PUBLIC

File No. CT-2019-005

THE COMPETITION TRIBUNAL

IN THE MATTER OF the *Competition Act*, R.S.C. 1985, c. C-34, as amended;

AND IN THE MATTER OF the acquisition by Parrish & Heimbecker, Limited of certain grain elevators and related assets from Louis Dreyfus Company Canada ULC;

AND IN THE MATTER OF an application by the Commissioner of Competition for one or more orders pursuant to section 92 of the *Competition Act*.

B E T W E E N :

THE COMMISSIONER OF COMPETITION

Applicant

- and -

PARRISH & HEIMBECKER, LIMITED

Respondents

AFFIDAVIT OF MARGARET SANDERSON
SWORN OCTOBER 9, 2020

I, **MARGARET SANDERSON**, of the City of Toronto, Province of Ontario, MAKE OATH AND SAY:

I. INTRODUCTION AND QUALIFICATIONS

1. I am a Vice President and the global practice leader of the Competition and Antitrust Economics practice for the consulting firm Charles River Associates International Limited ("Charles River Associates"), a multinational firm that provides economic, financial and business strategy consulting, and as such I have knowledge of the matters to which I herein depose.

2. Prior to joining Charles River Associates, I was Assistant Deputy Director of Investigation and Research within the Economics and International Affairs Branch of

the Competition Bureau. In that capacity, I managed the provision of expert economic advice on competition cases, regulatory interventions and enforcement policy within the Competition Bureau. I have thirty years of experience addressing the competitive effects of mergers and other firm conduct. I have worked on cases involving mergers, conspiracies, resale price maintenance, predatory pricing, abuse of dominance and misleading advertising, as well as matters involving regulatory policy in the areas of telecommunications, broadcasting and securities.

3. I have provided expert evidence concerning competition and regulatory matters in proceedings before the Superior Court of Quebec, the Competition Tribunal, Supreme Court of British Columbia, Ontario Superior Court of Justice, Court of Queen's Bench of New Brunswick (Trial Division), Federal Court – Trial Division, the Canadian Radio-television and Telecommunications Commission and the United States District Court – District of Idaho. Attached hereto as Exhibit "A" is a copy of my *curriculum vitae*.

4. I have been asked by counsel to Parrish & Heimbecker ("P&H") to provide my opinion on the likely competitive effects of P&H's acquisition of the Virden MB grain elevator from Louis Dreyfus Canada ("LDC") (hereafter referred to as the "Acquisition"). I have also been asked to respond to the Expert Report of Nathan H. Miller, Ph.D., (hereafter referred to as the "Miller Report") filed on behalf of the Commissioner of Competition ("Commissioner").[1]

5. To prepare this affidavit, I have relied on the materials, data and other information listed in Exhibit "B", attached hereto.

II. SUMMARY OF MY OPINION

6. The Commissioner alleges that P&H's purchase of the Virden elevator will harm farms because they will receive less for their grain post-Acquisition. The two grains of relevance in this application are canola and wheat. The Canadian wheat relevant is

[1] Expert Report of Nathan H. Miller, Ph.D., Exhibit A to the Affidavit of Nathan H. Miller, affirmed/sworn September 4, 2020 [hereafter referred to as the "Miller Report"].

referred to as Canadian Western Red Spring ("CWRS"), which I will use throughout my report.

7. While the Commissioner claims the Acquisition will result in P&H increasing prices for "grain handling services", there is no such product transacted between P&H and farms. P&H purchases grain from farms and sells grain to end customers. Any processing of grain purchased by P&H to sell to its end customers is a cost to P&H.

8. Farms sell grain to elevators and canola crushing facilities for a single "cash" price.[2] Elevators and crushers purchase grain from farms for a single cash price. The cash price paid to farms to purchase grain is the "ordinary" and "prevailing price in the relevant market".[3] The cash prices to purchase grain are the correct base prices to use when postulating a price decrease in the prices to be paid to farms under the hypothetical monopolist test,[4] and when considering the competitive effects of the Acquisition.

9. The cash prices paid for the purchase of grain are "posted prices" by the elevator or crushing facility.[5] This is not a case where buyers "may identify and charge different prices to various targeted sets of [farms]"[6] such that price discrimination exists. Grain companies do not negotiate each individual farm-specific price that would make the purchase of grain from each farm a separate relevant product market. Only a limited

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[2] To make comparisons with the Miller Report easier, in this report, I will use the term "cash price" to refer to the price paid to farms. As I describe herein, there are other terms used for the "cash" price paid to farms for their grain by elevators and crushers, including "flat" prices, "net" prices, and "bid" prices. The Miller Report uses the term "discounted cash price" to describe the amount paid to farms by elevators. See Miller Report, paragraph 35.

[3] Competition Bureau of Canada, *Merger Enforcement Guidelines*, October 6, 2011 [hereafter referred to as "MEGs"], paragraph 4.6.

[4] MEGs, paragraphs 4.6-4.7.

[5] The Commissioner's expert Dr. Miller agrees that the right economic model to address any competitive concerns arising from the Acquisition is a posted price model. See Miller Report, paragraph 47.

[6] MEGs, paragraph 4.8, speaking to market power in respect of the selling side of the market state: "When price discrimination is feasible, it may be appropriate to define relevant markets with reference to the characteristics of the buyers who purchase the product (assuming they can be delineated) or to the particular locations of the targeted buyers." This is not the case here.

number of one-on-one negotiations take place, where for example, P&H is asked to meet specials offered by competitors.

10. The relevant product markets are properly defined as the purchase of canola and the purchase of CWRS, such that the prices used to evaluate competition in the relevant product markets are the cash prices paid to farms for the purchase of their canola or CWRS.

11. The Moosomin and Virden elevators are located within southeastern Saskatchewan and southwestern Manitoba, respectively. Before the Acquisition, these two elevators competed for the purchase of canola and the purchase of CWRS. The issue to be addressed is whether P&H's purchase of Virden provides P&H with monopsony power in the purchase of these grains such that P&H will be able to depress purchase prices by a material amount post-Acquisition.

12. P&H will have no such ability because farms within the area are "well-placed to forego sales to the merging parties in favour of other buyers when faced with an attempt to lower prices."[7] P&H's post-Acquisition shares of purchases meet the criteria set out at paragraph 9.3 of the MEGs, where there should be no challenge of the Acquisition. The transactions data collected by the Commissioner (which does not include all elevators vying for grain in the area) shows that pre-Acquisition the Moosomin and Virden elevators' combined share of canola purchases is [redacted] and their combined share of CWRS purchases is [redacted][8] both of which are less than the 35% safe harbour threshold contained in the MEGs.

13. The transactions data collected by the Commissioner provides a compelling picture of robust competition for the purchase of canola and the purchase of CWRS in the area surrounding the Moosomin and Virden elevators. The transactions data includes farm

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[7] MEGs, paragraph 9.3.

[8] See Exhibit 14 of the Miller Report, reporting share before Acquisition for Moosomin and Virden for wheat (CWRS) and canola including crushers.

location information that allows draw areas to be constructed for the elevators within the immediate area owned by P&H, LDC, Viterra, Richardson, and Cargill, as well as the crushers owned by Bunge, ADM, Richardson, and LDC.[9] It is clear from this data that many elevators and crushers purchase canola and CWRS from the same farms from which Moosomin and Virden purchase. The transactions data also shows the draw areas of numerous elevators and crushers intersect and overlap with the draw areas for the Moosomin and Virden elevators. As a result, Moosomin and Virden compete with many rival elevators and crushers for the same farms' canola and CWRS. This competition extends well beyond the Viterra Fairlight elevator only.

14. The relevant geographic market is properly defined to include current purchasers of canola and CWRS that compete with Moosomin and Virden. This area may be defined as (at least) southeastern Saskatchewan and southwestern Manitoba. The market participants included in the relevant geographic market are numerous, and include many competing elevators and crushers beyond Moosomin, Virden and Fairlight.

15. The evidence of extensive competition for individual farms' grain is clear at multiple levels, including for those farms defined by the Commissioner to be "most affected" by the Acquisition because these farms "are located in the corridor between these two Elevators."[10] In this report, I define all farm locations that are within one-hour commercial trucking driving distance to *both* Virden and Moosomin as within the corridor between these two elevators. I refer to this area as the "corridor of concern" throughout my report. In defining this area, I limit the one-hour driving distance to be using commercial trucking roads only to address the Commissioner's concern that not all roads within the area can handle commercial trucks for the transportation of grain from farms to elevators.[11] This "corridor of concern" is much smaller than the relevant

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[9] Farm location data was not included in the transactions data submitted by Ceres. However, farm names are provided in Ceres' transactions data which allows Ceres to be included in several analyses I discuss in my report.

[10] Notice of Application, paragraph 21.

[11] Notice of Application, paragraphs 4, 29 and 35.

geographic market. There are [redacted] farms identified within the "corridor of concern" that grow canola or CWRS (with some of the [redacted] farms growing both).

16. Because I have intentionally selected those farms that are physically closest to the Moosomin and Virden elevators (by being within a one-hour commercial trucking drive distance), it is not surprising they sell canola or CWRS to Moosomin or Virden. Yet these same farms also sell canola or CWRS to many other elevators and crushers. Most of these farms have sold canola or CWRS to multiple buyers in the last three crop years, with [redacted] of these farms having sold canola or CWRS to rival elevators and crushers. The transactions data shows there are significant canola deliveries from these [redacted] farms to [redacted] The distances travelled to make canola sales to crushers from farms within the "corridor of concern" are well over [redacted] Similarly, there are significant CWRS deliveries from the farms in the "corridor of concern" made to [redacted]

17. Different farms make different choices. While one farm within the "corridor of concern" (such as, for example, the [redacted]) sold its CWRS to [redacted] in the last three crop years, a neighbouring farm (such as, for example, [redacted]) sold its CWRS to [redacted] over the last three crop years, while another farm in the "corridor of concern" (such as, for example, the [redacted]) sold its CWRS to [redacted] As a result, different farms deliver to elevators at different distances. This is expected because farms and elevators are physically dispersed throughout the area, such that a farm will have some elevators closer and some farther away. For example, while one farm in Elkhorn MB selling CWRS to [redacted] another farm in

Elkhorn MB delivered CWRS to [redacted]).

18. There are many examples of farms within the "corridor of concern" selling to distant elevators and crushers. A single farm's trucking costs to a single elevator will not determine P&H's purchase prices to buy grain from many farms. Instead, elevators (including P&H) need to set purchase prices that are attractive to a broad set of farms, that will have varying trucking costs to reach any one elevator. Therefore, trucking costs neither shield P&H from competition from more distant elevators, nor do they artificially restrict the relevant geographic market to only containing Moosomin, Virden and Fairlight, as the Commissioner claims.

19. The transactions data collected by the Commissioner demonstrates that farms within the Commissioner's area of concern avail themselves of many alternative buyers of canola and CWRS in the area. This is consistent with internal business documents that identify numerous elevator and crusher purchasers of canola and CWRS against which the Moosomin and Virden elevators compete.

20. The witness statements received from farms within the area surrounding the Moosomin and Virden confirm many elevators and crushers are considered when farms choose where to deliver their grain, even when they have an elevator very close.

    i. [redacted] regularly checks prices at [redacted] He has sold wheat to [redacted].[13]

    ii. [redacted] has sold wheat to [redacted] and can easily switch to selling to [redacted]

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[12] Witness Statement of [redacted] [hereafter referred to as "[redacted] Witness Statement"], paragraph 7.

[13] [redacted] Witness Statement, paragraph 8.

[14] Witness Statement of [redacted] [hereafter referred to as "[redacted] Witness Statement"], paragraphs 17-18.

[redacted] has sold canola to [redacted]

iii. [redacted] has sold wheat to [redacted] He can easily switch to selling wheat to [redacted] has sold canola to crushers in [redacted][18]

iv. [redacted] has sold to [redacted] and has contacted [redacted] for prices.[19]

v. [redacted] receives daily prices from [redacted][20] [redacted] has sold wheat to [redacted] and has sold canola to [redacted][21]

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15 [redacted] Witness Statement, paragraph 19.

16 Witness Statement of [redacted] [hereafter referred to as "[redacted] Witness Statement"], paragraph 19.

17 [redacted] Witness Statement, paragraph 21.

18 [redacted] Witness Statement, paragraphs 22 and 24.

19 Witness Statement of [redacted] [hereafter referred to as "[redacted] Witness Statement"], paragraphs 8-10.

20 Witness Statement of [redacted] [hereafter referred to as "[redacted] Witness Statement"], paragraph 9.

21 [redacted] Witness Statement, paragraphs 22-23.

vi. [redacted] is closest to [redacted], yet he has sold wheat to [redacted] which is [redacted] away.[22] [redacted] has sold canola to the [redacted][23]

vii. [redacted] prefers to sell to [redacted] which is only [redacted] from his farm, but he has sold some wheat and canola to [redacted][24]

21. To repeat my earlier quotation from the MEGs, even those farms that the Commissioner identifies as "most likely to be affected" by the Acquisition are "well-placed to forego sales to the merging parties in favour of other buyers when faced with an attempt to lower prices."[25]

22. There is further evidence of extensive competition from elevators and crushers such that the relevant geographic market is properly defined to include more elevators than the three claimed by the Commissioner. The diversion ratios calculated by the Commissioner's expert, Dr. Miller, using the transactions data, confirm the extensive sales of canola and CWRS made to elevators and crushers other than Moosomin, Virden and Fairlight from farms within the area examined in the Miller Report. Dr. Miller's estimated diversion ratio from Moosomin to rival elevators and crushers beyond that going to Virden and Fairlight is [redacted] in canola and [redacted]n CWRS. Dr. Miller's estimated diversion ratio from Virden to rival elevators and crushers beyond that going to Moosomin and Fairlight is [redacted] in canola and [redacted] in CWRS. It is incorrect to ignore this substantial substitution to elevators beyond Fairlight. If Moosomin, Virden and Fairlight were the only elevators that mattered for farms within area surrounding the Moosomin and Virden elevators, diversion ratios to rival elevators and crushers would

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22 Witness Statement of [redacted] [hereafter referred to as "[redacted] Witness Statement"], paragraph 8. While Ceres Northgate is farther away, it has offered bid prices high enough to justify the extra delivery costs. See [redacted] Witness Statement, paragraph 12.

23 [redacted] Witness Statement, paragraph 9.

24 Witness Statement of [redacted] [hereafter referred to as "[redacted] Witness Statement"], paragraphs 8-9.

25 MEGs, paragraph 9.3.

be much lower than the amounts estimated by Dr. Miller using the transactions data collected by the Commissioner.

23. Rather than make use of the transactions data evidence on actual farm sales to competing elevators and crushers to identify the market participants that currently compete with Moosomin and Virden when defining the relevant geographic market, the Commissioner's expert, Dr. Miller, relies on a high percentage margin over his constructed price for "grain handling services" in a hypothetical monopolist test for the Moosomin, Virden and Fairlight elevators. As I discuss herein, the Commissioner and his expert, Dr. Miller, have parsed the single cash price paid to farms for their grain into two components thereby creating a product which they call "grain handling services". But "grain handling services" is not an actual service transacted, contracted, or discussed, in any dealings between farms and purchasers of grain. As "grain handling services" is neither observed nor transacted, Dr. Miller must create a method to measure the price for it. His method for measuring prices for "grain handling services" leads to highly divergent prices for "grain handling services" such that these prices are measured with significant error.

24. The error in defining the price (and its measurement) as "grain handling services" affects multiple aspects of Dr. Miller's analysis beyond product market definition. As just noted, Dr. Miller uses the price of "grain handling services" to compute a percentage margin used in his hypothetical monopolist test, leading him to the incorrect conclusion that the geographic market is limited to only Moosomin, Virden and Fairlight. If the cash prices to purchase canola and CWRS are used in the hypothetical monopolist test instead, or if Dr. Miller referred to the transactions data evidence when defining the geographic market, it would be clear, even on his own analysis, that more elevators and crushers must be included as market participants in the relevant geographic market.

25. Similarly, Dr. Miller's measures of gross upward pricing pressure resulting from the Acquisition are overstated because they are represented as a fraction of the artificially constructed "grain handling services" prices. When properly expressed as a fraction of the cash prices paid to purchase canola and CWRS, Dr. Miller's gross upward pricing

pressure measures reveal insignificant incentive for P&H to reduce purchase prices paid for canola and CWRS post-Acquisition.

26. Even if one accepts the merger simulation results presented by Dr. Miller, they show the profit improvement from the Acquisition is minimal to P&H. Dr. Miller's simulation model predicts a profit improvement for P&H of only [redacted] annually, based on his prediction that the Moosomin and Virden elevators reduce their purchases of canola and CWRS by about [redacted] further to a purported increase in the price of "grain handling services". The profit increase at rival elevators generated by Dr. Miller's simulation swamps the profit improvement for P&H. Diversion from the Moosomin and Virden elevators to rival elevators and crushers increases profits at all elevators and crushers by [redacted] annually. Viterra's Fairlight elevator alone increases profits by [redacted] which is nearly [redacted] as much as the profit increase at Moosomin and Virden that Dr. Miller predicts. This is [redacted] one expects the beneficiary of an alleged anticompetitive transaction to be the merging parties, not their rivals. If [redacted] the expected primary beneficiaries, it makes Dr. Miller's prediction that P&H will increase the price for "grain handling services" (or decrease the prices at which it purchases canola and CWRS) [redacted]

27. In keeping with [redacted] of the profit increase accruing to rival elevators and crushers in Dr. Miller's merger simulation results, it is also the case that [redacted] the consumer surplus losses that he finds, which are defined as changes in farm expected utility, are incurred by farms that did not deliver canola or CWRS to Moosomin or Virden pre-Acquisition. Yet when Dr. Miller compares his estimated consumer surplus losses and profit gains to compute changes in total surplus using the results of his merger simulation, he includes expected utility losses in consumer surplus from farms that never purchased from Moosomin, Virden or Fairlight, but he does not include the increase in profits associated with elevators and crushers to which these farms divert their sales, as his model predicts will occur. The result is Dr. Miller understates the profit gains to rivals in his total surplus calculation. Using his simulation results, the sum of the total expected change in consumer surplus and the change in total profits to elevators and crushers to which farms sell their grain, the change in total surplus is [redacted] annually in

canola and [redacted] annually in CWRS. In other words, there is [redacted] in total surplus in canola and [redacted] in total surplus in CWRS.

28. But even these surplus changes have not been borne out. The [redacted] surplus changes predicted by Dr. Miller's simulation result from a predicted [redacted] in purchases of canola and CWRS at the Moosomin and Virden elevators. This has not occurred. Since the Acquisition, total purchases of canola and CWRS have [redacted] at the Moosomin and Virden elevators. As well, P&H's forecasted grain purchases at Virden show it plans to [redacted] total grain purchases at Virden post-Acquisition. [redacted] aggregate purchases at Moosomin and Virden post-Acquisition are [redacted] with P&H exercising monopsony power. In keeping with these [redacted] in purchases, regression analysis of bid prices since the Acquisition shows P&H has [redacted] for canola or for CWRS at Moosomin or Virden. [redacted] one of the Commissioner's witnesses, also reports [redacted] "has been [redacted] with their bids" such that he has "[redacted]"[26]

29. In sum, P&H's Acquisition of the Virden elevator has not provided and will not provide P&H with either the incentive or ability to materially lower the prices it pays to farms for their canola and CWRS. P&H has not [redacted] at the Moosomin and Virden elevators since the Acquisition closed, but instead it [redacted] These elevators compete with far too many other purchasers of canola and CWRS within the area to provide P&H with market power in respect of the purchase of canola or the purchase of CWRS. The Acquisition will not substantially lessen competition in any relevant and properly defined market.

30. The remainder of this Affidavit is organized as follows. Section III provides an overview of P&H's grain business. Section IV provides my economic analysis of the

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[26] [redacted] Witness Statement, paragraph 15.

competitive effects of the Acquisition. Section VI contains my comments on the Miller Report.

III. P&H'S GRAIN BUSINESS

31. P&H is one of several grain companies operating in Canada that purchases grain from farms for export to international customers or for shipment to domestic mills.[27] Other large grain companies against which P&H competes include Viterra Incorporated, Richardson International Limited, Cargill Limited, Paterson Grain Limited, G3 Canada Limited, Ceres Global Ag Corp, Archer Daniels Midland ("ADM"), Bunge Limited, and GrainsConnect Canada, as well as local grain companies such as Northwest Terminal, Southwest Terminal and Providence Grain.[28]

32. Canada is a large exporter of wheat and is the world's largest exporter of canola. Canada also produces large volumes of canola oil domestically. There are several large crushers of canola seed competing – pre- and post-Acquisition – for the purchase of canola in the area, such as Bunge at Altona MB and Harrowby SK, Richardson at Yorkton SK, and LDC at Yorkton SK. Crushers buy canola directly from farms as is evident from the transactions data collected by the Commissioner in this case. P&H and other grain companies compete with crushers for the purchase of canola from farms.

33. P&H acquires grain using a network of 29 primary elevators throughout Western Canada. Western Canadian elevators are connected by rail. [redacted]

[27] P&H's business is described at length in the Witness Statement of John Heimbecker [hereafter referred to as the "Heimbecker Witness Statement"].

[28] Request for ARC – P&H Asset Purchase from LDC dated August 23, 2019; P&H Response to the Notice of Application dated February 3, 2020; Moosomin Business Plan 2019 (P&H_0007141) and Moosomin Business Plan 2020 (P&H_0006457).

[redacted]

34. [redacted]

35. P&H does not supply "grain handling services", as the Commissioner defines this.[32] Instead, P&H (like other grain companies and crushers) buys canola and buys CWRS from farms, taking title to the grain at the time the farm delivers the grain to the elevator. [redacted]

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[29] P&H Milling Group is the largest Canadian-owned milling company. It sources wheat from Western Canada, Ontario, Quebec and Atlantic Canada to produce flour and cereal products. P&H Milling Group has mills located in Halifax NS, Montreal QC, Acton ON, Cambridge ON, Hanover ON, Saskatoon SK and Lethbridge AB. See https://www.phmilling.com/home.

[30] Heimbecker Witness Statement, paragraph 44.

[31] Heimbecker Witness Statement, paragraphs 15, and 30-34.

[32] Notice of Application, paragraph 17.

P&H grain purchase targets

36. [redacted]

37. [redacted] The global commodity supply and demand conditions for Canada's grain also vary year over year.

38. [redacted]

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[33] See the Heimbecker Witness Statement generally for a discussion of P&H's planning and grain purchase budgeting, and paragraph 32 specifically.

[34] See 2020-21 Western Canada Budget – Grain Tonnes, attached to the Heimbecker Witness Statement

[35] See 2020-21 Western Canada Budget – Grain Tonnes, attached to the Heimbecker Witness Statement.

[36] For example, Fusarium head blight ("FHB") is a fungal disease that may affect many Canadian crops including "wheat, barley, oats, rye, corn, canary seed and forage grasses", and negatively impacts grain quality and overall yield. FHB proliferates in warm, humid conditions; it "is associated with rainfall during the flowering stage" and "is spread by wind". See https://www.grainscanada.gc.ca/en/grain-research/scientific-reports/fhb-western/fhb-1.html. For maps that show the effect of FHB across Canada (2011 to 2016) see https://grainscanada.gc.ca/en/grain-research/export-quality/cereals/wheat/western/annual-fusarium-damage/maps-charts/.

[37] See Heimbecker Witness Statement, paragraphs 30-34.

[38] See Heimbecker Witness Statement, paragraph 31.

[redacted]

39. [redacted]

Understanding grain pricing for purchases from farms

40. There are various terms being used to describe prices in this case. In this section, I will clarify meanings.

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[39] See Heimbecker Witness Statement, paragraphs 41-43.

[40] 2018-19 Western Canada Budget – Grain Tonnes, attached to the Heimbecker Witness Statement.

[41] See 2020-21 Western Canada Budget – Grain Tonnes, attached to the Heimbecker Witness Statement.

[42] See Heimbecker Witness Statement, paragraph 71 and accompanying exhibits that discuss P&H's costs.

41. Elevators post prices they are paying to buy grain. The posted price is sometimes called the "flat" price,[43] the "net" price,[44] the "bid" price,[45] or the "cash" price.[46] I will refer to the "cash" price to be consistent with the terminology used in the Miller Report when describing the prices paid and received by farms. From the elevators' perspective, the cash price paid to farms is the *cost to acquire grain*. Elevators pay one single cash price to farms for their grain.[47] From the farm's perspective, the cash price is the price received for the *sale of grain*. Farms receive this single cash price when selling their grain to elevators.

42. The posted price for grain identifies its attributes or quality – typically this is "1 CAN WEST" for canola, reflecting "grade 1" Canadian western canola and "1 CWRS 13.5" for wheat, reflecting "grade 1" and 13.5% protein.[48] The posted price is the cash price for immediate (i.e., within the month) delivery to the elevator (also referred to as "spot"). Elevators also post "deferred" or "forward" prices, which are the cash prices that will be paid for a future delivery if the contract is entered into today.[49] [redacted]

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43 See, for example, Heimbecker Witness Statement, paragraph 60.

44 See, for example, the [redacted] Witness Statement, paragraph 7, the [redacted] Witness Statement, paragraph 8, and the [redacted] Witness Statement, paragraph 7.

45 When P&H contracts to acquire grain from farms, this price appears on the contract as the "Net Price." It is a Canadian dollar amount per metric tonne of grain. For example, see Figure 2.

46 See Figure 1a and Figure 1b. The posted price for a bushel of grain is referred to as the "Bid."

47 I refer to a "single" cash price to distinguish this from the Miller Report which breaks this one cash price into two components.

48 The Canadian Grain Commission provides canola and CWRS grade definitions based on "degree of soundness", "variety" and "standard of cleanliness commercially pure seed". Canola No. 1 Canada has soundness defined as "reasonably well matured, sweet, good natural colour", variety defined as "any variety of canola registered under the Seeds Act", and cleanliness defined as "not more than 1.0% of other seeds that are conspicuous and that are not readily separable from canola, to be assessed as dockage" (see ~~www.grainscanada.gc.ca/en/grain-quality/official-grain-grading-guide/10-canola-rapeseed/primary-grade-determinants-tables.html~~.) No. 1 CWRS has soundness defined as "reasonably well matured, reasonably free from damaged kernels" (see www.grainscanada.gc.ca/en/grain-quality/grain-grading/standard-grading-tool.html).

49 Deferred or forward cash prices apply to forward contracts, where the farm contracts to deliver a set quantity of grain for the contracted price within a future delivery month. See Heimbecker Witness Statement, paragraph 90.

[redacted][50] Elevators post cash prices measured in bushels, with the amount derived from the cash price calculated per MT.[51]

43. P&H provides a reference price when it posts its cash prices for purchase. The reference price provides the farm with information on the world commodity index that underlies the posted cash price. World commodity prices for grain can change frequently throughout a day and across days. The futures price used by P&H (and other grain companies) as its reference price for CWRS is the Minneapolis Hard Red Spring Wheat price which is in USD/MT.[52] The futures price used by P&H as its reference price for canola is the Intercontinental Exchange ("ICE") price for canola in Saskatchewan in CAD/MT.[53] It is common in the industry for elevators to post the difference between their cash prices and the futures price, which is referred to as the "basis".[54] The Alberta Wheat Commission describes "basis treatment on wheat prices" as follows:

> "As Western Canadian wheat bids are in Canadian dollars and the futures used in pricing are reported and traded in US dollars, the exchange rate becomes a significant influence on the basis. Regarding this unusual situation, the convention of the trade appears to be unconventional. Most buyers report their basis as simply the difference between their bid and the futures price, regardless of the fact that their bid is in Canadian dollars and the futures are in US dollars. For example, if their bid for CWRS is

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50 See Figures 1a-1b for P&H's May 14, 2020 posted prices for CWRS at Moosomin.

51 There are 36.744 bushels of wheat in a MT of wheat and 44.092 bushel of canola in a MT of canola. https://www.agric.gov.ab.ca/app19/calc/crop/bushel2tonne.jsp

52 Heimbecker Witness Statement, paragraph 65.

53 Heimbecker Witness Statement, paragraph 65.

54 Heimbecker Witness Statement, paragraph 73.

> $6.75/bu (Canadian) and the relevant futures price is 5.50/bu (US), their reported basis is 1.25 over the futures (6.75-5.50)."[55]

44. Figures 1a and Figure 1b are screenshots of P&H's mobile application's posted prices on May 14, 2020 to purchase 1CWRS 13.5 at Moosomin for various delivery months. Figure 1a is the initial screen view, and Figure 1b is the screenshot if one clicks through to "View Detail". Figure 1b provides details on the futures index used as the benchmark ("MWN20") and the futures price in USD per bushel. As shown there, if a farm were to contract with P&H on May 14, 2020 to deliver 1CWRS 13.5 to Moosomin in June 2020, P&H will pay the cash bid price of [redacted] CAD/bu to the farm, reflecting a US futures price of [redacted] USD/bu and a basis of [redacted] (= [redacted]).

45. Examples of contracts with farms also illustrate the cash prices and reference prices.

    i. Figure 2 provides an example of a P&H purchase contract with [redacted] to purchase [redacted] MT of 1 CWRS 13.5 for the "net" (i.e., cash) price of [redacted] CAD/MT. The contract refers to the futures price of [redacted] USD/MT and a basis of [redacted]. As noted above, the basis is the numerical difference between [redacted] which is in CAD and [redacted] which is in USD, such that it is not a price.[56] The contract is dated [redacted] for delivery in the month of [redacted]

    ii. Figure 3 provides an example of a Virden purchase contract with [redacted] to purchase [redacted] MT of CWRS #1 13.5 for the "net" (i.e., cash) price of [redacted] CAD/MT (or [redacted] CAD/bu). The contract was agreed on [redacted] and is for delivery in the month of [redacted] Unlike the P&H

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[55] See http://www.pdqinfo.ca/about/procedures. PDQ is the Alberta Wheat Commission's website providing wheat price data.

[56] When P&H contracts to acquire grain from farms, this basis appears on the contract as the "Basis Price." Although the default contract template puts a "$" before this amount, it is neither a "price" nor is it necessarily denoted in a currency. The basis is the numerical difference between the cash price and the referenced futures without regard for the currencies of either of those values. For example, see Figure 2 when the cash price is [redacted] CAD/MT and the "Futures Price" is [redacted] USD/MT and the basis is [redacted]/MT (= [redacted]).

contract, the LDC Virden contract does not provide a reference futures price or basis.

iii. Figure 4 provides an example of a P&H purchase contract with [redacted] to purchase [redacted] MT of 1CAN Canola for the "net" (i.e., cash) price of [redacted] CAD/MT. The contract refers to the futures price of [redacted] CAD/MT and a basis of [redacted]. The basis is the numerical difference between [redacted] and [redacted] both of which are in CAD. The contract is dated [redacted] for delivery in the month of [redacted]

iv. Figure 5 provides an example of a Virden purchase contract with [redacted] to purchase [redacted] MT of grade #1 canola for the "net" (i.e., cash) price of [redacted] CAD/MT (or [redacted] CAD/bu). Unlike the P&H contract, there is no futures price or basis used in the Virden canola contract. The contract is dated [redacted] for delivery in the month of [redacted].

46. The internal process through which P&H sets its posted prices is referred to as its "[redacted]" because, in the simplest sense, [redacted] The [redacted] to derive initial cash prices. [redacted] In addition, [redacted] The posted prices for grain are a function of the specific commodity as well as its quality.[57] [redacted]

[57] P&H sets posted prices for every elevator for a set of "Benchmark Commodities" which are regularly purchased from farms by that elevator. For instance, the Benchmark Commodity for CWRS wheat is "1CWRS 13.5"—that is, Canada Western Red Spring ("CWRS") of grade 1 with 13.5 percent protein. Similarly, the Benchmark Commodity for Canola is Canada West Canola, Grade 1 denoted by "1CAN CANOLA W." If a farm wants to contract to sell a grade or protein of either of these commodities that is different than the Benchmark Commodity standards to P&H, P&H uses a set of publicly reported "Protein Spreads" and "Grade Spreads" to adjust the posted price of the Benchmark Commodity to the posted price of the non-Benchmark Commodities. The Protein Spreads and Grade Spreads are the same across all elevators in the P&H network at a moment in

[redacted][59]

47. [redacted][60] [redacted] The outcome of this calculation is the posted cash price that P&H will pay for grain at the elevator.

48. [redacted] Different freight costs from an elevator to a terminal result

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time Heimbecker Witness Statement, paragraph 110 and P&H Discount Table (found in Appendix A to Answers to Undertakings Given on the Examination of John Heimbecker on July 15, 16, and 17, 2020), P&H CWRS Protein Spreads (found in Appendix I to Answers to Undertakings Given on the Examination of John Heimbecker on July 15, 16, and 17, 2020), and Quality Determinants (found in Appendix CC to Responses to Follow-up Questions from Heimbecker Examination]. Contracted prices for grain that are adjusted using the Spreads are still considered posted price transactions by P&H in the normal course of business, as the posted price for the non-standard proteins and grades are algorithmic adjustments to the posted prices of the Benchmark Commodities.

[58] For example, see Figure 1a and Figure 1b which illustrate posted bid prices on May 14, 2020 for 1CWRS 13.5 for deliveries in every month from May 2020 to March 2021.

[59] Cash prices vary one-to-one with CAD movements in the benchmark futures prices. See, Heimbecker Witness Statement, paragraph 73.

[60] Adapted from P&H Workback Analysis (Appendix DD found in Responses to Follow-up Questions from John Heimbecker's Examination for Discovery).

[61] The freight logical port for P&H's elevators in Alberta and western Saskatchewan is [redacted] where P&H has made significant investments [redacted] The freight-logical port for the [redacted] elevators is [redacted] Heimbecker Witness Statement, paragraphs 24 and 43.

in different posted prices by elevator. [redacted]

49. Figures 7-8 show there is no change in the relationships between Moosomin and Dutton since P&H acquired the Virden elevator.[63]

Posted prices, contract prices and negotiated prices

50. Farms have several ways to sell grain to elevators and crushers. Sales may be made with contracts signed for delivery within the same month.[64] Forward (or deferred) contracts establish the quantity to be delivered by the farm at a future month for the contracted cash price.[65] Such contracts may take the form of a grain purchase order ("GPO"), under which a farm provides a target cash price to the elevator, indicating the quantity and quality of grain the farm will deliver to the elevator if the target cash price is reached.[66]

51. If the posted cash price at the elevator reaches the target price set in a farm's GPO, the elevator contacts the farm to secure the delivery. An elevator can also proactively

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62 Freight costs are attached to the Heimbecker Witness Statement.

63 [redacted] freight-logical terminal. While there are other P&H elevators that ship to [redacted], a number of these are within the draw areas of some of the LDC elevators acquired by P&H (see Request for ARC – P&H Asset Purchase from LDC dated August 23, 2019). Dutton has the same terminal as Moosomin and would be unaffected by the Acquisition; hence, it is used in this and other price comparisons.

64 See, for example, [redacted] Witness Statement, paragraph 13, and [redacted] Witness Statement, paragraph 12.

65 See, for example, [redacted] Witness Statement, paragraph 13, and [redacted] Witness Statement, paragraph 12.

66 See, for example, [redacted] Witness Statement, paragraphs 12-13, [redacted] Witness Statement, paragraphs 14-15, and [redacted] Witness Statement, paragraphs 13-14.

trigger GPOs by agreeing to pay the target price to secure the contracted grain even if the posted cash price at the elevator has not reached the target price. At P&H, these are part of a limited special, when the commodity merchant may authorize one or more elevators to proactively trigger GPOs at their target prices.[67]

52. When P&H offers a "Special" price, which are referred to as "limited tonne" and "limited time" specials, it does so to meet a particular need, like, for example, filling remaining space in a train waiting at an elevator.[68] [redacted]

53. Posted "specials" are broadcast to farms through P&H customer service representatives ("CSRs") at individual elevators by sending emails or texts, sending a push notification through P&H's mobile application, and by calling farms within the area.[70]

54. [redacted] farms may have one-on-one negotiations with P&H for higher cash prices. As I discuss below, the instances of one-on-one negotiations are [redacted] relative to the [redacted] The evidence is that [redacted] of P&H's purchases occur at posted cash prices, such that [redacted][71]

Grading adjustments to cash prices at the time of delivery

55. Adjustments may be made to the cash price at the time of delivery if the quality delivered differs from the quality that was contracted. Grain quality at the time of contract may be uncertain when forward contracts are used. As well, there can be differences in quality within a single farm's crop. Elevators follow a formal process for

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67 Heimbecker Witness Statement, paragraph 96.

68 Heimbecker Witness Statement, paragraph 80.

69 Heimbecker Witness Statement, paragraph 80.

70 Heimbecker Witness Statement, paragraphs 82.

71 Heimbecker Witness Statement, paragraph 85. See also [redacted] Witness Statement, paragraph 27, which states: "[redacted]"

grading the quality of grain delivered, using a schedule of published price adjustments. Grade standards are established by the Canadian Grain Commission ("CGC").

56. Elevator staff grade grain through sampling taken at the time of delivery. The sample taken at the elevator can be sent to CGC for an official assessment if the farm disagrees with the elevator staff's assessment. This assessment has three parts.

i. First, the sample is assessed using a CGC-approved procedure to determine the amount of foreign material in the sample (e.g., materials that are not the desired grain). This determines the "net" compared to "gross" volume to which the cash price is applied.[72] The difference between gross and net volume is referred to as "dockage".[73]

ii. Second, the grain is assessed for moisture and protein levels.[74] Grain is contracted to have "straight" moisture levels.[75] If the delivered grain has a higher moisture percentage (e.g., "tough" or "damp" grain), a weight reduction is applied for the excess moisture (i.e., excess weight due to the moisture) in the sample. Reductions due to higher moisture levels are a fixed charge per MT. At elevators with a dryer, farms may have their grain dried for a fee instead of having the moisture reduction applied.[76] Drying charges or moisture fees are considered "fees" in the normal course of business, as they are a fee for providing drying services (directly or indirectly). P&H applies similar fees for drying or moisture

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[72] https://grainscanada.gc.ca/en/grain-quality/official-grain-grading-guide/04-wheat/determination-dockage.html

[73] From January to September 2019, the average dockage for a 42 MT delivery to Virden was [redacted] MT for Canola and [redacted] MT for CWRS.

[74] https://grainscanada.gc.ca/en/grain-quality/official-grain-grading-guide/02-moisture-testing/introduction-moisture-testing.html

[75] Canadian Grain Commission, "Glossary," August 1, 2020, available at https://www.grainscanada.gc.ca/en/grain-quality/official-grain-grading-guide/27-glossary/glossary.html, ("Moisture content is a measure of the water content of grain. Grain that is within acceptable limits of moisture is referred to as a straight grade. With increasing moisture content, grain may be referred to as tough, damp, moist and wet.")

[76] Heimbecker Witness Statement, paragraph 106.

reductions across elevators, although these can change over time.[77] Protein levels are assessed with pricing adjusted based on "protein spreads". P&H has the same protein spreads across elevators,[78] and like drying fees these may change over time.[79]

iii. Third, the grain is graded. Grading grain has objective measurable elements – green%, ergot%, etc. – and visual inspection elements. The visual quality inspection determines the degree of soundness.[80] The grader can use samples circulated by the CGC as benchmarks for guiding accurate and consistent visual grading, and there is an official grading guide that defines the degree of soundness associated with the different grades of grain. Although there are many grading factors, the primary objective and visual factors are summarized in "grading tables".[81] Adjustments in cash prices due to grade determination are done using the grain spreads at the elevator at delivery. Some of the measurable elements that affect grade only affect the price through the grade determination (e.g., ergot percentage or fusarium percentage).[82] Other grading factors have additional

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77 Heimbecker Witness Statement, paragraph 108 and P&H Discount Table (found in Appendix A to Answers to Undertakings Given on the Examination of John Heimbecker on July 15, 16, and 17, 2020. Additionally, P&H has supplied the quality determinants and fees in Quality Determinants (found in Appendix CC to Responses to Follow-up Questions from Heimbecker Examination).

78 Occasionally, the personnel at the elevator may choose to contract grain from a farm at a price that is different from that which would be expected given the Protein and Grade Spreads at the time of the contract. See, for example, Heimbecker Witness Statement, paragraph 112. P&H stated that this [redacted]

79 For an example of protein Spreads at the time of the transaction, see P&H CWRS Protein Spreads (found in Appendix I to Answers to Undertakings Given on the Examination of John Heimbecker on July 15, 16, and 17, 2020).

80 ~~https://www.grainscanada.gc.ca/en/grain-quality/grain-grading/standard-grading-tool.html~~

81 ~~https://www.grainscanada.gc.ca/en/grain-quality/official-grain-grading-guide/04-wheat/primary-grade-~~ determinants/cwrs-en.html

82 Heimbecker Witness Statement, paragraph 106.

quality reductions (e.g., admix, green%, heated%, spring thrashed, other damage% and test weight).[83]

57. Depending on P&H's inventory (at the elevator, port terminal and across its network) at the time of delivery, it may be possible for the elevator to blend a somewhat lower grade without affecting the overall grade of the elevator's full inventory.[84] For example, consider fusarium damage for CWRS. According to the grading tables, No. 1 CWRS can have up to 0.3% fusarium damage and No. 2 CWRS can have up to 0.8% fusarium damage. If a farm delivers a grain that meets No. 1 CWRS standards on all elements, except it has 0.4% fusarium damage, it is possible that the grader will still award this delivery No. 1 status and No. 1 pricing if the elevator can blend the delivered grain with 0.4% fusarium damage with existing inventory stocks and still meet the 0.3% fusarium damage limit for No. 1 CWRS.[85] If this were to occur, it is referred to as a form of "upgrading". It is P&H's policy not to upgrade grain in this manner.[86]

58. In summary, P&H manages its price setting, including adjustments for grade, and any offers of "Specials" centrally, at the network level. Individual elevators implement the directions provided from P&H's headquarters. In keeping with this central organizing principle, P&H also manages its costs at the network level.[87] P&H does not maintain

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83 Heimbecker Witness Statement, paragraph 106.

84 Heimbecker Witness Statement, paragraph 112.

85 Recall, the CGC insurance mechanism ensures that something that would be rightly classified as a No 1 could never be labelled a No 2 – the subjectivity is one directional. https://www.grainscanada.gc.ca/en/protection/delivery/dispute-grain-grade.html

86 Heimbecker Witness Statement, paragraph 112.

87 See Western Canada Pipeline PL - Budget 2018 (P&H_0000045).

profit and loss or other financial accounts for individual elevators.[88] Instead, P&H treats all elevators as "costs" in its financial records.[89]

IV. ECONOMIC ASSESSMENT OF THE ACQUISITION

Economics of monopsony power

59. This is a case about monopsony power (i.e., market power on the buying side of the market) because the competition concern is one involving P&H lowering the prices it pays to farms for their canola and CWRS after acquiring the Virden elevator.

60. Monopsony or oligopsony reflects market power on the buying side of the market, as opposed to the more usual competition framework involving market power on the selling side (i.e., monopoly or oligopoly power). In the textbook case of monopsony, the sole purchaser chooses the input quantity to purchase in order to maximize the value received from using the input less the total expenditure. When the input is homogeneous, price discrimination is not possible and an upward-sloping supply curve for the input exists,[90] the monopsonist lowers the input price by lowering its input

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88 [redacted] Response by Parrish & Heimbecker, Limited of Certain Grain Elevators and Related Assets from Louis Dreyfus Company Canada ULC (the "Proposed Transaction") — P&H Response to SIR dated November 9, 2019, at p.4, q. 9.

89 [redacted] Response by Parrish & Heimbecker, Limited of Certain Grain Elevators and Related Assets from Louis Dreyfus Company Canada ULC (the "Proposed Transaction") — P&H Response to SIR dated November 9, 2019, at p.4, q. 9.

90 If the supply of the input is flat, the monopsonist cannot change the price of the input by lowering its purchases. Not all industries will have upward sloping supply curves. In a study of 26 US manufacturing industries, for example, 16 industries were found to have upward sloping supply functions, while seven had flat supply functions and three had downward sloping supply functions (see J. Shea (1993) "Do Supply Curves Slope Up?", *Quarterly Journal of Economics*, 108:1-32). Outside of manufacturing, the supply curves for many agricultural products generally slope upward (see Dobson Consulting (1999) *Buyer Power and its Impact on Competition in*

purchases below competitive levels. It is only by reducing its purchases that the monopsonist is able to reduce the input purchase price because lowering the price of one unit also serves to lower the price paid for all other units.[91]

61. The source of inefficiency is the reduced input purchase quantities: the below-competitive input purchase level is associated with an allocative inefficiency (or "deadweight loss") caused by the monopsonist's decision not to purchase additional units for which the marginal value exceeds the marginal cost of the input supply. This is analogous to the familiar deadweight loss or allocative inefficiency associated with the exercise of market power when considering monopoly.[92]

62. Economists' concern with monopsony stems from the efficiency loss associated with fewer inputs being purchased relative to a competitive market. As a result, it is important to distinguish monopsony from arguments over the split of upstream profits among possible suppliers. It is possible that mergers may change the bargaining position of purchasers in their dealings with suppliers, thereby shifting the terms of trade

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the Food Retail Distribution Sector of the European Union, Study prepared for the European Commission – DGIV, May, at 13).

91 See Michael Trebilcock, Ralph Winter, Paul Collins and Edward Iacobucci (2003), *The Law and Economics of Canadian Competition Policy*, (Toronto: University of Toronto Press) at 69: "The distortion in the monopsony purchase arises because at any output, the marginal expenditure exceeds the supply price of the product. The marginal expenditure is higher than the supply price because to elicit an additional unit of supply the monopsonist must raise the price paid on all units, not just on the marginal unit."

92 "The analysis of the monopsonist reminds us that inefficiencies associated with market power arise from insufficient quantities, not excessive prices." Trebilcock et al., *The Law and Economics of Canadian Competition Policy*, at 70.

between purchasers and suppliers, but this need not alter the quantity of input purchases.[93, 94]

63. Monopsony power can exist even when output markets are competitive, as ultimately what matters are the alternatives available to input suppliers. An efficiency loss is still evident even with competitive downstream markets, since input suppliers that would have produced the relevant input at the competitive marginal cost of doing so do not supply it owing to the distorted input prices. At the same time, competitive output markets may act to attenuate monopsony concerns in some circumstances.[95]

64. The ability of the input purchaser to force a price and input purchase reduction below competitive levels depends critically on the alternatives that are available to suppliers. If suppliers have numerous ready alternatives, then supply is highly elastic. At high firm supply elasticities, any attempt to lower input prices will require a considerable reduction in input purchases. As a result, the input purchaser will have little ability to suppress price below the competitive level, implying little loss in efficiency.

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[93] The division of the gains from trade between two bargaining firms depends on the profits each firm would lose in the event that no trade occurs. In the context of a manufacturer negotiating with a distributor, if the manufacturer has many attractive distribution channels available to it and the manufacturer's product is highly desirable such that the distributor would lose considerable sales if it failed to stock the manufacturer's product the split of rents between the manufacturer and distributor will be more heavily weighted to the manufacturer. A merger that reduces the number of distributors may change this dynamic allowing the merged distributor to capture a larger share of the gains from trade than was the case pre-merger. There is no change in the quantity of product bought by the distributor however and hence no change in input purchases.

[94] Alternatively, the structure of pricing may be non-linear, having two-part tariffs (i.e., a fixed fee plus a payment based on volume purchased), or quantity discounts, which may allow the merged firm to reduce the total payment made to suppliers without reducing the quantity of inputs purchased from those suppliers. In such circumstances, there is no monopsony efficiency loss, although to the extent that returns to input suppliers are reduced over the longer term we might expect reduced entry or possible exit in the production of inputs, which in turn should raise returns to input suppliers again. If instead, a reduction in the economic return to suppliers reduces their output over the longer term owing to barriers to entry in input supply markets, there is an efficiency loss.

[95] When the merging firms compete in competitive output markets and when inputs are combined in fixed proportions to yield final output, any reduction of input purchases necessarily reduces the merged firm's outputs. By reducing input purchases, the monopsonist cedes market share in the output market. As a result, while input costs may decline owing to lower input prices and lower input purchases, these potential cost savings may be offset by the reduction in margin earned on the forgone output.

