

Post Office Board Agenda (CCRC meeting)

Date:	Thursday 19 November 2020	Time	15.00 – 16.30 hrs	Location	Microsoft Teams Meeting/ Finsbury Dials
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Present		Other Attendees	
• Tim Parker (Chairman)	• Ken McCall (SID)	• Ben Foat (General Counsel)	• Richard Taylor (Group Corporate Affairs and Communications Director)
• Nick Read (CEO)	• Zarin Patel (NED)	• Rodric Williams (Head of Legal – Dispute Resolution & Brand)	• Veronica Branton (Company Secretary)
• Tom Cooper (NED)	• Carla Stent (NED)	• Richard Watson (General Counsel – UKGI)	• Sir David Calvert-Smith (QEB Hollis Whiteman)
• Lisa Harrington (NED)	• Alisdair Cameron (CFO)	• Brian Altman QC (2 Bedford Row)	• Zoe Johnson QC (QEB Hollis Whiteman)
		• Alan Watts (Herbert Smith Freehills)	• Declan Salter (GLO Director)
		• Nick Vamos (Peters & Peters Solicitors LLP)	• Lucie Lambert (Deputy General Counsel - UKGI)
		• Richard Bussell (Linklaters)	

Apologies: N/A

Join Microsoft Teams Meeting
+44 20 3443 6294 United Kingdom, London (Toll)
Conference ID: 682 666 328#

Agenda Item	Action Needed	Lead
1. Welcome and Conflicts of Interest	Noting	Chairman
2. Minutes and Matters Arising 05 November 2020	Approval	Chairman
3. Update from Directions Hearing	Noting	Brian Altman QC and Zoe Johnson QC
4. Timetable for further Board decisions	Noting	Nick Vamos
5. Update on potential future appeals	Noting	Nick Vamos
6. Funding / Historical Shortfall Scheme	Approval	Al Cameron
7. Any Other Business	Noting	All

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POST OFFICE LIMITED BOARD MEETING
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MINUTES OF A CCRC MEETING OF THE BOARD OF DIRECTORS OF POST OFFICE LIMITED HELD ON THURSDAY 05 NOVEMBER 2020 AT 20 FINSBURY STREET, LONDON EC2Y 9AQ BY CONFERENCE CALL AT 15.00 HRS¹

Present:

Tim Parker	Chairman (TP)
Ken McCall	Senior Independent Director (KM)
Tom Cooper	Non-Executive Director (TC)
Carla Stent	Non-Executive Director (CS)
Zarin Patel	Non-Executive Director (ZP)
Lisa Harrington	Non-Executive Director (LH)
Alisdair Cameron	Group Chief Finance Officer (AC)
Nick Read	Group Chief Executive (NR)

In attendance:

Sarah Koniarski	Senior Assistant Company Secretary (SK)
Ben Foat	Group General Counsel (BF)
Rodric Williams	Head of Legal – Dispute Resolution & Brand (RWI)
Declan Salter	GLO Director (DS)
Richard Watson	General Counsel – UKGI (RW)
Lucie Lambert	Deputy General Counsel – UKGI (LL)
Alan Watts	Herbert Smith Freehills (AW)
Zoe Johnson QC	QEB Hollis Whiteman (ZJ)
Nick Vamos	Peters & Peters Solicitors LLP (NV)
Brian Altman QC	2 Bedford Row (BA)

Apologies: Sir David Calvert-Smith (QEB Hollis Whiteman)

**All participants joined via a Microsoft Teams Meeting Call*

Agenda Item	Action
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1. Welcome and Conflicts of Interest

A quorum being present, the Chairman opened the meeting. The Directors declared that they had no conflicts of interest in the matters to be considered at the meeting in accordance with the requirements of section 177 of the Companies Act 2006 and the Company's Articles of Association.

2. Minutes and Matters Arising

The Board **APPROVED** the minutes of the Board meeting to discuss the CCRC cases held on 22nd October 2020.

The Board **NOTED** the action log.

Matter Arising – Public Inquiry: Nick Read provided an update on the Post Office Horizon IT Inquiry chaired by Sir Wyn Williams. POL² had received an eighteen-page document on the plan and approach that Sir Wyn would be taking to the inquiry. Nick, together with Declan Salter and Alisdair Cameron, had reviewed and shared their preliminary observations, noting that detailed analysis would follow in due course. It was thought that the earliest date POL would be required to give evidence in person would be May 2021; although Sir Wyn had indicated that he would be taking calls for evidence from December 2020 onwards. A further update was expected in mid-November, setting out the approach to evidence gathering and

¹ Participation in the meeting was entirely via Microsoft Teams from participants' personal addresses. In such circumstances the Company's Articles of Association (Article 64) require that the location of the meeting be deemed as the chairman's location. However, it was not deemed appropriate to record personal addresses on the Company record. As such, the Registered Office is recorded as the meeting location.

² Post Office Limited

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witness statements. Regarding timelines, the plan had indicated that Sir Wyn would draft his final report in August 2021. Information gathering had already begun and Declan Salter was overseeing the submission of artefacts. Nick Read would keep the Board briefed on exchanges with Sir Wyn and any material developments.

3. Update on the Court of Appeal Criminal Division Proceedings and Preparation for Directions

Nick Vamos provided an update on the Court of Appeal Criminal Division Proceedings. On Friday 6th November 2020 POL would serve two documents in advance of the directions hearing scheduled for the 18th November. The documents comprised a position statement on disclosure (which the court had requested) and a response to the Aria Grace argument.

Nick Vamos confirmed receipt of the final provisional grounds of appeal submitted on behalf of the appellant in the Hussein case. This had completed all outstanding responses, being one of three cases opposed by POL. The appellant's submission had asserted that the Horizon evidence was essential to her case and should have been considered.

Nick Vamos recalled for the Board the referral made by Mr Justice Fraser to the Director of Public Prosecutions regarding the evidence given by Fujitsu employees in the Crown and High Courts. Nick advised that the senior lawyer at the Court of Appeal had contacted him to enquire whether the Metropolitan Police Service was actively investigating the referral. Nick had explained that he did not know, as he had no direct involvement other than to respond to document access requests. Nick had sought to assist the court by providing the relevant contact details for those managing the referral at the Met. In parallel, the Police had been in contact with the Criminal Case Review Commission to enquire as to the number of cases in which the Fujitsu witnesses (Jenkins and Chambers) had given evidence. Nick had been asked to assist with the query and would keep the Board informed of any further developments, should they arise, in relation to the referral.

The Board **NOTED** the update.

4. POL's Response to Whether the Court of Appeal Criminal Division Should Hear Argument on Limb 2 in Unopposed Cases

The Board was asked to consider whether the Court of Appeal Criminal Division should hear arguments on wide-ranging, systemic second category abuse of process in the cases of Misra, Felstead and Skinner. These cases had been uncontested on the basis of first category abuse where POL had decided to concede on limb one grounds but not limb two.

Papers had been circulated in advance of the meeting and Brian Altman summarised the key points. Aria Grace Solicitors, representing the appellants, had made lengthy applications to the Court of Appeal citing that the court should hear wide-ranging, systemic arguments extending to limb two. This was despite the likelihood that the court would find the convictions in these cases unsafe on the grounds of limb one abuse. Aria Grace had served successive documents, seeking to revise their supporting arguments.

The Registrar of the Court of Appeal had asked POL to provide written submissions by 6th November 2020 on whether the court ought to proceed to consider a second, opposed, ground of appeal (i.e. limb two abuse) where the court was already satisfied that convictions were unsafe on one (uncontested) ground (i.e. limb one abuse).

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Brian Altman explained that the question posed by the court amounted to a matter of procedure and the extent of the court's remit. POL was not being asked to comment on the merits of any systemic limb two arguments. Rather, it was being asked to respond to the question; where convictions had been demonstrated to be unsafe (in these instances on the grounds of limb one abuse) should the court nonetheless continue to hear arguments on limb two which, if successful, would lead to exactly the same outcome. POL was required to express a view on the question asked by the court and could not remain neutral on procedure.

Brian Altman recalled for the Board the Criminal Procedure Rules which stipulated that the court must always give effect to the "overriding objective" to deal with cases "justly". All parties were required to help the court to further the overriding objective. Dealing with a case justly included ensuring that it was dealt with efficiently, expeditiously and proportionately; that expenses were saved and that appropriate resources were allotted to the case, taking into account the need to allot resources to other cases. In regard to this latter point, the court would be cognisant of the needs of other appellants. Brian Altman observed that no other appellants, whose cases were uncontested, had sought to argue additional wide-ranging, systemic limb two grounds of appeal. They had all invited the court to quash the convictions on limb one grounds and, in four cases, on case-specific limb two grounds. Brian Altman reminded the Board that the sole question for the court to determine was whether a conviction was unsafe. This was the statutory test under the Criminal Appeal Act 1968. The court would not be interested in how unsafe a conviction might be and if the court were to decide that the three convictions were unsafe, on the grounds of limb one abuse, it could resolve not to hear arguments on limb two. Taking into consideration the overriding objective, Brian Altman submitted that it would not be an effective use of court time to expend resource listening to arguments, which, if successful, would lead to the same outcome. Brian Altman reasoned that in addition, there would be no public interest in the Court of Appeal hearing the arguments on wide-ranging, systemic (limb two) abuse when the appeals were unopposed on limb one grounds, and there were other forums in which these questions could be assessed, the Public Inquiry being an example. Brian Altman shared a quote from the Aria Grace appellants' grounds of appeal, which was common to all of their submissions, "*subject to the court's decision on this appeal under the first category of abuse of process, there is a question as to whether the court should determine the appeal on the second category of abuse of process where not necessary for the purpose of quashing the appellant's convictions.*" This excerpt indicated that Aria Grace Solicitors had recognised that it was not necessary for limb two arguments to be progressed in order to have their clients' convictions quashed under limb one.

Brian Altman observed that only the Aria Grace Solicitors had expressed an interest in pursuing these arguments. No other appellants, whose cases were uncontested, had sought to amplify nor argue additional grounds of appeal regarding wide-ranging, systemic second category abuse. In the event of the court agreeing to hear such arguments, however, they would be forced to participate, resulting in as many as 38 appellants making these arguments to the court.

The Chairman noted that Counsel's advice on procedure was clear and asked whether there were any contrary arguments, or wider implications, which the Board ought to consider. The Chairman added that the Board was mindful of its duty to assist the court to ensure that cases were conducted in accordance with the overriding objective. In parallel, the Board was sensitive to public perception around POL's response which might, in extremis, be distorted and perceived as an attempt to avoid accepting wider responsibility for the unsafe

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convictions, or to unfairly restrict examination. Brian Altman did not think so, particularly as the court had invited POL to respond on a point of procedure. The court, having had regard to its statutory objective, would look to agree a proportionate and common-sense approach towards managing the cases. Zoe Johnson concurred, emphasising that these were three unopposed cases where the outcome would not change, a critical factor in the rationale for POL's proposed response to the court. Further, both the CCRC limb two reasons and the appellants' limb two grounds of appeal were not case-specific but wide-ranging, systemic. In examining these grounds, the court would need to review a considerable amount of evidence which would be time-consuming and costly but lead to the same outcome. Zoe Johnson supplemented that the disclosure process would be ongoing, and should the court wish to explore the wide-ranging issues, it would have a vehicle to do so in the contested cases. Further, there remained opportunities for the arguments to be heard in other forums, including submissions to the Public Inquiry, or the High Court.

The Chairman invited questions from the Board. Zarin Patel asked what would happen if, upon completion of the disclosure exercise in February 2021, the Board should find that there were signs of systemic abuse. Brian Altman answered that it would be dependent on the Court of Appeal, however, the purpose of disclosure was to allow the appellants an opportunity to review and make their arguments. Brian Altman recalled that in each of the respondents' notices POL had acknowledged that there was an ongoing process and that the Board was interested in anything which the process might reveal about systemic limb two abuse of process. To date, none of the appellants had directly addressed this in their grounds of appeal.

