

**UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION
OFFICE OF THE ADMINISTRATIVE LAW JUDGES**

In the matter of

H&R BLOCK INC.,
a corporation,

HRB DIGITAL LLC,
a limited liability company, and

HRB TAX GROUP, INC.,
a corporation.

DOCKET NO. 9427

**RESPONDENTS' OPPOSITION TO COMPLAINT COUNSEL'S
MIL TO EXCLUDE SCHNELL DATA**

Complaint Counsel ("CC") seeks to exclude expert opinions analyzing empirical customer data that are central to this case and bear directly on CC's claims. CC does not argue that the opinions or underlying data are irrelevant, immaterial, or unreliable. Instead, CC claims that Mr. Schnell's analysis is not expert opinion and that the underlying data were disclosed too late. Both claims are wrong, and CC's MIL should be denied.

First, CC argues that Mr. Schnell's analysis is not proper expert testimony. Of course it is. Tables 1-28 reflect the results of complex analysis from multiple databases of consumer data. To obtain and compile this data, Mr. Schnell and Mr. Ghetler had to: confer with HRB personnel and identify, pull, and join complex data from across HRB; analyze which records and consumers to include based on the available data; query the datasets using technical query languages; analyze which data fields to use for particular queries; and employ judgment and expertise to analyze the results of those queries, including how to handle outliers and report the results in a way that fairly describes the underlying datasets in a format that is understandable by

less technical people. *See* CC Ex. 1. This is classic and proper expert testimony. *See, e.g., U.S. v. Ganier*, 468 F.3d 920, 922-26 (6th Cir. 2006) (interpreting data required expert “to apply [specialized] knowledge . . . well beyond that of the average layperson”); *In re Digital Music Antitrust Litigation*, 321 F.R.D. 64, 83-85 (S.D.N.Y. 2017) (declining to exclude expert that “performed analysis well beyond the capabilities of a typical lay person”). Indeed, CC’s own purported expert admitted he had never run a SQL query and needed to “use . . . code to deal with the data.” Ex. A. The Court need only review the native data (RX0291-RX0325) and just a few of the queries authored by Mr. Schnell’s team (Ex. B) to appreciate that specialized expertise is required.

Second, CC’s claim that the underlying data was disclosed too late fails for several reasons. To begin, the data Mr. Schnell analyzed “pertain[s] to experts” and thus was not required to be provided earlier. Rule 3.31(b)(2). Indeed, data in certain tables, such as Tables 24 and 28, only became necessary to respond to Mr. Benzarti’s analysis, which HRB did not receive until August 16. HRB could not anticipate every possible piece of data that might be responsive to the claims of CC’s experts. CC investigated HRB for five years before the complaint was filed, and was well-aware that HRB maintains numerous consumer databases. CC demonstrated that awareness (and conceded HRB had complied with its initial disclosure obligations) by subsequently requesting and receiving *specific* consumer data from different databases during discovery. CC did not argue such data should have been provided with the initial disclosures.

Moreover, CC’s argument that this data was not disclosed before the end of fact discovery is misplaced; much of it was. *See* Exs. C at 7-8 (Tables 1, 2, and 12); RX0121 and Ex. D at 7-18 (Tables 13-17, 19, 25-27). In fact, some of this data was analyzed by CC’s own

analyst Megan Baburek, and both the compiled data and her analysis of it is on CC's exhibit list. PX042-PX043.

The remaining data (in Tables 3-11, 18, 20-24 and 28) was not previously disclosed because in addition to pertaining to experts, CC did not seek it during fact discovery. CC suggests that some of the data would be responsive to Rog 1 and RFP 9. But CC voluntarily agreed to narrow Rog 1, and HRB asserted numerous valid objections in response to RFP 9. CC Ex. 11; *compare* Ex. D at 7 with CC Ex. 9 at 5. HRB provided extensive aggregate data in response to CC's requests, CC never moved to compel further responses, and none of the data in Mr. Schnell's analysis is inconsistent with HRB's objections. Importantly, Rog 1, as narrowed, requested only "[t]he total number of minutes the person spent in the Paid Commercial Tax Product *before* Downgrading." Ex. D at 7. The requests made by CC were intentional; over the course of its five-year investigation, CC didn't ask for the data it now seeks to exclude because it reveals numerous, inescapable flaws in their alleged claims.

Mr. Schnell's analysis is proper expert testimony analyzing complex, disparate consumer data that CC either already received or never requested. CC's attempt to prevent HRB from using this highly relevant, reliable analysis should be denied.

PUBLIC

Dated: October 10, 2024

Respectfully submitted,

By: /s/ Joseph J. Boylan

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CERTIFICATE OF SERVICE

I hereby certify that on October 10, 2024, I caused to be delivered via email a copy of Respondents' Opposition to Complaint Counsel's MIL to Exclude Schnell Data to:

The Honorable Jay L. Himes
Administrative Law Judge
600 Pennsylvania Ave., NW
Suite H-110
Washington, DC 20580

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Office of the Secretary
Federal Trade Commission
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I further certify that on October 10, 2024, I caused the foregoing document to be served via email to:

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Counsel Supporting the Complaint

Dated: October 10, 2024

Respectfully submitted,

By: /s/ Joseph J. Boylan
Joseph J. Boylan

*Counsel for H&R Block, Inc., HRB
Digital LLC, & HRB Tax Group, Inc.*

Exhibit A

Deposition of Youssef Benzarti, PH. D., marked "confidential" by Complaint Counsel.

CONFIDENTIAL

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UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION

IN THE MATTER OF:)
)
H&R BLOCK INC.,)
a corporation,)
)
HRB DIGITAL LLC,) Docket No.
a limited liability) 9427
company, and)
)
HRB TAX GROUP, INC.,)
a corporation.)
-----)

***** CONFIDENTIAL *****

Wednesday, September 18, 2024
9:03 a.m.

Videotaped Deposition of YOUSSEF
BENZARTI, PH.D., held at the offices of Jones
Day, 51 Louisiana Avenue NW, Washington, DC,
before Stacey L. Daywalt, a Court Reporter and
Notary Public of the District of Columbia.

CONFIDENTIAL

Page 2

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2

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A P P E A R A N C E S (CONTINUED):

ALSO PRESENT:

DANIEL MURDOCK, ESQ., H&R Block

(Via Zoom)

ORSON BRAITHWAITE, Videographer

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WITNESS	EXAMINATION BY	PAGE
YOUSSEF BENZARTI, PH.D.	BY MS. SNYDER	7

-----EXHIBITS-----

EXHIBITS	PAGE	LINE
Exhibit 1 Expert Report of Youssef Benzarti	14	21
Exhibit 2 Expert Rebuttal Report of Youssef Benzarti	14	23
Exhibit 3 StoneTurn Bio of Dr. Benzarti	49	1
Exhibit 4 Complaint	100	17
Exhibit 5 How Taxing is Tax Filing? Using Revealed Preferences to Estimate Compliance Costs	130	8
Exhibit 6 How do I change my account or downgrade my H&R Block Free online?	155	13
Exhibit 7 Taxpayer Compliance Burden	171	1
Exhibit 6B Exhibit 6 with URL information	188	22
Exhibit 8 Tax Year 2022 1040 instructions	190	17

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1	EXHIBITS (CONTINUED)	PAGE	
2	Exhibit 9		
	H&R Block Free Federal Forms Tax		
3	Year 2023	223	3
4	Exhibit 10		
	H&R Block Deluxe Federal Forms Tax		
5	Year 2023	223	6
6	Exhibit 11		
	How Taxing is Tax Filing? Using		
7	Revealed Preferences to Estimate		
	Compliance Costs	242	3
8			
	Exhibit 12		
9	How Taxing is Tax Filing? Leaving		
	Money on the Table because of		
10	Hassle Costs	254	7
11	Exhibit 13		
	Amended Expert Report of Ron		
12	Schnell	283	22

INSTRUCTIONS NOT TO ANSWER:

15	PAGE	LINE
16	139	20
17	162	22
18	220	6

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Page 6

1 THE VIDEOGRAPHER: Good morning. We
2 are going on the record at 9:03 a.m. on
3 September 18th, 2024.

4 Please note that the microphones are
5 sensitive and may pick up whispering and
6 private conversations. Please mute your phones
7 at this time. Audio and video recording will
8 continue to take place unless all parties agree
9 to go off the record.

10 This is Media Unit 1 of the
11 video-recorded deposition of Dr. Youssef
12 Benzarti in the matter of H&R Block Inc. filed
13 before the Federal Trade Commission, Docket
14 No. 9427.

15 My name is Orson Braithwaite
16 representing Veritext Legal Solutions. I'm the
17 videographer.

18 The court reporter is Stacey Daywalt
19 from the firm Veritext Legal Solutions.

20 Counsel will now state their
21 appearances and affiliations for the record.

22 (Counsel identify themselves on the
23 record.)

24 THE VIDEOGRAPHER: Thank you.

25 Will the court reporter please swear

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Page 7

1 in the witness.

