

Post Office Limited Postmaster Litigation Subcommittee Agenda



Date:	17 September 2019	Time:	10.00 – 11.00 hrs	Location:	1.19 Wakefield and by telephone
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Present:		Other Attendees:		
<ul style="list-style-type: none"> • Tim Parker (Chairman) (by phone) • Ken McCall (Senior Independent Director) 	<ul style="list-style-type: none"> • Tom Cooper (Non-Executive Director) 	<ul style="list-style-type: none"> • Nick Read (Chief Executive Officer) • Ben Foat (General Counsel) • Andrew Parsons (Womble Bond Dickinson) • Catherine Emanuel (Herbert Smith Freehills) • Richard Watson (General Counsel – UKGI) 	<ul style="list-style-type: none"> • Alasdair Cameron (Chief Financial Officer) • Veronica Branton (Company Secretary) • Rodric Williams (Head of Legal – Dispute Resolution & Brand) • Alan Watts (Herbert Smith Freehills) 	
Agenda Item	Input needed/ Status	Lead	Timings	
1. Welcome and Conflicts of Interest	Noting	Chairman	10.00 – 10.05 hrs	
2. Minutes and Matters Arising - 24 April 2019 - 12 June 2019 - 20 June 2019.	Approval	Chairman		
3. Updates on Court Activity (oral updates) Common Issues Appeal a. Horizon Issues Judgment i. Protocol for distribution ii. Instructions on appeal b. Third/Further Issues Trial i. Counsel availability and selection	Noting and Discussion	Womble Bond Dickinson/ Herbert Smith Freehills	10.05 – 10.55 hrs	
4. Settlement / Mediation (Draft Board Report) a. Dates (inc. lawyers only pre-meeting with Freeths) b. Costs c. Settlement ranges, approvals and strategy	Noting and Discussion			
5. Claimant case reviews (oral update)	Noting and Discussion	Herbert Smith Freehills		
6. Any other business	Noting	Chairman	10.55 – 11.00 hrs	
7. Date of next meeting: 11.30 hrs, 22 October 2019	Noting	Chairman		

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**POSTMASTER LITIGATION SUBCOMMITTEE
BOARD**

Minutes of a meeting of the Postmaster Litigation Subcommittee held on 24 April 2019

Present:

Tim Parker (by telephone)
Tom Cooper
Alisdair Cameron

In attendance:

Lord Neuberger
David Cavender, QC
Andrew Parsons (Womble Bond Dickinson)
Kirsten Massey (Herbert Smith Freehills)
Alan Watts (Herbert Smith Freehills)
Ben Foat (Legal Director)
Rodric Williams (Head of Legal)
Veronica Branton (Head of Secretariat)

Apologies were received from Ken McCall, Senior Independent Director.

Alan Watts provided a summary of the key points from his paper.

Questions and points raised:

- it appeared to be that the appeal on the Common Issues judgment was stronger and more likely to succeed than the appeal on the recusal. Could co-joining the appeals taint our chances of success in seeking leave to appeal the judgment?
- a pause in litigation over the summer could be helpful as we considered settlement options
- there appeared to be significant advantages to not rushing work on the Common Issues appeal. We needed to focus on winning the key points that were important to the operation of the business.

David Cavender QC explained that we had minimal control over when the appeals would be heard but they were likely to be heard together if the appeal on the Common Issues judgment was filed swiftly. He saw the recusal of the Judge as the only way of protecting against adverse findings in the Horizon trial. The functioning of the computer system was at the centre of the dispute. If a finding from the Horizon trial was that the system was not robust it would undermine our position in all of the cases brought against us. The subsequent trials were linked to fact and it was very difficult to appeal on findings of fact. However, that did not take away from the importance of the appeal on the Common Issues judgment. If we were going to co-join the appeals at the permissions stage careful thought would be required on how to do this. DC thought there was a greater degree of overlap between the common issues and recusal appeals than Alan Watts' advice suggested. A separate ground of appeal was on the overriding procedural unfairness and the proposal that the case should not be returned to the Judge for trials 3 and 4 ("recusal light").

DC's view was that if we did not proceed swiftly we would lose the recusal appeal; he did not think that a compromise approach would work and we should be asking for the applications to appeal to be considered by three Leading Judges. The Horizon trial was critical. A draft Skeleton Argument setting out many of the grounds for appeal had already been produced. DC saw advantage in both appeals being heard together because it would show the overlap between the two appeals. Kirsten Massey noted that a counter argument to this was that if the appeals were heard together the CoA might refuse the recusal appeal because the appeal on the Common Issues judgment would allow a number of the same issues to be considered.

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**POSTMASTER LITIGATION SUBCOMMITTEE
BOARD**

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Questions and points raised:

- what were the risks of co-joining the appeals and did we have the resources to submit the documentation required in time? DC reported that the resources required to deliver the documentation were available
- what risks would we face if we lost both appeal applications?

The Subcommittee requested Lord Neuberger's view of the situation and the options available.

Lord Neuberger reported that judges had been recused previously; he largely agreed with the position set out by DC. Both cases were likely to be heard together unless the court decided that the recusal should be dealt with quickly. It was more likely that the Horizon trial would continue if the two appeals were not considered together.

The matter was not black and white, but Lord Neuberger thought that when hearing the two appeals together the judges were more likely to give leave to appeal on all points raised in relation to the Common Issues judgment in order not to constrain the Court of Appeal (CoA). The recusal application was very different in some respects to the Common Issues appeal but there was still a fair degree of overlap.

If Lord Justice Coulson rejected the leave to appeal for recusal and the appeal on the Common Issues judgment found a number of points in our favour the CoA might then have a different view on recusing the Judge. Lord Fraser would have informed the CoA that an appeal was due to be lodged.

Lord Neuberger thought we were likely to obtain permission to appeal the recusal on grounds of apparent bias as the threshold for appeal was not very high. It would be very unusual not to give leave to appeal on the Common Issues judgment. Lord Neuberger thought that Lord Justice Coulson was likely to view matters in this light; on balance he thought it better for both appeals to be submitted together.

Questions and points raised:

- that we needed to take a decision but the case was not clear cut
- that we had little control on when and how the appeal cases would be heard. Further work was needed to determine the grounds for appeal sufficiently well. In addition, Ministers needed to be briefed properly on the issues. Seeking a settlement could be time consuming so a long appeal could be advantageous. It might, therefore, be better to have the hearings separated and we should not co-join the appeals if that gave us no scope to separate the hearings.

Following detailed discussion, the Subcommittee **AGREED:**

- that the appeals for recusal and on the Common Issues judgment should not be co-joined
- we should write to Lord Justice Coulson to advise that we would be submitting the grounds to seek leave to appeal the Common Issues judgment on 16 May 2019
- a meeting would be arranged in the week beginning 29 April to consider the grounds for appeal.

**POSTMASTER LITIGATION SUBCOMMITTEE
BOARD**

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Minutes of a meeting of the Postmaster Litigation Subcommittee held on 12 June 2019

Present:

Tim Parker (Chairman) (by telephone)
Ken McCall (by telephone)
Tom Cooper
Alisdair Cameron

In attendance:

Kirsten Massey (Herbert Smith Freehills)
Ben Foat (General Counsel)
Rodric Williams (Head of Legal)
Veronica Branton (Head of Secretariat)
Andrew Griffin (Deloitte) (Item 5.)
James Drummond (Deloitte) (Item 5.)

1. Horizon Trial Update**Action**

Ben Foat provided an update on the Horizon Trial which had resumed on 4 June 2019 and was hearing expert evidence. There were important areas of agreement between the experts, including that the Horizon system was relatively robust and that the range of bugs identified in the system was between 12 and 29.

Last week our QC had been cross examining the claimants' expert witness. This had established that remote access of the system had happened rarely and that the actual number of bugs the expert could identify in the system was not clear.

Our expert had begun to be examined the previous day. The claimants' QC was seeking to challenge his credibility and had criticised his statistical analysis for lacking precision.

The claimants' QC continued to criticise Post Office Limited for inadequate disclosure and insufficient access to documents. New documents were being put in front of witnesses which allowed them to be entered into evidence.

The Trial would end on 2nd July 2019 and the Judge would determine which expert witness he preferred on the basis of fact. While it was unlikely that the Judgment would be published until the Autumn we were planning for the possibility of it being published in July 2019.

2. Common Issues Appeal

Kirsten Massey provided an update on the Common Issues Appeal, the papers on which had been circulated to the Subcommittee on 7 June 2019.

The grounds to be submitted on appeal had reduced from 55 pages to 8 pages. Helen Davies' QC (HD) had made a number of recommendations, including that we did not appeal any of the Judge's factual findings or raise points of procedural unfairness which could retrace the grounds of the recusal application. Relational contract and procedural fairness points would be the focus of our appeal. HD had also suggested that we remove the ground relating to the training of assistants and the ground on reasonableness terms as well as the procedural unfairness ground relating to onerous and unusual clauses because POL would not be able to prove that all NCT Sub postmasters had signed their contracts.

A number of points were raised, including:

- that we should be clear that we were not seeking to defend any clauses within the contract that we did not think defensible, even if we agreed that they were not onerous or unusual provisions. It was noted that the main issue would be whether or not the clauses had been enforced. TC requested an analysis of the enforcement, in practice, of contract clauses that it had been argued could be viewed as "onerous or unusual" and where Sub postmasters might not have seen their contracts
- whether there were any case precedents we could look to in relation to onerous clauses. It was reported that there were other relevant cases but that our focus would be on enforcement of contract clauses in practice.

Executive

The Subcommittee **APPROVED** the submission of the grounds of appeal on the more limited basis discussed at the meeting.

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POSTMASTER LITIGATION SUBCOMMITTEE BOARD

3. Kelly Tolhurst meeting and Litigation Strategy

Al Cameron provided an overview of the primary objectives for the discussion with the Minister on 24 June 2019:

- we would acknowledge that our approach to the litigation had been flawed, that we had changed our approach and that this was evidenced by our revised approach to the appeal on the Common Issues Judgment and our new legal Counsel. We were looking at settlement options
- Government would like to see information on costings for settlement. This would be discussed at the meeting including thoughts on the potential range for settlement, while noting the inherent uncertainty in the absence of a figure in relation to quantum from the claimants' solicitors.

The information received to date on potential costs was discussed. It was reported that individual claimants had provided a schedule of information in which they had set out their estimated losses, which Womble Bond Dickinson (WBD) held. Previously, the Subcommittee had only been aware that we held information for the 140 cases which had already gone through mediation. Previous discussions at ARC around disclosure of figures in the Annual Report and Accounts (ARA) for 2017/18 and in prior years were raised and it was **AGREED** that WBD should be asked to explain the position to the Subcommittee. It was noted we had not held information on the probable economic output from the litigation because there had been no crystallisation of the liability or quantum of figures received from the claimants' solicitors. The position would be different for 2018/19 because of the Common Issues Judgment and points on which we had lost which meant that the claims were not without merit.

RW to
advise WBD

The disclosures on the litigation and inclusion of a provision in the ARA for 2018/19 were discussed, including whether we should include a provision figure if we were planning to go into settlement negotiations. Inclusion of a modest figure could signal our willingness to seek to settle where we had been at fault but also indicate that we would be testing the legitimacy of each of the cases. It was felt that we needed to be very careful about including a provision and the basis for this given that we were in an appeal process and that the claimants' QC would refer to the provision as an acknowledgement of liability. It was noted that the figure of £90m in relation to a potential settlement was in the public domain. It was **AGREED** that AC would come back to the Subcommittee with more detail on the range of potential settlement figures and the criteria for including cases for consideration for settlement. RW noted that it was important that we segregate the criminal justice system and civil litigation case streams.

AC

It was noted that the ARA was likely to be signed towards the end of July 2019.

4. Operational Work stream Update

Ben Foat reported that in parallel with the litigation work operational transformation work was taking place. We were reviewing whether all of our processes were fair and reasonable, including those for losses and suspension. Processes were being mapped end to end and policies were being reviewed.

A table was being produced for the July Board meeting which set out the processes that had been in place, the processes that would be implemented (where changed), how changes had addressed the trial points and the communications surrounding this. Changes proposed may not have been implemented by July 2018 as a programme of training, implementation and monitoring would be required.

A number of points were raised, including:

- whether the table would include a commentary on losses, processes for dealing with losses and which elements Postmasters were responsible for and which elements PO Limited? It was reported that this information would be included
- a quarterly update for ARC and/ or Board was requested on how the transformation work was being implemented and how it was working in practice.

Executive



**POSTMASTER LITIGATION SUBCOMMITTEE
BOARD**

5. Horizon Contingency Update & Plan

AC described the context for the Horizon Contingency planning work and the focus on providing reassurance to Postmasters. From late July 2019, a two to three month programme of work would be taking place to address the chief concerns of Postmasters, including remuneration. We would be reversing reductions in remuneration that were associated with the simplification programme and would be implementing improvements to Horizon, including enabling the same till to be used for Horizon transactions and retail transactions, and rolling out Branch Hub.

Committee Members raised the importance of real connections and conversations with people. It was agreed that this was vital and would be supported by the new field network and the Communications Team would be making sure that everyone had the 10 or so central messages we wished to communicate to assist those one-to-one conversations.

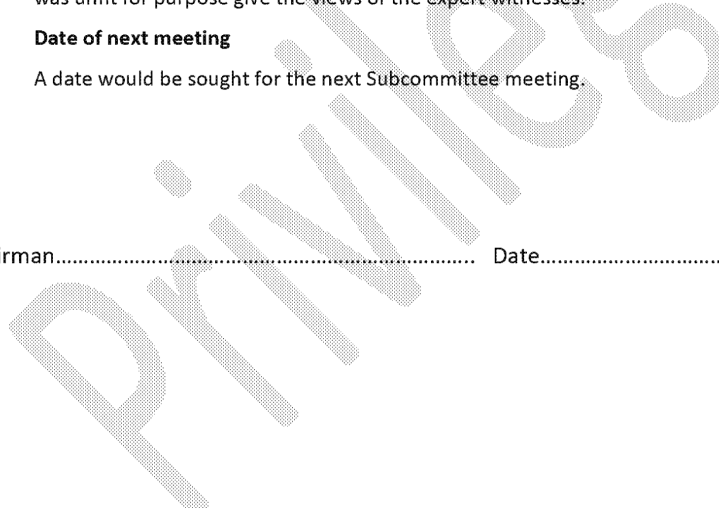
Andrew Griffin and James Drummond from Deloitte joined the meeting and provided an update on the Horizon contingency planning work. The Deloitte team was supporting POL's operational readiness to respond to the impact of an adverse Horizon trial. This included looking at what our response needed to be in the coming weeks; the impact of the worst case scenario and the strategic response to this; the "new normal" position and the day one readiness response. Potential business impacts and what could be done to mitigate these ahead of time was a particular focus. The range of impacts from a reputational, political, regulatory and business perspective were all being considered.

It was noted that how we handled complaints and the processes we had in place was critical. There was danger that the Managing Judge would find that our processes or our accounting system were not fit for purpose which was more likely than finding that the Horizon system was unfit for purpose give the views of the expert witnesses.

6. Date of next meeting

A date would be sought for the next Subcommittee meeting.

Chairman..... Date.....



POSTMASTER LITIGATION BOARD SUBCOMMITTEE

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**Minutes of a meeting of the Postmaster Litigation Subcommittee held on Thursday, 20 June 2019
at Finsbury Dials, 20 Finsbury Street, London, EC2Y 9AQ at 16.30**

Present:

Tim Parker (Chairman)
Ken McCall (by telephone)
Tom Cooper
Alisdair Cameron

In attendance:

James Drummond (Deloitte)
Ben Foat (General Counsel)
Andrew Griffin (Deloitte)
Andrew Harding (Womble Bond Dickinson)
Elizabeth Hallissey (Senior Assistant Company Secretary)
Andrew Parsons (Womble Bond Dickinson)
Tony Robinson QC (*Minute 1*)
Alan Watts (Herbert Smith Freehills)
Rodric Williams (Head of Legal)

1. Horizon Trial Update**ACTION**

Tony Robinson QC provided an update on the Horizon Issues Trial, which had restarted on 4 June 2019. He had been asked to provide a review of the trial and his opinion on the likely outcome.

Tony Robinson explained that the cross examination of the Claimants' expert witness had gone well and it had become clear that the documents did not say what the expert witness had claimed. However, there had also been issues with Post Office witnesses and one witness in particular, the Chief Architect of Horizon, could be perceived as not credible to the court after he gave evidence. This was an issue as he was a central witness from Fujitsu. Fujitsu had also provided information used by Post Office at a Parliamentary Select Committee a number of years ago to confirm that there was no remote access to Horizon, which was incorrect.

The Committee discussed the stance and behaviour of the Judge towards Post Office witnesses throughout the trial.

The Claimants' expert witness had agreed that the Horizon system was robust. However, he had displayed bias against Post Office in his evidence. The Committee discussed the evidence given by Post Office's Expert Witness and Tony Robinson explained elements of his evidence could have given the impression that he had not thoroughly investigated the Horizon issues and that the data in his report was unreliable, with imprecise calculations.

Further to questions from the Chairman, Tony Robinson explained that an objective judge would see that the Horizon system was robust and reliable almost all of the time. Both expert witnesses were unsatisfactory but the documents demonstrated the reliability of the system. However, he cautioned that preparations should be made for a similar judgment to the Common Issues Trial. It remained difficult to predict the judgment due to the abstract nature of the case. He expected the Judge to criticise Post Office but find that each individual Claimant's case should be assessed on its own merit, because, although there is insufficient evidence to suggest that the system was not robust, the Judge could not say it worked perfectly at all times in all cases.

Tony Robinson left the meeting.

POSTMASTER LITIGATION BOARD SUBCOMMITTEE

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ACTION

2. Deloitte – Day 1 Readiness Update

The report, which was tabled at the meeting, was noted and James Drummond and Andrew Griffin provided an overview of the progress of the project to date, including the identification of business impacts of likely and worse-case legal scenarios. Next steps included validating the response and mitigation suggestions with operational units, supporting individual units through a focused planning process, defining the 'new normal' for the business and developing rehearsals before the judgment.

An update on the emerging themes was provided. There were four impact areas identified including postmaster relations, Horizon compliance, political and regulatory and commercial partners. Each of these impact areas had sub-sections and there were 32 different impacts. A mitigation and response plan had been drafted and there were 39 activities across the business which included back office resourcing, stakeholder engagement and additional training. It was planned that all mitigation work would be on track for completion at the end of July 2019. In 2 weeks a planning process would commence to understand the commercial and regulatory potential breaches, and how to mitigate these risks and remain as compliant with third party contracts as possible, following receipt of the final judgment.

In response to questions from the Chairman, James Drummond explained that there would be an initial communication to current Postmasters to explain a new collaborative communication channel to discuss Horizon questions. There would then be a longer term 3 month communication plan. The Chairman said it was important to ensure that a bigger issue was not inadvertently caused with Postmasters that did not exist. Postmasters generally thought that Horizon was reliable and there had been little coverage to date of the trial. Ken McCall agreed and suggested that the communications should focus on increased support to Postmasters with an easier communication process. The Committee agreed that it was important to keep the communications positive on how the vital system operated.

Alisdair Cameron added that it would be more useful to provide examples and answers of frequently asked questions in order to further help Postmasters use the Horizon system effectively.

In response to a question from Tom Cooper, Andrew Griffin said that the essential mitigation work included ongoing Postmaster relationships and proactive communication. Tom Cooper highlighted that if additional resources and capacity were required to change processes, this would be more difficult than the communication activities. Alisdair Cameron explained that work had already commenced to update processes.

Ben Foat explained that a report was due to be submitted to the Post Office Limited Board in July 2019 that provided details of an old process against the updated process. It would enable clarity on improvements made to processes that may be directly referenced in the judgment. The Chairman highlighted the importance of a defensible, sustainable reconciliation process that would meet the directions of the judgment.

POSTMASTER LITIGATION BOARD SUBCOMMITTEE

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ACTION

3. Common Issues Judgment Appeal

The Skeleton Argument outlining the basis of appeal would be amended and re-submitted by 27 June 2019 in accordance with the Court of Appeal's order of 18 June 2019. There was no further update.

4. Claimants' Schedule of Information

The Committee discussed the Claimants' schedules of information. The Chairman asked for an explanation as to why the Post Office Limited Board had not been made aware of the schedules in 2017. Andrew Parsons said that the schedules had been submitted to court in mid-2017 for the first 198 Claimants. Further claimants were added and the schedules re-done with the final schedules received at the end of 2017. The schedules included financial claims totalling £224 million. This figure had not been communicated to the Post Office Limited Board.

Andrew Parsons said that he had not been aware that the Board had not received the information contained in the schedules, including the total value of the financial claims. He had not provided this information when asked about a claim estimate when discussing the requirement for a provision in the statutory accounts as this estimate was widely understood to be inaccurate and unreliable, and he thought this information was known within Post Office. The Committee discussed that last year's statutory accounts would not have required a provision, but the position had now significantly changed due to the trials held in November 2018 and March 2019. The chairman expressed dissatisfaction at the assumption that the Post Office Limited Board had all the required information, and noted that approaches may have been changed with the additional information.

Andrew Harding said that a rolling brief would be sent regularly to the Sub-Committee in the future to ensure that no information was assumed. Tom Cooper requested information on the breakdown of the claimants including those that had been previously prosecuted. Appropriate remediation actions could not be agreed without all the facts.

WBD/HSF

5. Report and Accounts

Alisdair Cameron reported that a meeting with the Company's external auditors, PricewaterhouseCoopers (PwC) had been scheduled for the following week to discuss the requirement for a provision in the FY 2018-19 report and accounts related to the ongoing Postmaster Litigation.

Following further discussion, it was agreed that a separate meeting was required to determine the requirement for a provision whilst the trials continued and to discuss the impact of a provision on any future mediation. The meeting with PwC would be delayed, up to 10 days, until these elements had been discussed by members of the Sub-Committee.

AC

6. Next Meeting

The arrangements for the next meeting would be agreed and circulated to all attendees.

POSTMASTER LITIGATION BOARD SUBCOMMITTEE

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There being no further business, the meeting ended at 17.35.

Chairman..... Date.....

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POST OFFICE BOARD
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Group Litigation Update

Author: Ben Foat/Rodric Williams

Sponsor: Ben Foat

Meeting date: 24 September 2019

Executive Summary

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Context

We are currently awaiting the High Court’s judgment on the Horizon Issues Trial. We expect to receive this any time between mid-September and late October 2019.

There will be a hearing in the Court of Appeal on 9 October 2019 to determine Post Office’s application for permission to appeal the Common Issues Judgment. The Court of Appeal’s judgment on this will follow shortly after the hearing.

Assuming these judgments are received within this timeframe, mediation to explore settlement with the Claimant Group is likely to take place in mid-November 2019.

In accordance with the legal strategy set out in the July Board paper, this report sets out

[Redacted]

Questions addressed in this report

1. What is the update on the contingency planning?
2. What are the preparations for settlement and mediation?

[Redacted]

3. What are the next steps?

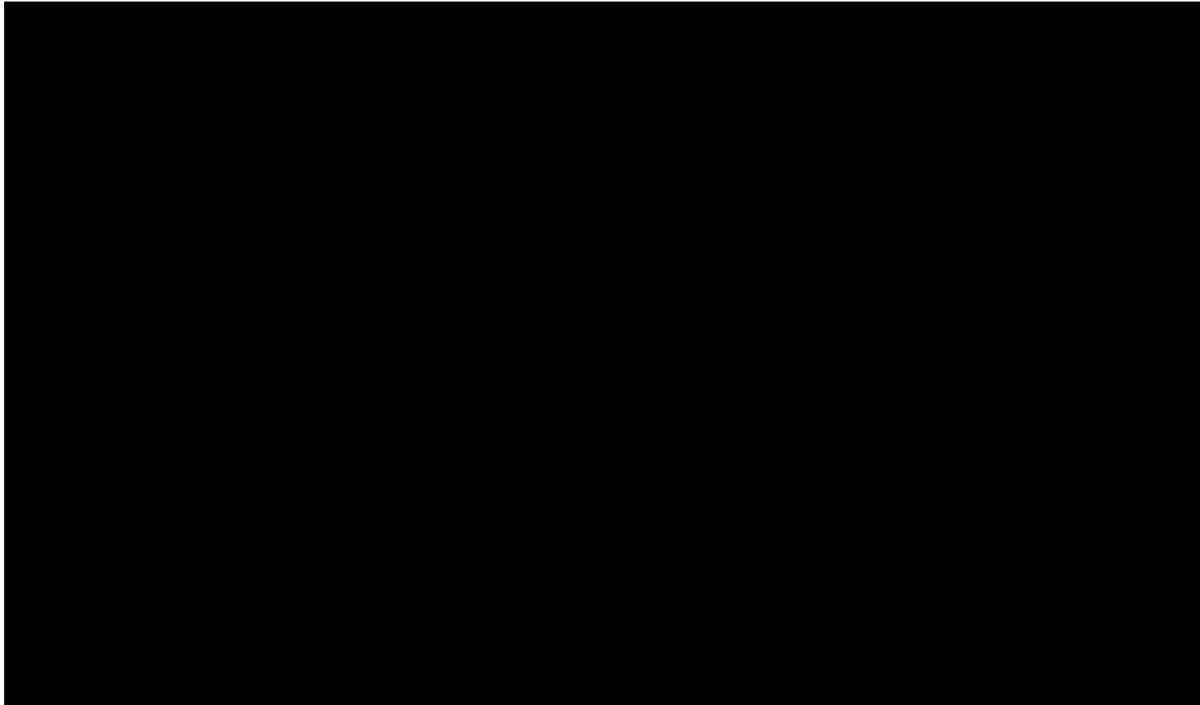
NOTE: This paper and the privileged and confidential legal advice it contains is based on advice prepared for Post Office by Herbert Smith Freehills LLP (HSF) (attached in full at **Appendix 6**). The advice will be updated following receipt of the Horizon Issues and appeal decisions given the material impact they could have on Post Office’s position.

Conclusion

As matters currently stand:

[Redacted]

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Input Sought

1. The Board is asked to approve the approach outlined in this paper. The Board will be asked to consider (and if appropriate approve) final settlement numbers by way of an updated paper closer to the mediation date.

Input Received

2. Our internal and external (HSF) legal teams have approved this paper.

The Board is asked to exercise caution when communicating about potential levels of settlement. The Court of Appeal recently held that written communications (emails) between Board members concerning settlement of a dispute were not privileged from disclosure (*West Ham v E20 Stadium LLP* [2018] EWCA Civ 2652. Post Office would be materially disadvantaged if settlement numbers or strategy were to be disclosed to the Claimant Group. **Communications about settlement should therefore only be held orally, but if that is not possible, advice should be sought from Post Office's lawyers.**

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Contingency Planning

Not underestimating the potential operational, reputation and commercial implications a negative outcome of the Horizon Issues Trial could have for the Post Office, we engaged Deloitte (the risk advisory team which has relevant experience in crisis preparedness and response work) to work with key business area owners to prepare an effective immediate and short-term response to stakeholder reaction to the Judgment. The work to date has included:

- defining worst-case, medium-case and best-case scenarios
- identifying the key stakeholders (Postmasters, Government & Regulators, Commercial & Retail Partners and Customers)
- identifying potential stakeholder reaction to the trial outcome and assessing the operational, reputational and commercial impact of those reactions
- preparing the business response to those likely impacts by identifying and impact assessing business as usual processes; introducing new impact detection processes (eg branch closure monitoring); designing new processes where BAU processes were not adequate for the worst-case scenarios; and putting mitigation plans in place where possible to minimise the impact.

Ultimately, the response from Day One (the day the judgment is handed down) will be determined by what the Horizon Issues Trial Judgment (the Judgment) actually says and how our stakeholders react to it. The output of our work ahead of the Judgment is the Operational Response Plan (available in the 'reading room') which details the business response to stakeholder reaction to the Judgment with the ultimate aim of continuing to maintain business operations and provide service to our customers as normally as possible. This is underpinned by a Communication Strategy and extensive Comms collateral designed to address worst, medium and best case scenarios¹. This material has been prepared with business area owners, undergone legal review by WBD and HSF and is currently undergoing a further 'tone' review by Lexington.

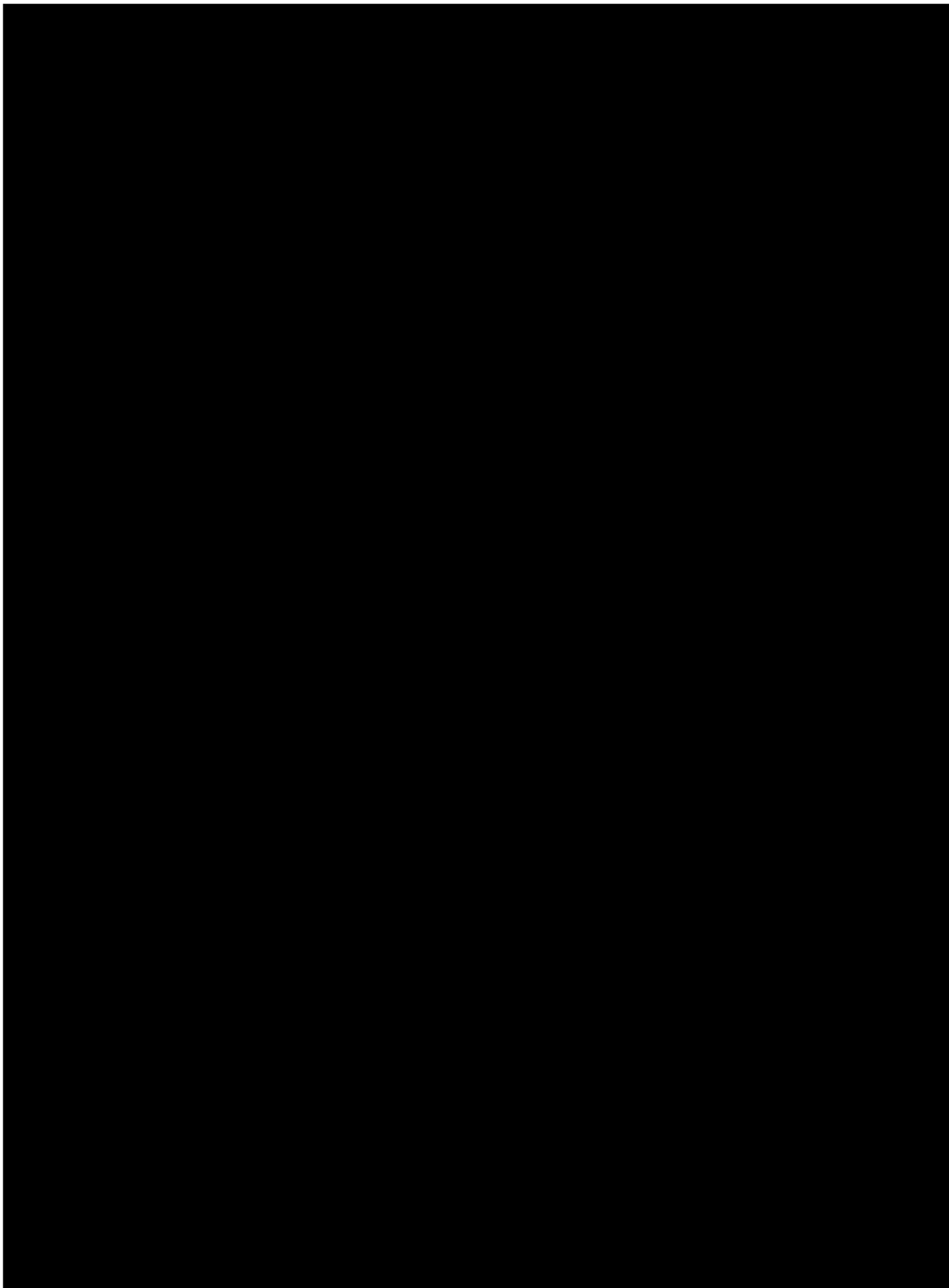
A Rapid Response Team (RRT) has been established to manage the stakeholder, and execute the Post Office, response to the Judgment. The RRT will be invoked on Day One (preparatory sessions already completed) and will run daily (until deemed no longer required) to coordinate and manage the organisation-wide response to the Judgment, escalating key decisions to the Group Executive as appropriate, collating and distributing business impact information and providing daily update briefings.

Mediation and Settlement

¹ E.g. wide-spread, coordinated branch closures across the network; increased non-compliance with branch cash declarations; adverse impact on trading relationships with commercial partners; loss of stakeholder trust in Post Office.

