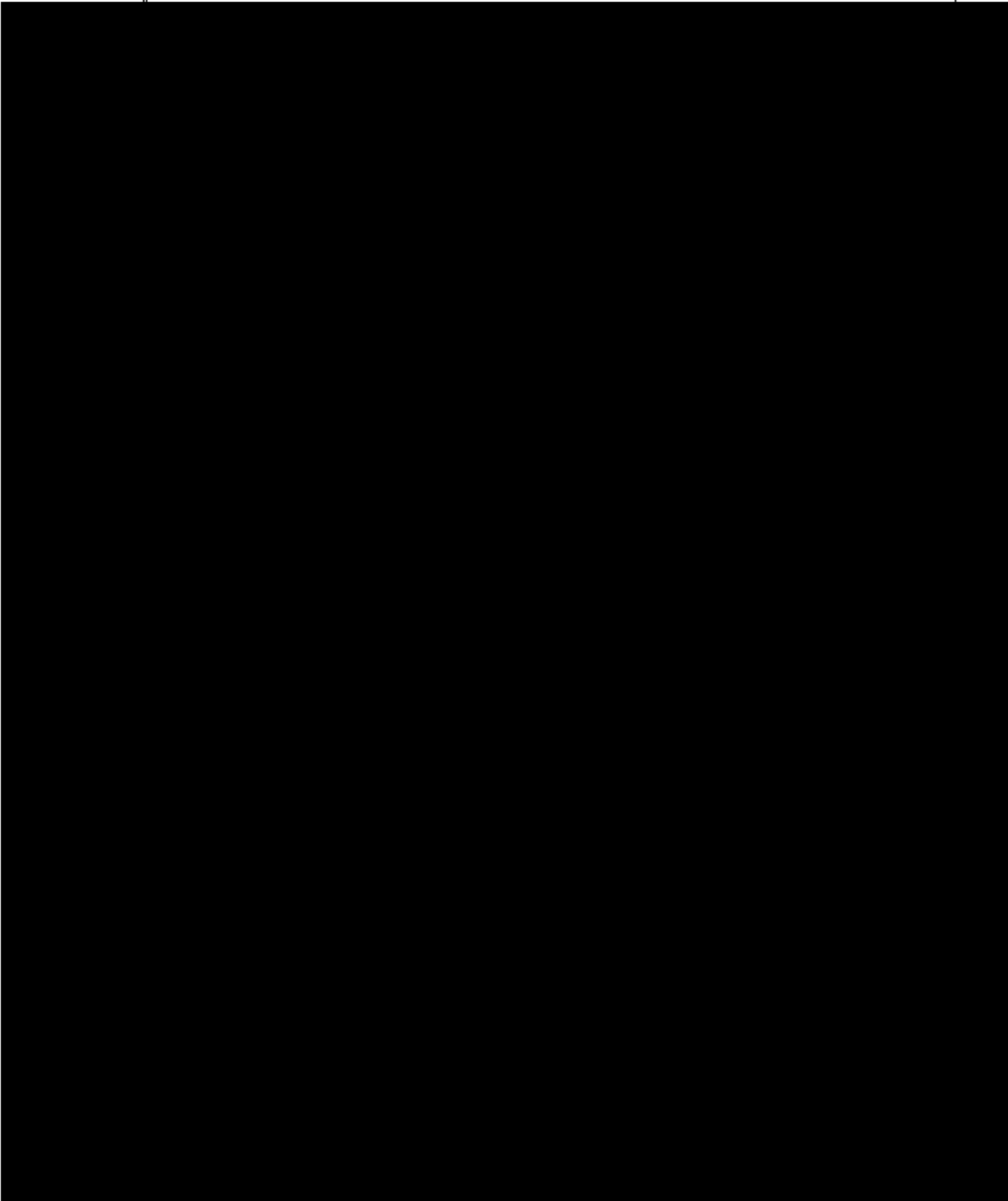


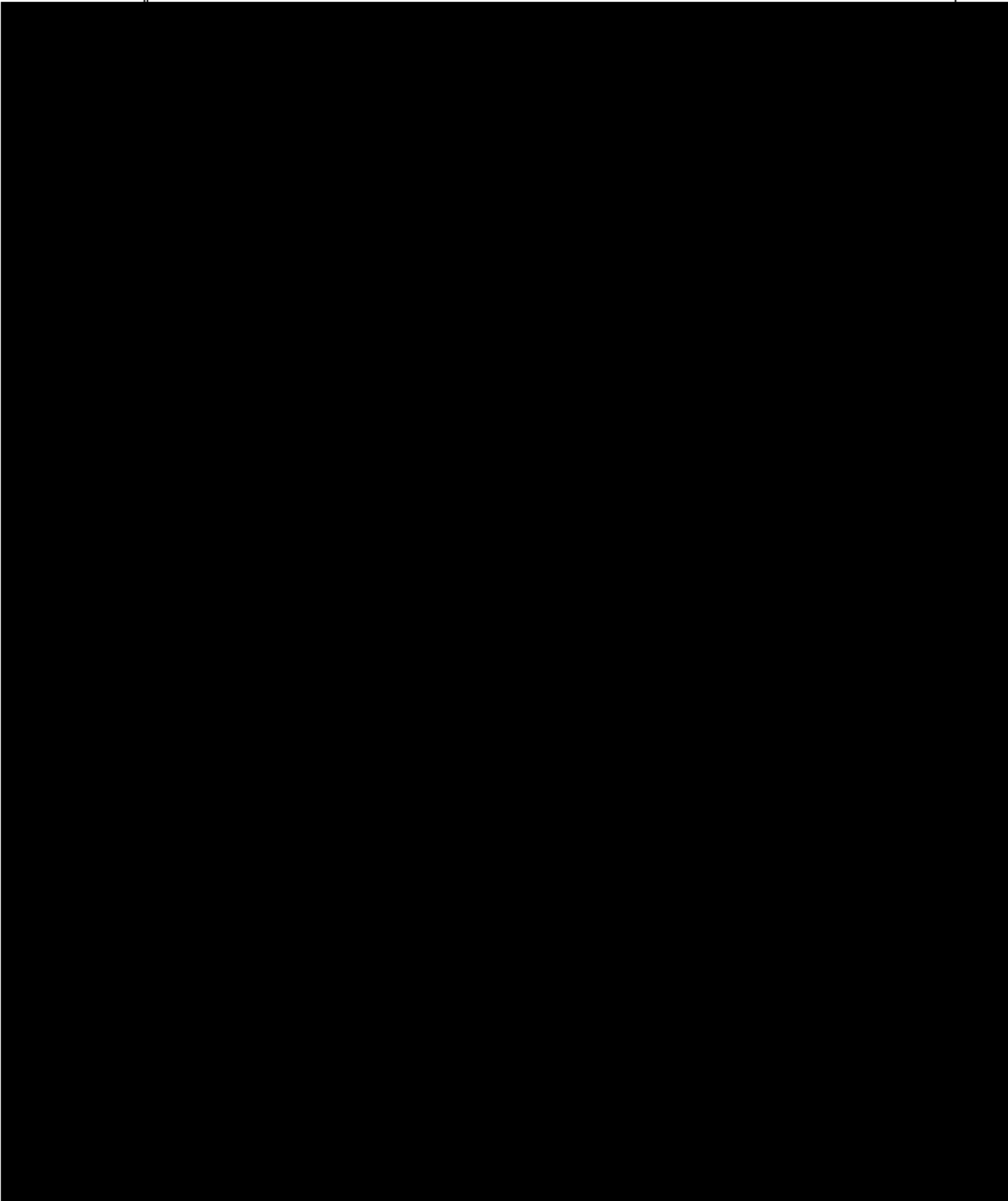


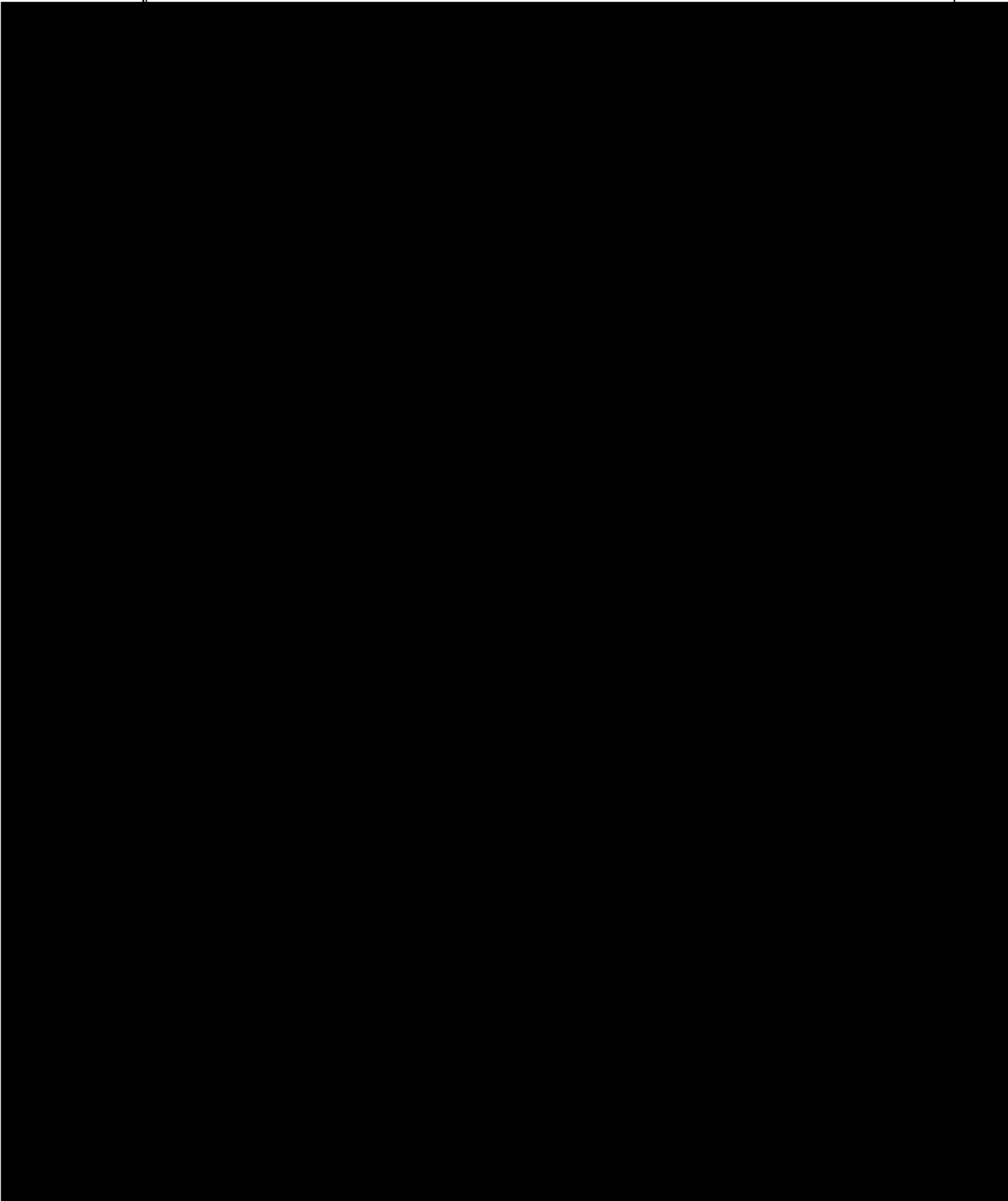










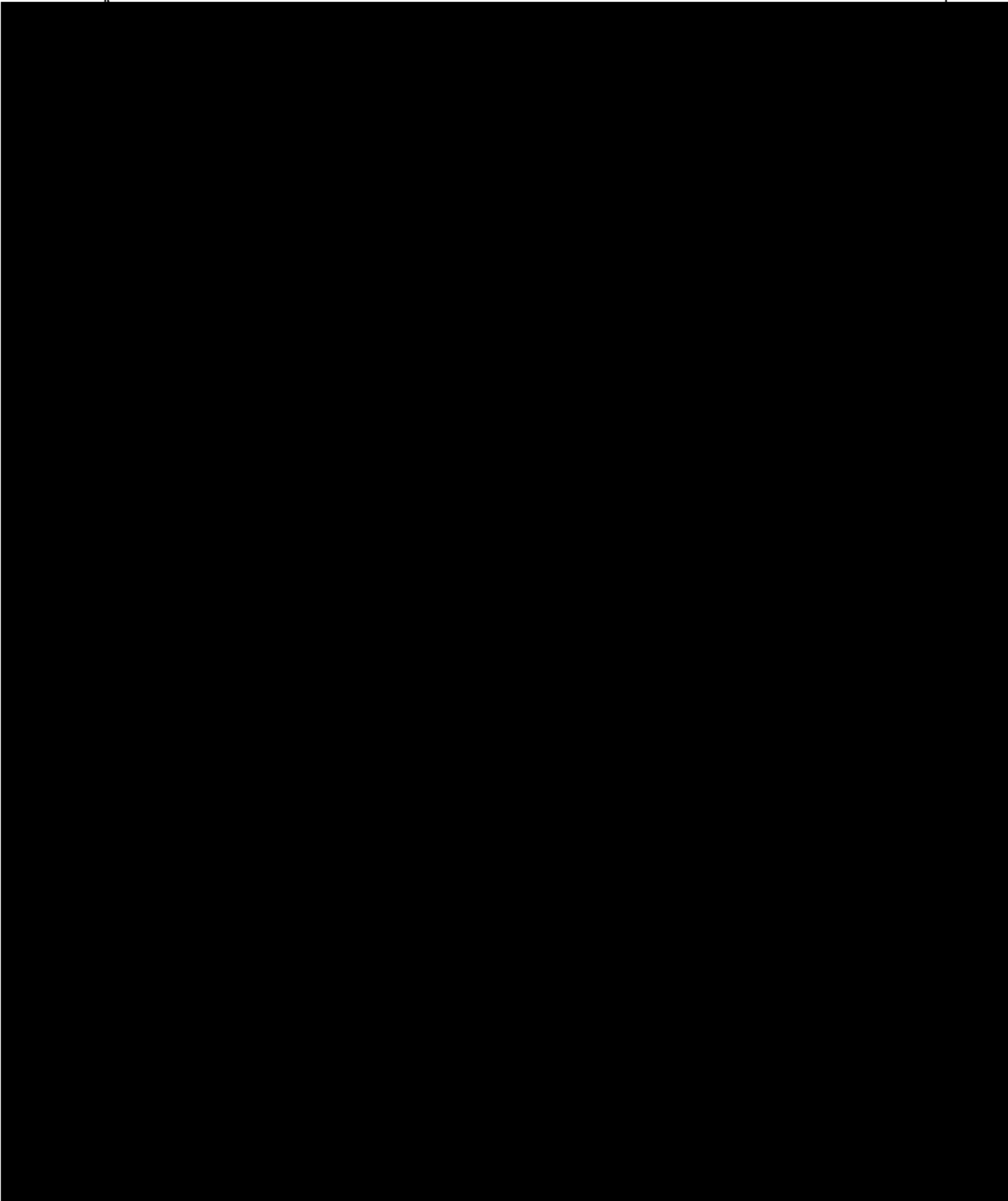


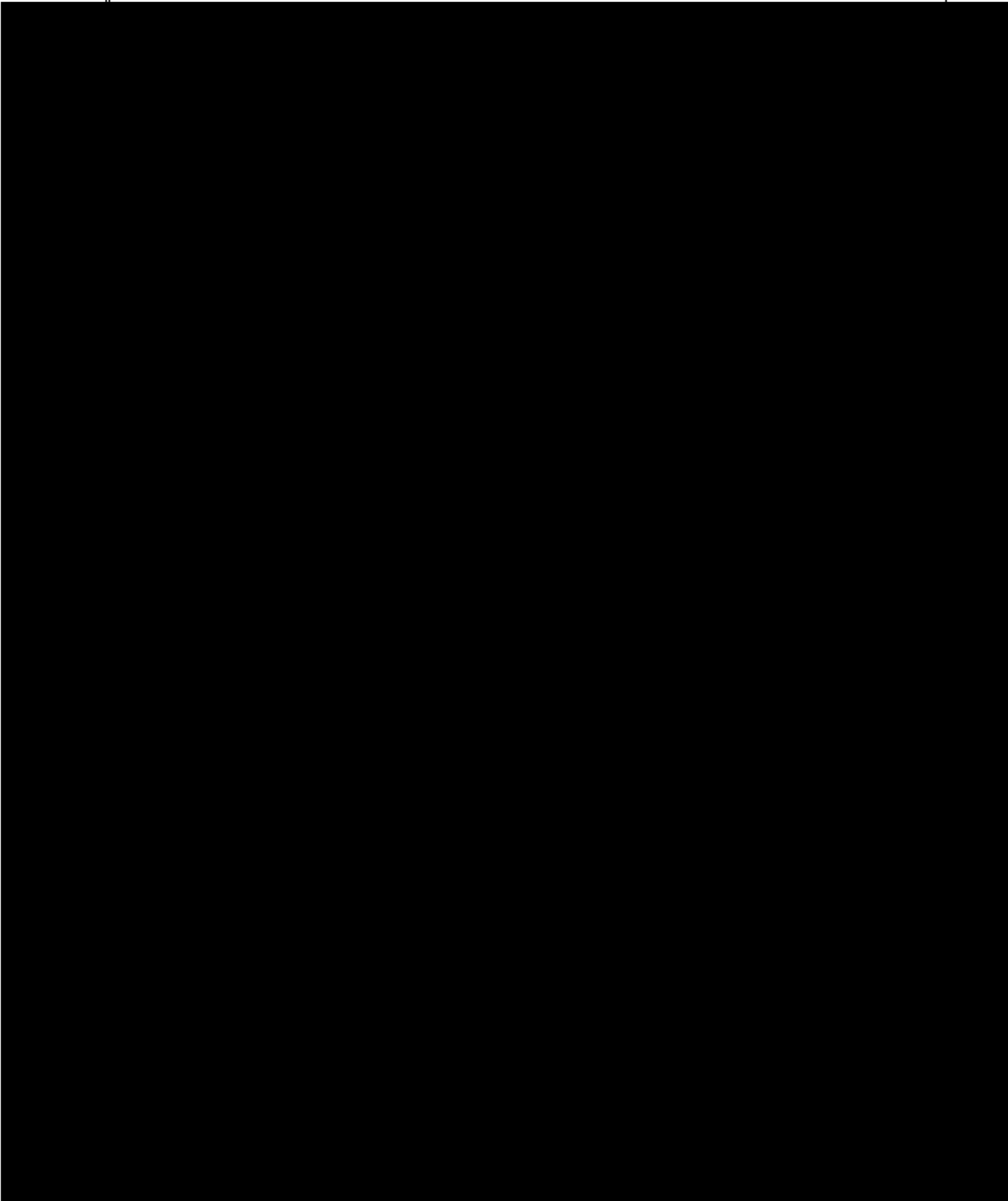
Employee 3

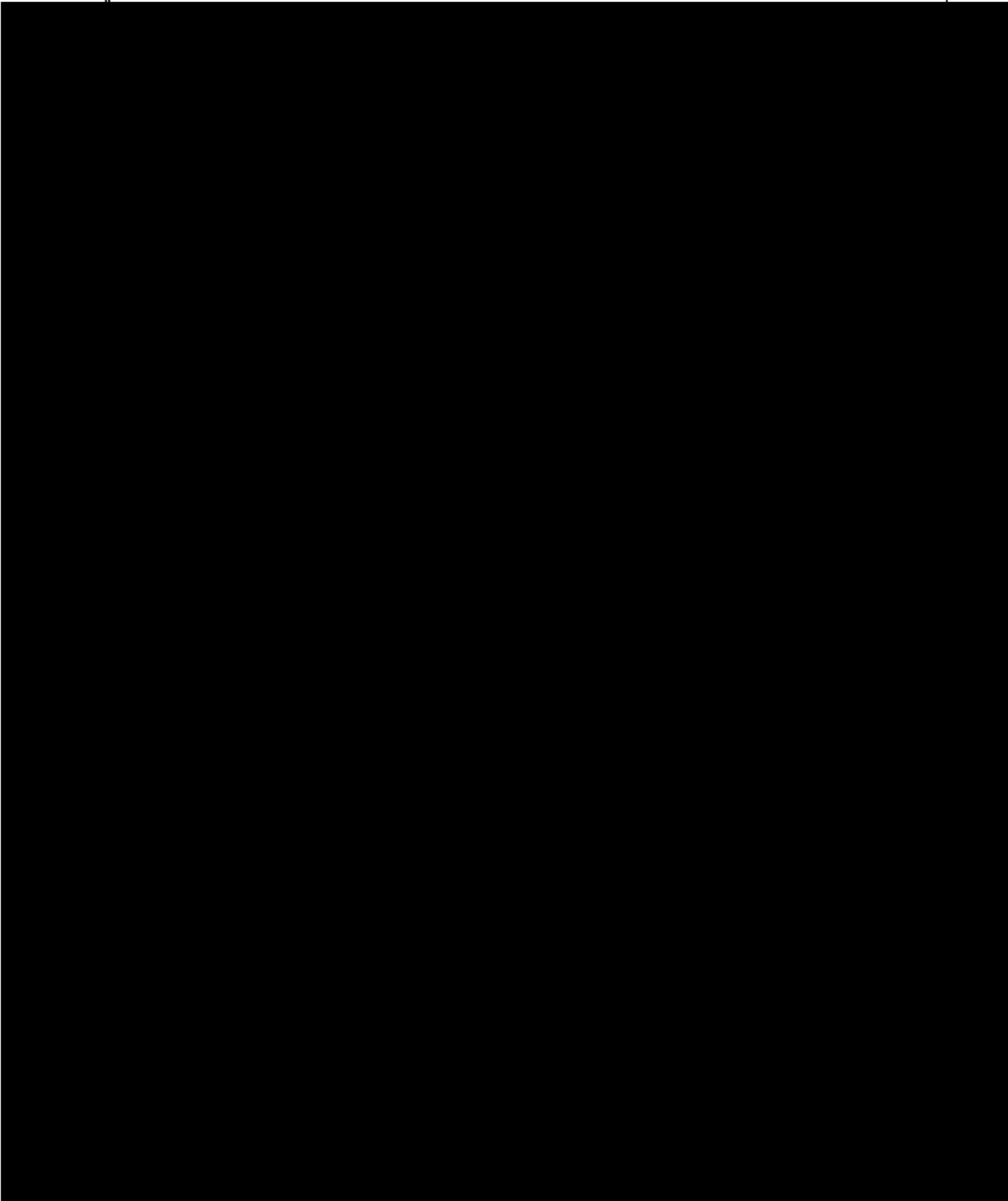
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DISTRICT OF ARIZONA  
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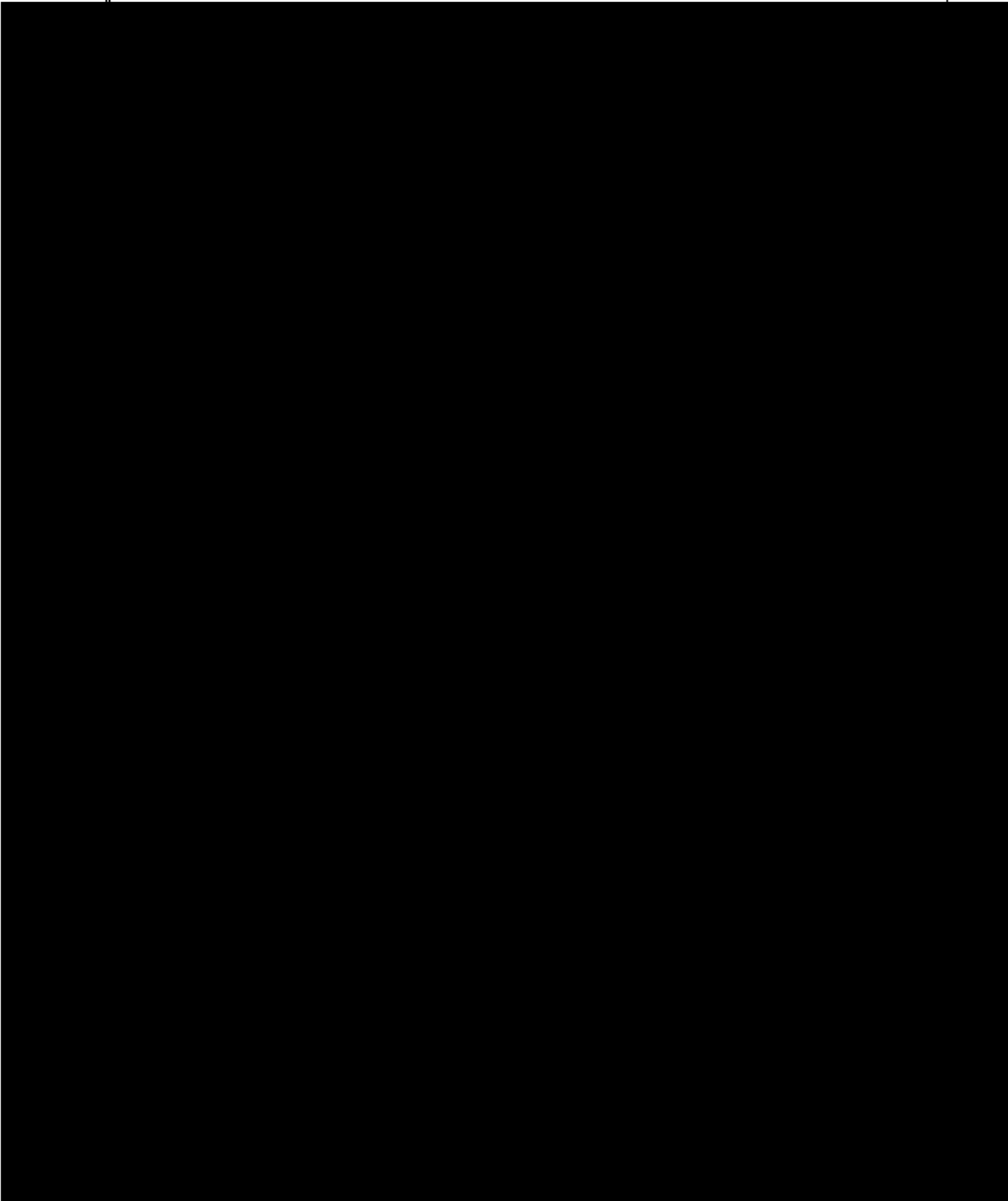
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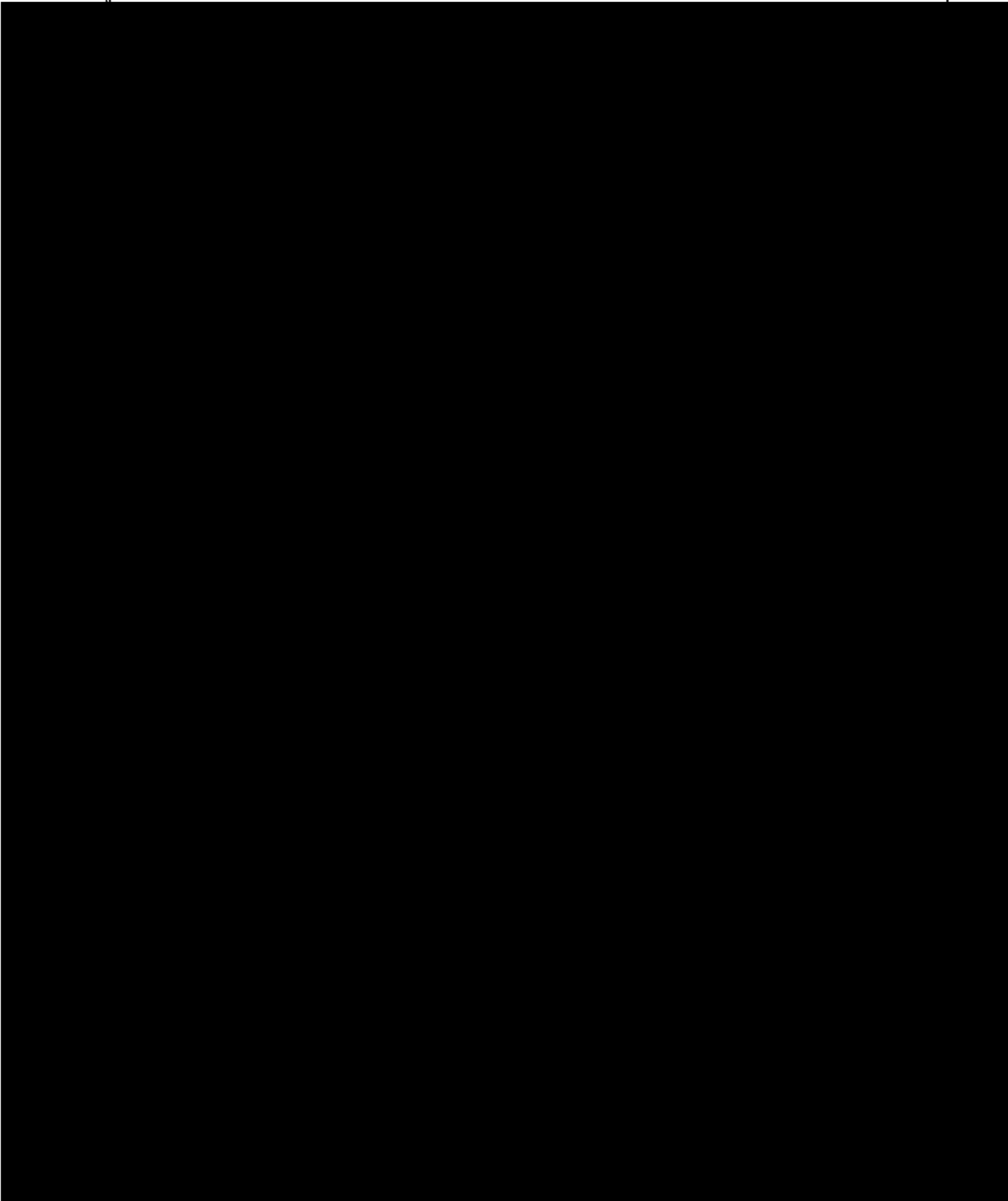


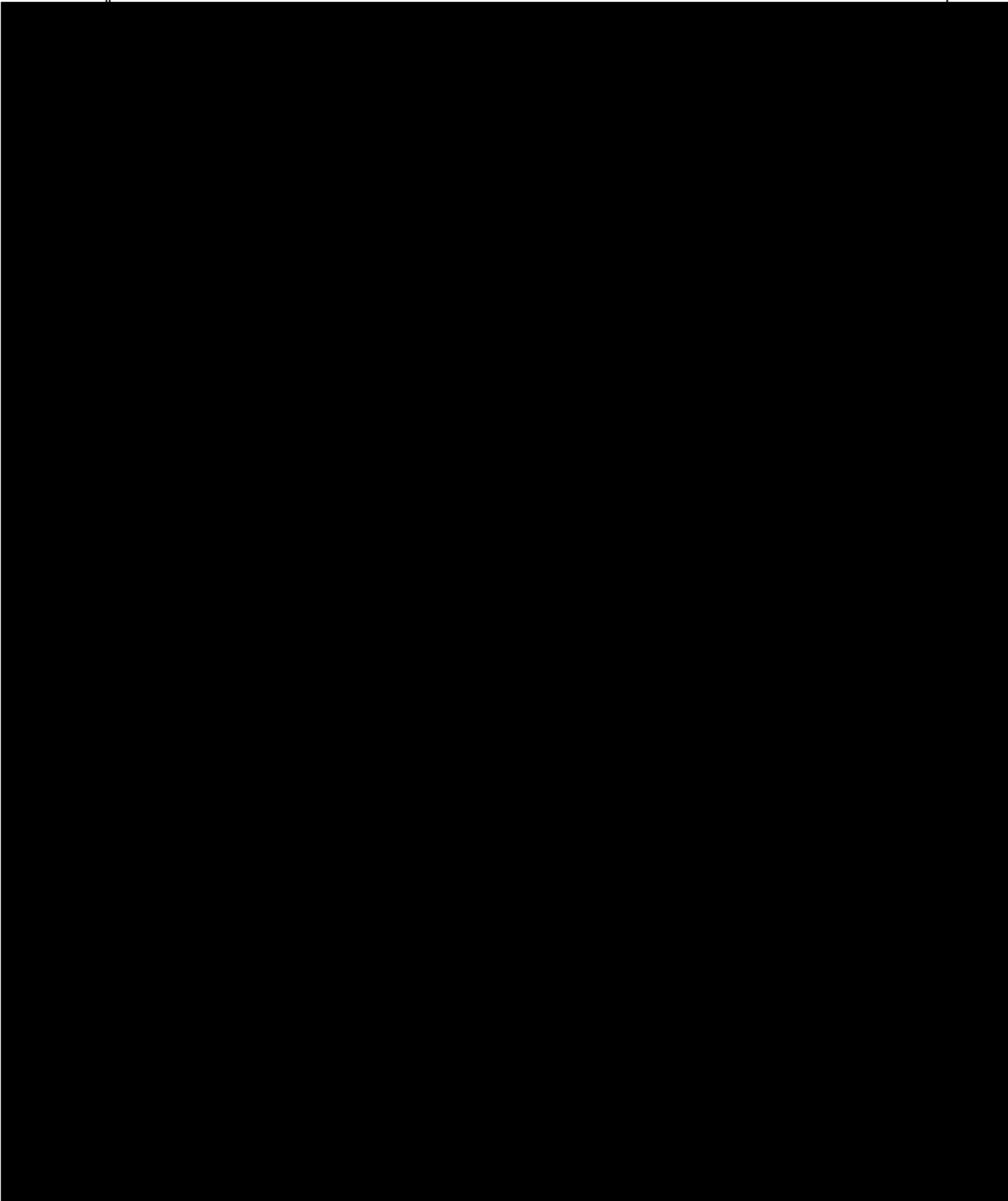


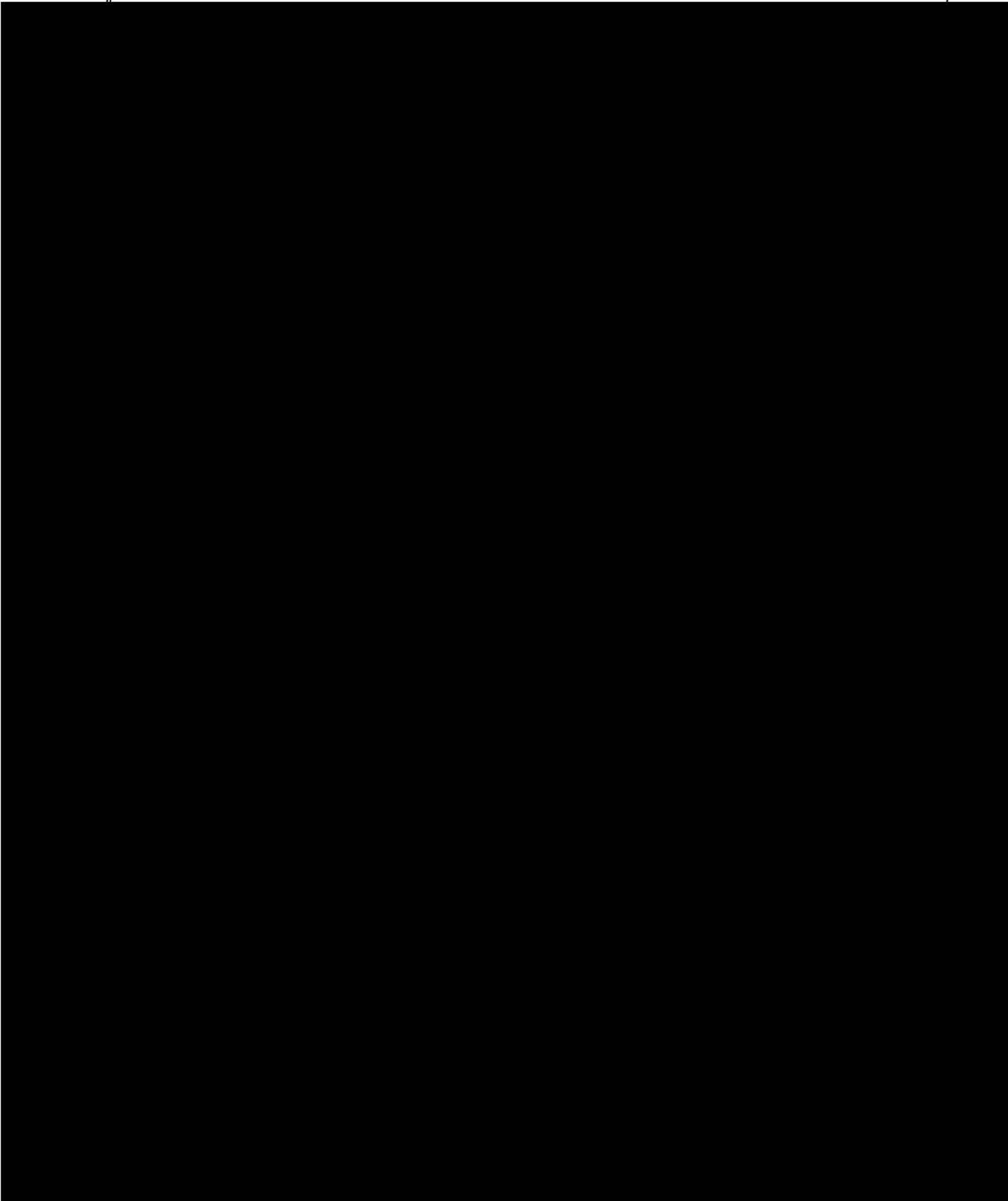


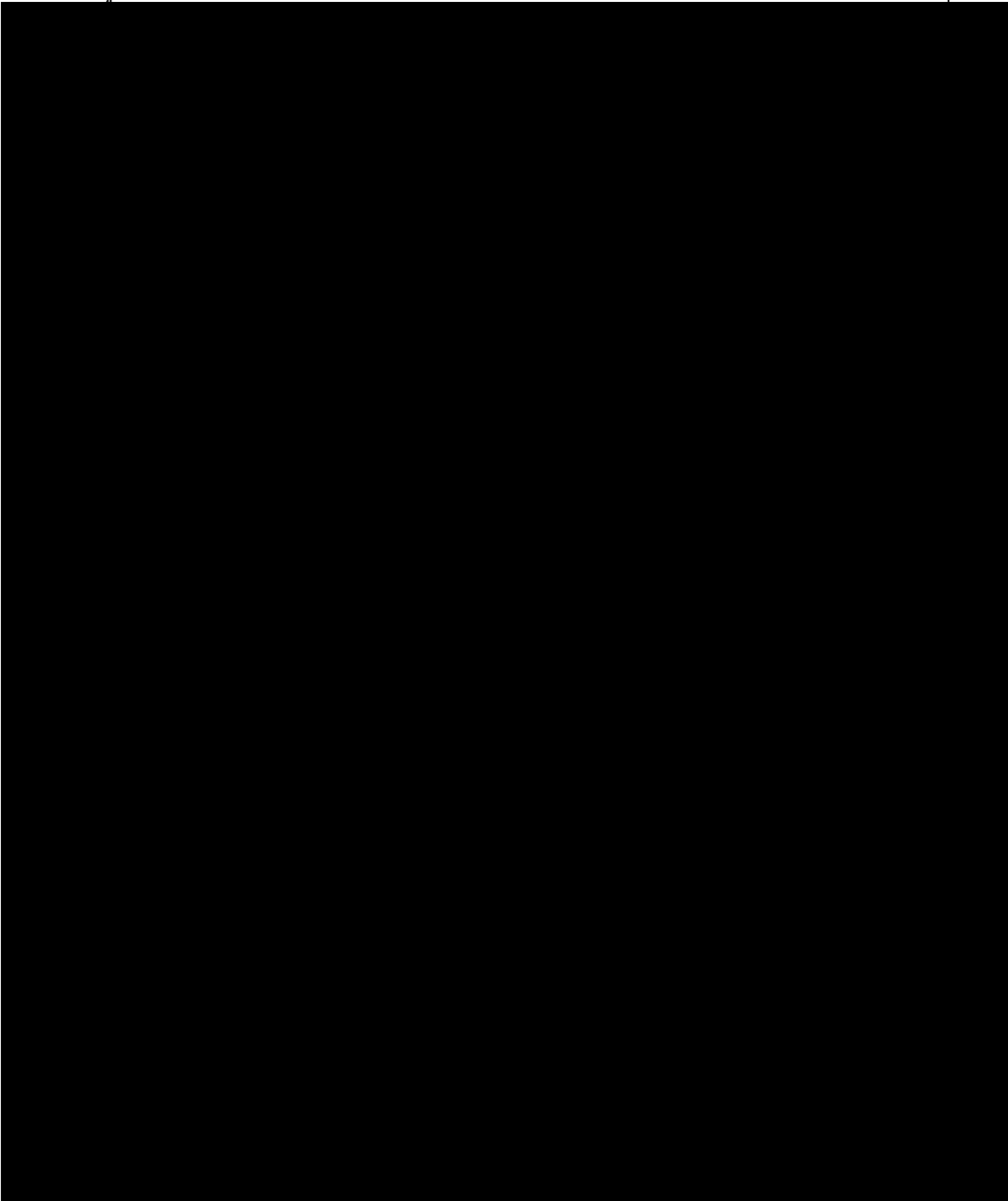


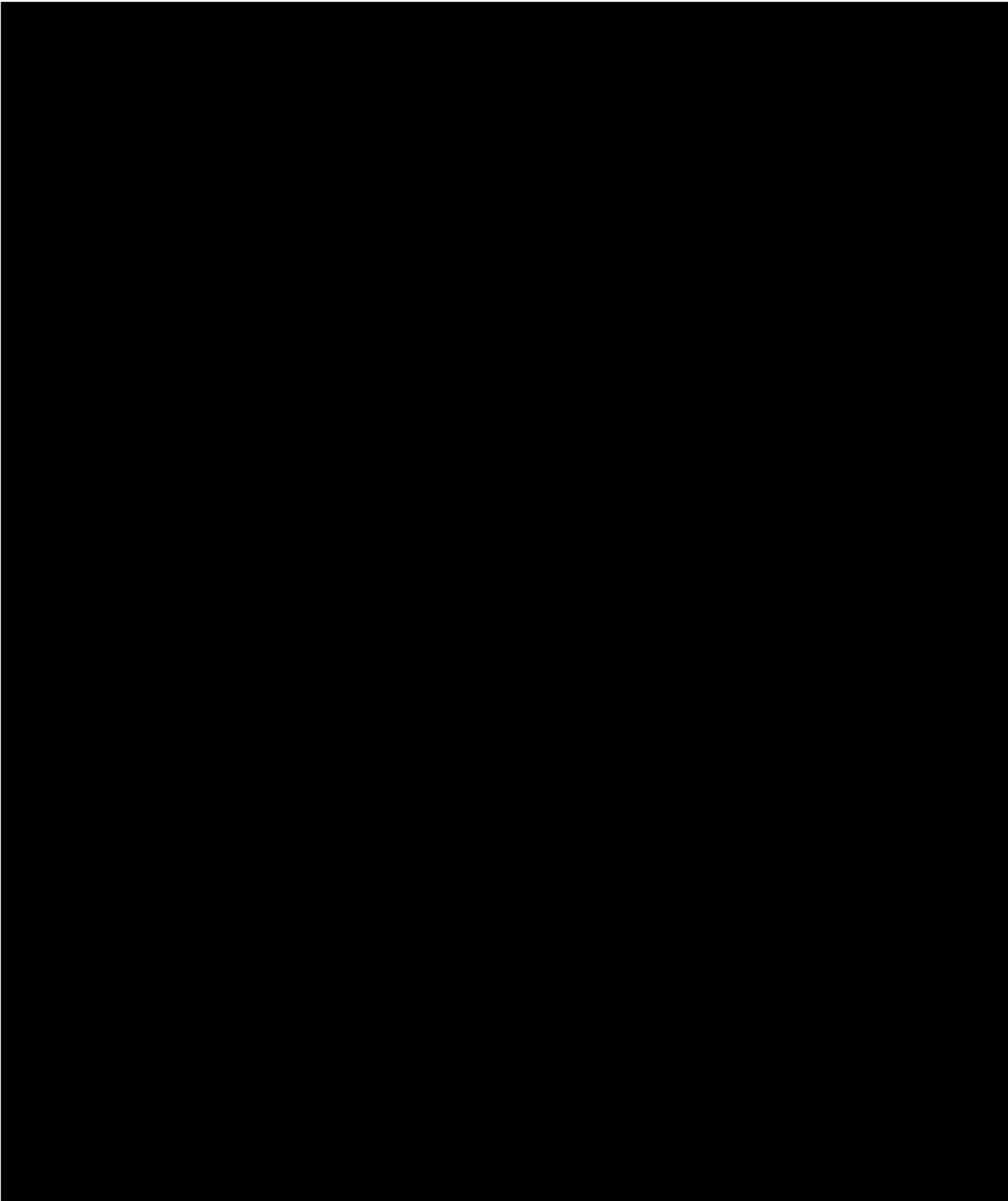


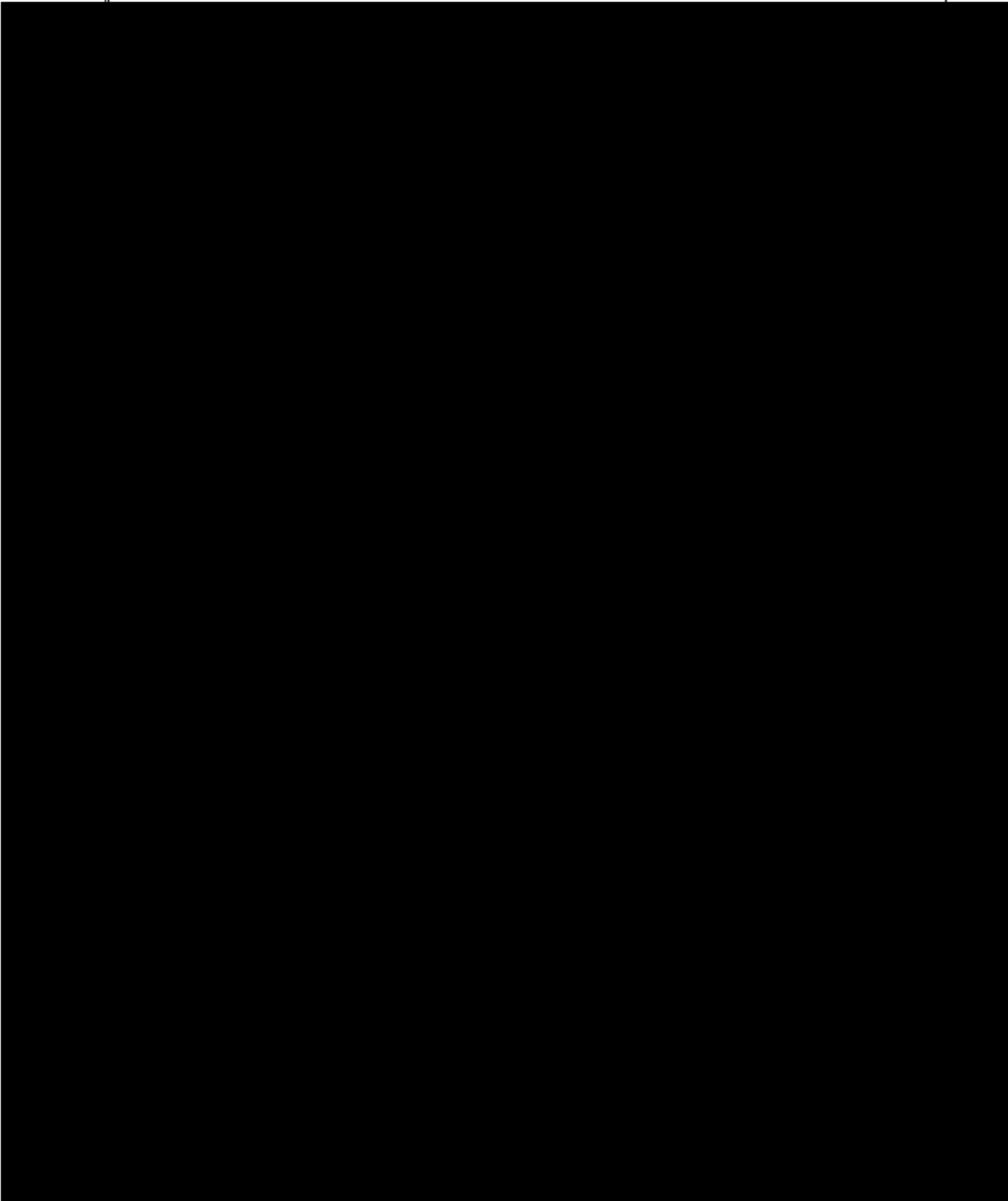


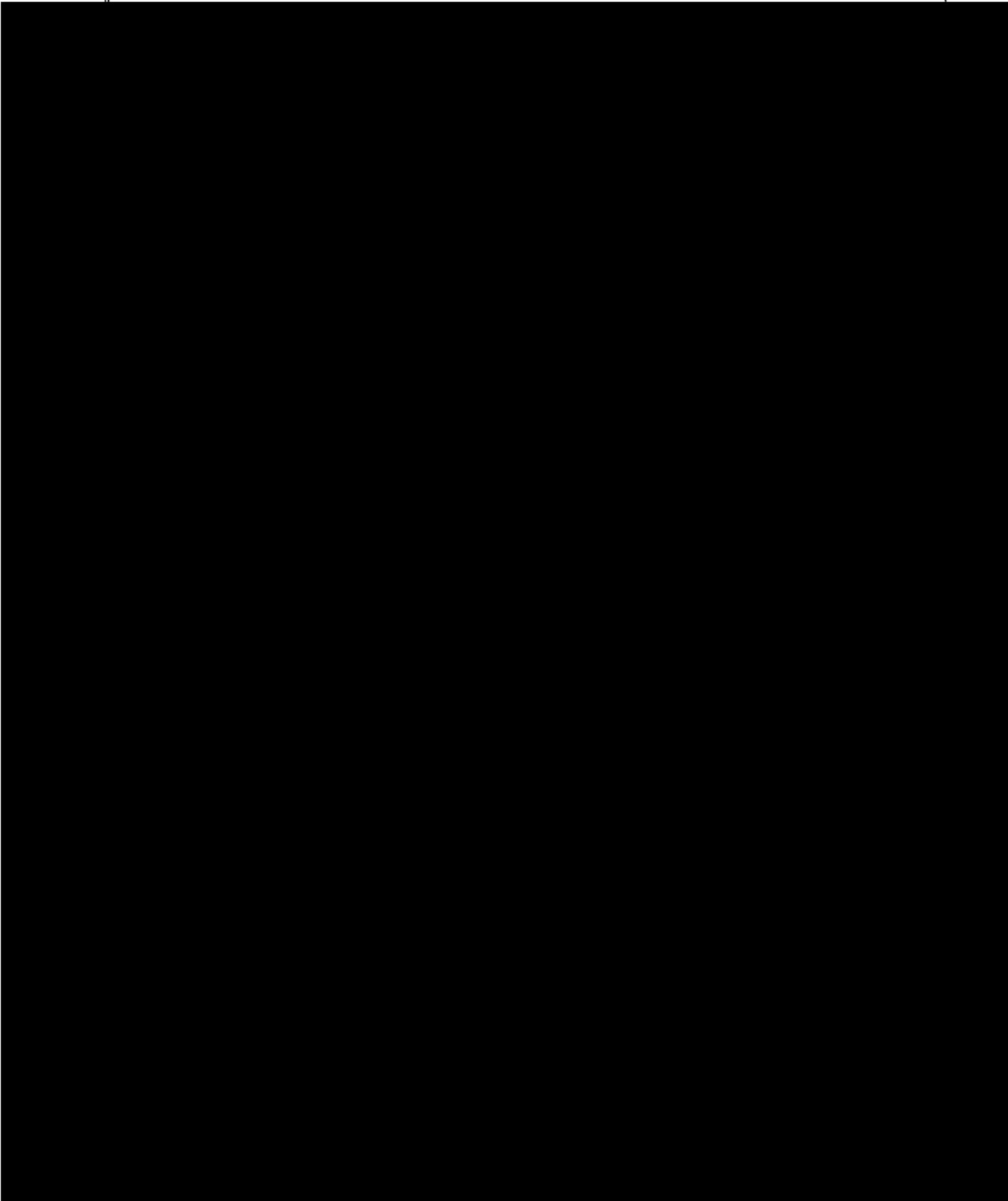




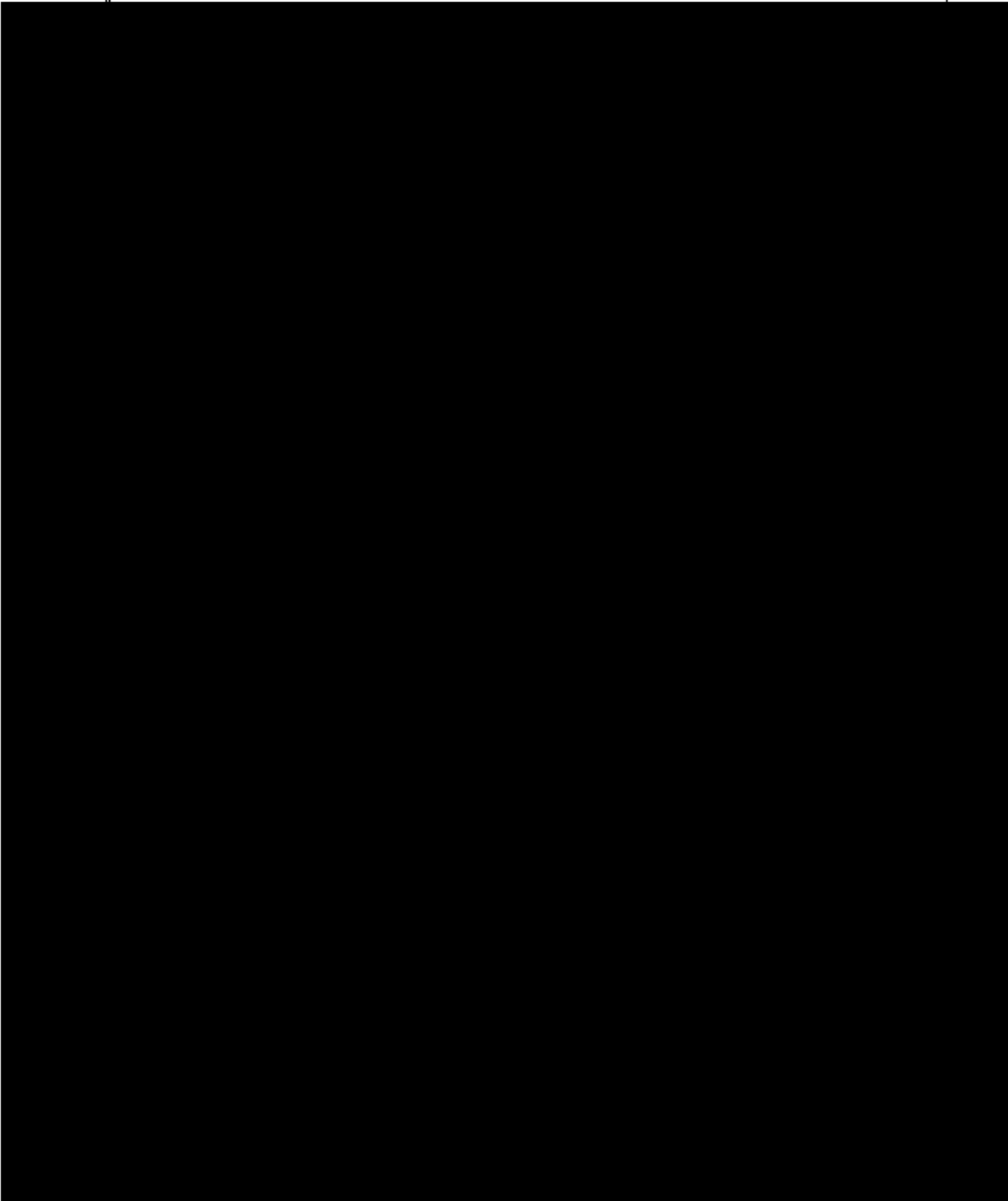


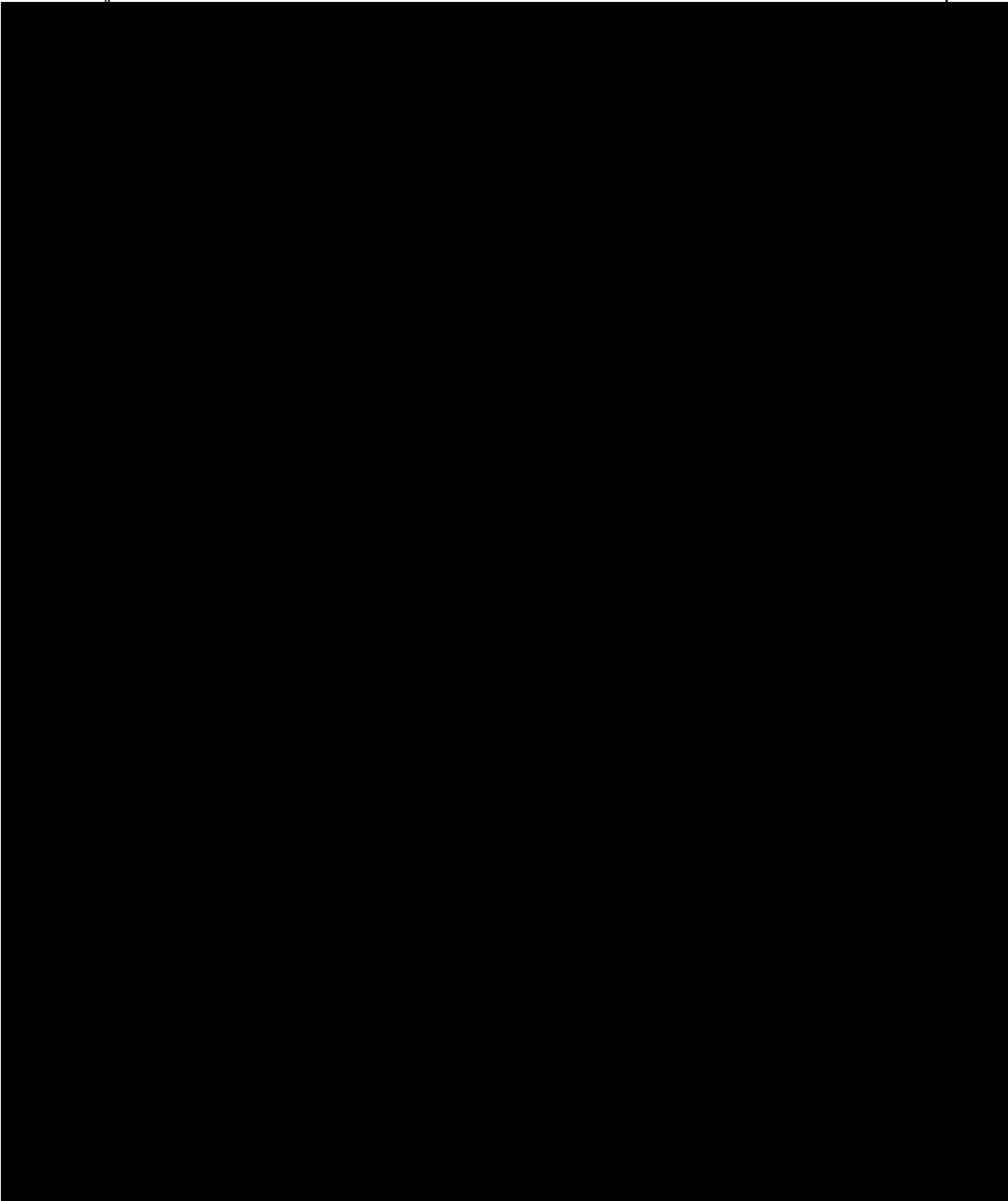


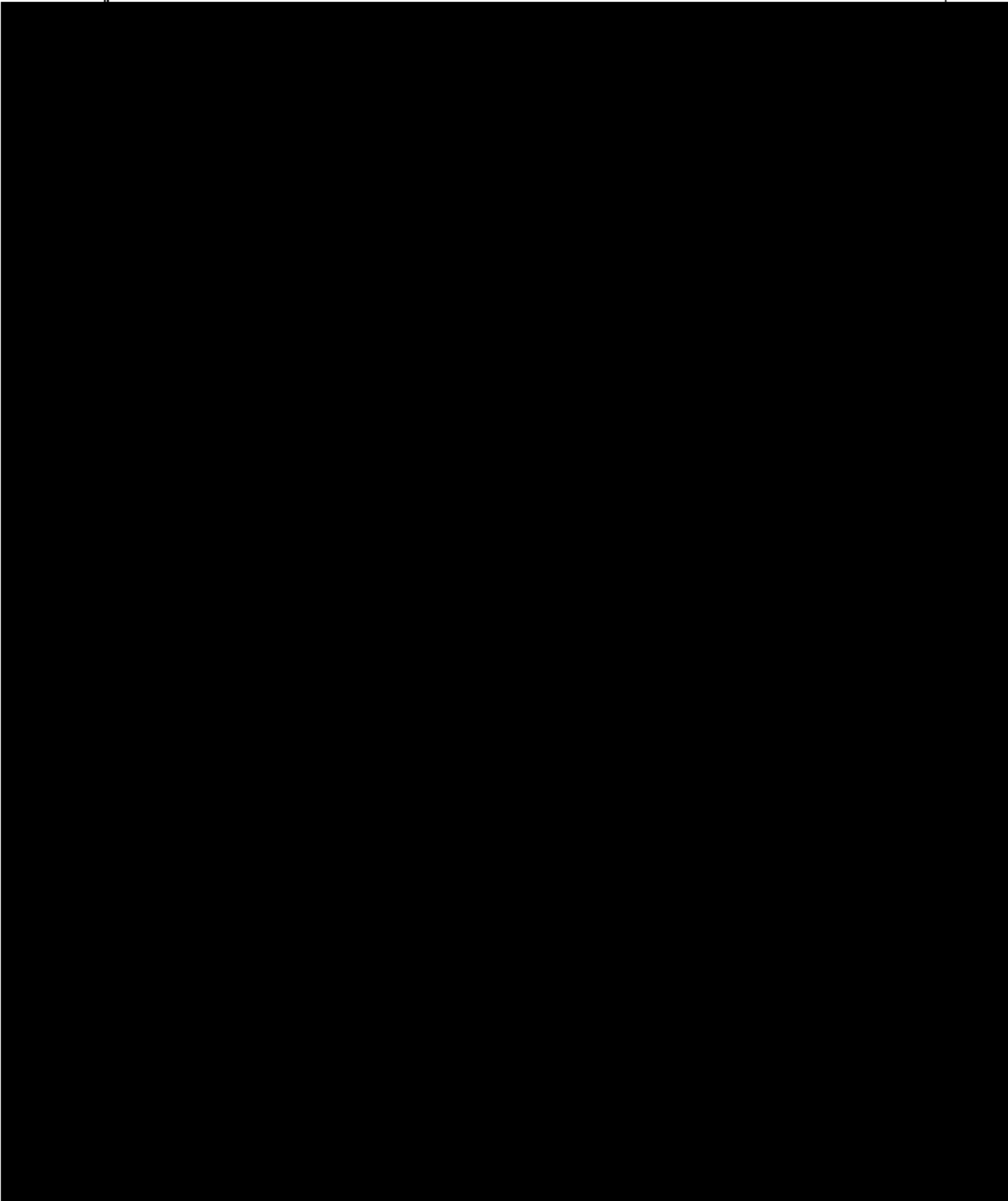


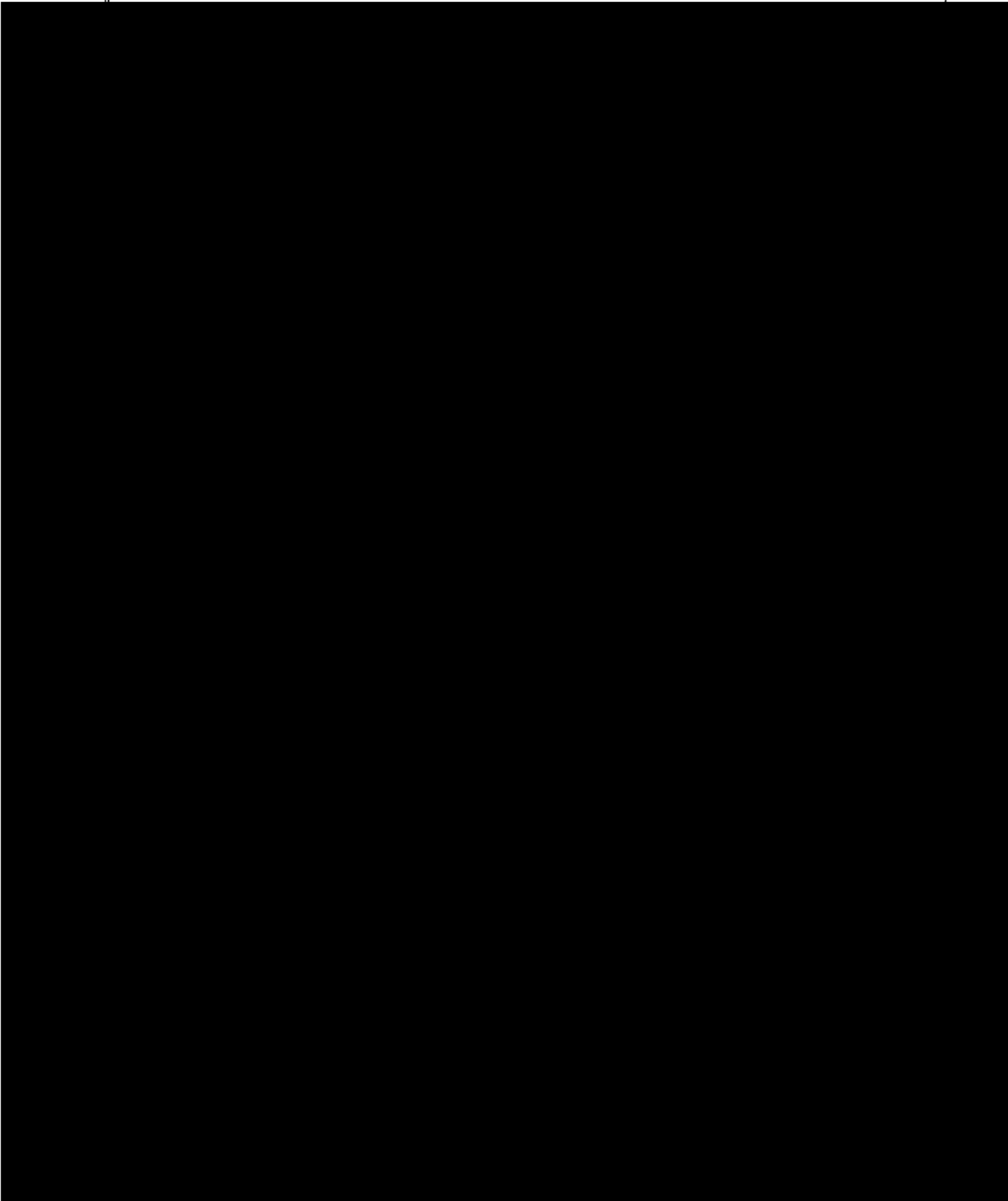


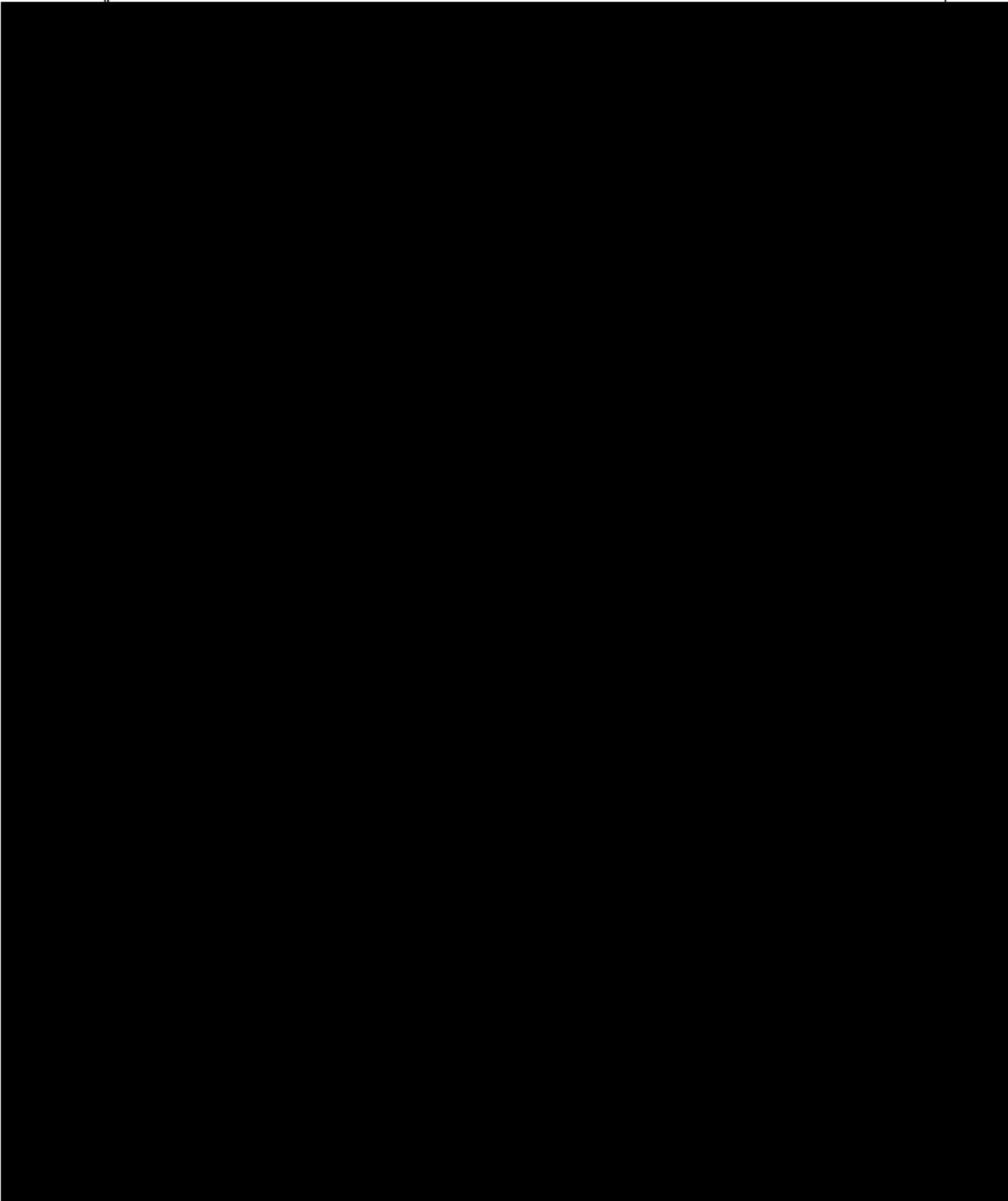


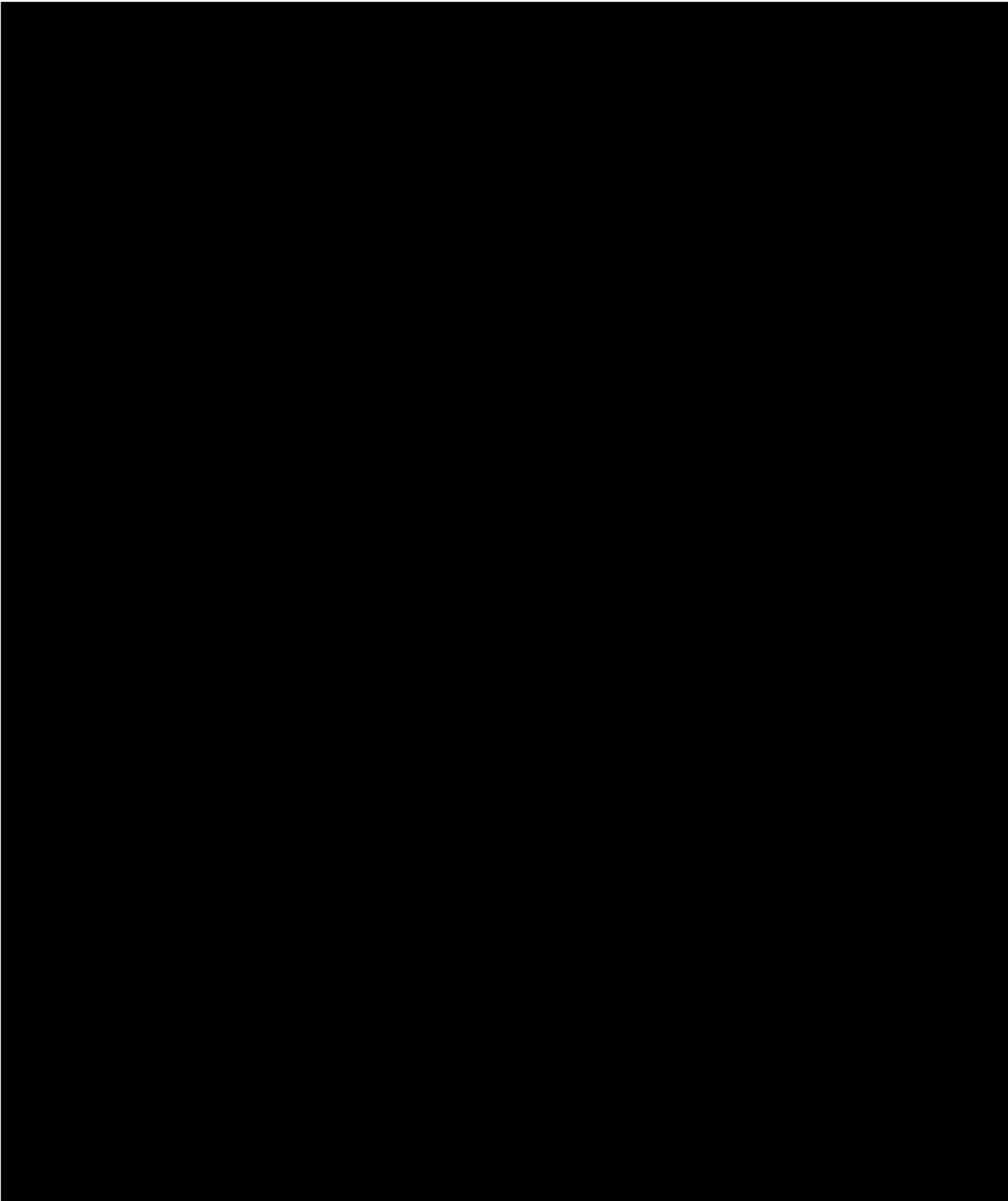


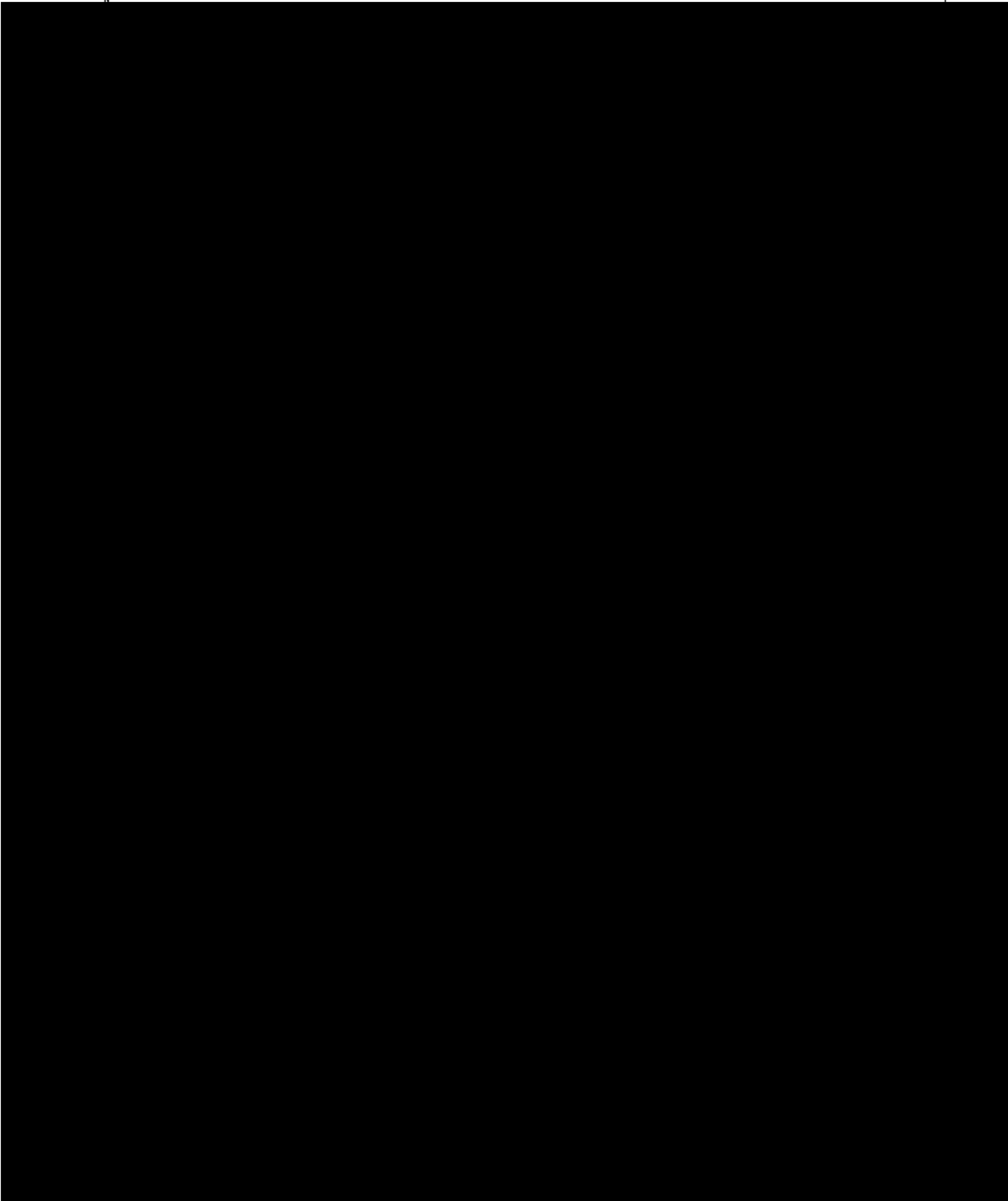


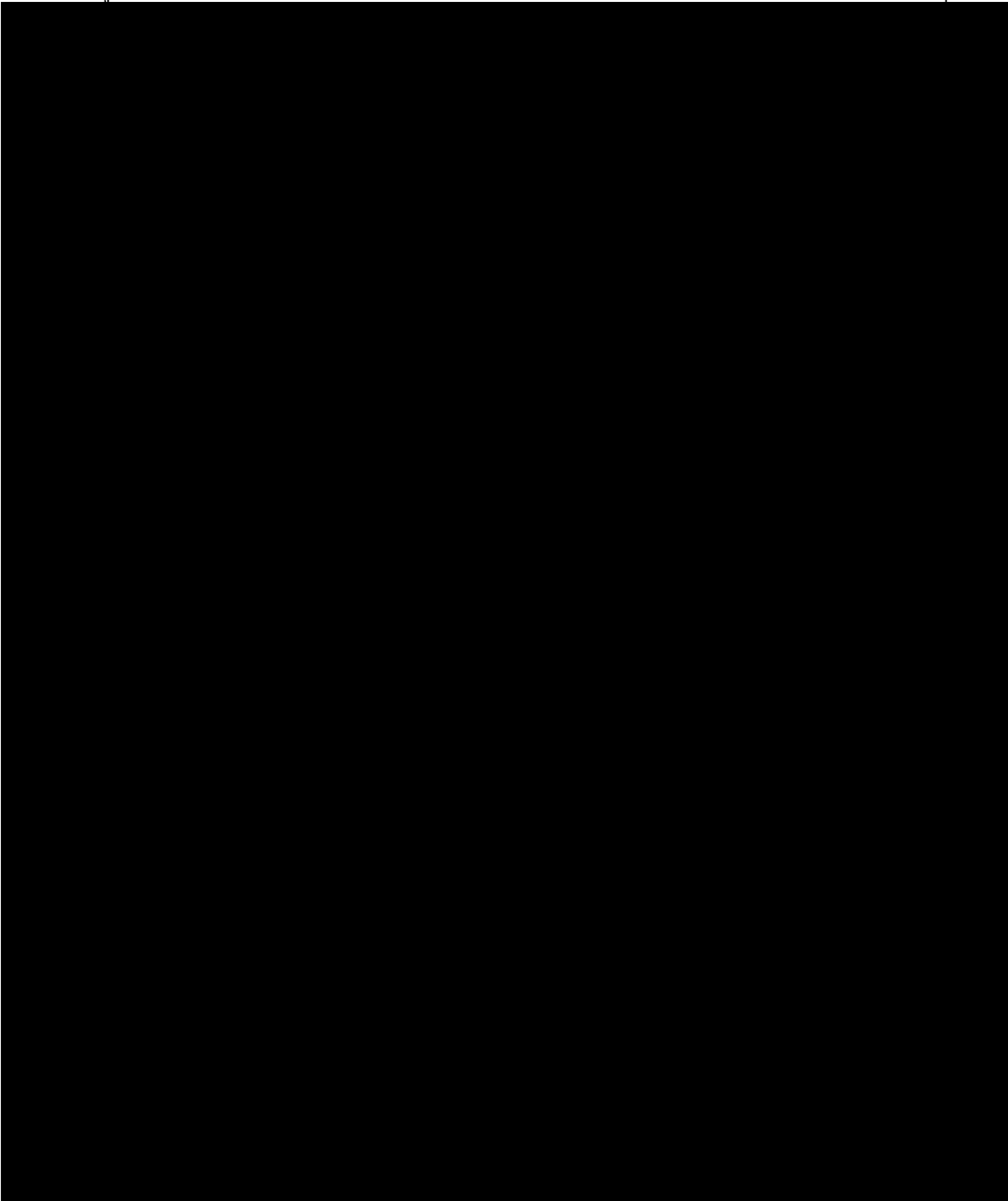




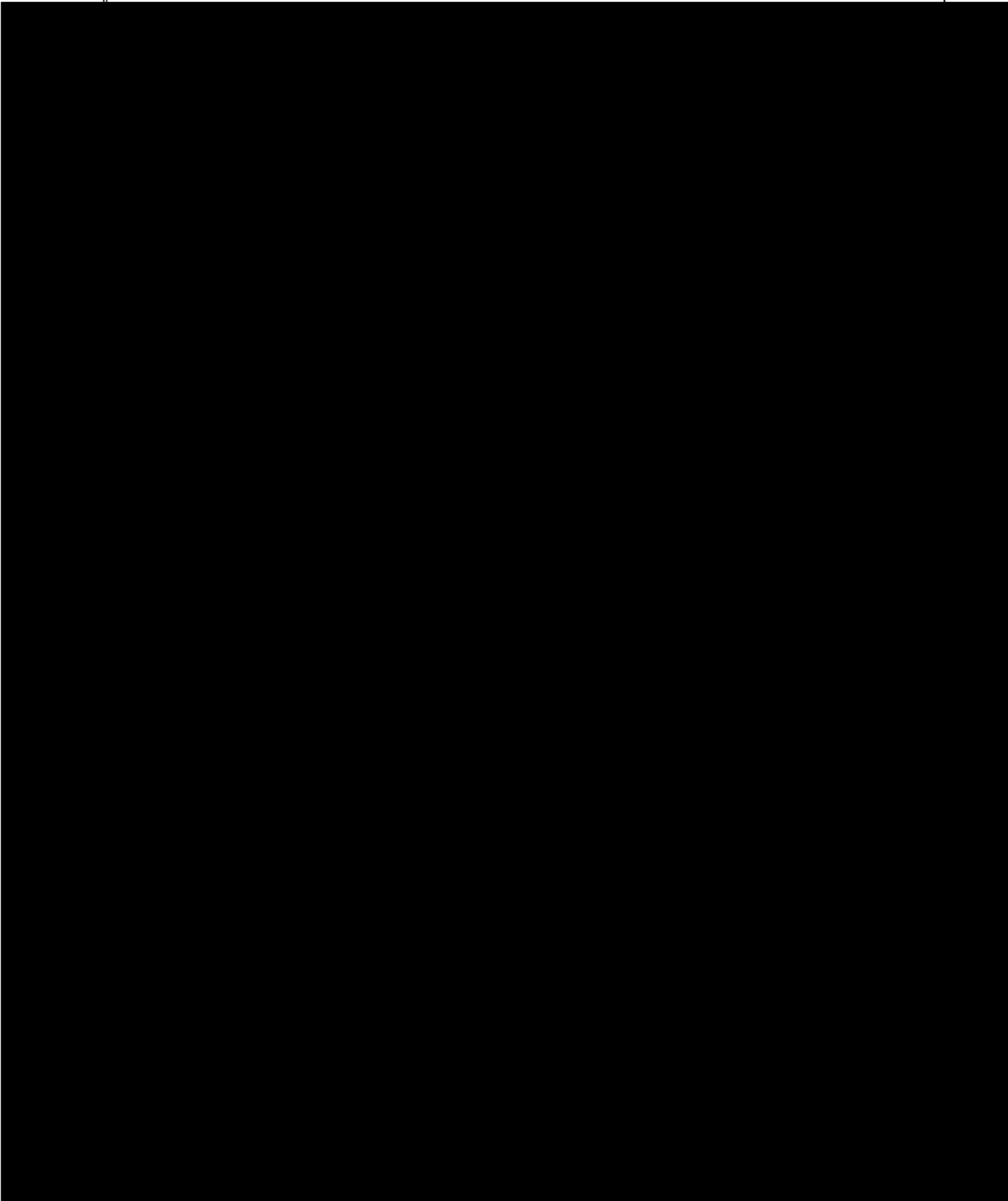


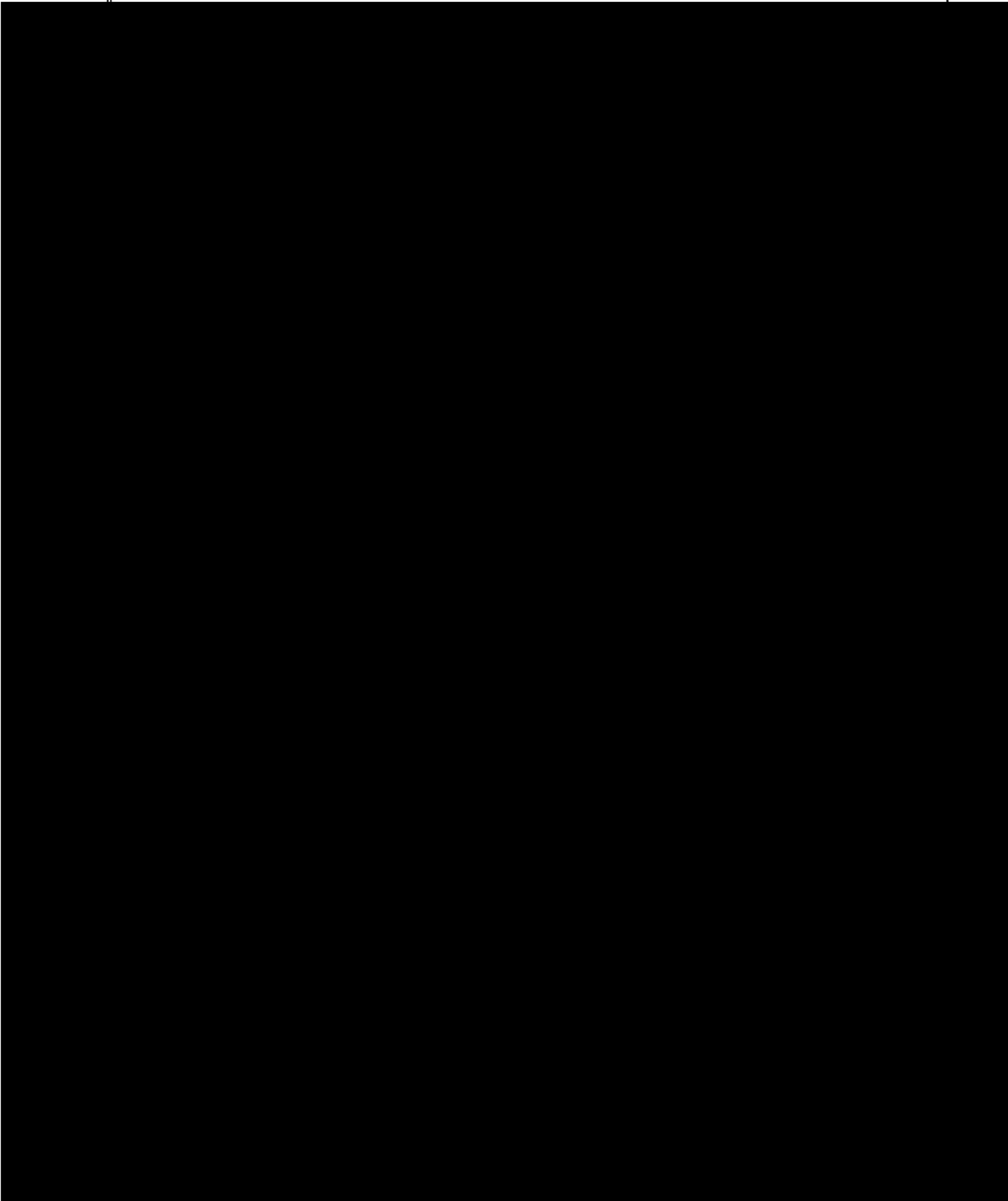


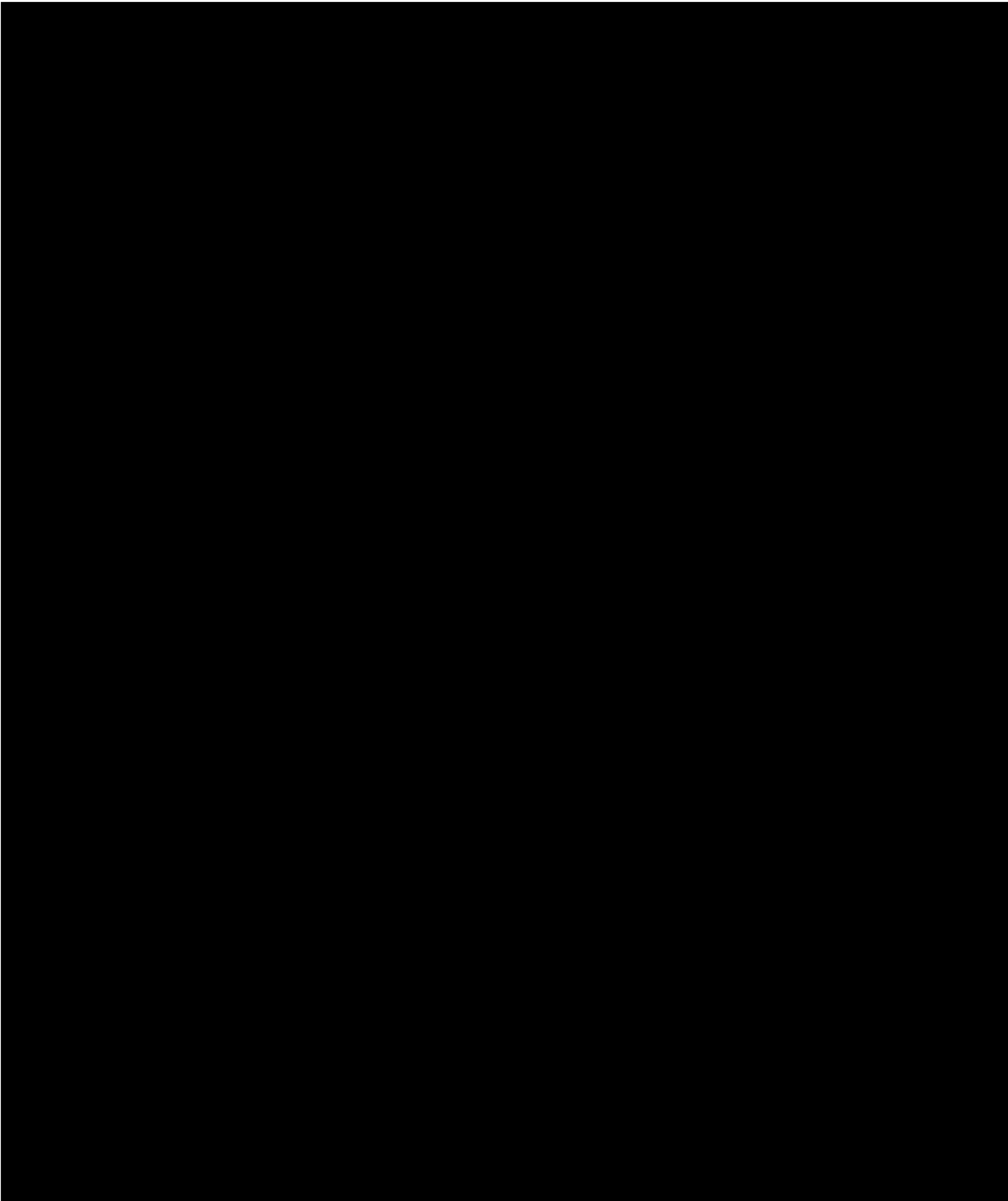


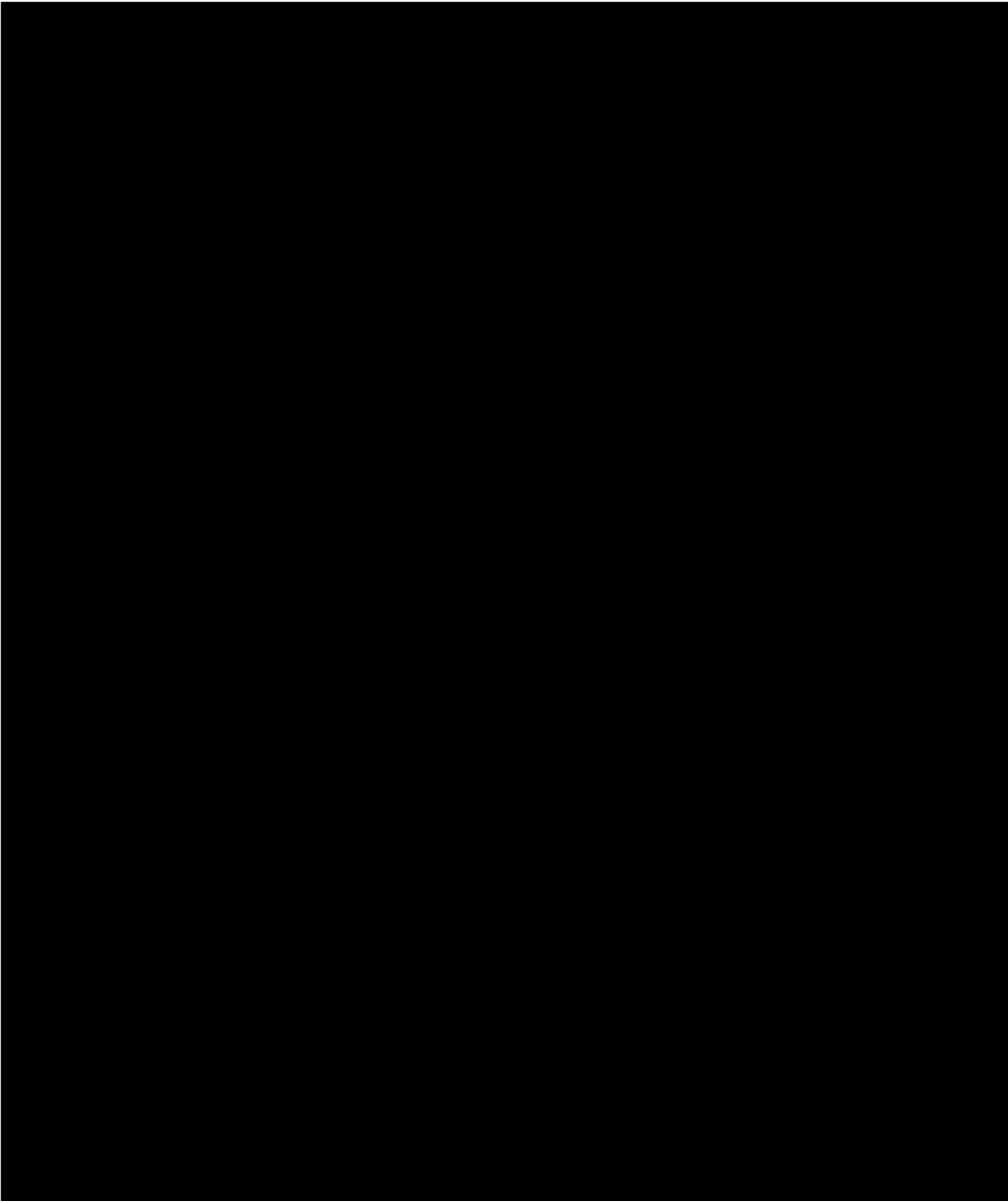


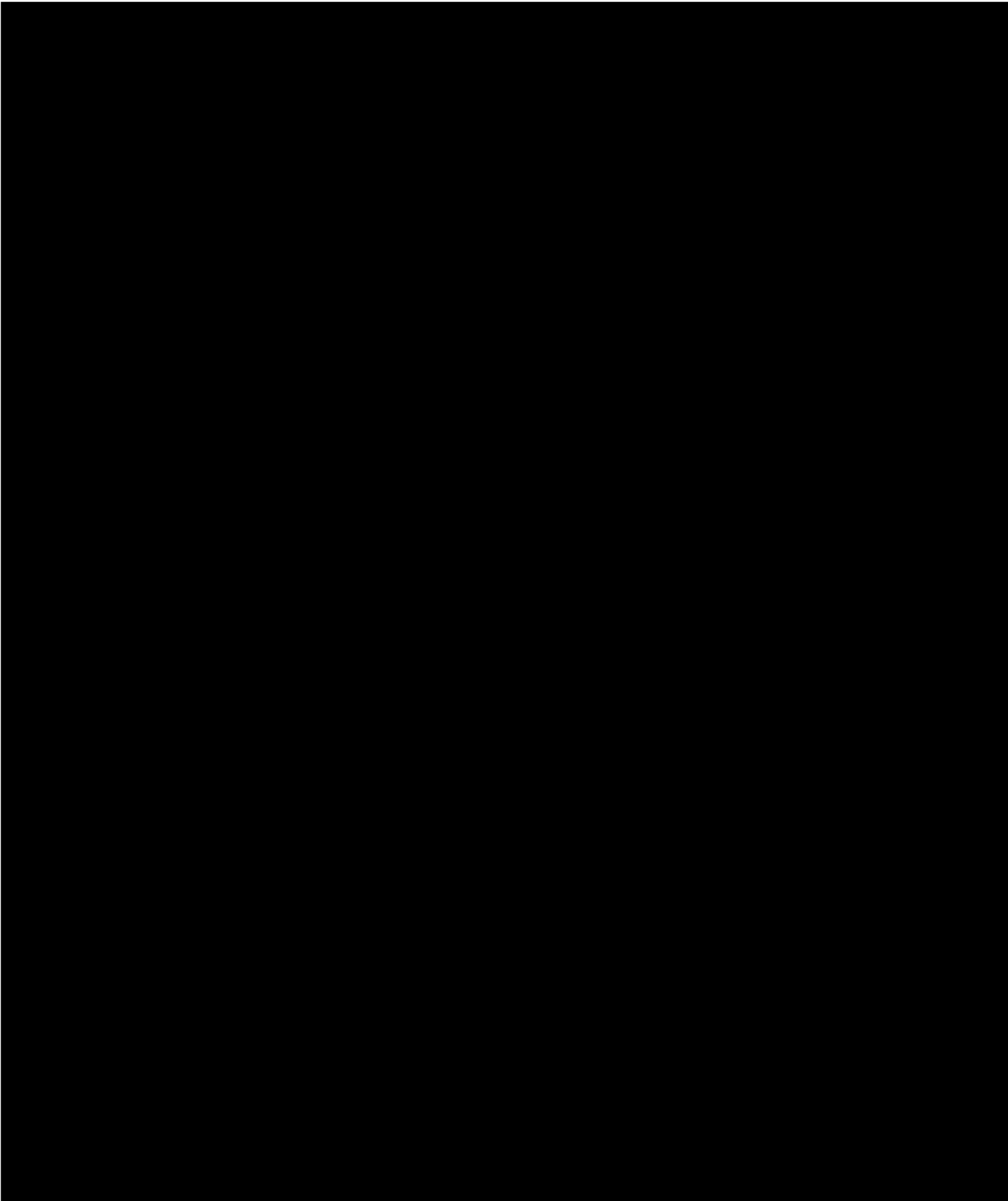












**From:** [REDACTED]  
**Sent:** Friday, March 18, 2011 6:50 PM  
**To:** Axelrod, Matthew (ODAG) (SMO)  
**Subject:** Fast and Furious [REDACTED] Affidavit 5  
**Attachments:** TT # 5, Affidavit.pdf; TT # 5, Application and Order.pdf

[REDACTED]  
Acting Chief of Staff  
ATF Office of the Director  
O: 202-[REDACTED]  
C: 786-[REDACTED]

\*\*\*\*\*

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**From:** [REDACTED]  
**To:** [REDACTED]  
**Sent:** Fri Mar 18 18:44:48 2011  
**Subject:** FW: Two more after this one.

[REDACTED]  
Chief, Firearms Operations Division  
[REDACTED]  
202-[REDACTED] Cell 202-[REDACTED]

*This e-mail message and any attached files are intended solely for the use of the addressee(s) named above in connection with official business. This communication may contain information that is Law Enforcement Sensitive, For Official Use Only, and/or Controlled (Non-public) that may be statutorily or otherwise prohibited from being released without appropriate approval. Any review, use, or dissemination of this e-mail message and any attached file(s) in any form outside of ATF or the Department of Justice without express authorization is strictly prohibited.*

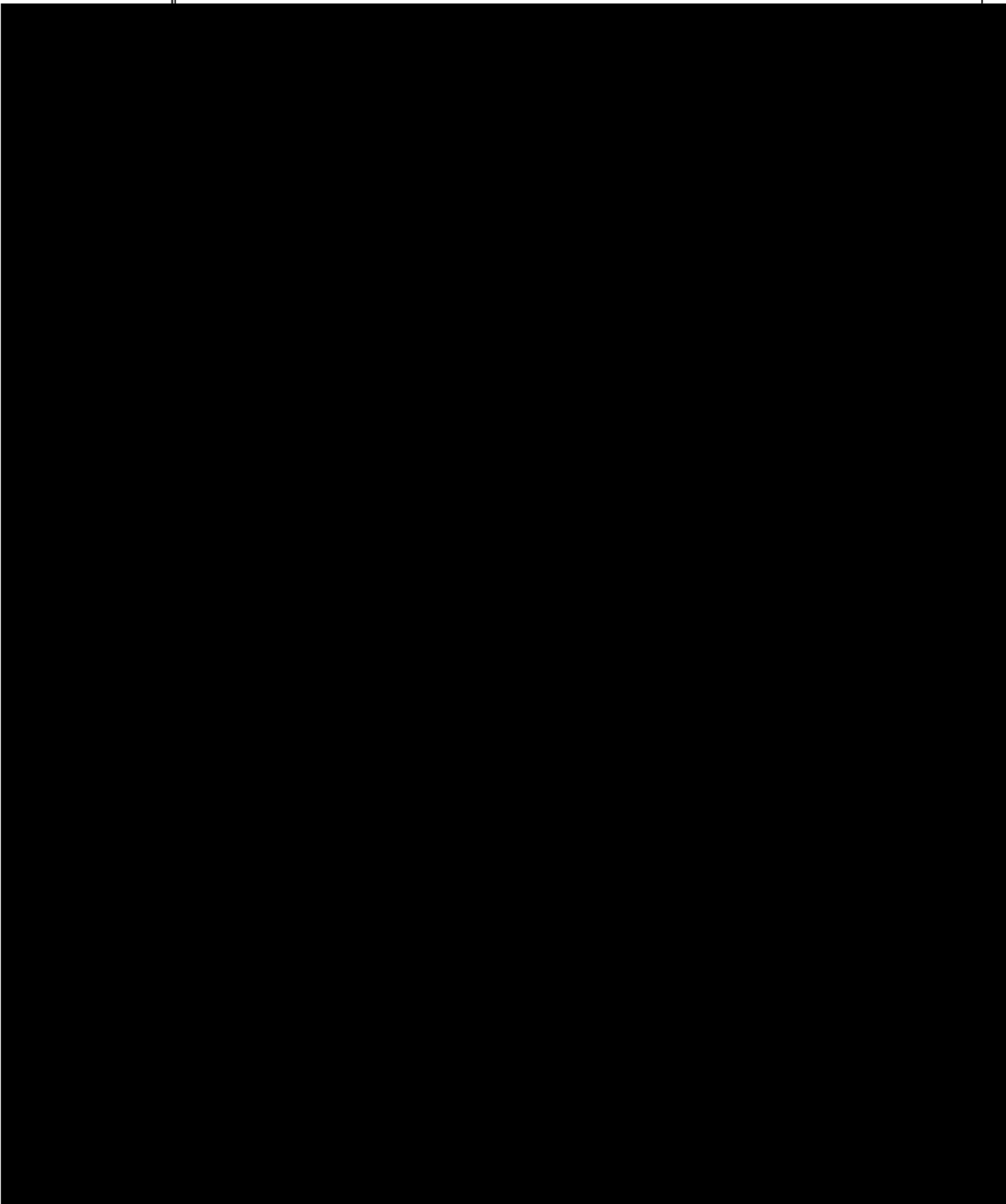
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**From:** [REDACTED]  
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**Subject:** Two more after this one.

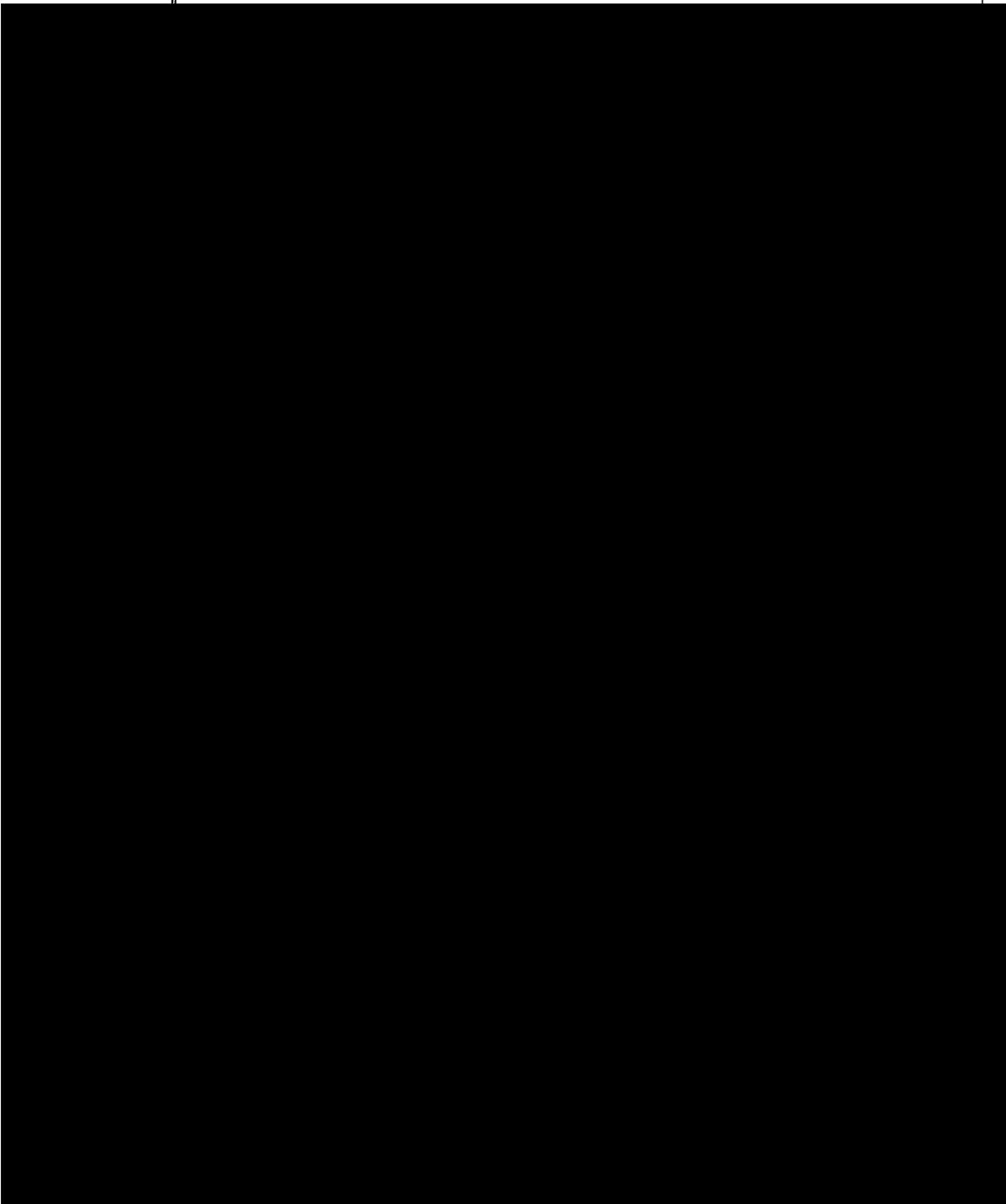
[REDACTED]  
Group Supervisor  
Phoenix Group VII  
602-[REDACTED]

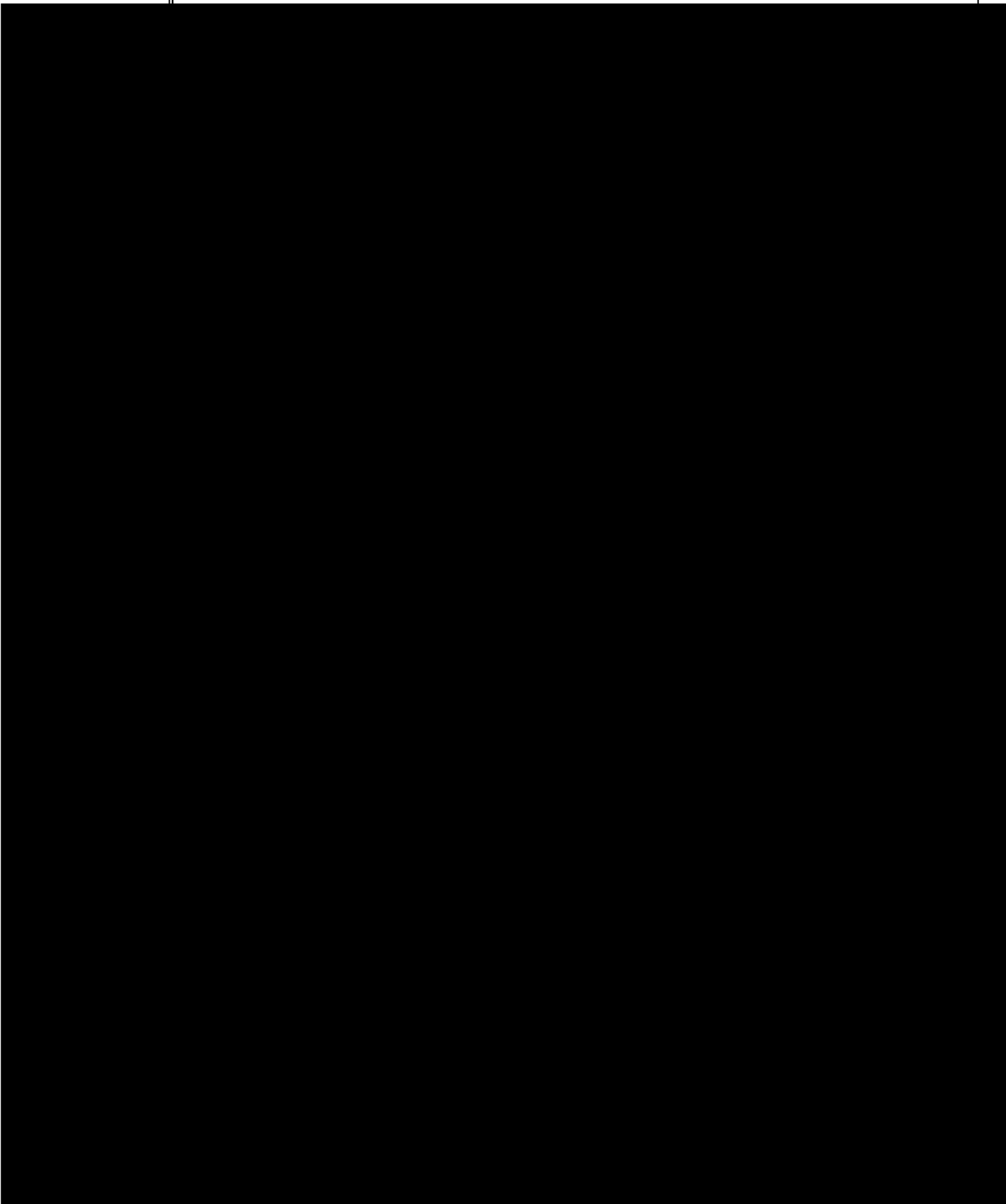
1 DENNIS K. BURKE  
United States Attorney  
2 District of Arizona  
  
3 EMORY T. HURLEY  
Assistant United States Attorney  
4 State Bar Number: 014812  
Two Renaissance Square  
5 40 North Central Avenue, Suite 1200  
Phoenix, Arizona 85004  
6 Telephone (602) 514-7500  
[emory.hurley@usdoj.gov](mailto:emory.hurley@usdoj.gov)  
7

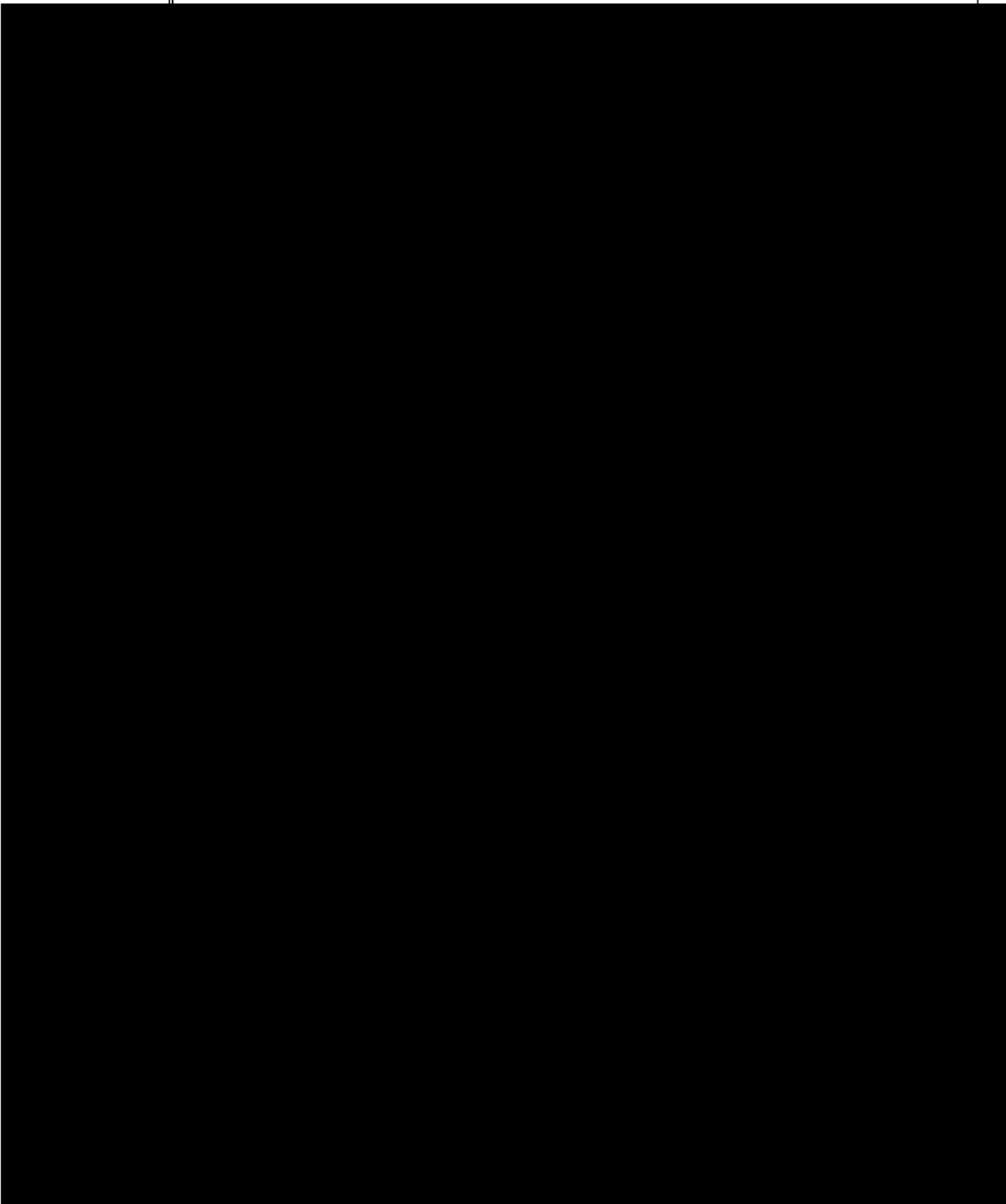
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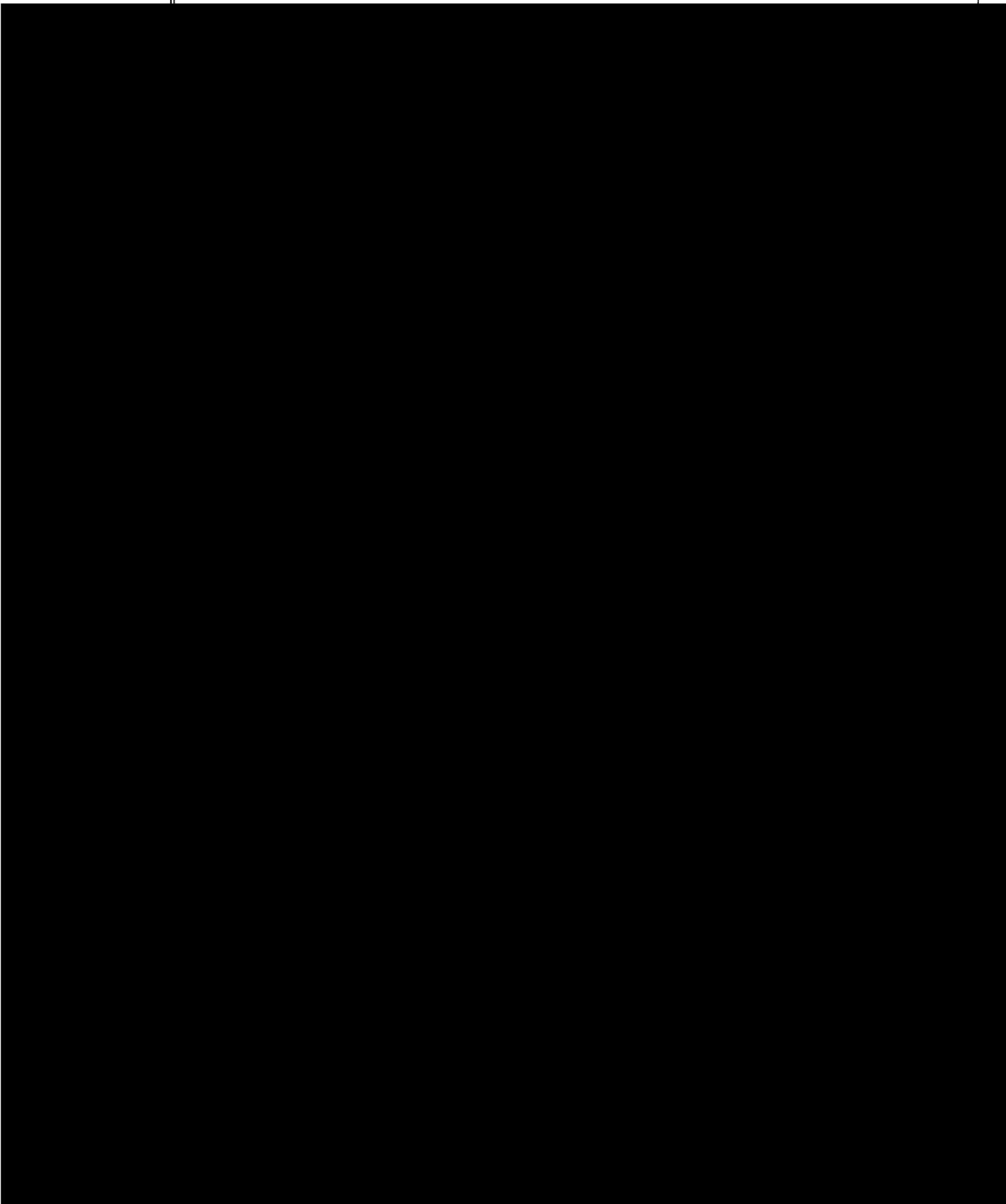