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YOUSSEF BENZARTI, PH.D.,

4

called as a witness, having been duly sworn by

5

a Notary Public, was examined and testified as

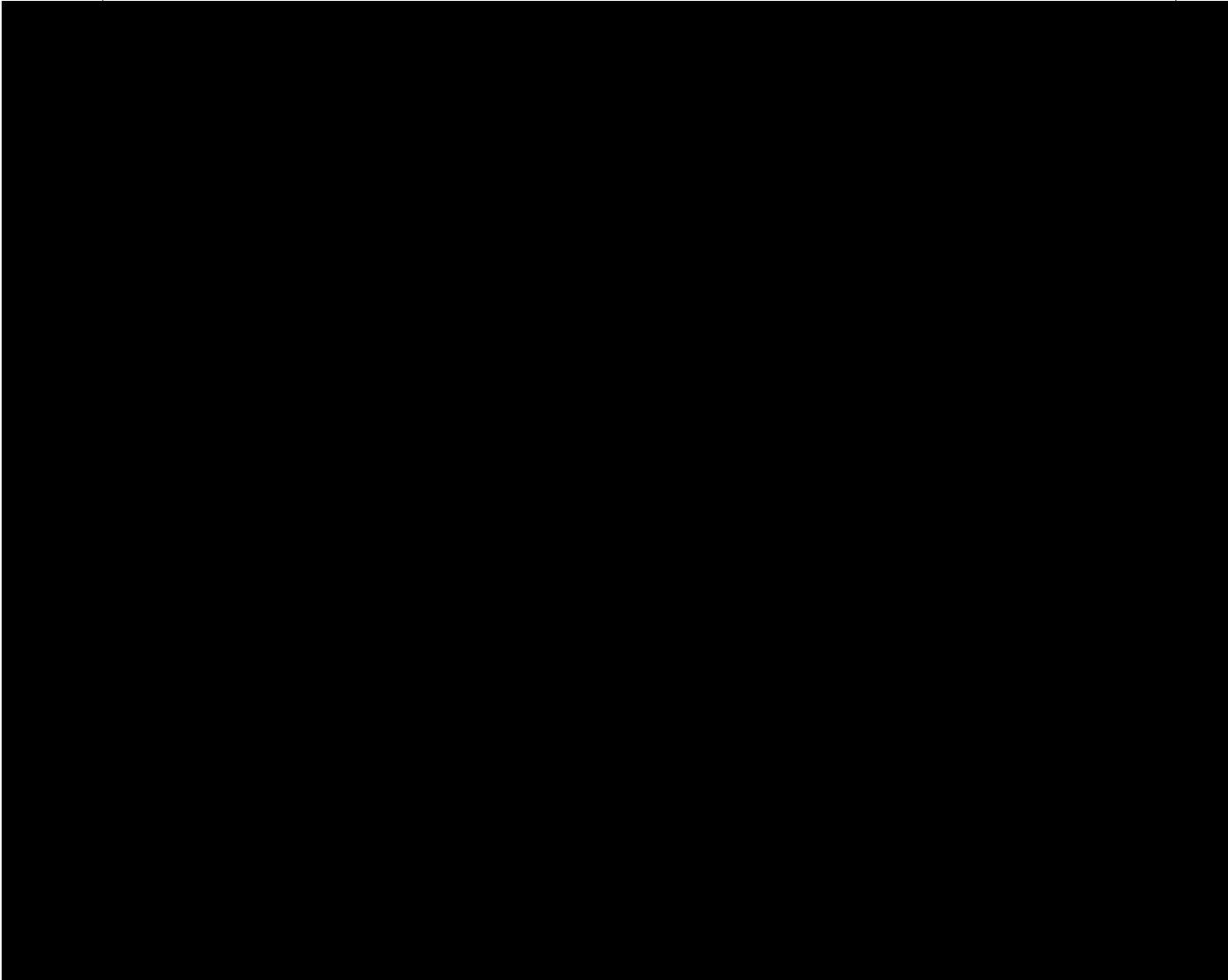
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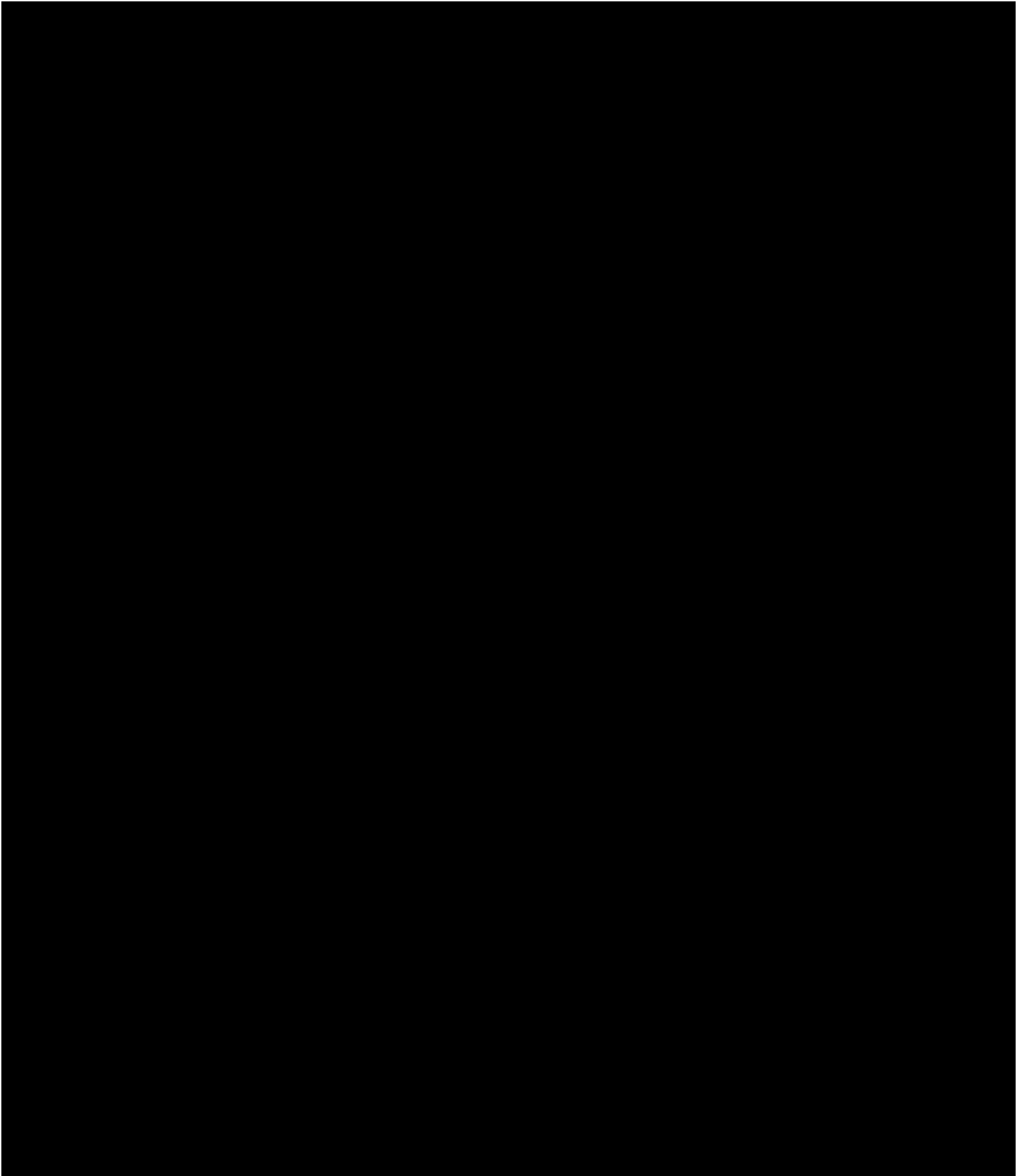
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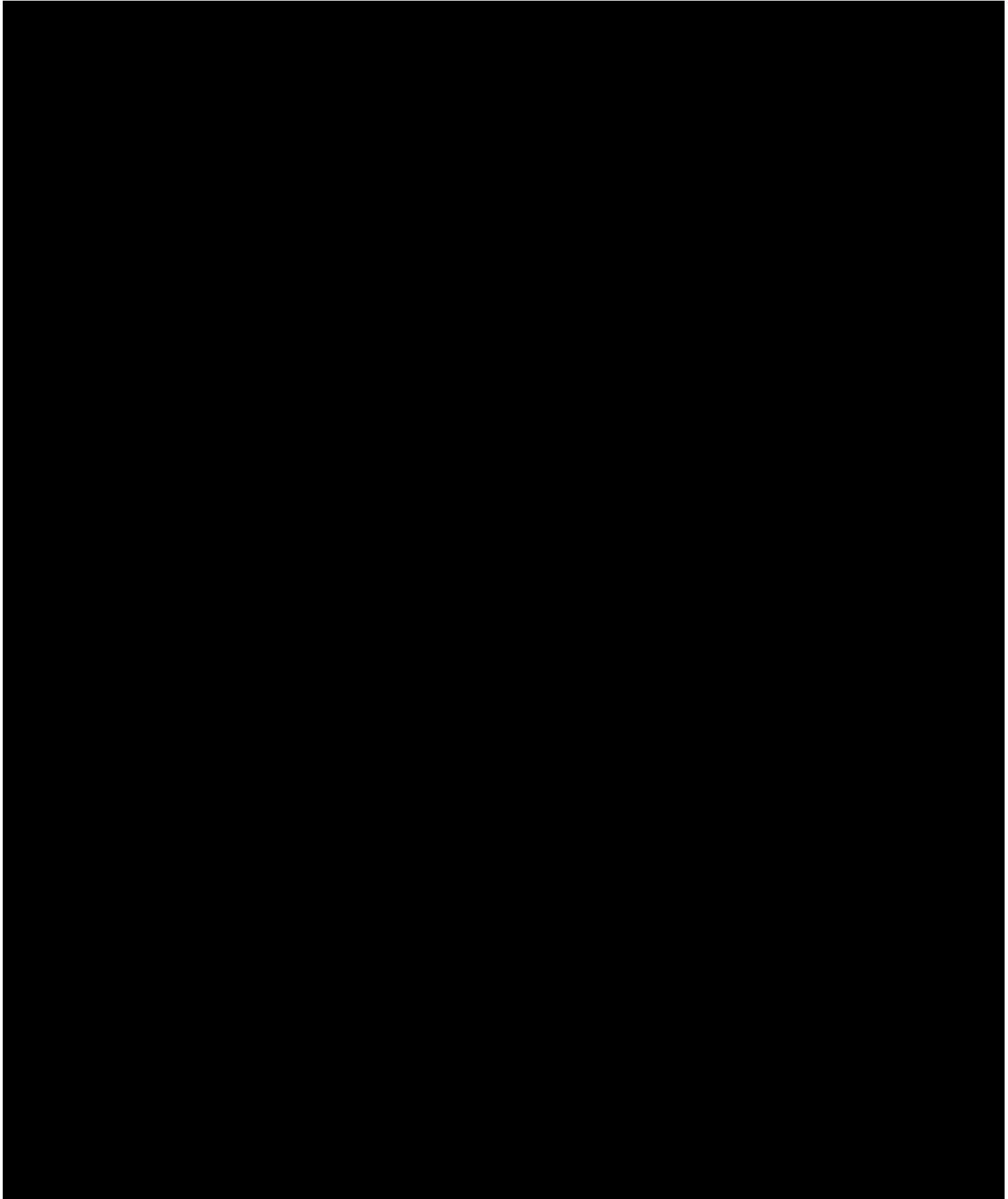
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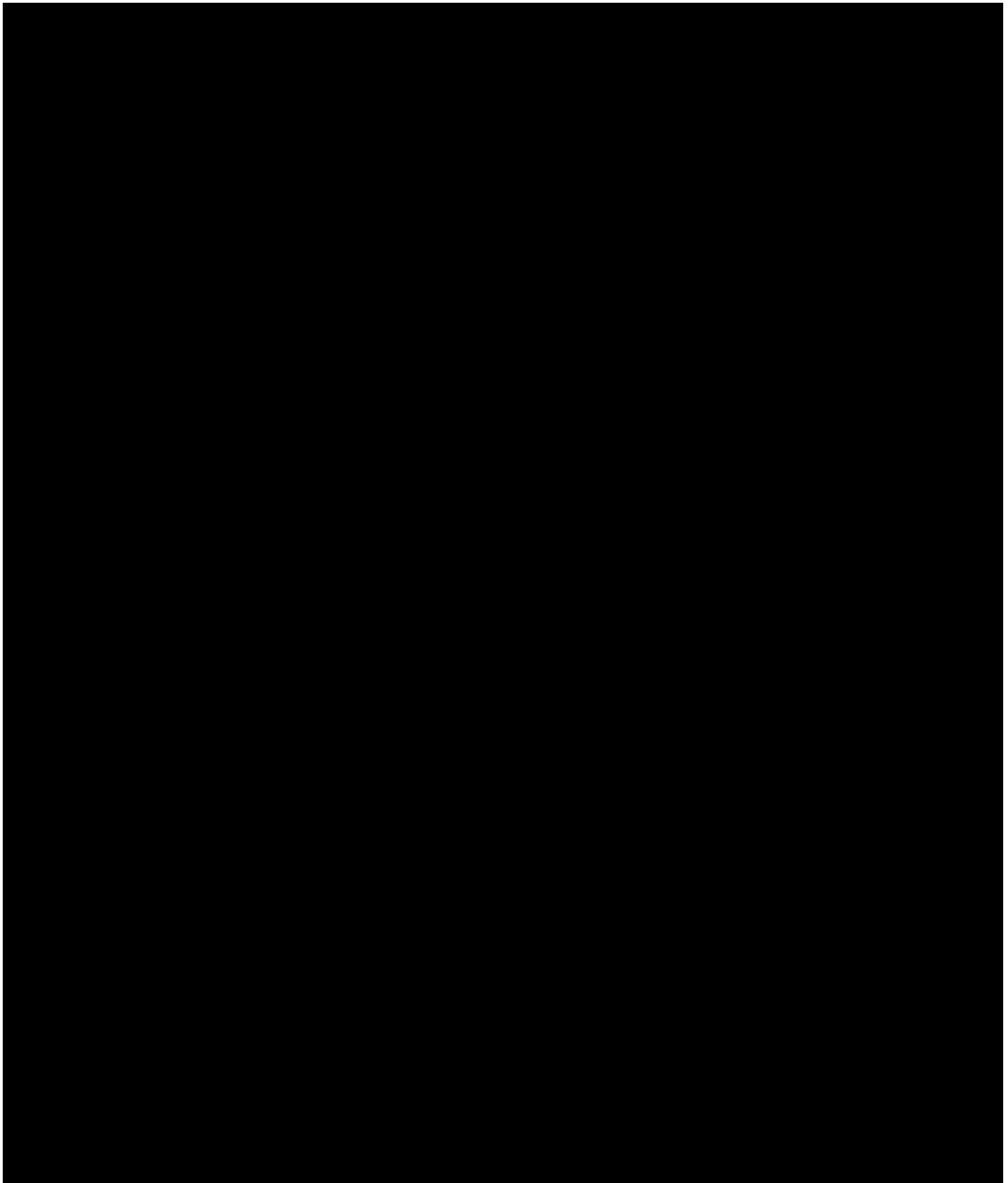
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EXAMINATION BY