65. As I discuss below, farms have numerous alternative buyers available beyond the Moosomin and Virden elevators, such that P&H faces a high supply elasticity. As a result, P&H is unable to materially reduce its purchase prices for grain from farms in the area surrounding the Moosomin and Virden elevators. To do so would require an uneconomic reduction in the volume of P&H's purchases at these elevators, particularly in light of the sizeable capital investments made by P&H in expanded terminal capacity in Vancouver.[96] Indeed, since closing the Acquisition, P&H has increased purchases at the Moosomin and Virden elevators.[97]

Relevant product markets

66. In cases where the market power concern is in respect of the *sale* of products or services, market definition is approached from the buyers' perspective.[98] However, this case is about market power on the *buying* side; hence, market definition should be approached from the farms' perspective.

67. If P&H were to have monopsony power post-Acquisition, it would reduce the cash prices paid to farms for their grain, owing to farms having few alternative buyers for their grain. Pre-Acquisition, the Virden elevator bought canola and CWRS from farms, while the Moosomin elevator bought canola, CWRS and other grains. As a result, any competitive effects from the Acquisition would be in respect of the purchase of canola and the purchase of CWRS as these are only two grains of overlap.

68. The Commissioner seeks to define the relevant product market differently, by claiming that elevators provide "grain handling services" to farms simultaneously with farms selling grain to elevators. This is an artificial construct that does not apply to the actual

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96 P&H's investments in the Fraser Grain Terminal and other terminal assets are described in the Heimbecker Witness Statement at paragraphs 24-25.

97 Details of the increase in purchases are provided herein.

98 MEGs, paragraph 4.2, page 11.

interactions between farms and elevators that exist today.[99] For instance, the [redacted] Witness Statements refer to receiving the "net" or "cash" price from elevators and crushers, which is the price that they use to compare across buyers and is the price that "matters to me and … drives my decision to sell [to] a given Elevator or crusher."[100] I discuss the error in the Commissioner's approach at length when commenting on the Miller Report in the next section. Market interactions between farms and elevators support a relevant product market defined as the purchase of canola or the purchase of CWRS.[101]

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[99] The Commissioner's characterization of the industry may have been relevant in the past, but it is not how the industry operates currently. With respect to past industry practices, I note the Competition Bureau filed an application before the Competition Tribunal challenging a joint venture between the Saskatchewan Wheat Pool and James Richardson International Limited at the Port of Vancouver in November 2005. At the time of that transaction, the merging firms did not purchase grain from farms. Instead, the Canadian Wheat Board ("CWB") purchased all grain from farms. Grain companies would handle grain delivered by farms on behalf of the CWB on a "toll basis". Under the terms of the handling agreements then in place, grain companies would pay farms what was referred to as an "Initial Price" determined by the CWB, minus certain deductions. The Initial Price was based on the CWB's perception of the market value in Vancouver (or other export ports, such as Thunder Bay). Grain companies would deduct certain charges (or tariffs) from that price including: (a) the effective rail tariff from their elevator to the export terminal; (b) tariffs for elevation, handling and cleaning; and (c) a CGC service fee. The net price, after applying those deductions, was the amount payable to the farm. With the end of the CWB on July 31, 2012, the historical tariffs and fees for service ended.

[100] [redacted] Witness Statement, paragraph 11.

[101] The Competition Bureau has defined the relevant product as the purchase of an input in other merger cases. For example, in its review of Cargill Limited's acquisition of the Better Beef Group of Companies, the Bureau examined the transaction's competitive effects in respect of cattle procurement, which is analogous to the purchase of grain here. The Bureau defined the relevant upstream product market as the procurement of fed cattle, or slaughter cattle under 30 months of age. Fed cattle are steers and heifers that have reached an optimum slaughter weight of 1,200 to 1,400 pounds. See Competition Bureau Backgrounder on the Acquisition of Better Beef by Cargill Limited, available at: https://www.competitionbureau.gc.ca/eic/site/cb-bc.nsf/eng/01941.html.

Shortly before dealing with the Cargill/Better Beef merger, the Bureau had completed a broader investigation of monopsony allegations made against Canadian packers following the U.S. and other countries' ban on imports of Canadian beef with the discovery of bovine spongiform encephalopathy ("BSE") in Canada in May 2003. Beef packers were accused of coordinating the prices paid to ranchers for cattle contrary to the conspiracy provisions of the *Competition Act*, and also of engaging in anti-competitive practices contrary to the abuse of dominance provisions of the *Competition Act*, notably refusal to deal, using captive supply to drive down cattle prices and margin squeezing. There were also allegations of strategic bidding among packers to depress cattle prices, black listing or boycotting of auction houses, cattle producers or feedlots attempting to sell cattle, and reducing prices offered for cattle by an amount equivalent to government aid. In late April 2005 the Bureau reported the results of its investigation, finding no evidence of conduct contrary to the *Competition Act*. See Competition Bureau Backgrounder on the Competition Bureau's Examination into Cattle and Beef Pricing, available at http://www.competitionbureau.gc.ca/internet/index.cfm?itemID-1311&lg=e.

69. Using the language of the MEGs, the cash price paid to farms to purchase canola or CWRS is "ordinarily considered to be the price of the product in the sector of the industry (e.g. manufacturing, wholesale, retail) being examined",[102] such that it is the "prevailing price in the relevant market".[103] The cash price to purchase canola and the cash price to purchase CWRS are also the correct base prices to use when postulating a price increase under the hypothetical monopolist test.[104]

70. The cash prices paid for the purchase of canola or the purchase of CWRS are "posted prices" at the elevator.[105] These prices apply across multiple farms. This is not a case where buyers "may identify and charge different prices to various targeted sets of [farms]"[106] such that price discrimination exists. P&H does not negotiate each individual farm-specific price that would make the purchase of grain from each farm a separate relevant product market. Instead, the relevant product markets are defined as the purchase of canola and the purchase of CWRS, such that the prices used to evaluate competition in the relevant product markets are the cash prices paid to farms for the purchase of their canola or CWRS.

Relevant geographic markets

71. Adapting the language of the MEGs to account for this case being one of monopsony, the relevant geographic markets should be defined to include all *purchasers* that would have to be included in order for a sole profit-maximizing buyer (a "hypothetical monopsonist") to impose and sustain a small but significant and non-transitory decrease in the cash price paid to farms. The geographic boundaries are drawn to include the

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[102] MEGs, paragraph 4.7.

[103] MEGs, paragraph 4.6.

[104] MEGs, paragraphs 4.6-4.7.

[105] The Commissioner's expert Dr. Miller agrees that the right economic model to address any competitive concerns arising from the acquisition is a posted price model. See Miller Report, paragraph 47.

[106] MEGs, paragraph 4.8, speaking to market power in respect of the selling side of the market state: "When price discrimination is feasible, it may be appropriate to define relevant markets with reference to the characteristics of the buyers who purchase the product (assuming they can be delineated) or to the particular locations of the targeted buyers." This is not the case here.

locations of all such purchasers. I discuss the application of the hypothetical monopsonist test in my comments on the Miller Report.

72. The Moosomin and Virden elevators purchase canola and CWRS. Rival elevators also purchase both grains. In canola, there are also additional purchasers who crush canola seed to produce canola oil. I will adopt the common industry nomenclature to refer to the latter group of grain purchasers as "crushers".

73. Figure 9 provides a map of the elevators and canola crushers within the area surrounding the Moosomin and Virden elevators. Elevators and crushers buy grain from numerous farms that are widely dispersed throughout the area. The cash prices set by elevators and crushers need to be high enough to attract sufficient volumes from many dispersed farms. As such, the cash prices must cover the trucking costs for more distant farms to be willing to truck grain to the elevator's or crusher's location.[107] Because a single cash price is paid to farms at varying distance from the elevator or crusher, farms that are located very close to the elevator or crusher receive the same cash price as farms that are farther away. The result is that very close farms realize a location "rent" or benefit that more distant farms do not realize. Nevertheless, without price discrimination and given the quantity of grain purchased by P&H, it cannot take advantage of farms based on proximity.

74. A single farm will be close to one elevator and more distant to another elevator, yet both elevators compete for this farm's grain, as well as many other farms' grain. The result is a set of interconnecting and overlapping "draw" areas where a draw area depicts the geographic locations of farms that deliver grain to any single elevator or crusher location. Using this concept, Figure 10 shows the locations of all farms from which

[107] Farms selling to more distant buyers are doing so because the cash prices they receive make the longer trip worthwhile. See, for example, [redacted] Witness Statement, paragraph 21, [redacted] Witness Statement, paragraph 24, and [redacted] Witness Statement, paragraph 25.

each of Moosomin and Virden purchase 95% of their respective canola,[108] based on the transactions data collected by the Commissioner for the last three crop years. Only farms making deliveries over 50 MT in a single crop year are included to ensure farms making regular sales to each elevator are used.[109] Each elevator buys canola from a wide area that extends well beyond its immediate area. There are [redacted] from which Moosomin purchases canola and [redacted] from which Virden purchases canola. In the 2018-19 crop year, these farms delivered [redacted] MT of canola to Moosomin and [redacted] MT of canola to Virden.

75. When distance is measured using roads suitable for commercial trucking,[110] the farms located on the periphery of the Moosomin 95% draw area for canola are approximately [redacted] from Moosomin. In the case of Virden, its 95% draw area for canola extends to farms located [redacted] from Virden based on commercial trucking roads. The Witness Statements of [redacted] refer to sales made to elevators and crushers within and beyond these distances.[111]

76. Crushers purchase larger quantities of canola than elevators; hence the purchase prices paid by crushers are higher to attract canola from more distant farms.[112] Figure 11 provides the draw area for Richardson's Yorkton crusher's purchases of canola in 2018-19 superimposed on the canola draw areas for Moosomin and Virden. The periphery of

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[108] A 95% draw area is used to match the share of total net quantity from the Moosomin, Virden and Fairlight elevators which is contained in Dr. Miller's "union of 90% service areas", as shown at Exhibit 18 of his report. Dr. Miller's union of 90% service areas (baseline) accounts for [redacted] of the Moosomin, Virden and Fairlight elevators' canola deliveries and [redacted] of their CWRS deliveries. Even if Dr. Miller uses an 85% service area (as shown in his Exhibit 18), this accounts for [redacted] of the Moosomin, Virden and Fairlight elevators' canola deliveries and [redacted] of their CWRS deliveries as report by Dr. Miller.

[109] A single truck holds 45 MT of grain. By using a threshold of 50 MT, the farm must deliver more than a single truckload to the elevator.

[110] These distances are based on commercial truck driving distances calculated using the HERE API and account for road weight limitations.

[111] See [redacted] Witness Statement, paragraphs 17 and 19, [redacted] Witness Statement, paragraphs 19 and 22, and [redacted] Witness Statement, paragraphs 22-23.

[112] See [redacted] Witness Statement, paragraph 10, [redacted] Witness Statement, paragraph 12, and [redacted] Witness Statement, paragraph 11.

Richardson's Yorkton's crusher's 95% draw area for canola is [redacted] which is [redacted] than that of Moosomin and Virden. Richardson's Yorkton crusher purchased canola from [redacted] farms in 2018-19.

77. The transactions data collected by the Commissioner includes farm location information that allows draw areas to be constructed for the elevators within the immediate area owned by P&H, LDC, Viterra, Richardson, and Cargill, as well as the crushers owned by Bunge, ADM, Richardson, and LDC.[113] Figure 12 provides the draw area outlines for each elevator and crusher purchasing canola in crop year 2018-19 based on the transactions data collected by the Commissioner. It shows a network of many overlapping draw areas. There is no obvious demarcation of a natural "end" or "limit" to these overlapping draw areas.[114] If I arbitrarily choose a threshold based on including those elevators and crushers that have at least [redacted] of their draw area intersect and overlap with the draw areas of both Moosomin and Virden, this results in [redacted] elevator/crusher purchasers of canola in the area.[115] Even if I were to arbitrarily restrict the set to only include those elevators and crushers that have at least [redacted] of their draw area intersect and overlap with the draw areas of both Moosomin and Virden, this results in [redacted] elevator/crusher purchasers of canola in the area.[116] Even with these arbitrarily

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[113] Ceres is another grain company with elevators within the area, [redacted] (see Miller Report, paragraph 151). The G3 transactions data [redacted] (see Miller Report, paragraph 170).

[114] Individual farms have options available beyond those that they use currently, given the overlaps and intersections between competing elevator and crusher draw areas. The number of additional options available to their specific farms is noted in the [redacted] Witness Statement, paragraphs 18 and 20, and [redacted] Witness Statement, paragraphs 21 and 25.

[115] The list of purchasers of canola includes: [redacted]

[116] The list of purchasers of canola includes: [redacted]

chosen restrictions, the relevant geographic market for the purchase of canola clearly includes more than Moosomin, Virden and Fairlight as claimed by the Commissioner.

78. Turning next to the purchase of CWRS, Figure 13 provides the 95% draw areas for Moosomin and Virden using the same criteria. When distance is measured using roads suitable for commercial trucking,[117] the farms located on the periphery of the Moosomin 95% draw area for CWRS are approximately [redacted] In the case of Virden, its 95% draw area for CWRS extends to farms located [redacted] based on commercial trucking roads. There are [redacted] included in the CWRS draw area for Moosomin and [redacted] within the CWRS draw area for Virden. In the 2018-19 crop year, these farms delivered [redacted] MT of CWRS to Moosomin and [redacted] MT of CWRS to Virden.

79. Figure 14 provides the draw area outlines for each elevator purchasing CWRS in crop year 2018-19 based on the transactions data collected by the Commissioner. Like canola, a network of many overlapping draw areas exists for CWRS. There is no obvious demarcation of a natural "end" or "limit" to these overlapping draw areas. If I arbitrarily use a threshold based on including those elevators that have at least [redacted] of their draw area intersect with the draw areas of both Moosomin and Virden, this results in [redacted] elevator purchasers of CWRS in the area.[118] Even if I were to arbitrarily restrict the set to only include those elevators that have at least [redacted] of their draw area intersect with the draw areas of both Moosomin and Virden, this results in [redacted] elevator purchasers of CWRS in the area.[119] As with canola, even using these arbitrarily chosen restrictions, the relevant geographic market for the purchase of CWRS clearly includes more than Moosomin, Virden and Fairlight as claimed by the Commissioner.

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[117] These distances are based on commercial truck driving distances calculated using the HERE API and account for road weight limitations.

[118] The list of purchasers of CWRS includes: [redacted]

[119] The list of purchasers of CWRS includes: [redacted]

80. The Witness Statements provided by farms in this matter whether by the Commissioner or by P&H refer to sales made regularly to – or prices regularly checked at – elevators beyond Moosomin, Virden and Fairlight. The elevator and crushers referred to are discussed above at paragraph 20, and include [redacted]

81. Internal documents maintained in the ordinary course of business provide support for including these many market participants within the relevant geographic market. P&H's SIR responses show that P&H and its CSRs at Moosomin refer to and track prices of many other elevators beyond Virden, including [redacted][120] LDC's SIR responses show that its Virden elevator competes with many other competitors besides Moosomin and Fairlight, including elevators at [redacted][121]

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[120] See, for example, P&H email regarding [redacted]

[121] See, for example, the email from [redacted]

82. Moosomin's fiscal 2019 and fiscal 2020 business plans[122] identify numerous competing elevators. Both plans (which pre-date the Acquisition) provide each competing elevator's overlap with Moosomin providing an indication of the percentage of Moosomin's draw area that the competing elevator touches. There are [redacted] elevators and crushers referenced. [redacted]

83. The relevant geographic market should include current purchasers of canola and CWRS that compete with Moosomin and Virden. This area may be defined as (at least) southeastern Saskatchewan and southwestern Manitoba. The market participants included in the relevant geographic market are numerous, and include many competing elevators and crushers beyond Moosomin, Virden and Fairlight.

The Commissioner's defined relevant geographic market

84. In the Notice of Application, the Commissioner defines the relevant geographic market as "the aggregated locations of farmers that benefited from competition between the Virden Elevator and Moosomin Elevator... Farmers most affected are located in the corridor between these two Elevators."[123] In this section, I discuss whether the farm locations within this area, which I will refer to as the "corridor of concern" between

[122] Moosomin Business Plan Fiscal 2019 (P&H_0007141) and Moosomin Business Plan Fiscal 2020 (P&H_0006457).

[123] Notice of Application, paragraph 21.

Moosomin and Virden differ systematically from the other farm locations within the relevant geographic markets for the purchase of canola and CWRS that I described above.

85. I begin by identifying the area defined as the "corridor of concern". Figure 15 maps all farm locations that are within one-hour commercial trucking driving distance to *both* Virden and Moosomin.[124] In order to identify the specific farms within this area, staff under my direction acquired property ownership maps from each of the rural municipalities ("RMs") that are within the "corridor of concern".[125] Each RM map identifies the owner of each 160 acre section of land within the RM.[126] Scans of the four RM maps are attached in Figures 16a-16d. Staff under my direction digitized the paper copies of these maps. Each collection of sections under a single common family name (and common address) is considered a "farm." The list of farms identified was provided to P&H for confirmation and correction of the classified farms ensuring that only farms growing canola or CWRS were included. The result is [redacted] grain farms located in the "corridor of concern", covering [redacted] acres of land, all within one-hour commercial trucking drive of both the Moosomin and Virden elevators.

86. The [redacted] farms within the "corridor of concern" are within the Commissioner's area of concern as they would be expected to benefit from competition between Moosomin and Virden pre-Acquisition. To situate these farms, Figure 17 maps the one-hour driving distance "corridor of concern" against the 95% draw areas for the Moosomin and Virden elevators purchases of CWRS. These [redacted] delivered [redacted] of the combined purchases of canola made by Moosomin and Virden in the last three crop years, and

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[124] Drive times and distances are calculated using the HERE Technologies API for commercial trucking routes. The drive times are calculated for a 45 tonne tractor truck including considerations such as road weight restrictions. HERE is an industry leader supplier of mapping data.

[125] There are four RMs within the "corridor of concern": Moosomin, Ellice-Archie, Wallace-Woodsworth, and Maryfield. Note that an RM is the same unit of geography as Dr. Miller's census sub-division or "CCS."

[126] "Each square parcel within the township is known as a "section" each being one mile square and consisting of 640 acres each. Title to each section may be further subdivided either into half-mile square 160-acre "quarters" and 40-acre sixteenths ("legal subdivisions" or LSDs)". https://www.isc.ca/signedinhome/help/land/pages/landdescriptions.aspx

[redacted] of the combined purchases of CWRS made by Moosomin and Virden in the last three crop years. Both elevators purchase grain well beyond the farms within what I refer to as the "corridor of concern". Hence, P&H must set its cash prices to purchase canola and CWRS at high enough levels to attract more grain to the Moosomin and Virden elevators than that which is produced by the [redacted] within the "corridor of concern" alone. In other words, the farms in the "corridor of concern" do not account for a large enough fraction of total deliveries to Moosomin and Virden that P&H would change the posted cash prices for all farms from which it purchases grain in order to buy grain from farms within the "corridor of concern" at a lower price, if that were hypothetically possible.

87. Staff under my direction searched the transactions data collected by the Commissioner to determine if the [redacted] in the "corridor of concern" deliver canola or CWRS to elevators and crushers beyond Moosomin and Virden. Figures 18a-18c colour code each farm within the "corridor of concern" based on the elevators and crushers to which the farm sold canola or CWRS (Figure 18a), the elevators and crushers to which the farm sold canola (Figure 18b) and the elevators to which it sold CWRS (Figure 18c) during the last three crop years. Pink identifies those farms delivering canola only to Moosomin. Blue identifies those farms delivering canola only to Virden. Red identifies those farms delivering canola only to Moosomin and Virden. Green identifies those farms delivering canola to Moosomin and Virden and a rival. Orange identifies those farms delivering canola to one of Moosomin and Virden and a rival. Black identifies those farms that did not deliver canola to either Moosomin or Virden.

88. As shown in the maps at Figures 18a-18c and in the summary table at Figure 19, there are [redacted] farms within the "corridor of concern" that sold only to Moosomin, [redacted] farms that sold only to Virden and [redacted] farms that sold only to both Moosomin and Virden in the last three crop years. Of the [redacted] within the Corridor, [redacted] (representing [redacted]) within the "corridor of concern" sold canola or CWRS to rival elevators and crushers.

89. Details for each of the [redacted] within the "corridor of concern" are provided in Figures 20-21 for canola (Figure 20) and CWRS (Figure 21). For each farm, total observed deliveries for each crop year are identified, as well as the percentage of deliveries to different elevators and crushers observed in the transactions data. Viterra's Fairlight elevator is frequently listed, but it is not the only alternative to which the farms in the "corridor of concern" deliver canola and CWRS. Figure 20 shows significant canola deliveries from these [redacted] to [redacted] Figure 21 provides similar information for the CWRS deliveries from the farms in the "corridor of concern".

90. Different farms make different choices. For example, the [redacted]

91. Figures 22-23 report the distances using commercial trucking roads from each farm within the "corridor of concern" to the different buyers of canola (Figure 22) and CWRS (Figure 23) to which these farms collectively made deliveries in the last three crop years. Shading identifies when the farm made deliveries over 50MT to the elevator or crusher within a crop year. The number of elevators/crushers used by each farm over the last three crop years is also provided.[127] Figure 22 clearly shows the attractiveness of

[127] Some farms have divided locations, in which case they appear twice. For example, [redacted] has a collection of sections in Elkhorn MB and another in Virden MB.

crushers for canola sales. [redacted] If P&H wishes to secure these farms' canola deliveries, P&H must set its cash prices to purchase canola at levels that are competitive with the many different elevator and crusher options to which these farms deliver canola.

92. Figure 23 provides the commercial truck driving distances for each farm within the "corridor of concern" to each elevator shading the elevators to which that farm sold over 50 MT of CWRS in any one of the last three crop years. [redacted] While a single farm may deliver CWRS to only one elevator, its neighbour may deliver CWRS to multiple elevators at varying distances. P&H is setting a common cash price to purchase CWRS from many different farms that clearly avail themselves of many different options. As a result, P&H must set its CWRS cash prices to be competitive with the many different elevators within the area that compete for the same farms' grain.

93. In sum, the farms within the "corridor of concern" sell canola and CWRS to many different rival elevators and crushers beyond Moosomin, Virden and Fairlight. The information contained in this analysis of the "corridor of concern" farm locations corroborates the witness statements from farms, which also reported numerous elevators and crushers to which individual farms have sold their grain in recent years as well as numerous alternative purchasers also available if farms are seeking better pricing. Whether the farms considered at those that are located within the narrow confines of one hour commercial driving distance from both Moosomin and Virden, or are within the larger draw areas for the Moosomin and Virden elevators, the buyers vying for these farms' grain extends well beyond Moosomin, Virden and Fairlight, which are the only elevators included in the Commissioner's relevant geographic market.

94. Given the range of options available to farms and the different choices they each make, the cash prices that P&H sets to purchase canola and CWRS must be competitive with the cash prices set by numerous elevators operated by [redacted] as they purchase canola from the same farms that deliver canola to Moosomin and Virden.

P&H's share of purchases in the defined product and geographic markets

95. I have defined the relevant markets to be the purchase of canola by elevators and crushers located within at least southeastern Saskatchewan and southwestern Manitoba, and the purchase of CWRS by elevators located within at least southeastern Saskatchewan and southwestern Manitoba. As described above, there is no obvious dividing point among the many intersecting and overlapping draw areas of elevators and crushers buying grain from farms surrounding the Moosomin and Virden elevators. This complicates market share calculations.

96. Nevertheless, using the transactions data collected by the Commissioner, Figures 24-25 provide the share of canola purchases (Figure 24) and share of CWRS purchases (Figure 25) that each of Moosomin and Virden had using the date ranges used for crop years in the Miller Report as well as the share of purchases for each other elevator and crusher included in the geographic market for which there is transactions data.

97. P&H's post-acquisition combined share of canola purchases is [redacted] and its combined share of CWRS purchases is [redacted], both of which are less than the 35% safe harbour threshold contained in the MEGs. Thus, the merging elevators "represent only a small percentage of the total purchases of the relevant product, [such that] the suppliers [i.e., farms] [are] well-placed to forego sales to the merging parties in favour of other buyer

when faced with an attempt to lower prices."[128] P&H's post-Acquisition share of purchases meets the criteria set out at paragraph 9.3 of the MEGs where there should be no challenge of the Acquisition.

Number of buyers of canola and CWRS available to farms within the area

98. To illustrate the number of elevator and crusher buyers available to farms within the area surrounding the Moosomin and Virden elevators, "heat maps" provide a count of buyers based on the intersection and overlap of the above-noted draw areas using the transactions data collected by the Commissioner. As was done when producing draw area maps for Moosomin and Virden, only farms delivering more than 50 MT to each elevator or crusher in a single crop year are included.

99. Figure 26 provides a heat map showing the number of elevators and crushers buying canola from farms across the area.[129] Farms within the area surrounding Moosomin and Virden have [redacted] elevators and crushers vying for their canola.[130] Figure 27 provides a heat map that extends beyond the immediate area surrounding Moosomin and Virden. It shows that farms surrounding Moosomin and Virden are no different from farms in other parts of western Canada with respect to the many elevators and crushers seeking to buy their canola.

100. Figure 28 provides the same information for CWRS based on the 95% draw areas using the transactions data collected by the Commissioner.[131] Farms within the area

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[128] MEGs, paragraph 9.3.

[129] For elevators and crushers that did not provide transactions data to the Commissioner, the average 95% draw area based on the transactions data is applied. For elevators with less than 100 rail car spots, the average 95% draw area is [redacted] for canola. For elevators with at least 100 rail car spots the average 95% draw area is [redacted] for canola. The average 95% draw area for crushers is [redacted]. These distances are based on commercial truck driving distances calculated using the HERE API and account for road weight limitations.

[130] Heatmaps based on the number of firms purchasing grain that consolidate multiple elevators owned by a single firm show a similar picture in that the farms in the area surrounding Moosomin and Virden have similar counts of "firm buyers" as do farms in other parts of western Canada.

[131] For elevators that did not provide transactions data to the Commissioner, the average 95% draw area based on the transactions data is applied. For elevators with less than 100 rail car spots, the average 95% draw area is [redacted] for CWRS. For elevators with at least 100 rail car spots the average 95% draw area is [redacted] for CWRS.

surrounding Moosomin and Virden have [redacted] elevators vying for their CWRS. Figure 29 shows that the number of elevators buying CWRS from farms within the immediate area surrounding Moosomin and Virden is not fewer than in other parts of western Canada.

Defining a material price decrease

101. Given the number of competing buyers of grain against which P&H will compete post-Acquisition, its purchase of Virden will not substantially lessen competition because purchasing Virden has not provided P&H with the incentive or ability to materially reduce cash prices paid to farms for canola and CWRS. This begs the question what constitutes a *material* change in price.

102. It is well known that economic models generally predict price effects from mergers between firms that have positive diversion (however small) and positive variable margins if efficiencies are not incorporated.[132] While the MEGs indicate the Bureau does not have numerical threshold for a material change in price,[133] because economic models will predict some change in price when efficiencies are not incorporated it is important to avoid considering any change in price from an economic model either likely or material.

103. Cash prices paid for the purchase of canola and the purchase of CWRS move in real time with global commodity markets.[134] Industry participants – be they farms, elevators or crushers – deal with fluctuating cash prices as part of the normal course of business.

These distances are based on commercial truck driving distances calculated using the HERE API and account for road weight limitations.

132 See OECD paper available at http://www.oecd.org/officialdocuments/publicdisplaydocumentpdf/?cote=DAF/COMP(2012)13&docLanguage=En which notes that "in the absence of efficiencies, the (gross) upward pricing pressure is always positive if margins and diversion ratios are positive".

133 MEGs, paragraph 2.14.

134 Cash prices vary one-to-one with CAD movements in the benchmark futures prices. See Heimbecker Witness Statement, paragraph 74.

Figure 30 illustrates the average daily range in the canola and CWRS futures prices that P&H uses as reference prices when posting its cash purchase prices. Pricing throughout August 2018 – July 2019 (inclusive) is shown. For each of the trade days for those commodities in the last year that they expired,[135] the difference between the high and low futures values are considered. The average of these within day ranges is reported in Figure 30. [redacted] When expressed in dollars per bushel, these values translate into 0.10 CAD/bu for each of canola and CWRS.[136] Should a farm be successful in timing its grain sale within a day, it can achieve a cash purchase price that is [redacted] higher by selling grain at the right hour of the day. While within-day average variation is [redacted], the variation in cash purchase prices that industry participants deal with across days can be much greater than this.

104. The Commissioner points to the "[redacted]" email[137] to suggest that two cents per bushel is a candidate for a material difference in price. I do not interpret this email to mean 2 cents per bushel should be used as the threshold for a material change in the cash purchase price of canola or CWRS.[138] During 2018-19, the average cash purchase price paid at Moosomin for canola was [redacted],[139] making 2 cents equal to [redacted] of the cash purchase price of canola. During 2018-19, the average cash purchase price paid at Moosomin for CWRS was [redacted],[140] making 2 cents equal to [redacted] of the

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135 Commodities expire on the last week day prior to the 15th of the contract month. https://www.barchart.com/futures/futures-expirations/grains. This is the last delivery date that would ever be pegged to this commodity. https://www.alberta.ca/understanding-the-canola-futures-contract.aspx, https://www.crmg.us/content/docs/study-guides/grain_and_oilseed_futures_and_options.pdf.

136 For canola, there are 44.092 bushels of canola in a MT of canola. Thus, the average variation in futures price is [redacted]. For wheat, there are 36.744 bushels of wheat in a MT of wheat. Thus, the average variation in futures price is [redacted].

137 [redacted]

138 See, also, the interpretation provided at Heimbecker Witness Statement, paragraph 180.

139 See Figure 49 which reports that the average price for canola at Moosomin is [redacted]. There are 44.092 bushels of canola per MT, thus the price per bushel is [redacted]

140 See Figure 49 which reports that the average price for CWRS at Moosomin is [redacted]. There are 36.744 bushels of CWRS per MT, thus the price per bushel is [redacted]

cash purchase price of CWRS. In contrast, [redacted] cents per bushel represents [redacted] of the cash purchase price of canola, and [redacted] of the cash purchase price of CWRS – both still well below the usual 5% threshold used to signify a small but significant and non-transitory change in price.

105. If the 5% threshold were to be used, a material price decrease would be [redacted] Even if a material price decrease is less than 5%, it should not be less than 1% of the cash purchase price; hence, a material change in price cannot be less than [redacted]. Indeed, a material change in price is very likely greater than [redacted] given the normal fluctuations in cash purchase prices within the industry. In the witness statements from farms, [redacted] refers to receiving prices from [redacted] that are [redacted] than he has received from Virden, Moosomin or Fairlight, [redacted][141] [redacted] notes that an elevator located farther than [redacted] would have to offer a significant premium to overcome the additional time and cost to haul his grain that distance.[142] It is clear from the "corridor of concern" analysis described above, the witness statements from [redacted] and the transactions data that many farms travel such distances. Therefore, the prices they are being offered must compensate them for this effort, which would mean they exceed [redacted].

106. As I discuss below, the weighted average price increases predicted using the Miller Report simulations are only [redacted] in canola and [redacted] for CWRS (for Moosomin, Virden and Fairlight), which are [redacted], let alone [redacted] of cash prices.

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[141] [redacted] Witness Statement, paragraph 11.

[142] [redacted] Witness Statement, paragraph 14.

Cash prices to purchase canola and CWRS have not declined by a material amount since P&H acquired Virden

107. In this section, I discuss whether there is any observed material change in the cash prices paid at Moosomin or Virden to purchase canola or CWRS post-Acquisition. As shown earlier in Figures 7-8 comparing Moosomin cash prices against those at Dutton there is no indication that Moosomin's cash prices for deliveries within the same month [redacted] to those paid at Dutton post-Acquisition.

108. Figures 31-32 expand the comparison to include Virden and include posted prices for deliveries in future months. Posted prices from January 2019 to July 2020 are shown, for canola (Figure 31) and CWRS (Figure 32). On a given day, elevators post prices for delivery in the current month and deliveries up to ten months forward (see, for example, Figure 1a). Figures 31-32 show the average of the daily posted cash prices for deliveries beginning in the current month and including deliveries up to six months from the current month.[143] For example, on January 5, 2019 the average is calculated using cash prices for delivery from January 2019 to July 2019.

109. Figure 31 compares Moosomin and Virden posted cash prices to the Dutton average before and after the Acquisition for canola. Prior to the Acquisition there were periods of time when Virden's canola posted cash prices were above or below those of Moosomin. Figure 32 provides the comparison for CWRS. It shows that prior to the Acquisition, Moosomin's posted CWRS prices were better than Virden's in the latter half of 2019. Since the Acquisition closed, there has been an increase in Virden's posted cash prices for CWRS. This is consistent with the observation made in the Witness Statements of [redacted][144] and [redacted][145]

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[143] The comparison is for up to six months forward in Figures 31-32 for illustration purposes. In the regression analysis, prices for delivery in all future months are used.

[144] [redacted] Witness Statement, paragraph 15.

[145] [redacted] Witness Statement, paragraph 27.

110. Figures 33-34 report the results of regression analyses testing if posted cash prices at Virden and Moosomin have [redacted] since the Acquisition, relative to Dutton which is used as a comparator. The same conclusion is reached whether comparing charts of posted prices over time or regression results. P&H has [redacted] the cash prices it pays farms at Virden or Moosomin post-Acquisition in an economically significant way. This is consistent with P&H [redacted] its canola and CWRS purchases at these two elevators, which I discuss below. P&H would be unable to [redacted] its purchases if it was offering farms [redacted] competitive levels.

111. The regression analysis compares the posted cash prices at Moosomin (or Virden) to posted cash prices at Dutton, controlling for the bid-delivery month combination.[146] As the data available for the post-Acquisition period runs from December 10, 2019 to June 30, 2020, these same dates are used for the 2016-2019 pre-Acquisition period. If Virden and Moosomin only compete with Fairlight, as the Commissioner claims, then the loss of Virden as a competitor would be expected to lead to Virden and Moosomin offering lower prices post-Acquisition than they did earlier. The posted prices at Dutton are used to control for market conditions over time in locations that are unaffected by P&H's acquisition of Virden.[147] Details of the regression methodology are provided in the attached Appendix.

112. Figure 33 reports the regression results comparing Virden cash prices to those at Dutton for all delivery months. The variable of interest is the interaction term that combines the indicator variable for Virden and the post-Acquisition period as this interaction term identifies if prices at Virden post-Acquisition were lower relative to posted prices at Dutton, controlling for changes over time that affected both elevators' pricing. The regression results show that prices [redacted] since the Acquisition. The canola result is [redacted], meaning that Virden canola posted prices

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[146] As described earlier, elevators post prices daily for deliveries in that month or future months.

[147] [redacted] such that it would be unaffected by the Acquisition.

have declined by about [redacted] since the Acquisition. The CWRS result is [redacted] meaning that CWRS posted prices at Virden have increased by about [redacted] since the Acquisition.

113. Figure 34 reports the regression results comparing Moosomin posted prices to those at Dutton. The canola result is [redacted] meaning that Moosomin canola posted prices have [redacted] since the Acquisition. The CWRS result is [redacted], meaning that Moosomin CWRS prices have [redacted] since the Acquisition. These changes [redacted] such that I interpret them to show there has been no material reduction in the cash prices paid to farms resulting from the Acquisition.

Farms are not using Moosomin and Virden in negotiations with the other

114. While the analysis described above shows the Acquisition has not substantially lessened competition, I have also considered the Commissioner's concern that farms have lost the ability to trade off Moosomin and Virden against each other to achieve better cash prices for the purchase of canola and CWRS. As noted above, [redacted] of P&H's grain purchases are at posted prices such that the incidence of purchases at higher prices due to specials and one-on-one negotiations is not the norm. In those limited instances where negotiations do occur, I consider the Commissioner's concern that farms have lost a significant advantage post-Acquisition by comparing the frequency of using Virden to negotiate better prices from Moosomin and vice versa. To do this comparison, the "Producer Report" documents were reviewed and classified. These documents include any discussion between farms and the respective elevator related to prices or competitors contained in emails, meeting minutes, or Jabber (an instant messaging tool used by Virden employees).

115. Each negotiation produces a document record as farms communicate a rival's price to CSRs, who in turn communicate that price to offsite traders who ultimately decide if the CSRs can offer the farm a comparable cash price. Only Producer Reports prior to the Acquisition are considered.

116. Figure 35a provides the classification of these documents for negotiations between farms and Virden from January 1, 2017 to December 2019 at the time of the Acquisition. Over these three years, the transactions data for Virden shows it had [redacted] deliveries of canola and [redacted] deliveries of CWRS, dealing with [redacted] unique farms. There is a total of [redacted] pre-Acquisition Producer Reports, of which there are [redacted] instances of farms using prices from a rival elevator in negotiations with Virden, for either canola or CWRS. Moosomin was mentioned only [redacted] in these [redacted] reports. Of the [redacted] negotiations in which farms mentioned [redacted] competitor, only [redacted] mentioned Moosomin or P&H. Instead, [redacted] were all used as bargaining chips to increase Virden's cash purchase prices.

117. Figure 35b provides the classification of these documents for negotiations between farms and Moosomin between January 1, 2017 to December 2019 at the time of the acquisition. Over these three years, the transactions data for Moosomin shows it had [redacted] deliveries of canola and [redacted] deliveries of CWRS, dealing with [redacted] unique farms. There are [redacted] instances of farms negotiating with Moosomin using a rival buyer's cash purchase prices, for either canola or CWRS. Negotiations mentioning Virden account for only [redacted] such instances. [redacted] is used in more than t[redacted] of all negotiations at Moosomin. Additionally, [redacted] negations only mention a single competitor, and Virden was only referenced [redacted] times in these negotiations, whereas [redacted] was mentioned [redacted] times.

P&H has increased grain purchases post-Acquisition

118. P&H's demonstrated purchases post-Acquisition, and its plans for the future (at Virden and also given its investments [redacted] show it is [redacted] its total purchases at the Moosomin and Virden elevators, which is consistent with a pro-competitive or competitively neutral rationale for the Acquisition rather than an anti-competitive rationale. Figure 36 provides the year over year grain deliveries to Moosomin and Virden comparing deliveries for the January to July period. Total canola

deliveries to the combined elevators [redacted] post-Acquisition. Total CWRS deliveries to the combined elevators [redacted] post-Acquisition.

119. Figure 37 provides P&H's forecasted grain purchases at Virden compared to its actuals in 2019 and post-Acquisition in 2020. Virden did not previously purchase feed wheat, barley or oats but will do so post-Acquisition. The [redacted] Witness Statement refers to Virden purchasing oats, barley and soybeans that it did not purchase when owned by LDC.[148] In canola, P&H's forecast has total grain purchases [redacted] over 2019 while the increase in CWRS is [redacted]. Higher aggregate purchases at Moosomin and Virden post-Acquisition are wholly inconsistent with P&H exercising monopsony power.

120. In summary, the evidence from the transactions data, P&H and LDC documents, and P&H's post-Acquisition conduct demonstrates P&H does not have market power in the purchase of canola or the purchase of CWRS in southeastern Saskatchewan and southwestern Manitoba. The Moosomin and Virden elevators compete with numerous rival elevators and crushers for the purchase of canola and the purchase of CWRS from farms within the area surrounding these elevators. P&H has increased its canola and CWRS purchases at Moosomin and Virden since the Acquisition consistent with its grain purchase budget targets. P&H has not reduced the cash prices paid to farms at Moosomin and Virden due to the Acquisition. There is vigorous and effective remaining competition, such that P&H's purchase of the Virden elevator has not substantially lessened competition in any properly defined relevant market.

V. ANALYSIS OF THE MILLER REPORT

"Grain handling services" is not how farms and purchasers contract for the sale and purchase of grain

121. Dr. Miller divides the single cash price that farms receive from elevators and crushers when selling their grain to elevators and crushers into two components: (i) a price for

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[148] [redacted] Witness Statement, paragraph 23.

grain; and (ii) a price for "grain handling services". Dr. Miller describes two transactions occurring simultaneously such that one price offsets the other in that a farm buys "grain handling services" from an elevator at the same time that an elevator buys grain from a farm.[149] As discussed above, this is not how P&H or the industry operates.[150] Farms receive a single cash price when selling grain to elevators and crushers; hence the relevant market from the farms' perspective is the "sale of grain". Elevators and crushers pay a single cash price when buying grain from farms; hence the relevant market from P&H's perspective is the "purchase of grain from farms". From either perspective there is one integrated cash price.

122. Parsing a single integrated cash price into two components is problematic because it requires assigning costs to each component, and it requires a method to divide or measure the single cash price into each component. Error may be introduced in the division and in the measurement. If the price of "grain handling services" is incorrectly defined and measured, an incorrect input is used by Dr. Miller in market definition and in his competitive effects analyses. As noted in the Miller Report: "The price of grain handling services is relevant in two ways: it provides the base, pre-transaction price for calculating percentage increase in price during the HMT and the GUPPI; and it is used to estimate a markup at Virden (which in turn is used in HMT, UPP and merger simulation)."[151]

123. The Miller Report describes the industry as one where farms would export their grain directly, but because "farms are not ordinarily equipped to directly supply grain to the swath of potential end-customers, they typically purchase grain handling services from a

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[149] Miller Report, paragraph 29.

[150] The basis in CWRS is not equal to the price of "grain handling services" as it is defined in the Miller Report because Dr. Miller converts the US futures reference price into CAD/MT and then compares that to the cash price paid to the farm. In contrast, they are equal in canola where the cash and futures prices are both quoted in CAD/MT.

[151] Miller Report, paragraph 156.

local primary elevator by accepting a discount on the grain's market value."[152] The interaction is described in the Miller Report as if farms contract with primary elevators to realize the grain's value by "executing a series of logistical and transactional steps that convey the grain from a farm to the end-customer."[153] Even under this view of the world, the "logistical and transactional" services provided by P&H and other grain companies to farms would include:

i. Marketing and selling expenses to negotiate export customer contracts;

ii. Grading, cleaning, and drying to meet the end customer's quality requirements;

iii. Storing, blending and loading at the elevator;

iv. Logistics, freight, and terminal costs to transport grain from elevators to port terminals for export to end-customers;

v. Managing market risk with respect to changes in commodity values and exchange rates; and,

vi. Depreciation and capital investments to maintain and build the physical assets used in the elevator and terminal network.

124. The Miller Report only assigns the second and third items in the above-noted costs to "grain handling services". Dr. Miller does not apportion any of the first, fourth, fifth or sixth items to the services he says primary elevators provide to farms, yet these costs are incurred if farms are to realize the grain's value in export markets.[154] The first set of costs are never addressed by Dr. Miller. The fourth set of costs is discussed in the Miller Report as follows:

> "One cost that I exclude that is worth further discussion is freight cost. First, [Virden's] accounting statements attribute freight to the trading business, which is part of a separate product market, as discussed above in

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[152] Miller Report, paragraph 29.

[153] Miller Report, paragraph 29.

[154] Heimbecker Witness Statement, paragraph 116.

> Section 3. Second, freight does not conceptually belong in the *marginal* cost of providing grain handling services since the *price* I imputed for these services does not include freight service. The futures market price does not capture the increased value of the grain after it has been shipped to the coast. Therefore, it is most appropriate *not* to include freight as a cost of grain handling services."[155] (emphasis in the original)
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> "I also do not include any adjustment for differences in freight costs relative to the theoretical expected costs to ship from the futures market location. For Canola, there is no adjustment to consider as the futures market location is Saskatchewan. For wheat, as discussed above, most shipments flow east or west, to ports to Thunder Bay or Vancouver, while the futures prices that I used for wheat are based on delivery to Minneapolis. Minneapolis is not appreciably closer to coastal ports than the Moosomin or Virden elevators are."[156]

125. Rail costs from elevators to ports are significant, in the range of [redacted] CAD/MT depending on the elevator location, such that excluding these costs, or any portion thereof, from the costs that grain companies incur when purchasing grain from farms and selling grain to export customers is a meaningful omission.[157]

126. The Miller Report defines the price of "grain handling services" as "the difference between the futures price and the price actually paid to the farm, after converting both to the same currency."[158] The futures price is equated to the price of grain (the first component of the price noted above). The Miller Report claims this is consistent with how the Moosomin and Virden elevators determine the "basis" in their contracts with farms.[159] This is an incorrect interpretation of the basis that is posted at elevators for CWRS. As I discussed above, the basis is the difference between the cash price and the

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[155] Miller Report, paragraph 204.

[156] Miller Report, paragraph 205.

[157] Freight costs attached to the Heimbecker Witness Statement

[158] Miller Report, paragraph 39.

[159] Miller Report, paragraph 40.

futures price used as a reference price to determine the cash price. The basis posted at the elevator is not a measure of the cost of "grain handling services". But even if the basis were to be used as a measure of the cost that farms incur to realize the value of their grain in export markets through farms' transactions with elevators, all costs associated with elevators' operations should be considered.[160] This is not what Dr. Miller does.

127. To illustrate that the elevator posted basis and the price of "grain handling services" are unequal and even uncorrelated in the case of CWRS, consider the five examples of posted prices in Figure 38. In examples A, B, and C, the posted basis is 40/MT, yet the prices of "grain handling services" (using the method described in the Miller Report) in these examples would be $14/MT, $23/MT and $38/MT respectively. Example D has a lower basis at 25/MT than examples A, B, and C, but the price of "grain handling services" in example D is $42.50/MT which is higher than the other three examples. Example E is identical to Example B on all posted values – they have the same posted cash price, the same posted futures price, and the same posted basis – and yet they have different prices of "grain handling services" as Dr. Miller defines these owing to a different exchange rate. The point of these examples is simple: there is no relationship between the basis posted at the elevator for CWRS and what Dr. Miller constructs as the price of "grain handling services". A farm cannot look at the basis posted at the elevator for CWRS and know the price of "grain handling services" for CWRS.

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[160] There is another purported "price" discussed in the Commissioner's filings, which is the "export basis" described in the Witness Statement of Harvey Brooks. The export basis described by Dr. Brooks is the difference between the FOB price paid to a grain company by its end-customer at a port (in CAD/MT) and the cash price paid to a farm in Rosetown SK (in CAD/MT). The FOB price at the port is not equivalent to the Minneapolis futures price, but instead is the amount an export customer pays to a grain company for its grain at the port terminal. The difference in these values, which Dr. Brooks defines as the "export basis", is said to cover "the costs to the primary grain elevator for primary elevation and handling, rail transportation to port, terminal elevation and vessel loading plus an undefined risk premium and any profits captured by the grain elevator company." Dr. Brooks' export basis is not equal to the price of "grain handling services" as it is defined by the Commissioner's expert Dr. Miller. However, Dr. Brooks includes more costs for grain companies' purchases from farms than does Dr. Miller.

128. The Miller Report claims the "price of grain handling services reflects local market conditions including weather or road restrictions, storage and freight capacity constraints, and the potential (or likely cost) for a particular elevator to help meet the grain marketing companies' existing sales commitments".[161] Dr. Miller also states that "[l]ocal competition between primary elevators also affects the price for grain handling services."[162] If, as argued by Dr. Miller, there is limited local competition in an area such the few elevators operating in the area could hypothetically increase their prices for "grain handling services" these same elevators would also hold market power in their purchases of grain from local farmers as well.

129. Consider the following hypothetical. Imagine there is one single primary elevator buying CWRS in all southeastern Saskatchewan and southwestern Manitoba, such that the 15 elevators included in the Miller Report analysis are replaced with one elevator. If there were only one primary elevator in all southeastern Saskatchewan and southwestern Manitoba, it would have market power with respect to purchasing grain from farms within the region as well as the same degree of market power providing "grain handling services" to farms within the region, even though this hypothetical elevator would not have market power in the sale of CWRS in export markets. There is no distinction to be drawn between this hypothetical monopsonist elevator's position buying grain from local farms and selling "grain handling services" to local farms. Therefore, there is no reason to artificially divide the single cash price the elevator pays to farms for their grain into the two components that Dr. Miller discusses.

Prices for "grain handling services" are measured with error

130. Agreements between farms and elevators for the purchase of grain by elevators refer to the single integrated cash price. There is no mention of any price for "grain handling

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[161] Miller Report, paragraph 41.

[162] Miller Report, paragraph 42.

services".[163] As a result, Dr. Miller must impute a price. Conceptually, the imputed price seems straightforward but practically it is measured with substantial error in the Miller Report. The measurement error exists with respect to canola and CWRS.[164] There are multiple sources of measurement error, including the following:

i. The futures price chosen by Dr. Miller in his calculation for the price of "grain handling services" does not reflect the futures price that the farm and elevator used at the time of the contract, which determined the farm's cash price. Futures prices vary significantly across days and within a day, leading to measurement error.

ii. Multiple deliveries are contained in the transactions data for a single contract between a farm and elevator. While a single cash price and single futures price govern the contracted cash price between the farm and elevator, deliveries on different days result in Dr. Miller's methodology using different futures prices with each delivery day even though a single futures price governed the contract between the farm and elevator.

iii. The quality of grain in a given delivery by a farm may not always match the quality that was contracted, leading to a quality adjustment in the transactions data that Dr. Miller's methodology incorrectly assigns to his imputed price of "grain handling services" rather than to the price of grain.

