

INTERNATIONAL CENTRE FOR THE SETTLEMENT OF
INVESTMENT DISPUTES

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 In the Matter of Arbitration :
 Between: :
 :
 GABRIEL RESOURCES LTD. and GABRIEL :
 RESOURCES (JERSEY) LTD., :
 : Case No.
 Claimants, : ARB/15/31
 :
 and :
 :
 ROMANIA, :
 :
 Respondent. :
 -----x Volume 2

HEARING ON THE MERITS

Tuesday, December 3, 2019

The World Bank Group
1225 Connecticut Avenue, N.W.
C Building
Conference Room C3-150
Washington, D.C.

The hearing in the above-entitled matter came on
at 8:56 a.m. before:

PROF. PIERRE TERCIER, President of the Tribunal

DR. HORACIO A. GRIGERA NAÓN, Co-Arbitrator

PROF. ZACHARY DOUGLAS, Co-Arbitrator

ALSO PRESENT:

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Secretary to the Tribunal

MS. MARIA ATHANASIOU
Tribunal Assistant

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MR. DARRYL LEW
MR. BRODY GREENWALD
MR. PETR POLÁŠEK
MR. HANSEL PHAM
MR. FRANCIS VASQUEZ JR.
MR. ANDREI POPOVICI
MS. GABRIELA LOPEZ
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MR. MIHAI BOTEA

APPEARANCES: (Continued)

Attending on behalf of the Respondent:

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MS. NORADÈLE RADJAI
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P R O C E E D I N G S

1
2 PRESIDENT TERCIER: Good morning, ladies and
3 gentlemen. It is my honor to open the second day of
4 the hearing in the ICSID Case 15/31 between Gabriel
5 Resources Ltd. and Gabriel Resources (Jersey) Limited
6 v. Romania. I hope you had a pleasant evening. And,
7 again, I express a wish that we will have a serene
8 and constructive day.

9 I would like first to ask whether there are
10 people on the teams that were not present yesterday
11 on your side.

12 MR. GREENWALD: Ms. Natalia Tchoukleva from
13 White & Case is here. Francis Levesque from White &
14 Case is here. Alyssa Howard from White & Case is
15 here. Lillian Siegel from White & Case is here.
16 Florentin Ţuca from the Ţuca law firm is here.
17 Ruxandra Niţă from the Ţuca law firm is here.

18 People who were not here yesterday, I think
19 that's it.

20 PRESIDENT TERCIER: Okay. Thank you.

21 On your side, Dr. Heiskanen?

22 DR. HEISKANEN: No changes on our side.

1 It's the same team as yesterday, Mr. President.

2 PRESIDENT TERCIER: Okay. Thank you very
3 much. So, a few points before we start with the
4 opening.

5 First, we have received the transcript.
6 Thank you to David and Margie for their excellent
7 job.

8 You have received also confirmation of the
9 time spent yesterday: 5 hours 17 minutes for
10 Claimant, and 41 minutes for the Arbitral Tribunal.
11 Then we have all received new exhibits, C-2955 and
12 C-2956 as well as R-689.

13 We have also received a joint list of the
14 exhibits--the list of confidential exhibits. This
15 was in line with PO 25 for the purpose of this
16 hearing.

17 We have also received Claimants' letter
18 concerning the issues and the exhibits that could be
19 used during the examination of Mr. Henry and
20 Mr. Tănase.

21 Have you a comment to these on your side?

22 MS. COHEN SMUTNY: No. No, we don't.

1 PRESIDENT TERCIER: On your side,
2 Dr. Heiskanen?

3 DR. HEISKANEN: Only the comment that we
4 made already yesterday, that the identification of
5 topics or issues that the witnesses are going to
6 discuss on direct doesn't help us because there's no
7 indication of what the actual evidence will be that
8 will be elicited.

9 PRESIDENT TERCIER: Okay. That is what you
10 said.

11 (Comments off microphone.)

12 PRESIDENT TERCIER: Then the next question
13 for us will be--it is too premature to do that--will
14 be to adapt our program. It depends a bit on the
15 time you'll have to spend today. Yesterday you told
16 us you would have contact with Mr. Bode.

17 DR. HEISKANEN: Yes. We don't have any word
18 from him yet, but we expect to be able to hear from
19 him today. And as soon as we hear, we will inform
20 the Tribunal.

21 PRESIDENT TERCIER: Okay. Good.

22 In that case, if there are no further

1 points--yes?

2 DR. HEISKANEN: There's a logistical point.
3 We are likely to start with Mr. Henry this afternoon.
4 And the Claimants have indicated earlier that
5 Mr. Henry is going to give evidence on direct in
6 response to the Witness Statements, so Mr. Găman and
7 Mr. Ariton, among others. Both Mr. Găman and Ariton
8 will be here in the afternoon, as authorized by the
9 Tribunal in PO 25 for that part of the--for the part
10 of the direct examination.

11 For that purpose, we will need some
12 simultaneous interpretation. It's just a heads-up
13 for logistical reasons.

14 PRESIDENT TERCIER: Comment on your side?

15 MS. COHEN SMUTNY: That is fine. We trust
16 the interpreters are available and ready.

17 PRESIDENT TERCIER: We trust too.

18 SECRETARY YETANO: I will confirm.

19 PRESIDENT TERCIER: Okay. You'll confirm it
20 on your side, Sara. Everything is fine? It's not a
21 problem?

22 SECRETARY YETANO: No. I think they should

1 be here, but I'm going to confirm right now.

2 PRESIDENT TERCIER: Okay. Another point?

3 DR. HEISKANEN: No other points.

4 PRESIDENT TERCIER: Okay.

5 In that case, you have the floor for your
6 opening.

7 OPENING STATEMENT BY COUNSEL FOR RESPONDENT

8 DR. HEISKANEN: Mr. President, members of
9 the Tribunal, you heard a very complicated story
10 yesterday. The reality is simpler. This case is
11 effectively about one single issue: Why did the
12 Rosia Montana Project stall?

13 We need to be precise with the terms here
14 because the Project has not failed; it has only
15 stalled.

16 The Project is still alive. RMGC's mining
17 license is still valid. And, in fact, it has been
18 recently into this year, extended for another five
19 years. Exhibit R-666.

20 RMGC still enjoys the rights it has under
21 the mining license, and it still is in possession of
22 all of its assets, including the real property that

1 it has purchased in Rosia Montana. It is up to RMGC
2 and the Claimants to decide whether and how to pursue
3 this Project.

4 The Romanian Government is not standing in
5 the way and has never been standing in the way. It
6 would not have any motive to do so. On the contrary,
7 RMGC is a consortium in which the Romanian State,
8 through Minvest, is a significant shareholder and has
9 been a shareholder from the very beginning. Romania,
10 in fact, stood greatly to benefit from the Project
11 economically and, in fact, badly needed it.

12 Romania was still in the midst of the global
13 financial crisis back in 2011 and 2012, during the
14 period when the Claimants' claims allegedly arose.
15 As the Tribunal will certainly recall, Romania was
16 particularly hard hit by the global financial crisis.
17 It was bailed out by the IMF, and it had to severely
18 cut public spending and wages of civil servants by
19 some 25 percent.

20 The simple answer to the question of why the
21 Project stalled is that it fundamentally lacked
22 social legitimacy. The Claimants and RMGC never

1 secured the social license to operate. RMGC, of
2 course, also lacked a number of administrative and
3 regulatory permits and approvals, including the
4 Environmental Permit, but its inability to obtain
5 these permits and approvals, or to maintain them, was
6 also a result and a consequence of the social
7 opposition.

8 There was local opposition to this Project,
9 effectively, from the very beginning. And over the
10 years, this opposition escalated to the national and
11 even international level. Rosia Montana is a mining
12 community, but the Claimants' Project is not the kind
13 of project that this community was used to for
14 several reasons.

15 First, the Project would have involved
16 destroying the Rosia Montana community itself. It
17 would have required the relocation of the entire
18 Rosia Montana village, a population of some 2,000
19 people and 900 households. Exhibit R-101, Page 10.

20 Second, the Project was also on a much
21 larger scale than any of the earlier mining
22 activities in the area. It would have been an

1 open-pit project and would have resulted in wiping
2 out/leveling four mountaintops, and it would have
3 involved--in fact, involved turning them into pits.

4 Third, the Project would also have involved
5 using cyanide-based technologies with which Romania
6 had had very bad experiences. In January 2000, when
7 the Rosia Montana Project was already underway, a
8 tailings dam in Baia Mare, a gold mine located some
9 200 kilometers north of Rosia Montana, failed during
10 the heavy rain and released some 100,000 cubic meters
11 of contaminated water, water contaminated by cyanide,
12 into the Danube.

13 This caused an environmental incident that
14 has been called the worst environmental disaster in
15 Europe since Chernobyl. It caused pollution
16 throughout Romania, Hungary, and Serbia, all the way
17 down to the Black Sea some 2,000 kilometers away.
18 Exhibit C-932, Page 6, C-721, Page 6, 7, and 16,
19 R-132, and CMA Report of Lorraine Wilde,
20 Paragraphs 36 and 40 to 59.

21 Fourth, the Project would also have involved
22 building structures and facilities that neither Rosia

1 Montana, nor the wider region were used to,
2 including, as you see on this screen, a massive
3 180-meters-high tailings dam, closing off an entire
4 valley and overlooking the town of Abrud, a town of
5 some 5,000 people.

6 And fifth and finally, the Project would
7 have involved destroying at least 100 kilometers of
8 mining galleries, many of them dating back to the
9 Roman times, and very likely also other forms and
10 types of cultural heritage. Exhibit C-766, Page 2;
11 C-375, Page 10; and C-1898, Page 15.

12 This was not a mining project in Western
13 Australia or in the great north of Canada or in the
14 great north of Scandinavia, for that matter. This
15 was a mining project at the heart of historical
16 Europe, in a densely populated area.

17 At the same time, the Project would have
18 been quite limited in terms of time. It would have
19 been completed in some 15, 16 years. Exhibit C-193,
20 Page 10.

21 It would not have secured a livelihood for
22 the local population, even for one generation, for

1 those who would have been actually employed by the
2 mine. And it should be kept in mind that not all
3 Rosia Montana residents are miners. Those who are
4 not miners would simply have had to move away.

5 And since the housing--much of the housing
6 would have been destroyed, would have been
7 demolished, except for the historical center, and the
8 village would have been uninhabitable during the
9 Project, local employees, those who would have
10 actually been hired by the mining company, would have
11 been displaced, and they would have had to commute to
12 work from another town.

13 This would have been a very high price to be
14 paid for a very limited return in terms of time.
15 This equation, the comparison between the social,
16 economic, and cultural cost and the return in terms
17 of time led to many concerns and questions regarding
18 the impact of the Project, understandably.

19 The question that arose was whether the
20 financial return from the Project would be sufficient
21 to offset its social, environmental, cultural impact.
22 Many said no.

1 The local NGO opposing the Project, Alburnus
2 Maior, was formed in September 2000 already. It
3 became the focal point of social resistance, in
4 particular, for those who did not want to move away,
5 to sell their houses and move out of the village.

6 Apart from Alburnus Maior, other NGOs--other
7 Romanian NGOs also got involved. And two years
8 later, in July 2002, 25 NGOs, including Alburnus
9 Maior, signed what they called the "Rosia Montana
10 Declaration." This is Exhibit 13 to Alina Pop's
11 Expert Opinion.

12 Two years later, in December 2002,
13 Greenpeace and other NGOs organized a large
14 demonstration in Bucharest, which was reported both
15 nationally and internationally by the BBC.
16 Exhibit 78 and 79 to the Thomson Reports.

17 Apart from this passive resistance refusal
18 to sell and move, the social opposition also took
19 another form of action. Alburnus Maior, together
20 with the other NGOs, started to systematically
21 challenge the permits and approvals issued by State
22 authorities to RMGC, permits and approvals that RMGC

1 needed in order to take the Project forward.

2 Over the years, this litigation campaign led
3 to over 80 main court and administrative proceedings
4 filed against the Project. These are listed in Annex
5 4 to the Counter-Memorial.

6 Now, it is important to keep in mind that
7 this is not a case of activists taking action to
8 prevent access to an operating mine or to prevent a
9 mining company from accessing a fully permitted mine.
10 This Project never left the exploration phase.

11 The action taken by those who opposed the
12 Project, refusal to sell and move and legal action
13 against the permits and approvals, was entirely
14 legal. The Romanian authorities could do nothing to
15 prevent it except to defend the decisions they had
16 taken in court, which is precisely what they did
17 without exception for many years, and often with RMGC
18 intervening on their side to defend those decisions.

19 As a result of the action that was taken by
20 those who opposed the Project, RMGC never obtained
21 the social license. So, what is, then, a social
22 license?

1 Social license is a shorthand for the social
2 legitimacy of a mining or any other large
3 infrastructure project, a project that has adverse
4 social, environmental, and cultural impacts. Social
5 license is an established concept in the mining
6 industry in particular. It has also been recognized
7 and applied by investment treaty Tribunals in the
8 context of mining disputes.

9 On the slide you see extracts from three
10 cases--or two cases, and there's also a reference to
11 the South American Silver v. Bolivia case. This is
12 nothing new. It is for the mining company to secure
13 the social license, just as it is for the mining
14 company to obtain the relevant administrative and
15 other permits and regulatory approvals.

16 The Claimants acknowledged many times that
17 they had to obtain the social license early on in the
18 Project. You see extracts of some of these
19 acknowledgments on the slide. This appears to be
20 undisputed.

21 Determining whether a social license exists
22 is not a matter of measuring whether the majority of

1 the local or the national population supports the
2 mining Project. Social license is not a quantitative
3 issue. Social license is about whether there's an
4 entrenched opposition to the Project, a stakeholder
5 group that is able and willing to take action to
6 block it.

7 Social license is not a matter of opinion.
8 It's a matter of action. Stakeholders who are
9 prepared to act, even if they represent a minority of
10 the affected population, may be in a position to
11 block the Project and deny the social license through
12 their action. And such action may be perfectly
13 legal, as it was in this case.

14 Although the level of support that the
15 opposition enjoys may affect its legitimacy--high
16 level of support implies high legitimacy and lower
17 level of support implies lower legitimacy--the
18 evidence in this case shows that a substantial
19 portion, if not the majority, of the population in
20 Romania, including at the local level, in fact,
21 opposed the Project--the Rosia Montana mining
22 project. We will hear expert evidence on this issue

1 during this hearing.

2 The mining license issued by the Government
3 is not a guarantee for a social license. It is for
4 the mining company to convince the local population
5 and other stakeholders that the net benefits of the
6 Project outweigh the damage that it will cause to the
7 environment, the social fabric, and the cultural
8 heritage.

9 And it is for the mining company to convince
10 the local population to sell their properties and
11 move away--out of the way of the Project if that is
12 what is required to make the mining project a
13 reality.

14 As Dr. Thomson has already testified and
15 stated in his Expert Reports RMGC lost the ability to
16 influence its social license in the early years of
17 the Project during the latter part of the exploration
18 phase, back in 1999 to 2003, when Alburnus Maior was
19 formed. Second Thompson Report, Paragraph 43.

20 The company made the fatal mistake of
21 failing to provide sufficient information about the
22 Project during the early years of the Project. And

1 it failed to constructively engage with the local
2 community. Whether for ignorance or arrogance, the
3 company did not take these concerns of the local
4 community seriously. RMGC's approach prevented it
5 from gaining the trust of the local population, which
6 led to polarization of views about the costs and
7 benefits of the Project.

8 The Project never recovered from RMGC's
9 early mistakes. Although the company made
10 substantial efforts during the later years to enhance
11 the popularity and support for the Project, it was
12 too little too late. By then the local opposition
13 was already entrenched.

14 During the following years, the social
15 conflict around the Project escalated from the local
16 to the national and even international level. It
17 culminated in the massive demonstrations in the fall
18 of 2013 and the following months. These
19 demonstrations continued throughout the country but
20 also abroad for several months.

21 By 2012, if not earlier, the Project had
22 become a political issue. It had become a political

1 issue in the sense that the social legitimacy of the
2 Project was seriously and forcefully challenged at
3 the national level. Exhibit C-641 and C-789, among
4 others.

5 The Romanian Government, which had a stake
6 in the Project and had supported it throughout, over
7 the years, including, as we just discussed, by
8 defending the lawsuits brought by NGOs against the
9 decisions of Romanian authorities, eventually came to
10 the view that the only legitimate way to take this
11 Project forward and to have it approved was by way of
12 submitting the matter to Parliament, the state organ
13 that is in the best position to determine issues of
14 social legitimacy, precisely because it represents
15 the people. It directly represents the people.

16 As Prime Minister Ponta stated in July of
17 2013, a couple of months before the Rosia Montana Law
18 was submitted to Parliament, I quote: "I believe the
19 final decision in such a controversial project with
20 advantages and disadvantage may only be made by
21 Parliament." C-462. And see also C-641.

22 RMGC fully supported the Law--the Rosia

1 Montana Law, as we will see in a moment. It provided
2 a solution to most of the permitting issue--issues
3 that it had been facing because of the social
4 opposition.

5 The massive demonstrations that began in
6 September 2013, after the submission of the Rosia
7 Montana Law to Parliament, dispelled any remaining
8 doubt about whether the Project was socially
9 legitimate and whether the company had a social
10 license. It very clearly did not have one.

11 In a Democratic society, the Government
12 cannot impose laws on its own people, nor can it
13 impose a mining project on people who are against it
14 and who are willing and able to take action to block
15 it. One cannot promote a mining project by use of
16 force if the opposition uses legal means, which was
17 the case here.

18 We heard yesterday much criticism over the
19 conduct of Prime Minister Ponta during the period
20 2012-2013, when the Rosia Montana Law was conceived,
21 drafted, and submitted to Parliament. This criticism
22 is fundamentally misplaced and it's also

1 misrepresented.

2 First of all, it's clear from the record
3 that the Ponta Government and Mr. Ponta himself, in
4 his capacity as Prime Minister, in fact, supported
5 the Project. The very submission of the Draft Law to
6 Parliament is evidence of support.

7 If passed, the Rosia Montana Law would have
8 greatly facilitated and accelerated the Project, and
9 it would have overcome many of the regulatory hurdles
10 it had been facing. Mr. Ponta also made public
11 statements in support of the Project. Many of these
12 are on record, for example, C-1504, C-416, C-437.

13 Even after the submission of the law to
14 Parliament, he continued to make public statements in
15 support of the Project, although he did acknowledge
16 that he had, I quote, "underestimated the level of
17 opposition to the Project and the Law," end of quote.

18 This is Paragraph 61 of his Witness
19 Statement.

20 The Claimants also argue that it was wrong
21 for Mr. Ponta to say after the submission of the law
22 to Parliament that he would leave the decision as to

1 whether or not to vote for the Project for each
2 member of his government to decide on the basis of
3 his or her conscience. C-789.

4 Contrary to what the Claimants suggested
5 yesterday, he never changed this position. If you
6 read the relevant Exhibit C-872, Pages 2 and 3
7 carefully--if you read the entire interview, you will
8 see that he did not change that position.

9 There is nothing inappropriate about
10 Mr. Ponta's course of conduct. Taking into account
11 the circumstances, he wanted to be neutral in his
12 capacity as Prime Minister because the Project was,
13 as he said, highly controversial. C-789.

14 Mr. Ponta's position is no different from
15 that of Mr. Corbyn, the Labour Leader in the UK, who
16 is now head of the UK elections, refusing to take a
17 stand for or against Brexit. He says that if he
18 becomes the Prime Minister, he will negotiate a new
19 Brexit deal with the EU and put this to a public
20 vote, together with the option to remain.

21 He is refusing to take a stand because
22 Brexit is a highly controversial issue, just as Rosia

1 Montana was a highly controversial issue in Romania
2 at the time. Mr. Corbyn is being criticized by his
3 political opponents for abdication of leadership. He
4 says he's acting as an honest broker.

5 And this is indeed how Mr. Ponta explained
6 his position in his Witness Statement--Paragraphs 51
7 to 59 of his Witness Statement. He says--and I
8 quote: "I distinguish between my capacity as deputy
9 and Prime Minister. I felt that it was better to
10 maintain a neutral position and, thus, abstain from
11 voting altogether."

12 We encourage the Tribunal to read his
13 Witness Statement very carefully. It has not been
14 challenged by the Claimants.

15 ARBITRATOR DOUGLAS: Can I ask you a
16 question on Brexit?

17 The Brexit referendum had no legal
18 significance in the sense that it wasn't binding on
19 anyone after the vote took place and, yet, there's no
20 political faction/party in the United Kingdom who is
21 prepared to say we can ignore it because it was a
22 decision of the people.

1 Aren't we in a similar situation here? The
2 vote went to Parliament. Parliament overwhelming
3 rejected the Law. Isn't that the end of the Project?
4 Who is now going to ignore the fact that it went to
5 Parliament, Parliament voted the way it did, even if
6 that has no legal significance in the sense it's a
7 formal legal declaration, the Project can't continue.

8 Isn't effectively, politically that the end
9 of the Project?

10 DR. HEISKANEN: I was not comparing Brexit
11 and the Rosia Montana Project. I was comparing the
12 conduct of Mr. Ponta and Mr. Corbyn.

13 ARBITRATOR DOUGLAS: My question was
14 slightly different, but I was using that as a pretext
15 to ask.

16 DR. HEISKANEN: It is similar, but I
17 wouldn't say it's an identical situation.

18 ARBITRATOR GRIGERA NAÓN: Assuming that this
19 notion of social license has the legal implications
20 that I think you are suggesting, why is the social
21 license just the responsibility of the investor and
22 not the shared responsibility of the investor and the

1 Government which, after all, granted the license?

2 DR. HEISKANEN: Social license is not a
3 legal concept. It's not a--it's a factual
4 description of a situation. It follows from the fact
5 that the issuance of the mining license doesn't mean
6 that the Project is feasible in practice.

7 The mining license gives access to the
8 mining company to the area, but it doesn't allow the
9 mining company to start actually exploiting the area
10 until it's physically possible, and that means
11 getting surface rights. We'll come back to this
12 issue later today.

13 But it is not the Government's task to
14 promote and assist one particular investor. The
15 Government has a regulatory function. Its function
16 is to issue the license if that is--if the legal
17 requirements are met. Its function is to issue the
18 legal--the permits and approvals--the regulatory
19 approvals that are required, if those are met.

20 But it is not the task of a Government to
21 assist one particular investor, possibly against
22 interests of the inhabitants of the country. That is

1 not the task of a Government.

2 ARBITRATOR GRIGERA NAÓN: Of course, I am
3 not going to argue with you, but my question is, when
4 the Government grants a license, it must have an idea
5 of what kind of work and operations, the activity,
6 that would be covered by the license, which
7 eventually implies exploitation of the resources.

8 The Government has no relation to have an
9 idea of what social implications that may have. As
10 you have just said, there are three hills that are
11 going to be erased--

12 DR. HEISKANEN: Four.

13 ARBITRATOR GRIGERA NAÓN: --or four. It
14 will be an open-pit mineral exploitation. There's
15 2,000 people living in the area. None of these
16 issues are part of--are ingredients of the social
17 license.

18 And the State has no input into that, has
19 not any duty to foresee that? It's just investor?

20 That's my question.

21 DR. HEISKANEN: You cannot foresee these
22 kind of issues, whether they come up or not. Many

1 mining licenses are, in fact, disputed, but not all
2 of them are. Social license is an issue that arises
3 only if there's local opposition. It may be that the
4 mining company is able to convince the local people
5 to support it and move away, if that is what is
6 required.

7 You cannot know in advance--you cannot know
8 in advance what the reaction of the local population
9 will be. Just as--just as it is not the task of the
10 Government to facilitate or provide shortcuts or
11 assist the mining company to get the regulatory
12 approvals; it is for the regulatory--for the mining
13 company to make sure that it meets those
14 requirements. It is similarly for the mining company
15 to make sure that it obtains the social license; that
16 is, that there is no opposition--local opposition
17 that will prevent the mining company from going ahead
18 with the Project.

19 The purpose--the function of the State and
20 the government is to create circumstances where these
21 kinds of activities can be undertaken and--but the
22 Government is not a--is not a guarantor of the success

1 and feasibility of the Project.

2 ARBITRATOR DOUGLAS: Let's come back to my
3 question.

4 The Prime Minister--we saw the videos--quite
5 a few of the videos yesterday--made it very clear he
6 will leave the decision to Parliament. If the
7 Parliament says yes, they'll go through with the
8 Project; if the Parliament says no, the Project won't
9 happen.

10 So, given Parliament said no, doesn't the
11 Government have to respect that decision of
12 Parliament even though it's not legally binding in
13 the Romanian legal system, just like the Brexit
14 referendum wasn't legally binding?

15 But given that political decision is being
16 made by Parliament, the highest representative organ,
17 doesn't the Government have to respect that decision?

18 DR. HEISKANEN: Of course. And they did
19 respect the decision in this case, but what was
20 rejected was the Rosia Montana Law, not the Project
21 in itself as such.

22 What the--and we will come back to what the

1 Rosia Montana Law actually contains in a moment. But
2 the Rosia Montana Law was not and did not contain
3 provisions saying, "This law approves the Project."
4 It contained various provisions about how the Project
5 could be facilitated and expedited, technical
6 provisions, but it didn't actually--it wasn't in
7 substance about whether the--in legal terms, it
8 wasn't about whether the Project would go forward or
9 not.

10 In political terms, of course, in the view
11 of those that went to the streets, it was about
12 whether to--whether this Project should go ahead or
13 not. One should distinguish between the legal
14 content of the Law and the political issue that
15 surrounded it.

16 ARBITRATOR DOUGLAS: Understood. But even
17 the Prime Minister was presenting it in that way,
18 wasn't he? That either the Project goes ahead or
19 not, that's up to Parliament?

20 DR. HEISKANEN: As he is explaining in his
21 Witness Statement, Mr. Ponta said that he was
22 observing the factual situation. He was not making

1 any legal determinations or conclusions about the
2 legal status of the Project. That is what he
3 explains. He observed what the situation was at the
4 time of the demonstrations.

5 And Mr. Ponta was not alone in taking this
6 position, of course. Mr. Antonescu, the President of
7 the Senate, stated on 9 September 2013, a few days
8 after the submission of the law to Parliament and
9 after the protests had erupted that, in his personal
10 view, the Rosia Montana Law should be rejected--and I
11 quote: "Not for technical reasons because this
12 Project would not have the chance to be feasible or
13 possibly useful, but because there are major
14 consequences and realities that prevent implementing
15 this Project at this time." C-832.

16 And he also said--and this is a transcript
17 from the video that we also saw yesterday--I
18 quote: "When talking about the Project involving
19 important natural resources of a nation, it is very
20 important to have public support. This is more
21 important than the technical data of that Project.
22 First of all, today we discover, as I was saying,

1 that the Project, the debate on it, is producing a
2 significant breach"--schism--the Romanian term is
3 schisma--schism, or division, within "the Romanian
4 society." This is C-2690.1.

5 When the Claimants showed the video of this
6 statement yesterday, they left out this part of
7 Mr. Antonescu's statement which was, in his view, the
8 main point. The Claimants also produced a slide that
9 you have--if you still have the hard copies--of
10 Mr. Antonescu's statement.

11 That appears to seek to mislead the Tribunal
12 as to what the evidence on this issue actually is.
13 And we will give you hard copies of the slide that
14 the Claimants distributed yesterday and another page
15 which shows actually what the evidence shows.

16 If you look at the slide, there's a red
17 square. It's a blown-up version of the evidence,
18 which is C-2690. And it appears to suggest that this
19 is a complete extract of what Mr. Antonescu said.

20 But if you look at the actual document from
21 which the extract is taken, which is the other page,
22 you show that the highlighted part was actually

1 omitted. It is in that highlighted part which I just
2 read, where Mr. Antonescu says--and I repeat: "When
3 talking about a Project involving important natural
4 resources of a nation, it is very important to have a
5 public support. This is more important than the
6 technical data of that Project."

7 "First of all, today we discover, as I was
8 saying, that the Project, the debate on it, is
9 producing a significant schisma in the Romanian
10 society."

11 We encourage the Tribunal to request
12 Claimants to verify that there are no similar issues
13 with the remaining slides. The Respondent would be
14 happy to do this verification, but we are not in a
15 position to do it during the Hearing.

16 The Parliament's decision--the
17 Government--the Parliament's decision to reject the
18 Rosia Montana Law was indeed a political decision in
19 the genuine term of that word, of that concept,
20 because it was based on the assessment of the social
21 legitimacy of the Project.

22 But the political decision is not a breach

1 of an investment treaty. A political decision to
2 reject a law that lacks social legitimacy is
3 perfectly legitimate and it is perfectly legal under
4 international law.

5 It is not the function of this Tribunal,
6 with all due respect, to sit in judgment of decisions
7 taken by democratically elected Romanian Parliament.

8 The Claimants suggested yesterday, as they
9 have suggested in their written submissions, that the
10 2013 demonstrations were not about the Project but
11 about a more general issue of Government corruption.
12 This is manifestly not the case.

13 Obviously, the demonstrators also criticized
14 the Government but only because it supported and
15 promoted the Project. What the demonstrations were
16 all about can be seen very clearly from these three
17 photographs. They are quite literally a snapshot of
18 what the demonstrations were--demonstrators were
19 against. They were against the Rosia Montana
20 Project.

21 We encourage the Tribunal to view very
22 carefully the many videos and photographs and the

1 documentary evidence and expert evidence that is on
2 record on this issue, what was the demonstration
3 about--what were the demonstrations about so that you
4 can judge for yourselves.

5 We will now show you two videos that are on
6 record. The first one is a photo montage about the
7 2013 demonstrations prepared by a professional
8 photographer, as you see on the slide, Cristian
9 Vasile, at the time. It shows in a more
10 comprehensive manner than the three photographs that
11 you just saw, the scale and the subject matter of the
12 demonstrations.

13 Note the green and red logo of the "Save
14 Rosia Montana" movement, which you see on the slide,
15 as you will see it in many of the photographs on the
16 video. The other logo, which translates as "United
17 We Save," was also used by the Project opponents.

18 (Slides exhibited.)

19 DR. HEISKANEN: The Claimants have chosen
20 not to call for examination, with one exception, the
21 Rosia Montana residents that have submitted Witness
22 Statements in this Arbitration.

1 The second video that we will show you shows
2 what they have to say about the 2013 demonstrations.
3 You will see on the right the names of the witnesses
4 who have been called--who have not been called for
5 examination in this Hearing in yellow. The one
6 witness that has been called is shown in green.

7 One of the witnesses who has not been
8 called, Mr. Petri, passed away before he was called.
9 This is also indicated on the right side of the video
10 with the cross.

11 When we show the video, you will see, in
12 bold, the person--the name of the person who is
13 speaking. This video was prepared by--as you see on
14 the screen, by Mr. Tica Darie, a Rosia Montana
15 resident, a few months after the demonstrations.

16 (Video played.)

17 DR. HEISKANEN: Gabriel Canada's initial
18 reaction to the rejection of the Rosia Montana Law
19 was that its failure did not mean the failure of the
20 Project. It simply meant--it simply meant that the
21 Project was no longer fast-tracked and would not get
22 any special treatment.

1 RMGC had to continue on the standard
2 regulatory track if it wanted to take the Project
3 forward. This is a press release of Gabriel Canada,
4 dated 12 November 2013.

5 But Gabriel Canada quickly changed tack,
6 apparently concluding that securing the social
7 license and the necessary regulatory approvals in the
8 face of persistent litigation and local resistance
9 and now also in the face of wider social movement
10 against the Project was not a realistic option, at
11 least not in the short-term.

12 This was their observation, as it was the
13 observation of Mr. Ponta. It's a political
14 observation, a factual observation, not a legal
15 conclusion.

16 Already in September 2013, when the Rosia
17 Montana Law was still being debated in Parliament,
18 Mr. Henry, Gabriel Canada's CEO, announced that if
19 the Law was rejected, Gabriel would go ahead with
20 formal notification to commence litigation. C-1442.

21 By late 2013/early 2014, Gabriel Canada
22 appears to have taken--appears to have given up on

1 the Project. In May 2014 it announced that it was
2 looking for funding for arbitration, as you see on
3 the slide.

4 Anything that the Claimants said or did as
5 of late 2013, early 2014 must, therefore, be seen
6 against this background in the context of this
7 attempt to create a paper trail for an upcoming
8 arbitration.

9 But even setting aside the issue of social
10 license, the Claimants do not have a case. They do
11 not have a case even if you, Members of the Tribunal,
12 accept the Claimants' version of the facts but not
13 their interpretation of those facts, the
14 interpretation of their facts as to what they mean.

15 This case is mainly about the interpretation
16 or appreciation of facts and events, not about
17 whether certain events occurred. In fact, most of
18 the events that are in dispute in this case are in
19 the public domain. They cannot be disputed. So,
20 what are, then, the main disputed facts?

21 Apart from the social license, the key
22 disputed events relate, first of all, to the EIA

1 Process, Environmental Impact Assessment process.
2 Was it completed or not in the TAC meeting of
3 29 November 2011 or at any later date?

4 Second, the renegotiation of the final terms
5 of the Project. Was RMGC coerced by the Government
6 to accept the new terms or did RMGC freely and
7 willingly participate in the negotiations?

8 And, third, the Rosia Montana Law, was it an
9 attempt by the Government to abdicate its
10 responsibility, which is what the Claimants suggest,
11 or was it a limited attempt by the Government to
12 facilitate and expedite the Project in the face of
13 social opposition?

14 My colleagues will soon address these three
15 issues in detail, but before giving the floor to
16 them, I'll make a few initial comments on the merits
17 of the Claimants' claims, apart from the issue of
18 social license.

19 In this connection, we have--we do not
20 intend to repeat the Respondent's jurisdictional
21 objections. We refer the Tribunal to the extensive
22 submissions on this issue that the Respondent has

1 made in its written pleadings. Of course, we are
2 happy to address any claims--any questions that the
3 Tribunal may have on those submissions.

4 We only want to highlight for the Tribunal
5 three critical jurisdictional dates under the
6 Canada-Romania BIT that you see on this slide. These
7 are November 23, 2011, when the Canada BIT enters
8 into force; July 30th, 2015, when the Request for
9 Arbitration was filed; and the three-year statute of
10 limitations that will go back to July 30, 2012.

11 We encourage the Tribunal to keep these
12 critical jurisdictional dates in mind, in particular,
13 the date of 30 July 2012, when you receive the
14 evidence of the witnesses and experts in the next two
15 weeks.

16 Any events that took place before the
17 critical jurisdictional dates for--particularly the
18 date of 23 November 2011 and 30 July 2012, fall
19 outside the Tribunal's jurisdiction and the Canada
20 BIT, as do any events that took place after the
21 filing of the Request for Arbitration. I'll come
22 back to that in a moment.

1 The Claimants' main claim is for an alleged
2 breach of the fair and equitable treatment standard
3 under the two BITs. The expropriation claim is not a
4 serious claim and the Claimants themselves do not
5 seem to take it seriously because it's always listed
6 in their submissions as the last claim in their list
7 of alleged breaches of the Treaty. If you make a
8 real serious claim for expropriation, it should be
9 your first claim because it's a claim for the loss of
10 the investment in its entirety.

11 And, indeed, it is evident that the
12 expropriation claim has no basis in fact. As we
13 explained in the very beginning, RMGC still has the
14 mining license. It has been extended, in fact. It
15 is still in possession of all of its assets,
16 including the real estate, in Rosia Montana.

17 As to the other claims for breach of the
18 full protection standard and non-impairment and
19 others, the Claimants themselves confirm that they
20 are based on the very same facts and the very same
21 theory of composite breach of the BIT as the FET
22 claim. So, if the FET claim fails, all these other

1 claims fail automatically.

2 As to the FET claim, the Claimants' main
3 claim, the fundamental point is--and this is what we
4 ask the Tribunal to keep in mind, again, when you
5 receive the evidence--the Claimants could not have
6 had any legitimate expectation on the basis of the
7 mining license alone that they will be able to
8 execute the Project.

9 The mining license does not create any
10 legitimate expectation that RMGC would be able to
11 meet the regulatory requirements for the
12 Environmental Permit or, indeed, for any other permit
13 or approval; nor does the mining license create any
14 legitimate expectation that the Claimants will be
15 able to get the social license.