Lisa Harrington asked whether there was any insight on Aria Grace's motives for pursuing the limb two arguments in the cases which were uncontested on limb one grounds. Brian Altman tendered that the appellants' representatives may have been endeavouring to build a platform for the High Court and a malicious prosecution claim. Unlike Aria Grace Solicitors, the other firms were thought to be "keeping their powder dry" and avoiding the Court of Appeal ruling out limb two abuse of process. It was sensed that there was some frustration within the firms representing the appellants that their approaches were not aligned. Aria Grace had limited experience of the criminal courts and were working as part of a team that included barrister Paul Marshall, a commercial and regulatory practitioner. The appellants' team had approached the criminal proceedings in a characteristically commercial manner.

POL was under a duty of obligation to make a post-conviction disclosure (PCD) to all appellants, including those whose cases were opposed (and, in due course, potential future appellants) irrespective of the court's decision. Tom Cooper asked how the PCD exercise related to the "Southwark Six" whose historical convictions were expected to be overturned in the near future. Tom Cooper sought clarification that if their convictions were overturned, the Southwark Six would be excluded from the PCD exercise. Responding, Brian Altman confirmed that their convictions had not yet been overturned and he was awaiting a response from Southwark Crown Court. Brian Altman advised that if they were to file a claim, their respective applications would need to be considered through the ordinary processes of civil disclosure.

The Board **AGREED** the following submissions which would be filed and served on behalf of POL:

- (i) That the court should not consider a second ground of appeal in the circumstances for the following reasons:

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- If, having received and applied the fresh evidence, i.e. the two High Court judgments, the court is satisfied a conviction is unsafe it must be quashed.
- Once the court is satisfied a conviction is unsafe, it has answered the sole question asked of it.
- It would be contrary to the overriding objective for the court, having decided that a conviction was unsafe on uncontested grounds, to proceed to consider further contested grounds of appeal because it would involve the court hearing a considerable amount of evidence which would be time-consuming and costly and would lead to the same outcome: i.e. the convictions are unsafe.
- No other appellants whose cases are uncontested currently seek to amplify or argue additional grounds of appeal regarding wide-ranging, systemic second category abuse. However, if the court did agree to hear such arguments they would be forced to join in, resulting in as many as 38 appellants making these arguments to the court.
- There is no public interest in the court making a ruling on wide-ranging, systemic second category abuse when the appeals are unopposed and there are other forums in which these questions may be properly assessed (e.g. in any malicious prosecution claim and/or the Government inquiry).

5. Civil liability – Southwark Appeals/ Mediation Options

Declan Salter provided a verbal update on the mediation approach to the “Southwark Six” Crown Court cases which were expected to be successful in overturning their historical convictions. It was not yet known at what point a judgement on their appeals would be handed down. DS and AB thought it likely that all six would subsequently bring a claim against POL for malicious prosecution. All six cases had settled in the GLO settlement. Declan Salter recommended that consideration be given to pro-actively initiating a dialogue with the claimants’ solicitors (in the event that their convictions were overturned) referencing POL’s previously stated intention to avoid extending litigation for those Postmasters whose cases were overturned; and asking them to set out their grounds for a malicious prosecution claim. Declan Salter suggested that opening up the lines of communication and having sight of their grounds would be incredibly helpful in assessing the merits of those claims at the earliest opportunity. Thereafter, mediation could be offered, although this would not entail an obligation to reach a settlement deal. An alternative option was to do nothing and await the claimants’ next steps.

In accordance with a matter arising at the last meeting, Tom Cooper had met with Declan Salter and Rodric Williams to discuss the mediation proposal. It was acknowledged that there remained a risk that the claimants would be supported by funders in due course, meaning it could become increasingly expensive to agree a settlement. Notwithstanding this, Tom Cooper was mindful that such engagement might perpetuate a misconception regarding POL’s mind-set on the validity of any claim. Tom Cooper had been unpersuaded that there were compelling reasons to reach out at this point. The Board had previously expressed that it was cautious to avoid creating precedents and there needed to be greater certainty that future settlement agreements were watertight. The Chairman invited discussion and there was a shared consensus that the Board had not yet been fully briefed on the possible grounds for malicious prosecution claims, adding to the sense that it was too early to take a position. The Board agreed that there had not been a persuasive argument to reach out to the claimants and agreed to await contact initiated by the claimants.

The Board **NOTED** the update.



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6. Civil liability – funding

Alisdair Cameron provided an update on funding and the proposed letter of comfort. Alisdair had attended a quarterly shareholder meeting earlier in the day where a number of work streams had been agreed. Discussion had ensued on the controls which could be embedded to provide improved assurance and work was ongoing to map these out. An upcoming meeting to discuss the funding agreement had been scheduled with the Minister and Tom Taylor (UKGI Deputy Director Group Finance) which would be attended by the Chairman, Alisdair Cameron and Nick Read.

The Board **NOTED** the update.

7. Any Other Business

There being no further business the Chairman declared the meeting closed at 15:35 hours.

Post Office Limited Board CCRC Actions as at 10.11.2020

REFERENCE	ACTION	ACTION OWNER	DUE DATE	STATUS	OPEN/CLOSED
Board (CCRC) Meeting 16 April 2020					
7. Historical Management of the Group Litigation Order (GLO)					
a)	Ben Foat advised that it would be possible to access Jane McLeod's emails to enable us to see timelines and where decisions had been taken. The Board APPROVED this approach.	Ben Foat		These actions feed into Project Brisbane, updates on which are coming back to the Board meetings on the CCRC cases. The work on Horizon integrity was included on the agenda for 18 th June 2020. Phase 2 of Project Brisbane was circulated on 24 th July 2020.	Open and ongoing
b)	The Board asked that a list of the documents shared with the Board on the mediation and the GLO should be provided.	Veronica Branton			
c)	It was also requested that the Chairman advise the Board on his recollection of discussions with management on what matters relating to the mediation should be discussed at Board.	Tim Parker			
d)	Kate Emanuel was asked whether any further information needed to be disclosed to CCRC, for example, the Deloitte report. She agreed to double check with the PCDE team.	Kate Emanuel			
e)	Ben Foat and Kate Emanuel would liaise on how to scope and carry out this work and would revert to the Board with the findings. The proposed timeline was two weeks.	Ben Foat and Kate Emanuel			
f)	That the information and advice provided by Fujitsu to Post Office and the timeline for this would be set out and technical advice procured, if required.	Kate Emanuel			
Board (CCRC) Meeting 23 April 2020					
2. Minutes and Matters Arising					
a)	Regular updates on Project Brisbane would be provided and the information that was accessible now, such as papers and minutes, would be reviewed.	Alan Watts/ Kate Emanuel		The work on from the Board Pack review was circulated on 6 th May 2020. The work on Horizon integrity was included on the agenda for 18 th June 2020. Phase 2 of Project Brisbane was circulated on 24 th July 2020.	Open and ongoing
c)	Rodric Williams should be asked about the governance structure and processes in place because he had been involved in supporting	Kate Emanuel/ Ben Foat		To be included within Project Brisbane. Phase 2 of Project Brisbane was circulated on 24 th July 2020.	Open and ongoing

Post Office Limited Board CCRC Actions as at 10.11.2020

REFERENCE	ACTION	ACTION OWNER	DUE DATE	STATUS	OPEN/CLOSED
	Post Office during the GLO.				
Board (CCRC) Meeting 24 September 2020					
8. Potential claims against Fujitsu	To update the Board following the conversation with POL stakeholders on the exit and negotiation strategy with Fujitsu.	Alan Watts			Open

THE QUEEN v JOSEPHINE HAMILTON AND 40 OTHERS**DIRECTIONS****3**

1. The cases of all appellants whose appeals are uncontested on ground 1, but contested on ground 2, will be listed on 17 December 2020 (with a time estimate of one day) for the hearing of submissions on the following questions of principle:
 - a. Is each appellant entitled as of right to argue ground 2?
 - b. If not, on what principles should the court act in deciding whether to permit argument on ground 2
2. Any party who wishes to make submissions at that hearing must no later than 4pm on Friday 11 December 2020 file a skeleton argument. The court will invite HM Attorney General to consider appointing an advocate to the court to make submissions.
3. The prosecution must complete disclosure by 5 February 2021.
4. Any appellant who wishes to add to the reasons of the CCRC for referring the cases on grounds 1 and 2 must do so no later than 4pm on Friday 11 December 2020.
5. Any response which the respondent wishes to make to such additional reasons must be served no later than 4pm on Friday 8 January 2021.
6. The appeals of all appellants other than Stanley Fell, Neelam Hussain and Wendy Cousins will be listed for final hearing on 22 March 2021.
7. The appeals of Stanley Fell, Neelam Hussain and Wendy Cousins will be listed to follow the hearing of the appeals of the other appellants.
8. The time estimate for the hearings referred to in paragraphs 6 and 7 is 4-5 days.
9. The applications by the appellant Seema Misra to argue additional grounds of appeal will be heard at the outset of her appeal.
10. The parties must file skeleton arguments and an agreed bundle by 4pm on Friday 12 March 2021.
11. The 3rd and 6th judgments of Fraser J may be referred to at the hearing, but it will be for the court hearing the appeals to decide whether to receive the judgments as fresh evidence pursuant to s23 Criminal Appeal Act 1968.
12. The application of the appellant Wendy Cousins for an extension of her representation order is granted to permit the instruction of an expert witness on the issues of:
 - a. The mechanisms in place in branch and within the system of collection by Royal Mail, and
 - b. The potential for Horizon errors to have been responsible for apparent cash and giro transactions which in fact were never established by Post Office Limited to be such.

13. If any appellant wishes to reply on expert evidence, it must be served no later than 4pm on Friday 12 February 2021. Any respondent's expert evidence in reply must be filed no later than 4pm on Friday 26 February 2021. The expert witnesses must meet and prepare a joint memorandum, setting out their points of agreement and disagreement, by no later than 4pm on Friday 12 March 2021.
14. Any appellant who will or may wish to give oral evidence in support of his or her appeal must no later than 4pm on Friday 12 March 2021 make an application on Form W with a witness statement.
15. All documents ordered to be filed must be provided both in hard copy and in electronic form.
16. So far as practicable, all hearings will be listed before the present constitution of the court, and in any event before Holroyde LJ.





POST OFFICE LIMITED BOARD REPORT

Title:	Business Case for HSS	Meeting Date:	17 November 2020
Author:		Sponsor:	Al Cameron - Group Chief Finance Officer

Input Sought

The purpose of this paper is to seek Board approval for a business case for HSS.

Update on Funding

On 30 October, the Chairman wrote to our Minister requesting a financial guarantee on HSS, enabling us to start payments. The Chairman, CEO and CFO had a call with the Minister and various BEIS and UKGI officials on 12 November.

The Minister said that the Government would have to help fund HSS. However, before this could be confirmed, HMT approval was needed for two different elements of the Government accounting: AME, which gives cover for BEIS to raise a financial provision; and DEL which gives approval for the liability to be discharged and payments made. The business case for AME was nearing completion and no help was required from POL: it has to be submitted by 25 November.

It was agreed that POL should submit a business case for DEL which could be appended to a submission by BEIS. The form of the business case was agreed with UKGI and BEIS officials and comments have been received from HMBU, Linklaters, HSF, UKGI and BEIS. The intention is that the DEL case will also be submitted by 25th, although this is not a deadline and BEIS approvals may take longer. UKGI requested that the case should be approved by the Board before submission. Timing of any HMT approval is uncertain.

The Minister supported the idea of an early comfort letter for POL. In the absence of any "guarantee" it is not clear that the wording will enable the Board to overcome the caution recommended by Linklaters and start payments under HSS.

BAU funding is expected to be confirmed next week, although separation from HSS, the level of haircut, the contractual commitments and final linkages with Telco decisions are not. The requested change in definition of security headroom has been refused.

Board approval

The Board is asked to approve the HSS business case for submission to BEIS. This has been a real-time and iterative discussion with UKGI and BEIS and further comments may be brought to the Board meeting. If appropriate, we can schedule a further discussion at the Board next week, although clearly any delay is unhelpful.