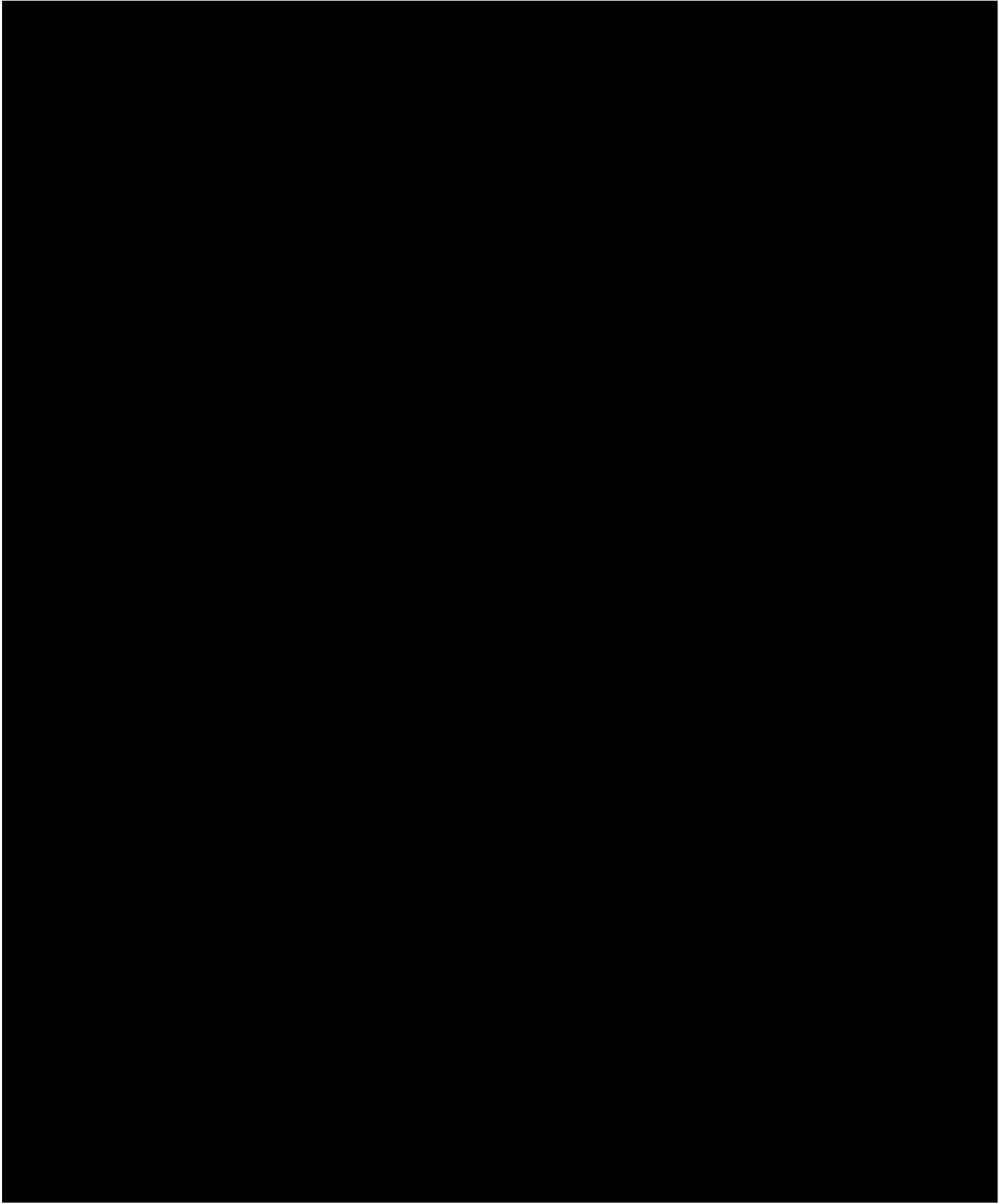
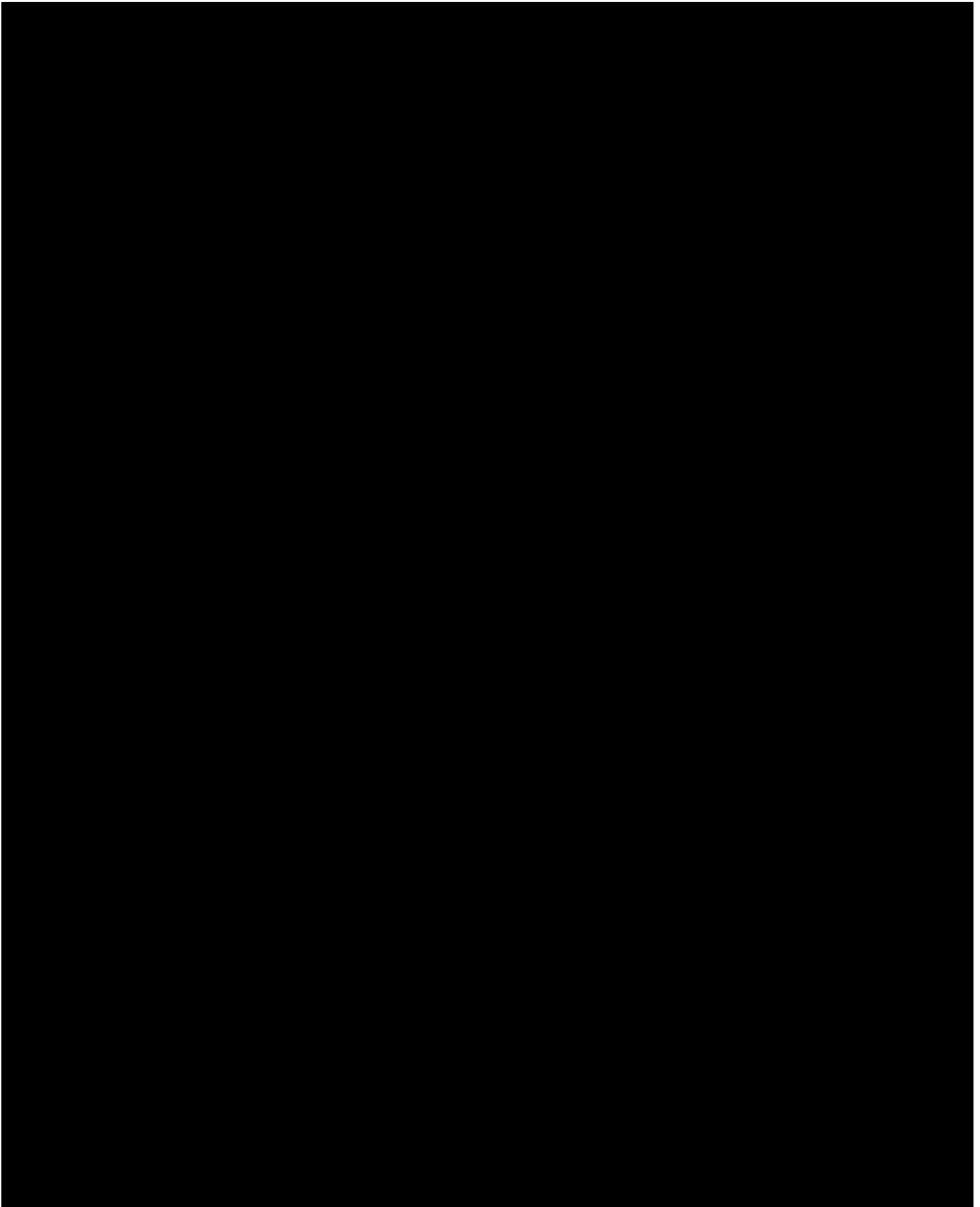
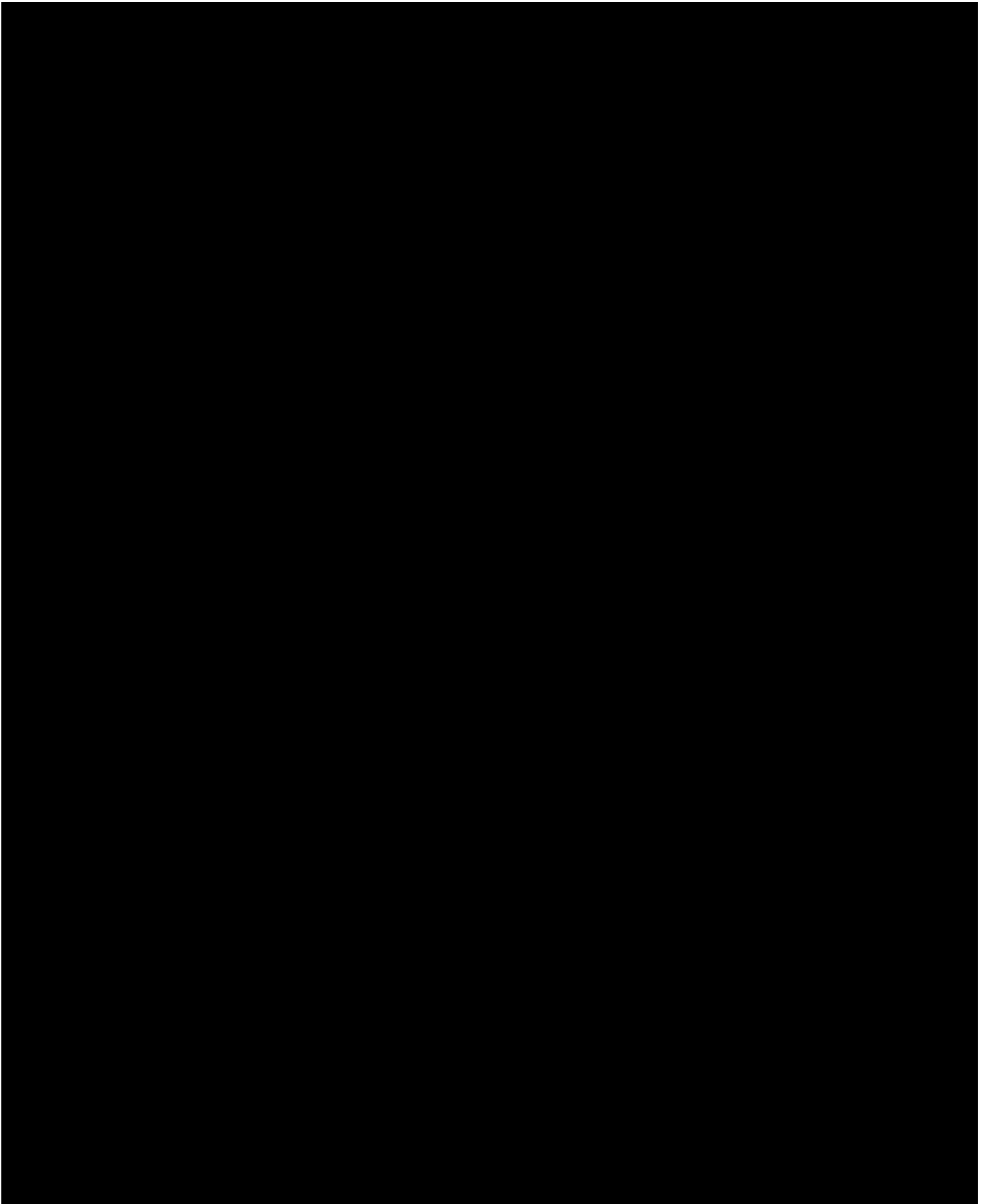


