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UNITED STATES DISTRICT COURT
DISTRICT OF MAINE

SURFCAST, INC,)
Plaintiff,) Case No.
v.) 2:12-CV-00333-DBH
MICROSOFT CORPORATION,)
Defendant.)

Deposition of KLAUS LAGERMANN
Washington D C
Thursday, June 27, 2013
9:05 a.m.

Reported by:
Donna Marie Lewis, RPR, CSR
Job No.: 1686712

Pages: 1 - 255

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UNITED STATES DISTRICT COURT
DISTRICT OF MAINE

SURFCAST, INC,)
Plaintiff,) Case No.
v.) 2:12-CV-00333-DBH
MICROSOFT CORPORATION,)
Defendant.)

Deposition of KLAUS LAGERMANN, held at
the Offices of DLA Piper, LLP, 500 Eighth Street,
NW, Washington, D C 20004, pursuant to Notice,
before Donna Marie Lewis, Registered Professional
Reporter and Notary Public of and for the District
of Columbia.

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A P P E A R A N C E S

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MICROSOFT
YNGVE D. ROENNIKE, INTERPRETER
SCOTT SMITH, VIDEOGRAPHER

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I N D E X

WITNESS:

KLAUS LAGERMANN

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P-R-O-C-E-E-D-I-N-G-S

THE VIDEOGRAPHER: My name is Scott 09:07:10
Smith representing Veritext, Mid Atlanta Region. 09:07:12
The date today is June 27, 2013 and the time is 09:07:15
9:07 a.m. The deposition is being held in the 09:07:20
office of DLA Piper LLP, 500 8th Street, 09:07:22
Northwest, Washington, D C 20004. The caption of 09:07:28
this case is SurfCast vs Microsoft Corporation in 09:07:33
the District Court of Maine; Case 09:07:39
Number 2:12-CV-00333-DBH. The name of the witness 09:07:47
is Klaus Lagermann. 09:07:59

At this time the attorneys will identify 09:08:01
themselves and the parties that they represent, 09:08:05
after which our court reporter, Donna Lewis 09:08:05
representing Veritext Mid Atlanta Region will 09:08:12
swear in the witness and we can proceed. 09:08:16

MR. MICALLEF: This is Joe Micallef, 09:08:18
along with my associate Wonjoo Suh with Sidley 09:08:18
Austin, representing Microsoft Corporation. 09:08:22

MS. QUAN: Stacy Quan, in-house counsel 09:08:28
at Microsoft. 09:08:29

MR. HEINTZ: James Heintz from DLA Piper 09:08:34
representing SurfCast Inc. as well as 09:08:38
Mr. Lagermann. 09:08:40

1	Whereupon,	09:08:40
2	KLAUS LAGERMANN,	09:08:40
3	after having been first duly sworn by	09:08:40
4	the Notary Public was examined and	09:08:40
5	testified as follows:	09:08:51
6	Whereupon,	09:09:16
7	YNGVE ROENNIKE,	09:09:16
8	after having been first duly sworn by	09:09:16
9	the Notary Public as the interpreter in	09:09:16
10	this matter testified as follows:	09:09:16
11	THE COURT REPORTER: Will the translator	09:09:16
12	identify himself on the record?	09:09:16
13	MR. ROENNIKE: Yngve Roennike. I	09:09:26
14	represent --	09:09:26
15	THE VIDEOGRAPHER: Can we begin again?	09:09:35
16	MR. ROENNIKE: I represent the company	09:09:39
17	that I've actually not worked for before. It is	09:09:41
18	called Global -- I'm sorry. All I have is Global	09:09:51
19	TI. It is a Florida company.	09:10:05
20	MR. MICALLEF: Thank you.	09:10:09
21	EXAMINATION ON BEHALF OF MICROSOFT	09:10:09
22	BY MR. MICALLEF:	09:10:12
23	Q Good morning, Mr. Lagermann?	09:10:13
24	A Good morning.	09:10:15
25	Q Would you please state your full name	09:10:17

Page 7

1	and residence address for the record?	09:10:18
2	A Yes. My name is Klaus Lagermann. I	09:10:20
3	live in Stockholm Gade Number 19, in Copenhagen.	09:10:23
4	Q Mr. Lagermann, have you ever been	09:10:30
5	deposed before?	09:10:32
6	A No, I have not.	09:10:33
7	Q You understand you are under oath?	09:10:34
8	A I understand.	09:10:35
9	Q Have you ever testified in court before?	09:10:36
10	A Yes, I have.	09:10:39
11	Q Can you tell me under what circumstances	09:10:41
12	you have testified in court?	09:10:43
13	A It was an employment case where I	09:10:45
14	witnessed.	09:10:47
15	Q How long ago was that?	09:10:50
16	A It must have been perhaps 20 years ago,	09:10:55
17	around that.	09:10:58
18	Q Are you on any medication that might	09:11:00
19	affect your ability to answer questions?	09:11:03
20	A No. I do take some blood pressure pills	09:11:05
21	but they should not affect me.	09:11:10
22	Q So I guess you understand that I'm going	09:11:13
23	to ask you a number of questions. You are	09:11:15
24	obligated to answer as best you can. Do you	09:11:18
25	understand that?	09:11:21

Page 8

1	A	Yes, I understand.	09:11:21
2	Q	I think I -- hopefully, we can agree to	09:11:22
3		do this in a very clear manner so the court	09:11:24
4		reporter doesn't get mad at one or both of us?	09:11:27
5	A	I hope so too.	09:11:31
6	Q	Okay. And can we also agreed that if	09:11:32
7		you don't understand something in my question you	09:11:35
8		will let me know?	09:11:37
9	A	Yes.	09:11:38
10	Q	Great. Can you tell us about your	09:11:39
11		educational background?	09:11:41
12	A	Education. I went to Copenhagen	09:11:43
13		Business School and I have a degree in economics.	09:11:49
14	Q	When was that? When did you graduate	09:11:56
15		from Copenhagen?	09:11:59
16	A	I graduated in 1983.	09:12:01
17	Q	Do you have any other formal degrees?	09:12:05
18	A	No.	09:12:08
19	Q	Do you have any informal training?	09:12:10
20	A	You mean courses or --	09:12:19
21	Q	Yes.	09:12:21
22	A	Or stuff like that. I took some	09:12:22
23		language courses, German.	09:12:25
24	Q	Are you presently employed?	09:12:33
25	A	Yes. I'm self-employed.	09:12:35

1	Q	Can you tell us what that employment is?	09:12:37
2	A	Yes. I have my own one-man company and	09:12:39
3		I'm an IT consultant and I also do some business	09:12:44
4		administration.	09:12:48
5	Q	What is the name of the company?	09:12:51
6	A	My company is named Speakkompagnet. It	09:12:53
7		is a Danish term. It use to be a voice over	09:12:58
8		company.	09:13:02
9	Q	A voice over company?	09:13:05
10	A	Yes. I had the company with my brother	09:13:07
11		and he was a voice over artist. His voice is	09:13:10
12		better than mine. But he left.	09:13:14
13	Q	What qualifies you to be an IT	09:13:21
14		consultant?	09:13:23
15	A	I'm a self taught programmer, an IT	09:13:25
16		engineer. I've worked at IBM. After business	09:13:29
17		school I got a job at IBM and made myself	09:13:32
18		understand the personal computer and how to make	09:13:39
19		my way around it.	09:13:43
20	Q	Can you describe your employment since	09:13:46
21		graduating from business school?	09:13:49
22	A	While I was in business school I worked	09:13:53
23		at IBM as a student in a student pool. And we had	09:13:55
24		various jobs selling or demonstrating or finding	09:14:03
25		out how things worked and explaining it to either	09:14:09

1	IBM people or customers. And after my graduation	09:14:12
2	I got a full time job at IBM as a systems	09:14:17
3	engineer.	09:14:22
4	Q And where was your employment with IBM?	09:14:26
5	A This was in Copenhagen.	09:14:30
6	Q Just to be clear, when you say you	09:14:31
7	graduated from business school that was not a	09:14:33
8	graduate program?	09:14:36
9	A No. It was a bachelor's degree. I	09:14:37
10	think it is a three year.	09:14:45
11	Q And when you were working for IBM as a	09:14:48
12	system engineer --	09:14:51
13	A Yes.	09:14:53
14	Q What kind of work were you doing?	09:14:53
15	A I would do -- I would do connectivity of	09:14:55
16	small systems, network installations, terminal	09:14:59
17	emulation, set up, stuff like that. And when the	09:15:09
18	IBM PC came about I would start working on that.	09:15:12
19	Q When did you leave IBM?	09:15:20
20	A In 1986.	09:15:24
21	Q Where did you go?	09:15:26
22	A I went to a --	09:15:27
23	(Witness and interpreter have a	09:15:40
24	discussion off of the record)	09:15:40
25	THE WITNESS: A stock broker, brokerage	09:15:41

1	firm.	09:15:45
2	BY MR. MICALLEF:	09:15:45
3	Q What was the name of this stock broker	09:15:45
4	or brokerage firm?	09:15:48
5	A It was Per Storhaug. That was the name	09:15:49
6	of the guy that owned it.	09:15:52
7	Q Where was it?	09:15:53
8	A It was in Copenhagen.	09:15:55
9	Q And what did you do there?	09:15:55
10	A I was managing his information	09:15:58
11	technology.	09:16:00
12	Q And what did that involve?	09:16:04
13	A It was mainly making sure that all of	09:16:05
14	the systems they needed was running as they	09:16:08
15	expected. And later on we started software	09:16:11
16	development as to provide some kind of interaction	09:16:15
17	with his customers through the use of information	09:16:21
18	technology.	09:16:23
19	Q Did you write software?	09:16:25
20	A Yes. I began programming at that time.	09:16:27
21	Q What languages?	09:16:30
22	A Assembly language programming, as well	09:16:34
23	as basic programming and Pascal. Later on, C and	09:16:38
24	C++.	09:16:46
25	Q How long were you at the brokerage firm?	09:16:51

1	A	About three years.	09:17:05
2	Q	So that would be to about 1989?	09:17:05
3	A	Eighty-nine, around '89, yes.	09:17:08
4	Q	And where did you go next?	09:17:09
5	A	I went to another brokerage firm to do	09:17:10
6		the same thing there.	09:17:14
7	Q	What was it called?	09:17:15
8	A	It was called Sankt Ann æ Bank which was	09:17:17
9		a small merchant bank.	09:17:23
10	Q	Why did you leave?	09:17:27
11	A	I got a better offer from Sankt Ann æ	09:17:27
12		Bank.	09:17:30
13	Q	More money?	09:17:33
14	A	Not so much the money, but a better	09:17:37
15		understanding of how information technology could	09:17:40
16		be used.	09:17:48
17	Q	Okay. How long did you stay at that	09:17:48
18		job?	09:17:50
19	A	Unfortunately not very long.	09:17:50
20	Q	Unfortunately did you say?	09:17:53
21	A	Yes.	09:17:53
22	Q	Why is it unfortunate.	09:17:56
23	A	Because I really liked the guys there.	09:17:56
24	Q	I see.	09:17:59
25	A	There were some conditions in the stock	09:17:59

1	market which meant they had to shrink down.	09:18:00
2	Q I see. And they let you go?	09:18:04
3	A I resigned.	09:18:06
4	Q Where did you go next?	09:18:09
5	A After Sankt Ann æ Bank, I went to a	09:18:16
6	company called CRI in a town called Bilacable	09:18:19
7	(phonetic) in Denmark, a little bit north of	09:18:25
8	Copenhagen.	09:18:28
9	Q CRI?	09:18:28
10	A CRI.	09:18:30
11	Q What did that stand for?	09:18:31
12	A I believe it was Computer Resources	09:18:32
13	International.	09:18:33
14	Q When did you join them?	09:18:36
15	A In '90 or '91.	09:18:41
16	Q And what was your role there?	09:18:45
17	A They were doing exchange dealings	09:18:47
18	systems. That was about the time when the	09:18:51
19	Copenhagen Stock Exchange was going electronic.	09:18:54
20	And I was in the team who did support applications	09:18:58
21	for dealers.	09:19:03
22	Q So this would be a computer system which	09:19:04
23	exchanged bids and acceptances and things like	09:19:07
24	that?	09:19:11
25	A Yes. Yes.	09:19:11

1	Q	And what was your -- what were your	09:19:11
2		responsibilities?	09:19:14
3	A	I was a developer of the graphical	09:19:15
4		support systems, stock exchange curves and stuff	09:19:23
5		like that, stock price curves and things like	09:19:27
6		that.	09:19:32
7	Q	How long were you at CRI?	09:19:32
8	A	Only about a year.	09:19:34
9	Q	Why did you leave?	09:19:36
10	A	It was, the environment did not suit me	09:19:39
11		at all.	09:19:43
12	Q	In what way?	09:19:44
13	A	It was a lot of exchange of people	09:19:45
14		coming in and out and it was difficult to keep	09:19:47
15		traction.	09:19:53
16	Q	And where did you go next?	09:19:53
17	A	I joined a company called HyperCom.	09:20:04
18	Q	When did you join them?	09:20:16
19	A	In 1992.	09:20:18
20	Q	So there was a hiatus between CRI and	09:20:20
21		HyperCom?	09:20:25
22	A	Yes. There was a little period of time	09:20:27
23		where I didn't have a job.	09:20:29
24	Q	What was HyperCom's business?	09:20:31
25	A	HyperCom's business was teletext data	09:20:37

1	broadcast systems.	09:20:41
2	Q And what did you do?	09:20:45
3	A I was supposed to help them develop a	09:20:50
4	product for the financial sector. And my	09:20:53
5	background suited that.	09:20:57
6	Q And how long did you stay at HyperCom?	09:21:01
7	A I stayed at HyperCom for three years.	09:21:04
8	Q That would be to about 1995?	09:21:10
9	A Yes.	09:21:11
10	Q Where did you go next?	09:21:13
11	A I started my own company in 1995.	09:21:15
12	Q What was it called?	09:21:17
13	A It was called Cebra Technology.	09:21:20
14	Q C-E-B-R-A?	09:21:24
15	A C-E-B-R-A, yes.	09:21:24
16	Q Does that word mean something?	09:21:25
17	A We were playing with letters and it	09:21:28
18	ended up not really meaning anything, but it was a	09:21:31
19	data broadcast technology company. And we took	09:21:34
20	the letters from collection enhancement broadcast	09:21:40
21	reception analysis. So it became Cebra.	09:21:45
22	Q What kind of data were you broadcasting?	09:21:50
23	A It will be anything. We would make	09:21:54
24	systems that enabled broadcast of data to either	09:21:56
25	broadcast reception for everybody or individual	09:22:02

1	reception through the broadcast medium.	09:22:06
2	Q Was it over air broadcast?	09:22:08
3	A This was using TV signals, so either	09:22:11
4	over the air, over cable or over satellite.	09:22:14
5	Q Was it information put into the vertical	09:22:17
6	or horizontal blanking interval?	09:22:21
7	A Exactly. Yes.	09:22:25
8	Q It was very similar to teletext.	09:22:25
9	A It is teletex, but it was teletext --	09:22:28
10	the teletext transport system used for	09:22:30
11	transmitting anything.	09:22:32
12	Q I see.	09:22:32
13	A Files, records, stock prices, anything.	09:22:33
14	Q I see. And how long were you at Cebra?	09:22:37
15	A I was at Cebra until Cebra merged with	09:22:40
16	another Danish company and was subsequently sold	09:22:45
17	to Sisco Systems.	09:22:48
18	Q You were the founder of Cebra?	09:22:50
19	A Yes, I was.	09:22:53
20	Q Were there other founders?	09:22:54
21	A There was an investment company, major	09:22:56
22	venture capital company.	09:22:59
23	Q Who was that?	09:23:01
24	A That was a company called 2M Invest.	09:23:02
25	Q How many employees did Cebra have?	09:23:06

1	A	I think we started out three guys and	09:23:15
2		when we were the most we were perhaps six or	09:23:19
3		seven.	09:23:21
4	Q	I'm sorry. When did Cebra merge with	09:23:22
5		another company?	09:23:25
6	A	In 1998 we merged with a company called	09:23:26
7		Cocom.	09:23:32
8	Q	What did Cocom do?	09:23:36
9	A	Cocom did cable modem technology.	09:23:40
10	Q	And what was the name of the merging	09:23:46
11		company?	09:23:49
12	A	It was still Cocom.	09:23:49
13	Q	So Cebra ceased to exist?	09:23:51
14	A	Well actually, Cebra was the continuing	09:23:54
15		entity that then changed name to Cocom.	09:23:54
16	Q	I see. And when did Sisco acquire	09:23:59
17		Cocom?	09:24:05
18	A	Ninety-nine.	09:24:07
19	Q	When in 1999?	09:24:09
20	A	It was concluded in September of 1999.	09:24:15
21	Q	After the merger were you an employee of	09:24:26
22		the surviving company, Cocom?	09:24:31
23	A	Yes, I was.	09:24:34
24	Q	What was your title?	09:24:35
25	A	I was vice president of business	09:24:36

1	development on new business development. I'm not	09:24:42
2	sure.	09:24:45
3	Q And what were your responsibilities?	09:24:47
4	A To find new business areas for the	09:24:50
5	technologies we had.	09:24:52
6	Q Did you do any development work?	09:24:56
7	A No. Not real.	09:25:01
8	Q Did you write any code?	09:25:03
9	A In Cocom, I would continue to maintain	09:25:09
10	the Cebra products that I had built because we	09:25:14
11	continued to have customers all the way through.	09:25:17
12	So that would be in the Cebra context or the Cebra	09:25:21
13	product area context, teletext technology. But I	09:25:27
14	was not involved with cable modem technology.	09:25:30
15	Q While you were an employee at Cocom did	09:25:35
16	you have an obligation to assign inventions to the	09:25:38
17	company that you made, assign them to the company?	09:25:41
18	MR. HEINTZ: I object to the form.	09:25:43
19	MR. MICALLEF: I will reask the	09:25:45
20	question.	09:25:47
21	BY MR. MICALLEF:	09:25:47
22	Q When you were an employee of Cocom did	09:25:48
23	you have any obligation to assign any inventions	09:25:50
24	you came up with to the company?	09:25:55
25	A No. It was the agreement that I would	09:25:59

1 keep my business separate. It was not merged into 09:26:01
2 the Cocom organization. And after the Sisco 09:26:04
3 purchase I retained the old Cebra business area 09:26:08
4 for myself. Cocom was not interested in 09:26:14
5 the technology of Cebra. They were interested in 09:26:21
6 the engineers that I had. There were two very 09:26:23
7 clever engineers and they got them. 09:26:29

8 Q That wasn't really my question. 09:26:30

9 A I'm sorry. 09:26:32

10 Q That is okay. While you were an 09:26:32
11 employee at Cocom if you came up with an 09:26:34
12 invention, were you obligated to assign that 09:26:36
13 invention to Cocom? 09:26:38

14 A I'm uncertain about that. I would have 09:26:43
15 to see if I can find the contract that I had with 09:26:46
16 them. 09:26:49

17 Q You did have a contract with them? 09:26:50

18 A I believe so, yes. 09:26:52

19 MR. MICALLEF: Counsel, we'd like to see 09:26:54
20 that. 09:26:57

21 BY MR. MICALLEF: 09:26:57

22 Q Do you recall if that contract had an 09:27:02
23 intellectual property provision in it? 09:27:05

24 A No. I don't recall. 09:27:08

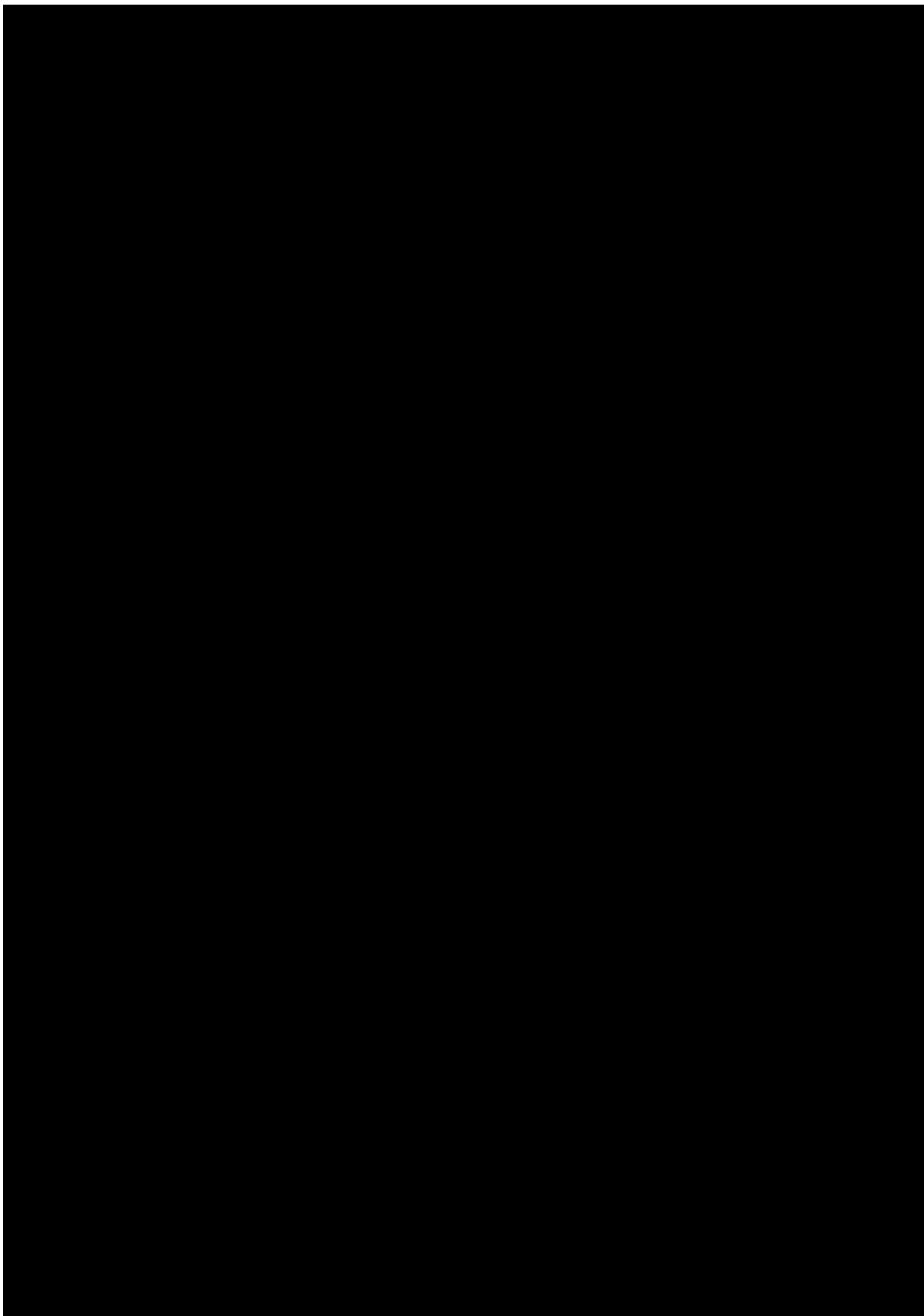
25 Q You don't recall either way? 09:27:09

1	A	I don't recall if it had. I don't even	09:27:13
2		recall specifically if I got a new one since it	09:27:17
3		was my own company that was the continuing entity.	09:27:20
4	Q	And so when did you leave? Did you go	09:27:34
5		to Sisco?	09:27:38
6	A	No.	09:27:40
7	Q	When did you leave Cocom?	09:27:40
8	A	It was an understanding that I would	09:27:49
9		leave with my teletext products because they	09:27:52
10		didn't want that. So it was probably spring or	09:27:55
11		summer '99.	09:28:02
12	Q	And the merger or when Sisco acquired	09:28:08
13		Cocom in September of '99?	09:28:12
14	A	It was a long process.	09:28:14
15	Q	Was that the closing date, September of	09:28:16
16		'99?	09:28:17
17	A	I think so. Yes.	09:28:18
18	Q	And so what did you do after Cocom?	09:28:20
19		MR. HEINTZ: Object to the form.	09:28:26
20		THE WITNESS: Continued to work with my	09:28:30
21		Cebra products. And during that time I also began	09:28:34
22		working with Mr. Santoro.	09:28:38
23		BY MR. MICALLEF:	09:28:41
24	Q	So what Cebra products did you have at	09:28:42
25		the time?	09:28:43

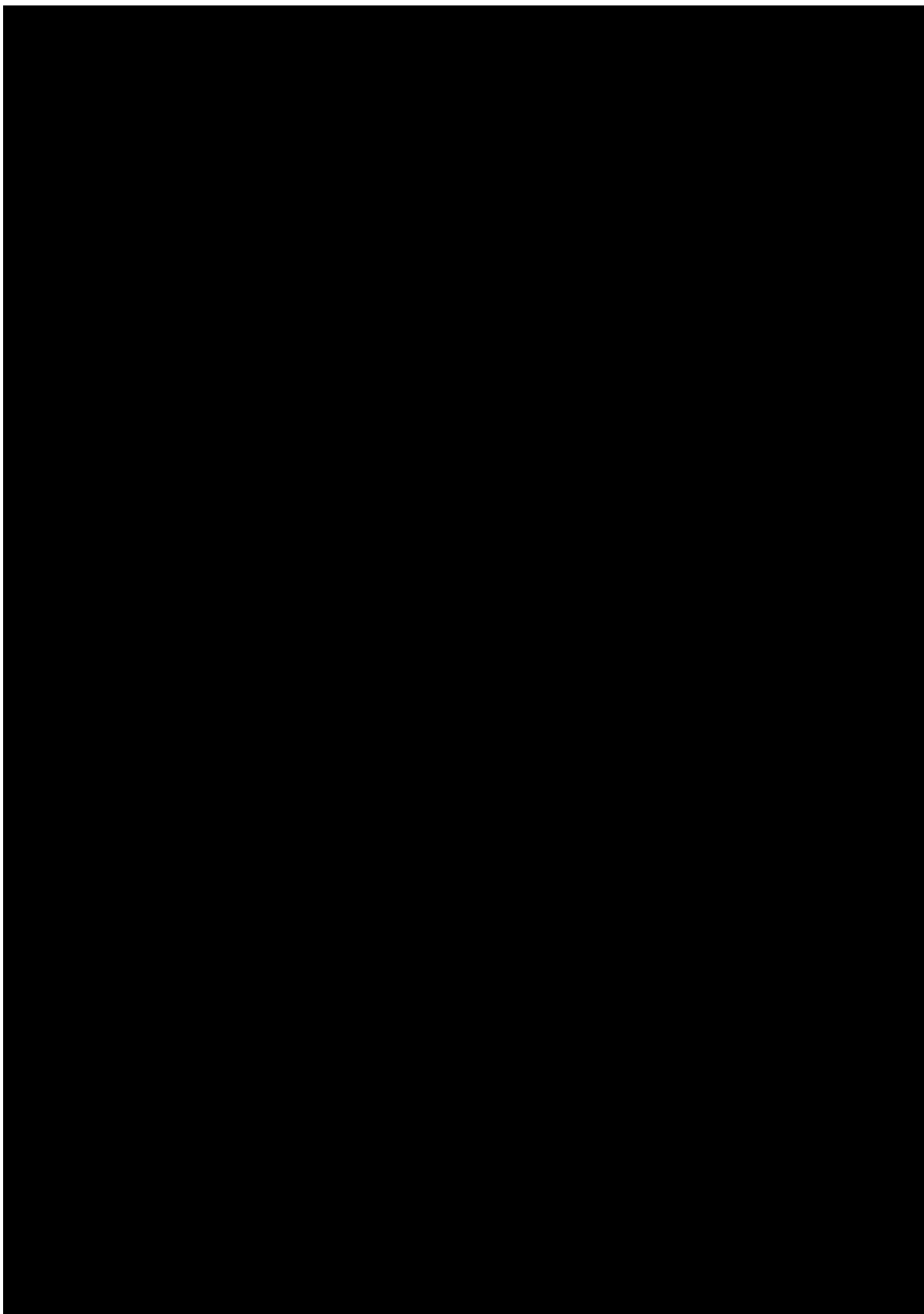
1	A	That was teletext technology products,	09:28:43
2		teletext receiver, application and teletext	09:28:49
3		broadcast technology.	09:28:52
4	Q	And were you doing business under a	09:28:54
5		particular --	09:28:55
6	A	Yes.	09:28:57
7	Q	Corporate form?	09:28:57
8	A	Yes.	09:28:57
9	Q	What was it?	09:28:57
10	A	It was the company that I had at the	09:29:02
11		time was called Lagermann Invest.	09:29:07
12	Q	You didn't keep the Cebra name, did you?	09:29:13
13	A	The products were named Cebra all the	09:29:17
14		way. And I retained the Cebra name as part of my	09:29:18
15		parting with Cocom and I still have it to this	09:29:22
16		date.	09:29:26
17	Q	And then at some point you met	09:29:27
18		Mr. Santoro?	09:29:30
19	A	Yes.	09:29:31
20	Q	How did you meet Mr. Santoro?	09:29:31
21	A	I met Mr. Santoro in London at the CNN	09:29:36
22		office in London. And he was on his way out and I	09:29:42
23		was on my way in when we met.	09:29:46
24	Q	When was that?	09:29:51
25	A	I think it was maybe 1996 or -7.	09:30:01

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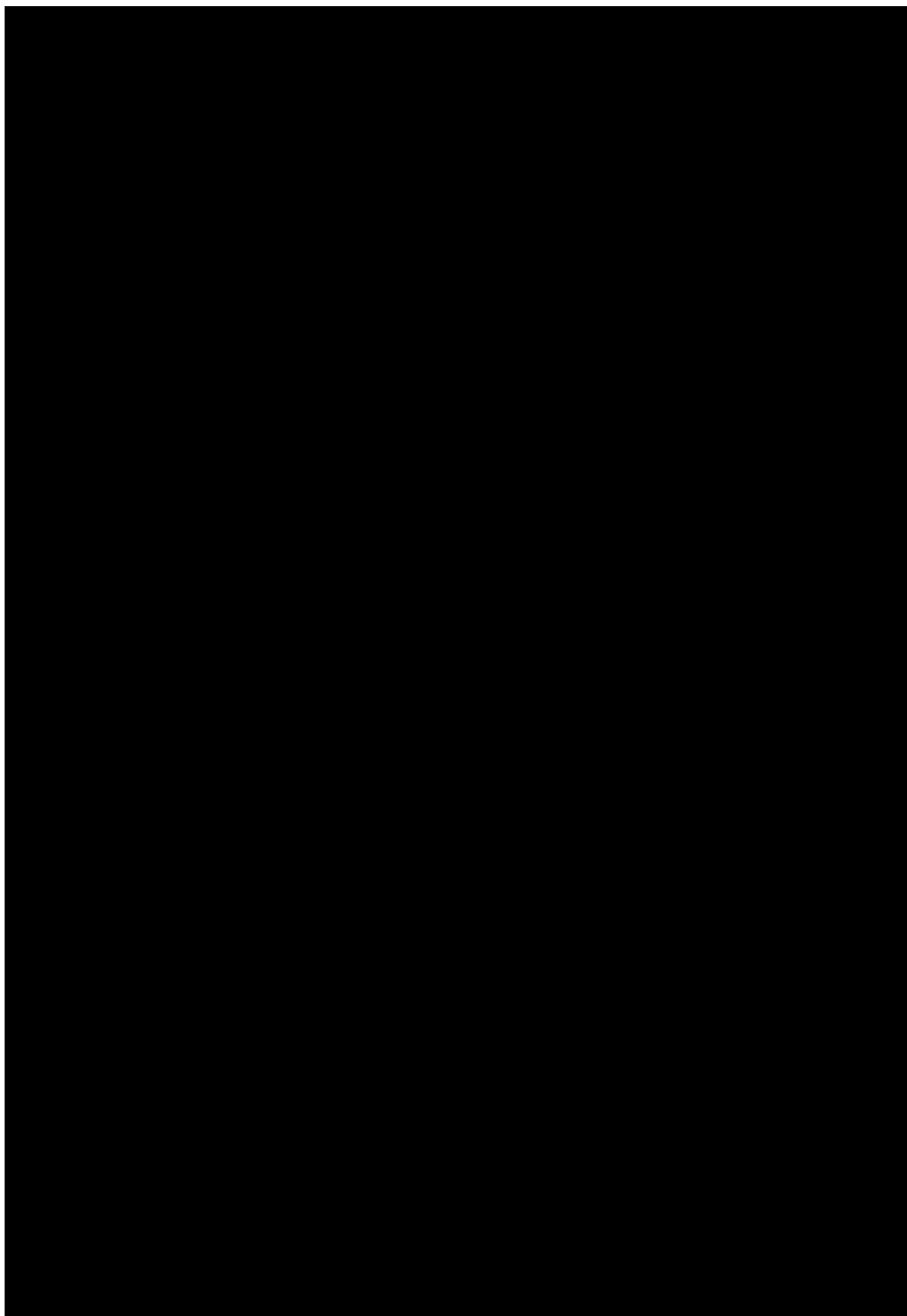
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BY MR. MICALLEF: 09:34:49

Q Okay. 09:34:49

(Whereupon, Exhibit 1 was marked for 16:53:40
identification) 16:53:40

MR. MICALLEF: Thank you. 09:35:29

BY MR. MICALLEF: 09:35:29

Q Mr. Lagermann, I've had the court 16:53:41
reporter mark Microsoft Corporation's first notice 09:35:32
of deposition pursuant to Rule 30(b)6 and she has 09:35:36
handed it to you. Have you seen this document 09:35:40
before? 09:35:43

A Yes, I have. 09:35:43

Q When did you see this document? 09:35:44

A During my three days here in Washington. 09:35:51

Q You got here three days ago? 09:35:54

A I got here Sunday. 09:35:55

Q This past Sunday? 09:36:01

A Yes. 09:36:02

Q Do you understand that you have been 09:36:04
designated to testify on certain of the topics 09:36:05

1 listed in this notice? 09:36:10

2 A Yes. 09:36:16

3 Q And do you understand that you have been 09:36:16

4 designated to testify on SurfCast's behalf 09:36:18

5 regarding topics 2, 8, 16 and 20? 09:36:22

6 A I do. 09:36:44

7 Q Are you prepared to testify about those 09:36:45

8 topics? 09:36:48

9 A Yes. 09:36:49

10 Q What have you done to prepare for this 09:36:52

11 deposition? 09:36:55

12 A I have read through many documents, many 09:36:58

13 notes and emails, including also the 403 Patent. 09:37:07

14 Q Did you do anything else? 09:37:19

15 A I have. Yes, I have spoken to 09:37:22

16 Mr. Santoro and Mr. Dechaene of SurfCast and -- 09:37:30

17 MR. HEINTZ: Again, I'm sorry. I will 09:37:37

18 instruct the witness not to answer that question 09:37:38

19 to the extent that doing so reveals any 09:37:40

20 attorney/client communication? 09:37:42

21 BY MR. MICALLEF: 09:37:46

22 Q When did you talk to Mr. Santoro? 09:37:47

23 A I talk to him every day since I have 09:37:50

24 been here. 09:37:53

25 Q Did you talk to him on the phone or was 09:37:55

1 he in the -- 09:37:58

2 A We stayed in the same hotel and we 09:38:00

3 talked in person. 09:38:02

4 Q What did you talk about? 09:38:04

5 MR. HEINTZ: I will instruct the witness 09:38:07

6 not to answer that question to the extent it 09:38:08

7 reveals communications that were done at the 09:38:10

8 direction of the attorneys at DLA Piper. 09:38:13

9 THE WITNESS: Mr. Santoro and I mainly 09:38:19

10 talked about our relationship. 09:38:23

11 MR. MICALLEF: Counsel, to the extent 09:38:35

12 any of the documents Mr. Lagermann reviewed have 09:38:36

13 not been produced I would ask that you produce 09:38:39

14 them. 09:38:42

15 MR. HEINTZ: I will take that under 09:38:43

16 advisement. 09:38:44

17 BY MR. MICALLEF: 09:38:45

18 Q Did you collect documents to be produced 09:38:46

19 in this case? 09:38:48

20 A I have handed over my email repositories 09:38:52

21 from the period where I was at SurfCast. 09:39:00

22 Q How many repositories were there? 09:39:06

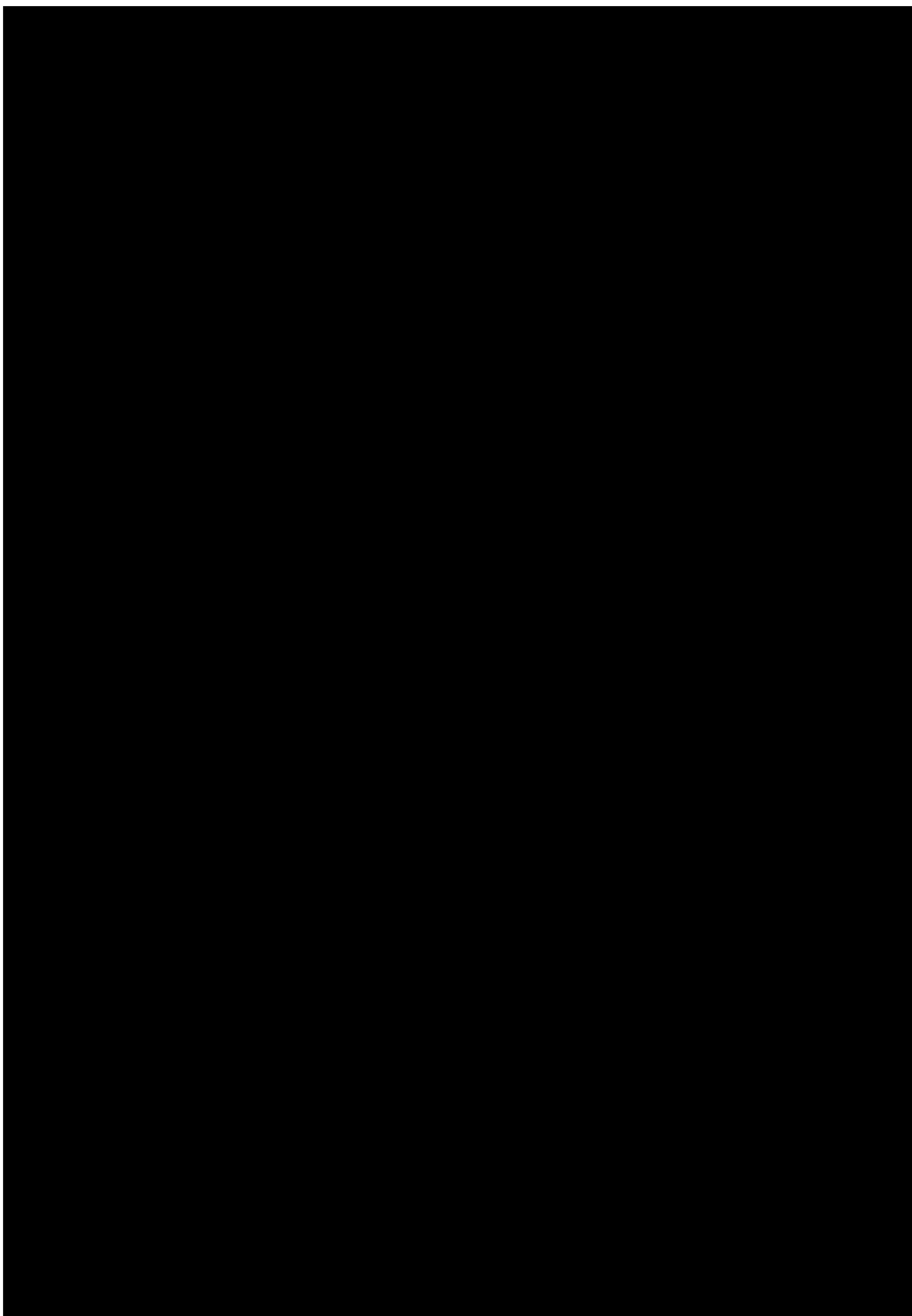
23 A I didn't count them, but back then there 09:39:11

24 were separate files for each folder and so on. So 09:39:14

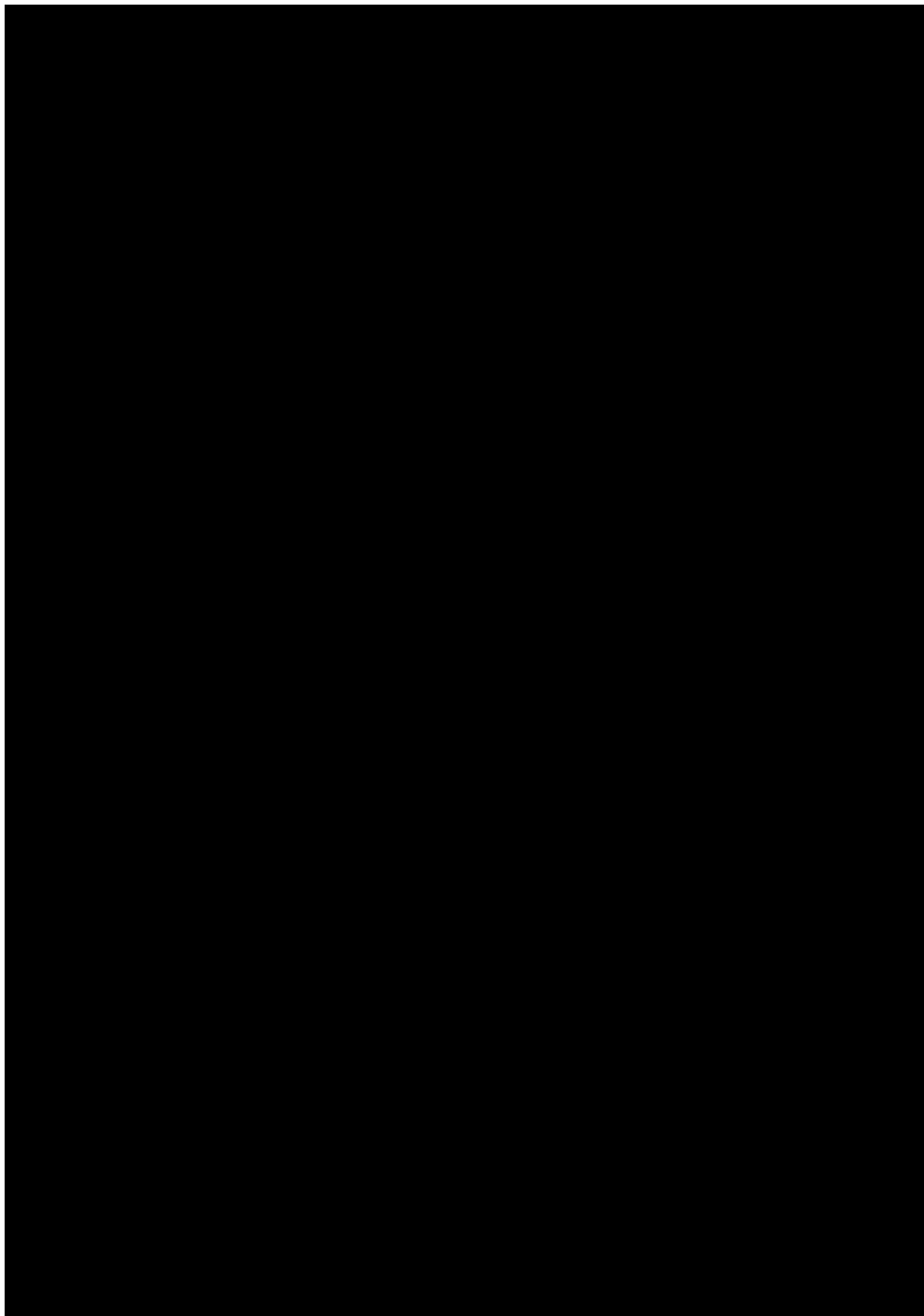
25 it could be like 50 or 60 files. 09:39:18

1 Q And you handed them over to SurfCast's 09:39:22
2 lawyers? 09:39:25
3 A Yes. 09:39:25
4 Q When did you do that? 09:39:26
5 A It could have been in the spring of this 09:39:37
6 year, like February or something. I don't recall 09:39:41
7 specifically. I sent them over using a courier 09:39:46
8 service. 09:39:50
9 Q Did you look for any documents other 09:39:51
10 than email? 09:39:53
11 A I looked for -- I looked for notebooks 09:39:58
12 from back then, personal paper notebooks. But I 09:40:03
13 didn't come across any. 09:40:08
14 Q Have you destroyed any documents in the 09:40:19
15 past ten years? 09:40:21
16 MR. HEINTZ: Object to the form of the 09:40:25
17 question. 09:40:27
18 THE WITNESS: In Denmark we generally 09:40:30
19 save things for five years and then we can just 09:40:36
20 dispose of them. And I've disposed of stuff. 09:40:40
21 BY MR. MICALLEF: 09:40:44
22 Q Have you disposed of documents in the 09:40:45
23 last year? 09:40:47
24 A No, not concerning this. 09:40:48
25 

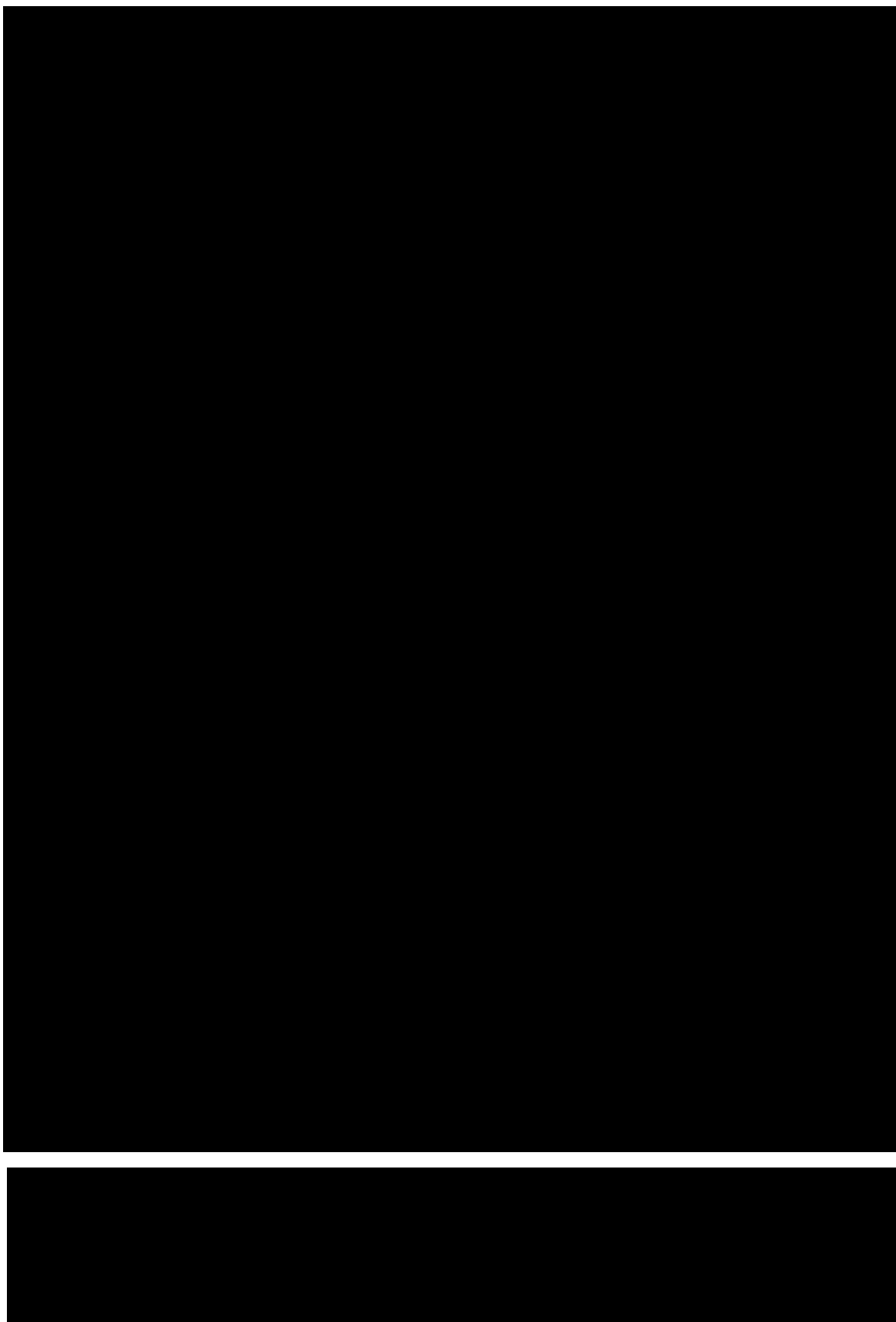
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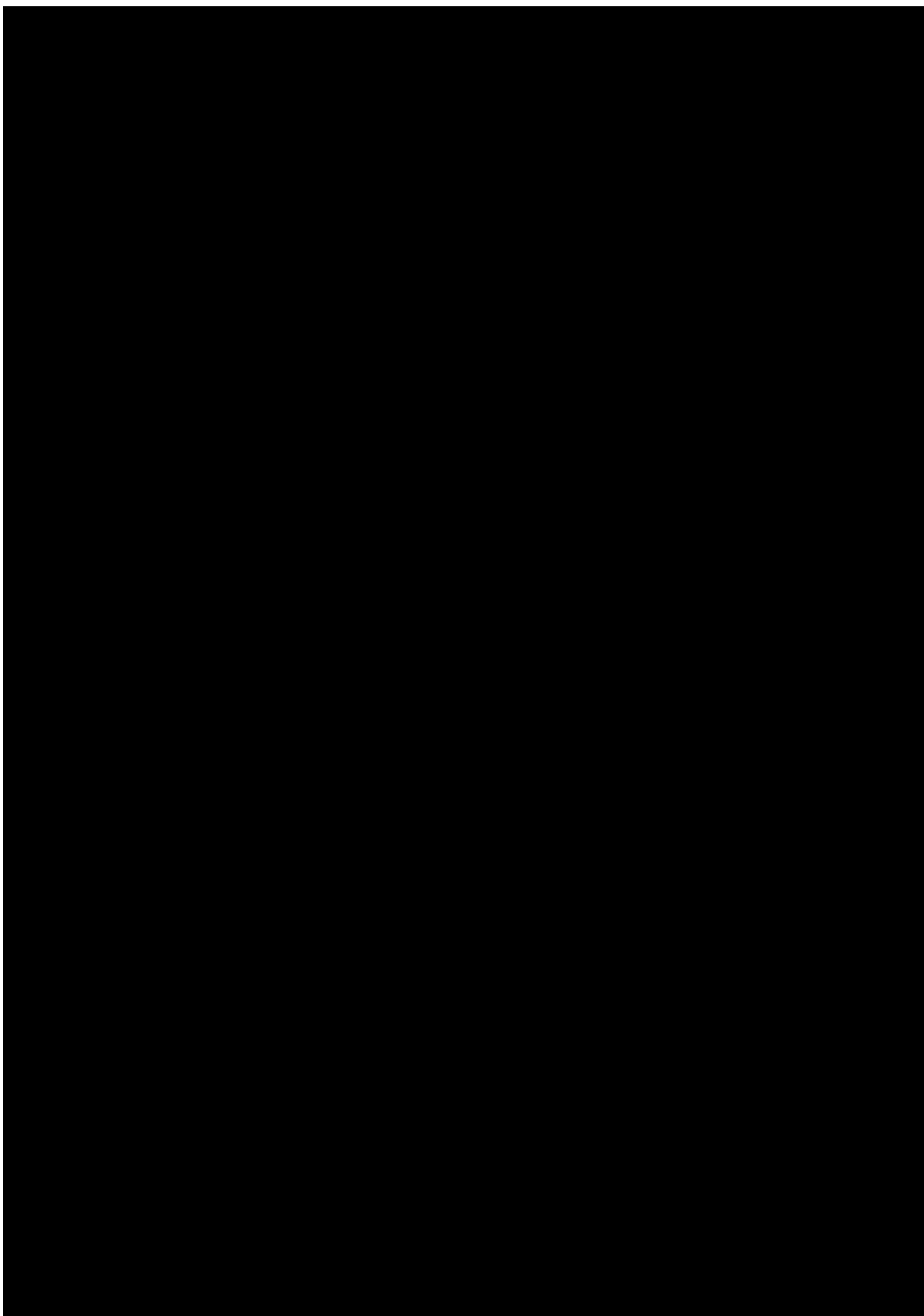
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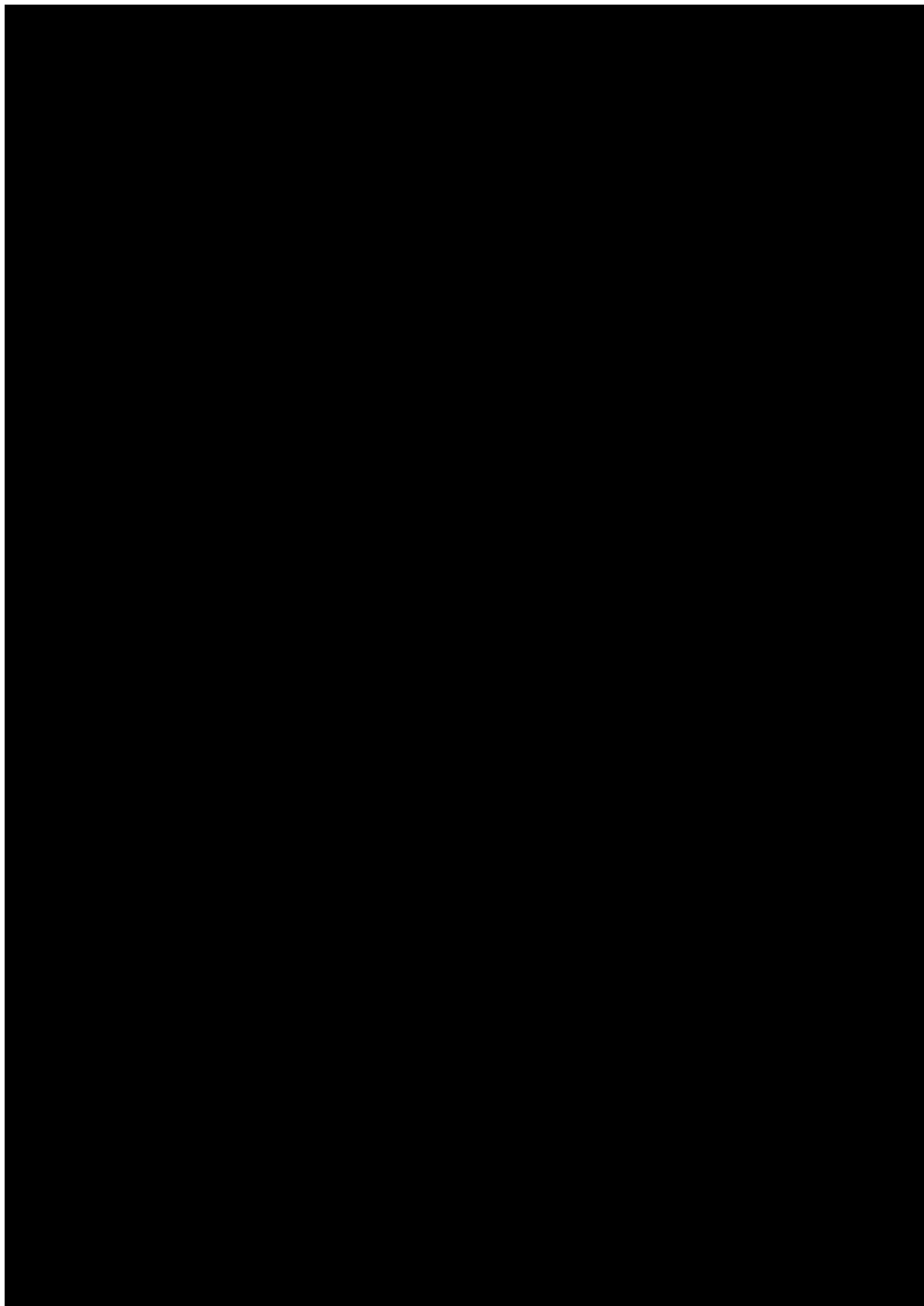
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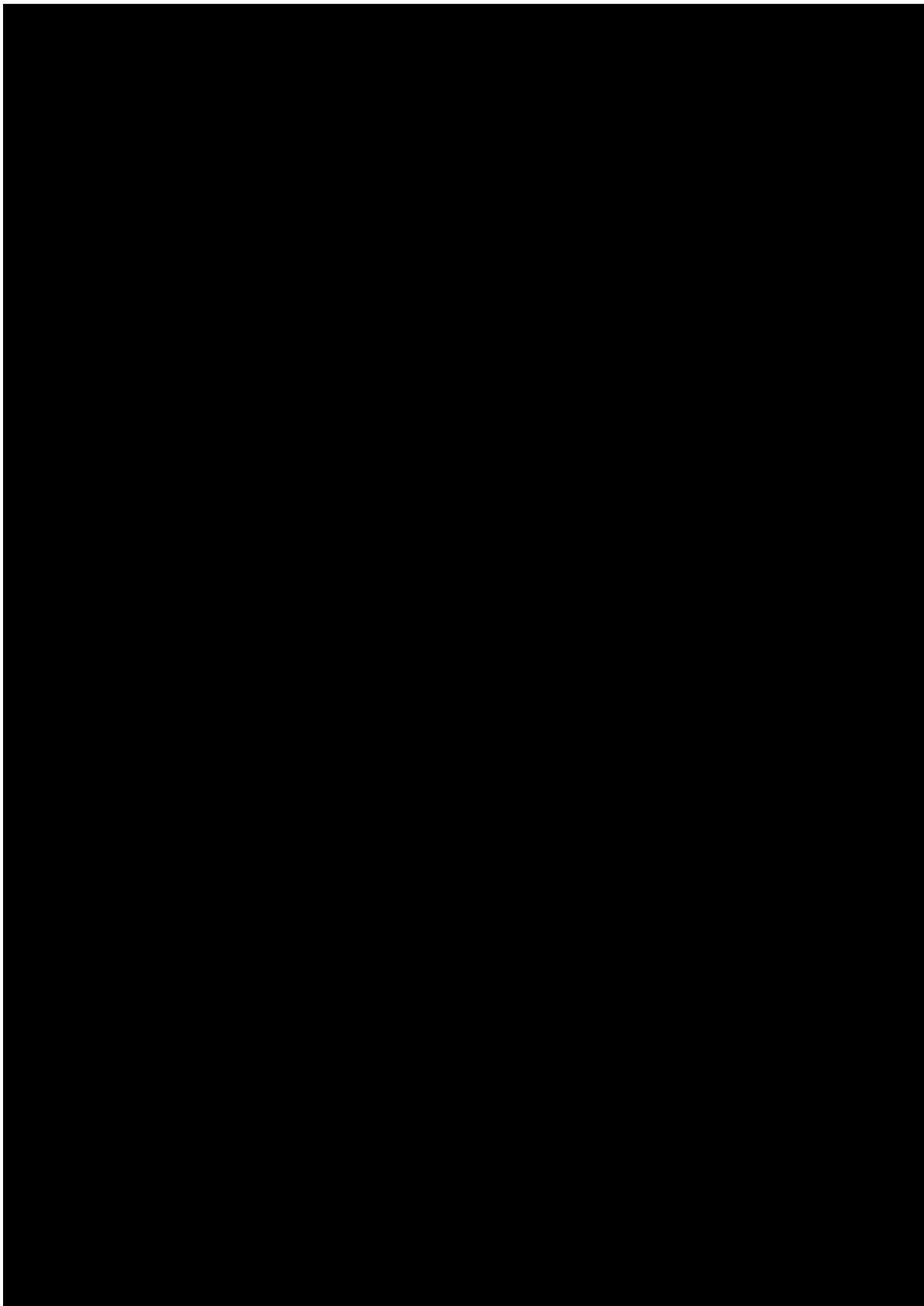
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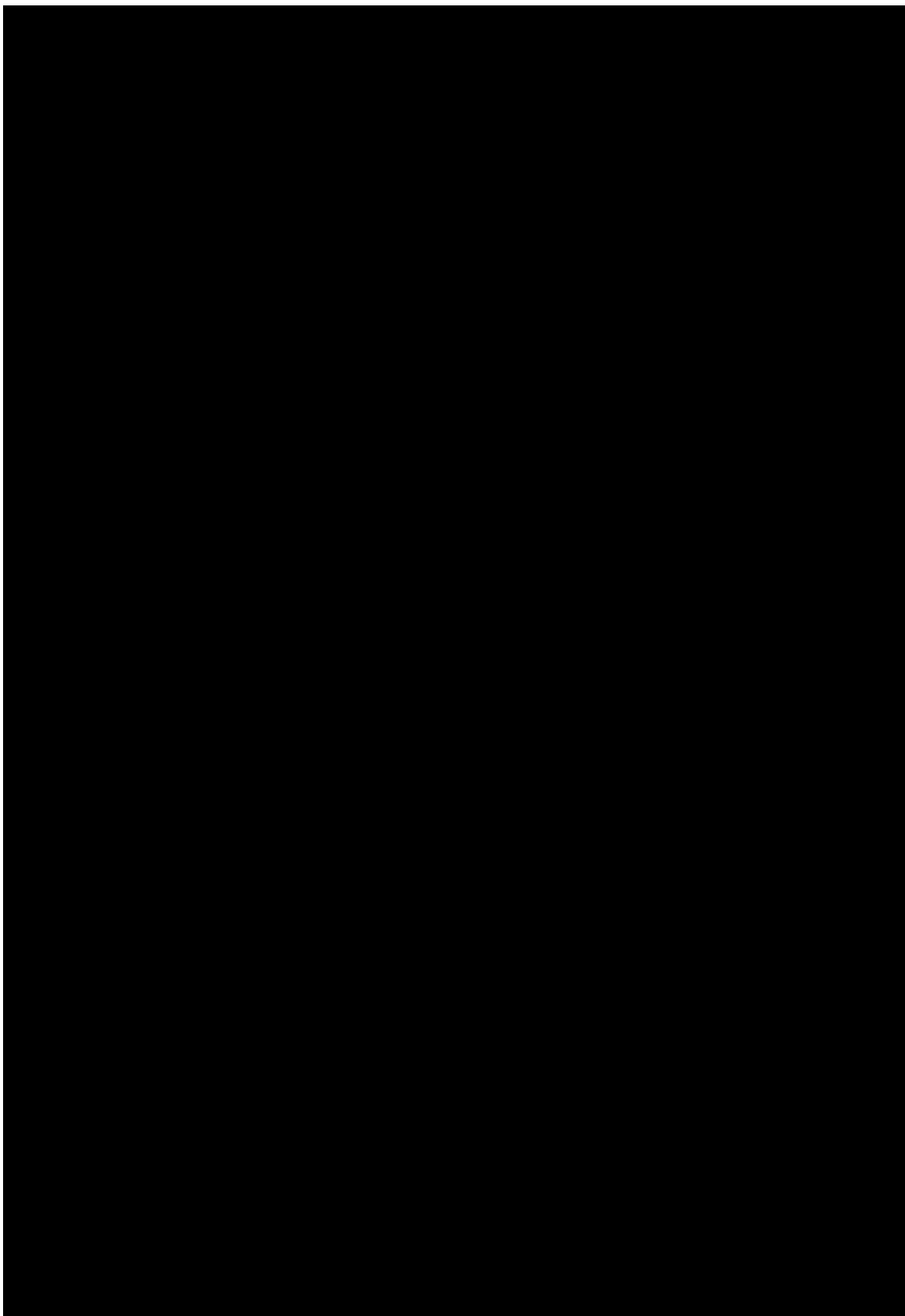
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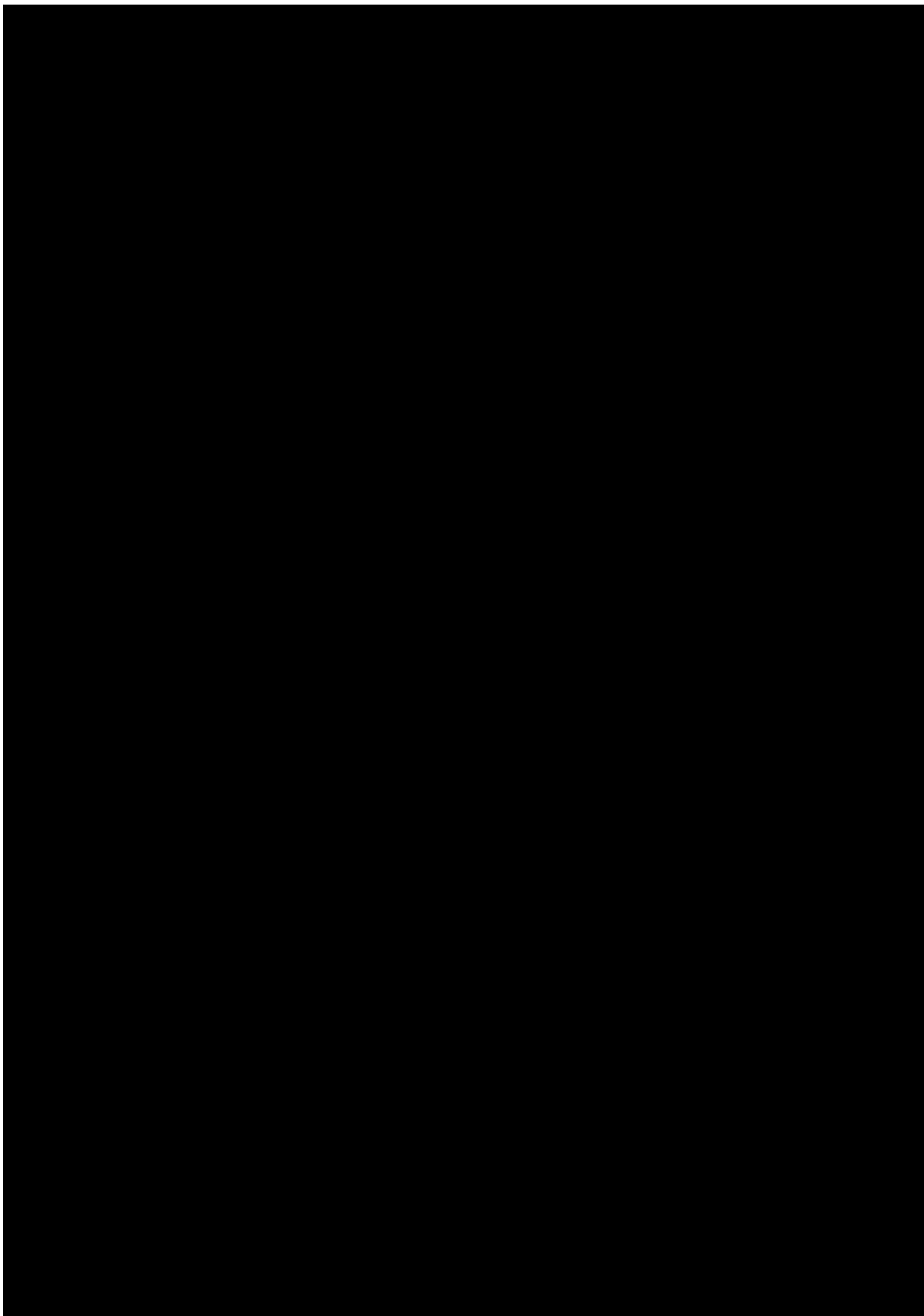
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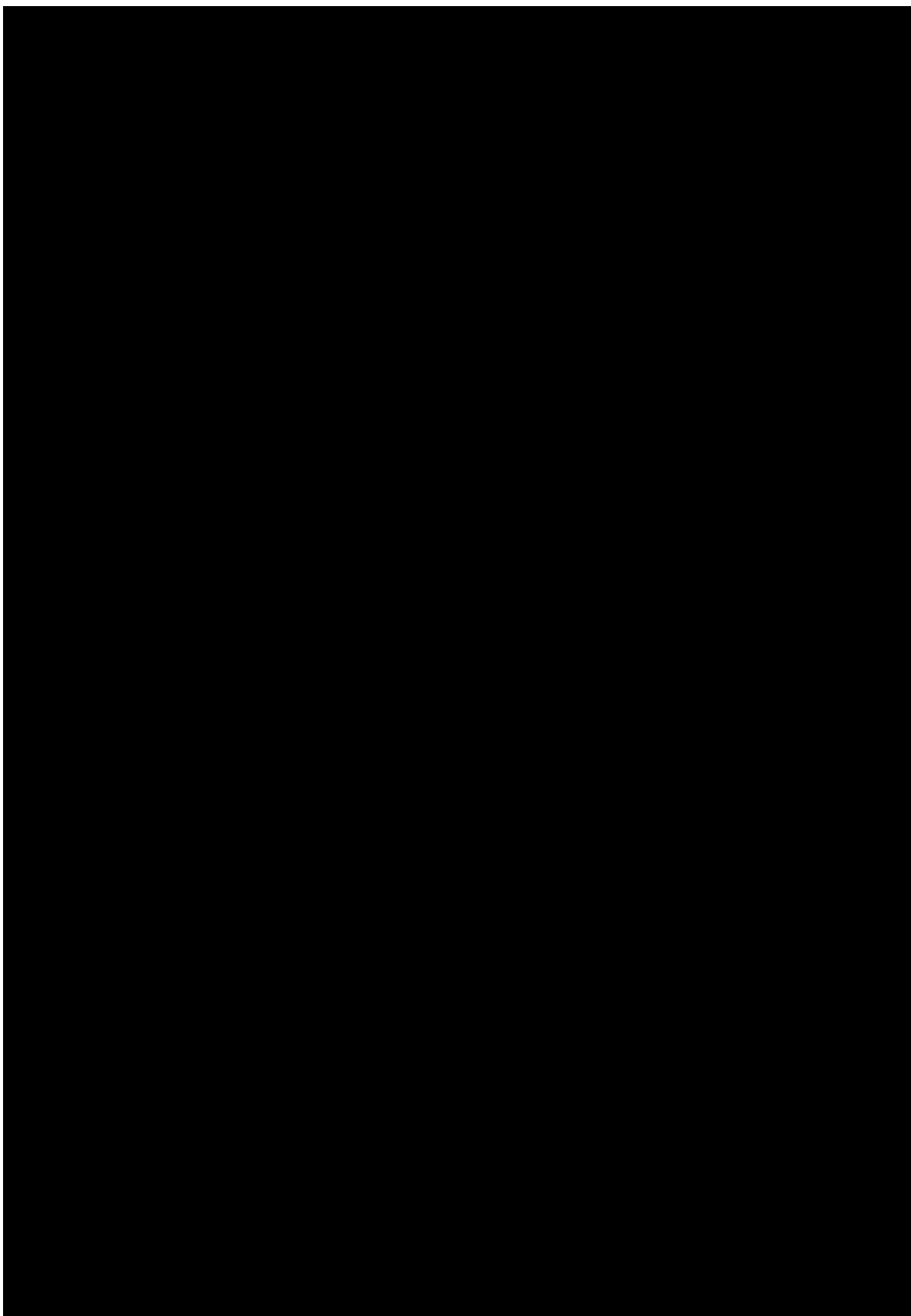
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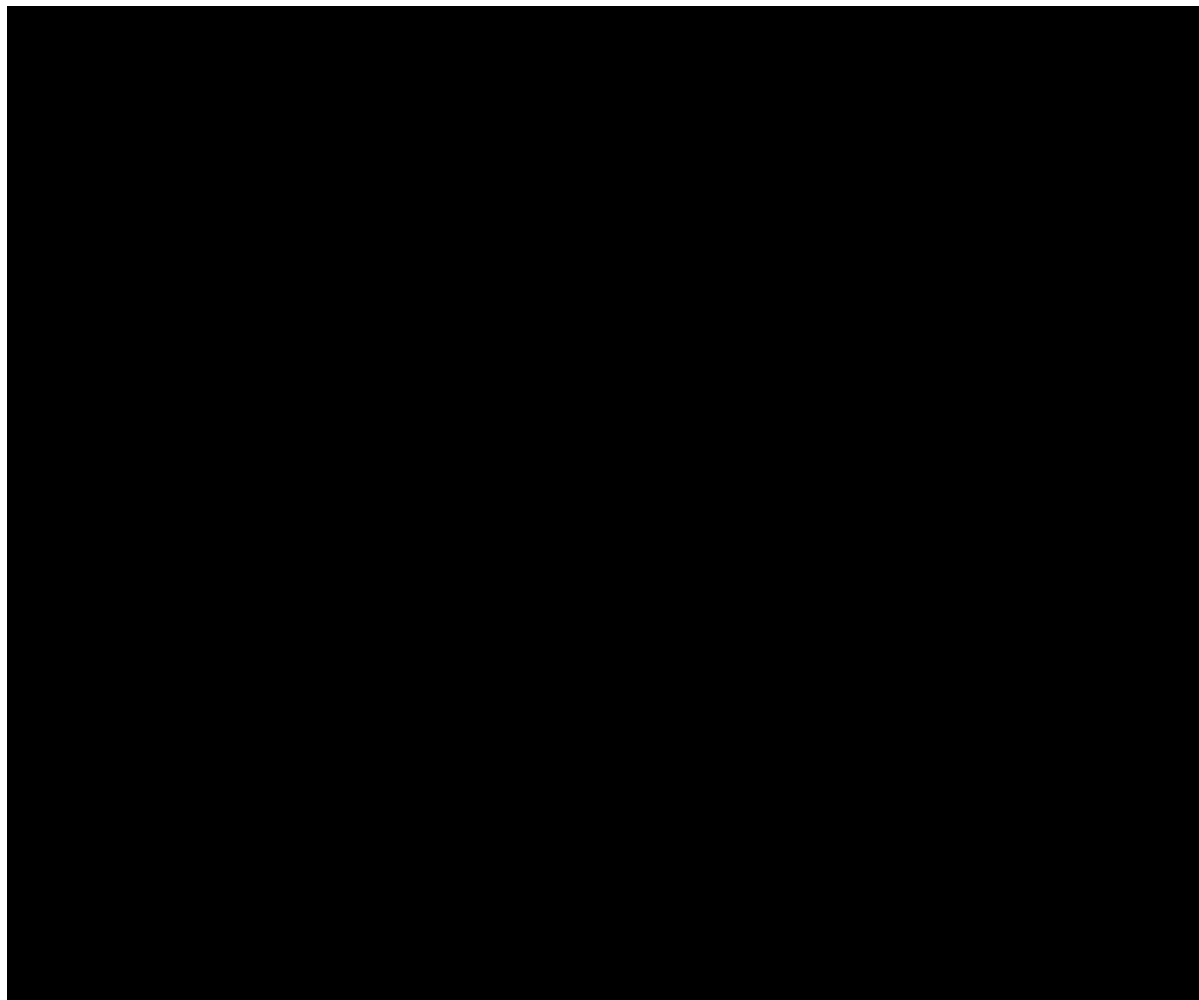
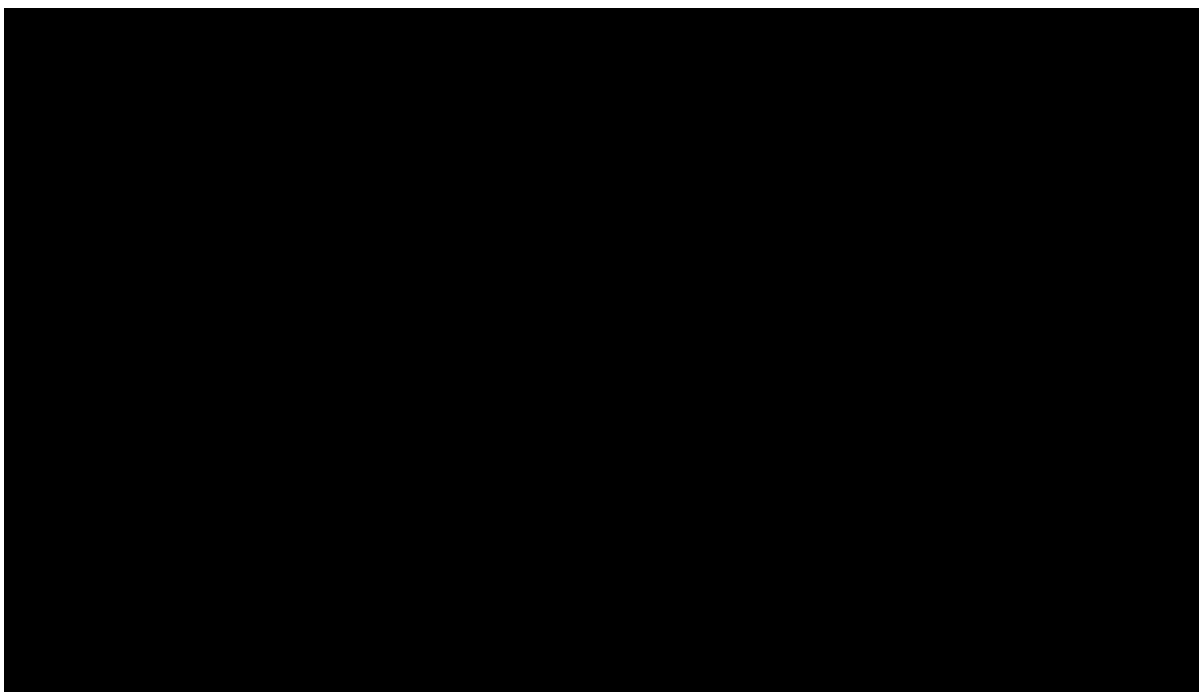
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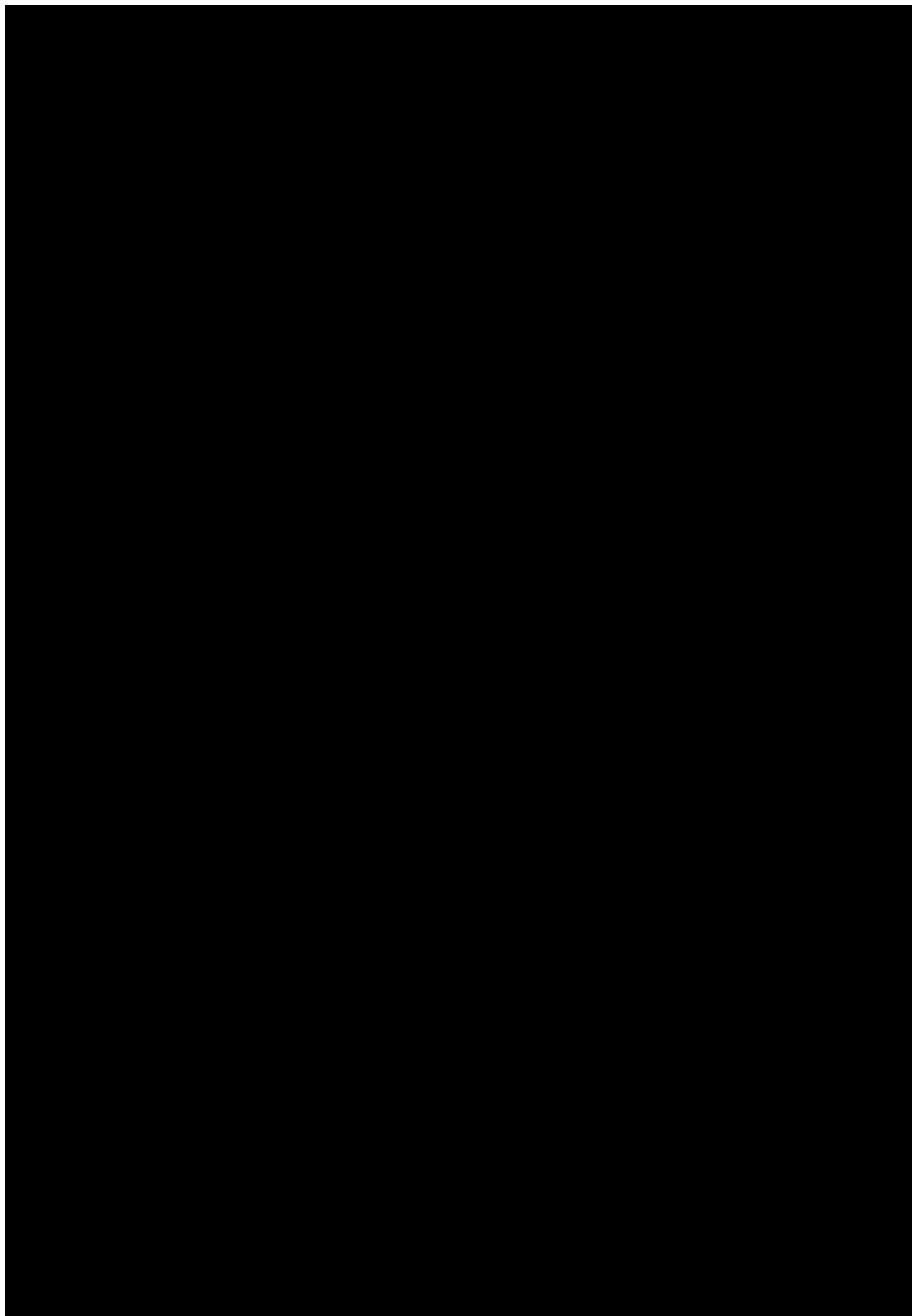
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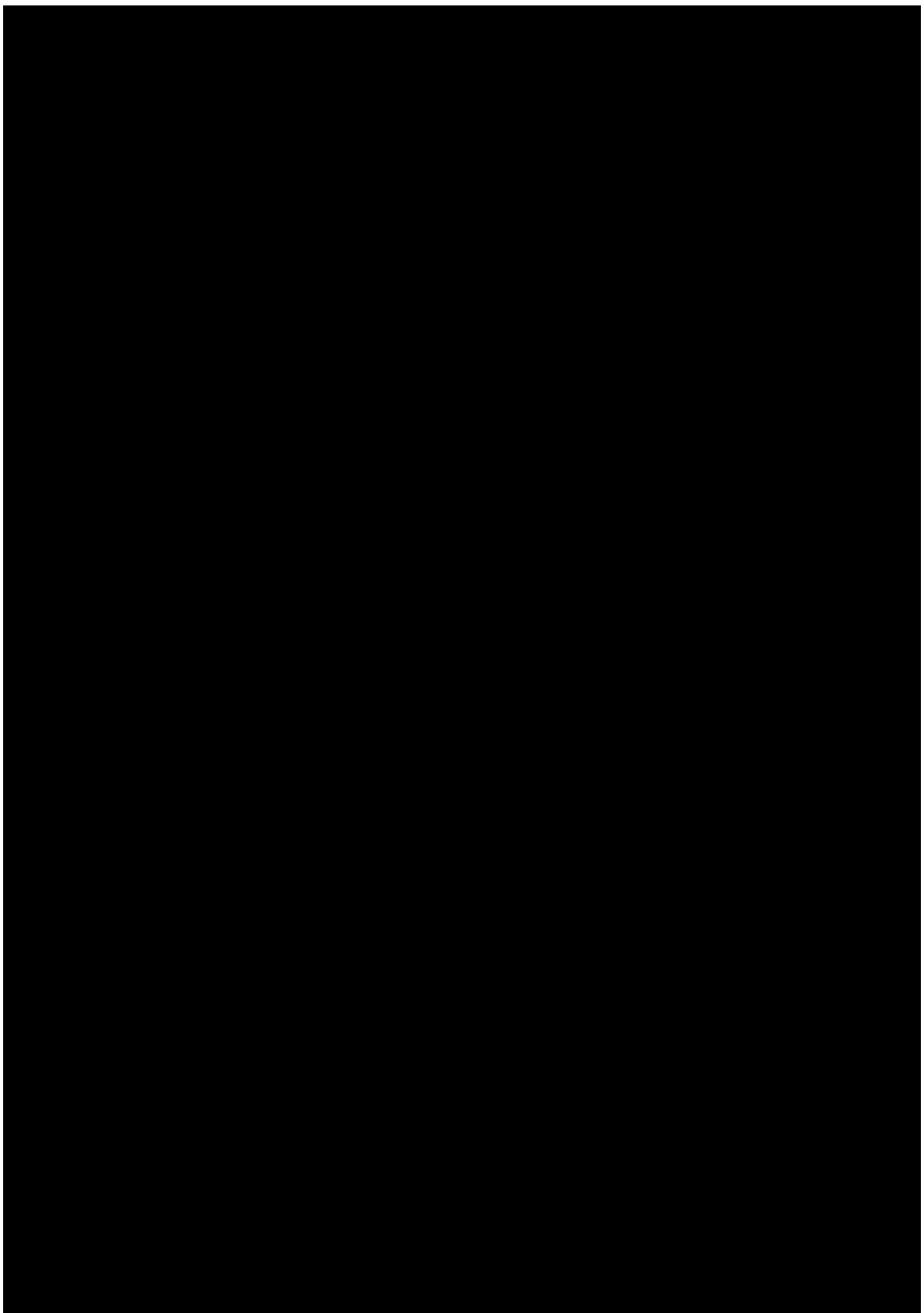
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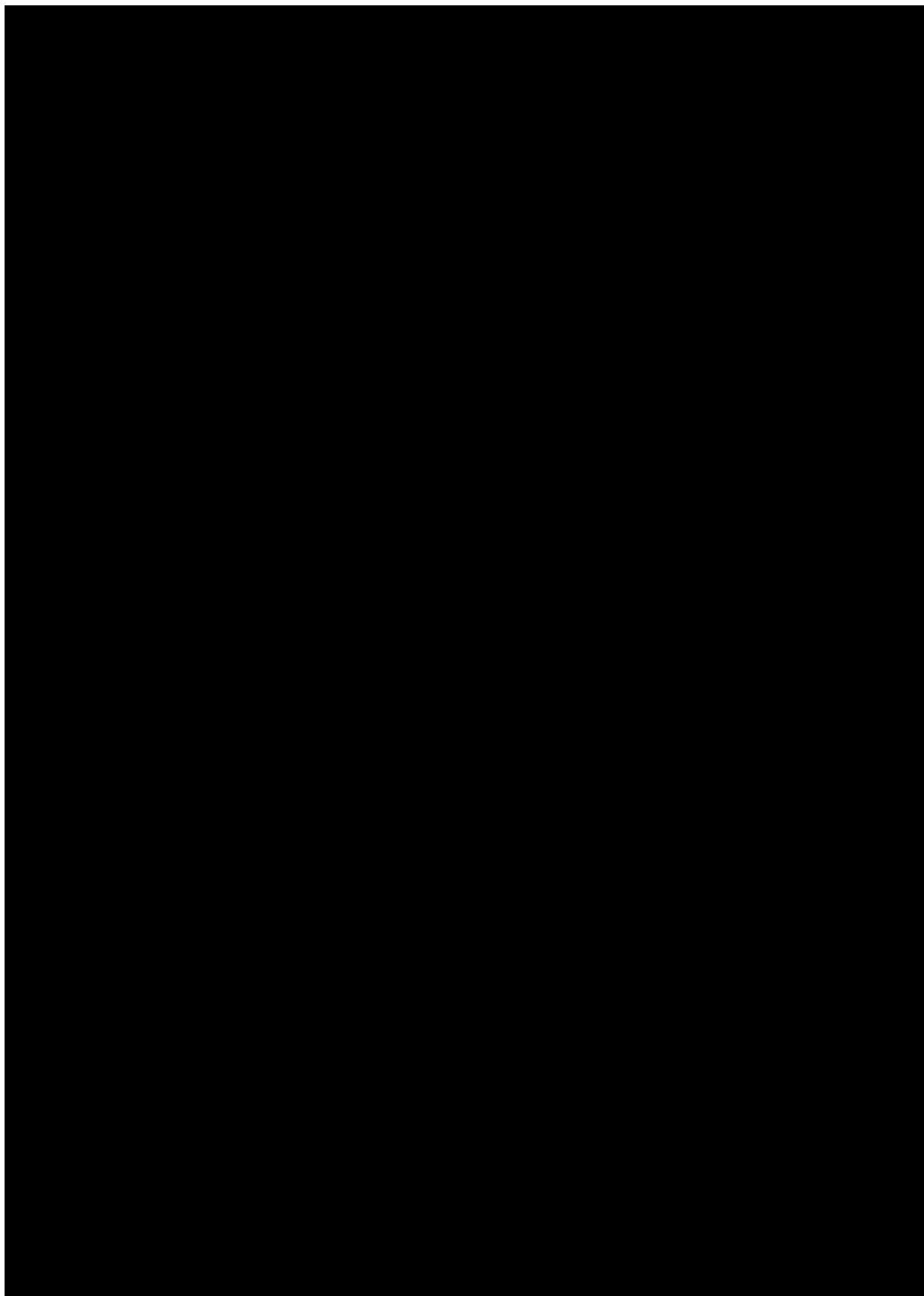
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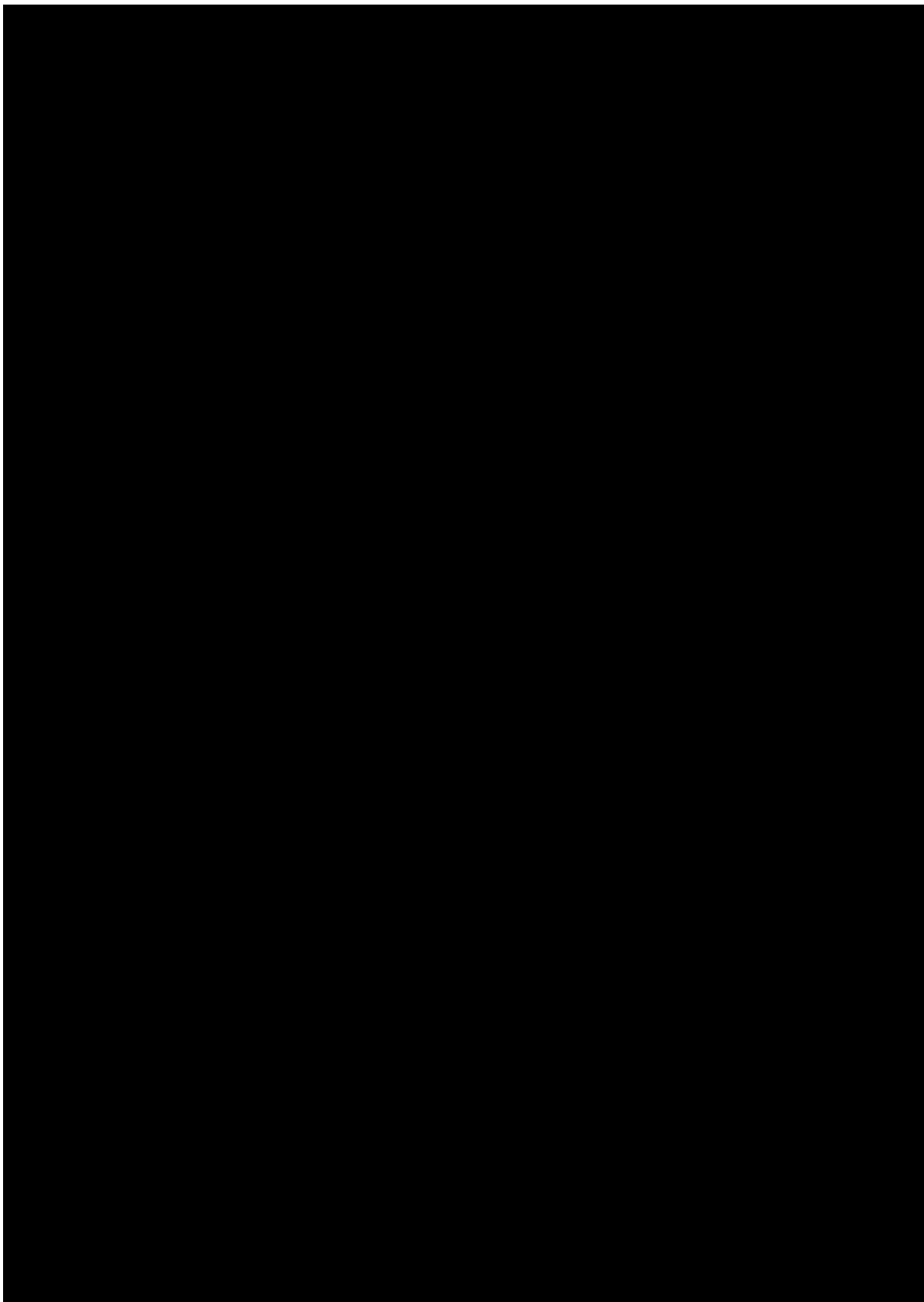
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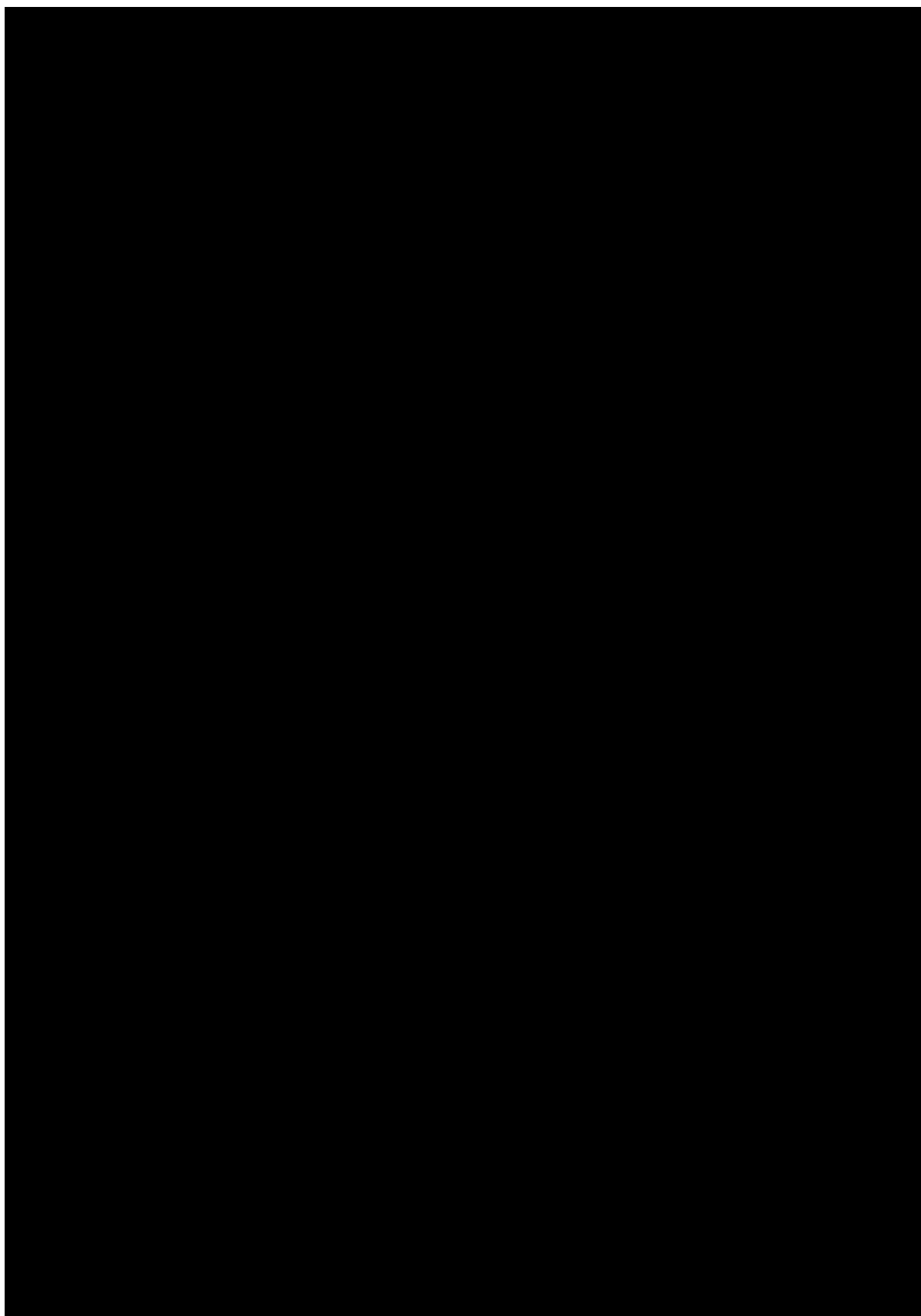
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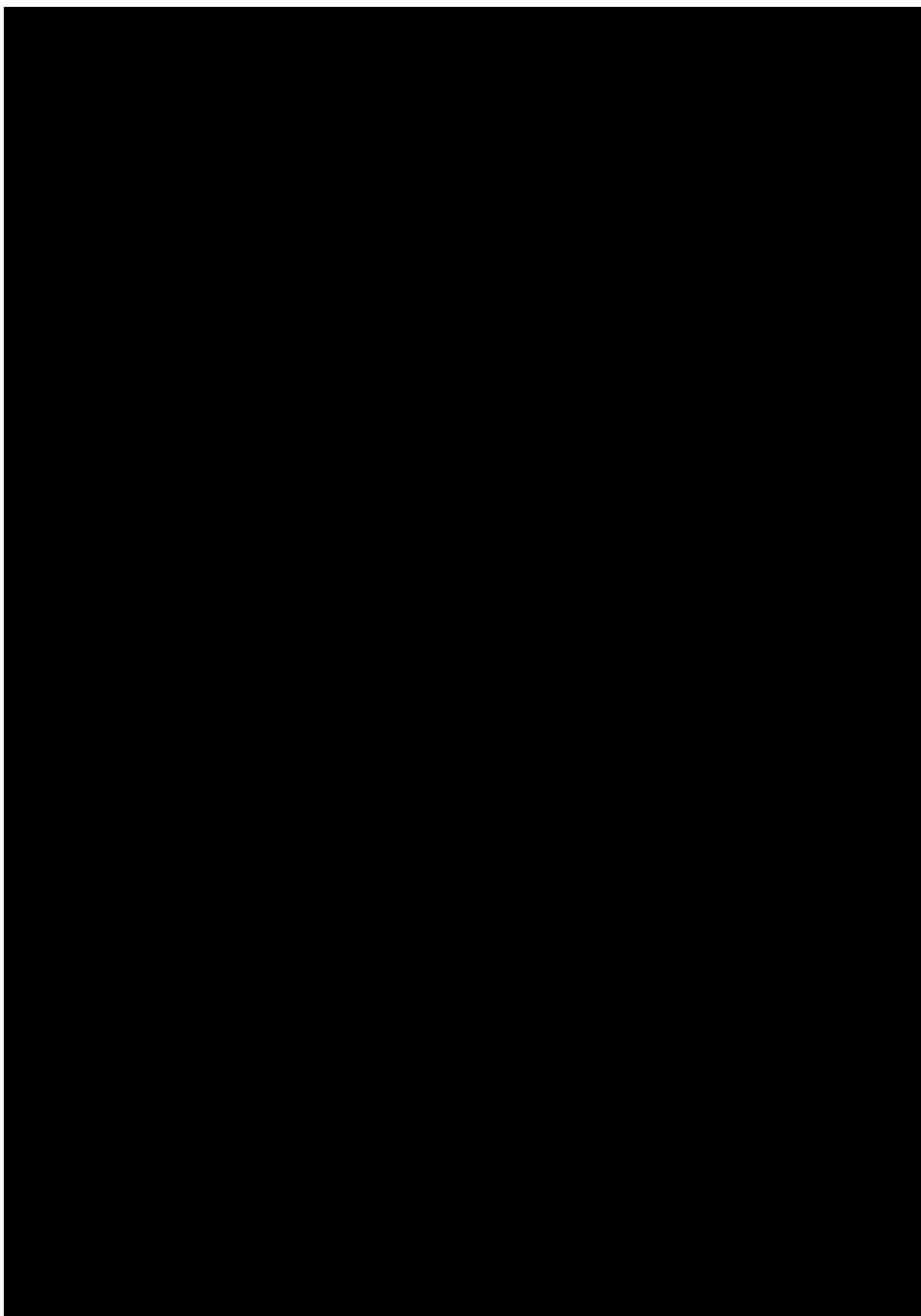
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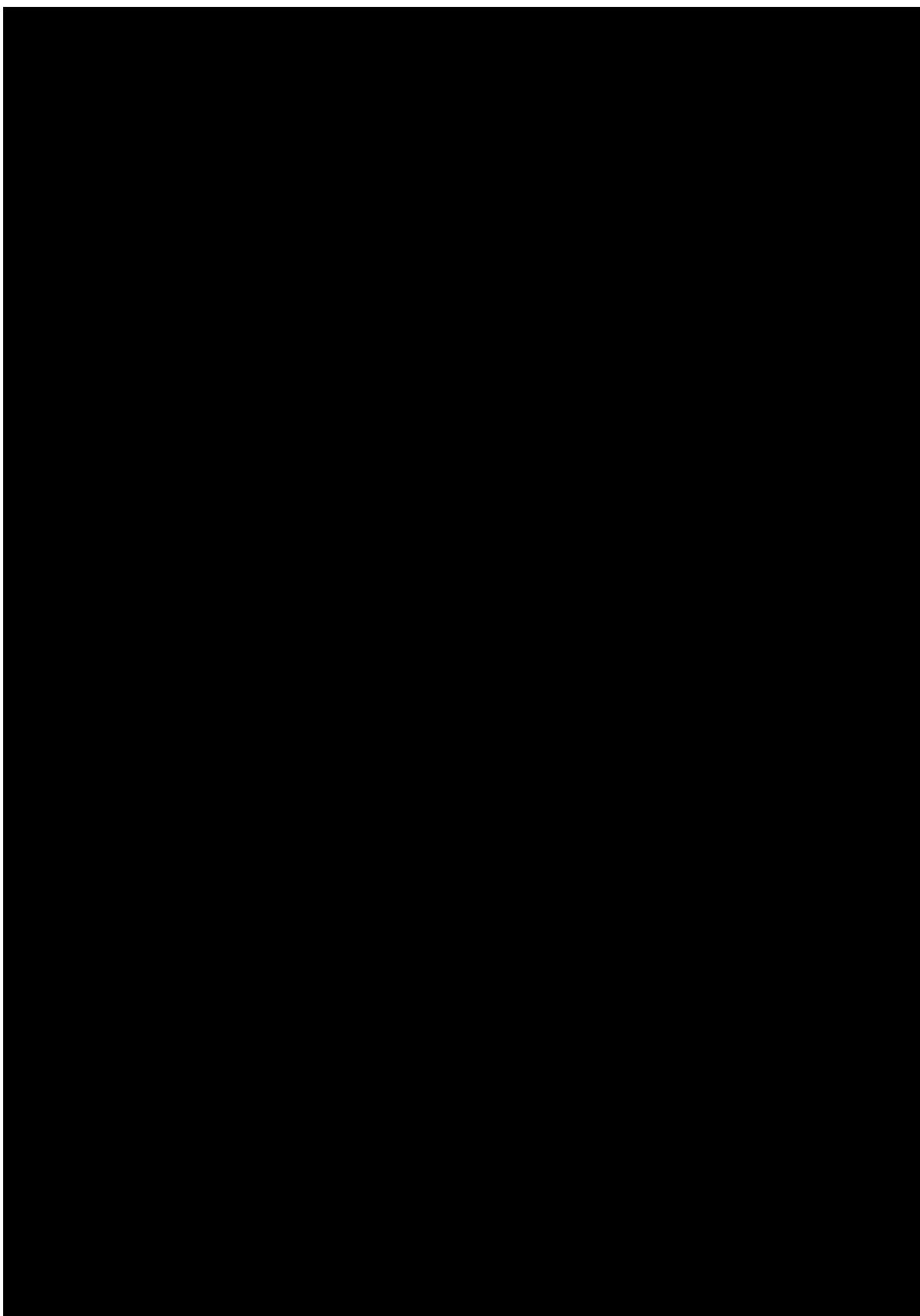
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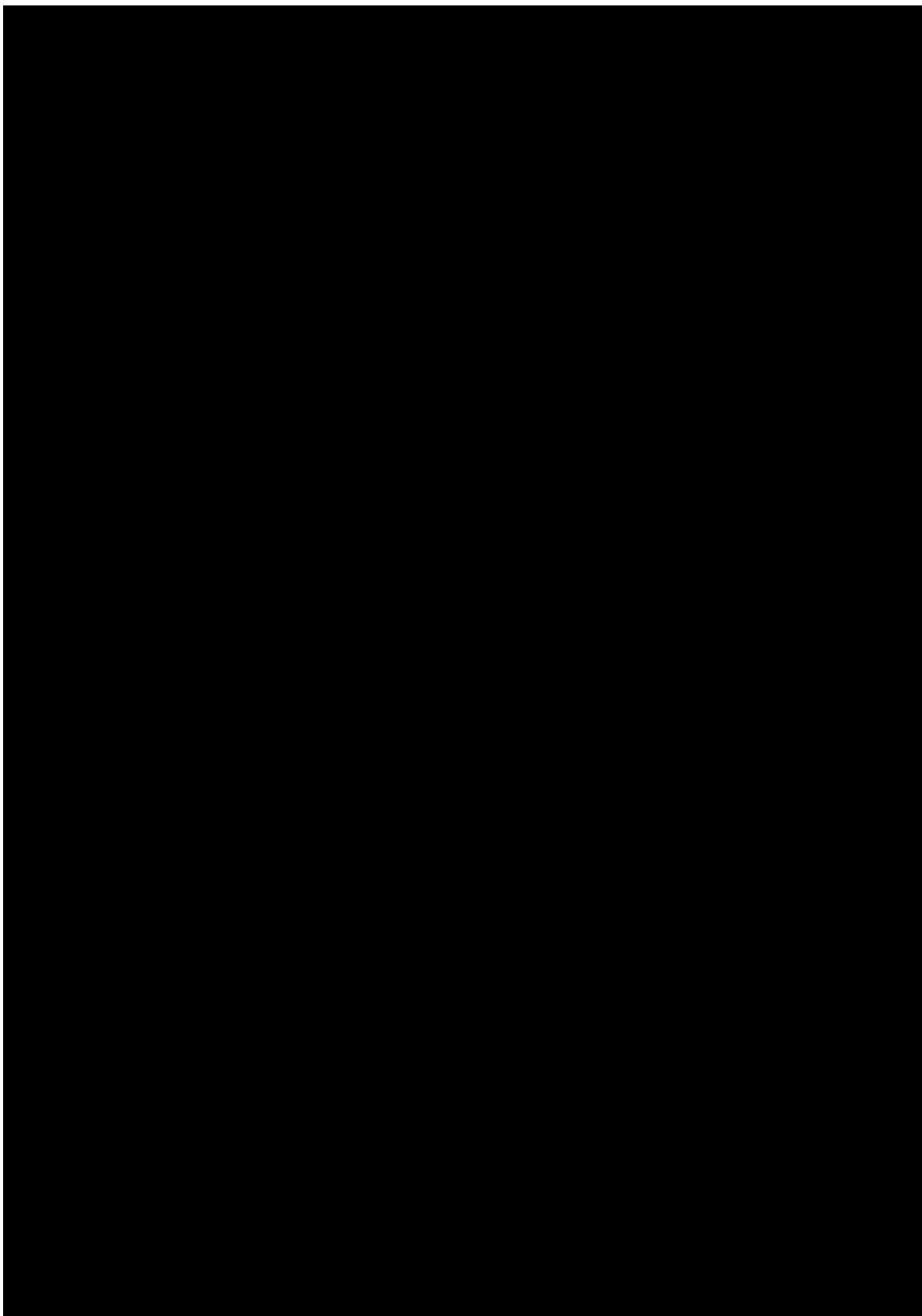
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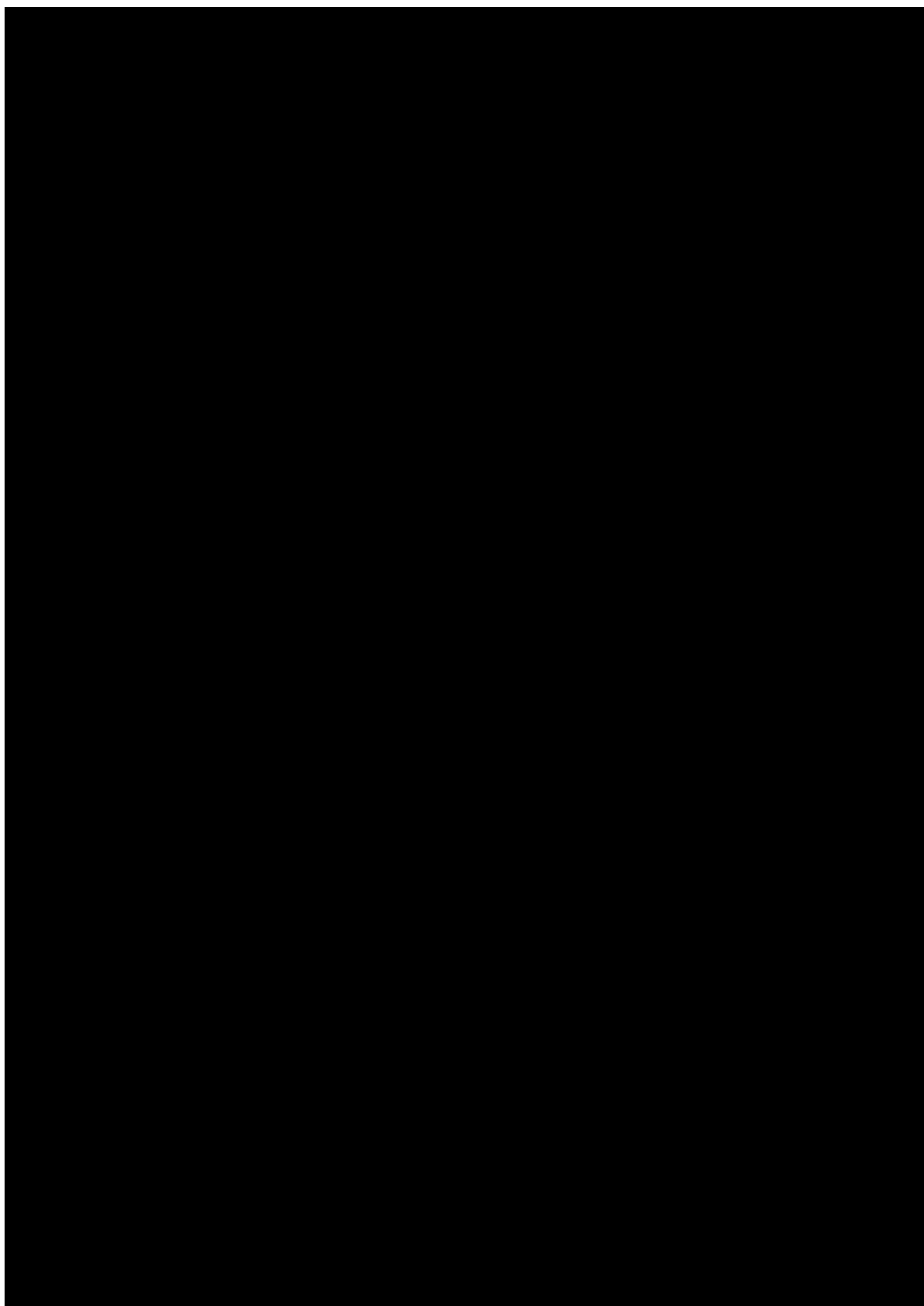
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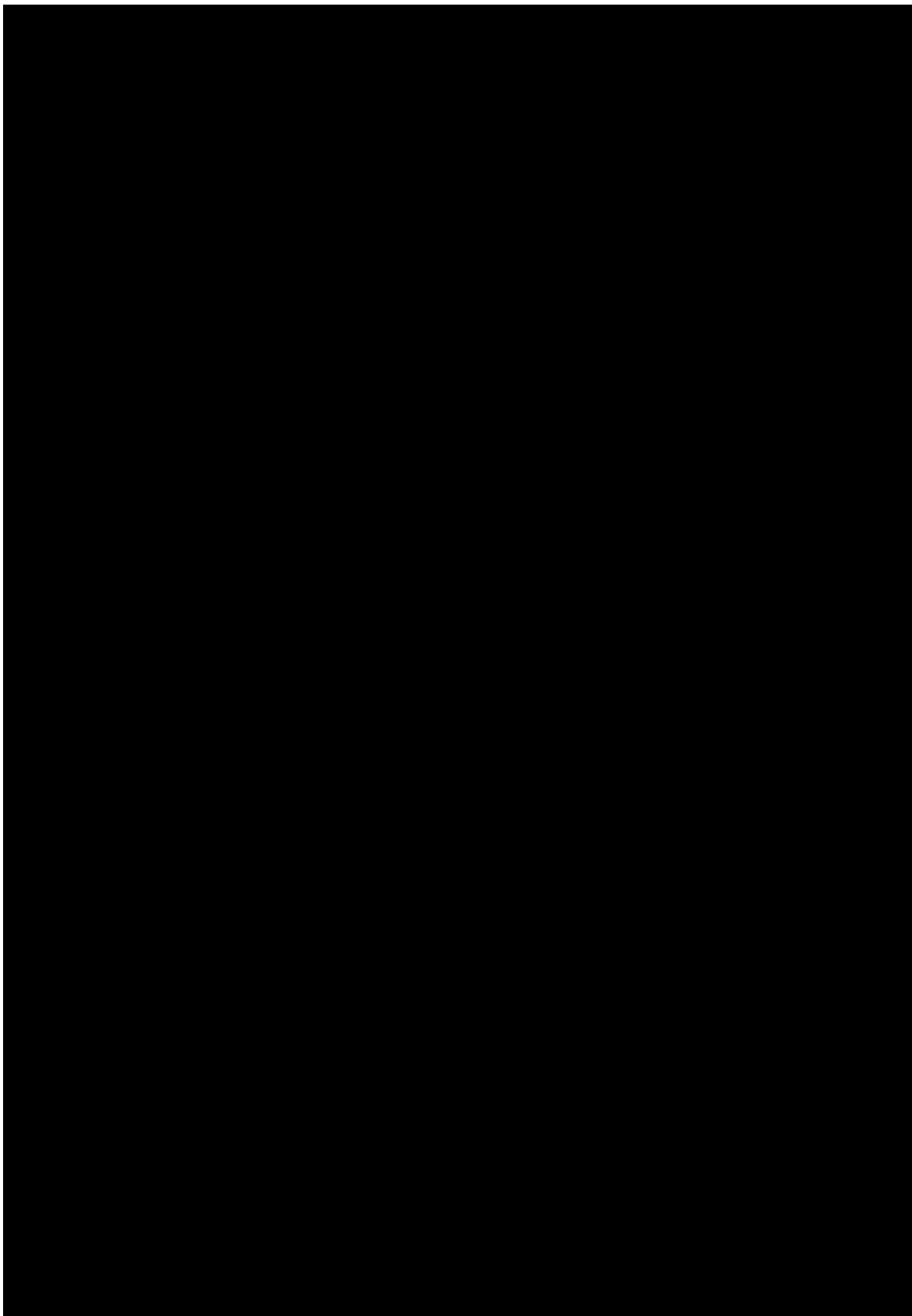
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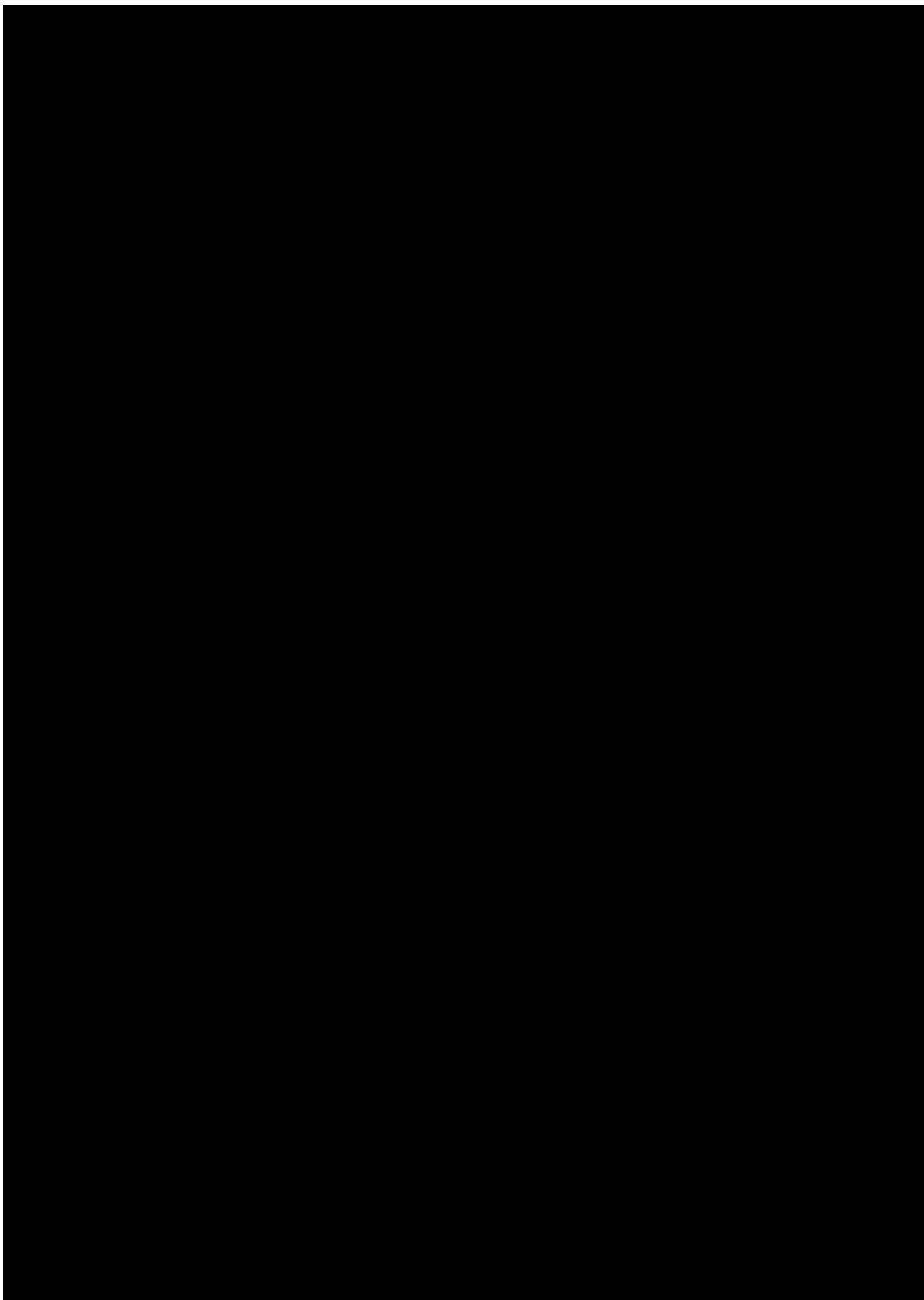
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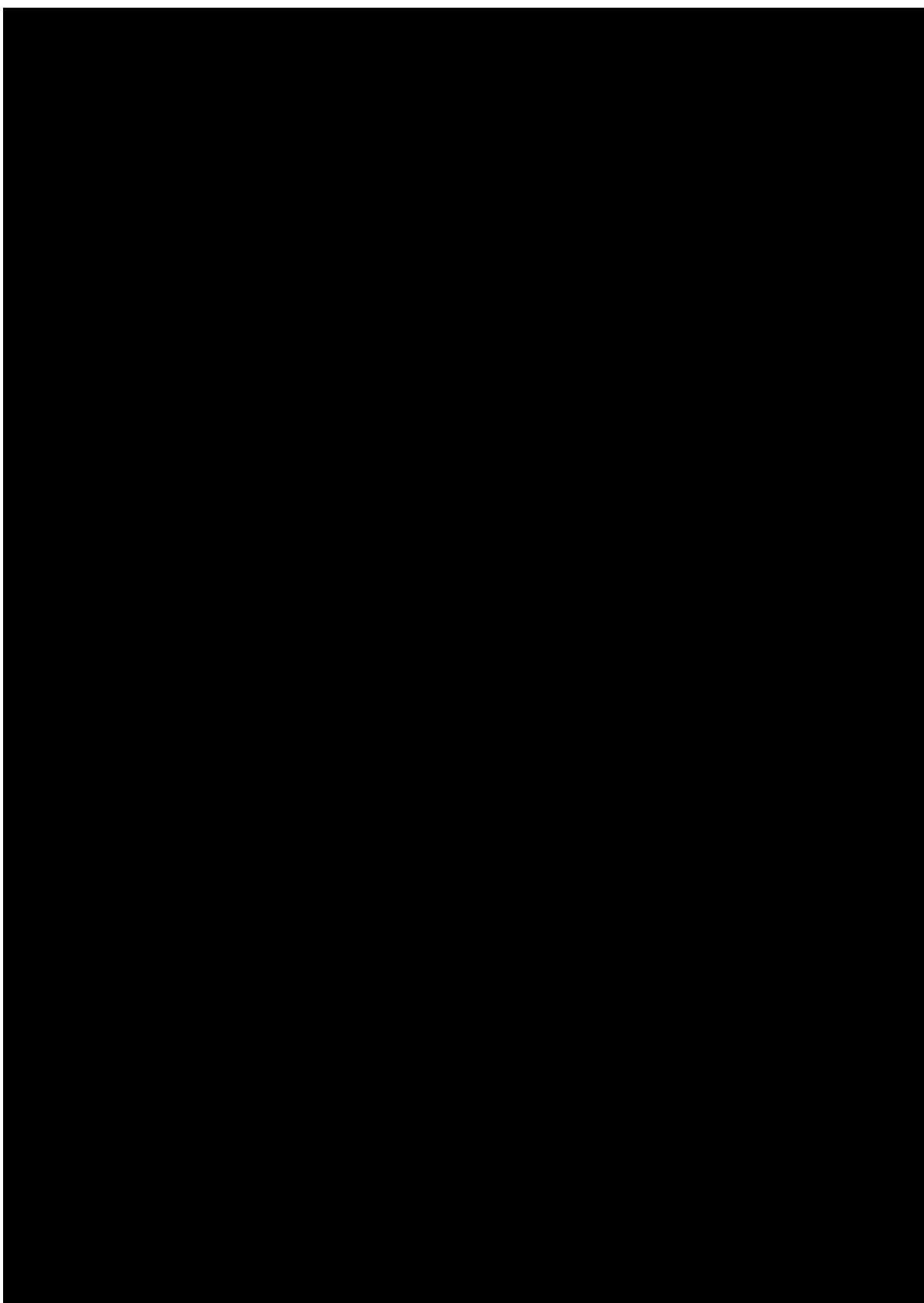
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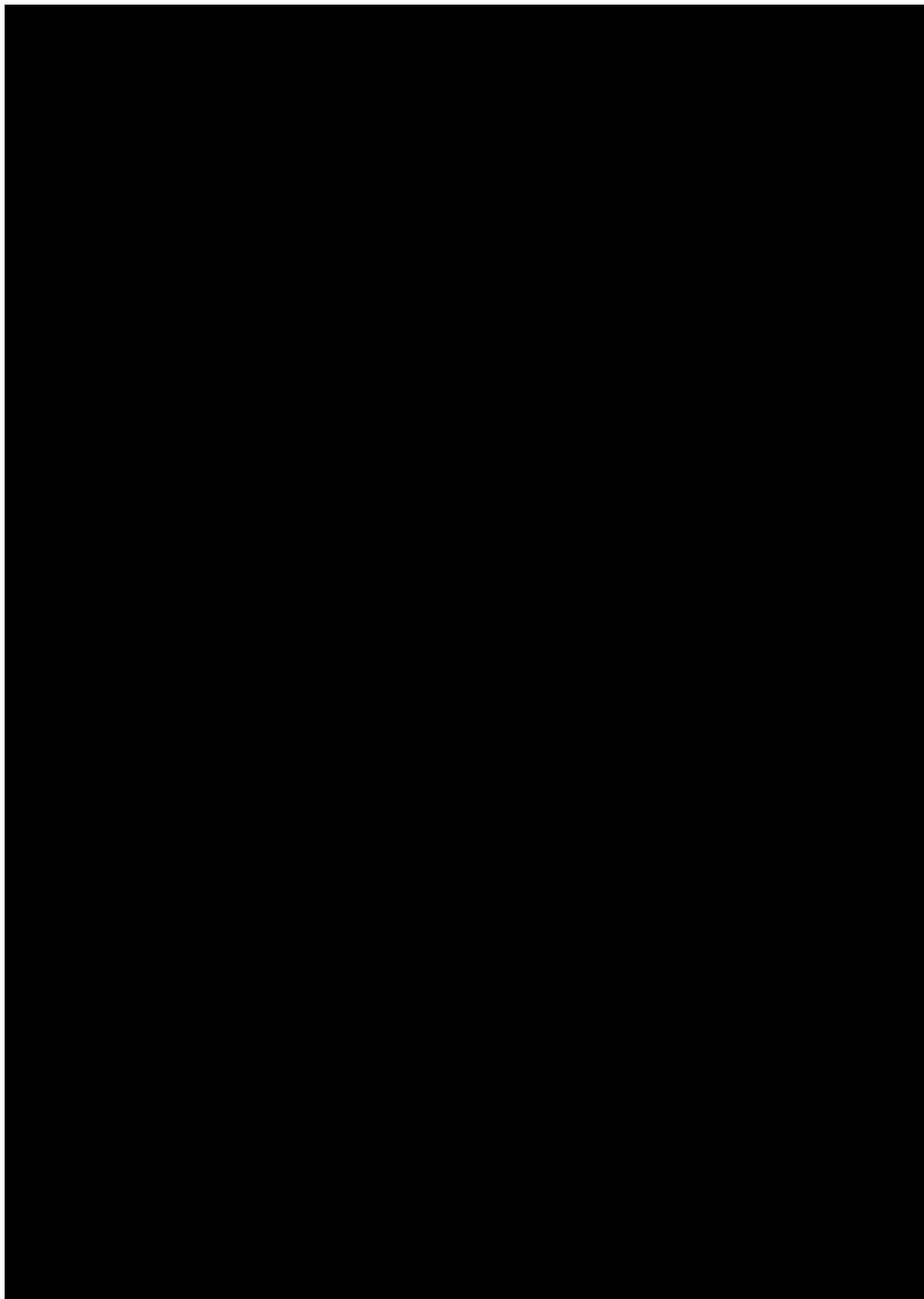
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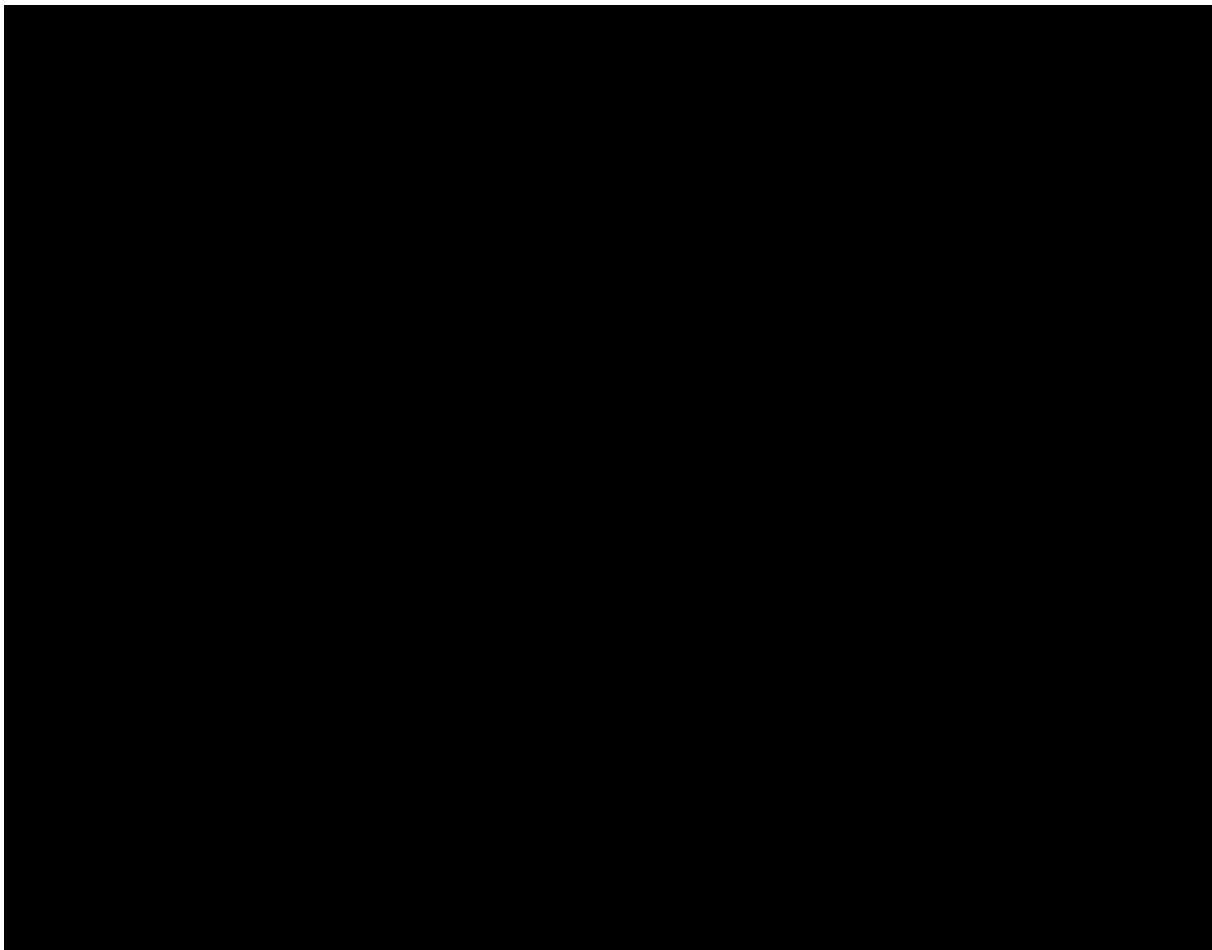
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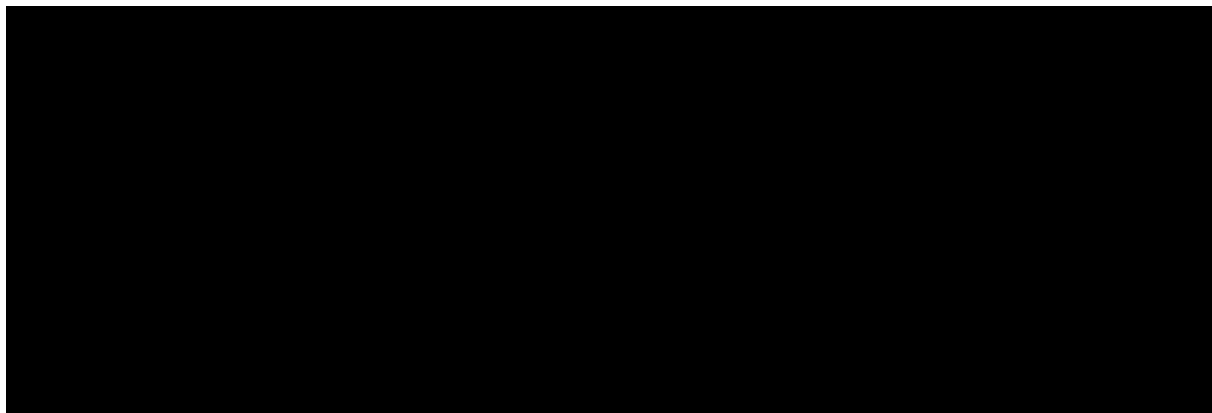
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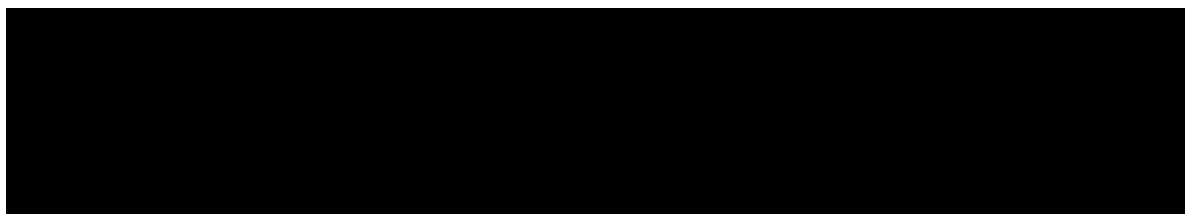
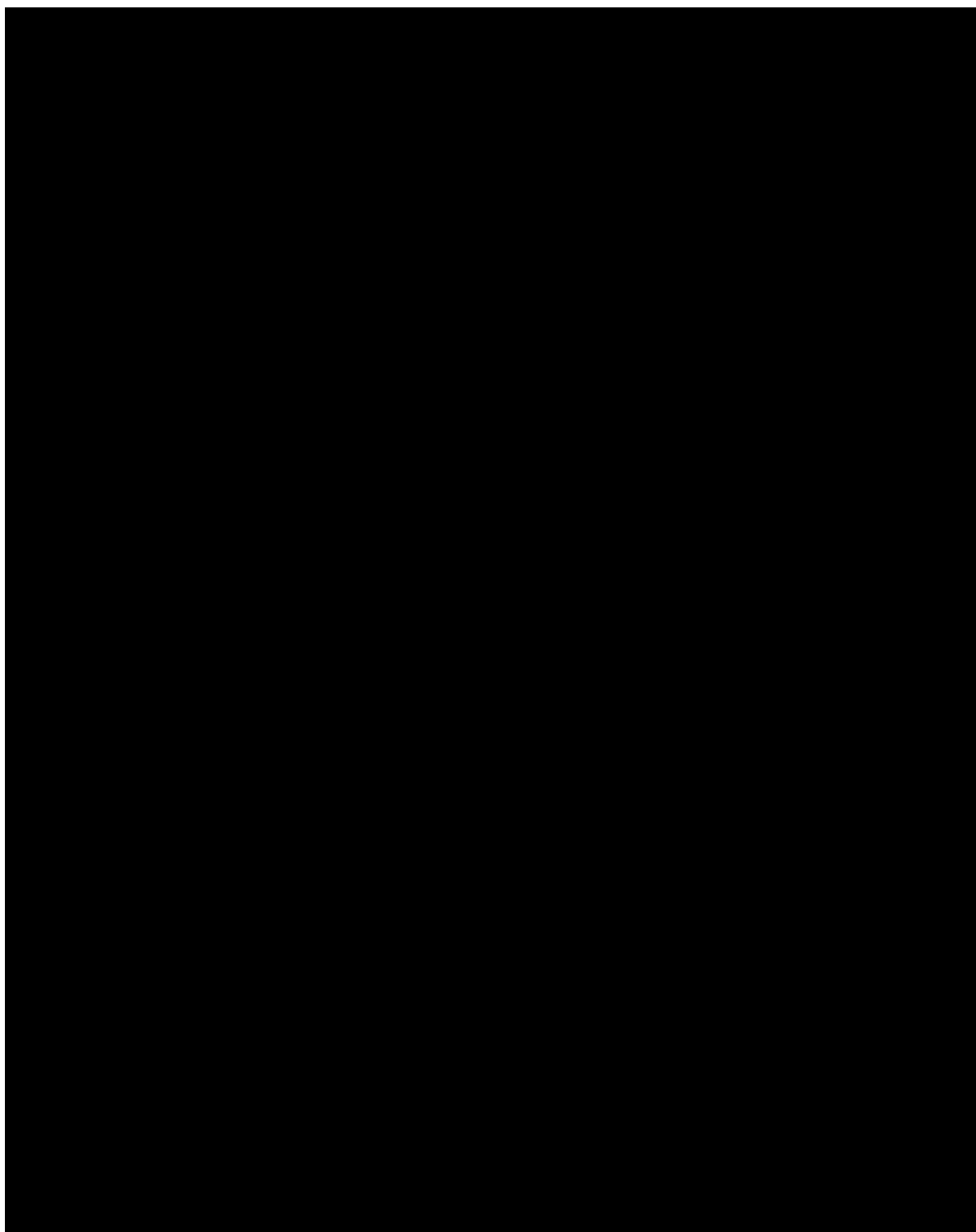
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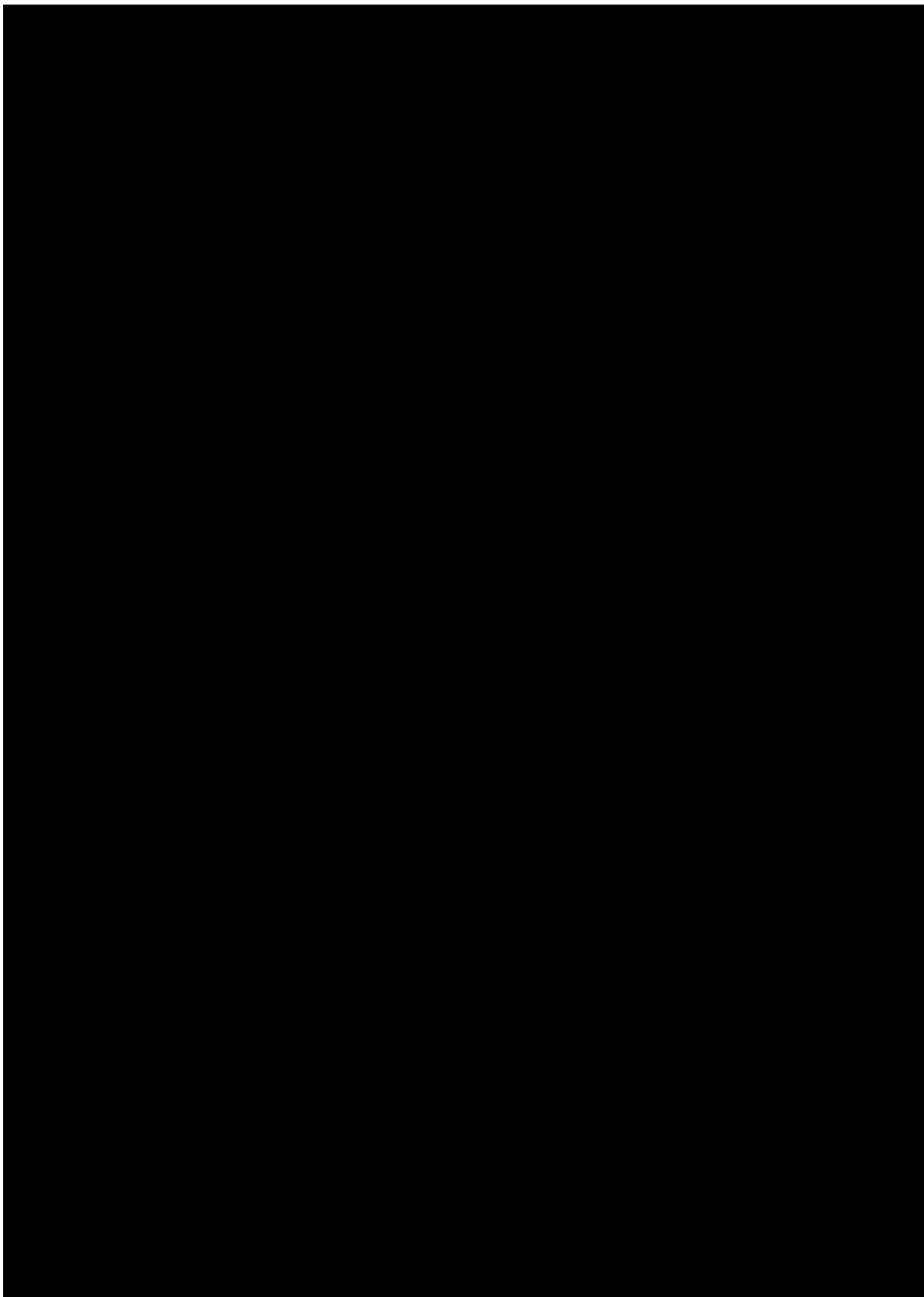
Q Do you know when you first received 10:28:38
information about Active Desktops? 10:28:40
A I had an active description so I would 10:28:48
receive it when you sent -- when Microsoft sent it 10:28:51
out. 10:28:51