131. One example contract illustrates these multiple measurement errors. [redacted] entered into a contract with P&H at Moosomin on [redacted] to sell [redacted] metric tonnes of grade 1 CWRS with protein 13.5 with delivery to occur in [redacted]. The

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[163] A P&H contract specifies the cash price per MT in CAD, the futures price the commodity is indexed to in its native currency and a basis that is equal to the numerical difference between these two numbers. The posted prices include the same three numbers. There is no price for grain handling services. See Figures 2-5.

[164] As discussed herein, there is tremendous variation in Dr. Miller's measured prices for "grain handling services" even for canola, where conceptually his definition of the price for "grain handling services" equals the basis posted at the elevator for canola. As a result, the prices for "grain handling services" measured in the Miller Report are not equivalent to the basis posted for canola. Even if they were measured to be equal to the basis for canola, this is still not the correct price for the relevant product which is the price for the purchase of canola.

contract specifies a cash price to be paid to [redacted] CAD/MT with a futures price of [redacted] USD/MT and a basis of [redacted]/MT.[165] Figure 2 provides this contract. There is no contracted price for "grain handling services" in this document. The contracted price is the cash price to be received by [redacted] and paid by P&H of [redacted] CAD/MT provided the delivered grain meets the quality standards in the contract.

132. The futures price on this contract is [redacted] USD/MT. On [redacted] the exchange rate was 1.3078 USD/CAD,[166] generating a CAD equivalent futures price of [redacted] CAD/MT. The difference between the CAD equivalent futures price and cash price in the contract is [redacted] CAD/MT, which using Dr. Miller's methodology, would be the price of "grain handling services" paid by [redacted] at Moosomin.

133. The transactions data does not include the futures price referenced on the grain contracts of any grain purchase transaction. As a result, Dr. Miller must choose a futures price to compare to the cash price paid to the farm. Suppose one knew the contract date, that alone would not be enough to accurately choose the right futures value for calculating the price of "grain handling services". Consider that the futures price of the index commodity[167] on [redacted], when [redacted] entered his contract ranged from [redacted] CAD/MT to [redacted] CAD/MT, as shown in Figure 39. The futures price specified in [redacted] contract corresponds to the price observed around 9:00 - 9:30am (CST). Even if one had the date of [redacted] contract, which is not contained in the transactions data, this does not provide the time of the relevant futures price. If

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[165] The basis for CWRS is equal to the difference between [redacted] and [redacted] but the cash price of [redacted] is in CAD and the futures price of [redacted] is in USD, which means the basis (as the difference in these two numbers) is unequal to a single currency denominated value with respect to CWRS. The CWRS basis is not equivalent to Dr. Miller's price of "grain handling services" because Dr. Miller converts the USD-denominated futures price into CAD before comparing it to the CAD-denominated cash price that the elevator pays the farm.

[166] https://www.wsj.com/market-data/quotes/fx/USDCAD. The quoted exchange rate is the rate at close of [redacted]

[167] https://www.barchart.com/futures/quotes/MWU18/overview; the "Option Month: U = September 2018" corresponds to the "U" and the "18" in the commodity code MWU18. The "M" in this code stands for the Minneapolis Grain Exchange ("MGEX").

the futures price at close[168] were to be used instead of the value recorded on [redacted] contract, the imputed price for "grain handling services" would be 25.22 CAD/MT rather than 34.83 CAD/MT.[169]

134. The transactions data that Dr. Miller uses to impute prices for "grain handling services" is based on deliveries not contracts. The grain associated with [redacted] contract in Figure 2 arrived at Moosomin in [redacted] separate deliveries of an average tonnage of [redacted] MT for each delivery. These [redacted] deliveries took place between [redacted] (the day of the contract) and [redacted] on [redacted] unique days. Use of Dr. Miller's methodology would generate different imputed prices for "grain handling services" because each delivery date has a different futures price. Figure 40a shows the variation which results from using a different futures price and the same cash price for the contracted quality. Figure 40b shows the variation that results from using the cash prices for each delivery and a futures price for each delivery.[170]

135. There is another source of variation that further creates measurement error. The cash prices on delivery vary in the transactions data because not every delivery made by [redacted] has the same quality as that which was contracted. As noted above, when the quality of grain differs from the quality in the contract, there will be different cash prices paid for different qualities delivered. The Miller Report uses the difference between the observed transactions price and an estimated futures price without adjusting the futures price to account for different quality of grain delivered. Thus, the futures price used in the comparison would be for the single first quality grade, but the cash prices paid will reflect different qualities delivered. Using the Miller Report method will lead to different prices for "grain handling services" that are due to differences in qualities of

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[168] Dr. Miller uses the settlement prices, or the futures prices at the close of the market, on the delivery day in his calculation. See Miller Report at paragraph 176.

[169] Figure 40a shows that the close price on [redacted] for MWU18 was [redacted] CAD/MT.

[170] The varying futures price is not the only contributor to the varying implied prices of grain handling services. Dr. Miller does not use the contracted cash price (which is the same across all [redacted] deliveries) in his calculation, but the net price (i.e., the cash price paid for the total net quantity assessed at the elevator on delivery) associated with each delivery.

grain with each delivery. As shown in Figure 40b, there are [redacted] deliveries of the [redacted] deliveries that exactly meet the contracted protein of 13.5%. The methodology used in the Miller Report results in [redacted] imputed prices for "grain handling services" that are associated with one contract, ranging from [redacted] CAD/MT to [redacted] CAD/MT. None of the [redacted] different imputed prices for "grain handling services" matches the [redacted] CAD/MT that the methodology is presumed to be intended to capture.

136. These measurement errors result in a wide range of imputed prices of "grain handling services" that do not reflect differences in local market conditions. Exhibit 6 of the Miller Report shows huge variation in the price of a purportedly well-defined product for "grain handling services". For example, the imputed price of "grain handling services" for wheat at Virden ranges from less than [redacted] CAD/MT to over [redacted] CAD/MT, and the imputed price of "grain handling services" for canola at Virden ranges from less than [redacted] CAD/MT to over [redacted] CAD/MT. As a result, the Miller Report's imputed prices of "grain handling services" at Virden for wheat range from [redacted] below the median to over [redacted] above than the median within 12 months. The Miller Report's imputed prices of "grain handling services" at Virden for canola range from [redacted] below the median to over [redacted] above the median within 12 months.

137. There can be tremendous variation in the imputed price of "grain handling services" even within a *single delivery day* as shown in Figures 41-44, which provide scatterplots of the Miller Report's imputed prices of "grain handling services" in Moosomin and Virden for canola and CWRS for the month of August 2018. The imputed prices vary widely across transactions, within a single day, across days within a single elevator, and across elevators for a single commodity. For example, on [redacted], the Miller Report's imputed price of "grain handling services" at Moosomin for CWRS ranges from [redacted] CAD/MT to [redacted] CAD/MT, and on the same day the range at Virden is from [redacted] CAD/MT to [redacted] CAD/MT.

138. The median value of the imputed prices of "grain handling services" at Moosomin and Virden are used in the Miller Report analyses. However, in doing so, no explanation is provided for how P&H was able to maintain a median price for "grain handling

services" at Moosomin that was $34.78 for CWRS in contrast to the median price at Virden of $27.18, representing a 20% premium for "grain handling services" at Moosomin.[171] The reverse is true in canola, where Moosomin's median price of "grain handling services" was [redacted] in contrast to Virden's median price of [redacted], representing a [redacted] premium for "grain handling services" at Virden.[172] If "grain handling services" were truly a well-defined product, this large difference in its prices should mean farms would be unwilling to acquire "grain handling services" for CWRS from Moosomin when they could acquire the same services at Virden for [redacted] The reverse is true for canola: farms using Virden for canola "grain handling services" would be paying a [redacted] using Moosomin. These differences are far larger than the usual SSNIP of 5% or 10%.

139. Or consider the price for "grain handling services" across commodities at a single elevator. Exhibit 6 of the Miller Report indicates Virden's median price of "grain handling services" for CWRS is [redacted]% greater than the median price of "grain handling services" for canola,[173] yet the cost that the Miller Report references for Virden to provide "grain handling services" in respect of one MT of canola or one MT of CWRS are nearly identical.[174] The differential is greater at Moosomin, where the Miller Report's price of "grain handling services" for wheat is [redacted]% greater than for canola.[175] There is no explanation for why the price of "grain handling services" at a single elevator would differ so much by commodity if the costs are equivalent. Recall that under the method adopted in the Miller Report the value of the grain is separate from the value of grain handling services such that differences in the value of grain should not be

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171 The calculation is: [redacted].

172 The calculation is: [redacted]

173 The calculation is: [redacted]

174 Miller Report, Exhibit 13.

175 The calculation is: [redacted]

the explanation for these significant differences in the prices for "grain handling services" between canola and CWRS at a single elevator.

140. These very different imputed prices for "grain handling services" cannot be used as a reliable base price from which markups and margins are calculated. Choosing a median value among this diverse set of incorrectly defined prices will not provide an accurate representation of the markup or margin. The error in imputing a price for "grain handling services" introduces error in markups and margins making the conclusions reached in the Miller Report with respect the hypothetical monopolist test, UPP, GUPPI or merger simulation unreliable.

The relevant geographic market includes more elevators than only Moosomin, Virden and Fairlight

141. The Miller Report defines the relevant geographic market to include only three elevators: Moosomin, Virden and Fairlight. Fairlight is included because of its proximity to Moosomin. As noted in the Miller Report, Fairlight is closer to Moosomin than is Virden.[176]

142. The Miller Report refers to documents from Moosomin CSRs referring to comparisons of cash prices paid to farms at Fairlight and Virden. This is a limited and highly selective reference to the documents. Review of LDC's SIR documents shows that Virden staff routinely referred to numerous competing elevators beyond Moosomin and Fairlight, including elevators at [redacted][177] I described the numerous elevators and crushers that Virden

[176] Miller Report, Exhibit 8.

[177] See, for example, email [redacted]

and Moosomin considered as their competitors for the purchase of canola and CWRS before the Acquisition in paragraphs 78-88 above. P&H must compete with these competitors post-Acquisition to attract grain to Virden. Moosomin and Fairlight are not the only competitive constraints on Virden.

143. Similarly, Moosomin's fiscal 2019 and fiscal 2020 business plans[178] identify numerous competing elevators beyond Virden. Both plans (which pre-date the Acquisition and pre-date LDC's solicitation of P&H to purchase 10 elevators from it) provide each rival elevator's overlap with Moosomin providing an indication of the percentage of Moosomin's draw area that the competing elevator touches. There are [redacted] grain purchasing competitors referenced. [redacted]

144. The Miller Report acknowledges "there are other nearby elevators"[179] but finds "the [redacted] margin earned by the Virden elevator . . . suggests it faces a relatively small set of relevant competitors."[180] It is noted that:

[redacted]

178 Moosomin Business Plan 2019 [P&H_0007141] and Moosomin Business Plan 2020 [P&H_0006457].

179 Miller Report, paragraph 72.

180 Miller Report, paragraph 72.

> "the [redacted] margins suggest that the firms have not been forced to lower prices to keep the customers they have from being tempted away to such would-be competitors. Similarly, they have not been tempted to lower price in order to attract potential customers from more distant elevators. These [redacted] margins suggest that a geographic market with few participants is likely correct."[181]

145. The importance of the error in defining and measuring the price of "grain handling services" is immediately evident. The Miller Report claims that the Virden elevator earns a [redacted] margin on "grain handling services" for canola and a [redacted] margin on "grain handling services" for CWRS.[182] As noted above, Virden's median price of "grain handling services" for canola is [redacted] than that at Moosomin[183] If Virden has a [redacted] margin on "grain handling services" for canola while its prices are [redacted] than Moosomin, the implication is Moosomin has not constrained Virden's prices for "grain handling services" in canola. In CWRS, the median price of "grain handling services" at Virden is [redacted] than at Moosomin,[184] yet the Miller Report claims Virden has a [redacted] margin in wheat grain handling services.[185]

146. The percentage margins defined in the Miller Report for "grain handling services" at Virden are not correctly defined or measured indicators of market power. As such, these margins should not be used to define the relevant market. I discuss this further below. As shown there, if the same markups are measured against cash prices, which are for the purchase of canola or CWRS, the percentage margins (using the Miller Report's markup at Virden) are well below the values used to define markets. Quite apart from the margin percentages, the observed sales by farms within the local area surrounding Moosomin and Virden using the transactions data collected by the Commissioner and

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181 Miller Report, paragraph 72.

182 Miller Report, paragraph 72.

183 The calculation is: [redacted]

184 The calculation is: [redacted]

185 Miller Report, Exhibit 13.

analyzed in the Miller Report confirm that many other elevators beyond Fairlight buy canola and CWRS in competition with Moosomin and Virden.

147. The Miller Report includes additional elevators beyond Moosomin, Virden and Fairlight in the competitive effects analysis on the basis that "classifying such elevators as outside the market does not remove them from the menu of choices available to a farm."[186] These additional elevators are illustrated in Figures 45-46. I agree that these many elevators are competitive constraints to P&H post-Acquisition. Indeed, the Miller Report's analysis of the transactions data collected by the Commissioner shows that elevators "outside" the defined geographic market are significant enough that his definition of the relevant geographic market should be expanded to include these additional elevators and crushers.

148. The Miller Report states "high diversion ratios between the Moosomin and Virden elevators indicate that many farms view the Moosomin and Virden elevators as substitutes",[187] yet the Miller Report ignores equal or higher diversion ratios between Moosomin or Virden and rival competing elevators and crushers when defining the geographic market. Exhibit 11 of the Miller Report provides the diversion ratios estimated using transaction sales and distances between farms and elevators, which show Moosomin and Virden compete with many elevators beyond Fairlight only.

149. Exhibit 11 only provided diversions from and to Moosomin, Virden and Fairlight. In Figures 47-48 I provide diversions from Moosomin and Virden to all elevators and crushers included in the transactions dataset using the Miller Report backup. As shown there, in canola, the diversion ratio from Virden to Moosomin ( ) is than the diversion ratio from Virden to each Similarly, the diversion ratio from Moosomin to Virden in canola (at) is than the

[186] Miller Report, paragraph 73.

[187] Miller Report, paragraph 106.

diversion ratio from Moosomin to [redacted]. If Dr. Miller regards Moosomin and Virden as having "high diversion ratios" for canola, then [redacted] diversion ratios to rival elevators and crushers mean these rival elevators and crushers are closer competitors to Virden and Moosomin than they are to each other.

150. If a diversion ratio of [redacted] from Virden to Moosomin is sufficient to include Moosomin in Virden's geographic market for canola, then [redacted] should also be included in the geographic market. If a [redacted] diversion ratio is used for CWRS, Figure 48 shows the diversion ratios from Moosomin to [redacted] exceed [redacted]; the diversion ratios from Virden to Brandon (both the Richardson and Viterra elevators), Elva, Fairlight, Moosomin, Oakner, Shoal Lake, and Souris exceed 5%; and the diversion ratios from Fairlight to [redacted] exceed [redacted].

151. Expanding the relevant geographic market beyond Moosomin, Virden and Fairlight to include at least the elevators identified within and on the periphery of each elevator's 90% service area (as defined in the Miller Report) would match the above-noted diversion ratios and the numerous references to these competing elevators and crushers contained in P&H and LDC documents. Consider first Exhibit 2 of the Miller Report which provides the Miller Report's 90% wheat service area for the Moosomin elevator, and identifies [redacted] within the 90% service area. Exhibit 3 of the Miller Report is the defined 90% wheat service area for the Virden elevator, and identifies [redacted] within Virden's 90% service area. Exhibit 38 of the Miller Report is the defined 90% wheat service area for the Fairlight elevator and identifies [redacted] on the periphery. Exhibit 17 of the Miller Report provides the union of 90% service areas for the Moosomin, Virden and Fairlight elevators, and identifies [redacted] While these many competing elevators are contained *within* the 90% service areas defined by the Miller Report or are immediately on the periphery, none of these elevators are included in Dr. Miller's geographic market.

Instead, the Miller Report artificially limits the relevant geographic market to only include Moosomin, Virden and Fairlight.

152. In summary, there are multiple pieces of evidence showing Moosomin and Virden compete with more elevators than only Fairlight, including elevator draw areas (or service areas as defined in the Miller Report), diversion ratios, P&H and LDC documents, and the farm witness statements filed on behalf of the Commissioner and P&H. The Miller Report restricts the relevant geographic market to only Moosomin, Virden and Fairlight by relying on a flawed margin calculation for "grain handling services" at Virden, which I discuss below.

The Miller Report's hypothetical monopolist test uses the wrong price

153. The Miller Report formally tests if a relevant market comprised of "grain handling services" at Moosomin, Virden and Fairlight exists by simulating a merger among the three elevators and comparing the change in price to a SSNIP. The results are presented at Exhibit 9 of the Miller Report.

154. The median price of "grain handling services" measured by Dr. Miller is key to his conclusion from the hypothetical monopolist test. Exhibit 9 of the Miller Report indicates a hypothetical monopolist that owns Moosomin, Virden and Fairlight would increase the price of canola by [redacted] CAD/MT at Moosomin, [redacted] CAD/MT at Virden, and [redacted] CAD/MT at Fairlight, when crushers are included. Exhibit 9 reports these changes as a percentage of the median price of grain handling services; specifically, [redacted] at Moosomin and [redacted] at Virden, both of which exceed a SSNIP of 5%. But, if the hypothetical monopolist price increase amounts are considered against the cash prices paid to farms for canola and CWRS as I provide in Figure 49, these price increases represent a [redacted] increase at Moosomin, a [redacted] increase at Virden, and a

[redacted] increase at Fairlight (using Virden average price as a proxy), all well below a 5% SSNIP.[188]

155. A similar conclusion is reached for CWRS. The Miller Report finds that a hypothetical monopolist that owns Moosomin, Virden and Fairlight would increase the price of wheat by [redacted] CAD/MT at Moosomin, [redacted] CAD/MT at Virden, and [redacted] CAD/MT. Exhibit 9 refers to these as [redacted] and [redacted] changes in the prices of wheat "grain handling services" at Moosomin and Virden, respectively. The average CWRS cash price paid to farms is [redacted] CAD/MT at Virden and [redacted] CAD/MT at Moosomin, such that these price increases represent a [redacted] increase at Moosomin, a [redacted] increase at Virden, and a [redacted] increase at Fairlight, all well below a 5% SSNIP (see Figure 49).

Market shares are overstated by excluding rival elevators from the relevant geographic market

156. By artificially limiting the relevant geographic market to only three elevators, the Miller Report overstates P&H's post-Acquisition share, inferring *prima facie* harm from the Acquisition because shares "far exceed the 35% threshold".[189] Exhibit 10 of the Miller Report computes Moosomin and Virden's share of deliveries as a fraction of only these three elevators deliveries from any farm.[190] By only counting shares amongst Moosomin, Virden and Fairlight, the Miller Report ignores all other rival elevators and crushers to which these same farms delivered [redacted] of their canola and [redacted] of their CWRS prior to the Acquisition (see Figures 25-26).[191]

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188 The average cash price paid to farms for canola is [redacted] CAD/MT for Virden and [redacted] CAD/MT for Moosomin

189 Miller Report, paragraph 83.

190 Miller Report, paragraph 81.

191 The shares of deliveries made by farms included in the area used in the Miller Report to estimate P&H's post-Acquisition shares to all elevators and crushers other than Moosomin, Virden and Fairlight are calculated using the transactions data collected by the Commissioner and analyzed by Dr. Miller. Miller Report, Exhibit 14.

157. Another illustration of the error in defining the relevant geographic market in this way uses the diversion ratios from the Miller Report. These diversion ratios show that Virden would lose [redacted] of its canola sales to elevators and crushers other than Moosomin and Fairlight and [redacted] of its CWRS sales to those other rivals.[192] Moosomin would lose [redacted] of its canola sales to elevators and crushers other than Virden and Fairlight and [redacted] of its CWRS sales to those other rivals.[193] Fairlight would lose [redacted] of its canola sales to elevators and crushers other than Moosomin and Virden and [redacted] of its CWRS sales to those other rivals.[194] It is incorrect to calculate shares using only Moosomin, Virden and Fairlight when farms within the Miller Report's defined 90% service area deliver this much canola and CWRS to other competing elevators and crushers.

158. Moosomin's share of canola delivered to all elevators and crushers from these farms is only [redacted][195] Virden's share of the net quantity of canola delivered to elevators and crushers from these farms is only [redacted][196] With a combined share of net quantity delivered of less than [redacted][197] there is no *prima facie* competition concern in canola. Moosomin and Virden have a higher share of net quantity of CWRS delivered to elevators from these farms, at [redacted] and [redacted] respectively.[198] Together, the Moosomin and Virden elevators received [redacted] of net quantities of CWRS from these farms,[199] which is well below the 35% safe harbour threshold contained in the MEGs.[200]

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192 See Figure 50 based on Miller Report, Exhibit 11.

193 See Figure 50 based on Miller Report, Exhibit 11.

194 See Figure 48.

195 Miller Report, Exhibit 14, reporting "Share Before Acquisition".

196 Miller Report, Exhibit 14, reporting "Share Before Acquisition".

197 The calculation is: [redacted]

198 Miller Report, Exhibit 14, reporting "Share Before Acquisition".

199 The calculation is: [redacted]

200 MEGs, paragraph 5.9 ("The Commissioner generally will not challenge a merger on the basis of a concern related to the unilateral exercise of market power when the post-merger market share of the merged firm would be less than 35 percent.")

159. A correct representation of P&H's post-Acquisition shares of farm deliveries of canola and CWRS shows they are well below levels that create competition concerns.

GUPPIs are overstated because they are measured against the wrong price

160. The flaws identified in measuring the price of "grain handling services" also affect the Miller Report's GUPPI measures, since these are expressed as a fraction of median prices for grain handling services. Exhibit 12 of the Miller Report reports UPP values at Moosomin of [redacted] CAD/MT for canola including crushers and [redacted] CAD/MT for CWRS. The UPP values at Virden are [redacted] CAD/MT for canola including crushers and [redacted] CAD/MT for CWRS.

161. Using the average canola cash price paid to farms of [redacted] CAD/MT at Virden and [redacted] CAD/MT at Moosomin for the time periods used in Dr. Miller's analyses, these UPP measures imply a GUPPI of [redacted] at Moosomin and [redacted] at Virden. Using the average CWRS cash price paid to farms of [redacted] CAD/MT at Virden and [redacted] at Moosomin for the time periods used in Dr. Miller's analyses, these UPP measures imply a GUPPI of [redacted] at Moosomin and [redacted] at Virden (see Figure 51). These are well under the thresholds that require additional analysis.

The Miller Report's merger simulation inputs

162. There are two key components that determine the merger simulation price and welfare predictions found in the Miller Report: (i) diversion ratios; and (ii) the dollar markup. Each is discussed in turn. The diversion ratios are primarily a function of farm distances to elevators and observed deliveries in the transactions data collected by the Commissioner.[201] In Dr. Miller's modelling, the dollar markup is used to determine the marginal utility of income or how sensitive farms are to the prices of "grain handling services".

[201] Miller Report, Exhibit 20, see note: "Diversion ratios are based on a choice model that controls for drive times to each elevator choice and is weighted by net quantity sold per grower per crop year to the chosen elevator."

163. The diversion ratios are derived from the farm choice model described in the Miller Report. All farms within the [redacted] contained within the union of the 90% service areas of Moosomin, Virden and Fairlight are included in the farm choice model. There are [redacted] deliveries included in the resulting dataset, many of which will be from the same farms, although they are treated as independent transactions.[202] The aggregated transactions data shows these farms make deliveries to [redacted] elevators are excluded because no farm location information was included in the data that [redacted] provided to the Commissioner.[204]

164. With an aggregated dataset of farm deliveries to [redacted], drive time calculations based on road distance between each farm and each elevator or crusher are calculated.[205] Dr. Miller creates a dataset for every farm/elevator and farm/crusher combination, dropping any combinations that have zero deliveries. The remaining observations are weighted by quantity which accords greater significance to larger deliveries.[206] Dr. Miller uses regression analysis to determine farms' elevator and crusher choices as a function of drive time and indicator variables for each elevator and

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[202] Miller Report, paragraph 163: "I did not attempt to standardize farms across companies. For example, the same entity might appear as 'John Smith', 'Smith, John A.,' and 'Smith Farm' in three different datasets, and I treat these entries as separate farms making separate decisions." Because Dr. Miller does not attempt to match farm names across or within the transactions data for each of the [redacted] in the dataset, the total number of farms is overstated, and his dataset cannot be used to determine the extent to which a single farm uses multiple elevators of varying distance. Considerable work was undertaken by staff under my direction to compare, aggregate and match farm names across the transactions data of the [redacted] for the farms identified as within the "corridor of concern". The farms within the "corridor of concern" are a subset of those within the union of 90% service areas used by Dr. Miller. I have no reason to believe the farms within the "corridor of concern" differ from those in the broader union of 90% service areas with respect to selling their canola and CWRS to multiple buyers at varying distances.

[203] Dr. Miller uses a 12-month period that differs between canola and CWRS. The time period for canola is March 2018-February 2019. The time period for CWRS is August 1, 2018 to July 31, 2019 (for the 2018–2019 crop year). A crop year starts in August and ends in July the following year. Miller Report, paragraphs 48 and 52.

[204] Miller Report, paragraph 151. Note that Ceres Northgate does provide identifying information on the location of farms who made the sale. Had Dr. Miller chosen to identify farms he may have been able to include Ceres Northgate in his analysis.

[205] Dr. Miller's geocoding methodology is described in the Miller Report, paragraphs 166-68. Dr. Miller assigns coordinates to farms first by postal code and then by town or city (if postal code is not available).

[206] Dr. Miller uses "net" quantity for the weighting, which is the quantity that is used to pay the farm.

crusher. The indicator variables for each elevator and crusher are used to explain the elevator/crusher choice that is unrelated to distance for a farm. If an elevator or crusher offers farms consistently higher prices or is otherwise preferred to deal with, farms will have deliveries to these locations even though they are farther away.

165. I report the coefficients on the elevator and crusher indicator variables contained in the Miller Report backup from the farm choice modelling in Figure 52. These show the [redacted], reflecting the fact that these purchasers of grain are attractive to the farms within the union of 90% service areas even though they are farther away. The "Distance Equivalent" columns in Figure 52 show how much farther a farm would be willing to drive to sell to each elevator or crusher compared to Richardson – Brandon/Kemnay (which is set to 0 in the Miller Report modelling). For example, farms would be willing to drive [redacted] to Moosomin and [redacted] (both compared to Richardson – Brandon/Kemnay), which means that a farm will be indifferent between selling canola to Moosomin and LDC Yorkton only when Moosomin is [redacted] to the farm than Yorkton.[207] Figure 52 also provides "Dollar Equivalent" columns that convert the coefficient values from the elevator and crusher indicator variables in Dr. Miller's regression results into dollars. The "Dollar Equivalent" columns show that the Miller Report's results indicate a farm is indifferent between selling to Moosomin and LDC Yorkton if Moosomin's price was about [redacted] per MT.[208] This shows that the driving distance has not removed

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[207] Drive distance equivalencies are calculated using Dr. Miller's driving time coefficients and the average speed used by Dr. Miller. Dr. Miller estimates a time coefficient of about [redacted] for CWRS (utility decrease per minute) and uses an average speed of about [redacted] (inferred from his backup). This equates to a utility coefficient per km of about [redacted] (see Figure 53).The coefficients on Dr. Miller's elevator and crusher indicator variables (i.e., his "fixed effects" variables) are converted to driving distance using this coefficient, such that Virden's drive equivalent of [redacted] is computed as follows: [redacted] (FE coefficient) / [redacted] For canola the calculation is analogous, but we use Dr. Miller's driving time coefficient for Canola of [redacted] These calculations are illustrated in Figure 53.

[208] Utility can be converted into dollar terms using the calibrated alpha from Dr. Miller's farm choice model. The calibrated alphas from Dr. Miller's results for CWRS and canola are [redacted] and [redacted] respectively. Utility can be converted to dollars by dividing by alpha. For example, for CWRS the coefficient on Virden is [redacted] which is equivalent to [redacted]

crushers from the relevant market or from being competitive constraints to P&H post-Acquisition. In fact, the Miller Report's own regression results show the farms in the analysis have a strong preference for selling canola to crushers.

166. Using the Miller Report's farm choice model results, Figure 54 plots the probability that a farm within the transactions dataset sells canola to Moosomin, Virden, another elevator or a crusher for a given drive distance.[209] Figure 54 shows that at [redacted] drive distance, there is typically about a [redacted] probability the farm delivers canola to Moosomin, a [redacted] probability the farm delivers canola to Virden, and a [redacted] probability the farm delivers to Harrowby (a crusher). While there is a near zero probability a farm delivers canola to an elevator more than [redacted] drive distance away, there is on average more than a [redacted] probability a farm sells canola to Velva (a crusher) at drive distances of [redacted] Crushers offer attractive cash purchase prices to farms that overcome higher costs to deliver canola to crushers. It is clear from the farm choice model results that crushers are part of the relevant market and should be included when considering the competitive effects of the Acquisition.

167. Figure 55 plots the probability that a farm within the area sells CWRS to Moosomin or Virden or any other elevator for a given drive distance using the farm choice model results. Controlling for drive distance from the farm to the elevator, the Moosomin and Virden elevators are [redacted] to be chosen by a farm within the transactions dataset than any other elevator, with the exception of [redacted] which is preferred even with longer drive times.

Understanding the Miller Report's surplus results

168. The surplus calculations generated by Dr. Miller's simulation model differ from the more typical case, so they are worth explaining. In a typical case, price increases

[209] The probabilities depend on the relative utilities (and thus distance) for farms from selling to each of the other elevators. The values reported are inferred from the Miller Report farm-elevator level regressions of choice on distance.

resulting from a merger reduce total quantity demanded leading to a deadweight loss and a wealth transfer from buyers to sellers. The deadweight loss has two components – a loss in consumer surplus and a loss in producer surplus. The loss in consumer surplus is due to buyers no longer purchasing the product at the higher post-merger prices despite having a willingness to purchase at pre-merger prices. The loss in producer surplus is due to sellers no longer earning a margin on the quantities that were sold pre-merger but are not sold post-merger due to reduced demand at higher post-merger prices.

169. In the merger simulation model employed by Dr. Miller to assess the welfare effects associated with his predicted increase in the price of "grain handling services", all farms included in the simulation supply the same quantity of grain to elevators and crushers pre- and post-Acquisition, such that there is no reduction in the total quantity of grain delivered.[210] The Acquisition changes the distribution of grain volumes from farms to elevators and crushers with volumes shifting away from Moosomin and Virden towards Fairlight and rival elevators and crushers, which results in a loss of share for Moosomin and Virden.[211] The volumes that shift to elevators other than Fairlight and to crushers are treated as "outside" the relevant market in the Miller Report.[212]

170. Dr. Miller reports "total welfare in the model is given by the sum of the value that each farm receives from the market for grain handling services, together with the profits of elevators within the relevant market. Change in deadweight loss is then the opposite of the change in total welfare."[213] Importantly, the change in consumer surplus in the Miller Report's simulation is a change in the *expected utility* of farms – it is the

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[210] The quantity sold by all farms in Dr. Miller's simulation is [redacted] MT of canola and [redacted] MT of CWRS. These amounts do not change pre- and post-acquisition.

[211] Miller Report, paragraph 137, and also Exhibit 14.

[212] Miller Report, paragraph 139.

[213] Miller Report, paragraph 136.

difference in farms' expected utility post-Acquisition compared to farms' expected utility pre-Acquisition.

171. In Dr. Miller's farm choice model, every farm location has some positive probability of delivering grain to every elevator and crusher included in the modelling.[214] In his model, each farm location selects the elevator to provide its "grain handling services" based on the highest utility score.[215] One elevator or crusher is selected by each farm location.[216] Even though a single farm location delivers 100% of its grain to one elevator pre-Acquisition, the model provides some small probability that this farm location would purchase "grain handling services" from every other elevator (and crusher) when these are included in the simulation for canola.[217] In aggregate, across all farm locations, the pre-Acquisition probabilities that a given farm location will choose a particular elevator or crusher are calibrated to the observed deliveries in the transactions data.[218]

172. The price increases that are predicted by any merger simulation model, including that used in the Miller Report, are the result of the merger internalizing diversion between the merging firms. When there is positive diversion and a positive margin, a merger simulation model will predict a price increase for the merging firms when efficiencies are not modelled. In the simulation discussed in the Miller Report, Fairlight is a "strategic" firm within the defined relevant market, such that it also increases its price for "grain handling services" somewhat in response to the price increase that the Miller Report predicts for P&H.[219] No other elevator or crusher alters its price in the Miller

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[214] Miller Report, paragraphs 111 and 189.

[215] Miller Report, paragraphs 111 and 189.

[216] Miller Report, paragraphs 186-188.

[217] Miller Report, paragraphs 186-196.

[218] Miller Report, paragraphs 189-196.

[219] Miller Report, paragraph 137.

Report's simulation.[220] With the changes in prices by Moosomin, Virden and Fairlight relative to no changes in prices at rival elevators and crushers, the probabilities that farms use a given elevator change.[221] In Dr. Miller's model, all probabilities change for every farm whether or not the farm sells grain to either the Moosomin or Virden elevators.[222]

173. Under this model, all farm locations within the union of 90% service areas of the Moosomin, Virden and Fairlight elevators experience a loss in expected utility due to the Acquisition.[223] The farm location does not have to be close to the Moosomin and Virden elevators or purchase "grain handling services" from either elevator to experience a loss in expected utility. In fact, as I discuss below most of the loss in expected utility that is identified in the Miller Report is for farm locations that do not deliver grain to the Moosomin and Virden elevators.

174. Figures 56-57 disaggregate the expected utility losses provided in the Miller Report to compare the distribution of these losses for canola and CWRS for farm locations that sell canola or CWRS to Moosomin or Virden pre-Acquisition compared to the farm locations that did not deliver grain to Moosomin or Virden pre-Acquisition.

i. In the case of canola, [redacted] of the farm-elevator consumer surplus losses in the Miller Report's results are less than [redacted] annually, and of these [redacted] are for farm-elevator combinations that did not deliver canola to Moosomin or Virden pre-Acquisition.

ii. For CWRS, [redacted] of the farm-elevator consumer surplus losses in the Miller Report's results are less than [redacted] annually, and of these [redacted] are for farm-elevator combinations that did not deliver CWRS to Moosomin or Virden pre-

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220 Miller Report, paragraph 216.

221 Miller Report, paragraphs 214 and 215.

222 Miller Report, paragraphs 214 and 215.

223 Miller Report, paragraphs 212 - 214.

Acquisition. For those farm-elevator combinations delivering CWRS to Moosomin or Virden pre-Acquisition, the Miller Report's calculations show there were [redacted] farms with consumer surplus losses between [redacted] and [redacted] annually, [redacted] farms with consumer surplus losses between [redacted] and [redacted] annually, and [redacted] farms with consumer surplus losses between [redacted] and [redacted] annually.

175. Across all consumer surplus loss categories identified in the Miller Report, there are far more farm-elevator combinations that delivered canola or CWRS to rivals than farm-elevator combinations that delivered canola or CWRS to Moosomin and Virden. This makes the Miller Report's consumer surplus loss calculations different from the more typical merger case. In most mergers with price increases, the consumer surplus losses arise from buyers who made purchases from market participants pre-merger who do not make purchases post-merger at the higher prices. But in the Miller Report model, most of the consumer surplus losses – measured as changes in expected utility – are with respect to farm-elevator or farm-crusher combinations that Dr. Miller excludes from his defined relevant market.

176. Another depiction of the distribution of consumer surplus losses is provided in Figure 58 which shows the fraction of consumer surplus losses associated with those farm-elevator combinations that have Moosomin and Virden as their two closest elevators. In canola, the Miller Report's results indicate [redacted] in consumer surplus losses for those farm locations with Moosomin and Virden as their closest elevators, compared to total consumer surplus losses in canola of [redacted] In CWRS, the Miller Report's results indicate [redacted] in consumer surplus losses for those farm locations with Moosomin and Virden as their closest elevators, compared to total consumer surplus losses in CWRS of [redacted].

177. As Figure 59 makes clear, most of the consumer surplus loss described in the Miller Report are for farm locations that have numerous rival elevator and crusher locations preferred to Moosomin or Virden because these rivals are closer. Thus, the consumer surplus losses described in the Miller Report are *not* resulting from farms whose nearest choices are Moosomin and Virden hypothetically travelling farther post-Acquisition.

Instead, much of the change in expected utility that forms the basis of the Miller Report's consumer surplus losses are from farms that are not close to either Moosomin or Virden and for which one would not expect the Acquisition to matter.

178. Notwithstanding the Miller Report's finding that most consumer surplus losses are associated with farm locations that do not deliver grain to Moosomin or Virden pre-Acquisition and that do not have Moosomin and Virden as their closest elevator options, all farm location consumer surplus losses are included by Dr. Miller in his reported welfare results without including the profit improvement that accrues to the many rival elevators that these farm locations use. Instead, Exhibit 15 of the Miller Report provides the consumer surplus losses for all farm-elevator combinations but only the profit improvement that is estimated for Moosomin, Virden and Fairlight. This is not an apples-to-apples comparison.

179. Accepting for the purposes of illustration Dr. Miller's use of expected utility to measure the change in consumer surplus from the Acquisition, a proper accounting of the welfare change should compare the consumer surplus losses and profit improvements for the same set of players – either the profits of all rival elevators should be included if the consumer surplus losses are calculated for all farm-elevator combinations or only the consumer surplus losses associated with the farms that use the elevators included in Dr. Miller's defined market (i.e., Moosomin, Virden and Fairlight) should be compared to the profits at these three elevators. Between these two comparisons, the correct one would include all rival elevators since a correct definition of the relevant market would include more elevators than only Moosomin, Virden and Fairlight.

180. Figure 60 provides the change in consumer surplus, total profit and total surplus for canola (including crushers) and for CWRS using the Miller Report's results incorporating the profit improvements at elevators beyond Moosomin, Virden and Fairlight. It shows the [redacted] in canola and [redacted] in

CWRS.[224] Even if one were to accept the use of expected utility as a meaningful way to measure the Acquisition's effects on total surplus, Dr. Miller's own estimates show there are no significant reductions in total surplus when all farm-elevator combinations in a properly defined relevant market are included.

181. The price and volume changes found in Dr. Miller's simulation results can be used to construct deadweight loss estimates using the more familiar model of linear demand.[225] The resulting deadweight loss is estimated to be a mere [redacted] annually in canola and [redacted] in CWRS annually, summed across Moosomin and Virden.

182. However, there is a more fundamental point to the Miller Report surplus calculations – most of the profit improvement from the alleged anticompetitive Acquisition accrues to Viterra and other rivals, and not to P&H. This is highly unusual. Normally, one expects the beneficiary of an alleged anticompetitive transaction to be the merging parties (or acquirer), not their rivals. If rivals are the expected primary beneficiaries, it makes the price increase predictions questionable or certainly less likely. That is the case here.

183. Figures 61-62 provide the details of the estimated changes in elevator shares, volume, price and profits using the Miller Report's simulation results. Exhibit 14 of the Miller Report shows a price change of [redacted] CAD/MT for canola in the price of "grain handling services" at Virden, which is a [redacted] change in the price of grain handling services. When this change is considered relative to the average cash price paid to farms for their canola at Virden, it represents only a [redacted] change in the average canola cash price of

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[224] Alternatively, Figure 60 reports the change in consumer surplus, total profit and total surplus if the farm-elevator combinations are restricted to Moosomin, Virden and Fairlight only. If Dr. Miller's welfare comparison is done for farm-elevator combinations using only Moosomin, Virden and Fairlight, the annual total surplus loss is [redacted] in canola and [redacted] in CWRS. Once Dr. Miller's welfare results are reported on an apples-to-apples basis, the changes in total surplus (i.e., changes in expected utility which he uses to measure consumer surplus together with the change in profits) are smaller than those reported in Exhibit 15 of the Miller Report.

[225] The formula for the deadweight loss calculation, assuming linear demand, is the change in quantity multiplied by the change in price divided by 2. This can be calculated using the Miller Report results for each of Moosomin and Virden, and then summed. The price and quantity changes found in Dr. Miller's simulation results and reported in Figure 62.

[redacted] CAD/MT paid to farms by the Virden elevator using Dr. Miller's time period. Expressed as a change in the price per bushel, this is an increase of [redacted] per bushel at Virden (see Figure 62). In CWRS, the Miller Report's simulation results generate an increase of about [redacted] per bushel increase at Moosomin and Virden and [redacted] per bushel increase at Fairlight for an average change across Moosomin, Virden and Fairlight of [redacted] per bushel (see Figure 62).

184. The price increases that Dr. Miller's simulation model predicts at Moosomin and Virden lead to predicted lower purchases at these elevators, in the range of [redacted] for Virden's CWRS purchases and [redacted] for Moosomin's CWRS purchases.[226] The Miller Report's predicted purchase reductions are smaller for canola. Whether canola or CWRS are considered, the merger simulation predicts that volumes which pre-Acquisition were delivered to Moosomin and Virden would be diverted to Fairlight and other rival elevators (and crushers in the case of canola) in proportion to the diversions estimated in the Miller Report's farm choice model. Figure 61 provides the firm-level changes in the profit for each of Moosomin, Virden and Fairlight that are reflected in the Miller Report's back-up materials.

185. The details contained in Figure 61 show that even Dr. Miller's simulation model finds it is [redacted] for Moosomin to implement a price increase for "grain handling services" in respect of canola post-Acquisition, whether one includes or excludes crushers in the set of canola buyers. Dr. Miller's model finds there is [redacted] in canola (with crushers included) at Virden such that the combined Moosomin + Virden profit [redacted] to P&H from implementing the predicted price increases in Dr. Miller's simulation are an aggregate [redacted] annually in canola and [redacted] annually in CWRS, for a total profit improvement of [redacted] annually. These are remarkably [redacted] for P&H to implement the reduction in purchases of canola

[226] Miller Report, Exhibit 14, reporting the change in share. Dr. Miller's backup materials provide the details, which I present in Figures 61 and D62.

and CWRS, and increase the prices of "grain handling services" for canola and CWRS predicted in the Miller Report.

186. According to Dr. Miller's simulation results, the firm that benefits the most from the Acquisition [redacted]. The Miller Report's simulation results have [redacted] increase by [redacted] in canola and [redacted] in CWRS for a total improvement of [redacted] annually. As a result, P&H only earns [redacted] of the total profit improvement among Moosomin, Virden and Fairlight predicted by Dr. Miller's merger simulation, while [redacted] of the total profit improvement goes to [redacted] It is highly unlikely that P&H would increase prices for "grain handling services" as this model suggests given the [redacted] in profits achieved by P&H and [redacted] achieved by [redacted] P&H paid more than [redacted] for the 10 LDC elevators and allocated [redacted] of its purchase price for the [redacted].[227] The annual profit improvement of [redacted] in the context of these purchase prices and belies any suggestion that P&H was motivated by a desire to create monopsony power or will, in fact, obtain monopsony power in acquiring the Virden elevator.

187. In conclusion, the price increases, purchase reductions and changes in total surplus identified in the Miller Report are unreliable. They have not occurred since the Acquisition and are unlikely to occur in the future. The Acquisition has not substantially lessened competition in any properly defined relevant market to date and it is unlikely to do so in the future.

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[227] See Notification re Asset Purchased from LDC – Schedule A at Section 4.2.

SWORN remotely by Margaret Sanderson at the City of Toronto, in the Province of Ontario, before me on October 9, 2020 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.

Commissioner for Taking Affidavits (or as may be)
IAN C. MATTHEWS

MARGARET SANDERSON

Appendix on the Difference-in-Differences Regression Analysis of Posted Prices at Moosomin and Virden

1. A standard difference-in-differences regression methodology is used to test whether Moosomin's (or Virden's) posted prices have stayed on the trajectory they were on pre-Acquisition relative to the Dutton elevator since P&H purchased the LDC elevators. The Dutton elevator is used as a benchmark since it also has Thunder Bay as its terminal port and it is not within the draw area of any acquired LDC elevator; hence it would be unaffected by the Acquisition.

2. The regression specification for this analysis is as follows:

$$Y_i = \beta_0 + x_i'\beta + \alpha I_M + \gamma I_A + \delta(I_D \times I_A) + \varepsilon_i$$

where:

- Y_i is the log of the observed posted bid (also known as net or cash) price;
- I_M is an indicator or dummy variable that takes the value 1 if the observed price was at Moosomin, and a value of 0 if the observed price was at Dutton;
- I_A is an indicator variable that take a value of 1 if the observed price is in the post-Acquisition period, and a value of 0 if the observed price was in the pre-acquisition period;
- x_i are a set of control variables that explain some of the variation in the observed prices. Here, these control variables include the futures price in the same day of the observed price, and a collection of indicator variables associated with the month of the posted price and the delivery month of the posted price.

3. The estimate of the differential in price of Dutton pre- and post-Acquisition is given by γ and reflects factors unrelated to the Acquisition since Dutton's price would not be affected by the Acquisition of Virden.

4. The estimated differential in price of Moosomin pre- and post-Acquisition is given by $\gamma + \delta$. This differential in price is assumed to come from factors that are unrelated to the Acquisition, and the effect of Acquisition. Absent any effects of the Acquisition we

expect any differential in price at Moosomin that has occurred over time to be equal to γ, which is the same differential at Dutton that exists between the post-Acquisition and pre-Acquisition periods. Therefore, δ, is interpreted as the percent difference in Moosomin's price that the regression attributes to the Acquisition, because it tells us how much the differential in price is different from γ. Hence, δ is the coefficient of interest in this analysis, as it would be an indicator of how much prices at Moosomin changed due to the Acquisition.

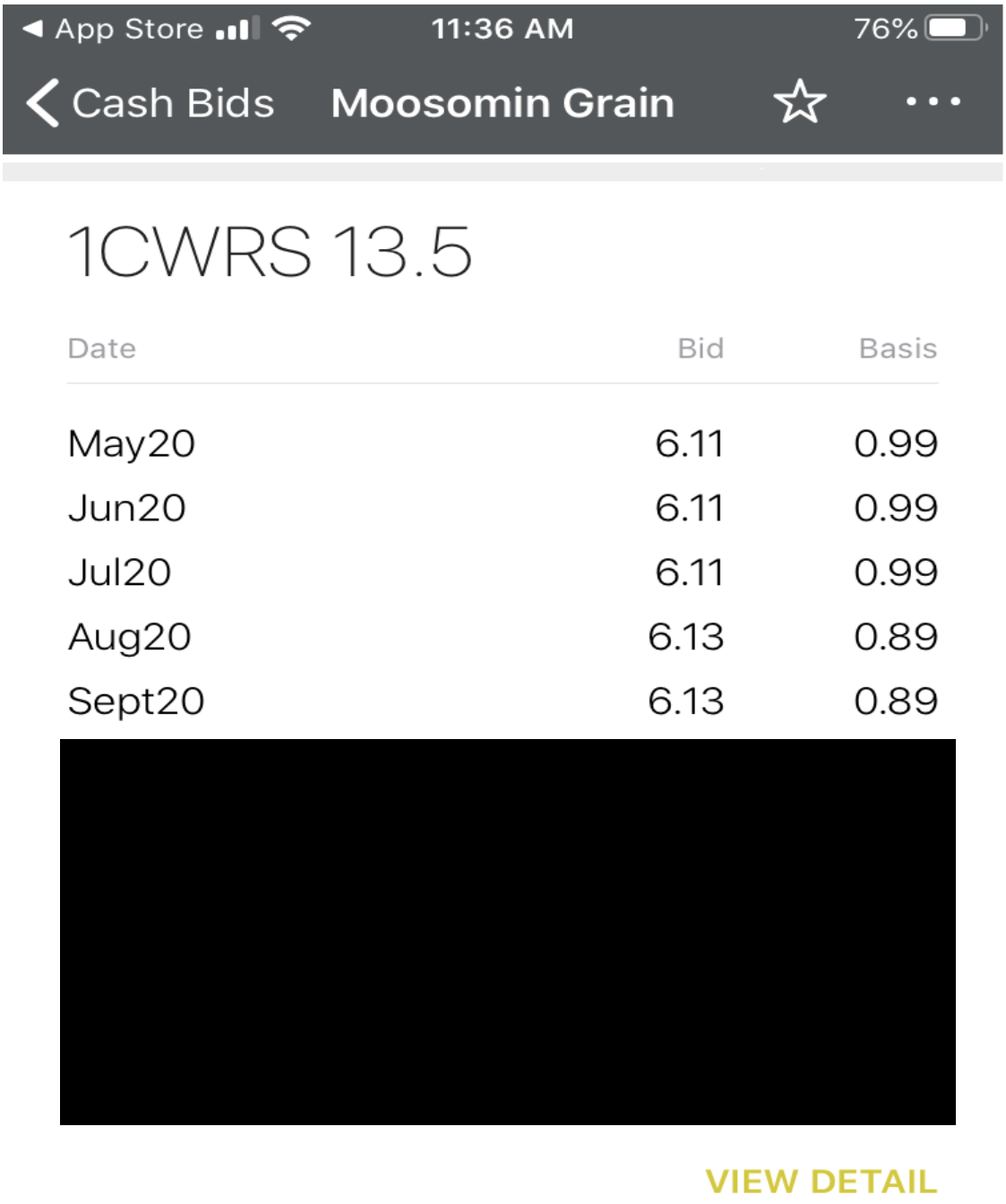
5. A similar analysis is undertaken to evaluate the potential effects of the Acquisition on the prices at Virden. The analysis is identical except that instead of using data on Moosomin prices, data on Virden prices are used. The interpretation of the coefficients such as γ and δ is analogous to the interpretation of these coefficients in the difference-in-differences analysis of Moosomin.