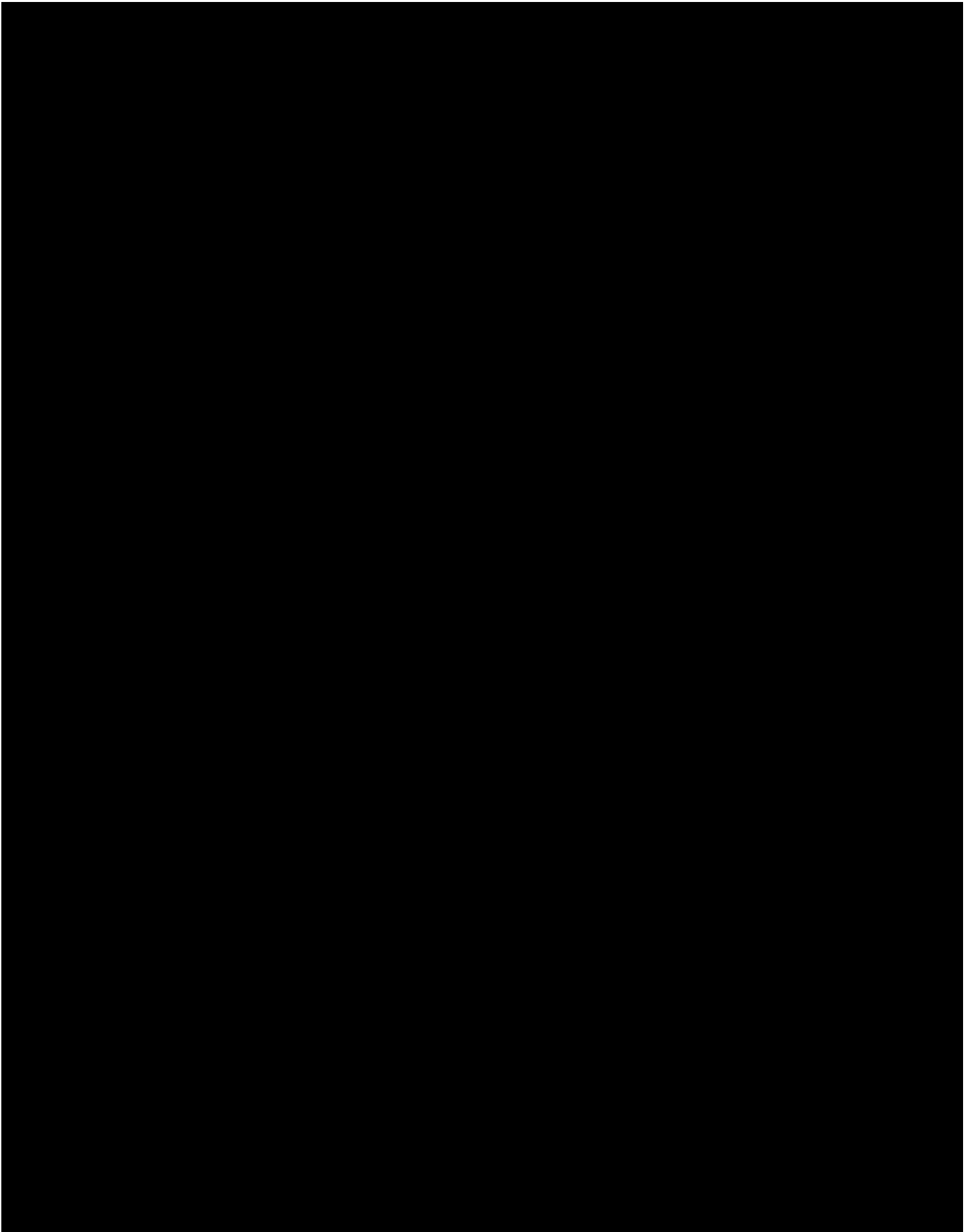
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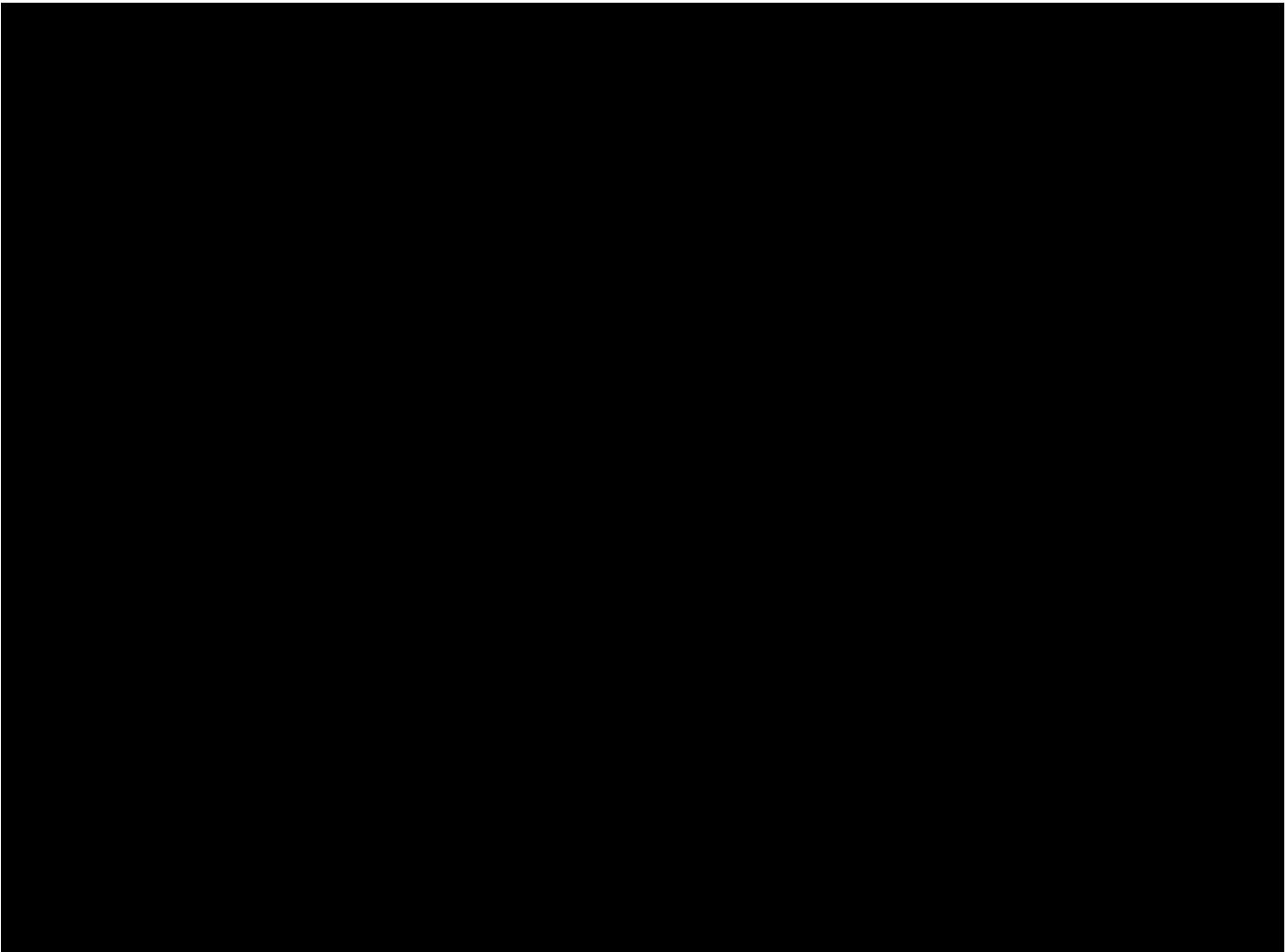
Pursuant to 16 C.F.R. § 3.45(e), the following exhibit contains information protected by the February 26, 2024 Protective Order Governing Confidential Material. Should the Commission intend to disclose in a final decision any of the redacted information in this document, please contact:

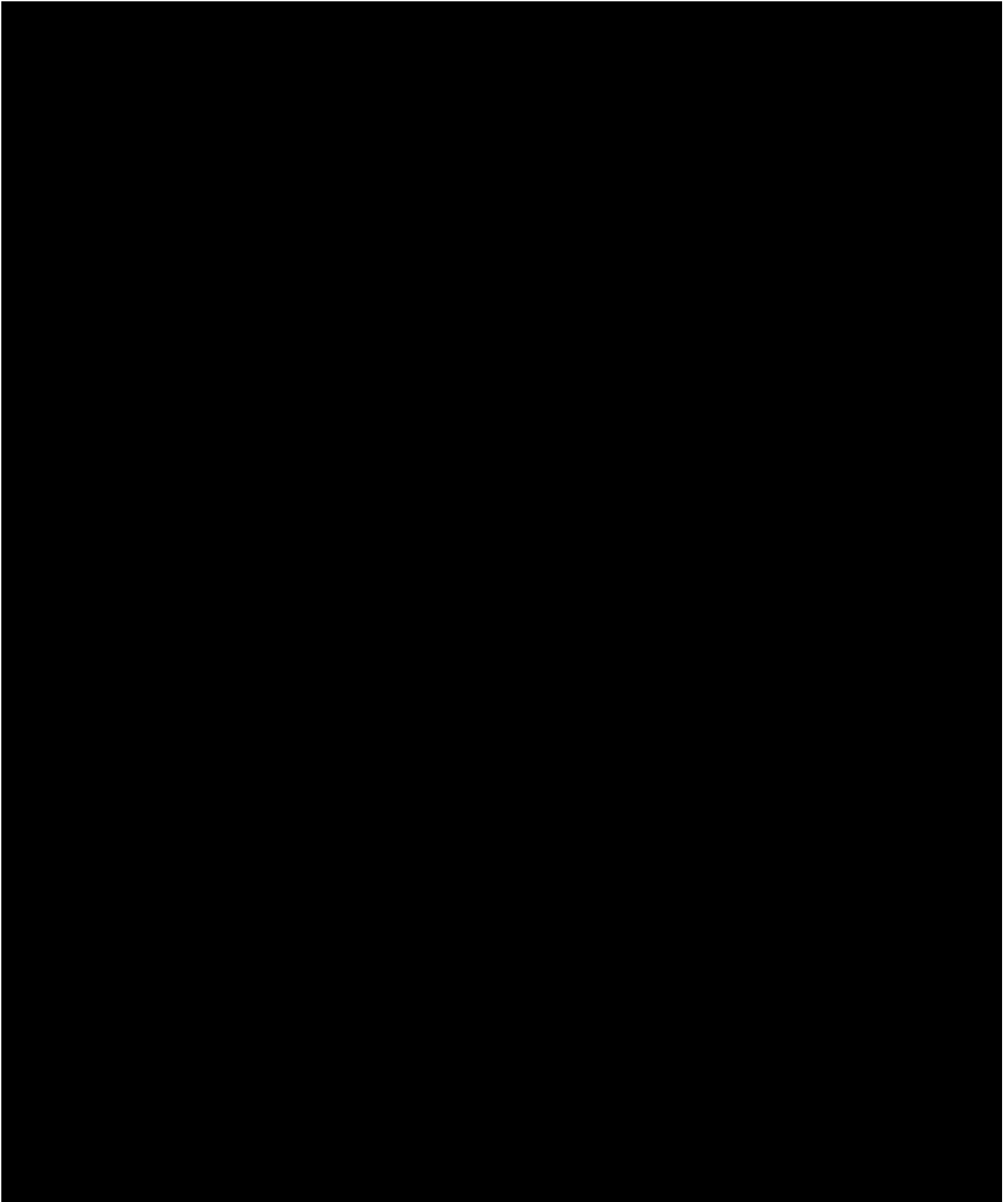
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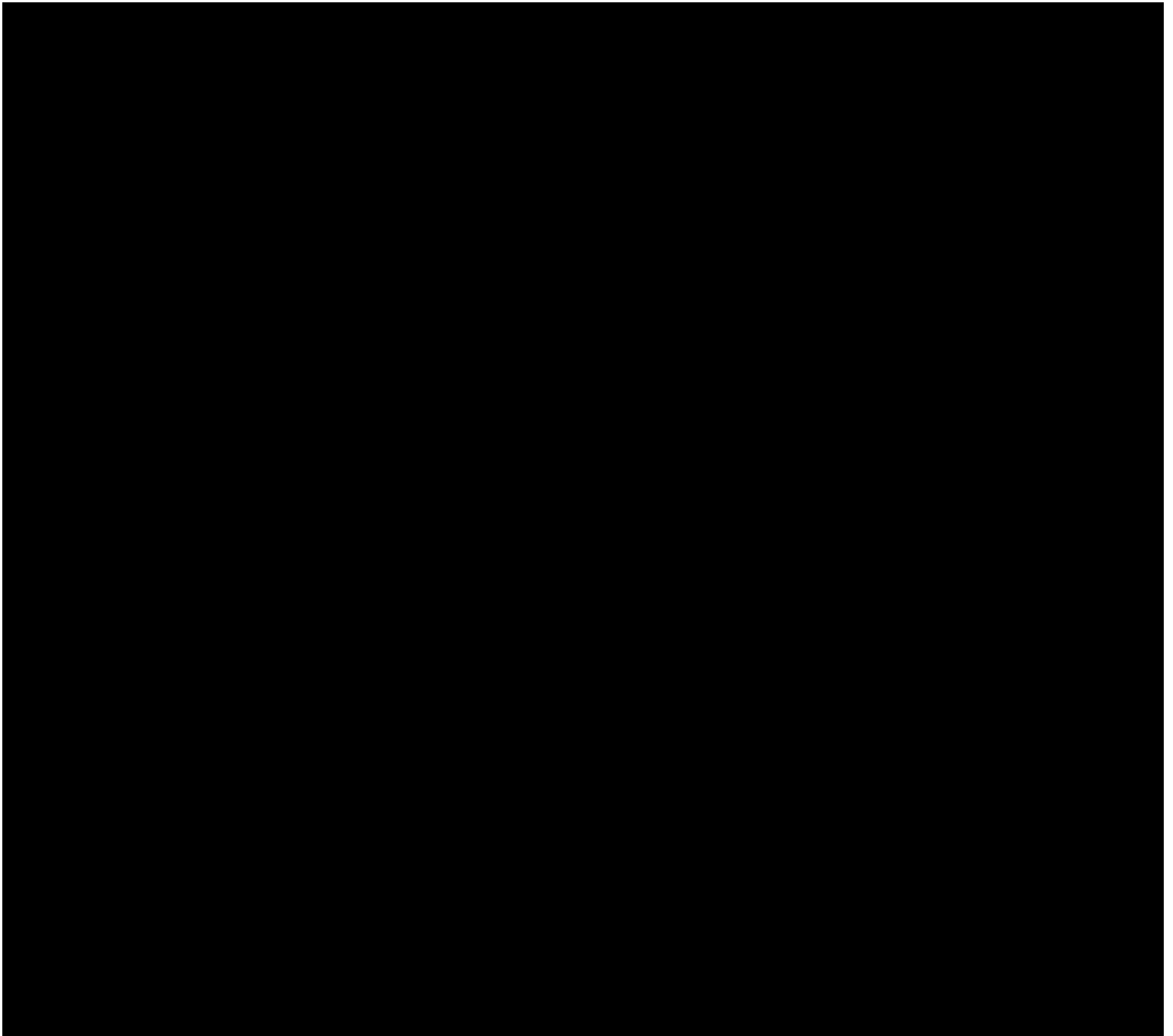