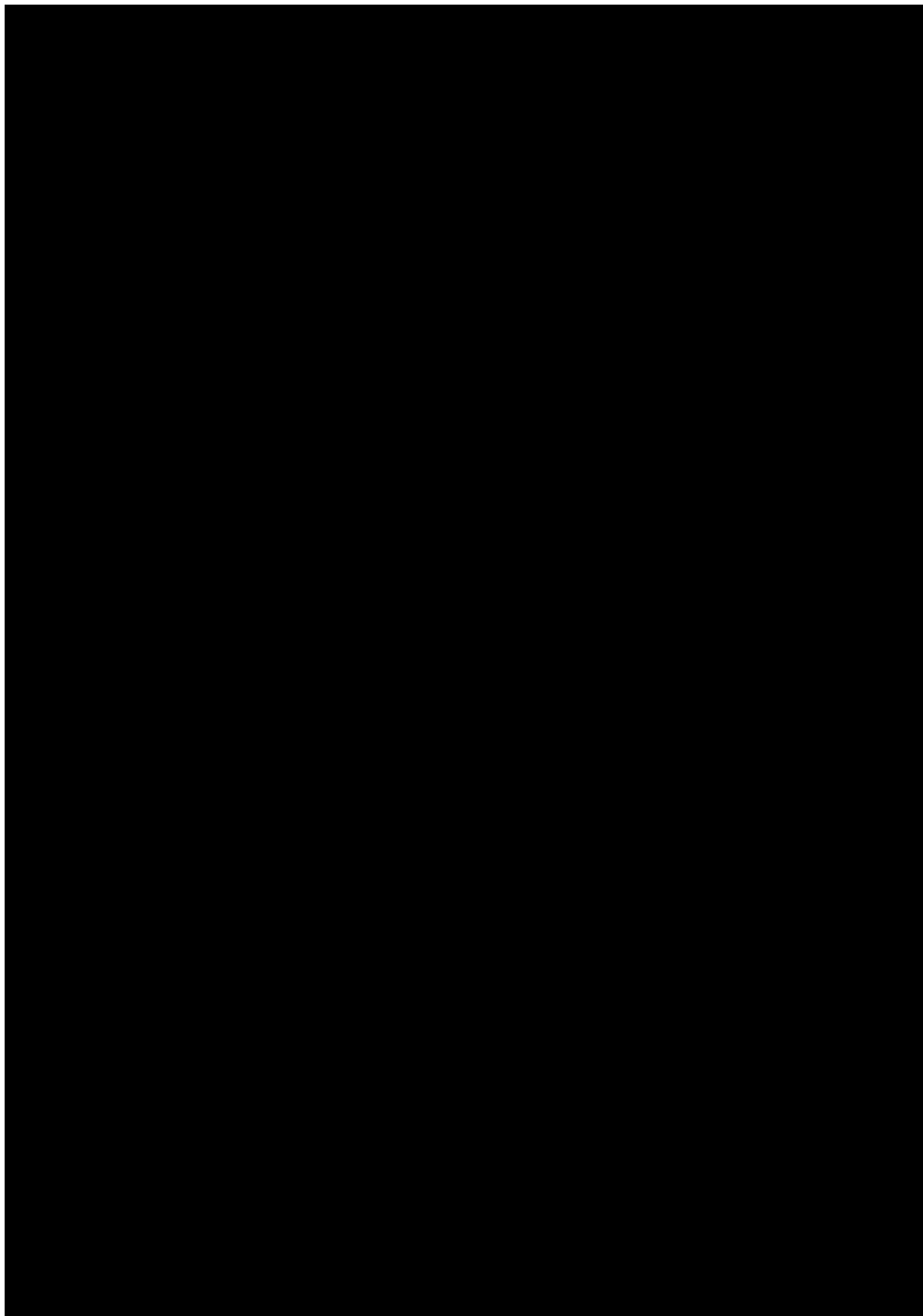
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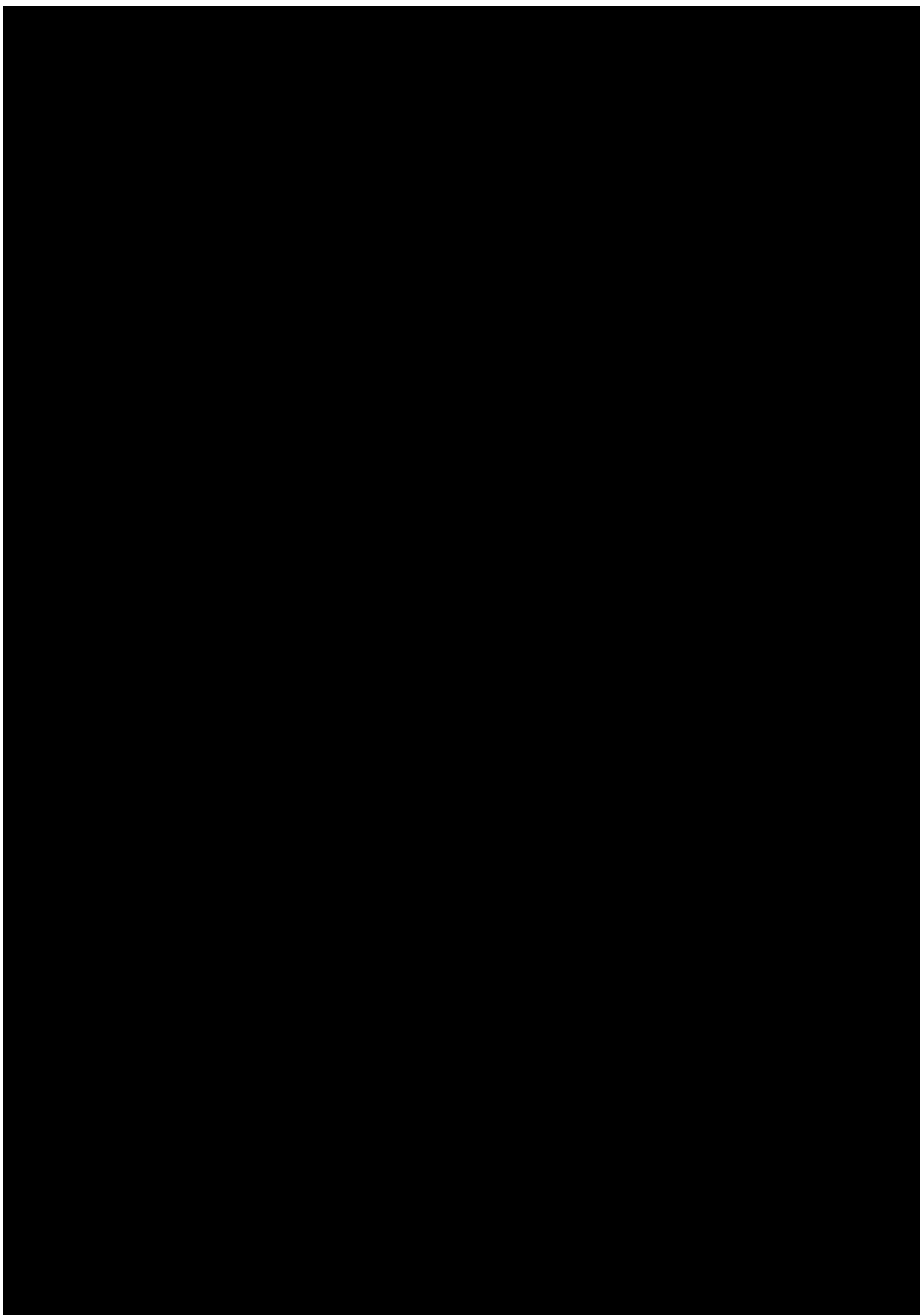
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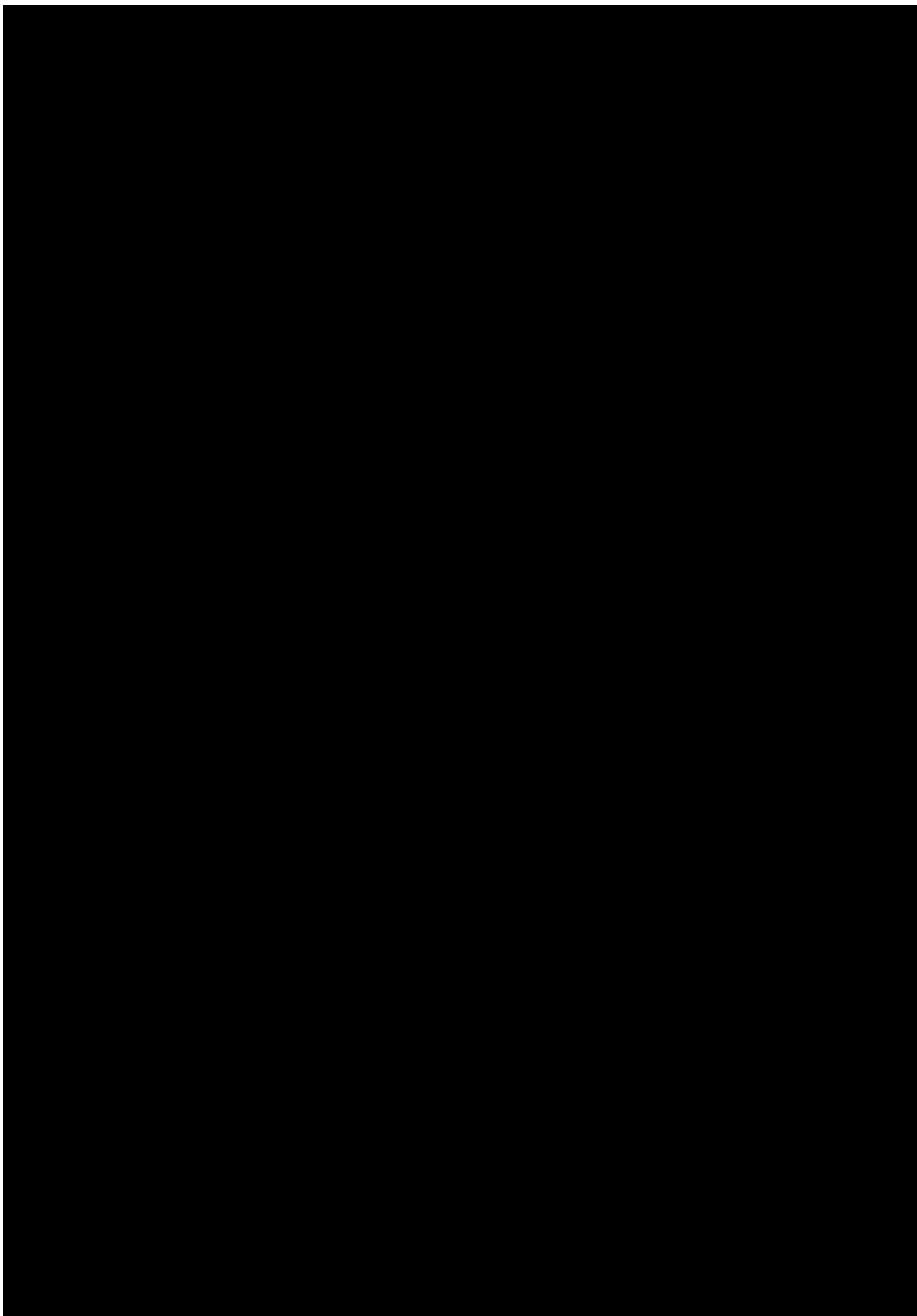
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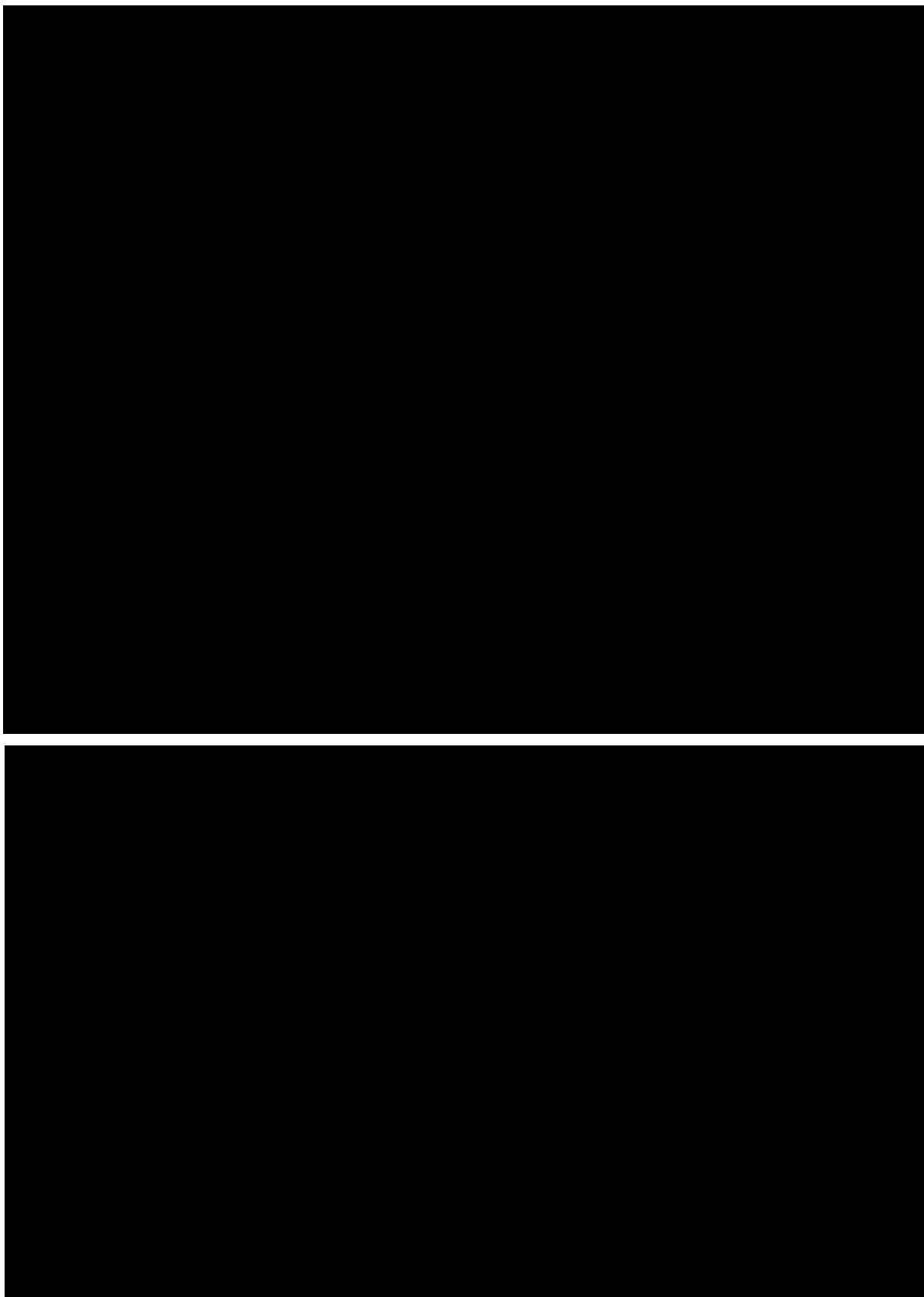
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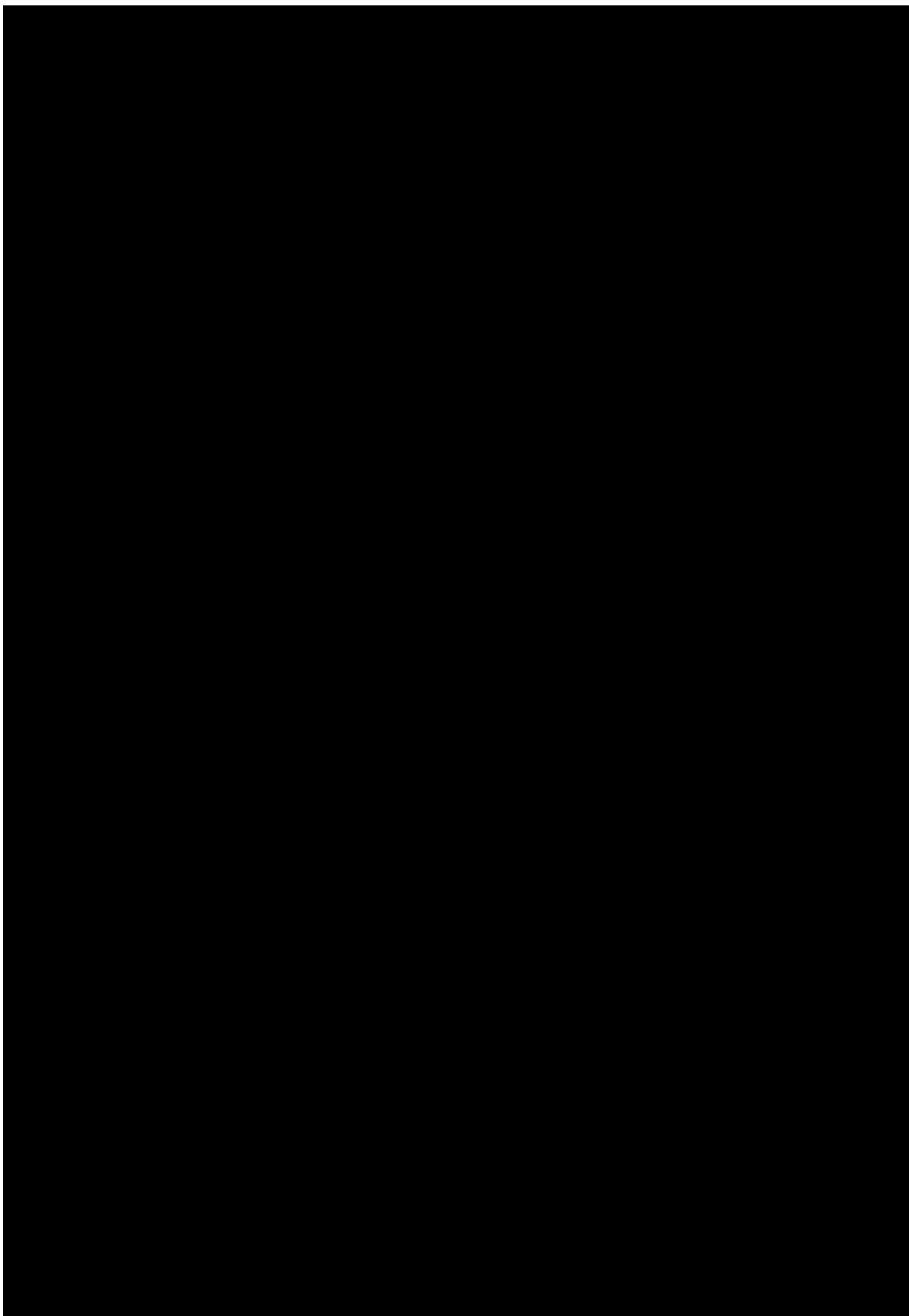
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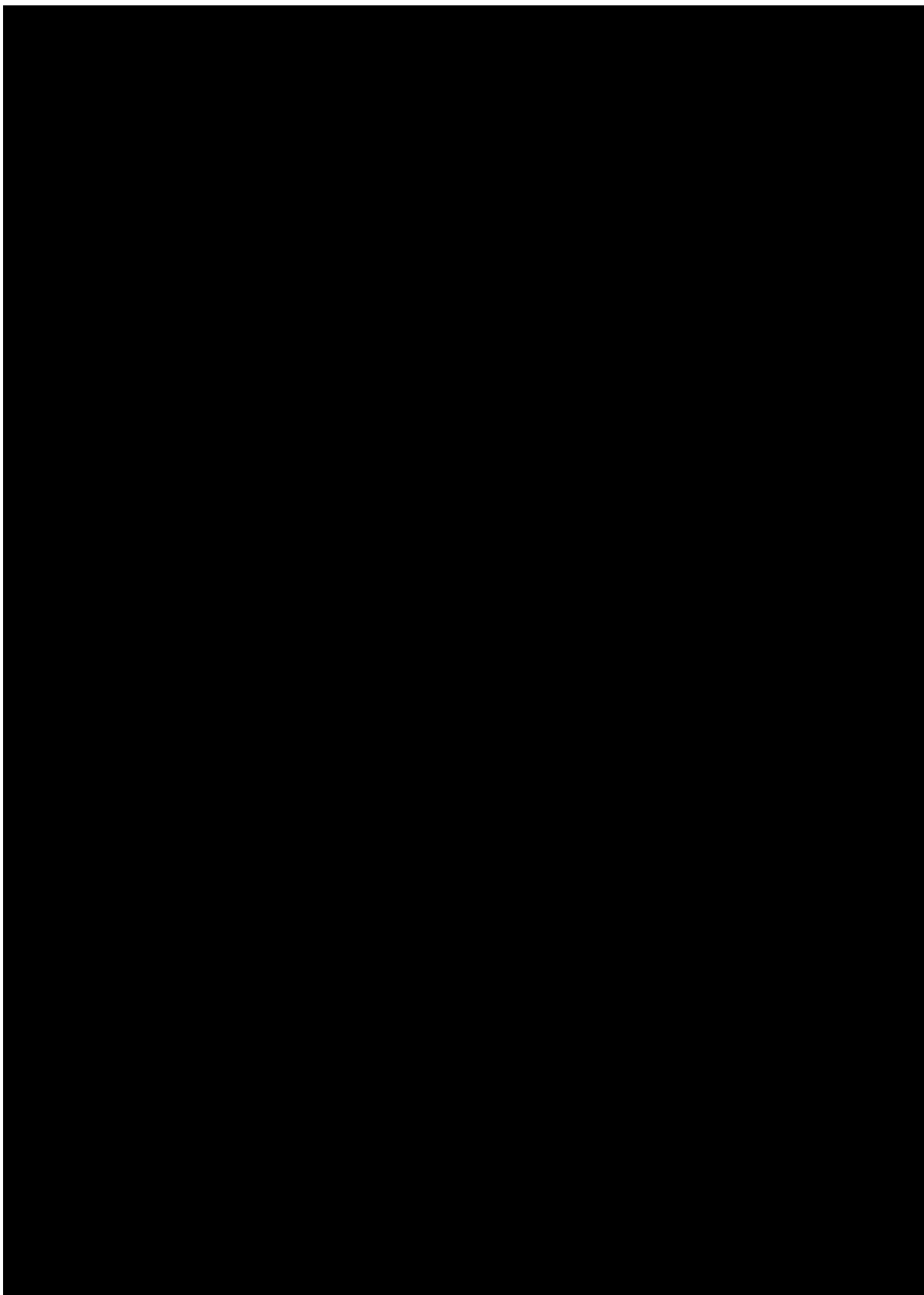
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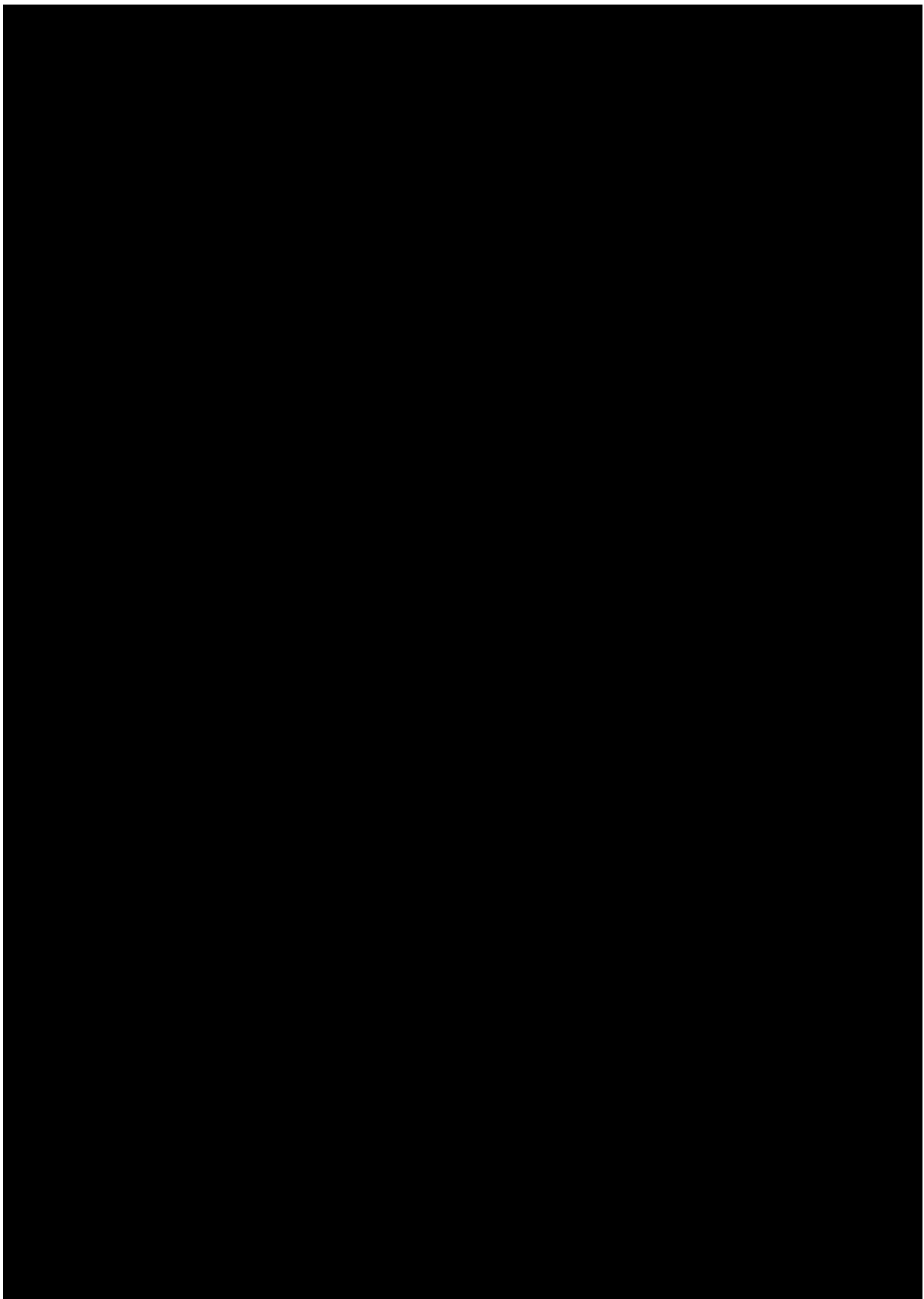
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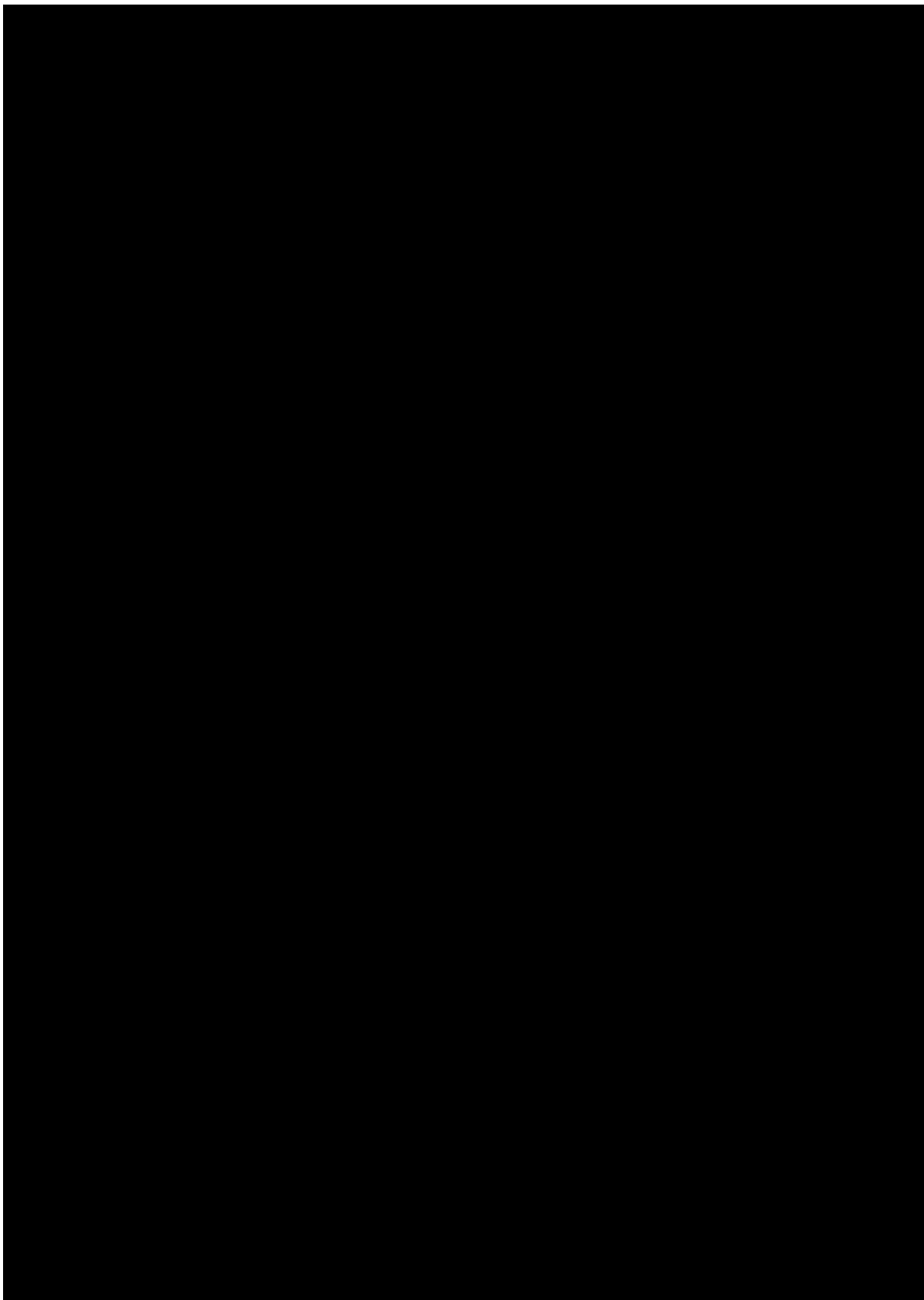
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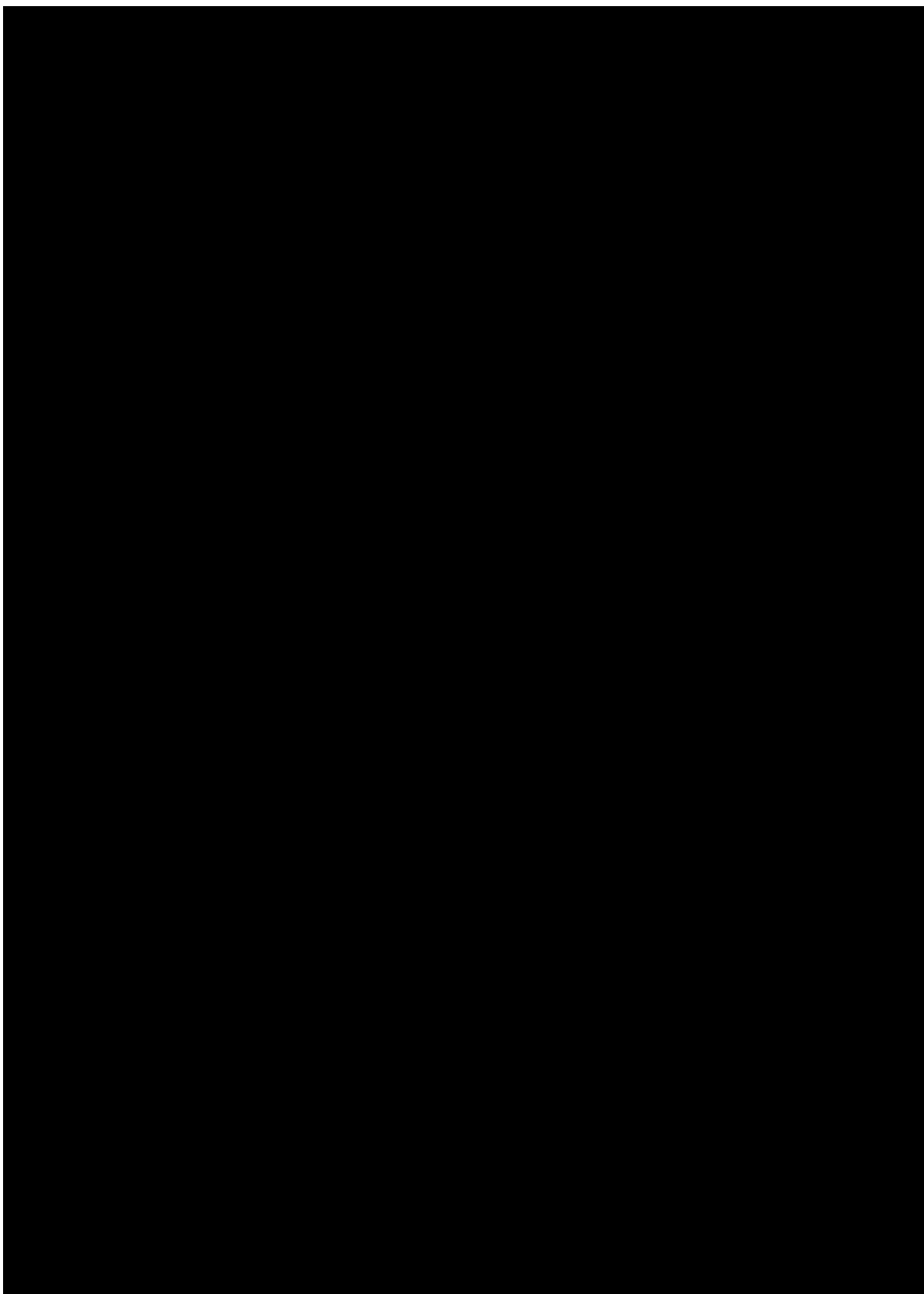
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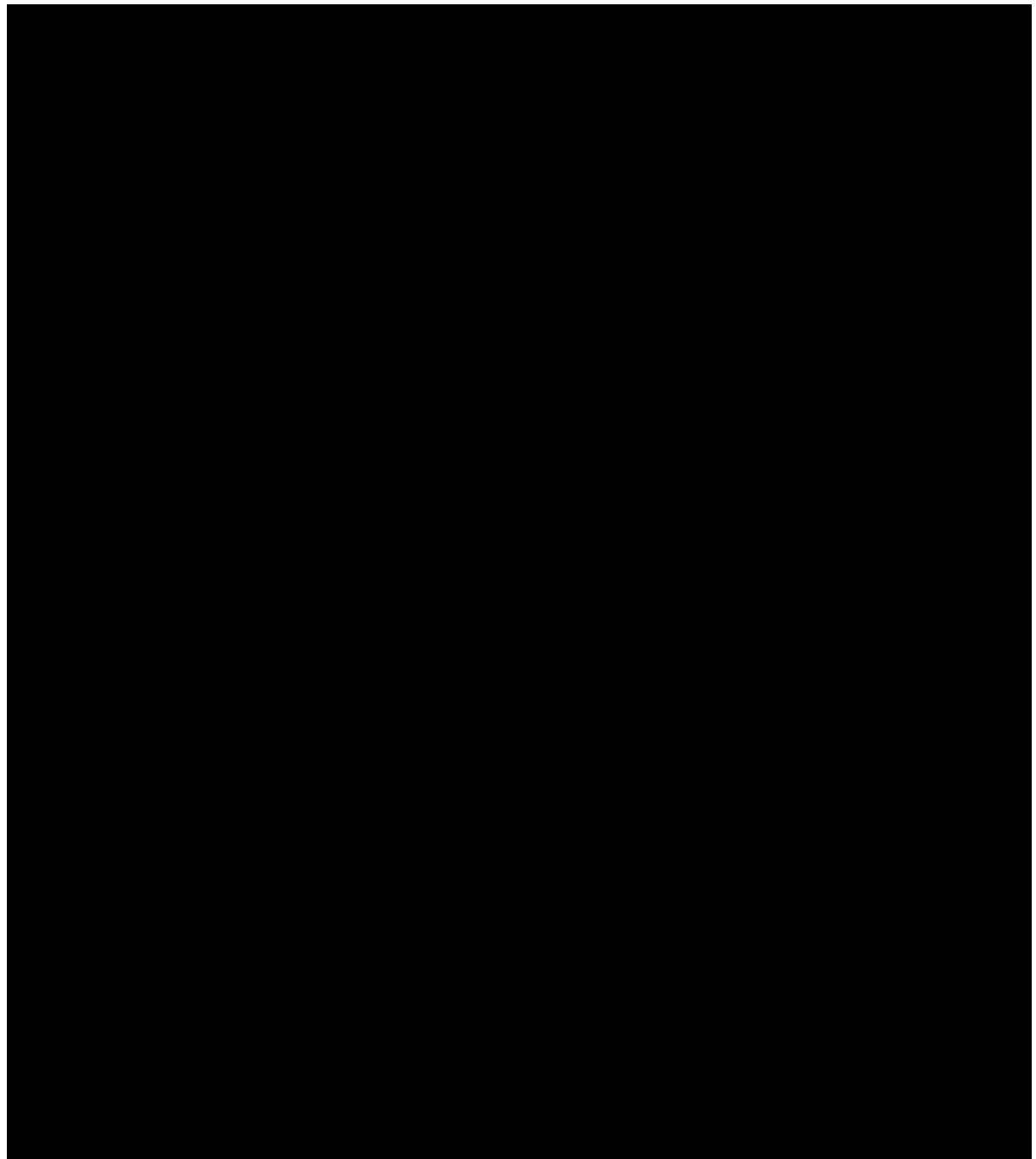
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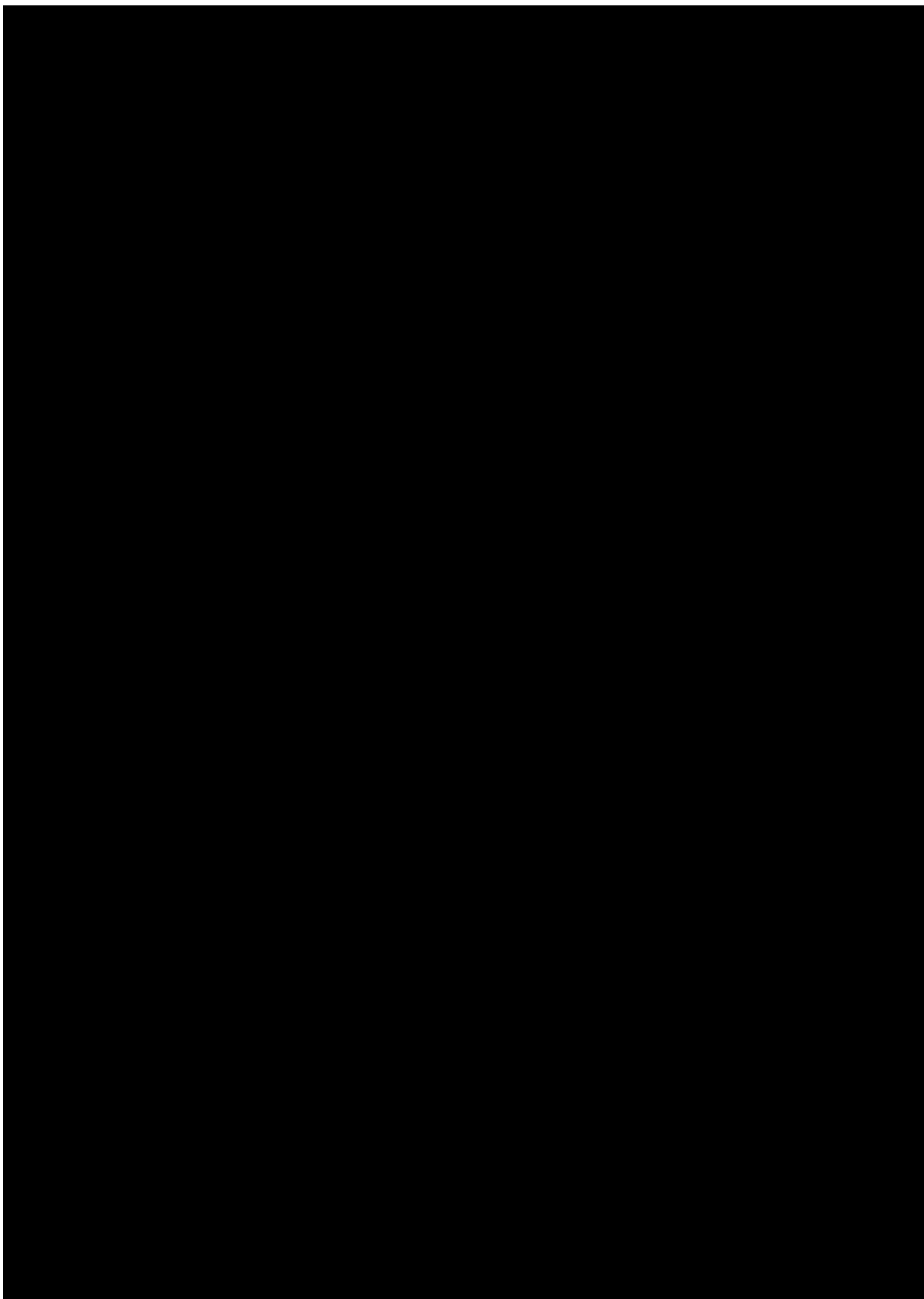
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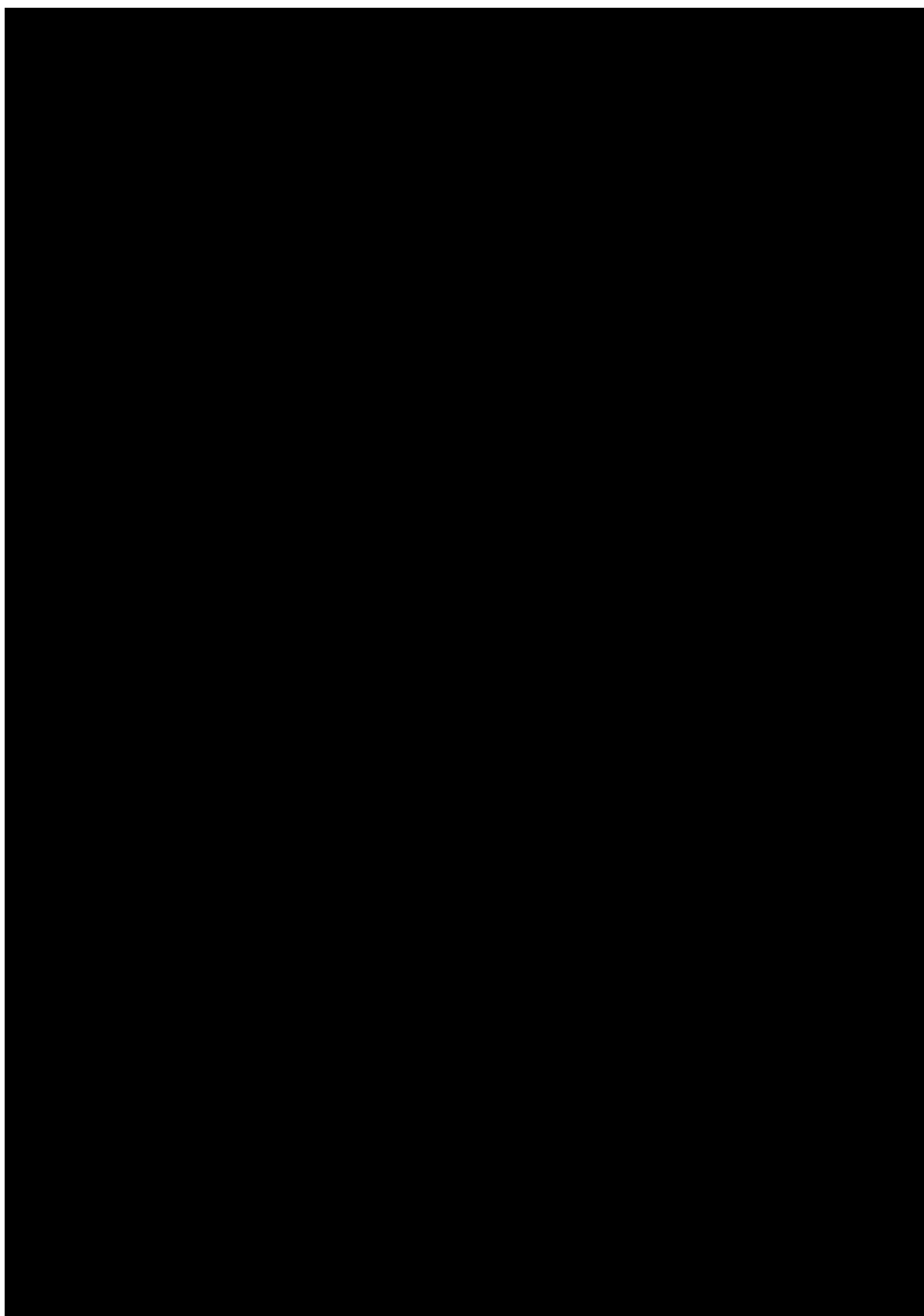
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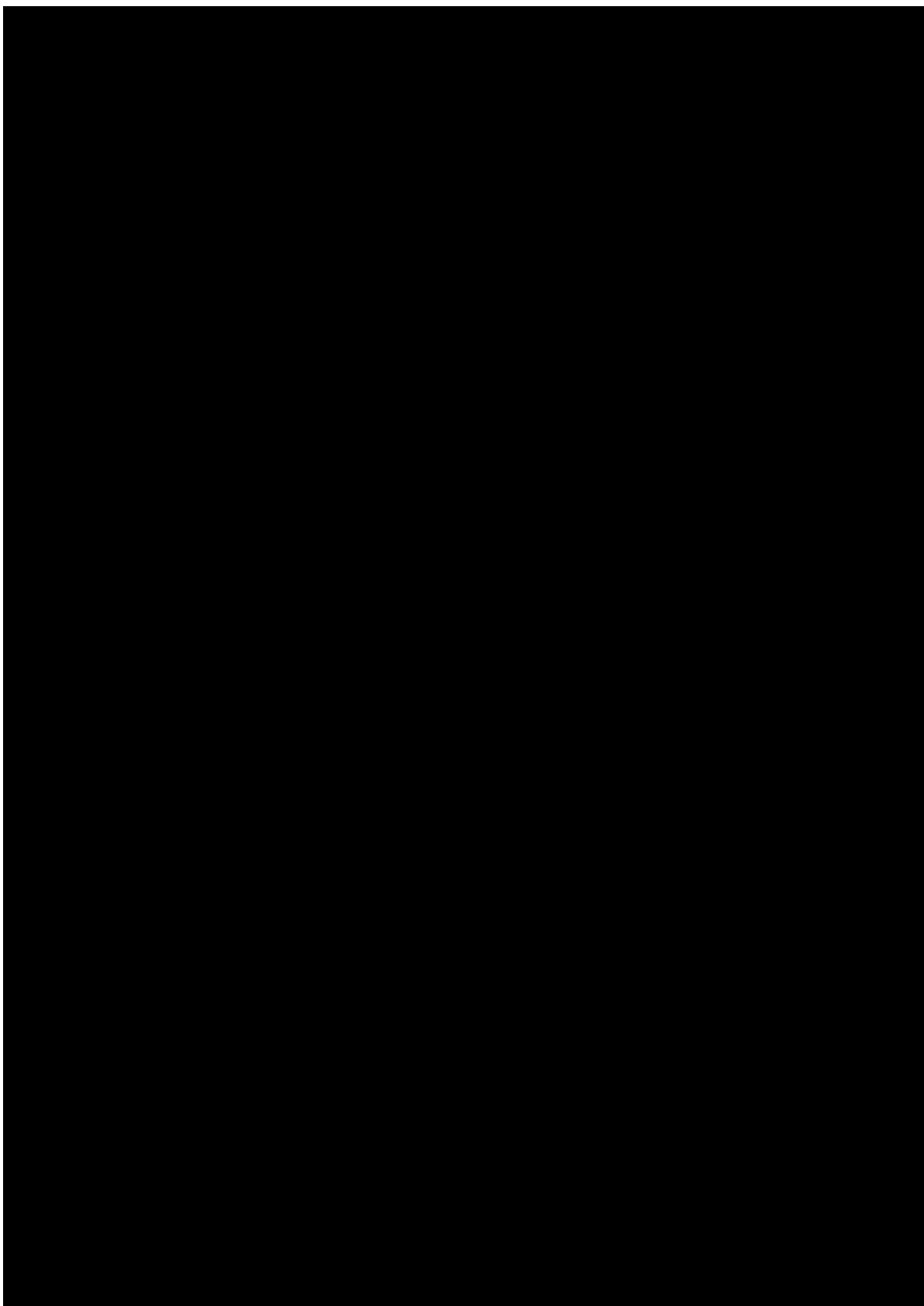
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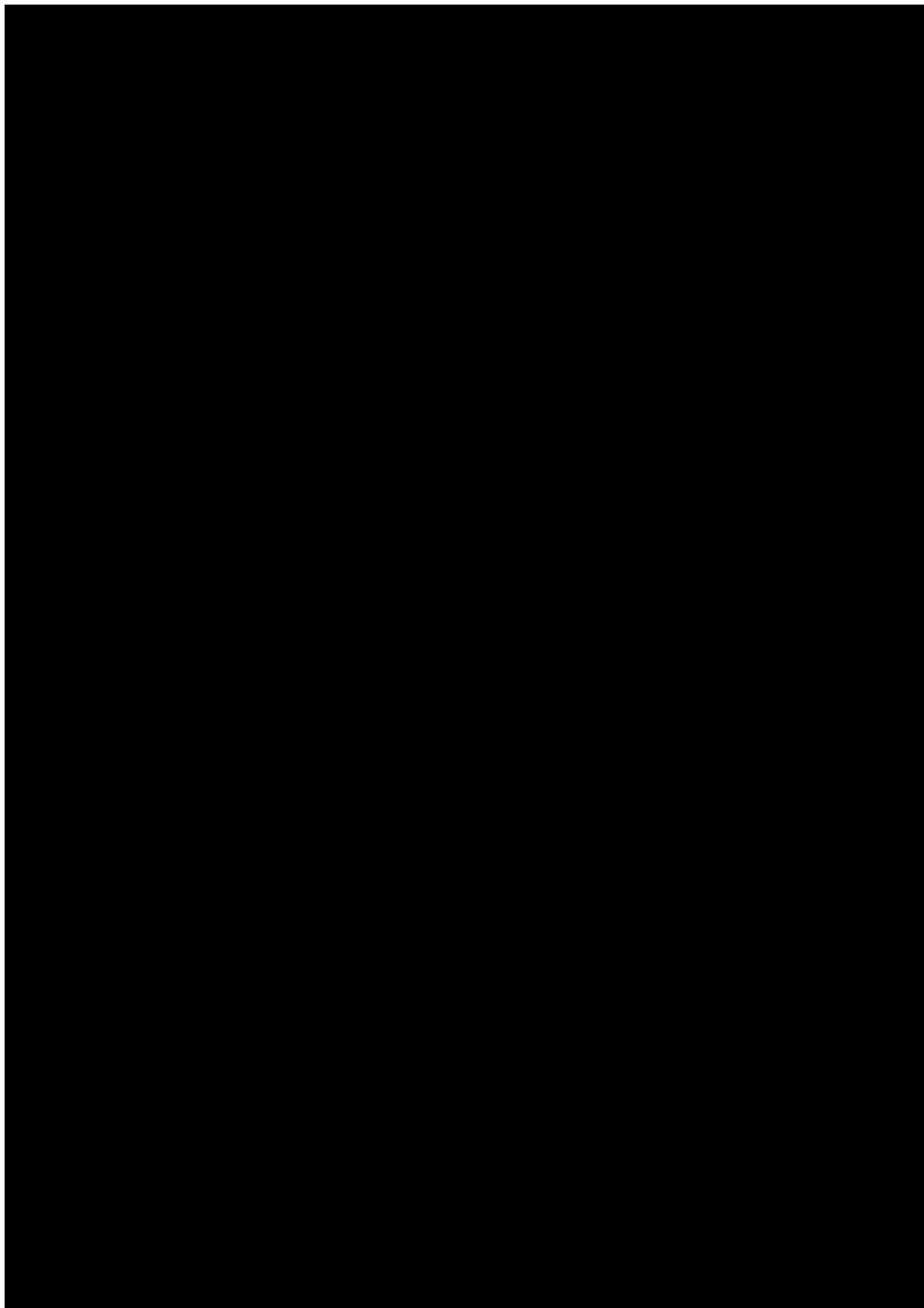
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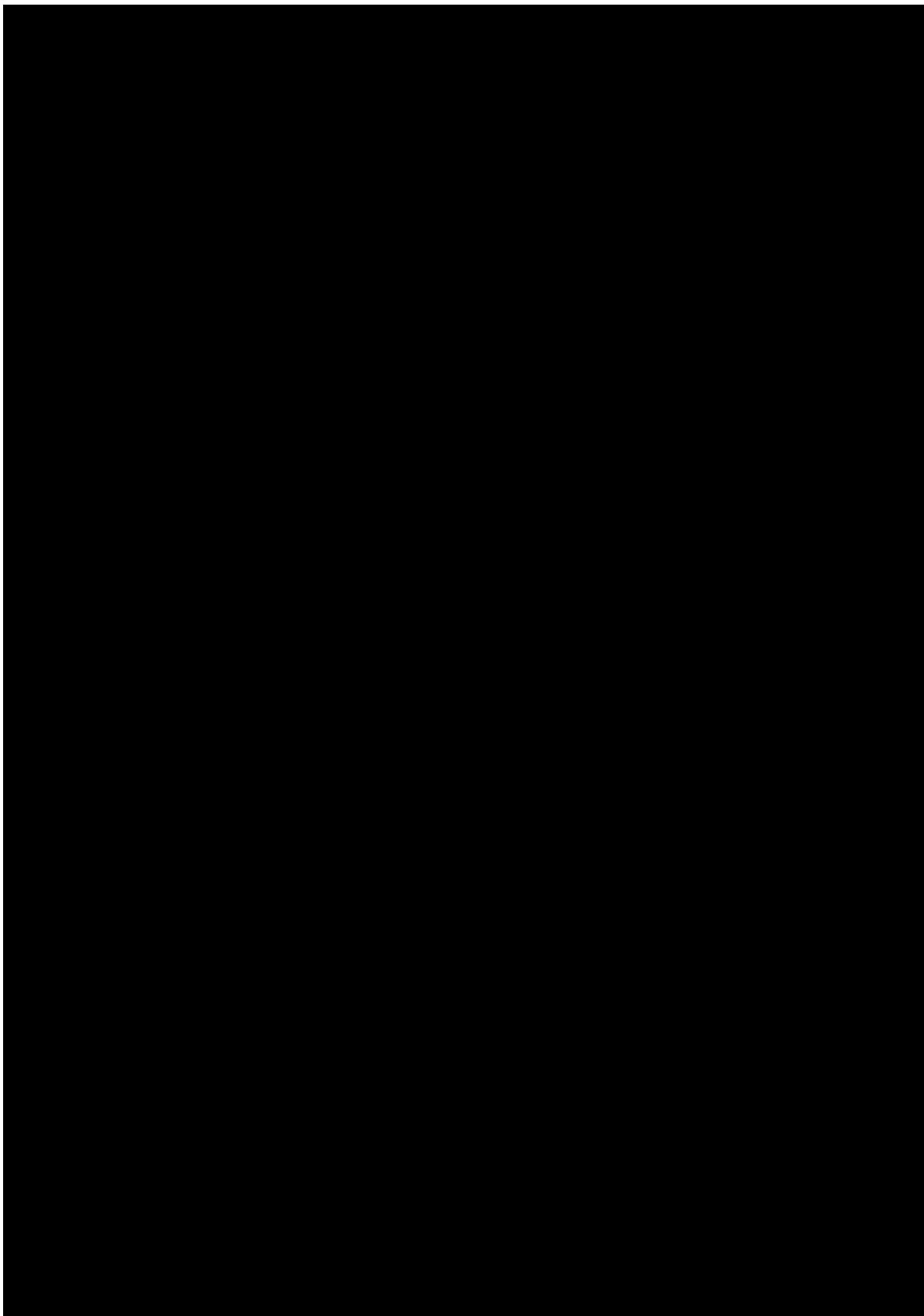
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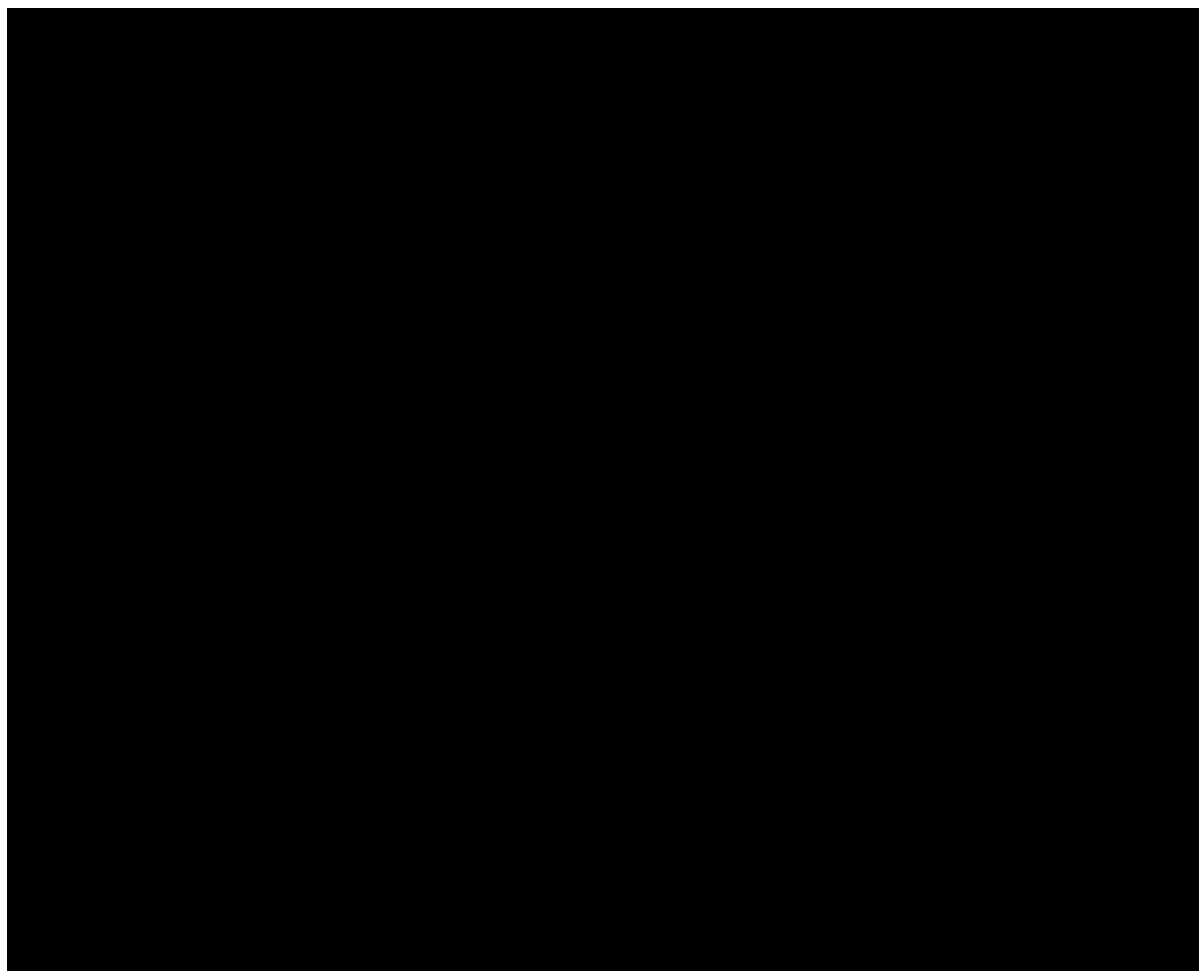
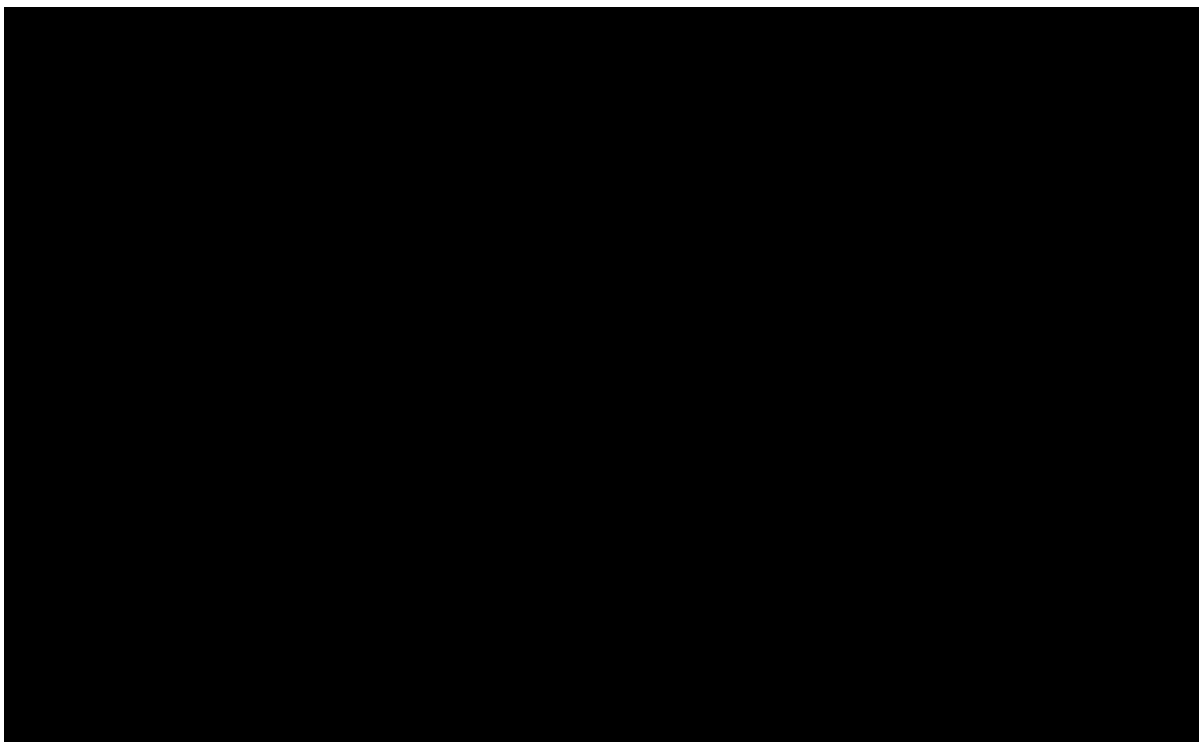
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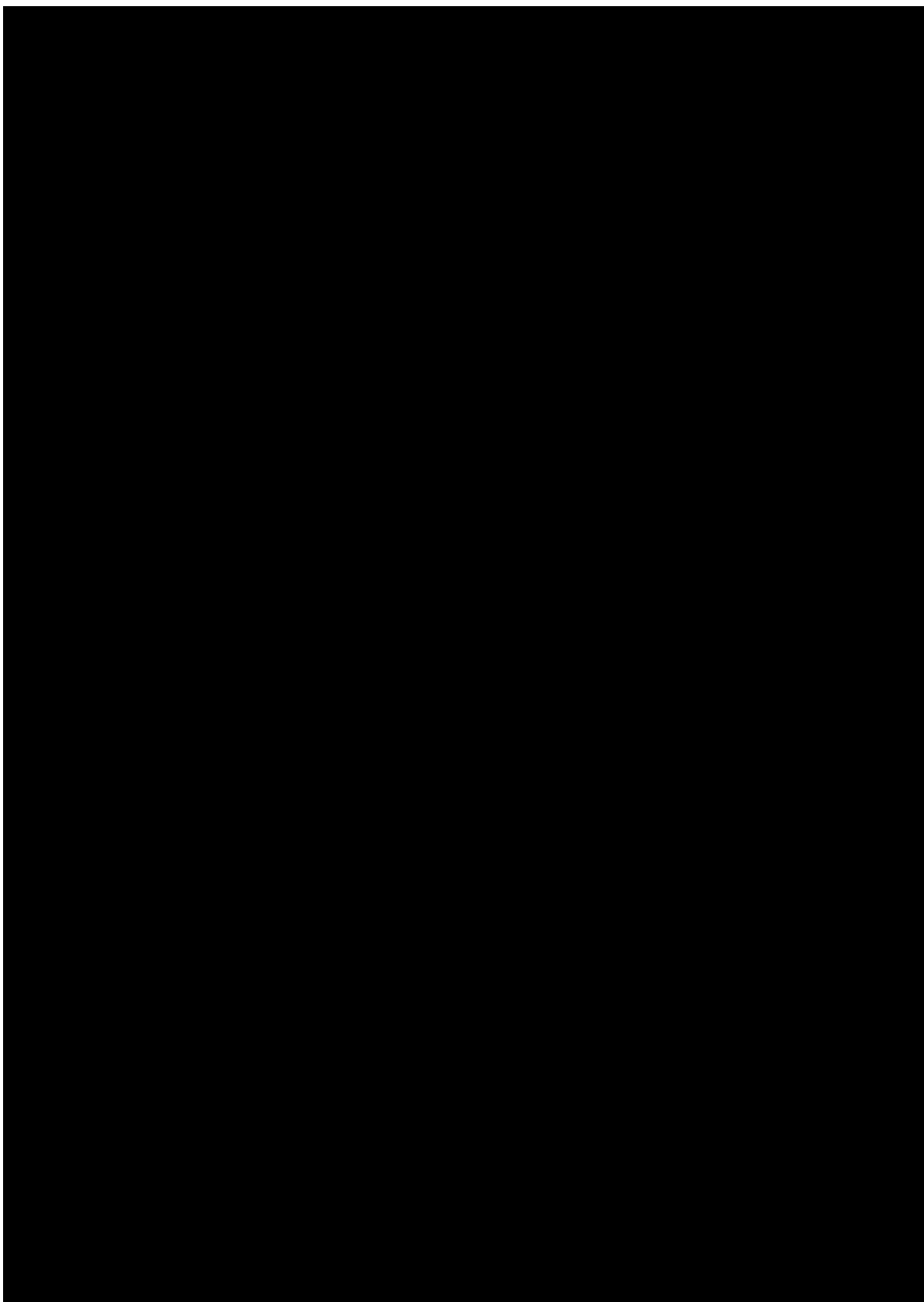
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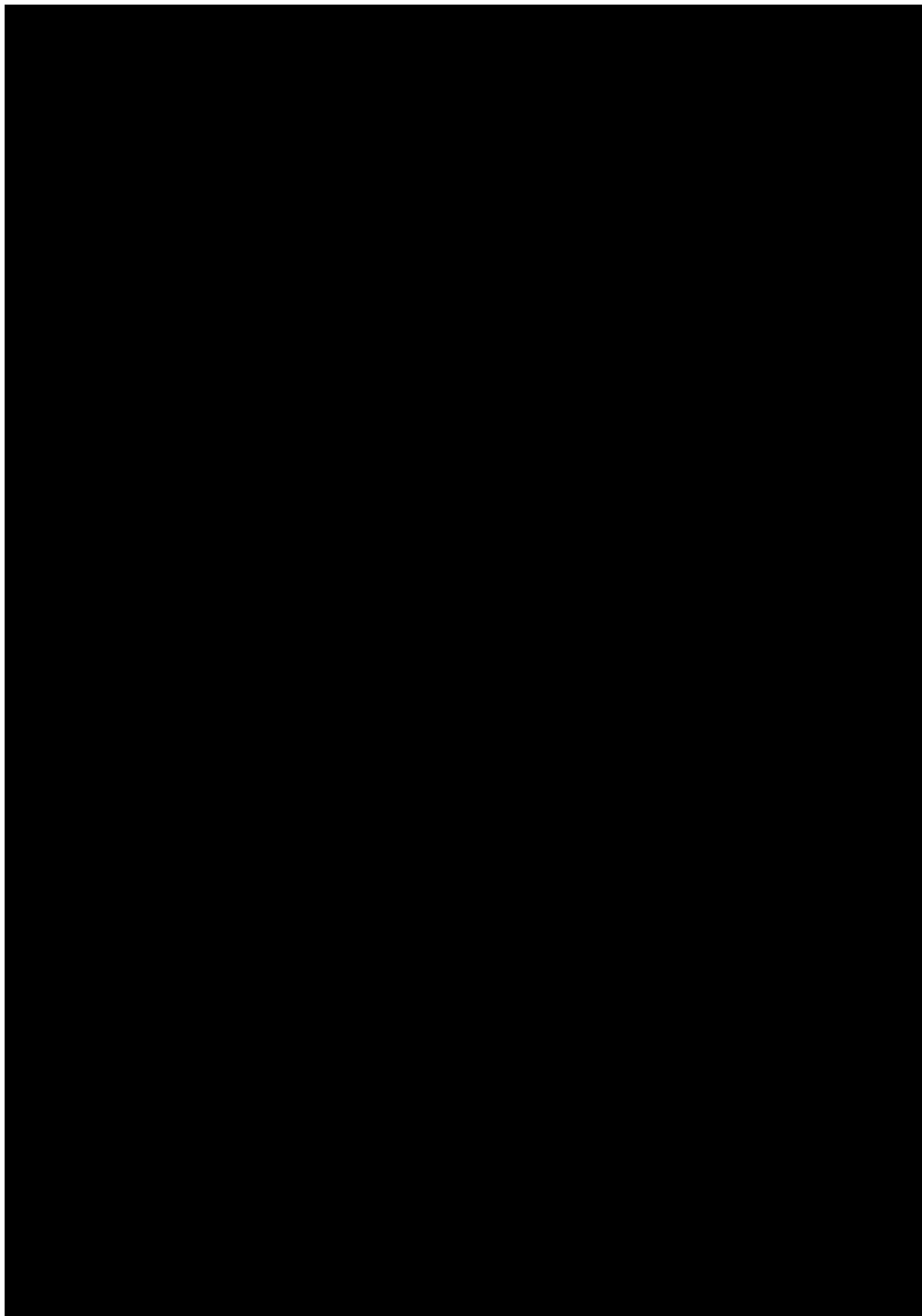
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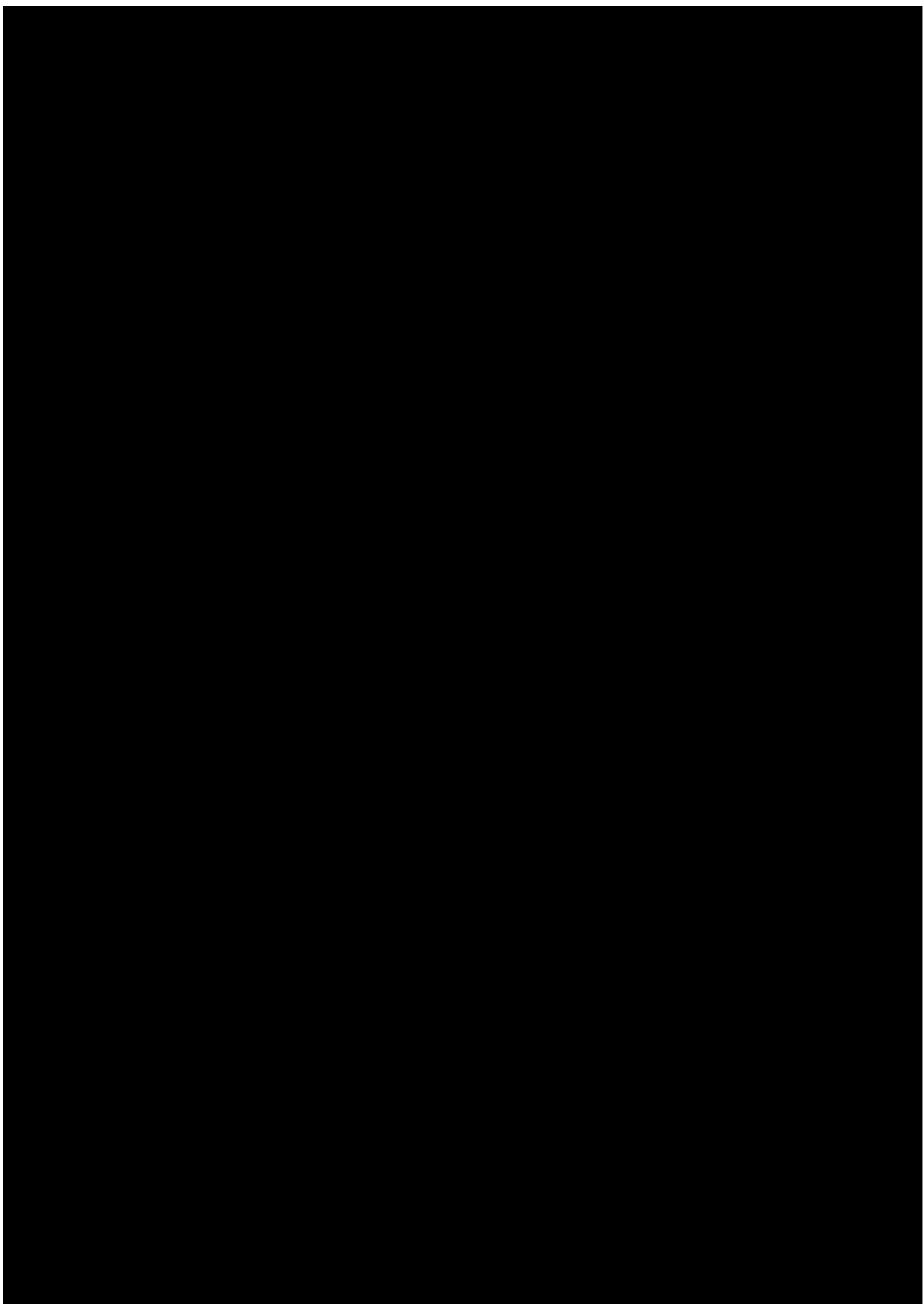
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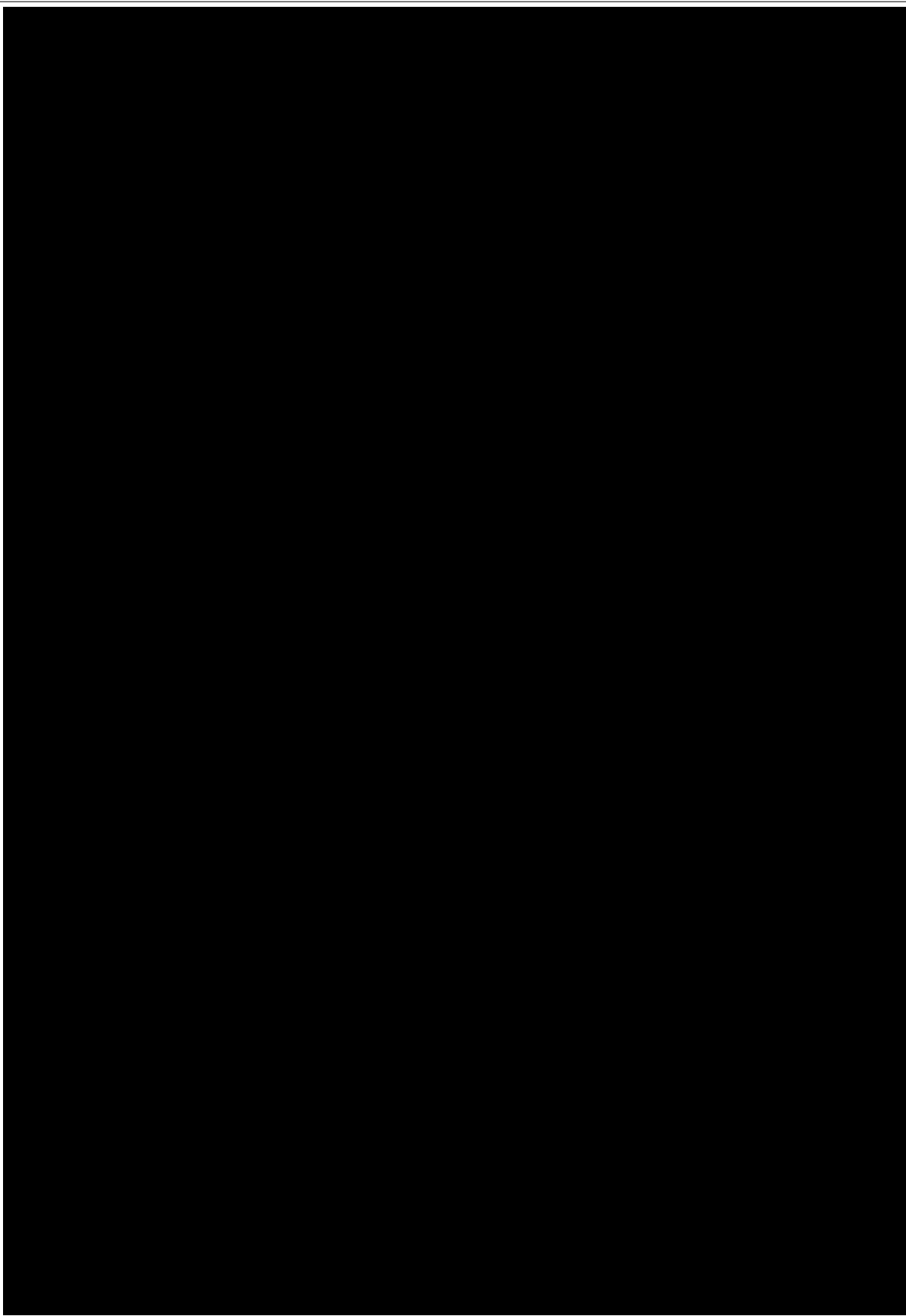
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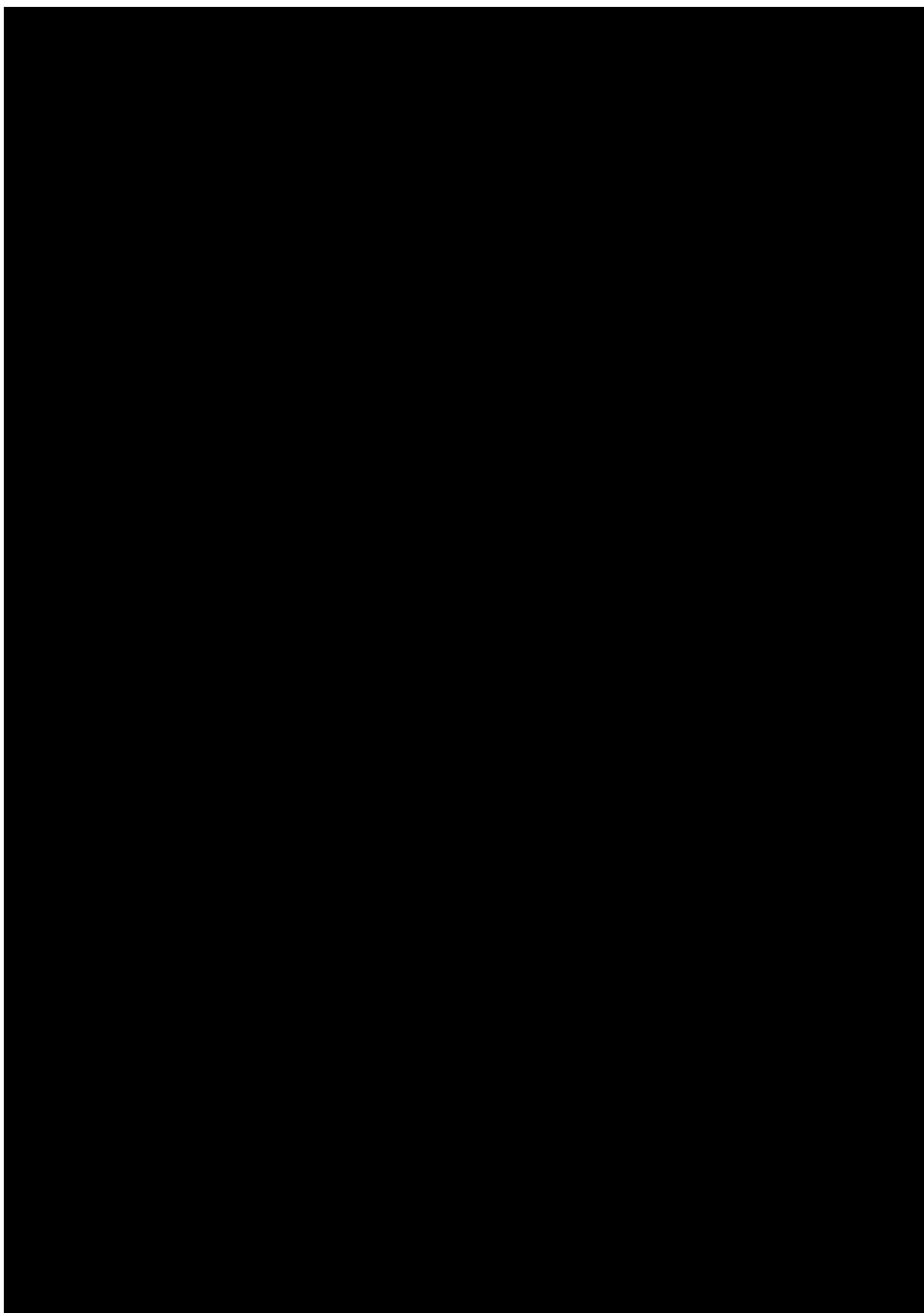
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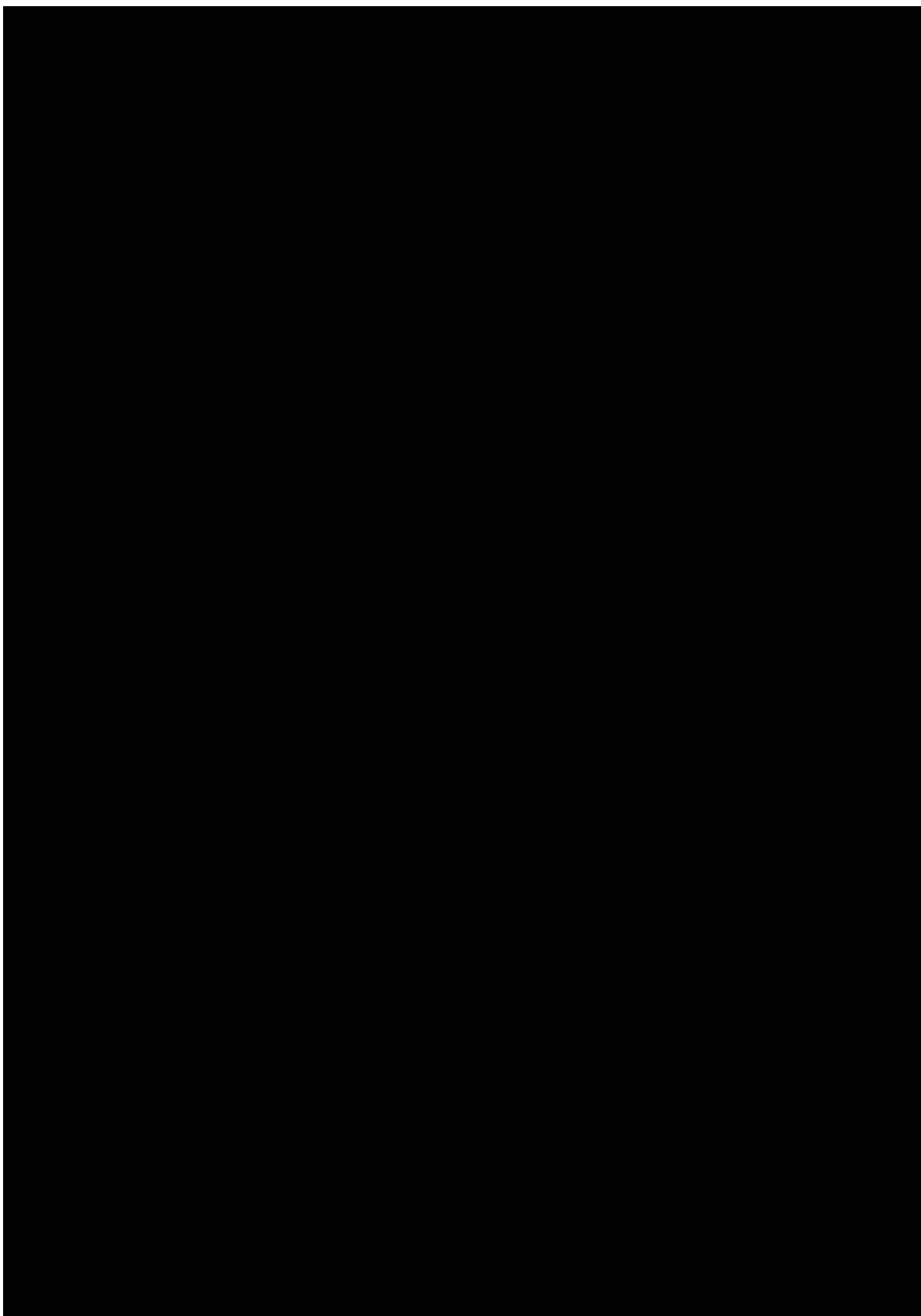
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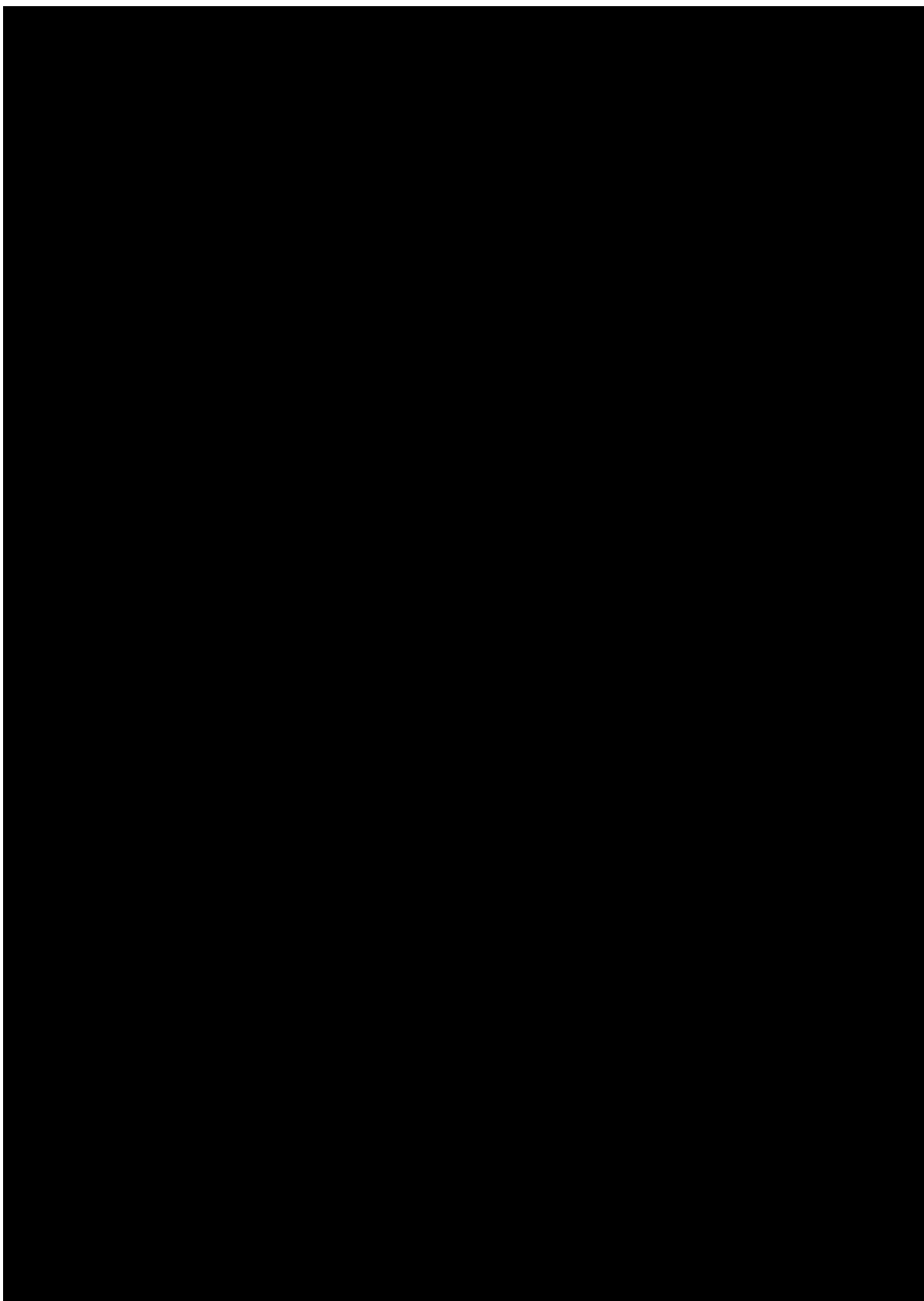
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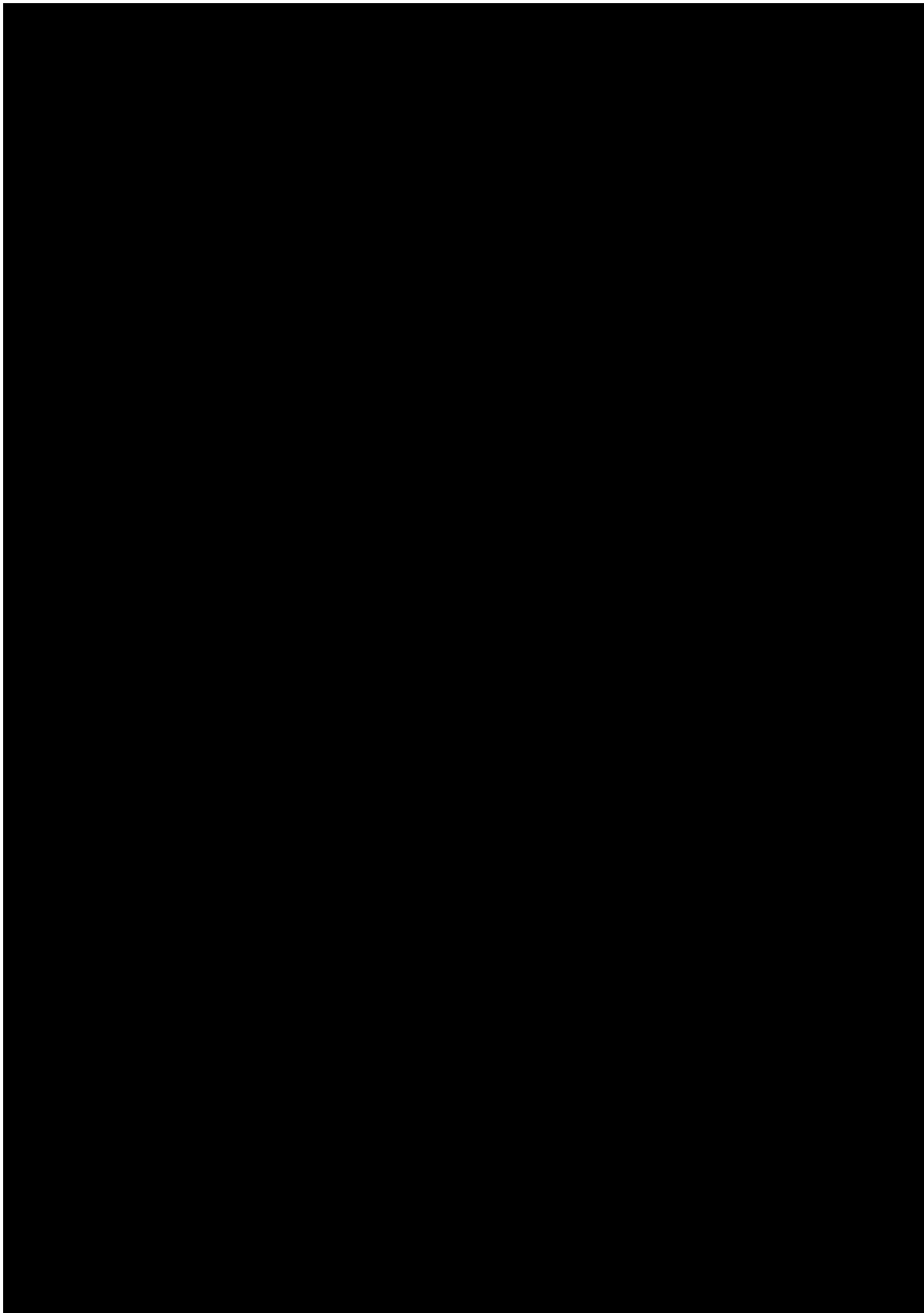
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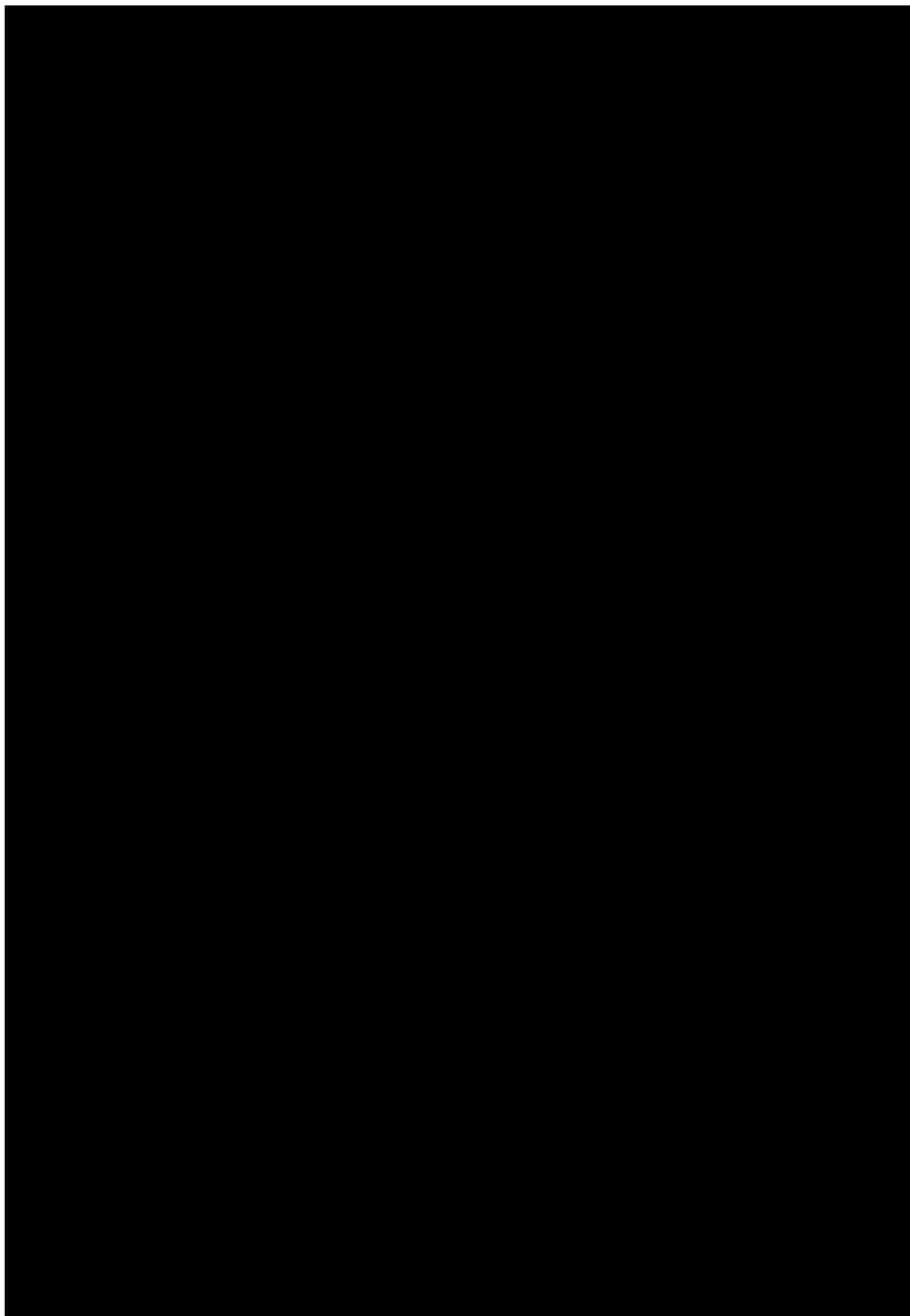
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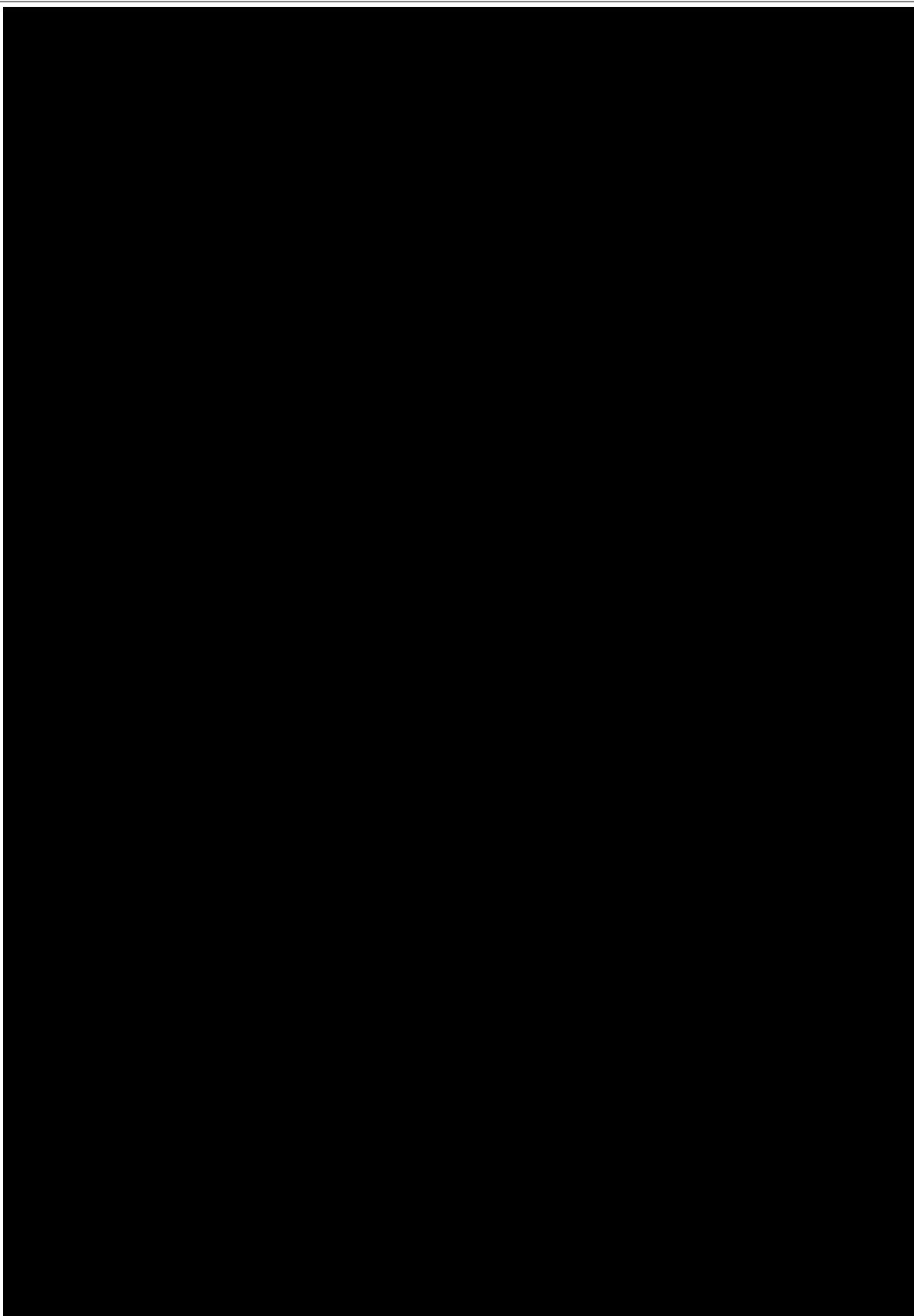
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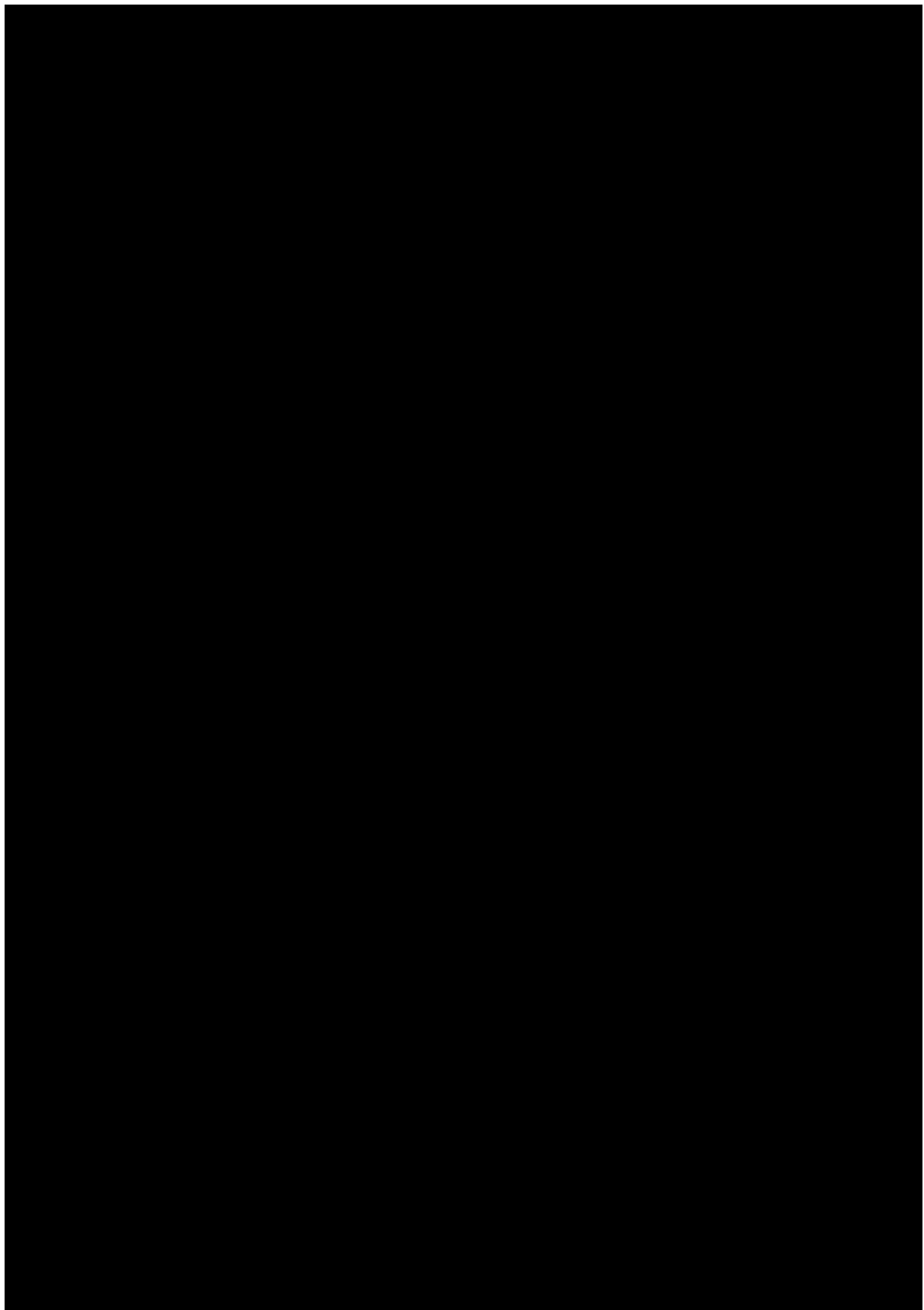
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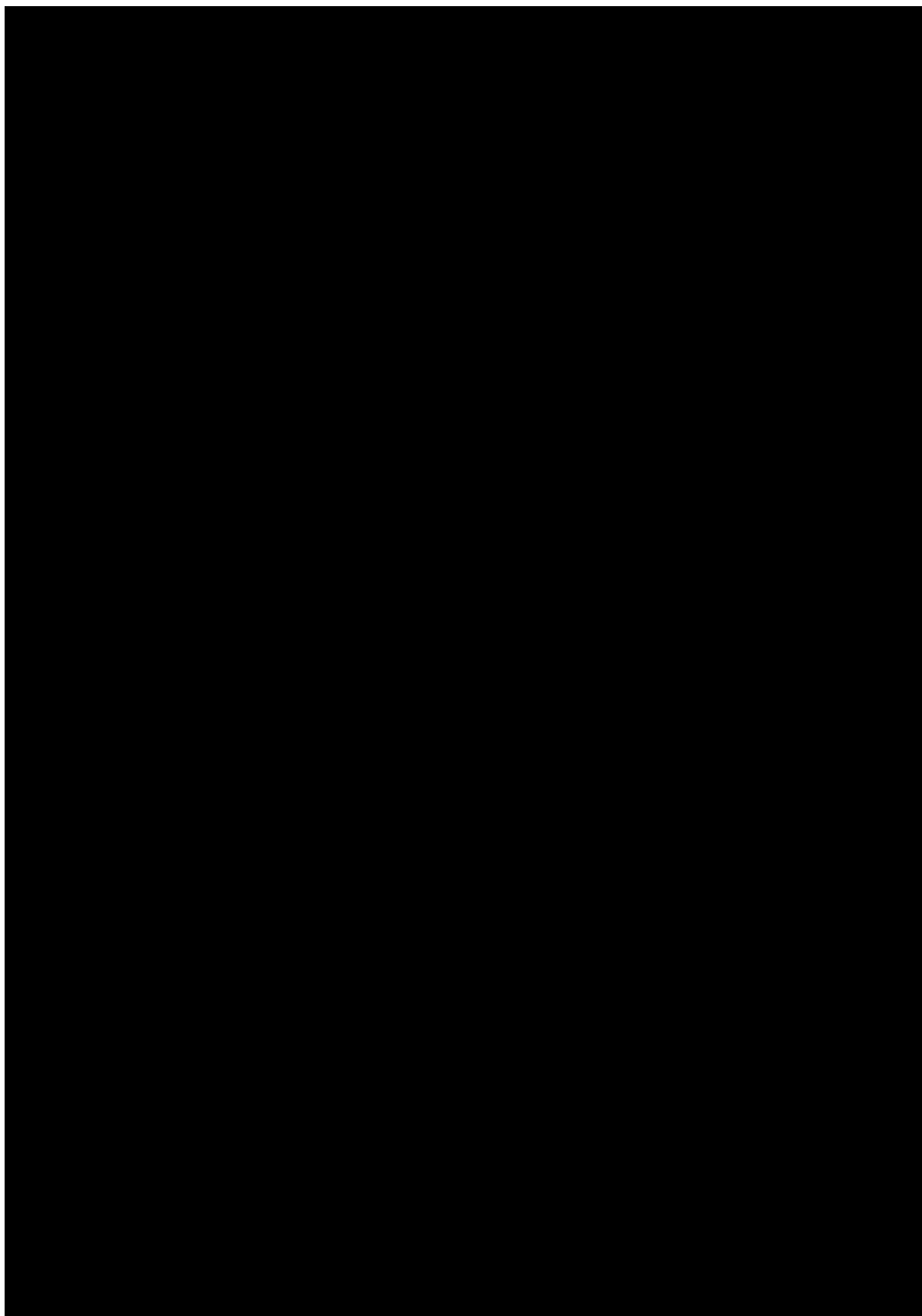
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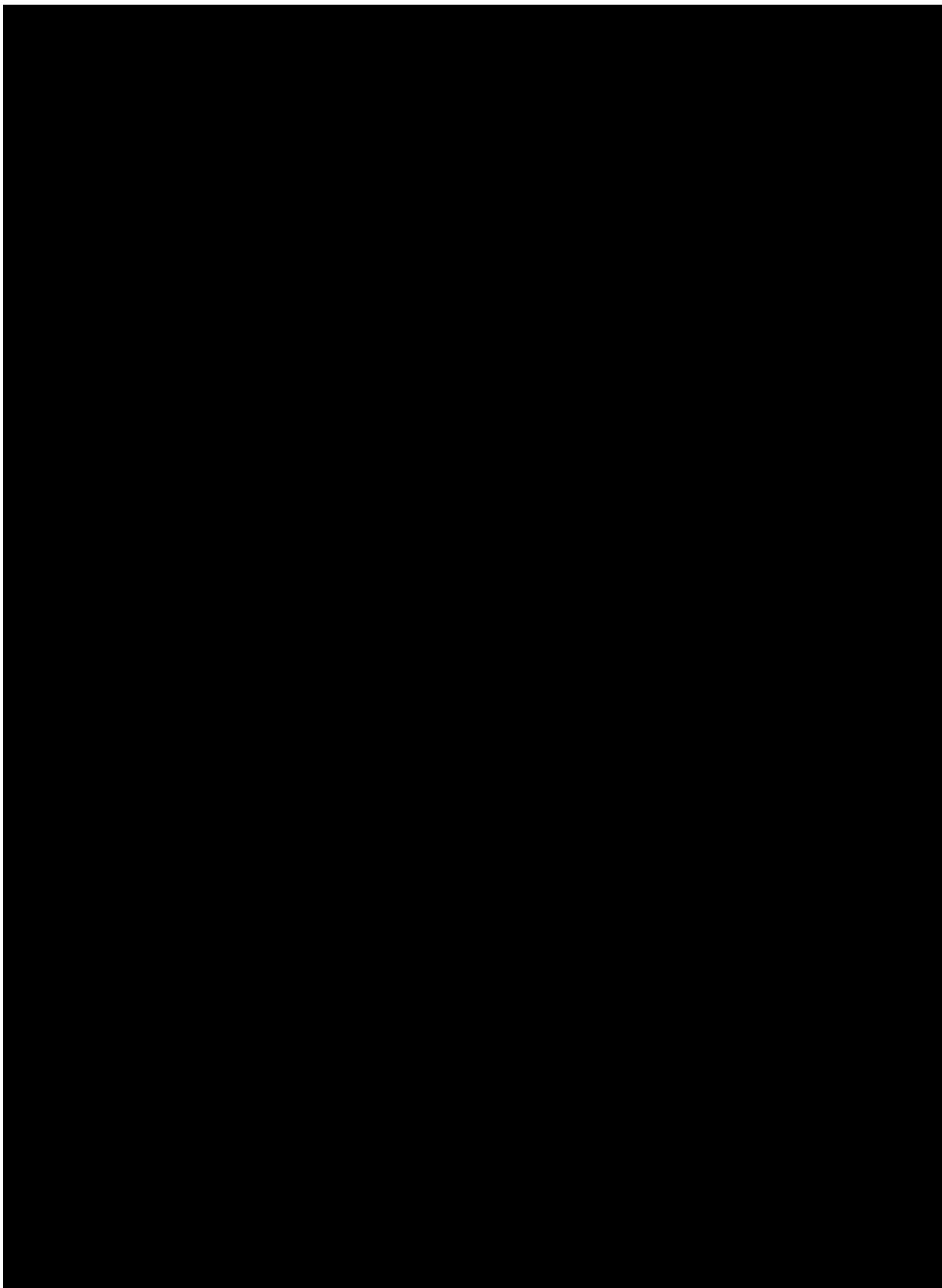
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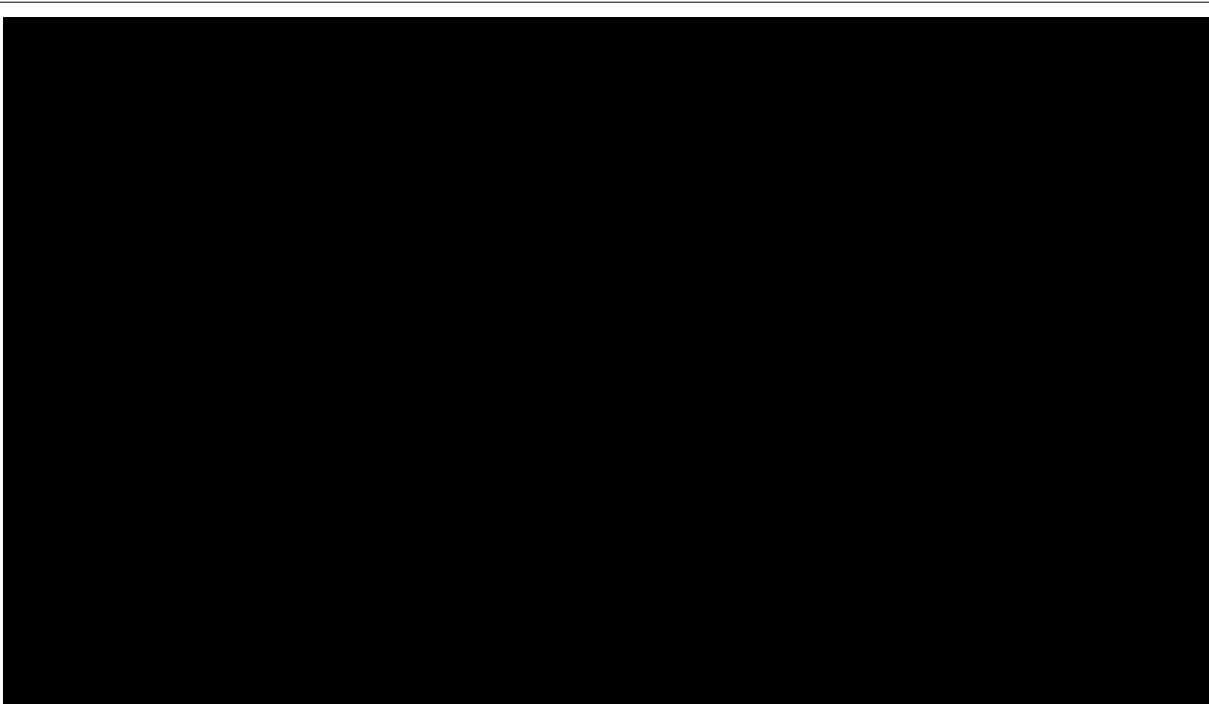
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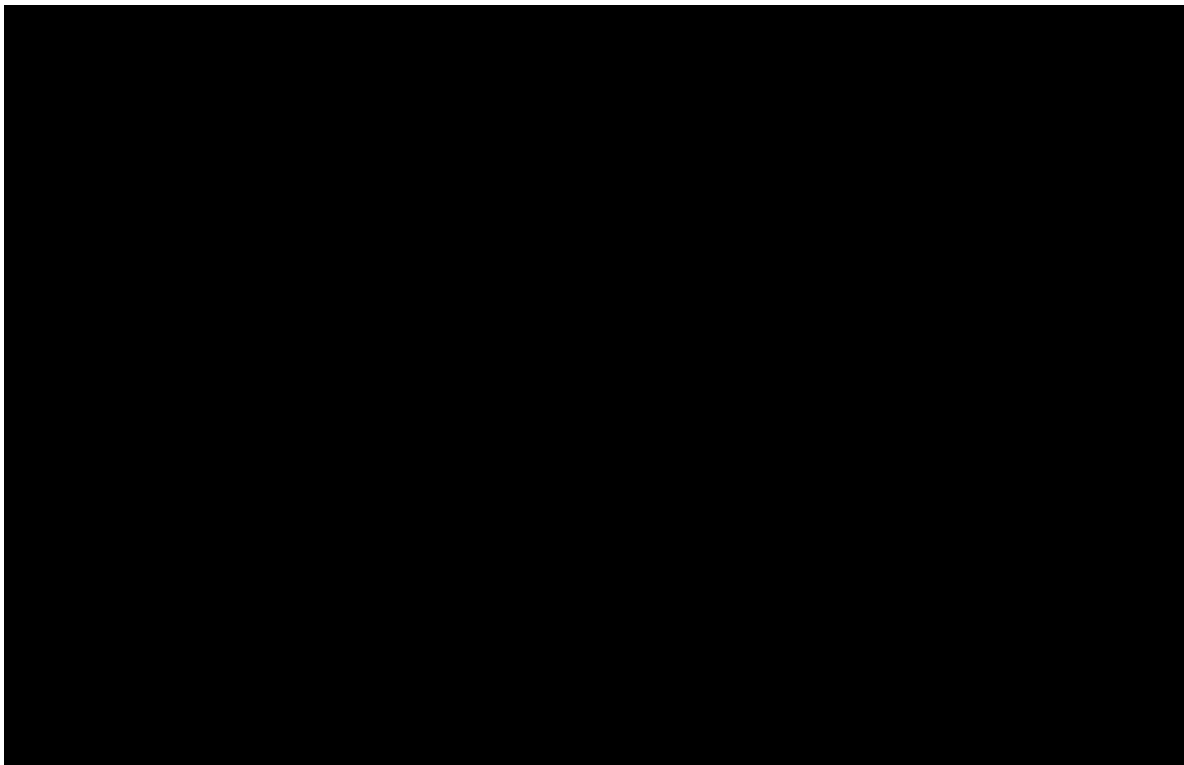