16 This is the sole task of the Claimants. It
17 is the risk they assumed when they embarked on the
18 Project.

19 RMGC had to earn these permits and licenses,
20 and if it failed, this doesn't make the Government
21 nor the Romanian State liable for RMGC's failures for
22 the risks that they assumed.

1 My colleagues will now address in detail the
2 alleged breaches of the FET standard. They will
3 focus on the three disputed events that I've just
4 listed: the environmental permitting process, the
5 renegotiation of the financial terms of the Project,
6 and the Rosia Montana Law.

7 They will show that none of these events,
8 these three events or these three sets of facts,
9 amount to a breach--or amounts to a breach of the FET
10 standard, whether individually or cumulatively, as
11 part of the alleged composite breach.

12 You see the outline of our argument on the
13 slide. I have covered the first part, the social
14 license issue. My colleague, Lorraine de Germiny,
15 will first address the Environmental Permitting
16 process, including the social opposition that
17 disrupted it.

18 What you heard yesterday was simply the
19 exposition of the permitting process, but no
20 reference was made to the disruption of that process
21 because of the social opposition.

22 As she will explain, the Environmental

1 Permit which underpins the Claimants' entire claim
2 was never due. RMGC never met the permitting
3 requirements.

4 Mr. Bonifacio will then deal with the
5 renegotiations of the financial terms of the Project.
6 He will show that the negotiations were not forced on
7 Gabriel. On the contrary, RMGC actively sought to
8 use the negotiations to its own advantage, in order
9 to have a special regime that would expedite and
10 facilitate the permitting process.

11 We will also show that there was never
12 any--that the permitting process was never subject to
13 progress in the negotiations.

14 And finally, then, Christophe Guibert de
15 Bruet will address the Rosia Montana Law. He will
16 show that the Draft Law was not an attempt to
17 abdicate the Government's responsibility. It was an
18 attempt--the Rosia Montana Law was an attempt to
19 advance the Project, including by enhancing its
20 social legitimacy by way of parliamentary approval.

21 And, finally, Dr. Leaua will look at some of
22 the post-July 2015 issues. This is mainly for

1 purposes of information to set the record straight,
2 because whatever happened after the registration of
3 the Claimants' Request for Arbitration on 30
4 July 2015 is irrelevant in this case because these
5 events fall outside the Tribunal's jurisdiction.

6 The Claimants never notified to Romania
7 these alleged breaches, as required by the two BITs.
8 It is not enough for the Claimants to argue that the
9 alleged breaches that occurred after this critical
10 jurisdictional date form part of a practice or policy
11 of the State for purposes of an alleged composite
12 breach.

13 The Claimants will have to prove that there
14 was such an alleged practice or policy but they have
15 failed to do so.

16 MS. de GERMINY: Good morning,
17 Mr. President, Members of the Tribunal. The
18 Claimants' core claim is that Romania failed to
19 provide their alleged investments with FET. This
20 claim fails, since even if the allegedly impugned
21 acts of state authorities were true, they would not
22 rise to the level of breaches of the BITs.

1 We refer the Tribunal to our written
2 submissions regarding the FET legal standard. Today
3 we simply remind the Tribunal that the Canada-Romania
4 BIT does not require Romania to provide more than the
5 customary international law minimum standard of
6 treatment.

7 Further to this standard, only egregious
8 conduct can amount to a breach of FET, as we see, for
9 instance, in this quote from Glamis Gold v. USA and,
10 on the next slide, an excerpt from Berkowitz v. Costa
11 Rica.

12 The Claimants argue that they reasonably and
13 legitimately expected the administrative process to
14 apply. Well, Romania has followed legal permitting
15 procedures. Insofar as it briefly departed from
16 those procedures in 2013, it did so to facilitate the
17 Project via the Rosia Montana Law and with RMGC's
18 full support, as my colleague, Mr. Guibert de Bruet,
19 will explain.

20 Recently, in another mining case, South
21 American Silver v. Bolivia, the Tribunal dismissed
22 the Claimants' FET claim in part because the Claimant

1 had not explained exactly which legitimate
2 expectations were frustrated due to conduct
3 attributable to the State or which of Bolivia's
4 specific acts violated those legitimate expectations.

5 It held that a Tribunal should assess the
6 legitimacy of the investor's expectations, taking
7 into account the circumstances of the case, including
8 the investor's own conduct and due diligence.

9 It also found that in that case the Claimant
10 knew or should have known that the mining project was
11 "in an area inhabited by indigenous communities,
12 under specific political, social, cultural, and
13 economic conditions."

14 Like in *South American Silver*, the Claimants
15 have not explained which legitimate expectations were
16 frustrated or which of Romania's purported acts
17 frustrated those legitimate expectations.

18 The Claimants knew from the outset that RMGC
19 needed to first successfully move residents and,
20 second, secure permits in accordance with Romanian
21 law and with the approval of stakeholders.

22 A further question is the standard of review

1 that the Tribunal should apply when considering the
2 State's actions. Under international law, Romanian
3 State authorities enjoy and are entitled to a margin
4 of appreciation in finding that RMGC has not yet met
5 the requirements for issuance of the Environmental
6 Permit.

7 Investment Tribunals and scholars have
8 recognized the Doctrine of Margin of Appreciation
9 which requires arbitrators to treat decisions by
10 State authorities with a degree of deference.

11 For instance, in *Electrabel v. Hungary*, the
12 Claimant alleged that the State's termination of a
13 power purchase agreement following Hungary's
14 accession to the EU and further to the European
15 Commission, constituted a breach of FET.

16 The Tribunal rejected the Claimants'
17 argument and held that Hungary "enjoyed a reasonable
18 margin of appreciation in taking such measures before
19 being held to account under the ECT's standards of
20 protection."

21 And, furthermore, as we see in the first
22 sentence, it held that its task was not to sit

1 retrospectively in judgment upon Hungary's
2 discretionary exercise of a sovereign power, not made
3 irrationally and not exercised in bad faith at the
4 relevant time.

5 The Tribunal also, for instance, in *Unghlaube*
6 *v. Costa Rica*, similarly held that governments are
7 accorded a considerable degree of deference regarding
8 the regulation and administration of matters within
9 their borders.

10 Here, too, the Tribunal should defer to the
11 actions of the Romanian State authorities which, in
12 any event, do not rise--do not approach the realm of
13 arbitrariness described on this slide.

14 Furthermore, as I will explain, RMGC never
15 met the requirements for the Environmental Permit.
16 Even if it had met those conditions, though, as
17 Respondent's legal expert, Professor Tofan explains,
18 RMGC had no subjective legal right to obtain the
19 permit.

20 As she explains, under Romanian law,
21 administrative authorities enjoy a margin of
22 discretion when assessing whether an applicant to an

1 administrative act has complied with the conditions
2 for this act to be issued. In particular, she opines
3 that the Ministry of Environment and the TAC enjoyed
4 a margin of discretion as to whether the Project's
5 documentation and its overall features warranted the
6 issuance of the permit.

7 So, the key FET claim in this case is that
8 the Ministry of Environment improperly refused to
9 issue the permit. This allegation also underpins the
10 other claims regarding the commercial negotiations
11 and the Rosia Montana Law that my colleagues will
12 address.

13 But the Claimants only have themselves to
14 blame for their predicament. RMGC failed to satisfy
15 the requirements for the permit and for the Project
16 more generally. And, crucially, RMGC also failed to
17 secure the social license.

18 Now, the Claimants say that the TAC had
19 completed its review of the EIA Report on
20 29 November 2011 and that the Ministry of Environment
21 was required to issue its decision regarding the
22 permit by January 2012.

1 They say that the Ministry failed to do so
2 for political reasons, political reasons that they do
3 not attempt to explain. The State's alleged
4 motivations for not permitting a project in which it
5 had an important economic interest and which it
6 continuously defended in the Romanian courts remains
7 a mystery.

8 In any event, by November 2011, the Ministry
9 of Environment was nowhere near making a decision on
10 the Environmental Permit. How do we get to
11 November 2011?

12 To show where we are in November 2011, we
13 must back up and look at the key milestones of the
14 EIA Review Process, up to that moment in time. The
15 Claimants make highly misleading statements to the
16 effect that the decision had been pending on the
17 permit since December 2004 and that there had been a
18 delay of several years.

19 Well, as we see on this slide, although RMGC
20 applied for the Environmental Permit in
21 December 2004, it submitted its EIA Report only in
22 May 2006. It is on the basis of the EIA Report that

1 the Ministry of Environment needed to decide the
2 Application. The very purpose of the EIA Review
3 Process is to assess the adequacy of the report. So,
4 the Ministry could not review or make a decision
5 regarding a report that it did not yet have.

6 A public consultation on the EIA Report then
7 took place in the summer of 2006, with 16 public
8 debates around Romania and also in Hungary. The
9 public registered over 5,600 questions and comments
10 with the Ministry of Environment during this time.
11 This was unprecedented.

12 Questions and concerns ranged from the size
13 of the dam, to the risk of another Baia Mare cyanide
14 accident, to the impact on the site's cultural
15 heritage.

16 In January 2007, the Ministry of Environment
17 submitted the public's questions to RMGC, and in
18 May 2007, RMGC then submitted its comments to those
19 questions to the Ministry of Environment. At that
20 point the TAC then promptly met four times between
21 June 26, 2007, and 9 August 2007, and they discussed
22 the EIA Report, which already then covered some

1 18,000 pages.

2 We heard little about this yesterday, but as
3 we see on the slide, in parallel with the EIA Review
4 Process, Rosia Montana residents were filing lawsuits
5 through Alburnus Maior against other permits for the
6 Project, including the so-called "urban certificate"
7 which, by the end of July 2007, there were several
8 problems in that regard.

9 RMGC's first and second urban certificates
10 had been challenged in court for some time, but then
11 in July 2007, the second urban certificate was both
12 suspended by a court and it expired. And in
13 September, the courts went further and they annulled
14 that act.

15 The additional problem was that RMGC's third
16 urban certificate was virtually identical to the one
17 that had just been annulled. So, the Ministry of
18 Environment considered that that was not appropriate,
19 and it informed RMGC that it needed to address these
20 problems and to submit a new urban certificate.

21 RMGC did not do so until 2010. The Parties
22 and their legal expert dispute whether this

1 interruption in the EIA Review Process was lawful.
2 Romania says it was. In any event, once RMGC
3 submitted a new urban certificate to the Ministry of
4 Environment in May 2010, as the Ministry of
5 Environment had requested, the EIA Review Process
6 resumed, and the TAC met in June 2010 and then with
7 RMGC in September 2010.

8 So, even on the Claimants' case that the EIA
9 Review Process was complete by the end of 2011, which
10 the Respondent rejects, the EIA Review Process had
11 only been essentially active for 15 months, between
12 May 2006 and September 2007, and then for 14 months,
13 between September 2010 and November 2011. So, just
14 over two years.

15 By way of comparison, the Ministry of
16 Environment conducted one other EIA Review Process
17 which was in connection with the expansion of a
18 nuclear plant in Southeast Romania called Cernavoda.
19 That review process spanned nearly 7 years, between
20 August 2006, the date of Application for the
21 Environmental Permit, and October 2013, the date of
22 the Government's issuance of that permit.

1 In any event, once the EIA Review Process
2 resumed in 2010, the TAC asked RMGC to update its EIA
3 Report, given this three-year lapse of time. Romania
4 had, in the meantime, in 2007, joined the EU. New
5 laws and regulations applied. And rather than
6 submitting an updated report, as requested, RMGC
7 submitted over 1,700 additional pages of notes and
8 purported updates.

9 When the TAC met just a few weeks later, in
10 December 2010, the Ministry of Environment
11 representatives rightly explained that it was
12 difficult to navigate between RMGC's different
13 documents, and they asked RMGC to consolidate those
14 documents.

15 So, the Ministry of Environment, by that
16 point in time, in December 2010, was reviewing both
17 RMGC's EIA Report from 2006 and its updates to that
18 report.

19 The TAC next met in March 2011. The
20 Claimants are misleading and arguing that by the end
21 of that meeting, the Ministry of Environment had
22 completed its review of RMGC's answers to questions

1 received from the public, and all but two chapters of
2 the EIA Report remained for review.

3 During that meeting, the TAC discussed
4 comments from the public in 2006. But another public
5 consultation, as we see on the slide, was set to take
6 place between March and May 2011, and RMGC then
7 submitted a new EIA Report chapter in response to
8 those comments and questions received from the public
9 in late August 2011, which we also see on the slide.

10 ARBITRATOR DOUGLAS: Just to be clear,
11 though, the requirement of the urban certificate, the
12 Parties are in dispute as to whether or not that was
13 actually a requirement of the Environmental Permit.
14 So, the dispute is not reflected in this timeline,
15 but that's a question of law, essentially.

16 MS. de GERMINY: It is, yes. And I will
17 discuss the urban certificate question in a bit more
18 detail in a few moments. But it is a disputed issue.
19 It has been a disputed issue for years. Indeed,
20 there was litigation in Romanian courts over that
21 very issue.

22 And RMGC has had a number of urban

1 certificates over the years that have been the
2 subject, separately, of litigation by NGOs. And I
3 will go into that in a bit more detail in a few
4 moments.

5 So, following a meeting between RMGC and the
6 Ministry of Environment in September 2011, the
7 Ministry sent to RMGC a letter with 102 questions
8 regarding the report chapters reviewed to date and
9 requesting further documents. The letter is detailed
10 and shows many outstanding issues and refers to
11 future TAC meetings, plural, in the future.

12 As we have learned in the past few days,
13 there are two versions of this letter which was
14 signed by then TAC President Mr. Marin Anton. First,
15 there is Exhibit C-575, which is on the slide and
16 which contains the sentence underlined in red. This
17 letter was sent to RMGC on 22 September 2011.

18 Second, we have Exhibit R-215, which does
19 not contain that sentence underlined in red and which
20 the Ministry of Environment sent to RMGC on
21 26 September 2011.

22 So, this modified version of the letter

1 strangely deleted an express request for a water
2 management permit and the ADC for Orlea. We have
3 looked into the reasons for this discrepancy in the
4 past few days, and as we have learned and as the new
5 Exhibit R-689 filed last night shows and as
6 Mrs. Mocanu may explain this week--or next week, this
7 modified version of the letter did not go through the
8 standard approval procedures within the Ministry and
9 does not represent the views of the different
10 directorates within the Ministry of Environment.

11 Only the 22 September 2011 version of the
12 letter underwent the approval procedures within the
13 Ministry in the sense that it was approved by the
14 different directorates.

15 It is, therefore, the Respondent's position
16 that the Ministry's official position is reflected in
17 that letter that went through the normal approval
18 procedures, so the 22 September version that we see
19 on the screen.

20 In any event, though, State authorities had
21 made clear on other occasions, both before and after
22 this letter, that RMGC needed to provide a water

1 management permit and an ADC for Orlea.

2 Returning to the timeline. The Claimants
3 submitted certain responses. The Claimants--excuse
4 me--the Claimants submitted certain responses to the
5 letter of 22 September 2011 on 10 October 2011. So,
6 by this point in time, the EIA Report comprised not
7 only ten chapters, but also baseline reports,
8 management plans, updates and studies, totaling
9 nearly 25,000 pages.

10 The Claimants allege that the Ministry of
11 Environment convened the TAC to meet on
12 29 November 2011 to discuss RMGC's answers to the
13 Ministry of Environment's final questions. However,
14 neither letter from the Ministry of Environment to
15 RMGC inviting it to meet on 29 November referred to
16 any questions as being final.

17 As may be seen, the TAC planned to discuss
18 not only RMGC's responses to the list of 102
19 questions, but also other issues. In late October,
20 the TAC visited Rosia Montana and then, in late
21 November, a delegation from the EU Parliament met
22 with Ministry officials and then with RMGC

1 representatives in response to certain petitions that
2 had been filed against the Project with the EU
3 Parliament.

4 Neither the site visit report of the TAC nor
5 the report of the visit of the European Delegation --
6 from just days before the EIA Review Process was
7 allegedly completed, on the Claimants' case - suggest
8 that the EIA Review Process was near completion.

9 The content of the discussions at the
10 November 29 TAC meeting is largely undisputed,
11 insofar as there is an audio recording and a
12 transcript. The Parties disagree regarding the
13 meaning and the significance of certain statements at
14 that meeting.

15 The Claimants make much of statements by
16 Mr. Anton, as well as certain TAC members, indicating
17 that they had no or few outstanding questions.
18 However, those statements, when put in context, are
19 either irrelevant and/or mischaracterized by the
20 Claimants. We, thus, encourage the Tribunal to read
21 the transcript from this meeting, Exhibit C-486, from
22 start to finish.

1 As the Tribunal will see, several topics
2 were discussed, as indicated in the agenda. Chapters
3 8 and 9 of the EIA Report were discussed. RMGC's
4 October 2011 answers to the Ministry's 102 questions,
5 the so-called "IGIE Report"--that was a report from
6 2006 done by independent experts on certain aspects
7 of the EIA Report. They also discuss the TAC's site
8 visit and the visit of the European Delegation.

9 As we see on the slide in the right-hand
10 column, throughout each of these portions of the
11 TAC's discussion that day, TAC officials asked
12 technical substantive questions. When RMGC
13 responded, the TAC official in question does not say
14 "Okay, I approve" or "Okay, we validate."

15 These were technical ongoing discussions,
16 and the TAC was taking note of RMGC's responses
17 without endorsing them necessarily. There are also a
18 number of items that you will not see in the
19 transcript.

20 You will not see a moment when the TAC
21 President asked the members to vote.

22 You will not see him say, "We will now go

1 around the room, and each TAC member will indicate
2 whether they are for or against issuance of the
3 Environmental Permit." Nor does the agenda indicate
4 that such a vote will take place.

5 When he goes through the agenda items,
6 Mr. Anton asks certain TAC members whether they have
7 questions or comments regarding that agenda item.
8 And in that context, certain TAC members say that
9 they have no questions or comments.

10 In addition, discussion of an EIA Report
11 chapter within the TAC did not mean that review and
12 analysis of the issues raised in that chapter was
13 closed. It did not mean that the TAC could not
14 subsequently ask questions about a chapter discussed
15 in the TAC.

16 As mentioned a moment ago, in
17 September 2011, the Ministry of Environment sent a
18 list of 102 questions about Chapters 1 to 7, which
19 had been discussed in December 2010. Stated
20 differently, the fact that by the end of the
21 29 November meeting, the TAC and RMGC had discussed
22 Chapters 1 to 9 of the EIA Report did not mean that

1 the TAC's review and consideration of the EIA Report
2 was complete.

3 It is, again, evident from the meeting
4 transcript alone that certain TAC members were still
5 reviewing and considering the EIA Report and had
6 questions. Although the Claimants attach importance
7 to statements by Mr. Anton, especially at the end of
8 the meeting, to the effect that things were finalized
9 in the TAC, RMGC knew, based on the discussions that
10 same day, that the TAC was still considering the EIA
11 Report and related documents and that additional
12 issues were outstanding, even if the TAC did not
13 mention them again at that particular meeting.

14 You will also see in the transcript that
15 Mr. Anton was in a hurry. He was continuously
16 saying, "Let's move on, next question" and even, at
17 times, interrupting and cutting off TAC officials.
18 Perhaps, to his credit, he was trying to conduct the
19 meeting expeditiously.

20 His comment at the end of the meeting that
21 things are finalized may reflect a commendable desire
22 to move things along, but it was at odds with, first,

1 the fact that the questions--the fact that questions
2 had been raised during this meeting and not
3 necessarily answered to the TAC's satisfaction, and
4 also that other issues and questions that had not
5 been mentioned during this meeting were outstanding.

6 It is also important to bear in mind that
7 Mr. Anton, as State Secretary, was a political
8 appointee, not a technical expert. He was not one of
9 the civil servants within the Ministry of Environment
10 reviewing the thousands of pages of the EIA Report.
11 That was not his job.

12 His job was to schedule and coordinate these
13 TAC meetings. He was also not going to participate
14 in the TAC's decision as to whether to issue the
15 Environmental Permit.

16 Contemporaneous evidence after the meeting
17 also confirms that Ministry of Environment--that the
18 Ministry of Environment considered that the EIA
19 Review Process was ongoing. In letters from
20 December 2011, responding to questions from Members
21 of Parliament, the Minister of Environment,
22 Mr. Borbély explained: "The Project owner has been

1 asked to clarify some aspects raised by the public
2 and, therefore, the EIA Procedure for the Rosia
3 Montana project is underway and will be finalized
4 after a complete, careful, and thorough analysis of
5 all documentation by all decision-makers."

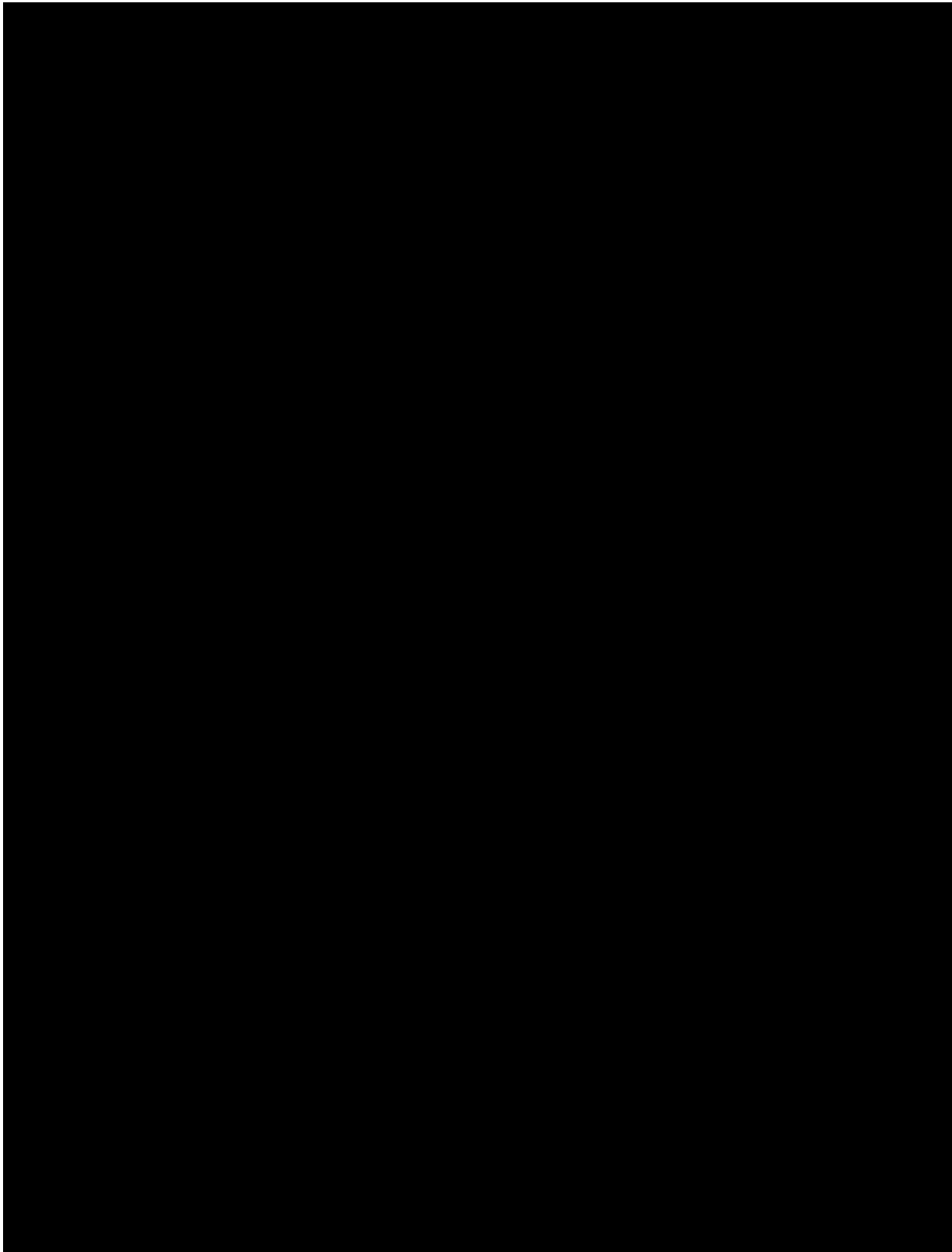
6 By letter dated January 2012, Mr. Anton
7 responded to questions from an association regarding
8 the Project. And he wrote that that it was
9 "currently in the EIA Procedure," more specifically
10 at the stage of the quality analysis of the Project
11 Environmental Impact Report and that given the
12 Project complexity and the multitude of legal
13 requirements, the TAC has requested additional
14 information/clarifications regarding the submitted
15 documentation.

16 The next couple of documents to which I will
17 refer are confidential.

18 (End of open session. Attorneys' Eyes Only
19 information follows.)

ATTORNEYS' EYES ONLY SESSION

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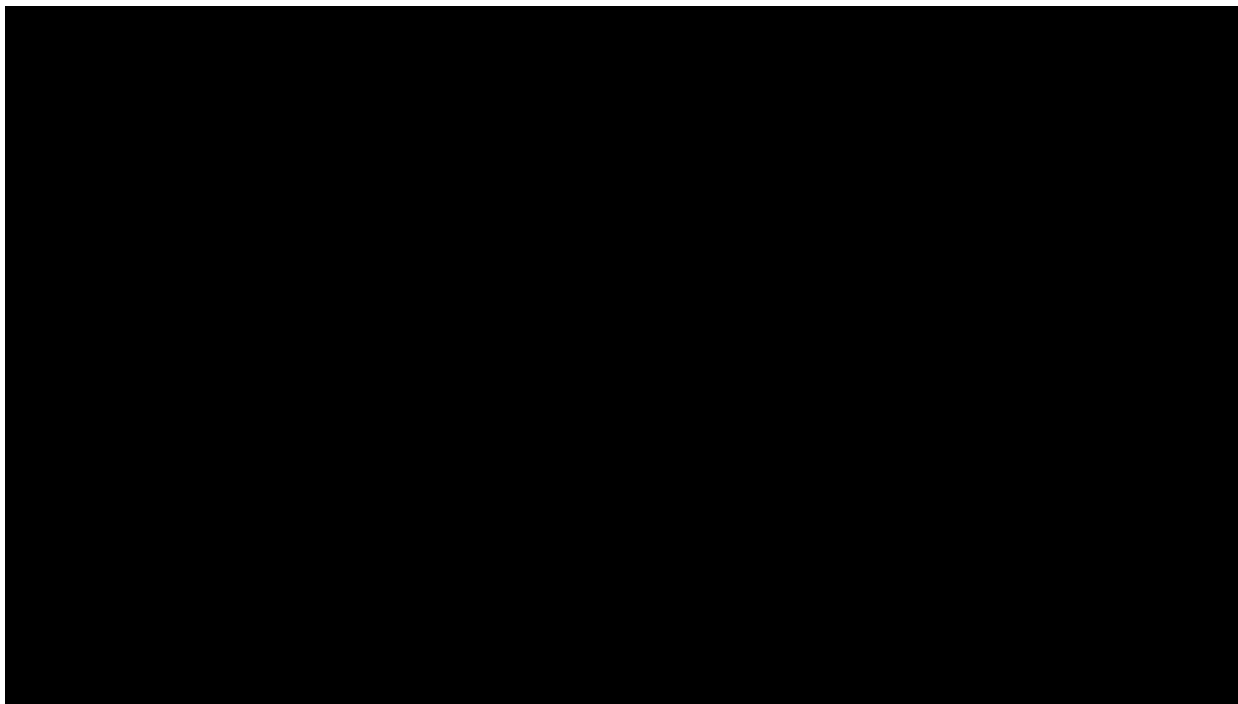
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(End of Attorneys' Eyes Only session.)

1 OPEN SESSION

2 ARBITRATOR GRIGERA NAÓN: May I ask you a
3 question?

4 MS. de GERMINY: Yes.

5 ARBITRATOR GRIGERA NAÓN: From a regulatory
6 viewpoint, what is the decision-making process of a
7 TAC? Is it by majority/unanimity when the process
8 comes to an end, so we can know that the TAC has
9 really come to the finish of issues?

10 MS. de GERMINY: There has to be a
11 moment--so, indeed, there are provision referring to
12 the need for consensus. And there has to be a
13 moment, effectively, when all members of the TAC are
14 asked to take a position whether they are for or
15 against issuance of the Permit. So, there has to be
16 a moment when a decision is made, and then,
17 separately, there is then a process when the
18 conditions for issuance of the permit are discussed
19 and drafted and finalized with the Ministry of
20 Environment.

21 ARBITRATOR GRIGERA NAÓN: What do you mean
22 by "consensus"? Is it head count? Is it vote? How

1 do--how--from a regulatory viewpoint, there is a TAC
2 determination of issues. Is it issue by issue? Is
3 it oral decision?

4 How does it work?

5 MS. de GERMINY: The legal provisions,
6 indeed, refer to a consensus. So, there has to be a
7 consensus on the idea of issuing--on issuing the
8 Permit. Then there is discretion--there's area for
9 maneuver, perhaps, in the way conditions are drafted.
10 And that's where there's an element of discretion
11 that may come in.

12 So, certain TAC members may be in favor
13 or--or may have concerns regarding the permit, but
14 they may be, perhaps, addressed through the
15 conditions.

16 ARBITRATOR GRIGERA NAÓN: But at some point
17 in time, somebody has to say "We have a consensus" or
18 "not."

19 Is that the President of the TAC or that is
20 not defined?

21 MS. de GERMINY: The Law does not say
22 specifically whether--how that is managed. It does

1 not say. It says there is consensus, there are
2 provisions relating to the need for consensus and for
3 a conciliation meeting at some point with the TAC,
4 where there may be a discussion of differing views or
5 of concerns regarding the issuance of the Permit.

6 In addition, in May 2012, Gabriel Canada
7 noted that public officials had referred to
8 outstanding issues in the EIA Review Process,
9 including the need for a Government decision that the
10 Project was of public interest, the need for an ADC
11 for Orlea, and the need for a waste management plan.

12 In any event, as I will demonstrate, as of
13 January 2012, RMGC had not met the requirements to
14 obtain the Environmental Permit and, in some cases,
15 still has not met those requirements to this day.
16 I'm going to go through these various issues.

17 In January 2012--

18 ARBITRATOR DOUGLAS: Just backtracking.
19 Where is the reference to public interest?

20 MS. de GERMINY: So, it's government
21 approval for the diversion of a stream. And I'm
22 going to discuss that.

1 ARBITRATOR DOUGLAS: Okay. So, it's the
2 diversion of the stream; it's not about surface
3 rights, just to be clear?

4 MS. de GERMINY: Correct. This is about the
5 Water Framework Directive and the need for a
6 declaration of outstanding public interest, in order
7 to permit the diversion of the Corna River and Rosia
8 streams to be able to derogate from the Water
9 Framework Directive.

10 So, in January 2012, the Ministry of Culture
11 had not endorsed the Project. The Parties agree that
12 the Ministry of Culture endorsed the Project in
13 April 2012--in April 2013. This is the endorsement
14 from April 2013.

15 It's also undisputed that the Ministry of
16 Culture was required to endorse the Project, as shown
17 on this slide showing the relevant legal provisions.
18 The Law does not spell out, though, what criteria the
19 Ministry of Culture should take into account when
20 deciding to endorse or not the Project.

21 Further to the law, though, and on the
22 Principle of Integrated Conservation, which is

1 referred to in the red line, the endorsement must
2 follow and be based on preventive archeological
3 research.

4 Now, the Claimants argue that an ADC is only
5 required prior to issuance of a building permit.
6 This is misguided. For the Ministry of Culture to
7 endorse a project for purposes of the Environmental
8 Permit, it must be satisfied with the preventive
9 research conducted by the developer or which the
10 developer has committed to conduct.

11 So, in that regard, the Ministry of Culture
12 may require the developer to secure certain ADCs
13 before it will issue its endorsement.

14 The Claimants argue that the Ministry of
15 Culture effectively endorsed the Project in
16 December 2011. This is incorrect both as a matter of
17 fact and of law. There is no dispute that there had
18 been significant archeological research in Rosia
19 Montana over the years, and that led to authorities
20 either to protect or to discharge certain parts of
21 the Project area.

22 However, in 2011, there was uncertainty

1 surrounding both Orlea and Cârnic Massifs, causing
2 TAC representatives--as we see, this is an example,
3 an excerpt from TAC meeting minutes from
4 March 2011--to express concern and to seek
5 clarification regarding the situation with these two
6 Massifs.

7 Cârnic was a problem because, although RMGC
8 had secured an ADC in 2004, Alburnus Maior had
9 successfully challenged that ADC in court. And when
10 RMGC received a second ADC, further to more research
11 for Cârnic, when RMGC secured a second ADC in 2011,
12 Alburnus Maior again challenged it.

13 We see on the next slide the Cârnic ADC area
14 that was the subject of litigation. That's in red.
15 The map shows the other three mountains that were to
16 become pits in orange-yellow, Orlea and Jig at the
17 top and Cetate at the bottom left.

18 For Orlea--as for Orlea, RMGC had not, and
19 still today has not, applied for an ADC. This slide
20 shows, in green, the areas that have been--that are
21 the subject of ADCs. The Orlea area, as you can see
22 is not in green.

1 To this day, RMGC has not carried out
2 preventive archeological research at Orlea. It did
3 some field surveys and other preliminary assessments
4 on the basis of which it mapped the underground
5 galleries which you see represented on the map.
6 Those are the black lines.

7 The outcome of those preliminary studies are
8 set out in the Preliminary Assessment Study of Orlea
9 which RMGC submitted to authorities in August 2011.
10 And, later, a more detailed report was prepared
11 setting out the research that was proposed to be
12 carried out in Orlea in view of applying for an ADC.

13 So, when the Ministry of Culture endorsed
14 the Project in April 2013, it did so following
15 receipt of and on the basis of that 2013 Report,
16 which the national archeological commission had just
17 approved in March.

18 The Ministry also, though, conditioned its
19 endorsement on RMGC's securing of an ADC for Orlea
20 and on RMGC's obtaining all the endorsements
21 necessary for the Project.

22 ARBITRATOR GRIGERA NAÓN: My understanding

1 is that Orlea was going to develop later on, in seven
2 years, and that it was not an immediate need--at
3 least that's what I've heard--to count on that
4 approval, quote/unquote, regarding Orlea.

5 How do you address that issue?

6 MS. de GERMINY: So, the Ministry of
7 Culture's endorsement of April 2013, as I say, is
8 conditional, in the sense that it says that an ADC
9 for Orlea must be obtained. The ADC is, in any
10 event, also necessary for the building permit. And,
11 of course, there are questions as to how that delayed
12 research would affect the feasibility of the Project
13 more generally.

14 So, in January 2012, RMGC also had not yet
15 secured the approval of the Waste Management Plan
16 which was a prerequisite to securing the
17 Environmental Permit, as shown on the slide. The Law
18 provides the approval of the Management Plan shall
19 take place during the procedure for the assessment of
20 environmental impact.

21 The Claimants argue that because the Waste
22 Management Plan was not discussed at the 29 November

1 meeting, it was not required for the Environmental
2 Permit. However, even if the plan was not mentioned
3 during the meeting, that does not mean that it was
4 not required. The Law is quite clear.