6. It bears noting that *any* difference estimated in the coefficient of interest δ is assumed to result from the Acquisition in this analysis.

Figure 1a

Screenshot of P&H Mobile Application the Morning of May 14, 2020

Posted Prices of CWRS at Moosomin



Notes:

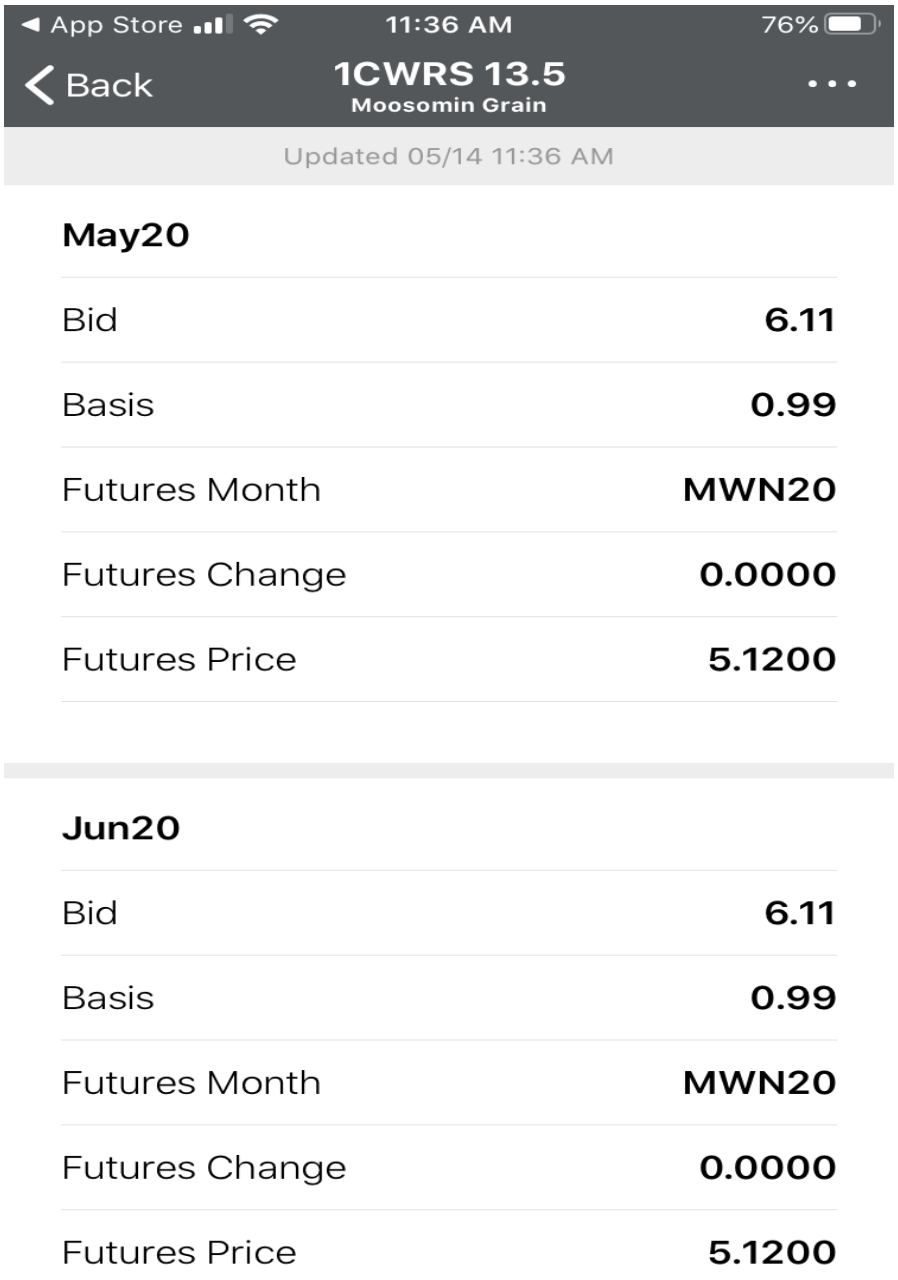
[1] Bid is the posted cash price of CWRS grade 1 with 13.5% protein in Canadian dollars per bushel for deliveries during the month indicated in the "Date" column.

[2] Basis is the posted basis value of CWRS grade 1 with 13.5% protein per bushel for deliveries during the month indicated in the "Date" column.

Figure 1b

Screenshot of P&H Mobile Application the Morning of May 14, 2020

Posted Prices of CWRS at Moosomin (Details)



Notes:

[1] This screen is the first screen after clicking "View Details" on the main postings screen (see Figure D1a). Scrolling down will reveal a similar panel for all posted prices listed on the main posting screen (e.g., Jul20, Aug20, etc.).

[2] Bid is the posted cash price of CWRS grade 1 with 13.5% protein in Canadian dollars per bushel for deliveries during the month indicated in the "Date" column.

[3] Basis is the posted basis value of CWRS grade 1 with 13.5% protein per bushel for deliveries during the month indicated in the "Date" column.

[4] Futures Month, Change, and Price indicate the indexed commodity (e.g., MWN20 for May 20 Deliveries), its current value in US dollars, and changes from recent values.

PUBLIC

Figure 2

Purchase Confirmation

Parrish & Heimbecker, Limited

Moosomin Grain
Box 1590
Moosomin, SK S0G 3N0
Ph: (306)435-4905
Fax:(306)435-4353

Account Information

Purchased From:	[redacted]
Account Nbr:	[redacted]
Phone Nbr:	
Fax Nbr:	

Contract Number:	[redacted]
Original Date:	[redacted]
Contract Type:	**FIXED PRC CONTRACT**
Delivery Location:	Moosomin Grain

Confirmation of a Verbal Agreement between [Seller] [redacted] and [Buyer] Cassandra Beutler.

Contract Details

Date:	[redacted]
Commodity:	**CWRS - WEST**
Grade:	**1CWRS 13.5**
Currency:	CAD Per MT (kg)
Basis Location:	Moosomin Dlvd
GPO Number:	[redacted]

1,580.000 Quantity **MT** **UOM**

Futures Price:	[redacted]
Basis Price:	
Net Price:	
Option Month:	[redacted]

Shipping Details

Ship From/To:	[redacted] - [redacted]
Delivery Mode:	Truck
Transport Type:	Truck (kg)

Rules to Govern	
Rules:	National Grain & Feed Assoc
Grade:	Destination
Weight:	Destination

Special Instructions and Conditions

The Buyer(s) and Seller(s) signature on this contract acknowledge(s) the parties are authorized to enter into a binding agreement. By signing this Contract, the parties understand and agree to the terms and conditions on both the front and reverse side of this Contract. Any errors and omissions must be confirmed in writing within 24 hours of receipt of this contract or Contract is duly noted as accepted.

Maximum 2.0 PPM Vomitoxin, subject to rejection or discounts
Minimum 300 Falling Number

P&H limits basis contracts to a maximum of 1 calendar year from original contract delivery period start date. If at that time pricing has not been established P&H retains the right to price outstanding contract or unpriced portion thereof.

Authorized Signature of Seller

[redacted]

Date: _____

Authorized Signature of Buyer

Parrish & Heimbecker, Limited

Date: _____

Figure 2

1) Buyer shall receive good title to the Commodity free and clear of all encumbrances and Seller warrants that he/she has full right to enter into this Contract, he/she is full owner of the Commodity, he/she has not sold or contracted to sell the Commodity to anyone other than Buyer, and will keep Commodity free of all liens and encumbrances. Seller agrees to settle any outstanding accounts relating to the Commodity delivered to Buyer by hereby expressly allowing Buyer to deduct and pay any such outstanding accounts from monies due to Seller under this contract. Seller shall produce reasonable evidence of payment of any outstanding accounts at the request of Buyer. If Buyer is notified of any security interests in the Commodity before delivery, Buyer shall have the option of accepting or rejecting deliver hereunder. Buyer may honor any security interests, liens or other claims against the Commodity if notification of the same is received before the Commodity is delivered or paid for. In the event that Seller has encumbered the Commodity without disclosing this to Buyer, Seller shall indemnify and save harmless any costs and damages incurred by Buyer as a result thereof.
2) Unless otherwise expressly agreed to in writing by the Buyeror unless otherwise specified at the time of sale, Seller warrants that the Commodity was or will be grown in Canada, may be introduced into commerce under the Food and Drugs Act (Canada) or other applicable federal, and provincial laws, and complies with other applicable federal and provincial laws, including but not limited to Canada Agricultural Products Act and Plant Protection Act (Canada).
3) Buyer's weights and grades will govern this Contract, unless otherwise specified. Seller warrants that the Commodity shall be of merchantable quality and shall not be adulterated, misbranded, or in any way violate any federal and provincial laws, including without limitation the Pest Control Products Act (Canada), the Canada Agricultural Products Act, the Food and Drugs Act, the Plant Protection Act (Canada), the Canadian Environmental Protection Act. Seller guarantees the Commodity to arrive at final destination "cool and sweet" and free from any kind of infestation.
4) The Commodity shall be delivered in containers that meet all provincial and federal laws, and are in all respects in compliance with applicable provincial and federal regulations related to the delivery of grain intended for human consumption. The Commodity may be delivered only during Buyer's designated receiving hours. Buyer may schedule deliveries of the Commodity by Seller to suit the availability of appropriate storage and cleaning facilities. Buyer has 90 days after the end date of the contract to arrange for delivery (Buyers Call). Buyer may designate any reasonable alternate delivery point if necessary to expedite or facilitate Seller's performance of this Contract, but shall not be obligated to do so. Seller shall pay any increased shipping charges under this provision; reductions in shipping charges shall be for Buyer's convenience, increases or decreases in shipping charges shall be for Buyer's account.
5) Notwithstanding any other provisions of this agreement to the contrary, all rights, title and interest to the Commodity shall remain in Seller until such time as the crop has been delivered to Buyer's designated point or picked up by Buyer. Buyer's acceptance of any delivery shall not waive its rights for conditions which are not disclosed or reasonably discoverable at time of transfer.
6) Buyer may reject any Commodities delivered or tendered for delivery hereunder that do not comply with conditions contained herein. Buyer's rejection of delivery for this reason shall not release Seller for this contract. If Buyer accepts any Commodity not meeting contract grade or quality, market scale discounts and premiums at time of delivery will apply, unless otherwise specified in writing. Seller shall pay all freight costs or other charges incurred by Buyer in connection with rejected Commodities.
7) If Seller finds he/she cannot deliver the contracted quantity, Seller shall immediately advise Buyer. If Seller fails to notify Buyer of their ability to complete the contracted delivery, Seller's liability shall continue until Buyer can determine whether Seller has defaulted. Buyer, when so notified or upon such determination, shall by the close of the next business day elect either to: (a) agree with Seller to extend the time for delivery; or (b) after having given notice to Seller to complete the contract, buy-in for Seller's account the defaulted portion of the contract; or (c) after having given notice to Seller to complete the contract, cancel the defaulted portion of the contract at the difference between the contracted price and the replacement cost, plus an administration fee of $10 per metric tonne. Seller shall pay to Buyer on demand the amount as may be determined under paragraph 7(b) or (c), as may be applicable.
8) No course of dealing by Buyer (including without limitation accepting any partial delivery or making any payment before complete delivery), nor any delivery or failure to exercise any right, shall operate a waiver of such right. Any waiver must be in writing, and shall not be construed as a continuing waiver or a waiver of any subsequent breach of this Contract.
9) Any increase in freight rates taking effect before fulfillment of this Contract, and not pursuant to paragraph 4 above, and excessive freight or other charges occasioned by the shipper's erroneous billing and routing, or loading of cars, trucks and barges below minimum and over maximum weight, will be for Seller's account. Seller is to pay weighing and inspection fees. Any freight reductions shall be for Buyer's account.
10) Except as expressly stated herein, Buyer shall not be liable in any respect for failure or delay in the fullfillment or performance of this contract if hindered or prevented, directly or indirectly, by war, national emergency, inadaquate transportation facilities, inability to secure fuel or power, fire flood, windstorm or other acts of God, strikes, lockouts or other labour disturbancies, embargo, orders, or acts of any government or governmental agency or authority, accidents to machinery, or any cause of like or different kind beyond buyer's reasonable control. However, notwithstanding this provision, the Buyer shall have an additional 90 days beyond the expiry of delivery period to call for a delivery of the Commodity without penalty. If additional delivery options have not been provided by the Buyer by the end of the 90 day extension period, the Seller will be entitled to a $3.00 per metric tonne penalty on the undelivered portion of the Contract. The original Contract and its terms will remain in force until the Buyer is able to receive and/or other delivery options are provided. If the Seller is unable to deliver the contracted quantity and quality when called for, this clause shall be deemed void and no penalty will be awarded. This clause does not pertain or apply to commercial transactions between the Buyer and other grain companies or commercial entities.
11) This instrument constitutes the sole agreement between the parties respecting the Commodity. Any prior agreements, negotiations or representations not expressly set forth in this Contract have no effect. This Contract may not be modified except in writing duly signed by both parties.
12) This Contract shall be governed by the laws of the Province in which it was written and the laws of Canada as may be applicable therein except where an issue may be decided under the National Grain and Feed Association Grain Trade Rules. Any claim relating to this Contract shall be settled by arbitration under the National Grain and Feed Association Arbitration Rules as are in effect at the date of this agreement. The parties agree to submit to arbitration. Judgment upon any arbitration award may be entered in any court or tribunal of competent jurisdiction. Copies of the National Grain and Feed Association Trade Rules and National Grain and Feed Association Arbitration Rules are available upon request and also on the National Grain and Feed Association's website at http://www.ngfa.org.
13) Buyer may liquidate this contract because of (a) the Seller's insolvency, (b) a case being commenced by or against the Seller, (c) a trustee for the Seller being appointed in a case, or a custodian being appointed before such commencement, (d) any default of the terms and conditions herein. Without limiting any other remedies available to Buyer, this Contract is subject to Buyer's right to set off against any amount payable to Seller, all amounts owing by the Seller to Buyer, including, without limitation, all amounts owing in respect of any crop inputs provided by the Buyer and interest at 1.5% per month.
14) This contract is binding on the parties and their heirs, successors and assigns. Seller may assign this contract only upon Buyer's prior written consent.
15) It is agreed by both parties that the United Nations Convention on Contracts for the International Sales of Goods shall not apply to this Contract.
16) None of the terms of this Contract may be added to, deleted, or altered in any way without the written consent of an authorized representative of the Buyer.
17) This contract is not valid unless it has been signed by an authorized representative of the Buyer.
18) If Seller, or anyone on my behalf, deliver(s) grain to P&H that is not an eligible variety, Seller will be liable to P&H for all claims, damages, losses and costs (including legal fees) that may result from such false and/or negligent representation. Seller further acknowledge and agree that P&H may consider Seller to be in default of my delivery contract as a result of the delivery on a non-eligible variety.

Authorized Signature of Seller	Authorized Signature of Buyer
Date: _____	Date: _____

Figure 3

Canada

Deferred Delivery Contract (DDC)

FINAL BINDING AGREEMENT

Louis Dreyfus Company Canada ULC
P.O. Box 2459
Virden, Manitoba, Canada
Tel: 204 748-6282 Fax: 204 748-6285

DEFERRED DELIVERY CONTRACT (DDC) **Contract** [redacted]

This contract has been agreed to on the [redacted] between **Louis Dreyfus Company Canada ULC** (referred to as **LDC**) and the **PRODUCER** (referred to as **Seller**).

Last Name: [redacted]		**CWB ID:**	CLARK20009
First Name:		**Company:**	[redacted]
Address:		**Phone #:**	[redacted]
Province:		**Fax #:**	[redacted]
Town:		**DocuSign:**	Yes
Postal Code:			

The Seller hereby agrees to sell and LDC hereby agrees to buy from the Seller the commodity described below on the following terms and conditions:

Net Amount 200.000 MT	**Grain** CWRS #1 13.5	**Grade** #1	**Net Price ($/MT)** [redacted]
Delivery Period [redacted]	**Delivery Point** Virden	**Delivery Via** Truck	**Net Price ($/Bu)** [redacted]

If applicable, the above mentioned Deferred Delivery Contract, has been transferred from GPO/BC/MPC/PPC No.

Contract Terms:

1. Immediately upon delivery of the commodity to the delivery point, a grade and dockage shall be established. In the event of a disagreement between LDC and/or LDC's representative and the Seller, a representative sample of the commodity shall be forwarded to the Chief Inspector of the Canadian Grain Commission, whose decision shall be final and binding.

2. All rights, title and interest to the commodity shall remain with the Seller until such time as the commodity has been delivered to LDC's designated delivery point and a grade and dockage has been established by LDC, whereupon all rights, title and interest to the commodity shall be transferred to LDC.

3. LDC shall receive good title to the commodity, free and clear of all encumbrances.

4. The Seller agrees to settle any outstanding accounts relating to the commodity delivered to LDC by hereby expressly allowing LDC to deduct any such outstanding accounts from revenue due to the Seller under this contract.

5. In the event that the Seller does not deliver against this agreement, LDC shall retain the right to charge the Seller an Administration fee that shall not exceed $15.00 per MT in addition to any charges from contract term No.8.

6. In the event that LDC is unable to receive the commodity by the end of the Delivery Period, then the Delivery Period shall be deemed to be extended for a period of 90 days (the "Extended Period"). If LDC does not call for delivery of the commodity by the end of the Extended Period, LDC shall pay the Seller a storage payment for each day beyond the Extended Period until the day delivery is called for by LDC (the "Storage Payment"). Notwithstanding the foregoing, no Storage Payment shall be due to the Seller if the commodity delivered is not in accordance with the contract. The Storage Payment on each outstanding tonne shall be calculated in accordance with the Canadian Grain Commission Licensed Primary Elevator tariffs applicable to LDC and calculated for each day beginning on the first day following the Extended Period until the delivery day called for by LDC. LDC shall make such Storage Payment within a reasonable period following completion of delivery. LDC shall provide the Seller with at least 24 hours' notice of the delivery date (the "Delivery Date") and LDC shall not be liable for any Storage Payments for storage occurring after such Delivery Date. In the event that LDC notifies the Seller of a Delivery Date that falls within the Delivery Period or the Extended Period and the Seller fails to make such delivery on the Delivery Date, LDC may, at its sole option, charge the producer $0.10/mt per day of such non delivery ("Late Delivery Charge"): if the Delivery Date is during the Delivery Period, from the first day following the end of the Delivery Period until the date commodity is delivered; or, if the Delivery Date is during the Extended Period, from the Delivery Date to the date on which the Seller delivers to LDC all undelivered commodity remaining outstanding on this contract. For the avoidance of doubt, the Late Delivery Charge is in addition to any other rights or remedies under law or contract that LDC may have for late or non-delivery.

7. Unless LDC agrees in writing, the Seller shall not sell or deliver the specific commodity contracted for to anyone other than LDC if that sale and delivery would result in the Seller being unable to deliver under this contract.

8. In the event the Seller does not deliver in accordance with the terms of this agreement, the Seller will be liable to LDC for damages for the difference between the contract price and the price LDC is required to pay in order to replace the commodity at the delivery point or an alternative location at LDC's discretion and for any other loss or expense incurred resulting from the failure to deliver. The exercise by LDC of any right or remedy provided in this contract does not affect other rights or remedies LDC may have under this contract.

9. Grade and protein discounts to apply at time of delivery. For all classes of wheat and durum, maximum vomitoxin allowance of 2 ppm and maximum moisture allowance at 14.0% and minimum falling number of 300 seconds.

Producer _____ Louis Dreyfus Company Canada ULC _____

Date _____ Date _____

SELLERS ARE URGED TO CAREFULLY READ THE CONTRACT. DISPUTES IN RESPECT OF THE CONTRACT MUST BE SETTLED EITHER BY THE TWO PARTIES OR BY CIVIL ACTION. IN WITNESS WHEREOF, LDC AND SELLER HAVE SIGNED THIS AGREEMENT.

PUBLIC

Figure 4

Purchase Confirmation

Parrish & Heimbecker, Limited

Moosomin Grain
Box 1590
Moosomin, SK S0G 3N0
Ph: (306)435-4905
Fax:(306)435-4353

Account Information

Purchased From: [redacted]

Account Nbr:
Phone Nbr:
Fax Nbr:

Contract Number:	[redacted]
Original Date:	[redacted]
Contract Type:	**FIXED PRC CONTRACT**
Delivery Location:	Moosomin Grain

Confirmation of a Verbal Agreement between [Seller] [redacted] and [Buyer] Cassandra Beutler.

Contract Details

Date:	[redacted]
Commodity:	**CANOLA - WEST**
Grade:	**1CAN CANOLA W**
Currency:	CAD Per MT (kg)
Basis Location:	Moosomin Dlvd
GPO Number:	[redacted]

500.000 Quantity — **MT** UOM

Futures Price:	[redacted]
Basis Price:	([redacted])
Net Price:	[redacted]
Option Month:	**H=**[redacted]

Shipping Details

Ship From/To:	[redacted] - [redacted]
Delivery Mode:	Truck
Transport Type:	Truck (kg)

Rules to Govern

Rules:	National Grain & Feed Assoc
Grade:	Destination
Weight:	Destination

Special Instructions and Conditions

The Buyer(s) and Seller(s) signature on this contract acknowledge(s) the parties are authorized to enter into a binding agreement. By signing this Contract, the parties understand and agree to the terms and conditions on both the front and reverse side of this Contract. Any errors and omissions must be confirmed in writing within 24 hours of receipt of this contract or Contract is duly noted as accepted.

P&H limits basis contracts to a maximum of 1 calendar year from original contract delivery period start date. If at that time pricing has not been established P&H retains the right to price outstanding contract or unpriced portion thereof.

Authorized Signature of Seller

[redacted]

Date: _____

Authorized Signature of Buyer

Parrish & Heimbecker, Limited

Date: _____

Figure 4

1) Buyer shall receive good title to the Commodity free and clear of all encumbrances and Seller warrants that he/she has full right to enter into this Contract, he/she is full owner of the Commodity, he/she has not sold or contracted to sell the Commodity to anyone other than Buyer, and will keep Commodity free of all liens and encumbrances. Seller agrees to settle any outstanding accounts relating to the Commodity delivered to Buyer by hereby expressly allowing Buyer to deduct and pay any such outstanding accounts from monies due to Seller under this contract. Seller shall produce reasonable evidence of payment of any outstanding accounts at the request of Buyer. If Buyer is notified of any security interests in the Commodity before delivery, Buyer shall have the option of accepting or rejecting deliver hereunder. Buyer may honor any security interests, liens or other claims against the Commodity if notification of the same is received before the Commodity is delivered or paid for. In the event that Seller has encumbered the Commodity without disclosing this to Buyer, Seller shall indemnify and save harmless any costs and damages incurred by Buyer as a result thereof.
2) Unless otherwise expressly agreed to in writing by the Buyeror unless otherwise specified at the time of sale, Seller warrants that the Commodity was or will be grown in Canada, may be introduced into commerce under the Food and Drugs Act (Canada) or other applicable federal, and provincial laws, and complies with other applicable federal and provincial laws, including but not limited to Canada Agricultural Products Act and Plant Protection Act (Canada).
3) Buyer's weights and grades will govern this Contract, unless otherwise specified. Seller warrants that the Commodity shall be of merchantable quality and shall not be adulterated, misbranded, or in any way violate any federal and provincial laws, including without limitation the Pest Control Products Act (Canada), the Canada Agricultural Products Act, the Food and Drugs Act, the Plant Protection Act (Canada), the Canadian Environmental Protection Act. Seller guarantees the Commodity to arrive at final destination "cool and sweet" and free from any kind of infestation.
4) The Commodity shall be delivered in containers that meet all provincial and federal laws, and are in all respects in compliance with applicable provincial and federal regulations related to the delivery of grain intended for human consumption. The Commodity may be delivered only during Buyer's designated receiving hours. Buyer may schedule deliveries of the Commodity by Seller to suit the availability of appropriate storage and cleaning facilities. Buyer has 90 days after the end date of the contract to arrange for delivery (Buyers Call). Buyer may designate any reasonable alternate delivery point if necessary to expedite or facilitate Seller's performance of this Contract, but shall not be obligated to do so. Seller shall pay any increased shipping charges under this provision; reductions in shipping charges shall be for Buyer's convenience, increases or decreases in shipping charges shall be for Buyer's account.
5) Notwithstanding any other provisions of this agreement to the contrary, all rights, title and interest to the Commodity shall remain in Seller until such time as the crop has been delivered to Buyer's designated point or picked up by Buyer. Buyer's acceptance of any delivery shall not waive its rights for conditions which are not disclosed or reasonably discoverable at time of transfer.
6) Buyer may reject any Commodities delivered or tendered for delivery hereunder that do not comply with conditions contained herein. Buyer's rejection of delivery for this reason shall not release Seller for this contract. If Buyer accepts any Commodity not meeting contract grade or quality, market scale discounts and premiums at time of delivery will apply, unless otherwise specified in writing. Seller shall pay all freight costs or other charges incurred by Buyer in connection with rejected Commodities.
7) If Seller finds he/she cannot deliver the contracted quantity, Seller shall immediately advise Buyer. If Seller fails to notify Buyer of their ability to complete the contracted delivery, Seller's liability shall continue until Buyer can determine whether Seller has defaulted. Buyer, when so notified or upon such determination, shall by the close of the next business day elect either to: (a) agree with Seller to extend the time for delivery; or (b) after having given notice to Seller to complete the contract, buy-in for Seller's account the defaulted portion of the contract; or (c) after having given notice to Seller to complete the contract, cancel the defaulted portion of the contract at the difference between the contracted price and the replacement cost, plus an administration fee of $10 per metric tonne. Seller shall pay to Buyer on demand the amount as may be determined under paragraph 7(b) or (c), as may be applicable.
8) No course of dealing by Buyer (including without limitation accepting any partial delivery or making any payment before complete delivery), nor any delivery or failure to exercise any right, shall operate a waiver of such right. Any waiver must be in writing, and shall not be construed as a continuing waiver or a waiver of any subsequent breach of this Contract.
9) Any increase in freight rates taking effect before fulfillment of this Contract, and not pursuant to paragraph 4 above, and excessive freight or other charges occasioned by the shipper's erroneous billing and routing, or loading of cars, trucks and barges below minimum and over maximum weight, will be for Seller's account. Seller is to pay weighing and inspection fees. Any freight reductions shall be for Buyer's account.
10) Except as expressly stated herein, Buyer shall not be liable in any respect for failure or delay in the fullfillment or performance of this contract if hindered or prevented, directly or indirectly, by war, national emergency, inadaquate transportation facilities, inability to secure fuel or power, fire flood, windstorm or other acts of God, strikes, lockouts or other labour disturbancies, embargo, orders, or acts of any government or governmental agency or authority, accidents to machinery, or any cause of like or different kind beyond buyer's reasonable control. However, notwithstanding this provision, the Buyer shall have an additional 90 days beyond the expiry of delivery period to call for a delivery of the Commodity without penalty. If additional delivery options have not been provided by the Buyer by the end of the 90 day extension period, the Seller will be entitled to a $3.00 per metric tonne penalty on the undelivered portion of the Contract. The original Contract and its terms will remain in force until the Buyer is able to receive and/or other delivery options are provided. If the Seller is unable to deliver the contracted quantity and quality when called for, this clause shall be deemed void and no penalty will be awarded. This clause does not pertain or apply to commercial transactions between the Buyer and other grain companies or commercial entities.
11) This instrument constitutes the sole agreement between the parties respecting the Commodity. Any prior agreements, negotiations or representations not expressly set forth in this Contract have no effect. This Contract may not be modified except in writing duly signed by both parties.
12) This Contract shall be governed by the laws of the Province in which it was written and the laws of Canada as may be applicable therein except where an issue may be decided under the National Grain and Feed Association Grain Trade Rules. Any claim relating to this Contract shall be settled by arbitration under the National Grain and Feed Association Arbitration Rules as are in effect at the date of this agreement. The parties agree to submit to arbitration. Judgment upon any arbitration award may be entered in any court or tribunal of competent jurisdiction. Copies of the National Grain and Feed Association Trade Rules and National Grain and Feed Association Arbitration Rules are available upon request and also on the National Grain and Feed Association's website at http://www.ngfa.org.
13) Buyer may liquidate this contract because of (a) the Seller's insolvency, (b) a case being commenced by or against the Seller, (c) a trustee for the Seller being appointed in a case, or a custodian being appointed before such commencement, (d) any default of the terms and conditions herein. Without limiting any other remedies available to Buyer, this Contract is subject to Buyer's right to set off against any amount payable to Seller, all amounts owing by the Seller to Buyer, including, without limitation, all amounts owing in respect of any crop inputs provided by the Buyer and interest at 1.5% per month.
14) This contract is binding on the parties and their heirs, successors and assigns. Seller may assign this contract only upon Buyer's prior written consent.
15) It is agreed by both parties that the United Nations Convention on Contracts for the International Sales of Goods shall not apply to this Contract.
16) None of the terms of this Contract may be added to, deleted, or altered in any way without the written consent of an authorized representative of the Buyer.
17) This contract is not valid unless it has been signed by an authorized representative of the Buyer.
18) If Seller, or anyone on my behalf, deliver(s) grain to P&H that is not an eligible variety, Seller will be liable to P&H for all claims, damages, losses and costs (including legal fees) that may result from such false and/or negligent representation. Seller further acknowledge and agree that P&H may consider Seller to be in default of my delivery contract as a result of the delivery on a non-eligible variety.

Authorized Signature of Seller	Authorized Signature of Buyer
Date: _____	Date: _____

Figure 5

PUBLIC

Deferred Delivery Contract (DDC)

FINAL BINDING AGREEMENT

Louis Dreyfus Company Canada ULC
P.O. Box 2459
Virden, Manitoba, Canada
Tel: 204 748-6282 Fax: 204 748-6285

DEFERRED DELIVERY CONTRACT (DDC) **Contract** [redacted]

This contract has been agreed to on the 20th day of April, 2018 between **Louis Dreyfus Company Canada ULC** (referred to as **LDC**) and the **PRODUCER** (referred to as **Seller**):

Last Name: [redacted]
First Name:
Address:
Province:
Town:
Postal Code:

CWB ID: 0010716702
Company: [redacted]
Phone #:
Fax #:
DocuSign: No

The Seller hereby agrees to sell and LDC hereby agrees to buy from the Seller the commodity described below on the following terms and conditions:

Net Amount	Grain	Grade	Net Price ($/MT)
109.000 MT	Canola	#1	[redacted]
Delivery Period	**Delivery Point**	**Delivery Via**	**Net Price ($/Bu)**
[redacted]	Virden	Truck	[redacted]

If applicable, the above mentioned Deferred Delivery Contract, has been transferred from GPO/BC/MPC/PPC No.

Contract Terms:

1. Immediately upon delivery of the commodity to the delivery point, a grade and dockage shall be established. In the event of a disagreement between LDC and/or LDC's representative and the Seller, a representative sample of the commodity shall be forwarded to the Chief Inspector of the Canadian Grain Commission, whose decision shall be final and binding.
2. All rights, title and interest to the commodity shall remain with the Seller until such time as the commodity has been delivered to LDC's designated delivery point and a grade and dockage has been established by LDC, whereupon all rights, title and interest to the commodity shall be transferred to LDC.
3. LDC shall receive good title to the commodity, free and clear of all encumbrances.
4. The Seller agrees to settle any outstanding accounts relating to the commodity delivered to LDC by hereby expressly allowing LDC to deduct any such outstanding accounts from revenue due to the Seller under this contract.
5. In the event that the Seller does not deliver against this agreement, LDC shall retain the right to charge the Seller an Administration fee that shall not exceed $15.00 per MT in addition to any charges from contract term No.8.
6. In the event that LDC is unable to receive the commodity by the end of the Delivery Period, then the Delivery Period shall be deemed to be extended for a period of 90 days (the "Extended Period"). If LDC does not call for delivery of the commodity by the end of the Extended Period, LDC shall pay the Seller a storage payment for each day beyond the Extended Period until the day delivery is called for by LDC (the "Storage Payment"). Notwithstanding the foregoing, no Storage Payment shall be due to the Seller if the commodity delivered is not in accordance with the contract. The Storage Payment on each outstanding tonne shall be calculated in accordance with the Canadian Grain Commission Licensed Primary Elevator tariffs applicable to LDC and calculated for each day beginning on the first day following the Extended Period until the delivery day called for by LDC. LDC shall make such Storage Payment within a reasonable period following completion of delivery. LDC shall provide the Seller with at least 24 hours' notice of the delivery date (the "Delivery Date") and LDC shall not be liable for any Storage Payments for storage occurring after such Delivery Date. In the event that LDC notifies the Seller of a Delivery Date that falls within the Delivery Period or the Extended Period and the Seller fails to make such delivery on the Delivery Date, LDC may, at its sole option, charge the producer $0.10/mt per day of such non delivery ("Late Delivery Charge"): if the Delivery Date is during the Delivery Period, from the first day following the end of the Delivery Period until the date commodity is delivered; or, if the Delivery Date is during the Extended Period, from the Delivery Date to the date on which the Seller delivers to LDC all undelivered commodity remaining outstanding on this contract. For the avoidance of doubt, the Late Delivery Charge is in addition to any other rights or remedies under law or contract that LDC may have for late or non-delivery.
7. Unless LDC agrees in writing, the Seller shall not sell or deliver the specific commodity contracted for to anyone other than LDC if that sale and delivery would result in the Seller being unable to deliver under this contract.
8. In the event the Seller does not deliver in accordance with the terms of this agreement, the Seller will be liable to LDC for damages for the difference between the contract price and the price LDC is required to pay in order to replace the commodity at the delivery point or an alternative location at LDC's discretion and for any other loss or expense incurred resulting from the failure to deliver. The exercise by LDC of any right or remedy provided in this contract does not affect other rights or remedies LDC may have under this contract.
9. Grade and protein discounts to apply at time of delivery. For all classes of wheat and durum, maximum vomitoxin allowance of 2 ppm and maximum moisture allowance at 14.0% and minimum falling number of 300 seconds.

Produce[redacted]

Louis Dreyfus Company Canada ULC

Date

Date

SELLERS ARE URGED TO CAREFULLY READ THE CONTRACT. DISPUTES IN RESPECT OF THE CONTRACT MUST BE SETTLED EITHER BY THE TWO PARTIES OR BY CIVIL ACTION. IN WITNESS WHEREOF, LDC AND SELLER HAVE SIGNED THIS AGREEMENT.

Figure 6

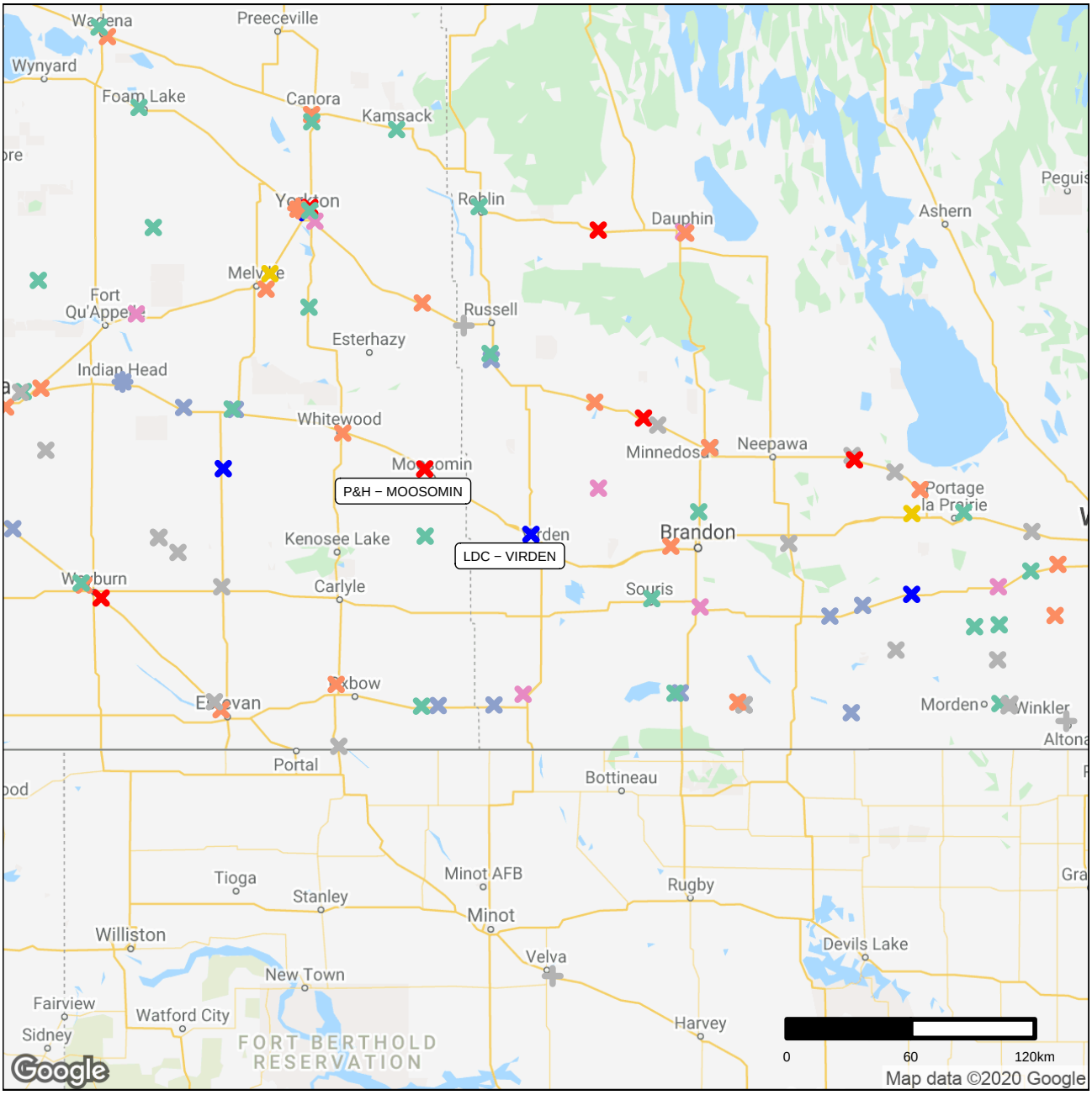
Figure 7

Figure 8

Figure 9

Grain Elevator and Processor Locations Map

Virden−Moosomin Area



Company
- P&H
- LDC
- Viterra
- Richardson
- Paterson Grain
- Cargill Limited
- G3
- Other