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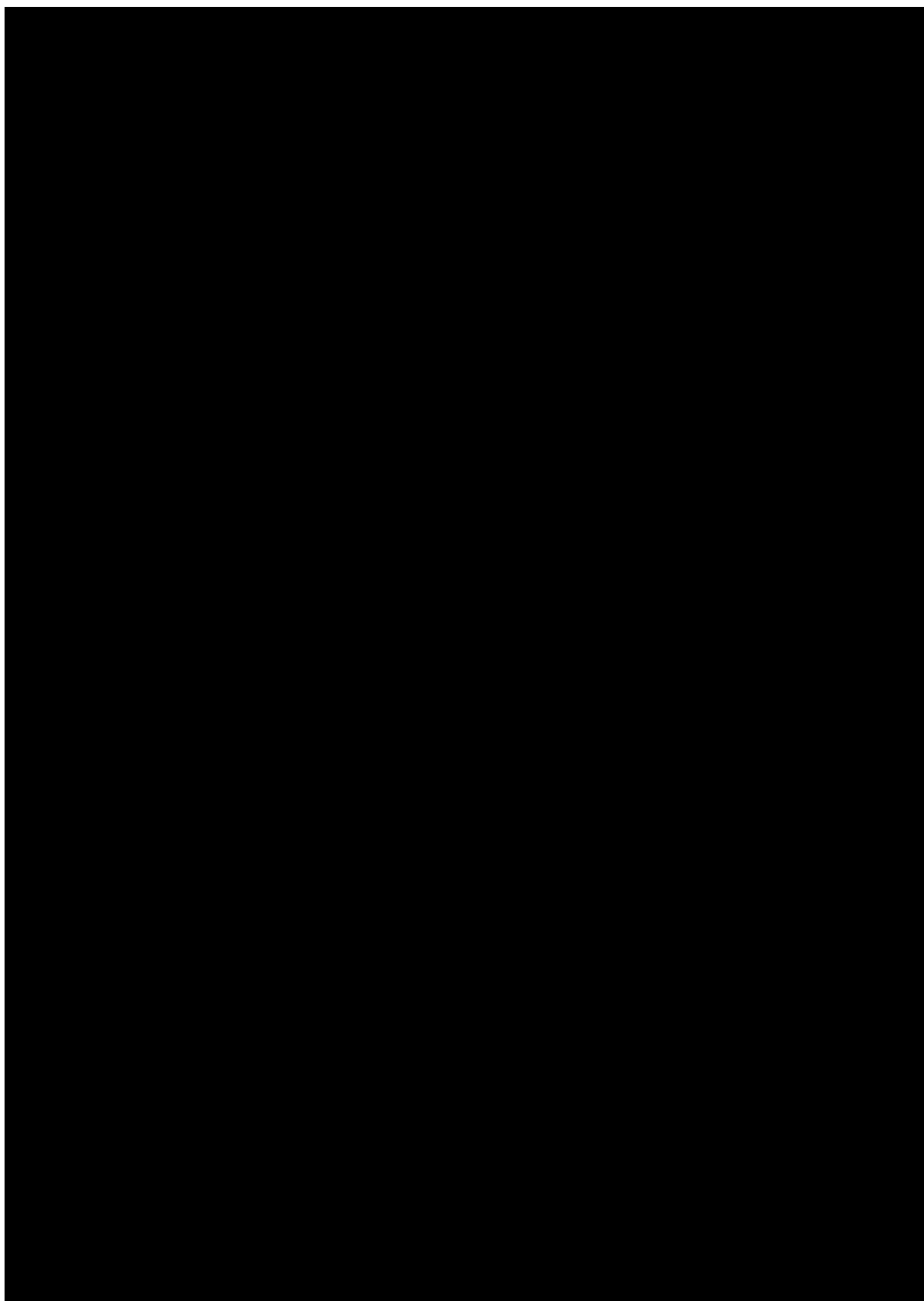


Q And I'm just saying that if you have a 11:33:21
window with a refresh rate associated with it then 11:33:23
the refresh rate is not a distinction from a tile? 11:33:27

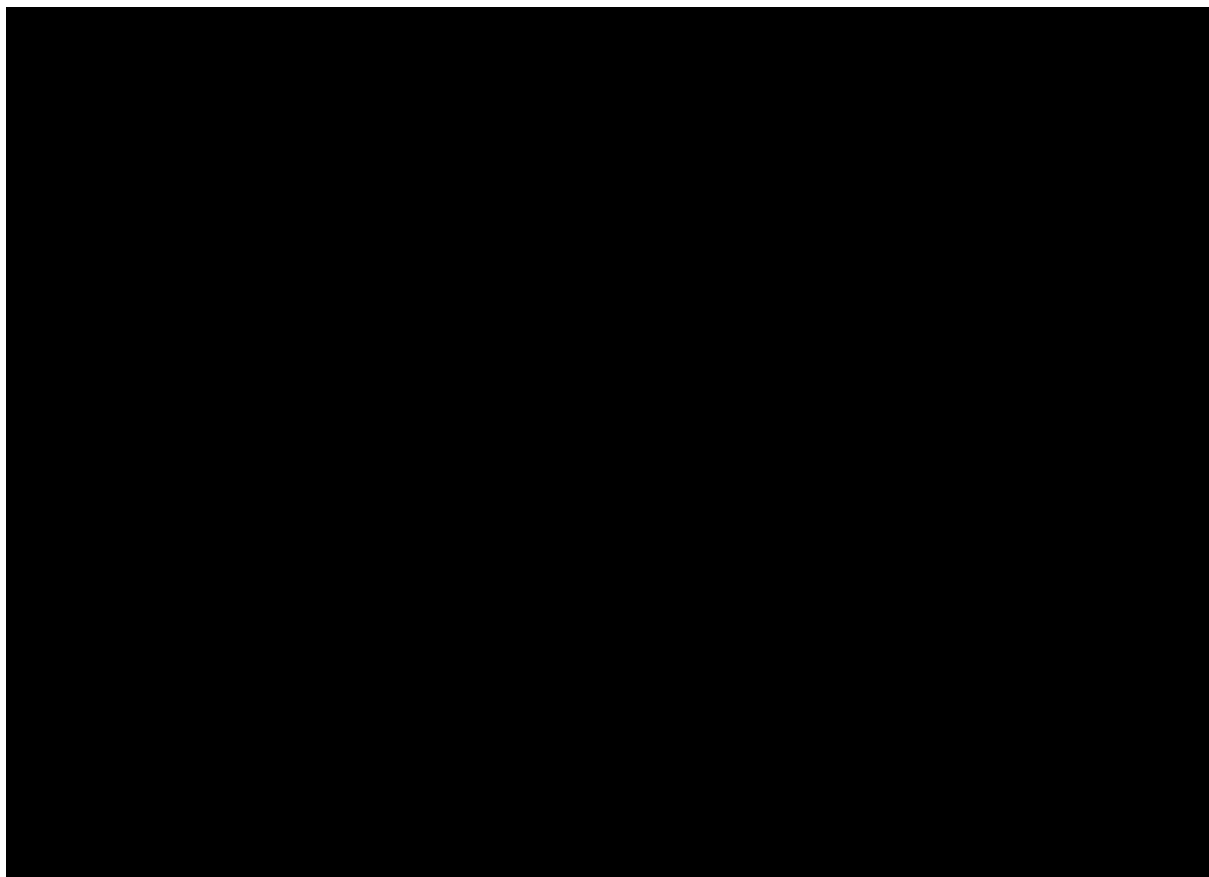
A That is true. 11:33:33



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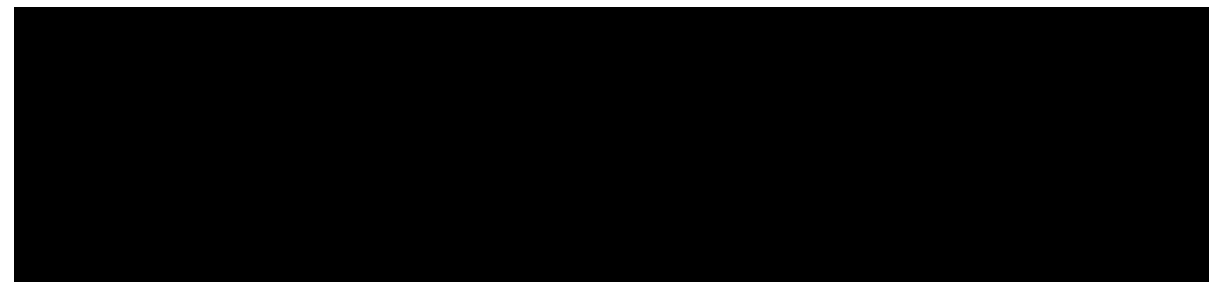
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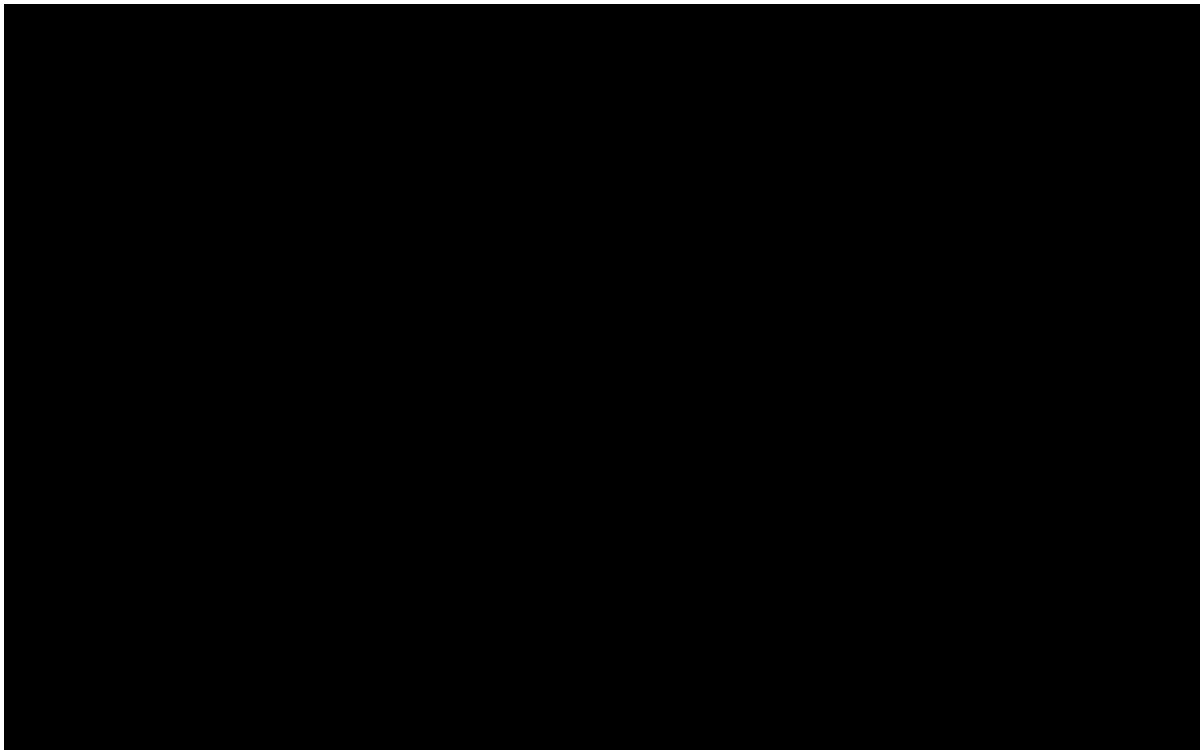
Q Okay. Okay. But in your view a tile is 11:36:24
not a tile unless it has those three things, a 11:36:28
refresh rate assigned to it, is managed by the 11:36:31
grid as you described, and it uses Dynamic 11:36:36
Resource Allocation. Is that fair? 11:36:41

MR. HEINTZ: Object to the form. 11:36:44

THE WITNESS: There are a few more 11:36:45
properties of the tile that I would add. 11:36:47



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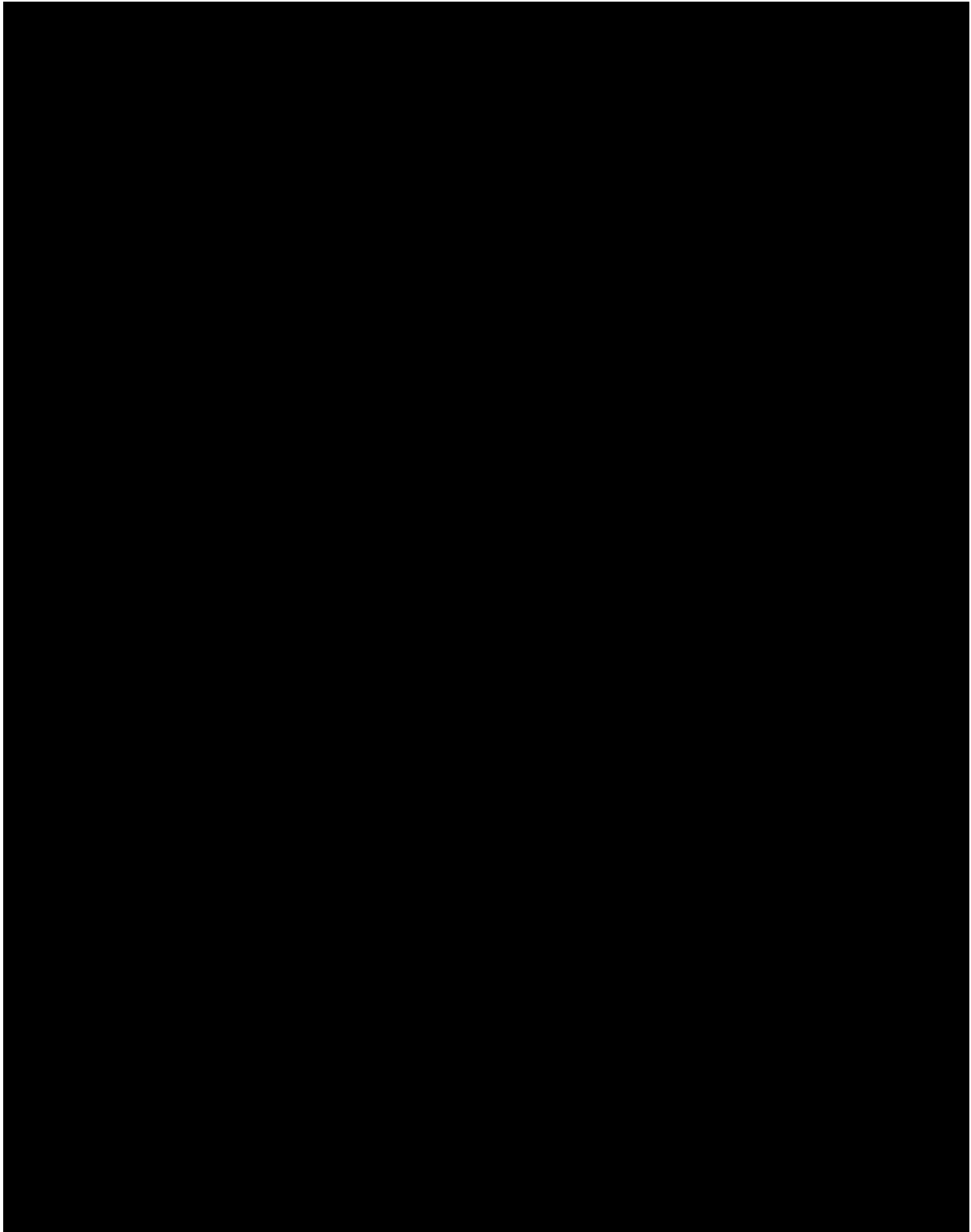


Q And you said it has to have a refresh 11:37:15
rate assigned to it; it has to be managed by the 11:37:19
grid by which you mean its size and location must 11:37:22
be controlled by the grid; it has to use Dynamic 11:37:26
Resource Allocation. And then you said there were 11:37:29
other aspects of your inventive tile. 11:37:34
A Yes. 11:37:37
Q Can you tell them to me? 11:37:38
A I would say that we have a persistence 11:37:40
aspect where the tile will survive closing down 11:37:44
the SurfCast application and reopening it. It has 11:37:50
a selectability issue where the way the user 11:37:54
interfaces with the tiles is by selecting a tile 11:37:59
and thus employing the features of that tile. The 11:38:03

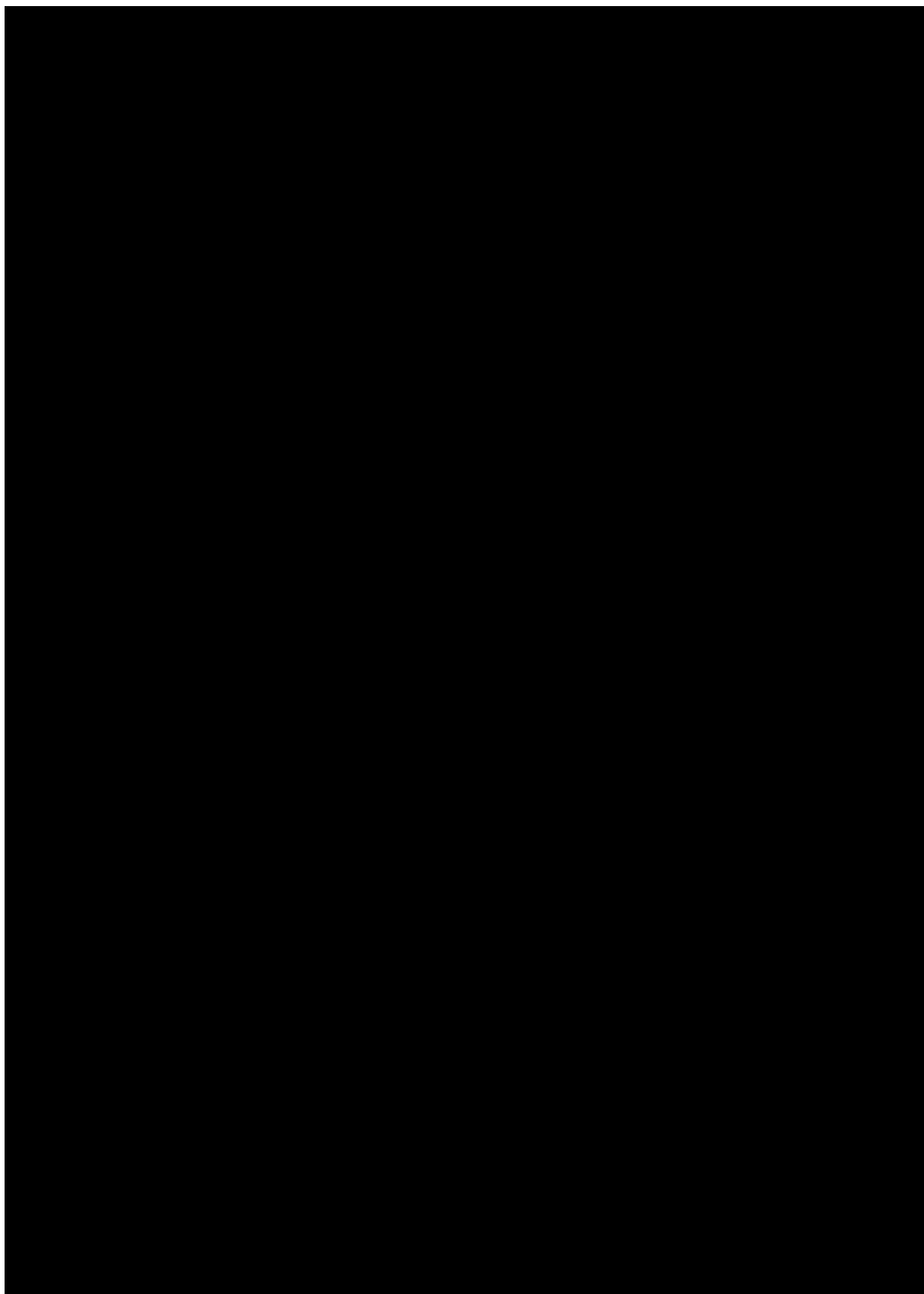
1	thing about whether it has to use the Dynamic	11:38:15
2	Resource Allocation depends on the nature of the	11:38:17
3	tile.	11:38:22
4	Q Okay. Does a tile have to be	11:38:30
5	rectangular?	11:38:46
6	A I recall us playing with that idea that	11:38:49
7	it could have other shapes. And I think for the	11:38:55
8	purpose of development we ruled out other shapes	11:39:01
9	than rectangular. It was in our mind set but not	11:39:07
10	as part of a development plan.	11:39:11
11	Q Could it be the shape of an icon?	11:39:14
12	MR. HEINTZ: Object to the form of the	11:39:17
13	question.	11:39:17
14	THE WITNESS: What is the shape of the	11:39:20
15	icon?	11:39:21
16	BY MR. MICALLEF:	11:39:22
17	Q Any icon?	11:39:22
18	A But what shape is that?	11:39:22
19	Q Were there any limitations on shape as	11:39:24
20	far as the tile goes?	11:39:27
21	MR. HEINTZ: Object to the form of the	11:39:30
22	question.	11:39:31
23	THE WITNESS: To the best of my memory	11:39:35
24	we don't -- we didn't work with limitations on the	11:39:37
25	shape but we worked with certain conditions given	11:39:41

1 an implementation target. And that gave our 11:39:45
2 degrees of freedom in what we could implement and 11:39:52
3 it almost always ended up rectangular. 11:39:57

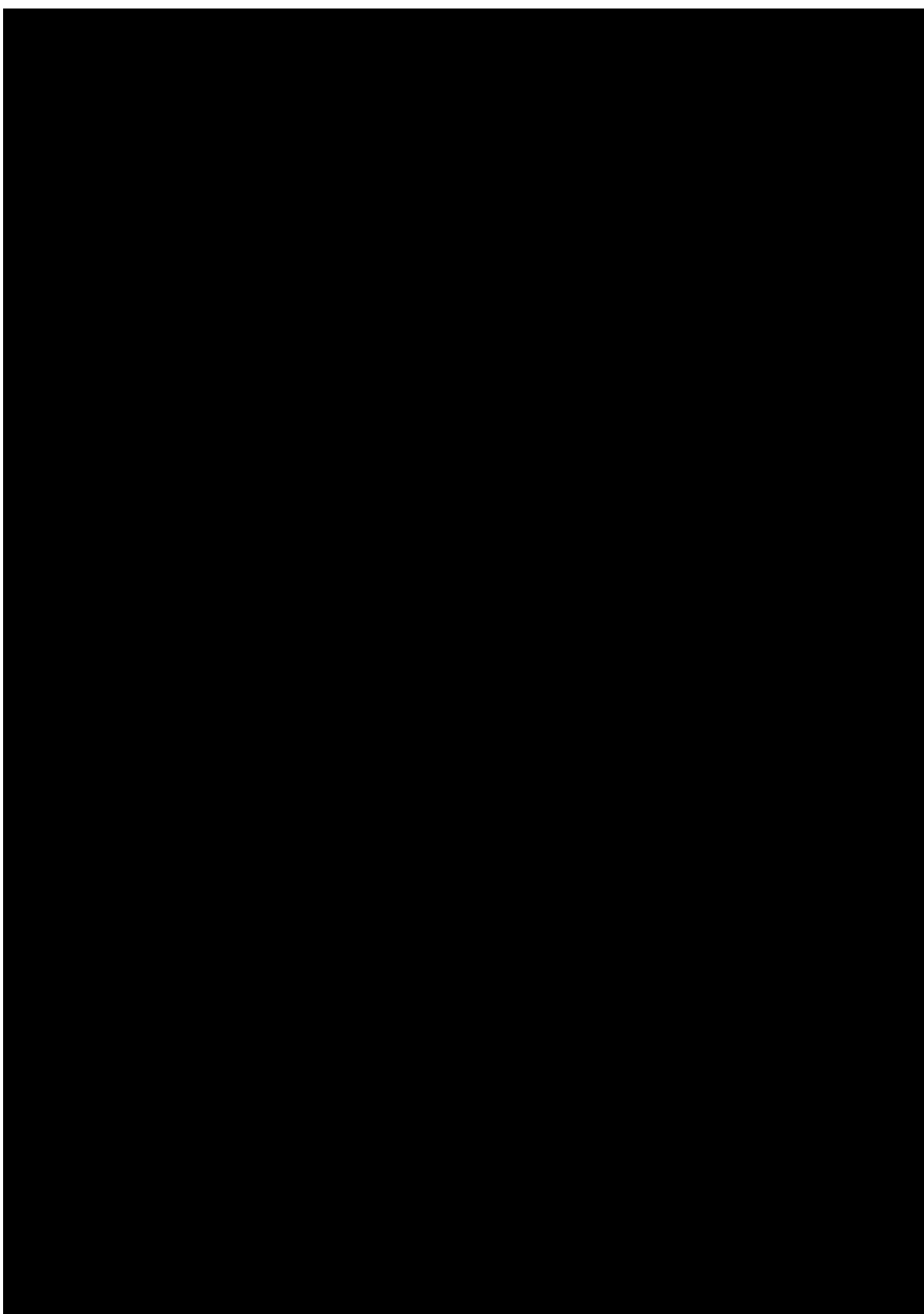
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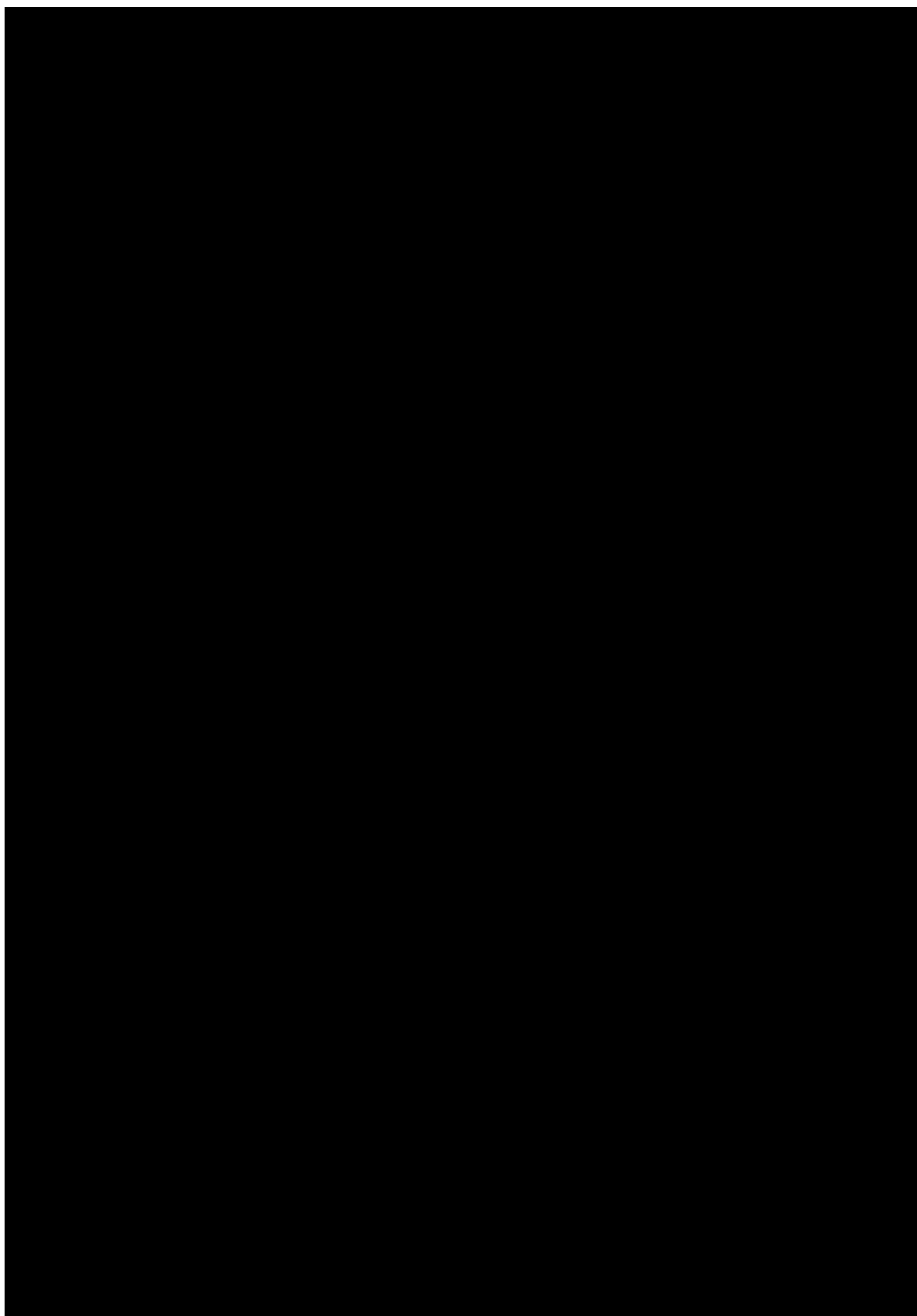
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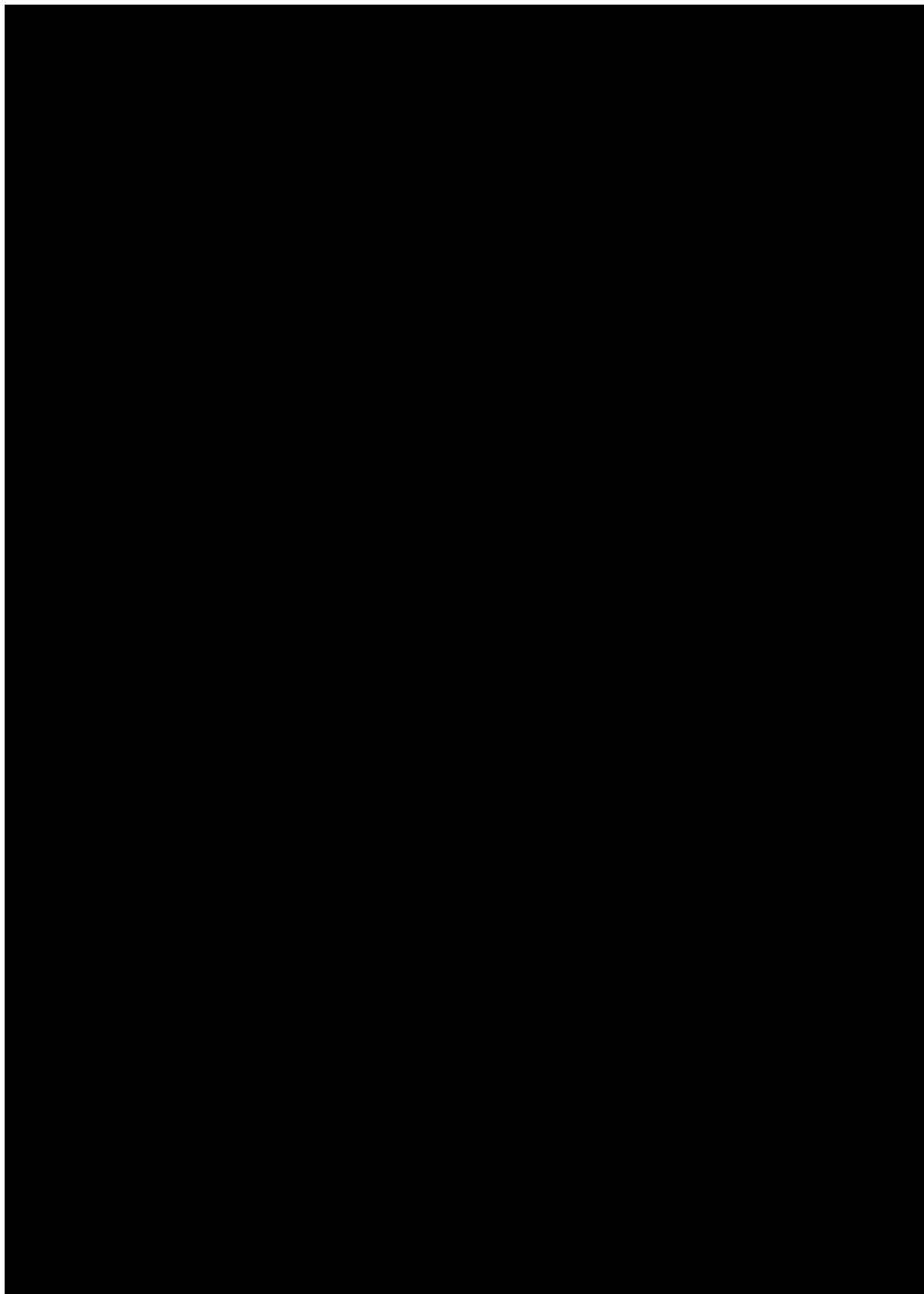
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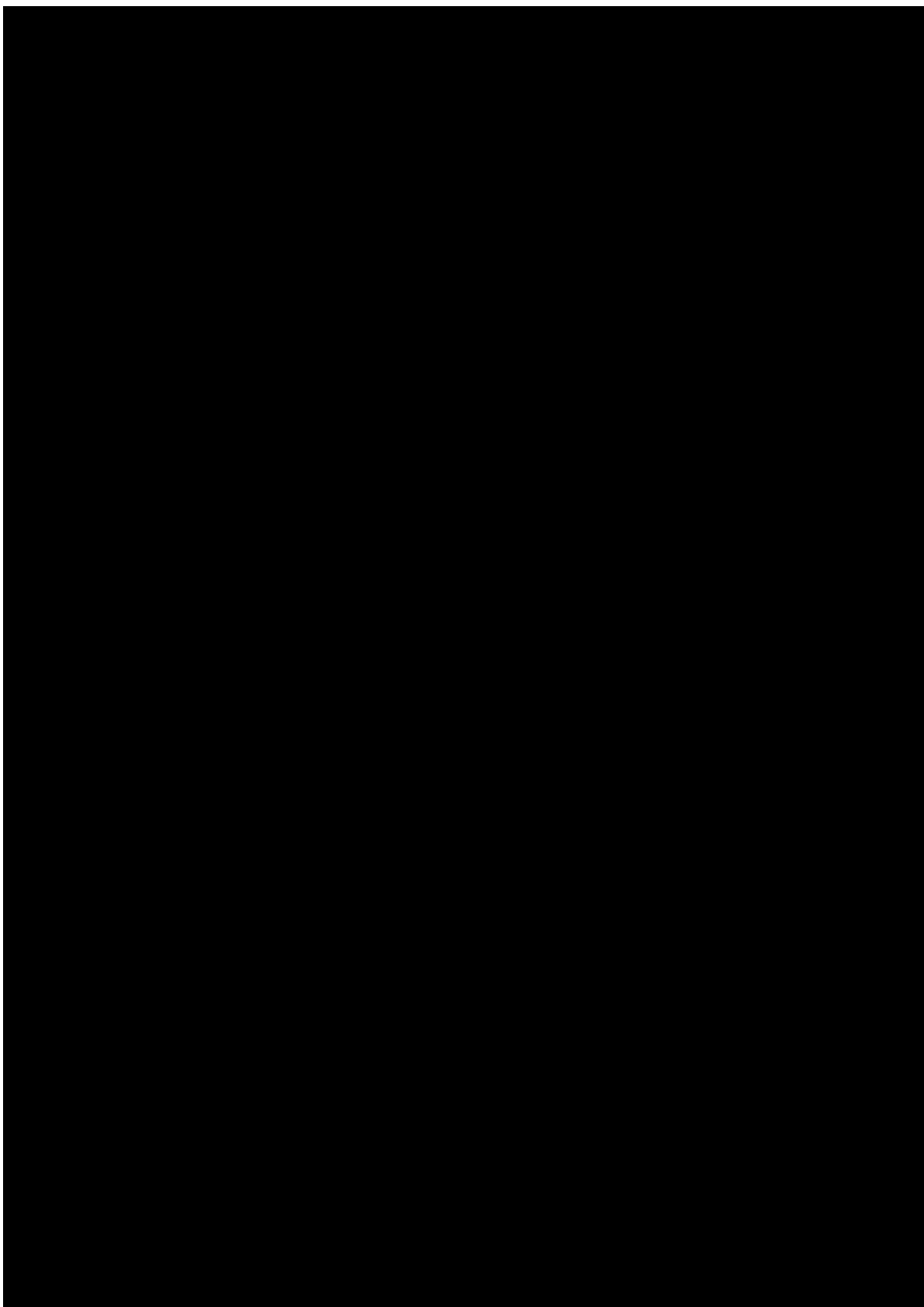
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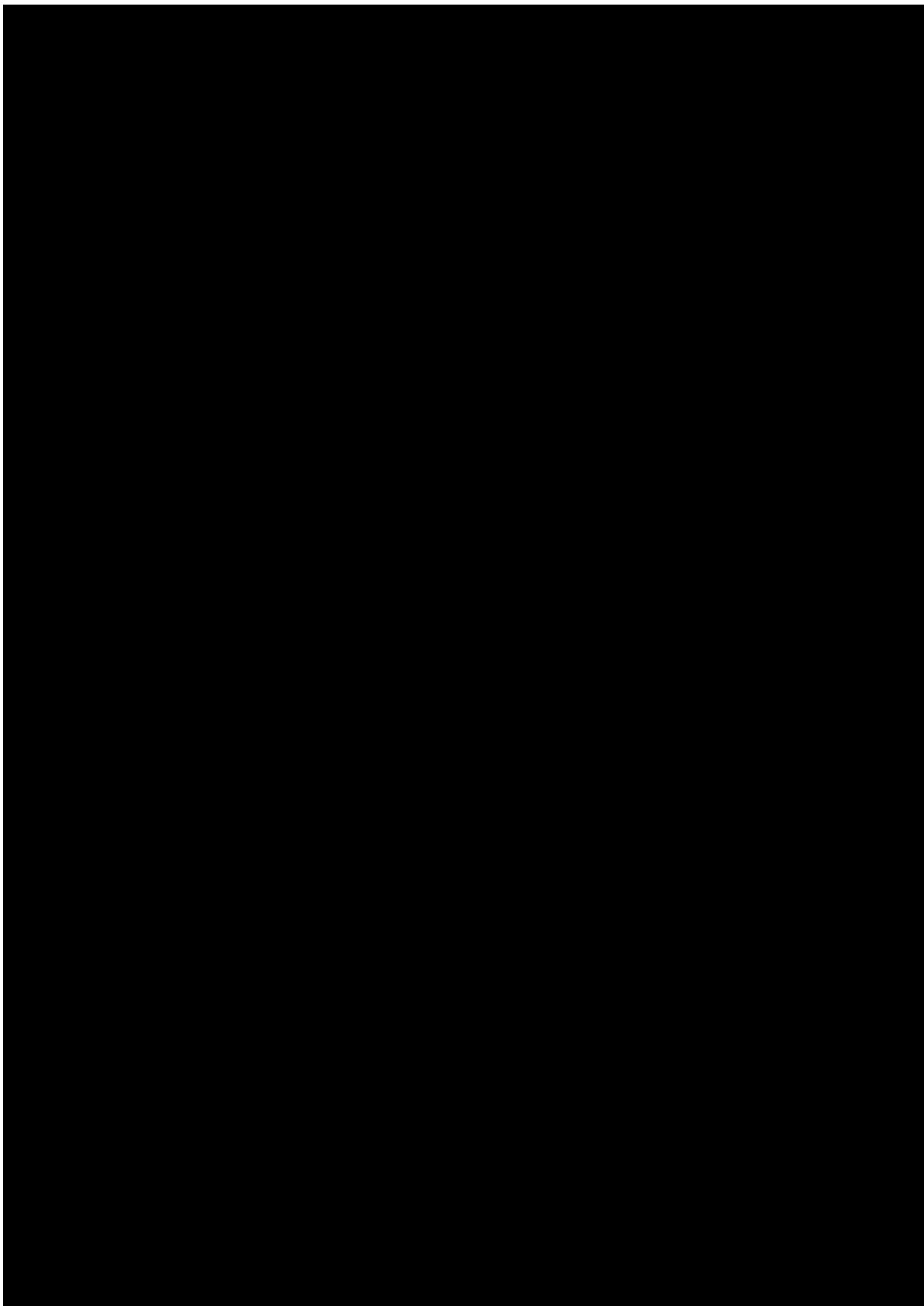
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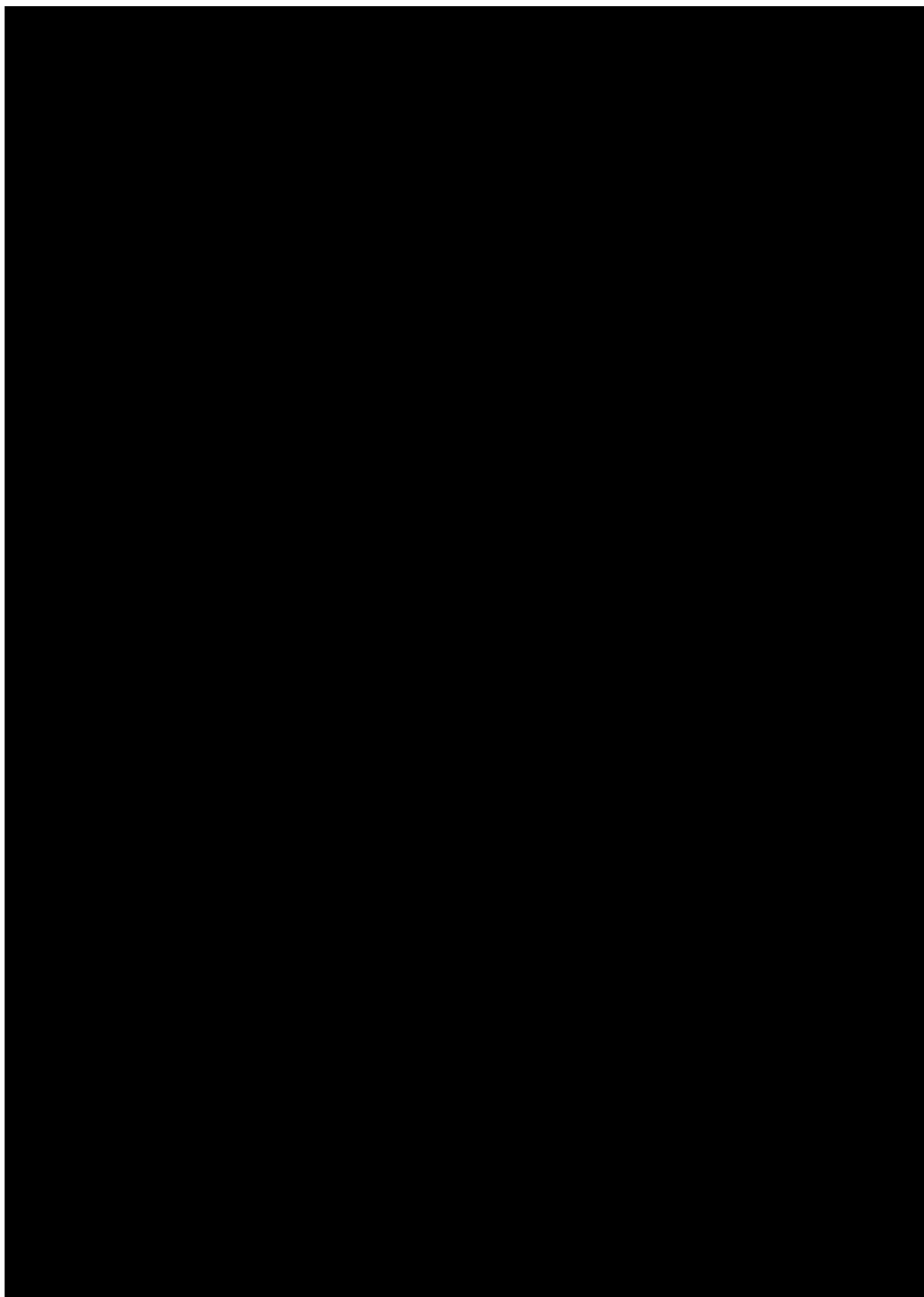
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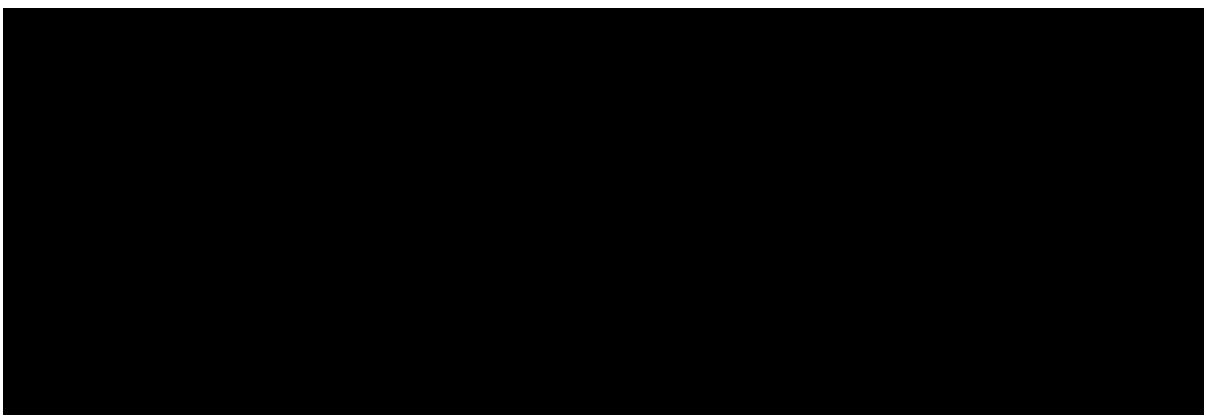
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BY MR. MICALLEF: 11:54:49