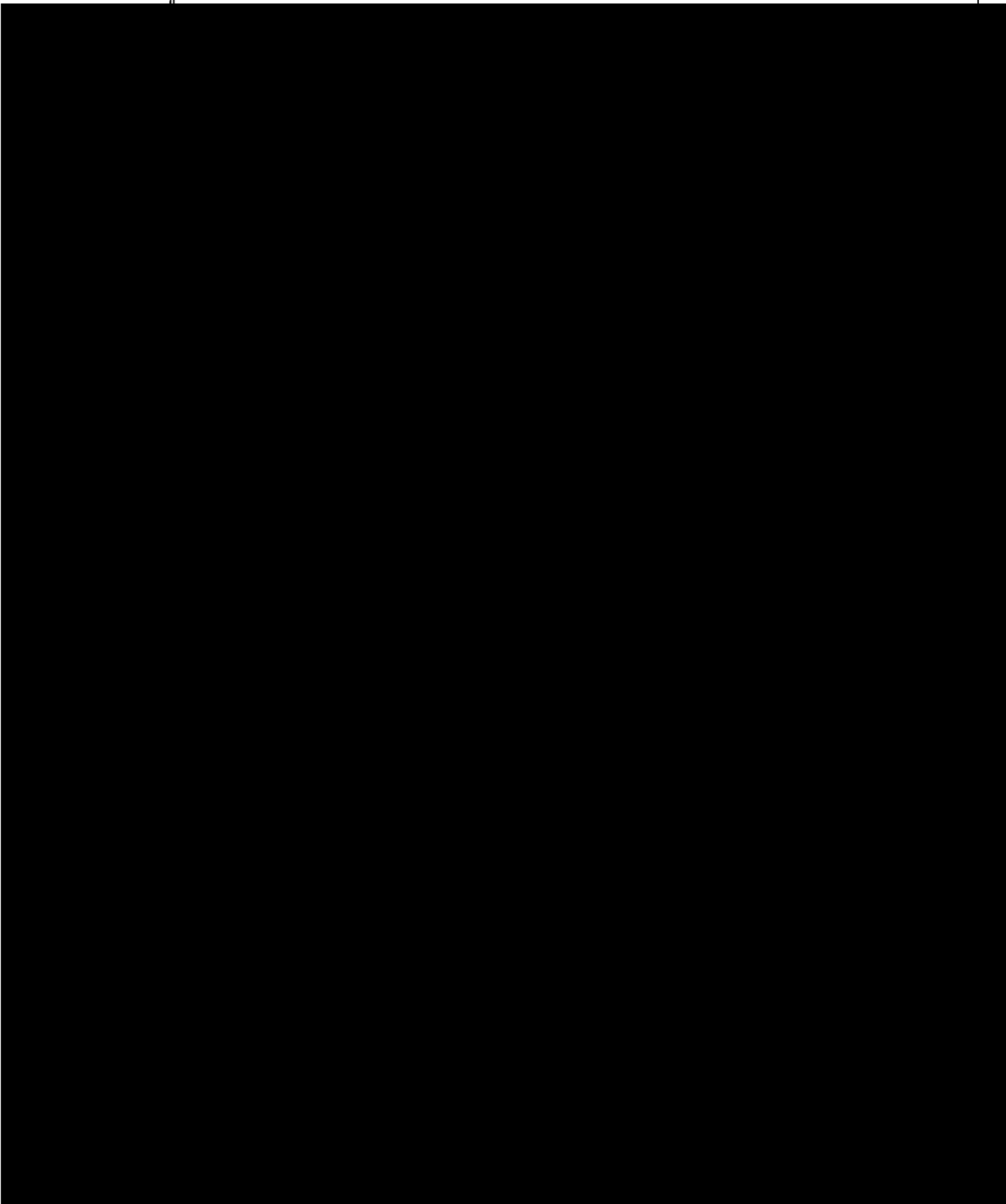


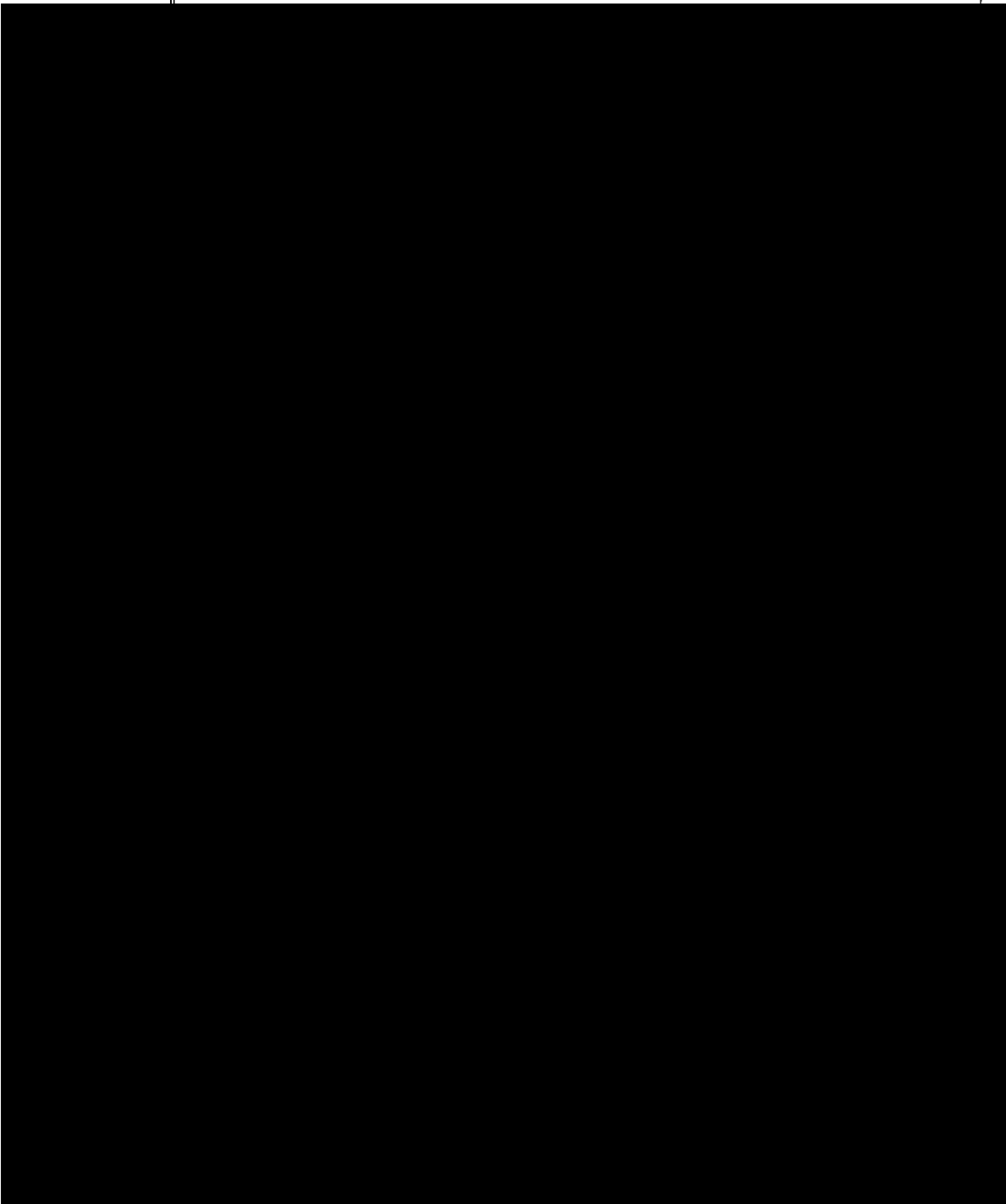


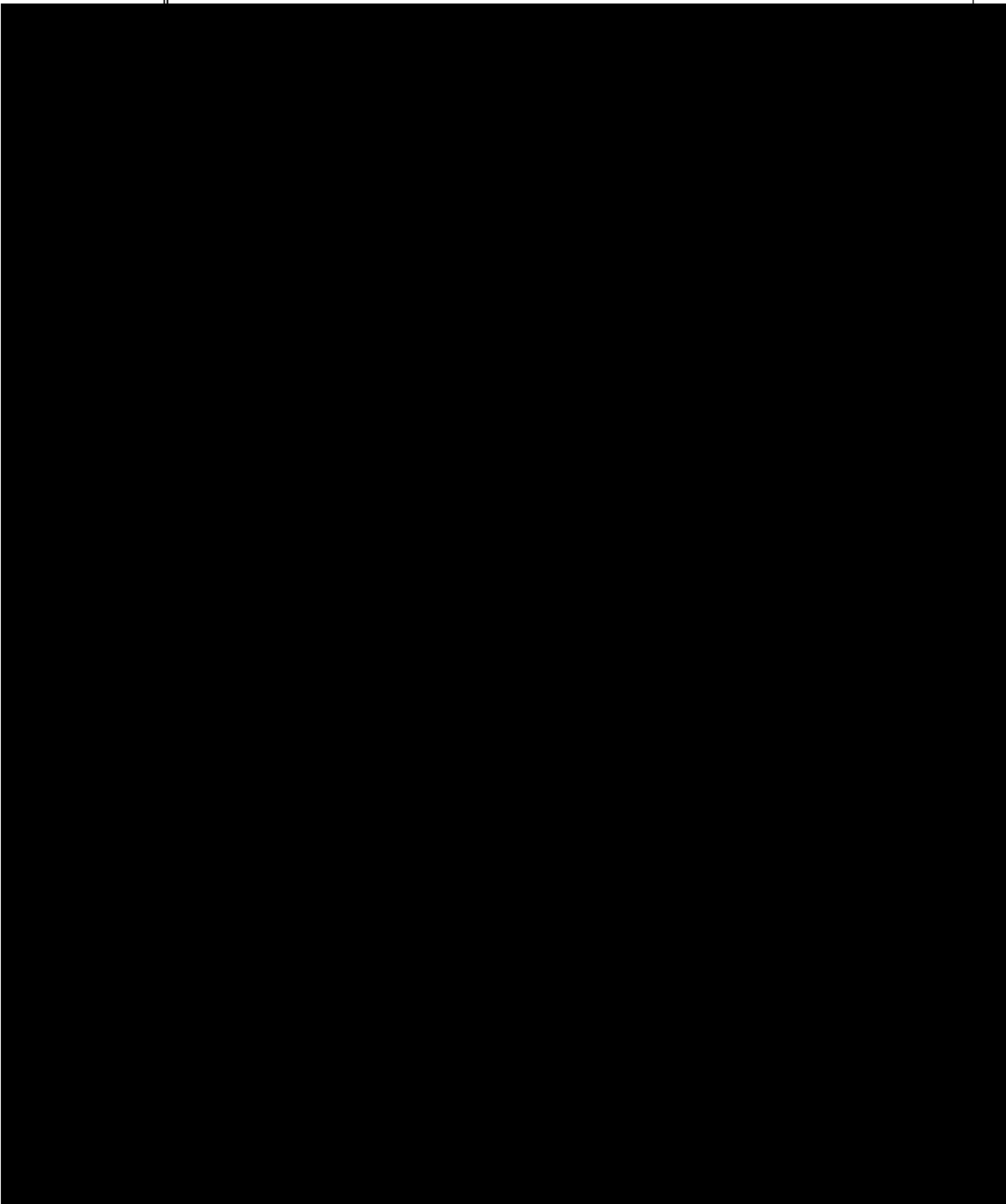


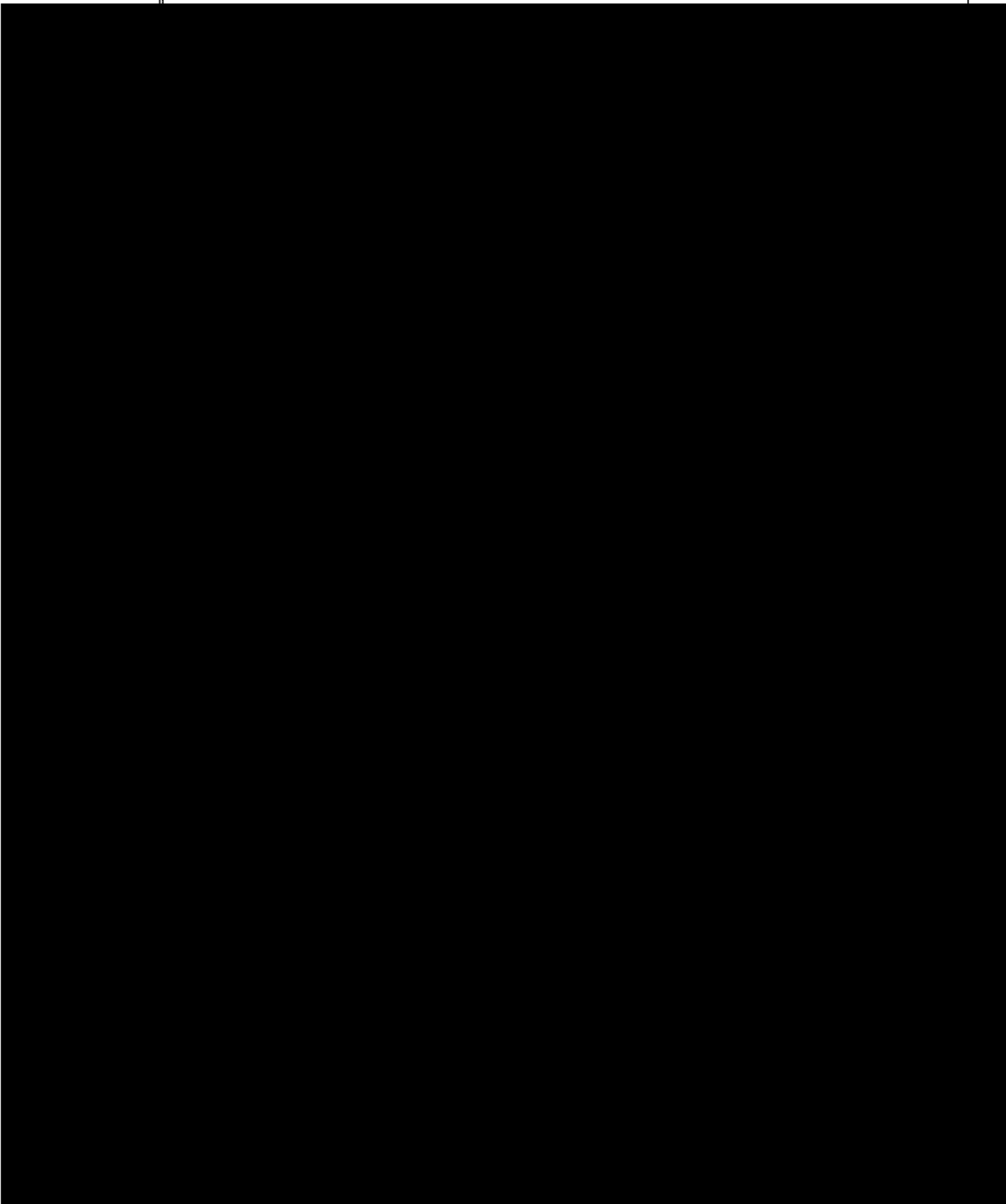




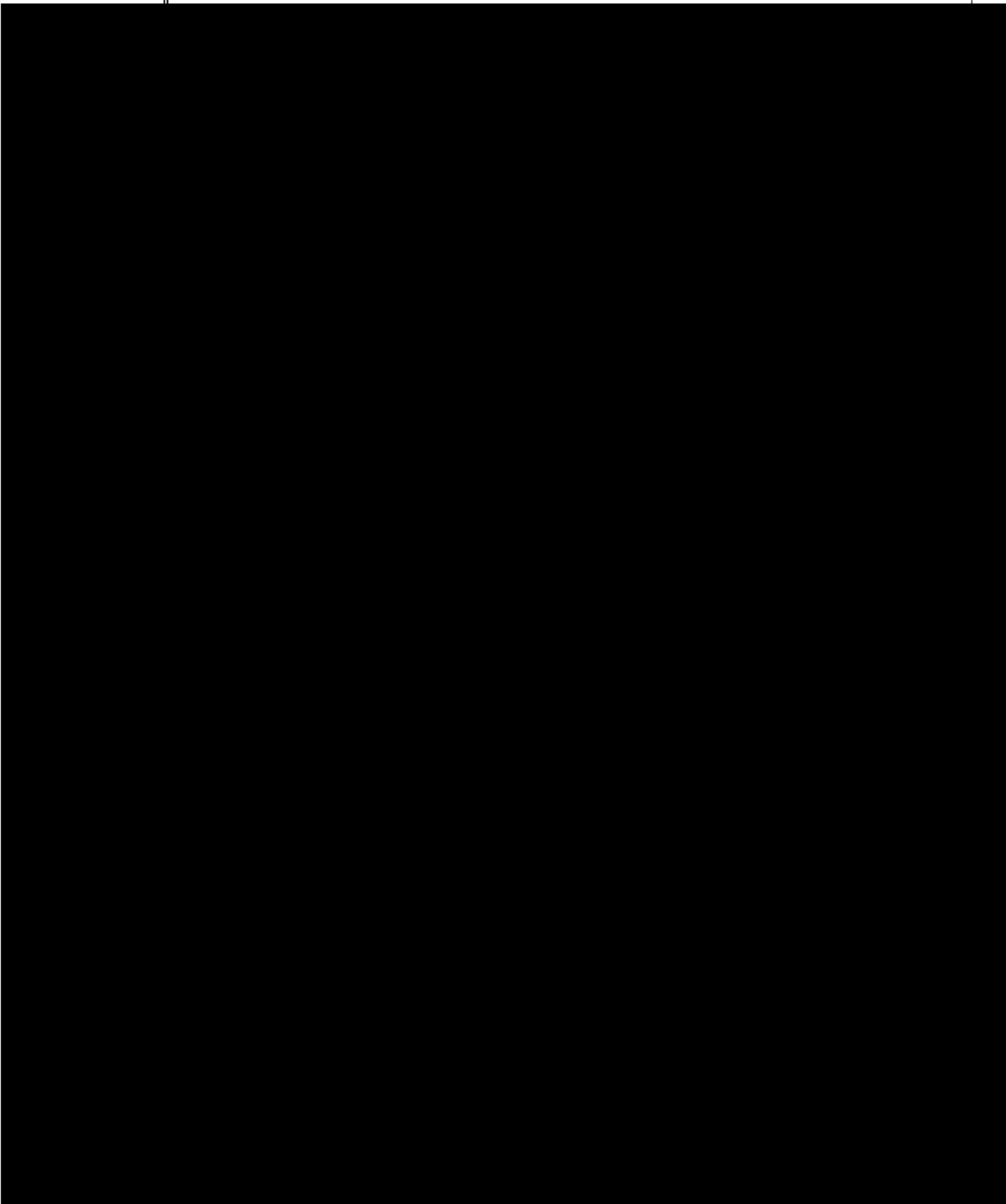


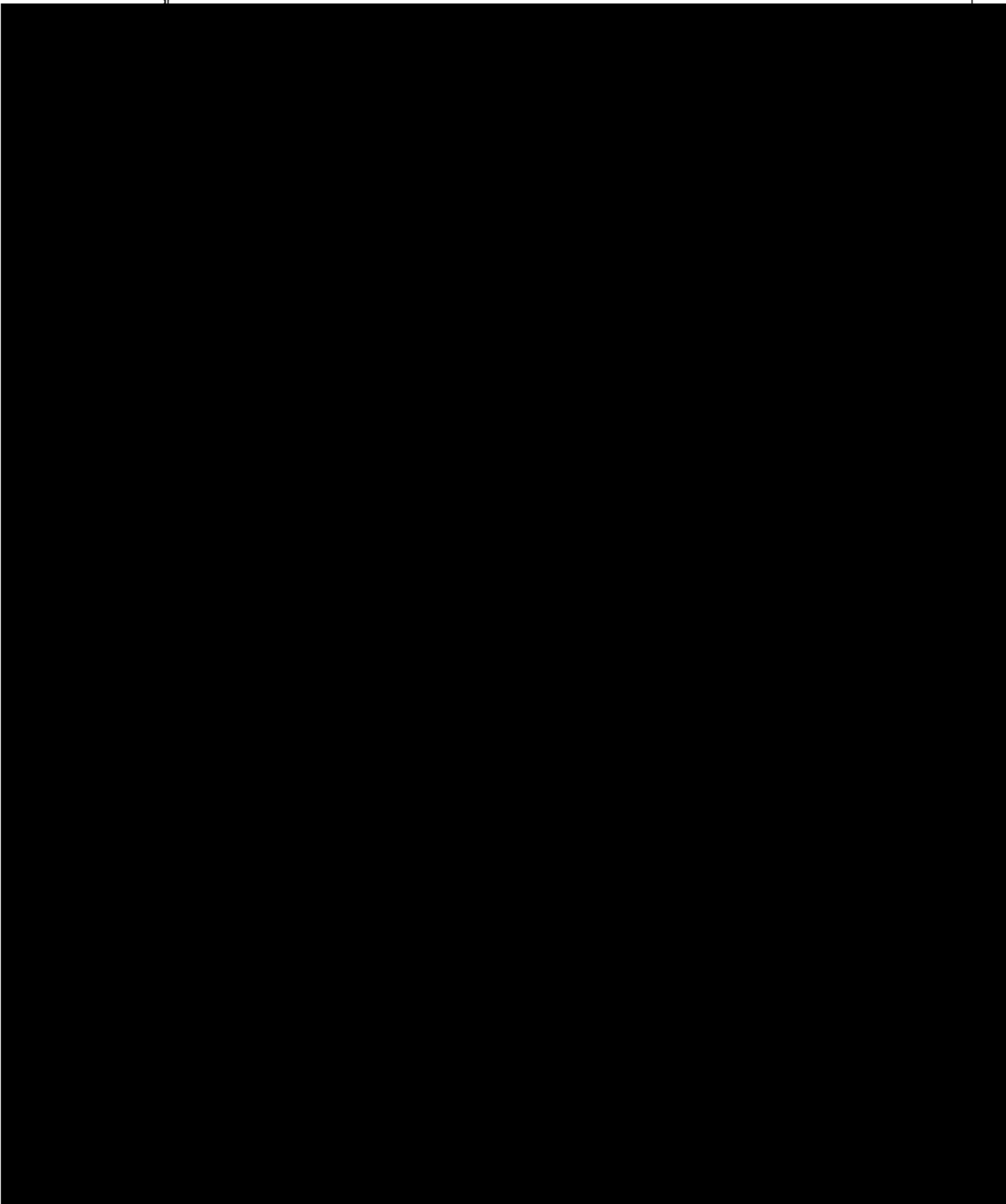


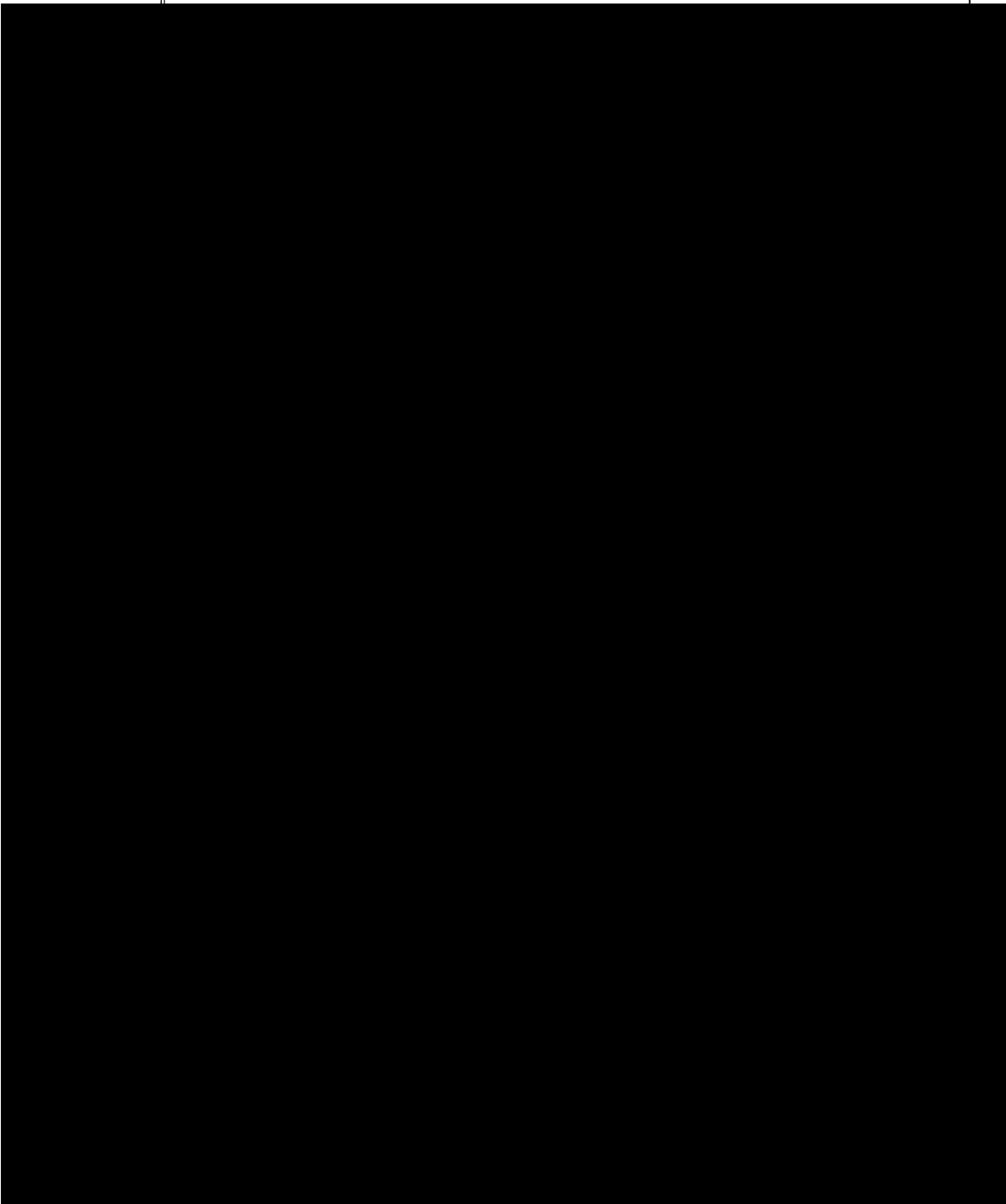


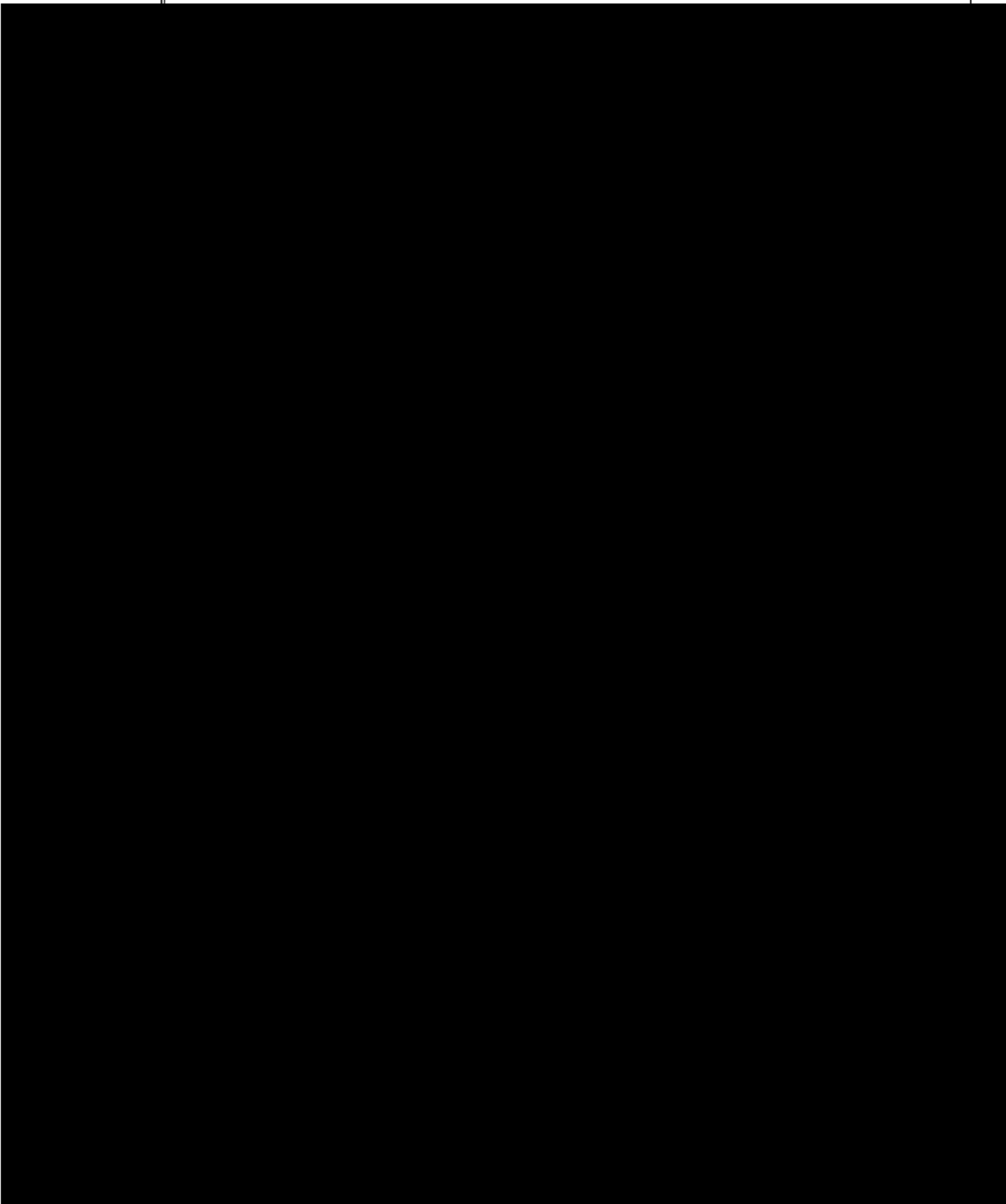


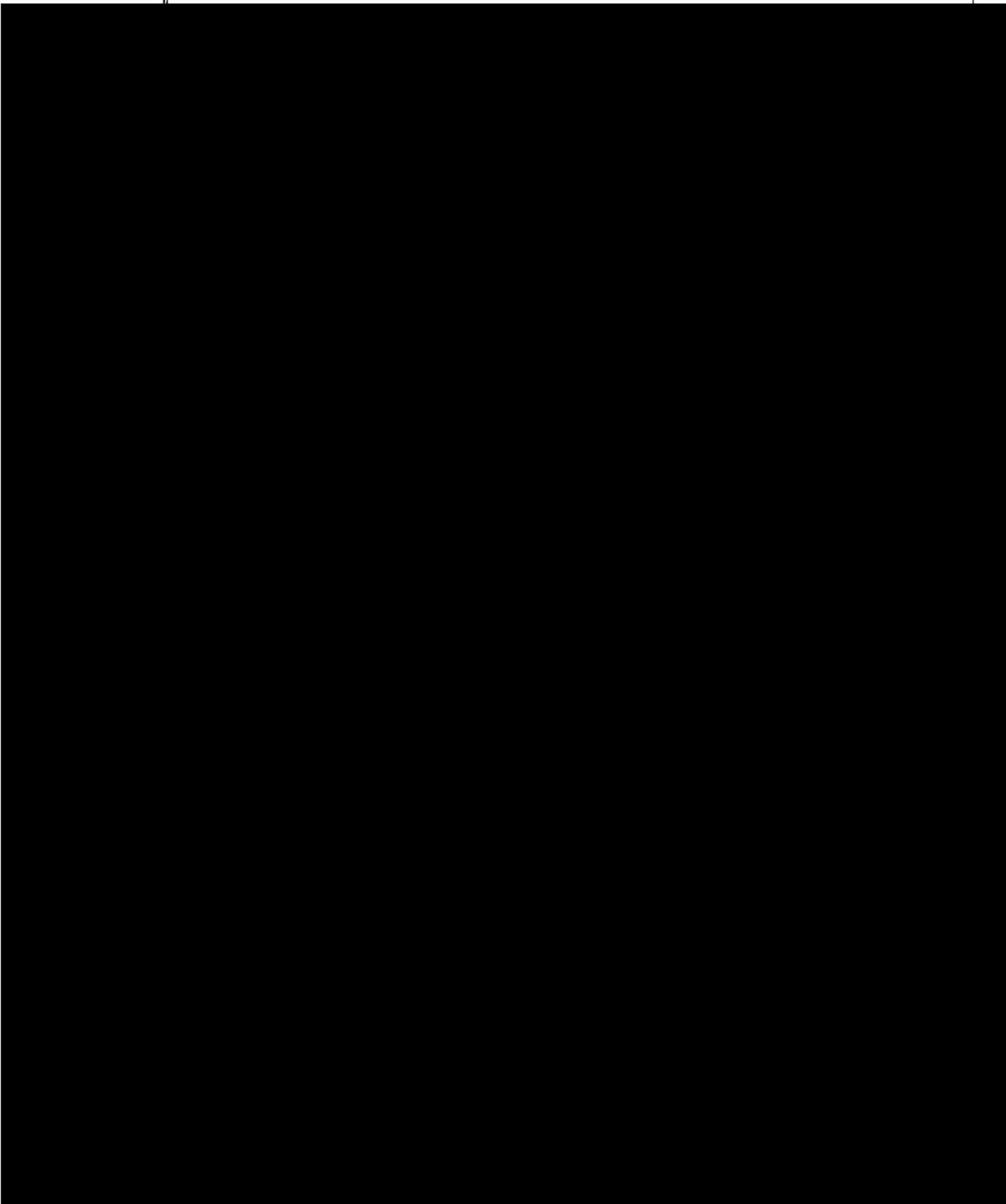


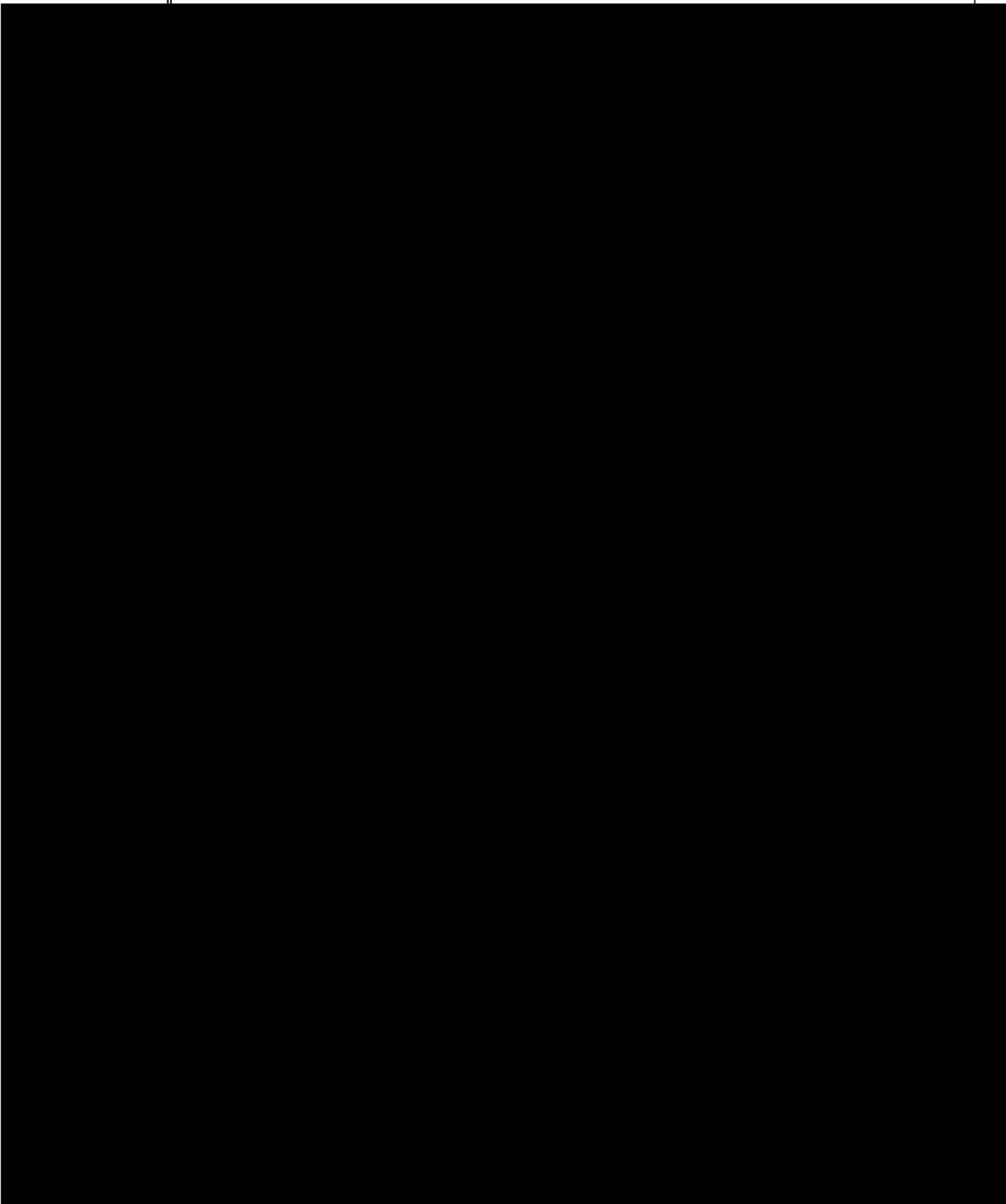


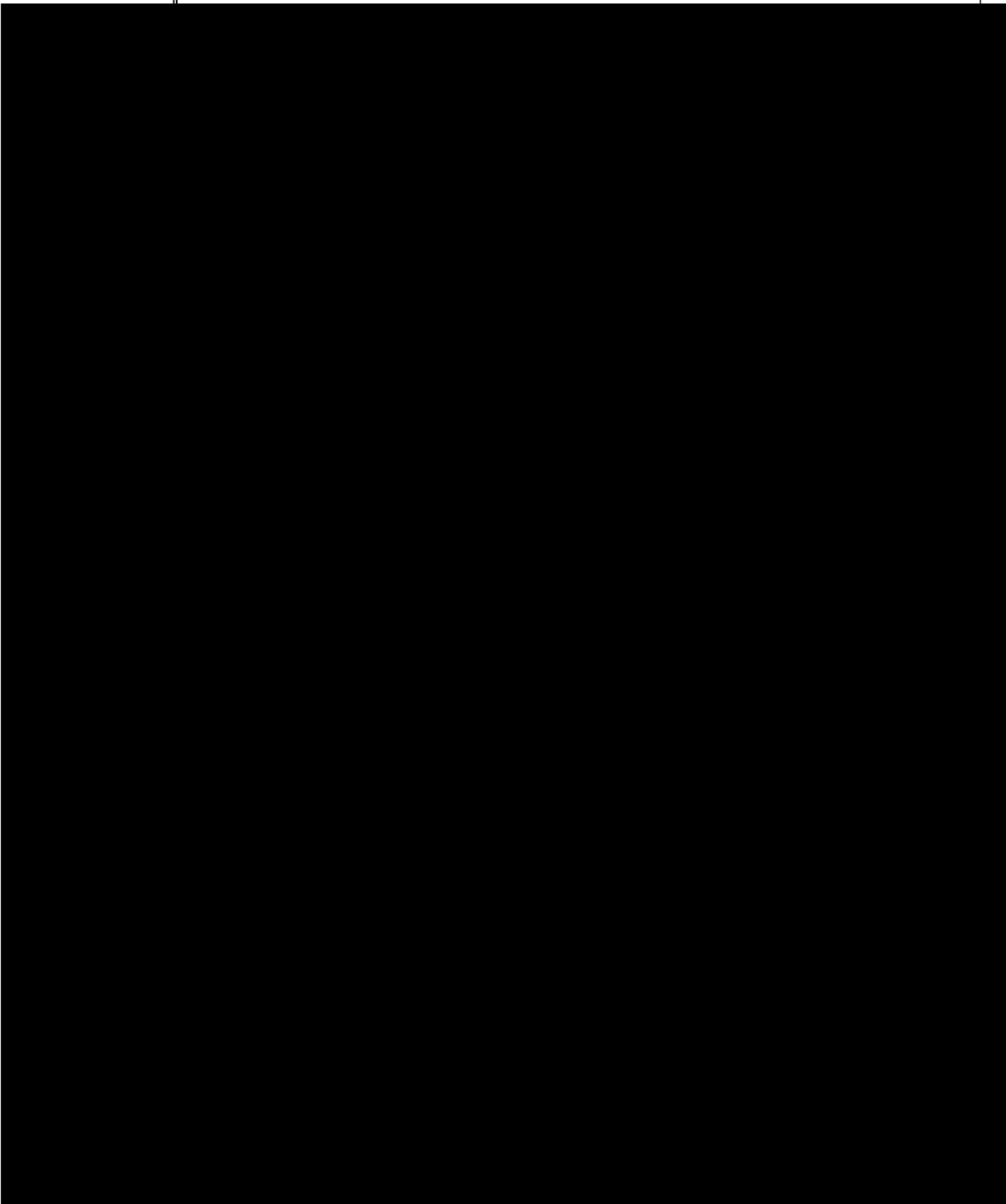


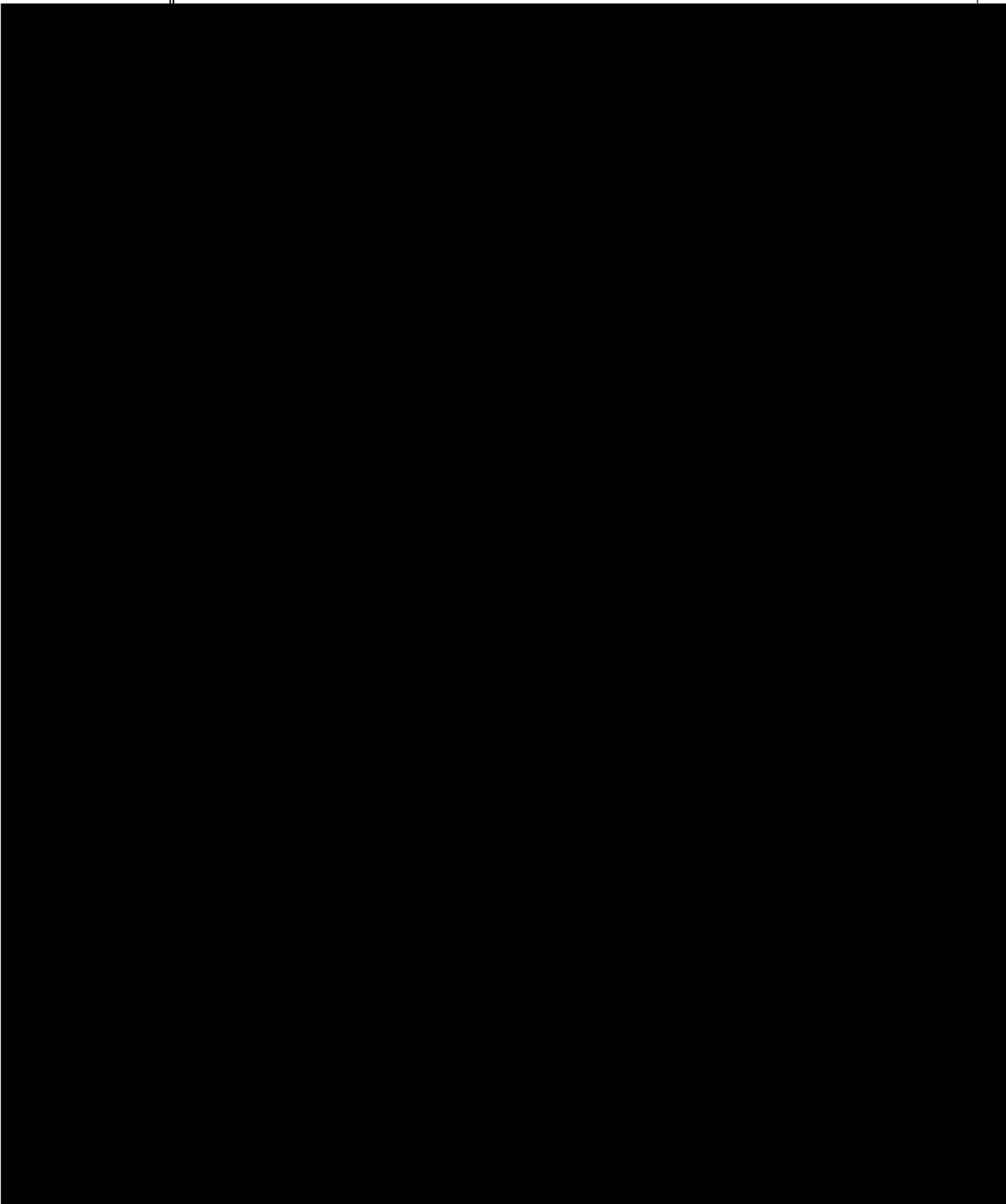




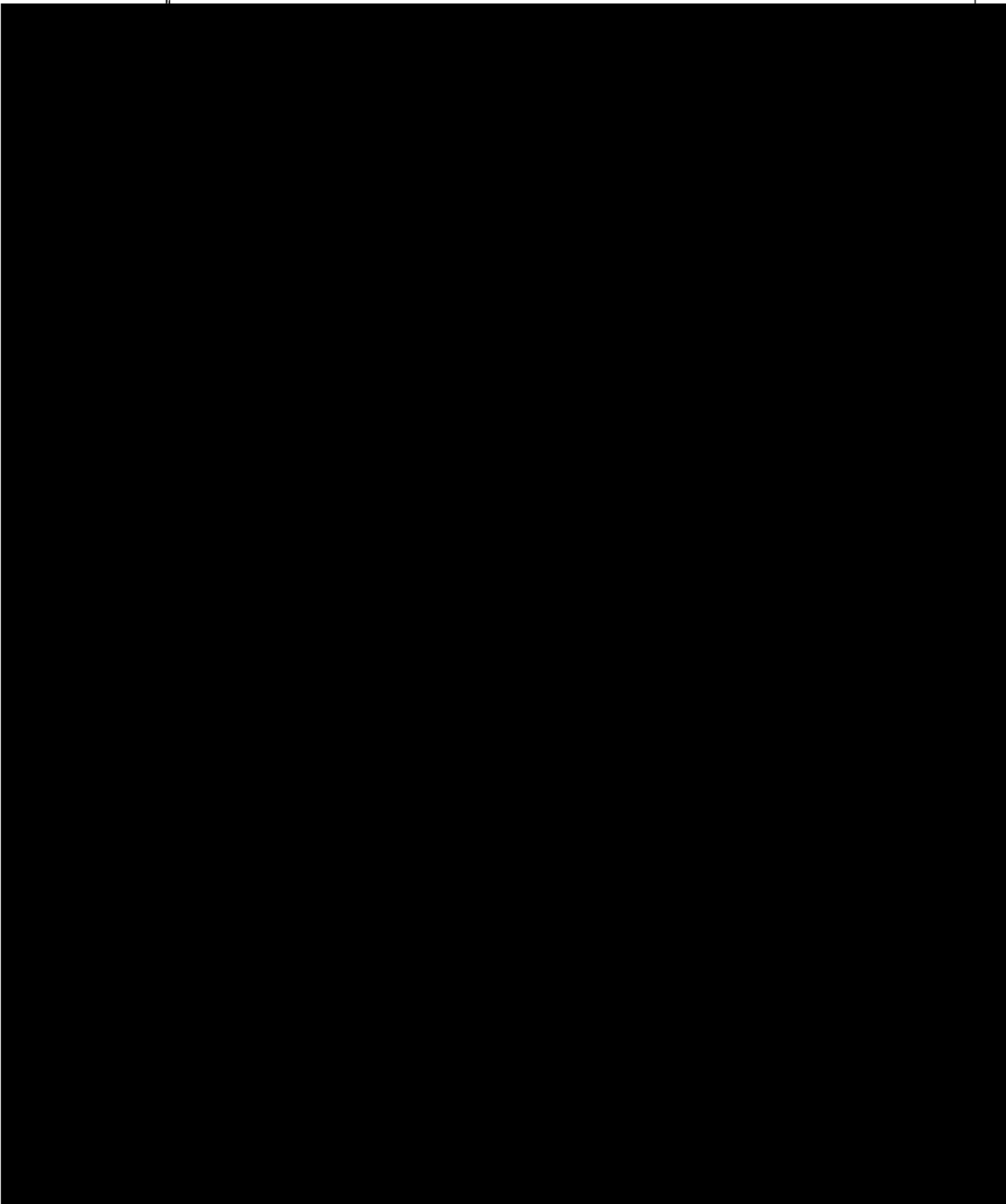


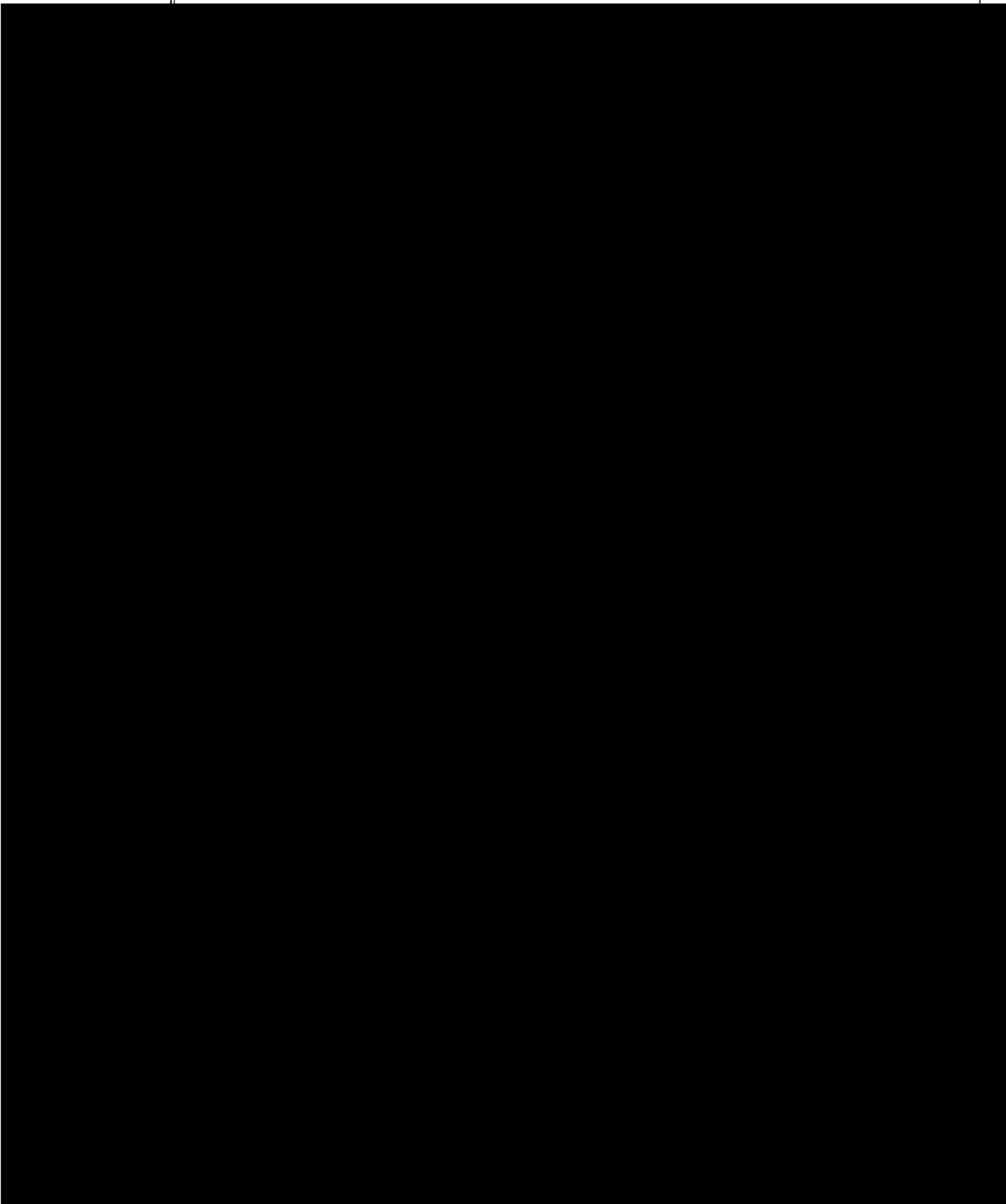


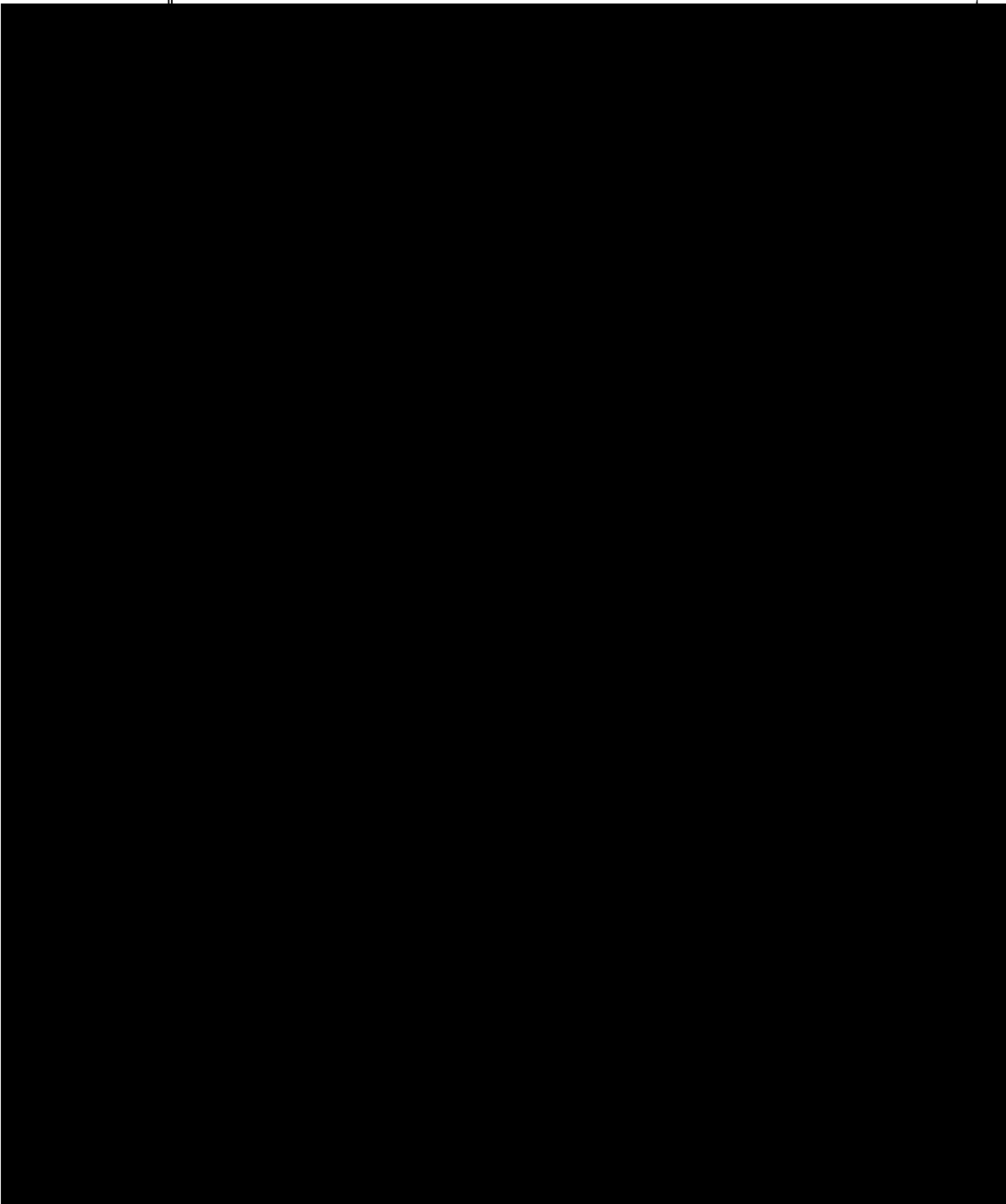


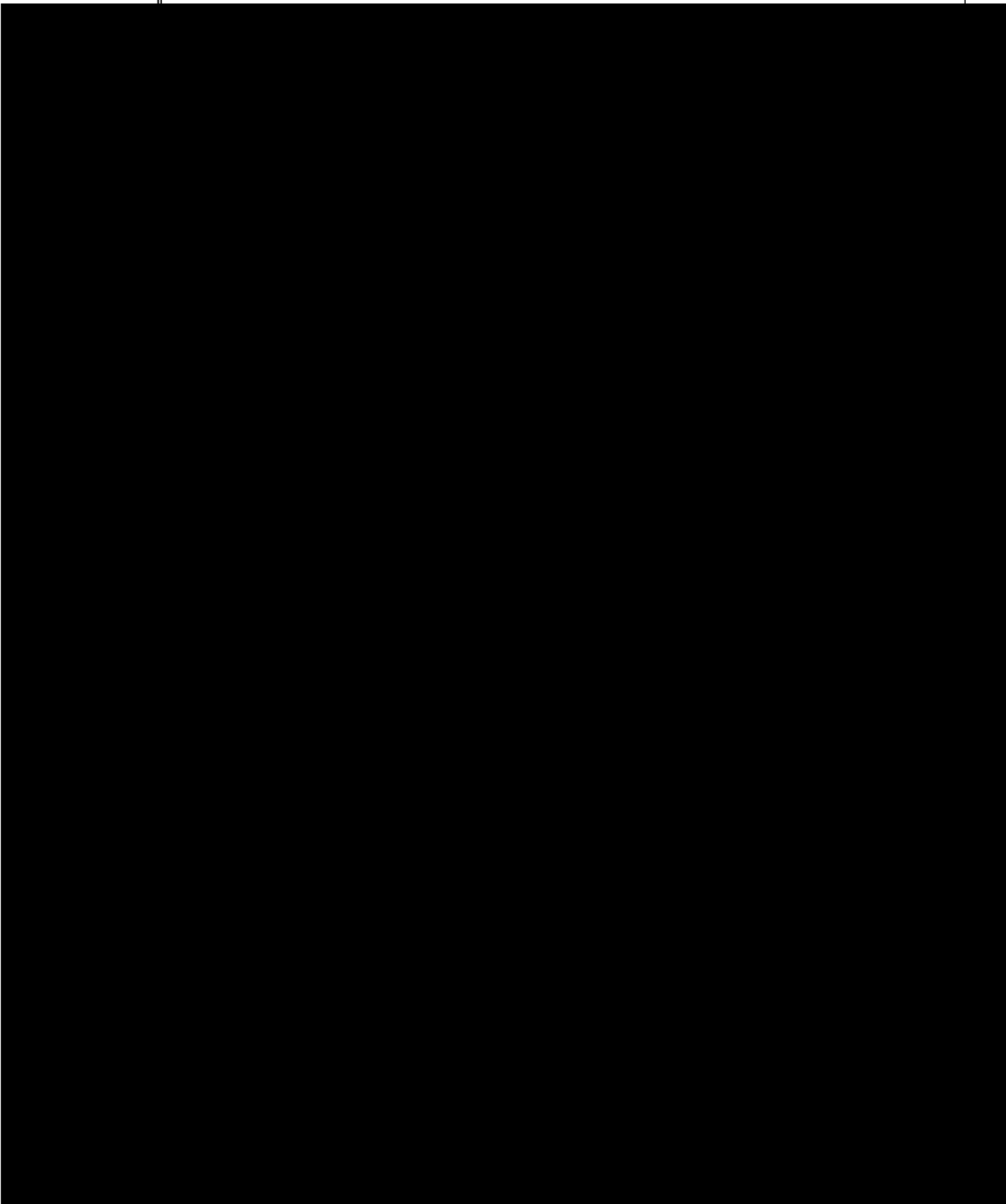


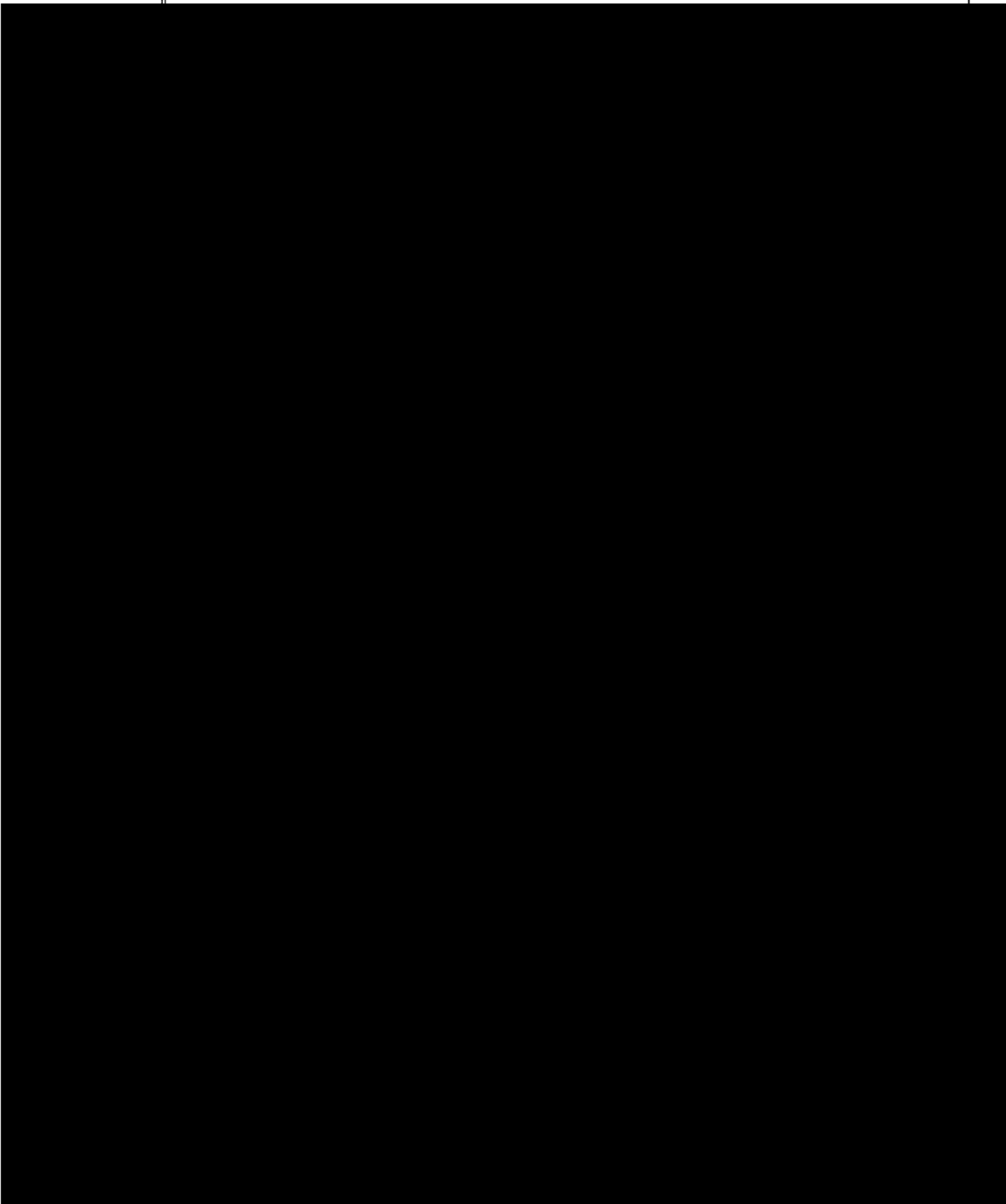


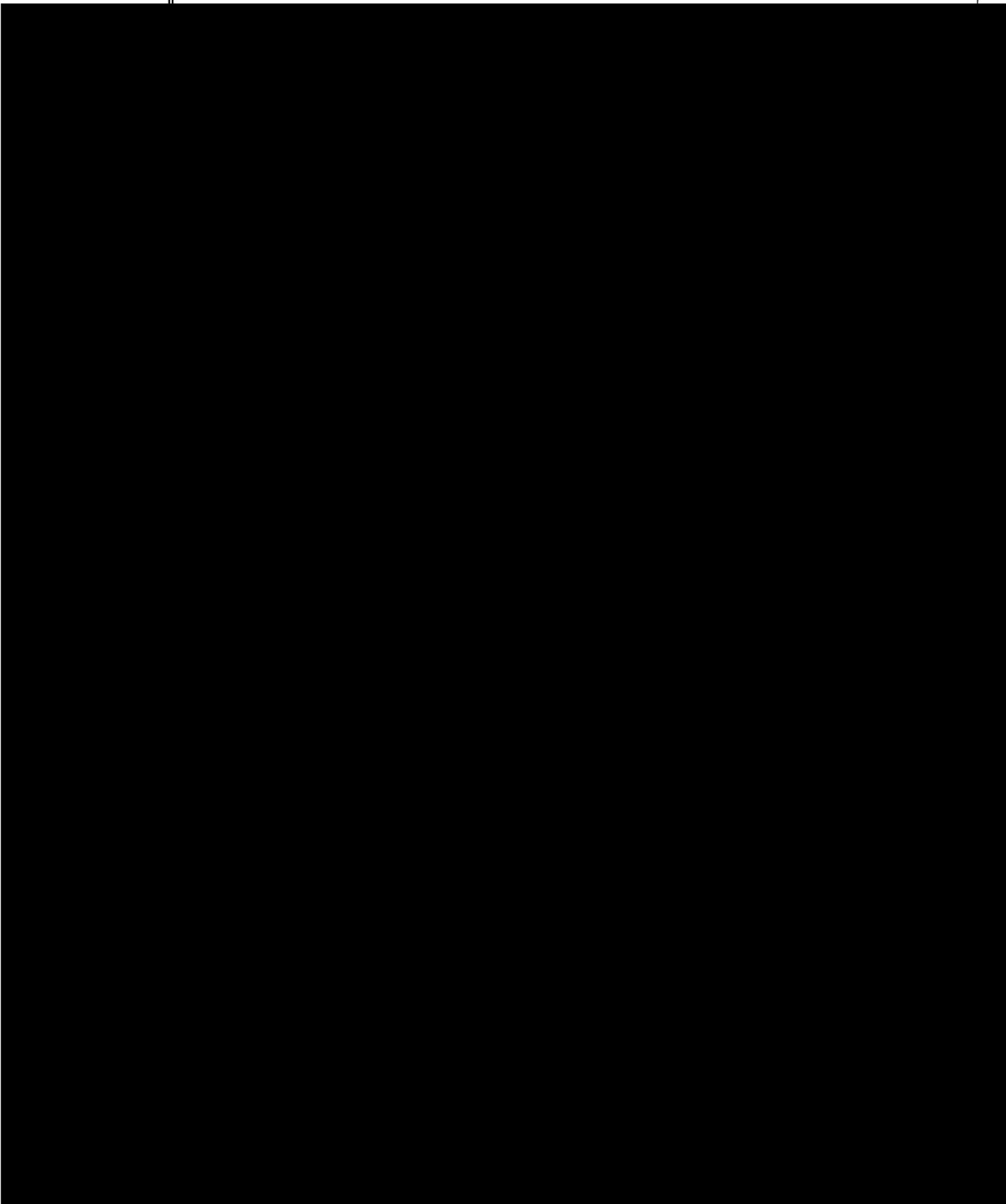


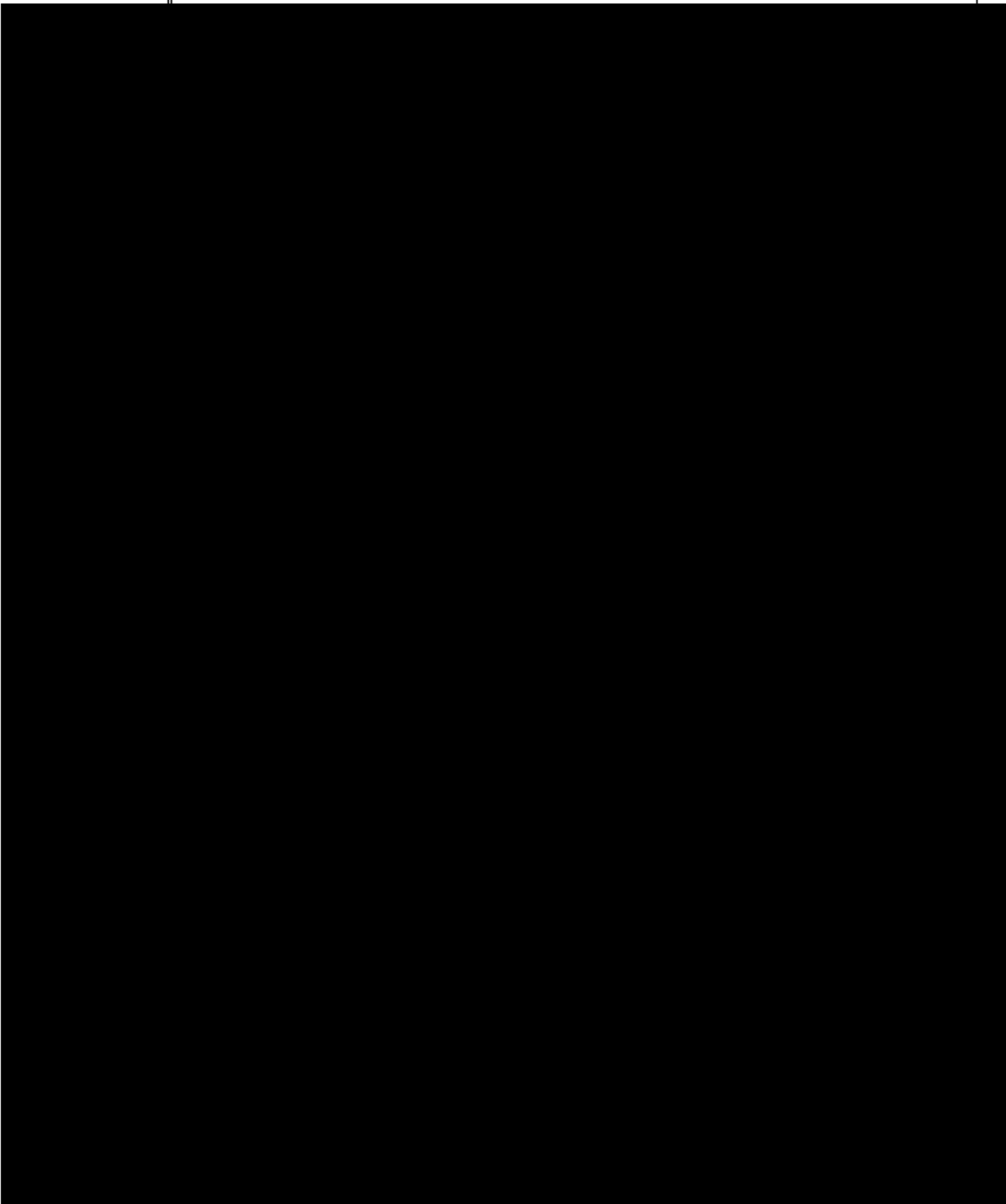


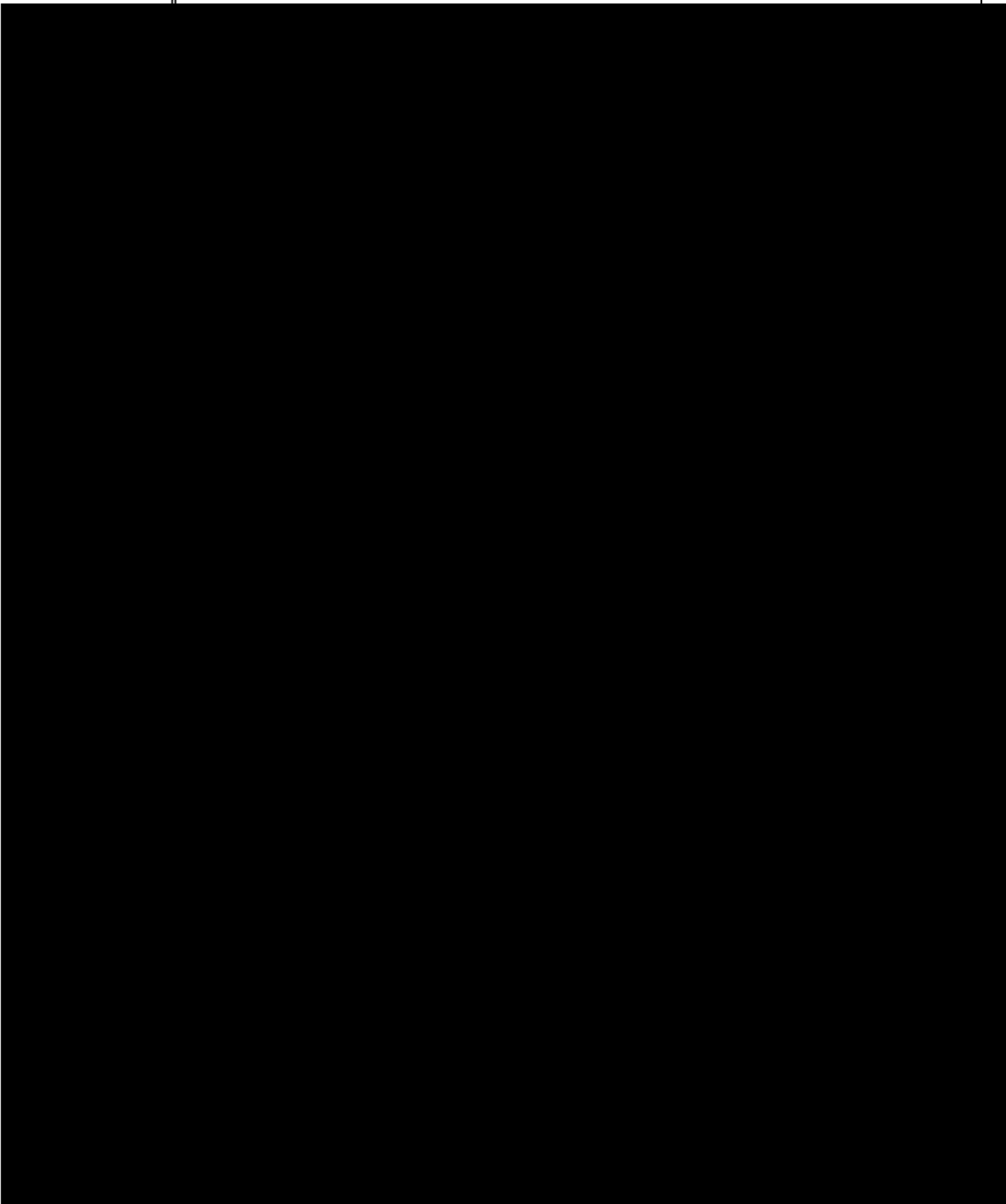




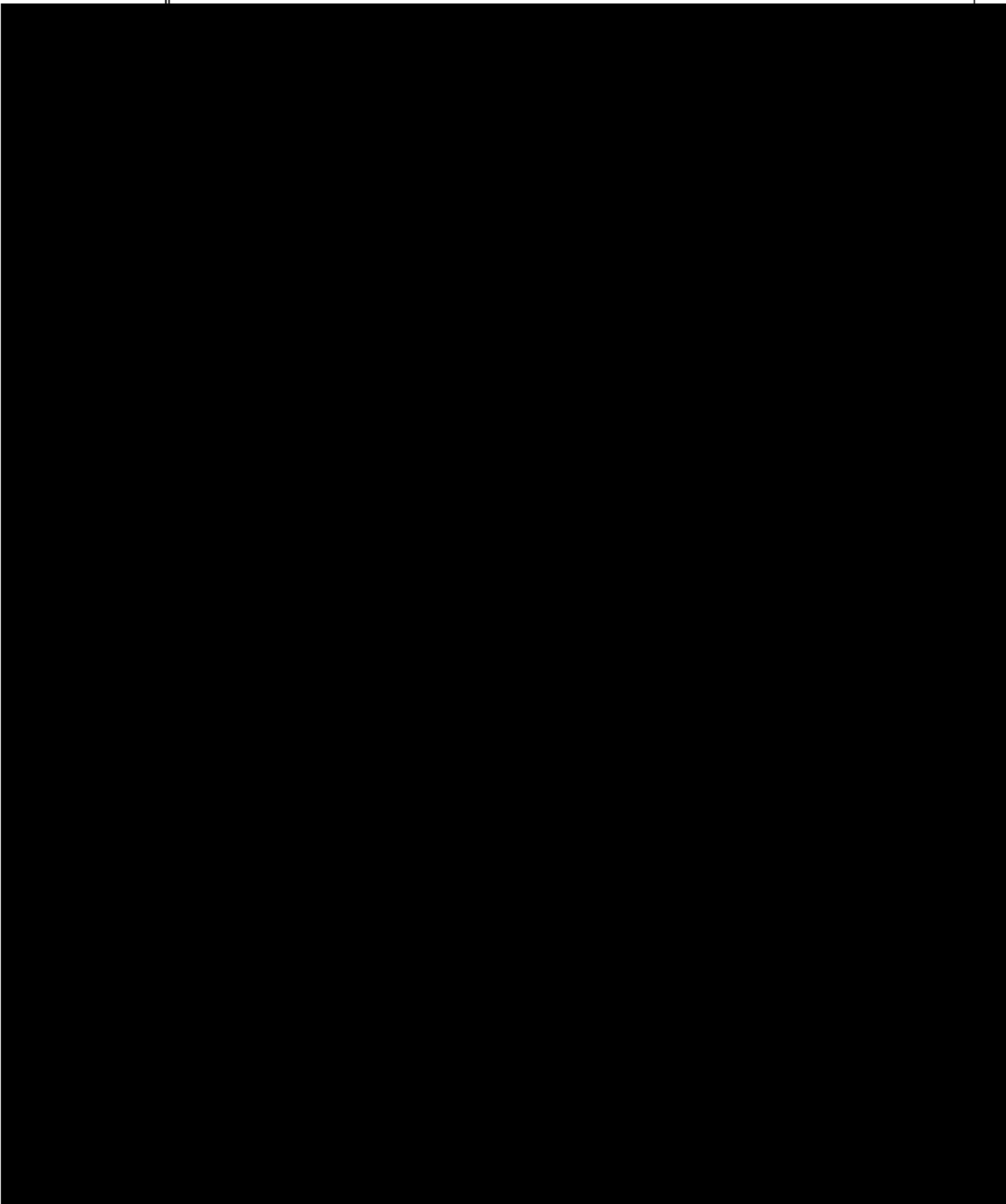


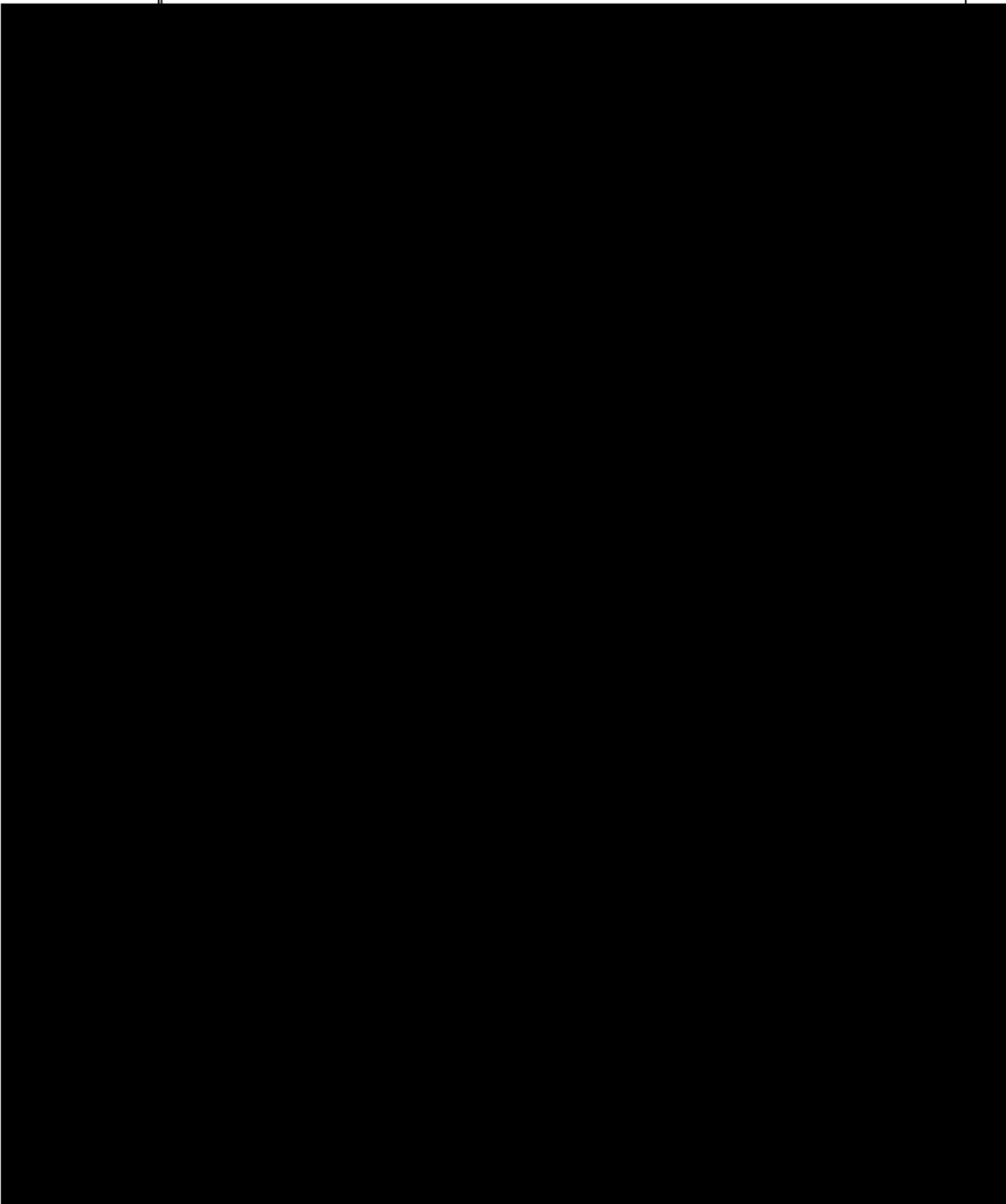


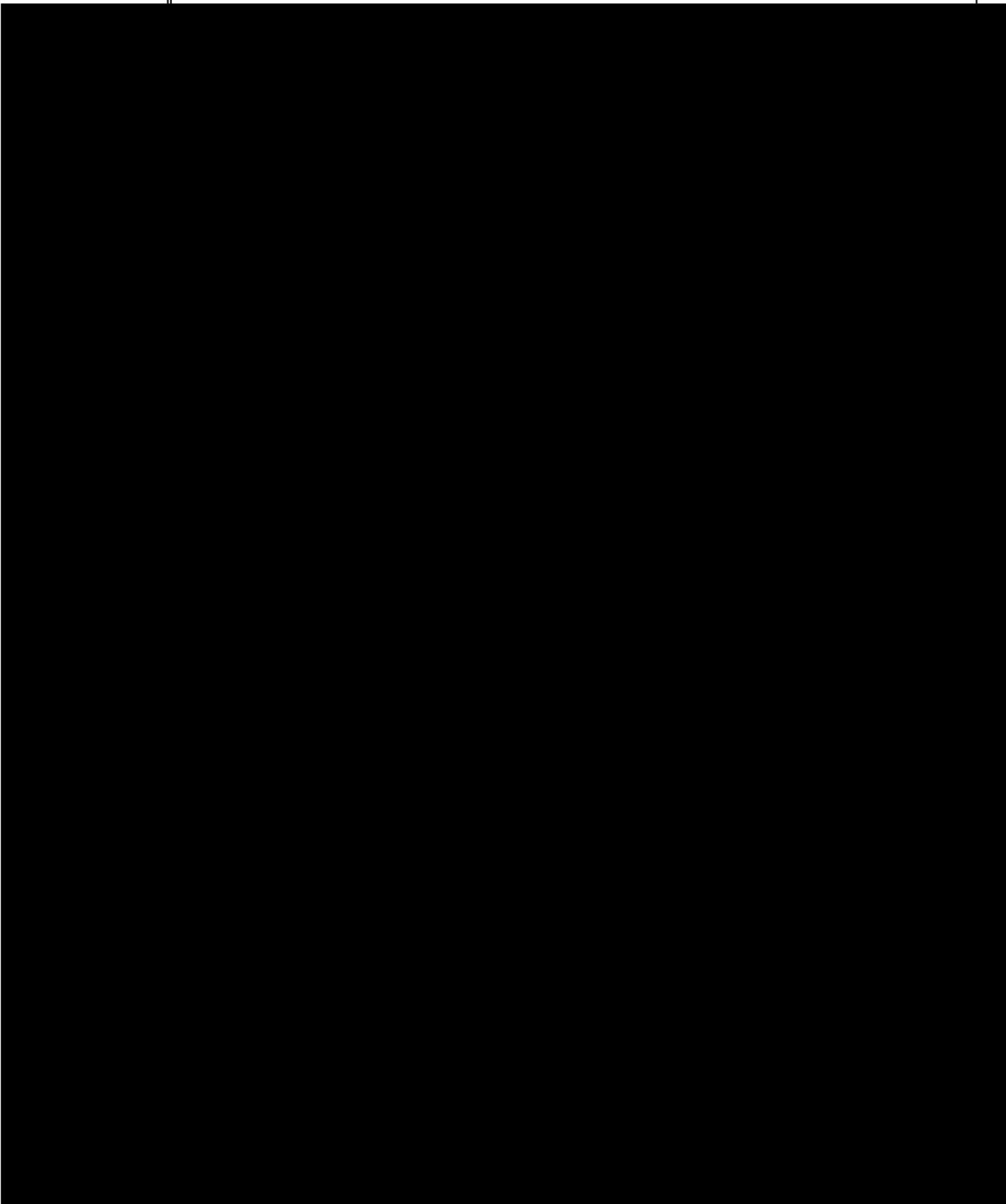


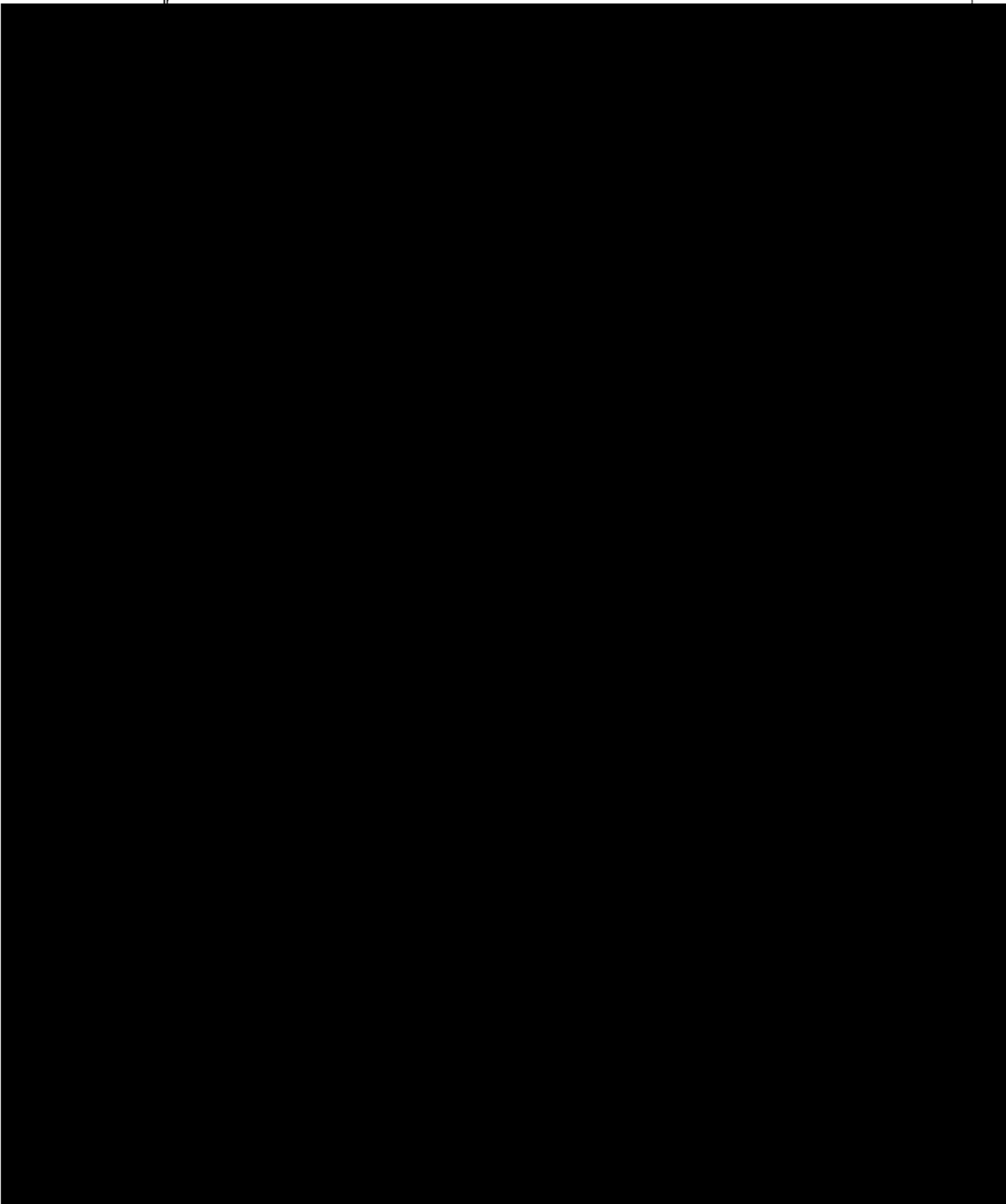


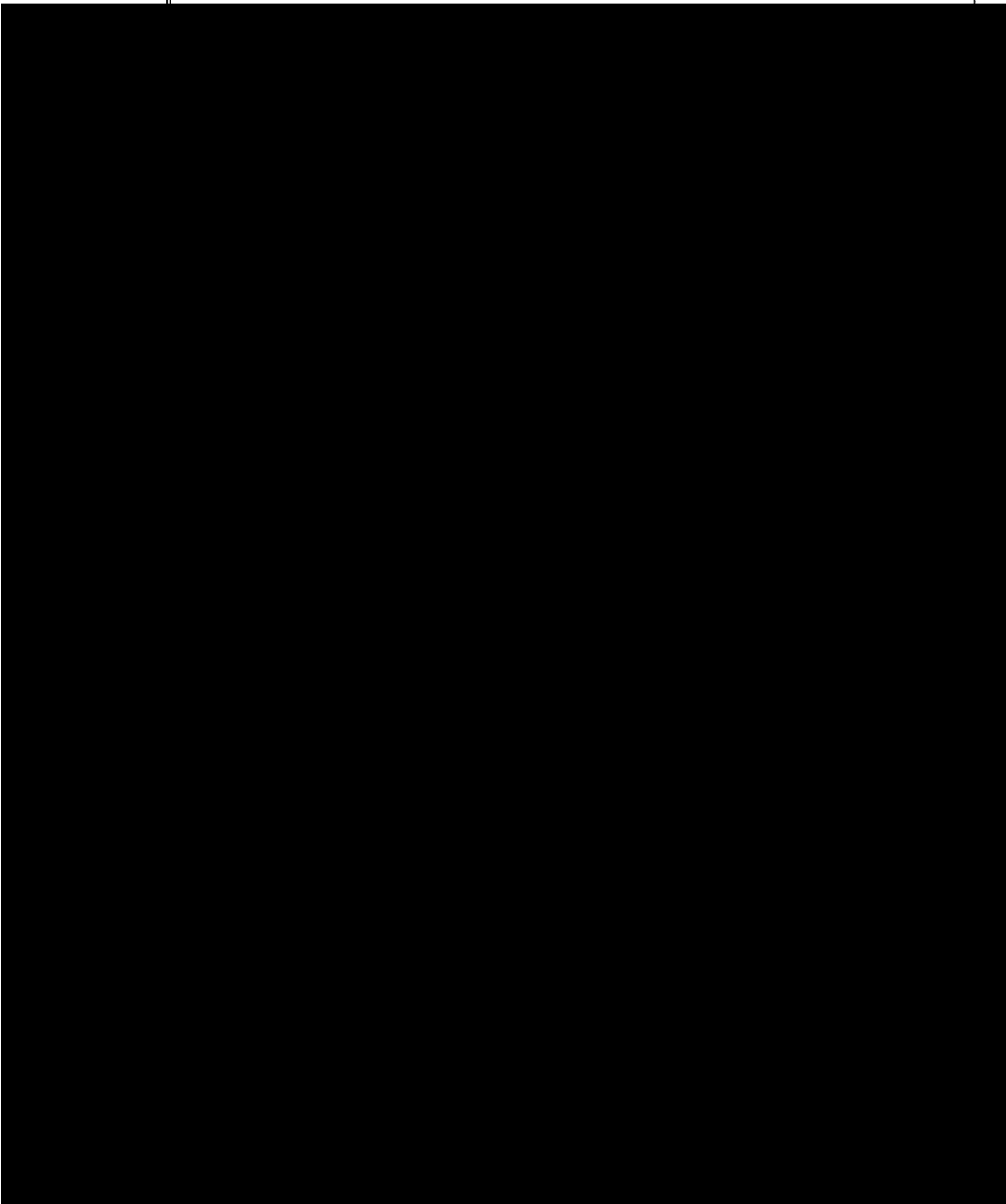


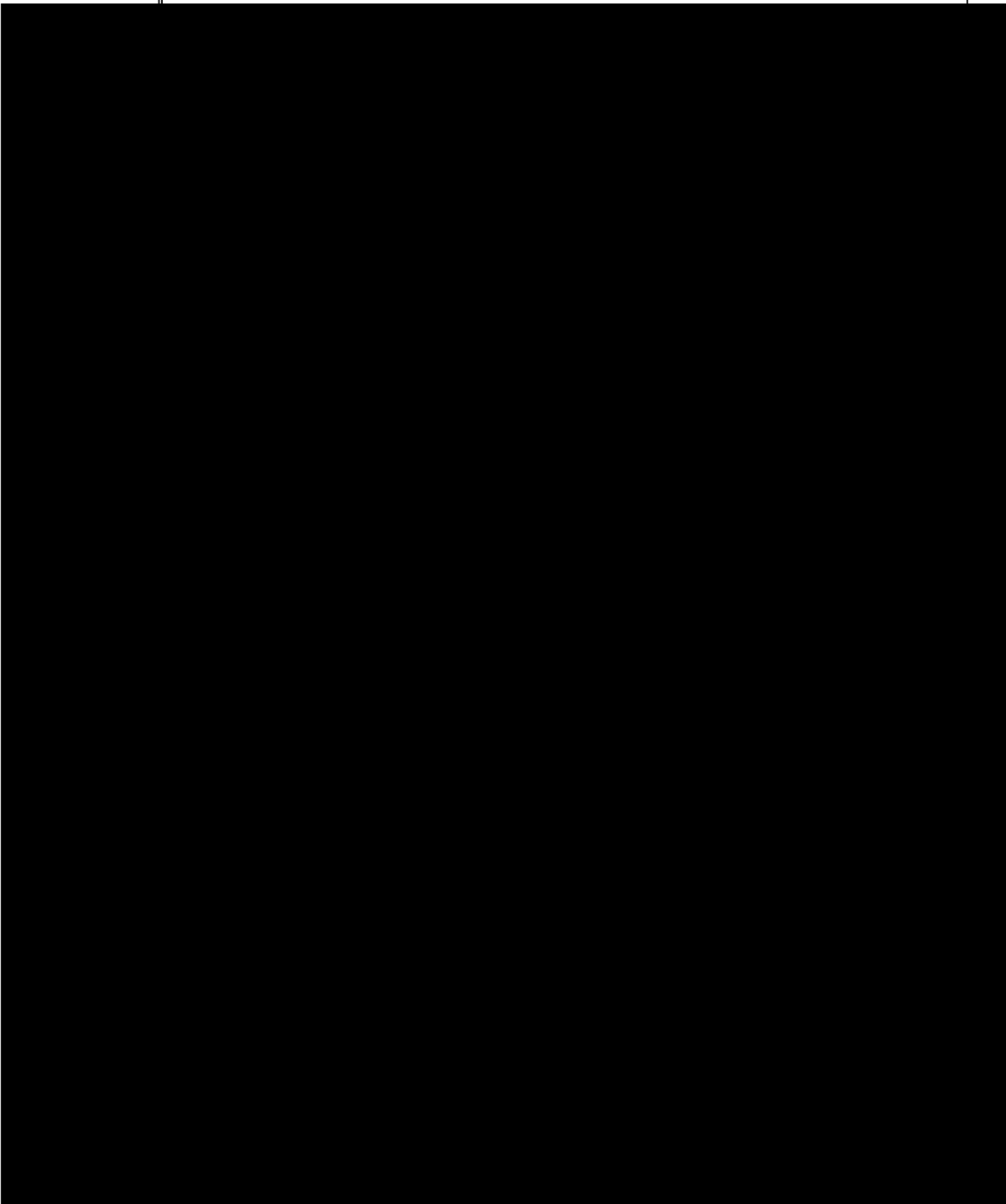


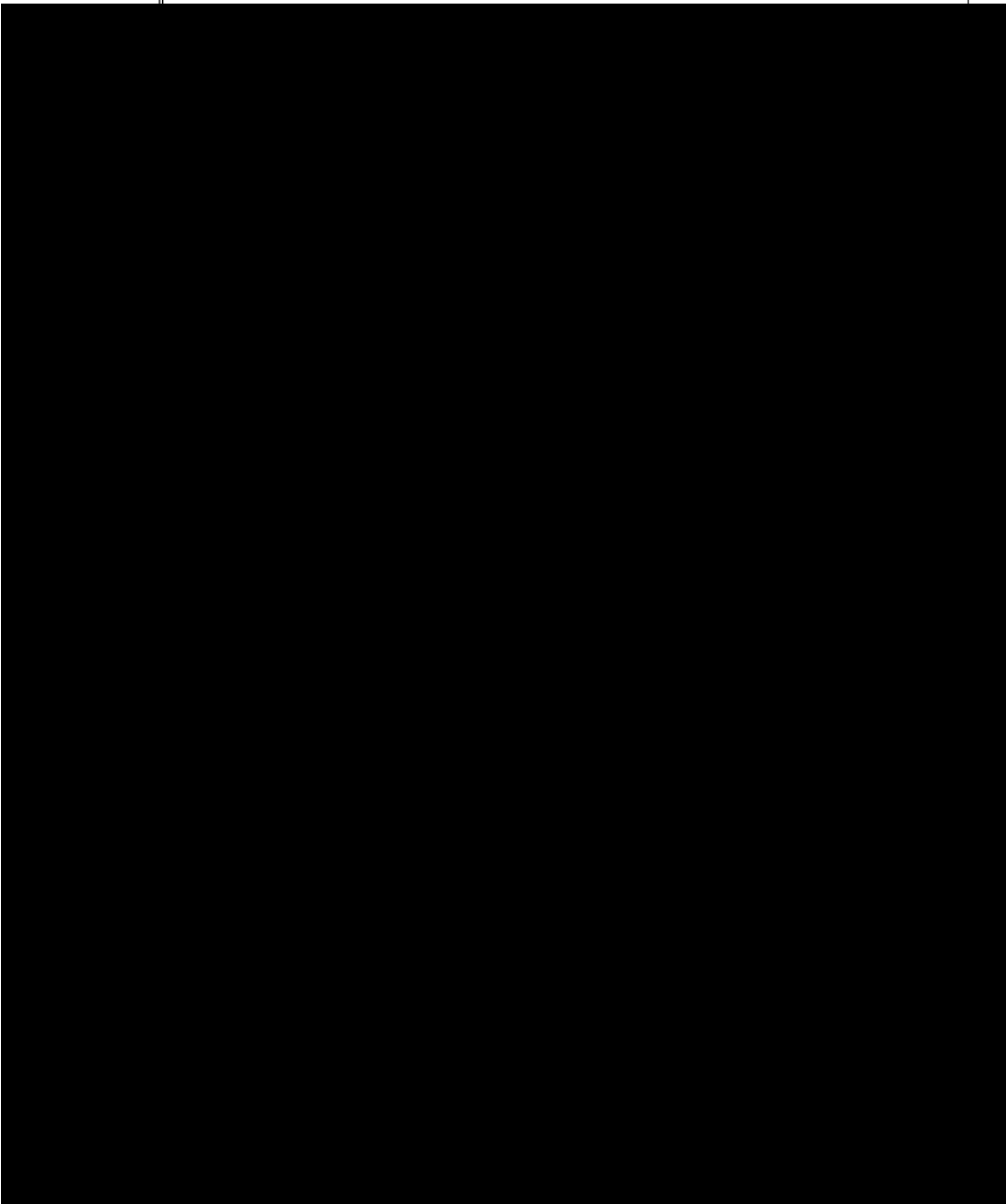


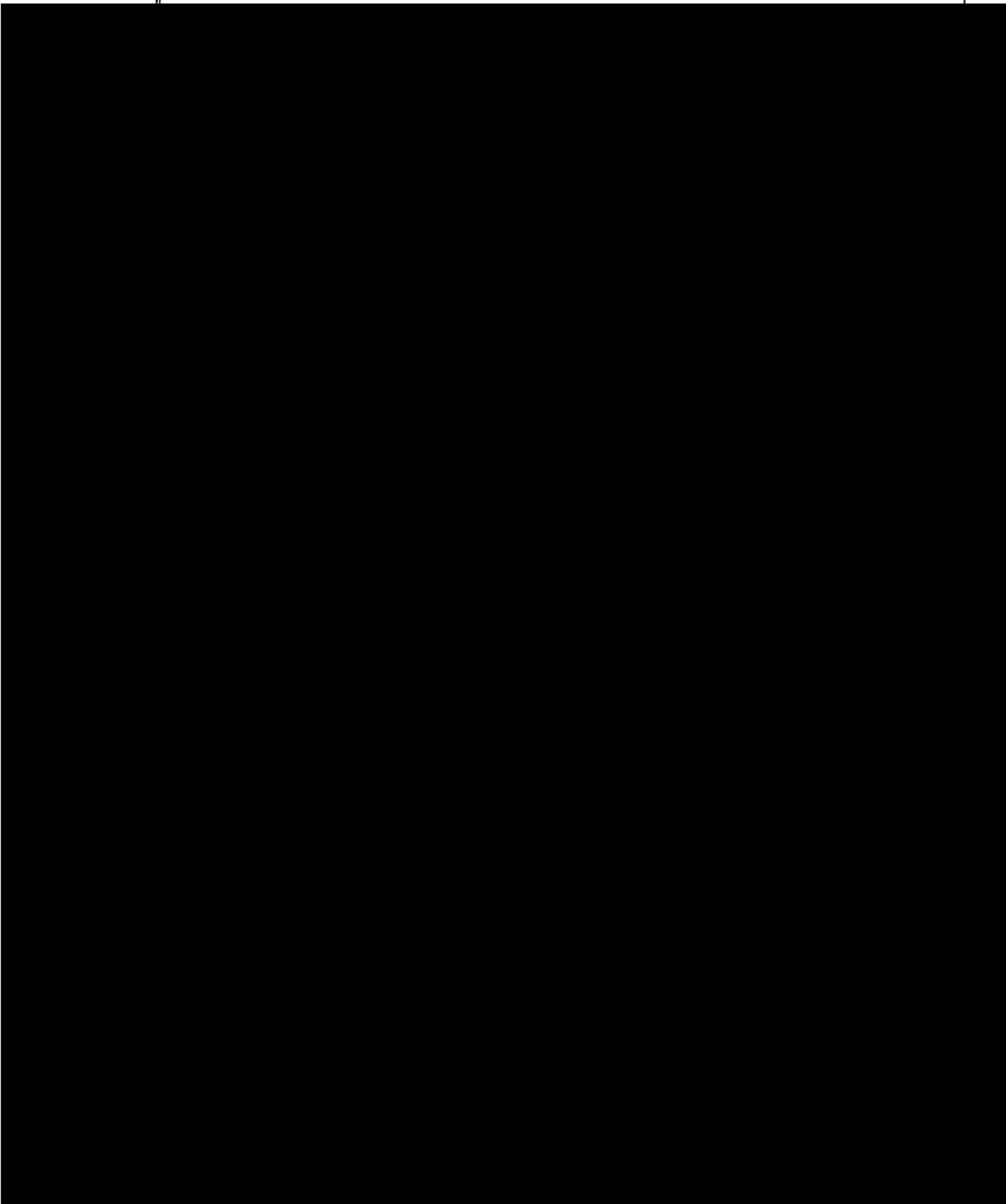




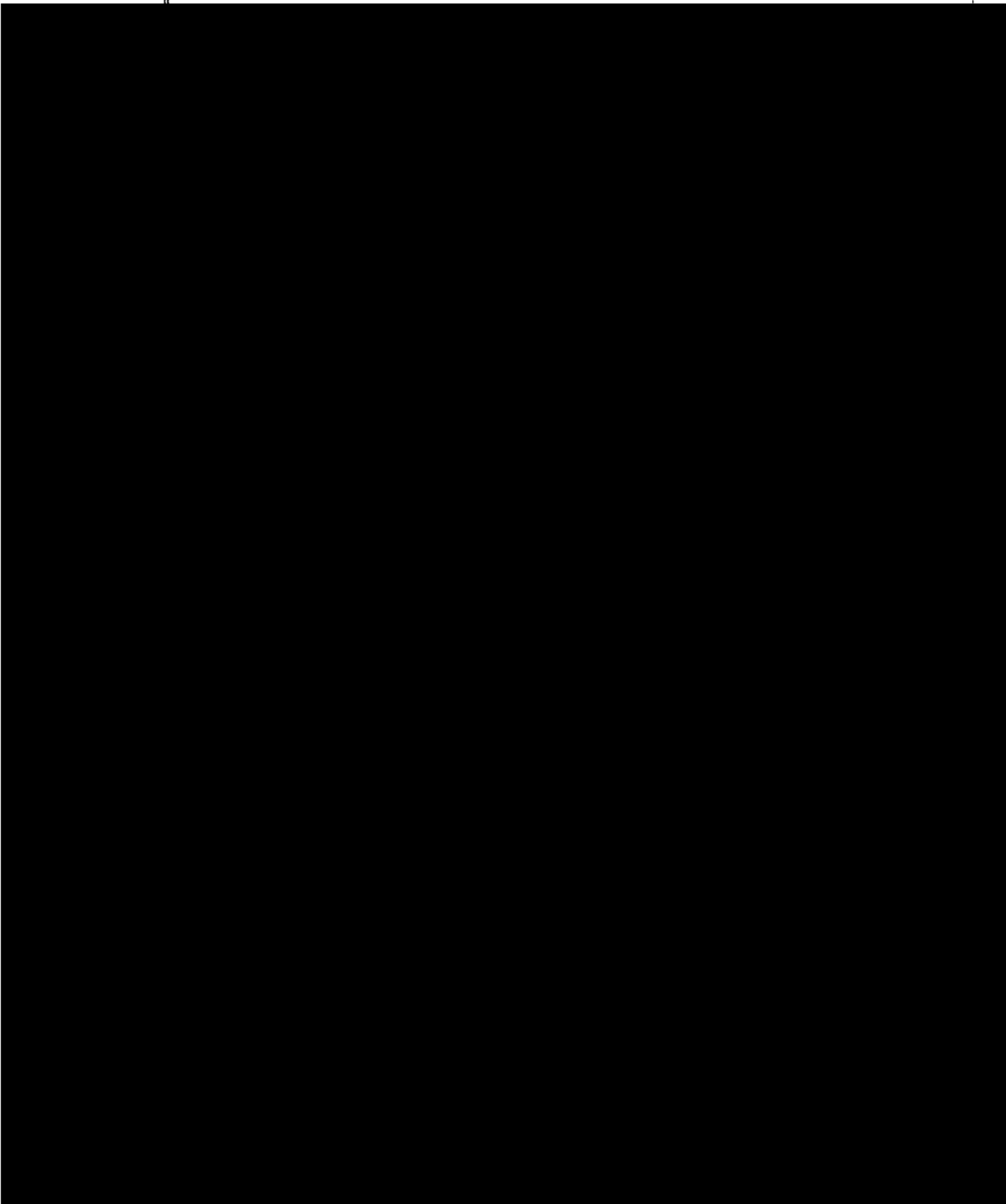


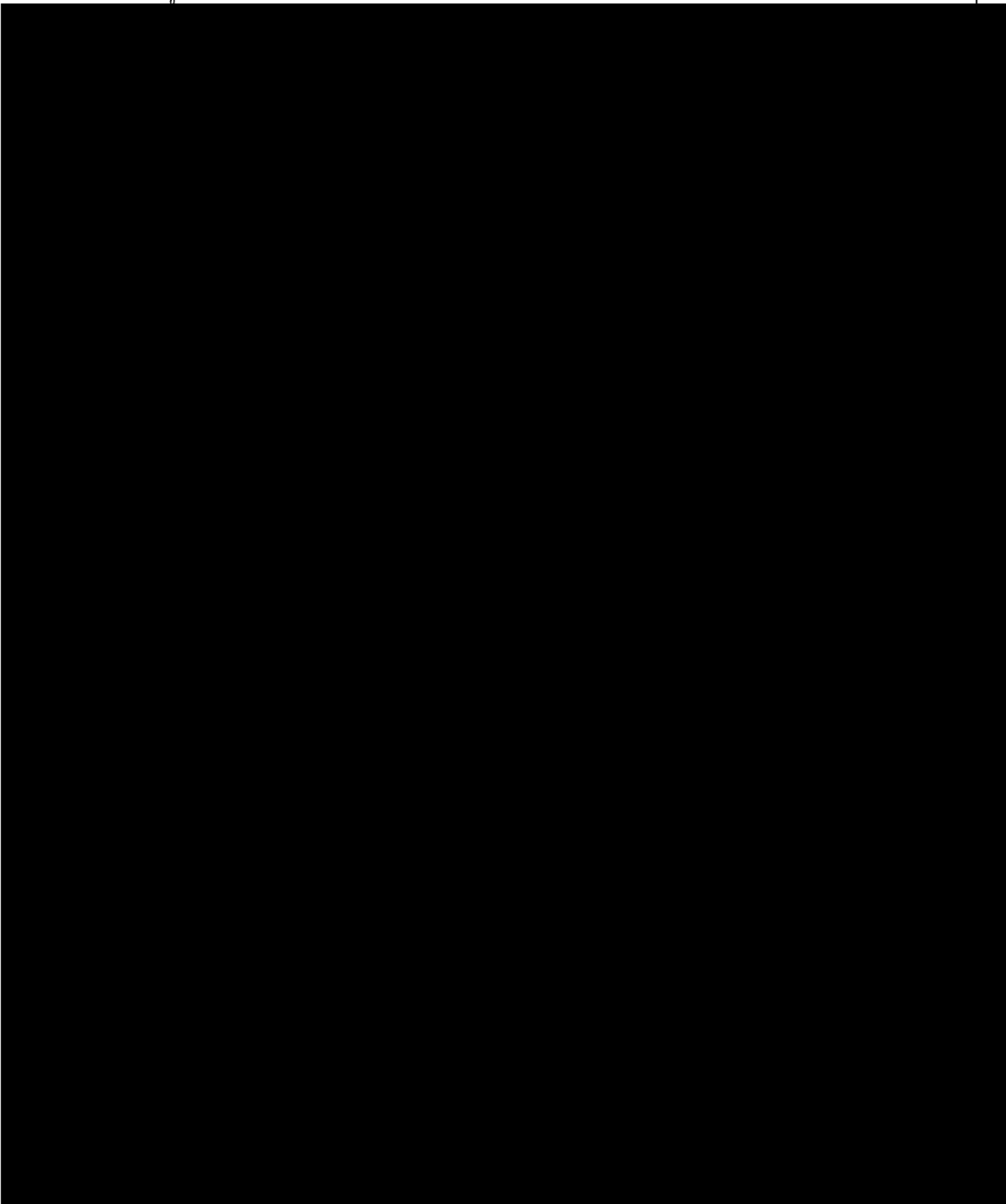


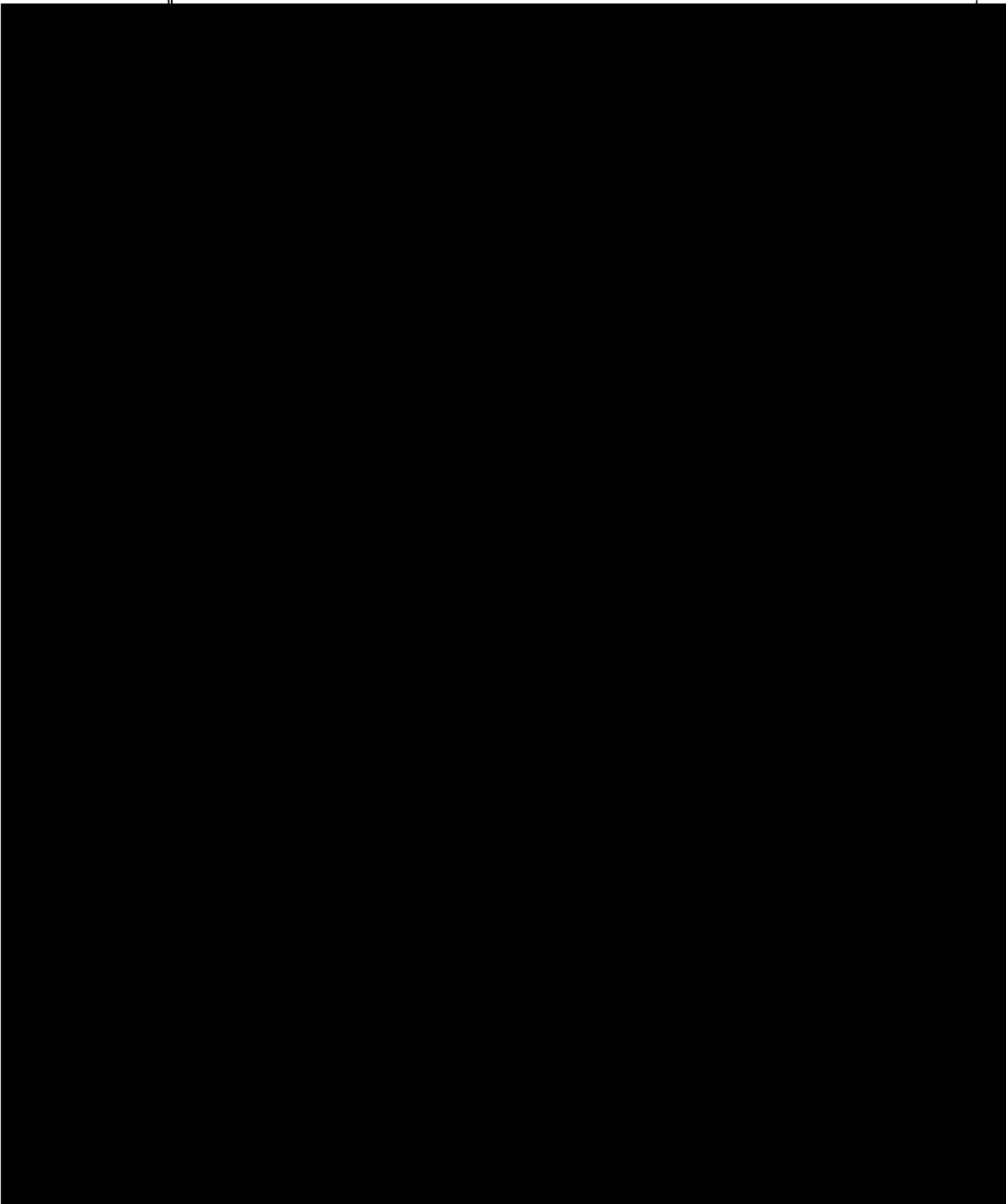


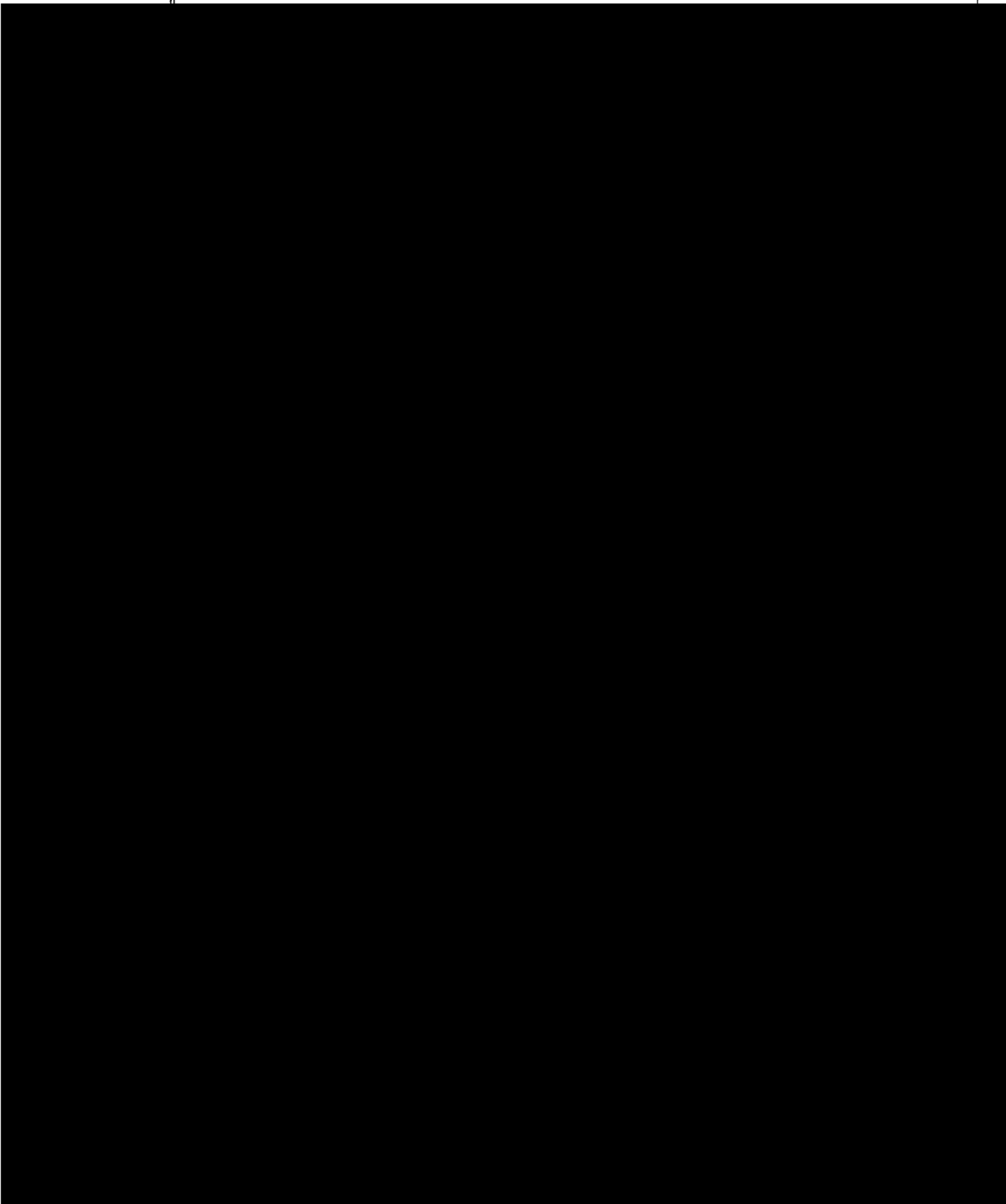


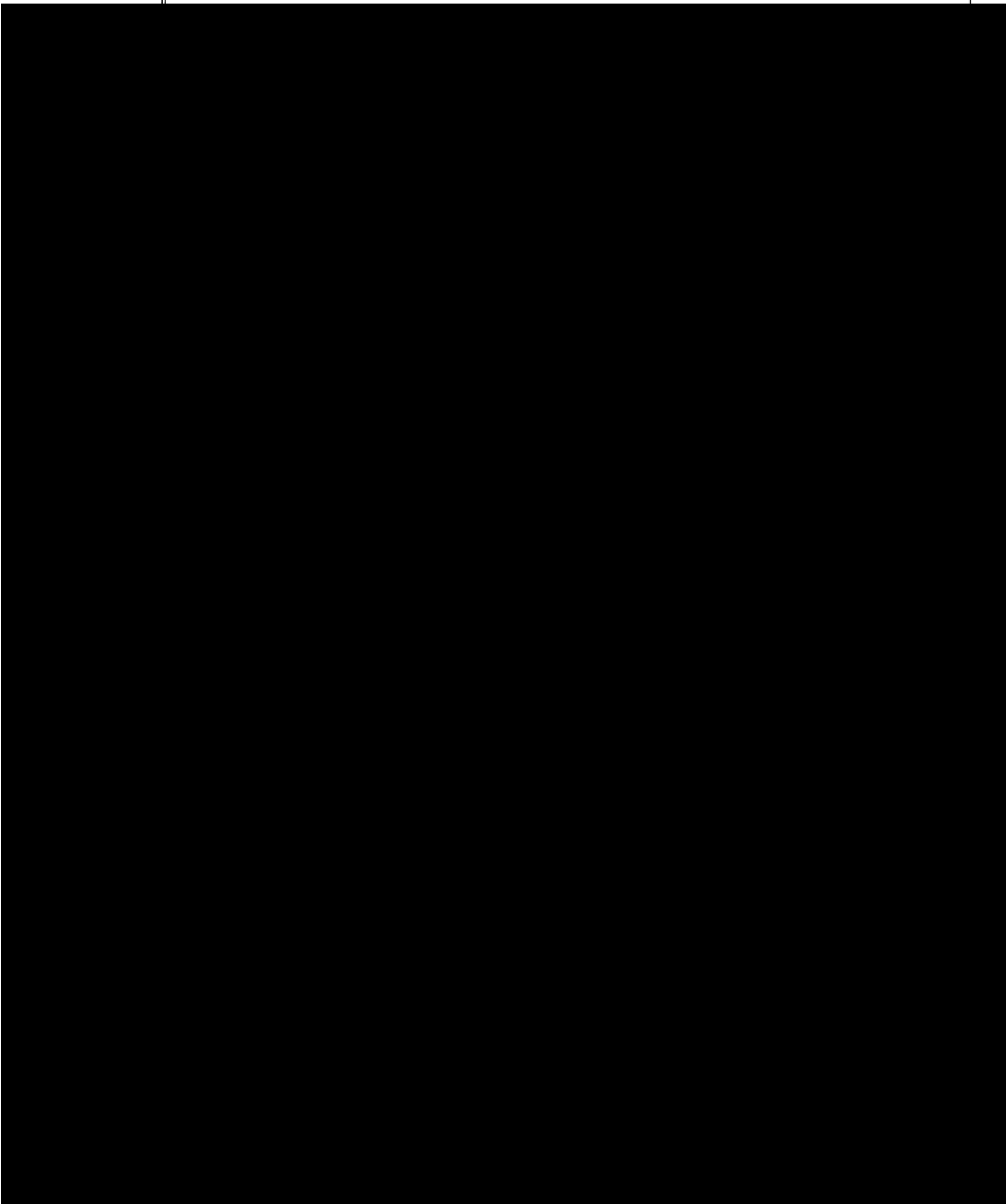


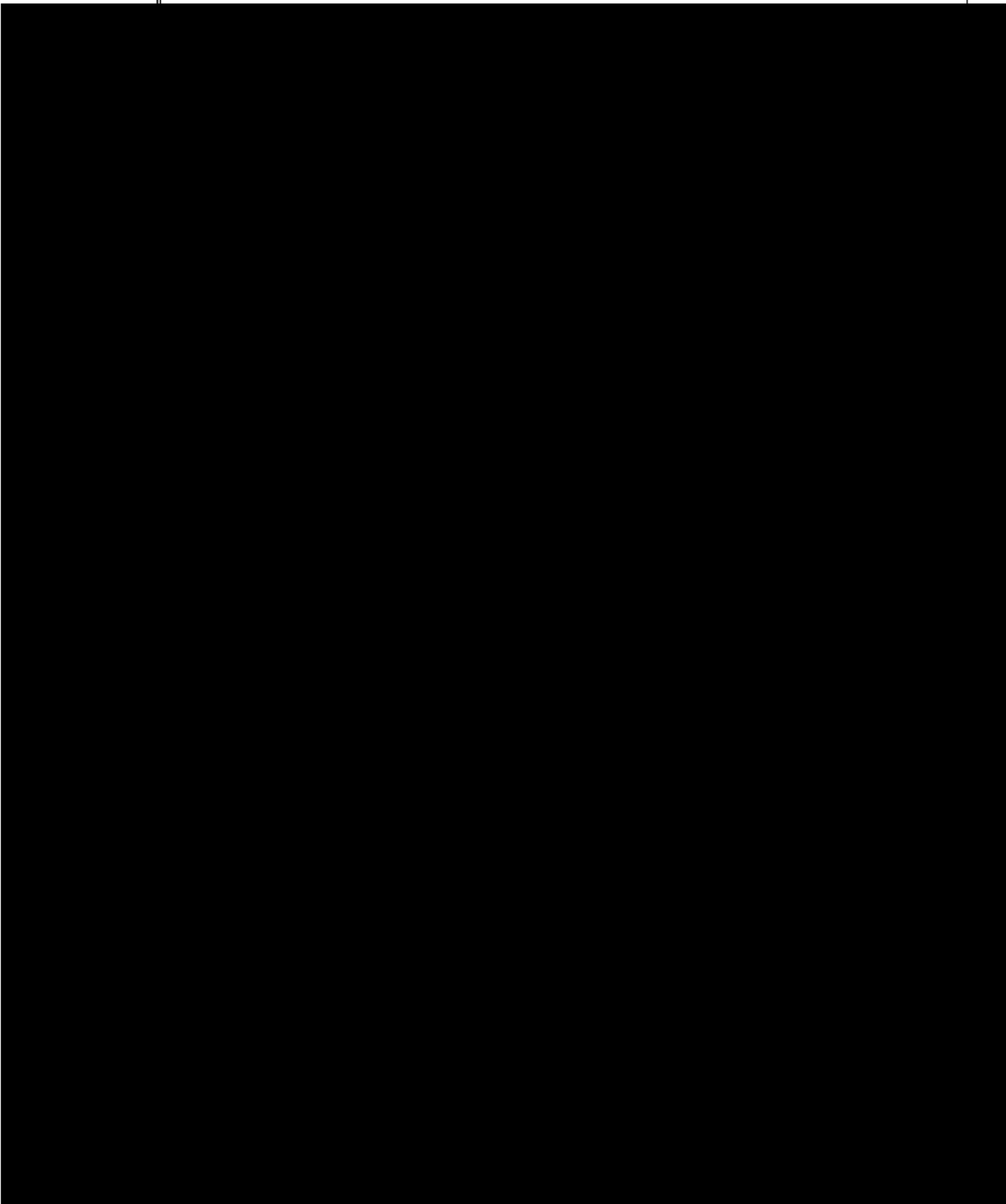


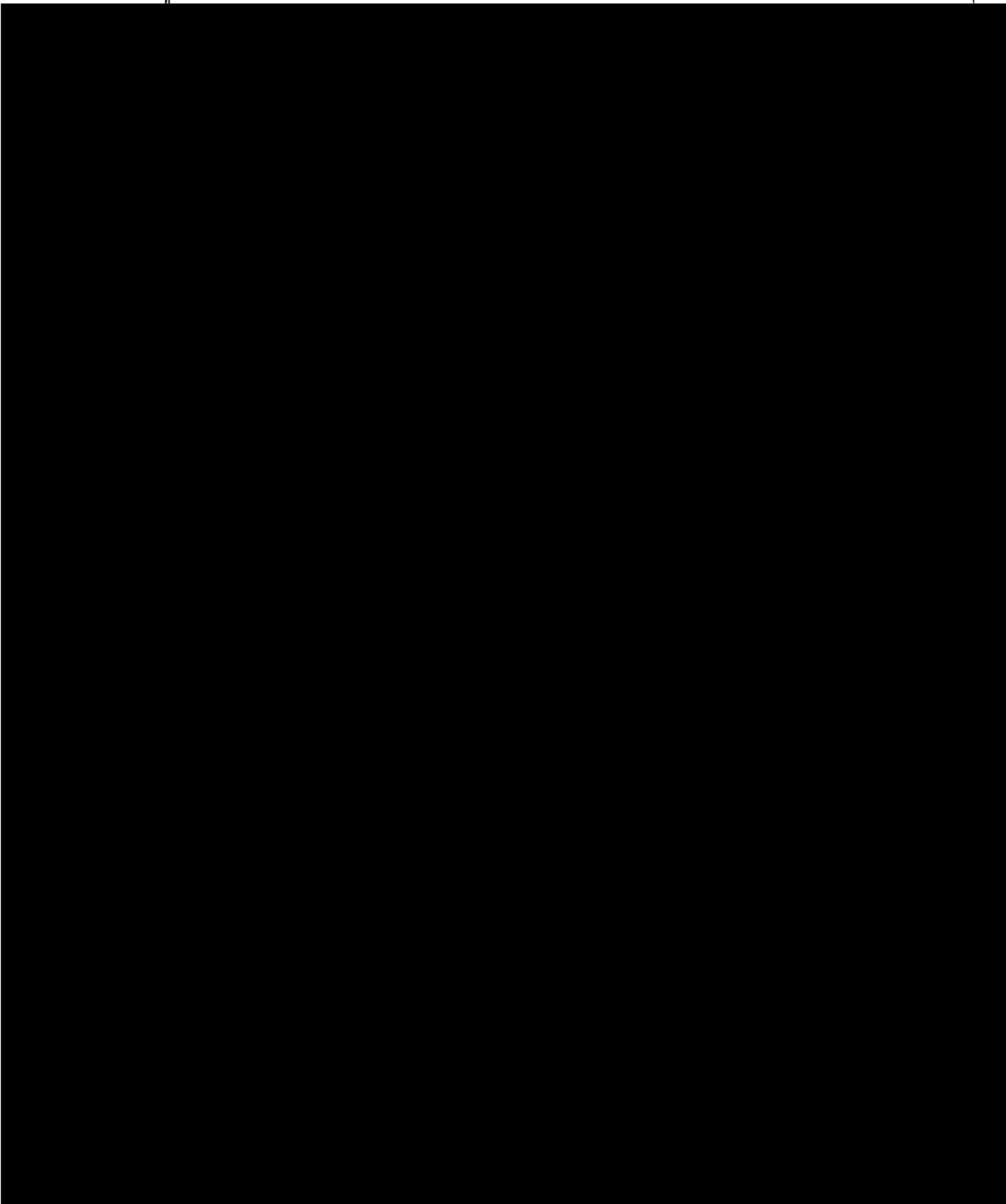


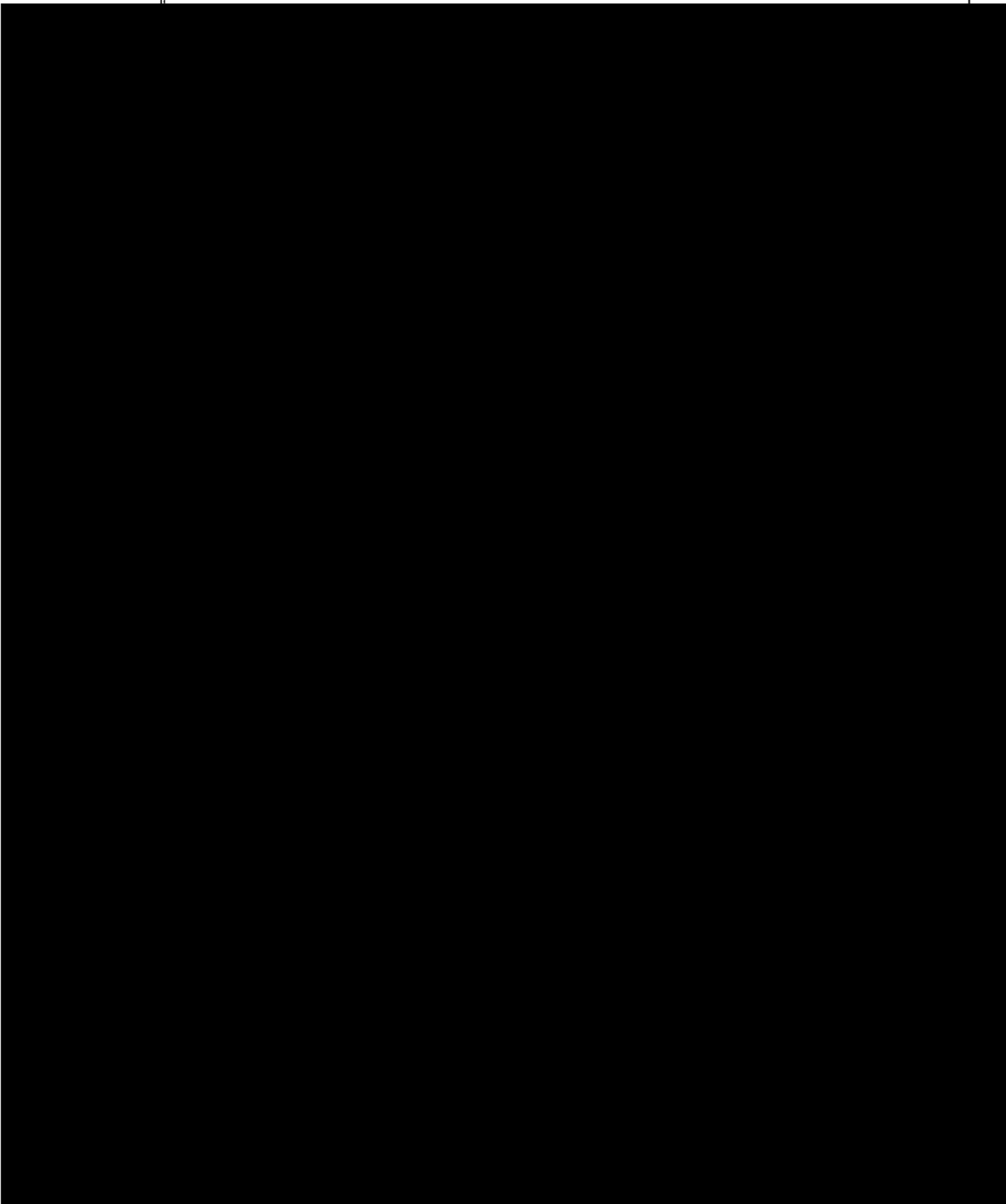




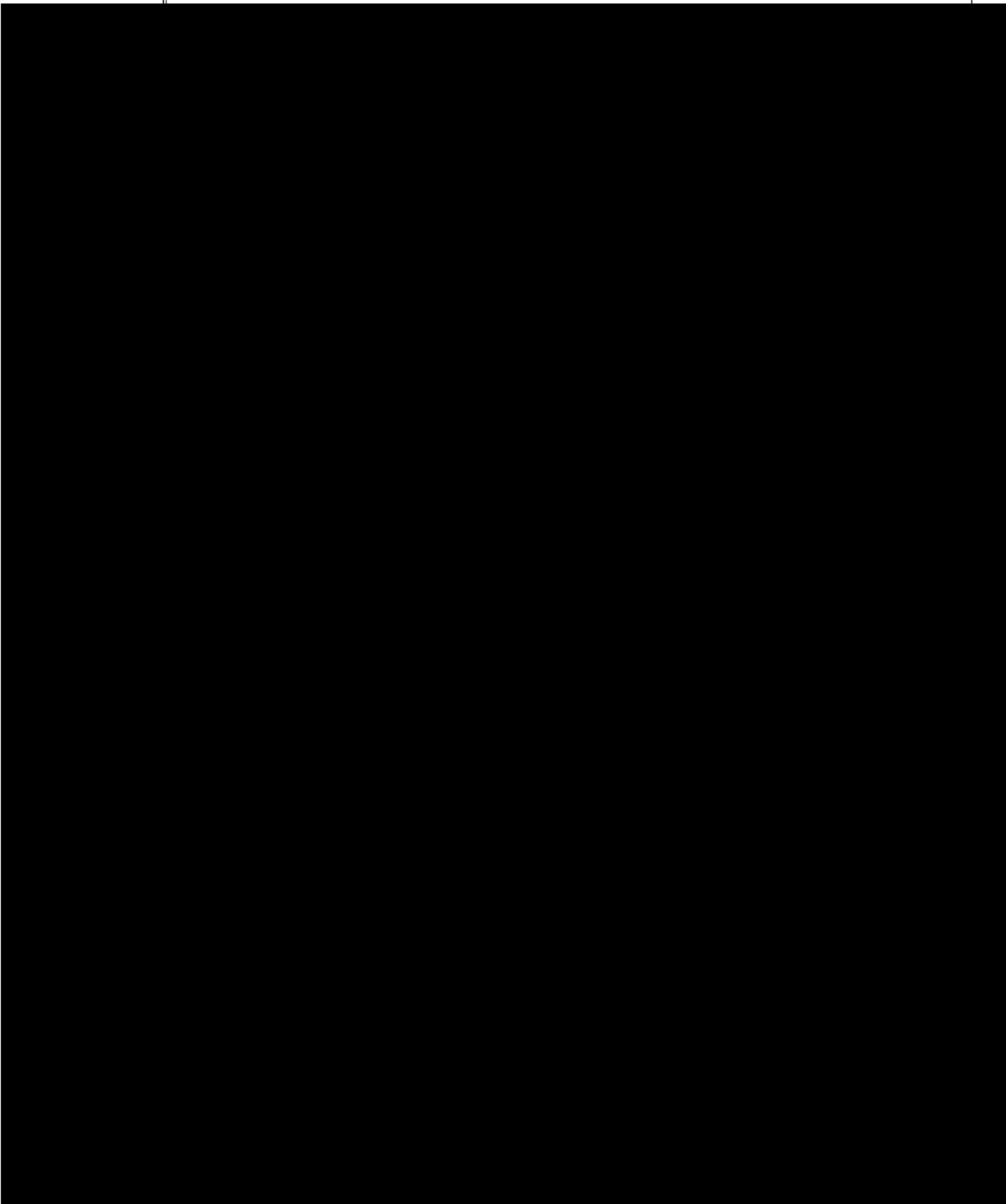


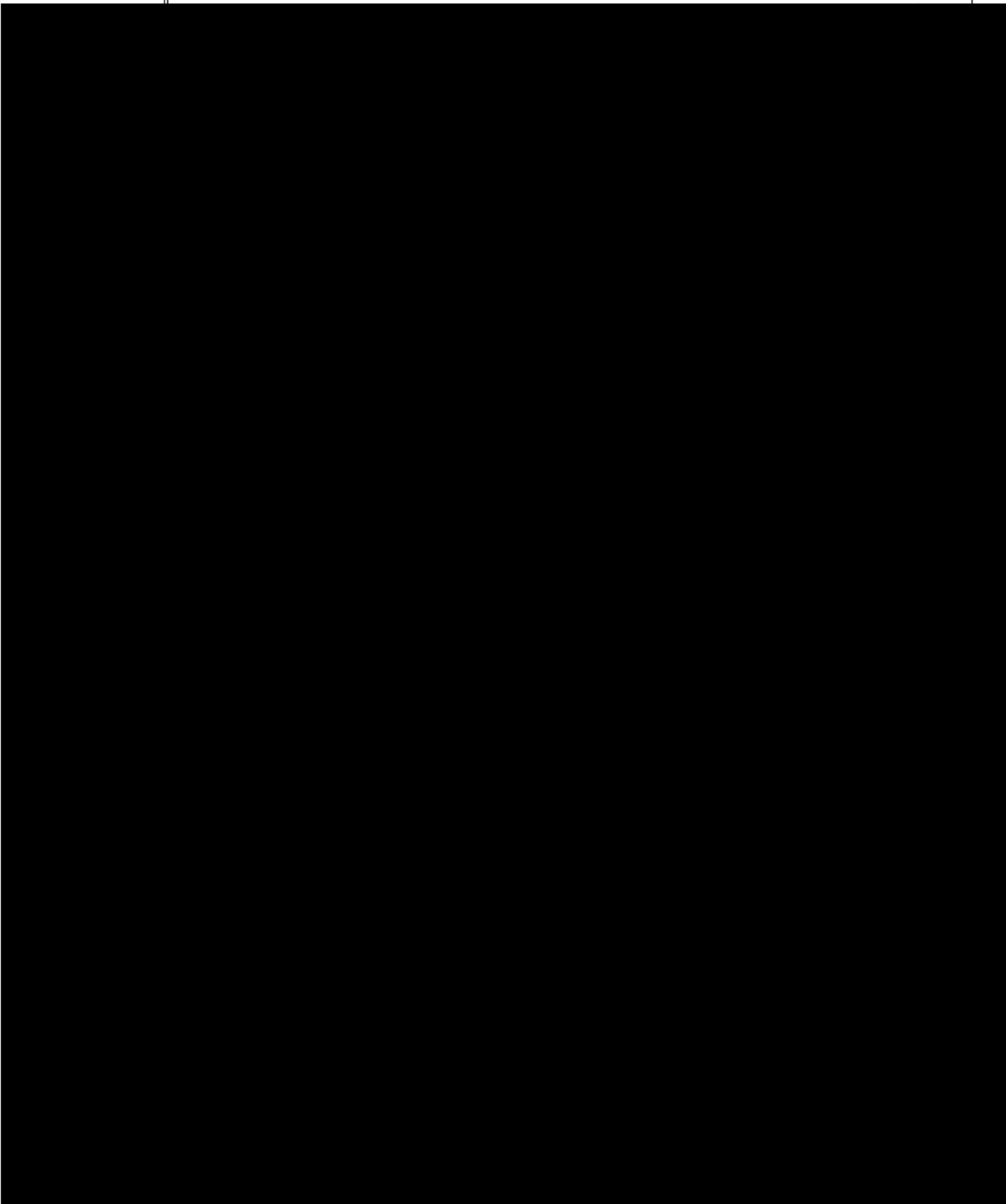


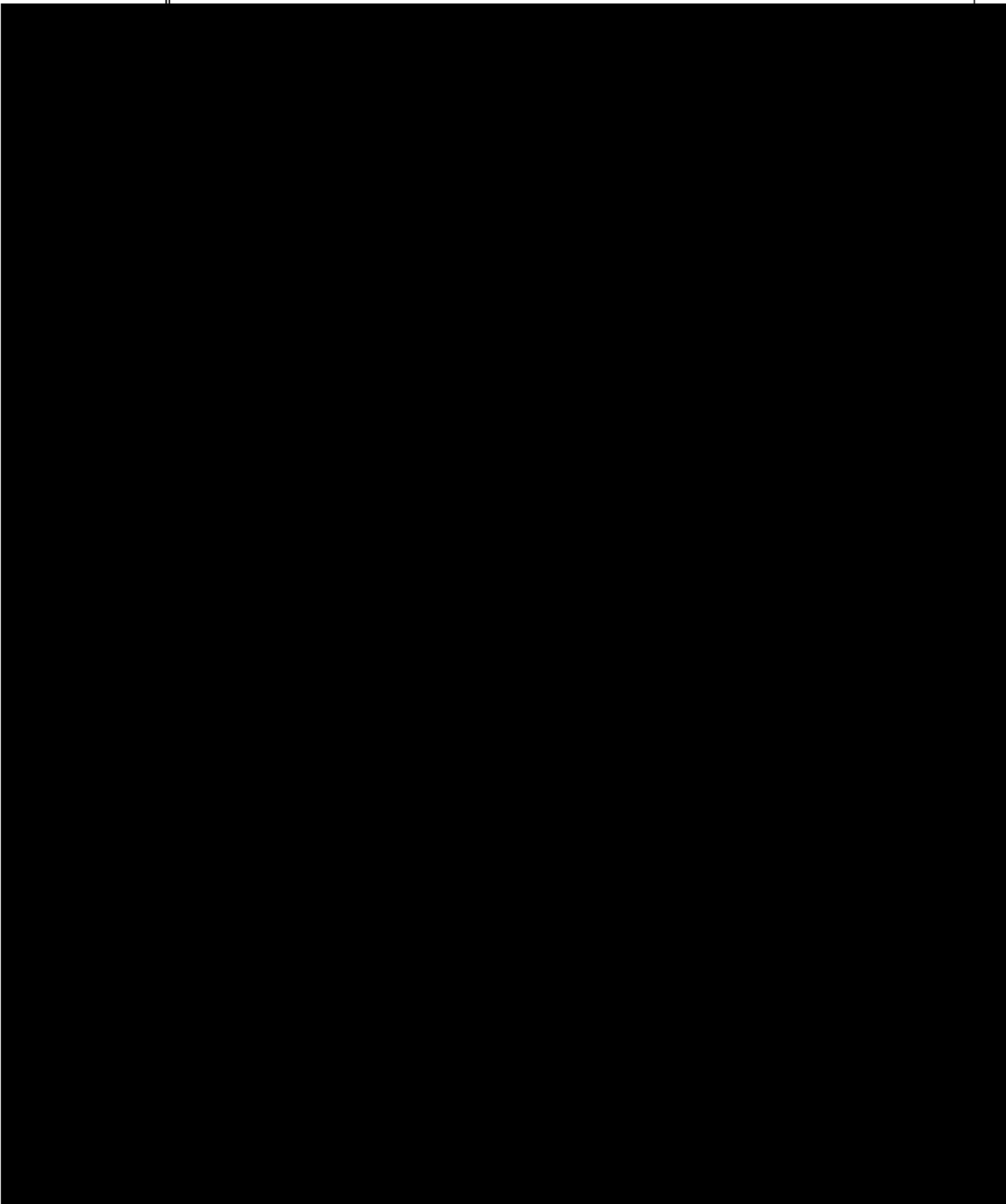


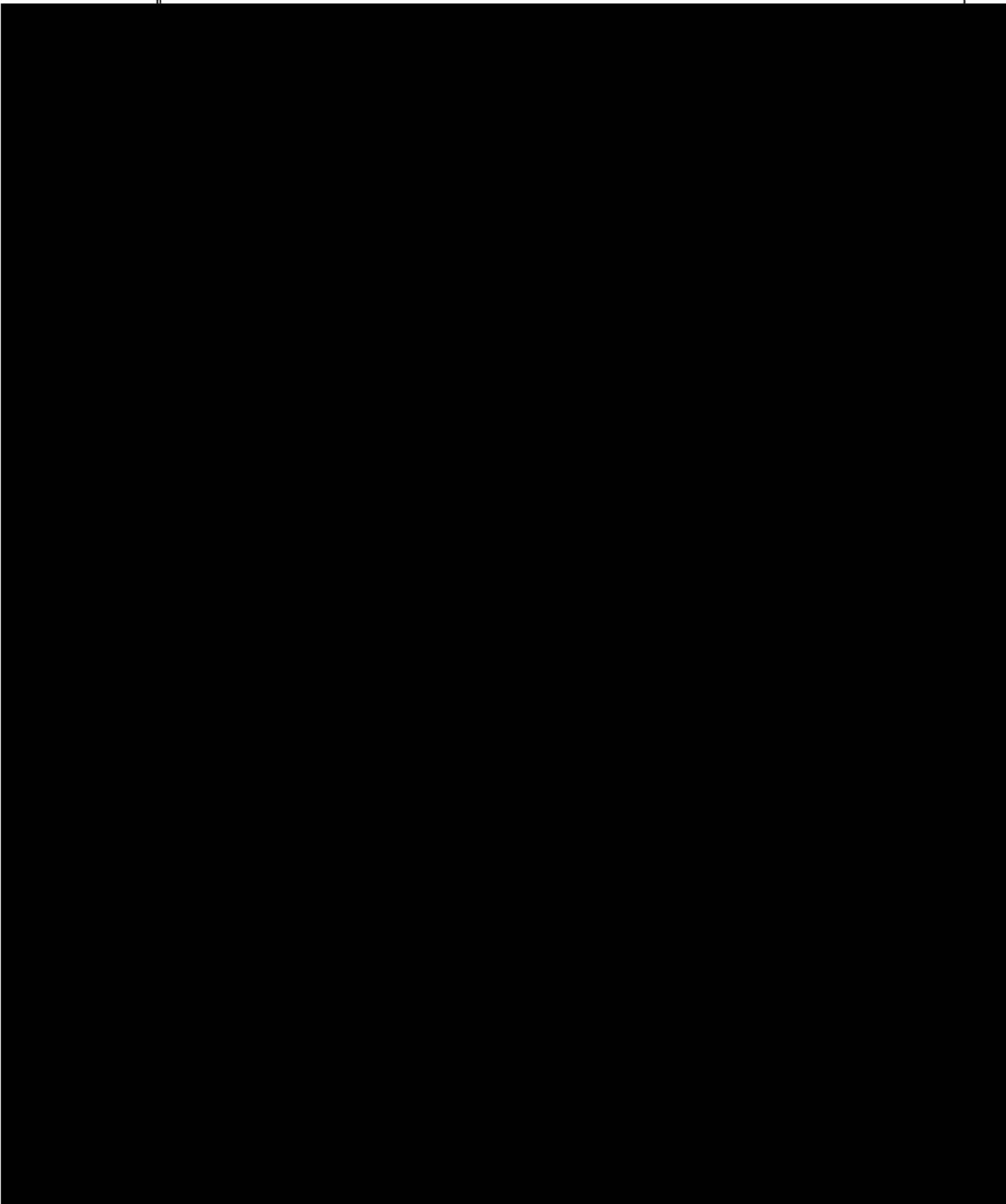


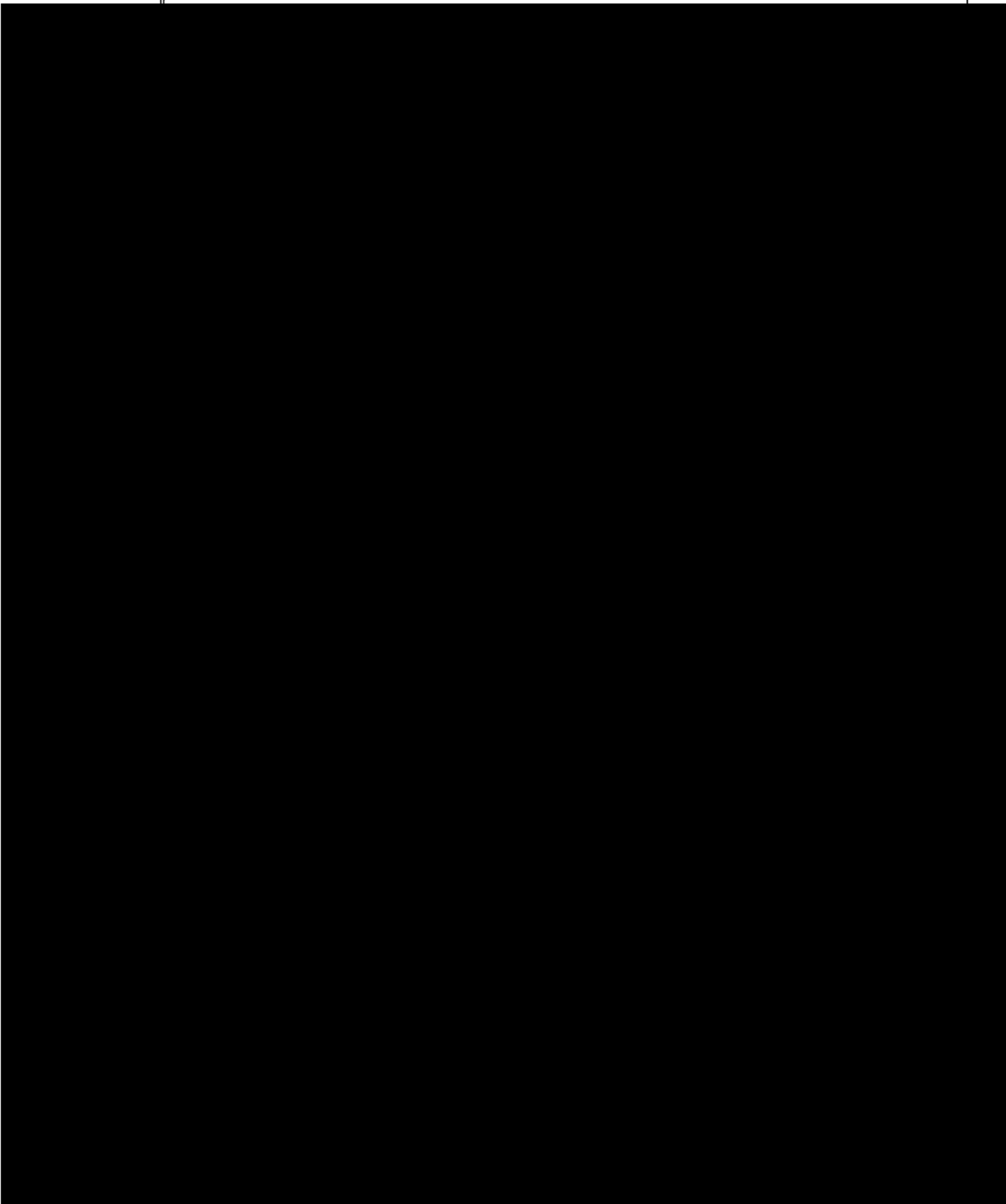


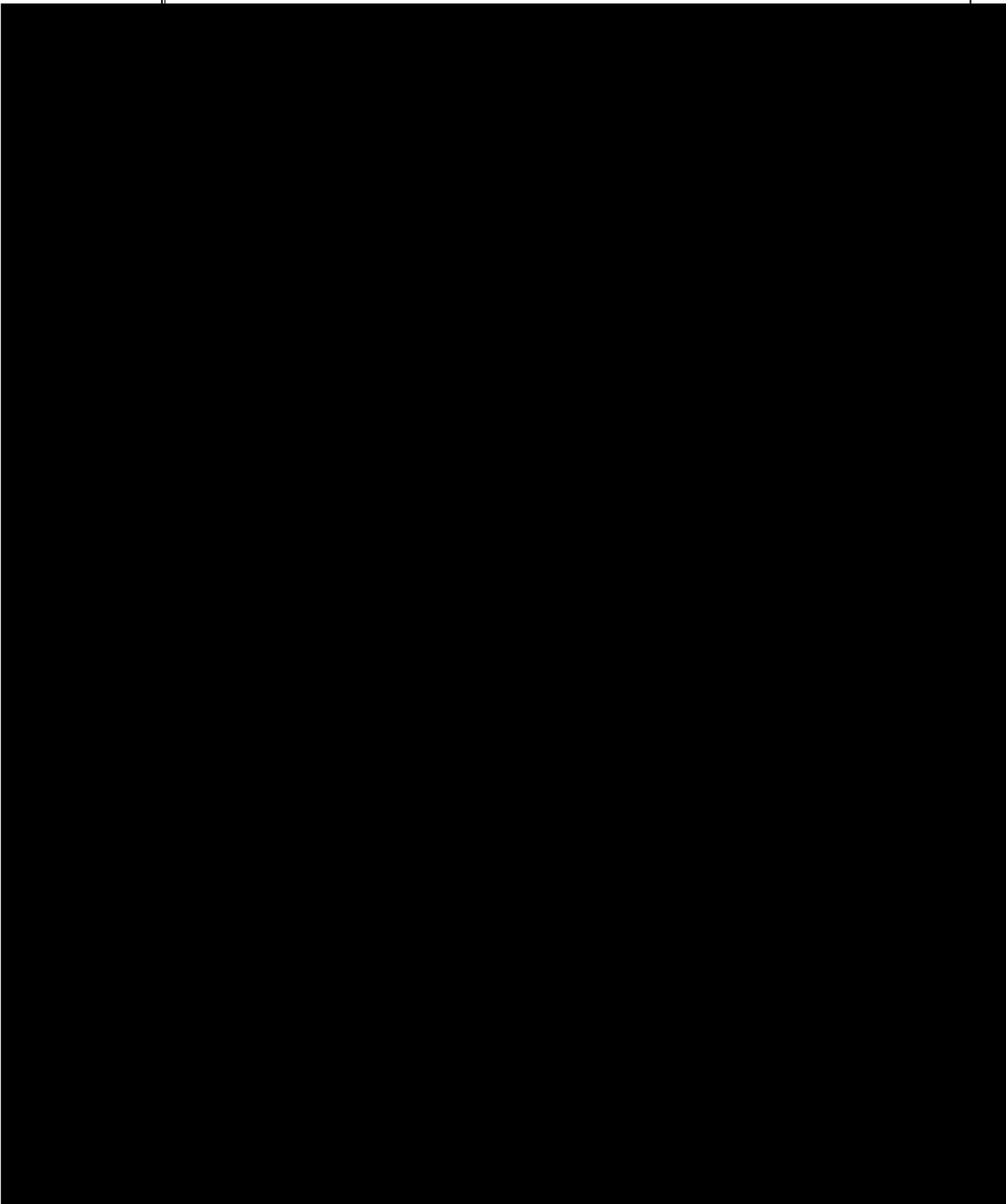


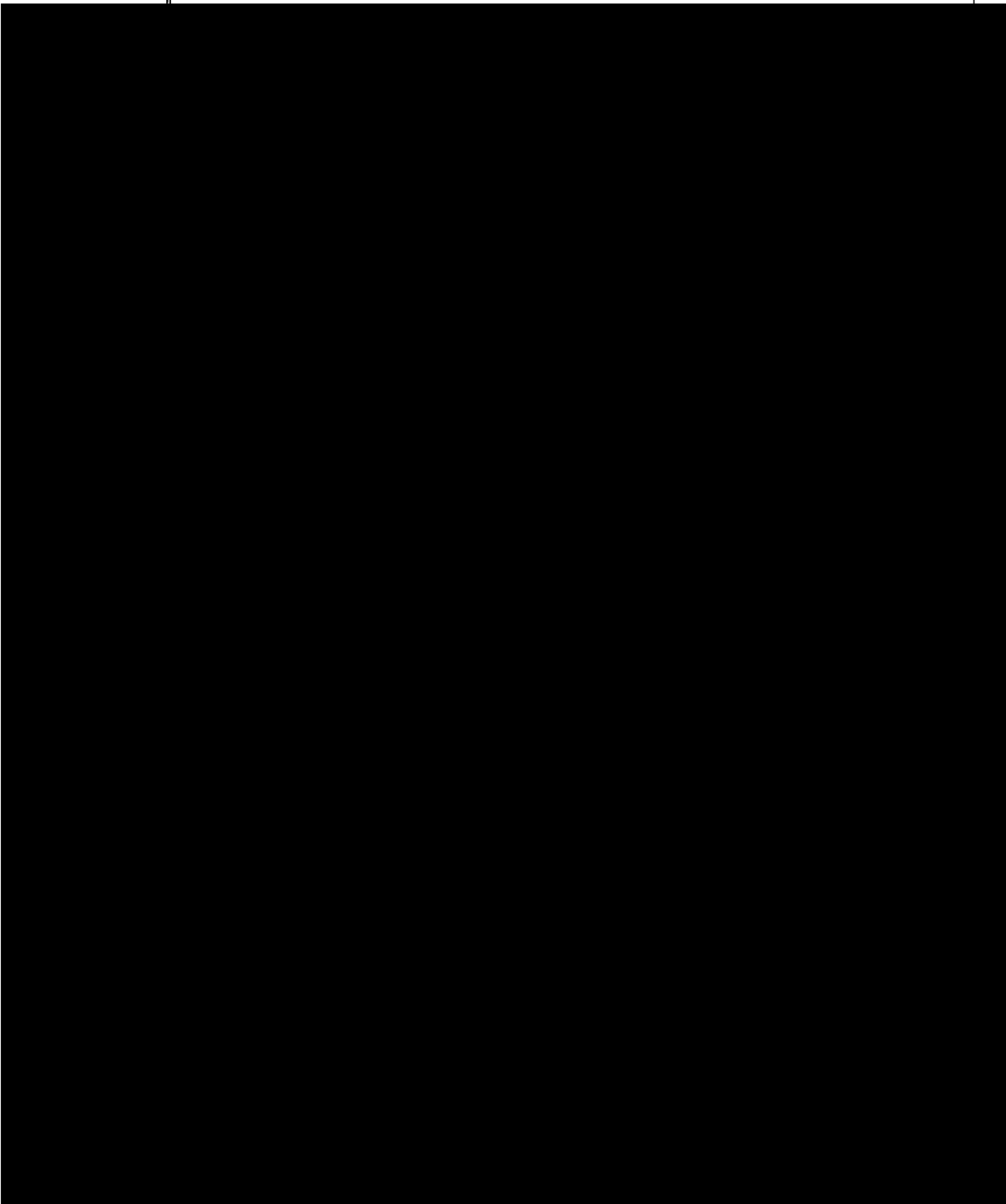


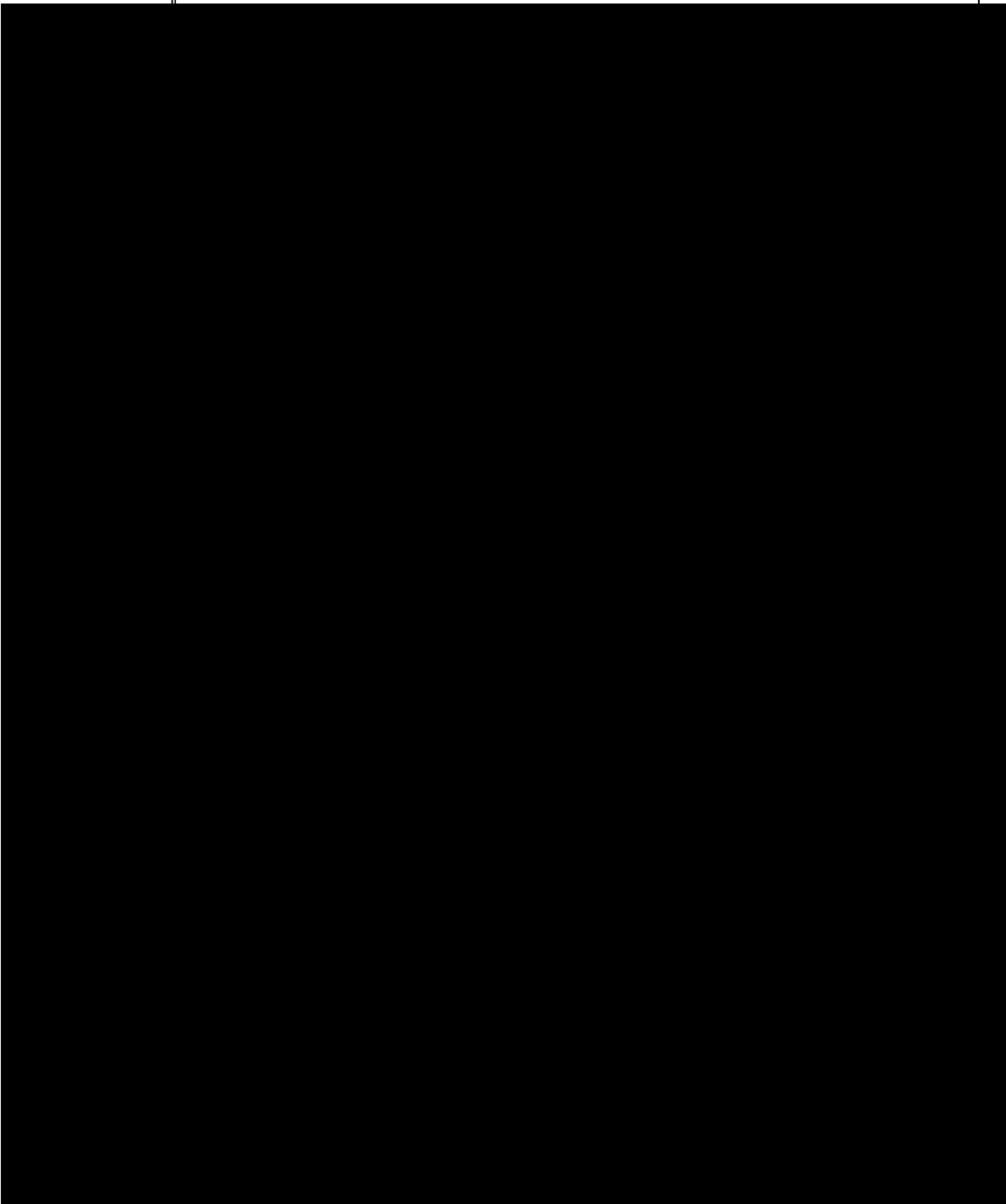




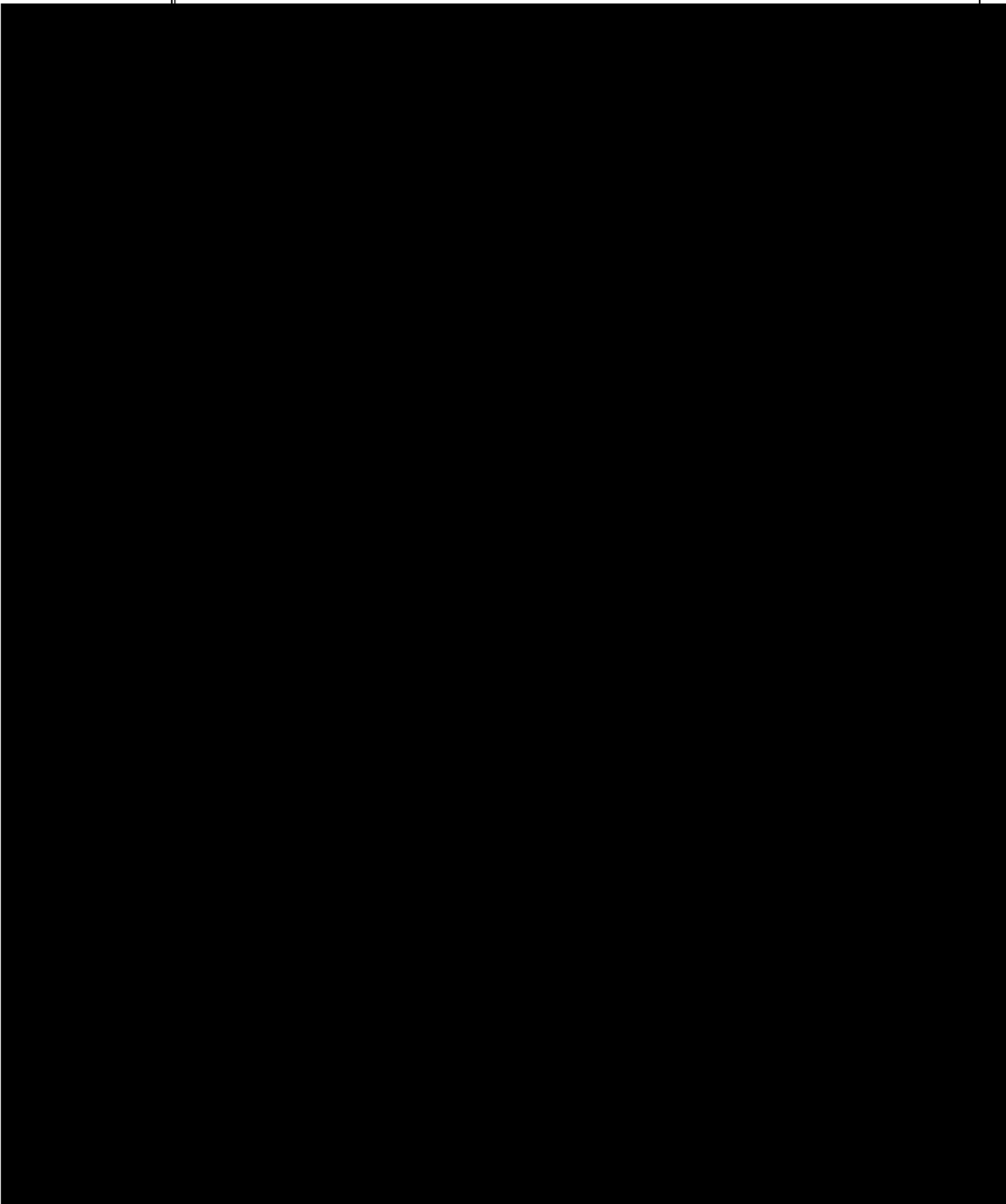


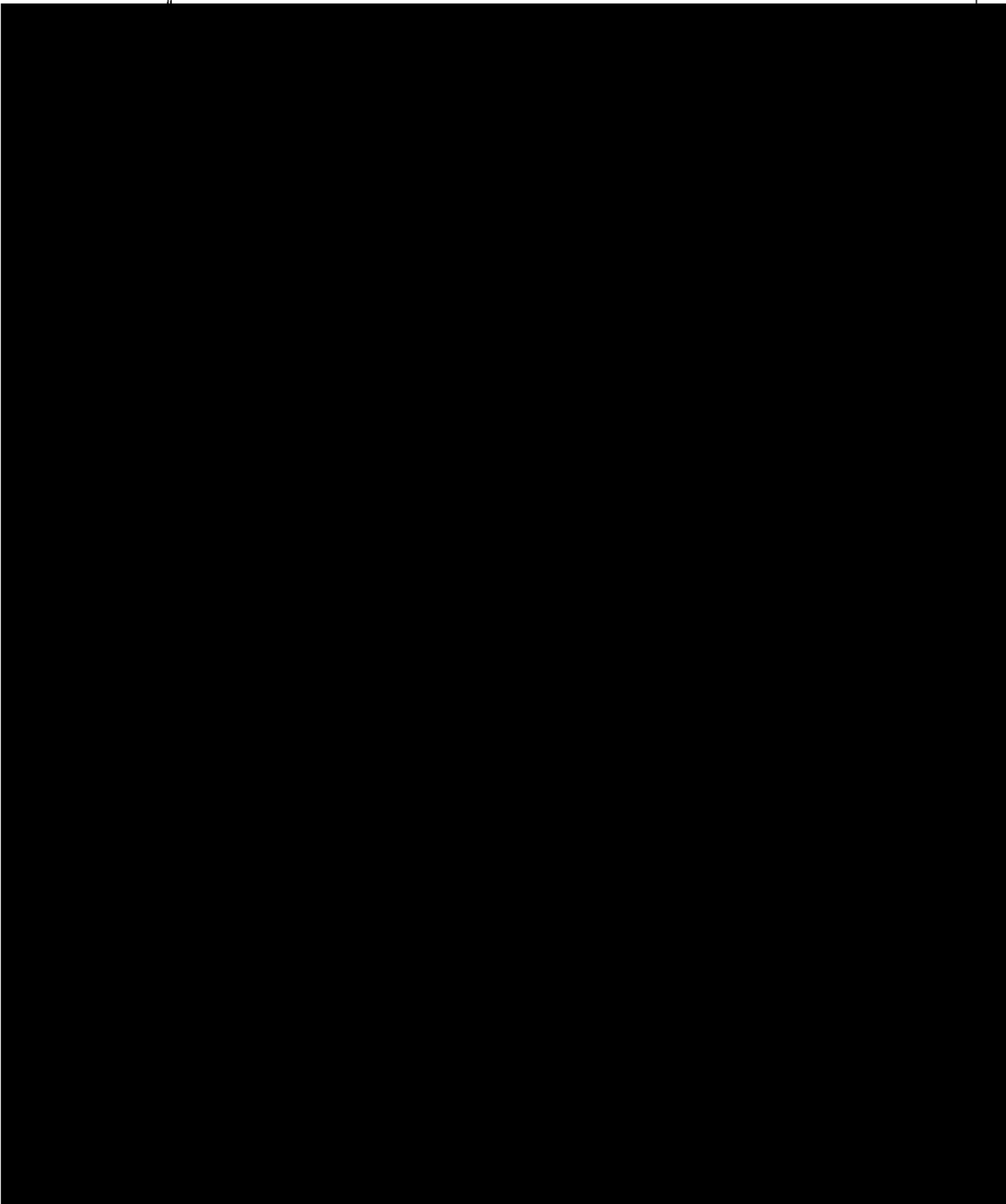


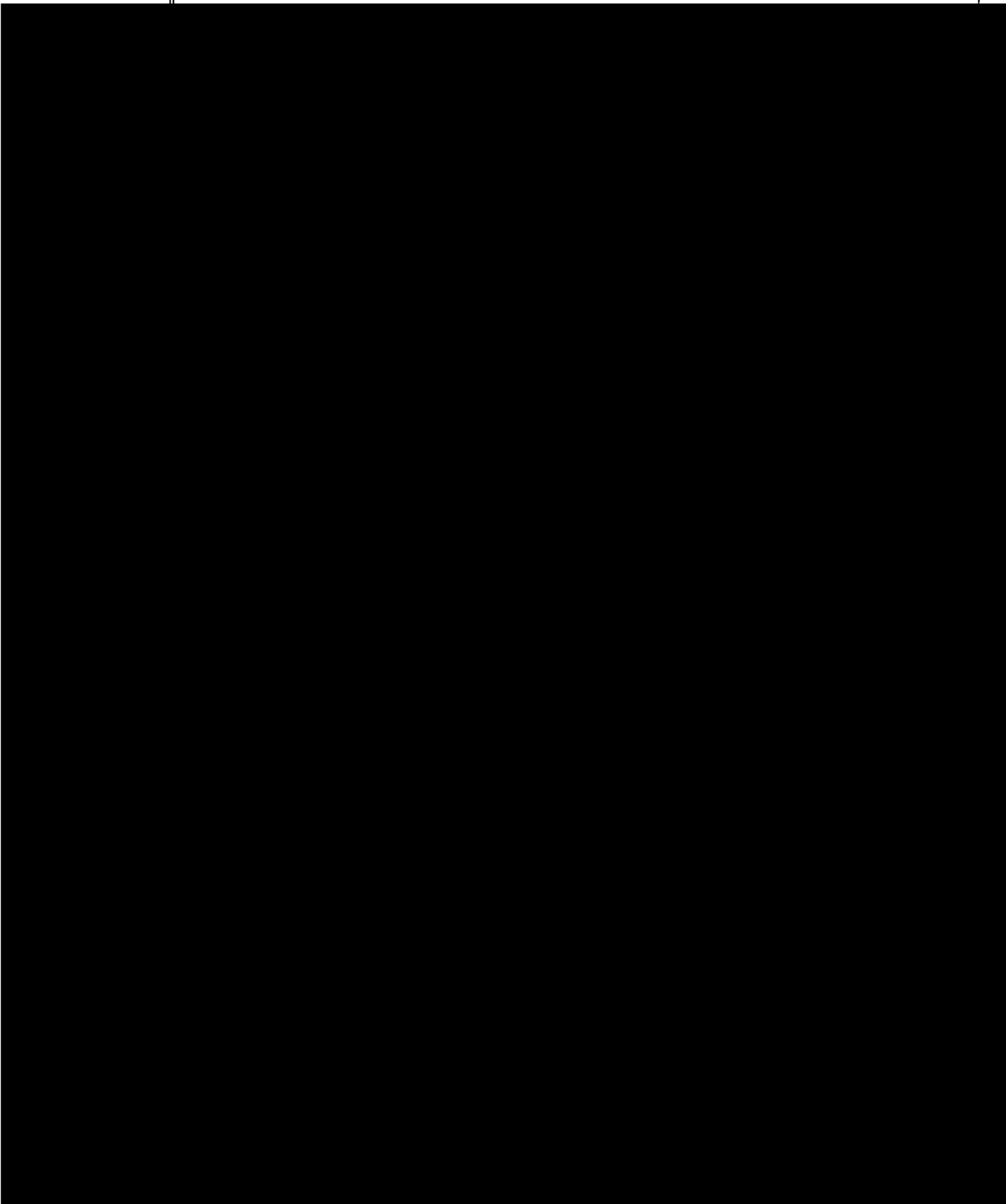


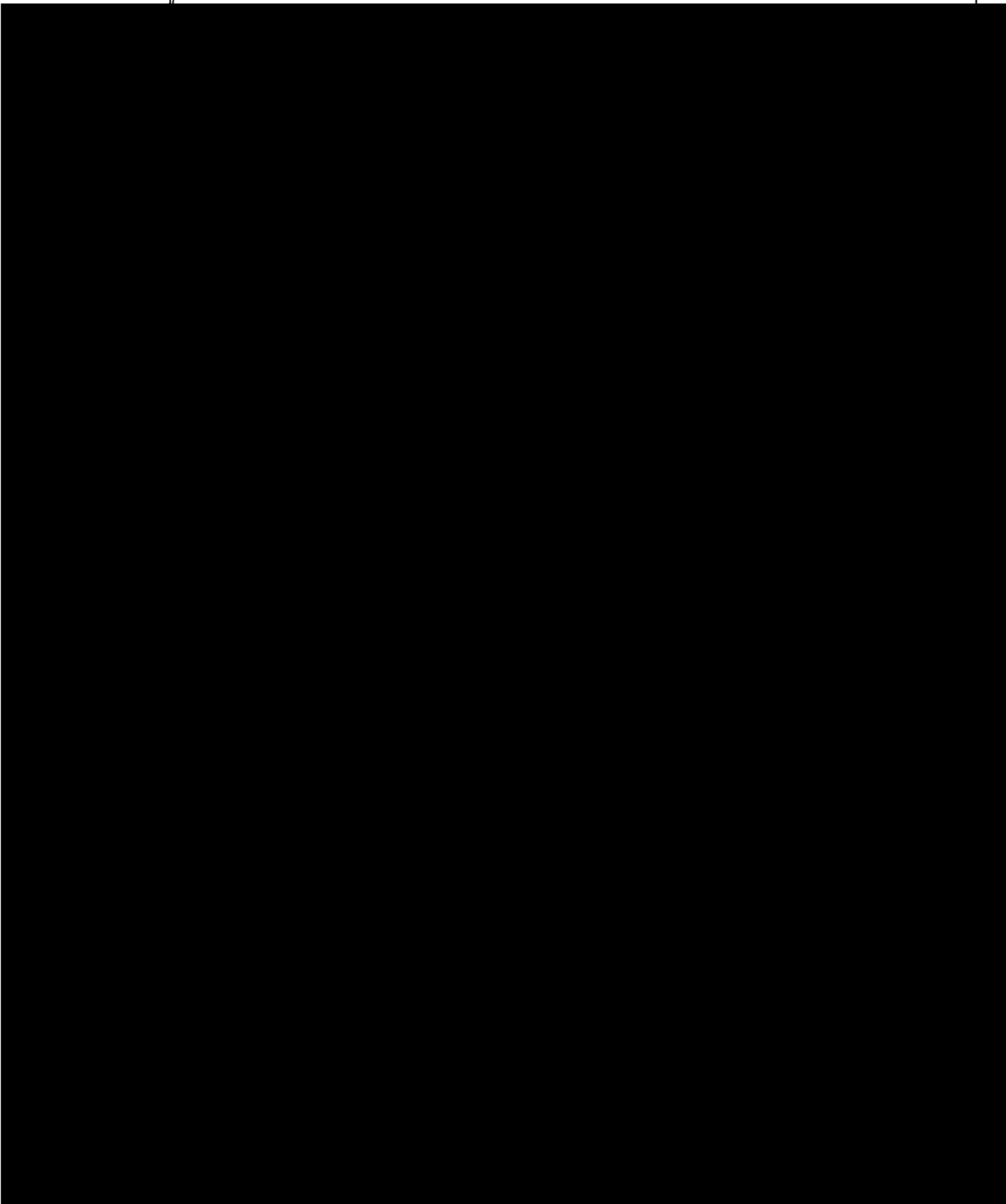


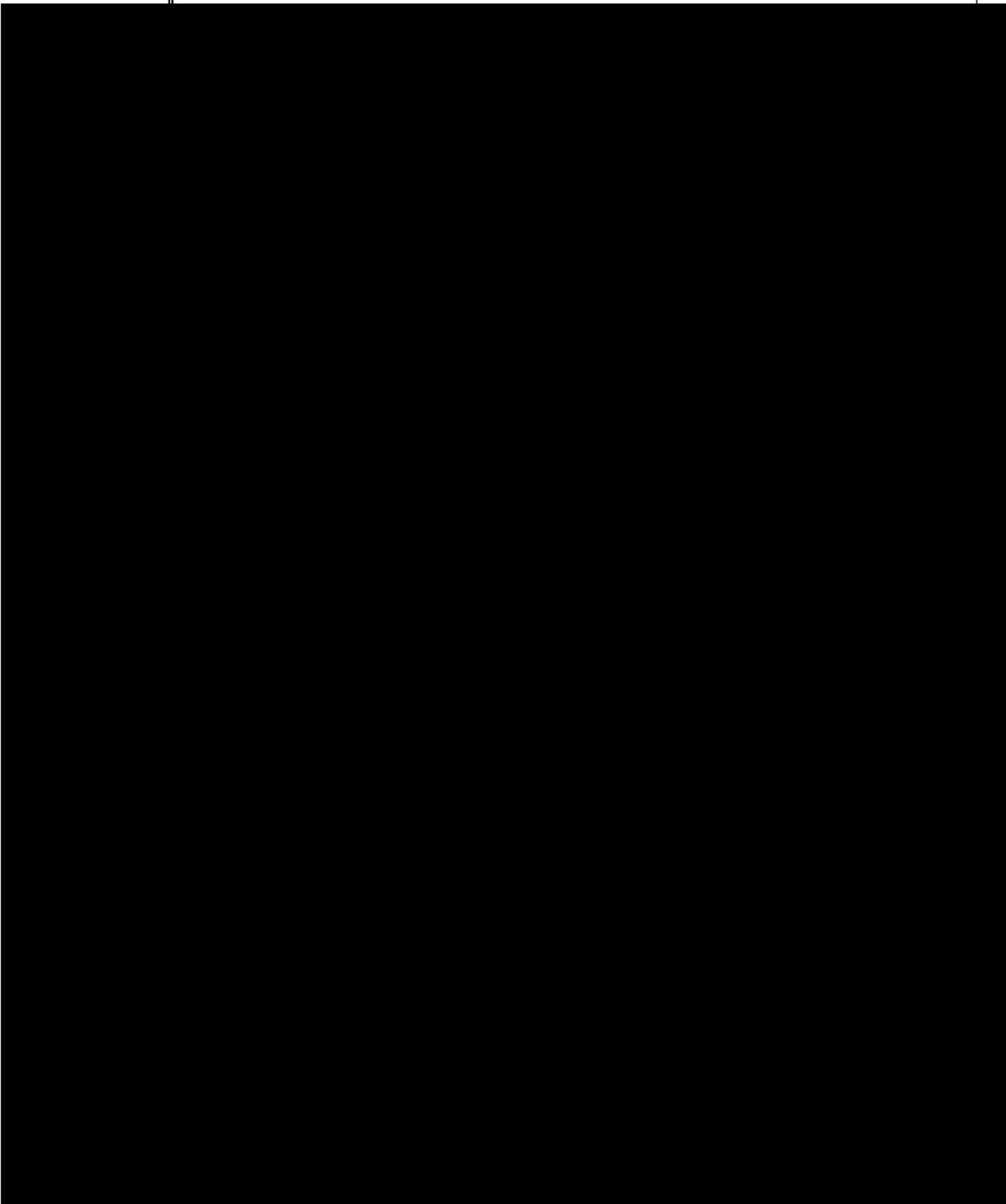


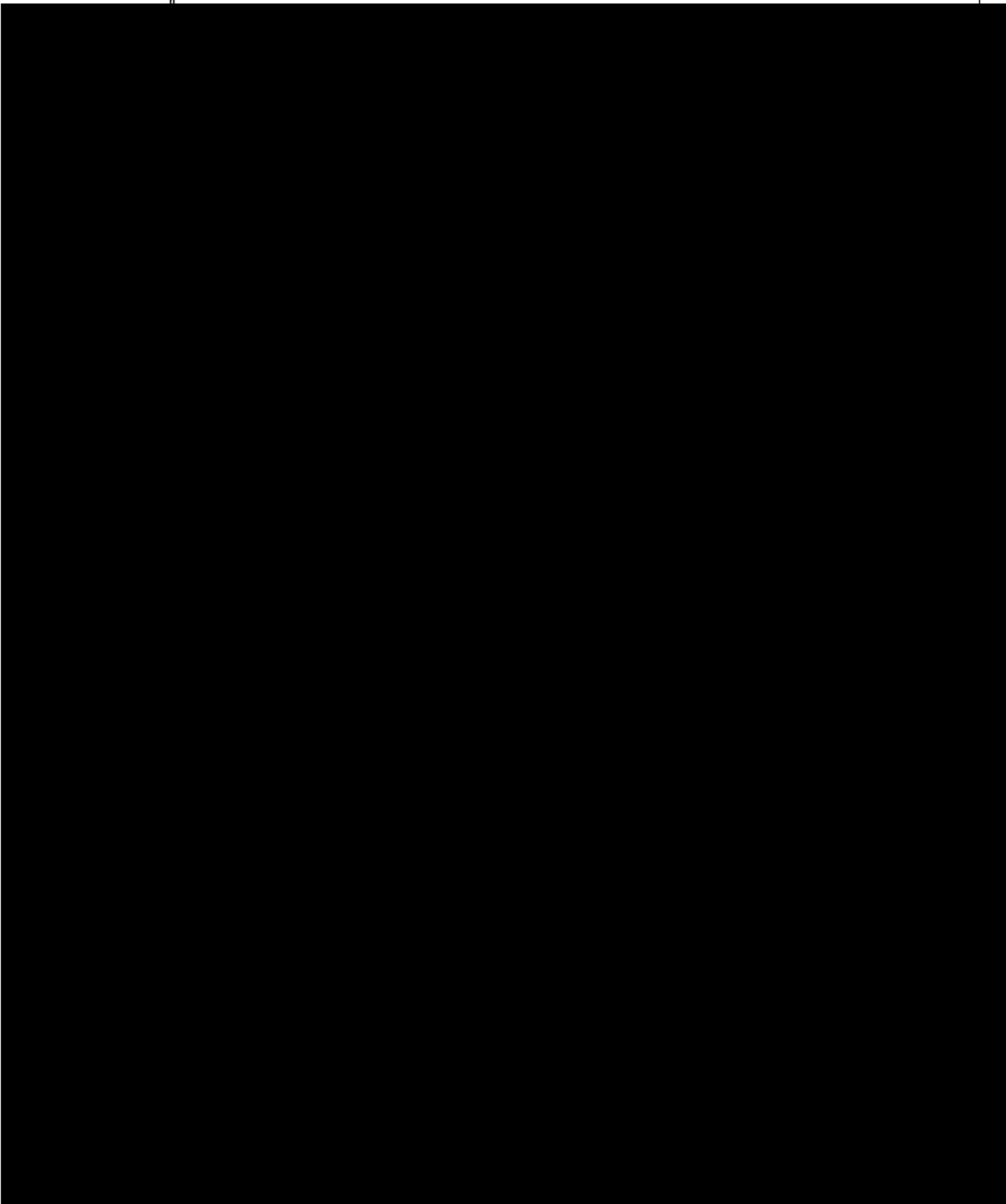


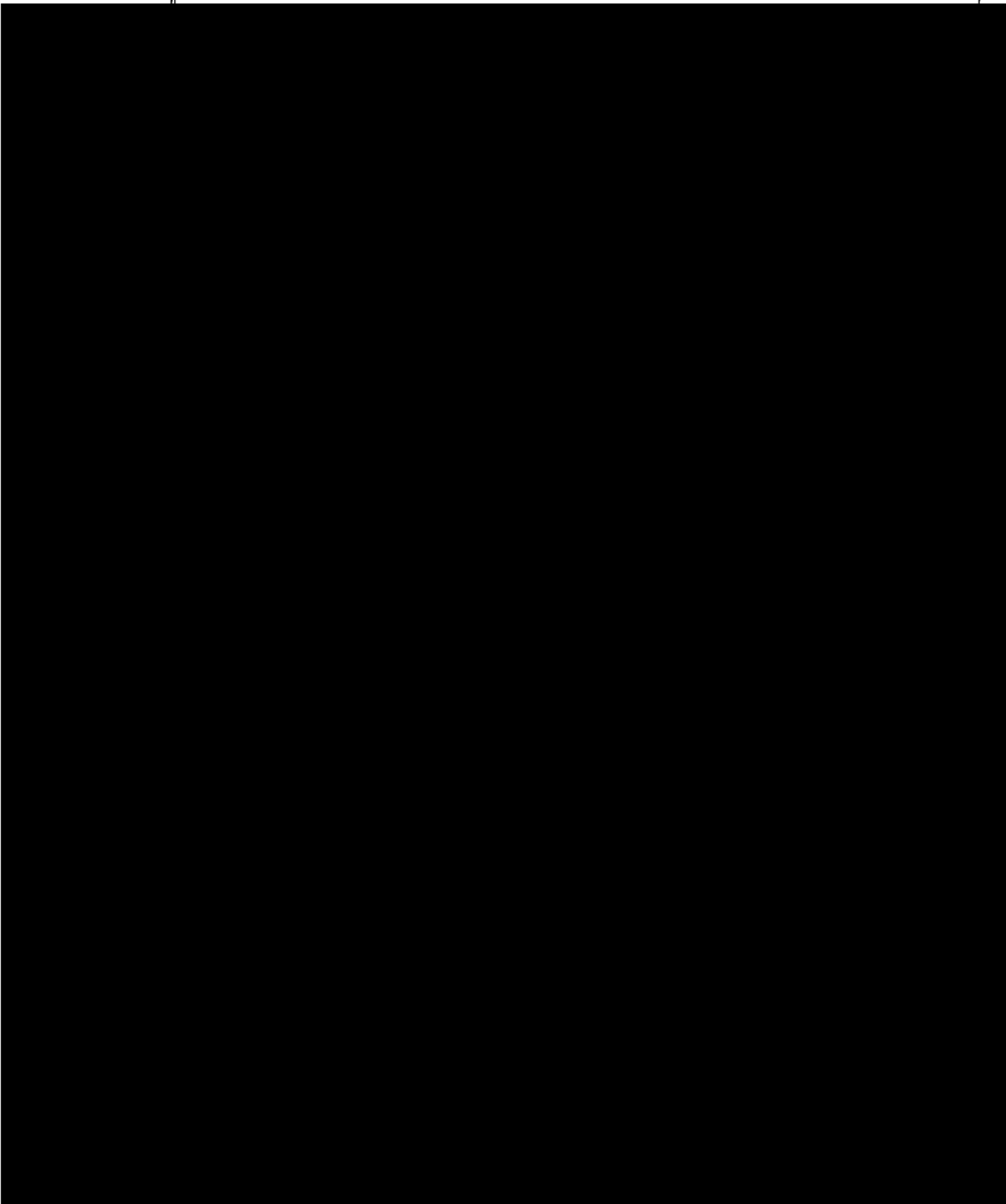


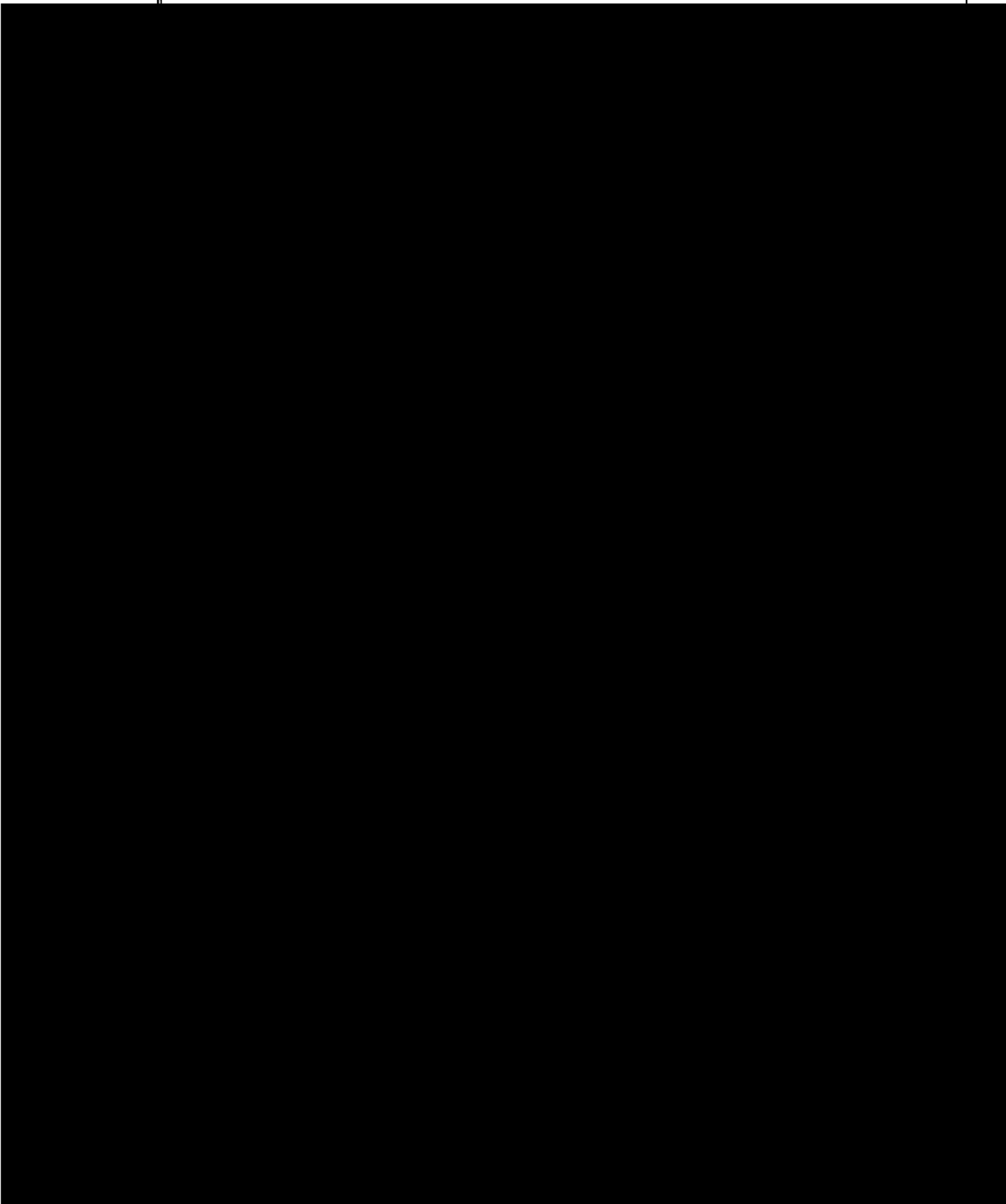




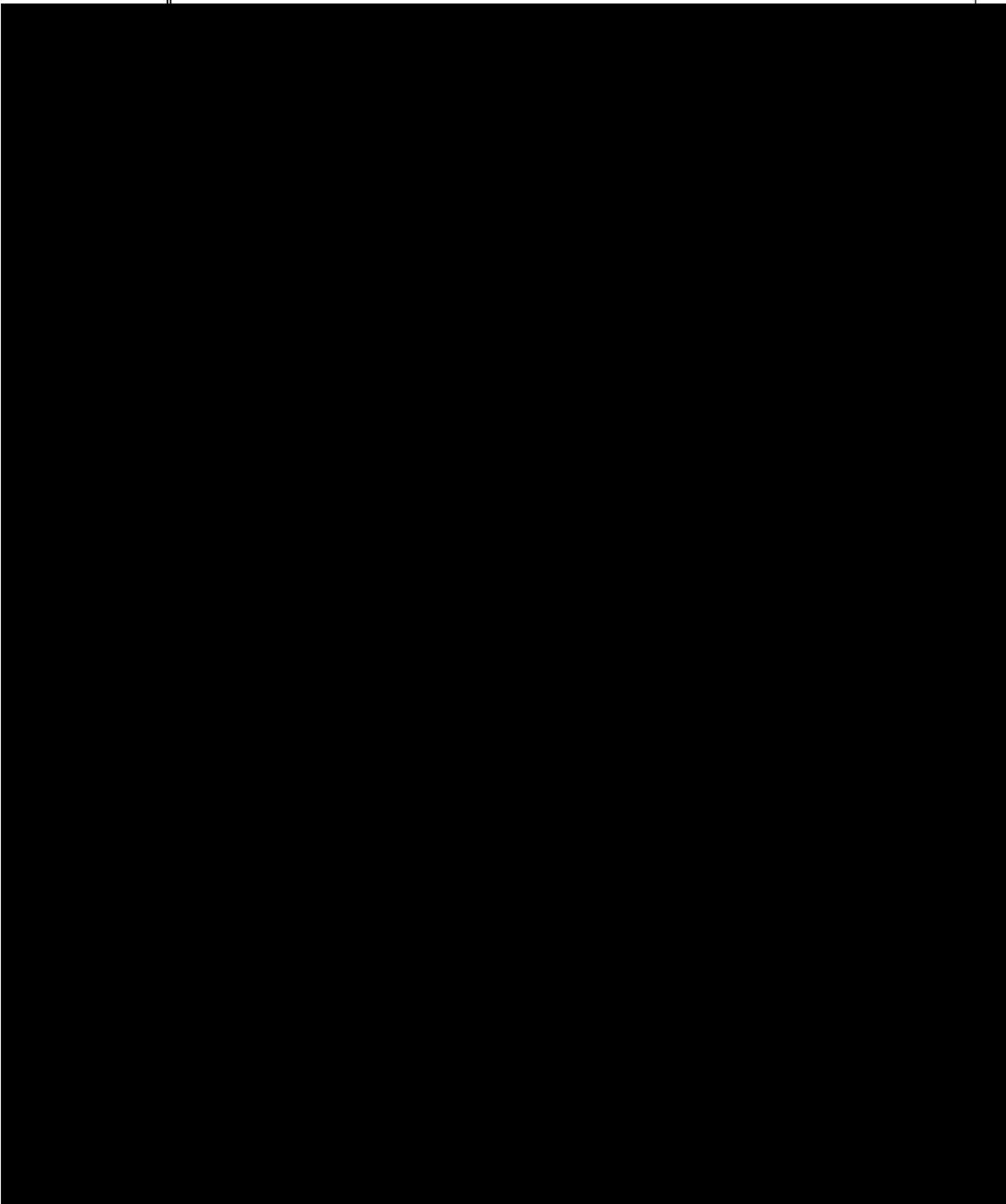