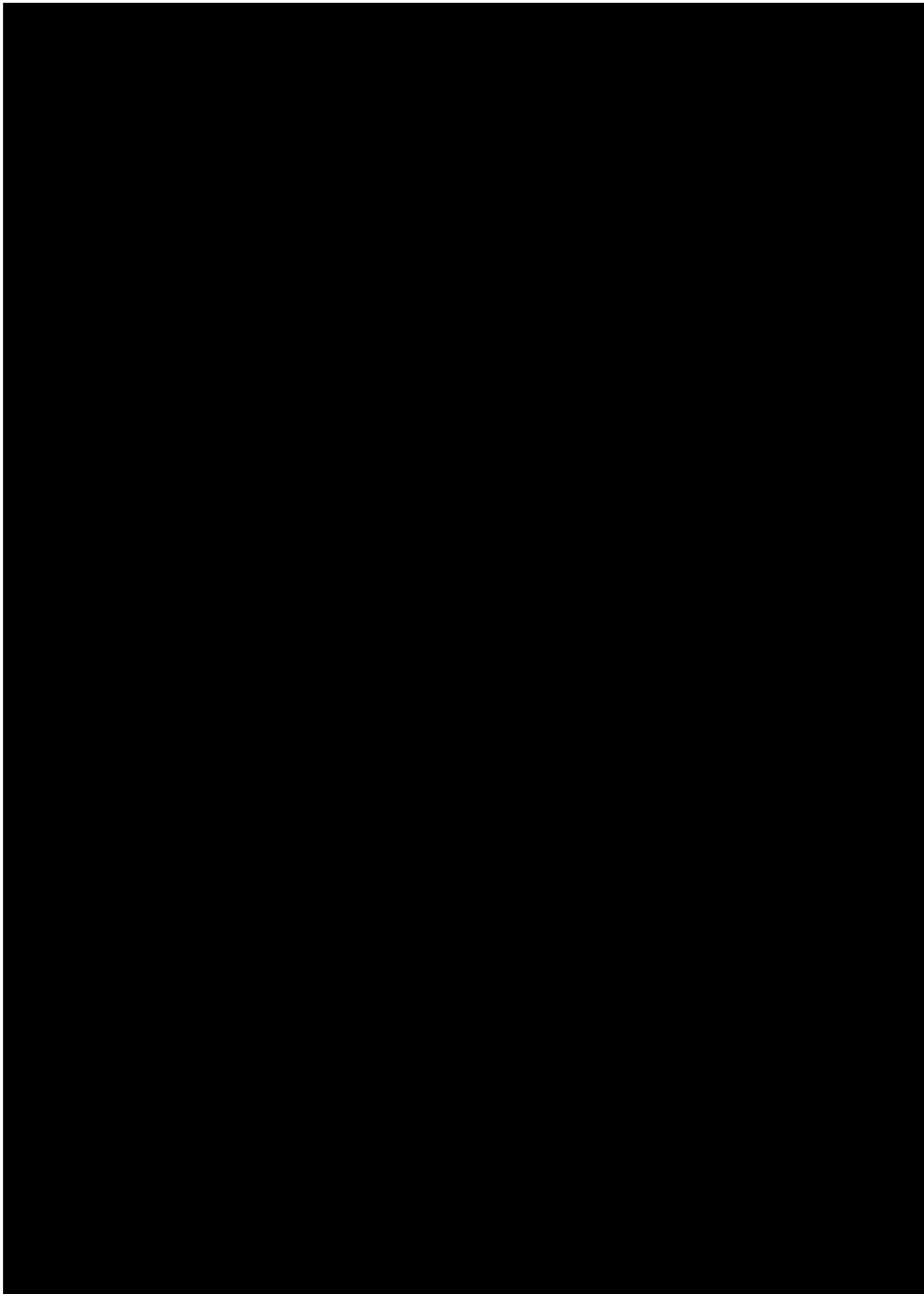
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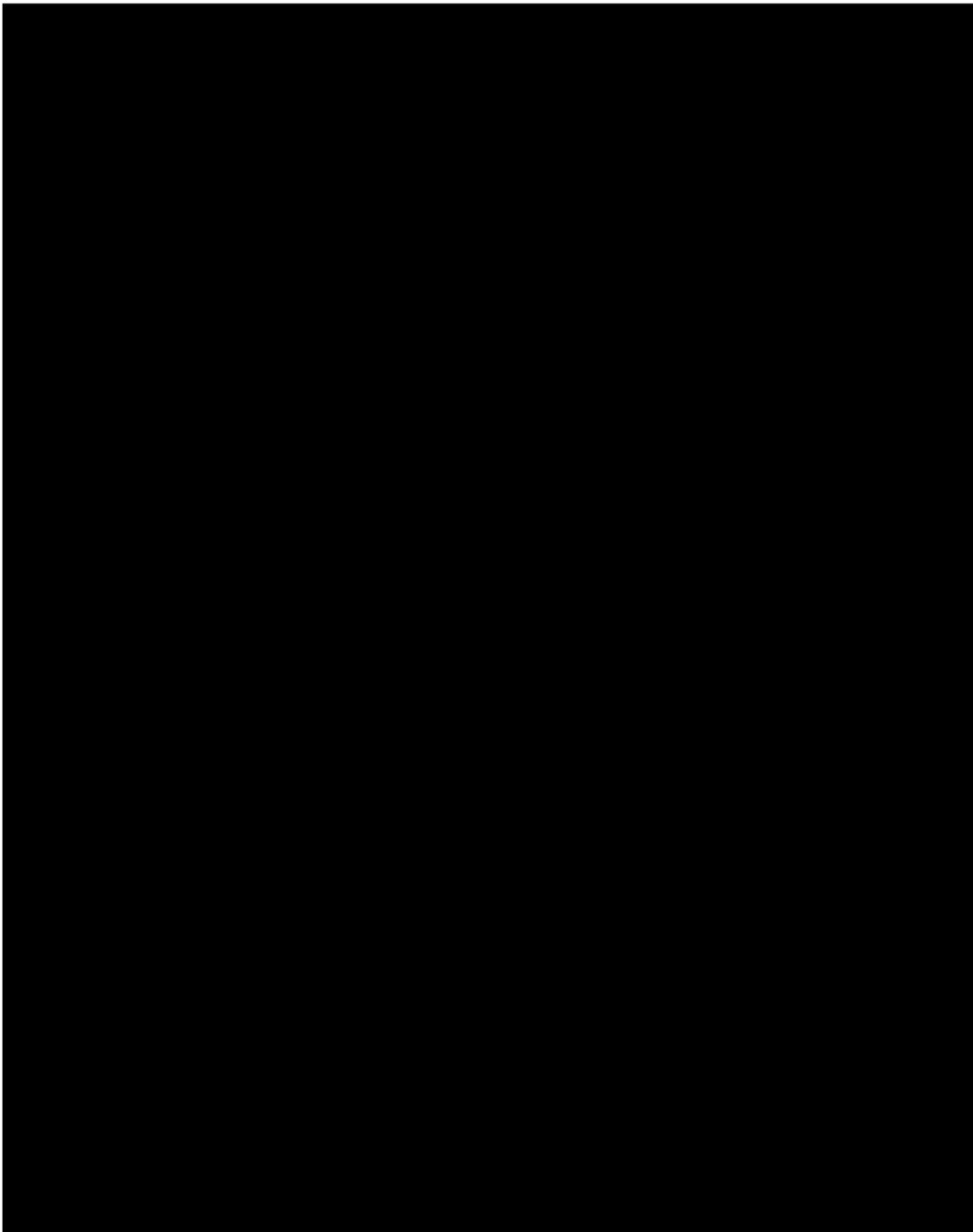
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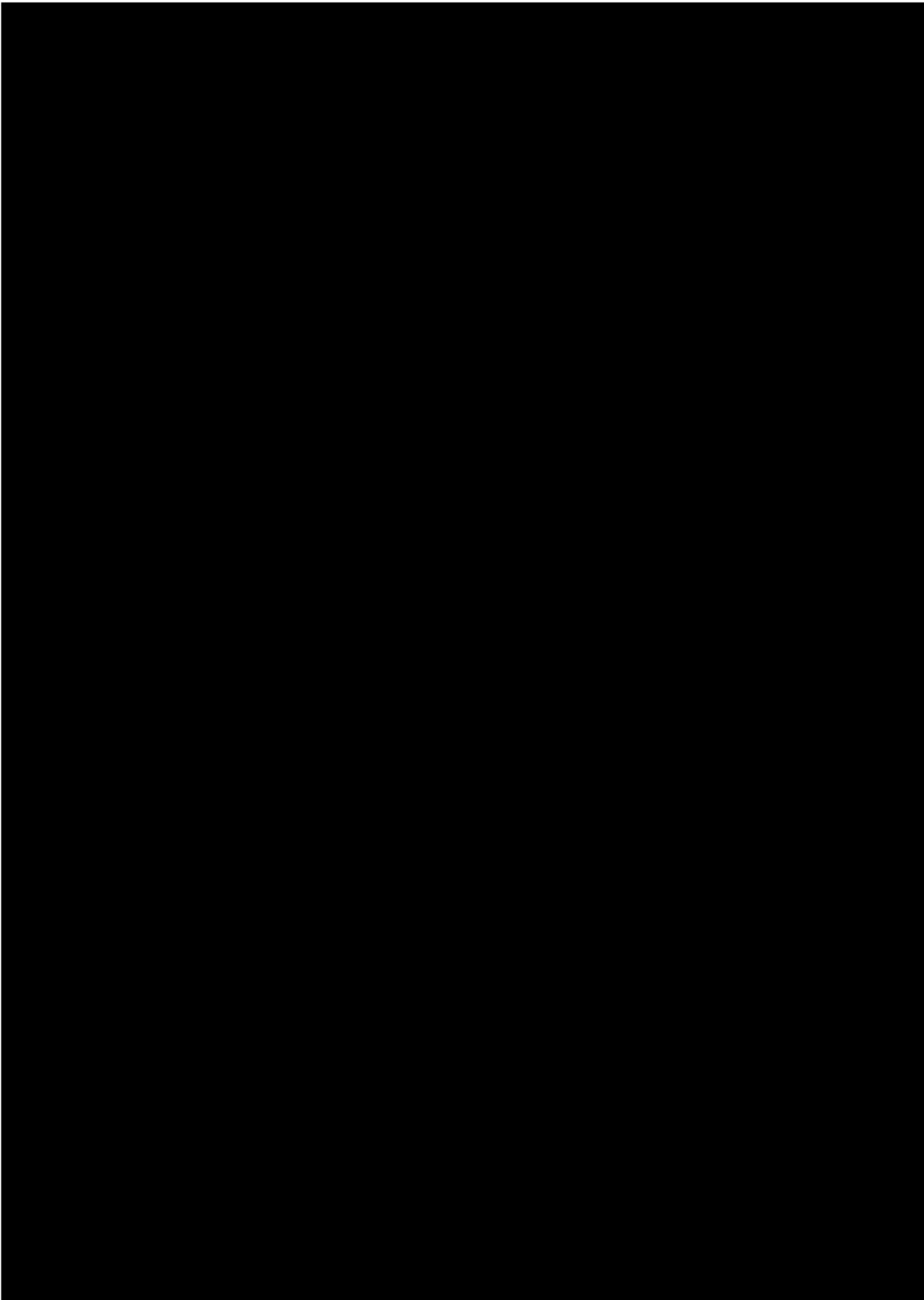
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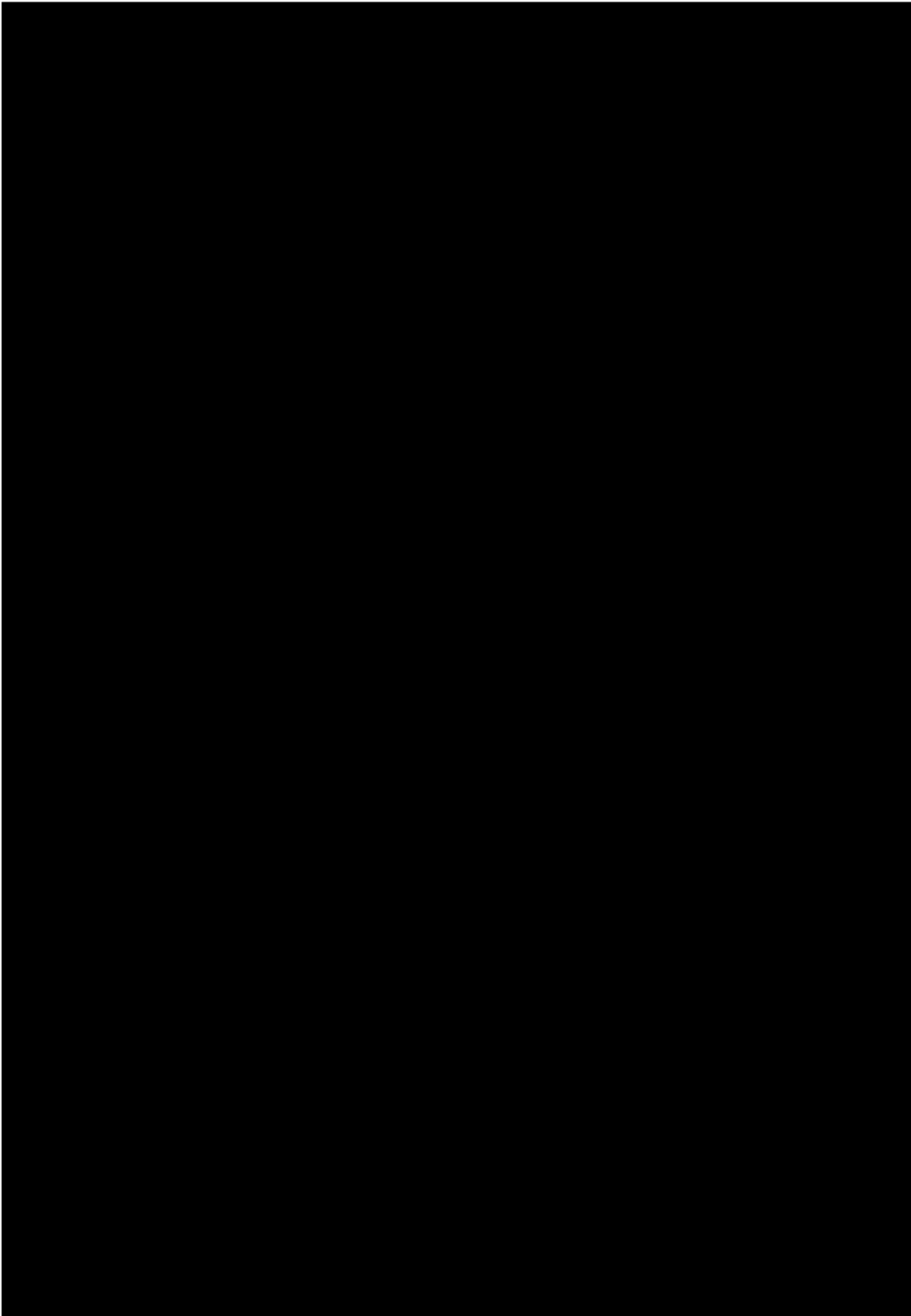
² *New Articles are being considered but appear unlikely to be finalised by November 2019.*

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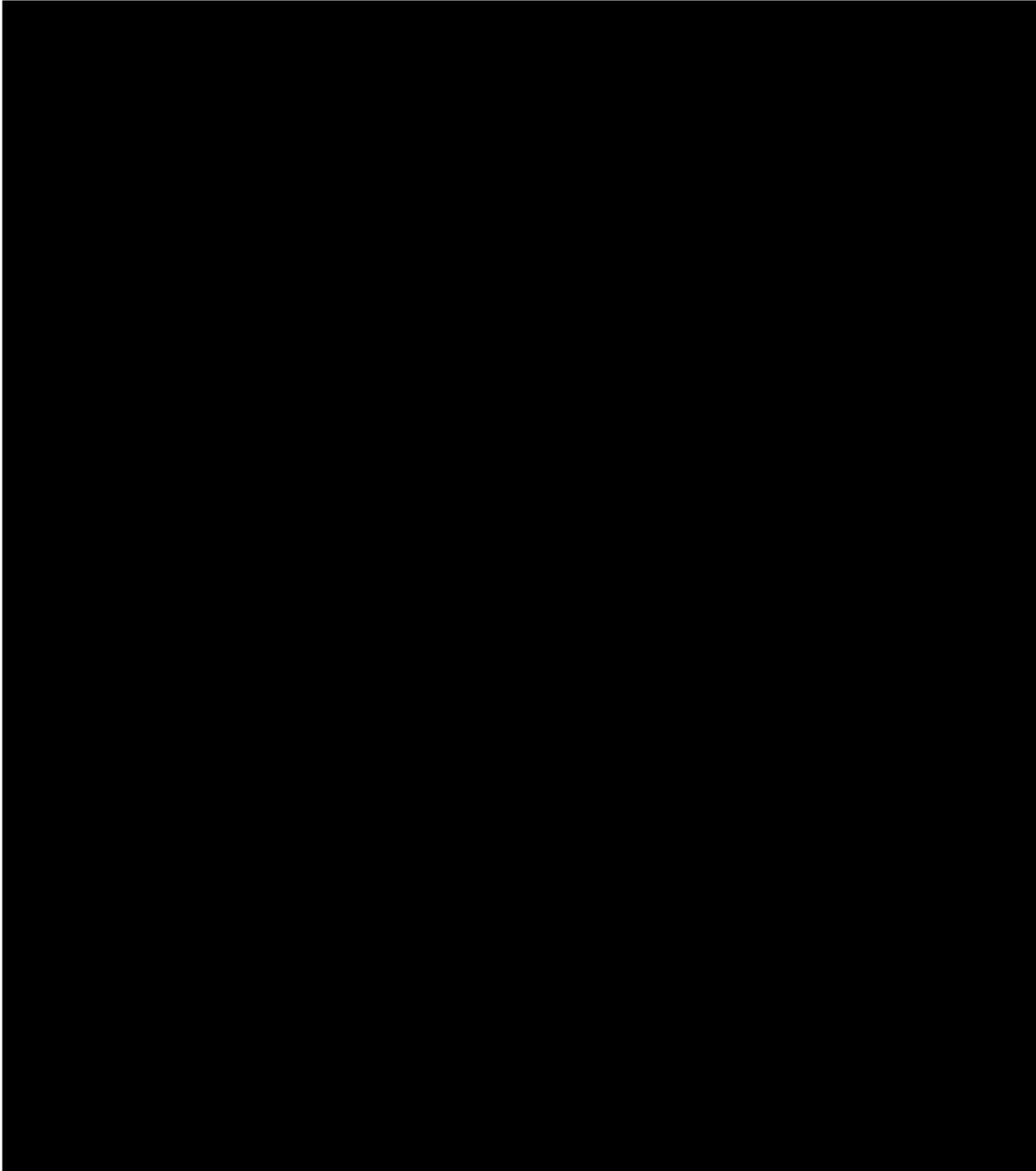
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Next Steps

An overview of the main court and settlement-related activity in Group Litigation through to October 2020 is set out in the "Group Litigation Timetable" at **Appendix 4**.

As well as preparing for mediation, between now and the end of October 2020 we are preparing to:

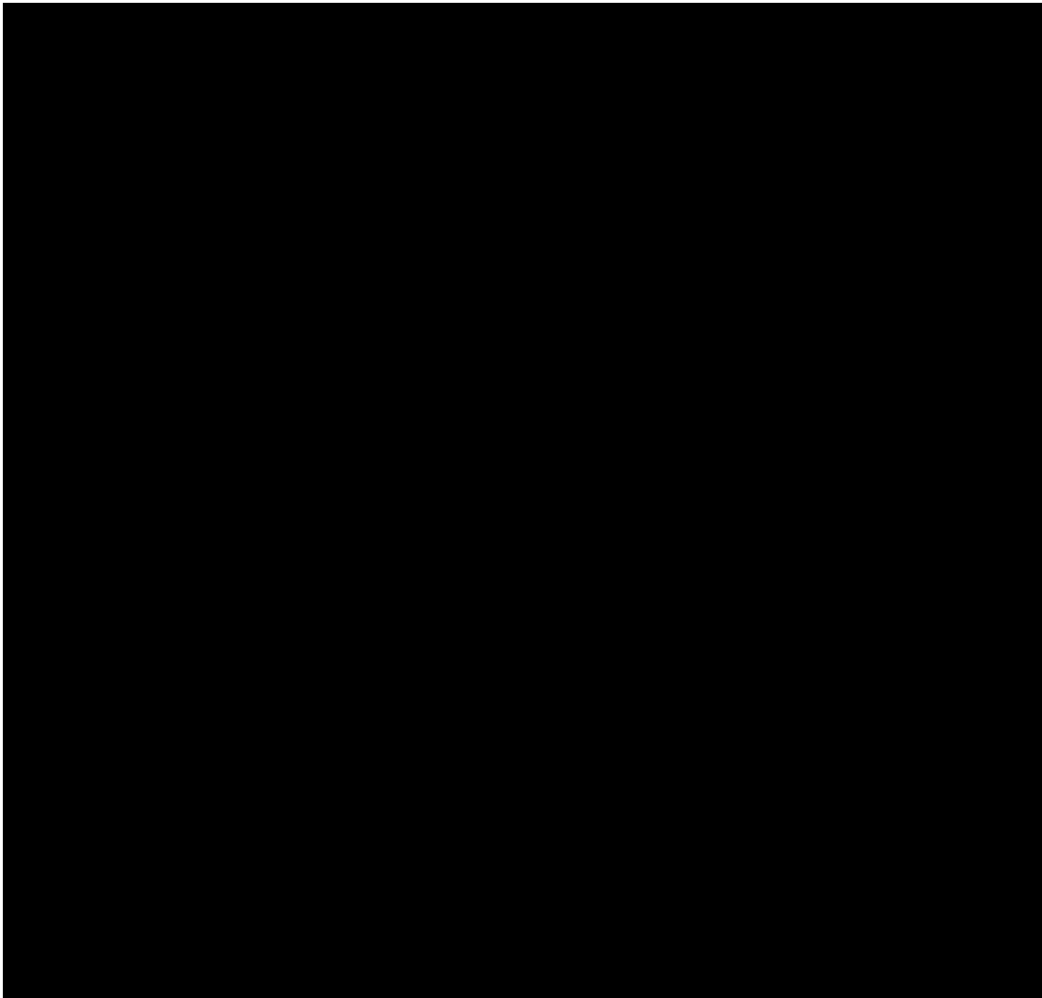
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- receive the Horizon Issues judgment, which we propose is managed in accordance with the protocol set out in **Appendix 5**;
- attend the Court of Appeal hearing on 9 October 2019 on permission to appeal the Common Issues Judgment;
- respond to the Claimants’ formal articulation of their claim for the third trial; and
- identify “test claimant” criteria for representative cases in the as yet unscheduled trials on breach (i.e. whether Post Office acted wrongly), causation (i.e. did that breach cause the Claimant’s harm), and limitation (i.e. is a Claimant’s claim time-barred).

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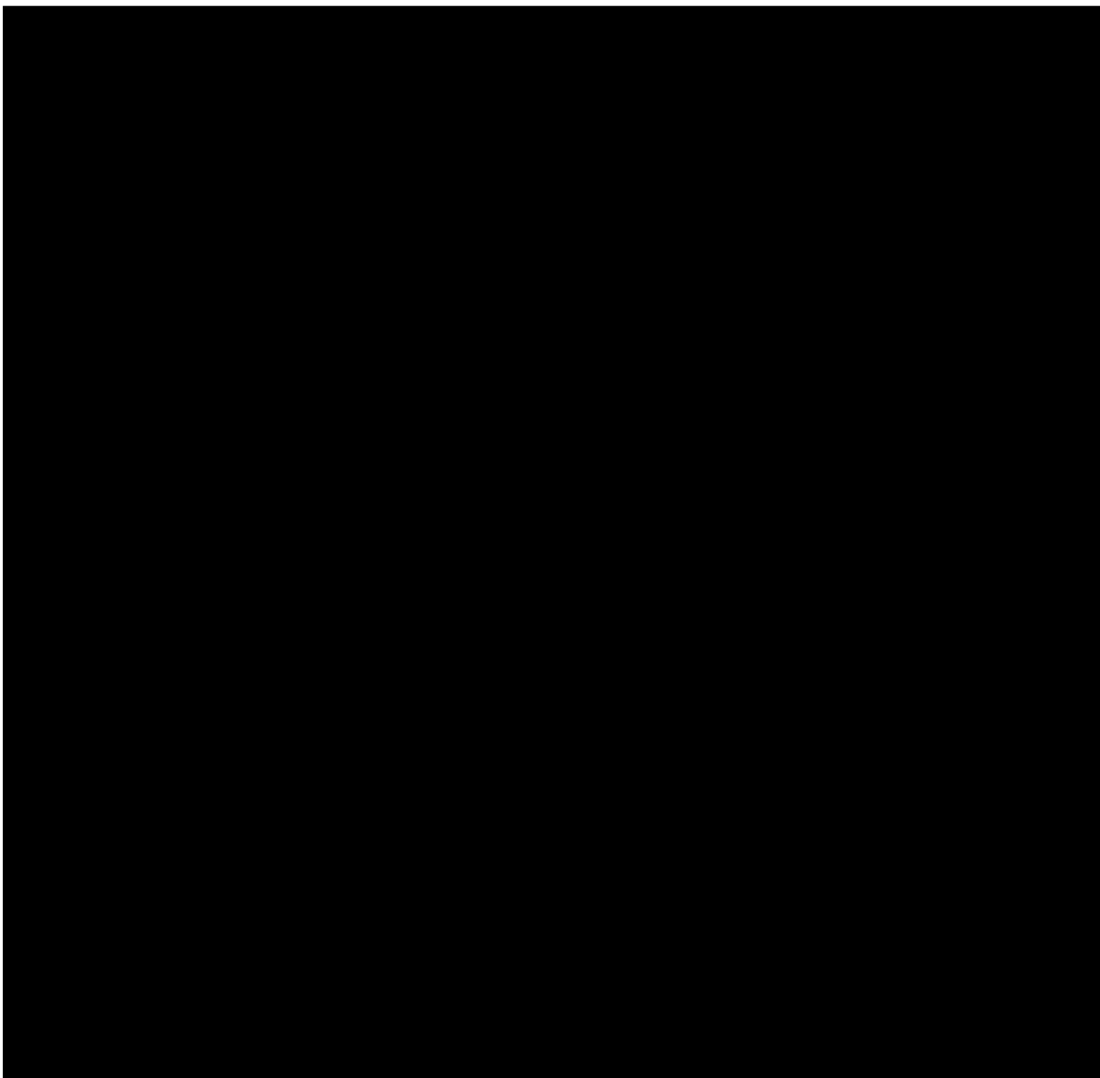
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Appendices



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3. Extracts from Post Office Limited's Articles of Association

11. VARIATION OF SPECIAL SHARE RIGHTS

11.1 Matters requiring consent

Notwithstanding any provision in these articles to the contrary (save for article 116 to which this article 11 shall be subject), each of the following shall be deemed to be a variation of the rights attaching to the Special Share and accordingly shall occur and be effective only with the prior written consent of the Special Shareholder:

...

- (O) the entry into or implementation of a relevant transaction by any member of the group which involves or is likely to involve (either individually or when taken together with all other related relevant transactions (other than any related relevant transaction previously approved under this article 11.1(O) entered into or implemented in the previous 12 months)) the incurring of a commitment or liability, or the payment of a sum, by any member of the group which is an amount in excess of £50,000,000;

...

- (S) (a) the incurring of (or entry into of any commitment to incur) any borrowing by any member of the group in circumstances where the borrowing:
- (i) (1) individually; or
 - (2) taken together with the aggregate principal amount in respect of borrowings already incurred in the same accounting period without approval under this article 11.1(S); or
 - (3) if part of any series of related borrowings to finance a single investment, then taken together with the aggregate principal amount incurred in respect of such related borrowings exceeds £75,000,000; or
 - (ii) is to be provided from any source other than another member of the Enlarged Group, the National Loans Fund or the Crown, save in respect of borrowings which are due from the Secretary of State, the Bank of England and (other) Monetary Financial Institutions, a Local Authority or a Public Corporation; or
 - (iii) if taken together with the aggregate principal amount outstanding of all money borrowed by the group from any source (excluding amounts borrowed by any member of the group from any other member of the Enlarged Group, other than amounts to be taken into account under article 11.1(S)(b)(v) below) exceeds an amount equal to the lesser of £2,000,000,000 and 2.5 times the aggregate of:

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- (1) the amount paid up on the issued share capital of the company; and
- (2) the total of the capital and revenue reserves of the group, including any share premium account, capital redemption reserve and credit balance on the profit and loss account, but excluding sums set aside for taxation and amounts attributable to outside shareholders in subsidiary undertakings of the company and deducting any debit balance on the profit and loss account, all as shown in the then latest audited consolidated balance sheet and profit and loss account of the group (or if consolidated financial statements are not prepared, as would have been shown in such consolidated financial statements had they been prepared), but adjusted as may be necessary in respect of any variation in the paid up share capital or share premium account or capital redemption reserve of the company since the date of that balance sheet and further adjusted as may be necessary to reflect any change since that date in the companies comprising the group;

....

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4. Group Litigation Timetable

	August 2019	Sept 2019	Oct 2019	Nov 2019	Dec 2019	Jan 2020	Feb 2020	March 2020	April 2020	May 2020	June 2020	July 2020	Aug 2020	Sept 2020	Oct 2020
Common Issues Appeal			Oral hearing for Court determination of permission to appeal (9 Oct; decision to follow asap)		File additional documents with Court as required for appeal (if permission granted)							Likely window for hearing (if permission granted) Note: Court vacation August & September so unlikely appeal will be heard in these months.			
Horizon Issues Trial		Likely window for Horizon Issues Judgment		Hearing on costs of Horizon Issues trial											
Further Issues Trial	Disclosure (30 Aug)		Costs Budgets (2 Oct) Discussion Reports (16 Oct) Costs Management Conference (23 Oct) Particulars of Claim (25 Oct)	CMC (7 Nov) Defences (25 Nov)	Statement of Assumed Facts (2 Dec) CMC (4 Dec) Replies (9 Dec)	PTR (23 Jan)		Further Issues Trial (2-20 Mar)		Likely window for Further Issues Judgment	Hearing on costs of Further Issues Trial				
Trial 4				Agree selection criteria (27 Nov)							Likely window for Trial 4				
Settlement	Scoping settlement / initial engagement with Cs			Target window for first mediation		Window for possible second mediation									

Postmaster Litigation Subcommittee-170919

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5. Horizon Judgment

Post Office proposes adopting the following protocol for the Horizon Issues judgment:

- i. Authority: Post Office’s Postmaster Litigation Board Subcommittee (“Subcommittee”) will be authorised to instruct Post Office’s external legal team to seek permission to appeal the judgment when it is handed down, if so decided.
- ii. Trial Team Standby: the trial team is on standby to receive and consider the judgment immediately upon receipt from the court.
- iii. Initial Impressions: the trial team will immediately review the judgment to assess at a high level how Post Office has fared over all, and communicate this through the General Counsel and/or Post Office’s external lawyers to the Subcommittee within 8 hours of receiving the judgment.
- iv. First Review: the trial team will undertake a more detailed review to identify areas of potential appeal, and within 24 hours of receiving the judgment report these through the General Counsel and/or Post Office’s external lawyers to the Subcommittee.
- v. Consultation: the Subcommittee has the opportunity to consult the external legal team on any issue they require to inform their decision on whether to seek permission to appeal. This consultation can take place in person or by phone, with 48 hours of receiving the judgment
- vi. Instructions: the Subcommittee provides its instructions on whether to seek permission to appeal to the external legal team, such instruction to be delivered through the General Counsel and/or Post Office’s external lawyers at any time prior to the judgment being handed down.