Q Before I ask you any questions about 11:54:50
Exhibit 11, Mr. Lagermann, let me ask this: Were 11:54:52
you aware while -- while you were working at 11:54:55
SurfCast were you aware of any other systems that 11:54:57
used tiles? 11:55:00

A There was -- I mean there was no general 11:55:08
accepted idea about what a tile was. Certainly 11:55:15
many other software companies used rectangle areas 11:55:18
in the screen. But the way we thought it out I 11:55:26
don't recall coming across anybody with that idea. 11:55:28

Q But tile interfaces were well known? 11:55:31

MR. HEINTZ: Object. 11:55:34

THE WITNESS: Yes. To tile something 11:55:35
was even used in the Windows Operating System 11:55:38
years before as ways of arranging windows on the 11:55:42
screen, but that didn't make them tiles. That 11:55:47
just made them windows placed in some order on the 11:55:50
screen. 11:55:54

1	BY MR. MICALLEF:	11:56:04
2	Q By that do you mean it wouldn't make	11:56:05
3	them tiles in the special way that you were using	11:56:07
4	the word?	11:56:09
5	A Exactly, in our --	11:56:10
6	MR. HEINTZ: I object to the form of the	11:56:13
7	question.	11:56:15
8	BY MR. MICALLEF:	11:56:16
9	Q But outside of some special definition a	11:56:17
10	tile would just be a rectangular area on the	11:56:21
11	screen. Is that fair?	11:56:25
12	MR. HEINTZ: Object to the form of the	11:56:27
13	question.	11:56:28
14	THE WITNESS: If I had used the word	11:56:29
15	tile outside of SurfCast most people would think	11:56:31
16	it was something in a bathroom.	11:56:34
17	BY MR. MICALLEF:	11:56:37
18	Q But a person who worked in the computer	11:56:37
19	world and software industry, if you used the tile	11:56:41
20	in its ordinary sense, it would just mean	11:56:45
21	something like a rectangular --	11:56:49
22	A We would never use the word tile in a	11:56:52
23	computing environment.	11:56:53
24	Q Never?	11:56:55
25	A I mean we would, but other people would	11:56:55

1 not refer to a Window, even if it was positioned 11:56:57
2 in a certain way as a tile. They would refer to 11:57:00
3 it as a window. 11:57:03

4 Q So you had never seen somebody in the 11:57:04
5 computer industry refer to a tile in a user 11:57:07
6 interface? 11:57:11

7 A I had seen referred to the arrangement 11:57:12
8 of windows as tiling. And does that make what was 11:57:15
9 arranged a tile? I don't know. 11:57:20

10 Q But I asked you a slightly different 11:57:24
11 question. 11:57:26

12 A Okay. 11:57:26

13 Q You had never heard of somebody in the 11:57:27
14 computer industry referring to something on a 11:57:29
15 screen as a tile? 11:57:32

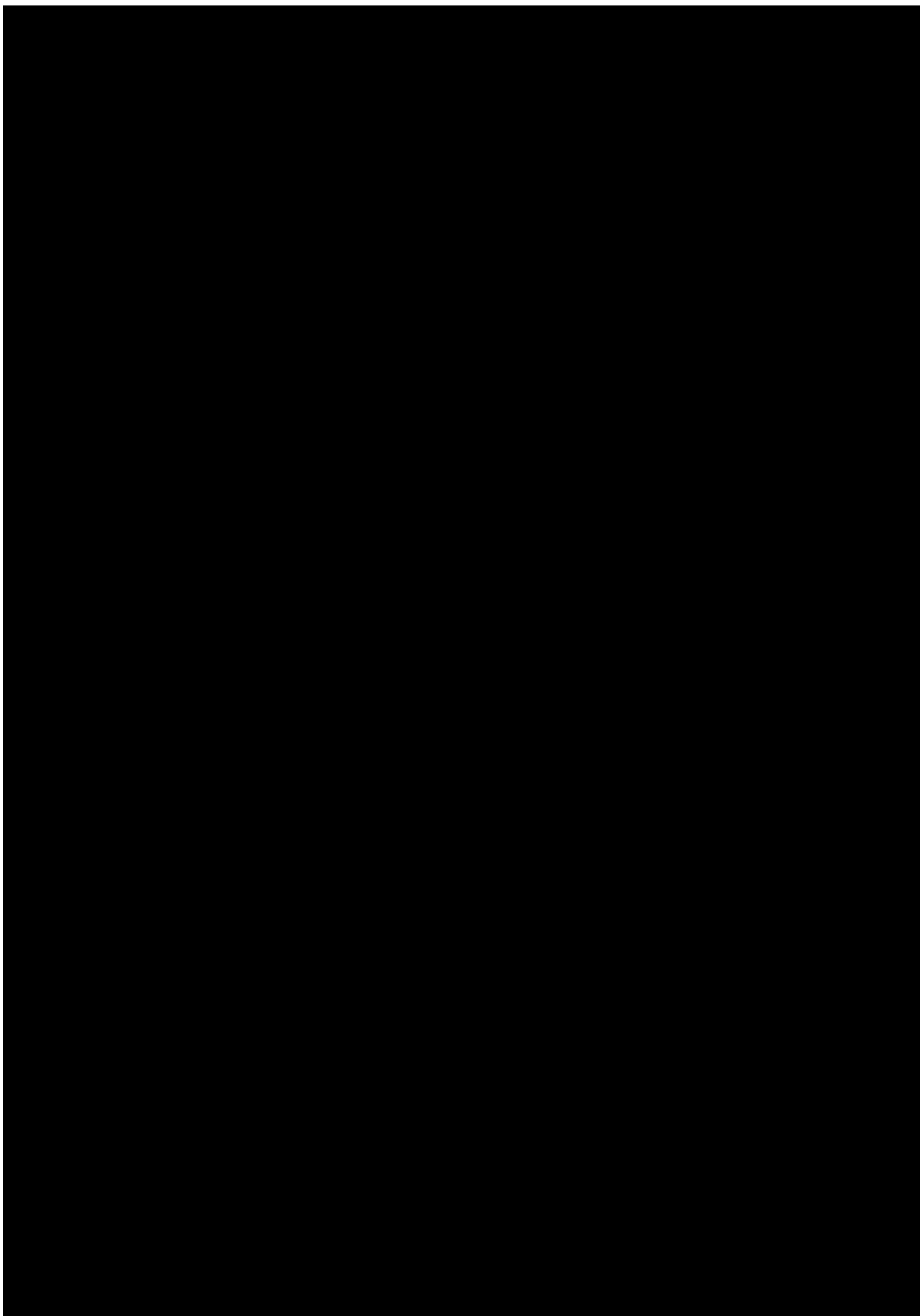
16 A To the best of my recollection, no I had 11:57:35
17 not. 11:57:37

18 Q That was outside of your experience? 11:57:37

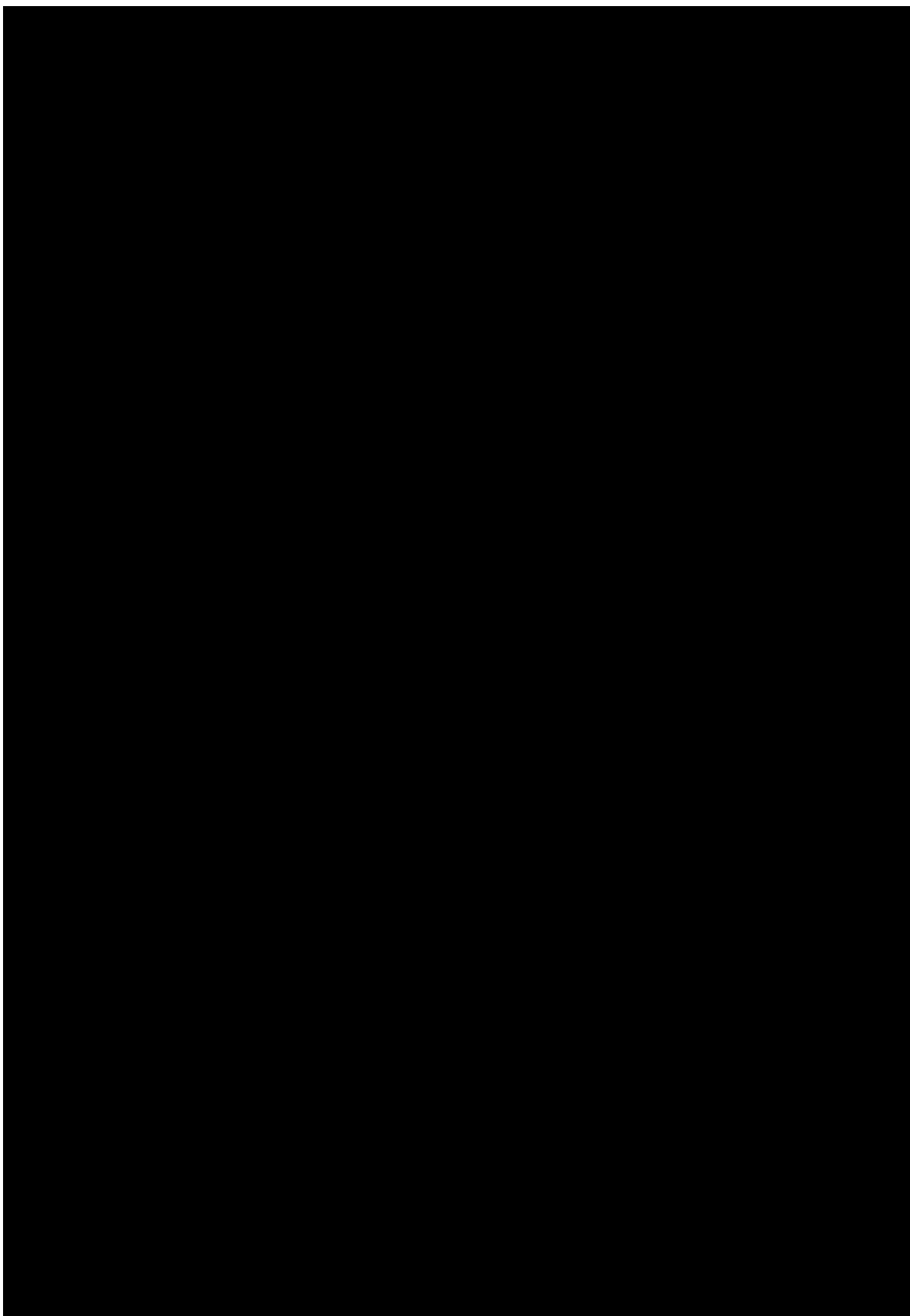
19 A As far as I can remember, yes. 11:57:41

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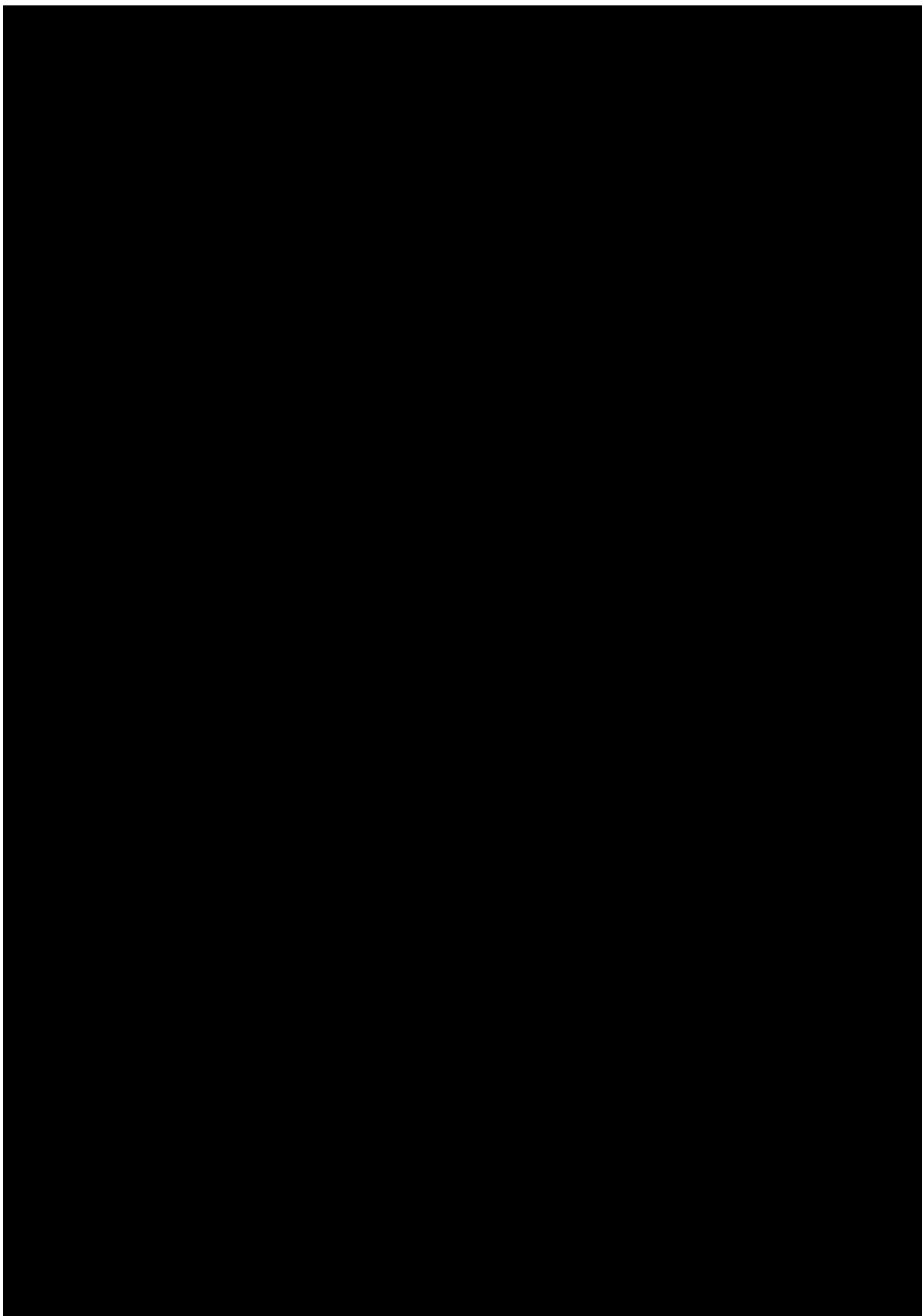
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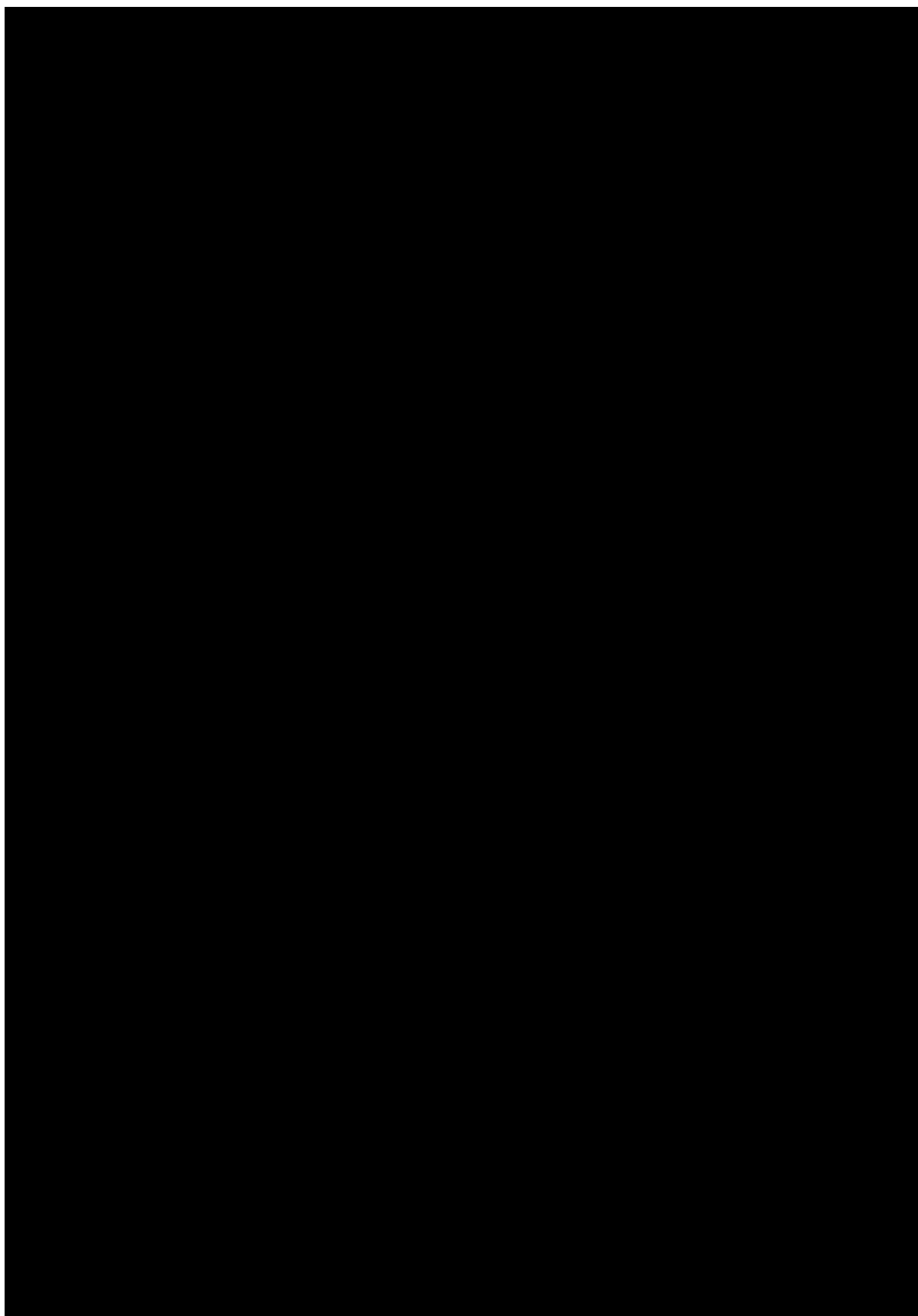
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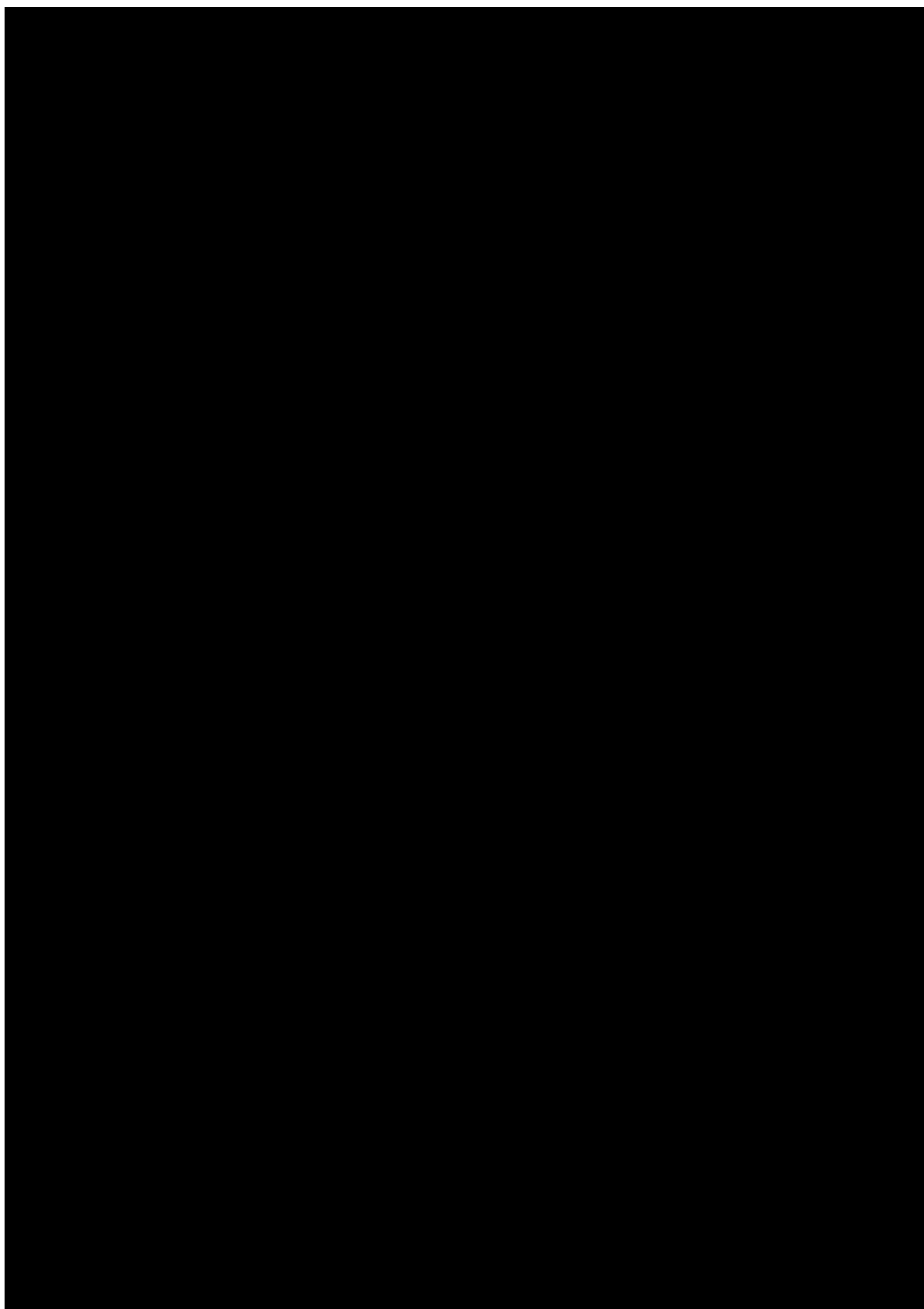
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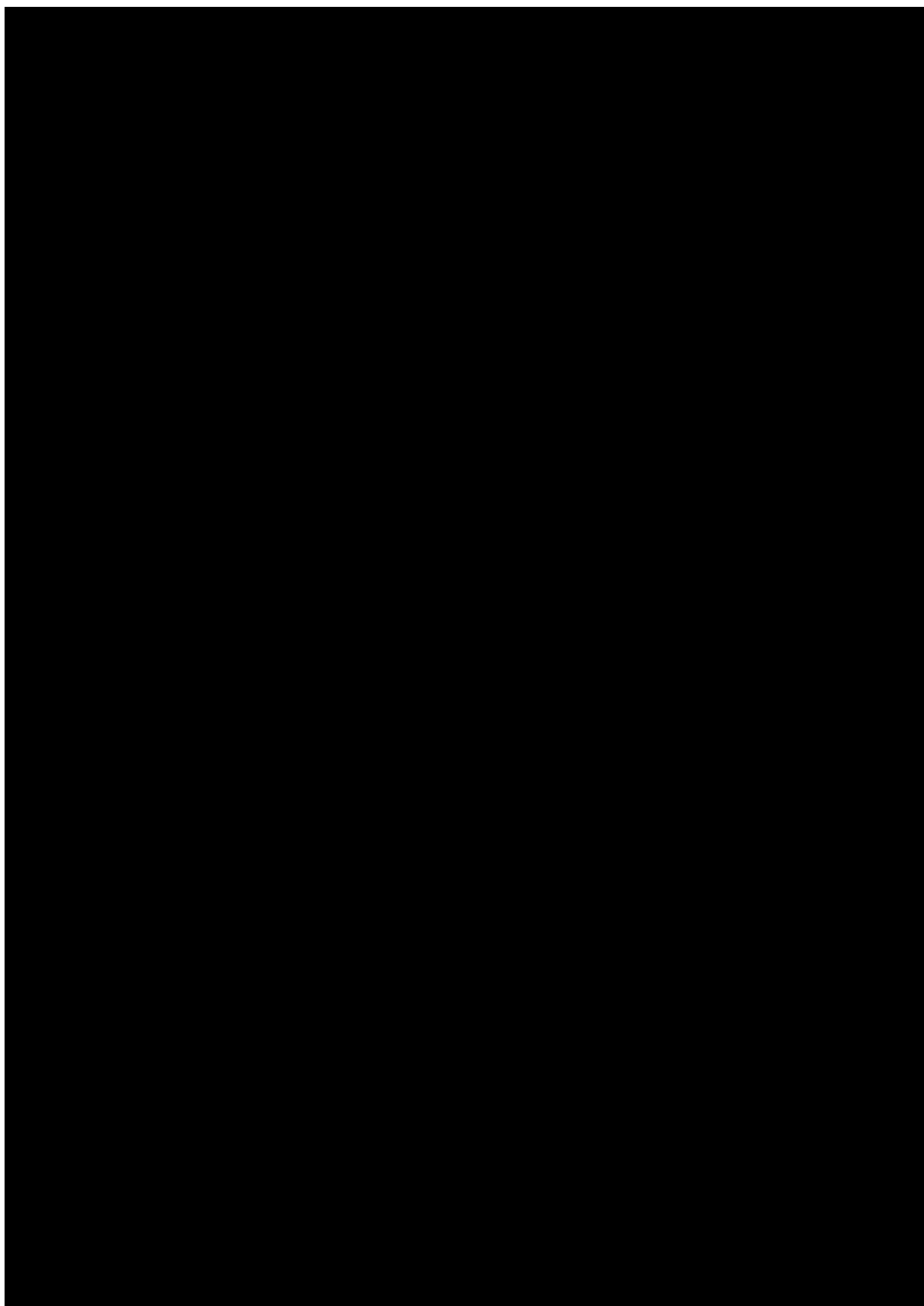
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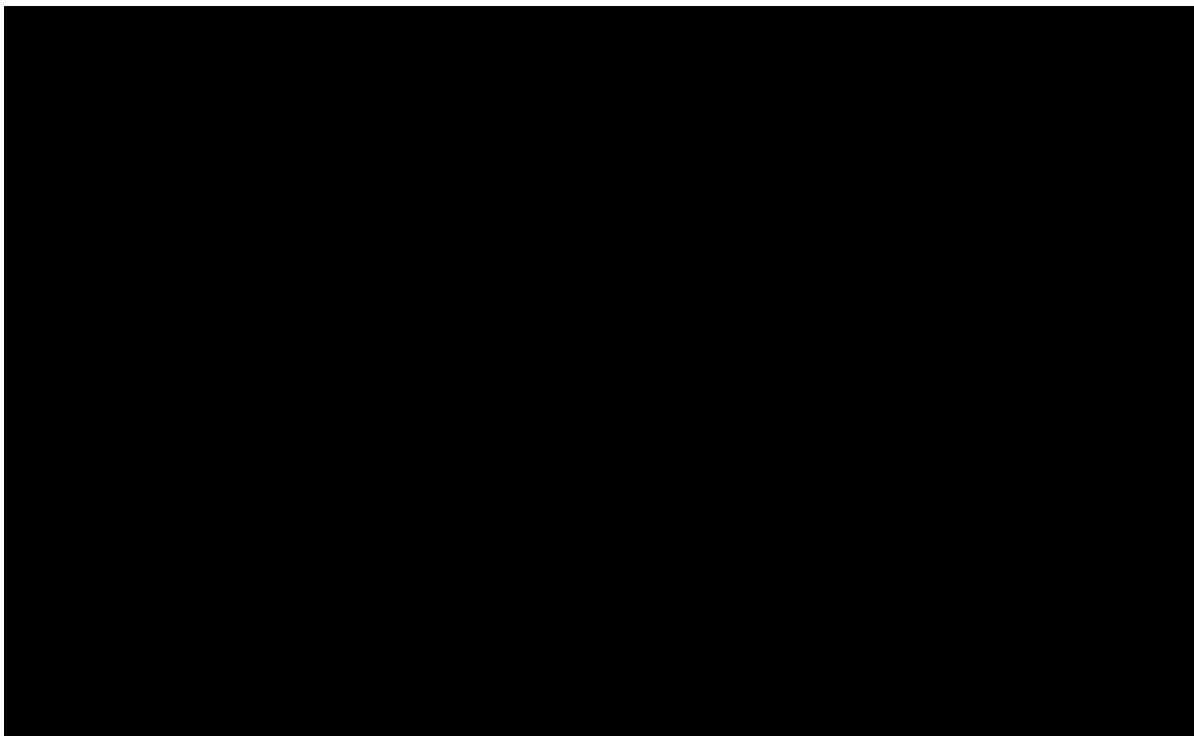
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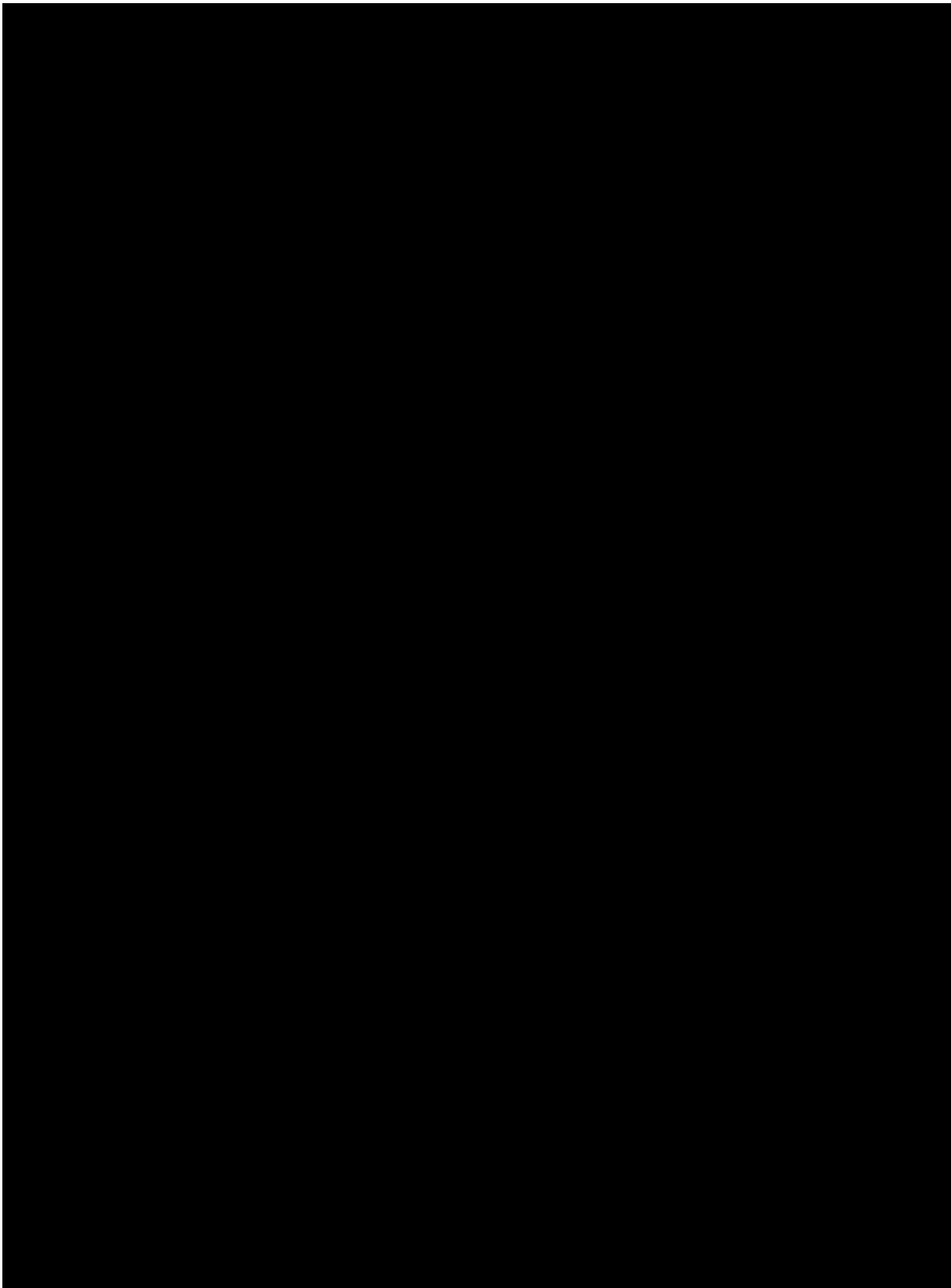


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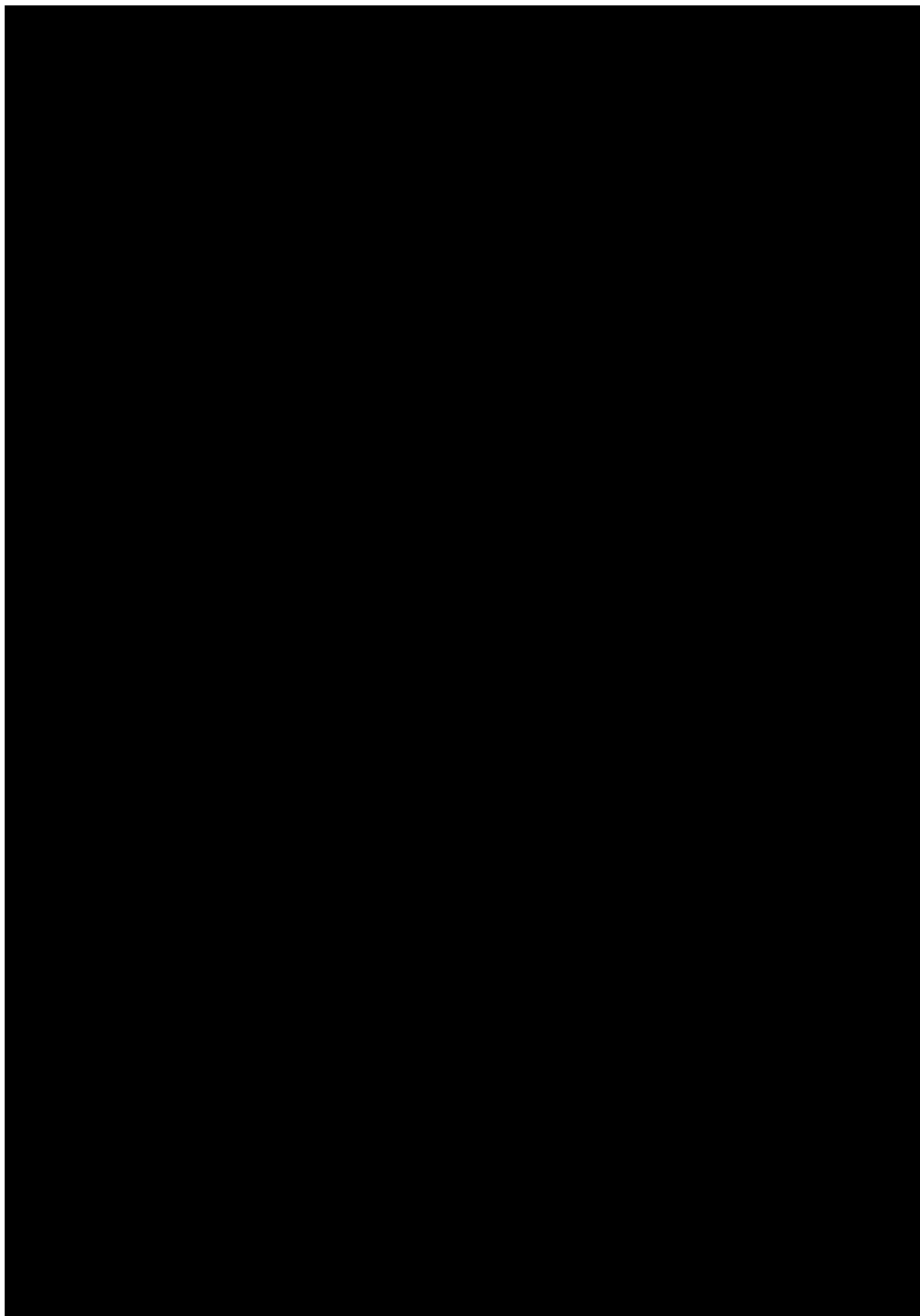


MR. MICALLEF: Okay. We have to switch 12:09:43
the tape. Why don't we just stop for lunch. It 12:09:45
is a little after 12. 12:09:51
THE WITNESS: Sounds good. 12:09:52
MR. HEINTZ: Come back at one. 12:09:52
(Whereupon, a recess occurred 12:09:52
from 12:09 p.m. until 1:01 p.m.) 12:09:52
* * * 12:09:52

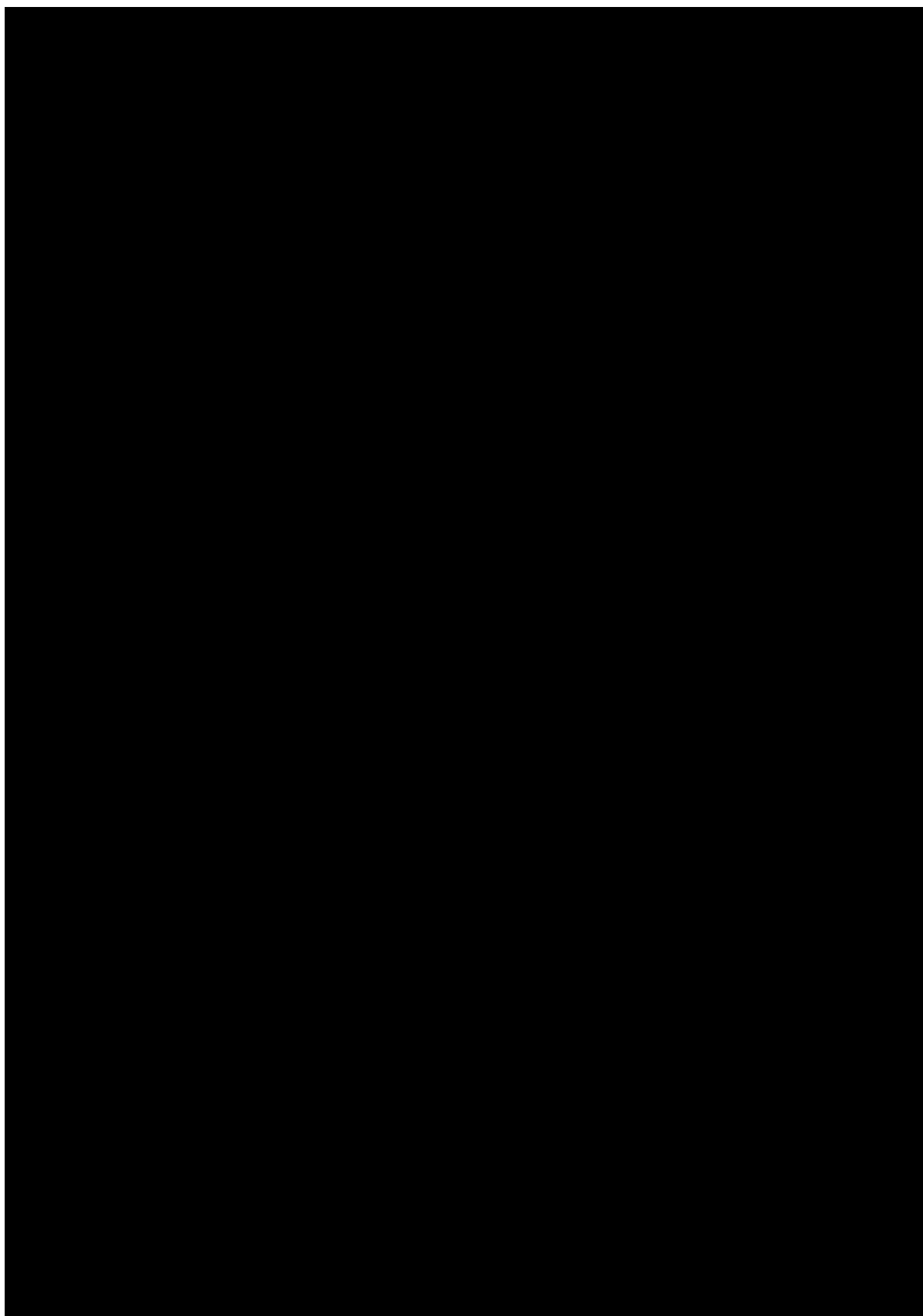
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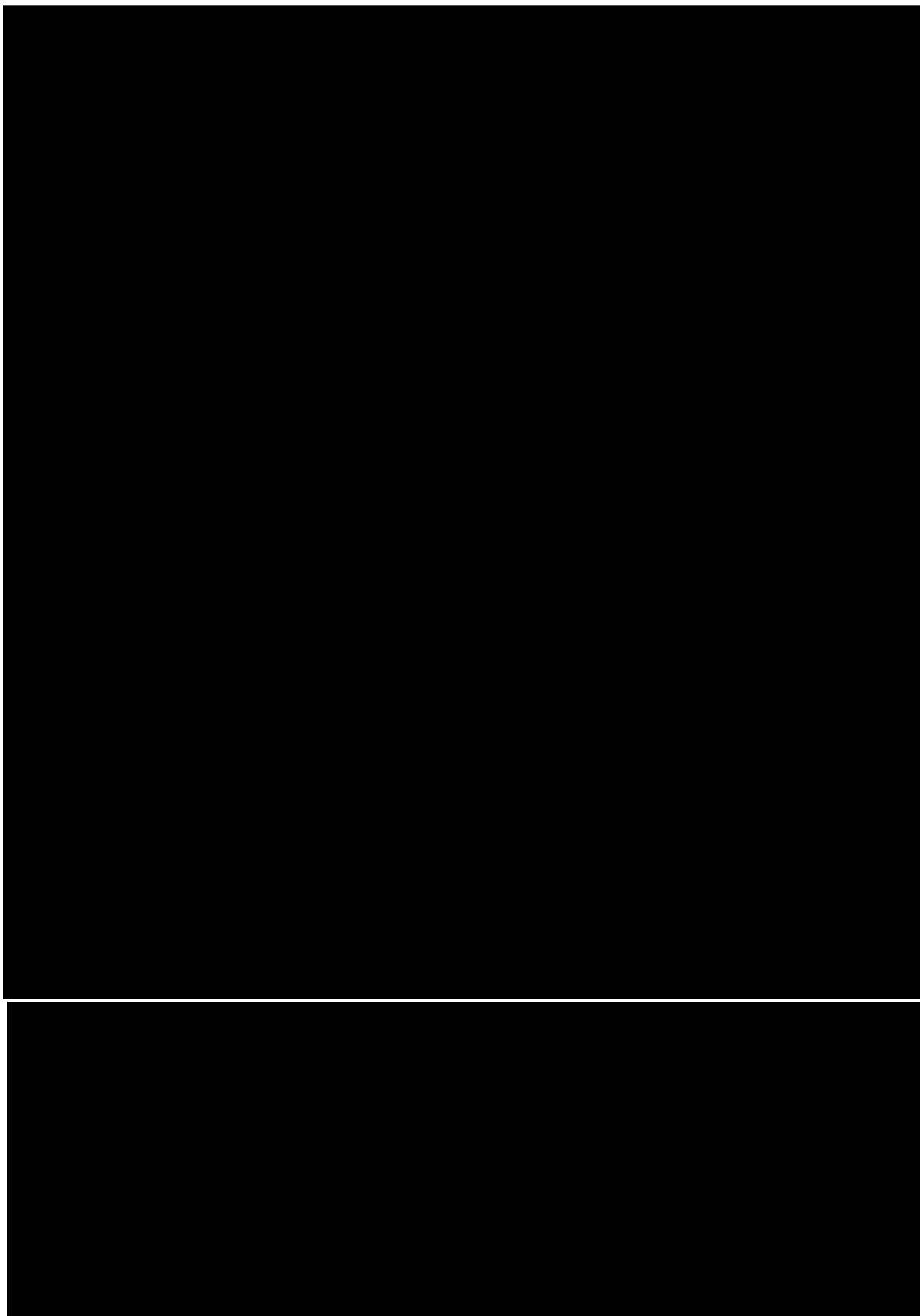
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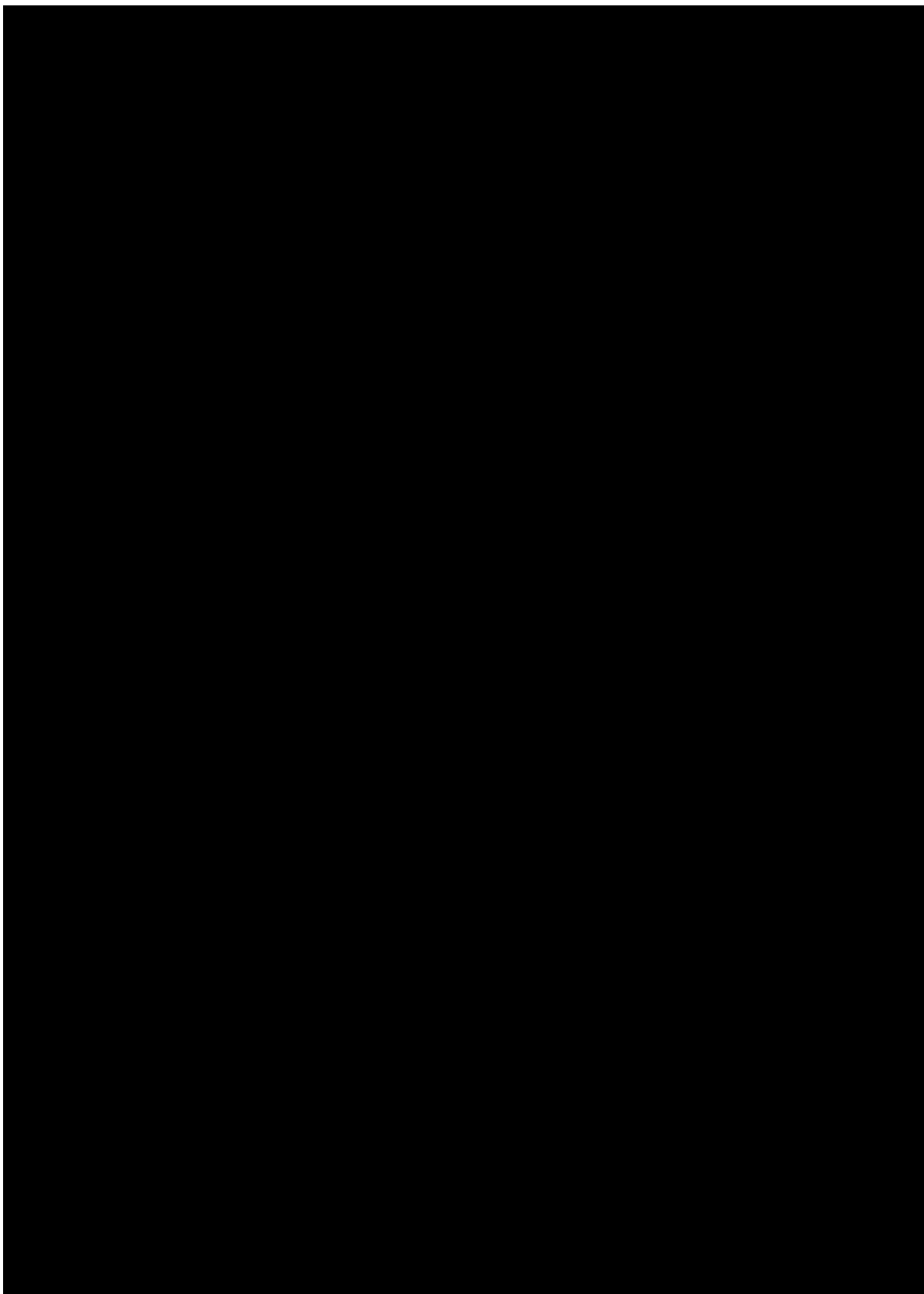
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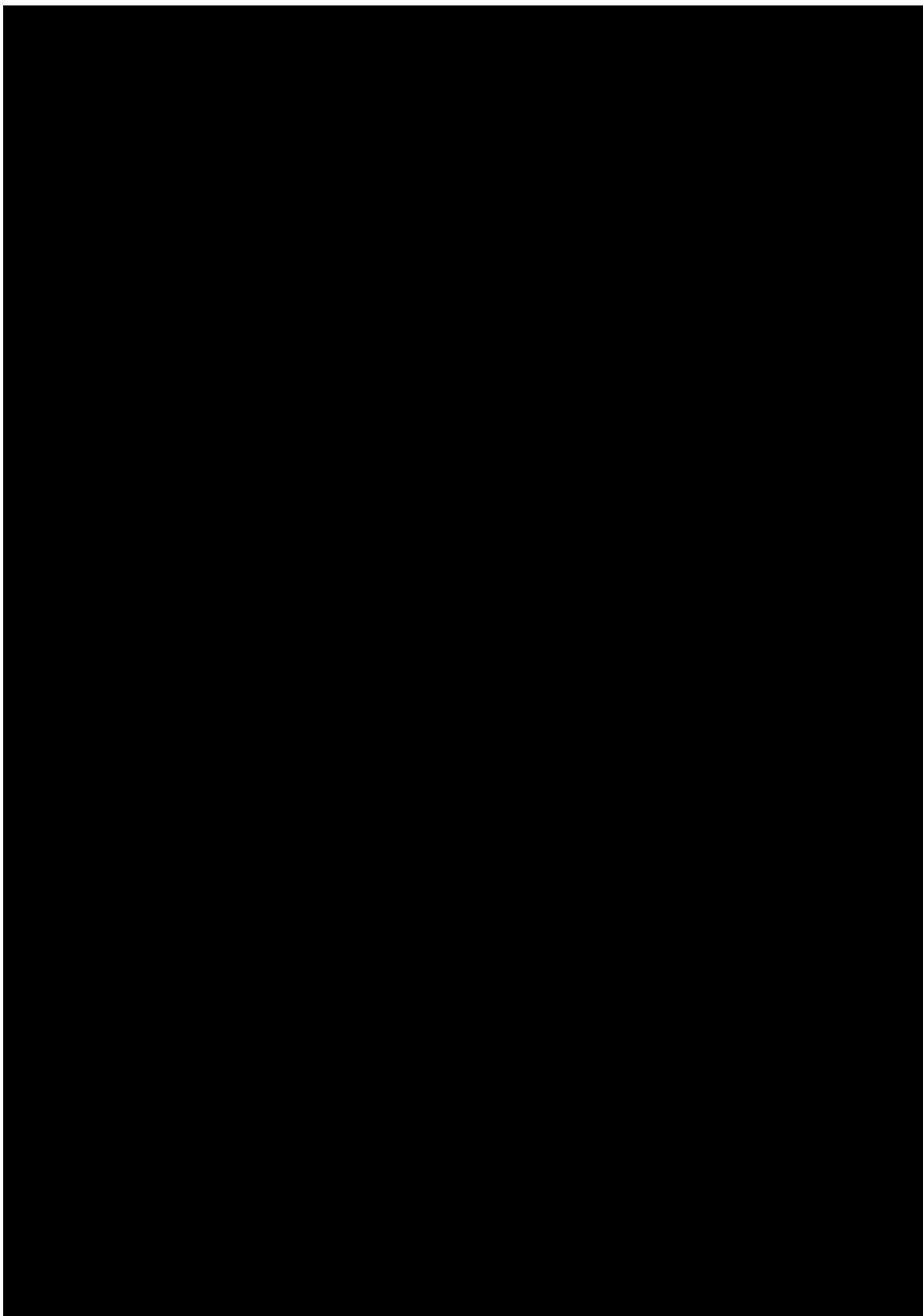
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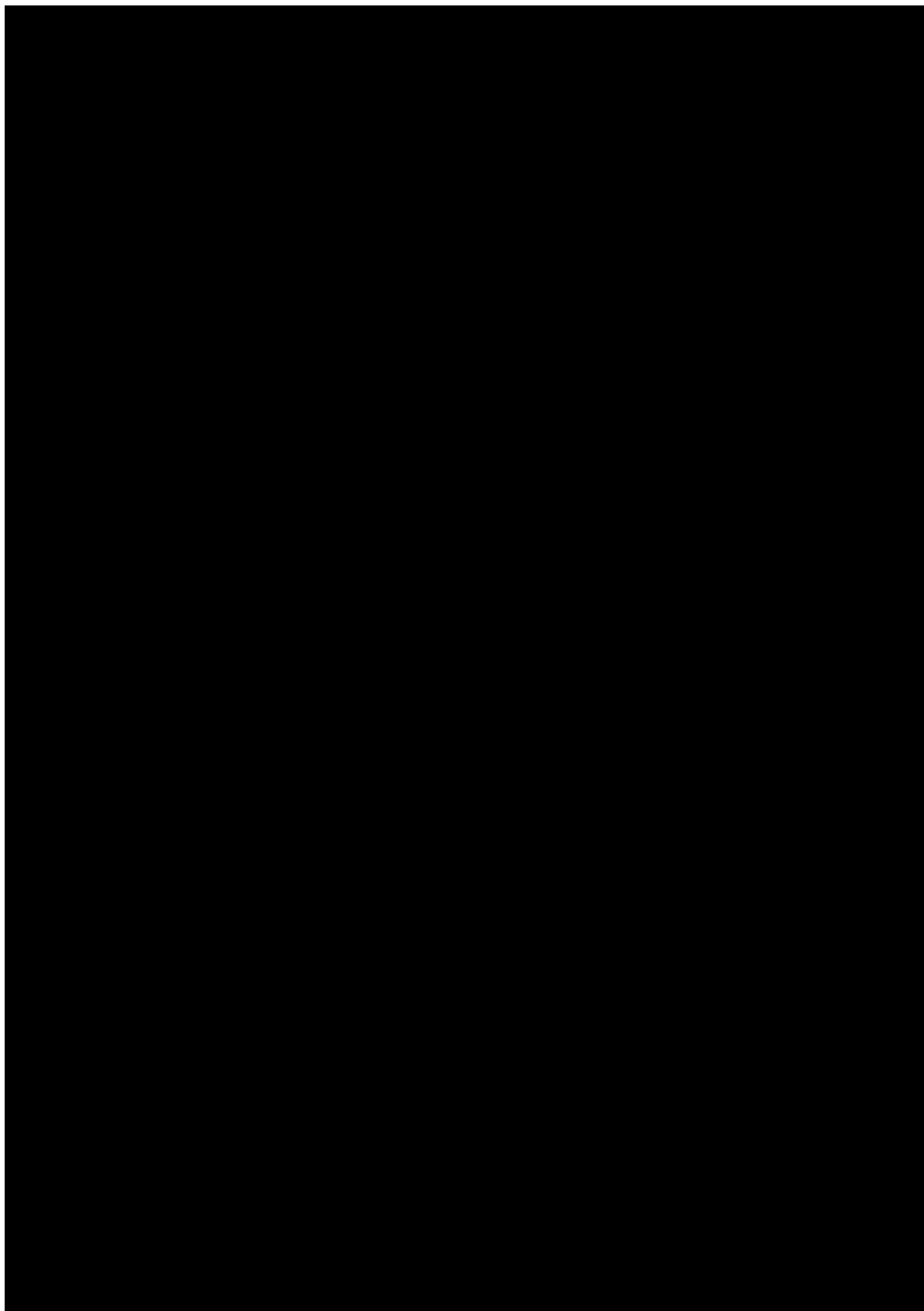
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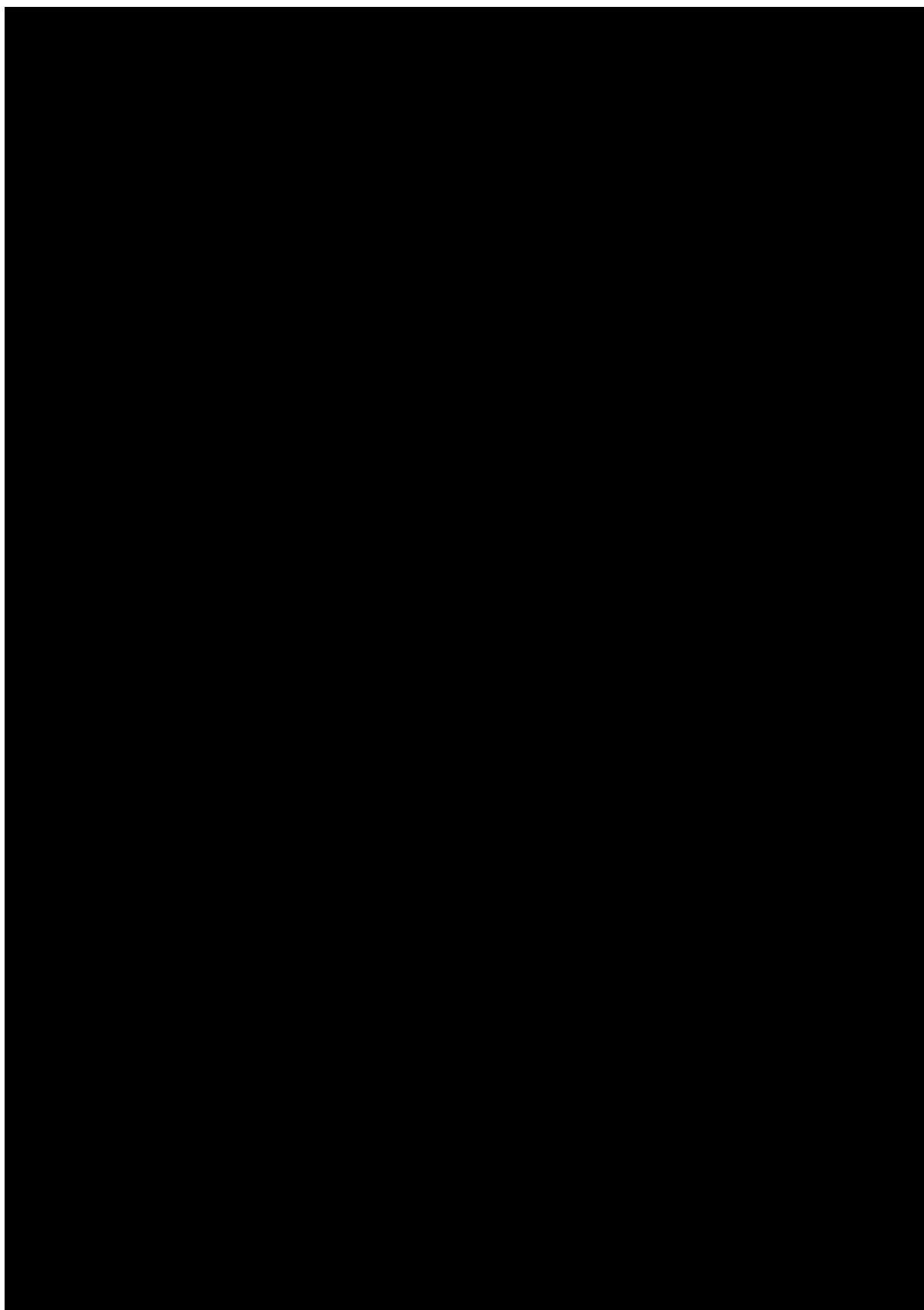
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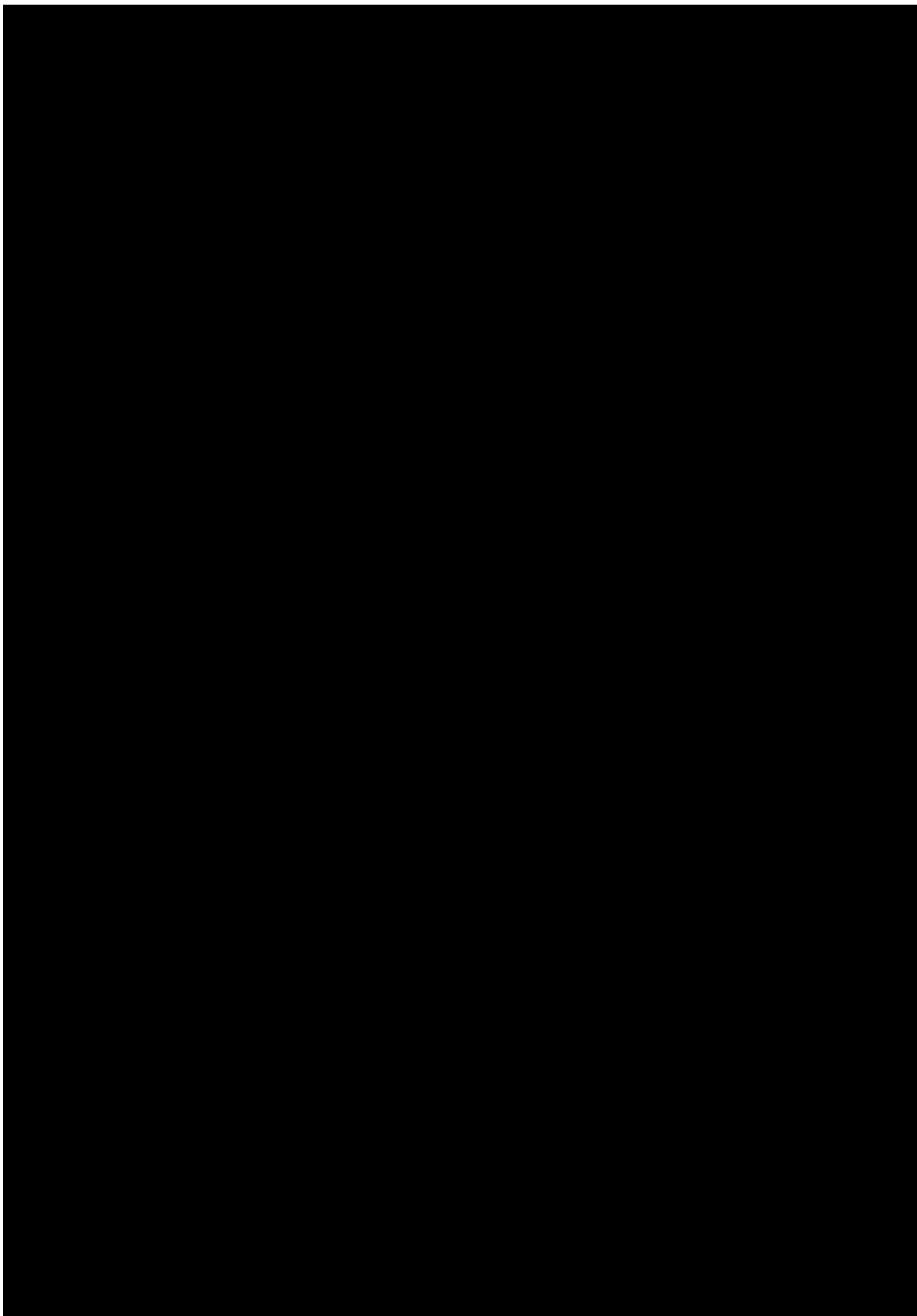
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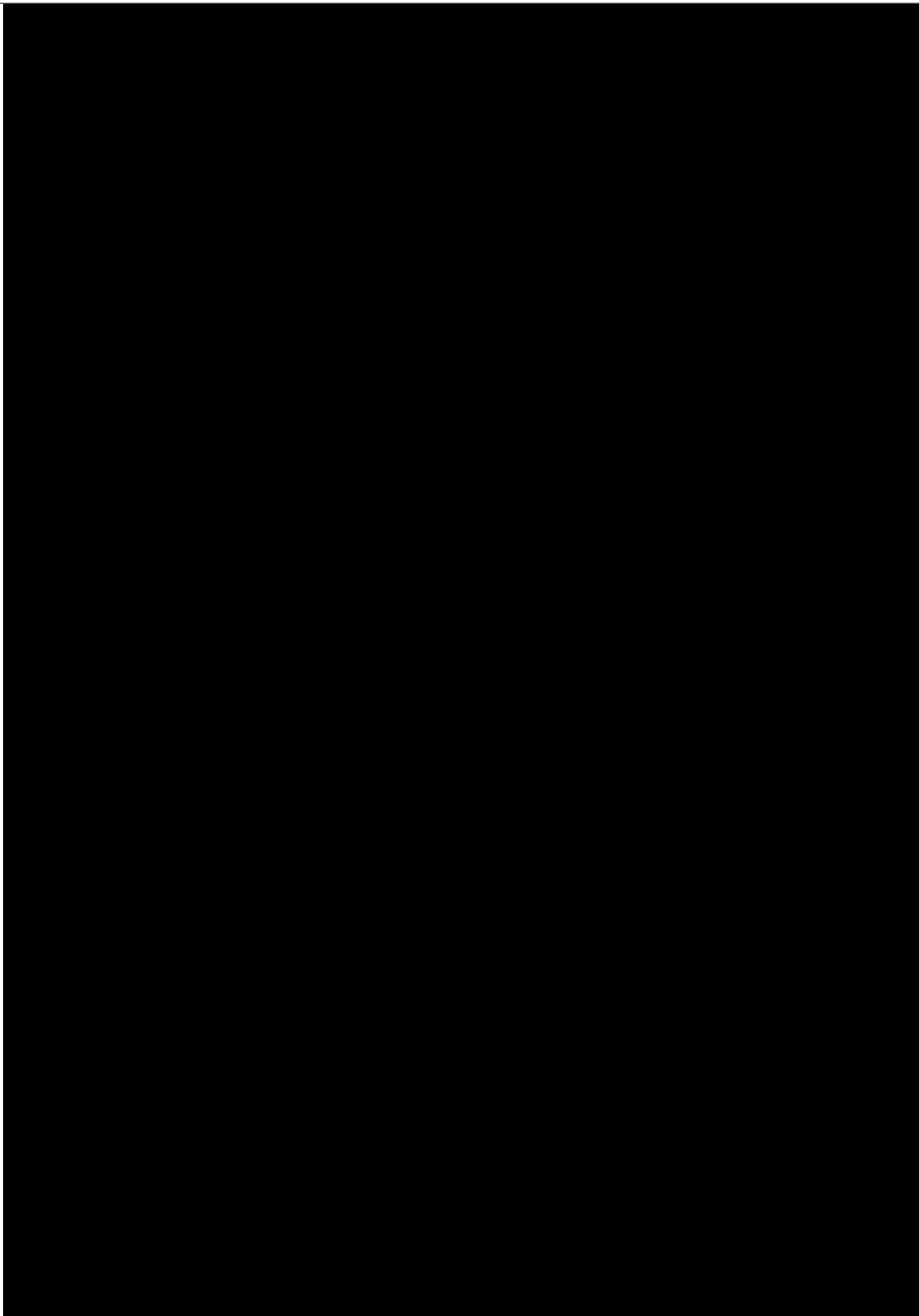
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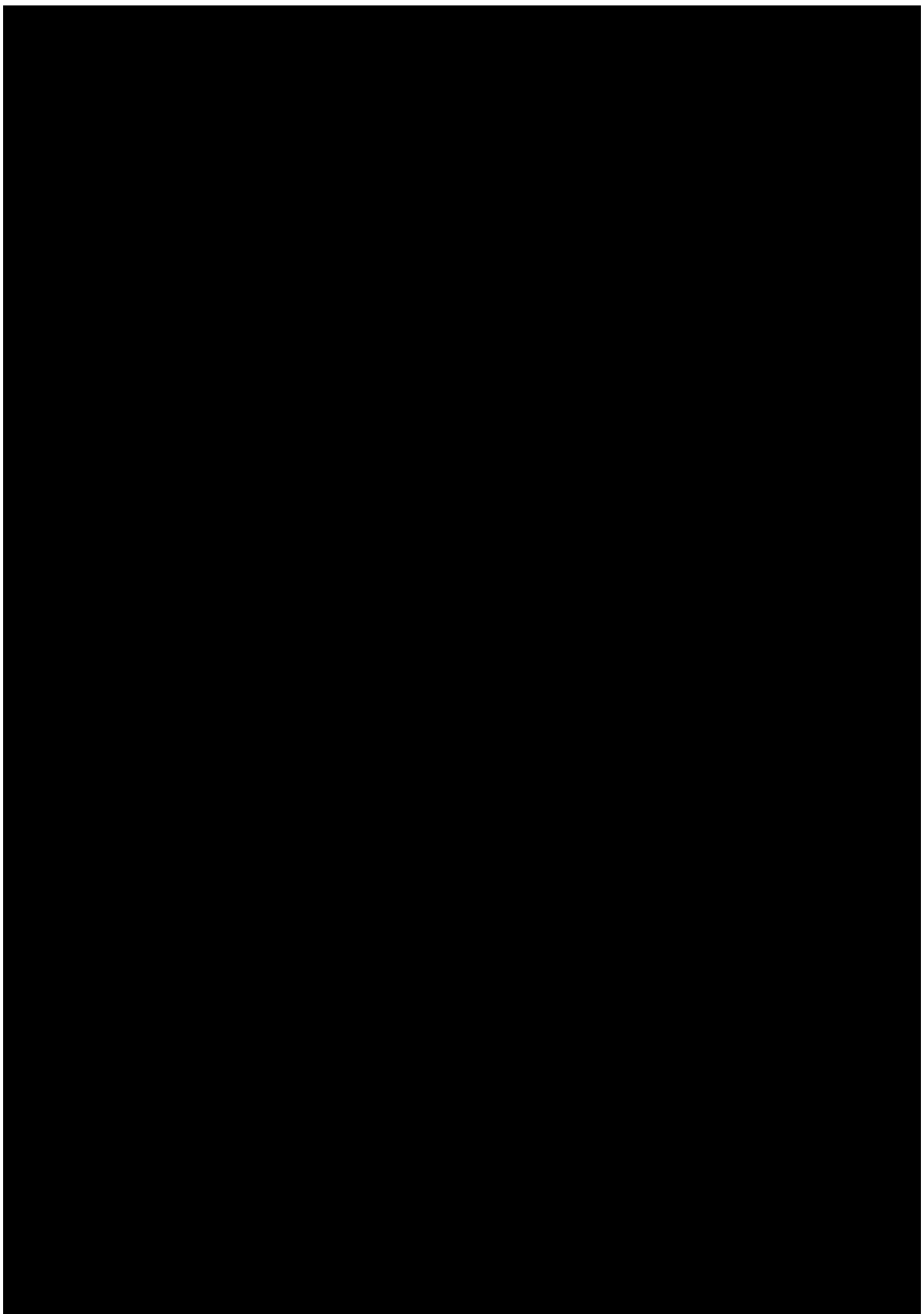
1 MR. HEINTZ: Actually, I'm going to 13:15:06
2 object. And I'm going to instruct the witness not 13:15:07
3 to answer that question. That is attorney/client 13:15:08
4 privileged communications. 13:15:14
5 MR. MICALLEF: You are instructing him 13:15:17
6 not to tell me how often? 13:15:18
7 MR. HEINTZ: Are you asking him about a 13:15:20
8 specific type of communication directed to a 13:15:22
9 specific subject matter, so yes I'm instructing 13:15:26
10 him not to answer that question? 13:15:28
11 MR. MICALLEF: That he has already 13:15:29
12 disclosed on the record, both the type and the 13:15:30
13 subject matter. 13:15:33
14 MR. HEINTZ: I disagree with you, but if 13:15:34
15 I missed it I'm objecting to all of these 13:15:36
16 questions. I'm instructing him not to answer that 13:15:38
17 question. 13:15:40
18 BY MR. MICALLEF: 13:15:41

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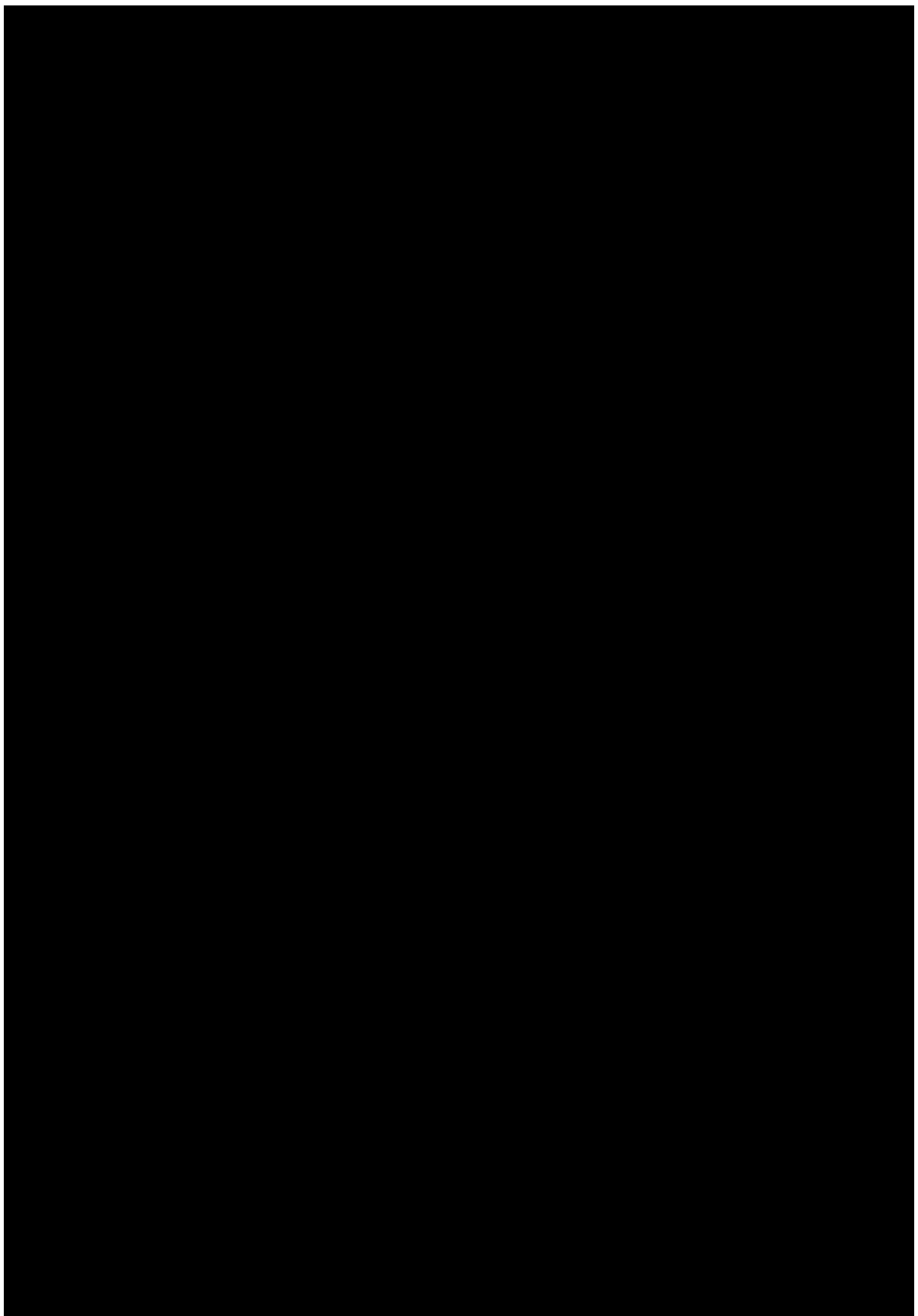
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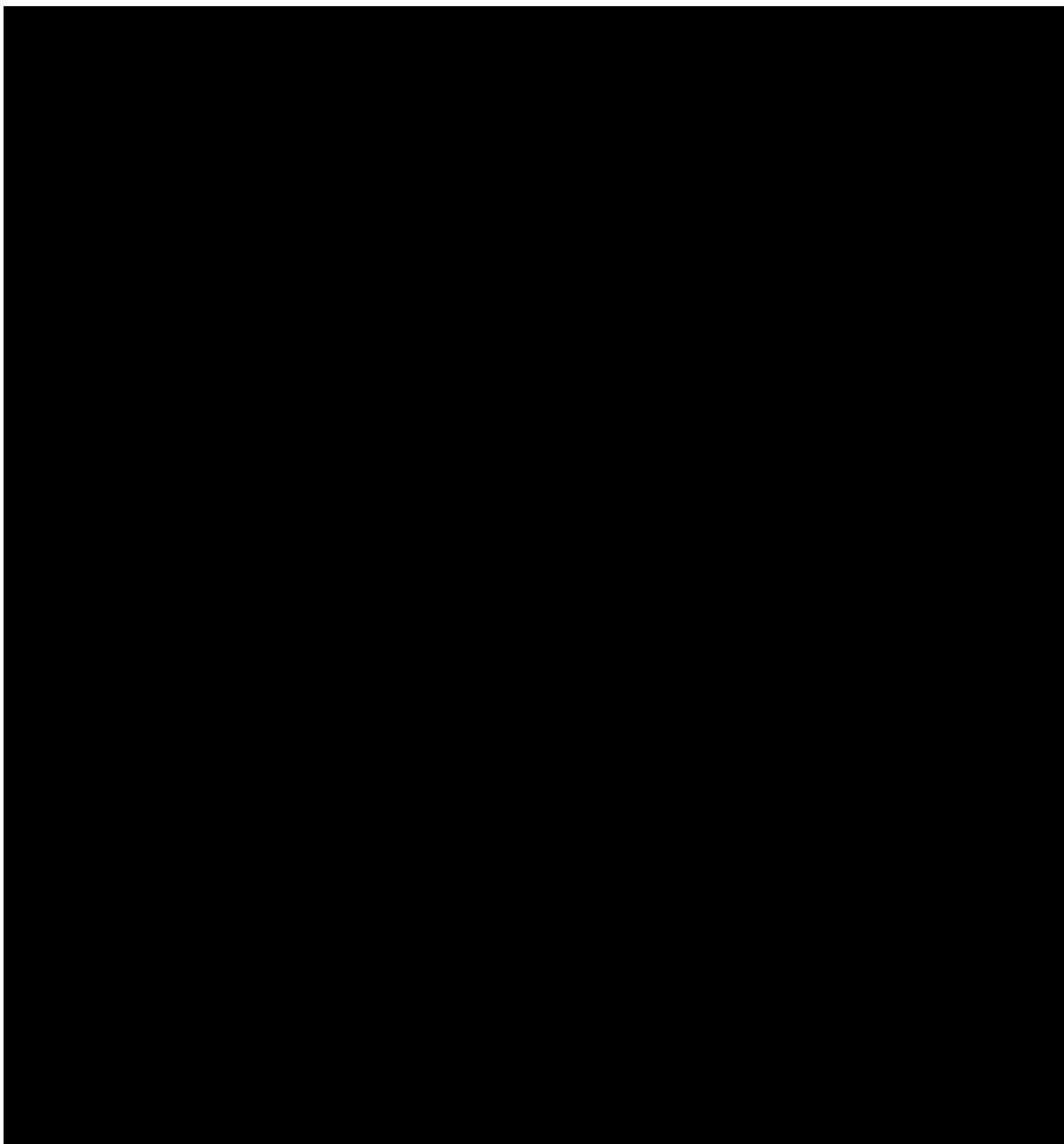
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BY MR. MICALLEF: 13:21:46

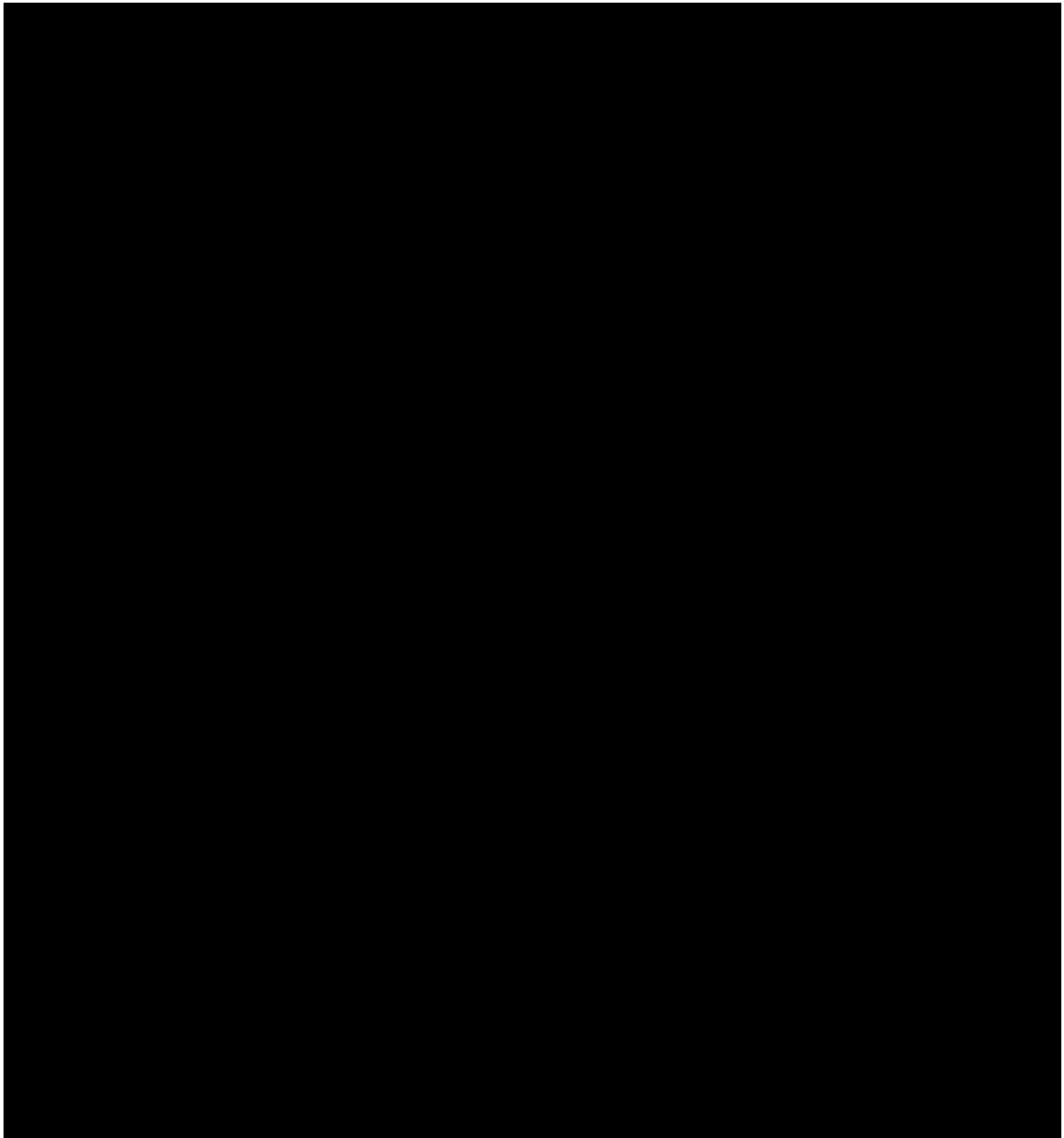
Q Mr. Lagermann, is Mr. Santoro an 13:21:46
attorney. 13:21:50

A Is he an attorney. 13:21:52

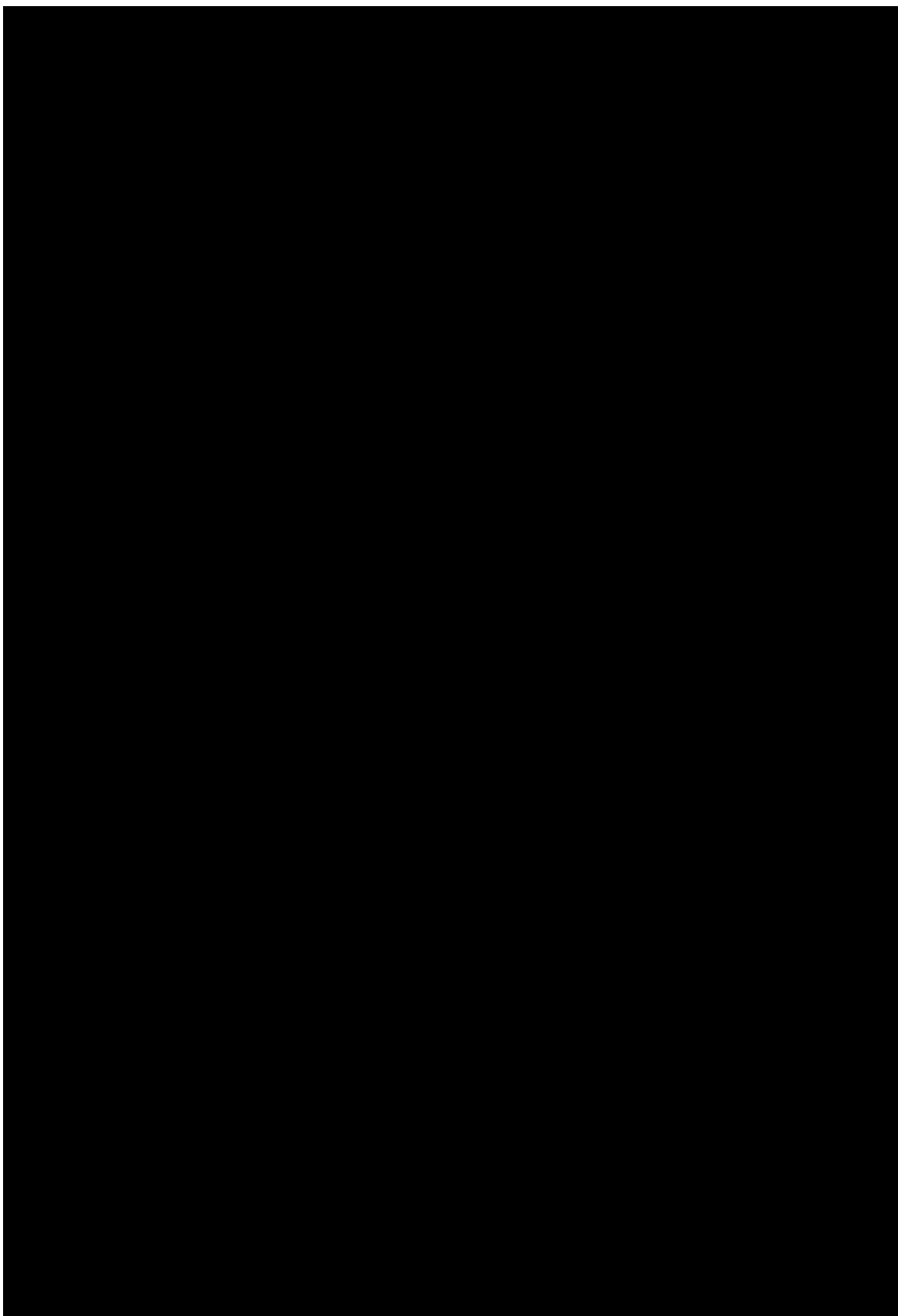
Q Yes. 13:21:53

A No, he is not. 13:21:55

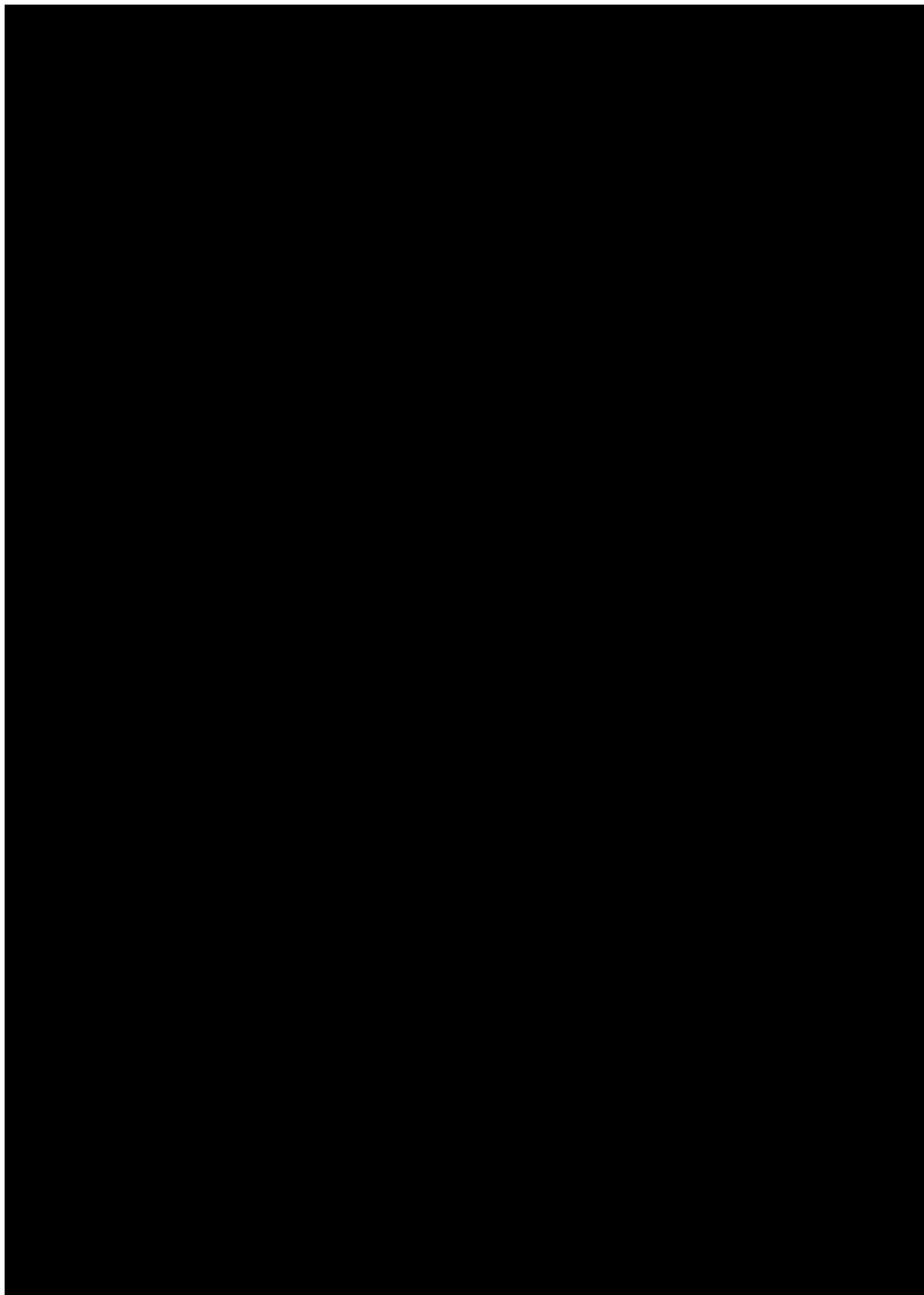
1 MR. MICALLEF: Are you going to maintain 13:21:58
2 your objection? 13:21:59
3 MR. HEINTZ: I am. 13:22:01
4 MR. MICALLEF: We will keep this 13:22:02
5 deposition open. 13:22:03
6 BY MR. MICALLEF: 13:22:19



