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Date: September 12, 2022  
CT- 2022-002

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REGISTRAR / REGISTRAIRE

OTTAWA, ONT.

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**THE COMPETITION TRIBUNAL**

**CT-2002-002**

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

**AND IN THE MATTER OF** the proposed acquisition by Rogers Communications Inc. of Shaw Communications Inc.;

**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:

**COMMISSIONER OF COMPETITION**

Applicant

- and -

**ROGERS COMMUNICATION INC. AND SHAW COMMUNICATIONS INC.**

Respondents

---

**RESPONDING MOTION RECORD  
(Bureau's Refusals Motion)**

---

September 12, 2022

**LAX O'SULLIVAN LISUS GOTTlieb LLP**

Suite 2750  
145 King Street West  
Toronto, ON M5H 1J8

**Jonathan C. Lisus** (LSO# 32952H)

Tel: 416.598.7873

Email: jlisus@lolg.ca

**Crawford G. Smith** (LSO# 42131S)

Tel: 416.598.8648

Email: csmith@lolg.ca

**Matthew R. Law** (LSO# 59856A)

Tel: 416.849.9050

Email: mlaw@lolg.ca

**Bradley Vermeersch** (LSO# 69004K)

Tel: 416.646.7997

Email: bvermeersch@lolg.ca

**Zain Naqi** (LSO#: 67870U)

Tel: 416.645.3789

Email: znaqi@lolg.ca

Counsel for the Respondent/Responding Party,  
Rogers Communications Inc.

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**DAVIES WARD PHILLIPS & VINEBERG LLP**

155 Wellington Street West  
Toronto, ON M5V 3J7

**Kent E. Thomson** (LSO# 24264J)

Tel: 416.863.5566

Email: kentthomson@dwpv.com

**Derek D. Ricci** (LSO# 52366N)

Tel: 416.367.7471

Email: dricci@dwpv.com

**Steven Frankel** (LSO# 58892E)

Tel: 416.367.7441

Email: sfrankel@dwpv.com

**Chanakya A. Sethi** (LSO# 63492T)

Tel: 416.863.5516

Email: csethi@dwpv.com

Counsel for the Respondent/Responding  
Party, Shaw Communications Inc.

**TO: THE COMMISSIONER OF COMPETITION**

Department of Justice Canada  
Competition Bureau Legal Services  
Place du Portage, Phase I  
50 Victoria Street, 22nd Floor  
Gatineau, QC K1A 0C9

**John S. Tyhurst**

**Derek Leschinsky**

**Katherine Rydel**

**Ryan Caron**

**Suzanie Chua**

**Marie-Hélène Gay**

**Kevin Hong**

Tel: (819) 956-2842 / (613) 897-7682

Fax: (819) 953-9267

Counsel for the Applicant/Responding Party,  
The Commissioner of Competition

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# TAB 1

**THE COMPETITION TRIBUNAL**

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

**AND IN THE MATTER OF** the proposed acquisition by Rogers Communications Inc. of Shaw Communications Inc.;

**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:

**COMMISSIONER OF COMPETITION**

Applicant

- and -

**ROGERS COMMUNICATIONS INC. AND SHAW COMMUNICATIONS INC.**

Respondents

---

**AFFIDAVIT OF ASHLEY MCKNIGHT**  
**(affirmed September 12, 2022)**

---

I, **Ashley McKnight**, of the City of Oshawa, in the Regional Municipality of Durham, AFFIRM:

1. I am a law clerk with the law firm of Lax O'Sullivan Lisus Gottlieb LLP, lawyers for the Respondent, Rogers Communications Inc. ("**Rogers**"), and as such, have knowledge of the matters contained in this Affidavit.
2. Attached hereto and marked as **Exhibit "A"** is a copy of an email exchange between Mathew Law, counsel for Rogers, and Paul Klippenstein, counsel for the Competition Bureau, dated September 11, 2022.
3. Attached hereto and marked as **Exhibit "B"** is a copy of an email, with attachments, from Mr. Law to Mr. Klippenstein dated September 11, 2022.
4. Attached hereto and marked as **Exhibit "C"** is a copy of an email exchange, with attachments, from Mr. Law to Mr. Klippenstein dated September 12, 2022.

**AFFIRMED** by Ashley McKnight before me at the City of Toronto, in the Province of Ontario, on September 12, 2022.



Commissioner for Taking Affidavits  
(or as may be)

**RONKE AKINYEMI**



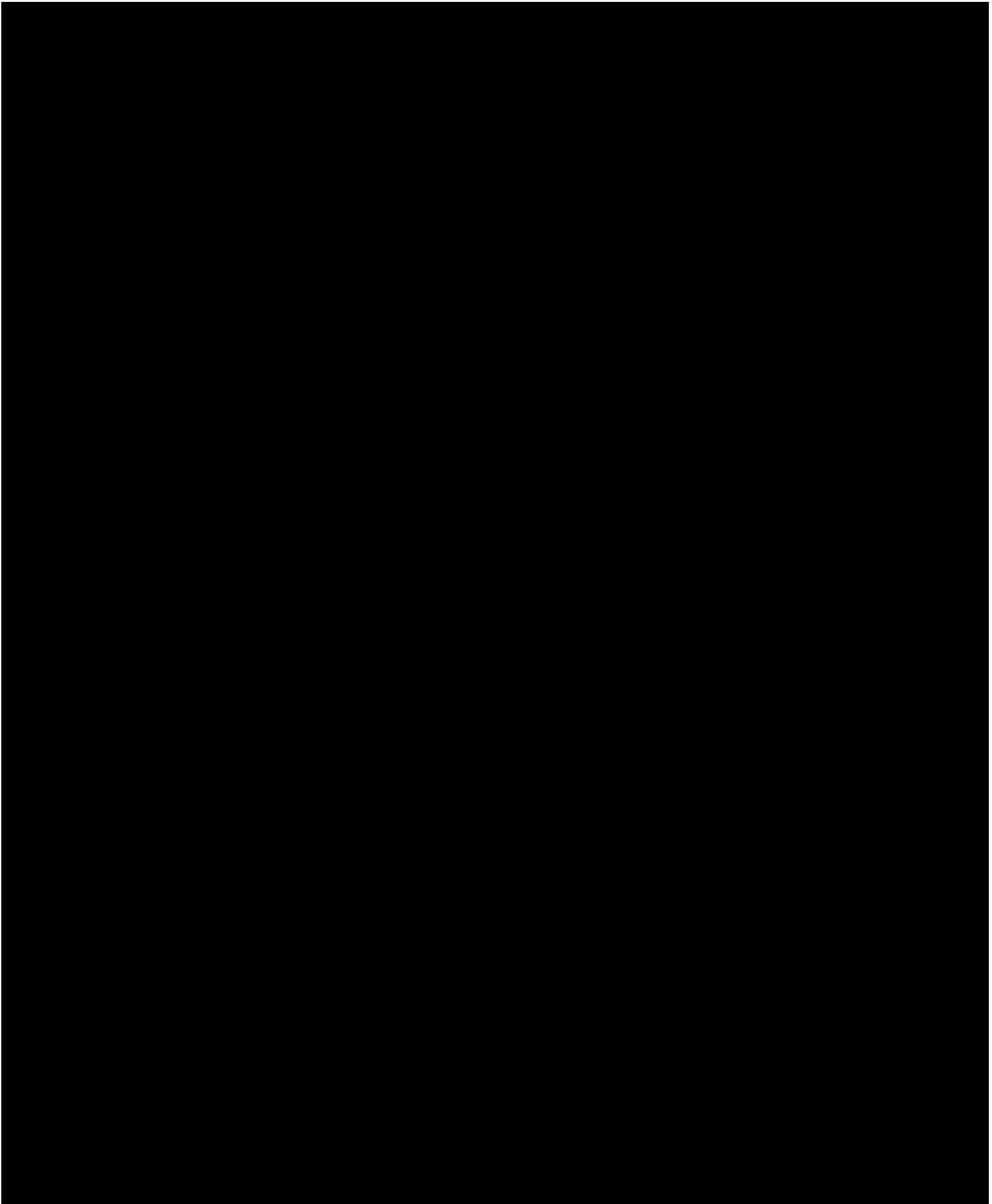
**ASHLEY MCKNIGHT**

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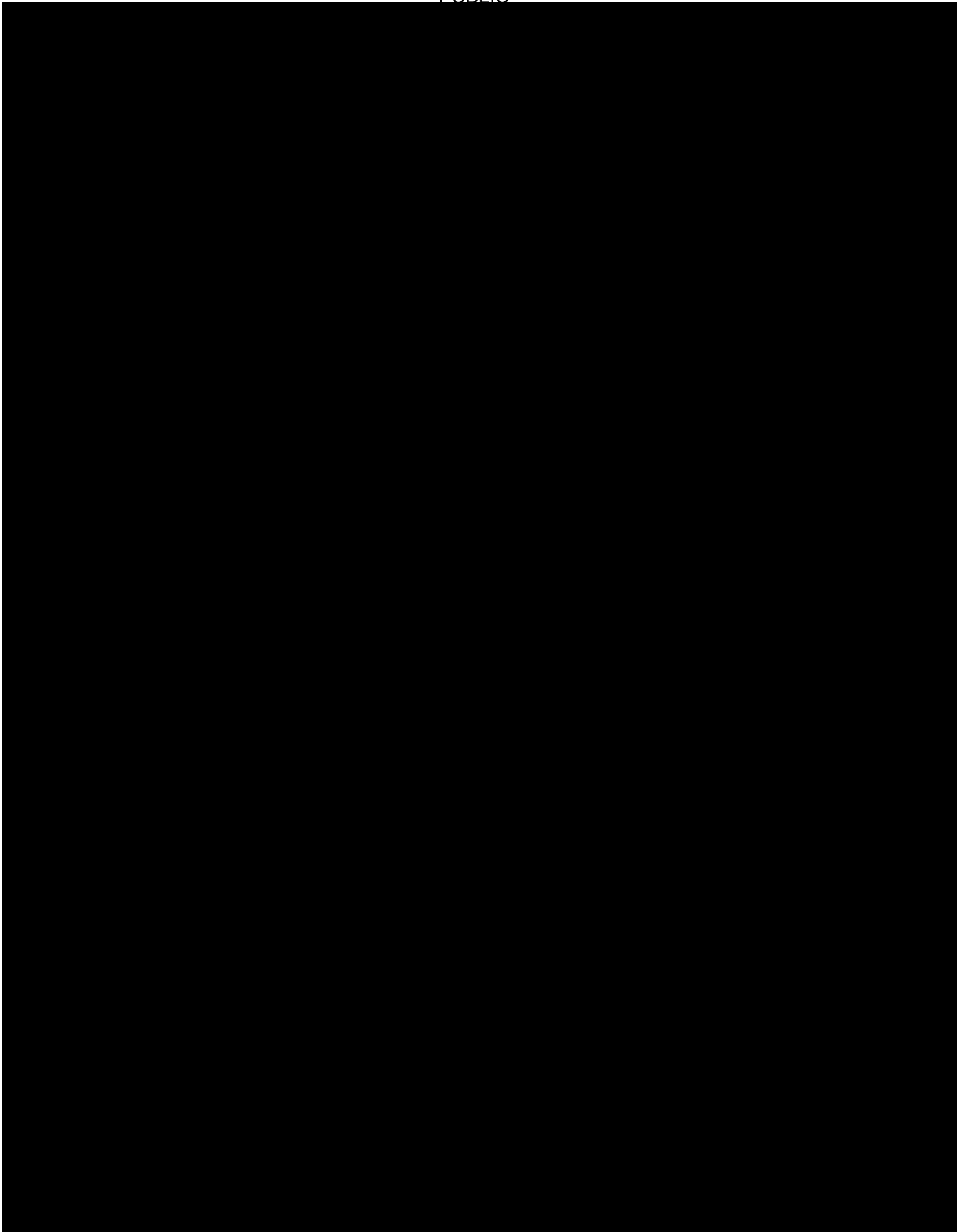
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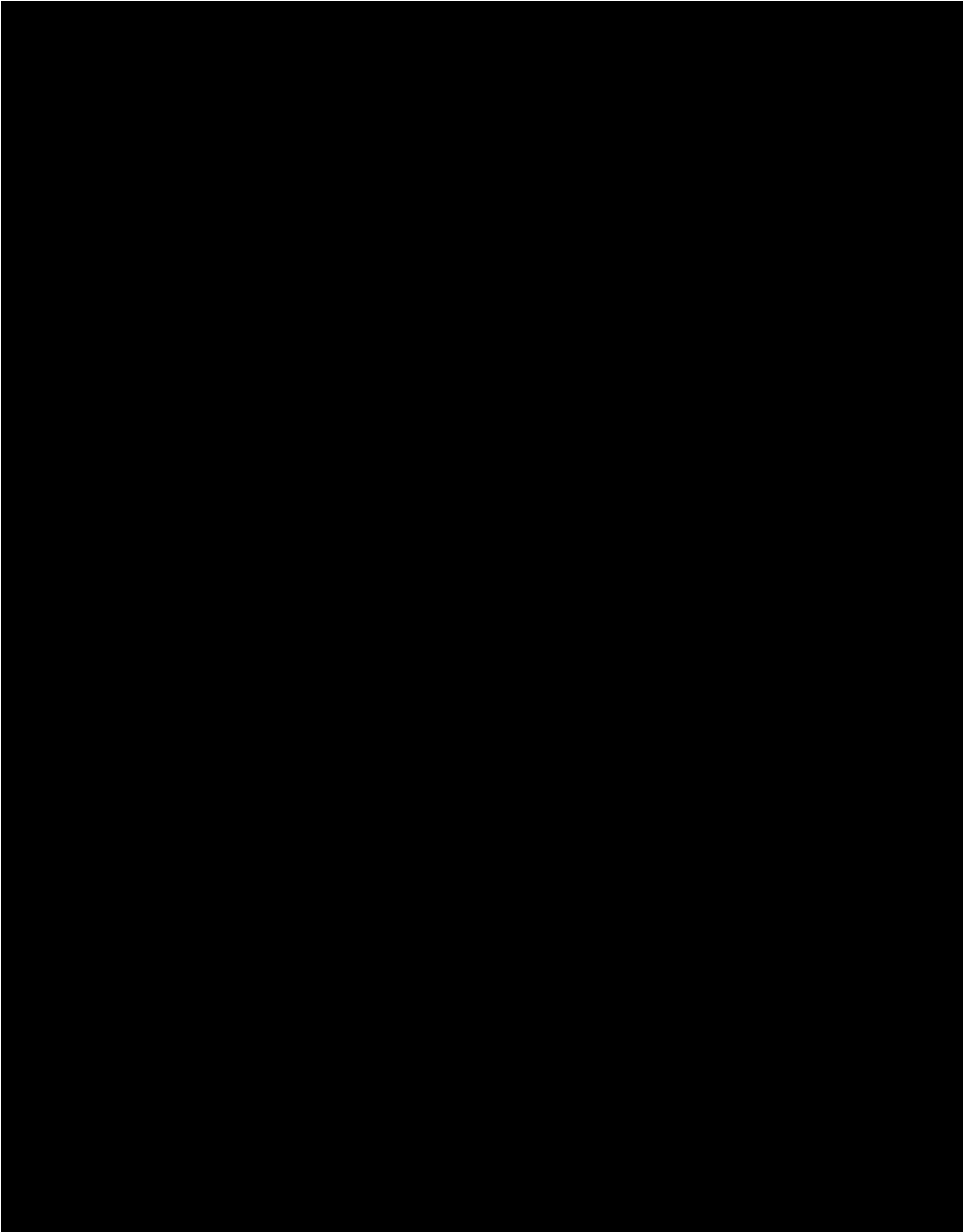
*Commissioner for Taking Affidavits (or as may be)*

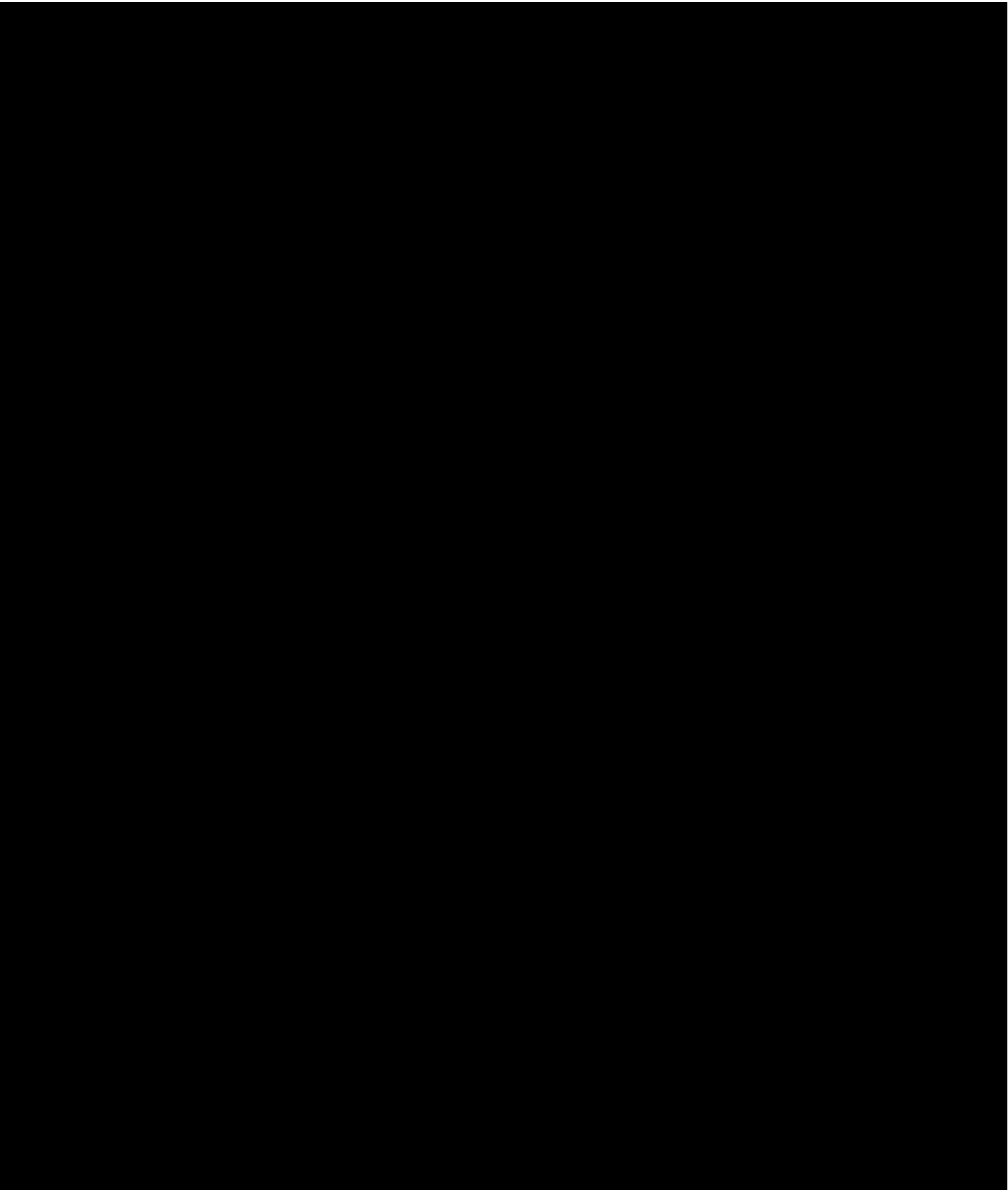
**RONKE AKINYEMI**



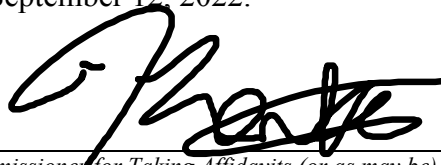






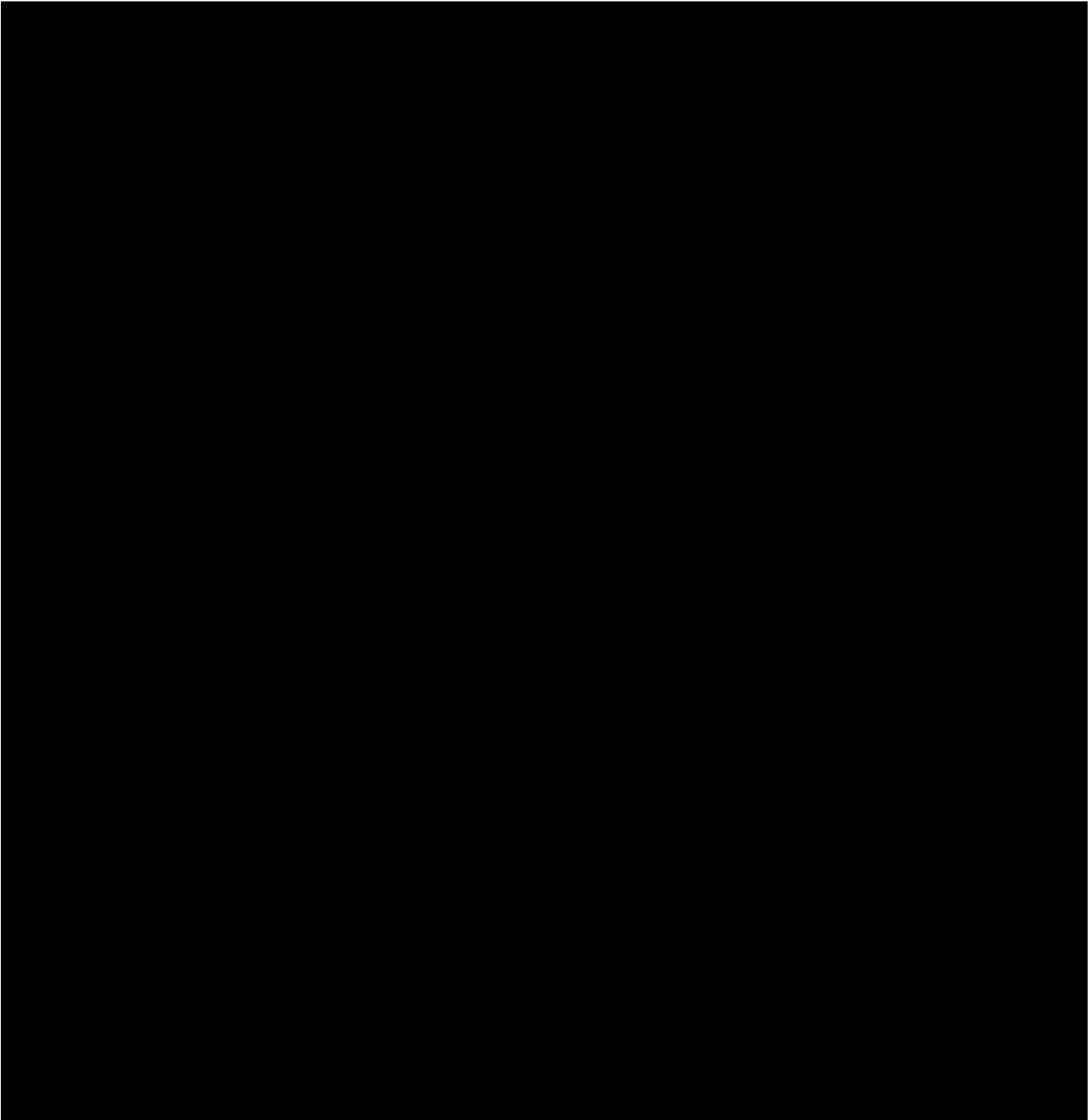


This is **Exhibit “B”** referred to in the Affidavit of Ashley McKnight sworn September 12, 2022.

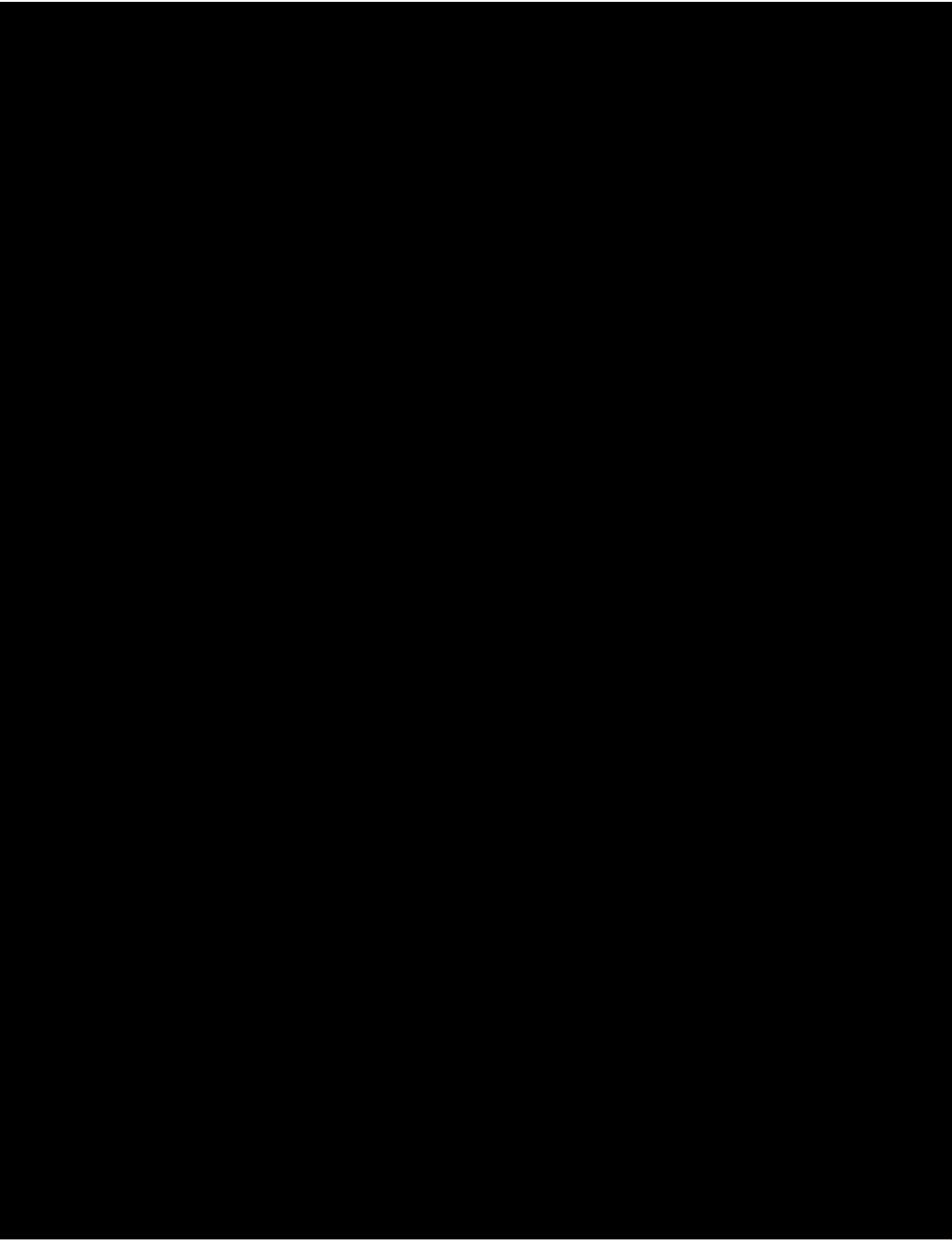
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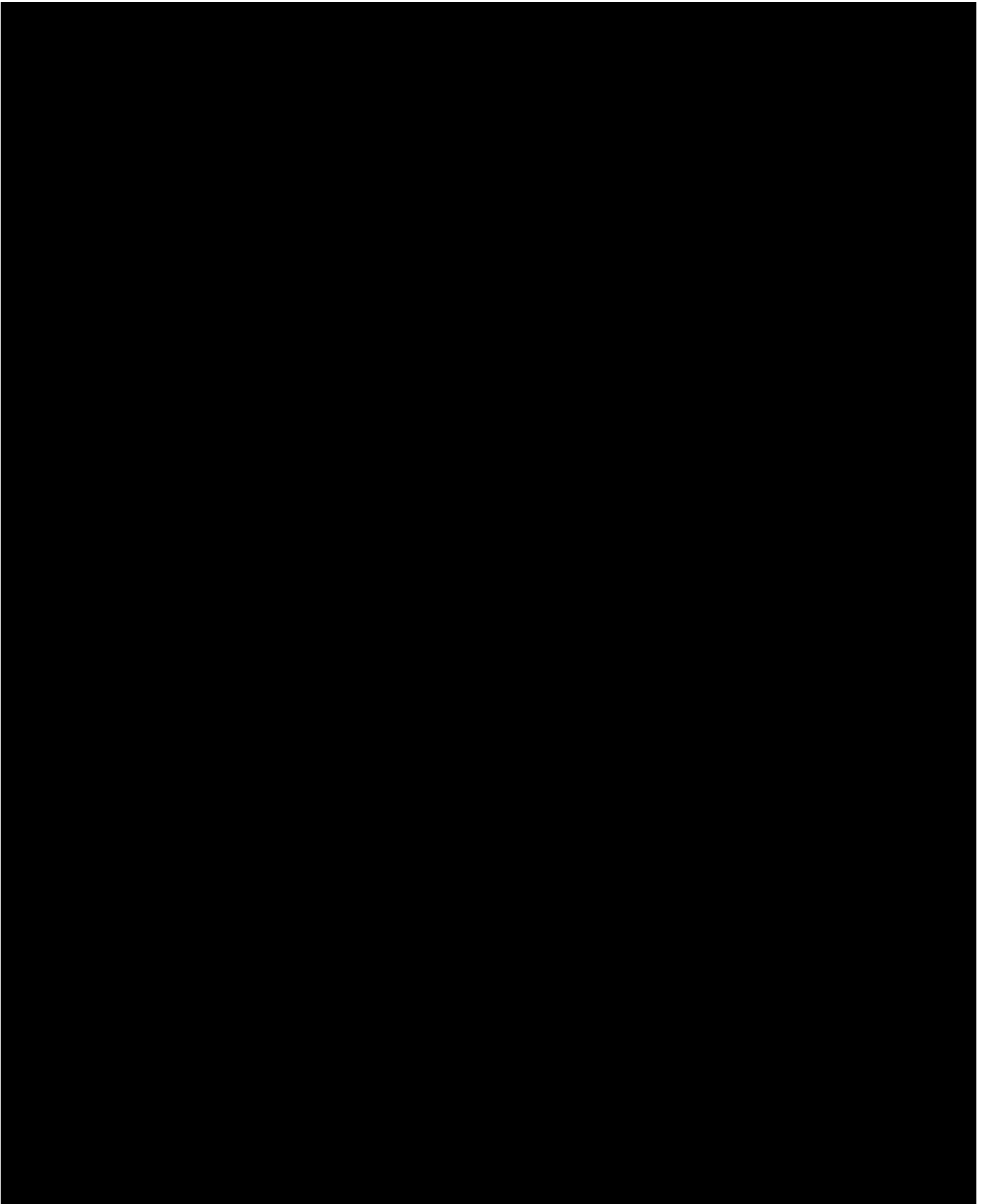
*Commissioner for Taking Affidavits (or as may be)*

**RONKE AKINYEMI**

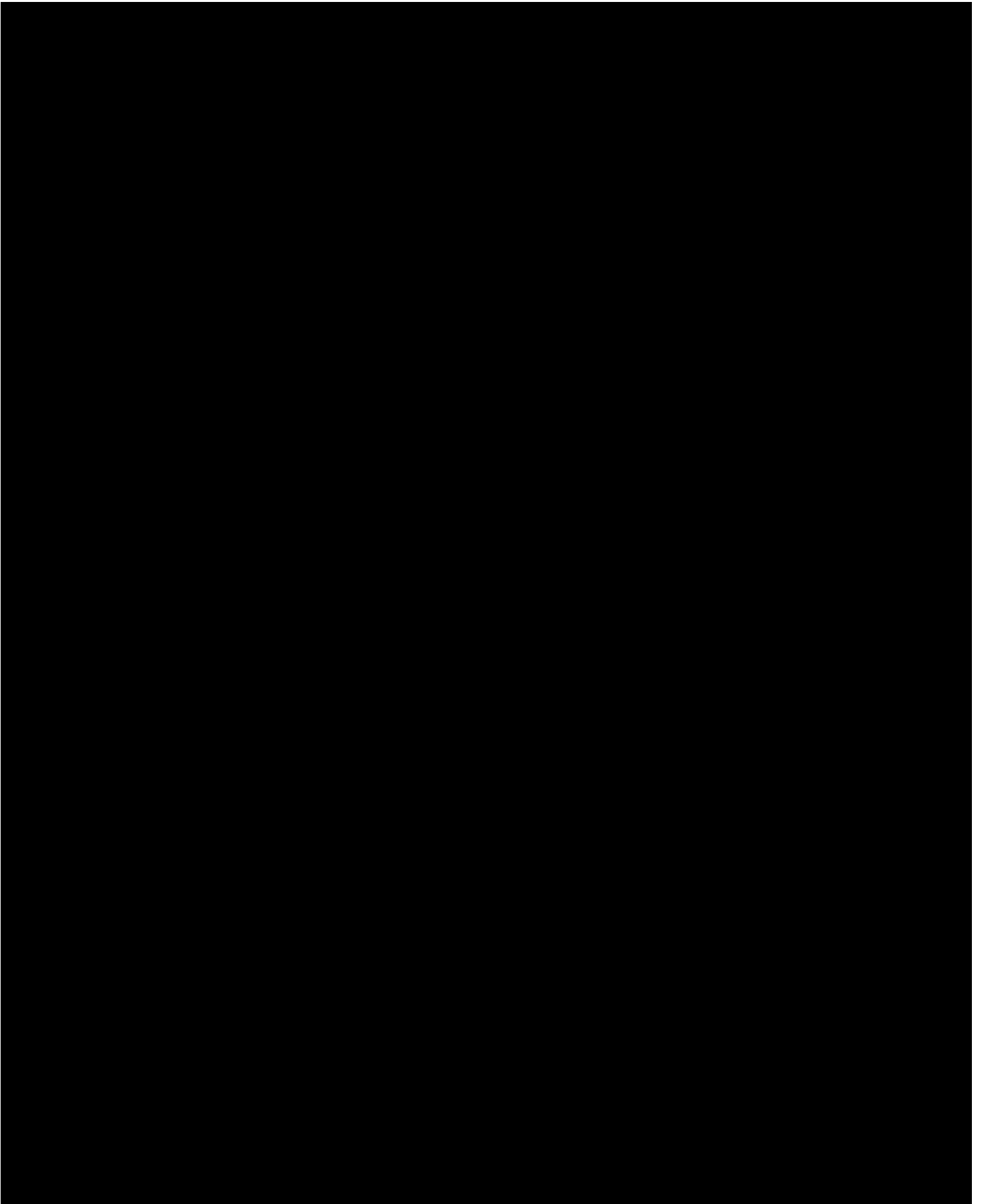


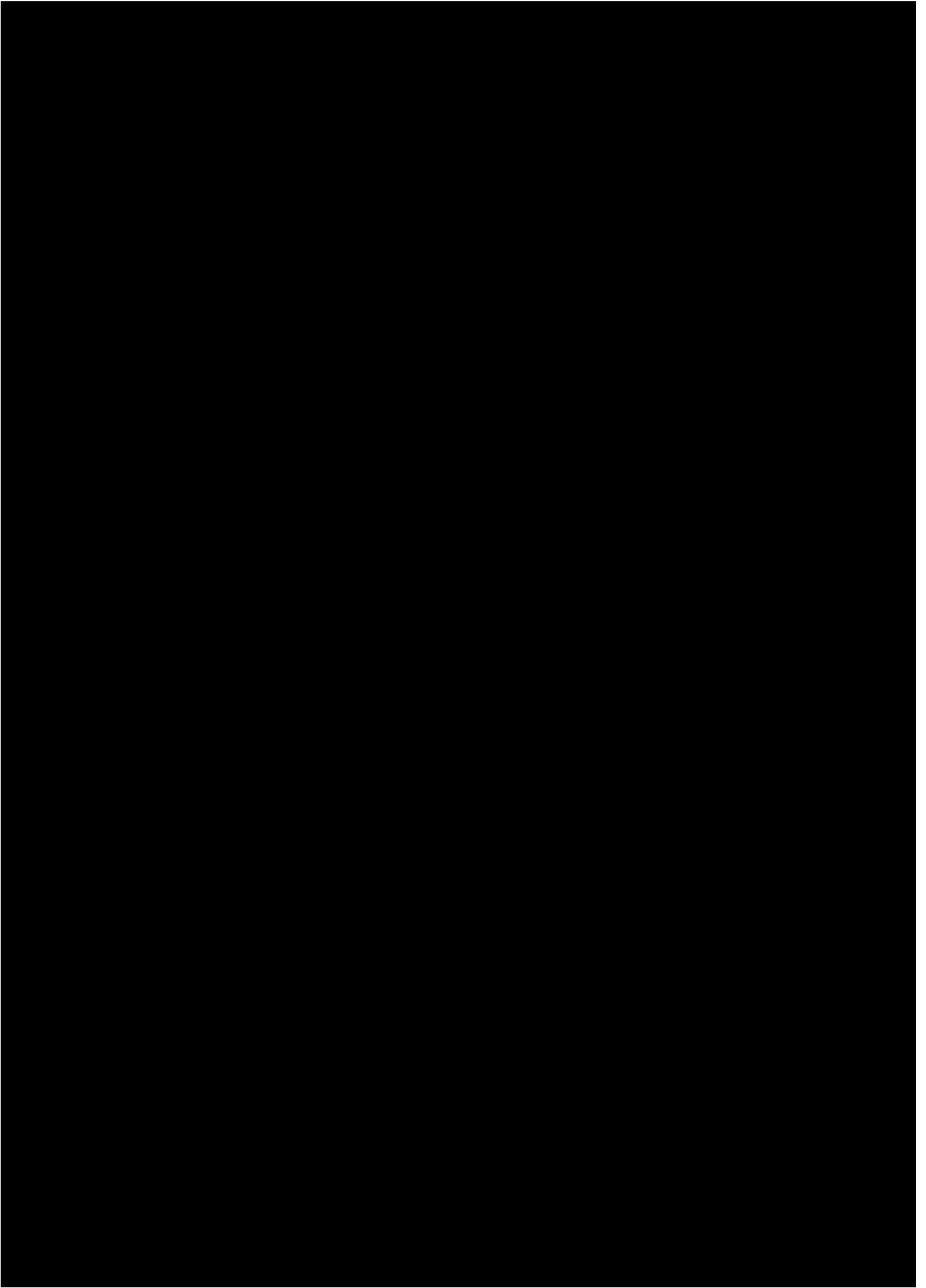
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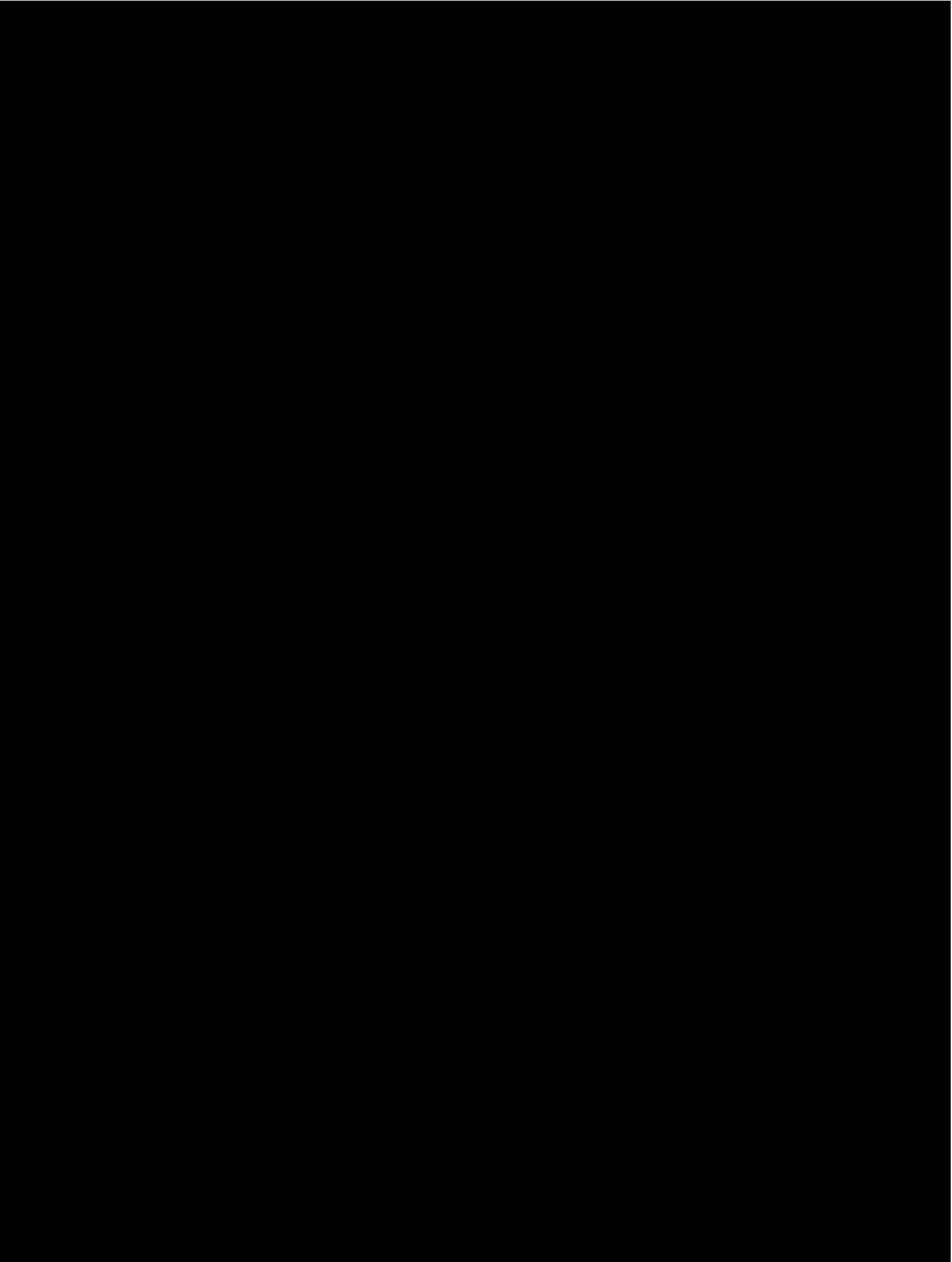