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The Post Office Historical Shortfall Scheme

Business Case submission to BEIS - DRAFT

Executive Summary

The purpose of this paper is to gain BEIS and HMG support for distinct funding for the Historical Shortfall Scheme (HSS), enabling early payments to be made.

HSS was agreed as part of the settlement of the Group Litigation (GLO) in December 2019. The intention is to enable Postmasters who were not part of GLO to have claims for shortfalls and related compensation settled more quickly and cost effectively than through a second, group action lawsuit.

The Board would like to start making payments, especially de minimis payments where the cost of investigation exceeds the claim. The value of early payments is to settle claimants who are increasingly frustrated at perceived delays and uncertainty. As the anniversary approaches, this may become a public story.

The alternative is not a cheaper scheme: it is another group action lawsuit, with the costs of law firms and litigation funders added to the claims.

HMG approval is required before payments can start. In addition, POL's legal advice is that it should be extremely cautious making any payments until POL can be confident that it can complete the scheme. This requires HMG funding, separate and in addition to the BAU funding already requested.

POL will provide for HSS in December 2020 or January 2021 as estimates of the cost become more compelling. This will trigger net liabilities with potentially serious commercial consequences.

Controls over decision-making, value for money, fraud and reporting are essential and proposals have been summarised in this submission. POL will continue to work with BEIS/UKGI to ensure they are fit for purpose.

It has been difficult to estimate the claims to be paid, with initial estimates woefully short. There have been far more applications than expected.

POL is seeking HMG approval to start offering payments under the HSS, recognising that:

- The amount and nature of the spend will exceed the Board's authority
- The settlements will have to be predominantly funded by HMG
- The extra cost to HMG to 31 March 2022 is expected to be less than £300m. This is not permission for POL to spend £300m: it is financial cover for future decisions.
- HMG support is conditional on the controls over eligibility, fraud and reporting being maintained and enabling BEIS's preferred engagement in the process.

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Business Case

Context

POL has been in discussions with UKGI and BEIS for some time on future funding and plans. It understands that HMG considers that:

- POL's commitment to free, national access to cash is important;
- Post Offices are critical to the levelling up agenda;
- POL is expected to continue to pursue trading improvements to become commercially sustainable;
- there is no intention for Post Office Limited to become insolvent; and
- the historical claims from Postmasters should be resolved and eligible claims met.

The GLO was settled in December 2019. As part of that settlement, which BEIS approved, POL agreed to set up a scheme for Postmasters who had not taken part in the GLO but have similar claims. This is the HSS.

Separately, 47 convictions have been referred by the Criminal Case Review Commission ("CCRC") to criminal appeal courts. In 44 cases, POL did not oppose the appeal. A further 842 private prosecutions brought by Post Office before 2014 could also be appealed, with the potential for compensation claims to follow ("Overturned Convictions").

We have no agreed funding beyond 31 March 2021. For BAU, funding has been requested and a determination for 2021-22 is expected shortly. The request included cover for the legal costs associated with HSS. For HSS compensation, funding is expected to be requested by BEIS both for AME and DEL in the next few days. Overturned Convictions costs are unclear and therefore, no funding request has yet been made.

The purpose of this paper is to gain BEIS and HMG support for distinct HSS funding, enabling early payments to be made.

The Historical Shortfall Scheme

The purpose of the HSS is to settle eligible claims quickly and without the need for a second, group action lawsuit. This should reduce costs by avoiding the legal fees and funder costs that consumed a large part of the GLO settlement. The decision to accept offers made by POL, following the HSS independent panel adjudication, is for the claimants. Law firms are already challenging the scheme's approach to compensation as part of a tactic to undermine the claimant's confidence in HSS.

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The structure of the scheme is in place, including a team separated from POL's BAU operations into the Historical Matters Business Unit (HMBU). It is led by Declan Salter, a new recruit reporting to the CEO. [REDACTED]

Claims are checked and assessed by HMBU staff and POL's external lawyers. An Independent Panel has been formed to adjudicate. The majority of these claims are either unquantified or only partly quantified. As at 16 November 2020, 2,382 claims had been received. [REDACTED]

The Panel has started its work. Both it and the Board has agreed that it would be sensible to make immediate payments totalling c. £2.5m to settle claims that fall below £8,000 on the grounds that the cost to investigate and adjudicate would be disproportionate.

The expectation is that 70% of offers will be made by end August 2021 and the vast majority by end March 2022.

Recognition of Liabilities

POL must recognise a liability for HSS when it is probable, requiring both a past event that triggers likelihood and a sensible estimate of the cost.

In discussions with its independent auditors, PwC, POL considers that the past event was agreeing to set up the scheme in December 2019. When the Panel has reviewed enough cases, the HMBU can extrapolate. [REDACTED]

POL will therefore provide for the estimated settlement of HSS in its December or January management accounts and for its Annual Report for 2019-20 and 2020-21. Net assets at end of October were £60m and are forecast to decline over the second half of the year with judgements to be made on the carrying value of businesses disrupted by CV-19. Any substantial provision for HSS compensation will result in POL having net liabilities.

This will trigger breach clauses in a number of commercial agreements including [REDACTED] guarantee of POL's borrowings from Bank of England and its foreign currency agreements with [REDACTED]. These uncertainties will be apparent to major banks with whom POL must re-negotiate the Banking Framework in the first half of 2021.

If Government agreed to fund HSS compensation then, subject to that commitment being sufficiently certain, POL could create a matching accounting asset, removing the impact of HSS on future net liabilities.

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BEIS is considering a letter of comfort as an interim measure, stressing its support for POL. As it will be short of a guarantee on HSS, this is not expected to benefit the net liability position or enable the Board to approve HSS payments. It may reassure third parties, although commercial partners tend to assume Government support and may find the caveats more worrying than helpful.

Quantification and uncertainty

POL's track record in estimating costs and claims relating to the Postmaster litigation is poor, significantly under-estimating both.

HSF was more effective in estimating the 2019 settlement value.

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

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Looking forward:

- Estimates will improve with the closure of the scheme to new applicants on 27 November 2020, as claimants provide more information about their claims, and on extrapolations from early Panel determinations.
- No estimates have been included for any subsequent or parallel group action.
- The full, ultimate quantum is uncertain and will be kept under continuous review and reporting to the Board, UKGI and BEIS.

Early Decision

Given that estimations of the costs of HSS will improve over time, it would be easier to postpone any Government commitment to bear those costs. However, POL does not have the balance sheet to support HSS costs. POL's BAU funding submission demonstrated that, as a result of both the GLO and CV-19, it needs additional financial support without HSS.

On 7 November, Minister Scully confirmed that BEIS understood the scale of HSS is such that it is unaffordable to POL and that HMG funding will be required. A guarantee could not be provided however until a business case was in place.

The value of an early decision is to enable the scheme to start making payments, especially de minimis payments. This will reassure claimants and increase the chances of HSS succeeding.

While there has not been public attention on the lack of payments so far, individual claimants are becoming increasingly upset and aggressive, suspecting that they will be let down.

The anniversary of the agreement to set up HSS is 10 December 2020, potentially generating media and political interest. If payments cannot be started after a year, more bad publicity may be generated for both POL and HMG, undermining efforts to "move on".

The alternative is not a cheaper scheme: it is another group action lawsuit, with the costs of law firms and litigation funders added to the claims.

Controls

This does not and must not mean that offers are made without the right process and controls over: decision making and value for money; fraud; and reporting.

Decision-making and value for money

POL is seeking BEIS approval to start making payments under the scheme, recognising that the cost is of an unusual nature requiring approval and will also exceed POL's £50m delegated authority.

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In discussion, the principle proposed is that BEIS approvals should not fully wait until the Board has approved spend in the usual way. Rather, BEIS should be engaged as the scheme proceeds so that it can take a view of precedent setting decisions throughout the process. POL and the HMBU will manage this better if a single member of the BEIS team takes this role and is responsible for bringing in other BEIS officials as appropriate. POL will work with officials to develop these processes.

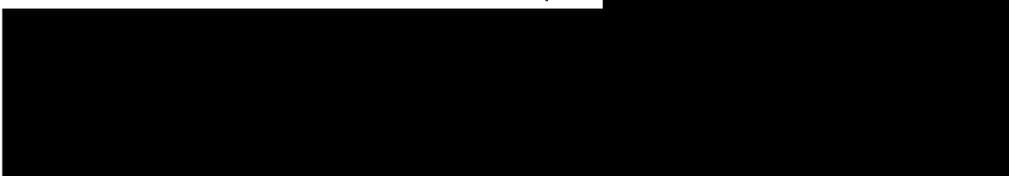
Beyond that, formal delegated authorities will operate through HSS, as follows:

Decision	Est Value	Panel	HSSAC ¹	HMC ²	Board	BEIS
De Minimis – Quantified	Ca. £2.5m	a		a	a	
Cases <£50k	<£50k	a	a			
Cases <£500k	<£500k	a		a		
Legal Costs De Minimis	Ca. £0.2m	a		a		
Legal Costs Other	Ca. £2.4m	a		a	a	
Cases <£5m	<£5m	a		a	a	
Cases >£5m	>£5m	a		a	a	a
Interest Rate	Ca.£150m	a		a	a	a
Total Settlement Value Cap (Inc. Int and legal)	< £320m			a	a	a

HSSAC is the HSS Approvals Committee. HMC is the Historical Matters Committee.

The purpose of the scheme is to attempt to settle as many claims as possible, minimising the cost and liabilities from an adverse outcome on a future lawsuit and the POL resource and costs associated. The decision to promote the HSS in December 2019 was premised on it being better than the alternative and that remains the case. The greater up take in applications creates an opportunity to increase the numbers of claims that can be closed through HSS.

Value for Money will be delivered if the cost of HSS is less than the total cost of a lawsuit. This should be the case as there will be much less need to cover the costs of funders and a reduced cost for lawyers.



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Fraud

The eligibility of each claim is considered by an HMBU claims assessor using POL data for the contract, service dates, remuneration and criminal convictions.

These assessments are reviewed by POL experts and HSF. 79 claims have been identified as ineligible to date.

Identity checks will be completed by HMBU staff before payments are made (see Payments below).

Fraudulent claims should therefore be protected against.

Exaggerated claims will be received and judgements will be made to restrict these without creating so much work and delay that the scheme fails. This is an area where we expect BEIS to be involved, helping us to ensure that offers made respect the independence of the Panel while being:

- 
- Follow agreed approaches on fraud risk, unquantified claims and unsubstantiated claims. The HSS may permit claims to be accepted and paid with a lower standard of proof than may be necessary to substantiate a legal claim in Court. However, it should be noted that the claimants would likely have the benefit of a disclosure exercise if they were to pursue their claim through the Courts which may enable them to further substantiate their claims. If more certainty is required then it would be necessary to go through a Court process with the cost implications discussed above. As set out above, there will be measures in place to prevent and minimise fraudulent or

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exaggerated claims and the overall view is that these measures, along with the other speed and cost efficiencies of HSS, significantly outweigh any remaining risk of fraudulent/exaggerated claims.

- Have BEIS engagement when precedent setting or when offers are individually significant (to be defined).

Reporting

The HMBU will report to each Board meeting. To ensure transparency and minimise surprises, the HMBU will also agree monthly reporting with UKGI and BEIS. This will include both the month-end position and any changes in the month for:

- The value and number of applications
- The progress of applications through the process
- A comparison with milestones (see below) and other targets
- Costs incurred and costs to complete
- Latest estimates/forecasts of costs and timescales
- Details of any developments of a second group action lawsuit
- Details of any coverage or public comment.

On a quarterly basis, this will be summarised and discussed at POL's Quarterly Shareholder Review.

Payments

It would not be sensible to try and forecast the flow of payments across the period to March 2022. It is recommended that the HMBU reporting of offers and payments to UKGI and BEIS enable a monthly drawdown of funds into a separate bank account controlled by HMBU for the purpose of settling HSS claims only. However, POL is open to open mechanisms that suit HMG.