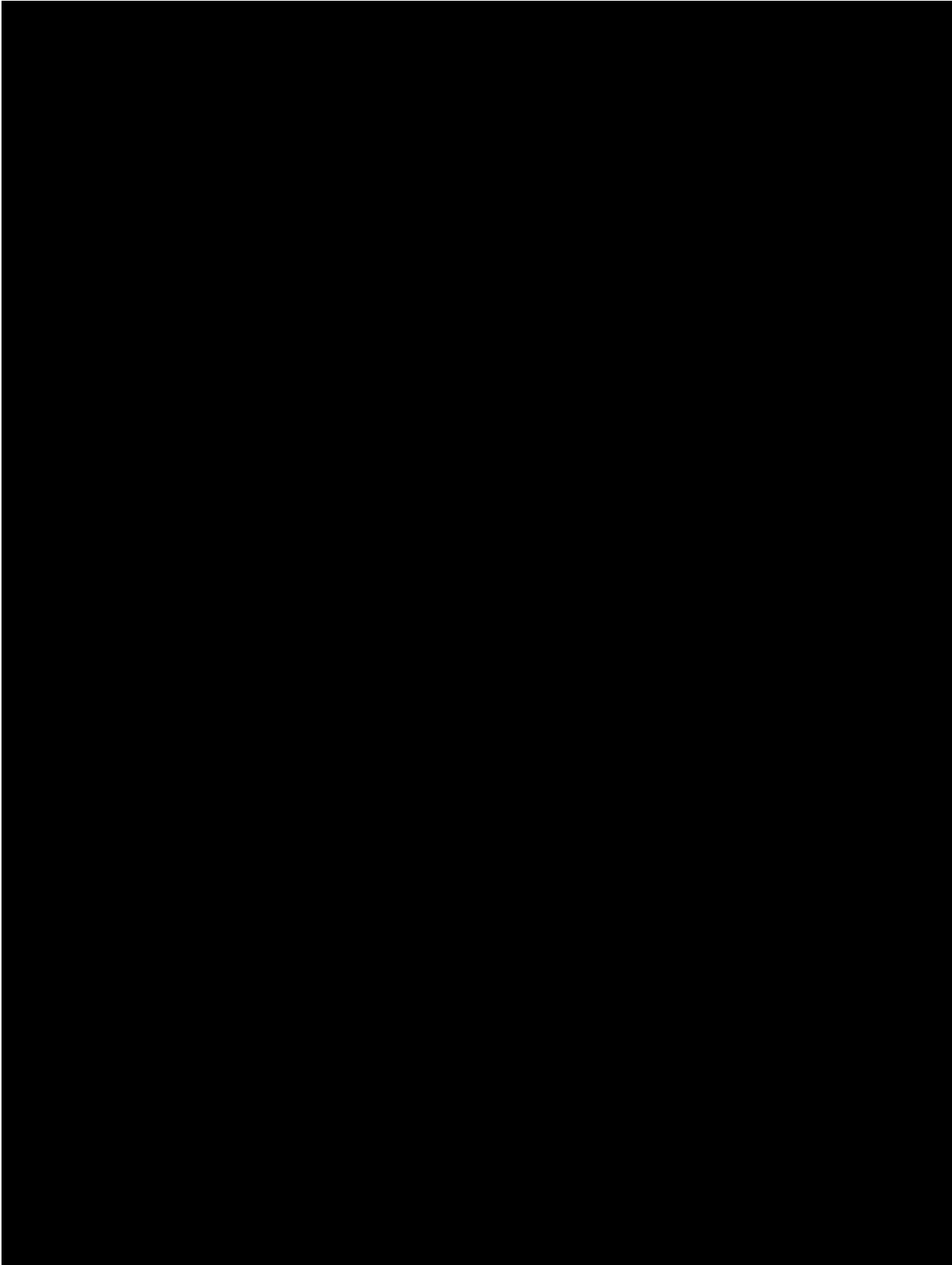
5 It's also undisputed that, by law, both the
6 NAMR, National Agency for Mineral Resources and the
7 Ministry of Environment were required to approve this
8 plan in two steps and that RMGC did not submit an
9 updated version of this plan to the NAMR until
10 December 2011, so after the November 2011 TAC
11 meeting. Moreover--

12 The next few slides are confidential.

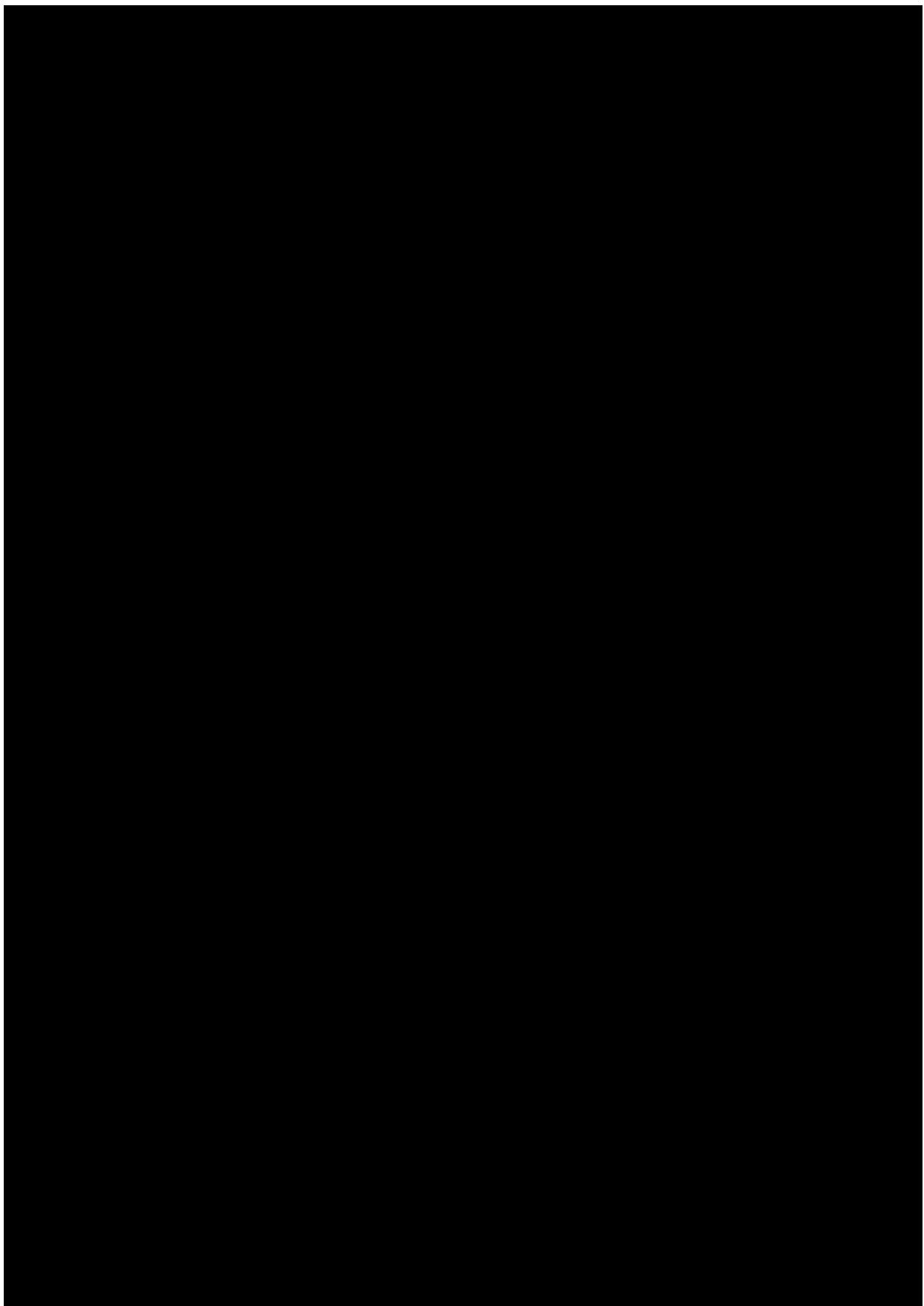
13 (End of open session. Attorneys' Eyes Only
14 information follows.)

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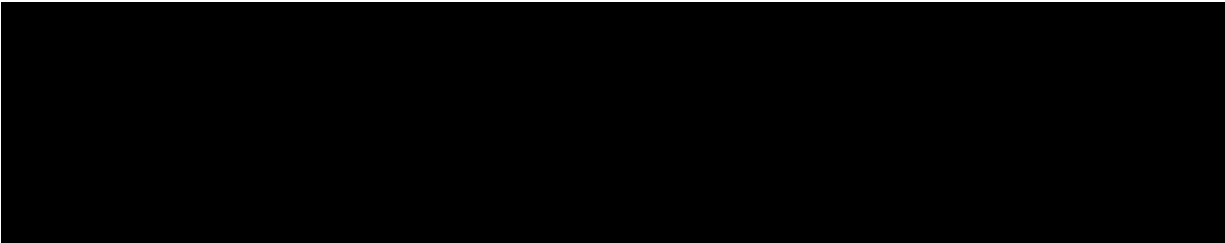


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(End of Attorneys' Eyes Only session.)

1 OPEN SESSION

2 MS. de GERMINY: RMGC needed but did not
3 have in place valid urban plans. The Ministry of
4 Environment was not in a position to issue the
5 Environmental Permit in January 2012 because, as is
6 undisputed, RMGC had not secured from the Rosia
7 Montana and neighboring municipalities the approval
8 of the PUZs for the Project area and the protected
9 areas, including the historical center of the
10 village.

11 What the Parties call the "industrial area
12 PUZ" is sometimes also called the "Project area PUZ"
13 or just "the PUZ." It was--

14 ARBITRATOR GRIGERA NAÓN: Precisely. I was
15 confused. Do we have a project area? an industrial
16 area? Is it the same thing? Are they different
17 things? And which are the applicable regulations to
18 each?

19 MS. de GERMINY: I will explain.

20 I think it's fair to say that the Parties,
21 and depending on the documents you look at,
22 essentially refer to two PUZs, the industrial area

1 PUZ or the Project area PUZ. So, that is really the
2 zoning urban plan for the Project. And then there is
3 a separate PUZ, which is the historical area PUZ.
4 And we see these on the map.

5 So, first of all, the outer border is the
6 original--and you see it--it's a bit hard to
7 read--but on the left-hand side of the screen, the
8 original industrial zone, that was the original area
9 of the original PUZ from 2002, which I will mention
10 in a moment. And then the area reduced slightly, so
11 that's the inner gray line.

12 You see towards--and so you see at the top
13 it says "Project's Footprint."

14 You then see the four blue areas for the
15 four pits, Jig, Orlea, Cetate, and Cârnic. And you
16 see between those four pits the thing that says
17 "Protected Area."

18 So, the protected area there corresponds to
19 the village, the historic center of the village. And
20 that would have been the subject of an historic area
21 PUZ. And it is surrounded by the green buffer zone.

22 So, at times you see references to a buffer

1 zone. That's the buffer zone. There's also, you'll
2 see, a separate protected area a little bit to the
3 left, which would have been in connection with the
4 other protected area.

5 So, it was the zoning plan for the Project
6 that RMGC really needed to submit to local
7 authorities to get their approval. And to get their
8 approval, RMGC needed to first submit its proposed
9 PUZ to local utility companies and local authorities
10 to get their endorsements and their--to get permits.

11 Once RMGC had collected all of these
12 endorsements and permits from local authorities, it
13 then needed to submit its proposed PUZ to the
14 affected municipalities for their approval. This
15 zone actually covers four villages. So, it needed
16 the approvals from all four and not just Rosia
17 Montana.

18 As of late 2011 and early 2012, RMGC needed
19 to secure three endorsements for the industrial area
20 PUZ and three endorsements for the historical area
21 PUZ.

22 We see here an excerpt from the meeting

1 minutes from 29 November, where Mr. Tanase says: "We
2 have to take these two PUZs to the final approval
3 stage. There is a series of endorsements to be
4 obtained for each of them, about 14 or over 20
5 endorsements to obtain. We have obtained the
6 majority, but we are still short of a few."

7 ARBITRATOR DOUGLAS: Again, though, the
8 context for that may have simply been that we need to
9 do all that for the construction permit, not
10 necessarily to obtain the Environmental Permit.

11 MS. de GERMANY: So, Romania's position is
12 that the PUZ was very much necessary for the EIA
13 Procedure, that authorities needed to see the zoning
14 plan that was going to be the underlying basis of the
15 whole Project.

16 That PUZ, of course, as the Tribunal may
17 have seen in our submissions--we heard a little bit
18 about it yesterday--one of the key endorsements that
19 that PUZ needed to obtain was called the "SEA
20 Endorsement," which was a separate environmental
21 endorsement which was to be issued by the Sibiu EPA.

22 And so, the Ministry's EIA Review Process

1 also needed to take into account the Environmental
2 Permit of the PUZ and the requirements delineated by
3 the Sibiu EPA.

4 ARBITRATOR DOUGLAS: I know we're going to
5 hear from the experts on this at length.

6 MS. de GERMINY: Yes.

7 ARBITRATOR DOUGLAS: But just in a nutshell,
8 is the major difference between the parties as to
9 whether or not it's a requirement for the
10 Environmental Permit--I understand the Respondent's
11 position to be it's not expressly stated in the Law,
12 but it's part of the discretion because you would
13 need to have it in front of you to make an informed
14 decision; whereas the Claimants say, well, it's not
15 part of the law, and therefore, it can only be
16 relevant to the construction permit.

17 Is that, in a gist, where the dispute lies
18 on that?

19 MS. de GERMINY: Right. So, I mean, the
20 Claimants rely on the express requirement in Romanian
21 law that a PUZ is required for a building permit, and
22 that is undisputed. But there are other provisions

1 of Romanian law which are based on the EU SEA
2 directive and the EIA directives, as transposed into
3 Romanian law, that make it clear that a PUZ must also
4 be in place prior to issuance of the Environmental
5 Permit.

6 So, there is both a legal basis that flows
7 from a technical requirement, which is that the PUZ
8 is effectively showing the geographic delimitation of
9 the area, all of the characteristics of the area,
10 taking into account how the water and electricity and
11 the whole--the streets will feed into this area.

12 So, from a technical point of view, the
13 Ministry of Environment considered that this was
14 essential to have and, indeed, they requested it on
15 many occasions over the years to RMGC.

16 ARBITRATOR DOUGLAS: Just to clarify one
17 point.

18 Does your submission on it being a
19 requirement for the Environmental Permit depend upon
20 first establishing that there's a discretion?

21 MS. de GERMINY: It's our position that it
22 is a requirement that is clear from different legal

1 provisions that our experts set out in detail. But,
2 certainly, if--even if the Tribunal were to conclude
3 that it's not expressly provided for, that they
4 certainly would have very much the discretion to
5 consider that a PUZ is necessary.

6 ARBITRATOR DOUGLAS: Alternative, I guess.

7 MS. de GERMANY: Yeah.

8 So, as I just mentioned, this is just one
9 other note from a Gabriel Canada disclosure from
10 March 2012 which is, again, noting that they are
11 trying to get all of the endorsements that they need
12 to get.

13 And here I would just like to note that by
14 way of background--I alluded to this a moment
15 ago--that RMGC had secured the approval of a PUZ for
16 the Project area in July 2002. There were, however,
17 two problems with that PUZ.

18 First, local residents--and this is what we
19 see on the slide--through Alburnus Maior,
20 successfully challenged the Local Council
21 Decision--the Rosia Montana Local Council Decision
22 approving that PUZ. They challenged that for years,

1 as we see on the slide.

2 And second, as RMGC's urban certificate
3 reported--this is a snapshot from RMGC's first urban
4 certificate--and I'm going to discuss the urban
5 certificates in a moment--but as RMGC's urban
6 certificate recorded, RMGC, in any event, needed to
7 amend that initial PUZ for technical reasons. So,
8 that 2002 PUZ was not sufficient for this Project to
9 go forward.

10 And as I also noted a moment ago, the
11 Ministry of Environment repeatedly asked RMGC to
12 provide this PUZ. This is an example of one of those
13 requests. This is actually a request from the--from
14 the Ministry of Environment. It's the first letter
15 that the Ministry of Environment sends to RMGC
16 following the resumption of the EIA Review Process in
17 2010.

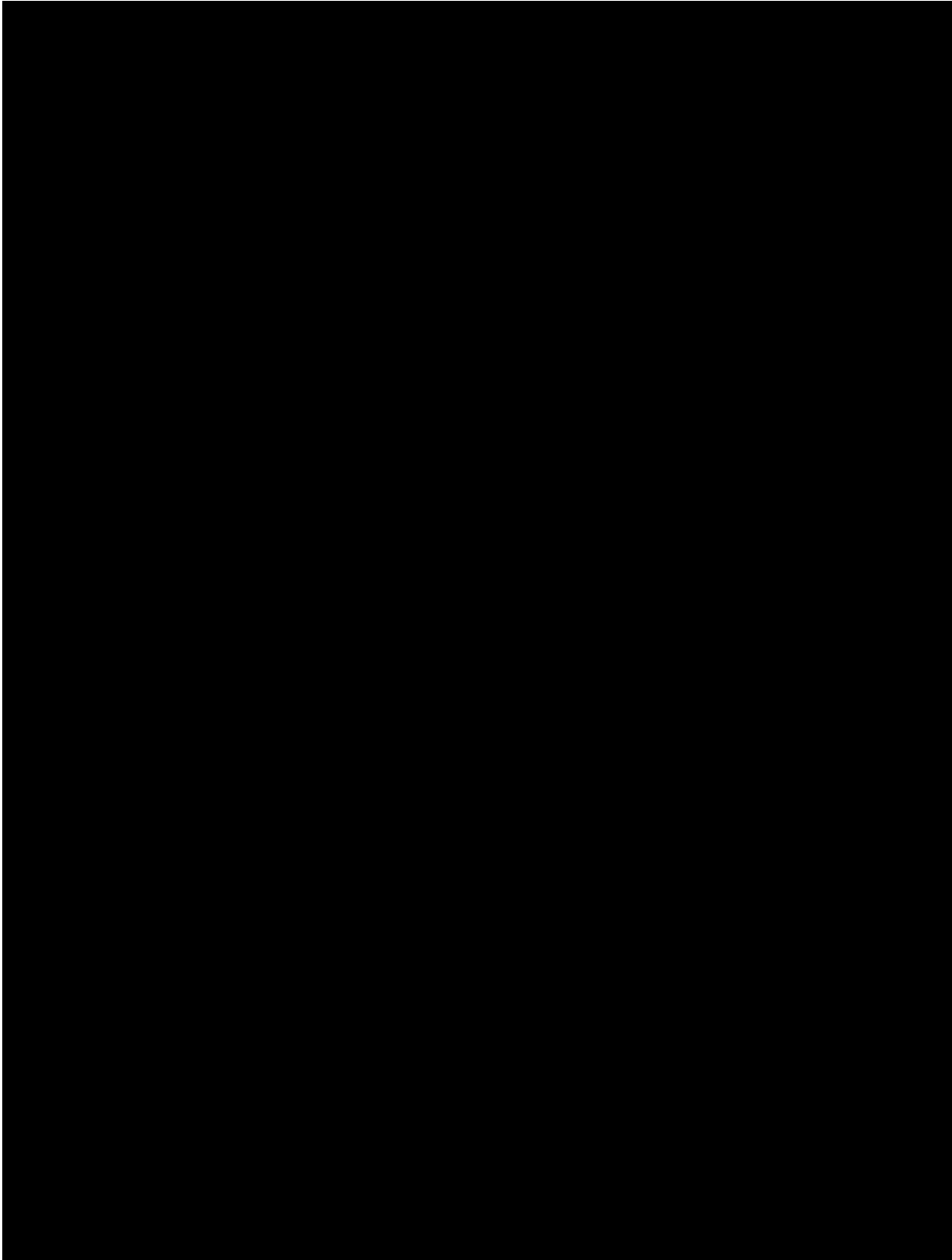
18 It was a letter signed by the Minister
19 himself, and as you see, he asks: "Please deliver
20 the PUZ," indicating the whole area. And he--you
21 know, the whole area for which the urban certificate
22 is issued because they essentially go together.

1 And I'm now going to comment on certain
2 confidential information.

3 (End of open session. Attorneys' Eyes Only
4 information follows.)

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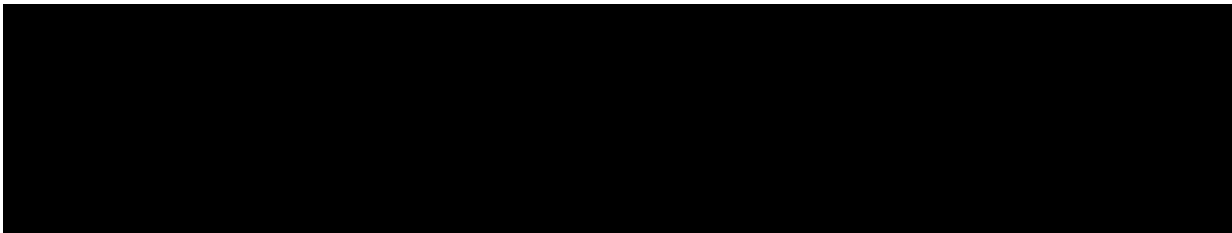
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Now returning to non-confidential material.

(End of Attorneys' Eyes Only session.)

1 OPEN SESSION

2 MS. de GERMINY: RMGC needed to obtain and
3 maintain a valid Urban Certificate throughout the EIA
4 Procedure. Valid for up to 24 months, the Urban
5 Certificate is both an informative and a regulatory
6 administrative act regarding a geographic area. It's
7 informative because it sets out the legal, economic,
8 and technical status of the area as it stands;
9 regulatory because it lists the approvals and
10 endorsements that a developer must obtain to apply
11 for a building permit.

12 So, for instance--this is a snapshot from
13 RMGC's first urban certificate from 2004. It
14 indicated, among many other permits, that RMGC needed
15 to secure the environmental permit that we see in
16 Section d.3, before it could then secure the building
17 permit.

18 It's undisputed that RMGC secured six urban
19 certificates in connection with the Project. It's
20 also undisputed that local residents, through
21 Alburnus Maior and other NGOs, continuously
22 challenged those urban certificates in court for

1 years. As we can see from the slide, as of late
2 2011, court proceedings regarding the urban
3 certificate then in force, UC87, were pending.

4 Now, the Claimants argue that RMGC did not
5 need an urban certificate to secure the Environmental
6 Permit, and that in any event, these challenges did
7 not impact the validity of the UCs. However, as
8 Professors Dragoş and Tofan explain, under Romanian
9 law, an urban certificate must be obtained at the
10 start and kept valid throughout the procedure.

11 The Claimants were aware of this requirement
12 since, in 2003, Gabriel Canada indicated that the
13 submission of the EIA to the Minister of Environment
14 has been delayed, pending receipt of the final
15 confirmation of the land-use zoning, being the urban
16 certificate.

17 And once RMGC did obtain--did secure its
18 first urban certificate in 2004, it then applied for
19 the Environmental Permit, and it included its urban
20 certificate with its Application. The Ministry of
21 Environment, in turn, made clear to RMGC that the EIA
22 Procedure was tied to the Urban Certificate and its

1 underlying technical sheet.

2 You'll see references to a "technical sheet"
3 or "technical memorandum" underlying the urban
4 certificate.

5 As we see here, Ms. Filipas of the Ministry
6 of Environment says the procedure for the issuance of
7 the permit is based on the technical sheet which is
8 attached to the UC. And if you don't have a valid
9 deed, it means that we don't have the complete
10 documentation necessary for issuing the regulatory
11 deed.

12 Alburnus Maior and other NGOs continued to
13 attack RMGC's urban certificates throughout 2012,
14 starting with an appeal of the 21 December 2011
15 Bucharest Tribunal ruling. And shortly after RMGC
16 obtained a new urban certificate in April 2013,
17 Alburnus Maior again applied to the Cluj Tribunal to
18 annul that certificate. And that litigation
19 ultimately resulted in the Certificate's annulment in
20 2016.

21 Crucially, the Claimants have failed to show
22 that the Ministry of Environment's alleged failure to

1 issue the Environmental Permit in January 2012 or
2 subsequently, insofar as it was motivated by RMGC's
3 failure to maintain a stable urban certificate that
4 was not the subject of legal challenges, was
5 unlawful.

6 In 2011 and 2013 RMGC also did not comply
7 with the Water Framework Directive. It's undisputed
8 that the Project involved the diversion of water
9 streams, both in the Rosia and Corna Valleys. This
10 diversion would deteriorate their ecological and
11 chemical qualities.

12 These next two slides show--first, on top
13 for this one, the existing Corna--the existing Rosia
14 stream and, on the bottom, how it would be diverted.

15 If you look at the slides with the Corna
16 Valley, you'll see there's a gray area where RMGC
17 would put the TMF dam and you see different blue
18 polka dot lines that show how the water would be
19 diverted.

20 As a result, RMGC needed permission to
21 derogate from the Water Framework Directive under
22 Article 4(7) of the Directive which, of course, also

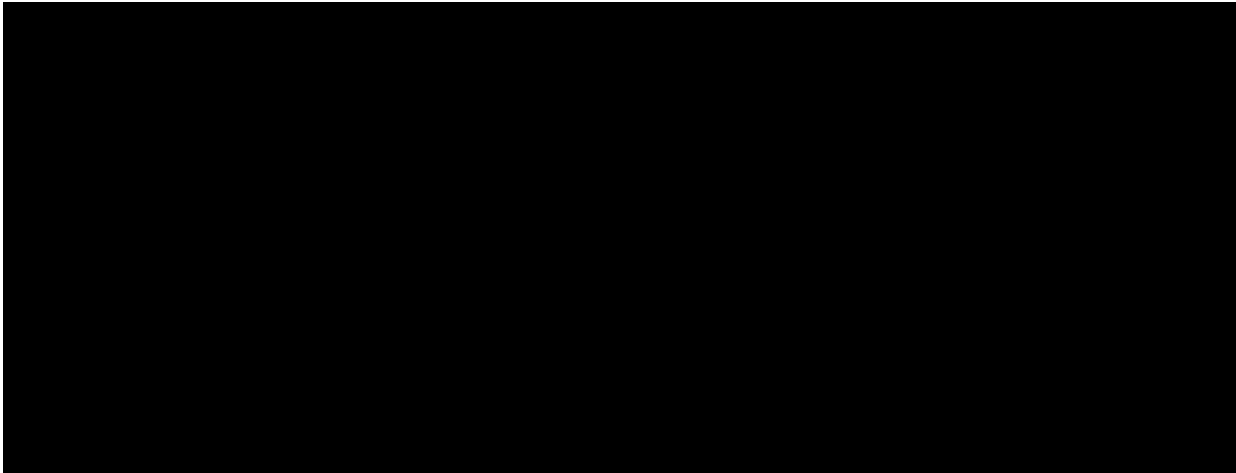
1 has been transposed into Romanian law. It's the
2 Waters Law 107. "Such derogations are granted only
3 in exceptional cases and only for purposes of
4 overriding public interest."

5 As shown on the next slide, which contains
6 confidential information--

7 (End of open session. Attorneys' Eyes Only
8 information follows.)

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ATTORNEYS' EYES ONLY SESSION



(End of Attorneys' Eyes Only session.)

1 OPEN SESSION

2 MS. de GERMINY: The Claimants, however,
3 argue that the only issue in terms of compliance was
4 that RMGC needed to secure this declaration of public
5 interest. They say that RMGC secured that
6 Declaration in September 2011 from the Alba County
7 Council, and that that was the end of the story.

8 But it was far from being the end of the
9 story. The Law does not provide from whom that
10 declaration must come. And although the Claimants
11 argue that the Declaration from a local authority,
12 the Alba County Council, sufficed, neither the TAC
13 nor the Ministry of Environment ever accepted that
14 declaration or confirmed that it met the requirements
15 of the directive.

16 On the contrary, given the significance of
17 the Project, State authorities considered that the
18 Declaration of Overriding Public Interest needed to
19 come from a central government authority.

20 And that's--we see examples. There's
21 extensive correspondence--but examples of two
22 letters, internal State letters, but noting that a

1 governmental act is required.

2 The next slide is confidential.

3 (End of open session. Attorneys' Eyes Only
4 information follows.)

ATTORNEYS' EYES ONLY SESSION

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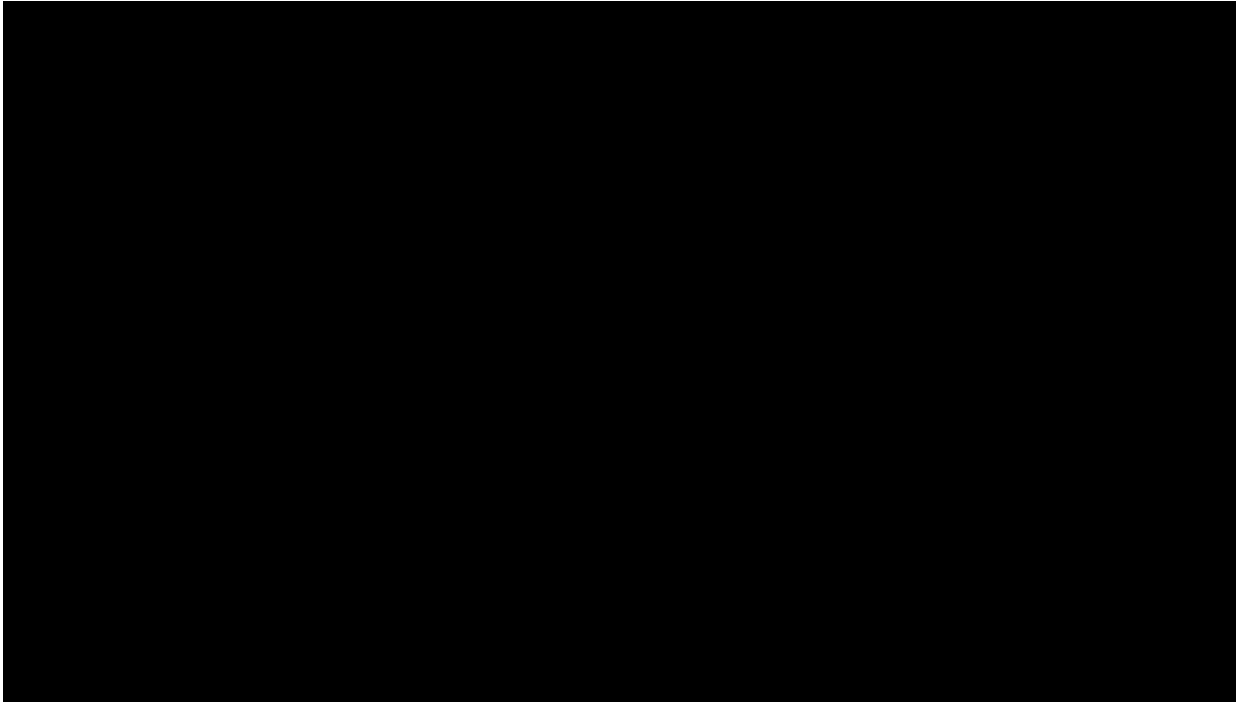
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(End of Attorneys' Eyes Only session.)

1 OPEN SESSION

2 MS. de GERMINY: The next slide shows, in
3 timeline form, the correspondence, both internal
4 State correspondence and correspondence with RMGC,
5 mainly from 2011 and 2014, regarding the Project's
6 lack of compliance with the Water Framework
7 Directive. And as you can see, it's really quite
8 extensive.

9 For instance, at the 31 May 2013 TAC
10 meeting, ANAR, the representative--ANAR is the
11 Romanian Waters Authority, which was a TAC
12 member--Mr. Cazan said that RMGC still needed to
13 submit the documentation to comply with the directive
14 and, therefore, to secure the water Management
15 Permit.

16 And he warned this Project may lead to an
17 infringement procedure declared by the European
18 Commission, and this is why we need to be very sure
19 and very convinced.

20 And just months later, in October 2013, the
21 EU Commissioner for the environment noted to the
22 Romanian Minister of Environment: This "project

1 involves the diversion of 2 rivers. This clearly
2 involves a deterioration of these water bodies. In
3 that case, the Project should only go ahead if all
4 the conditions under the directive are fulfilled. The
5 project being of 'overriding public interest' is only
6 one condition. The Project should have also been
7 included in the river basin management plan and
8 therefore subject to a public consultation. And this
9 was not the case."

10 As of 2014, RMGC still had not submitted the
11 requisite documentation to the Ministry of
12 Environment in connection with the Directive, as the
13 Ministry of Environment explained in a
14 25 February 2014 letter to the Ministry of External
15 Affairs, in connection with the Commission's queries
16 about the Project.

17 And so, here they're staying no
18 documentation has been submitted. "To the extent--to
19 the extent that the Rosia Montana Project stays with
20 the technical solution, we deem that in order to
21 issue the Water Management Permit, an analysis of
22 Article 4(7) is necessary."

1 RMGC also needed but did not have the
2 surface rights to the Project area.

3 PRESIDENT TERCIER: May I just mention the
4 fact that you--do you know how long you have to deal
5 with the last point?

6 MS. de GERMANY: I need, perhaps, 10, 15,
7 maybe 20. It's hard to say. But I think--I don't
8 know how long.

9 PRESIDENT TERCIER: What do you prefer?

10 MS. de GERMANY: I would prefer, if it's
11 amenable to the Tribunal, to go ahead and finish my
12 presentation and then we break.

13 PRESIDENT TERCIER: Okay. You're surviving?
14 You too?

15 Okay. Good. Then go ahead.

16 MS. de GERMANY: Okay.

17 ARBITRATOR DOUGLAS: Well, just to disrupt
18 it, then, what is the position--the Respondent's
19 position on whether or not the surface rights were
20 required for the Environmental Permit? I have not
21 understood you to say that they were required but--

22 MS. de GERMANY: Right.

1 ARBITRATOR DOUGLAS: --I'd like a
2 clarification.

3 MS. de GERMINY: So it's certainly,
4 indeed--I know that was your question yesterday.
5 It's certainly undisputed that RMGC obviously needed
6 the surface rights for the Building Permit, and we
7 would not dispute that from a technical point of
8 view.

9 But we say that that is shortsighted. It's
10 misguided in the sense that RMGC ran a very important
11 risk if it did not acquire the surface rights early
12 on. Because even if a minority of residents refuse
13 to move, RMGC would need to redesign the Project
14 around those properties--of course, depending on how
15 many properties and where they are located--and thus
16 redo--restart an EIA Procedure and/or resort to
17 expropriation proceedings which had an uncertain
18 outcome.

19 So that's why we note that the surface
20 rights were, of course, a very important issue also
21 for the Environmental Permit.

22 ARBITRATOR DOUGLAS: Is this, again, a

1 matter that requires discretion, or is this a formal
2 legal requirement of the permit?

3 MS. de GERMINY: It would--it is the same in
4 that the surface rights are a requirement only
5 perhaps for the building permit in terms of express
6 provisions relating to that that you'll see in the
7 Urban Certificate. But certainly from the Ministry's
8 point of view, this was important.

9 And it goes hand in hand, of course, with
10 the question of zoning. It's the same--it's directly
11 related. Because if there are residents in the area
12 that don't move and that you cannot move, then you
13 have to redo the EIA Procedure.

14 You have to review what is going to be the
15 impact of this Project on the area where the Project
16 is going to be and that you don't know where the
17 Project is going to be if there are people who are
18 there.

19 And so, as we see on the next slide, the
20 Rosia Montana Village is nestled; right? We've seen
21 already a few drawings, but this one shows it, I
22 think, very explicitly.

1 The Rosia Montana Village is nestled among
2 the four mountains that were going to become pits.
3 The village is in the middle. We see the houses that
4 are spread out all around. And the orange line
5 represents the delimitation of the Project area PUZ.
6 It's that same outer limit we saw earlier.

7 So the blue squares, to be precise, are
8 existing buildings as of today. Some of these
9 buildings may not be dwellings or inhabited, but many
10 of them are. Many Rosia Montana residents have, of
11 course, left over the years and, in many cases, have
12 sold their houses to RMGC. Many residents have also
13 passed away. But as of 2011 according to the
14 official and most recent Romanian census, there were
15 over 600 people living in Rosia Montana Village.

16 RMGC knew from the outset that a failure to
17 acquire the surface rights could derail the Project.
18 In 2002, it indicated that "[i]t is to be expected
19 that a certain number of people will be reluctant to
20 negotiate with RMGC... However, the fact that some of
21 these people are situated in the areas for the plant
22 and tailings dam is of great concern given that these

1 are critical path areas".

2 And the TAC also expressed concern about
3 this issue. On various occasions--this is an
4 example--an excerpt from TAC meeting minutes from
5 2007 where the representative of the Ministry of
6 Environment said: This is a very serious issue.
7 There are at least three households that--when I went
8 that refused to leave and that are situated exactly
9 on the TMF site. I don't know if you convinced them,
10 but this project is not of public utility, so
11 expropriation is out of the question.

12 So as we have seen, a number of fundamental
13 issues were outstanding not only in 2011 but also in
14 2013. And before returning to the EIA Review Process
15 timeline for 2013, I would like to make a couple of
16 comments regarding statements that you heard
17 yesterday about the 2013 period.