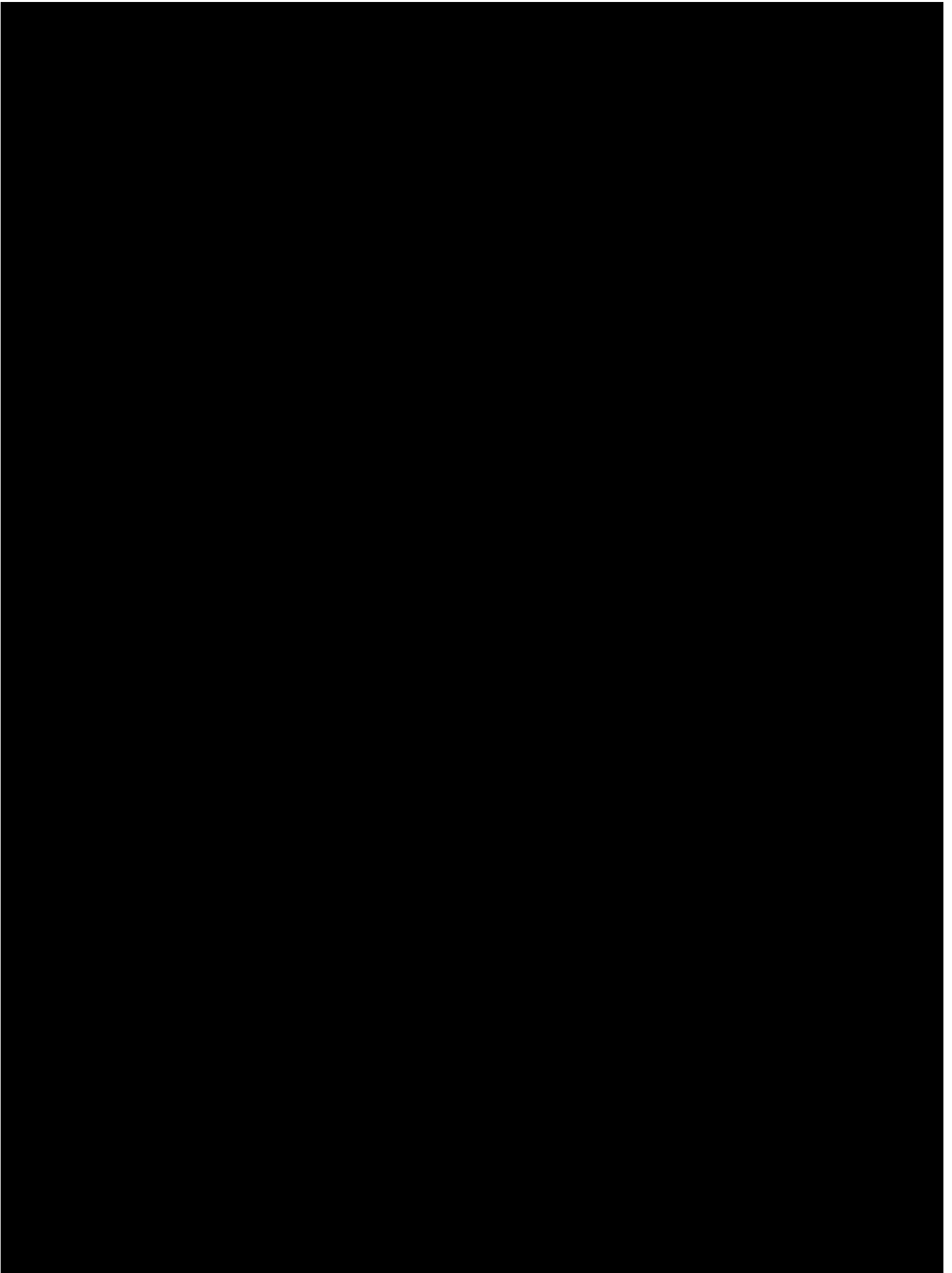


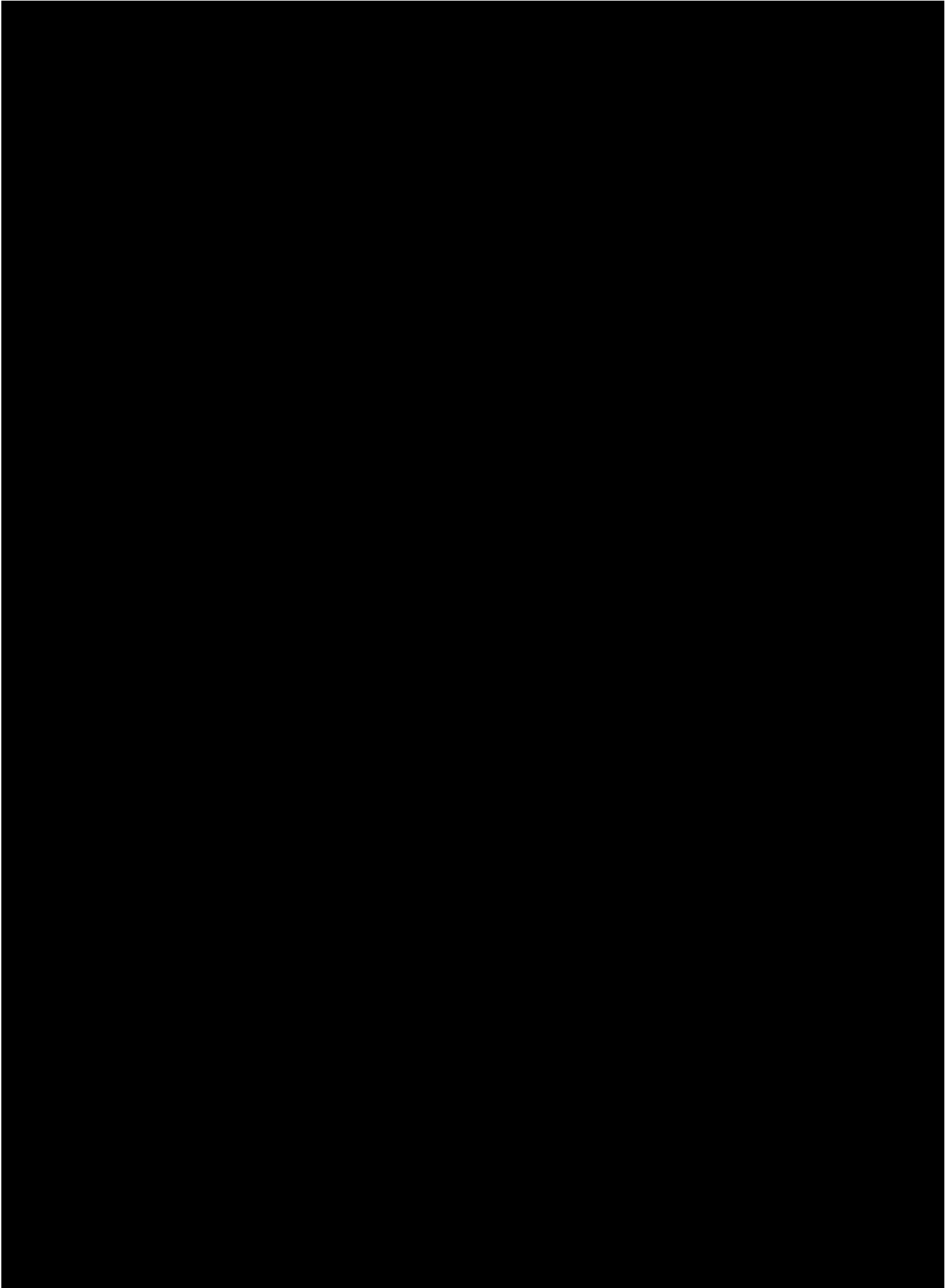


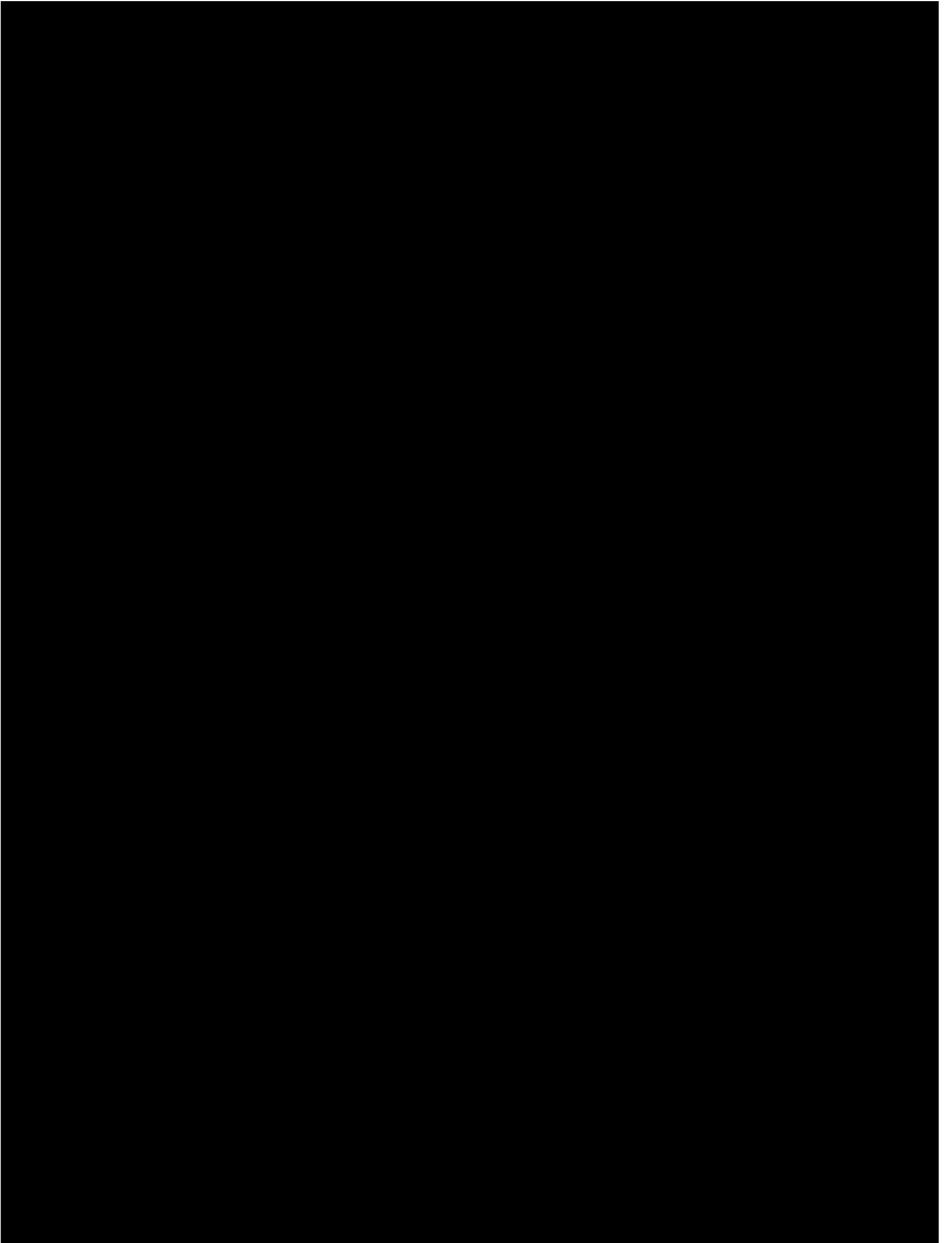


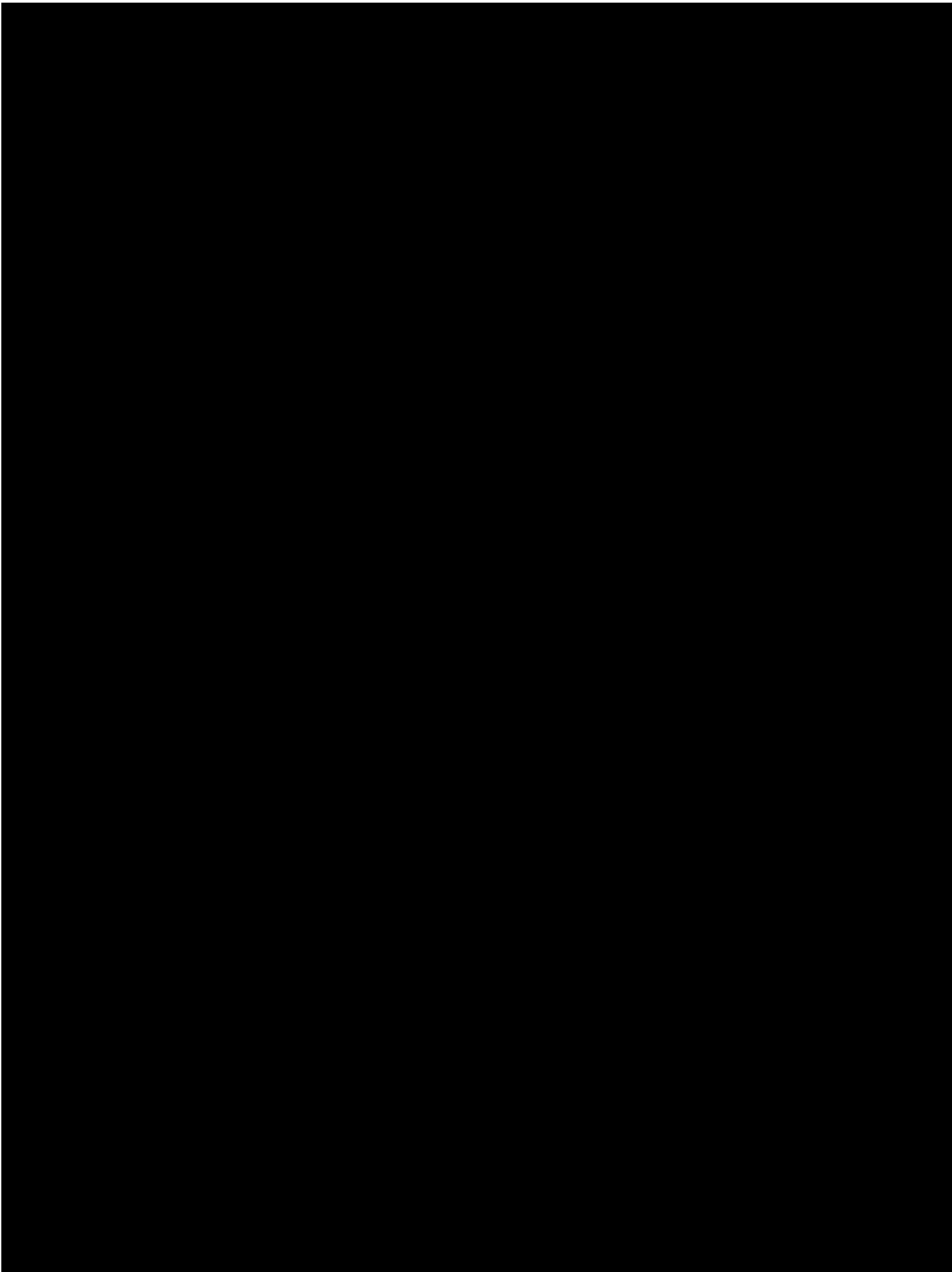


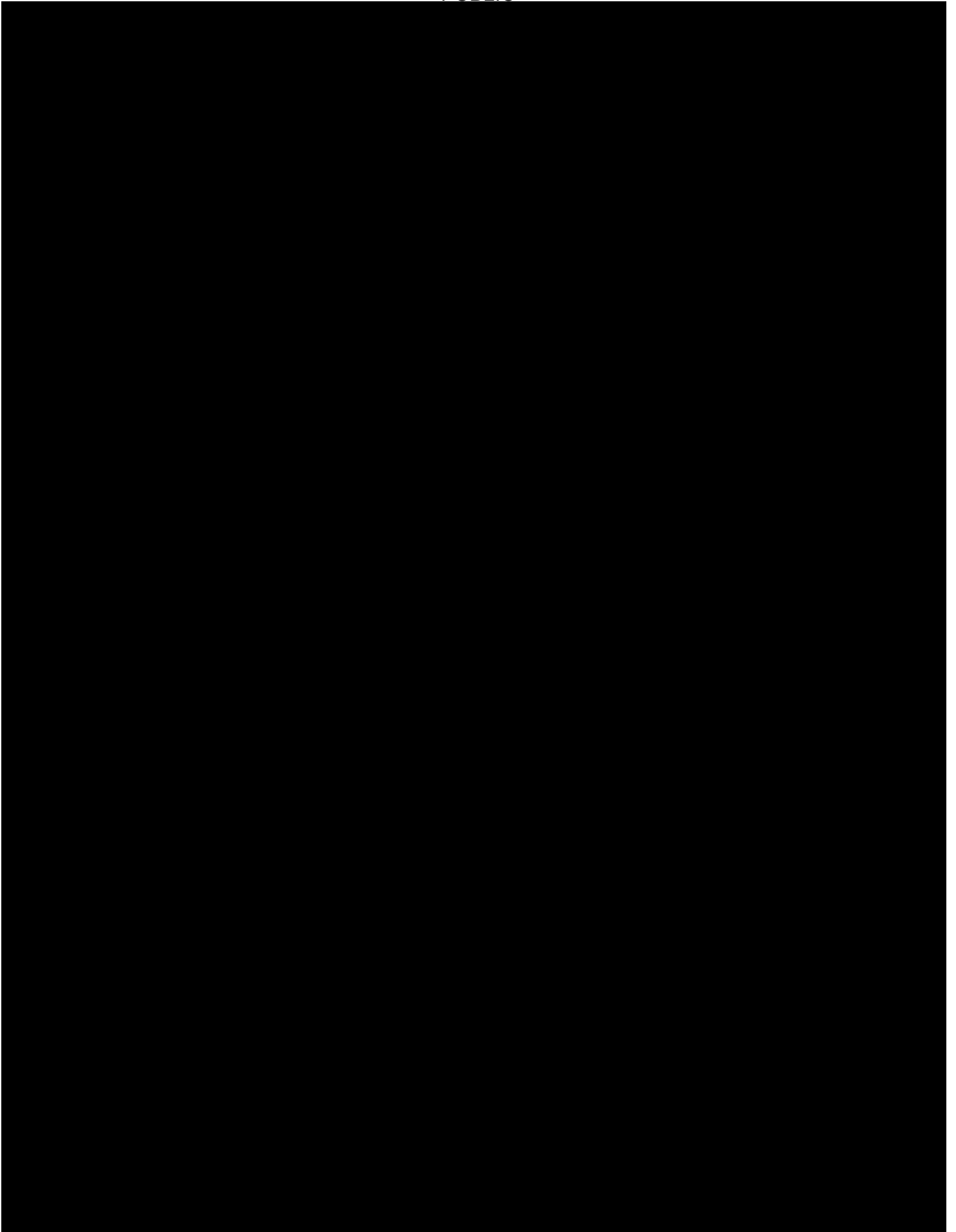




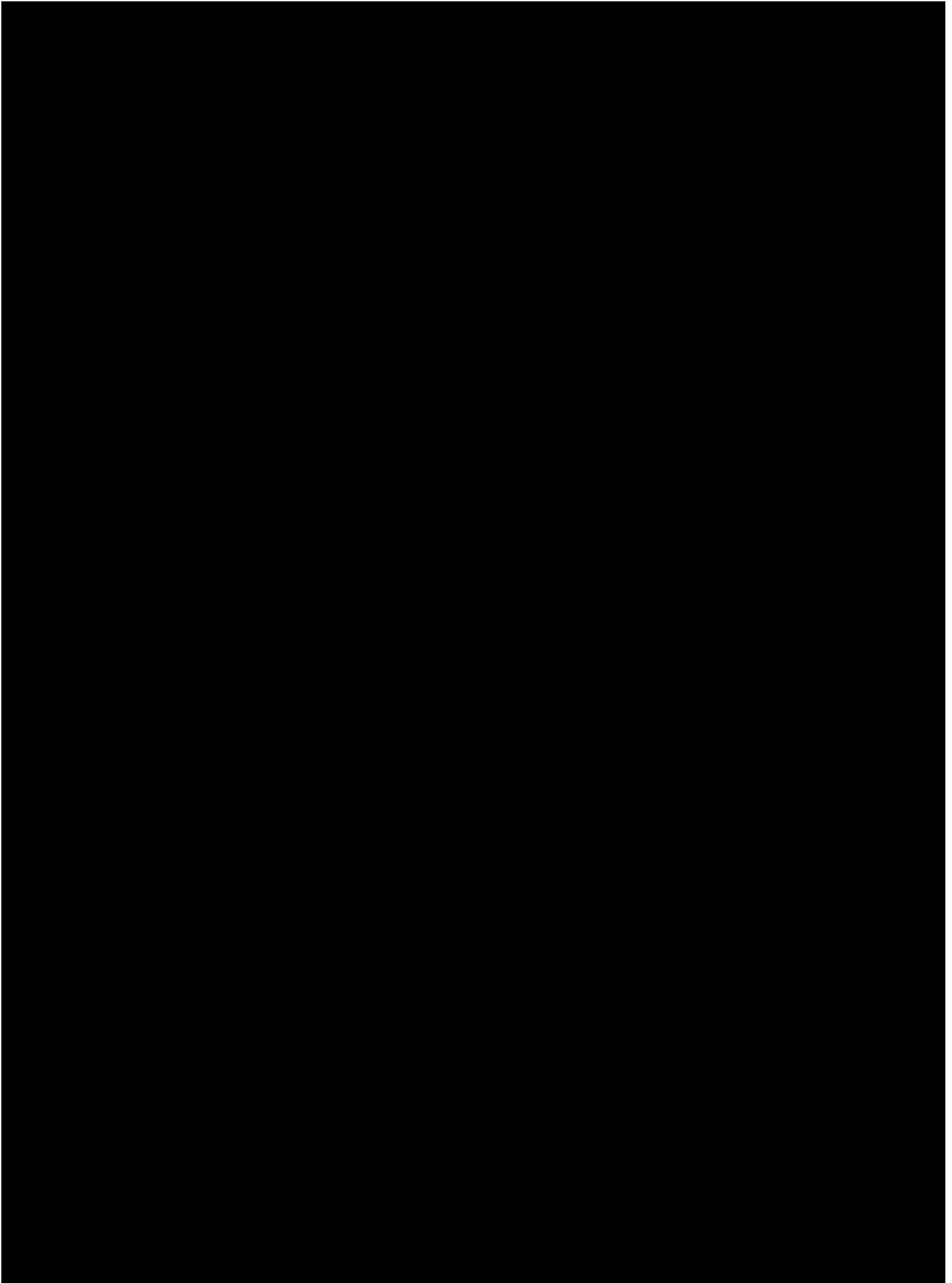


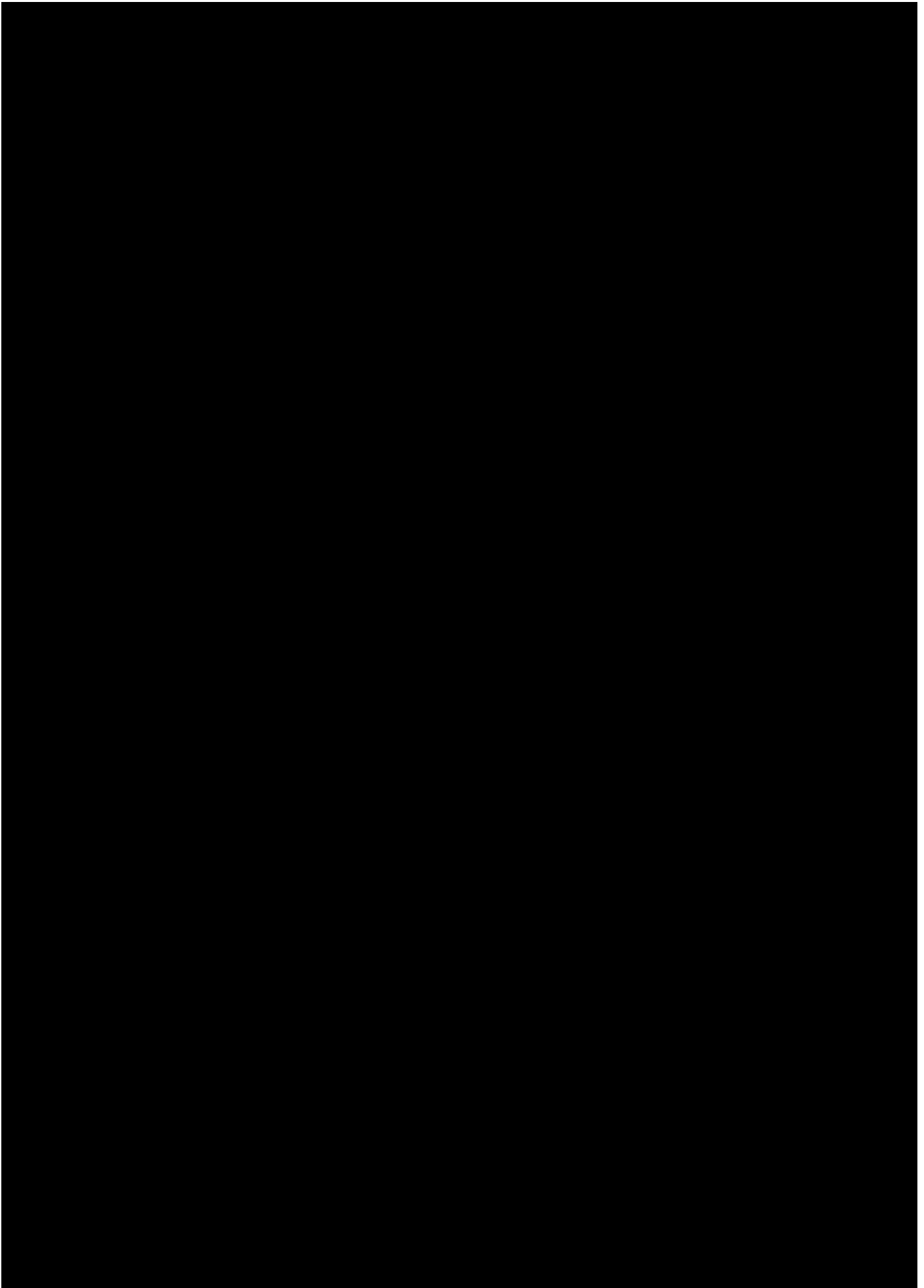


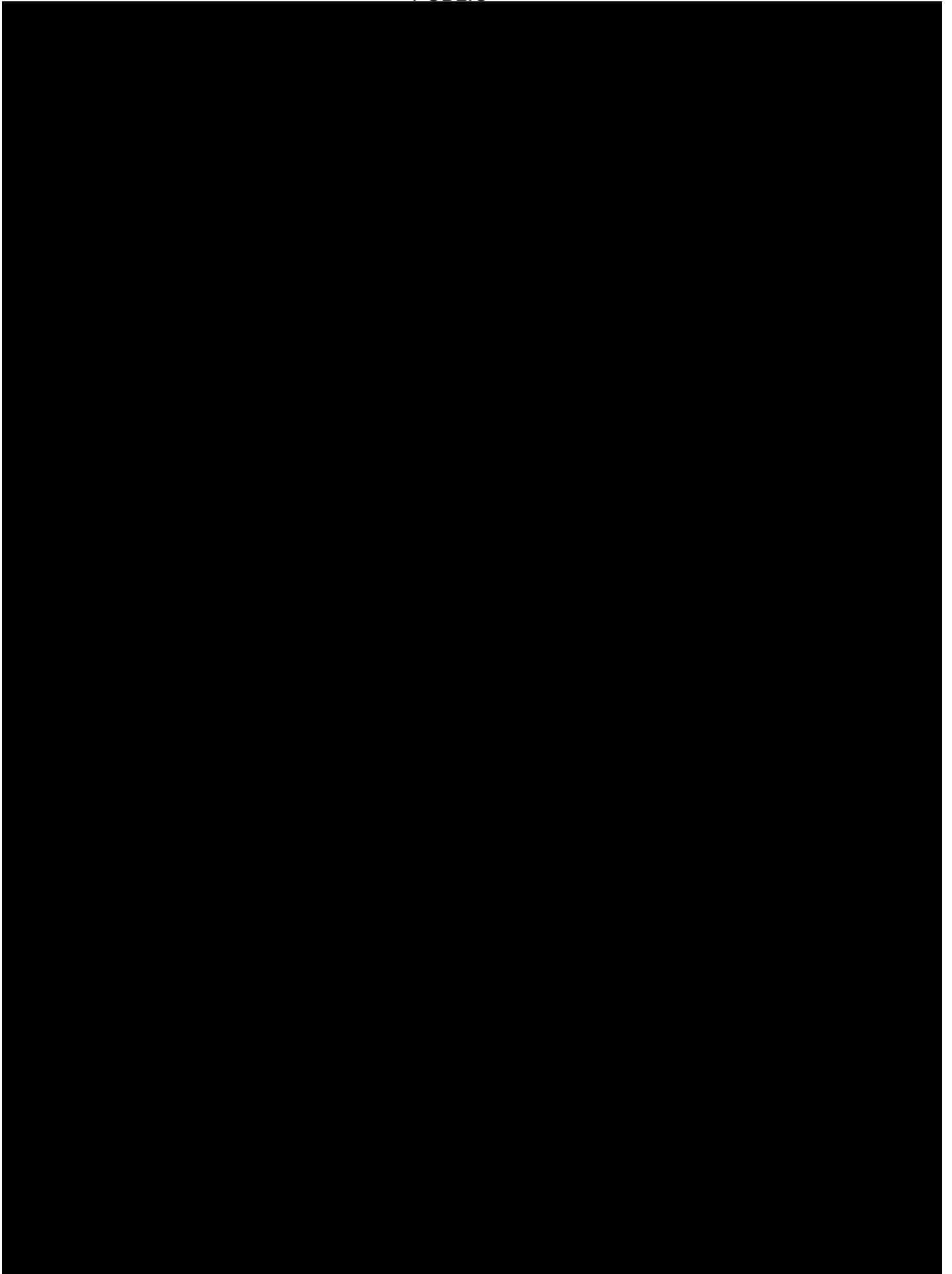


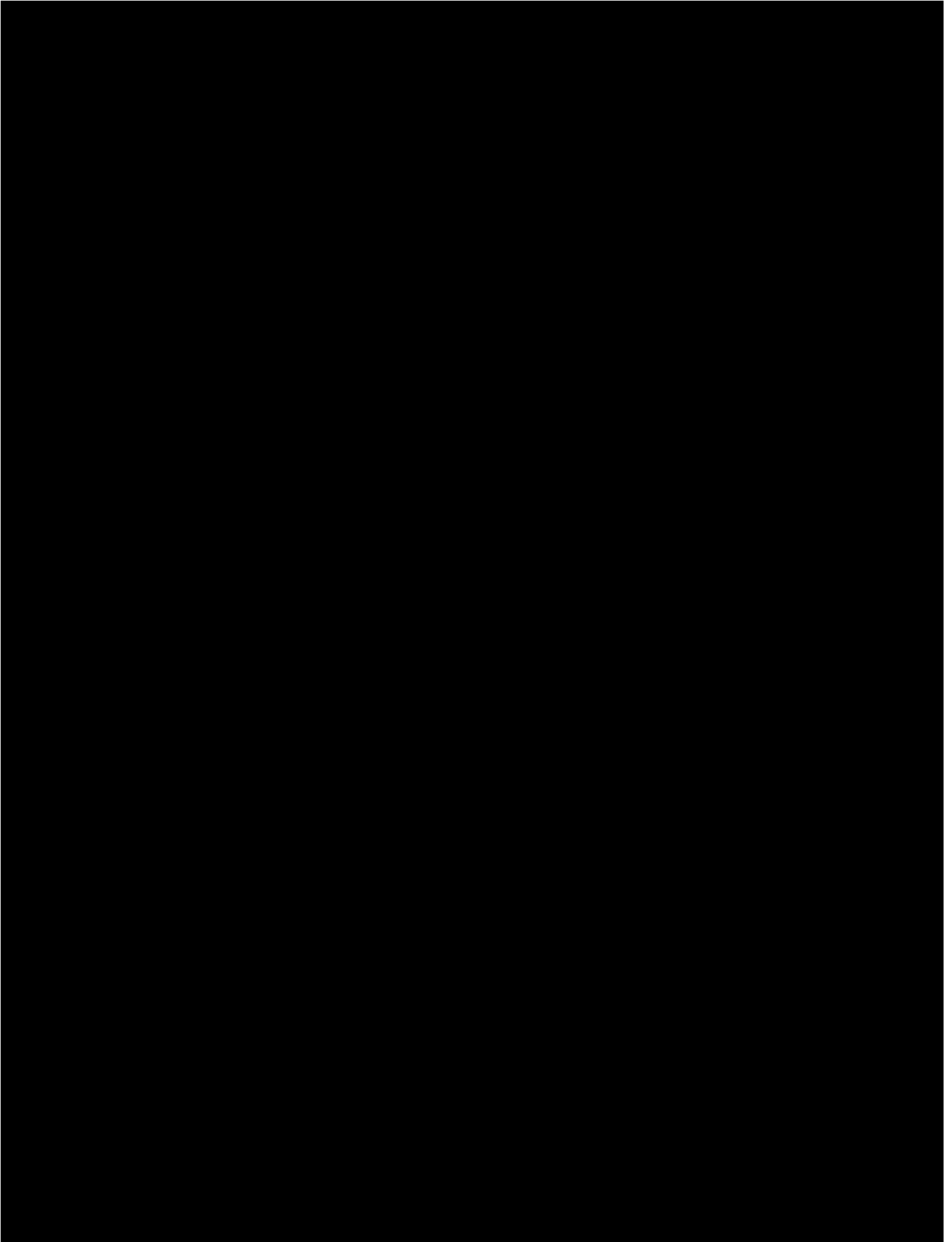


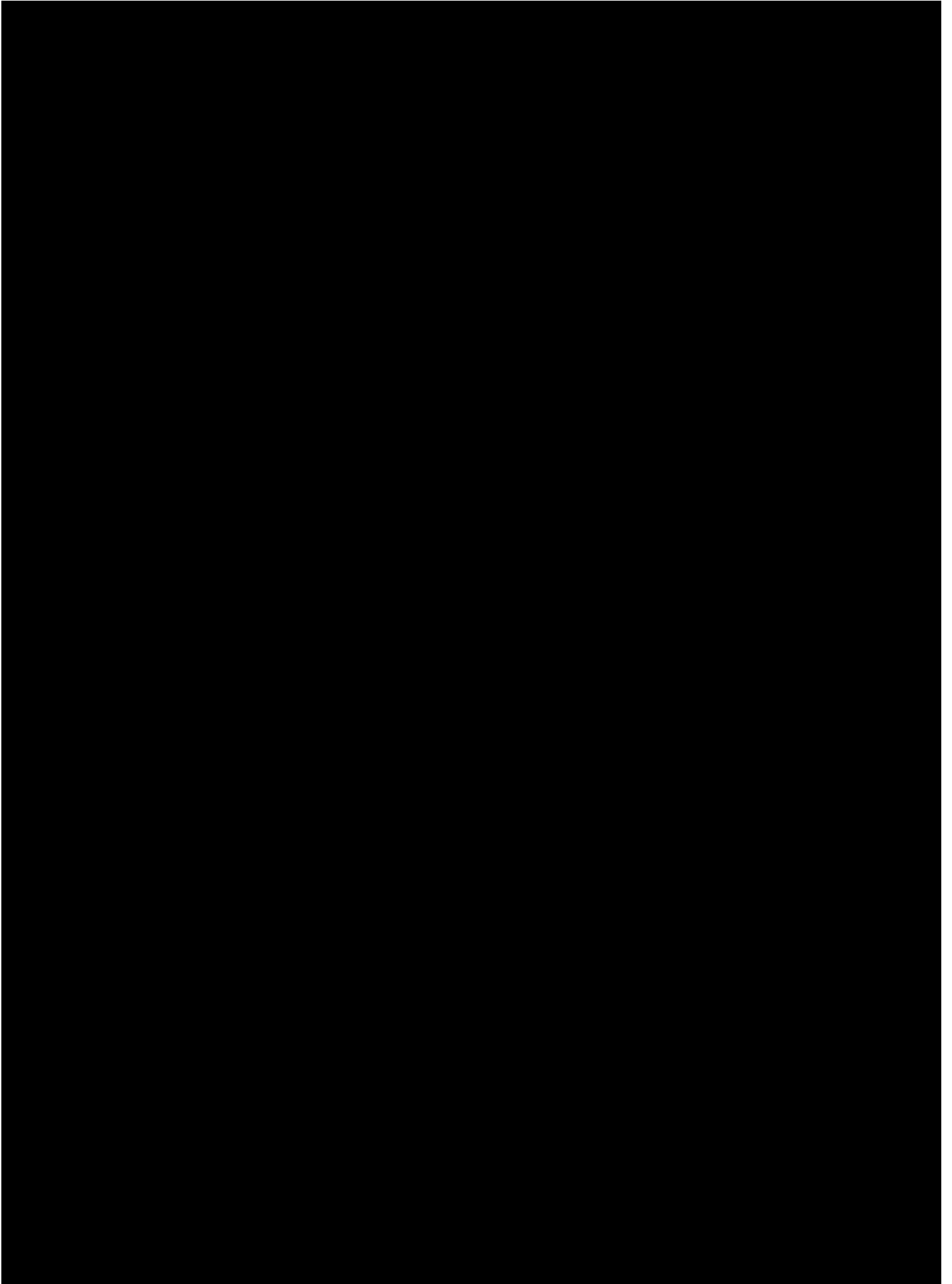


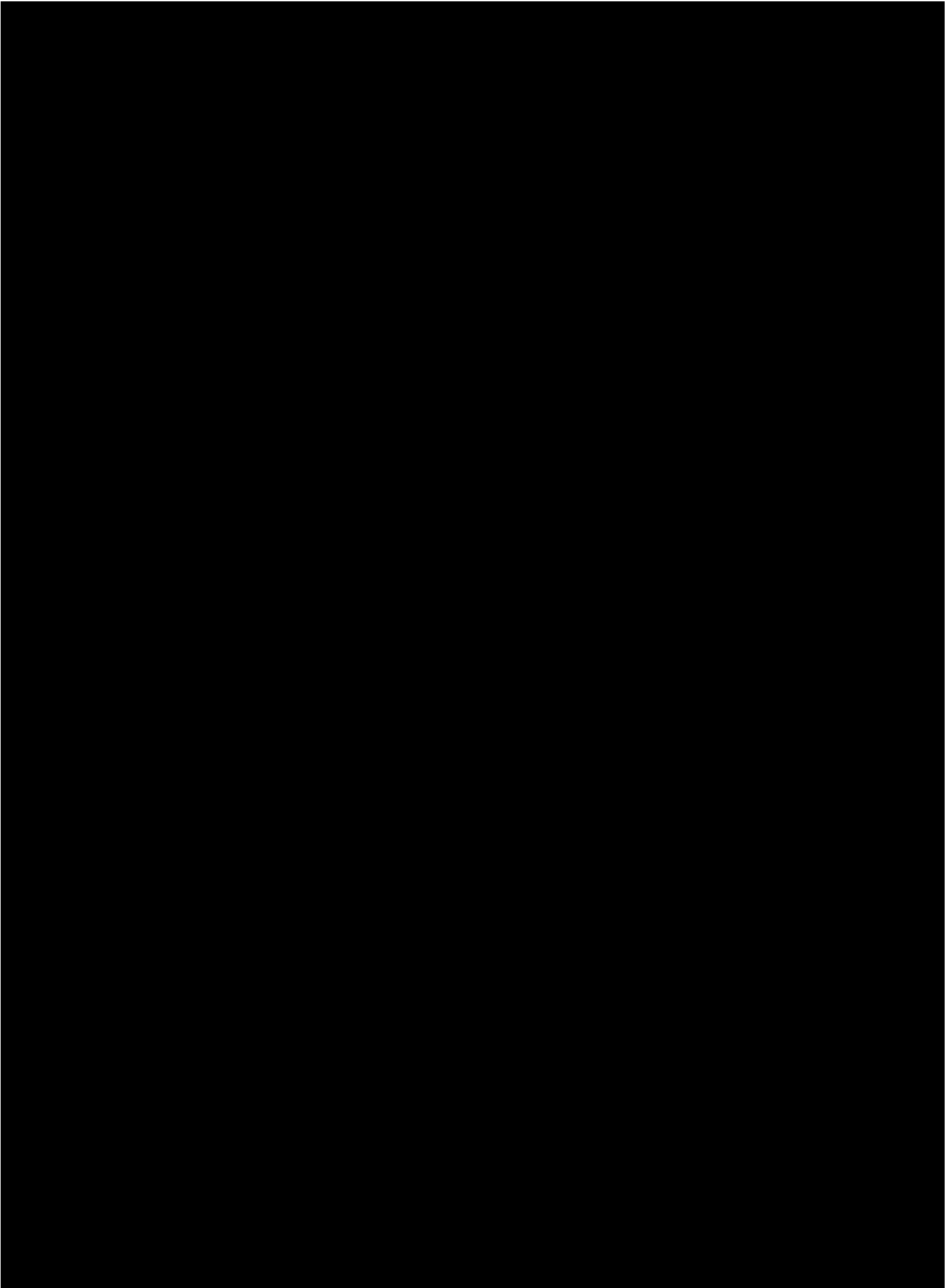




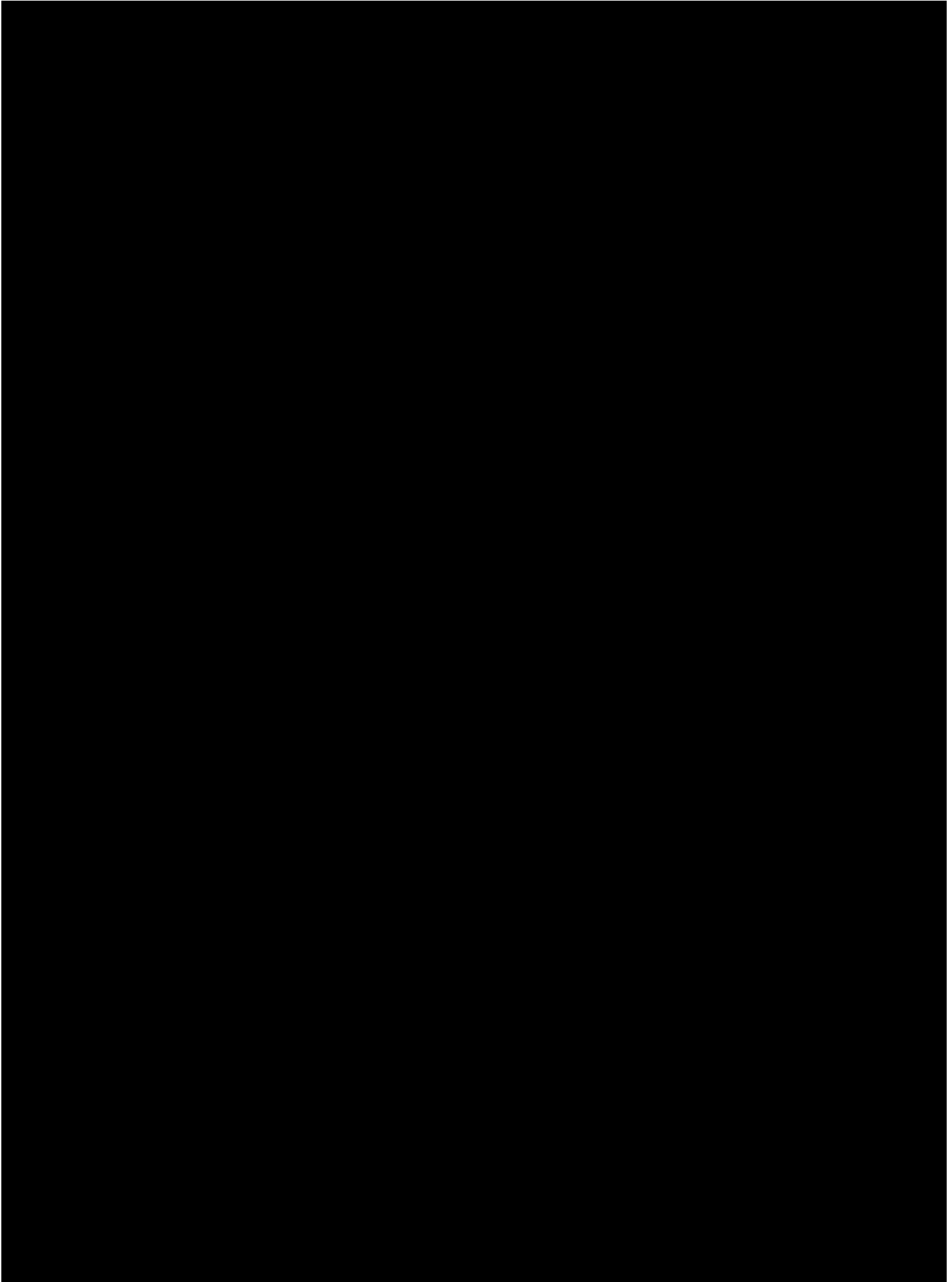