The HMBU intends to make agreed payments directly into the claimants' UK bank accounts in weekly batches. This would only be done after the HMBU has verified the details including seeing a recent bank statement and performing an independent bank account and name verification check. If the latter is not possible, details will be confirmed with the applicant by telephone.

Moral hazard

There has been concern raised with POL that it should not be allowed to simply pass the problem to HMG. In addition, POL should have "skin in the game", incentivising it to ensure value-for-money.

In the 2018-21 funding period POL has funded all of the GLO costs. This will end up exceeding budget by more than £100m. No additional money has been requested in the period. In addition, POL has been asked to retain legal spend going forward in BAU. It is therefore clear that POL has had and will have material financial skin in the game.

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In addition, we will work with BEIS and UKGI to agree a further sharing as part of the overall settlement. POL will incur costs related to 2020-21. There has also been discussion of what happens to the proceeds of any sale of the Telco business. The suggestion is that any sale proceeds plus capital investments avoided less the cash earnings forecast in our plans for 2021-24 could be shared.

POL is understandably concerned that the combination of shared funding, BAU haircuts and other changes have a cumulative impact, changing the contractual commitments POL can make and its ability to achieve shared goals.

Exit strategy

The scheme has already closed for most applicants. A few applications continue from (i) the 6,000 former PMs who were provided with the information about the scheme in August 2020 and (ii) where, in special circumstances, certain situations (including CV-19) might have a reasonable explanation for delay.

The scheme aims to close completely on 27th November 2020. Further information on types of loss were sent to all applicants at the end of September 2020 which gave individuals the opportunity to amend their application if necessary. This window also aims to close on 27th November 2020.

It is the HMBU's intention to work towards a position where offer letters can be issued for c.70% of claims by end August 2021. Higher-value and more complex cases will inevitably take longer.

HMBU does not expect to need the independent panel after December 2021. The appeal and mediation process will extend beyond this and there is no way to determine how many individuals will take these options. It is reasonable to assume that many will seek a settlement higher than the initial offer. An end date of March 2022 may be a sensible forecast at this stage but as elsewhere, the timetable will evolve.

Milestones

The key milestones are:

1. The c.250 Shortfall-only, fully-quantified De Minimis claims will be sent offer letters in 2020, assuming HMG support and approval in December 2020.
2. The c.250 Shortfall-only, partly-quantified De Minimis claims will be fully quantified and sent offer letters in January 2021.
3. 70% of claims will be made an initial offer by end August 2021.

These milestones will be assessed and reported on monthly by the HMBU to POL Board, UKGI and BEIS.

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External analysis

[REDACTED]

No other third-party assessments are currently assumed to be appropriate. However, HMG does have expertise in managing such situations. HMBU will be seeking to engage officials to ensure we benefit from relevant experiences. POL would be grateful for BEIS support in identifying and contacting such people.

The ask

POL is seeking HMG approval to start the HSS scheme, recognising that:

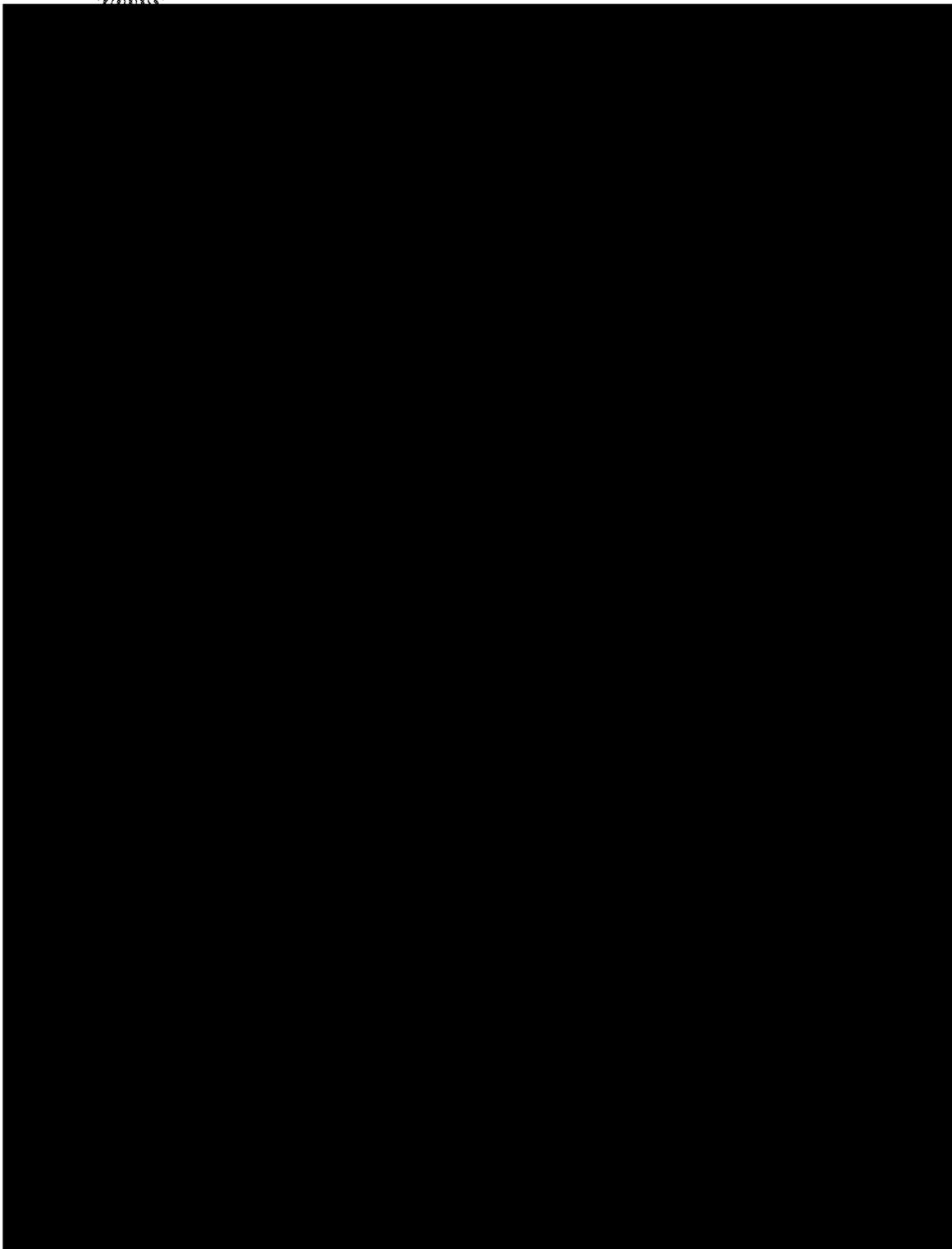
- The amount and nature of the spend will exceed the Board's authority
- The settlements will have to be predominantly funded by HMG
- The extra cost to HMG to 31 March 2022 is expected to be less than £300m. This is not permission for POL to spend £300m: it is financial cover for future decisions.
- HMG support is conditional on the controls over eligibility, fraud and reporting being maintained and enabling BEIS's preferred engagement in the process.

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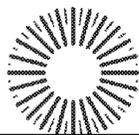


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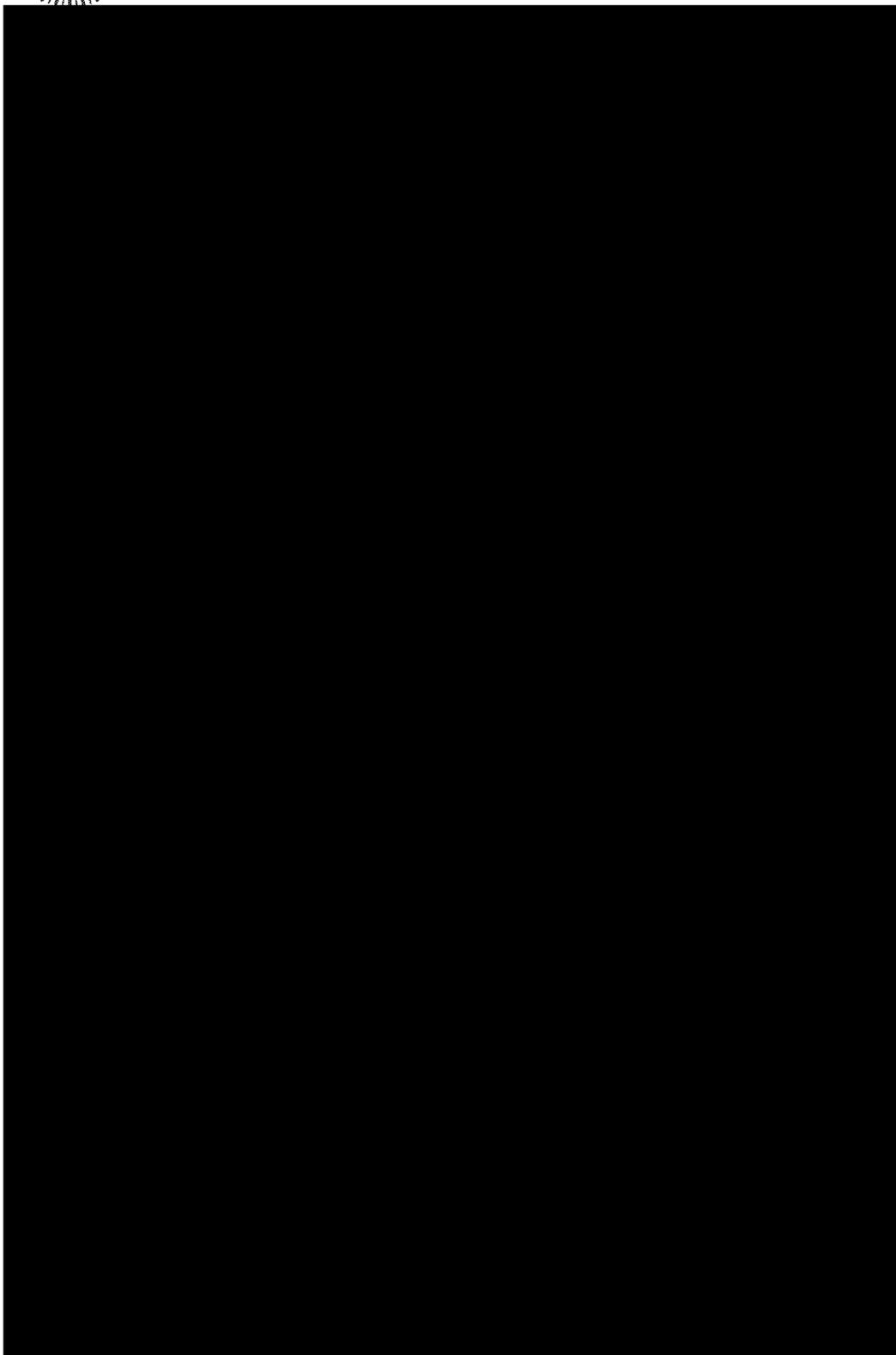