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Appendix 6



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FREEHILLS

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Draft: 13 September 2019

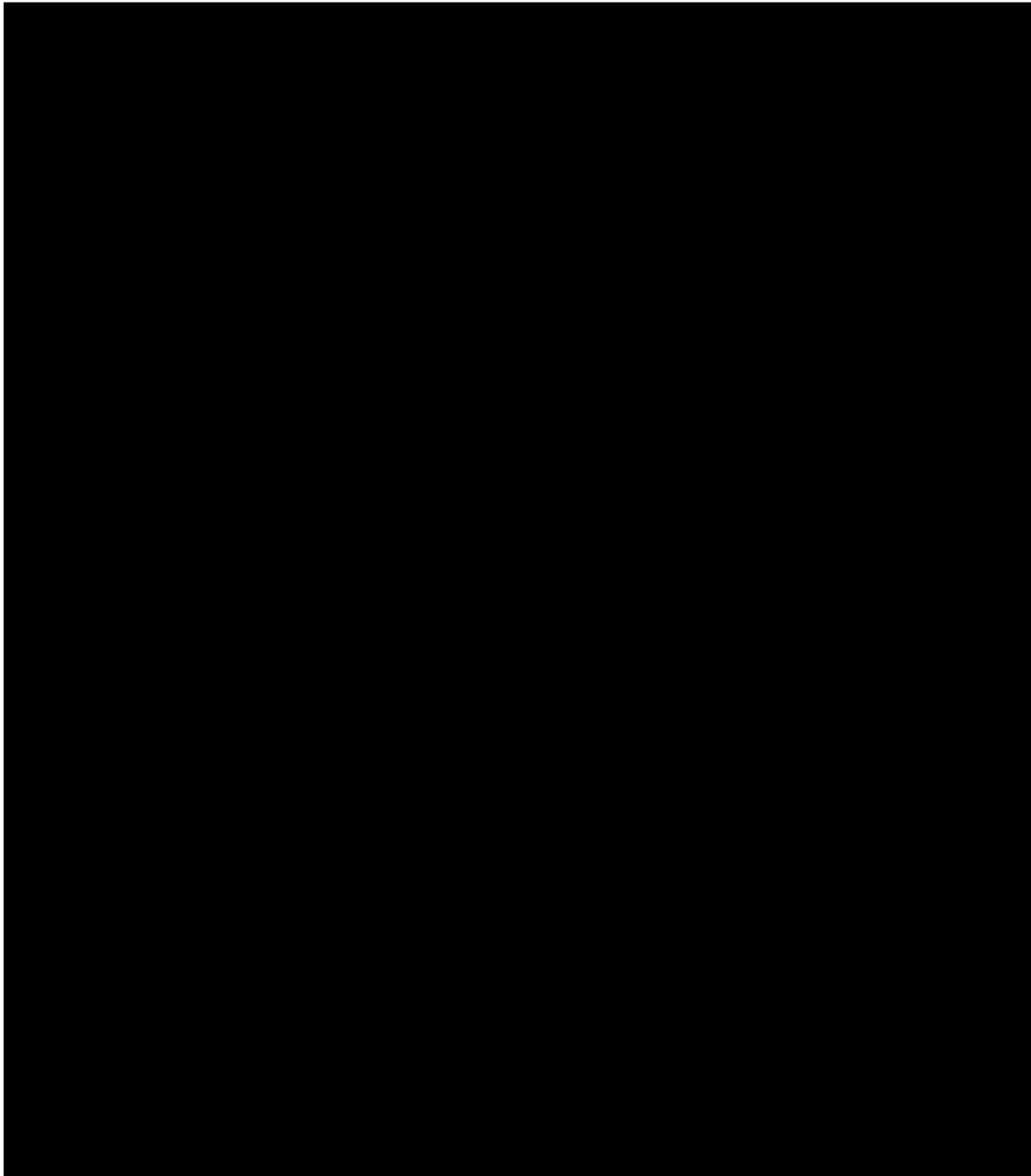
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**ALAN BATES & ORS – V – POST OFFICE
LIMITED
ADVICE ON SETTLEMENT**