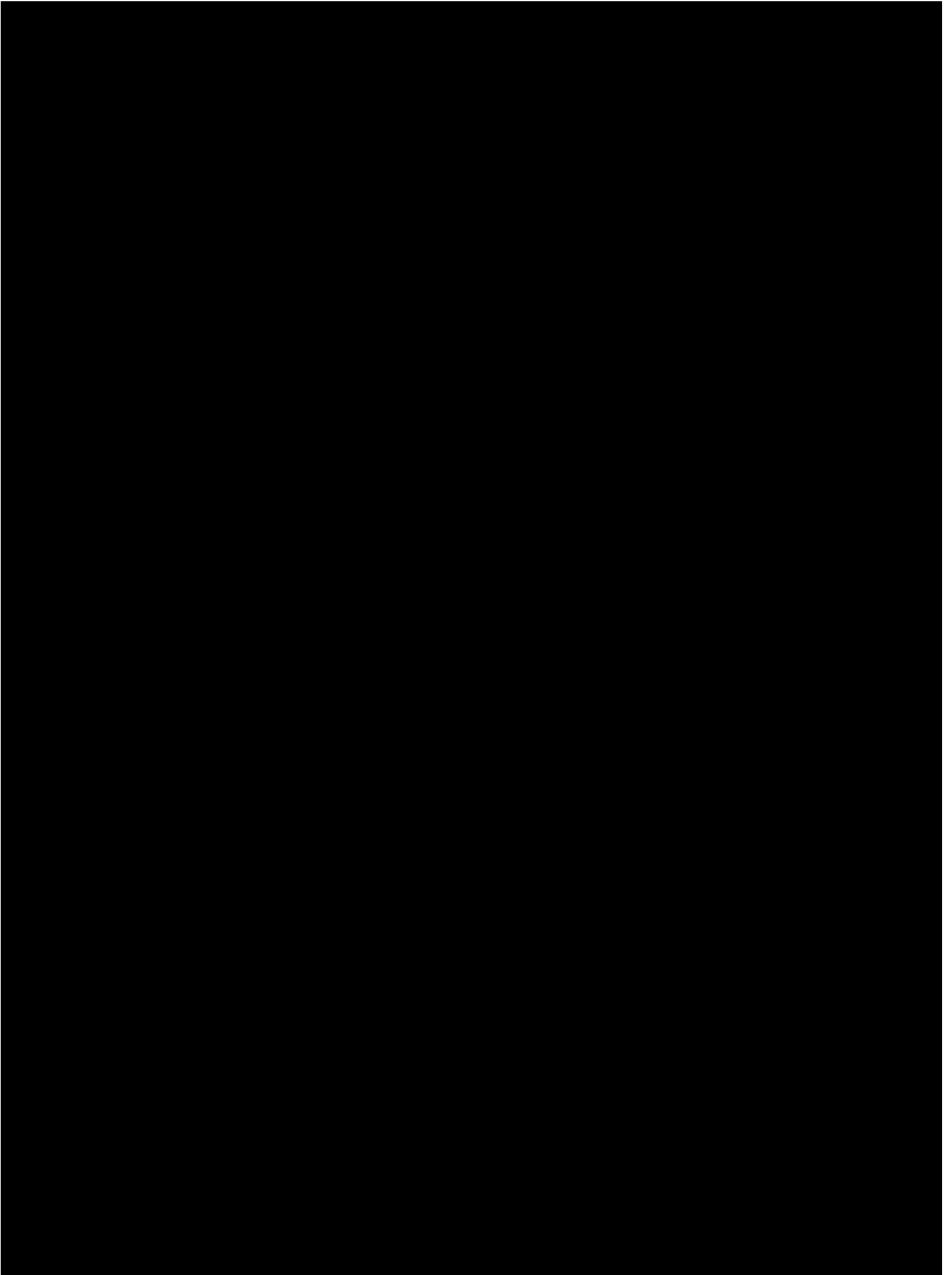


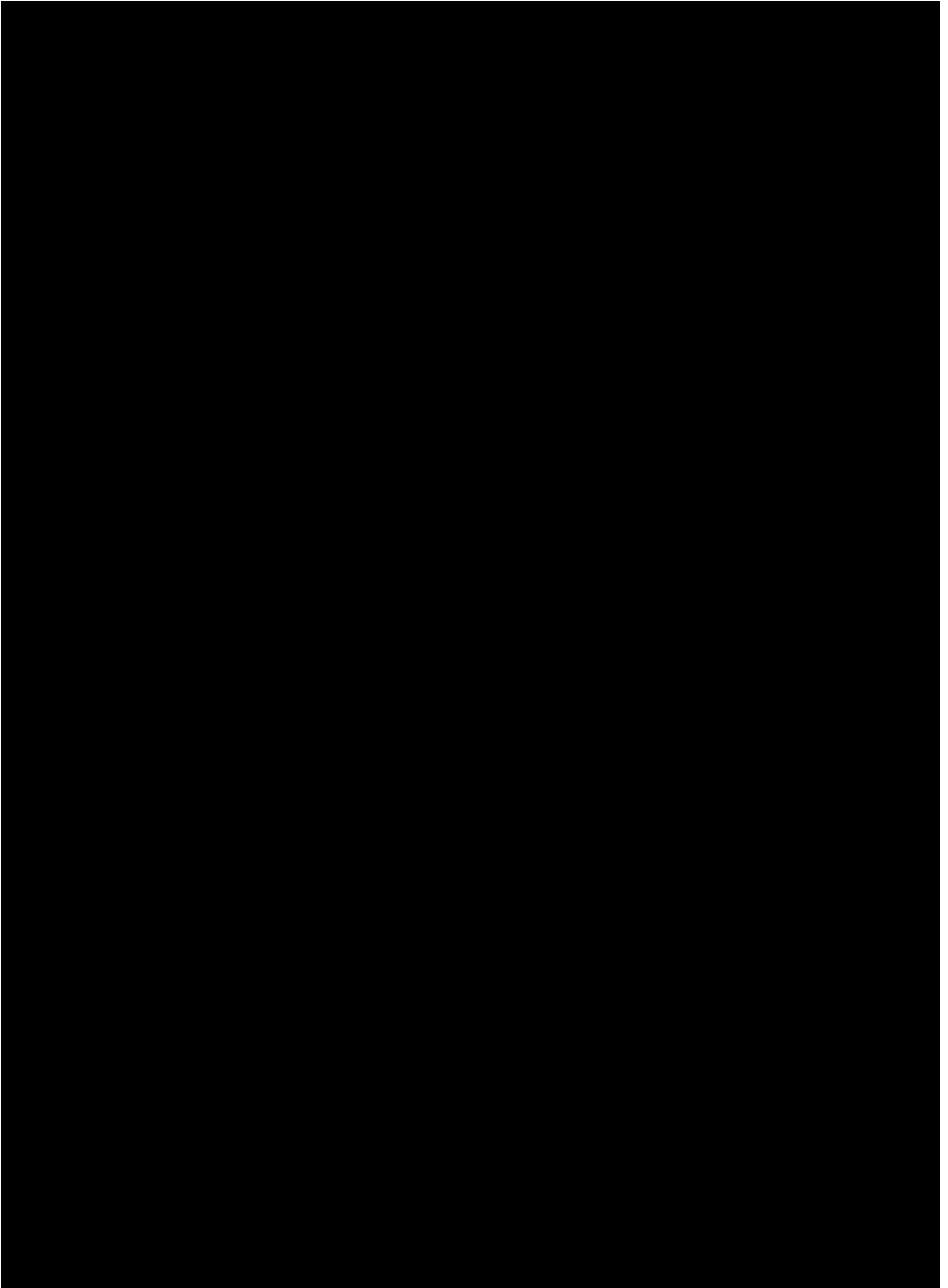


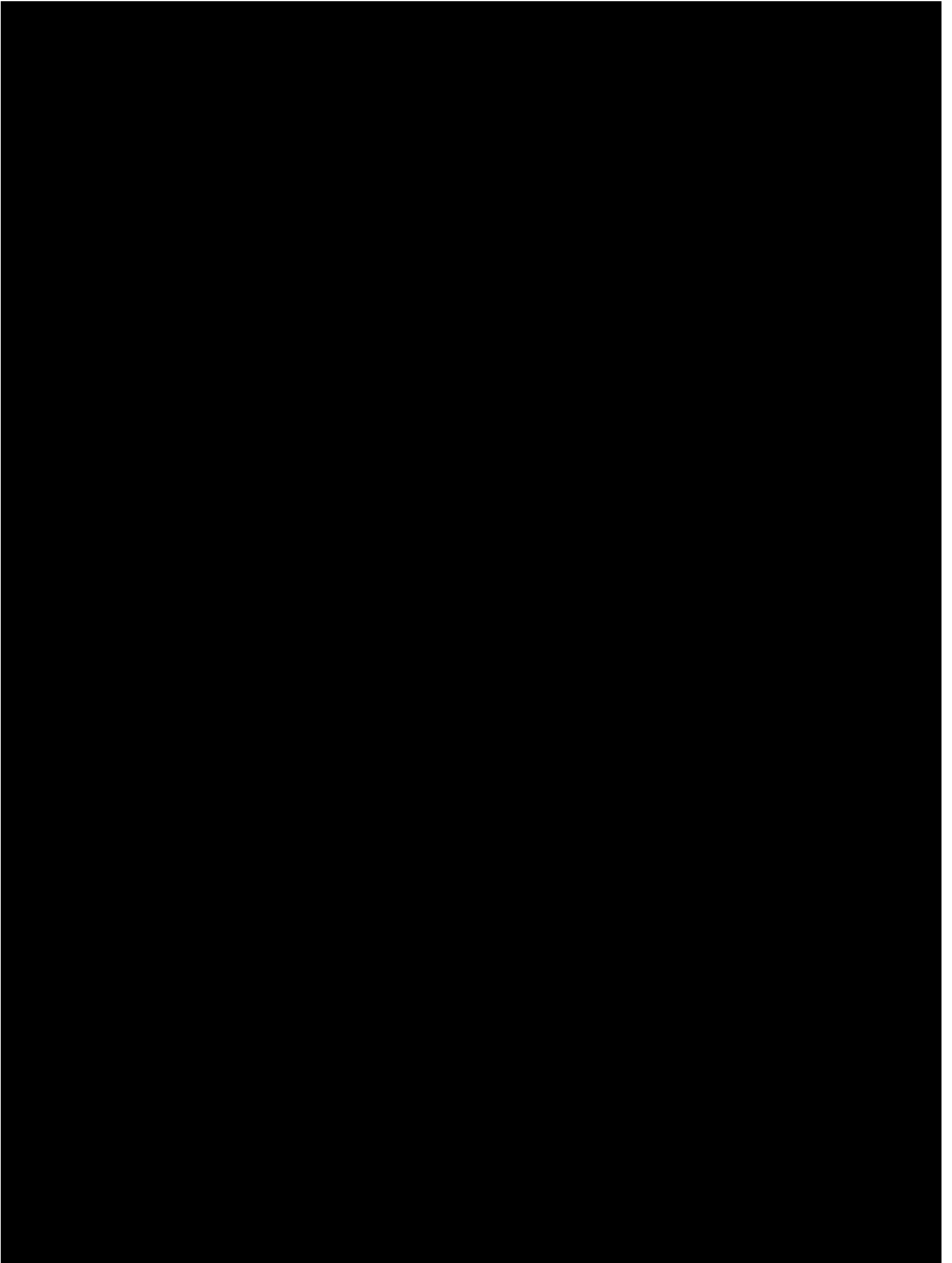


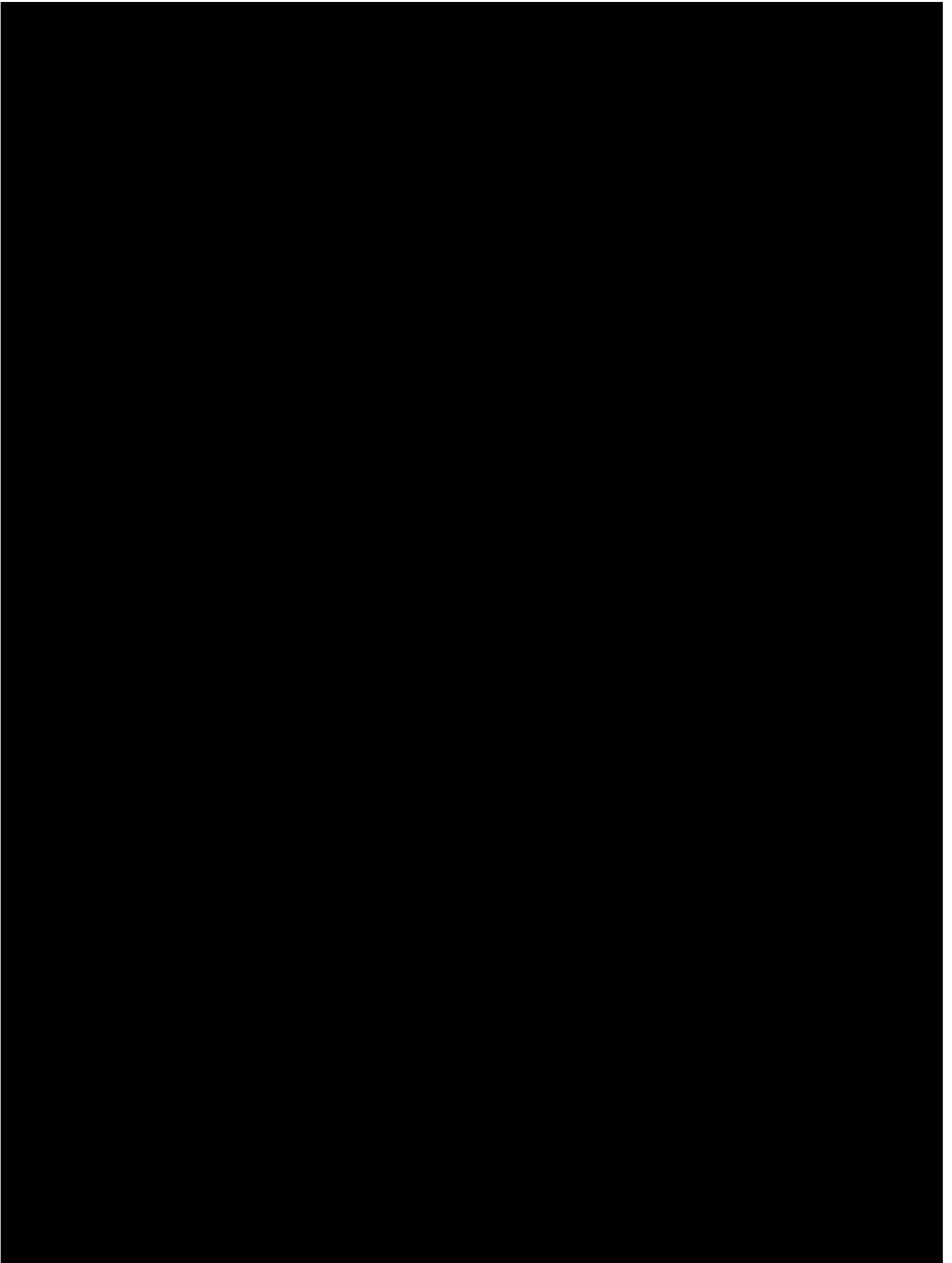


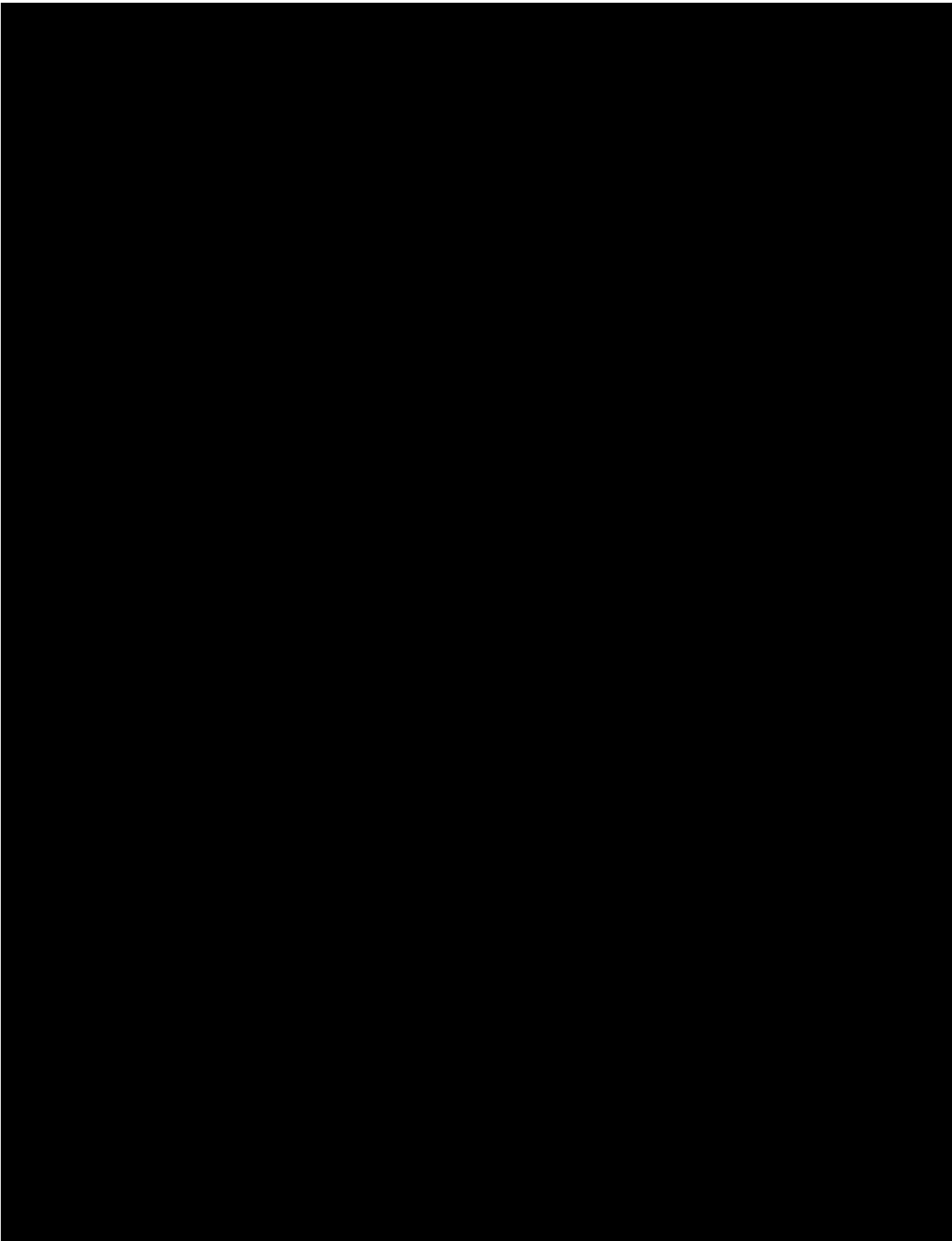


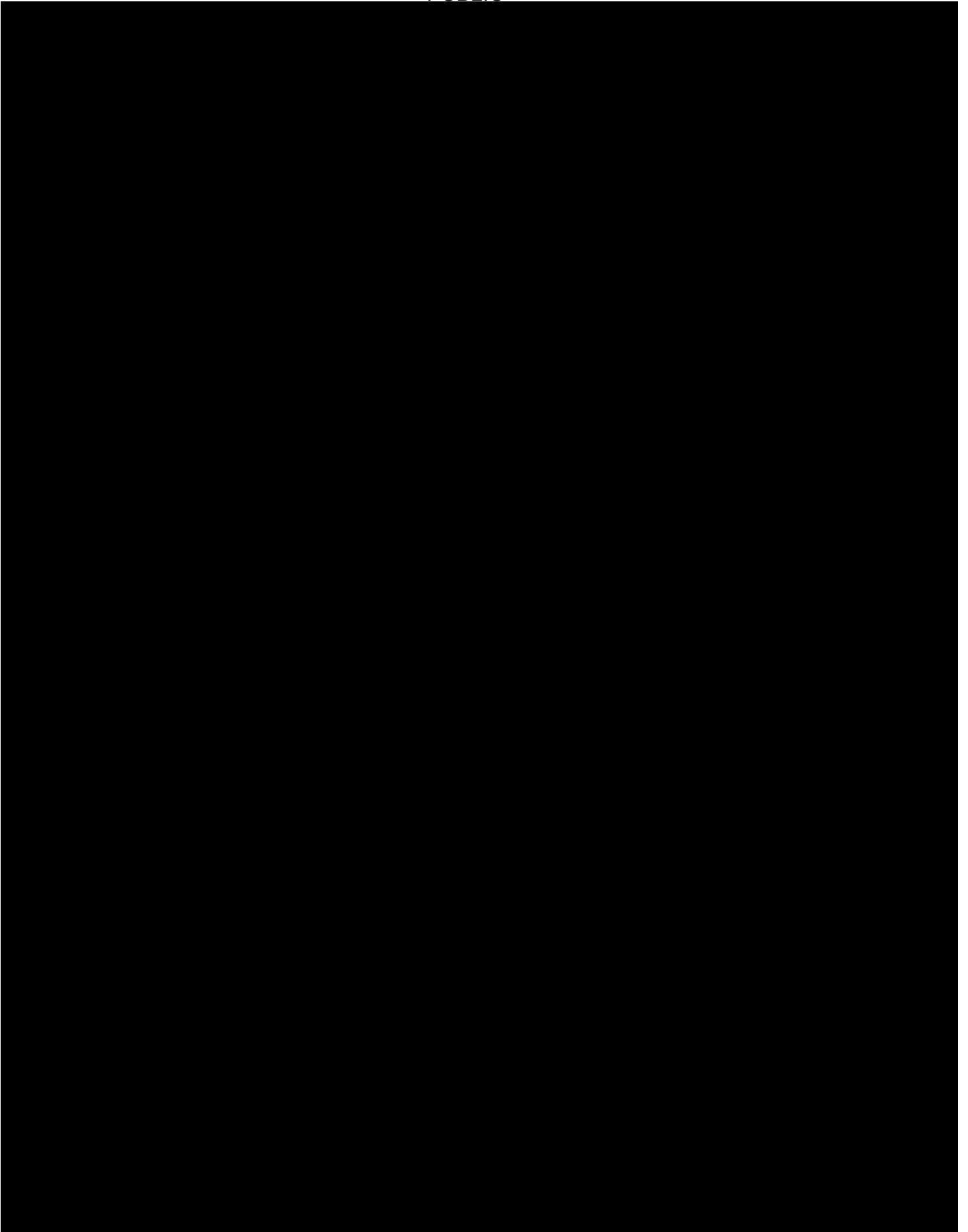


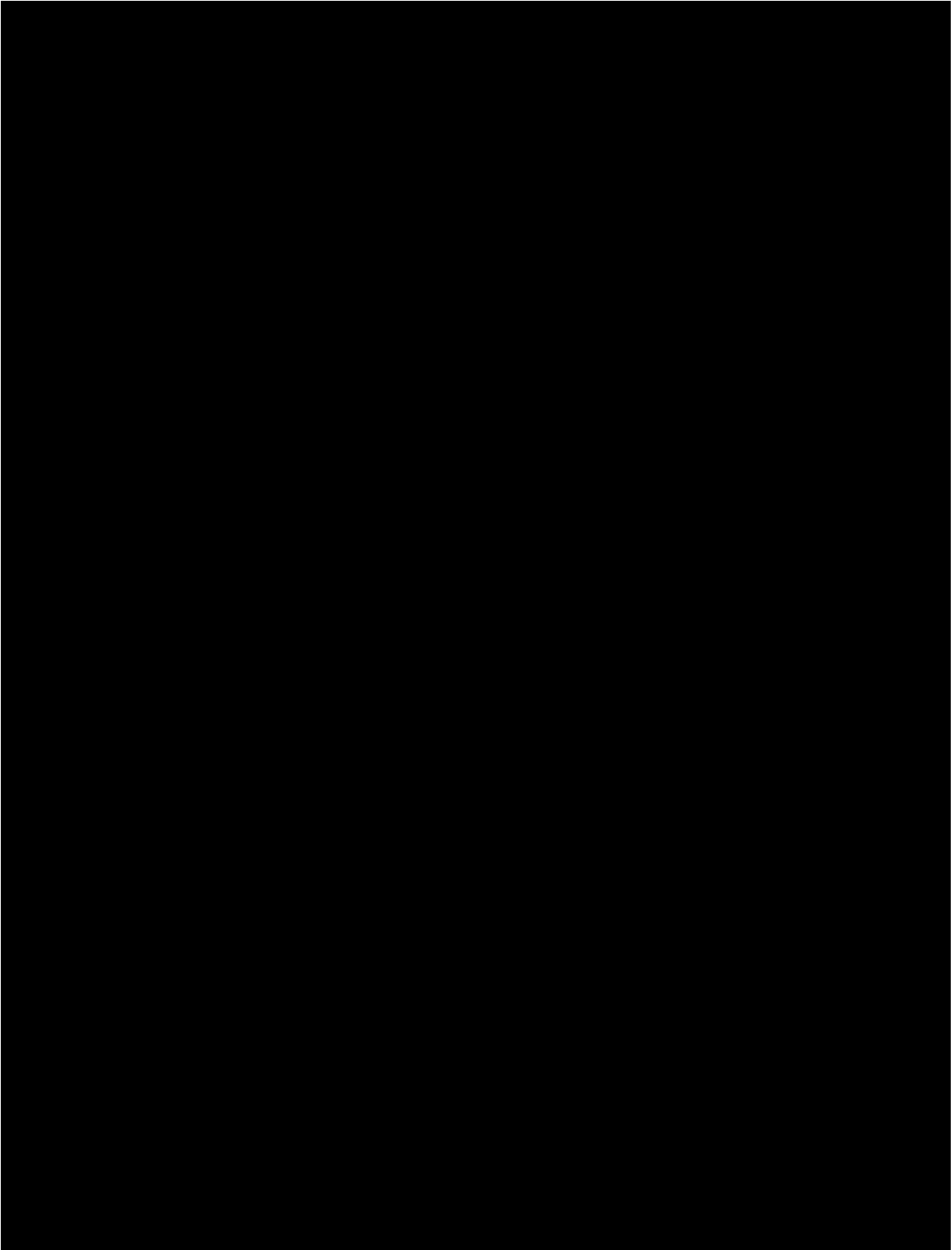


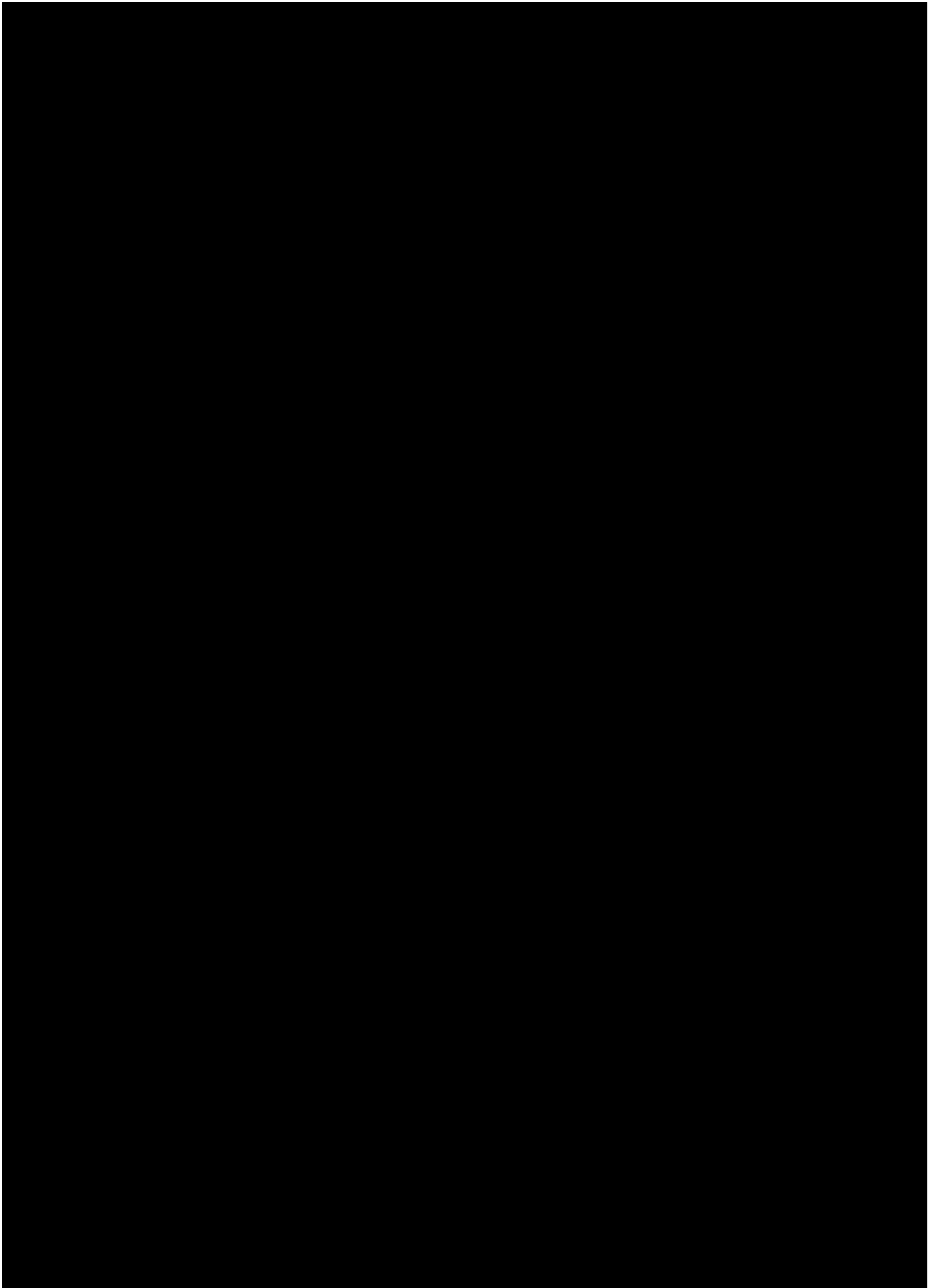




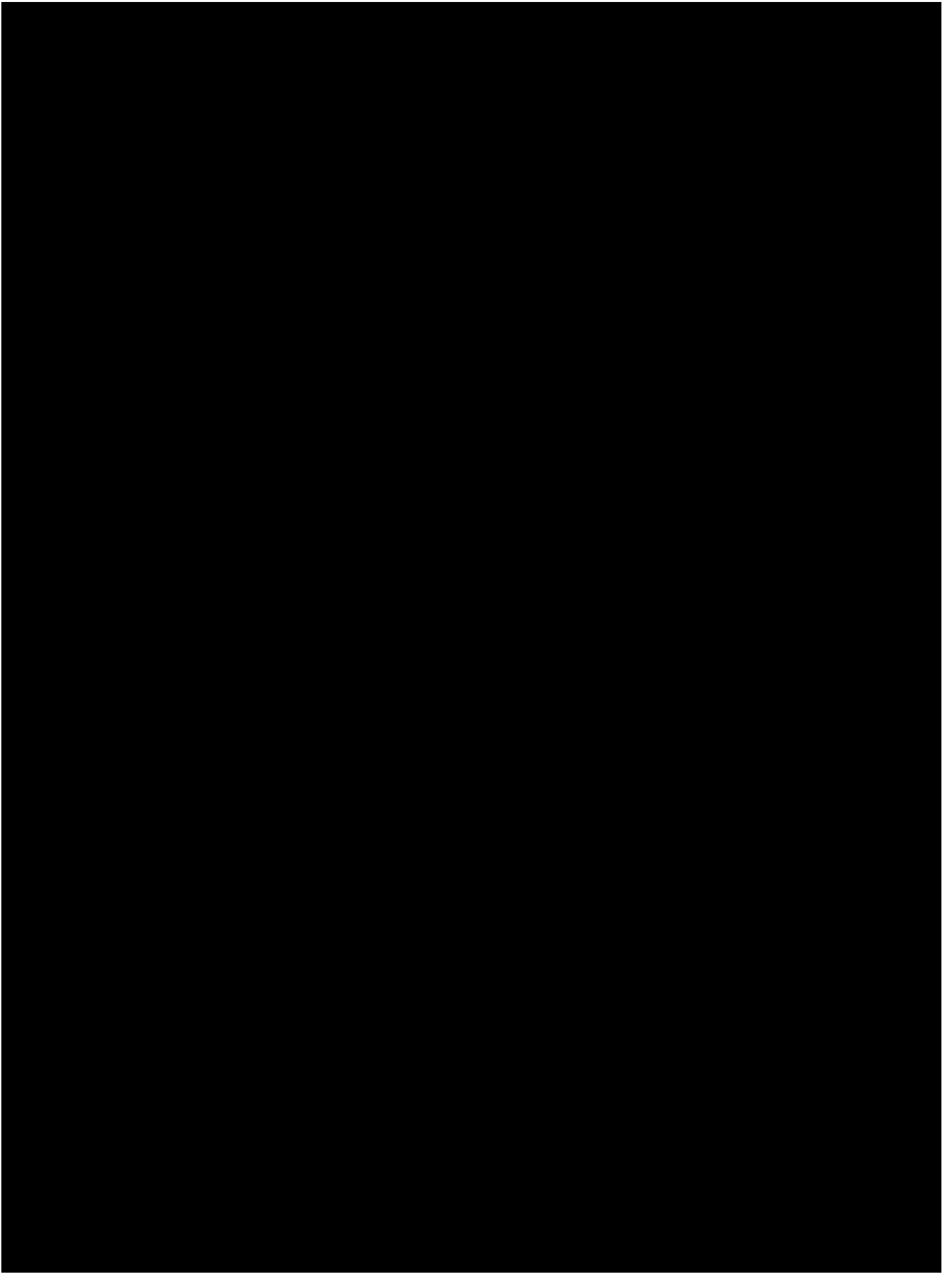


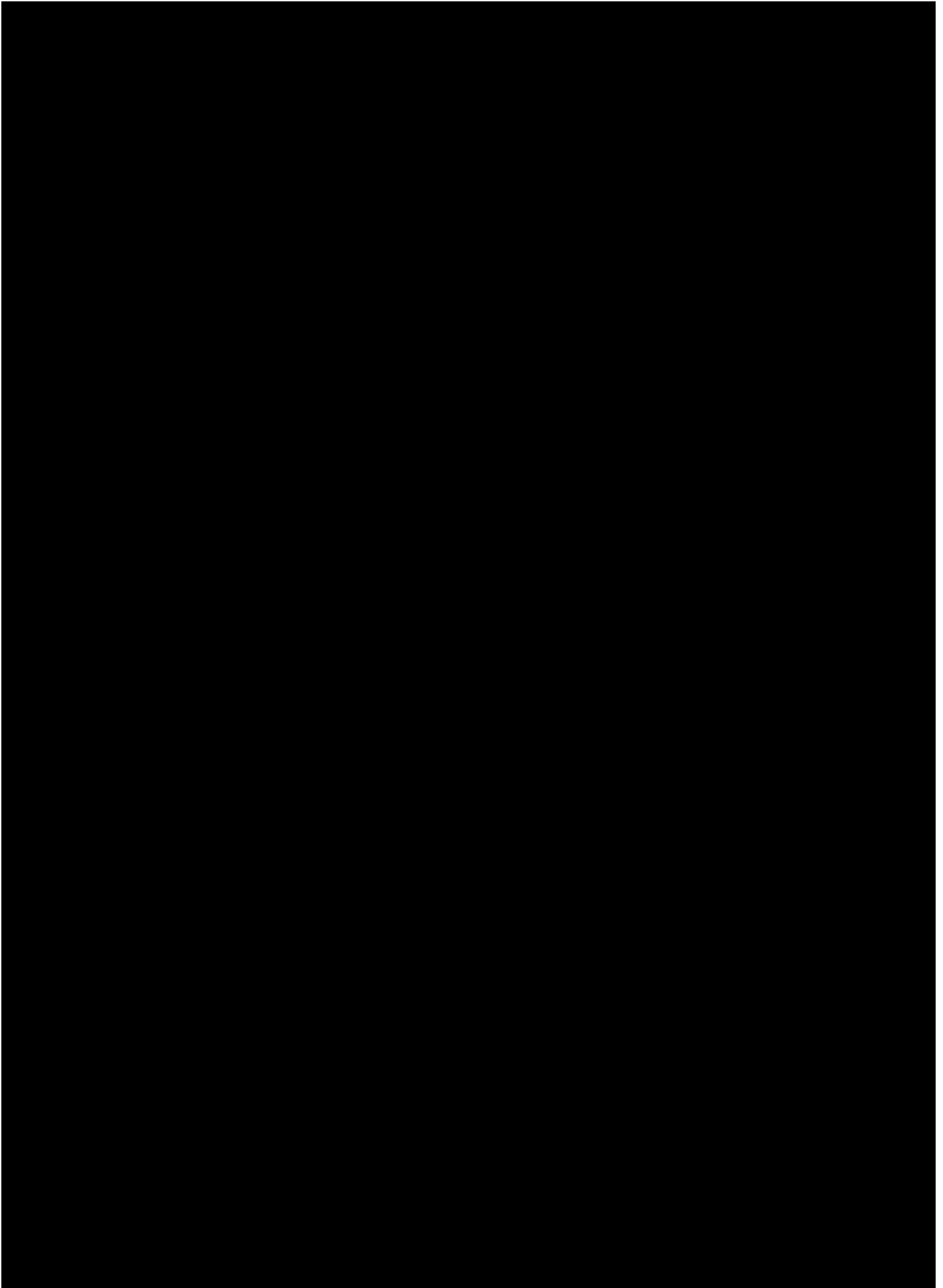


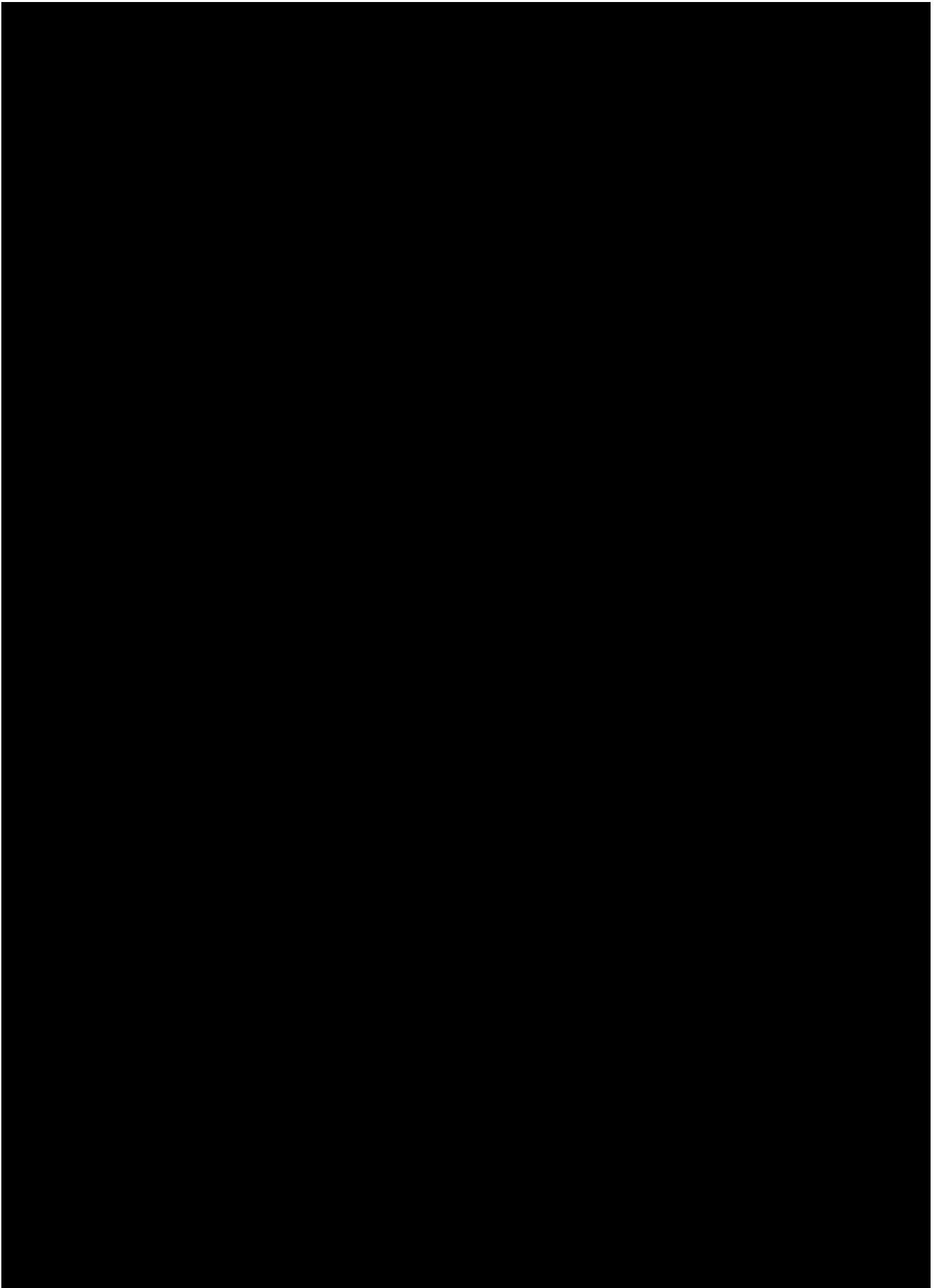


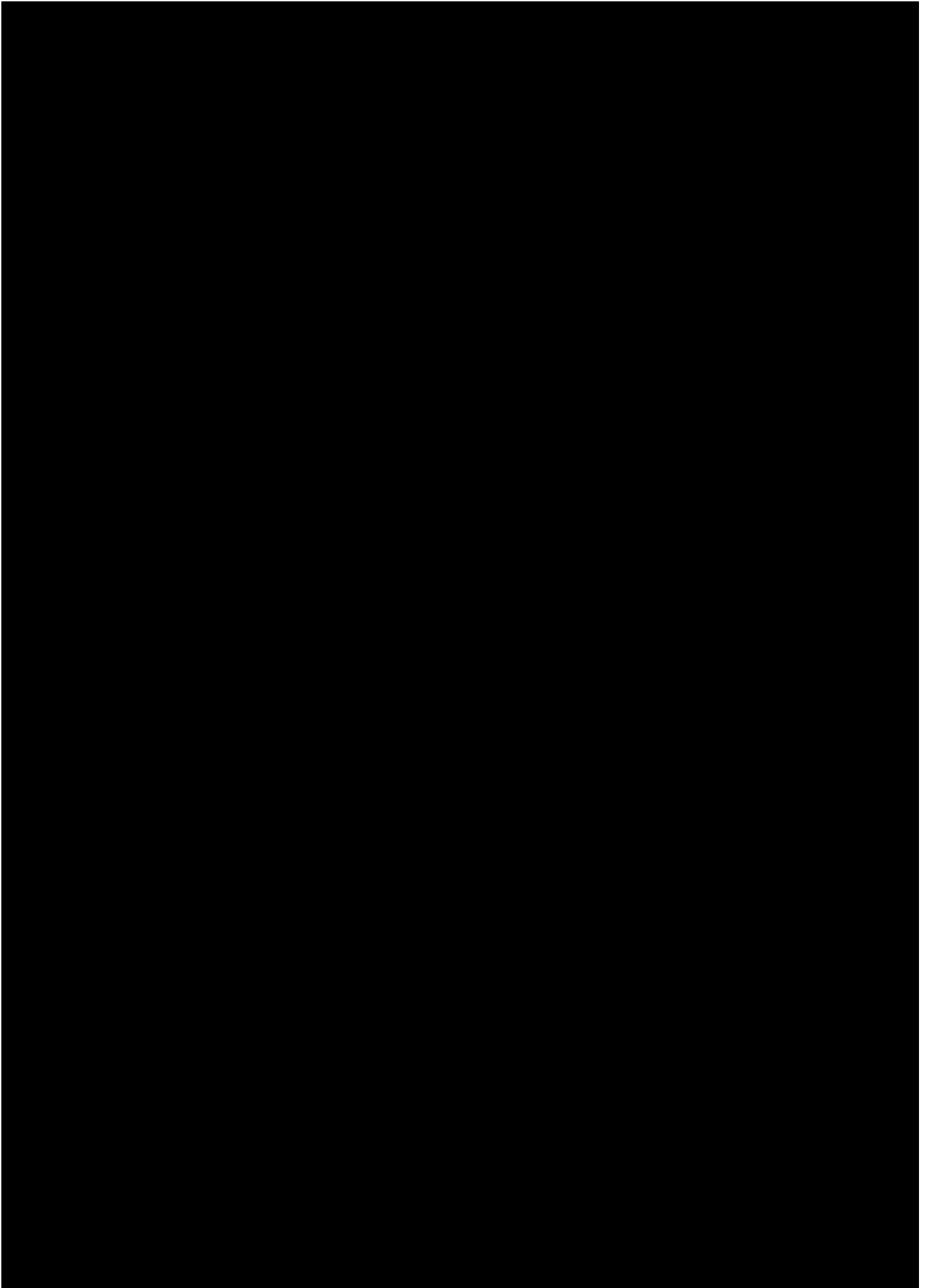






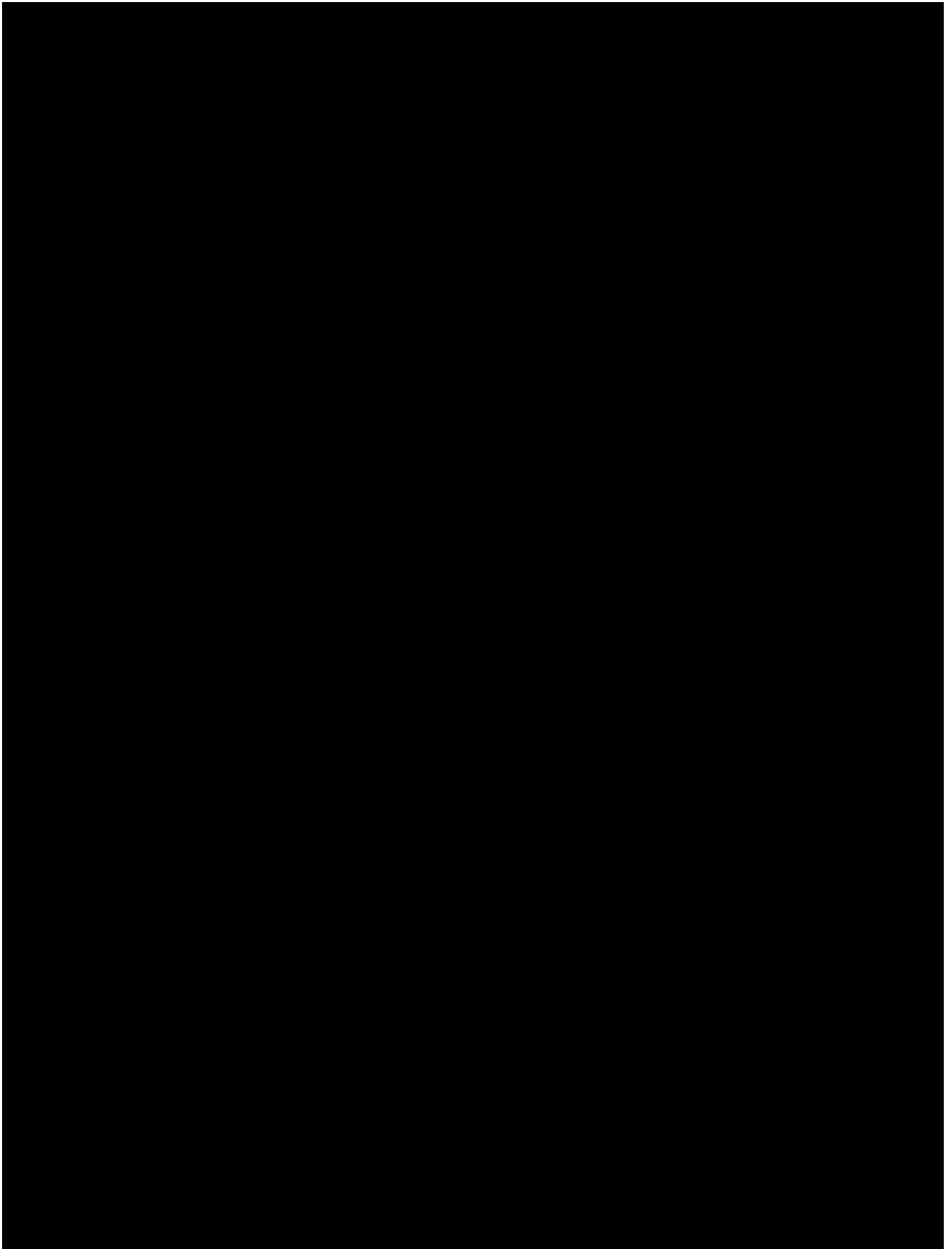