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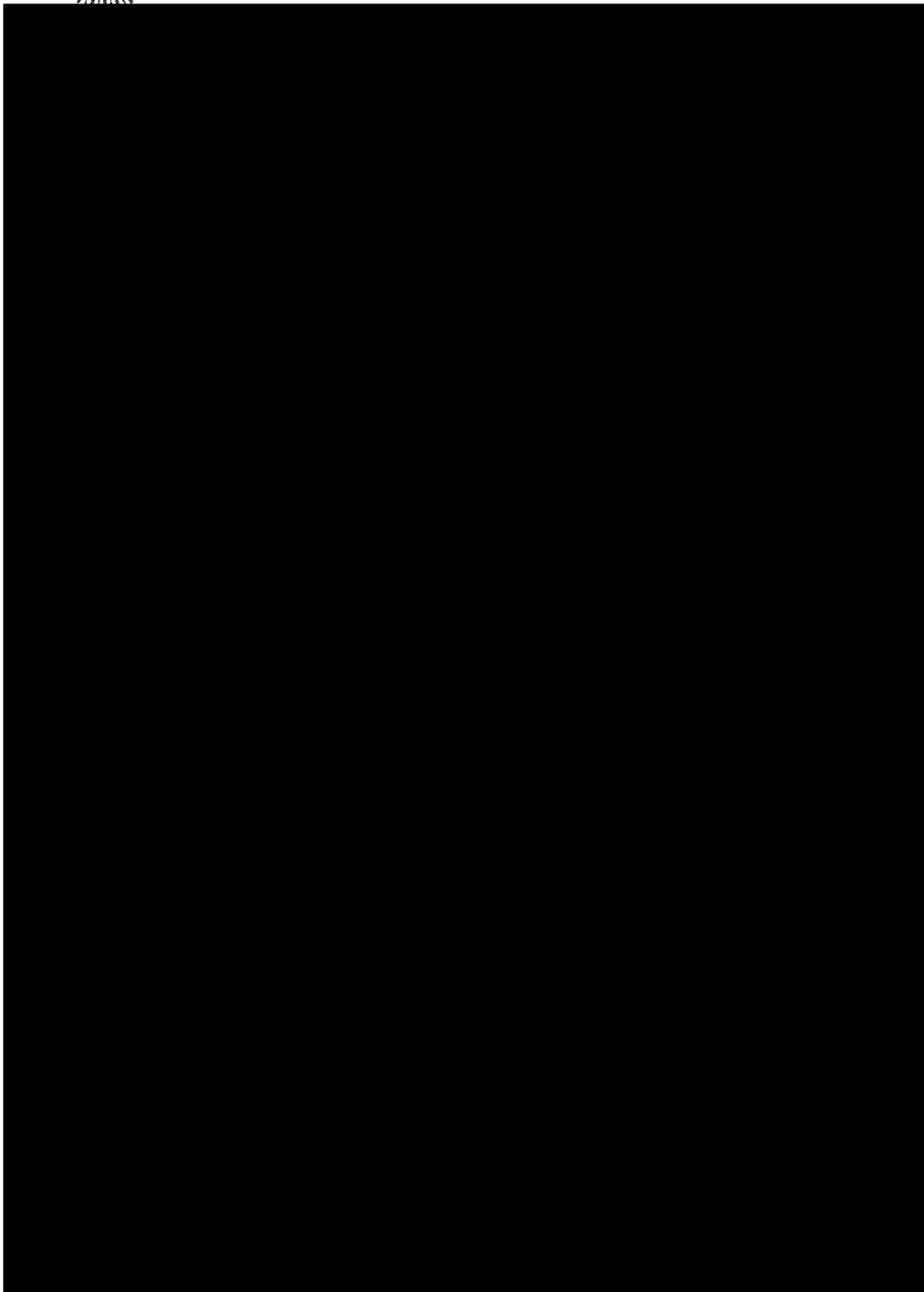


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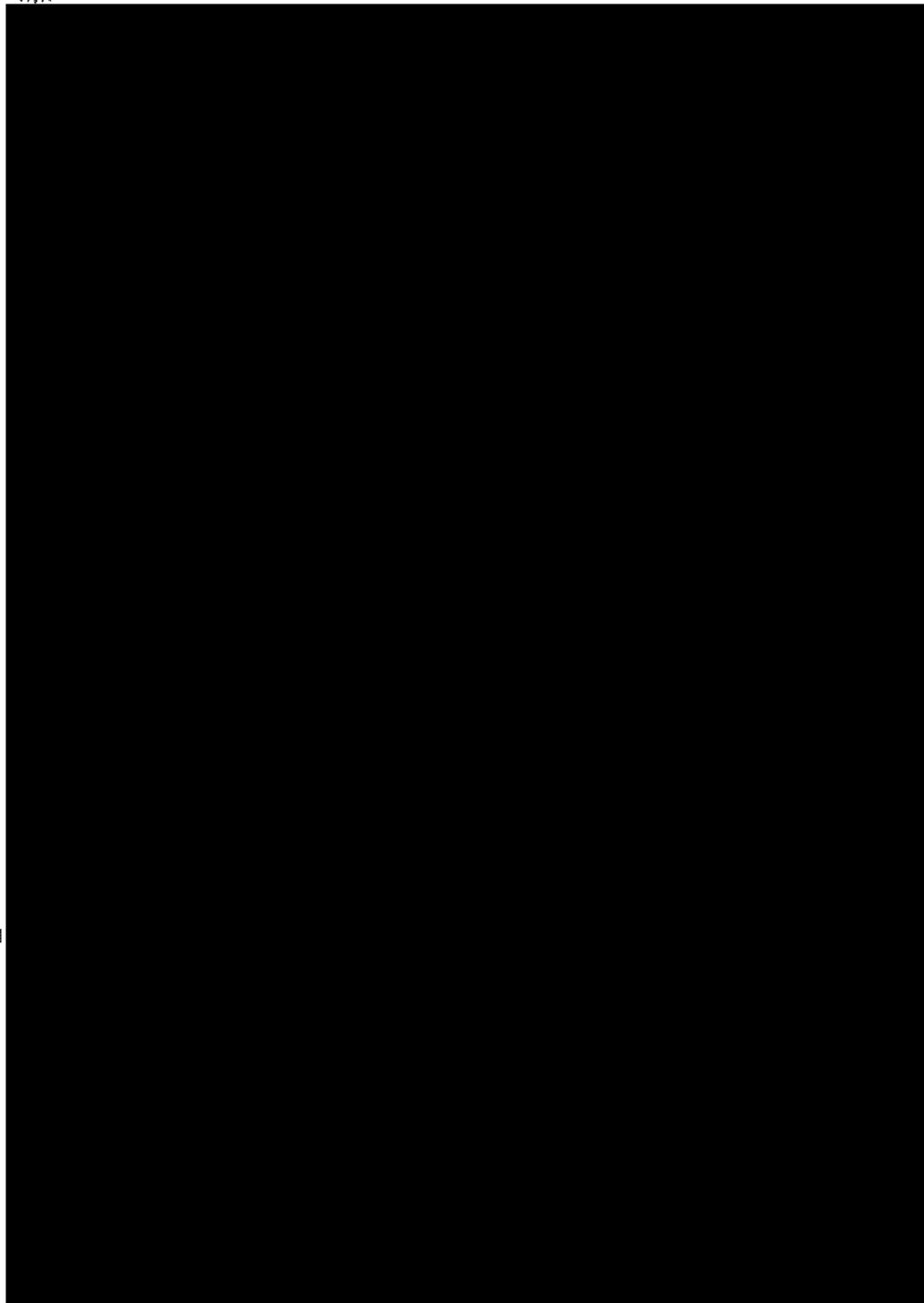


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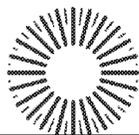
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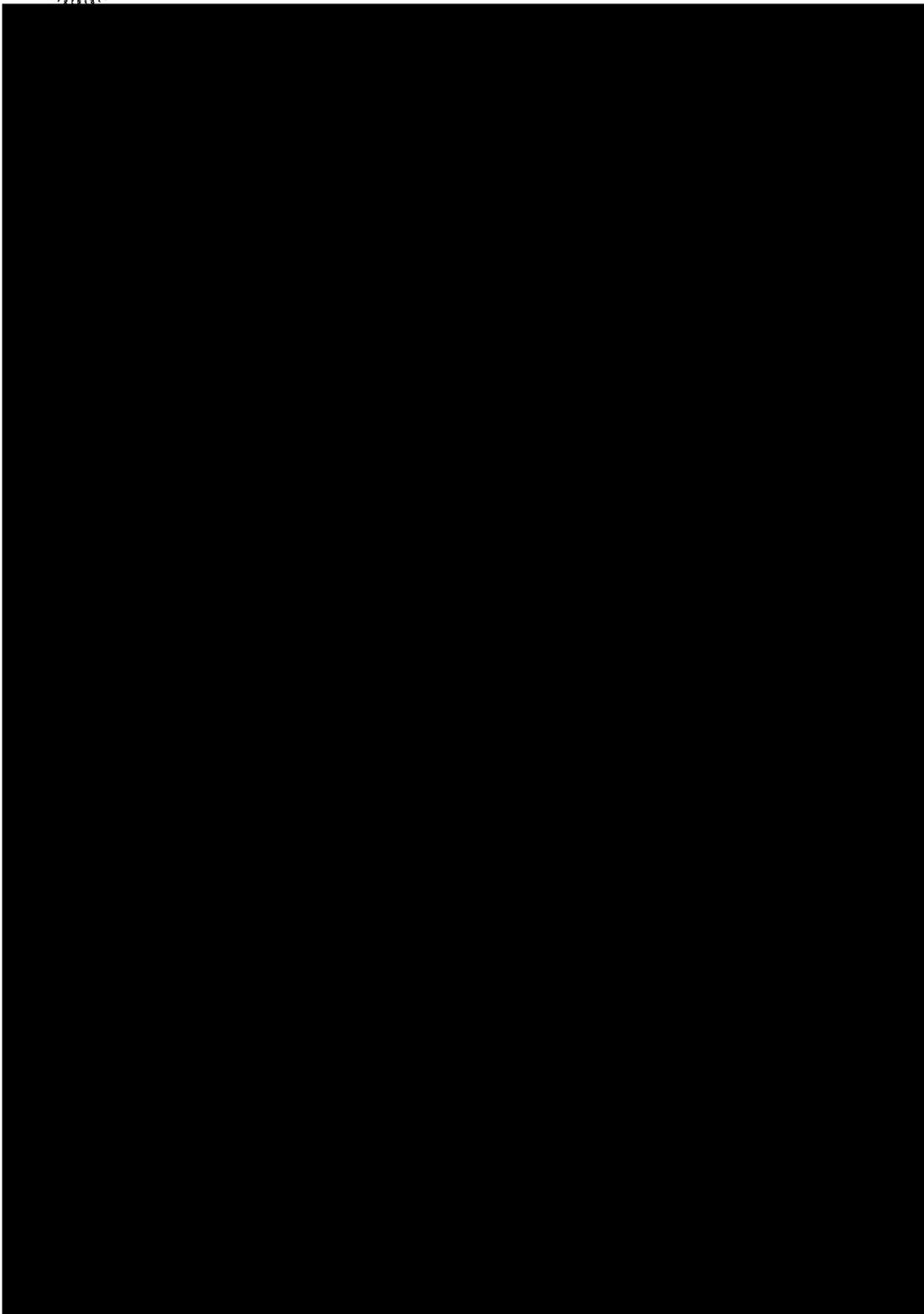
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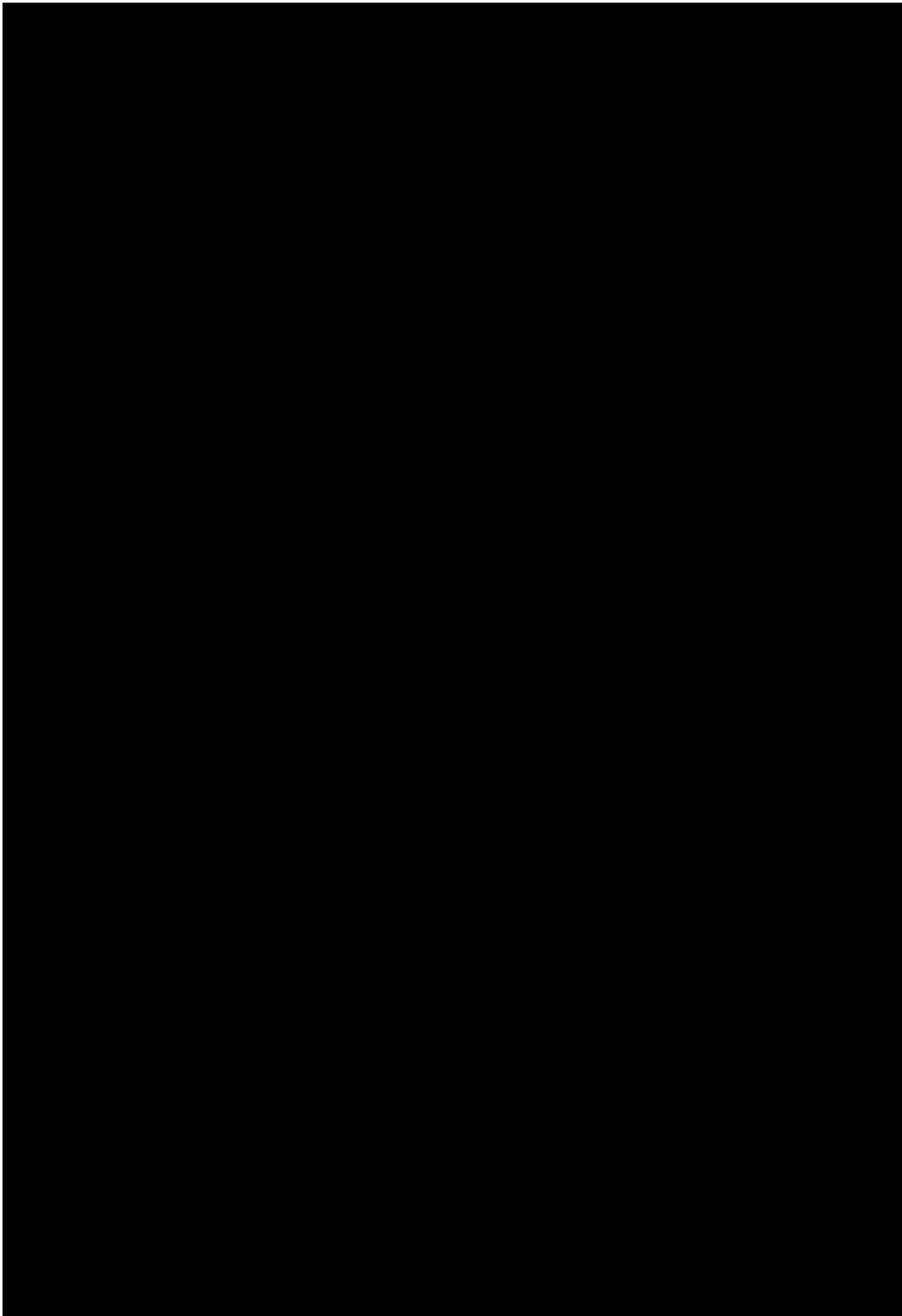
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Tab 6 Historical Shortfall Scheme Funding