Herbert Smith Freehills LLP

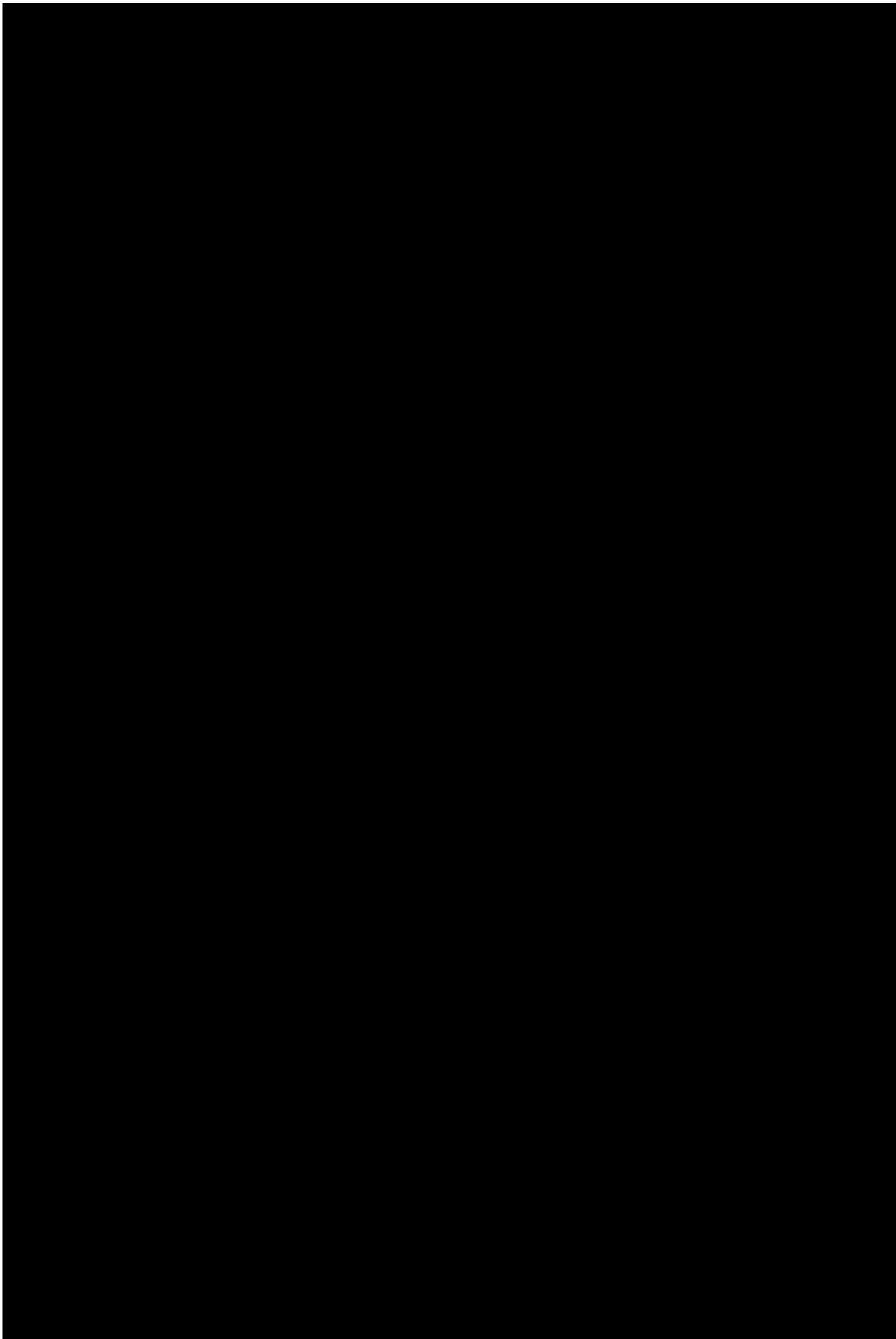
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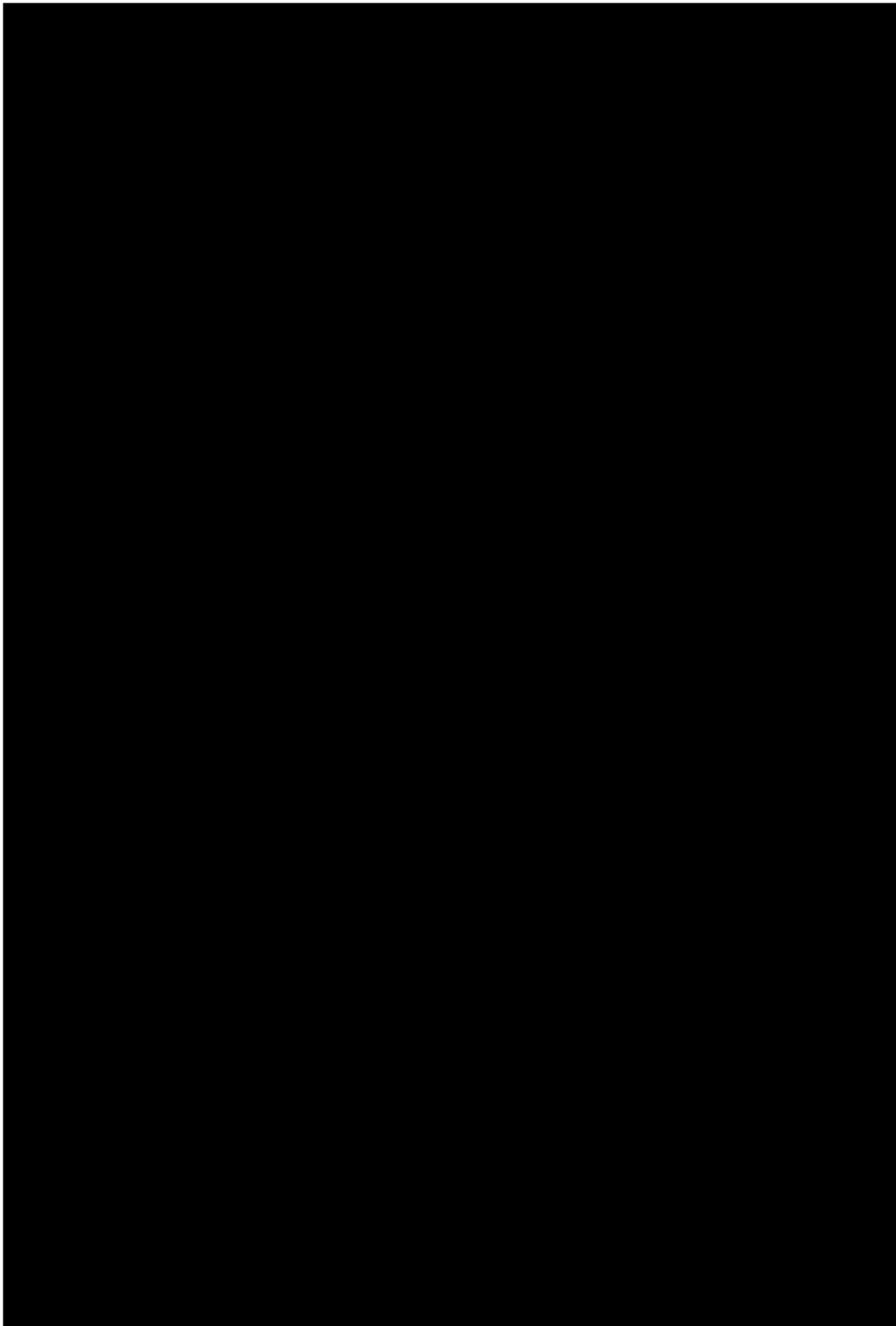
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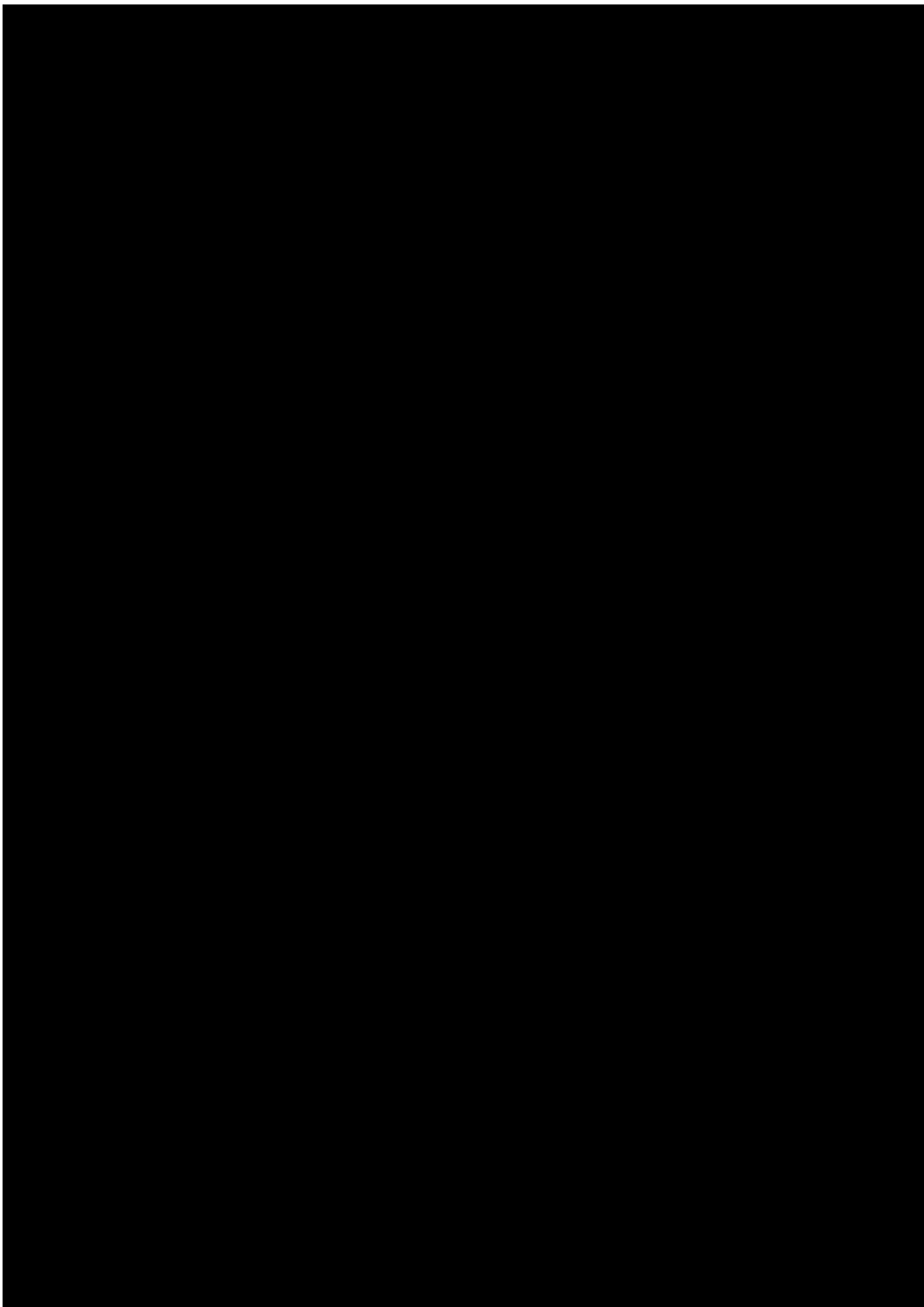
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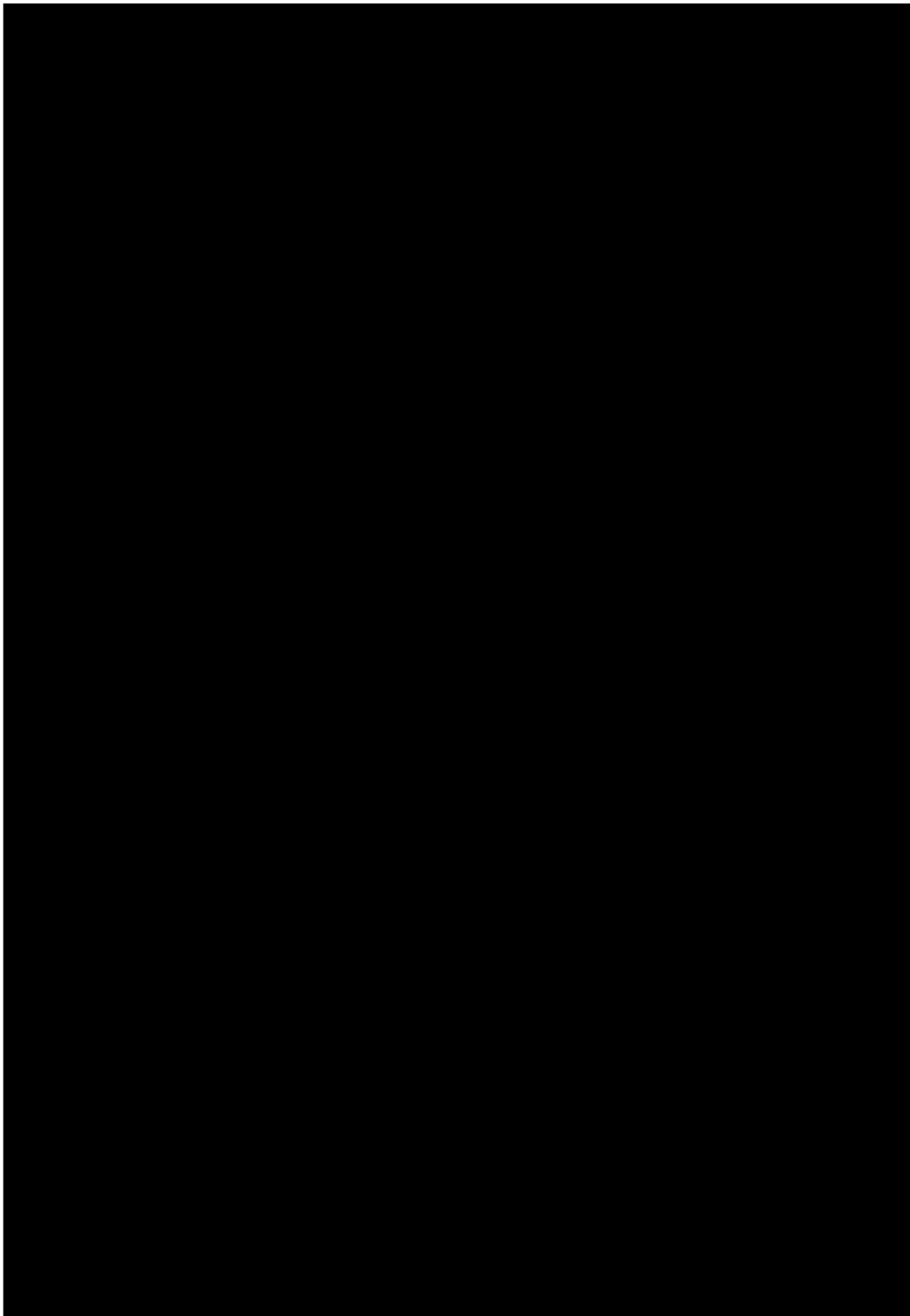
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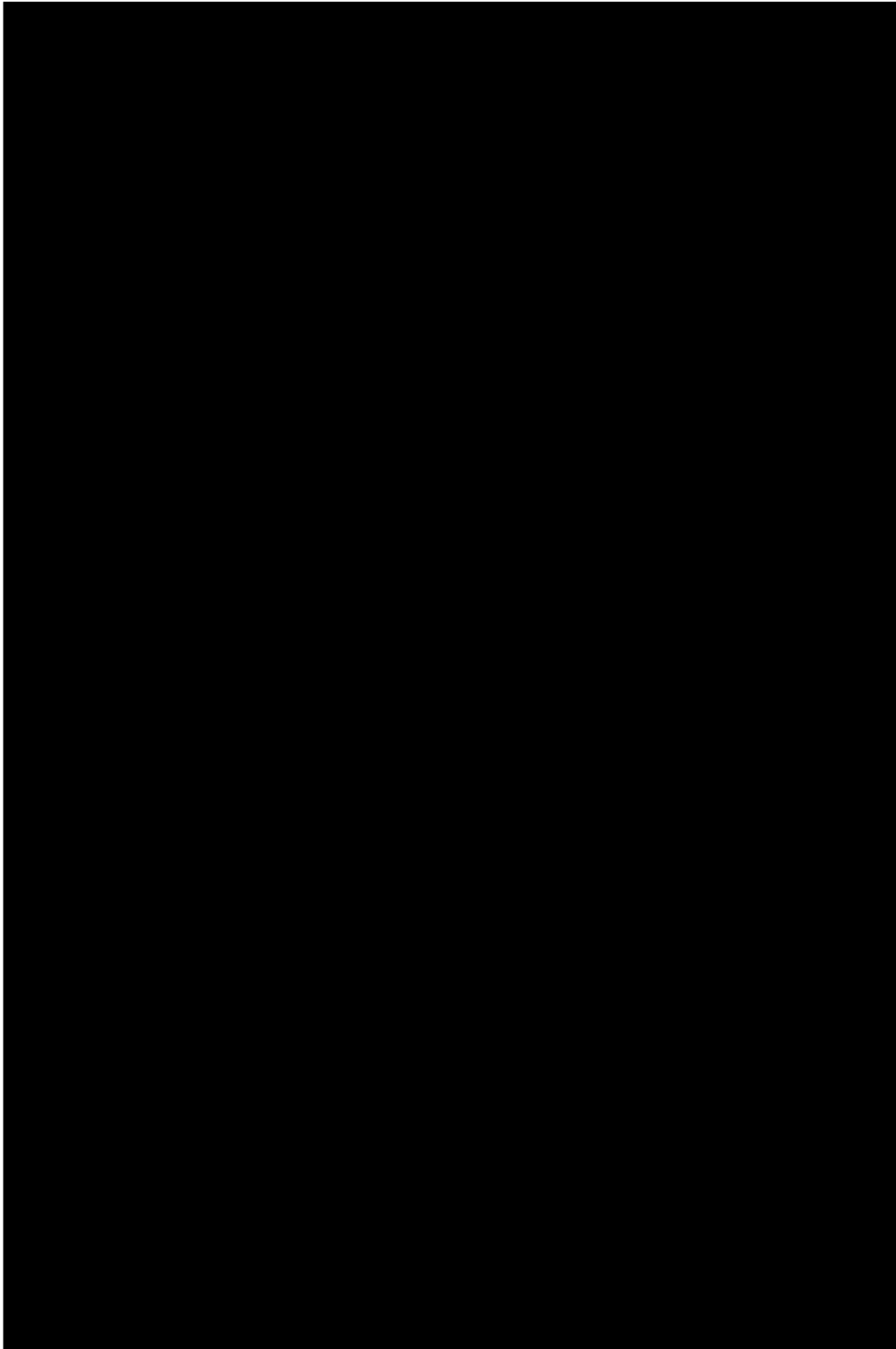
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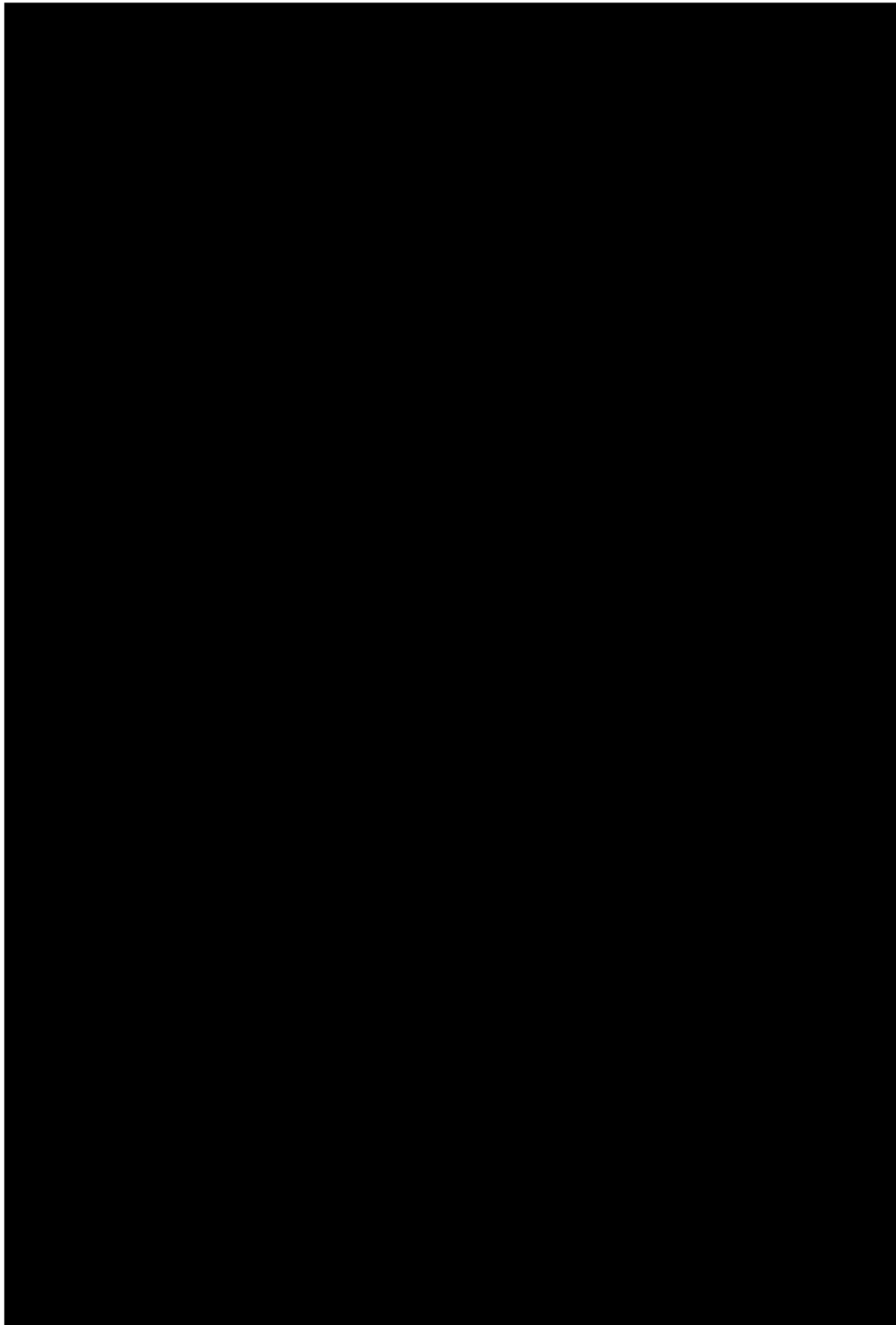
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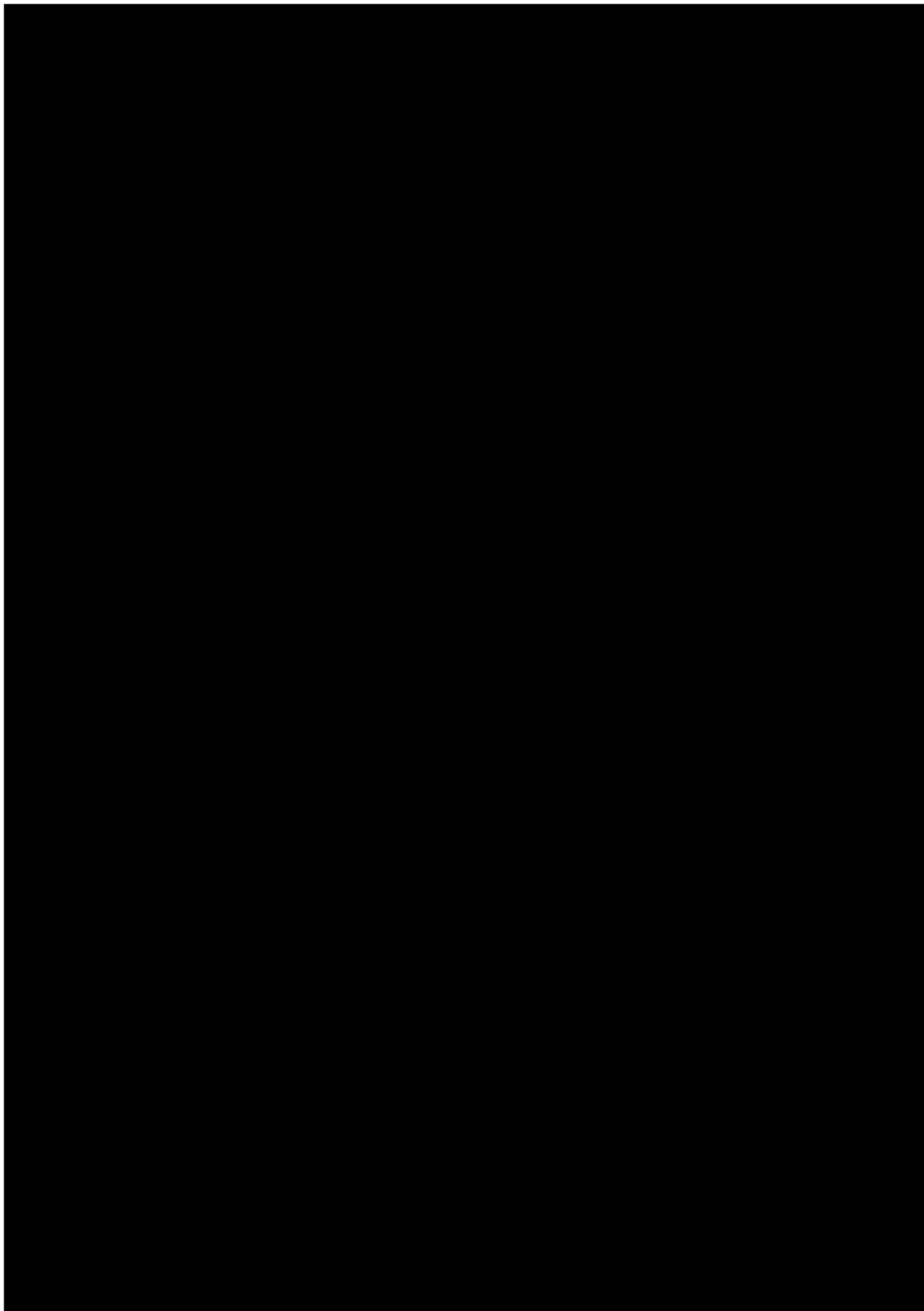
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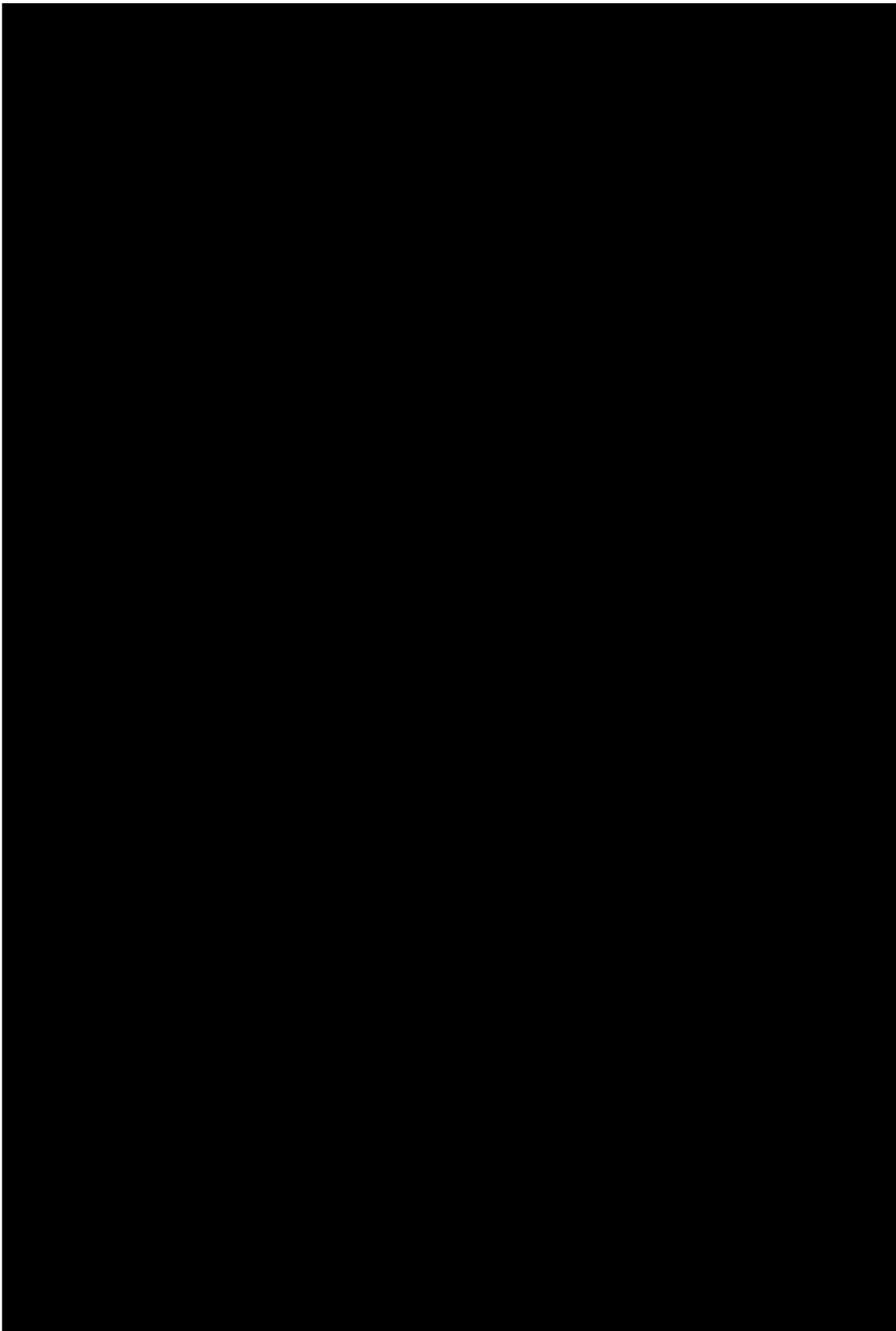
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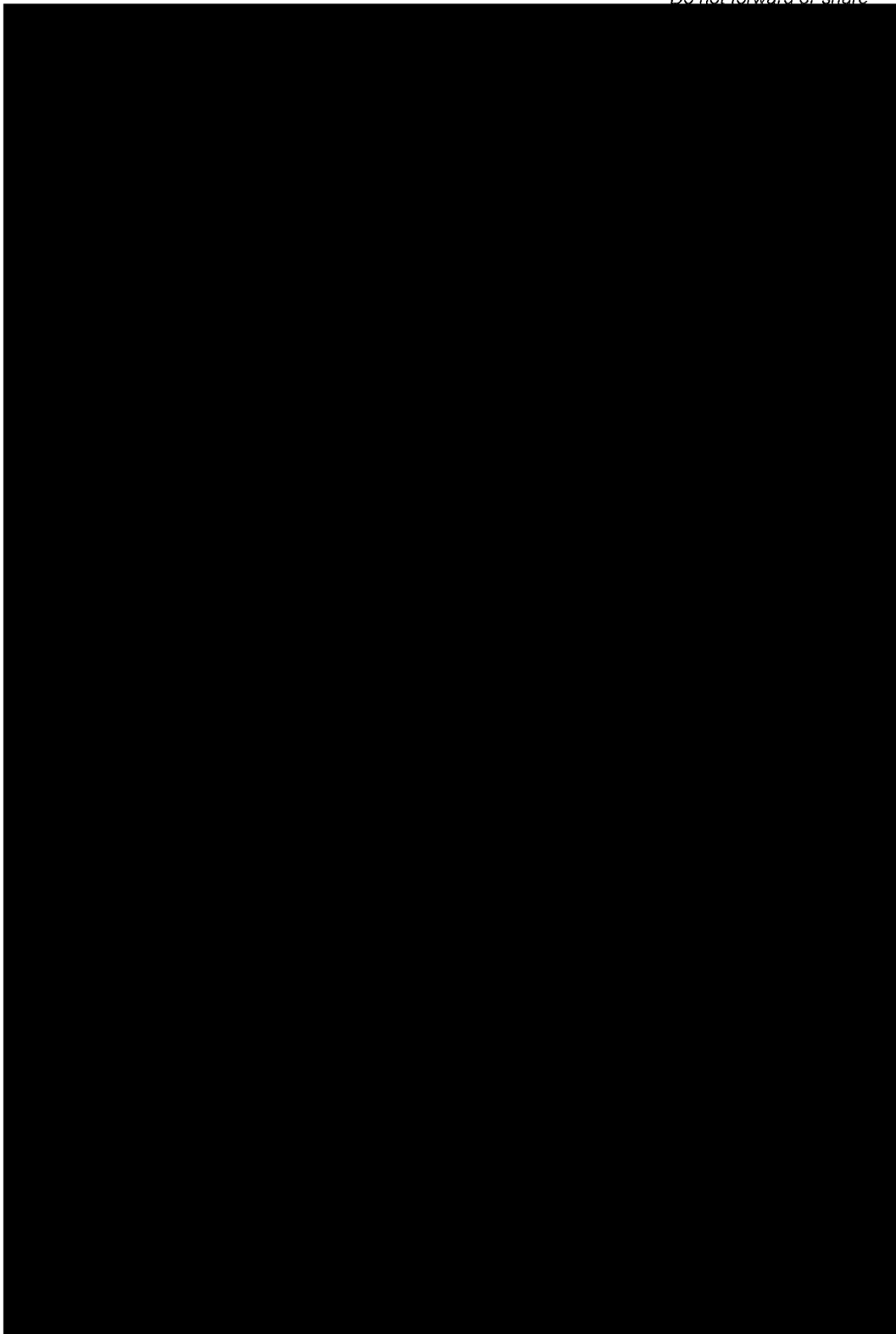
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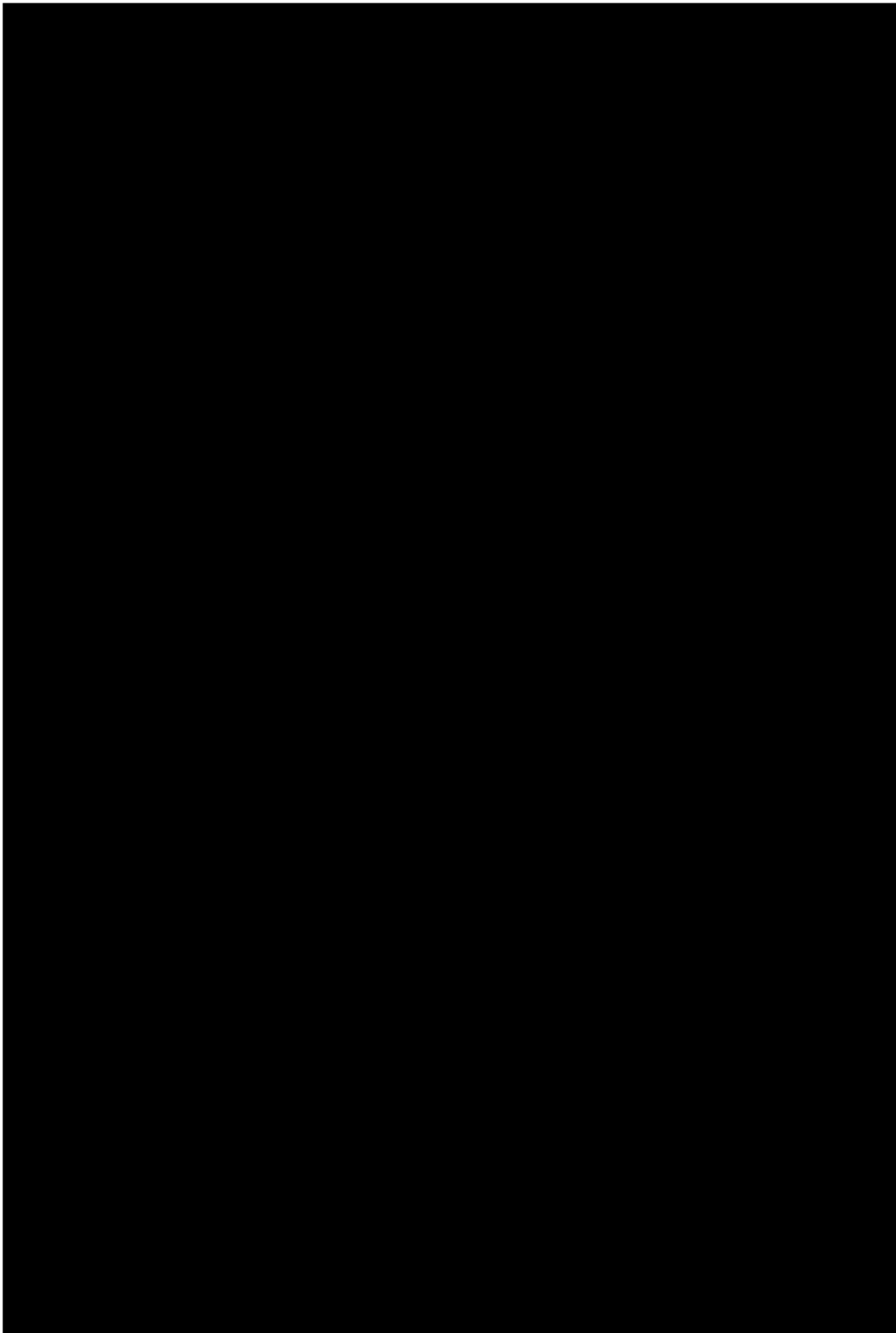
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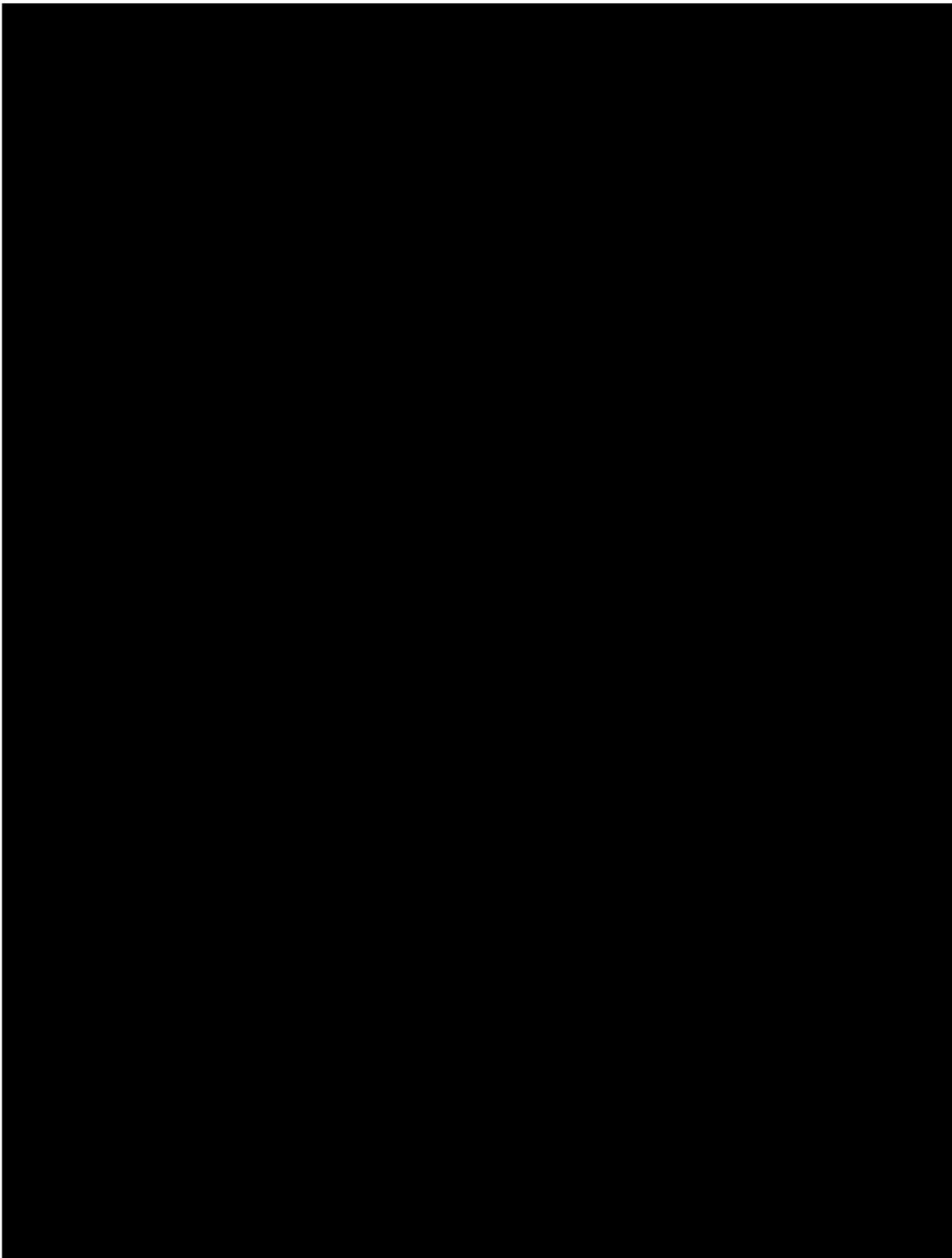
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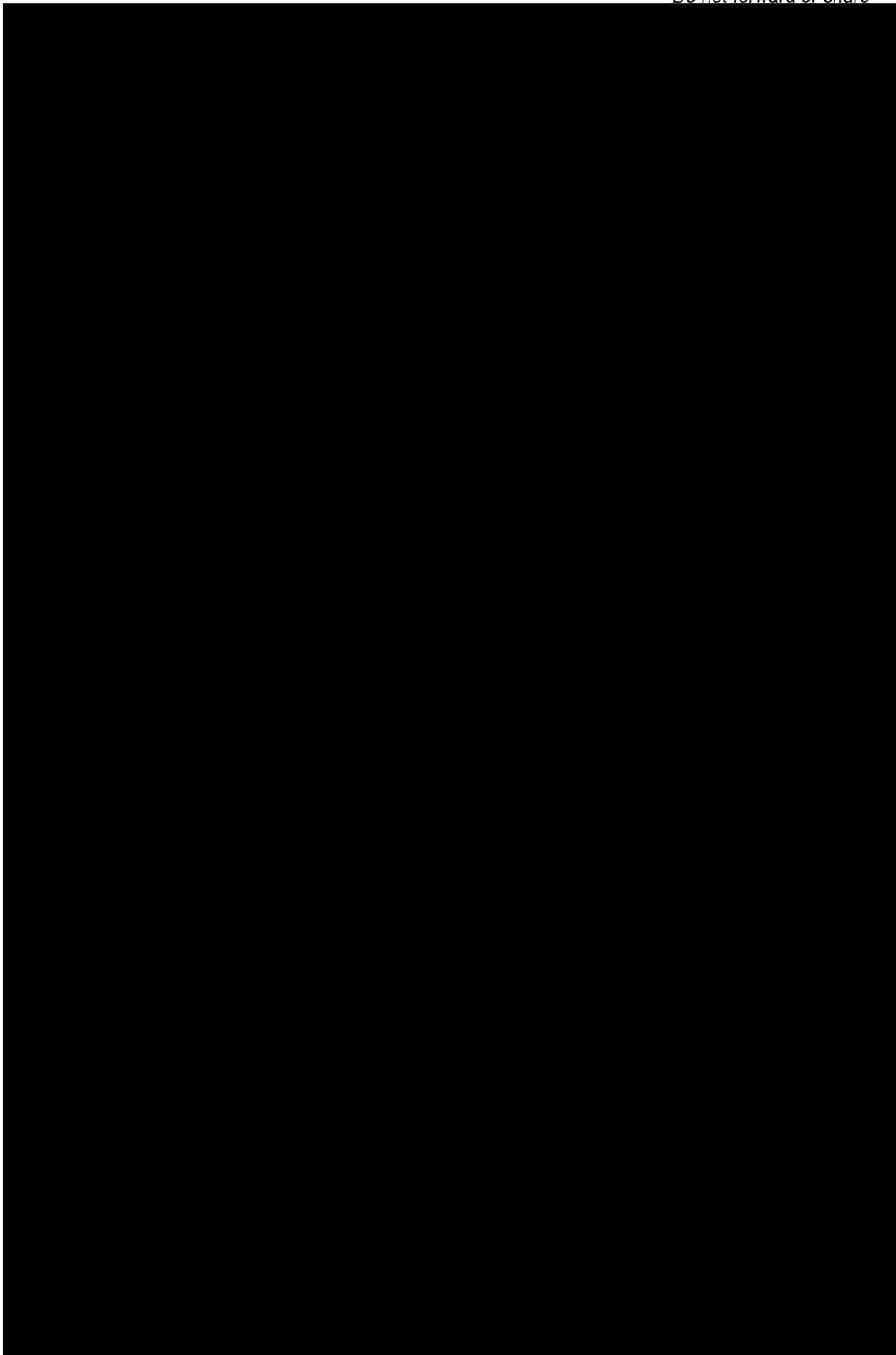
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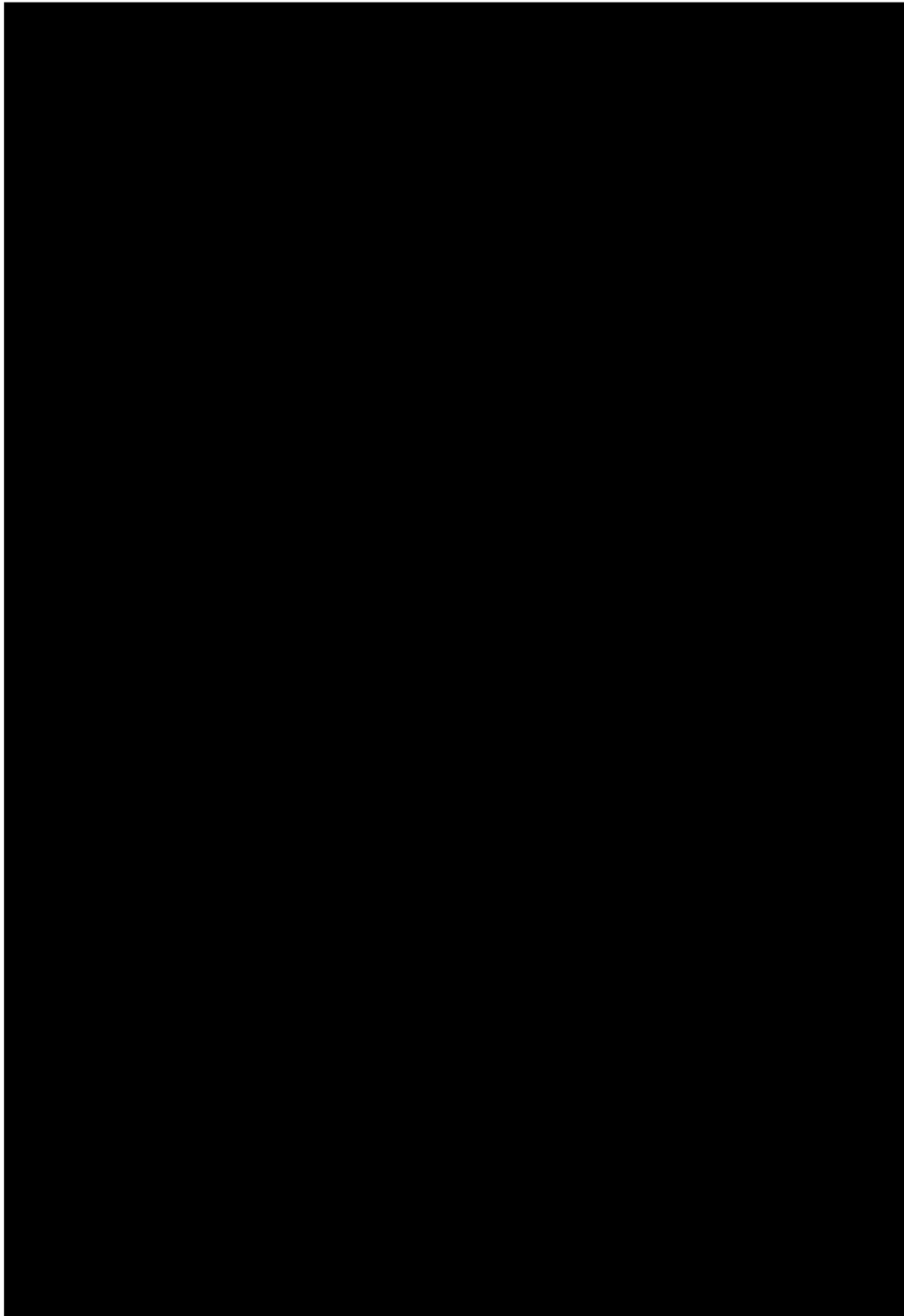
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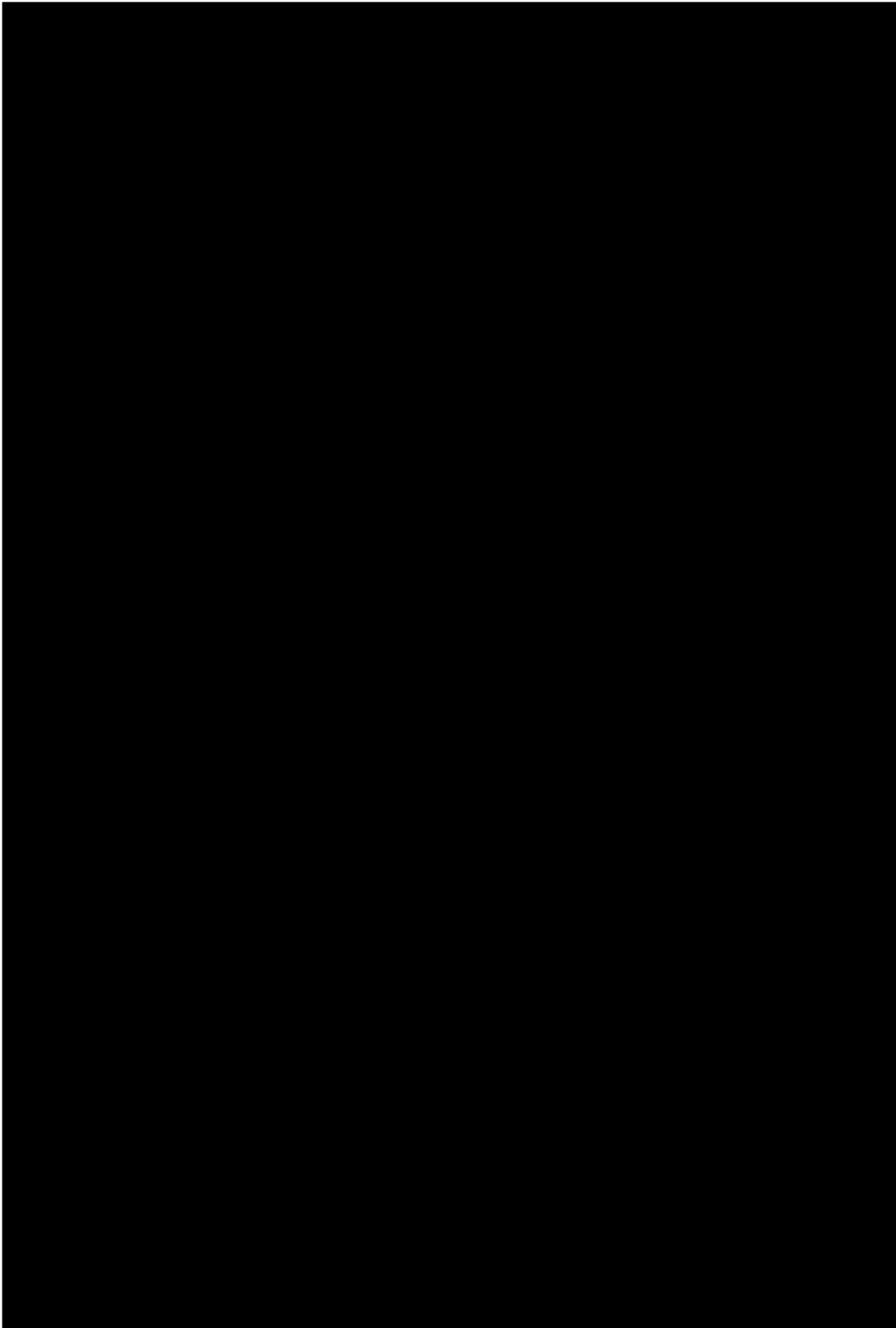
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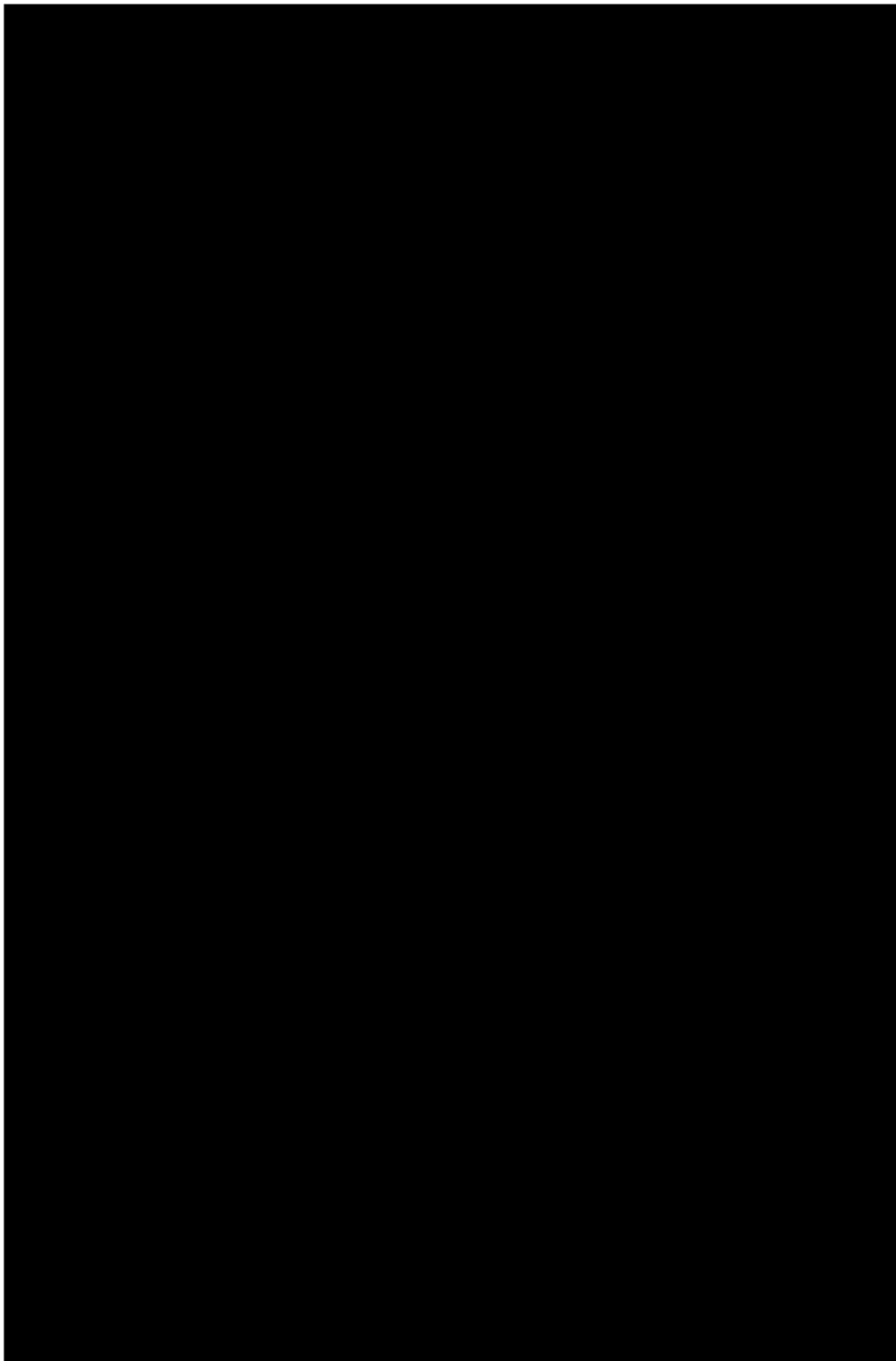
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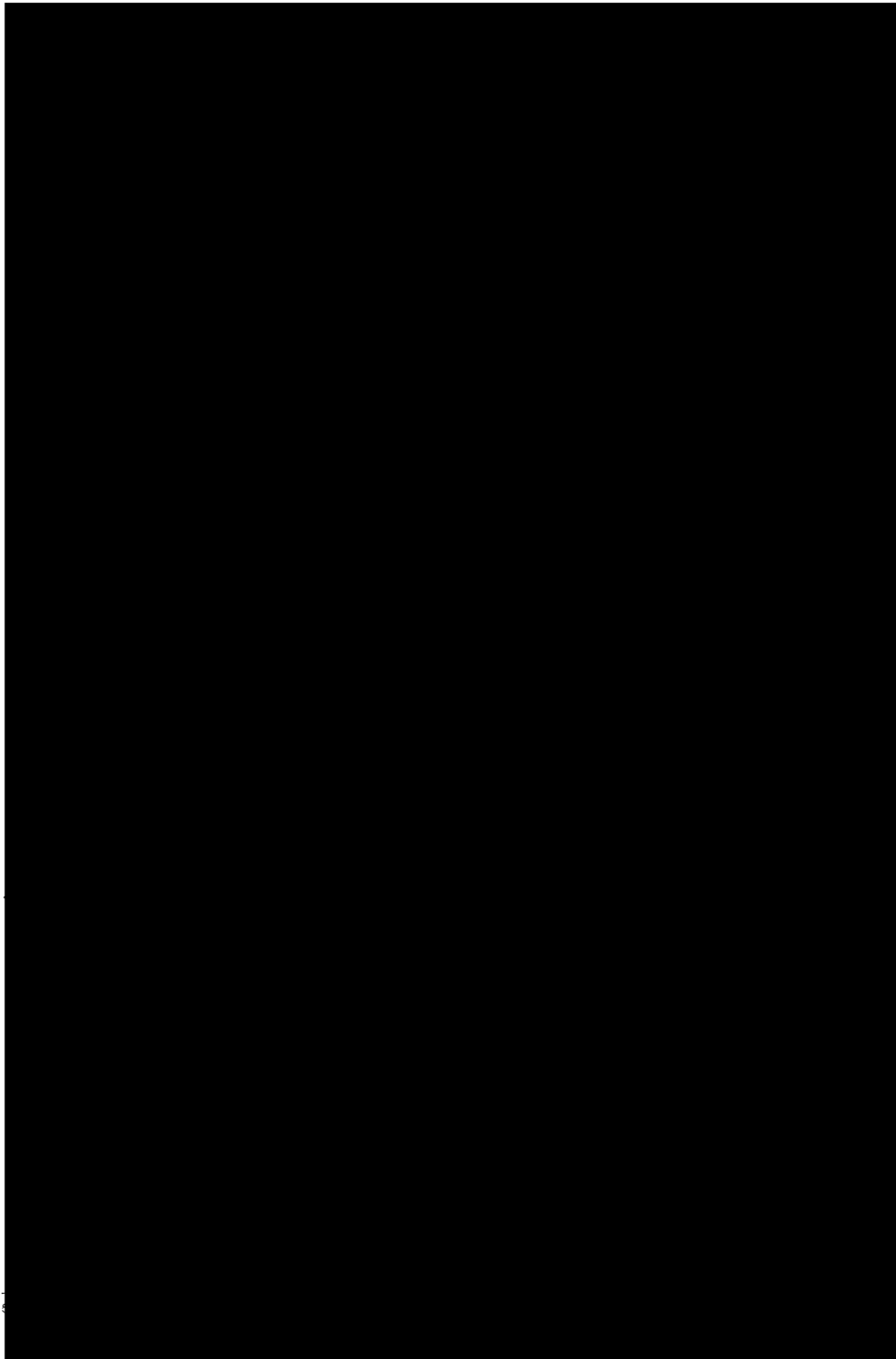
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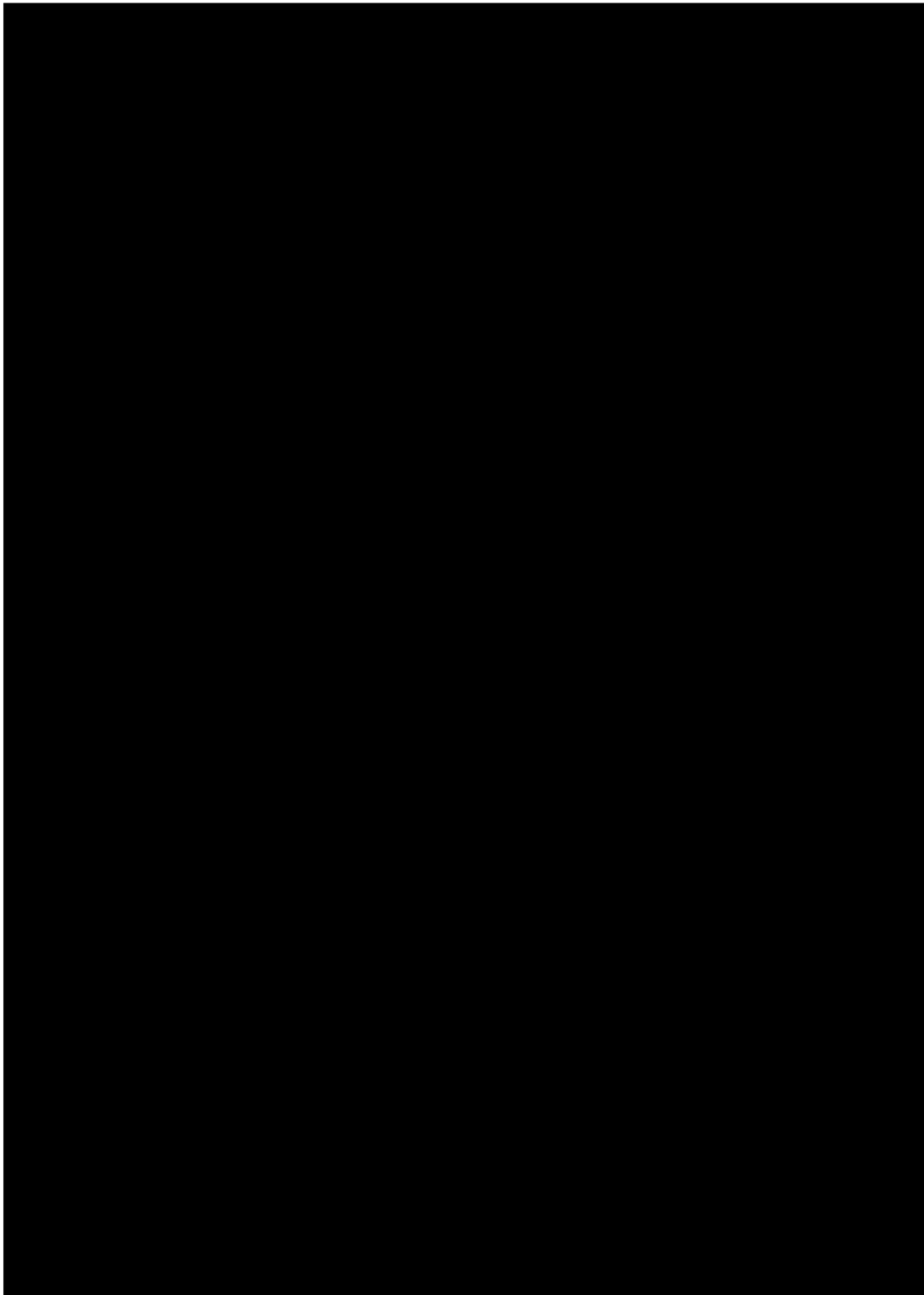