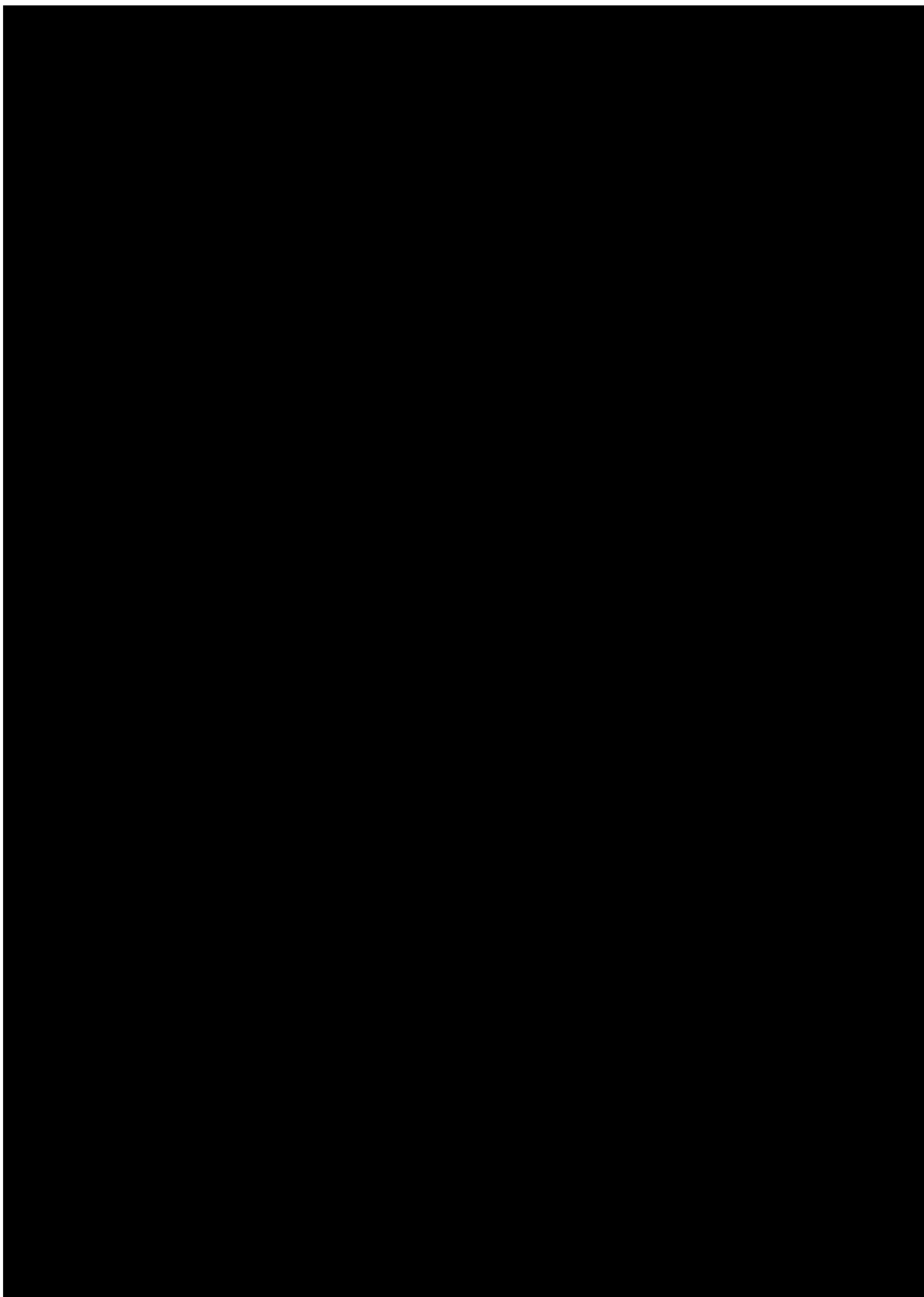
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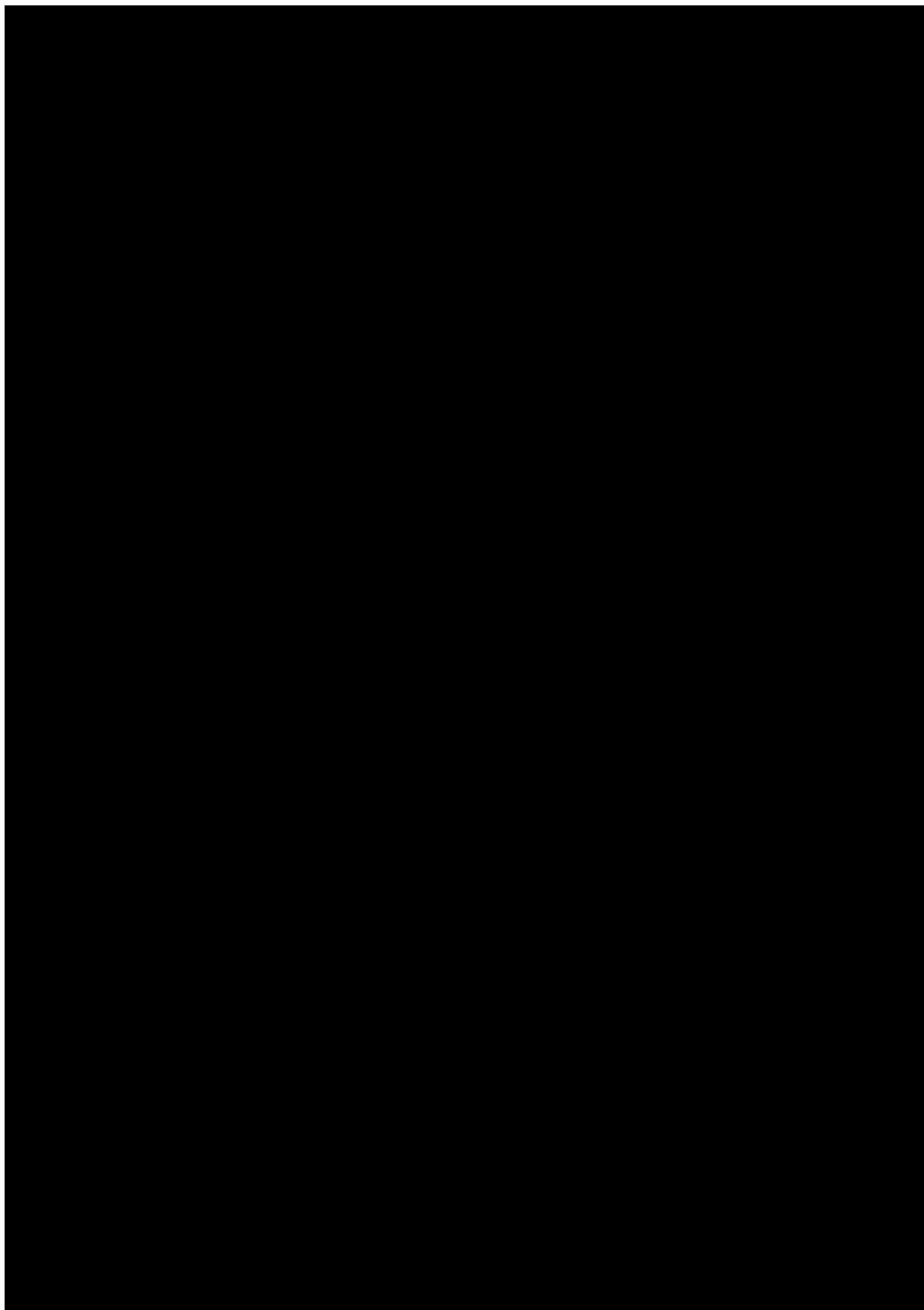
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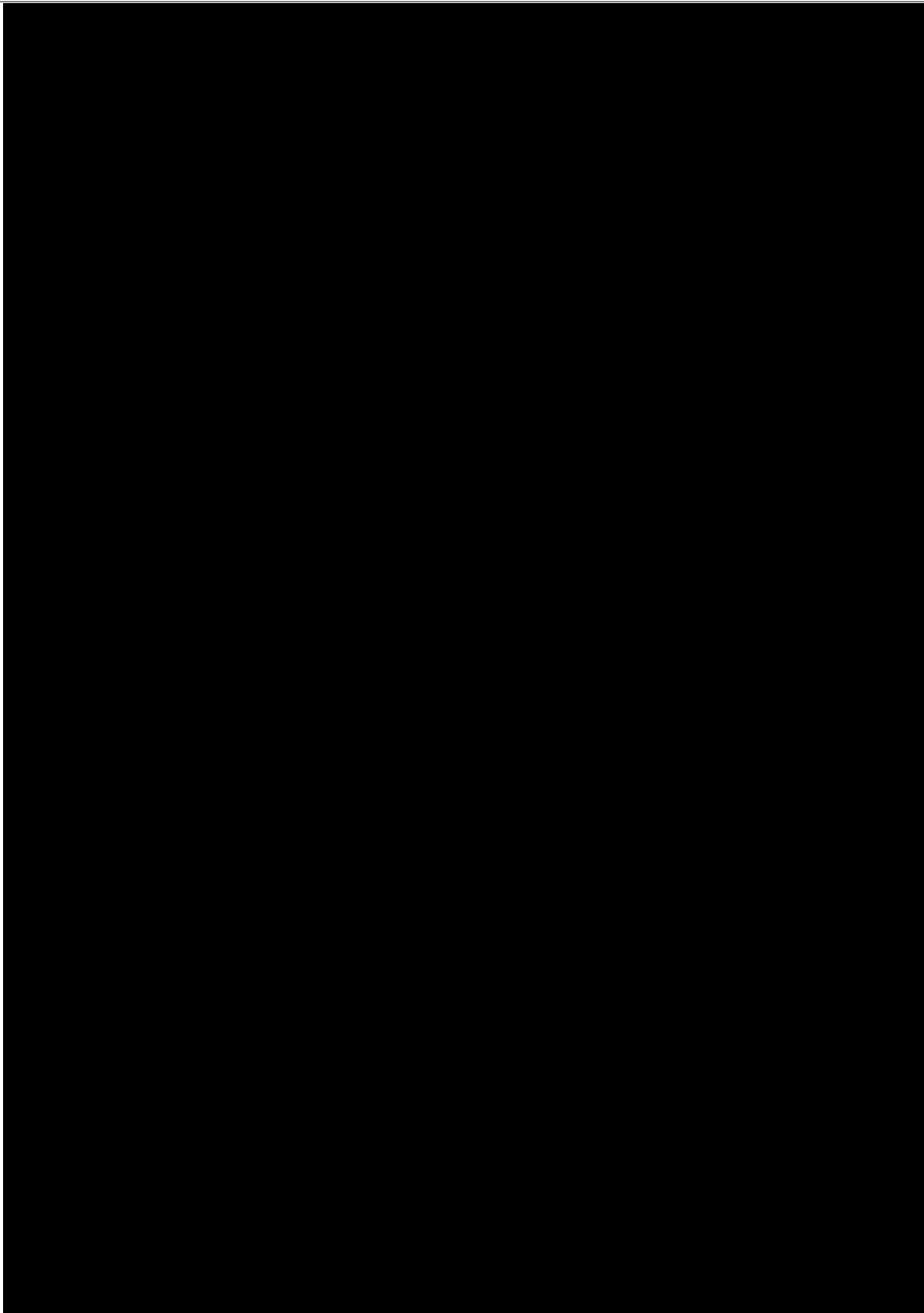
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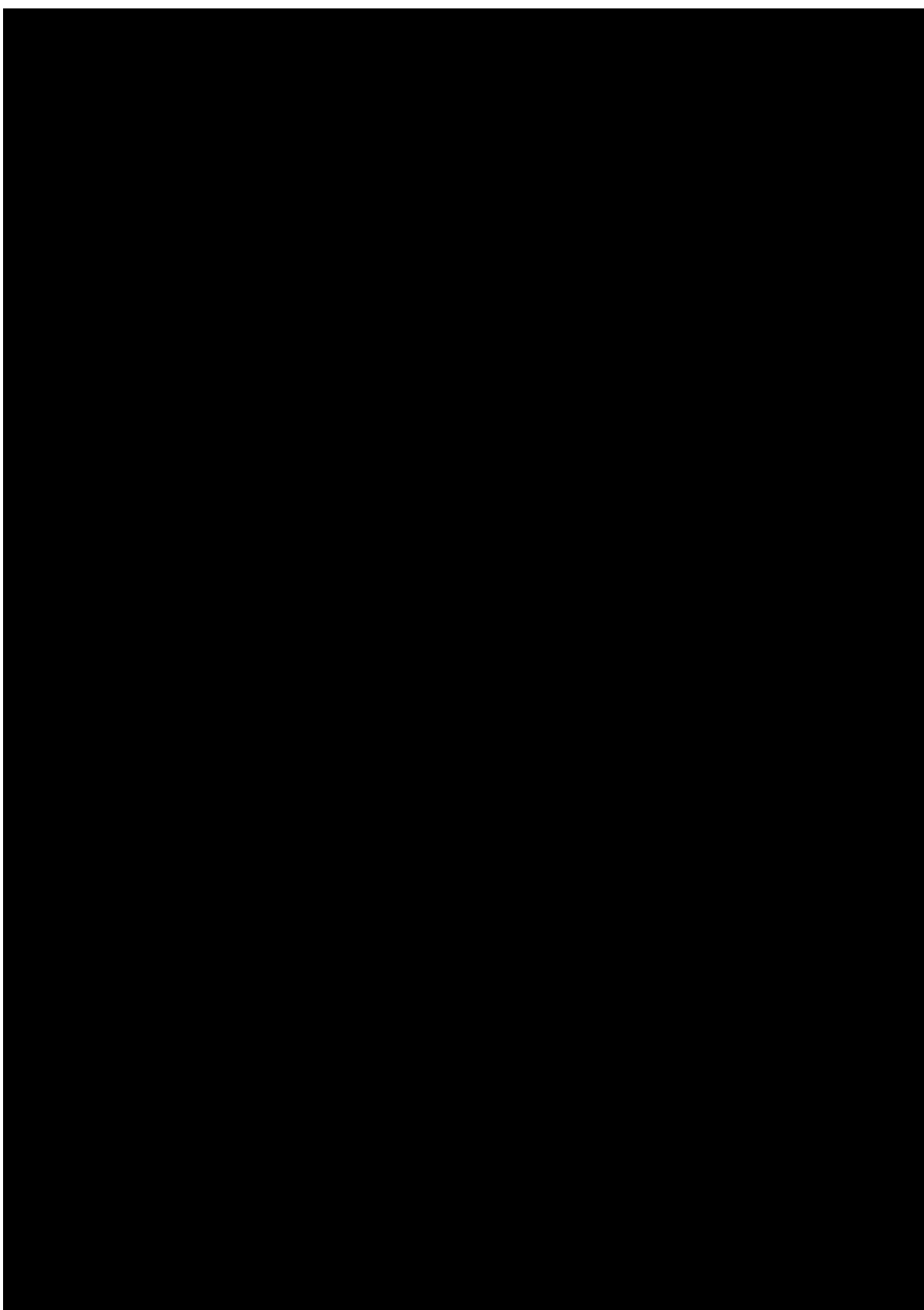
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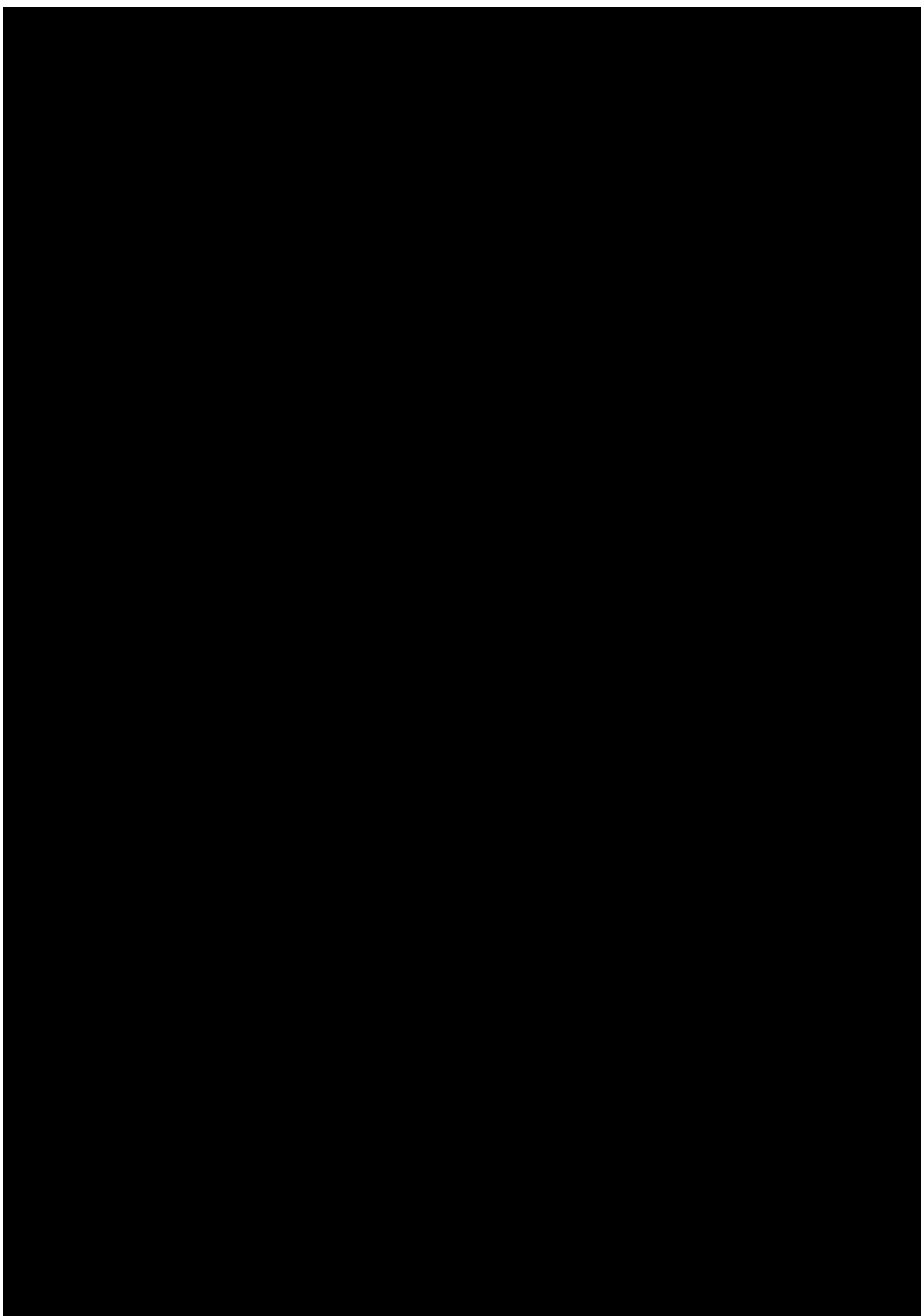
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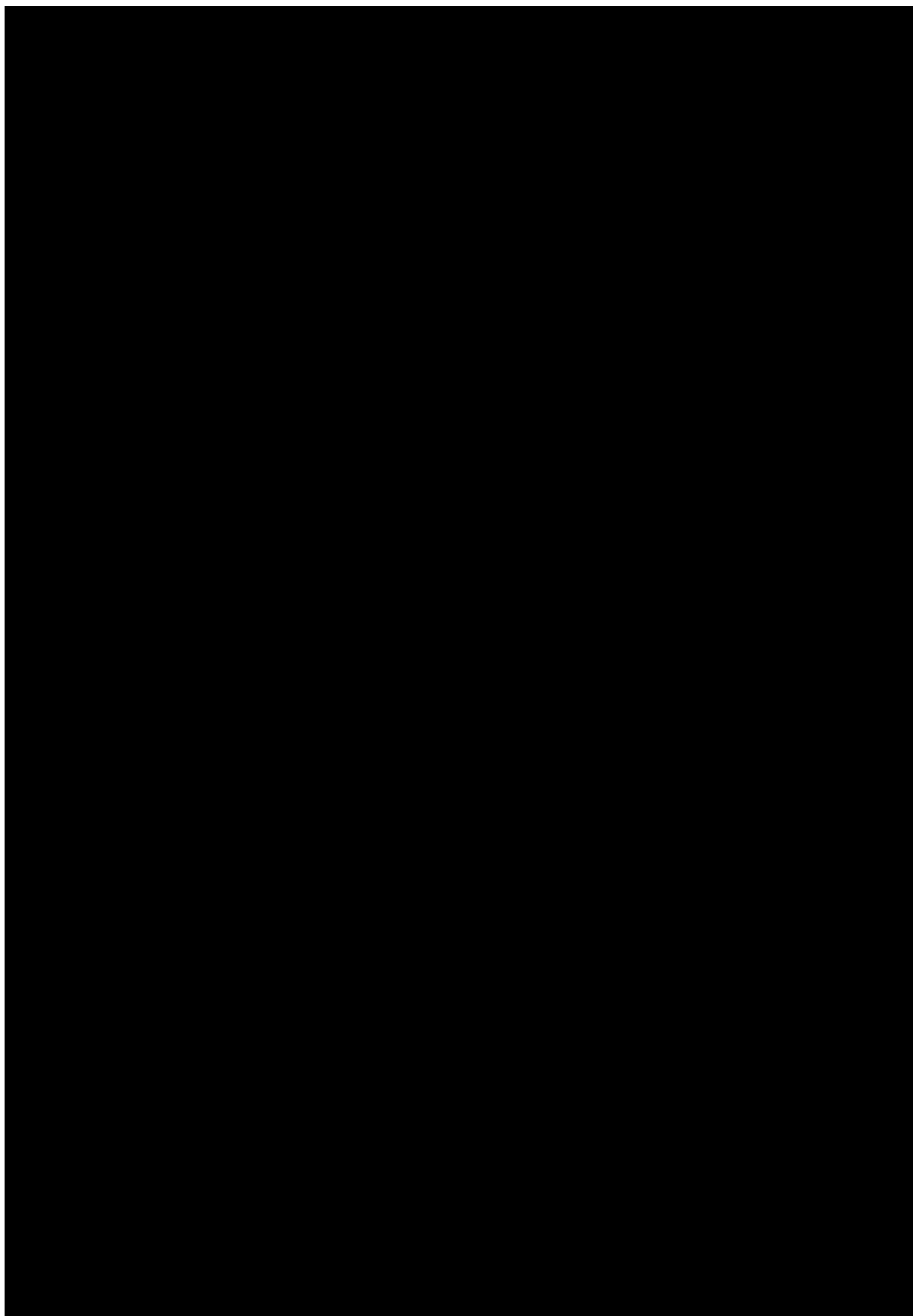
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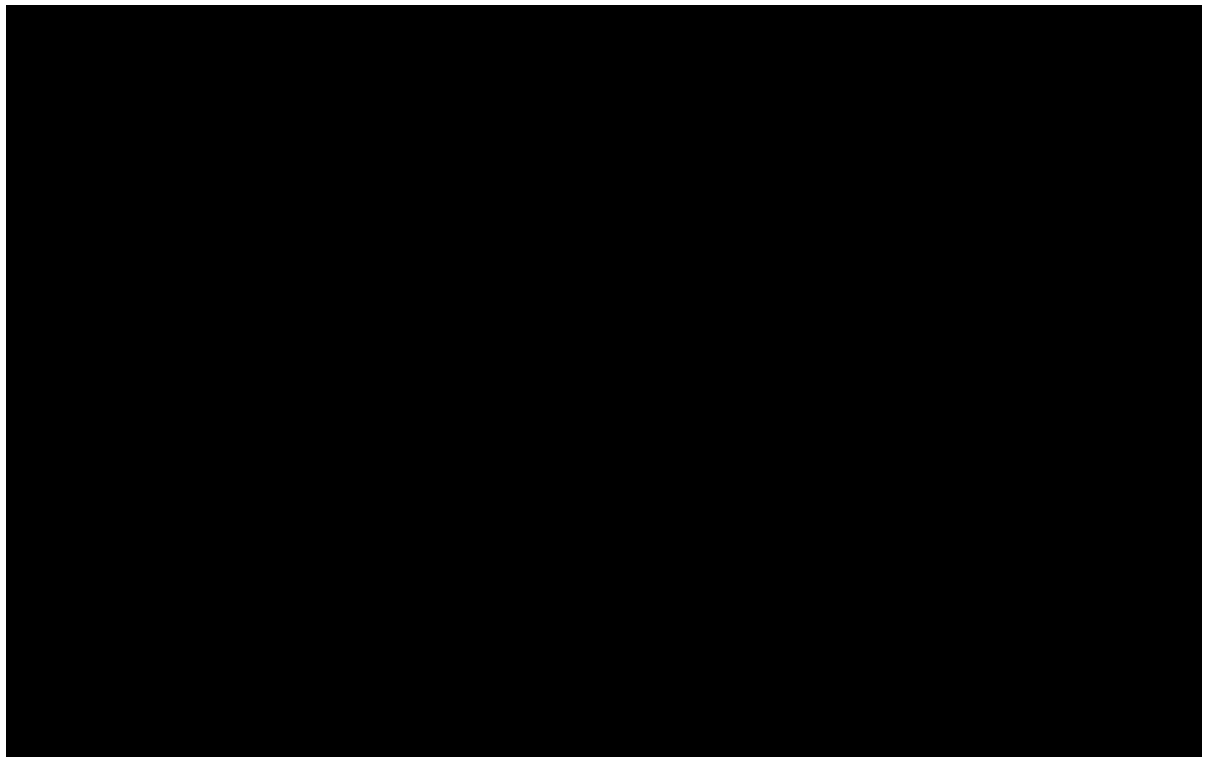
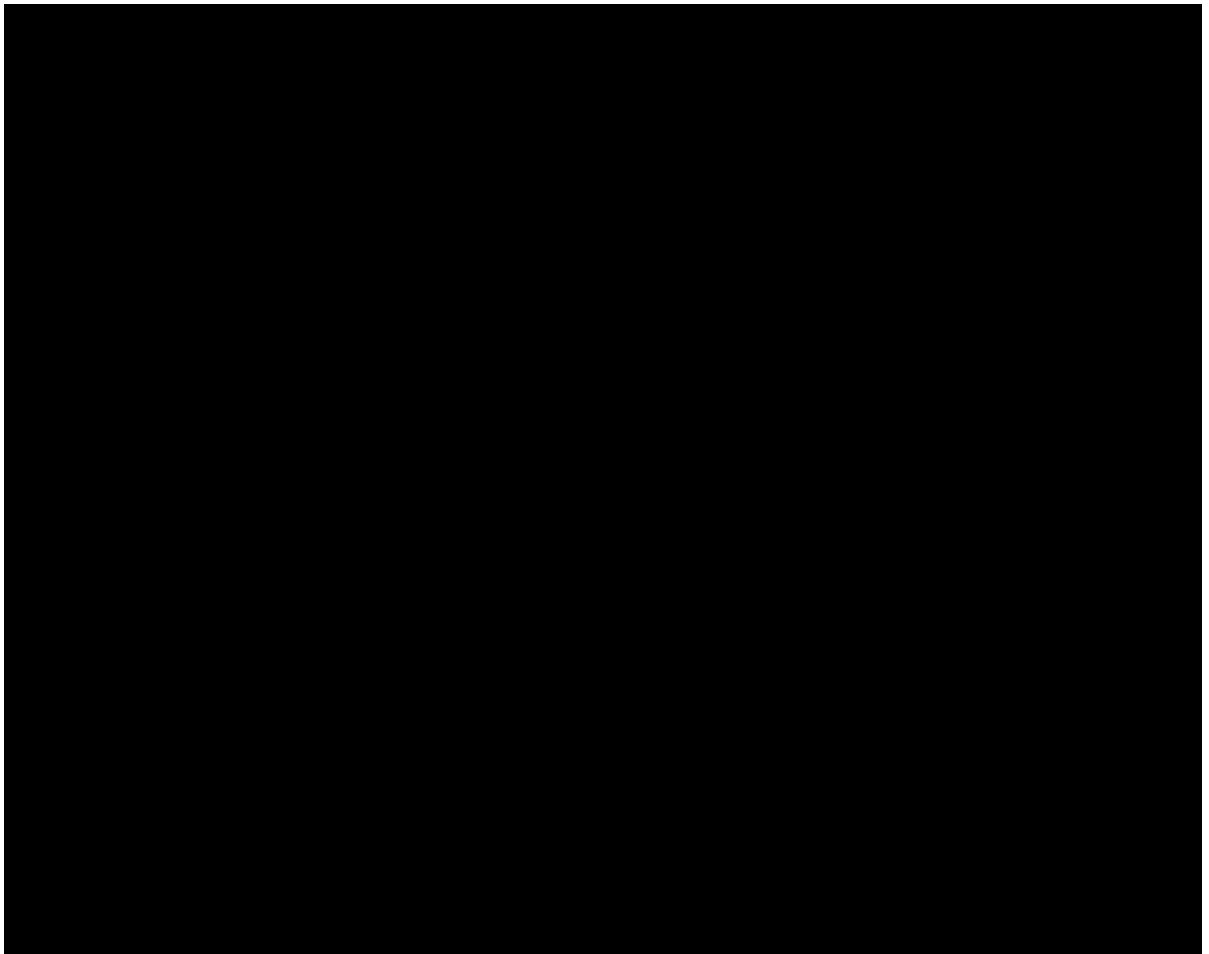
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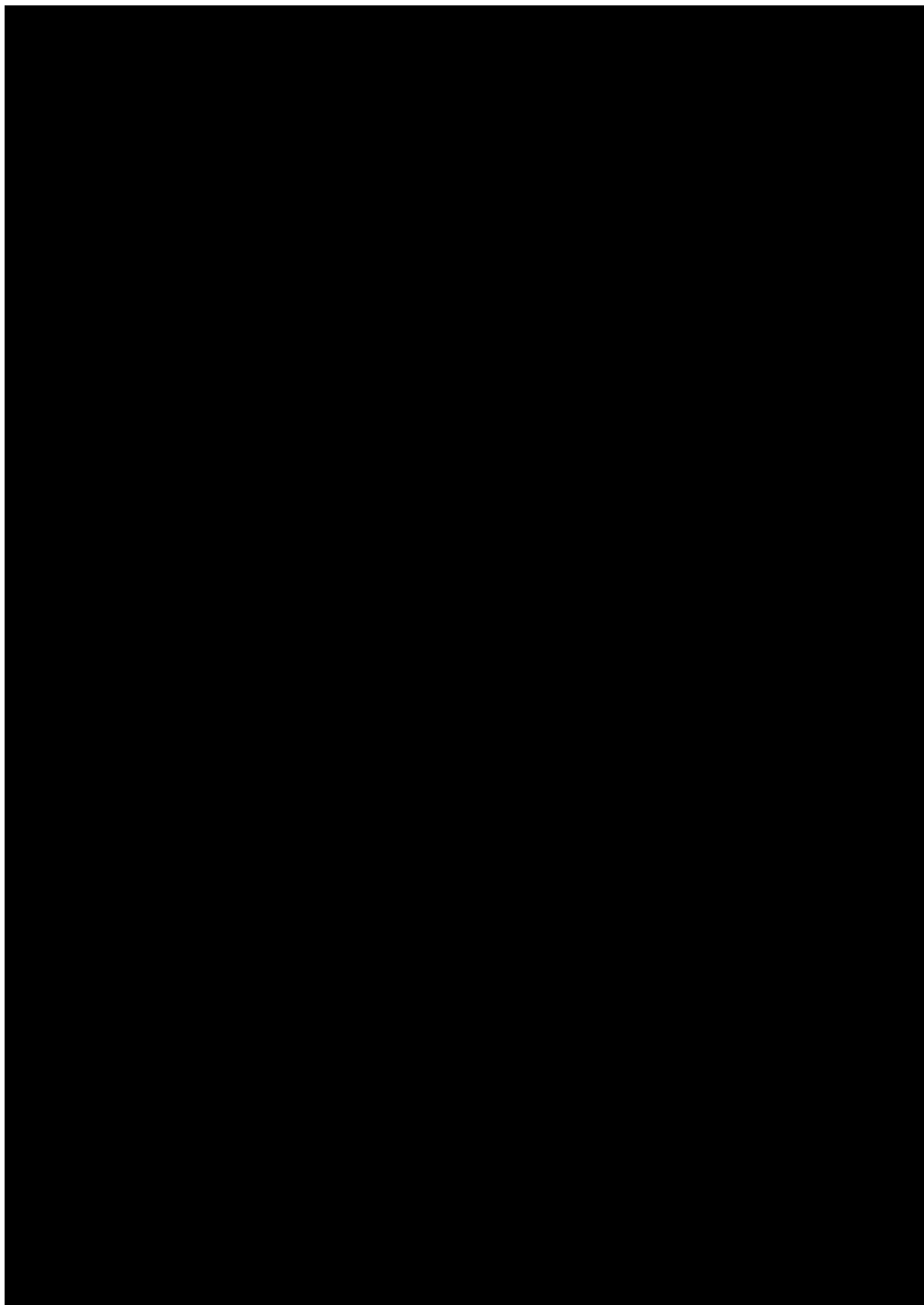
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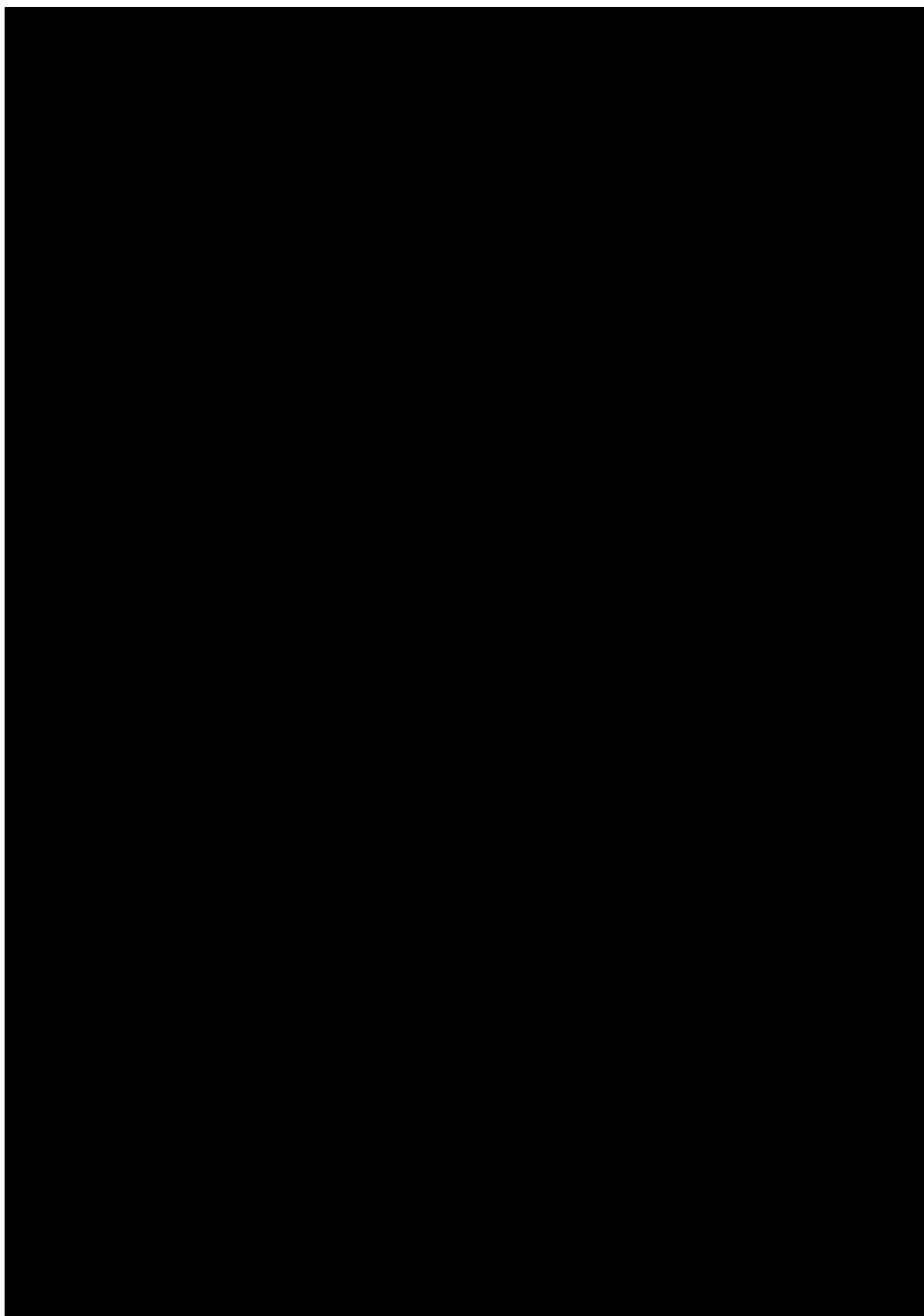
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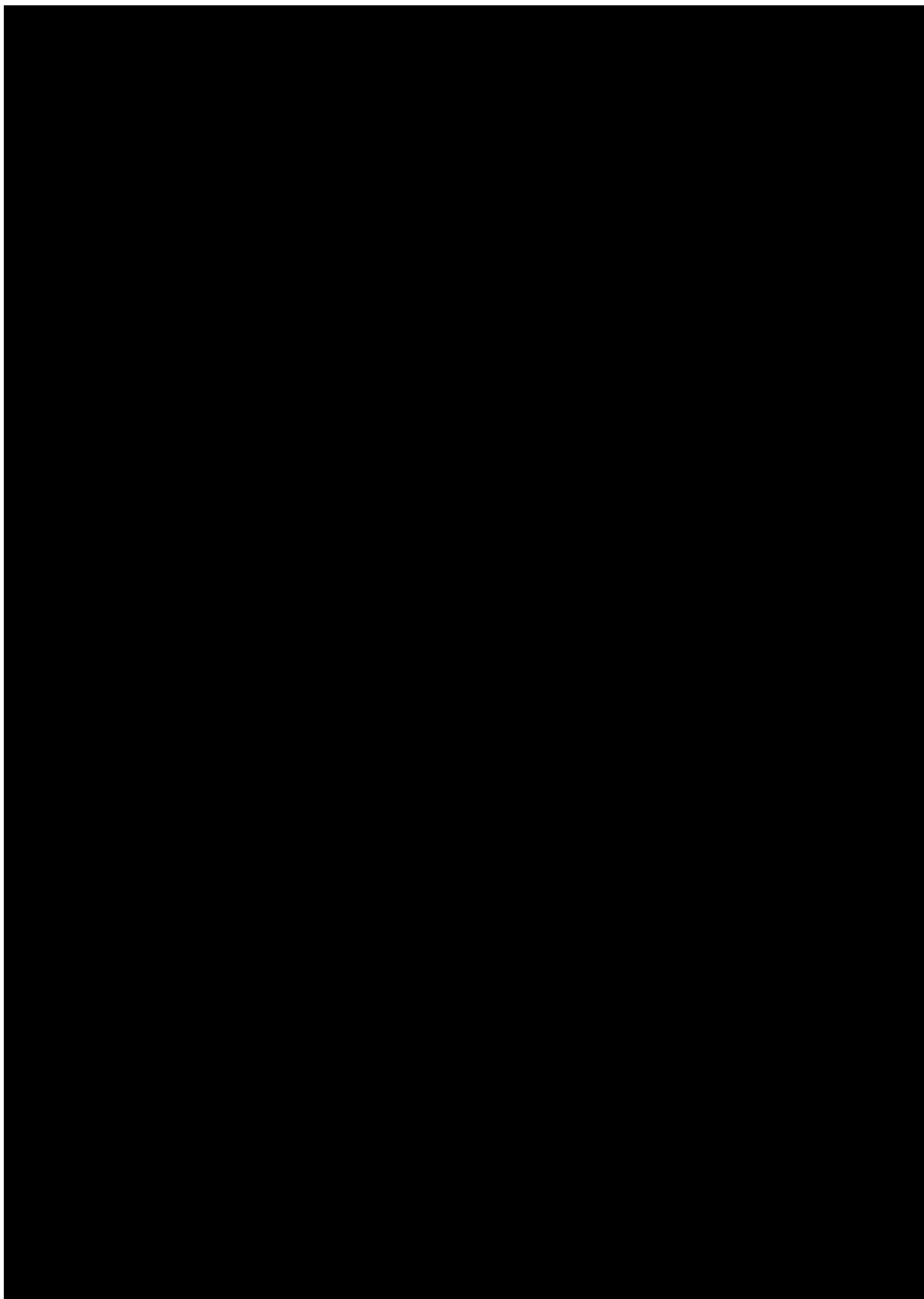
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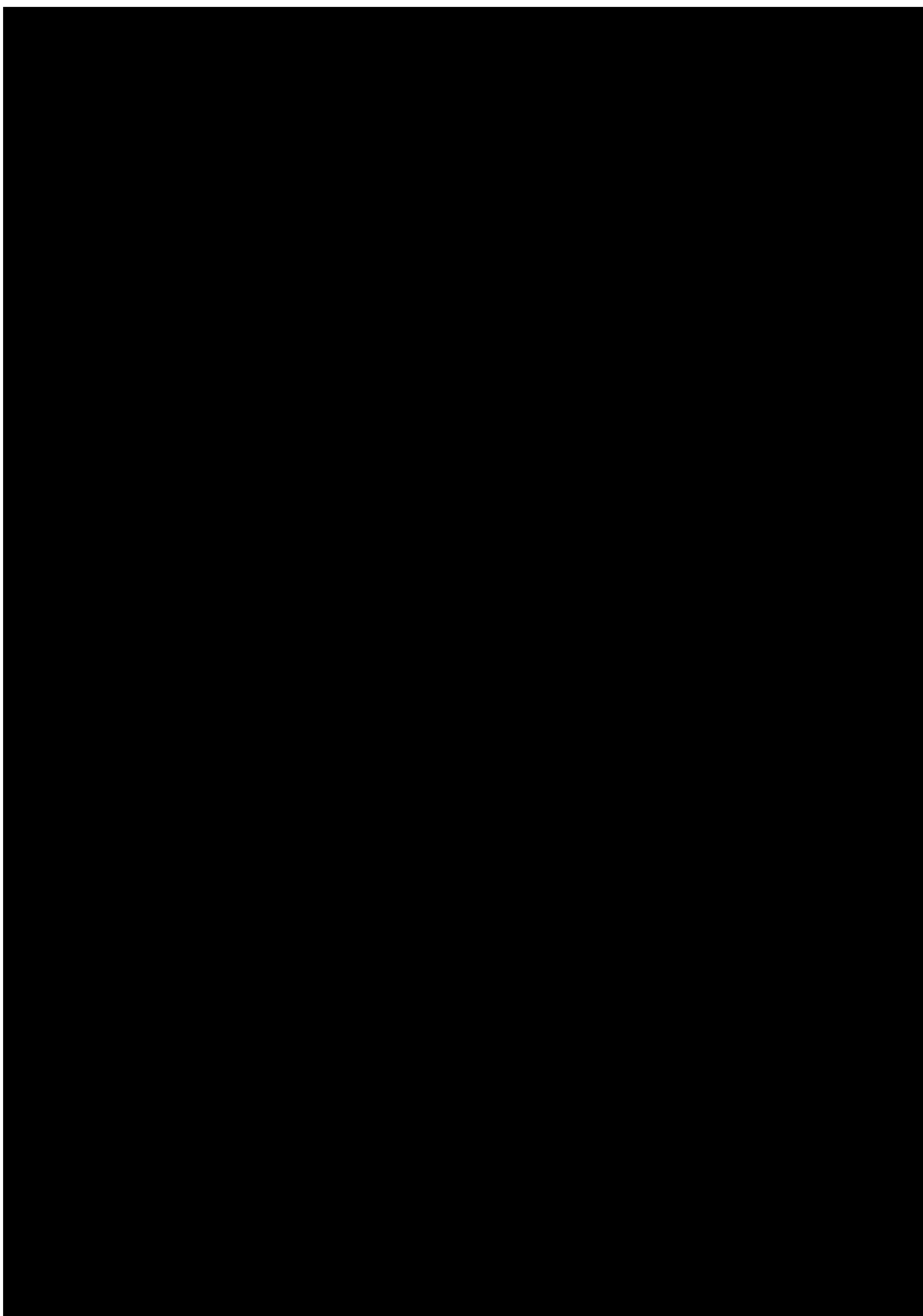
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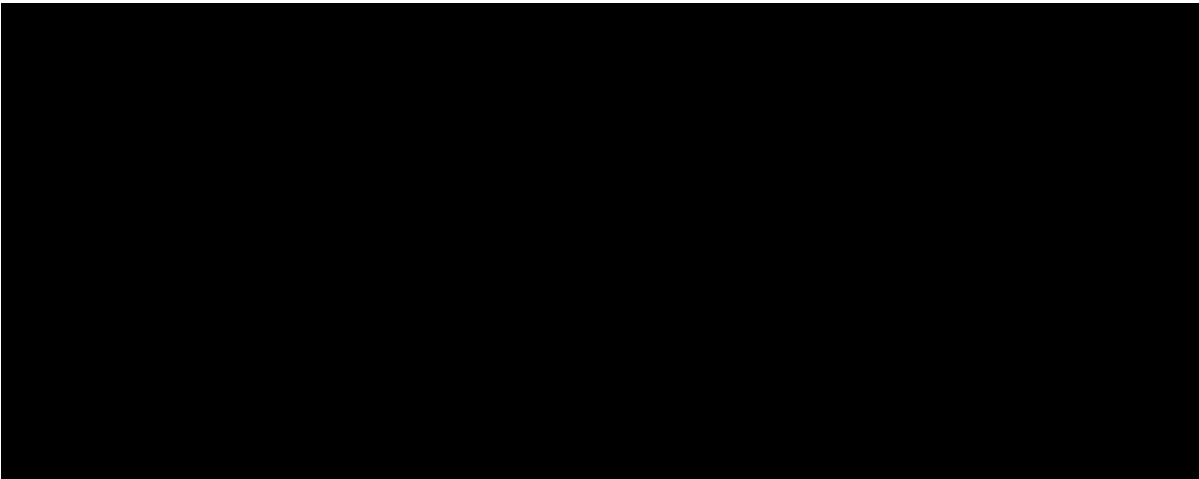
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Q Well let's see, an Active Desktop Item 13:46:50
is rectangular. Right? 13:46:53

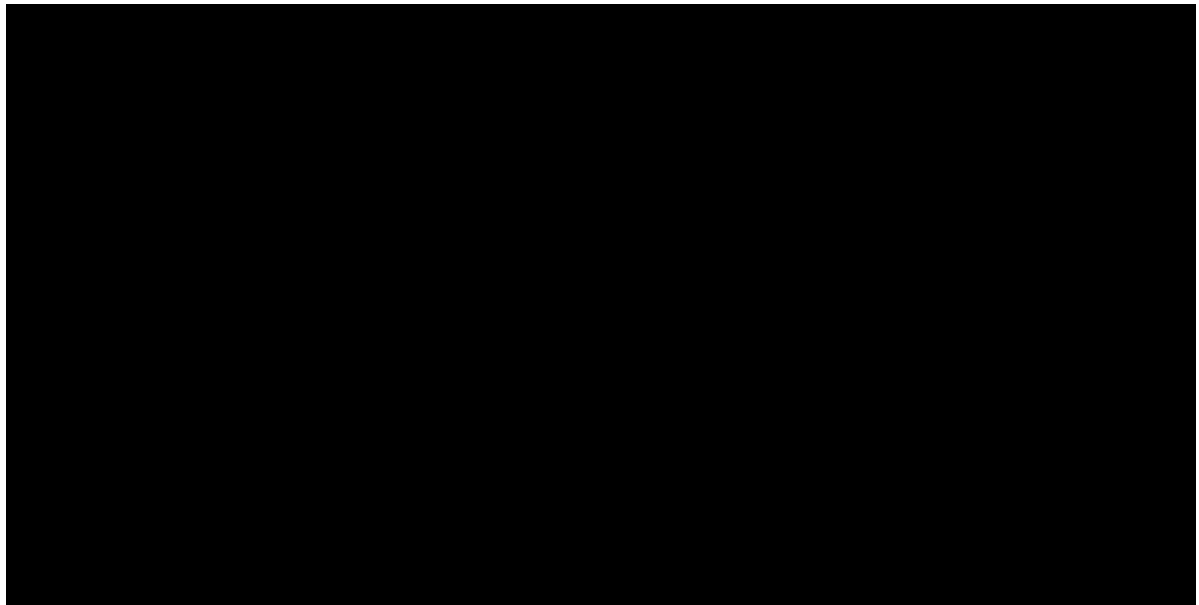
A Yes. 13:46:55

Q And the user can assign a refresh rate 13:46:56
to a Desktop Item? 13:46:59

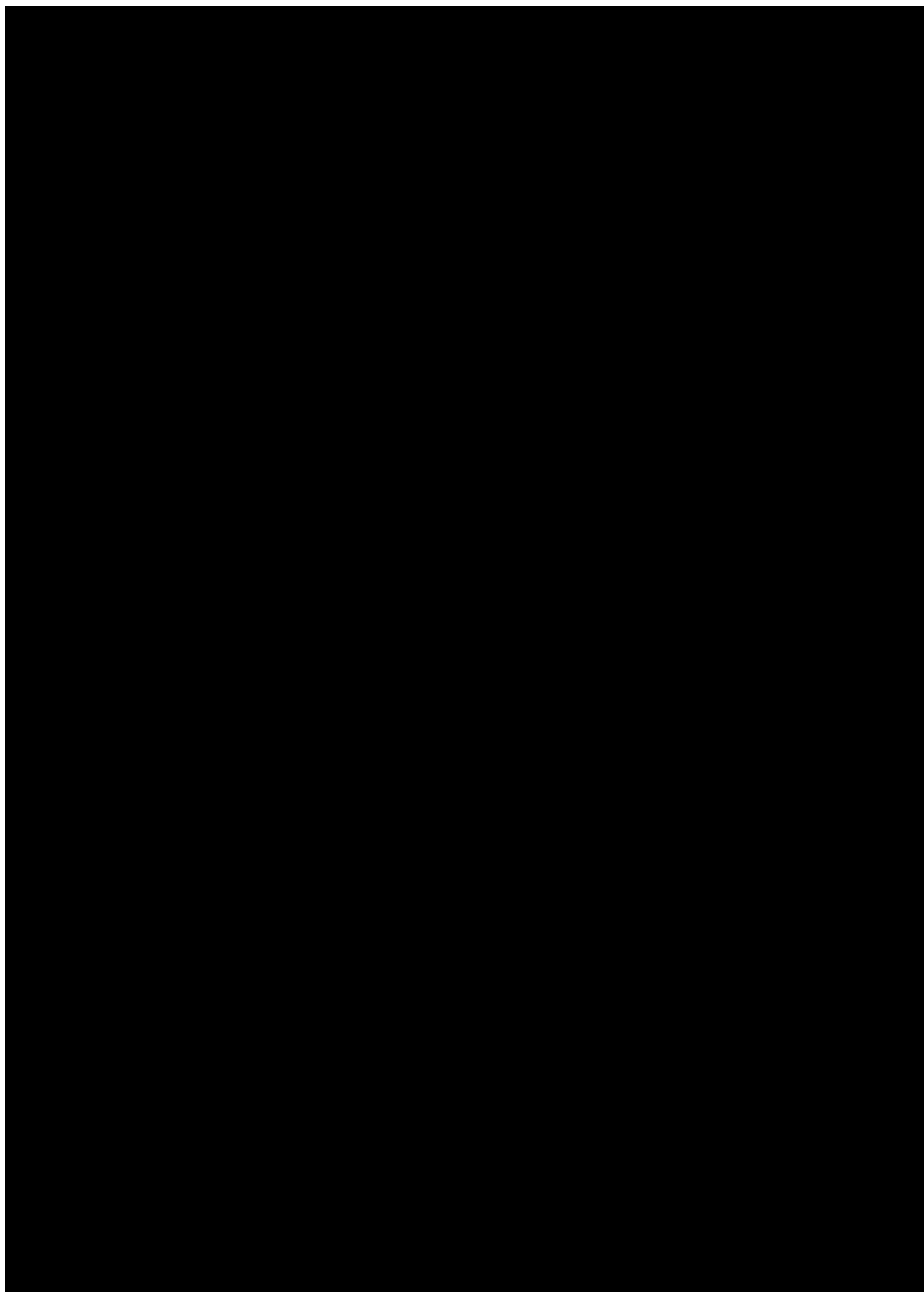
A Yes. Yes. 13:47:01

Q And Active Desktop Items are persistent. 13:47:01
Isn't that right? 13:47:07

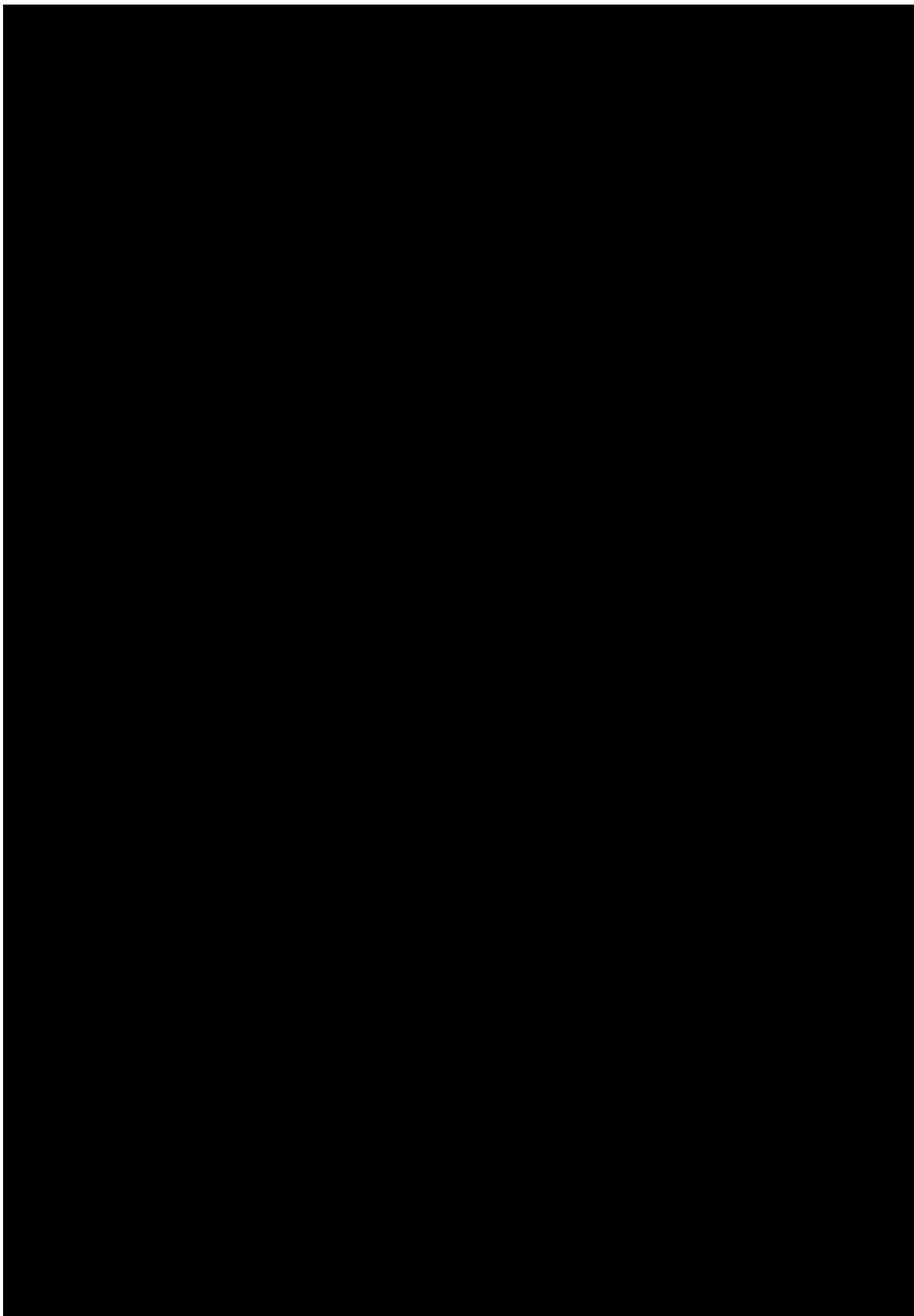
A They can be, yes. 13:47:08



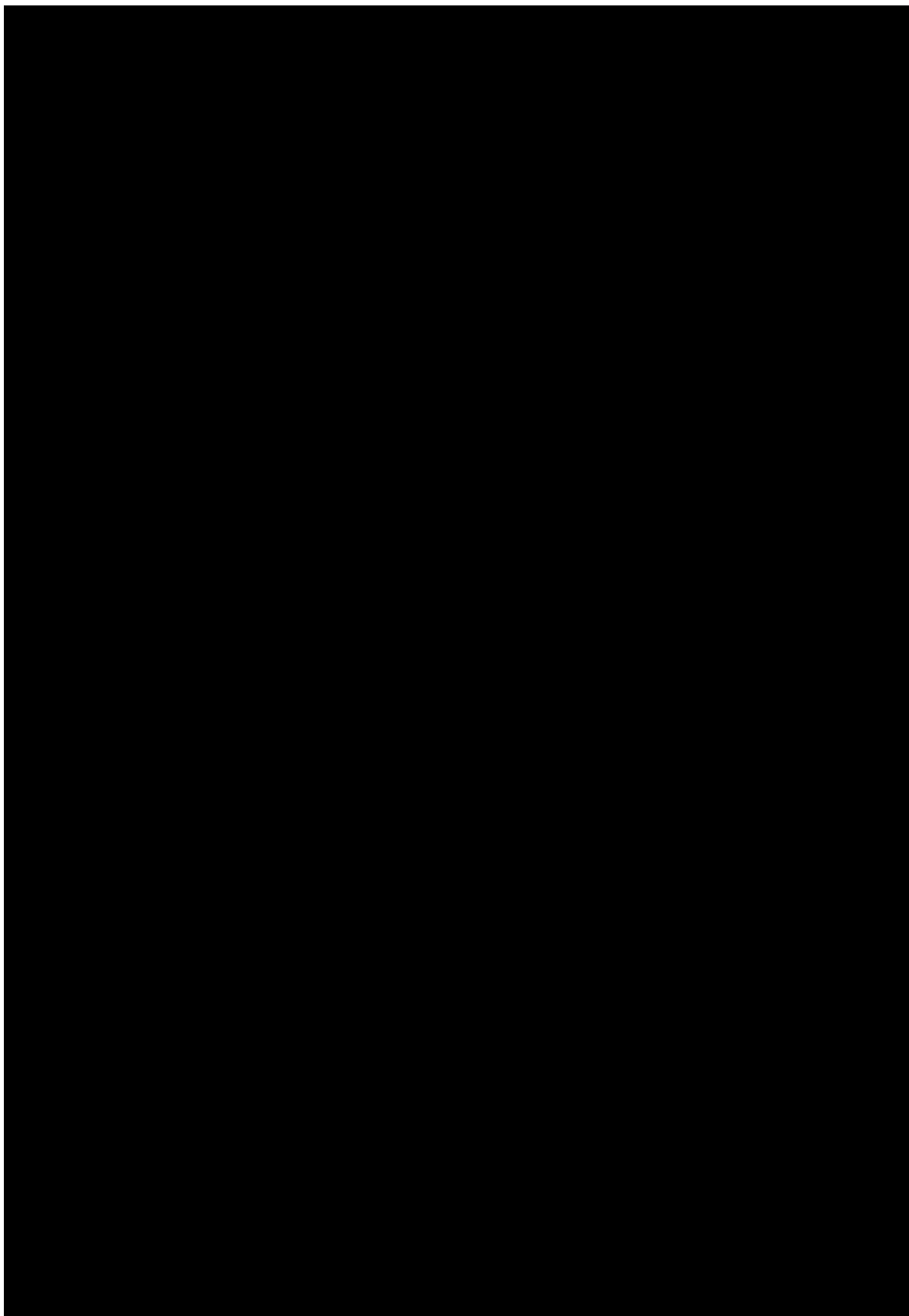
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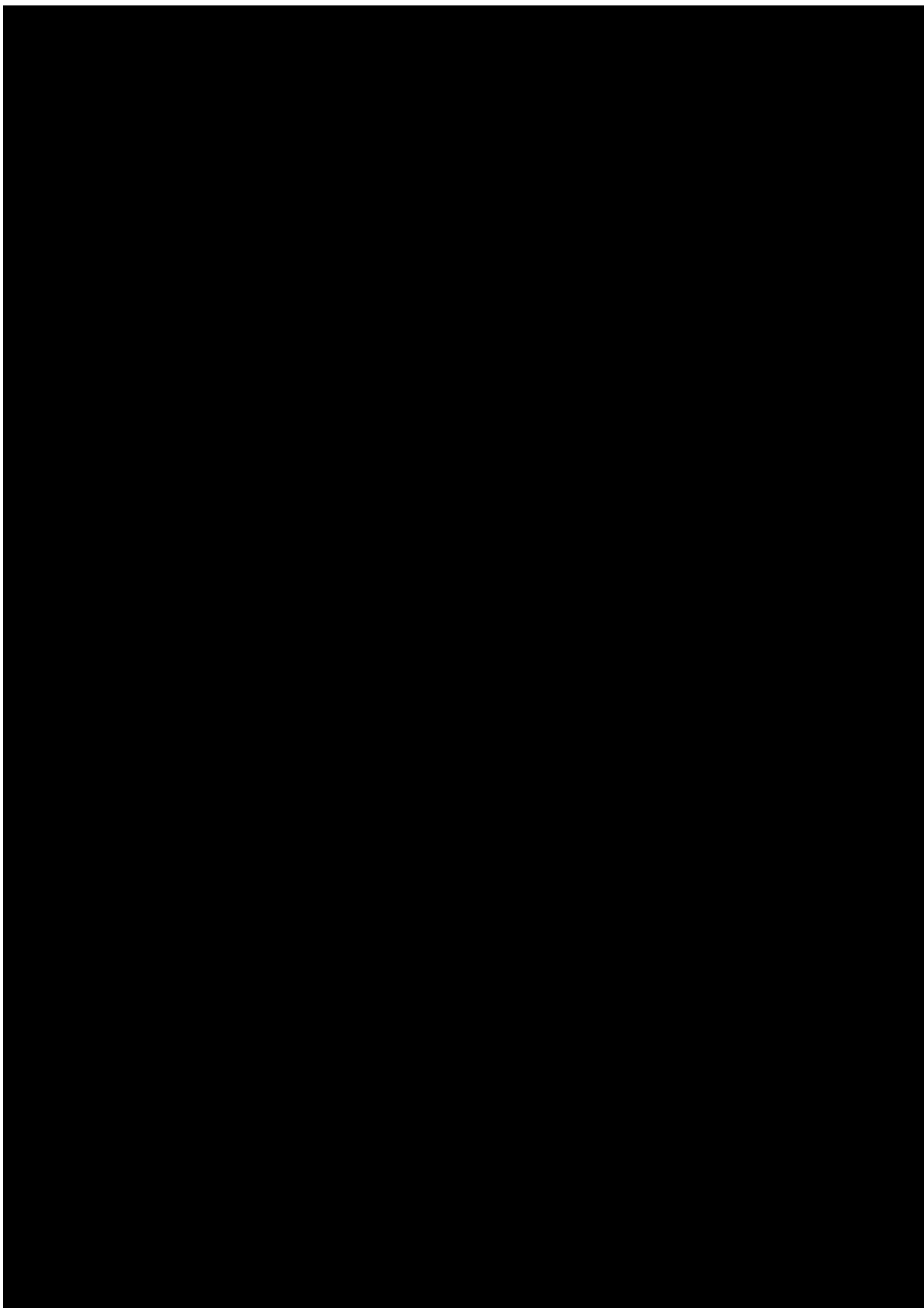
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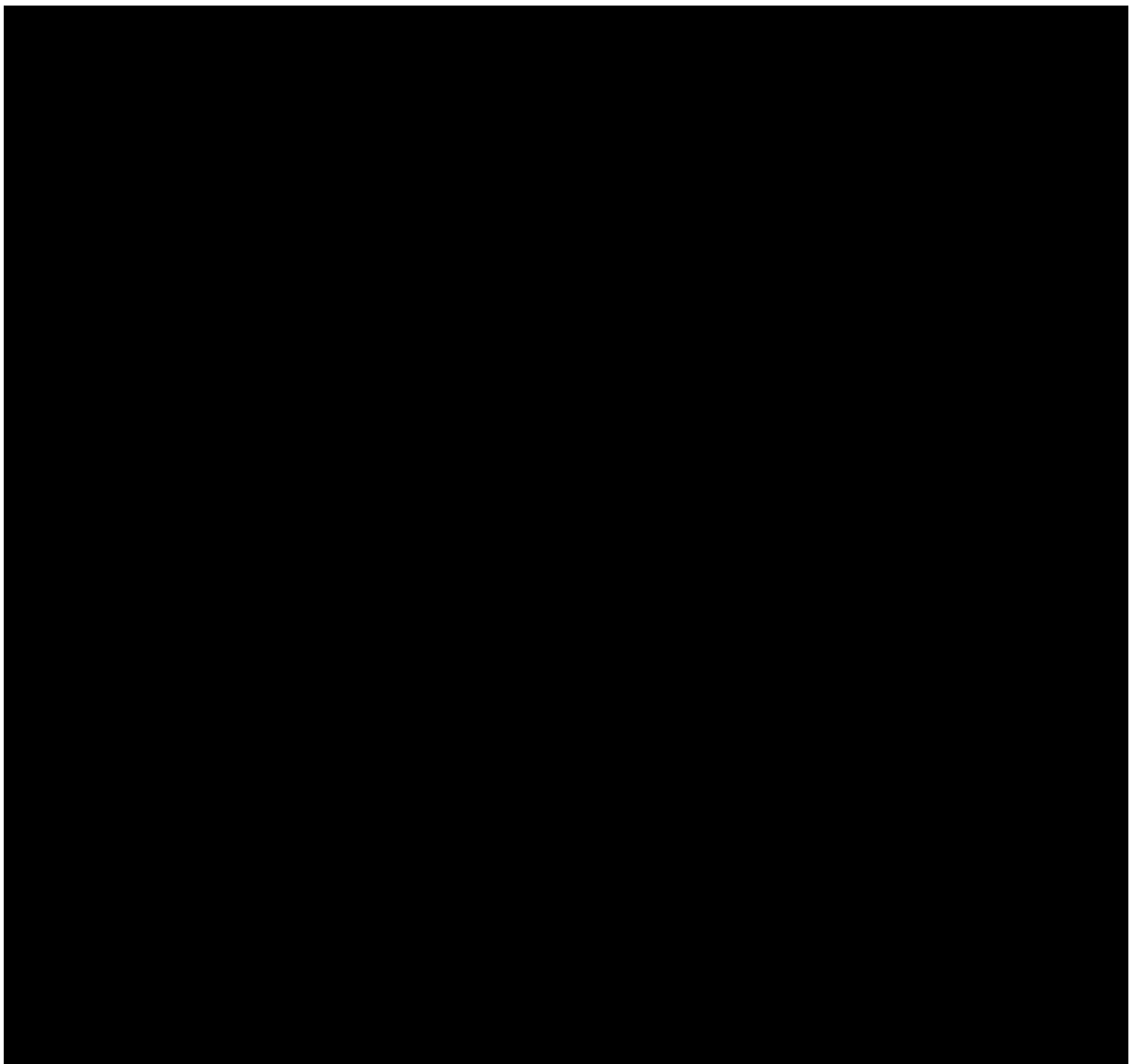
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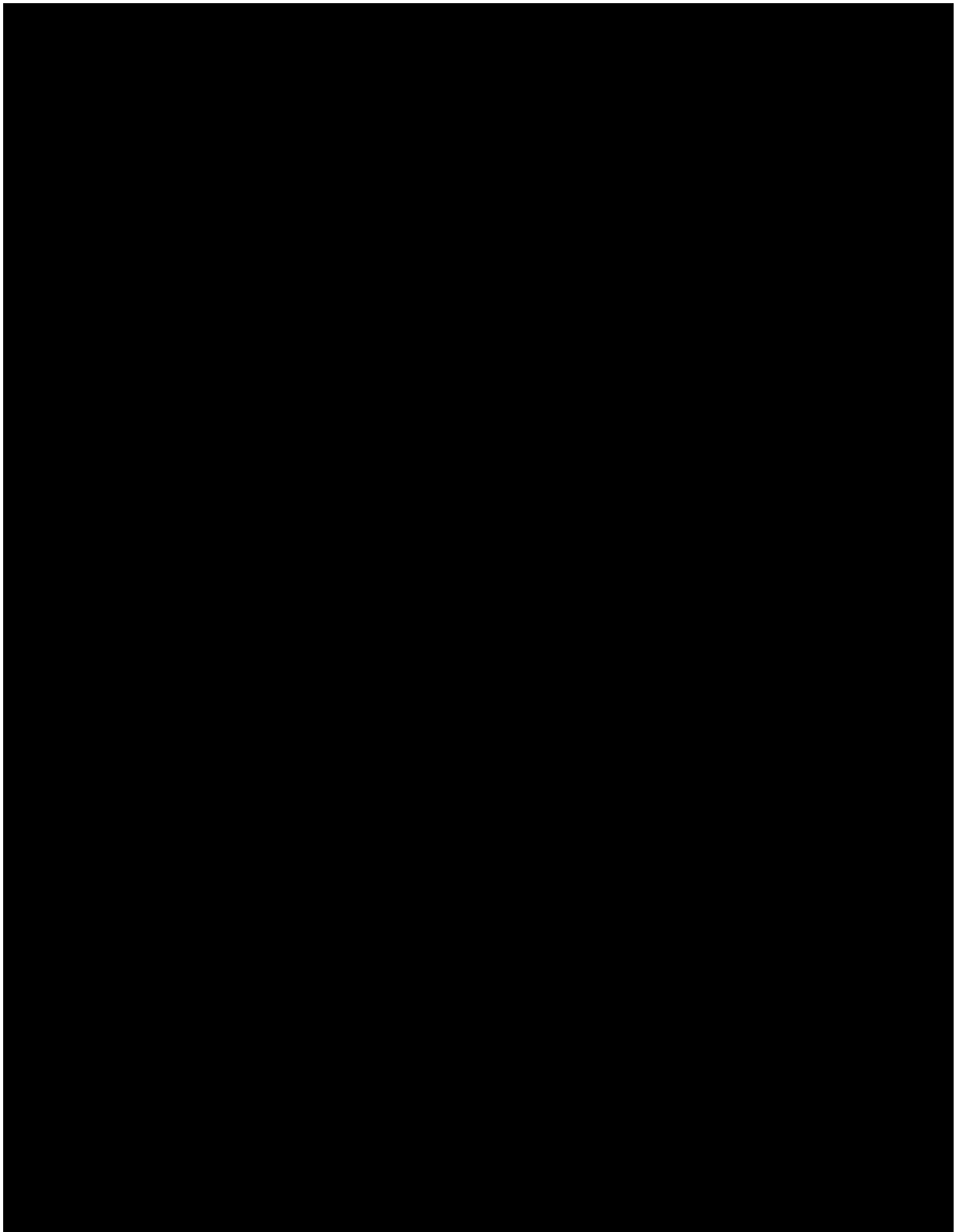
Q But there is no question, you would 13:53:38
agree, that Active Desktop Items can be displayed 13:53:39
in what we call a grid? 13:53:43
MR. HEINTZ: Object to the form of the 13:53:46
question. 13:53:47
THE WITNESS: Active Desktops can be 13:53:47
displayed any way you want on your desktop. 13:53:51
Active Desktop Items can be displayed any way you 13:53:52

1	want on your desktop. So it is indeed possible	13:53:56
2	manually to arrangement it in a grid if you had	13:53:59
3	more of them.	13:54:03
4	BY MR. MICALLEF:	13:54:04
5	Q And you would also agree that in the	13:54:04
6	Windows Operating Systems that include Active	13:54:09
7	Desktop technology that there is a piece of	13:54:12
8	software that manages Active Desktop Items. Would	13:54:16
9	you agree with that?	13:54:21
10	MR. HEINTZ: Object to the form of the	13:54:22
11	question.	13:54:24
12	THE WITNESS: I'm not sure I understand	13:54:26
13	what you mean.	13:54:28
14	BY MR. MICALLEF:	13:54:29
15	Q Well, things that appear on computer	13:54:29
16	screens don't pop up magically. Right? There is	13:54:31
17	software that puts them on the screen. Do you	13:54:35
18	agree with that?	13:54:37
19	A Yes.	13:54:38
20	Q Okay. So in a Windows Operation System	13:54:39
21	that has Active Desktop technology, there is	13:54:42
22	software that manages any Active Desktop Items on	13:54:49
23	the screen. Is that fair?	13:54:49
24	A I suppose they are children of the	13:54:52
25	desktop. Yes.	13:54:54

1 Q Well there is some code, some software 13:54:56
2 that actually implements them and controls them? 13:54:58
3 A The operating system perhaps. 13:55:02
4 Q Or some portion of the operating system? 13:55:03
5 A I don't know specifically but I suppose 13:55:06
6 so. 13:55:08
7 Q You suppose so. You know it must be 13:55:08
8 some code that controls Active Desktop Items? 13:55:10
9 A Well, there must be. Yes. 13:55:14

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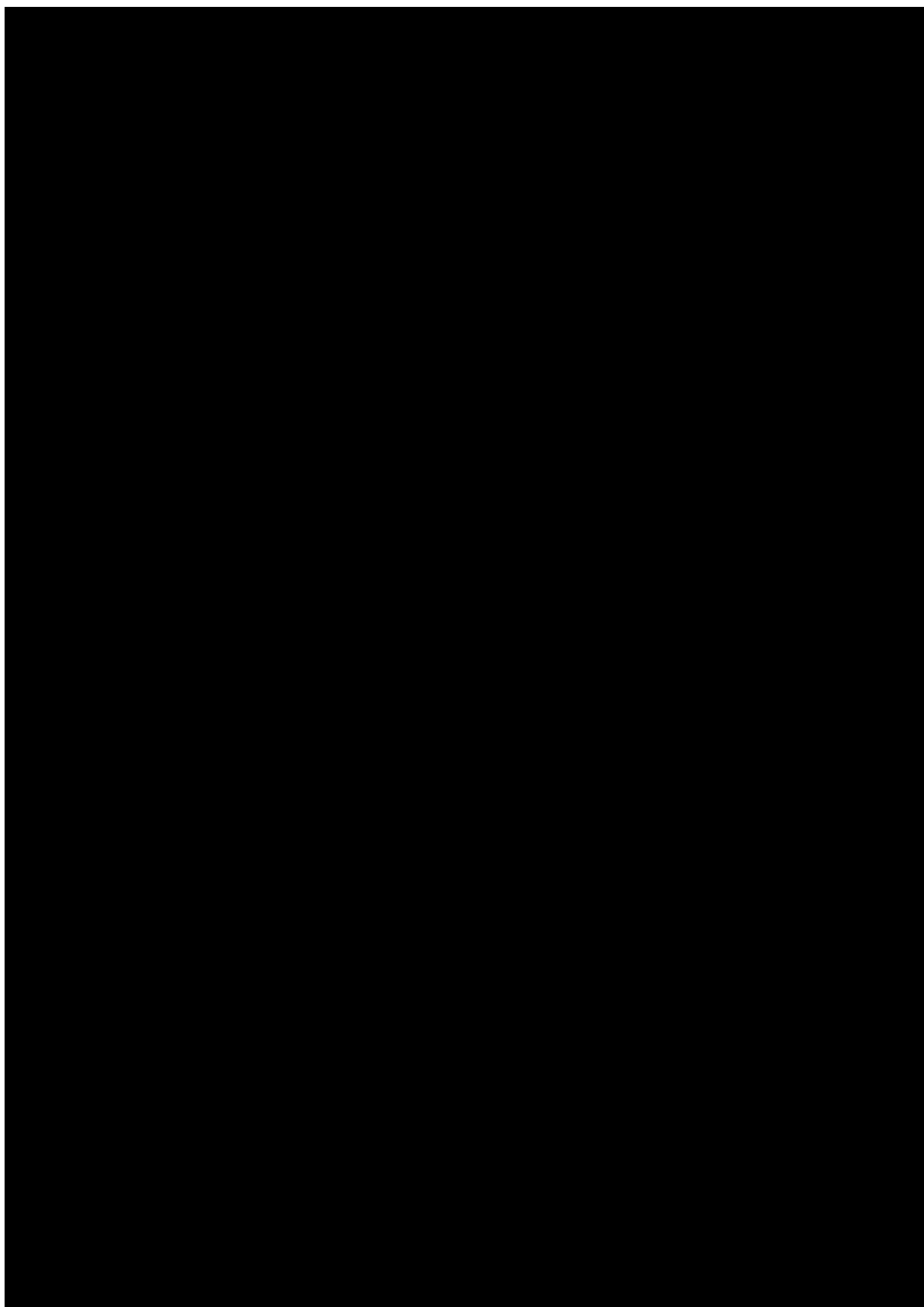
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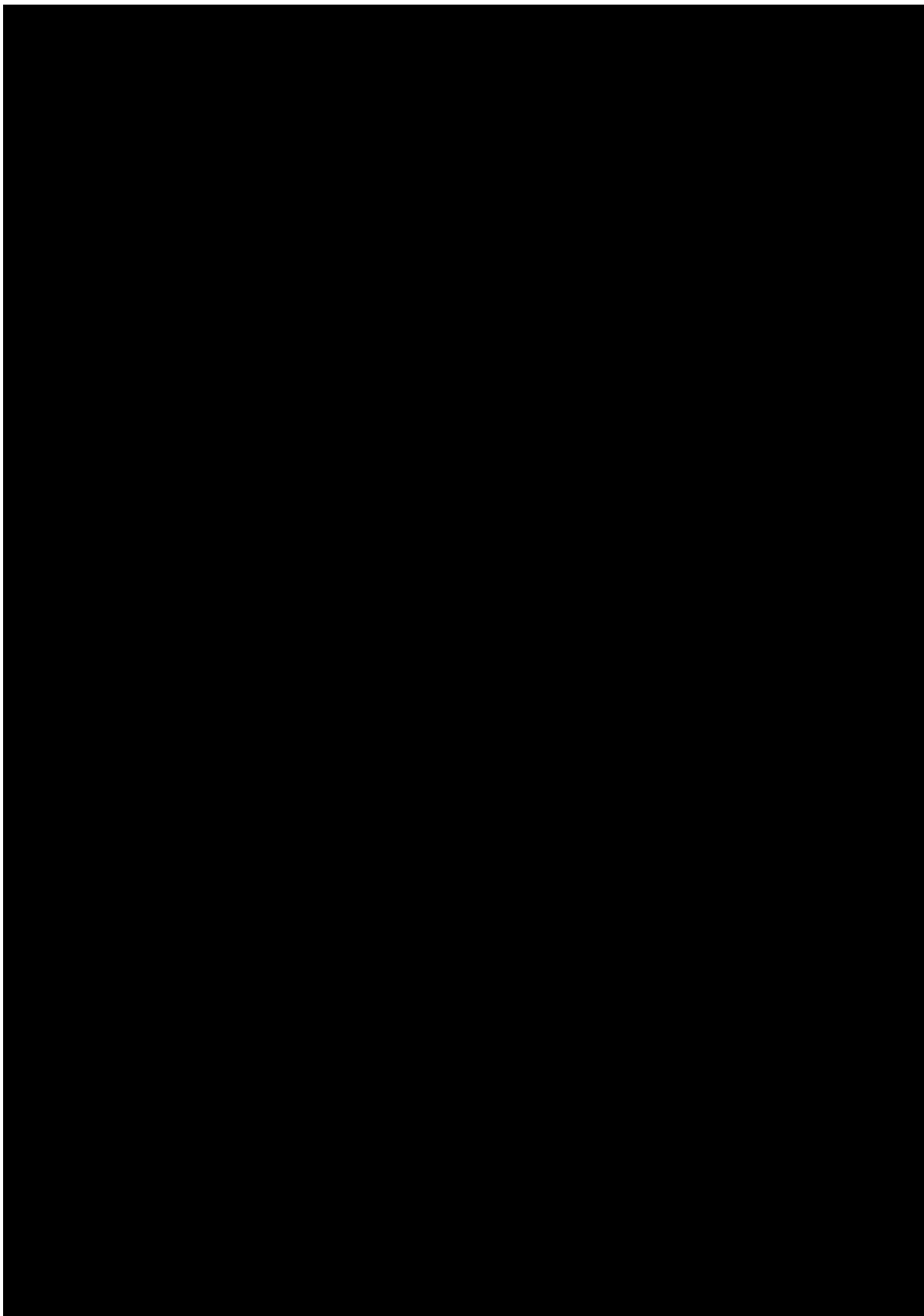
MR. MICALLEF: We need to take a break 13:57:58
for the tape. Why don't we take a very quick one. 13:57:59

1 MR. HEINTZ: Okay. 13:58:04
2 THE VIDEOGRAPHER: Off of the record at 13:58:04
3 1:57:58. 13:58:04
4 (The proceedings recessed from 1:58 p.m. 13:58:05
5 to 2:04 p.m.) 13:58:05
6 THE VIDEOGRAPHER: Back on the record at 14:04:15
7 2:04 p.m. 14:04:17
8 BY MR. MICALLEF: 14:04:21
9 Q I'm going to ask the court reporter just 14:04:22
10 to read back the last couple of sentences from 14:04:23
11 that last answer? 14:04:26
12 MR. HEINTZ: Actually if we are going to 14:04:39
13 read back the answer I would like to have the 14:04:40
14 whole answer read back. 14:04:42
15 MR. MICALLEF: Sure. 14:04:43
16 BY MR. MICALLEF: 14:05:54
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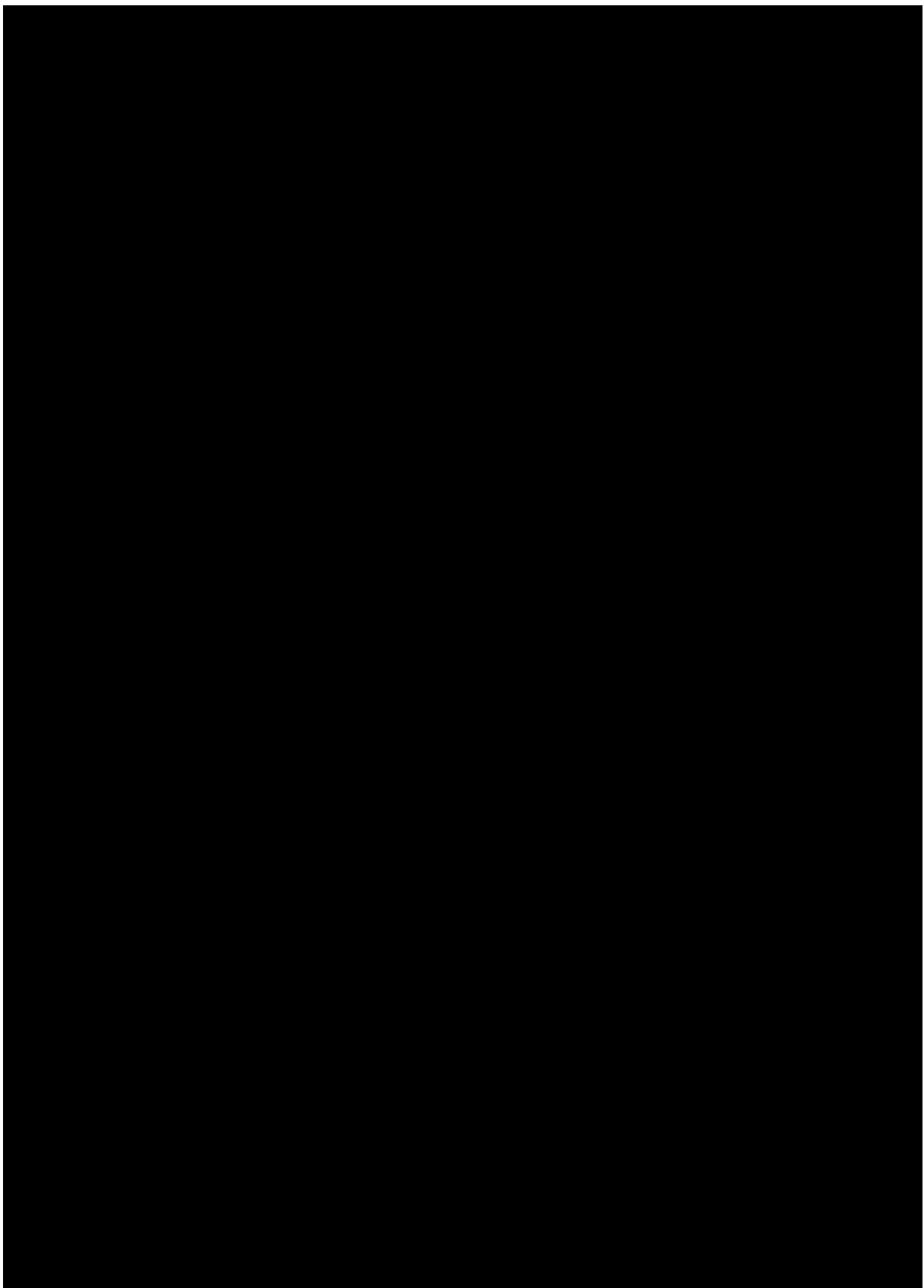
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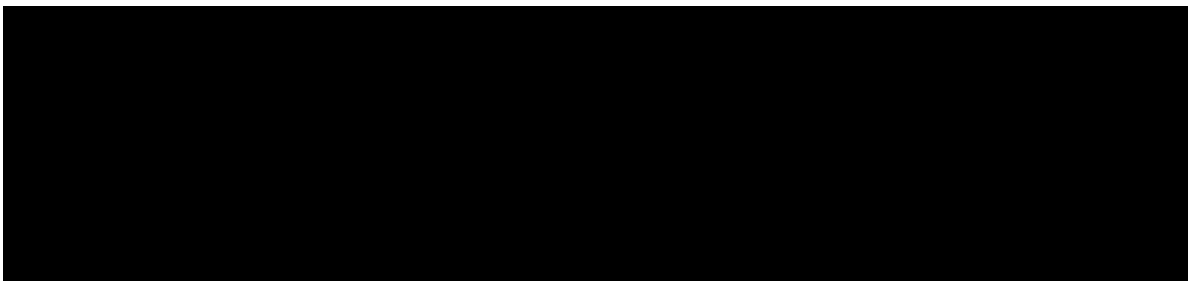
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Q And I just -- I want to get a list of 14:11:35
them. We already agreed that Active Desktop items 14:11:39
can be assigned a refresh rate? 14:11:42

A They can be assigned a refresh rate, 14:11:45
yes. 14:11:47

Q They can be placed in a grid on the 14:11:49
screen. Right? 14:11:51

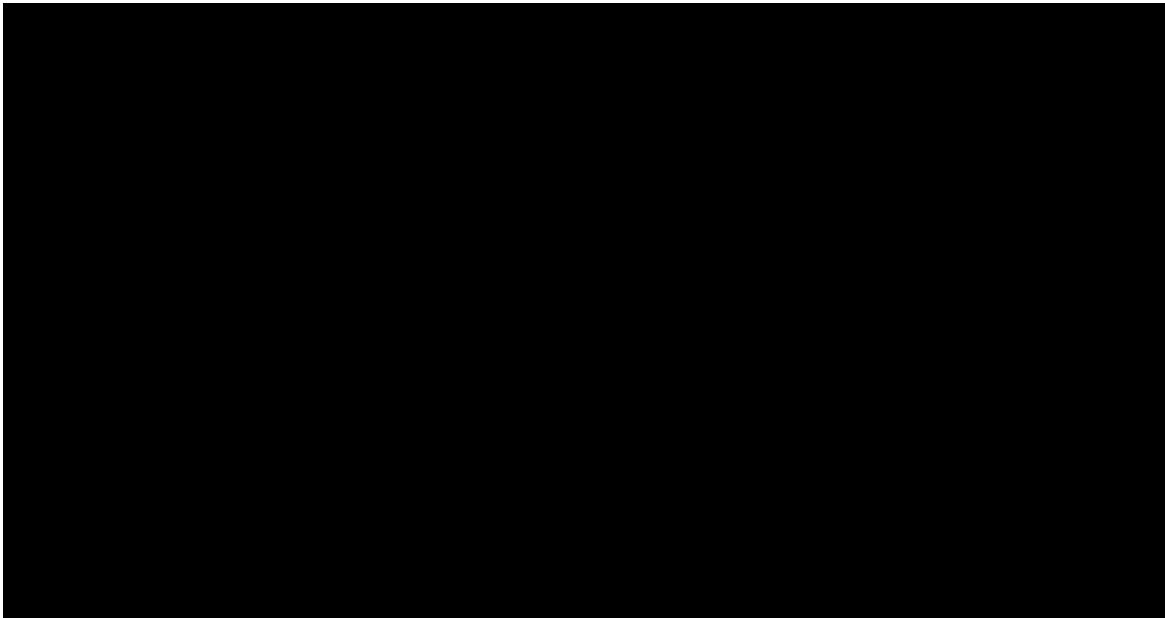
A They can be placed anywhere. 14:11:52

Q Including in a grid -- 14:11:54

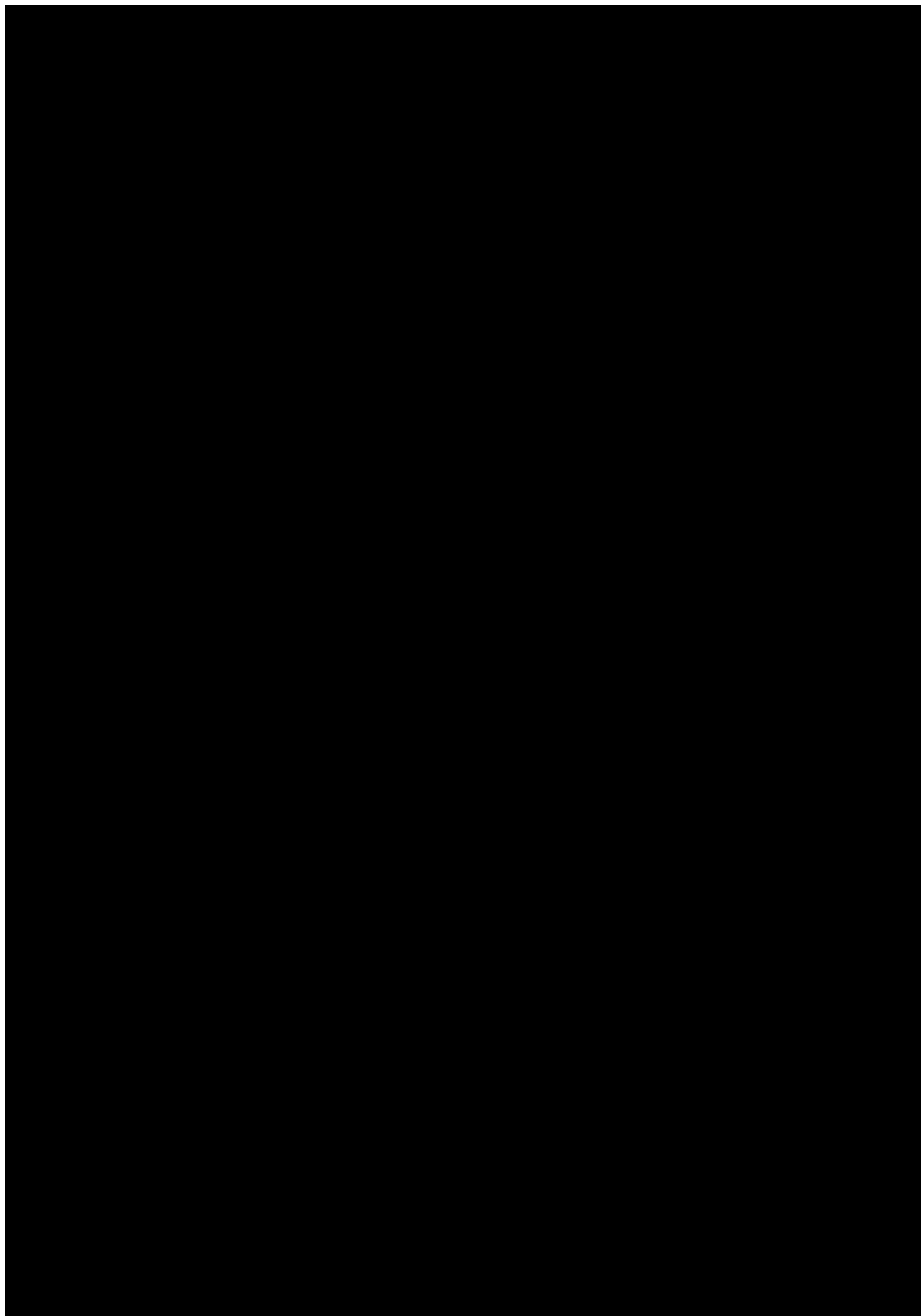
A Including -- 14:11:55

Q Formation. 14:11:55

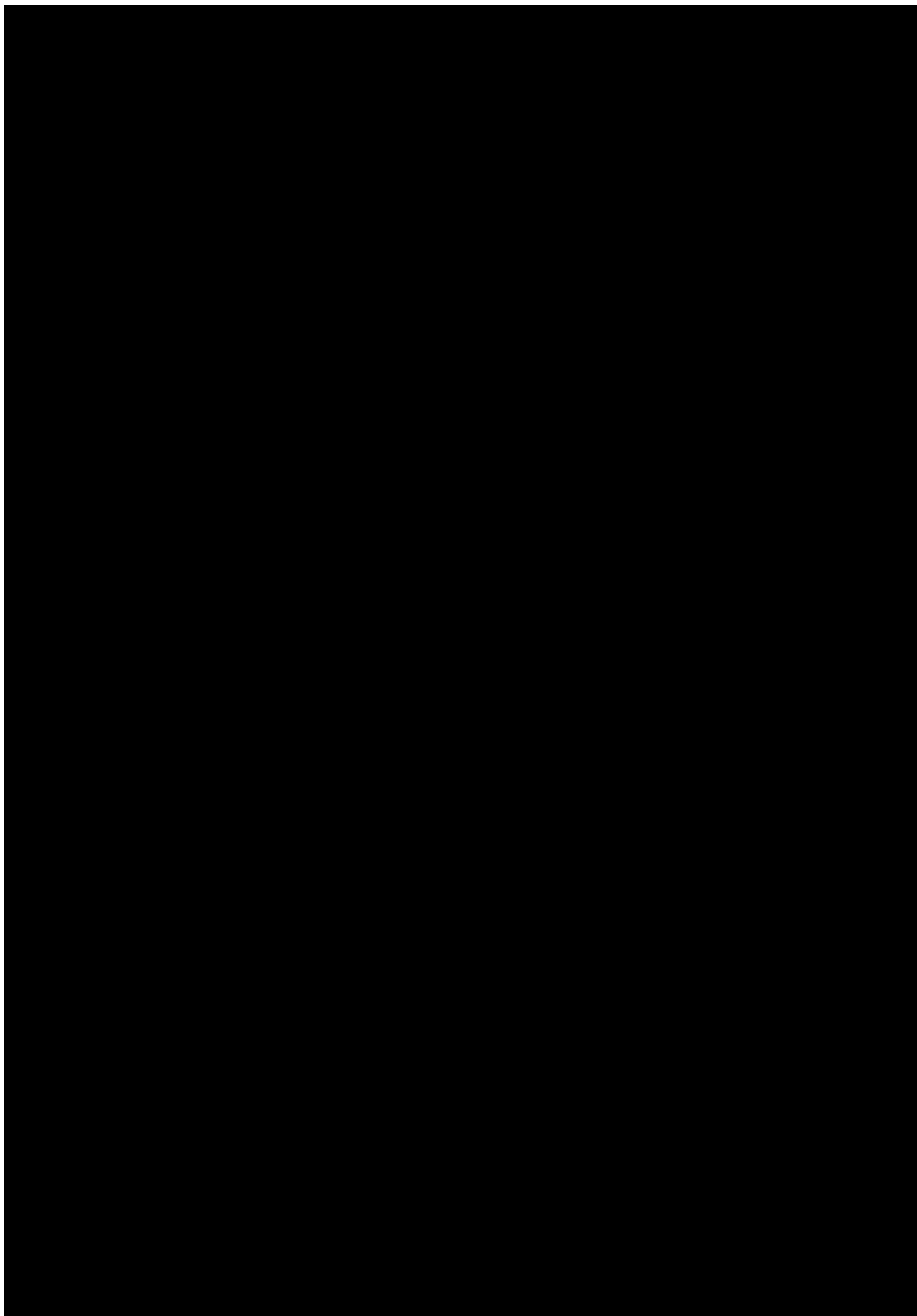
A Including in a grid. Manually, yes. 14:11:56