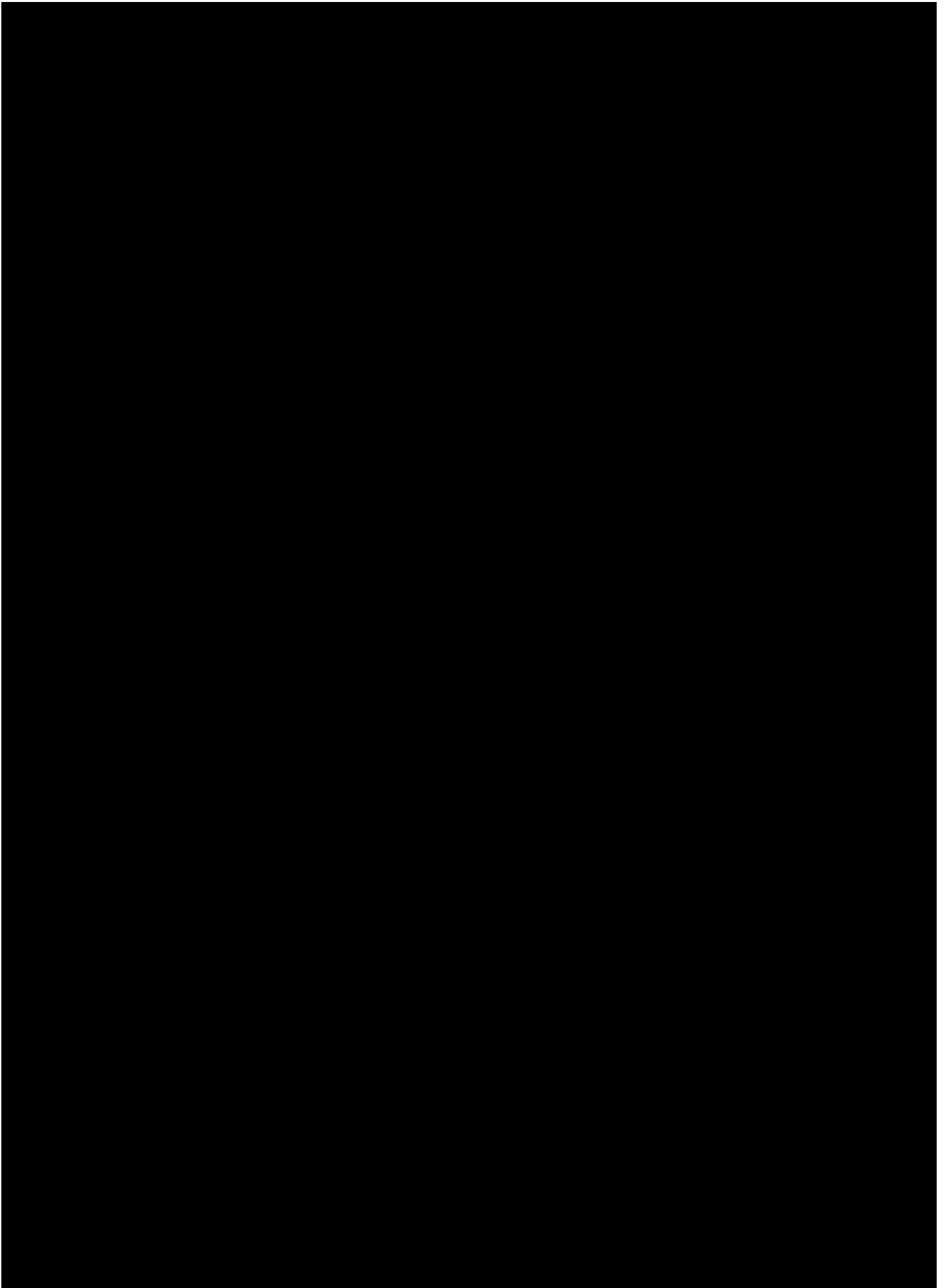




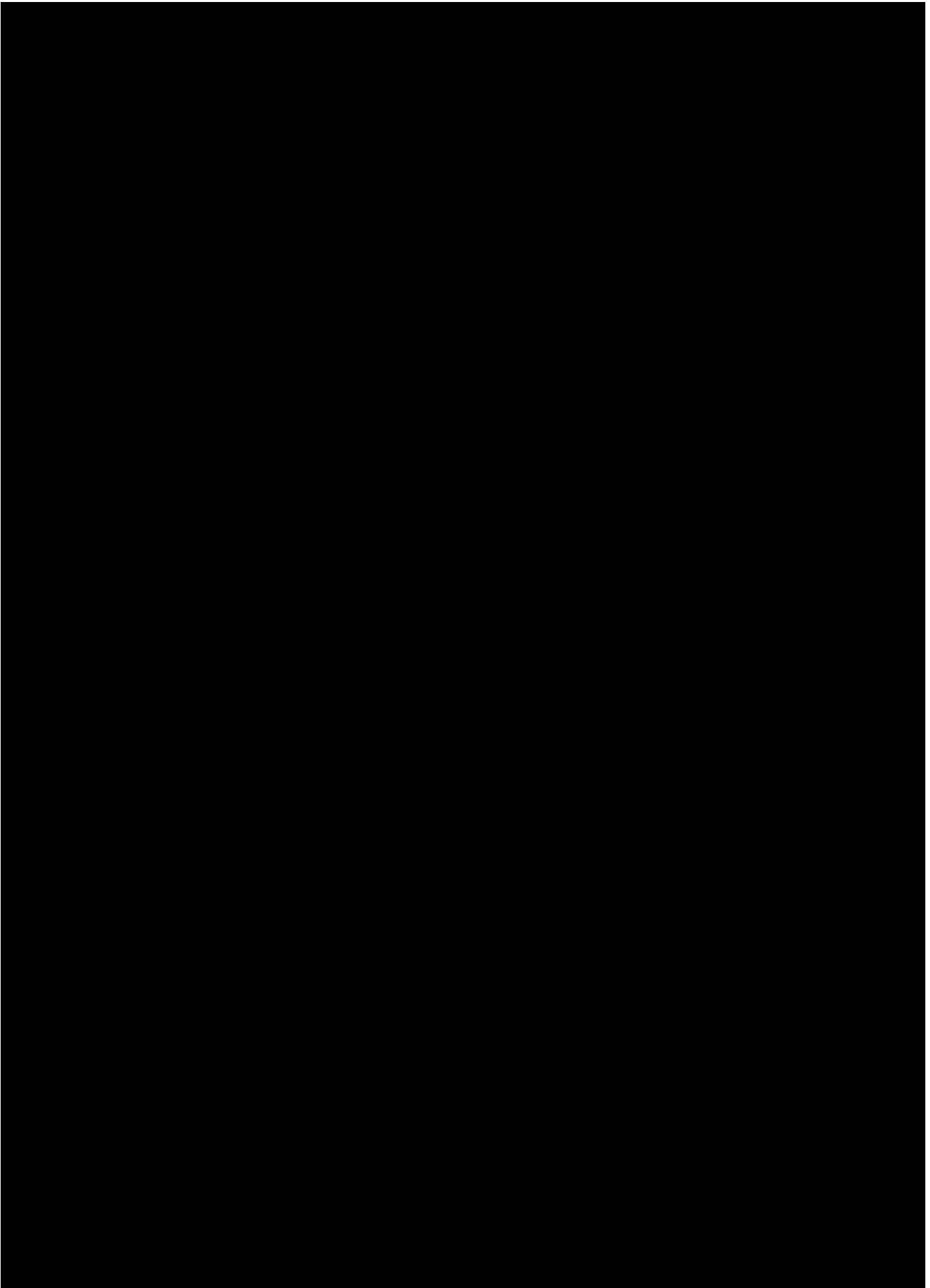


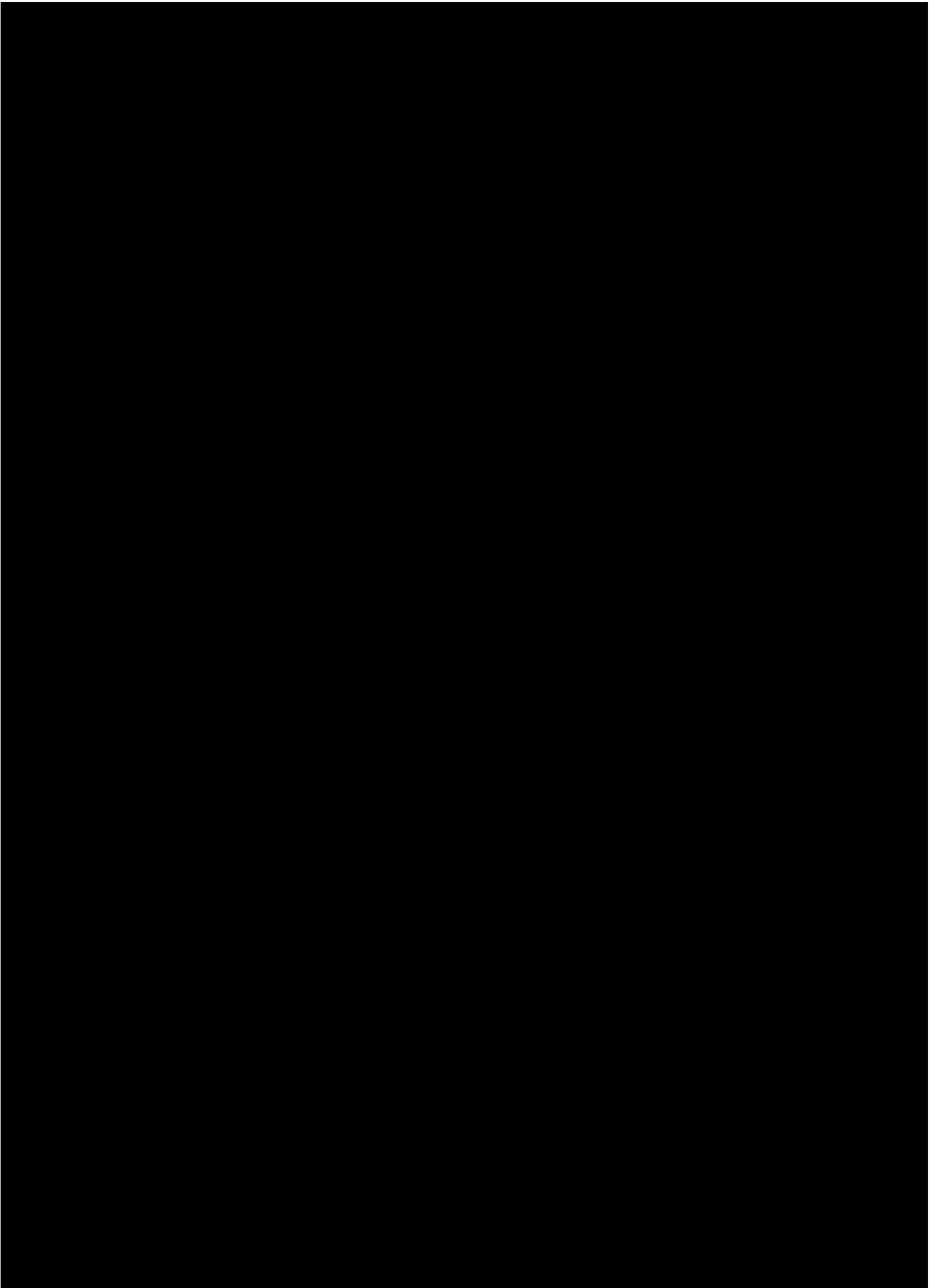


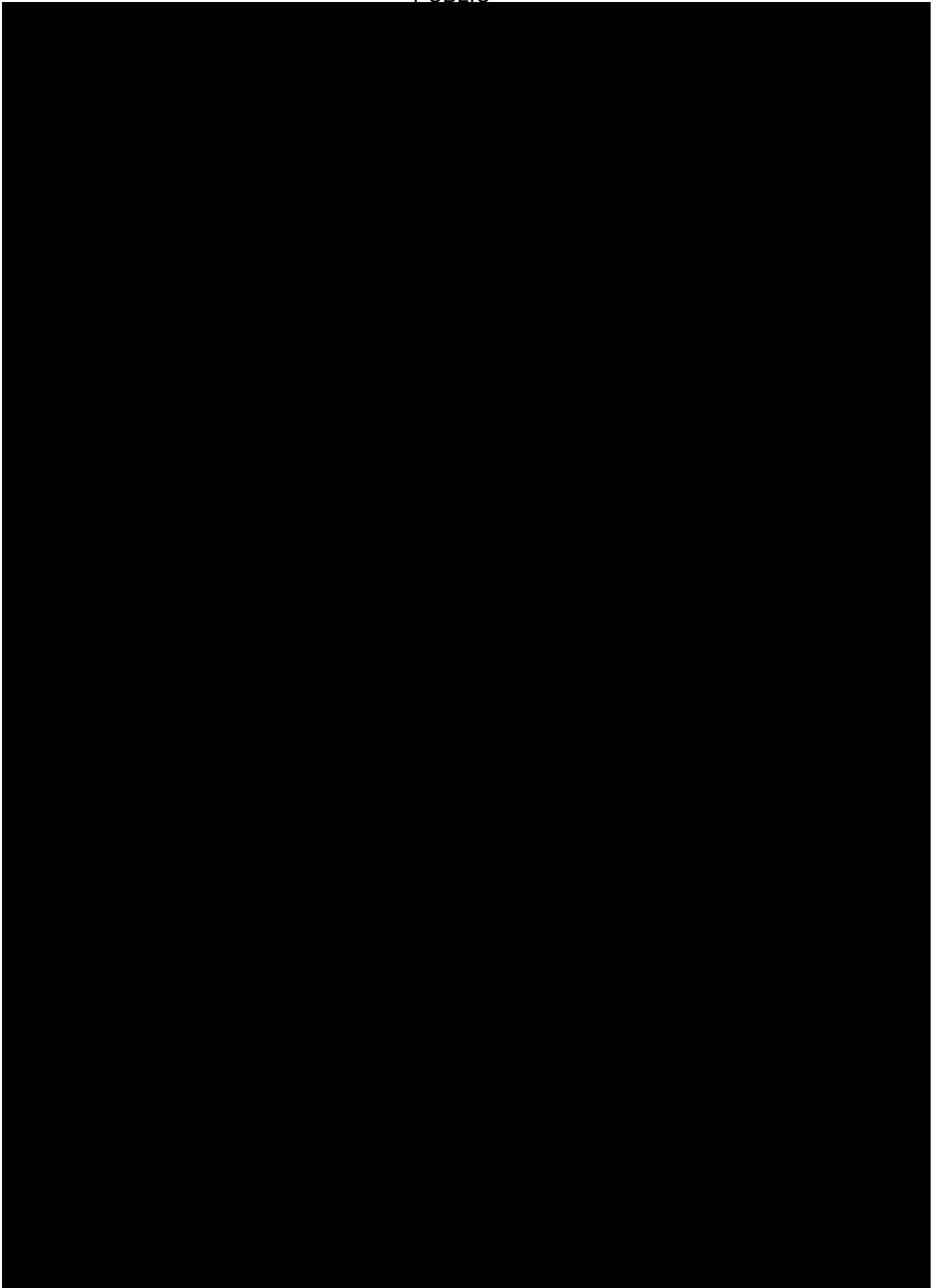


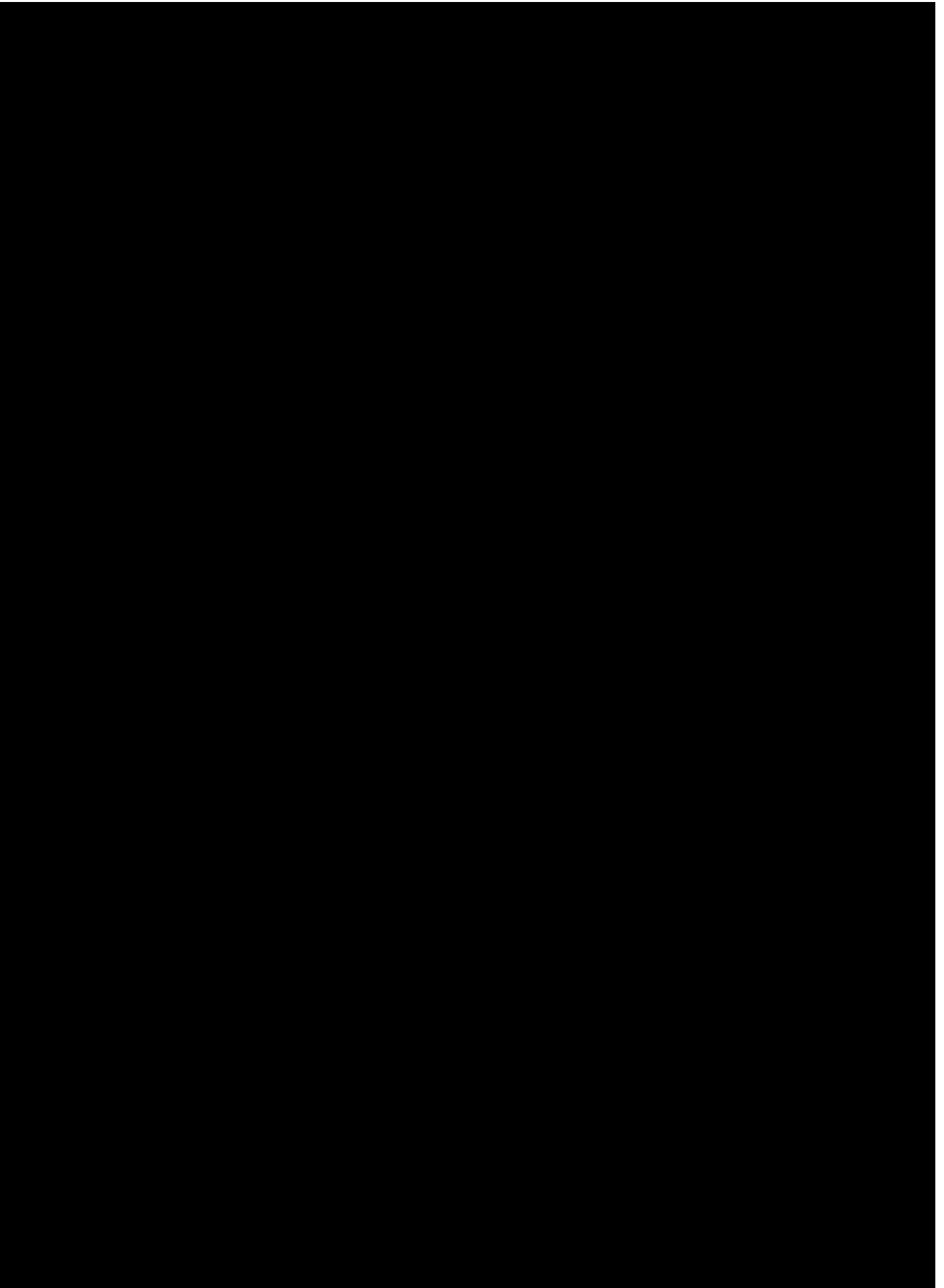


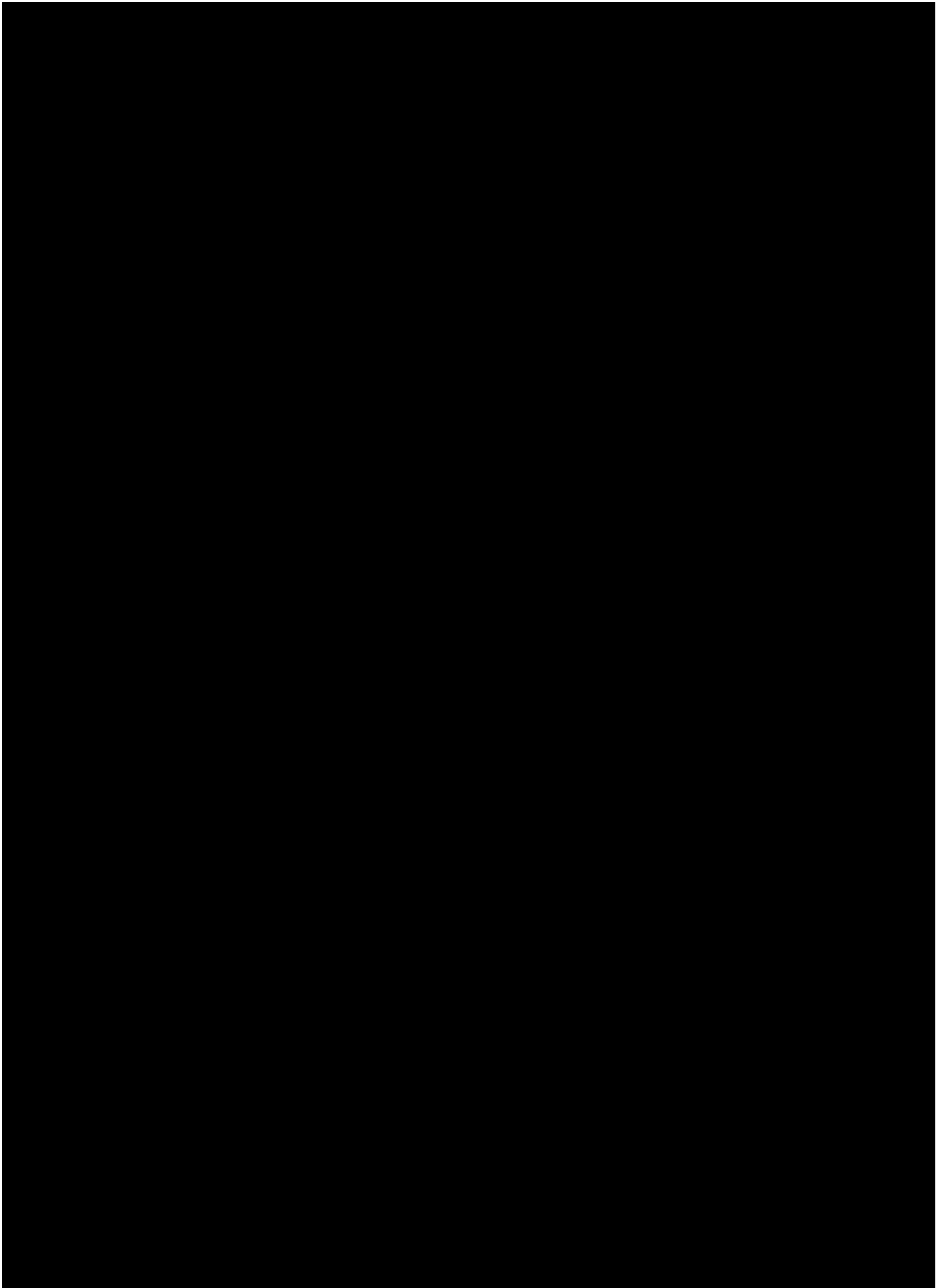


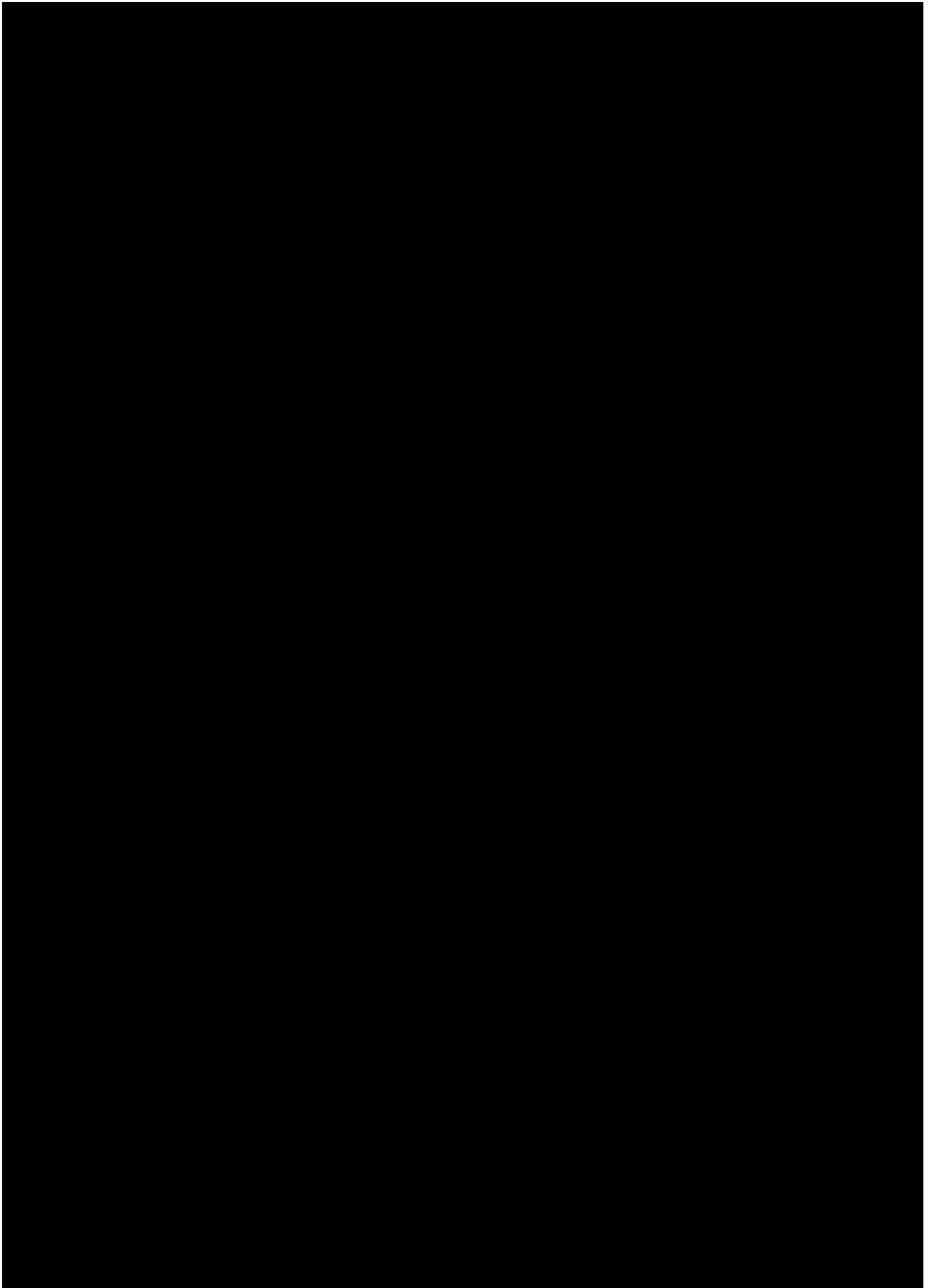


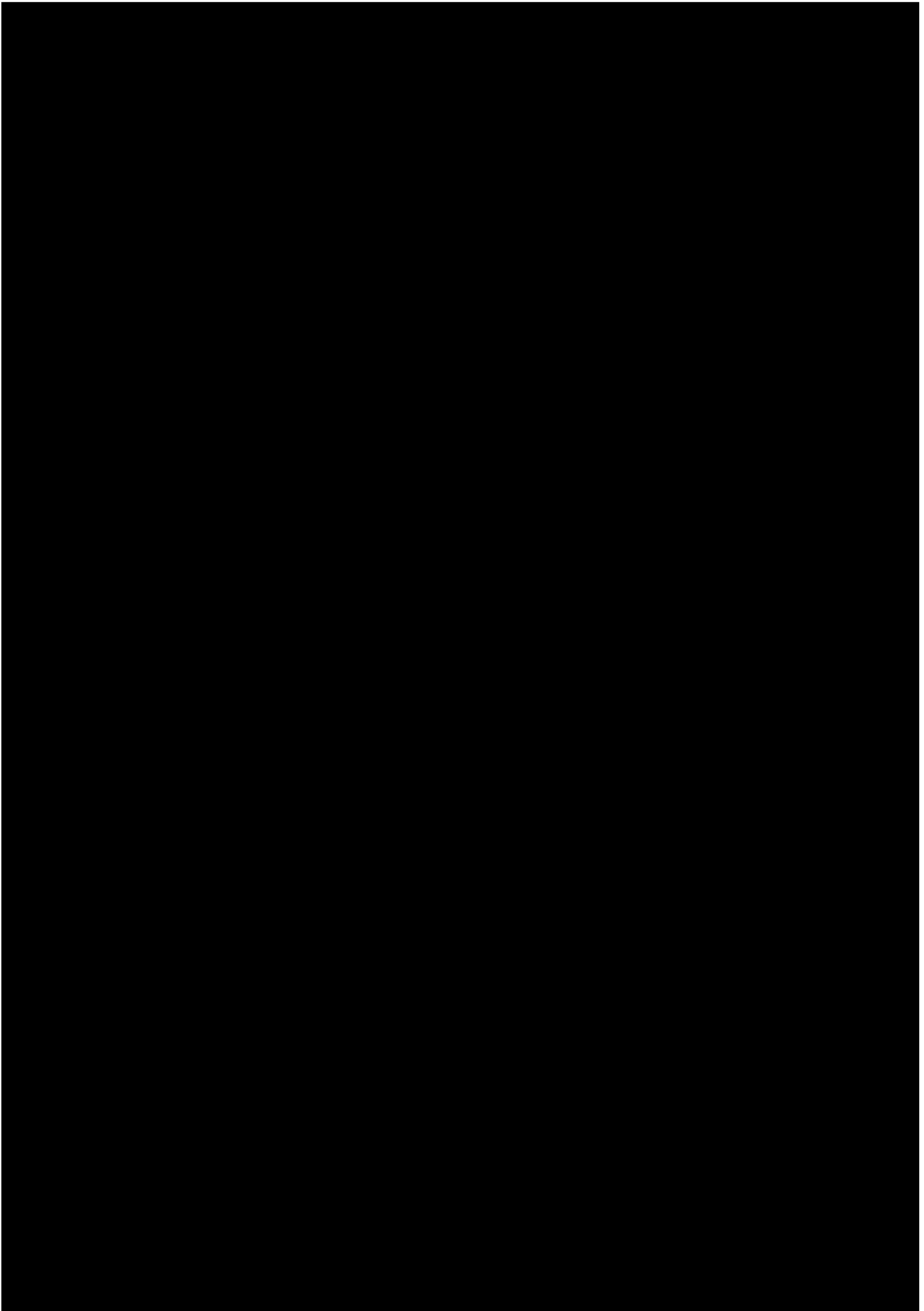


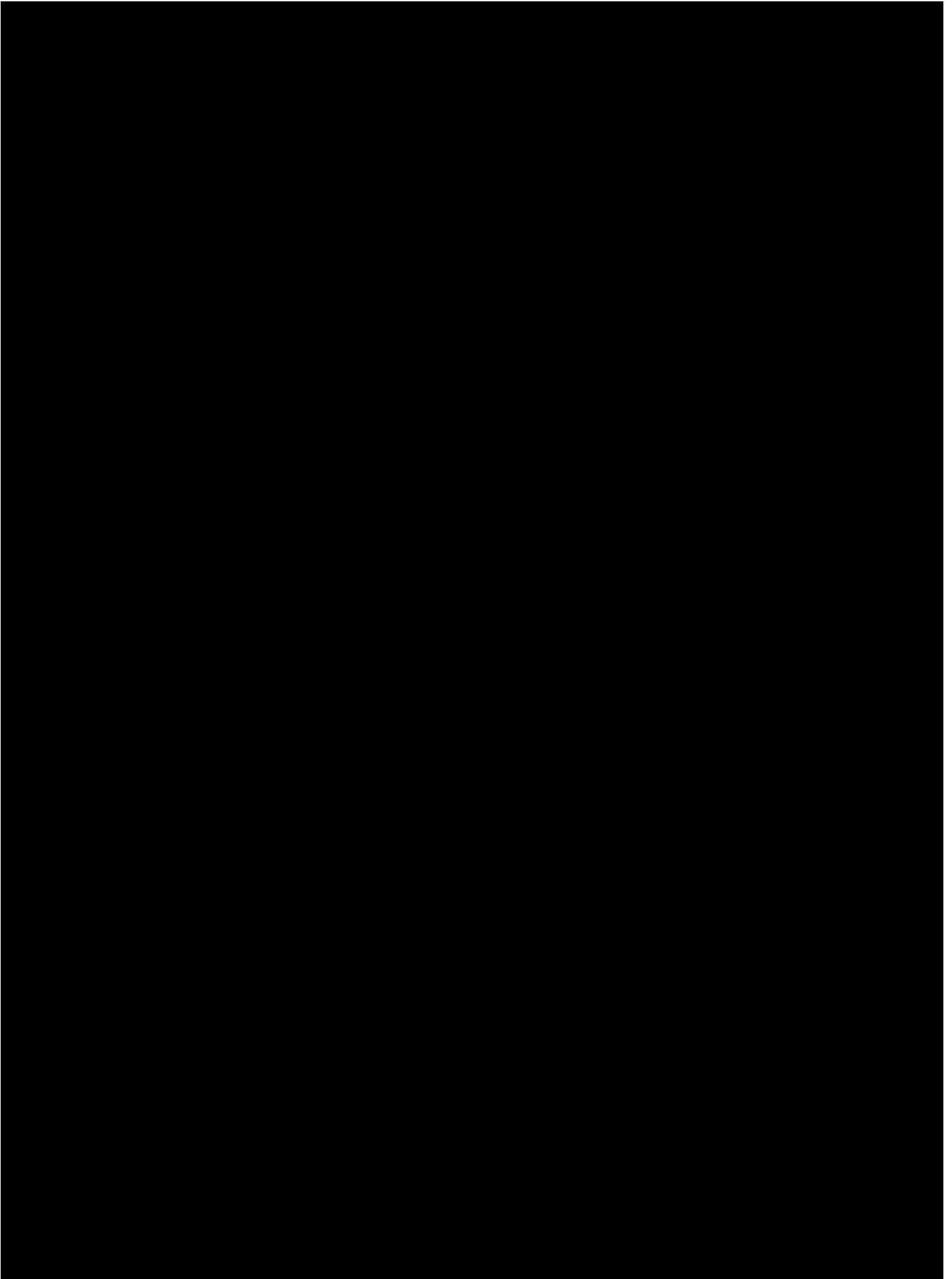




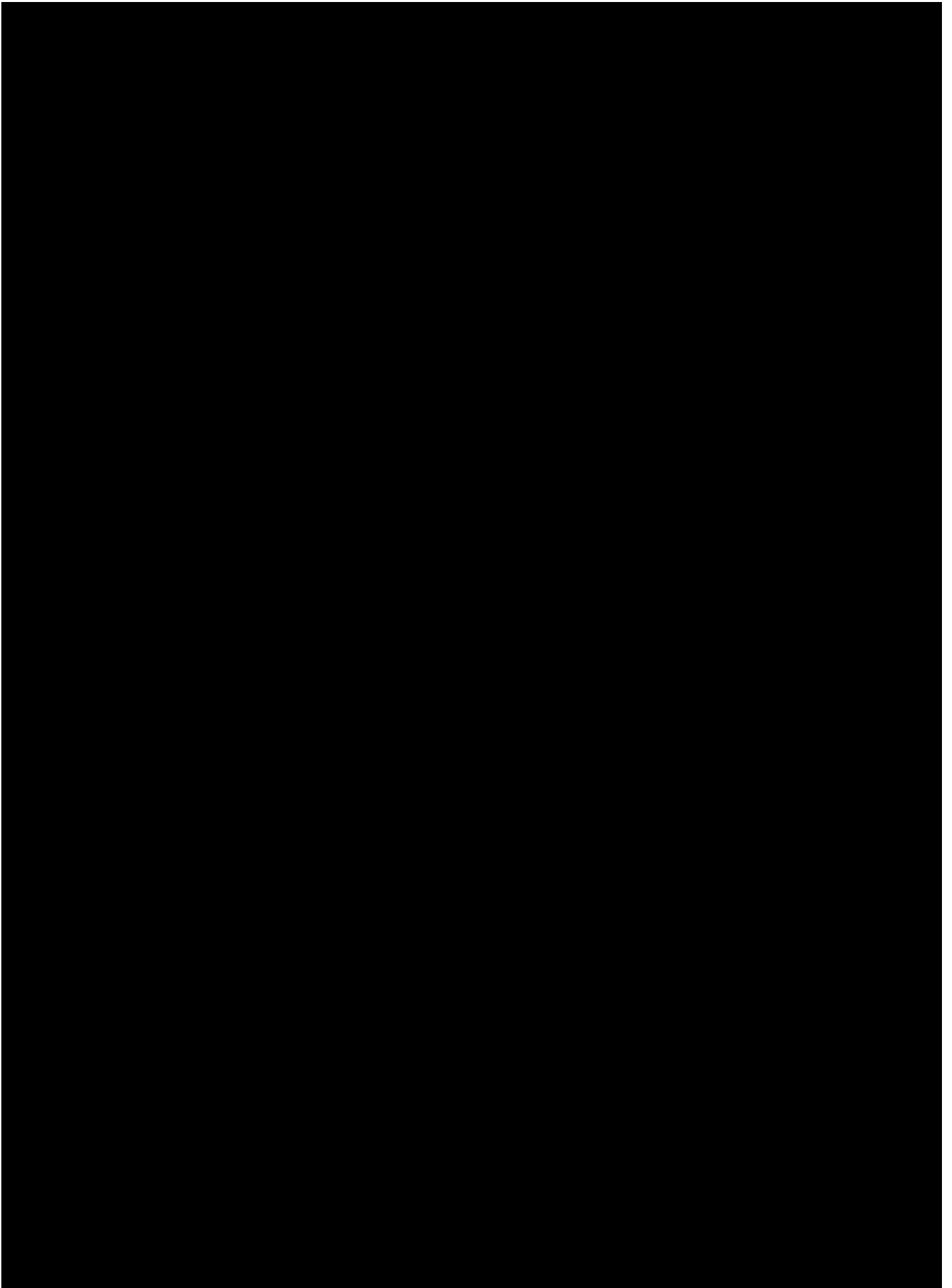


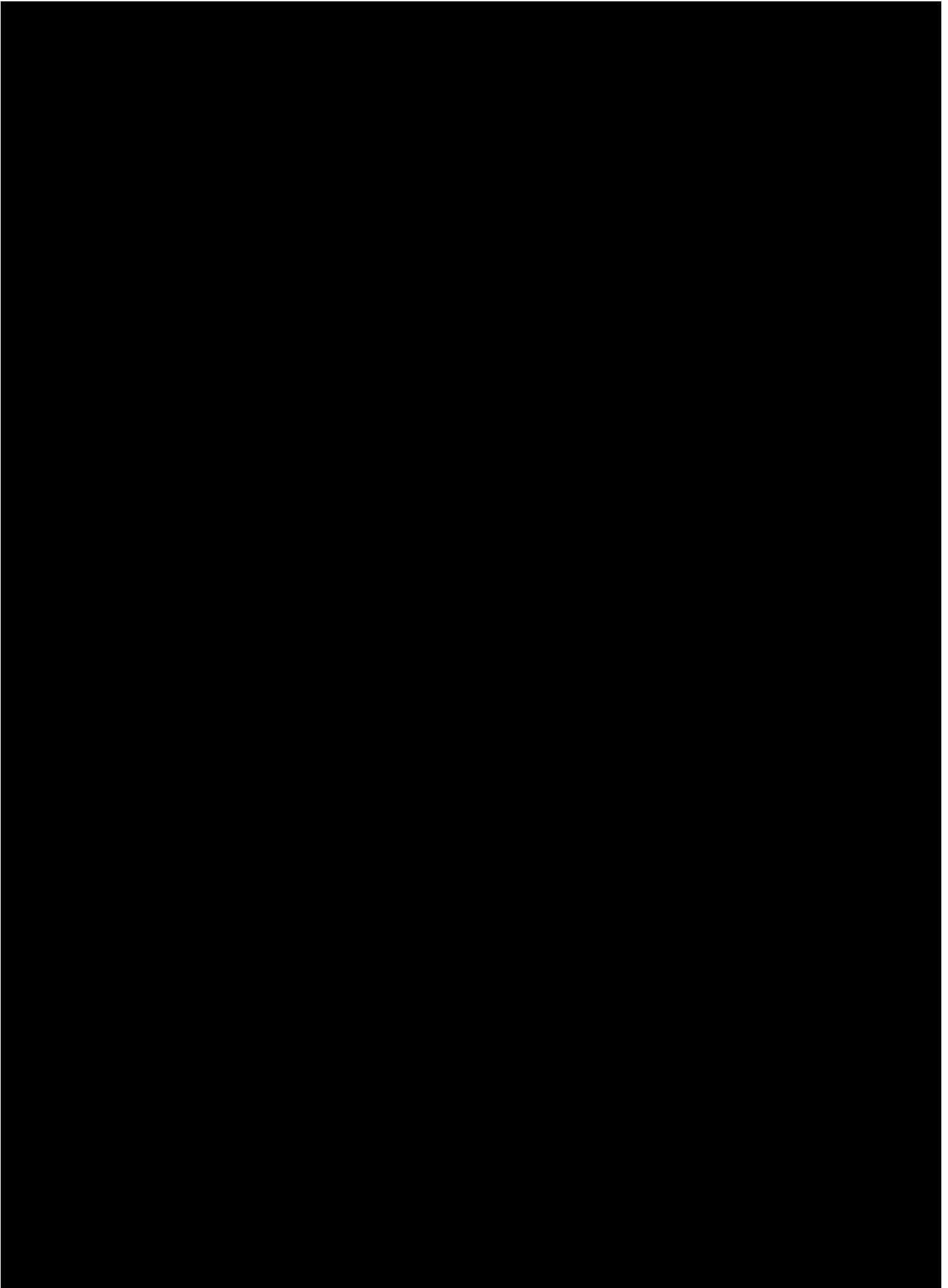


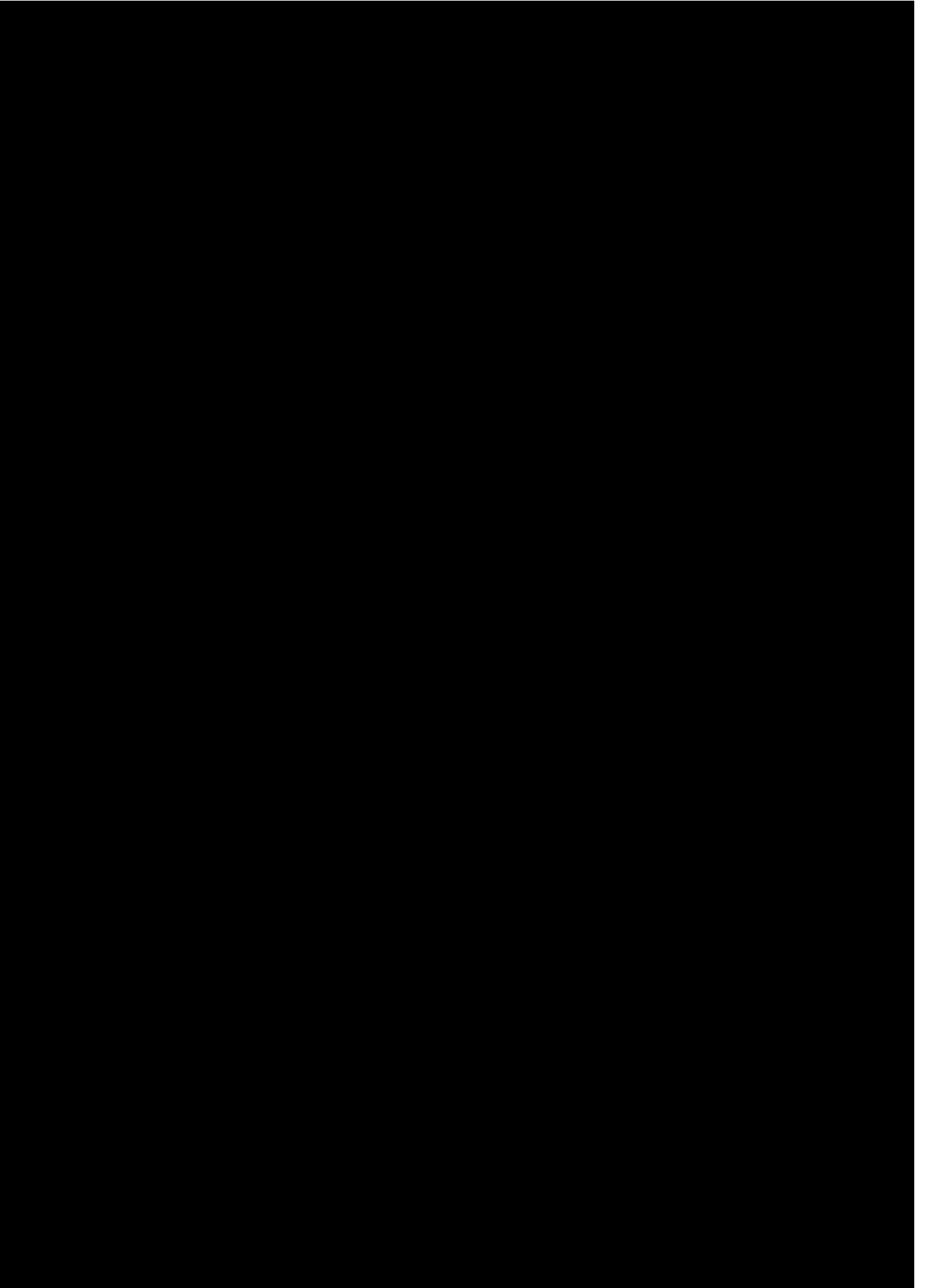