18 First, in the context of discussing events
19 in 2013, Claimants' counsel, in their presentation,
20 said yesterday that the Minister of Environment
21 Gavrilescu, when called upon to be a witness,
22 declined.

1 This is wrong. Minister Gavrilescu was not
2 called to be a witness and she did not decline to be
3 a witness. Madam Gavrilescu was Minister of the
4 Environment for six months in 2015 and then between
5 2017 and 2019, not in 2013. Her name came up a few
6 months ago because, as the Tribunal will recall, she
7 had signed a May 2019 letter on behalf of the
8 Ministry of Environment that one of the Respondent's
9 technical experts had used as an exhibit to her
10 report.

11 And the Claimants complained about this
12 letter saying it was not contemporaneous, and the
13 Tribunal held that unless the Respondent wished to
14 resubmit the exhibit as a Witness Statement that
15 exhibit should be stricken because it was not
16 contemporaneous. And given the circumstances,
17 Romania did not proffer a Witness Statement on
18 Minister Gavrilescu's behalf.

19 Second, we heard much yesterday about the
20 conclusions of an Inter-Ministerial Commission that
21 met in March 2013 and its statement that the Ministry
22 of Environment can "issue the Environmental Permit

1 and any other details can be solved along the way."

2 The views of that Commission are, however,
3 of little relevance as a matter of law and fact. As
4 a matter of law, the Commission was not a
5 decision-making body, and its views took the form of
6 an informative note addressed to the Government.

7 As a matter of fact, its views, which total
8 eight pages, were based on limited information,
9 namely two two-hour meetings on 11 and 22 March 2013.
10 And they were issued, these views--the informative
11 notes were issued just two weeks after the first
12 meeting.

13 So let's return to the EIA Review Process in
14 2013. Following RMGC's submission of its Waste
15 Management Plan and the Ministry of Culture's
16 endorsement of the Project, the TAC met four times
17 between May and July 2013.

18 The Claimants argue that these meetings
19 reconfirmed the requirements--reconfirmed that the
20 requirements for the permit were met and that the
21 Ministry of Environment was prepared to recommend
22 issuance of the permit.

1 However, in March 2013, Gabriel Canada noted
2 in its public disclosures that it was confident that
3 it could and would comply with its environmental
4 obligations reflecting that this was an ongoing
5 effort.

6 Then, at those meetings, the TAC, in fact,
7 raised issues such as, as I just explained, the Water
8 Framework Directive. The TAC also asked, for
9 instance, about the route by which cyanide would be
10 transported to Rosia Montana.

11 This had been a recurring issue for years
12 for the public and the TAC, as we see on this slide.
13 These are examples of comments from the public and
14 questions raised in the TAC.

15 Although the cyanide was possibly--possibly
16 going to arrive by ship in Constanta and then travel
17 across the country to Rosia Montana, the Ministry of
18 Transport's representative--and this is--on--it's on
19 this slide on the bottom. The representative of the
20 Ministry of Transport--and that's from a May 2013
21 meeting-- observed: Nobody in the Constanta port was
22 contacted. Nobody knows about this transport. Have

1 you contacted anybody? They don't know about it.

2 And RMGC's representatives in this meeting
3 responded: Well, several alternative routes have
4 been studied and the final route will be decided
5 "when the time comes."

6 So, they declined to provide further
7 information, notwithstanding the TAC's request, at
8 that point in time and the previous requests.

9 And although the Claimants complain about
10 these meetings in 2013--in, for instance,
11 March 2013--Gabriel Canada reported that it looked
12 forward to furthering discussions with relevant
13 Ministries regarding compliance with environmental
14 standards.

15 The Claimants also refer to the Ministry of
16 Environment's publication on 11 July 2013 of a note
17 for public consultation as evidence of the Ministry
18 of Environment's--as evidence that the Ministry of
19 Environment was allegedly ready to issue the permit.

20 They refer, at times erroneously, to this
21 document as a "Draft Permit." It was not. And a
22 2014--indeed, the name indicates that it's not a

1 permit--it's not a Draft Permit, and that's also
2 reflected in the document itself.

3 A 2014 RMGC Management Report confirms the
4 understanding that that note for public consultation
5 from 2013 was not a Draft Permit. So this is from
6 2014.

7 RMGC wrote: After the completion of the EIA
8 Procedure, the TAC is to make--the TAC will make a
9 consultative decision. Based on this decision and on
10 the report, the Ministry will decide about the
11 granting or rejecting of the permit. The decision of
12 the Ministry, together with a Draft Permit, will be
13 subject to a public consultation.

14 So they knew that the document from 2013 did
15 not fulfill that role. And at the end of the
16 consultation period, the Ministry of Environment will
17 draw up the Environmental Permit.

18 This report flies in the face of the
19 Claimants' argument that following a meeting on 26
20 July 2013, the Ministry of Environment should have
21 issued the permit. Gabriel Canada and RMGC's
22 contemporaneous statements reflect their

1 understanding that the EIA Review Process was
2 ongoing, satisfaction that the TAC was continuing its
3 work, and uncertainty as to whether RMGC had complied
4 with all environmental obligations.

5 None of the complaints the Claimants voice
6 in this Arbitration regarding the existence and the
7 content of the TAC meetings in 2013 were the Ministry
8 of Environment's alleged failure to issue the permit
9 in 2013 appear in those documents.

10 PRESIDENT TERCIER: Thank you very much. So
11 now I think we will have the break.

12 I'm sorry. I totally forgot to ask the
13 court reporters whether they are still ready to work.
14 Sorry for doing that. And thank you very much for
15 your work.

16 We will take now 15 minutes' break. But
17 before I would like to know what is the prospect--how
18 do you see the time? You told us yesterday that you
19 hoped to finish before lunch. Are you still--

20 DR. HEISKANEN: Probably an hour and a half,
21 thereabouts. Perhaps a bit more, I'm being advised.

22 PRESIDENT TERCIER: Okay. I think it would

1 be good if we could have the lunch break as provided,
2 at 1:15 would be good. So if you can arrange your
3 timing and decide when or how you should--

4 DR. HEISKANEN: We will accommodate the
5 Tribunal's wishes.

6 PRESIDENT TERCIER: I am not sure we are the
7 only one asking.

8 Good. Thank you very much.

9 (Brief recess.)

10 PRESIDENT TERCIER: Okay. Good. So, let's
11 resume, Mr. Bonifacio. You have the floor.

12 MR. BONIFACIO: Thank you.

13 Mr. President, Members of the Tribunal, the
14 Claimants' case on composite breach rests on their
15 argument that in 2011 the Government engaged in a
16 series of actions with the intention of blocking the
17 Project.

18 They say that the Government did this
19 continuously as from August 2011 through the
20 commercial negotiations between the Government and
21 Gabriel in the fall of 2011 and until the end of the
22 negotiations leading to the Rosia Montana Law in the

1 summer of 2013.

2 This allegation is without foundation. The
3 Government did not block the Project or its
4 permitting either in 2011 or in 2013 or, indeed, at
5 any time. My colleague, Lorraine de Germiny, has
6 just demonstrated why the Project did not meet the
7 requirements for environmental permitting.

8 As I will explain in a moment, there were
9 commercial negotiations between the Government and
10 Gabriel which began in October 2011. They were
11 nothing more than arm's-length discussions between
12 two partners in a Project during a period when
13 Romania was suffering one of the worst financial
14 crises of its modern history. And those negotiations
15 reached a conclusion within a couple of months, by
16 the end of 2011.

17 For the ensuing negotiations in 2013--and as
18 my colleague, Christophe Guibert de Bruet, will
19 explain--the Rosia Montana Law came about with the
20 Claimants' support and encouragement and was intended
21 to assist, not block, the progress of the Project.

22 Turning first to 2011. The Claimants argue

1 that starting on 1 August 2011 and running through to
2 November 2013, the Government of Romania first
3 conditioned the Project's permitting progress on the
4 Government obtaining an increased stake in the
5 Project's benefits, and, second, artificially blocked
6 the permitting of the Project until it obtained that
7 increased stake.

8 In order for this aspect of the Claimants'
9 case to succeed, they must establish both of these
10 propositions. As the Tribunal will see also in the
11 course of this hearing, neither of their propositions
12 is supported by the evidence. The progress of the
13 permitting was not conditioned on obtaining increased
14 benefits from the development of the Project and nor
15 did the Government interfere in the permitting
16 process, which ran its natural course.

17 The only reason for these allegations being
18 made now is opportunism. The Claimants have chosen a
19 valuation method for the quantification of their
20 damages that is based on the market capitalization of
21 Gabriel Canada in the Toronto Stock Exchange. This
22 method is inappropriate and cannot be used to

1 reliably calculate damages, as Romania has explained
2 throughout this arbitration.

3 But that's not the main point that I want to
4 make now. The Claimants have chosen to use this
5 method, which is highly sensitive to changes in the
6 valuation date, and then they chose to backdate the
7 start of the Composite Act to August 2011.

8 Why did they do so? Because in their
9 quantification, this leads to an increase of
10 approximately USD 3 billion of additional damages
11 when comparing with a valuation date in August of
12 2013, and some USD 3.5 billion if valued after the
13 end of August 2013. This is graphically shown on the
14 screen.

15 In the red vertical line, you can see a
16 valuation date. The blue line shows the market
17 capitalization of Gabriel Canada and how it evolved
18 in time. You can see that the historical peak of the
19 market capitalization of Gabriel Canada was
20 registered precisely in the period July/August 2011.

21 So, when the Claimants were preparing their
22 quantum expert reports, they were hard-pressed to

1 create the appearance that Romania committed a breach
2 of treaty in July or August 2011. And this is
3 transparently why they chose to backdate the start of
4 the Composite Act to August 2011.

5 At no point before the preparation of the
6 Claimants' Memorial and its First Expert Report on
7 quantum did Gabriel ever allege that Romania had
8 interfered with Gabriel's investments in August of
9 2011 or, indeed, at any point throughout 2011 as a
10 result of the commercial negotiations with the
11 Government.

12 As we can see on the screen, in their
13 Request for Arbitration, the Claimants listed
14 chronologically all key events relevant to their
15 claims, and there is no mention of any political
16 statement or commercial negotiations with the
17 Government or, indeed, any conduct of Romania in the
18 summer of 2011. That omission was not an oversight.
19 It is the testament to a changing case theory
20 designed to achieve a certain result on quantum.

21 So, against that background as to why there
22 are now allegations that Romania's relevant conduct

1 started in August 2011, let's start by examining
2 first the alleged events of August 2011 and then the
3 subsequent commercial negotiations as from
4 October 2011 to see whether they amount to such an
5 act.

6 Turning to the first point, the
7 international responsibility of Romania depends on a
8 showing of a wrongful act attributable to Romania.

9 Far from pointing to an act taken by Romania
10 on 1 August 2011, as we heard yesterday, again, the
11 Claimants' point vaguely to a public statement by
12 Prime Minister Emil Boc during an interview that he
13 was "not a fan of the project."

14 You can see a portion of the interview on
15 the screen which corresponds to a video projected
16 yesterday.

17 On the slides, you can see a table showing
18 all public statements of Central Government officials
19 since 2006 through the end of 2012 that are part of
20 the record.

21 We have also prepared a table version of the
22 events in this slide to assist the Tribunal in

1 placing the statements in sequence during this part
2 of the presentation. This has been distributed
3 earlier.

4 The table shows where in the timeline of
5 public statements the specific press article is
6 located by reference to Prime Minister Boc's previous
7 public statements since 2006.

8 First, whatever Prime Minister Boc said
9 specifically that day and whether he is a fan of the
10 Project or not, individual statements are not in and
11 of themselves an act of State. Investment Treaty
12 Tribunals have consistently and rightly made clear
13 that statements of public officials that are not
14 accompanied by concrete measures or that are
15 contradicted or belied by the State's action are of
16 limited relevance to interpret the State's motives.

17 As the Tribunal explained in *S.D. Myers v.*
18 *Canada*, it is the record as a whole that must be
19 considered when assessing the conduct of the State,
20 not the statements of individual politicians who may
21 simply express their own personal views.

22 Second, there was nothing new in the

1 Prime Minister's statements, as Prime Minister Boc
2 expressly recalled during the interview. As we can
3 see on the screen, Prime Minister Boc's statements
4 are preceded by the words "I have said on a number of
5 occasions," which is a key aspect of this statement.
6 His personal position had been previously expressed
7 publicly.

8 Third, whatever Prime Minister Boc's past
9 and current personal views about the Project, it is a
10 fact that this Project was firmly on the Government's
11 program since 2009. Nowhere do Prime Minister Boc's
12 statements support the Claimants' propositions that
13 the permitting would only be--would only progress if
14 Romania obtained increased benefits from this
15 Project.

16 On the contrary, Prime Minister Boc refers
17 that for the Government, there are "two major
18 considerations" in this Project that were to be
19 assessed at the respective Ministry level. One was
20 the environmental aspect, and the second was the
21 commercial aspect, as you can see on the screen.

22 Even from the standpoint of the commercial

1 aspect of the Project, Prime Minister Boc is only
2 stating that this should be "rediscussed". Nowhere
3 does he state that the benefits must be absolutely
4 increased or how. And even less is he stating that
5 an increase is a condition for the Project to
6 proceed.

7 The suggestion of revisiting the stake of
8 Romania in this Project's benefits was also not new.
9 As Mr. Sorin Găman states in his Witness Statement,
10 the public debate regarding this project throughout
11 the financial crisis, which seriously affected
12 Romania between 2009 and 2011, had focused in part on
13 whether or not the Romanian population derived
14 sufficient benefits from the development of the
15 Project when compared with the associated
16 environmental risks.

17 In that context, in March 2010 the
18 Government through Minister of Economy Adriean
19 Videanu publicly endorsed the public opinion's view
20 that it would be timely to consider whether the
21 economic benefits from the development of the Project
22 were appropriate for Romania.

1 Minister Ion Ariton, who is a witness in
2 this arbitration and who replaced Mr. Videanu in
3 September 2010, had also left the door open to that
4 possibility when asked about a possible renegotiation
5 with Gabriel some months later in October of 2010.

6 In summary, the statements of Prime Minister
7 Boc do not support the contention that the Government
8 of Romania conditioned the Project's permitting
9 progress on the Government obtaining an additional
10 stake in the Project's benefits or artificially
11 blocked the permitting of the Project until it
12 obtained that increased stake.

13 The Claimants then try to bolster their
14 argument by referring to a selection of a handful of
15 other statements of Romanian officials after
16 1 August 2011.

17 The public statements about the Project were
18 numerous at different points in time. The authors of
19 those statements were, to name but a few: President
20 Traian Băsescu, Prime Minister Boc, Prime Minister
21 Mihai Răzvan Ungureanu, Minister of Economy Ion
22 Ariton, Minister of Economy Lucian Bode, Minister of

1 Culture Kelemen Hunor, Minister of Environment László
2 Borbély, Minister of Employment Sebastian Lăzăroiu.

3 Other state officials also publicly
4 expressed their views over time, such as Secretary of
5 State of Economy Claudiu Stăfănuț and the Director of
6 Mining Director within the Minister of Economy,
7 Mr. Găman.

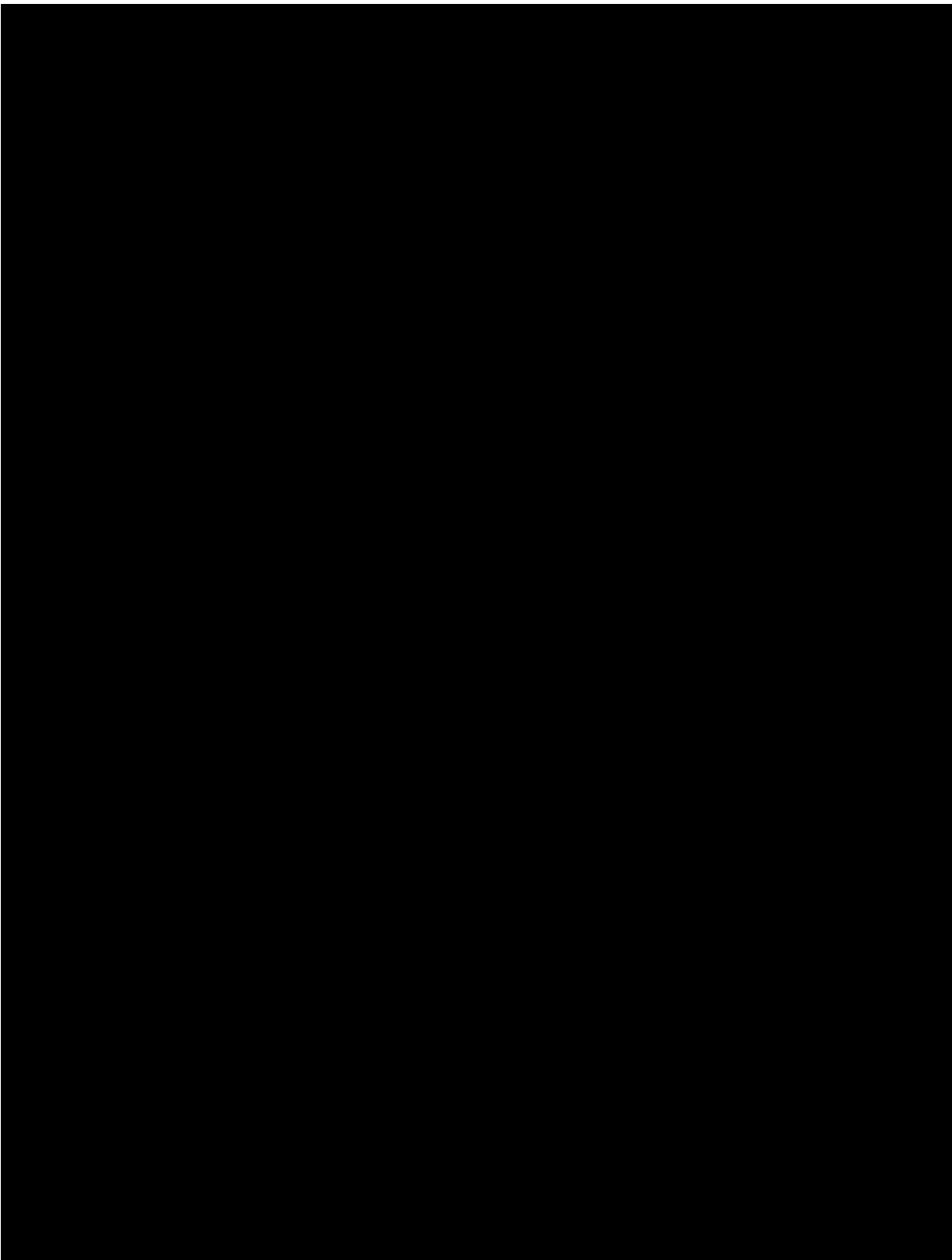
8 Given the significant diversity of views
9 expressed in this specific assortment of public
10 official statements, they cannot be equated to an act
11 of Romania. And even on an individual basis, none of
12 these statements says that permitting process would
13 be held up pending an increase of Romania's stake in
14 the Project.

15 I now turn to a confidential part of the
16 presentation.

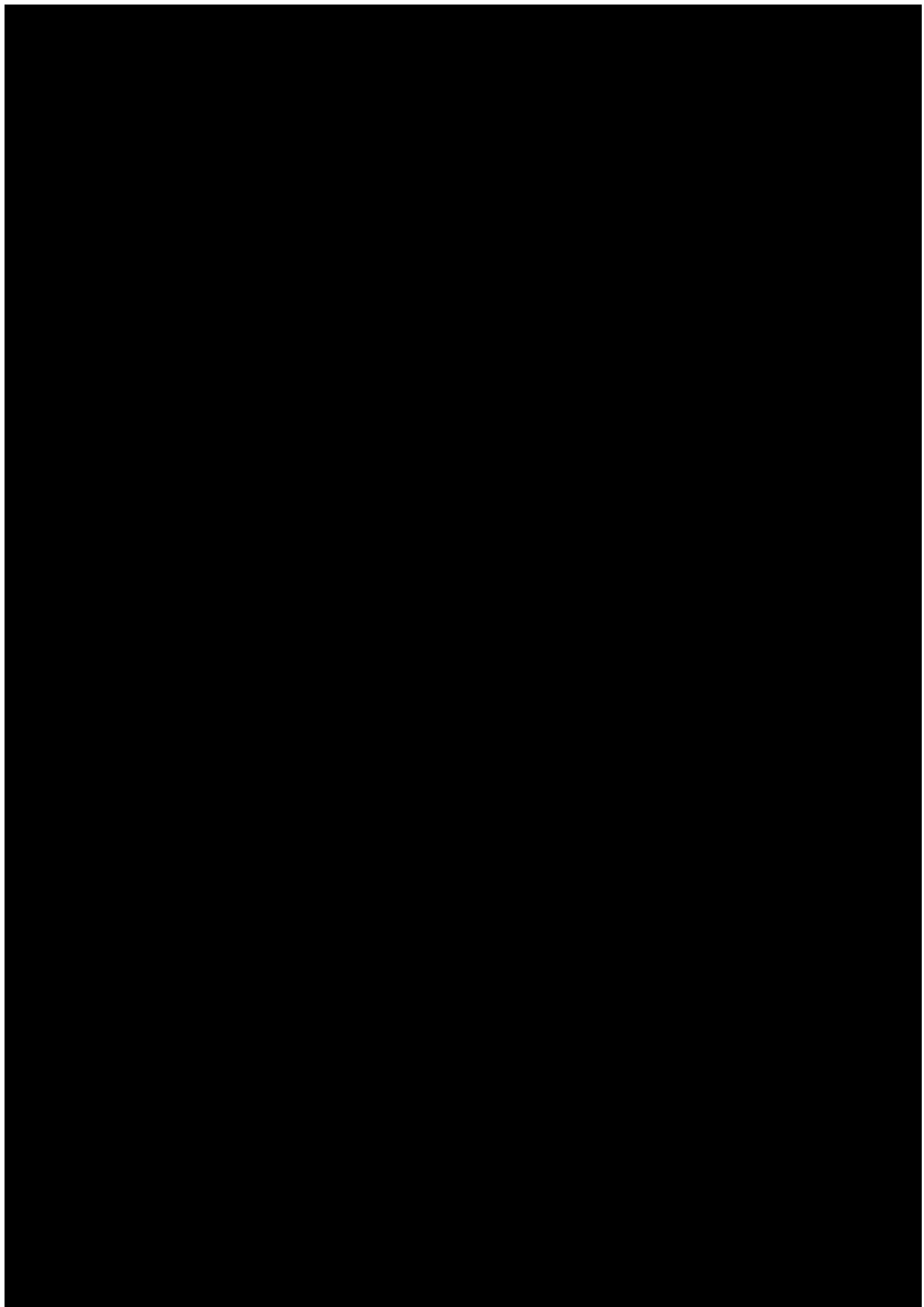
17 (End of open session. Attorneys' Eyes Only
18 information follows.)

ATTORNEYS' EYES ONLY SESSION

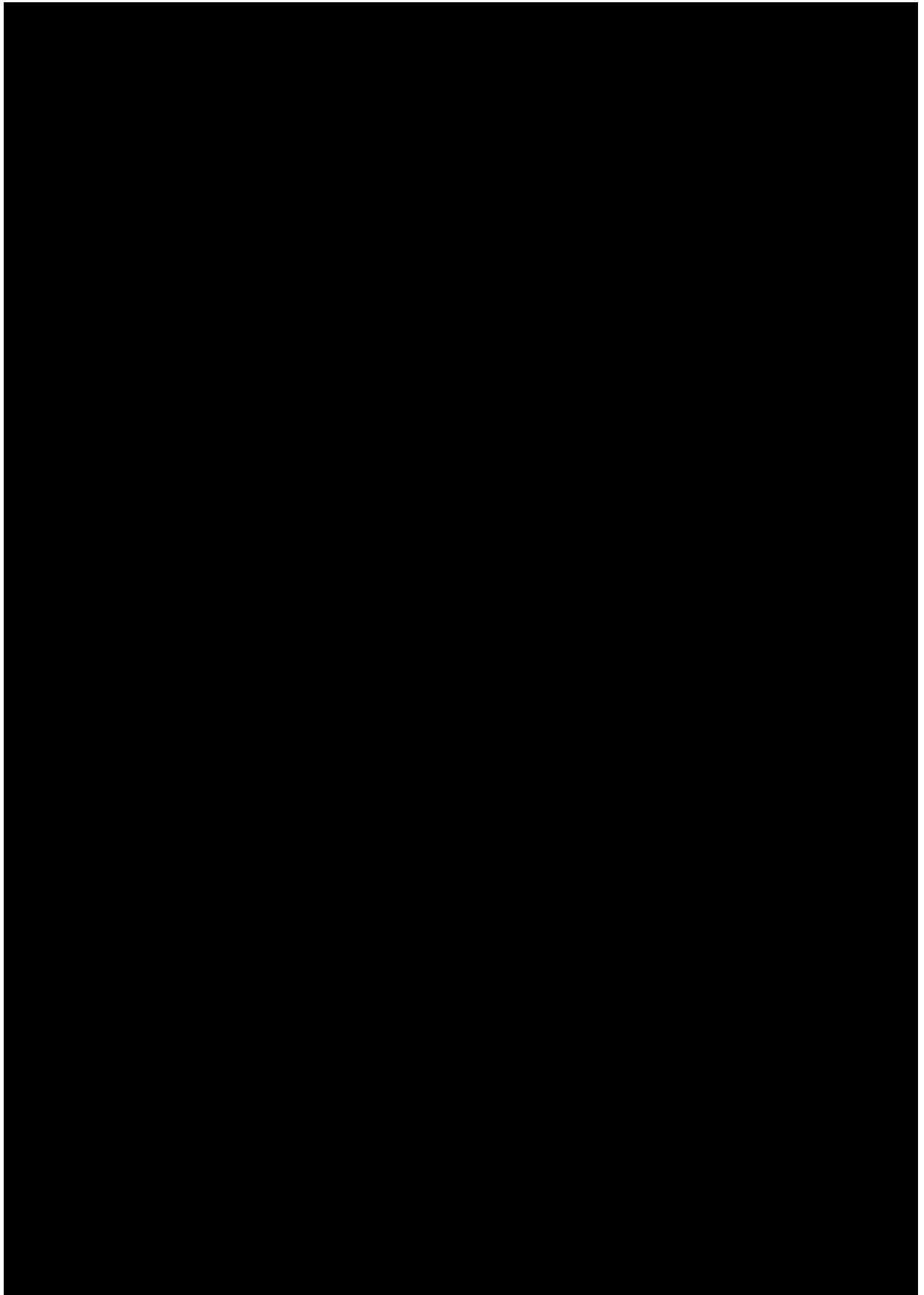
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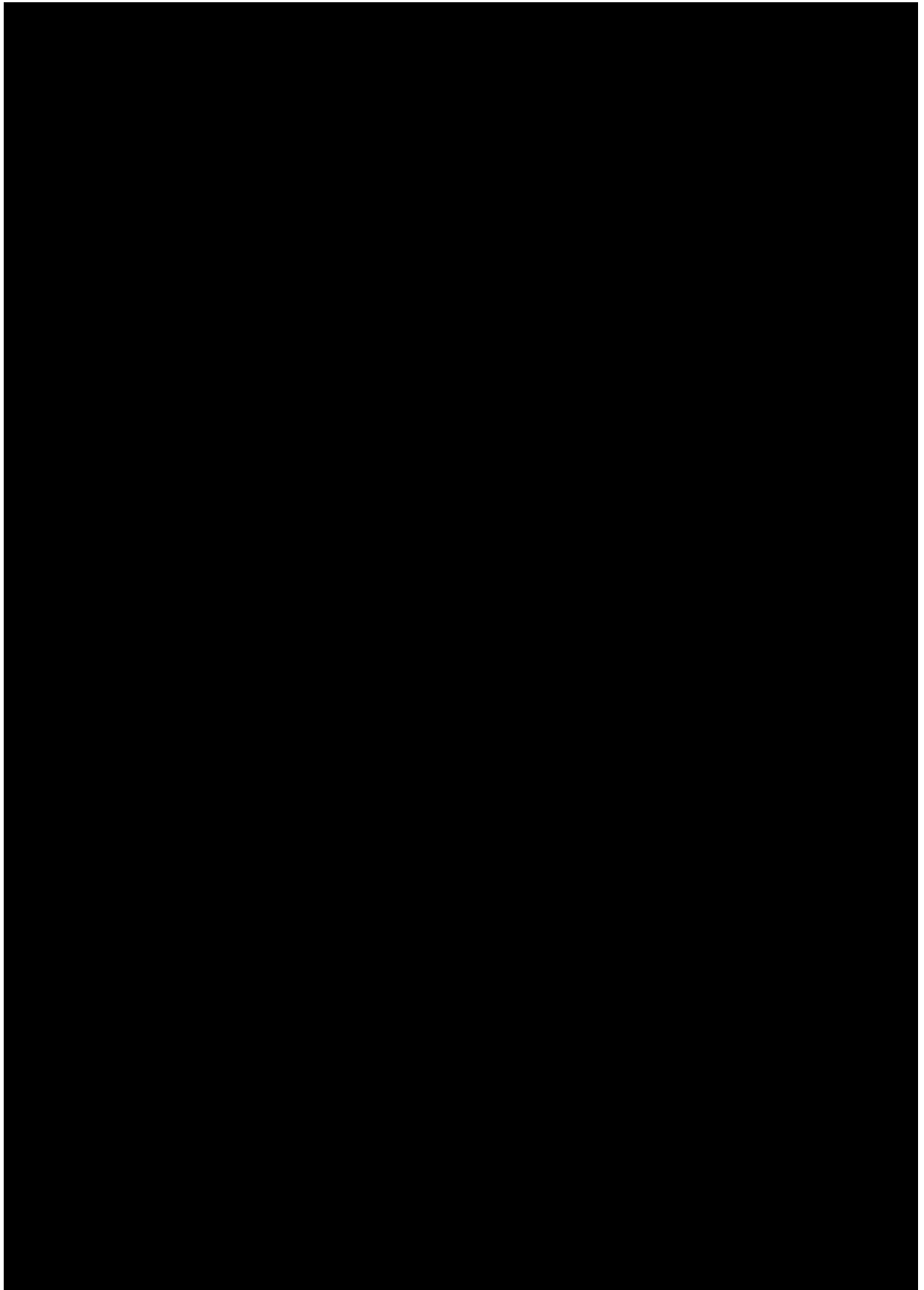
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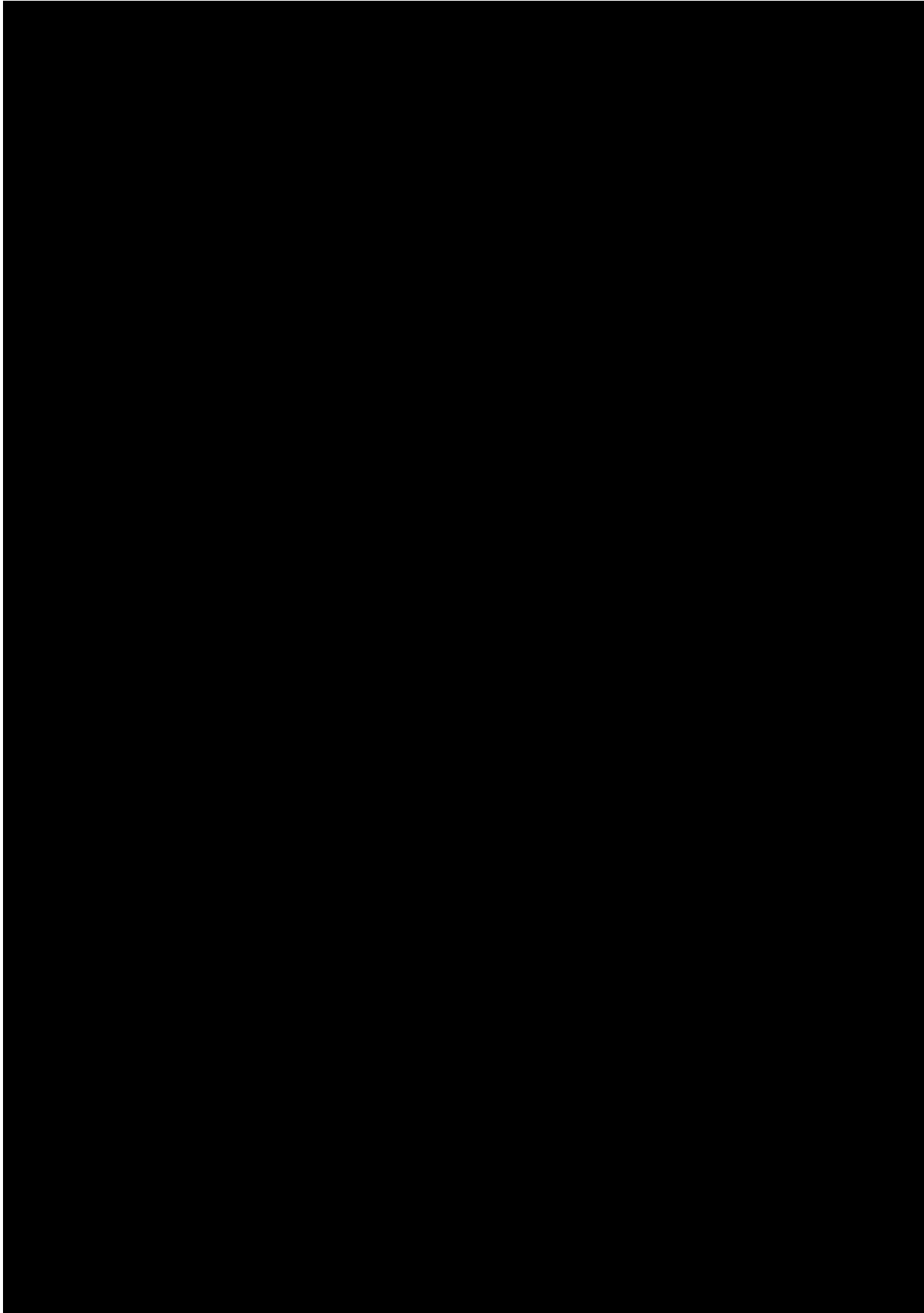
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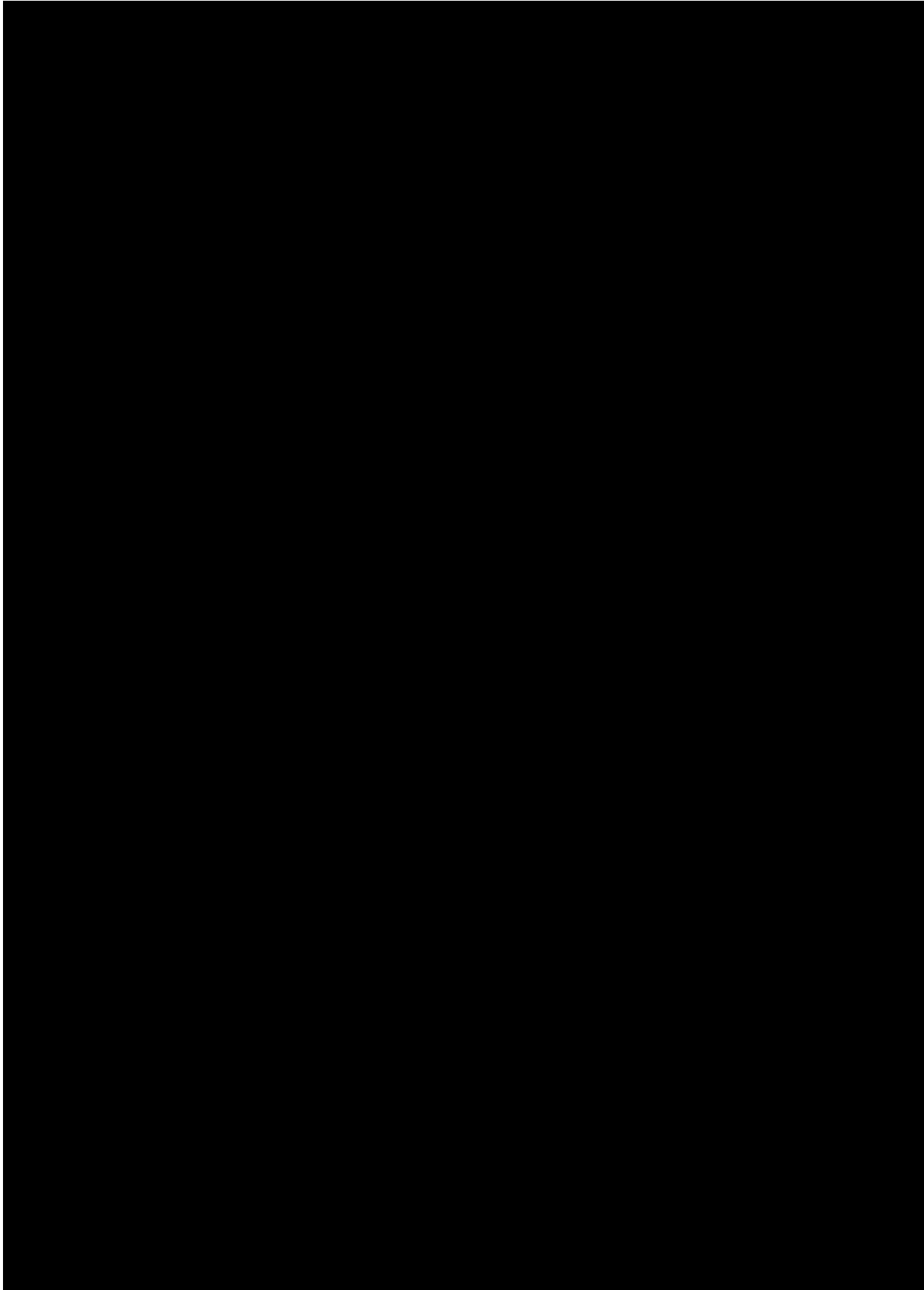
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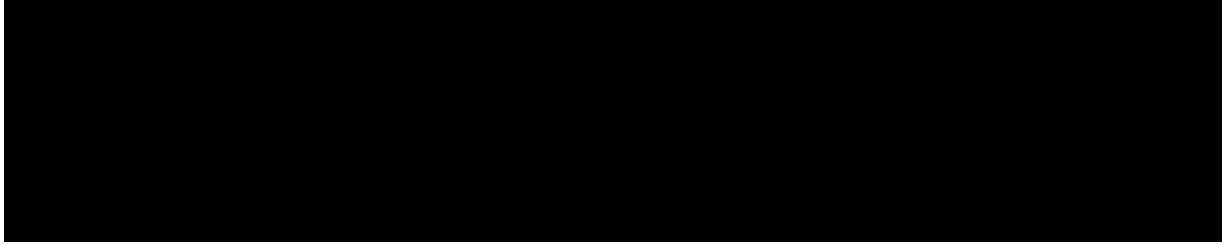
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(End of Attorneys' Eyes Only session.)