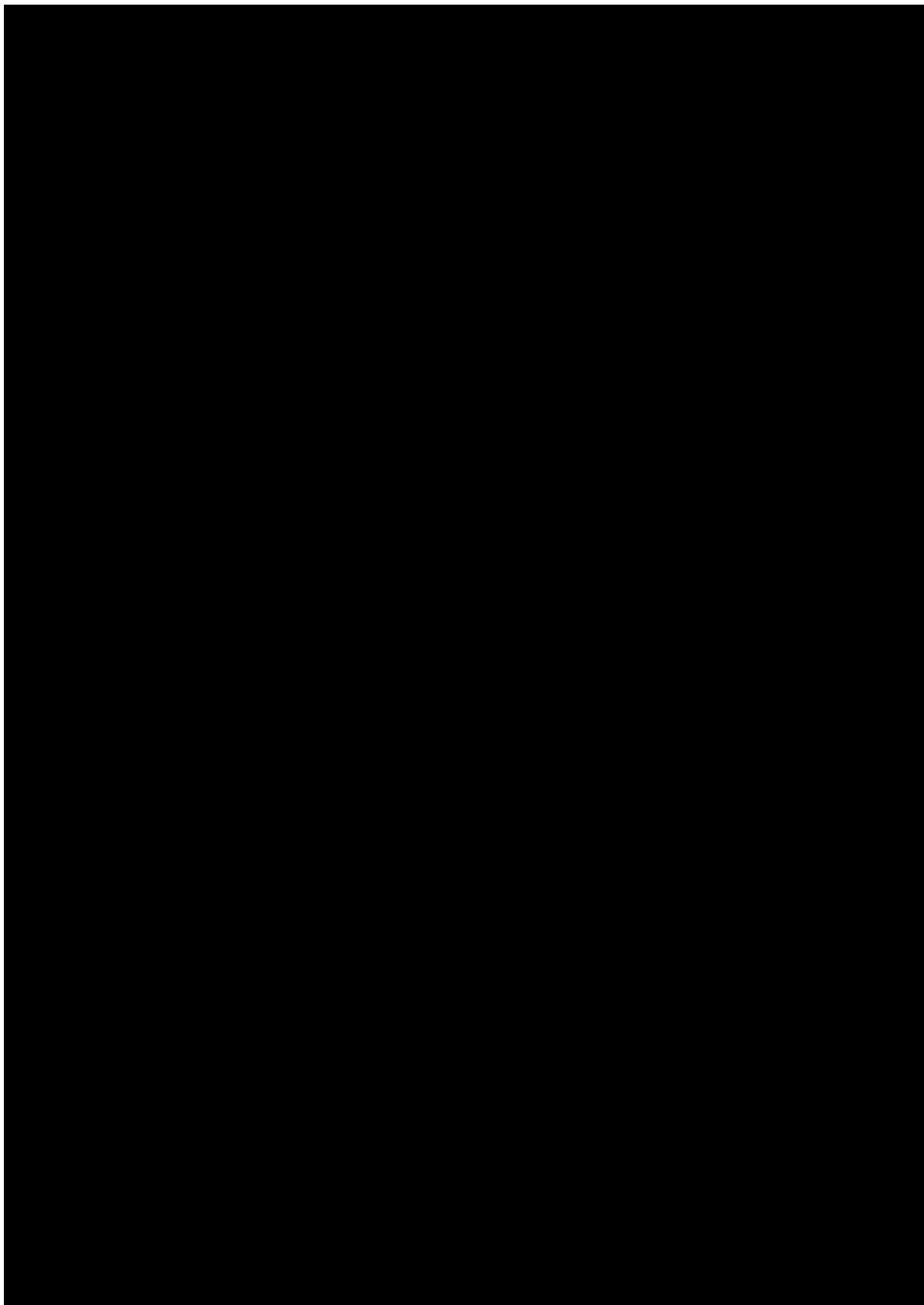
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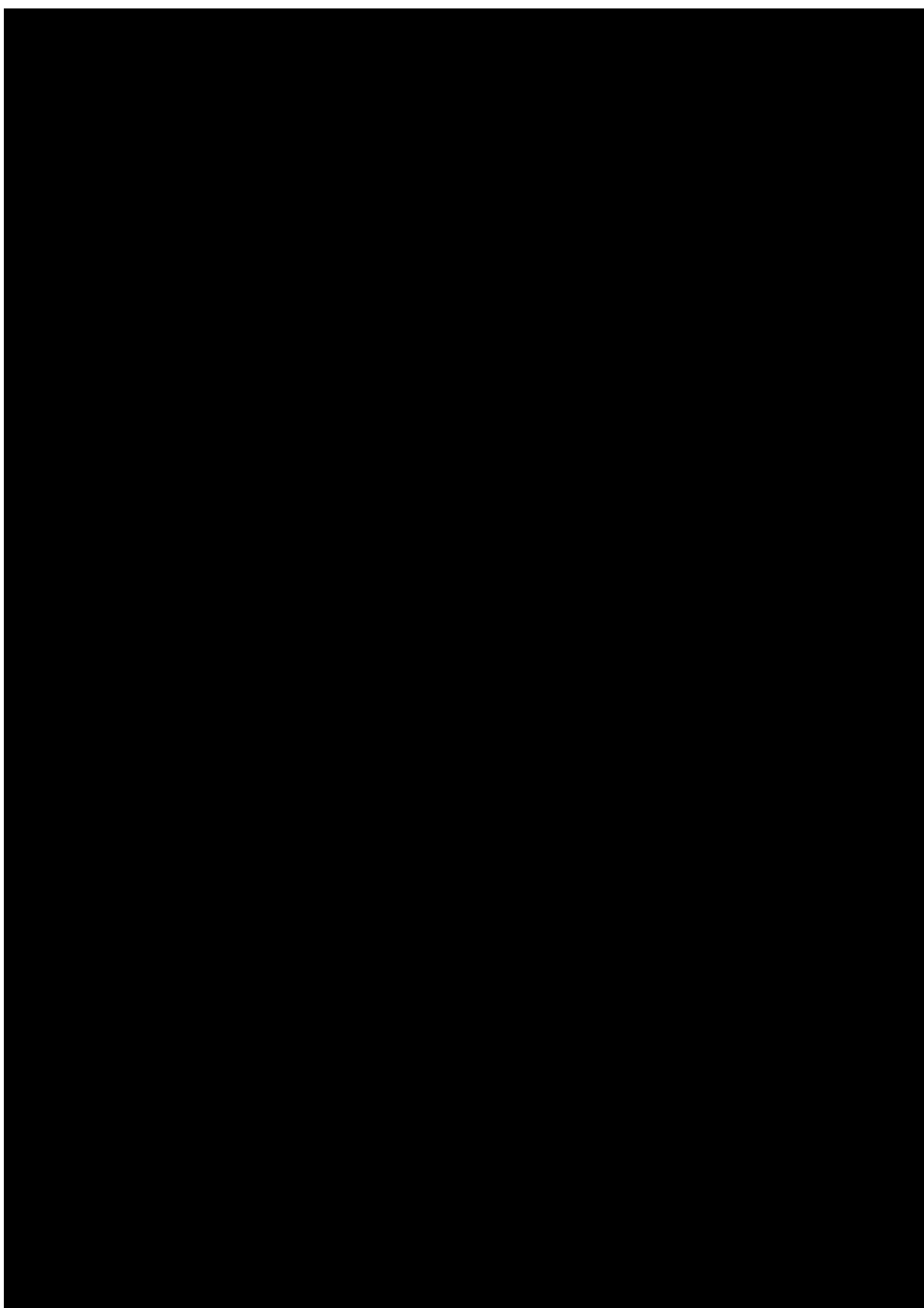
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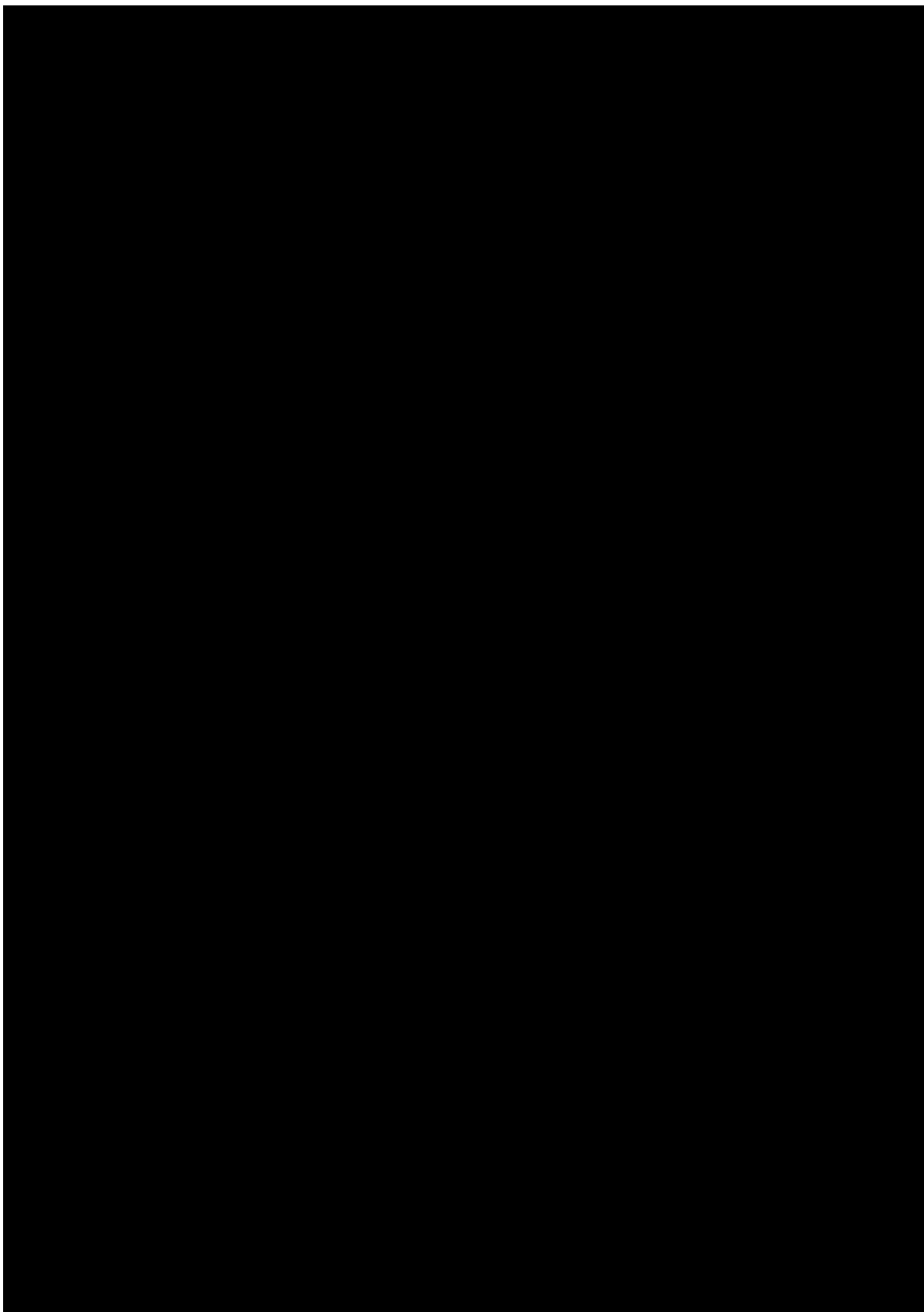
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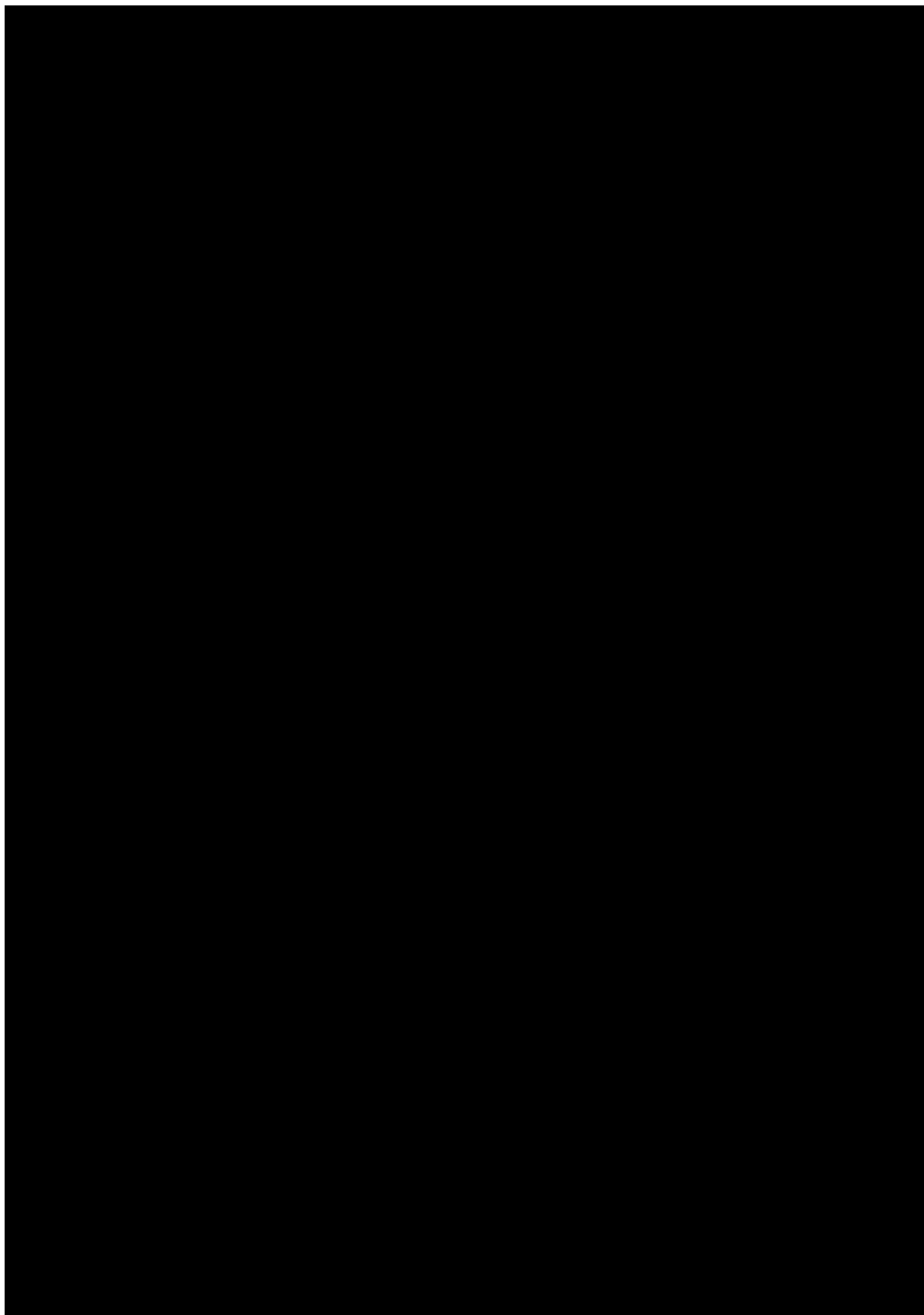
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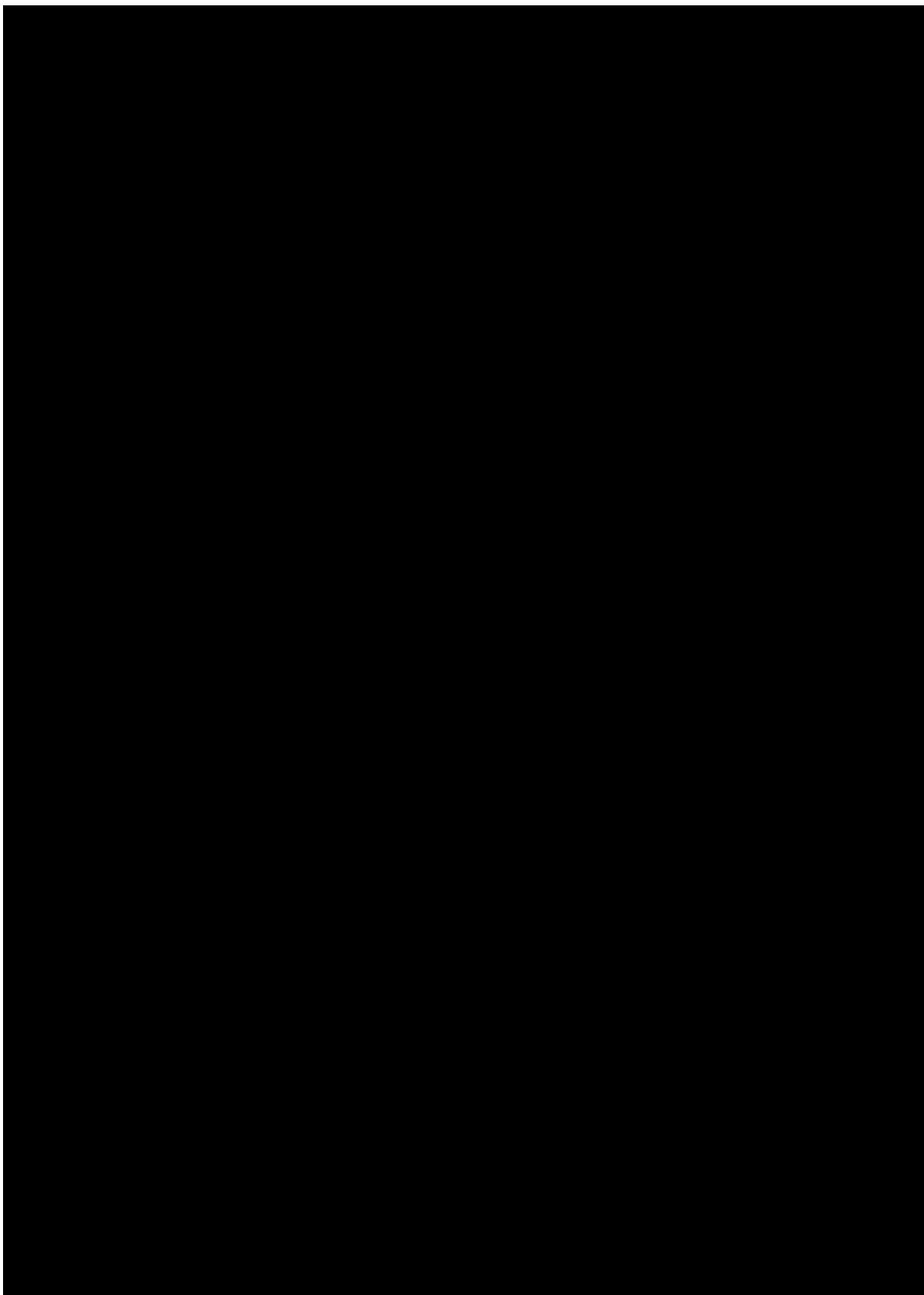
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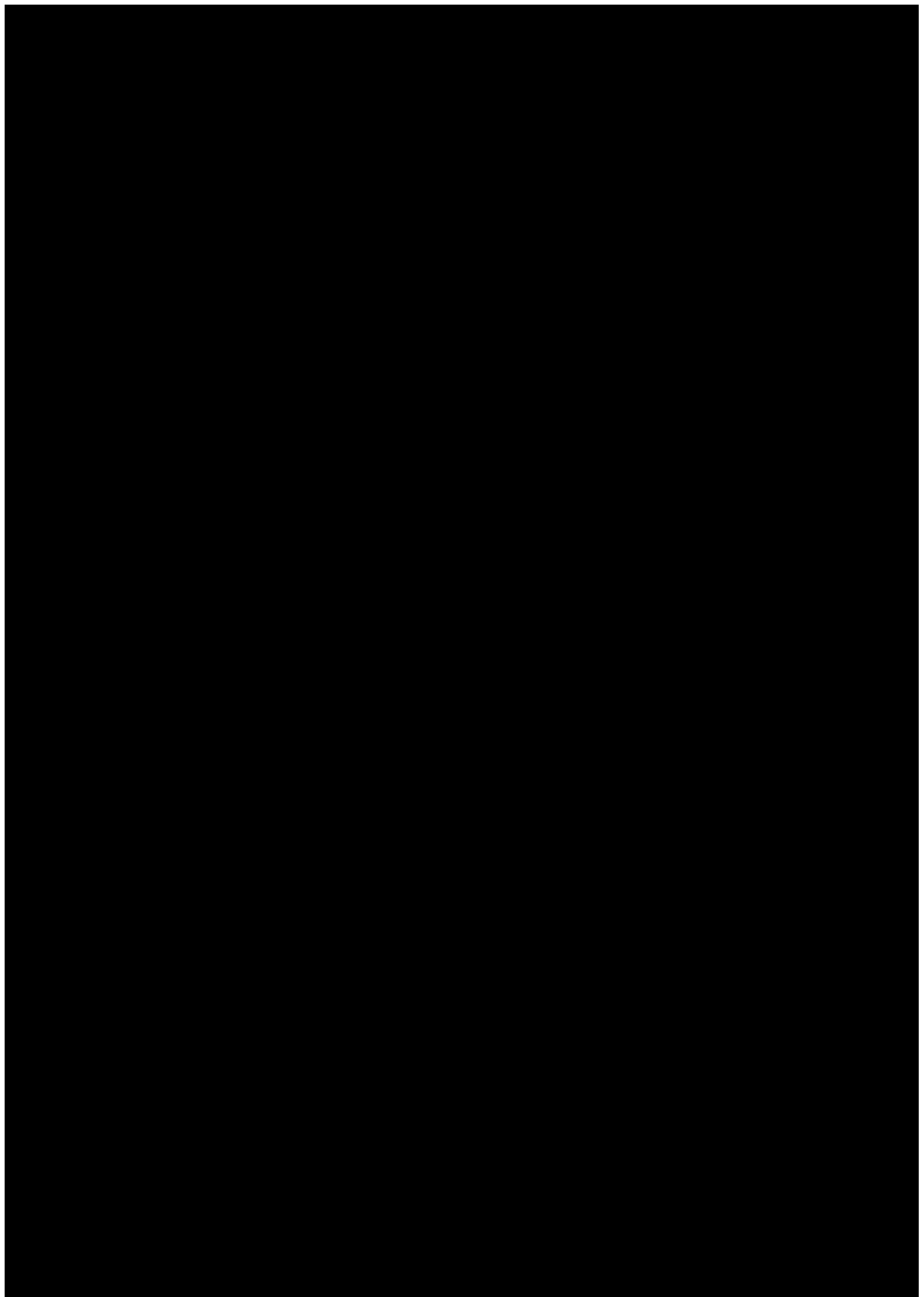
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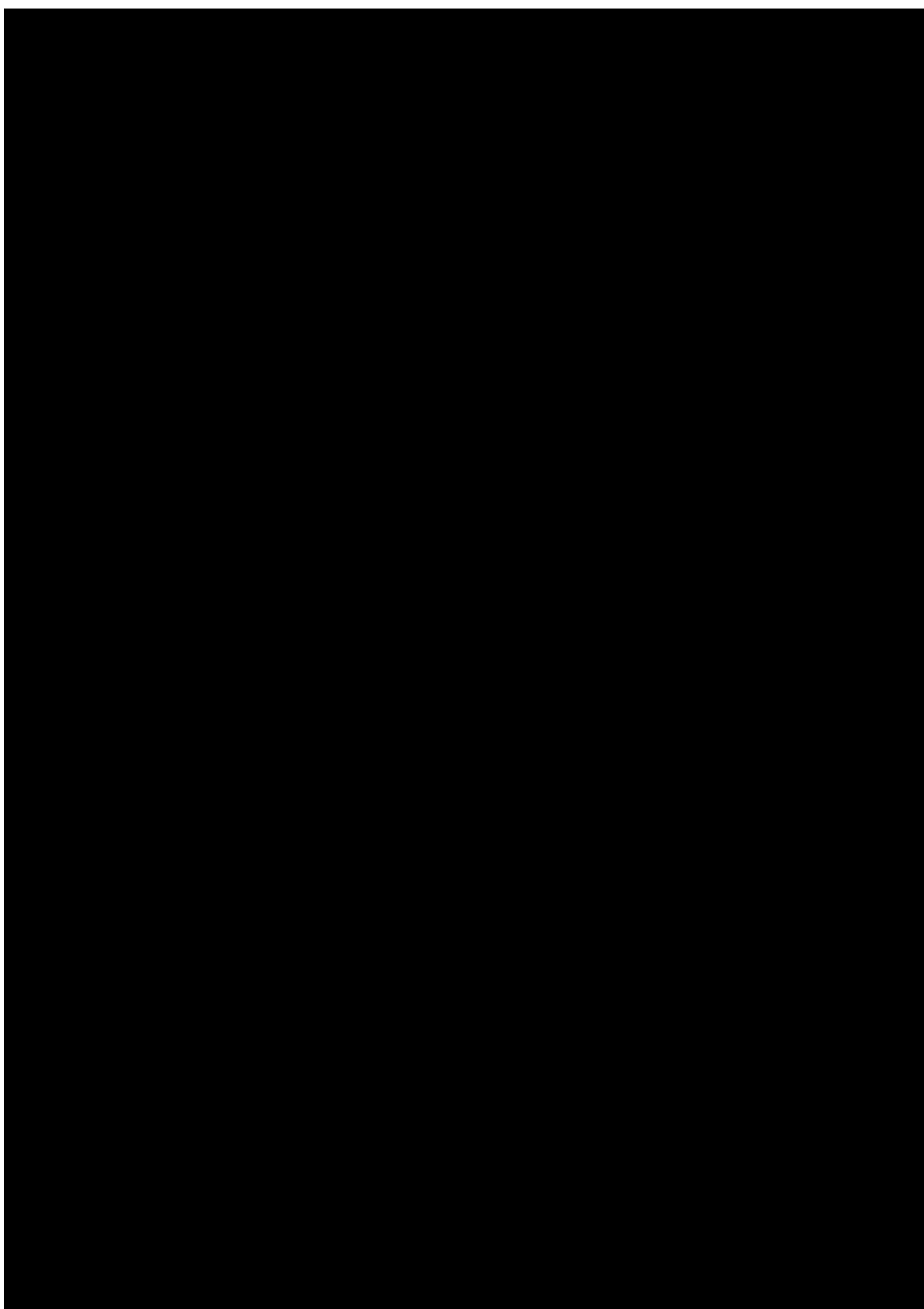
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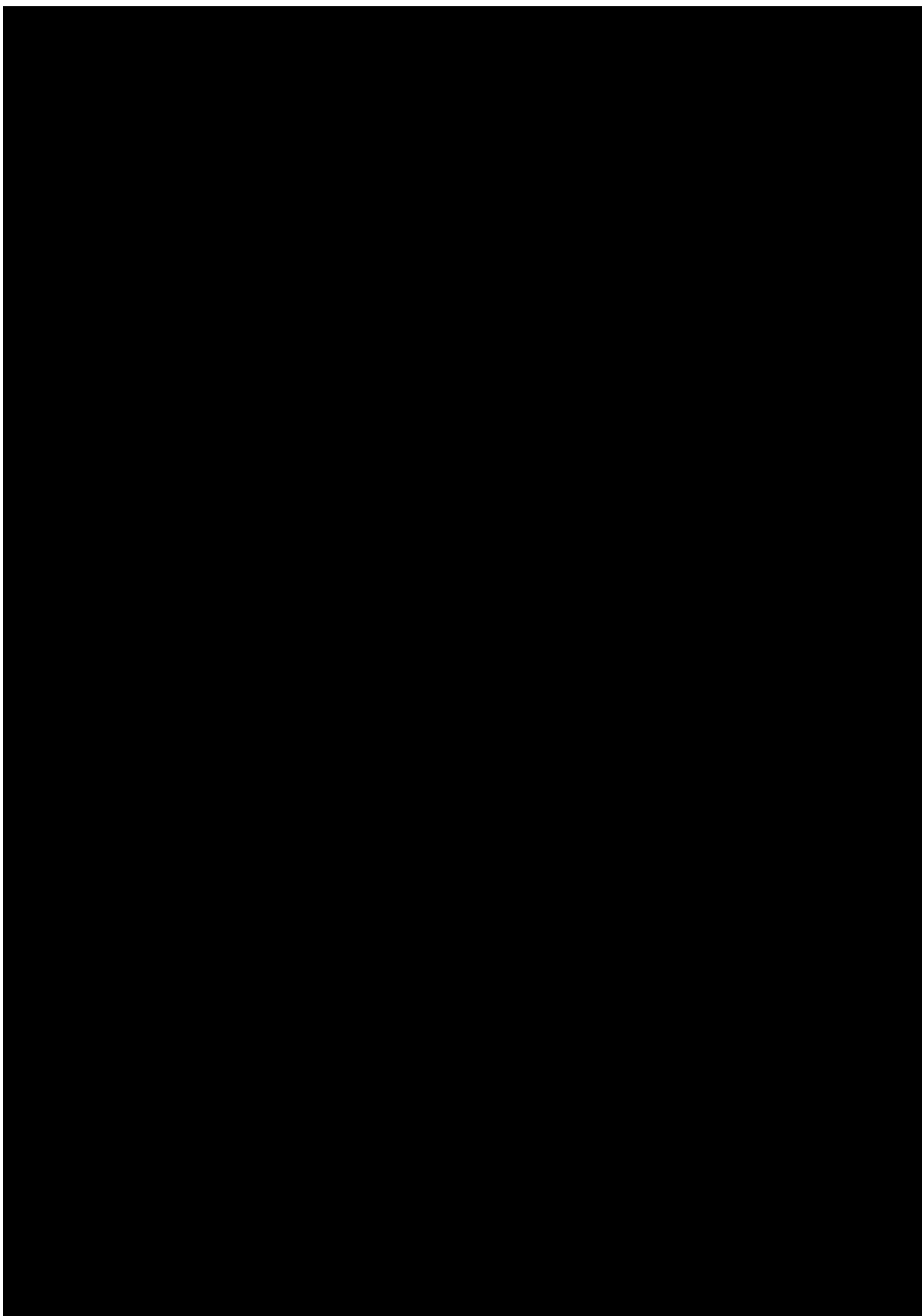
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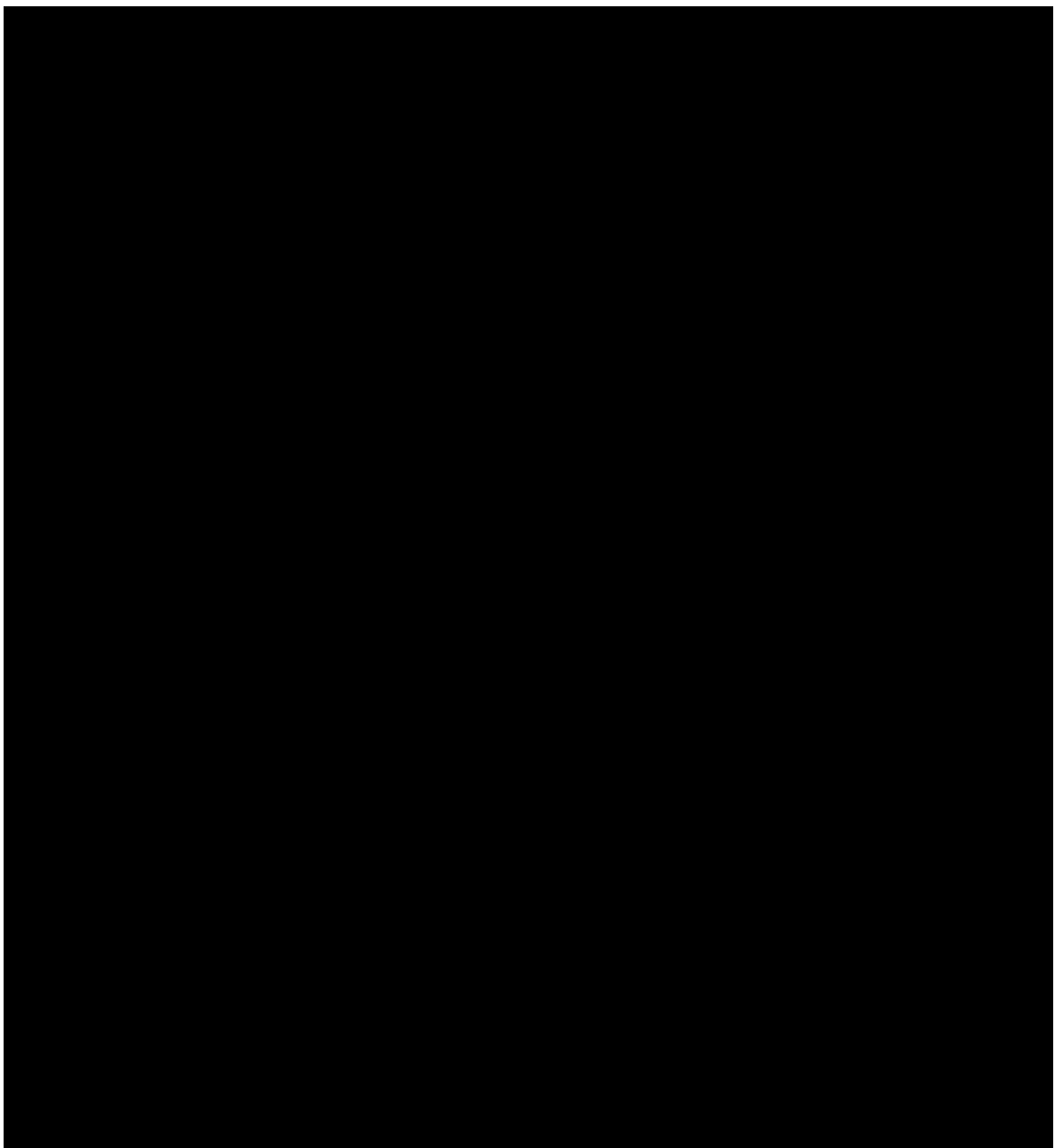
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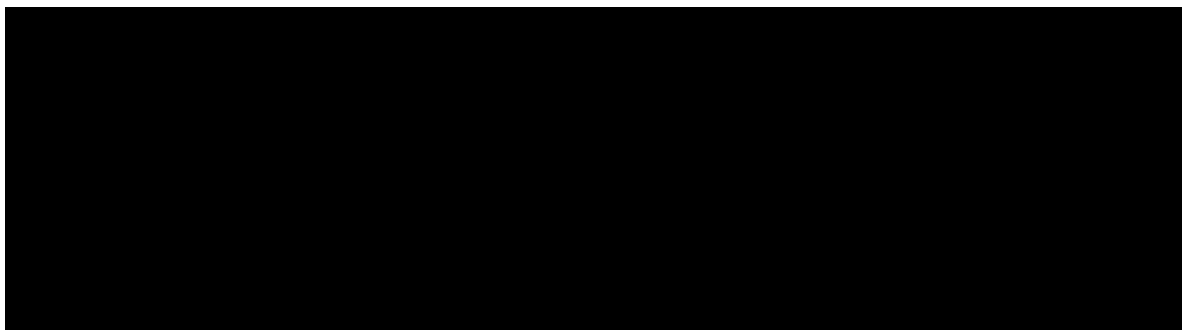


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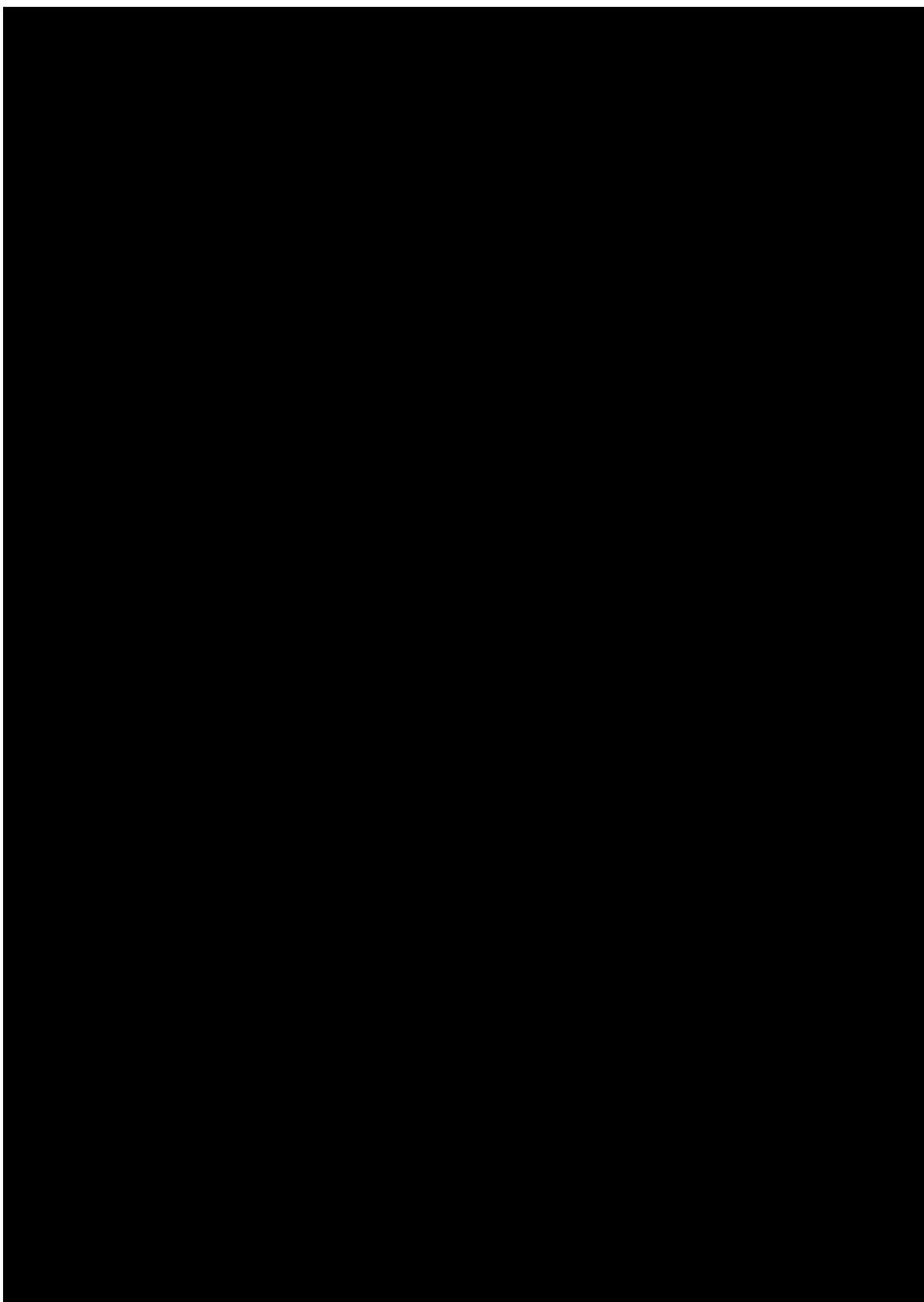


BY MR. MICALLEF:

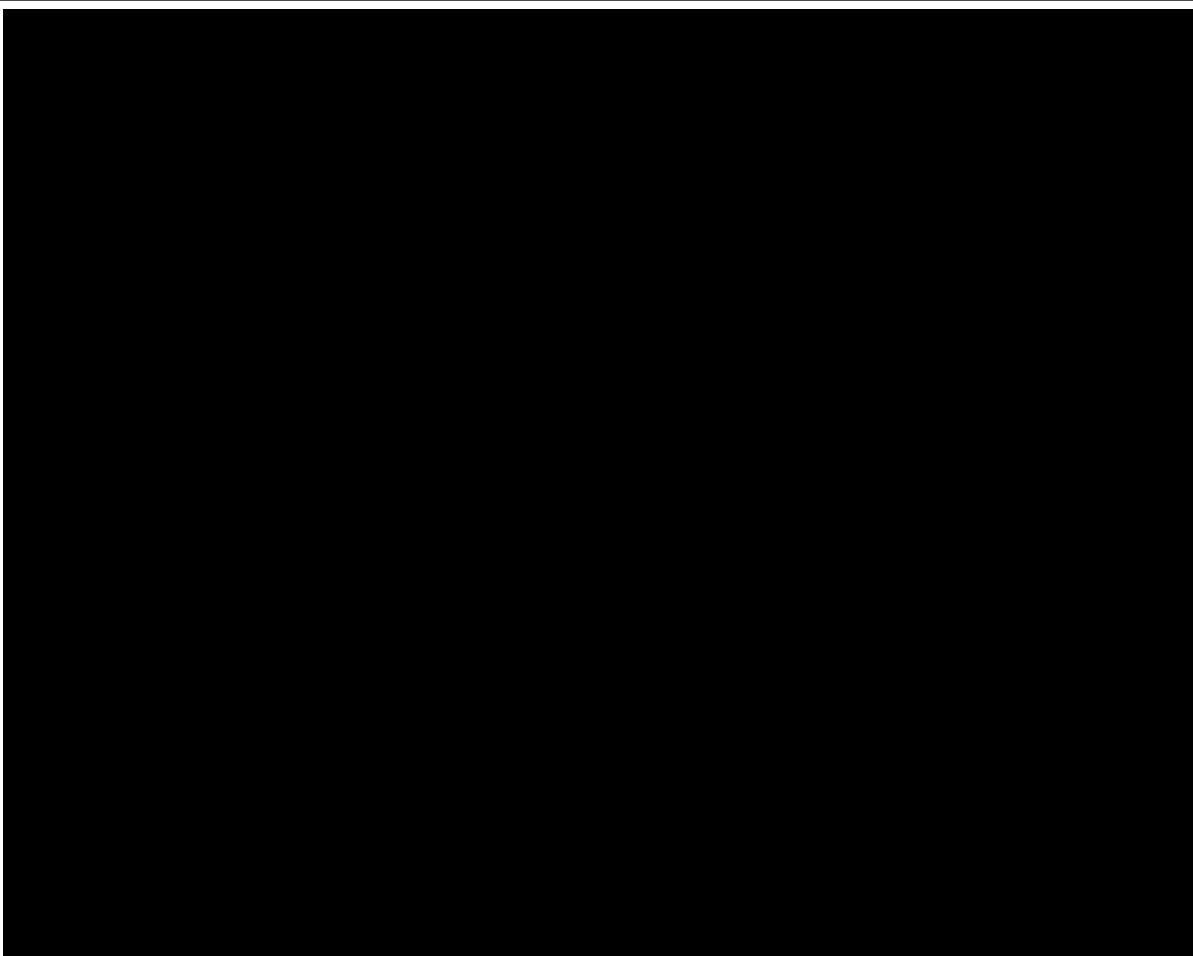
14:27:07



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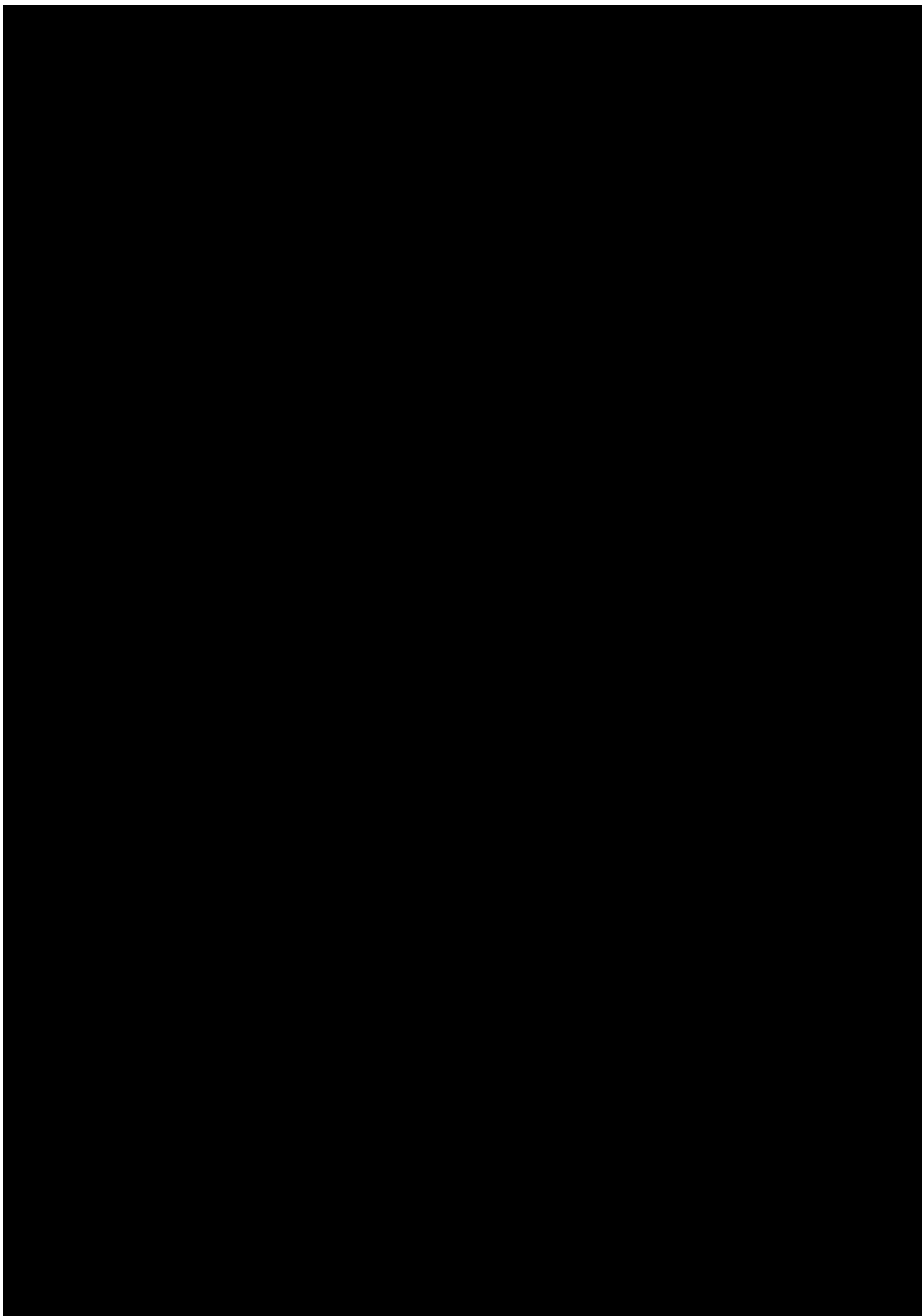


Q And you understand that Active Desktop 14:30:27
would actually retrieve information? 14:30:30
A I understand that. 14:30:33
Q Would you agree -- would you agree that 14:30:35
a push system, like Mr. Dent seems to believe 14:30:40
Active Desktop was, would not practice your 14:30:47
invention? 14:30:50
MR. HEINTZ: Object to the form of the 14:30:51
question. 14:30:53
THE WITNESS: I would disagree because 14:30:55
there is nothing in our invention that restricts 14:30:57

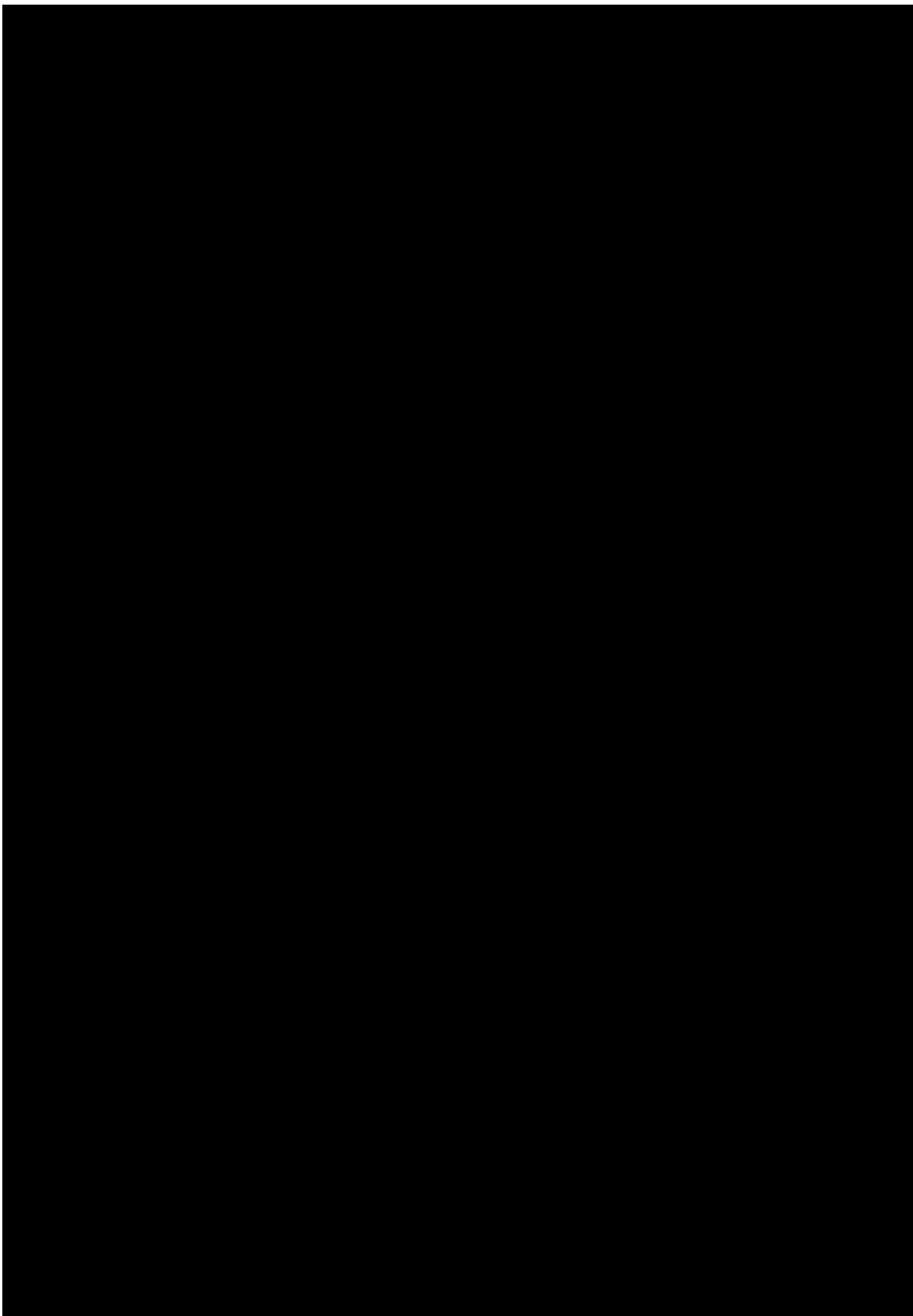
1 it to only be retrieved information that could 14:30:59
2 also be implementations that involved push 14:31:04
3 technologies. And I remind you of my background 14:31:09
4 which was broadcast technology, which in its core 14:31:12
5 is push that something is sent without anybody 14:31:16
6 requested it. And that in my own interpretation 14:31:20
7 of what SurfCast was, that included also broadcast 14:31:27
8 reception tiles which meant that they were pushed 14:31:33
9 technology receivers. So there is -- there is 14:31:36
10 nothing that makes me agree that. 14:31:39

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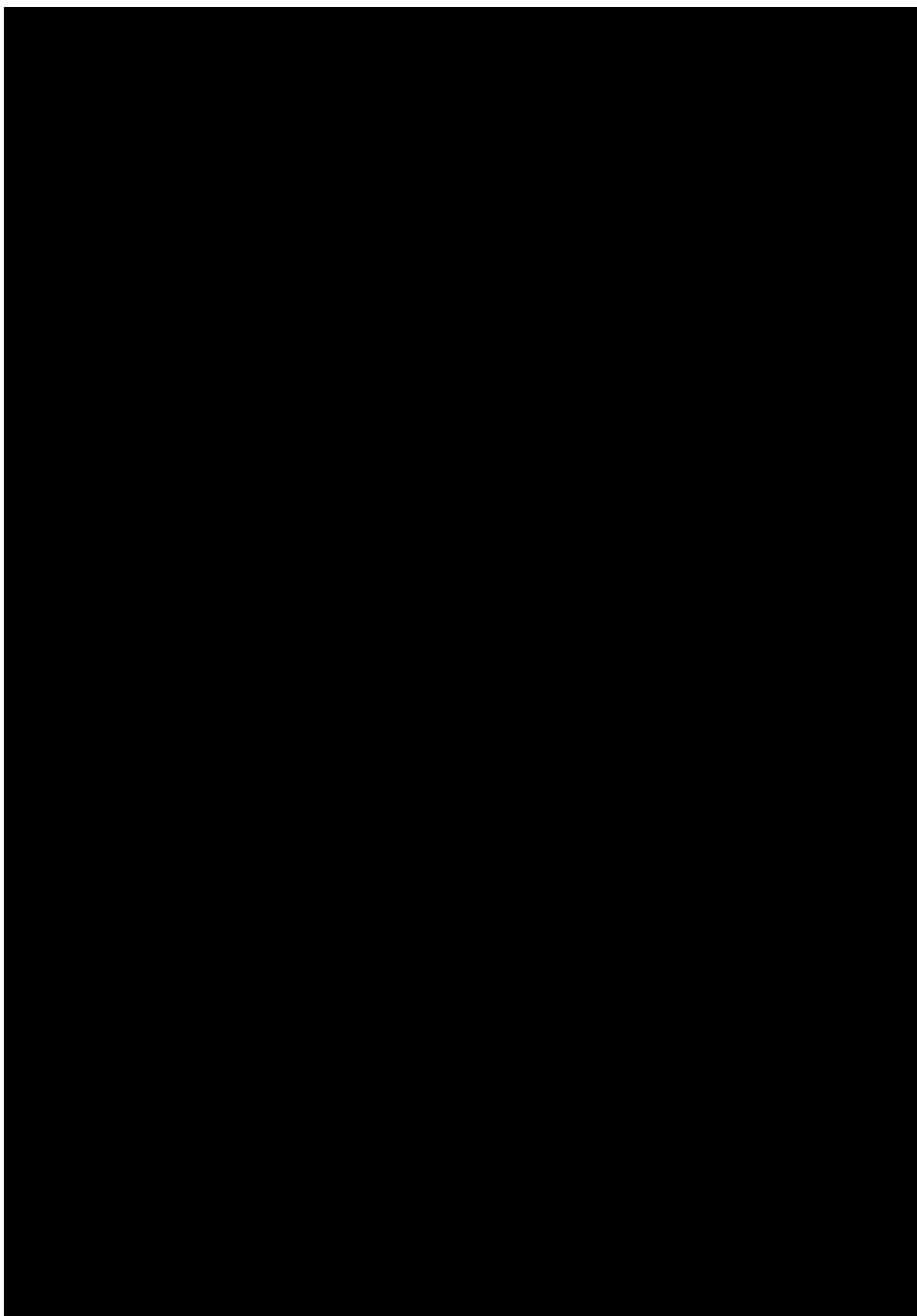
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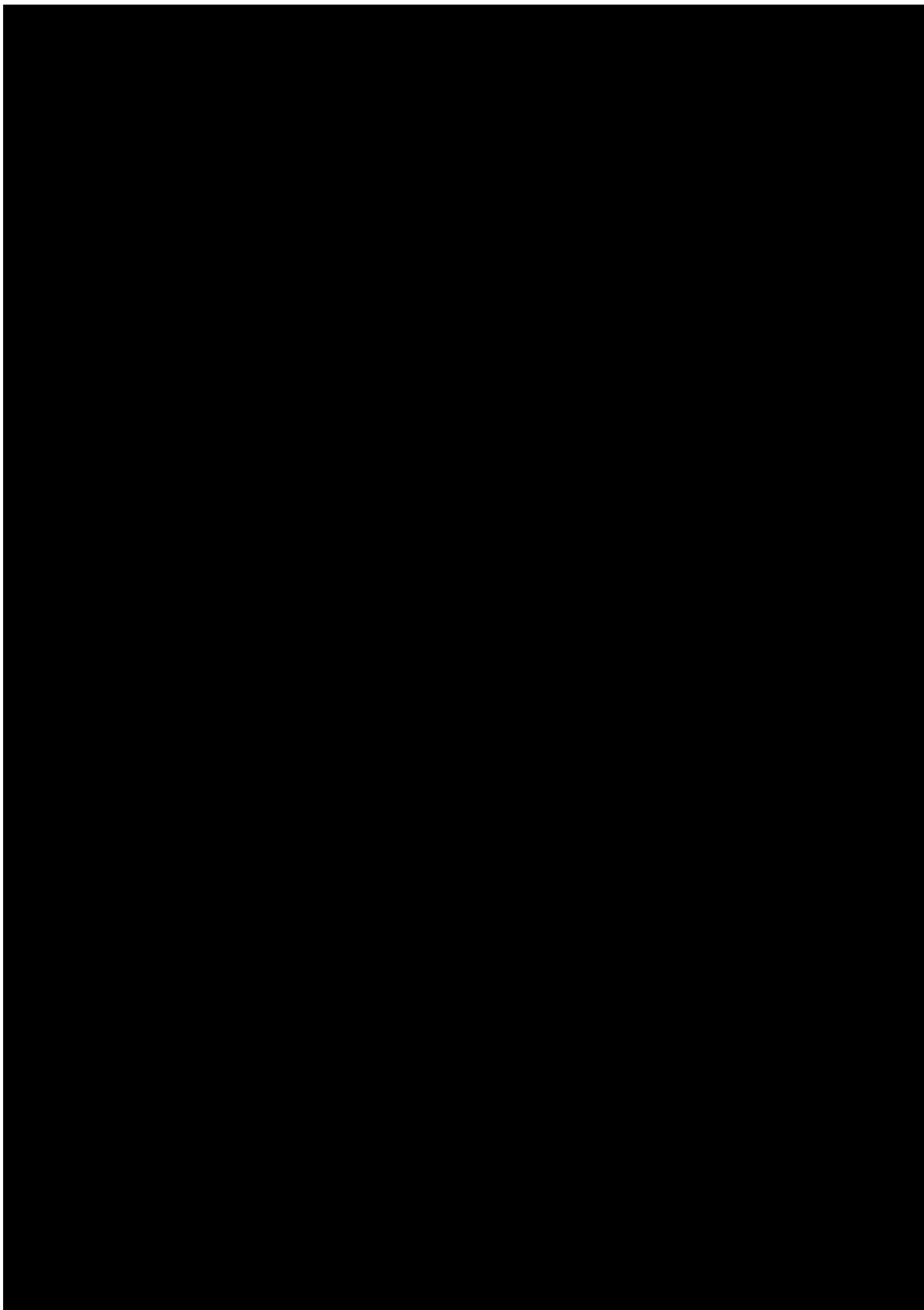
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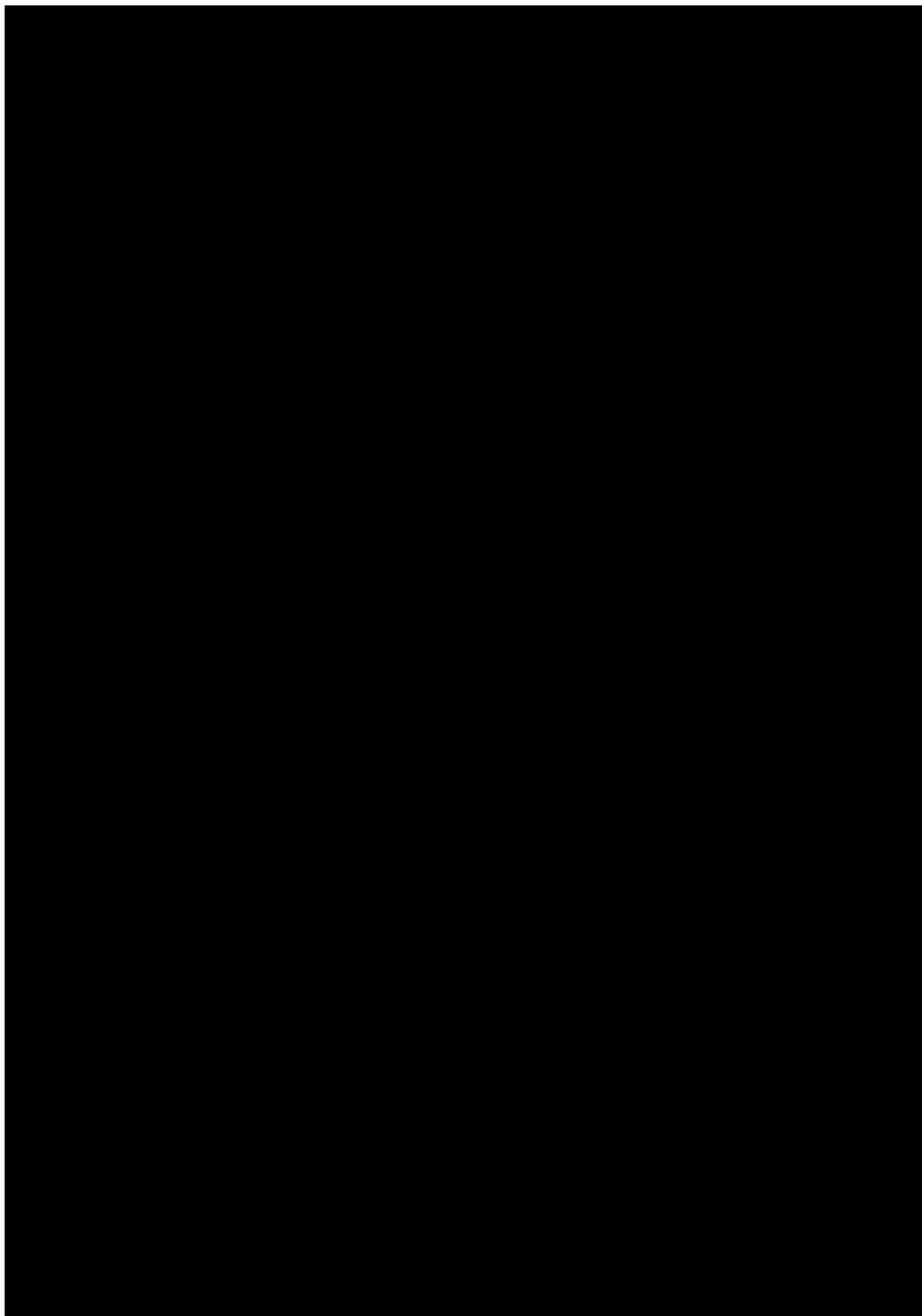
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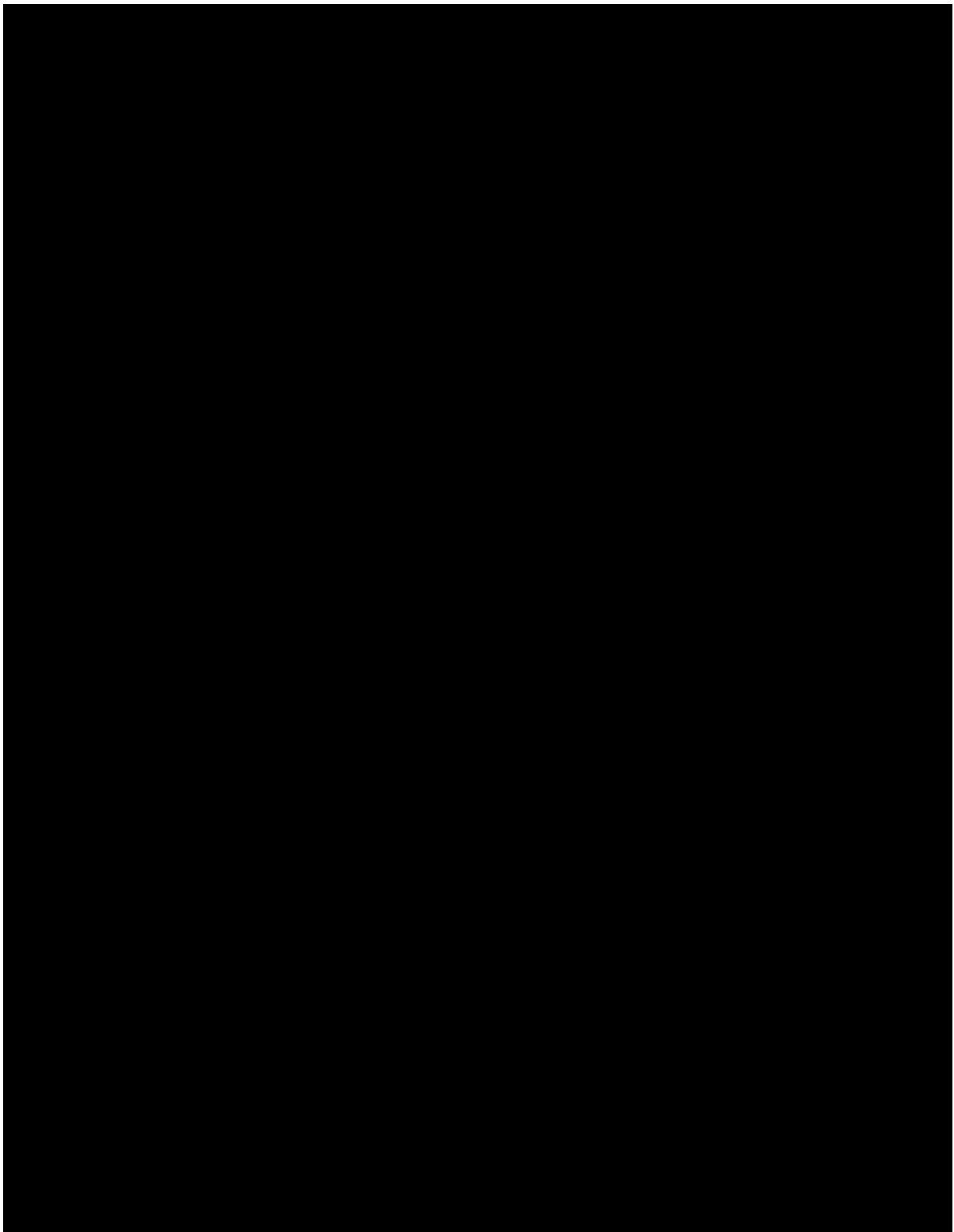
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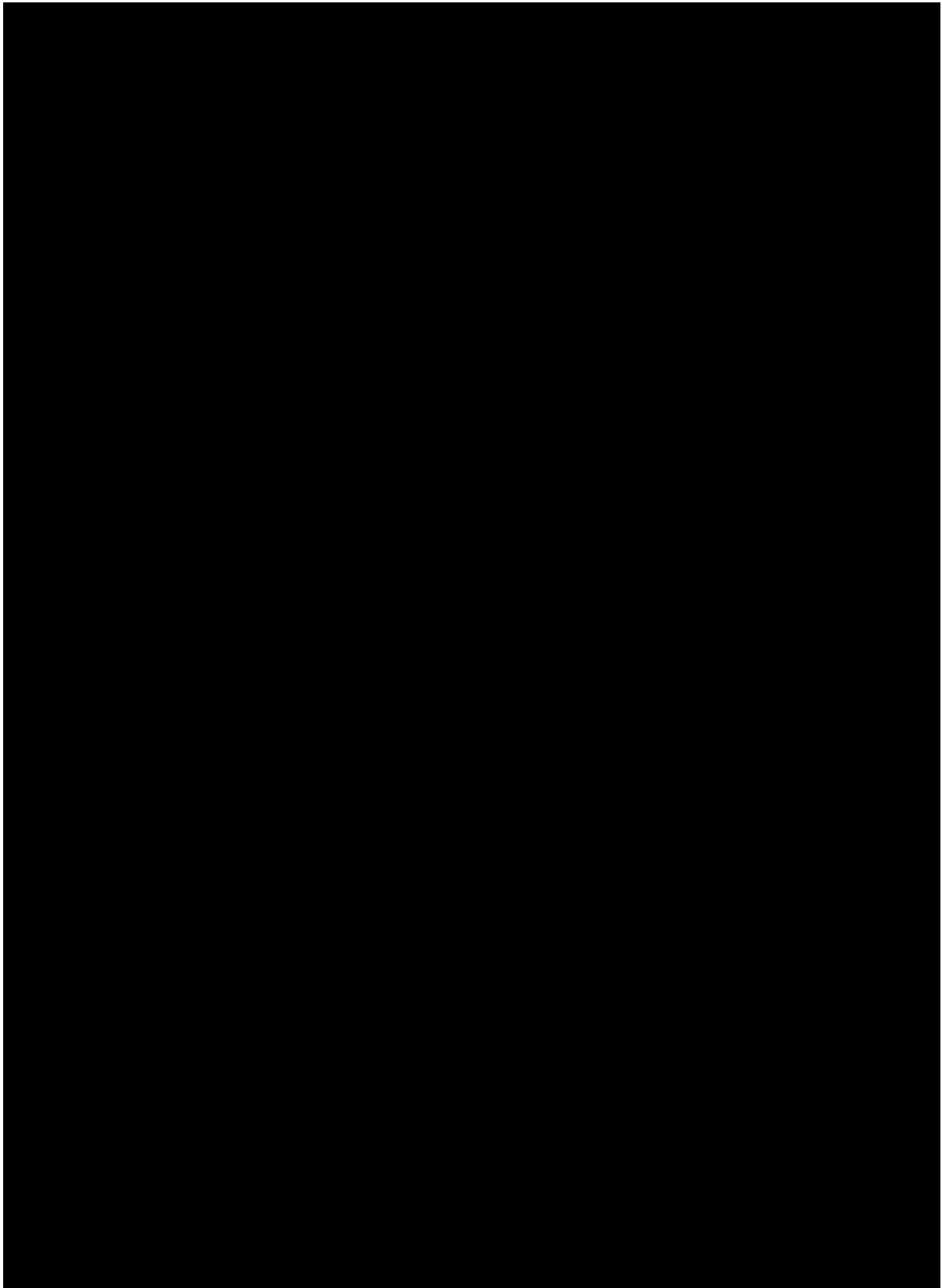
Q Did you have Windows 98 based PCs at 14:41:14
SurfCast in the summer of 2000? 14:41:21

1	A	Summer of 2000? The reason I hesitate	14:41:32
2		is because I switched to XP as soon as I could, as	14:41:41
3		soon as the Beta was out, I think it was code	14:41:45
4		named whistler or something, I switched as soon as	14:41:51
5		I could.	14:41:55
6	Q	Lots of us did. Well, let me ask it	14:41:56
7		this way, did you or anybody at SurfCast ever	14:41:58
8		actually play with Active Desktop in the summer of	14:42:02
9		2000?	14:42:06
10	A	I believe I did before that when --	14:42:11
11		because of my membership of the Microsoft	14:42:15
12		Developer Network, I did when my -- I installed	14:42:19
13		also the Beta of the Windows 98 and the subsequent	14:42:23
14		updates of Windows 98. And I believe in one of	14:42:26
15		those, suddenly my desktop had another appearance	14:42:30
16		because it automatically installed Active Desktop,	14:42:33
17		that is where I came across.	14:42:37
18	Q	And you actually operated the Active	14:42:38
19		Desktop?	14:42:40
20	A	I tried it out, figure out how to	14:42:42
21		configure it, how to set it up. And I found it to	14:42:45
22		be exactly what it says it is, that it is an	14:42:50
23		opportunity to put a piece of a web page on your	14:42:55
24		desktop with refresh and not much more than that.	14:42:59
25		And then I dismissed it as too simple for what we	14:43:03

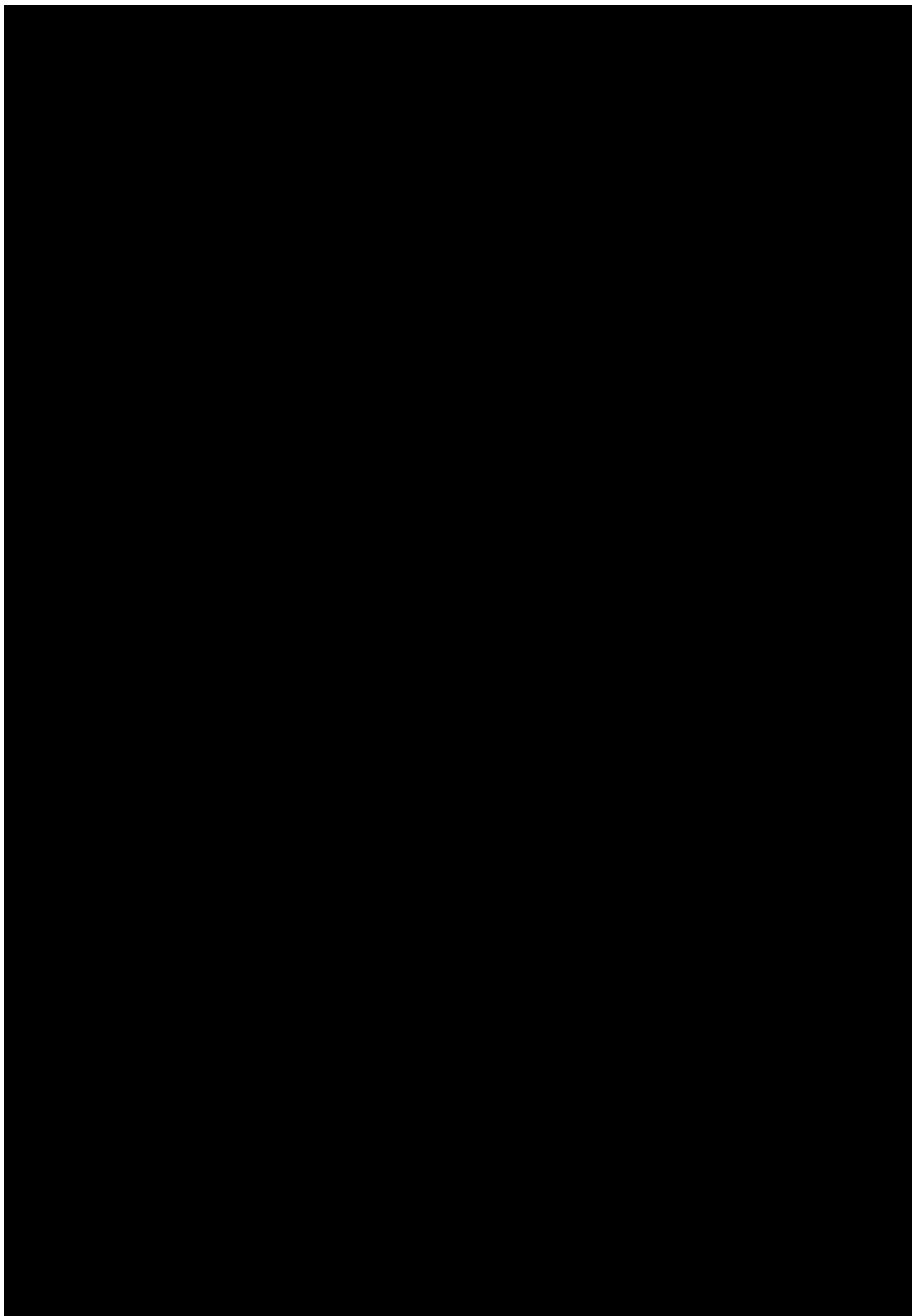
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are trying to achieve.

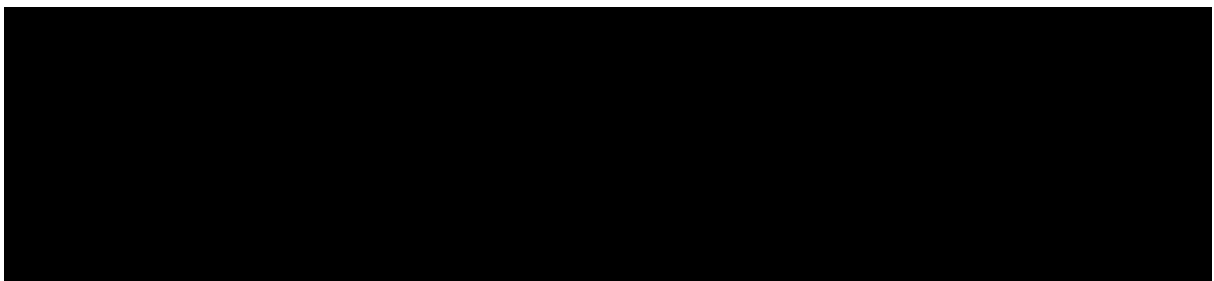
14:43:07



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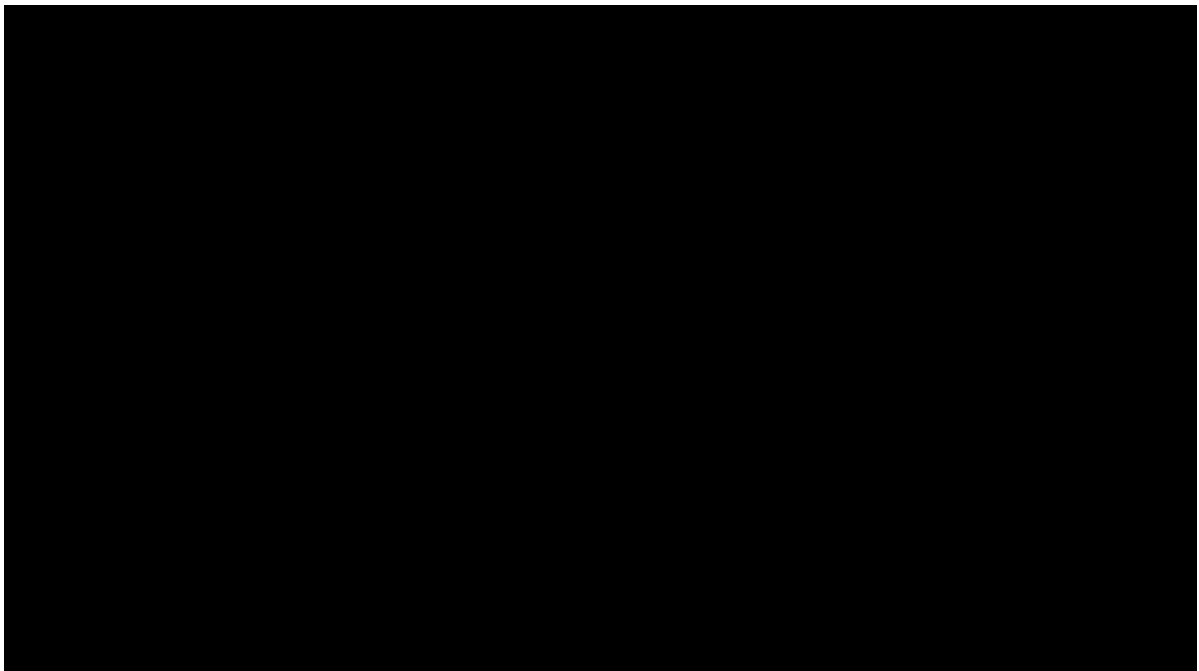


Q So you saw Katiesoft in, I guess, 14:47:45
displaying Microsoft Outlook or running Microsoft 14:47:52
Outlook in one of its boxes on the screen? 14:47:57

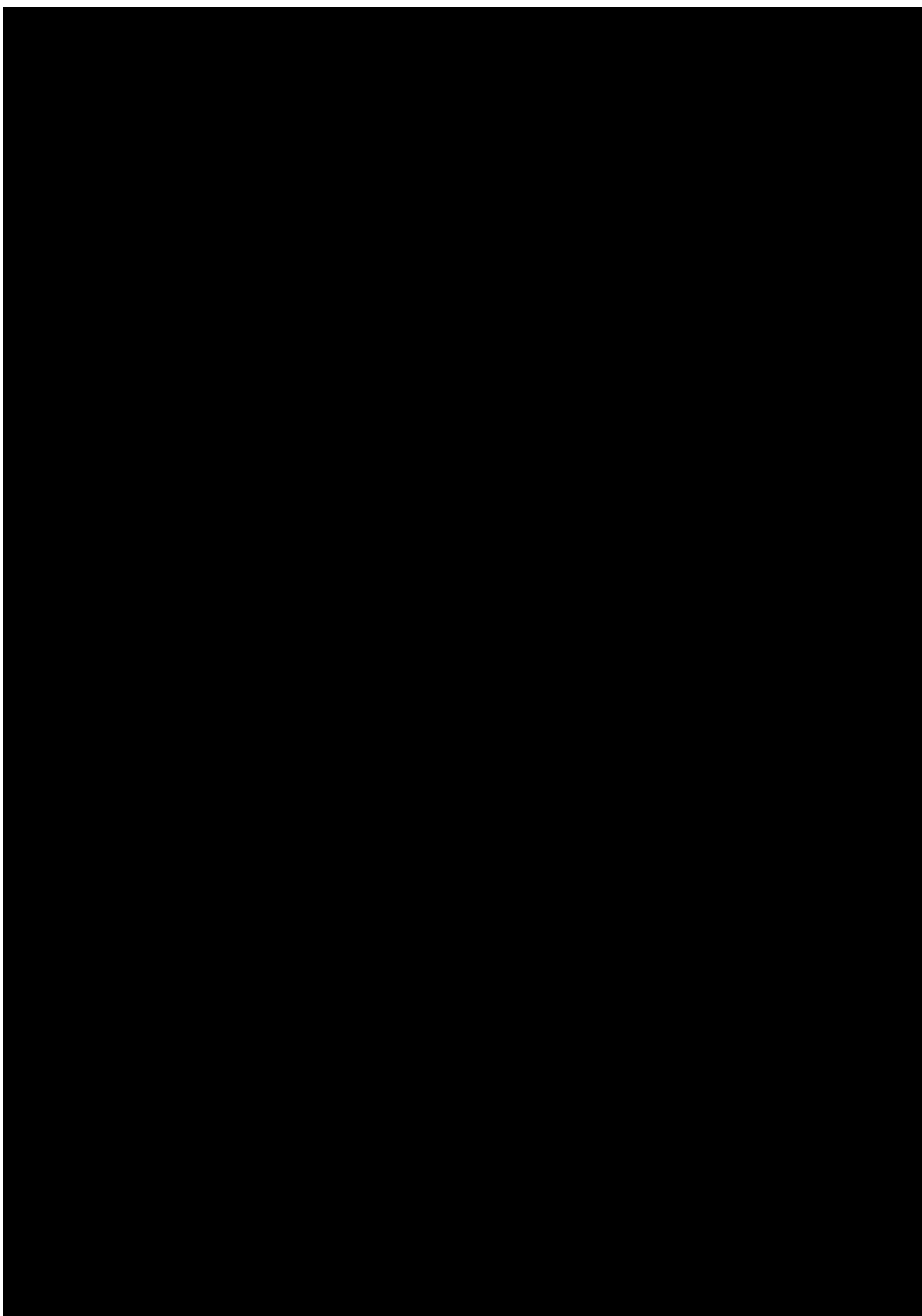
A Yes. 14:48:00

Q Do you know where you saw that? 14:48:02

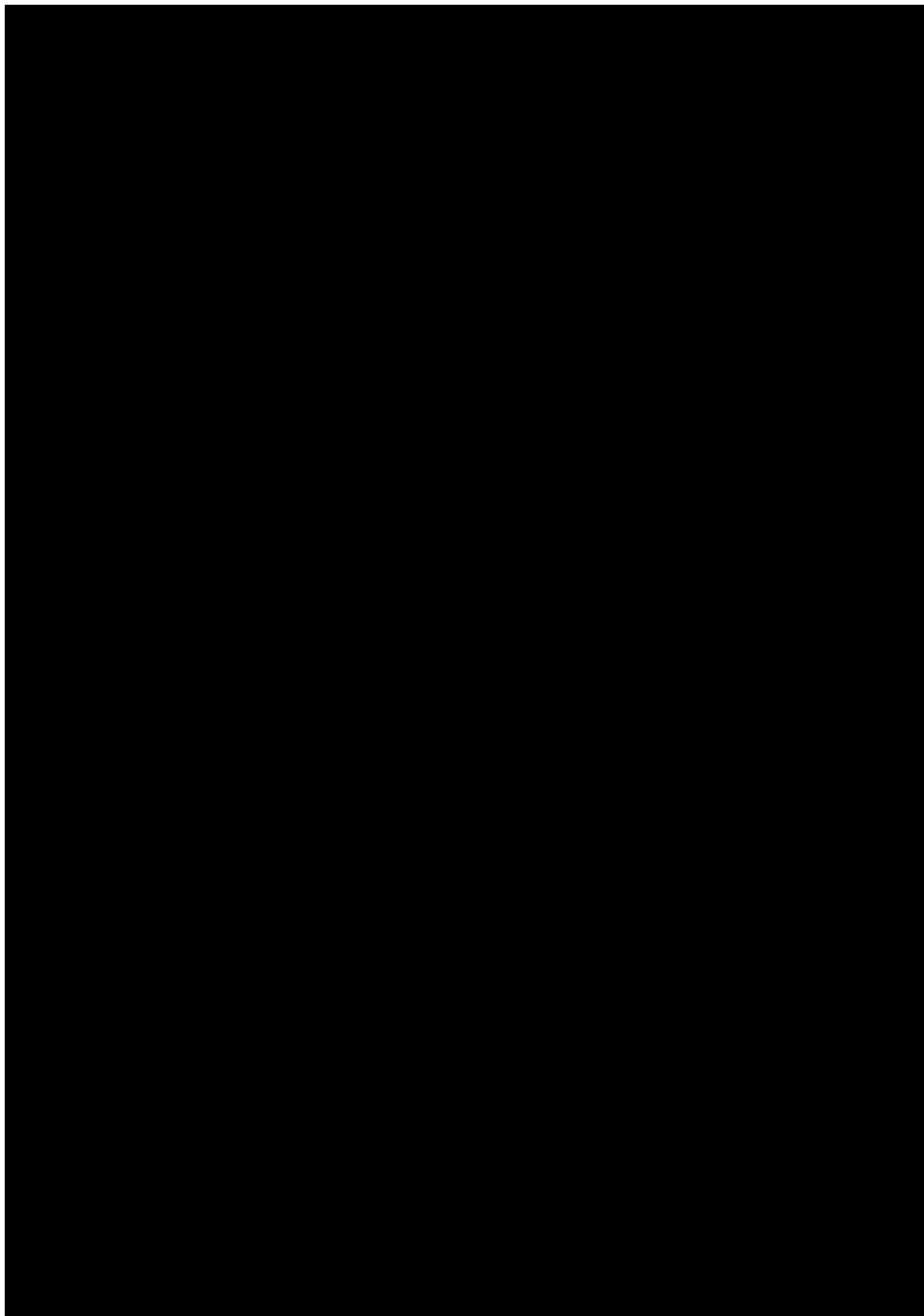
A It could have been with one of the 14:48:11
developers. It could have been -- it could have 14:48:13
been on any machine in the company. I just said I 14:48:20
saw it. And I also figured out how they 14:48:27
implemented it using what I stated there, the OLE 14:48:30
Automation. 14:48:34



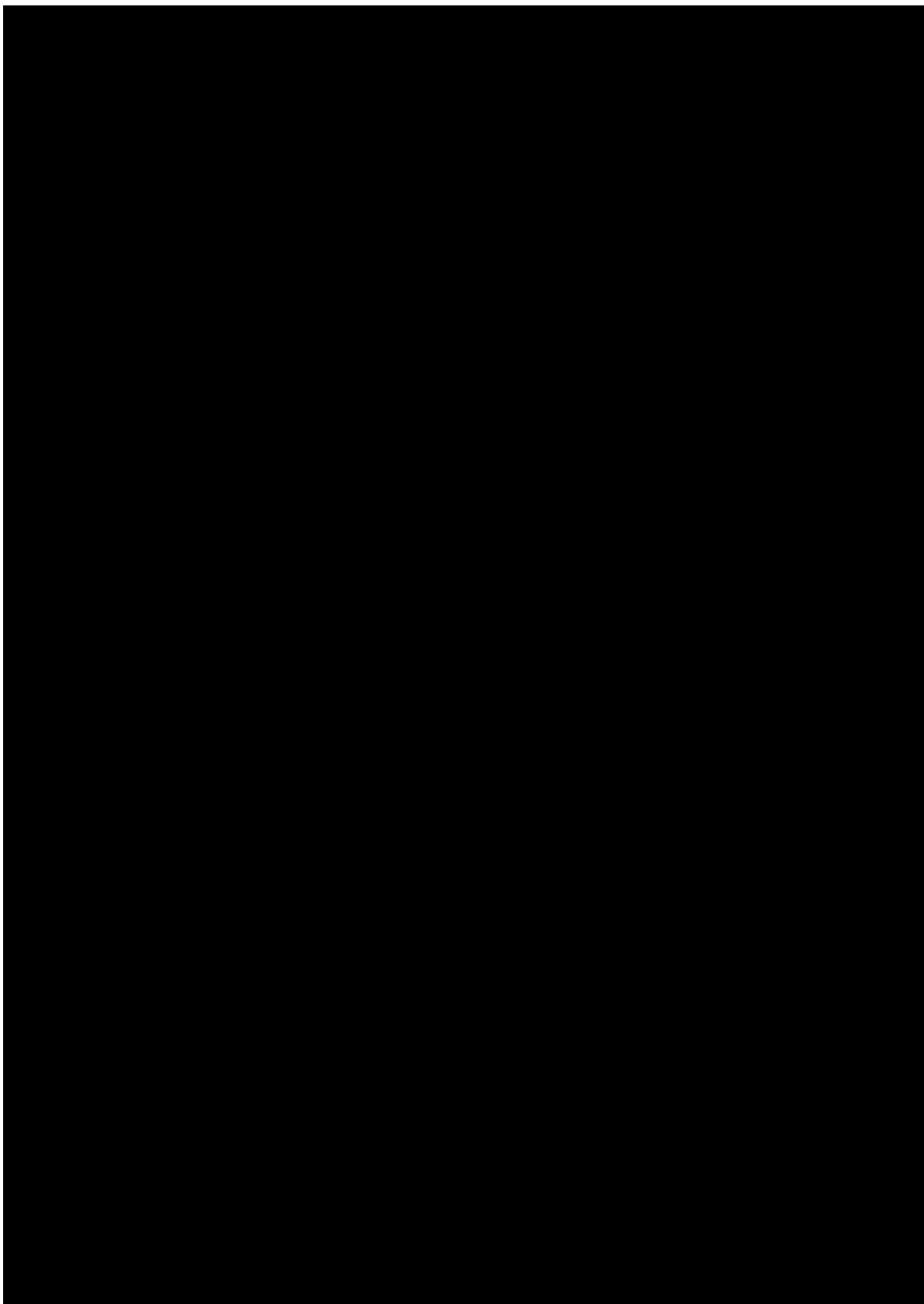
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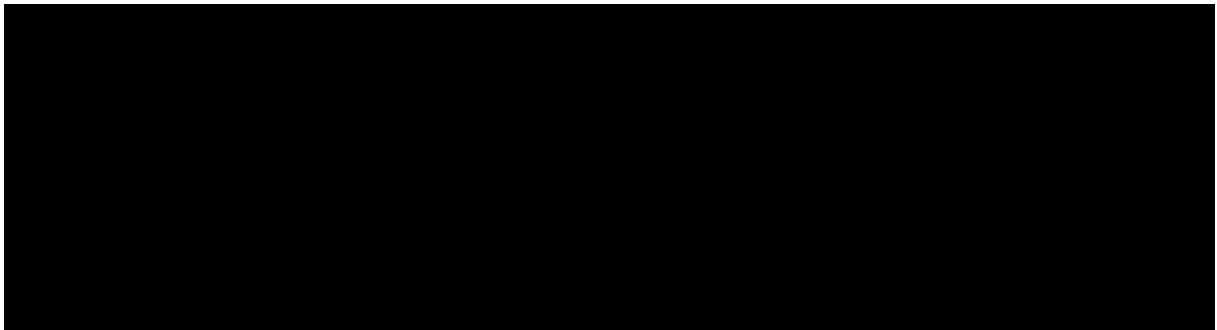
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Q Did SurfCast ever sell any version of 14:55:36
the SurfCast application to anybody? 14:55:39

A To my knowledge no. 14:55:41

Q I'm afraid we are almost at the end of 14:56:00
the tape again so we are going to have to take 14:56:04
another short break. Let's go off of the record? 14:56:06

A Thank you. 14:56:09

THE VIDEOGRAPHER: Going off of the 14:56:15
record again at 2:56:05) 14:56:16

(Whereupon, a recess occurred 14:56:21
from 2:56 p.m. until 3:01 p.m.) 14:56:21

THE VIDEOGRAPHER: Back on the record at 14:56:22
3:01:20 seconds? 15:01:35

MR. MICALLEF: I'm going to have the 15:01:37
court reporter mark as Exhibit 22, United States 15:01:39
patent Number 6,724,403 and ask that you take a 15:01:42
look at it. 15:01:46

(Whereupon, Exhibit 22 was marked 16:53:40
for identification) 16:53:40

1	BY MR. MICALLEF:	15:02:18
2	Q Mr. Lagermann, you have been handed	15:02:19
3	Exhibit 22. Do you recognize this patent?	15:02:21
4	A Yes.	15:02:23
5	Q And you are the Klaus Lagermann that is	15:02:51
6	listed as the inventor on the front?	15:02:54
7	A I am.	15:02:57
8	Q Can we agree to refer to this as the 403	15:02:57
9	Patent?	15:03:00
10	A The 403 Patent.	15:03:02
11	Q Okay. And you have reviewed this 403	15:03:04
12	Patent in the past couple of days?	15:03:07
13	A Yes.	15:03:10
14	Q Did Mr. Dechaene come up with any of	15:03:18
15	the technology that is described in the 403	15:03:23
16	Patent?	15:03:27
17	A When -- during my tenure at SurfCast I	15:03:29
18	don't recall him participating in any technology	15:03:34
19	development, discussion or description.	15:03:41
20	Q And your tenure at SurfCast lasted	15:03:49
21	beyond October 30, 2000. Is that right?	15:03:52
22	A It ended in September of 2001.	15:03:58
23	Q So as far as you know Mr. Dechaene could	15:04:04
24	not have contributed to the technology described	15:04:07
25	in the 403 Patent?	15:04:10

1	A	In -- as far as I know he didn't. I	15:04:19
2		don't know if he did that I don't know of. But as	15:04:22
3		far as I know he did not.	15:04:24
4	Q	Does Mr. Dechaene have a technology	15:04:29
5		background?	15:04:32
6	A	He is a banker and I believe he has an	15:04:39
7		MBA. He may also have an engineering degree, I'm	15:04:41
8		not sure. I would have to check.	15:04:47
9	Q	I'm going to ask you to turn to column 7	15:04:56
10		on the pad?	15:05:00
11	A	Column 7.	15:05:13
12	Q	There is a sentence that begins on line	15:05:14
13		55 and it goes to about line 59. It says; A	15:05:16
14		novel feature of the present invention is that the	15:05:21
15		data content of any number of the programs can	15:05:24
16		vary in realtime. And the rate at which the	15:05:27
17		display of each is updated can be controlled by	15:05:32
18		the user. Do you see that?	15:05:34
19	A	I see that.	15:05:36
20	Q	Would you agree that that sentence	15:05:37
21		was -- that feature that is described in that	15:05:42
22		sentence was in Active Desktop. Right?	15:05:45
23	MR. HEINTZ:	Object to the form of the	15:05:52
24		question.	15:05:54
25	THE WITNESS:	I'd have to see what	15:06:09

1	context this was. I know that an Active Desktop	15:06:11
2	Item can be assigned refresh configuration.	15:06:51
3	BY MR. MICALLEF:	15:07:35
4	Q I'm sorry. Are you done your answer,	15:07:36
5	Mr. Lagermann?	15:07:38
6	A I'm just trying to -- the sentence is	15:07:39
7	long. And I'm just trying to get the verbs right.	15:07:45
8	The way it is described here that it just says	15:07:57
9	that a program can vary. And that the rate at	15:08:00
10	which the display of each is updated can be	15:08:05
11	controlled by the use of Active Desktop Items have	15:08:09
12	a similar feature.	15:08:13
13	Q In fact, it is the same as the way that	15:08:16
14	sentence describes it. Active Desktop Items have	15:08:18
15	that same feature as is described on column 7,	15:08:23
16	lines 55 through 59 of the 403 Patent. Is that	15:08:26
17	fair?	15:08:32
18	MR. HEINTZ: Object to the form.	15:08:33
19	THE WITNESS: A similar feature at	15:08:38
20	least. I don't know if it is the same because	15:08:40
21	this is in the general description, but it is not	15:08:43
22	in the detailed description so it appears to be	15:08:46
23	similar. Yes.	15:08:50
24	BY MR. MICALLEF:	15:08:51
25	Q I'm not asking about the detailed	15:08:51

1	description.	15:08:53
2	A Okay.	15:08:53
3	Q I'm asking about this one sentence.	15:08:54
4	A This one sentence.	15:08:56
5	Q Column 7, lines 55 to 59. And my	15:08:56
6	question is, it is true that Active -- with Active	15:09:00
7	Desktop Items, the data content of any number of	15:09:03
8	programs can vary in realtime at the rate at which	15:09:05
9	the display of each is updated can be controlled	15:09:09
10	by the user. Correct?	15:09:12
11	MR. HEINTZ: Object to the form.	15:09:14
12	THE WITNESS: It appears so.	15:09:27
13	BY MR. MICALLEF:	15:09:29
14	Q And Active Desktop came before the	15:09:31
15	SurfCast application. Isn't that right?	15:09:34
16	A Yes.	15:09:38
17	Q And so when column 7 of 403 Patent says	15:09:40
18	that is a novel feature, the patent is wrong. Do	15:09:44
19	you agree with that?	15:09:48
20	A In this sentence?	15:09:50
21	Q Yes, sir.	15:09:52
22	A In this sentence, yes.	15:09:53
23	Q The patent is wrong in that respect?	15:09:55
24	MR. HEINTZ: Object to the form of the	15:09:58
25	question.	15:10:00

1	BY MR. MICALLEF:	15:10:00
2	Q Right?	15:10:01
3	A This sentence it is not correctly	15:10:03
4	formulated.	15:10:06
5	Q Because of that feature?	15:10:07
6	A The way the feature is described here in	15:10:10
7	this sentence is not new.	15:10:13
8	Q Okay. Would you agree that Katiesoft	15:10:16
9	also practiced that feature before SurfCast?	15:10:21
10	A No. I didn't never see Katiesoft as	15:10:32
11	something with refresh rates in this respect.	15:10:36
12	Q Are you aware that with the Katiesoft	15:10:42
13	technology the user could program the refresh rate	15:10:46
14	for each program being displayed?	15:10:50
15	A For each section?	15:10:55
16	MR. HEINTZ: Object to the form of the	15:10:57
17	question.	15:10:59
18	BY MR. MICALLEF:	15:10:59
19	Q Well, do you have any idea whether that	15:11:00
20	is true or not?	15:11:02
21	A My impression was that there was an	15:11:04
22	overall configuration for refresh which was not	15:11:05
23	formulated the way we described ours.	15:11:13
24	Q That was your understanding of	15:11:17
25	Katiesoft?	15:11:19

1 A That was my understanding at the time as 15:11:19
2 far as I remember. That is a long time ago. 15:11:21
3 Q I would ask -- I'd direct your attention 15:11:26
4 to column 8, line 15. There is a sentence that 15:11:27
5 says; The Window may occupy a substantial 15:11:41
6 percentage of available screen space, usually 90 15:11:44
7 to 100 percent. Do you see that sentence? 15:11:48
8 A I see that. 15:11:52
9 Q That would be true of your tiles as 15:11:53
10 well, isn't it? 15:11:57
11 A It would be true of our grid. 15:11:57
12 Q With the SurfCast application, could a 15:12:02
13 tile occupy the entire screen? 15:12:03
14 A It could. 15:12:07
15 Q So that sentence would be true of your 15:12:07
16 tiles. Correct? 15:12:09
17 MR. HEINTZ: Object to the form of the 15:12:11
18 question. 15:12:13
19 BY MR. MICALLEF: 15:12:13
20 Q The sentence in column 8, lines 15 and 15:12:13
21 16 would be true of the SurfCast tiles. Correct? 15:12:18
22 A If they were blown up to full screen 15:12:19
23 size, yes. 15:12:22
24 Q A couple of sentences down says; That 15:12:28
25 Window can be -- can commonly be resized by the 15:12:31

1	user. Do you see that?	15:12:35
2	A Yes.	15:12:41
3	Q And the SurfCast could be resized by the	15:12:42
4	user. Is that right?	15:12:45
5	A They could be resized by the user under	15:12:53
6	certain circumstances, yes.	15:12:56
7	Q In column 8, beginning at about line 30	15:13:01
8	there is a sentence that says; Tiles permit	15:13:07
9	"dynamic bookmarking" of information in that each	15:13:09
10	tile is a viewer of a single information source.	15:13:14
11	Do you see that?	15:13:18
12	A I see that.	15:13:19
13	Q Windows back at the time you filed this	15:13:23
14	patent application, each viewer were on the single	15:13:25
15	information source. Is that fair?	15:13:29
16	A Windows in general?	15:13:34
17	Q Could windows --	15:13:37
18	A A window?	15:13:37
19	Q Yes. I will strike that. I will ask a	15:13:39
20	different question. At the time you filed the 403	15:13:41
21	Patent, a window was a viewer of a single	15:13:43
22	information source. Correct?	15:13:48
23	A It could be, yes.	15:13:49
24	Q And an Active Desktop Item could also be	15:13:51
25	a viewer of a single information source?	15:13:55

1	A	It could be, yes.	15:13:58
2	Q	The sentence goes on to say that; The	15:14:00
3		tiles can be customized with the user's choice of	15:14:03
4		content. Do you see that?	15:14:09
5	A	I see that.	15:14:11
6	Q	That was true in October of 2000 of	15:14:13
7		windows too. Correct?	15:14:16
8	A	Yes. For some windows, yes.	15:14:23
9	Q	And even -- and in Active Desktop Item	15:14:27
10		even before or say 1999 could be customized with	15:14:32
11		the user's choice of content too. Isn't that	15:14:34
12		right?	15:14:38
13	A	That would be...	15:14:38
14	Q	That would be correct.	15:14:40
15	A	That would be correct.	15:14:41
16	Q	Okay. Now there is a sentence that	15:14:41
17		begins on line, roughly line 35 that says; The	15:14:49
18		tile is different from an icon because it provides	15:14:53
19		a realtime or near realtime view of the underlying	15:14:57
20		information in that it contains continually	15:15:00
21		refreshed content. Do you see that?	15:15:04
22	A	(Nods)	15:15:06
23	Q	Were you aware of any icons that could	15:15:08
24		provide or provide a view of -- a realtime view of	15:15:10
25		information before you filed this patent	15:15:15