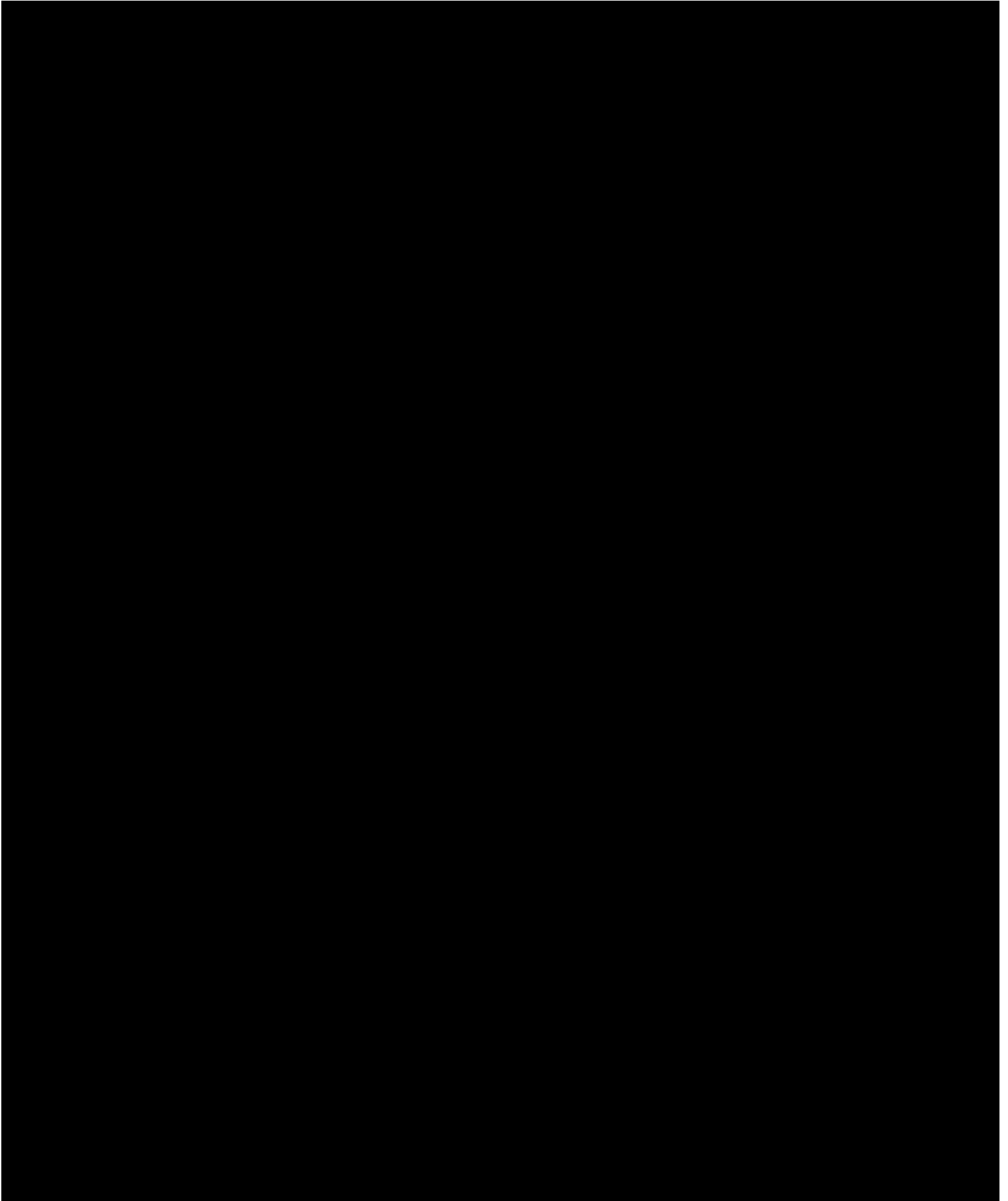




Exhibit C

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**UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION**

In the matter of

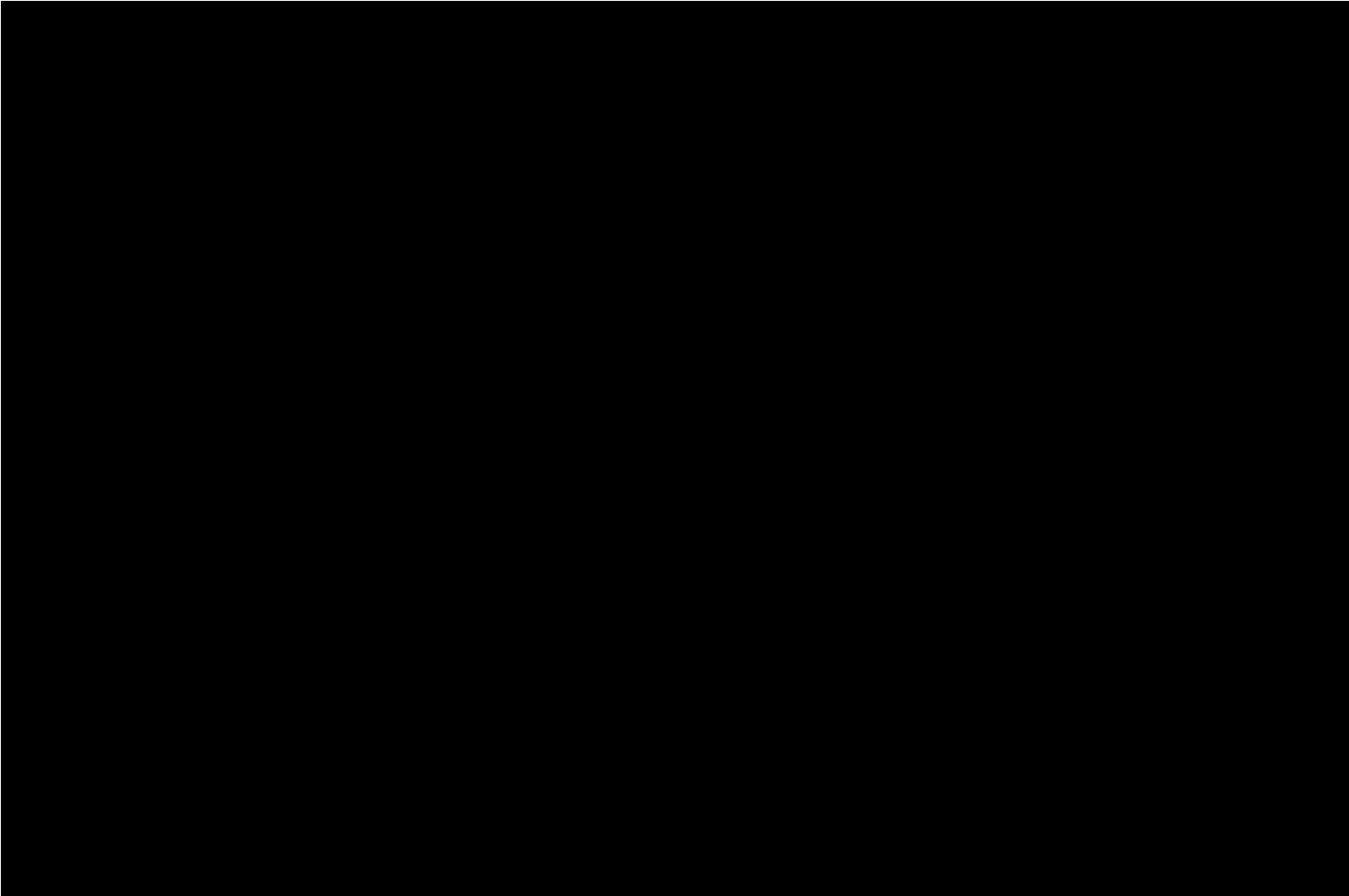
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a corporation,

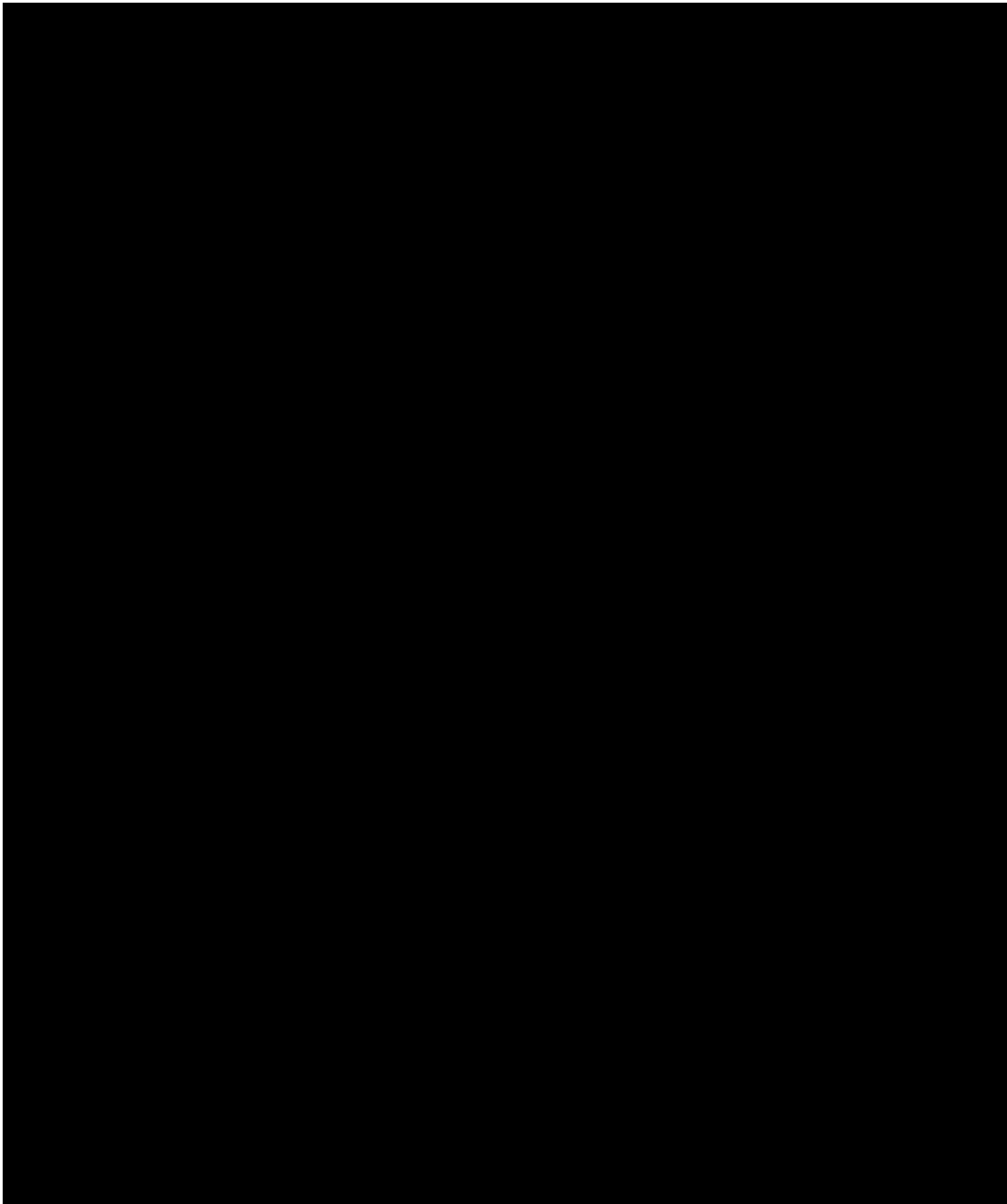
HRB DIGITAL LLC,
a limited liability company, and