1 OPEN SESSION

2 MR. BONIFACIO: In other words, it is only
3 in this arbitration that the Claimants have felt the
4 need to reinterpret the meaning of Mr. Borbély's
5 statements throughout August 2011 to suggest that
6 Mr. Borbély was pushing for a renegotiation of the
7 commercial terms of the license.

8 They planted the seed of confusion regarding
9 a link between commercial negotiations and permitting
10 that cannot be inferred from Mr. Borbély's statements
11 and continue to feed that confusion by quoting his
12 statements out of context.

13 As we saw yesterday, the Claimants apply the
14 same technique for other public statements of
15 Romanian officials about the Project that summer and
16 fall.

17 The Claimants' misrepresentation of the
18 various statements are just too numerous to be
19 addressed here. I refer the Tribunal to Romania's
20 written pleadings where each of the relevant
21 statements is explained in context, specifically,
22 Counter-Memorial Section 4.7 and Rejoinder

1 Section 3.4.1.

2 I will, however, say a word about one new
3 document mentioned yesterday on Slide 31 of Volume 3
4 of the Claimants' Opening Statement. This is Exhibit
5 C-2918, one of the rebuttal documents.

6 This exhibit contains a letter of
7 Minister Hunor to a member of Parliament responding
8 to a question about public statements relating to the
9 economic advantages of the Project as well as
10 cultural heritage protection.

11 The letter has absolutely nothing to do with
12 the Ministry of Economy's negotiations with Gabriel,
13 as becomes clear when looking at the question raised
14 by Deputy Eugen Bejinariu that the letter is
15 addressing.

16 So, the Tribunal is referred to
17 Exhibit R-674 which contains the question that
18 Mr. Hunor is answering in Exhibit C-2918.

19 The ultimate proof, that in the period
20 starting in 1 August 2011, the Government did not
21 change its conduct vis-à-vis the Project, lies in the
22 fact that there is no trace of a protest against any

1 of those public statements on the part of the
2 Claimants or RMGC. There had to be public shock and
3 outrage had any public official actually stated or
4 suggested in public statements that he would not
5 comply with the law intentionally to force a foreign
6 investor to sit at the negotiation table and offer an
7 increase of benefits for the State.

8 But there are no such statements of protest,
9 not least from Gabriel and RMGC. In their Opening
10 Statement yesterday, the Claimants have called it
11 coercion, a shakedown, an abuse, but this is not what
12 they said at the time.

13 As Ms. Mocanu states in her Witness
14 Statement, during the meeting at the Ministry of
15 Environment in early September 2011 with
16 representatives of RMGC that I mentioned before, she
17 does not recall any representative of RMGC, including
18 RMGC's lawyers, protest against any statements of
19 Mr. Borbély to the press prior to that date to the
20 effect that he would block the permitting subject to
21 renegotiation of the commercial terms of the license;
22 nor did Mr. Tanase complain to any of the many

1 officials he met after those statements were made,
2 including the very people who were conducting the
3 commercial negotiations as from October, such as
4 Mr. Ariton and Mr. Găman.

5 It is not that at the time the Claimants did
6 not know about the political statements of which
7 we--they complain now. They did, as we can see on
8 the screen. Gabriel and RMGC had various service
9 providers constantly reviewing all news items on the
10 Project in Romania and abroad.

11 On at least one occasion specifically,
12 referred to in the Claimants' Opening Statement, the
13 statements of the public official in question were
14 delivered viva voce in front of various RMGC
15 employees and directors during a joint site visit to
16 Rosia Montana.

17 RMGC had a track record of drafting
18 responses to and complaints against adverse news
19 items and distributing the positive items to key
20 contacts and publishing them on RMGC's website.

21 They helped diffusing some of those
22 statements, namely of Mr. Borbély, because they

1 contain positive statements to them, as we can see on
2 the screen.

3 Far from complaining or protesting against
4 any statements by public officials, Gabriel was
5 pleased with those public statements and boasted in
6 Gabriel Canada's disclosures in the Toronto Stock
7 Exchange that the Project had gained significant
8 political support that summer.

9 Several of those public statements were
10 perceived in public opinion and political debate as
11 being biased towards Gabriel such that Gabriel even
12 felt compelled to publicly explain that they were not
13 the result of Gabriel's financing of any political
14 party, as we can see on the screen. And this is all
15 that Gabriel had to protest about at the end of
16 August 2011.

17 To conclude on the alleged start of the
18 composite act, the Claimants try to fabricate a
19 series of acts starting in August 2011, essentially
20 based on a selection of political statements made not
21 to Gabriel, but to the press. That attempt fails
22 because those statements do not demonstrate the

1 beginning of a new pattern of conduct to the
2 Government vis-á-vis the Project; express very
3 different personal views, and not one unitary
4 position that can be said to reflect the position of
5 Romania.

6 And last but not least, those statements do
7 not anywhere support the serious allegations that the
8 permitting was conditioned on the increase in
9 Romania's economic benefits from the development of
10 the Project.

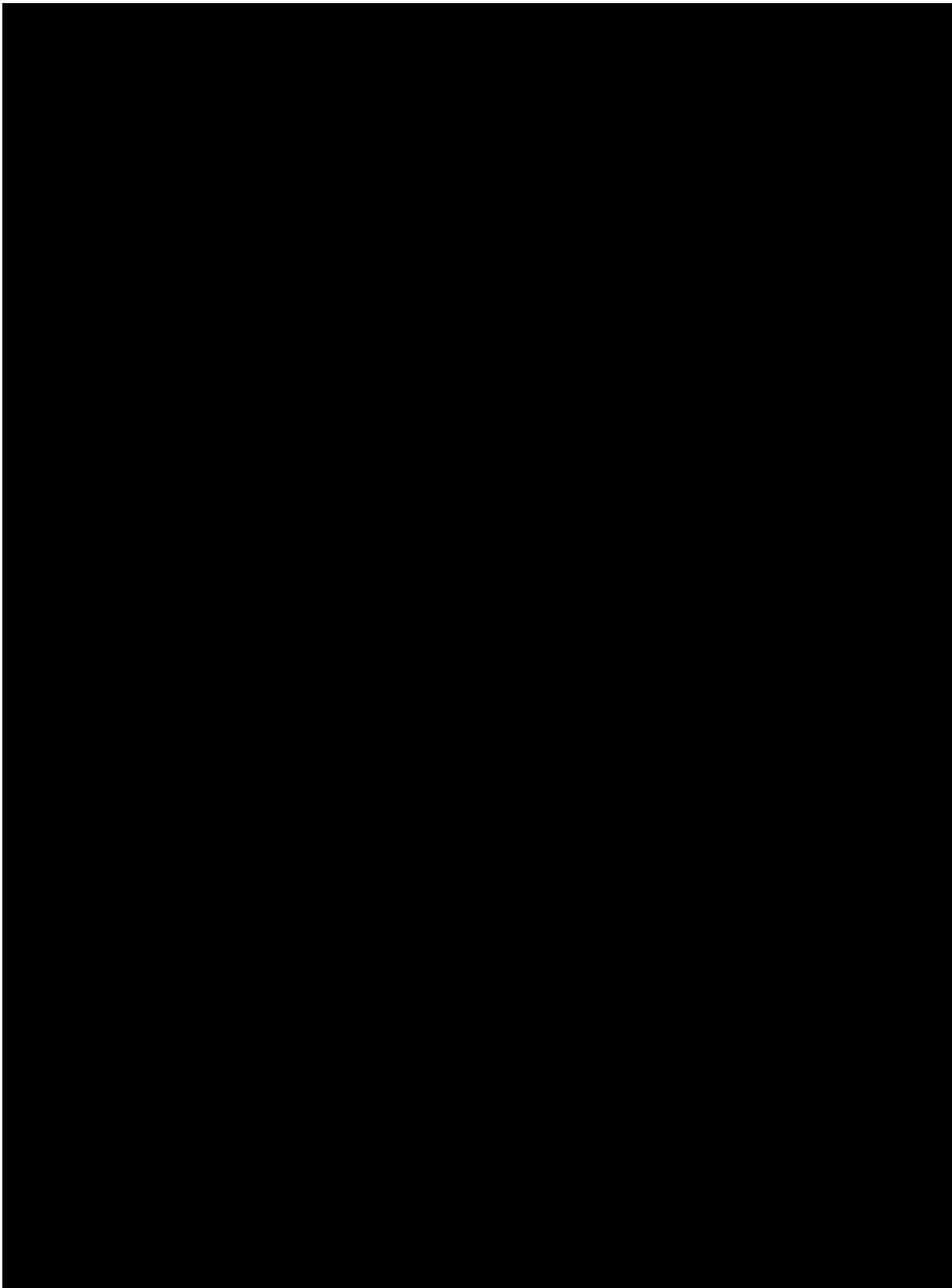
11 That allegation is equally unsupported by
12 what happened next in the commercial negotiations
13 starting in October 2011. So let's turn to that now.

14 This part of my presentation is
15 confidential.

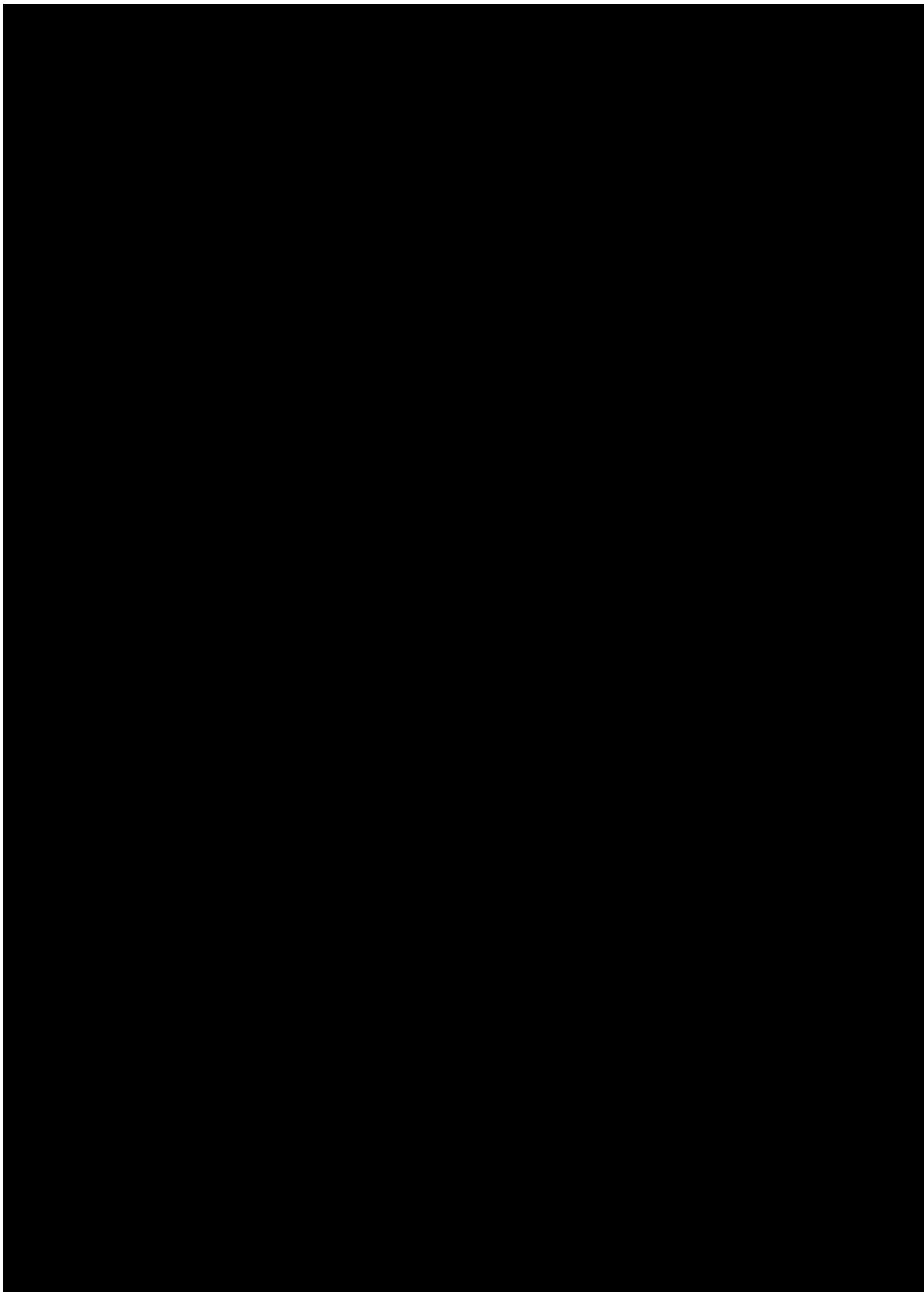
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17 information follows.)