1	application?	15:15:19
2	A I'm uncertain about the timing but there	15:15:46
3	were -- there were icons that would reflect a	15:15:51
4	state of something but like a -- like a traffic	15:16:01
5	light icon and it could go red, green, yellow	15:16:20
6	depending on the state of something, so there were	15:16:25
7	some icons like that.	15:16:26
8	Q The very next sentence in column 8, line	15:16:30
9	38 of the 403 Patent states; "A tile is different	15:16:35
10	from a window because a tile will typically be	15:16:39
11	smaller in size, allowing the user to view	15:16:43
12	multiple tiles simultaneously if desired." Do you	15:16:47
13	see that?	15:16:52
14	A Excuse me. The line number again,	15:16:53
15	please.	15:16:54
16	Q Thirty-eight?	15:16:54
17	A I see that.	15:17:00
18	Q But back in say October of 1999, windows	15:17:06
19	could be smaller than your tiles, couldn't they?	15:17:11
20	A Yes. A window in the propermatic	15:17:14
21	(phonetic) sense could be anything down to one	15:17:21
22	pixel.	15:17:25
23	Q So the size of a tile or of a window is	15:17:25
24	not any kind of distinction between tiles and	15:17:27
25	windows. Would you agree with that?	15:17:31

1	MR. HEINTZ: Object to the form of the	15:17:36
2	question.	15:17:38
3	THE WITNESS: Can I answer it this way	15:17:44
4	that in my opinion the distinction alone based on	15:17:46
5	size doesn't matter so much as the distinction	15:17:52
6	based on the functionality.	15:17:55
7	BY MR. MICALLEF:	15:17:58
8	Q I just want to focus on the distinction	15:17:58
9	that is drawn in this sentence?	15:18:01
10	A In this sentence.	15:18:02
11	Q It says -- it is just pointing to size.	15:18:03
12	And that is not a distinction between windows and	15:18:06
13	tiles, is it?	15:18:09
14	MR. HEINTZ: Object to the form of the	15:18:12
15	question.	15:18:15
16	THE WITNESS: I guess not.	15:18:15
17	BY MR. MICALLEF:	15:18:17
18	Q So why were you telling the world here	15:18:17
19	that a tile is different from a window based on	15:18:19
20	size?	15:18:24
21	A It was --	15:18:25
22	MR. HEINTZ: Object to the form of the	15:18:27
23	question. You can answer.	15:18:29
24	THE WITNESS: In my view we were trying	15:18:35
25	to describe a scenario or a frame of reference in	15:18:38

1	which to put the grid and tile invention. This	15:18:46
2	particular thing was not our invention, how big or	15:18:53
3	small it was. Our invention was what it did. And	15:18:58
4	this is a description of what it would look like.	15:19:00
5	BY MR. MICALLEF:	15:19:06
6	Q And just to be clear, that sentence	15:19:07
7	appearing at column 8, lines 38 to 41 of the 403	15:19:12
8	patent is incorrect. Do you agree with that?	15:19:18
9	MR. HEINTZ: Object to the form of the	15:19:28
10	question.	15:19:30
11	THE WITNESS: See that sentence alone,	15:19:40
12	it appears -- it appears false. It needs to be	15:19:42
13	seen in the context.	15:19:46
14	BY MR. MICALLEF:	15:19:47
15	Q You would never tell anybody that your	15:19:53
16	tiles from different from windows because they	15:19:55
17	were smaller than windows, would you?	15:19:58
18	A No I would not. I would focus on what	15:20:01
19	they actually did.	15:20:04
20	Q The next sentence beginning at line 42	15:20:15
21	states; "A tile provides an at-a-glance view of	15:20:16
22	the current status of the program or file	15:20:20
23	associated with it but does not necessarily have	15:20:23
24	the large number of active areas associated with	15:20:25
25	windows, such as title bar, menu bar and scroll	15:20:28

1	bars." Do you see that?	15:20:35
2	A I see that.	15:20:35
3	Q You know that windows don't have to have	15:20:36
4	title bars, menus or scroll bars. Correct?	15:20:37
5	MR. HEINTZ: Object to the form of the	15:20:44
6	question.	15:20:44
7	THE WITNESS: There are many different	15:20:45
8	uses of the term window even in -- when you are	15:20:47
9	programming for the windows environment, even the	15:20:52
10	smallest element on the screen is in fact a window	15:20:56
11	because it has a window handle. So it is -- it is	15:21:00
12	sometimes confusing to use the term window. I	15:21:06
13	think here we mean an application window. And the	15:21:10
14	normal appearance of an application window is that	15:21:14
15	it has all of these extra user interface	15:21:17
16	components. And the way we saw the tile was that	15:21:21
17	it would not.	15:21:23
18	BY MR. MICALLEF:	15:21:25
19	Q But prior to October 1999 there were	15:21:25
20	many windows that did not have title bars, menu	15:21:29
21	bars and scroll bars. Is that fair?	15:21:33
22	MR. HEINTZ: Object to the form of the	15:21:39
23	question.	15:21:40
24	THE WITNESS: Yes. There were many	15:21:43
25	windows that didn't have that.	15:21:45

1	BY MR. MICALLEF:	15:21:46
2	Q Do you call those things active areas?	15:21:46
3	When I say those things -- let me strike that and	15:21:49
4	let me rephrase. Would you call title bars, menu	15:21:51
5	bars and scroll bars active areas?	15:21:55
6	A It is not a term I would use myself, but	15:21:58
7	it was a term that was agreed upon.	15:22:00
8	Q So the idea of not having active areas	15:22:04
9	such as title bars, menu bars and scroll bars that	15:22:08
10	was not some new idea that you came up with. Do	15:22:12
11	you agree with that?	15:22:16
12	MR. HEINTZ: Object to the form of the	15:22:18
13	question.	15:22:20
14	THE WITNESS: Again, this is a	15:22:28
15	distinction of what the invention would look like	15:22:31
16	when deployed. And therefore we use these terms.	15:22:36
17	And I agree that this single sentence taken on its	15:22:39
18	own makes little sense.	15:22:44
19	BY MR. MICALLEF:	15:22:48
20	Q I'm going to ask you to turn to column	15:22:49
21	24 of the patent. And i'm going to address, ask	15:23:03
22	you to address your attention to claim 1. Do you	15:23:20
23	see that?	15:23:23
24	A Claim 1, yes.	15:23:25
25	Q Did you read this claim in the past few	15:23:25

1	days?	15:23:28
2	A I read through the whole thing a number	15:23:33
3	of times.	15:23:35
4	Q Okay. Can you tell me in claim 1, can	15:23:36
5	you tell me what parts you came up with, if any?	15:23:40
6	MR. HEINTZ: Object to the form of the	15:23:44
7	question.	15:23:46
8	THE WITNESS: I can tell you that since	15:23:51
9	this is work done by Mr. Santoro and myself, and	15:23:58
10	Mr. Santoro is not a computer programmer and this	15:24:03
11	has a formulation that is at least bordering on	15:24:10
12	language used by programmers, it would probably	15:24:19
13	have been me who came up with a formulation and	15:24:22
14	this would be what came out of that contribution.	15:24:27
15	BY MR. MICALLEF:	15:24:33
16	Q You would agree this claim 1 doesn't	15:24:43
17	require a grid, wouldn't you?	15:24:47
18	MR. HEINTZ: Object to the form of the	15:24:50
19	question?	15:24:52
20	THE WITNESS: I would claim that claim 1	15:25:02
21	does require a grid because it talks about	15:25:05
22	partitioning of a visual display and those were	15:25:08
23	the actions meant for the grid. The whole	15:25:10
24	partitioning thing was something that the grid	15:25:12
25	would do.	15:25:15

1	Q	And the grid is something that you	15:25:16
2		believe distinguishes your invention from Active	15:25:19
3		Desktop. Is that fair?	15:25:22
4	MR. HEINTZ:	Object to the form of the	15:25:25
5		question.	15:25:26
6	THE WITNESS:	It provides services to	15:25:27
7		the tiles that the Active Desktop would not have	15:25:28
8		or an Active Desktop Item would not have.	15:25:32
9	BY MR. MICALLEF:		15:25:37
10	Q	And we already talked about those	15:25:37
11		services?	15:25:38
12	A	Yes.	15:25:39
13	Q	Let me ask you, I just want to go down	15:25:45
14		the claim step by step, Mr. Lagermann. The	15:25:49
15		preamble of this claim recites a method executed	15:25:54
16		by a device under the control of a program, said	15:25:58
17		device including a memory for storing said	15:26:02
18		program. Do you see that?	15:26:05
19	A	I see that.	15:26:06
20	Q	Would you agree that a computer running	15:26:07
21		Microsoft Windows with Active Desktop technology	15:26:12
22		would satisfy that preamble?	15:26:18
23	MR. HEINTZ:	Object to the form of the	15:26:21
24		question?	15:26:23
25	THE WITNESS:	It is not completely clear	15:26:42

1 to me, but we can agree that an Active Desktop 15:26:44
2 Item is a program that runs on a computer. 15:26:56
3 BY MR. MICALLEF: 15:27:01
4 Q The first step is selecting a plurality 15:27:03
5 of information sources. You would agree that with 15:27:07
6 Active Desktop you could select a plurality of 15:27:10
7 information sources? 15:27:14
8 A I believe that with an Active Desktop 15:27:15
9 Item you can select one. 15:27:18
10 Q But my questions was Active Desktop 15:27:19
11 general. So if you have multiple Active 15:27:21
12 Desktop Items you can -- 15:27:23
13 A They -- 15:27:23
14 THE COURT REPORTER: Excuse me. 15:27:23
15 BY MR. MICALLEF: 15:27:23
16 Q Okay. Strike that. So my question was 15:27:26
17 broader than that. With Active Desktop a user can 15:27:28
18 select a plurality of information sources? 15:27:32
19 MR. HEINTZ: Object to the form of the 15:27:36
20 question. 15:27:38
21 THE WITNESS: I agree that an Active 15:27:40
22 Desktop items can select one information source 15:27:42
23 and then you can have more than one Active Desktop 15:27:46
24 items on your desktop. 15:27:49
25

1	BY MR. MICALLEF:	15:27:53
2	Q And you would agree that with Active	15:27:57
3	Desktop you could partition a visual display	15:27:59
4	device into an array of Active Desktop Items.	15:28:02
5	Would you agree with that?	15:28:06
6	A You can place each Active Desktop items	15:28:09
7	individually. And if you want to you can place	15:28:10
8	them also as arranged in a grid or any other	15:28:15
9	array.	15:28:20
10	Q And each such item in that situation	15:28:22
11	would be associated with an information source.	15:28:25
12	Correct?	15:28:27
13	MR. HEINTZ: Object to the form of the	15:28:30
14	question.	15:28:32
15	THE WITNESS: Every single Active	15:28:32
16	Desktop Item would have one information source.	15:28:34
17	BY MR. MICALLEF:	15:28:38
18	Q And with Active Desktop you could assign	15:28:38
19	a refresh rate to -- a different refresh rate to	15:28:41
20	each Active Desktop Item. Is that right?	15:28:46
21	A That is my understanding, yes.	15:28:49
22	Q And the Active Desktop technology would	15:28:51
23	update information from an associated information	15:28:56
24	source in accordance with whatever refresh rate	15:29:01
25	was selected for that Active Desktop Item. Would	15:29:05

1	you agree with that?	15:29:09
2	MR. HEINTZ: Object to the form of the	15:29:11
3	question.	15:29:14
4	THE WITNESS: Yes. Each Active Desktop	15:29:22
5	Item would receive information according to its	15:29:23
6	own configurate, configurate refresh rate.	15:29:26
7	BY MR. MICALLEF:	15:29:31
8	Q And so if you had two Active Desktop	15:29:31
9	items on the screen of this computer, they would	15:29:33
10	both be updated according to their assigned	15:29:37
11	refresh rate?	15:29:40
12	A Their own assigned refresh rate, I	15:29:41
13	believe so.	15:29:43
14	Q And they would be updated	15:29:43
15	simultaneously. Isn't that right?	15:29:45
16	MR. HEINTZ: Object to the form of the	15:29:48
17	question.	15:29:50
18	THE WITNESS: They would each be updated	15:29:50
19	according to their own refresh rate and that would	15:29:51
20	happen over the same period of time.	15:29:55
21	BY MR. MICALLEF:	15:29:57
22	Q And do you believe that is updating the	15:29:57
23	two of them simultaneously?	15:29:58
24	A My understanding is that you can use	15:30:03
25	that word for that, yes.	15:30:05

1 Q So it seems to me, Mr. Lagermann, that 15:30:11
2 you would agree that Active Desktop did absolutely 15:30:14
3 everything in this claim except you don't think an 15:30:19
4 Active Desktop items is a tile. Is that a fair 15:30:24
5 statement of your position? 15:30:29
6 MR. HEINTZ: Object to the form of the 15:30:32
7 question. 15:30:33
8 THE WITNESS: I don't think it is a 15:30:34
9 completely fair statement because it is not the 15:30:35
10 Active Desktop items or the Active Desktop as a 15:30:37
11 technology that arranges it into a grid. It is 15:30:44
12 the user that does that. In our claim it is our 15:30:50
13 invention that does that. That is the distinction 15:30:53
14 I would make. 15:30:58
15 BY MR. MICALLEF: 15:30:59
16 Q Do you see anywhere in claim 1 of the 15:30:59
17 403 Patent where it says the software has to 15:31:02
18 arrange -- 15:31:05
19 A It says -- 15:31:07
20 Q Tiles in a grid? 15:31:07
21 A It says that it is a program set method 15:31:08
22 comprising partitioning of original display. That 15:31:15
23 means that the program does it. It is not 15:31:19
24 something the user has to do individual with each 15:31:21
25 tile. The program would make the arrangement. 15:31:24

1 Q And you are aware that by default Active 15:31:28
2 Desktop would display Active Desktop items in a 15:31:31
3 grid. Are you not? 15:31:38
4 MR. HEINTZ: Object to the form of the 15:31:40
5 question? 15:31:41
6 THE WITNESS: In a grid. What do you 15:31:42
7 mean by grid? 15:31:44
8 BY MR. MICALLEF: 15:31:45
9 Q Don't you know what a grid is? 15:31:46
10 A Do you mean arranged across and down? 15:31:48
11 Q In the grid, yes. 15:31:52
12 A Okay. I was not aware of that. 15:31:54
13 Q Assuming for the sake of argument that 15:32:07
14 that is true, then would it be true that Active 15:32:10
15 Desktop does everything in this claim except you 15:32:15
16 think Active Desktop items are not tiles? 15:32:20
17 MR. HEINTZ: Object to the form of the 15:32:25
18 question? 15:32:27
19 A I still believe that the arrangement is 15:32:27
20 an important feature, the partitioning of the 15:32:31
21 display is an important feature because this is 15:32:35
22 what our invention was mostly about. The end user 15:32:40
23 experience when you looked at this that you were 15:32:44
24 able to arrange it according to various ways of 15:32:46
25 working with your information. So I didn't -- I 15:32:51

1 wouldn't have to manually position stuff around 15:32:53
2 but this program would do it for me. 15:32:59

3 Q Would you agree that an Active Desktop 15:33:05
4 system that by default displays Active Desktop 15:33:08
5 items in a grid would satisfy everything in this 15:33:12
6 claim, except that you think Active Desktop items 15:33:16
7 are not tiles? 15:33:20

8 MR. HEINTZ: Joe, that is asked and 15:33:22
9 answered. You are starting to harass the witness 15:33:23
10 now. You've asked it, he's answered, you've asked 15:33:26
11 it, he's answered. Twice is enough. 15:33:28

12 MR. MICALLEF: So objection. 15:33:31

13 THE WITNESS: Again, the way I see it is 15:33:37
14 that even if the Active Desktop by default 15:33:40
15 arranged its Active Desktop items in a 15:33:45
16 checkerboard grid then we would have something 15:33:49
17 different here because of the partitioning feature 15:33:54
18 of the grid program, because of the different ways 15:33:59
19 of arrangement than just the checkerboard 15:34:05
20 arrangement, something that was related to the way 15:34:08
21 you were working and on what you were working. 15:34:11

22 BY MR. MICALLEF: 15:34:16

23 Q What does the partitioning portion of 15:34:17
24 the claim require that automatically displaying 15:34:19
25 items in a grid doesn't satisfy? 15:34:25

1	MR. HEINTZ: Object to the form of the	15:34:28
2	question.	15:34:29
3	THE WITNESS: I know that what	15:34:40
4	Mr. Santoro and I invented was an idea for a piece	15:34:42
5	of commuter software that made your life easier by	15:34:48
6	providing certain features that was not available	15:34:52
7	at the time. That is why we believed we had	15:34:55
8	something new. And I know that this has to be	15:35:00
9	formulated in claims, in a patent application and	15:35:06
10	that what I put into the word partitioning is	15:35:15
11	everything that we thought our invention was	15:35:19
12	about. So if it doesn't mean that to me then I	15:35:25
13	don't know what it means. I know what the word	15:35:41
14	partitioning means.	15:35:47
15	BY MR. MICALLEF:	15:36:02
16	Q Are you done your answer?	15:36:02
17	A I think so.	15:36:04
18	Q Sir, you have read this patent you said	15:36:04
19	a couple of times in the past few days. Did you	15:36:07
20	put some special definition of the word	15:36:10
21	partitioning in your patent?	15:36:13
22	A When I read this, the whole time I'm	15:36:15
23	completely aware of our ideas for the actual	15:36:18
24	solution that we invented. So when I read the	15:36:23
25	partition, to me it means partitioning in the ways	15:36:26

1	that we described that it could be partitioned,	15:36:30
2	something that was -- something that would make	15:36:32
3	your life easier in the way you work with your	15:36:36
4	computer. That is what I mean.	15:36:39
5	Q And would the partitioning of claim 1	15:36:43
6	cover dividing some or all of a display into an	15:36:46
7	array of tiles?	15:36:50
8	MR. HEINTZ: Object to the form of the	15:36:53
9	question.	15:36:54
10	THE WITNESS: I don't think I can get	15:36:57
11	any closer to it.	15:36:58
12	BY MR. MICALLEF:	15:37:03
13	Q What do you mean by that, sir?	15:37:03
14	A That -- yeah, I'm not sure what you are	15:37:10
15	asking me.	15:37:14
16	Q Well let me ask you this, would you	15:37:15
17	agree that Active Desktop divides some or all of	15:37:17
18	the display into an array of desktop items can be	15:37:22
19	used to do that?	15:37:27
20	MR. HEINTZ: Object to the form of the	15:37:28
21	question.	15:37:30
22	THE WITNESS: My impression of Active	15:37:31
23	Desktop items is that they reside underneath the	15:37:34
24	items that reside on the desktop such as icons or	15:37:39
25	other windows displayed at the time. That means	15:37:44

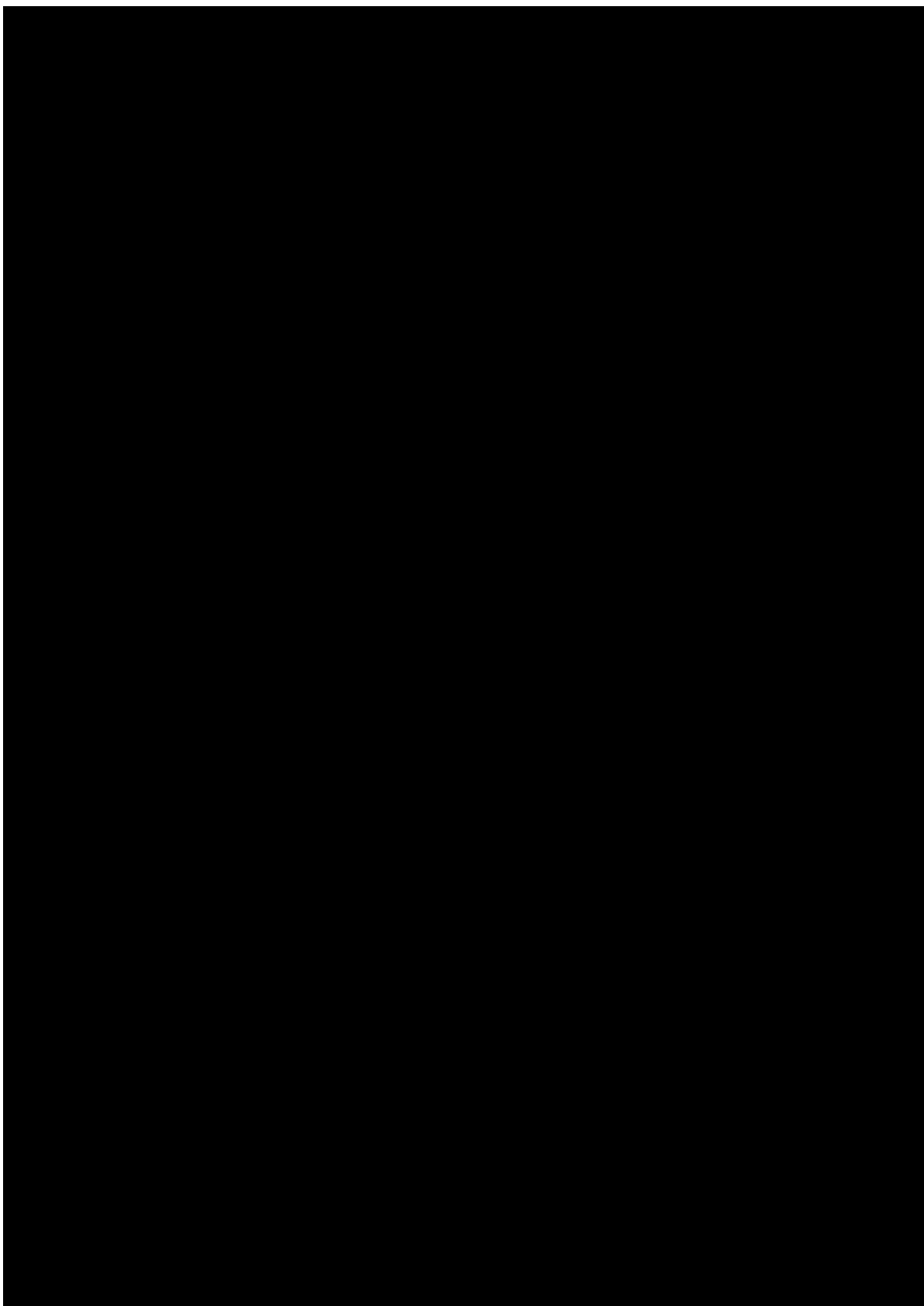
1	Active Desktop items were not foreground	15:37:48
2	applications. They were rather background	15:37:52
3	applications. They would be behind everything	15:37:55
4	else. Our invention would certainly not be behind	15:37:58
5	everything else but be in front and be the thing	15:38:02
6	you would use for your interaction with your	15:38:06
7	information.	15:38:09
8	BY MR. MICALLEF:	15:38:10
9	Q But would you agree that Active Desktop	15:38:11
10	could divide a display into an array of Active	15:38:13
11	Desktop items?	15:38:18
12	MR. HEINTZ: Objection. The form of the	15:38:21
13	question --	15:38:23
14	THE WITNESS: I was not --	15:38:23
15	MR. HEINTZ: Object to the form of the	15:38:23
16	question.	15:38:23
17	THE WITNESS: I was not aware. I	15:38:24
18	learned that from you today.	15:38:26
19	BY MR. MICALLEF:	15:38:29
20	Q Do you think an array is the same thing	15:38:29
21	as a grid?	15:38:31
22	A I think a grid is a better description	15:38:34
23	for an arrangement of squares in an orderly	15:38:40
24	fashion. An array is more generic. When you say	15:38:42
25	grid, it is a row column oriented thing, whereas	15:38:50

1	an array could be that or something else.	15:38:58
2	BY MR. MICALLEF:	15:39:02
3	Q Well, let's use that definition for a	15:39:03
4	grid, a row column orientation. Can we agree on	15:39:05
5	that?	15:39:07
6	A A grid, a row column orientation I could	15:39:09
7	agree to that.	15:39:13
8	Q Okay. So if I automatically display	15:39:14
9	Active Desktop items in a row column orientation	15:39:22
10	then that is partitioning the display into an	15:39:27
11	array of Active Desktop items, isn't it?	15:39:32
12	MR. HEINTZ: Objection. Asked and	15:39:37
13	answered. This is the third time.	15:39:39
14	THE WITNESS: Again, my impression of	15:39:42
15	Active Desktop items is that it is something that	15:39:44
16	resides behind everything else and as such is not	15:39:46
17	meant as a user interface application.	15:39:51
18	BY MR. MICALLEF:	15:39:54
19	Q Sir, that doesn't answer my question.	15:39:55
20	You know that doesn't answer my question, don't	15:39:56
21	you sir?	15:39:58
22	MR. HEINTZ: Okay. Joe, that is enough.	15:39:59
23	You are harassing the witness. You've asked this	15:40:01
24	question three times. He has answered you three	15:40:03
25	times.	15:40:05

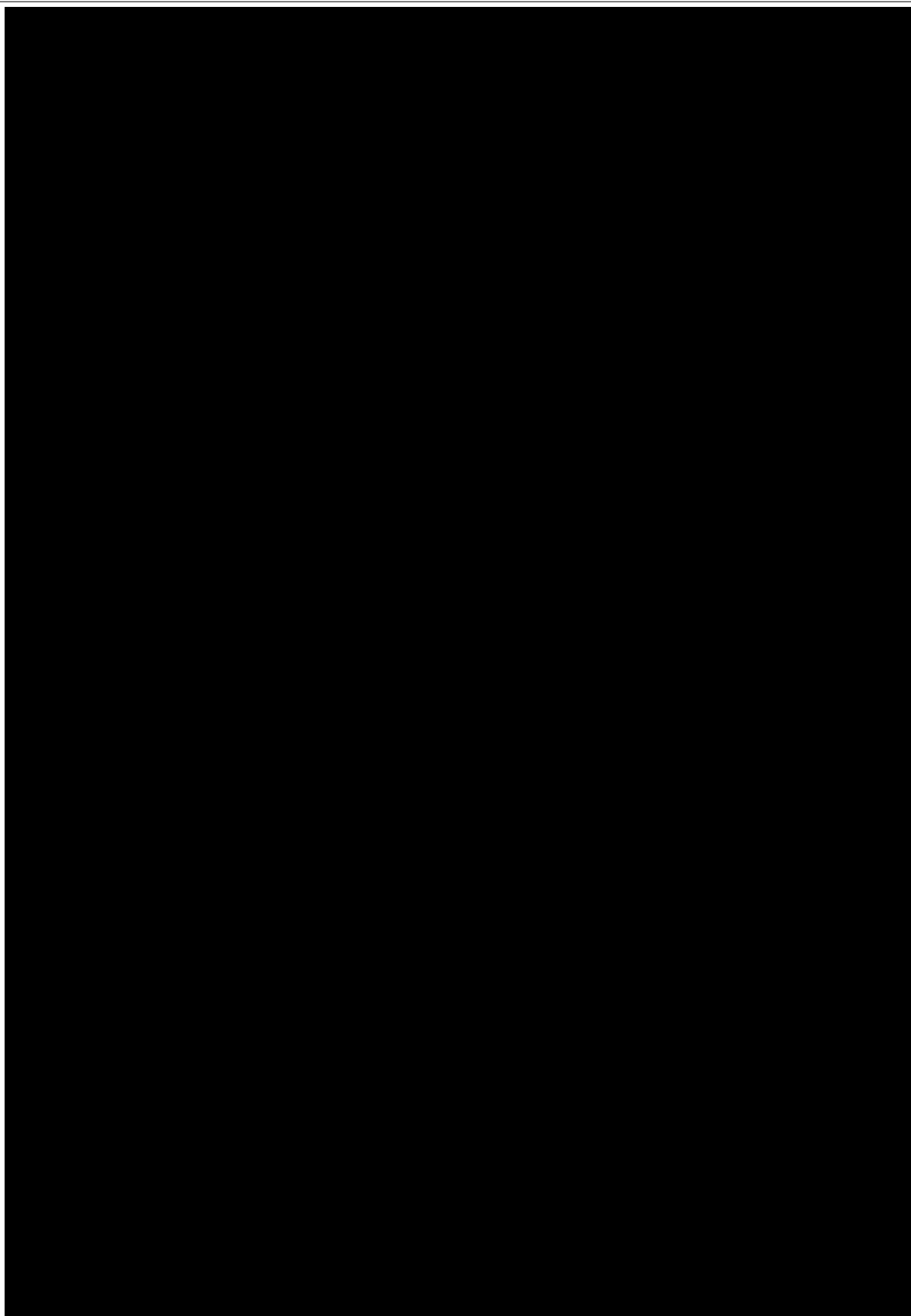
1 MR. MICALLEF: No, he answered another 15:40:06
2 question. 15:40:06
3 MR. HEINTZ: Either you ask another 15:40:06
4 question or I'm going to instruct him to stop 15:40:09
5 answering that question. So it is up to you. 15:40:11
6 BY MR. MICALLEF: 15:40:14
7 Q Does partitioning a visual display of 15:40:19
8 the device into an array of tiles require anything 15:40:26
9 other than displaying tiles in a row, column 15:40:31
10 format? 15:40:39
11 MR HEINTZ: Asked and answered. Are you 15:40:40
12 going to ask him another question or are we just 15:40:43
13 going to play this game. 15:40:46
14 MR. MICALLEF: Speaking objections can 15:40:48
15 stop now. 15:40:50
16 BY MR. MICALLEF: 15:40:51
17 Q Can I have an answer, sir? 15:40:52
18 MR. HEINTZ: I'm going to instruct him 15:40:53
19 not to answer. If you want to ask another 15:40:55
20 question, go right ahead. 15:40:59
21 BY MR. MICALLEF: 15:41:48

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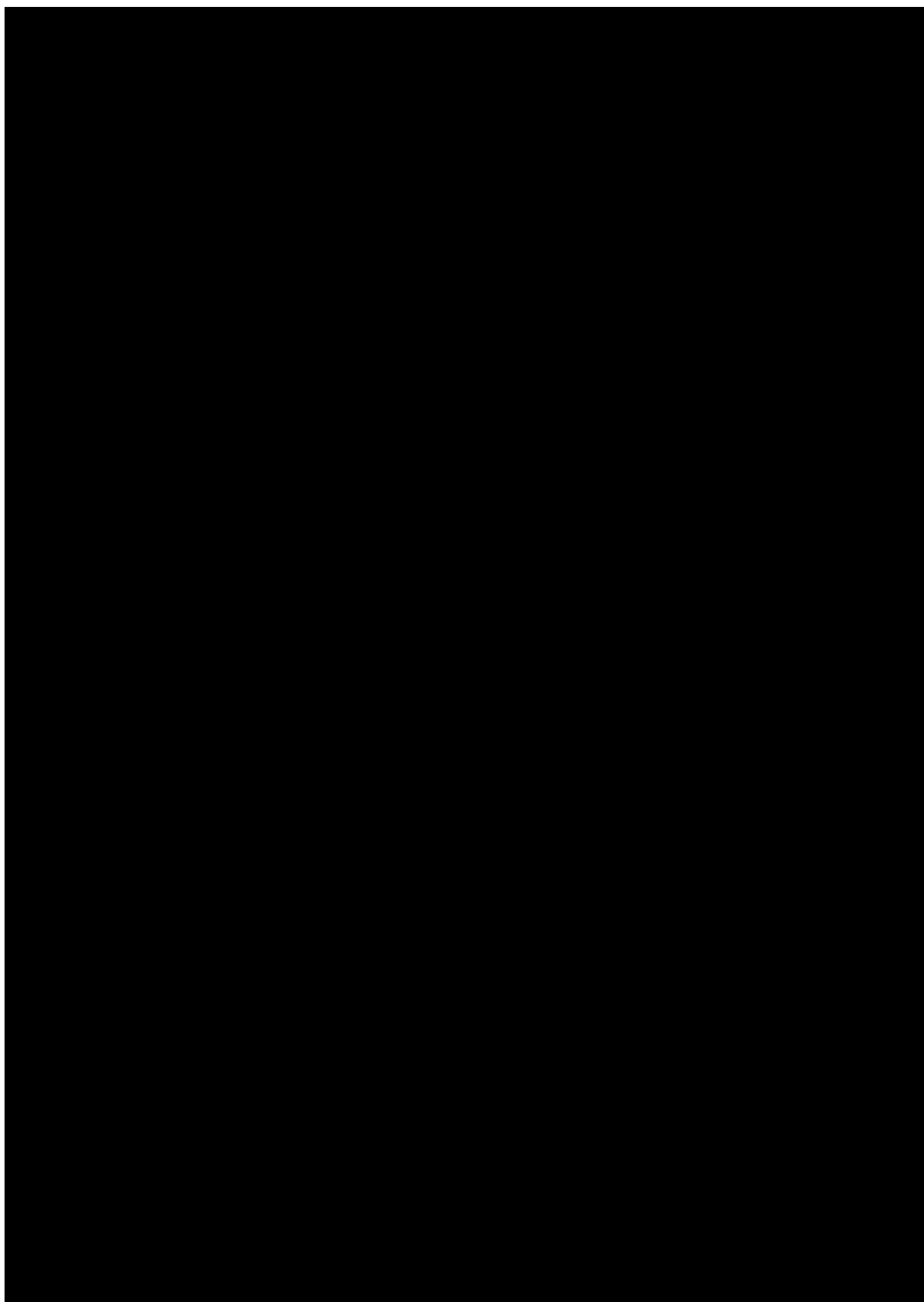
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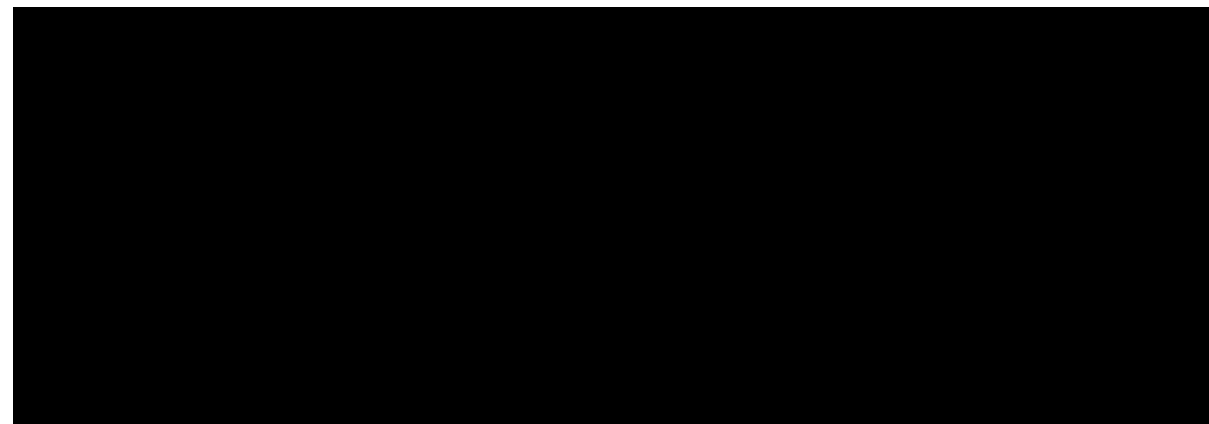
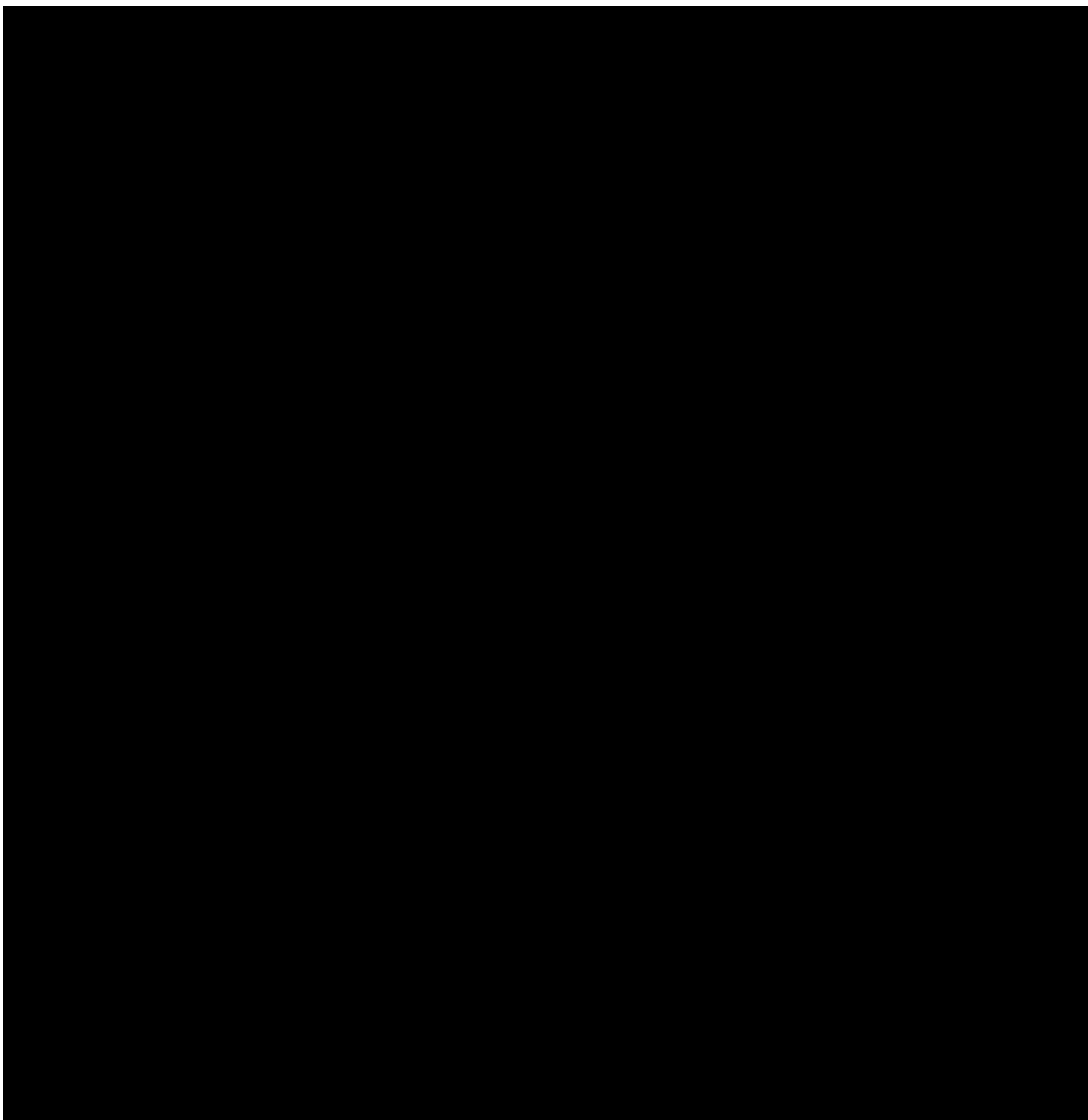
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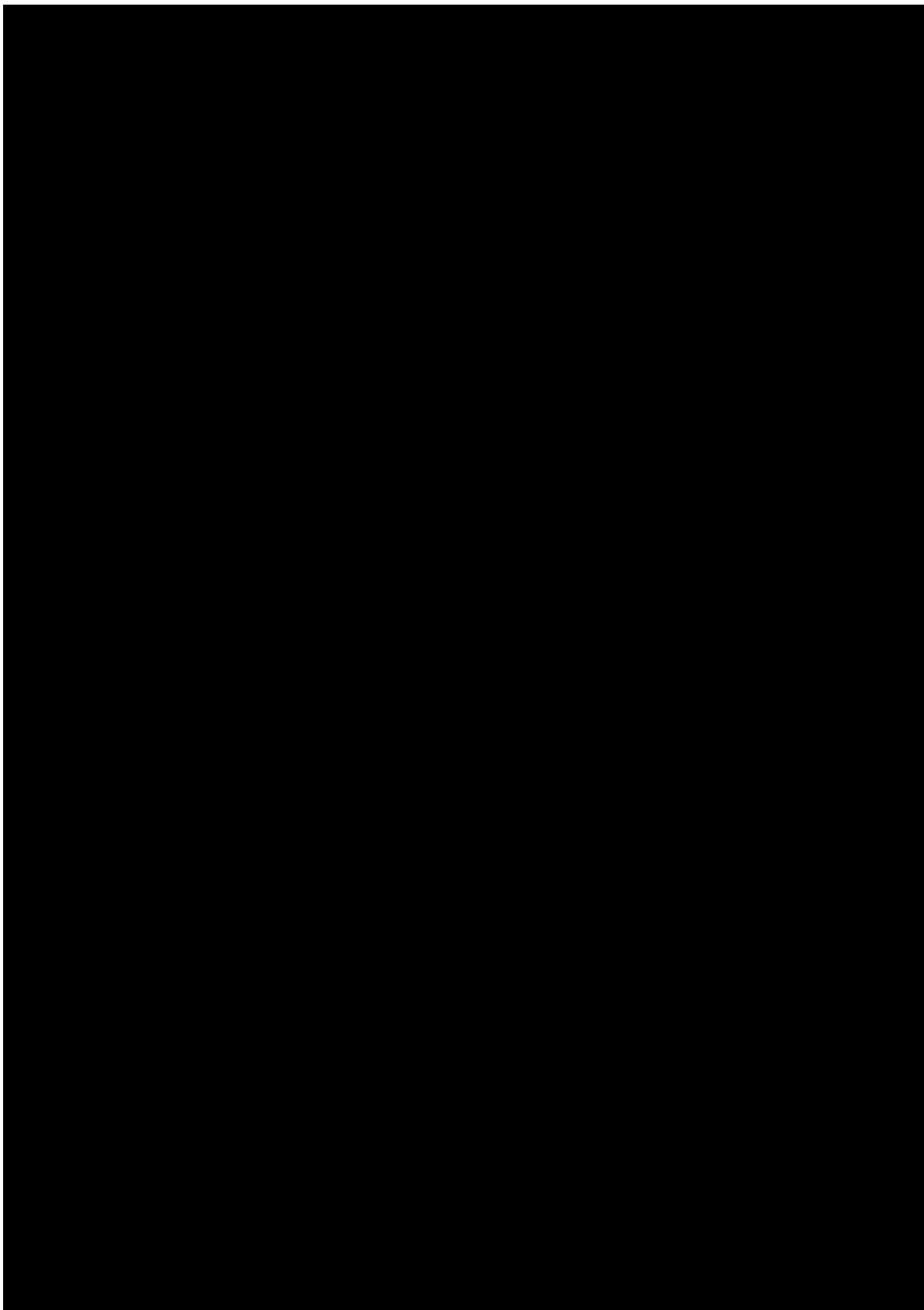
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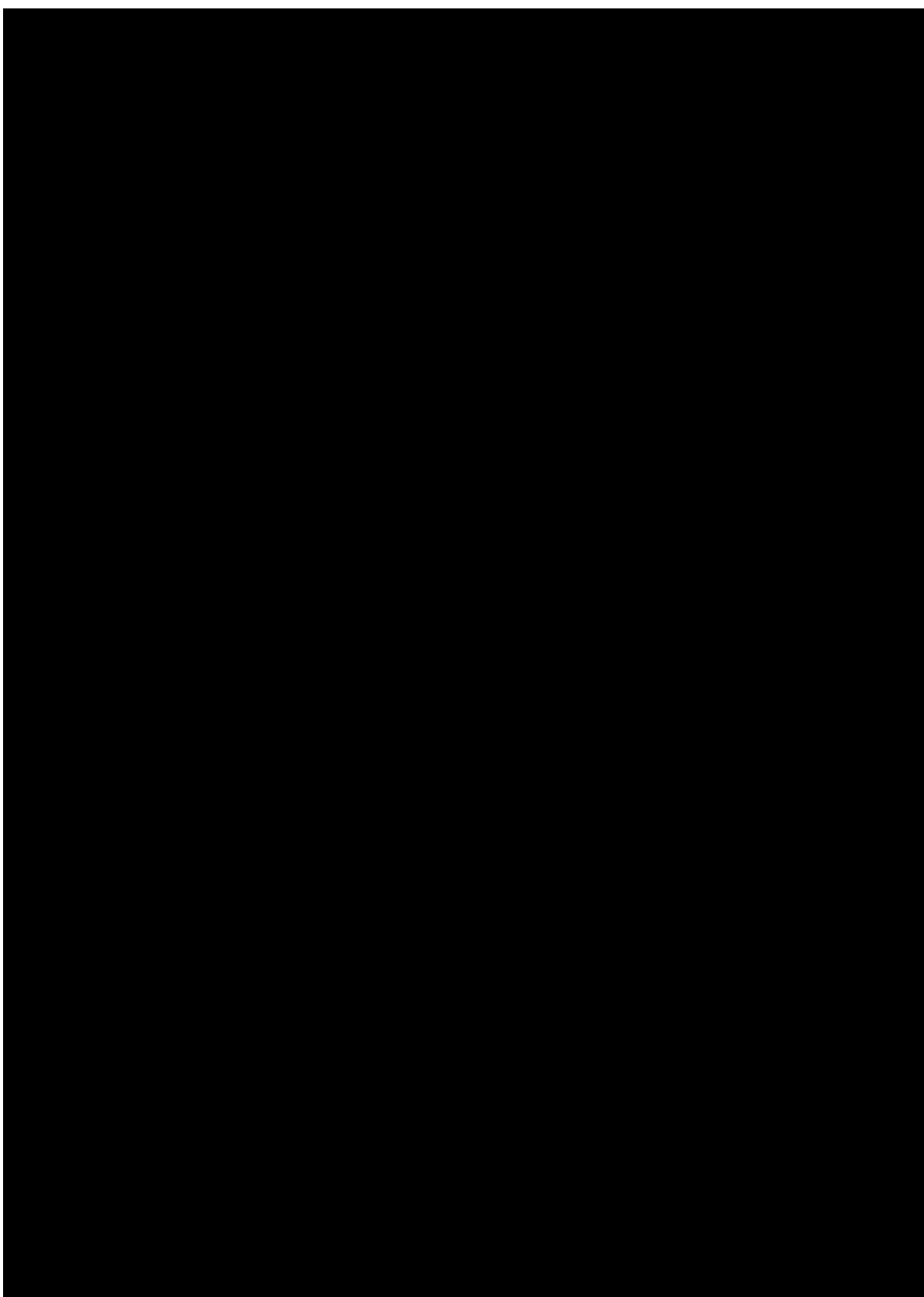
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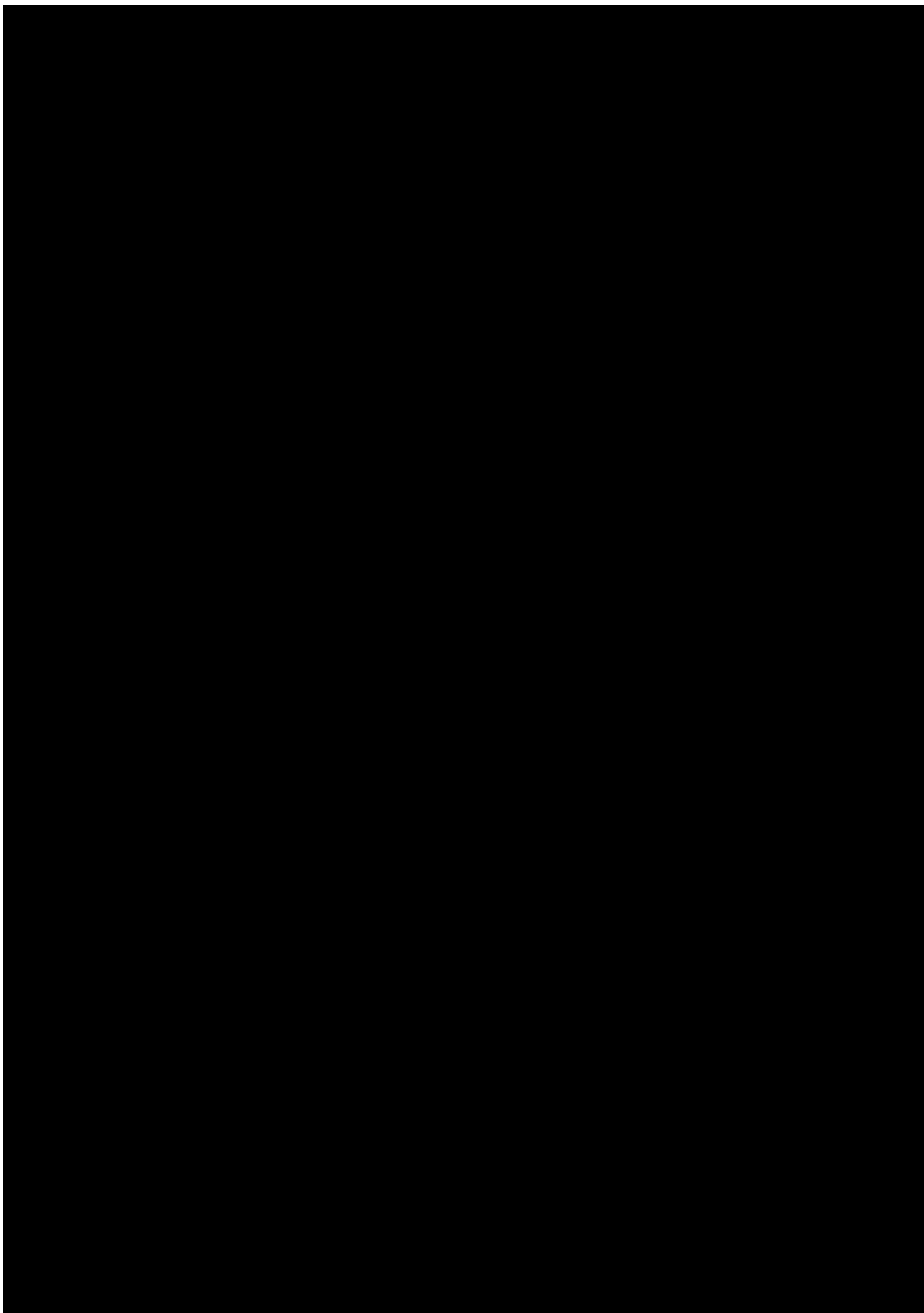
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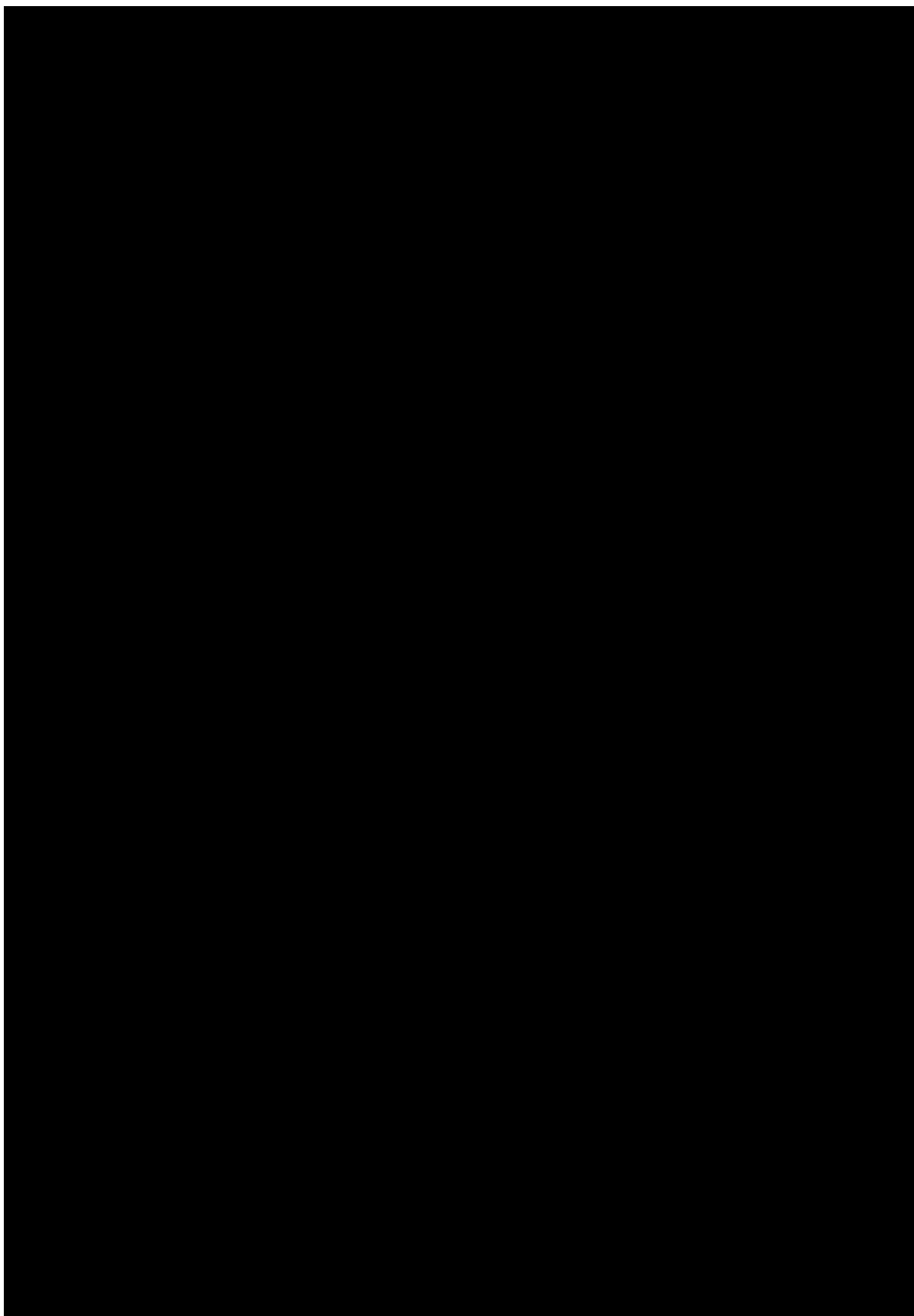
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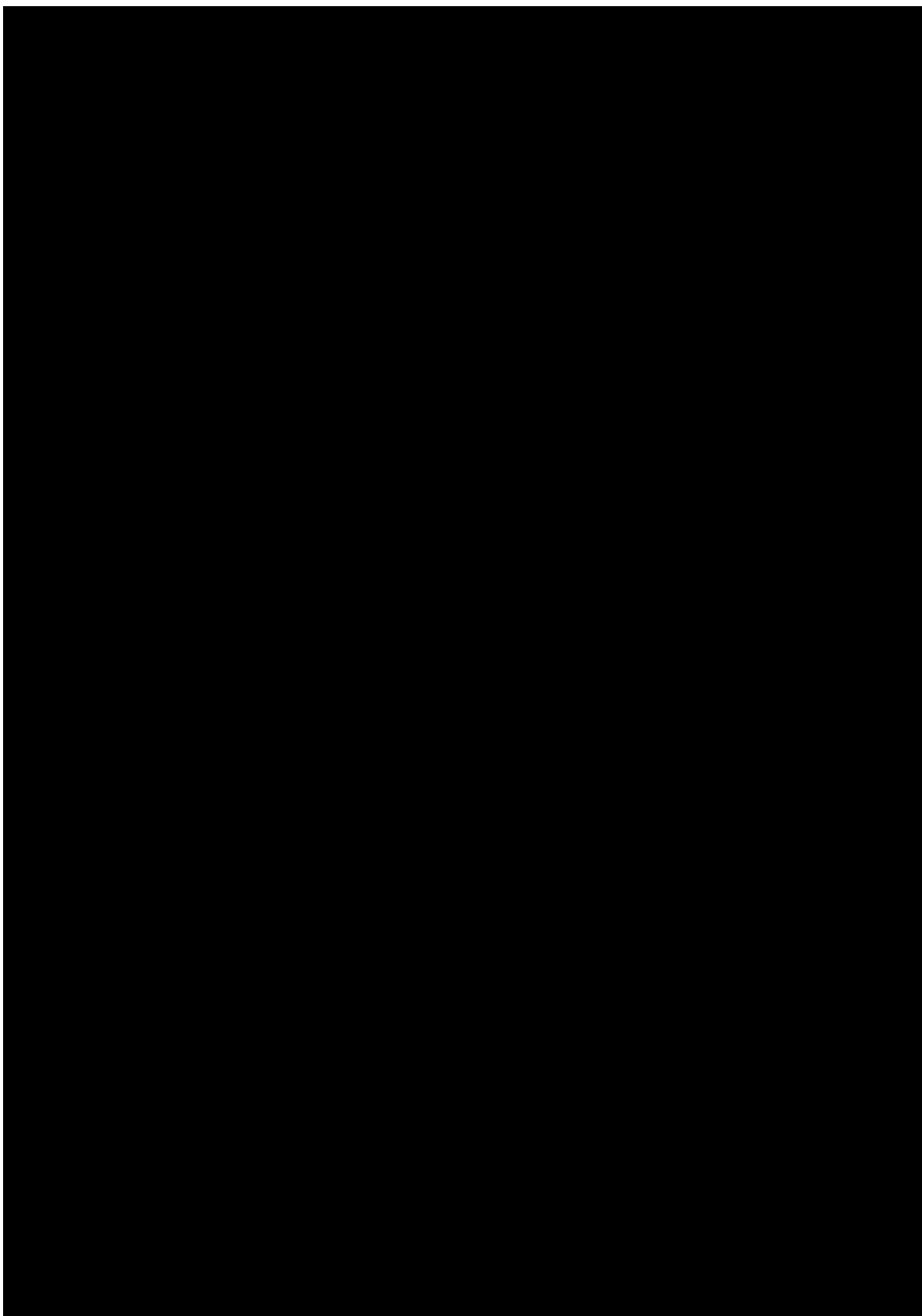
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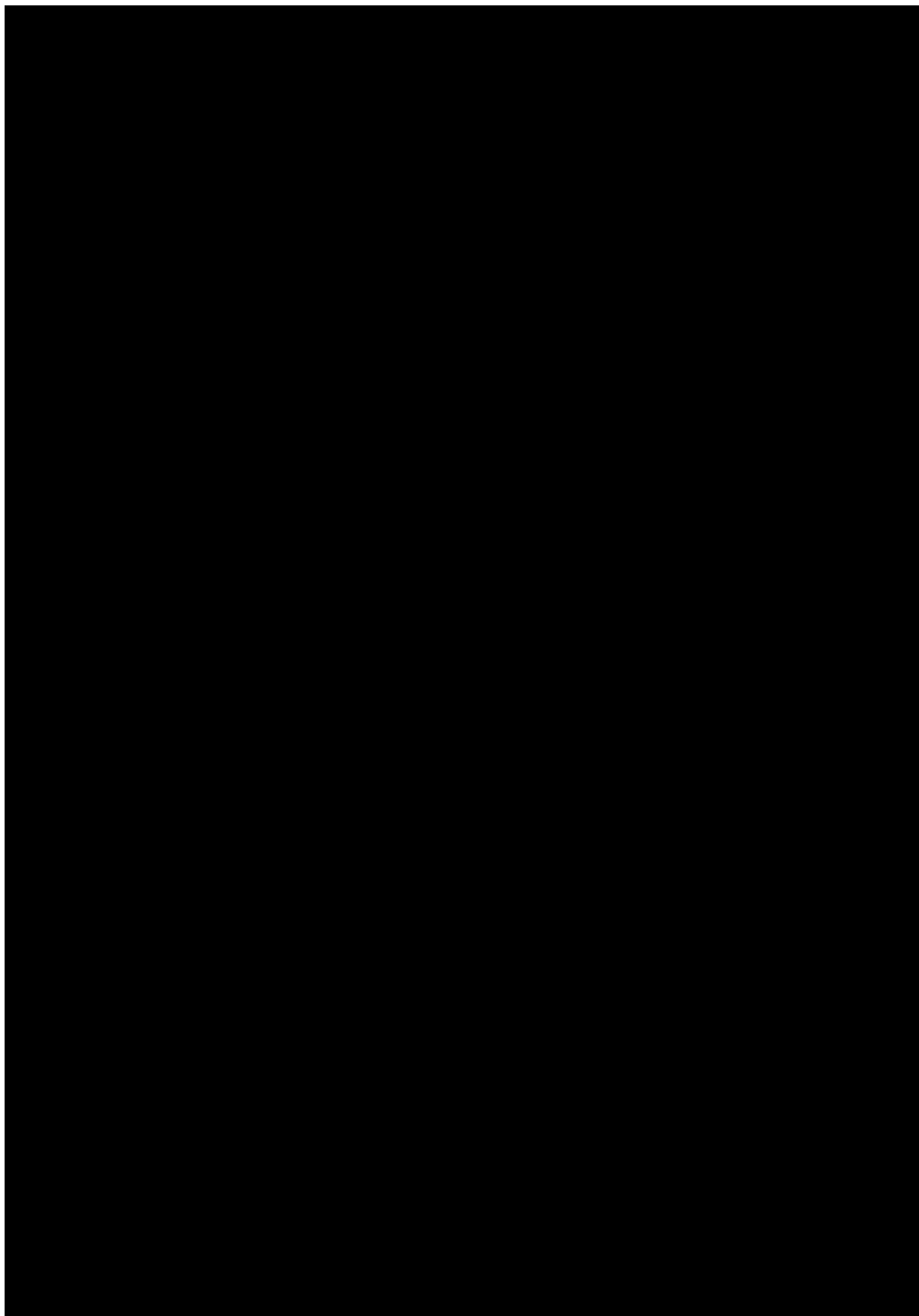
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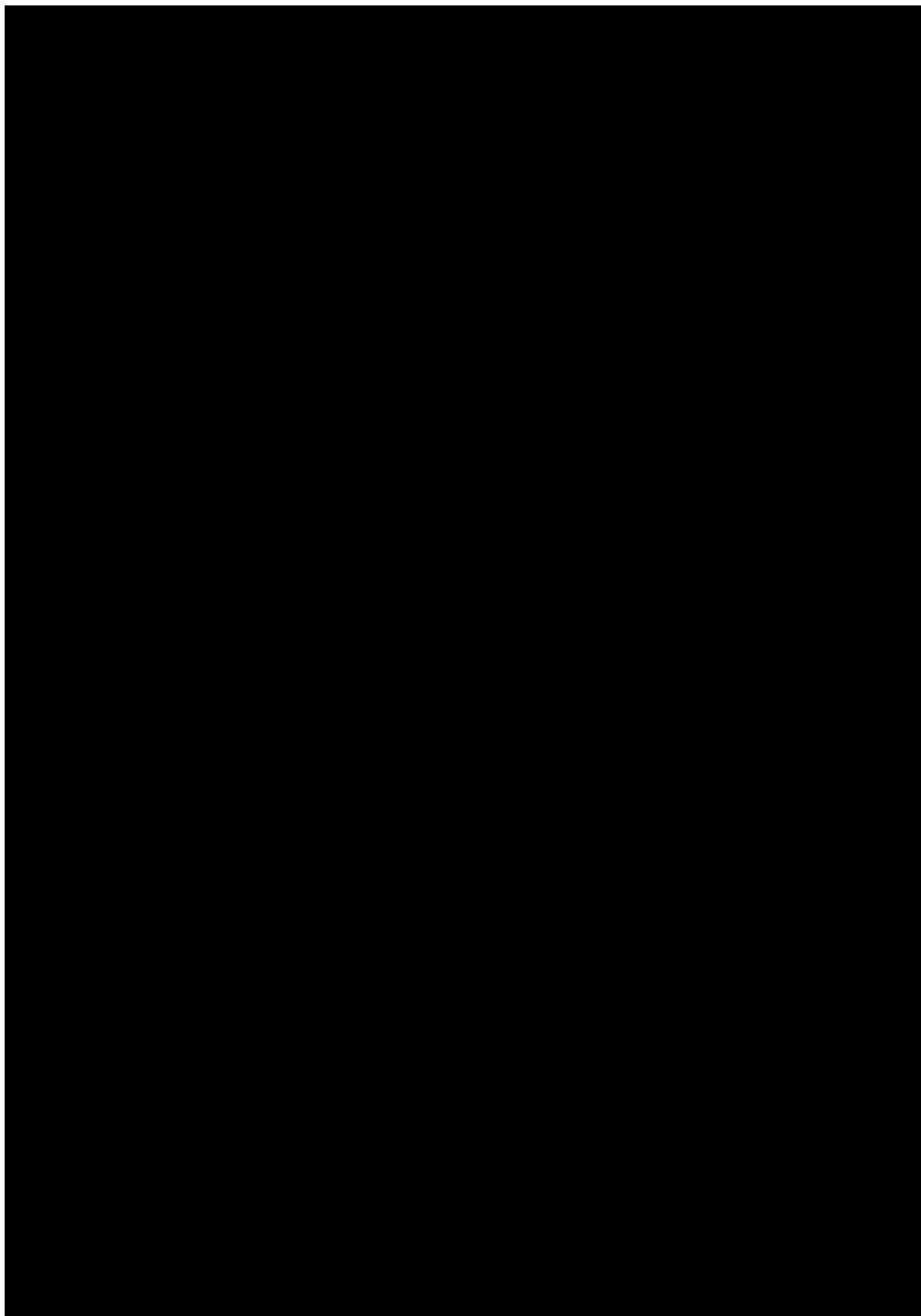
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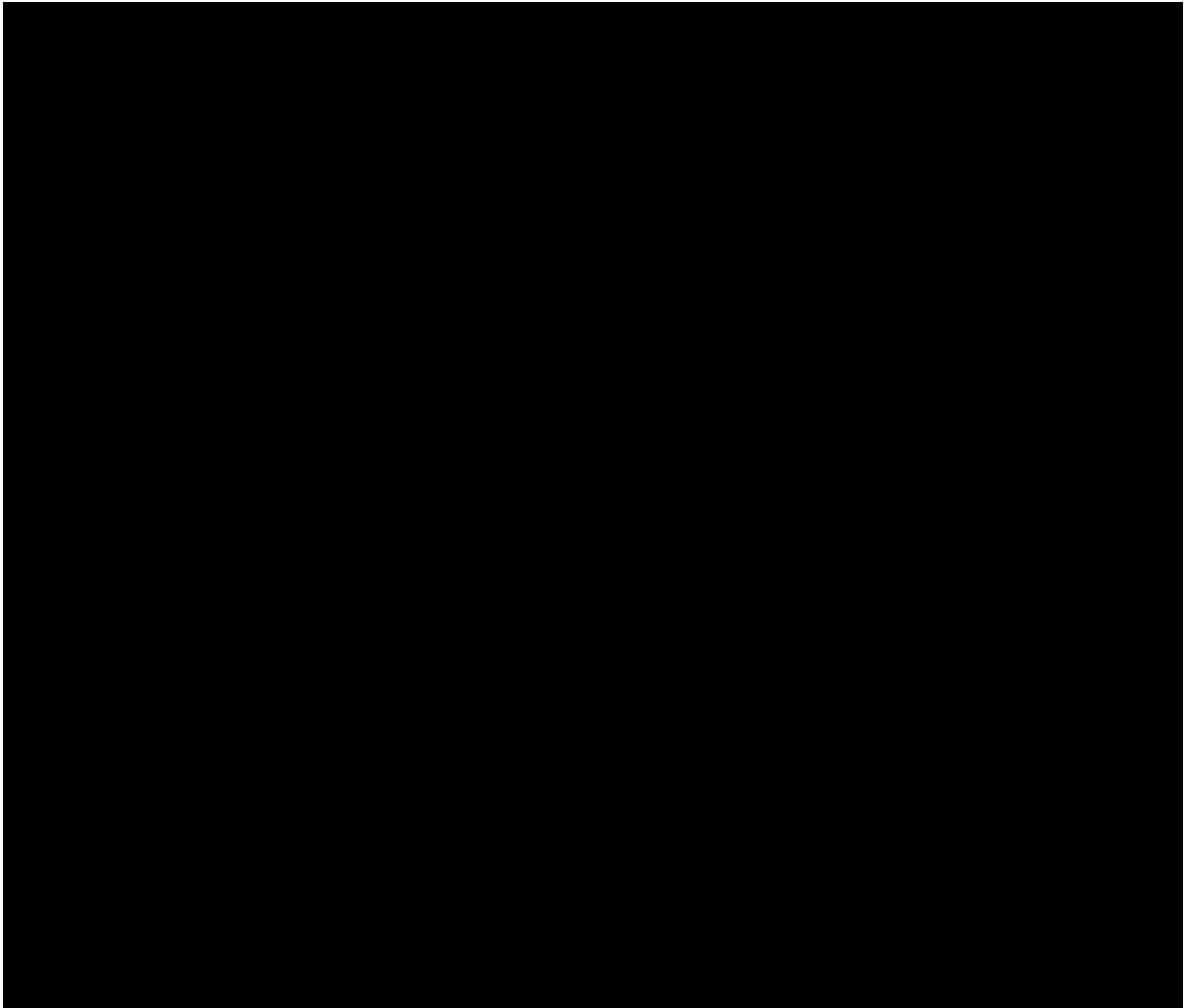
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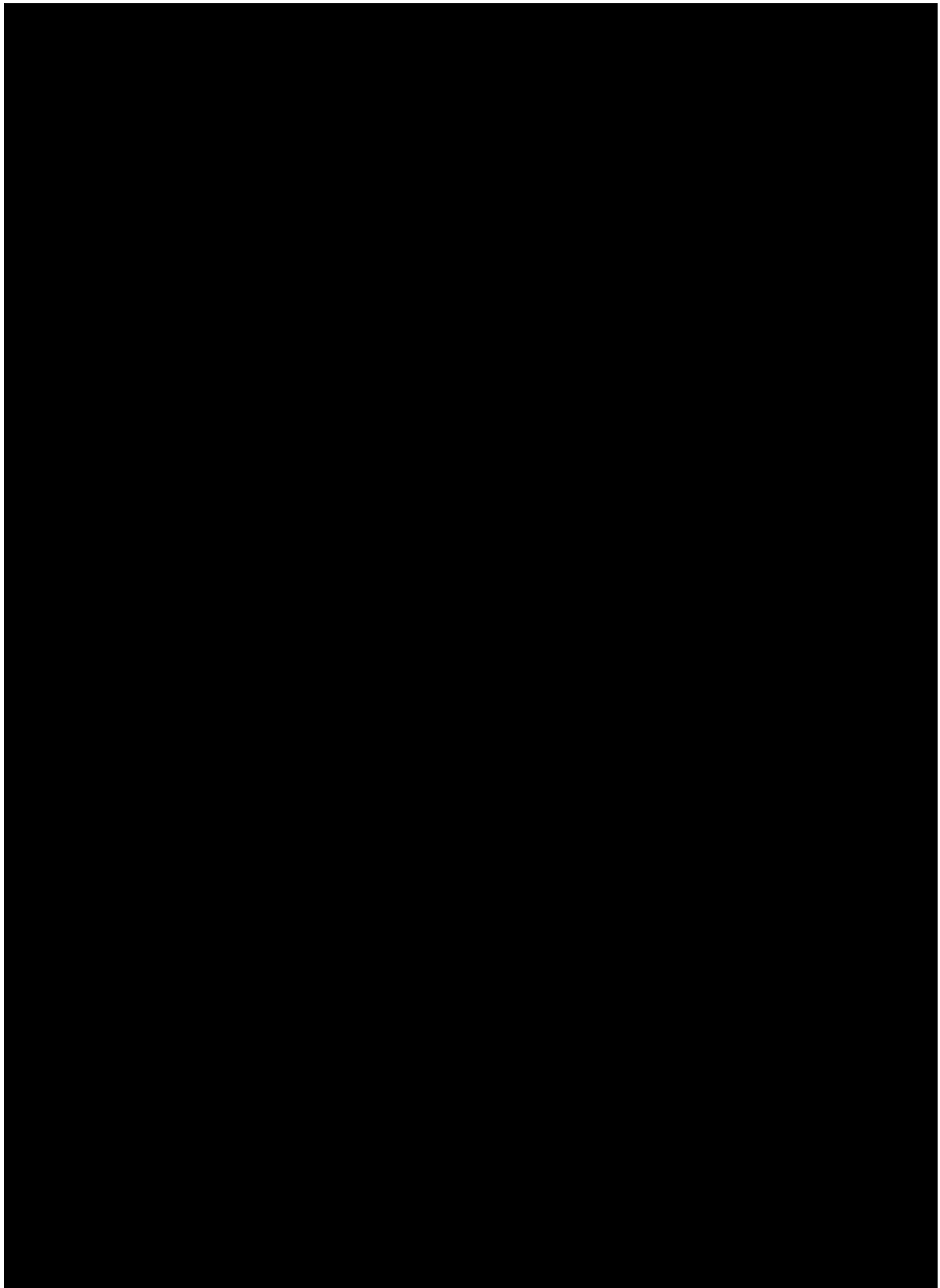


THE VIDEOGRAPHER: You are out of tape 16:01:42
in about 30 seconds. 16:01:43
MR. MICALLEF: I guess we have got to go 16:01:45
off of the record. 16:01:47
THE VIDEOGRAPHER: Going off of the 16:01:48
record at 4:01 p.m. and 40 seconds. 16:01:48
(The proceedings recessed from 4:01 p.m. 16:01:49
to 4:08 p.m.) 16:01:49
THE VIDEOGRAPHER: Back on the record at 16:09:08
4:08 p.m. 16:09:09

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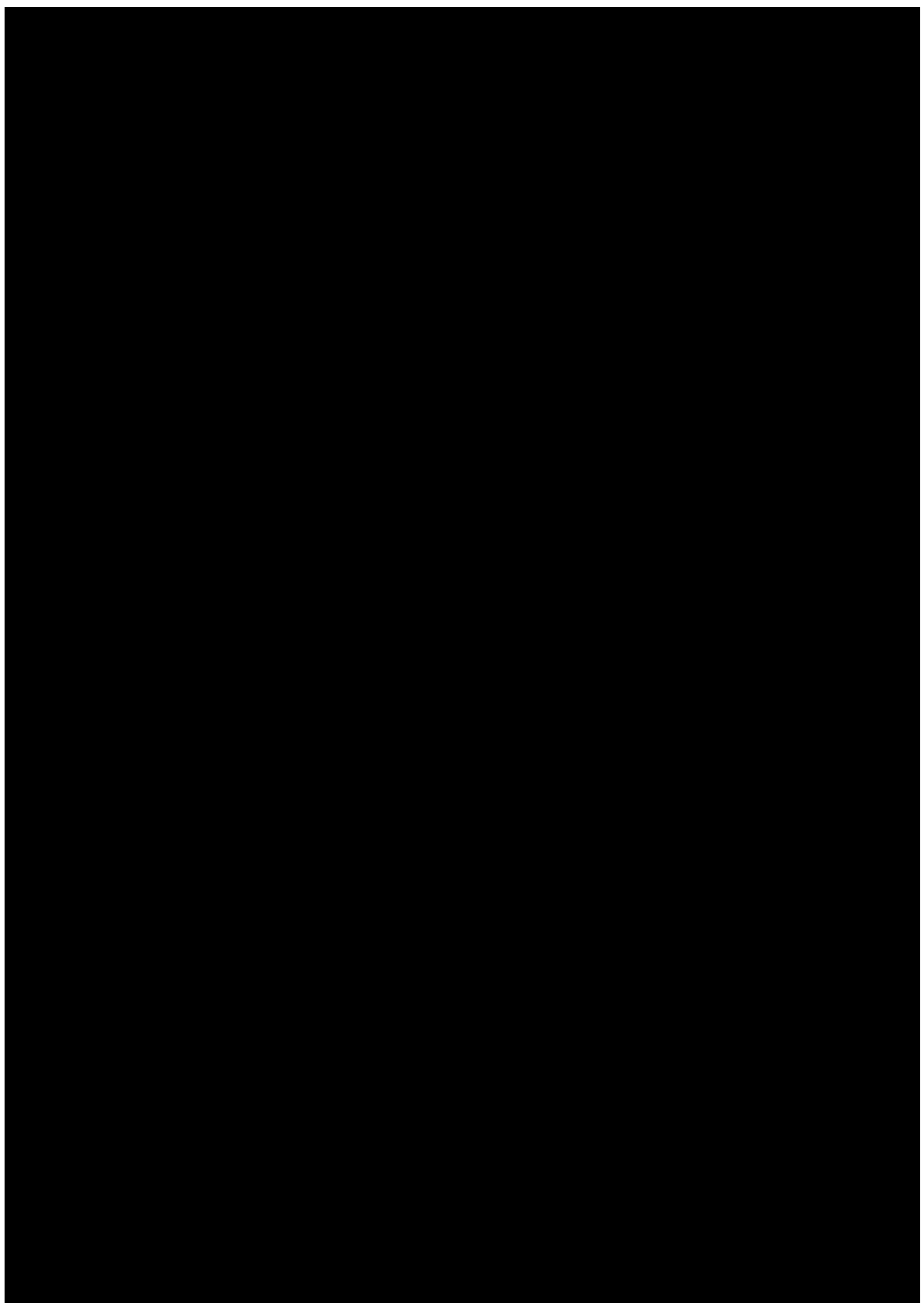
BY MR. MICALLEF:

16:09:13

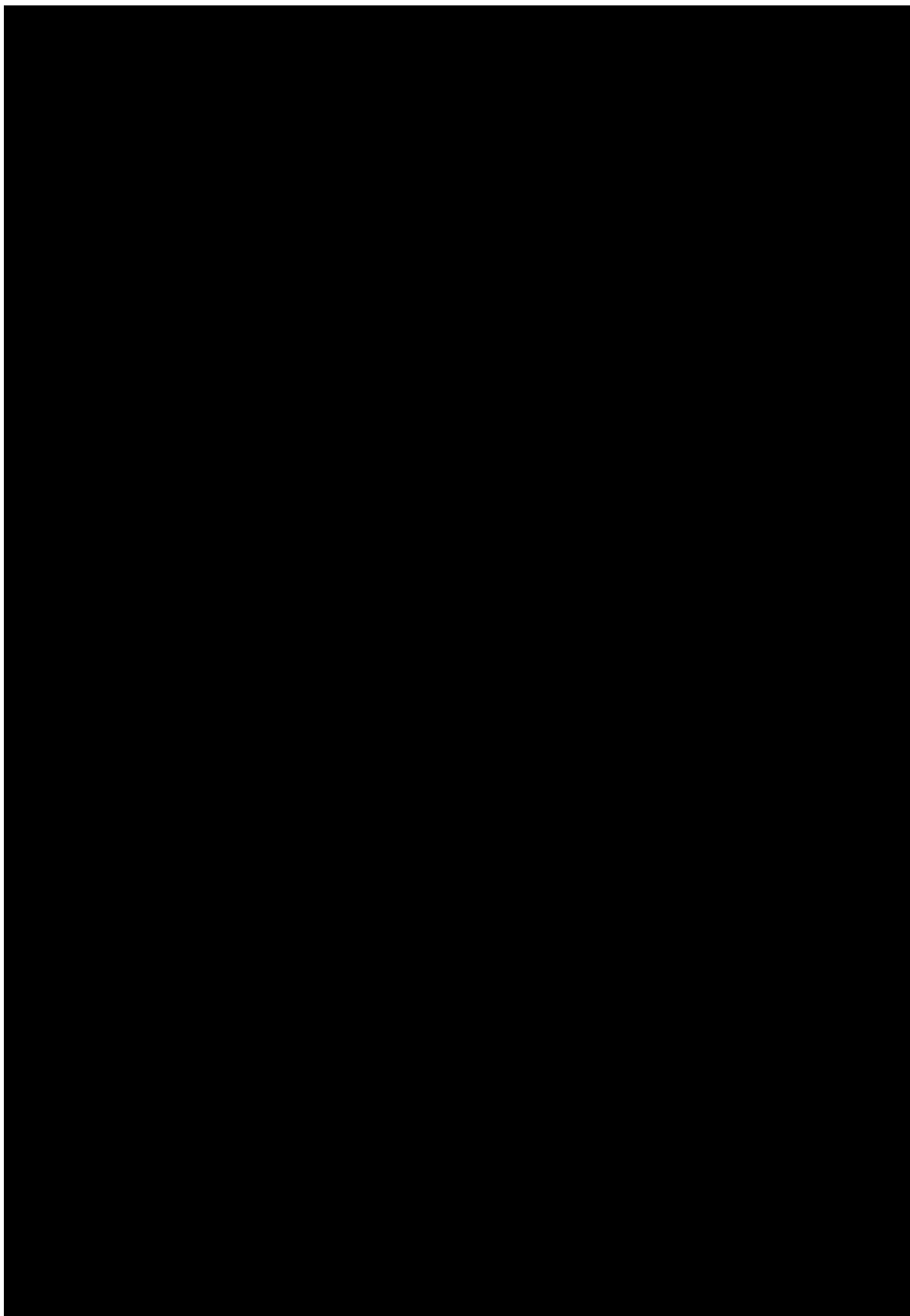


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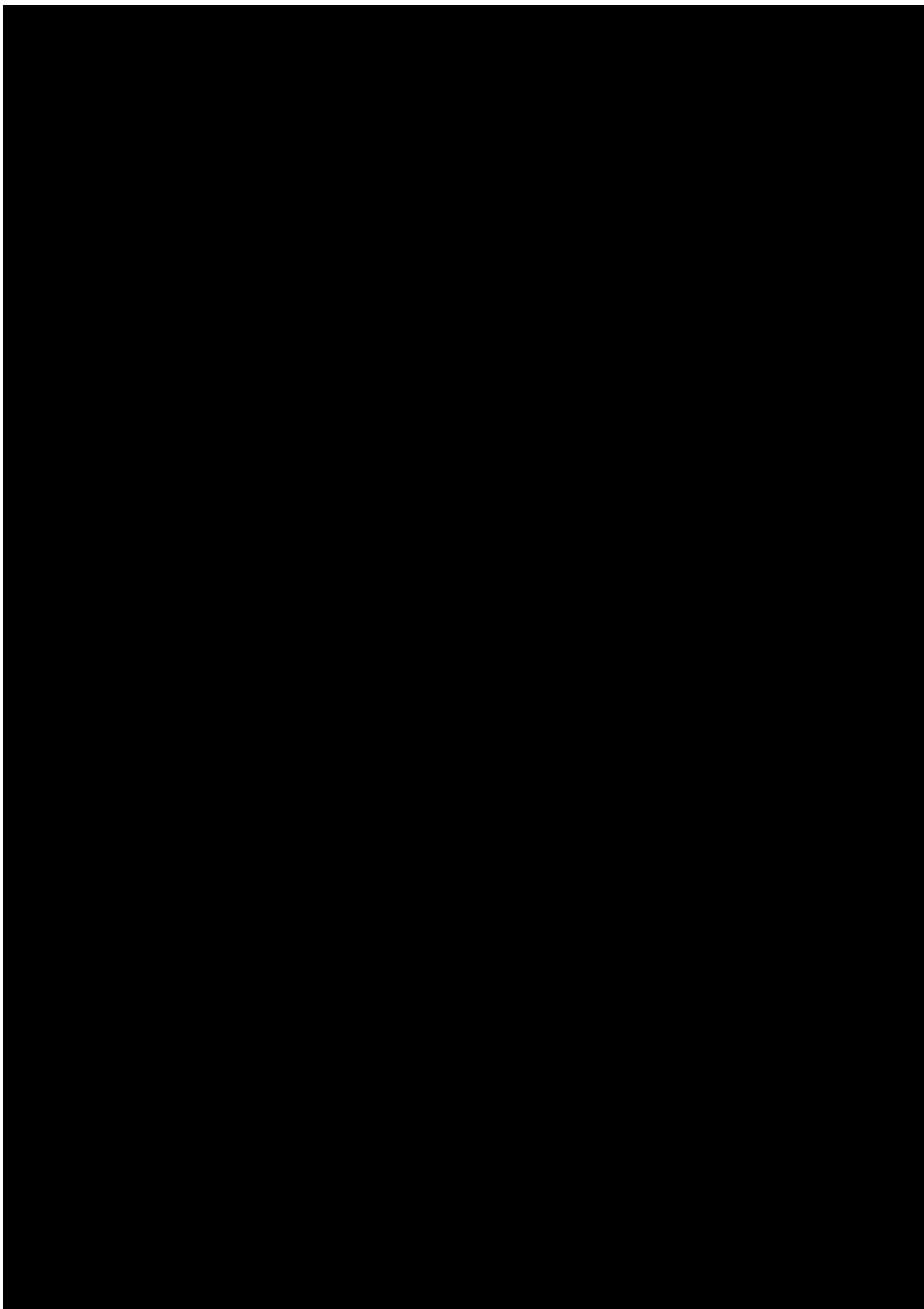
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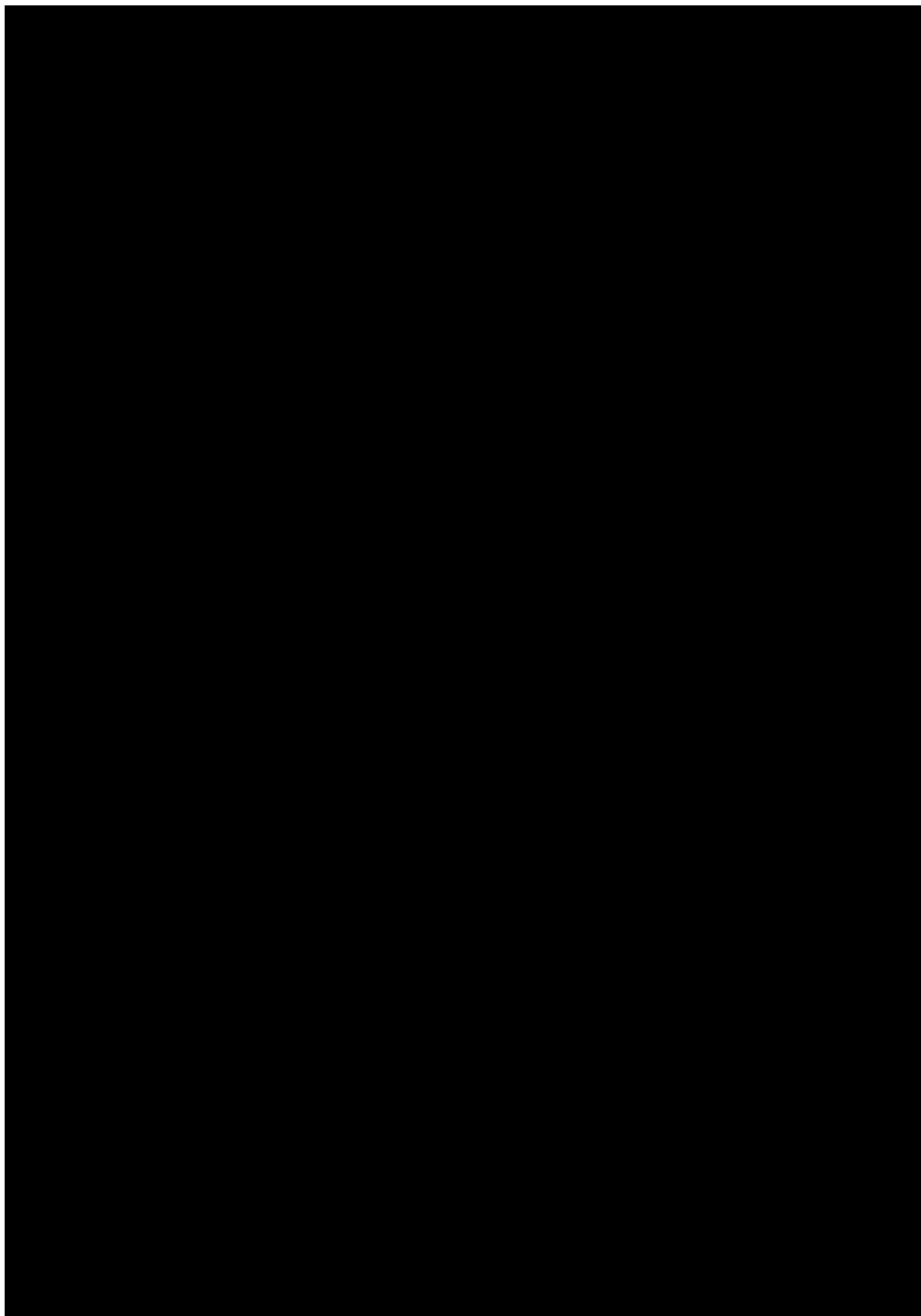
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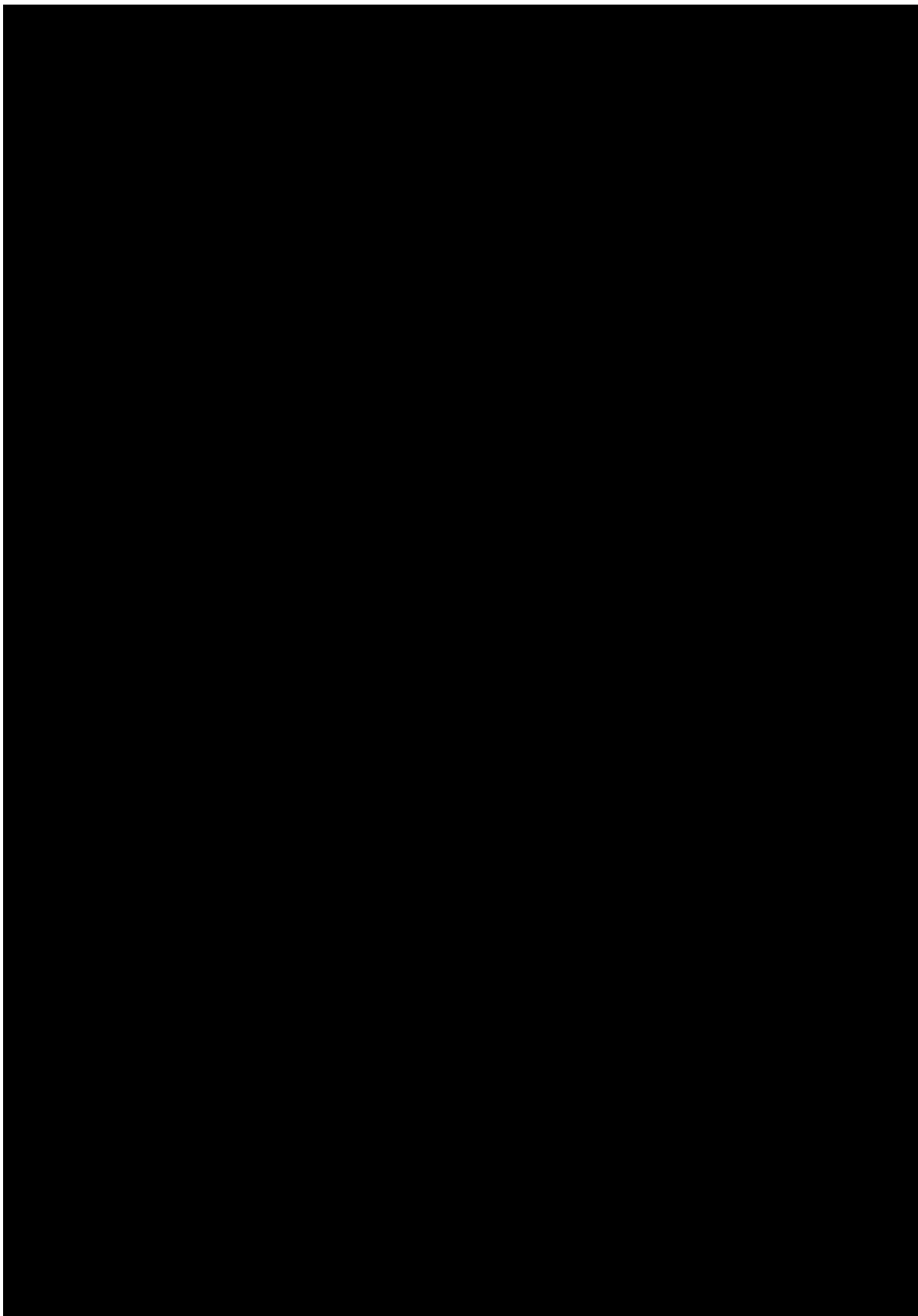
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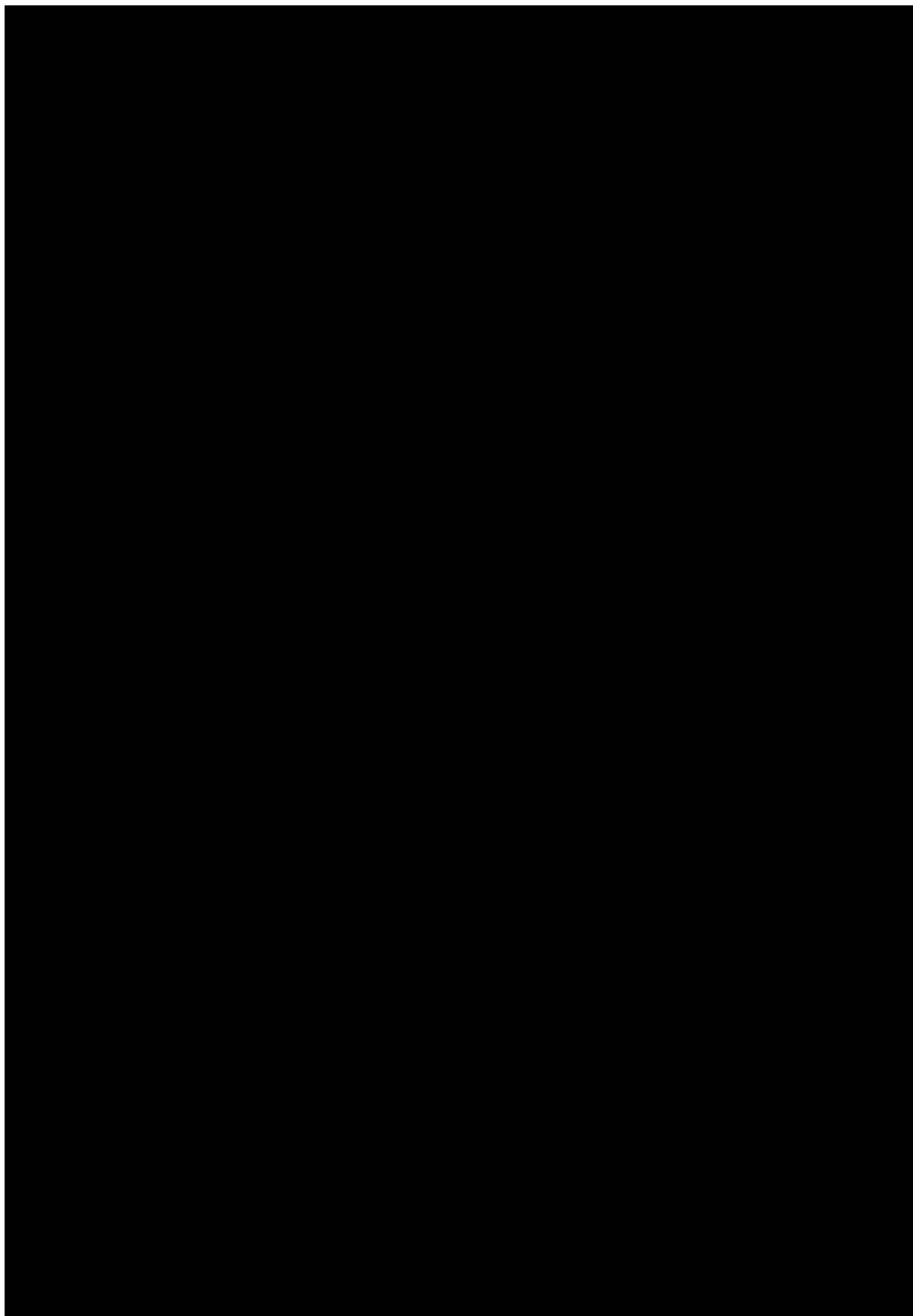
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MR. MICALLEF: I'm going to ask the 16:18:47
court reporter to mark as Exhibit 25 a document 16:18:48
Bates labeled MC_SurfCast_000256994 and have you 16:18:53
take a look at it. 16:19:01
(Whereupon, Exhibit 25 was marked 16:53:40
for identification) 16:53:40
MR. MICALLEF: In fact, while you are 16:53:41
looking at that I'm going to have the court 16:19:41
reporter mark as Exhibit 26 a document labeled 16:19:43
MS_SurfCast_000256996. And I will ask her to mark 16:19:47
as Exhibit 27 a document Bates labeled, 16:19:57
MC_SurfCast_000256989. And you can look at all 16:20:00
three of them at the same time if you want. 16:20:09
(Whereupon, Exhibit 26 was marked 16:53:40
for identification) 16:53:40
(Whereupon, Exhibit 27 was marked 16:53:40
for identification) 16:53:40
BY MR. MICALLEF: 16:20:54
Q Mr. Lagermann, let's begin with 16:20:55

1	Exhibit 25 which appears to be an email that you	16:20:58
2	sent to Richard Bone. Is that correct?	16:21:01
3	A Yes.	16:21:05
4	Q Do you recall that email?	16:21:07
5	A Yes.	16:21:08
6	Q What led you to send that email?	16:21:08
7	A That Mr. Bone contacted me for some	16:21:12
8	services that he needed from me and signing some	16:21:23
9	documents.	16:21:26
10	Q For the patent office, documents for the	16:21:29
11	patent office?	16:21:31
12	A As I recall it was something called a	16:21:33
13	declaration.	16:21:36
14	Q I note for the record that Exhibits 25,	16:21:39
15	26 and 27 are redacted. Microsoft did not redact	16:21:43
16	these documents. These documents come from the	16:21:48
17	Records and patent Office. They were apparently	16:21:49
18	submitted by Mr. Bone in redacted form. I want to	16:21:52
19	ask you about -- well first of all, on Exhibit 25	16:21:59
20	which is dated December 10, 2008 was Mr. Bone your	16:22:05
21	lawyer?	16:22:08
22	A I had left SurfCast. I knew he was	16:22:15
23	SurfCast's lawyer. So I think that does not make	16:22:18
24	him my lawyer.	16:22:22
25	Q You never retained him, did you?	16:22:23