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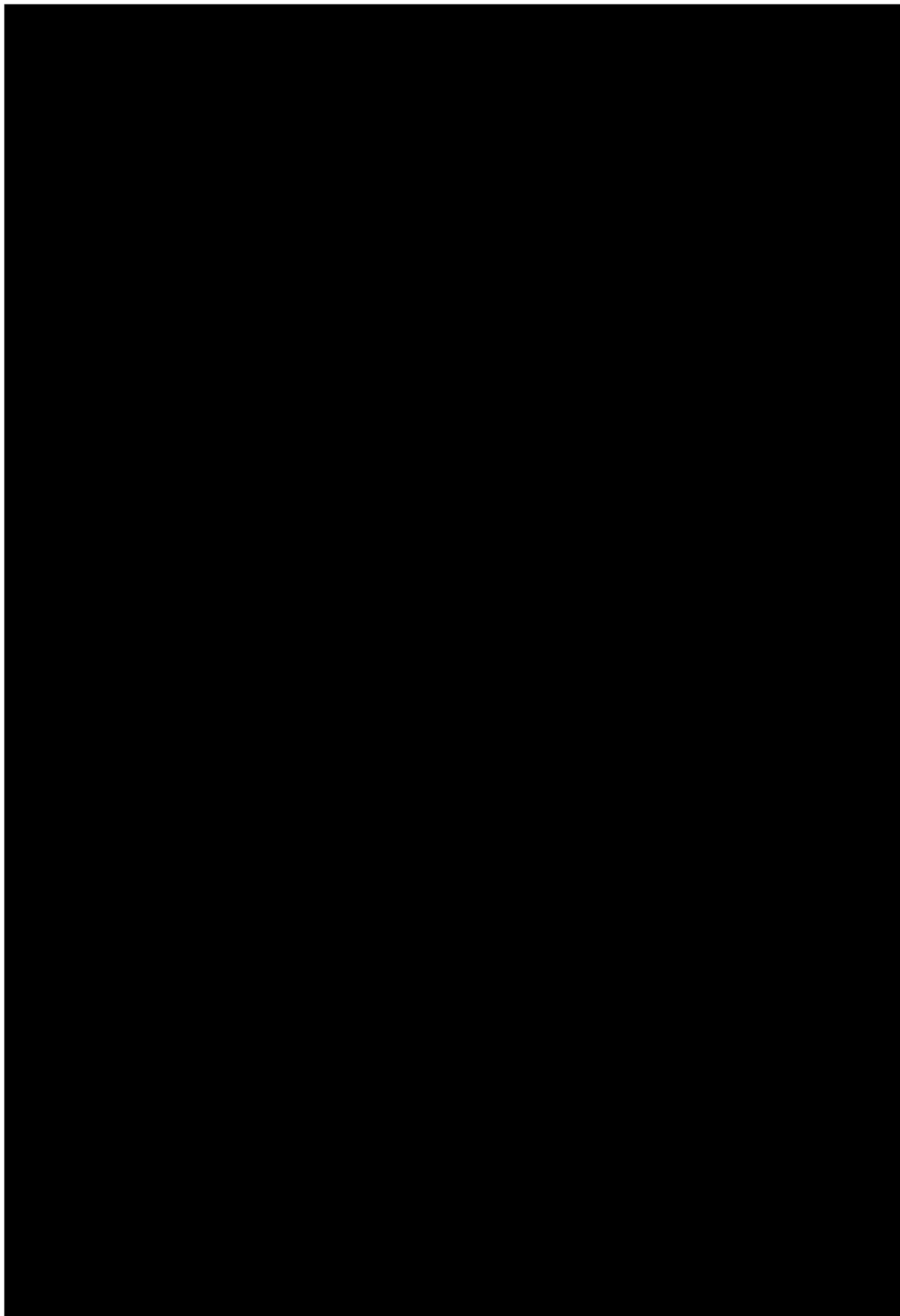
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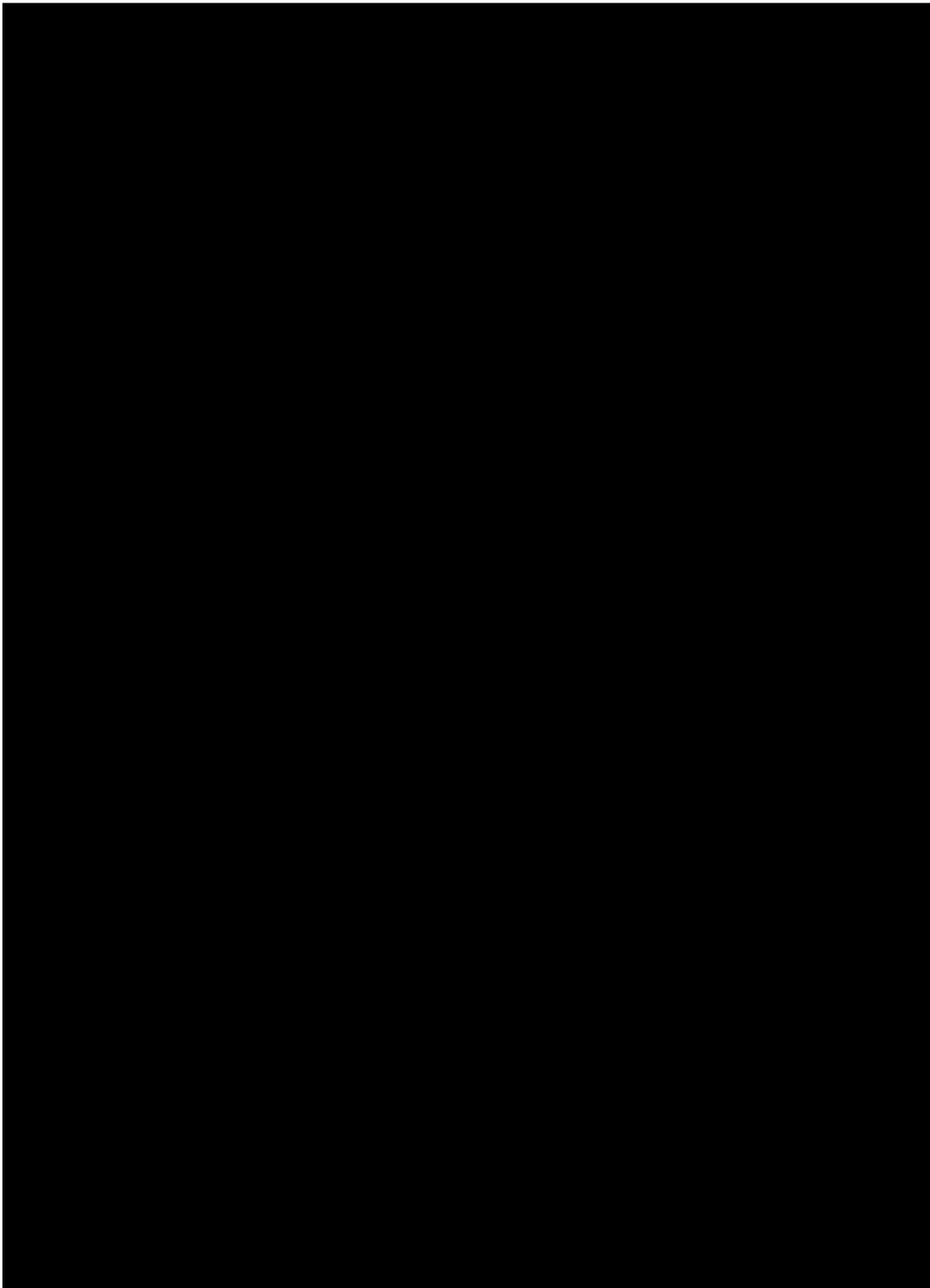
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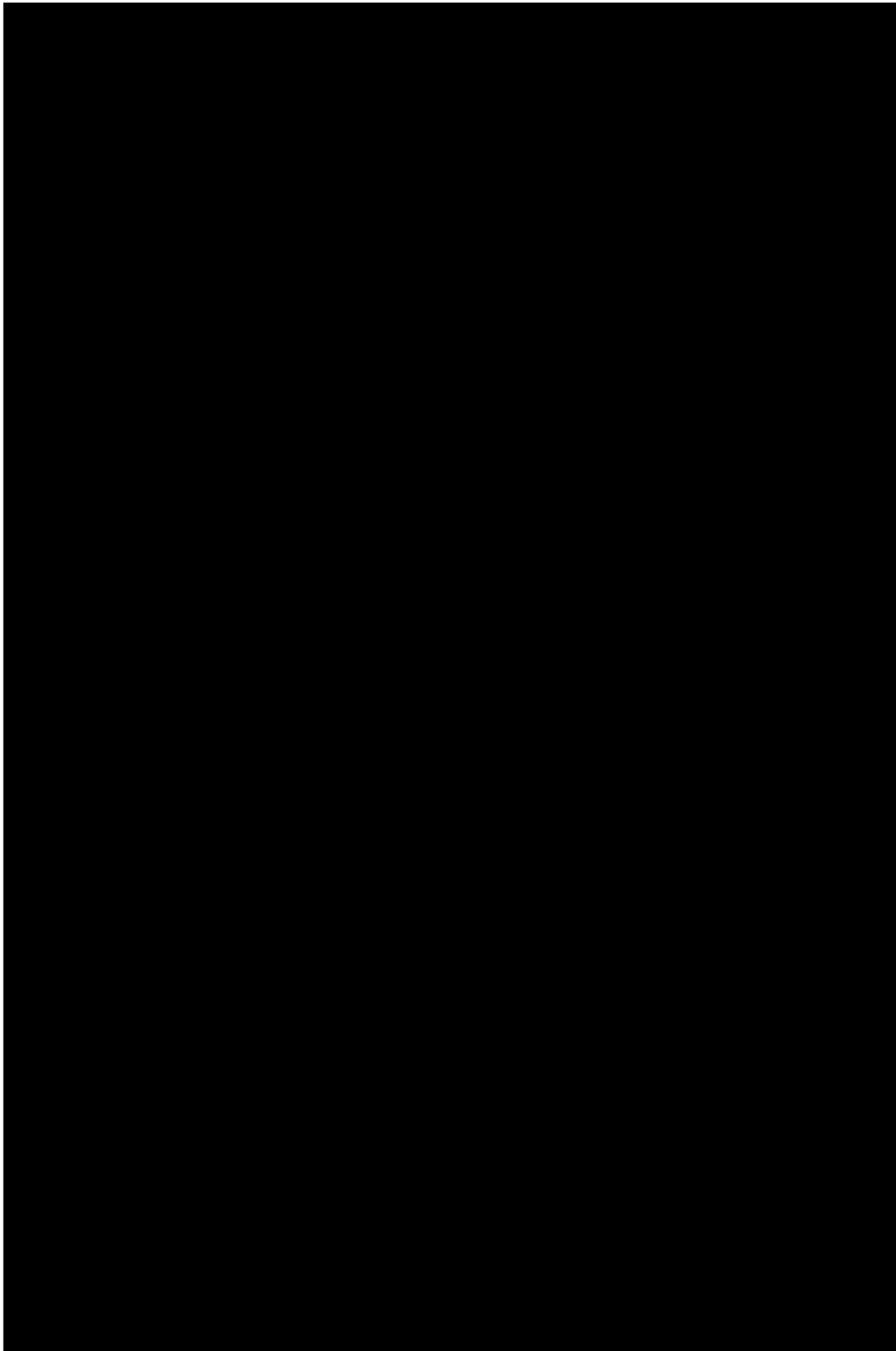
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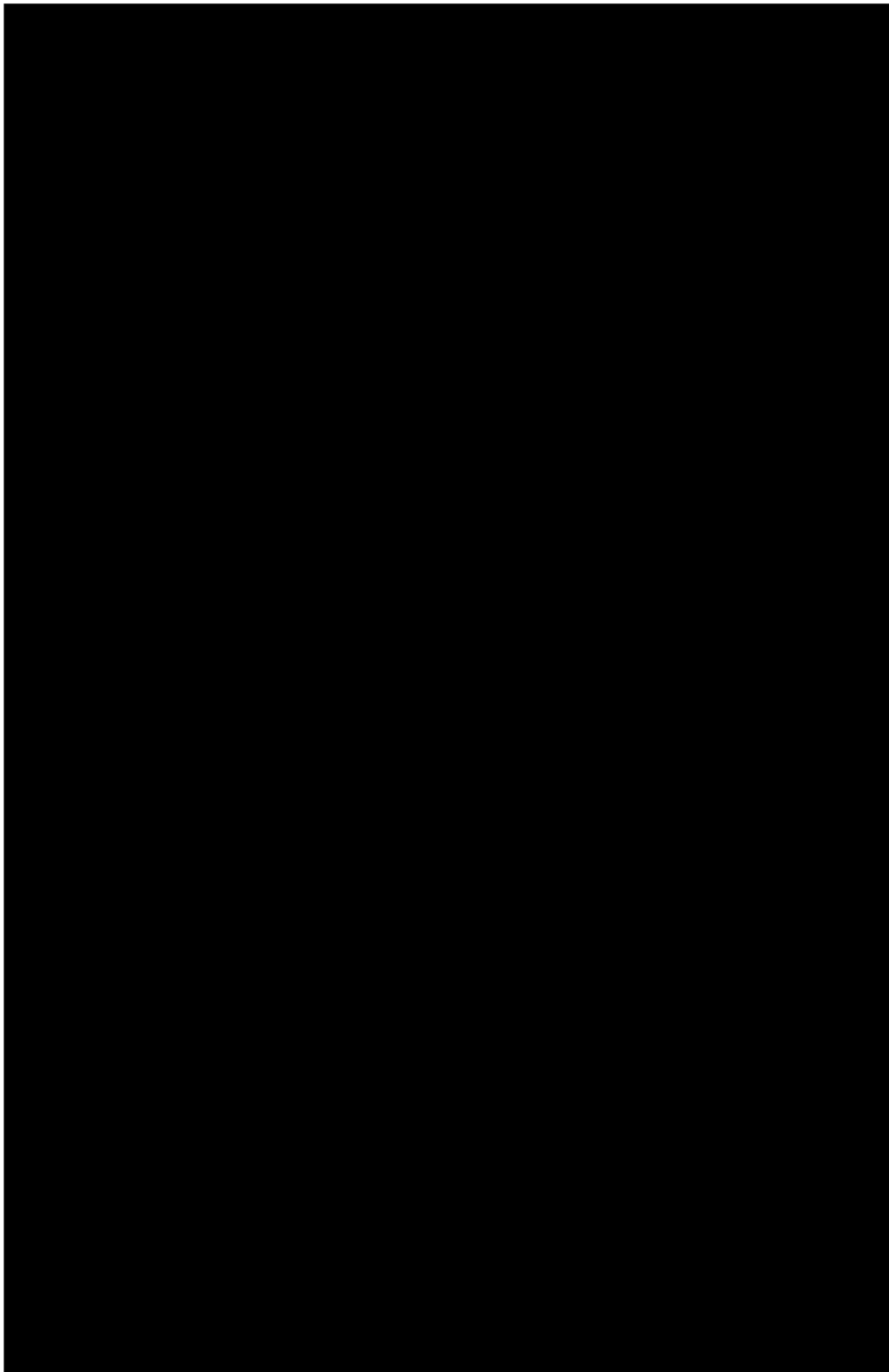
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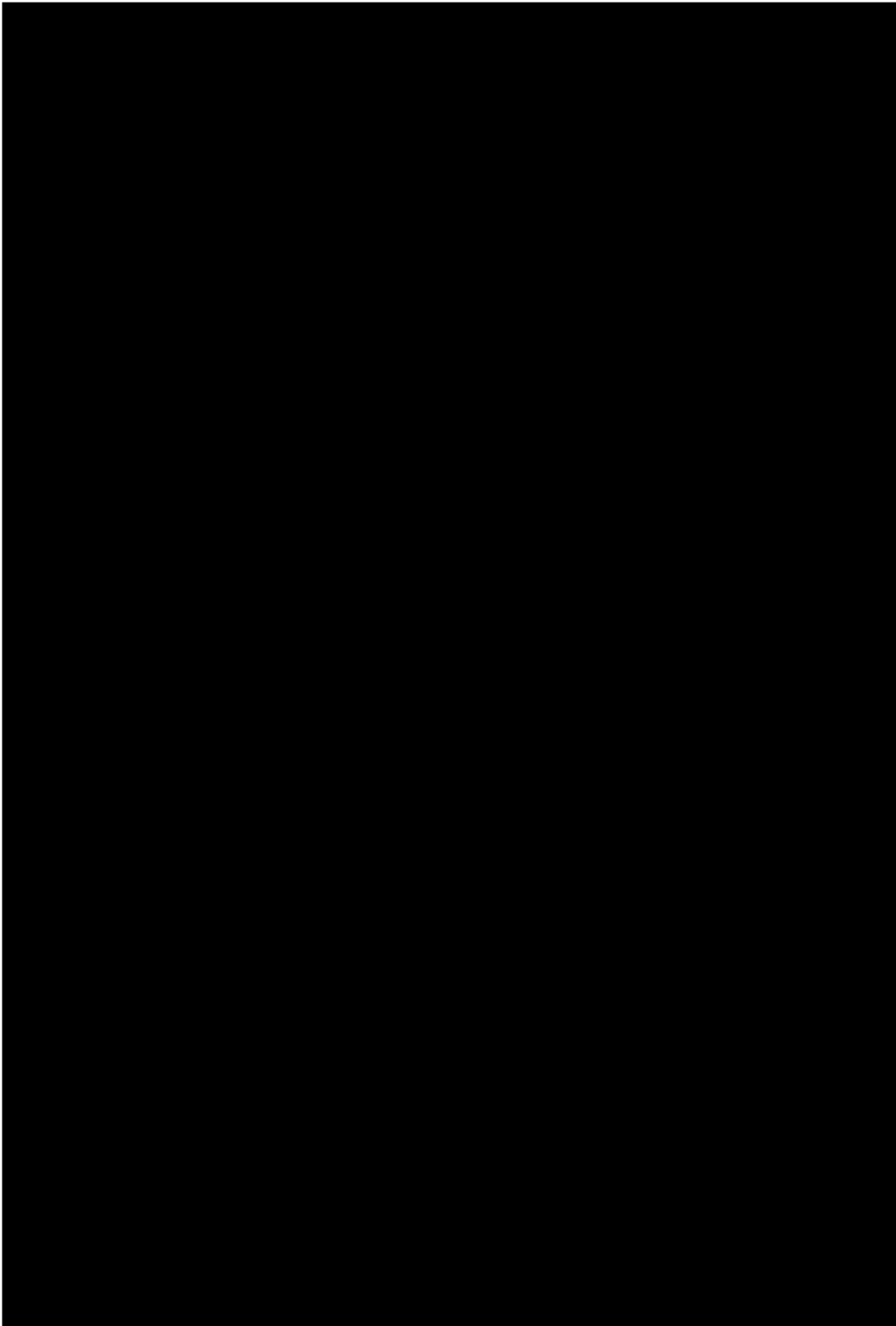
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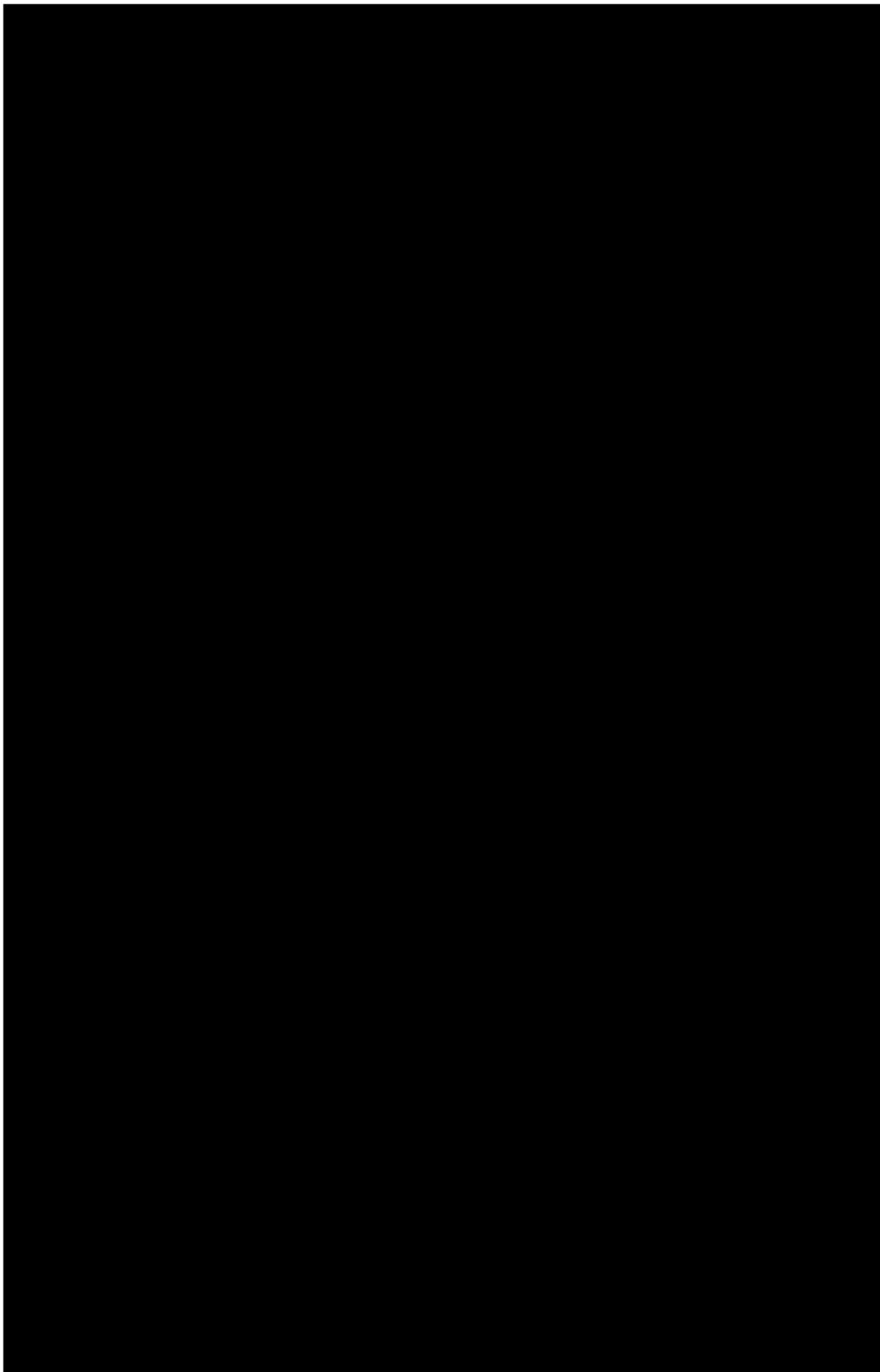
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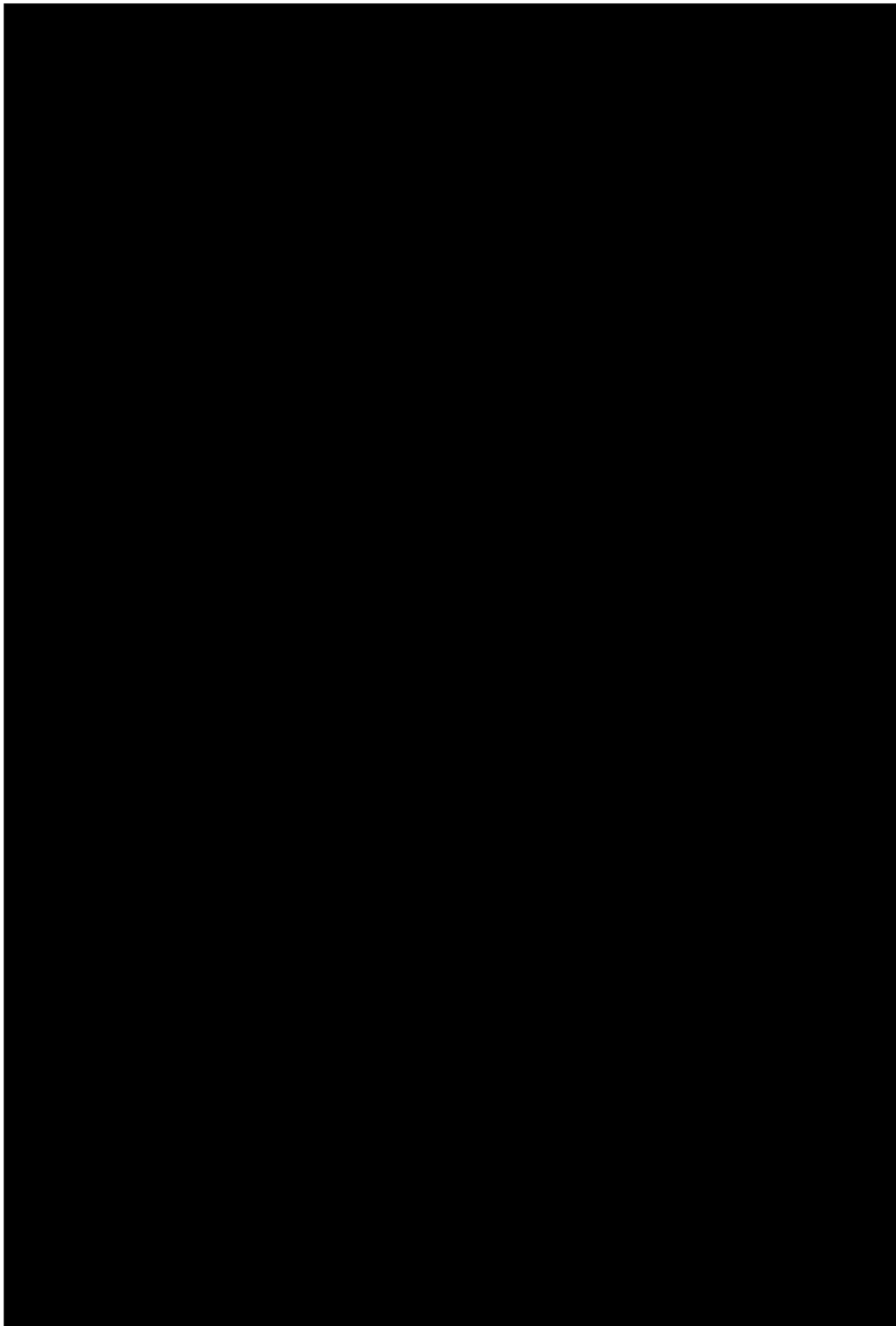
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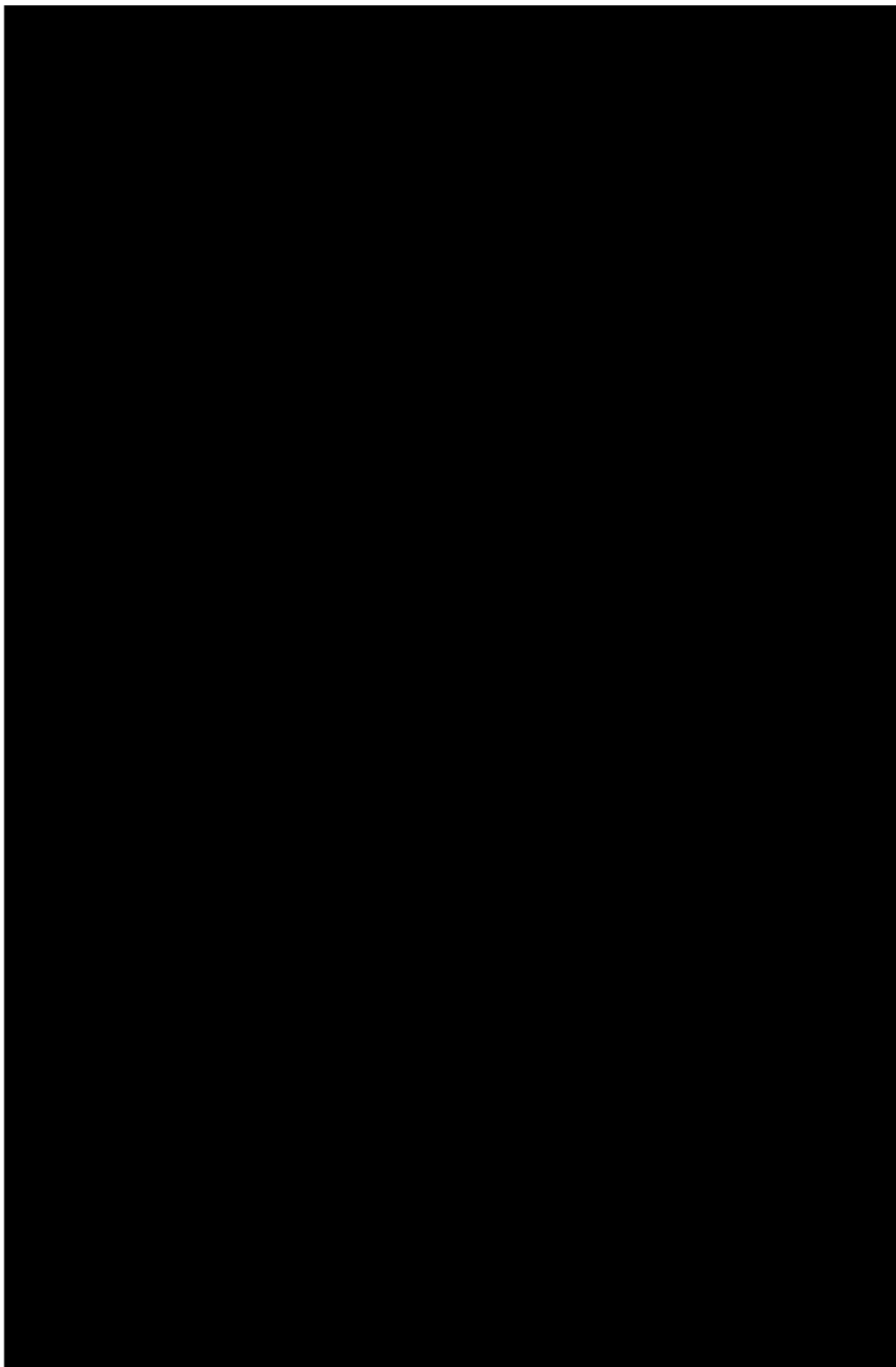
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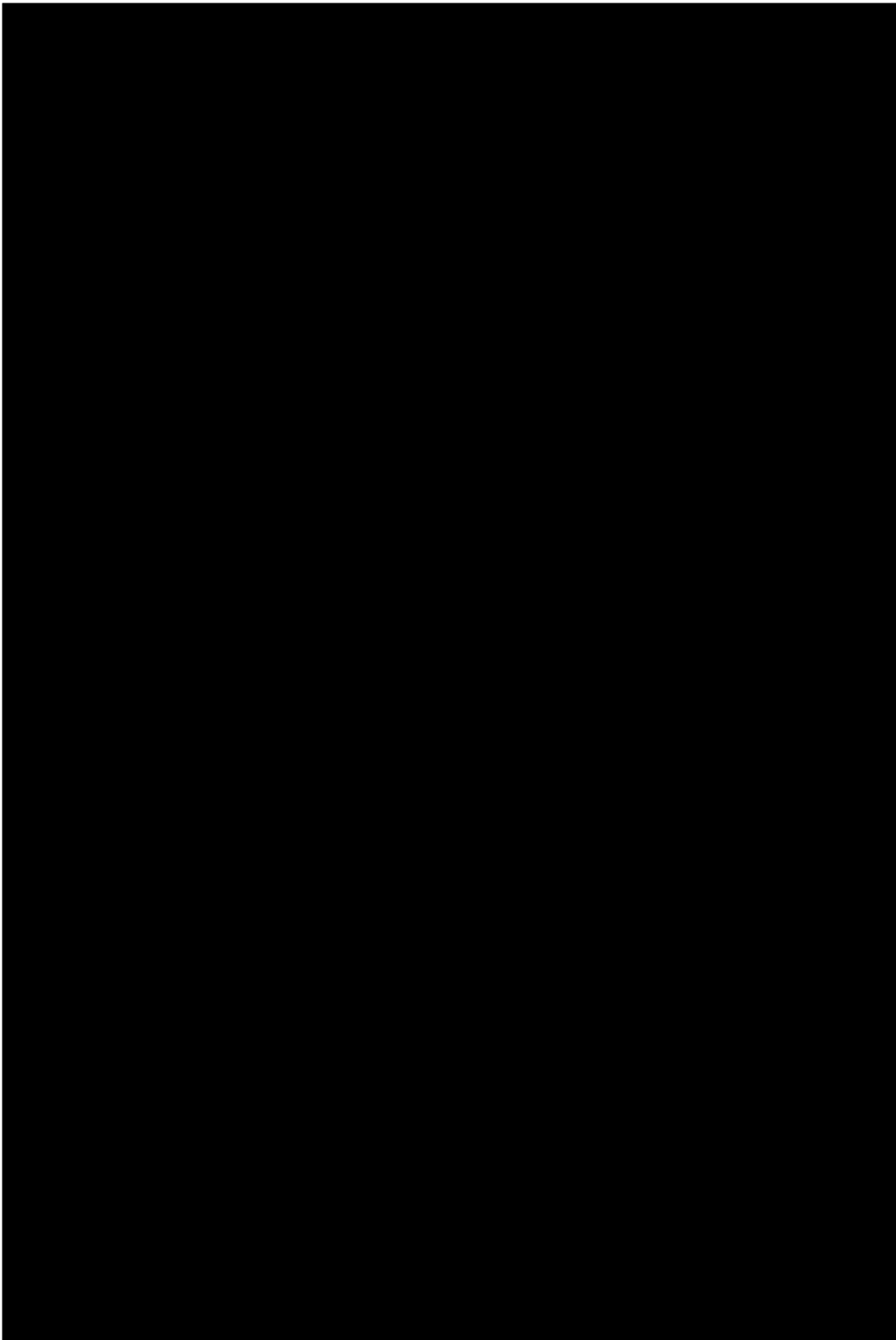
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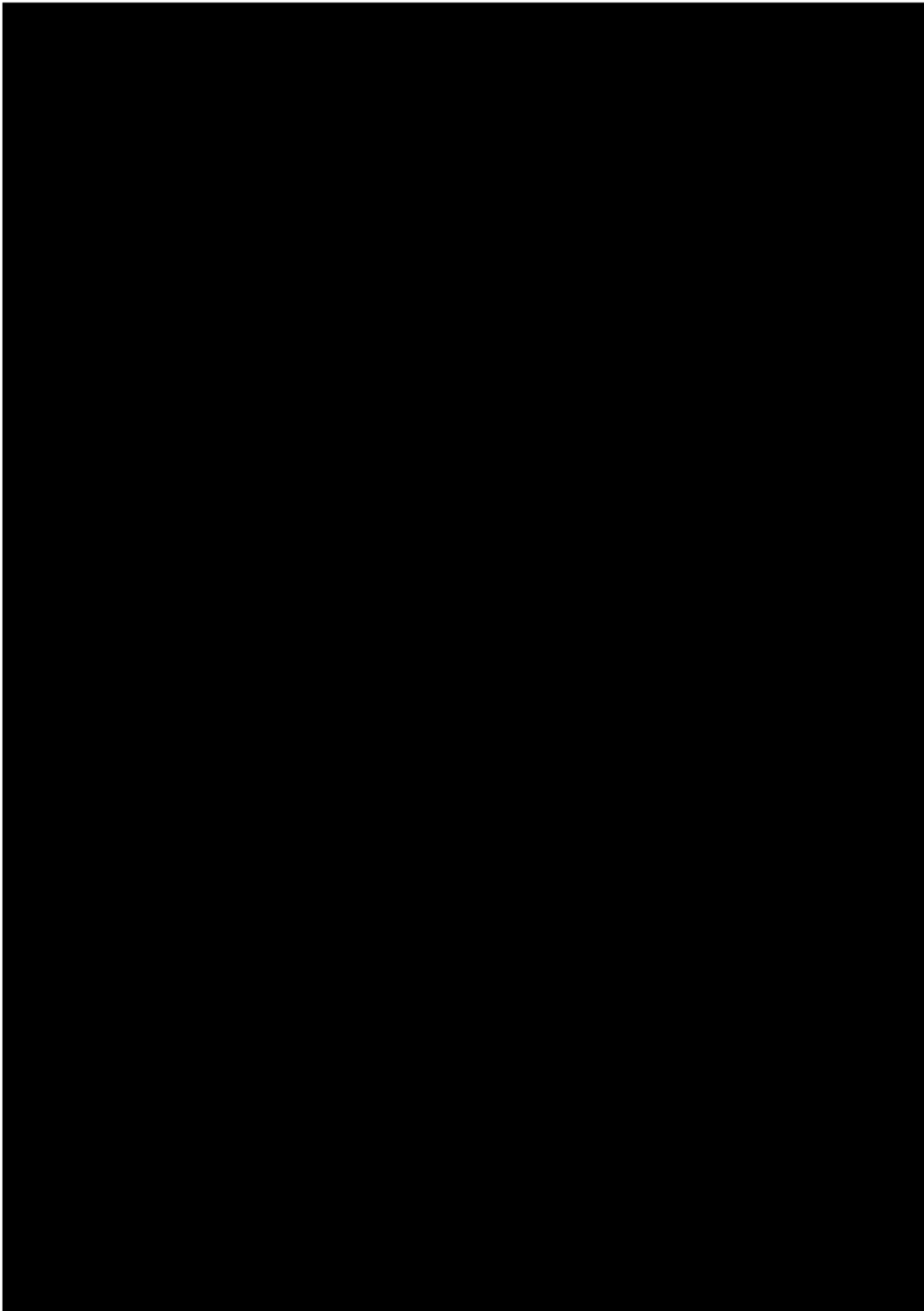
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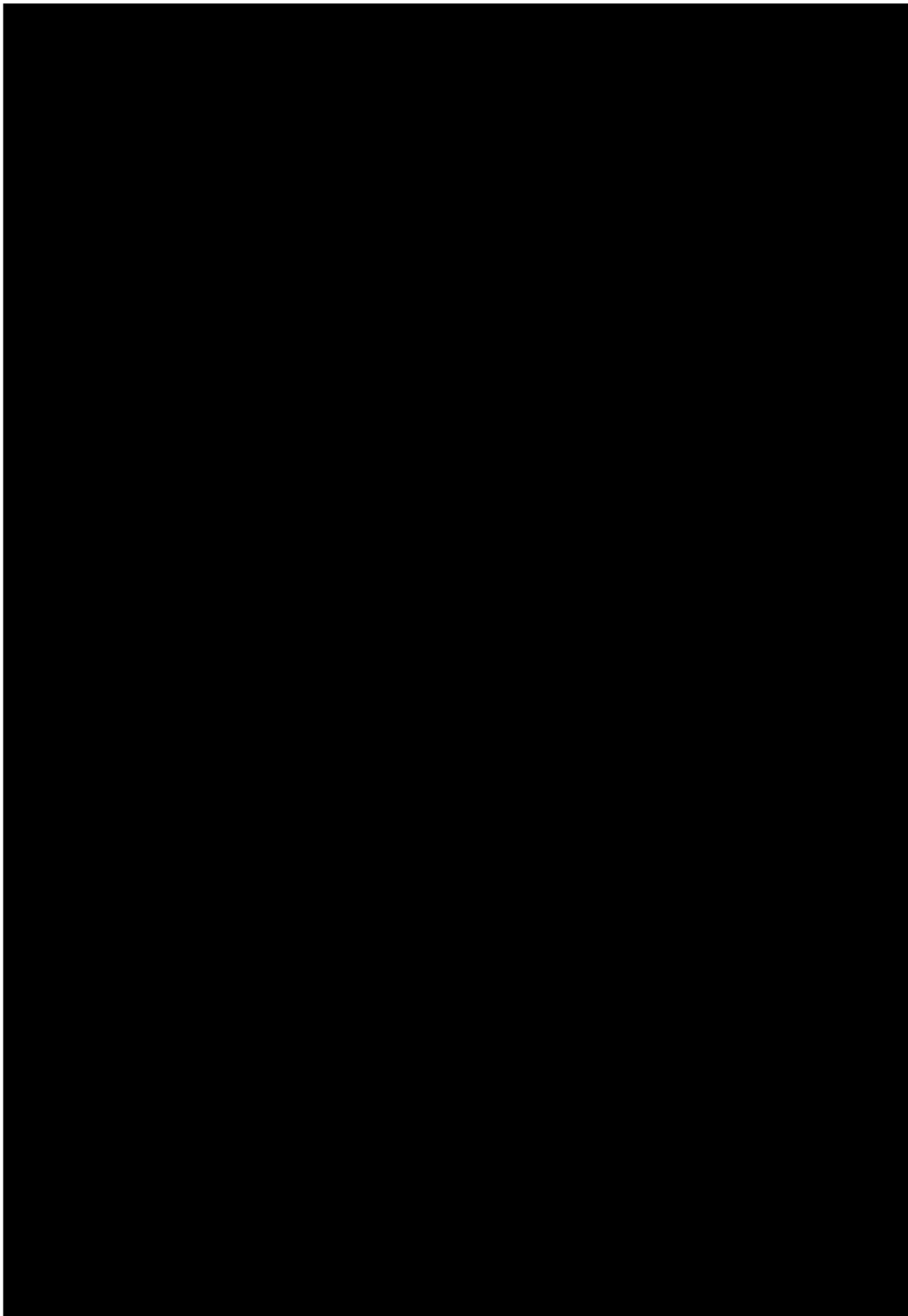
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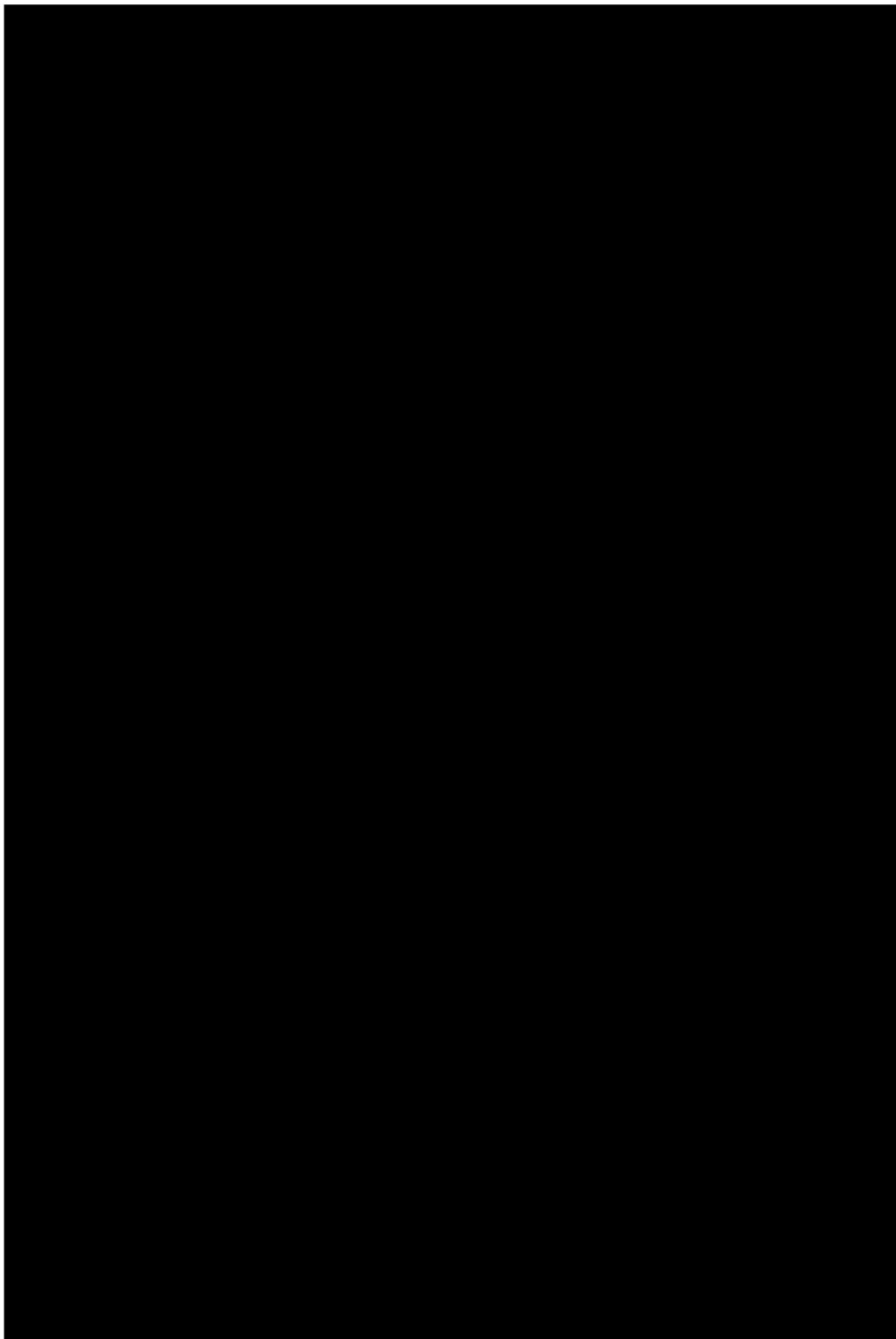
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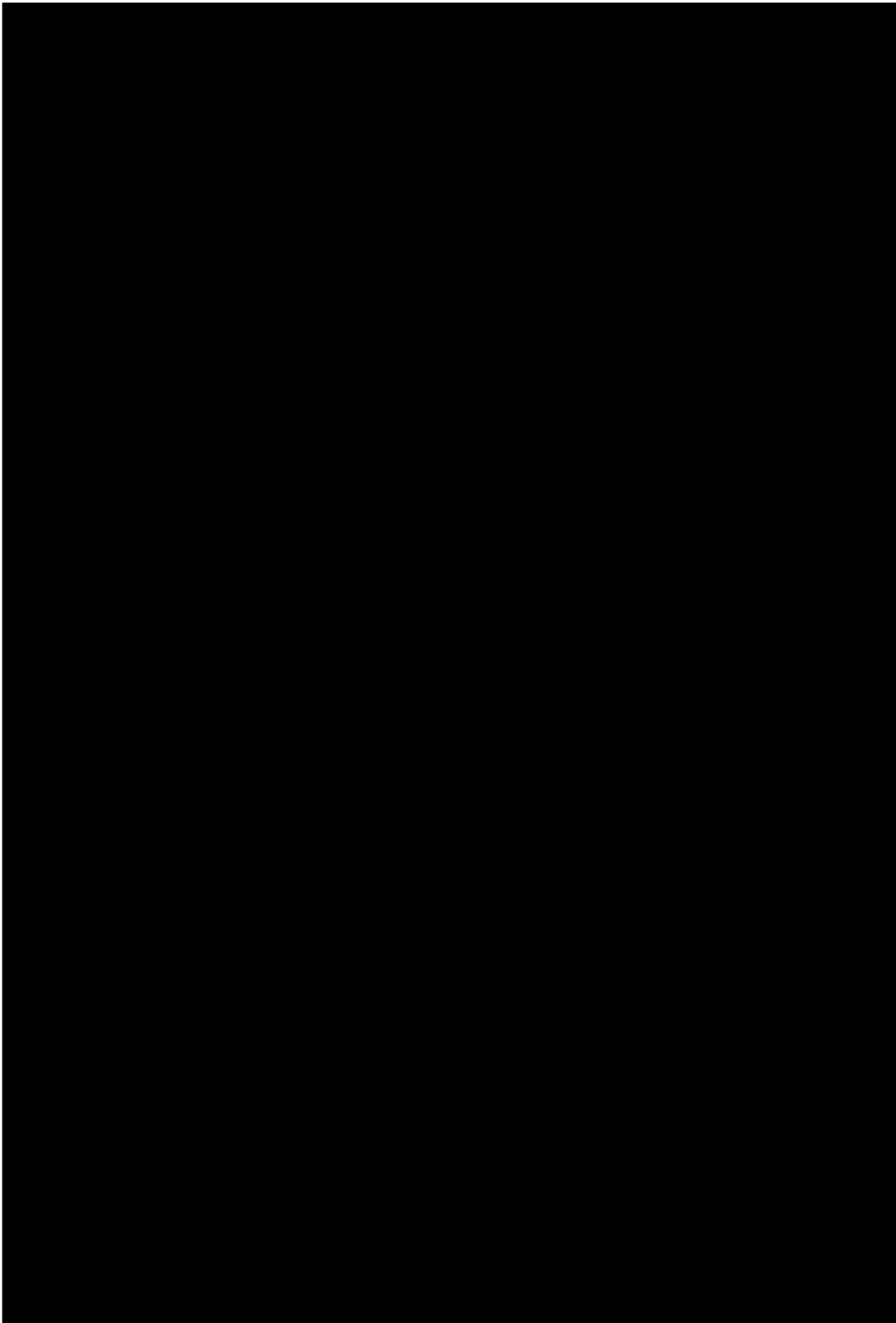
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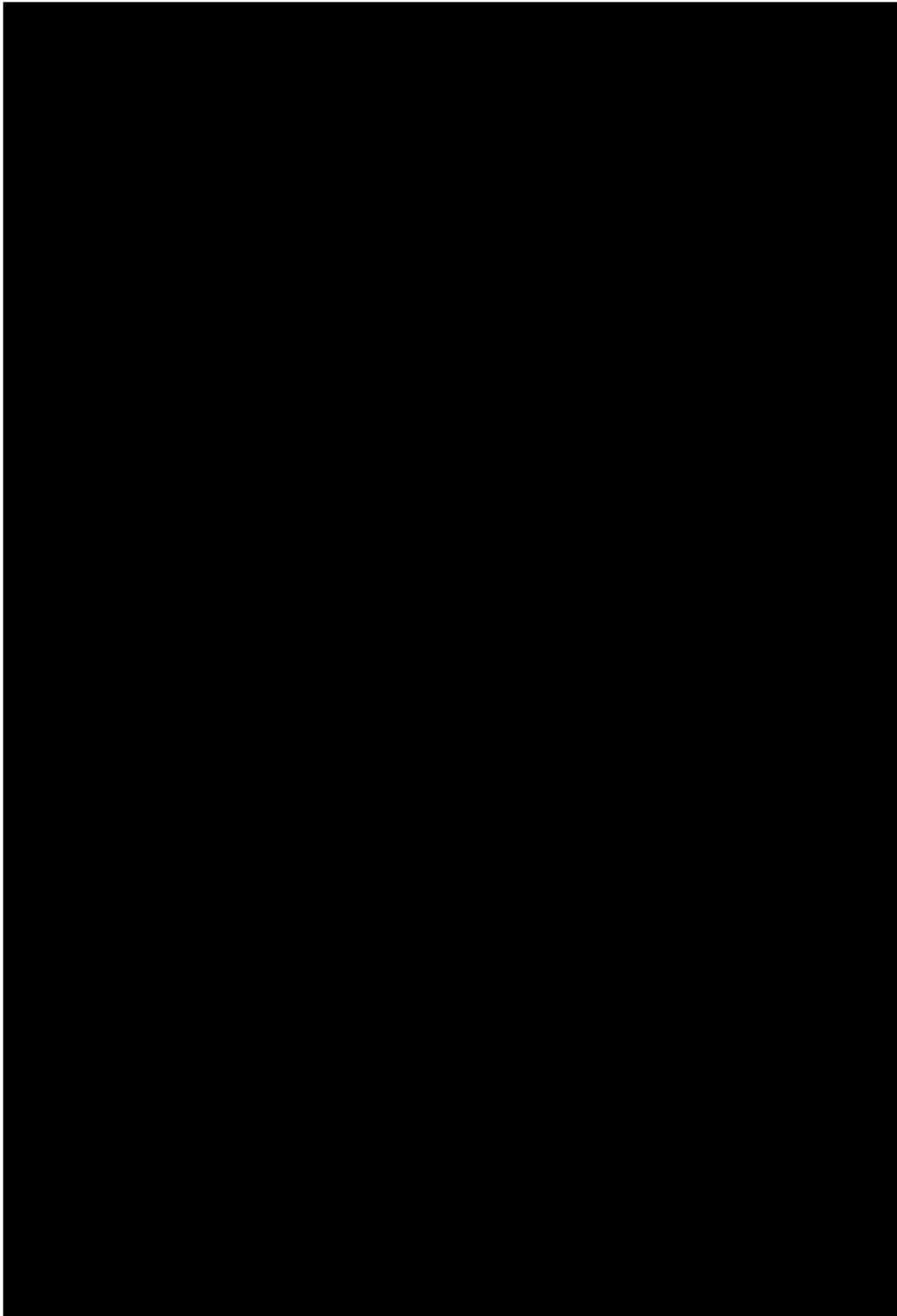
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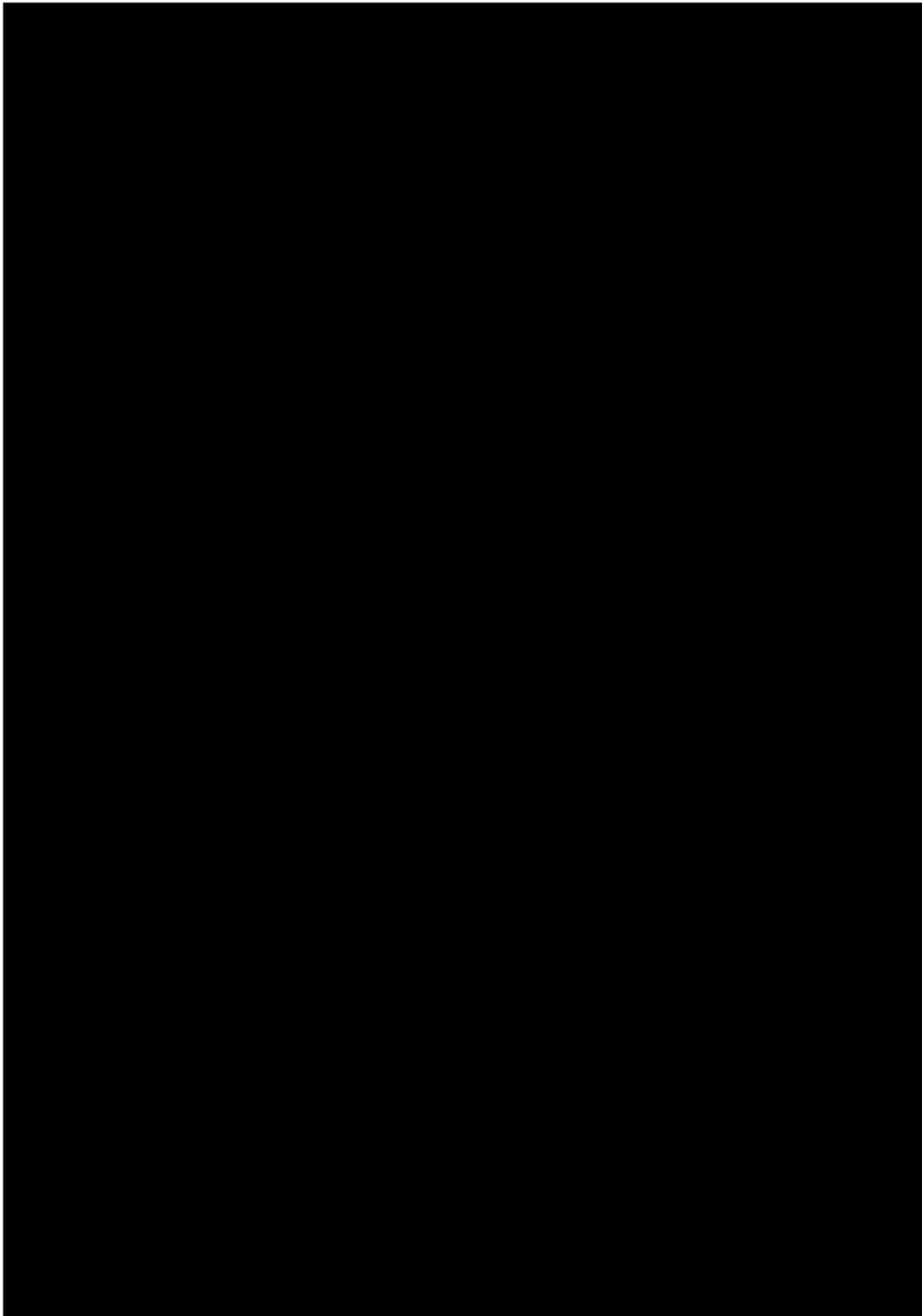
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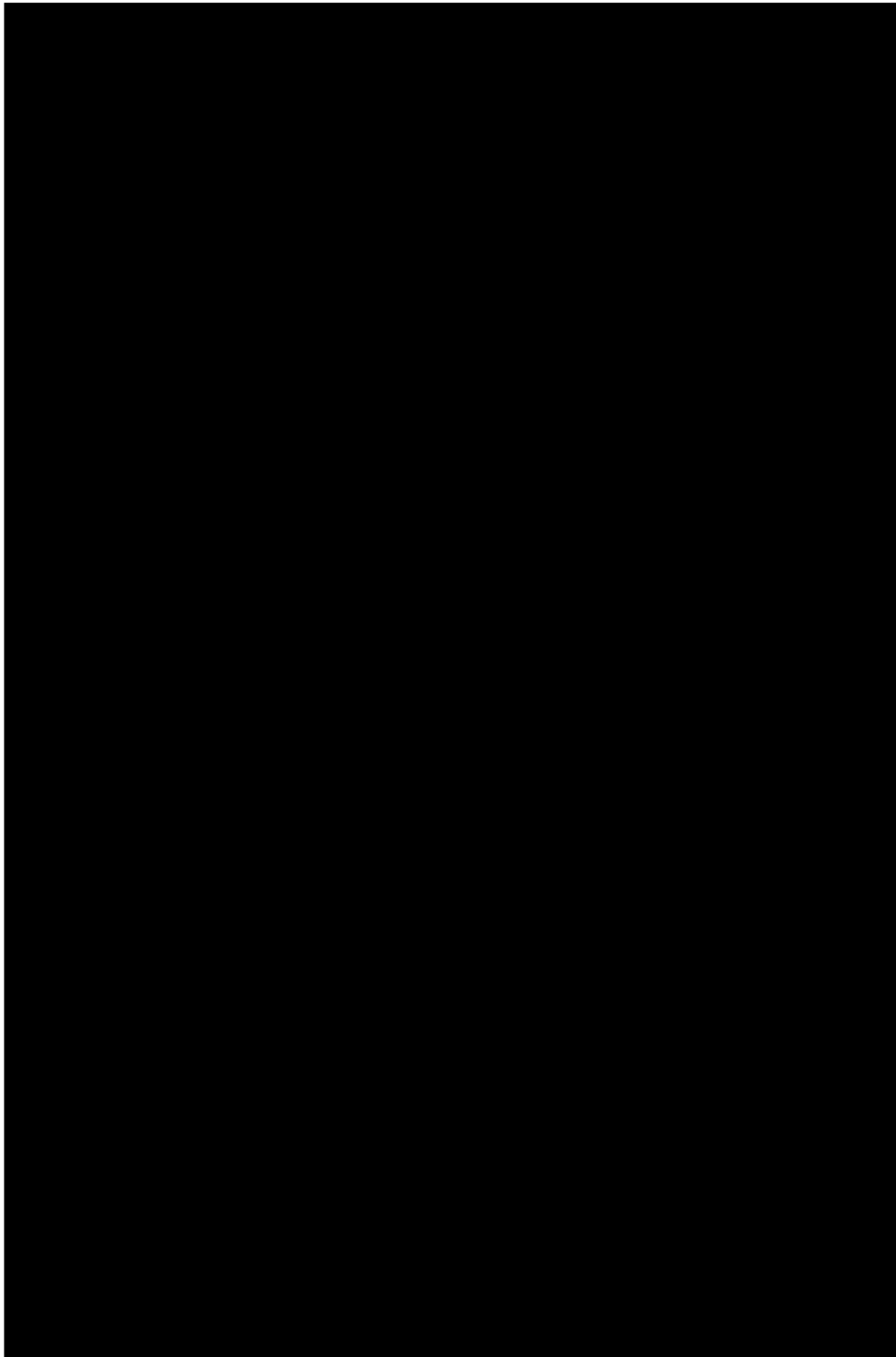