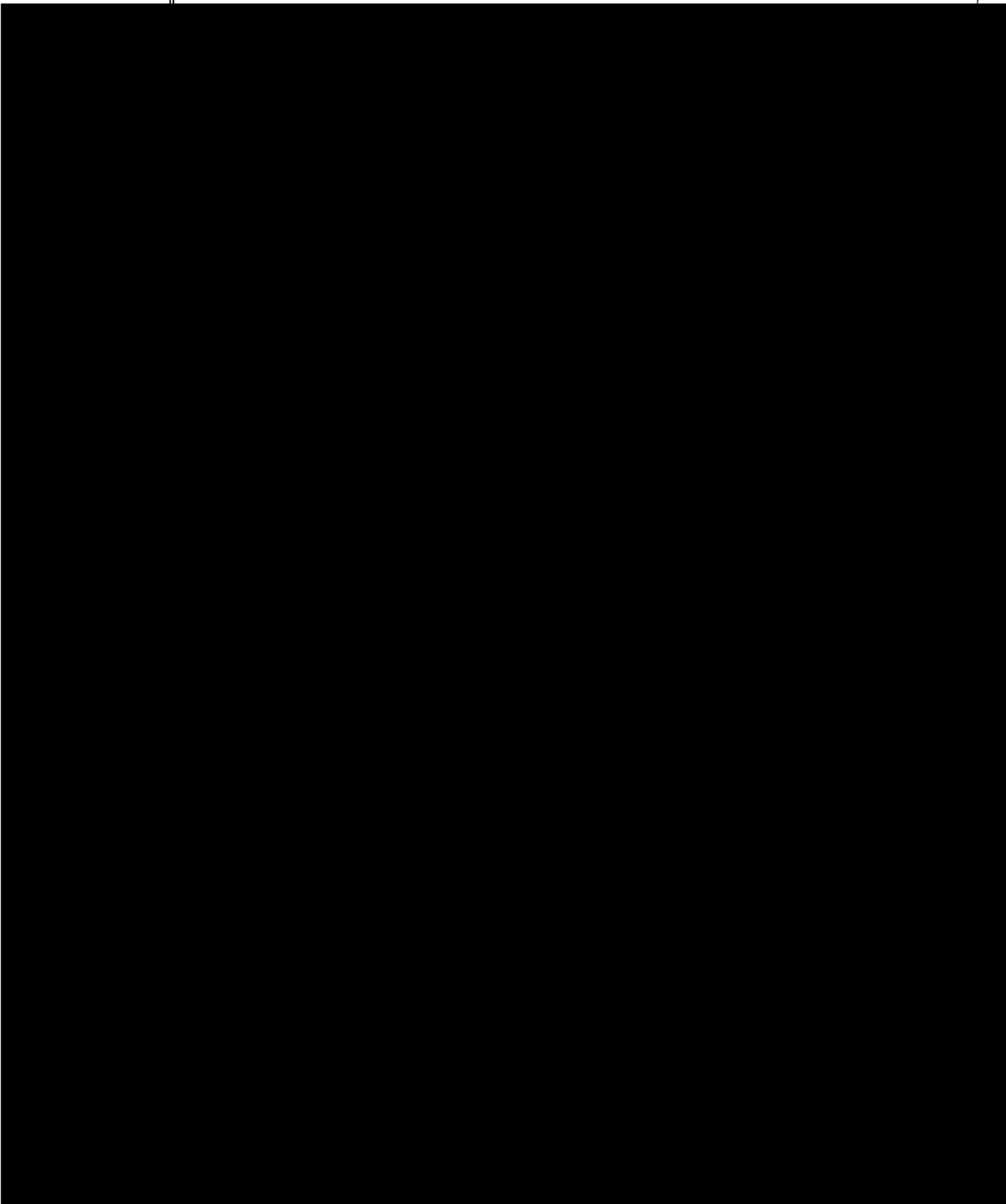


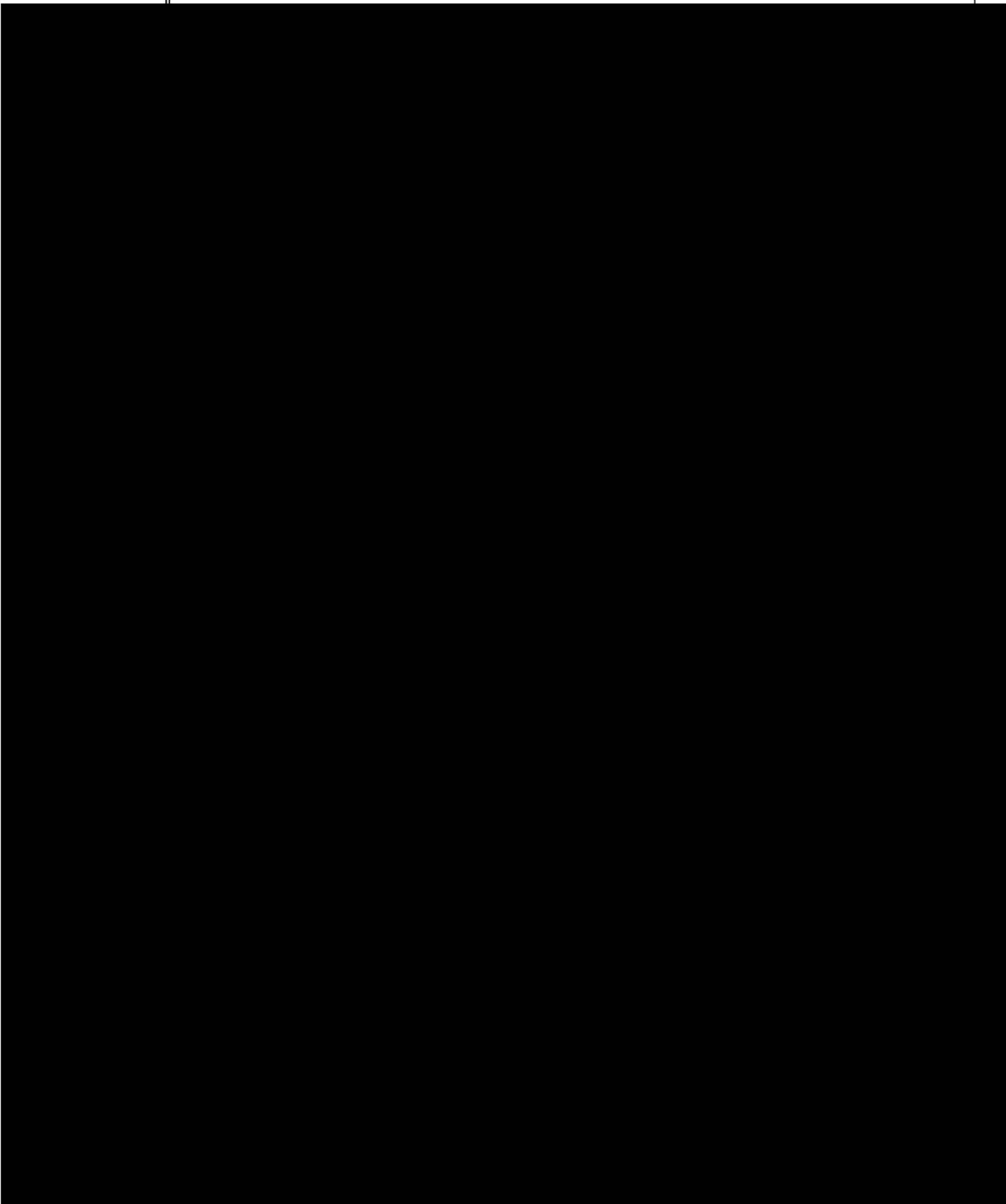


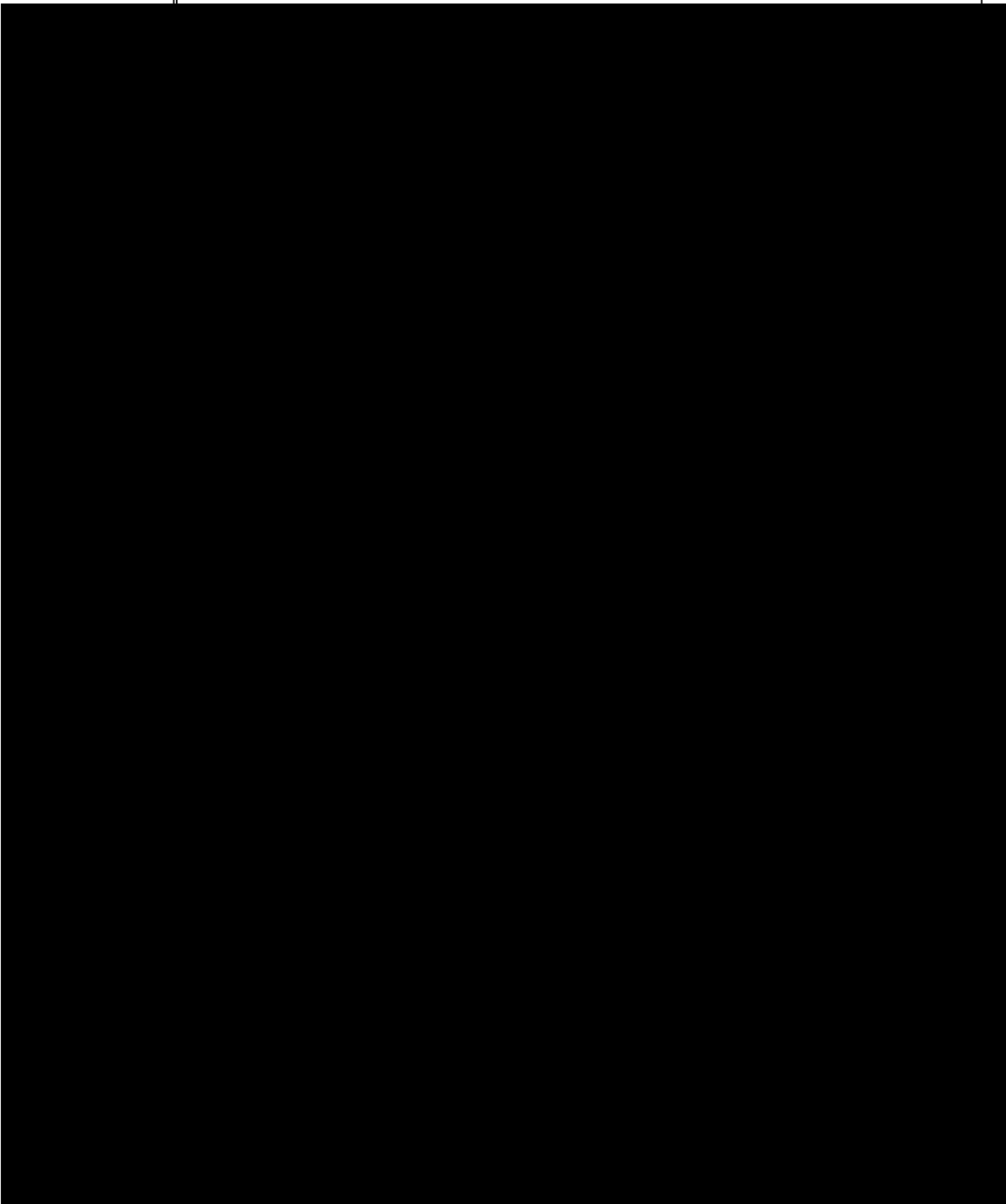


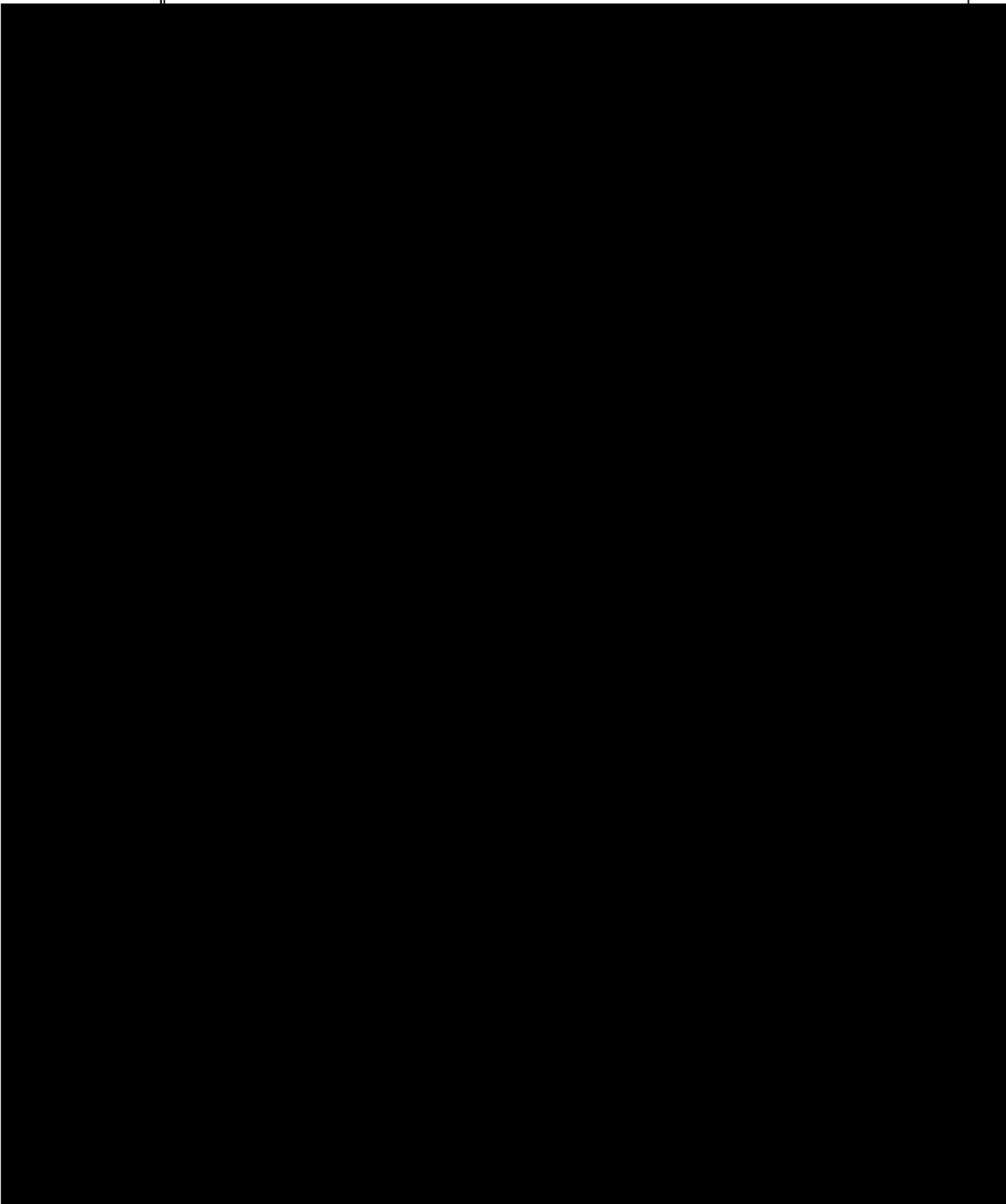


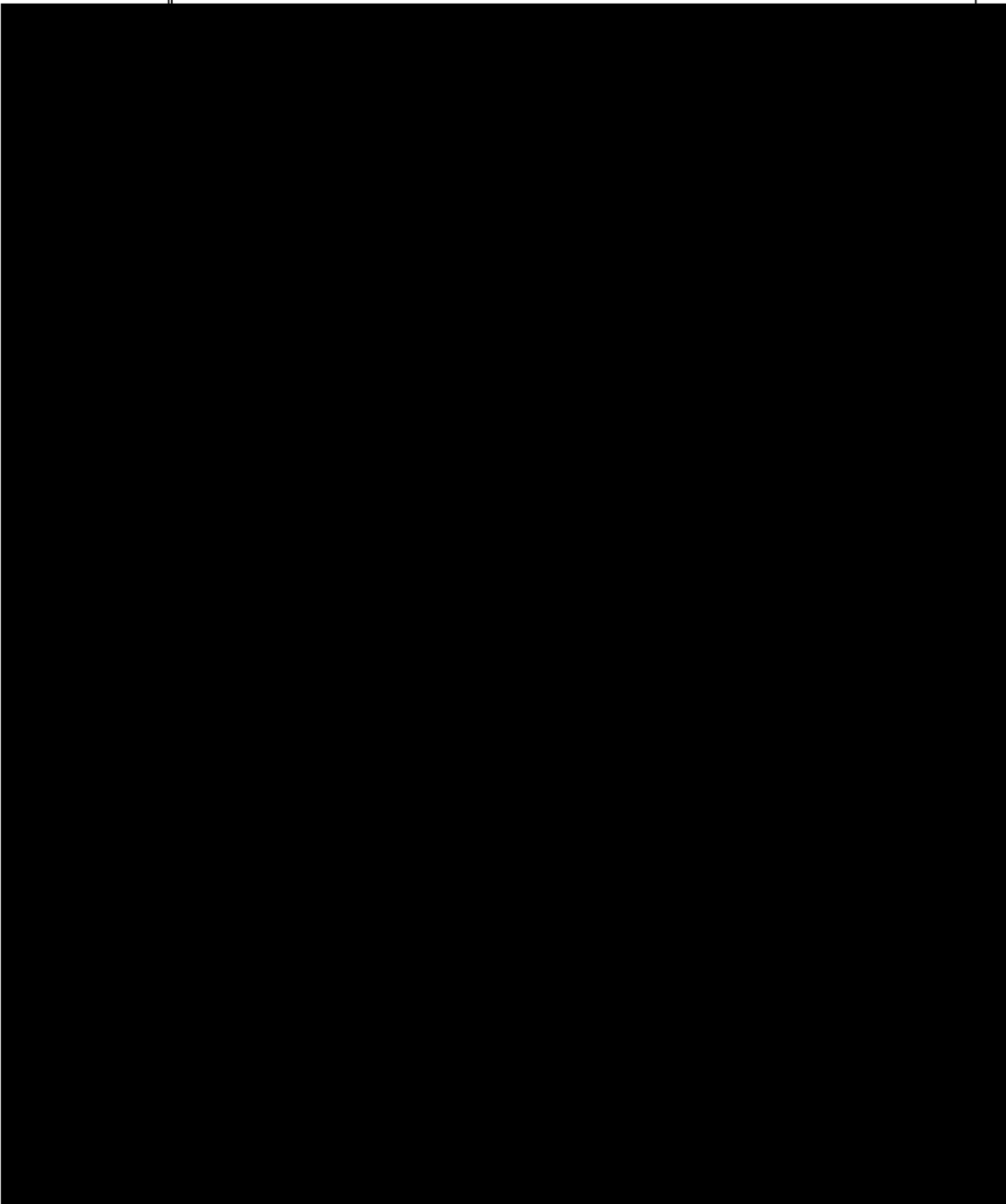


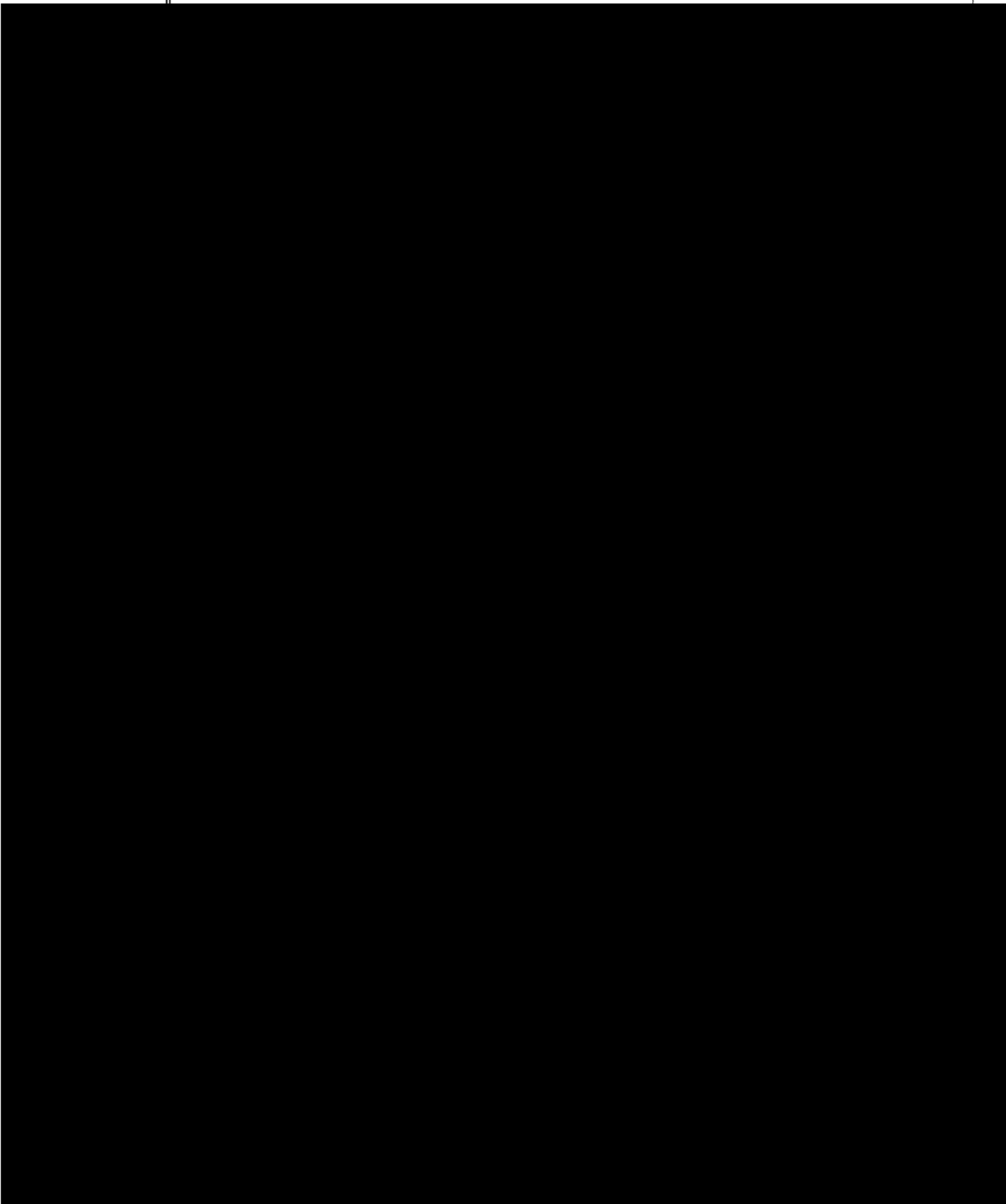


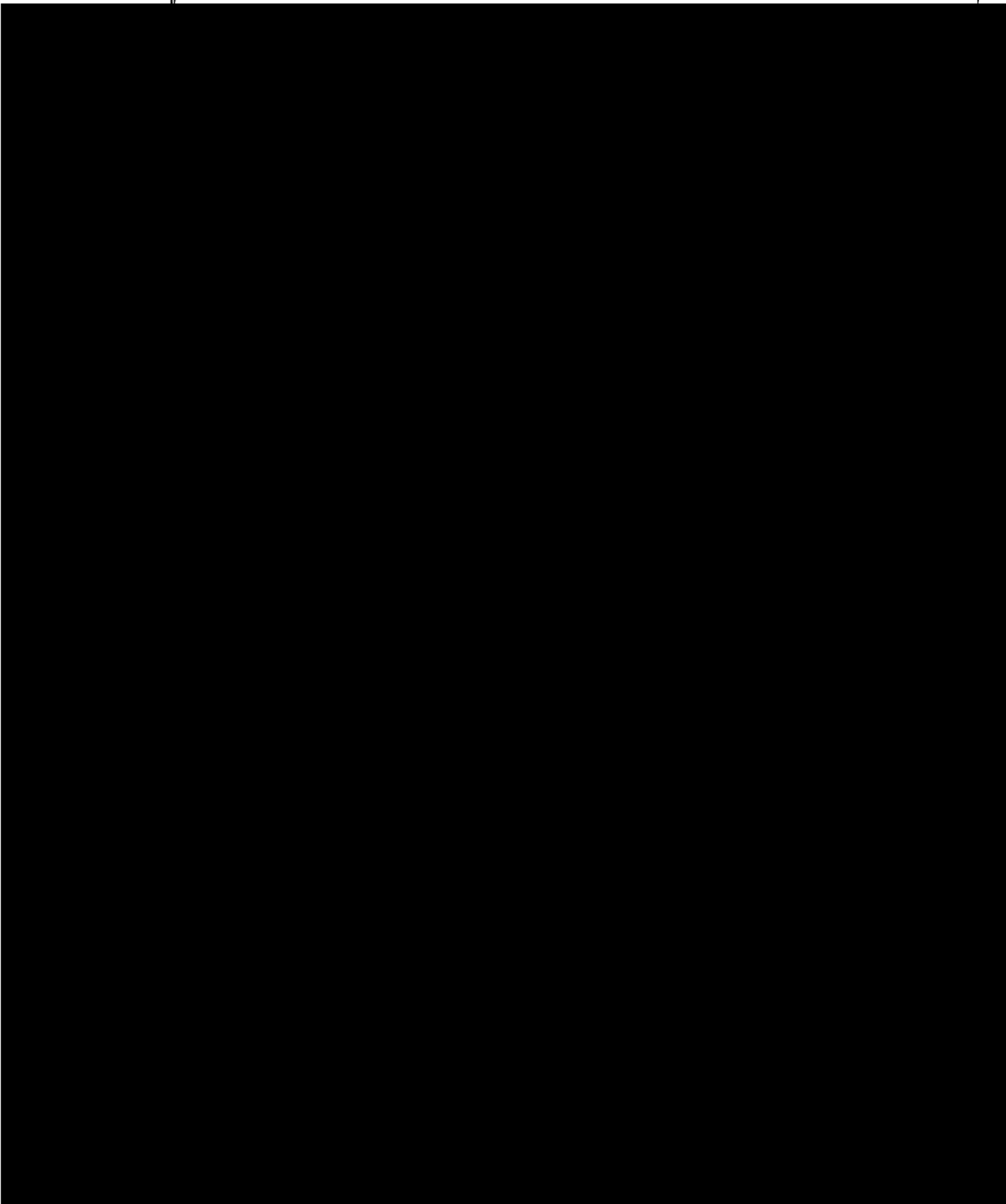




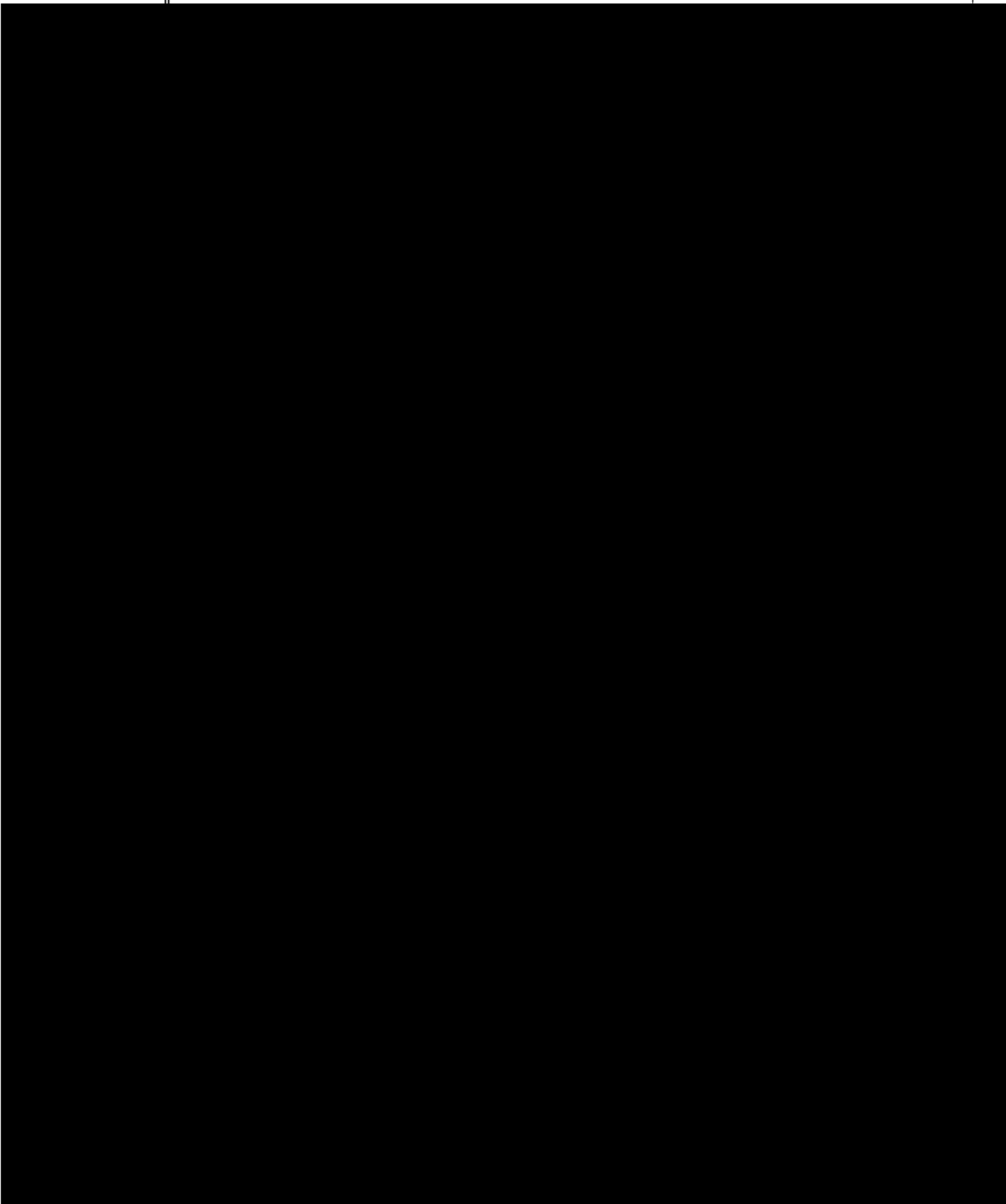


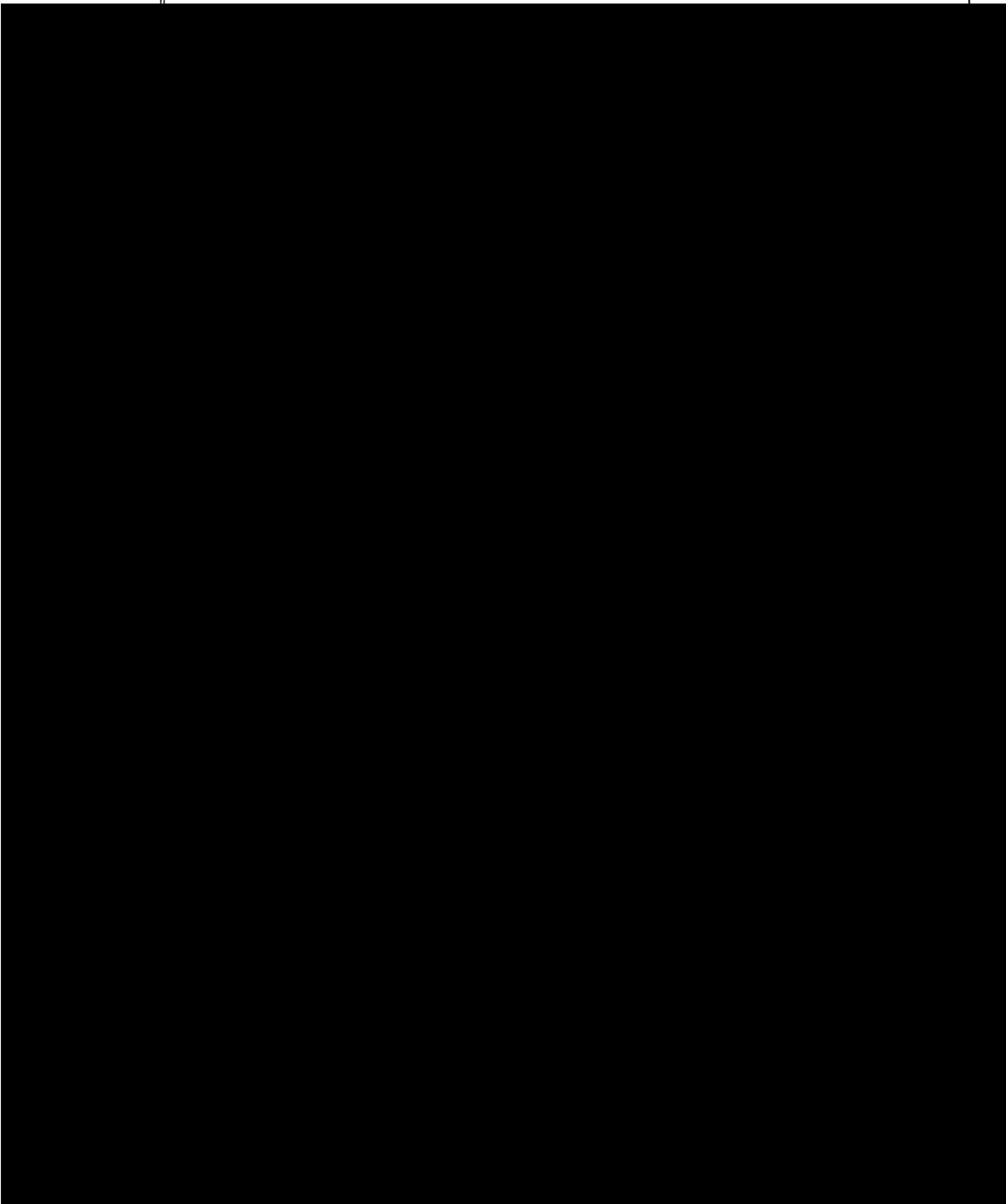


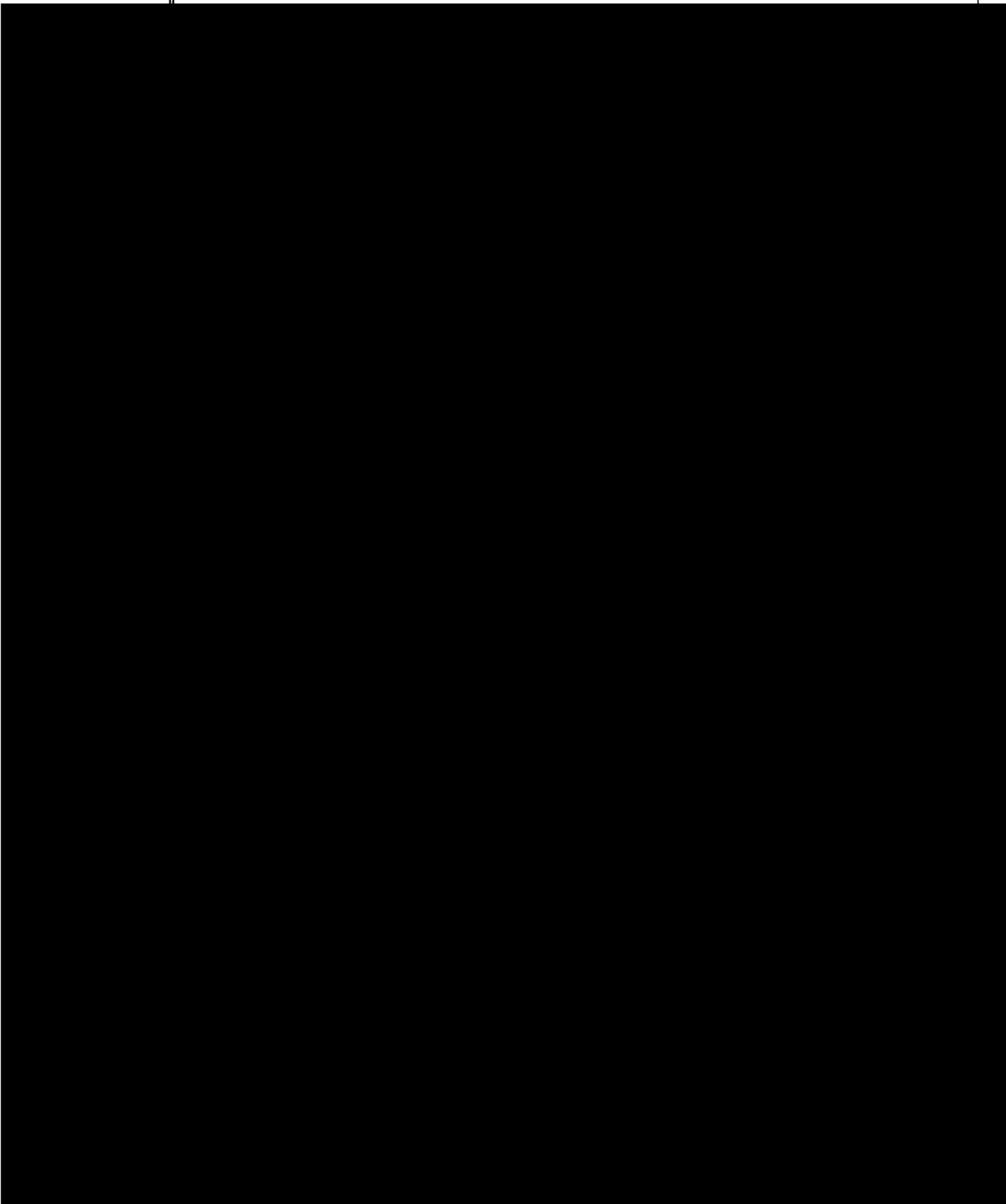


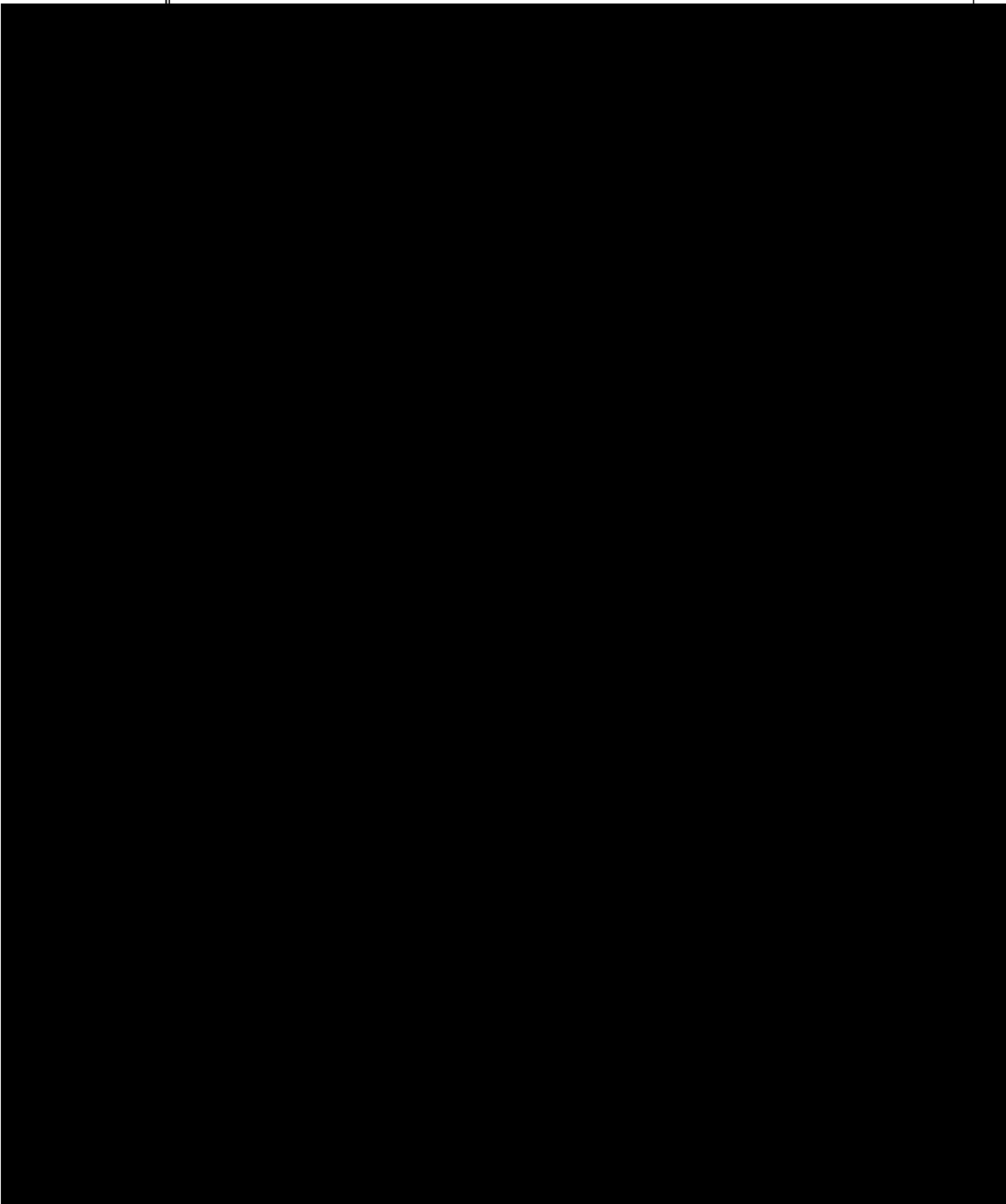


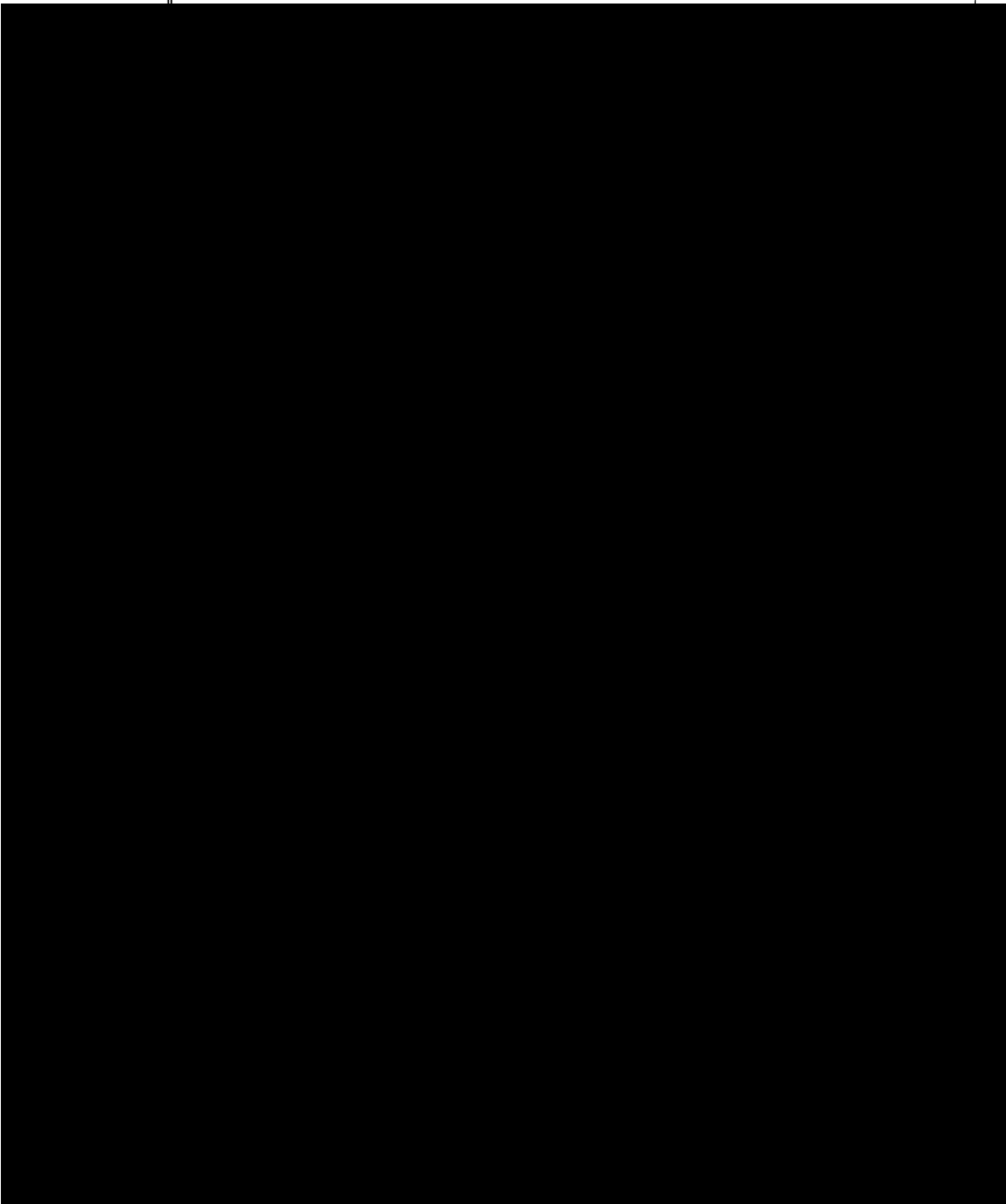


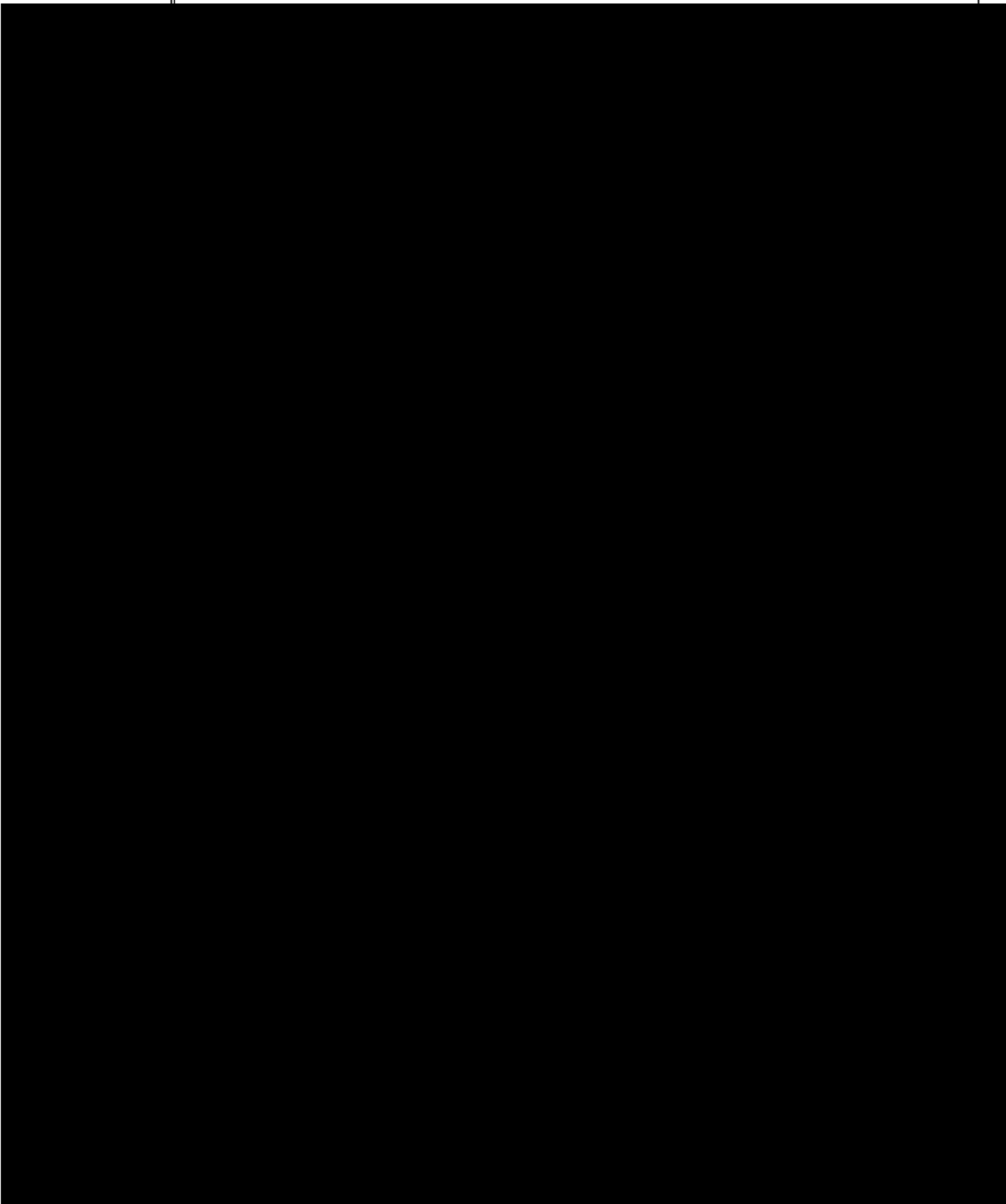


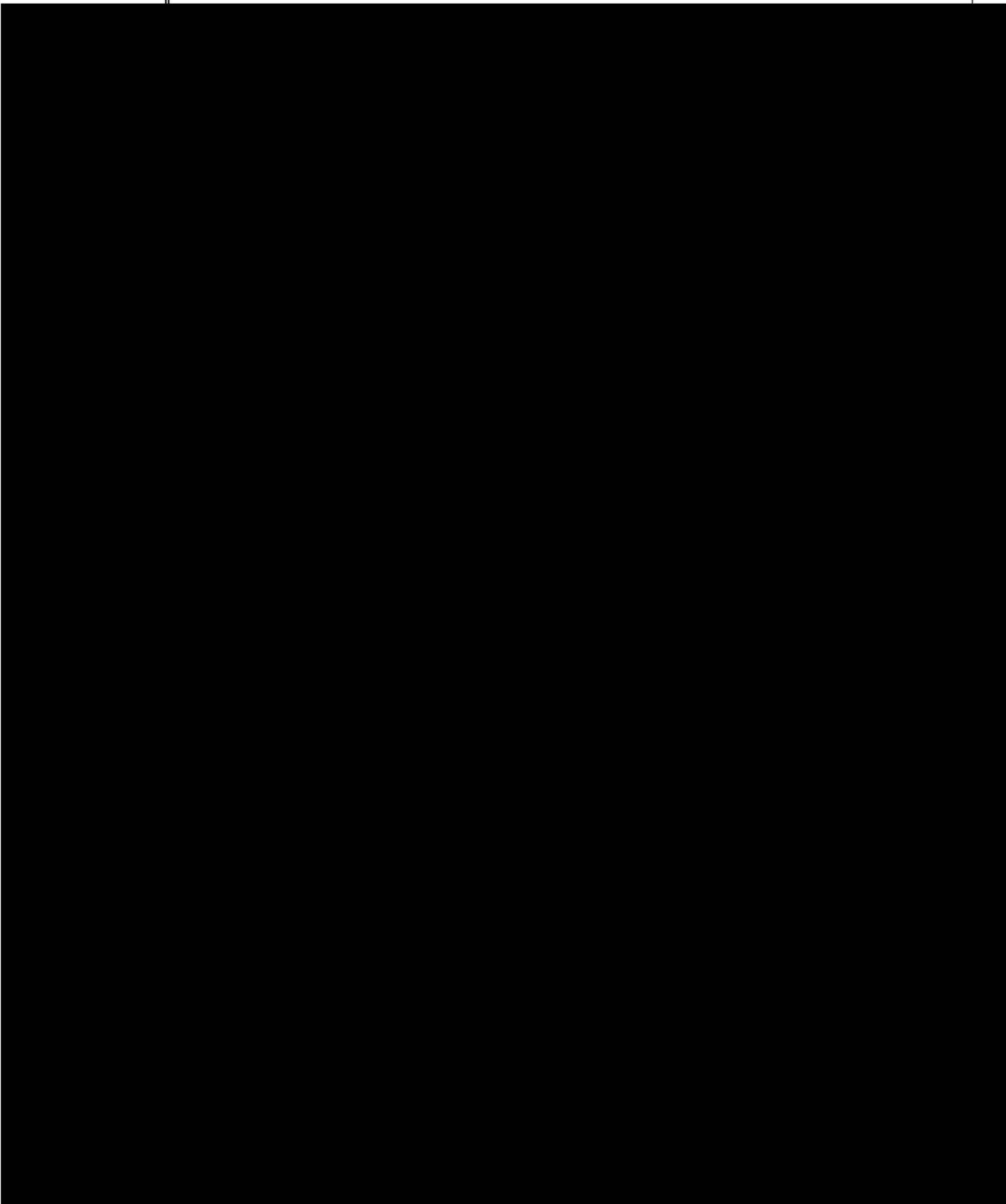


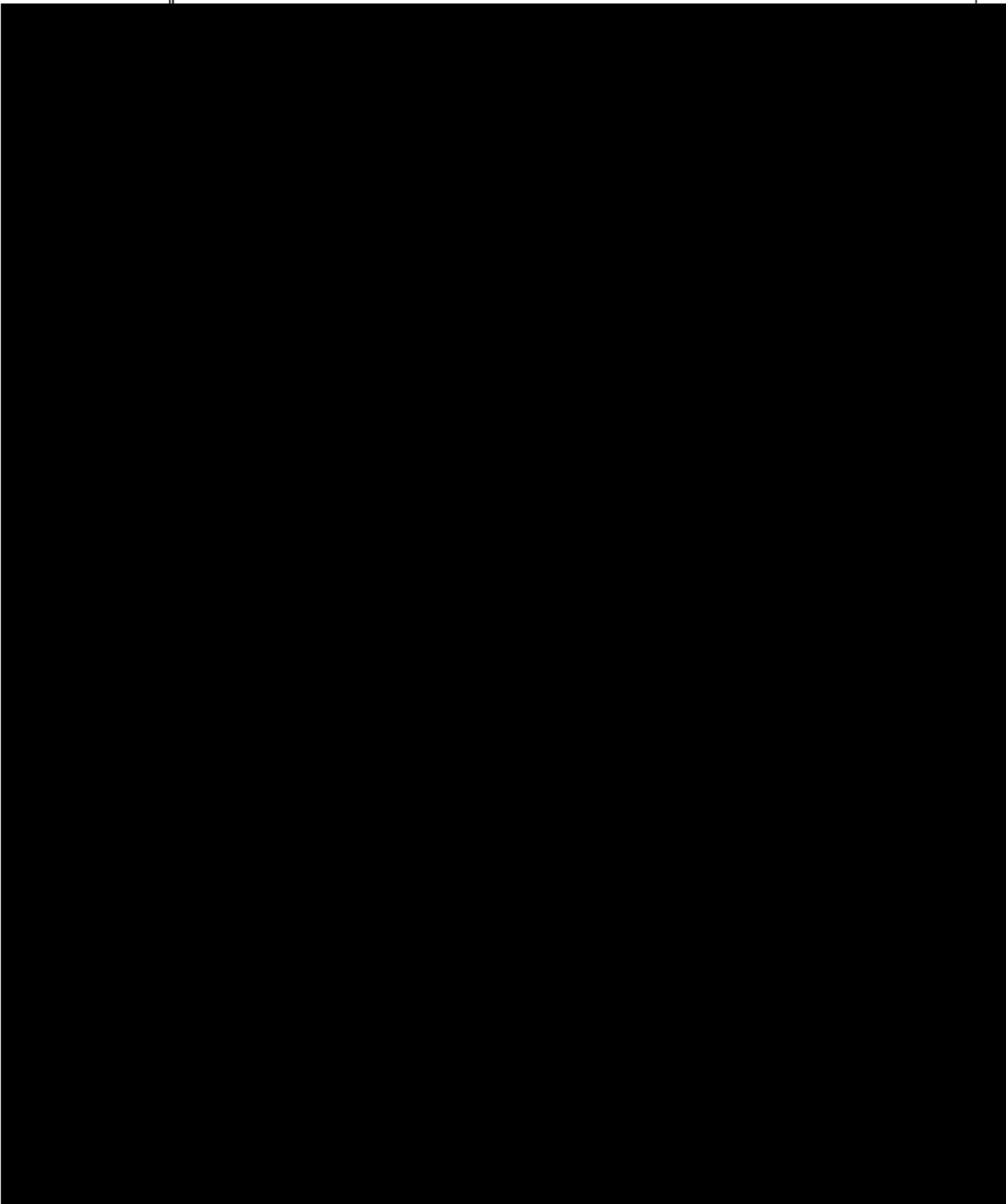




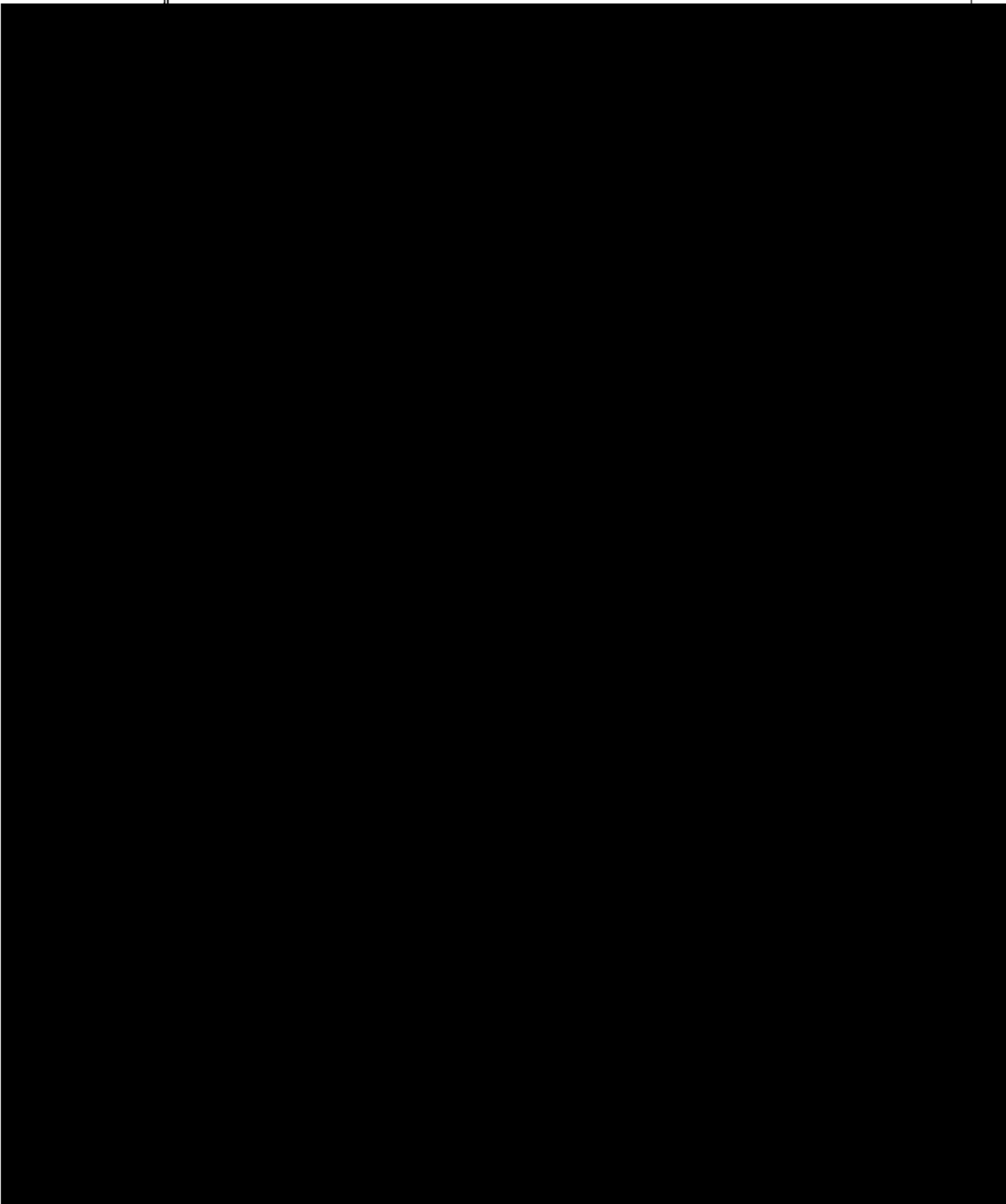


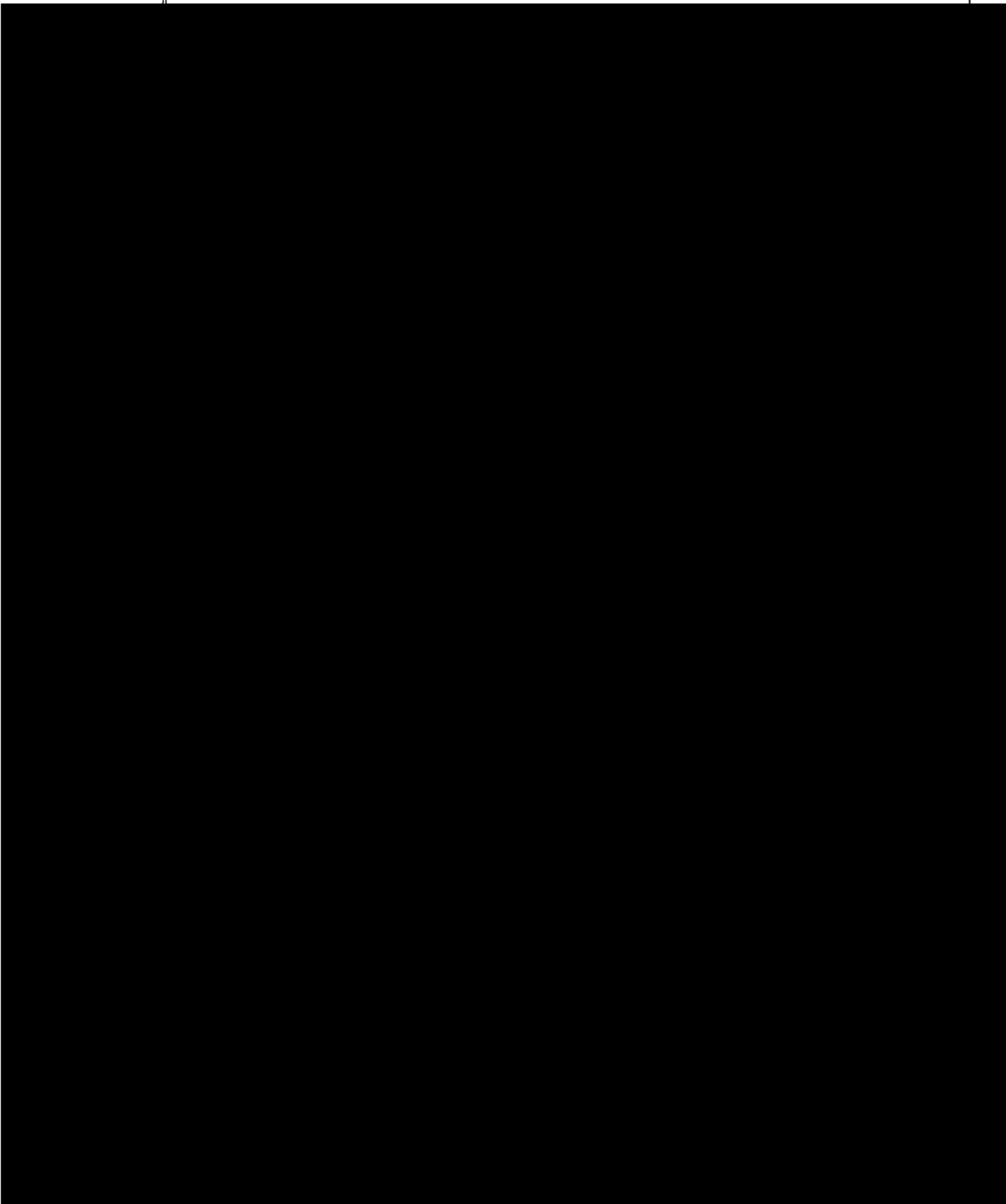


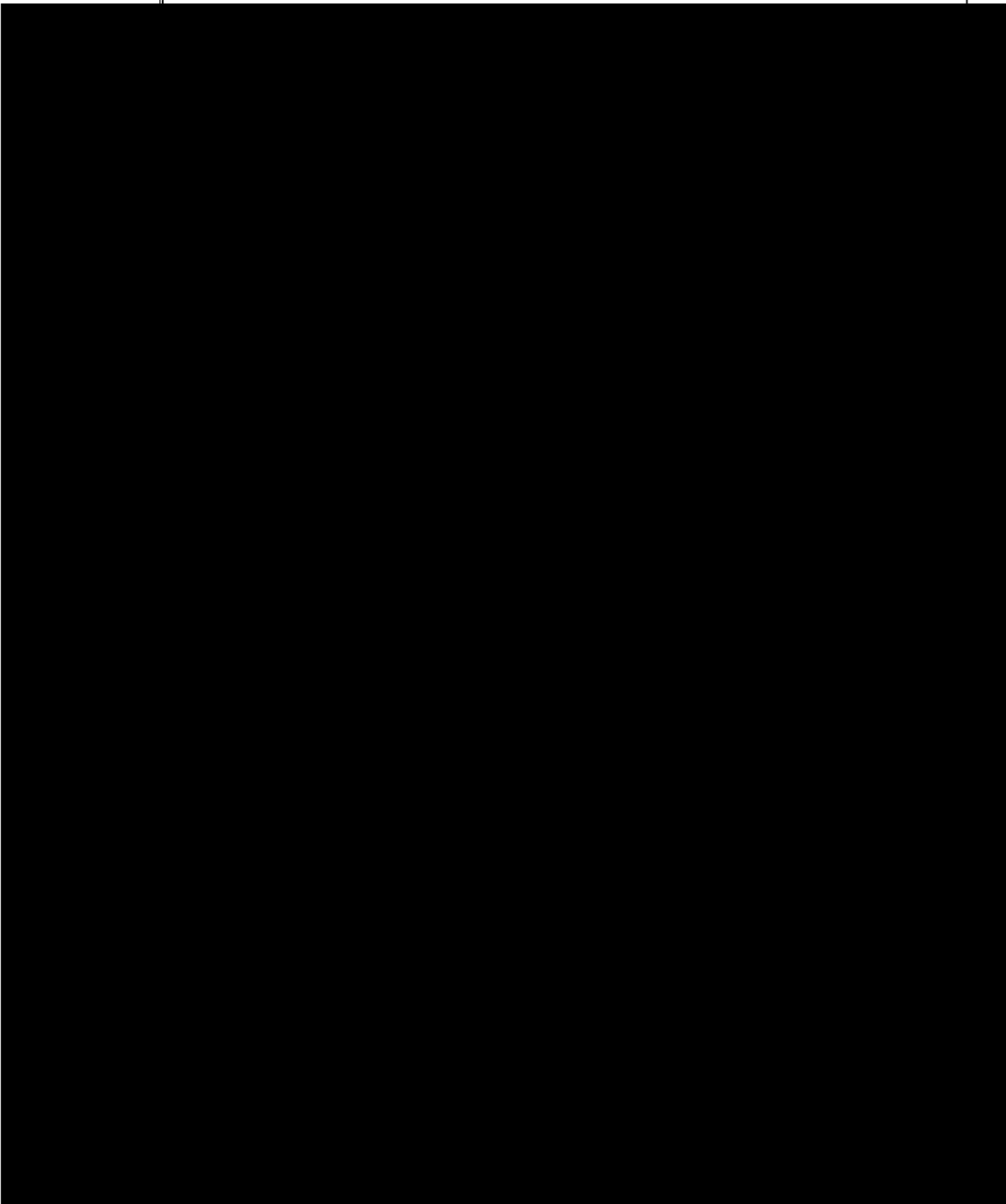


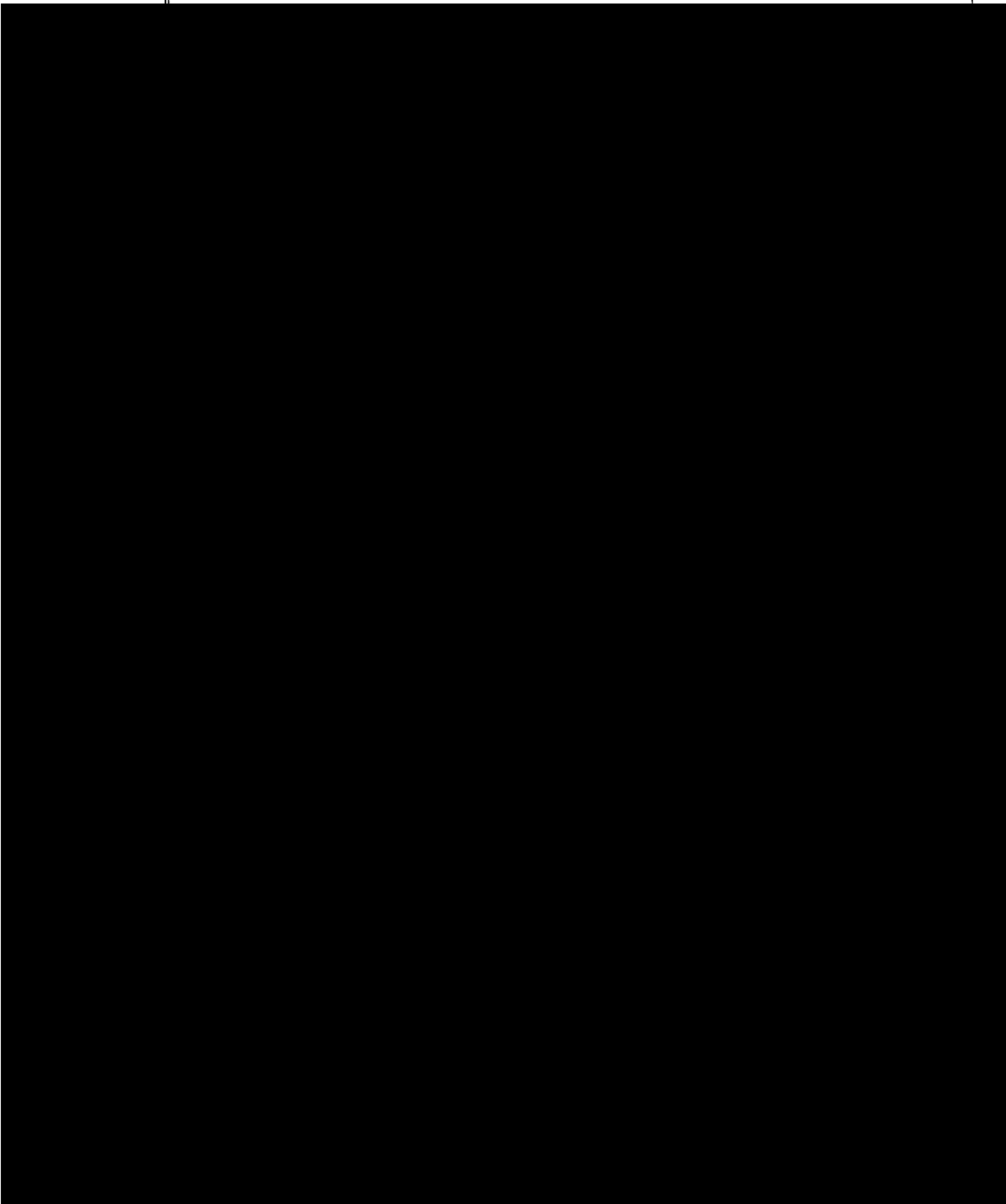


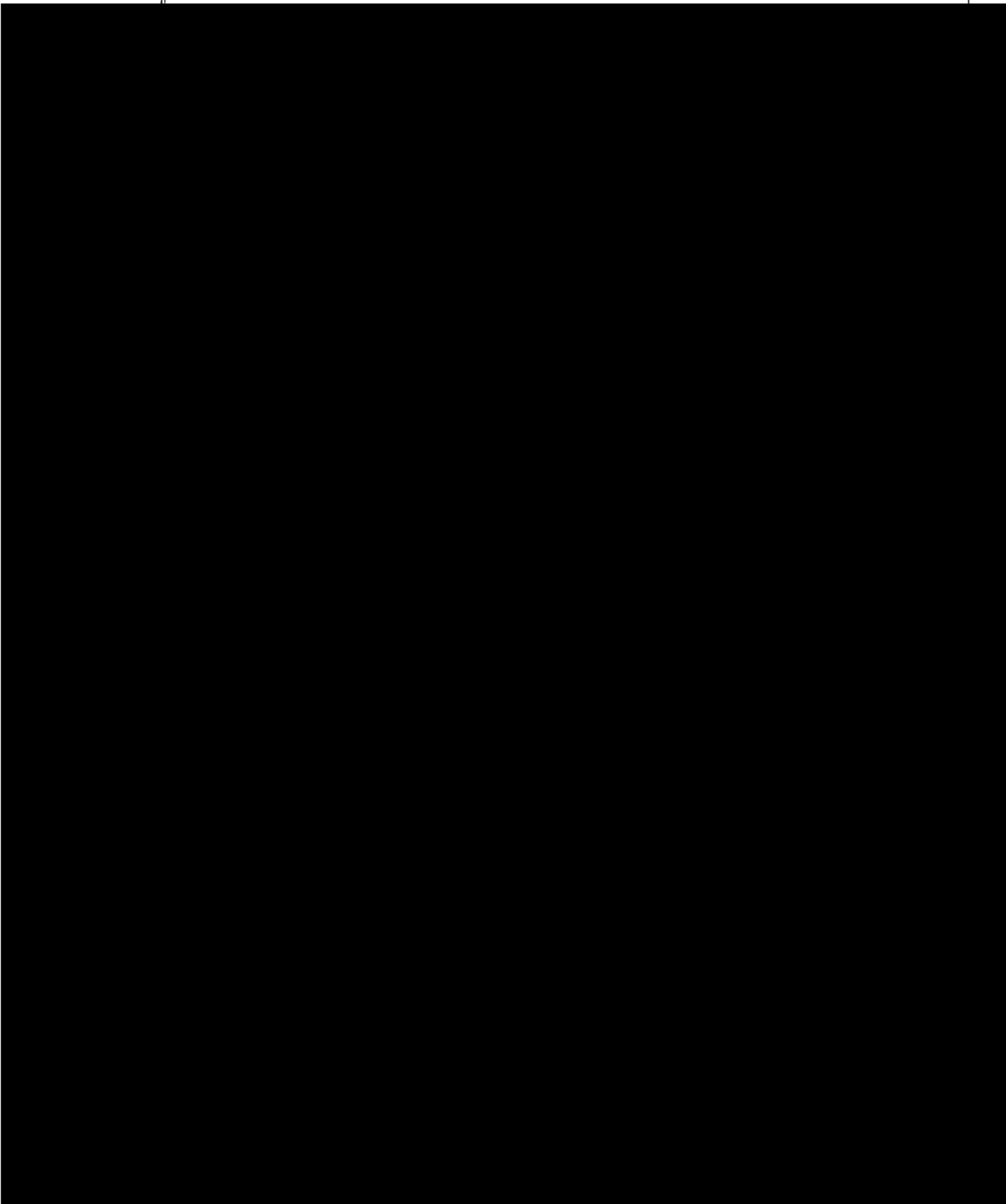


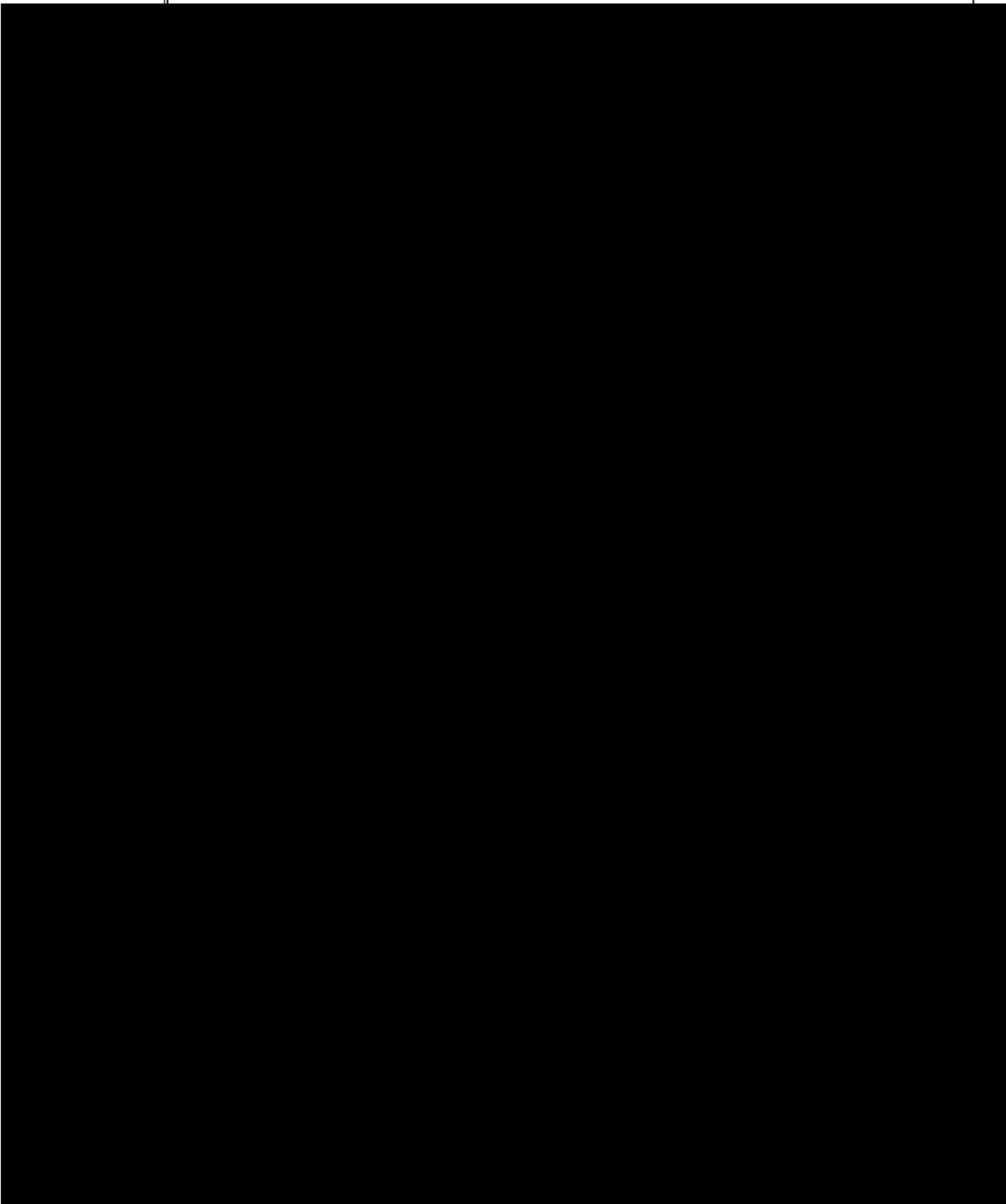


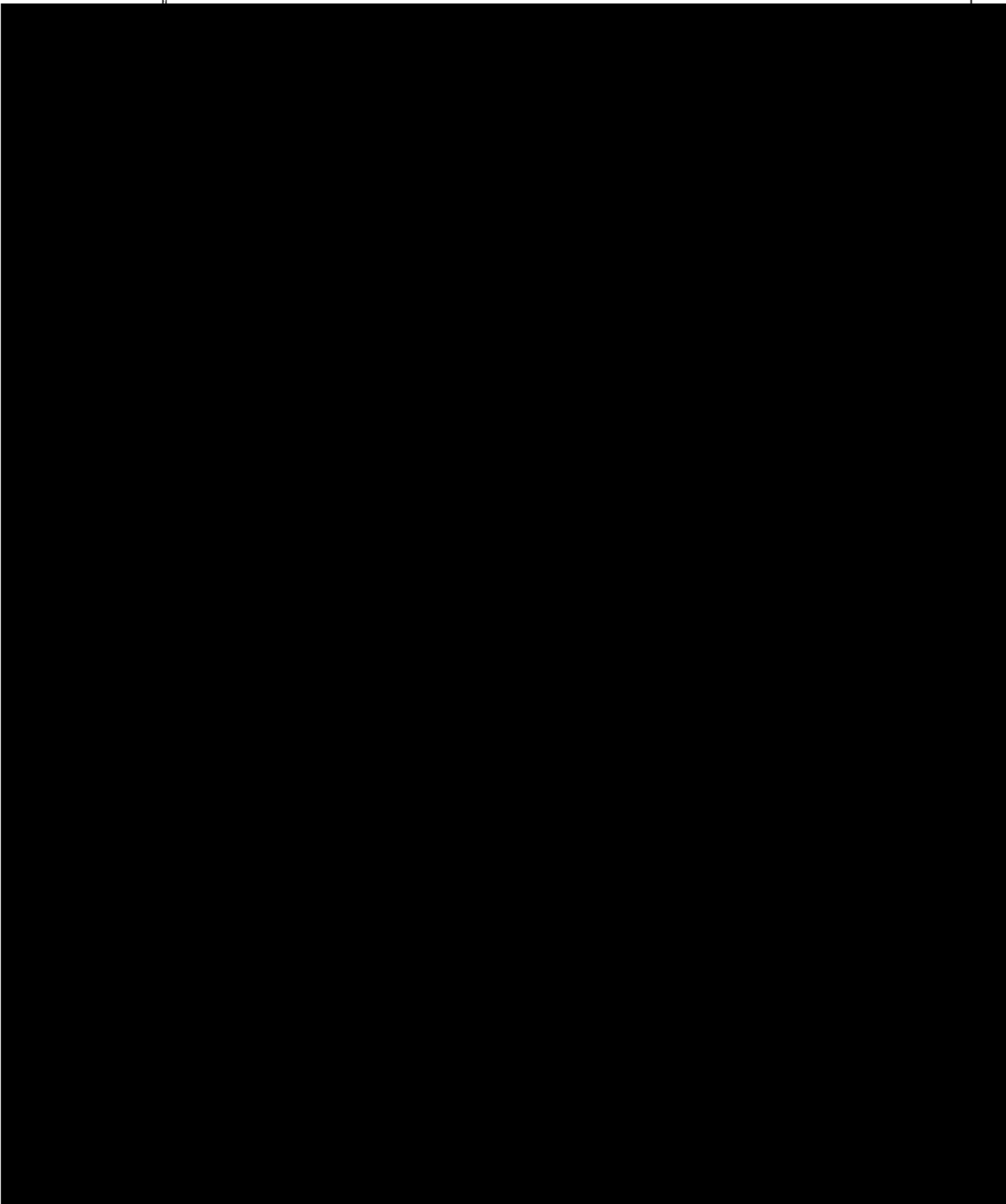


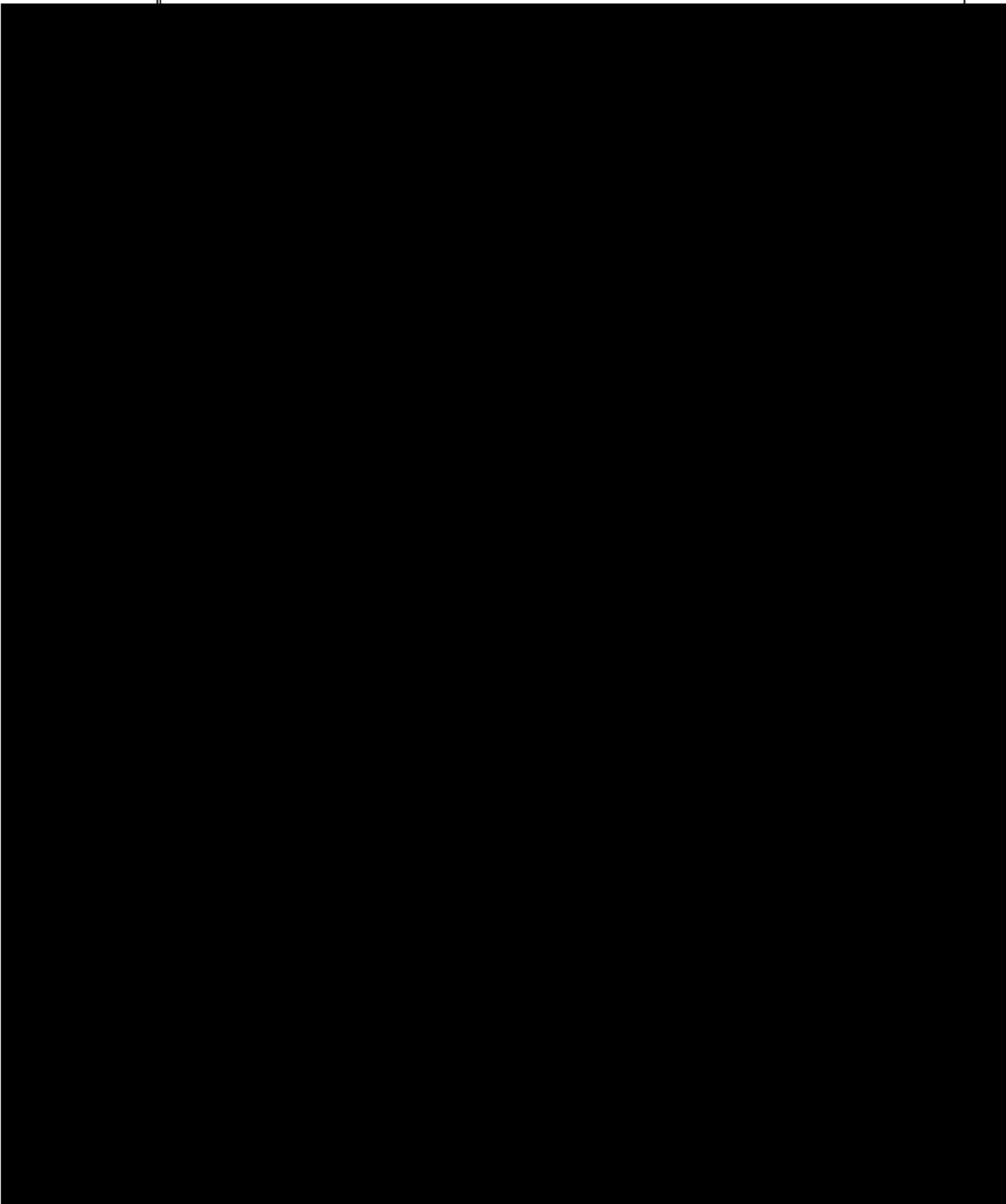




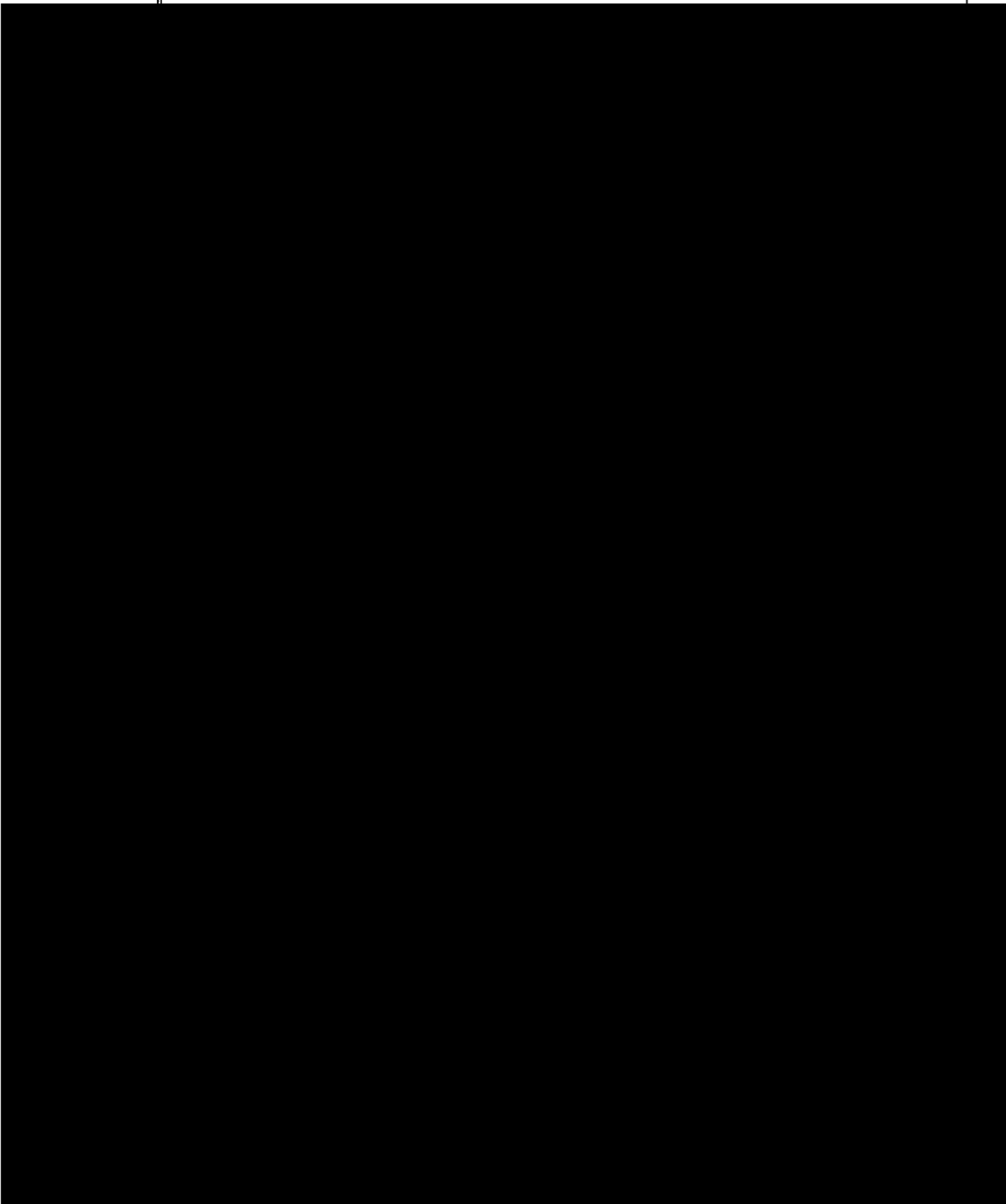


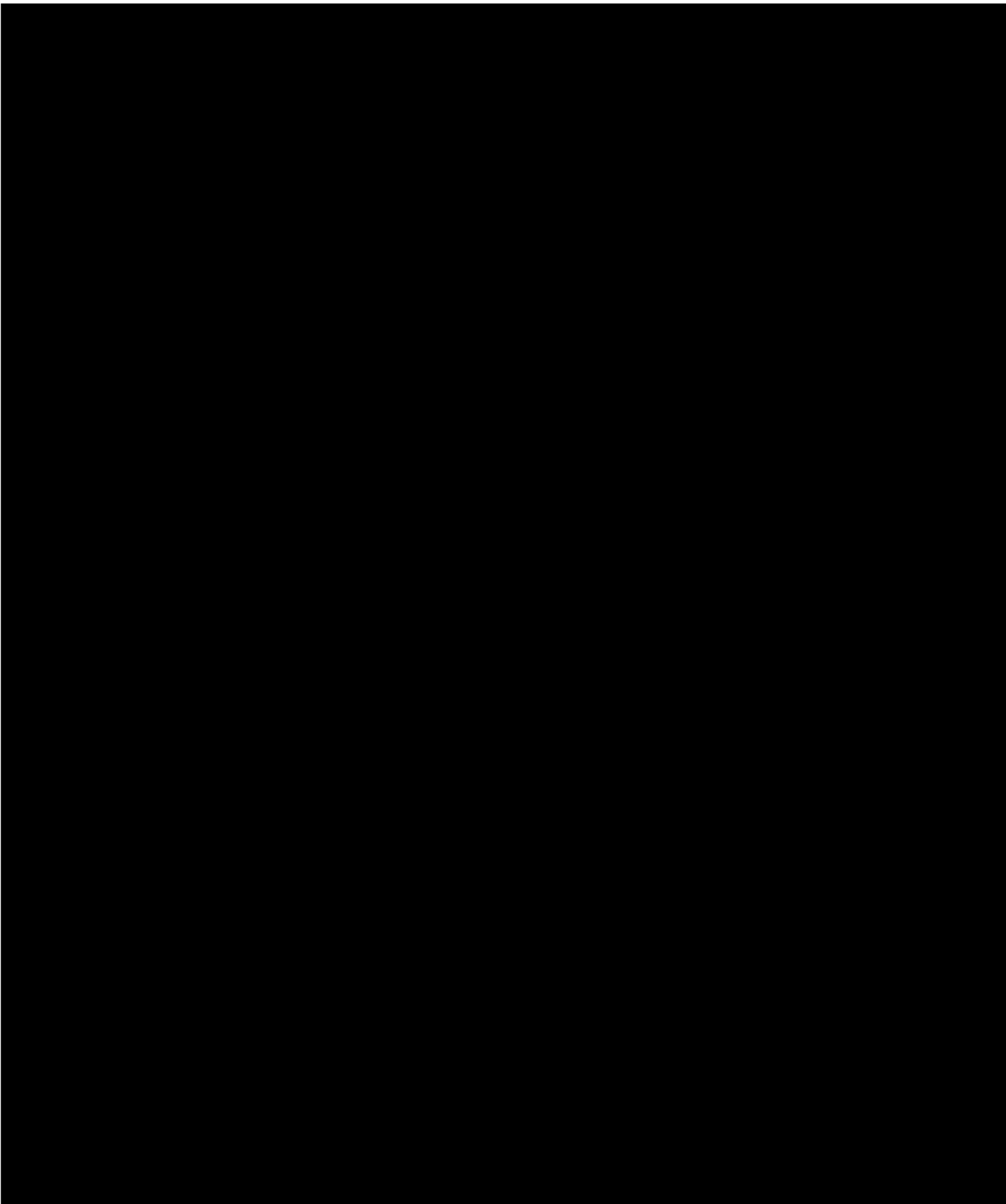


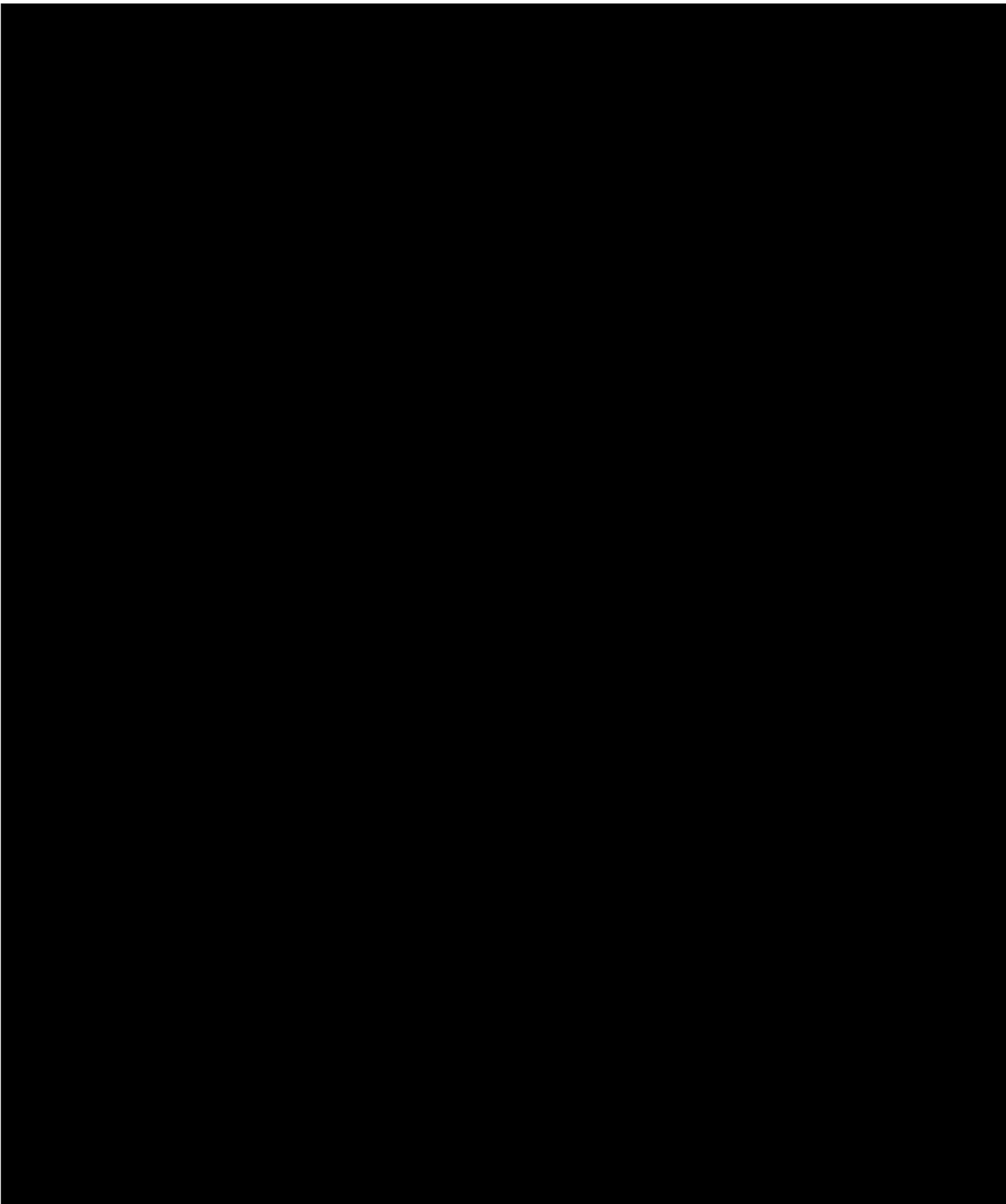


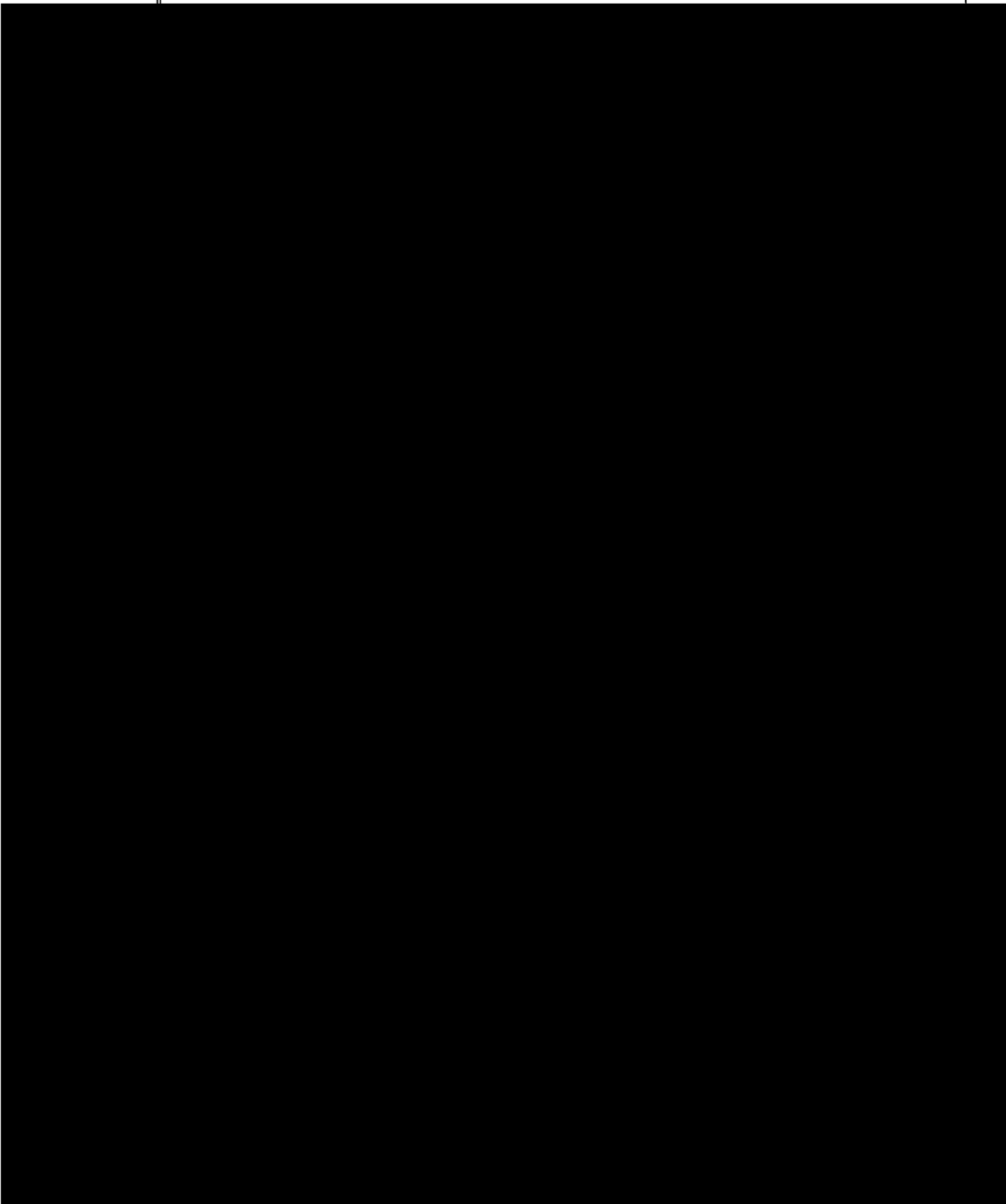


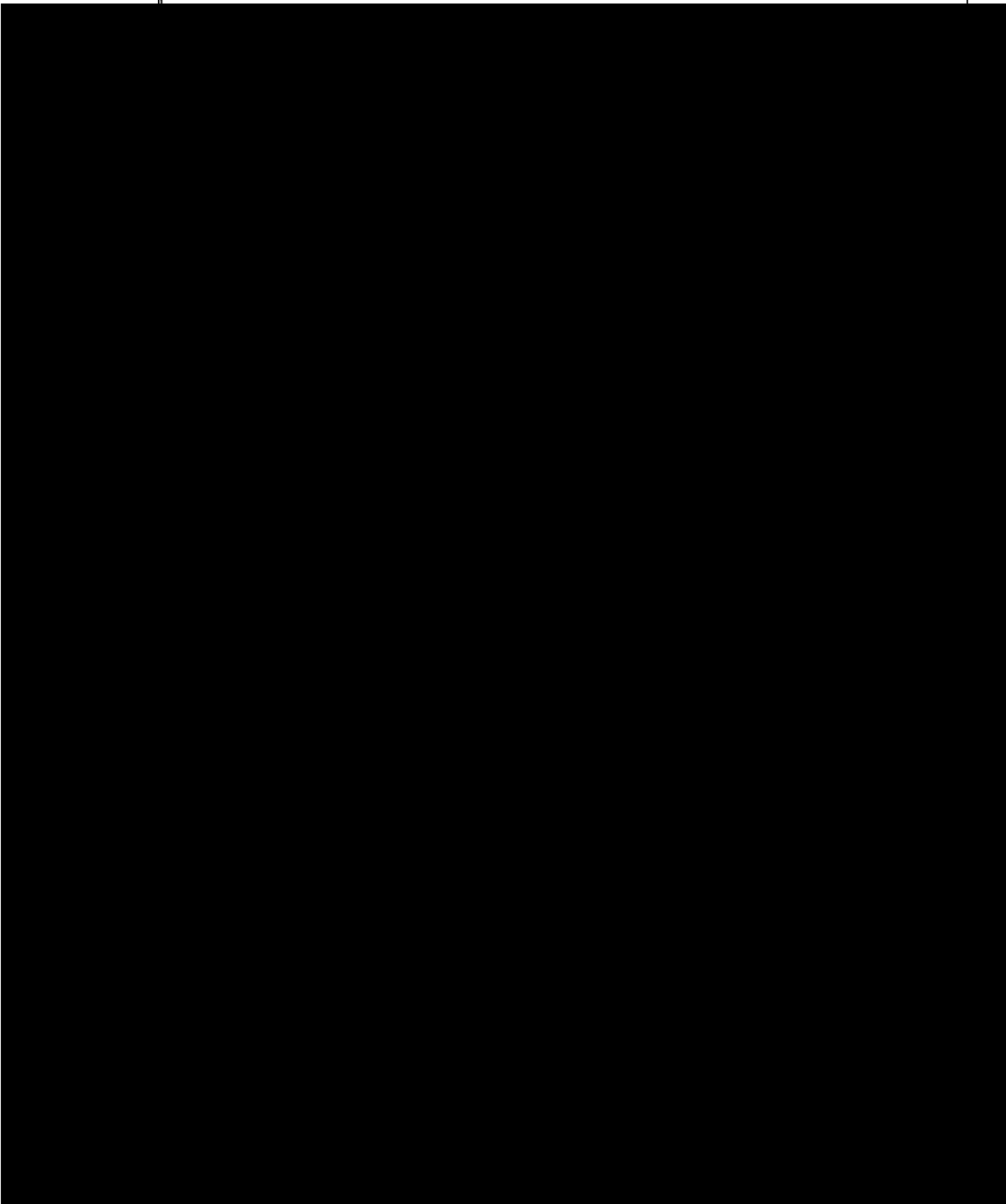


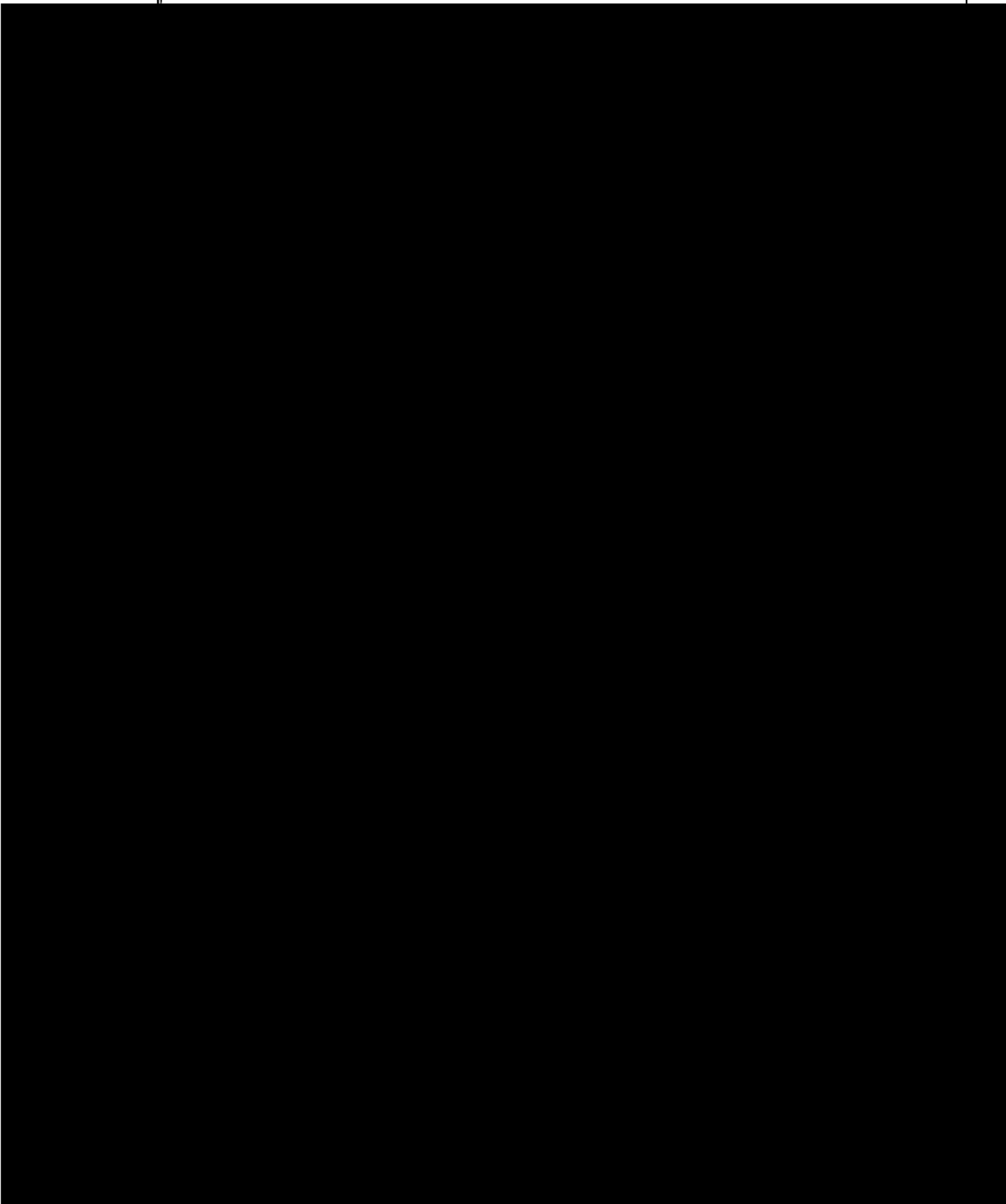


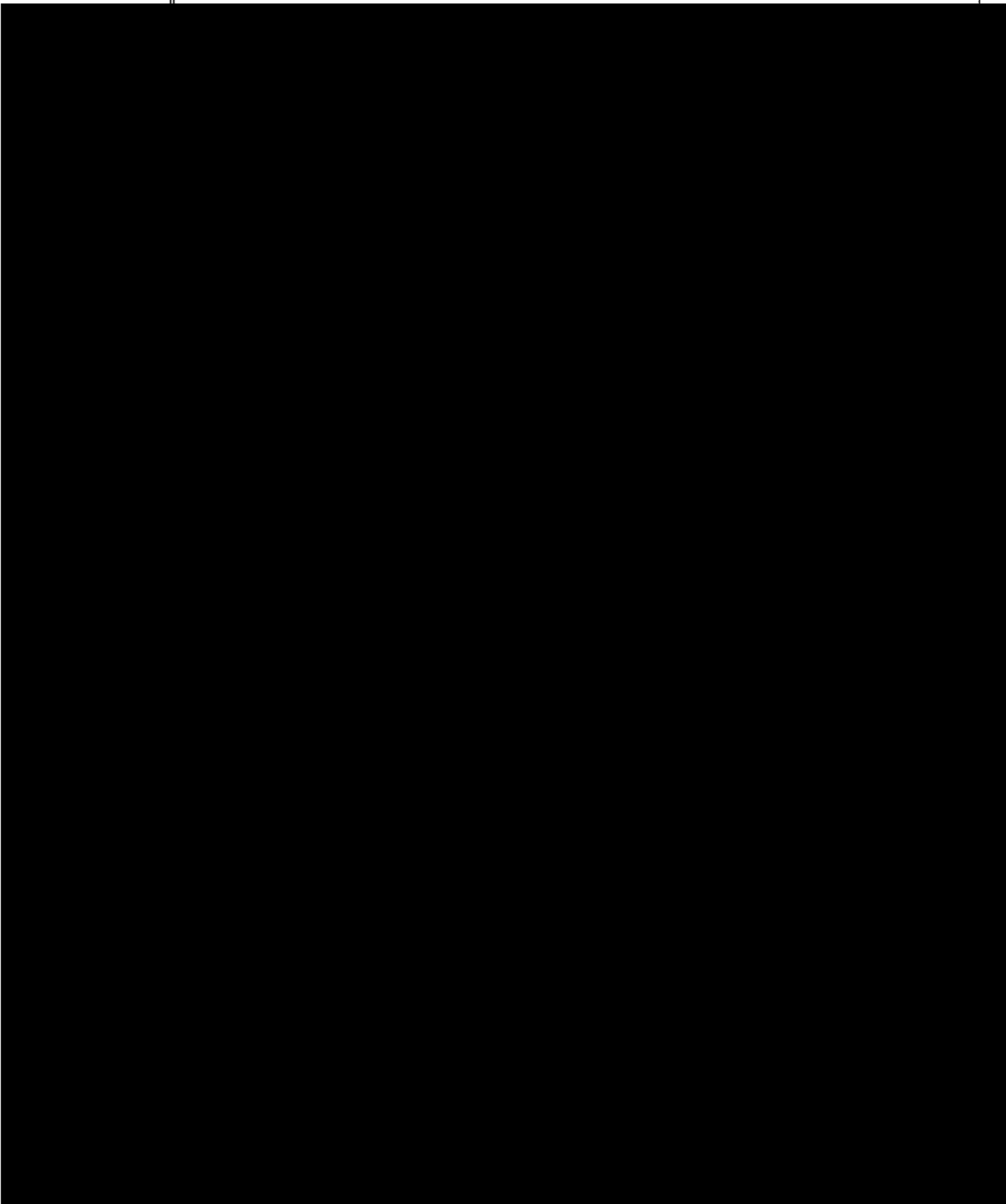


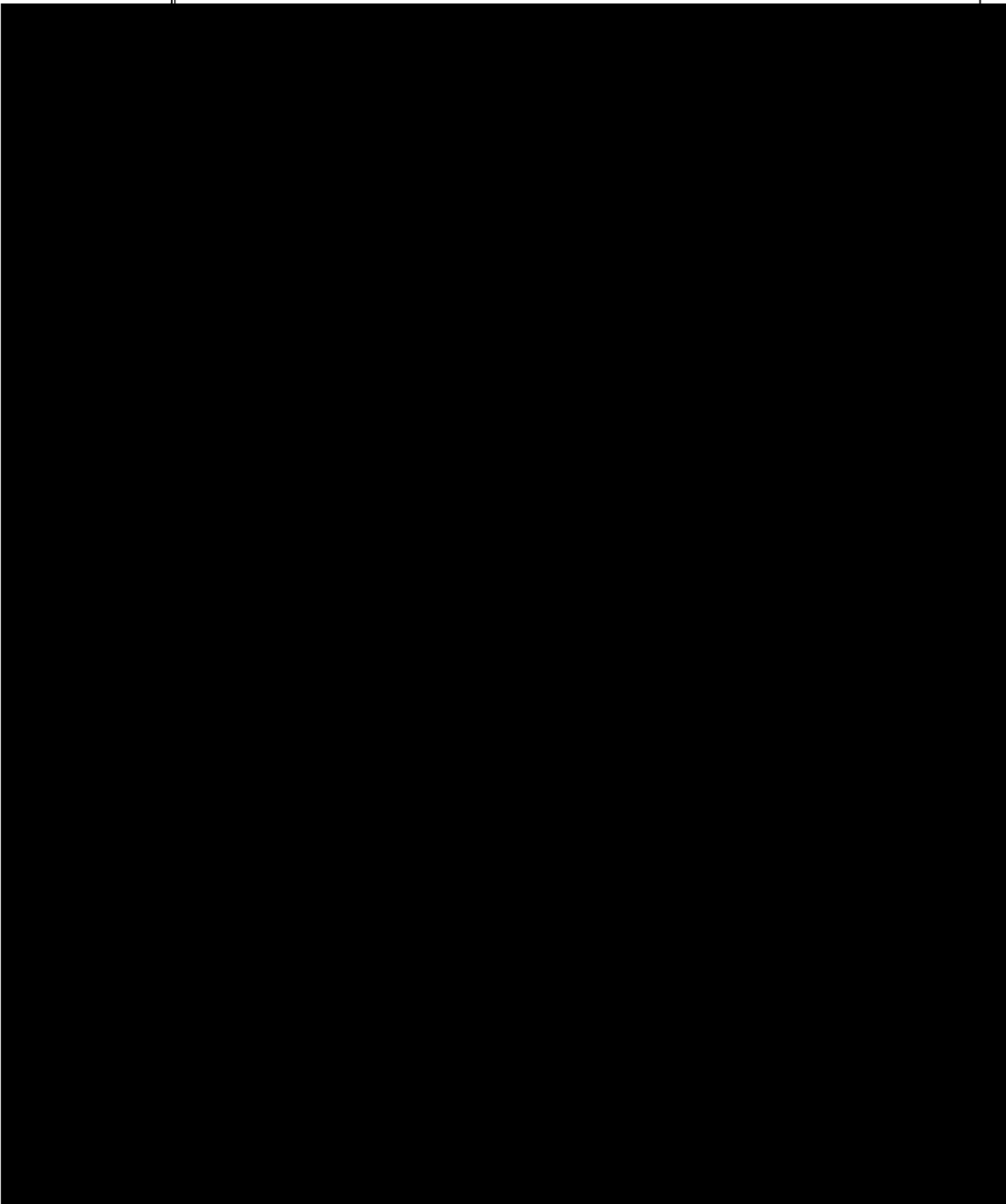




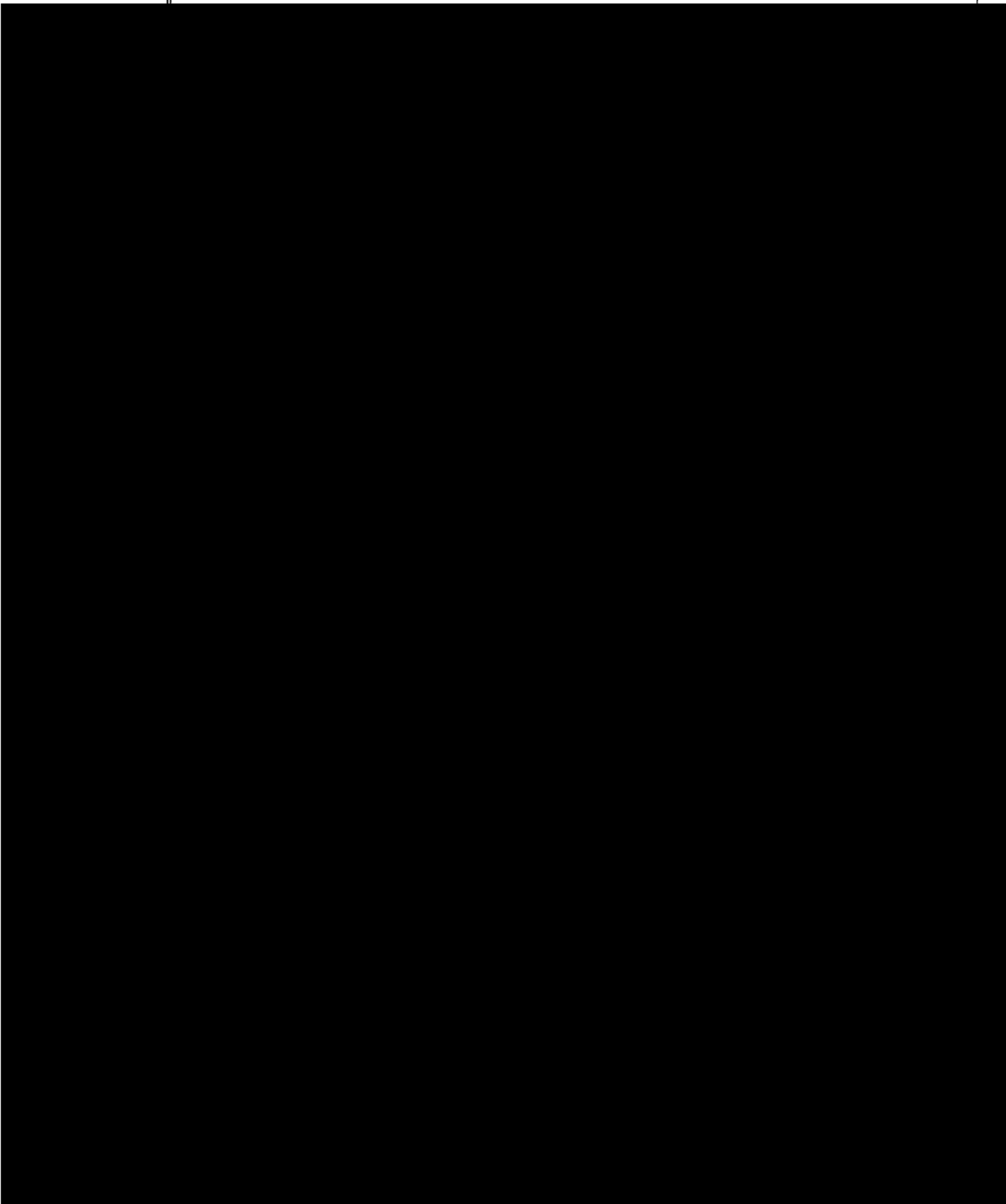


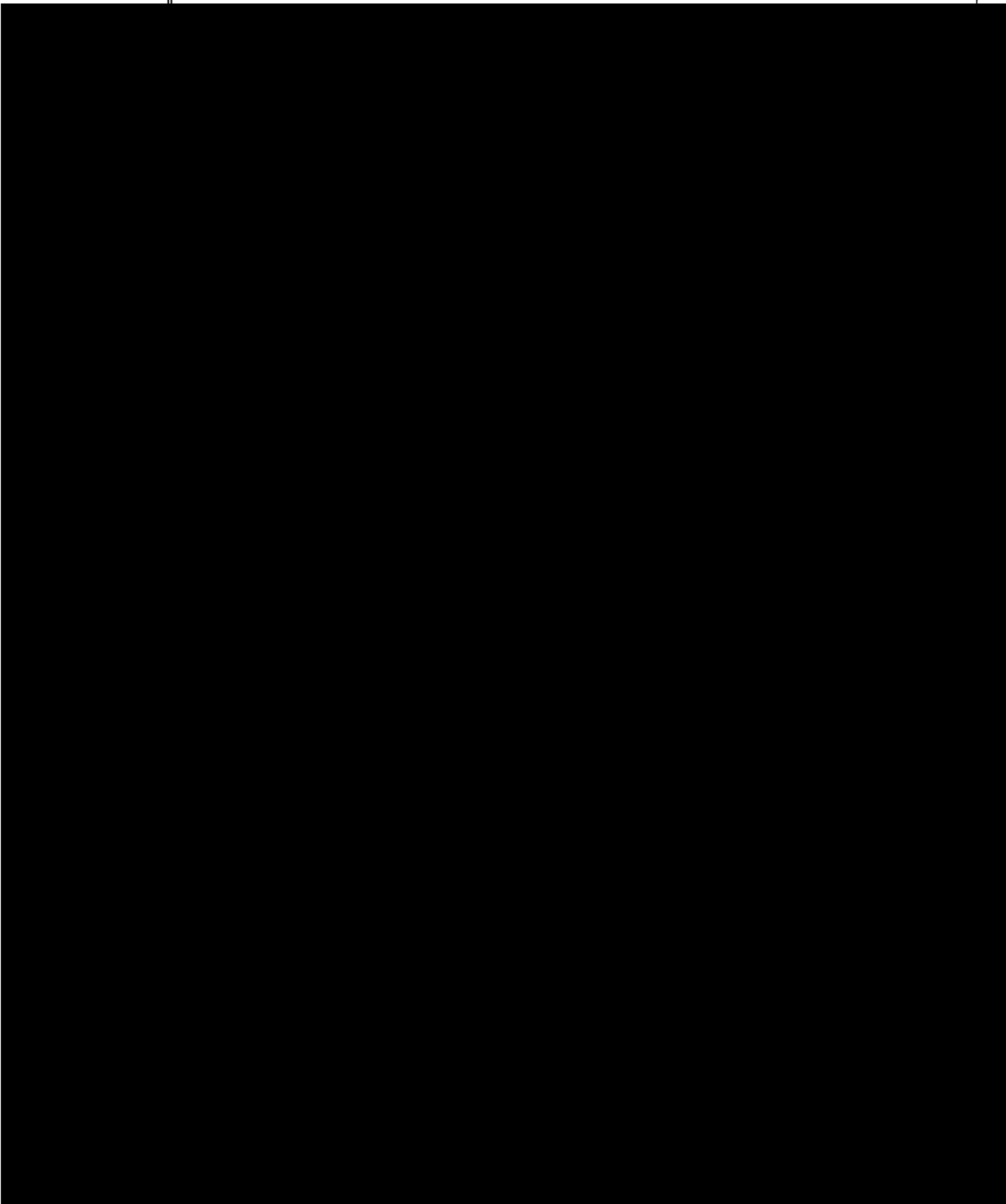


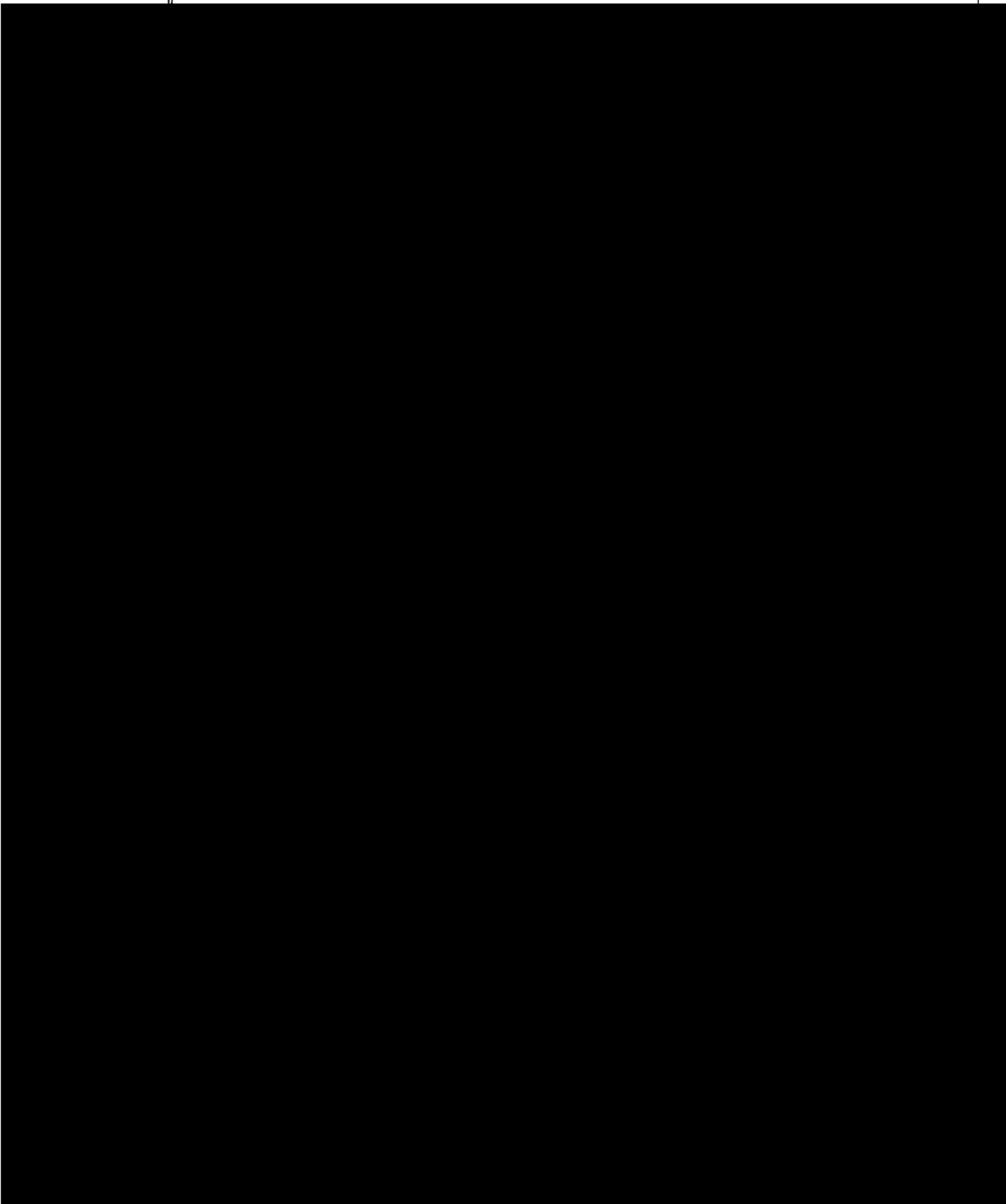


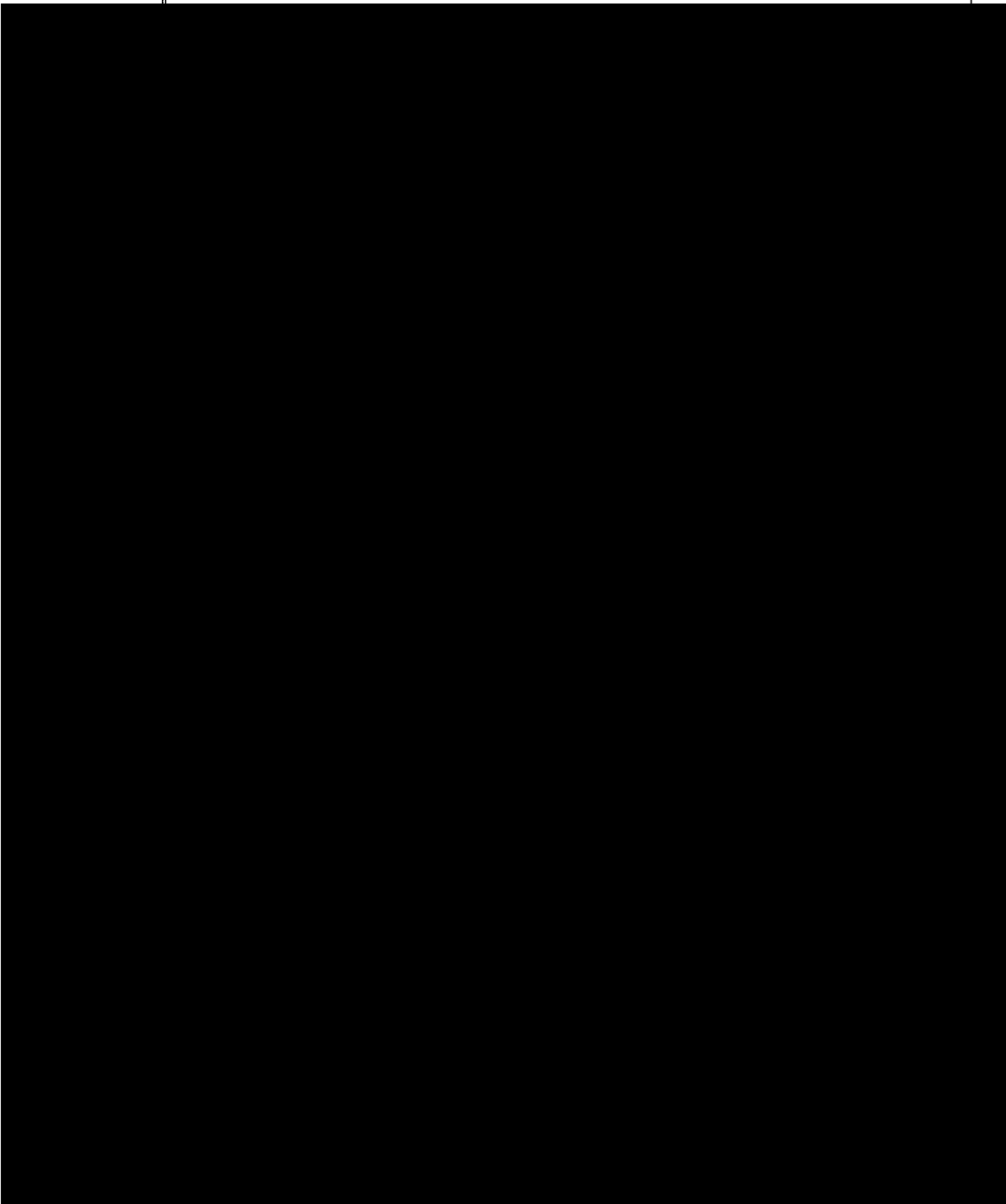


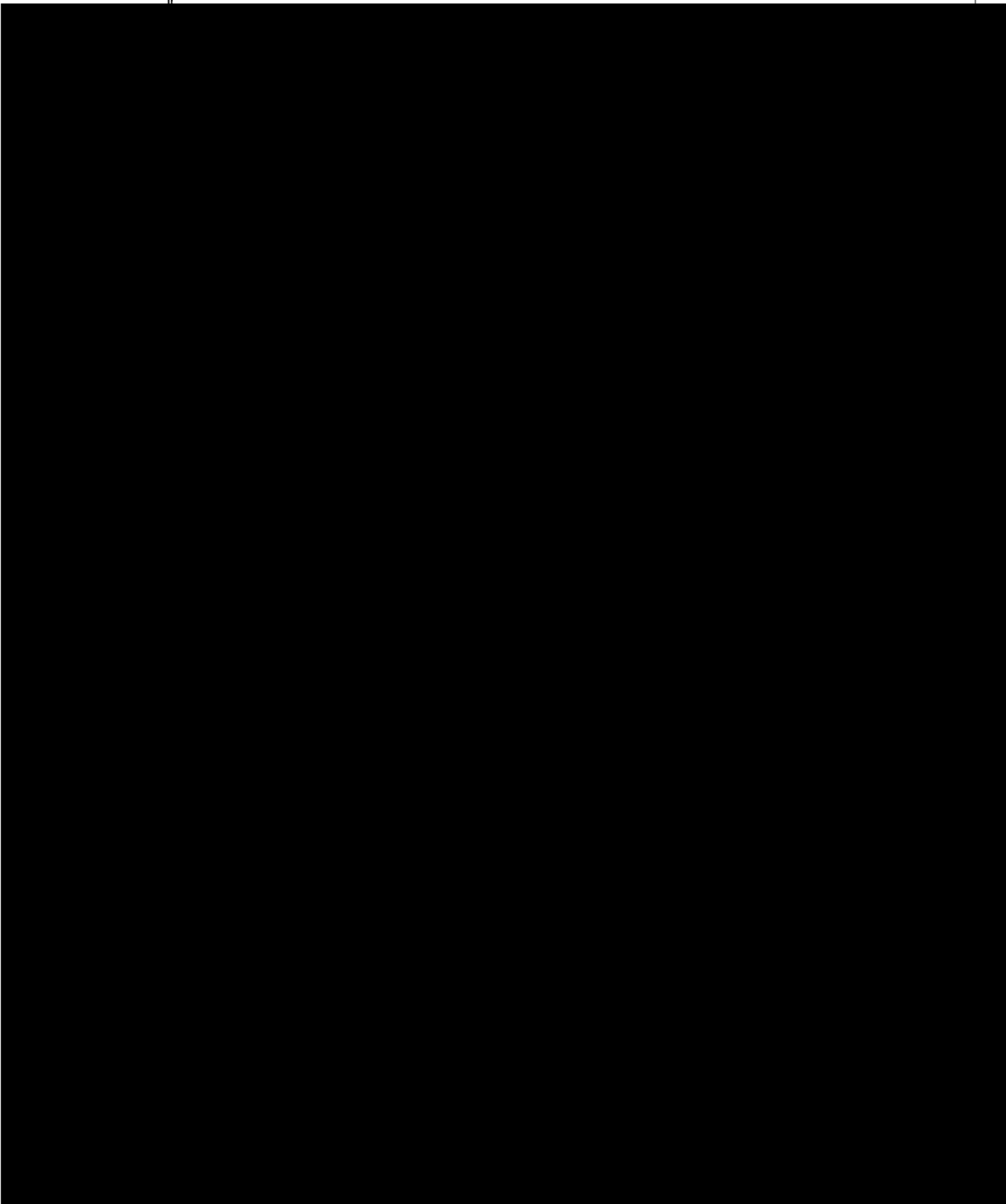


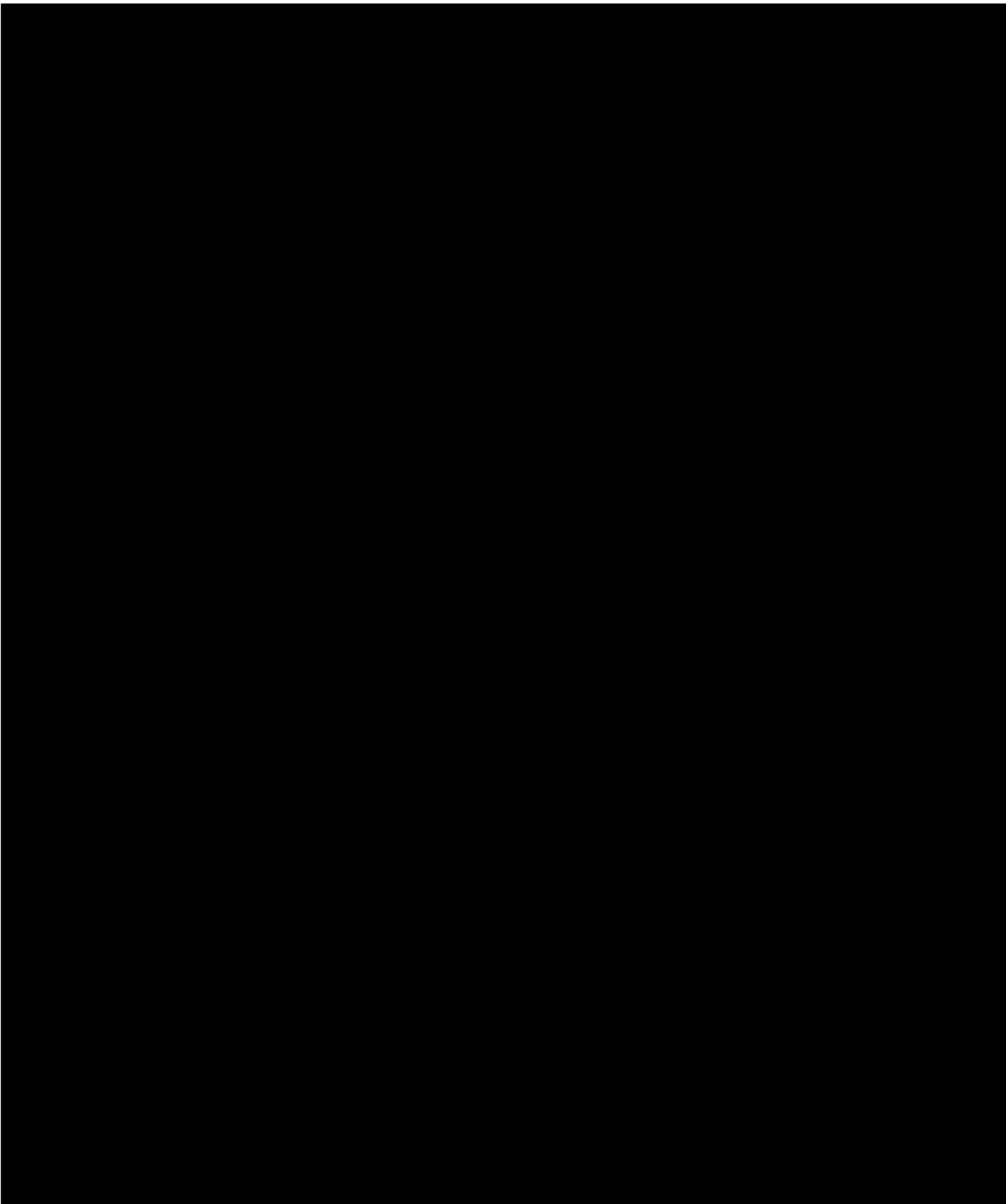


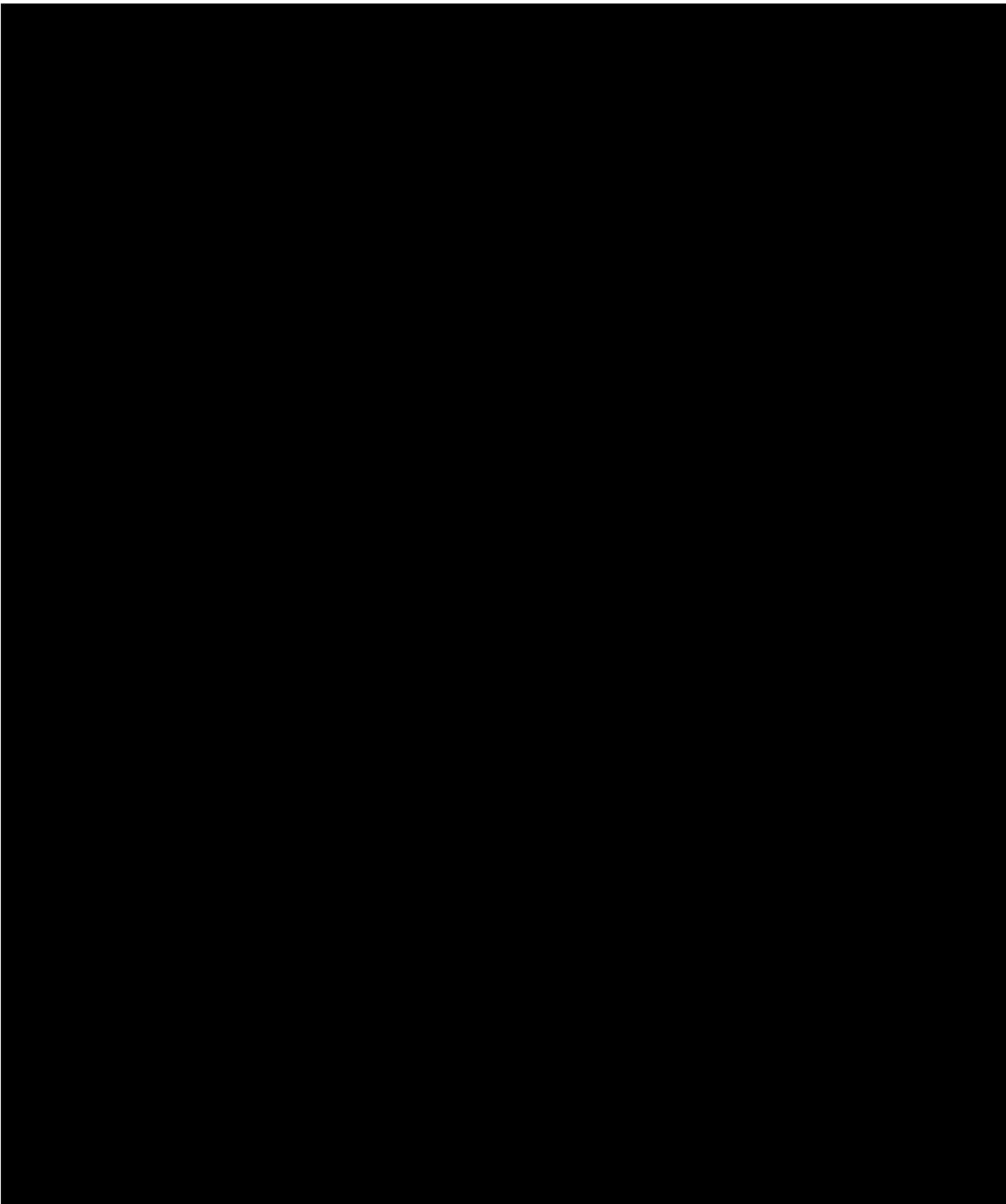












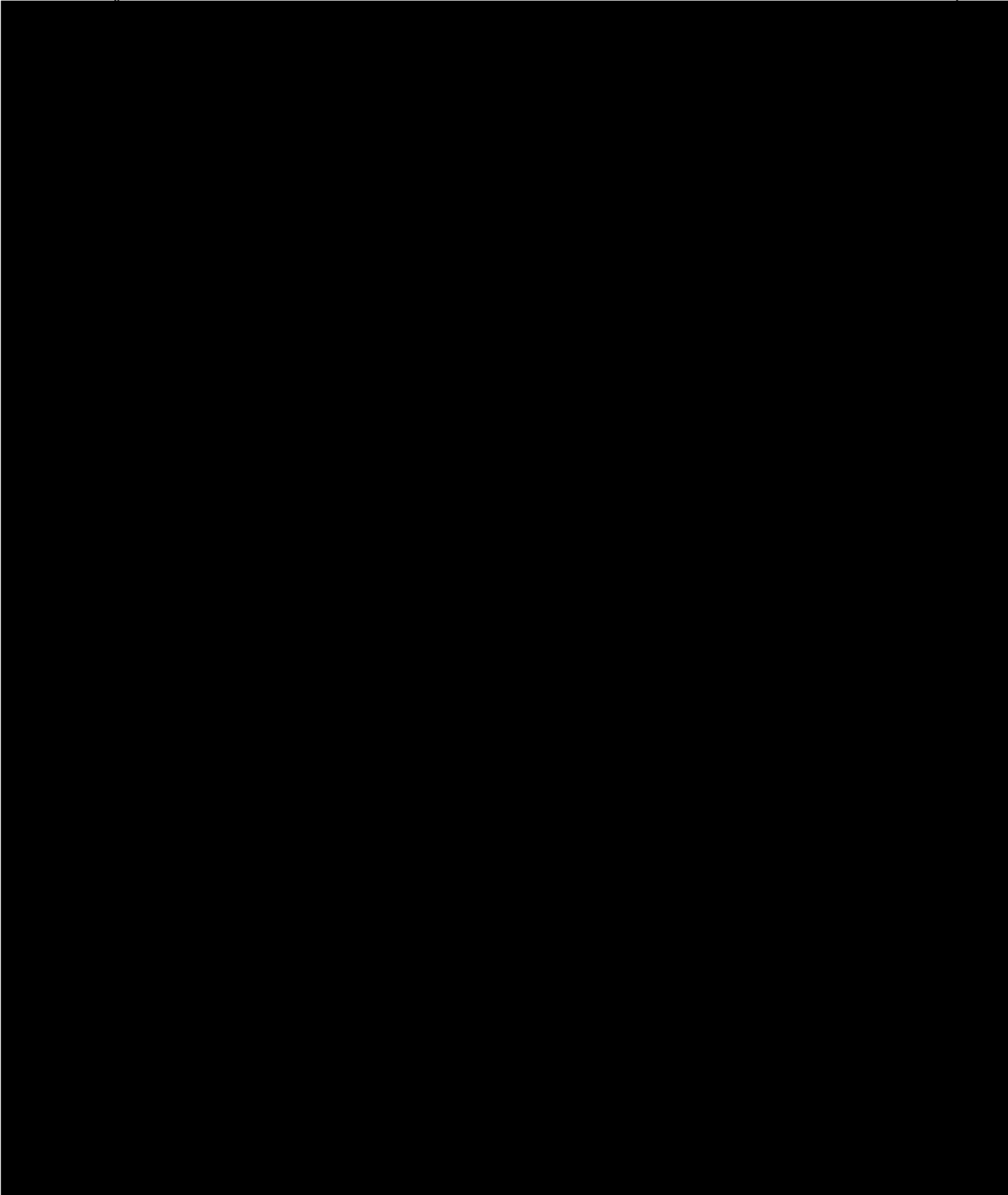
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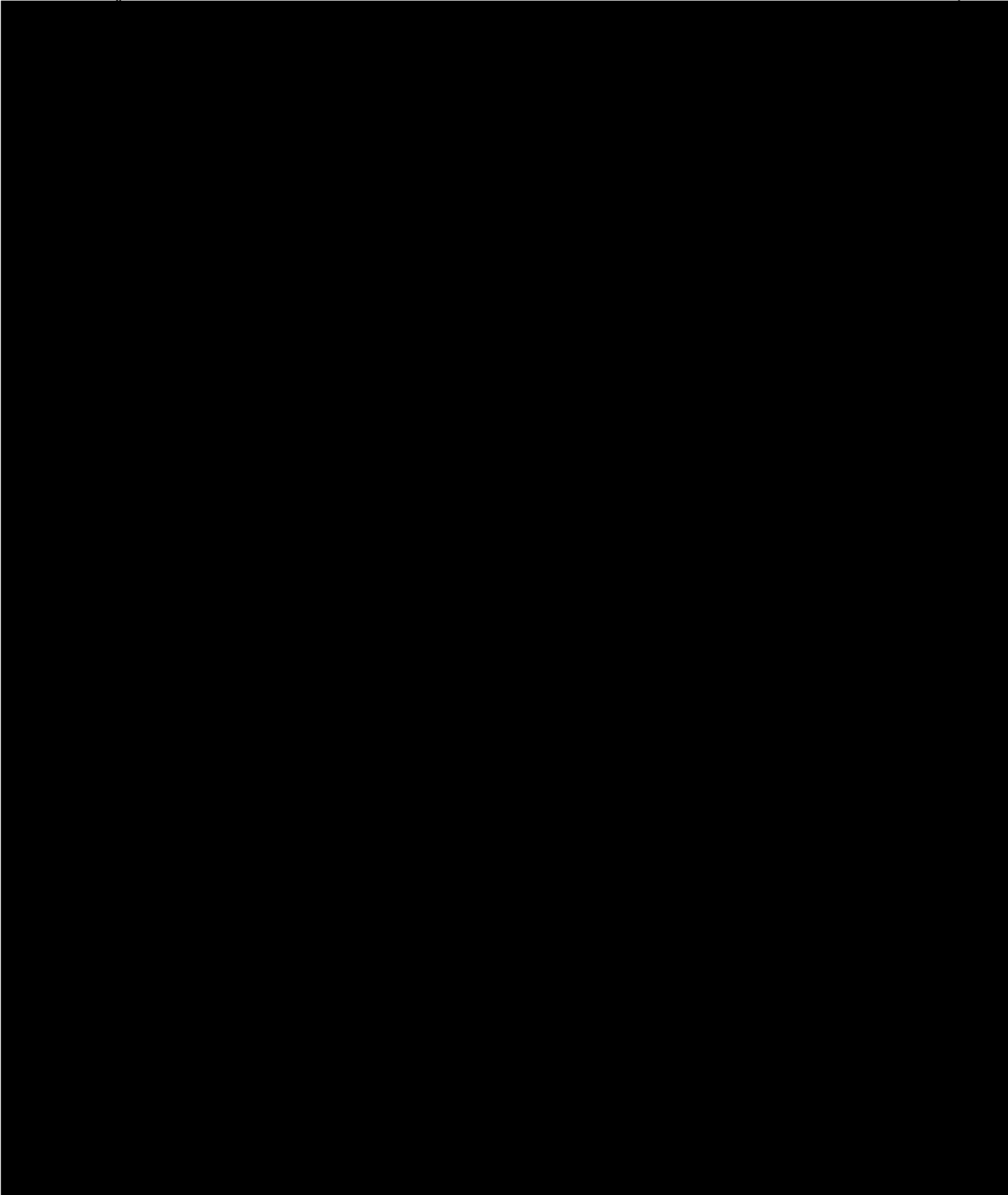
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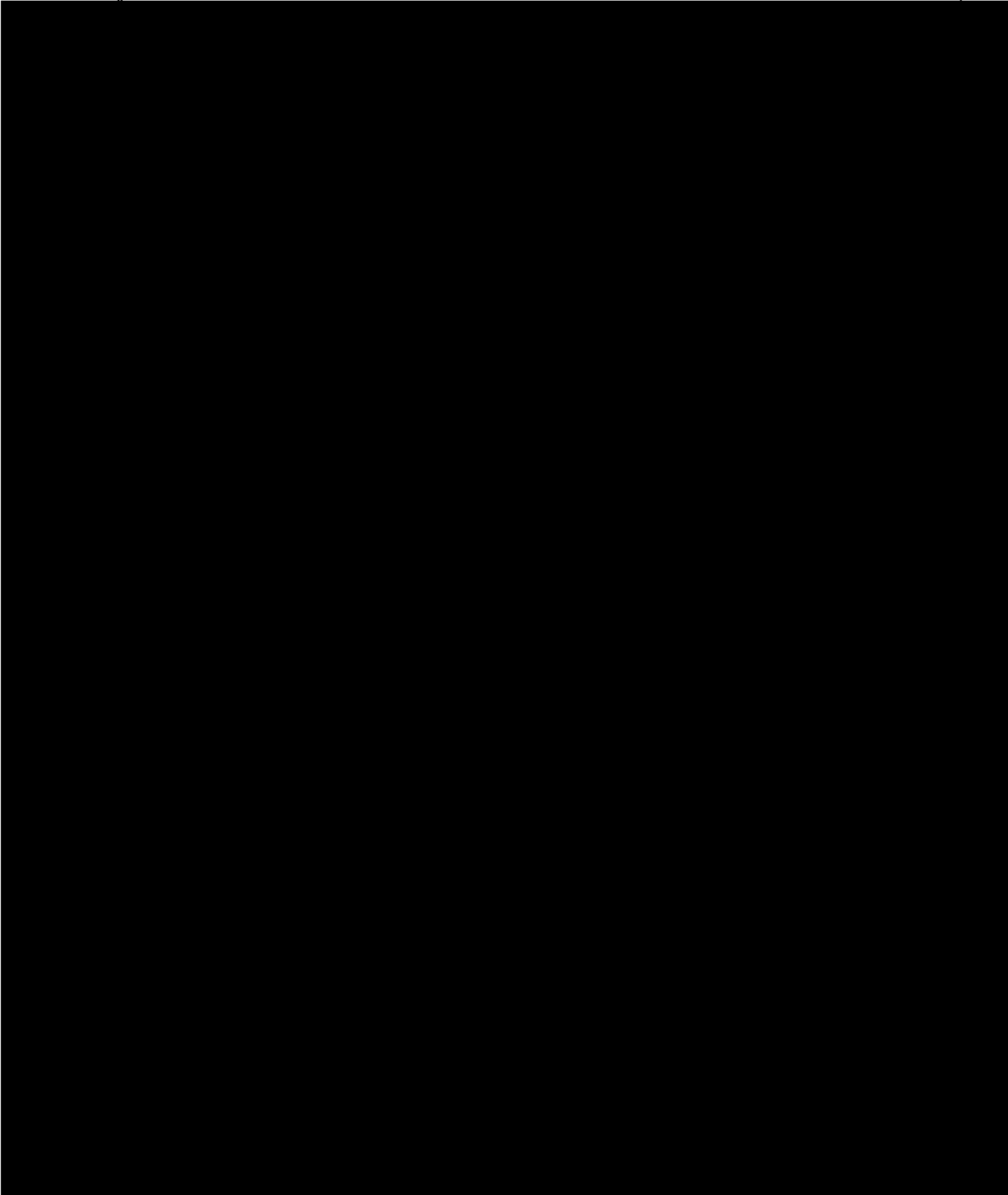
1 DENNIS K. BURKE  
United States Attorney  
District of Arizona  
2  
3 EMORY T. HURLEY  
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Phoenix, Arizona 85004  
5 Telephone (602) 514-7500  
[emory.hurley@usdoj.gov](mailto:emory.hurley@usdoj.gov)

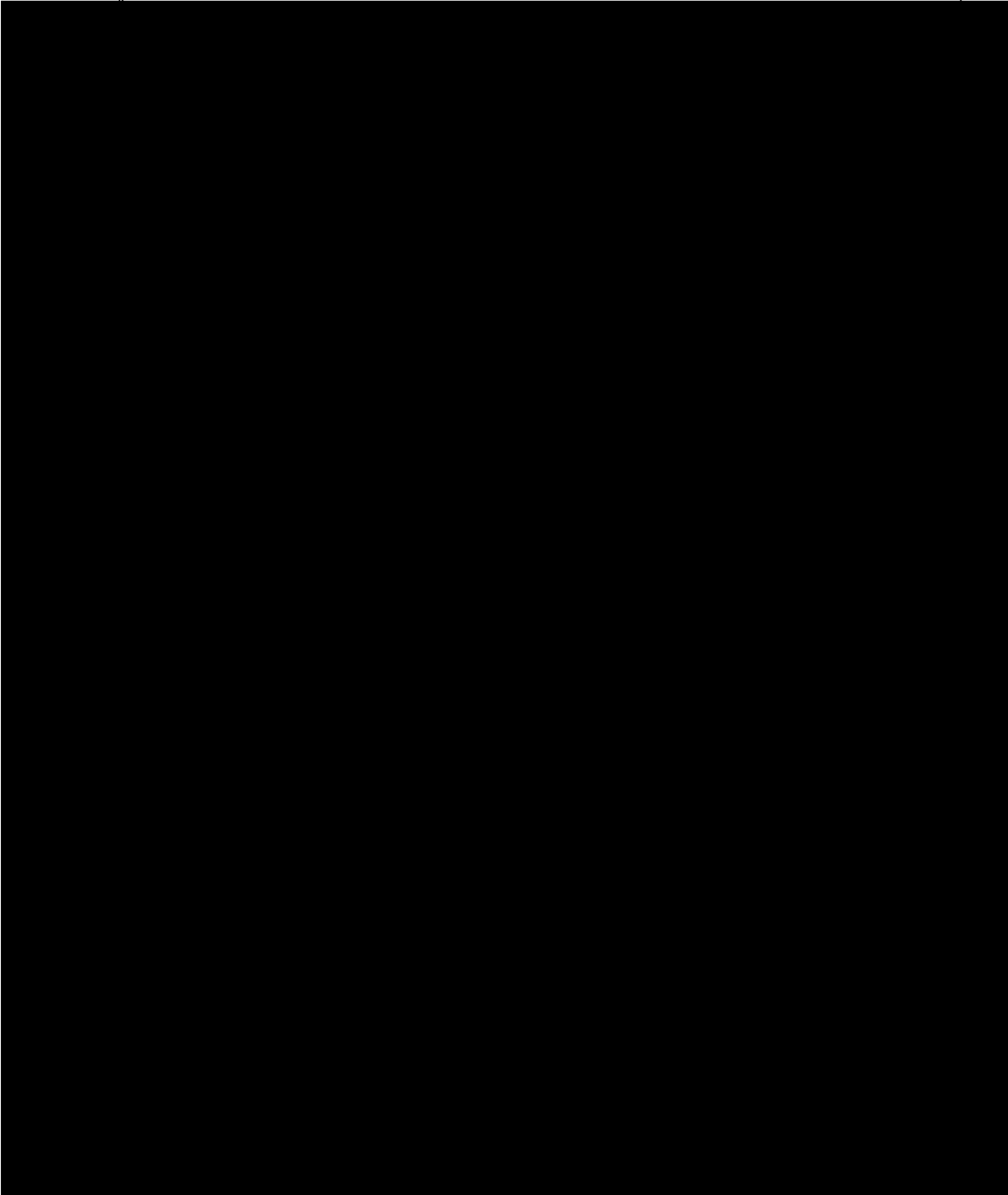
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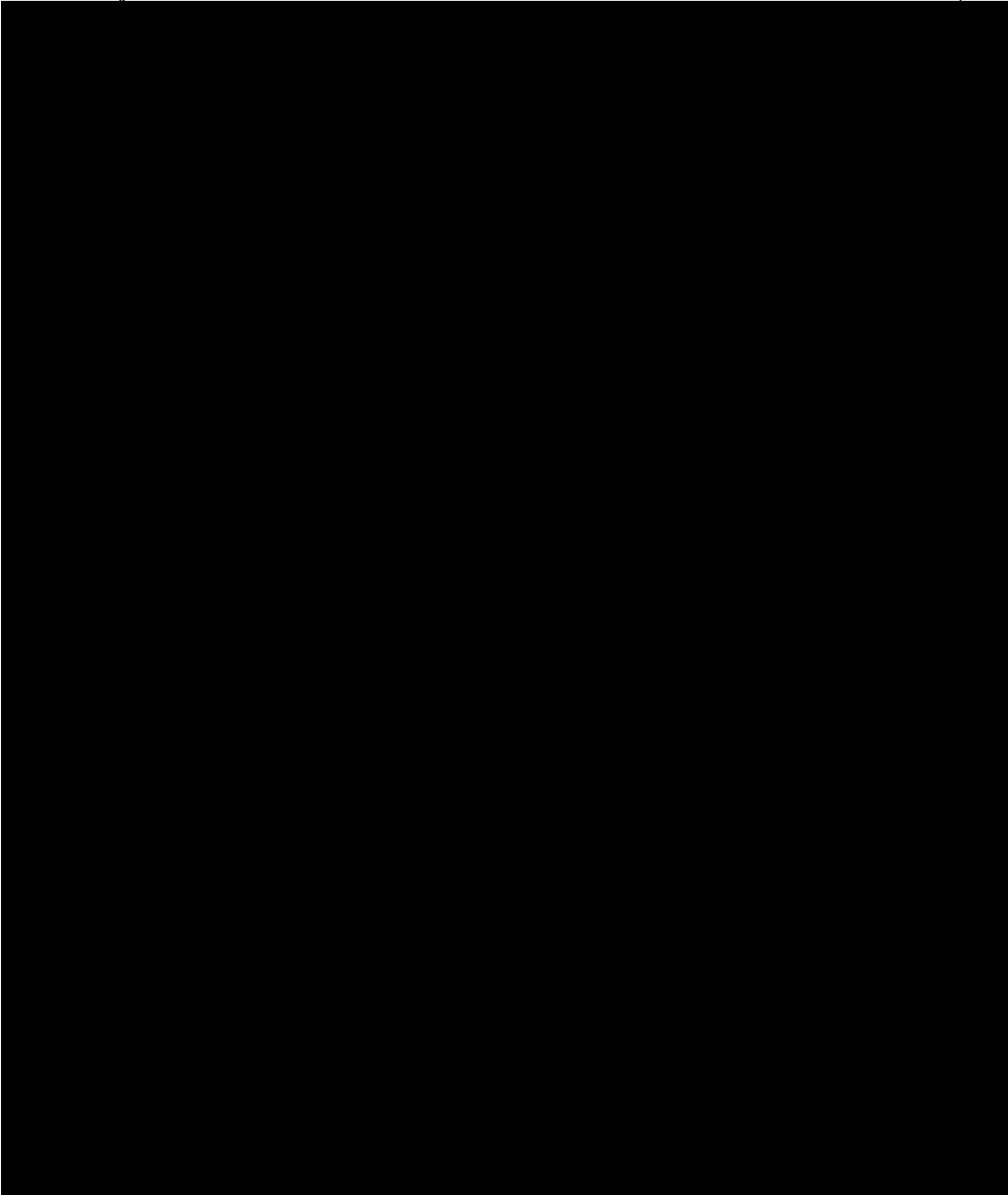