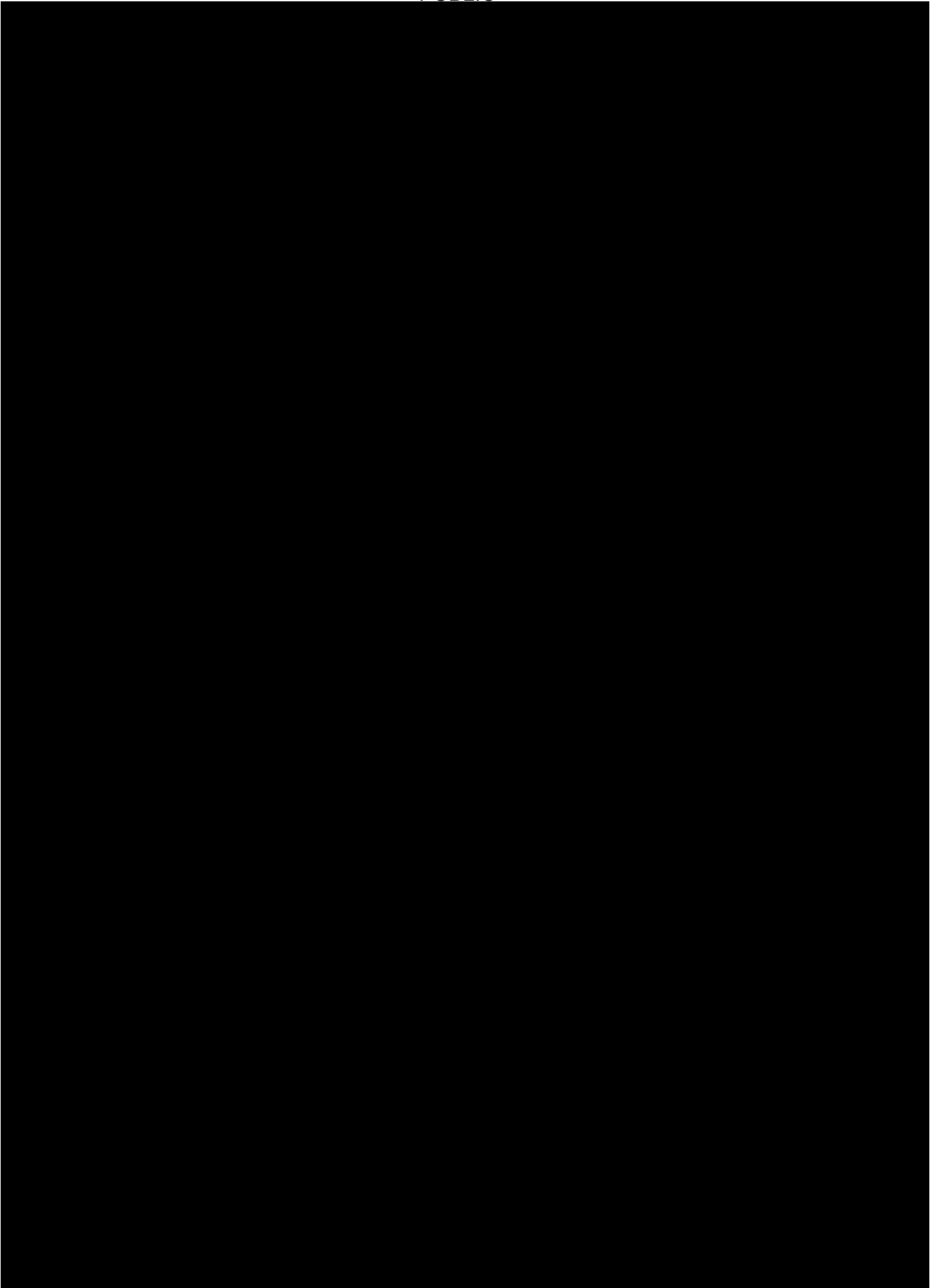


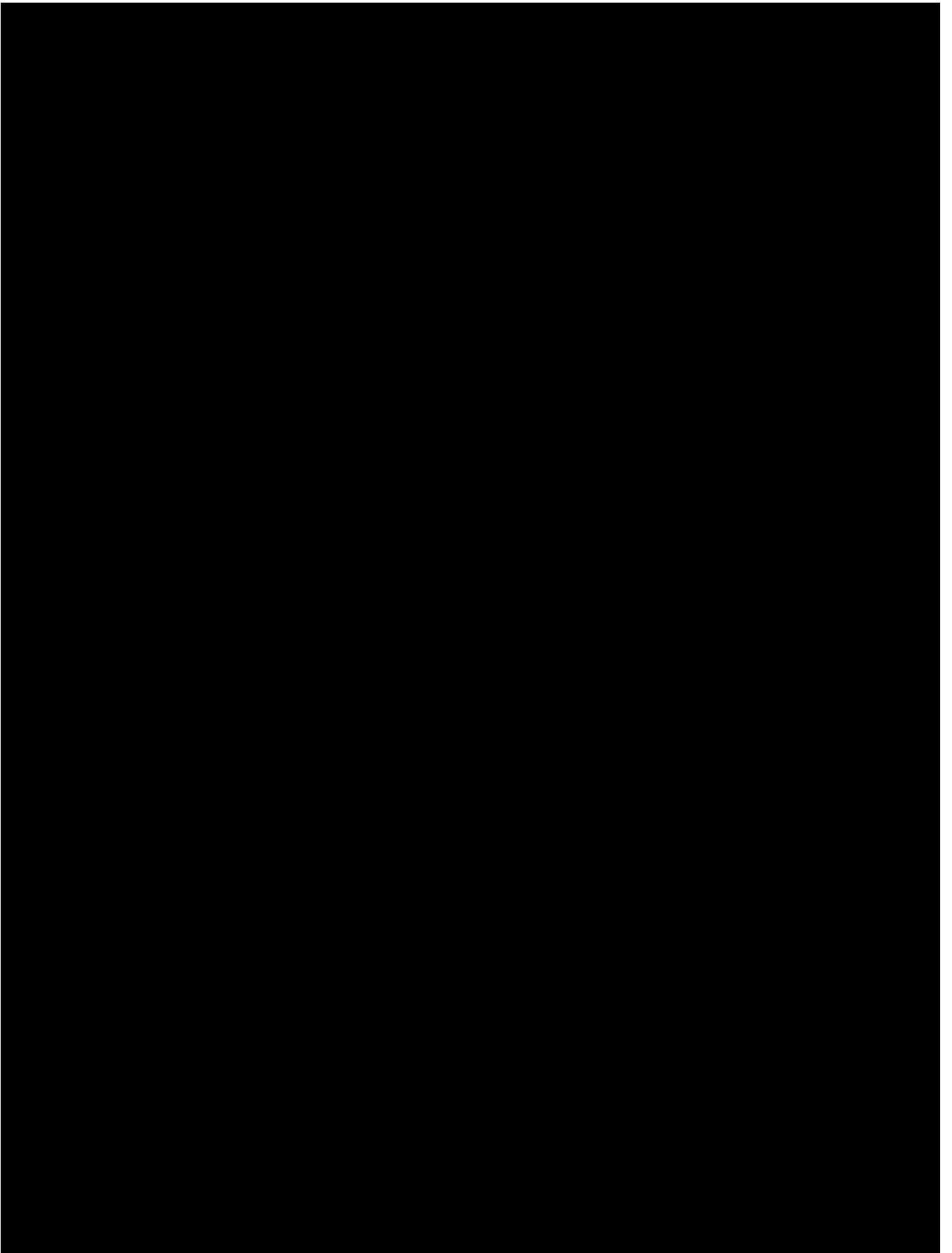


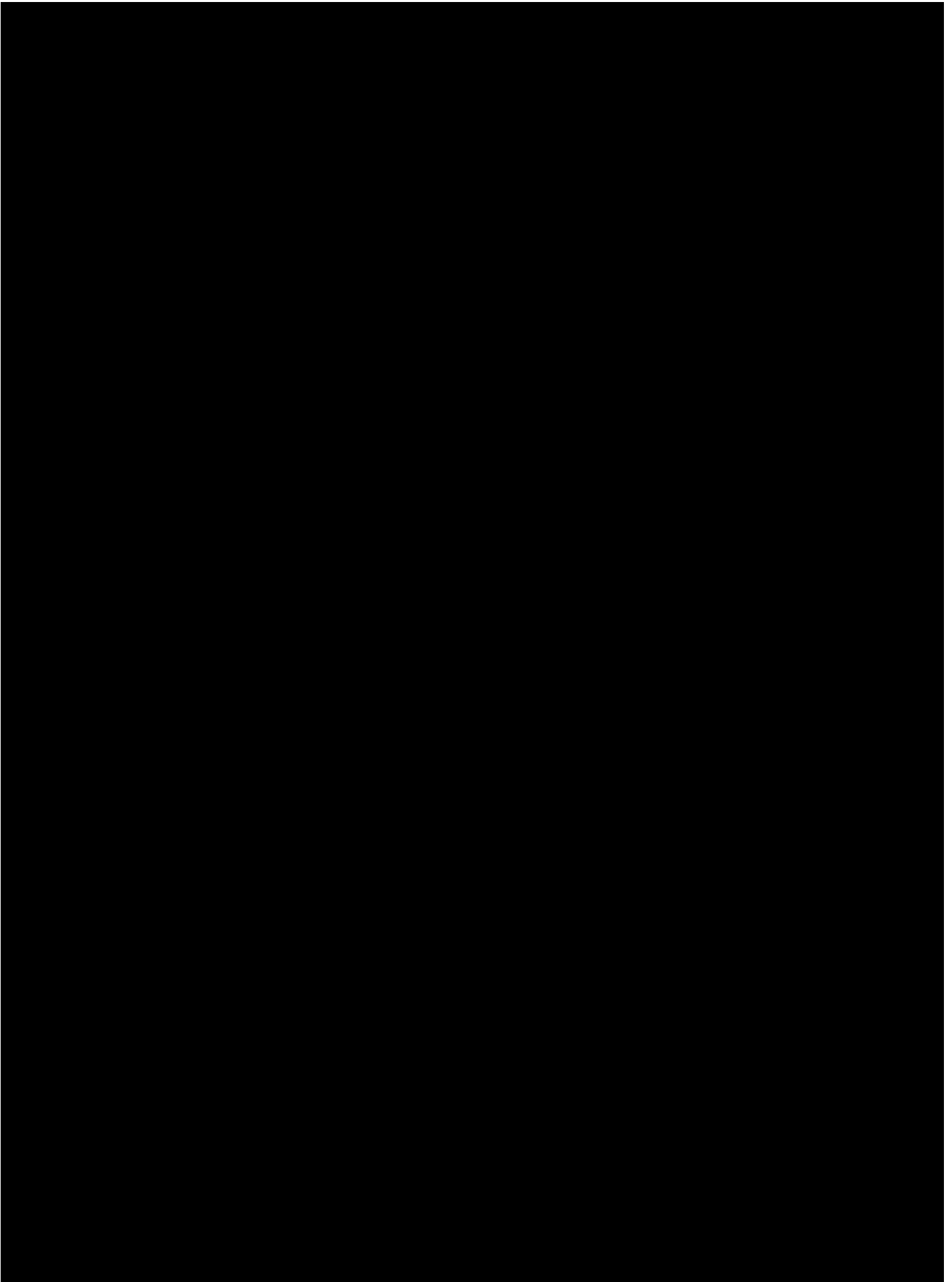


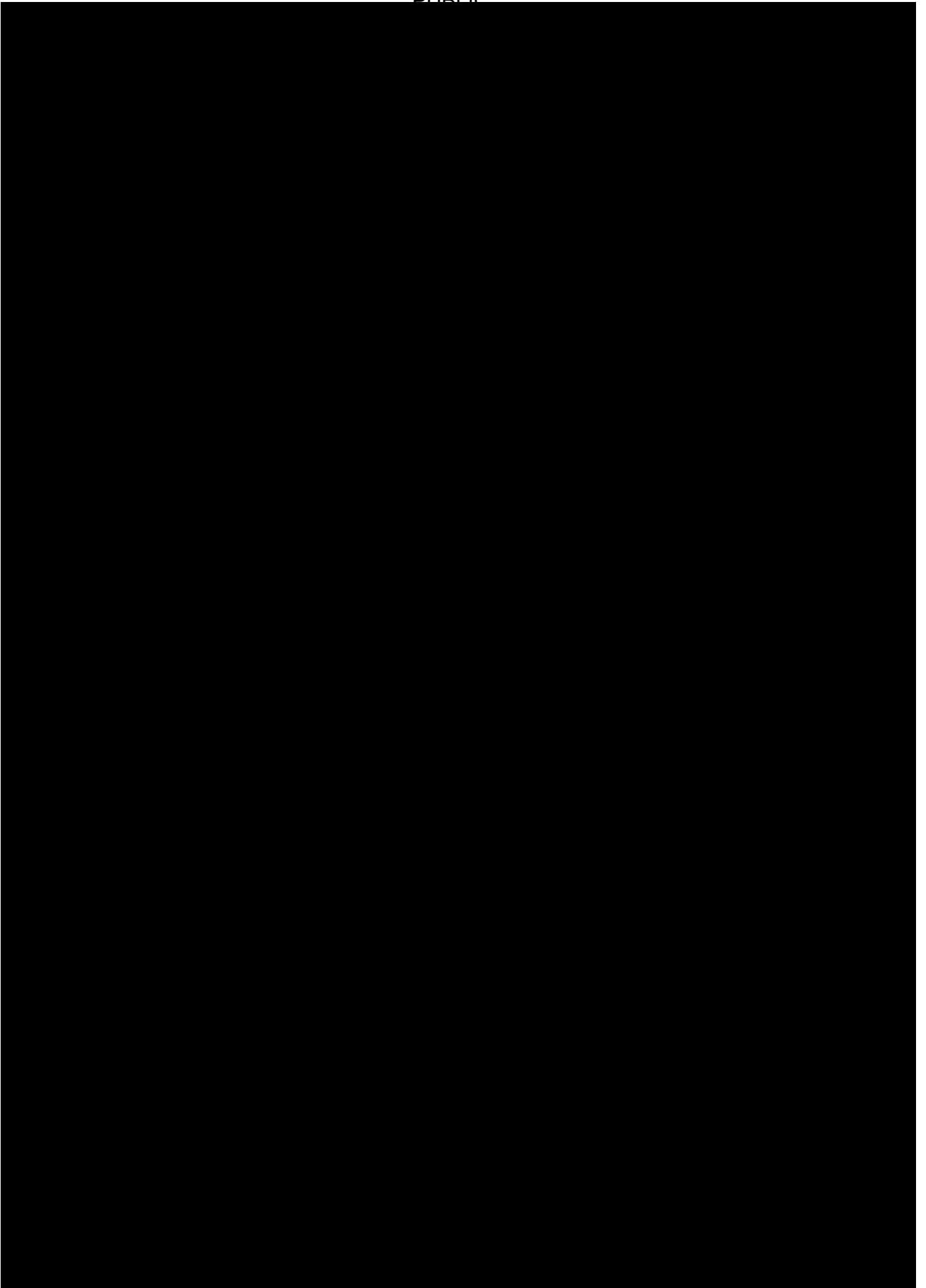


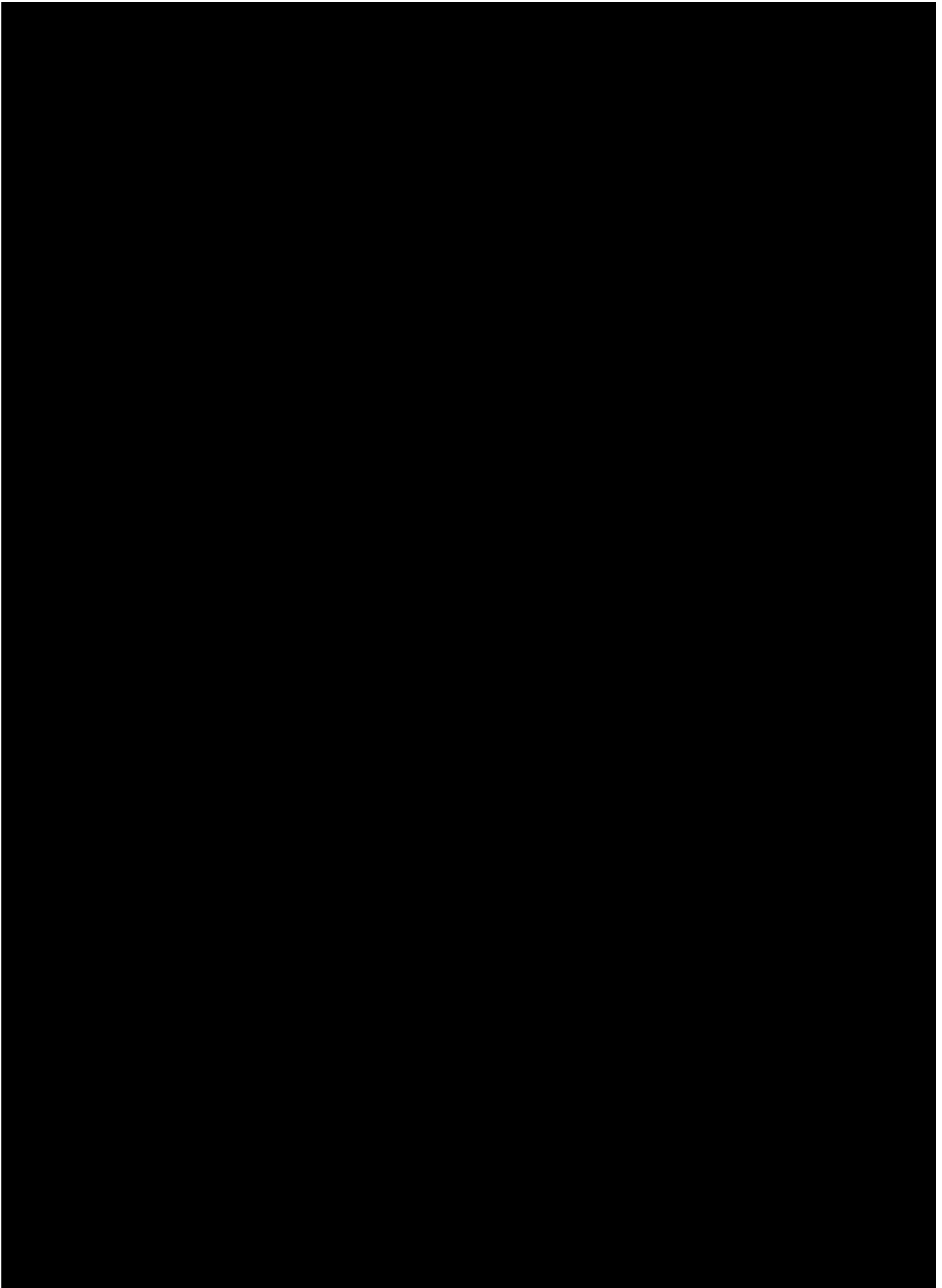




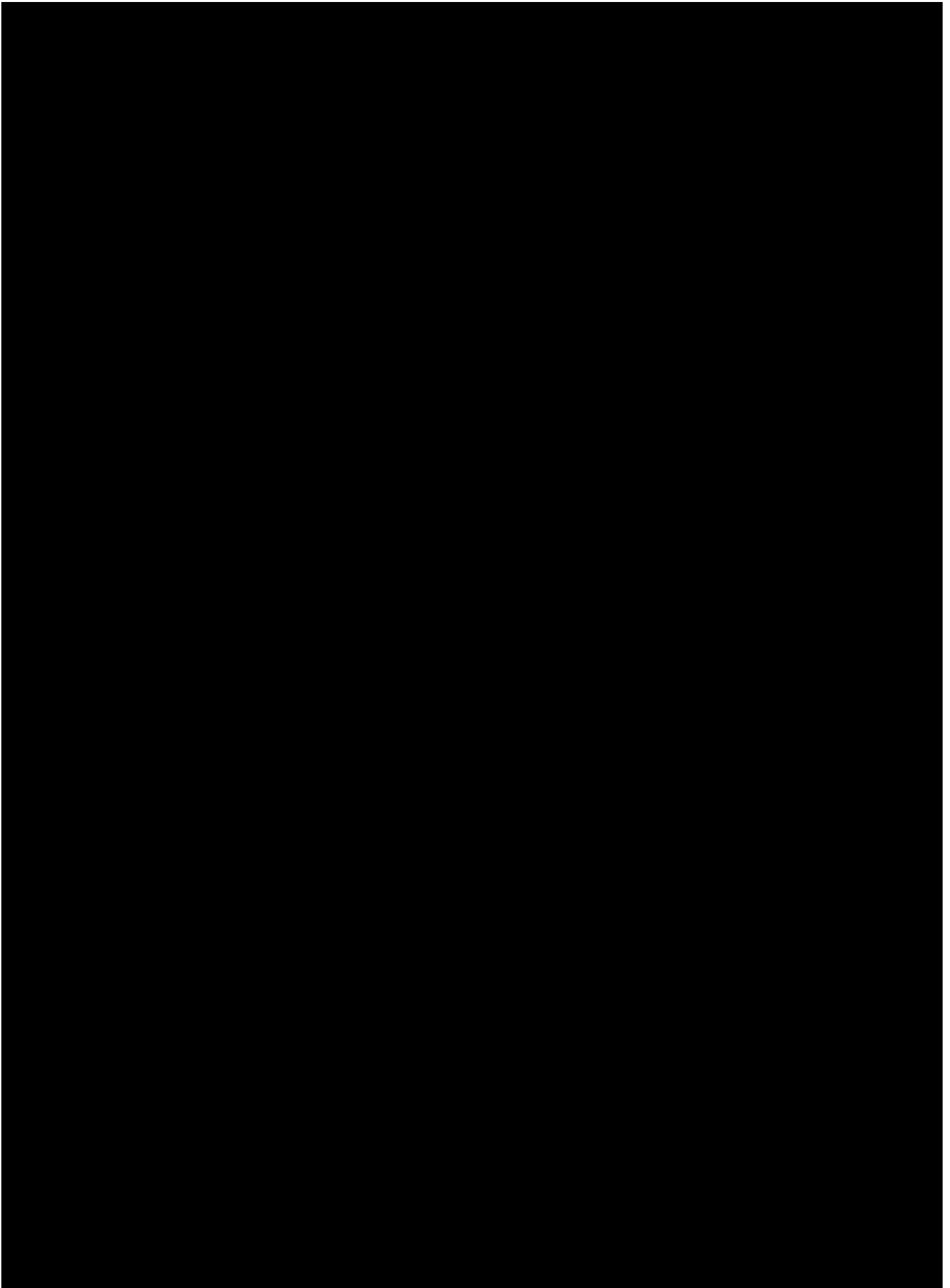


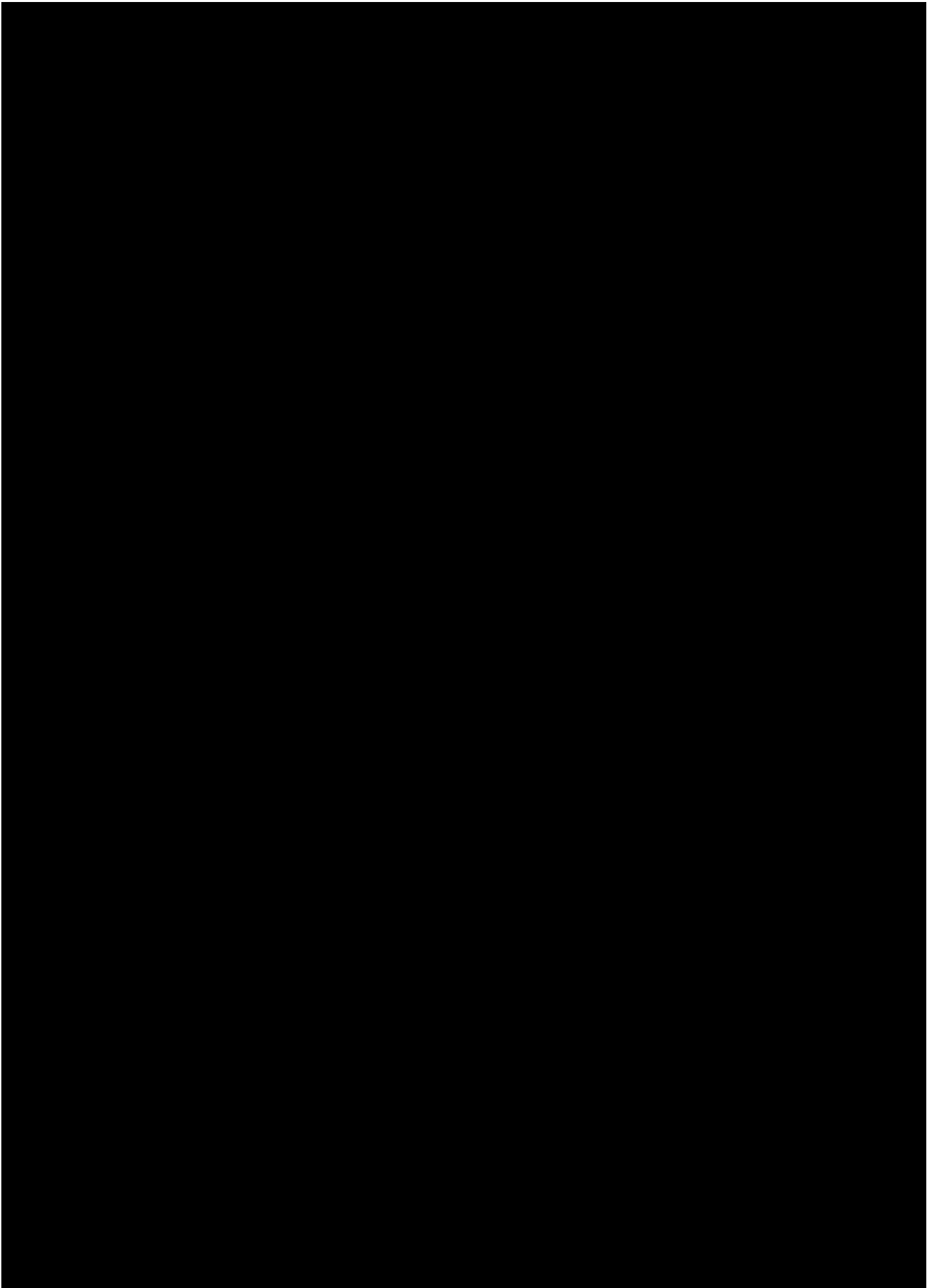






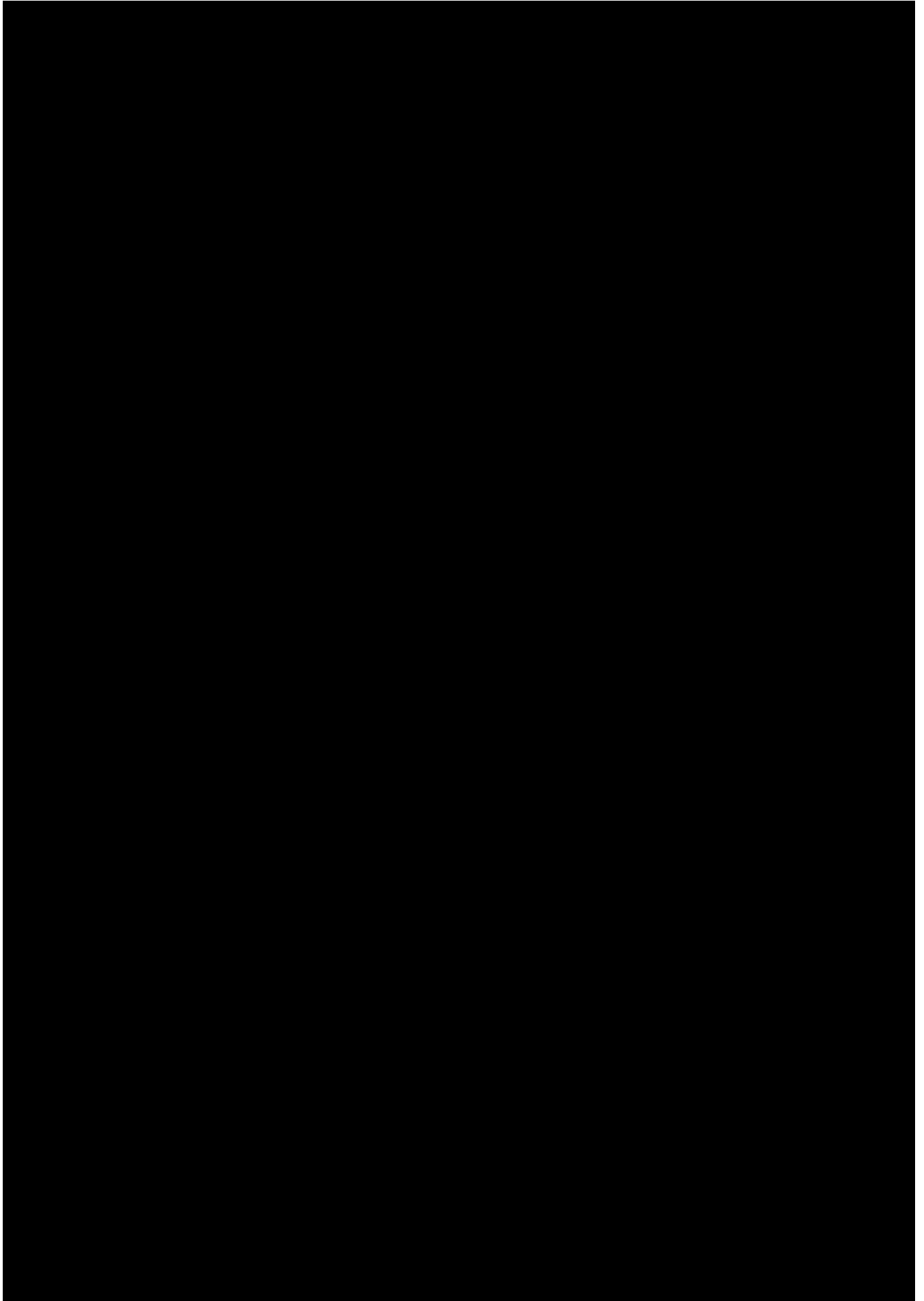


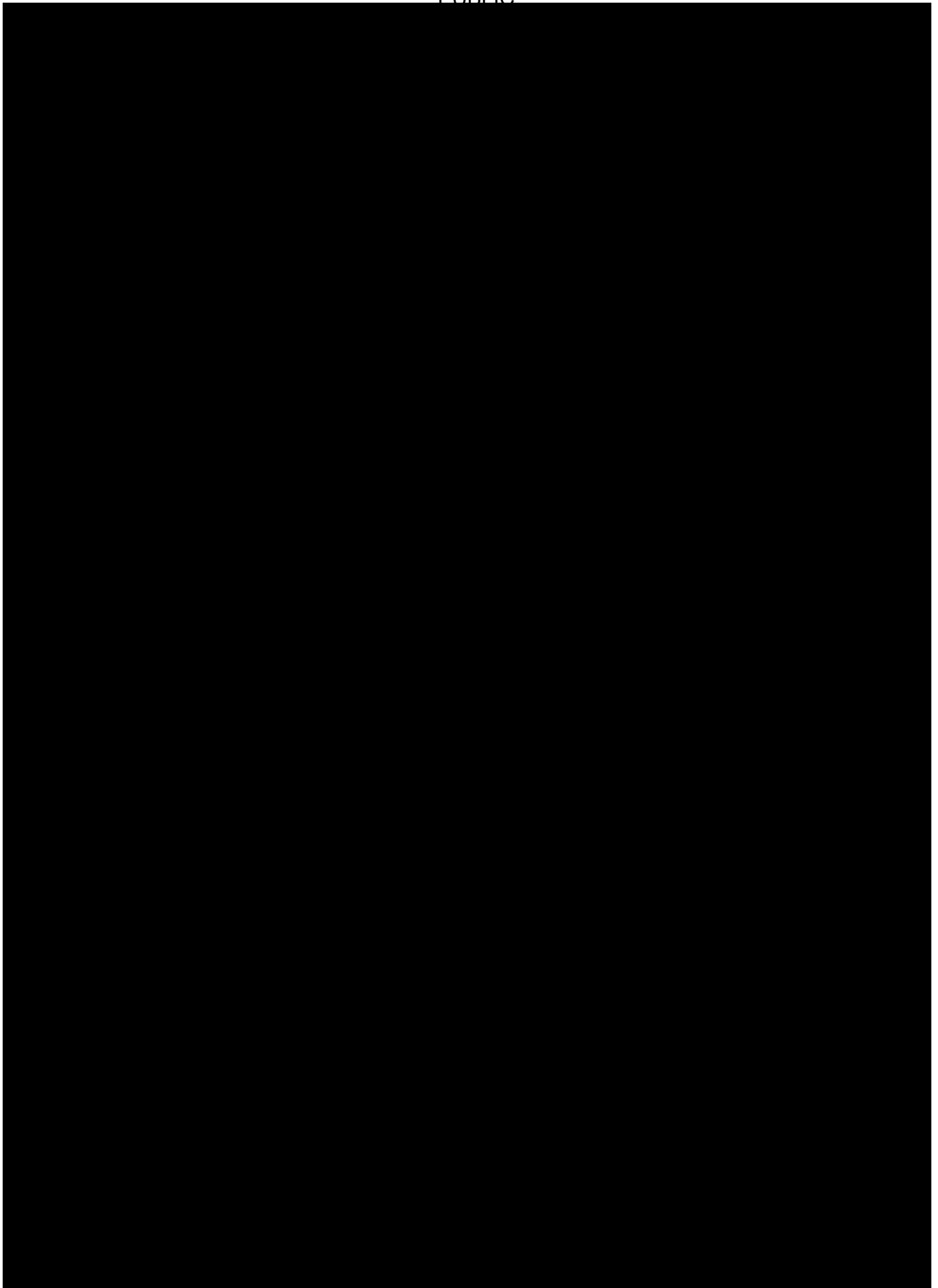


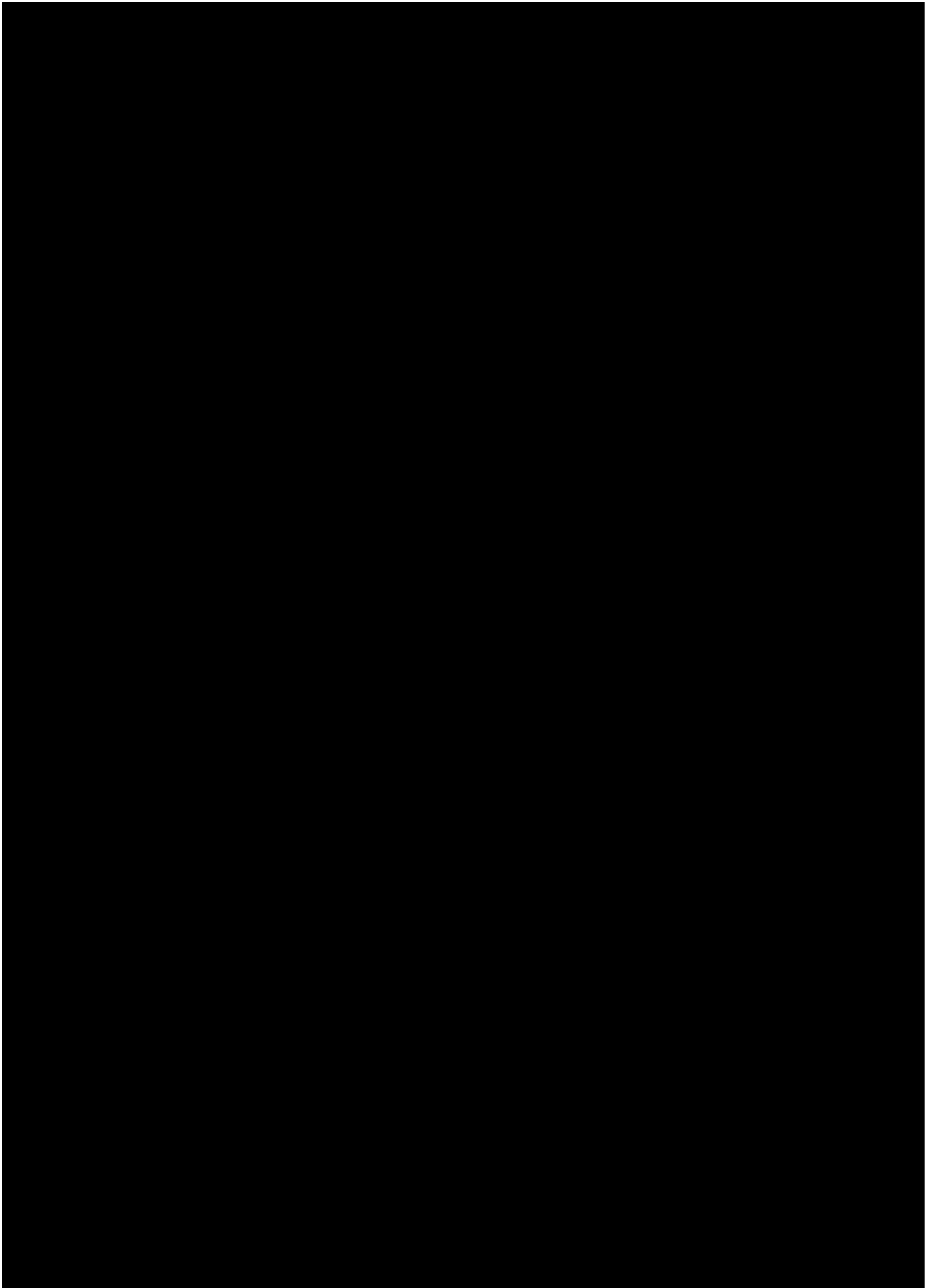


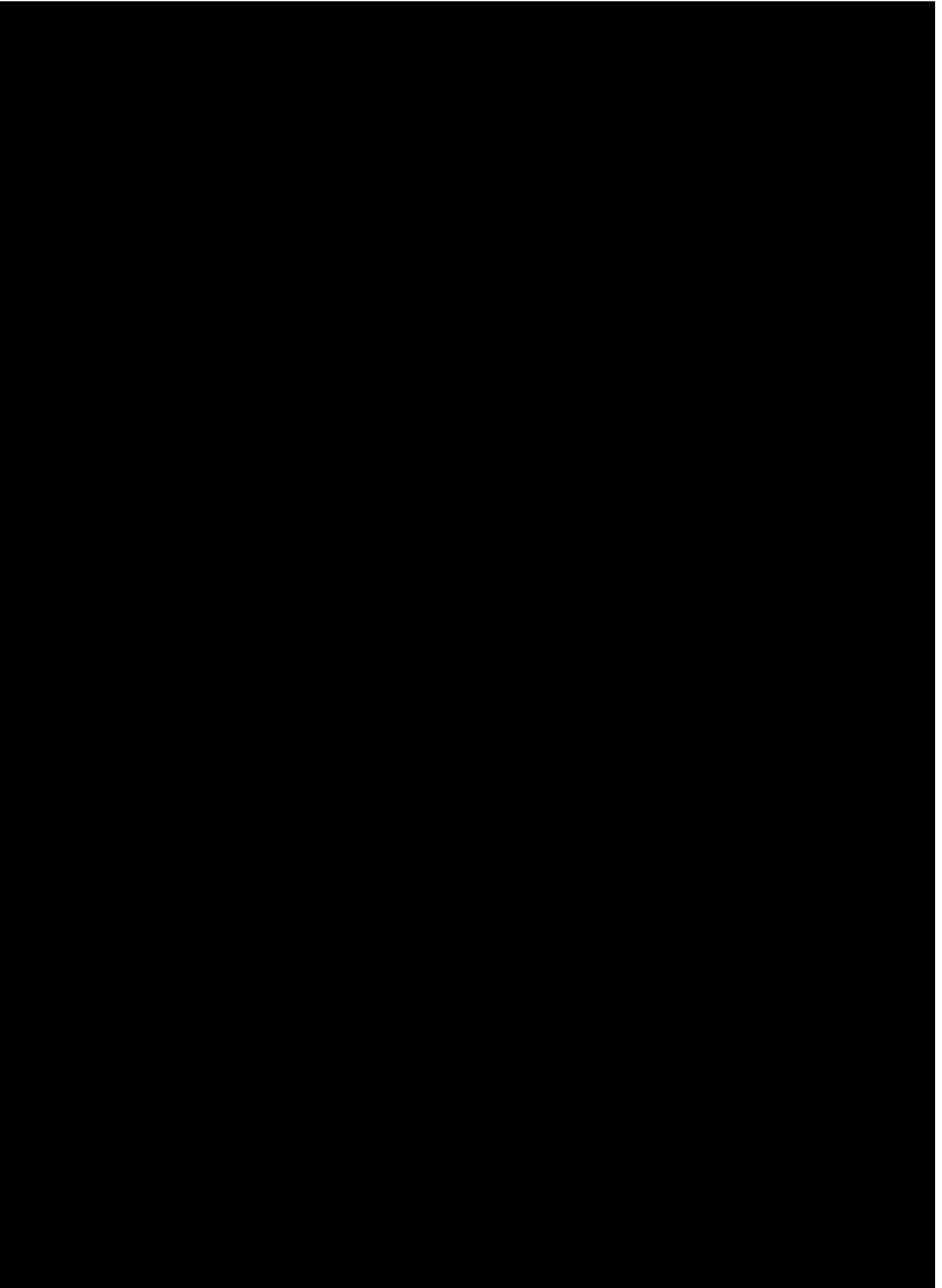




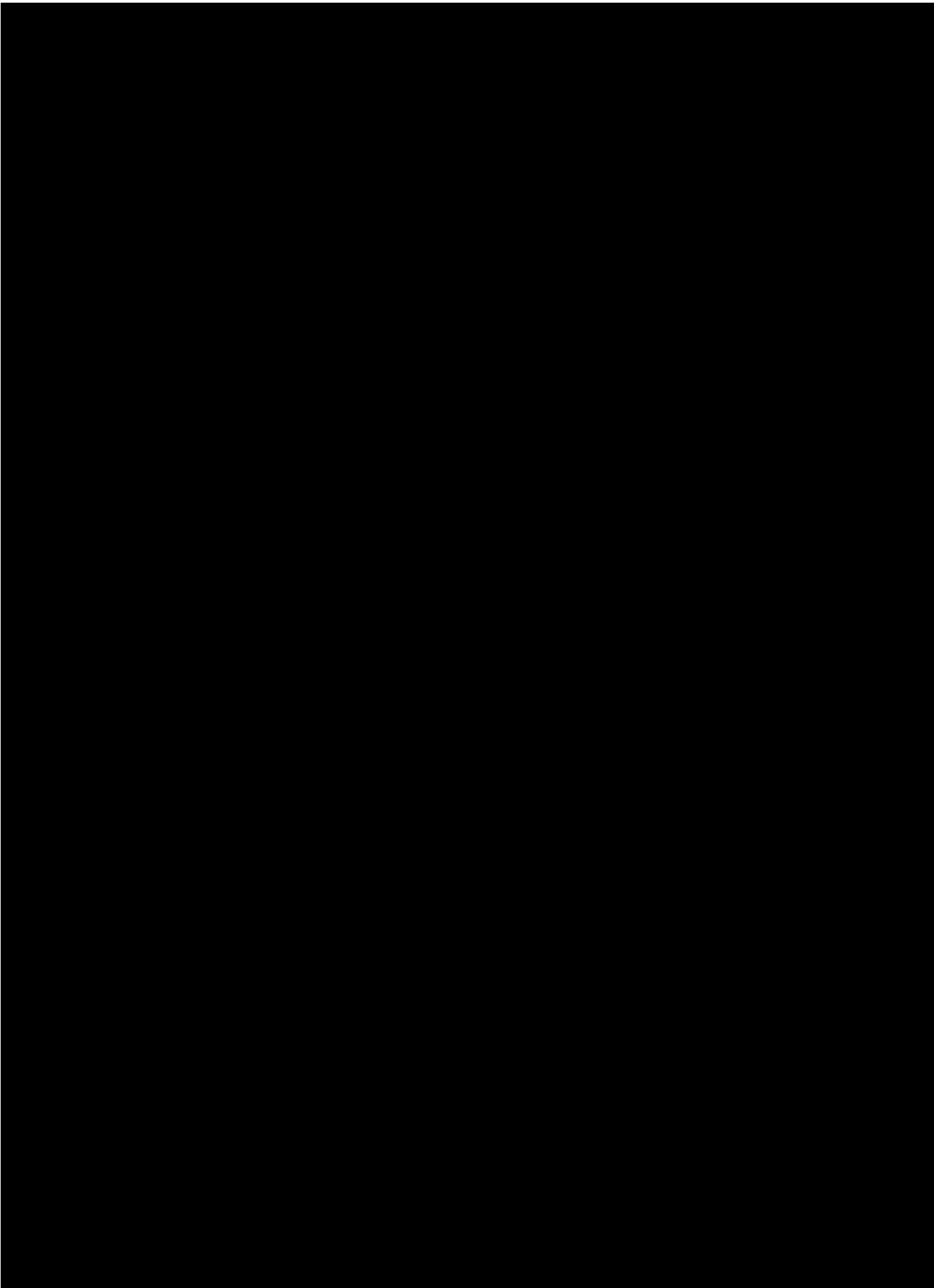


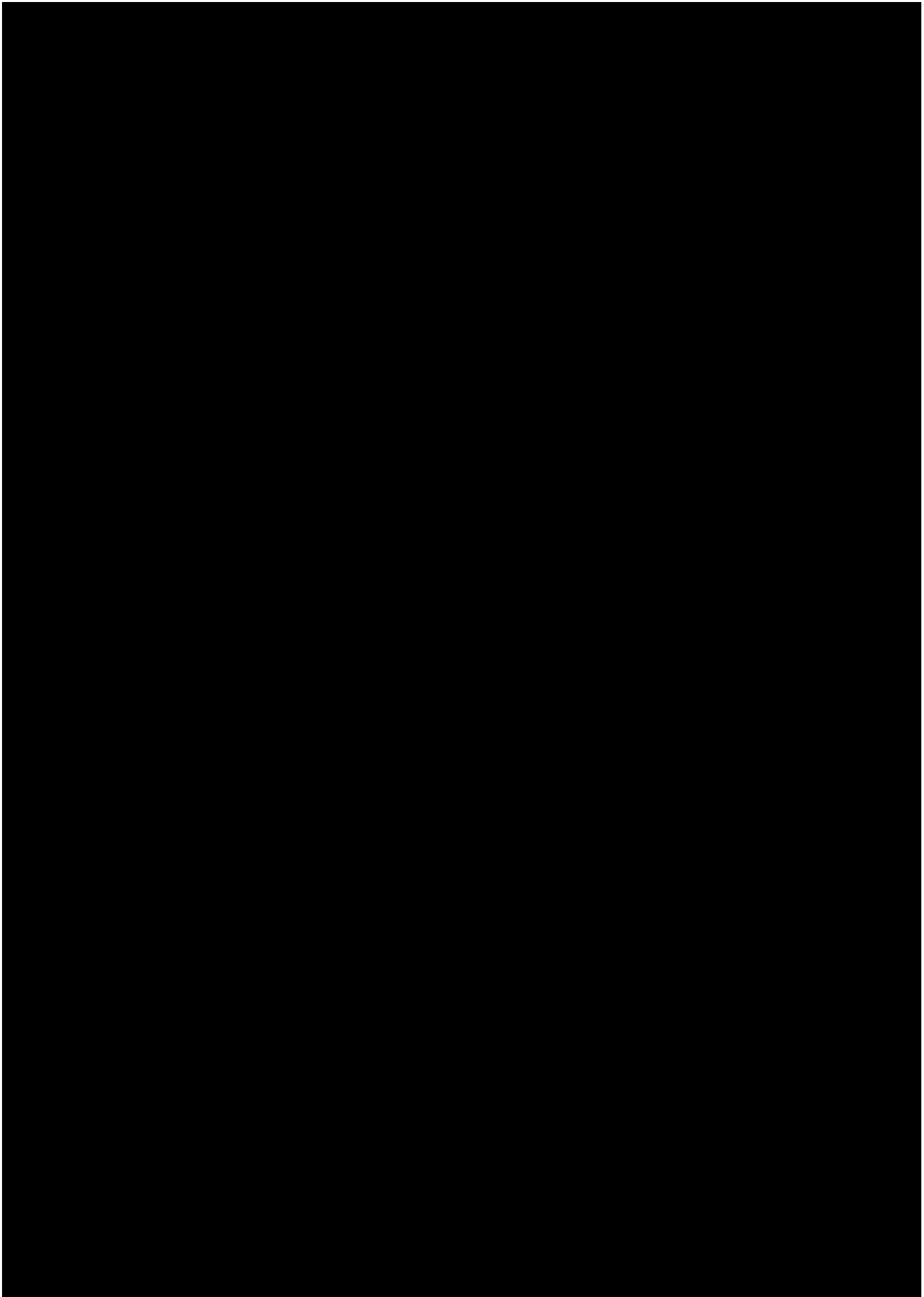