Buyer Type
- Elevator
- Crusher

Sources:
Grain Elevators in Canada Data

Figure 10

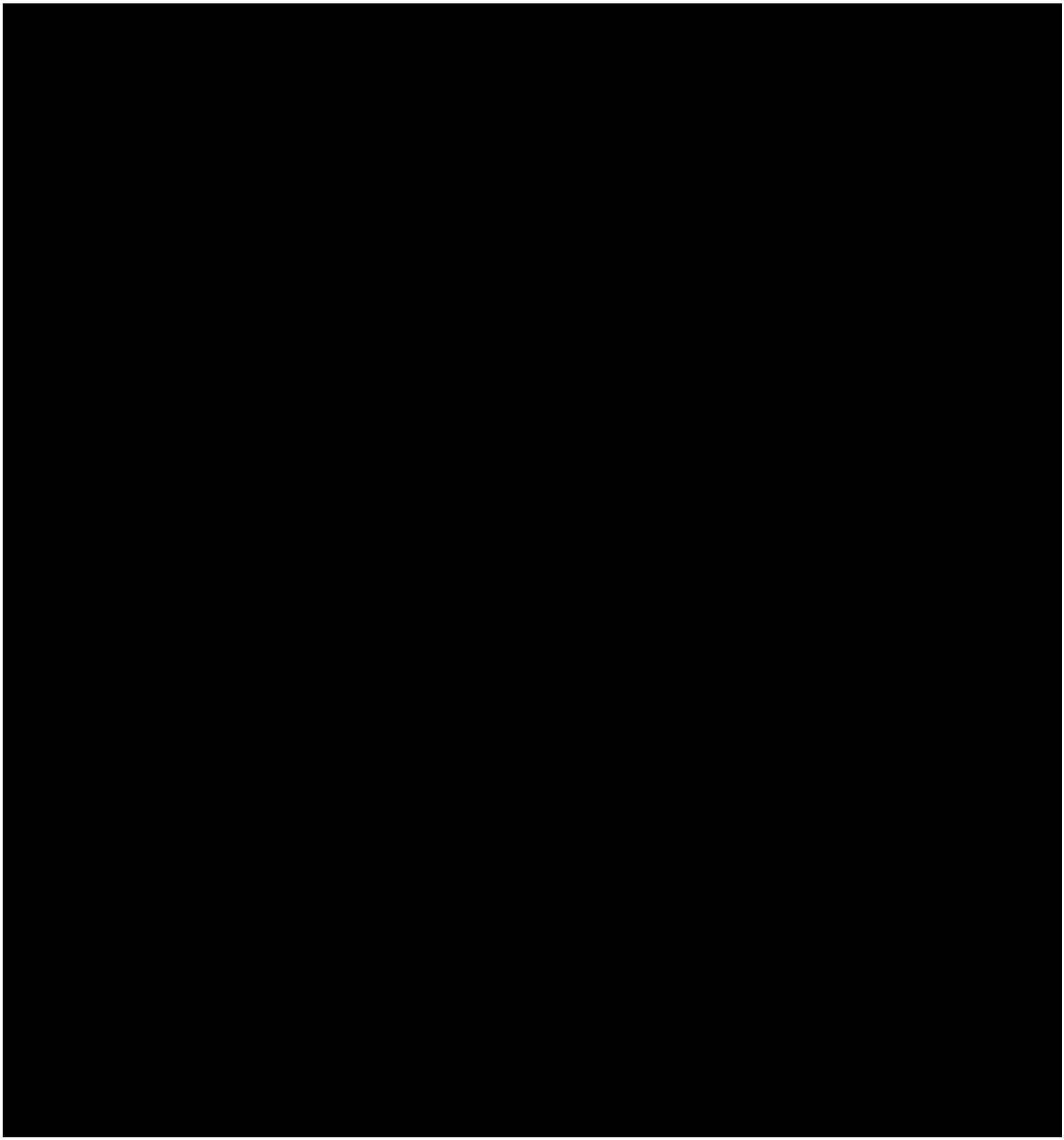


Figure 11

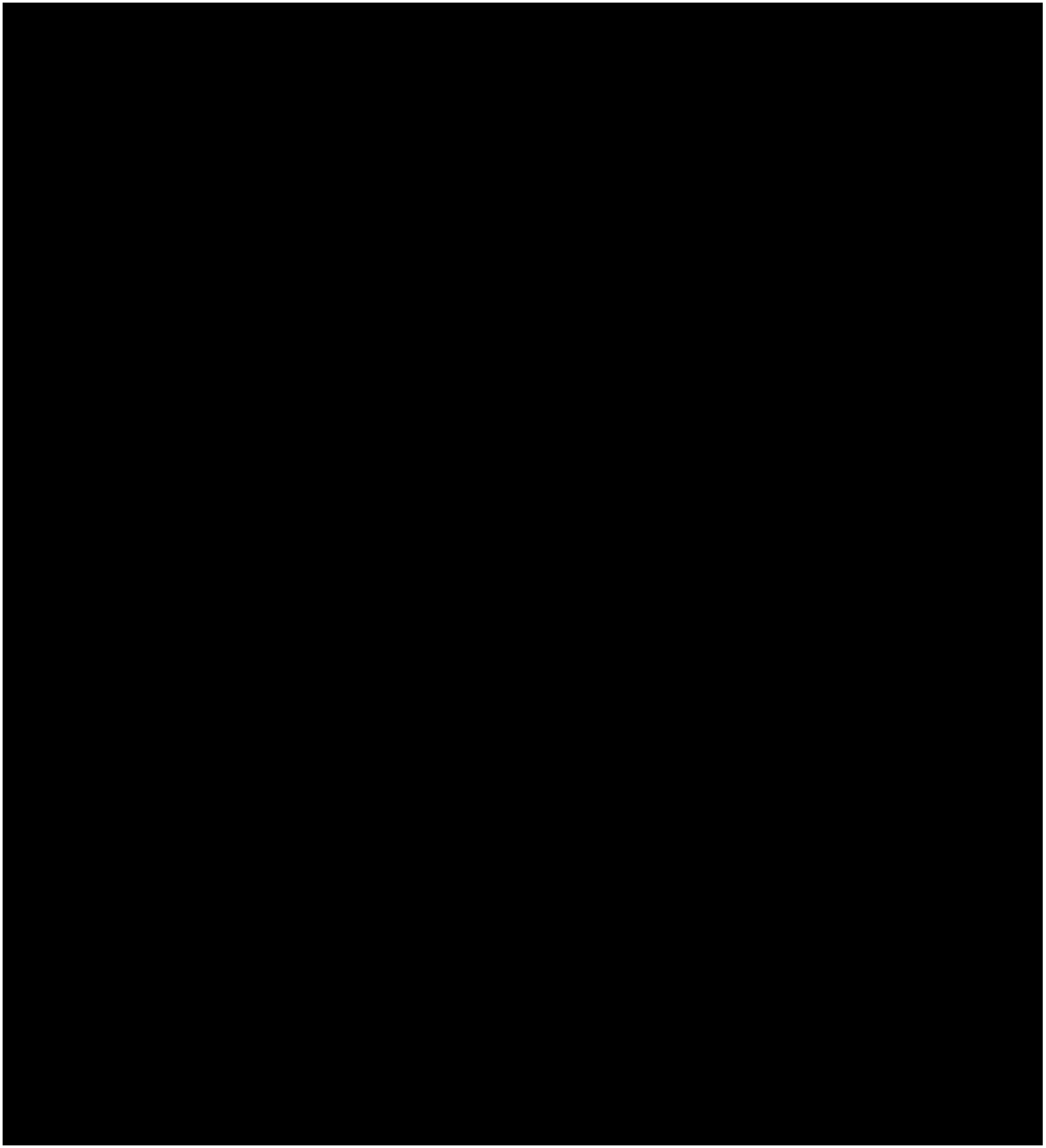


Figure 12

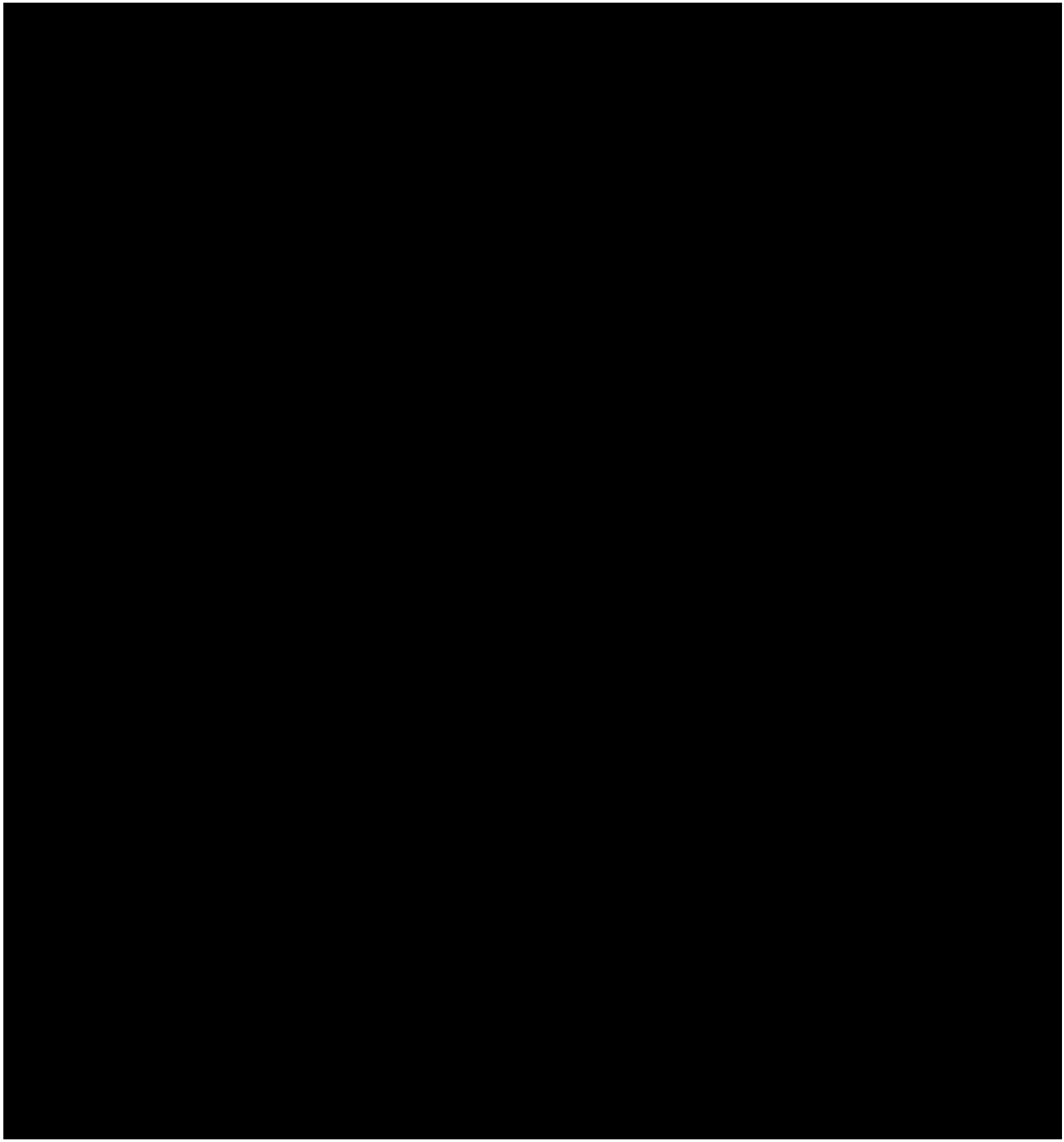


Figure 13

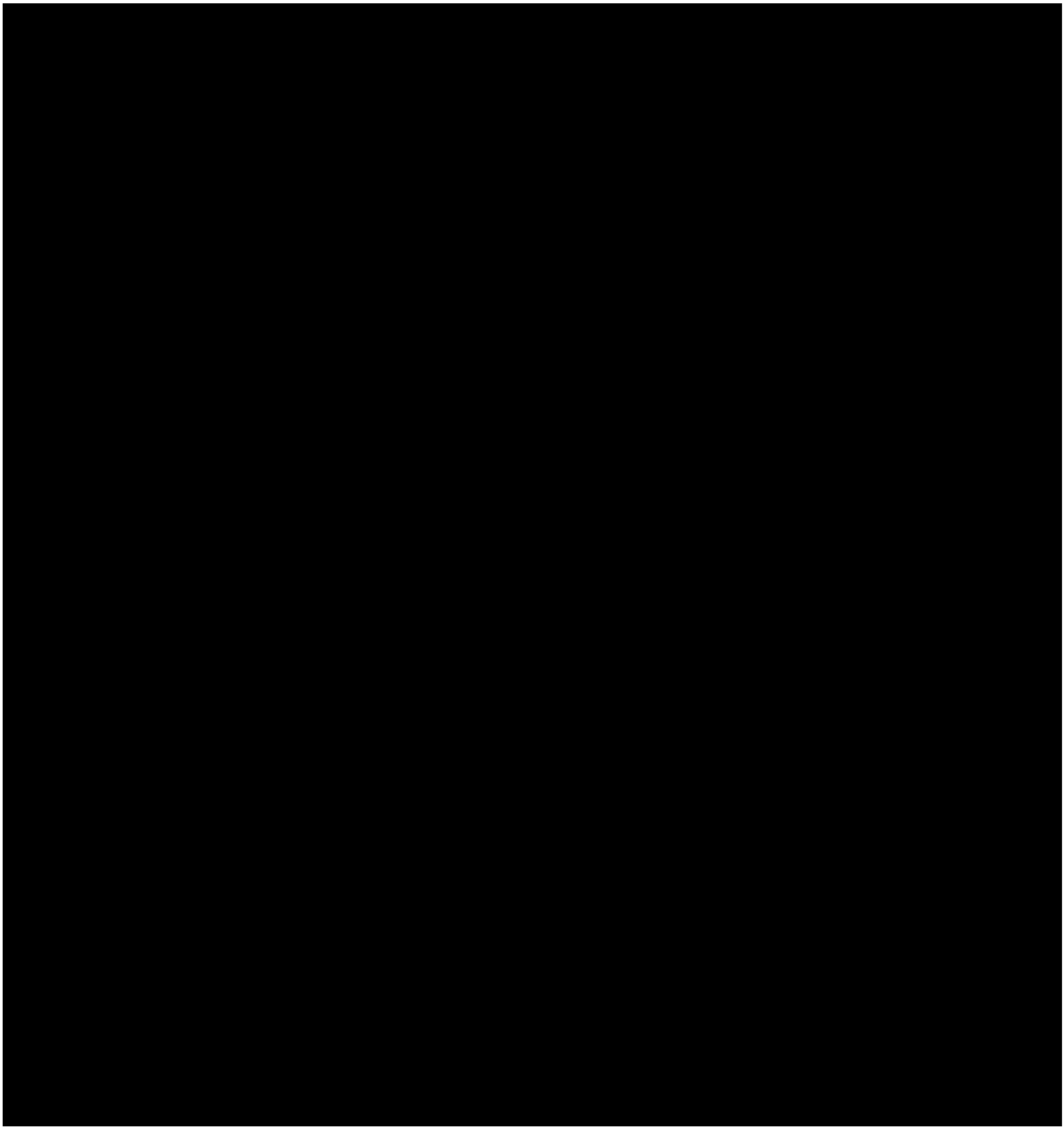


Figure 14

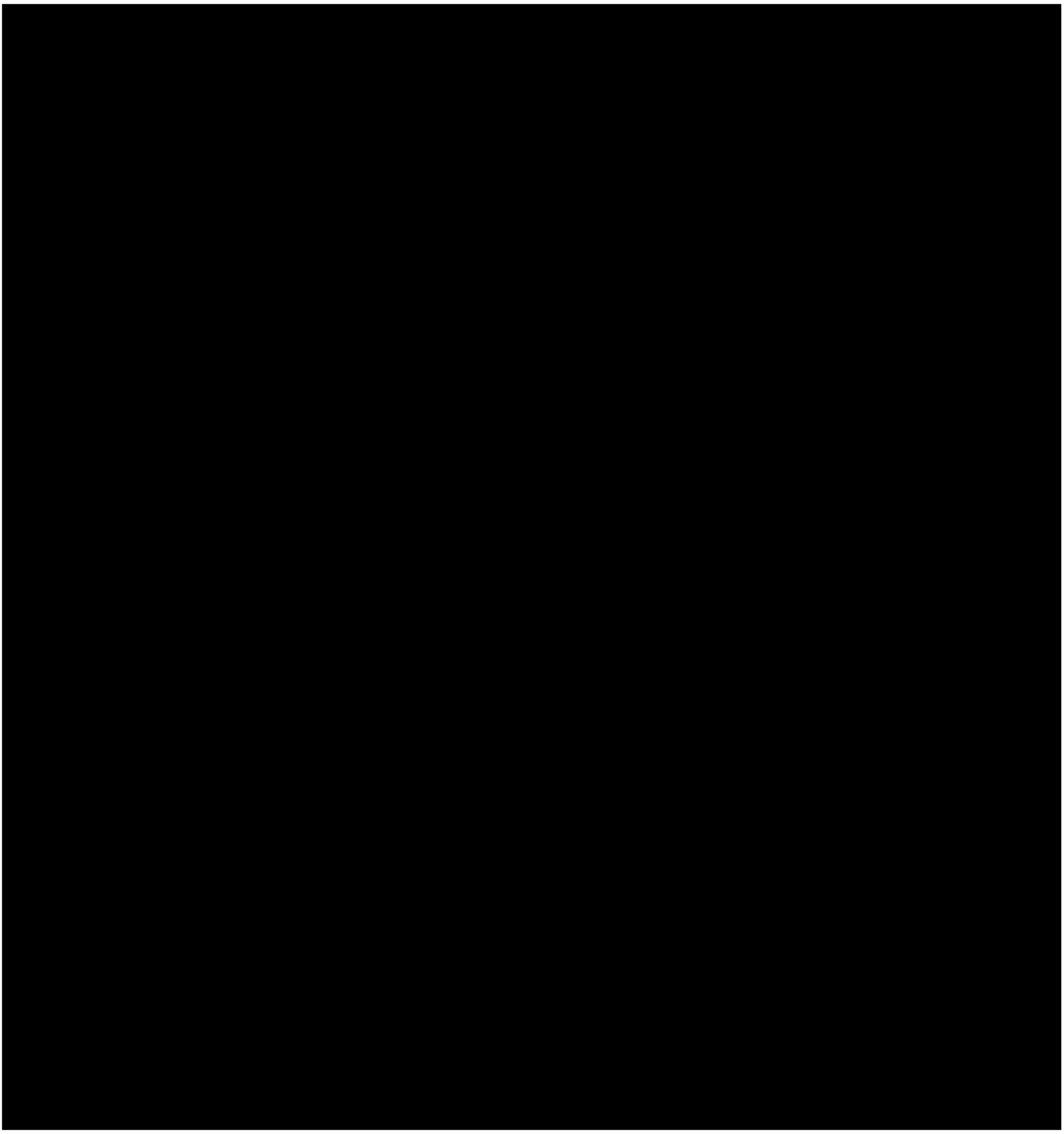


Figure 15

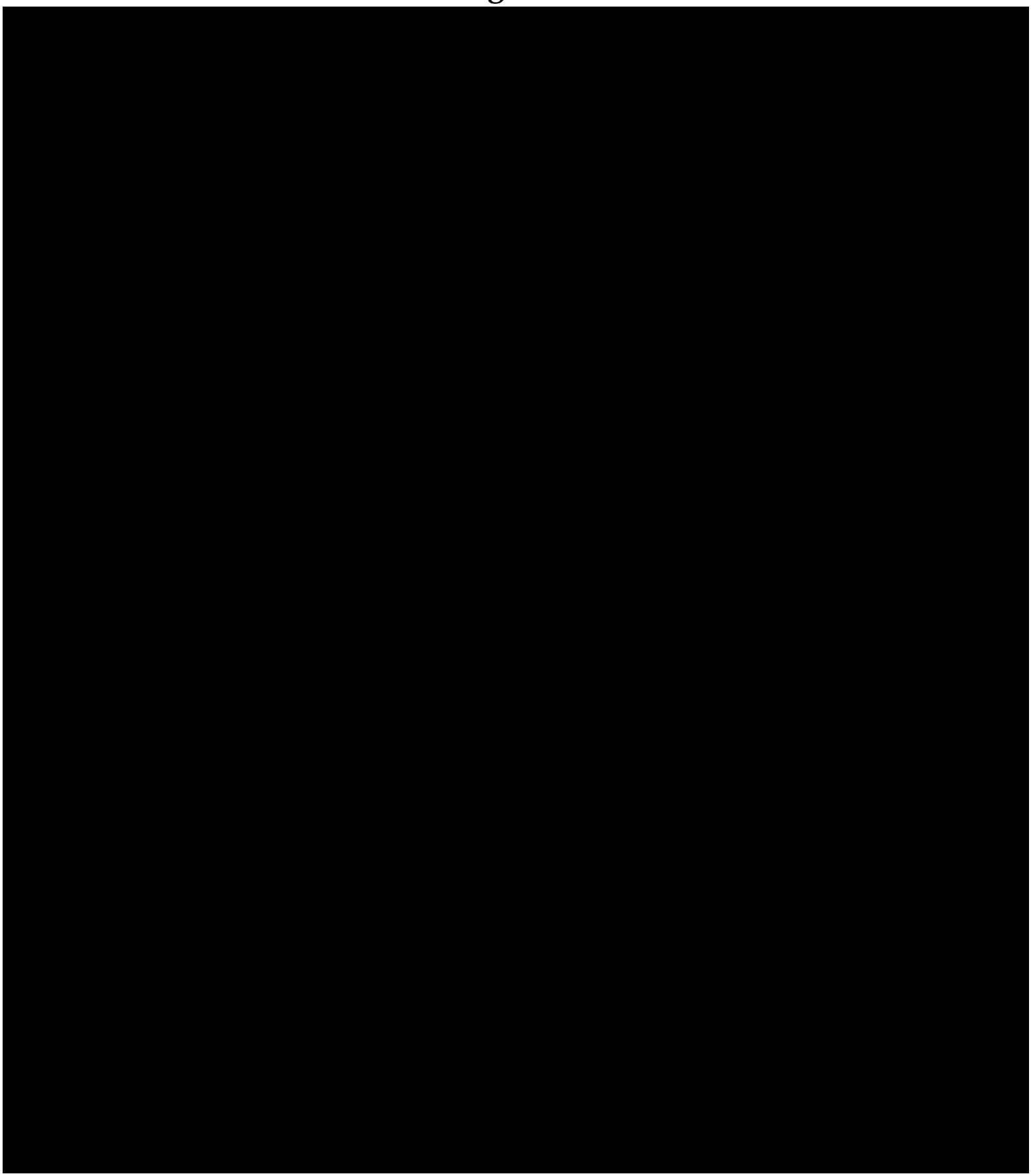


Figure 16a

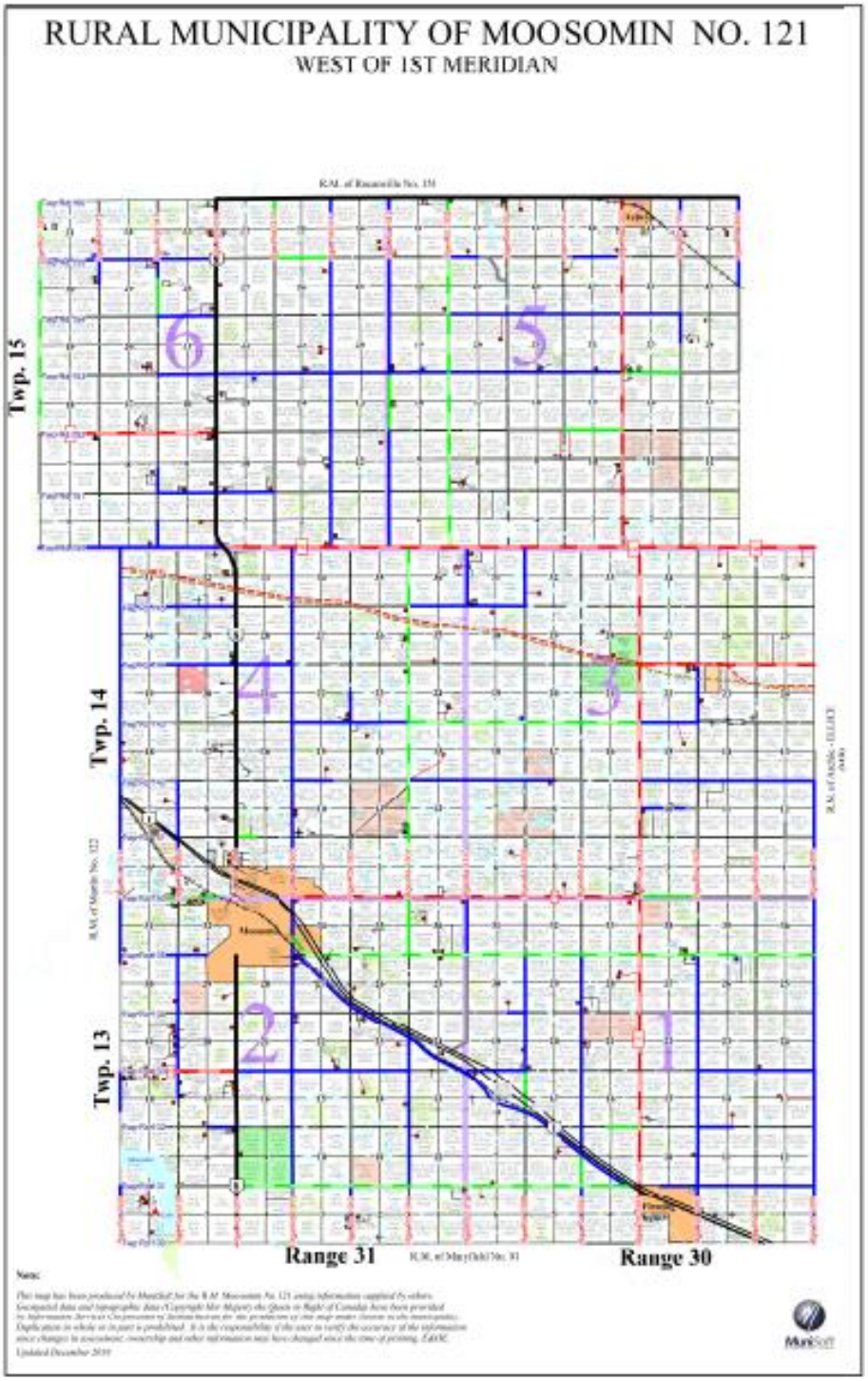

RURAL MUNICIPALITY OF MOOSOMIN NO. 121
WEST OF 1ST MERIDIAN
Twp. 15
Twp. 14
Twp. 13
Range 31
Range 30
6
5
4
3
2
1
Moosomin
MuniSoft

Figure 16b

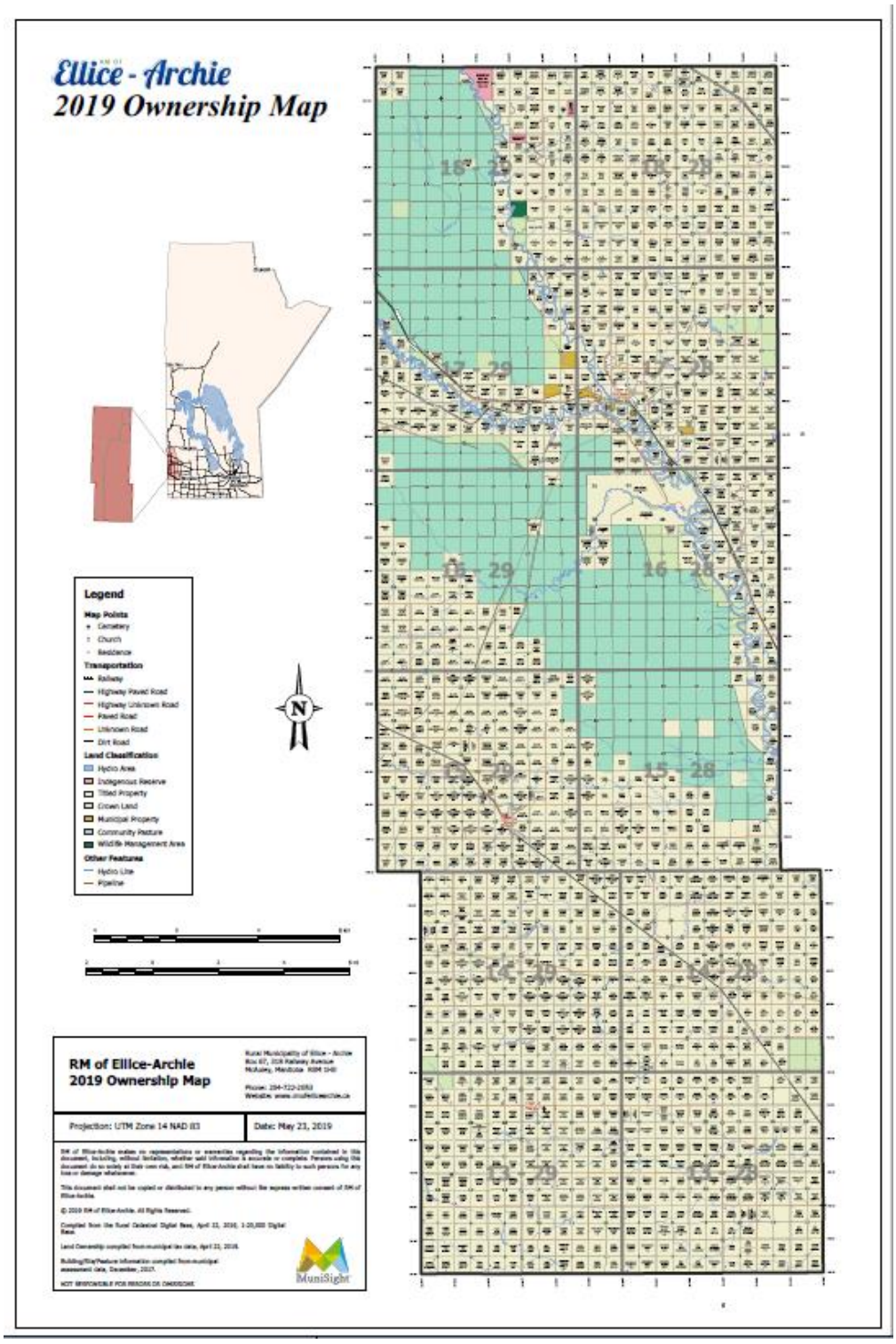

Ellice - Archie
2019 Ownership Map
Legend
Map Points
Cemetery
Church
Residence
Transportation
Railway
Highway Paved Road
Highway Unknown Road
Paved Road
Unknown Road
Dirt Road
Land Classification
Hydro Area
Indigenous Reserve
Titled Property
Crown Land
Municipal Property
Community Pasture
Wildlife Management Area
Other Features
Hydro Line
Pipeline
N
RM of Ellice-Archie
2019 Ownership Map
Projection: UTM Zone 14 NAD 83
Date: May 23, 2019
MuniSight

Figure 16c

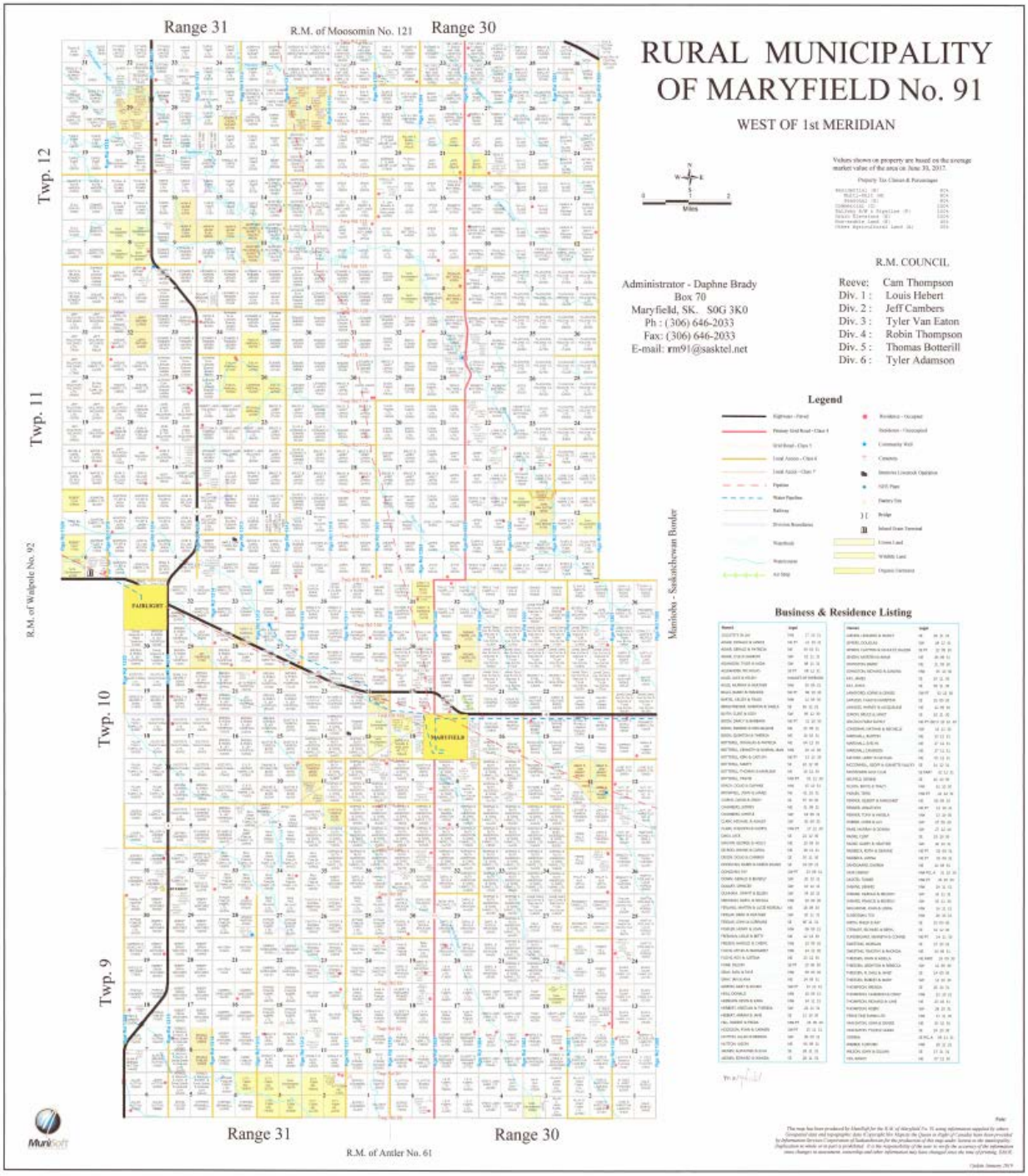

Range 31
R.M. of Moosomin No. 121
Range 30
RURAL MUNICIPALITY
OF MARYFIELD No. 91
WEST OF 1st MERIDIAN
Twp. 12
Twp. 11
Twp. 10
Twp. 9
R.M. of Walpole No. 92
Manitoba - Saskatchewan Border
FAIRLIGHT
MARYFIELD
Administrator - Daphne Brady
Box 70
Maryfield, SK. S0G 3K0
Ph : (306) 646-2033
Fax: (306) 646-2033
E-mail: rm91@sasktel.net
R.M. COUNCIL
Reeve: Cam Thompson
Div. 1 : Louis Hebert
Div. 2 : Jeff Cambers
Div. 3 : Tyler Van Eaton
Div. 4 : Robin Thompson
Div. 5 : Thomas Botterill
Div. 6 : Tyler Adamson
Legend
Business & Residence Listing
Range 31
Range 30
R.M. of Antler No. 61

Figure 16d

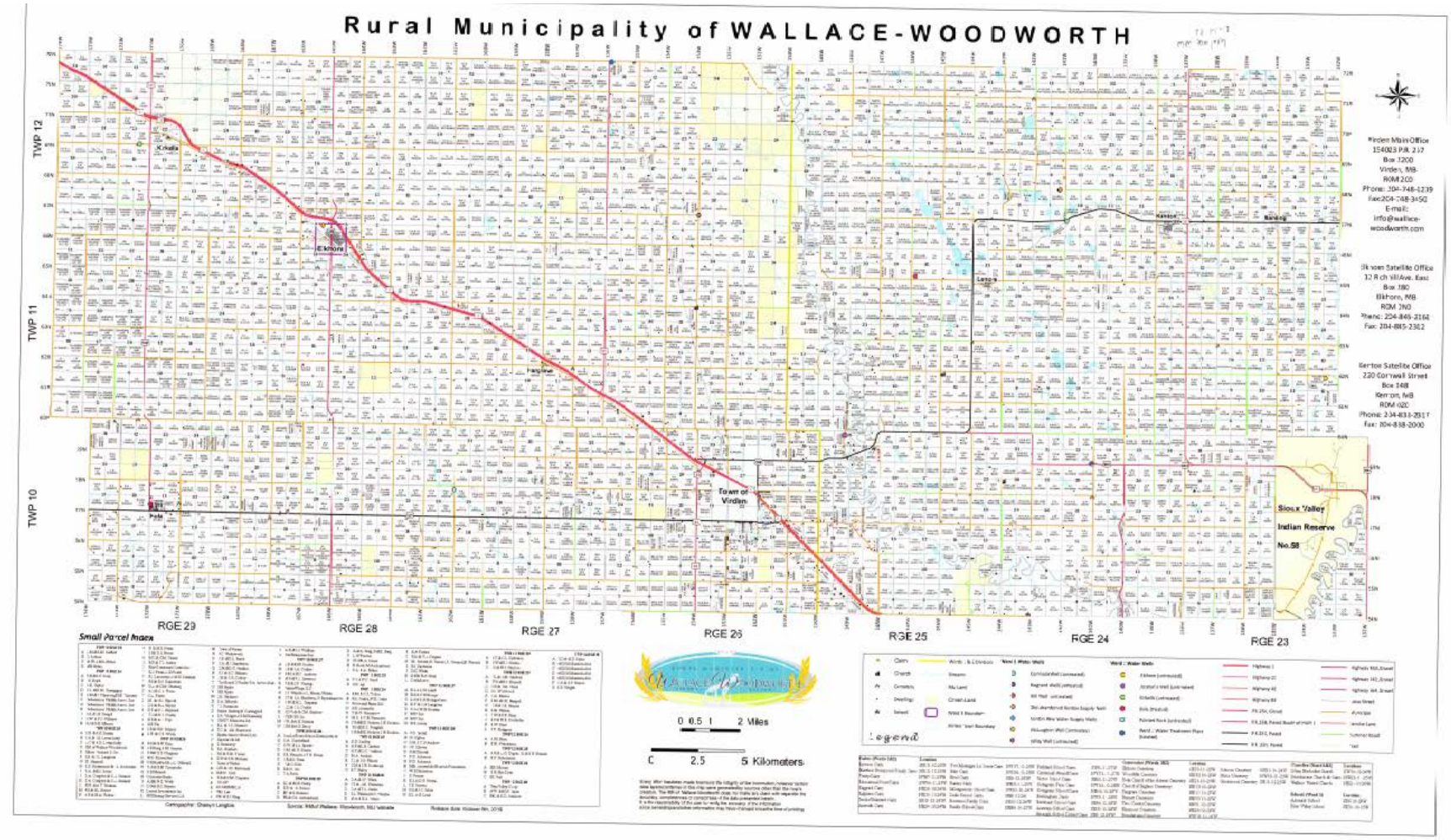

Rural Municipality of WALLACE-WOODWORTH
TWP 12
TWP 11
TWP 10
RGE 29
RGE 28
RGE 27
RGE 26
RGE 25
RGE 24
RGE 23
Kirkella
Elkhorn
Langenburg
Town of Virden
Sioux Valley Indian Reserve No.58
Small Parcel Index
0 0.5 1 2 Miles
0 2.5 5 Kilometers
Legend