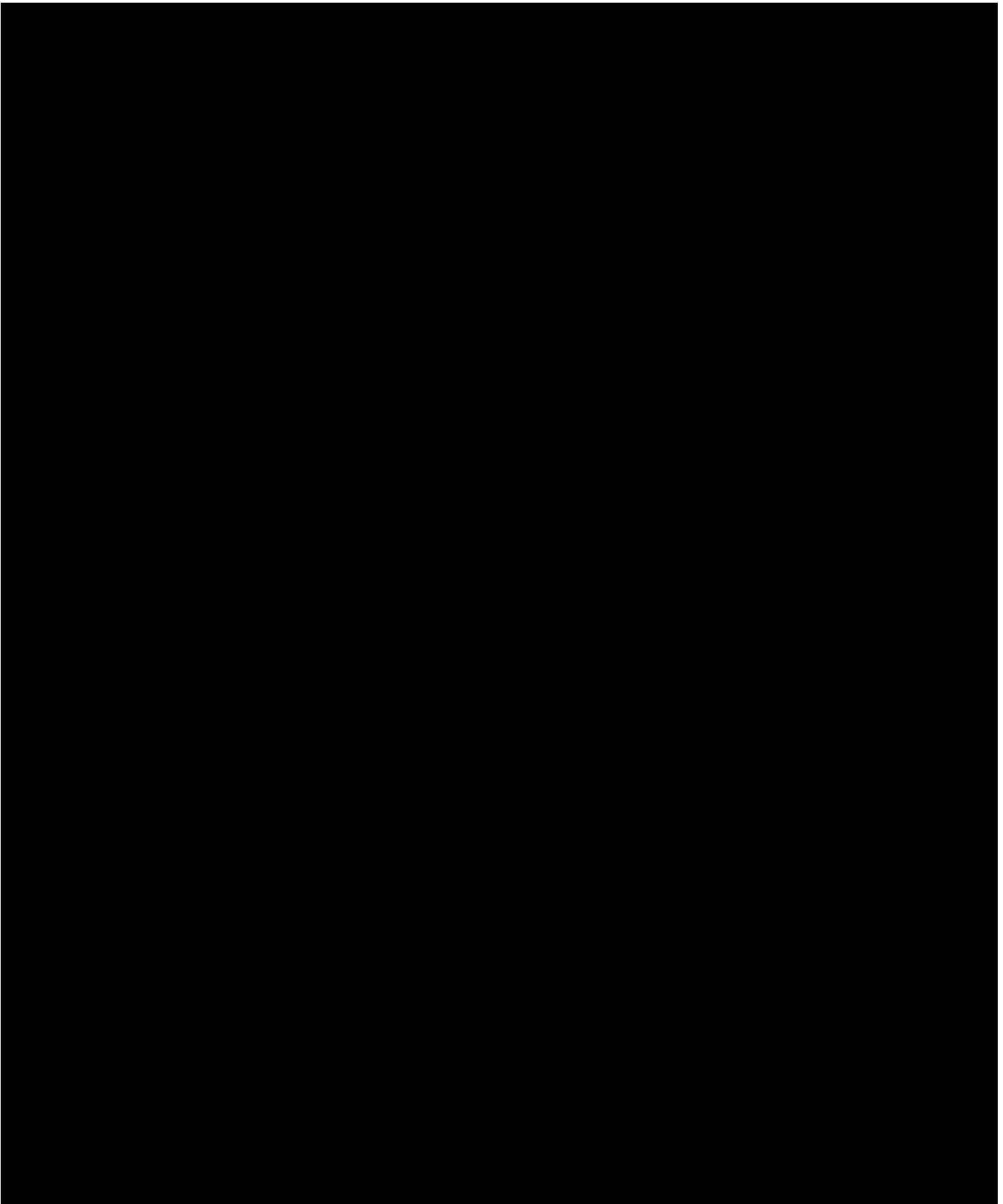
HRB TAX GROUP, INC.,
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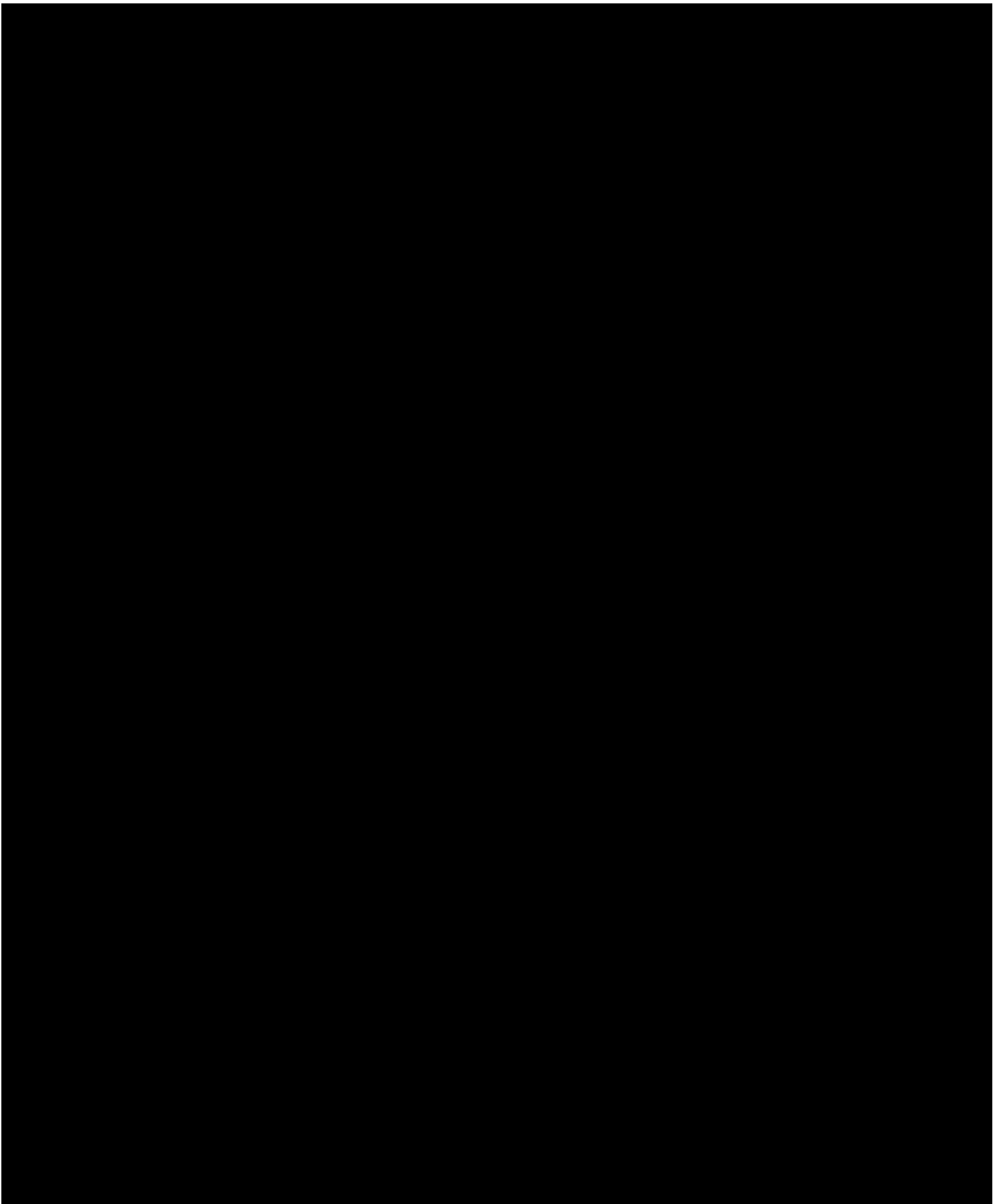
DOCKET NO. 9427

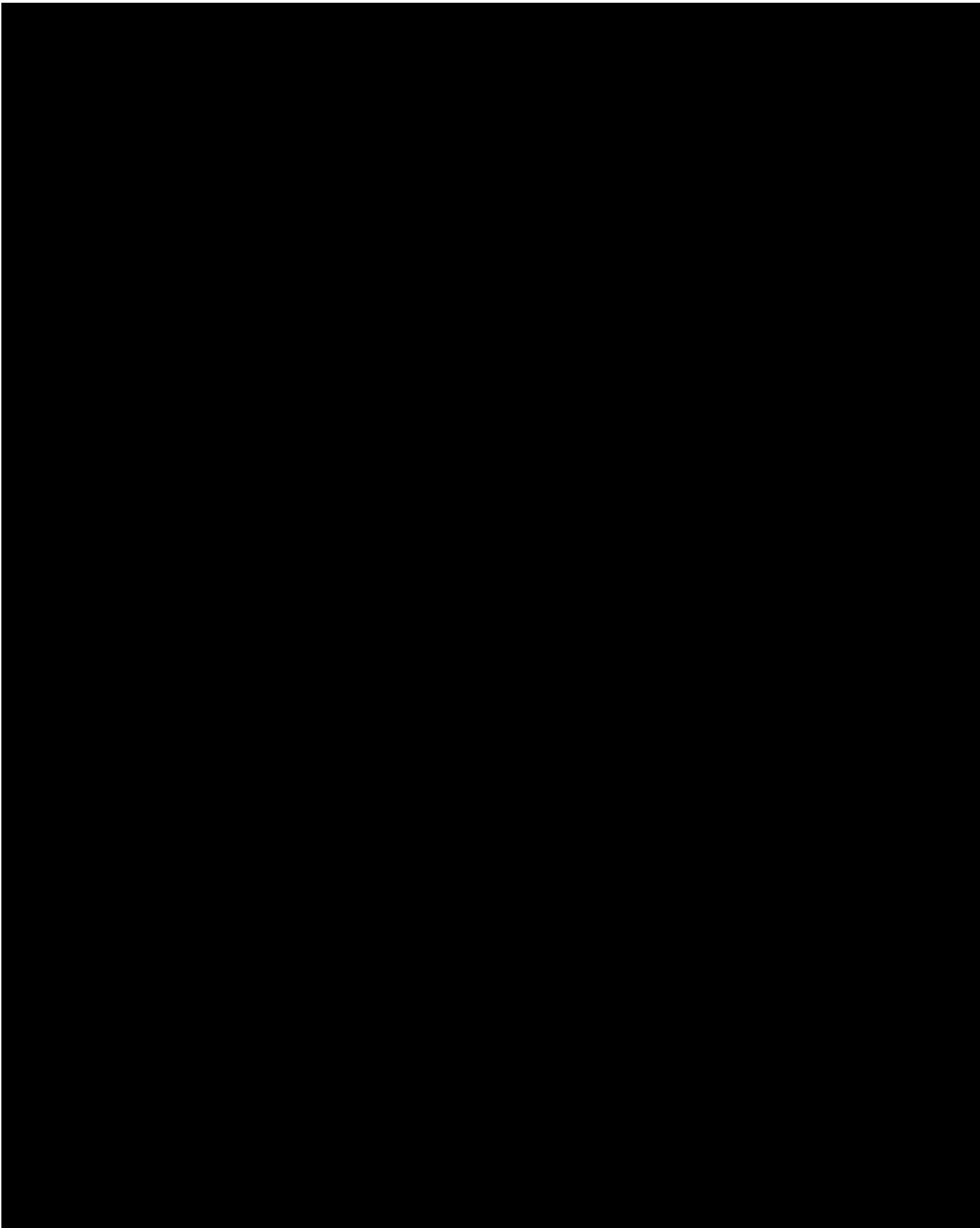
RESPONDENTS H&R BLOCK, INC., HRB DIGITAL LLC, AND HRB TAX GROUP, INC.'S RESPONSES AND OBJECTIONS TO SECOND SET OF INTERROGATORIES