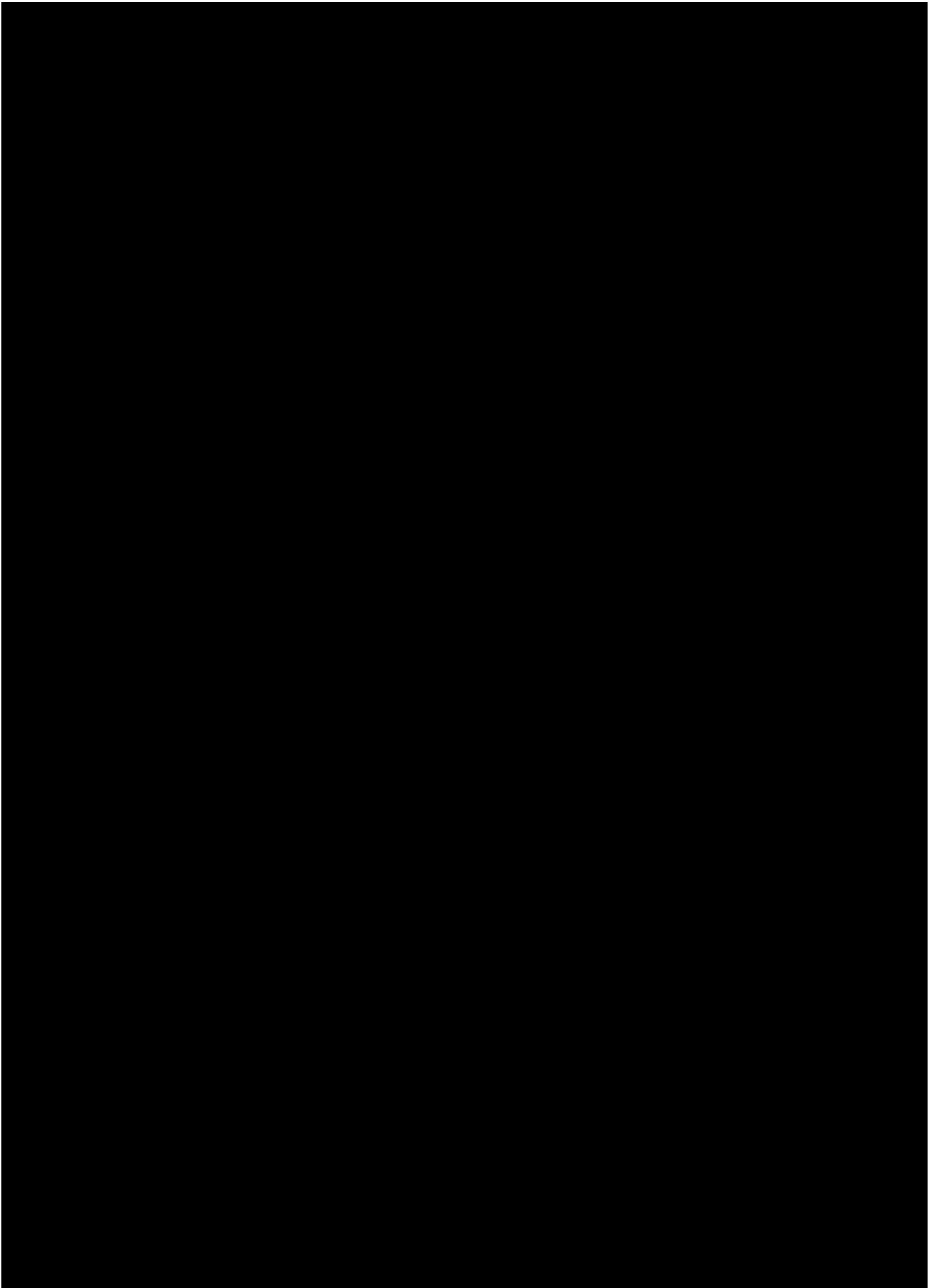


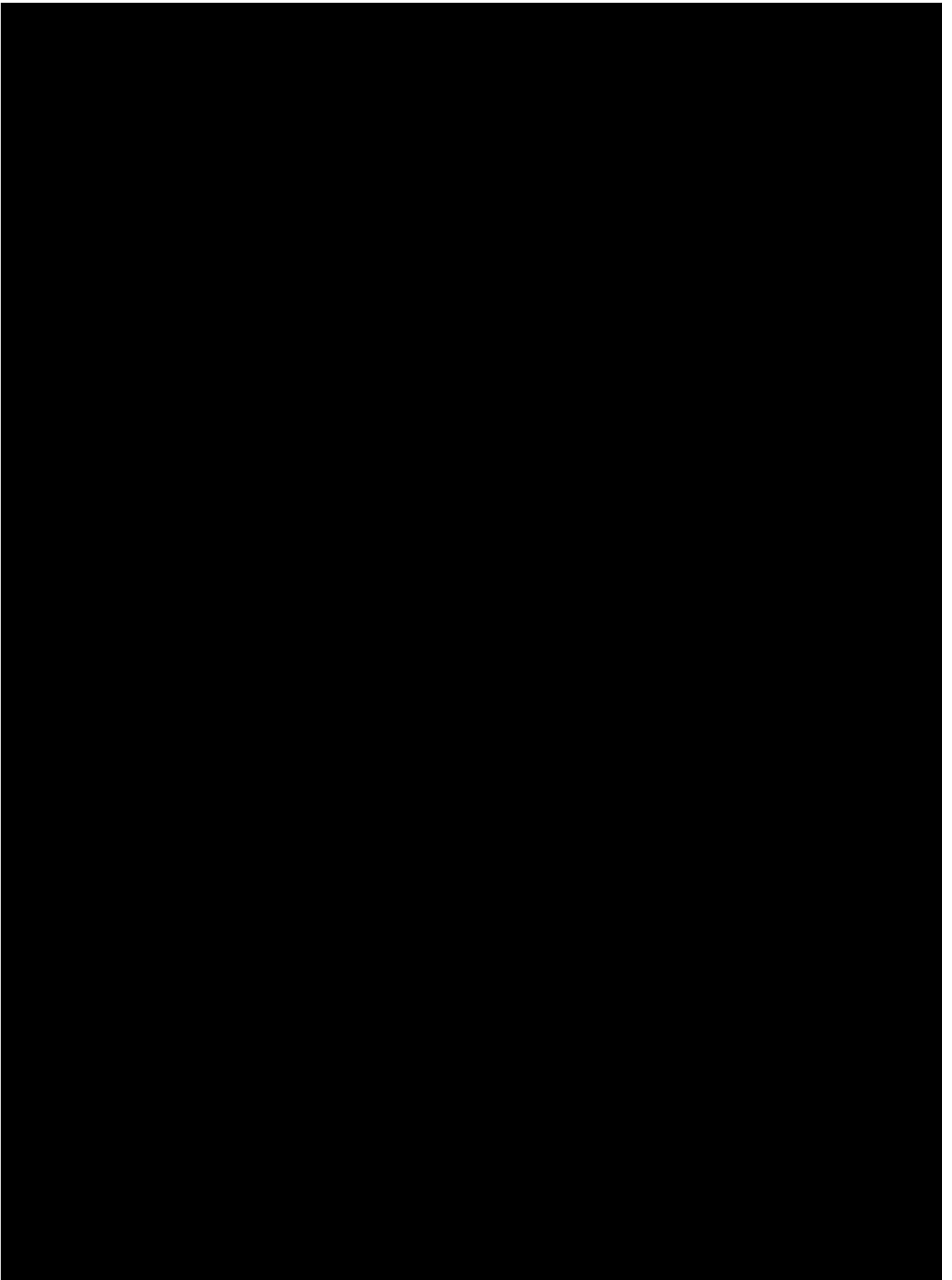


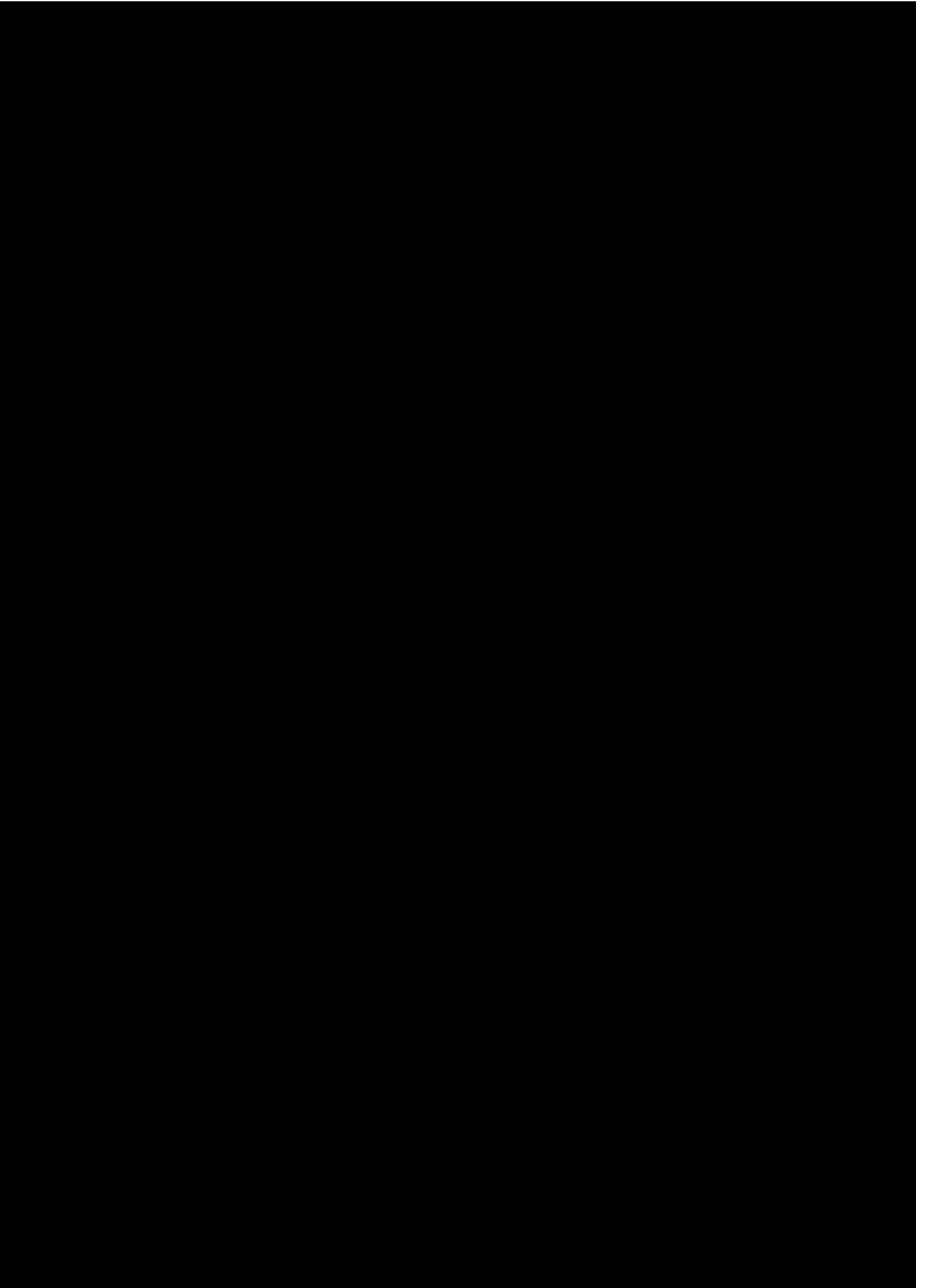


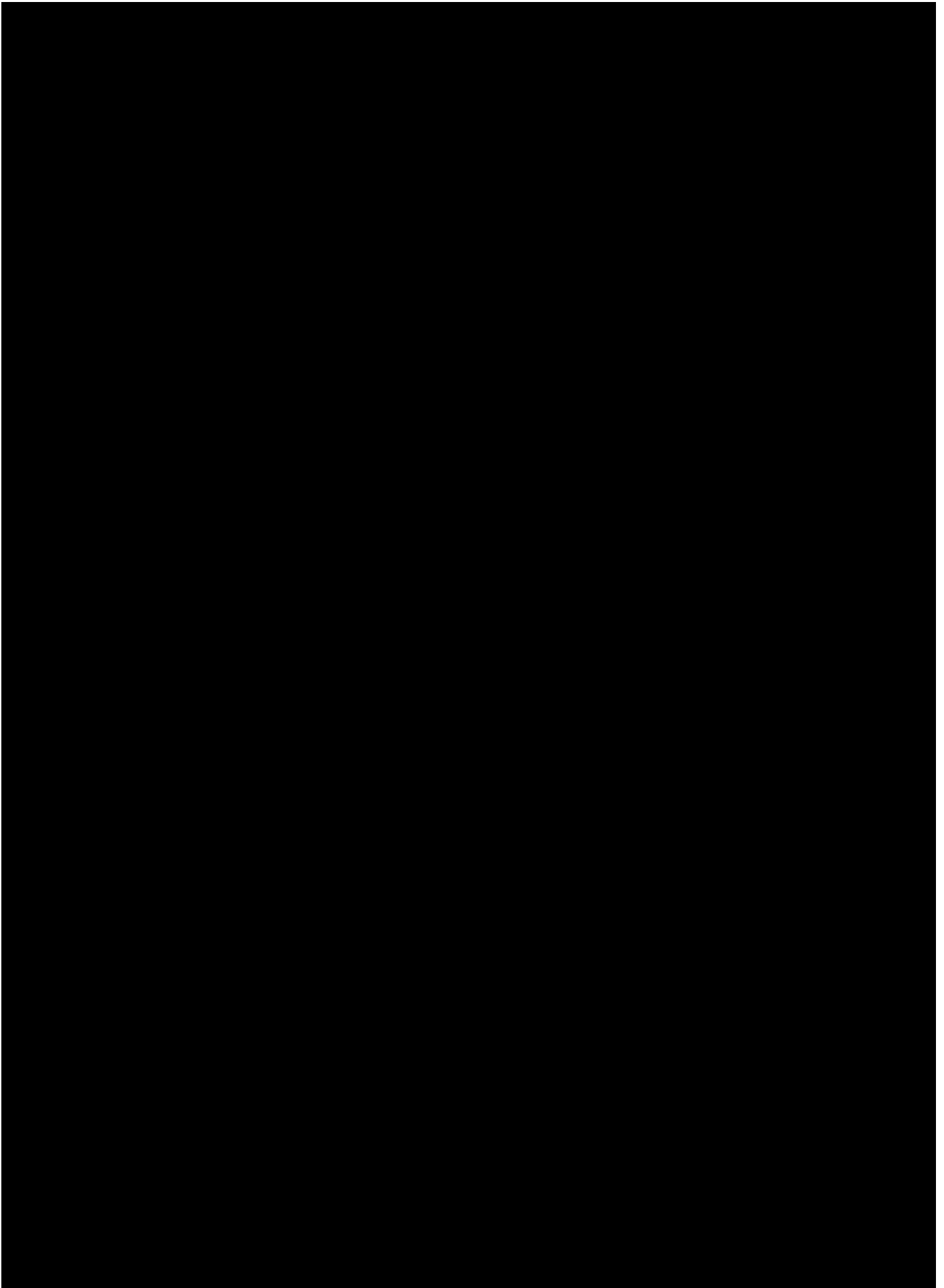


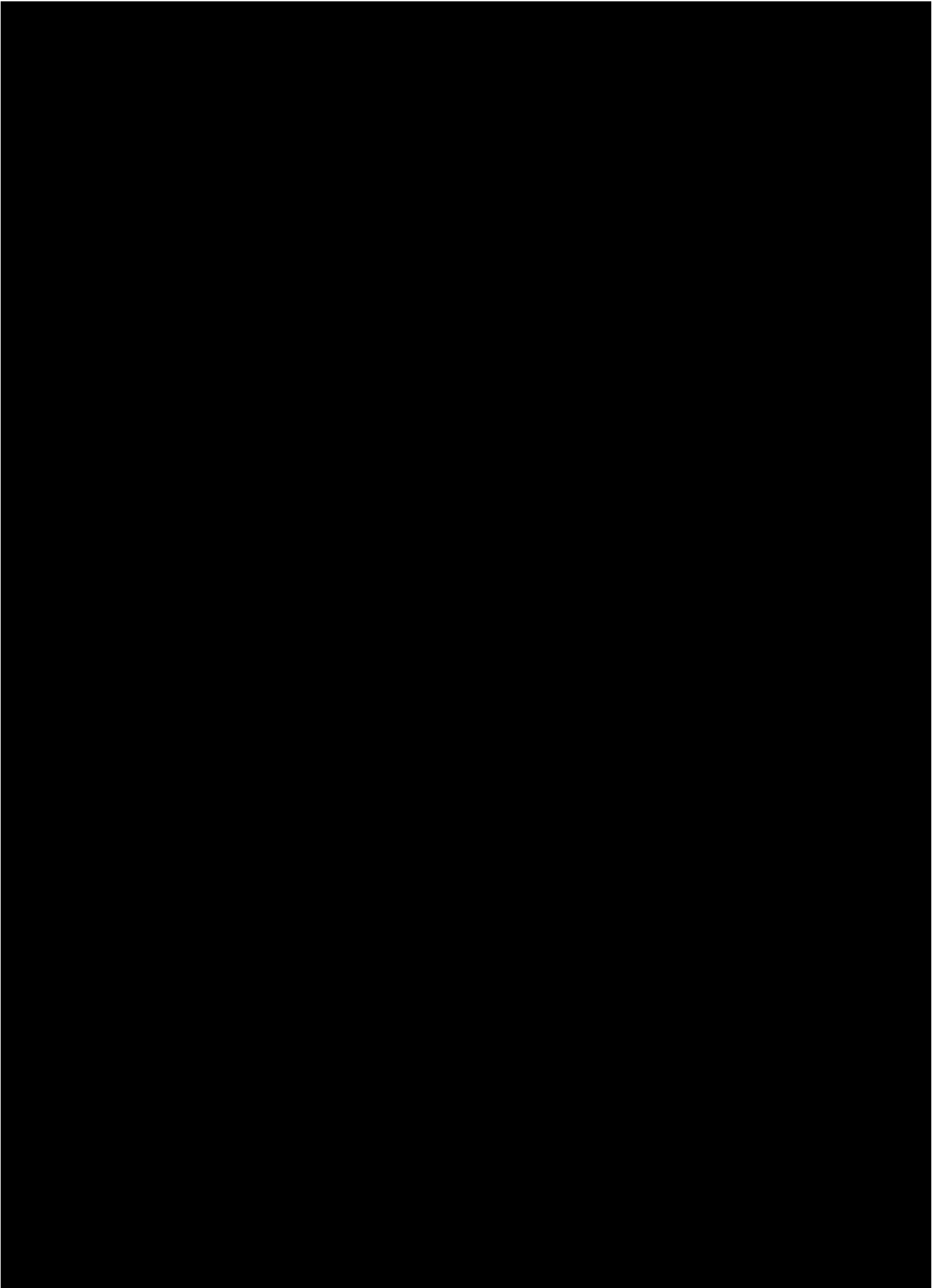


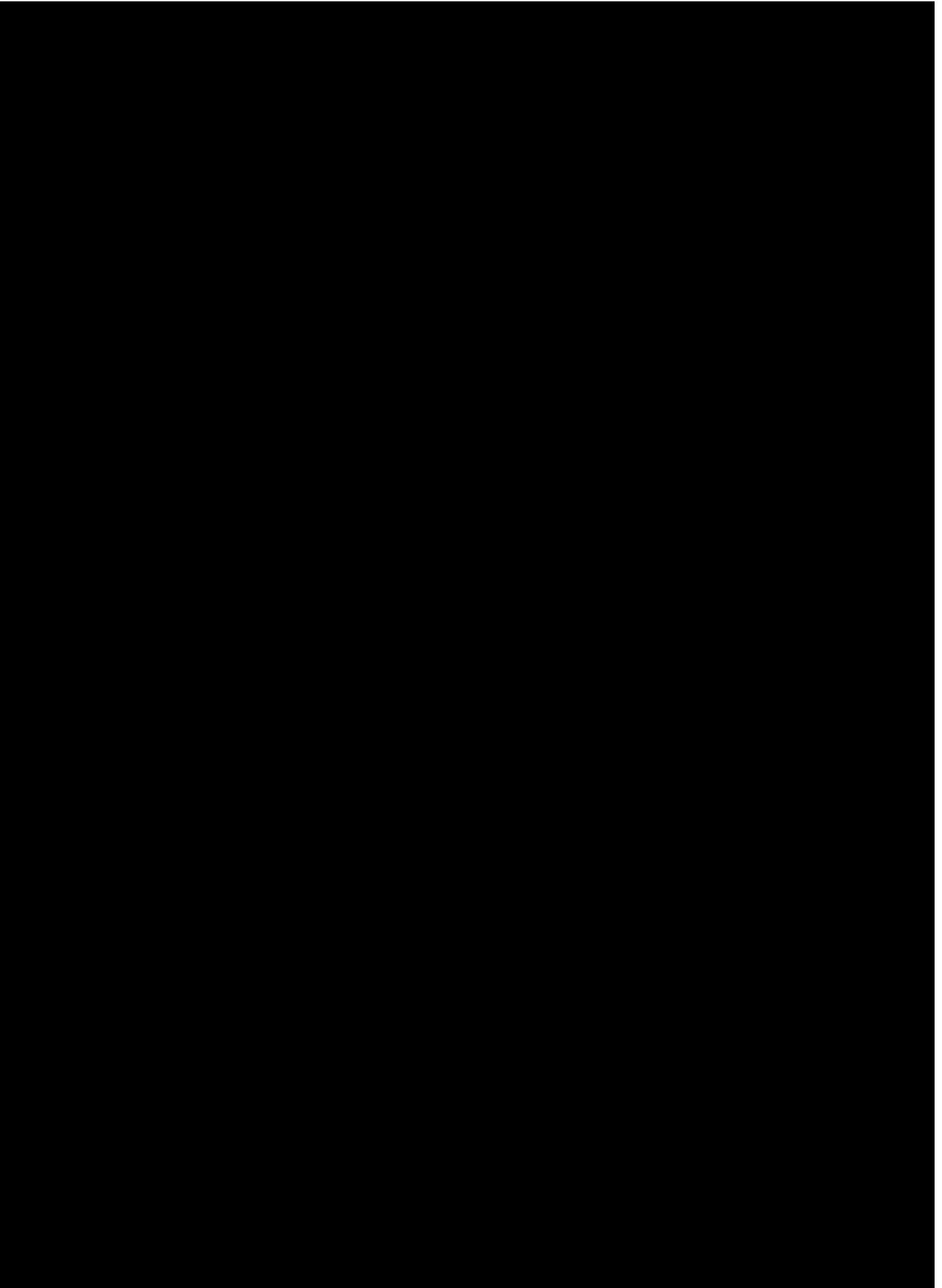




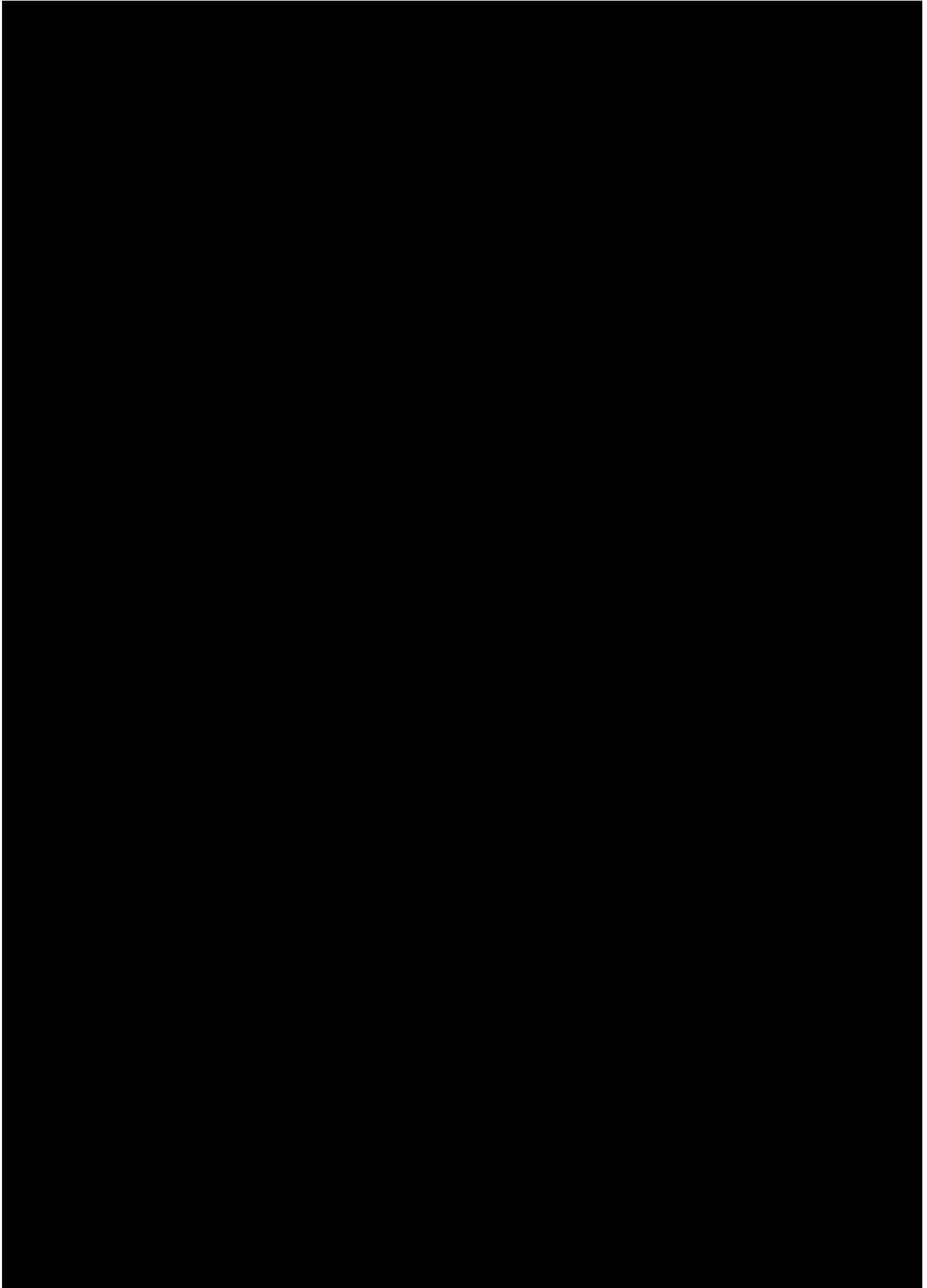


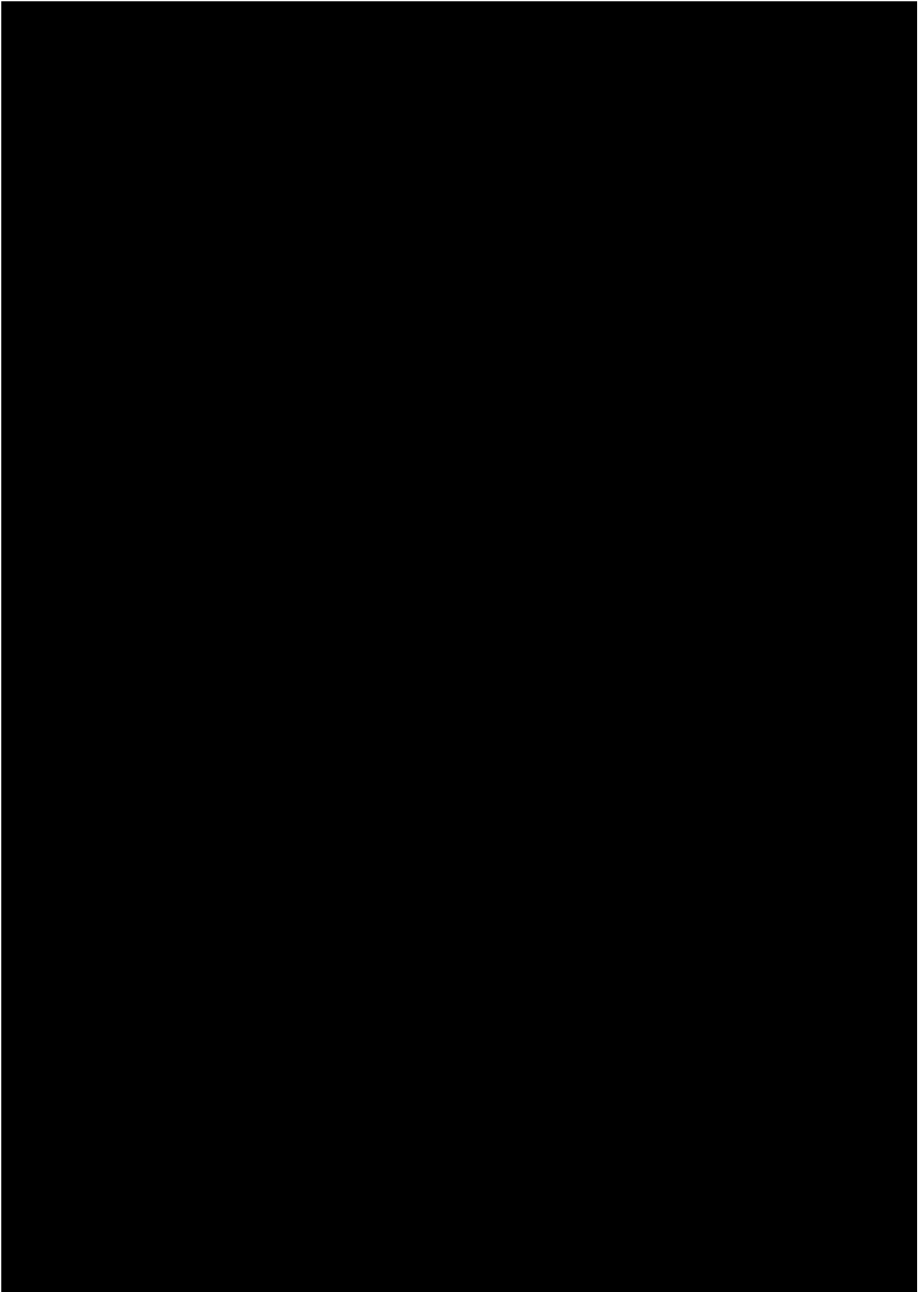


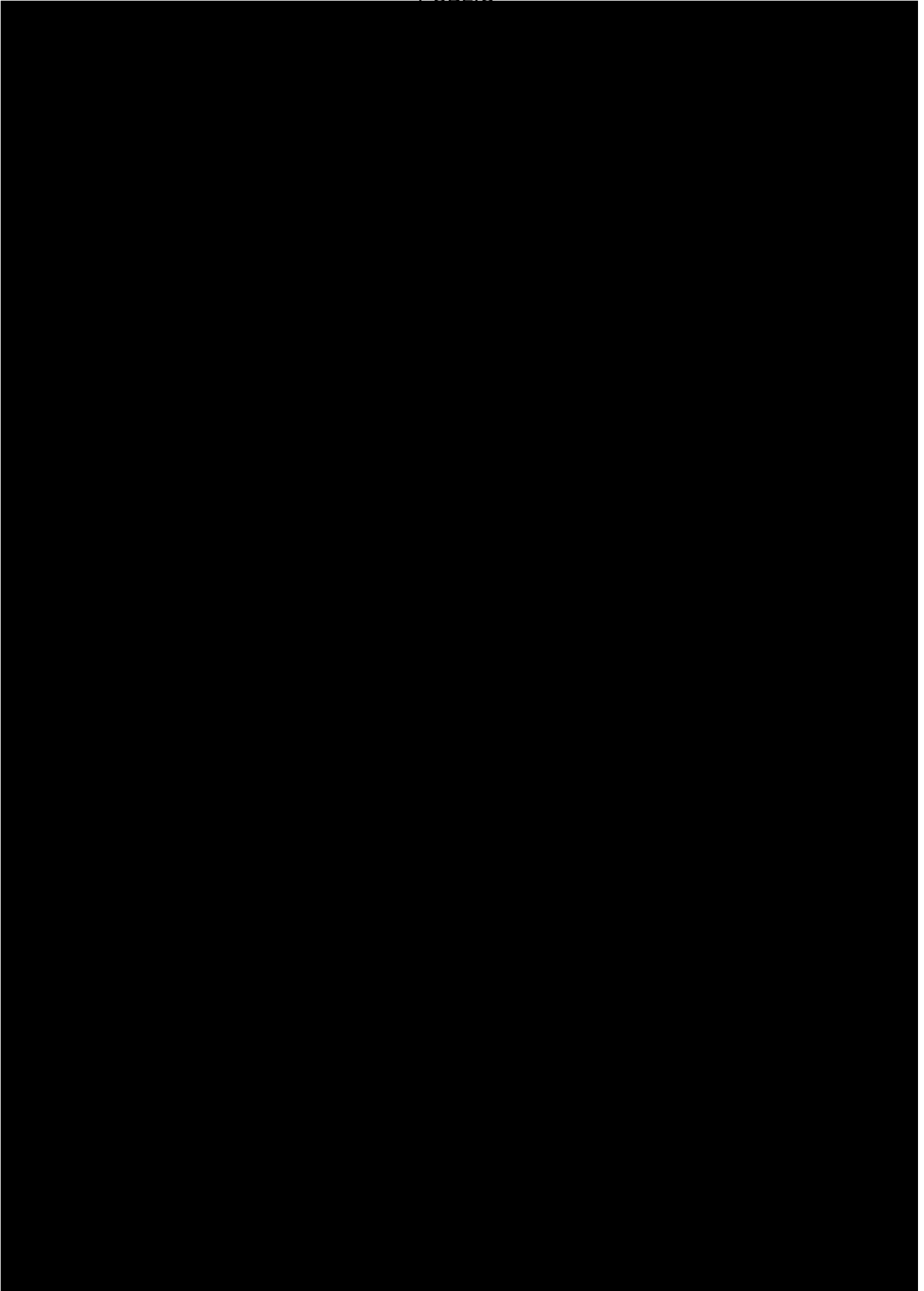


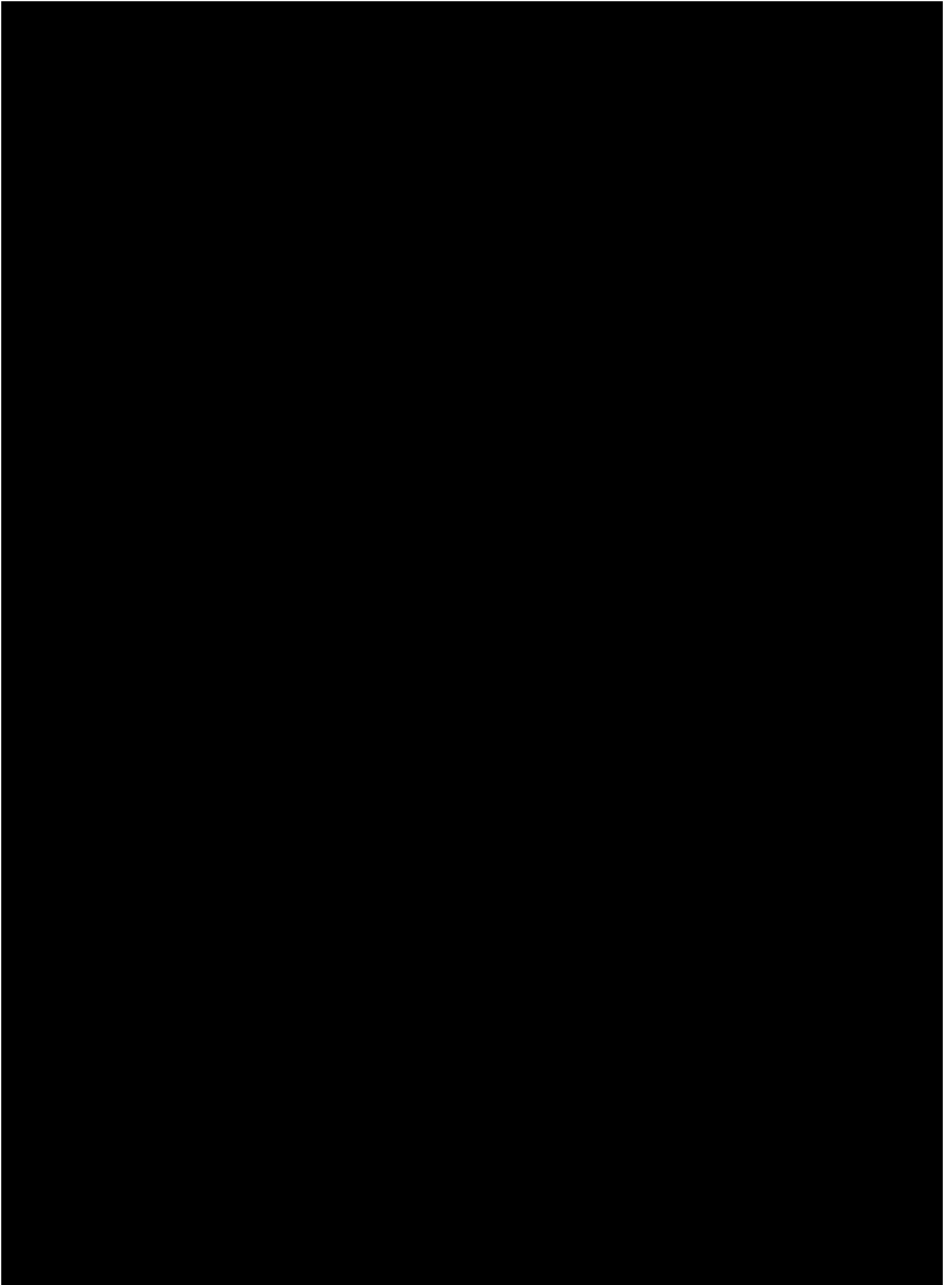




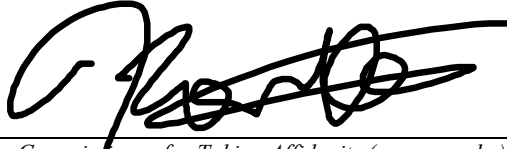






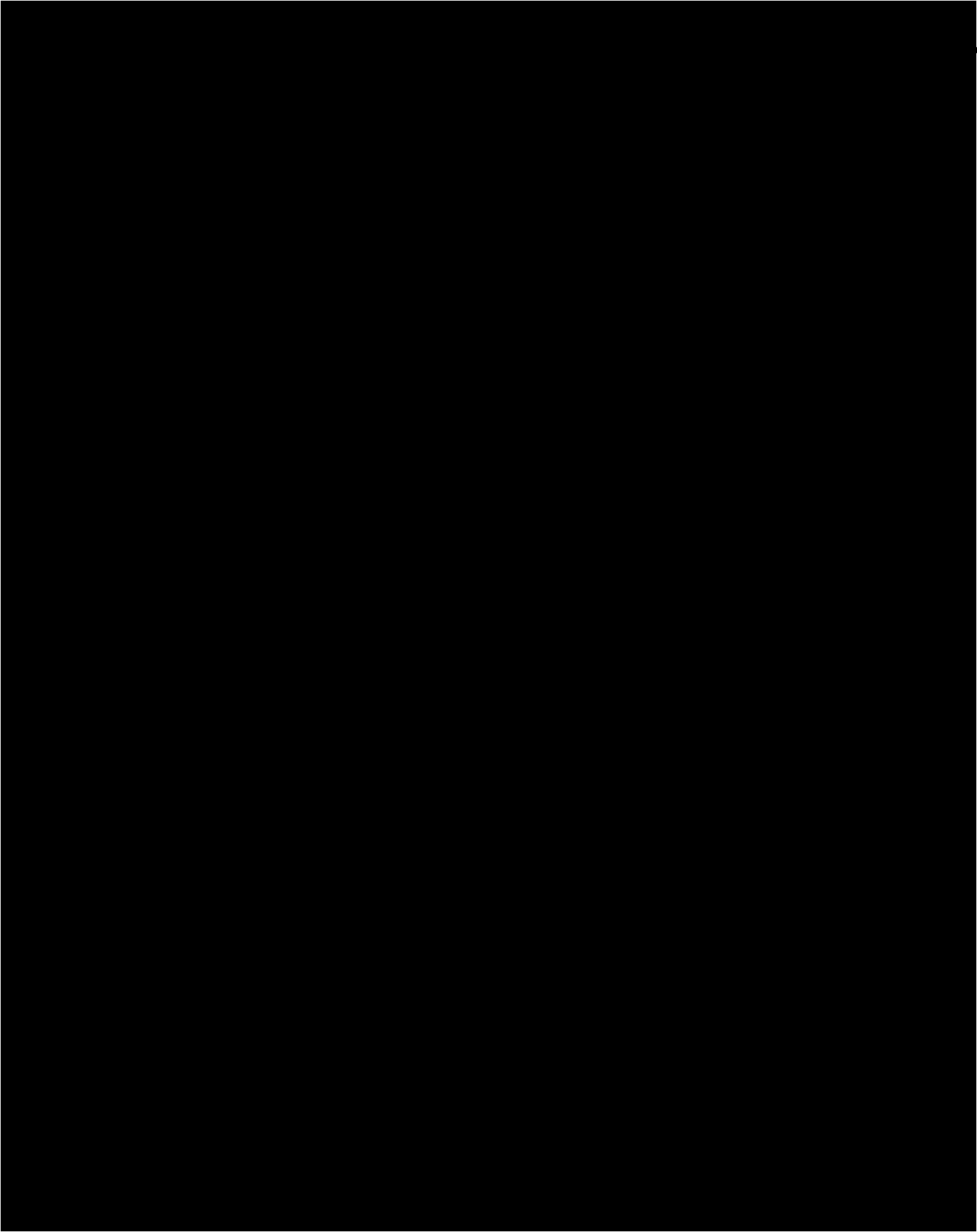