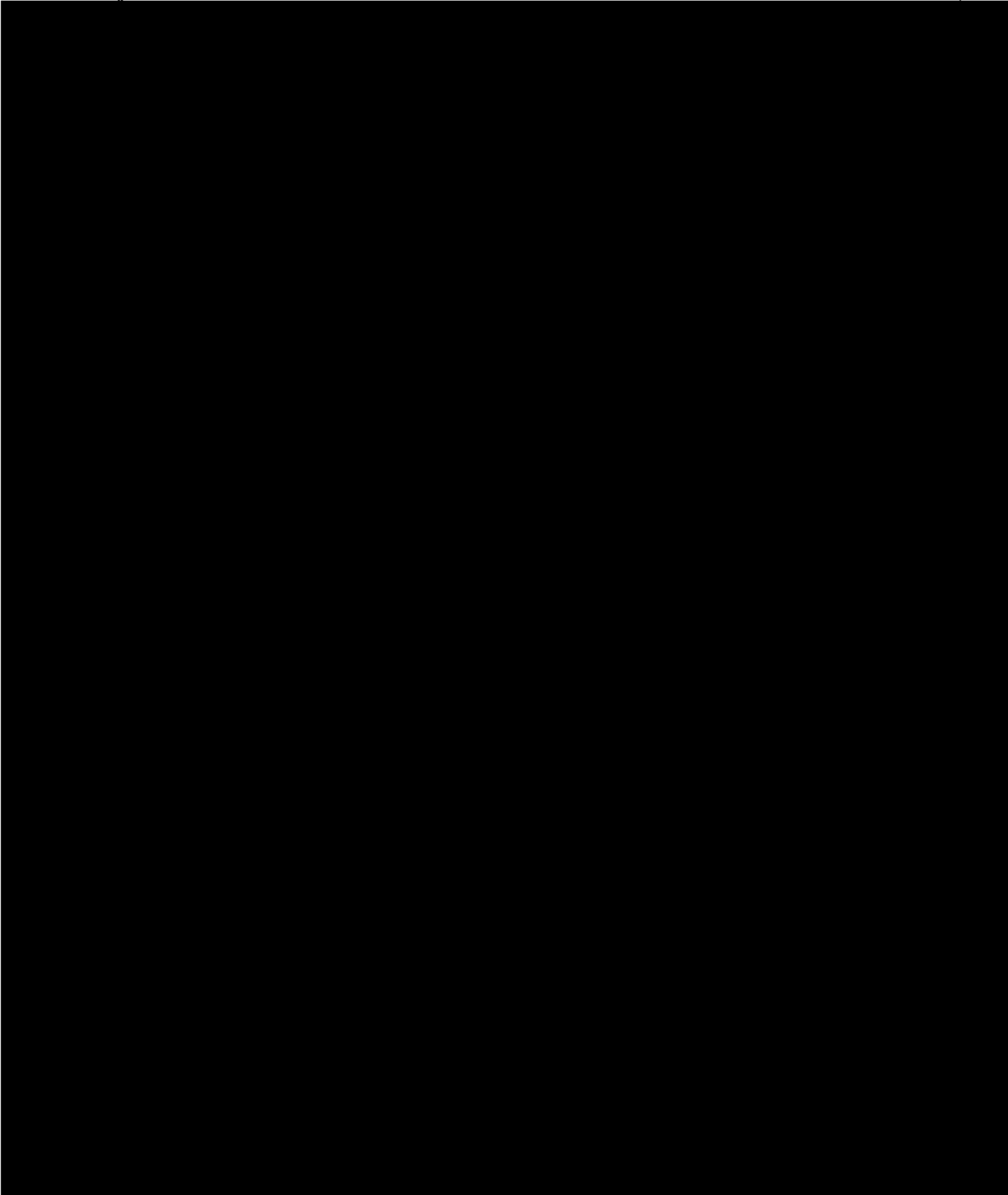


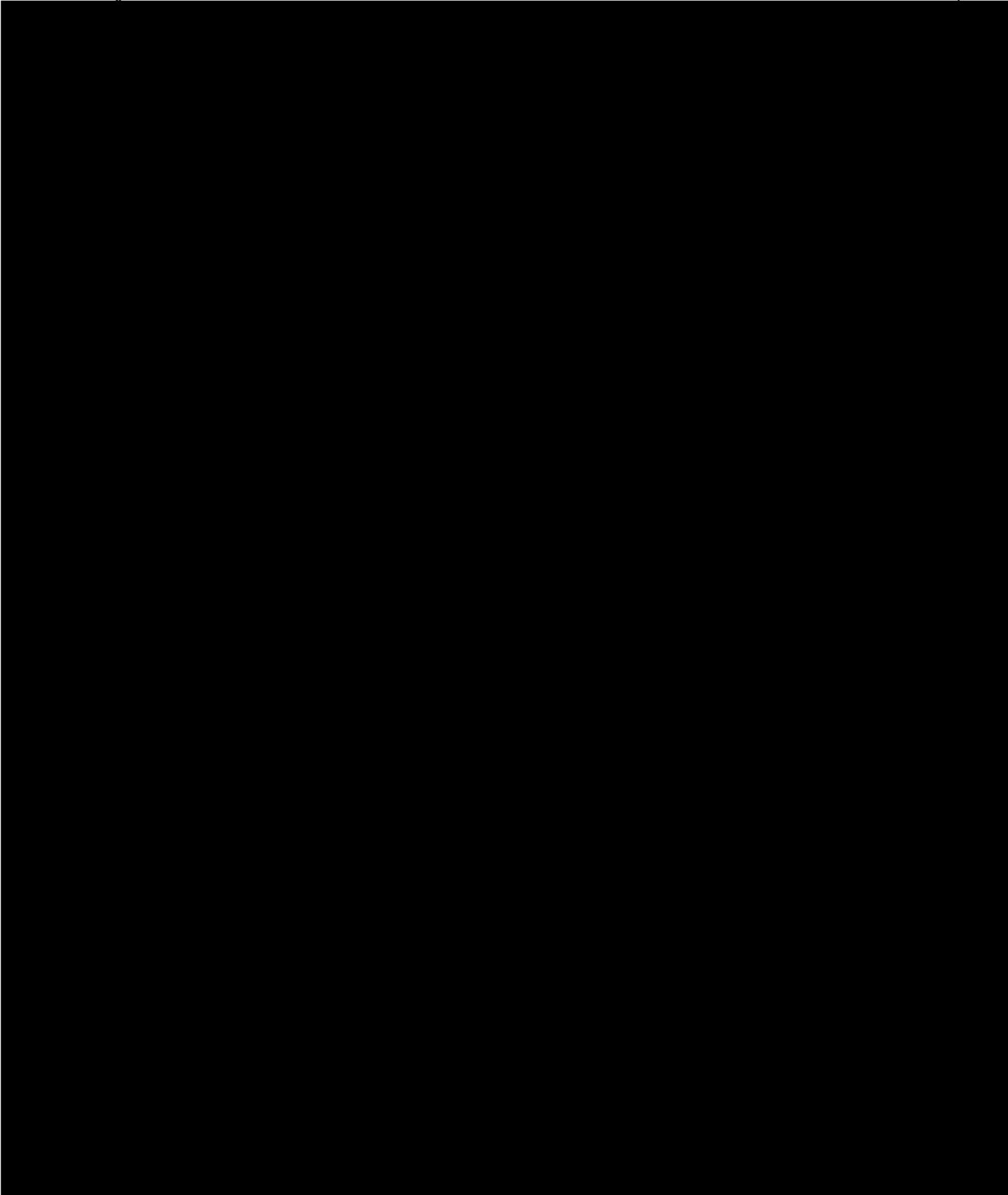


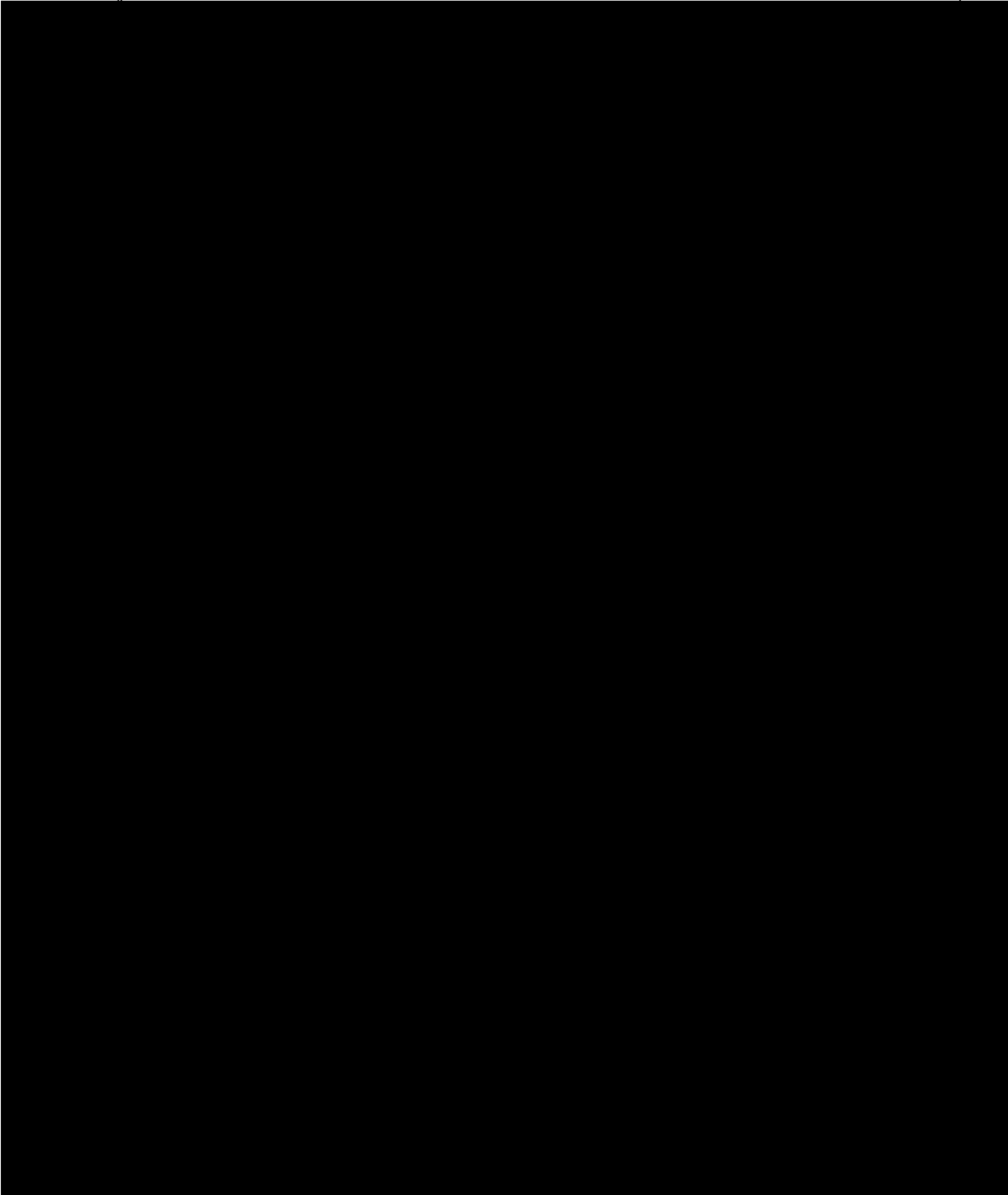




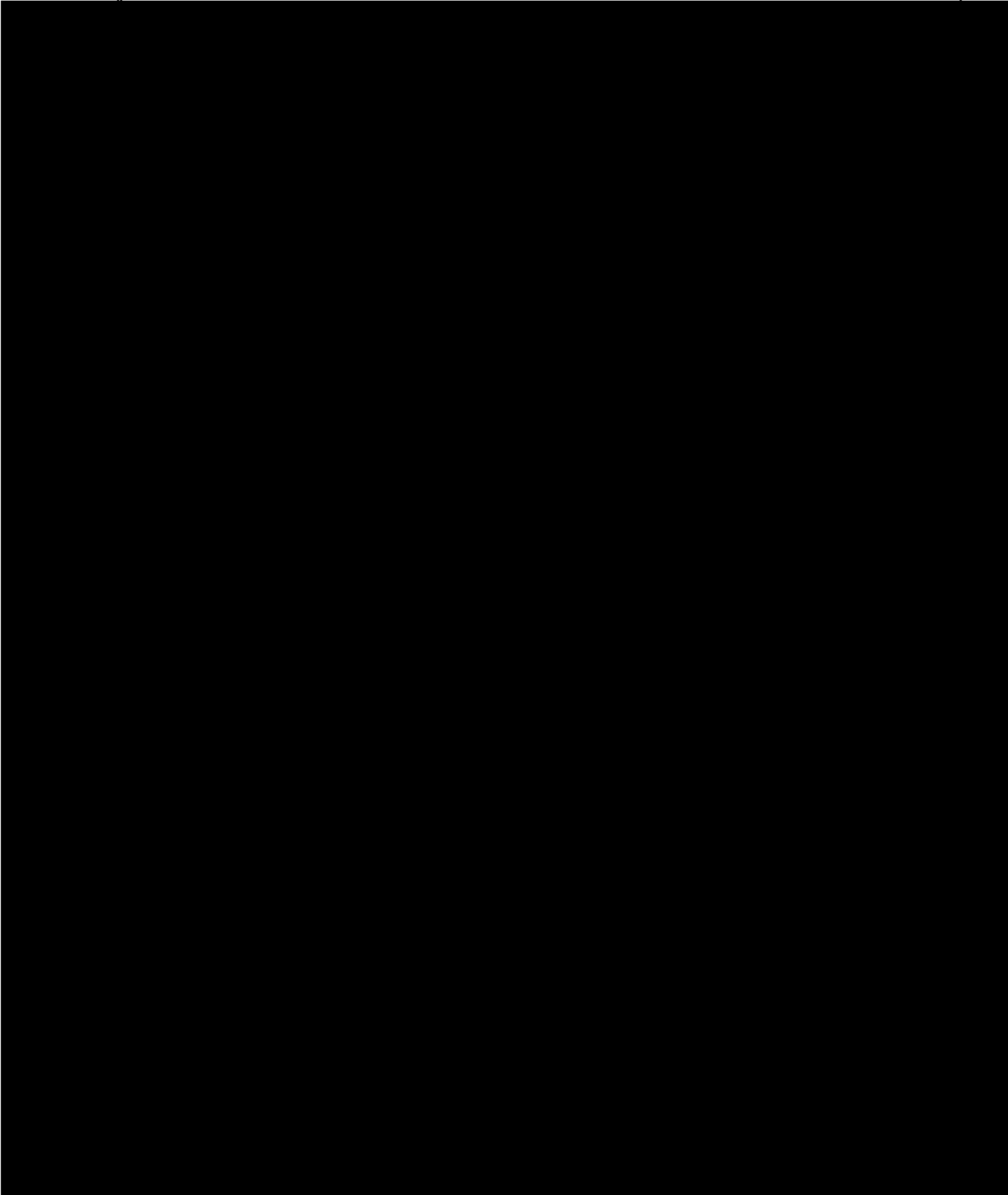


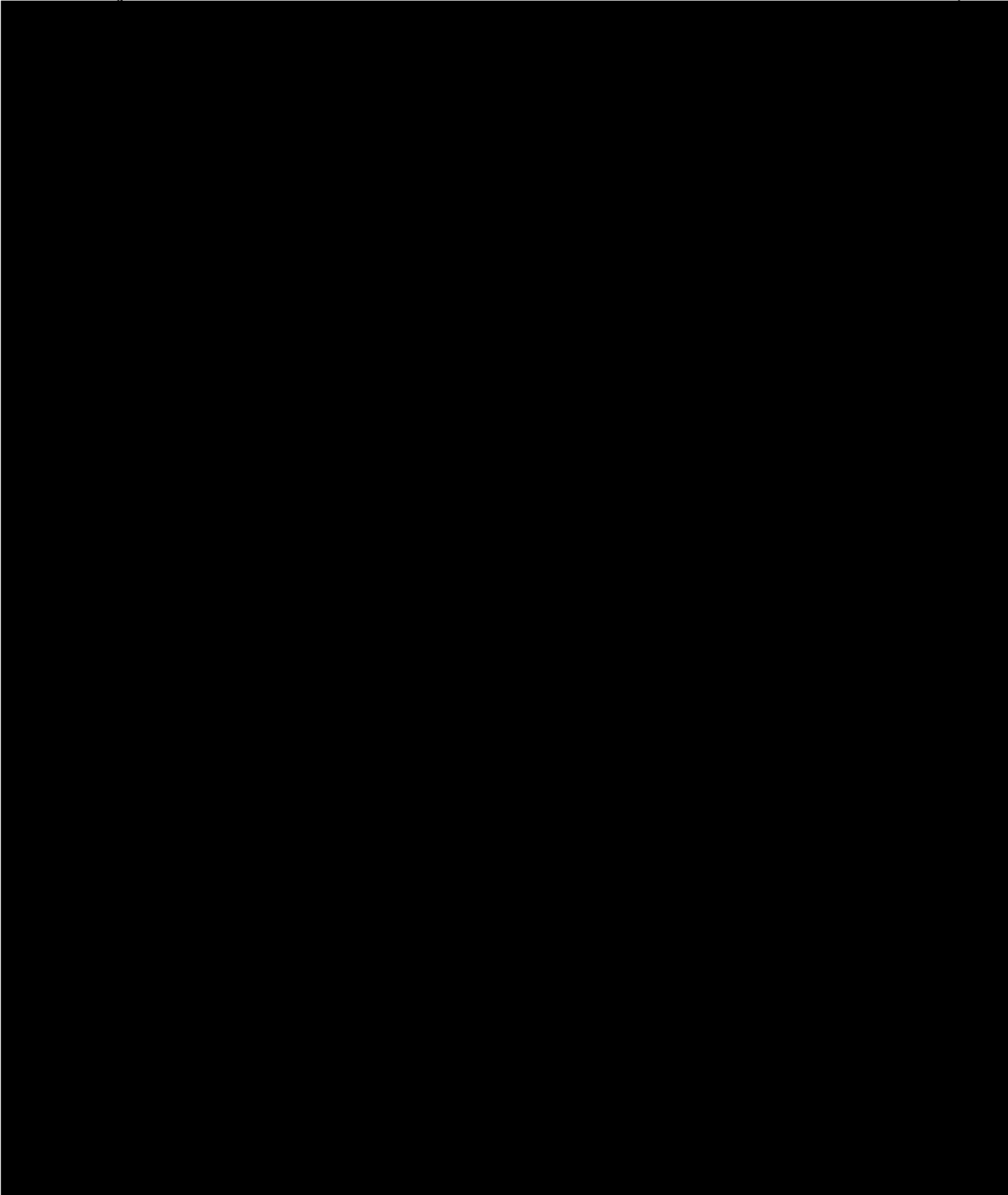


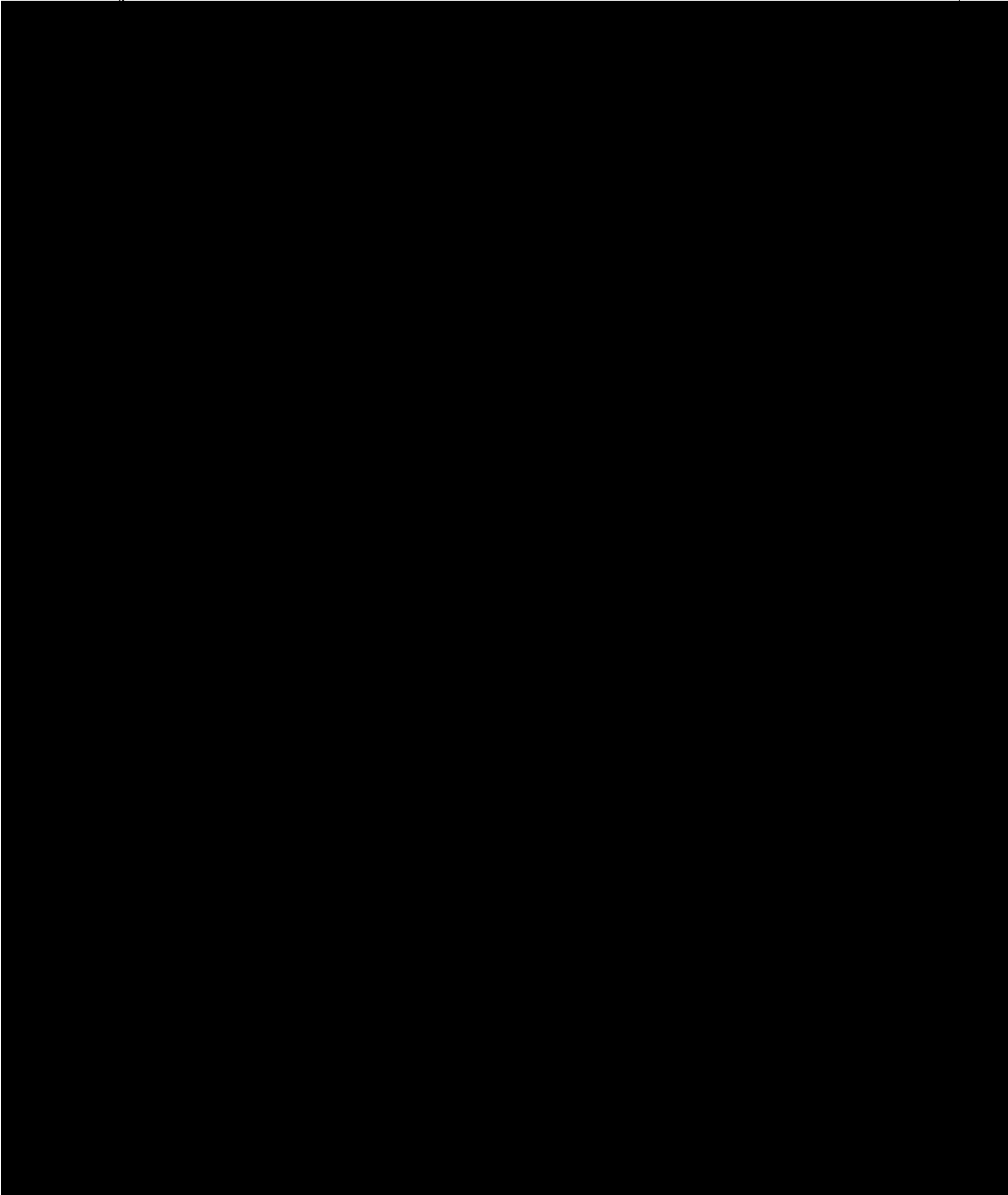


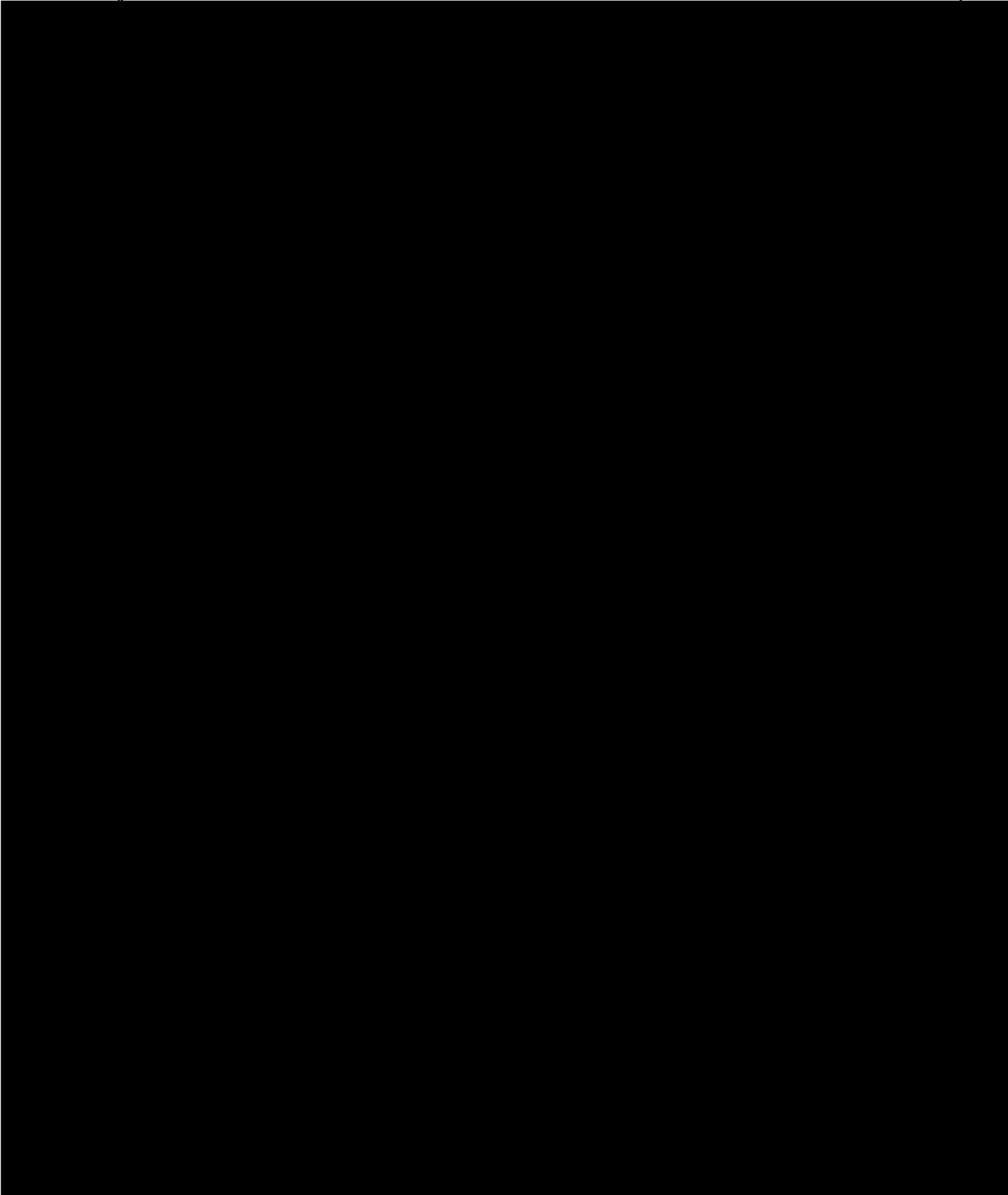


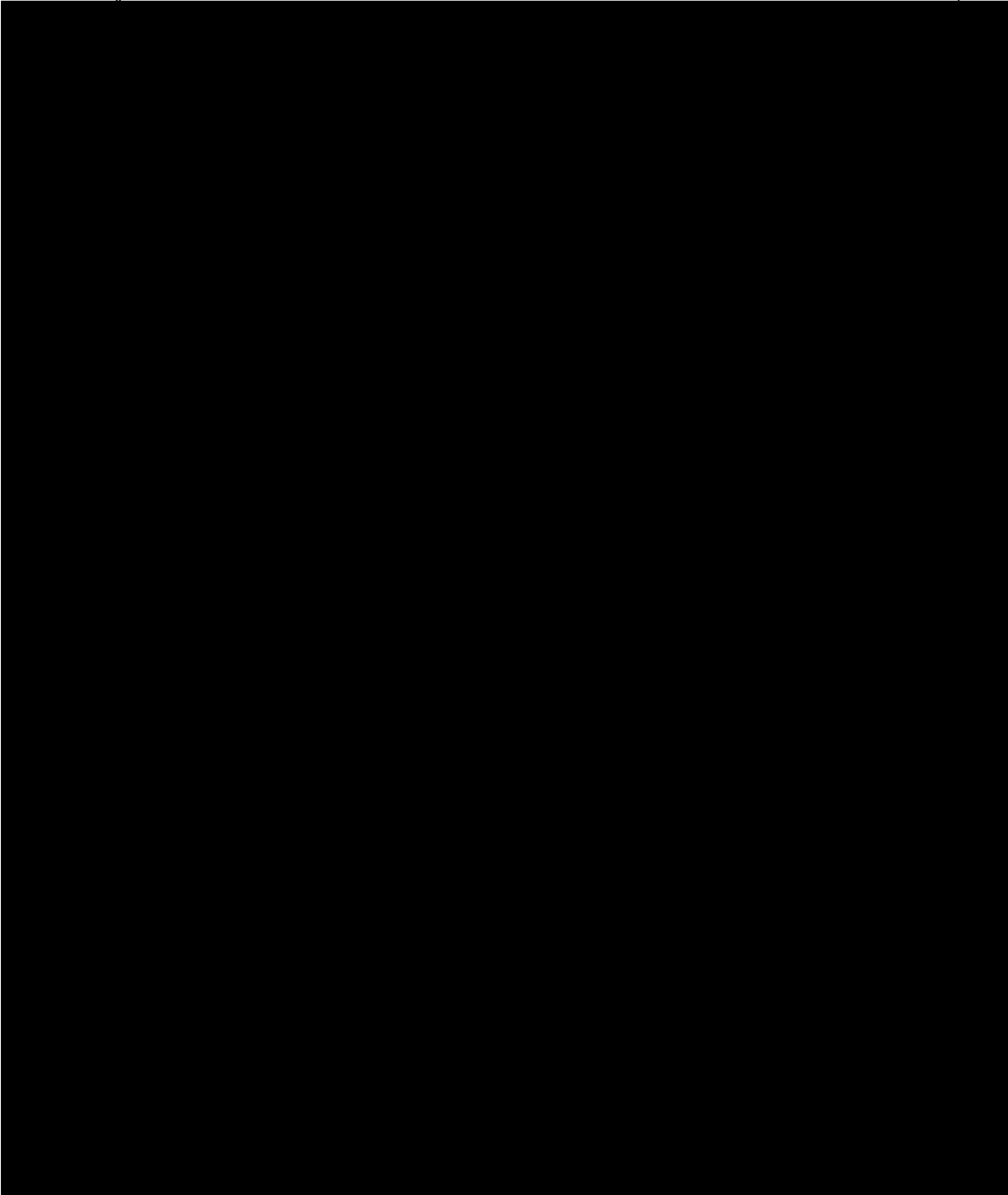


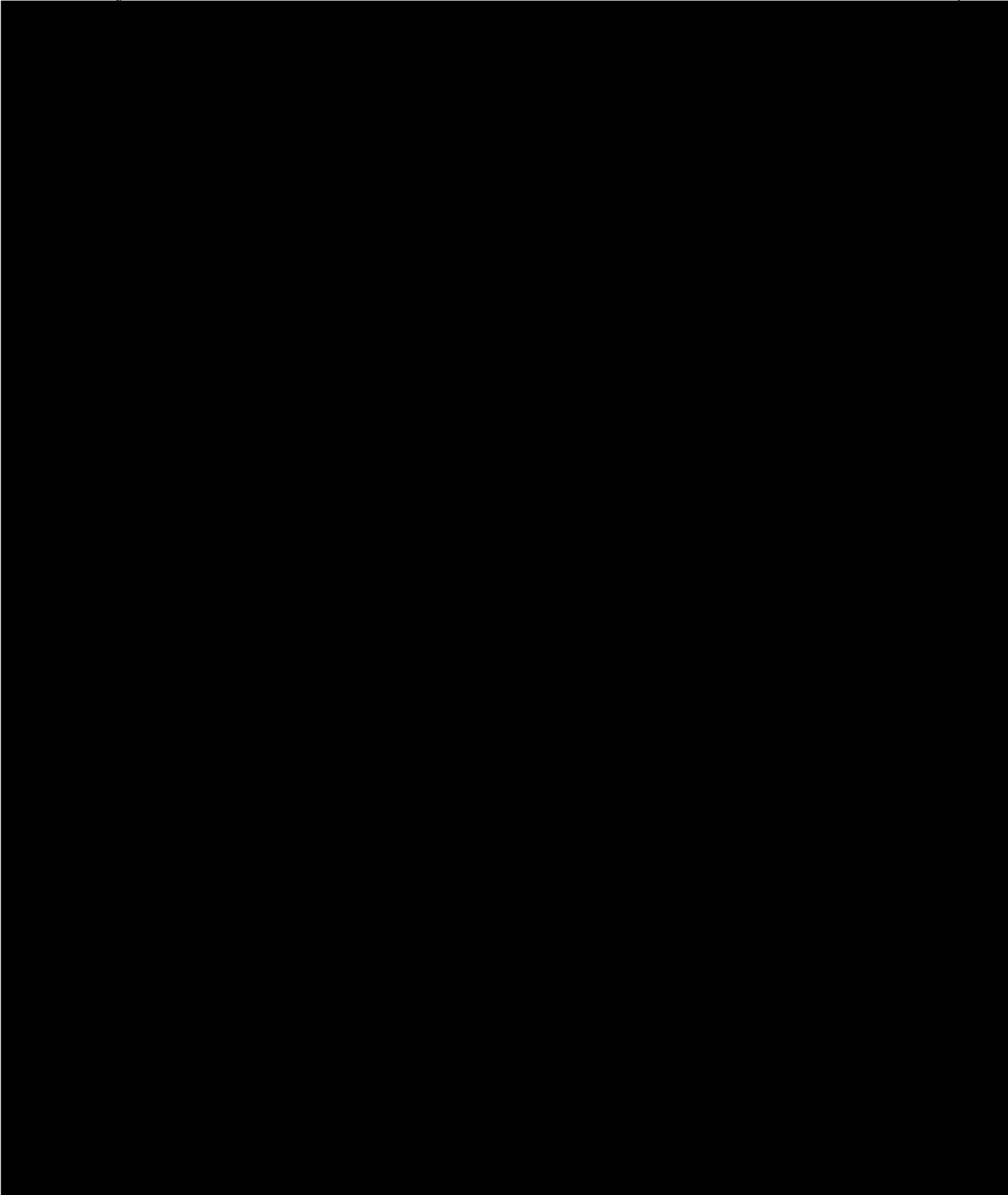


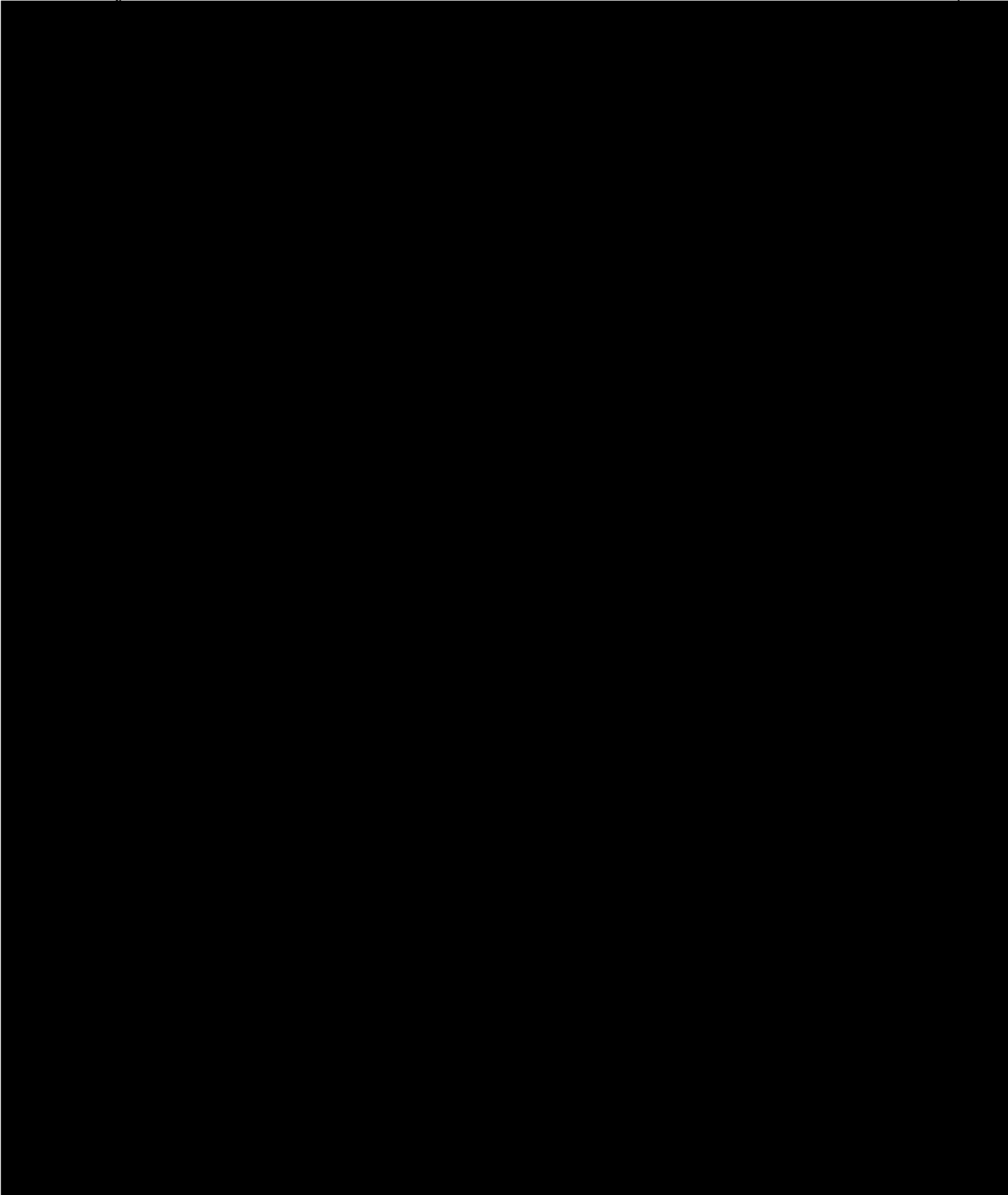


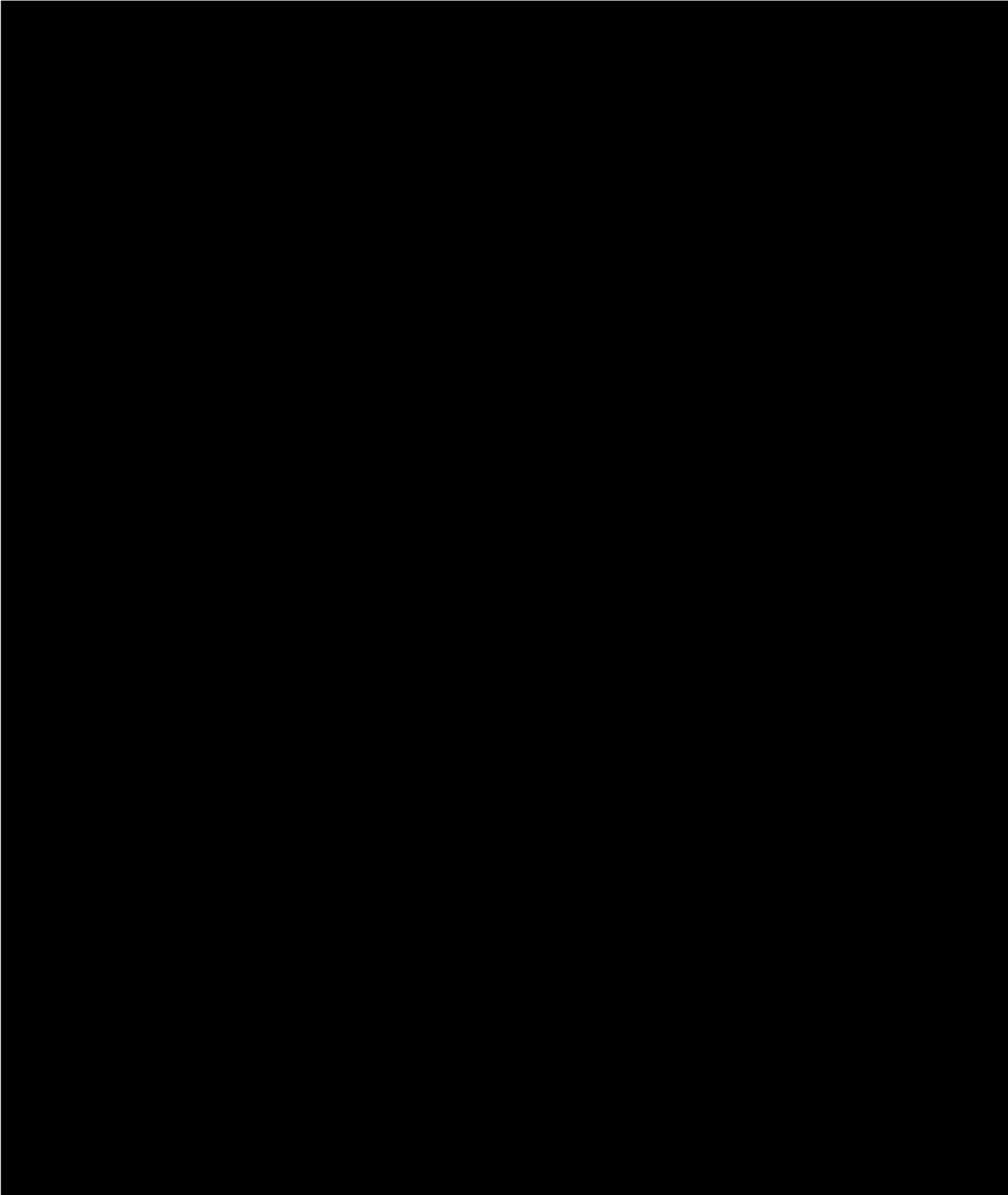




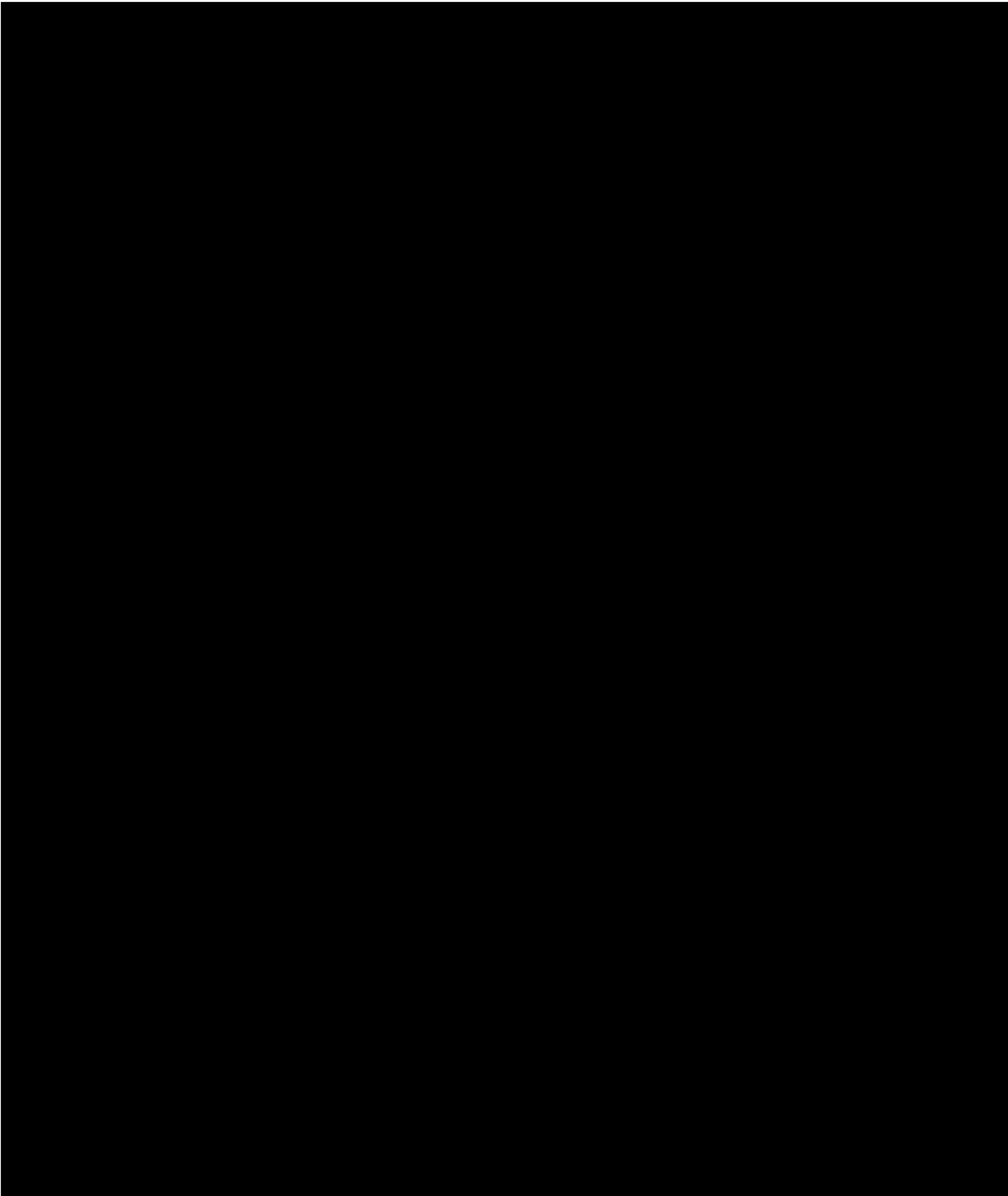


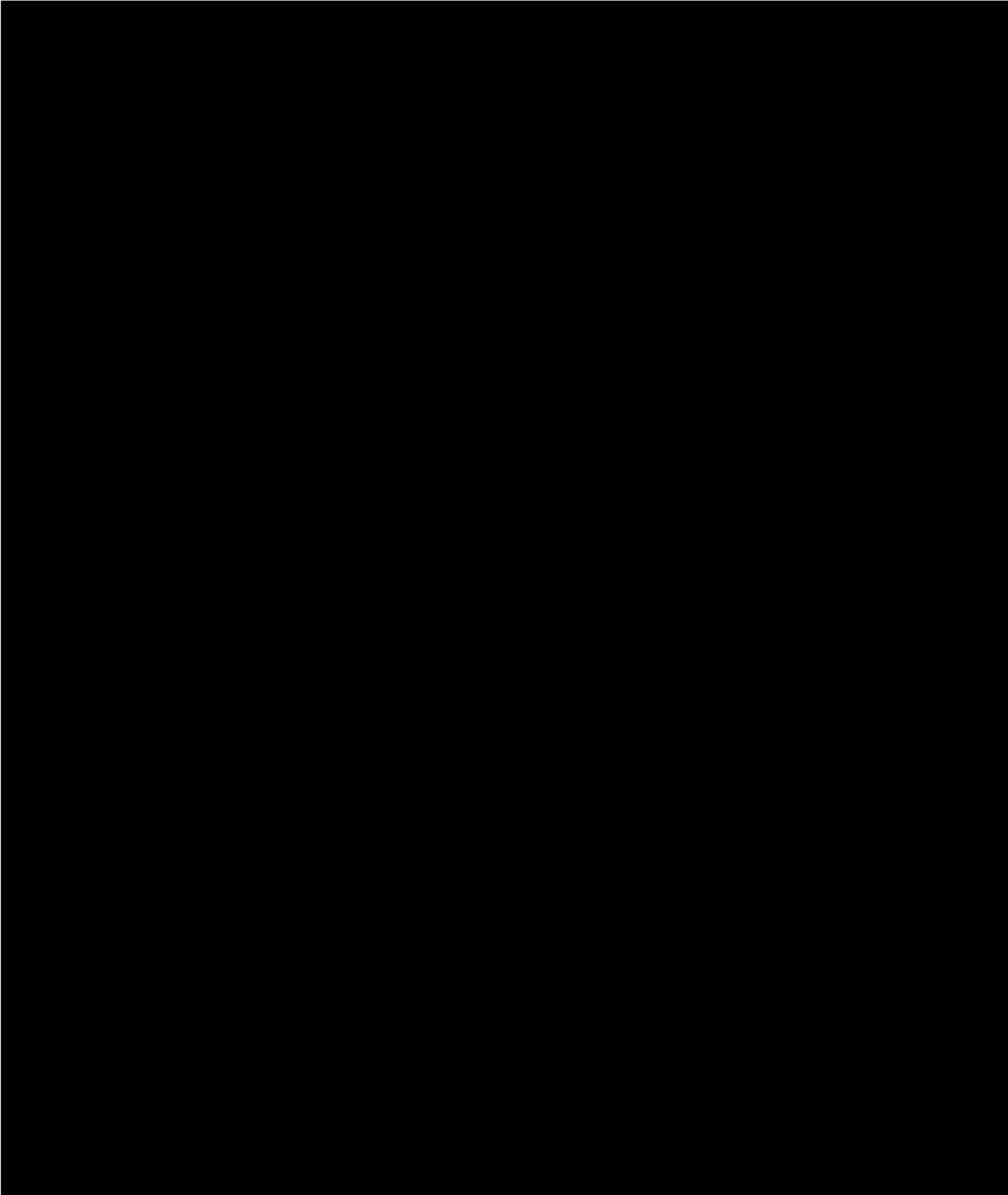


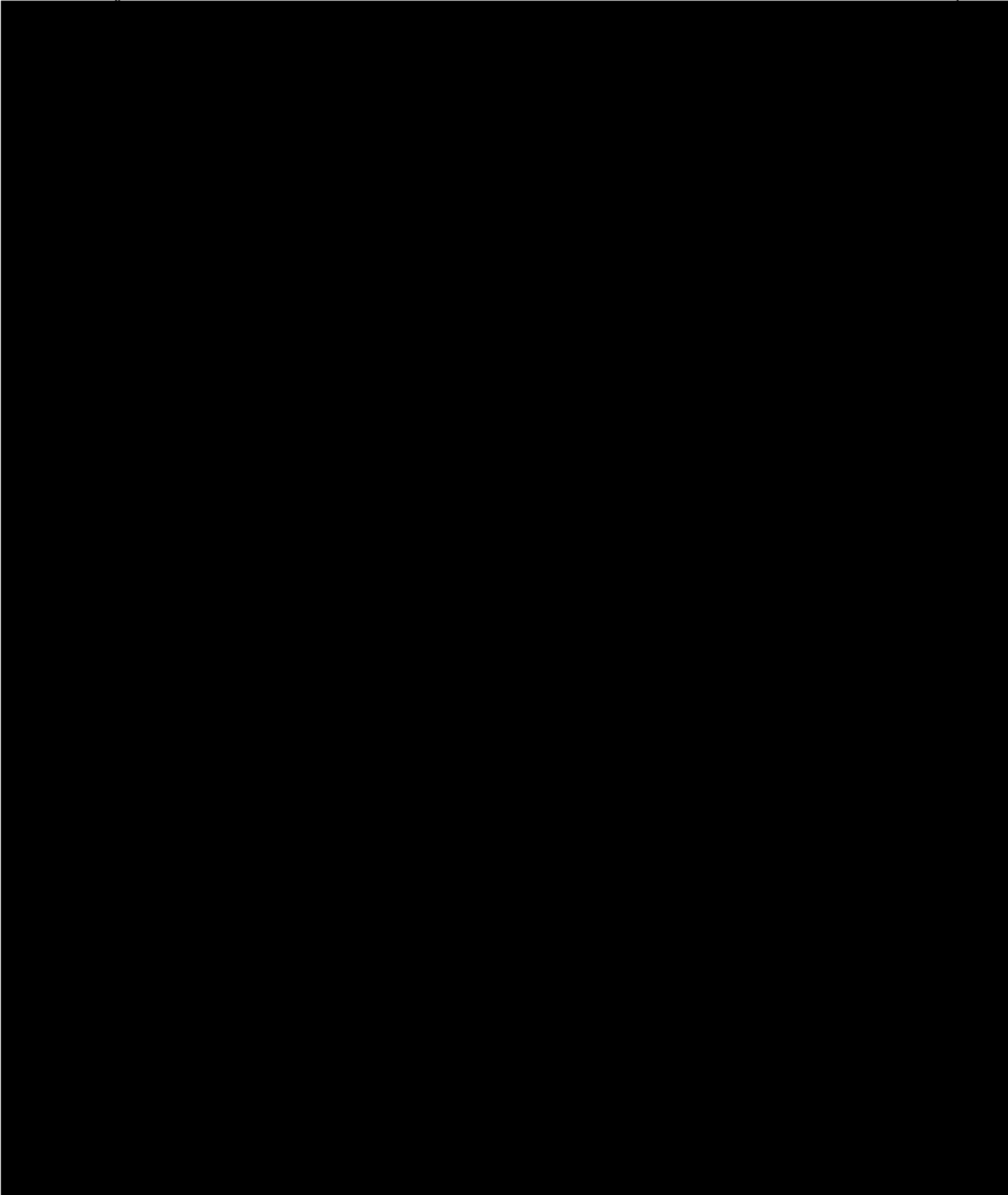


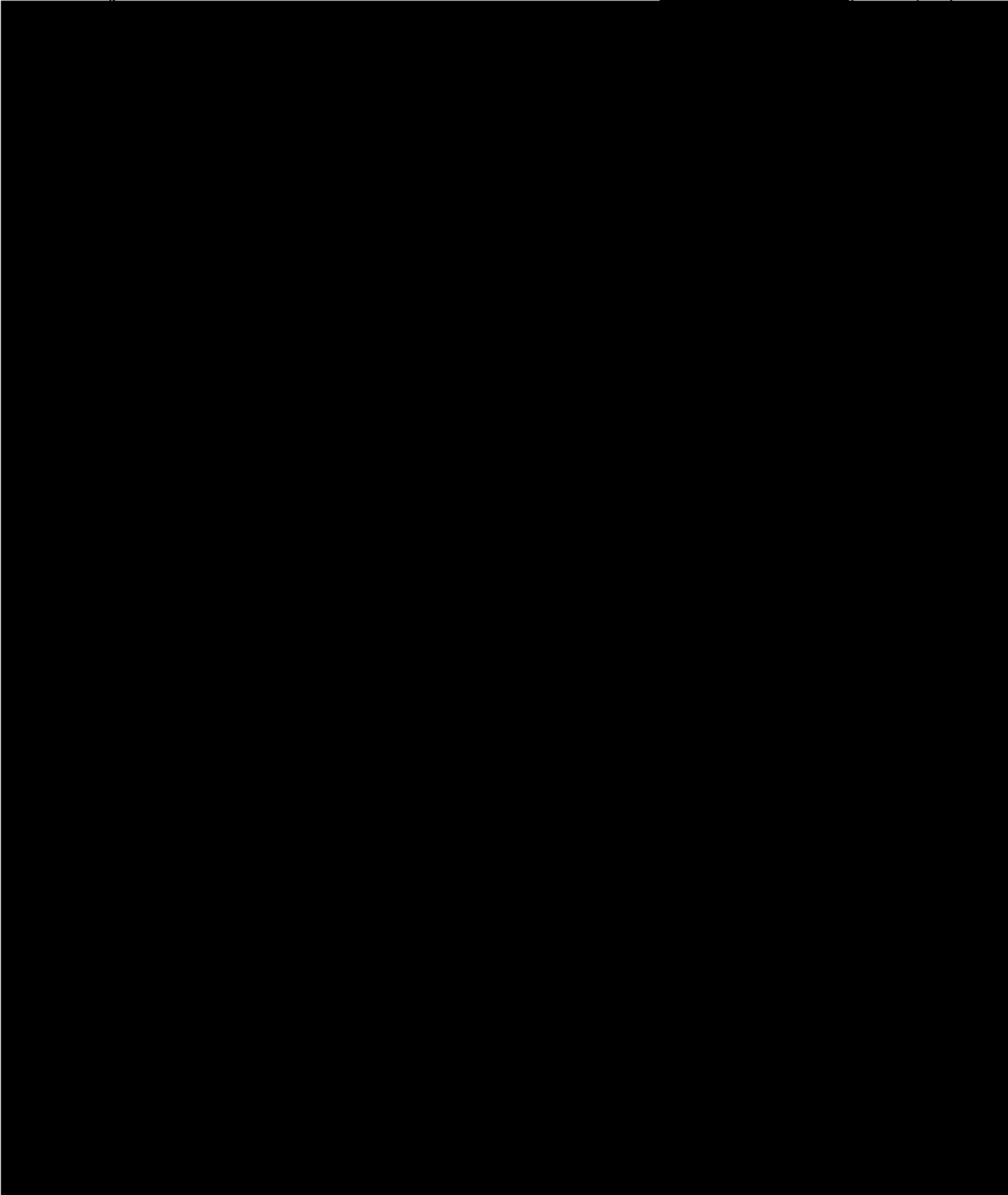


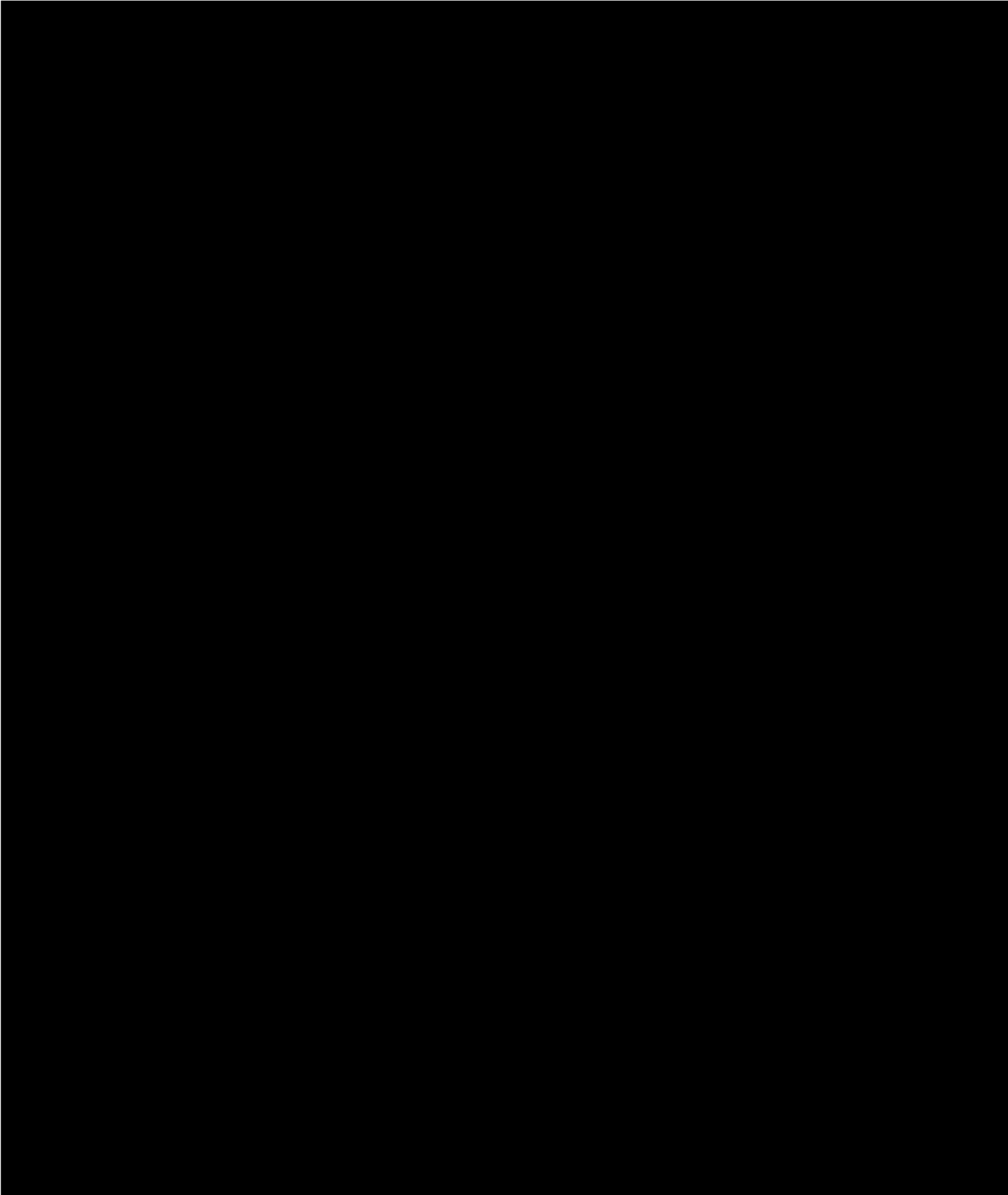


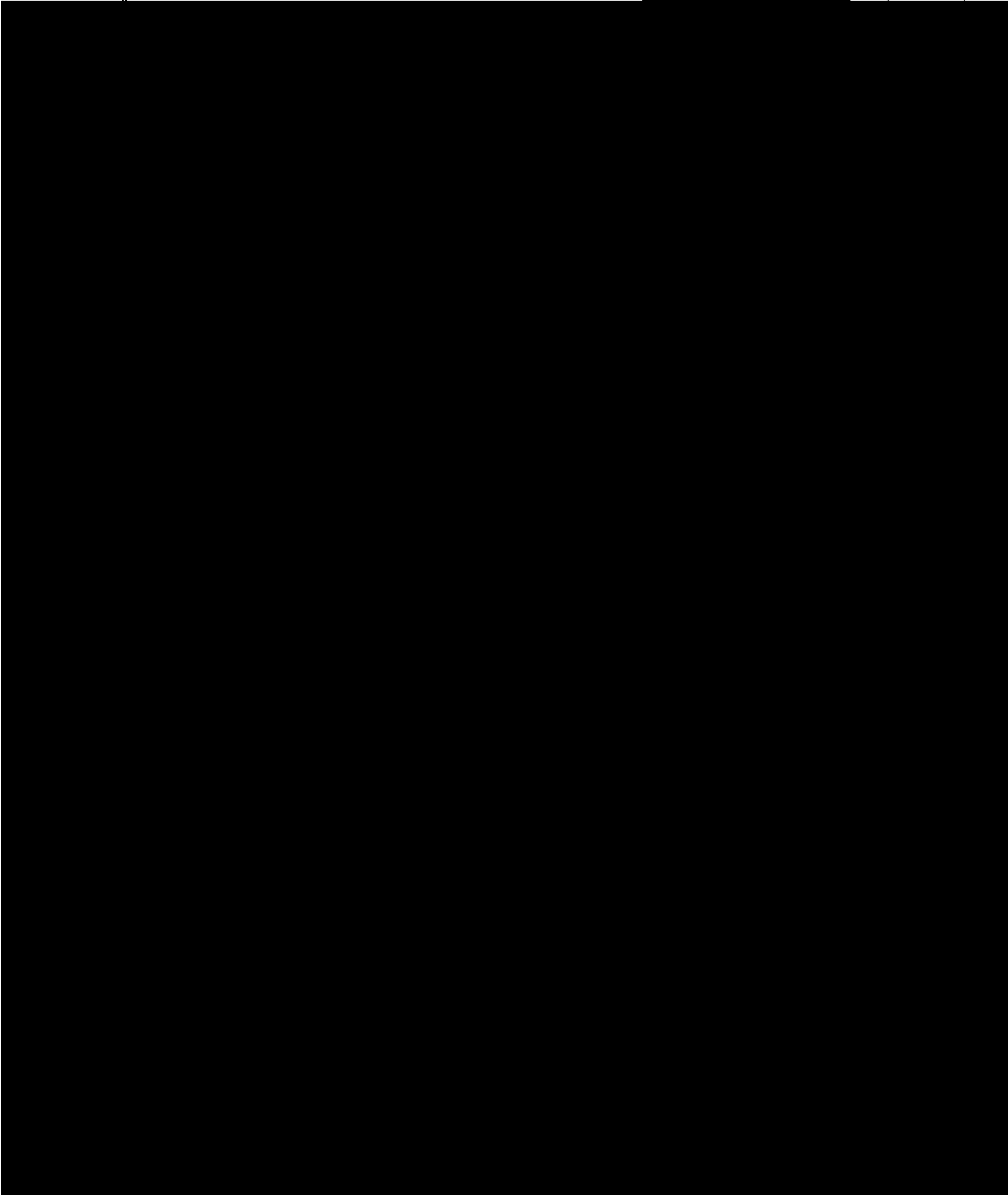


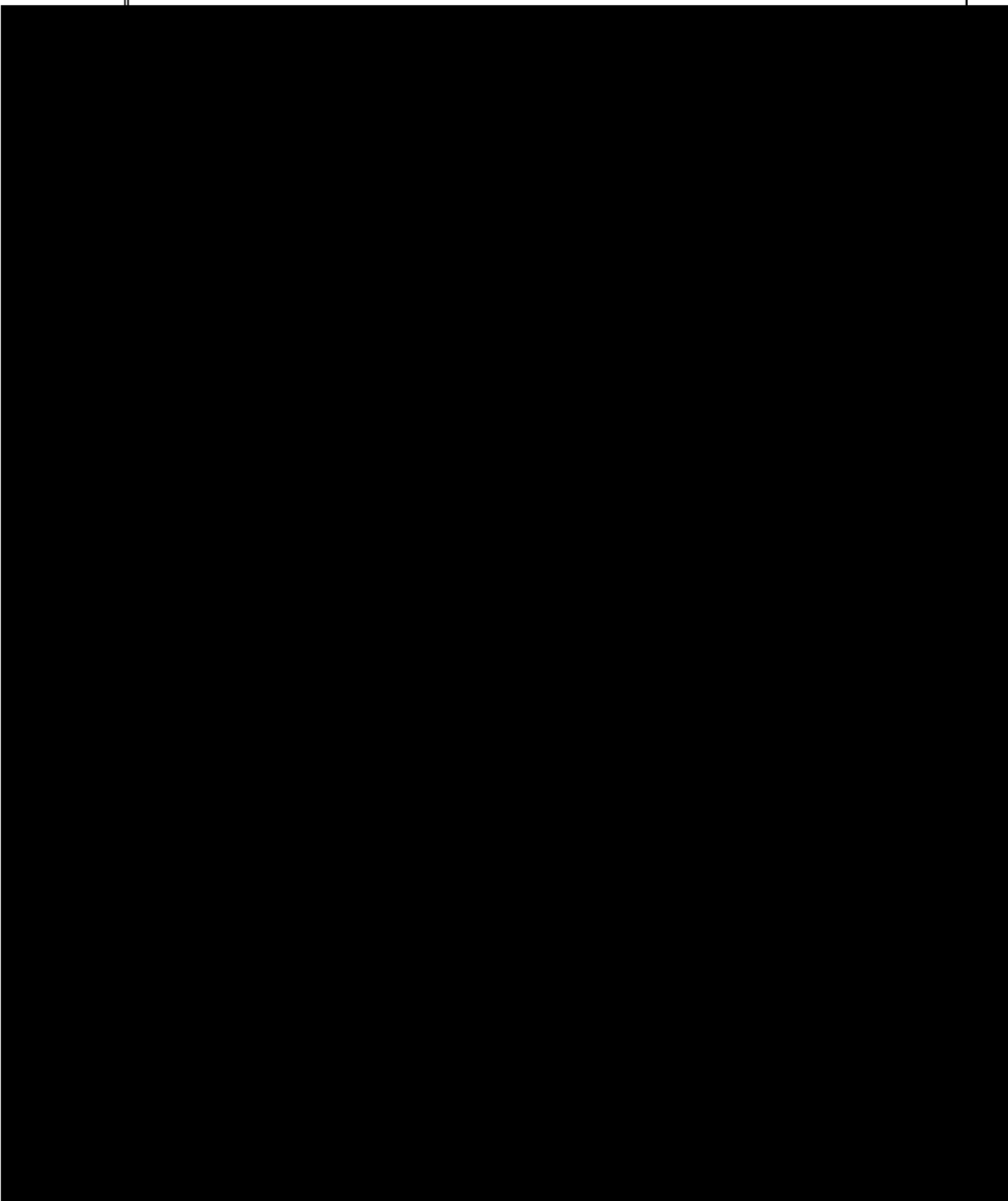












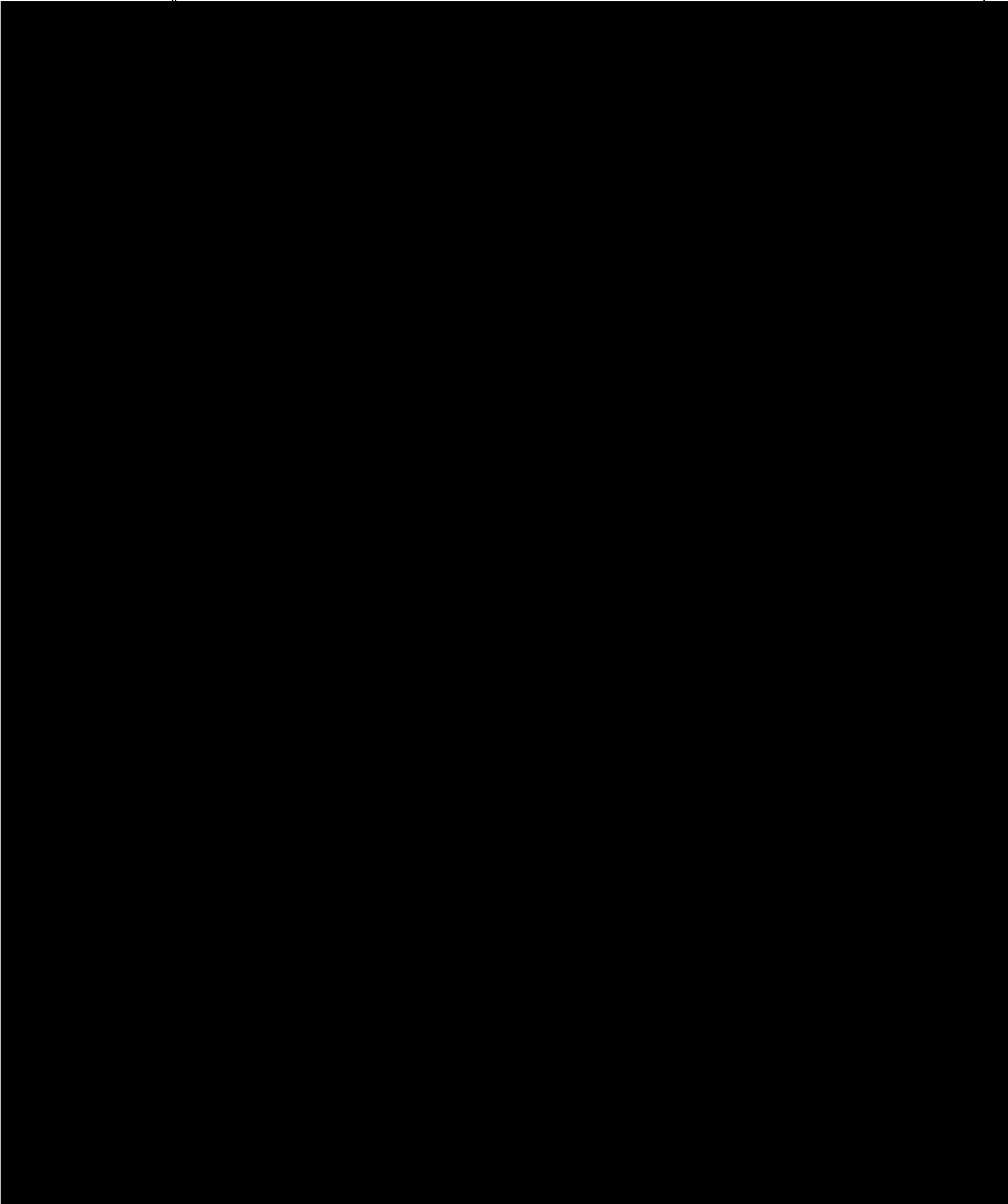
1 DENNIS K. BURKE  
United States Attorney  
2 District of Arizona

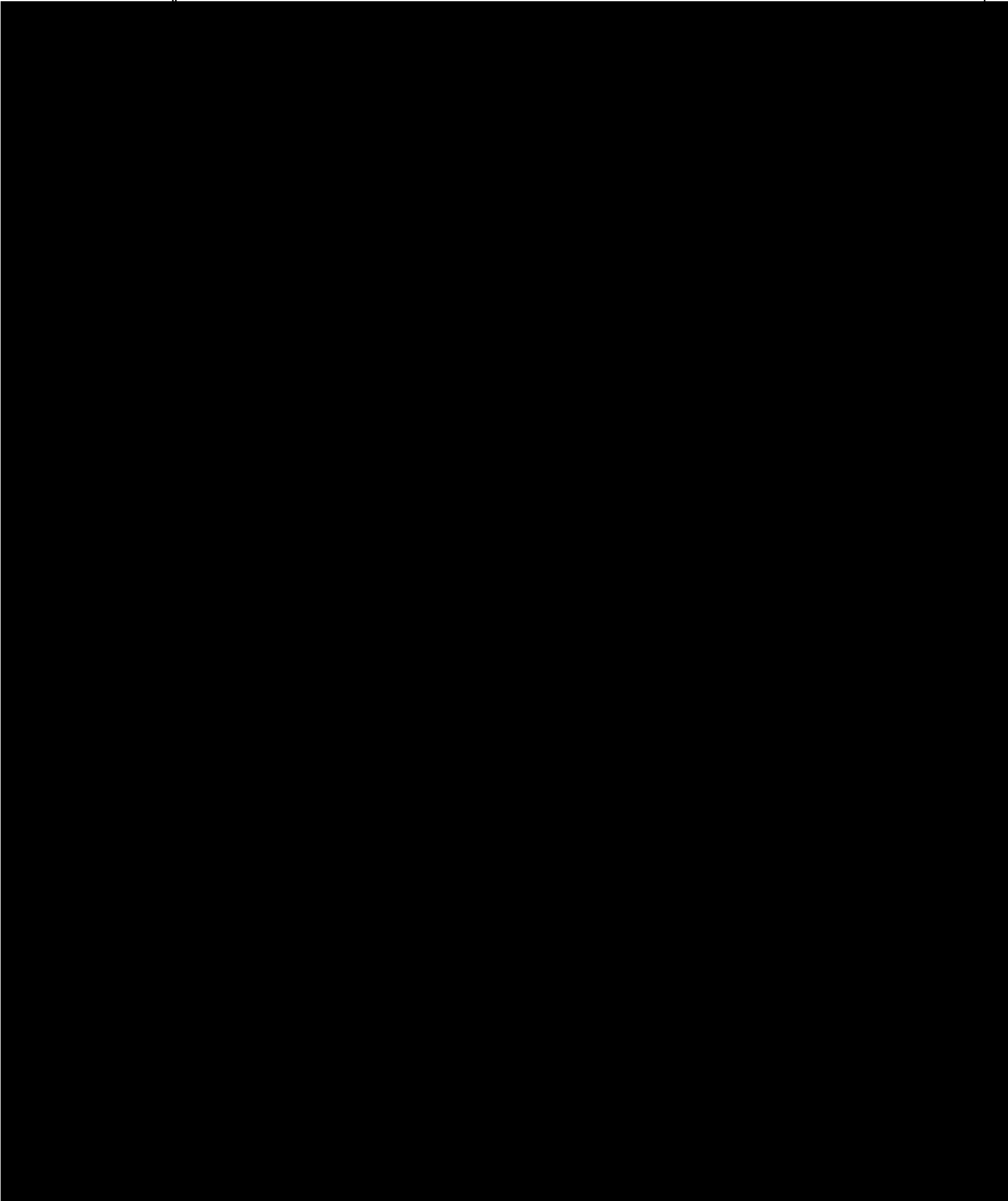
3 EMORY T. HURLEY  
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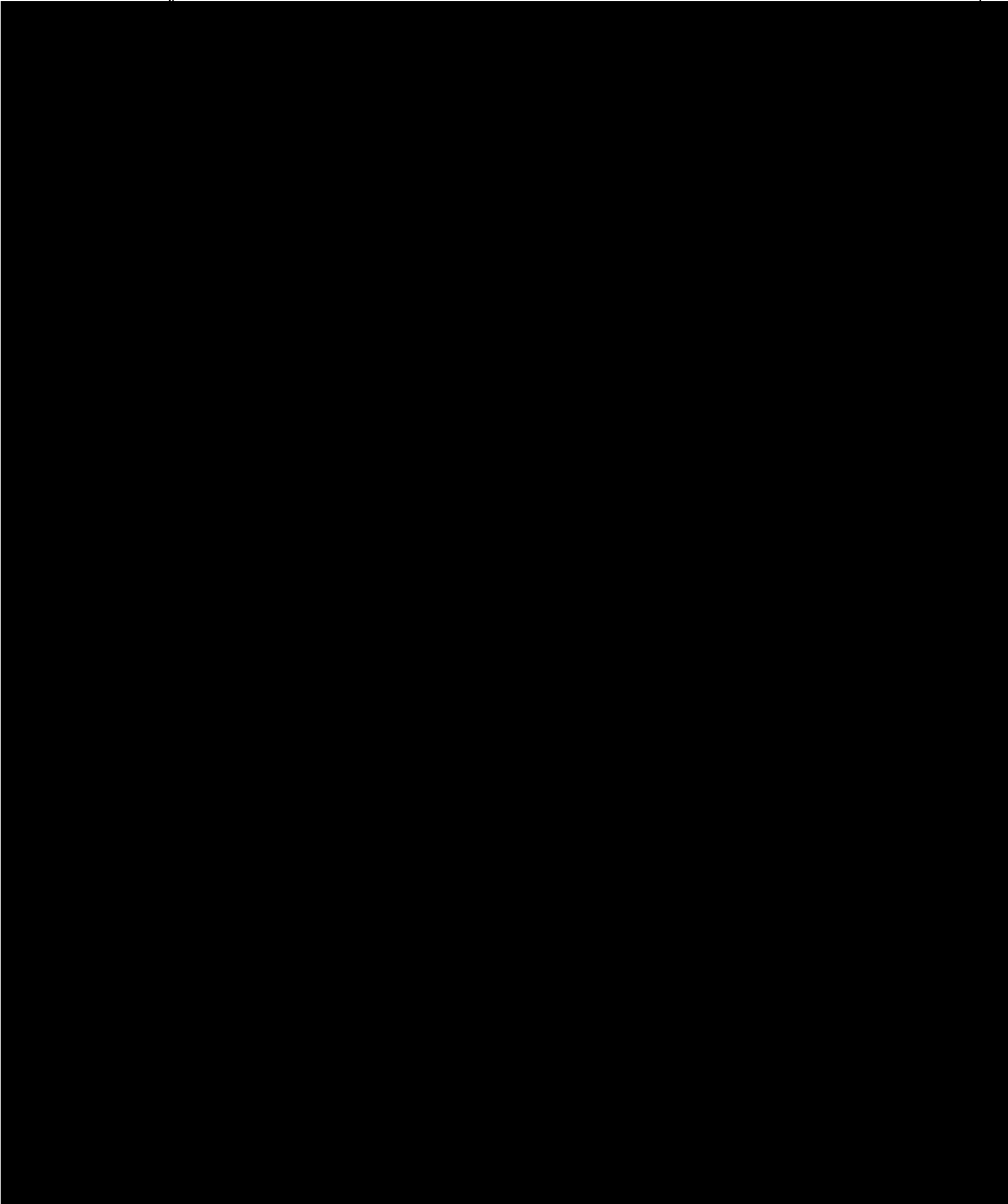
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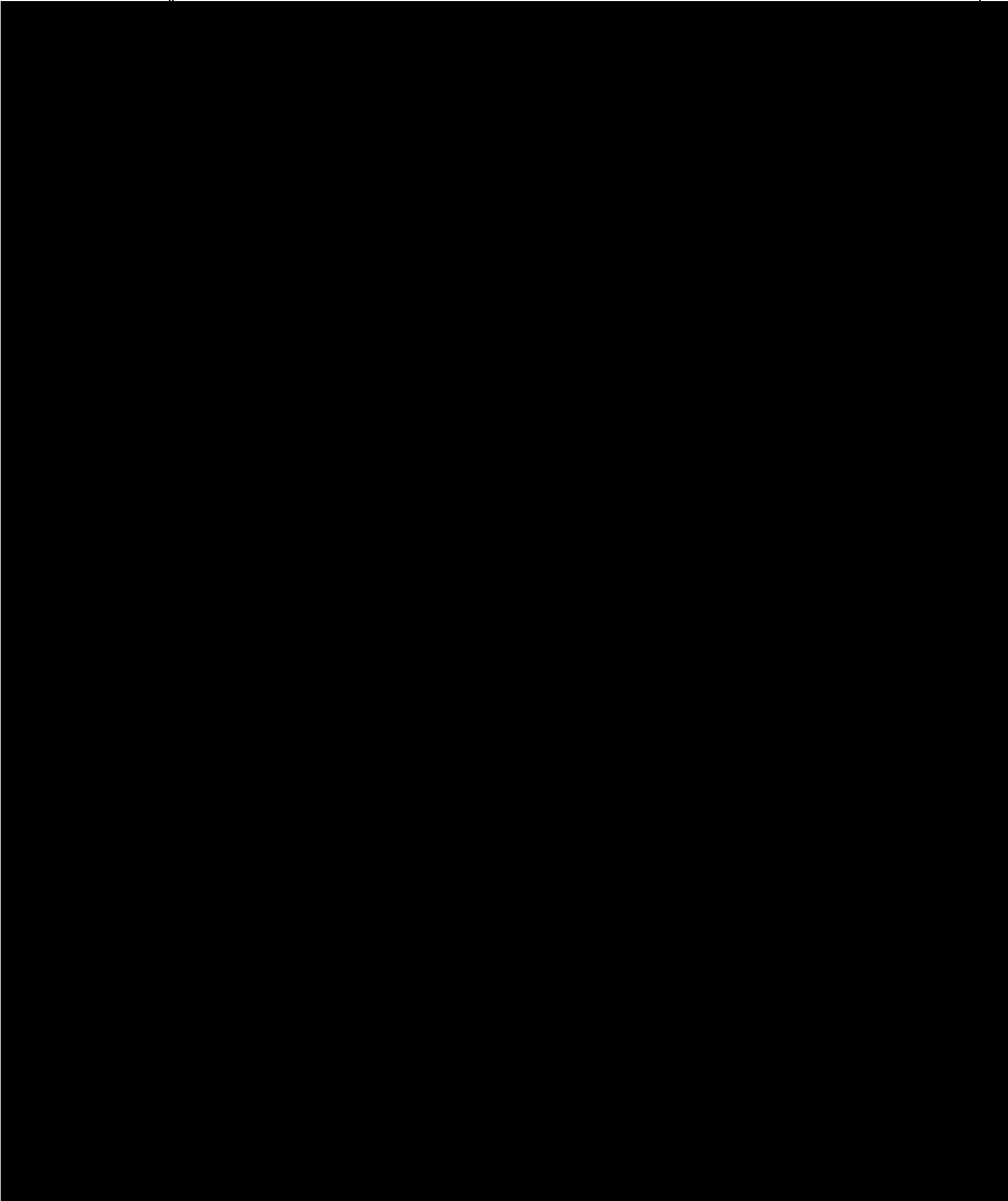
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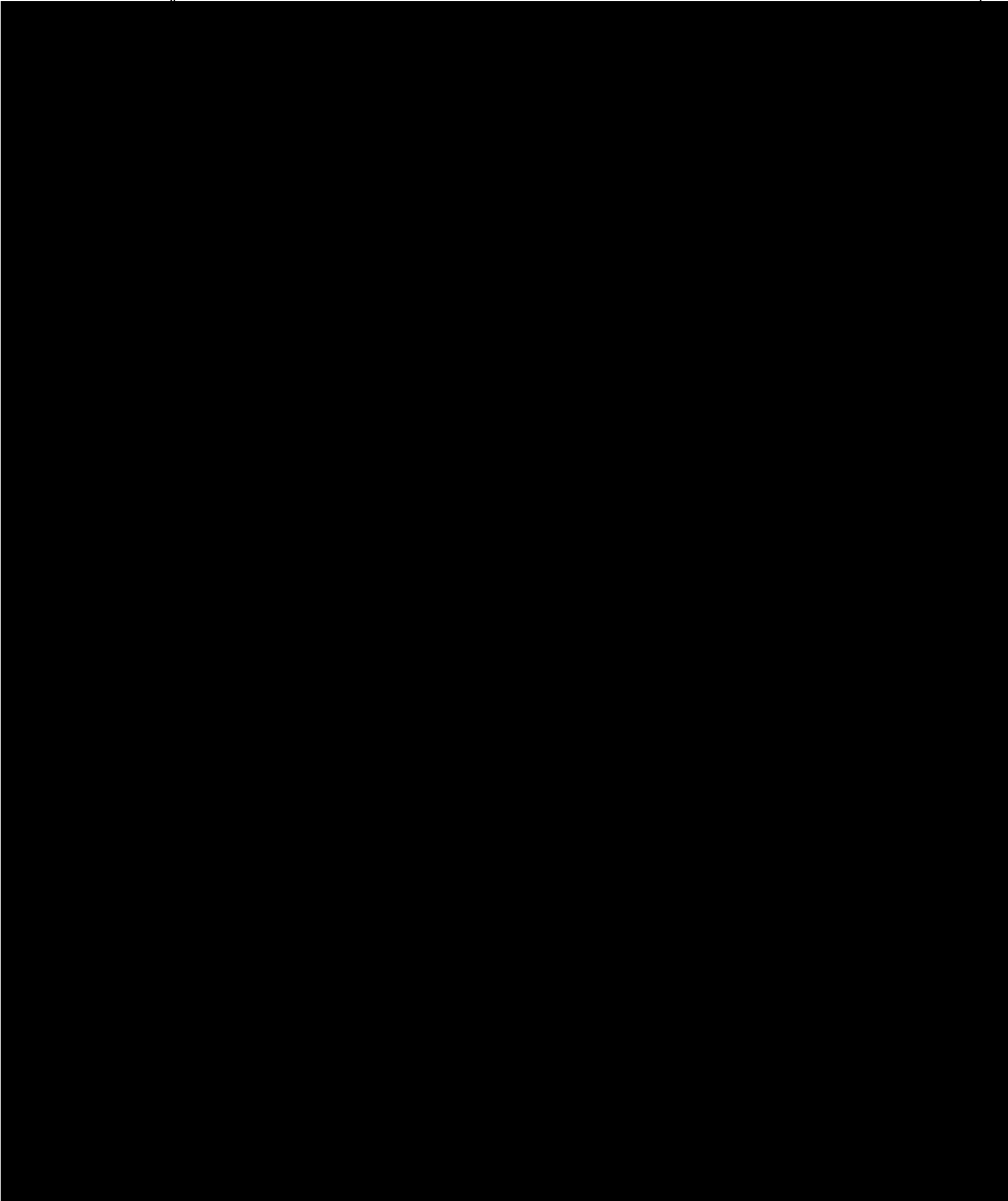