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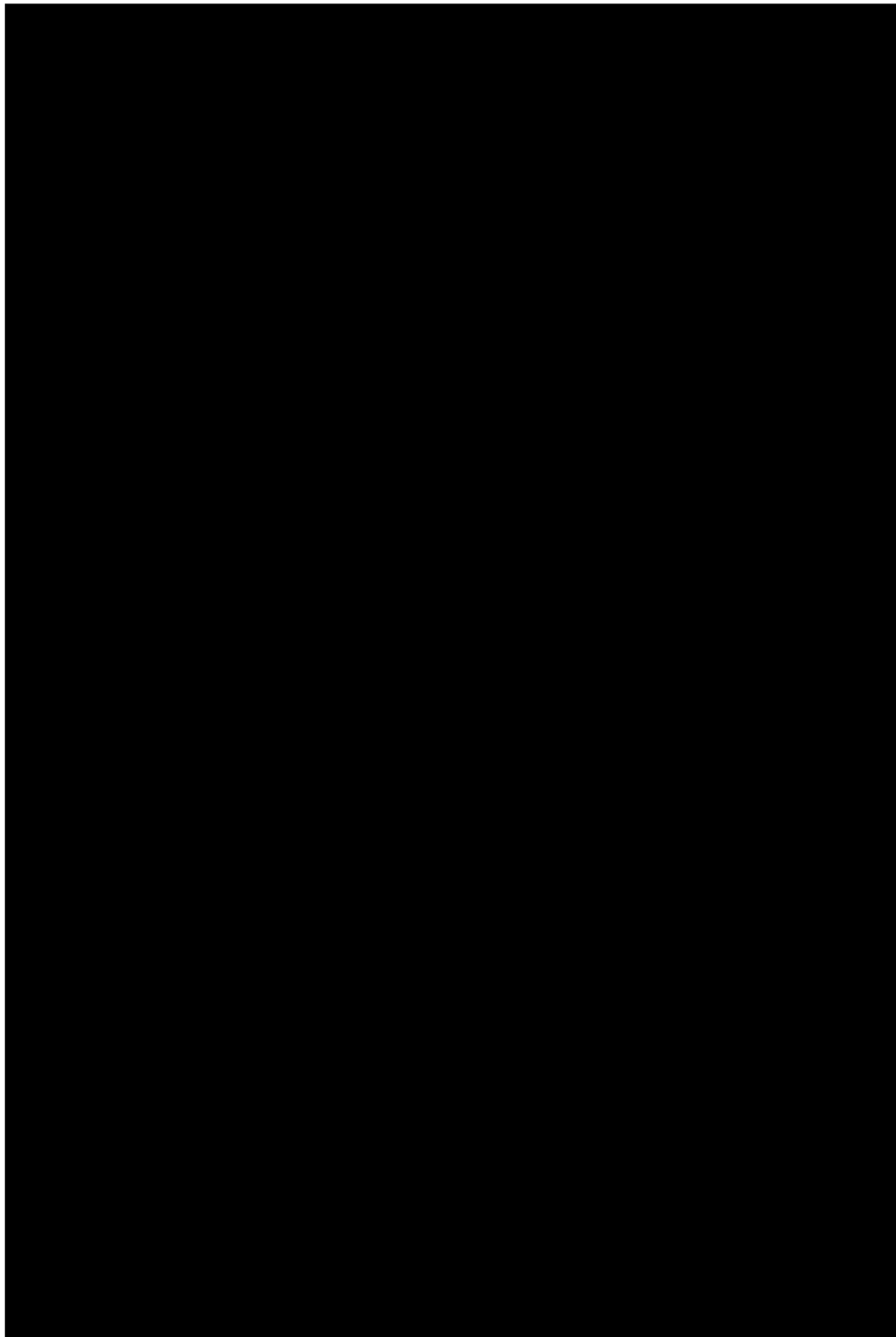
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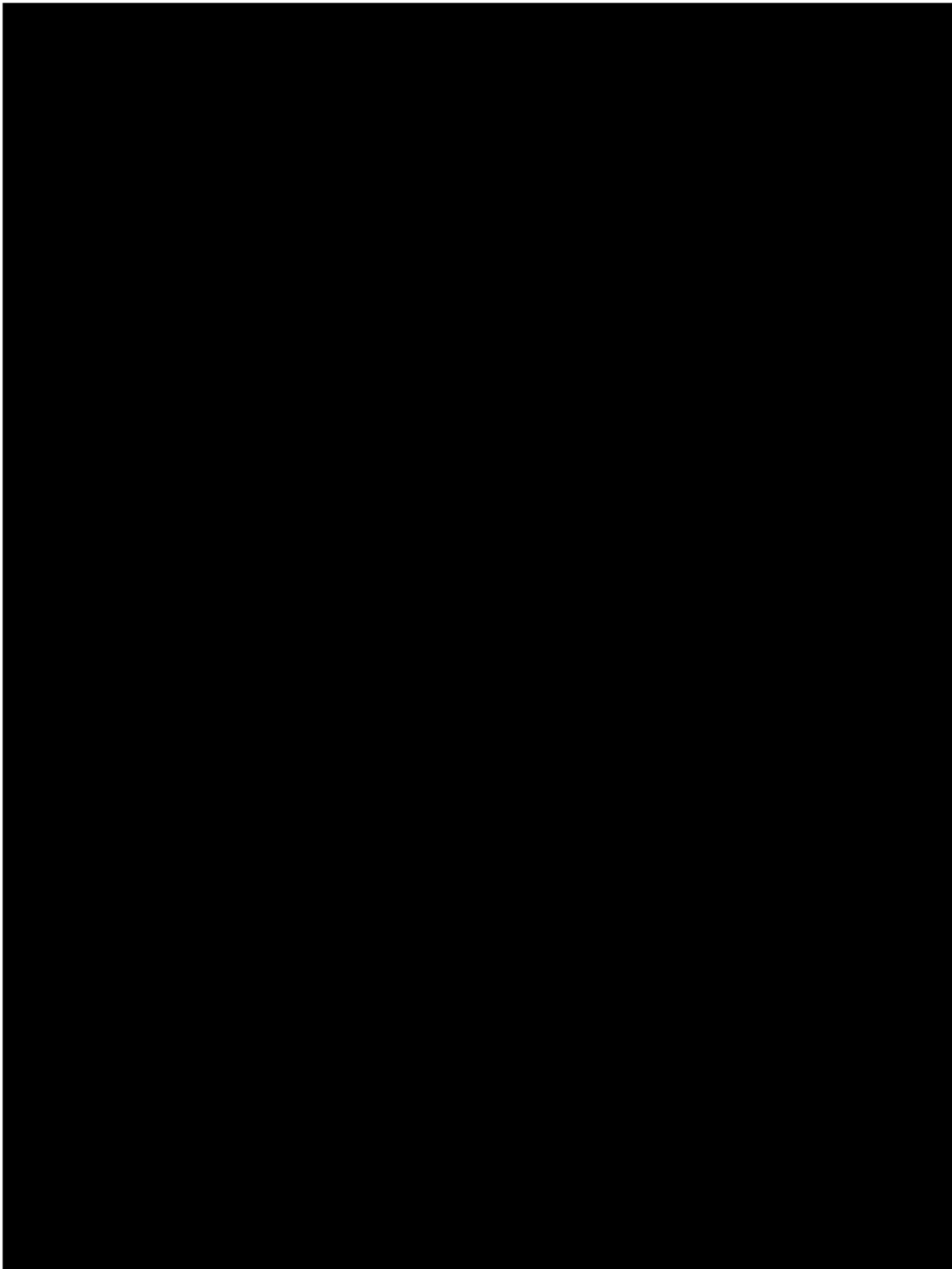
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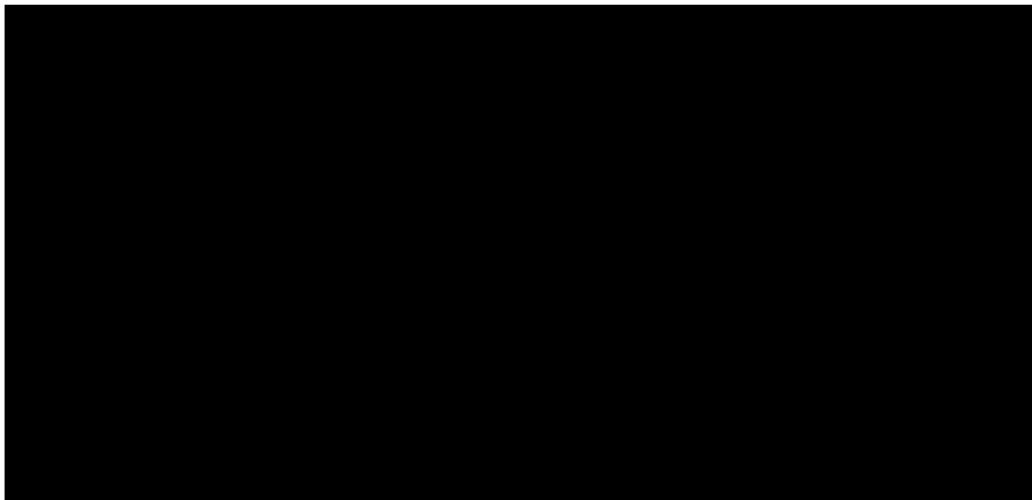
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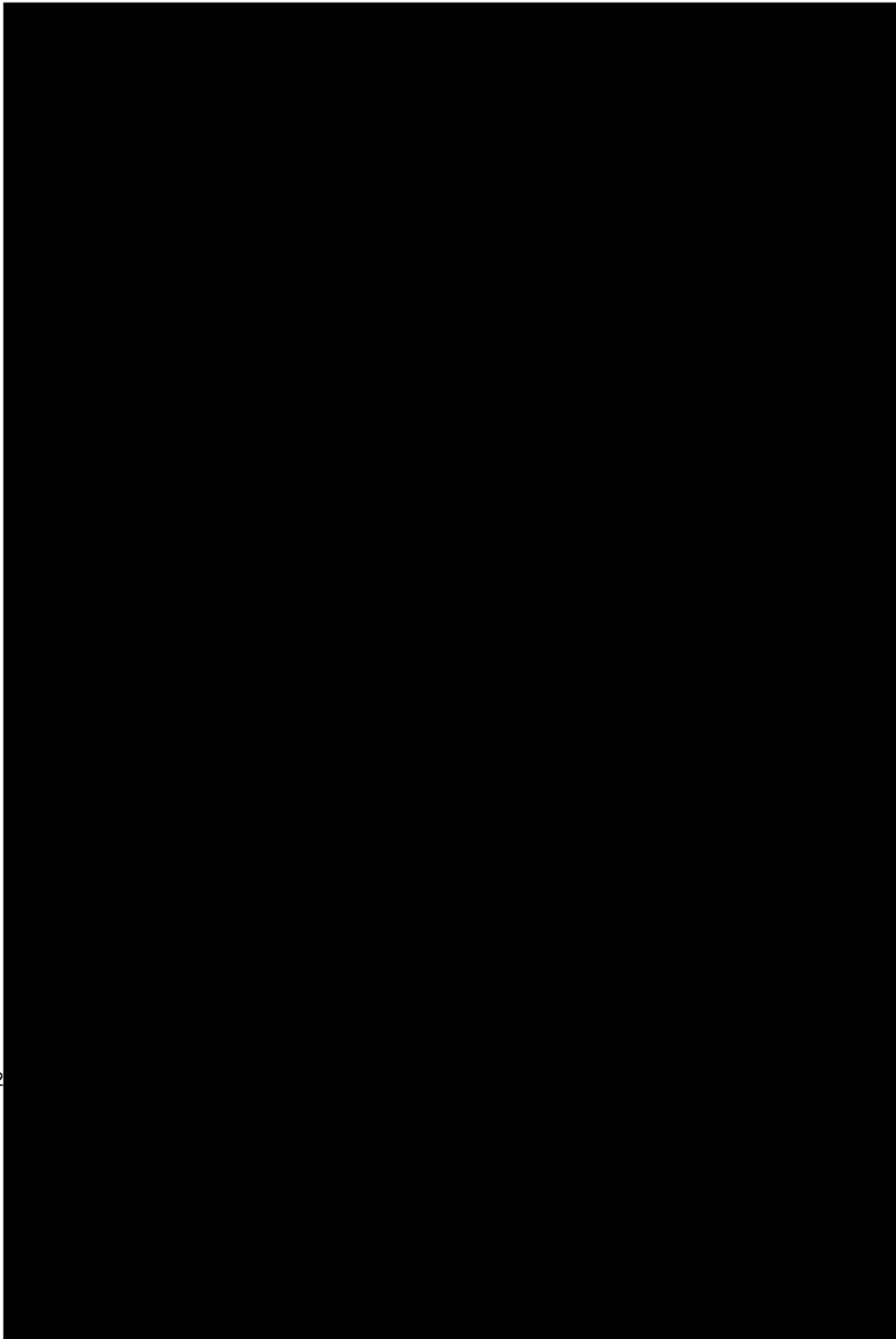
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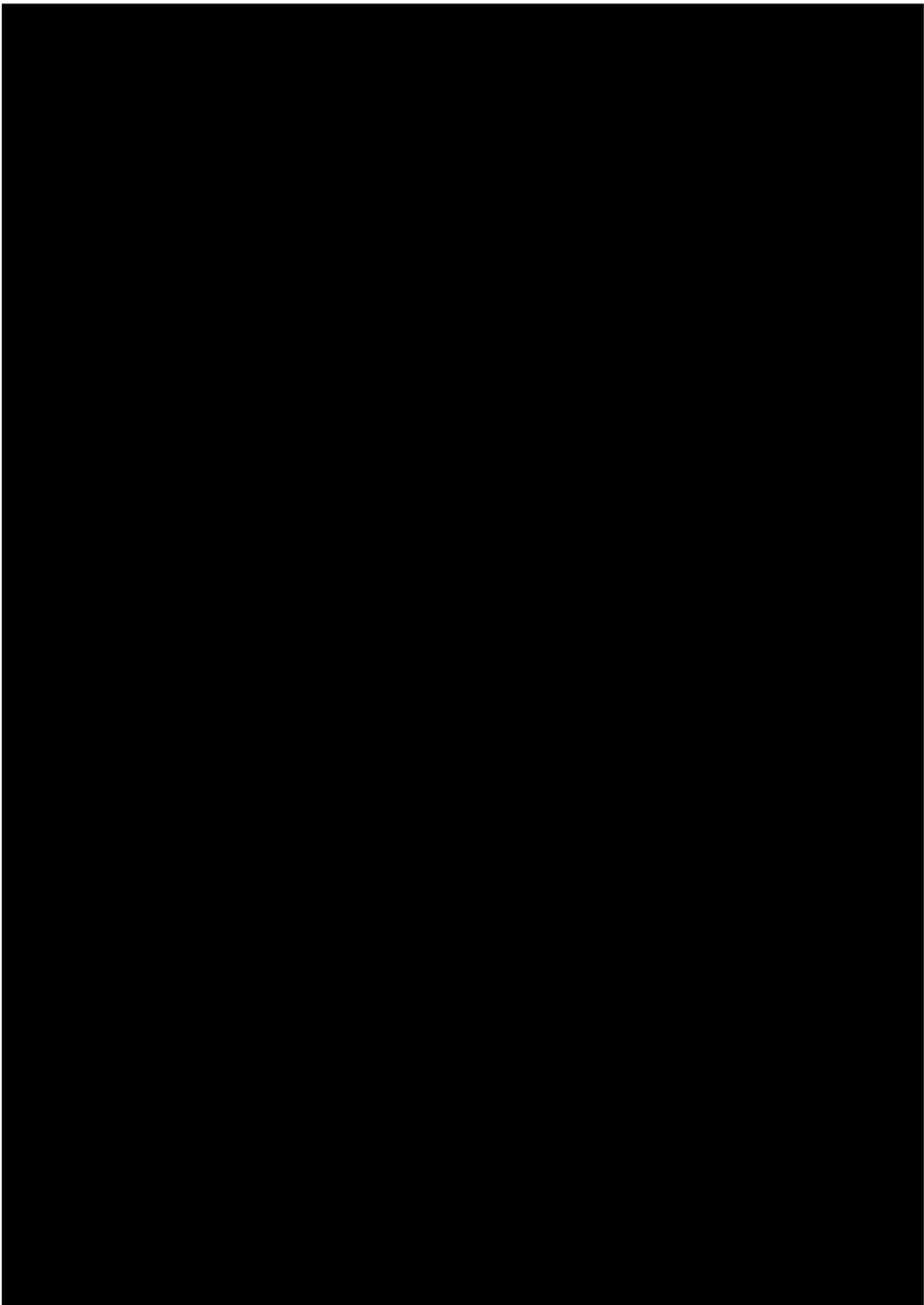
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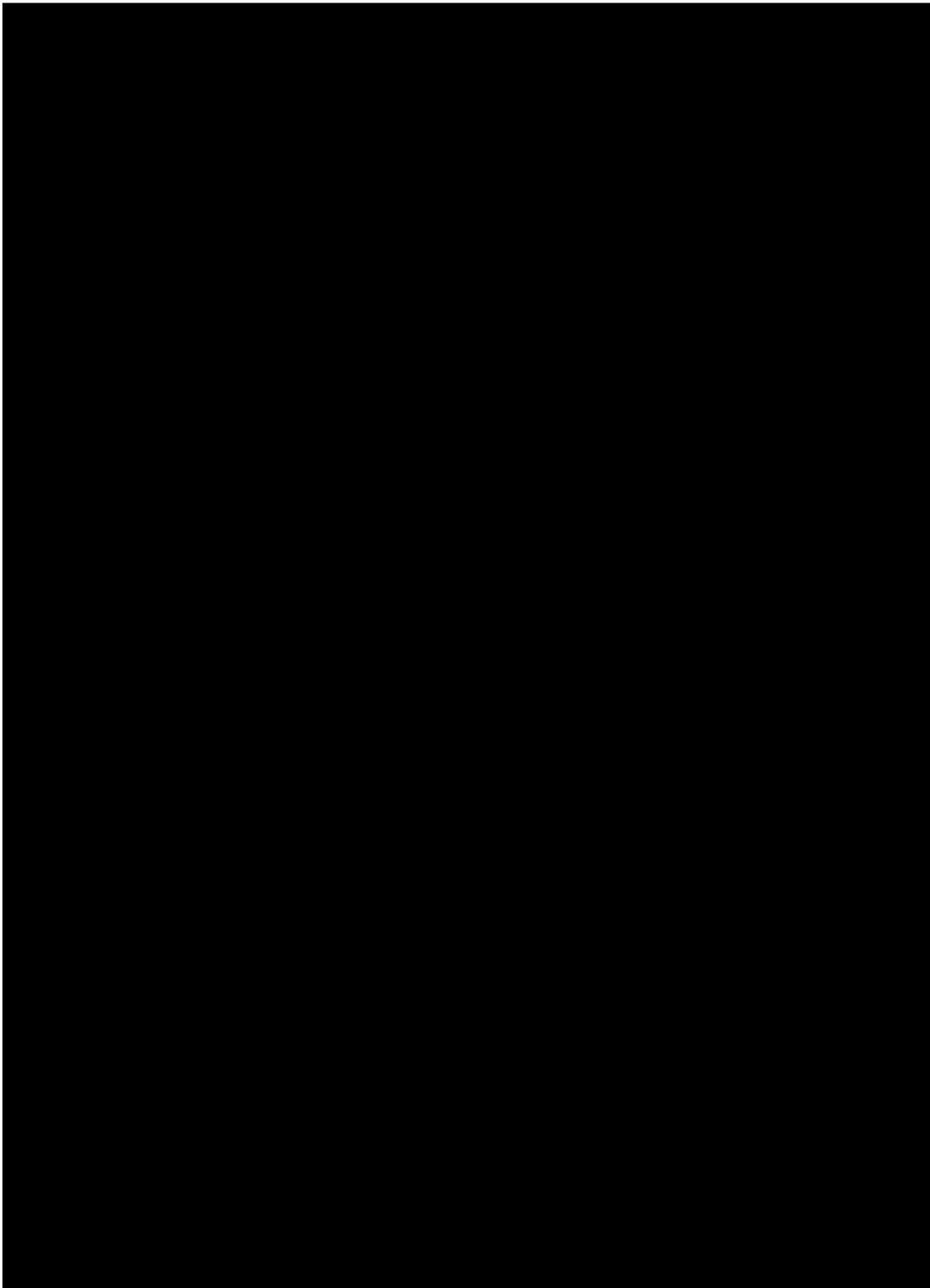
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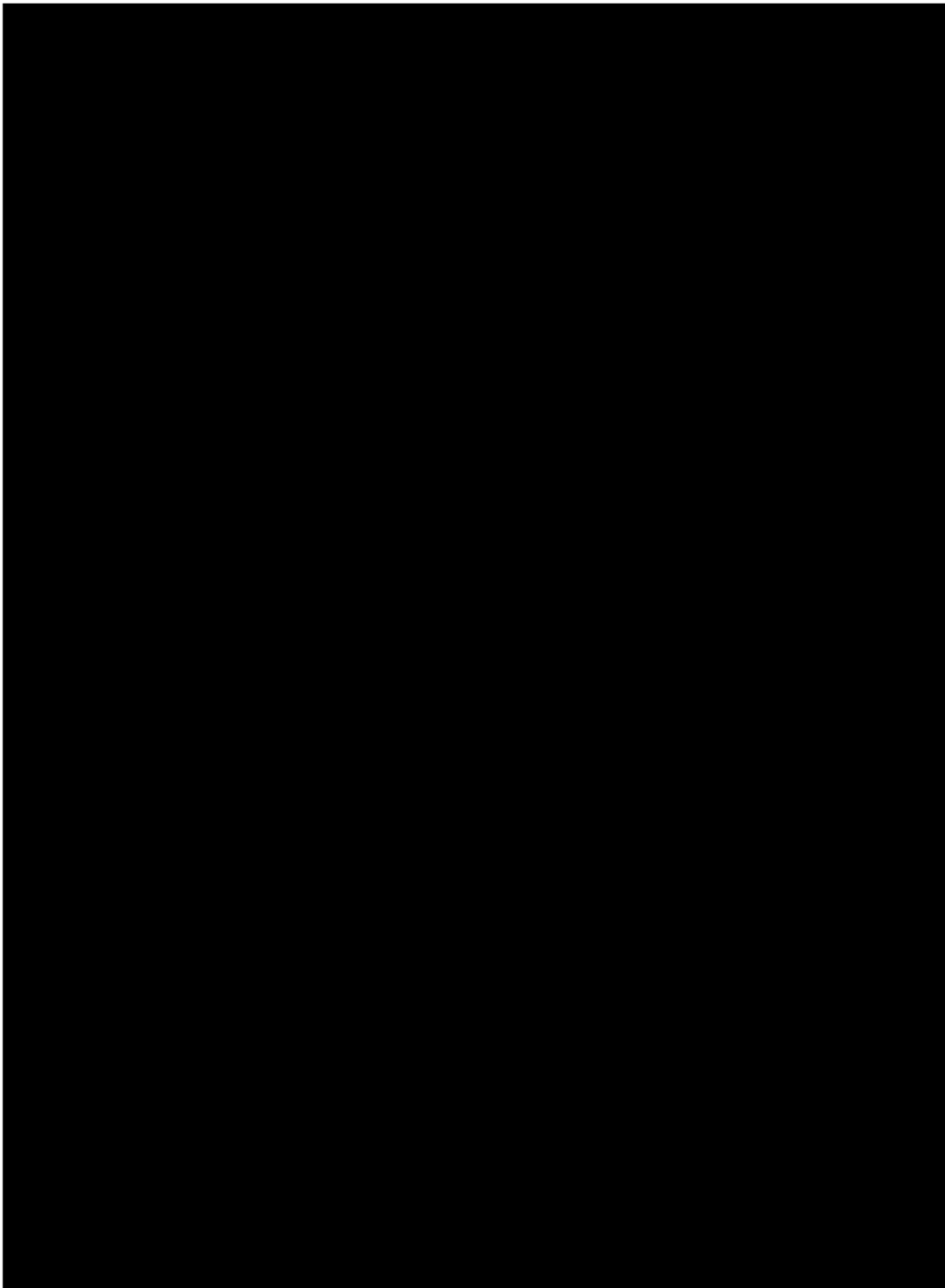
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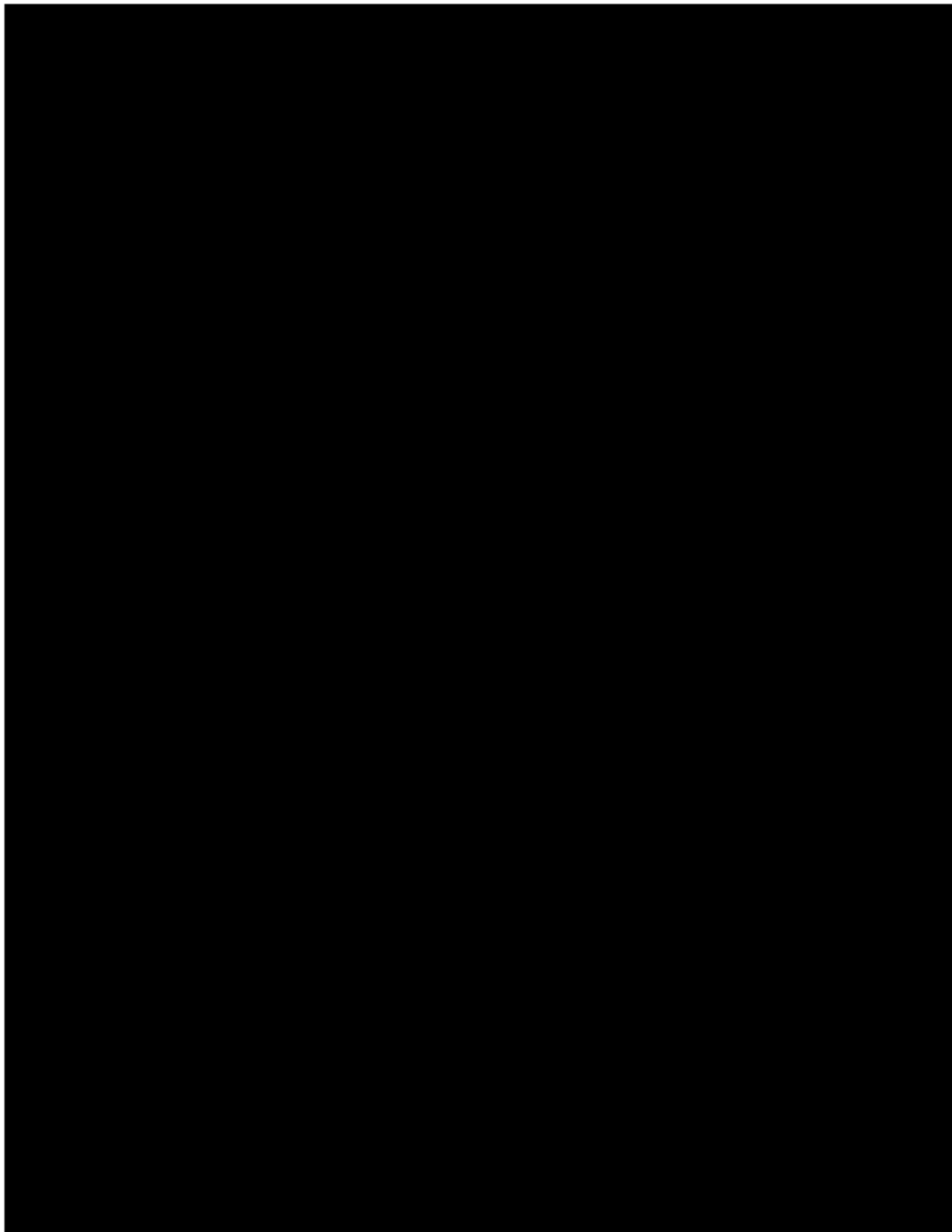
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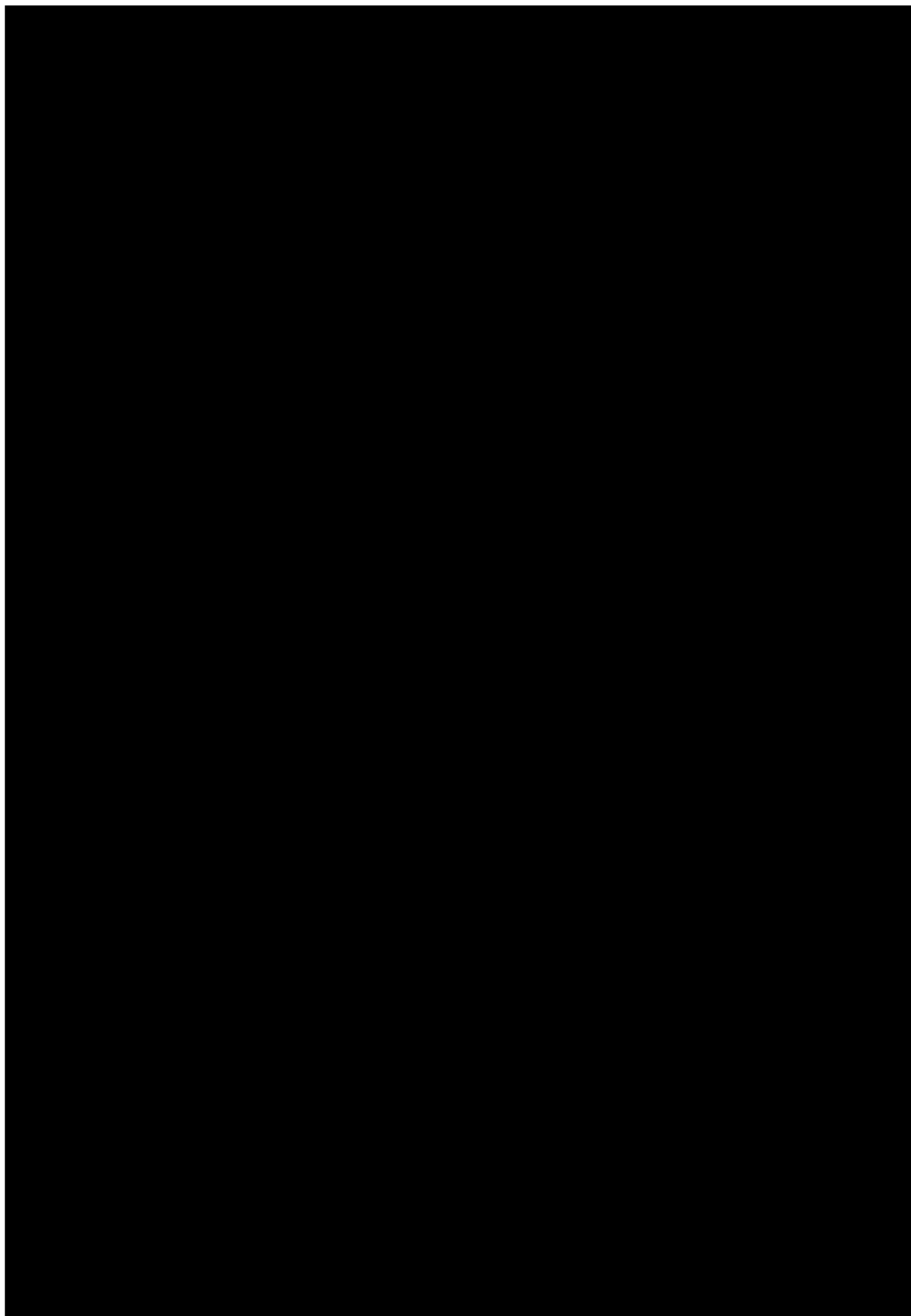
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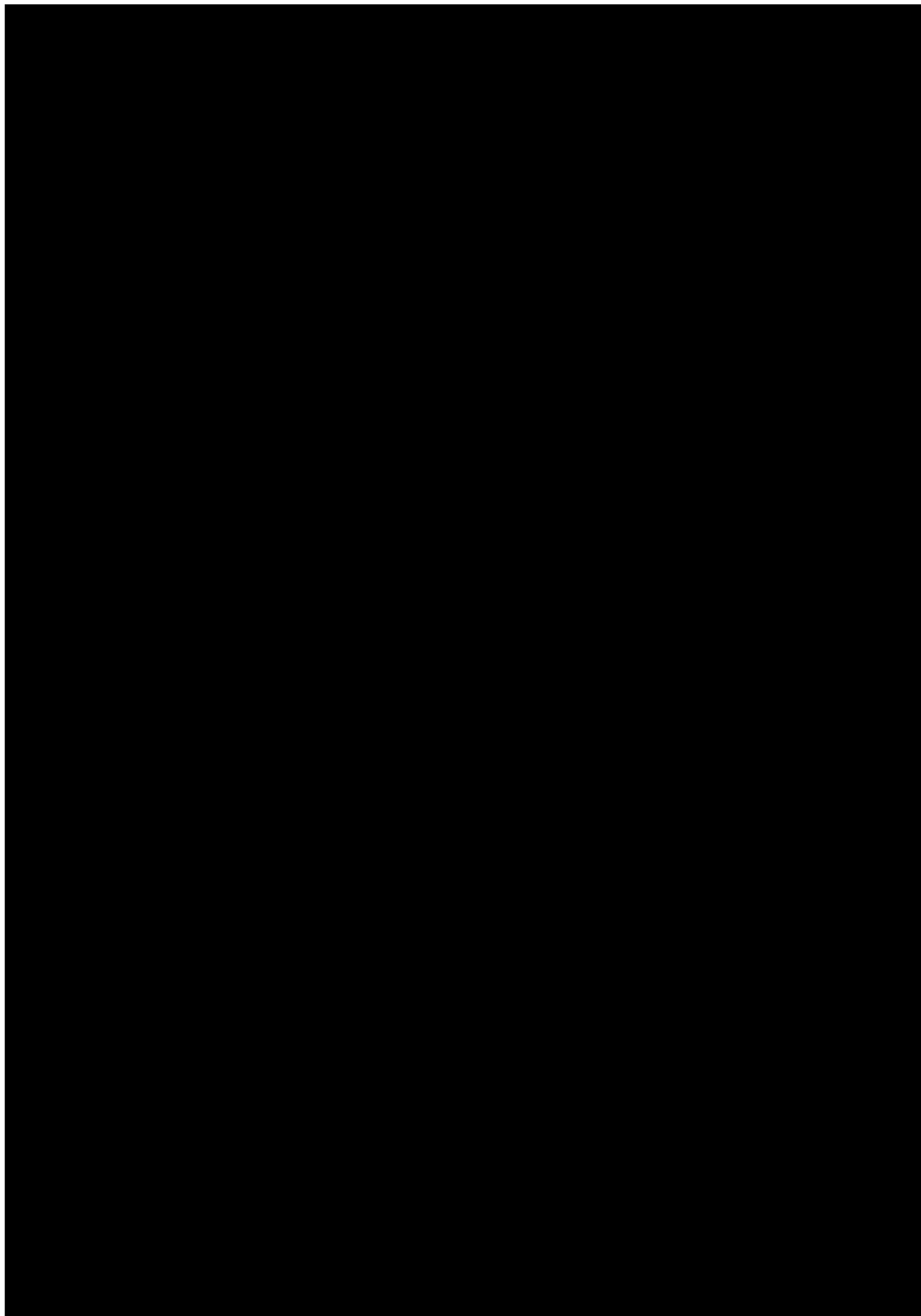
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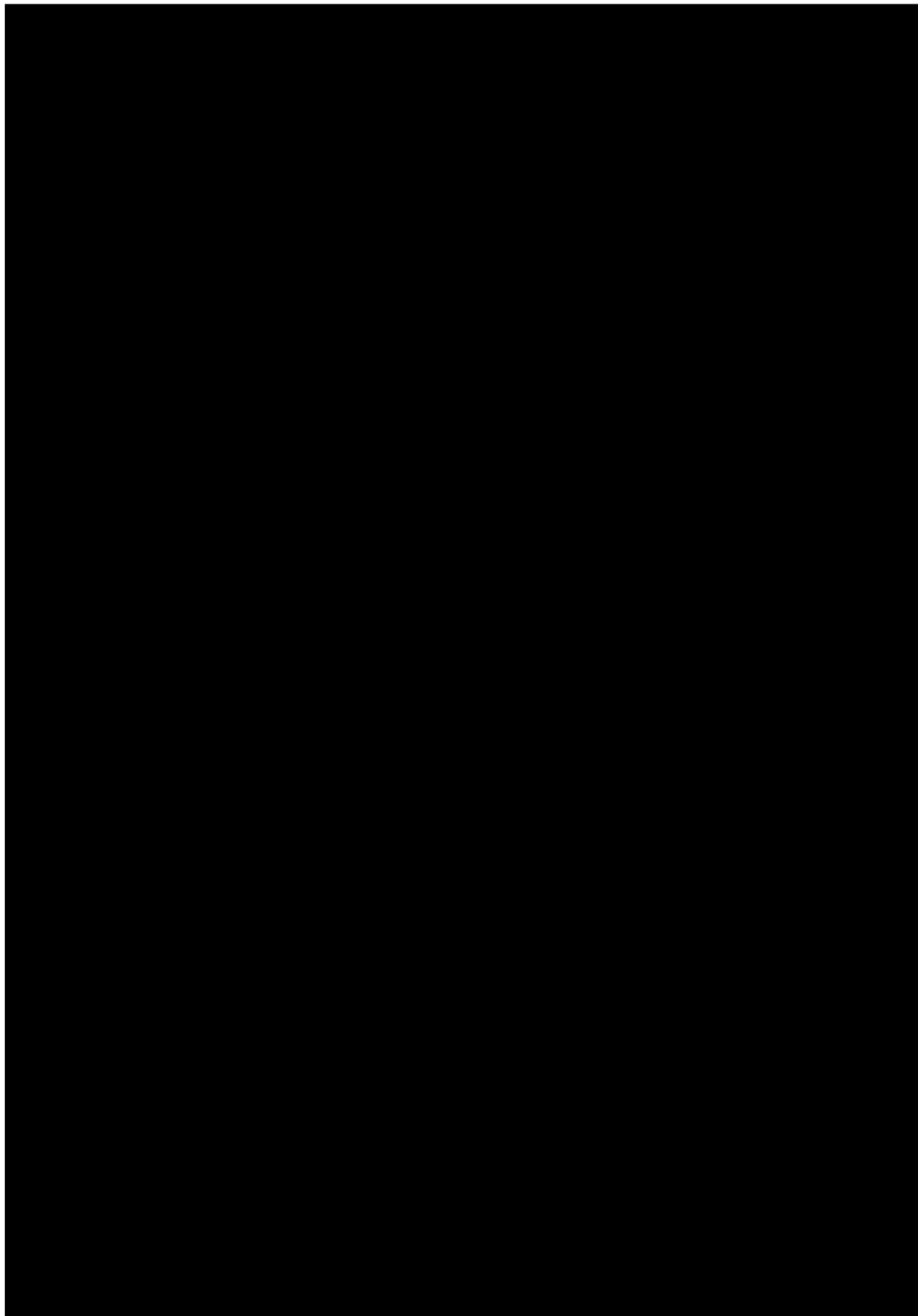
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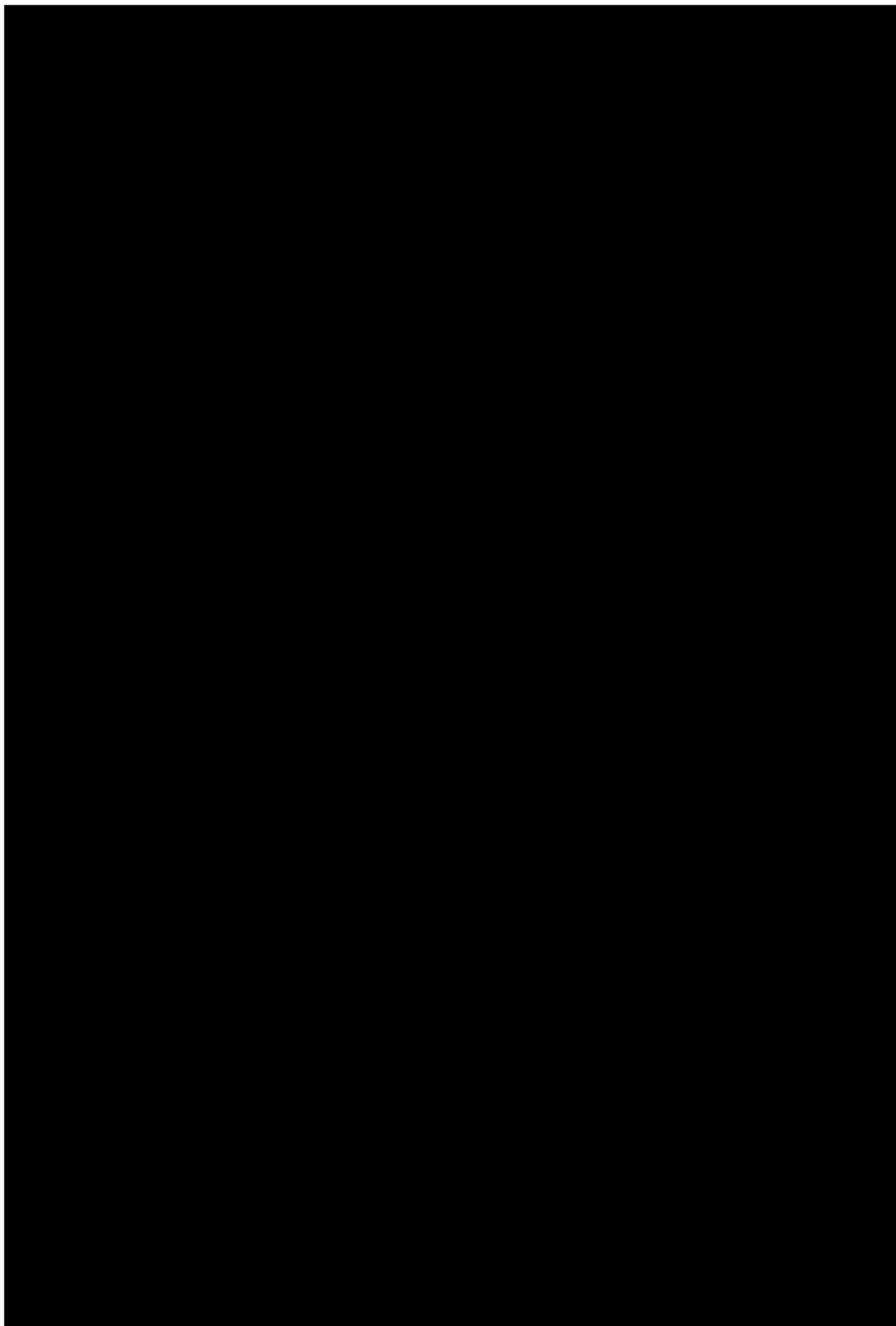
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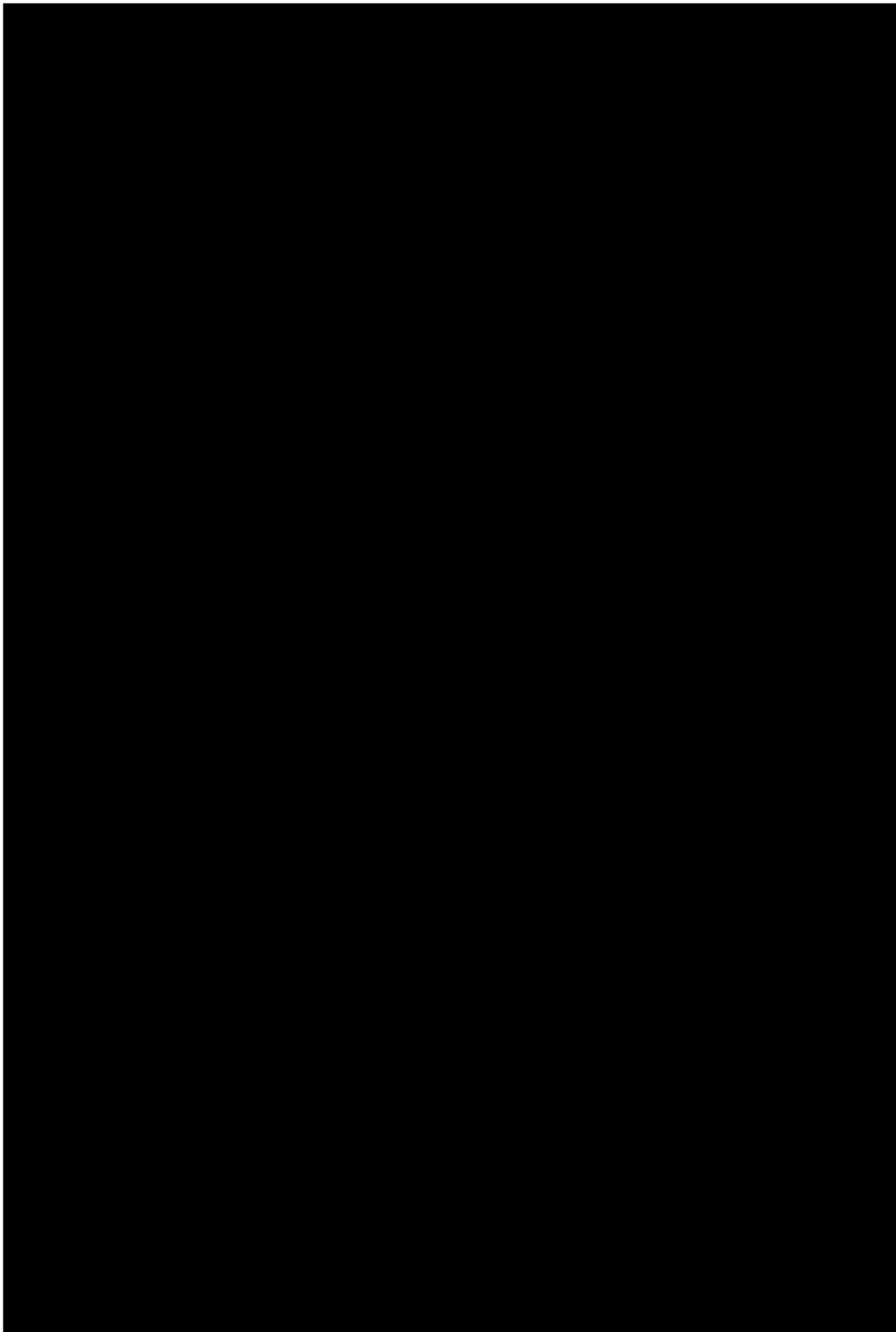
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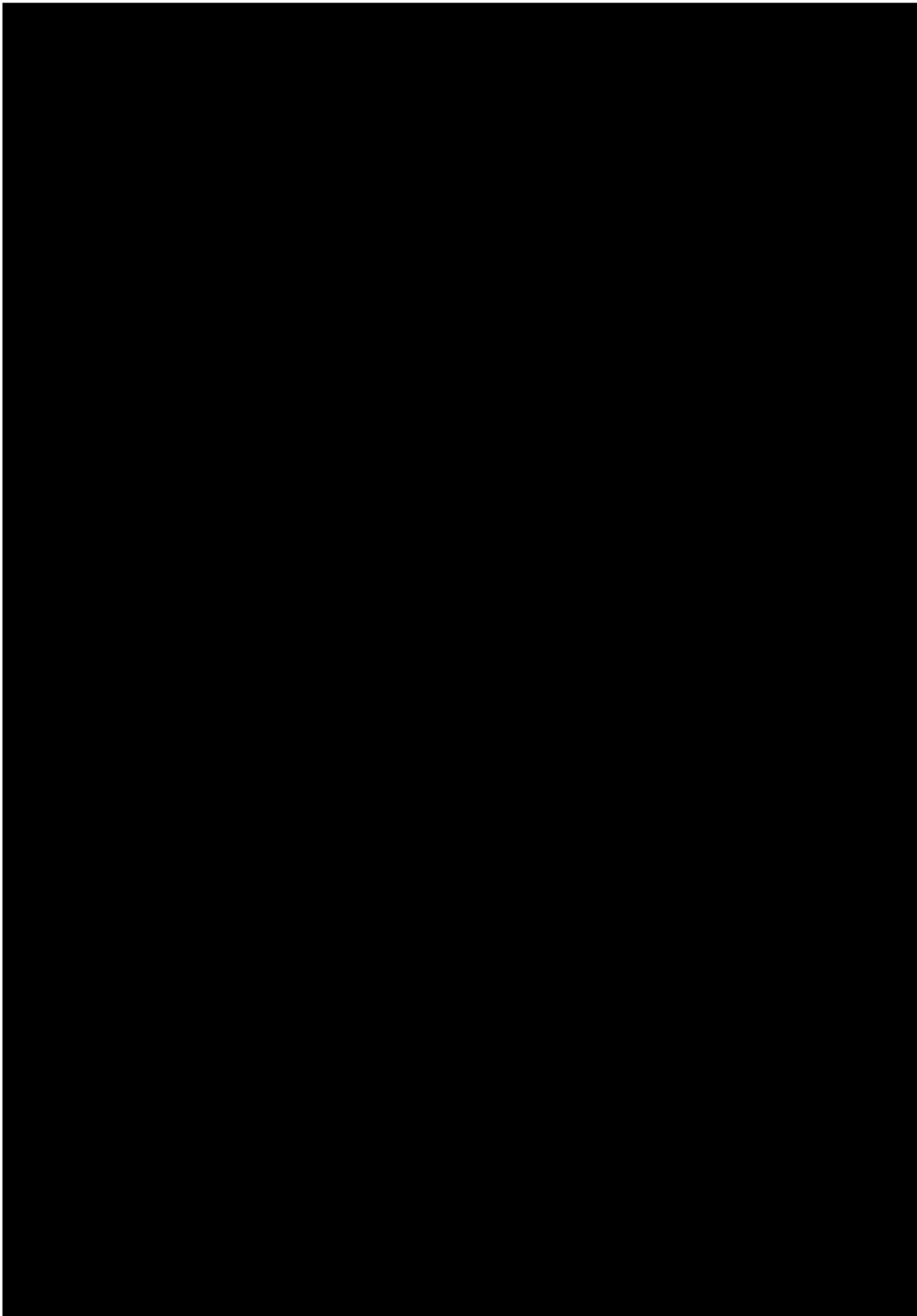
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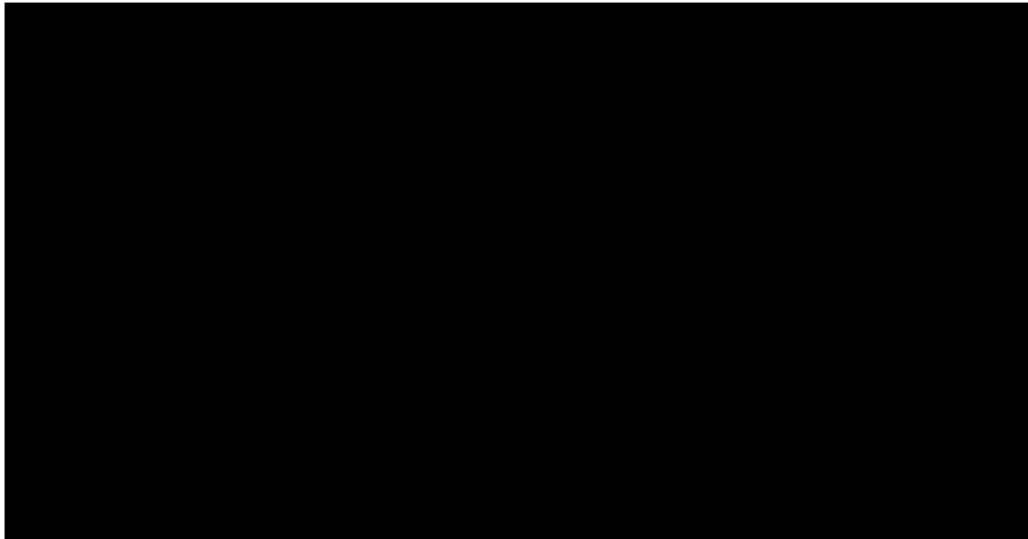
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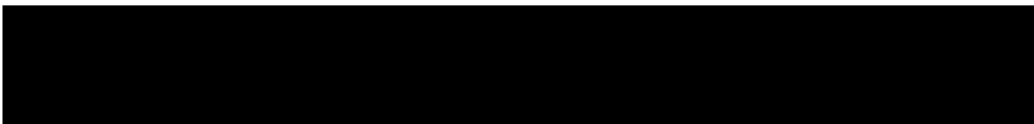
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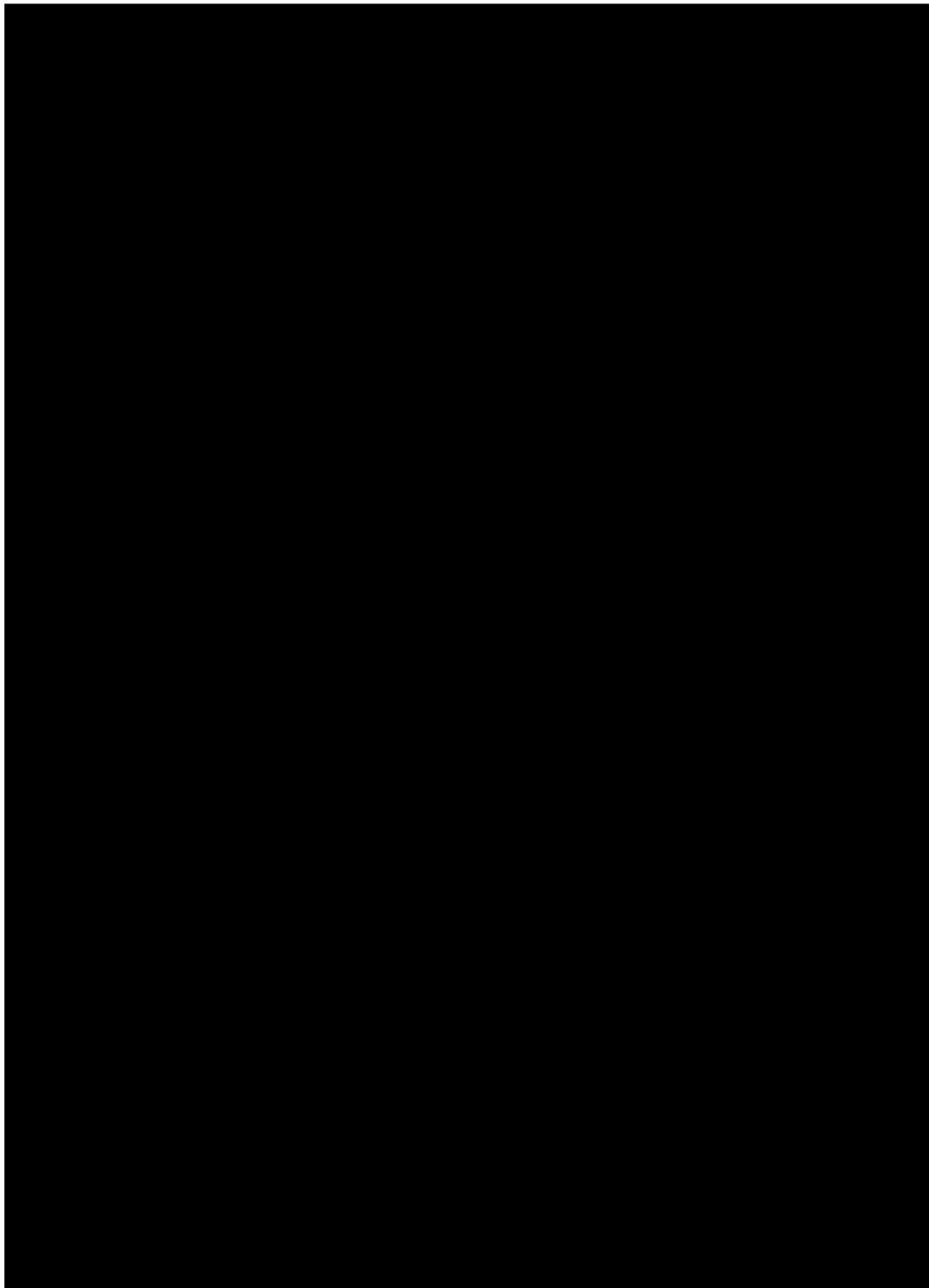