Figure 17

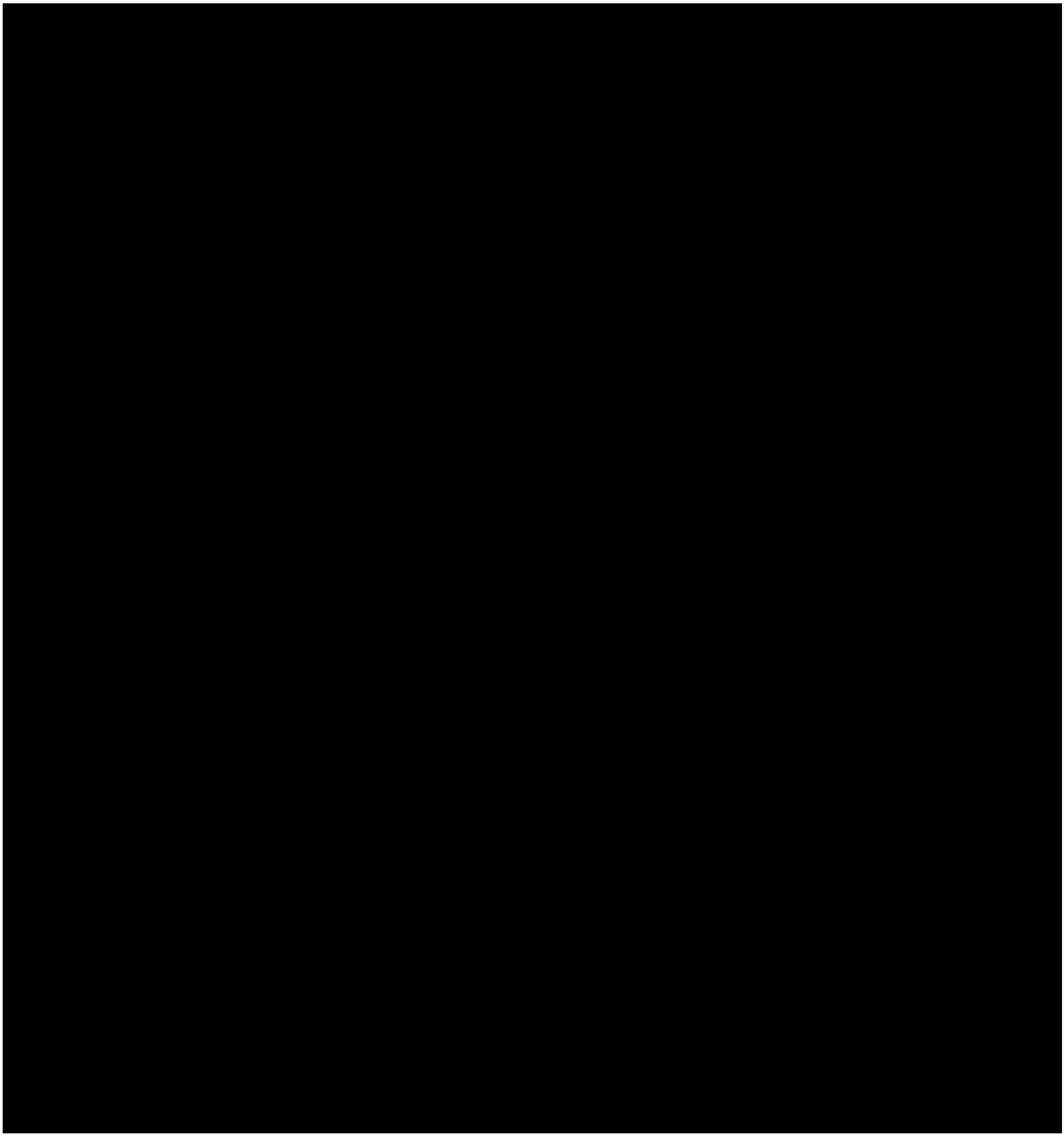


Figure 18a

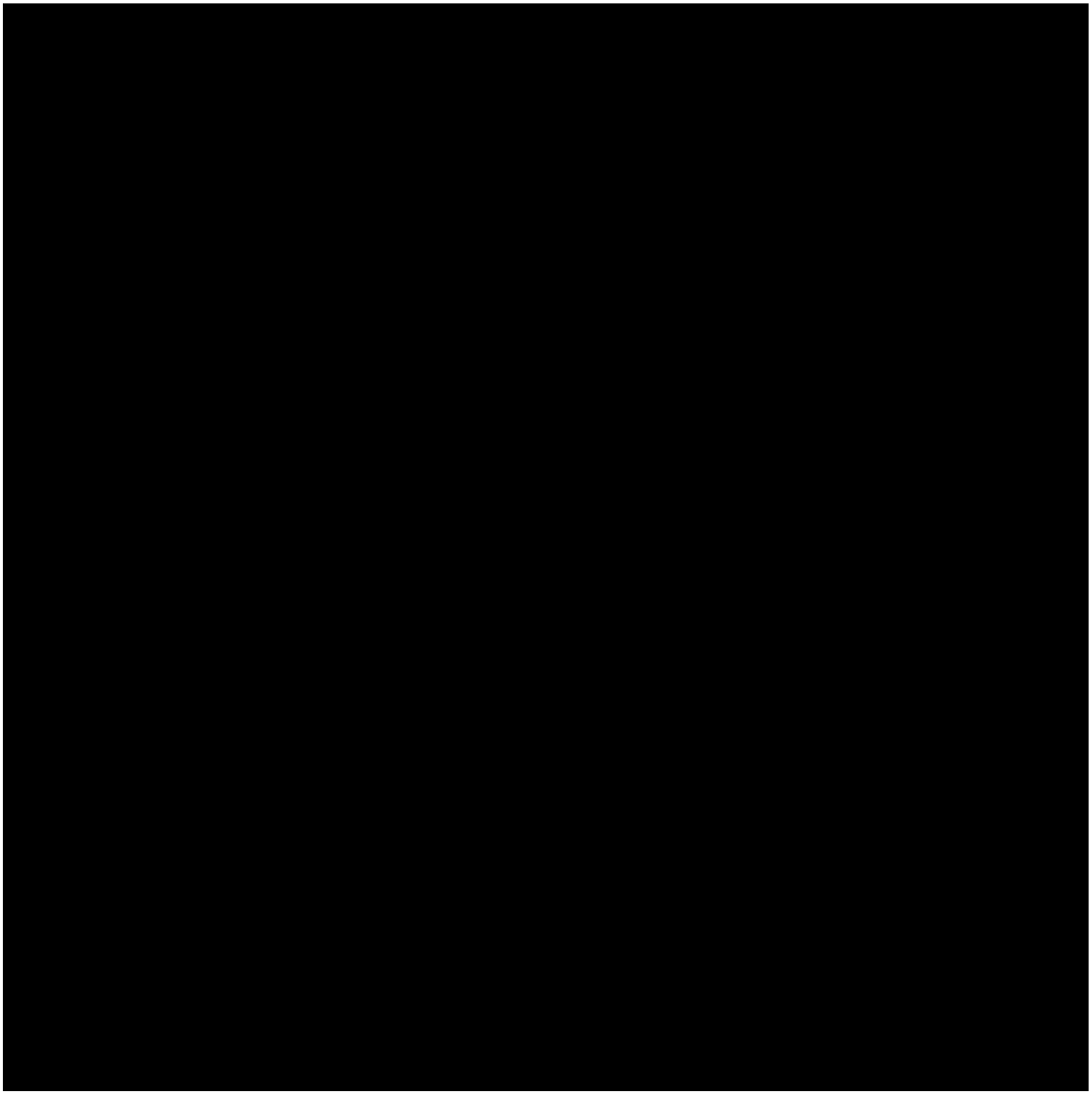


Figure 18b

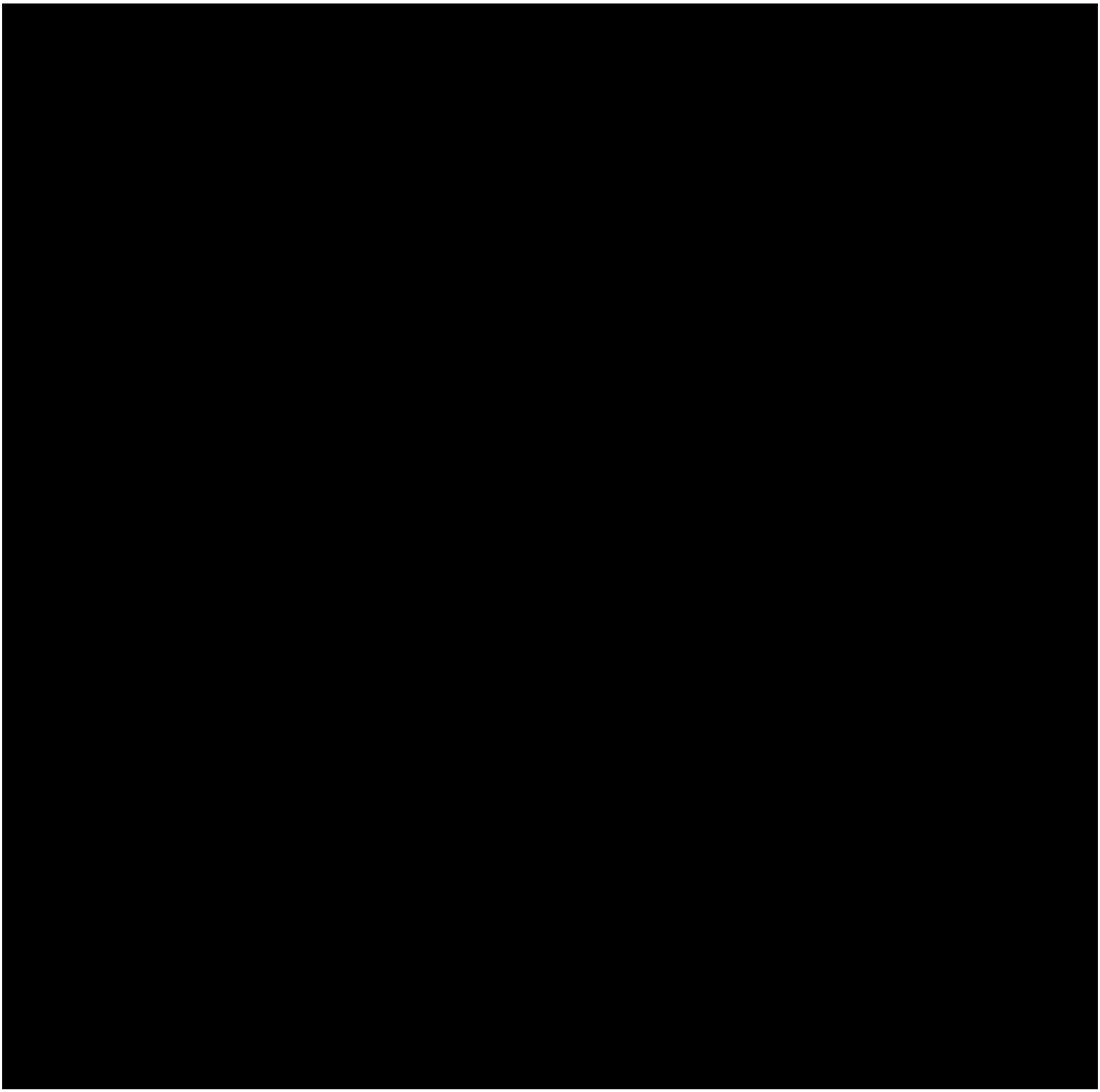


Figure 18c

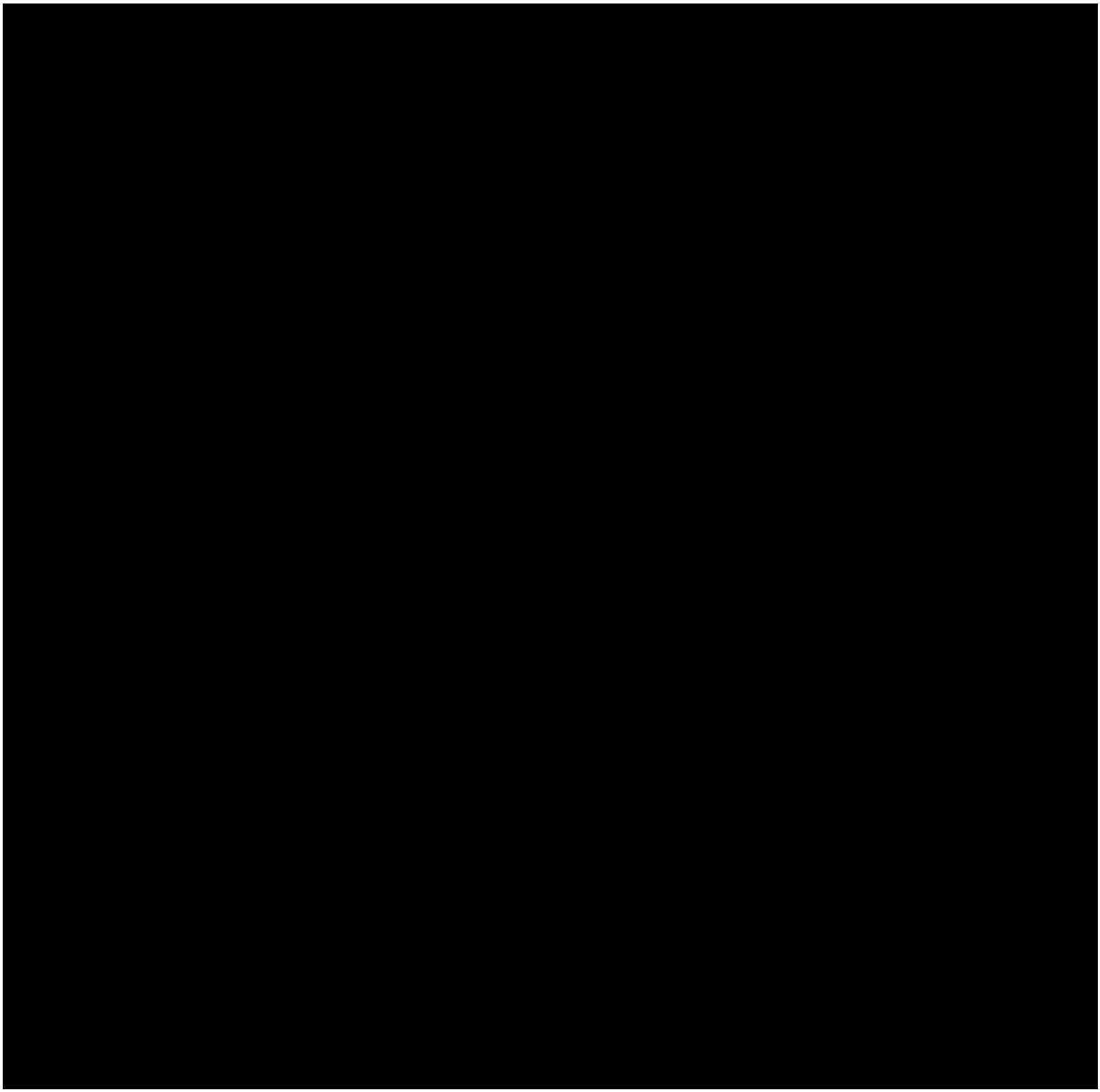


Figure 19

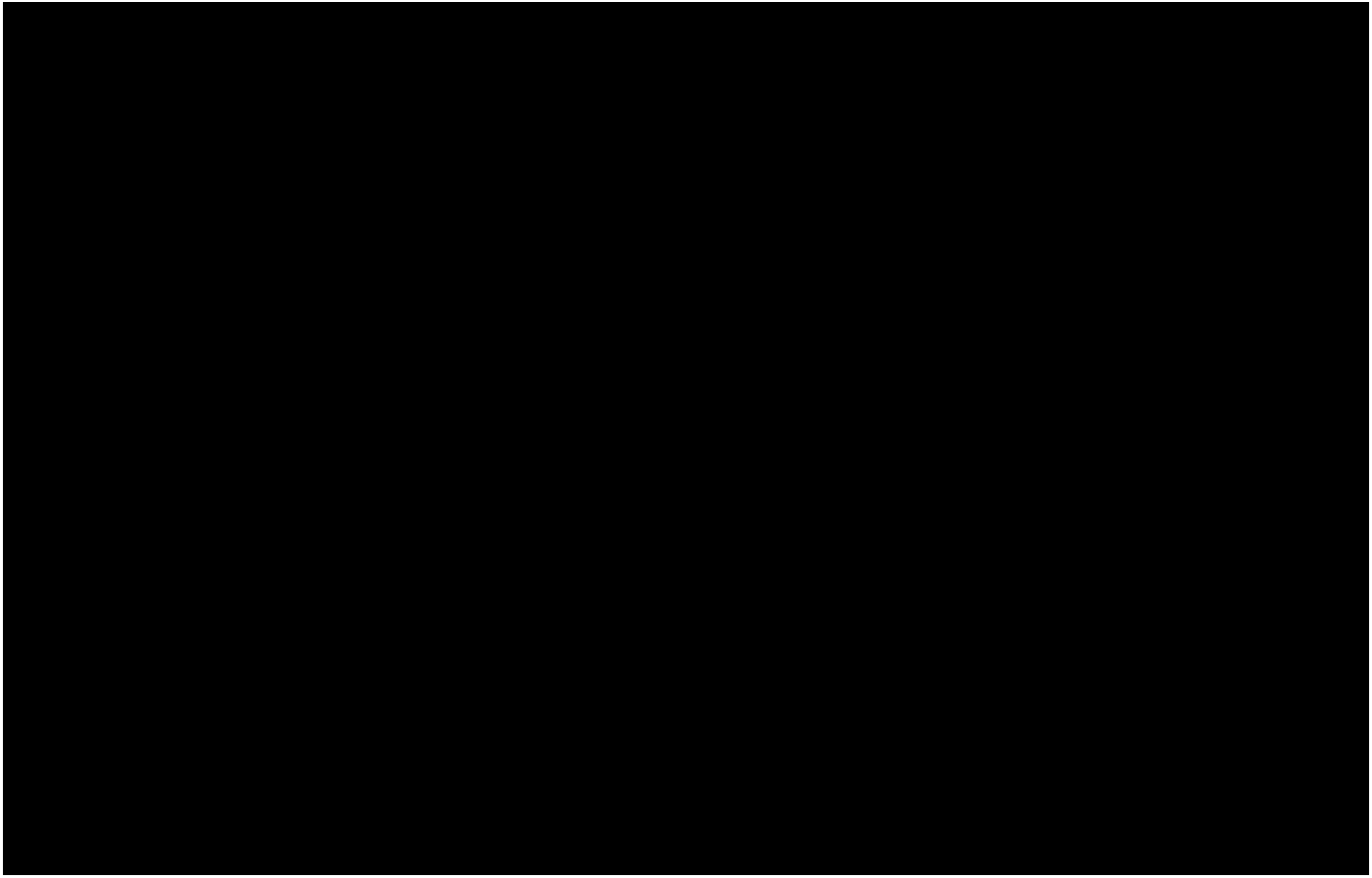


Figure 20

Figure 20

Figure 20

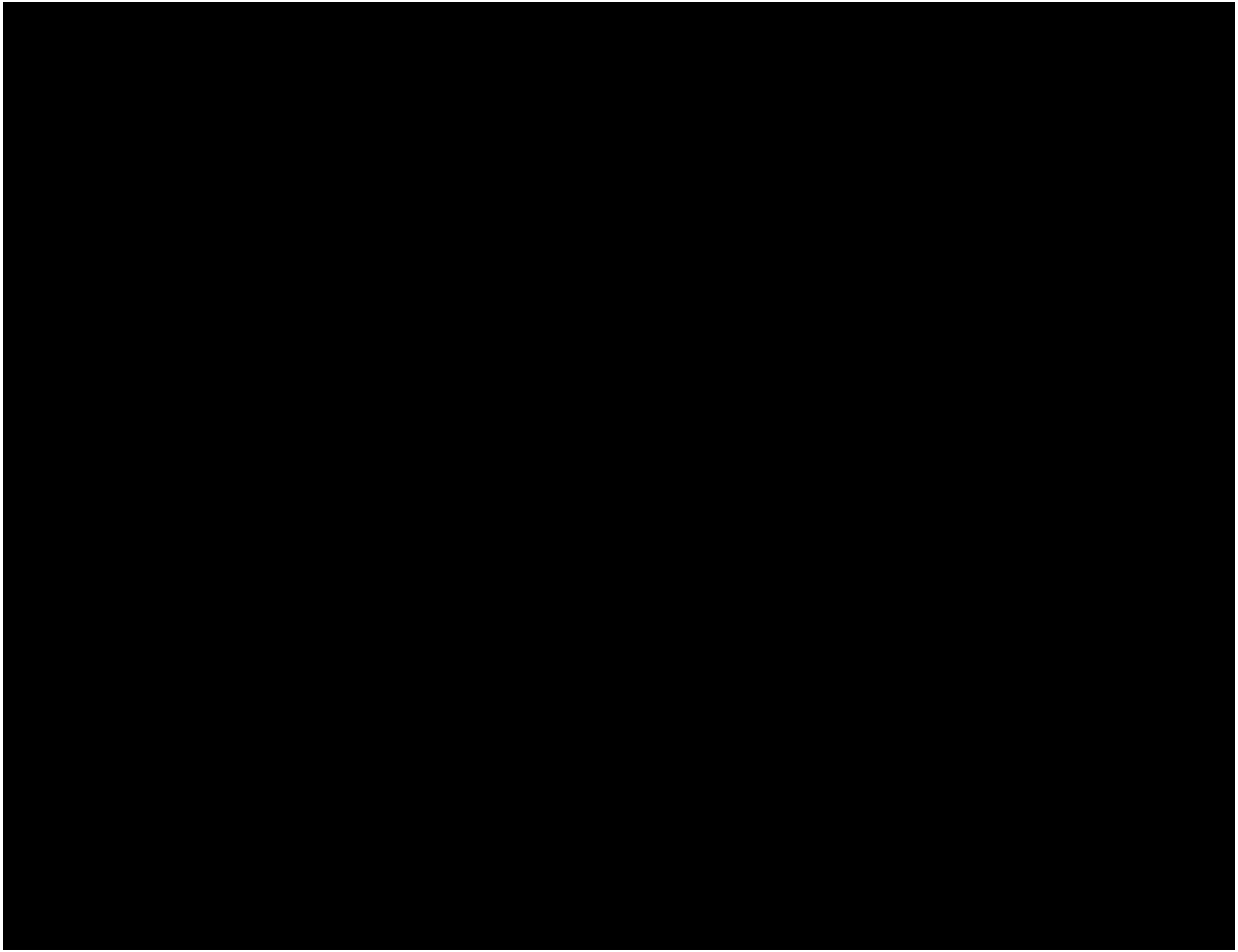


Figure 20

Figure 21

Figure 21

Figure 21

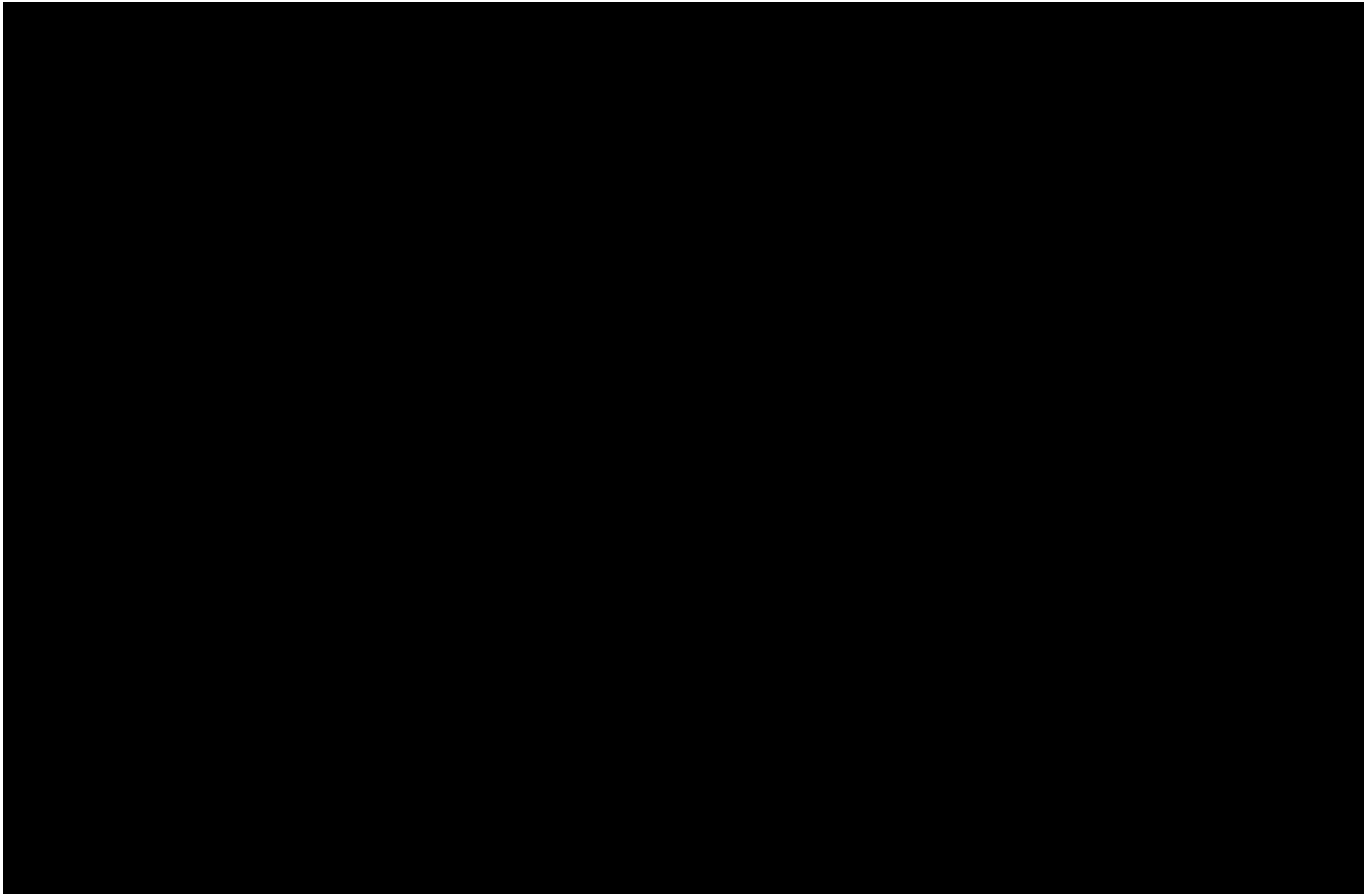


Figure 21

Figure 21

Figure 21

Figure 22

Figure 22

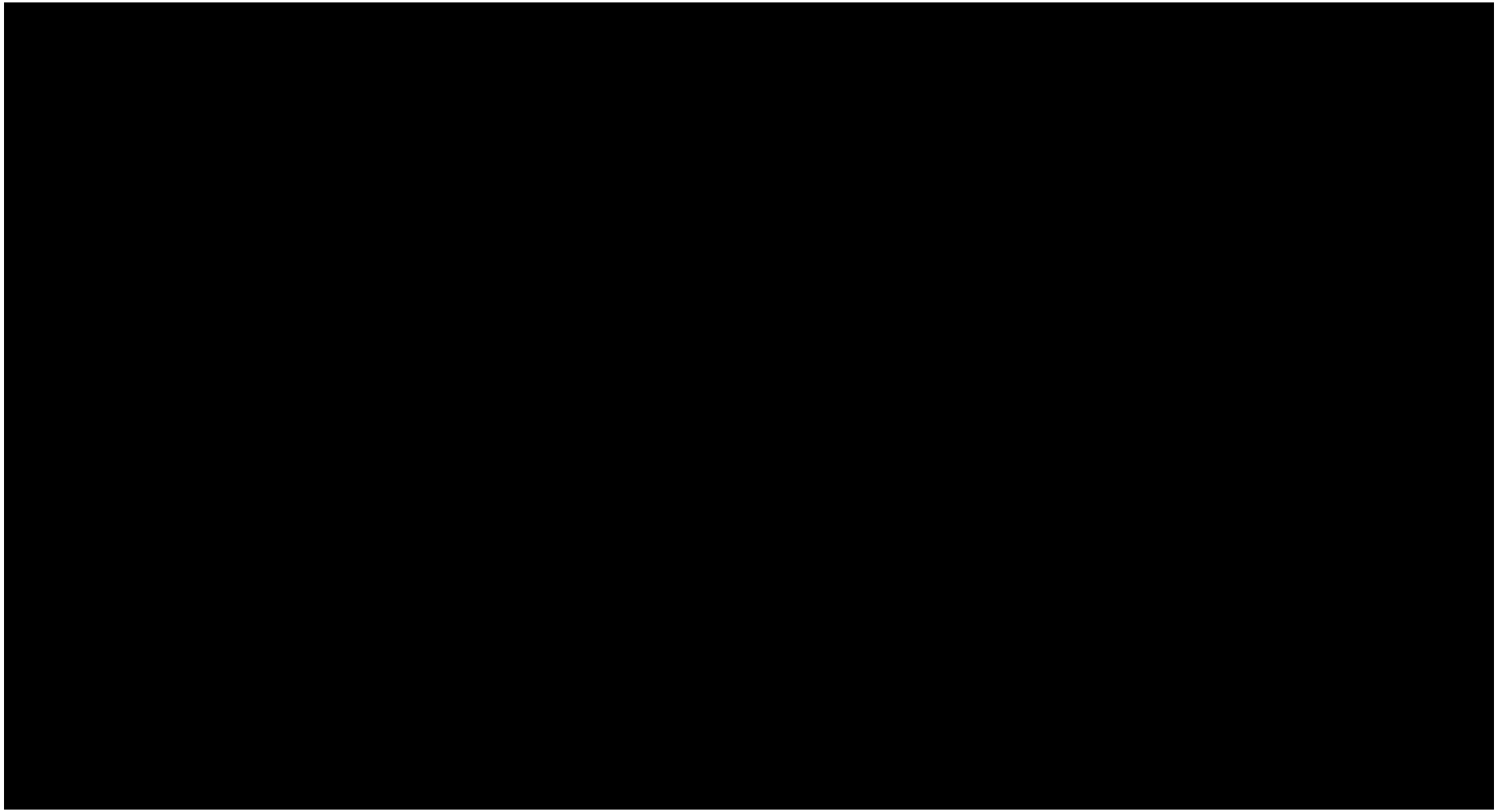


Figure 23

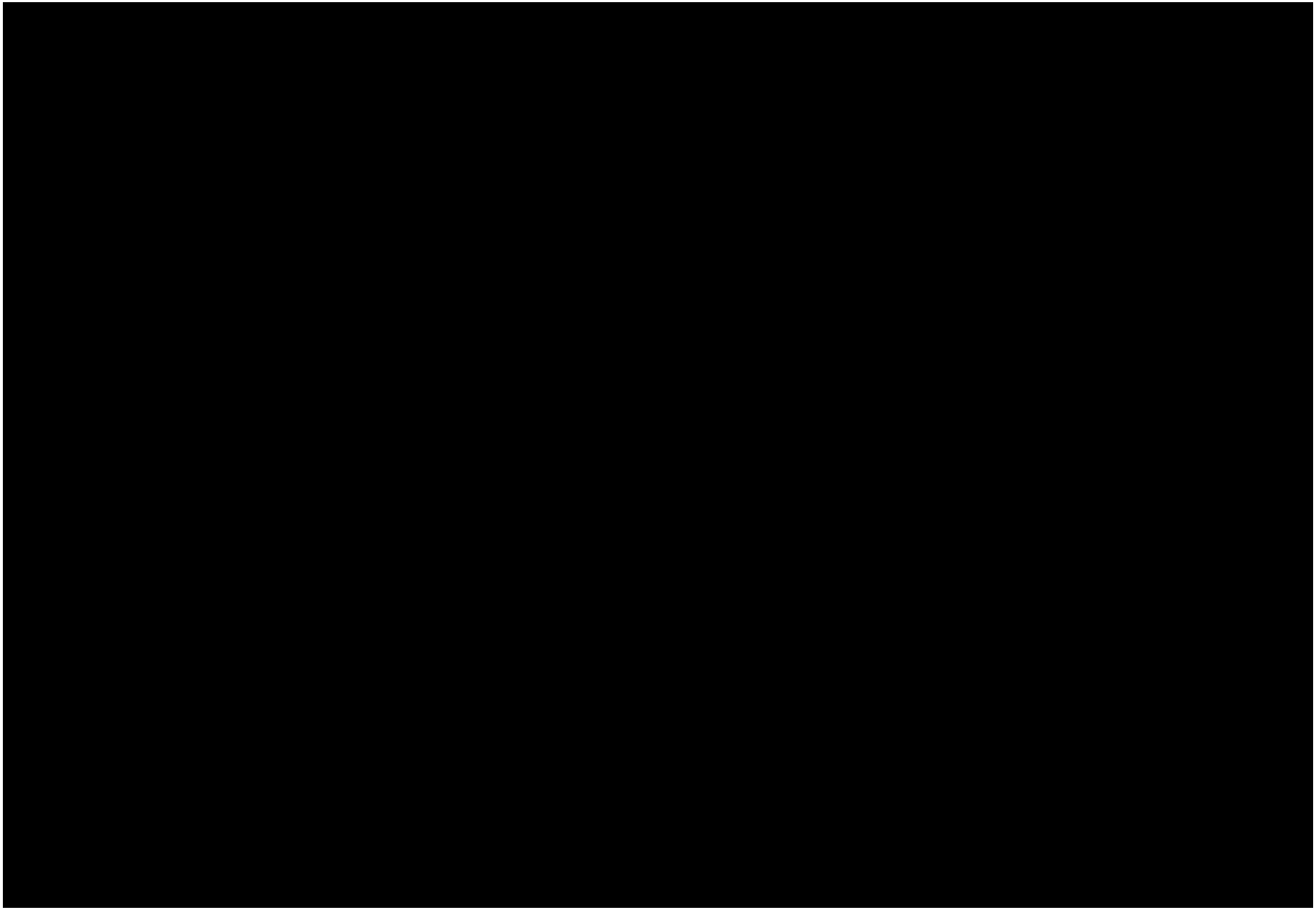


Figure 23

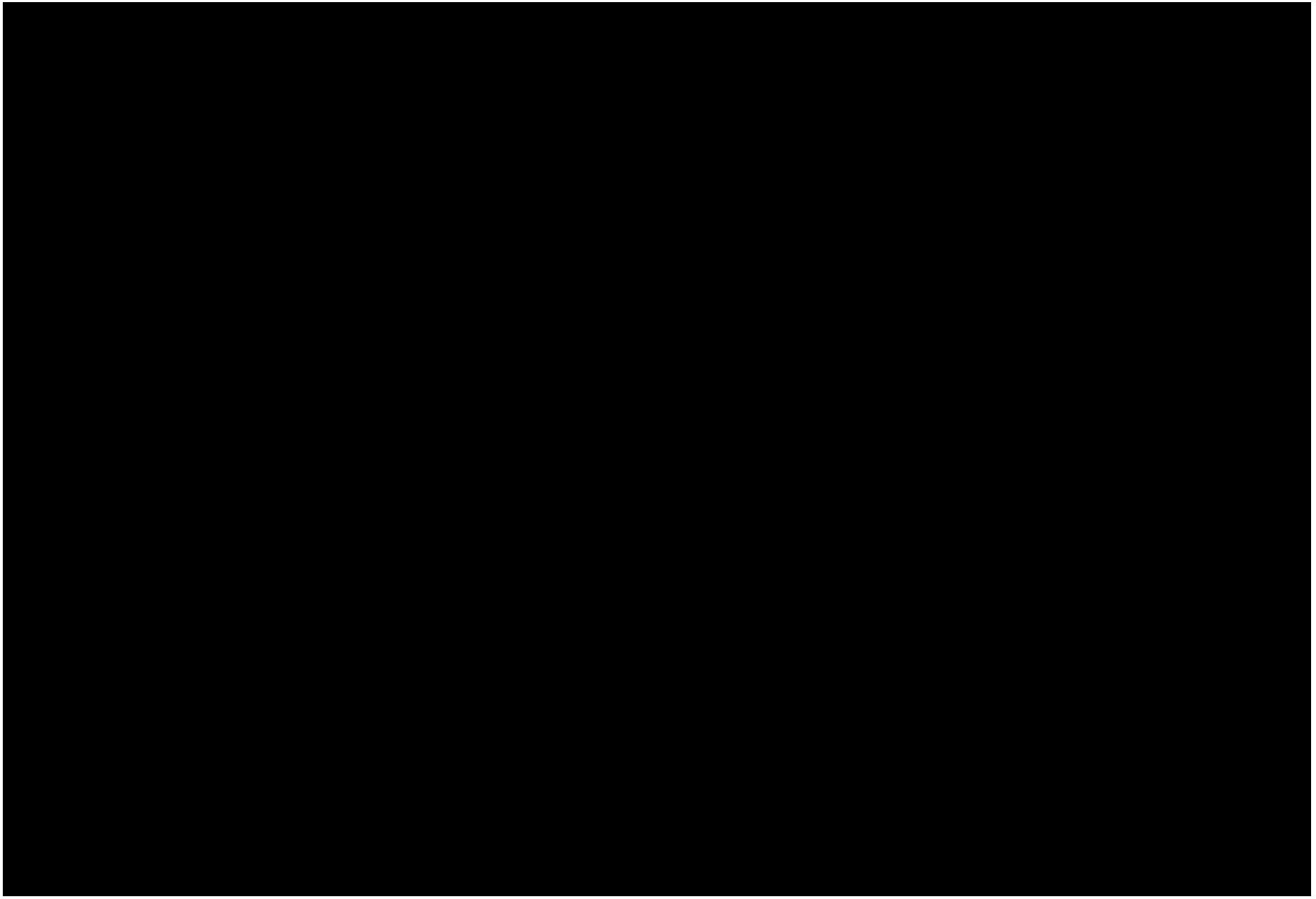


Figure 24

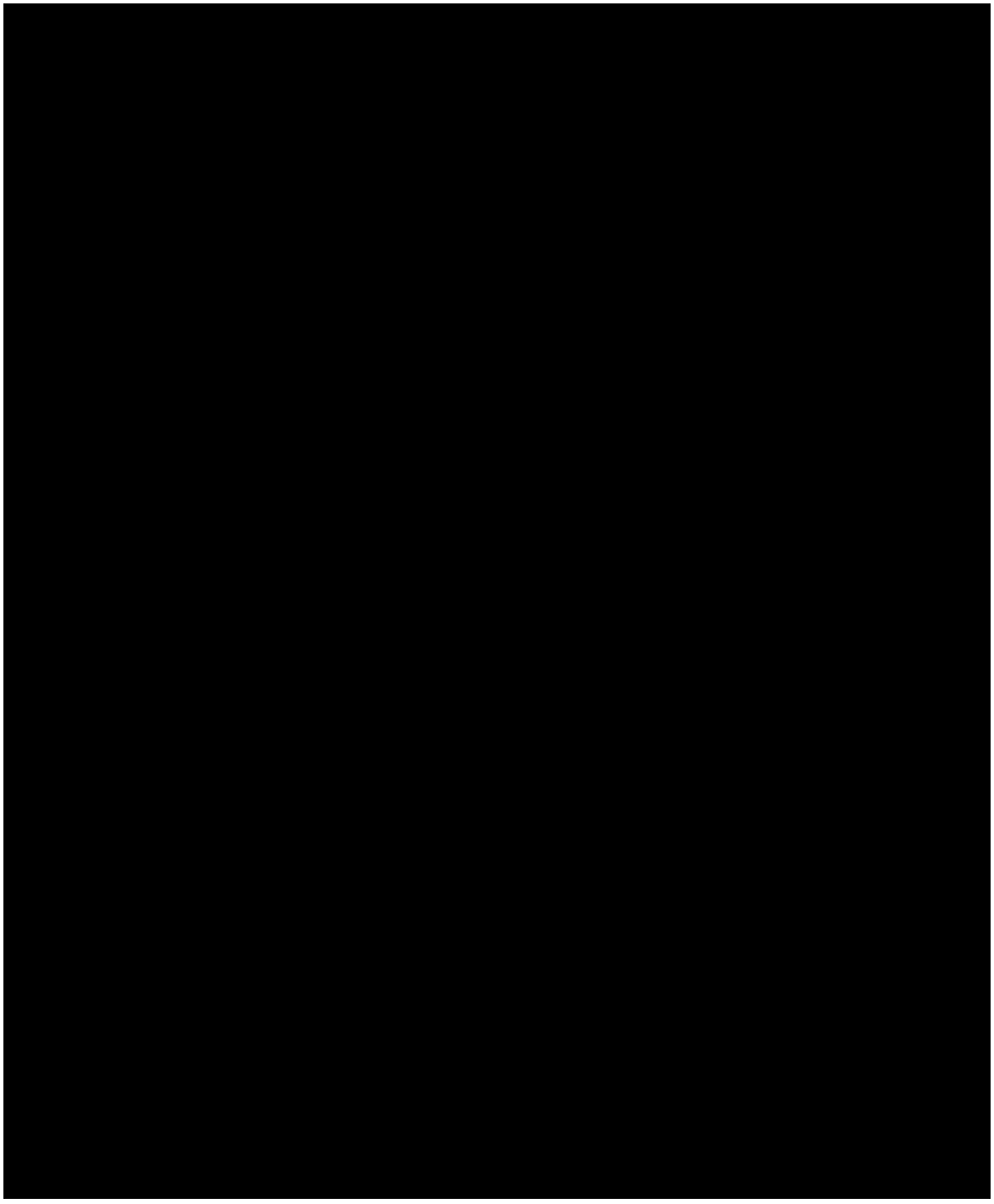


Figure 25

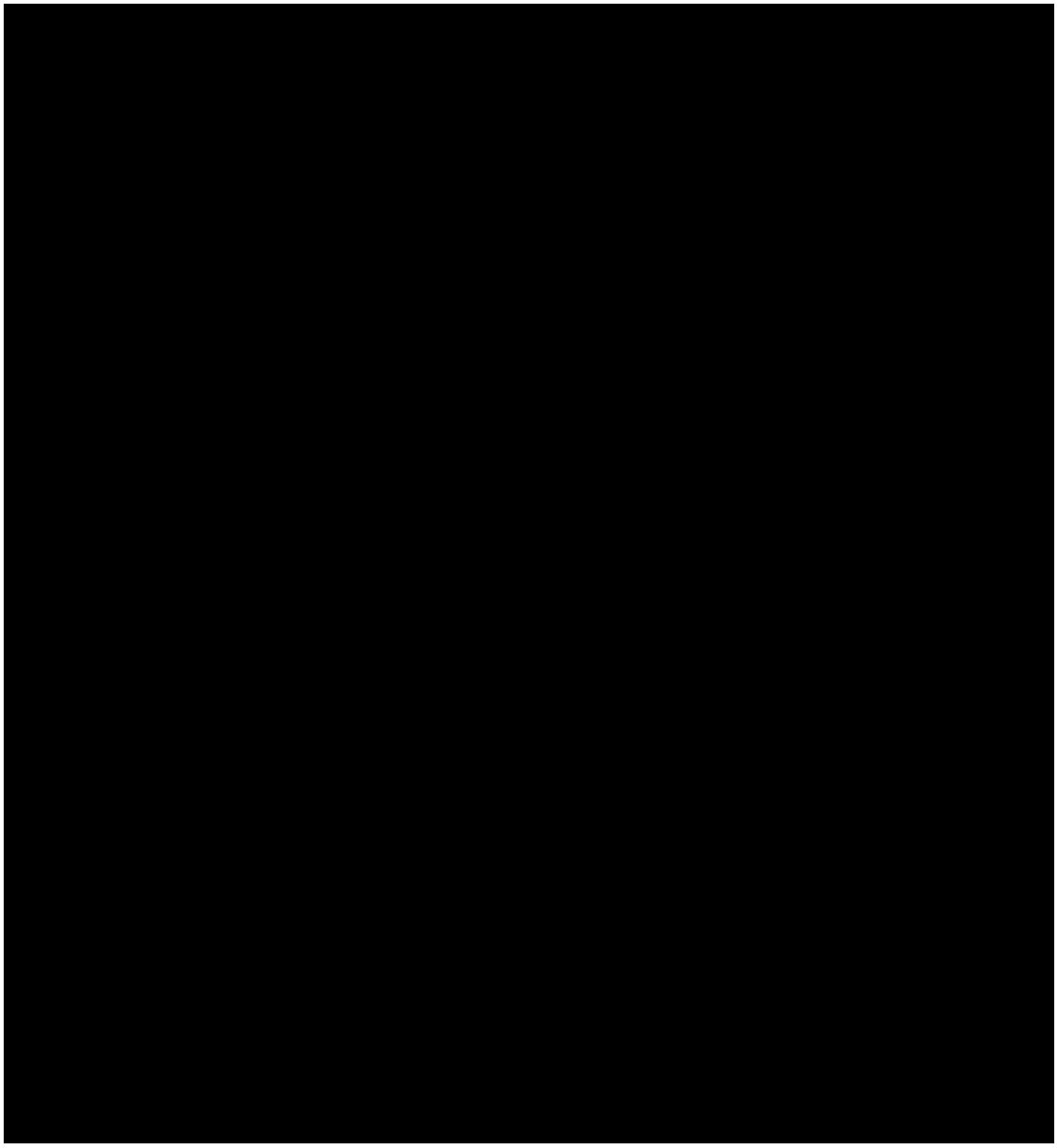
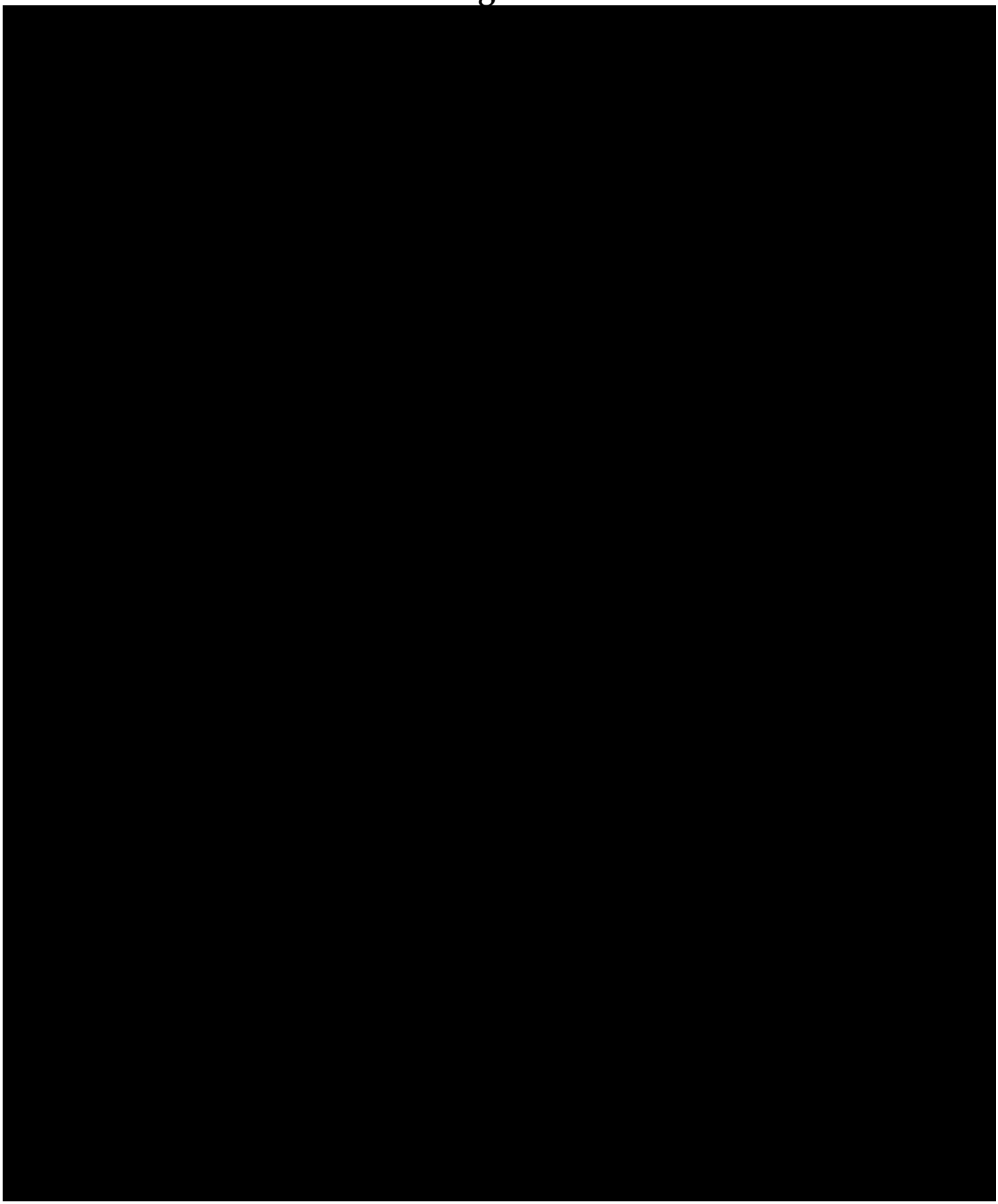