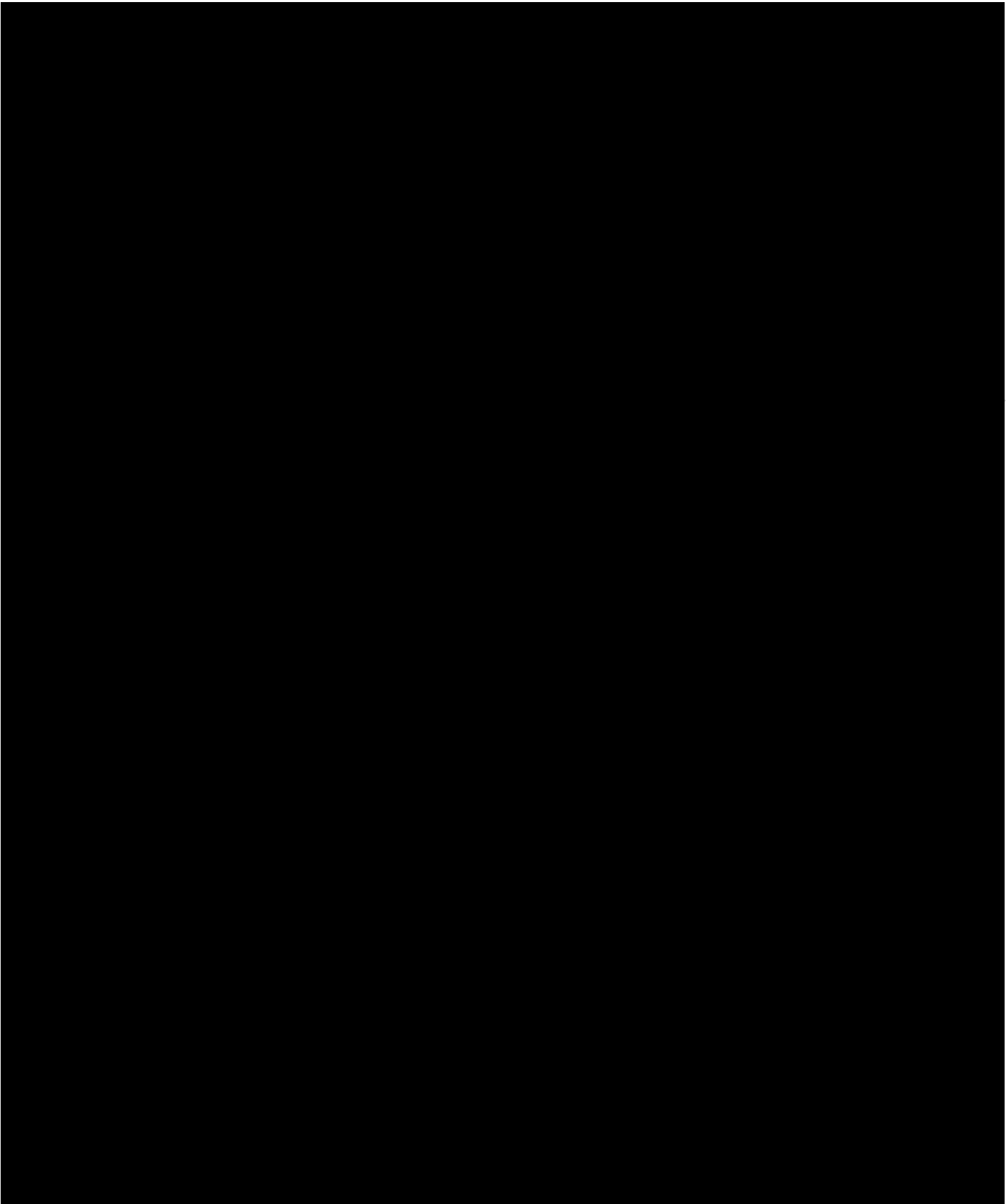
This is **Exhibit “C”** referred to in the Affidavit of Ashley McKnight sworn September 12, 2022.

A handwritten signature in black ink, appearing to read 'Ronke Akinyemi', written over a horizontal line.

*Commissioner for Taking Affidavits (or as may be)*

**RONKE AKINYEMI**



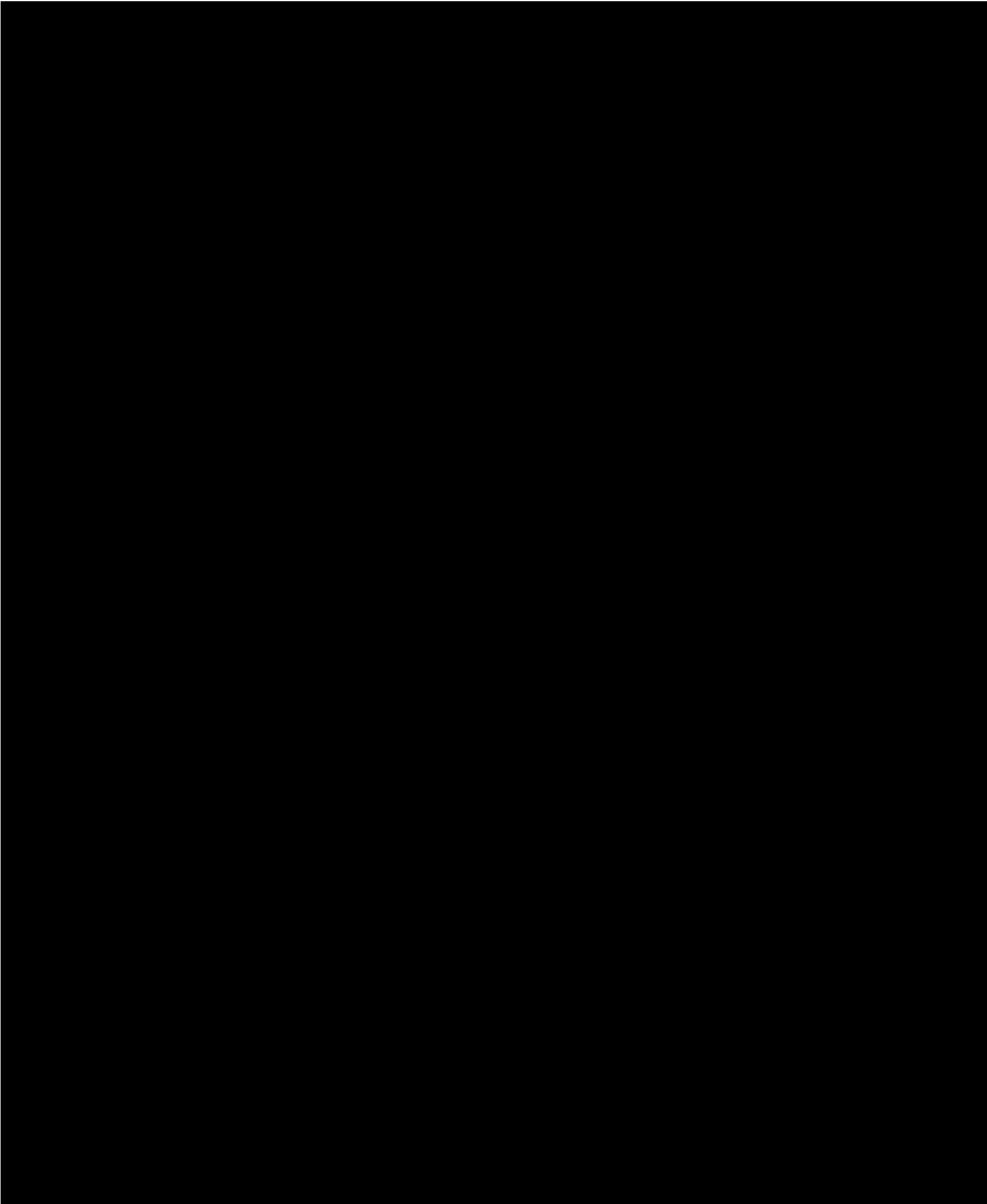








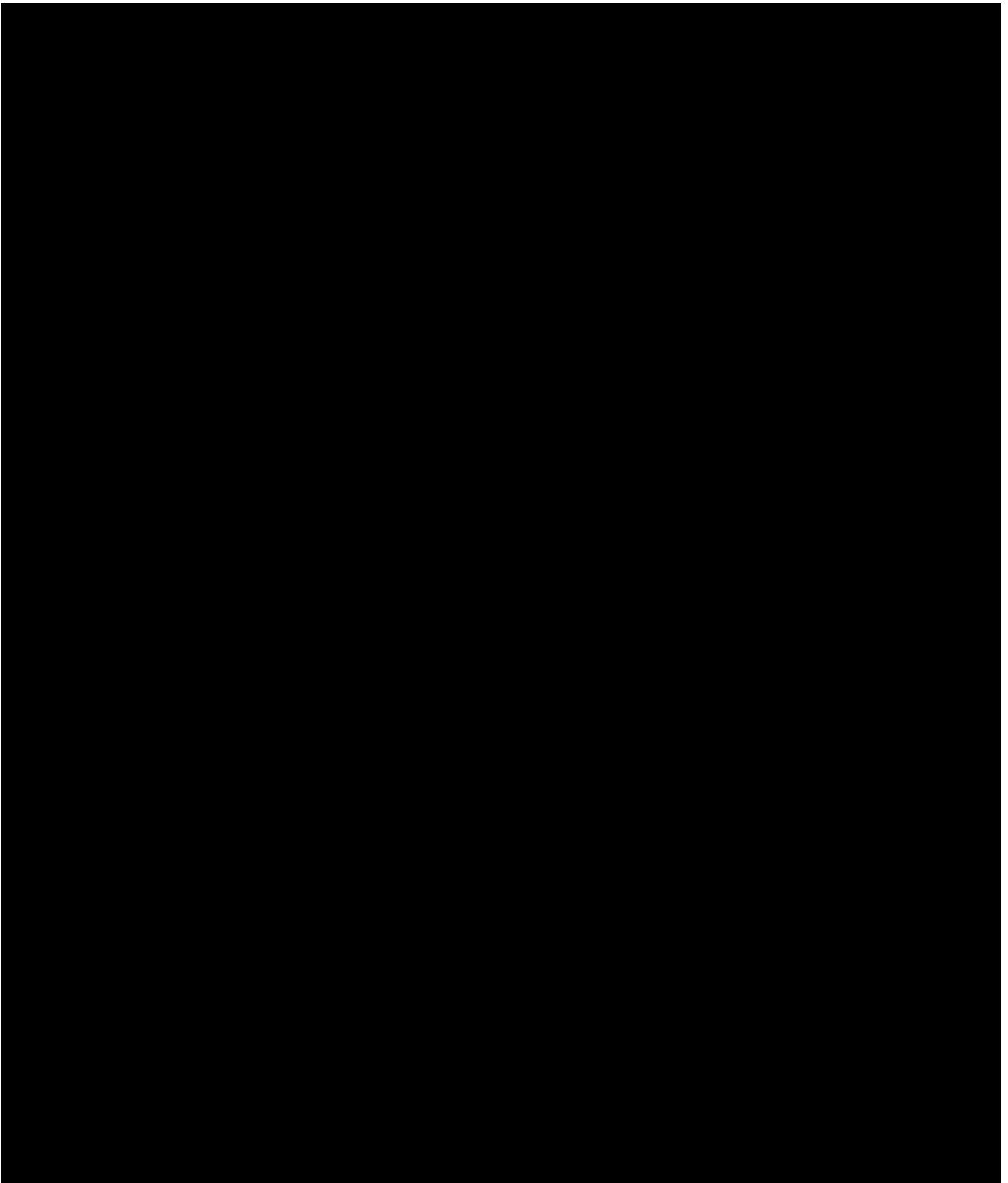


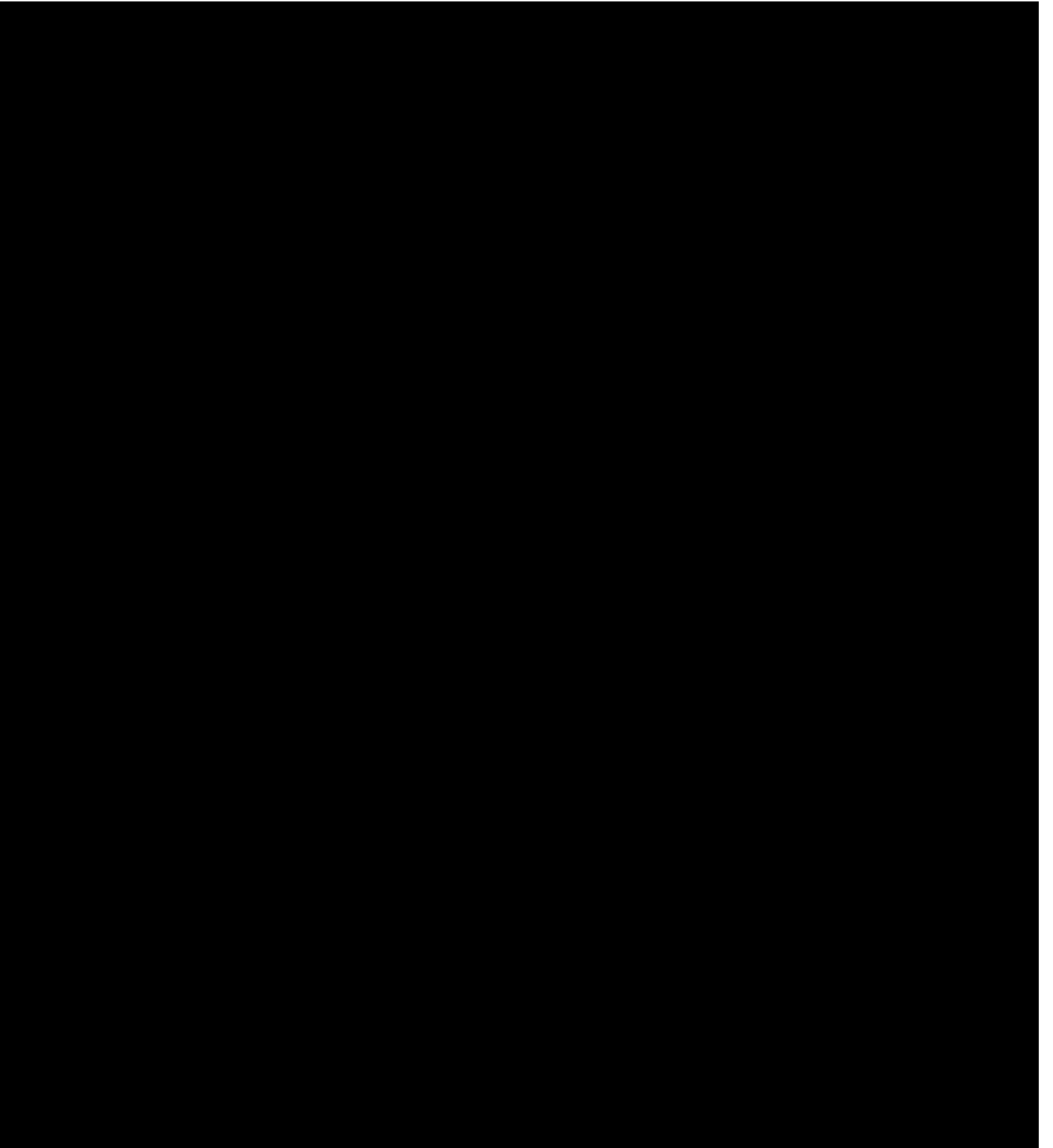


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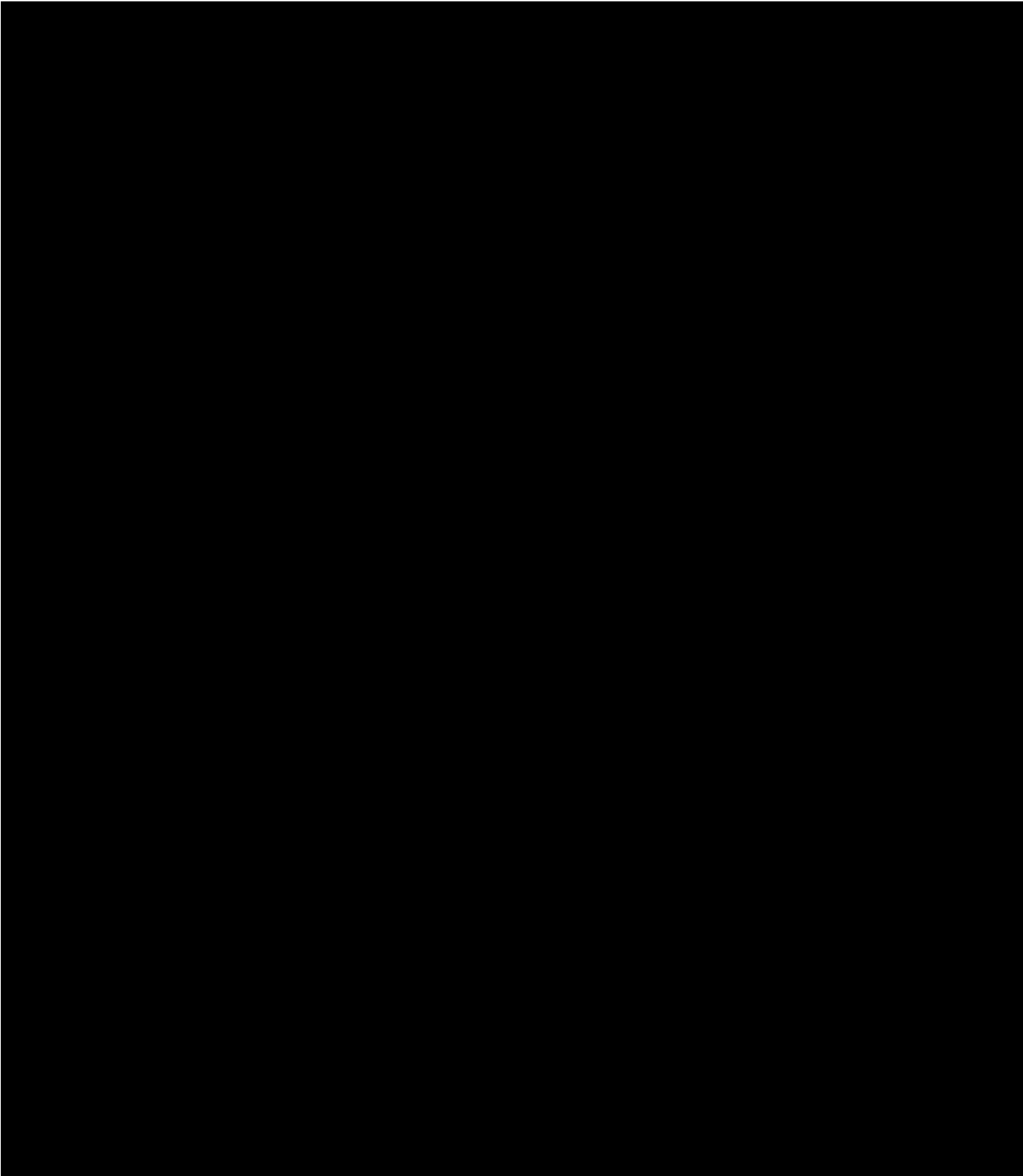