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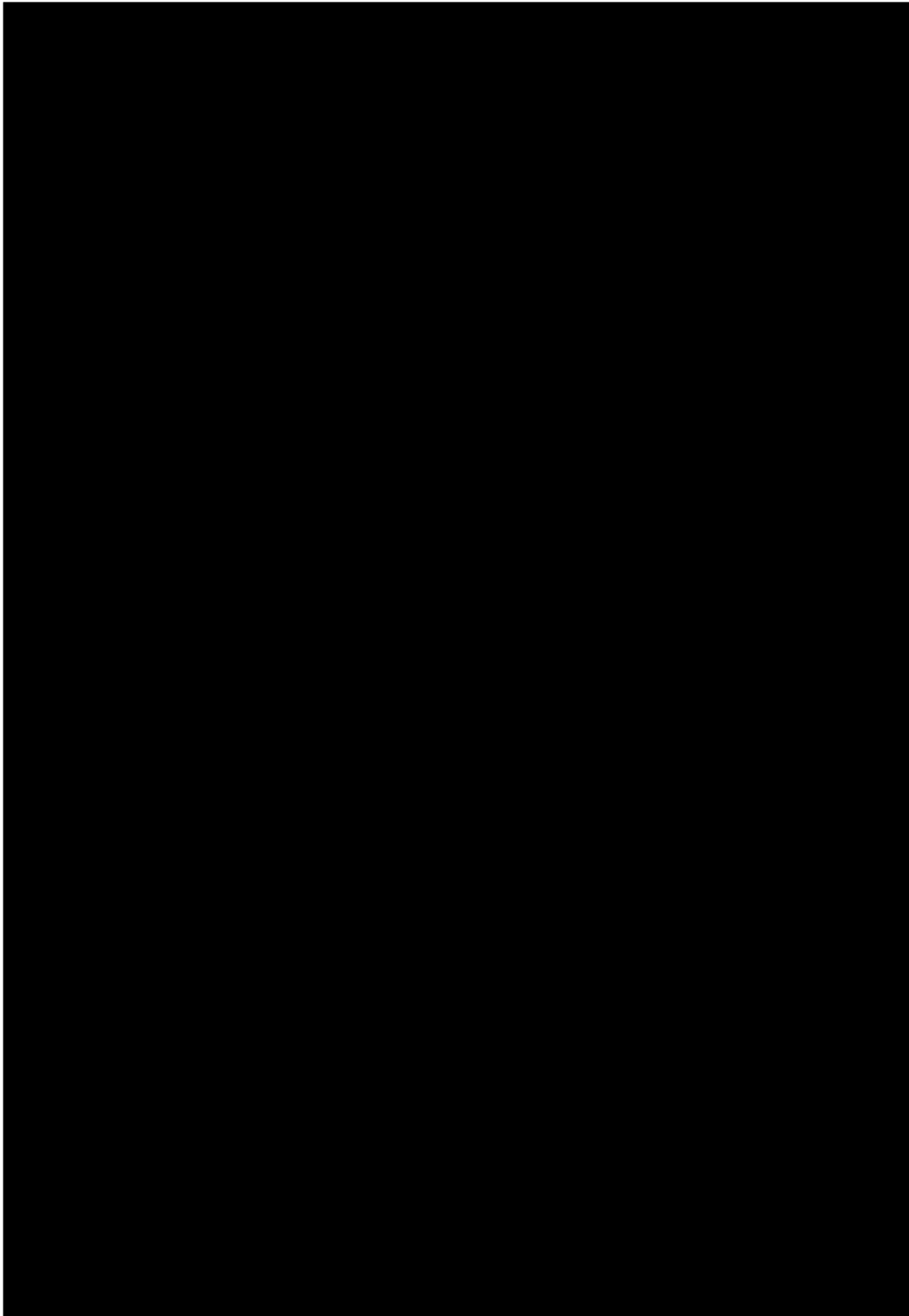