ATTORNEYS' EYES ONLY SESSION

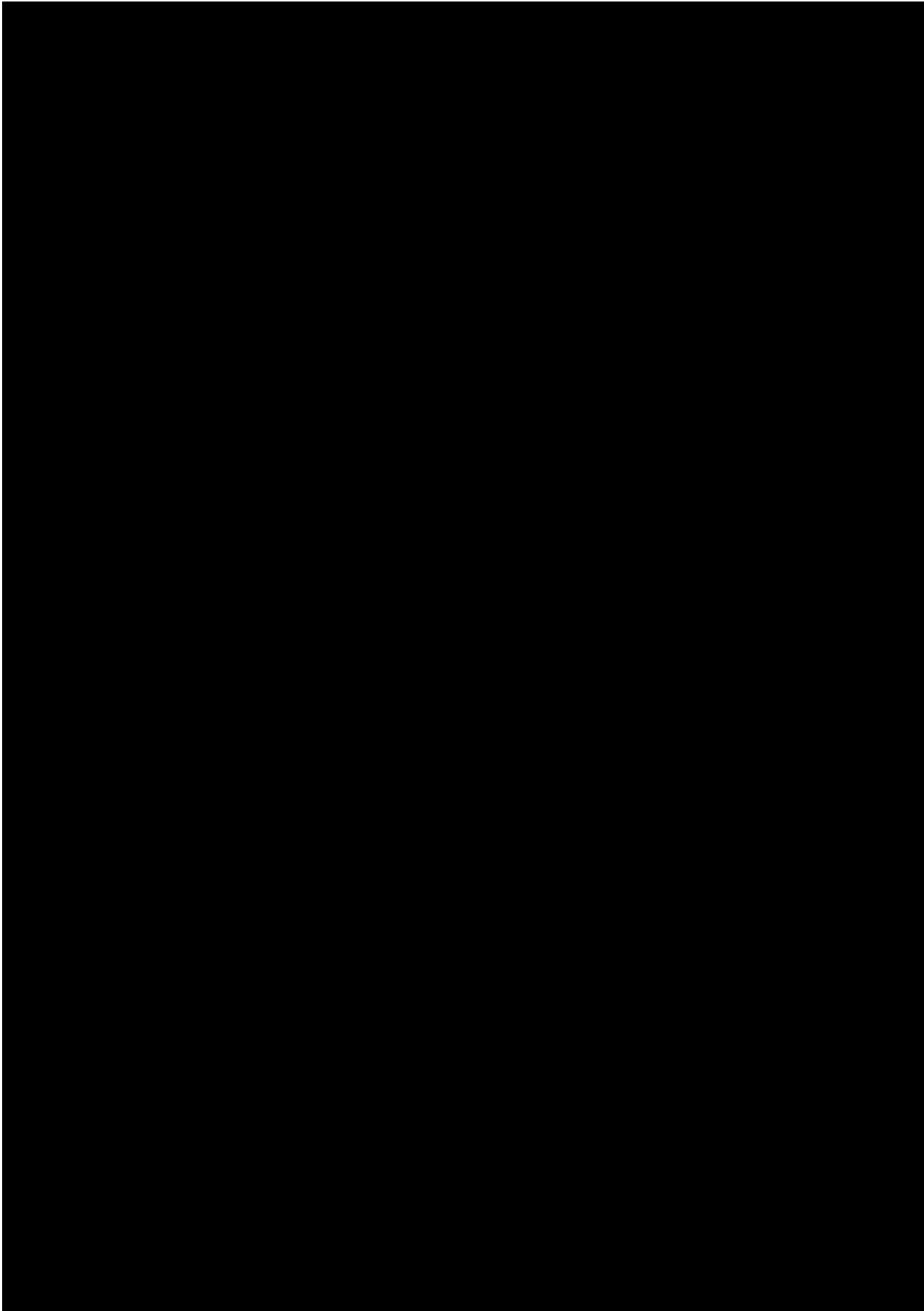
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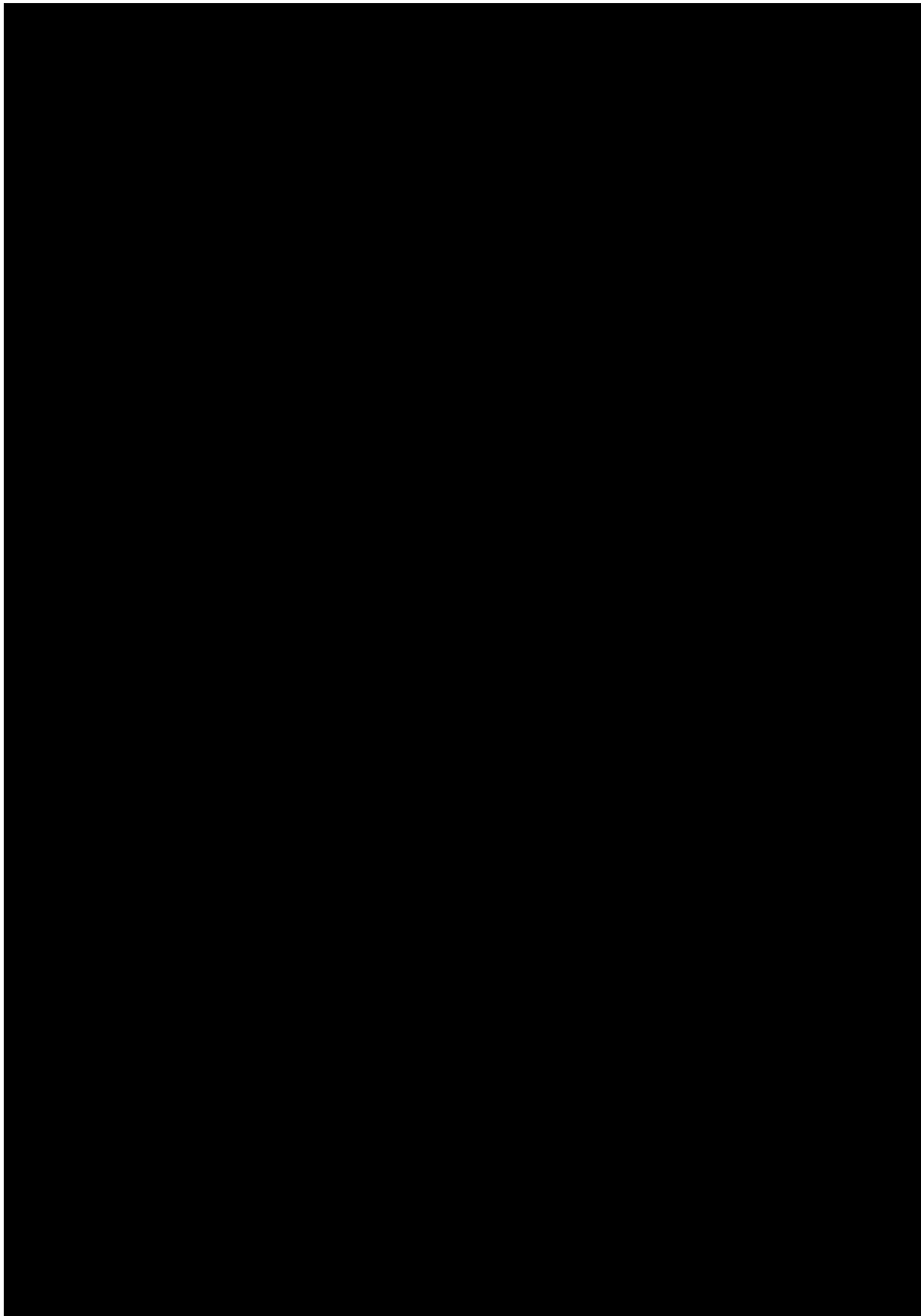
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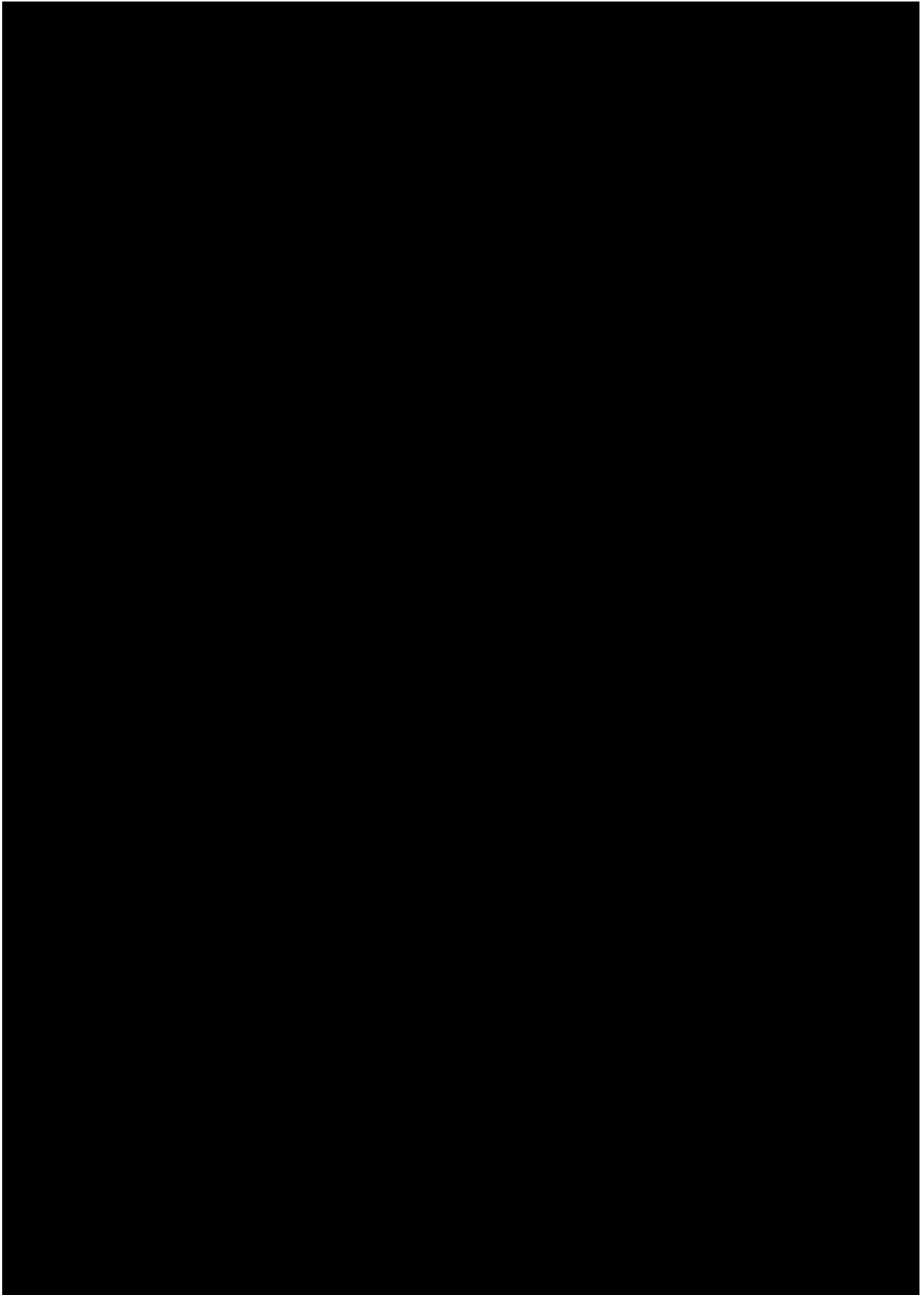
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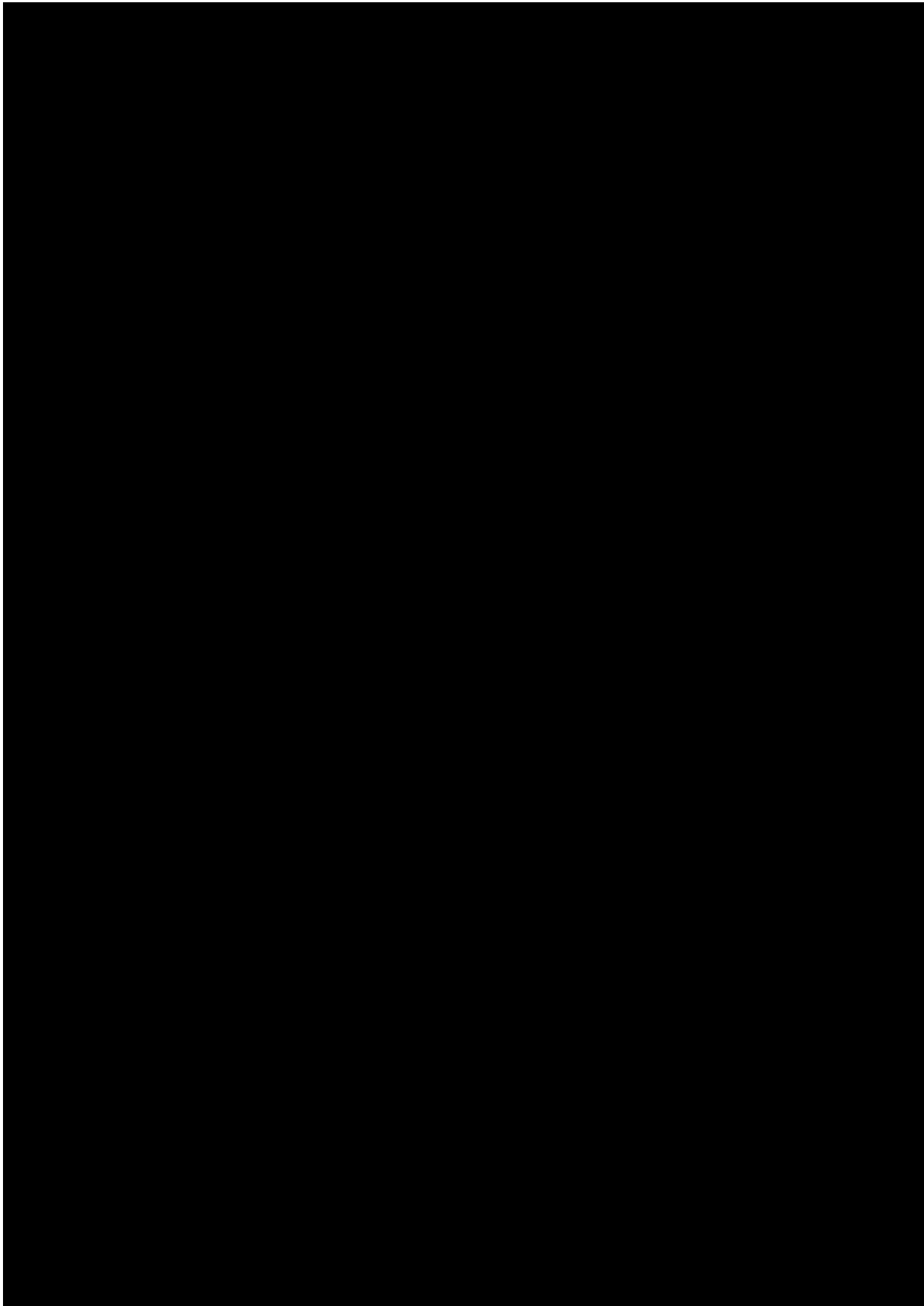
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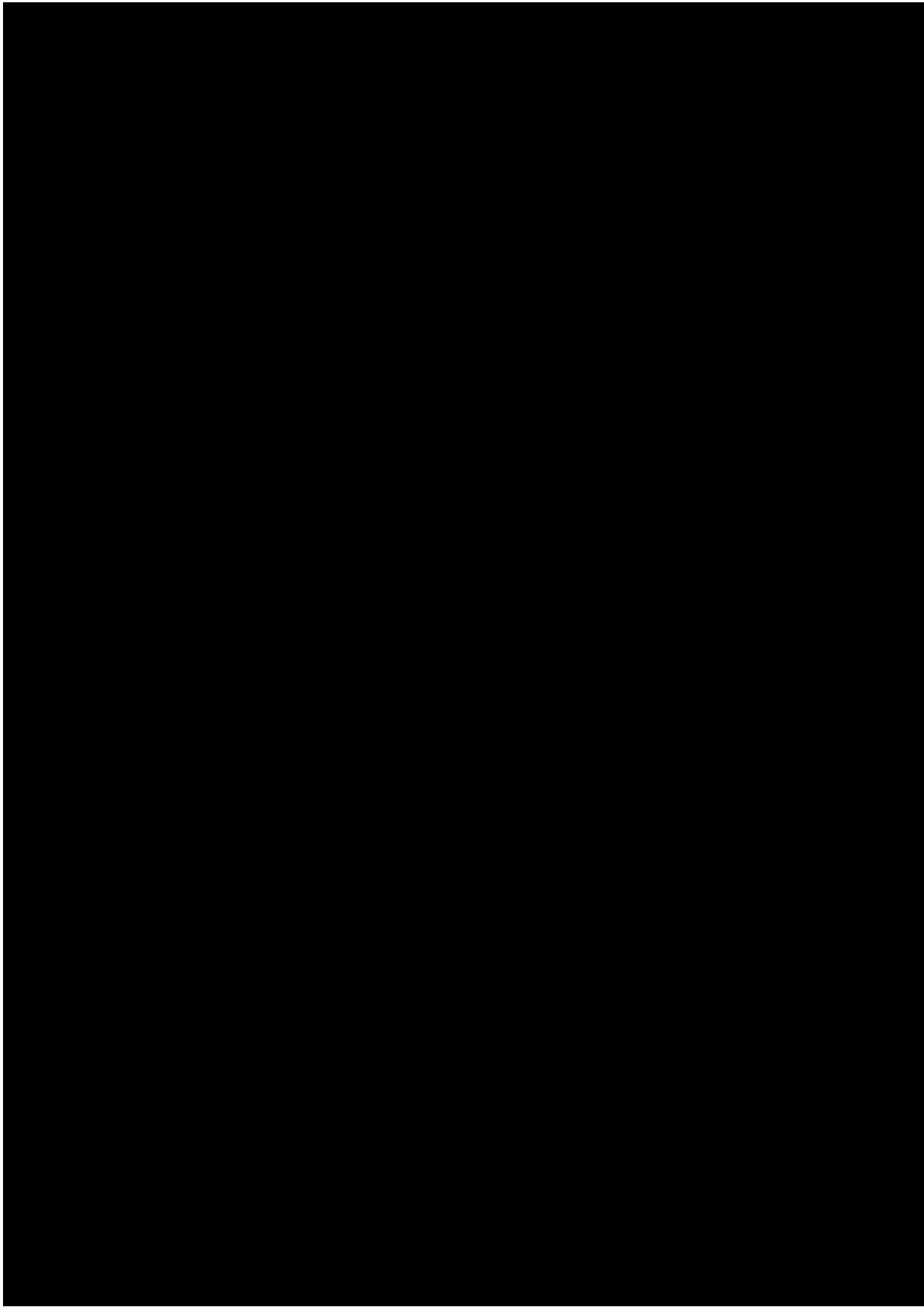
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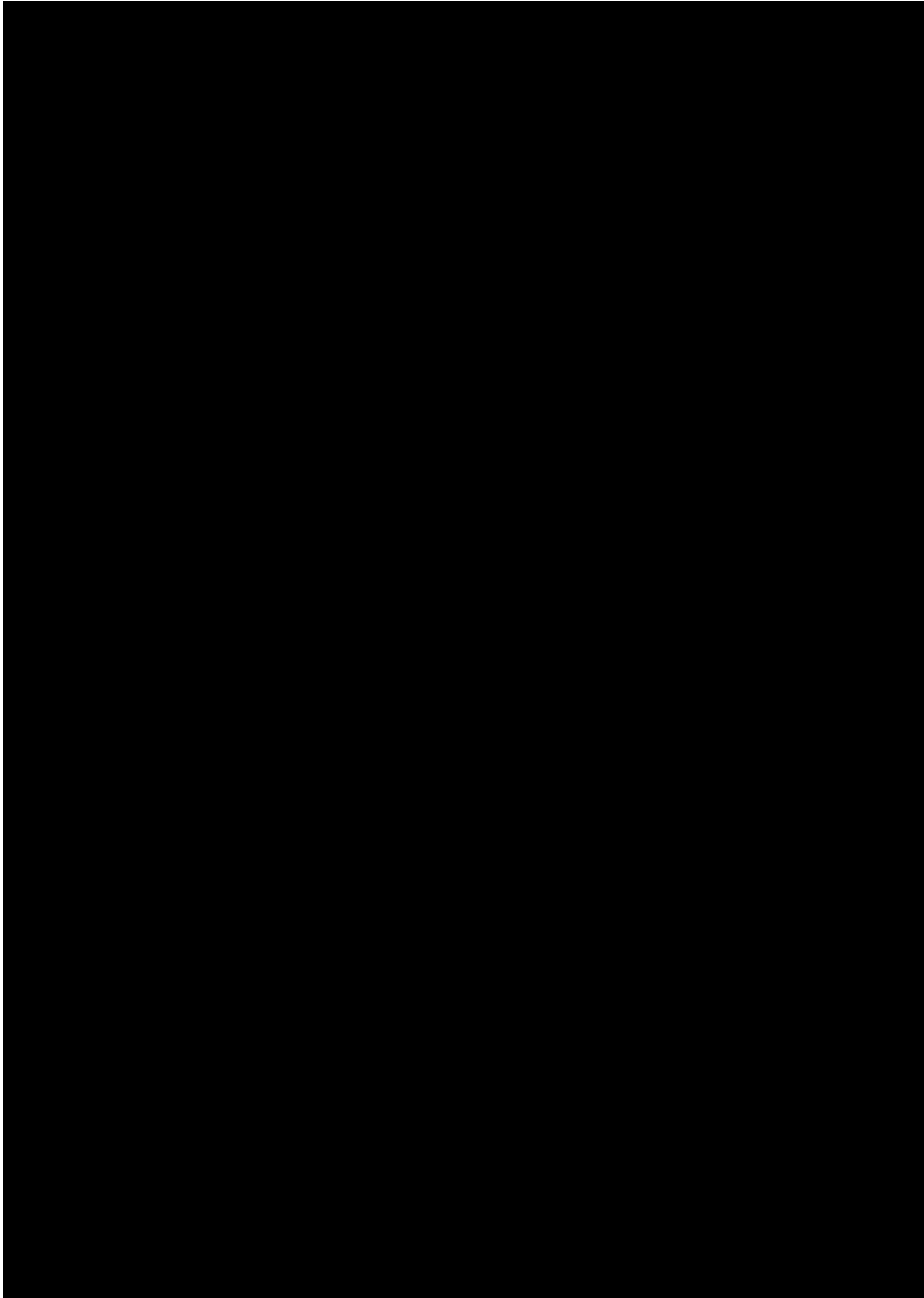
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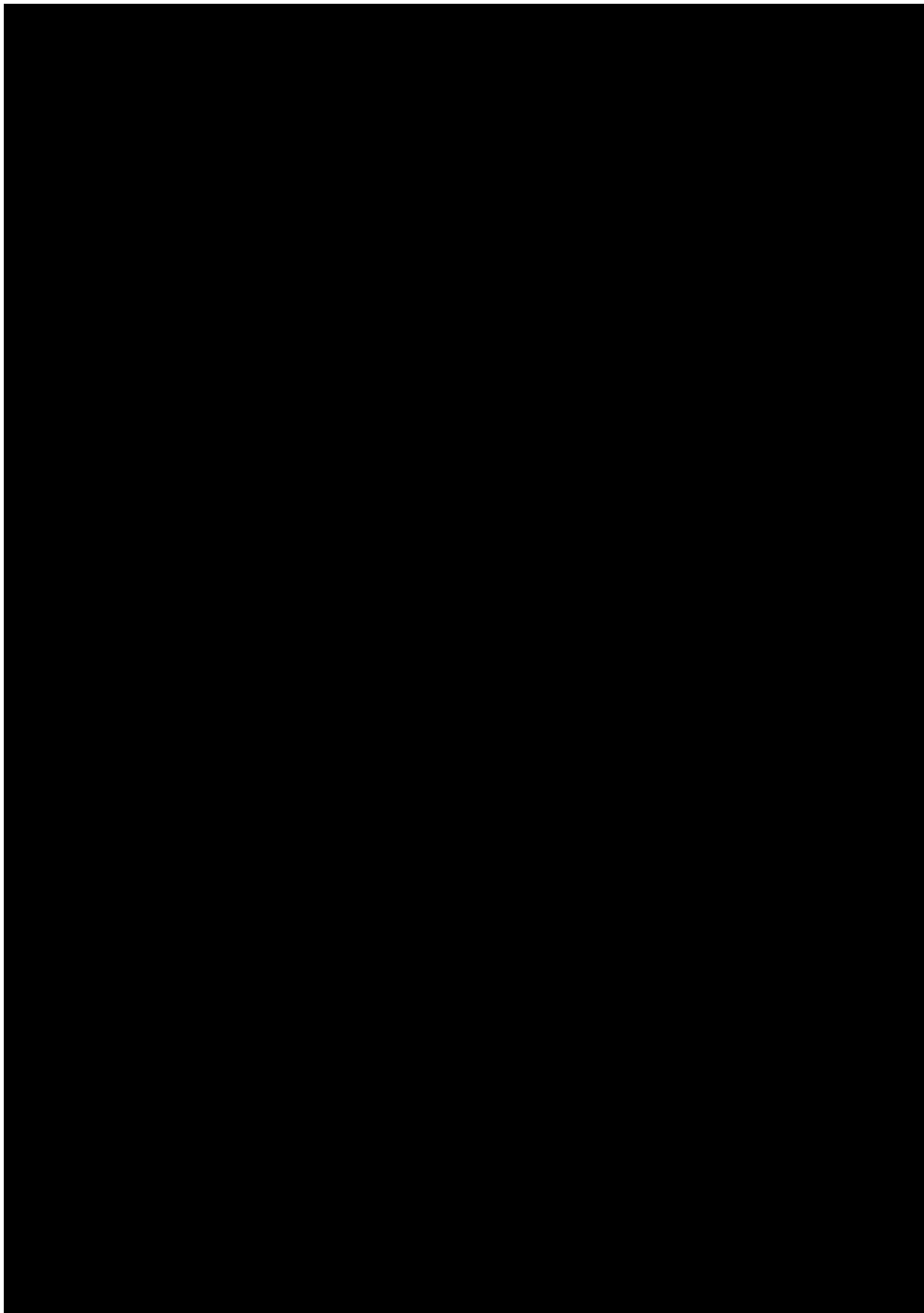
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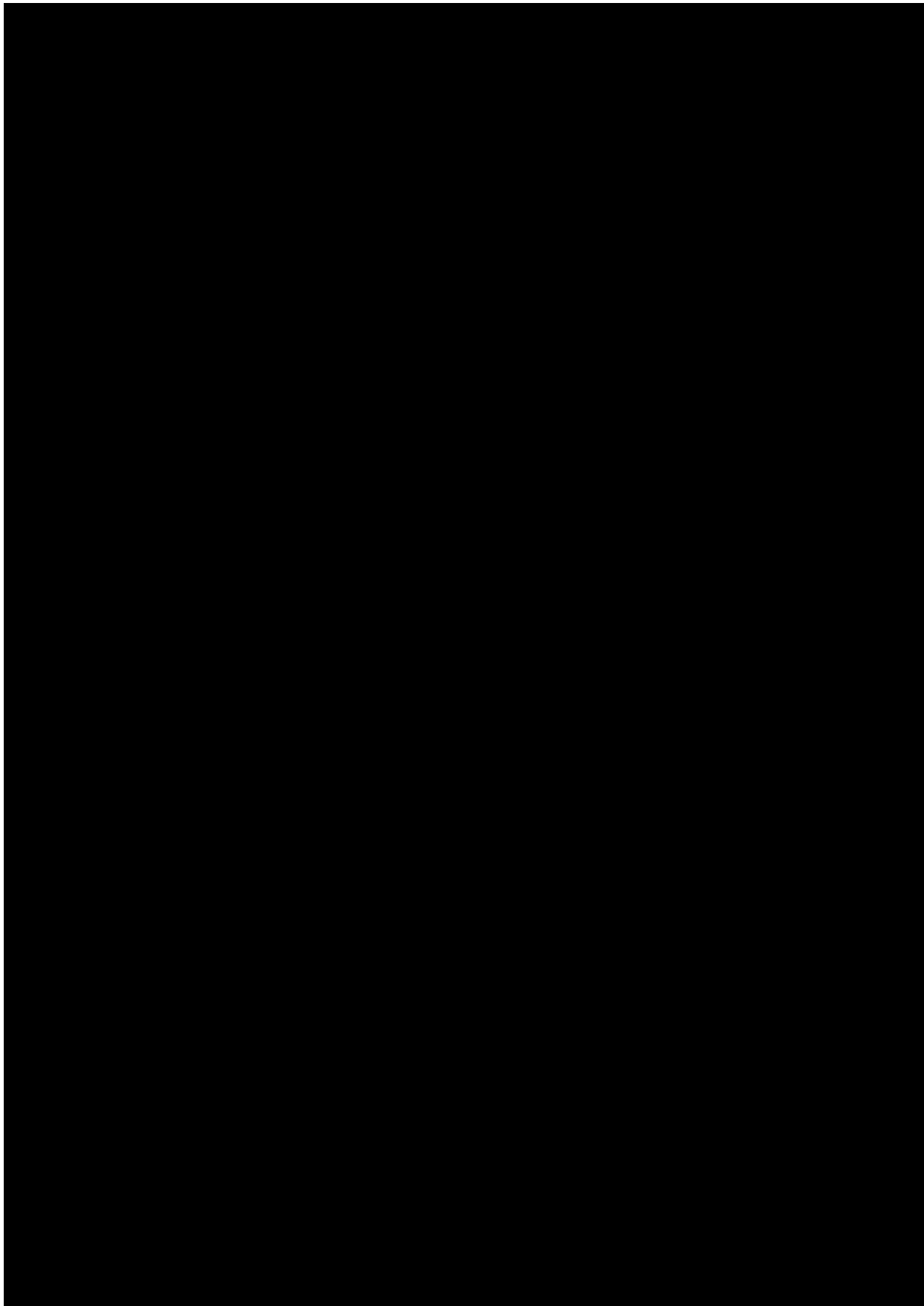
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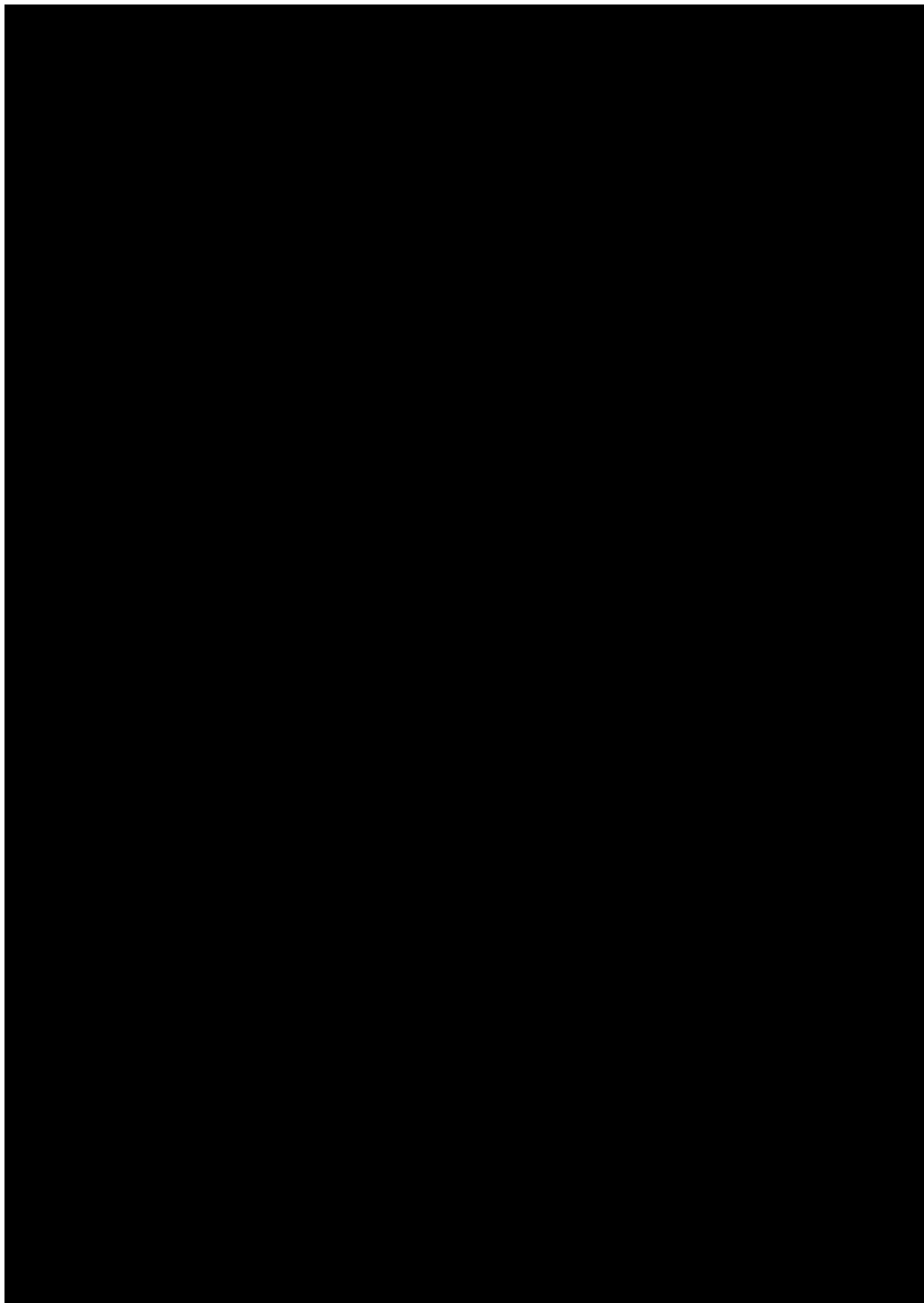
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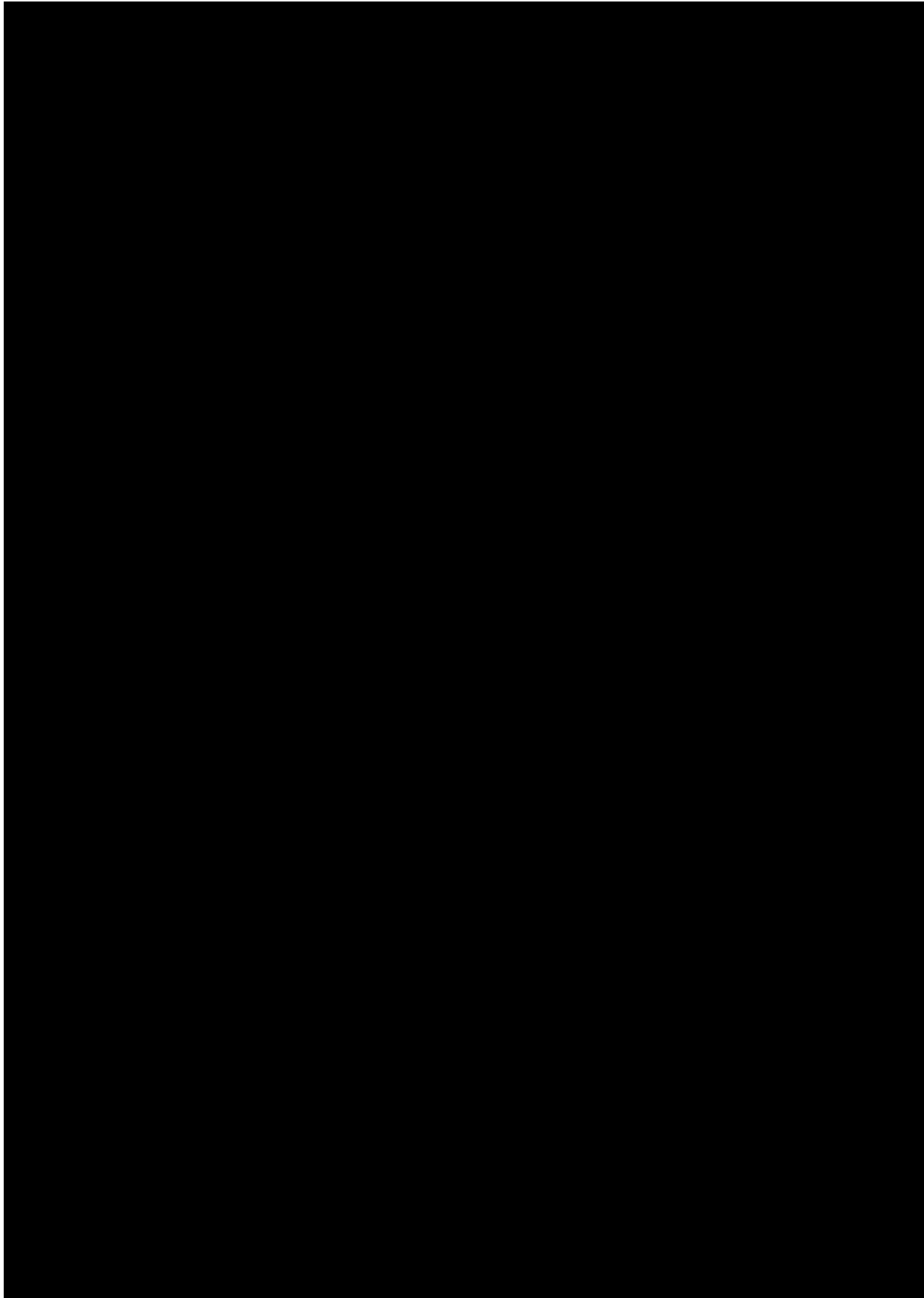
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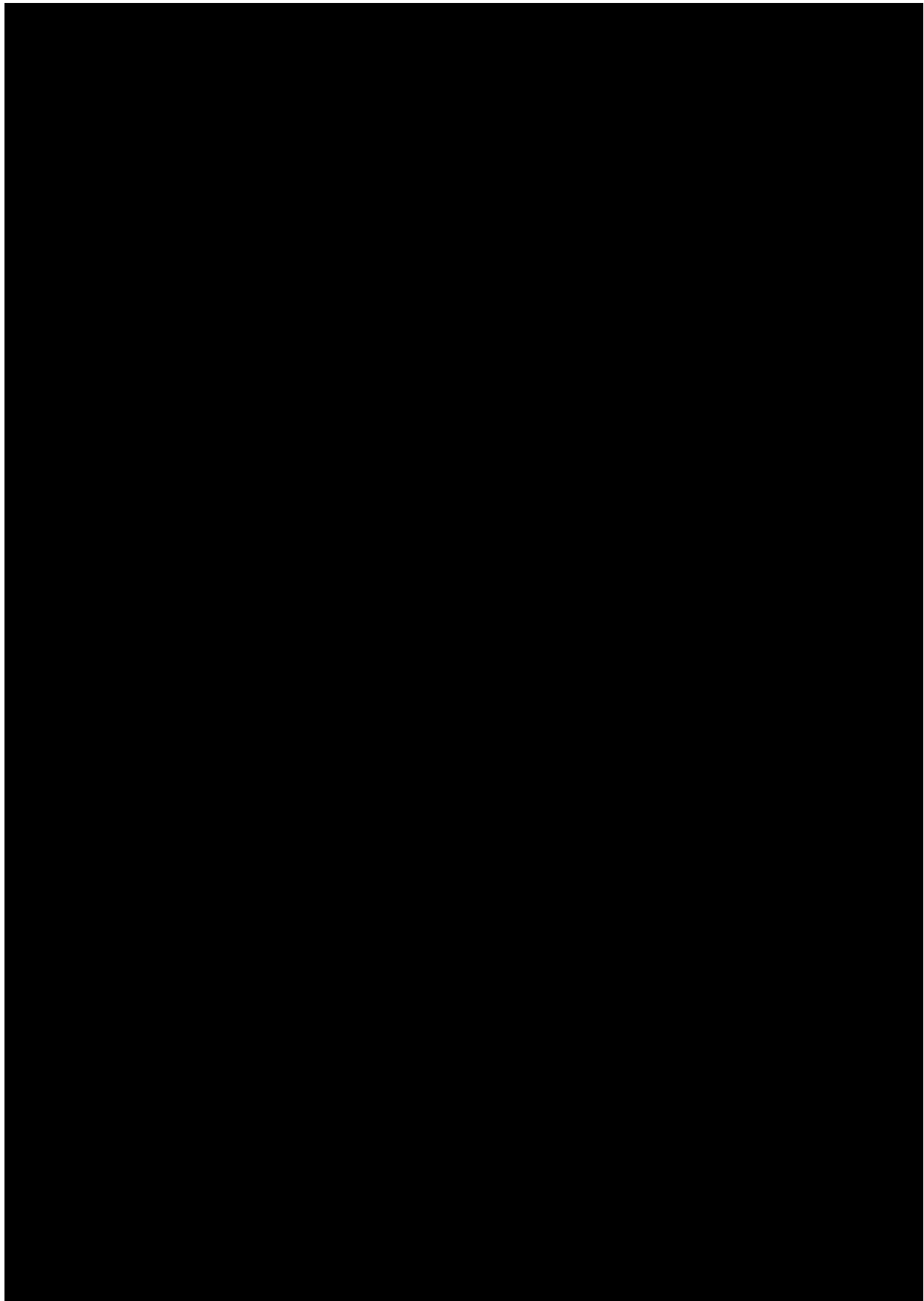
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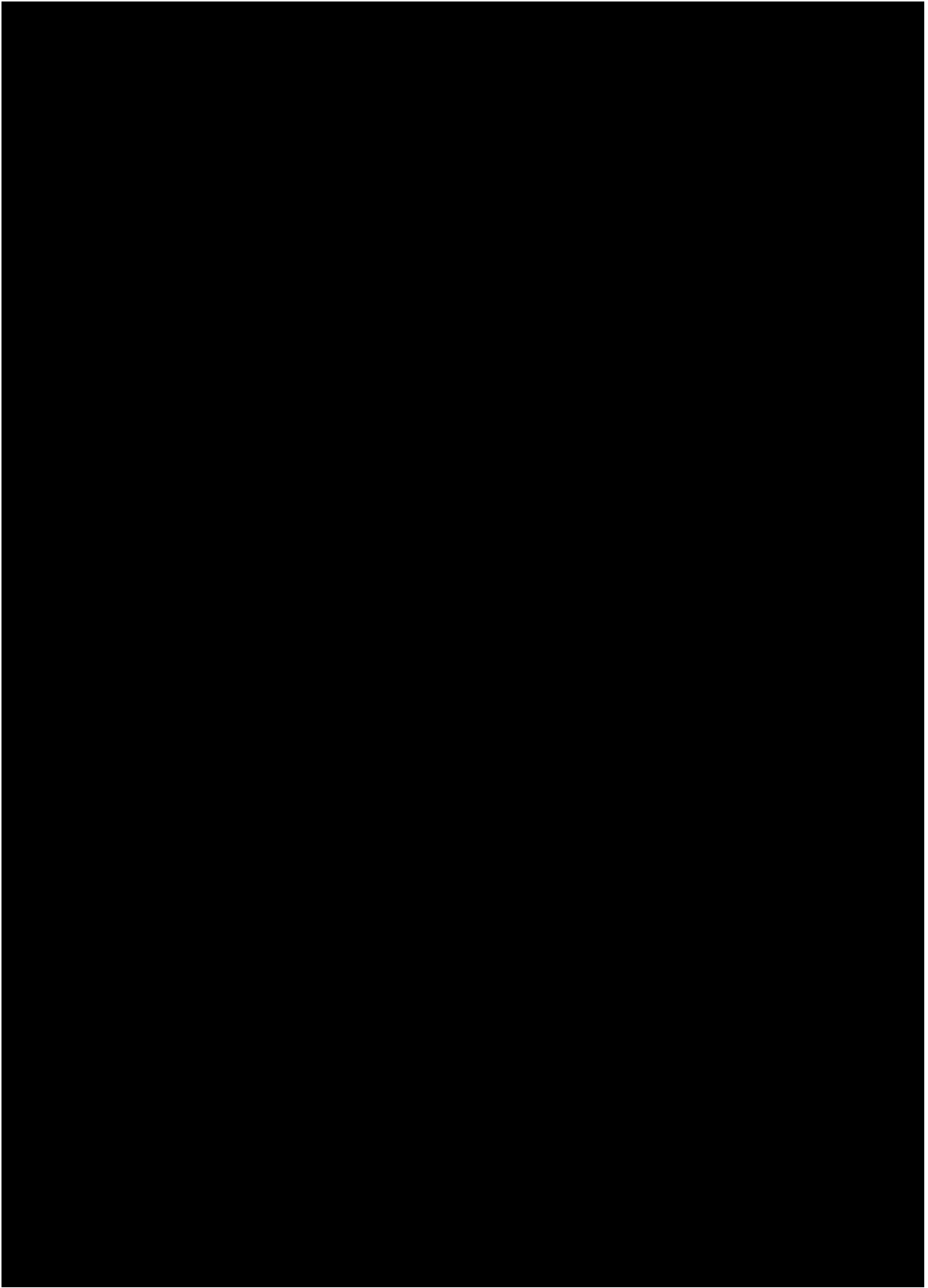
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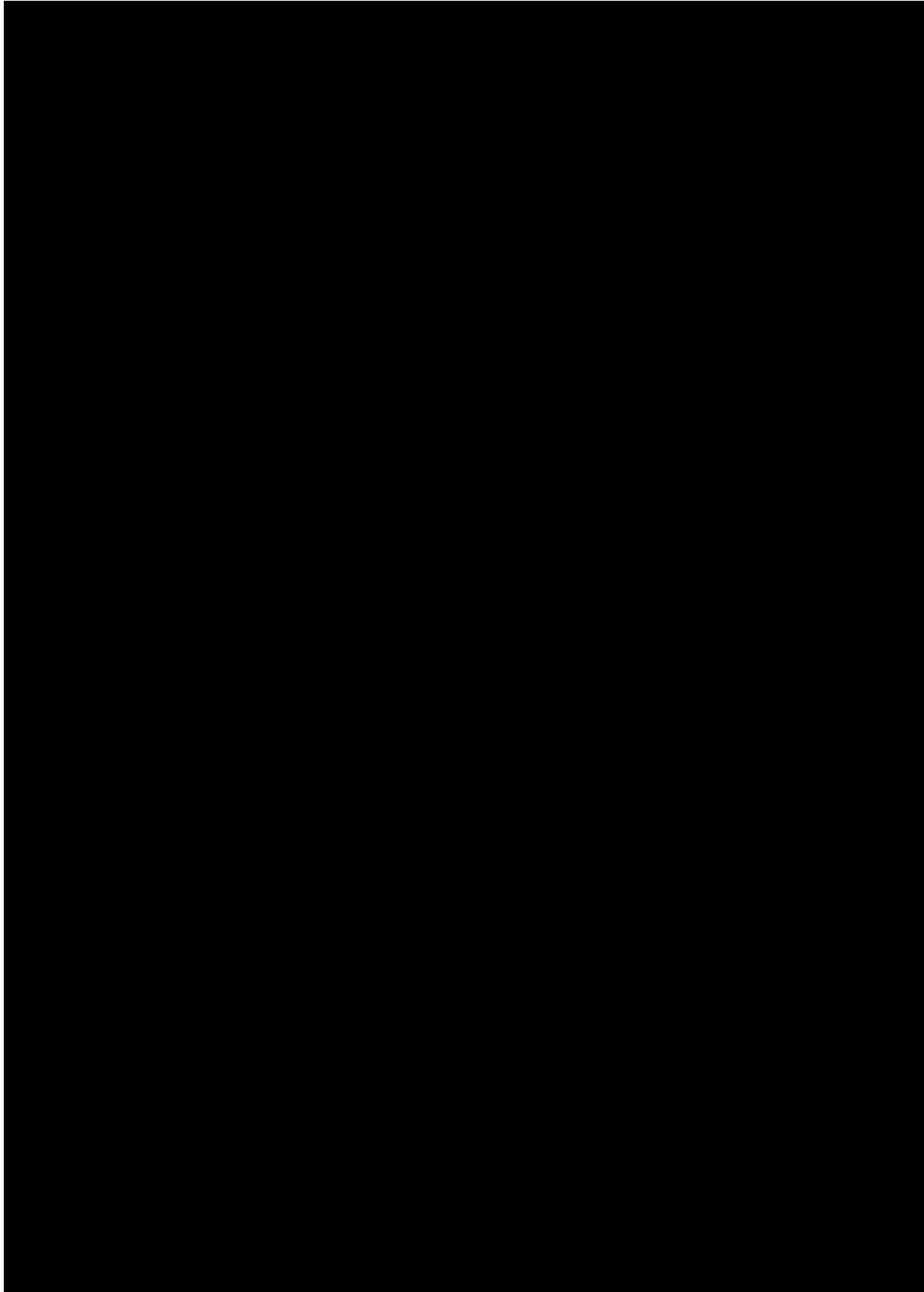
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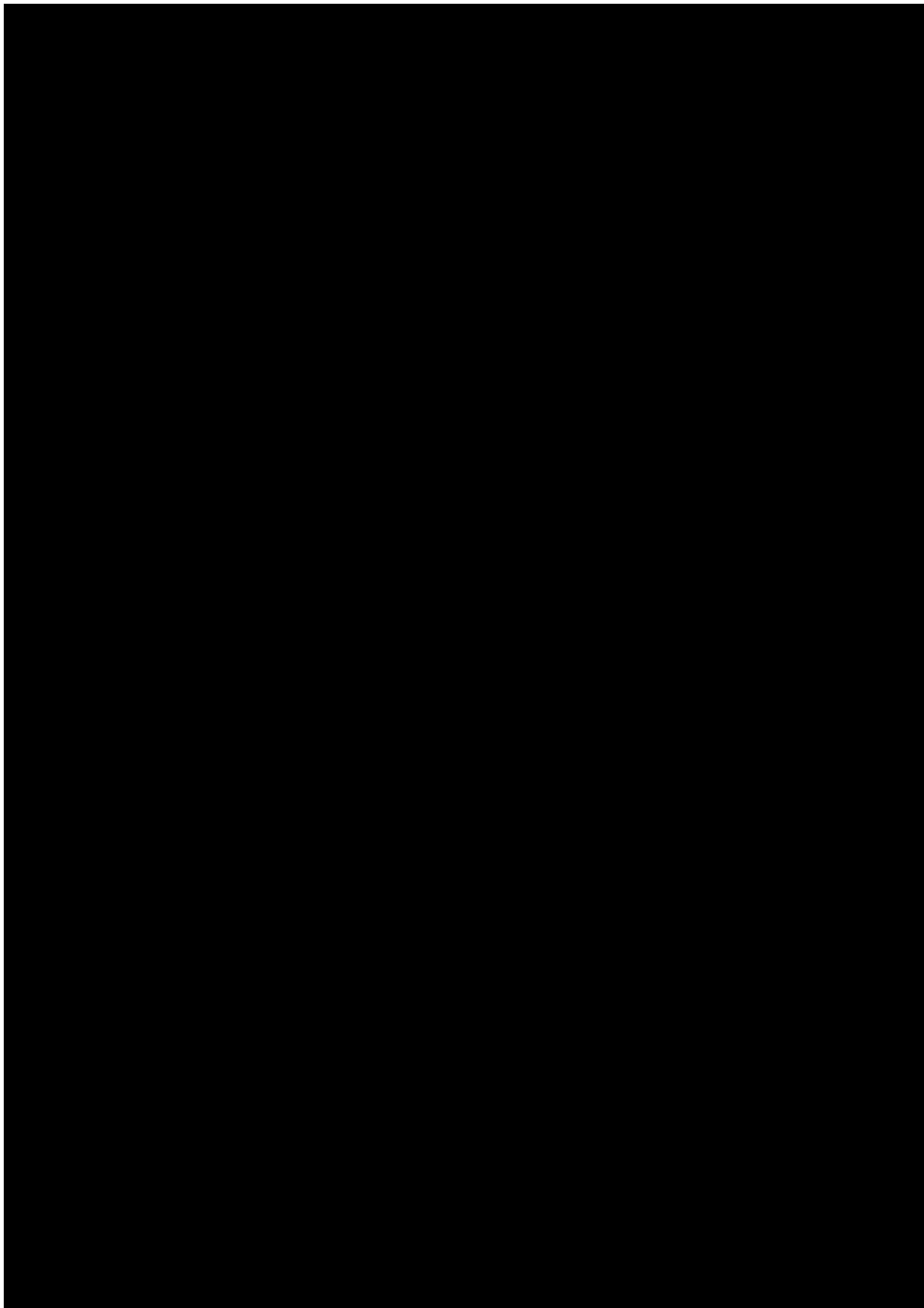
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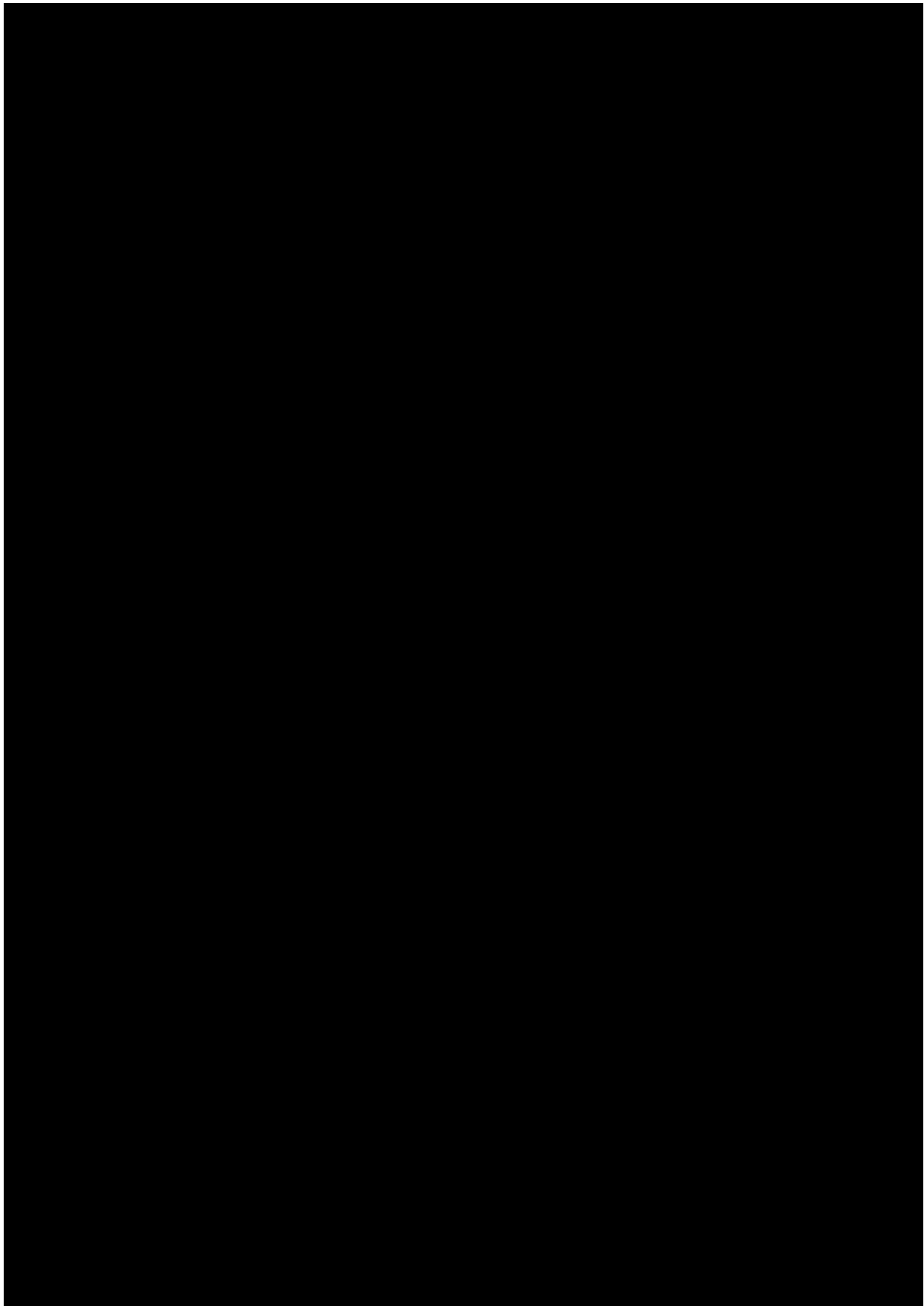
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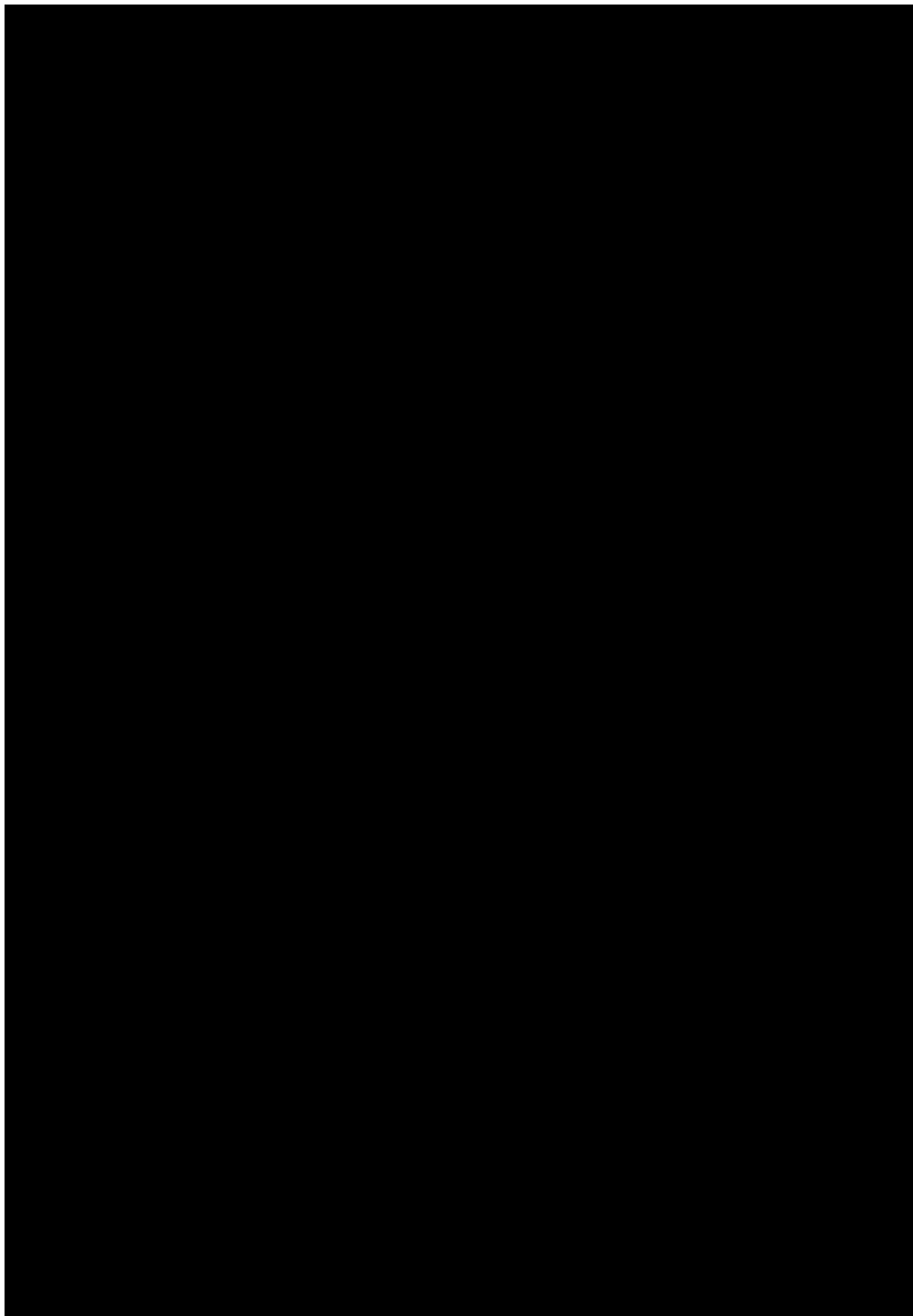
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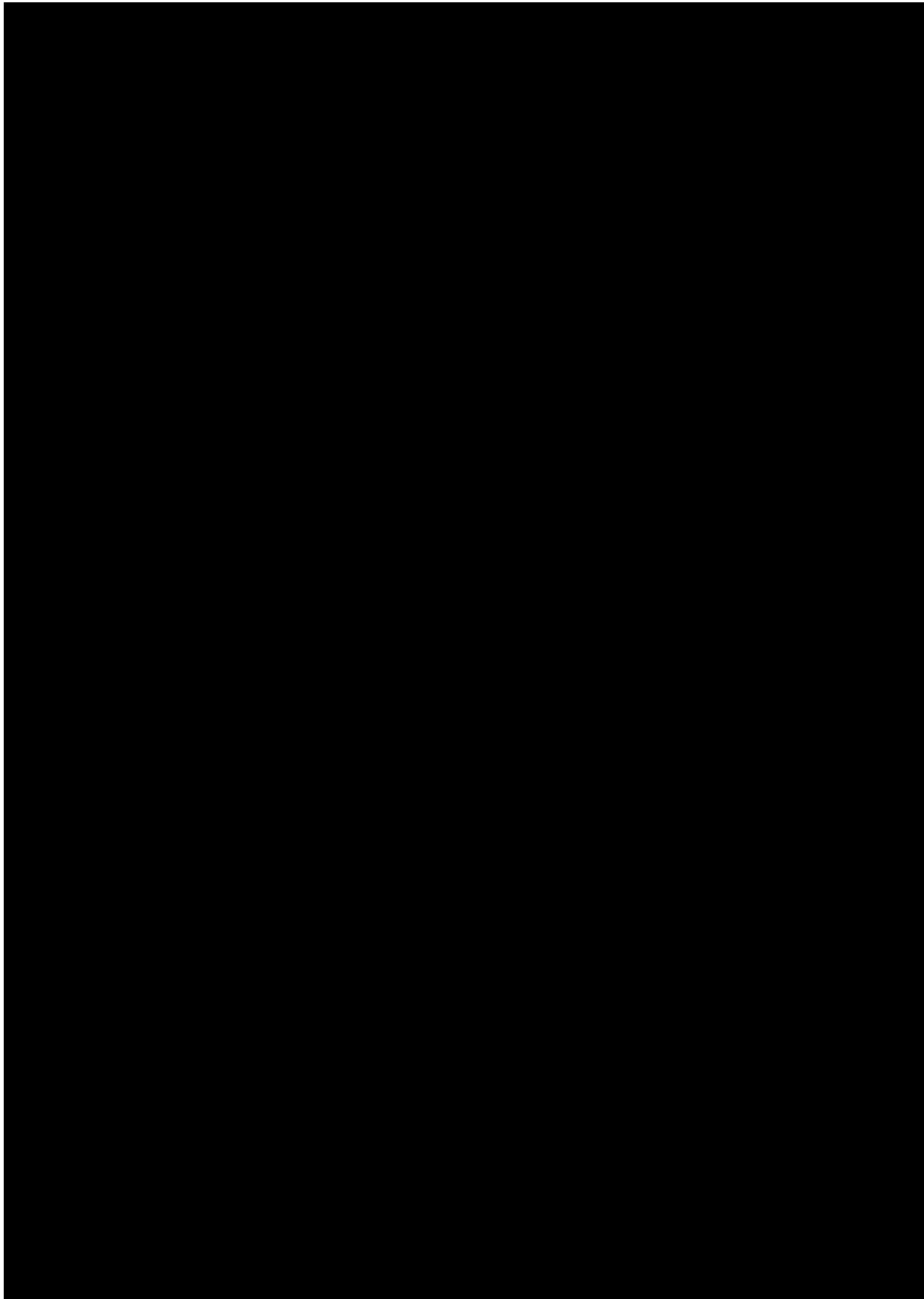