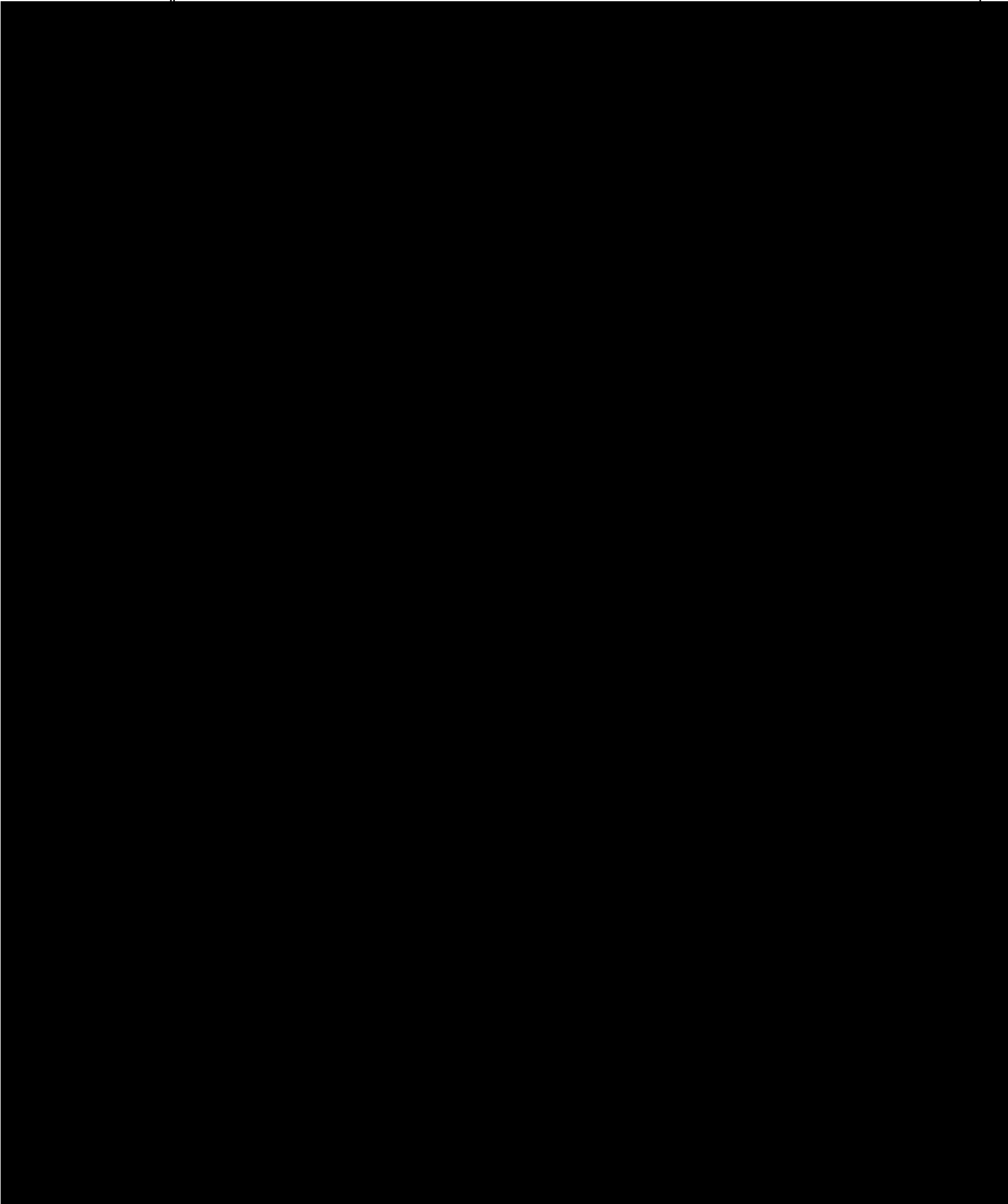


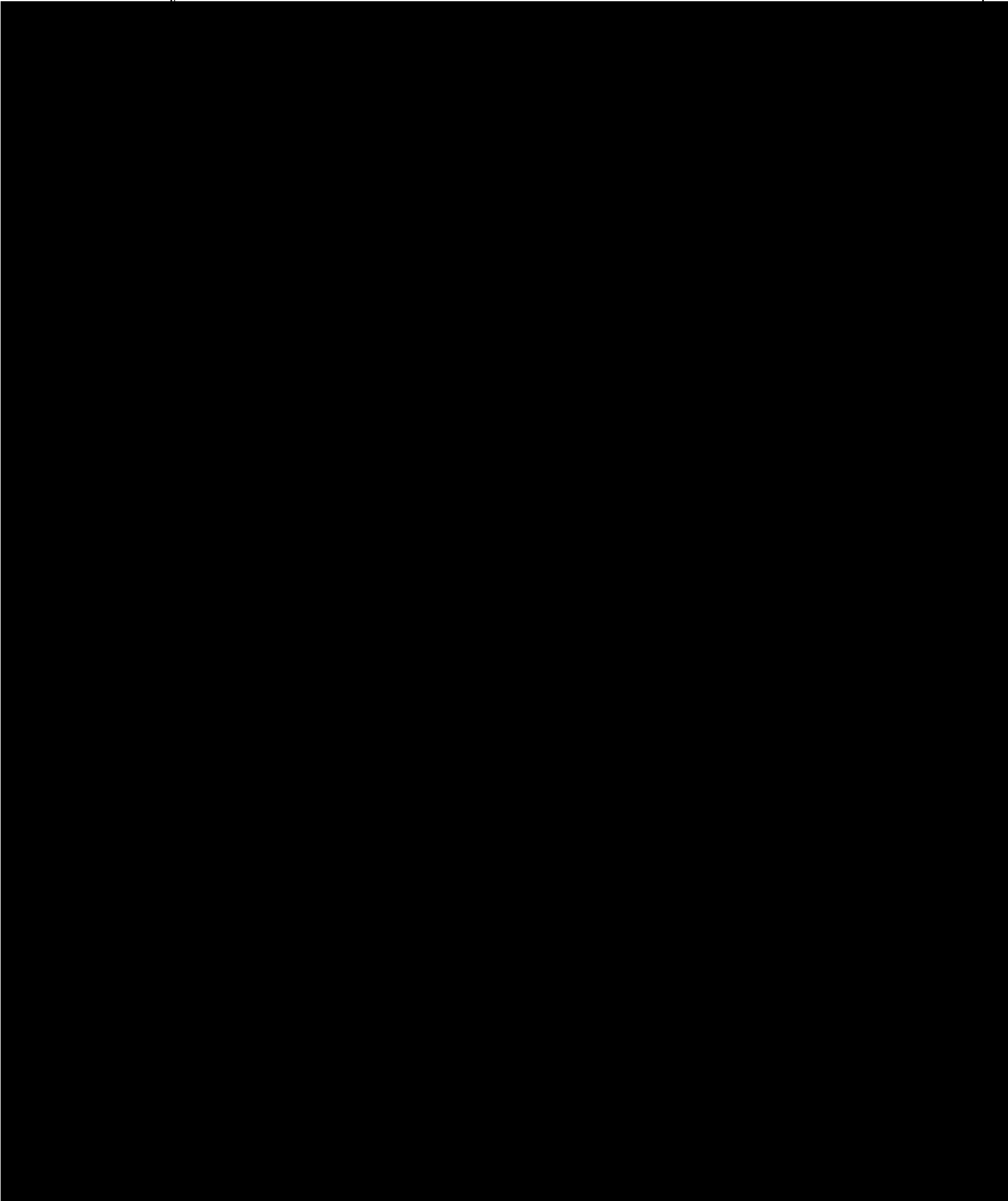


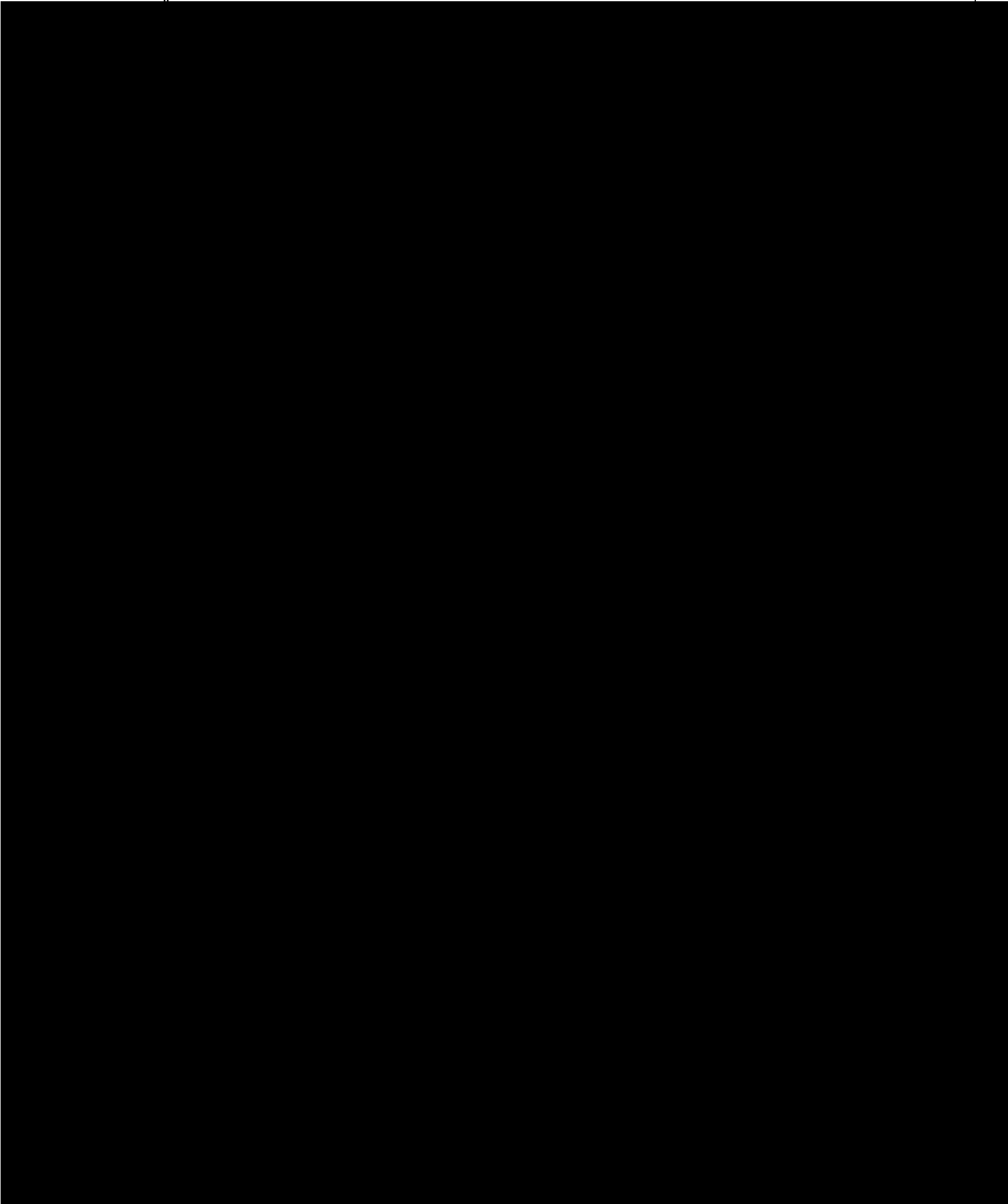




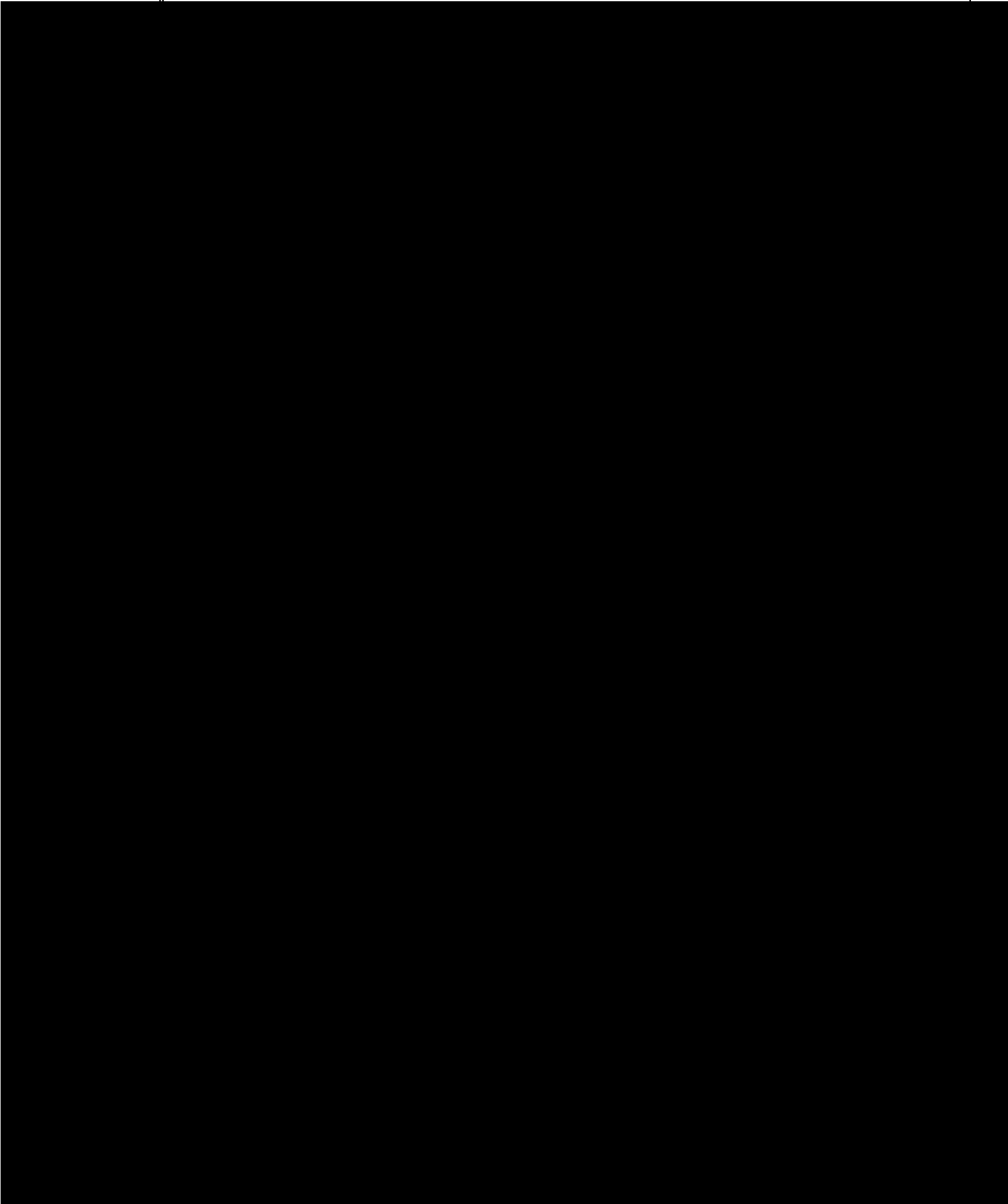


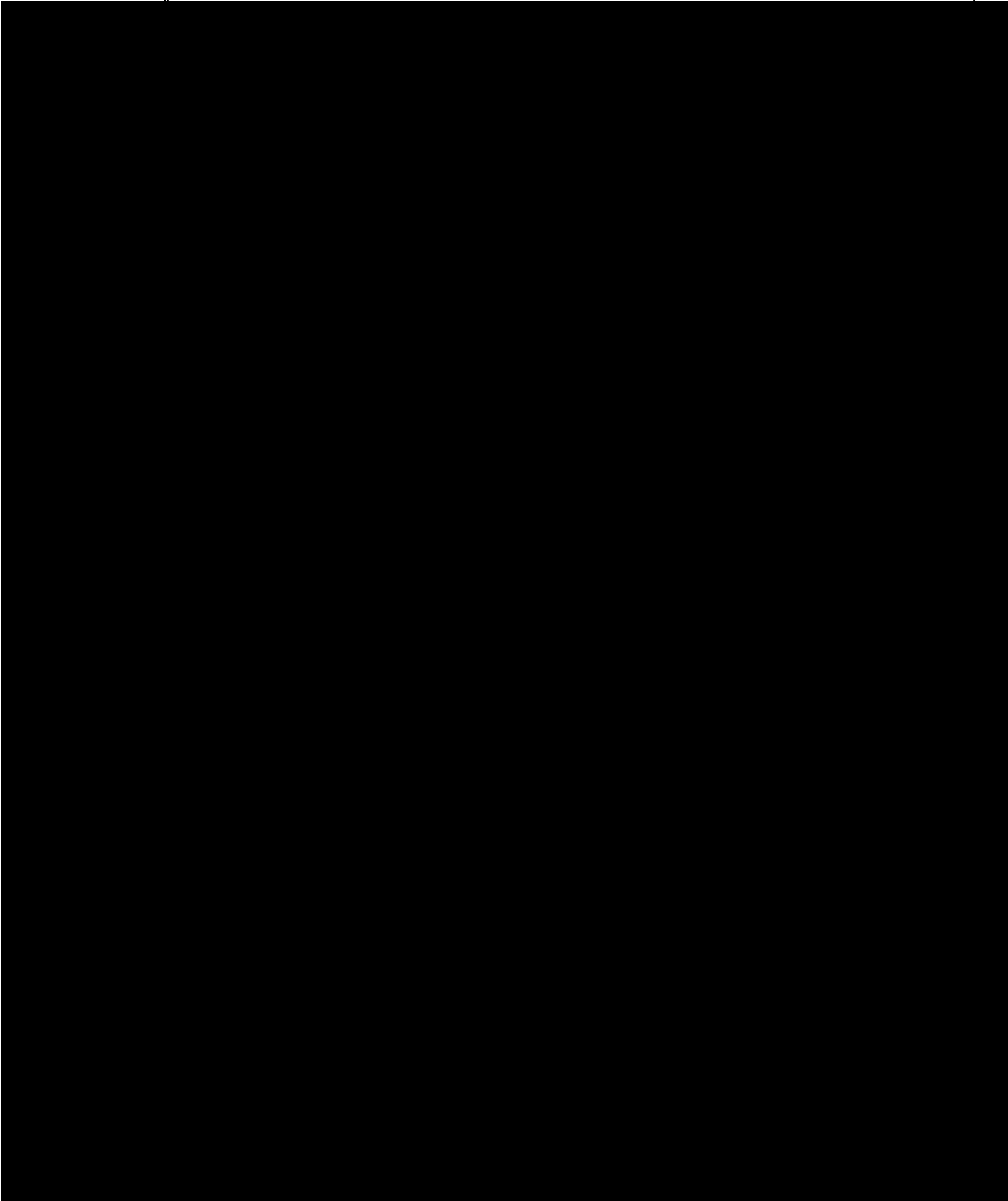


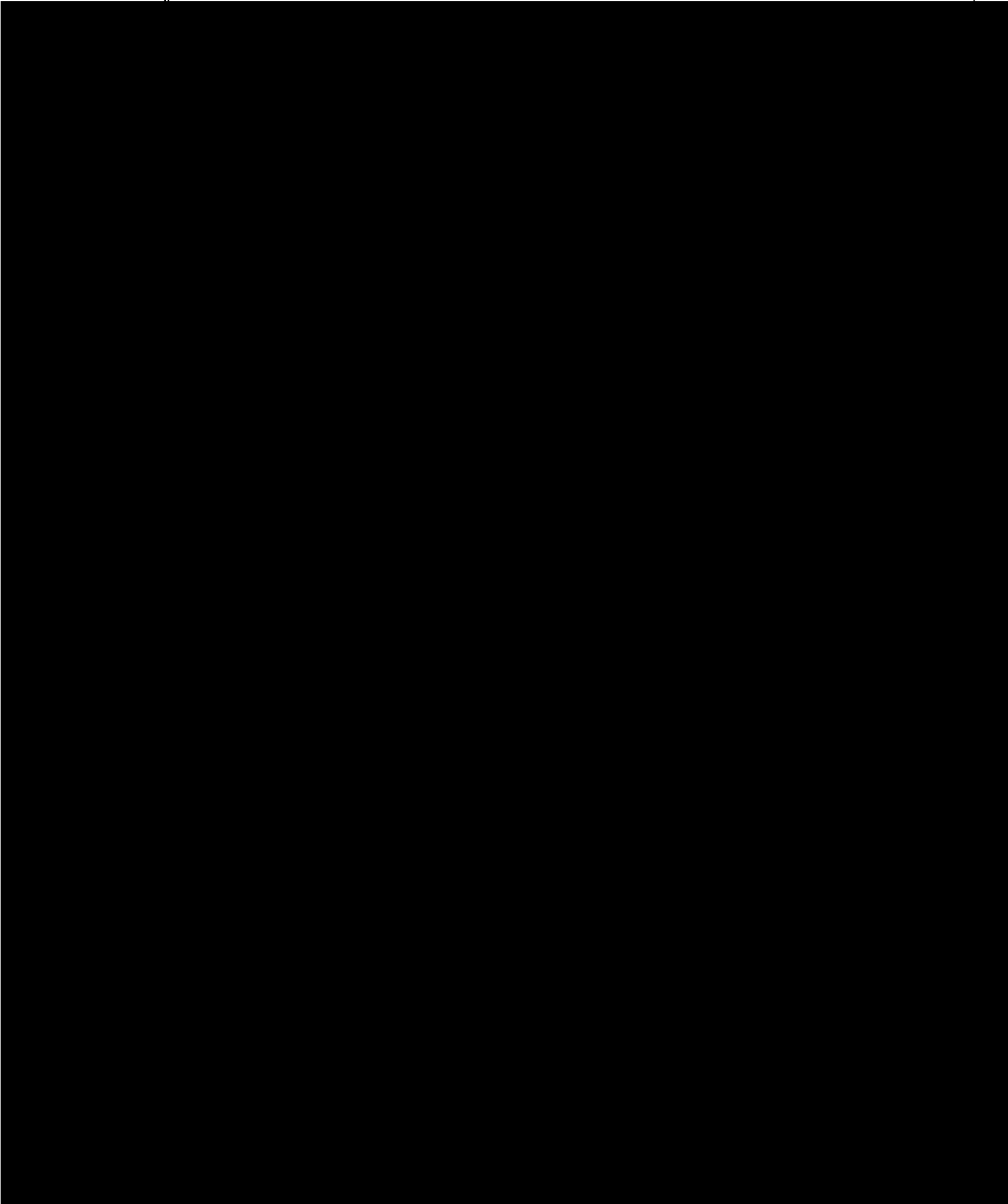


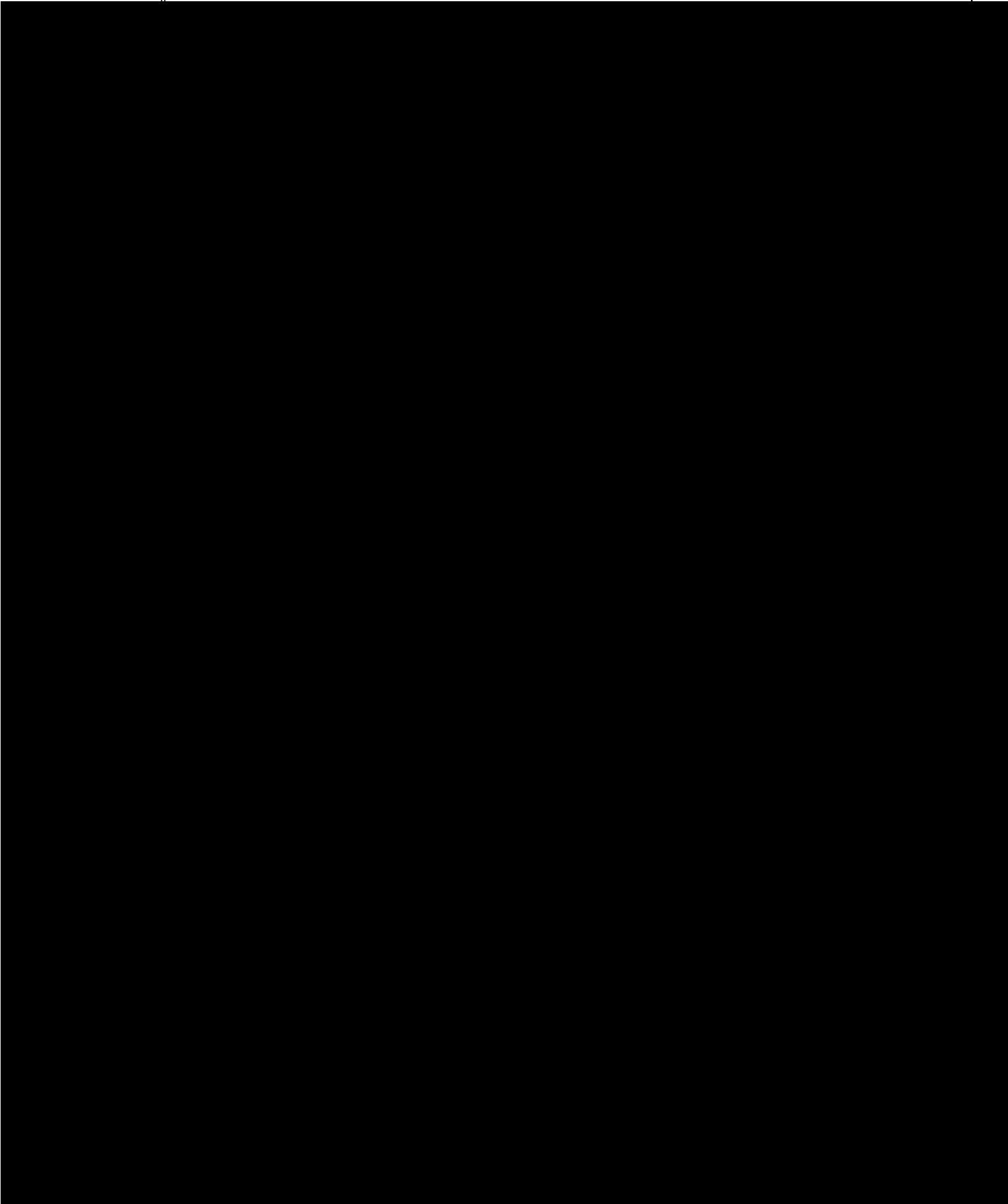


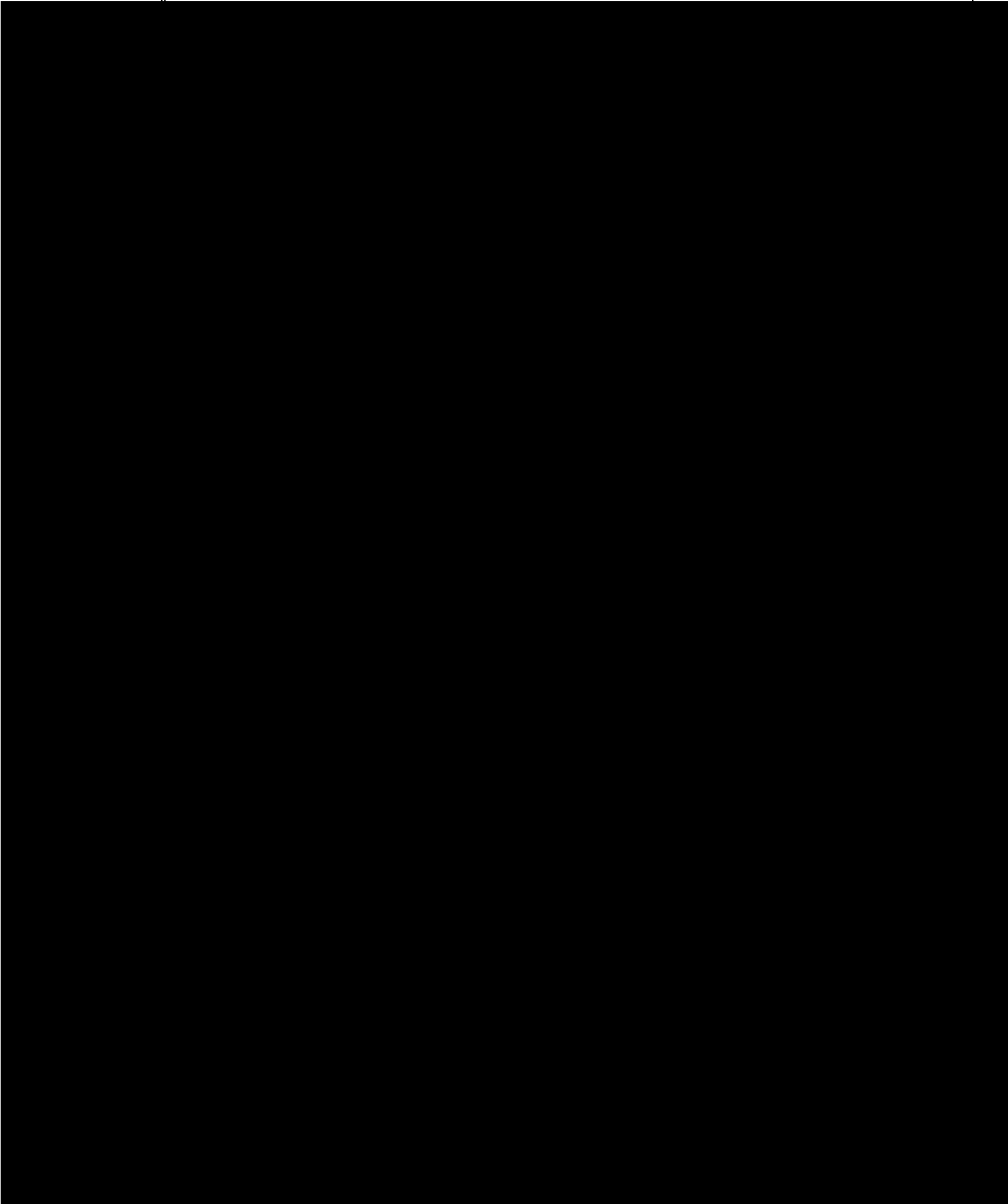


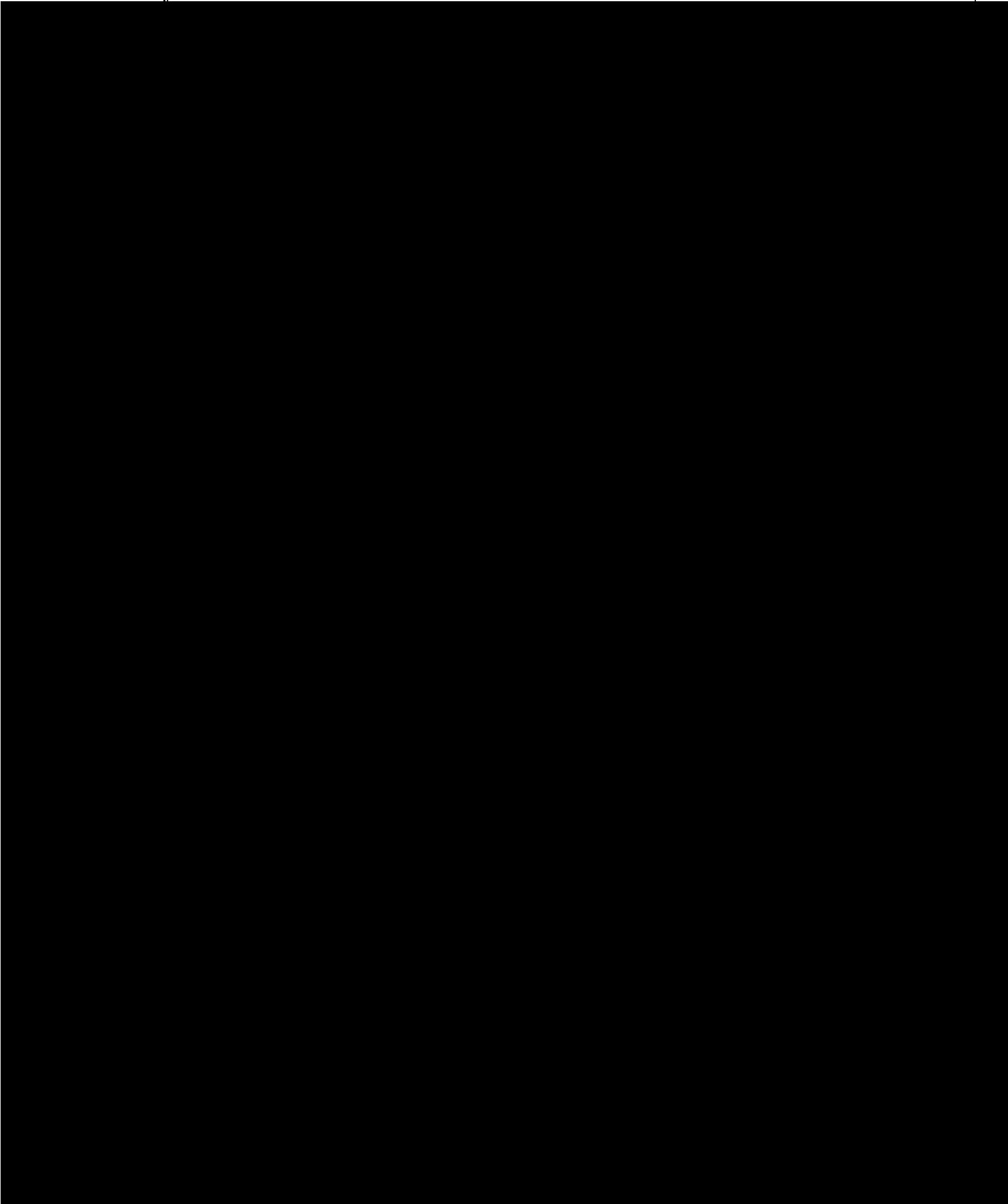


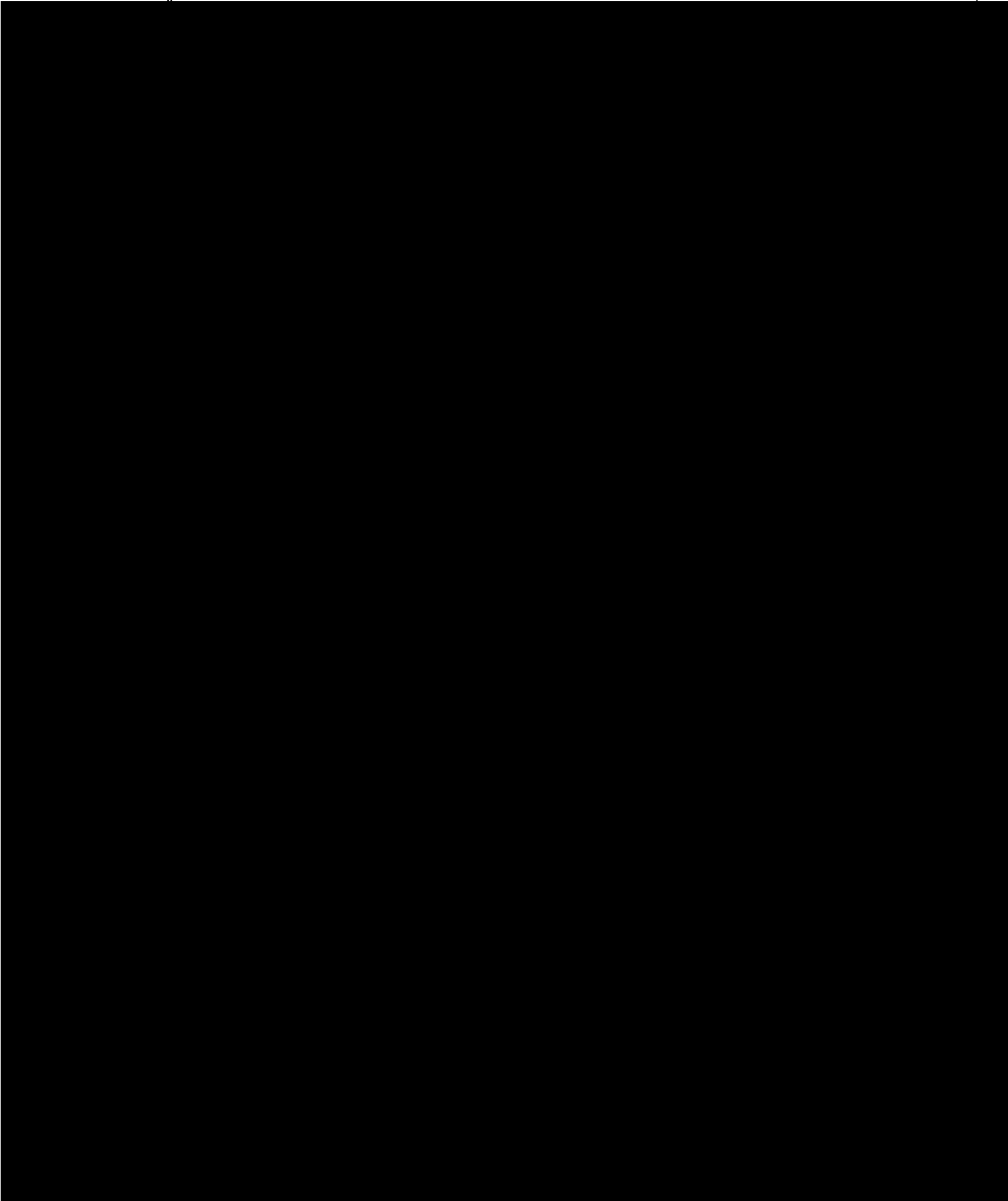


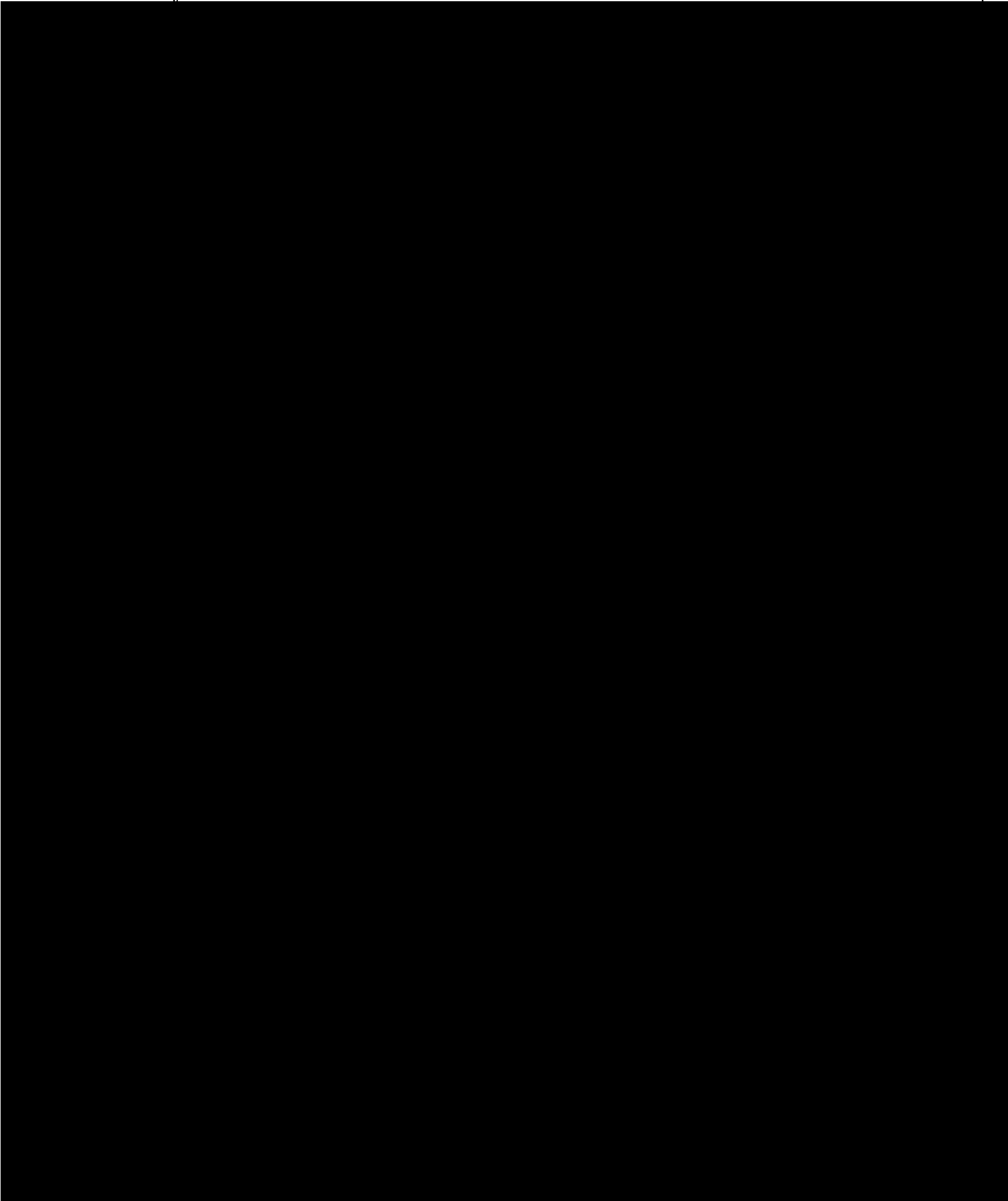




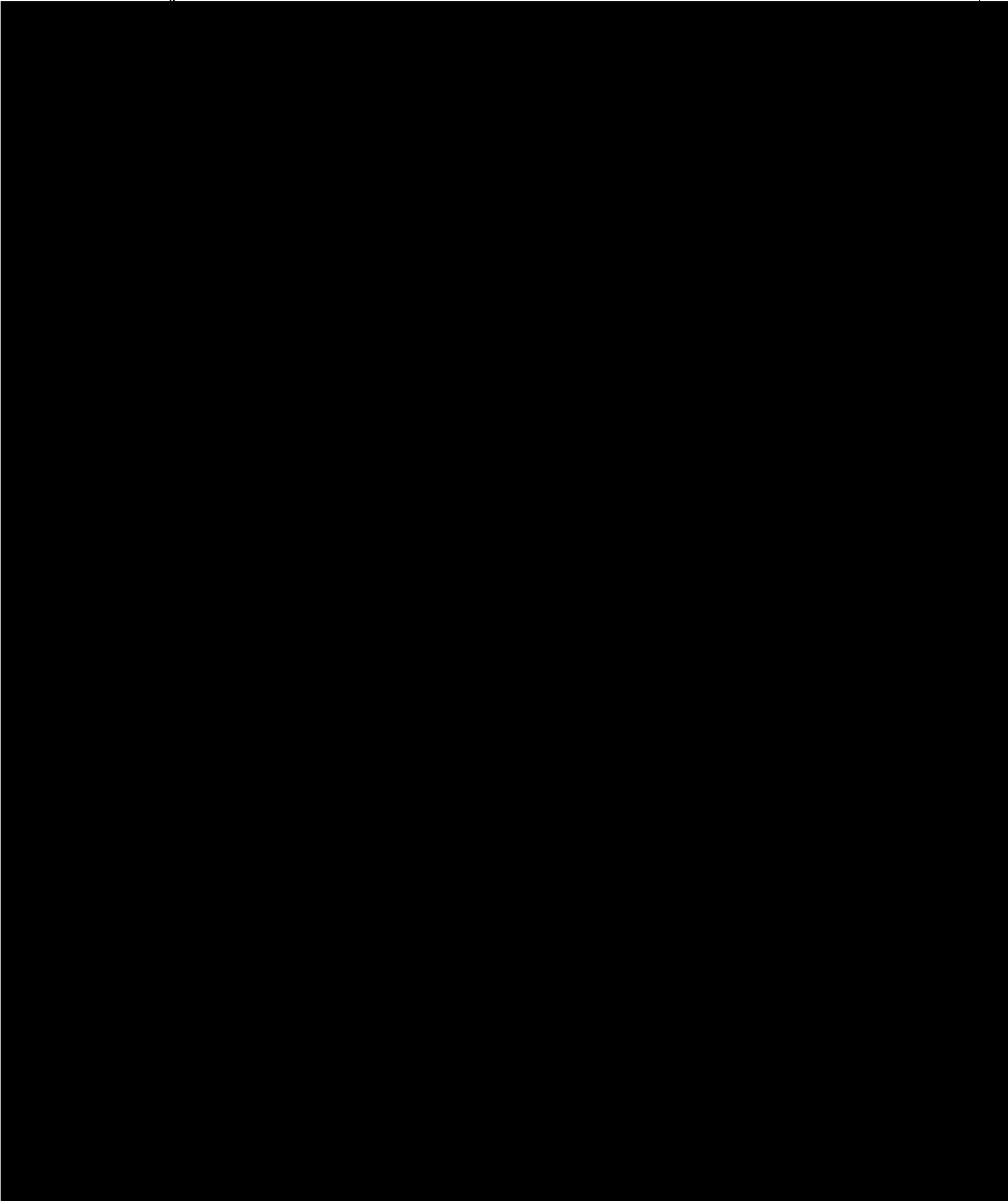


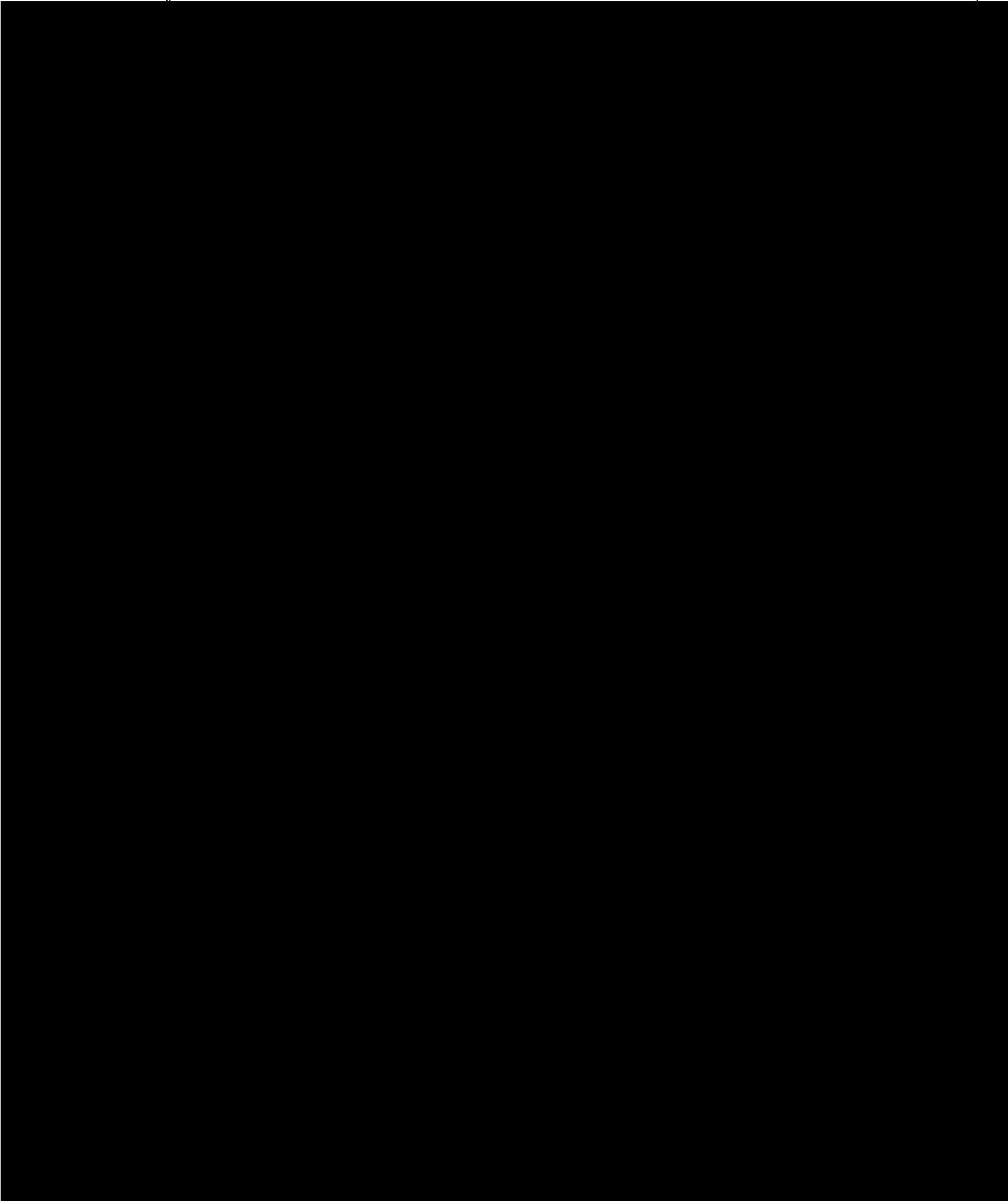


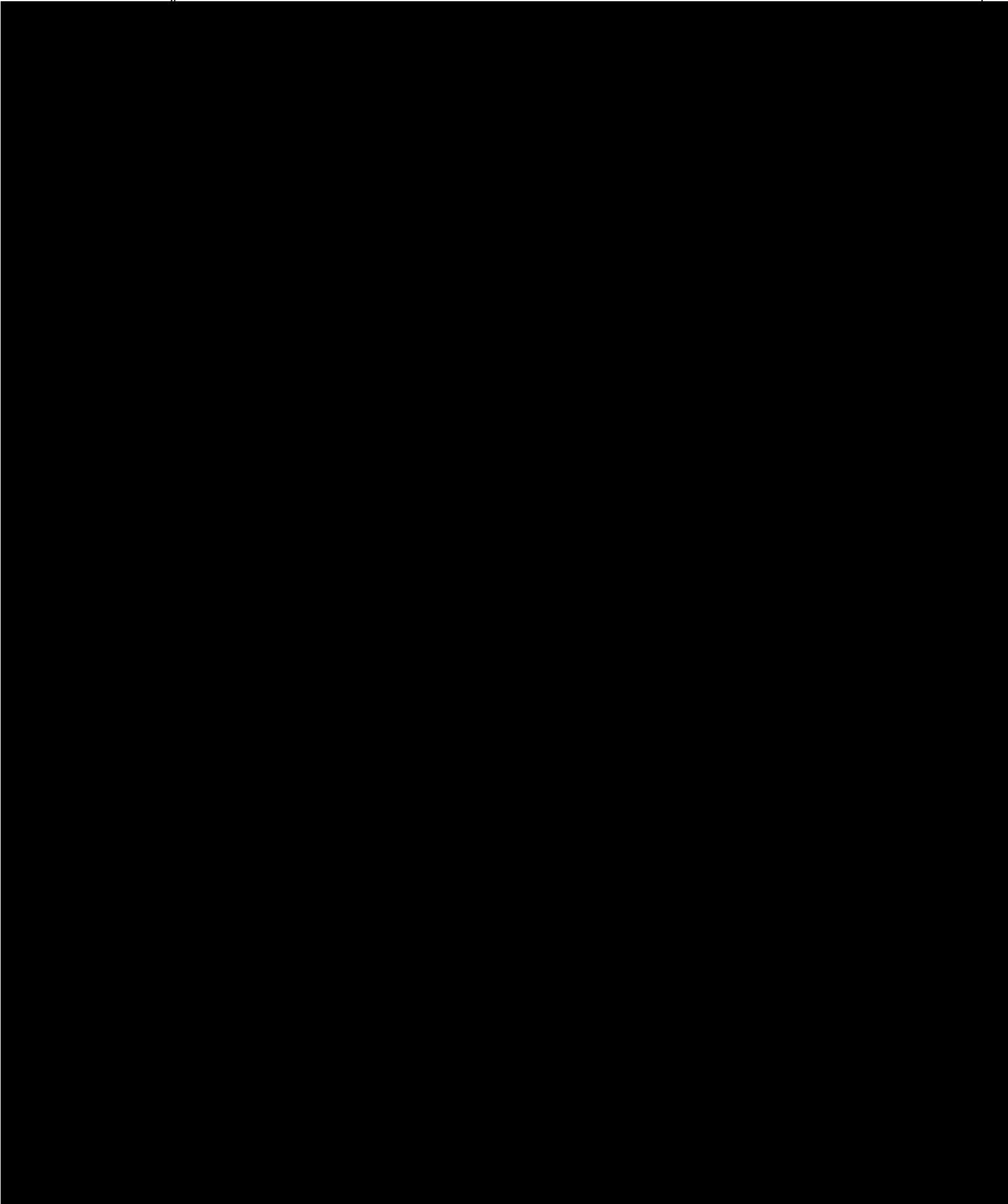


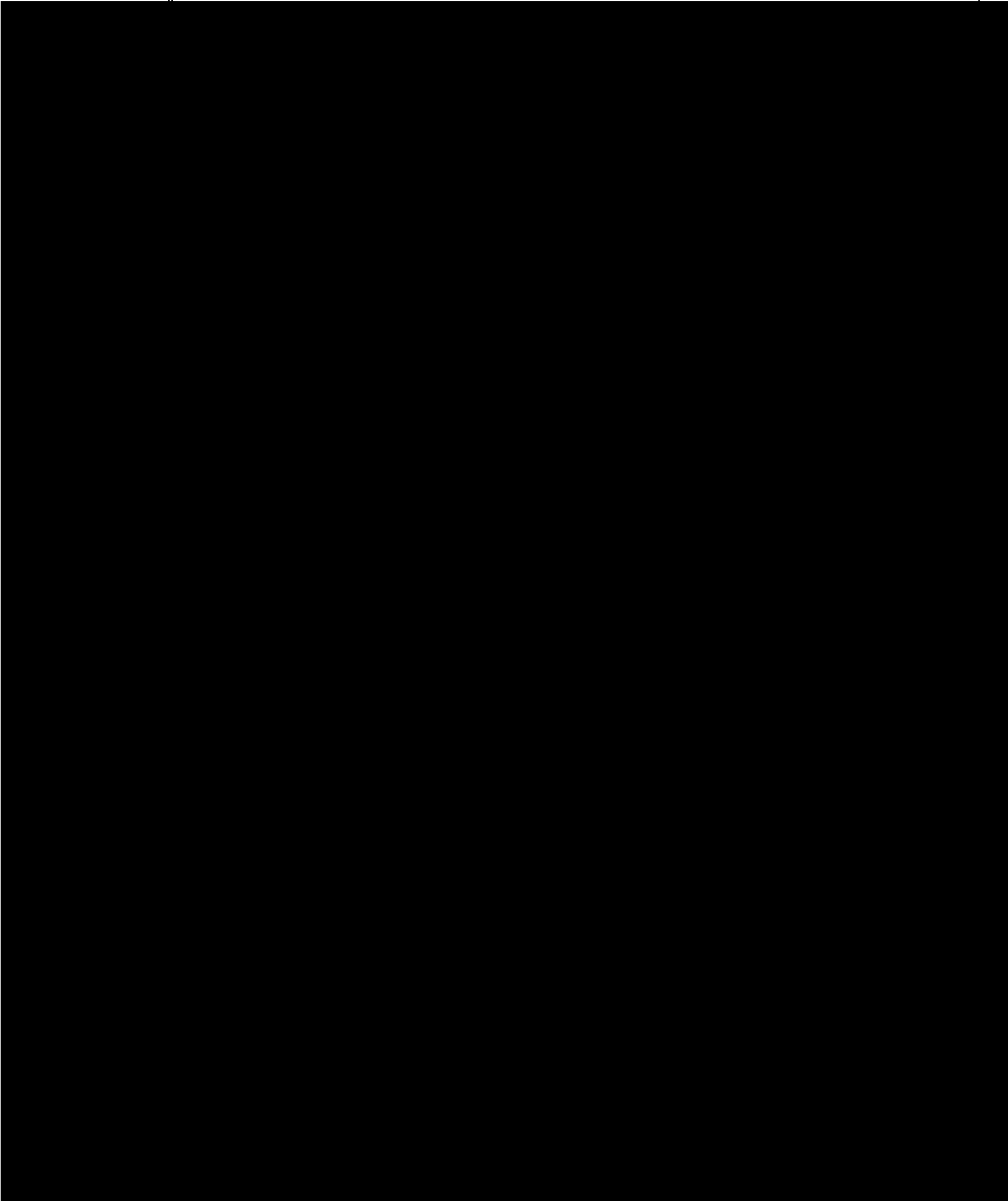


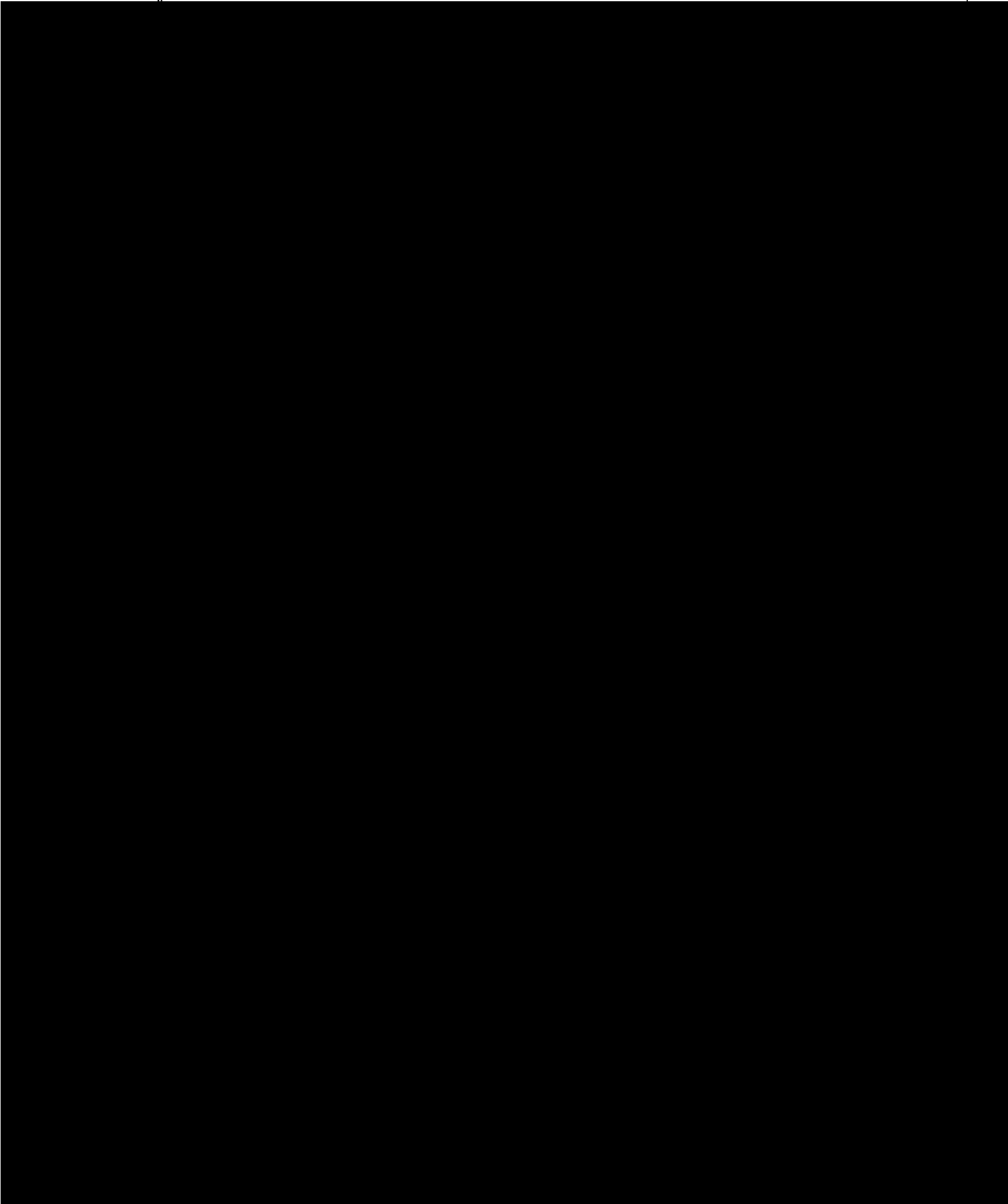


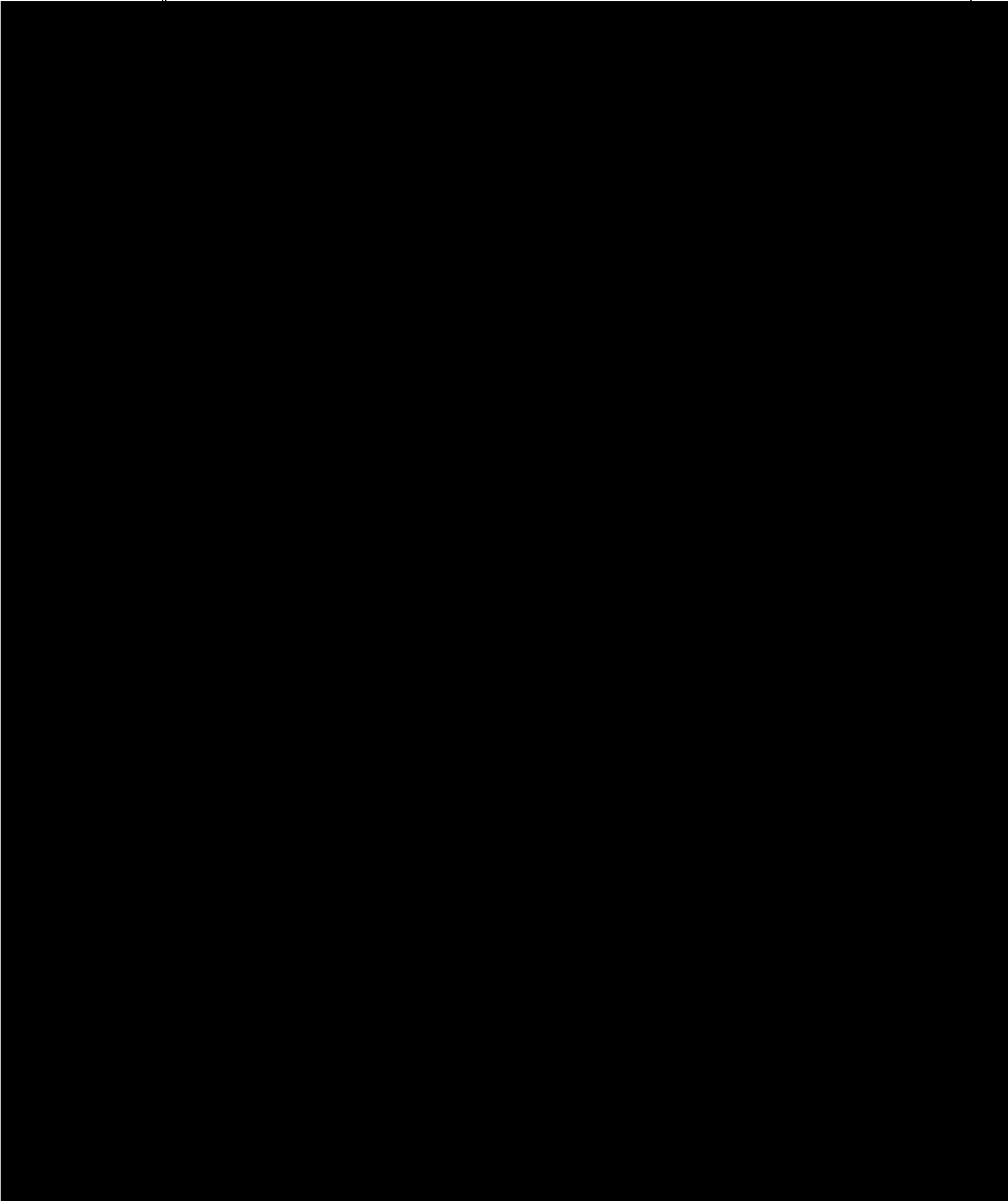


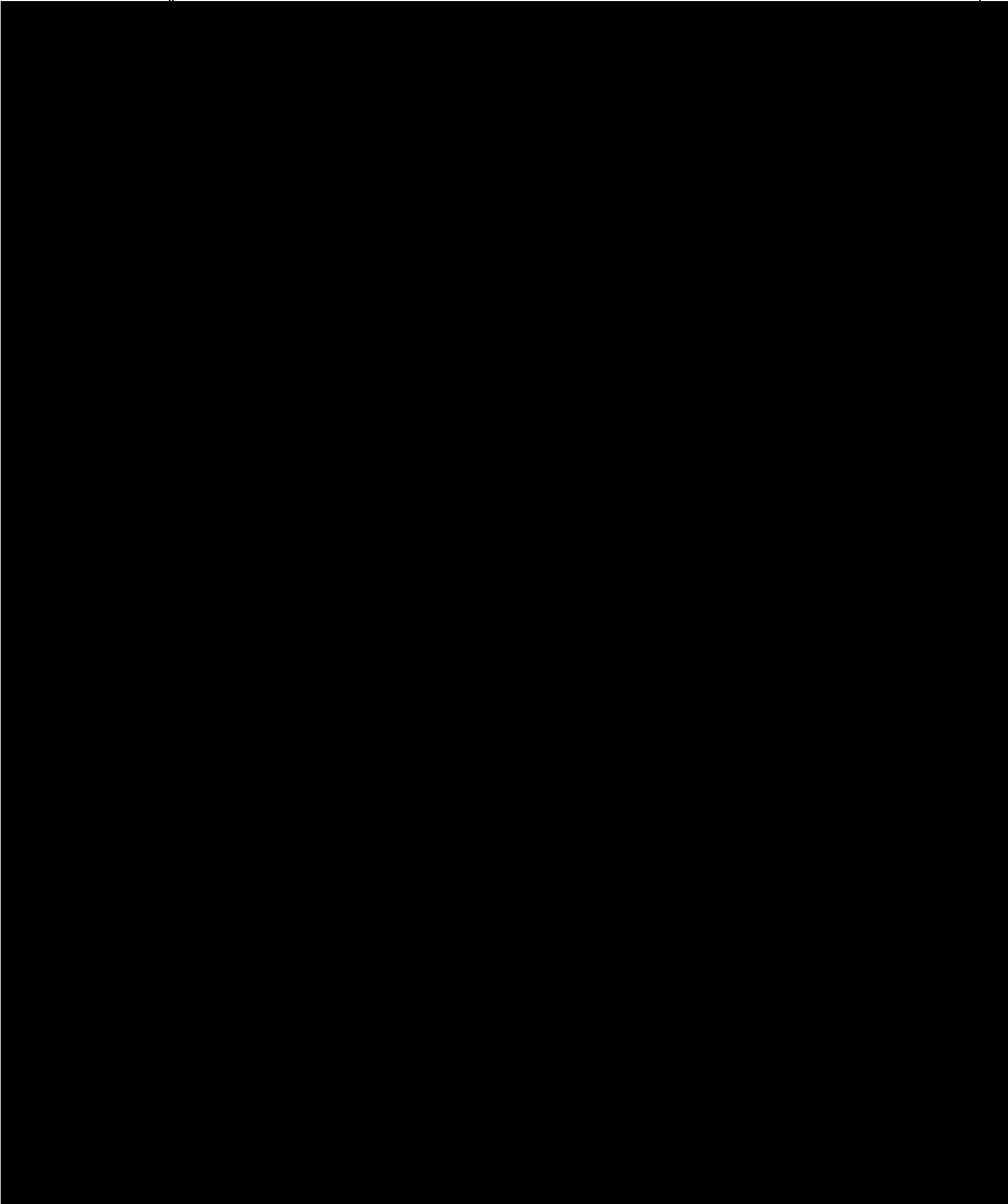


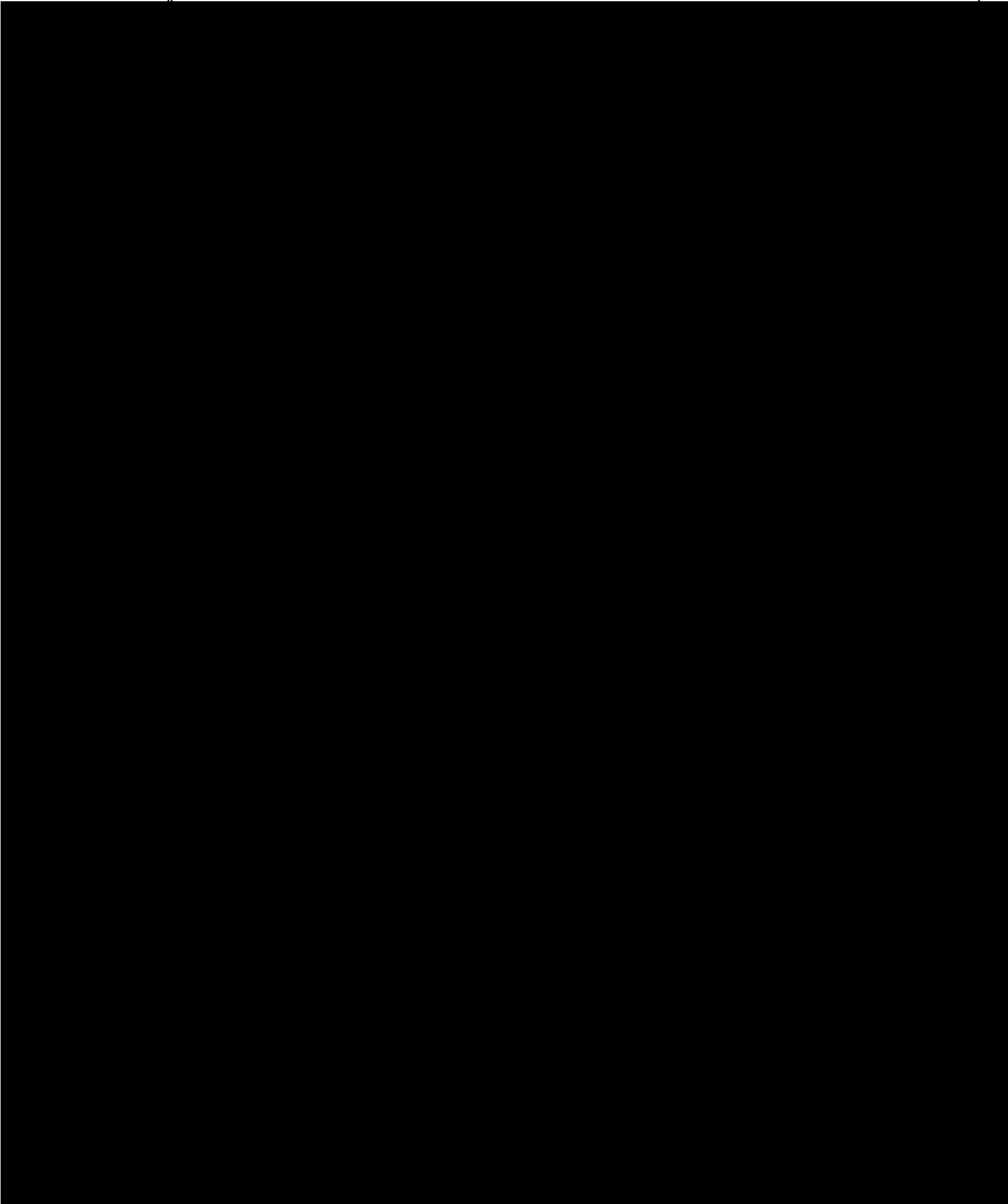




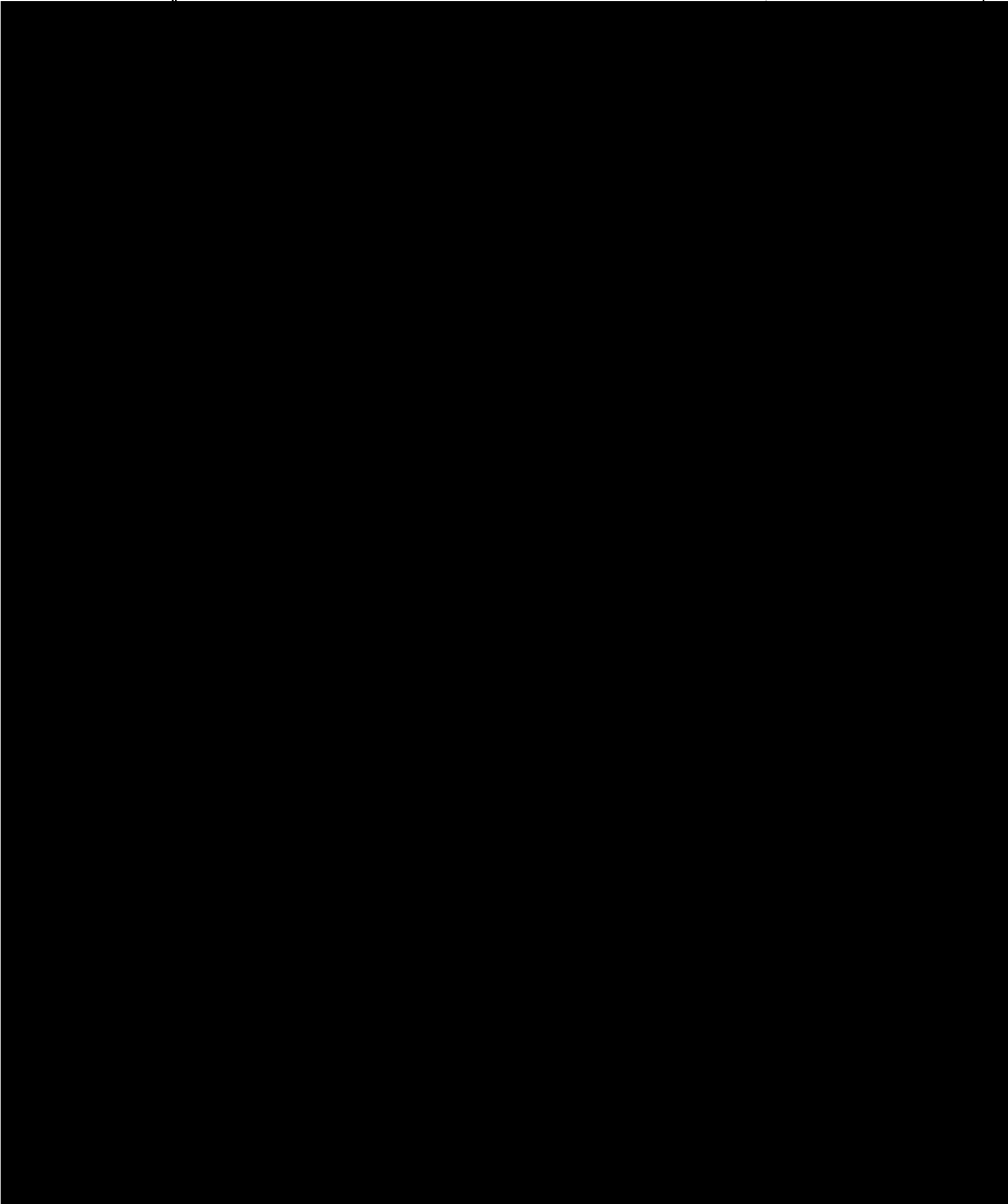


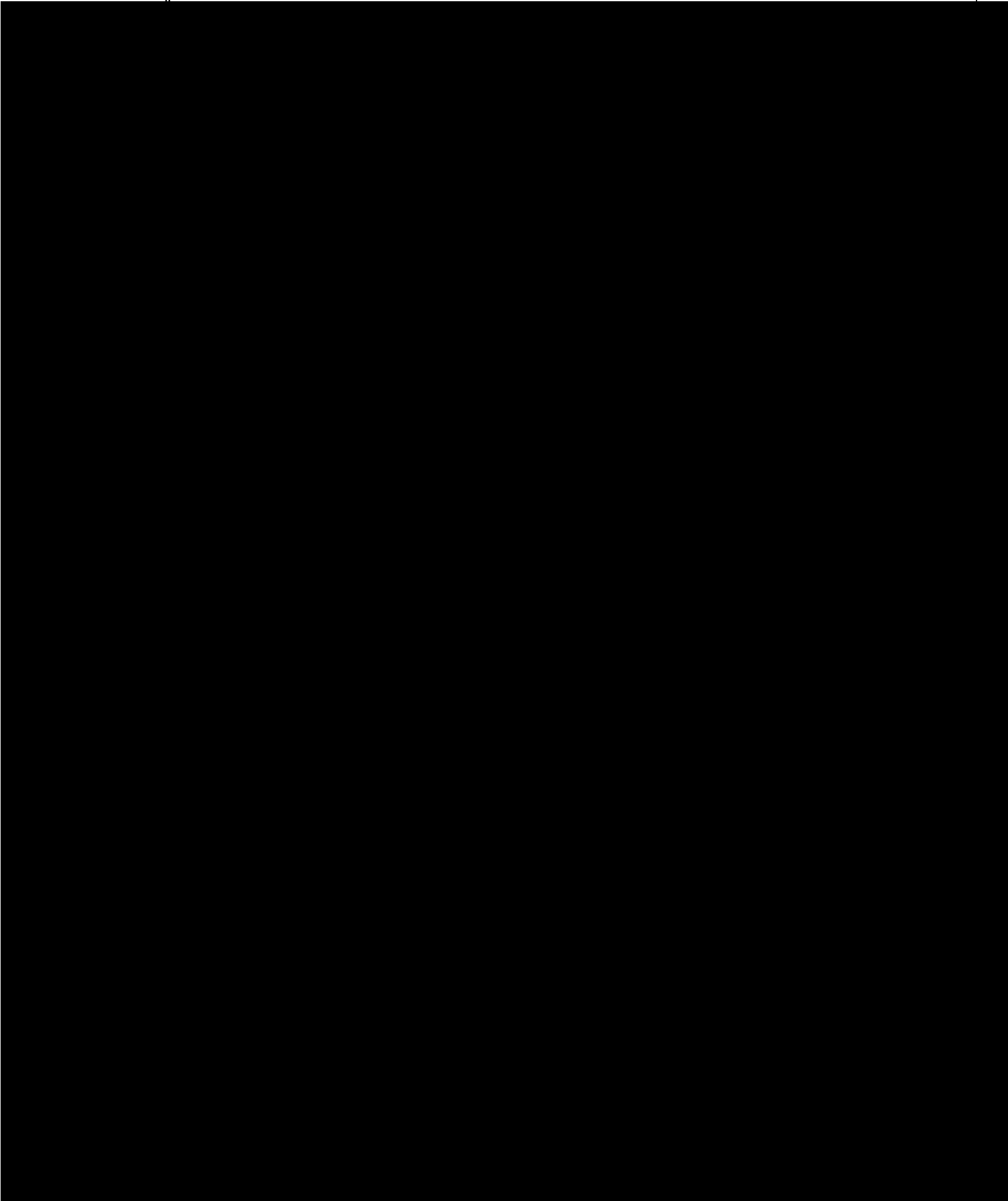


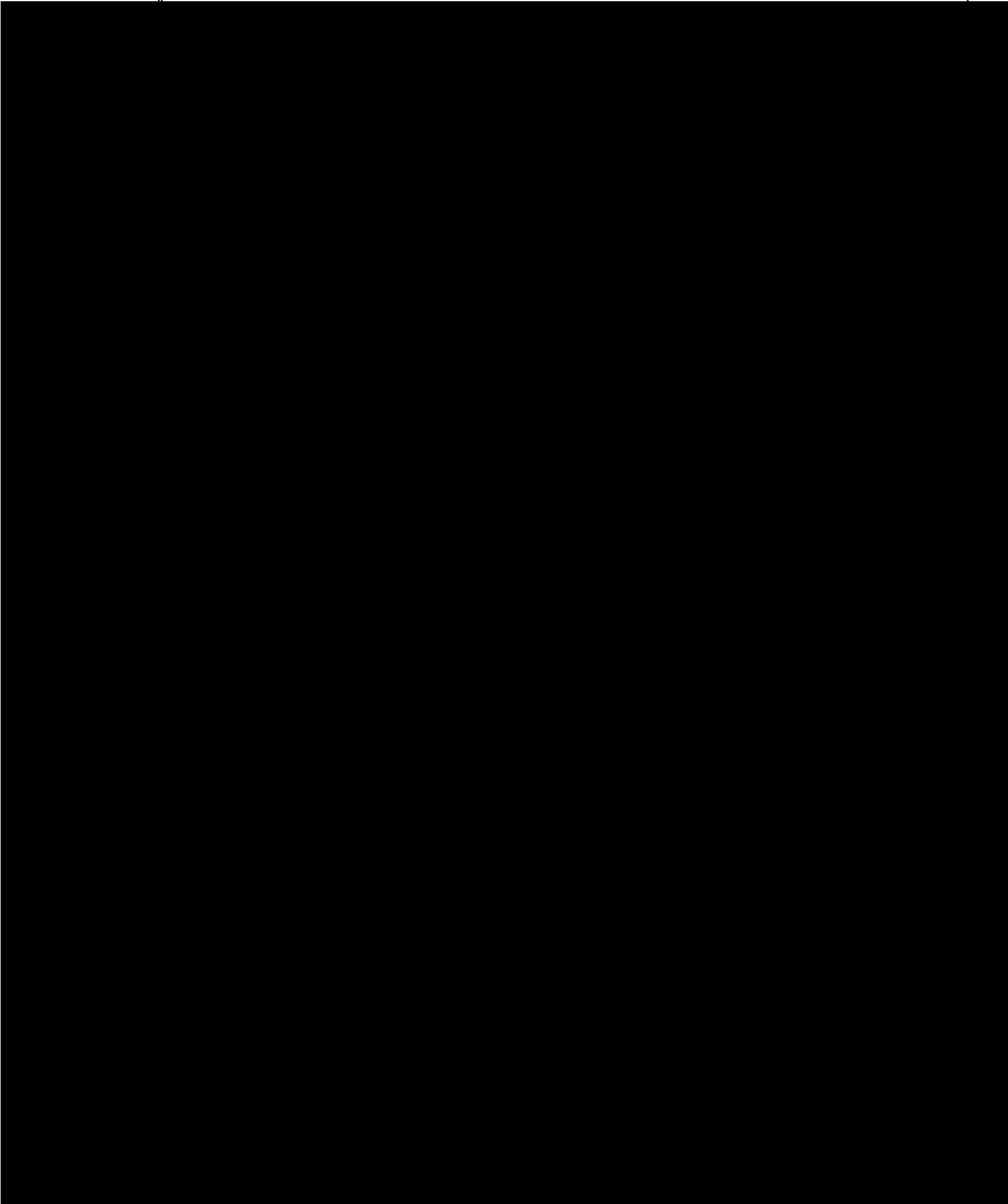


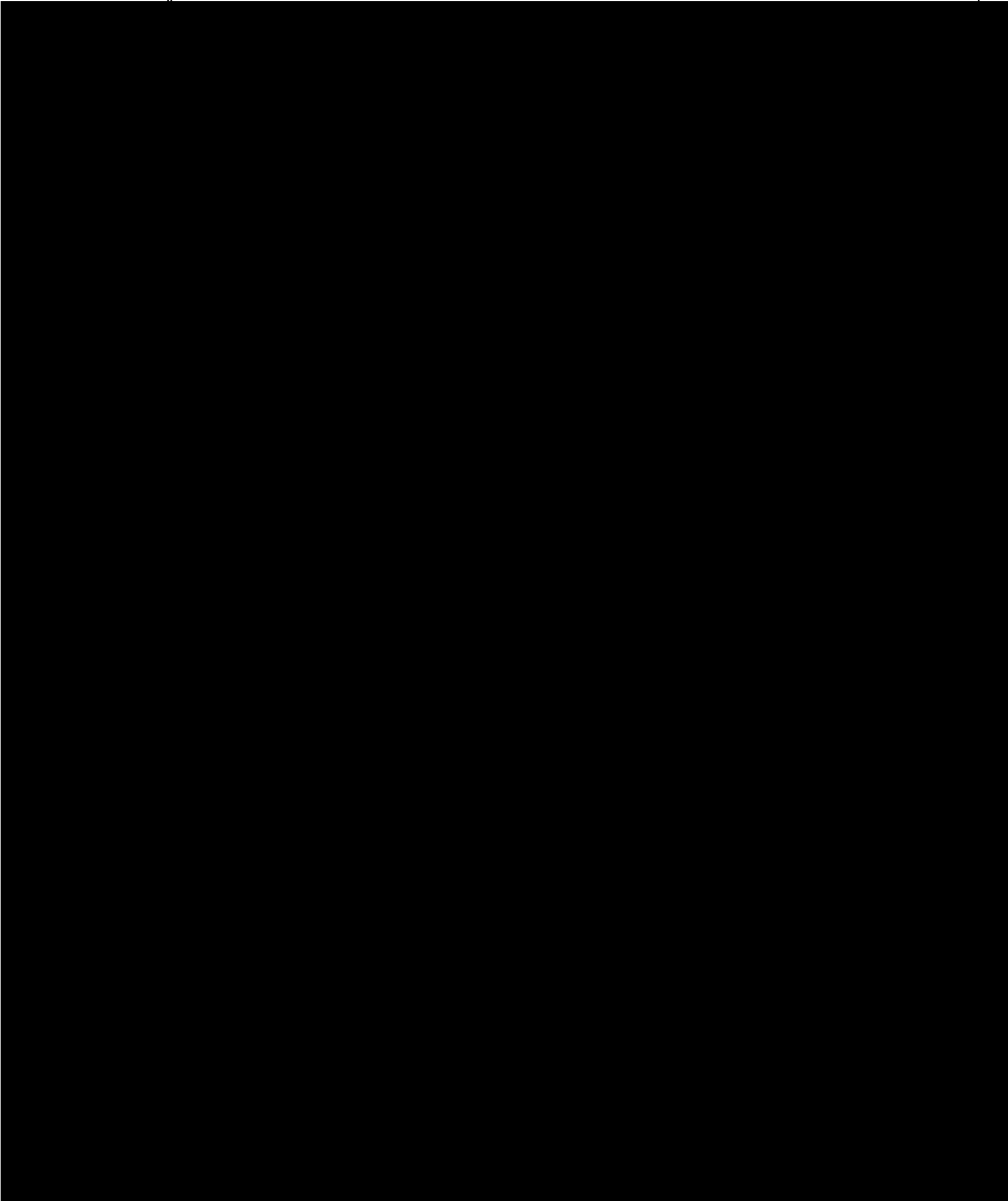


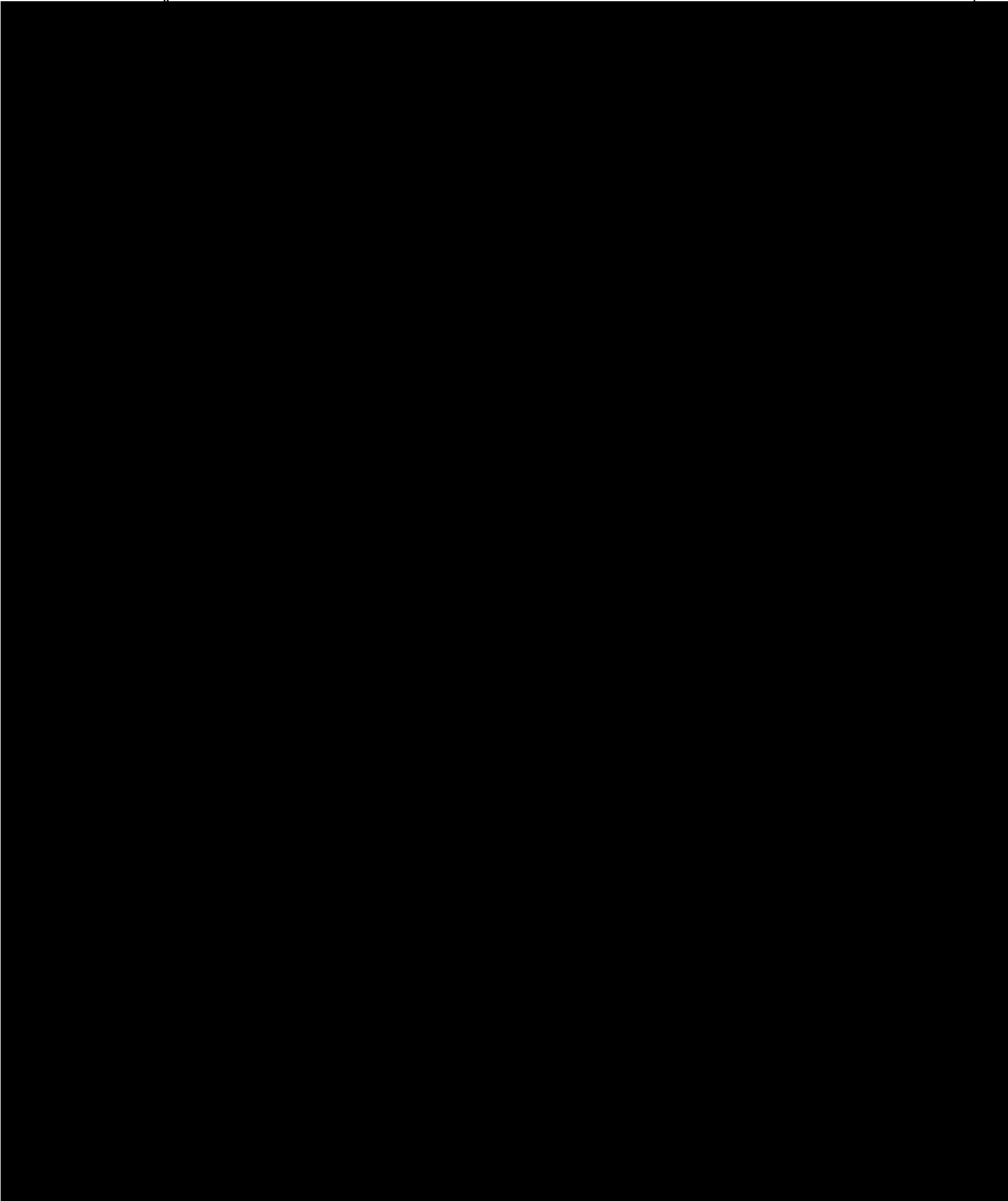


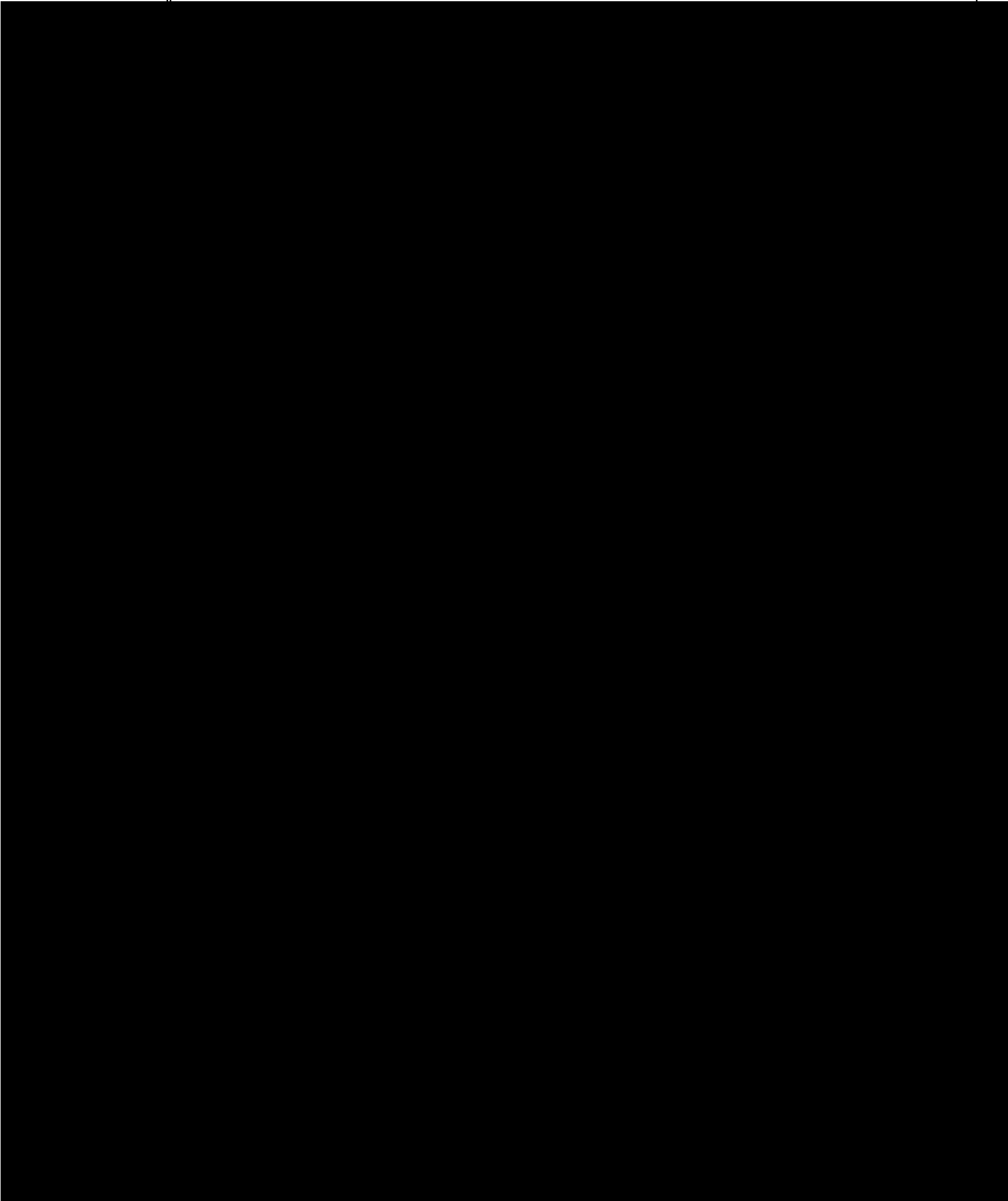


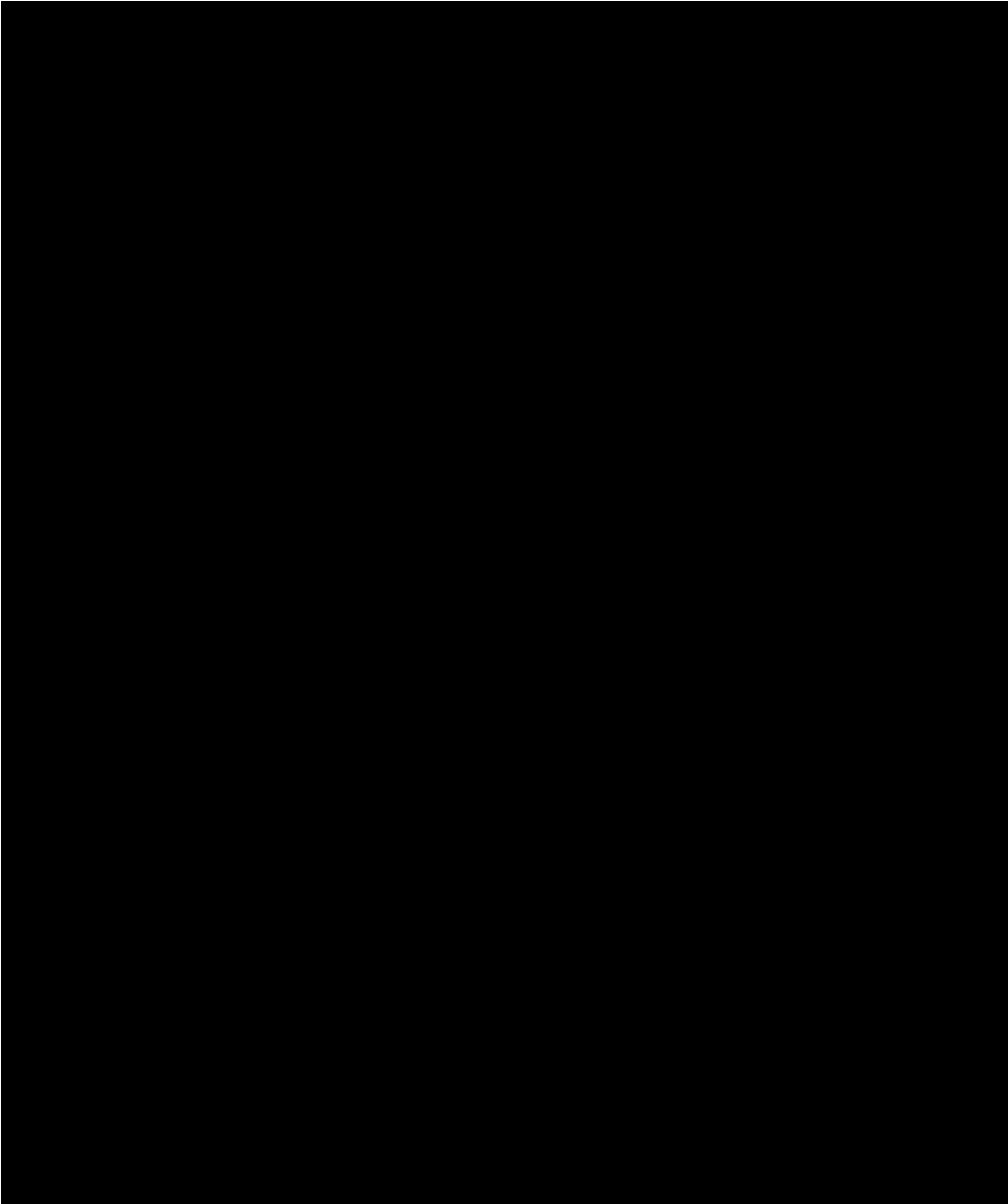


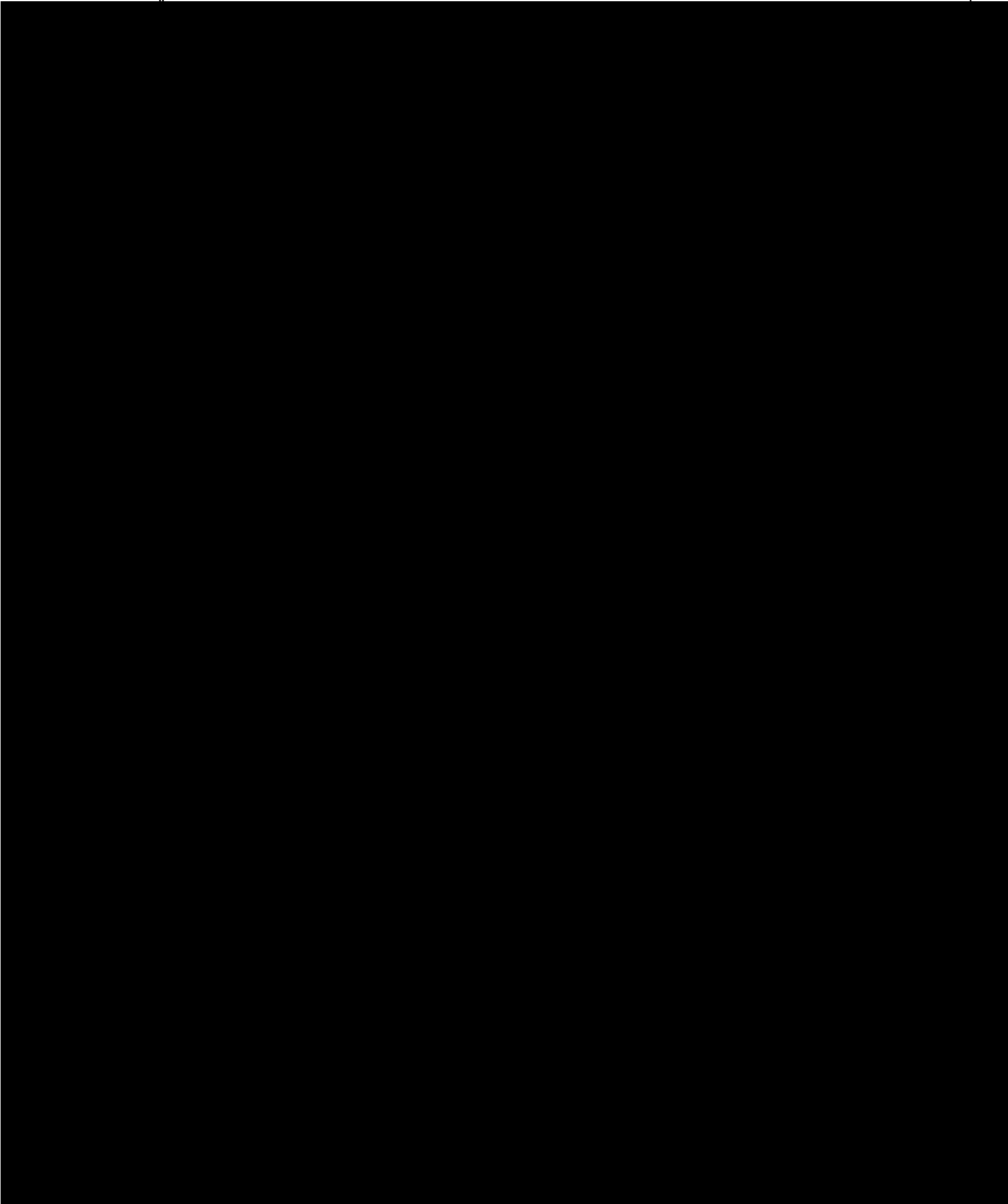




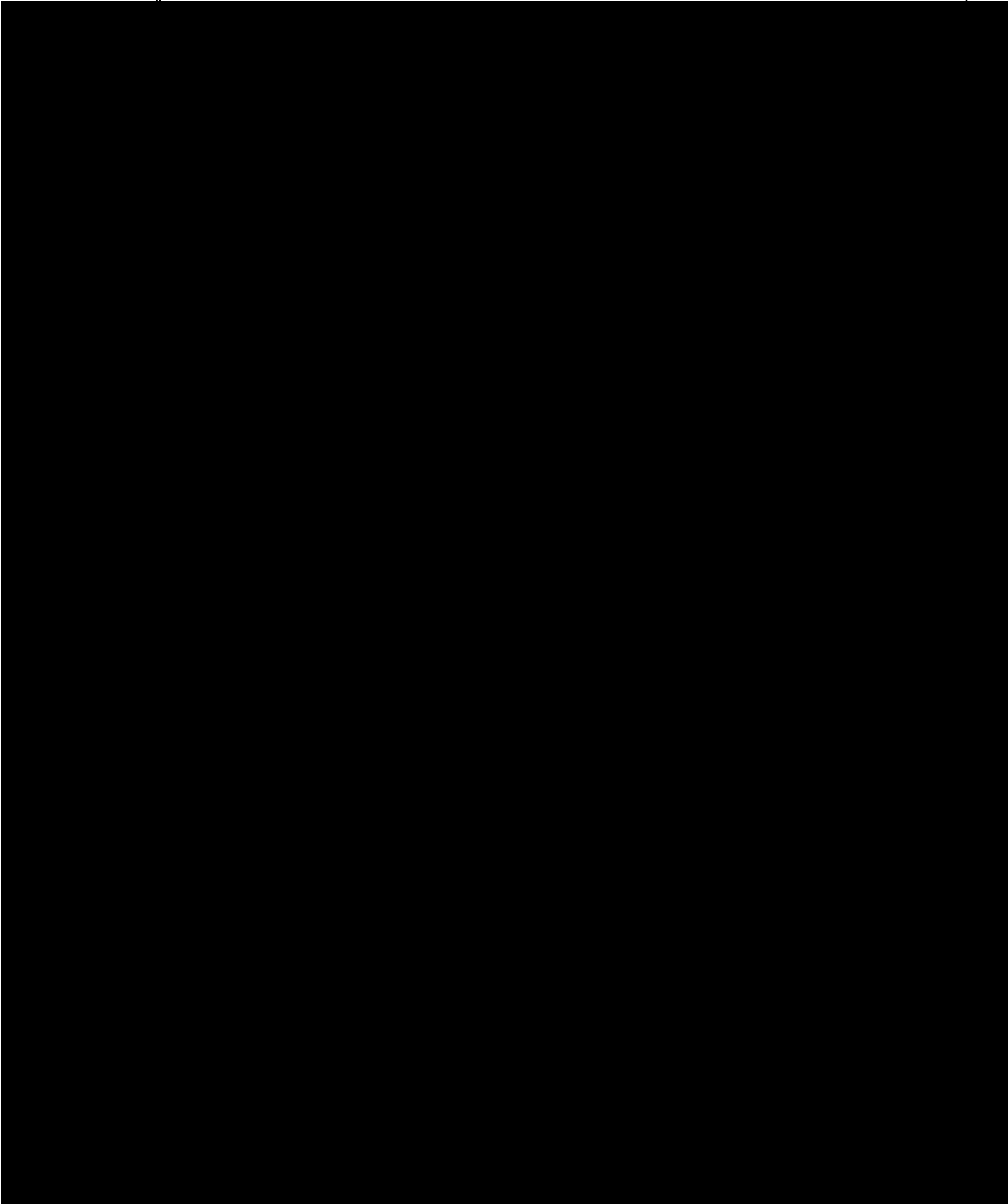


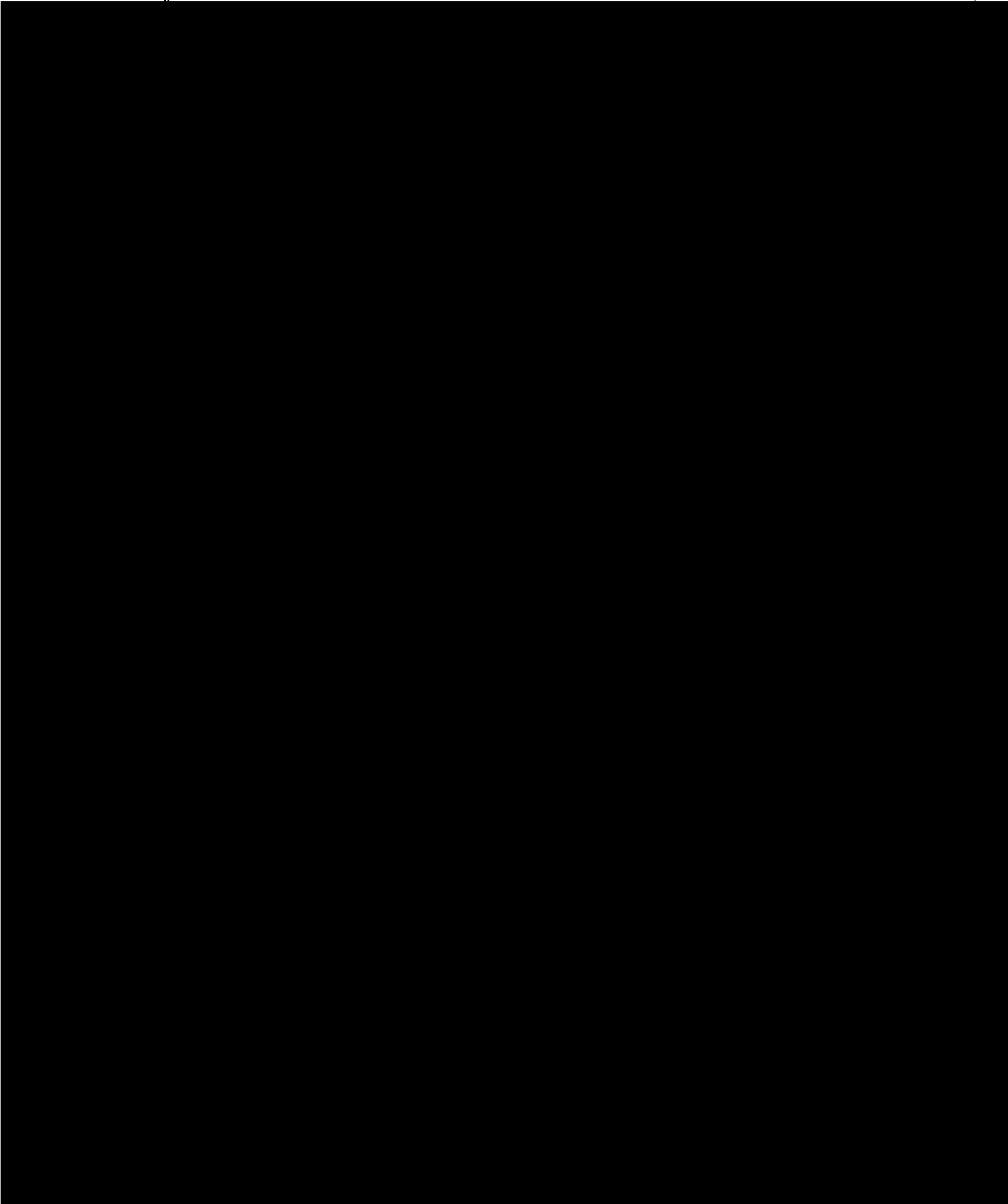


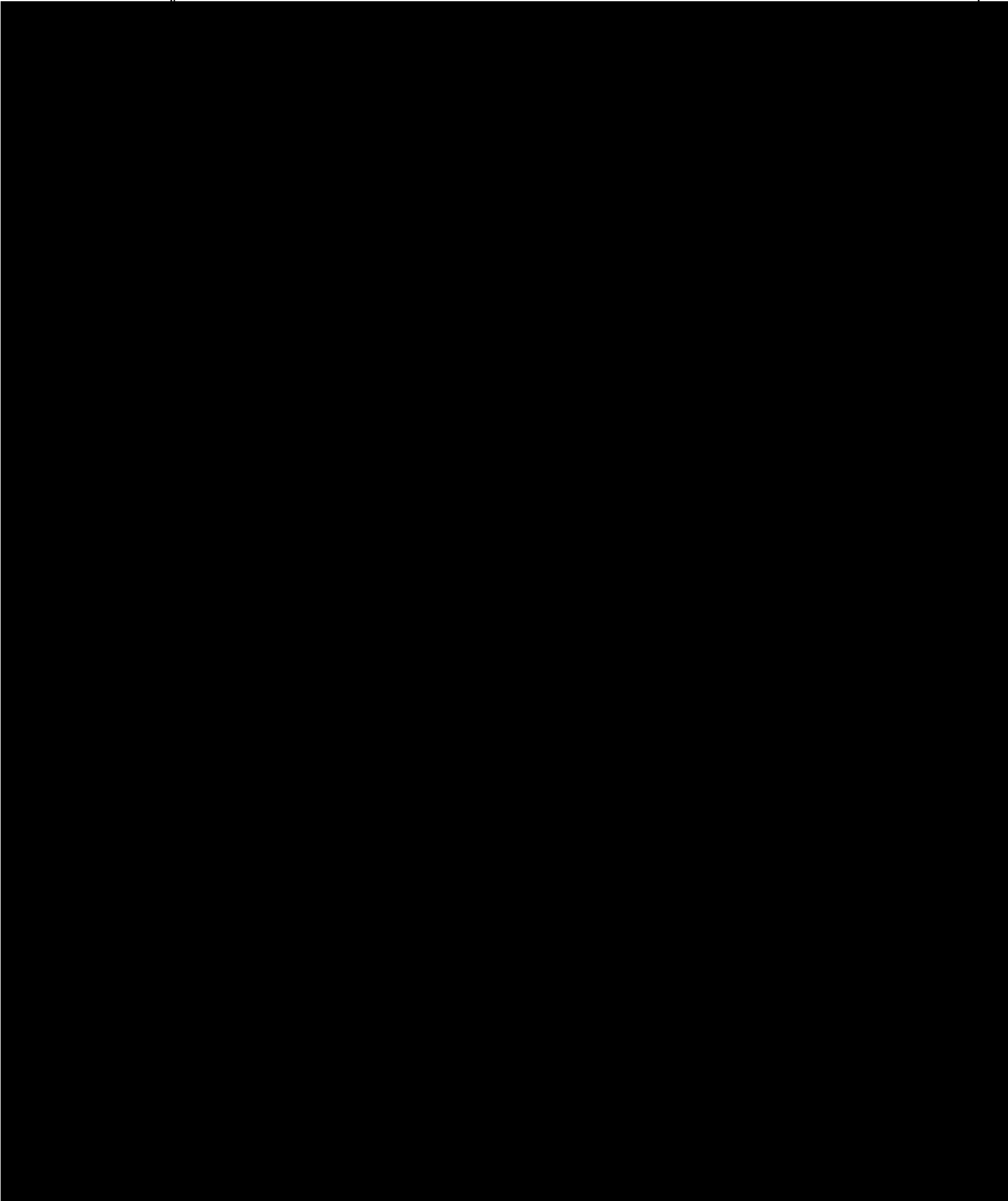


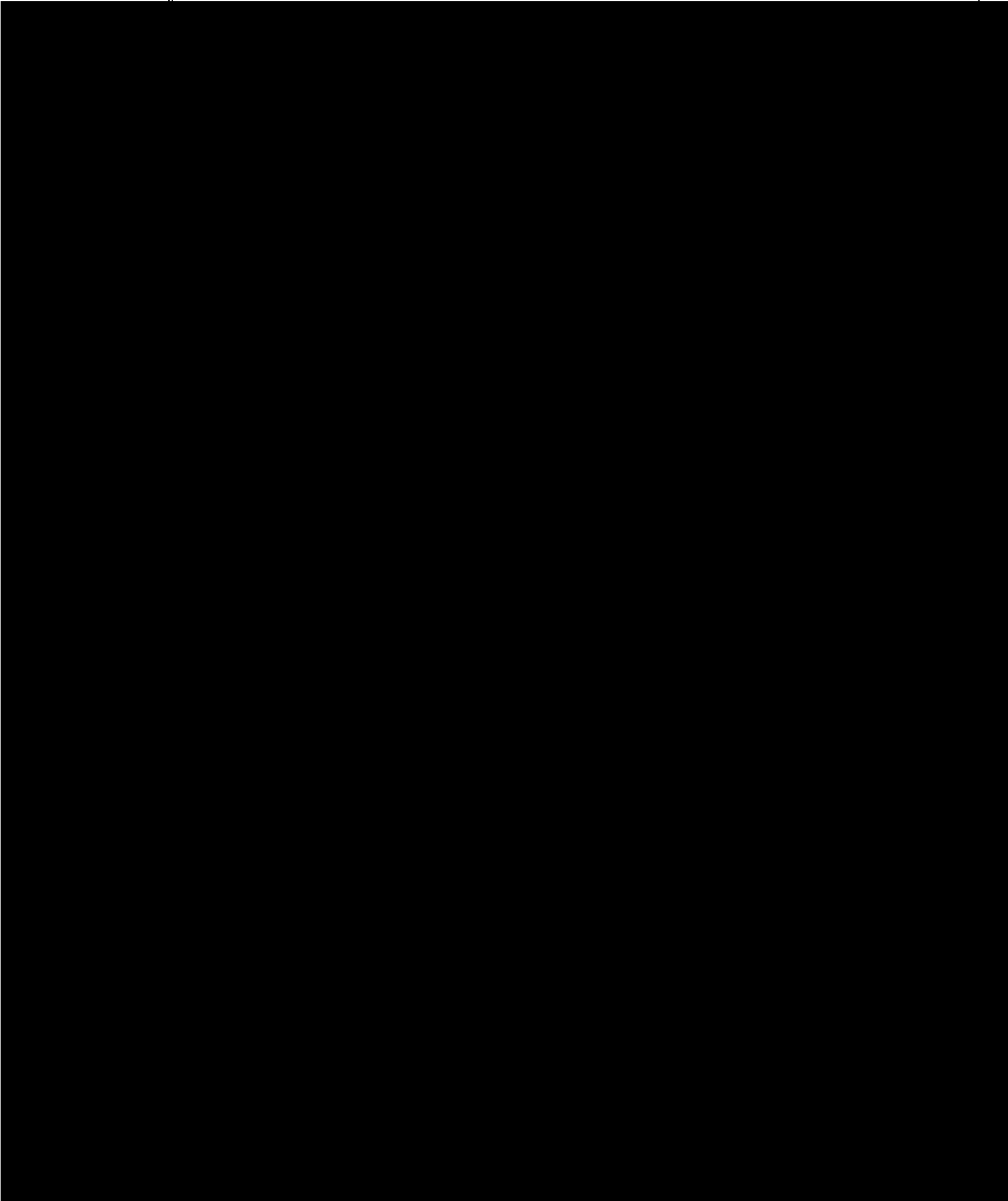


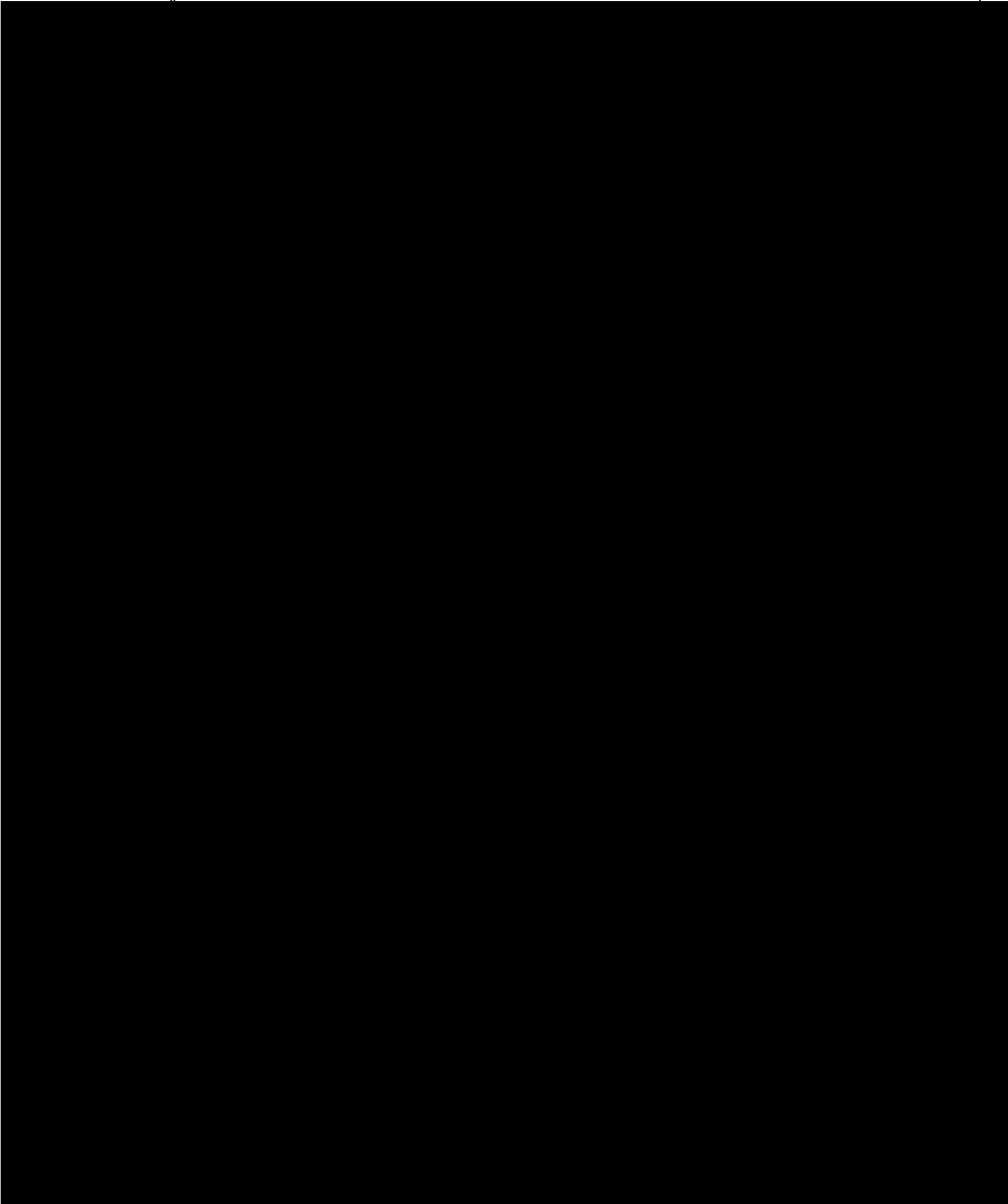


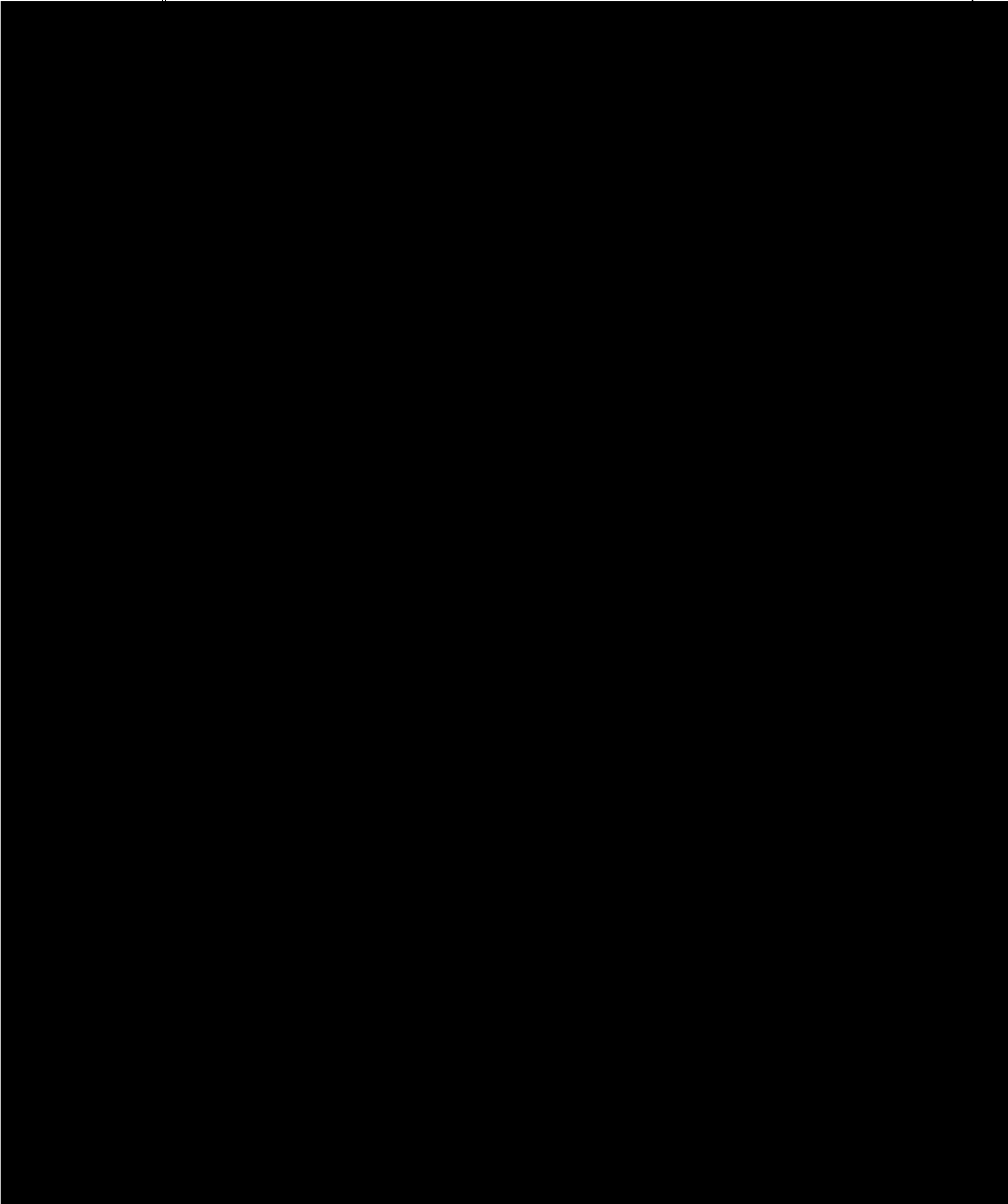


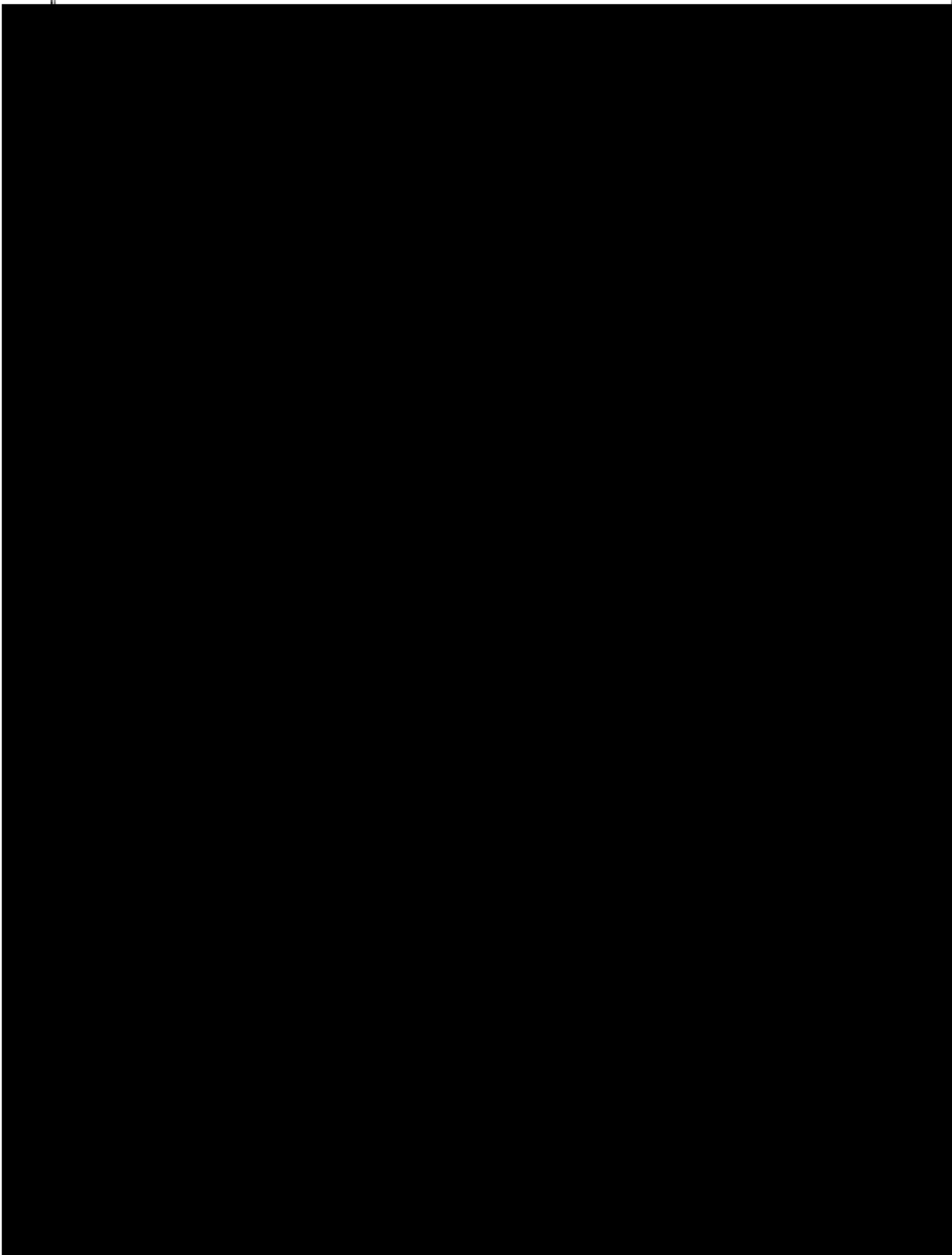


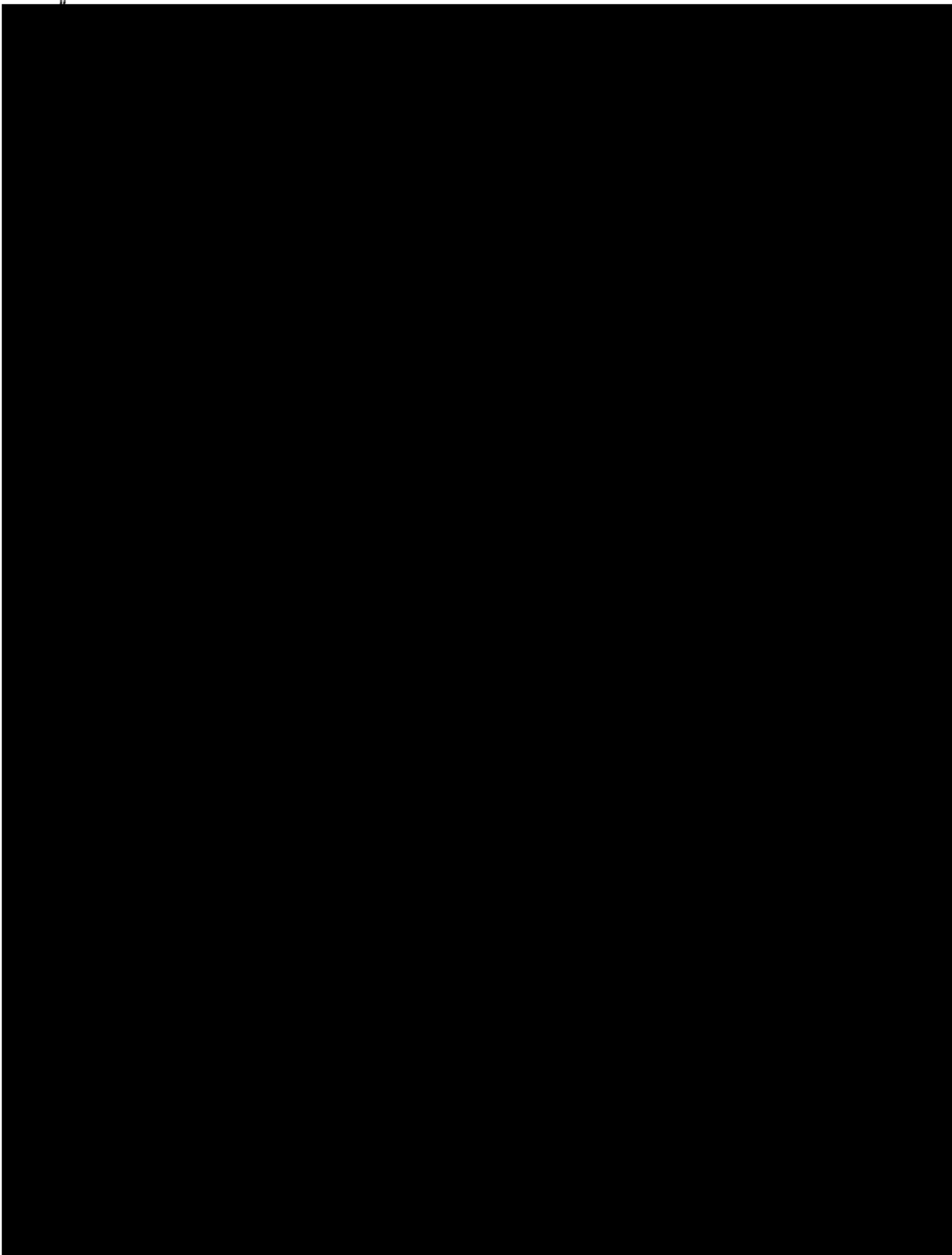




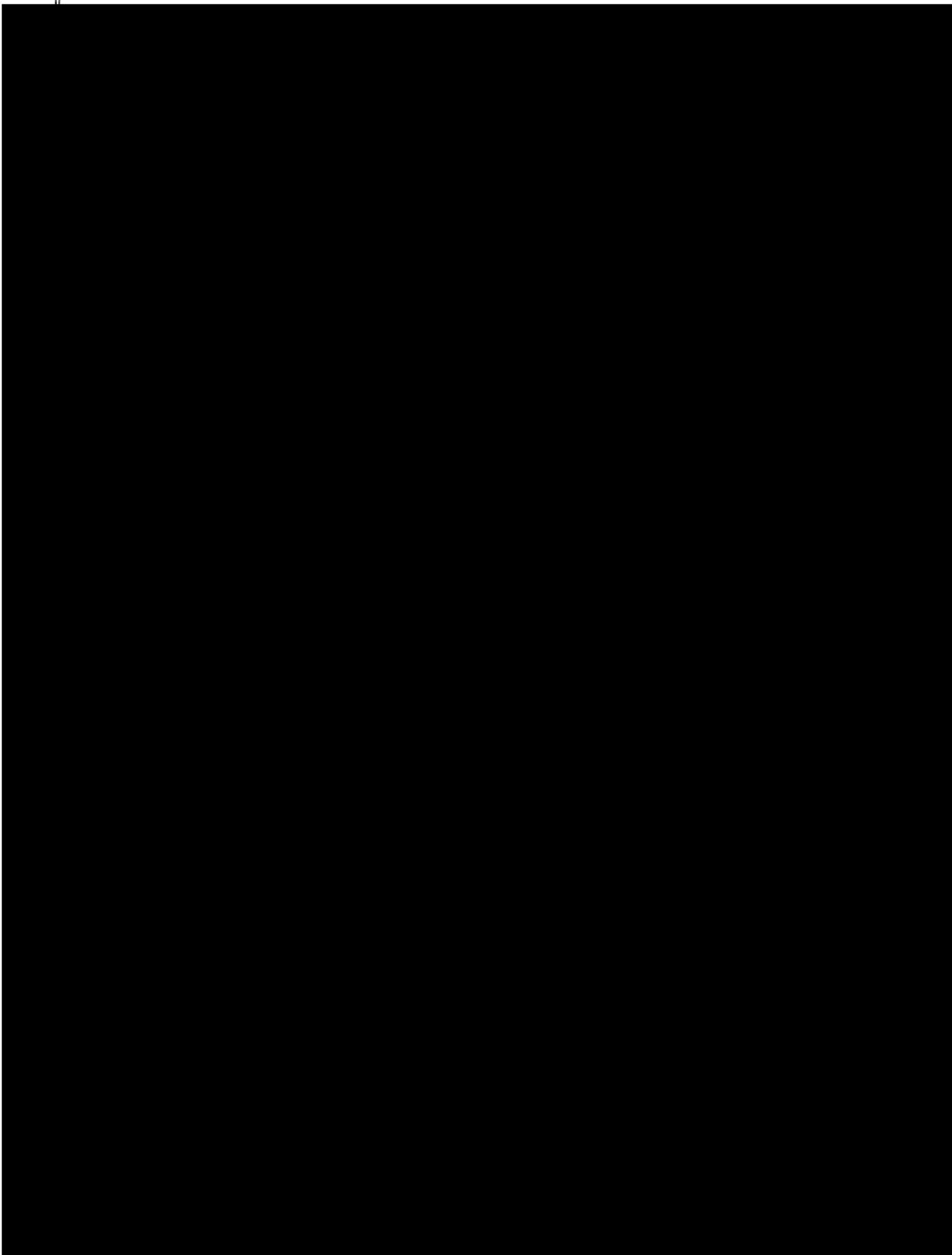


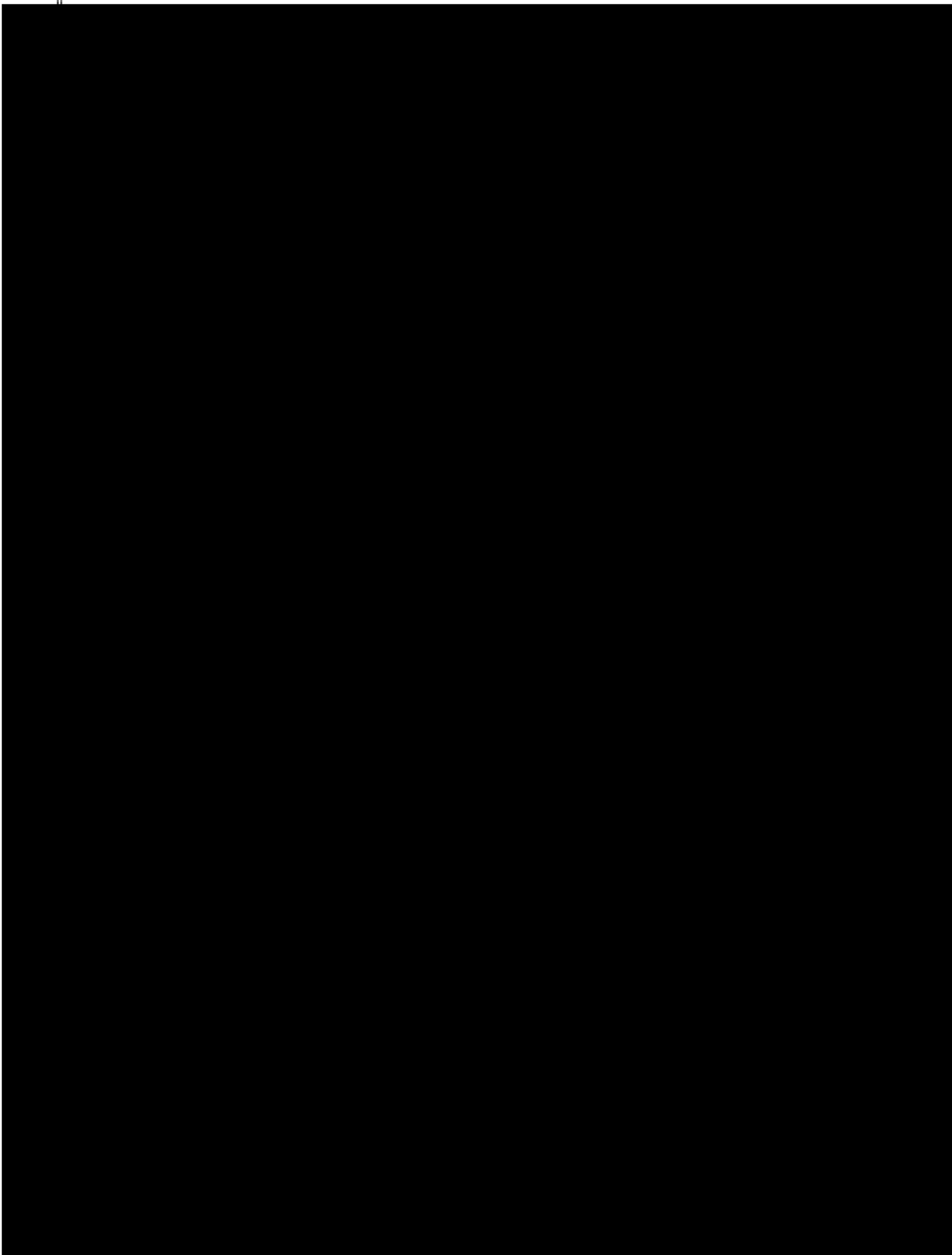


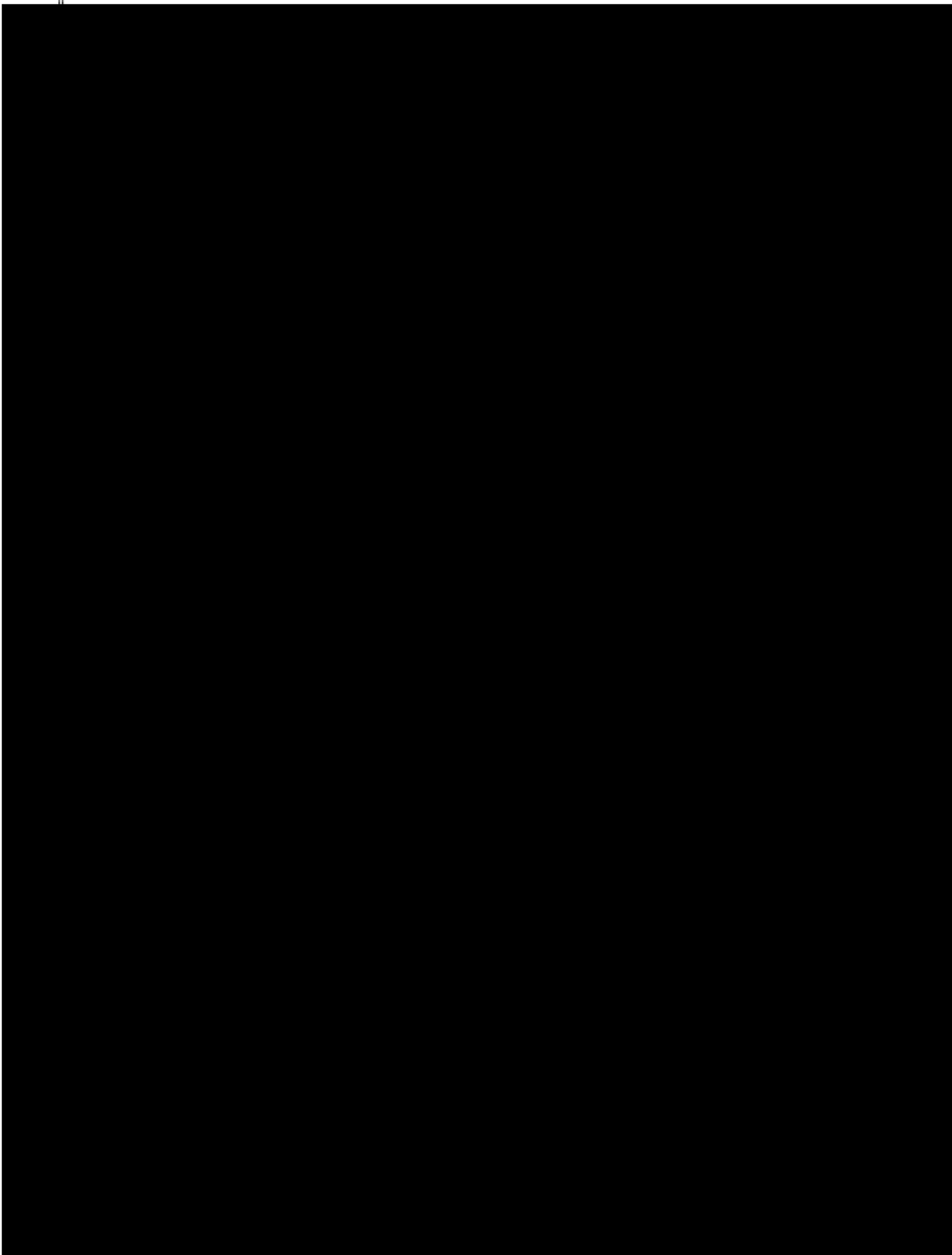


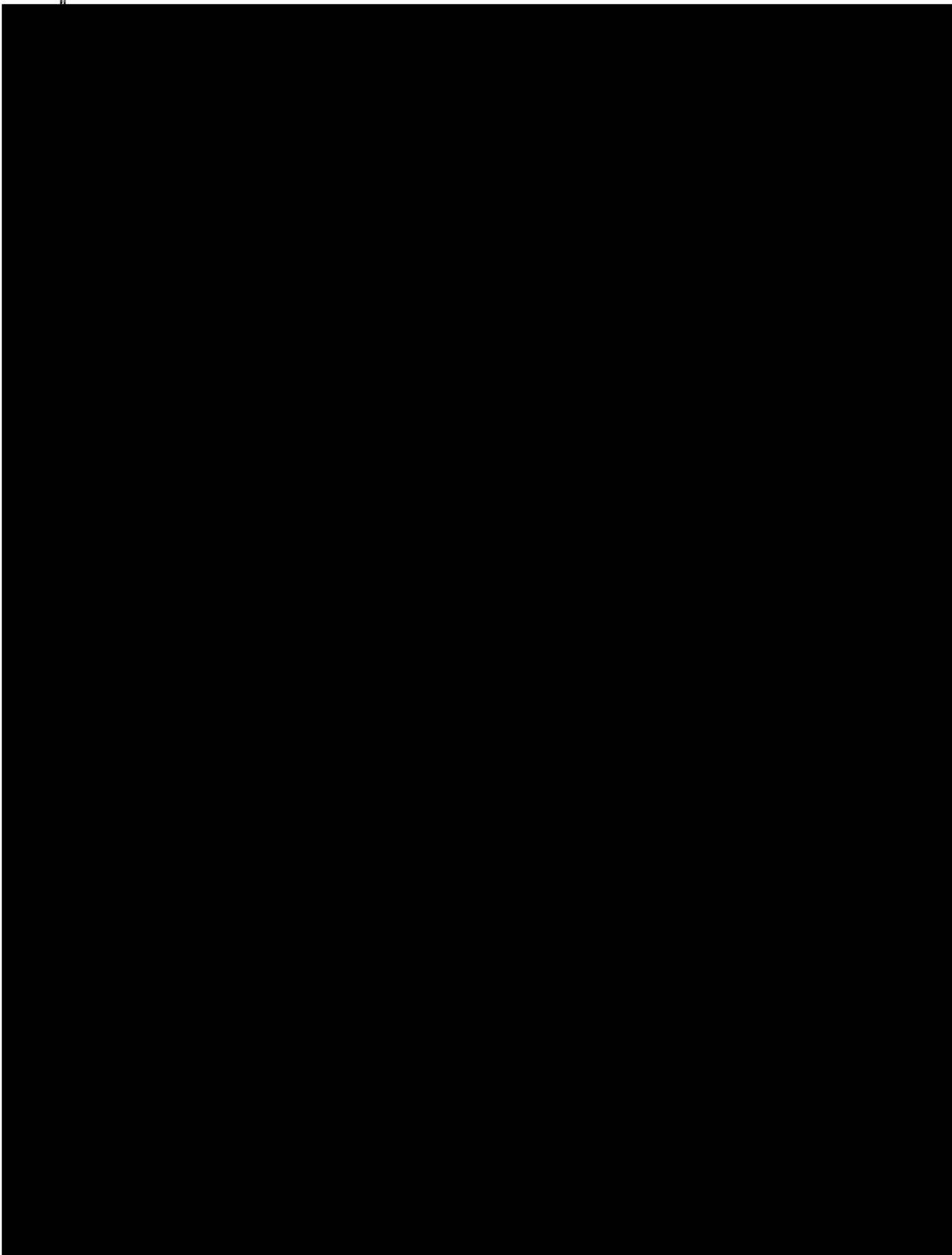


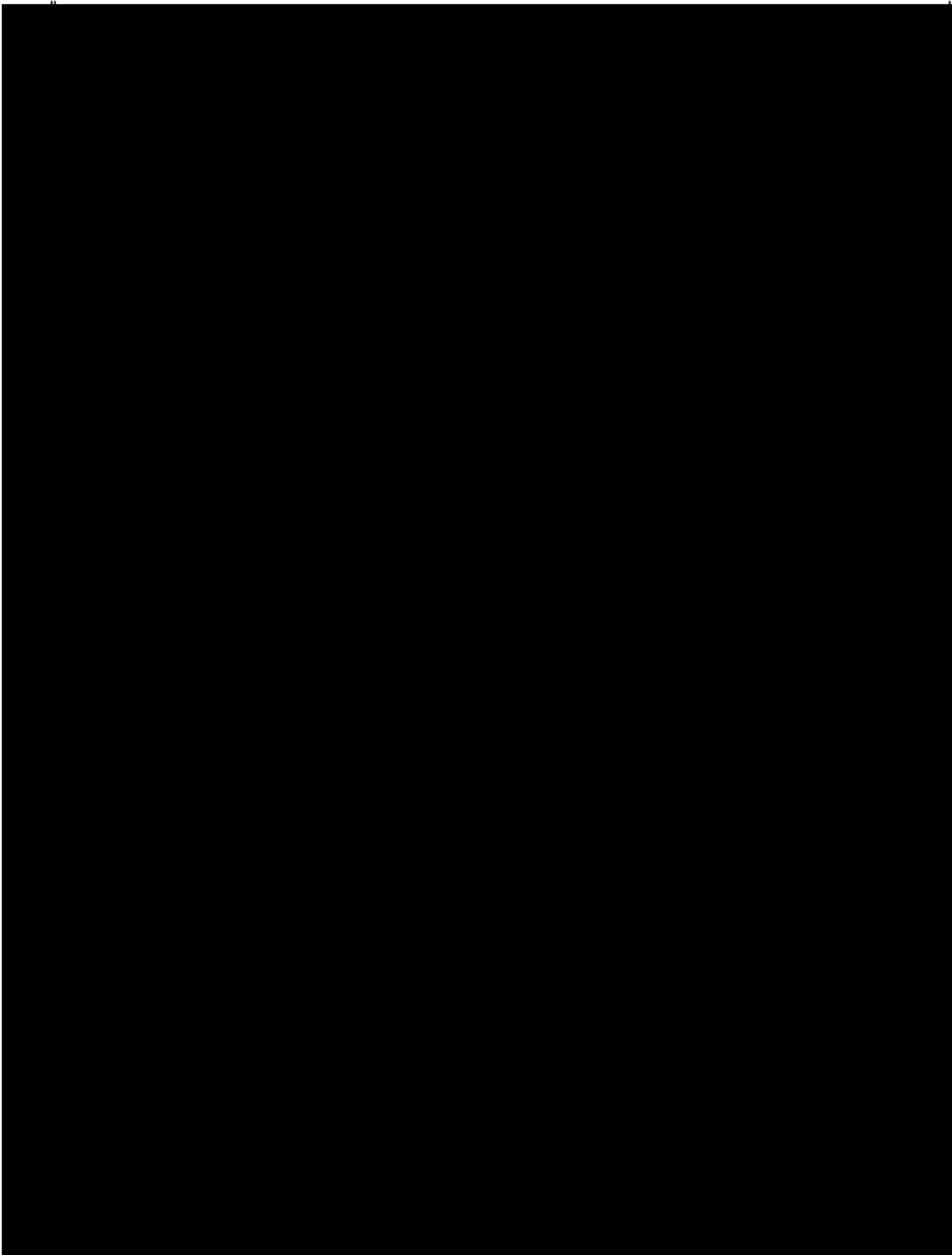


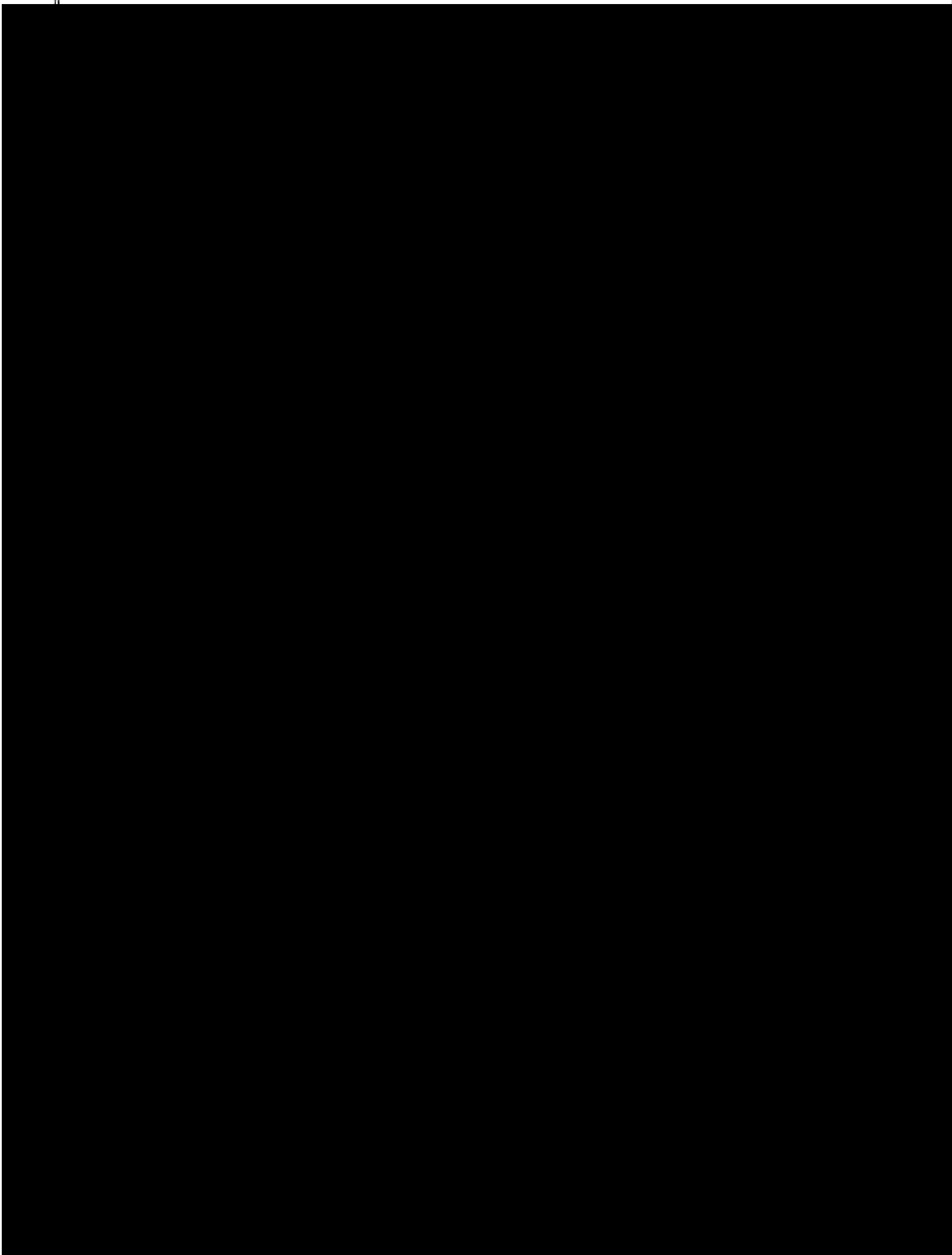


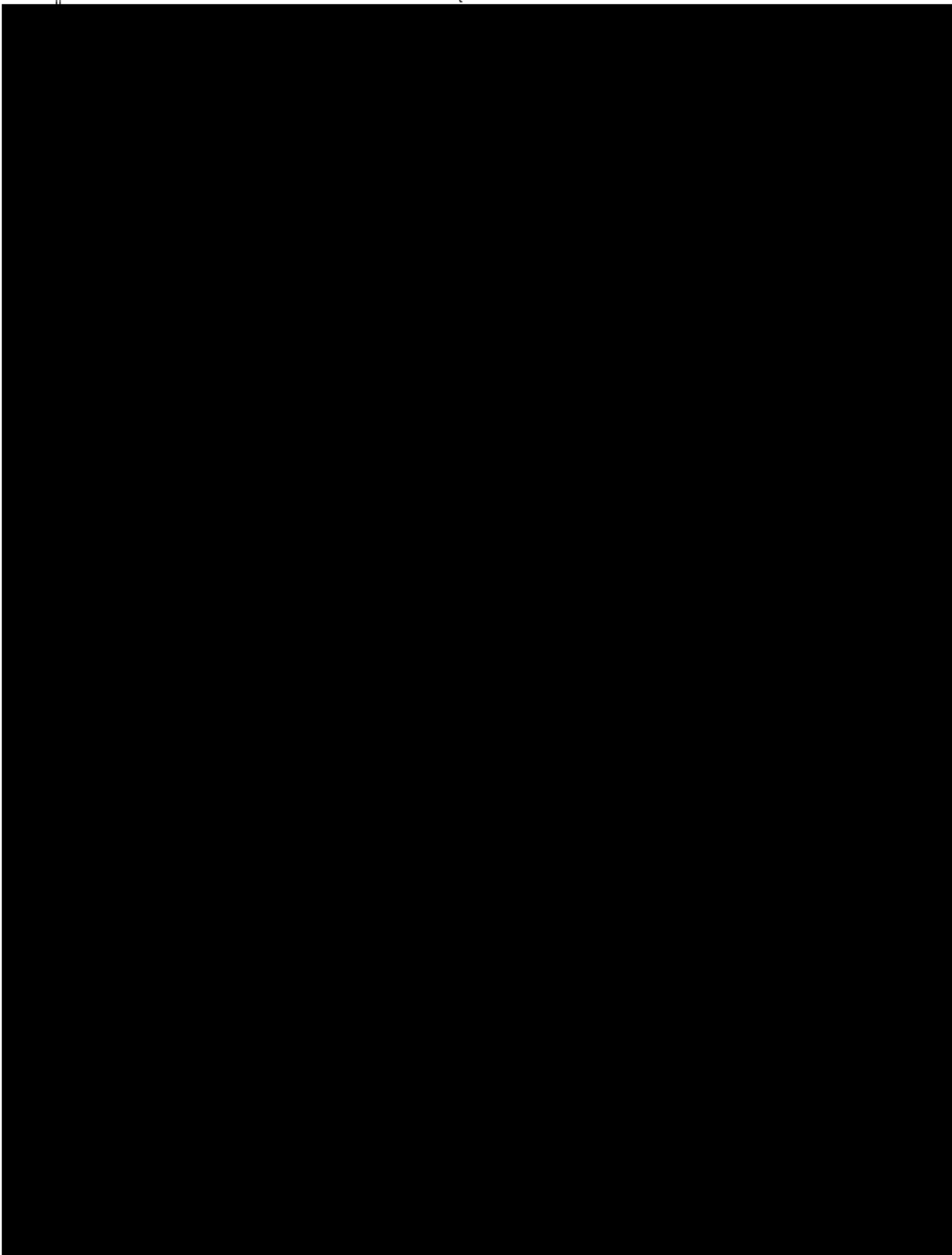


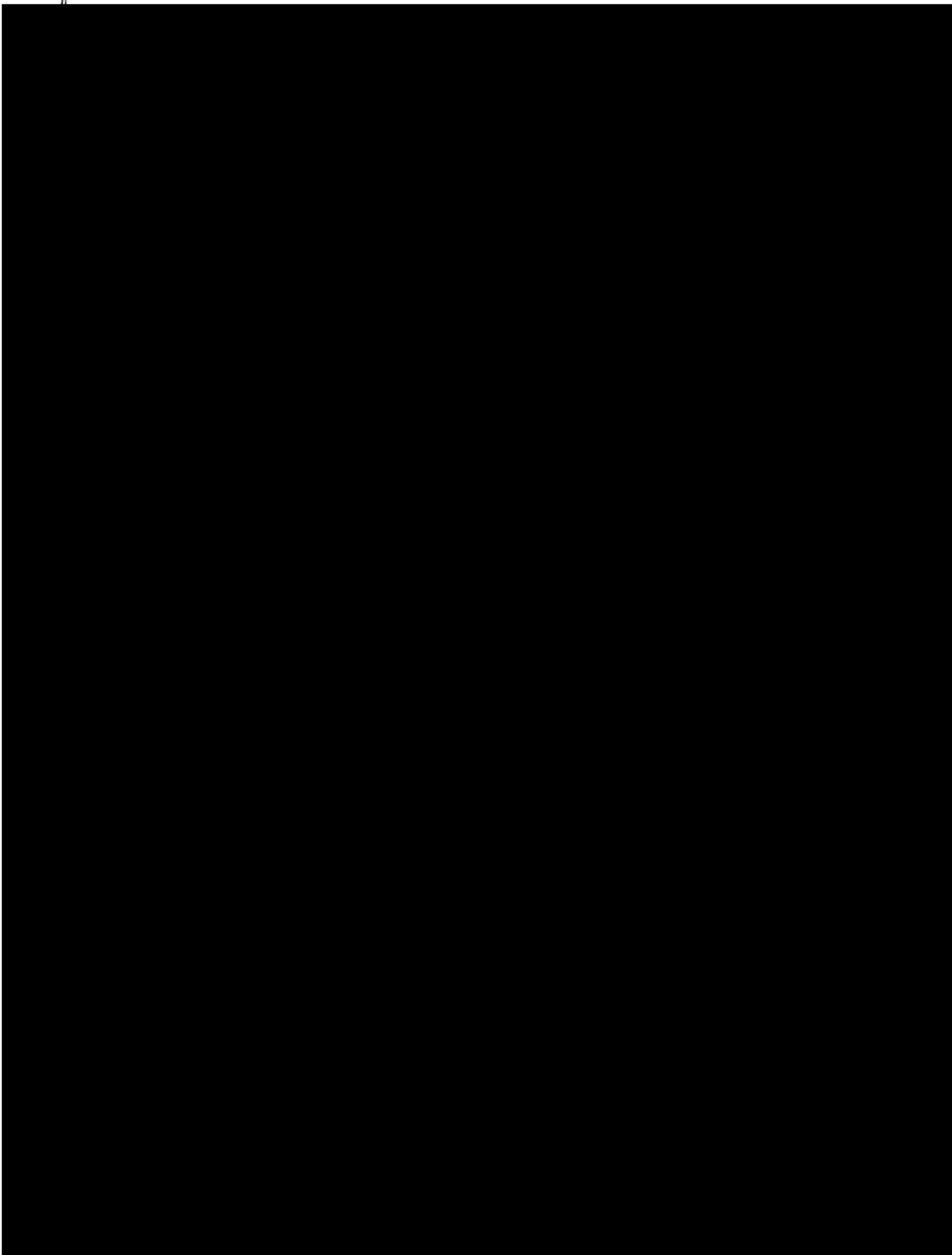




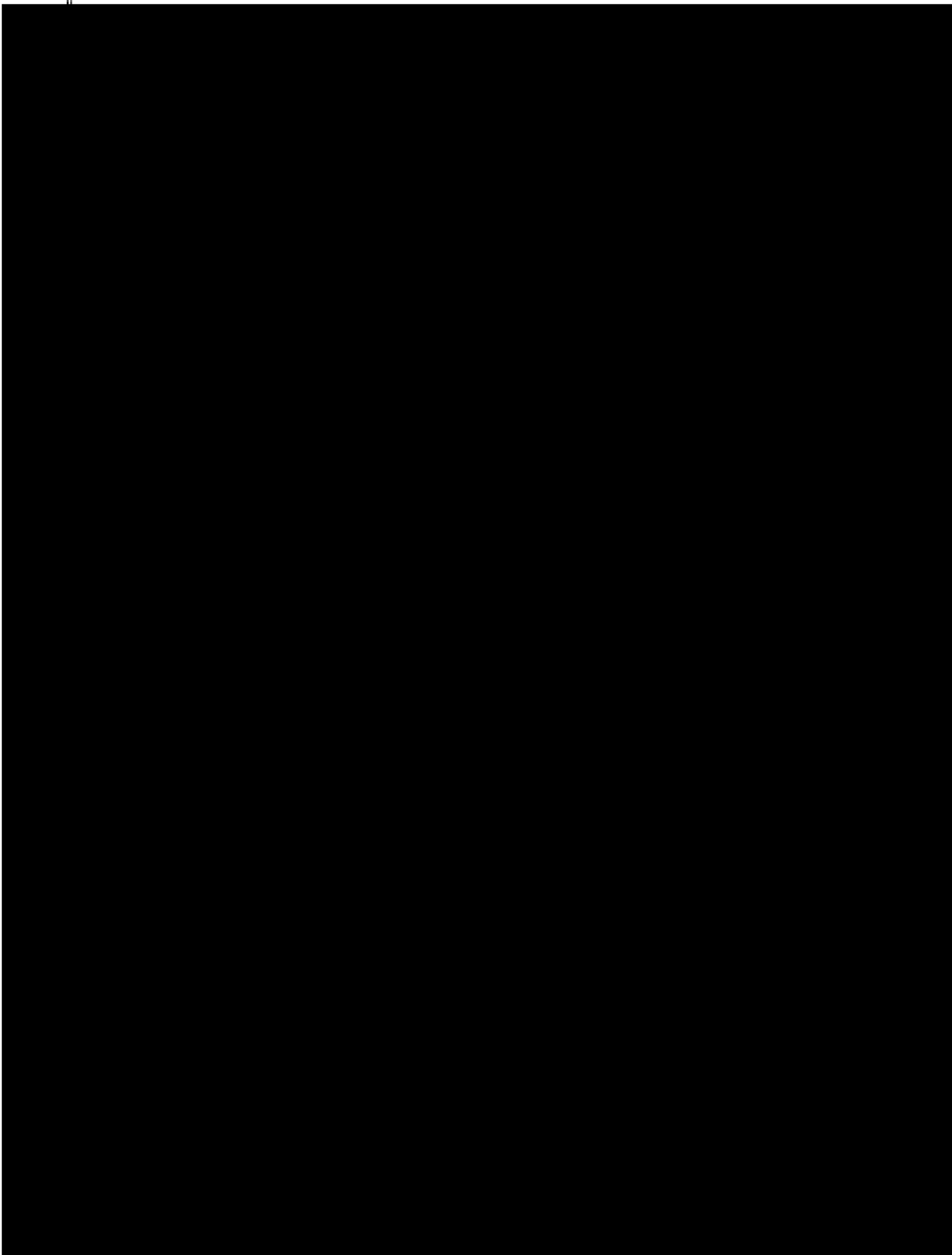


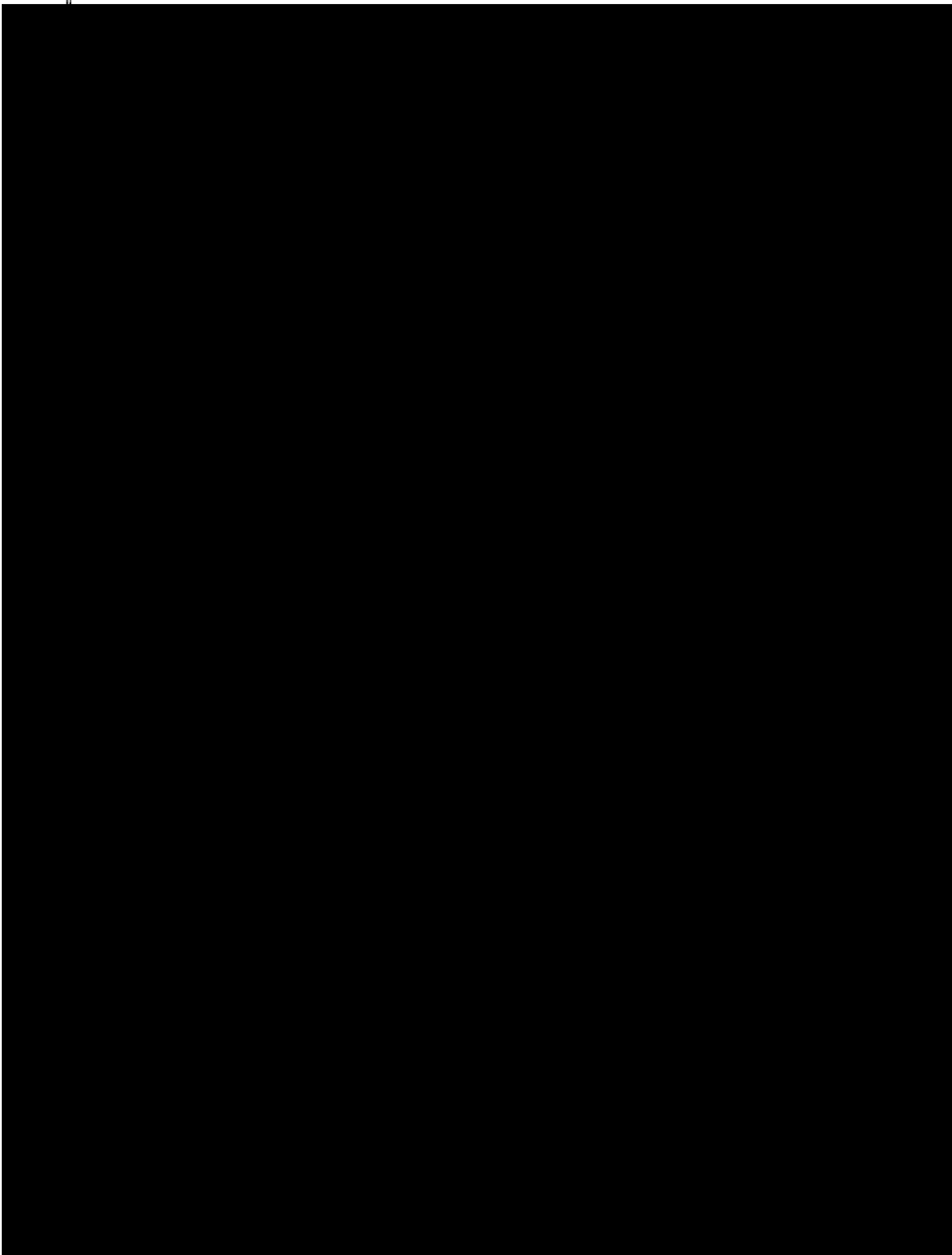


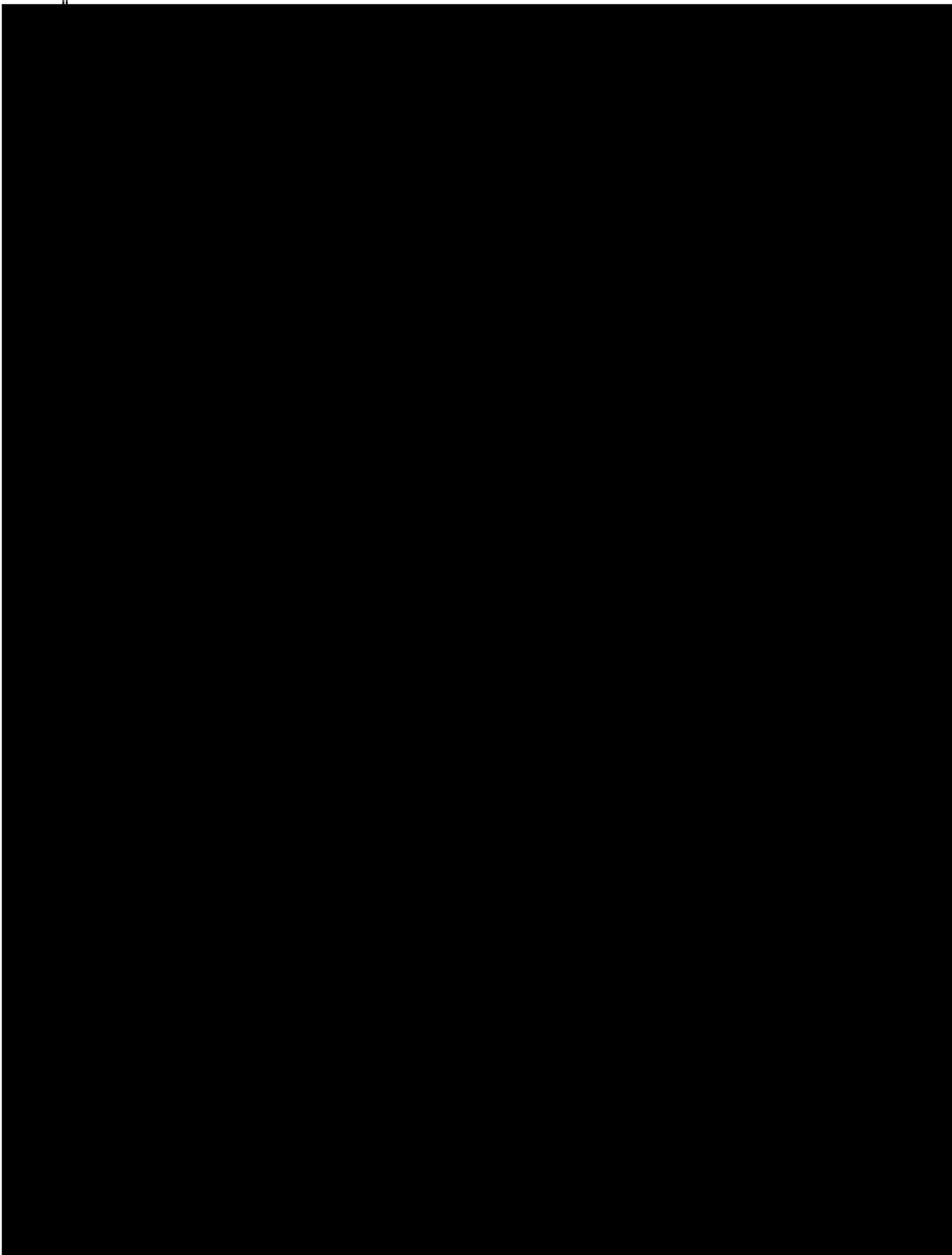


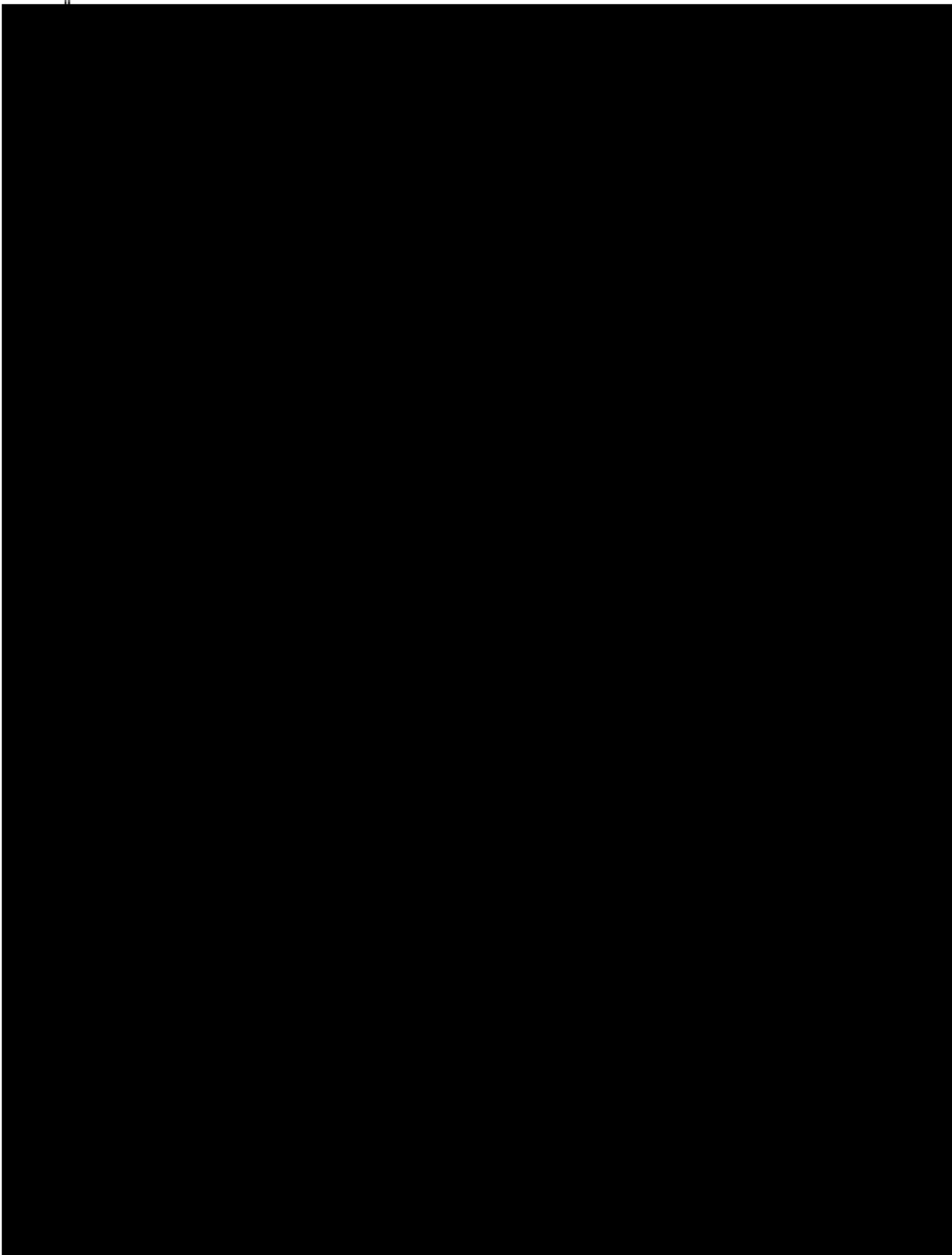


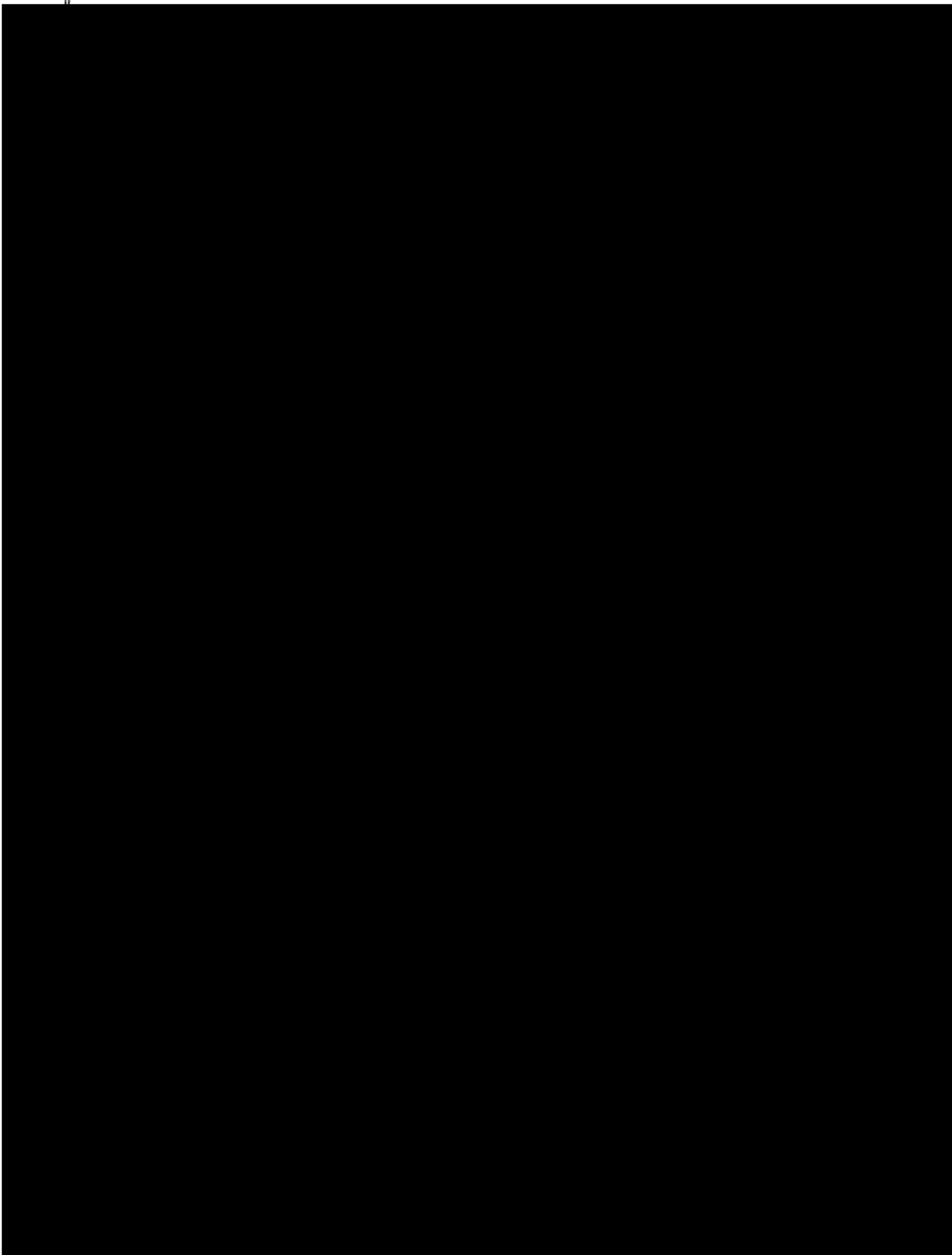


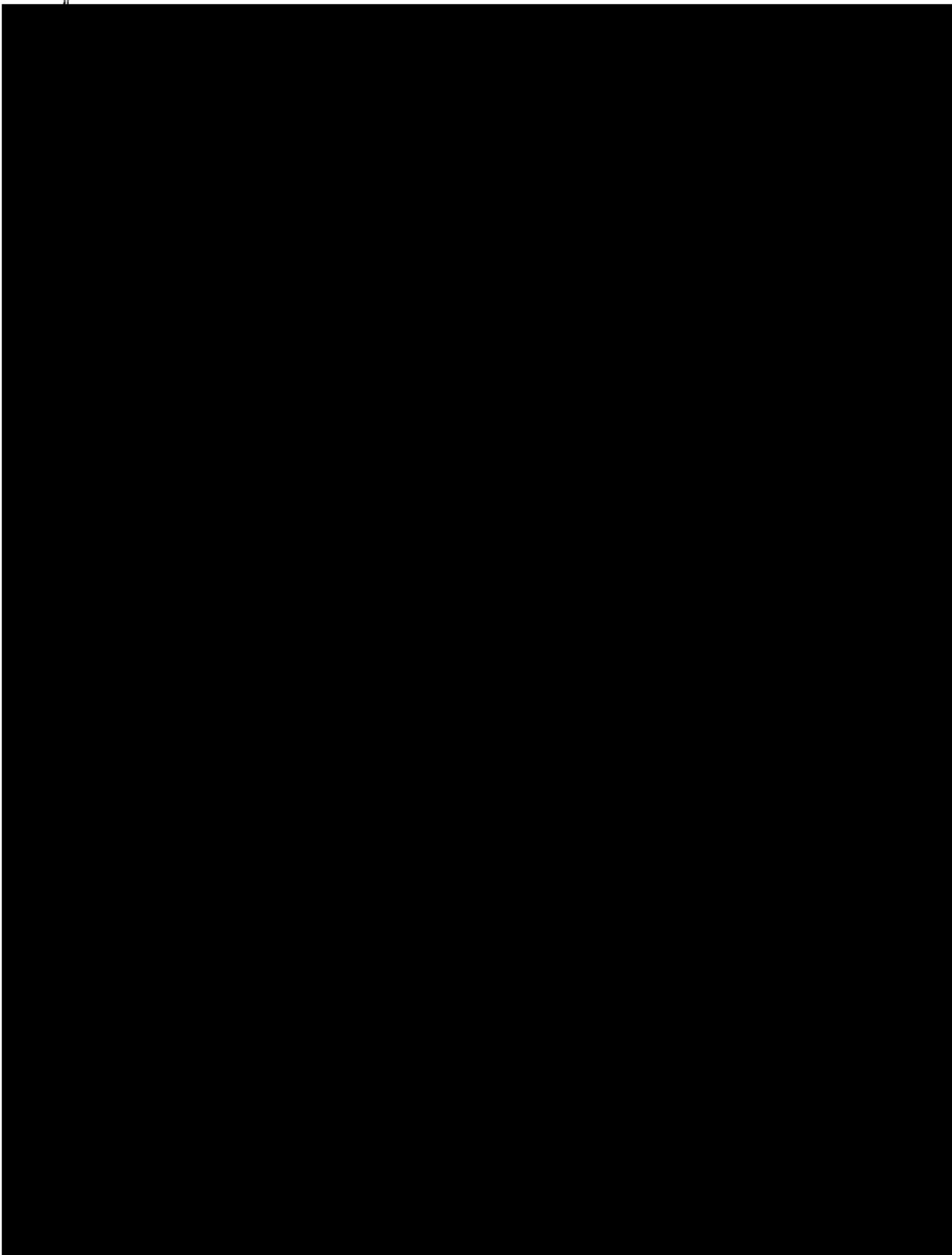


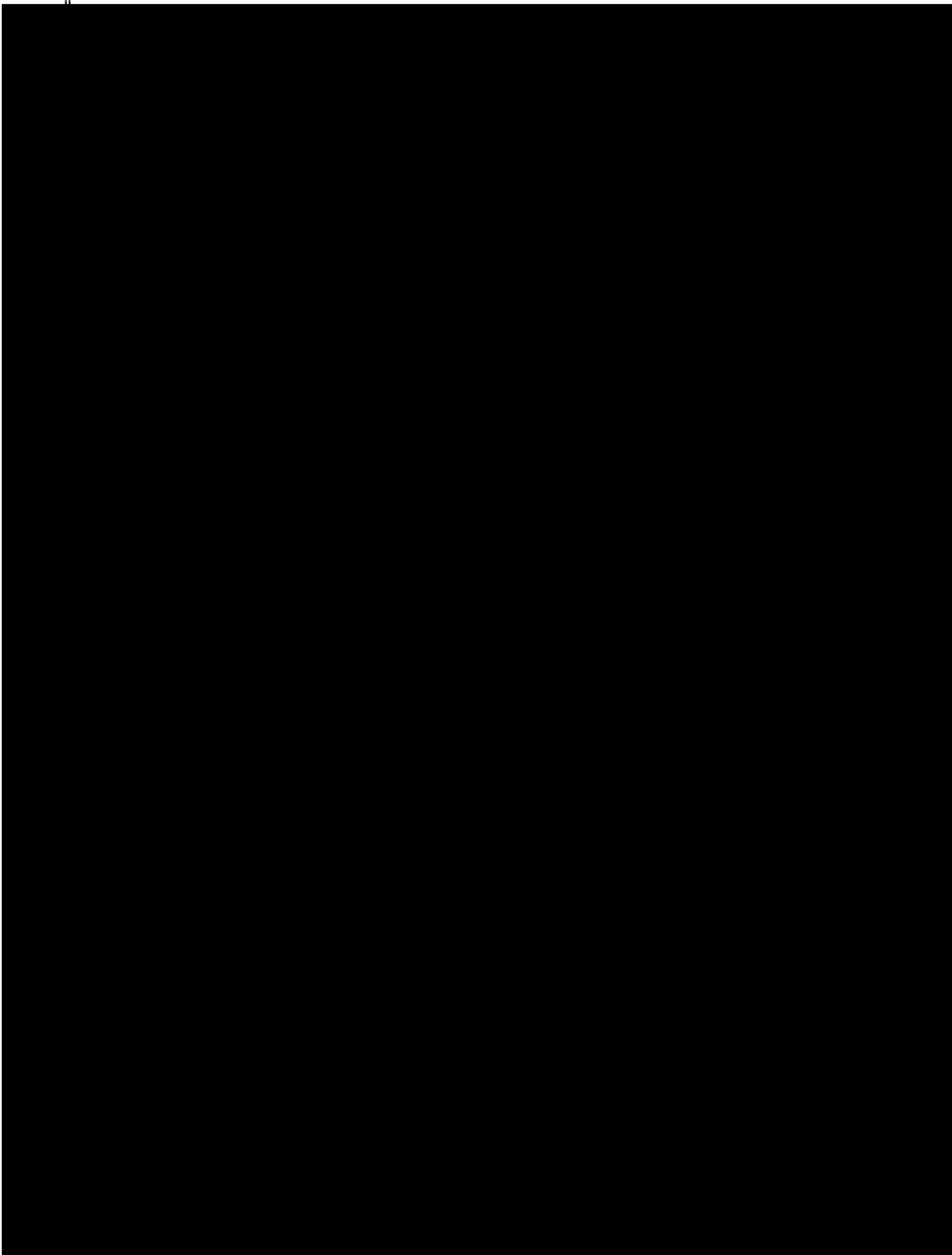


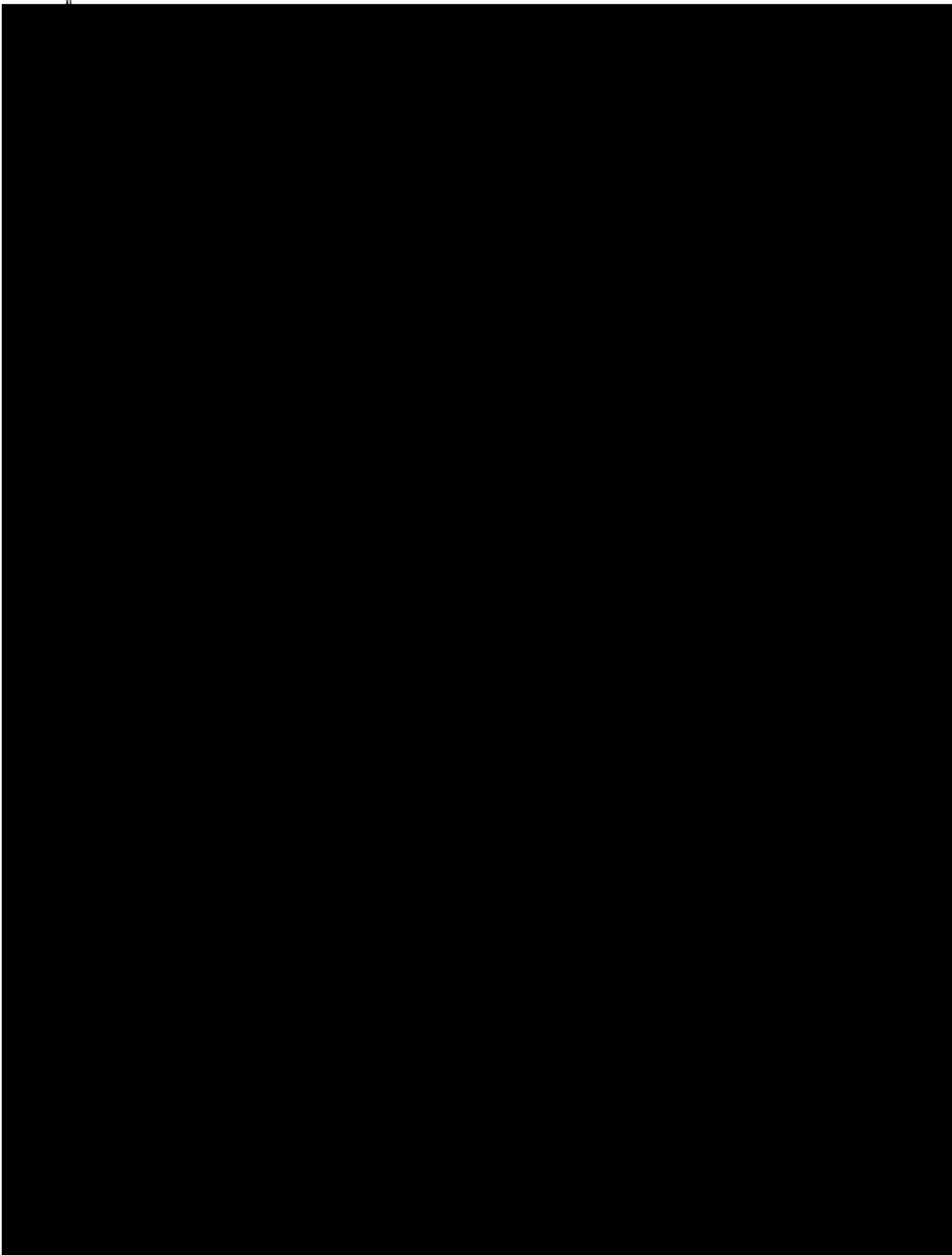




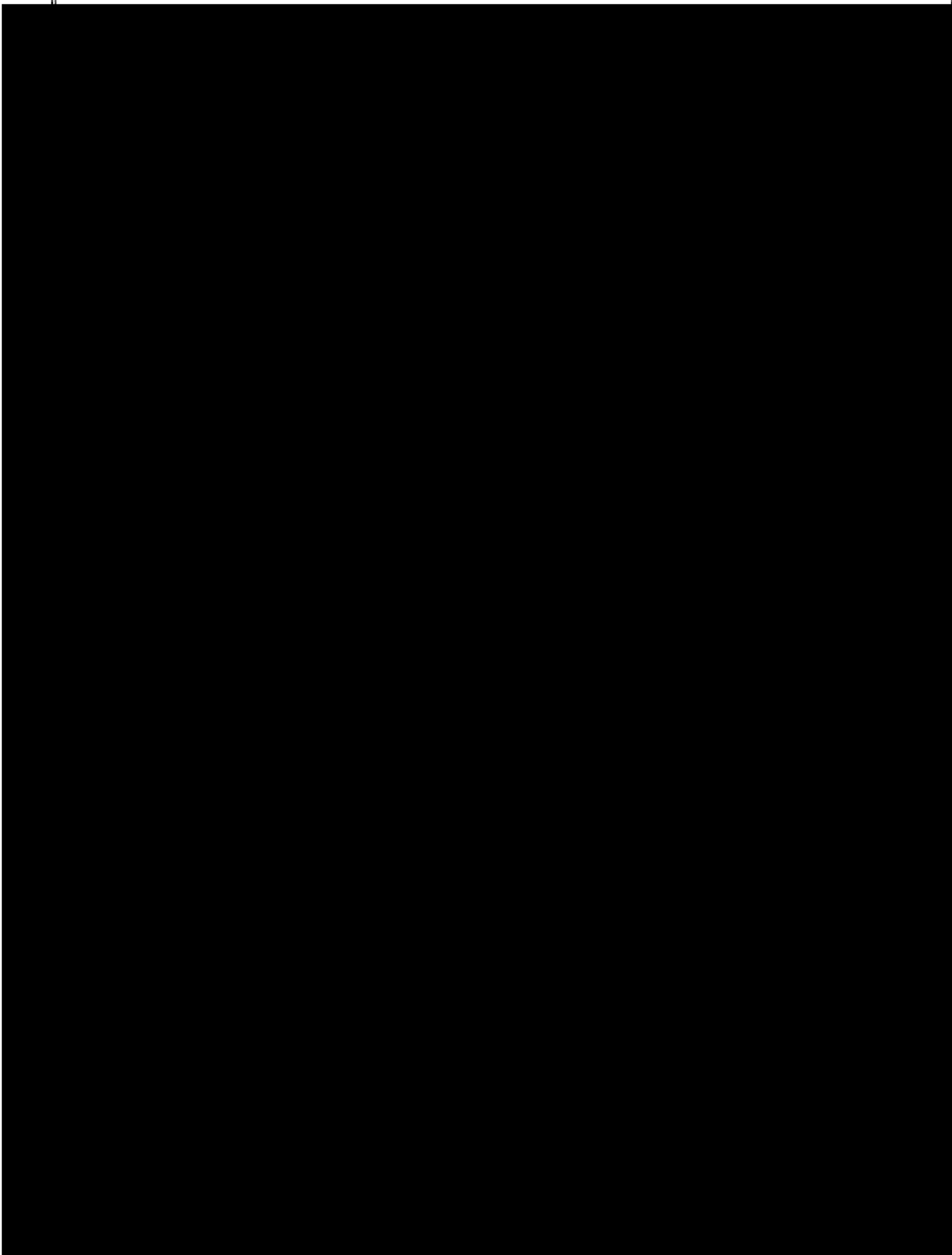


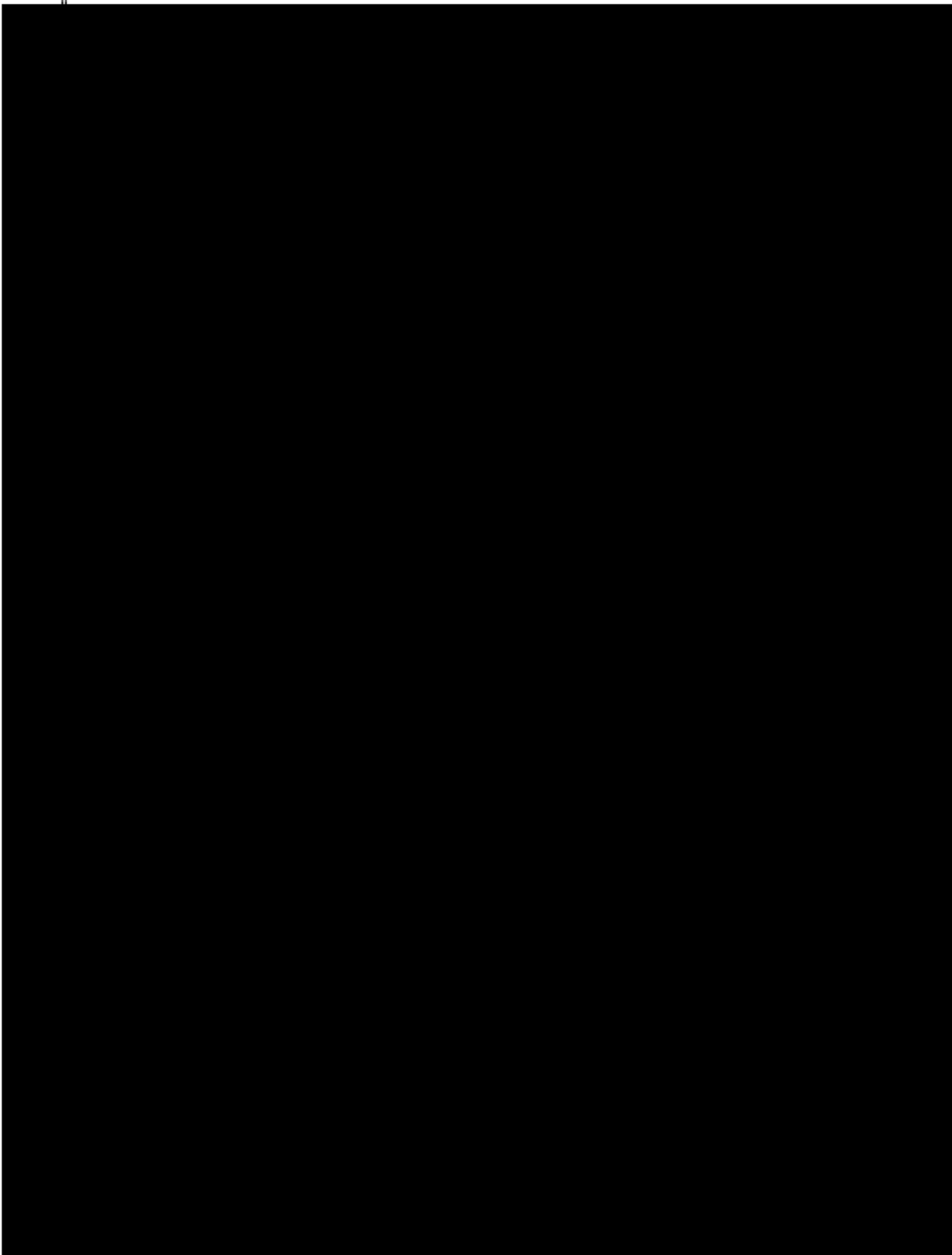