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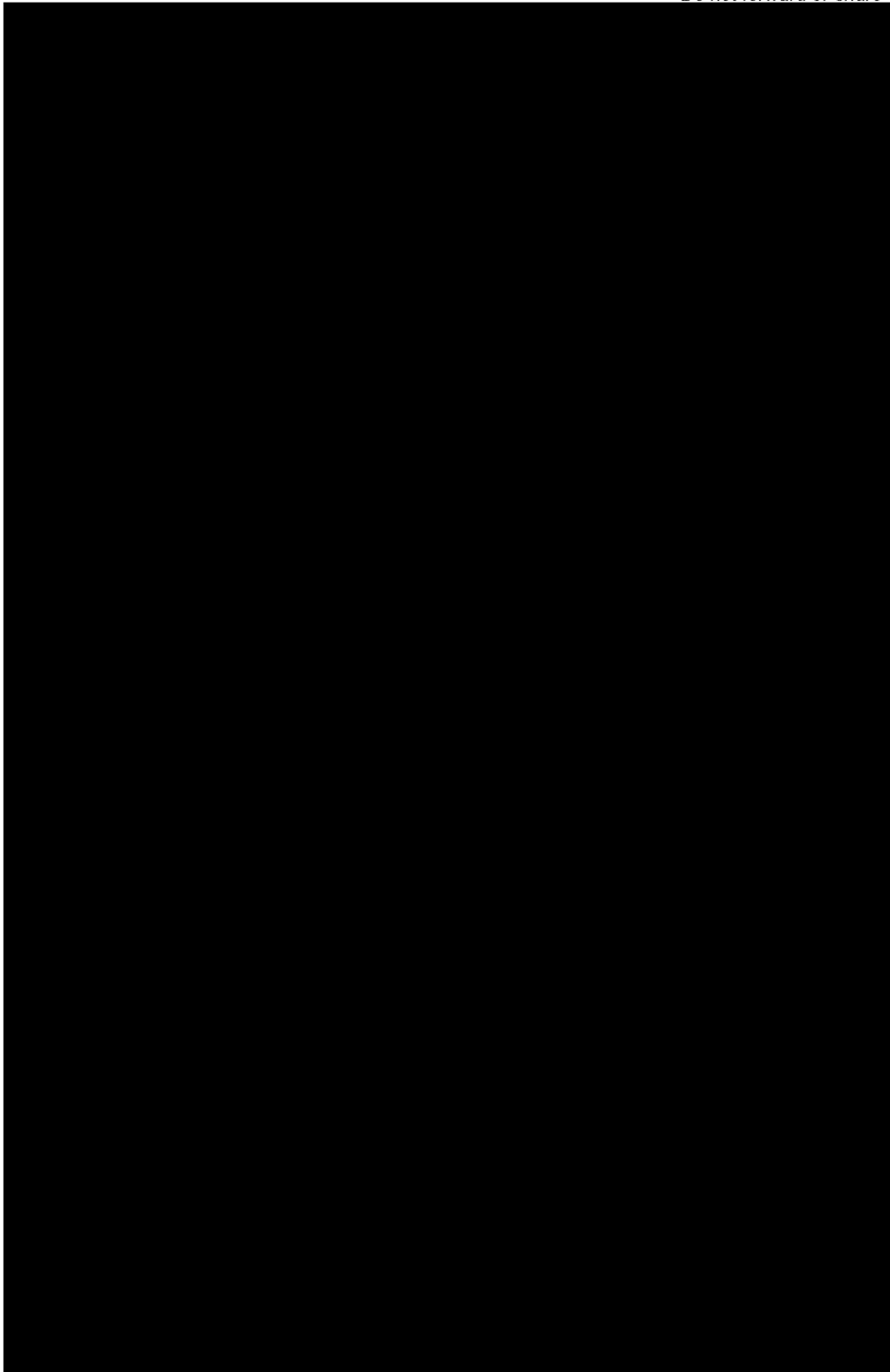
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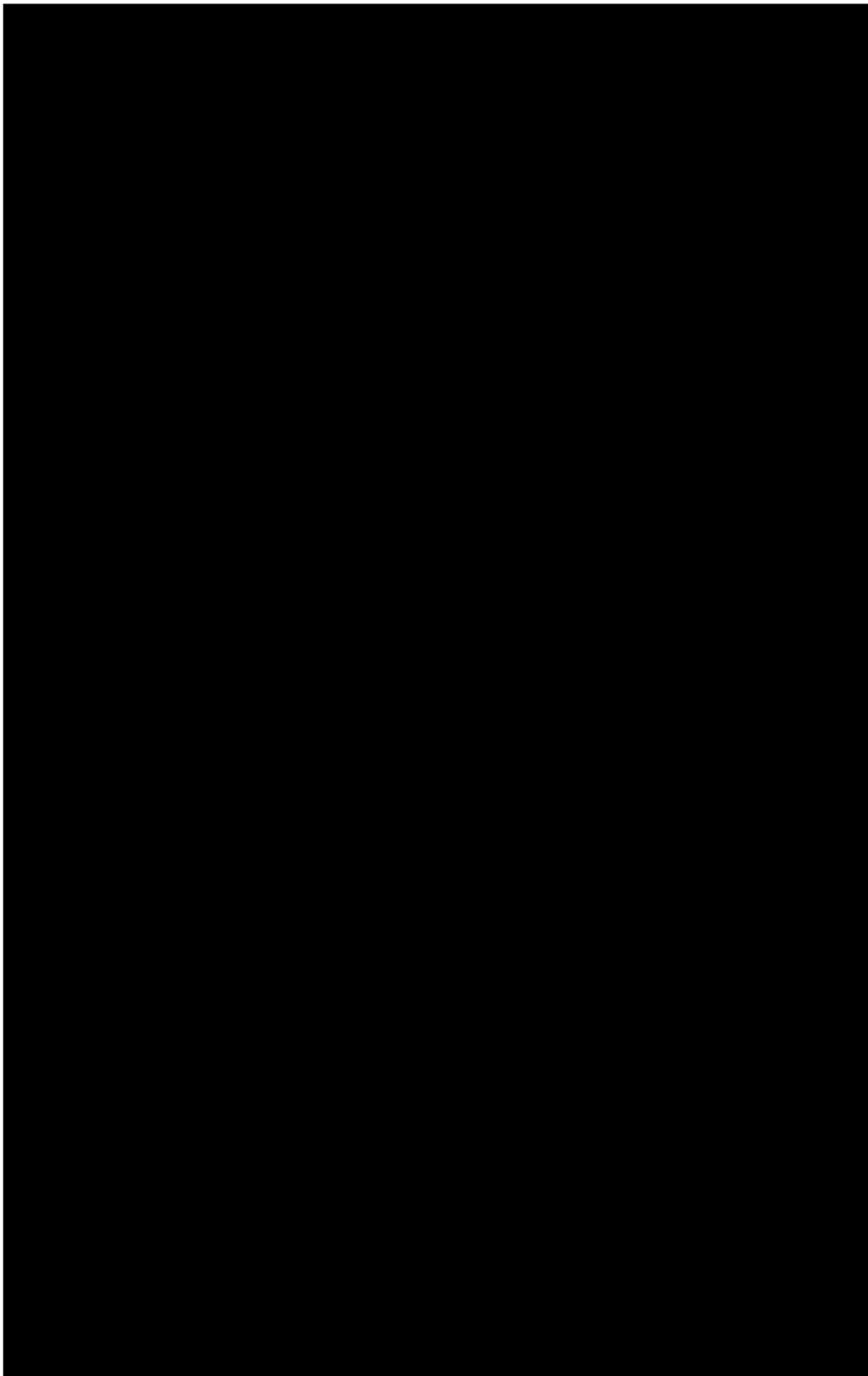
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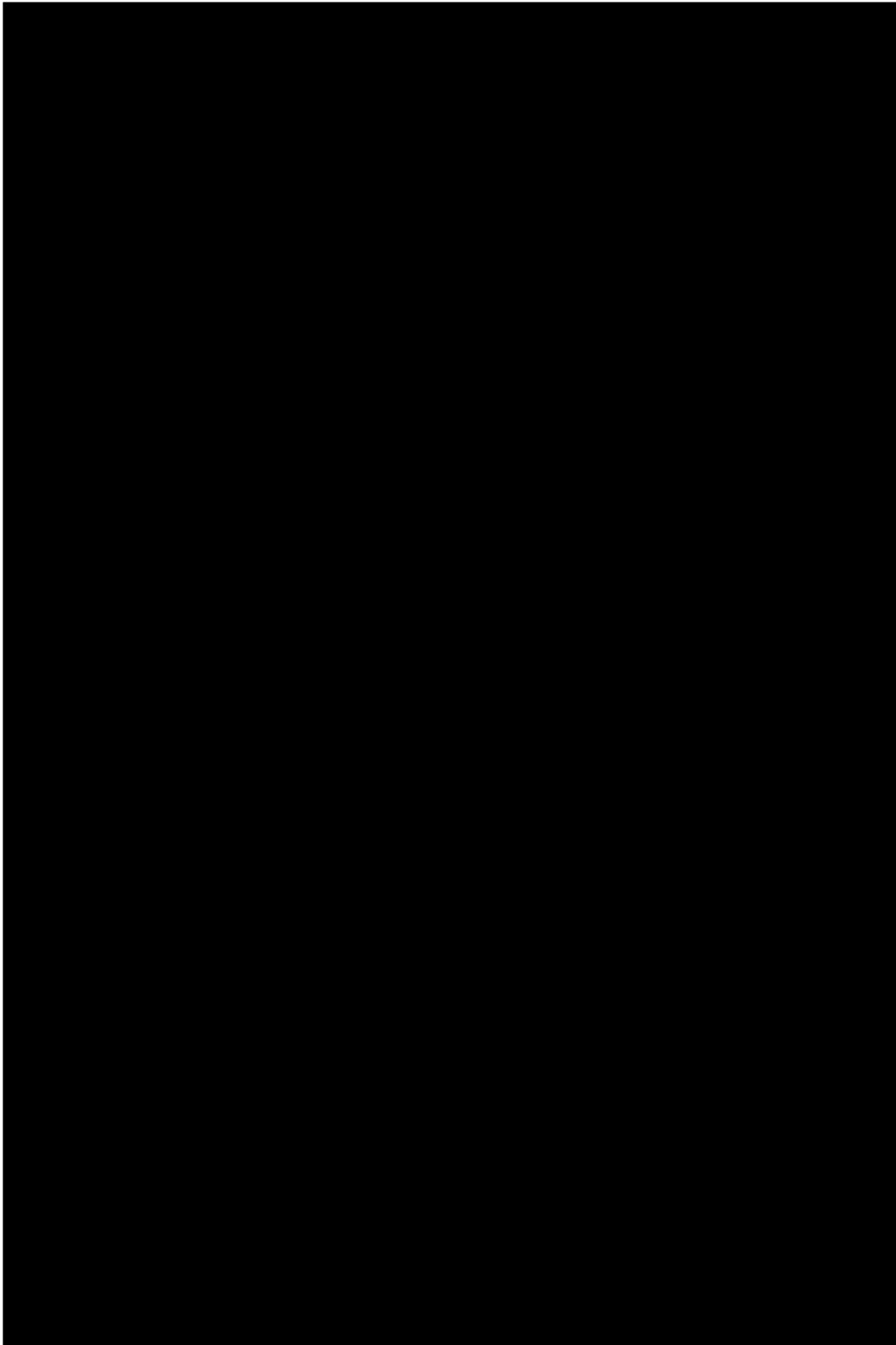
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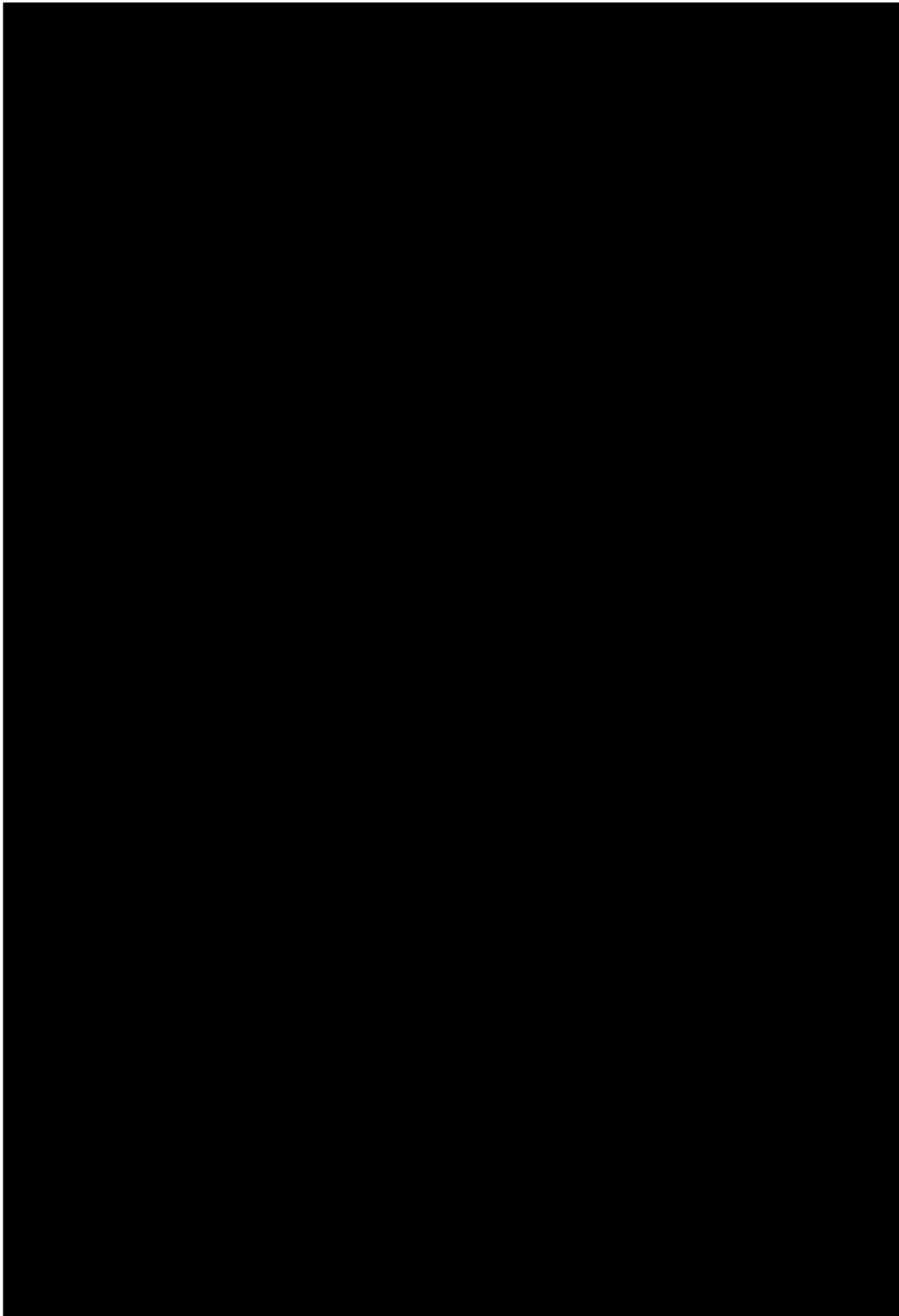
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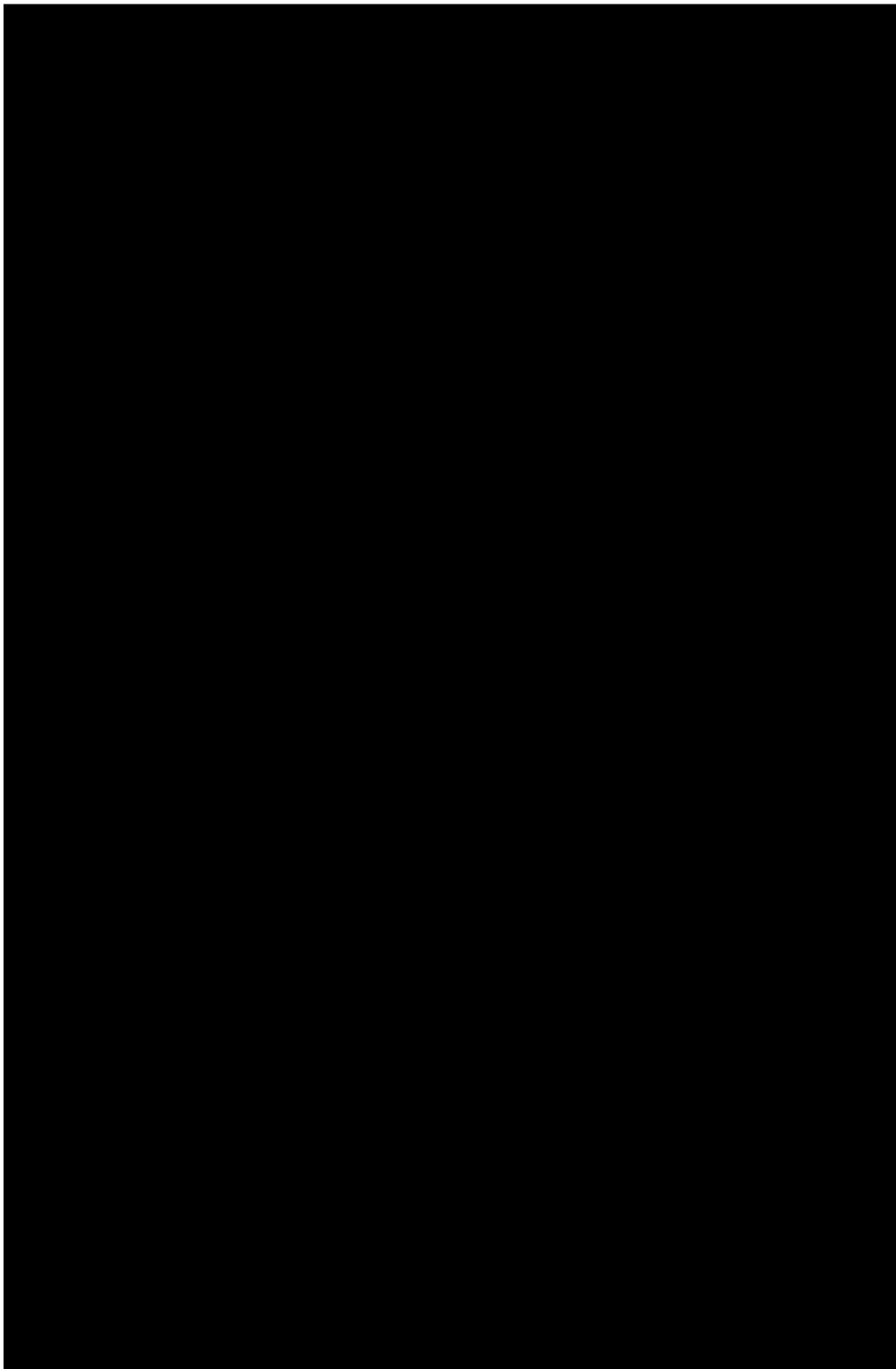
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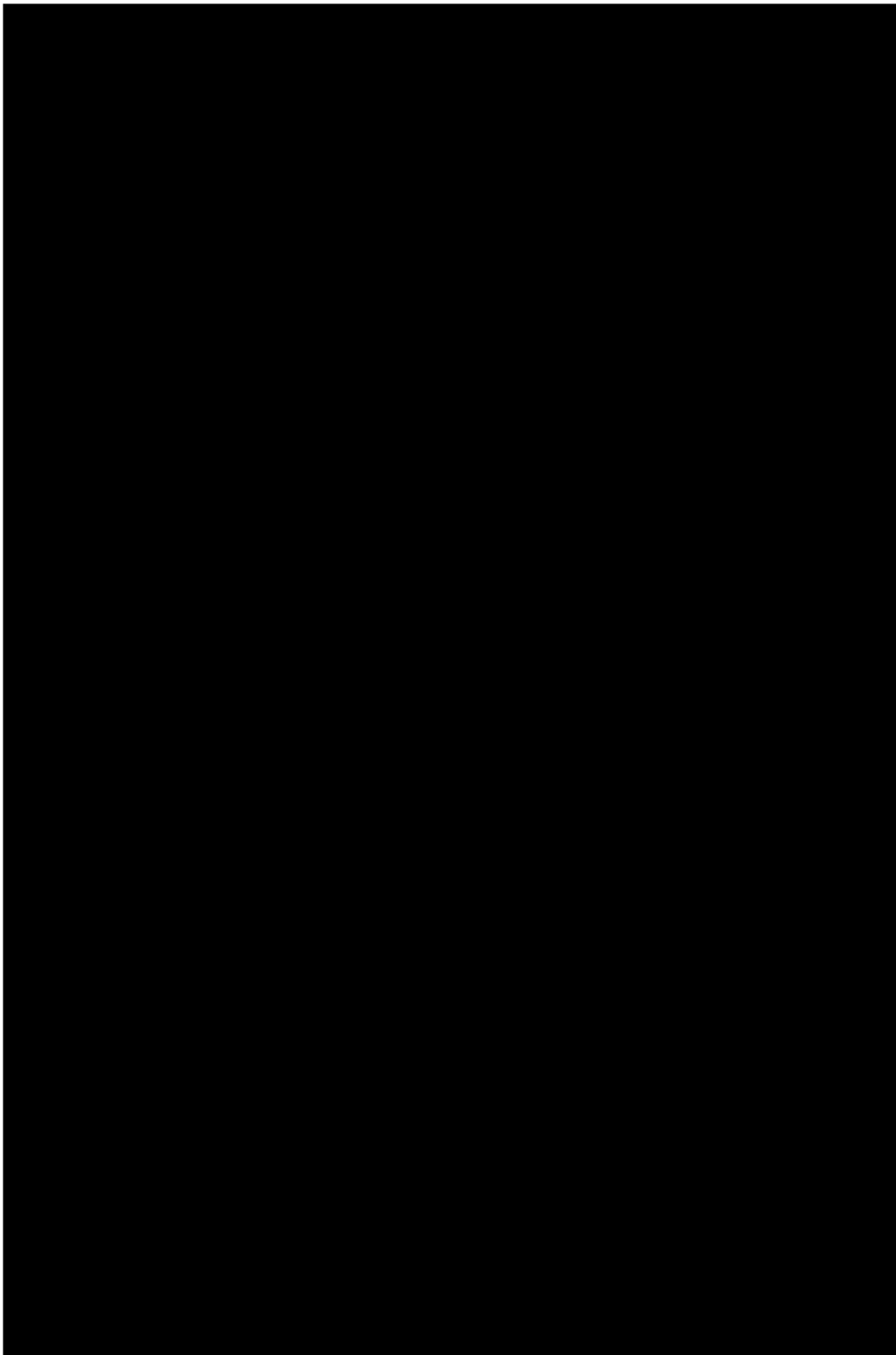
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