Figure 26



d

Figure 27

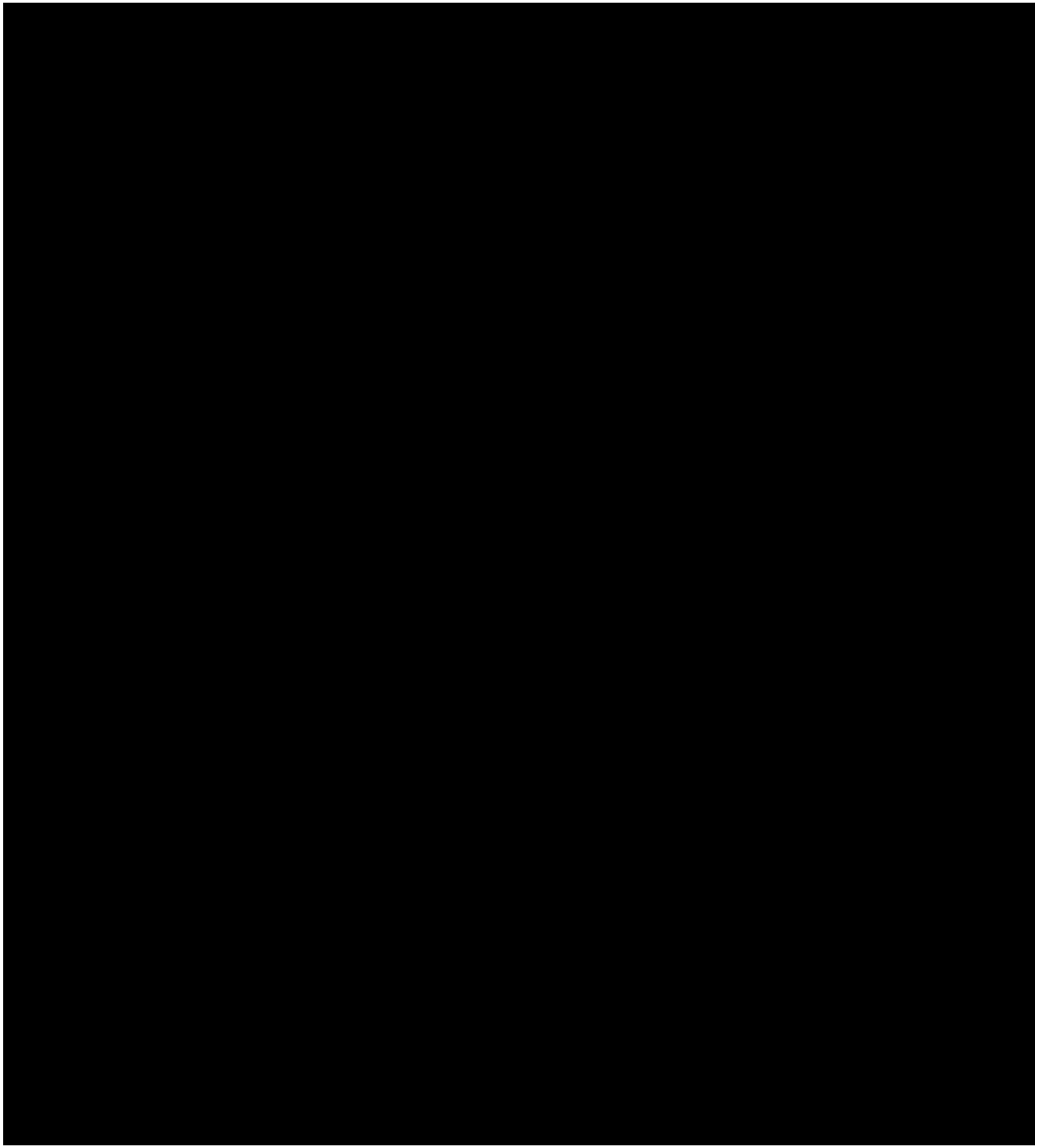


Figure 28

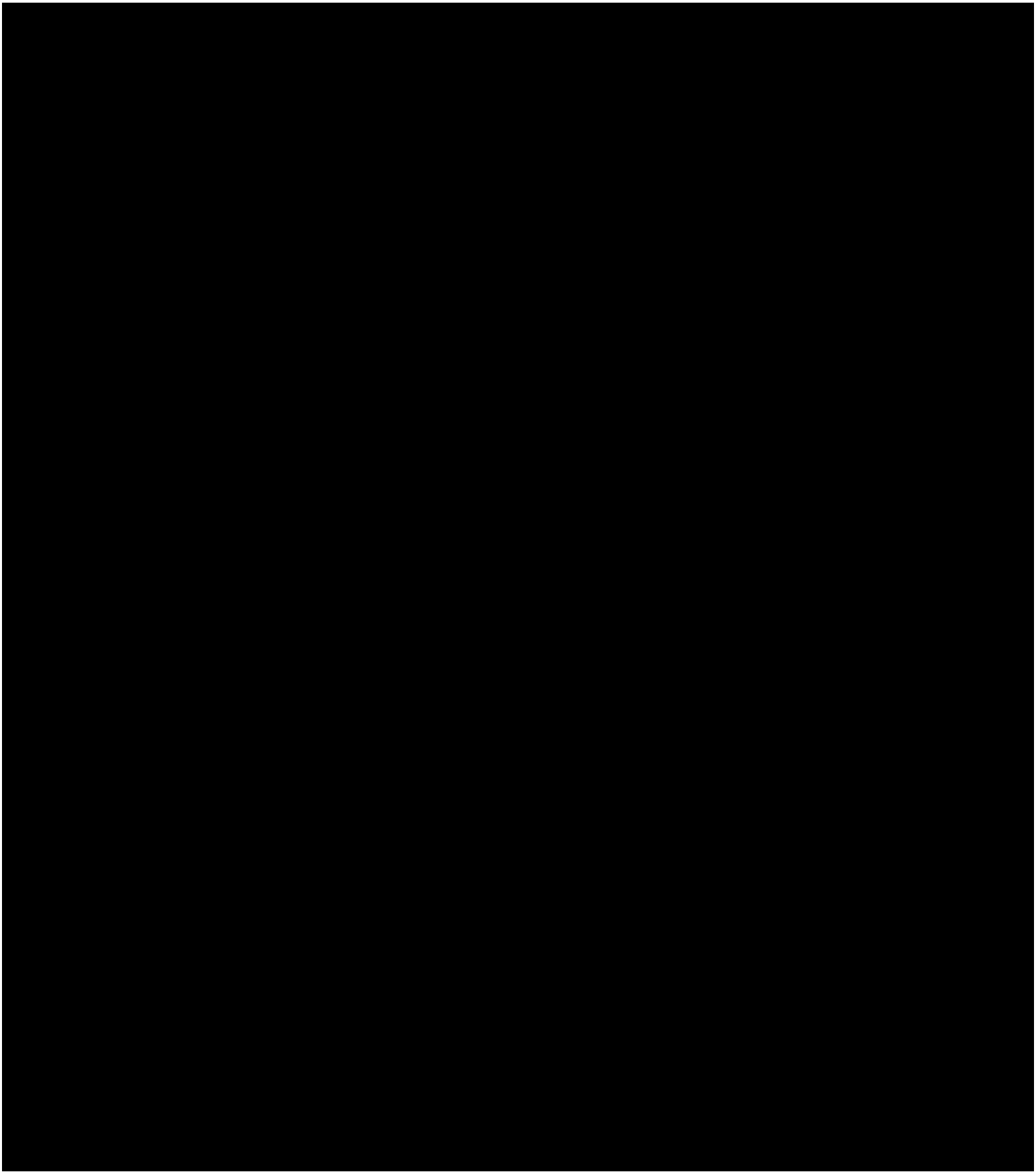


Figure 29

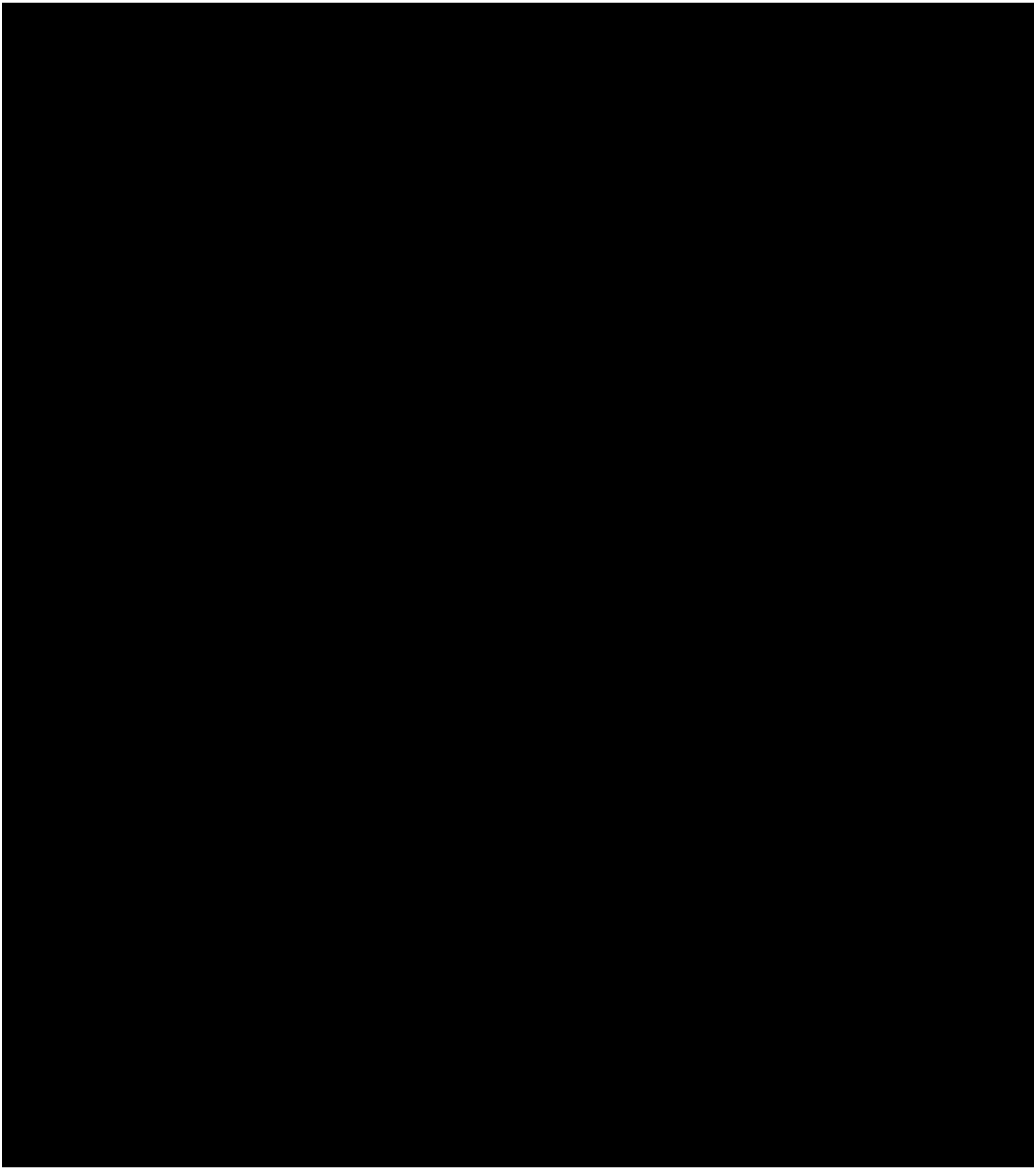


Figure 30

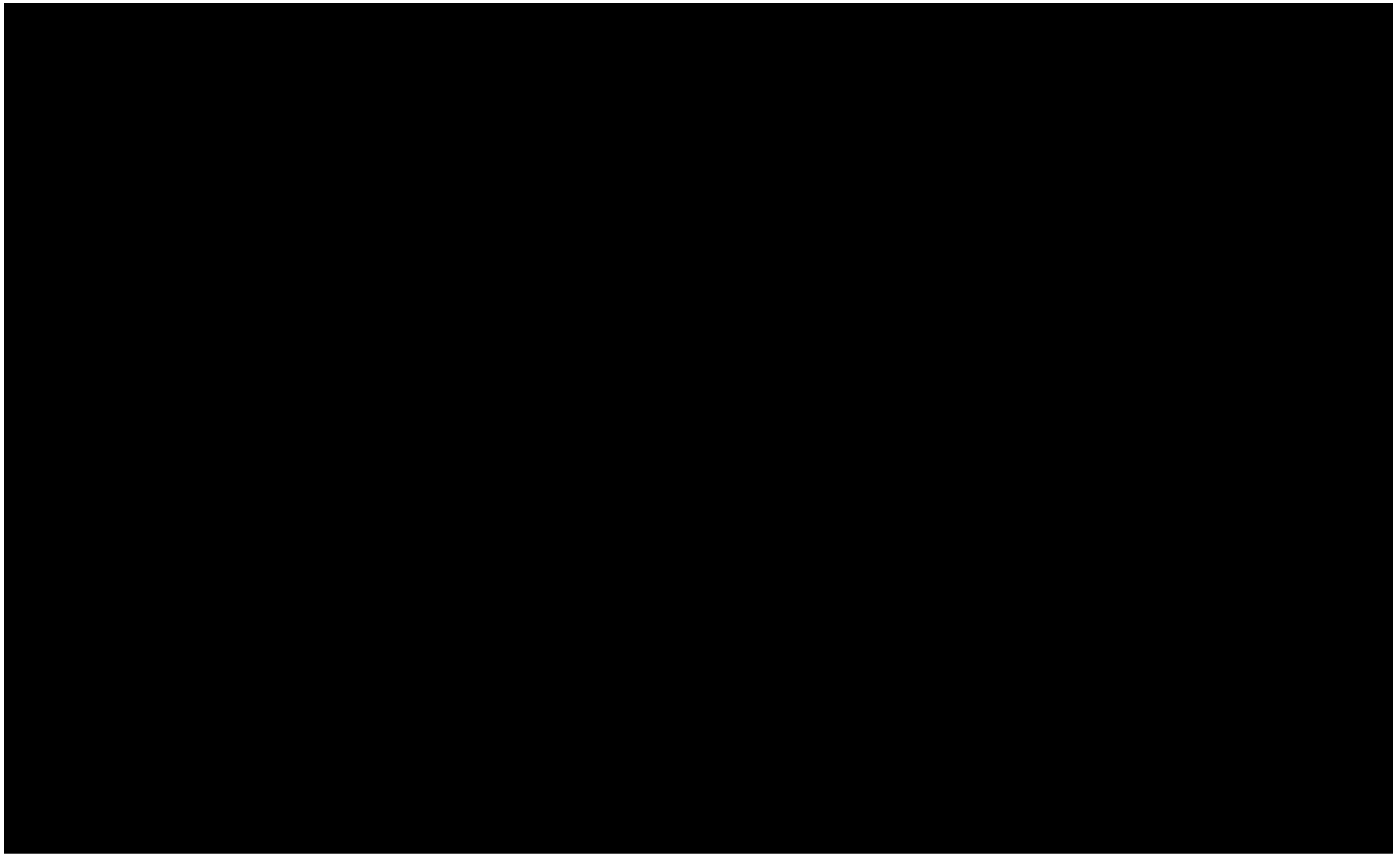


Figure 31

Figure 32

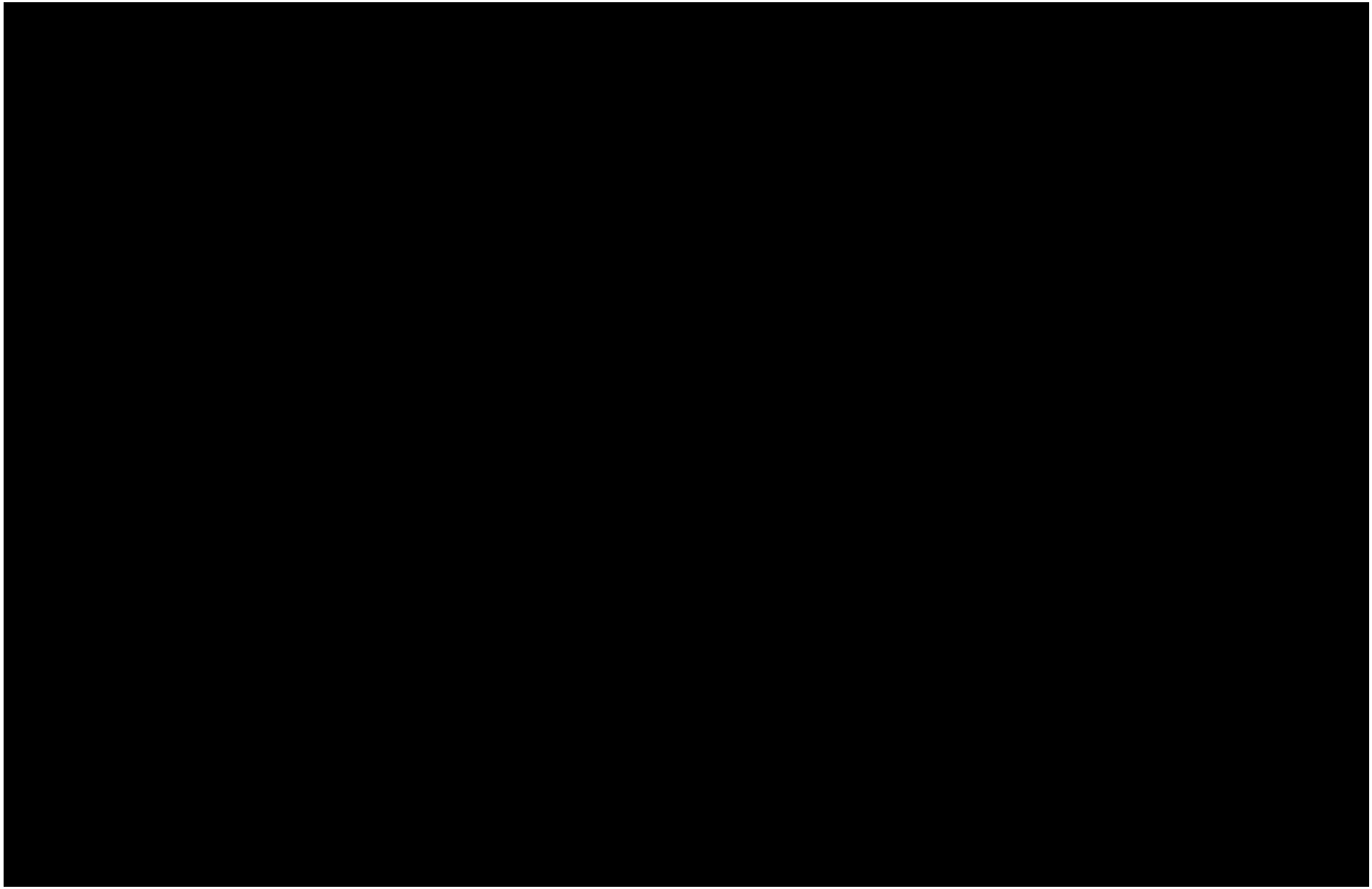


Figure 33

Figure 34

Figure 35a

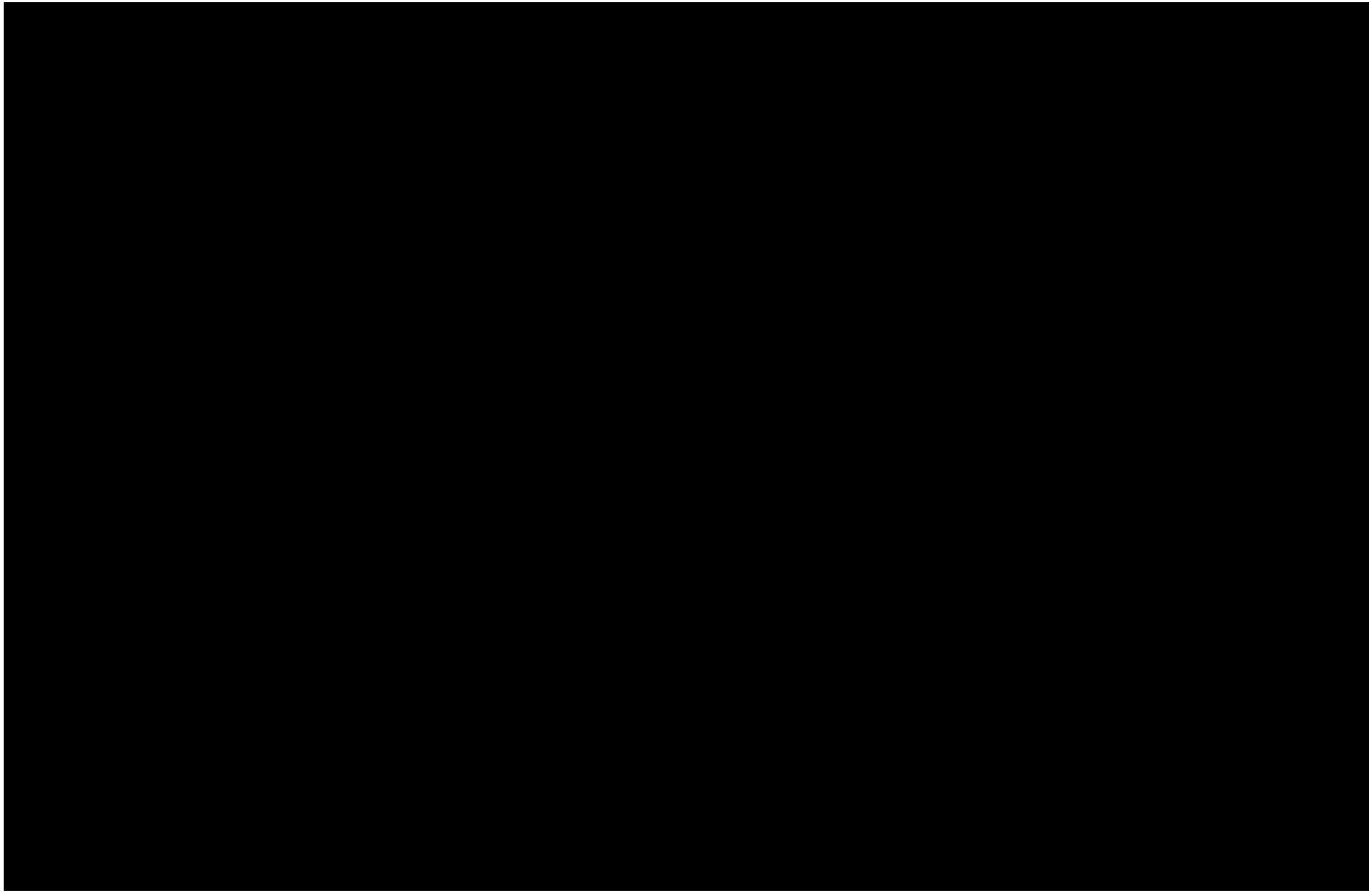


Figure 35b

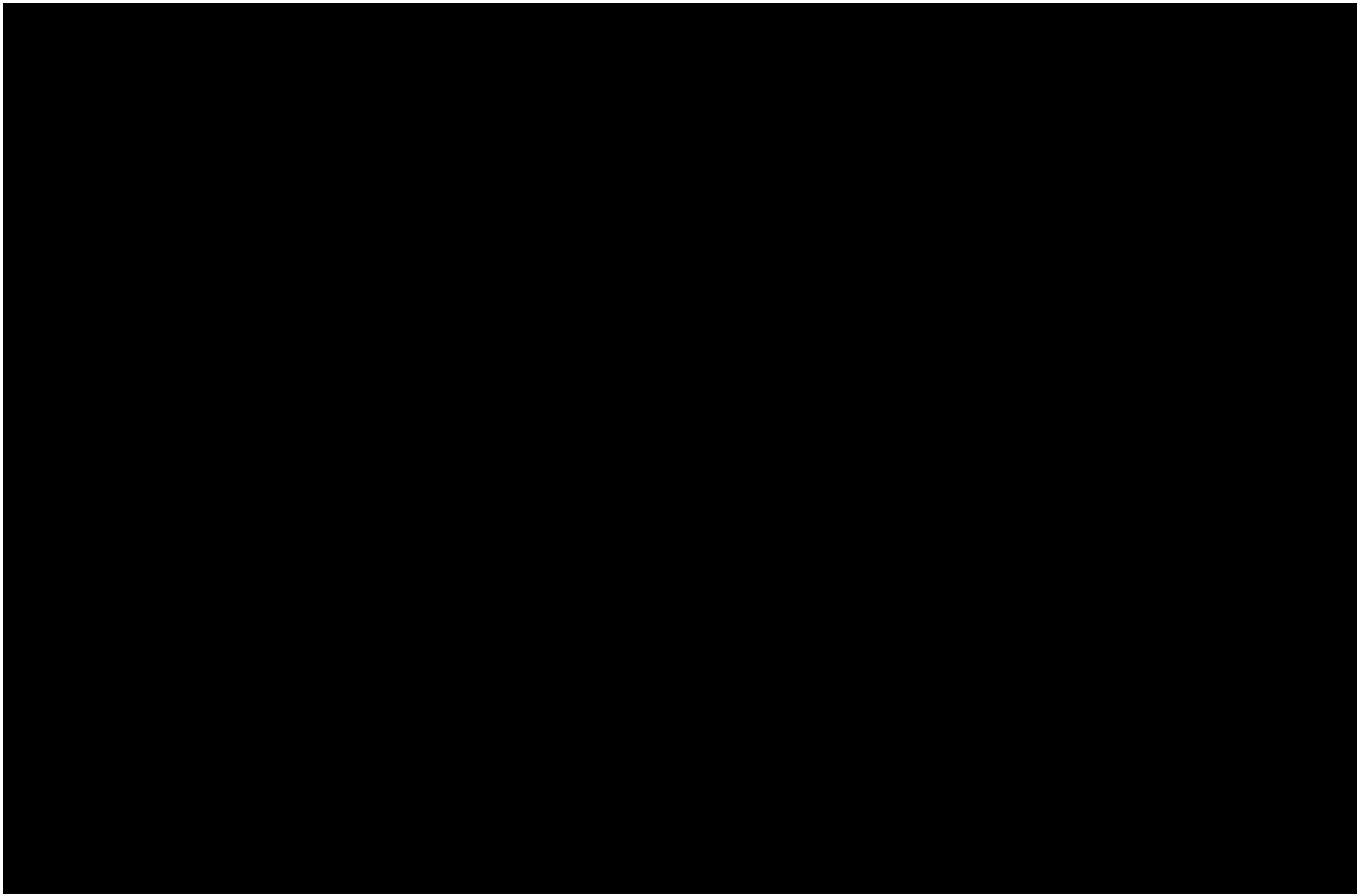


Figure 36

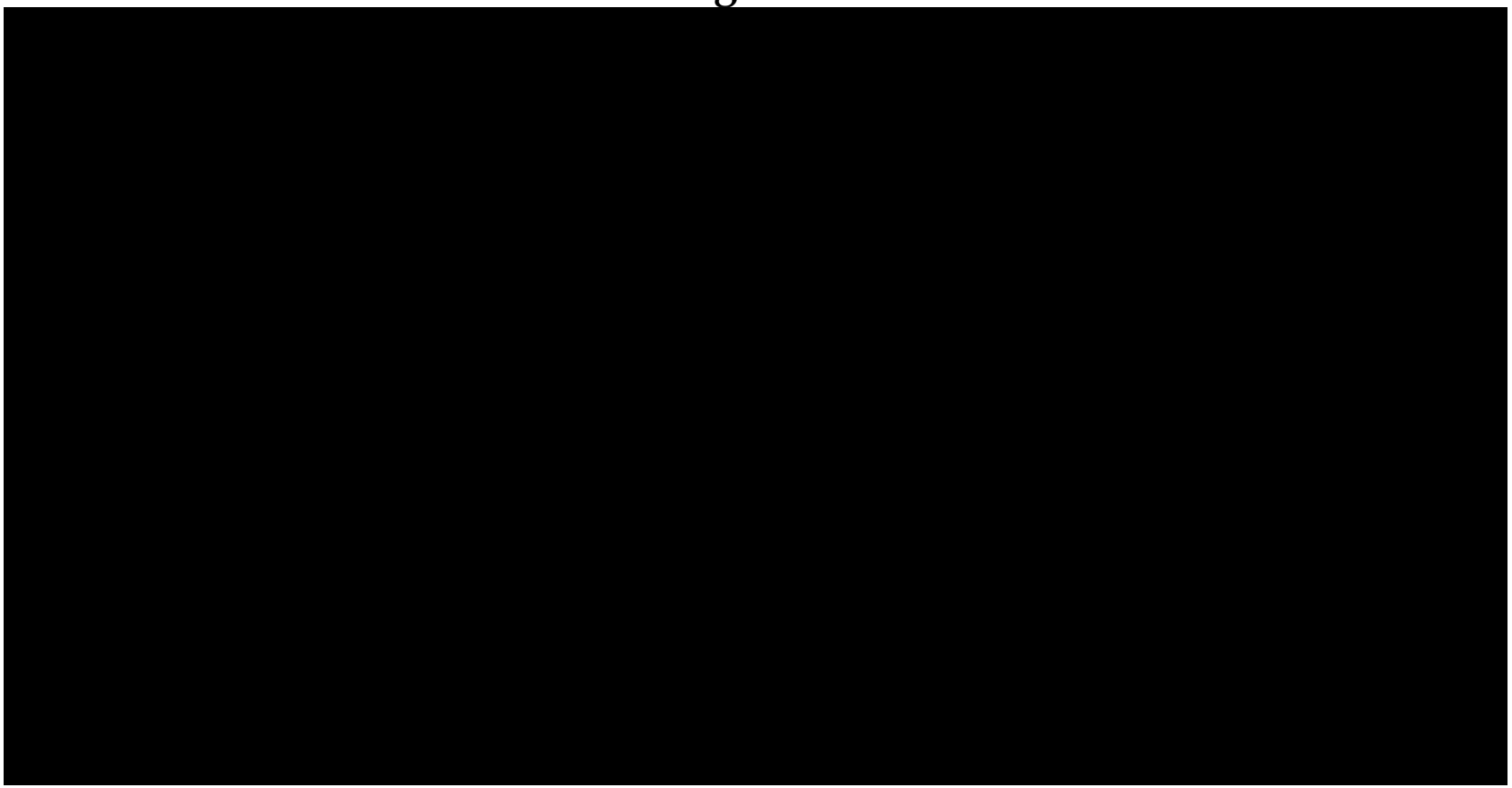


Figure 37

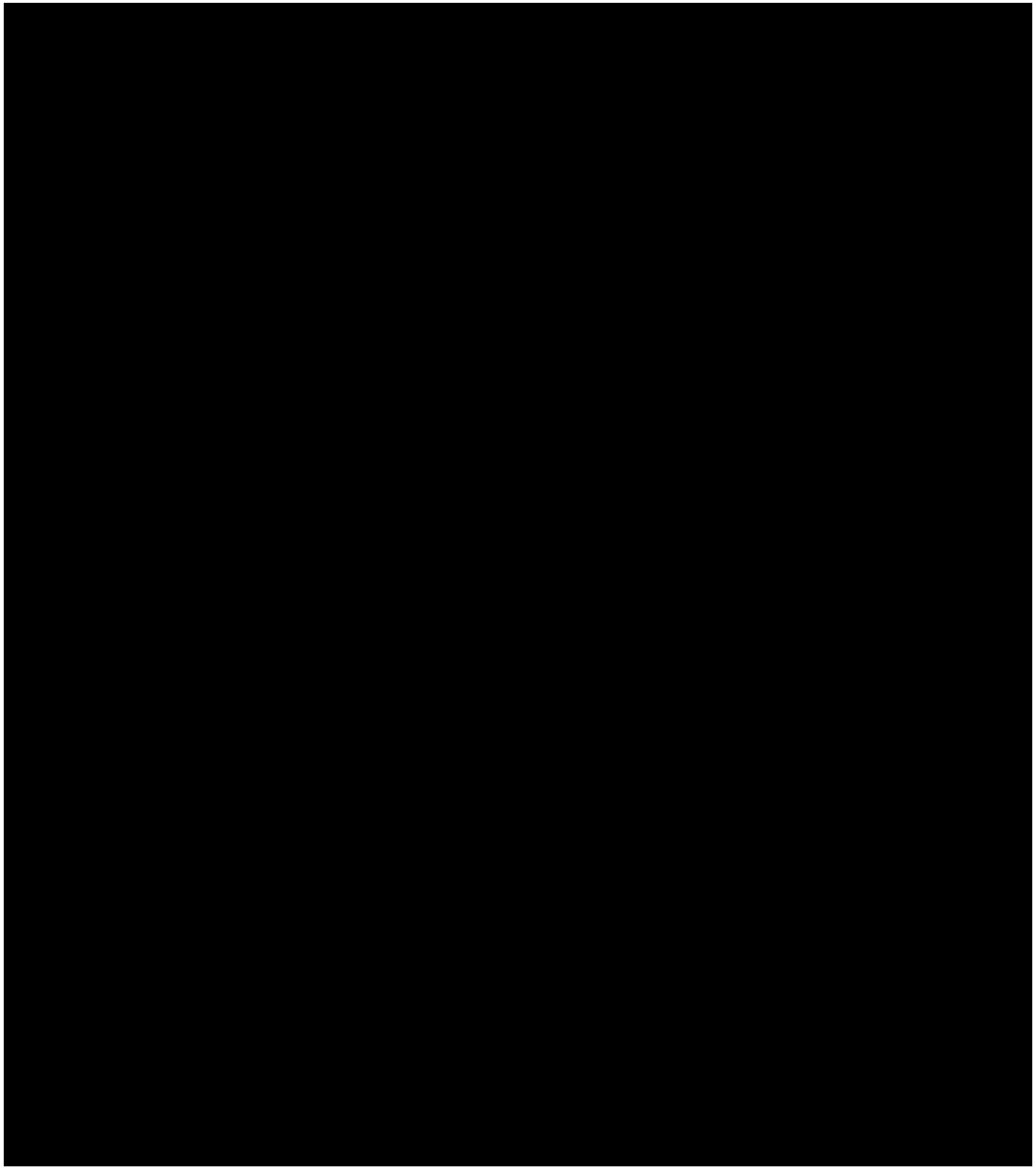


Figure 38

Basis Examples

Does Basis Reflect the Price of Grain Handling Services?

Feature	A	**B**	C	D	E
Cash Price (CAD/MT)	$220.00	**$250.00**	$300.00	$250.00	$250.00
Futures Price (USD/MT)	$180.00	**$210.00**	$260.00	$225.00	$210.00
Basis (/MT)	40.00	**40.00**	40.00	25.00	40.00
Exchange Rate (CAD/USD)	1.30	**1.30**	1.30	1.30	1.35
Price of GHS (CAD/MT)	$14.00	**$23.00**	$38.00	$42.50	$33.50

Notes:

[1] Examples A, B, C have the same basis, but different prices of grain handling services using Dr. Miller's definition.

[2] Examples A, B, C have a higher basis than example D, but example D has a higher price of grain handling services using Dr. Miller's definition than examples A, B, C.

[3] Examples B & E are identical on all transparent elements, but have very different prices of grain handling services using Dr. Miller's definition because of the different exchange rates.