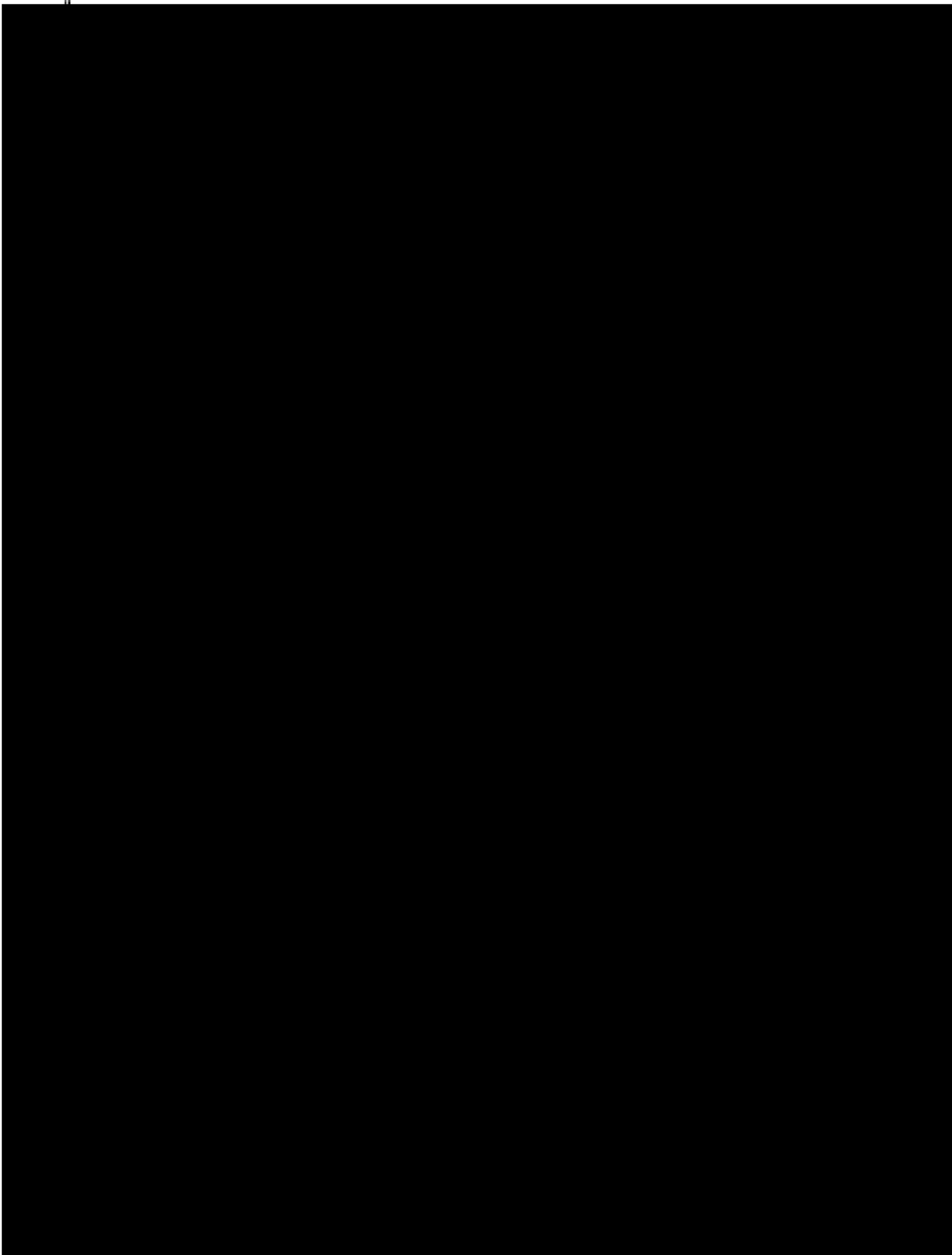


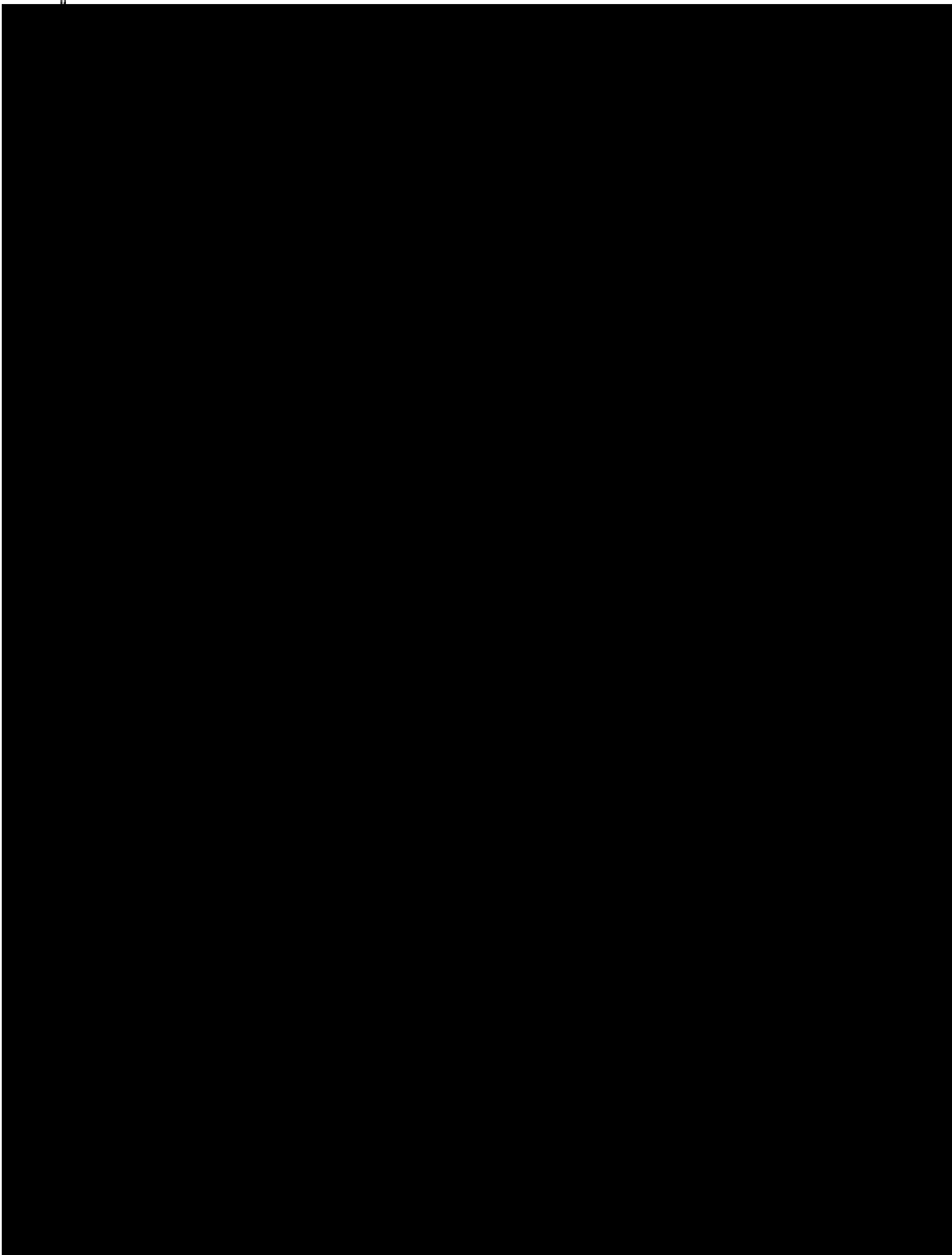


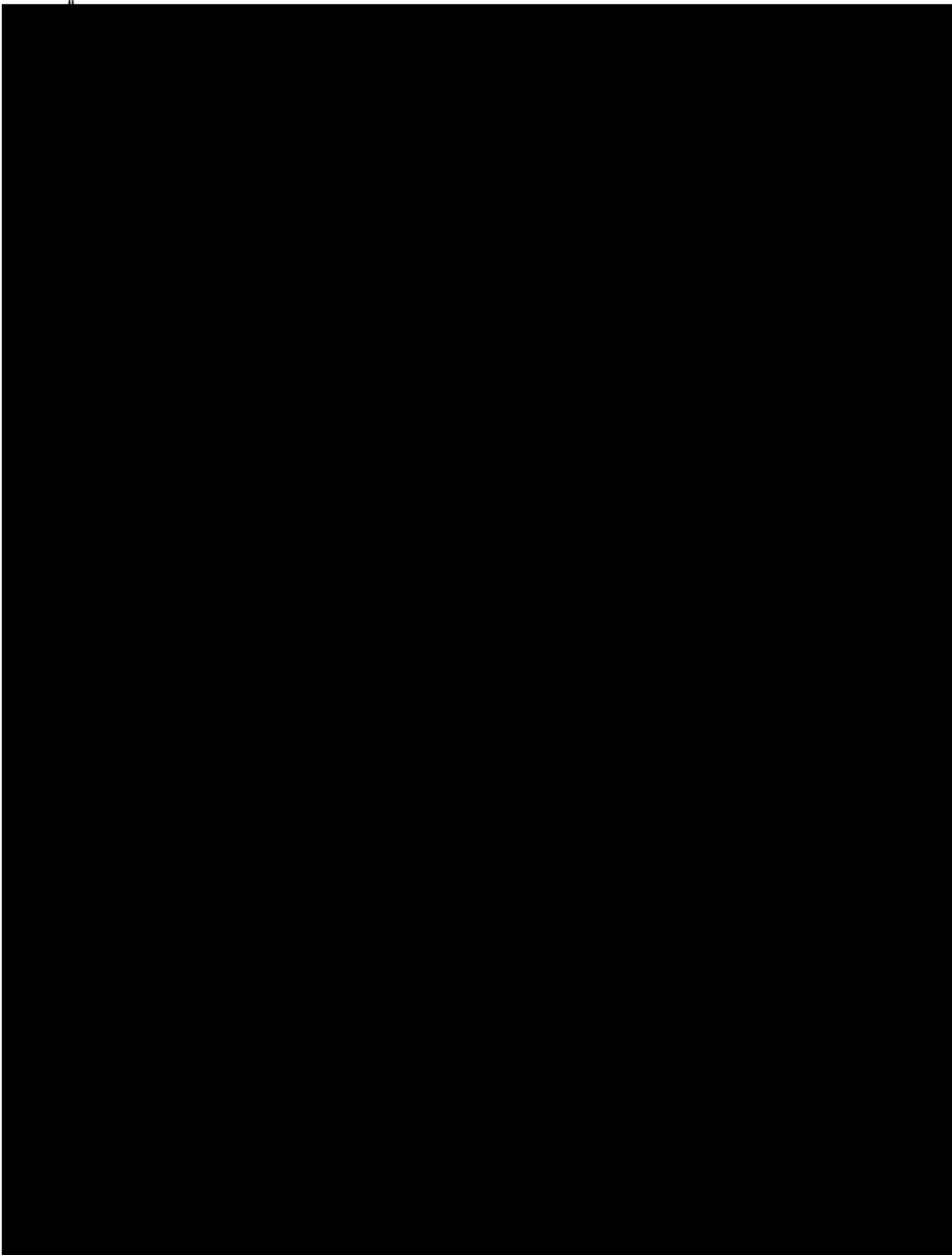


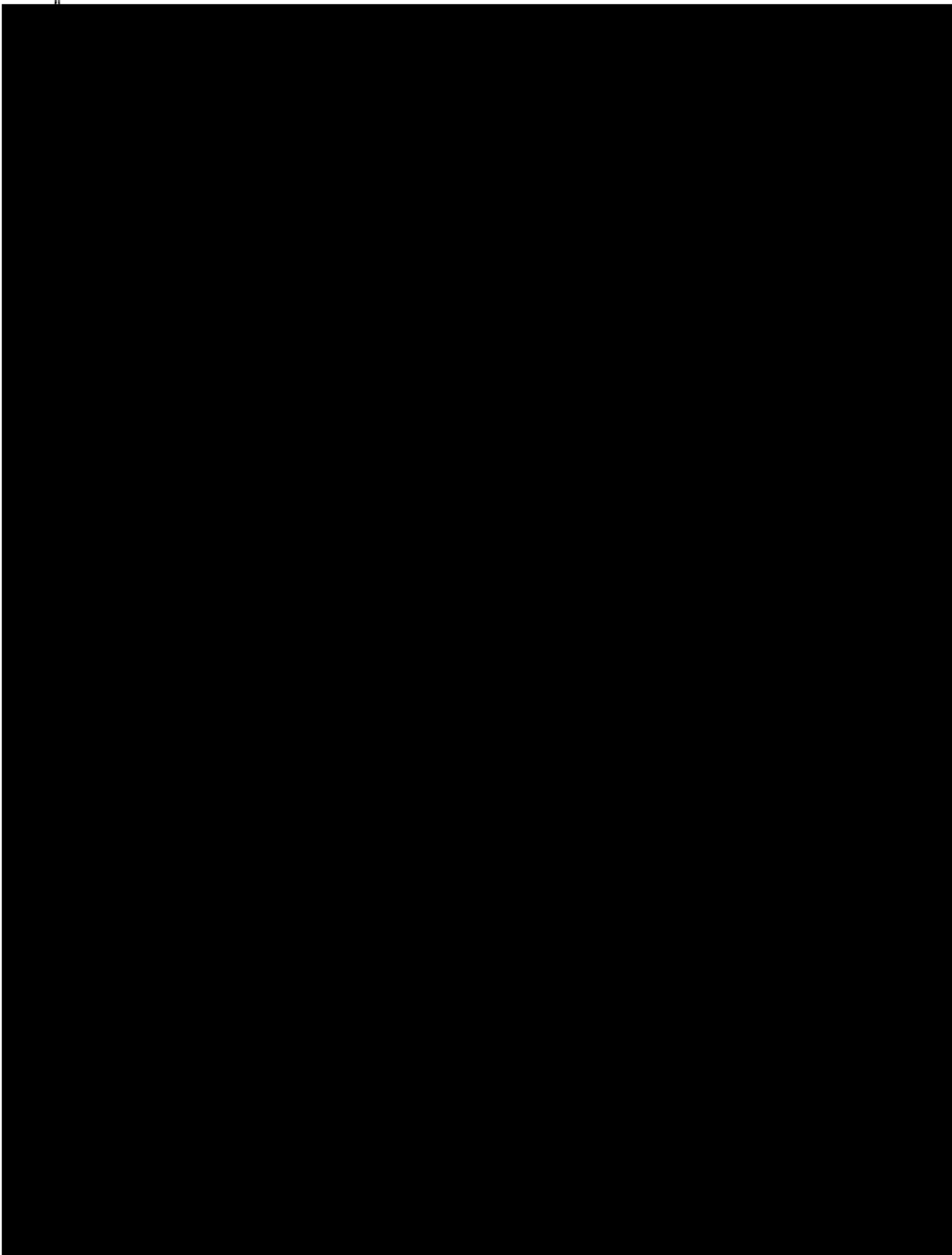


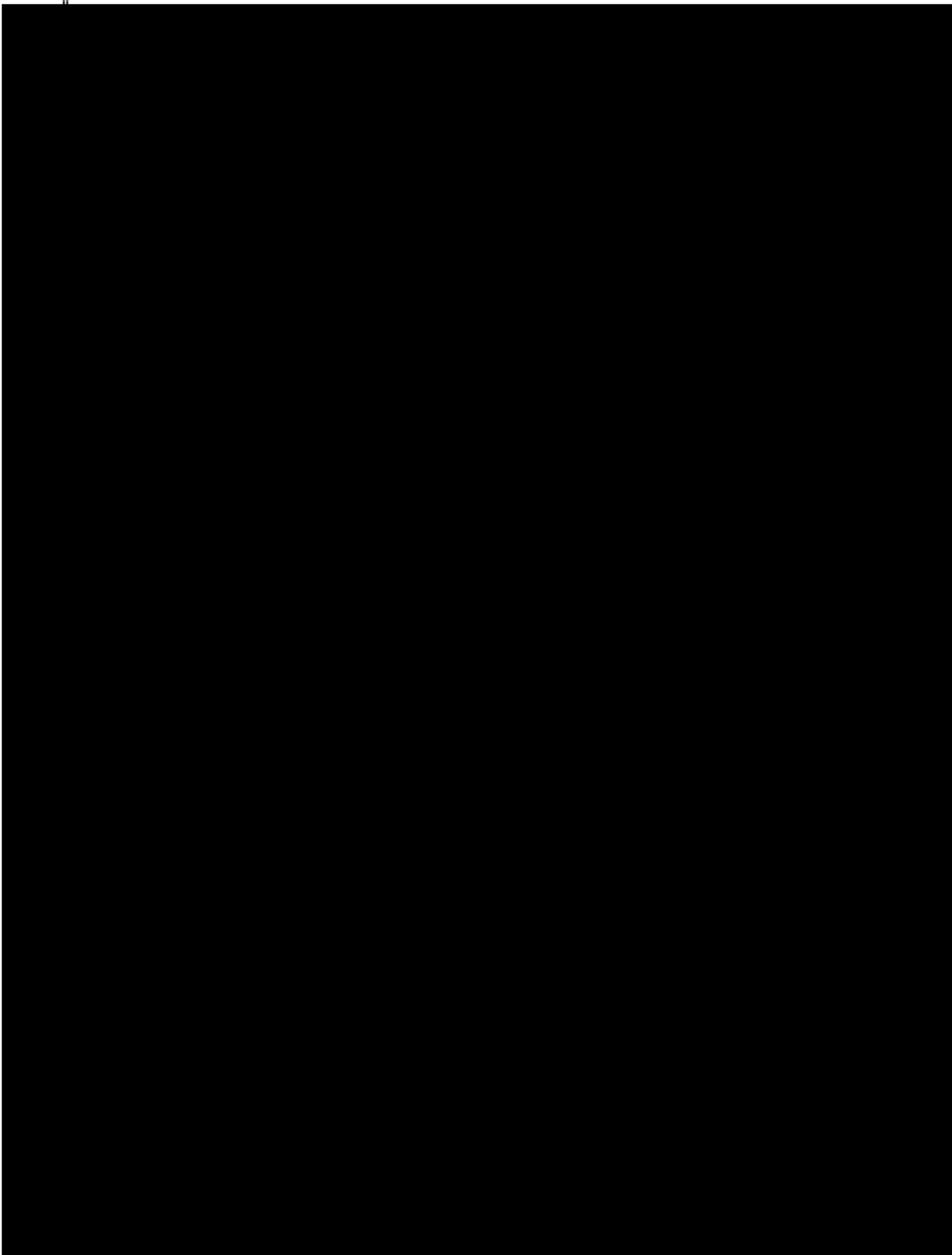


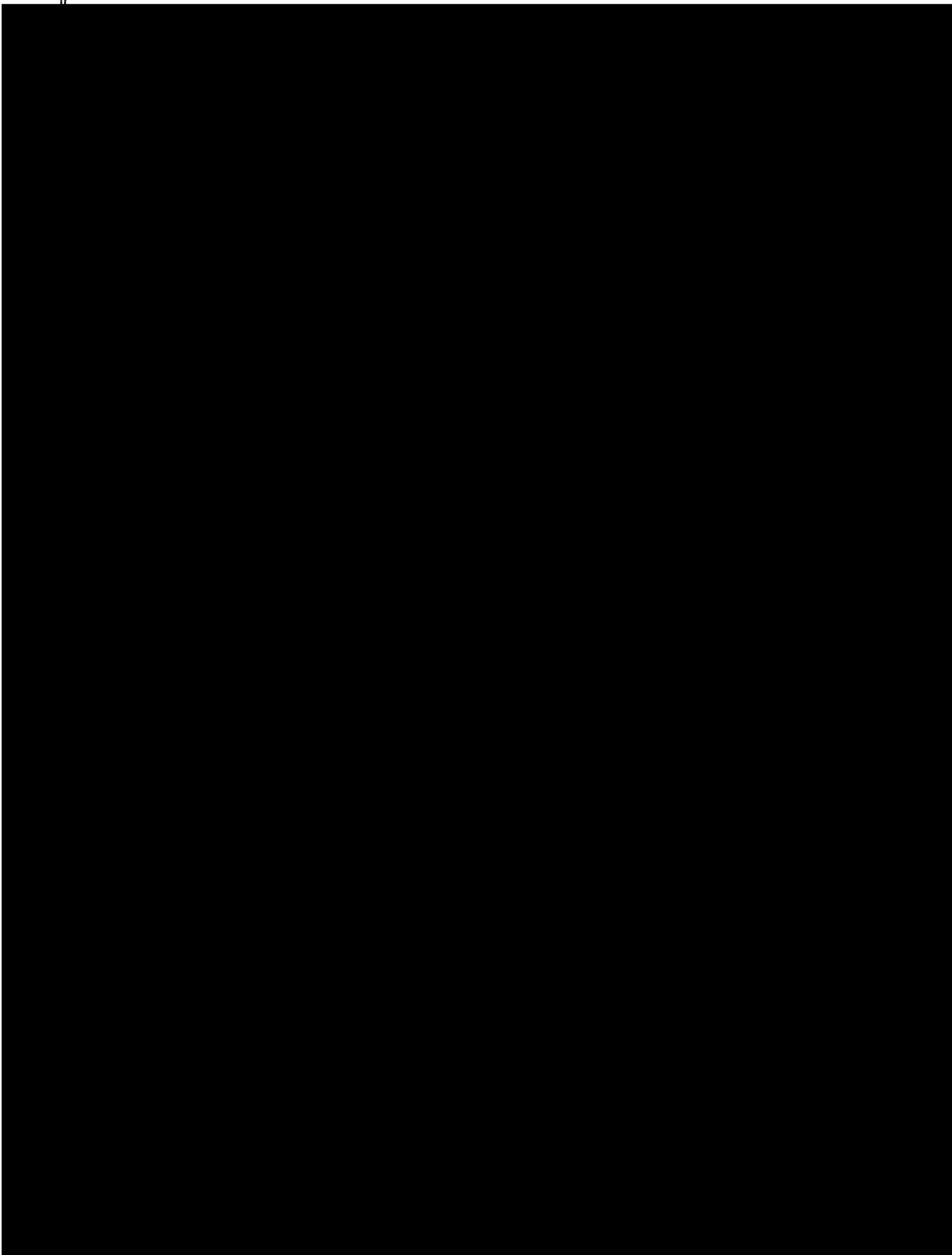




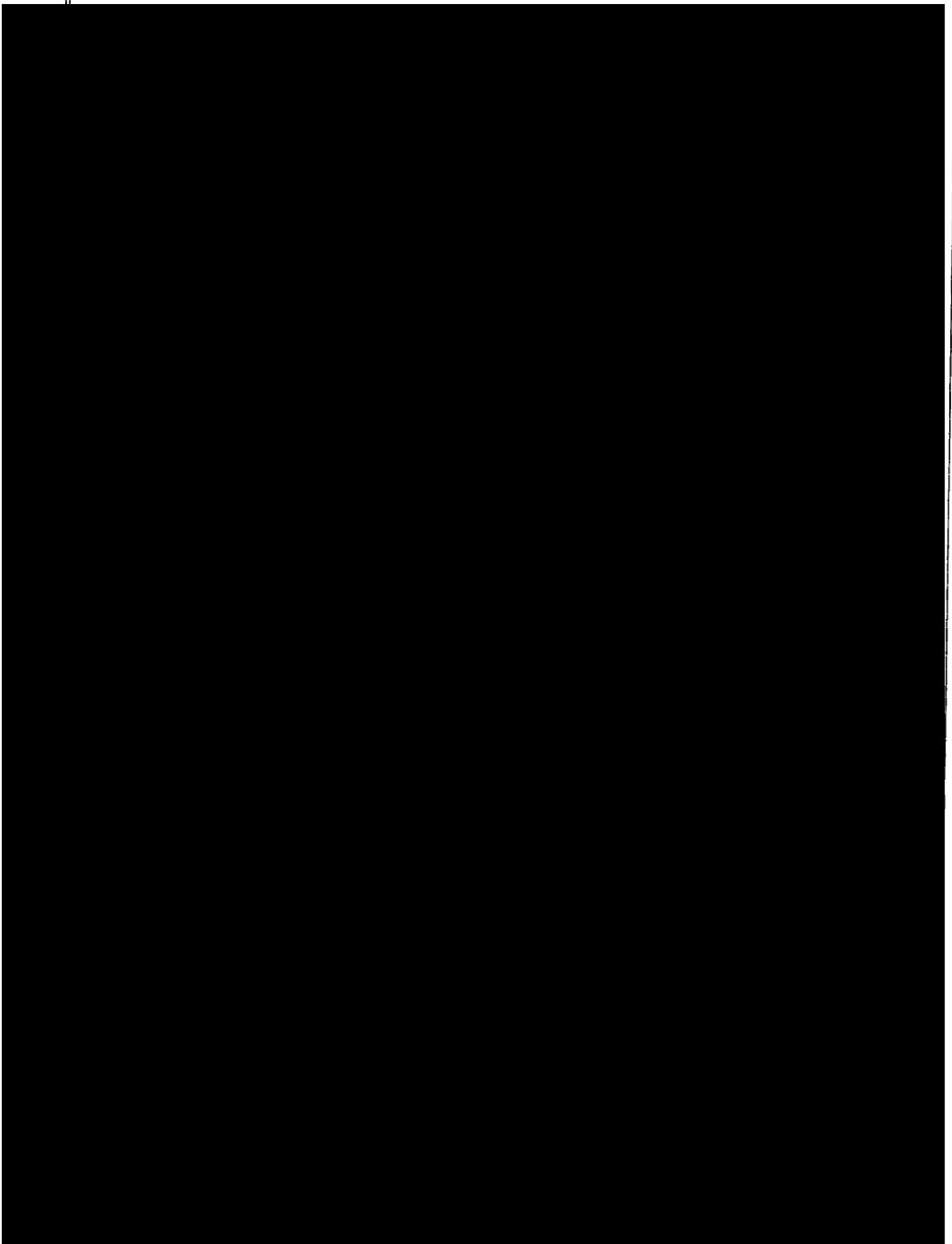


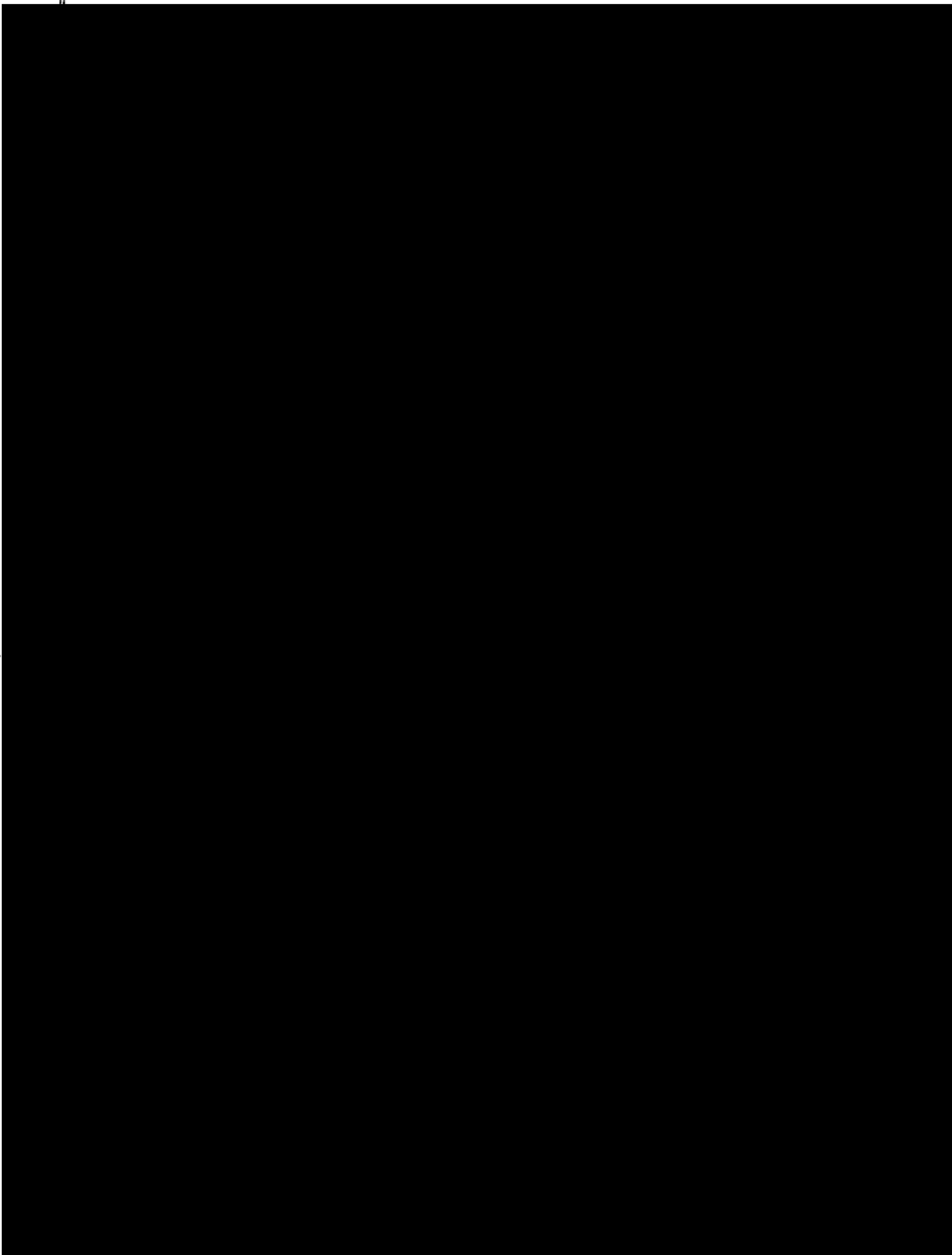


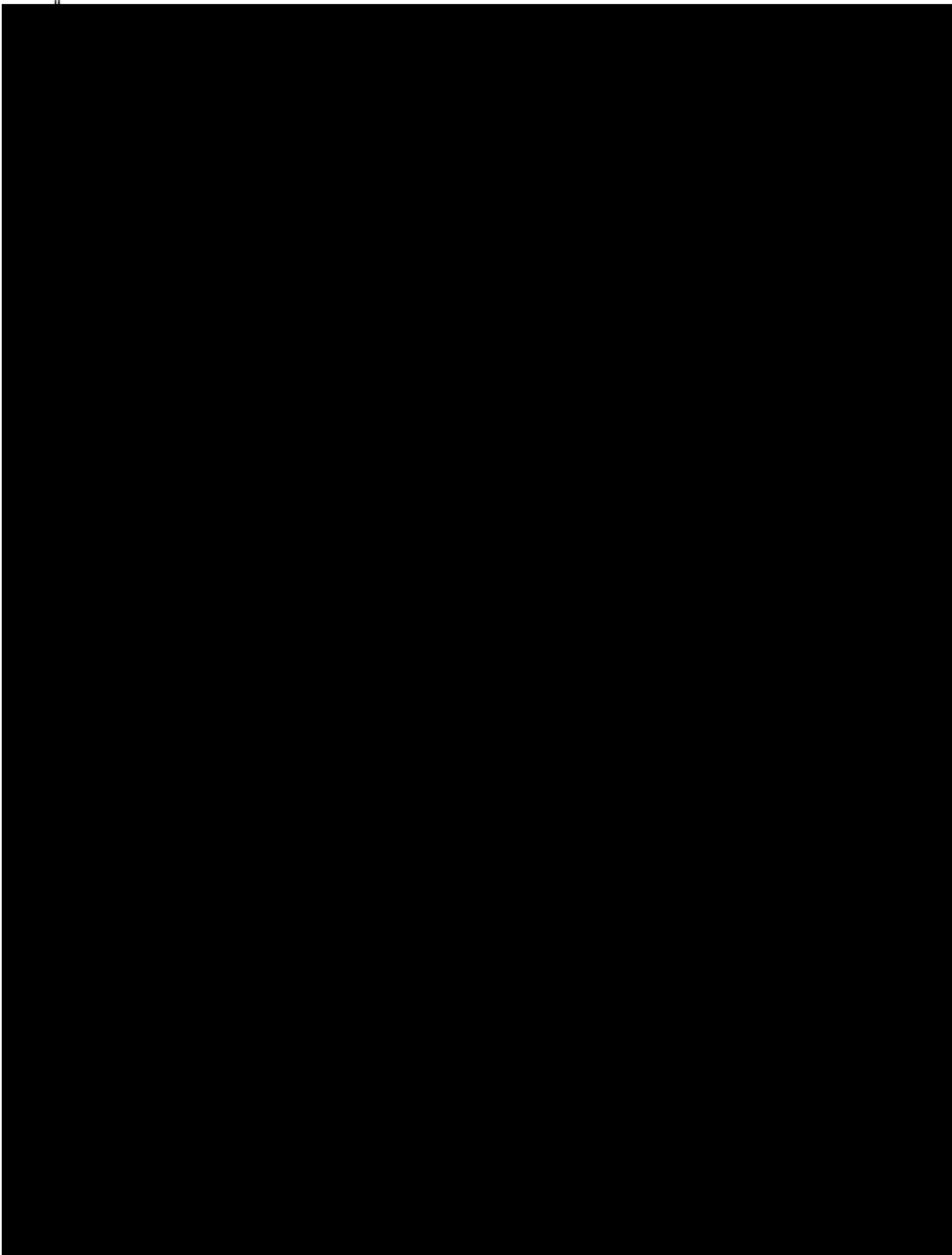


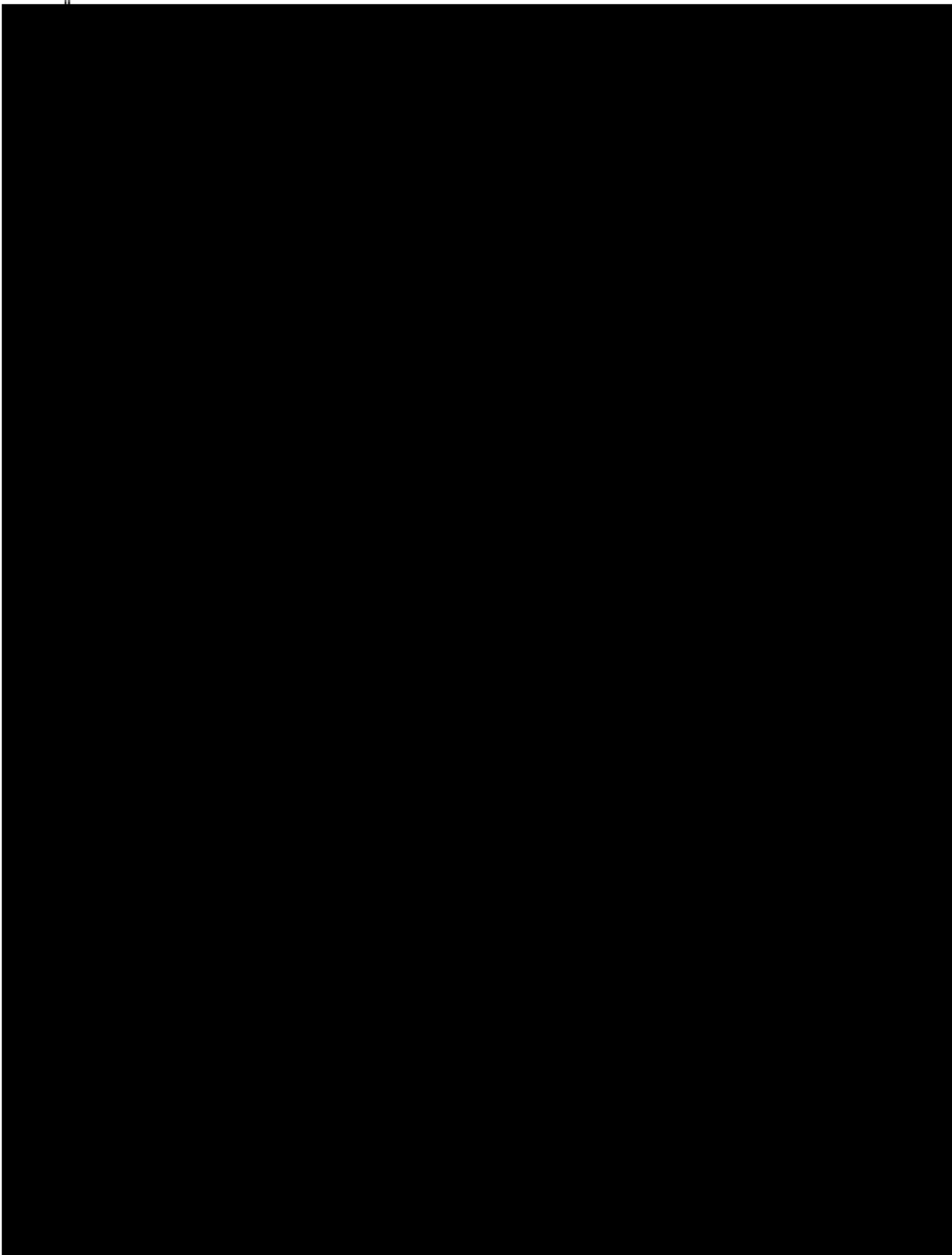


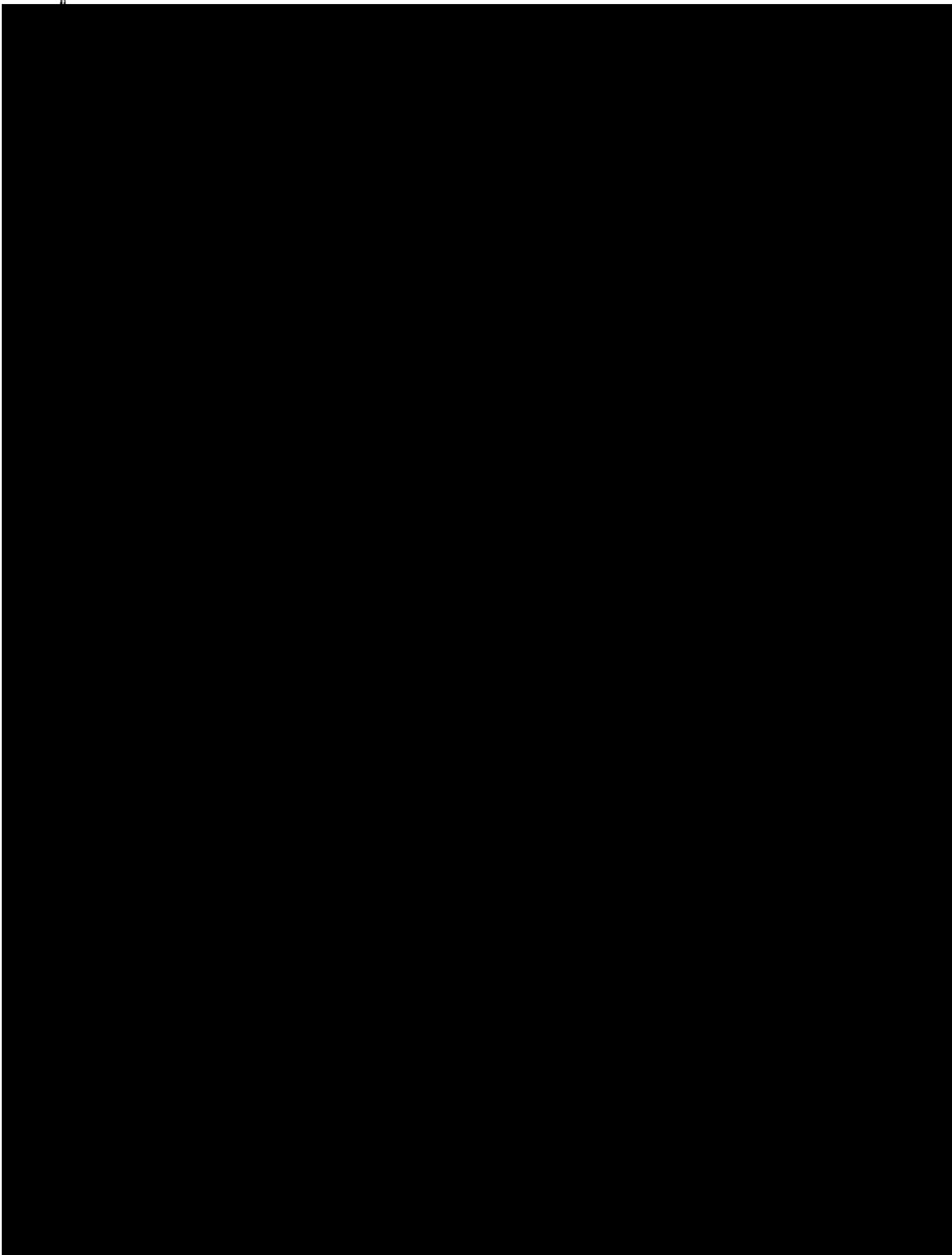


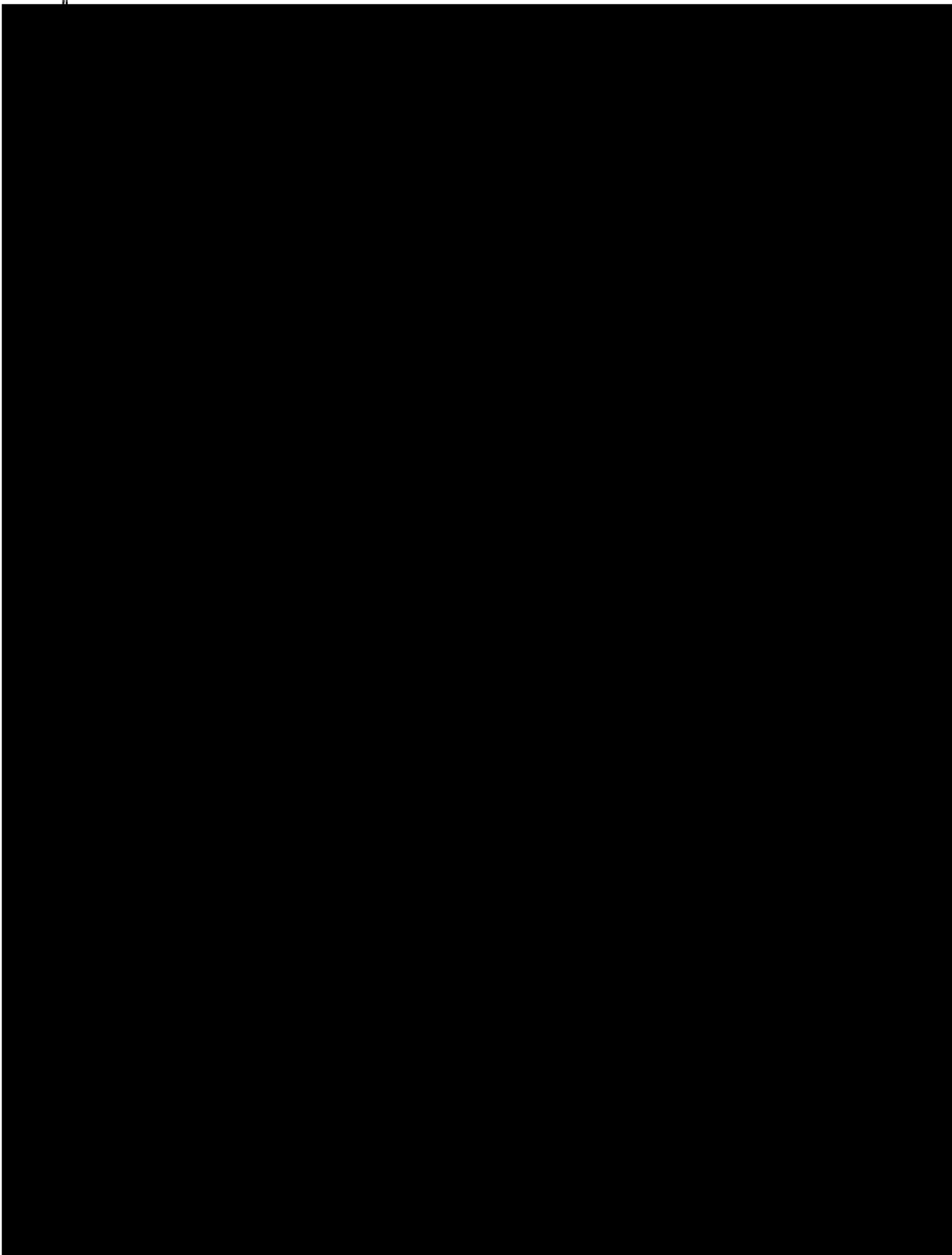


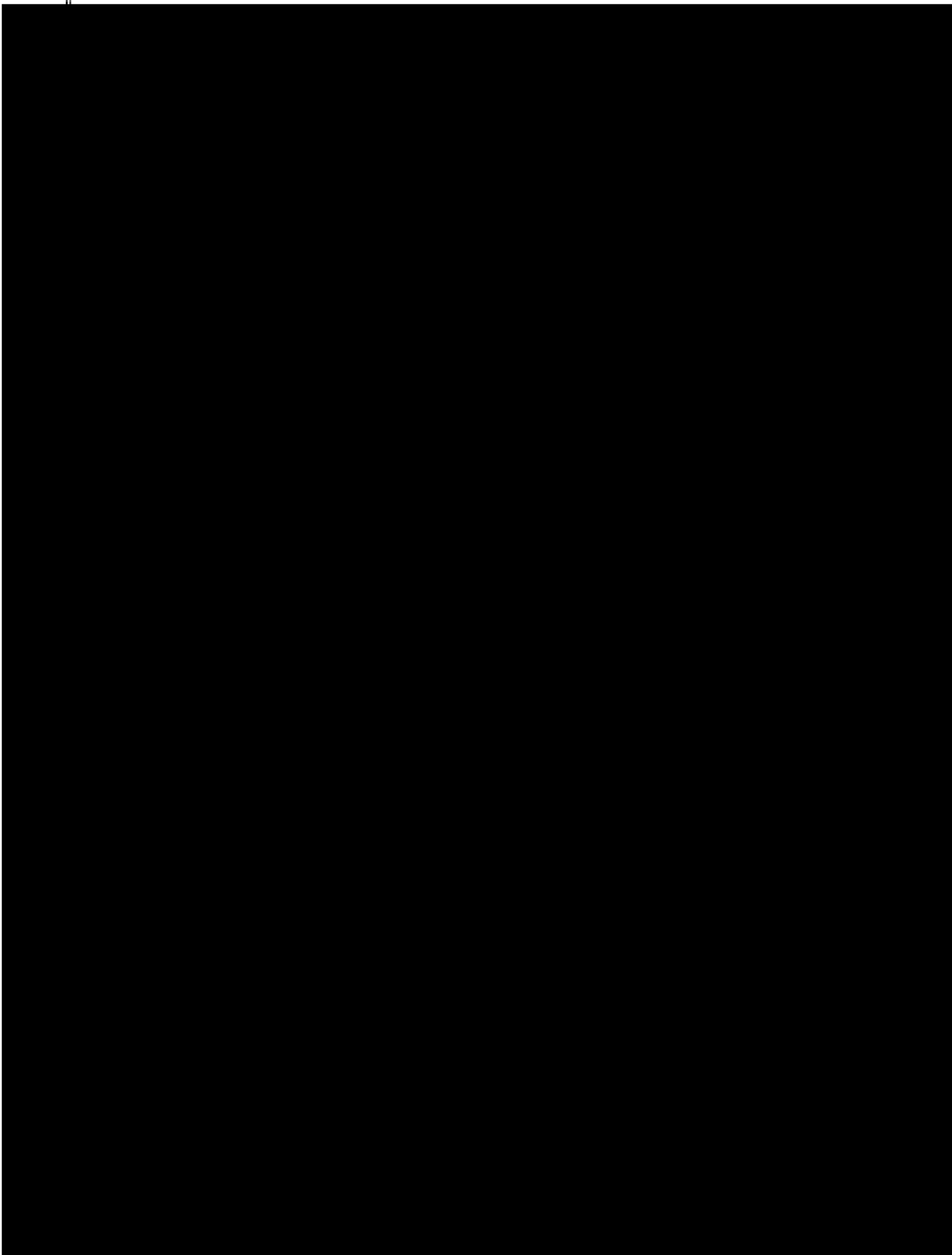


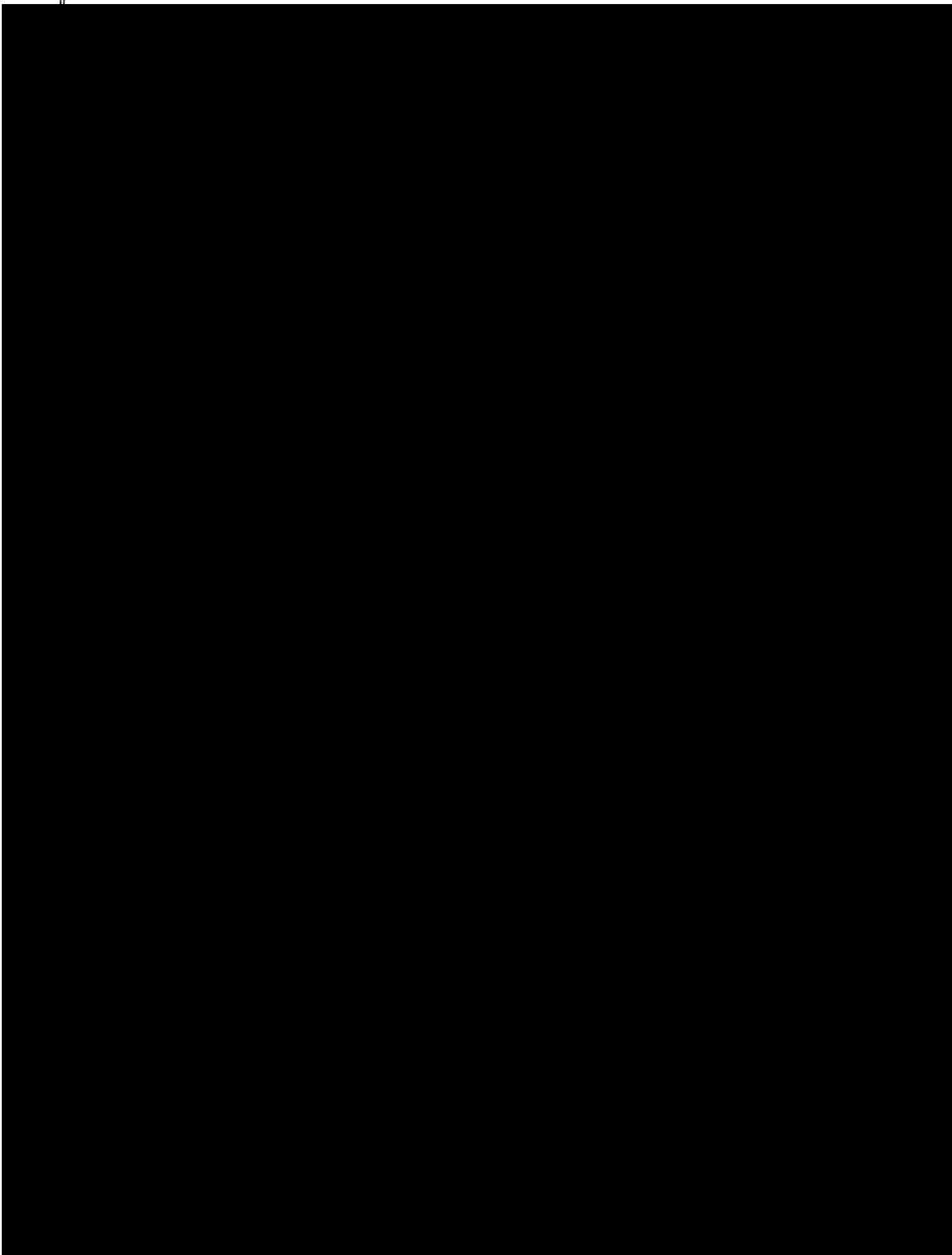




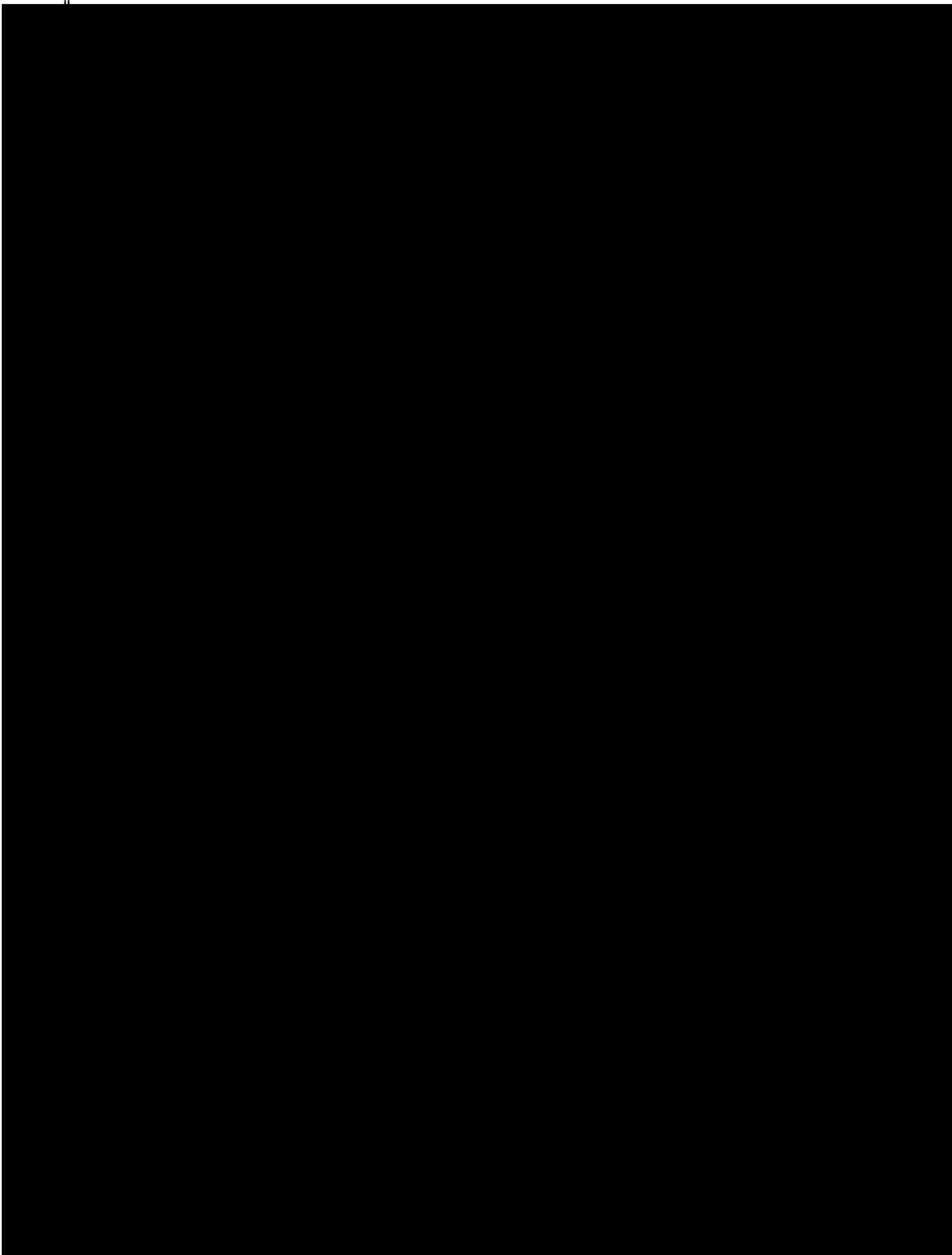


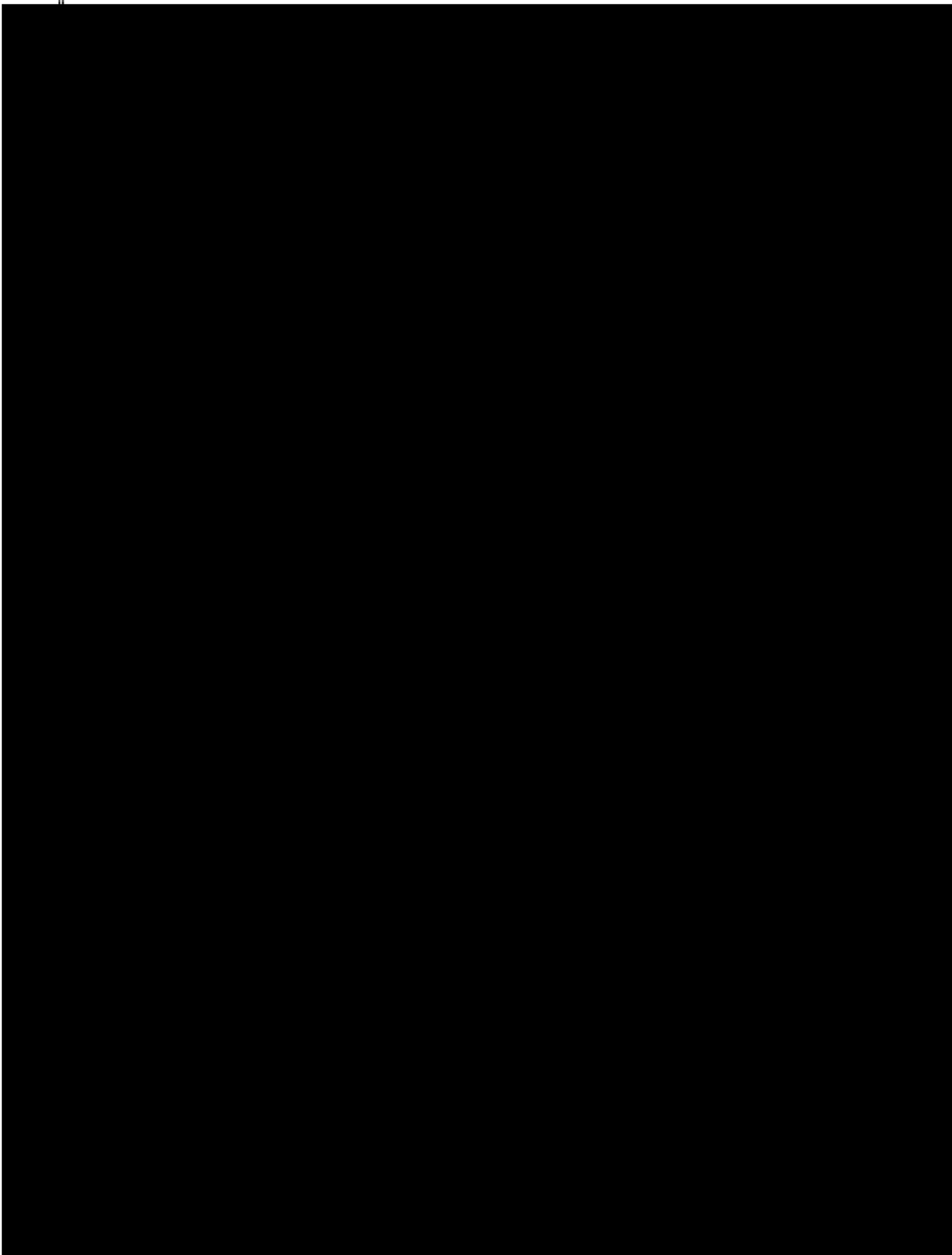


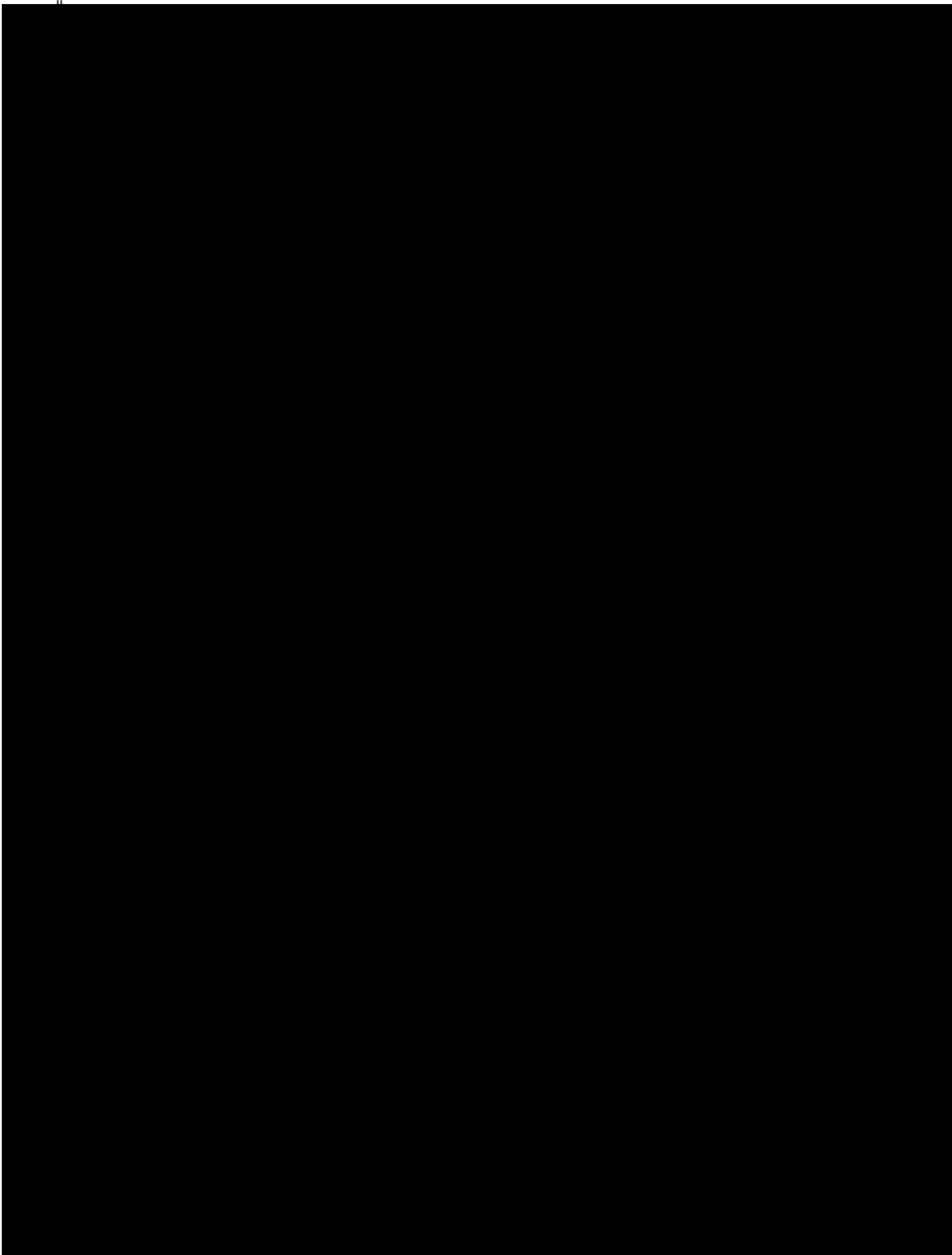


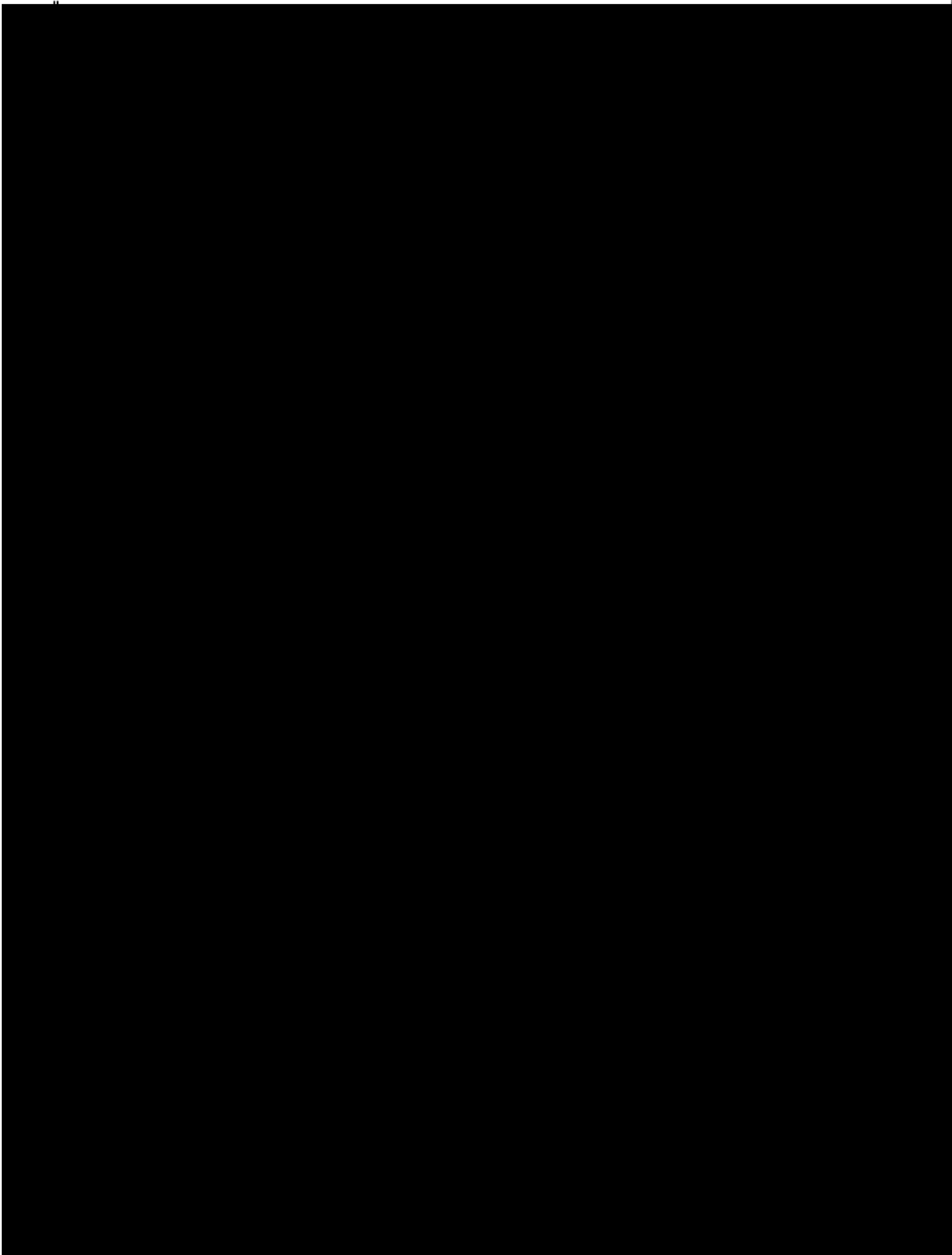


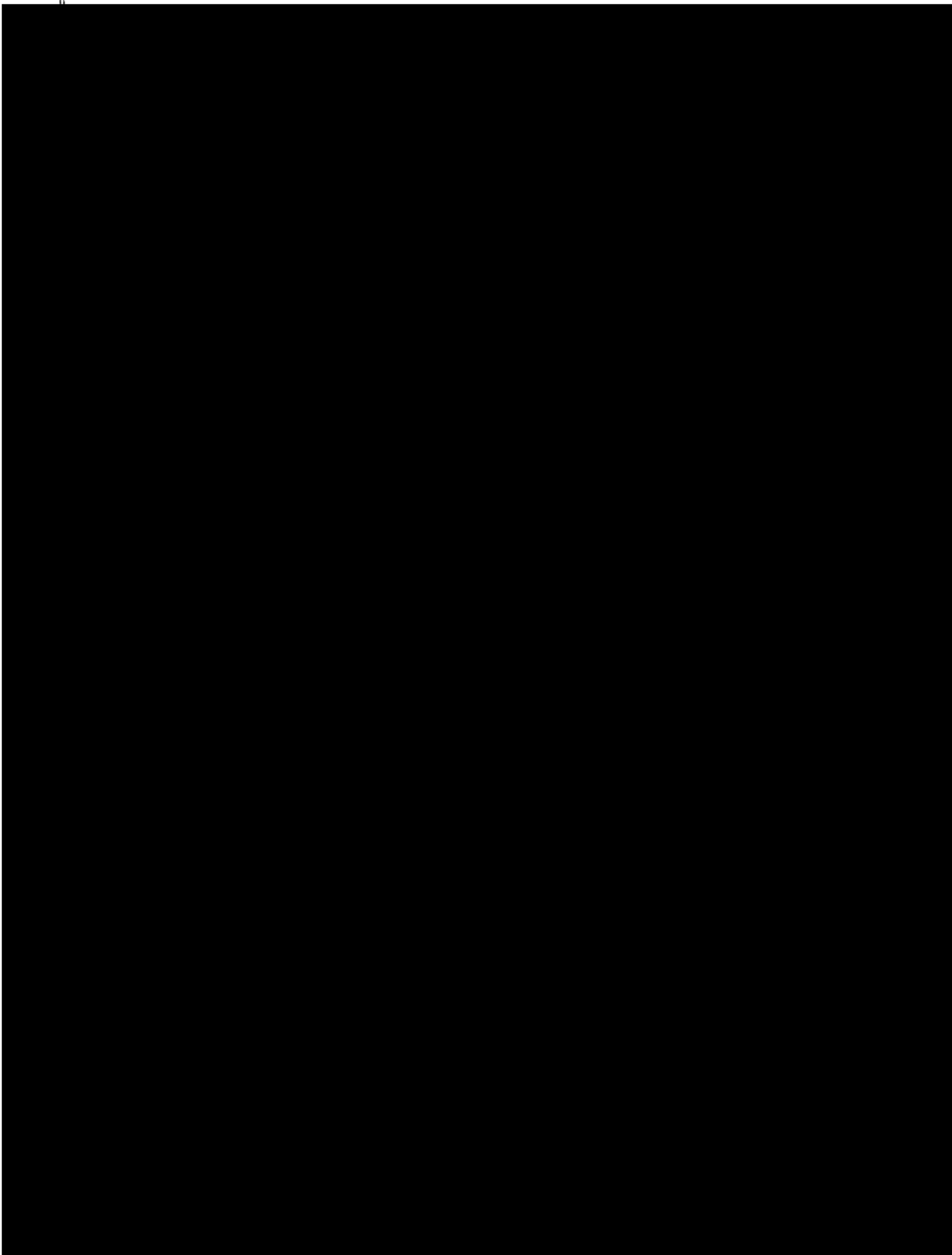


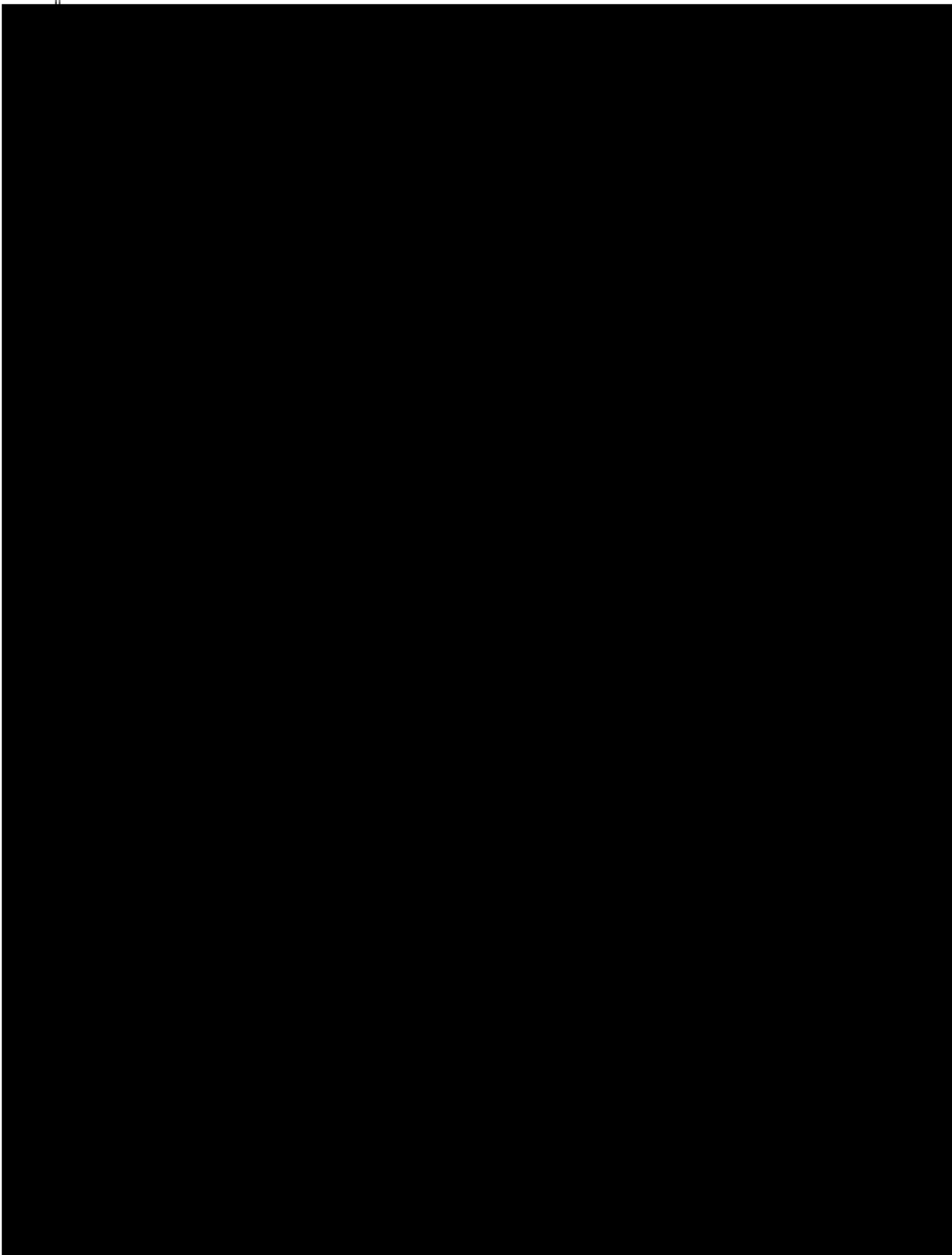


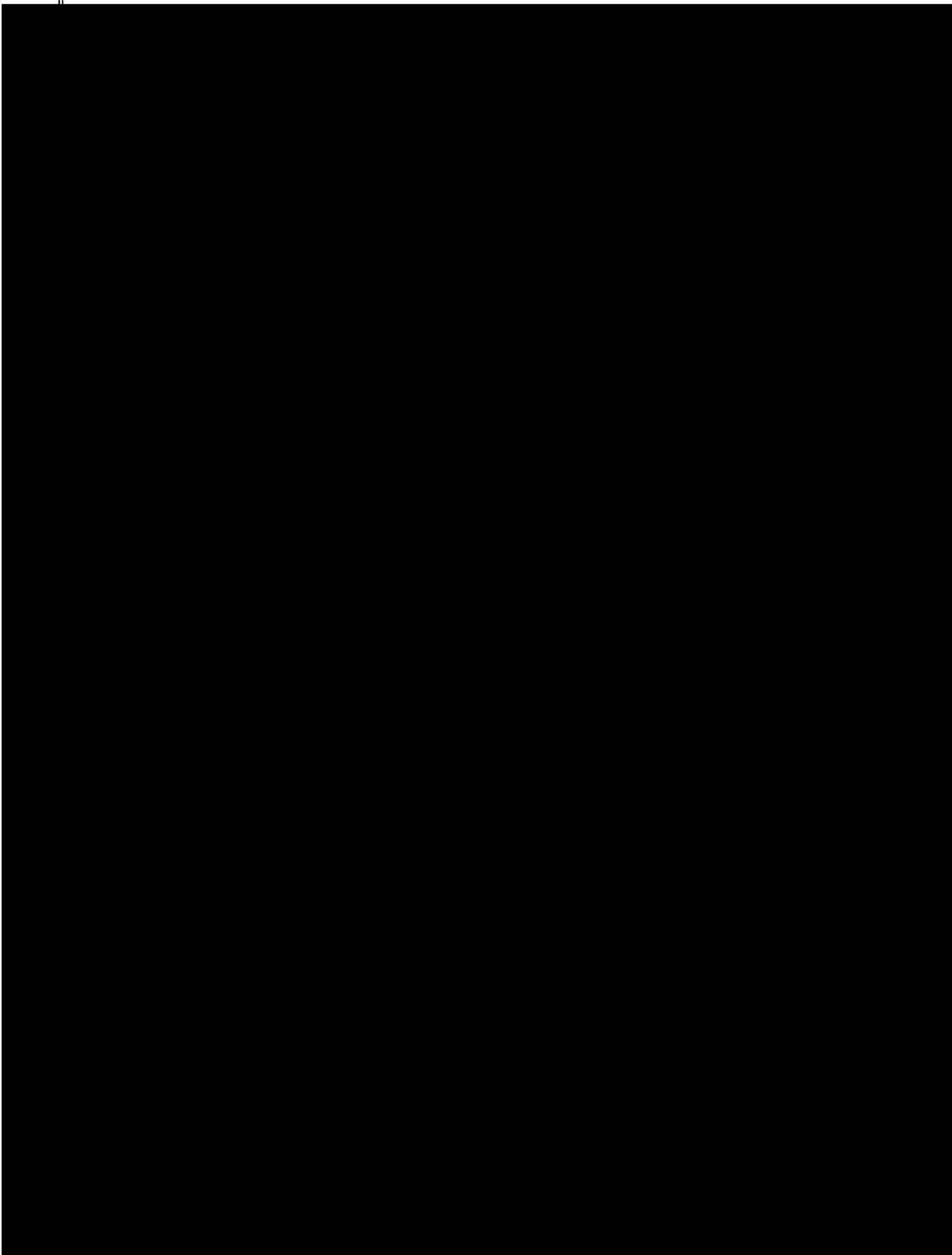


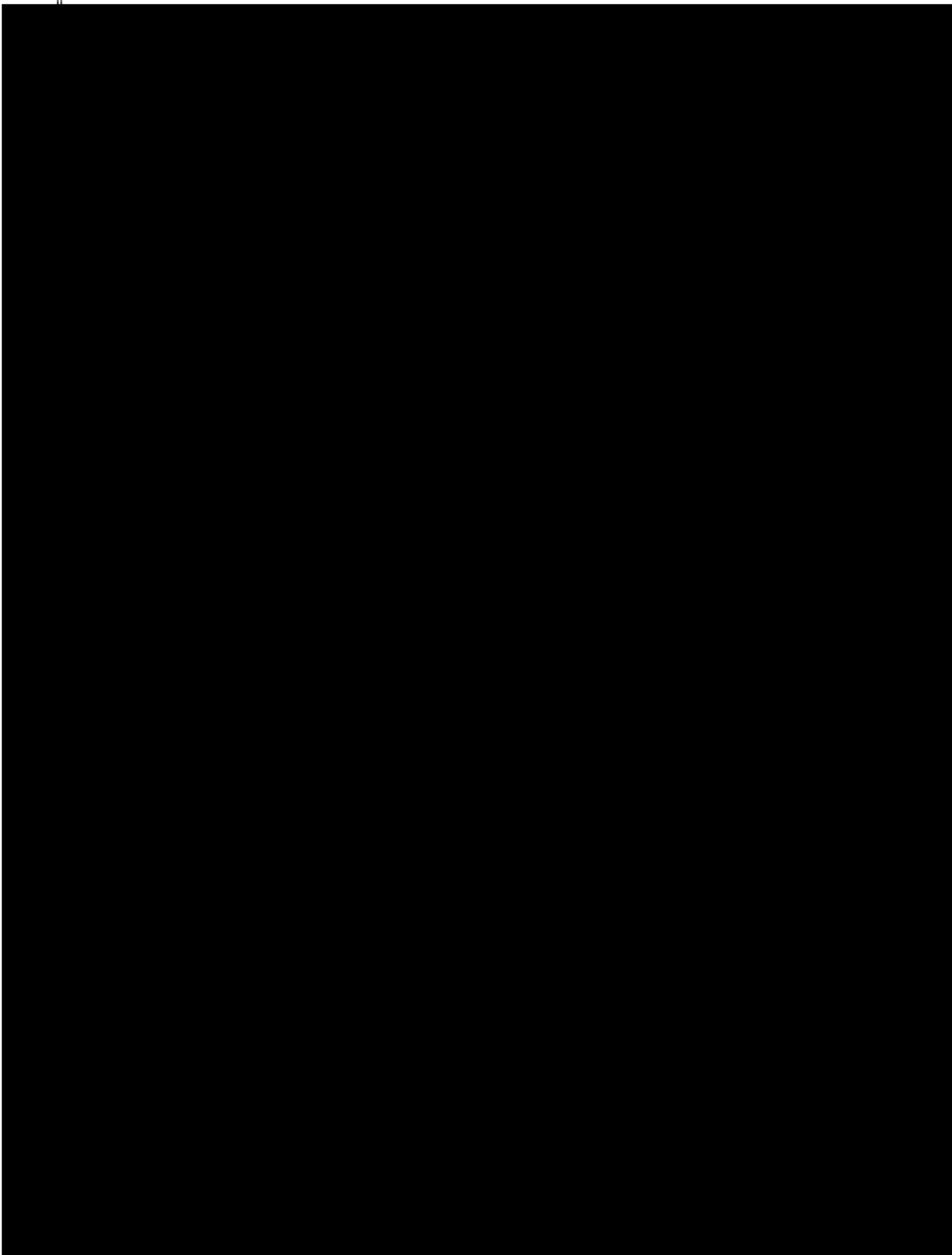




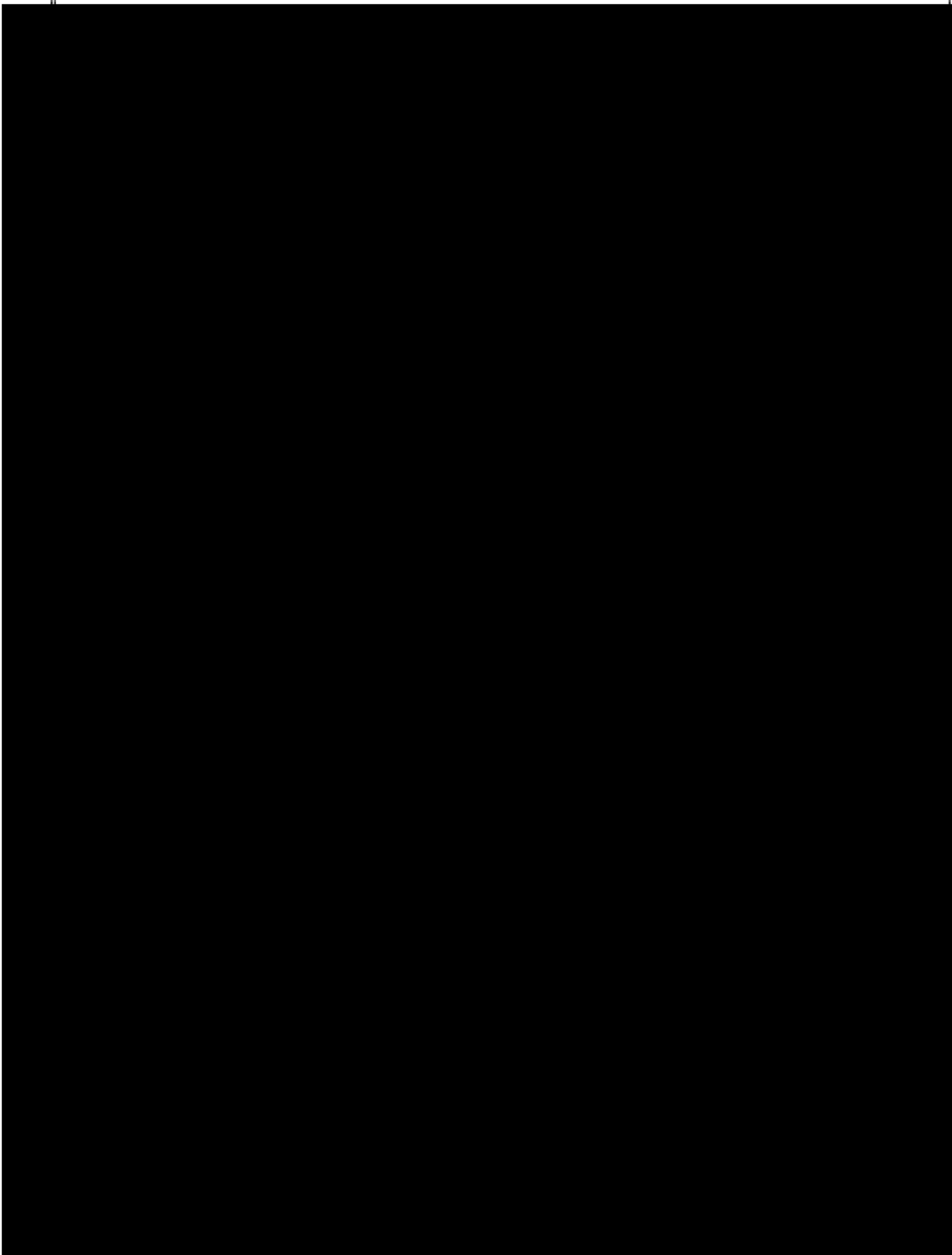


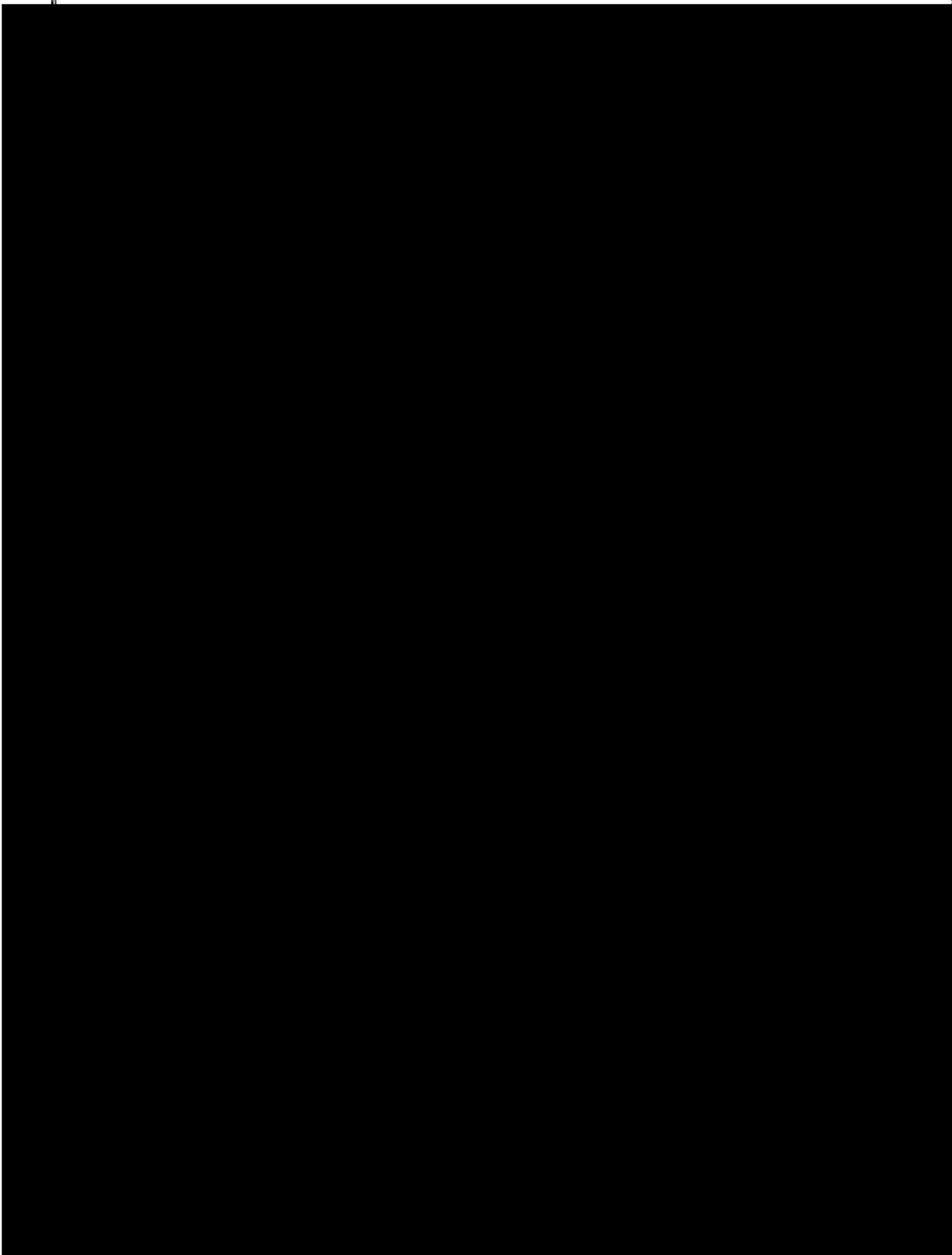


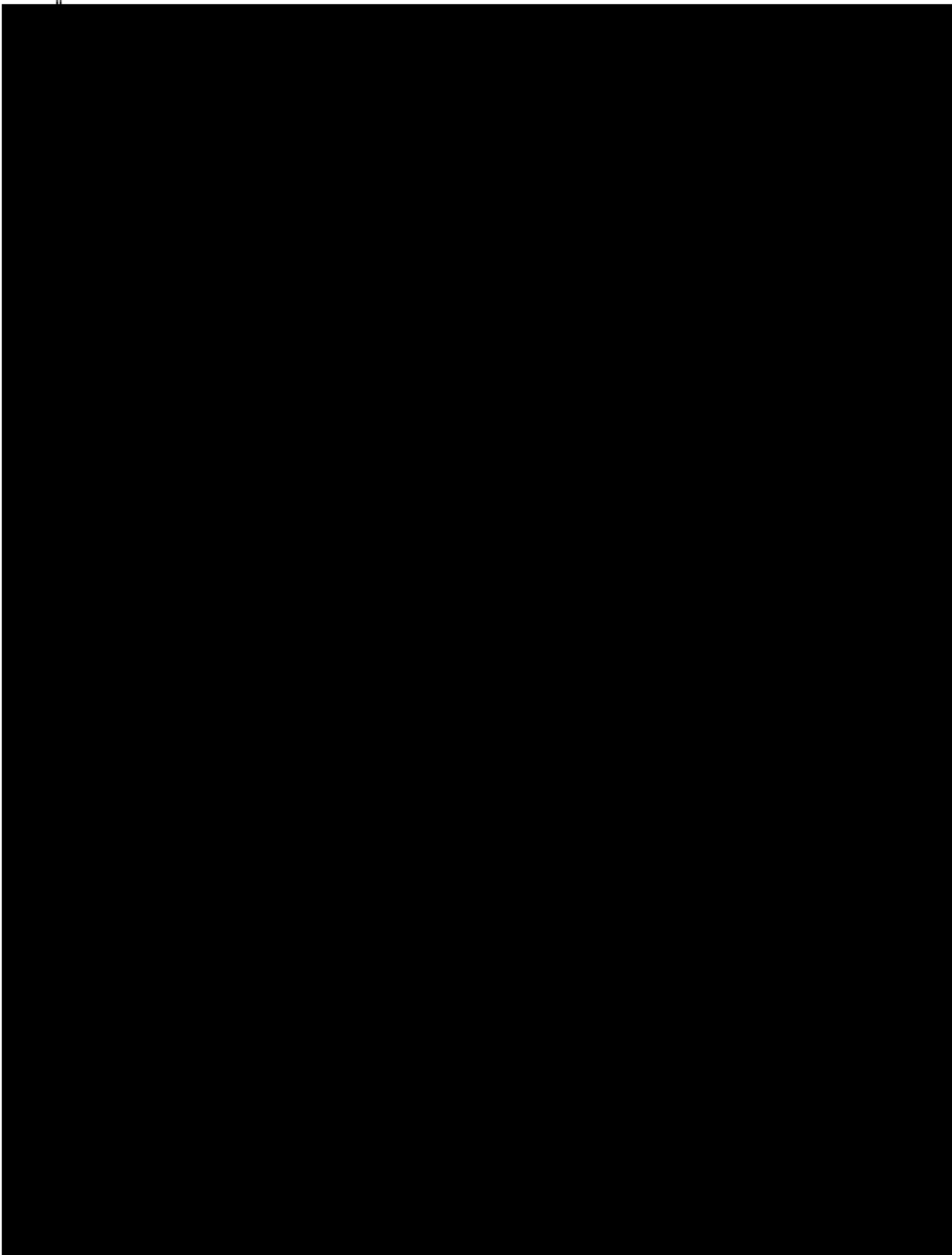


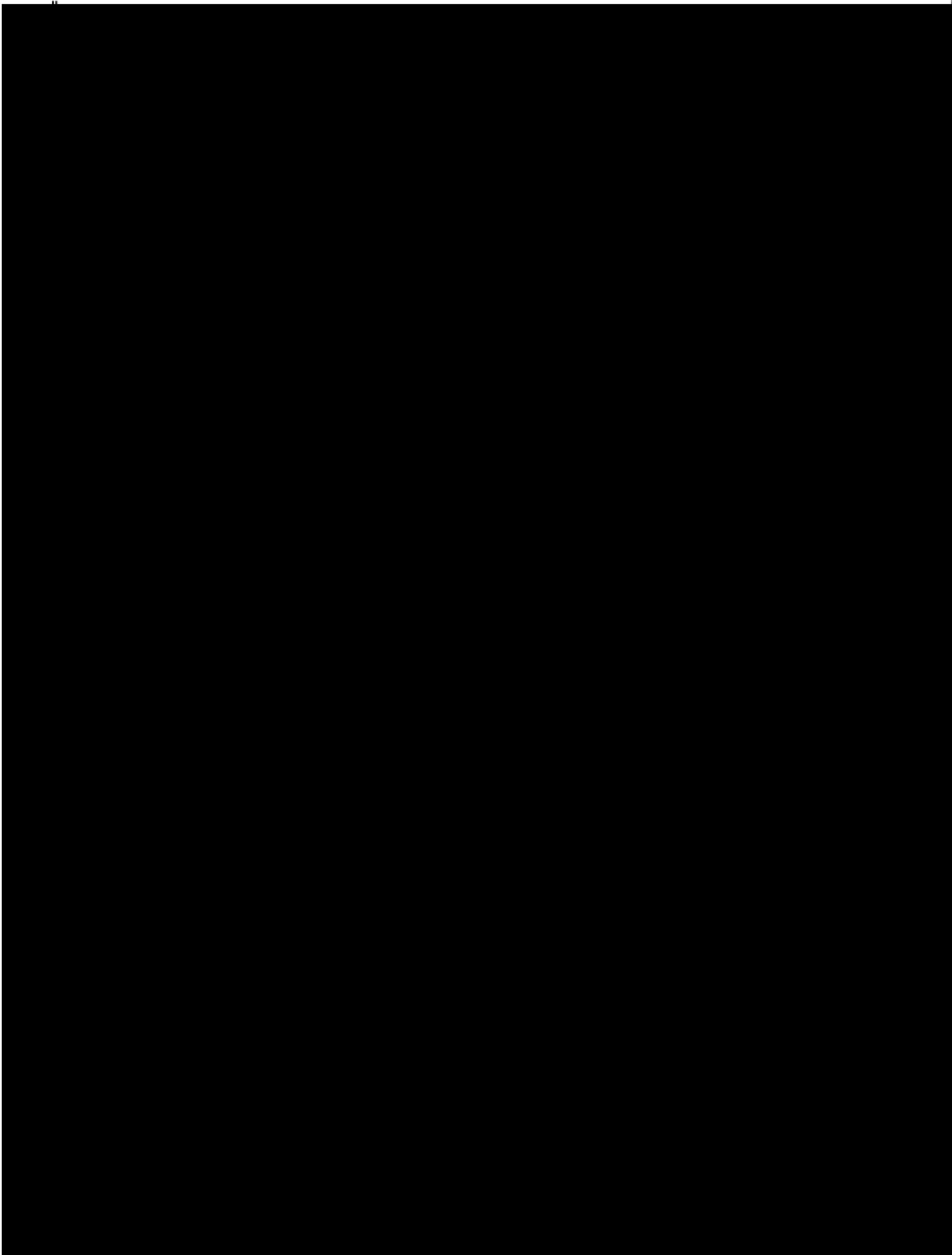


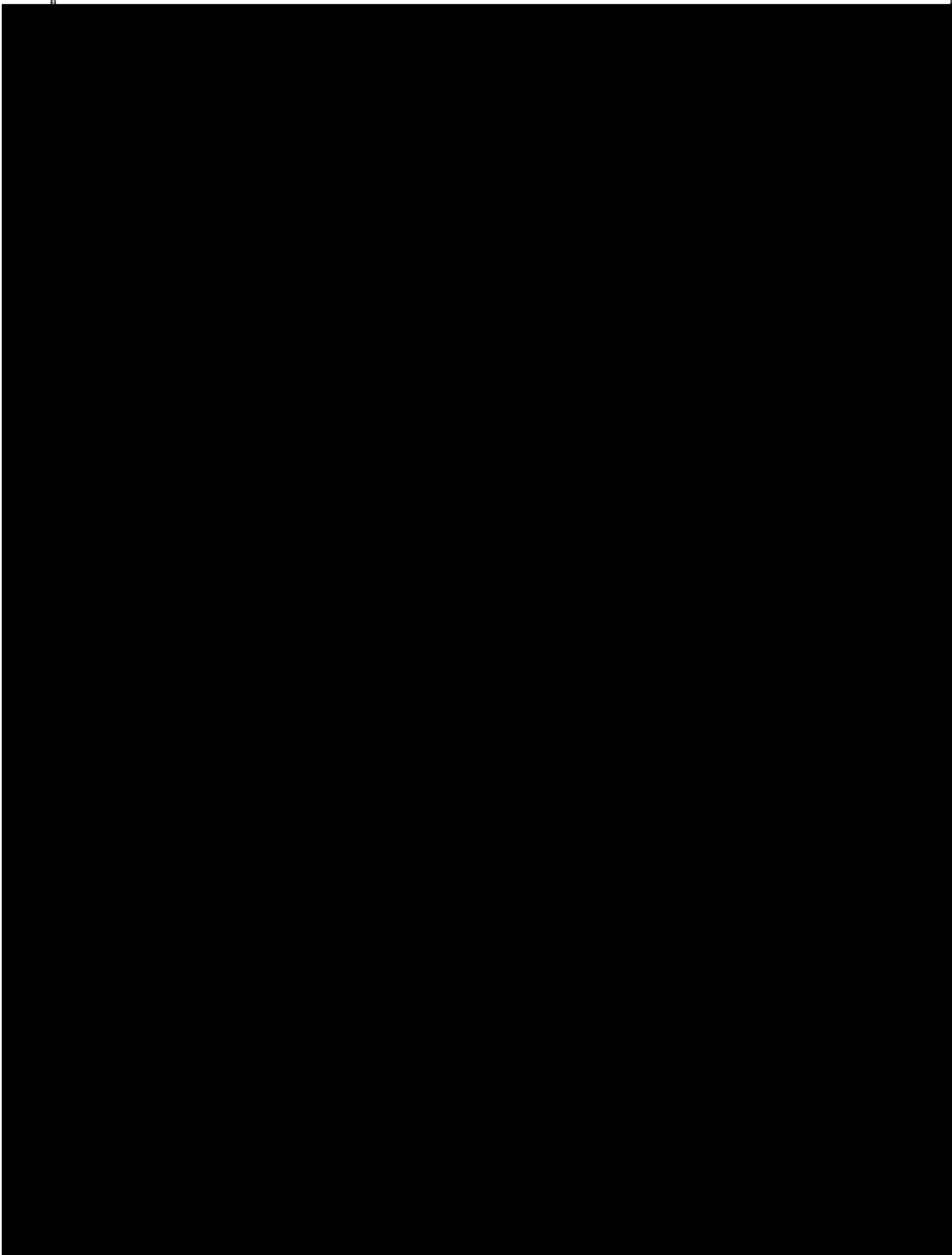


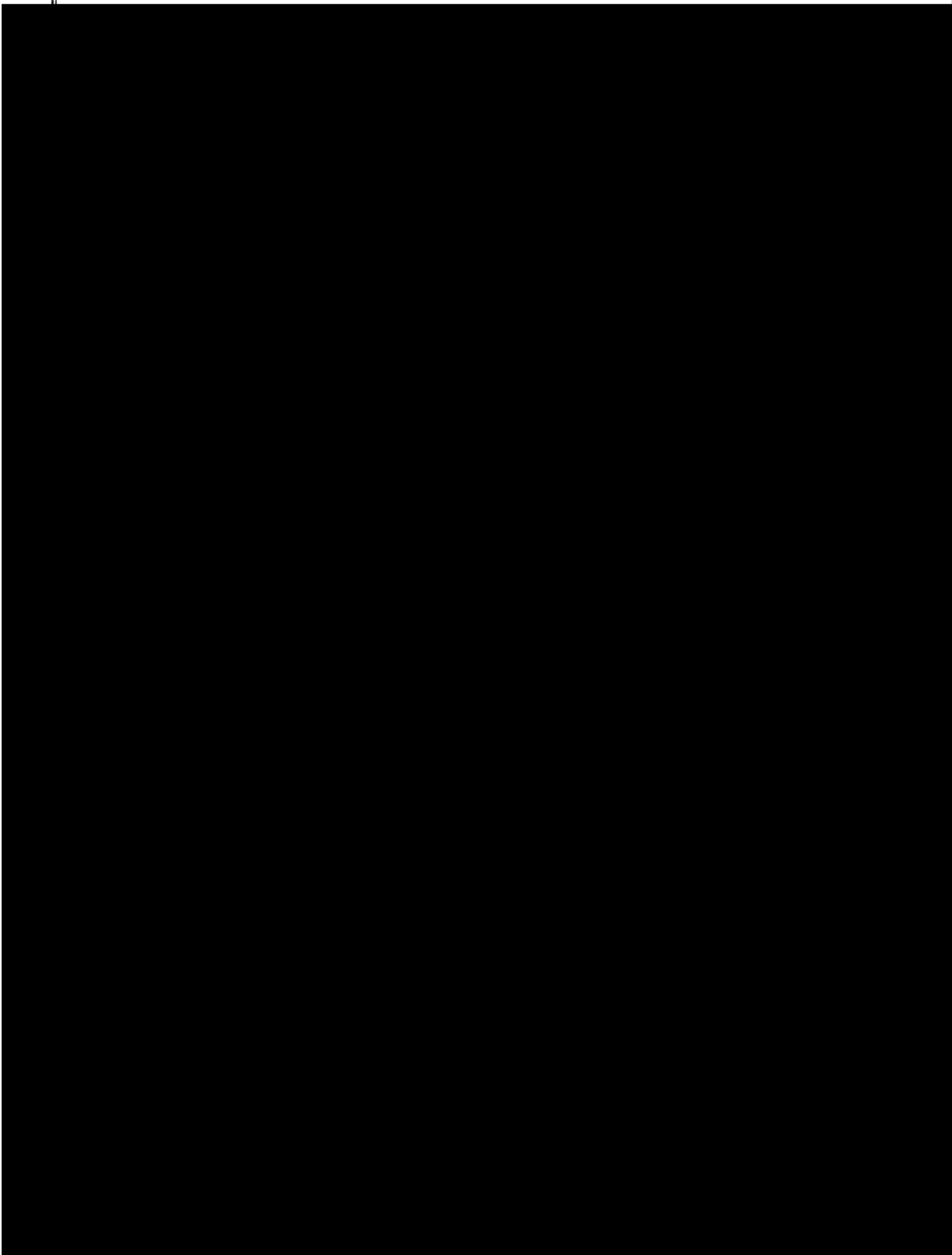


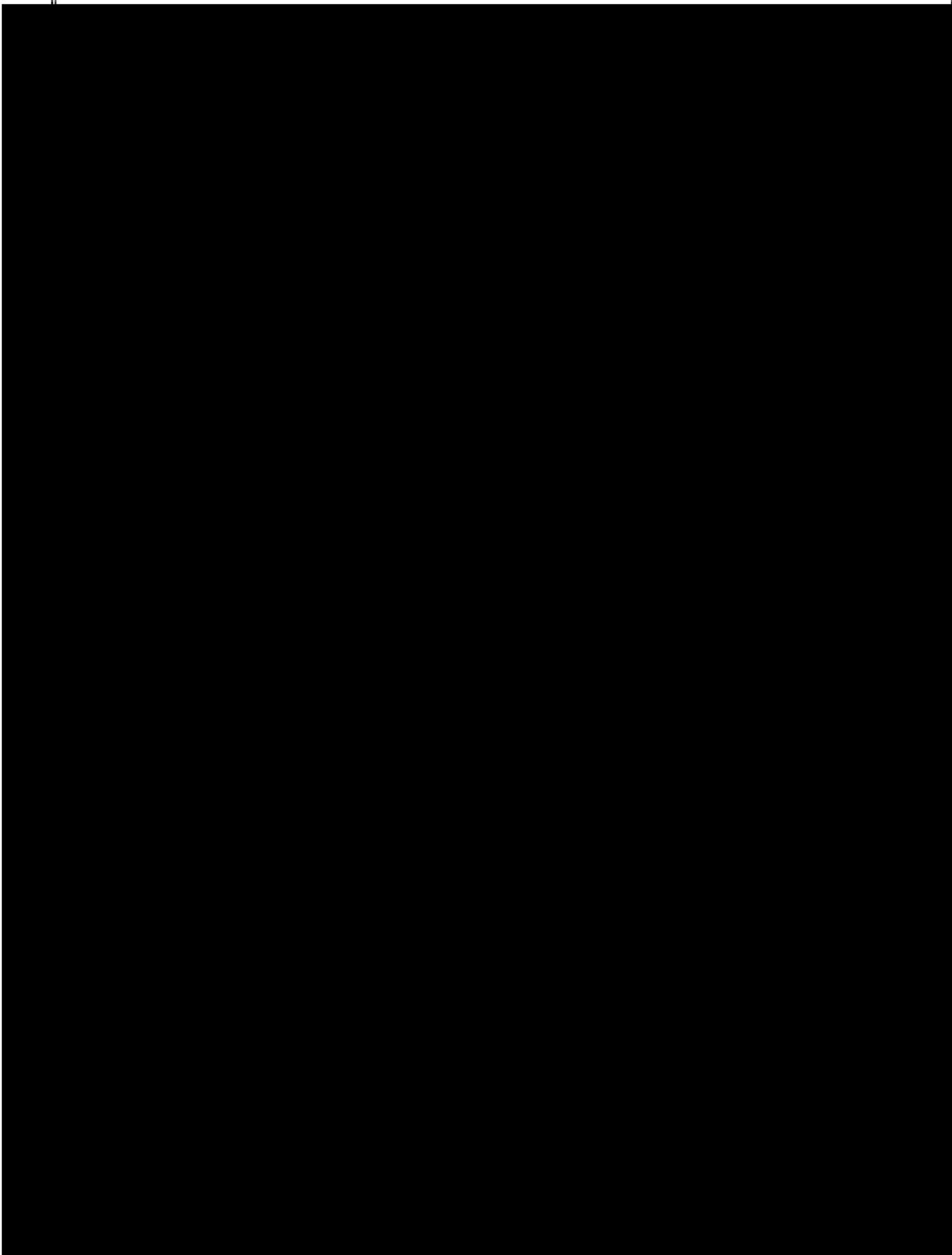


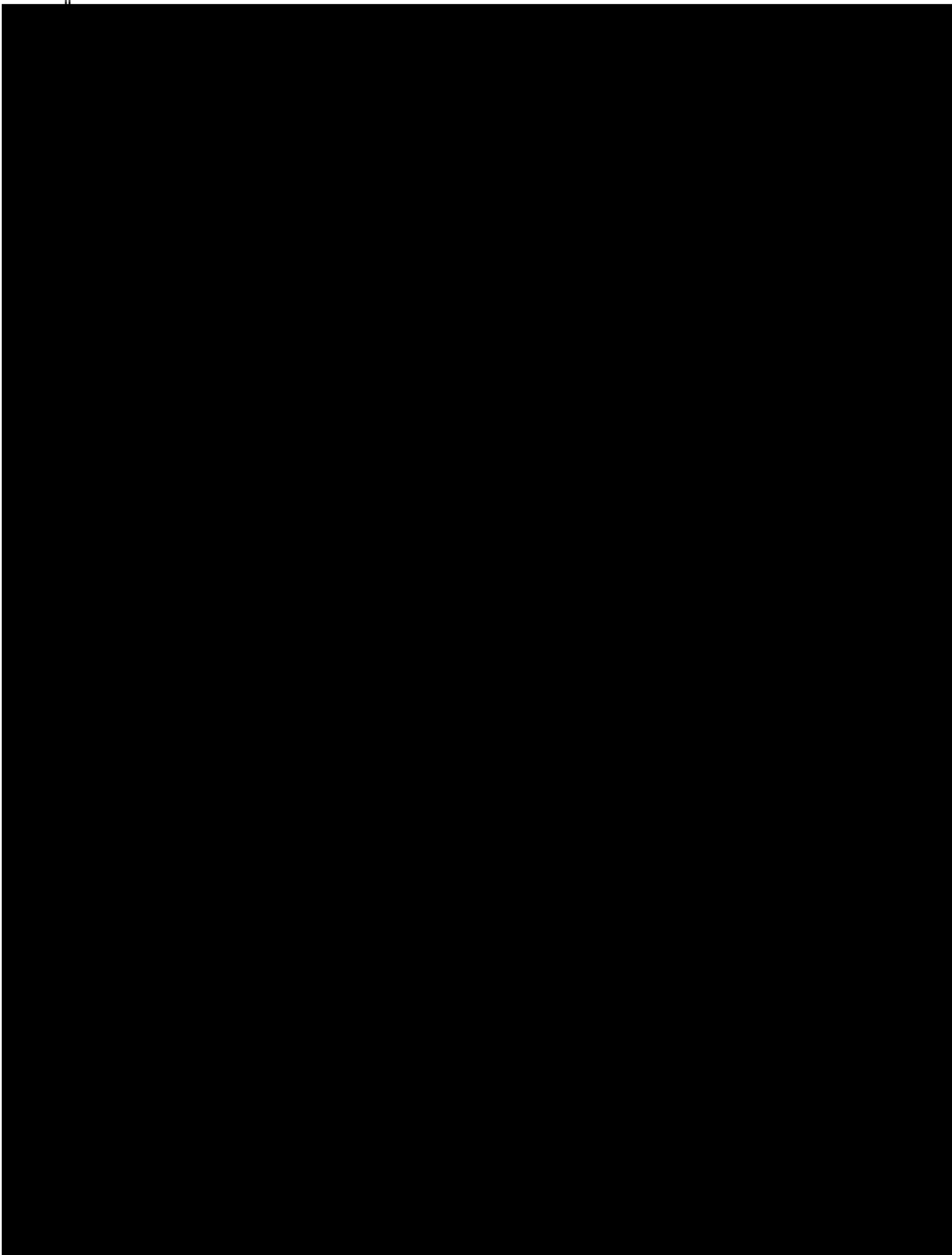




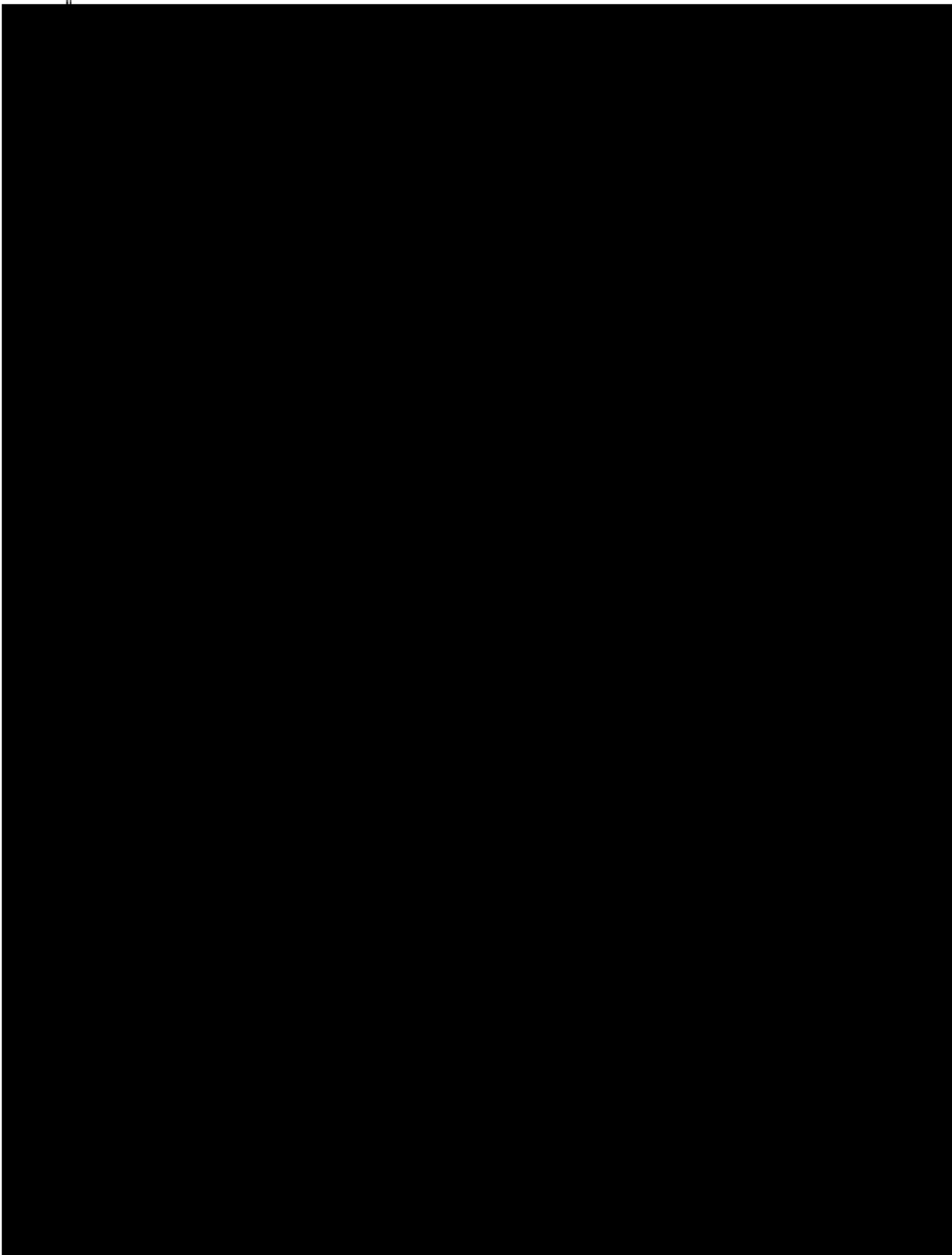


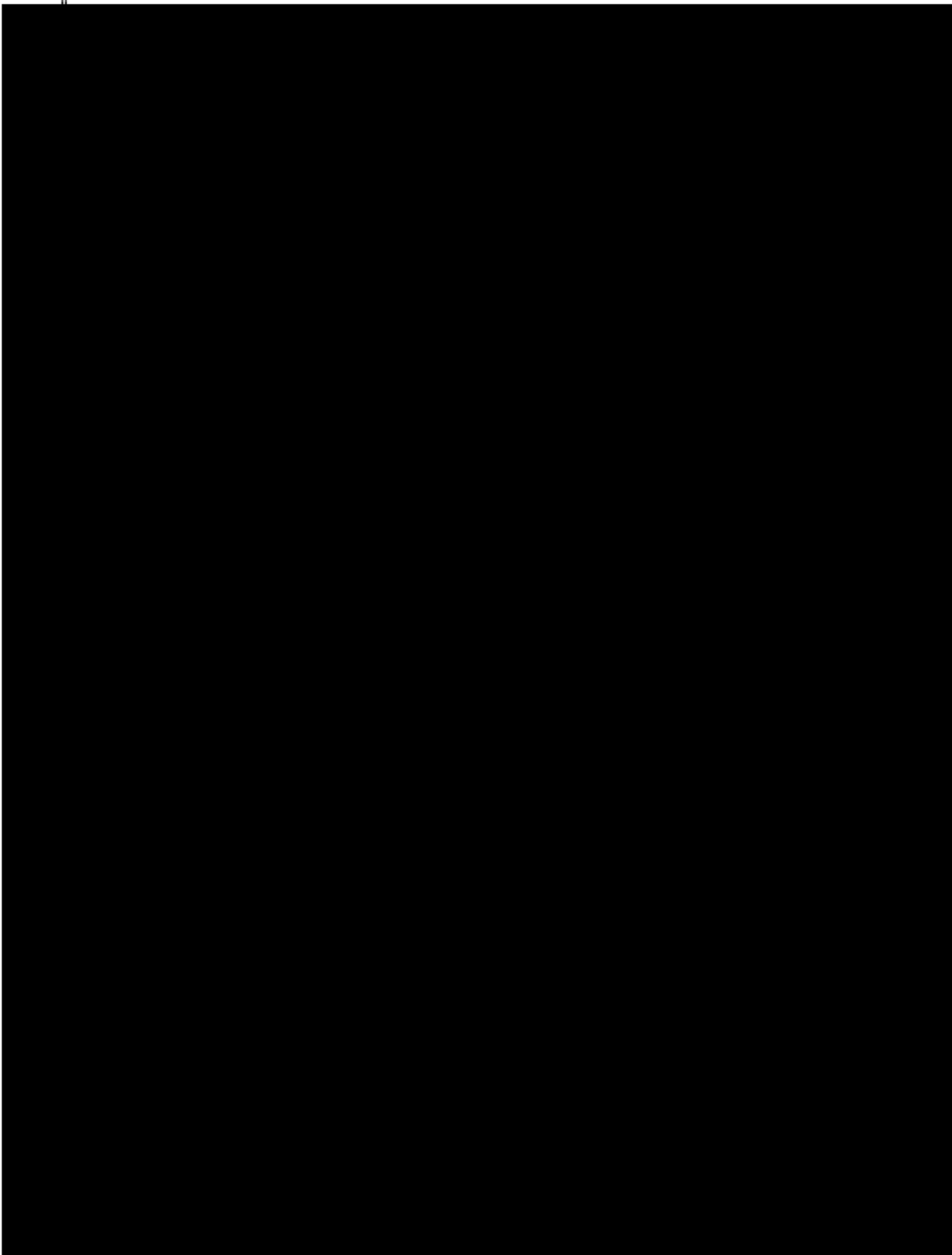


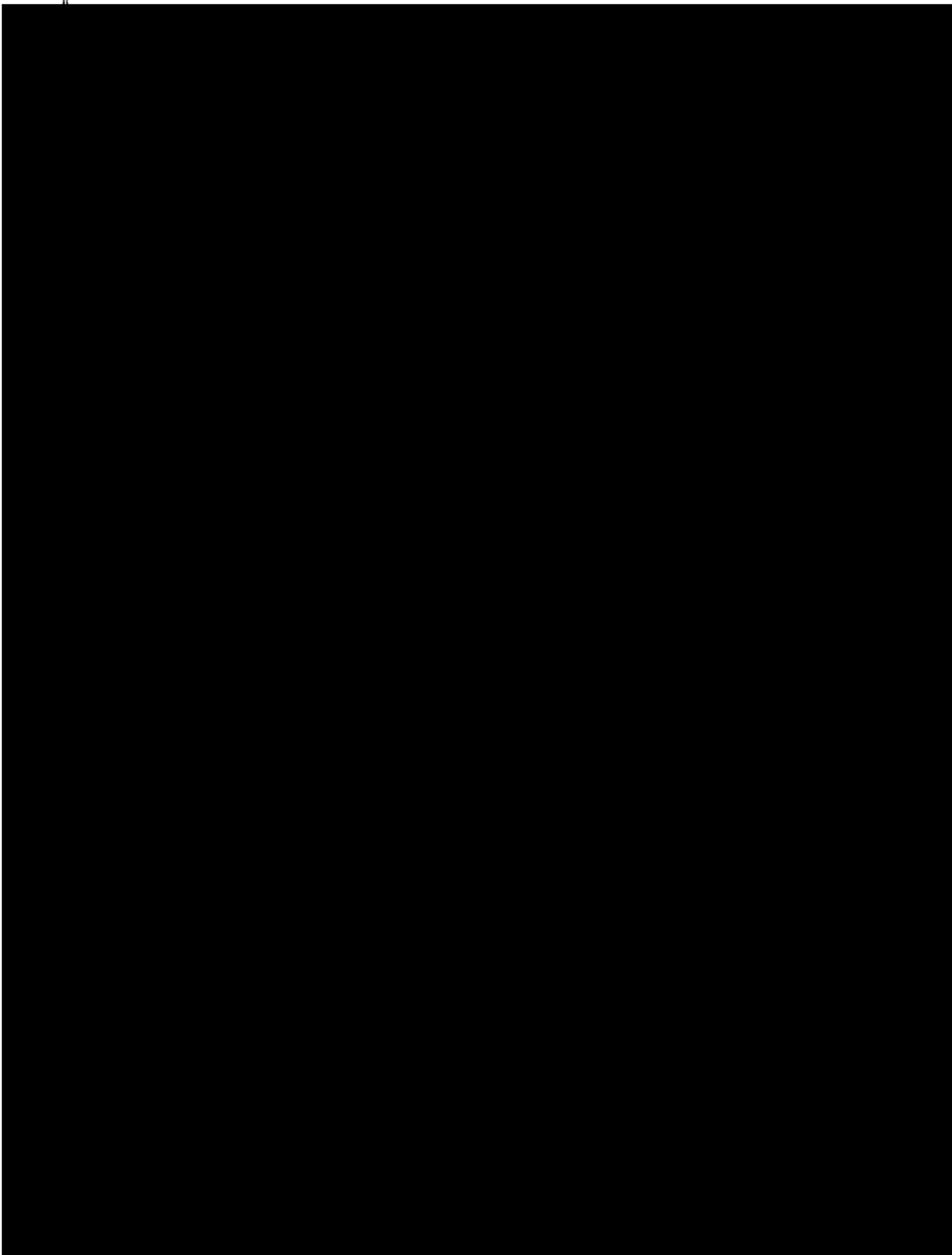


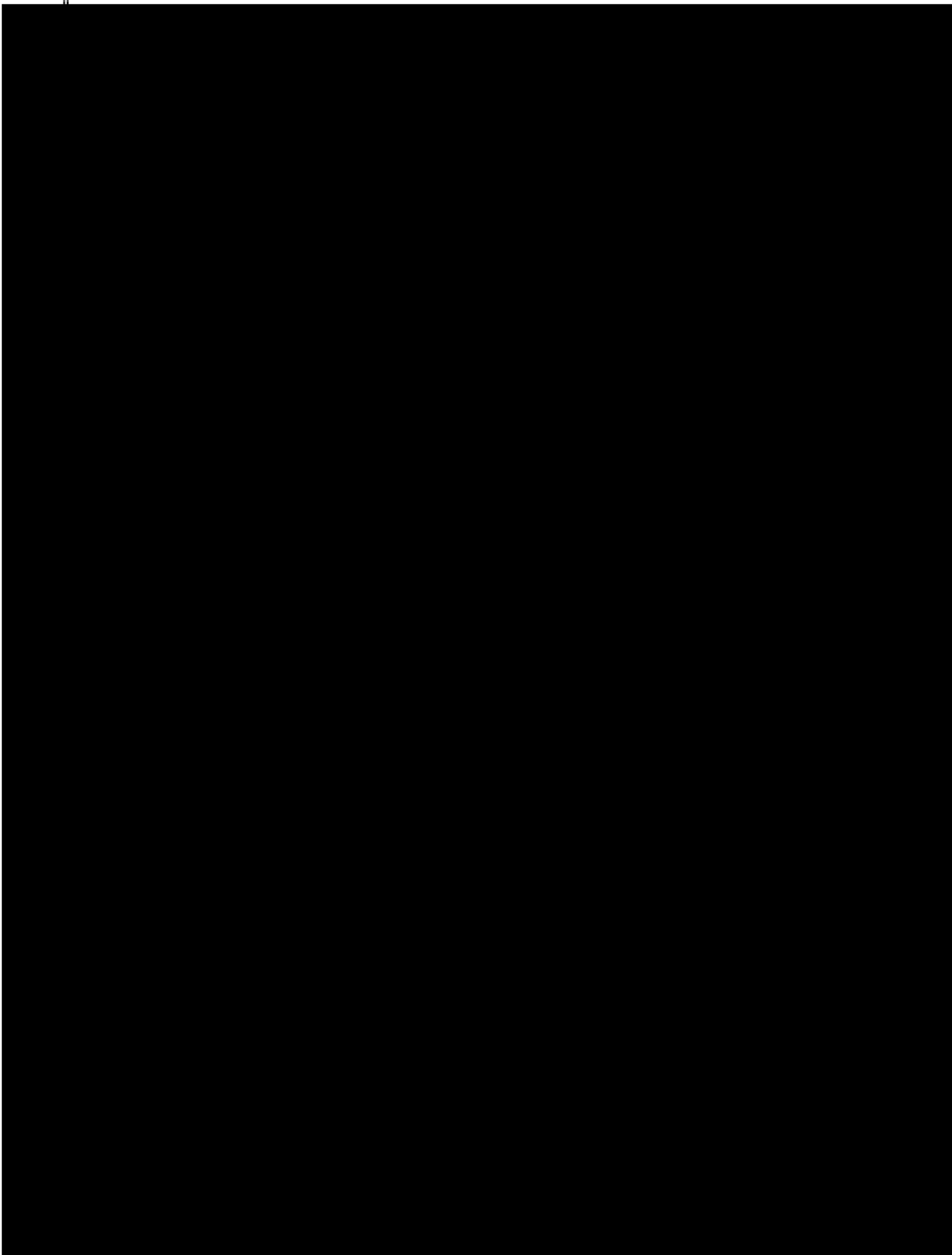


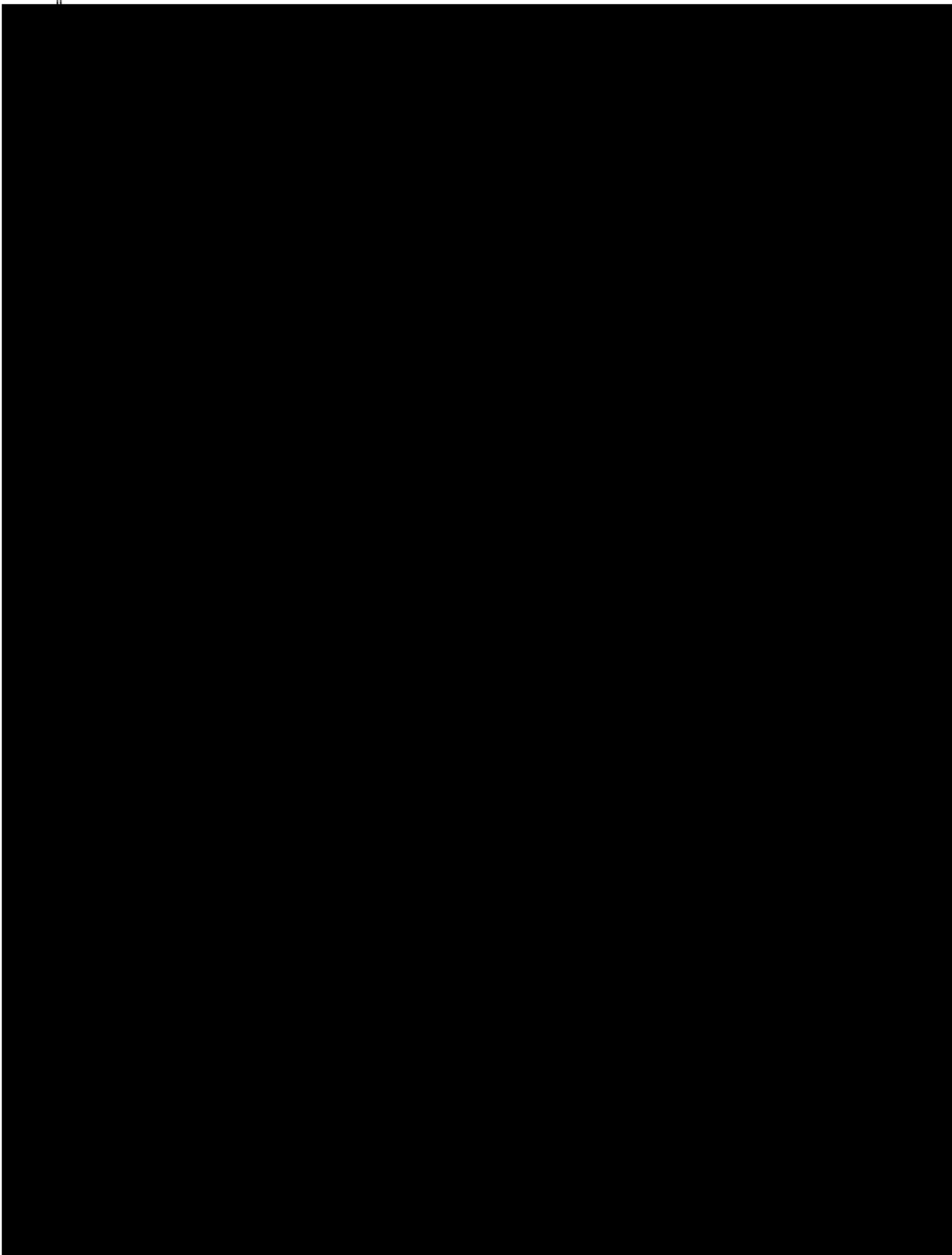


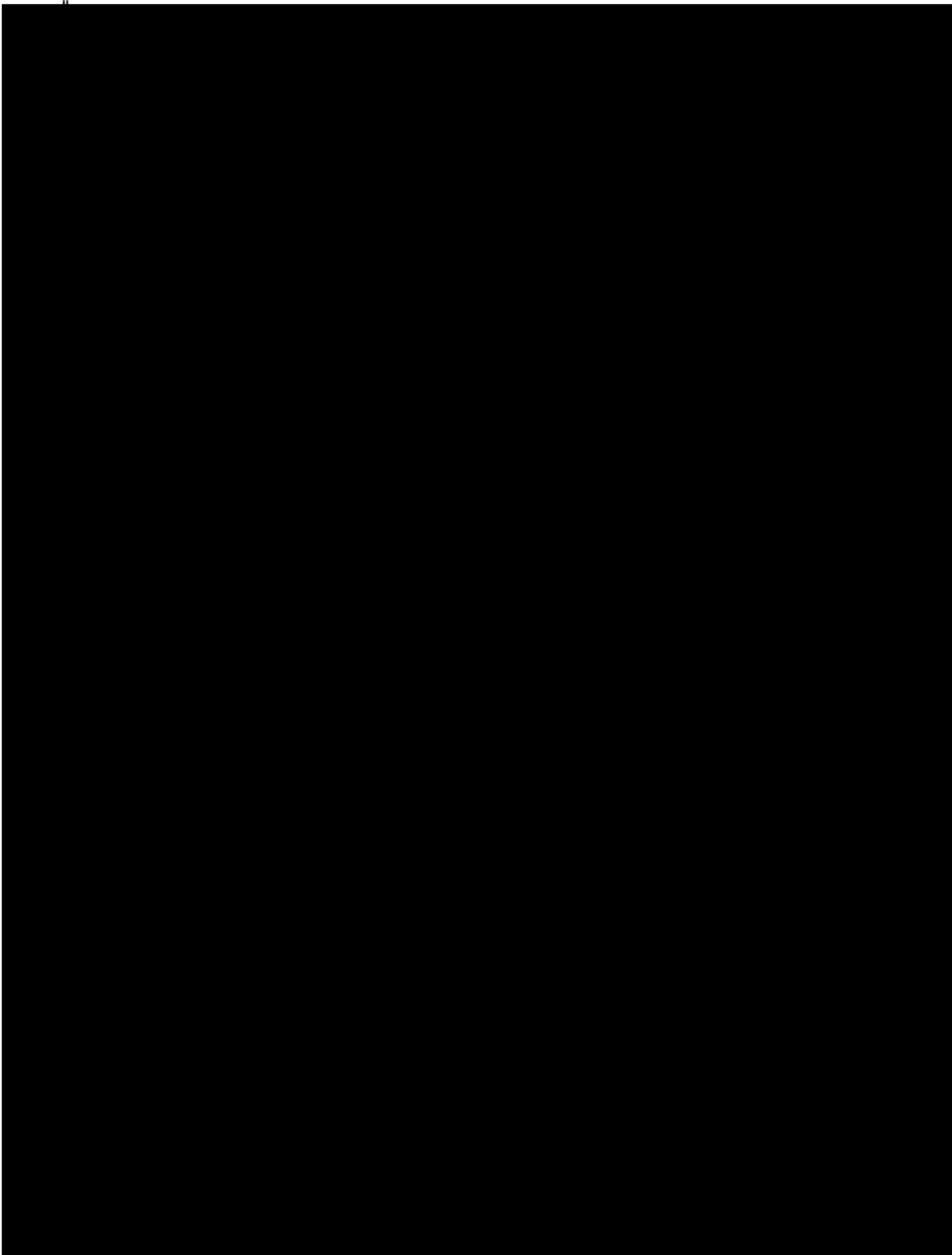


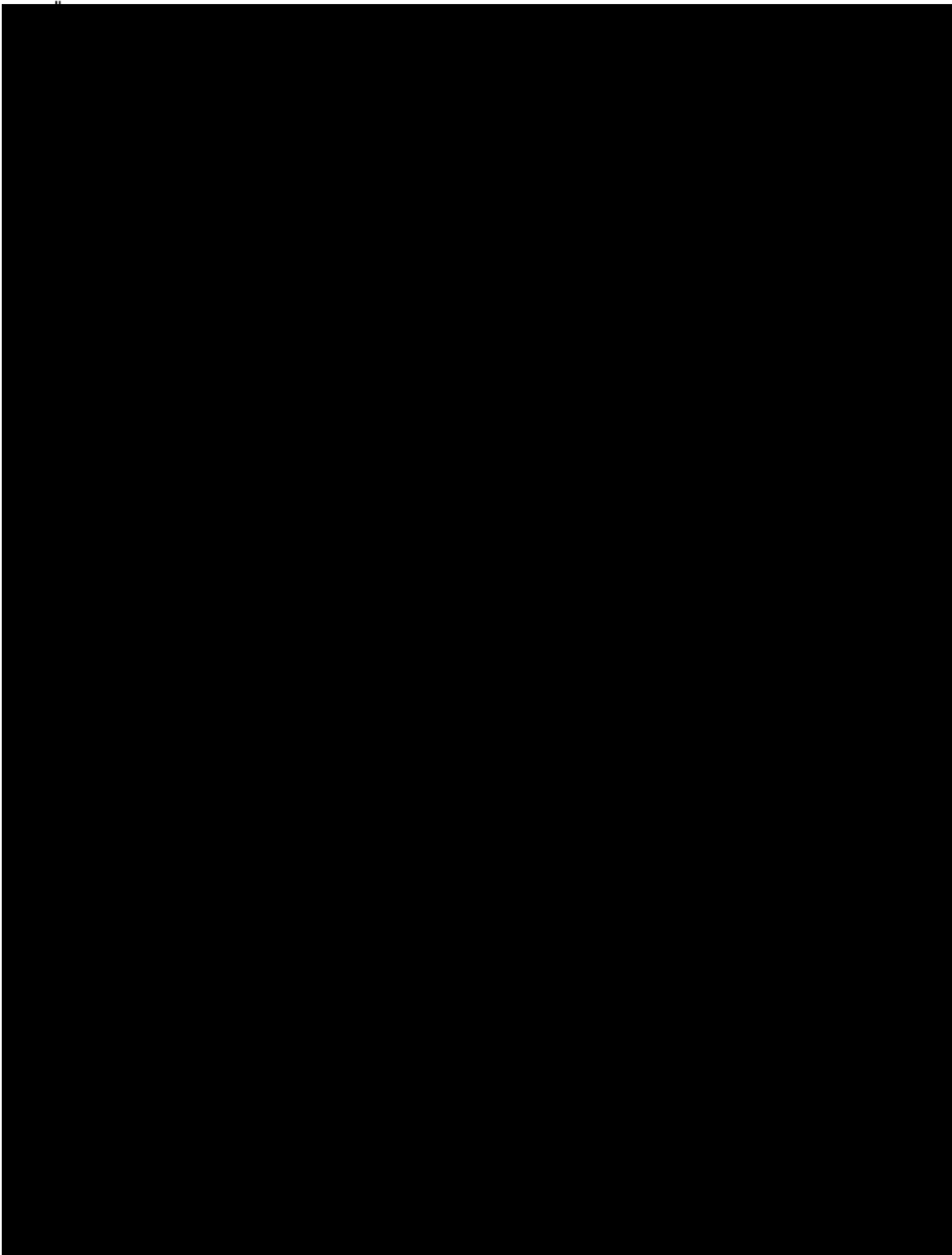


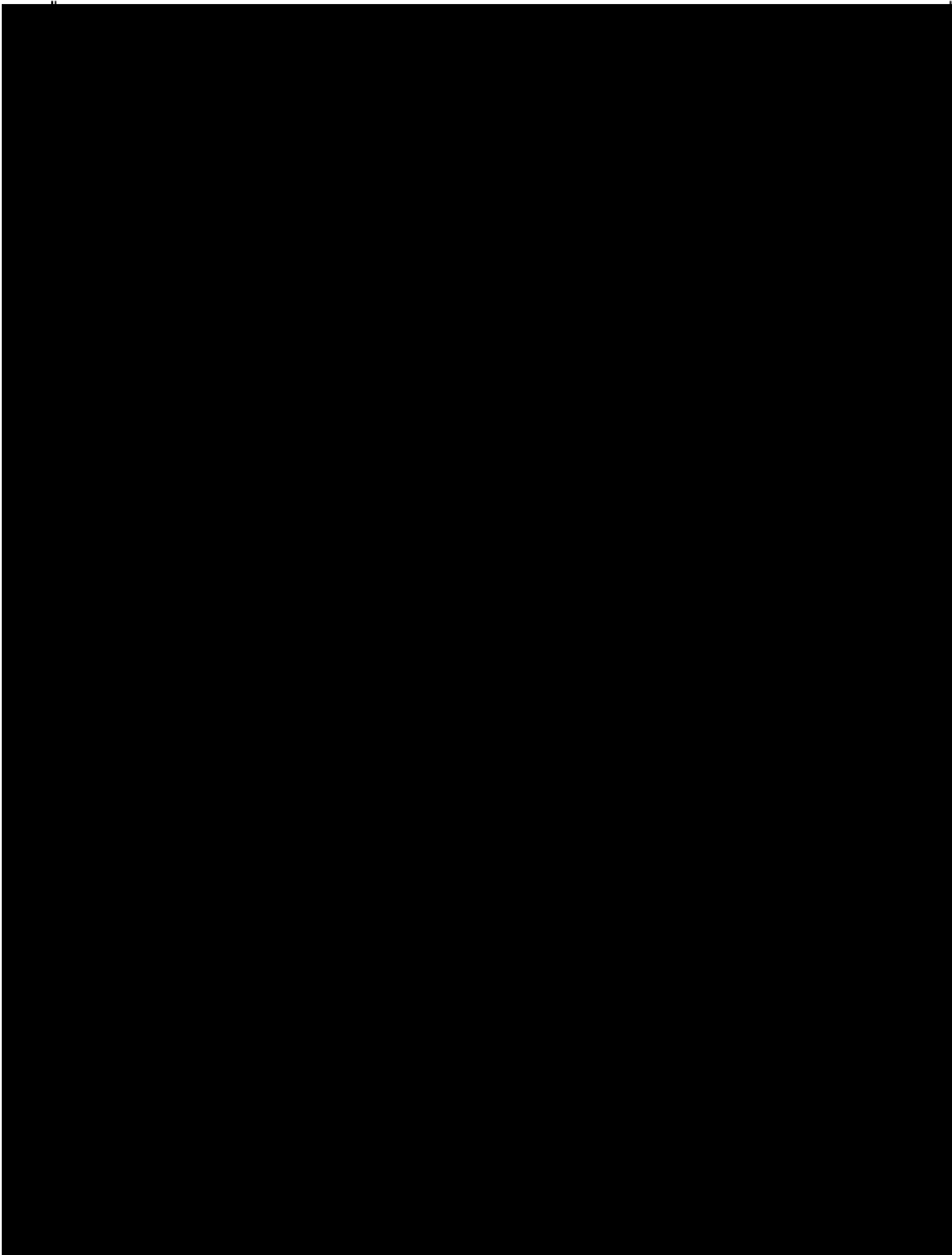












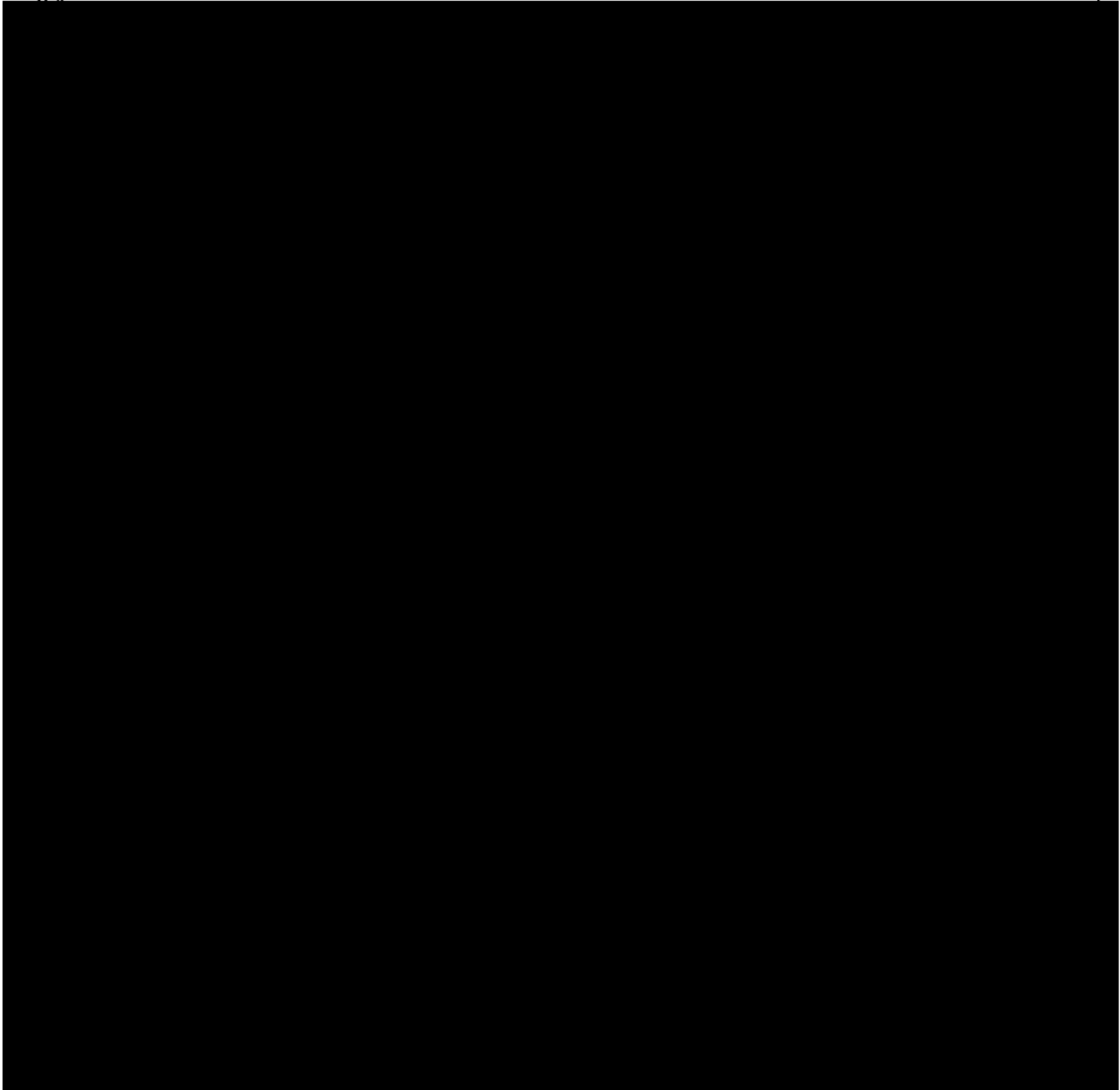


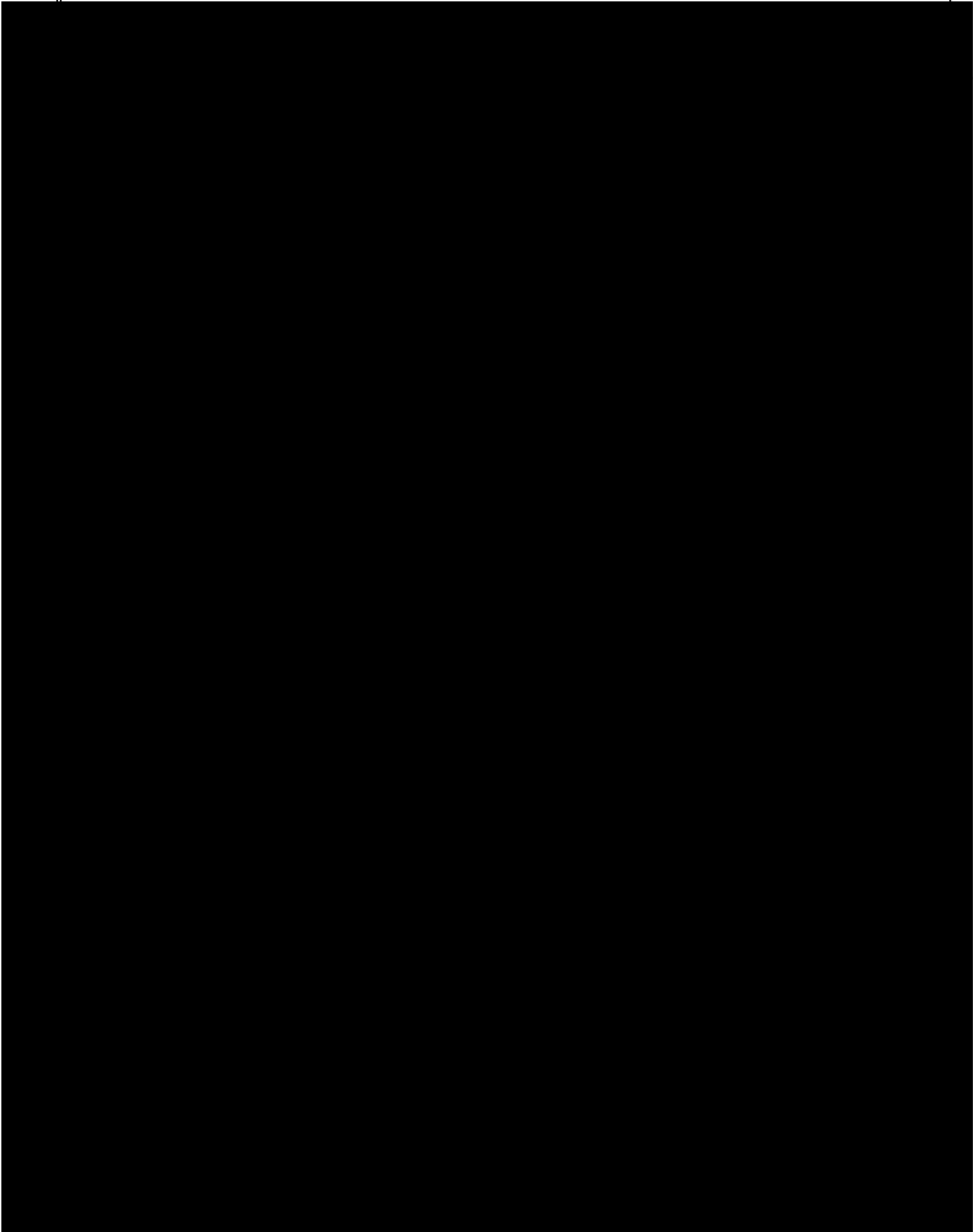
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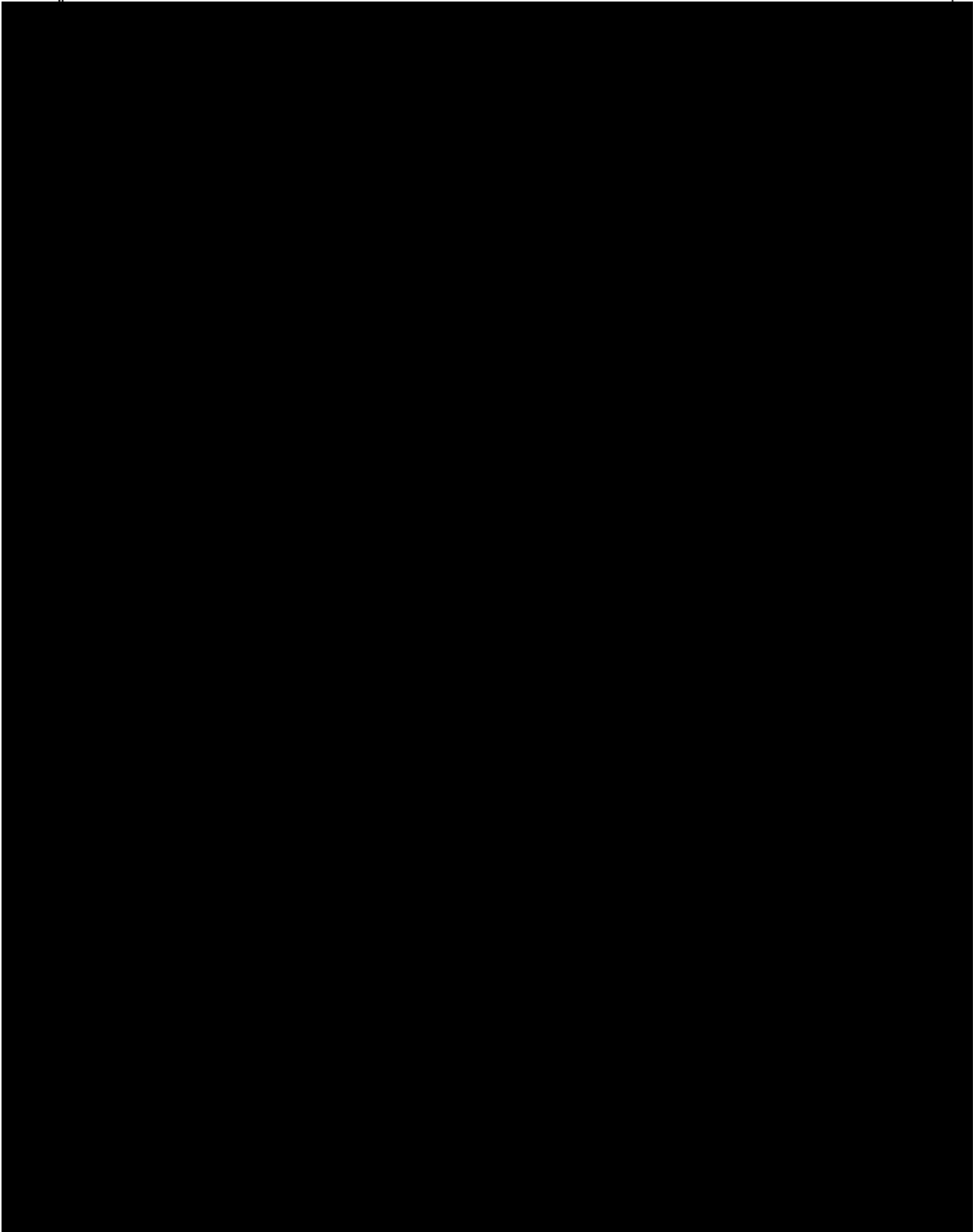
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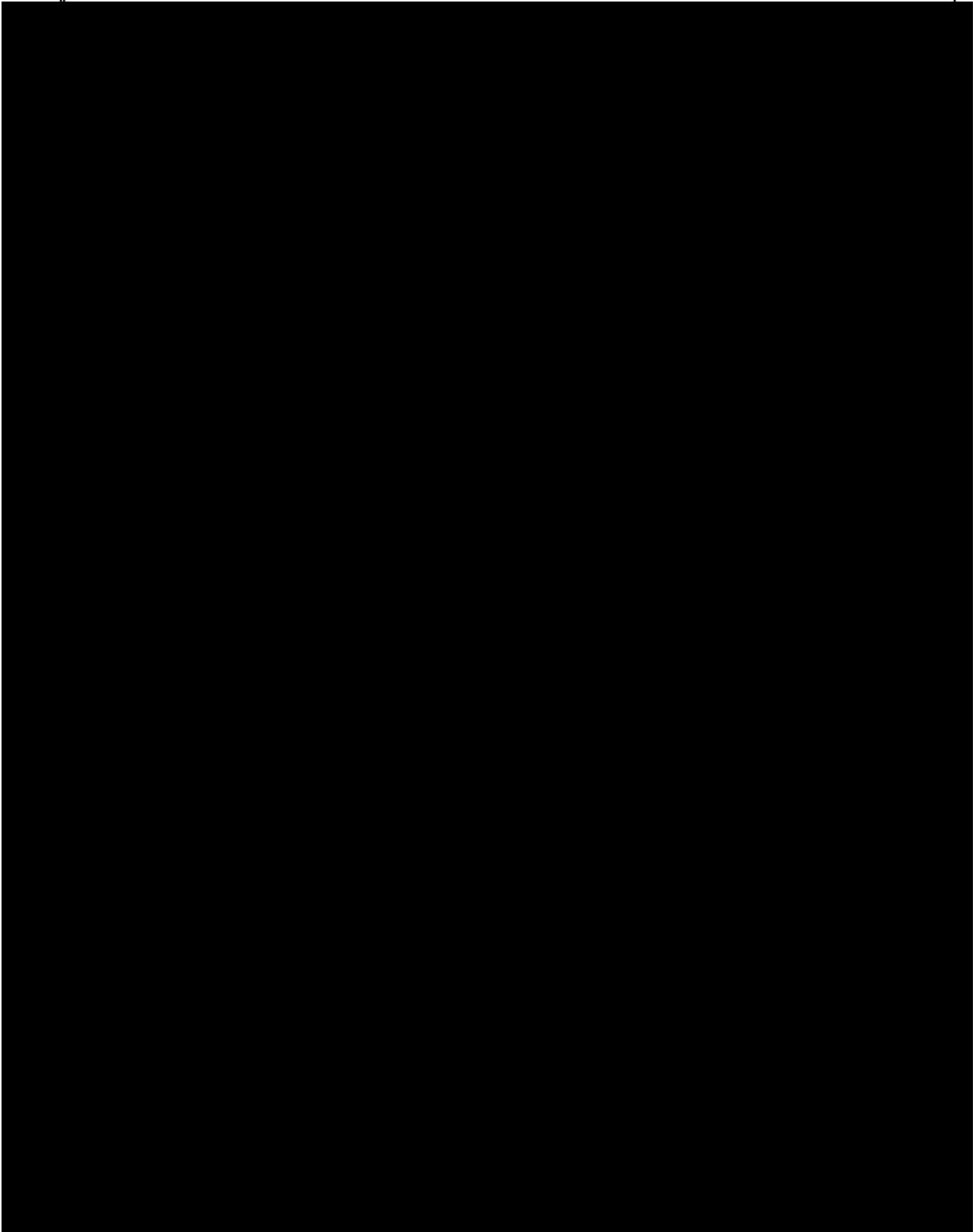
1 DENNIS K. BURKE  
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2  
3 EMORY T. HURLEY  
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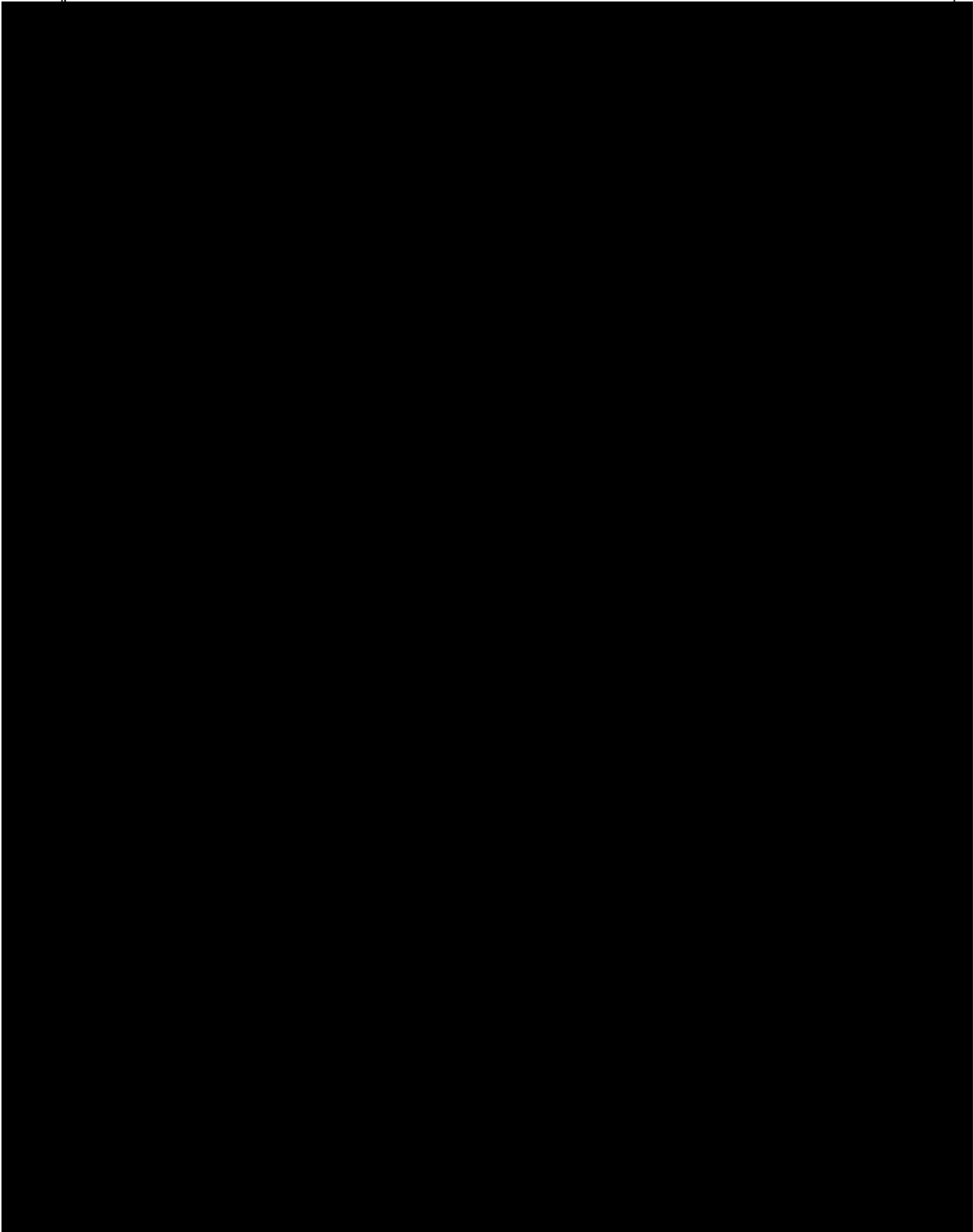
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7 UNITED STATES DISTRICT COURT  
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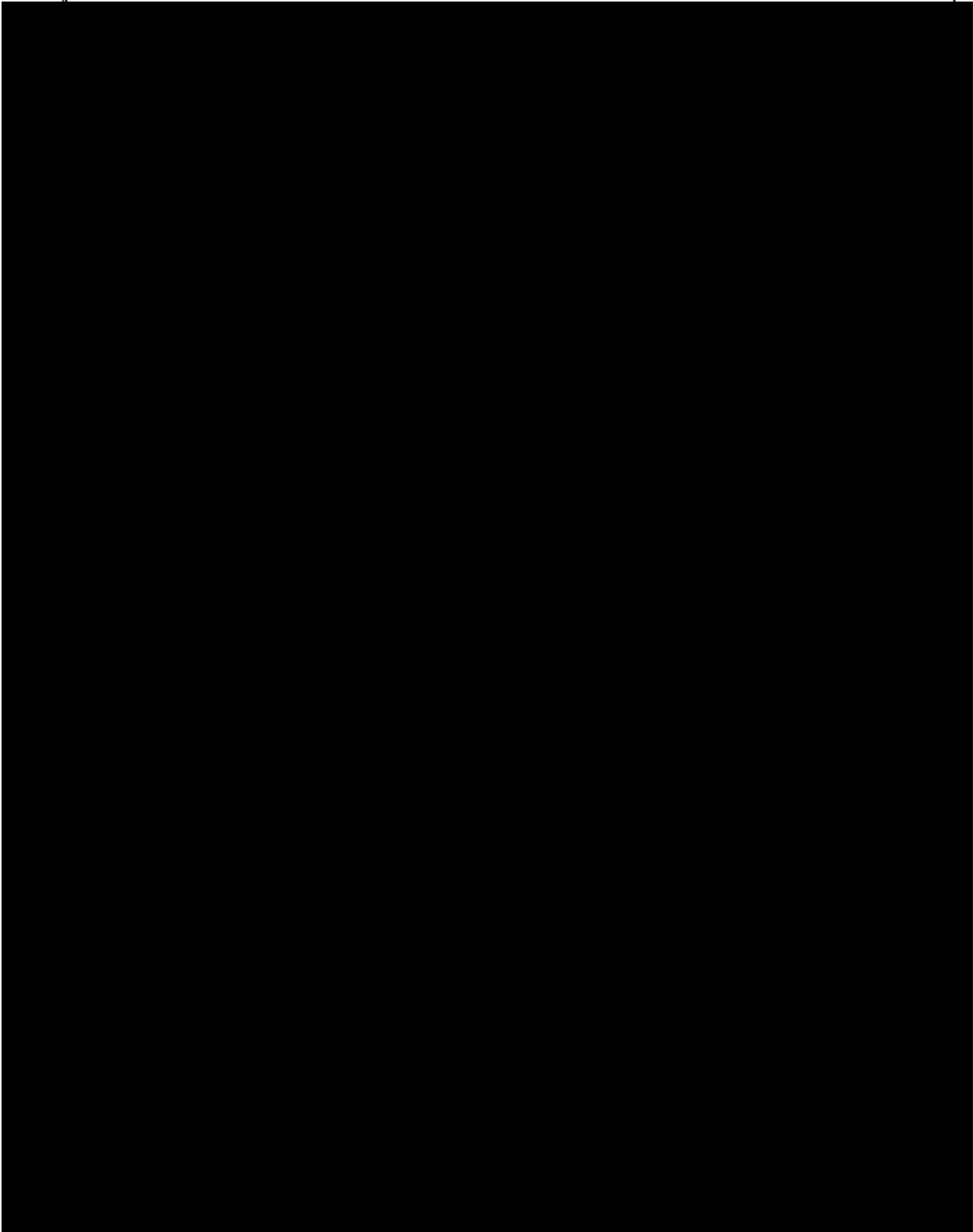