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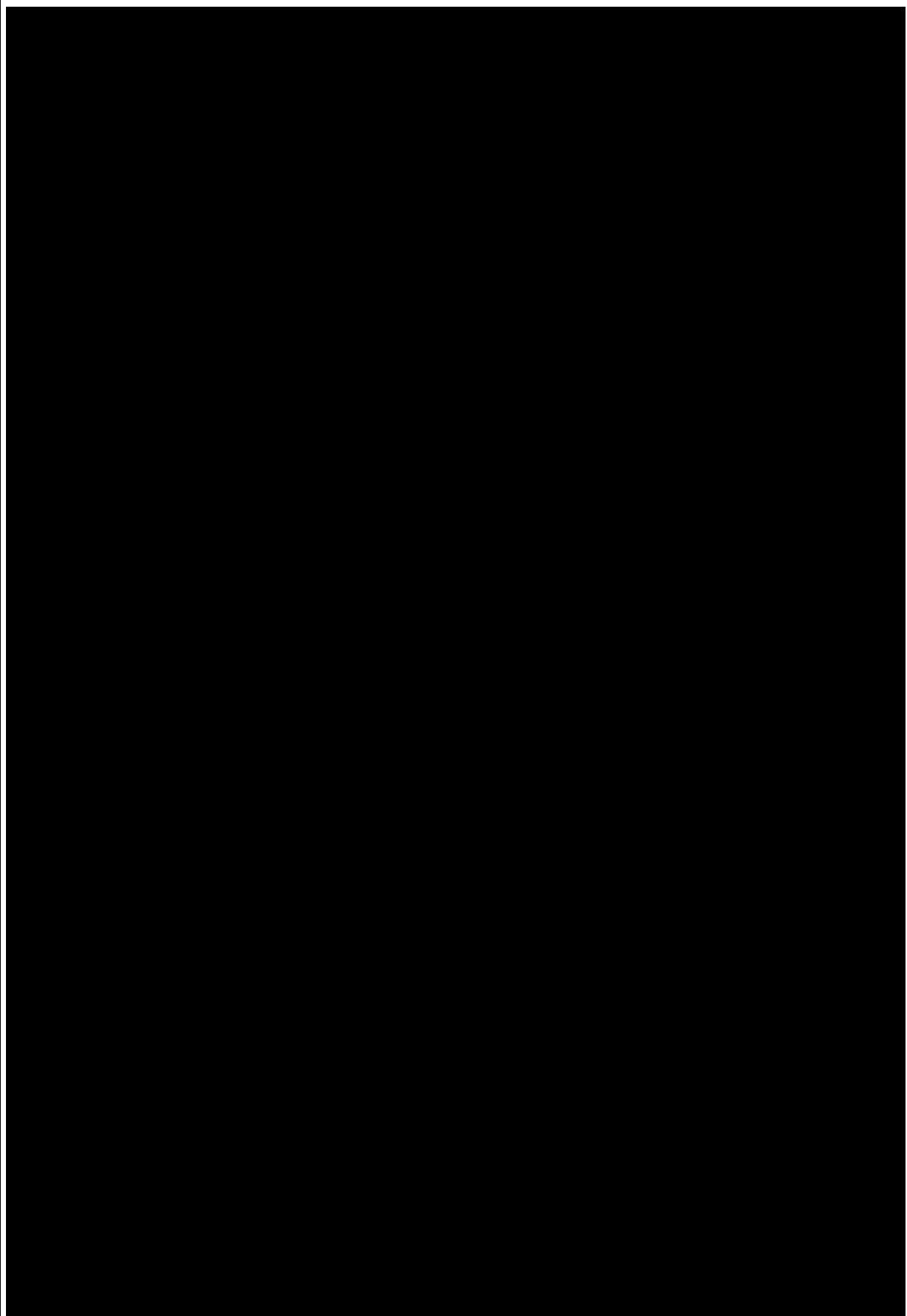
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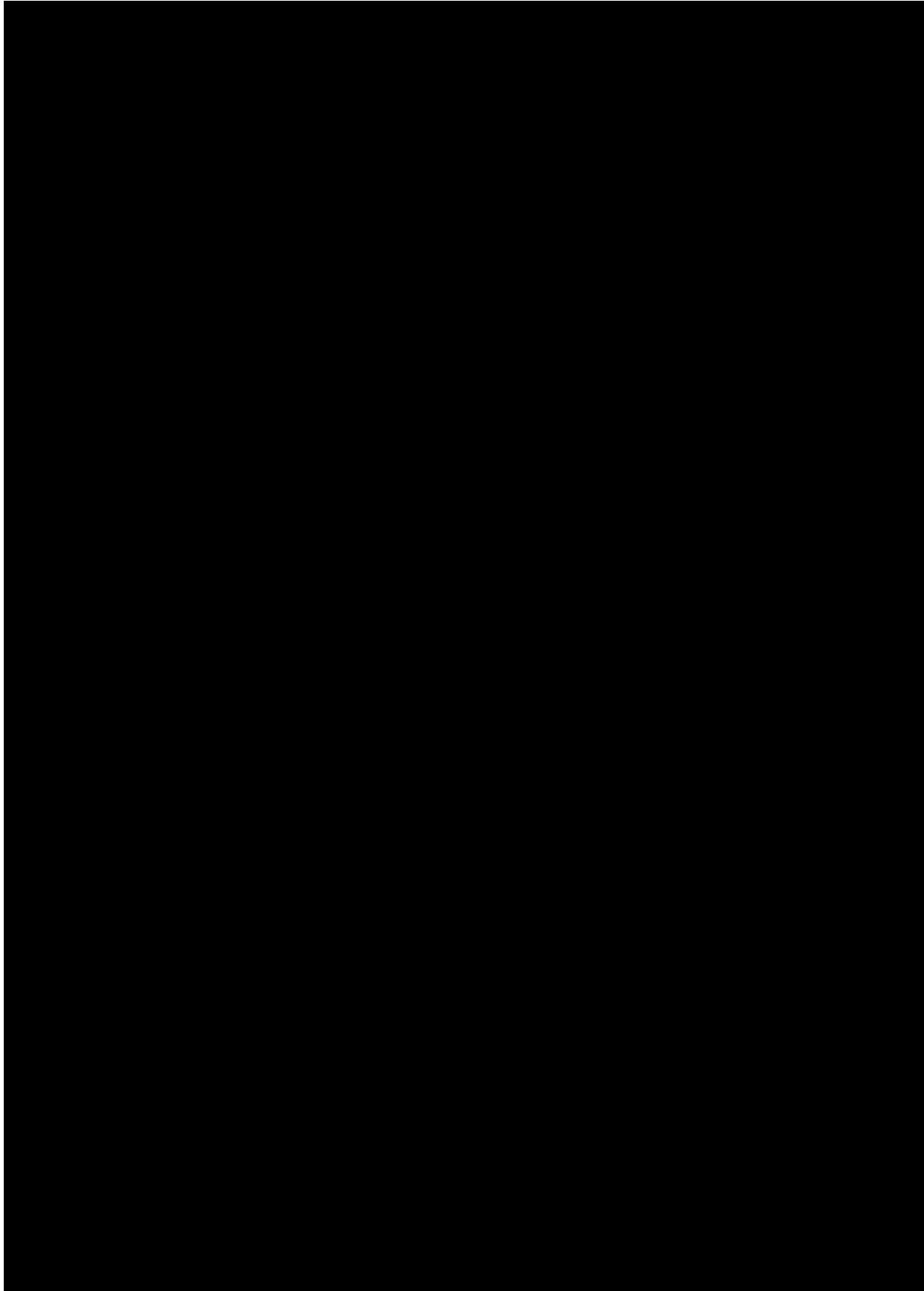
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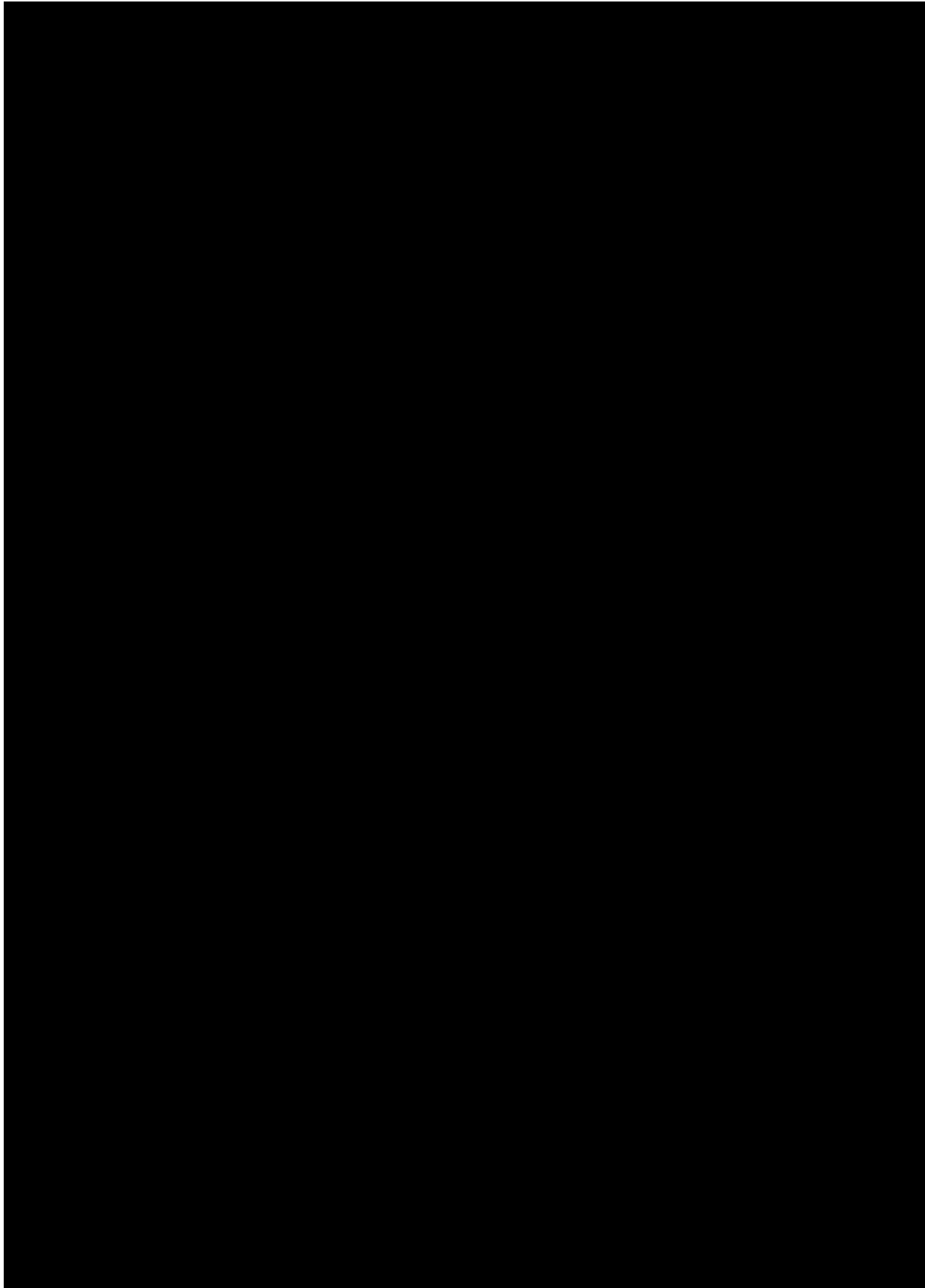
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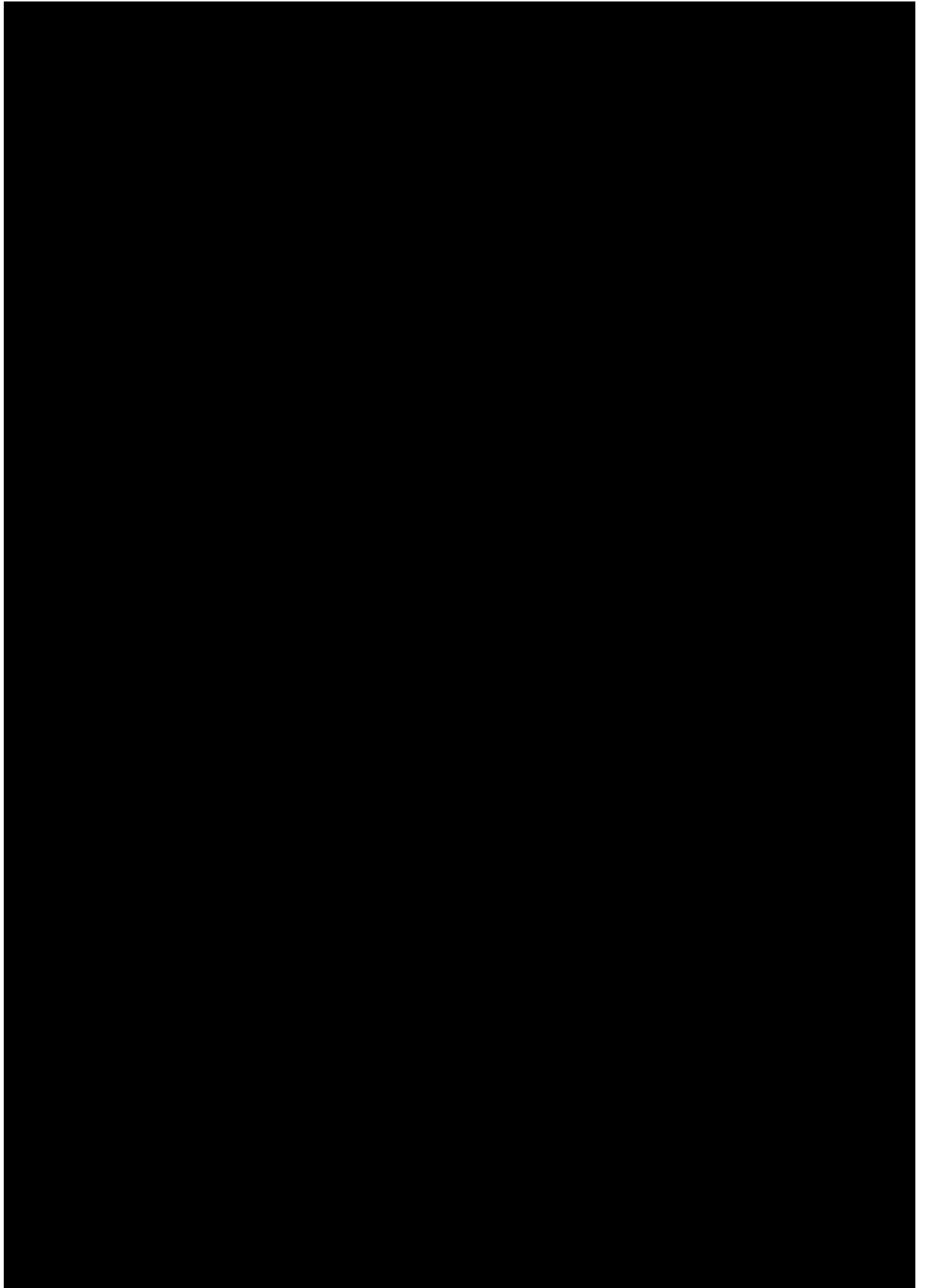
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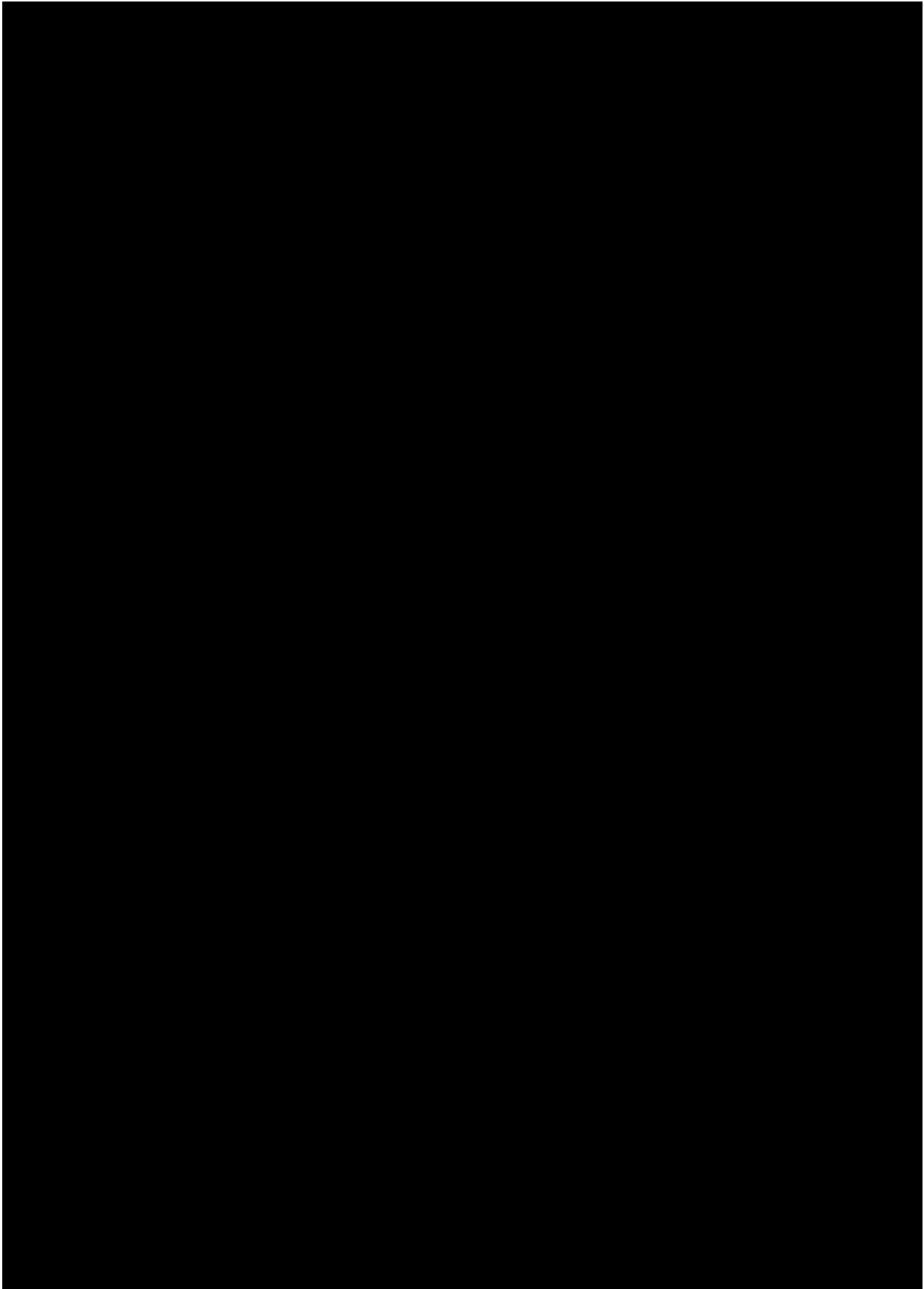
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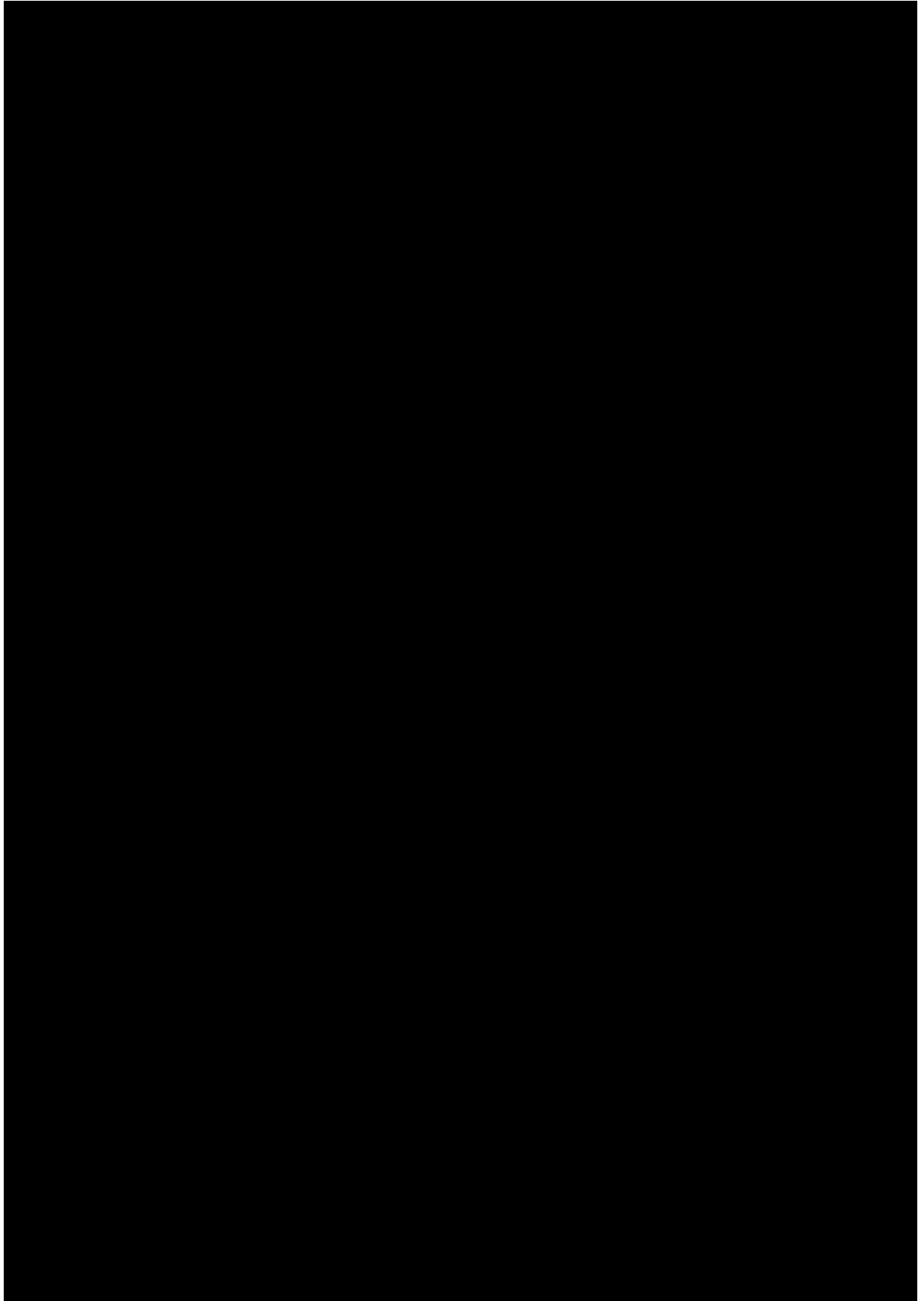
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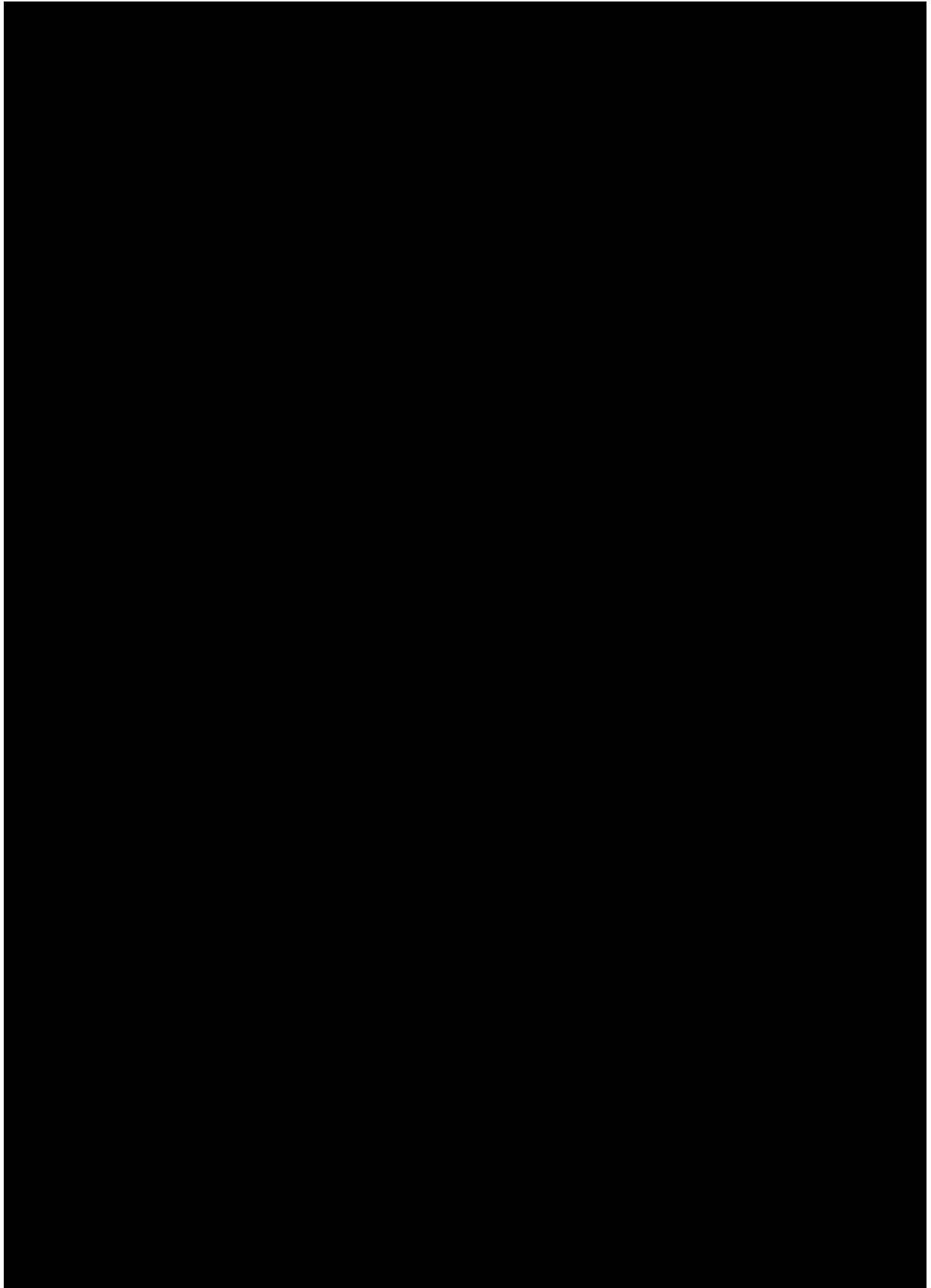
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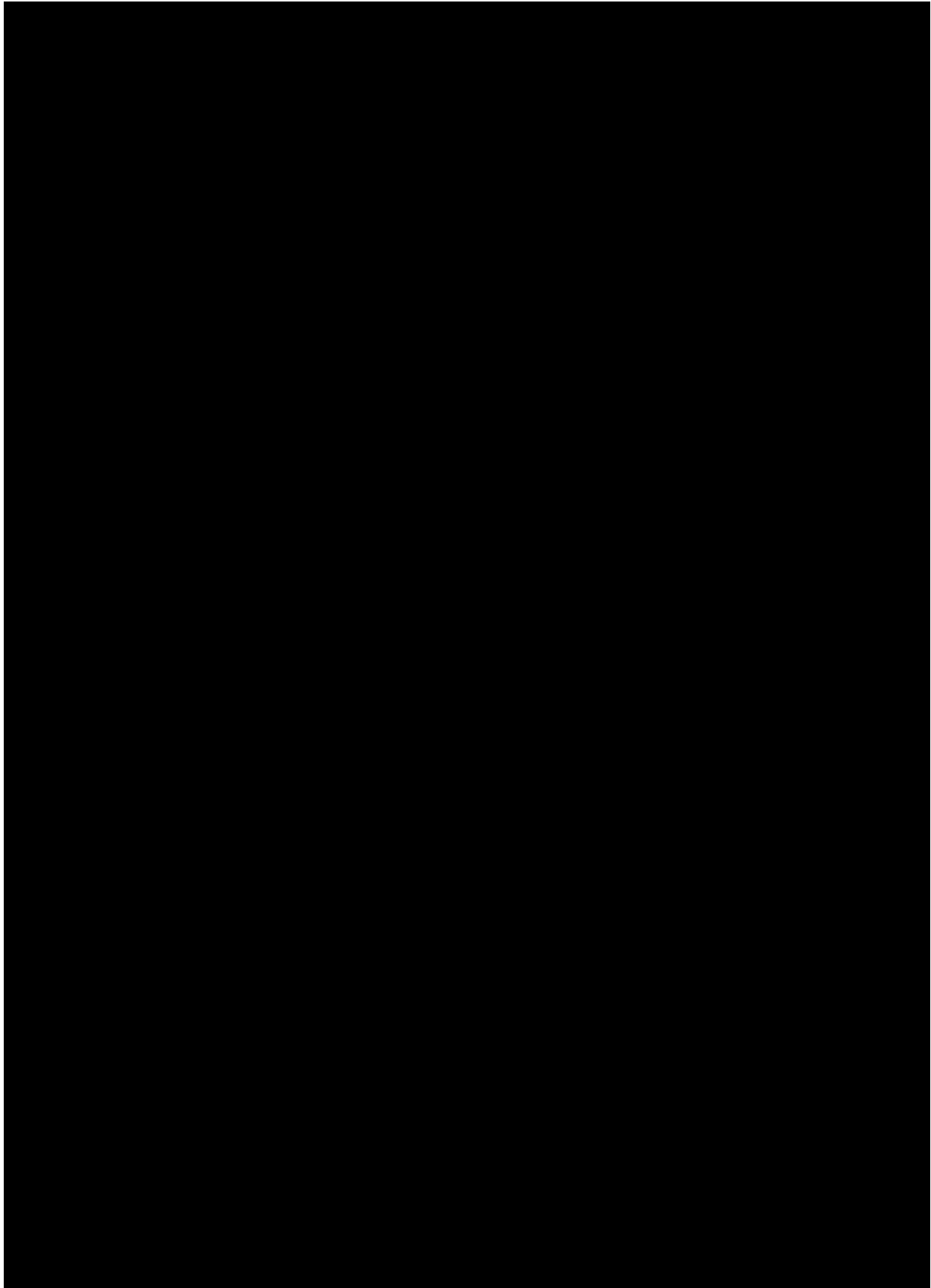
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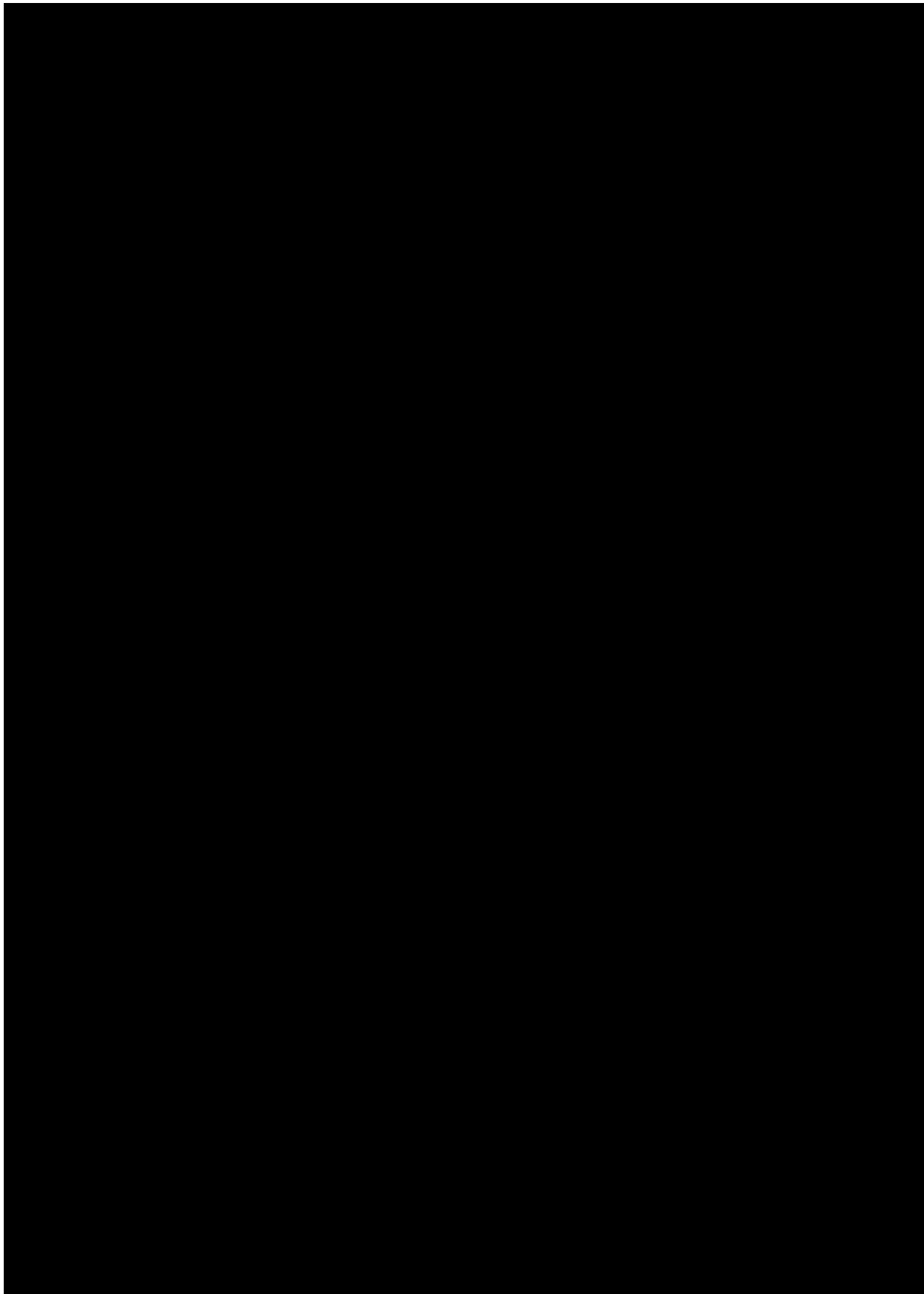
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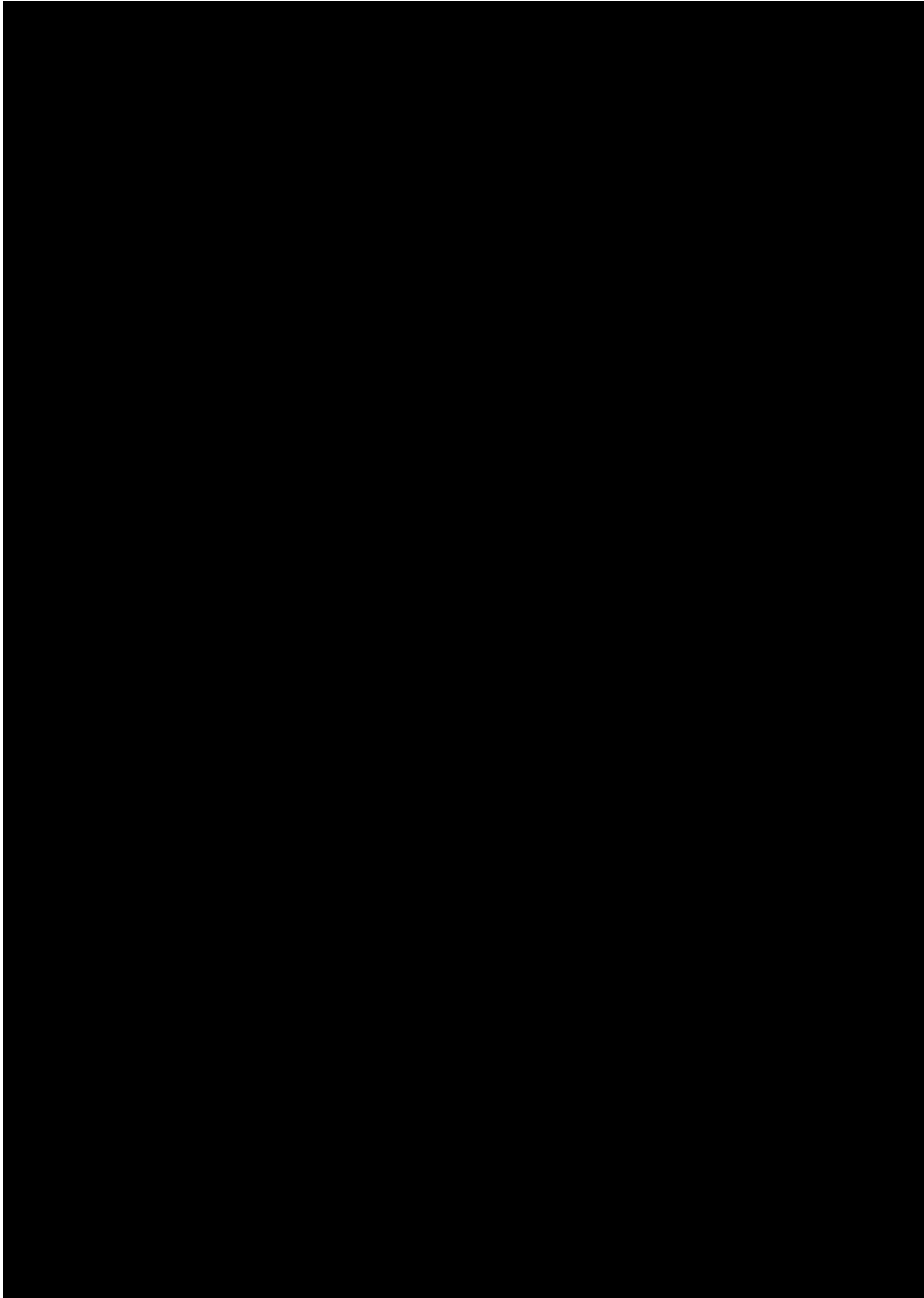
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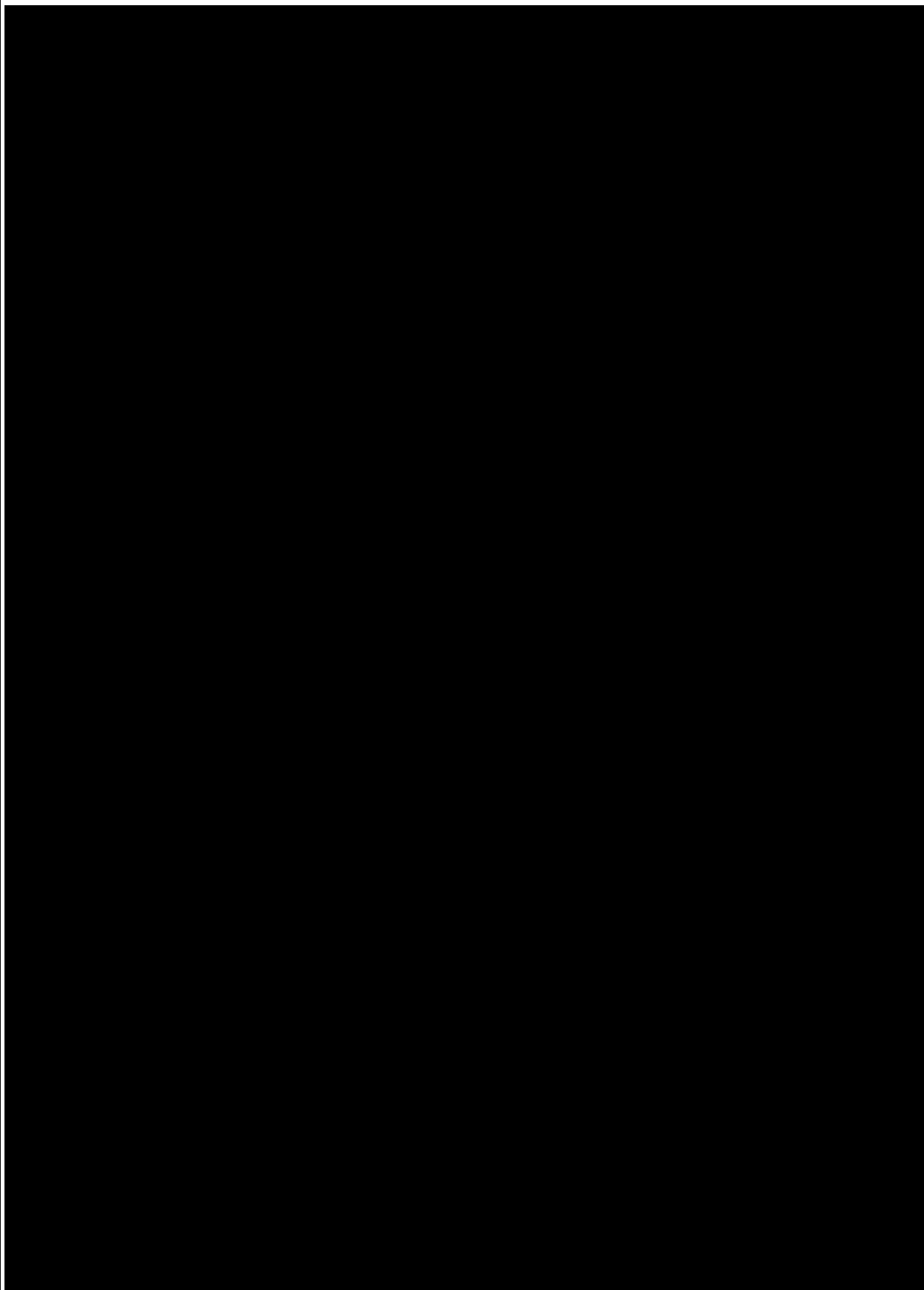
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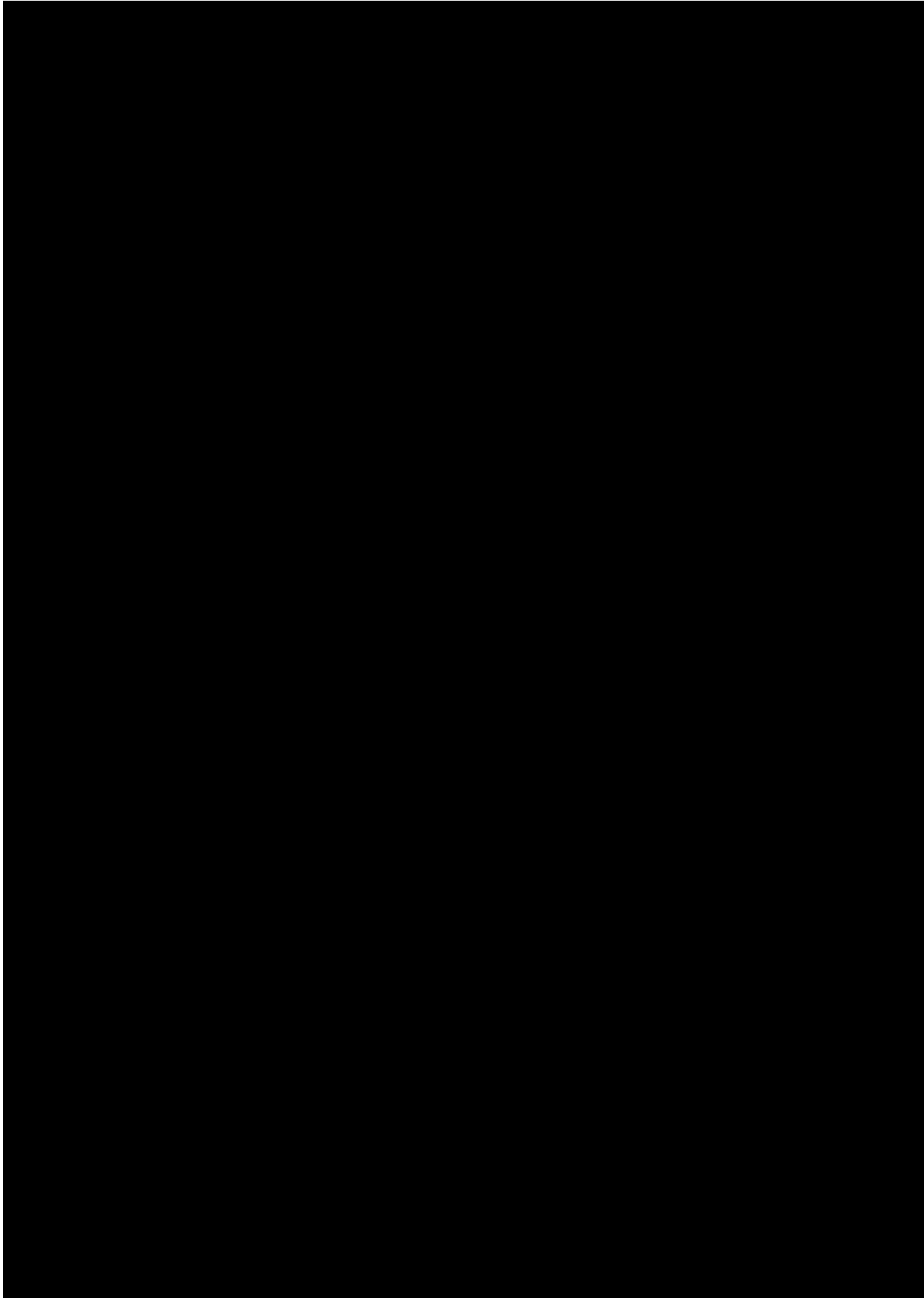
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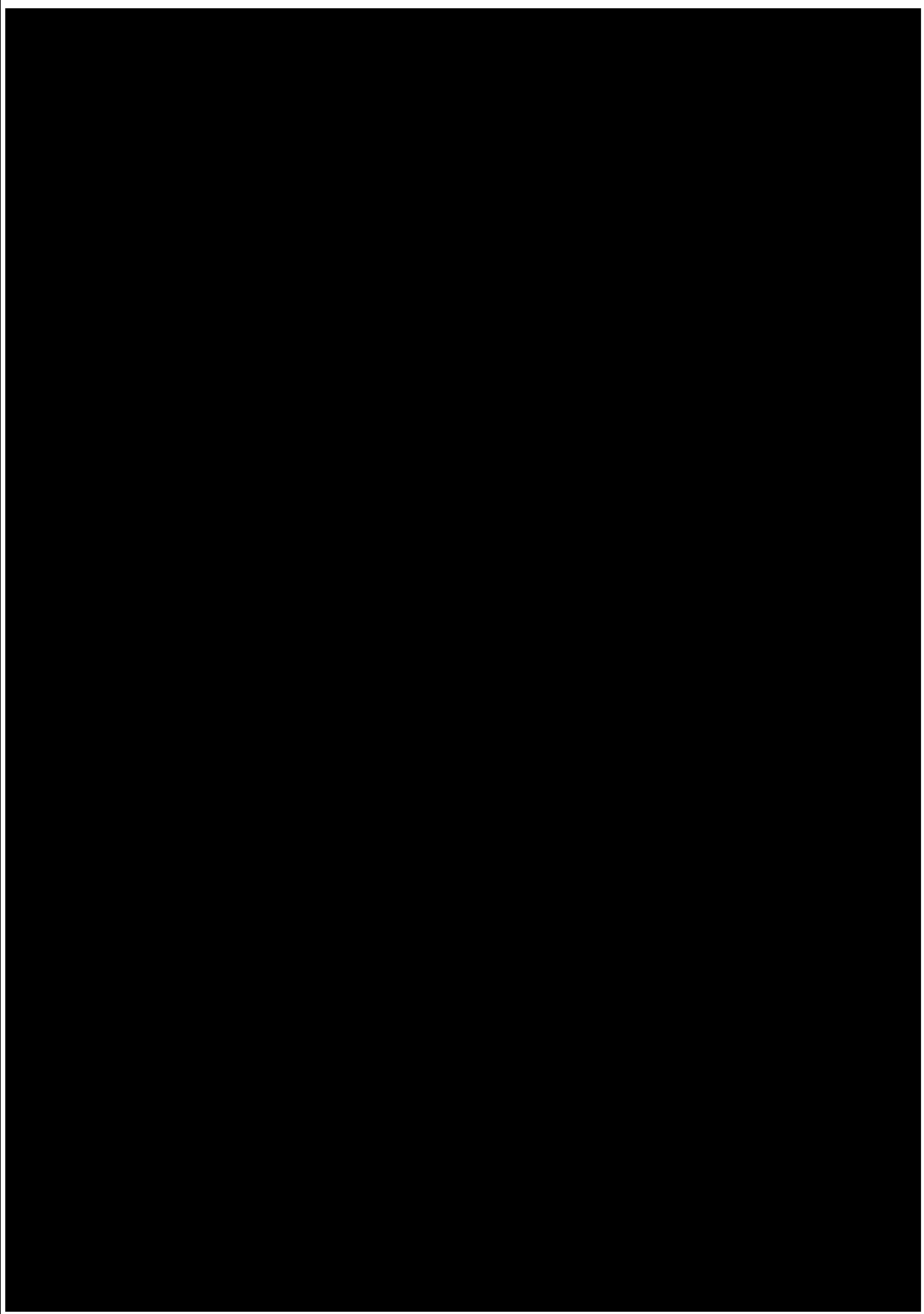
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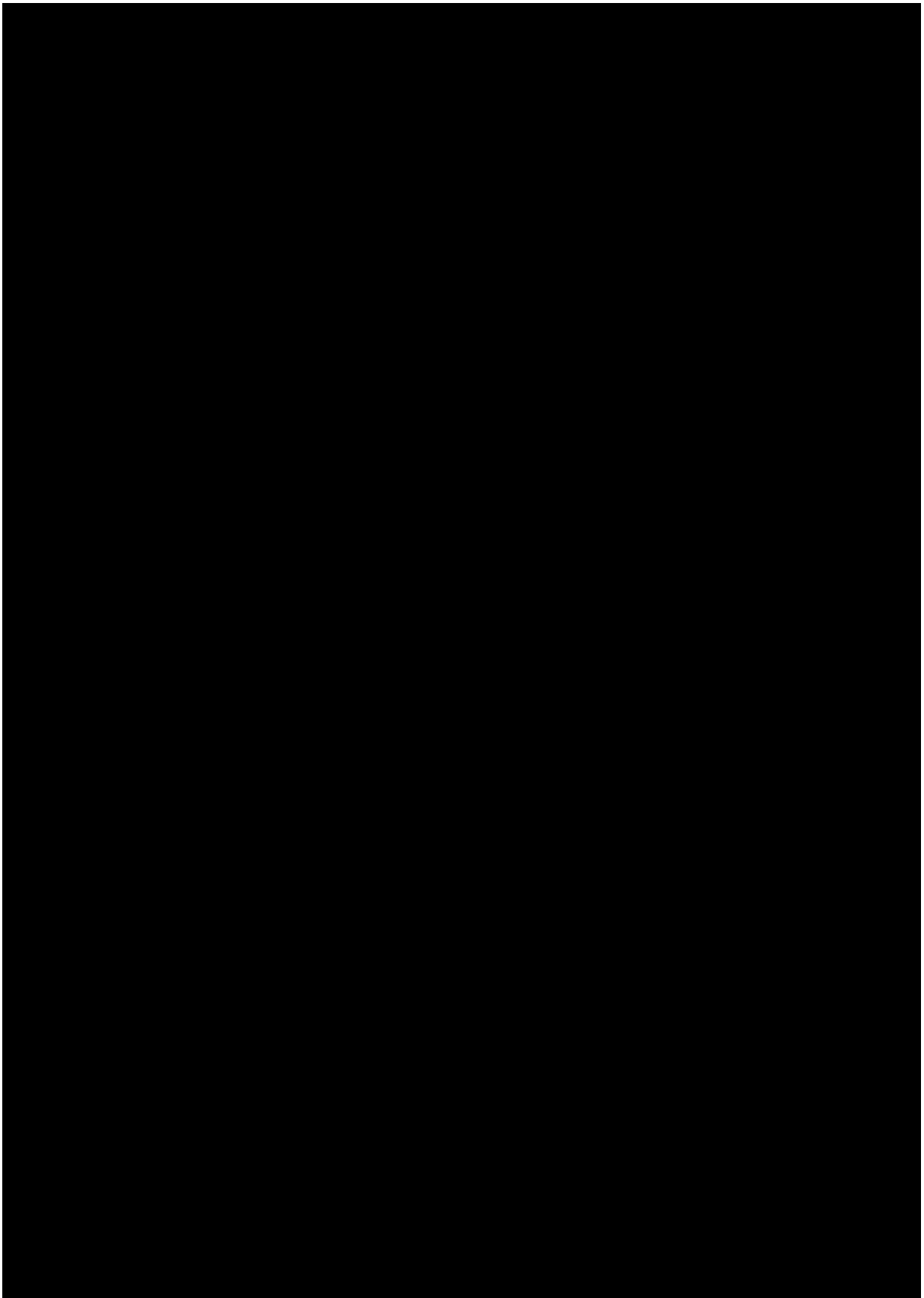
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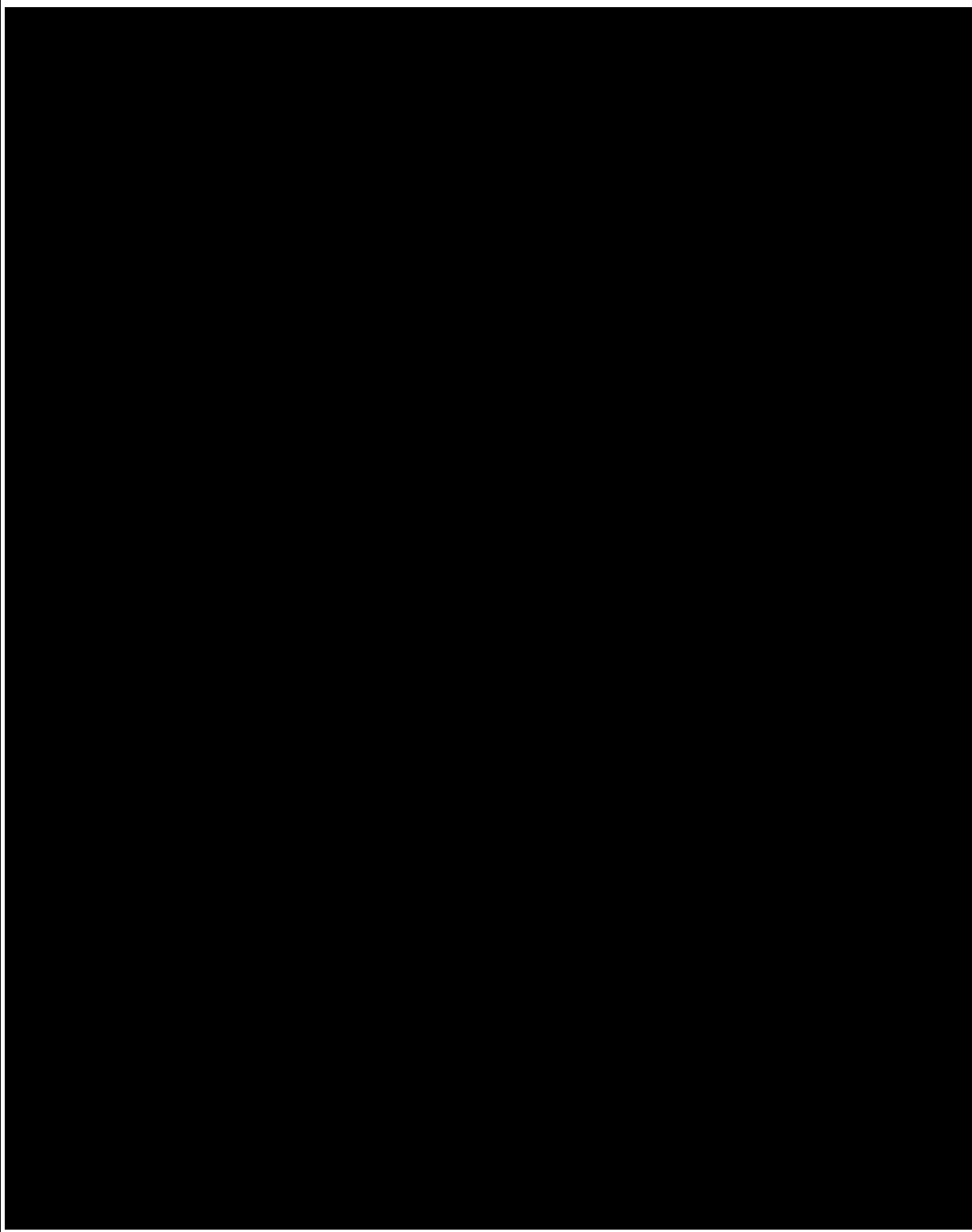
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(End of Attorneys' Eyes Only session.)