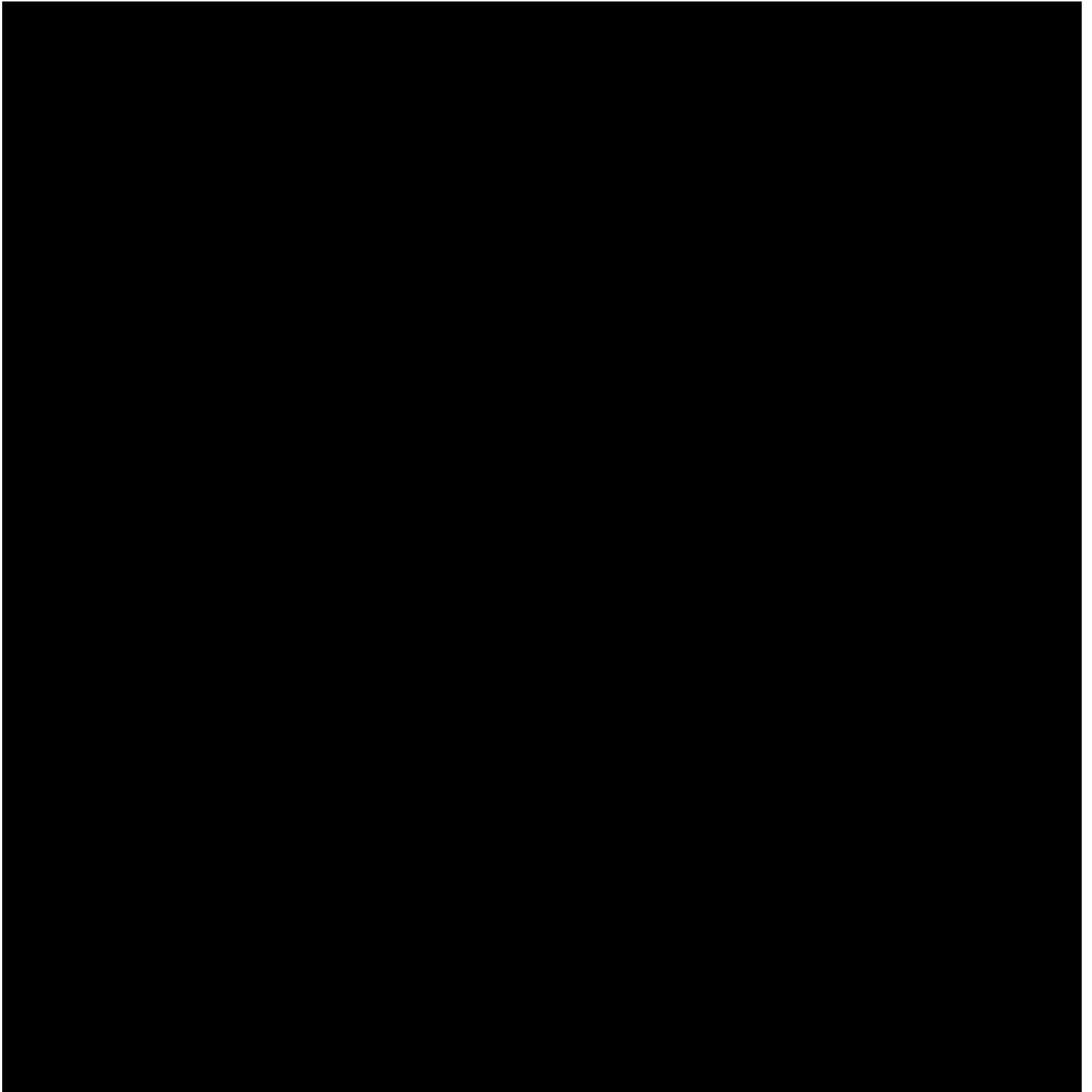
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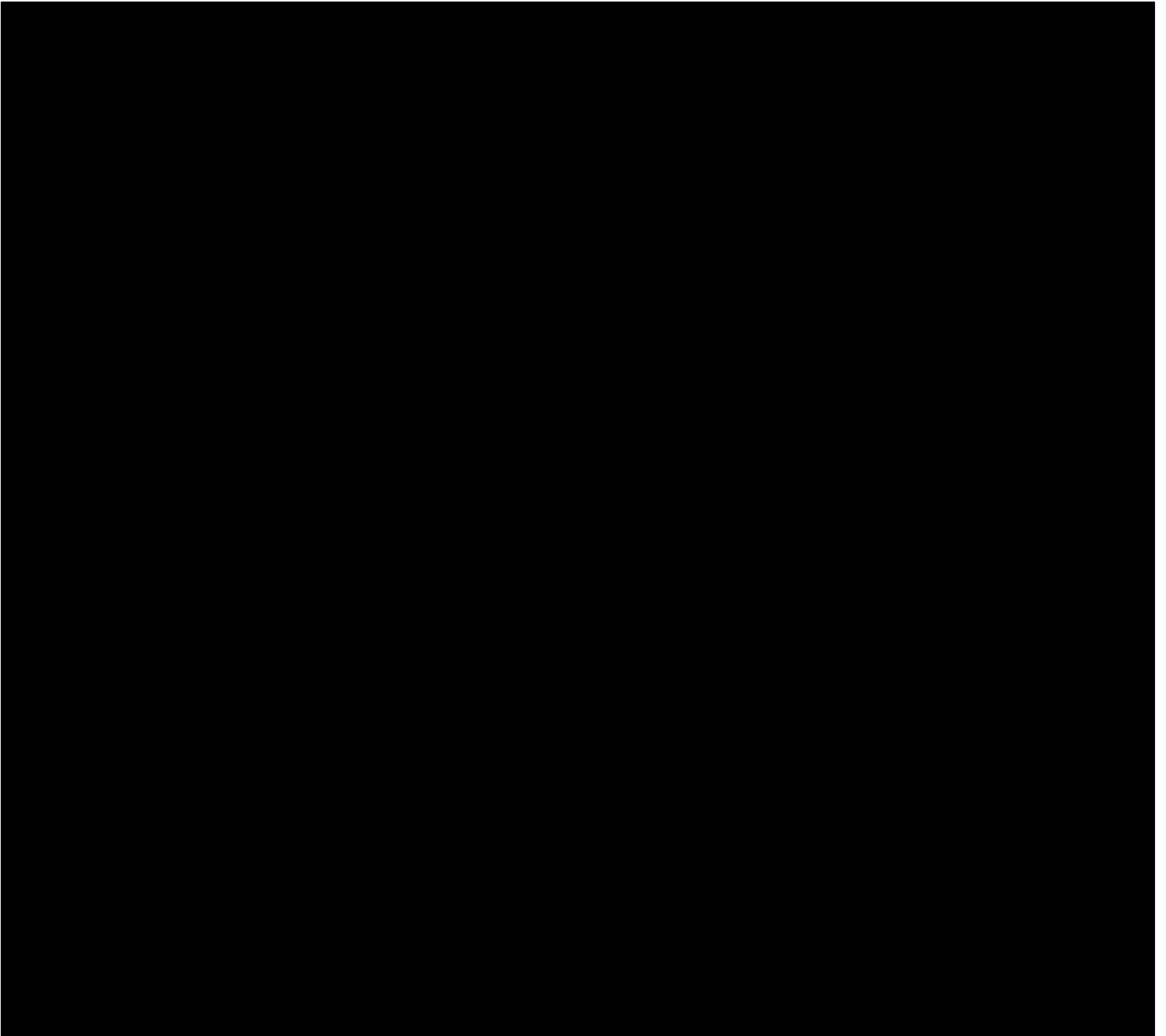


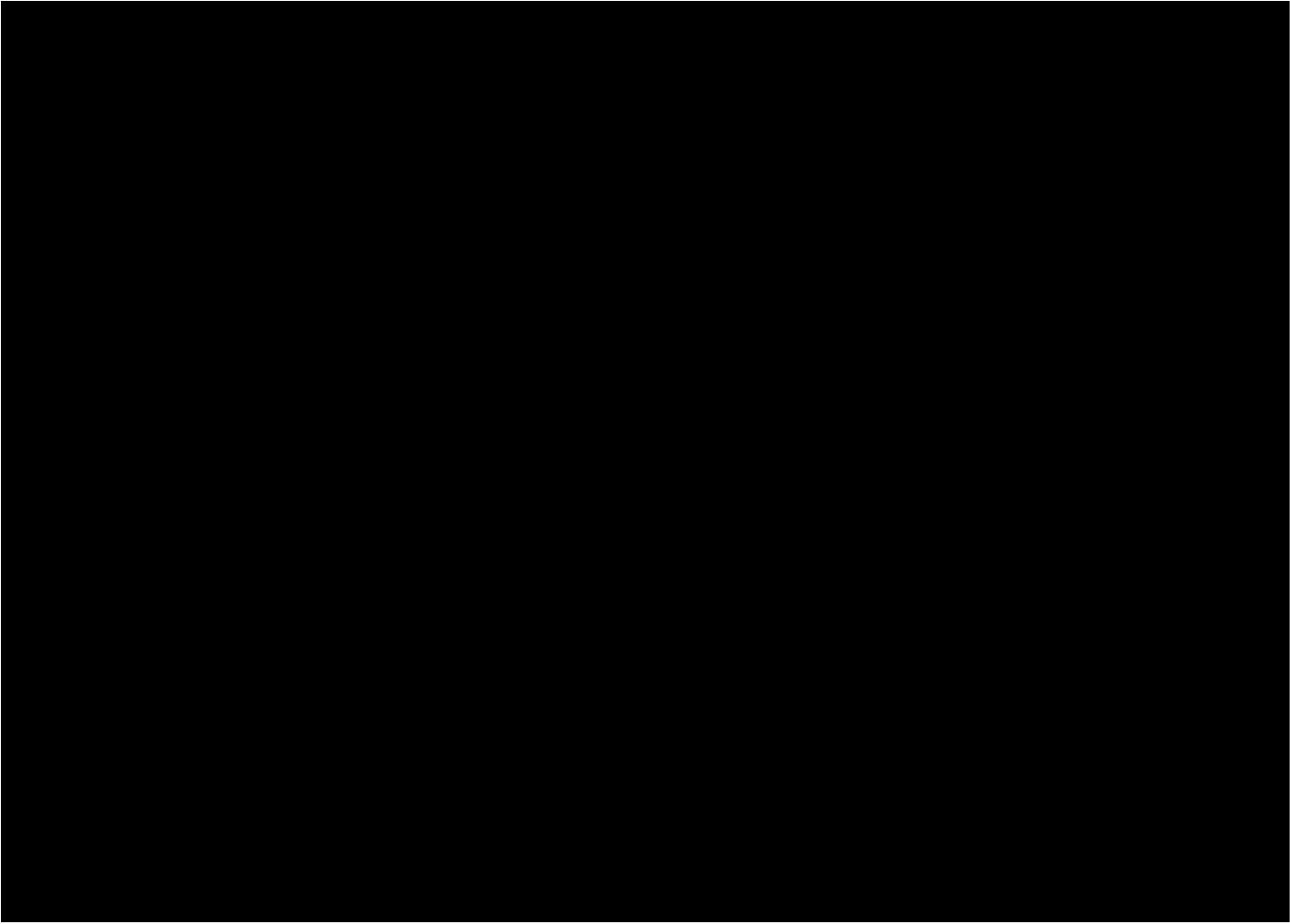


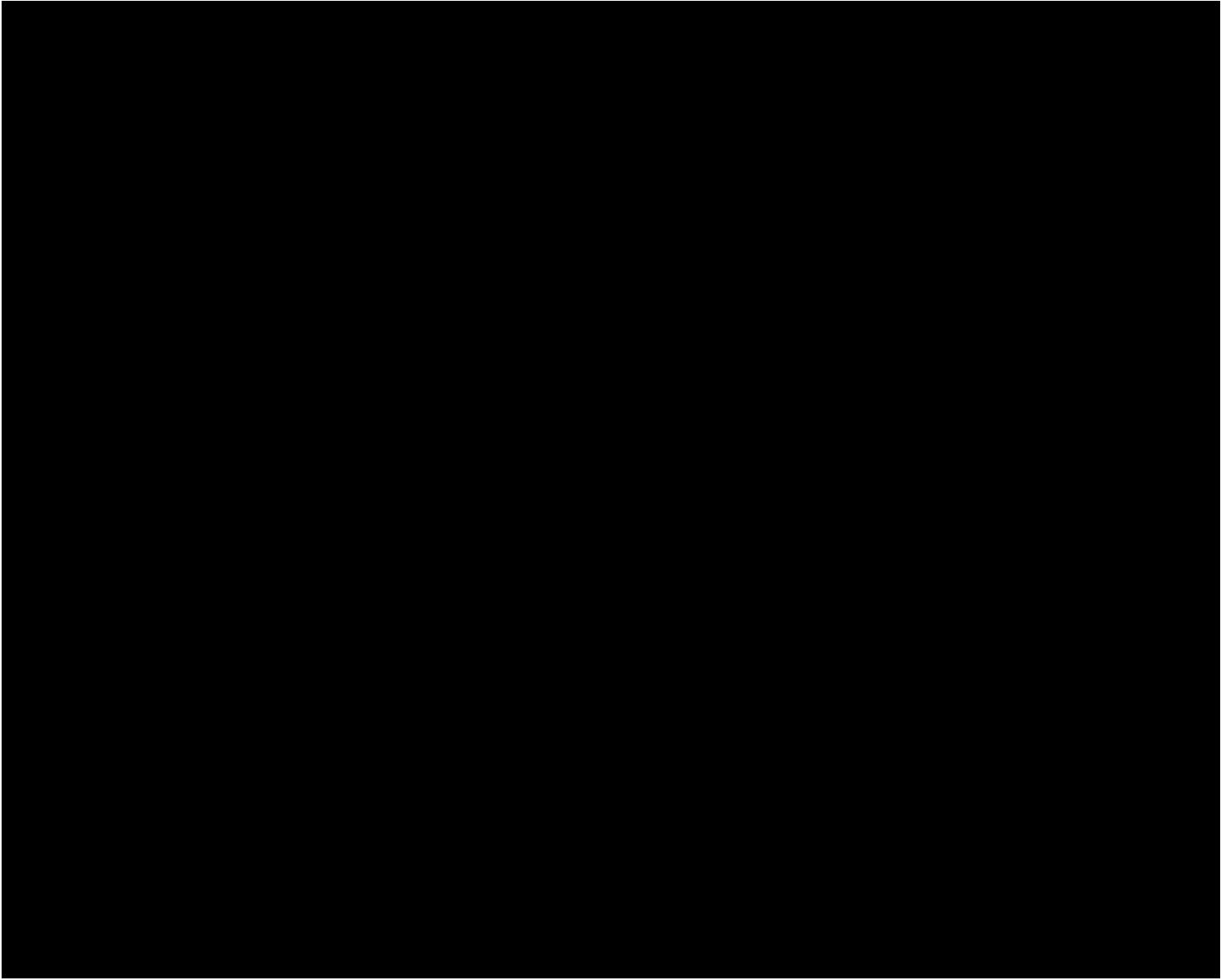


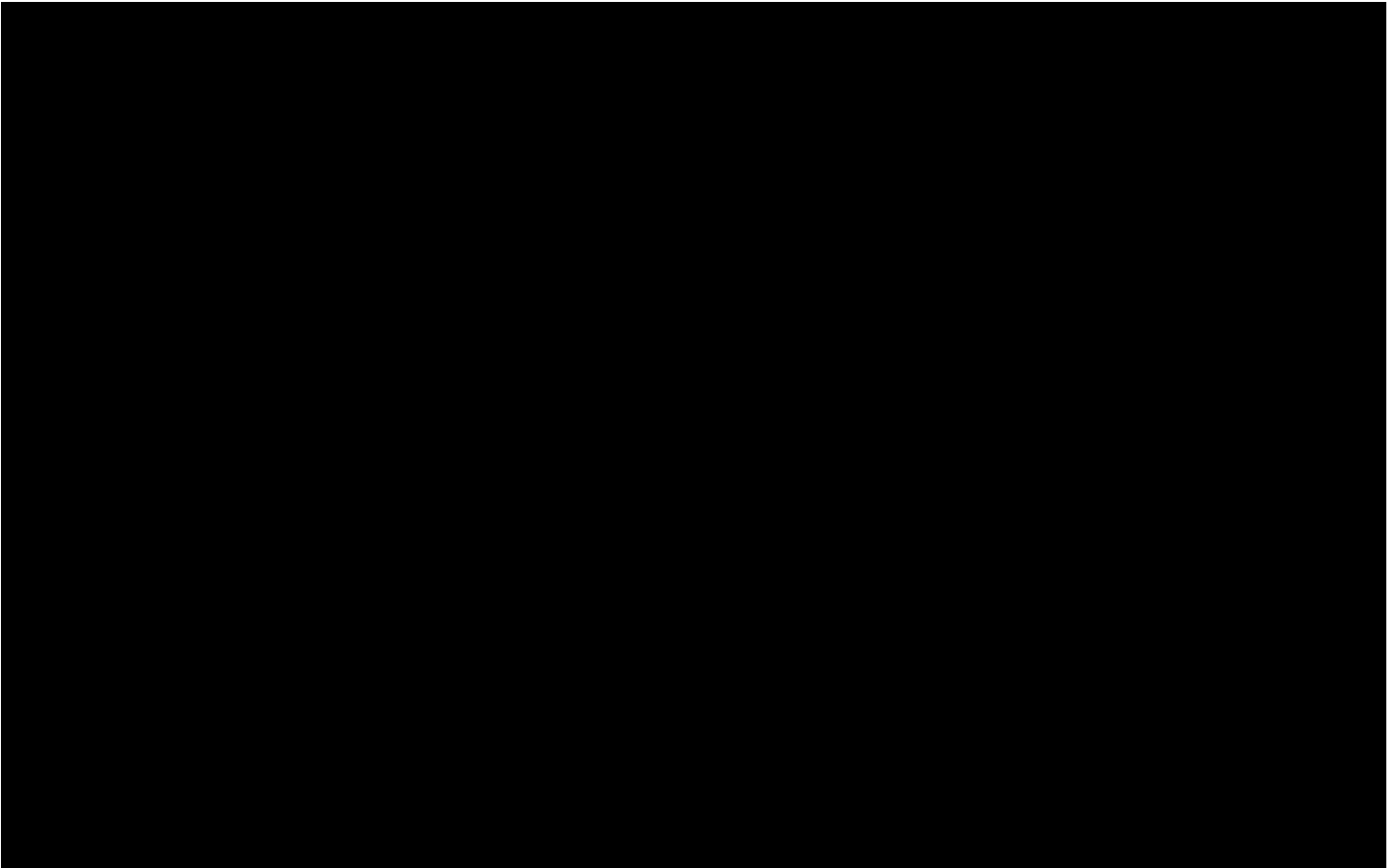


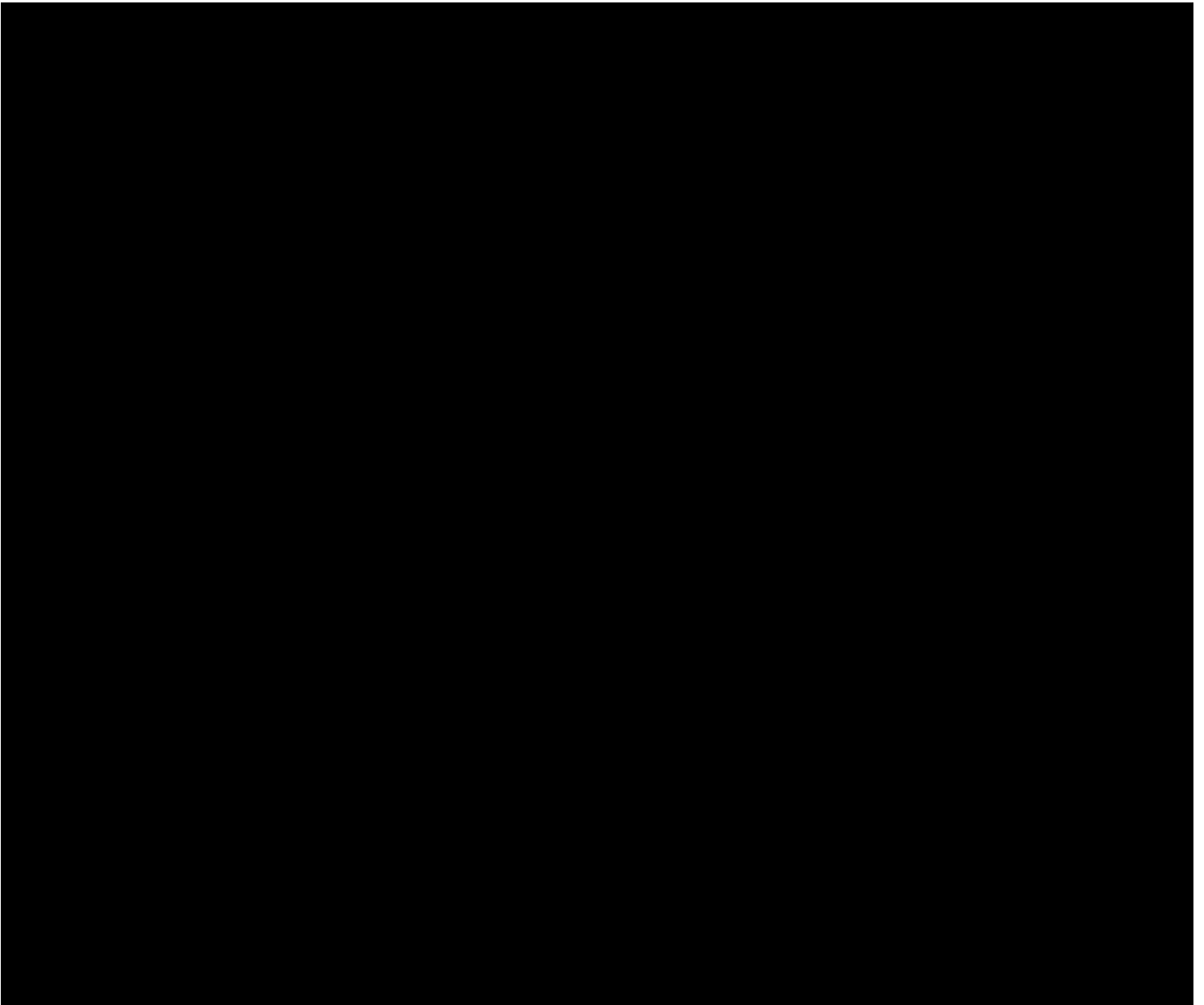


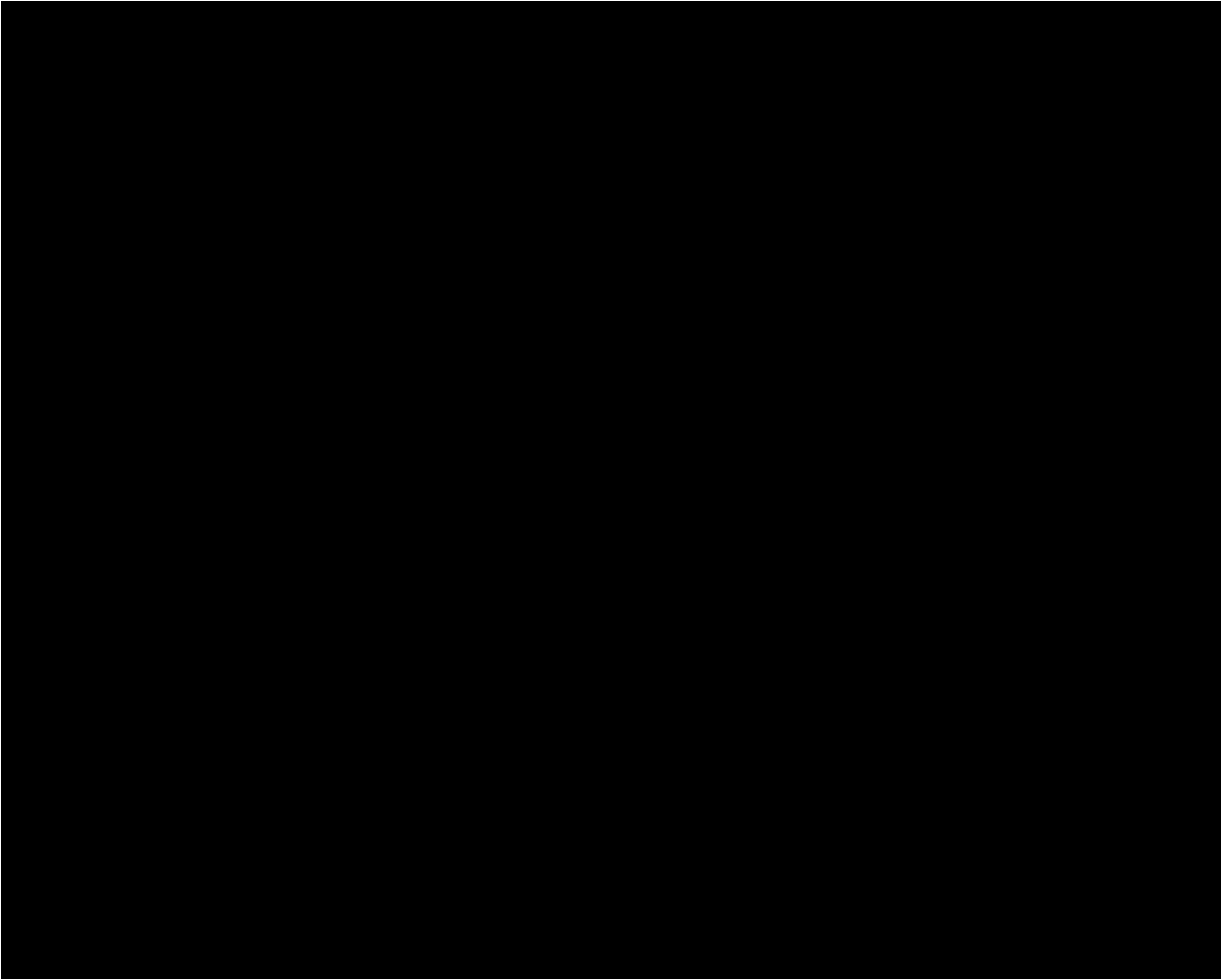




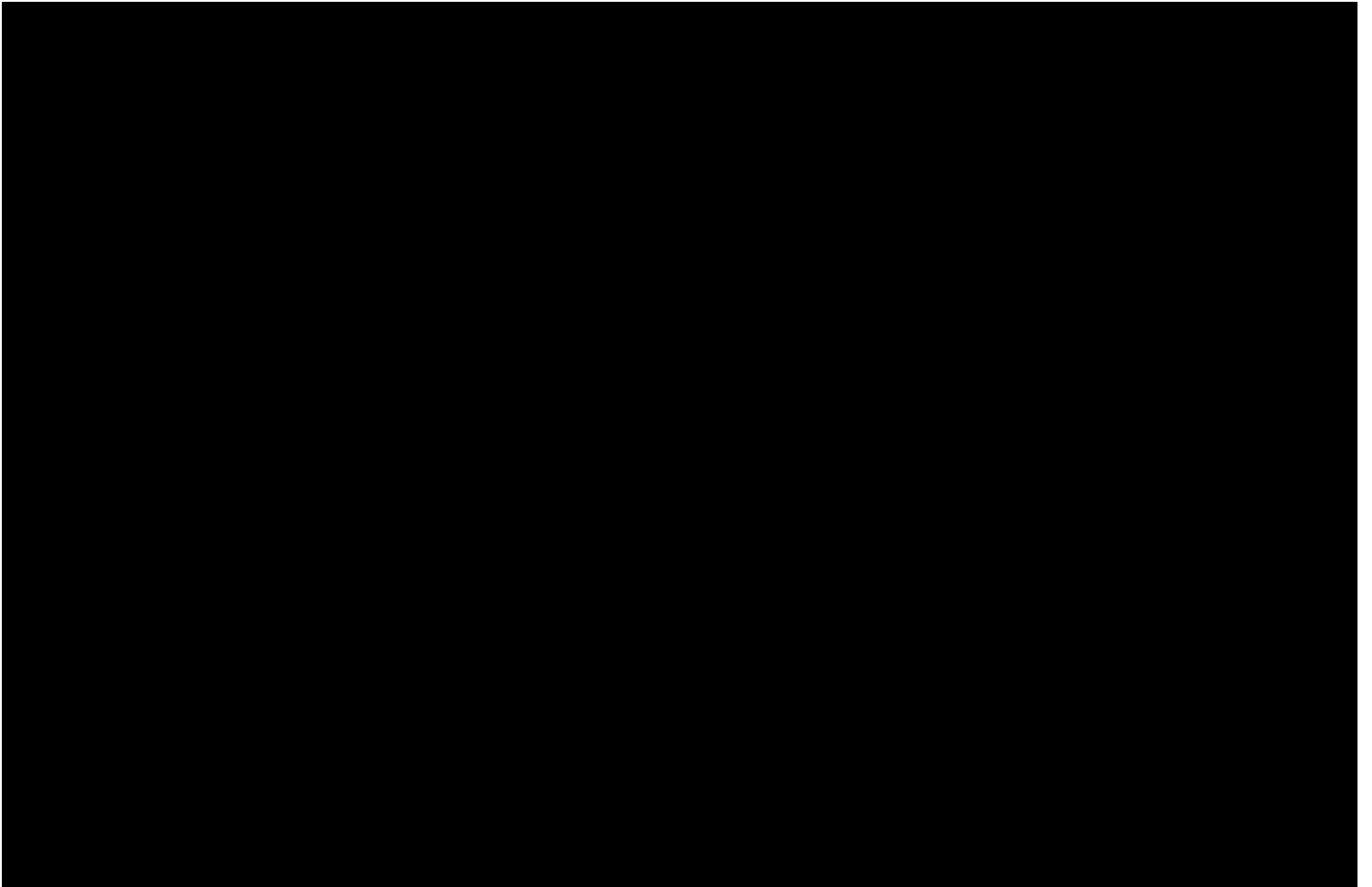












# TAB 2

**THE COMPETITION TRIBUNAL**

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

**AND IN THE MATTER OF** the proposed acquisition by Rogers Communications Inc. of Shaw Communications Inc.;

**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:

**COMMISSIONER OF COMPETITION**

Applicant

- and -

**ROGERS COMMUNICATION INC. AND SHAW COMMUNICATIONS INC.**

Respondents

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**RESPONDING MEMORANDUM OF FACT AND LAW OF ROGERS COMMUNICATIONS INC.  
(Commissioner's Refusals Motion)**

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September 12, 2022

**LAX O'SULLIVAN LISUS GOTTlieb LLP**

Suite 2750  
145 King Street West  
Toronto, ON M5H 1J8

**Jonathan C. Lisus** (LSO# 32952H)

Tel: 416.598.7873

Email: jlisus@lolg.ca

**Crawford G. Smith** (LSO# 42131S)

Tel: 416.598.8648

Email: csmith@lolg.ca

**Matthew R. Law** (LSO# 59856A)

Tel: 416.849.9050

Email: mlaw@lolg.ca

**Bradley Vermeersch** (LSO# 69004K)

Tel: 416.646.7997

Email: bvermeersch@lolg.ca

**Zain Naqi** (LSO#: 67870U)

Tel: 416.645.3789

Email: znaqi@lolg.ca

Counsel for the Respondent/Responding Party,  
Rogers Communications Inc.

**TO: THE COMMISSIONER OF COMPETITION**

Department of Justice Canada  
Competition Bureau Legal Services  
Place du Portage, Phase I  
50 Victoria Street, 22nd Floor  
Gatineau, QC K1A 0C9

**John S. Tyhurst**

**Derek Leschinsky**

**Katherine Rydel**

**Ryan Caron**

**Suzanie Chua**

**Marie-Hélène Gay**

**Kevin Hong**

Tel: (819) 956-2842 / (613) 897-7682

Fax: (819) 953-9267

Counsel for the Applicant/Moving Party,  
The Commissioner of Competition

**TO DAVIES WARD PHILLIPS & VINEBERG LLP**

155 Wellington Street West  
Toronto, ON M5V 3J7

**Kent E. Thomson (LSO# 24264J)**

Tel: 416.863.5566

Email: kentthomson@dwpv.com

**Derek D. Ricci (LSO# 52366N)**

Tel: 416.367.7471

Email: dricci@dwpv.com

**Steven Frankel (LSO# 58892E)**

Tel: 416.367.7441

Email: sfrankel@dwpv.com

**Chanakya A. Sethi (LSO# 63492T)**

Tel: 416.863.5516

Email: csethi@dwpv.com

Counsel for the Respondent,  
Shaw Communications Inc.

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## **PART I - BRIEF STATEMENT OF ARGUMENT**

1. The Commissioner seeks to compel responses from Rogers to the questions set out in its Appendix “A” refusals chart. In the interests of moving this case forward expeditiously, Rogers has advised that it will provide the vast majority of these answers, without prejudice to positions (already taken) that the information sought is not relevant to any pleaded issues in the case.

2. There are two issues that remain:

- (a) Rogers maintains its refusal with respect to Q 819-820 from the examination of Mr. Prevost. As set out below, the request is neither relevant nor proportionate; and

■ [REDACTED]

### **A. Q 819-820 Are Not Relevant Or Proportionate**

3. On discovery, the Bureau asked Mr. Prevost a series of questions about whether Rogers offers postpaid, low-cost plans to customers in accordance with the CRTC’s Telecon Regulatory Policy CRTC 2021-130 (in particular, paragraphs 544-545 of the policy). That policy was issued on April 15, 2021.

4. Rogers undertook to, and did, provide information on any plans that were introduced after April 15, 2021 in response to that policy. It identified one such plan offered by FIDO and has agreed to provide monthly subscriber volumes in relation to

that plan. Mr. Prevost was also asked whether Rogers offered plans that met the criteria in the policy **in the three years prior to its issuance** and to identify any such plans and their terms. This question was refused.

5. Rogers submits that the refusal is proper.

6. First, the information is not relevant. The request does not relate to any pleaded issue. Nor could historical plans introduced before the policy came into effect possibly assist the Tribunal's inquiry on any disputed question of fact or law.

7. The Bureau argues that historical offerings of low-cost plans to consumers will go to the issues of efficiencies and, in particular, whether efficiencies claimed by Rogers should be reduced on the basis of alleged socially adverse redistributive effects. However, historical plans have no bearing on such analysis. Any impacts on consumers, and whether they are socially adverse (which Rogers denies), must be assessed prospectively. The Bureau has not explained how historical plans for a three-year period—before the policy was even promulgated and before the transaction at issue was even entered into, let alone closed—would assist the Tribunal in making any determinations about the alleged redistributive effects of the transaction.

8. Rogers has already advised of existing plans that are responsive to the policy and were introduced after April 2021. Put simply, the Bureau does not require this information to make its case.

9. Second, the request is disproportionate. The request would require Rogers to search for all plans and offerings made over a three-year period. Gathering this

information would entail a tremendous effort and may not even be possible.

Proportionality is a key principle of disclosure. As the Federal Court of Appeal has held:

Although not formally codified in the *Federal Courts Rules*, as it has in some jurisdictions (*Rules of Civil Procedure*, R.R.O. 1990, Reg. 194, s. 29.2.03), the proportionality principle has a long antecedence in the jurisprudence of the Federal Courts. As early as 2003 in *Apotex Inc. v. Merck & Co.*, 2003 FCA 438 this Court recognized that merely showing a question is relevant does not mean that it must be answered. There is a second hurdle. The answer must also be proportionate (see also *Apotex Inc. v. Wellcome Foundation Limited*, 2008 FCA 131).

Proportionality takes into account the fact that evidence has degrees of significance and connection to the case. It also takes into account the burden required to obtain the information, the scope of the request and the availability of information from other sources, to mention but some of the considerations.<sup>1</sup>

10. Here, the Bureau's request is not proportionate. It would require Rogers to review the specific terms of hundreds if not thousands of different plans over a three-year period. This goes well beyond the scope of a reasonable and proportionate production, and goes well beyond what the Bureau itself asked for in the agreed upon Discovery Plan.

11. Given the Bureau's failure to identify any plausible relevance to the information sought and the disproportionate scope of the request, the Bureau's position should be rejected.

■ [REDACTED]

■ [REDACTED]

[REDACTED]

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<sup>1</sup> *Hospira Healthcare Corporation v. Kennedy Trust for Rheumatology Research*, [2020 FCA 177](#), at paras. 8-9.



[REDACTED]

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[REDACTED]

[REDACTED]

**PART II - ORDER REQUESTED**

16. Rogers respectfully requests that the Commissioner's motion be dismissed.

**ALL OF WHICH IS RESPECTFULLY SUBMITTED** this 12<sup>th</sup> day of September, 2022.



---

Counsel for Rogers and Shaw

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September 12, 2022

**LAX O'SULLIVAN LISUS GOTTLIEB LLP**

Suite 2750

145 King Street West

Toronto, ON M5H 1J8

**Jonathan C. Lisus** (LSO# 32952H)

Tel: 416.598.7873

Email: jlisus@lolg.ca

**Crawford G. Smith** (LSO# 42131S)

Tel: 416.598.8648

Email: csmith@lolg.ca

**Matthew R. Law** (LSO# 59856A)

Tel: 416.849.9050

Email: mlaw@lolg.ca

**Bradley Vermeersch** (LSO# 69004K)

Tel: 416.646.7997

Email: bvermeersch@lolg.ca

**Zain Naqi** (LSO#: 67870U)

Tel: 416.645.3789

Email: znaqi@lolg.ca

Counsel for the Respondent/Responding  
Party, Rogers Communications Inc.

**SCHEDULE “A”**

**LIST OF AUTHORITIES**

1. *Hospira Healthcare Corporation v. Kennedy Trust for Rheumatology Research*, [2020 FCA 177](#)