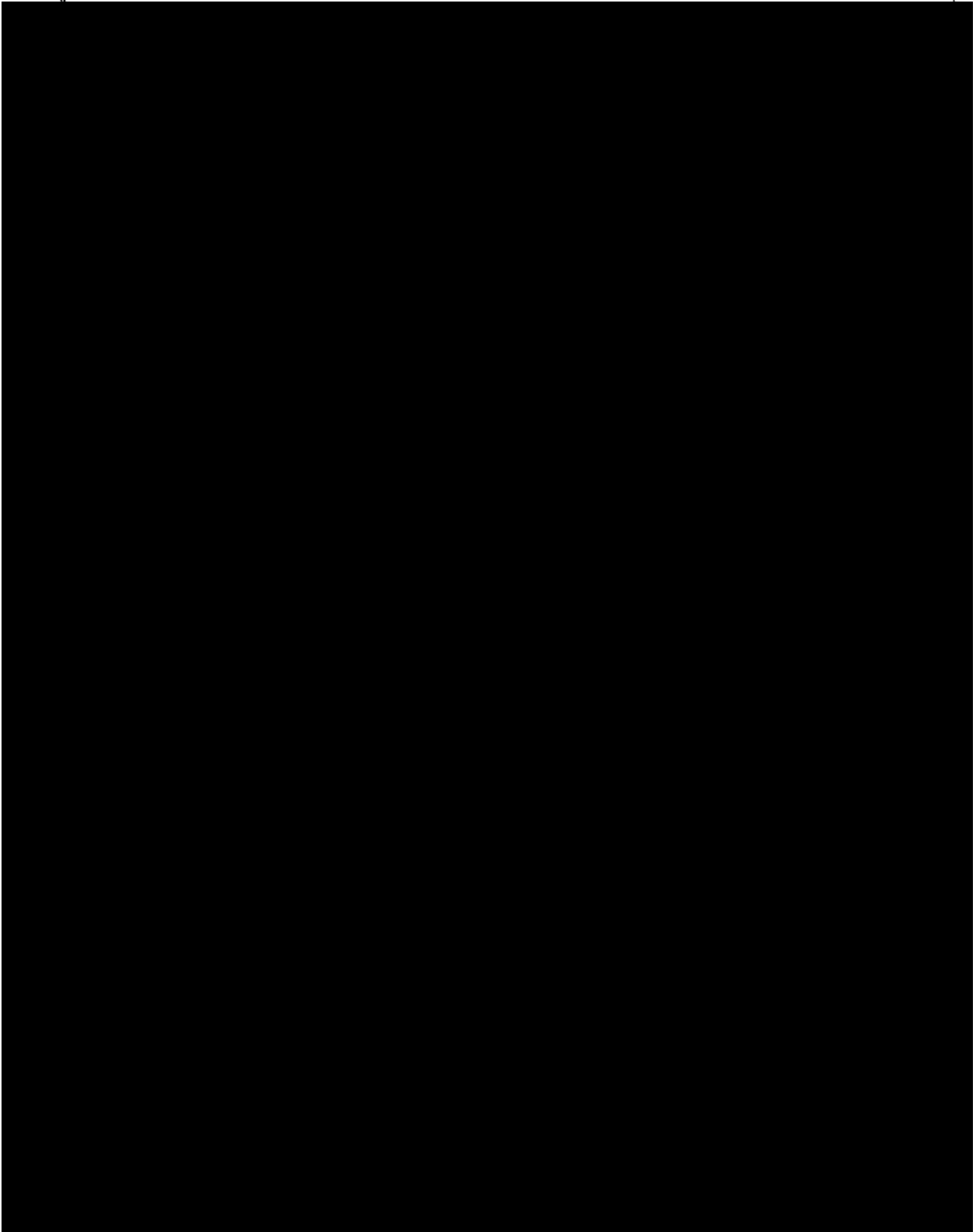


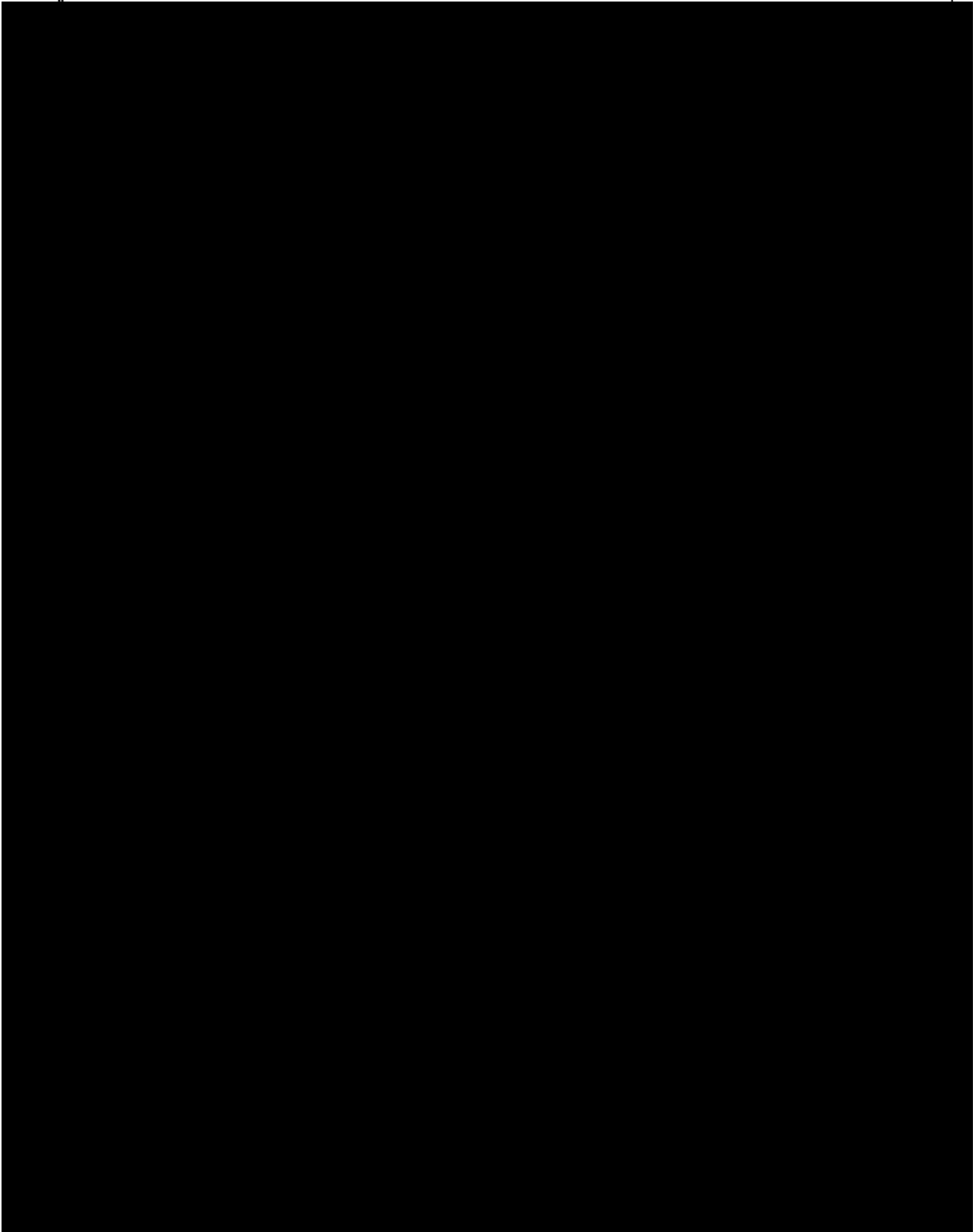




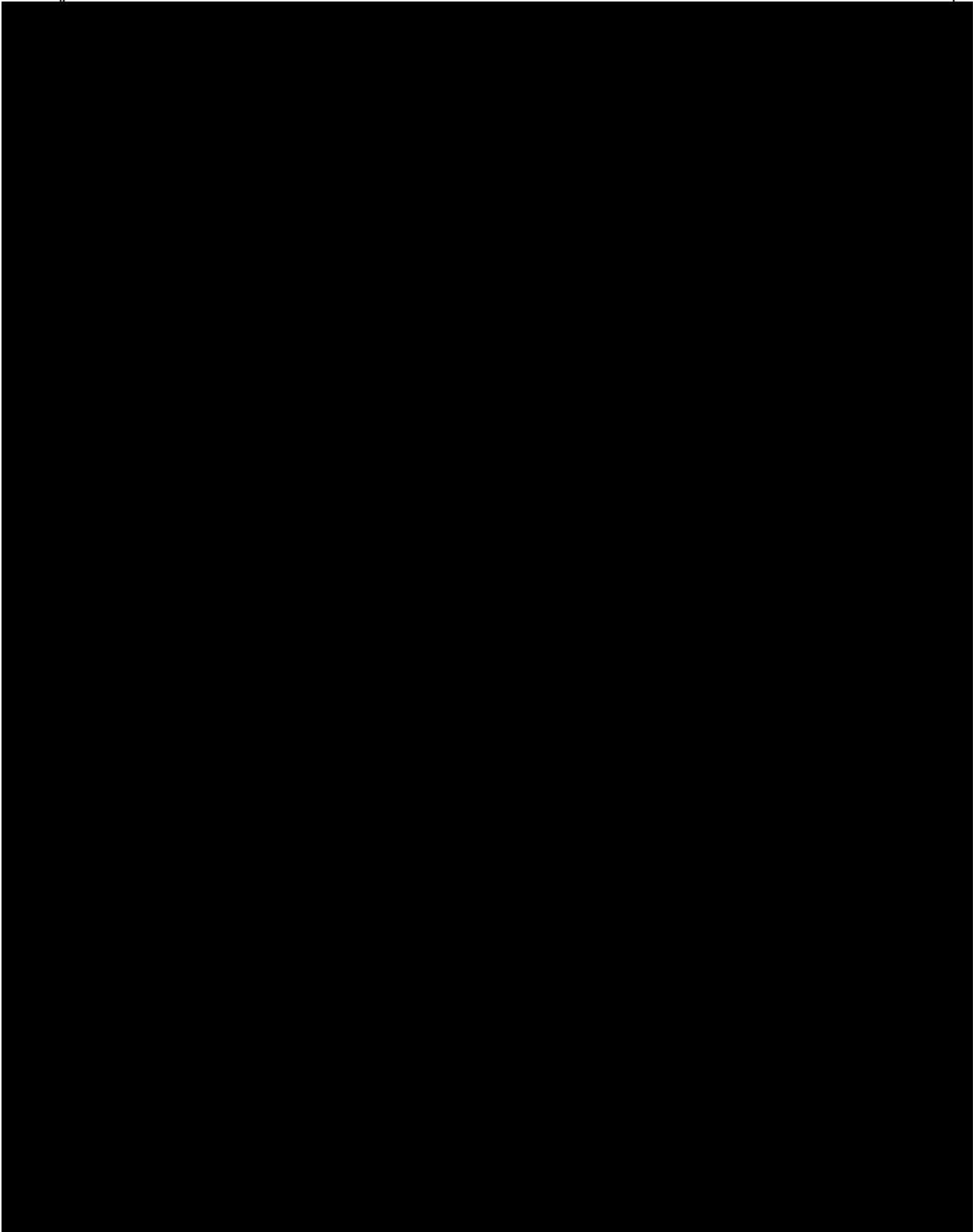


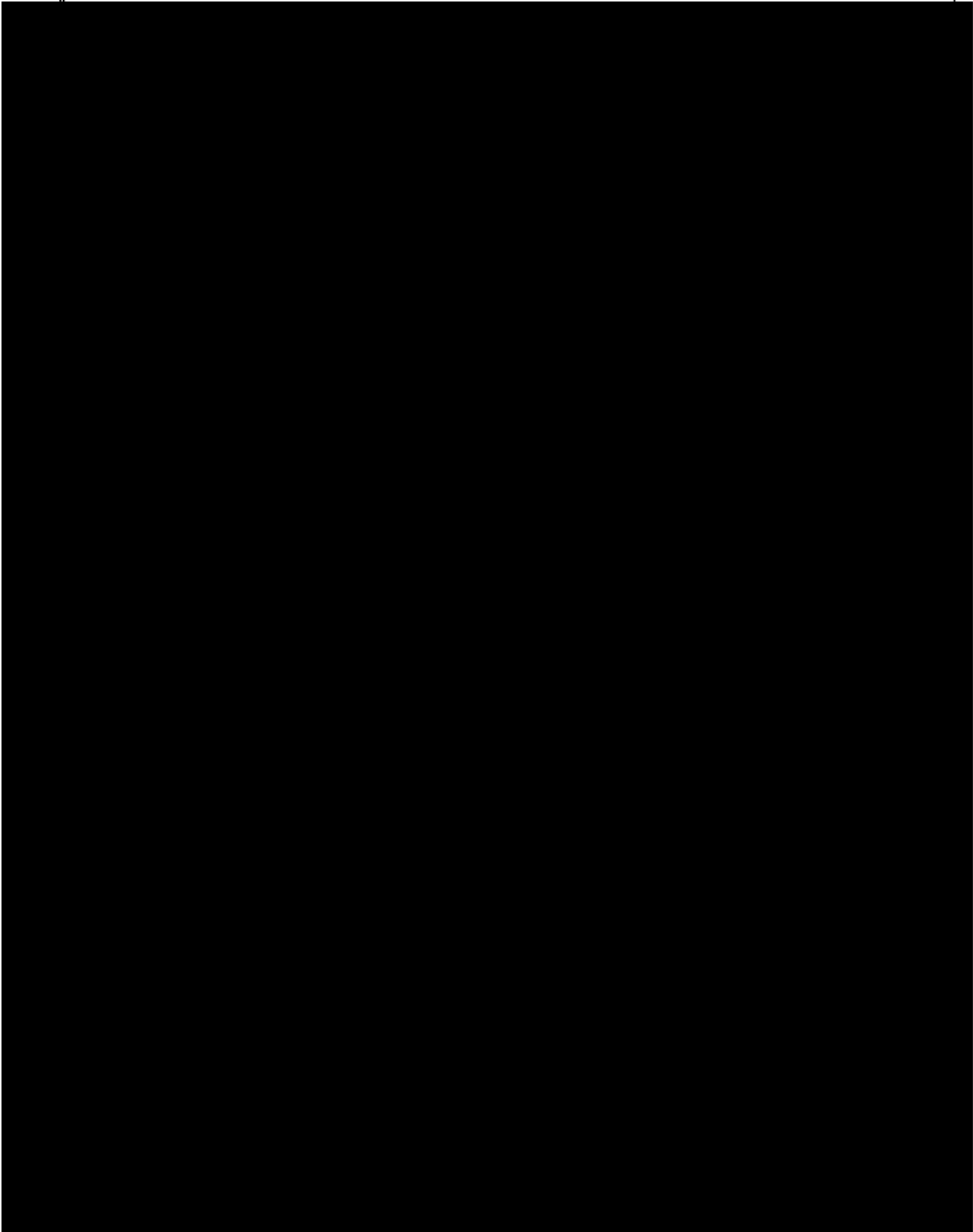


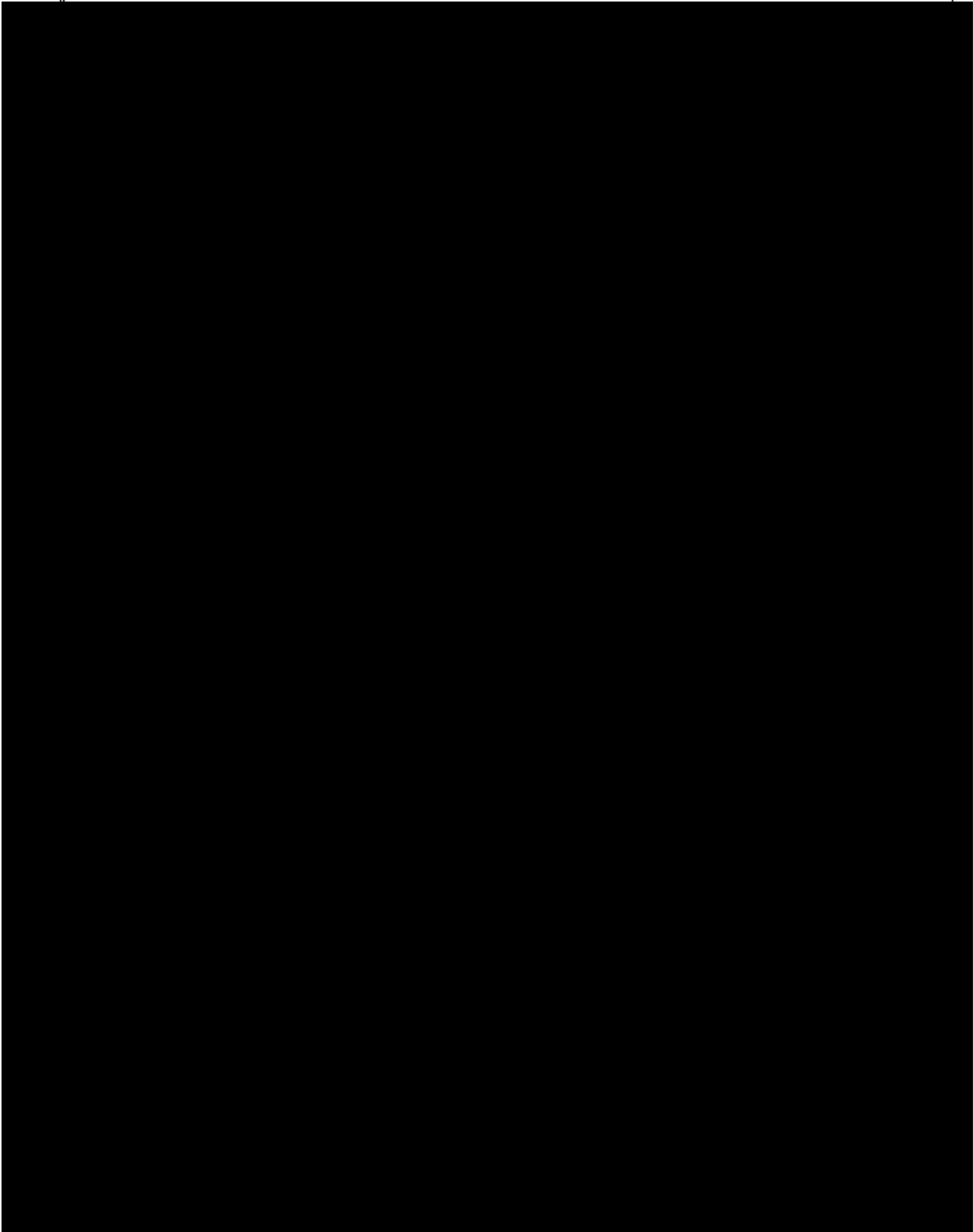


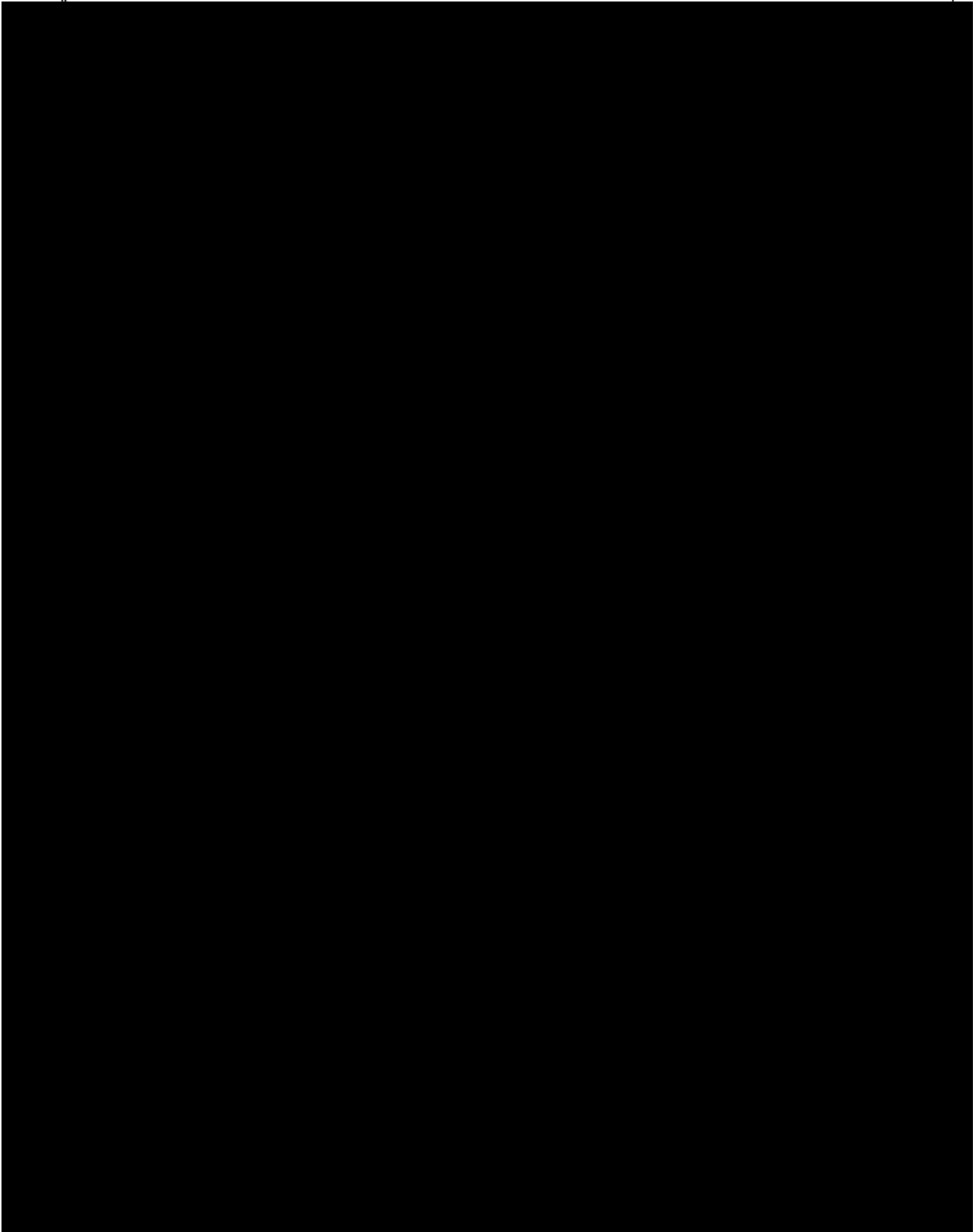


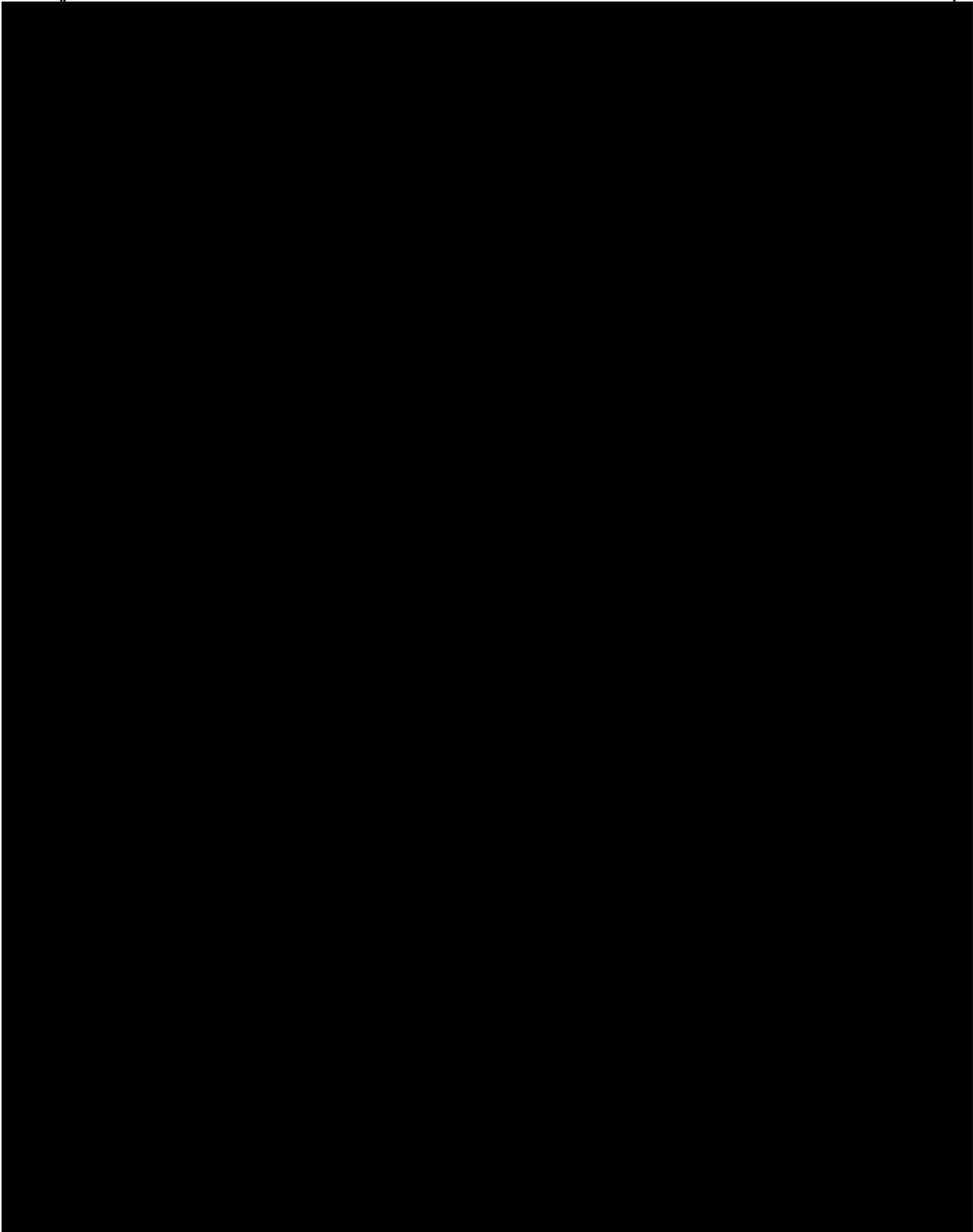


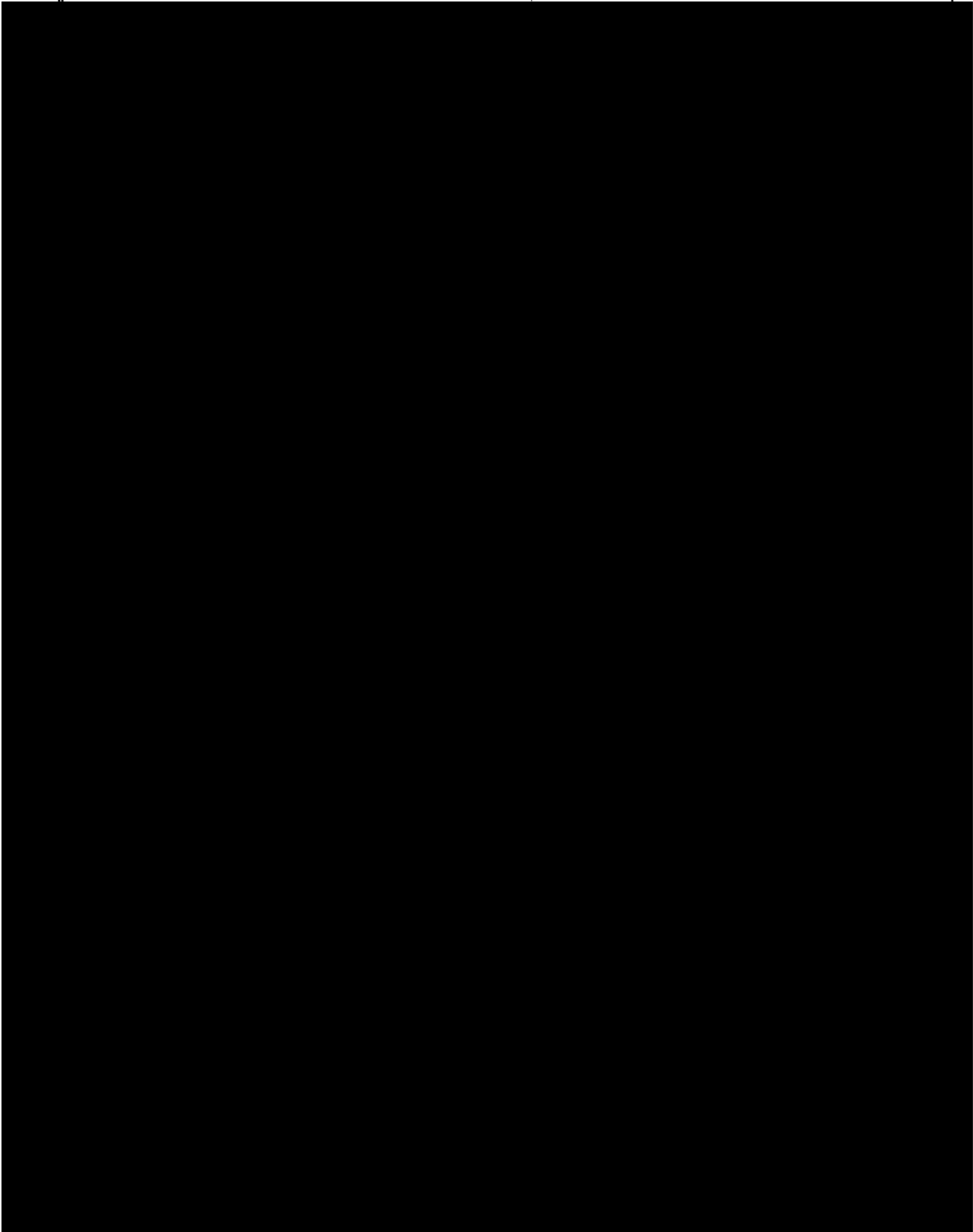


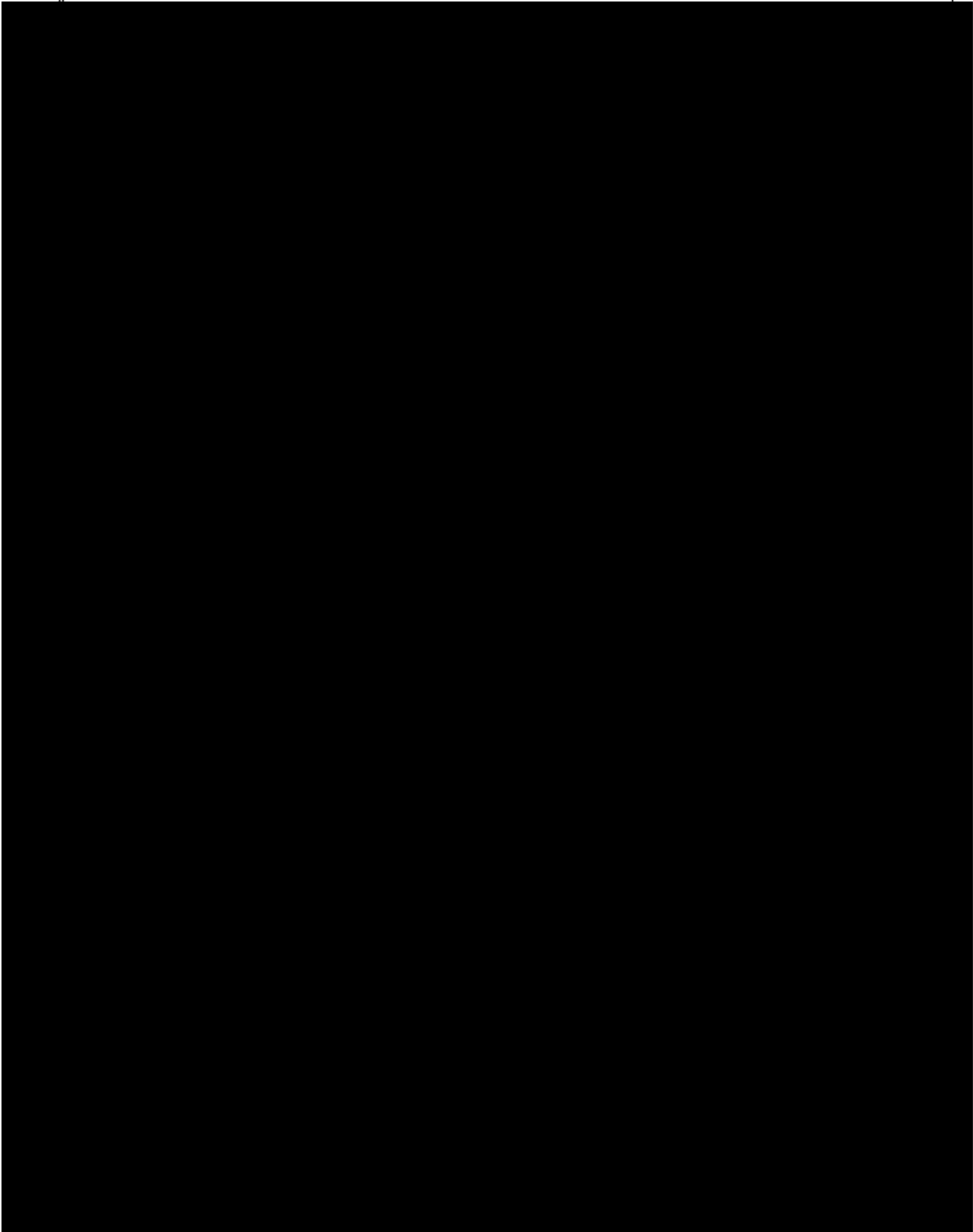


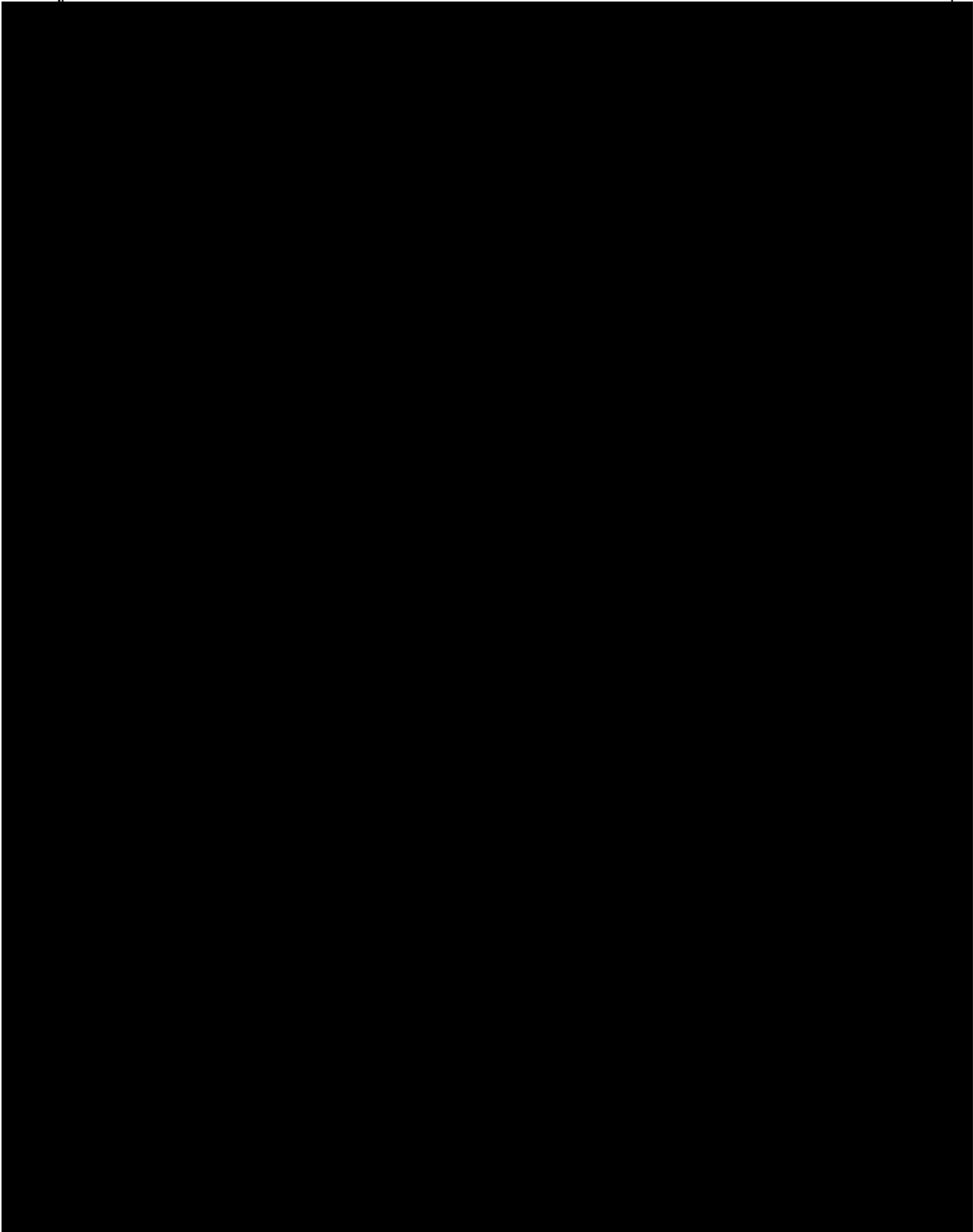




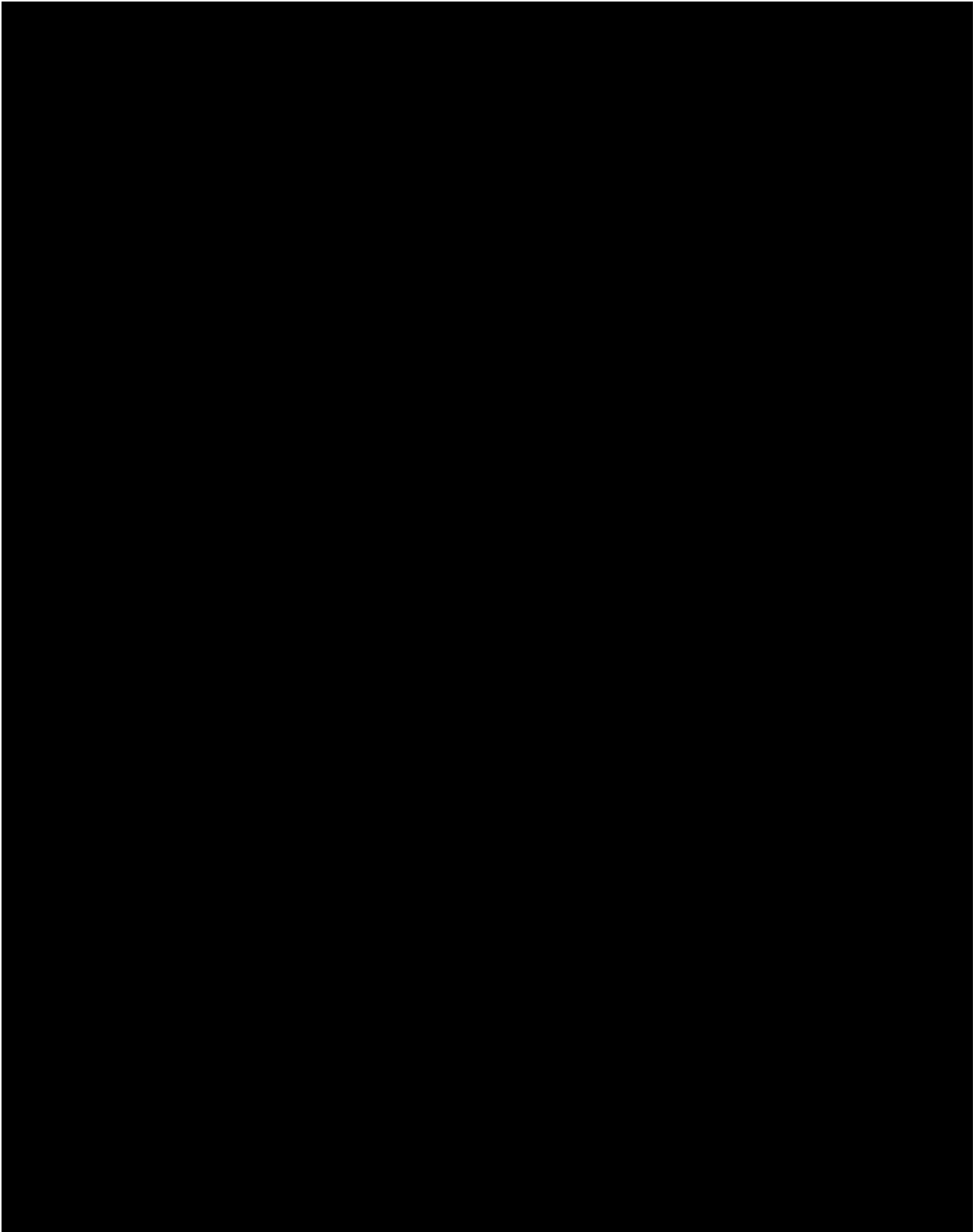


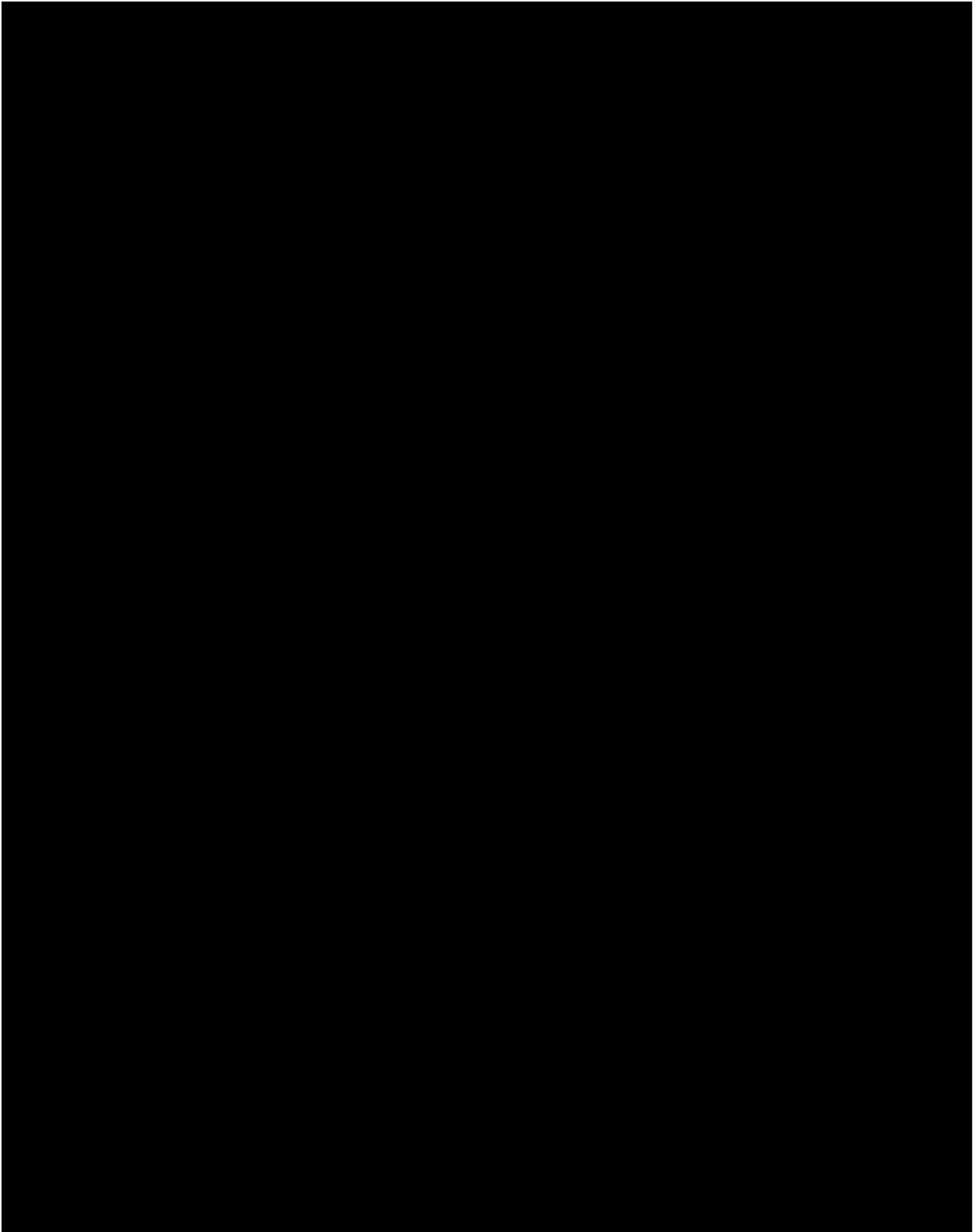


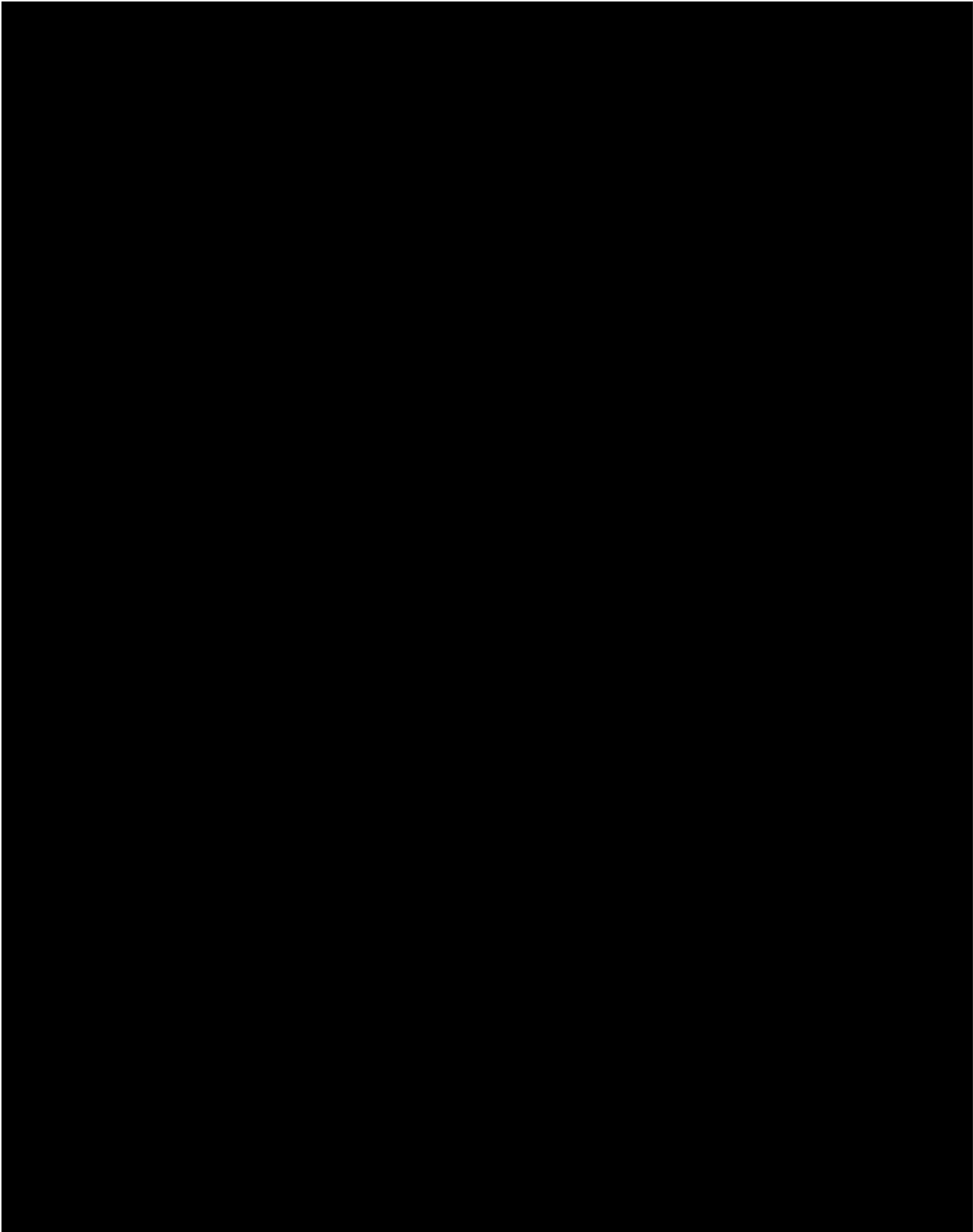


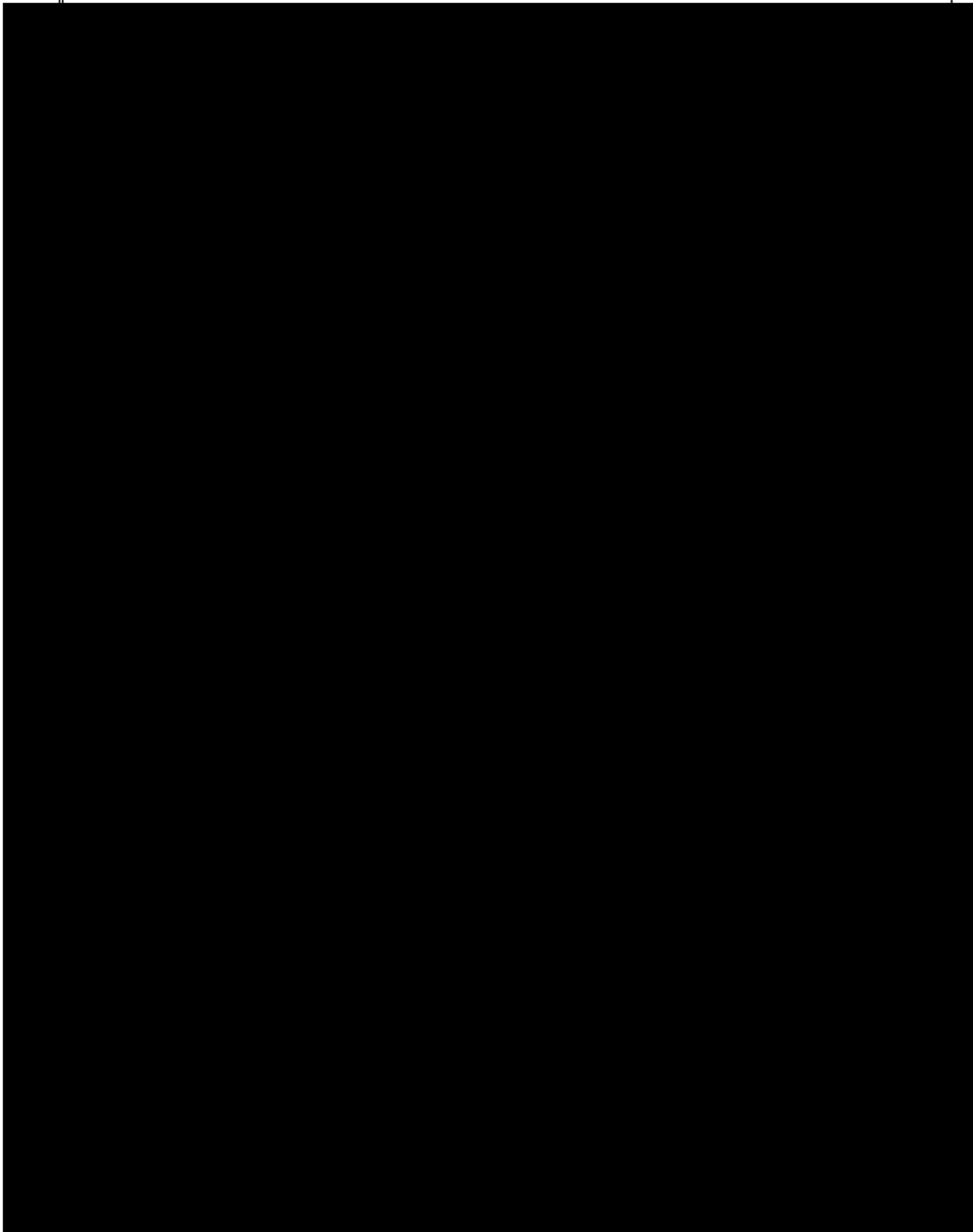


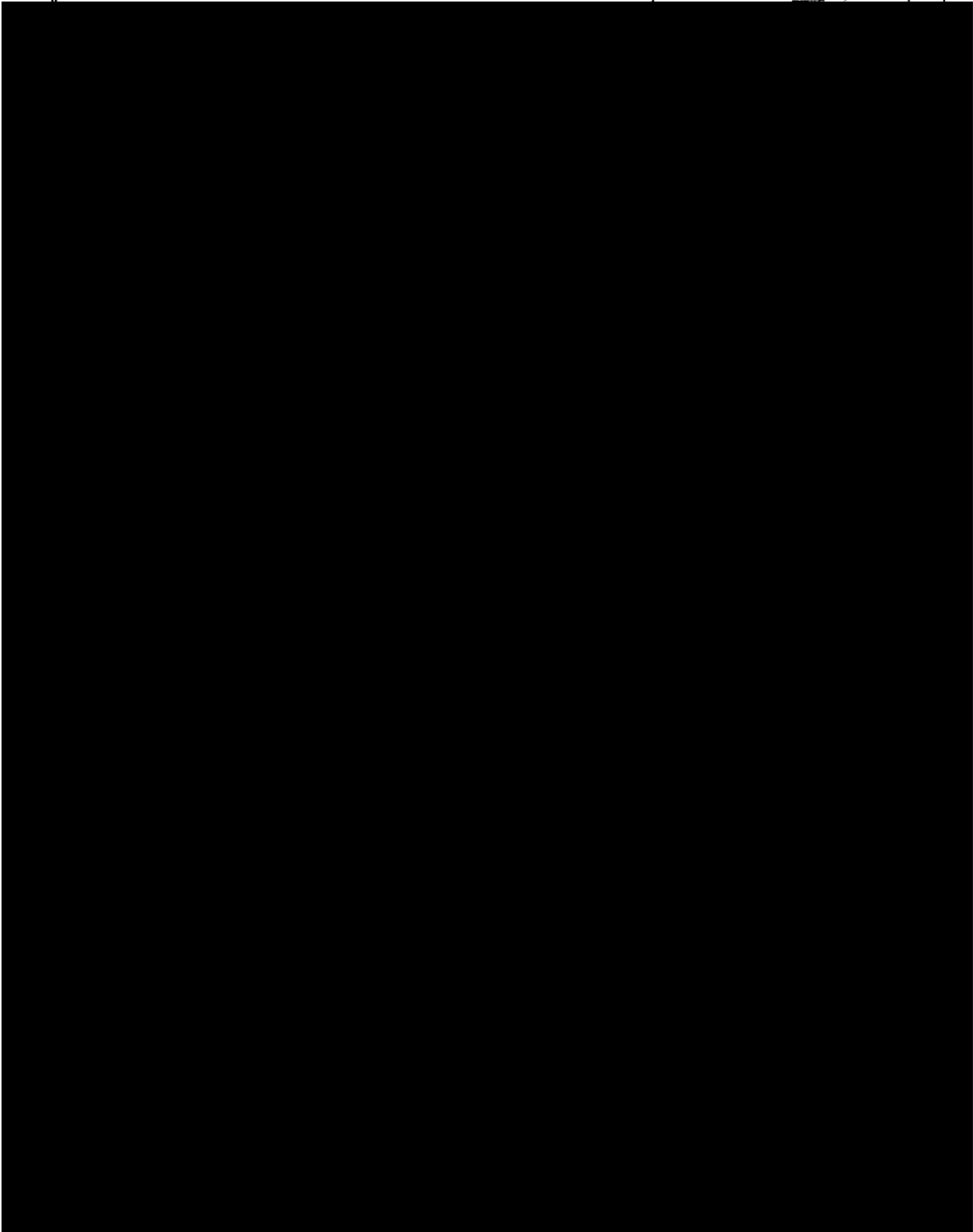


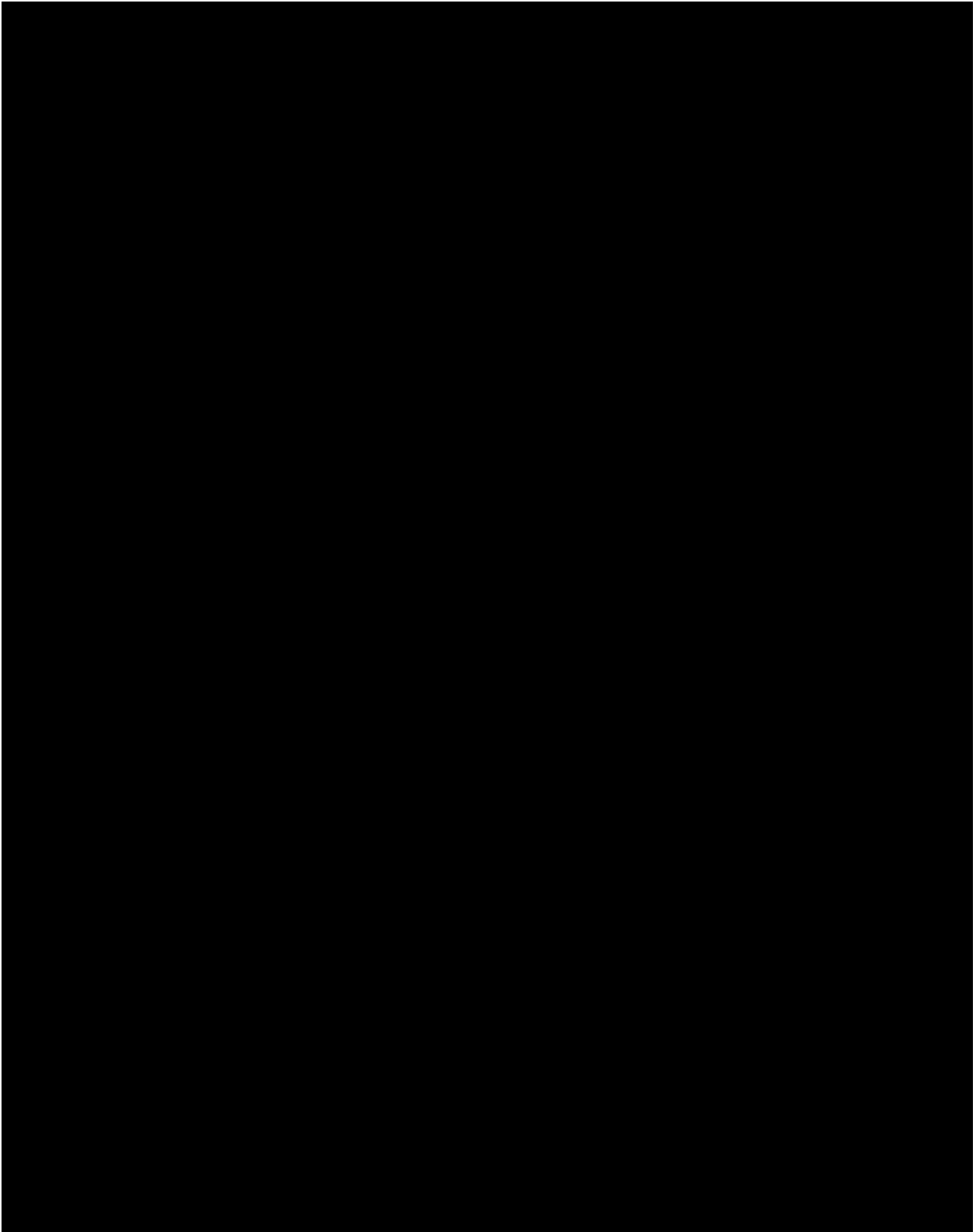


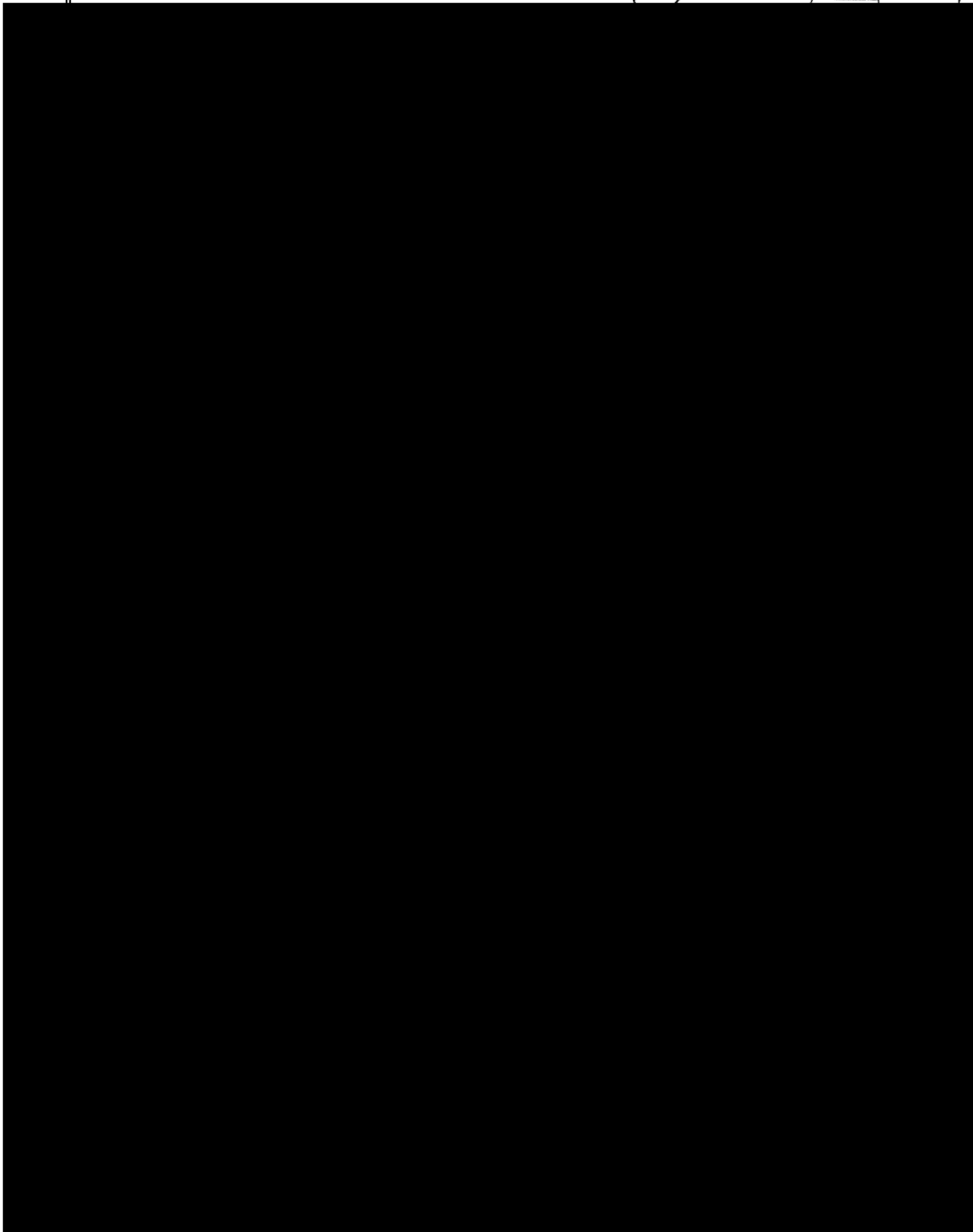


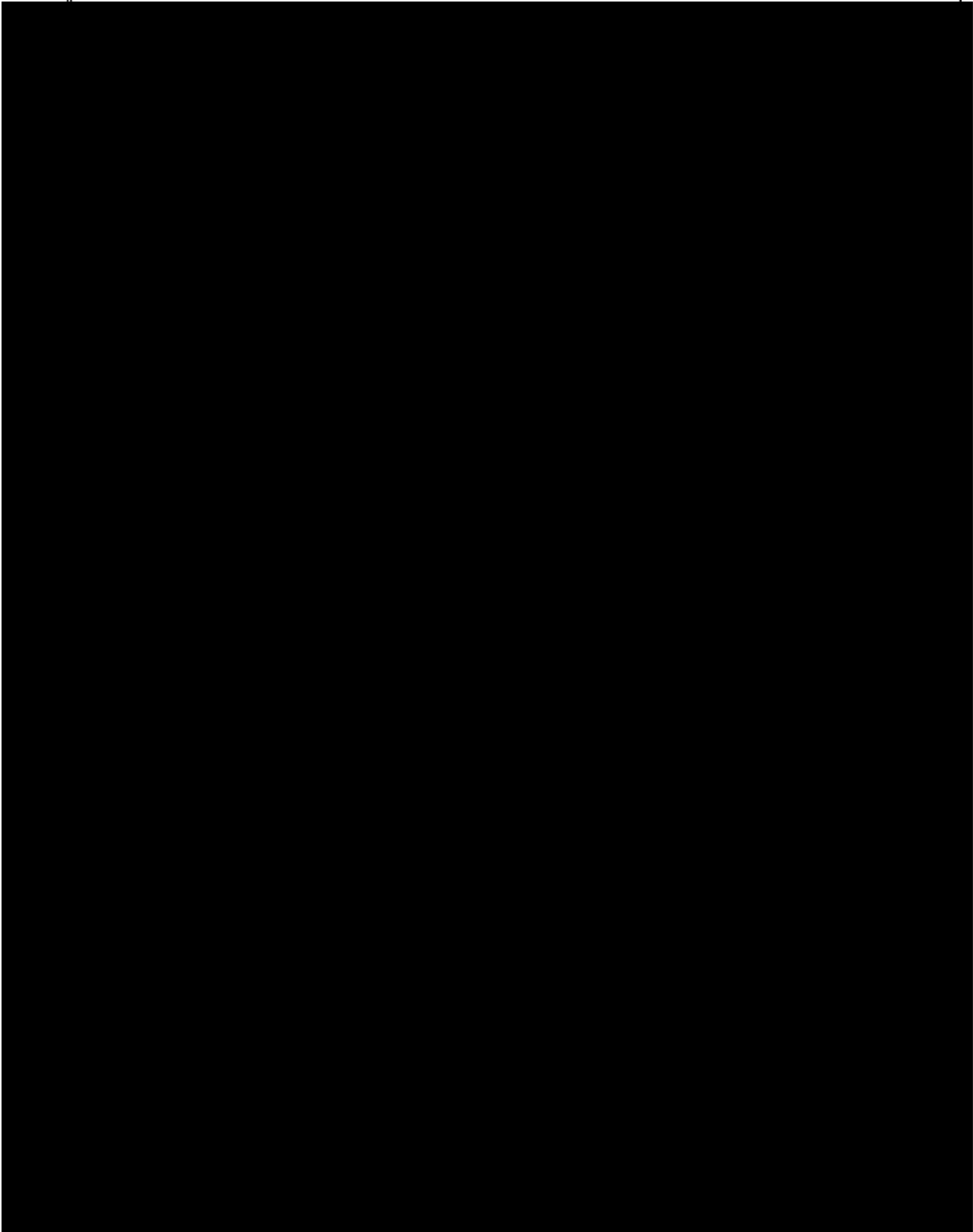








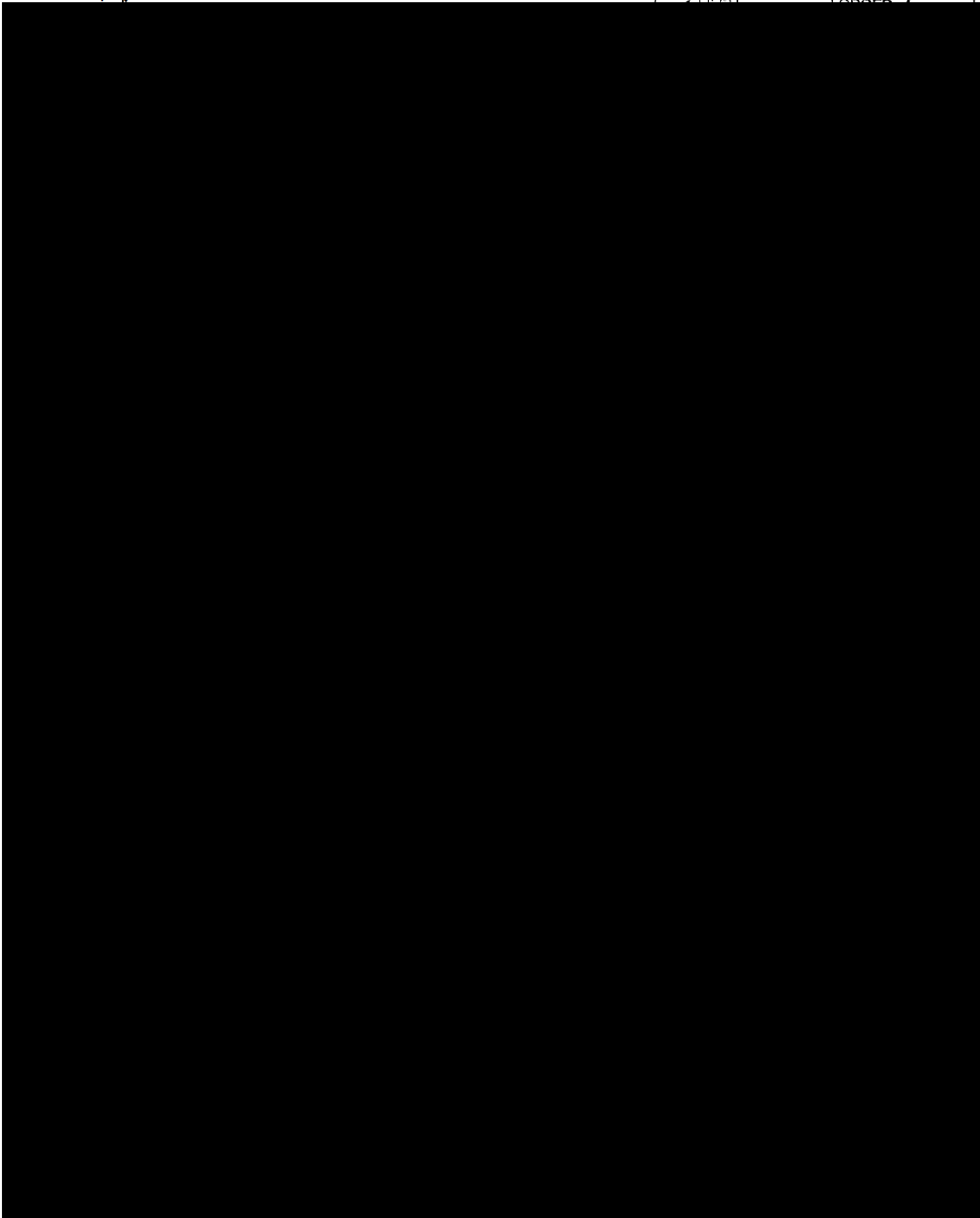


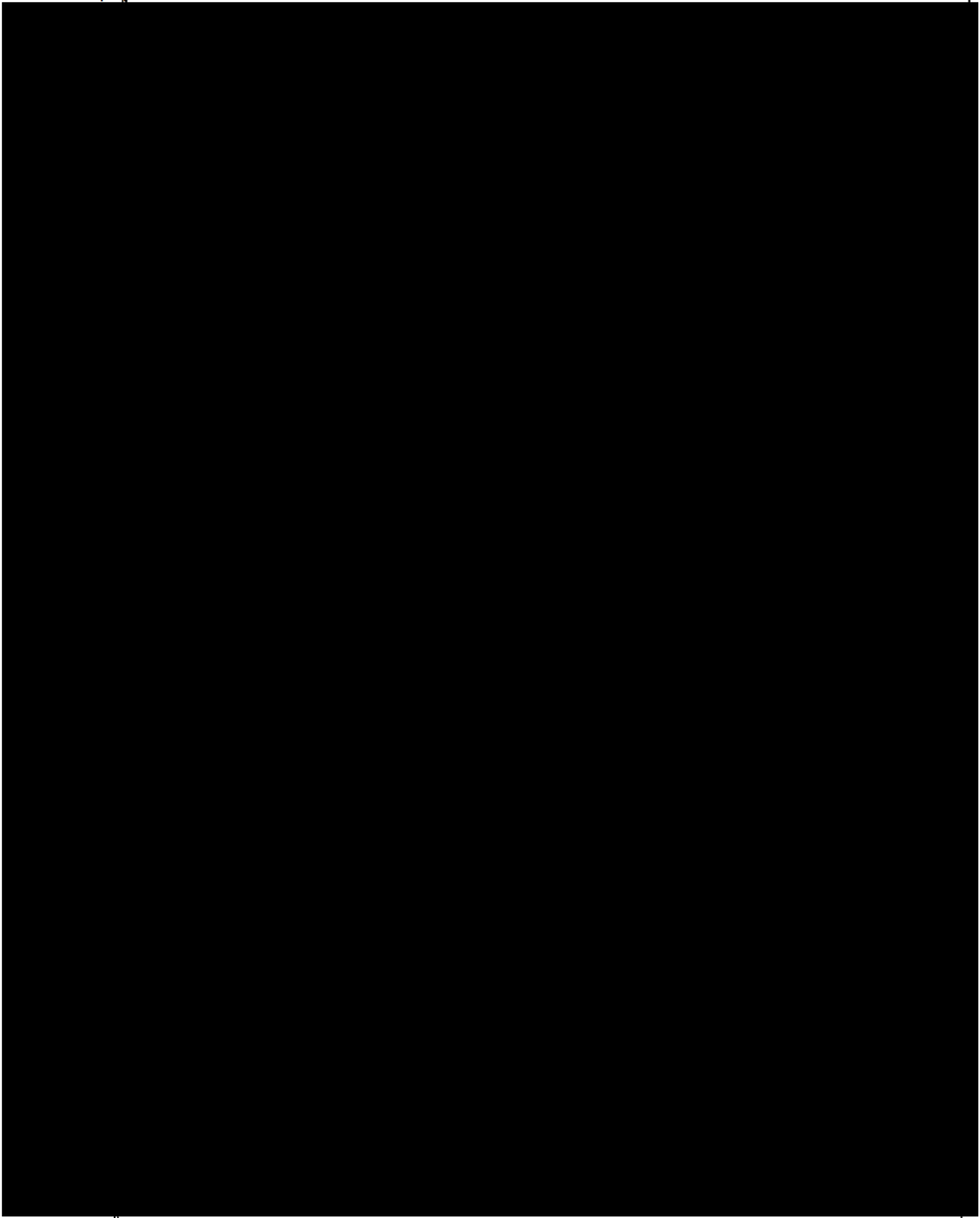


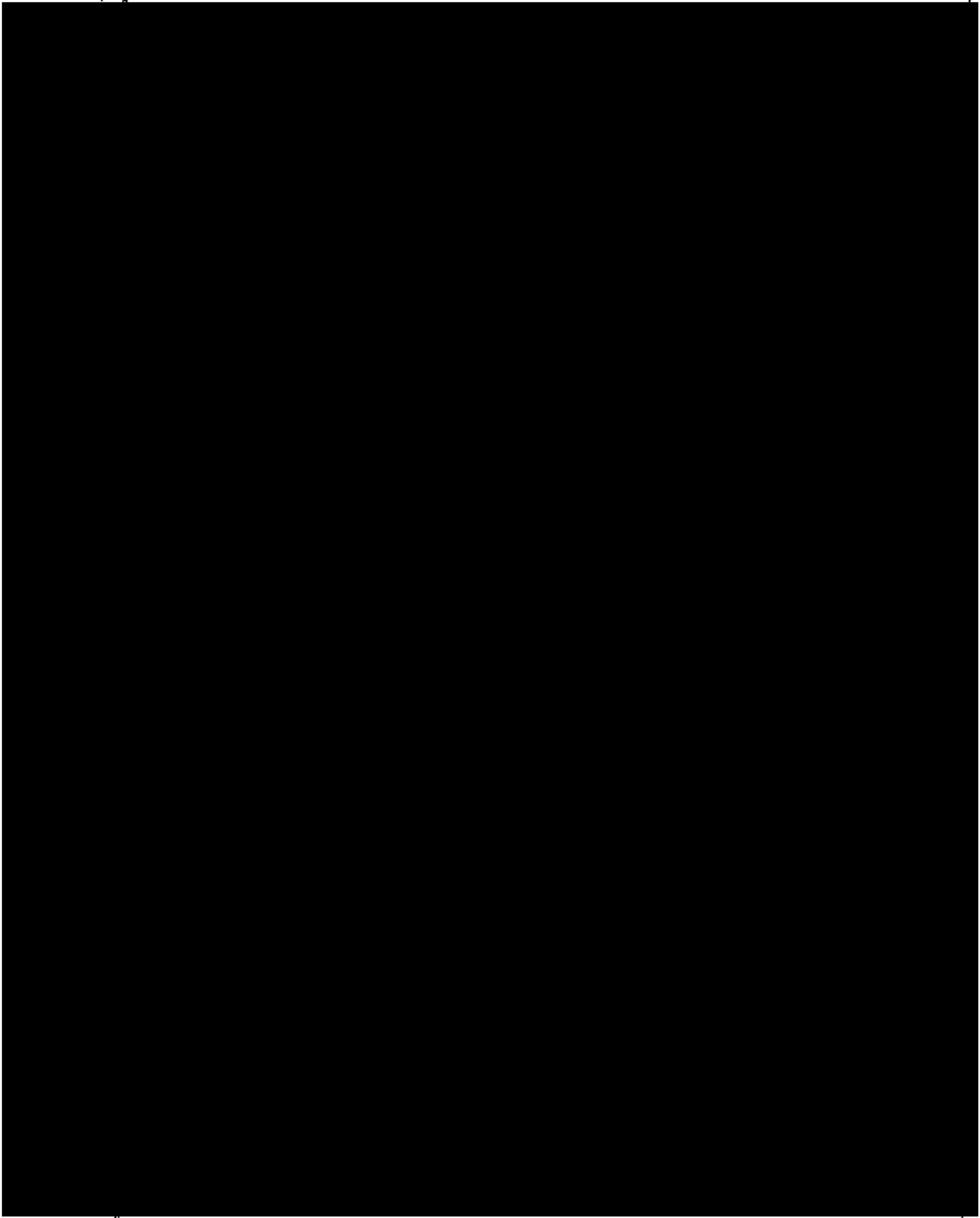


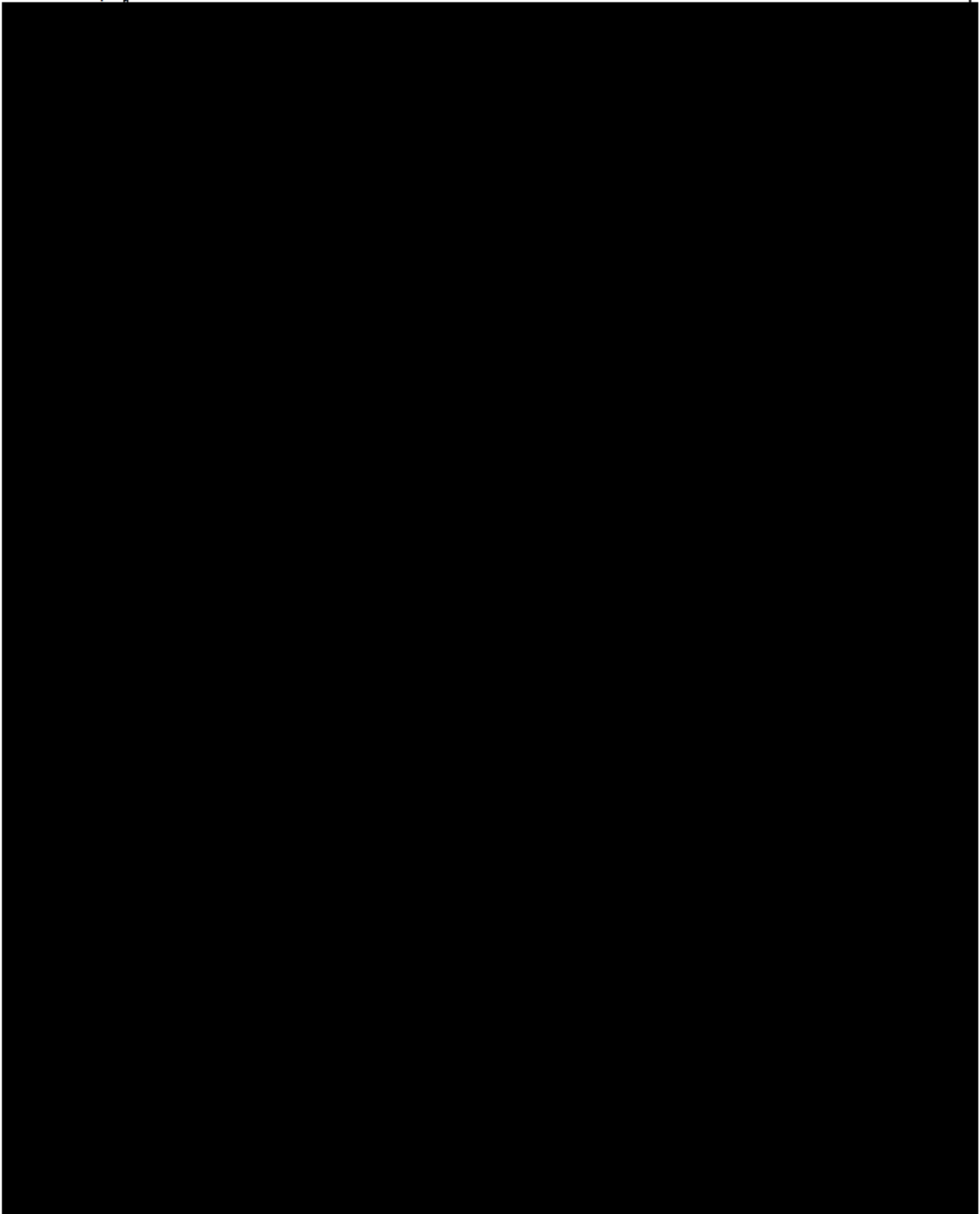
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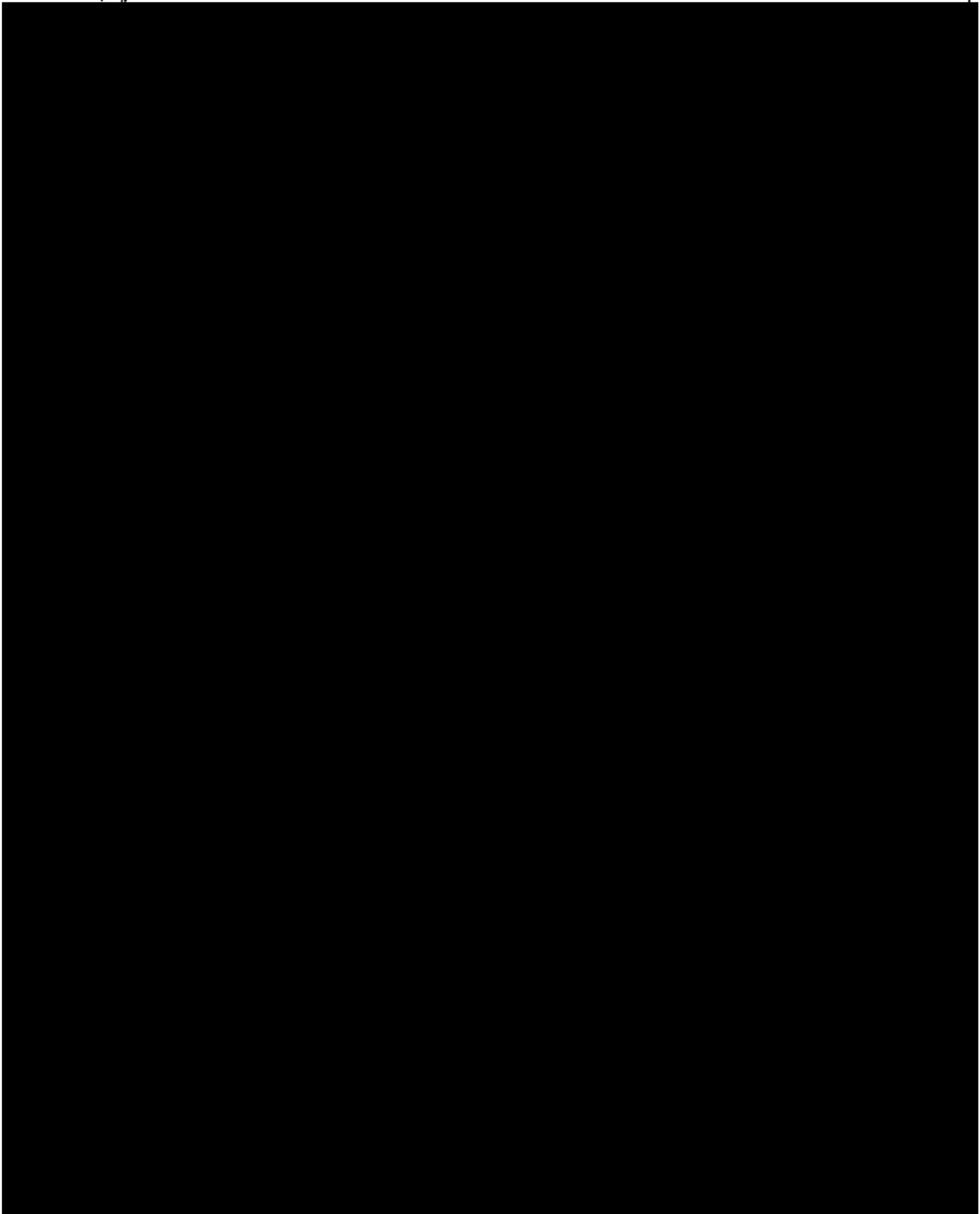
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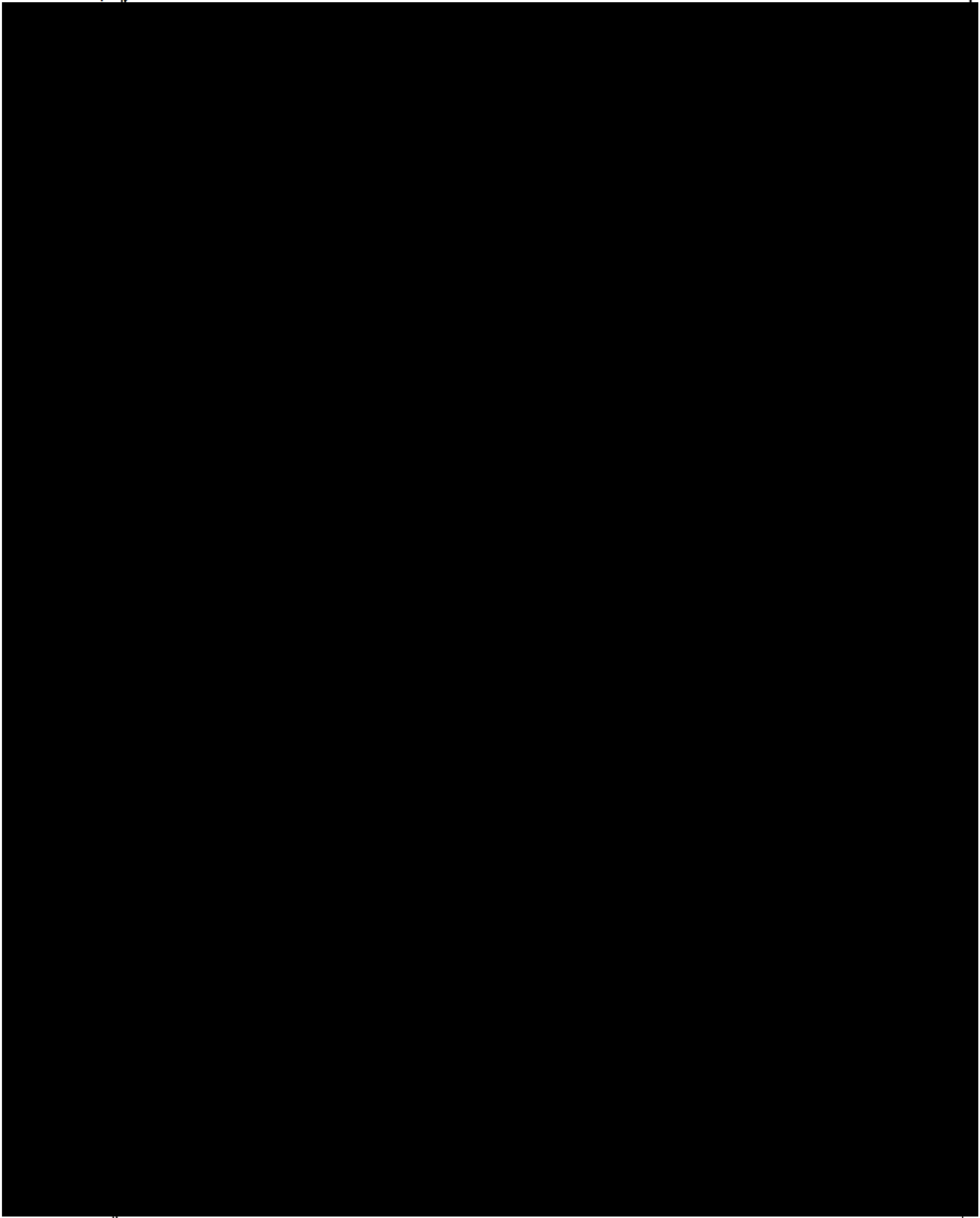


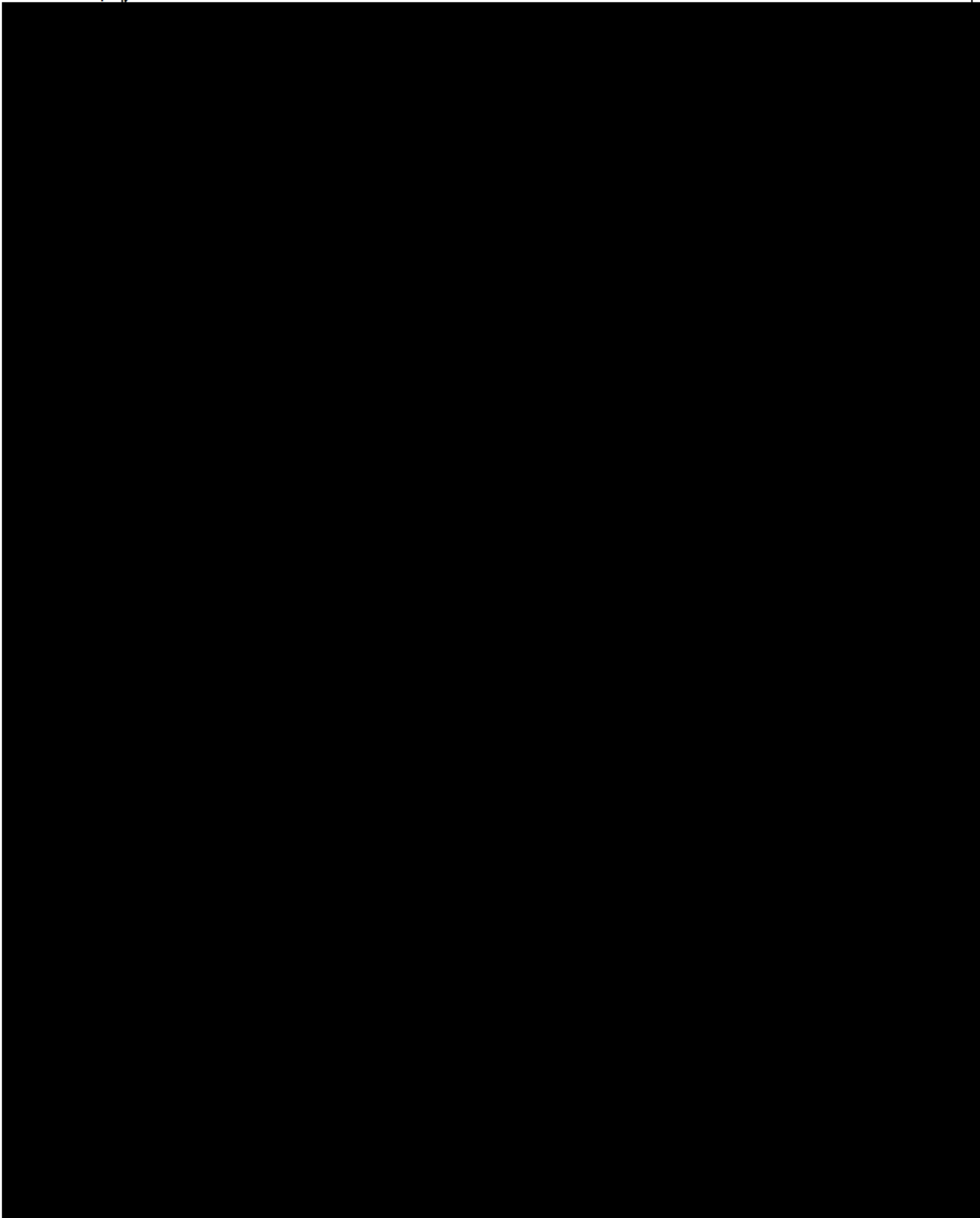


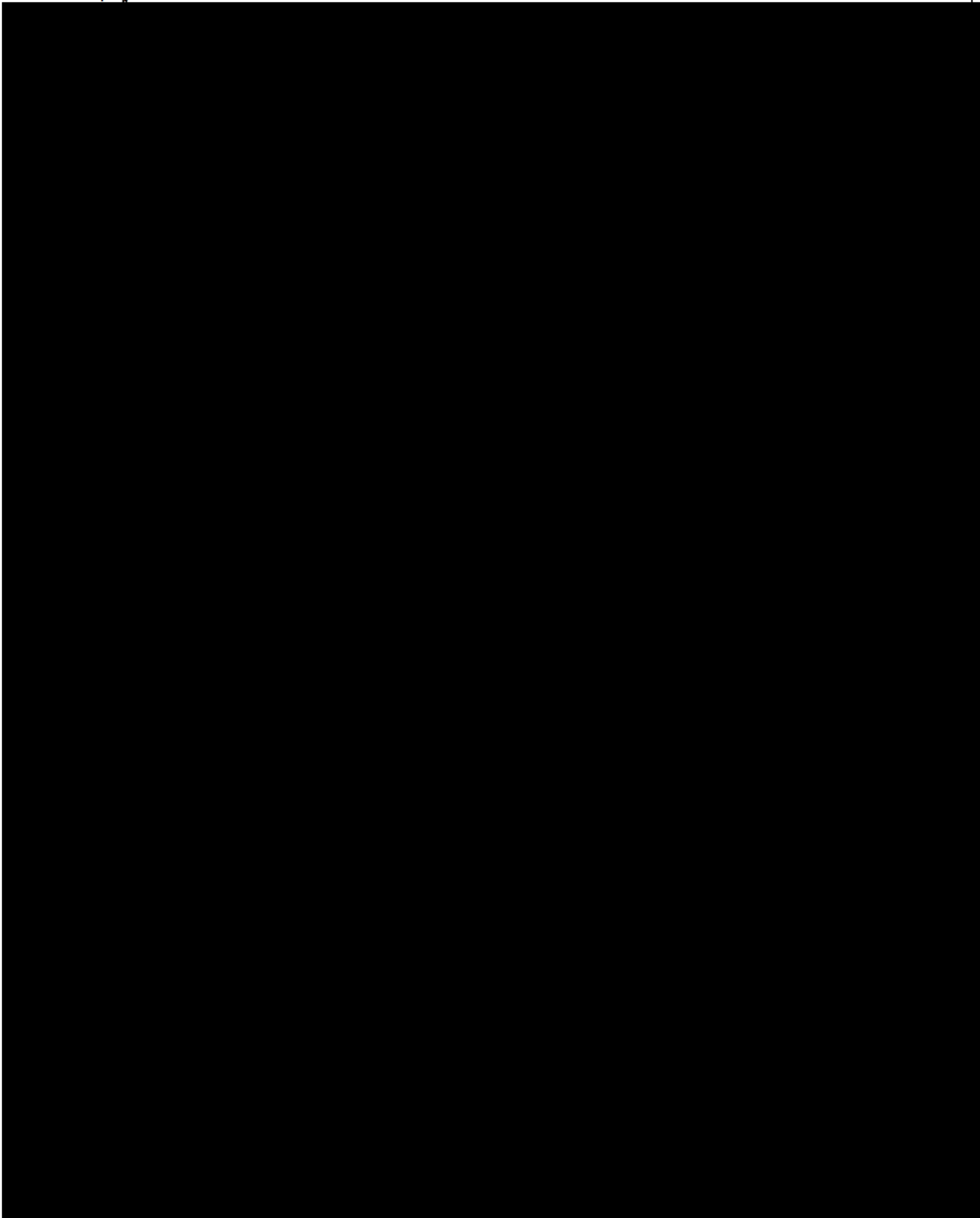




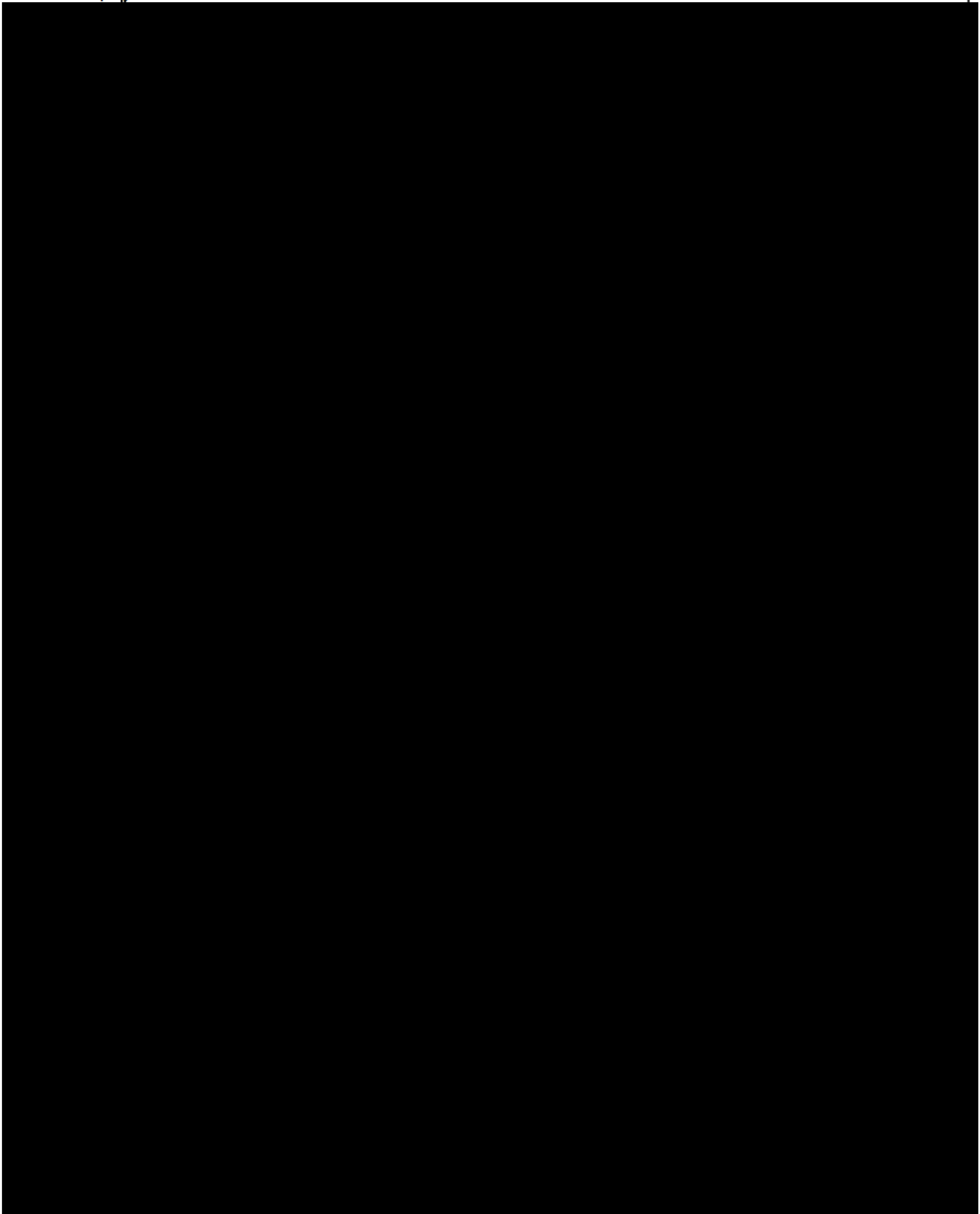


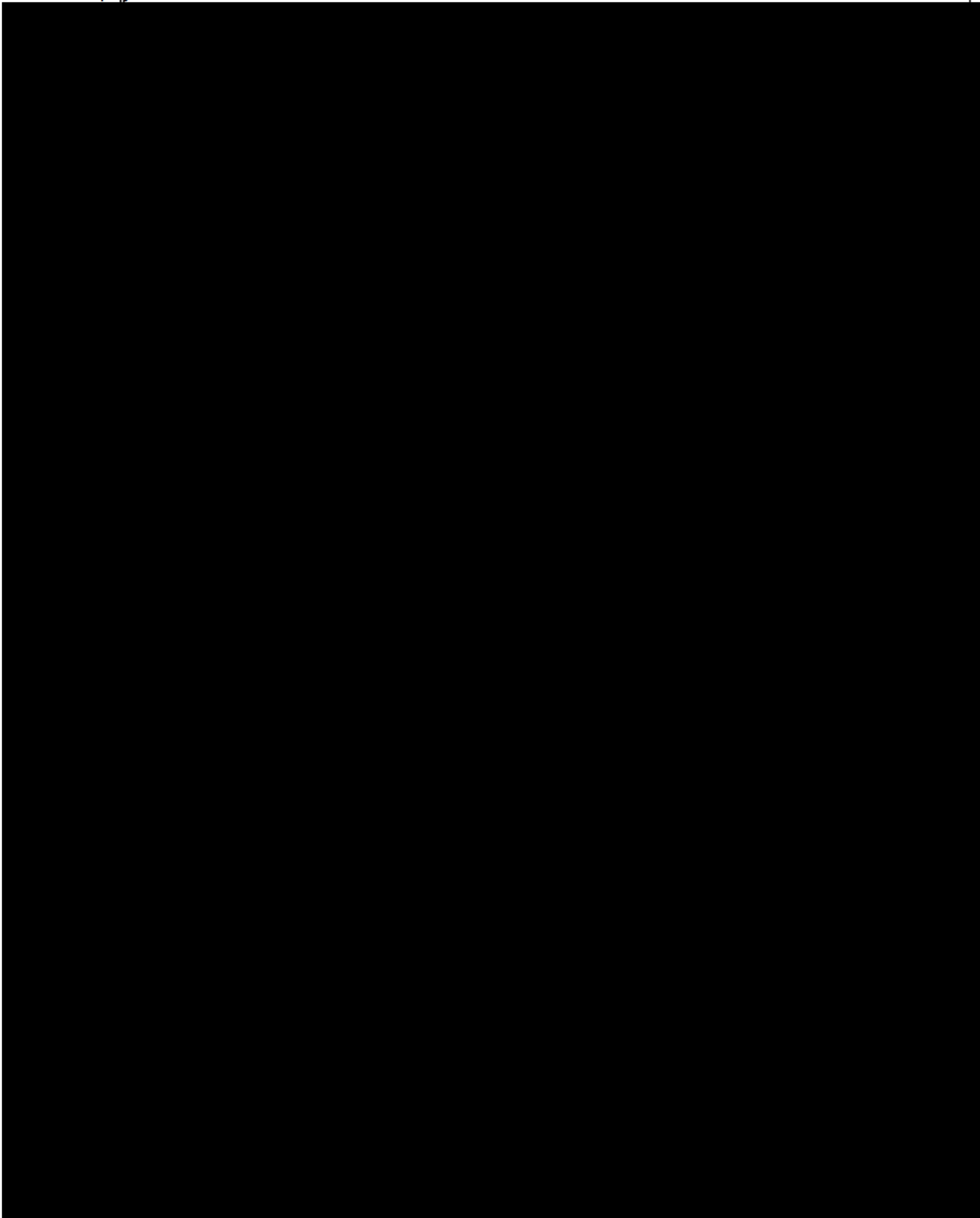


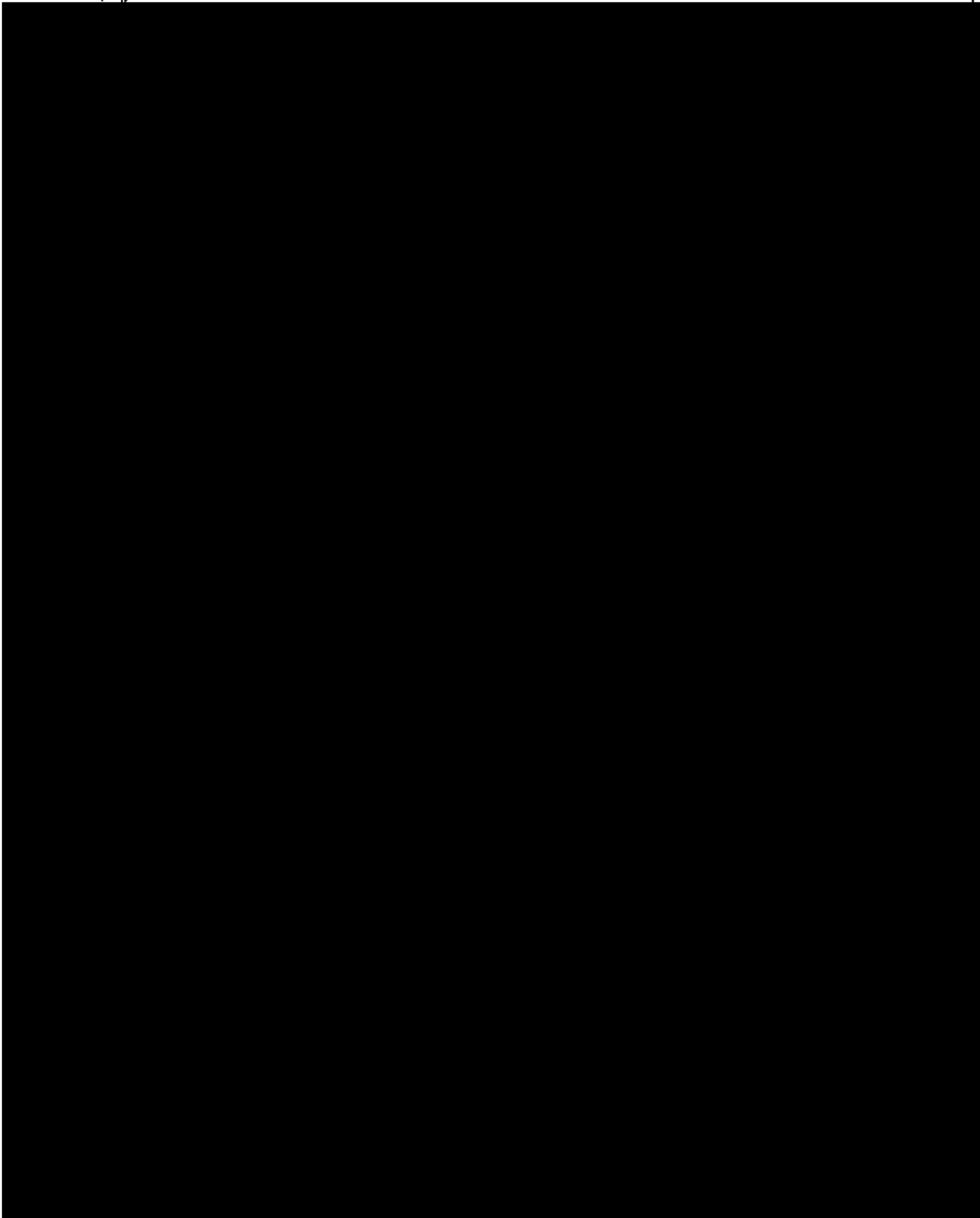






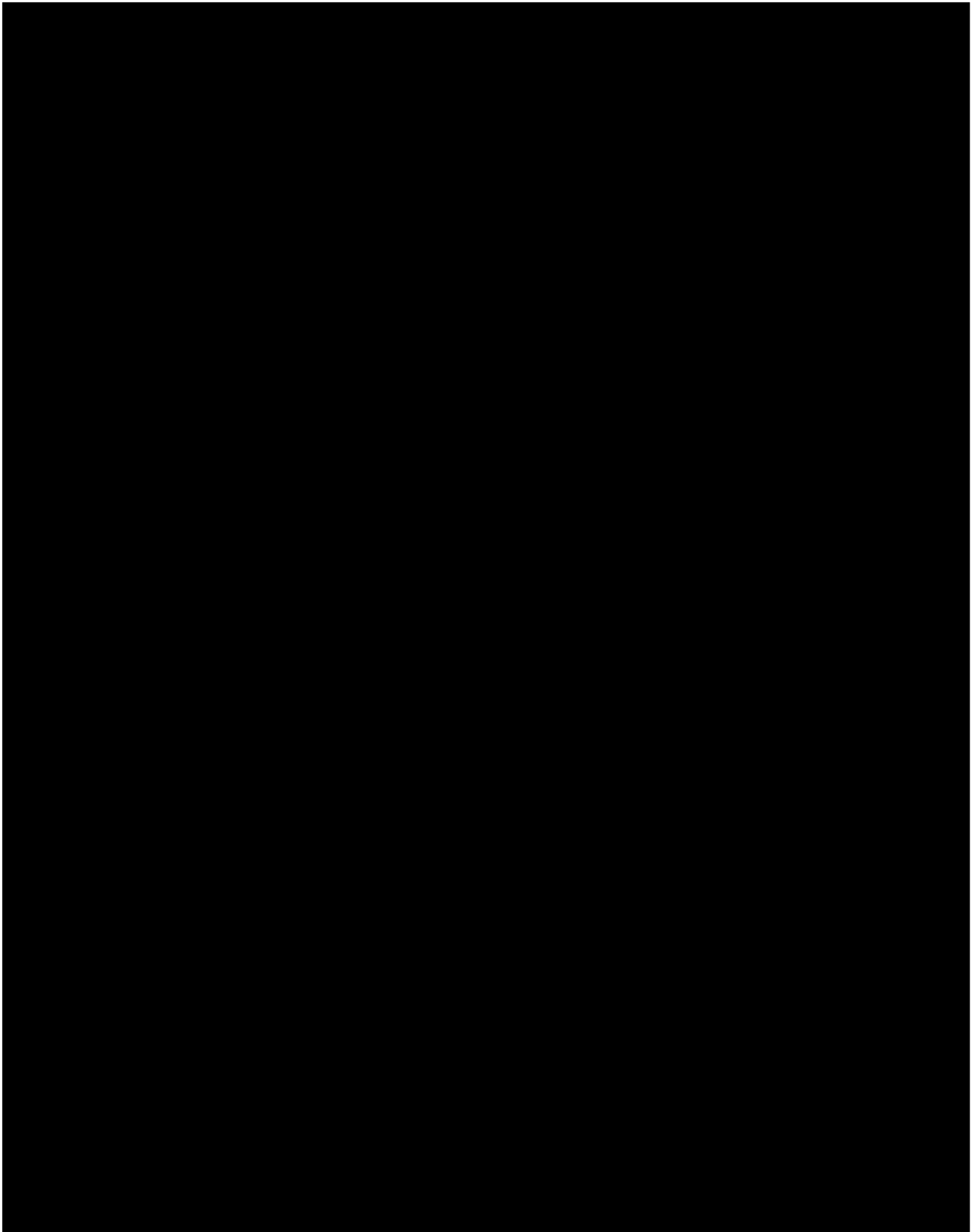






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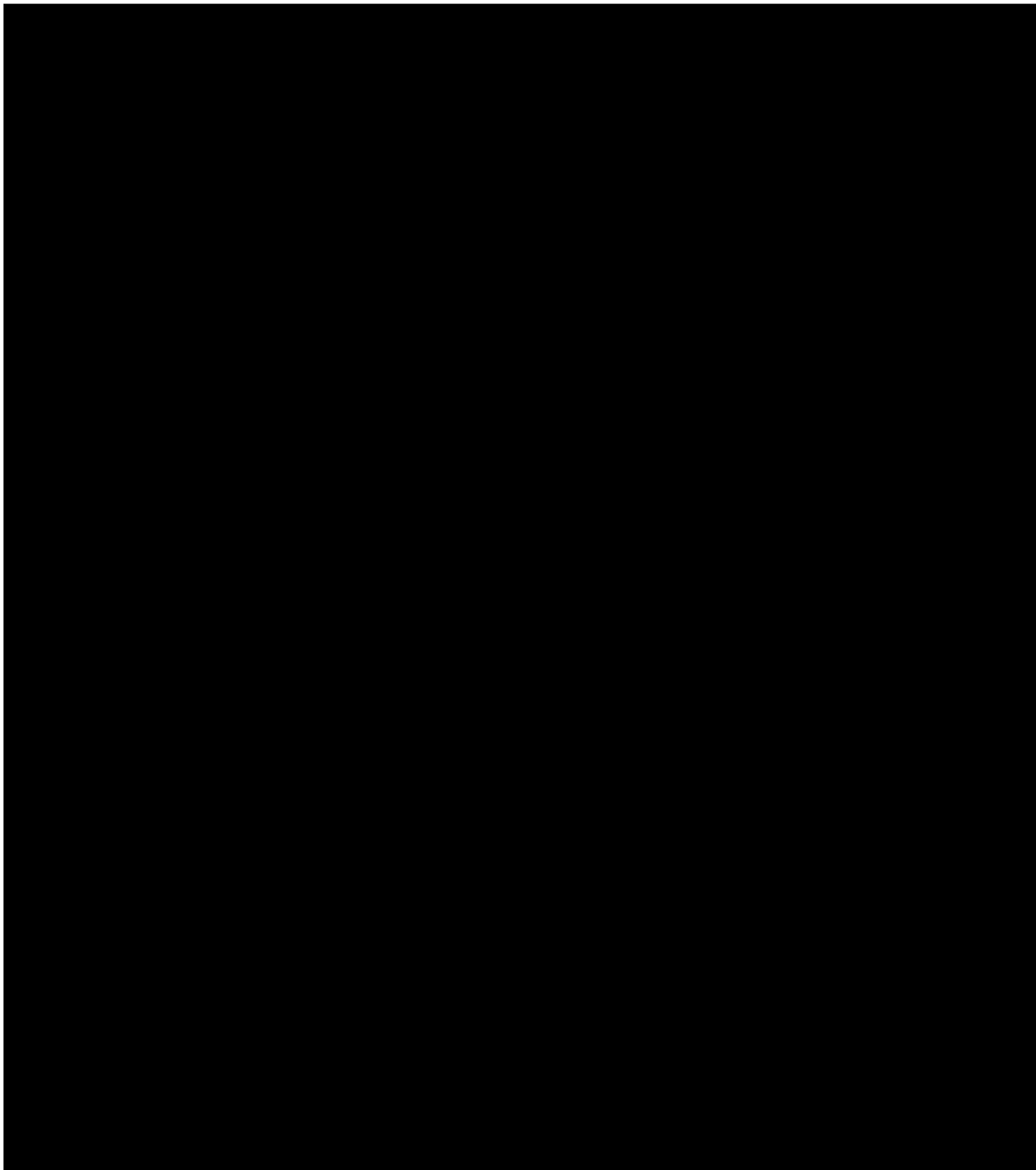




**U.S. Department of Justice**  
**Criminal Division**

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*Washington, D.C. 20530*





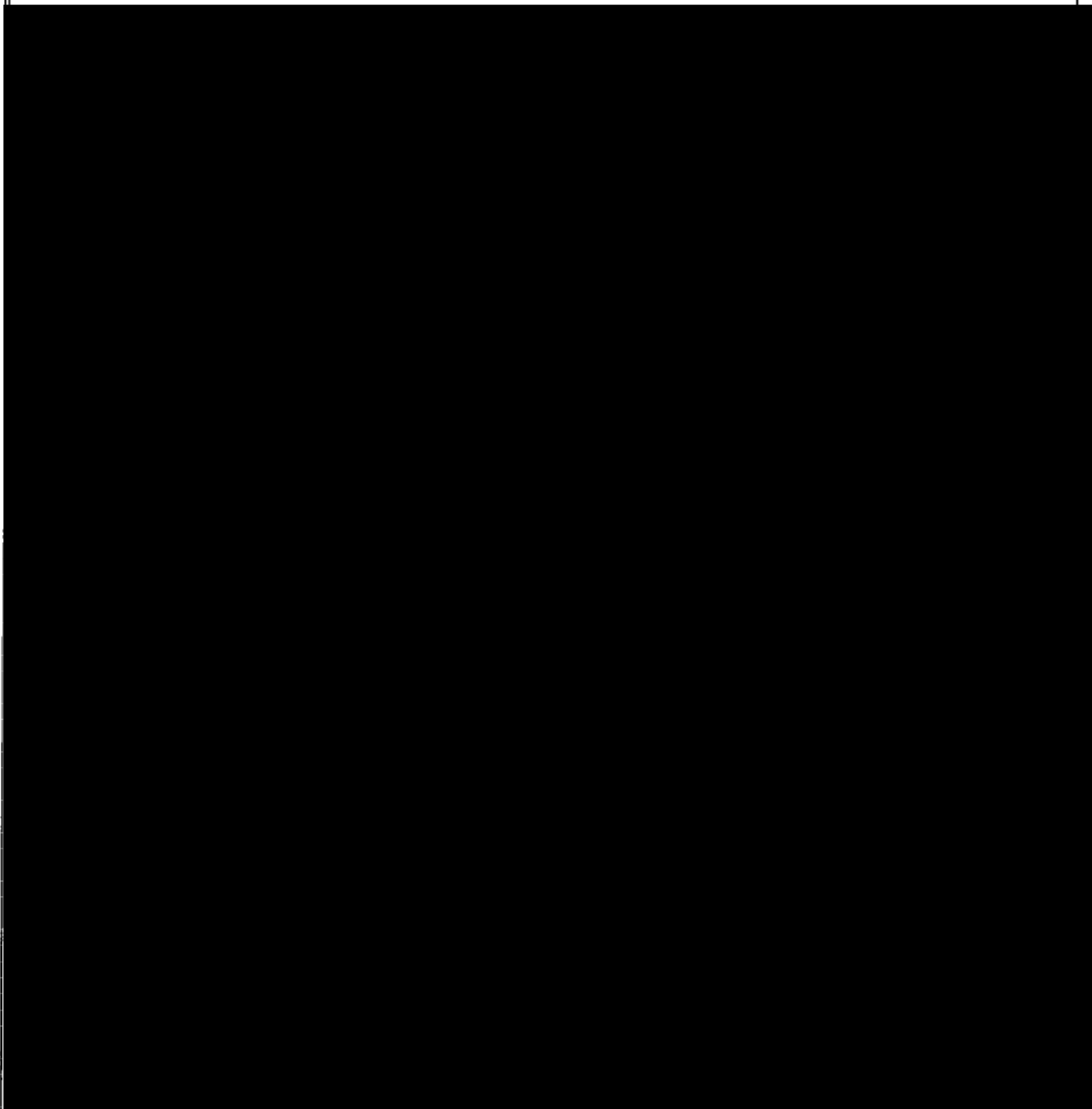
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**EXHIBIT B**

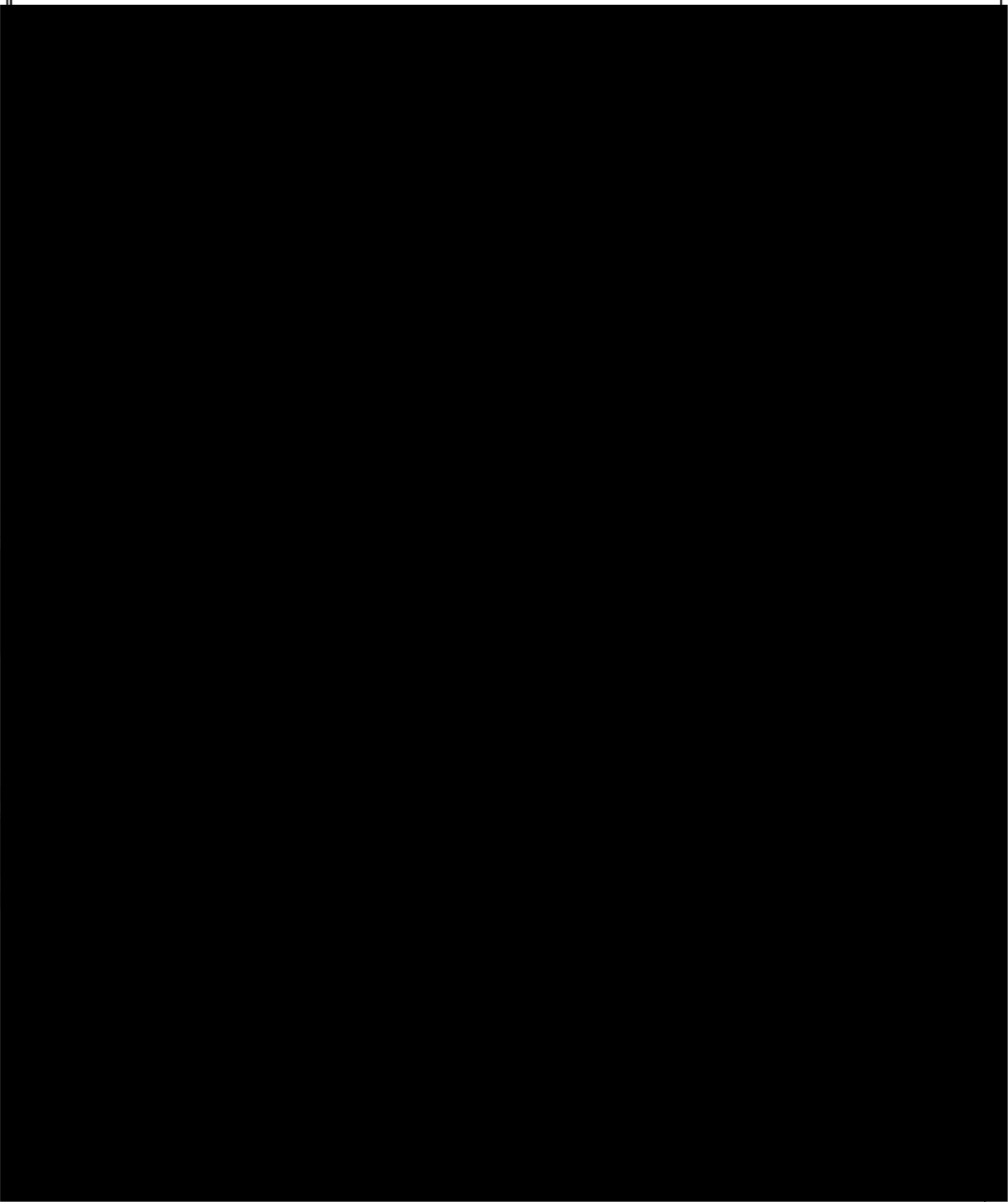


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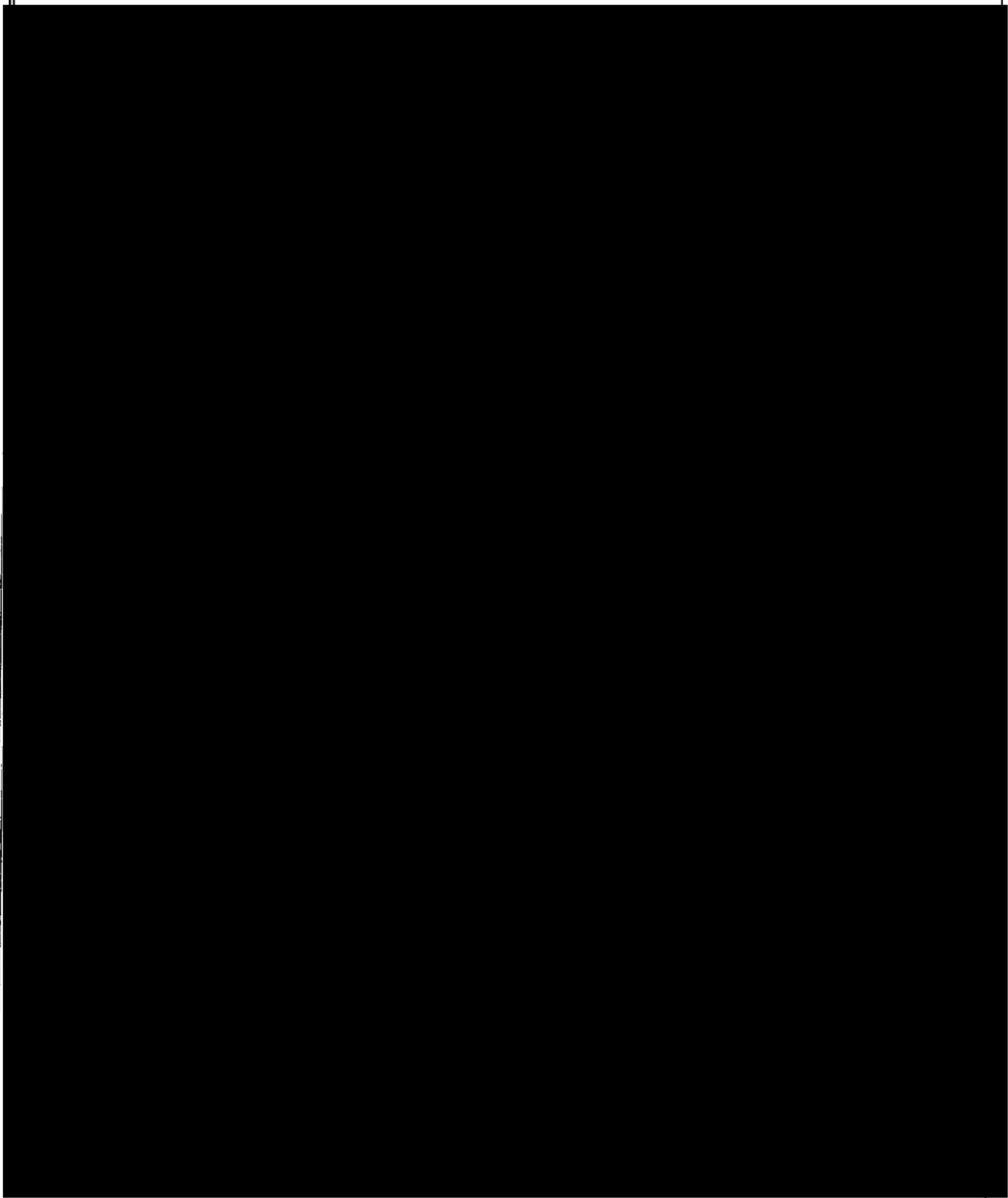
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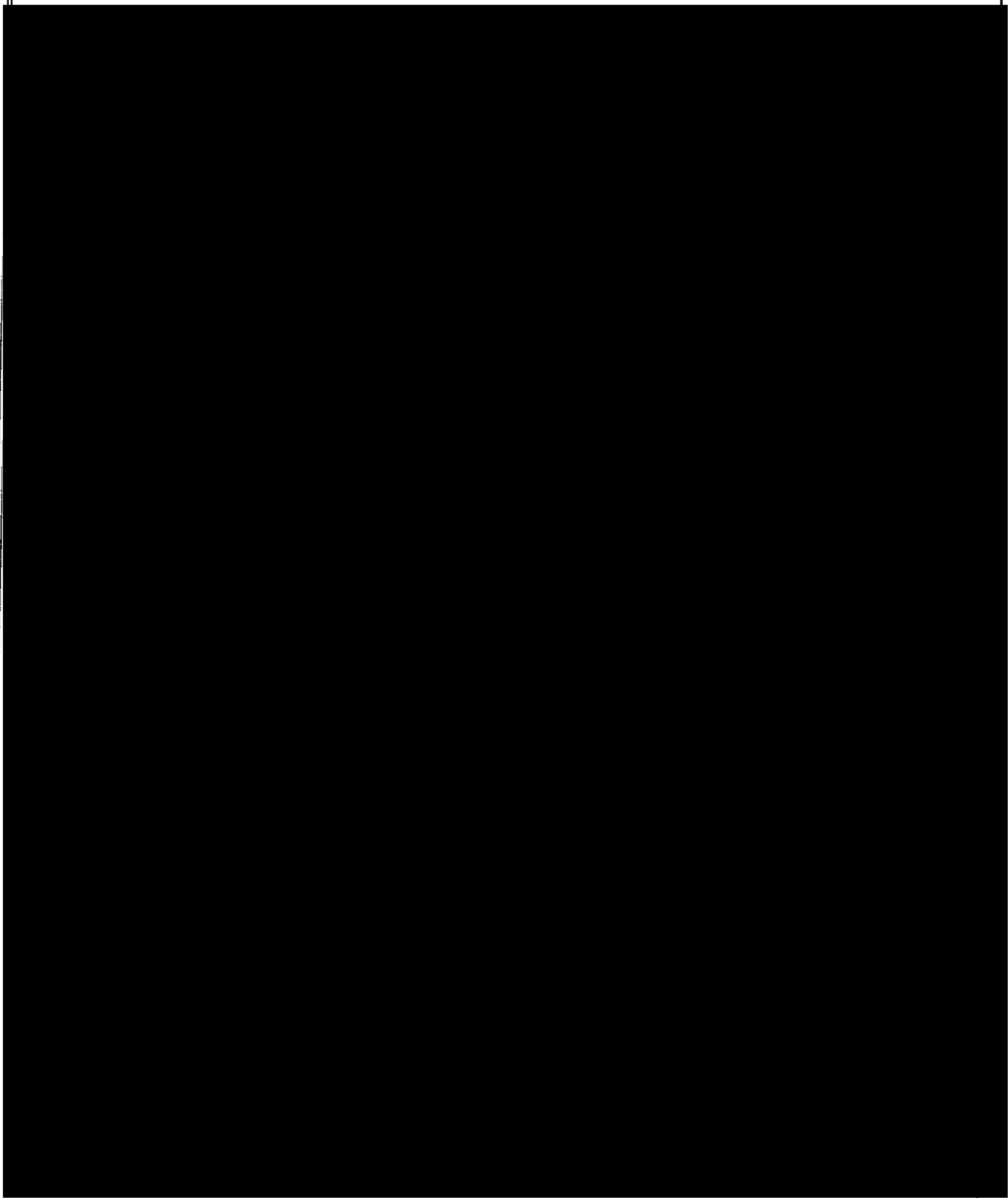
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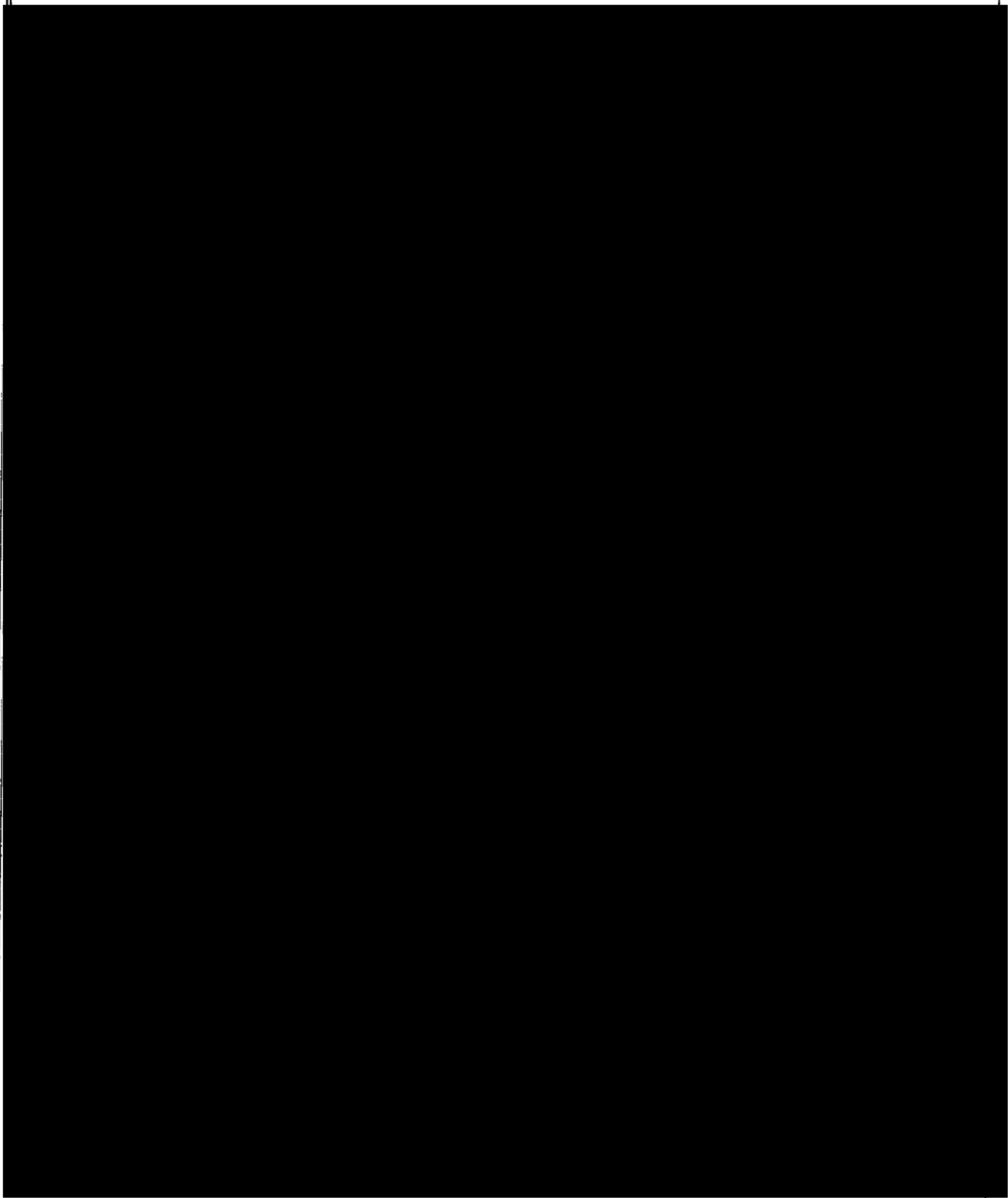
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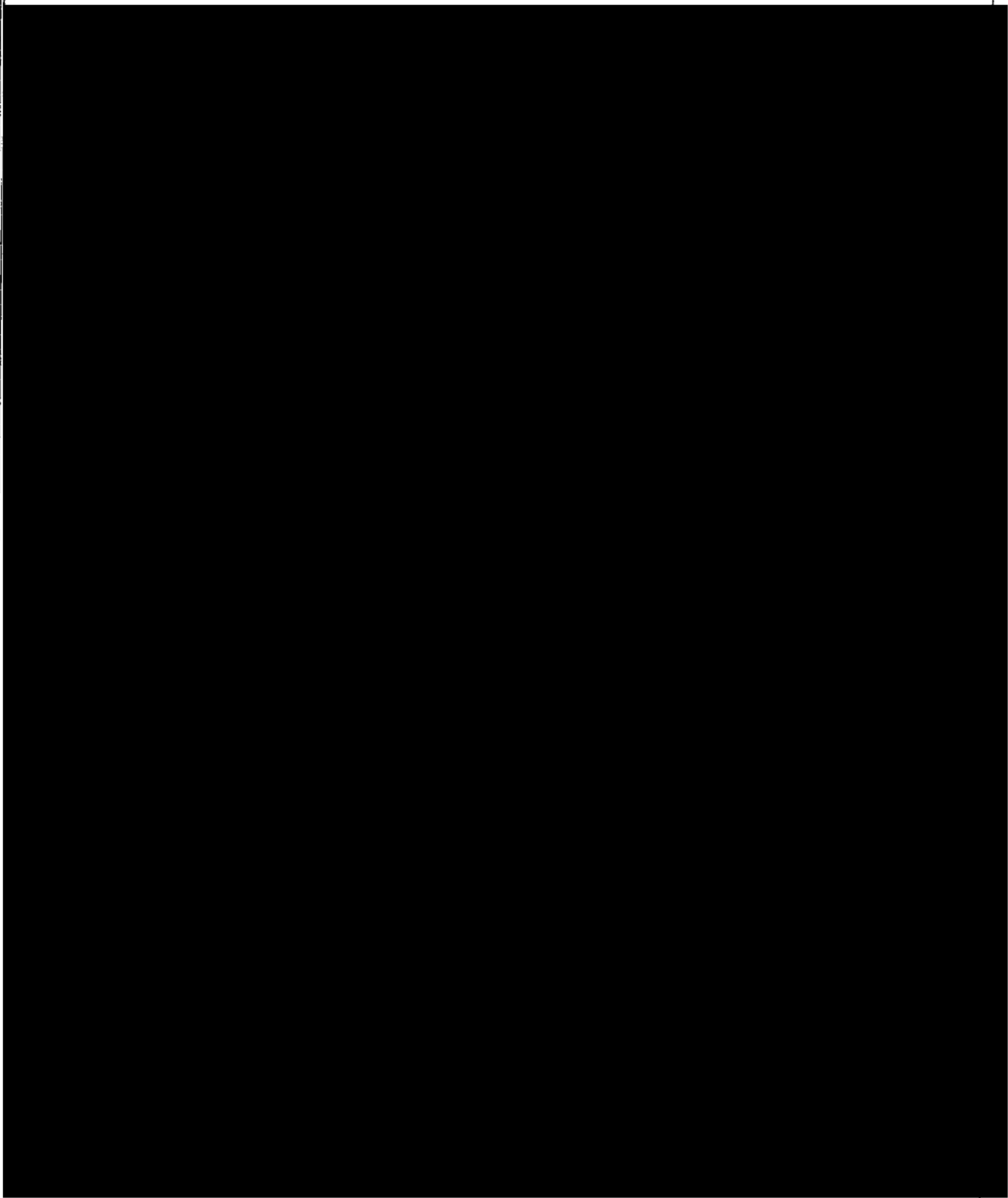
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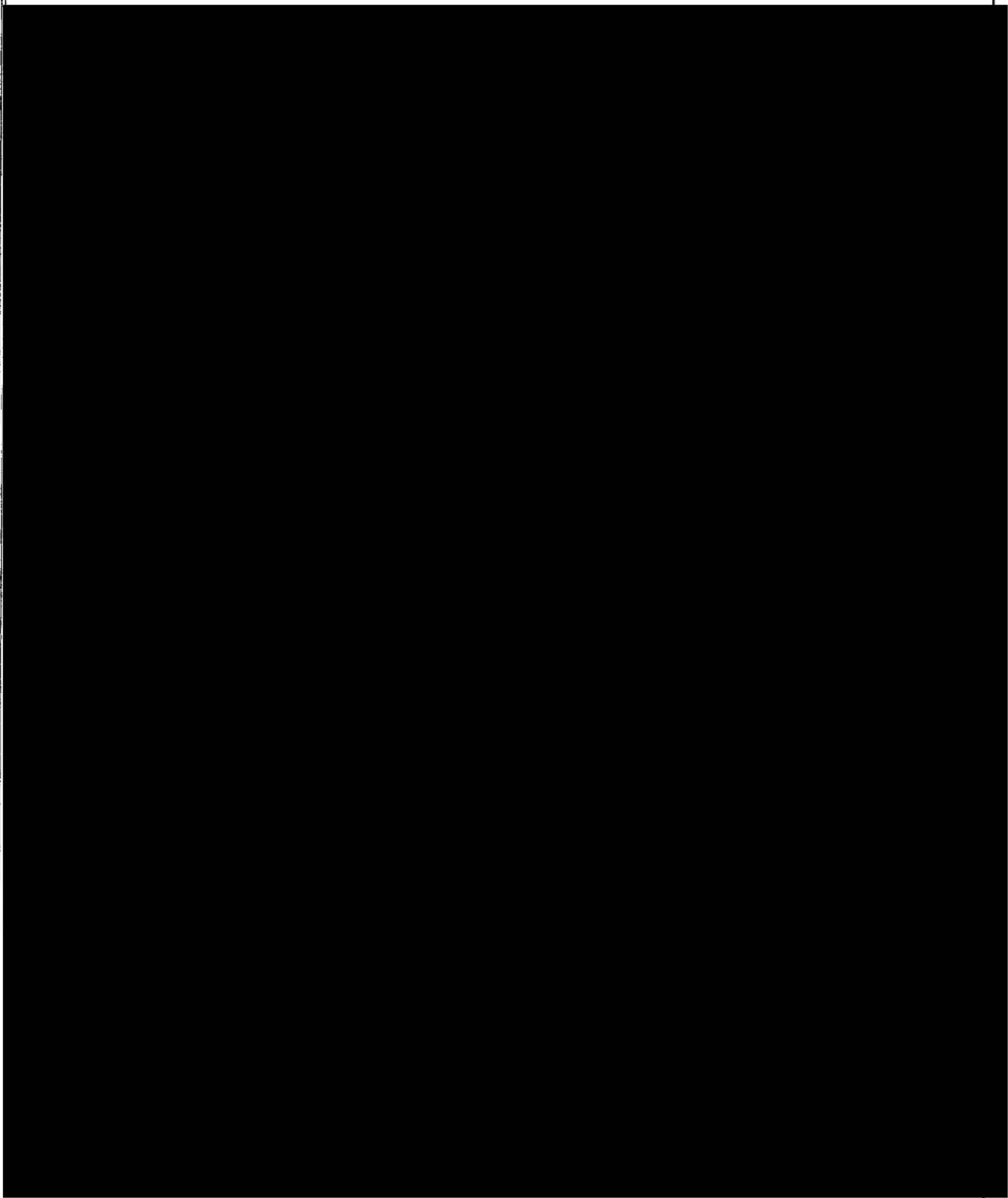
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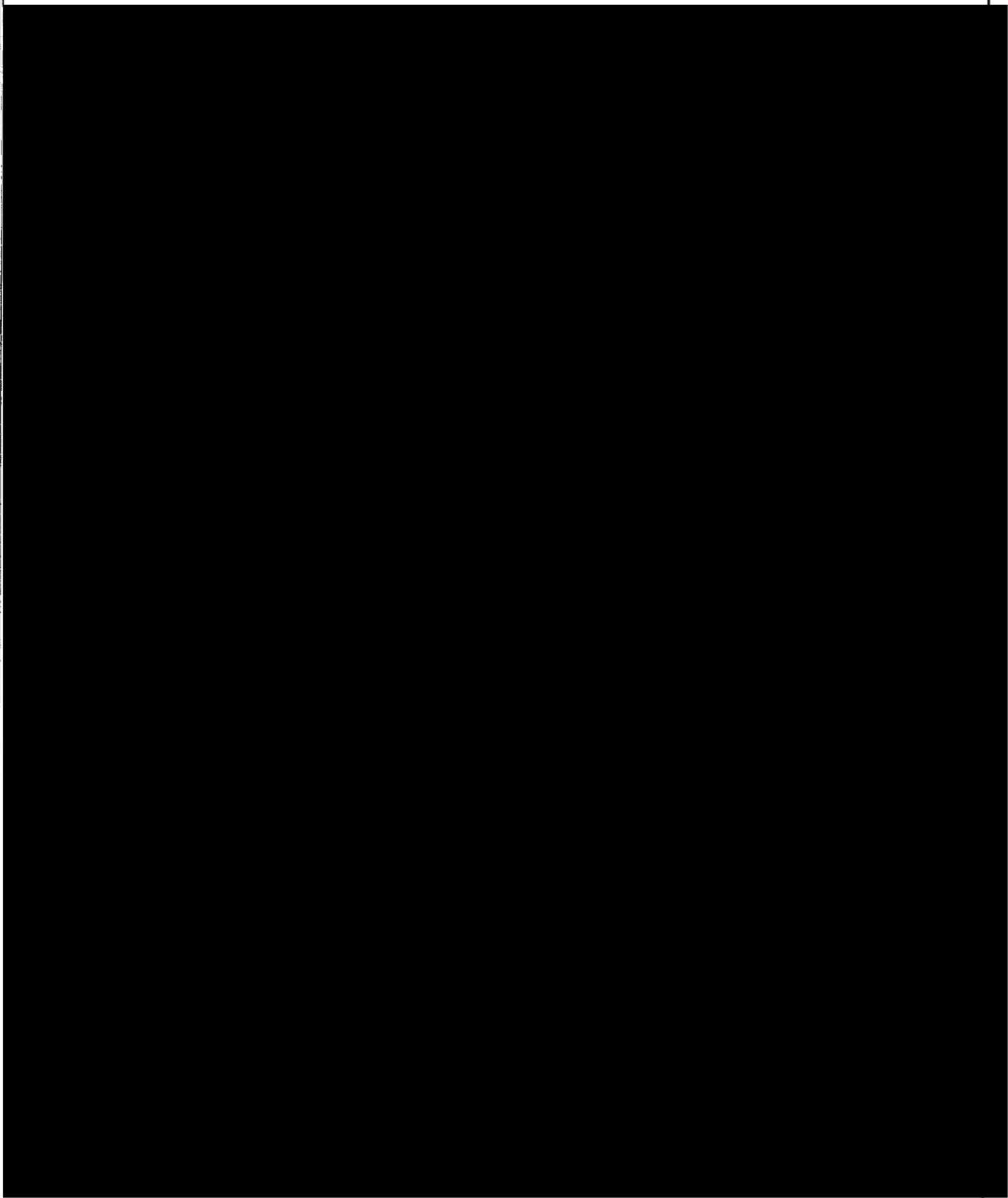
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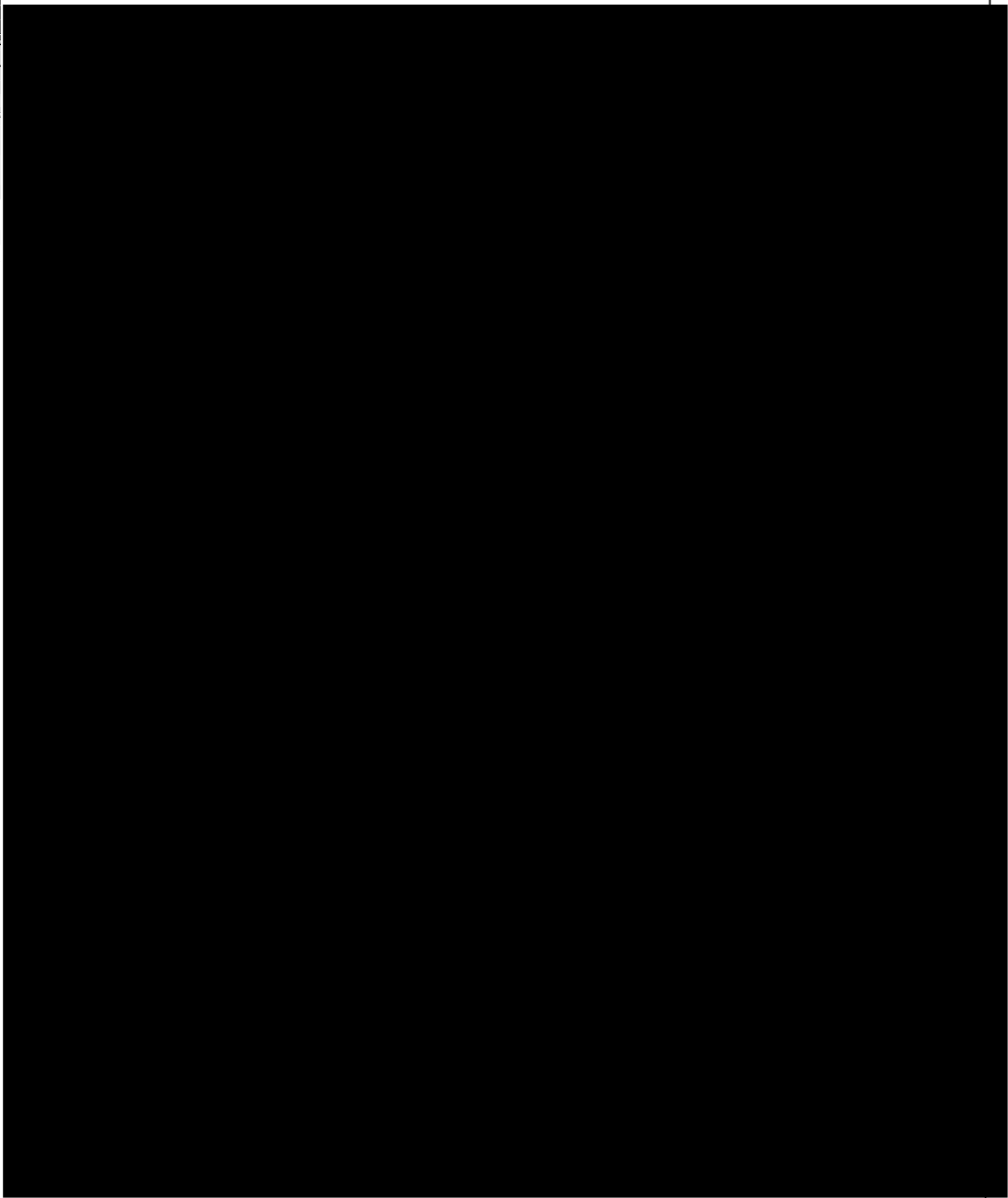


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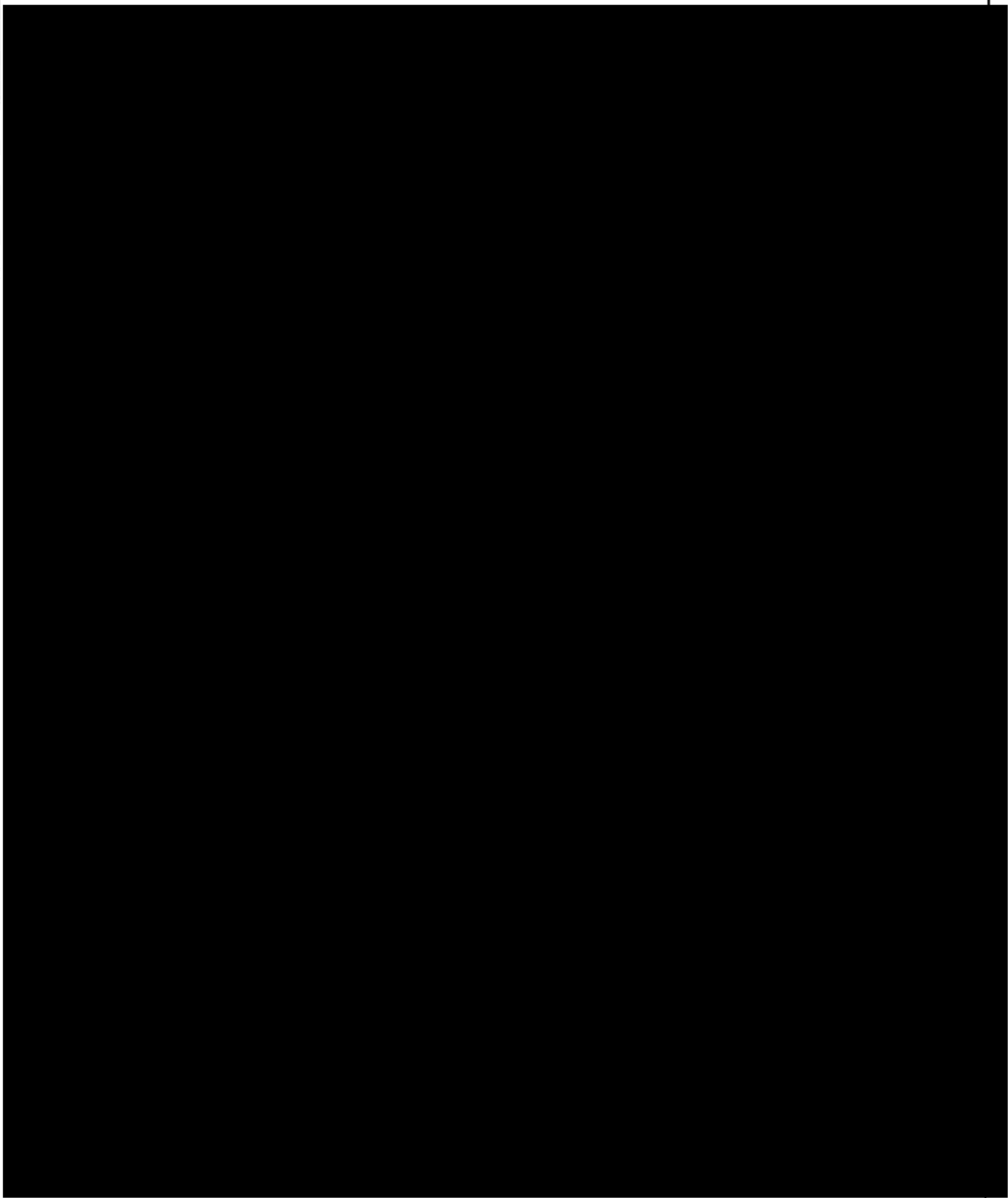




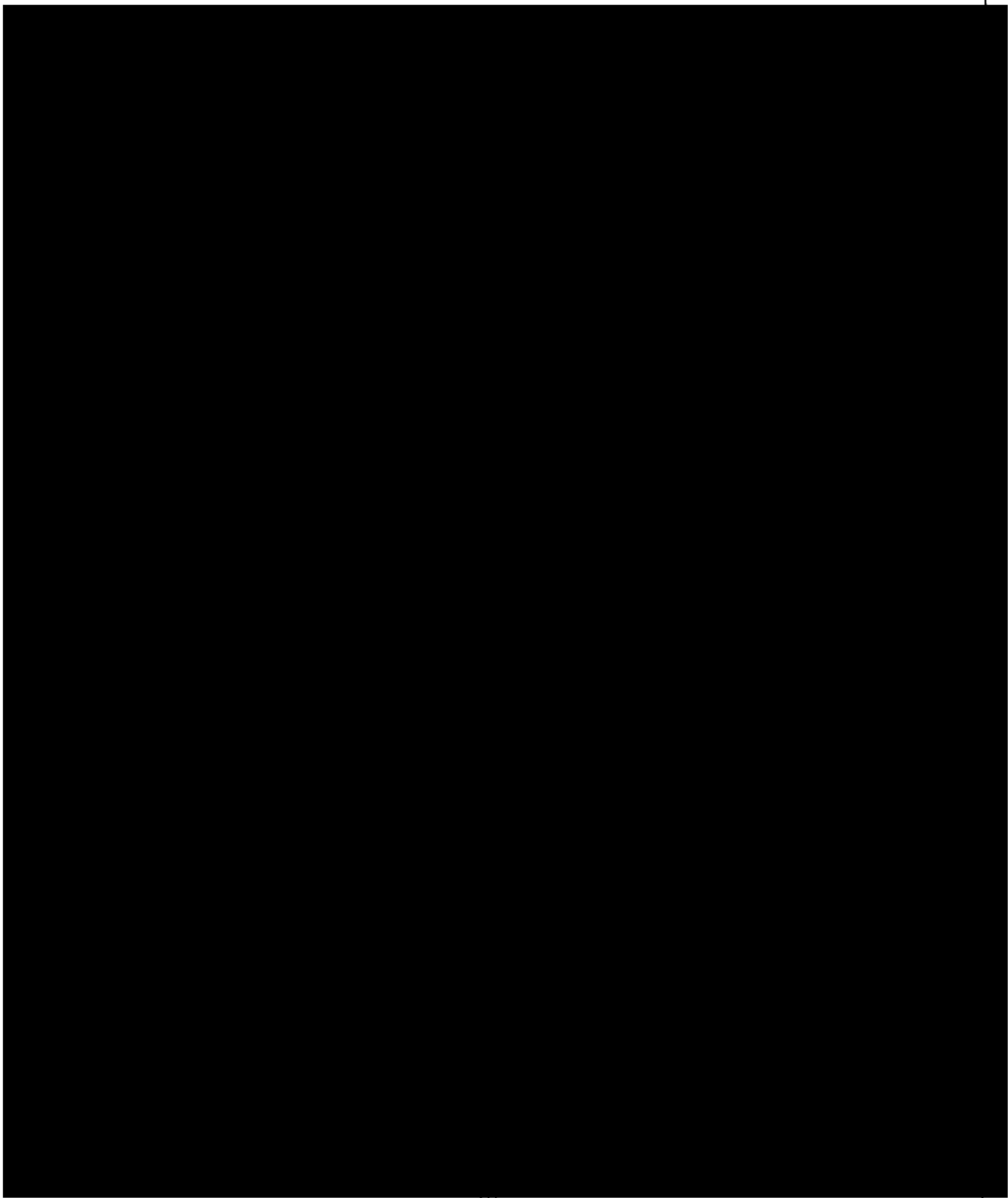
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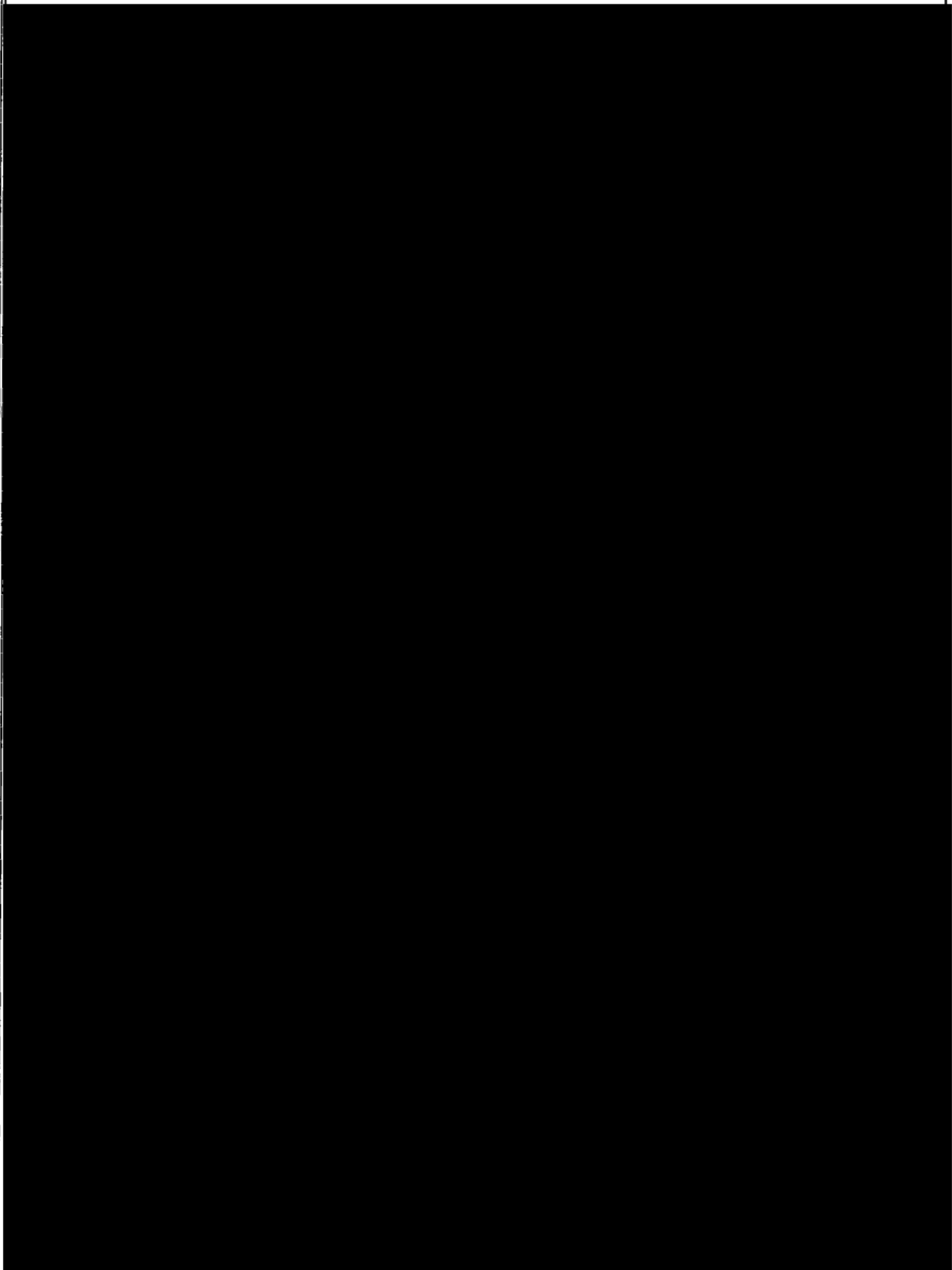
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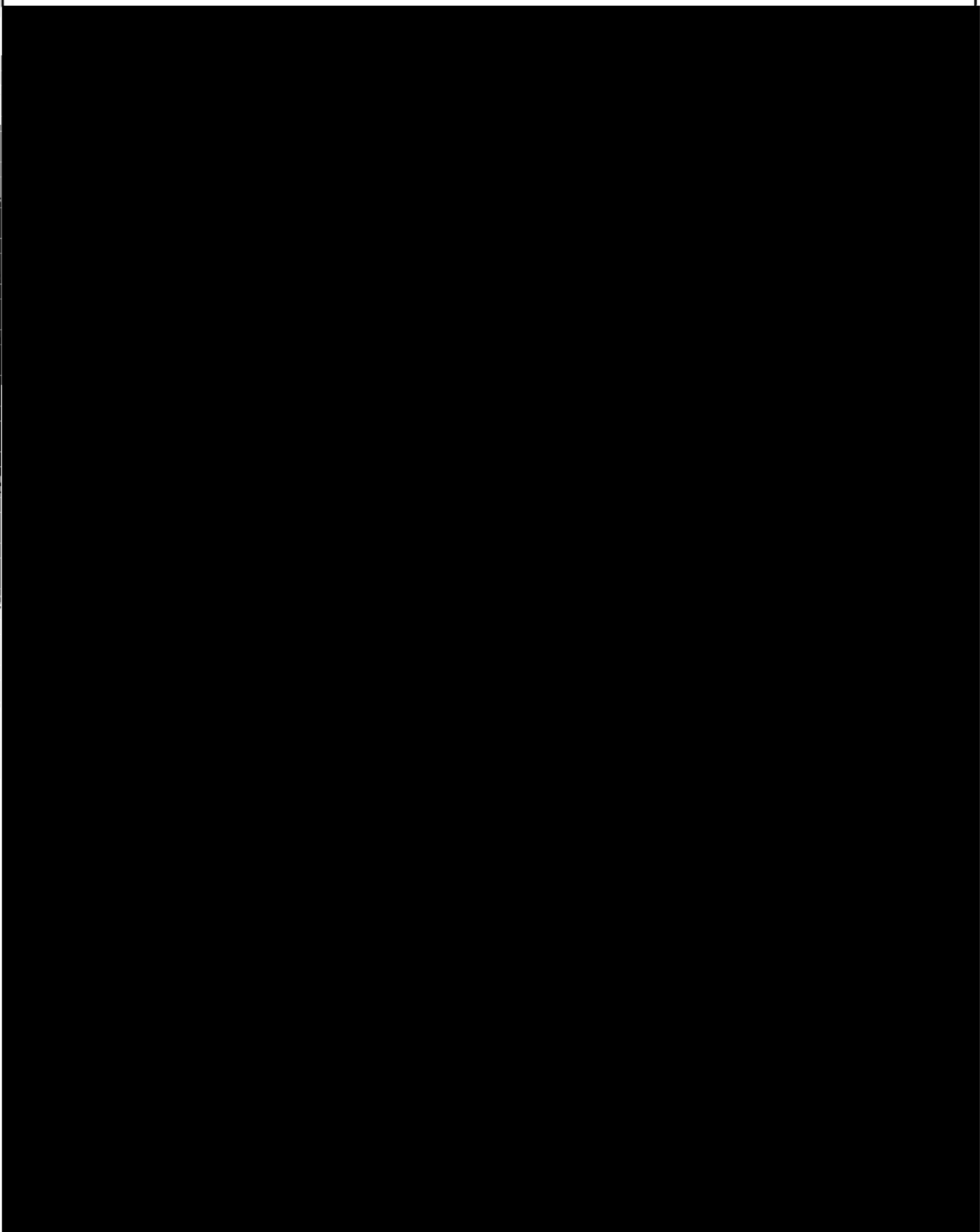
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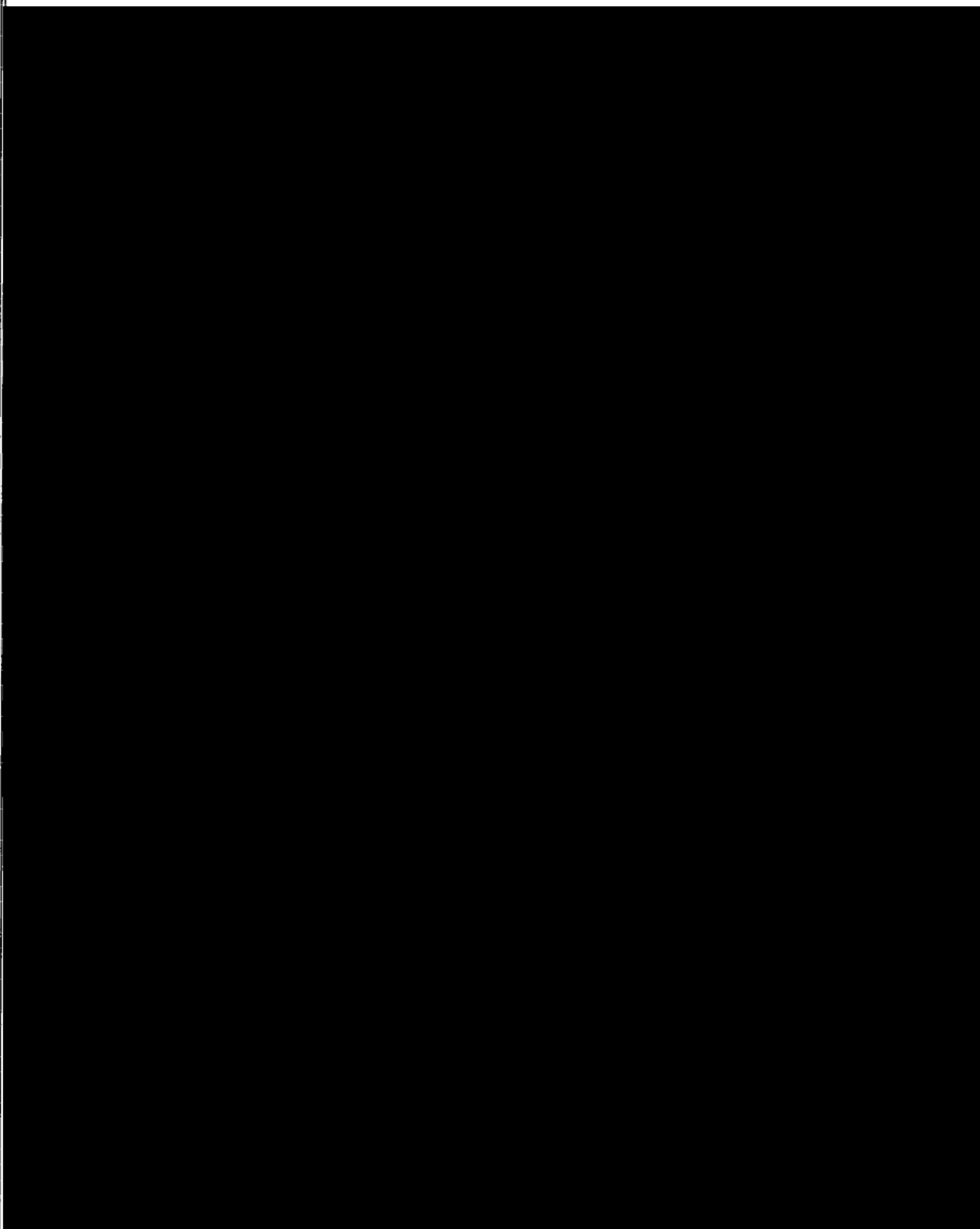
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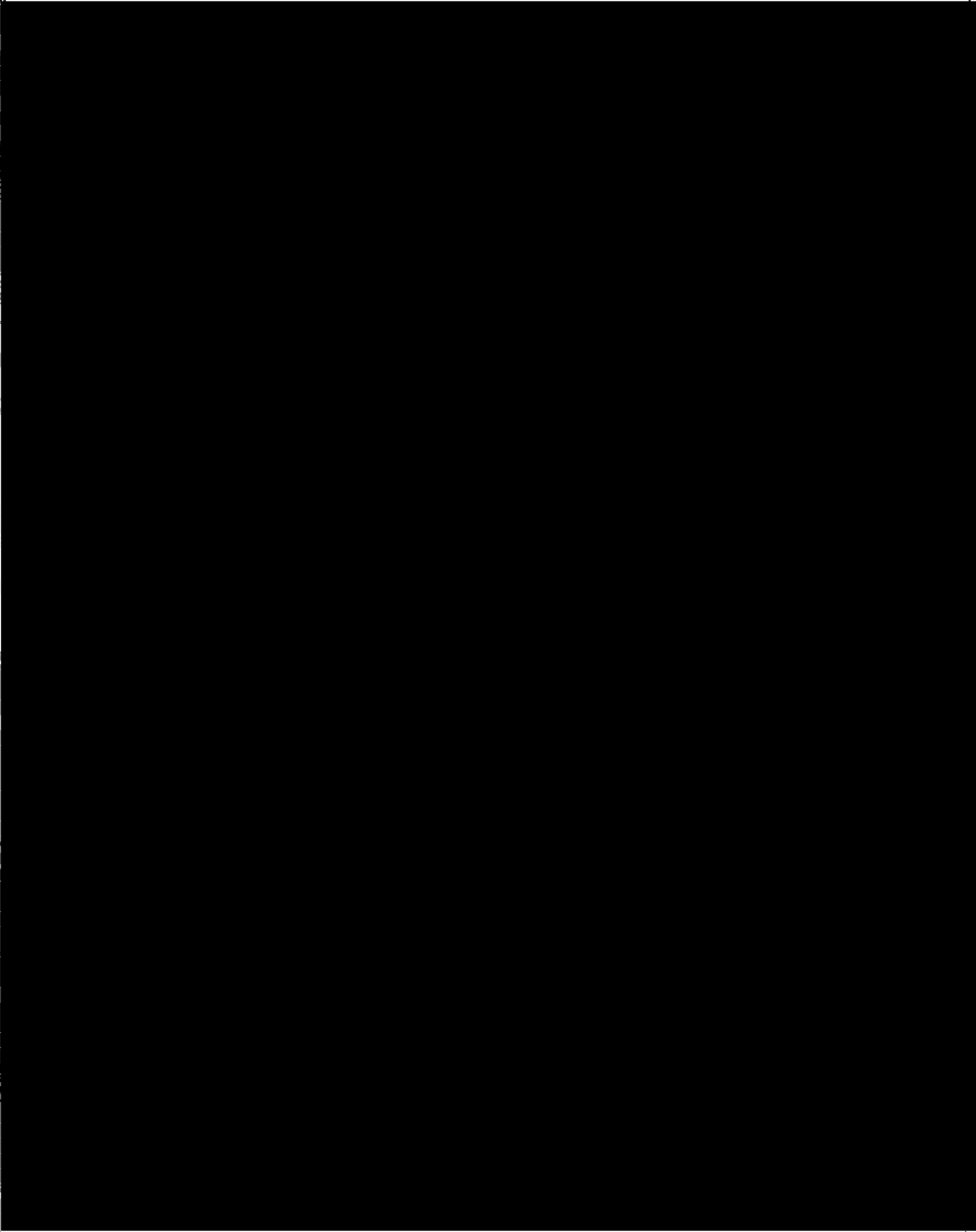
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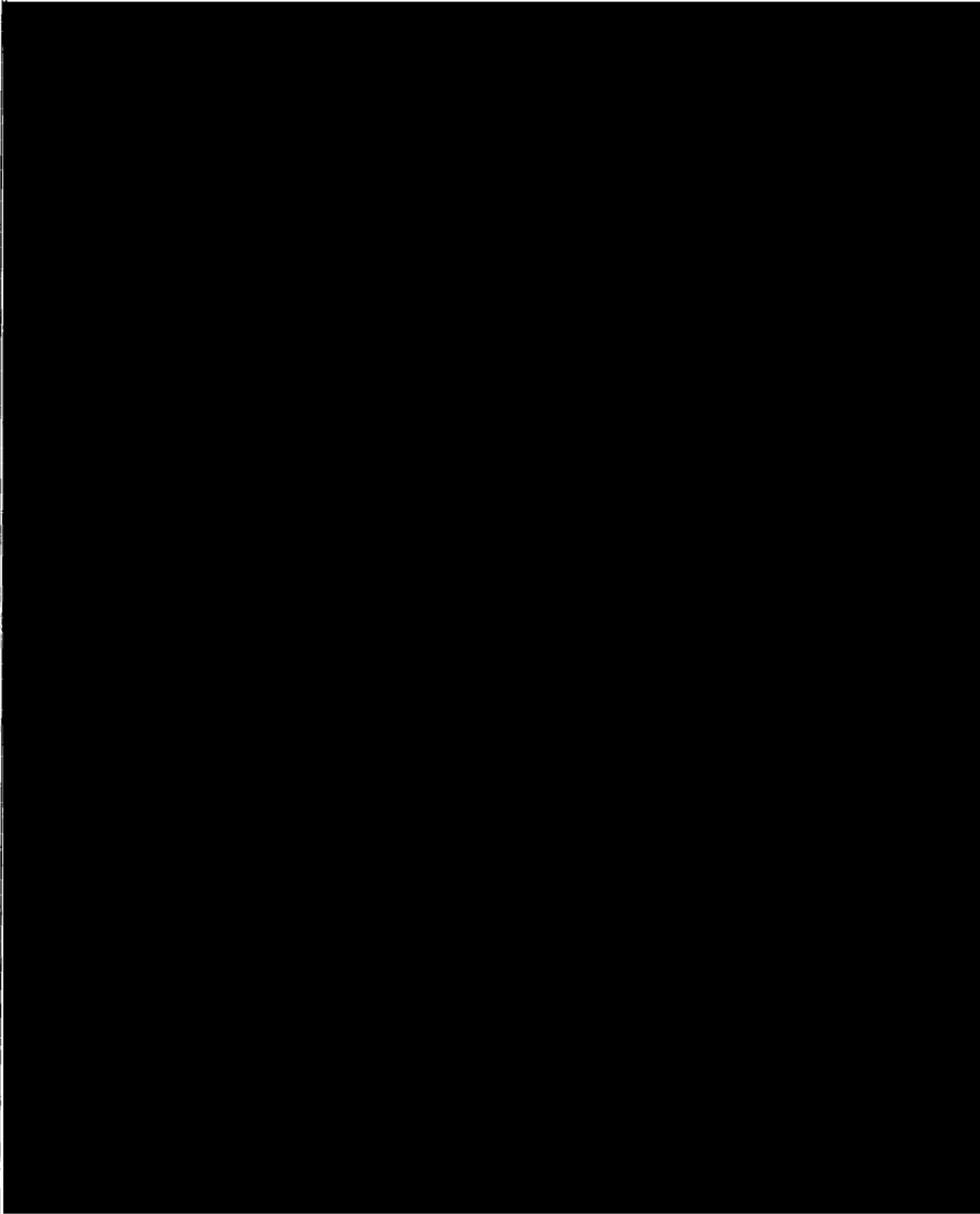
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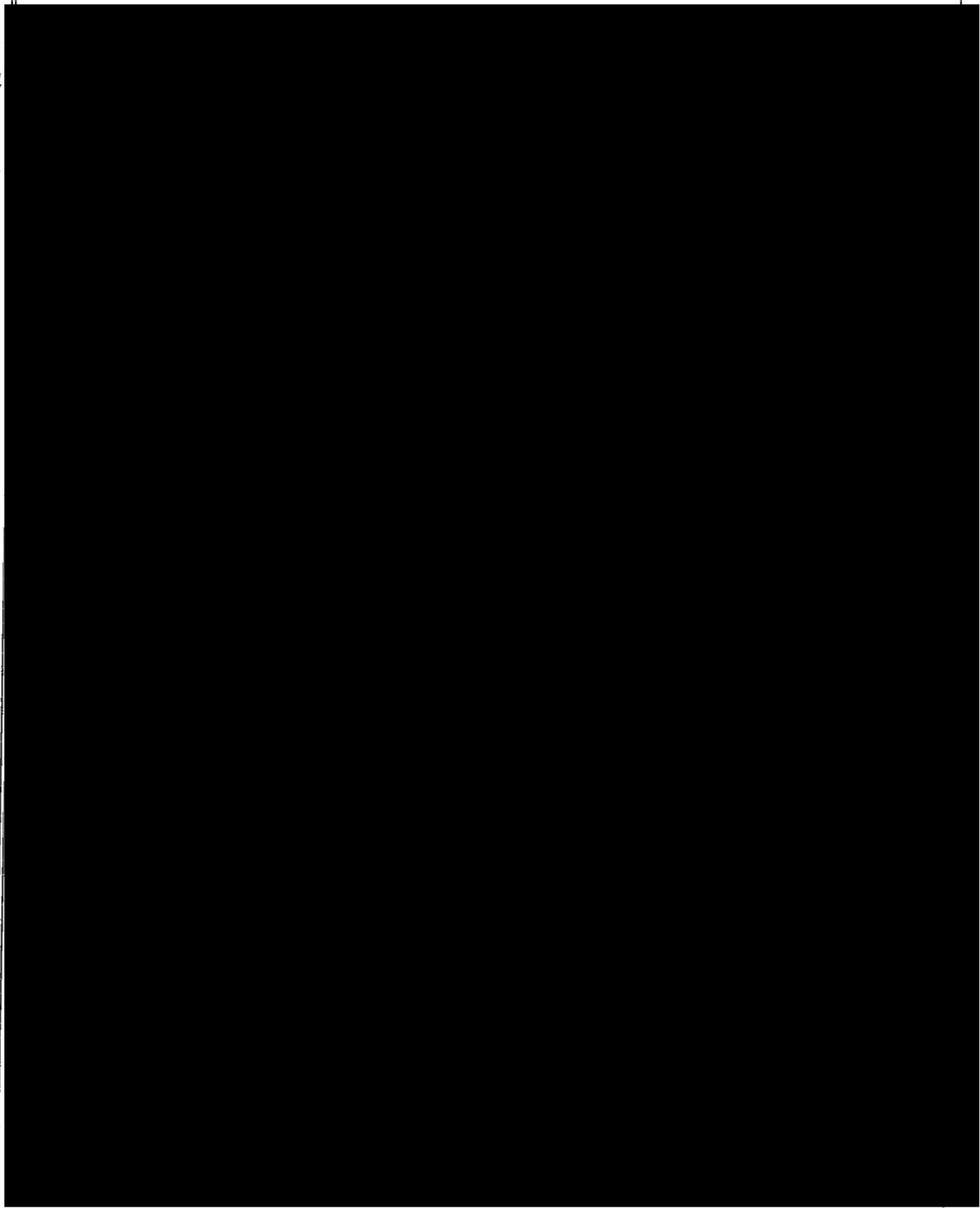


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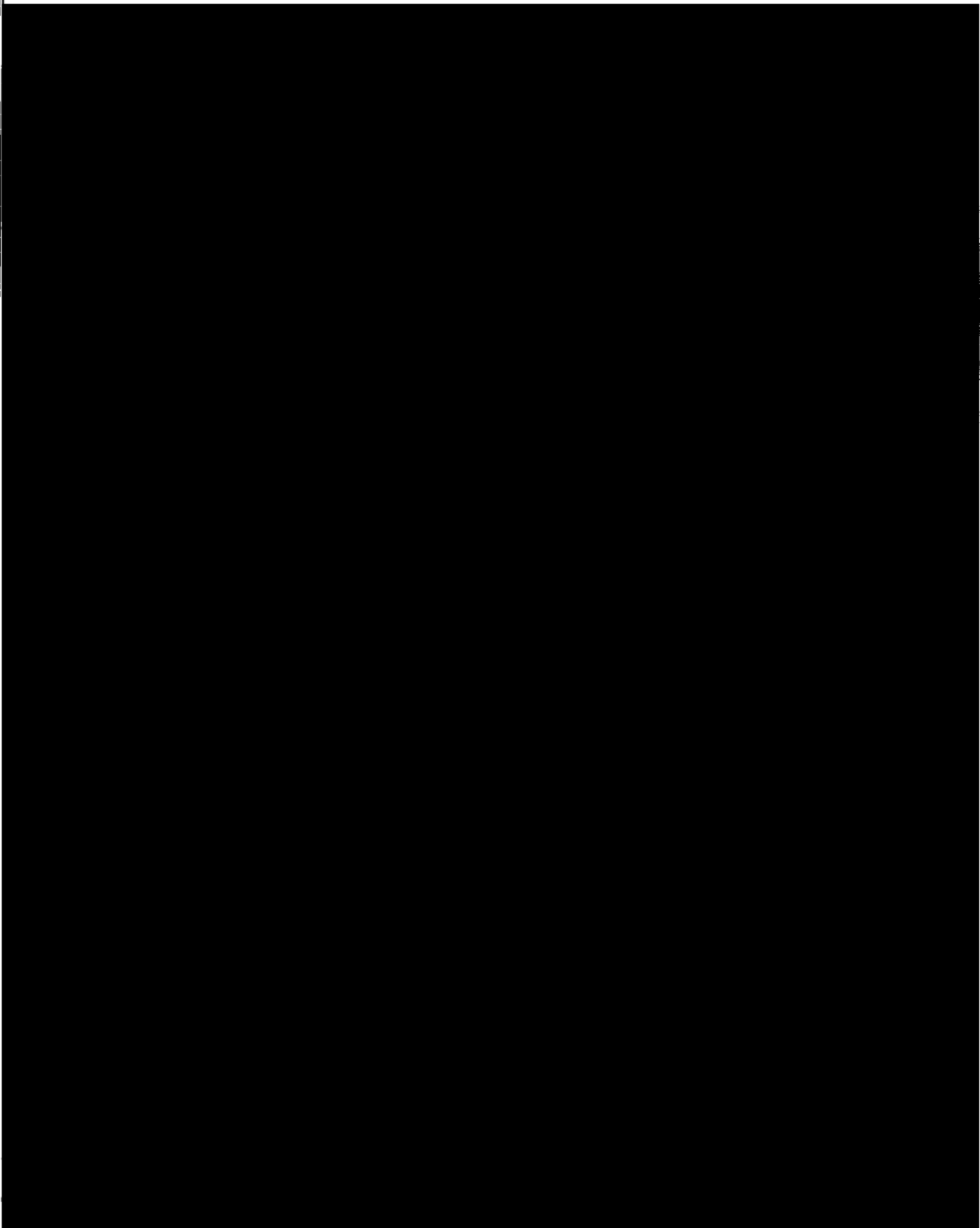




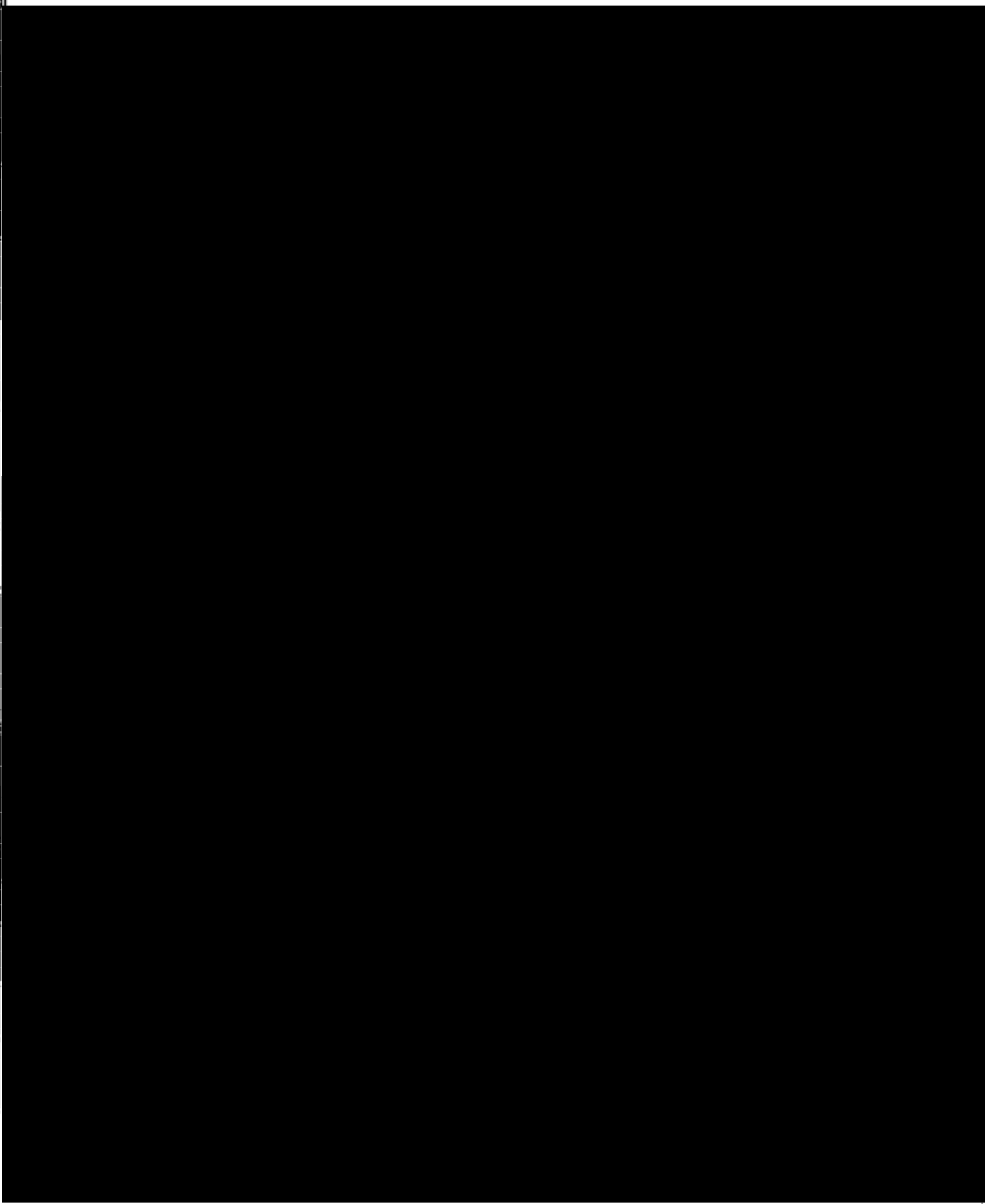
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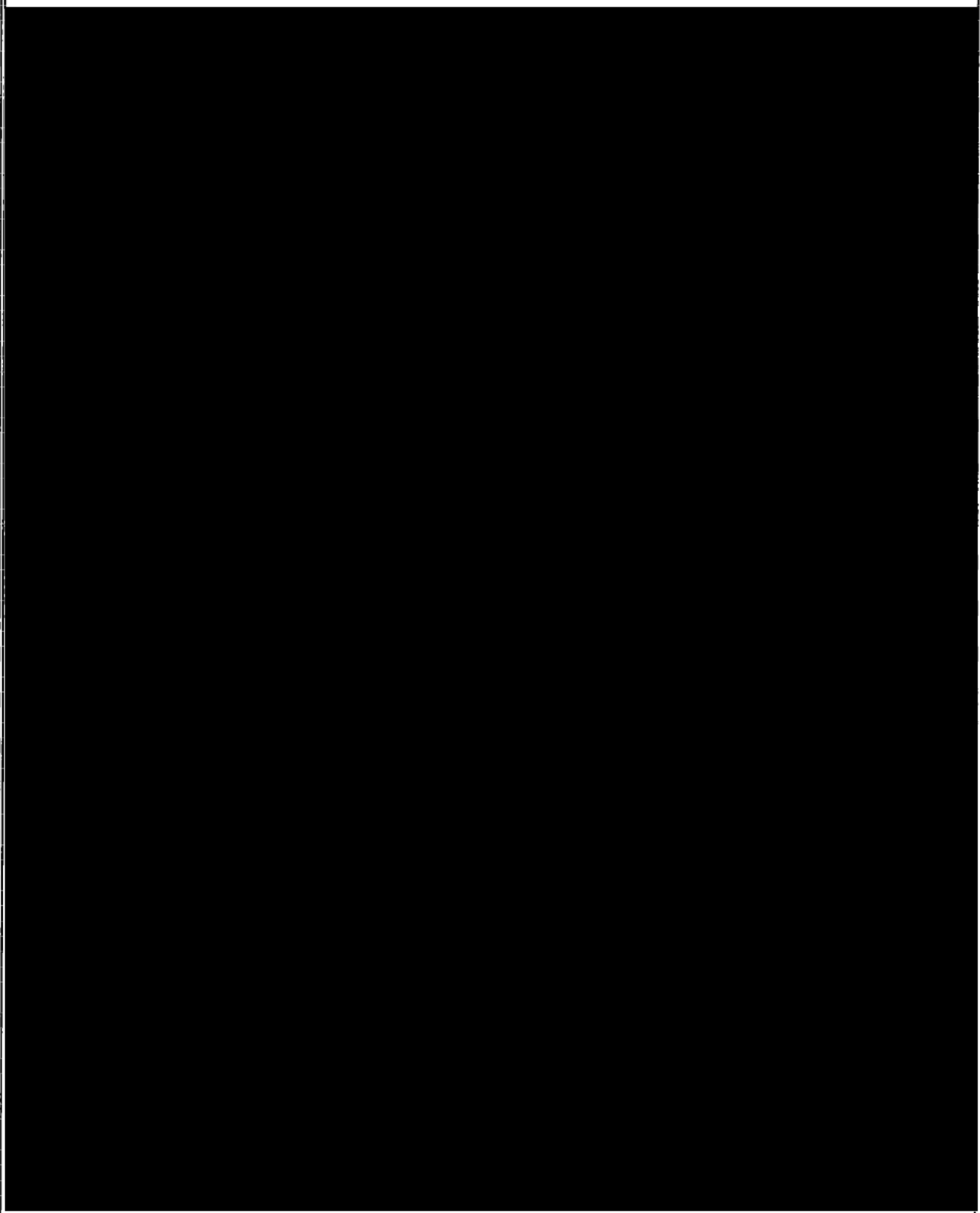
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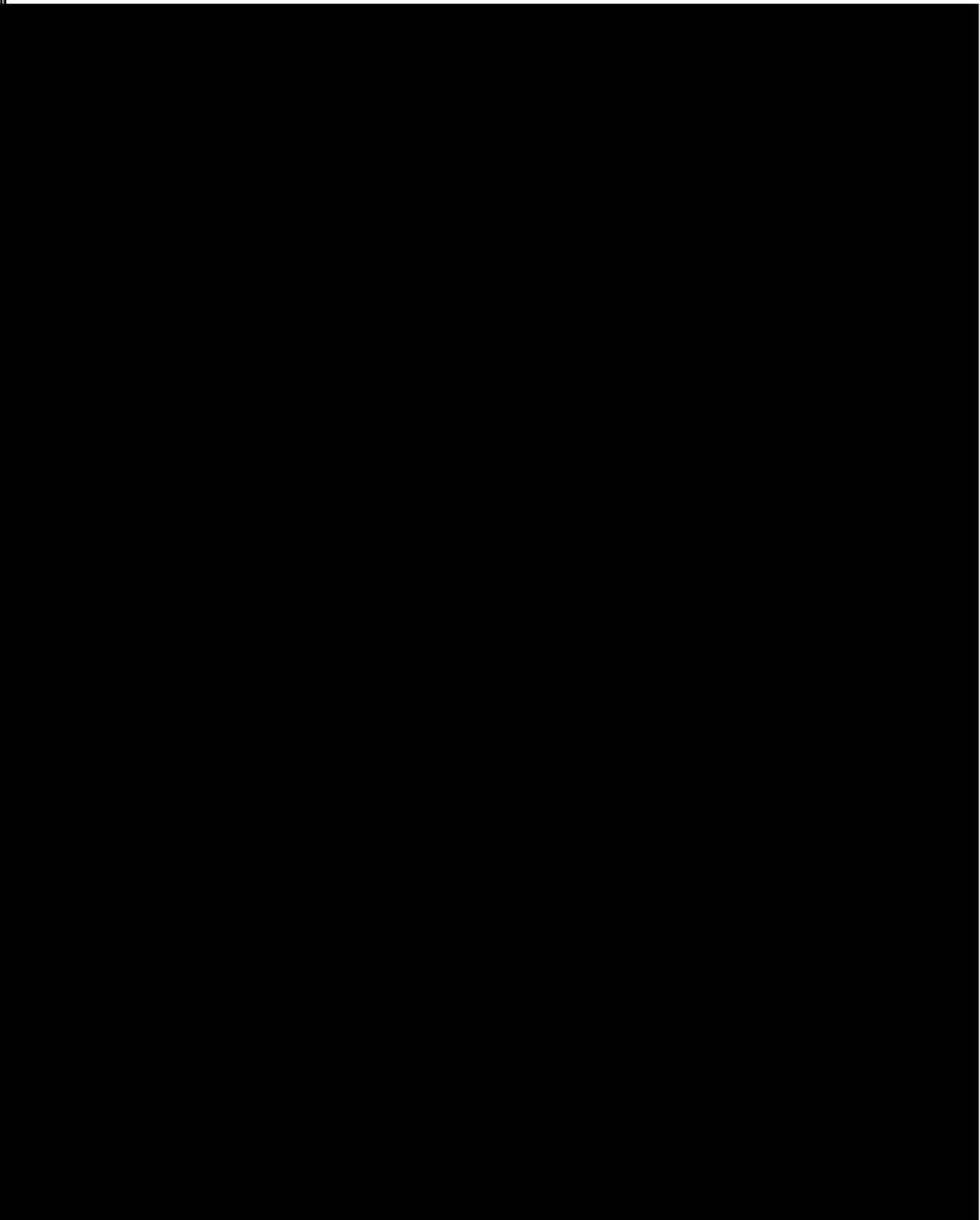
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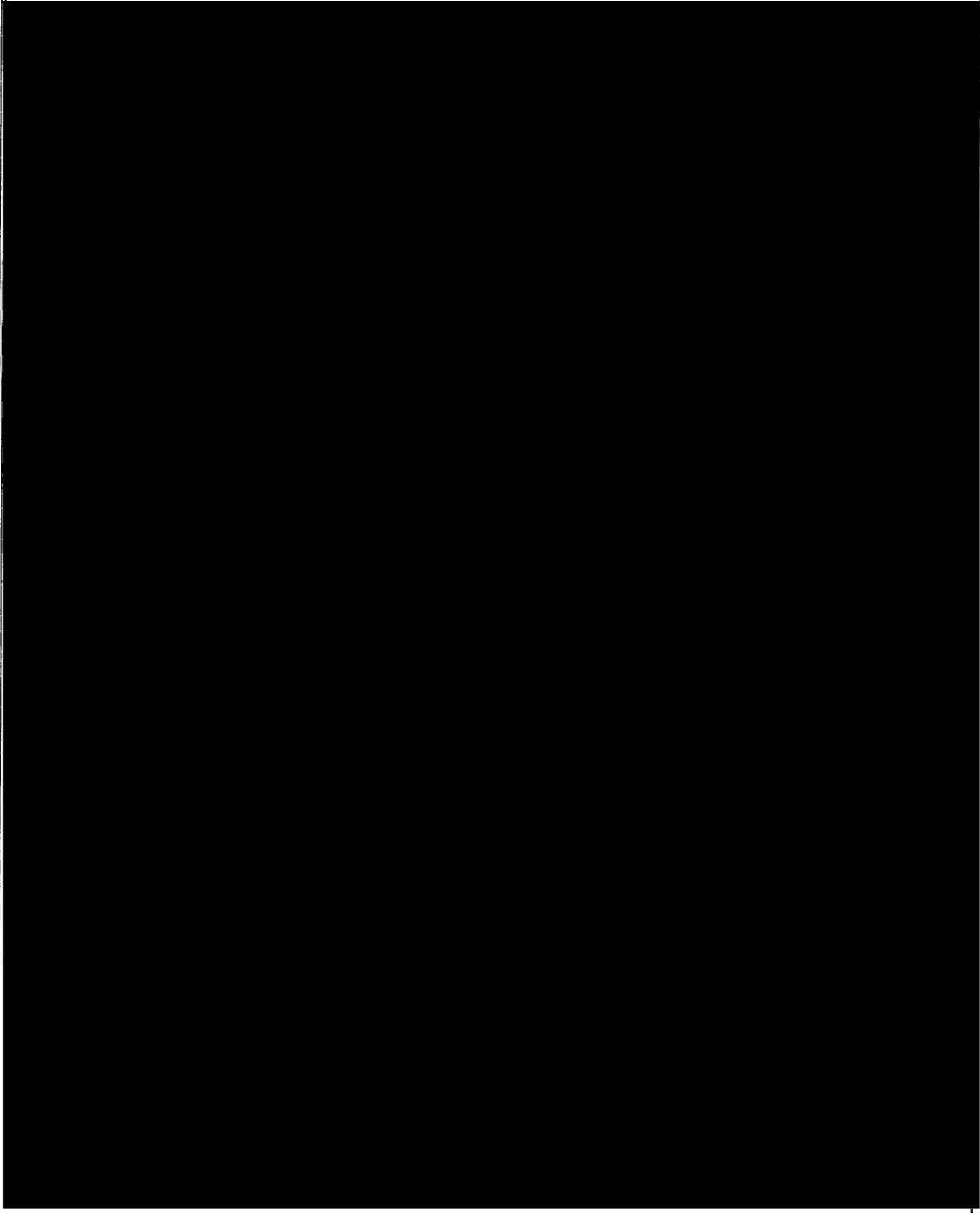
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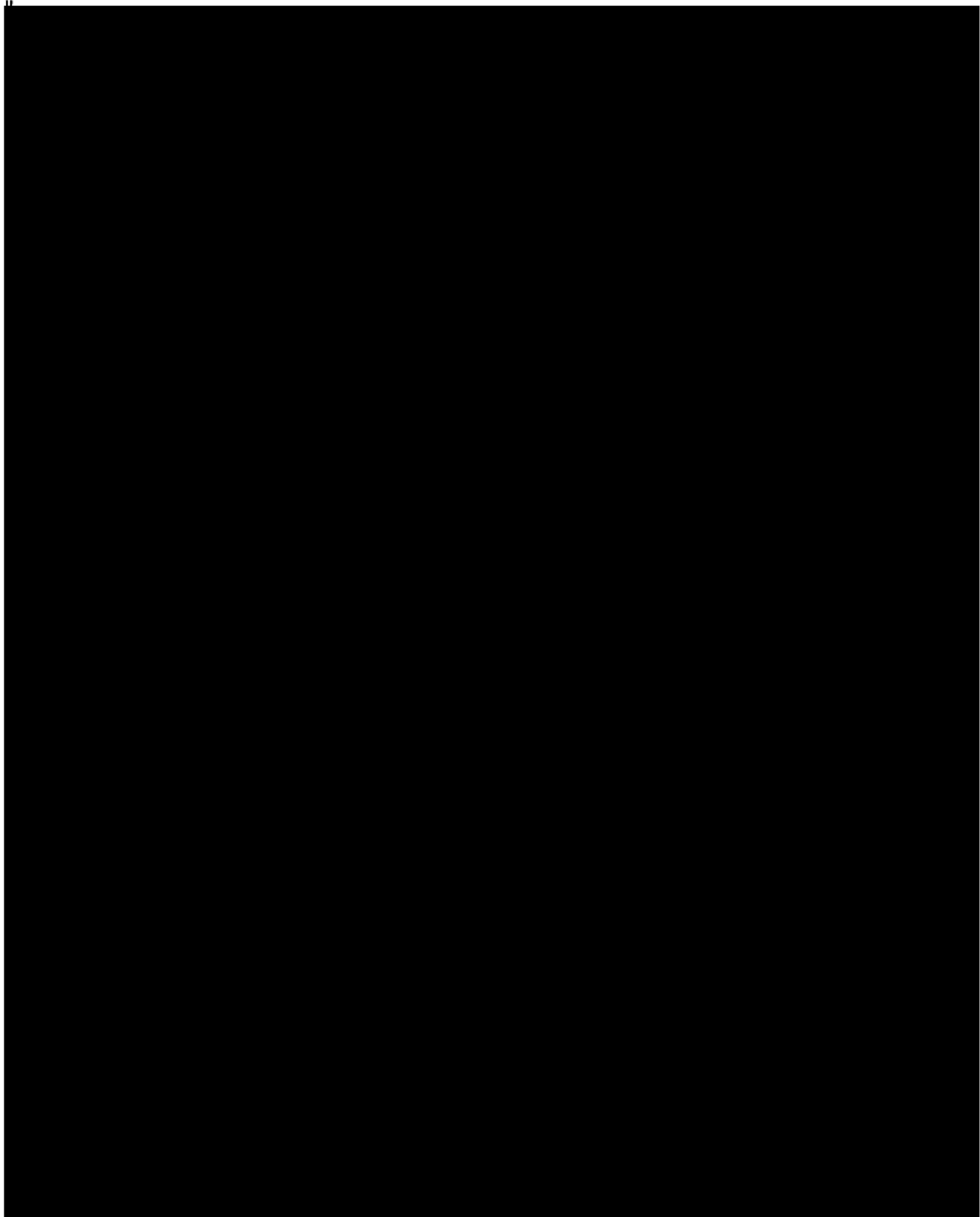
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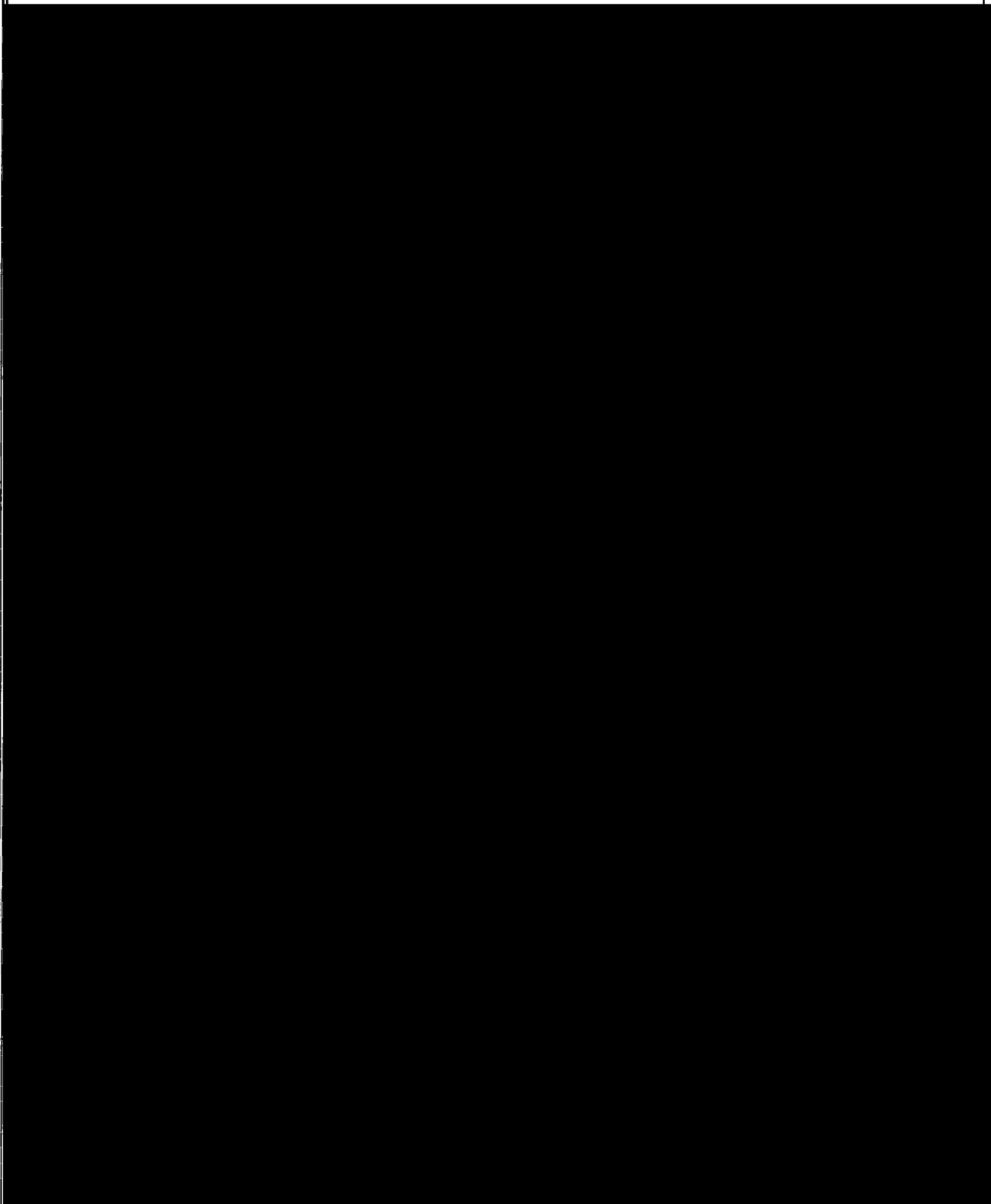


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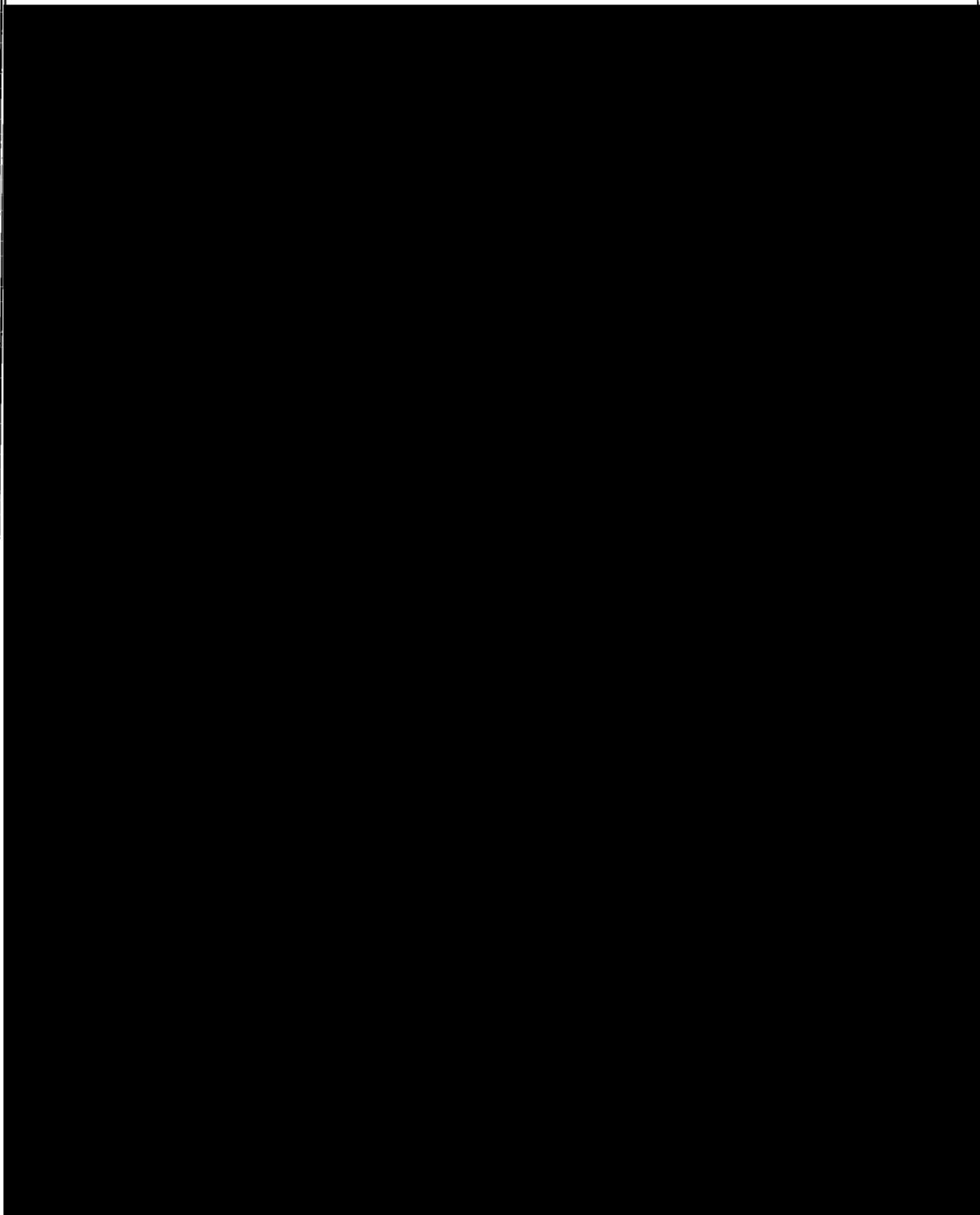




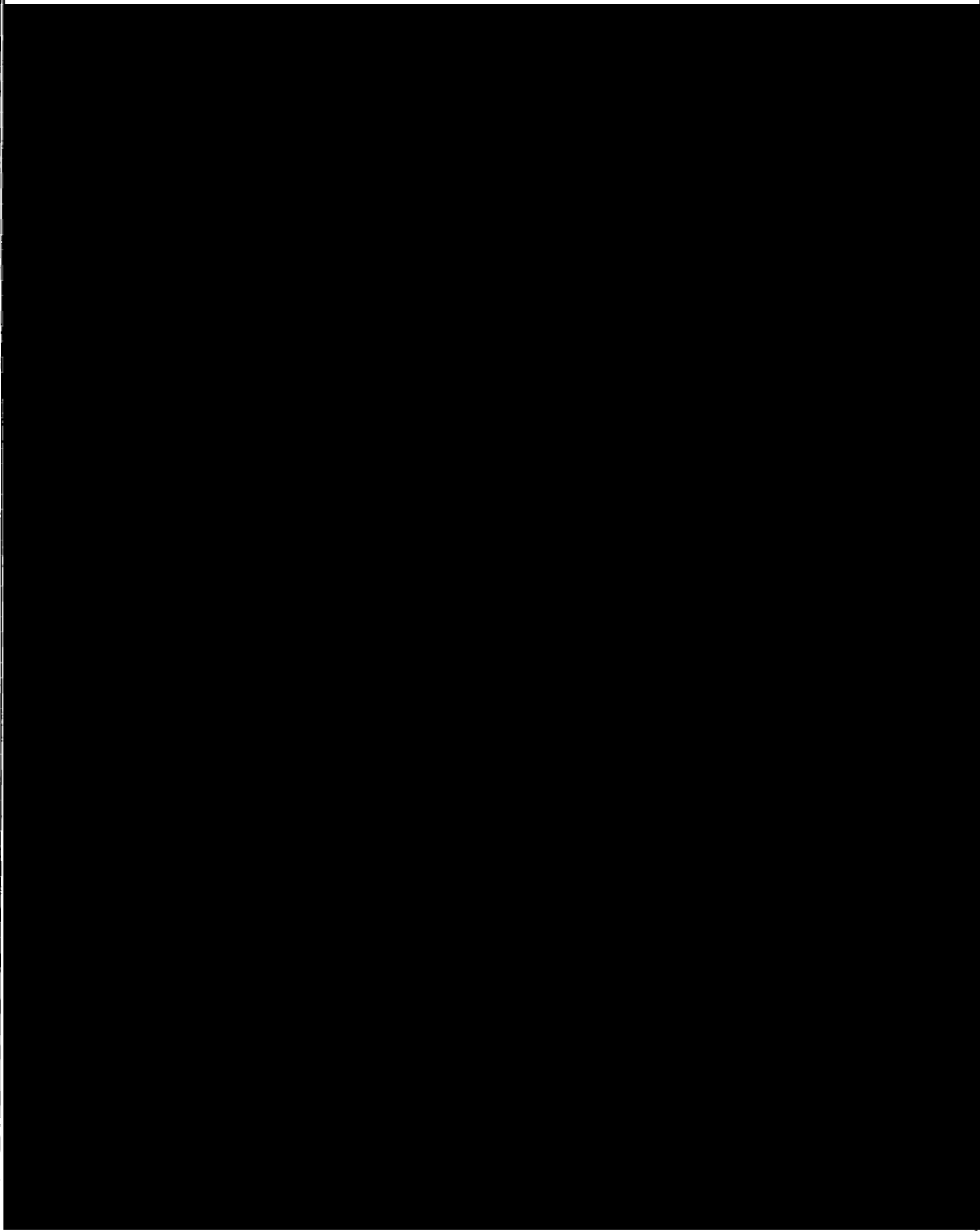
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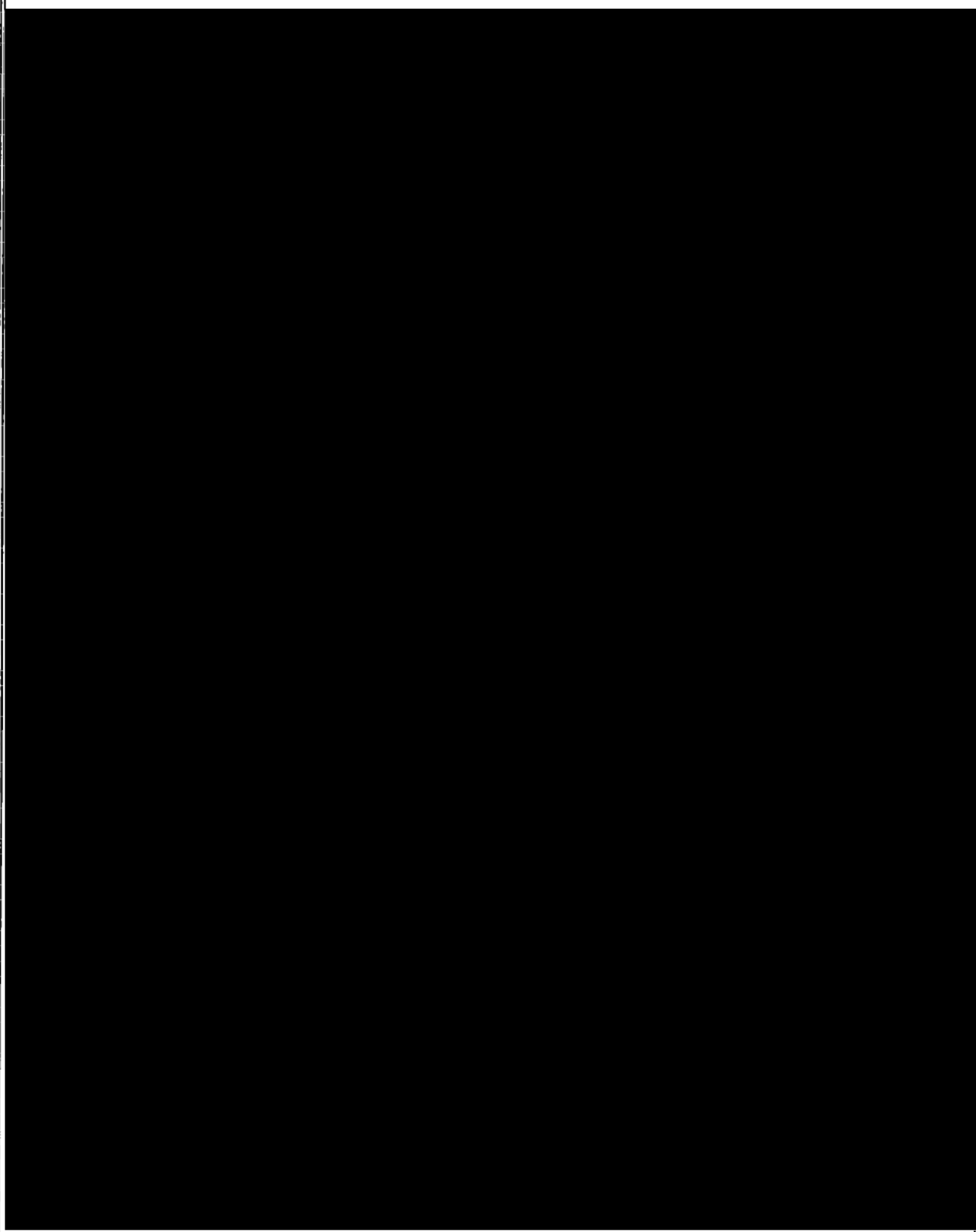
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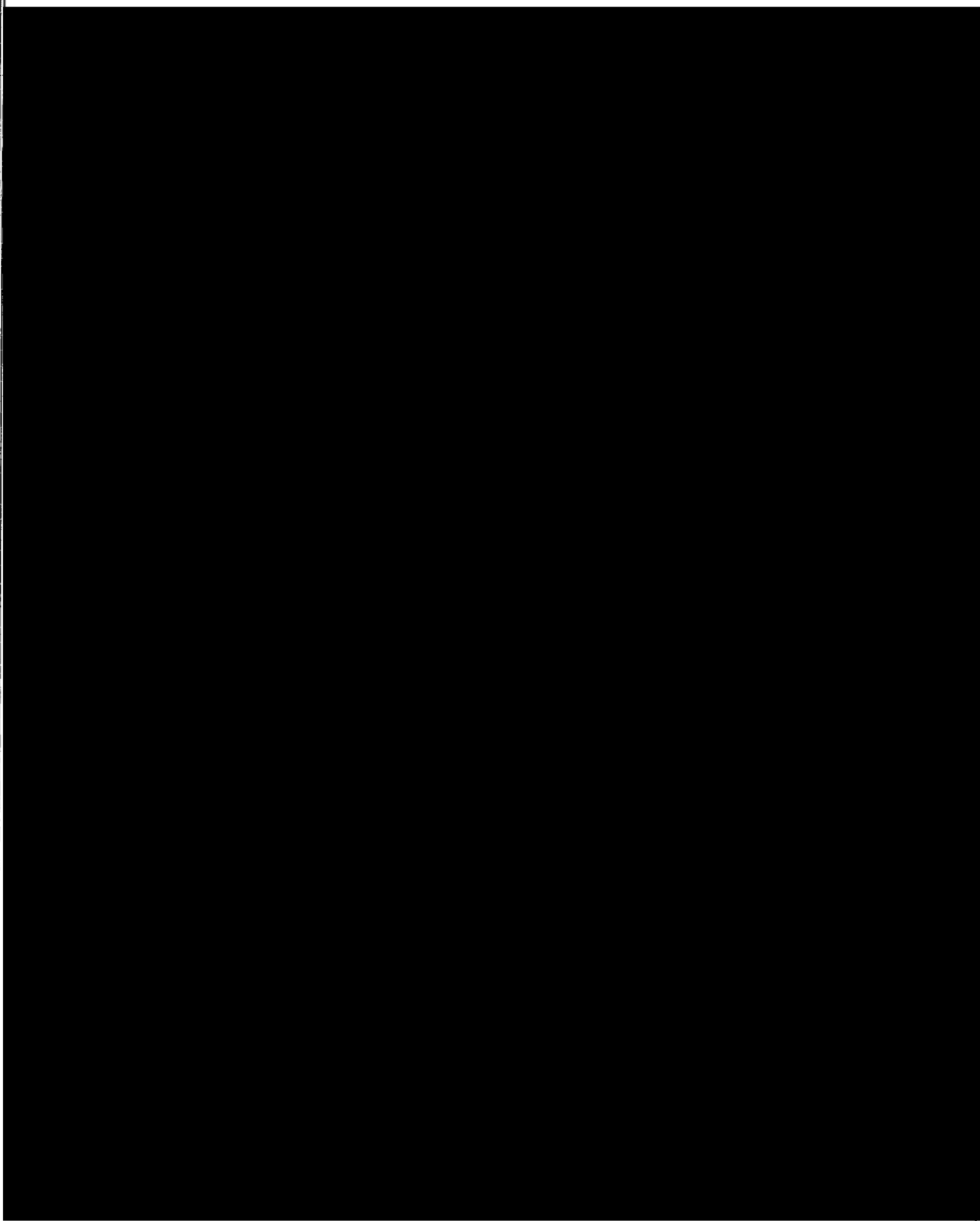
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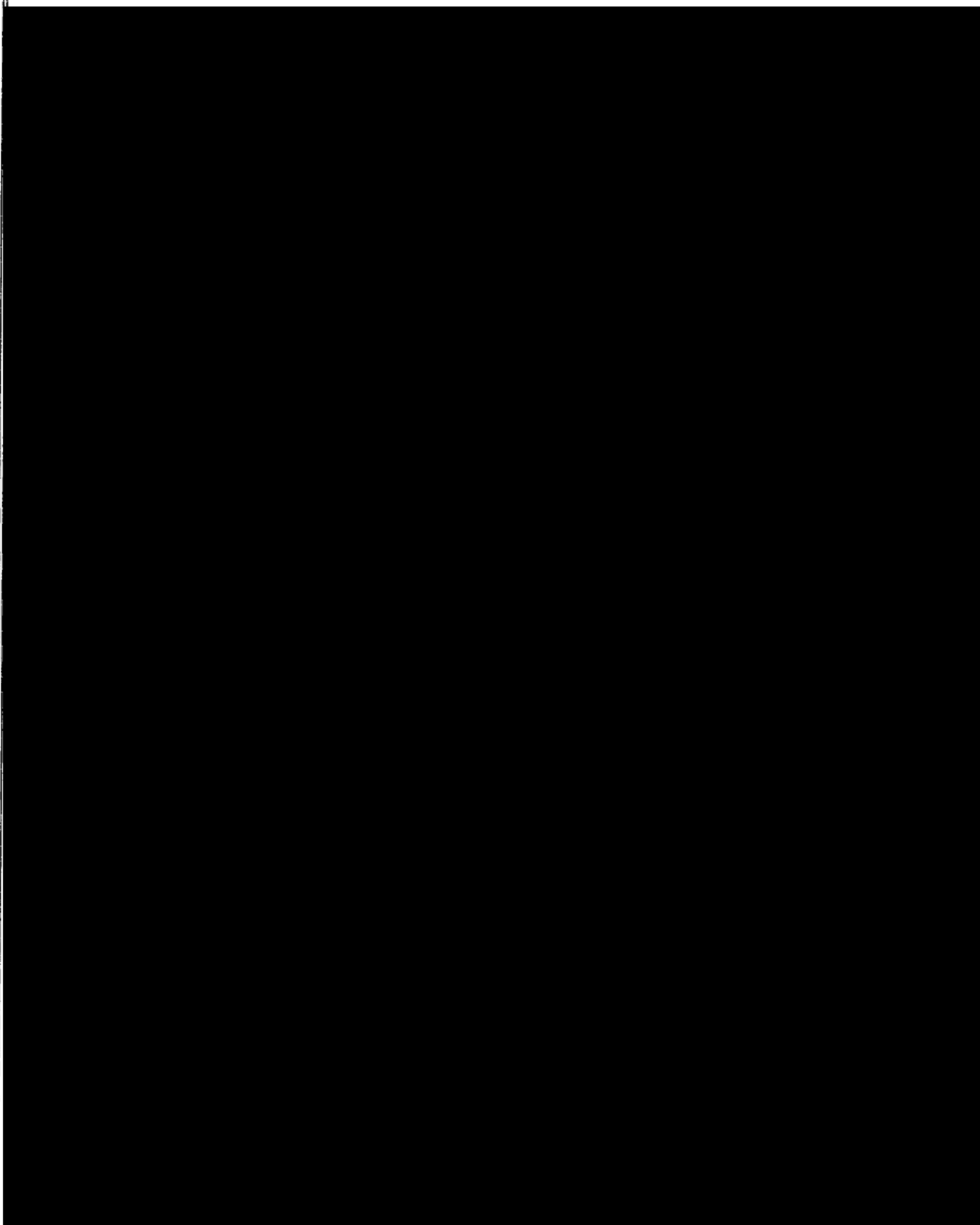
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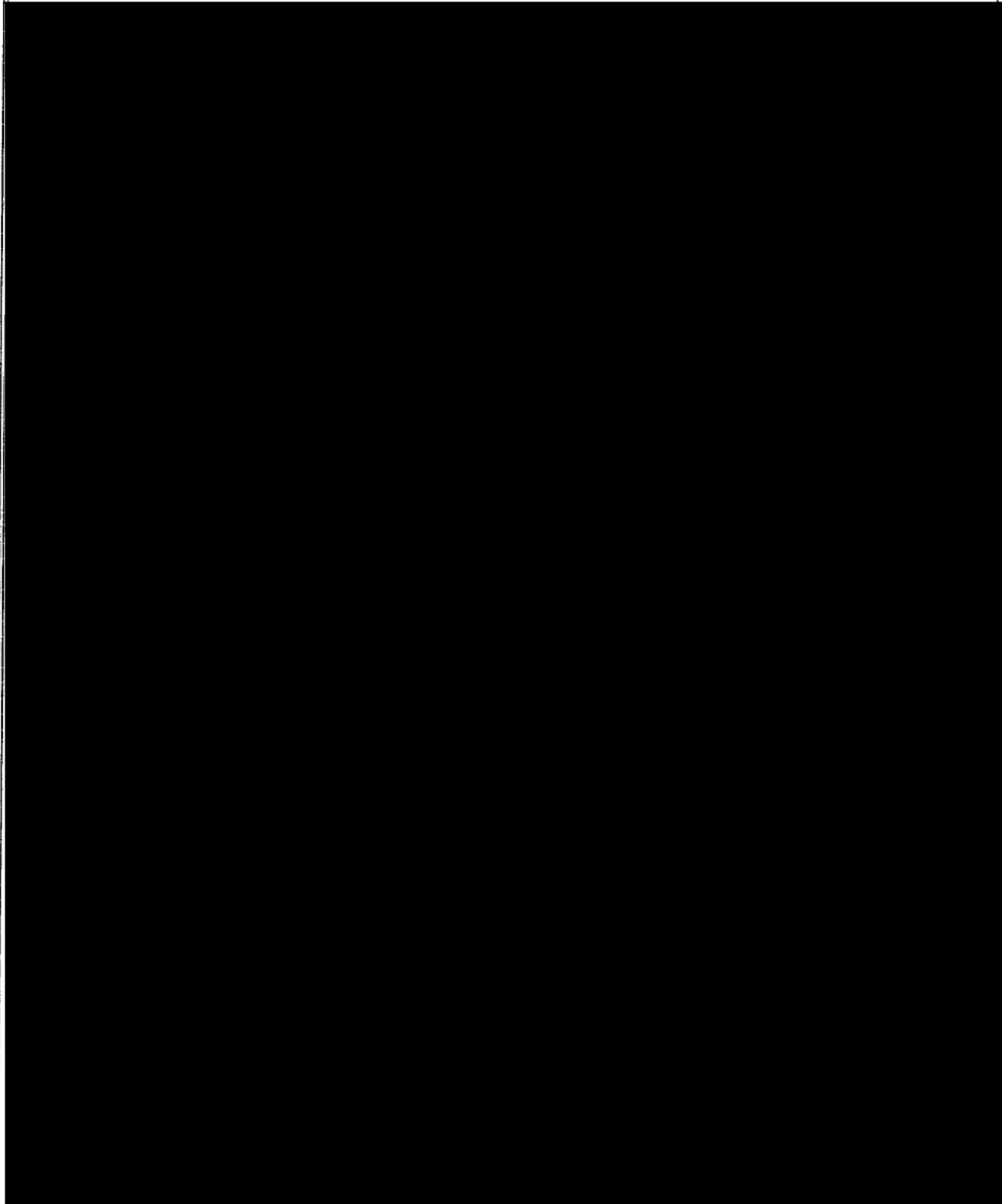
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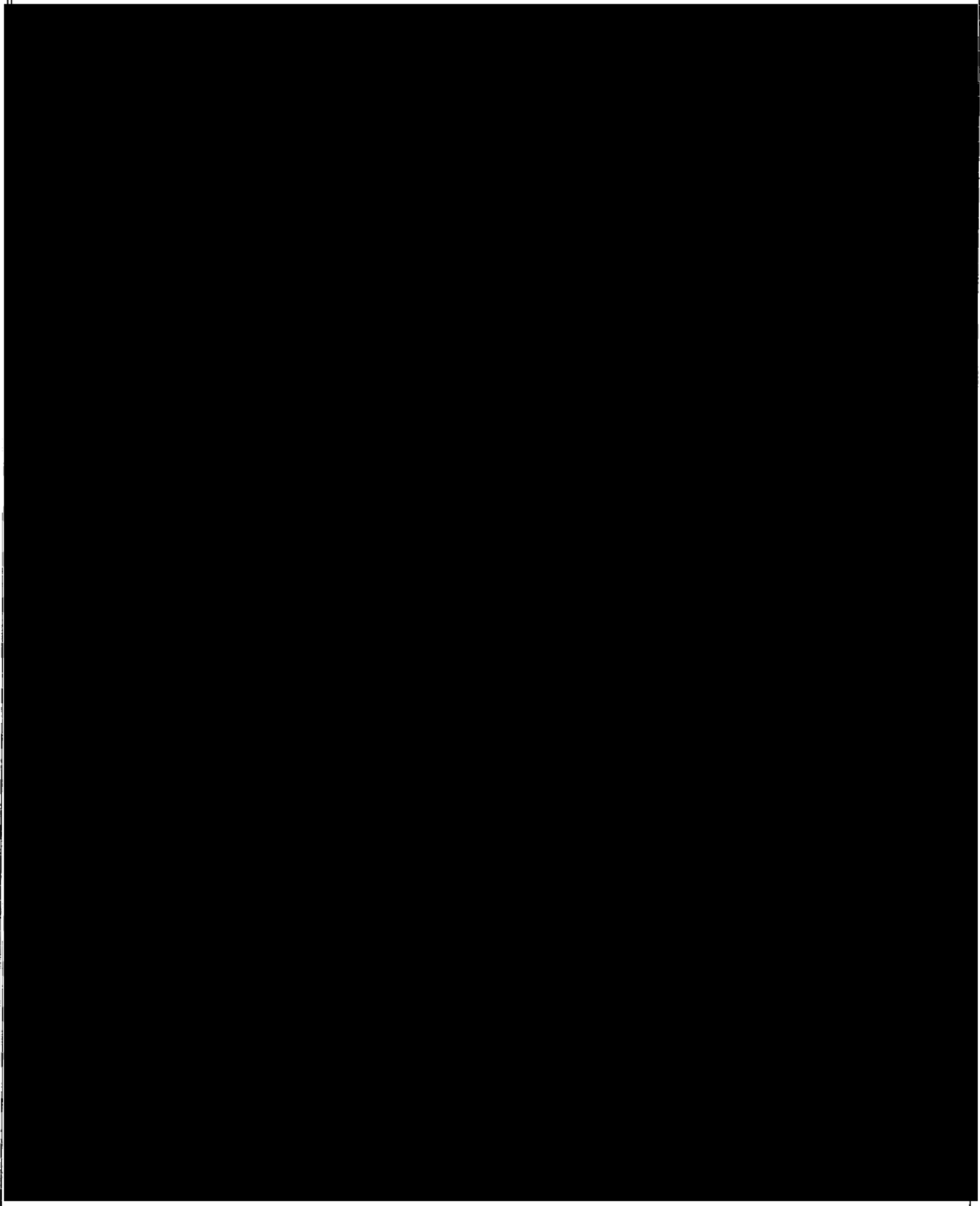
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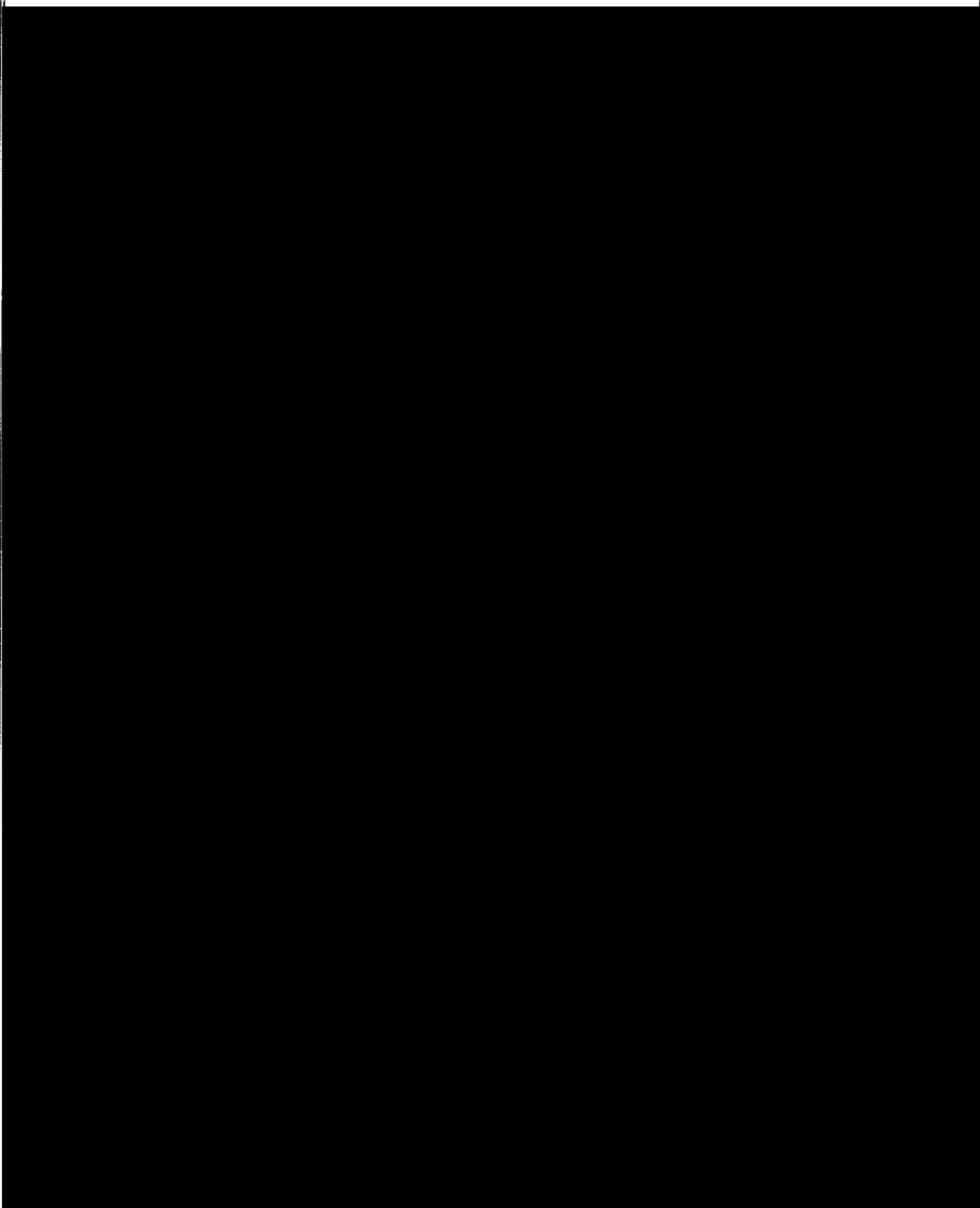