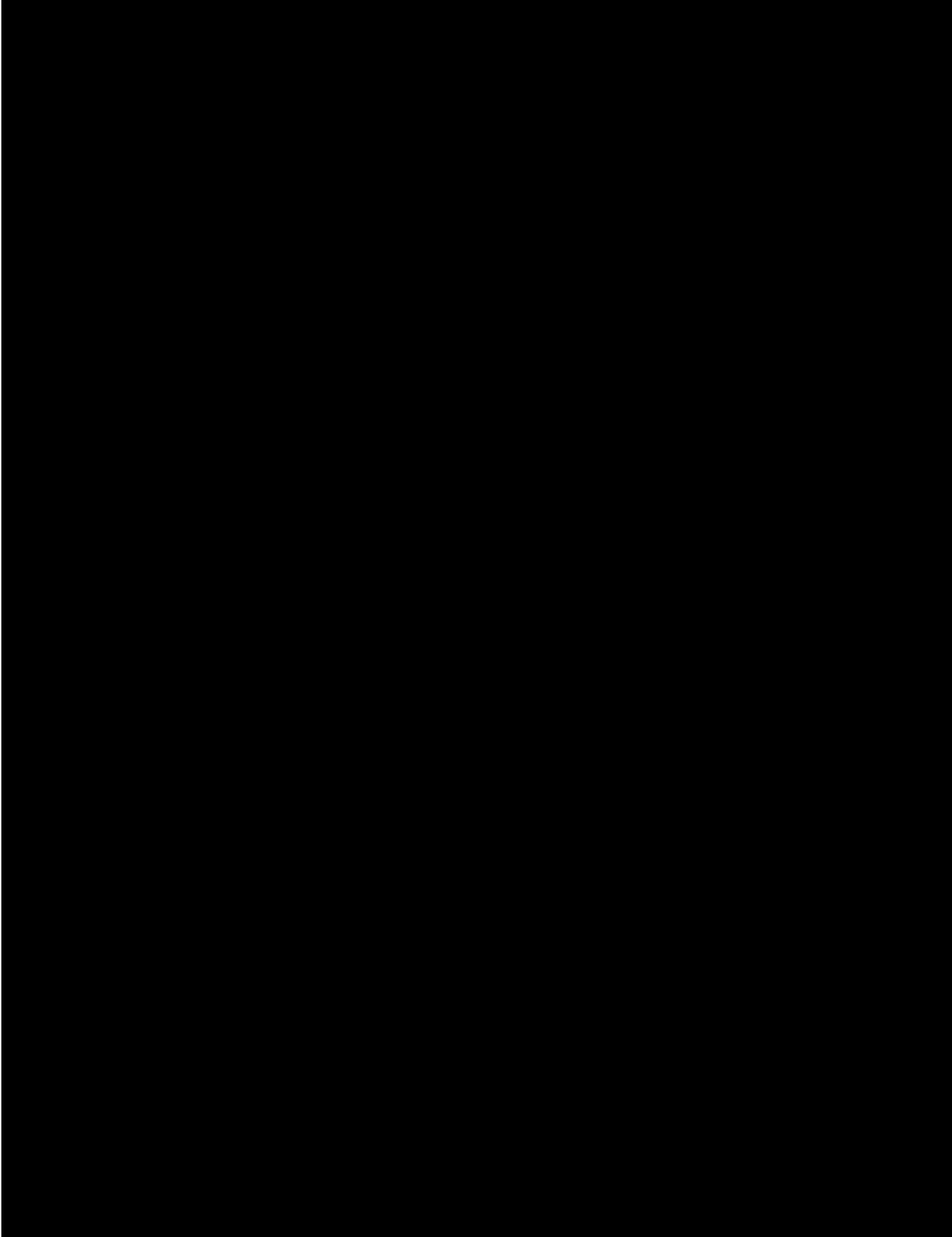


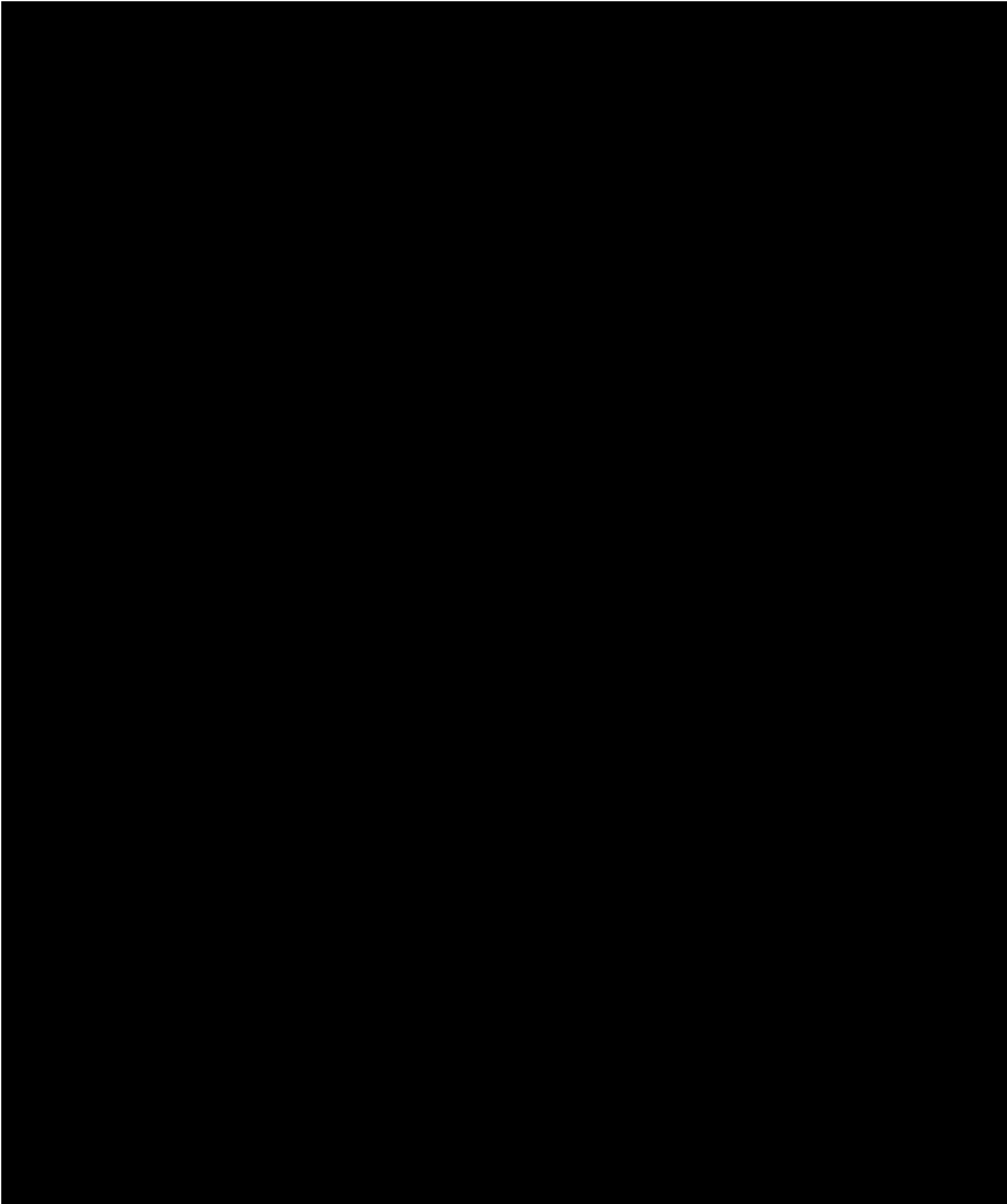


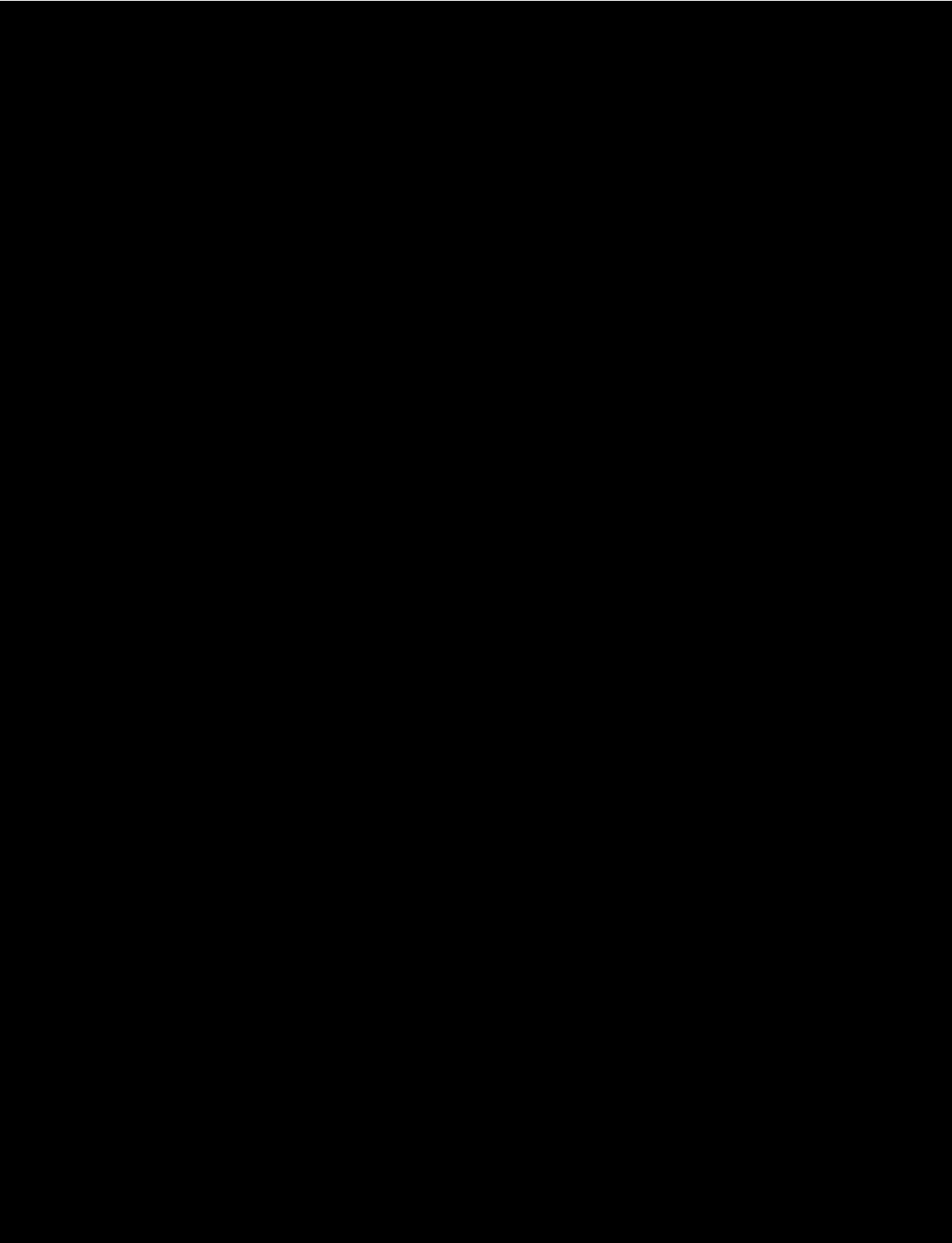


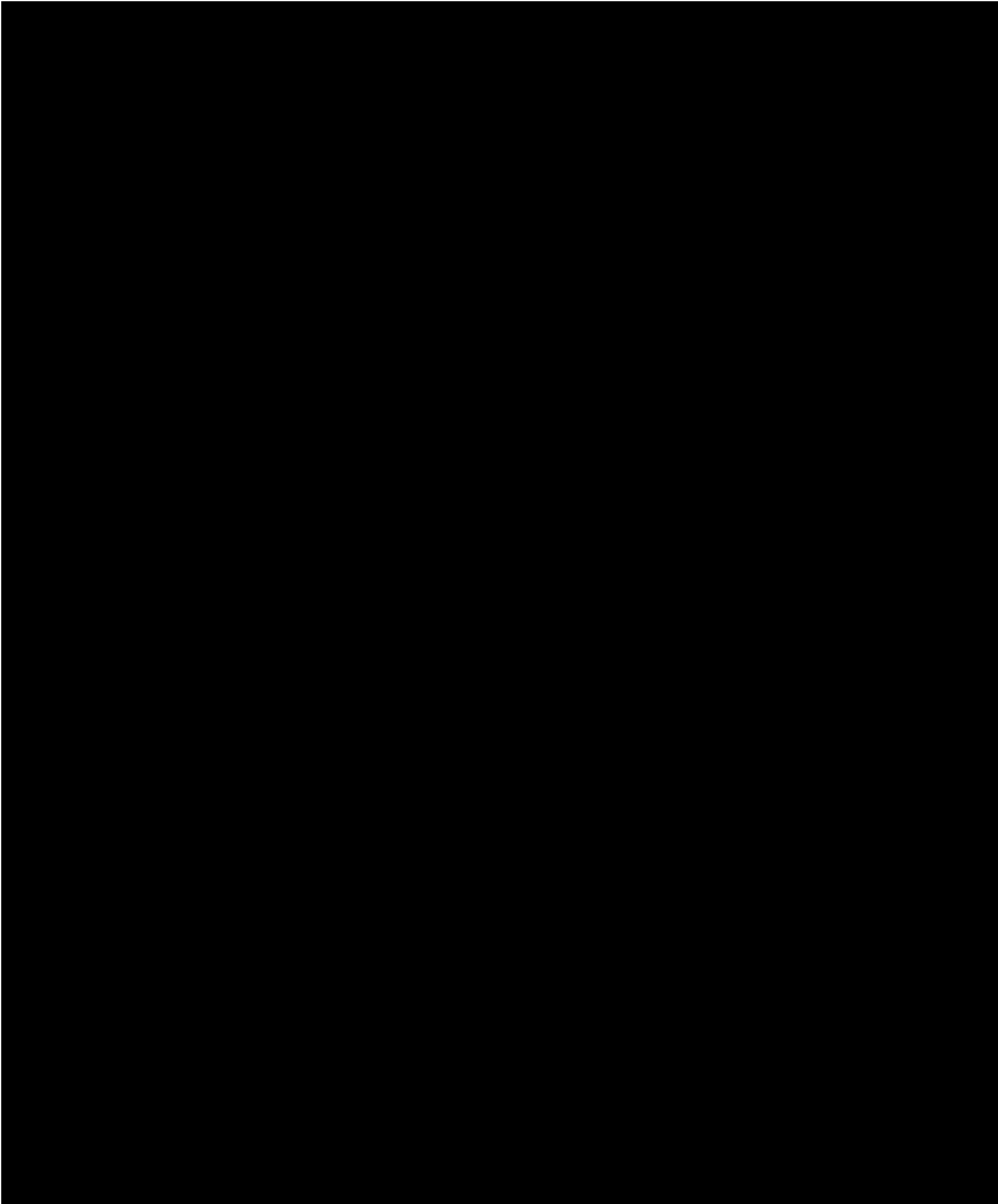


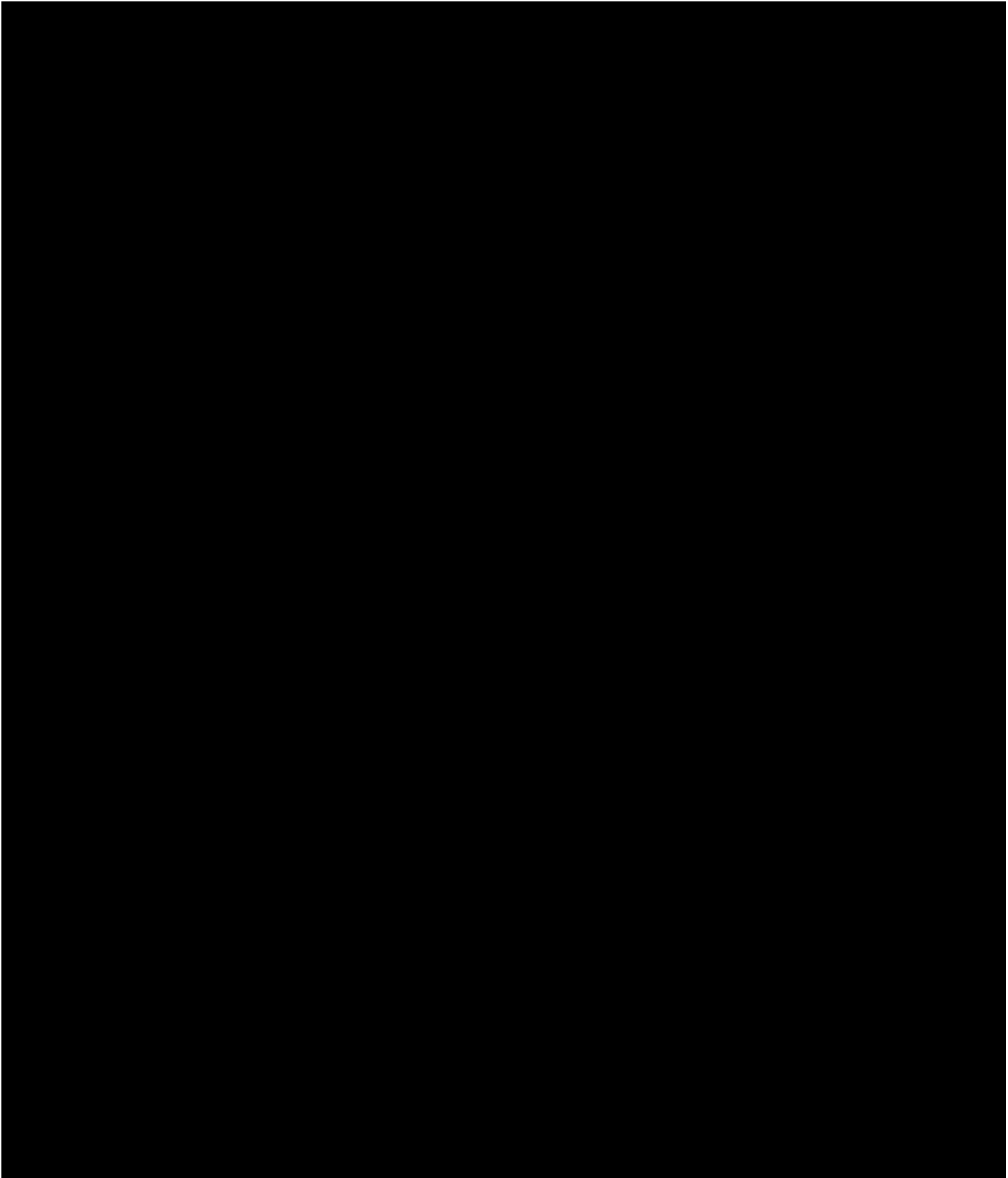


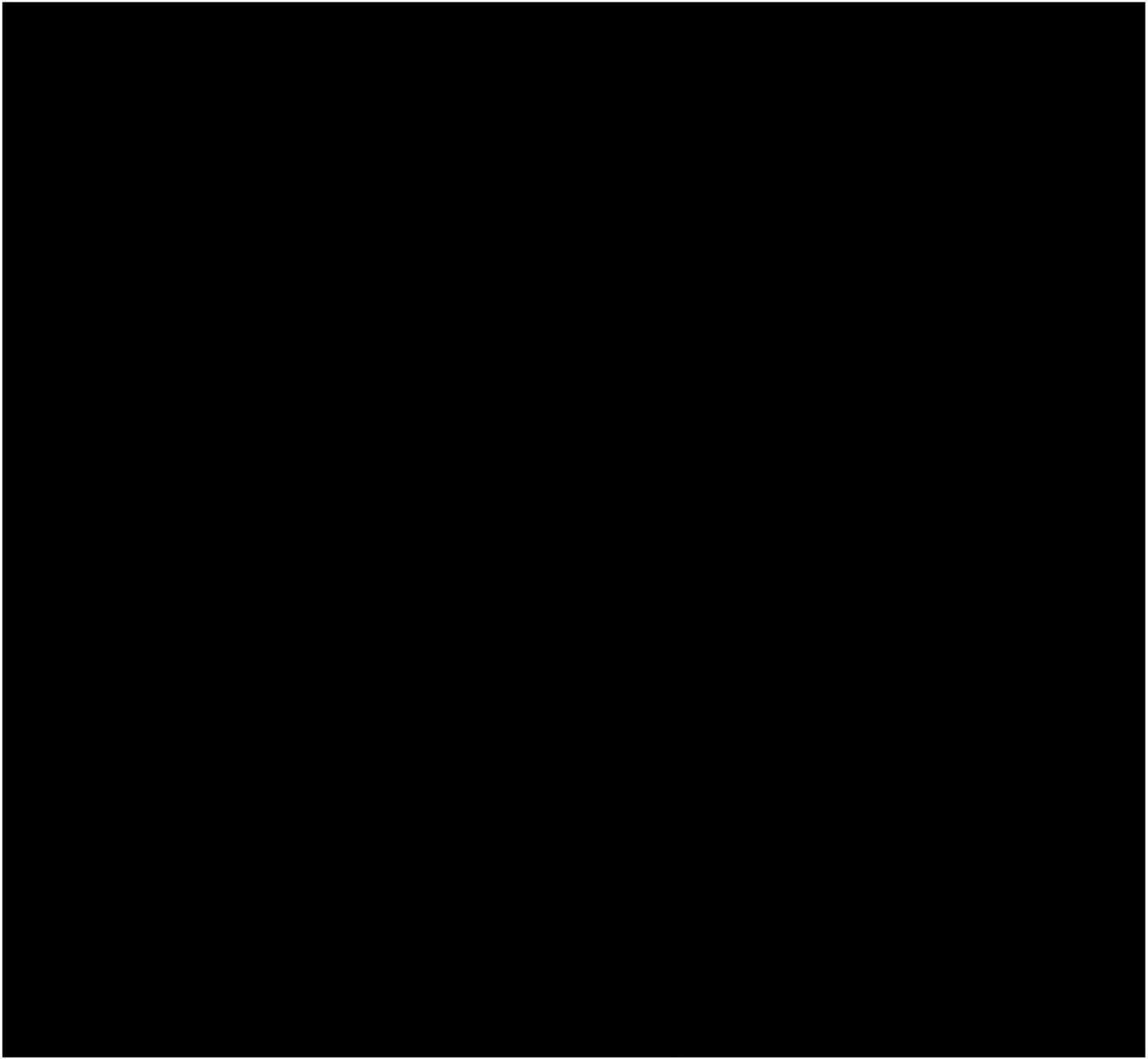


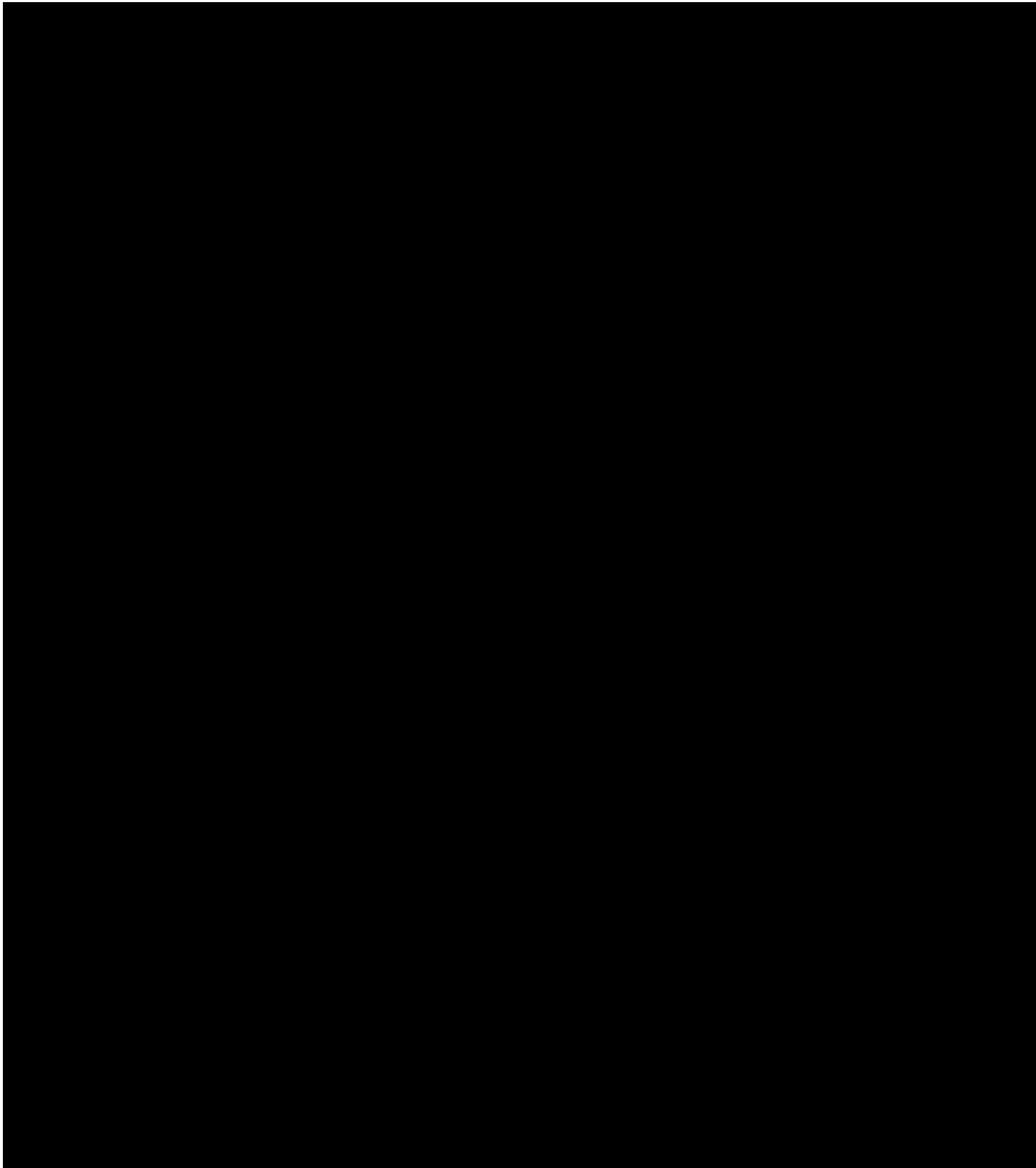