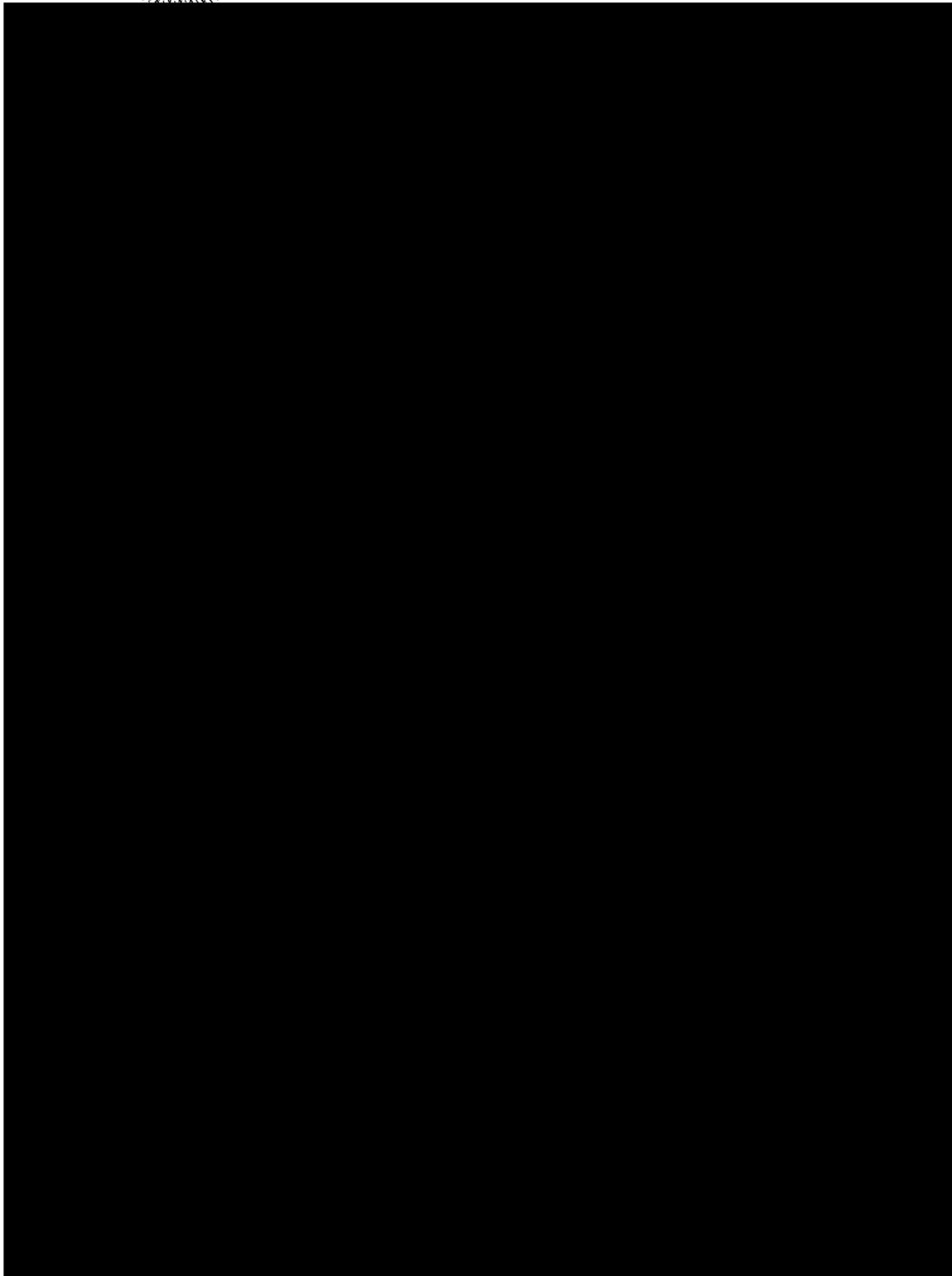


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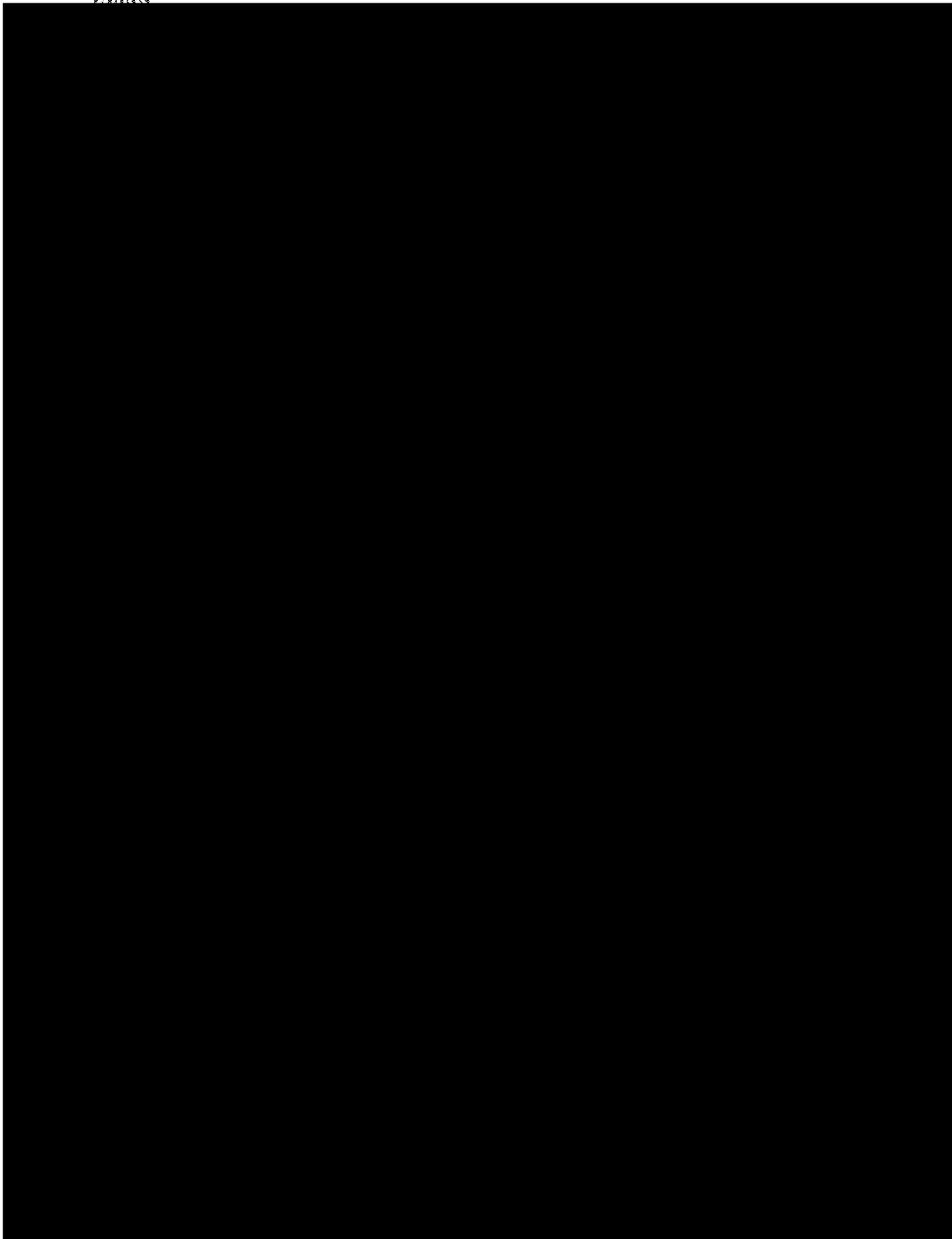


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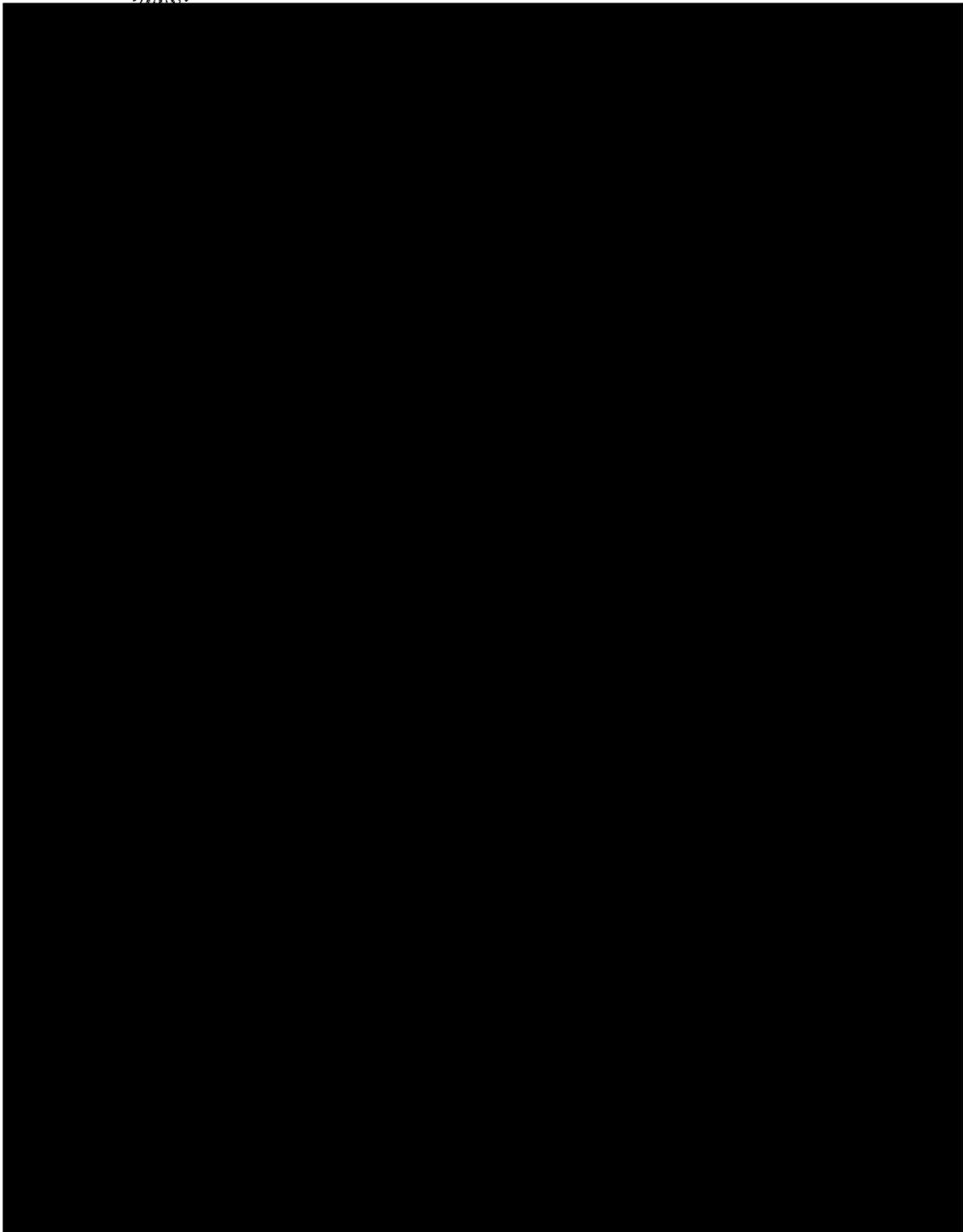