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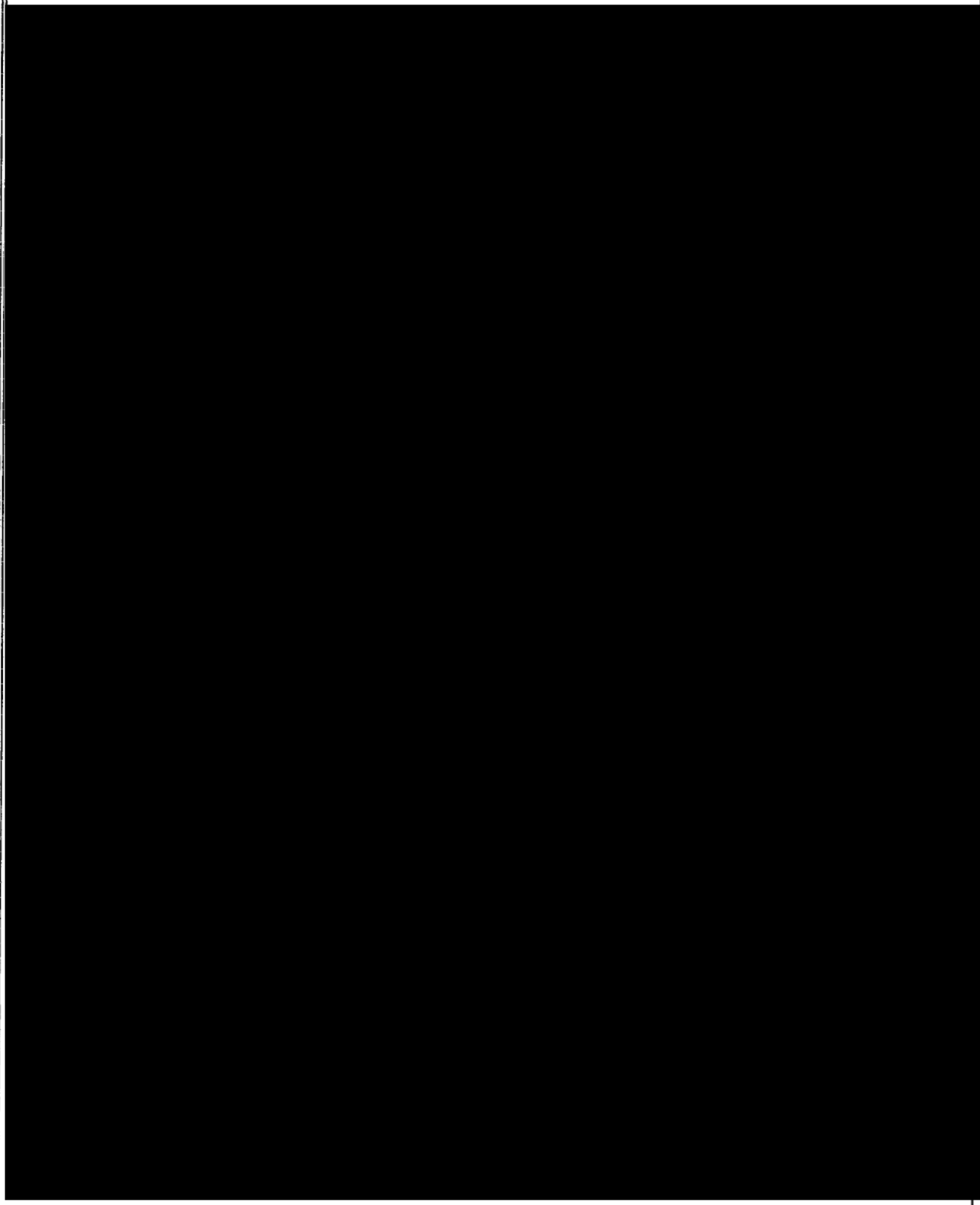




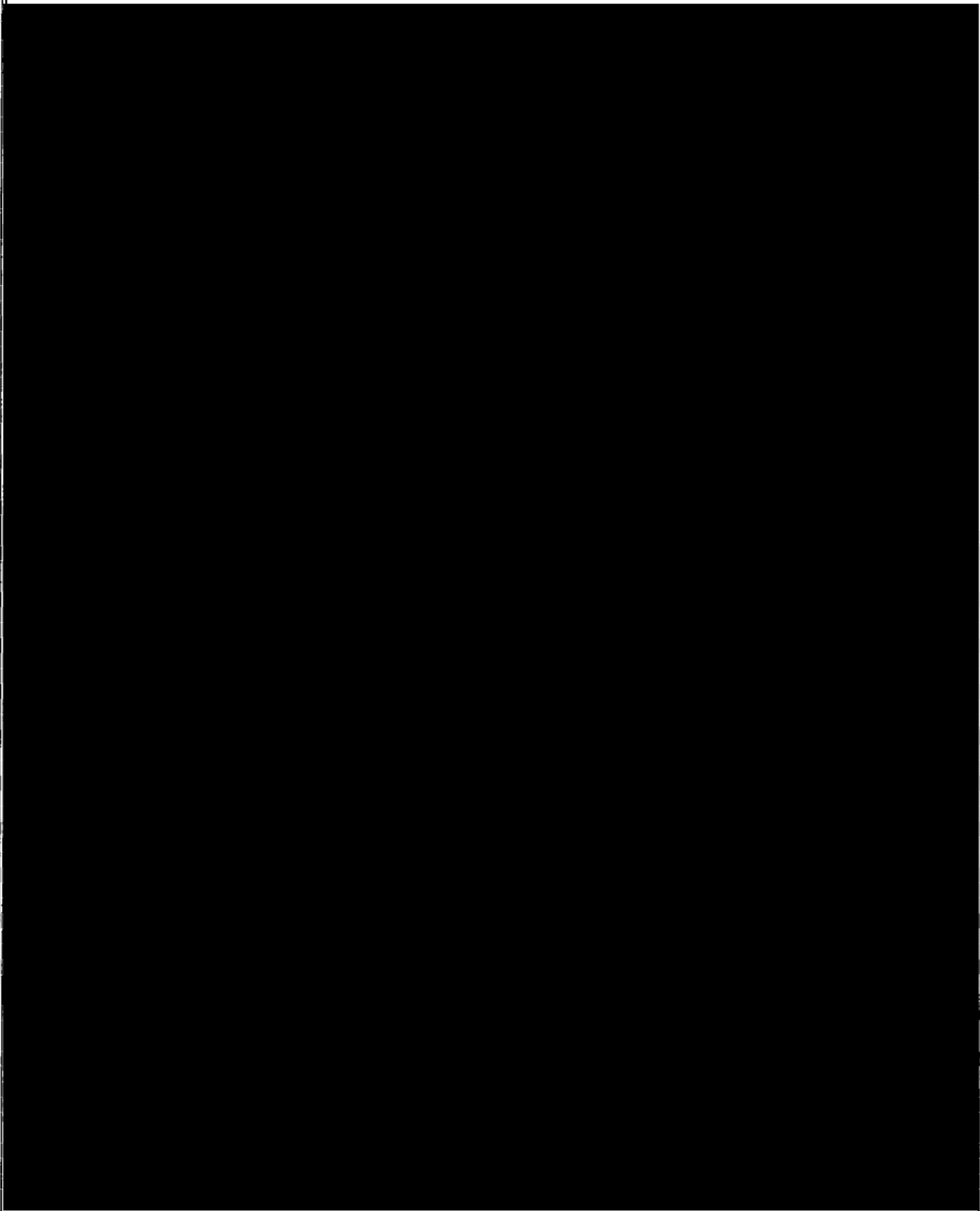
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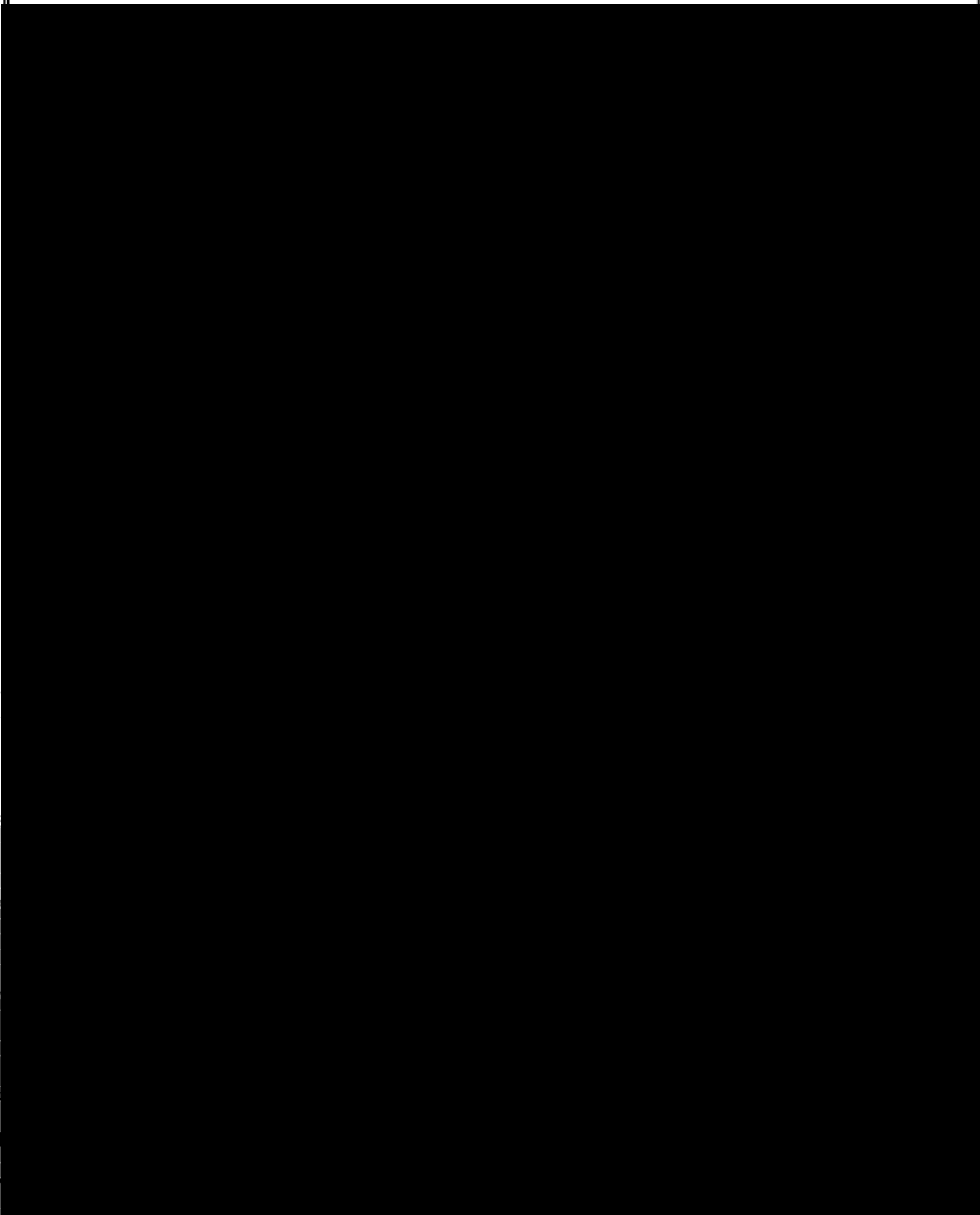
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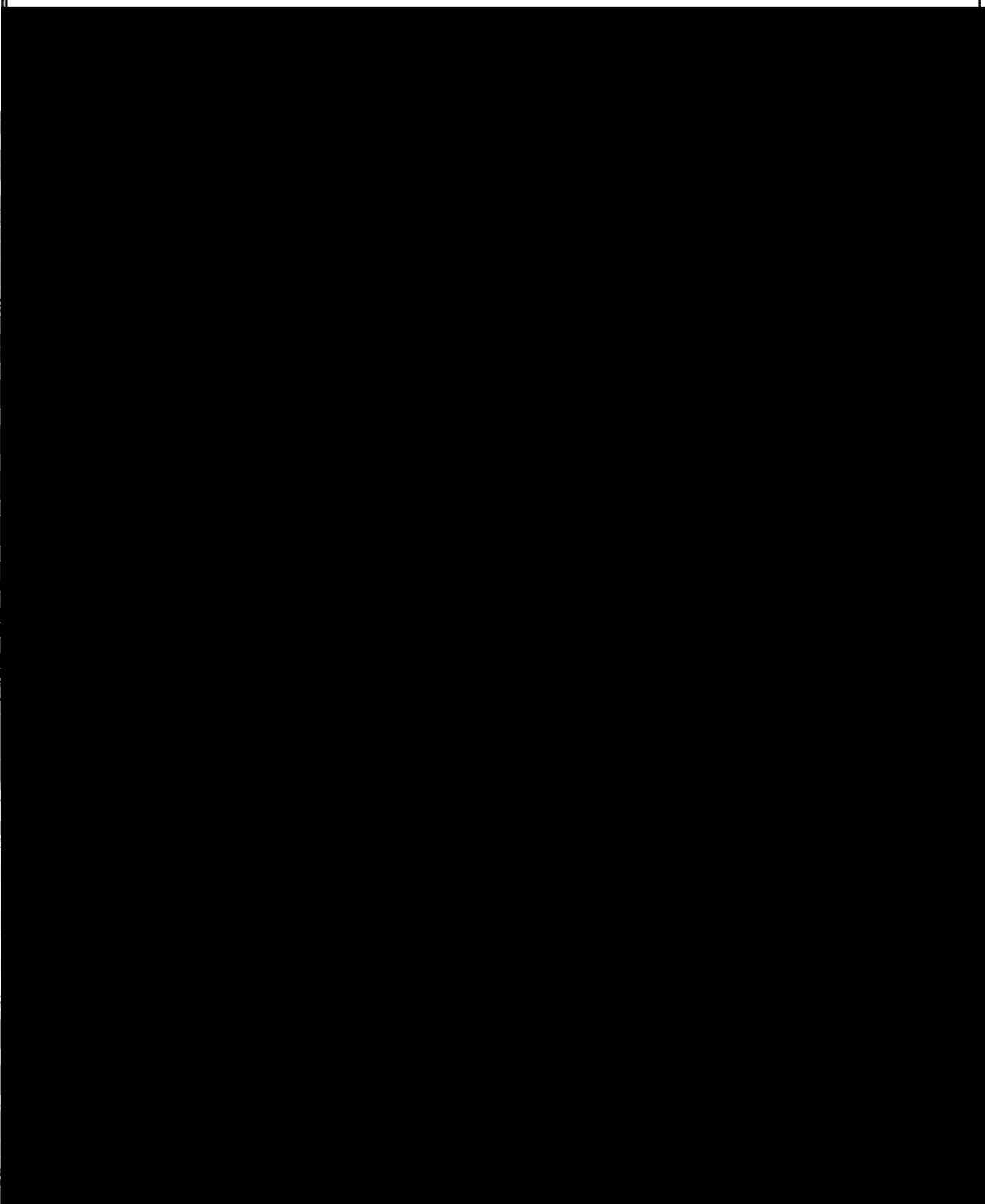
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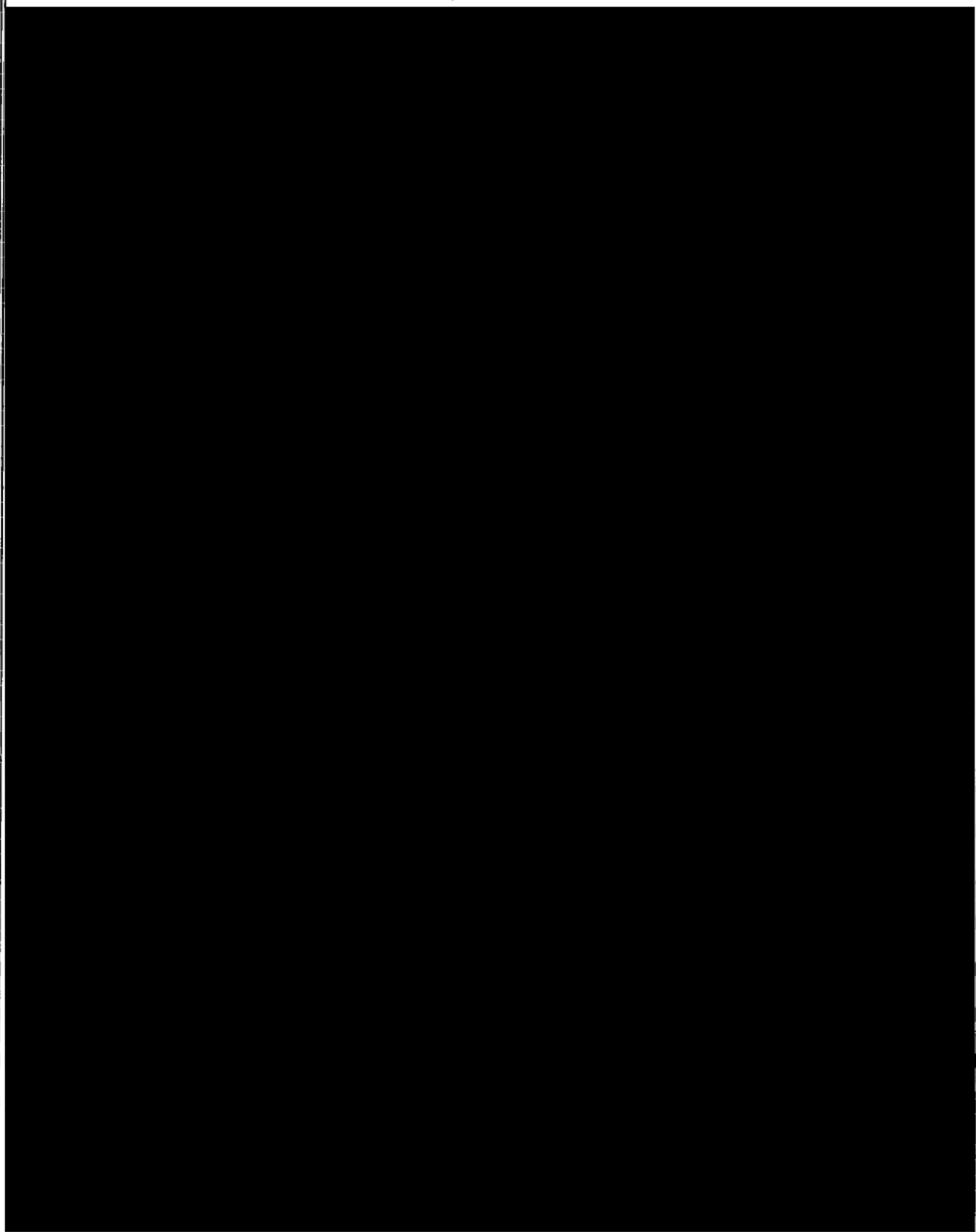
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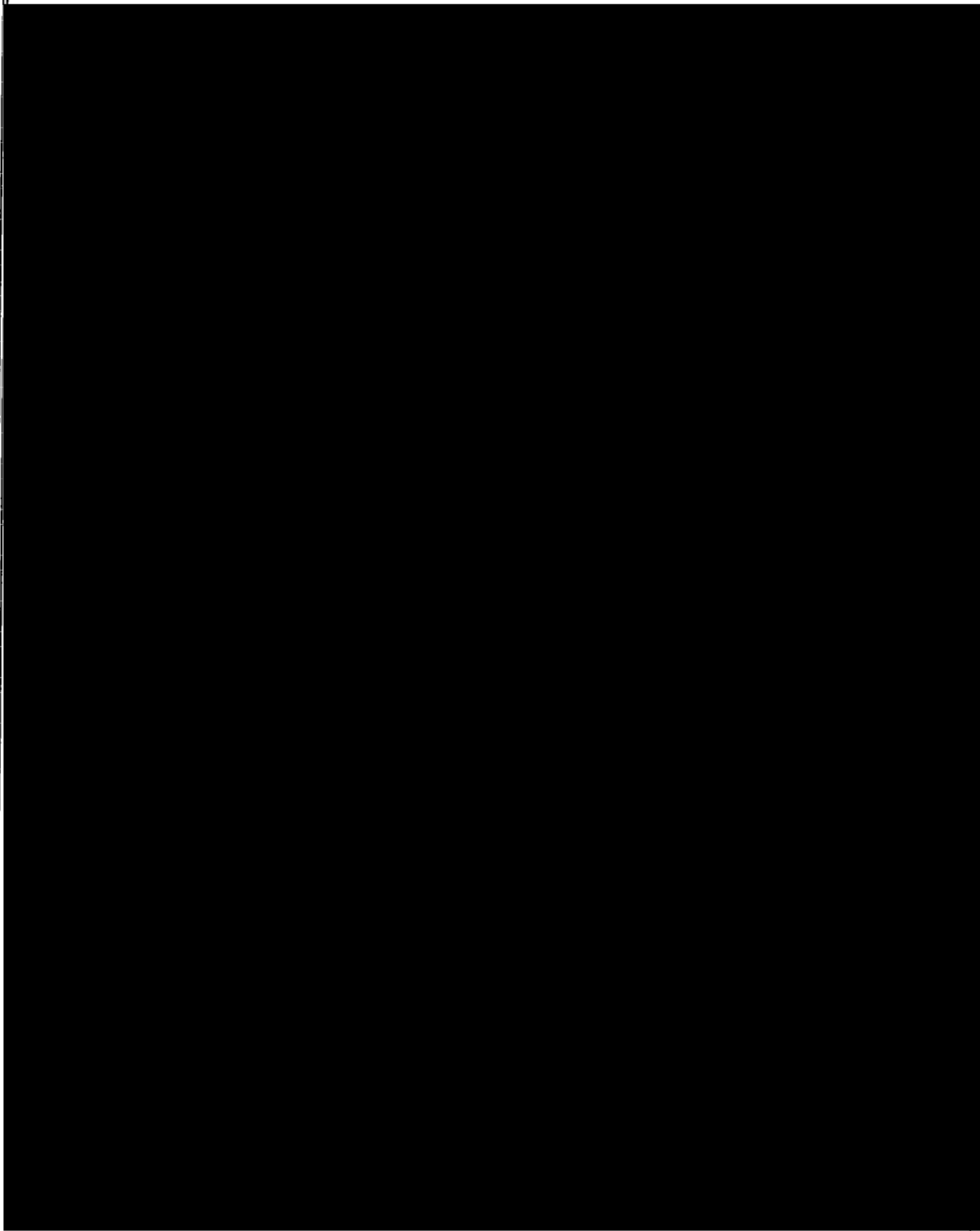
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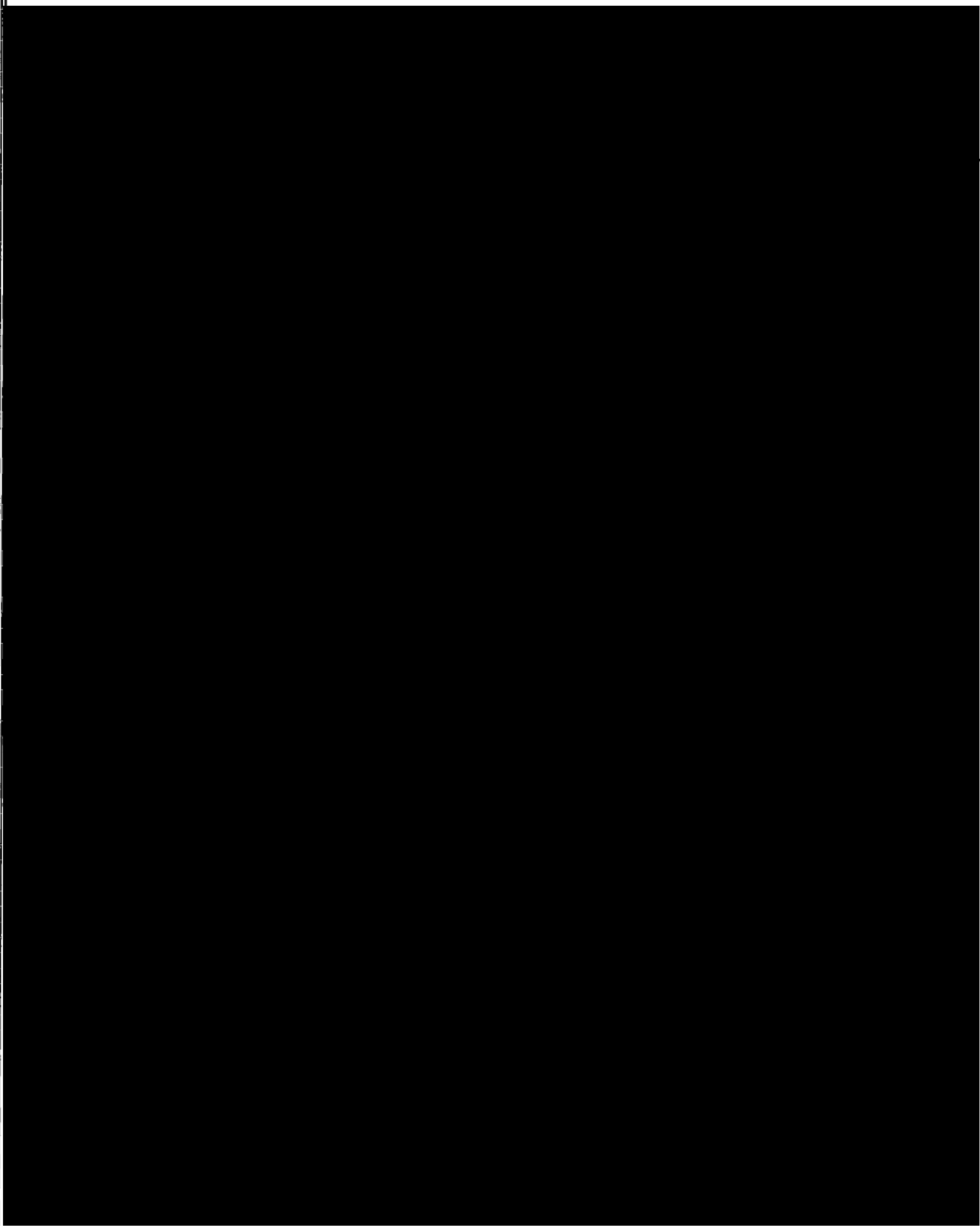
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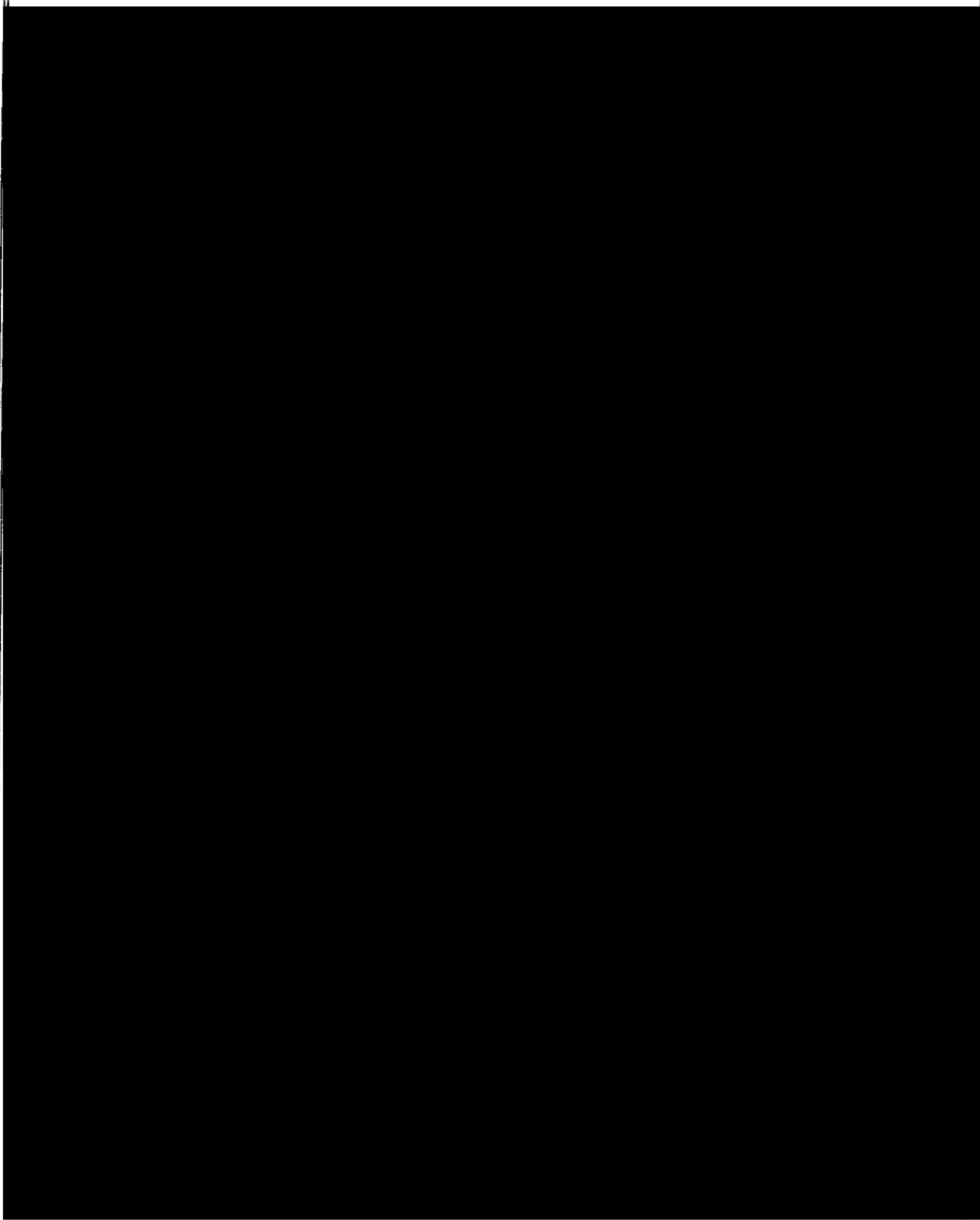


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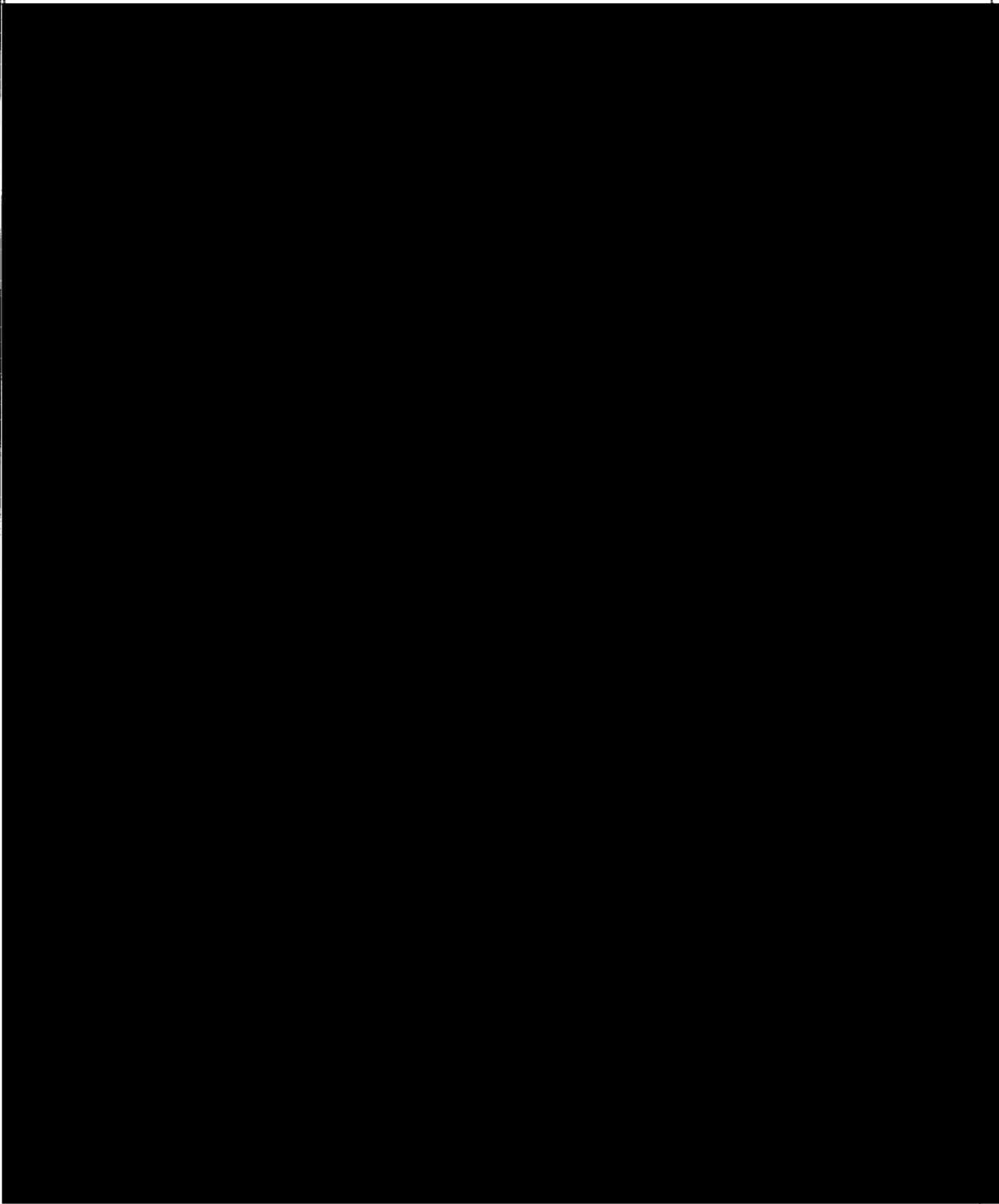




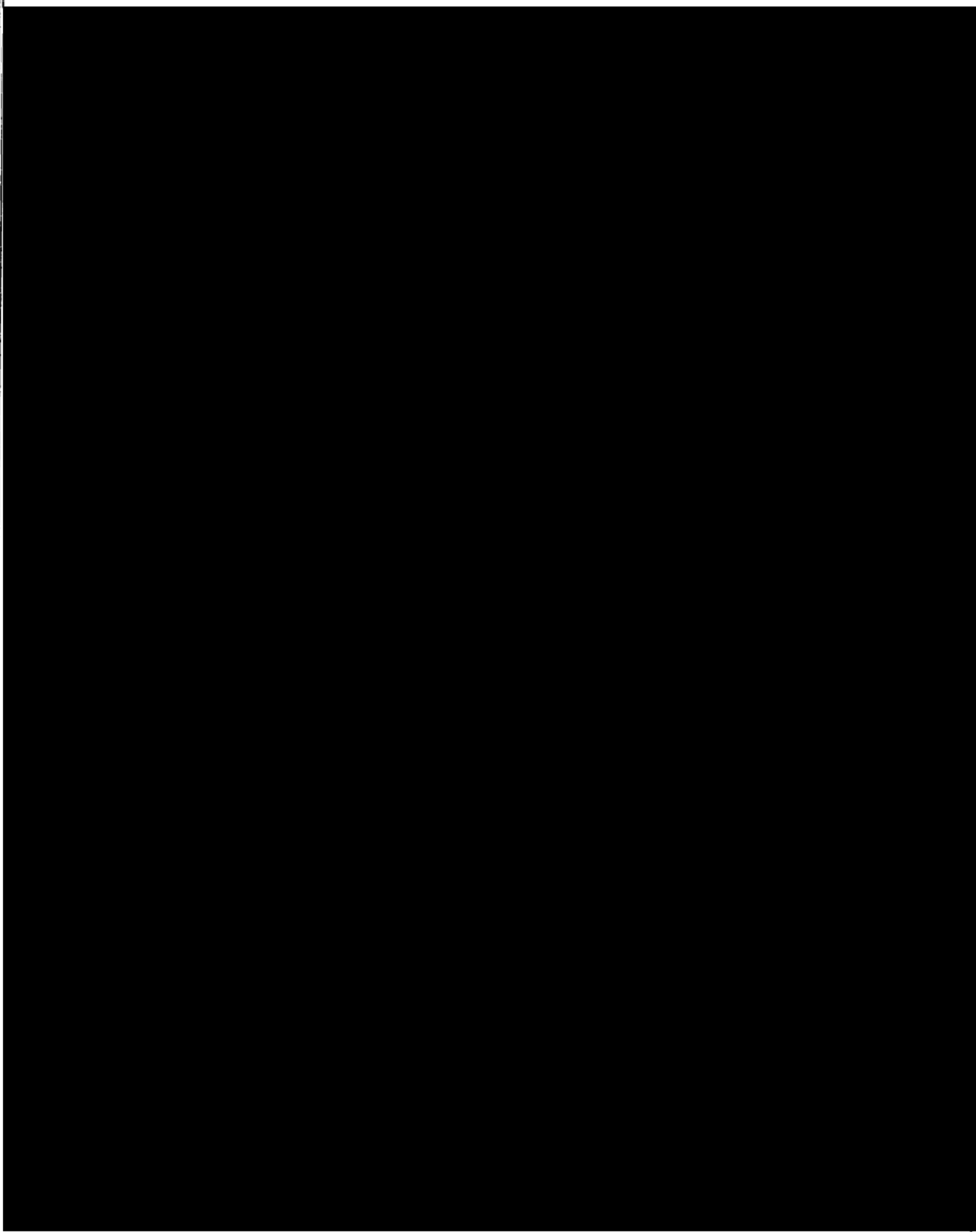
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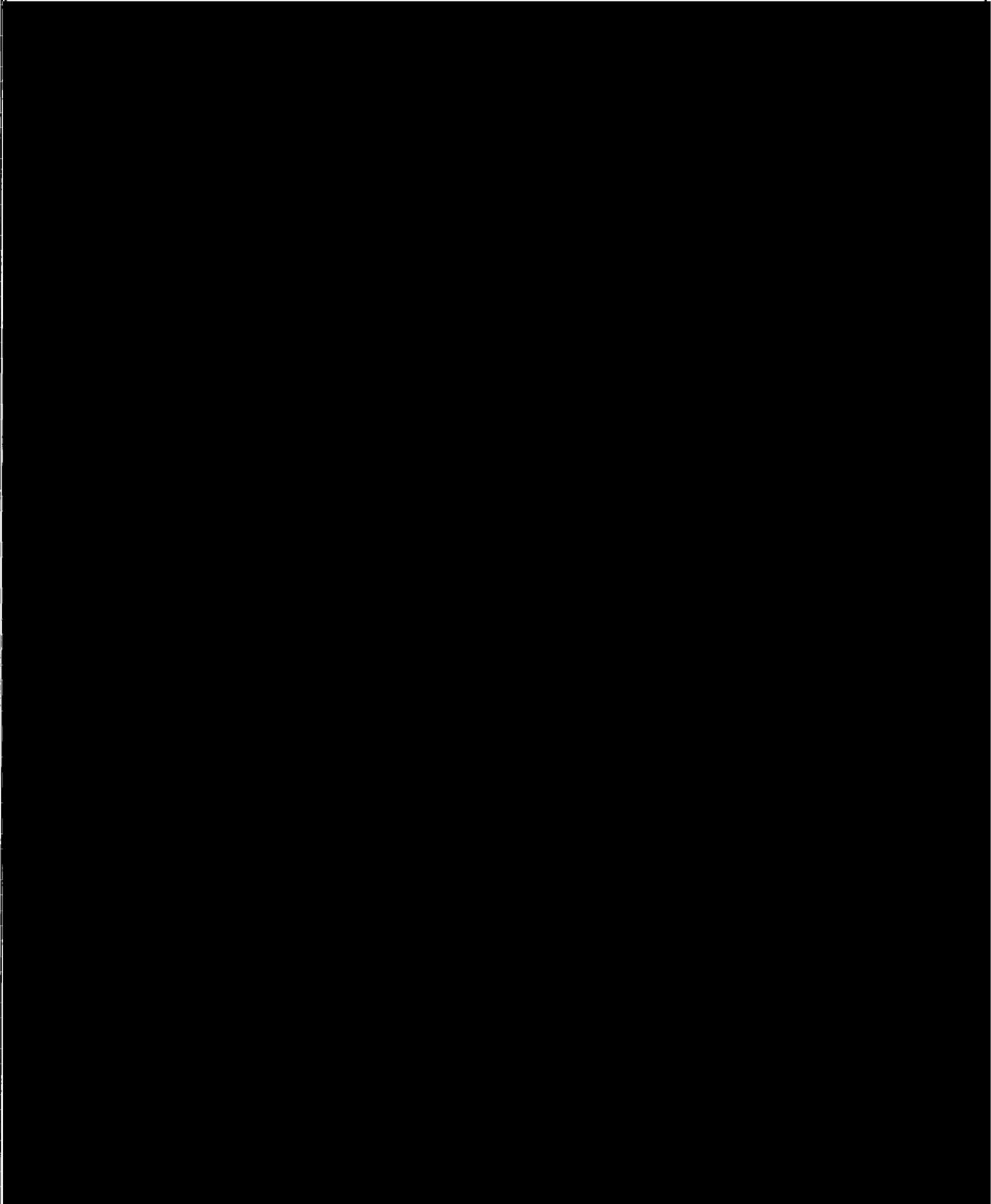
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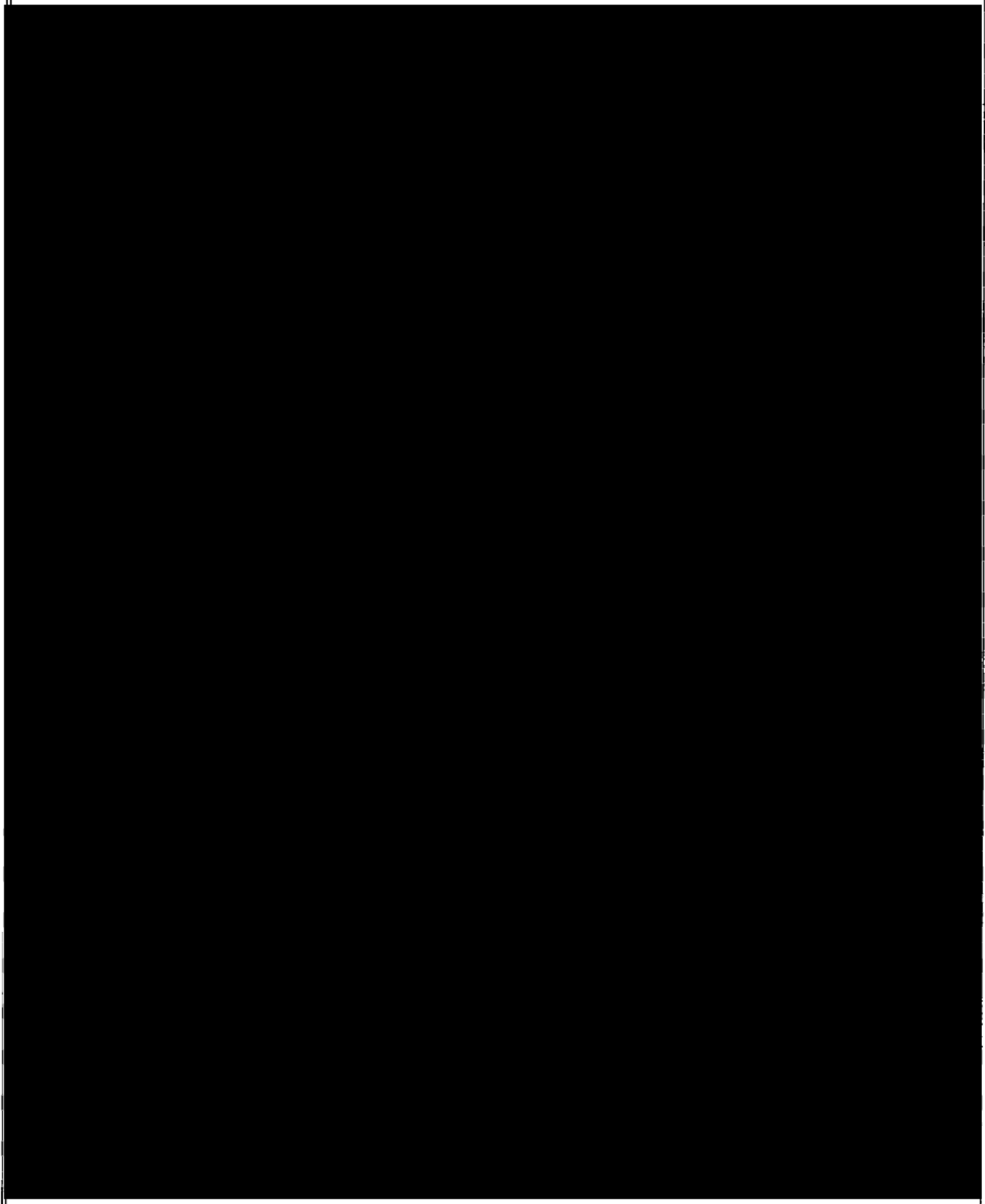
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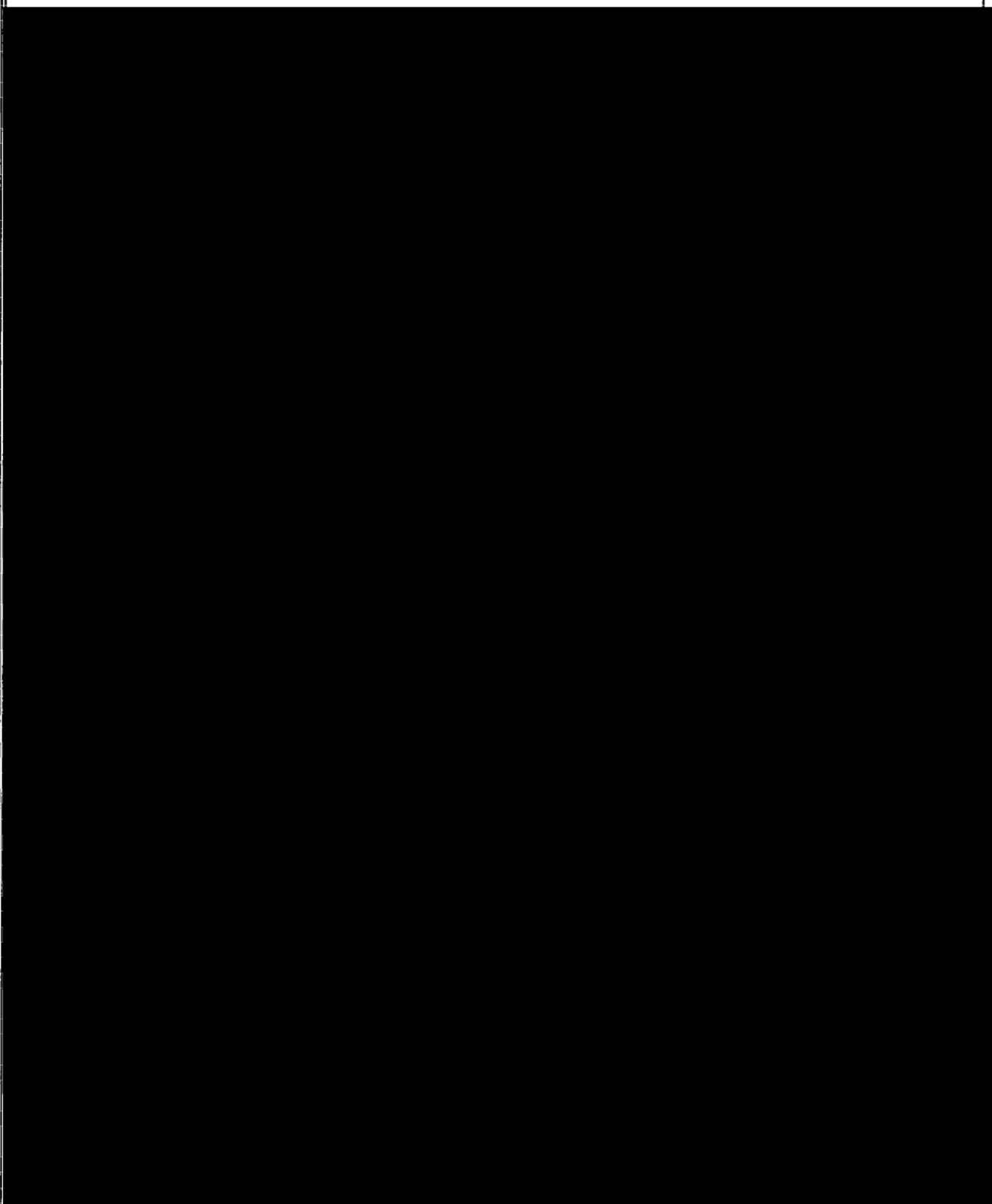
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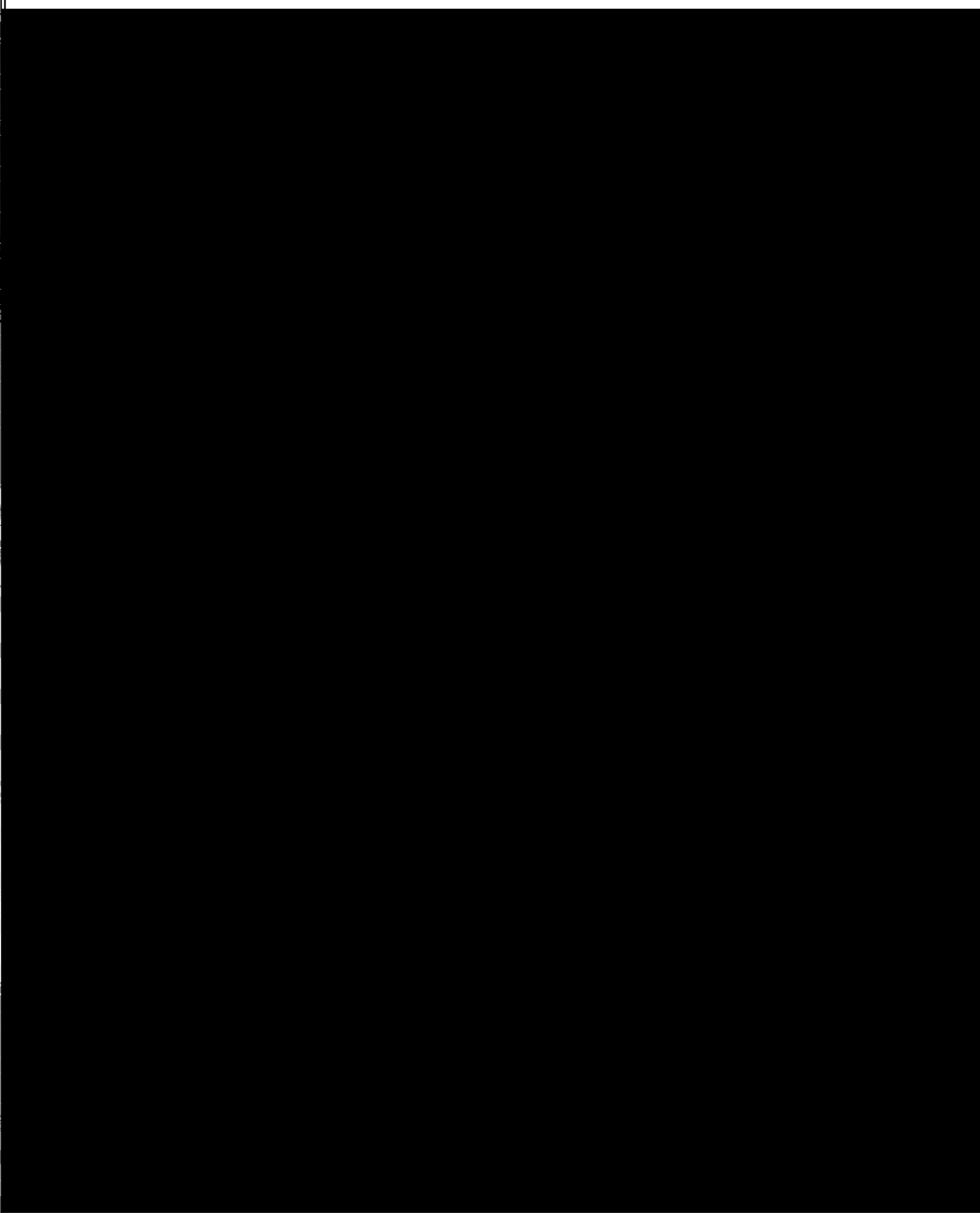
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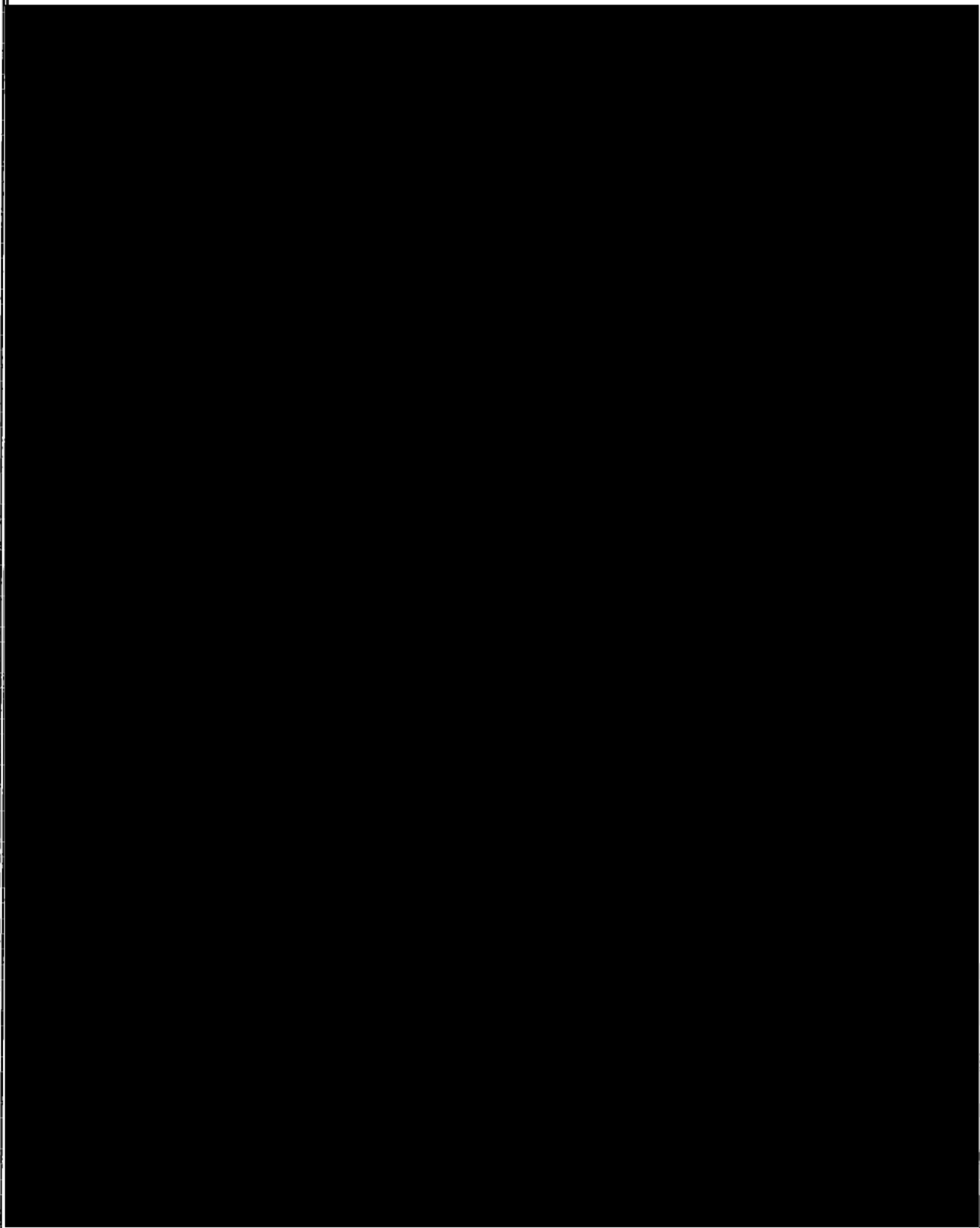
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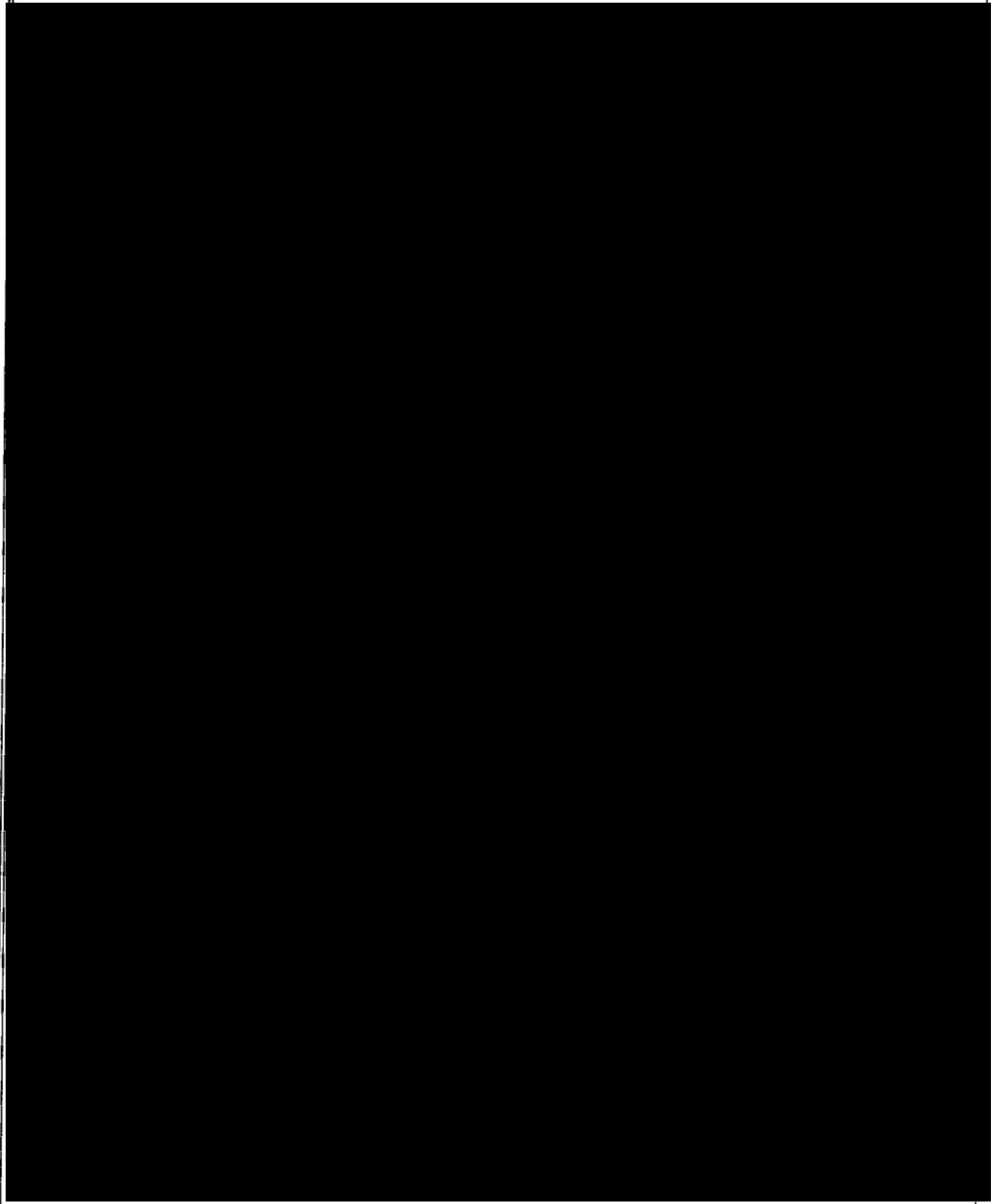


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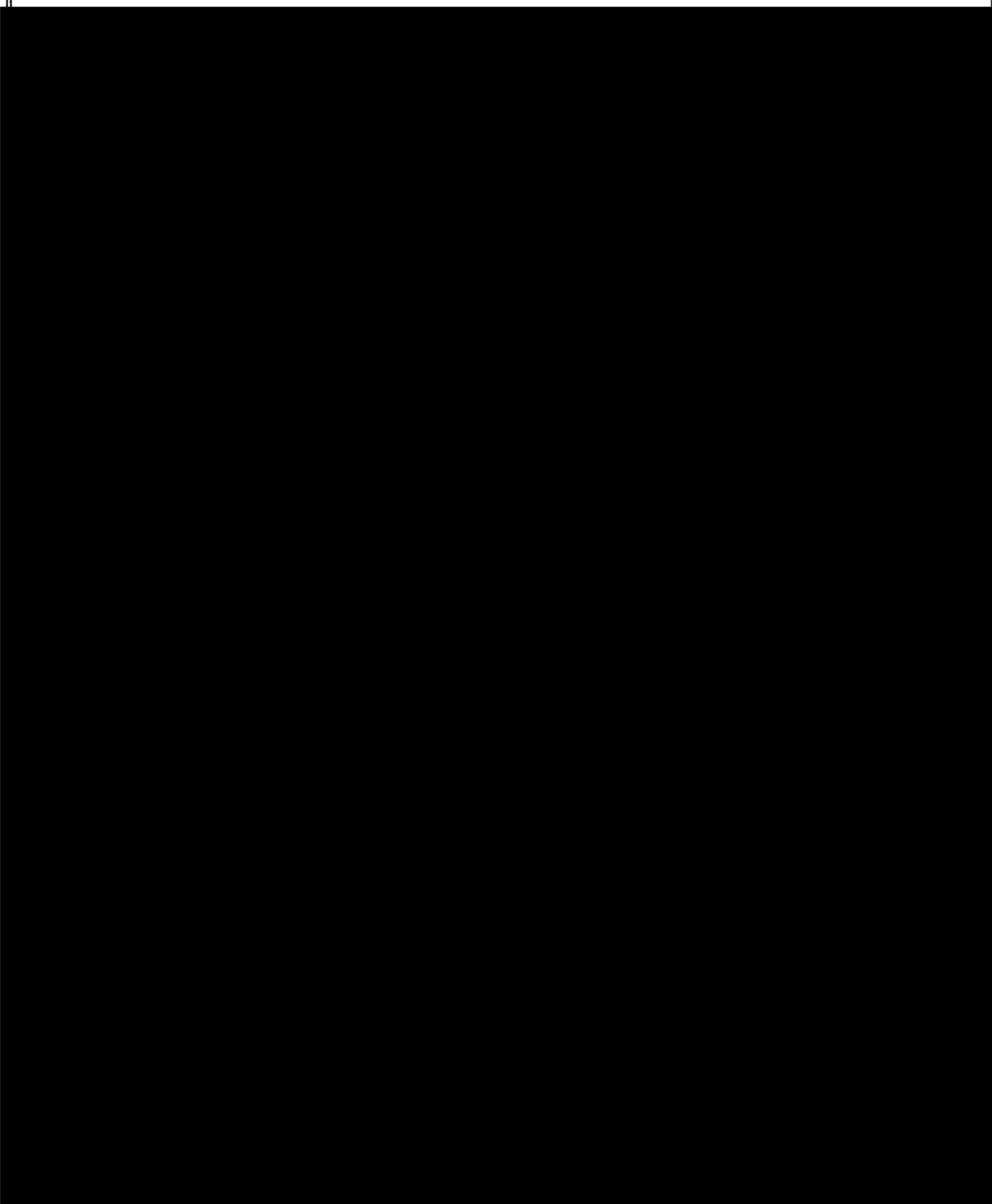




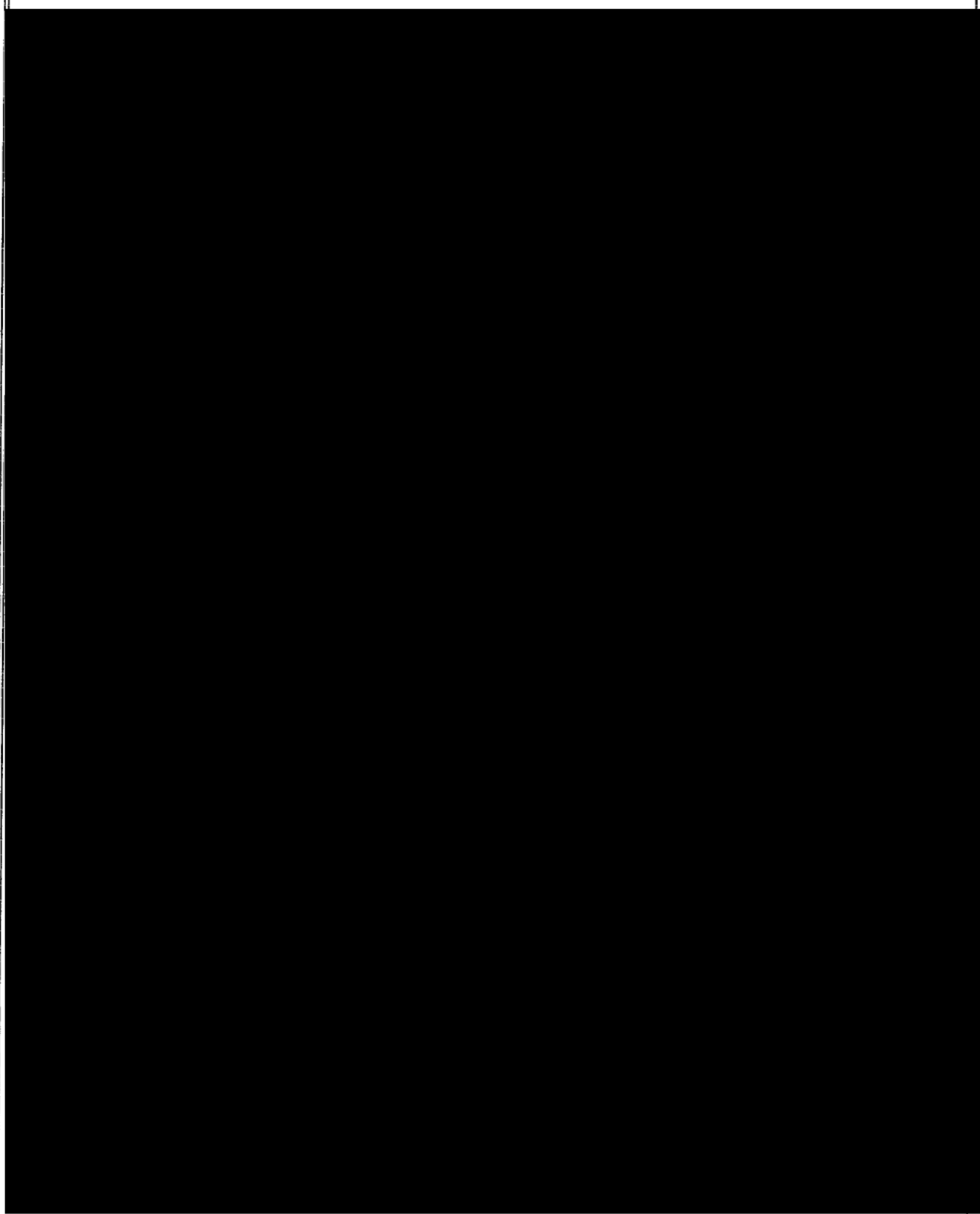
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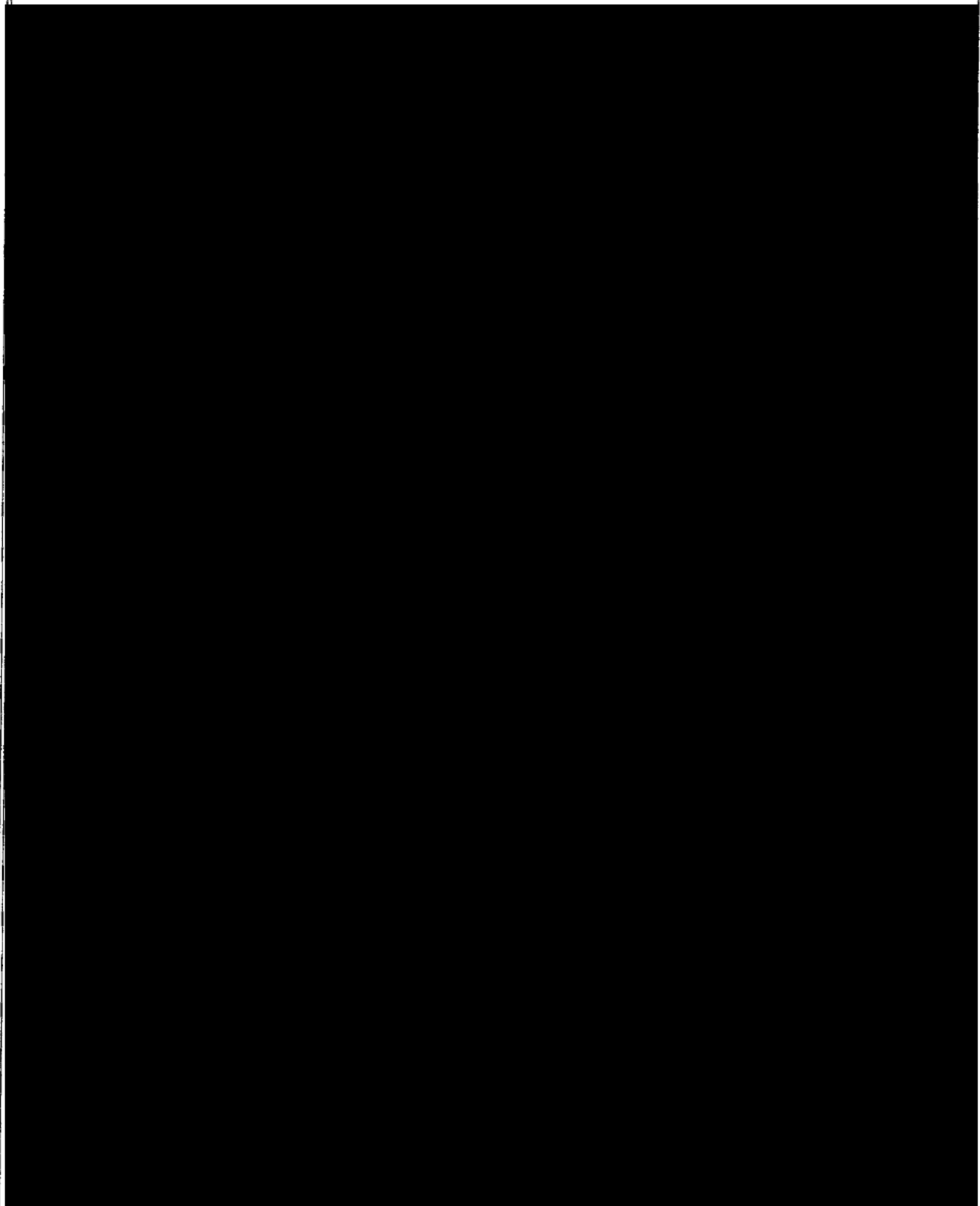
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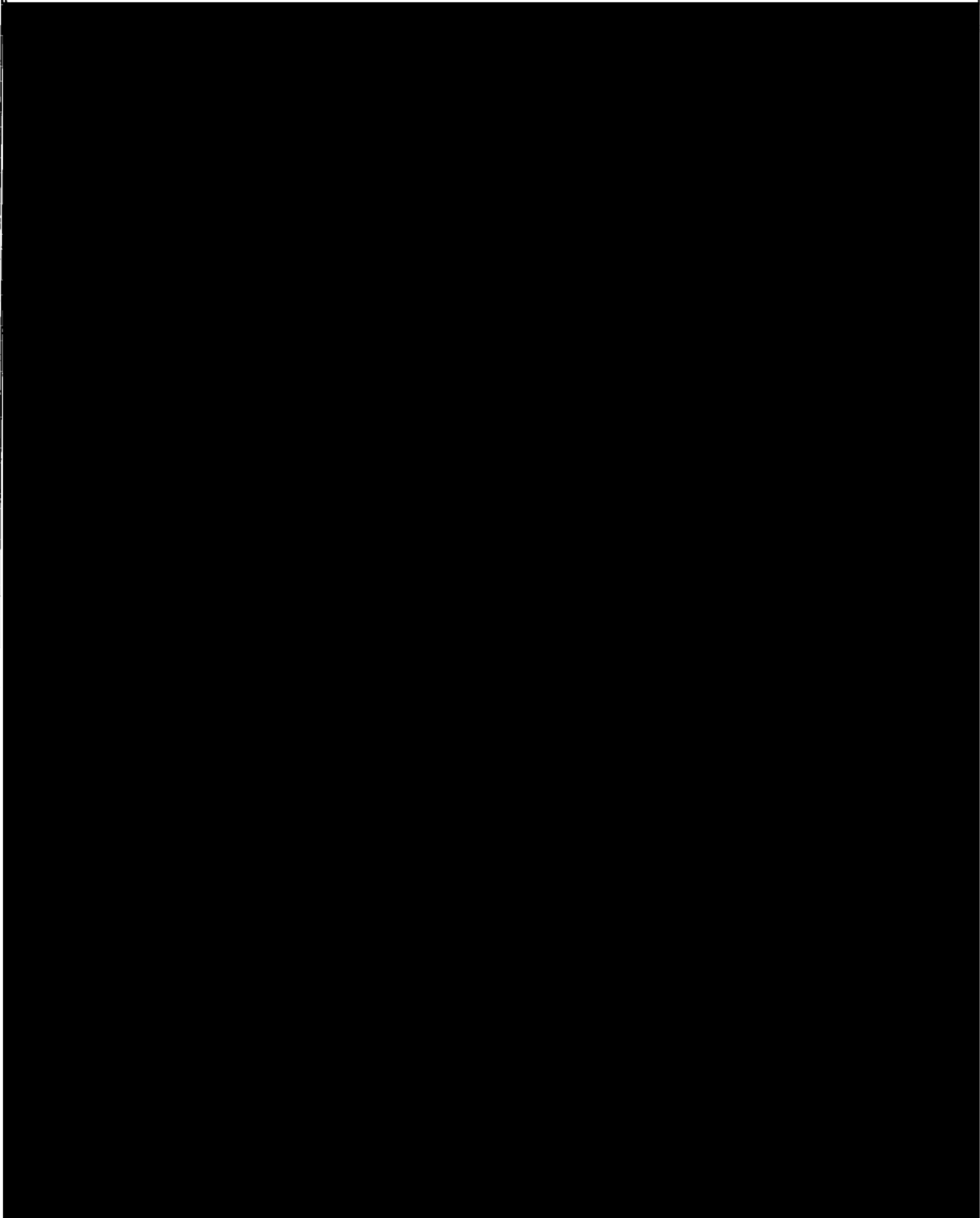
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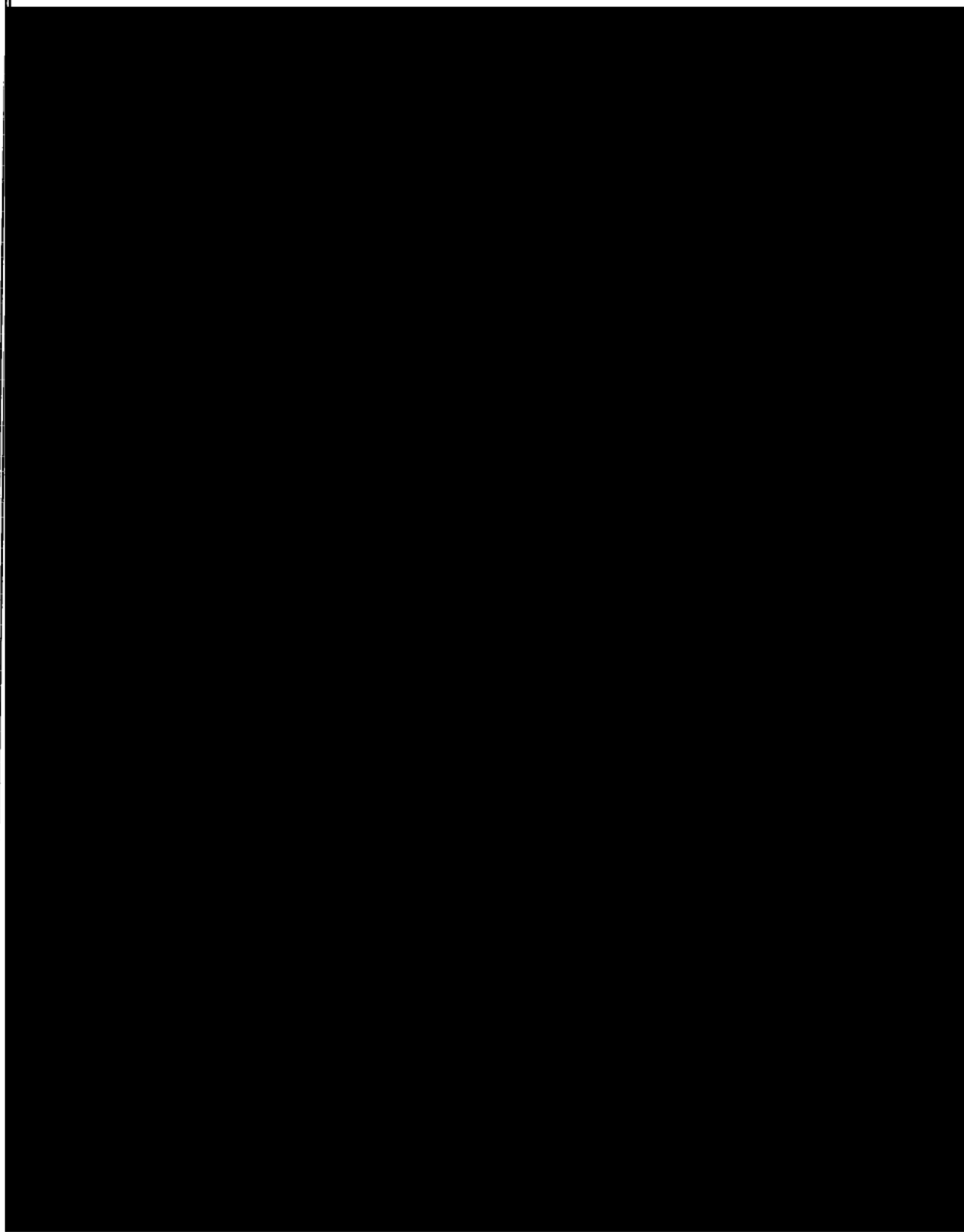
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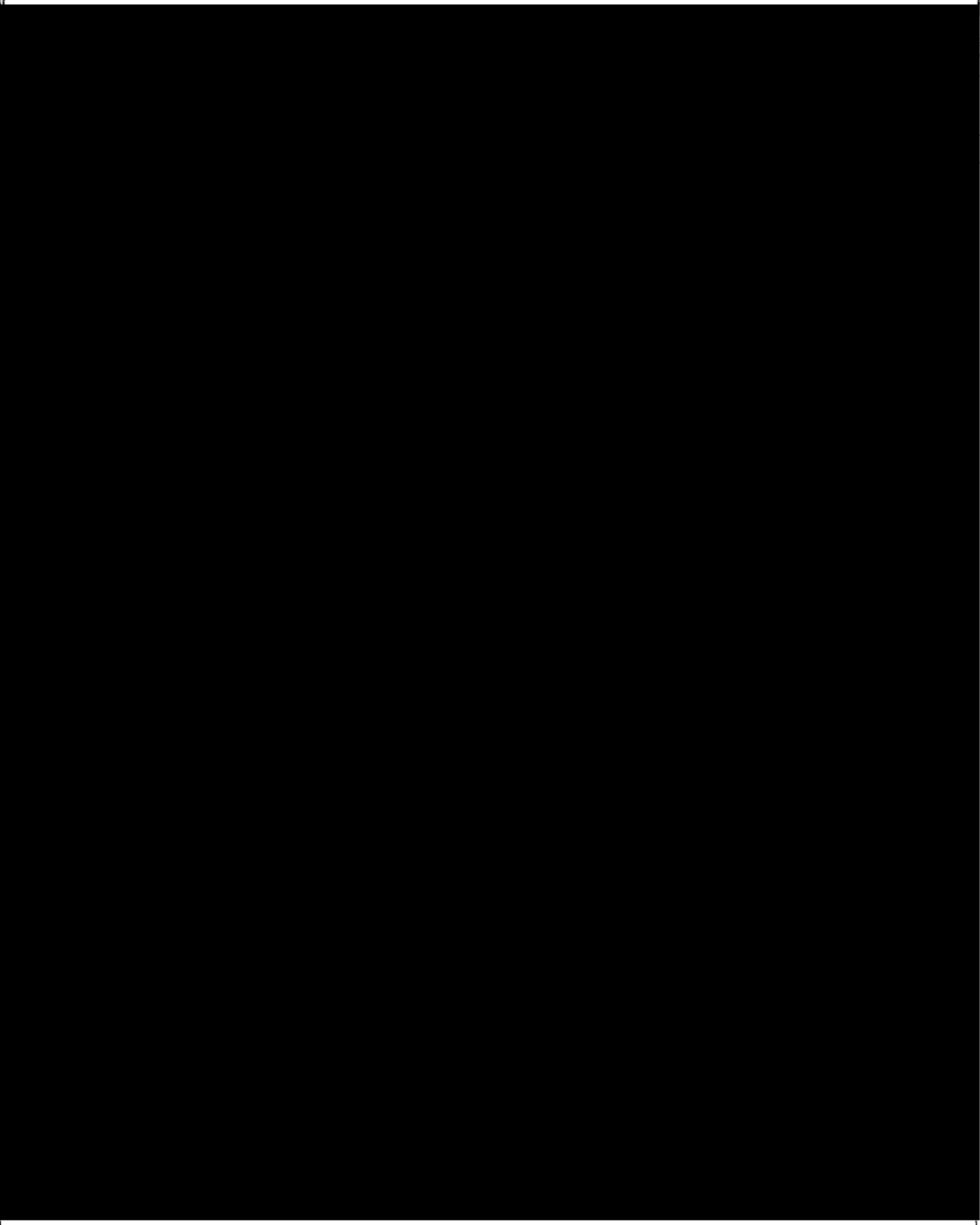
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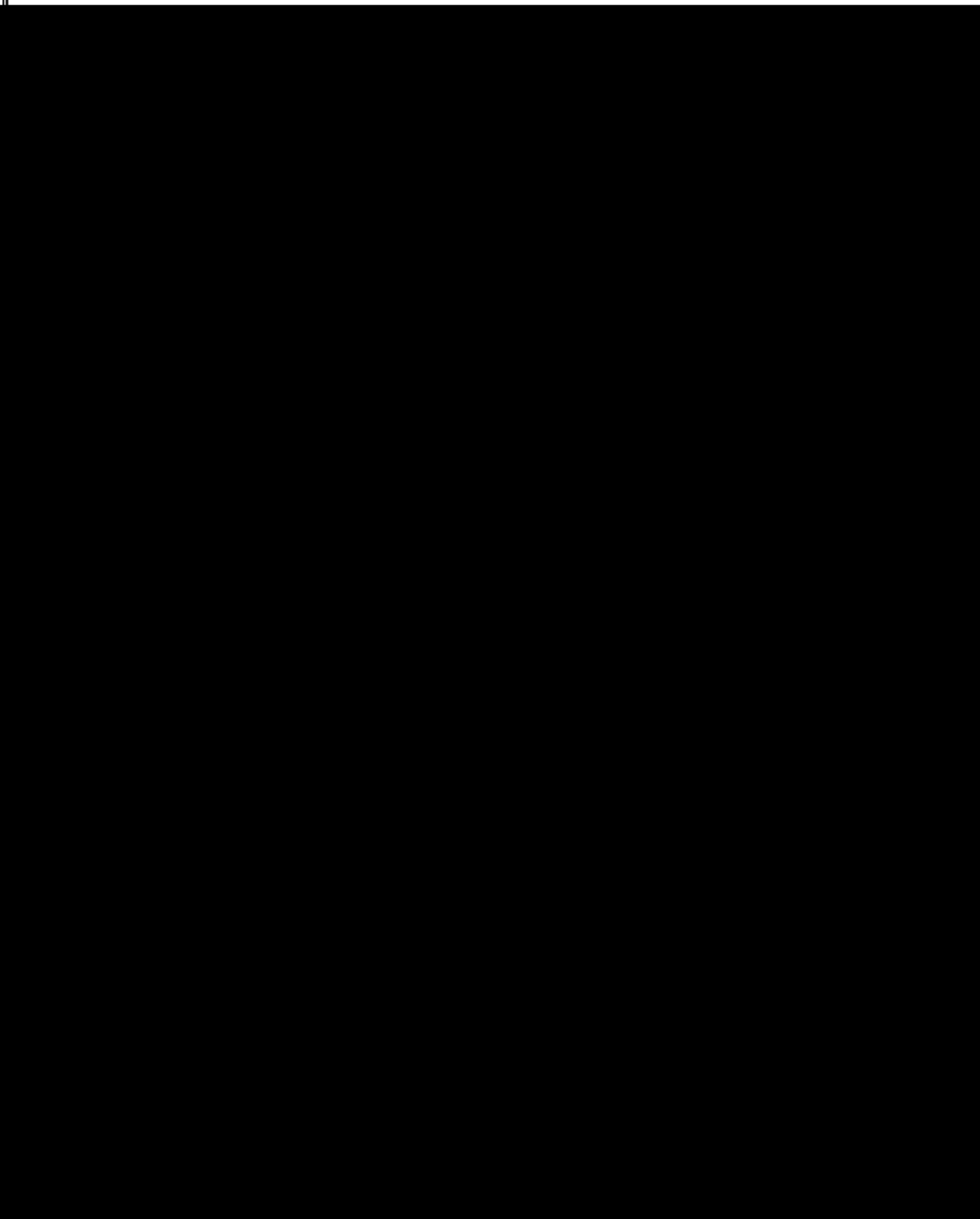
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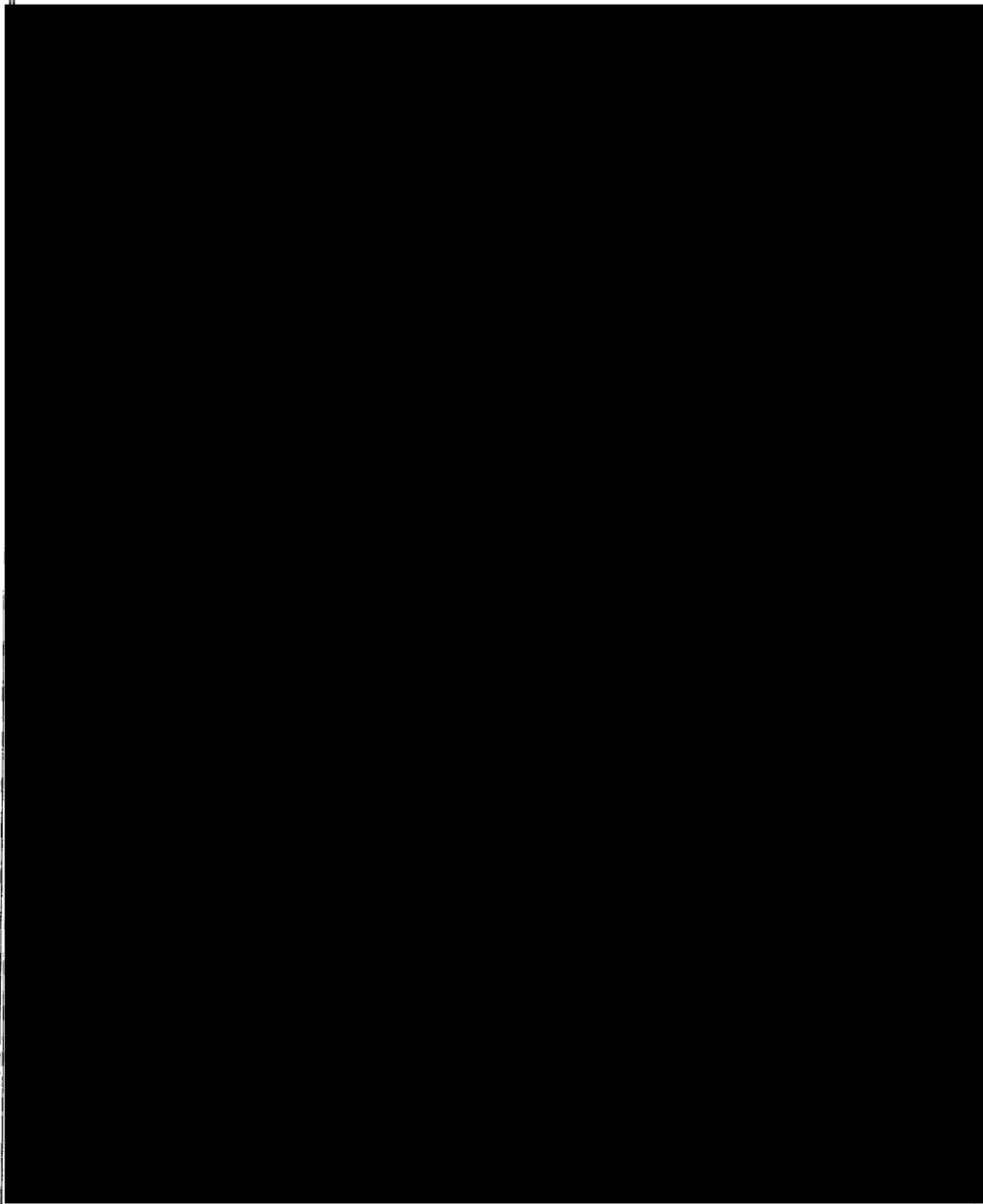


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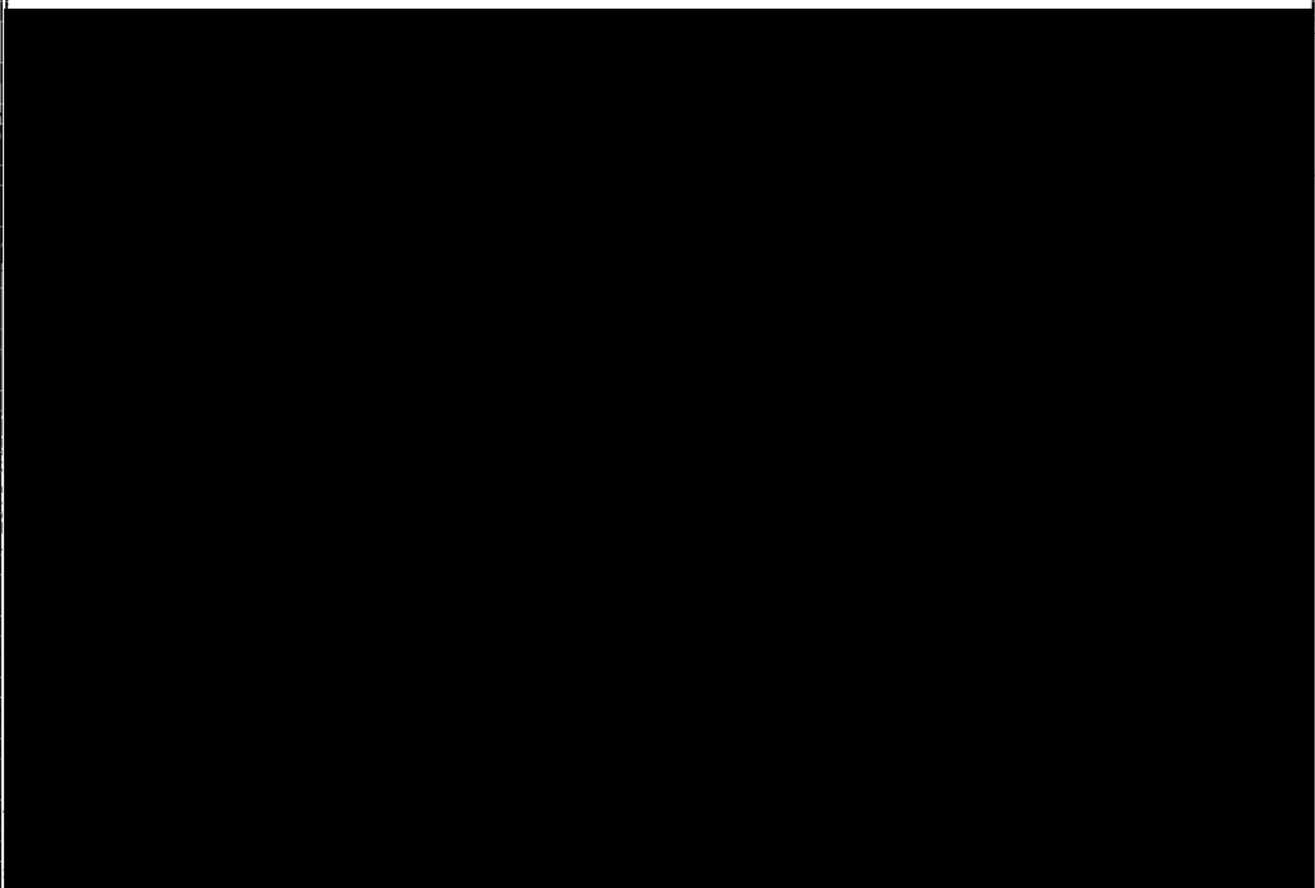




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**From:** [REDACTED]

**Sent:** Friday, March 18, 2011 4:22 PM

**To:** Melson, Kenneth E.; Hoover, William J.; Axelrod, Matthew (ODAG) (SMO)

**CC:** [REDACTED]

**Subject:** FAST AND FURIOUS ROIs AND GUN BUY TIMELINE

**Attachments:** FAST AND FURIOUS REPORTS OF INVESTIGATION.docx; Firearm purchases - per date w recover.pdf; Gun Runner Study.docx

Attached are all of the Fast and Furious event reports (ROIs) the gun buy summary, and the "gunrunner study" that formed the basis of the civil seizure warrant justification used late in the case.

Matt – A hard copy of the ROIs will be dropped off today by Director Melson.

[REDACTED]  
Acting Chief of Staff  
Office of the Director  
O: 202 [REDACTED]  
[REDACTED]  
HQ Room 5 S 100

The Fast and The Furious - [REDACTED]

*Firearm Purchases and Recoveries*

page 1 of 12

week day	# days purch	Date	Straw Purchaser	# firearms	Day Total - multiple purchases	Month Total Firearm	# Firearms Recovered	When	Where
2009									

The Fast and The Furious - [REDACTED]

*Firearm Purchases and Recoveries*

page 2 of 12

week day	# days purch	Date	Straw Purchaser	# firearms	Day Total - multiple purchases	Month Total Firearm	# Firearms Recovered	When	Where
2009	[REDACTED]								

The Fast and The Furious - [REDACTED]

*Firearm Purchases and Recoveries*

page 3 of 12

week day	# days purch	Date	Straw Purchaser	# firearms	Day Total - multiple purchases	Month Total Firearm	# Firearms Recovered	When	Where
2009									



The Fast and The Furious - [REDACTED]

*Firearm Purchases and Recoveries*

page 4 of 12

week day	# days purch	Date	Straw Purchaser	# firearms	Day Total - multiple purchases	Month Total Firearm	# Firearms Recovered	When	Where
2009									

The Fast and The Furious - [REDACTED]

*Firearm Purchases and Recoveries*

page 5 of 12

week day	# days purch	Date	Straw Purchaser	# firearms	Day Total - multiple purchases	Month Total Firearm	# Firearms Recovered	When	Where
2009	[REDACTED]								
2010	[REDACTED]								



The Fast and The Furious - [REDACTED]

*Firearm Purchases and Recoveries*

page 6 of 12

week day	# days purch	Date	Straw Purchaser	# firearms	Day Total - multiple purchases	Month Total Firearm	# Firearms Recovered	When	Where
2010									

The Fast and The Furious - [REDACTED]

*Firearm Purchases and Recoveries*

page 7 of 12

week day	# days purch	Date	Straw Purchaser	# firearms	Day Total - multiple purchases	Month Total Firearm	# Firearms Recovered	When	Where
2010									

The Fast and The Furious - [REDACTED]

*Firearm Purchases and Recoveries*

page 8 of 12

week day	# days purch	Date	Straw Purchaser	# firearms	Day Total - multiple purchases	Month Total Firearm	# Firearms Recovered	When	Where
2010									

The Fast and The Furious - [REDACTED]

*Firearm Purchases and Recoveries*

page 9 of 12

week day	# days purch	Date	Straw Purchaser	# firearms	Day Total - multiple purchases	Month Total Firearm	# Firearms Recovered	When	Where
2010									

The Fast and The Furious - [REDACTED]

*Firearm Purchases and Recoveries*

page 10 of 12

week day	# days purch	Date	Straw Purchaser	# firearms	Day Total - multiple purchases	Month Total Firearm	# Firearms Recovered	When	Where
2010									

The Fast and The Furious - [REDACTED]

*Firearm Purchases and Recoveries*

page 11 of 12

week day	# days purch	Date	Straw Purchaser	# firearms	Day Total - multiple purchases	Month Total Firearm	# Firearms Recovered	When	Where
2010									

The Fast and The Furious - [REDACTED]

*Firearm Purchases and Recoveries*

page 12 of 12

week day	# days purch	Date	Straw Purchaser	# firearms	Day Total - multiple purchases	Month Total Firearm	# Firearms Recovered	When	Where
2010	[REDACTED]								
2007	[REDACTED]								
2008	[REDACTED]								
2009	[REDACTED]								

[REDACTED]

February 1, 2011

In reviewing the news article in question concerning allegations of impropriety by either ATF or individual licensed Firearms Dealers in this matter concerning weapons purchased in Arizona that find their way into Mexico, We need to keep things in their proper perspective.

Let it be stated that while certain legislative officials not directly living here or directly familiar with this ongoing problem would suggest willful negligence on the part of federal Agencies charged with the enormous task of interdicting the flow of weapons crossing our border with Mexico, It should be known to the public that these Federal Agencies speaking strictly from my personal experience through many years act and conduct themselves in a very professional and proper manner. Any comparison to the contrary should be rejected completely.

On balance, The Mexican Cartels that use every available means at their disposal to procure any weapons to further their illegal drug trade do not run out of time or money. Federal Agencies have limited resources of money and manpower allotted to them by legislative officials who approve said budgets, While the Mexican Cartels are under no such restriction. Senator Grassley's office contacted us regarding "any" impropriety by ATF and we have stated that their exists no indication to that effect.

Lastly, It should be noted that our border is immense with Mexico and not every vehicle going into Mexico is stopped and searched for weapons, narcotics, or cash. Perhaps a more "Pro-Active" legislative approach would be to stop pointing blame at either Federal or State agencies attempting to do their job, And increase through legislation the budgets of all agencies on a more equitable level with the Drug Cartels and addition use all available means to secure our border. It appears that any State or Federal agency charged with said tasks are damned if they do, And damned if they don't. An appropriate response has to be to give them the tools to accomplish this monumental problem confronting them.



January 26, 2011

So there remains no confusion to the accuracy regarding these events culminating with the Federal Indictment and arrests Monday, And to set the record straight and assure the public, We have issued the following statement.

We have worked closely in conjunction with several Federal agencies including the Phoenix office of ATF within the guidelines of both the Southwest Border Initiative and Operation Gunrunner, as well as within the guidelines of being an existing Federal Firearms Licensed dealer, as well as many other licensed Arizona dealers as well.

Due to the sensitivity and nature of any ongoing Federal Investigation we obviously are precluded from making any further statement other than we defer respectfully to the United States Attorney's Office and the Phoenix ATF field office on our behalf for any further comment they determine appropriate at this time.

Thank You.

United States Attorney's Office  
District of Arizona

## Memorandum

**To:** Dennis K. Burke  
**From:** Emory Hurley  
**Subject:** [REDACTED]  
**Date:** January 28, 2011

The two AK-47 type rifles associated with the U.S. Border Patrol shooting, specifically two ROMARM WASR-10 7.62x39 mm rifles, Serial Numbers [REDACTED] and [REDACTED] were purchased by [REDACTED] on Friday, January 16, 2010, along with a third ROMARM WASR-10 7.62x39 mm rifle, Serial Number [REDACTED]. The three rifles were purchased in a single transaction from Federal Firearms Licensee (FFL) [REDACTED]. ATF was not notified of this purchase until Monday, January 19, 2010, when ATF received the ATF Form 4473 documenting [REDACTED] purchase of three AK-47 type rifles on January 16, 2010. These were forwarded to ATF by the FFL and the purchase is documented in **ATF ROI #67**.

[REDACTED] first known firearms purchase occurred on November 24, 2009, at FFL [REDACTED]. On that day he was in the company of another Fast and Furious suspect, [REDACTED]. On November 24, 2009, [REDACTED] purchased five (5) FN Herstal Five-Seven pistols, and [REDACTED] purchased five (5) AK-47 type rifles. On the ATF Form 4473, [REDACTED] listed his address as [REDACTED]. At the time of the purchase, [REDACTED] and [REDACTED] were traveling in a 2000 Isuzu Rodeo registered to [REDACTED]. This is documented in **ATF ROI # 12**. As of this date, the five (5) FN pistols purchased by [REDACTED] on November 24, 2009, have not been recovered.

On November 25, 2009, ATF entered [REDACTED] in the ATF case management system as a suspect in the investigation. This event does not result in the creation of an ROI.

On December 12, 2009, [REDACTED] purchased five (5) ROMARM WASR-10 AK-47 type rifles from FFL [REDACTED]. ATF was notified of this purchase on December 12, 2009 when agents received the ATF Form 4473 recording the purchase. This is documented in **ATF ROI # 46**. As of this date, these five AK-47 type rifles have not been recovered.

On December 17, 2009, this AUSA, ATF Group Supervisor [REDACTED] and ATF Special Agent [REDACTED] met with [REDACTED], the owner of FFL [REDACTED]. [REDACTED] had been providing information to ATF on large firearms purchases, including large purchases of (only) long guns which do not trigger any multiple purchase reporting requirements. This information was being provided voluntarily and without compensation from ATF. [REDACTED] had expressed concerns about the cooperation he was providing and whether he was endangering himself or implicating himself in a criminal investigation.

[REDACTED] was advised by the agents and this AUSA that they could not tell him who he could or could not sell to and that they could not instruct him to make a sale in violation of the law or to refuse to make a lawful sale. He was advised by the agents that as an FFL he has to comply with all of the statutes and regulations that govern the sale and transfer of firearms and cannot sell firearms unless the required

Memo to DKB  
January 28, 2011  
Page - 2

paperwork and background check were completed. As long as the required forms were properly filled out and the FFL did not know or have a reason to know that the firearms were part of a straw purchase or intended to be used in a crime, that he could complete the transfer. [REDACTED] was also told by the agents and this AUSA that the information he provided to ATF regarding large firearms transactions, particularly sales involving only long guns, was very important and useful to ongoing ATF investigations.

During this meeting, ATF agents also described additional information that [REDACTED] or his employees might receive from purchasers which would not necessarily be required by the provisions of Chapter 44 of Title 18 to be kept in his records, but which would prove useful to ATF. This information included phone numbers or other contact information as well as license plate numbers and vehicle descriptions. As of the date of this meeting, [REDACTED] was already providing this type of information to ATF and continued to do so throughout the course of the investigation.

On January 9, 2010, [REDACTED] purchased three (3) FN Herstal Five-Seven pistols from FFL [REDACTED]. [REDACTED] ATF was not advised of this purchase by the FFL, however, on January 14, 2010, these firearms were entered into the suspect gun database by ATF Phoenix. These firearms were discovered by law enforcement on January 14, 2010, in Columbus, New Mexico, but were not traced and were returned to person carrying them. ATF Phoenix was not notified of this law enforcement contact until May 17, 2010. **ATF ROI #254.**

On January 14, 2010, in Columbus, New Mexico, (a border town), U.S. Border Patrol agents pulled over a vehicle driven by [REDACTED] with passenger [REDACTED], due to suspicious driving behavior. In the vehicle they found three AK-47 type rifles purchased by [REDACTED] three FN Herstal Five-Seven pistols purchased by [REDACTED] on January 9, 2010, from FFL [REDACTED], and two Ruger pistols purchased by another. U.S. Border Patrol agents did not observe any other criminal conduct and so returned the firearms to the occupants of the vehicle. They did not trace any of the firearms. ATF Phoenix was notified of the observation of the firearms on May 17, 2010, after ATF Las Cruces forwarded information in connection with a firearms trafficking investigation in [REDACTED] involving [REDACTED] and others. **The investigation of [REDACTED] is still on going, [REDACTED] and must be viewed as close-hold.**

On January 16, 2010, [REDACTED] purchased the three ROMARM WASR-10 AK-47 type rifles, Serial Numbers [REDACTED] and [REDACTED] as well as [REDACTED]. As detailed above, ATF was not notified of this purchase until January 19, 2010. This notification came only through the cooperation of the FFL as this long gun only purchase would not trigger any affirmative reporting requirements. **ATF ROI #67.**

On December 15, 2010, [REDACTED] was arrested for using a false address on the ATF Form 4473 on June 15, 2010. A complaint was filed on December 16, 2010, and he was indicted on January 11, 2011, for making false statements in connection with the acquisition of a firearm. On January 19, 2011, he was indicted as part of the overall Fast and Furious conspiracy.

Agents were able to determine that when [REDACTED] purchased firearms on June 15, 2010, that he no longer lived at the [REDACTED] address listed on the ATF Form 4473 and his drivers license. His

Memo to DKB  
January 28, 2011  
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drivers license was changed in August of 2010, to reflect a different address. In the course of his post arrest interview in December 2010, he admitted that he had not lived at the [REDACTED] address for two or three years. However, earlier in the investigation, agents had no reason to believe that this was not his address because his drivers license and the registration to the car that he was driving came back to the [REDACTED] address. **See ATF ROI #12.**

On March 1, 2010, [REDACTED], purchased one FN Herstal Five-Seven pistol from [REDACTED] in a single-firearm transaction. On or about March 3, 2010, this pistol was recovered by Phoenix Police in connection with a drug house in Phoenix. This was the first actual recovery of a firearm purchased by [REDACTED] **ATF ROI #107 and 156.**

UNITED STATES of America,  
Plaintiff-Appellee,

v.

Mary Peggy MOORE, Defendant-  
Appellant.

UNITED STATES of America,  
Plaintiff-Appellee,

v.

Lee Roy WILEY, Defendant-Appellant.

Nos. 94-30453, 94-30454.

United States Court of Appeals,  
Ninth Circuit.

Argued and Submitted Jan. 23, 1997.

Decided March 31, 1997.

Defendant-neighbor, who purchased firearm for 14-year-old, and defendant-mother, who facilitated transaction, were convicted in the United States District Court for the District of Idaho, Justin L. Quackenbush, J., of making false statement in connection with purchase of firearm and conspiracy to violate Gun Control Act, respectively. Defendants appealed. The Court of Appeals, Tashima, Circuit Judge, 84 F.3d 1567, reversed. On rehearing en banc, the Court of Appeals, Trott, Circuit Judge, held that: (1) evidence supported convictions; (2) jury instruction did not impermissibly remove materiality issue from jury's consideration; (3) Gun Control Act was not unconstitutionally vague on its face, or as applied; and (4) mother was not entitled to favorable adjustment of offense level for acceptance of responsibility.

District court decision affirmed.

Tashima, Circuit Judge, dissented and filed opinion, in which Pregerson and Reinhardt, Circuit Judges, joined.

#### 1. Weapons ⇌4

Under Gun Control Act, 14-year-old was ineligible to purchase firearm from federally licensed dealer. 18 U.S.C.A. § 922(b)(1).

#### 2. Weapons ⇌4

"Straw man" doctrine holds that person violates Gun Control Act by acting as intermediary or agent of someone who is ineligible to obtain firearm from licensed dealer and making false statement that enables ineligible principal to obtain firearm. 18 U.S.C.A. § 922(a)(6).

See publication Words and Phrases for other judicial constructions and definitions.

#### 3. Weapons ⇌4

Sham or "straw man" purchases occur, for purposes of Gun Control Act, when lawful purchaser buys firearm for unlawful one. 18 U.S.C.A. § 922(a)(6).

#### 4. Weapons ⇌3

Primary purpose of Gun Control Act is to make it possible to keep firearms out of hands of those not legally entitled to possess them because of age, criminal background, or incompetency. 18 U.S.C.A. § 922.

#### 5. Conspiracy ⇌47(3.1)

##### Weapons ⇌17(4)

Neighbor's conviction for making materially false statement in connection with "straw man" purchase of firearm for 14-year-old, and mother's conviction for conspiracy to violate Gun Control Act, were supported by evidence that they falsely stated that neighbor was minor's grandfather, who intended to purchase and hold firearm for minor until he was 21 years old; mother's claim that she consented to transaction, and that transfer of weapon to minor was therefore legal under Idaho law, did not establish defense to "straw man" doctrine, as it did not address materially false statements. 18 U.S.C.A. § 922(a)(6); I.C. § 18-3302A.

#### 6. Criminal Law ⇌1038.1(2)

Objection to jury instruction would be reviewed for plain error, where defense did not raise it at trial. Fed.Rules Cr.Proc.Rule 52(b), 18 U.S.C.A.

#### 7. Criminal Law ⇌1038.1(2)

If constitutional error occurs in jury instruction because defendant's right to have jury decide issue is infringed, error is both

Cite as 109 F.3d 1456 (9th Cir. 1997)

structural and plain and, therefore, requires reversal of conviction.

#### 8. Weapons ⇨17(6)

Jury instruction in prosecution for making materially false statement in connection with purchase of firearm did not impermissibly withhold materiality element from jury's consideration, as court expressly instructed jury that materiality was element of charged offense and that government had to prove it beyond reasonable doubt. 18 U.S.C.A. § 922(a)(6).

#### 9. Criminal Law ⇨823(5)

Jurors in prosecution for making materially false statement in connection with purchase of firearm were not misled or confused by language of jury instruction regarding materiality element, where judge answered jurors' question inquiring about interplay in instructions between intent and materiality by setting forth four separate elements which government was required to prove beyond reasonable doubt, including materiality of alleged false statements. 18 U.S.C.A. § 922(a)(6).

#### 10. Criminal Law ⇨1038.1(4)

Any error in trial court's instruction in prosecution for making materially false statement in connection with purchase of firearm, which advised that if minor was true purchaser of firearm, then neighbor who purchased gun on minor's behalf had made false statement in connection with purchase, was harmless, rather than plain, as disputed instruction did not affect any substantial rights, in light of evidence, substance of defense, and verdict. 18 U.S.C.A. § 922(a)(6).

#### 11. Constitutional Law ⇨258(3.1)

##### Weapons ⇨3

Gun Control Act provision prohibiting person from making false statement in connection with purchase of firearm was not unconstitutionally vague, on its face, as it unmistakably rendered juvenile ineligible to buy firearm from a federally licensed dealer, and made it crime to make any false statement in connection with such purchase. 18 U.S.C.A. § 922(a)(6).

#### 12. Constitutional Law ⇨258(3.1)

##### Weapons ⇨3

Gun Control Act provision prohibiting person from making false statement in connection with purchase of firearm was not unconstitutionally vague, as applied to neighbor who purchased gun for 14-year-old and mother who facilitated transaction, notwithstanding Idaho law that allowed transfer of weapon to minor with parent's consent, as neighbor and mother understood legal obligations under Act, although they sought to work around them. 18 U.S.C.A. § 922(a)(6); I.C. § 18-3302A.

#### 13. Criminal Law ⇨1252

Mother, who conspired with neighbor to illegally purchase gun for her 14-year-old son, was not entitled to reduction in offense level for acceptance of responsibility, as mother initially lied to law enforcement about her involvement in acquisition of firearm and denied that she told clerk that neighbor was her son's grandfather and that he would hold gun until son was 21 years old. 18 U.S.C.A. § 922(a)(6); U.S.S.G. § 3E1.1, 18 U.S.C.A.

#### 14. Criminal Law ⇨1158(1)

Findings of sentencing judge as to acceptance of responsibility are entitled to considerable weight, and Court of Appeals will review denial of reduction in offense level for acceptance of responsibility under clearly erroneous standard. U.S.S.G. § 3E1.1, 18 U.S.C.A.

Thomas J. McCabe, Westberg, McCabe & Collins, Boise, ID, for Defendant-Appellant Lee Roy Wiley.

David Z. Nevin, Nevin, Kofoed & Herzfeld, Boise, ID, for Defendant-Appellant Mary Peggy Moore.

George W. Breitsameter, Assistant United States Attorney, Boise, ID, (on the briefs) and Joseph Douglas Wilson, United States Department of Justice, Washington, DC (argued), for Plaintiff-Appellee.

Appeals from the United States District Court for the District of Idaho, Justin L. Quackenbush, District Judge, Presiding, D.C. No. CR-94-0018-JLQ.

Before: HUG, Chief Judge,  
 PREGERSON, REINHARDT, BRUNETTI,  
 KOZINSKI, THOMPSON, O'SCANNLAIN,  
 TROTT, RYMER, KLEINFELD, and  
 TASHIMA, Circuit Judges.

TROTT, Circuit Judge.

Mary Peggy Moore ("Mrs. Moore") and Lee Roy Wiley ("Wiley") appeal their respective convictions for conspiracy and for making a material false statement in connection with the purchase of a firearm. Wiley allegedly bought a firearm as a "straw man" on behalf of Mrs. Moore's fourteen-year-old son, Bobby Moore ("Bobby"). Mrs. Moore allegedly was liable as Wiley's aider and abettor and coconspirator in his making of the false statement.

In an attempt to overturn their convictions, Mrs. Moore and Wiley tender three arguments. First, they contend that Mrs. Moore as Bobby's parent consented to the acquisition of the firearm, thereby rendering the government's proof insufficient as a matter of law either to constitute a violation of 18 U.S.C. § 922(a)(6) or to establish the existence of an unlawful conspiracy.

Second, they argue that the district court failed adequately to submit for the jury's determination the question of whether the alleged false statement was material, advising the jury instead that if Bobby and not Wiley was the true purchaser of the firearm, then Wiley had made a material false statement in connection with its purchase. In support of this contention, the appellants direct us to *United States v. Gaudin*, — U.S. —, 115 S.Ct. 2310, 132 L.Ed.2d 444 (1995), in which the Supreme Court held that the materiality of a false statement offense must be decided by the jury, not by the court.

Third, the appellants assert that the Gun Control Act as it relates to this case is constitutionally vague (1) on its face, or (2) as applied.

Mrs. Moore alleges separately that the district court erred at sentencing in refusing to give her a favorable adjustment for acceptance of responsibility.

1. The opinions of the three-judge panel are re-

ported at 84 F.3d 1567 (9th Cir.1996).  
 Because we conclude that these claims have no merit, we affirm the district court.<sup>1</sup>

## I

### A.

#### The Facts

On September 2, 1993, fourteen-year-old Bobby Moore saw a .25 caliber handgun in a pawnshop which had a federal license to sell firearms. When he showed interest in the weapon, a clerk shooed him off the premises because his age rendered him ineligible under federal law to buy it. Undaunted, Bobby set out to find a way to acquire the handgun for himself. He approached his mother to buy it for him, but she turned him down. Bobby's friend Jason Marks witnessed this discussion. Jason's unchallenged testimony about the discussion established not only that Mrs. Moore refused to buy the gun on behalf of her son, but that she explicitly told him he would have to "get someone else" to get it for him because she "didn't want her name on the papers":

A. (By Jason Marks) Well, we [Bobby and Jason] left the pawn shop and we were trying to figure out a way that *he* could get the money to get the gun.

\* \* \* \* \*

Q. (By the prosecutor) So what did you do as far as trying to get the money?

A. Well, we walked back to his house and I sat down and he was looking around his house at stuff that he could sell or get rid of to get some money.

\* \* \* \* \*

Q. Okay. When [Bobby] first talked to Mrs. Moore, he was there looking for something to sell, looking at the boom box. When he first talked to his mom, what did he say? What did he ask her?

A. He asked if she would pawn this for him, and she said, no, and they got in an argument.

Q. Okay, and tell us what else was said.

A. Then Bob said why he wanted to pawn it and stuff, and—

ported at 84 F.3d 1567 (9th Cir.1996).

Q. Did [Bobby] ask her to pawn it or hawk it for anything particular?

A. Yeah, for the gun.

Q. What? For the gun?

A. Yeah, and Bob's mom said she didn't want to do it because she didn't want her name on the papers and he could hurt somebody and she didn't think he needed a gun. But Bob has a way of talking people into things, and so he kind of threw a tantrum and got all mad, and finally his mom said that she would do it.

Q. Said she would do what?

A. Pawn the CD Player.

Q. Did she say she would pawn the CD player for the gun, or just pawn the CD player?

A. *Just pawn the CD player and he would have to figure out a different way of getting the gun because she didn't want her name on the papers.*

Q. That's what he told her; is that correct? *He would have to get someone else to get the gun?*

A. *Yeah.*

(emphasis added).

Mrs. Moore then pawned Bobby's CD player and gave him the cash she received from the transaction. She did so knowing that he intended to use it to purchase a firearm.

The next day, Bobby went looking for someone else to help him acquire the weapon, as suggested by his mother. He took the cash to Wiley's residence to see if Wiley would assist him. The neighborhood knew Wiley as "Grandpa," and he frequently did favors for the neighborhood children. The record reflects that Wiley is a man of limited intelligence. Wiley was neither Bobby's parent nor guardian, nor was he related to him in any respect whatsoever.

Wiley balked at first, but Bobby persisted; and with the promise of money as a sweetener, Wiley relented and agreed to purchase the gun on Bobby's behalf.

Mrs. Moore then drove Wiley, Bobby, and Jason to the pawnshop. During this trip, Wiley asked Mrs. Moore if the purchase of

the gun was all right with her, to which she replied that it was fine.

When the group arrived at the pawnshop, Mrs. Moore waited in the car while Wiley, Bobby, and Jason went inside. Wiley asked the clerk to see the handgun Bobby had spotted on his earlier visit. Because the two boys were present, the clerk inquired for whom Wiley wanted to purchase the gun. Wiley responded that the gun was for Bobby, but that he Wiley was Bobby's grandfather, and that he was going to hold it for Bobby until Bobby was 21 years of age. Both of these statements were false and were intended to facilitate the transaction. On cross-examination, Wiley conceded that the only reason he was in the pawnshop was "to stand in for Bobby to get that gun."

The clerk responded to Wiley's representations with an inquiry about Bobby's parents and whether they knew about this purchase. Bobby said that his mother was outside, and he went to get her. In short order, Mrs. Moore appeared briefly in the doorway and, without prompting by Wiley, said to the clerk, "His grandfather is buying a gun for him. He's going to hold it until he's 21, and everything is fine with me."

Satisfied by Mrs. Moore's representations, the clerk had Wiley sign BATF Form 4473 as the "transferee (buyer)," accepted the cash Bobby had given to Wiley for the transaction, and turned the gun over to Wiley. Back in the car, and contrary to the intentions he expressed to the clerk, Wiley gave the gun to Mrs. Moore, expecting that it would go to Bobby. As Bobby intended from the start, he then took the firearm as his own possession.

Mrs. Moore's reluctance to buy this weapon for her son and to put her name on the papers was well founded, and her worry about Bobby hurting someone with it was prescient. On January 20, 1994, Bobby used it to shoot Ronald Wade Feldner, a New Plymouth, Idaho police officer, in the face. Officer Feldner died, leaving behind a wife and minor children.

## B.

### The False Statement

[1] In 18 U.S.C. § 922(a)(6), Congress made it a federal offense



for any person in connection with the acquisition or attempted acquisition of any firearm or ammunition from a licensed importer, licensed manufacturer, licensed dealer, or licensed collector, knowingly to make any false or fictitious oral or written statement or to furnish or exhibit any false, fictitious, or misrepresented identification, intended or likely to deceive such importer, manufacturer, dealer, or collector with respect to any fact material to the lawfulness of the sale or other disposition of such firearm or ammunition under the provisions of this chapter.

In the same statute, Congress also rendered it illegal for a licensed firearms dealer to sell or deliver "any firearm or ammunition to any individual who the licensee knows or has reasonable cause to believe is less than eighteen years of age," or to sell or deliver a handgun to anyone less than twenty-one years of age. 18 U.S.C. § 922(b)(1). Thus, federal law made Bobby Moore ineligible to purchase a firearm from a federally-licensed dealer.

The government's theory of its case against Wiley, and against Mrs. Moore as an aider and abettor and conspirator, is straightforward and simple. As charged in the indictment and as explained to the jurors in the jury instructions, the government alleges that the true buyer of the .25 caliber handgun was the ineligible Bobby Moore, and that Wiley acted merely as his disguised agent-in the parlance, as a "straw man" purchaser. Thus, goes the government's argument, when Wiley the straw man agent signed his name on Form 4473 as the "transferee (buyer)," he made a false statement because the buyer was not Wiley, but Bobby himself. The manifest materiality of this false statement, says the government, stems from the law's prohibition against Bobby buying a firearm.

The appellants, on the other hand, contend that Mrs. Moore consented to the acquisition of this firearm by Wiley on behalf of her son.

2. At the time this firearm was purchased, Idaho law did not prohibit the sale of a firearm to a minor so long as the minor had the consent of a parent or a guardian. Idaho Code § 18-3302A (1990). Since these events, the Idaho Legislature amended section 18-3302A to require the

They argue here, as they did to the trial court and to the jury, that such consent rendered the sale lawful per se, and accordingly, that any false statements that Wiley and Mrs. Moore made to the clerk were flatly immaterial. To support this argument, the appellants assert that, at the time of sale, transferring firearms to minors was legal in Idaho, so long as the minor's parents gave consent.<sup>2</sup>

The respective positions of the government and the appellants were carefully set forth by the district court in its instructions to the jury:

The government contends that Mary Peggy Moore is not charged with any unlawful transfer of the firearm to her son, but rather is *charged with aiding and abetting Lee Roy Wiley or being a principal in a straw man purchase* of a firearm in the place of the prohibited minor, James Robert Lee Moore, who the government contends was the true purchaser. *The defendant Mary Peggy Moore denies that she participated in a straw man purchase, or that a straw man purchase took place.*

\* \* \* \* \*

[T]he defendants Lee Roy Wiley and Mary Peggy Moore cannot be found guilty of any charge pending against them in this case solely because they may have delivered the firearm to James Robert Lee Moore.

The limited charges against the defendants in Count 1 and 2 are that *James Robert Lee Moore was the true purchaser of the firearm and that the defendants served merely as straw men* for the purchase of the firearm in the place of James Robert Lee Moore.

(emphasis added).

C.

#### The Straw Man Doctrine

[2, 3] The straw man doctrine, which is nothing more than a long-standing construc-

written permission of a parent or a guardian. The Gun Control Act has also been amended to make it illegal for a juvenile to possess a handgun without a parent's or guardian's written consent. 18 U.S.C. §§ 922(x)(1)(A) & 922(x)(3)(A)(iii) (1994).

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tion of the relevant statutes, holds that a person violates section 922(a)(6) by acting as an intermediary or agent of someone who is ineligible to obtain a firearm from a licensed dealer and making a false statement that enables the ineligible principal to obtain a firearm. As we said in *Perri v. Department of the Treasury*, 637 F.2d 1332, 1336 (9th Cir.1981), "sham or 'strawman'" purchases occur "when a lawful purchaser buys for an unlawful one." See *United States v. Lawrence*, 680 F.2d 1126, 1127-28 (6th Cir.1982) (defendants who purchase firearms for ineligible foreign citizens violate section 922(a)(6)); *United States v. Ortiz-Loya*, 777 F.2d 973, 978 (5th Cir.1985) (same). In *Lawrence*, for example, the Sixth Circuit found determinative of straw man status that, like Wiley, the transferee (1) acted under the direction and control of the ineligible buyer, (2) purchased weapons selected by the ineligible buyer with the buyer's money, (3) took a commission that showed agency, and (4) had no intention of keeping the gun for himself. 680 F.2d at 1128; see also *United States v. Howell*, 37 F.3d 1197 (7th Cir.1994) ("The jury was entitled to conclude, beyond a reasonable doubt, that Mrs. Howell was no more than a straw purchaser, an eligible purchaser who is acting as an agent, intermediary, or straw purchaser for someone who is ineligible to purchase the firearm directly.") (internal quotations omitted).

[4] In effect, this doctrine is merely an application of a principle that dates back to the time when the legal profession relied regularly on maxims expressed in Latin to illuminate the law: "Qui facit per alium facit per se," or "He who acts through another acts himself." In this context, it is a construction of the statute that directly serves the primary purpose of the Gun Control Act, which is "to make it possible to keep firearms out of the hands of those not legally entitled to possess them because of age, criminal background, or incompetency." *Barrett v. United States*, 423 U.S. 212, 220, 96 S.Ct. 498, 503, 46 L.Ed.2d 450 (1976) (quoting S.Rep. No. 1501, 90th Cong., 2d Sess. 22 (1968) U.S. Code Cong. & Admin. News 1968 p. 4410).

3. Lawrence died during the pendency of the ap-

D.

## Analysis

In an attempt to avoid the implications of the straw man doctrine, the appellants' sole defense was that Mrs. Moore consented to the purchase, and that because of her consent, Wiley and Mrs. Moore committed no crime, period. The defense argued that Wiley was *her* lawful agent implementing *her* lawful decision; he was not a straw man, and thus, Wiley and Mrs. Moore did not violate the statute. In the defense's view, the grandfather ruse was immaterial and irrelevant.

[5] Whether the defense is correct, of course, depends entirely on the facts. It was for the jury to decide whose agent Wiley was and whether Bobby was the actual buyer of the gun. If the jurors had a reasonable doubt about whether the buyer was Bobby, they would have acquitted. They did not. Read in the light of the indictment and the instructions, the jury verdict establishes conclusively that Bobby was the buyer, not Wiley, and that Wiley was merely Bobby's straw man agent for the purchase. Clearly, the jury attached no factual merit to the claim that Wiley was the buyer of the gun.

The appellants' argument echoes the failed argument of defendant Somogye in the *Lawrence* case.<sup>3</sup> 680 F.2d at 1127. Somogye admitted that he and Lawrence knowingly purchased guns for an individual who could not legally buy them in his own name, but claimed that because they entered the store and paid for the weapons, as a matter of law they did not lie when they registered themselves on the transaction form as the buyers of the weapons. The Sixth Circuit dismissed this now familiar argument as novel, but "specious." *Id.* at 1127. The court explained that:

The foundation of Somogye's argument is that he and Lawrence were not agents of Hajjan but were instead middlemen who purchased the guns for resale to Hajjan. Hence, as principles, they were in fact the buyers of the weapons. *This argument*

peal rendering moot the case against him.

does not, however, conform to the facts of the case. Lawrence and Somogye were at all relevant times acting under the control and direction of Hajjan. They purchased the guns designated by Hajjan and did so with his money. The fixed commission they received further evidenced their role as agents. Therefore Lawrence and Somogye were not buyers and their statements on the forms were false in violation of 18 U.S.C. § 922(a)(6).

*Id.* at 1128 (emphasis added).

In the instant case, the uncontested facts presented to the jury did not as a matter of law establish a defense to the straw man doctrine. Nothing in the statute, the case law, or the rules of statutory construction suggests that a parent can either (1) render an unlawful straw man purchase legal by consenting to it, or (2) override the clear prohibition against making material false statements in a firearms transaction. Appellants ignore the specific rules that apply when someone purchases a firearm from a federally licensed dealer. Their suggestion that Idaho Code § 18-3302A "empowers" a parent to arm a child is misleading and a non sequitur. The fact that Idaho law permits a weapons transfer to a minor under 16 years of age with parental consent does not "empower" a juvenile to purchase a firearm from a federal dealer through an intermediary who falsely identifies himself as the buyer. The gravamen of the charge against Mrs. Moore and Wiley was the allegation that they made a material false statement. The district court properly explained the charge in denying the appellants' motion to dismiss:

The Court: But [parental authority to give a weapon to a child is] not what we are here about. What we are here about is whether or not false statements were made in connection with the purchase of the firearm, and I don't think the government's case against Mrs. Moore is that she got Wiley to purchase it, who gave it to her, who gave it to her son. I don't think that is an offense. The question being, whether or not she aided and abetted, or engaged in an legal [sic] agreement, conspiracy, to violate the federal law which

prohibits false statements in connection with the purchase of the firearm.

There is, of course, ample evidence in the record to support the jury's verdict and their conclusion that Bobby bought the gun for himself through an intermediary. Mrs. Moore turned down Bobby's request to buy the gun for him and refused to go on the papers. She told him he'd have to find someone else. He found Wiley.

Wiley was an archetypical straw man. He was recruited and compensated for his role because Bobby could not buy the coveted firearm and because his mother would not buy it for him. Wiley testified that the boys asked him to do "a favor for them," that they picked it out, and that Bobby gave him the money for it. Wiley's own testimony is dispositive of his role as a straw man purchaser in this matter:

(By Mr. Lindquist)

Q. Okay. You knew that—you knew why they were asking you to buy the gun, didn't you?

(By Wiley)

A. Yes, I did.

Q. You knew what Bobbie [sic] was asking you to buy the gun, didn't you?

A. What [sic] he wanted to own a gun, as far as I know.

Q. Bobbie wanted a gun?

A. That's right.

Q. And you knew that the reason that they were asking you was because Bobbie couldn't buy that himself, correct?

A. Well, that sounds about right.

Q. And so they were asking you, Bobbie was asking you to buy it in his place, right?

A. Yeah, as far as I know, yeah.

\* \* \* \* \*

Q. So the person that was really getting that gun was Bobbie, wasn't it?

A. That's right.

Q. And you knew that, didn't you?

A. Yes, I did.

Q. And you knew that the only reason you were there, the only reason that they

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came to you was because Bobbie couldn't get it on his own?

A. That sounds about right.

Q. You weren't interested in getting a gun that day, were you, Mr. Wiley?

A. No, I wasn't.

\* \* \* \* \*

Q. The only reason that you were there that day was to stand in for Bobbie to get that gun, correct?

A. That sounds about right.

(emphasis added). Wiley's involvement in the transaction is the smoking gun that proves both the illegality of this purchase and the existence of the conspiracy. Under the circumstances and given the jury's verdict, Mrs. Moore's words spoken in the pawnshop in support of the grandfather ruse serve primarily to connect her both to the false statement offense and to the conspiracy, rather than to provide the appellants with a defense. In her cameo appearance in the pawnshop's doorway, she did not reveal what was actually happening. Instead, she lied about the transaction in progress, and by so doing, purposefully enabled Wiley to make a material false statement on BATF Form 4473 and thereby consummate an illegal purchase. Her precise misrepresentation about Wiley's status as Bobby's grandfather and about who was going to control the weapon can hardly be called "consent." What the record demonstrates that she said and did does not square with the appellants' characterization of it. Thus, the appellants' argument that the evidence is insufficient to sustain these verdicts is demonstrably without merit.

In conclusion, we borrow again from the Sixth Circuit in *Lawrence*:

The result we reach here is necessary if the intentions of Congress as revealed in the Gun Control Act of 1968 are to be followed. If sales such as this one were insulated from the law's registration provisions, the effect would be tantamount to a repeal of those provisions. Other courts have upheld convictions for gun registra-

tion violations predicated on sham transactions and we must do so here.

680 F.2d at 1128.

## II

### The Instructions on Materiality

[6] Moore and Wiley argue that the district judge violated the *Gaudin* rule through its instruction to the jury. See *United States v. Gaudin*, — U.S. —, 115 S.Ct. 2310, 132 L.Ed.2d 444 (1995) (holding that the materiality of a false statement is a matter for the jury to decide). Specifically, they challenge the judge's instruction that:

If the government establishes by proof beyond a reasonable doubt that James Robert Lee Moore was the true purchaser of the handgun and that Lee Roy Wiley was not, then the government has established that Lee Roy Wiley made a material false statement in connection with the purchase of the firearm. But I want you to keep in mind the making of a material false statement is just one of the elements of an offense, and I described those elements to you in the earlier instructions.

Jury Instruction No. 14 (excerpt). Because the defense lodged no objection on *Gaudin* grounds to this instruction, we review for plain error pursuant to Federal Rule of Criminal Procedure 52(b).

*Gaudin* involved allegations of criminal false statements on federal loan documents in violation of 18 U.S.C. § 1001. The problem in *Gaudin* arose because the district court handled the issue of the materiality of the alleged false statements—which is an element of the crime—as a matter for the court to decide, not the jury. Unlike the instant case, the trial court instructed the jury that "[t]he issue of materiality . . . is not submitted to you for your decision but rather is a matter for the decision of the court. You are instructed that the statements charged in the indictment are material statements." — U.S. at —, 115 S.Ct. at 2313.

[7] The Supreme Court held that such an approach to the issue and such an instruction violated both the Fifth and the Sixth Amendments to the United States Constitution, which together "require criminal convictions

to rest upon a *jury* determination that the defendant is guilty of every element of the crime with which he is charged, beyond a reasonable doubt." *Id.* at —, 115 S.Ct. at 2313 (emphasis added). The Court concluded by saying that "[t]he trial judge's refusal to allow the jury to pass on the 'materiality' of Gaudin's false statements infringed that right [to have a jury decide]." *Id.* at —, 115 S.Ct. at 2320. The rule of this circuit is that if such a constitutional error occurs, it is both "structural" and "plain" and therefore requires reversal. *United States v. Gaudin*, 28 F.3d 943, 952 (9th Cir.1994), *aff'd*, — U.S. —, 115 S.Ct. 2310, 132 L.Ed.2d 444 (1995).

[8] The question we must answer, therefore, is whether the instruction of which the defendants complain withheld the element of materiality from the jury in violation of *Gaudin's* rule. Our answer is that it did not.

Unlike in *Gaudin*, here the court did not withhold the materiality element from the jury. The court expressly instructed the jury that materiality was an element of the charged offense, and that the government had to prove it beyond a reasonable doubt:

In order for a defendant to be found guilty of [making a false statement], the government must prove each of the following four elements beyond a reasonable doubt: . . . ; and third, *that the statement was intended or likely to deceive the firearms dealer with respect to a fact material to the lawfulness of the sale; . . .* If you find that the government has established each of the foregoing elements against a defendant by proof beyond a reasonable doubt, your verdict should be one of guilty against that defendant on this Count 2.

If you find that the government has not established all or any of the four elements by proof beyond a reasonable doubt against a defendant, your verdict should be one of not guilty on Count 2 against that defendant.

(emphasis added). The court also instructed the jury that "[t]he burden is always upon the government to prove guilt by proof beyond a reasonable doubt."

It is also noteworthy that when the court discussed the instructions with counsel before reading them to the jury, no one objected that the instruction now complained of violated the *Gaudin* rule, a rule established first by a three-judge panel of this court on June 22, 1993 and then affirmed en banc on June 21, 1994, more than two months before the trial. Moreover, the district court offered to enhance the instructions on the materiality element by giving an additional instruction offered by Mr. McCabe, counsel for Mr. Wiley, but Mr. McCabe withdrew the instruction. The exchange between court and counsel during this conference sheds light on this issue:

Mr. McCabe: The [instruction] I offered was number twelve, which is Devitt and Blackmar, and it says it is material if it is relevant to the decision and is capable of influencing them, and what I'm concerned with there is *if we leave it wide open like that, even though being a grandparent is not truly material to the transaction, they might decide that the false statement that was material was saying that he was his grandfather.*

The Court: I'm willing to give your number twelve.

Mr. McCabe: I will withdraw it at this time.

The Court: All right. Any other exceptions/failure to give, Mr. McCabe?

Mr. McCabe: I don't believe so, judge.

(emphasis added).

Mr. Nevin, counsel for Mrs. Moore, also addressed Instruction No. 14 in this conference, and he too did not object on *Gaudin* grounds. What he said about the disputed language was not that it withdrew the materiality element from the jury's consideration, but that it was "a comment on the evidence."

From these exchanges and from the transcript of the proceedings, it is clear that no one believed during the trial that the disputed instruction withdrew the hotly disputed element of materiality from the jury.

The *Gaudin* issue arose for the first time in a motion for a new trial after the chosen defense had failed. Counsel for Mr. Wiley argued to the court that "materiality is al-

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ways an issue that needs to be submitted to the jury . . .," to which the court responded, "I did submit it to the jury." To prove his point, the court then read the same instructions to counsel previously quoted in this opinion. Counsel's response was.

I understand, Judge. I concede all of those things. In terms of—and in fact you went further. When the jury came out with a question, you gave them an answer that included, yet again, an instruction to them that the government had to prove beyond a reasonable doubt that, quote, "That the alleged statement was of a nature material to the lawfulness of the sale." I concede all of that, judge.

Nevertheless, counsel made the same point that they make here, namely that the language in Instruction 14 had the effect of withdrawing consideration of this element from the jury's consideration. The court discussed the matter with counsel and then disagreed, denying the motion for a new trial. The record viewed as a whole supports the court's conclusion: the question of materiality remained with the jury.

[9] This leaves us, however, with the question of whether the jurors were misled or confused by the disputed language in Instruction No. 14. They were not. During deliberations they sent a question to the judge inquiring about the interplay in the instructions between intent and materiality. This is the question:

Count 2—Third Element [materiality], Instruction # 11.

"That the statement was intended or likely to deceive the firearms dealer. . . ." Does the "intention" and "likely to deceive" both need to be met in this element or just one met for this element to be satisfied.

[signed]

One can conclude from this question only that the jury understood that the element of materiality was theirs to decide, and that they were attempting to decide it. There is no sign they believed or did otherwise.

More importantly, however, when the court answered the jurors' question, he told

them again that this essential element was on *their* table for decision:

In response to your question, you are advised that the government has the burden of proving beyond a reasonable doubt that the Defendant under consideration knowingly and wilfully made, or aided and abetted the making of a false statement. The government must also prove beyond a reasonable doubt that the defendant knew the alleged statement was false. *The government must also prove beyond a reasonable doubt that the defendant intended his or her statement to deceive a firearms dealer and that the alleged statement was of a nature material to the lawfulness of the sale and that the alleged statement was of a nature which would deceive the dealer or would likely deceive the dealer.*

. . . This Instruction sets forth four separate elements which the government must prove beyond a reasonable doubt.

(emphasis added). If the earlier statement in Instruction 14 might have been a problem, this certainly cured it.

Thus, when we view the instructions "as a whole in the context of the entire trial to determine if they were misleading or inadequate to guide the jury's deliberation," *United States v. Perez*, 989 F.2d 1111, 1114 (9th Cir.1993), we see clearly that they do not suffer from this defect.

[10] There is an explanation, of course, for Mr. McCabe's withdrawal of his enhanced materiality instruction, as well as for both counsels' disinclination to get too close to the materiality issue as framed by the prosecution. As Mr. McCabe candidly admitted at oral argument before the three-judge panel, he did not want the jury precisely to focus on the materiality of the admittedly false statements made by Mr. Wiley for fear that such a focus would distract the jury from the substance of the defense, which as described earlier in this opinion, was that *none* of the statements made by Wiley and Mrs. Moore could qualify as material false statements because no crime was being committed in that Mrs. Moore approved of the purchase. As Mr. Nevin says in his excellent brief,

As we argue above, Idaho law protected the right of *any* third party to give a gun to a child of *any* age, with the parent's permission. Thus the statements that Mr. Wiley was Bobby's grandfather, and that the gun would be held until Bobby turned 21, were in no way "material to the lawfulness of the sale."

(emphasis in original). This tracks exactly the argument Mr. Nevin made to the jury at the end of the case, demonstrating also that everyone involved in the trial considered the materiality element to be in play and not to have been preempted by the court. In fact, materiality was the essence of both defendants' defense. With this in mind, it is pellucid beyond a reasonable doubt that the court's disputed statement in Instruction No. 14 read in context and measured against (1) the evidence, (2) the substance of the defense, and (3) the verdict, was completely harmless. See *Perez*, 989 F.2d at 1115-1116 (holding that jury instructions were harmless beyond a reasonable doubt where the jury was told that "carrying"—for purposes of establishing the offense of carrying a firearm in relation to a drug trafficking offense—was shown conclusively if the firearm was within the defendant's reach). In context, the error, if any, certainly was not "plain," and the disputed instruction did not affect any substantial rights. See *United States v. Olano*, 507 U.S. 725, 732, 113 S.Ct. 1770, 1776-77, 123 L.Ed.2d 508 (1993).

### III

#### The Constitutionality of the Gun Control Act

Prior to trial, the appellants unsuccessfully moved to dismiss the indictment on the ground that 18 U.S.C. §§ 922(a)(6) and (b)(1) are constitutionally vague. They argued that these sections fail to give adequate and fair notice to a person of ordinary intelligence that certain conduct is unlawful. See *Grazned v. City of Rockford*, 408 U.S. 104, 108, 92 S.Ct. 2294, 2298-99, 33 L.Ed.2d 222 (1972). We review this claim de novo, and we conclude that it has no merit.

[11] The plain language of section 922(b)(1) unmistakably renders a juvenile in-

eligible to buy a firearm from a federally licensed dealer. Section 922(a)(6) makes it a crime to make any false statement in connection with such a purchase. Any ordinary person of reasonable intelligence reading these sections could not help but understand that they prohibit sham straw man transactions designed to obtain a gun for an ineligible juvenile.

[12] The Fifth Circuit rejected an analogous argument that section 922(a)(6) was constitutionally vague as applied to a straw transaction in *United States v. Brooks*, 611 F.2d 614, 617 (5th Cir.1980), *overruled on other grounds*, *United States v. Henry*, 749 F.2d 203 (5th Cir.1984). In *Brooks*, a gun dealer was convicted for an illegal straw sale to a nonresident. The court found the statute's ban on the knowing "sale" to a nonresident to be a sufficiently definite warning of the conduct proscribed by application of the straw transaction doctrine. The court found that the words "sell or deliver . . . to any person who . . . does not reside in the State" gave fair notice that the defendant could not make a sham sale where he knows the ultimate recipient is a nonresident. 611 F.2d at 617.

Here, section 922(b)(1) reads that it shall be unlawful for firearms dealers "to sell or deliver . . . to any individual who . . . is less than eighteen years of age." Under the reasoning of *Brooks*, this practically identical language makes it reasonably clear that sham transactions designed to procure a gun for a minor are unlawful. If Wiley was therefore sufficiently warned that the sham transaction he engaged in was an illegal sale to *Bobby*, he can be charged with the requisite knowledge that his answer on the form was deceitful. See *United States v. Crooks*, 804 F.2d 1441, 1448 (9th Cir.1986), (holding that signature on tax form was sufficient to show knowledge that false statements on return were, in fact, false), *modified*, 826 F.2d 4 (9th Cir.1987).

Appellants reintroduce Idaho Code § 16-3302A (1990) into their void-for-vagueness argument. They claim that the vagueness of the federal statute's ban on straw sales to minors is "compounded" by the Idaho law's sanction of sales and transfers of firearms to

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minors under 16 with their parent's permission. As discussed earlier in Part I, Idaho law has no "empowering" effect that alters federal law on the prohibition of the straw sale of firearms to minors. Appellants state that a reasonably intelligent person would be confused about the interplay of federal and Idaho law here, but they cite no authority to reinforce their theory that state law can unconstitutionally "compound" the vagueness of federal law. In this regard, we find the holding of the Supreme Court in *United States v. Powell* to be instructive:

The fact that Congress might, without difficulty, have chosen "[c]learer and more precise language" equally capable of achieving the end which it sought does not mean that the statute which it in fact drafted is unconstitutionally vague. *United States v. Petrillo*, 332 U.S. 1, 7, 67 S.Ct. 1538, 1541-42, 91 L.Ed. 1877 (1947).

423 U.S. 87, 94, 96 S.Ct. 316, 321, 46 L.Ed.2d 228 (1975). In *Village of Hoffman Estates v. Flipside, Hoffman Estates, Inc.*, the Supreme Court declared:

"[V]agueness challenges to statutes which do not involve First Amendment freedoms must be examined in the light of the facts of the case at hand." [citations omitted]. "One to whose conduct a statute clearly applies may not successfully challenge it for vagueness." *Parker v. Levy*, 417 U.S. 733, 756, 94 S.Ct. 2547, 2562, 41 L.Ed.2d 439 (1974). The rationale is evident: to sustain such a challenge, *the complainant must prove that the enactment is vague "not in the sense that it requires a person to conform his conduct to an imprecise but comprehensive normative standard, but rather in the sense that no standard of conduct is specified at all."* *Coates v. City of Cincinnati*, 402 U.S. 611, 614, 91 S.Ct. 1686, 1688, 29 L.Ed.2d 214 (1971). Such a provision simply has *no core*." *Smith v. Goguen*, 415 U.S. 566, 578, 94 S.Ct. 1242, 1249, 39 L.Ed.2d 605 (1974).

455 U.S. 489, 495 n. 7, 102 S.Ct. 1186, 1191 n. 7, 71 L.Ed.2d 362 (1982) (emphasis added). Here, the extension of the prohibition against the "sale" of firearms to minors to also include straw man purchases for minors is not standardless; it delegates no policy matters

to policemen and juries, and most important, it is normatively comprehensible.

The record shows that both Mrs. Moore and Wiley understood their respective legal obligations in this case, even though they unlawfully sought to work around them. Mrs. Moore knew full well that a purchaser's name went on "papers" and that fulfilling that role entailed grave responsibilities she did not want. Wiley, too, was aware of the unlawful nature of his conduct. He clearly appreciated the legal problems associated with arming a juvenile and used a ruse about his relationship with Bobby to circumvent them. When the clerk tried vainly to warn Wiley, who was employed as a private security guard, about the danger of putting even a supervised firearm in the hands of a juvenile and about the "trouble" that could ensue, Wiley's dismissive response was, "I know the law."

In short, we discern no arbitrary or unfair application of the Gun Control Act in this case, an Act clear on its face and in its impact with respect to false statements and juveniles.

#### IV

##### Acceptance of Responsibility

Mrs. Moore contends that the trial court erred by not granting her a two-point reduction in offense level for acceptance of responsibility. She correctly points out that by putting the government to its proof she did not foreclose such a reduction. U.S.S.G. § 3E1.1, comment., n. 2 ("In rare situations a defendant may clearly demonstrate an acceptance of responsibility for [her] criminal conduct even though [she] exercises [her] constitutional right to a trial.>").

[13] The presentence report recommended denying such a reduction, pointing to Mrs. Moore's initial lies to law enforcement about her involvement in the acquisition of the firearm and to her denials post-trial that she told the clerk Wiley was her son's grandfather and that he would hold the gun until Bobby was 21. The district court agreed with the presentence report and found that her situation was not the rare one justifying such a benefit.



[14] The findings of a sentencing judge as to acceptance of responsibility are entitled to considerable weight. *United States v. Scarano*, 975 F.2d 580, 587 (9th Cir.1992). We review such a denial under the "clearly erroneous" standard. *Id.* We do not perceive any defect in the district court's decision in this case. We note that Wiley was awarded such a reduction, but that the trial court determined that Mrs. Moore's conduct did not measure up to the required standard. Such a holding was not clearly erroneous.

AFFIRMED.

TASHIMA, Circuit Judge, with whom PREGERSON and REINHARDT, Circuit Judges, join, dissenting:

For the reasons set forth in the panel majority's opinion, *United States v. Moore*, 84 F.3d 1567 (9th Cir.1996) ("*Moore I*"), I dissent. The majority errs in several major respects. I briefly address these errors *seriatim*.

### 1. Mrs. Moore's Consent

First, the majority refuses to recognize that the uncontradicted evidence establishes that Mrs. Moore consented to her son's purchase of the handgun. That she did consent is demonstrated by "The Facts," Part I.A., *Op.* at 1459, of the majority opinion. According to Bobby's friend, Jason: "But Bob has a way of talking people into things, and so he kind of threw a tantrum and got all mad, and finally his mom said that she would do it." (Emphasis added.) What Mrs. Moore agreed to do was to pawn the CD player.<sup>1</sup> Bobby "would have to figure out a different way of getting the gun because she didn't

1. This action, of pawning the CD player with the foreknowledge of what the money would be used for, also demonstrates Mrs. Moore's consent. Indeed, as a minor, Bobby could not pawn the CD player himself. That is why he importuned his mother to pawn the CD player for him. In the eyes of the law, both the CD player and the money obtained from pawning it belonged to Mrs. Moore.

2. Moreover, as the panel opinion pointed out, Mrs. Moore's conviction for aiding and abetting could not be sustained, unless she acted "knowingly and intentionally," *i.e.*, that she consented

want her name on the papers." As her later actions demonstrate, this was not a prohibition from Bobby purchasing the gun, it was only Mrs. Moore's refusal to have "her name on the papers." For, as the majority's summary of the facts next states:

Mrs. Moore then pawned Bobby's CD player and gave him the cash she received from the transaction. She did so knowing that he intended to use it to purchase a firearm.

The next day, Bobby went looking for someone else to help him acquire the weapon, as suggested by his mother.

*Op.* at 1459 (emphasis added). As the majority further states, "Mrs. Moore then drove Wiley, Bobby, and Jason to the pawnshop." During that trip, she told Wiley that the purchase of the gun "was all right with her," "it was fine." Finally, Mrs. Moore told the pawn shop clerk, "everything is fine with me."<sup>2</sup>

Mrs. Moore consented to Wiley's purchase of the handgun for Bobby.<sup>3</sup> Short of purchasing the weapon herself, there was little else that Mrs. Moore could have done to facilitate the transaction.

### 2. The Parental Consent Exception

The majority's second error is to ignore Mrs. Moore's consent and, thus, the central issue in this case—the scope of the parental consent exception. The majority ignores Mrs. Moore's consent to the sale because it does not want to deal with the consequences of recognizing it.

Even the Bureau of Alcohol, Tobacco and Firearms ("BATF") agrees that Congress in-

to the transaction. *Moore I*, 84 F.3d at 1573 n. 6.

3. The majority's summary of the facts also shows that Wiley, after purchasing the firearm, did not hand the gun to Bobby, but "gave the gun to Mrs. Moore...." *Op.* at 1460. Thus, not only did Mrs. Moore consent to the purchase of the firearm, according to the majority's summary of the facts (i) the firearm was purchased with her money, (ii) she authorized Wiley to conduct the transaction, (iii) after purchasing the firearm, Wiley handed it to Mrs. Moore, and (iv) it was Mrs. Moore who actually handed over physical possession of the firearm to her son.

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tended that guns purchased for juveniles by their parents be excepted from the Gun Control Act's ("GCA") prohibition, and has administered the GCA to recognize such an exception.<sup>4</sup> However, the BATF would limit that exception to transactions in which the parent herself or himself is the purchaser—the "Transferee (Buyer)."

As the panel opinion makes clear, there is no justification in the legislative history to construe the parental consent exception as narrowly as does the BATF, particularly when construing a criminal statute. For the reasons stated in Parts III and IV of the panel opinion, *Moore I*, 84 F.3d at 1571-73, the majority errs in failing to recognize Congress' intent that under the GCA, a parent may validly consent to the purchase of a gun for her minor child without being the physical purchaser.

Congress simply did not intend to criminalize acquisition of firearms by minors where the parent knows of and consents to the purchase.

The report of the Senate Judiciary Committee on the GCA listed among the serious national problems addressed by the legislation the acquisition of firearms by "juveniles without the knowledge and consent of their parents or guardians . . ." S.Rep. No. 1097, 90th Cong., 2nd Sess. (1968), reprinted in 1968 U.S.C.C.A.N., 2112, 2114 (emphasis added). The report elaborated:

The *clandestine* acquisition of firearms by juveniles and minors is a most serious problem facing law enforcement and the citizens of this country. The controls proposed in the title are designed to meet this problem and to substantially curtail it.

*Id.* at 2167 (emphasis added).

The committee report made clear that Congress did not intend to frustrate all gun acquisitions by minors:

4. No party has cited and the court has not found any reported case in which a straw purchaser has been prosecuted for buying a firearm for a juvenile where the straw purchaser is a parent or other close relative of the juvenile.

[U]nder the title, a minor or juvenile would not be restricted from owning or learning the proper usage of the firearm, since any firearm which his parent or guardian desired him to have could be obtained for the minor or juvenile by the parent or guardian.<sup>5</sup>

*Id.*

There is no indication that Congress intended to limit the exception for the purchase of a firearm for a minor exclusively to purchases made by the parent himself or herself. What the legislative history indicates is that Congress considered parental permission sufficient to allow a third party to purchase the firearm on behalf of a minor. The Senate Judiciary Committee's report clearly indicates that Congress' purpose was only to prohibit those acquisitions of firearms by minors that are "clandestine" or made "without the knowledge and consent of their parents."

*Moore I*, 84 F.3d at 1571-72 (footnote omitted).

### 3. *The Jury's Finding*

The majority also errs in pretending that the pivotal issue was fairly presented to and decided by the jury. The majority sets up a straw man and knocks it down. Under the majority's hypothesis, the issue, which "was for the jury to decide," was whether Wiley was Mrs. Moore's agent or Bobby's agent. Part I.D., *Op.* at 1461. That, of course, is not the issue.

As the instructions quoted by the majority show, if Bobby was the "true" purchaser, defendants were guilty as straw purchasers:

The limited charges against the defendants in Count 1 and 2 are that James Robert Lee Moore was the true purchaser of the firearm and that the defendants served merely as straw men for the purchase of the firearm in the place of James Robert Lee Moore.

5. The transaction at issue here meets this description—the firearm was "obtained for the minor" by Mrs. Moore through the arrangements that were made with Wiley with her substantial assistance and consent.

Part I.B., *Op.* at 1460. This instruction completely foreclosed the jury from finding that defendants were not guilty under the parental consent exception, if the jury found that Mrs. Moore had consented to Bobby's purchase of the handgun. Thus, it is disingenuous to say that the issue was submitted to the jury for its determination.

#### 4. No False Statement

According to the government's theory of the case, the only material false statement made was made by Wiley when he signed the BATF form stating that he was the "transferee (buyer)."<sup>6</sup> This statement was false, according to the government, because Bobby was the "true" purchaser and Wiley was a "straw man." However, even under this theory, under the BATF's own interpretation of what its own forms and regulations require, Wiley was *required* to state that he was the "transferee (buyer)."

According to the testimony of BATF Special Agent Sterling Nixon, when a parent purchases a gun for her child, even with the child's own money, she is *required* to list her own name as the "transferee (buyer)."<sup>7</sup> BATF Form 4473 simply is not designed to accommodate a straw purchase, whether or not it is lawful.<sup>8</sup> There was no place on the form where Wiley could have disclosed that he intended immediately to transfer the gun to Mrs. Moore, for eventual transfer to Bobby. Wiley did not make a false statement. He was, in fact, the "transferee (buyer)" and listed himself as such. Because he fully com-

6. The majority never precisely identifies the material false statement charged in this case; however, the government made clear at oral argument that the *only* statement it was relying on as false *and material* was Wiley's identifying himself as the transferee (buyer). This is confirmed by the materiality instruction quoted by the majority. Part II, *Op.* at 1463-64.

Throughout its opinion, the majority implies that Wiley's statements that he was Bobby's grandfather, and that he would hold the firearm until Bobby was 21 were material. However, they clearly were not material to the lawfulness of the sale. First, no one contends that the GCA authorizes a grandparent to act as a straw purchaser for his minor grandchild (absent a parent's consent). Second, neither does anyone contend that a minor may purchase a handgun if he promises that an adult will retain possession of it until he turns 21.

plied with the requirements of the BATF form and the form nowhere required disclosure of the "straw" aspect of the transaction, Wiley did not make a false statement by listing himself as the "transferee (buyer)," unless that action were criminalized by the "straw man" doctrine, discussed below.

Further analysis of the BATF's design<sup>9</sup> and administration of its Form 4473 demonstrates the "Catch 22" in which straw purchasers are placed. According to BATF Agent Nixon's testimony, straw purchasers are required to list themselves as the "transferee (buyer)," even though they are standing in for the "true" purchaser, *e.g.*, where a parent is purchasing a firearm for her child. Thus, in the BATF's view, straw purchasers are required to make a false statement. The BATF then, in its discretion, determines whether or not that false statement is material, *i.e.*, whether or not Congress intended that transaction to be exempted from the BATF's "true" purchaser requirement. Whatever the merits of such an administration of the GCA for regulatory purposes, it is hardly a fair way to administer the criminal law.

#### 5. The Straw Man Doctrine

Although not directly acknowledging it, the majority seems to recognize that the "straw man" doctrine is a judicially-created gloss on the GCA—it imposes criminal liability where there is none under a plain, strict reading of

7. Agent Nixon further testified that this required listing of the parent's name as transferee (buyer) would be true even if the parent intended immediately to transfer the firearm to her child, and that it would not be a false statement.

8. As noted in the panel opinion, not all straw transactions are illegal. *Moore I*, 84 F.3d at 1570. The paradigmatic straw transaction is, of course, the legal stand-in of a parent for her or his minor child.

9. The contents of the form are controlled by the BATF. See 27 C.F.R. §§ 178.21 (authorizing Director of BATF to prescribe forms), 178.124(f) (prescribing contents of Form 4473). Presumably, therefore, the BATF could require straw purchases, including those for minors with parental consent, to be disclosed on the form. Apparently, it has elected not to do so.

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the statute. We agree that it is a proper and useful doctrine. See *Moore I*, 84 F.3d at 1571. Where the majority errs, however, is in the doctrine's application, in deferring to the BATF to dictate its scope in construing the parental consent exception, when the BATF's construction is clearly at odds with Congress' intent. See *Moore I*, 84 F.3d at 1572-73 (Part III).

The application of the straw man doctrine to this case is bizarre and perverse. Mrs. Moore has been convicted of having aided and abetted the acquisition of a firearm by her son. Under 18 U.S.C. § 2, she is liable "as a principal." But, as a principal, as even the government concedes, she had the right to purchase a firearm for her son. Thus, she stands convicted of having aided and abetted an offense for which she could not have been convicted of as a principal.

The majority concludes its defense of applying the straw man doctrine to this case by borrowing from the Sixth Circuit:

The result we reach here is necessary if the intentions of Congress as revealed in the Gun Control Act of 1968 are to be followed.

*United States v. Lawrence*, 680 F.2d 1126, 1128 (6th Cir.1982)(emphasis added). The majority, however, has pointed to no such intent. Application of the straw man doctrine here does not follow "the intentions of Congress." No reported case has ever applied the straw man doctrine to criminalize the sale of a gun to a minor with a parent's consent. As we have demonstrated, Congressional intent compels exactly the opposite conclusion. The majority's novel application of that doctrine to this case does violence to the intent of Congress.

This court should not default to the BATF, or any other Executive Branch agency, the power to construe our criminal laws in derogation of the intent of Congress. Congress did not intend to criminalize the sale of a firearm to a minor; where the sale is made with the consent of the minor's parent. If, as it should be, the underlying transaction is seen as one within the parental consent exception, then the sale was lawful and any false statement made to facilitate it could not have been of "any fact material to the lawful-

ness of the sale," within the meaning of 18 U.S.C. § 922(a)(6).

For these reasons, I would reverse the convictions. I respectfully dissent.



**BUDGET RENT-A-CAR, INC., Plaintiff-Counter-Defendant-Appellant,**

v.

**George HIGASHIGUCHI; Sharon Higashiguchi, Defendants-Counter-Claimants-Appellees,**

v.

**Alan STAUBER and Tammie Deponte, Defendants.**

Nos. 94-15932, 94-16510.

United States Court of Appeals,  
Ninth Circuit.

Argued and Submitted May 9, 1996.

Submission Deferred Jan. 21, 1997.

Resubmitted March 19, 1997.

Decided March 31, 1997.

Self-insured car lessor sought declaratory judgment that it had no duty defend or indemnify lessee and passenger against possible claims by assault victims. The United States District Court for the District of Hawaii, Samuel P. King, J., 849 F.Supp. 743, dismissed for lack of diversity jurisdiction. Lessor appealed. The Court of Appeals, Canby, Circuit Judge, held that potential tort liability of lessee and passenger satisfied amount in controversy necessary for diversity jurisdiction.

Reversed and remanded.

**1. Federal Courts ⇨776**

Dismissal for lack of subject matter jurisdiction is reviewed de novo.