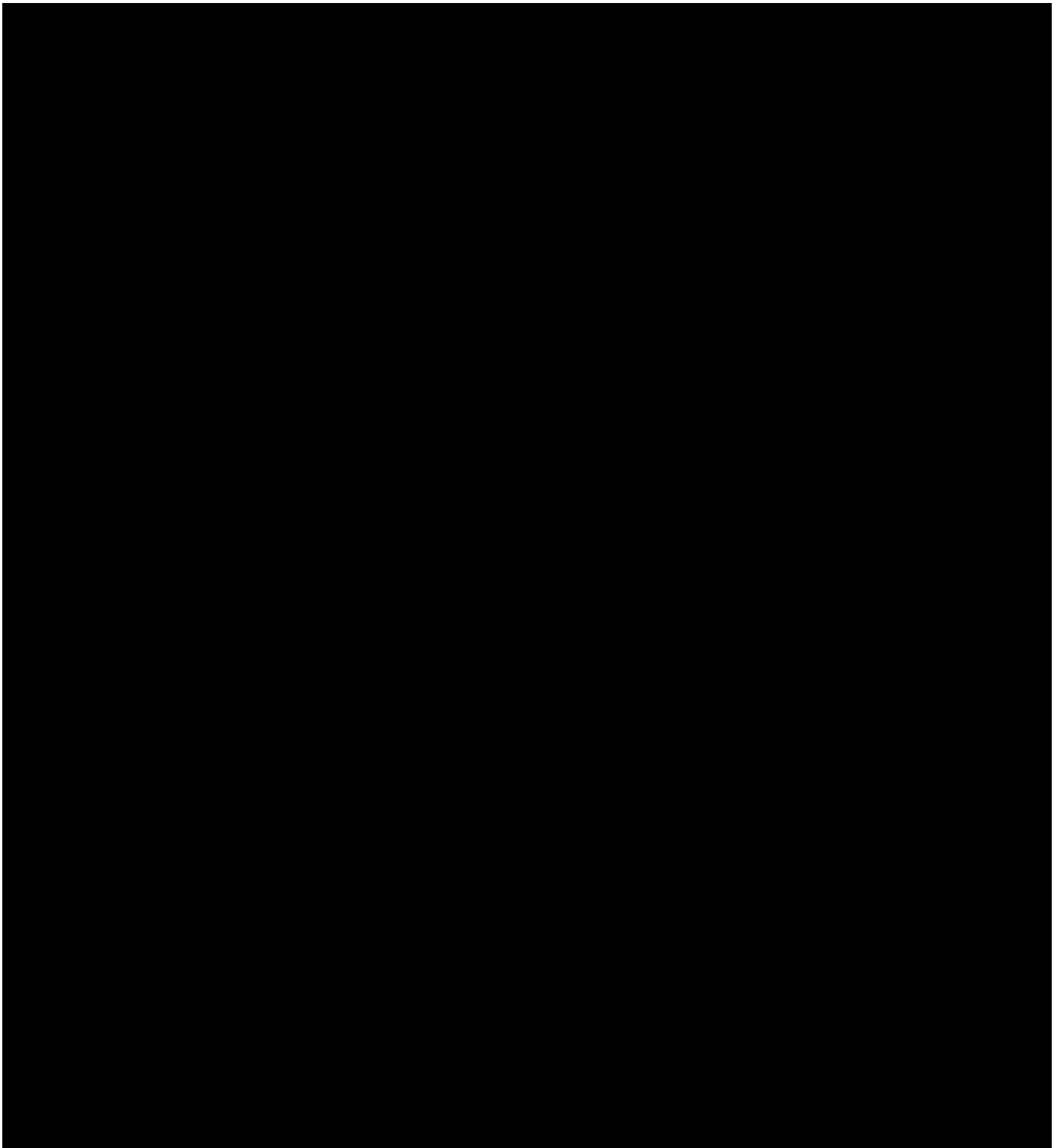


Exhibit D

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**RESPONDENTS H&R BLOCK, INC., HRB DIGITAL LLC, AND HRB TAX GROUP,
INC.'S THIRD SUPPLEMENTAL RESPONSES AND OBJECTIONS TO
FIRST SET OF INTERROGATORIES**