Figure 39

Figure 40a

Figure 40b

Figure 41

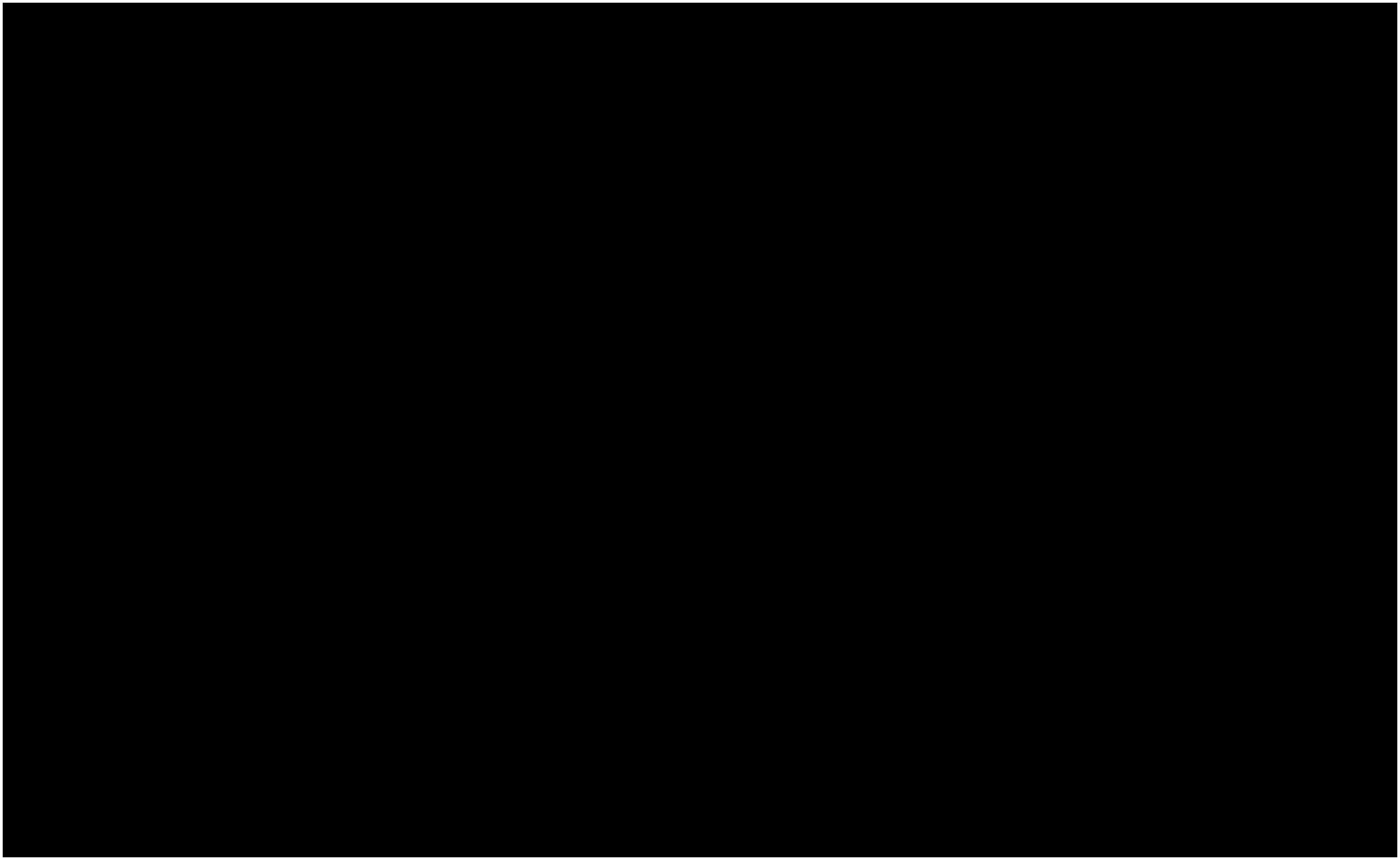


Figure 42

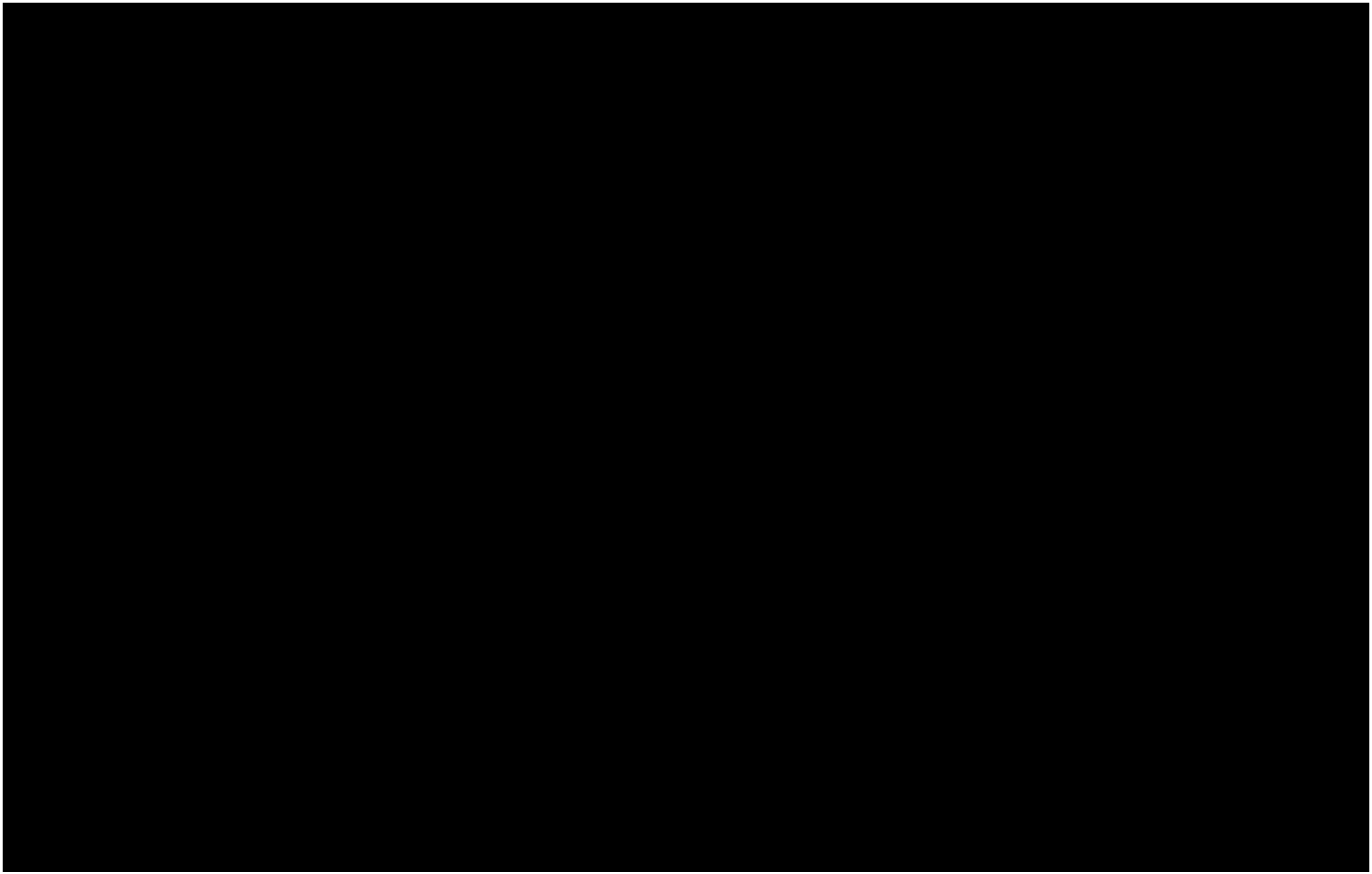


Figure 43

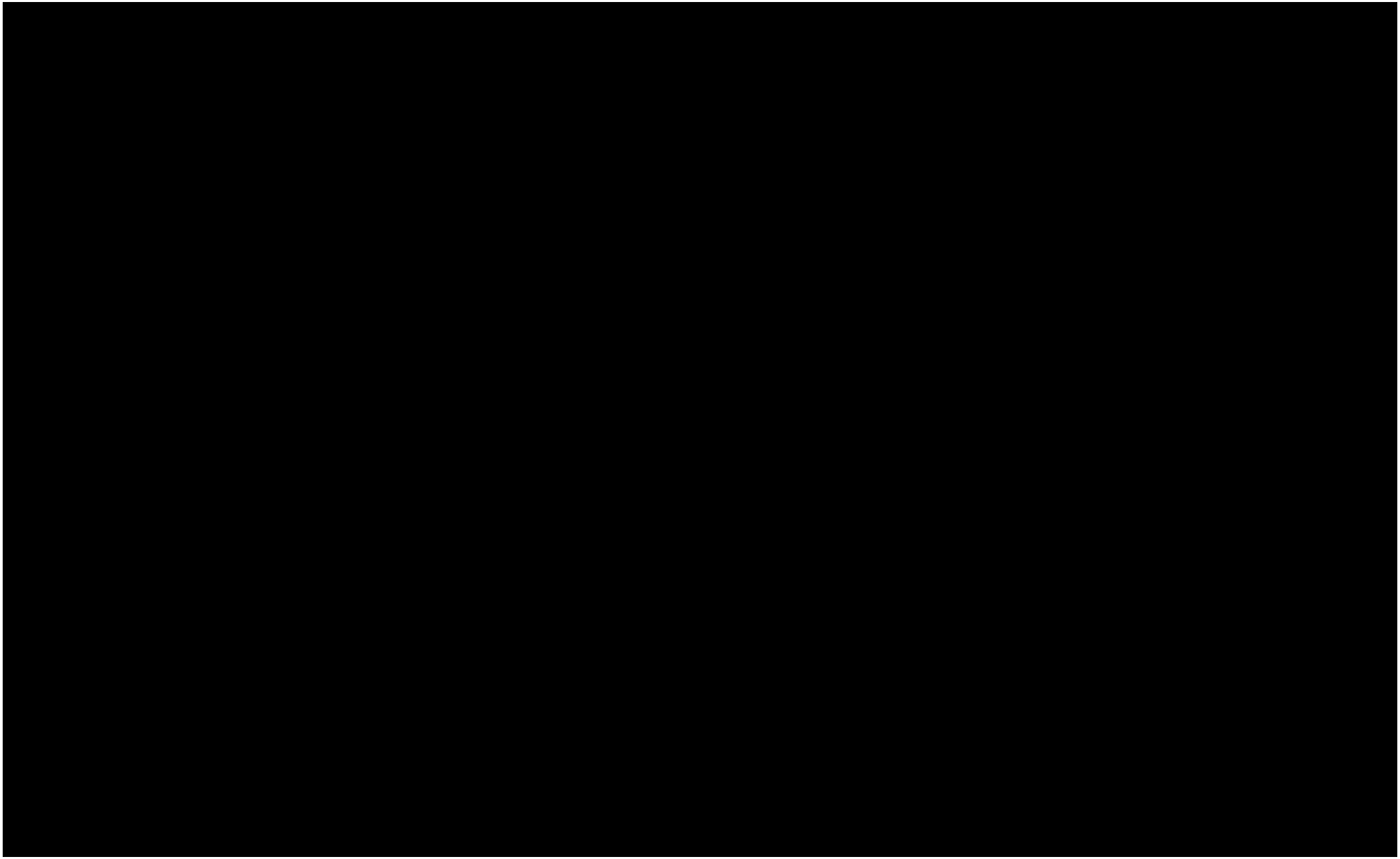


Figure 44

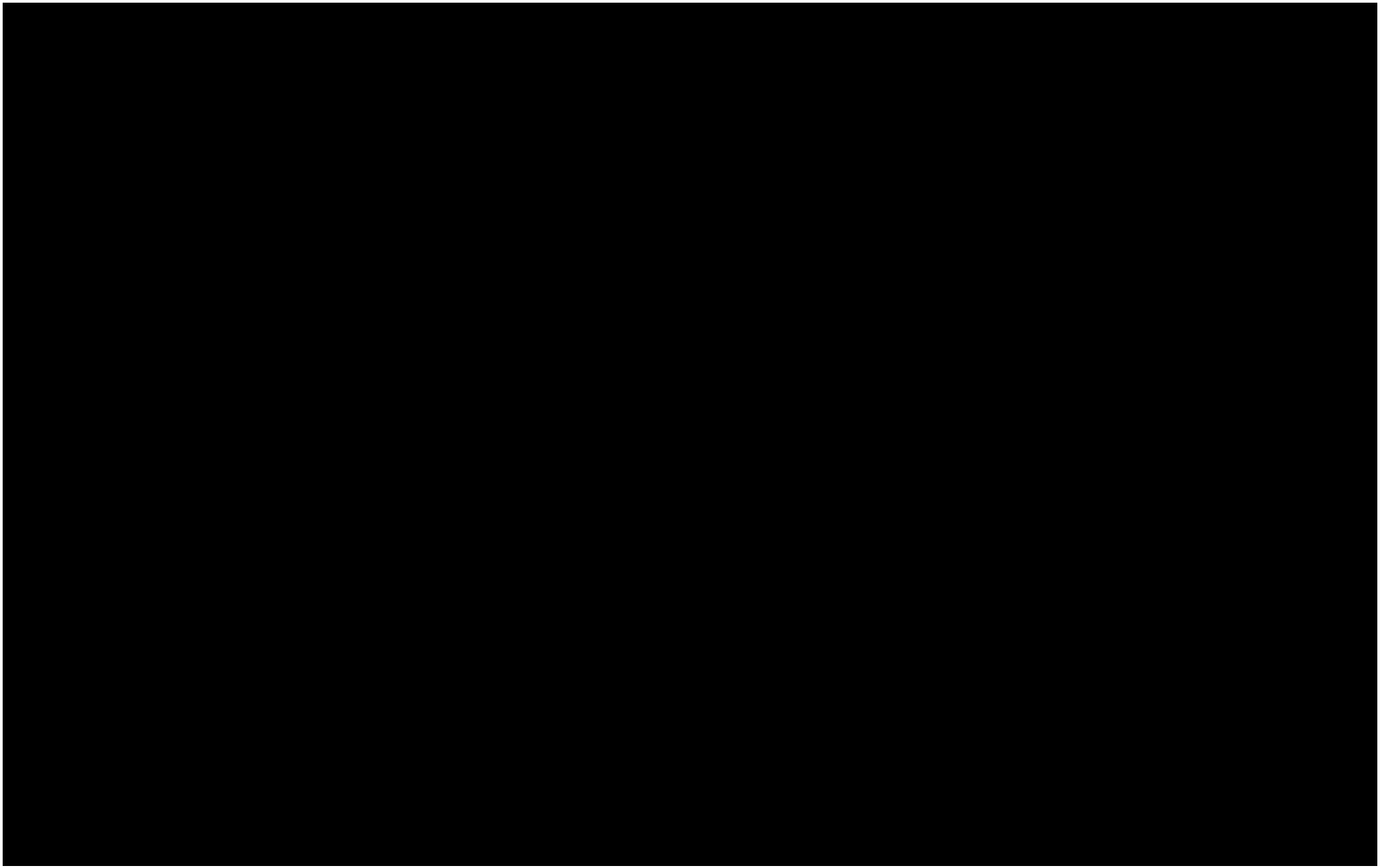


Figure 45

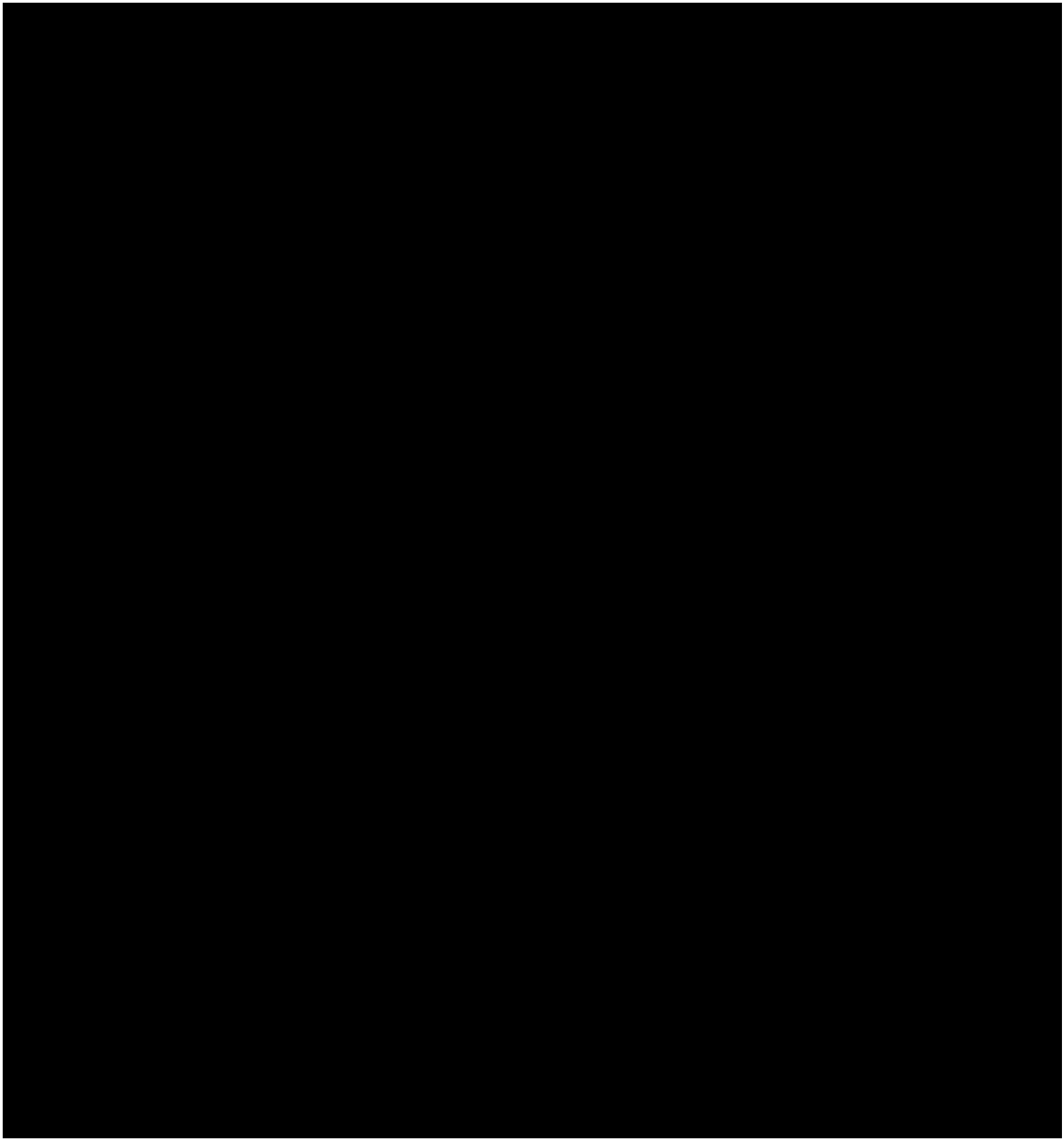


Figure 46

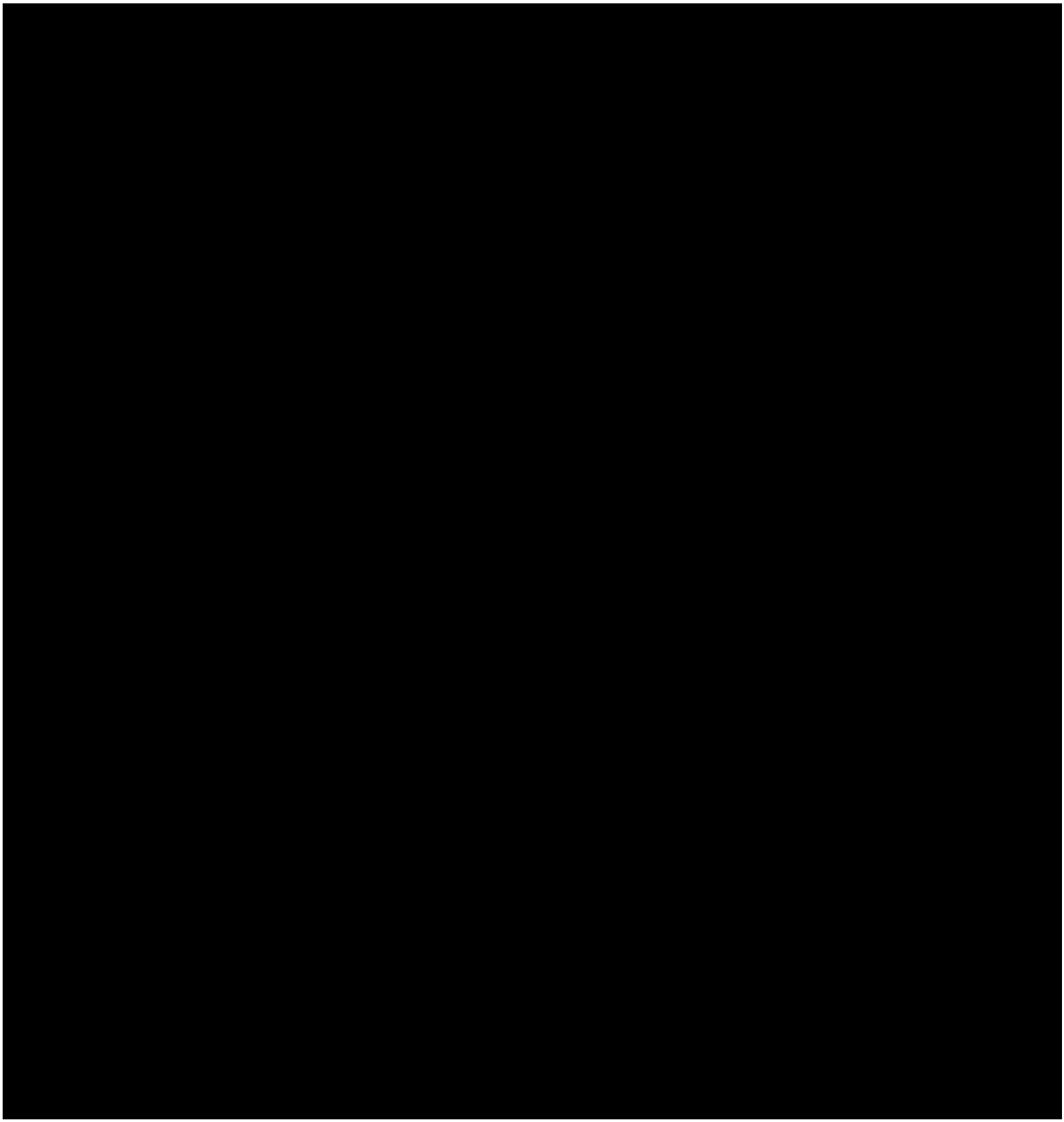


Figure 47

Figure 48

Figure 49

Figure 50

Figure 51

Figure 52

Figure 53

Figure 54

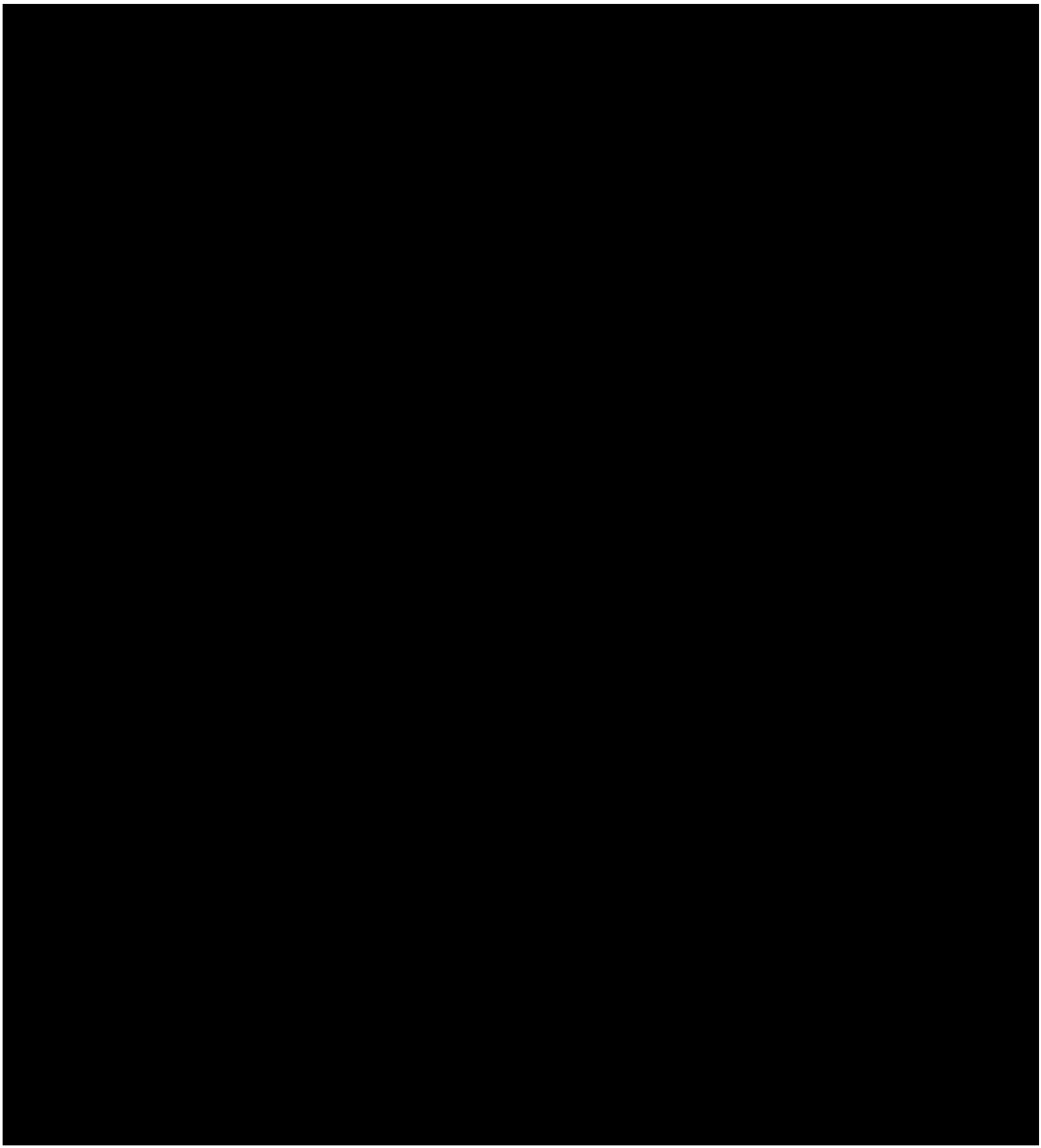


Figure 55

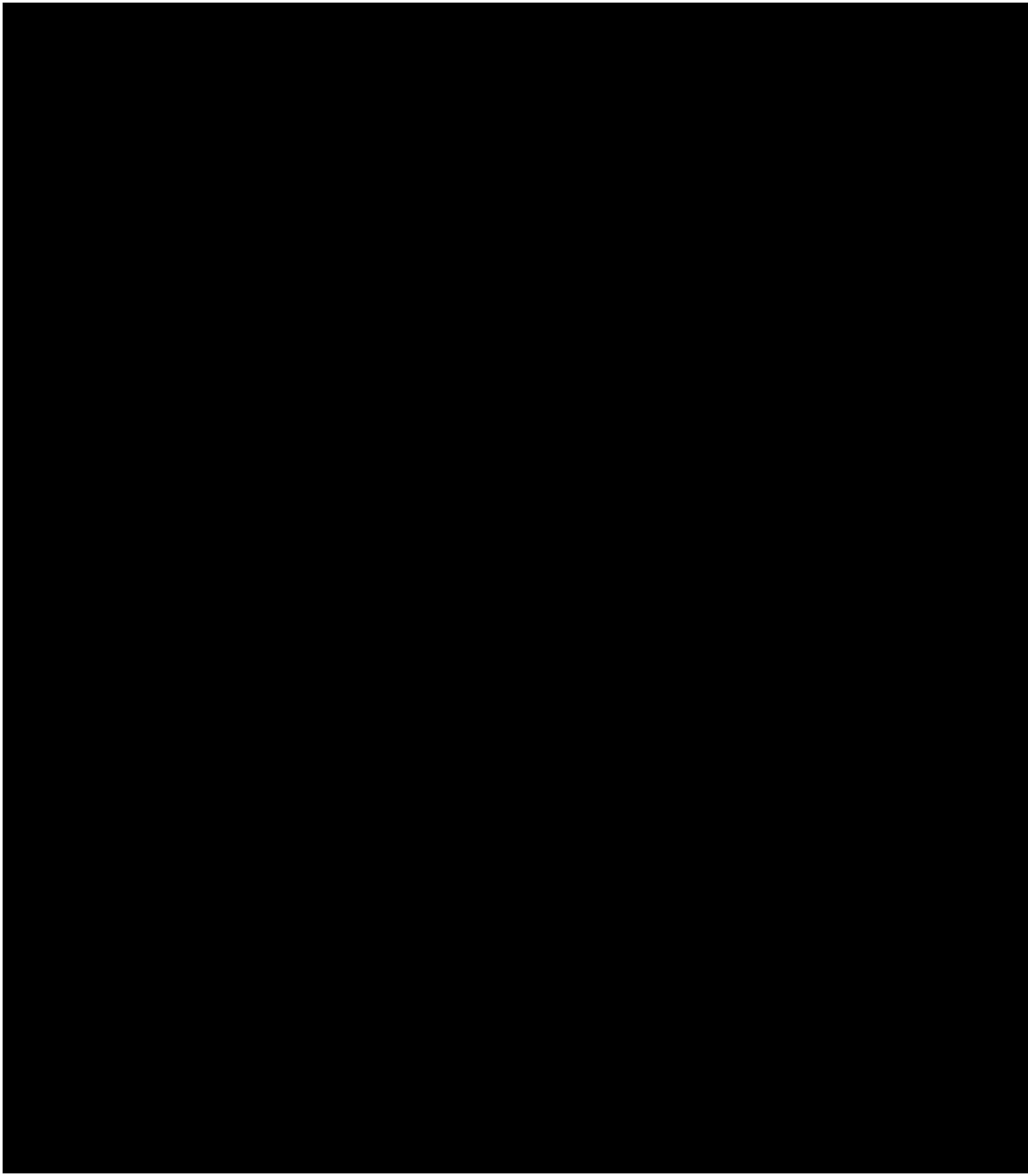


Figure 56

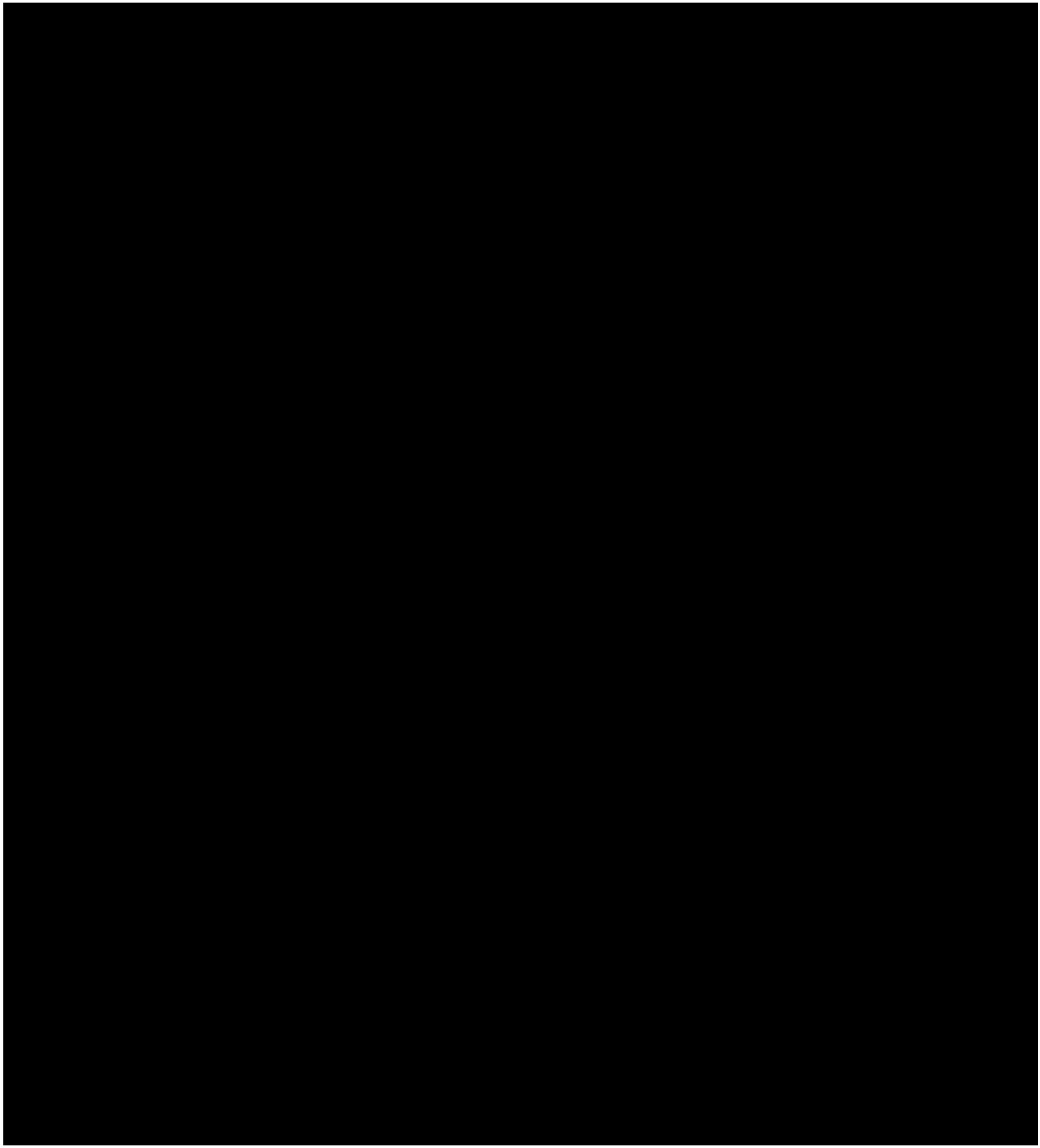


Figure 57

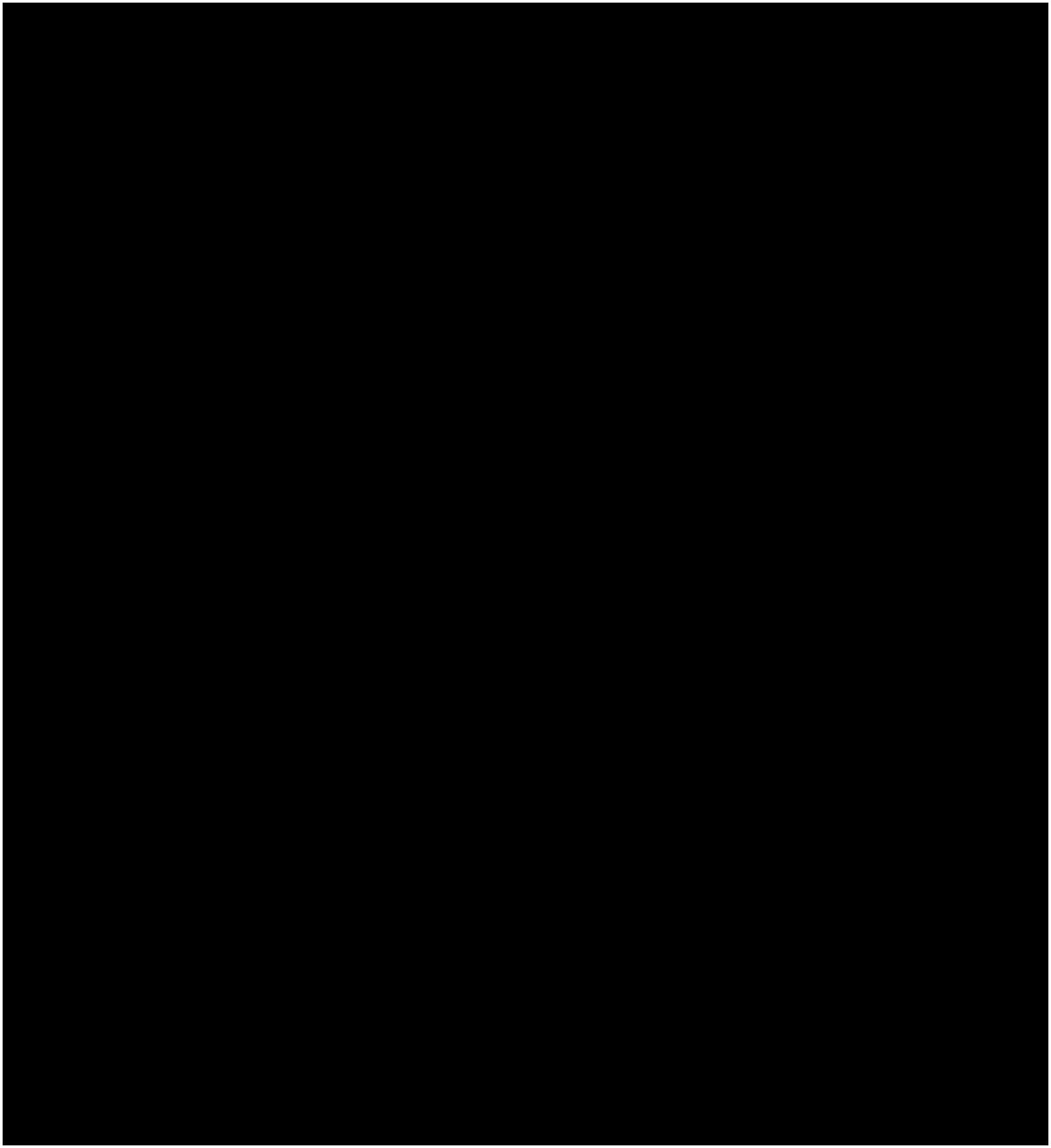


Figure 58

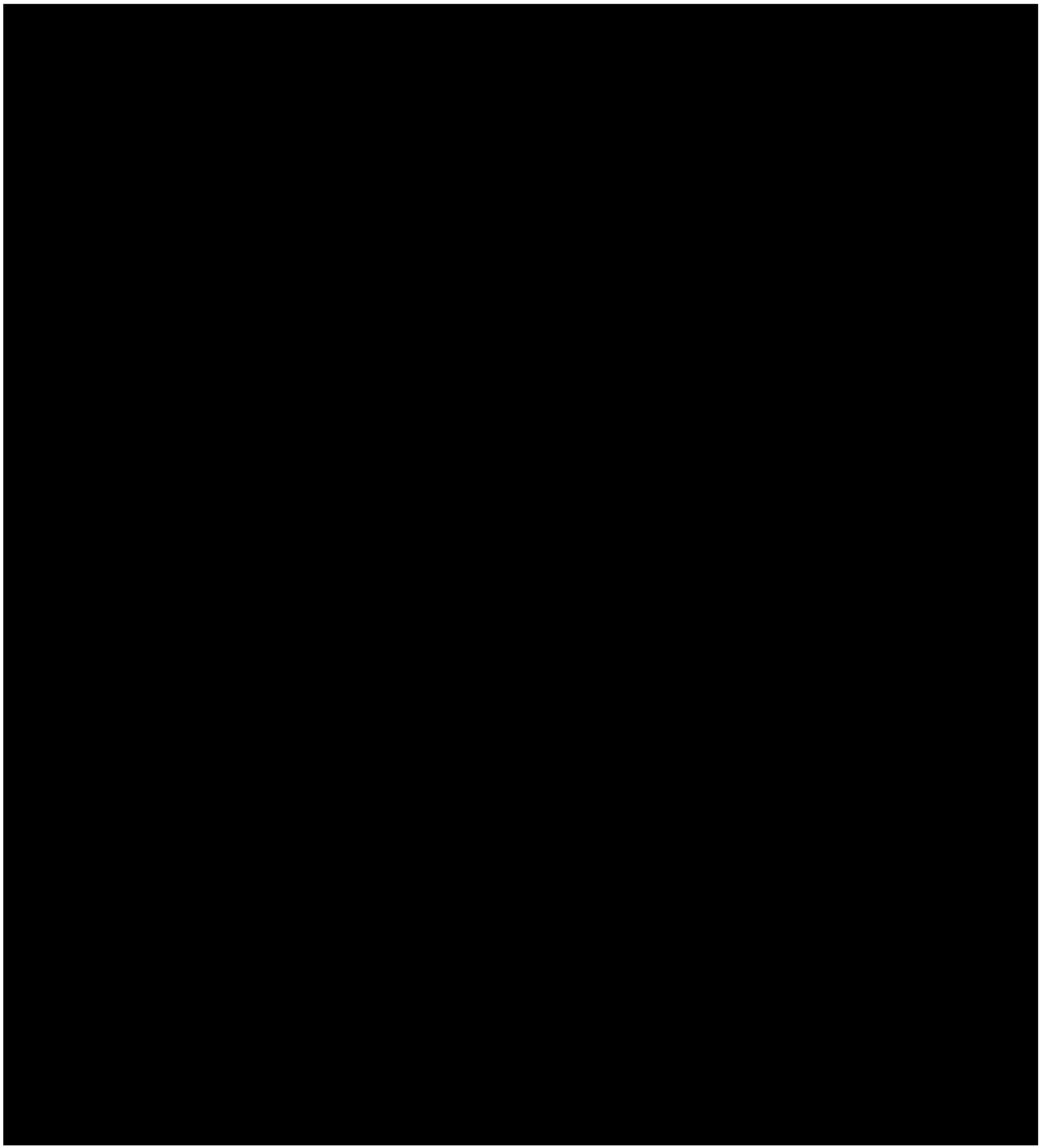


Figure 59

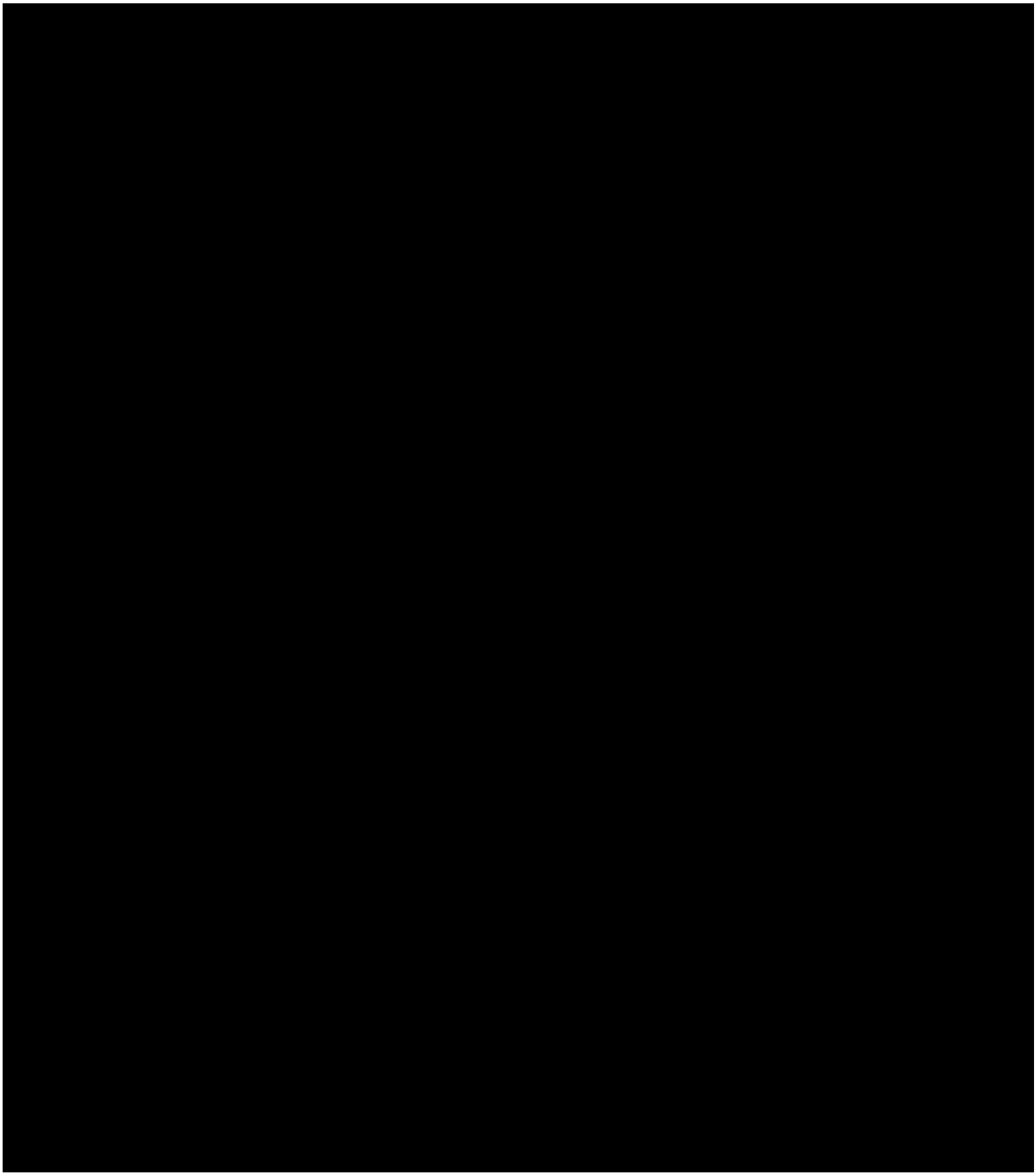


Figure 60

Figure 61

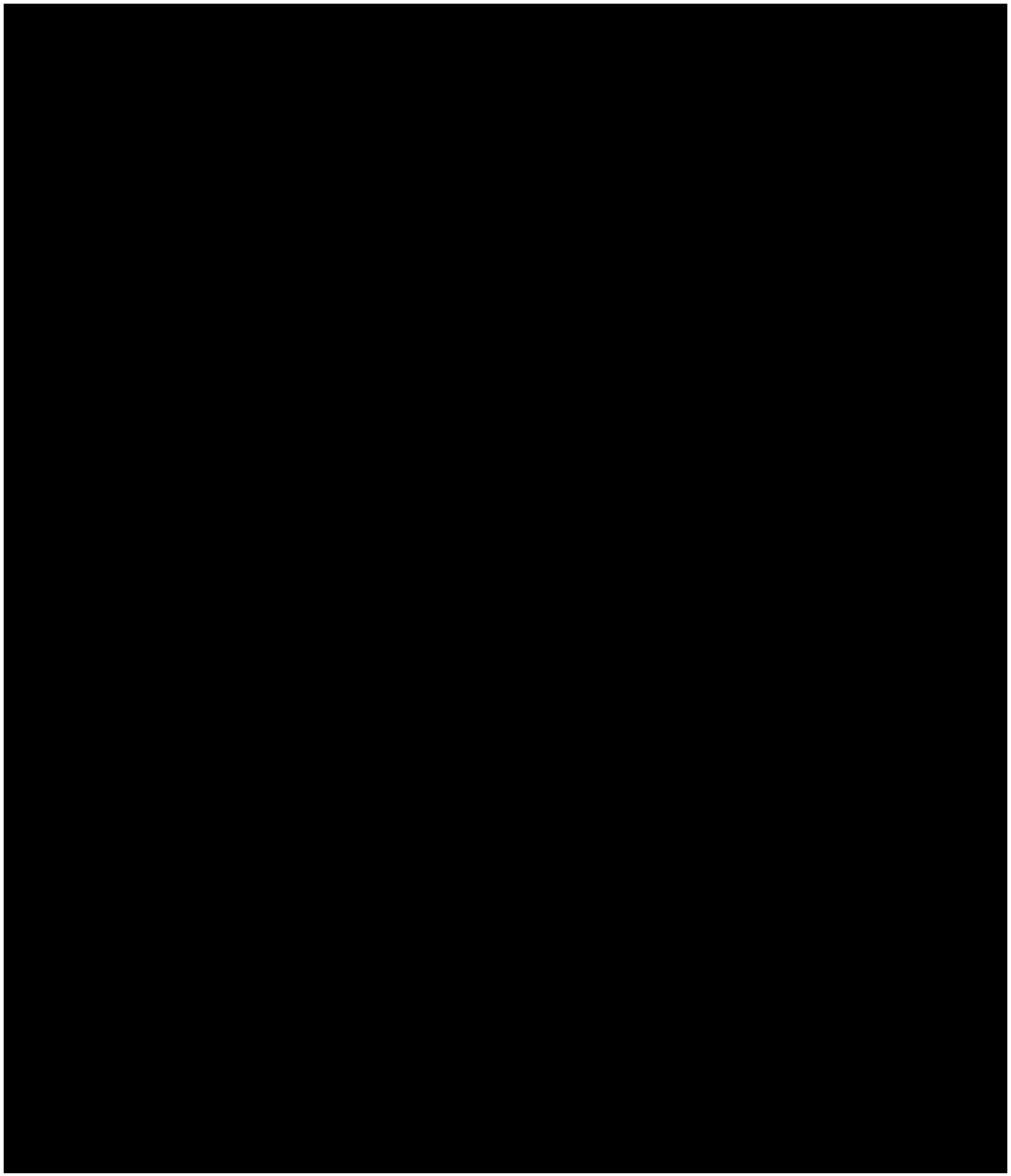


Figure 62

PUBLIC

This is Exhibit "**A**" to the Affidavit of **MARGARET SANDERSON** of Toronto, Ontario SWORN REMOTELY before me at the City of Toronto, in the Province of Ontario on October 9, 2020 in accordance with O. Reg. 431/20, Administering Oath of Declaration Remotely.

IAN C. MATTHEWS

MARGARET F. SANDERSON
Vice President, Practice Leader of
Antitrust & Competition Economics

M.A. Economics,
University of Toronto

B.S. Economics and
Quantitative Methods
(with distinction),
University of Toronto

Margaret Sanderson is Vice President & Practice Leader of Charles River Associate's Antitrust & Competition Economics Practice. She has experience analysing the competitive effects of a wide range of business conduct (mergers, horizontal restraints, predatory pricing, abuse of dominance and vertical restraints) and government regulatory policy. Ms. Sanderson has worked on competition and regulatory cases in a number of industries, including communications (broadcasting, telecom, satellite, wireless), media (newspapers, magazines), transportation (airlines, automotive, rail), consumer products (alcohol, books, retailing), finance (banking, securities), industrial (chemicals, forest products, petroleum, waste) and health care. She has testified before Canadian courts and regulatory authorities and has appeared before the U.S. Federal Trade Commission.

PROFESSIONAL EXPERIENCE

2006 – Present *Practice Leader, Antitrust & Competition Economics*, Charles River Associates

Lead the Antitrust & Competition Economics Practice, which is comprised of a research staff of 125 professional economists located in nine offices throughout North America and Europe.

1998–Present *Vice President,* Charles River Associates

Analyze the economic effects of mergers and acquisitions in a wide variety of industries, including conducting econometric studies and merger simulations. Examine the competitive effects of alleged price-fixing conspiracies and various business contracting practices, including loyalty programs, exclusive contracts, and pricing behaviour. Prepare economic affidavits for testimony in a variety of civil litigation matters, including class certification motions, private and class actions alleging competition infractions, and damages. Advise governments on regulatory policy matters in respect of competition law, climate change policy, communications policy, regulation of securities markets, and investment activity.

1996–1998 *Assistant Deputy Director of Investigation and Research,* Competition Bureau, Economics and International Affairs Branch

Directed the Enforcement Economics and Economic Policy Division, which provided economic expertise on enforcement cases, regulatory interventions, enforcement policy, and competition policy advocacy.

Provided advice to the director of investigation and research on enforcement policy, such as merger enforcement guidelines as applied to a bank merger, sentencing principles, and use of economic experts. Promoted competition policy principles to other government departments in areas such as spectrum auctions, electricity deregulation, and transportation regulation review.

1992–1996 *Chief,* Competition Bureau, Enforcement Economics Division

Modeled the Enforcement Economics Division after the Economic Analysis Group of the Antitrust Division at the U.S. Department of Justice. Staffed the division with Ph.D.-trained economists, provided economic expertise to the enforcement branches of the Competition Bureau through the analysis and resolution of cases, and conducted independent research.

Conducted economic analysis and provided written reports and recommendations to the Director of Investigation and Research and other senior executives on resolution of enforcement cases, including preparation for litigation. Provided technical assistance to former Soviet countries through the OECD and the World Bank. Principal author of the *Strategic Alliances Bulletin*.

1990–1992 *Executive Assistant to the Senior Deputy Director of Investigation Research* Competition Bureau, Mergers Branch

Critically reviewed all assessment documents, litigation material, and correspondence that involved merger transactions. Analysed the potential anticompetitive effects and claimed efficiency gains in several key cases. Assisted in the development and release of the Merger Enforcement Guidelines, including presentation of the technical aspects of this policy to Canadian and foreign government officials, antitrust practitioners, and businesspeople.

1990 *Commerce Officer,* Competition Bureau, Mergers Branch

Conducted merger investigations in several industries, including industrial and commercial insulation and newspapers.

1988–1989 *Economist*, Competition Bureau, Economics and International Affairs Branch

Analysed the role played by import competition in several merger cases and prepared a discussion paper on the assessment of foreign competition in a merger.

1987–1988 *Tax Policy Officer,* Department of Finance, Business and Resource Tax Analysis Division

Examined the influence played by tax measures commonly regarded as having a non-neutral impact on mergers and acquisitions, the competitive position of Canadian trucking firms engaged in trans-border activity with the United States, and the tax positions of small and large real estate companies.

TESTIMONY AND AFFIDAVITS

- Canadian International Trade Tribunal
  - CITT Inquiry No. NQ-2016-002, Gypsum Board, on behalf of CGC Inc., addressing market definition and the effect provisional duties would have on competition among gypsum board producers, consumers and businesses in Canada. Report filed November 8, 2016. Testimony December 5, 2016.

- Canadian Radio-television Telecommunications Commission
  - Telecom Notice of Consultation CRTC 2019-57, Review of mobile wireless services, on behalf of Bell Canada (co-authored with Andy Baziliauskas and Migiwa Tanaka), addressing the value of high quality mobile wireless networks. Report filed May 13, 2019.
  - Telecom Notice of Consultation CRTC 2017-259, Reconsideration of Telecom Decision 2017-56 regarding final terms and conditions for wholesale mobile wireless roaming service, on behalf of Bell Canada, addressing investment and competition in respect of retail mobile wireless services. Report filed September 8, 2017.
  - Telecom Notice of Consultation CRTC 2014-76, Review of wholesale mobile wireless services, on behalf of Bell Canada, addressing the competitiveness of retail wireless services in Canada and the set of supply options available for tower and site sharing, and roaming. Report filed May 15, 2014.
  - Telecom Notice of Consultation CRTC 2013-551, Review of wholesale service and associated policies, on behalf of Bell Canada, addressing whether forbearance from regulation of certain high-speed data access and transport facilities led to a substantial lessening of competition in the provision of data services to business customers. Report filed January 31, 2014.
  - Broadcasting Notice of Consultation CRTC 2013-106, Call for comments on a change in effective control of Astral Media Inc. to BCE Inc., on behalf of Bell Canada Enterprises, Inc., addressing the economics of vertical transactions as applied to the revised Bell/Astral transaction. Report (co-authored with David Reitman) filed April 15, 2013.
  - Broadcasting Notice of Consultation CRTC 2010-41, Call for comments on opening up the general interest pay services genre to competition in the French-language market and on proposed conditions of licence for competing Canadian general interest pay services in the French-language market, on behalf of Astral, addressing the impact of entry on Super Écran. Report filed March 30, 2010.
  - Broadcasting Notice of Public Hearing CRTC 2007-10, Review of the Regulatory Frameworks for Broadcast Distribution Undertakings and Discretionary Programming Services, on behalf of CTVglobemedia and Canwest Media Inc., addressing the economic outlook for private conventional television in Canada, and modeling the impact of compensation for carriage. Reports filed January 25, 2008 and February 22, 2008.
  - Telecom Public Notice CRTC 2005-2, Forbearance from Regulation of Local Exchange Services, on behalf of Aliant, addressing competitive conditions within certain exchanges for local service in Nova Scotia and Prince Edward Island to determine if sufficient competition exists for the CRTC to forbear from regulation. Report filed June 20, 2005. Testimony on September 26, 2005.

- Telecom Public Notice CRTC 2005-8-1, Framework for Forbearance from Regulation of High-speed Intra-exchange Digital Services, on behalf of Bell Canada, addressing competitive conditions within certain exchanges for high-speed digital services to determine if sufficient competition exists for the CRTC to forbear from regulation. Report filed September 1, 2005.

- Competition Tribunal

  - Commissioner of Competition v. Hudson's Bay Company, CT-2017-008, on behalf of Hudson's Bay Company, addressing the likely effects on competition from the advertised ordinary selling prices on mattresses and sleep sets used by Hudson's Bay Company. Affidavit sworn March 1, 2019.

  - Commissioner of Competition v. Parkland Industries Ltd. et al., CT-2015-003, on behalf of Parkland, addressing the likely competitive effects of Parkland's acquisition of Pioneer in selected local geographic retail gasoline markets. Affidavit sworn May 5, 2015. Cross examination on May 8, 2015.

  - Nadeau Ferme Avicole Limitée/Nadeau Poultry Farm Limited v. Groupe Westco Inc. and Groupe Dynaco, Coopérative Agroalimentaire and Volailles Acadia S.E.C. and Volailles Acadia Inc./Acadia Poultry Inc., CT-2008-004, on behalf of Groupe Westco Inc., addressing whether Nadeau is substantially affected in its business due to its inability to obtain adequate supply and whether the refusal to deal is having an adverse effect on competition. Report filed October 20, 2008. Testimony on November 27-28, 2009.

  - Commissioner of Competition v. Labatt Brewing Company Limited, Labatt Brewing Income Fund, Lakeport Brewing Limited Partnership, Roseto Inc. and Teresa Cascioli, CT-2007-03-22, on behalf of Labatt, addressing whether there will be immediate and long-term irremediable anti-competitive effects if Labatt were to acquire the units of Lakeport Brewing Income Fund. Affidavit sworn March 23, 2007.

- Court of Queen's Bench of New Brunswick (Trial Division)

  - In the matter of Rombaut v. Province of New Brunswick for a motion to declare unconstitutional certain features of the New Brunswick's Physician Resource Management Plan, Court File No. S/C/751/94. Affidavit sworn January 4, 1999. Deposition on April 27, 1999. Testimony on February 29, 2000.

- Federal Court—Trial Division

  - In the matter of Commissioner of Competition v. Labatt Brewing Company Limited, Labatt Brewing Income Fund and Lakeport Brewing Limited Partnership, for the issuance of orders under paragraph 11(1)(b) and 11(1)(c) of the *Competition Act*, Court File No. T-325-07. Affidavit sworn November 26, 2007.

  - In the matter of Always Travel Inc. et al. v. Air Canada, American Airlines Inc., United Airlines Inc., Delta Air Lines Inc., Continental Airlines Inc., Northwest Airlines Inc., and the International Air Transport Association (IATA) for a motion to certify a proposed class action amongst travel agents further to an alleged agreement among Defendants to fix commissions, Court File No. T-757-02. Affidavit sworn November 28, 2003.

- Ontario Superior Court of Justice
  - In the matter of Joseph S. Mancinelli et al. v. Royal Bank of Canada et al. for a motion to certify a class comprised of all persons in Canada who entered into a foreign exchange instrument directly or indirectly through an intermediary between 2003 and 2013, Court File No. CV-15-536174CP. Affidavit sworn December 10, 2018. Sur-reply sworn October 31, 2019. Examination on November 29, 2019.
  - In the matter of Yaing-Ja Lee and Yong Han Lee v. Korean Air Lines Co., Ltd. for a motion to certify a class of purchasers of direct and one-stop connecting flights between Canada and Korea, the first segment of which originated in Canada from Korean Air Lines during the period from September 8, 2003 to and including August 1, 2007, Court File No. CV-56747 CP. Affidavit sworn October 6, 2014.
  - In the matter of Rhonda Tetefsky et al. v. General Motors Corporation et al. for a motion to certify a class proceeding related to purchases or leases of motor vehicles in Canada during September 2005 to September 2007, Court File No. 07-CV-340633CP. Affidavit sworn June 30, 2011.
  - In the matter of The Fanshawe College of Applied Arts and Technology and Michael Harris v. LG Philips LCD Co. Ltd. et al. for a motion to certify a class proceeding related to purchases of liquid crystal display ("LCD") and televisions, computer monitors and laptops containing LCD, Court File No. 54054-CP. Affidavit sworn April 29, 2009. Responding Affidavit sworn July 16, 2010.
  - In the matter of Kathryn Robinson and Rick Robinson v. Rochester Financial Limited et al. for a motion to certify a class proceeding related to all individuals who participated in the Banyan Tree Gift Program for the taxation years 2003, 2004, 2005, 2006 and 2007, Court File No. 08-CV-349792. Affidavit sworn March 3, 2009.
  - In the matter of Nutech Brands Inc. and Startech.com Ltd. v. Air Canada et al. for a motion to certify a class proceeding related to purchases of airfreight shipping services, Court File No. 50389CP. Affidavit sworn December 16, 2008. Reply Affidavit sworn January 30, 2012.
  - In the matter of Axiom Plastics Inc. v. E.I. Du Pont Canada Company for a motion to certify a class proceeding related to purchases of engineering resins used to manufacture parts for automotive supply, Court File No. 05-CV-302358 CP. Affidavit sworn October 3, 2006. Examination on April 12, 2007.
  - In the matter of North York Branson Hospital et al. v. Praxair, Canadian Liquid Air, Liquid Carbonic, Canadian Oxygen, Air Products Canada et al. for a motion to determine common damages amongst a set of hospitals further to a price-fixing conspiracy in compressed gases, Court File No. 93-CQ-42118. Affidavit sworn October 17, 2001.
  - In the matter of Minnema v. ADM, Ajinomoto, Heartland Lysine and Sewon America for a motion to certify a class of indirect purchasers alleged to have suffered damages further to a price-fixing conspiracy in lysine, Court File No. G23495-99-CP. Affidavit sworn September 13, 2000.
- Ontario Court (General Division)
  - In the matter of Chadha v. Bayer for a motion to certify a class that alleged it suffered damages further to an alleged price-fixing conspiracy in iron oxide, Court File No. 98-CV-142211. Affidavit sworn November 25, 1998.

- Province of Quebec Superior Court
  - In the matter of Option Consommateurs and Guillaume Girard v. British Airways PLC for a motion to certify a class that alleged it suffered damages further to an alleged price-fixing conspiracy between British Airways and Virgin Atlantic Airways in passenger fuel surcharges. Court File No. 500-06-00410-072. Expert report filed November 14, 2017. Affidavit sworn December 5, 2014 in earlier proceeding.

- Supreme Court of British Columbia
  - In the matter of Jeremy Schimpf v. Samsung Electronics Co. Ltd. et al. for a motion to certify a class of purchasers of static random access memory (SRAM) or products that contain SRAM, Court File No. S-070350. Affidavit sworn August 22, 2014.
  - In the matter of Michelle Fairhurst v. Anglo American PLC et al. for a motion to certify a class of purchasers of Gem Grade Diamonds, Court File No. S-071209. Affidavit sworn November 2, 2010. Reply Affidavit sworn December 3, 2010.
  - In the matter of Lana Wakelam v. Johnson & Johnson et al. for a motion to certify a class of consumers of children's cough medicine for use by children under age six, Court File No. S078806. Affidavit sworn November 19, 2009.
  - In the matter of Sun-Rype Products Ltd. and Wendy Weberg v. Archer Daniels Midland Company et al. for a motion to certify a class of purchasers of high-fructose corn syrup (HFCS) and products containing HFCS, Court File No. L051456. Affidavit sworn October 27, 2009. Reply Report filed December 7, 2009. Examination on February 1, 2010.
  - In the matter of Pro-Sys Consultants Ltd. v. Infineon Technologies AG et al. for a motion to certify a class of purchasers of dynamic random access memory (DRAM) and products containing DRAM, Court File No. L043141. Affidavit sworn December 22, 2006. Supplementary Affidavit sworn May 15, 2007. Examination on June 15, 2007.

- United States District Court, District of Idaho
  - In re Micron Technology Inc., Securities Litigation, Case No. 1:06-cv-00085-BLW, on behalf of Micron, addressing the extent to which any DRAM overcharges arising from an alleged price-fixing agreement. Report filed on November 9, 2009.

PUBLICATIONS AND SELECTED PAPERS

"Why is Price Fixing the Most Egregious Competition Offense?" With Mary Beth Savio, Thomas Vinje and Dieter Paemen. Paper prepared for a Debate session comparing the harm from conduct that stifles innovation to price fixing at the American Bar Association Antitrust Section Spring Meeting, 2019.

"Building a Stronger Cognizable Efficiencies Case with Economic Analysis." With Keith Bockus. Paper prepared for the American Bar Association Antitrust Section Spring Antitrust Meeting, 2018.

"The Economics of Upward Pricing Pressure – Understanding the Parkland Case." With Andy Baziliauskas. *Canadian Competition Record*, 2017.

"Economic Analysis Used in Canadian Merger Cases." Chapter 4 in *Competition and Antitrust Laws in Canada: Mergers, Joint Ventures, and Competitor Collaborations*, by Brian A. Facey and Cassandra Brown, LexisNexis Canada, 2013.

"Rigorous Analysis of Economic Evidence on Class Certification in Antitrust Cases." With D. Hawthorne. *Antitrust Magazine*, Fall 2009.

"Competition Class Actions: An Evaluation of Deterrence, Accountability and Corrective Justice." With M.J. Trebilcock. University of Western Ontario Press, 2007.

"Merger to Monopsony in Canada, Europe and the United States: A Selected International Comparison." Chapter 3 in *Handbook of Research in Trans-Atlantic Antitrust*, edited by Philip Marsden, Edward Elgar Publishing Limited, 2006.

"Going Mobile – Slowly: How Wireline Telephone Regulation Slows Cellular Network Development." With N. Quigley. *C.D. Howe Institute Commentary*, December 2005.

"Merger Review in Regulated Industries." With M.J. Trebilcock. *Canadian Business Law Journal*, September 2005.

"Profits versus Rents in Antitrust Analysis: An Application to the Canadian Waste Services Merger." With R.A. Winter. *Antitrust Law Journal*, November 2002.

"Competition Tribunal's Redetermination Decision in *Superior Propane*: Continued Lessons on the Value of the Total Surplus Standard." *Canadian Competition Record*, spring/summer 2002.

"Geographic Market Definition in *Canadian Waste Services*." With R.A. Winter. *Canadian Competition Record*, spring/summer 2002.

"Bad Policy, Bad Law: Bill C-26 Amendments to the *Competition Act* on Airline Predation." With M. J. Trebilcock. *Canadian Competition Record*, spring/summer 2000.

"Conspiracy Law in Canada: Towards an Economic Approach." With P. Hughes. *Review of Industrial Organization*, 13:1-2, 1998.

"Treatment of Mergers." With R. Pittman. Chapter in the *Technical Assistance Manual*, World Bank, 1998.

"Efficiency Analysis in Canadian Merger Cases." *Antitrust Law Journal* 65, 1997.

"Commentary: Antitrust and Health Care: A Canadian's Perspective." *Antitrust Bulletin* 39:2, 1994.

"Divestiture Relief in Merger Cases: An Assessment of Canadian Experience." With A. Wallwork. *McGill Law Journal* 38:3, 1993.

"The Perfect is Not the Enemy of the Good: A Response to Roy Davidson." With A. Kleit. *Canadian Competition Policy Record*, 1992.

"Competition Policy in Canada: The First Hundred Years." With W.T. Stanbury. *Competition Bureau*, 1989. (Released in connection with the centenary proceedings of Canadian competition policy.)

SELECTED PRESENTATIONS

"Monopsony". Panel discussant at the Canadian Bar Association Economist Roundtable with the Competition Bureau. May 2019.

"Umbrella Purchasers". Panel discussant at the Ontario Bar Association's panel on umbrella purchasers. May 2018.

"Macroeconomic Implications of Market Power: Canada compared to the United States." Presentation to the International Monetary Fund. March 2018.

"Net Neutrality". Panel discussant at the University of Toronto Law and Economics Symposium on Competition Policy in the Age of Big Data. Fall 2018.

"Time to Redesign the *Competition Act*? Exploring Potential Changes on the Act's 30th Anniversary". Panel discussant at the Canadian Bar Association Competition Law Section Annual Fall Meeting, 2015.

"Economics of Retail Mergers." Panel discussant at the Canadian Bar Association Competition Law Section Annual Fall Meeting, 2014.

"Economics of Price Maintenance." Panel discussant at the Canadian Bar Association Roundtable: Draft Enforcement Guidelines for Price Maintenance, 2014.

"Class Certification Today: How Rigorous is 'Rigorous Analysis'?". Panel discussant at the American Bar Association 61st Antitrust Law Spring Meeting, 2013.

"Behavioural Economics: Cutting Edge or Junk Science." Panel discussant at the Canadian Bar Association Competition Law Section Annual Fall Meeting, 2011.

"Economic Theories of Monopsony in Competition Cases." Panel discussant at the Canadian Bar Association Competition Law Section Annual Fall Meeting, 2007.

"Efficiencies Analysis in Canadian Merger Review: A Case for Leaving Things Be." Panel discussant at the Canadian Bar Association Competition Law Section Spring meeting, 2006.

"Year in Review." Panel discussant at the Canadian Bar Association Competition Law Section Annual Fall Meeting, 2005.

"Industrial Economics and Performance in Canada." Panel discussant at the Industry Canada Workshop, 2004.

"Selected Comments on Revisions to the Canadian Merger Enforcement Guidelines." Panel discussant at the Canadian Bar Association Competition Law Section Annual Fall Meeting, 2003.

"Economics of Loyalty Discounts." Panel discussant at the Conference Board Antitrust Conference, New York, 2002.

"Establishing Efficiencies: Successful Approaches to Using Economic Evidence." Panel discussant at the Conference Board Antitrust Conference, New York, 2001.

"Economic Issues Arising from the Air Canada/CAIL Merger." Panel discussant at the Canadian Bar Association Competition Law Section Annual Fall Meeting, 2000.

"Process and Politics in Canadian Merger Review." With M.J. Trebilcock. Panel discussant at the Law and Economics Programme University of Toronto Roundtable, 2000.

"Differentiated Products Mergers: Recent Experience in Canada and the United States" With L. Csorgo. Panel discussant at the Canadian Bar Association Competition Law Section Annual Fall Meeting, 1998.

"Treatment of Joint Ventures." Panel discussant at the U.S. Federal Trade Commission's Roundtables on Joint Ventures, 1998.

"Treatment of Efficiencies." Panel discussant at the U.S. Federal Trade Commission's Global Hearings on Competition and Innovation, 1996.

"Emerging Issues in Competition Policy." Panel discussant at the Canadian Bar Association Competition Law Section Annual Fall Meeting, 1996.

"Facilitating Practices: Canadian and U.S. Experience." With J. Langenfeld. University of Toronto Law and Economics Programme, 1994.

"Antitrust and Health Care." Panel discussant at the Western Economic Association meetings, 1993.

PUBLIC

This is Exhibit "**B**" to the Affidavit of **MARGARET SANDERSON** of Toronto, Ontario SWORN REMOTELY before me at the City of Toronto, in the Province of Ontario on October 9, 2020 in accordance with O. Reg. 431/20, Administering Oath of Declaration Remotely.

IAN C. MATTHEWS

PUBLIC

Materials Relied Upon by Margaret Sanderson

Bates-Numbered Documents

LDC00000355
LDC00001147
LDC00004251
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Expert Reports

Expert Report of Nathan H. Miller, Ph.D

Public Sources

Canadian Grain Commission, “Glossary,” available at https://www.grainscanada.gc.ca/en/grain-quality/official-grain-grading-guide/27-glossary/glossary.html

Competition Bureau Backgrounder on the Competition Bureau’s Examination into Cattle and Beef Pricing, available at http://www.competitionbureau.gc.ca/internet/index.cfm?itemID-1311&lg=e

Competition Bureau Backgrounder on the Acquisition of Better Beef by Cargill Limited, available at: https://www.competitionbureau.gc.ca/eic/site/cb-bc.nsf/eng/01941.html

Competition Bureau of Canada, Merger Enforcement Guidelines

Dobson Consulting (1999) Buyer Power and its Impact on Competition in the Food Retail Distribution Sector of the European Union, Study prepared for the European Commission – DGIV, May, at 13)

Michael Trebilcock, Ralph Winter, Paul Collins and Edward Iacobucci (2003), The Law and Economics of Canadian Competition Policy, (Toronto: University of Toronto Press) at 69:

OECD paper available at http://www.oecd.org/officialdocuments/publicdisplaydocumentpdf/?cote=DAF/COMP(2012)13&docLanguage=En

http://www.pdqinfo.ca/about/procedures

https://grainscanada.gc.ca/en/grain-quality/official-grain-grading-guide/02-moisture-testing/introduction-moisture-testing.html

https://grainscanada.gc.ca/en/grain-quality/official-grain-grading-guide/04-wheat/determination-dockage.html

https://grainscanada.gc.ca/en/grain-research/export-quality/cereals/wheat/western/annual-fusarium-damage/maps-charts/

https://www.barchart.com/futures/quotes/MWU18/overview

https://www.grainscanada.gc.ca/en/grain-quality/grain-grading/standard-grading-tool.html

https://www.grainscanada.gc.ca/en/grain-quality/official-grain-grading-guide/04-wheat/primary-grade-determinants/cwrs-en.html

https://www.grainscanada.gc.ca/en/protection/delivery/dispute-grain-grade.html

https://www.isc.ca/signedinhome/help/land/pages/landdescriptions.aspx

https://www.phmilling.com/home

https://www.wsj.com/market-data/quotes/fx/USDCAD

https://www.grainscanada.gc.ca/en/grain-research/scientific-reports/fhb-western/fhb-1.html

https://www.grainscanada.gc.ca/en/grain-quality/grain-grading/standard-grading-tool.html

https://www.grainscanada.gc.ca/en/grain-quality/official-grain-grading-guide/10-canola-rapeseed/primary-grade-determinants-tables.html

Other Documents

2018-19 Western Canada Budget – Grain Tonnes, attached to the Heimbecker Witness Statement

2020-21 Western Canada Budget – Grain Tonnes, attached to the Heimbecker Witness Statement

Appendix I to Answers to Undertakings Given on the Examination of John Heimbecker

Appendix F – 2016-2018 Grain Purchases – Moosomin.xlsx, as submitted with P&H's SIR

Notice of Application, Parrish & Heimbecker, Limited, December 19, 2019

P&H Response to SIR dated November 9, 2019

P&H Response to the Notice of Application dated February 3, 2020

P&H [redacted] Analysis (Appendix DD found in Responses to Follow-up Questions from John Heimbecker's Examination for Discovery)

Request for ARC – P&H Asset Purchase from LDC dated August 23, 2019

Response by Parrish & Heimbecker, Limited of Certain Grain Elevators and Related Assets from Louis Dreyfus Company Canada ULC

Notification re Asset Purchased from LDC – Schedule A

Trebilcock et al., The Law and Economics of Canadian Competition Policy, at 70

Witness Statement of [redacted]

Witness Statement of [redacted]

Witness Statement of [redacted]

Witness Statement of [redacted]

Witness Statement of [redacted]

Witness Statement of John Heimbecker

Witness Statement of [redacted]

Witness Statement of [redacted]

Data

LDC:

LDCCA Ticket Detail 2016-2018.xlsx

LDCCA Ticket Scale w Grade and Address Info 13-18_LDCCA.xlsx

Grain Purchase Data- Virden 1-1-19 thru 10-4-19 KH - CONFIDENTIAL LEVEL A.xlsx

Virden All Commodity Ticket Detail 2019 CWRS - CONFIDENTIAL LEVEL A.xlsx

PMJB00001_000000006-CONFIDENTIAL LEVEL A.xlsx

PMJB00001_000000011-CONFIDENTIAL LEVEL A.xlsx

P&H:

P&H_-_Asset_Purchase_from_LDC_-_Appendix_D_to RFI Response - Protected_and_Confidential.XLSX

P&H_-_Asset_Purchase_from_LDC_-_Appendix_E_to RFI Response - _Protected_and_Confidential.XLSX

P&H_-_Asset_Purchase_from_LDC_-_Appendix_F_to RFI Response - _Protected_and_Confidential.XLSX

P&H_-_Notification_re_Asset_Purchase_from_LDC_-2018_Calendar_Year_Transaction_Data_-_Protected_and_Confidential.XLSX

D#10 Grain Purchases 2019 Moosomin.xlsx

D#10 Grain Purchases 2019 Virden.xlsx

Moosomin Virden - Tonnes (Transactions).xlsx

Richardson:

PMDC00004_000000001-CONFIDENTIAL LEVEL A.xlsx

PMDC00006_000000002-CONFIDENTIAL LEVEL A.xlsx

PMDC00007_000000002 - CONFIDENTIAL LEVEL A.xlsx

Viterra:

PMDD00001_000000002-CONFIDENTIAL LEVEL A.xlsx

Cargill:

Highly Confidential - Cargill Data Request - Elva and Oakner- Aug 2020.xlsx

Ceres:

PMDB00002_000000046-CONFIDENTIAL LEVEL A.xls

Bunge:

PMJF00001_000000005-CONFIDENTIAL LEVEL A.xlsx

PMJF00001_000000001-CONFIDENTIAL LEVEL A.xlsx

PMJF00001_000000002-CONFIDENTIAL LEVEL A.xlsx

PMJF00001_000000003-CONFIDENTIAL LEVEL A.xlsx

PMJF00001_000000004-CONFIDENTIAL LEVEL A.xlsx

G3:

PMGB00001_000000017-CONFIDENTIAL LEVEL A.xlsx

ADM:

RABE00001_000000001- CONFIDENTIAL LEVEL A.xlsx

Additional Data:

P&H LDC Pricing Data.xlsx

Public Data:

https://open.canada.ca/data/en/dataset/05870f11-a52a-4bf4-bc15-910fd0b8a1a3

Rural Municipality Ownership Maps