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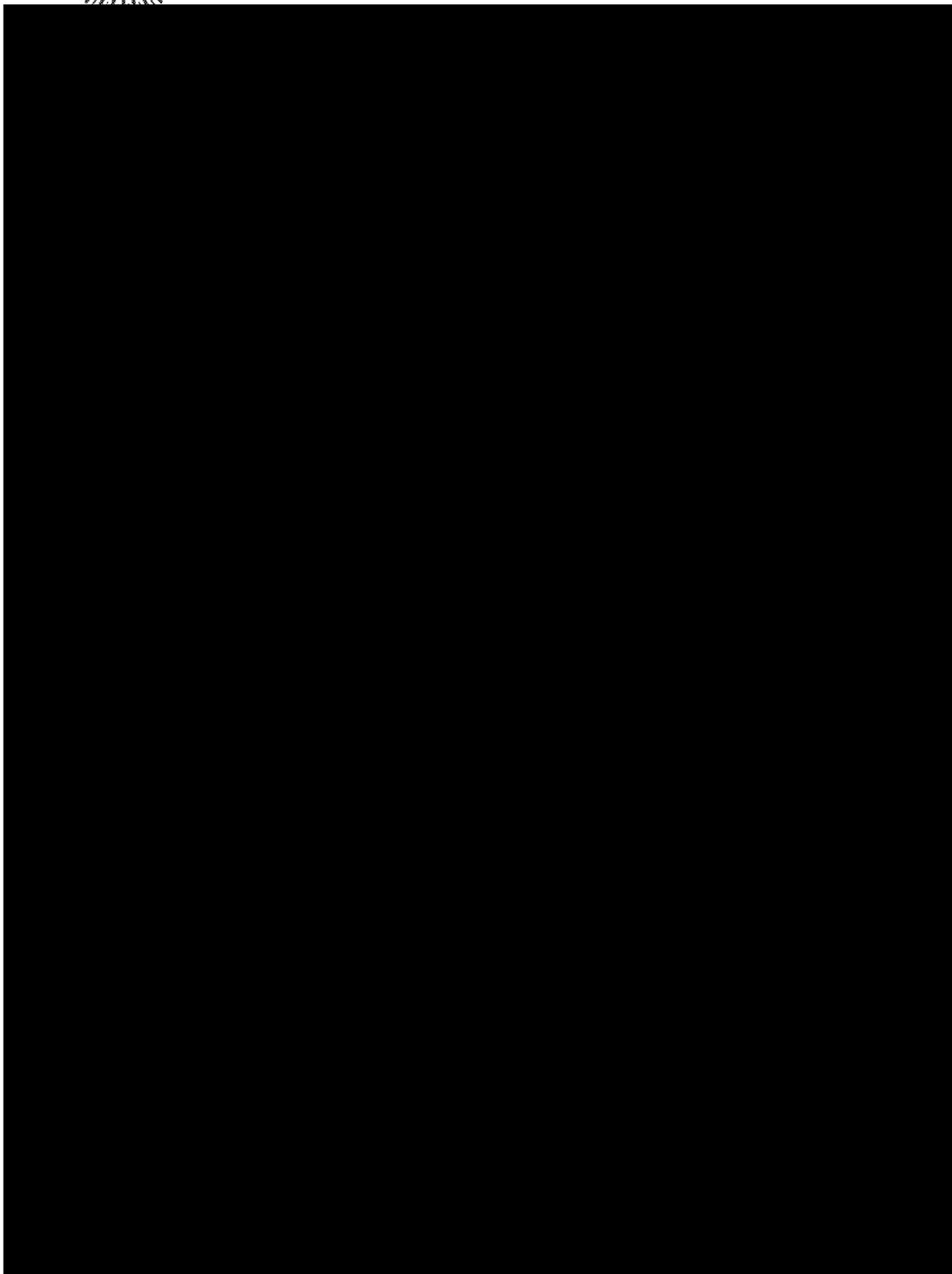


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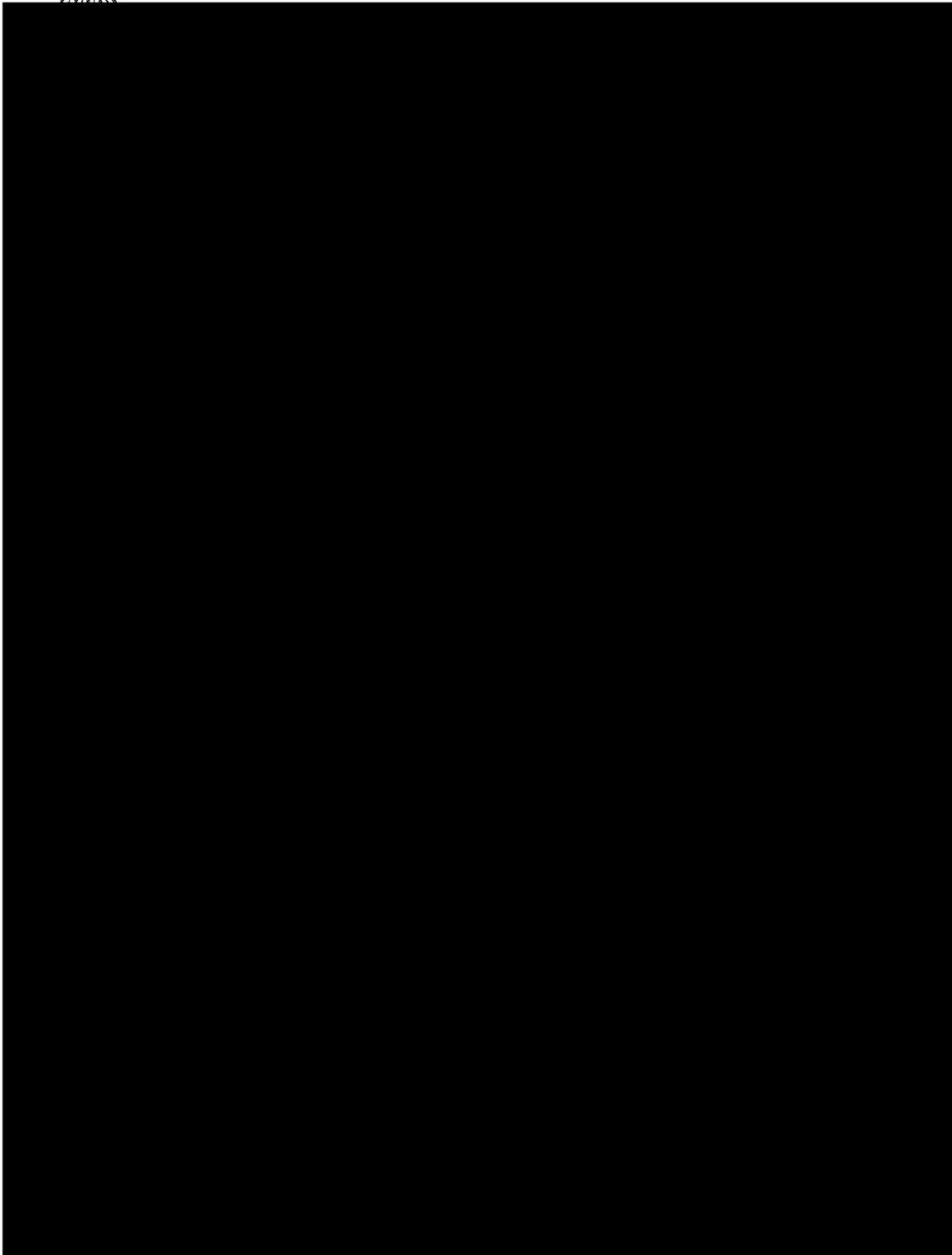


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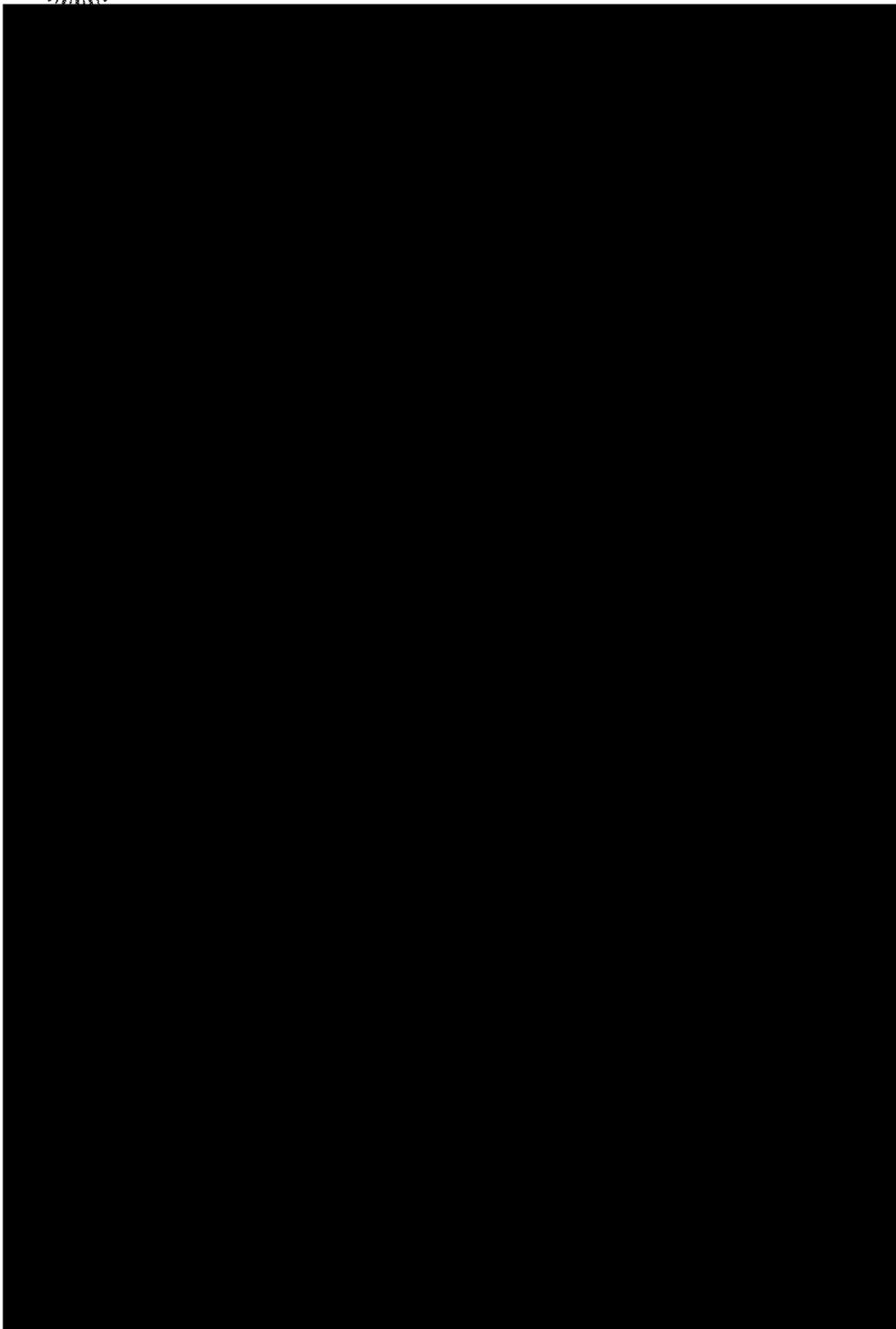