1	A	No.	No.	16:22:25
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2	Q	On Exhibit 25 the first sentence you	16:22:27
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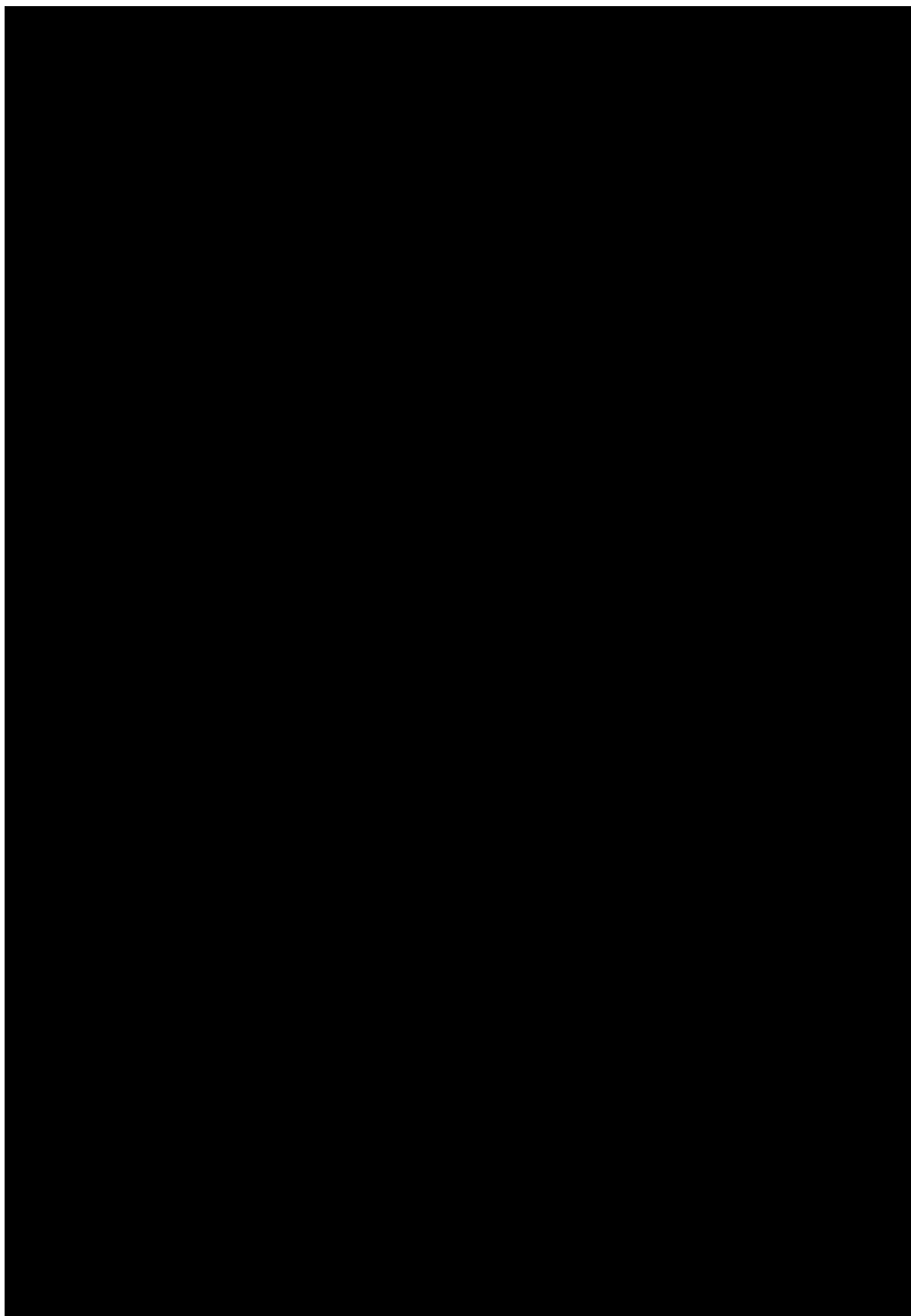
3	say; I did contact -- and then the next word is	16:22:31
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4 | redacted. Can you tell me what is redacted there? 16:22:34

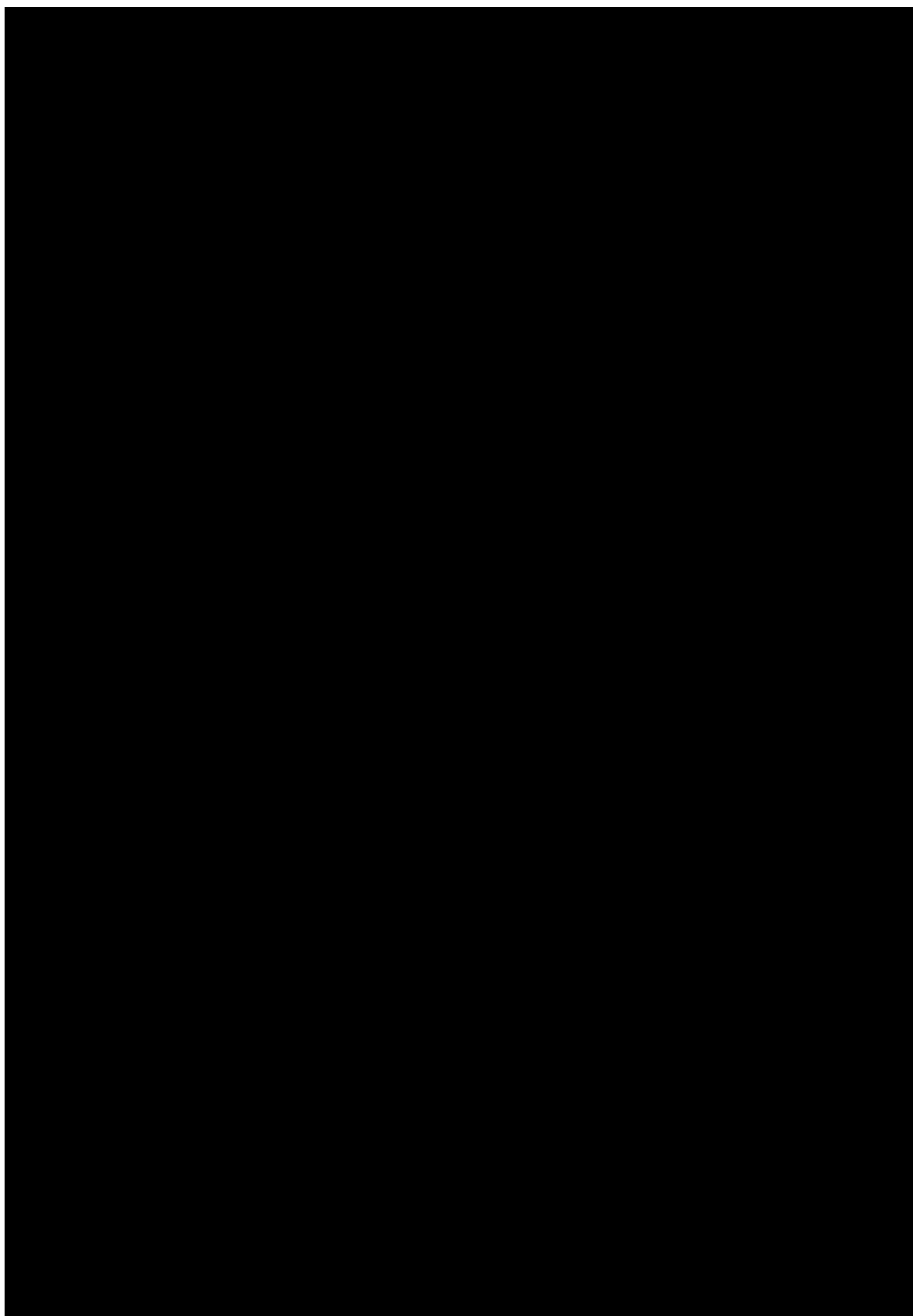
5	A	Ovid.	16:22:49
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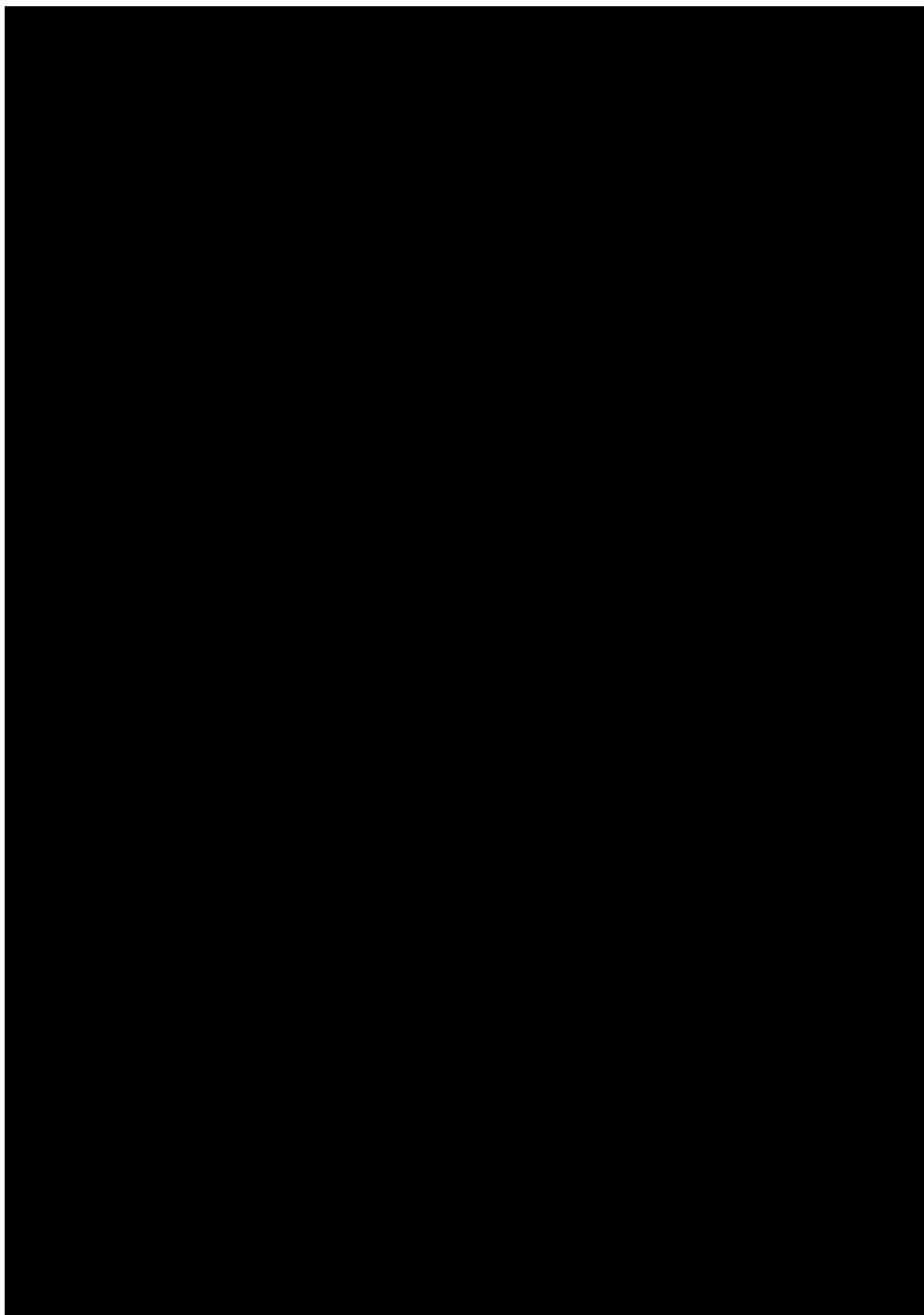
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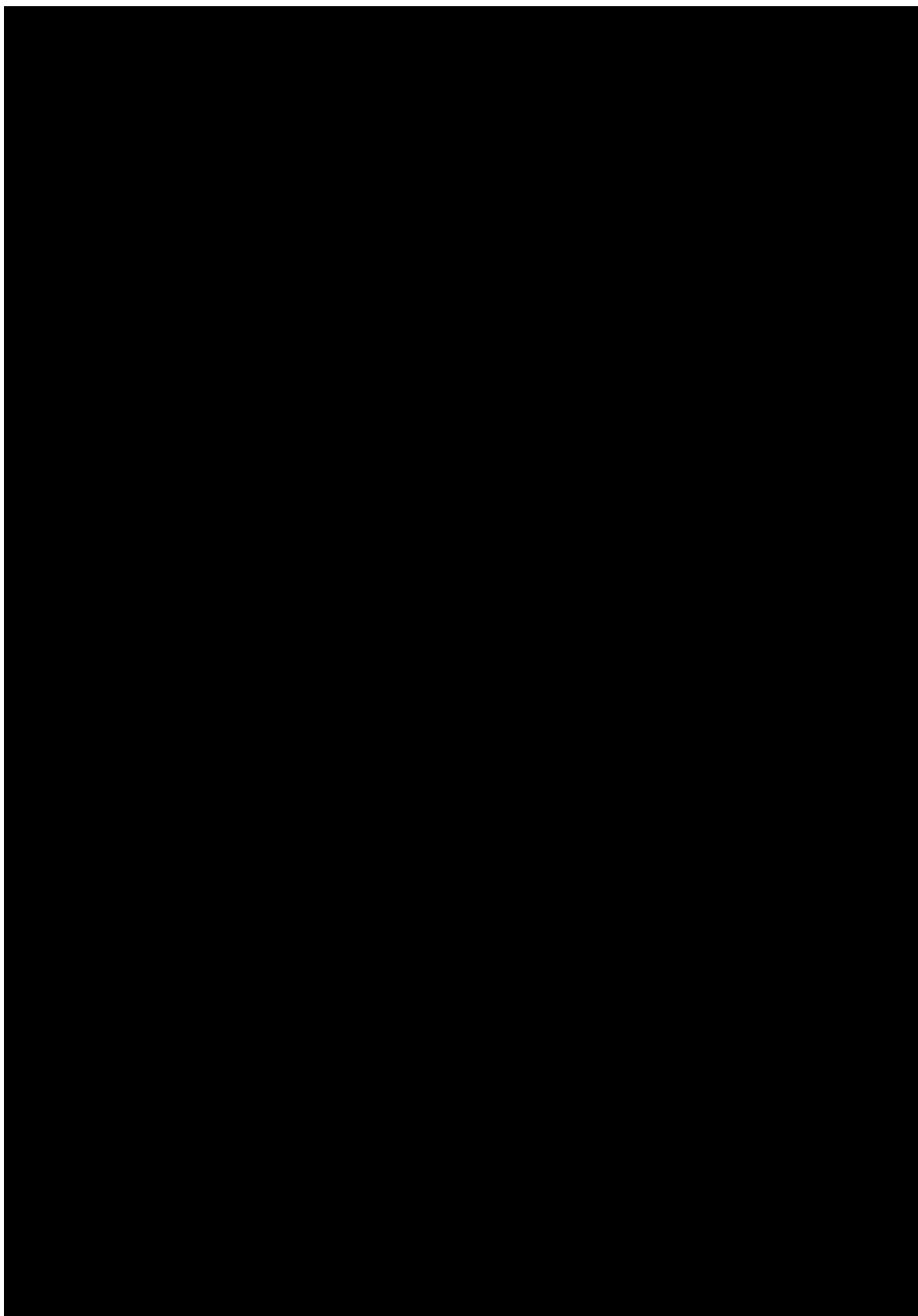
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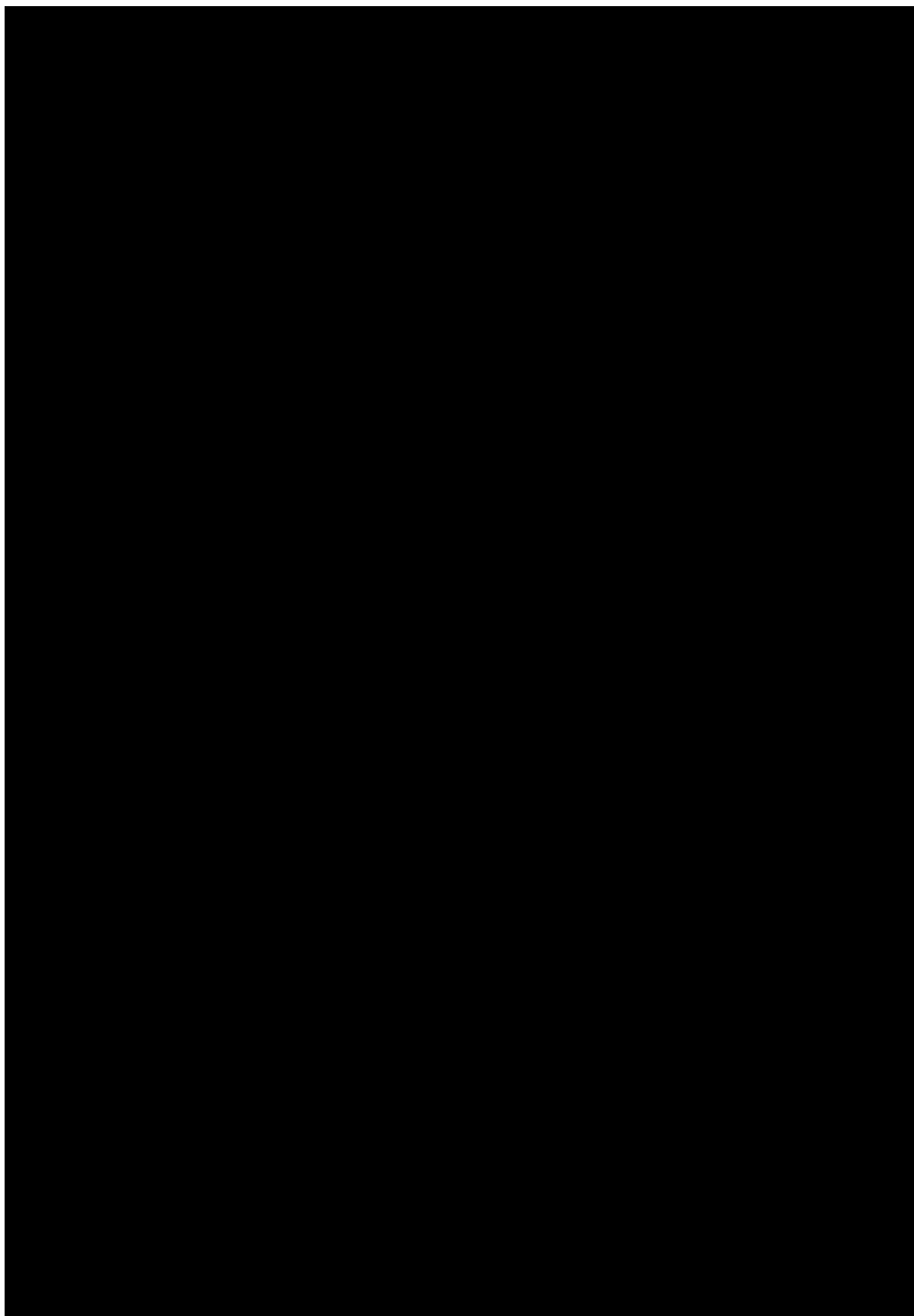
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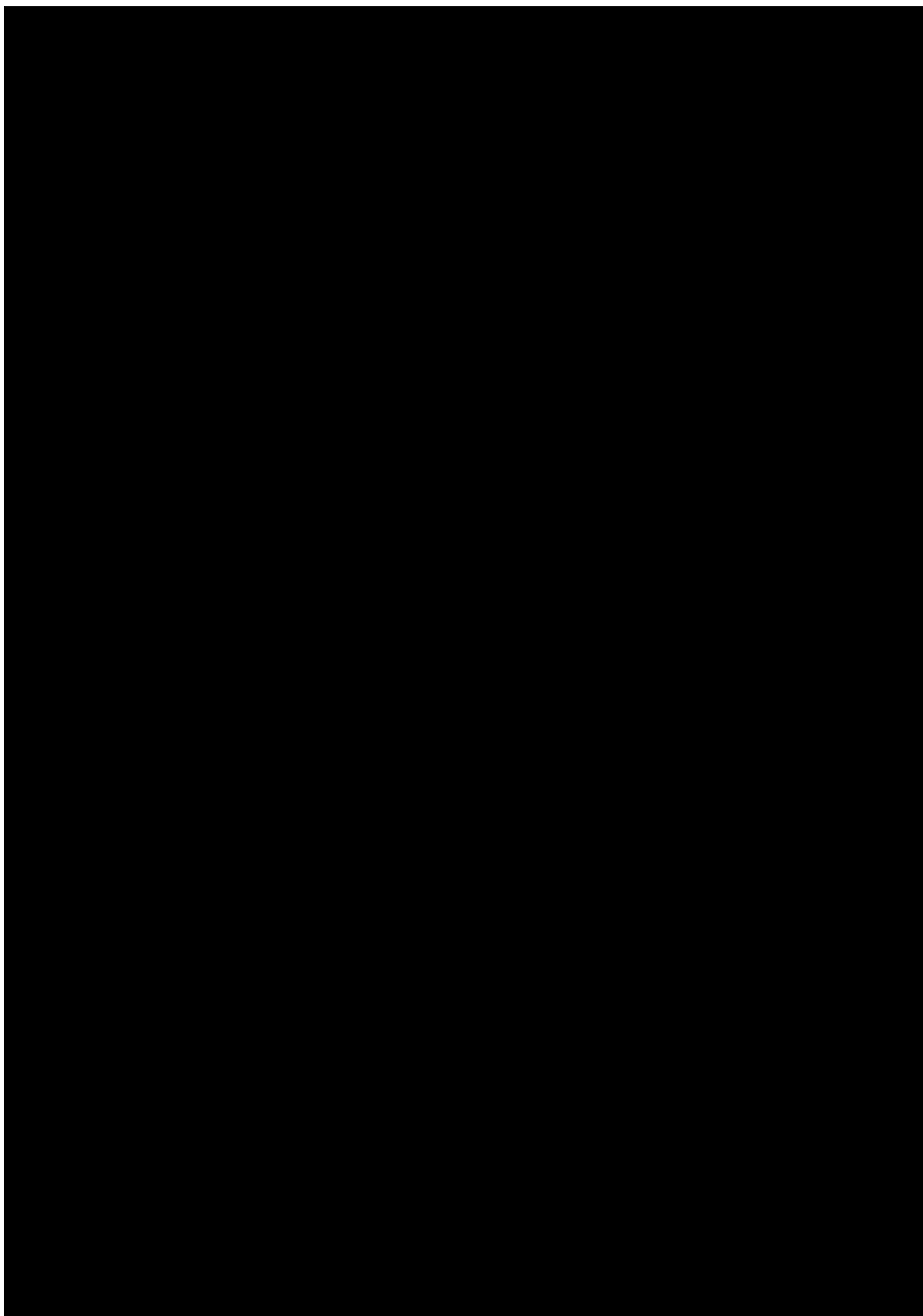
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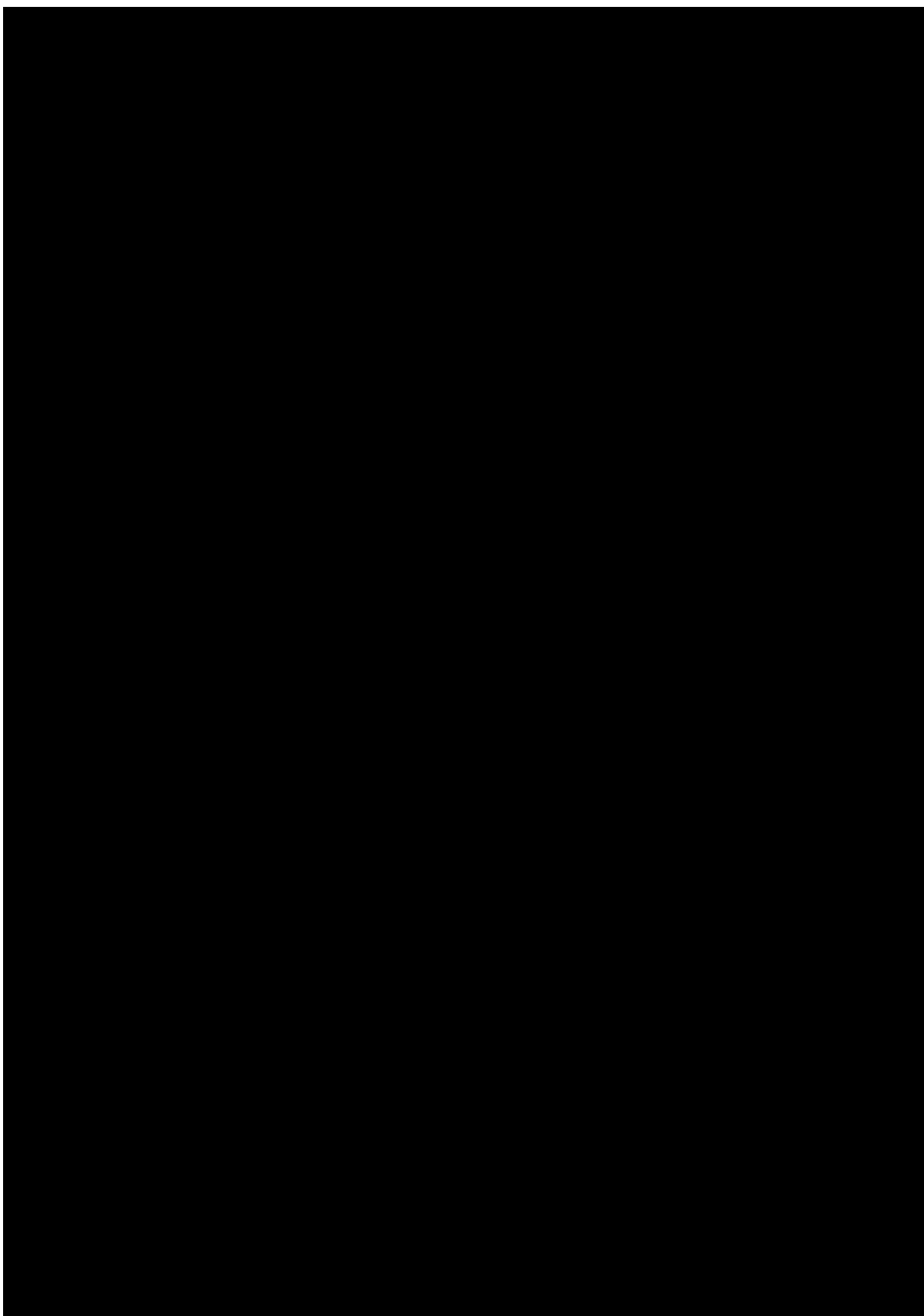
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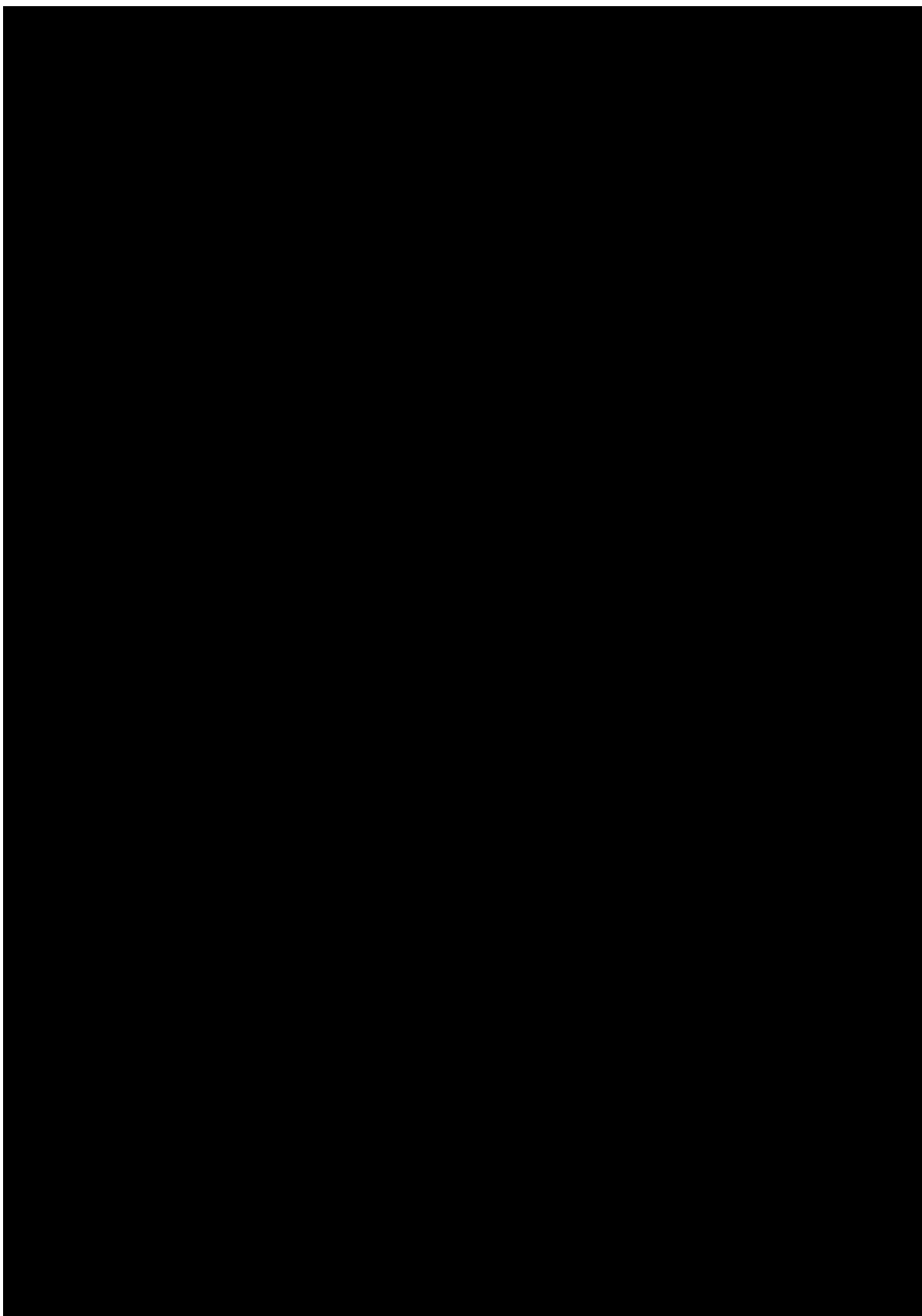
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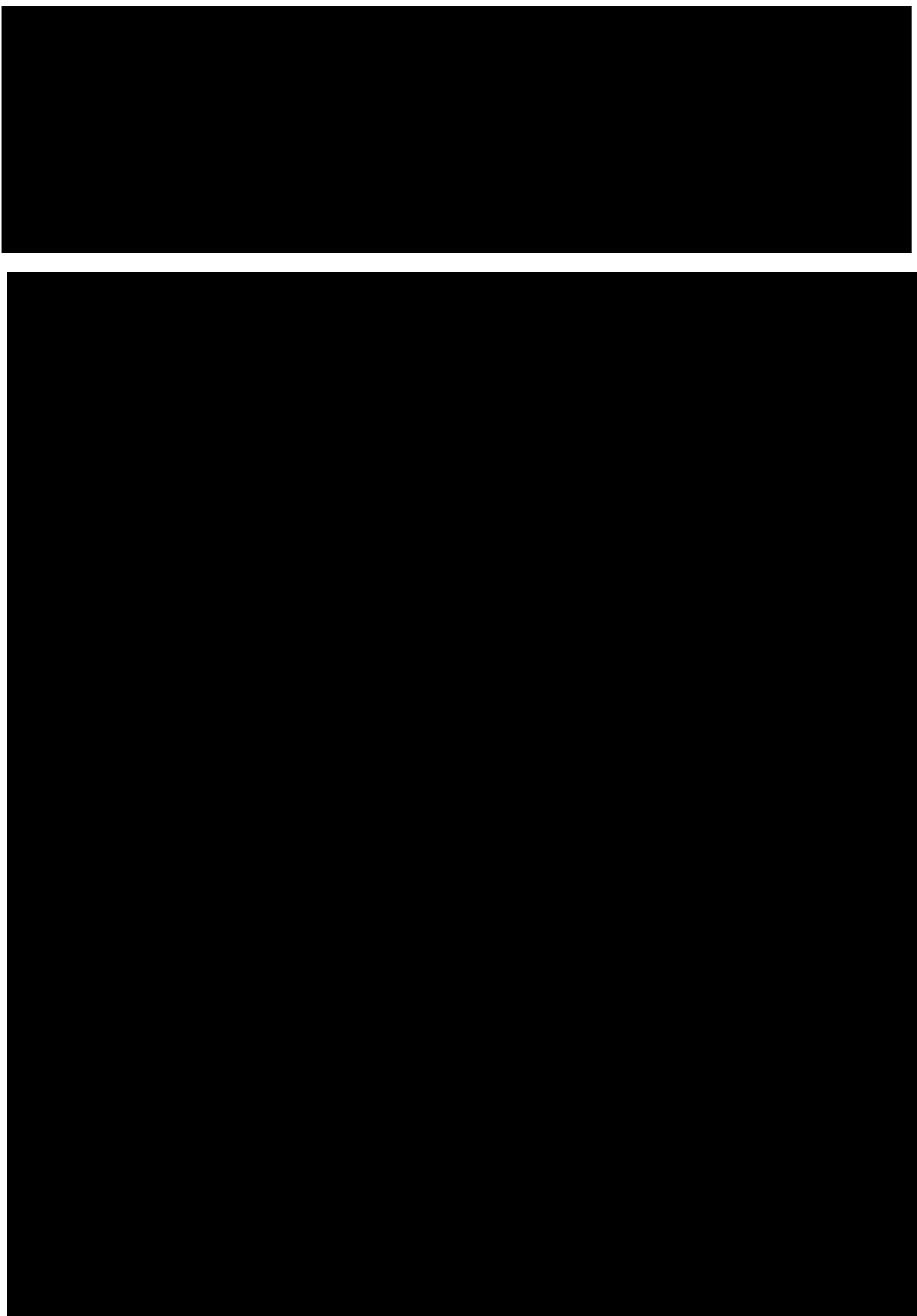
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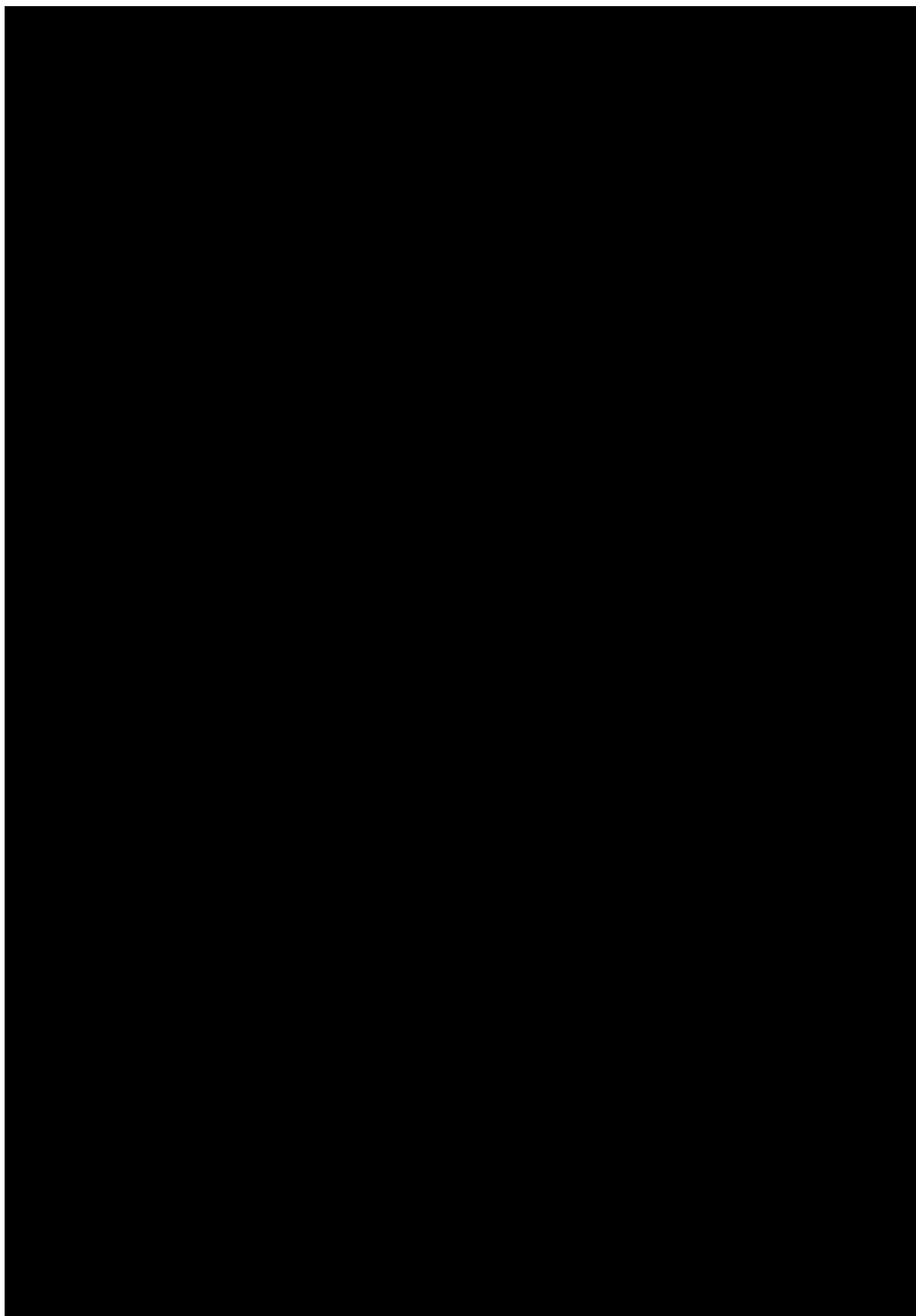
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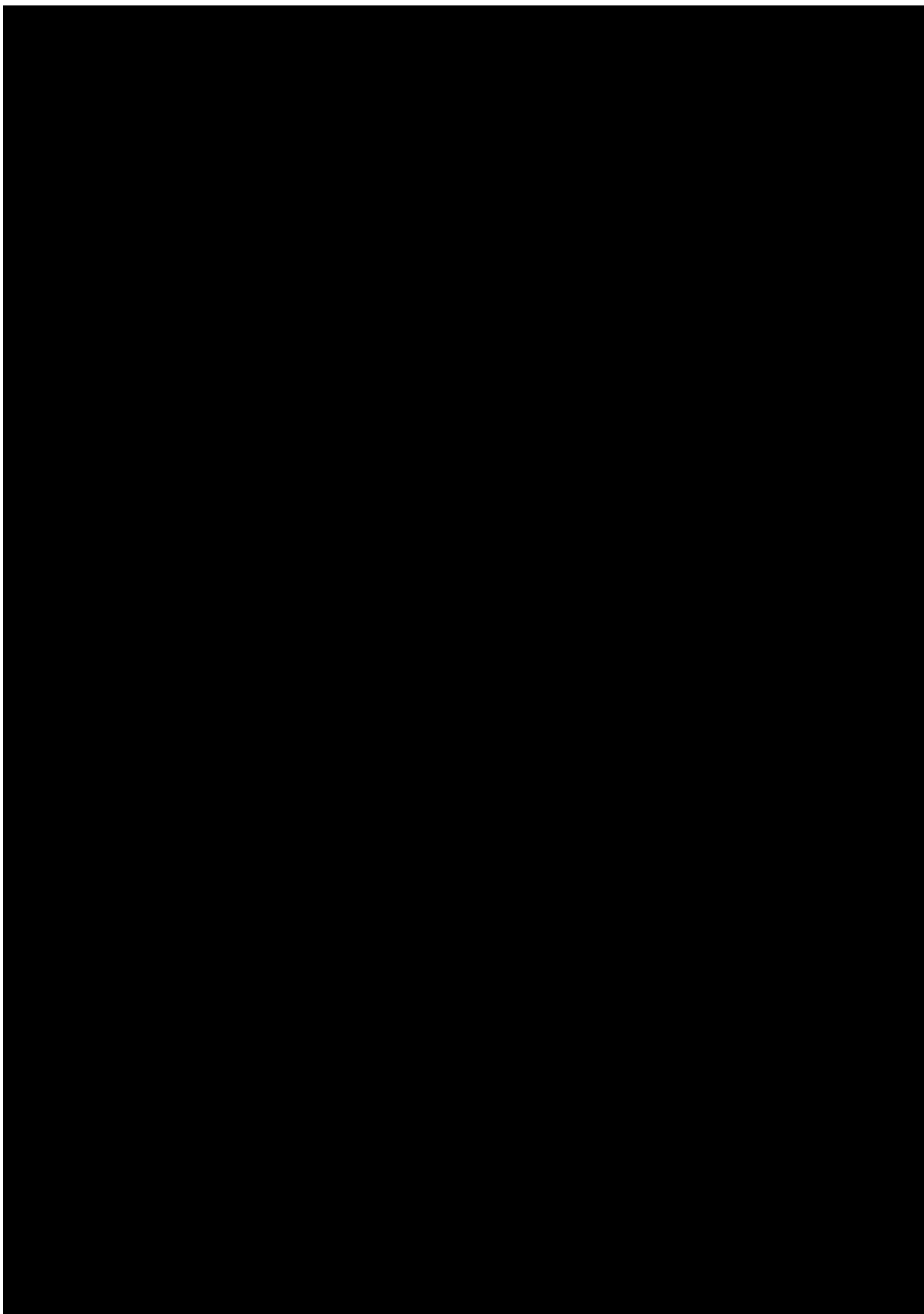
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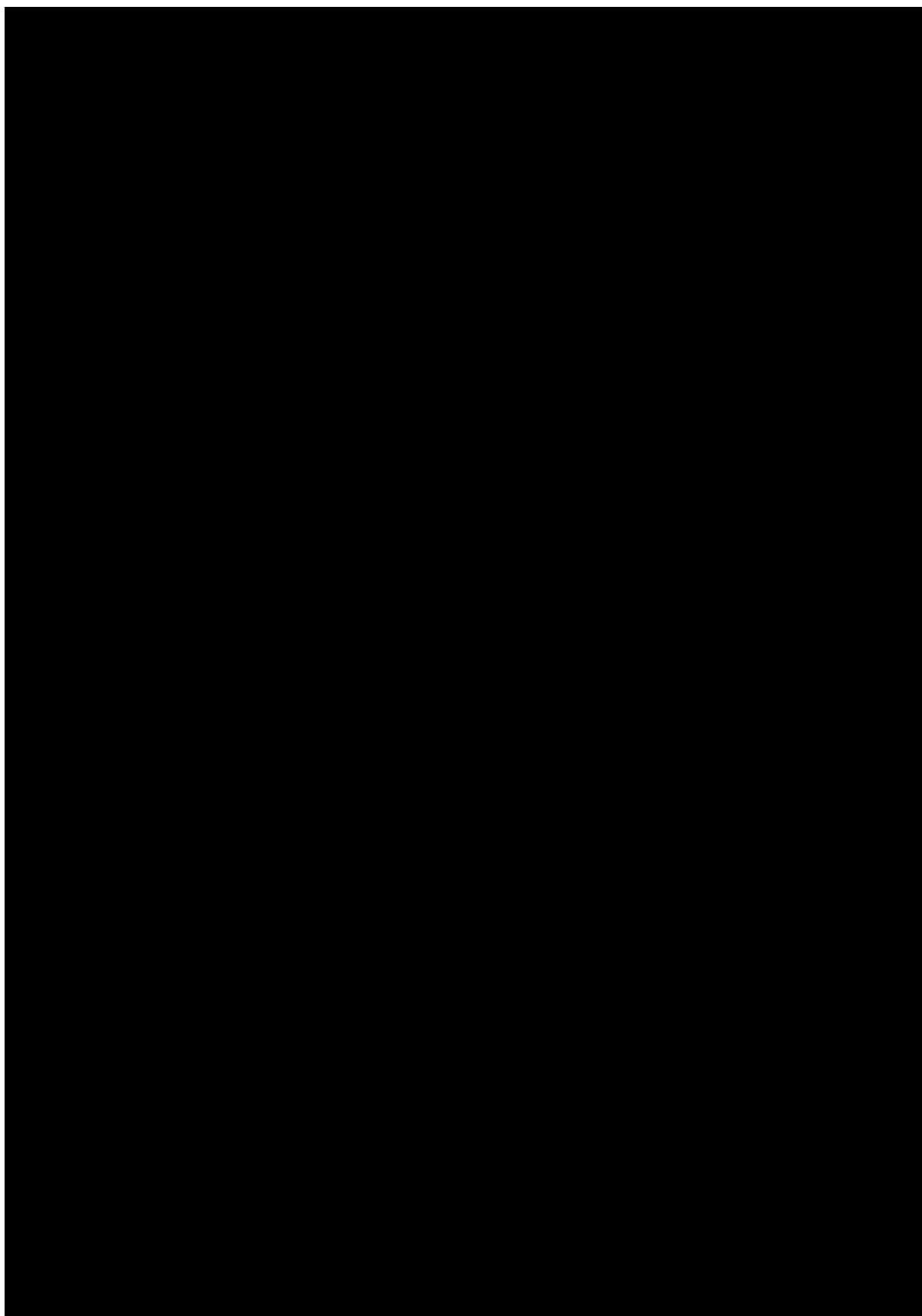
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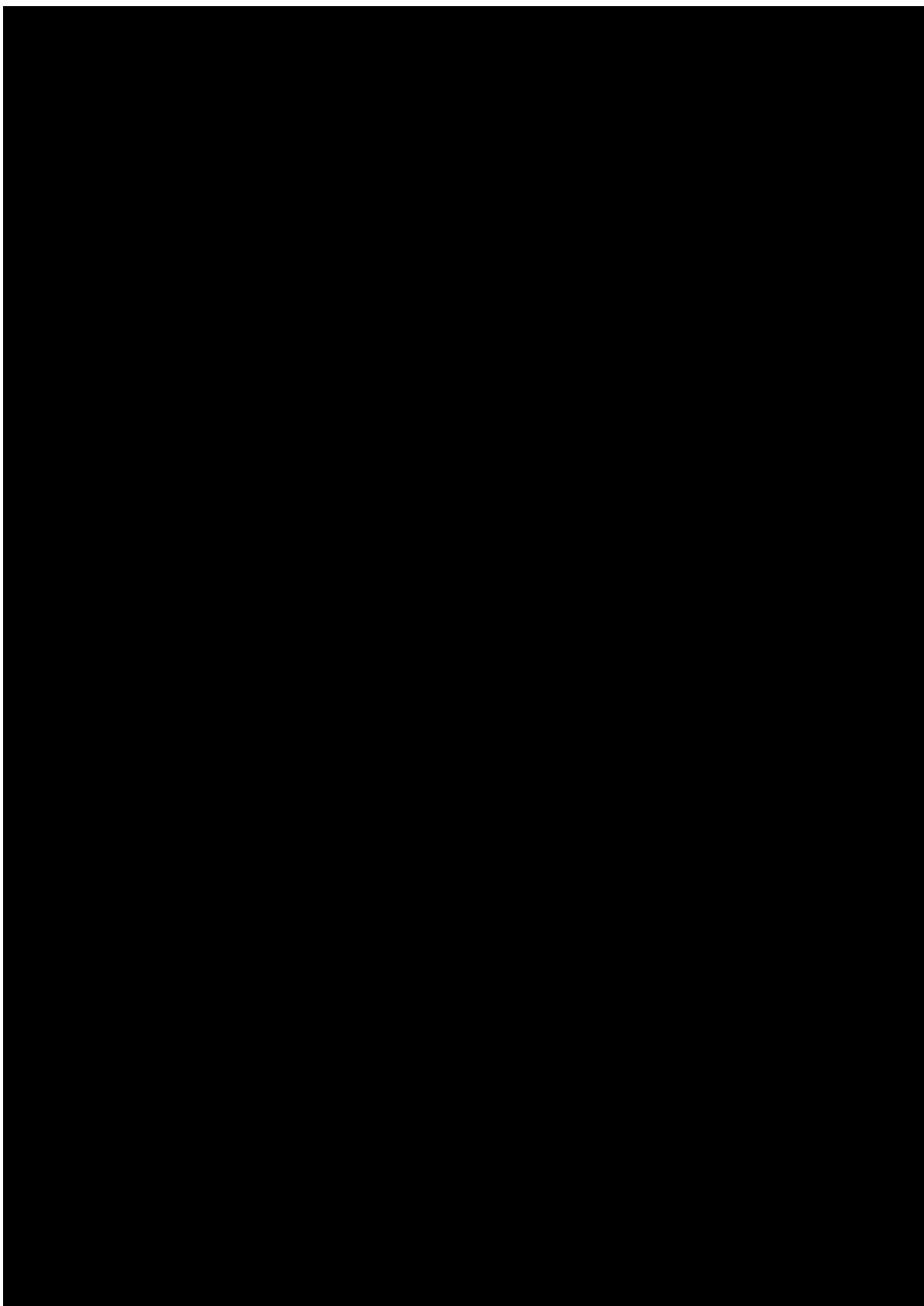
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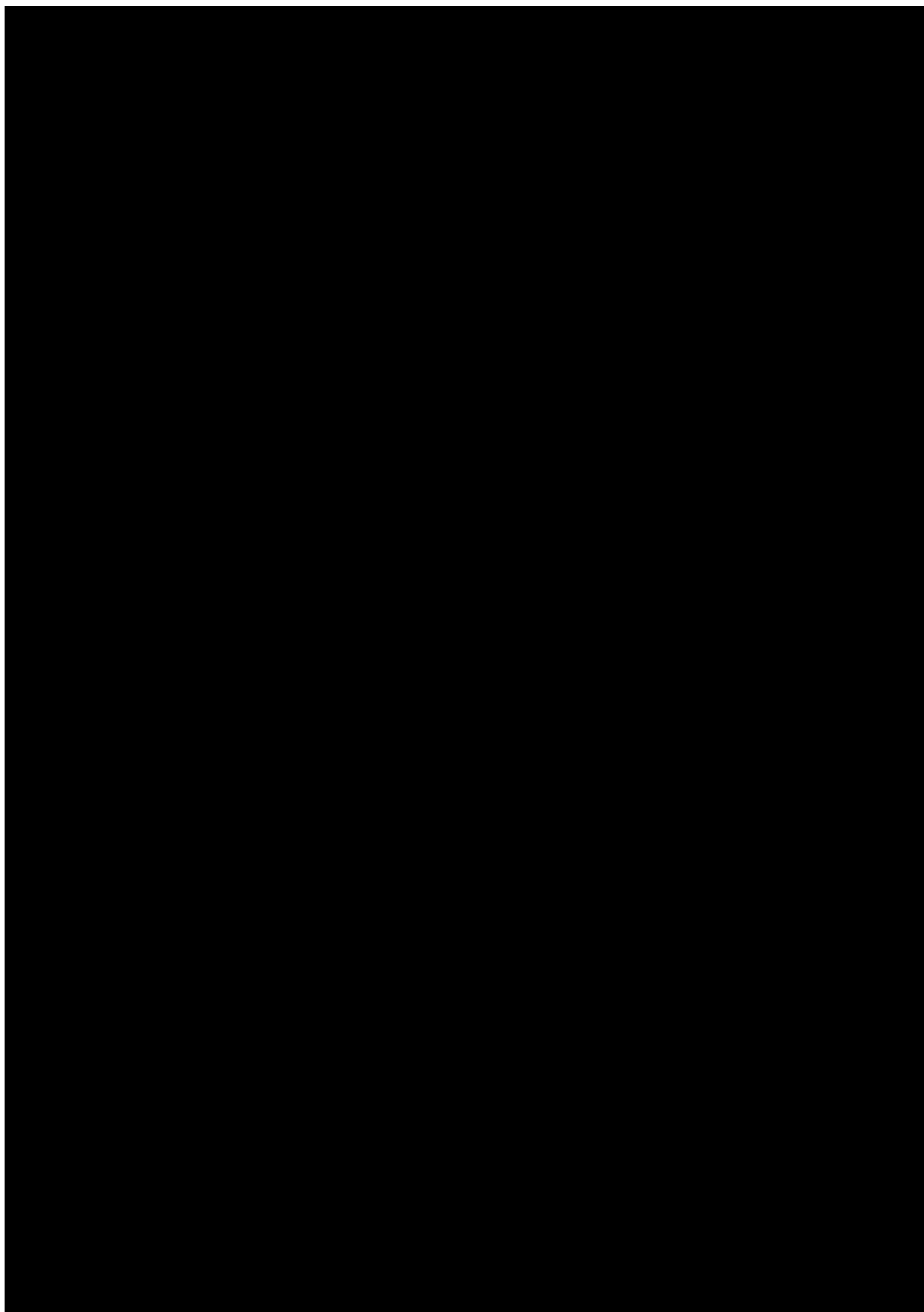
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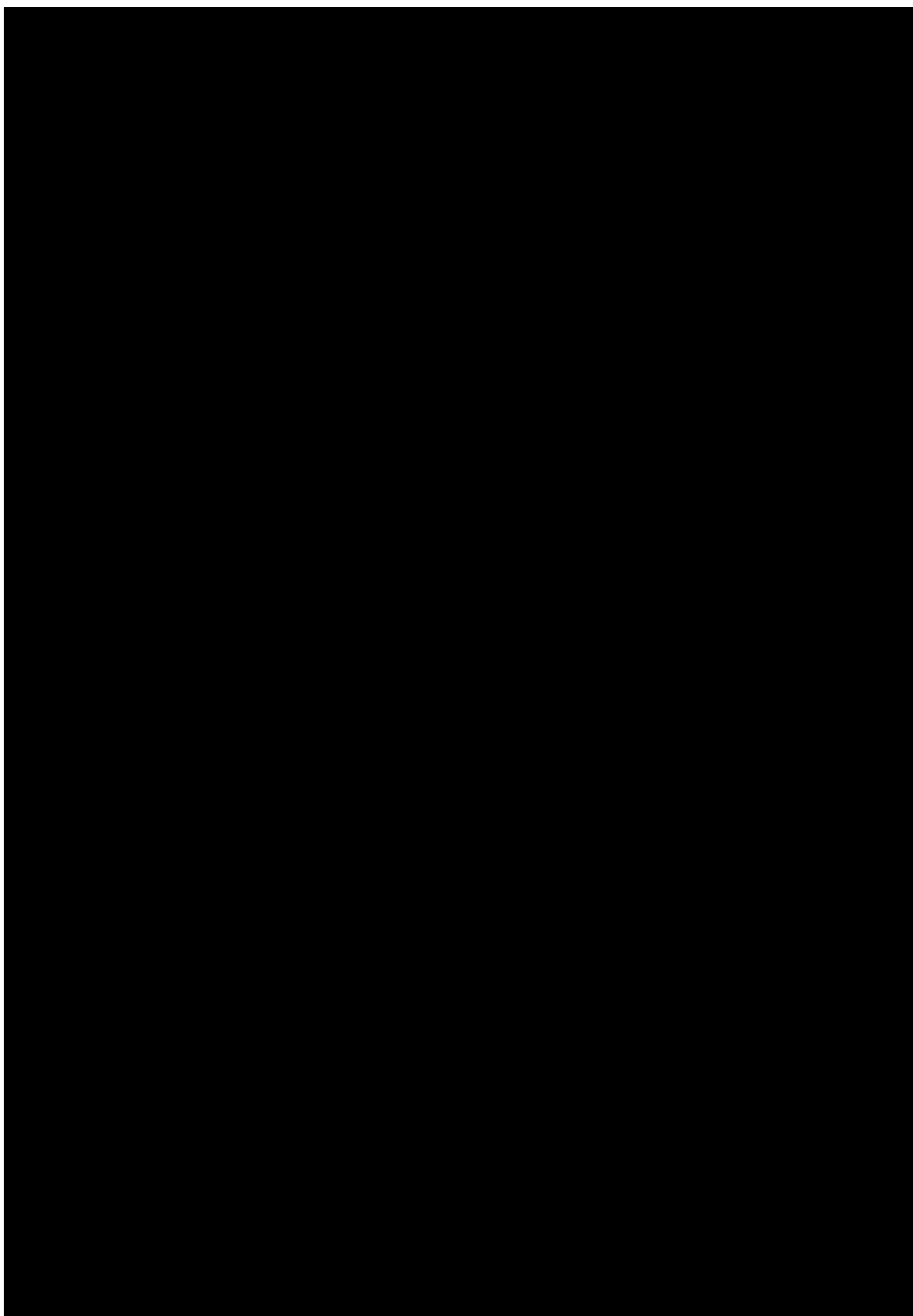
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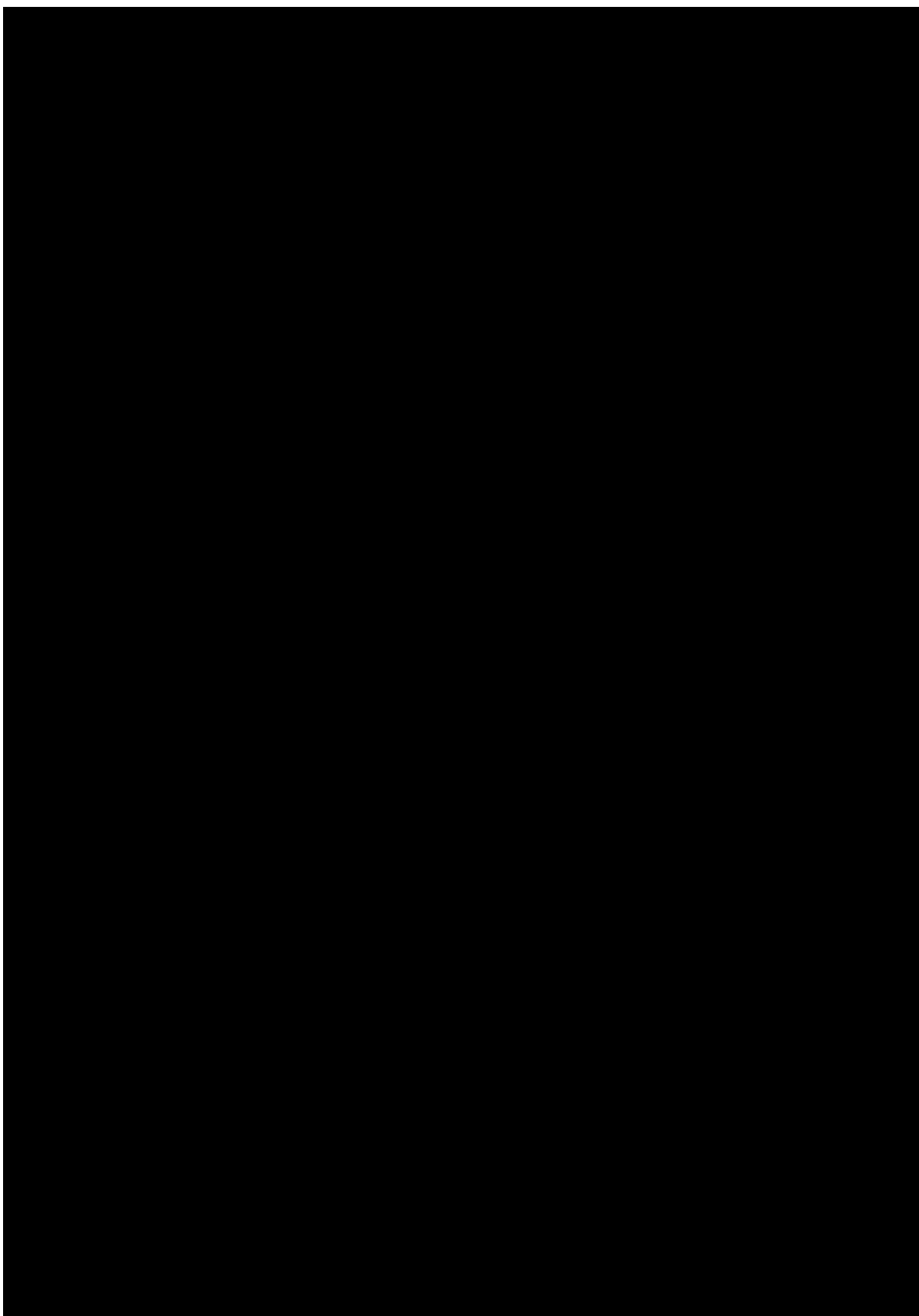
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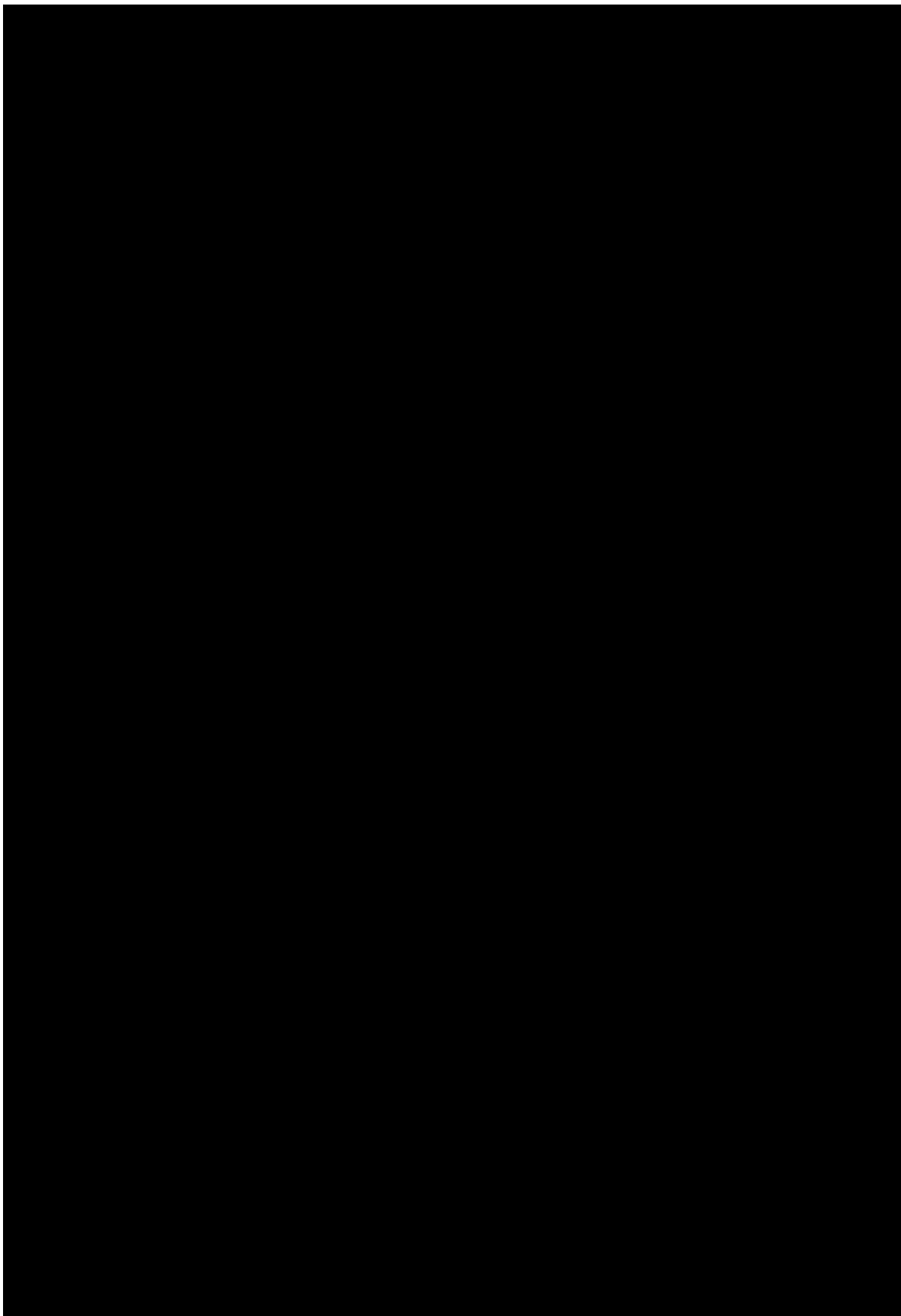
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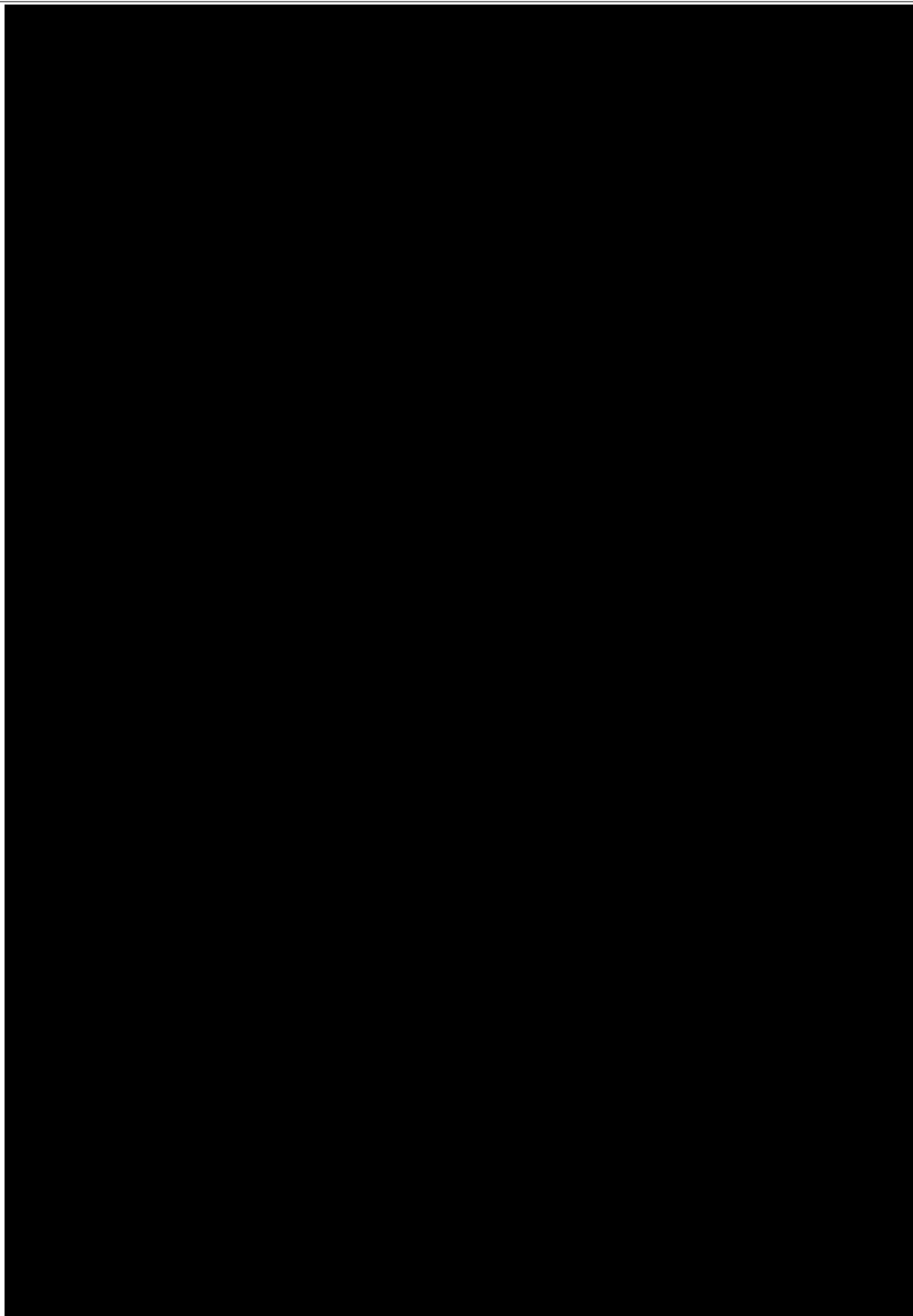
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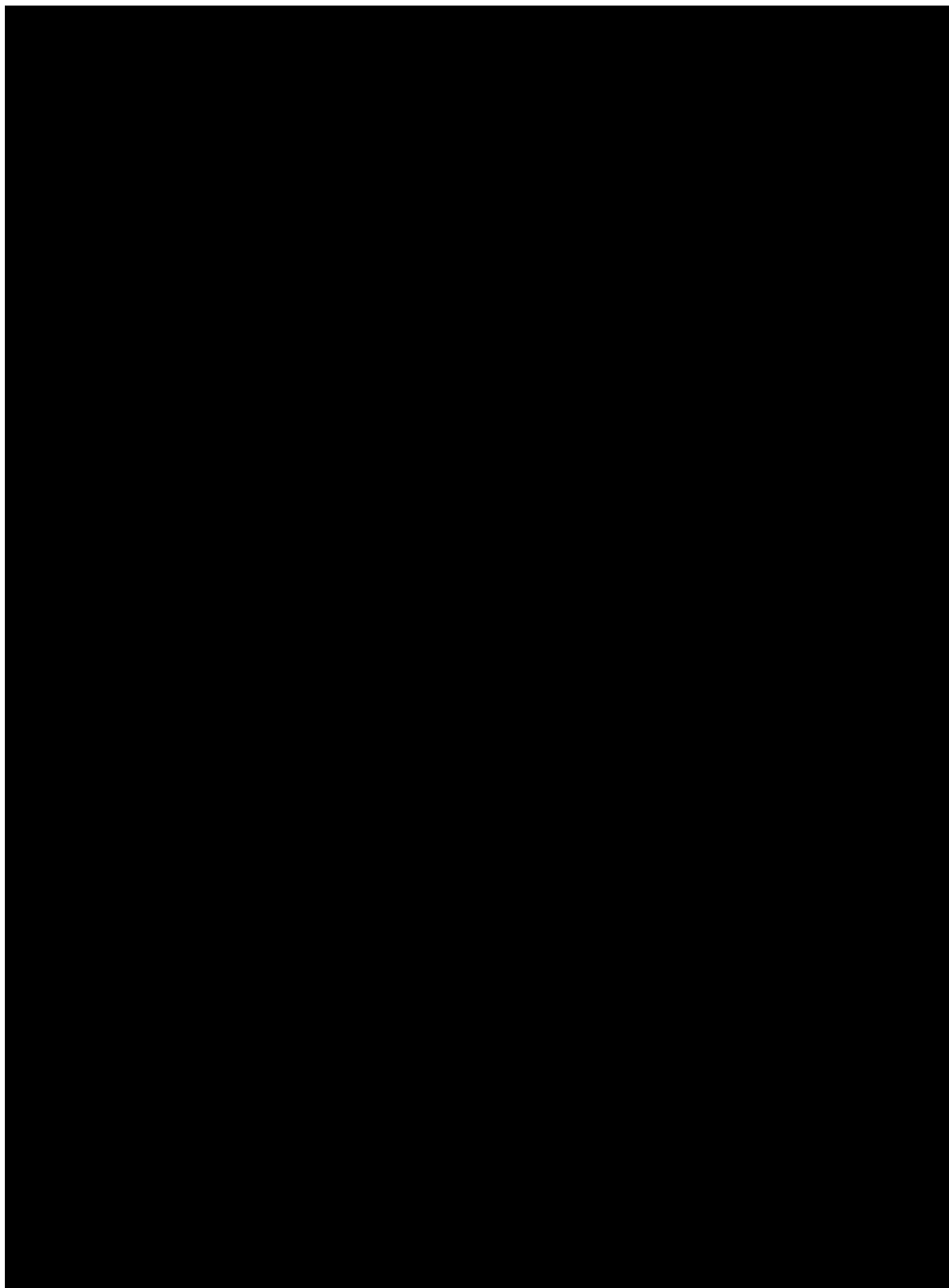
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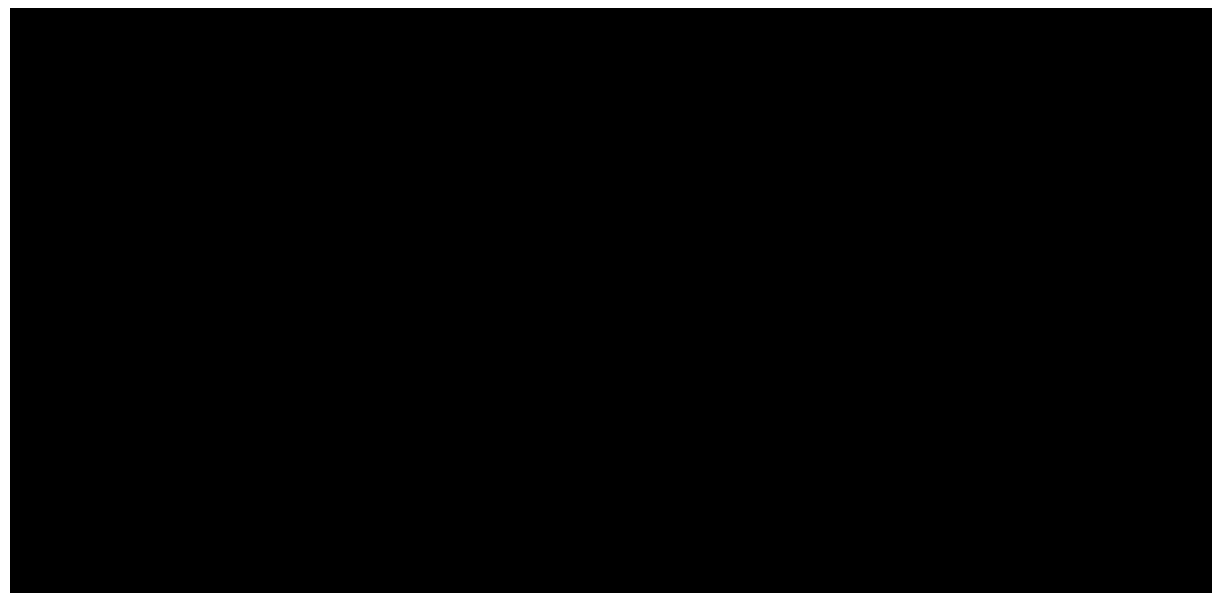
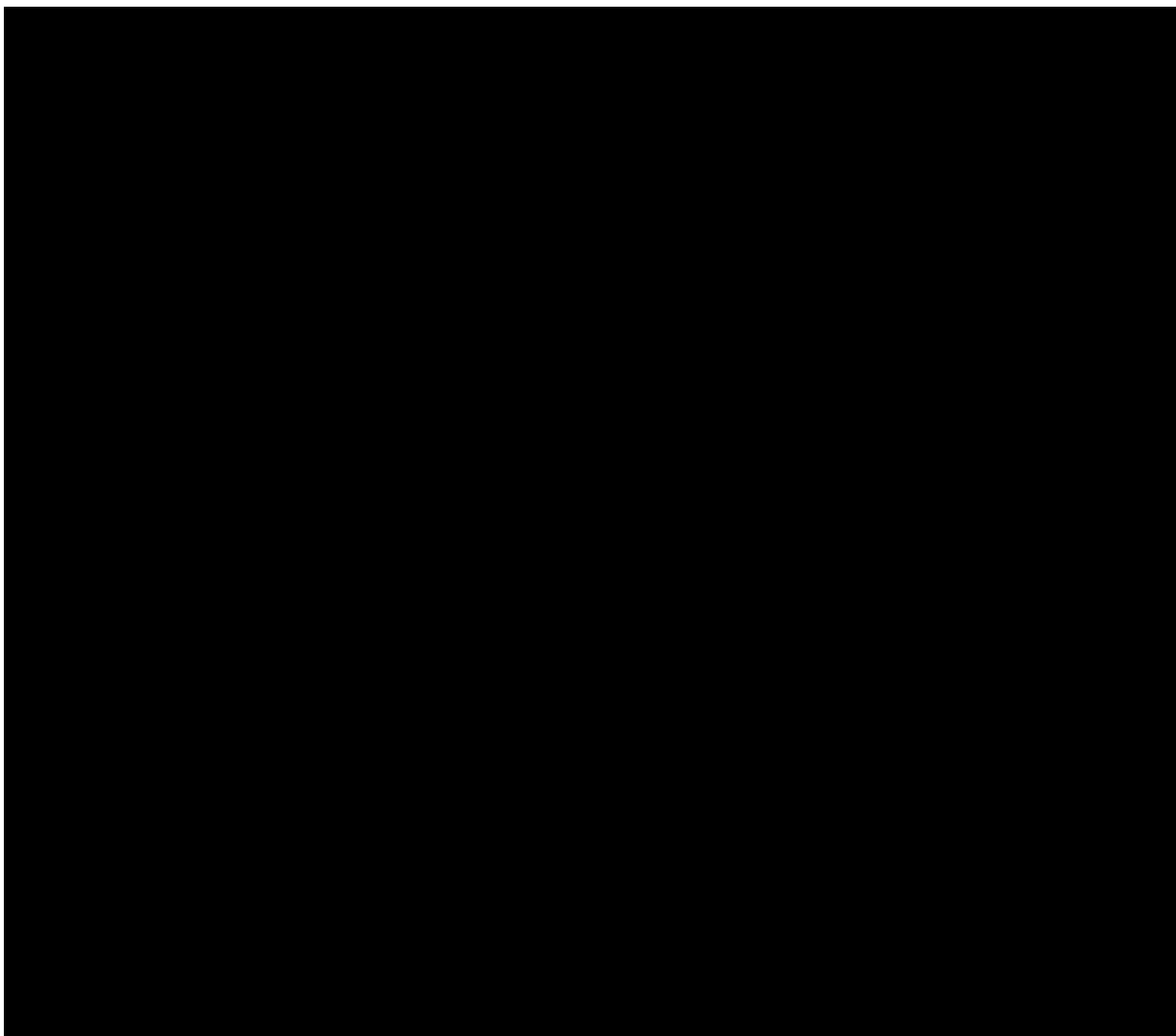
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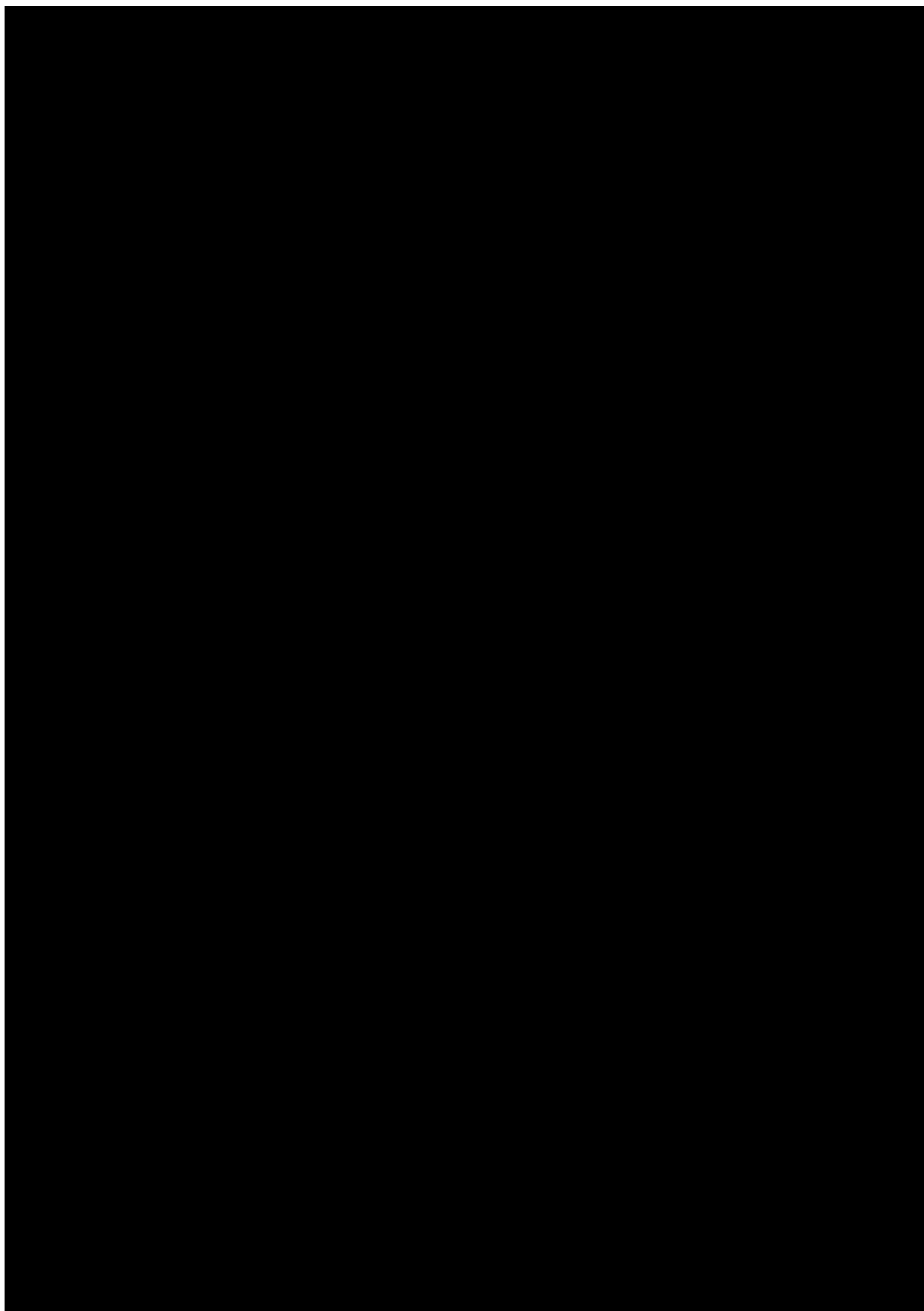
1 BY MR. MICALLEF: 16:48:35
2 Q Okay. Let me take a break and confer 16:48:35
3 with my colleagues here. We are really close. I 16:48:42
4 know I'm going to mark one more thing. We may be 16:48:43
5 able to make it easier. I also want to confer 16:48:46
6 with them. Okay. 16:48:50
7 THE VIDEOGRAPHER: Going off record at 16:49:01
8 4:48 p.m. 16:49:02
9 (Whereupon, a recess occurred 16:49:03
10 from 4:48 p.m. until 4:58 p.m.) 16:49:03
11 THE VIDEOGRAPHER: Back on record at 16:49:04
12 4:58 p.m. 16:58:44
13 BY MR. MICALLEF: 16:58:48

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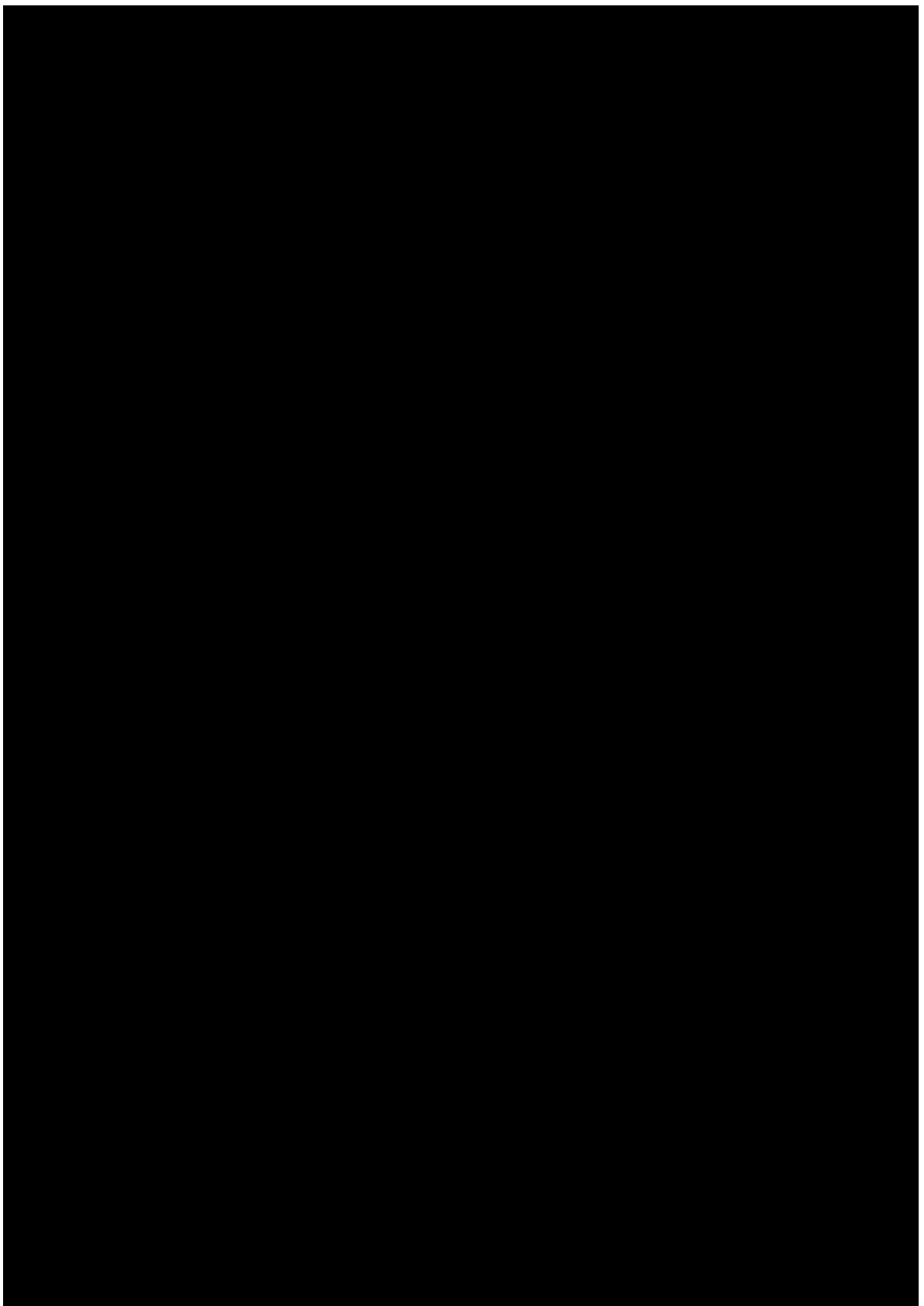
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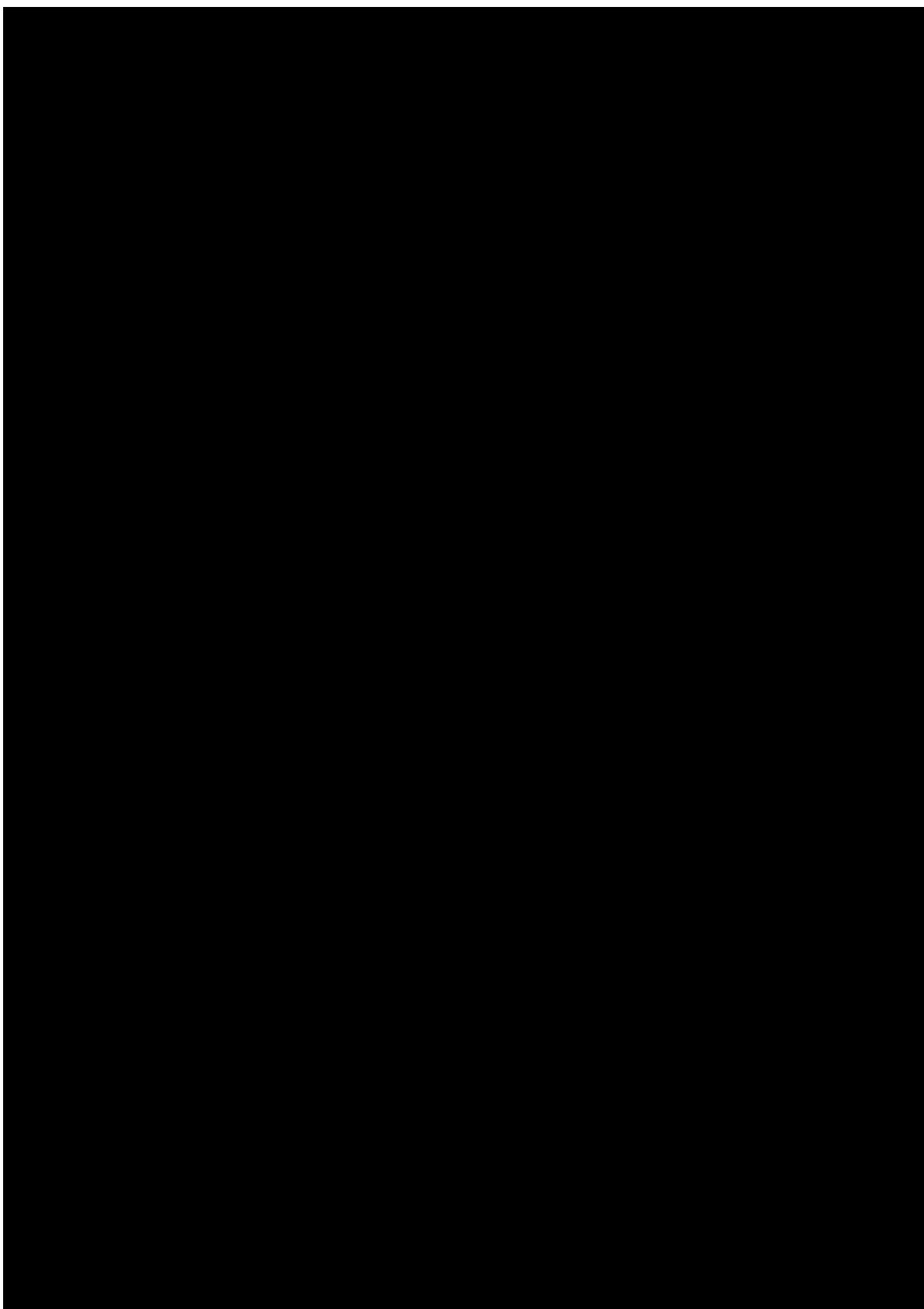
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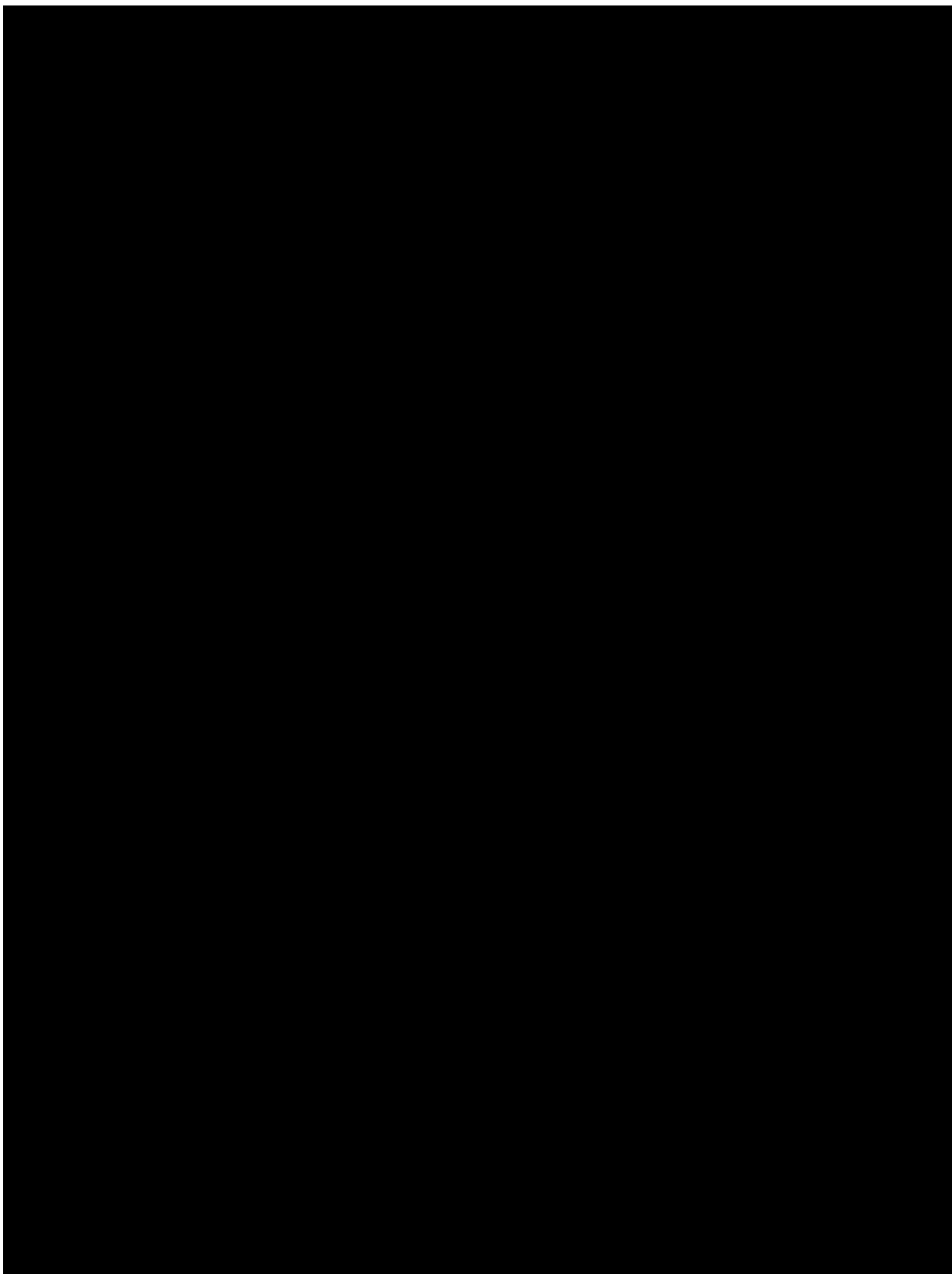
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Q Are you going to come to trial,

17:07:27

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1	Mr. Lagermann?	17:07:28
2	MR. HEINTZ: Object to the form of the	17:07:31
3	question.	17:07:34
4	THE WITNESS: I don't know when and	17:07:35
5	where that would be, but I suppose so.	17:07:36
6	MR. MICALLEF: I have no further	17:07:43
7	questions for Mr. Lagermann at this time. I think	17:07:44
8	there have been some inappropriate instructions	17:07:46
9	and we will take that up in a letter later. And	17:07:49
10	in our view the deposition remains open.	17:07:51
11	MR. HEINTZ: I want to note for the	17:07:56
12	record an agreement that we've reached concerning	17:07:58
13	what has been marked as Exhibit 23. Exhibit 23 is	17:08:00
14	some source code that was handed to me by counsel	17:08:04
15	from Microsoft. After having it handed to me, it	17:08:08
16	was written on by me. And we have agreed that	17:08:11
17	they can make one additional copy of the source	17:08:14
18	code of Exhibit 23 in exchange for me holding on	17:08:17
19	to my copy of 23. Do you to agree?	17:08:20
20	MR. MICALLEF: We agree.	17:08:24
21	Mr. Lagermann, thank you for your time.	17:08:25
22	MR. HEINTZ: Well, hold on. I'm not	17:08:28
23	done. I have some questions.	17:08:28
24	MR. MICALLEF: Okay.	17:08:31
25		17:08:31

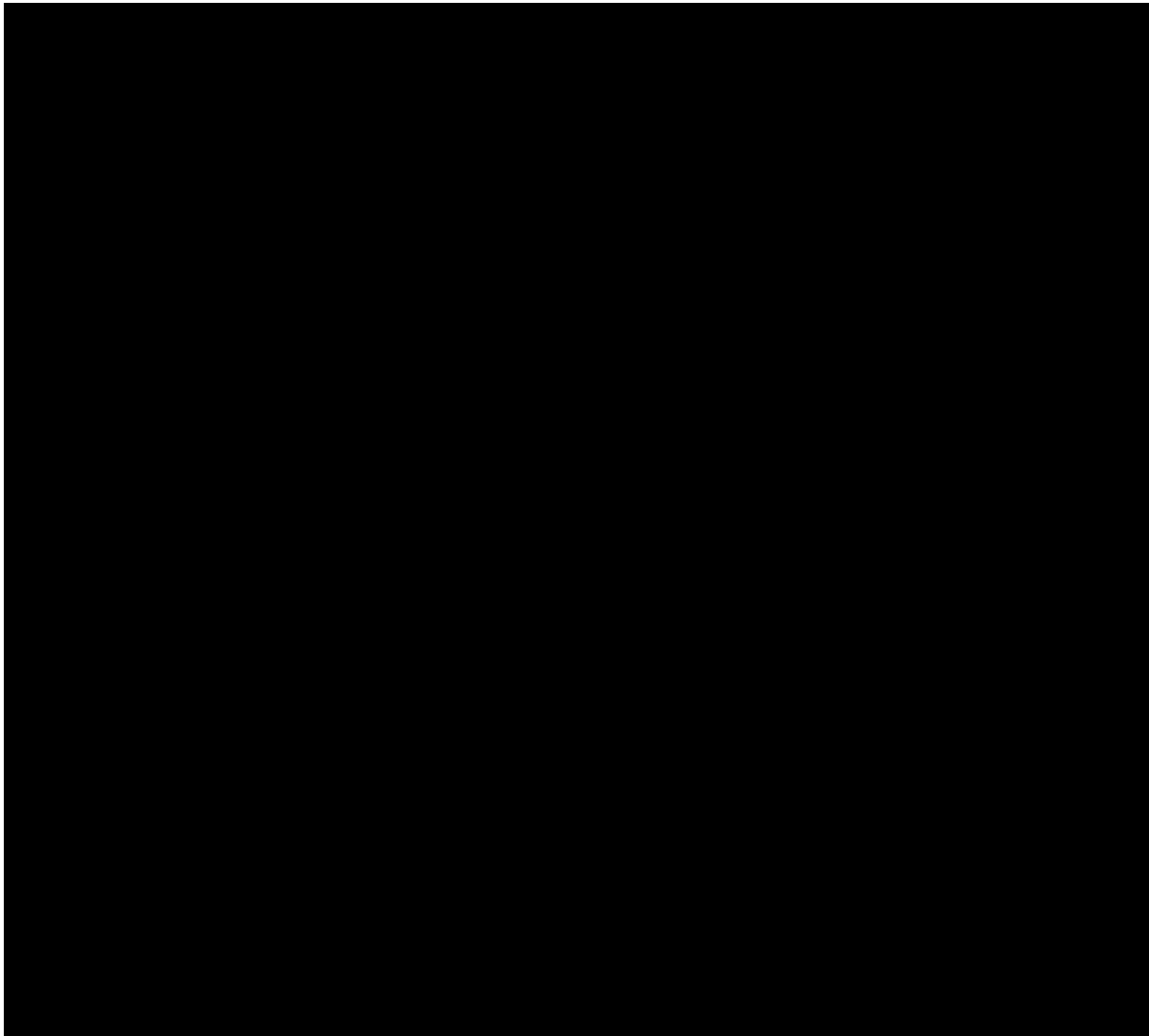
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EXAMINATION ON BEHALF OF SURFCAST

17:08:31

BY MR. HEINTZ:

17:08:32



MR. HEINTZ: No further questions.

17:09:36

MR. MICALLEF: That is it. Thank you
very much for your time.

17:09:39

17:09:42

THE WITNESS: Thank you.

17:09:44

THE VIDEOGRAPHER: This concludes the
deposition at 5:09 p.m.

17:09:55

17:09:56

(Whereupon, at 5:09 p.m., the above

17:09:57

1 proceedings was adjourned.)

17:09:57

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1 I declare under penalty of perjury under the
2 laws that the foregoing is true and correct.

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4 Executed on _____, 20____,
5 at _____,

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7 _____
8 KLAUS LAGERMANN
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REPORTER'S CERTIFICATE

I, DONNA M. LEWIS, RPR, Certified
Shorthand Reporter, certify;

That the foregoing proceedings were
taken before me at the time and place therein set
forth, at which time the witness, KLAUS LAGERMANN,
was put under oath by me;

That the testimony of the witness, the
questions propounded and all objections and
statements made at the time of the examination
were recorded stenographically by me and were
thereafter transcribed;

I declare that I am not of counsel to
any of the parties, nor in any way interested in
the outcome of this action.

As witness, my hand and notary seal this
1st day of July, 2013

Donna M. Lewis, RPR
Notary Public

My Commission expires:
March 14, 2018

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[09:16:08 - 09:26:23]

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