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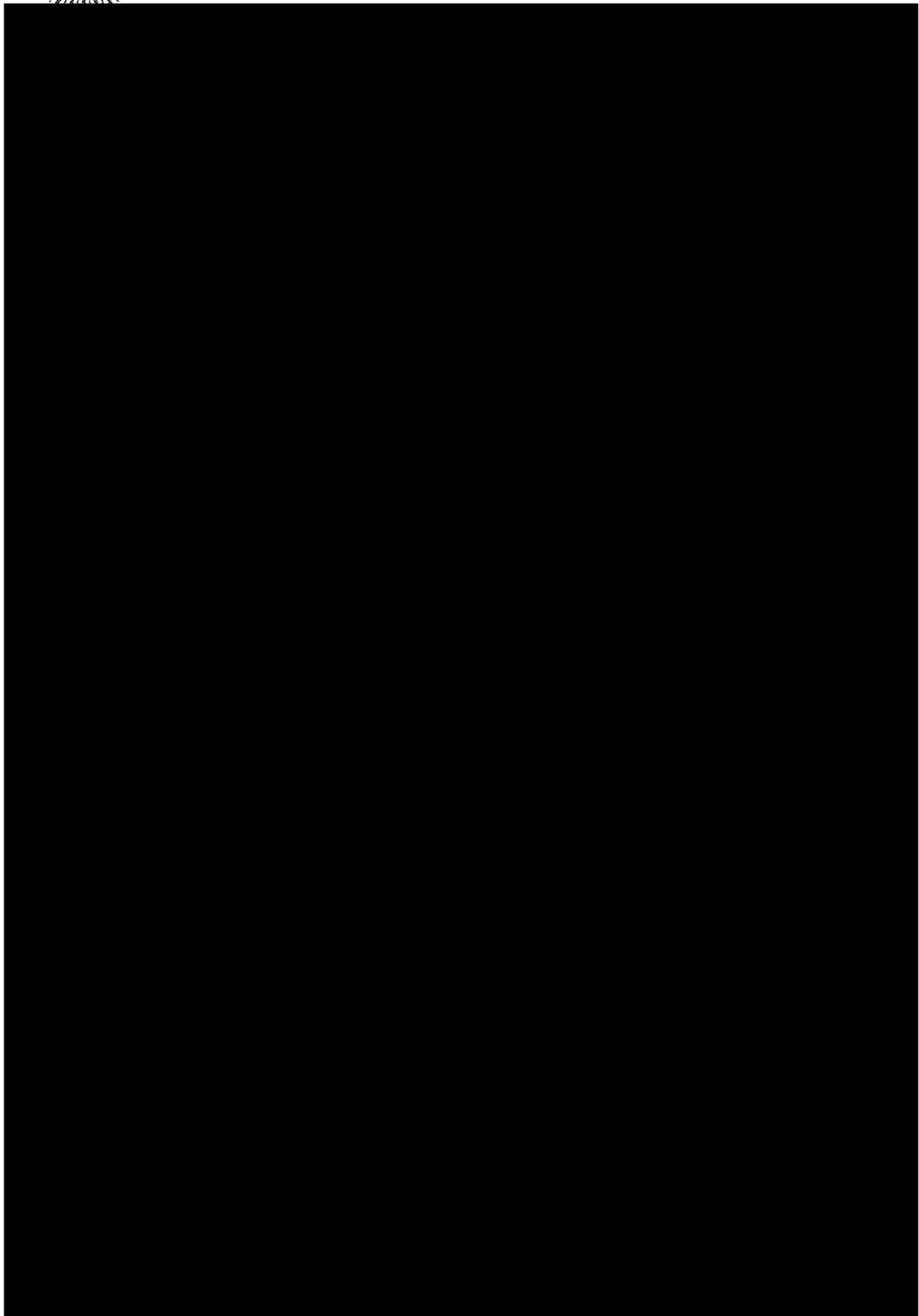


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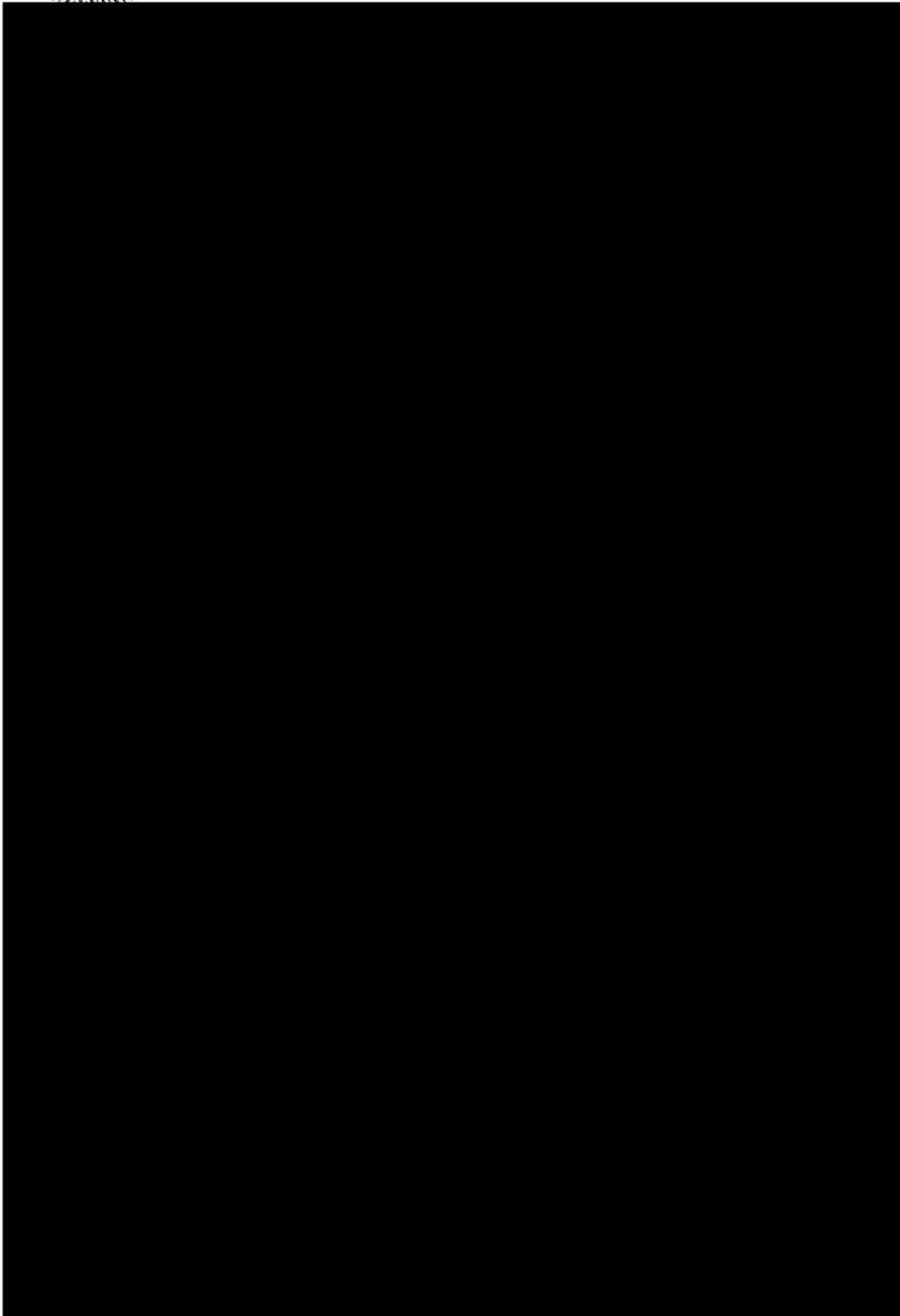


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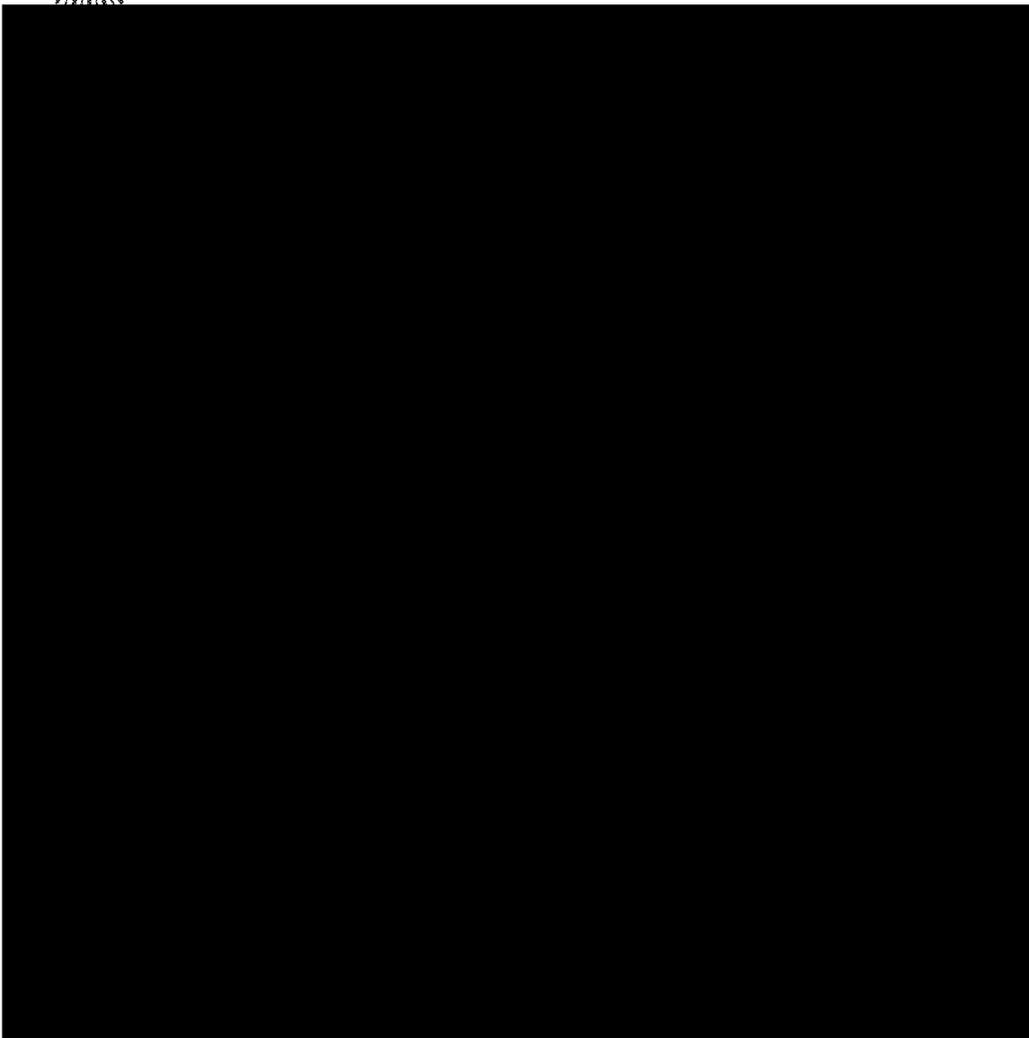


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