1 OPEN SESSION

2 MR. GUIBERT de BRUET: Contains three
3 articles which are all specific to the Rosia Montana
4 Project.

5 These articles approve the Agreement and
6 incorporate it as an appendix to the Rosia Montana
7 law. And as we'll discuss in more detail, this
8 chapter also declares the Project to be of public
9 utility and outstanding national public interest.

10 Chapter II, titled "Implementing certain
11 measures on the mining of gold and silver ores in the
12 Rosia Montana perimeter and adopting certain
13 legislative amendments," does pretty much what its
14 title indicates. Article 4 addresses certain issues
15 that are specific to the Project, including the
16 extension of the license, the setting of the royalty
17 rate, and the transfer of publicly-owned lands within
18 the mining perimeter to RMGC.

19 Article 5, which constitutes approximately
20 half of the legislative portion of the Rosia Montana
21 Law, is divided itself into four parts. Article 5,
22 Part I, amends the relevant portions of Law Number

1 571 of 2003 regarding the fiscal code granting mining
2 projects of outstanding national interest the right
3 to deduct from taxable income the costs related to
4 sustainable development.

5 Article 5, Part II, amends relevant
6 provisions of Mining Law Number 85 of 2003 changing,
7 among other things the expropriation regime from
8 mining projects declared to be of public utility,
9 creating a mechanism for conveying expropriated land
10 to license holders, setting a three-month deadline
11 for issuing an Environmental Permit, provided all
12 requested documents and information have been
13 provided, and granting the ability to fulfill in
14 phases the conditions for urbanism documentation
15 related to areas which include mining perimeters.

16 Article--excuse me. Article 5, Part III,
17 amends the Government--no, no. This is still
18 non-confidential. Sorry.

19 Article 5, Part III, amends the Government
20 emergency ordinance, Number 34/2003, regarding the
21 organization, management, and operation of permanent
22 pasturelands. And Article 5, Part IV, amends Law

1 Number 46/2008 of the forestry code, essentially
2 exempting from its provision mining projects to be
3 declared to be of public utility and outstanding
4 national public interest.

5 Chapter III contains the final provisions,
6 which are all specific to the Project. Articles 6
7 through 9 of the Rosia Montana Law address various
8 issues, such as the royalty rate applicable to the
9 Project, and the ability to proceed with construction
10 prior to obtaining an archeological discharge
11 certificate, and the ability to conduct the requisite
12 archeological research in phases.

13 The next part of the Rosia Montana Law is
14 the Agreement, which, as previously mentioned, was
15 approved and incorporated as an annex pursuant to
16 Article 1 of the Law. In the interest of time, I'll
17 only cover the Agreement at a very high level.

18 Article 1 provides, among other things, for
19 the increase of the State's interest in RMGC in
20 stages. Upon the fulfillment of, first, the issuance
21 of the Environmental Permit and the coming into force
22 of the Rosia Montana Law, and, second, the issuance

1 of all authorizations required to commence
2 operations.

3 Article 3 provides for an increase of the
4 royalty rate to 6 percent and gives the option--the
5 option to the State to request payment in kind.

6 Article 4 provides for the extension of the mining
7 license in accordance with the Rosia Montana law.

8 Articles 5, 6, and 7 provide for RMGC's commitments
9 with respect to investments in cultural heritage,
10 environmental obligations, and obligations towards
11 the Rosia Montana community.

12 Article 8 states that the Parties agree that
13 RMGC shall be granted "the right to use all immovable
14 assets located in the perimeter of the mining license
15 which are necessary to achieve the goals set forth
16 under the mining license." This would presumably
17 include privately held land, although it's unclear
18 from the language of the Agreement.

19 In Article 11 Gabriel undertakes to provide,
20 within four months of the issuance of the
21 Environmental Permit, a detailed plan on how the
22 Project will be financed. It also provides an

1 estimated schedule for the issuance and approval of
2 the requisite permits and endorsements. Finally, in
3 Article 12, the State undertakes to secure the
4 financial stability of the main fiscal parameters of
5 the Project throughout the validity term of the
6 license.

7 It also provides for an ICC Dispute
8 Resolution Clause, with a seat in Paris, and
9 specifies that the Agreement is governed by Romanian
10 Law.

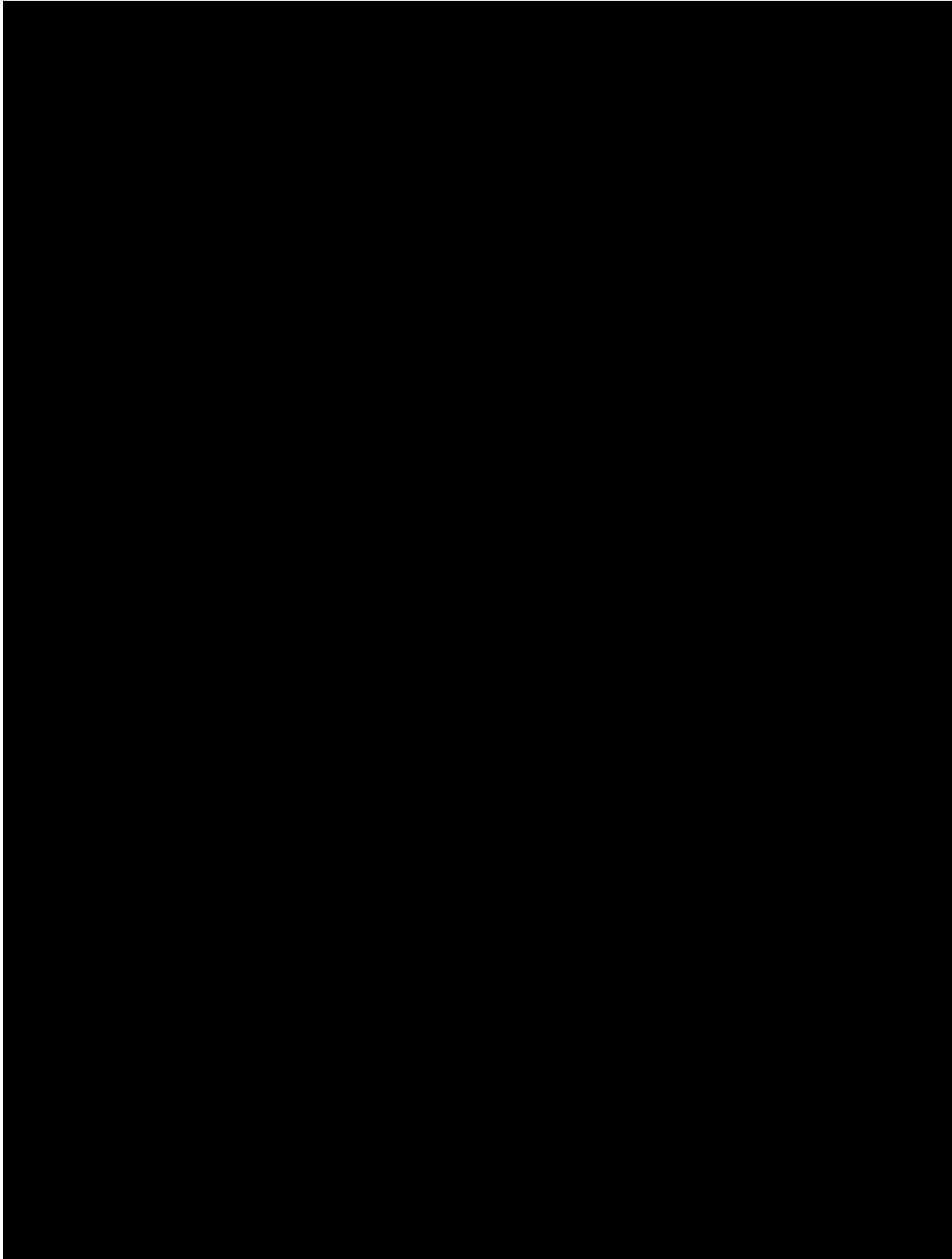
11 A brief word on the appendices. Appendix 1
12 to the Agreement lists the benefits of the Rosia
13 Montana project for the Romanian economy, including
14 the assumptions used to derive those benefits. And
15 Appendix 2 to the Agreement provides an indicative
16 permitting schedule "taking into account the great
17 number of endorsements, approvals, permits, and
18 authorizations which need to be obtained to build and
19 operate the project, as well as the current status of
20 the authorization procedure." The schedule assumes
21 that the streamlined procedures implemented by the
22 Rosia Montana law would be applicable.

1 This next portion of the presentation is
2 confidential.

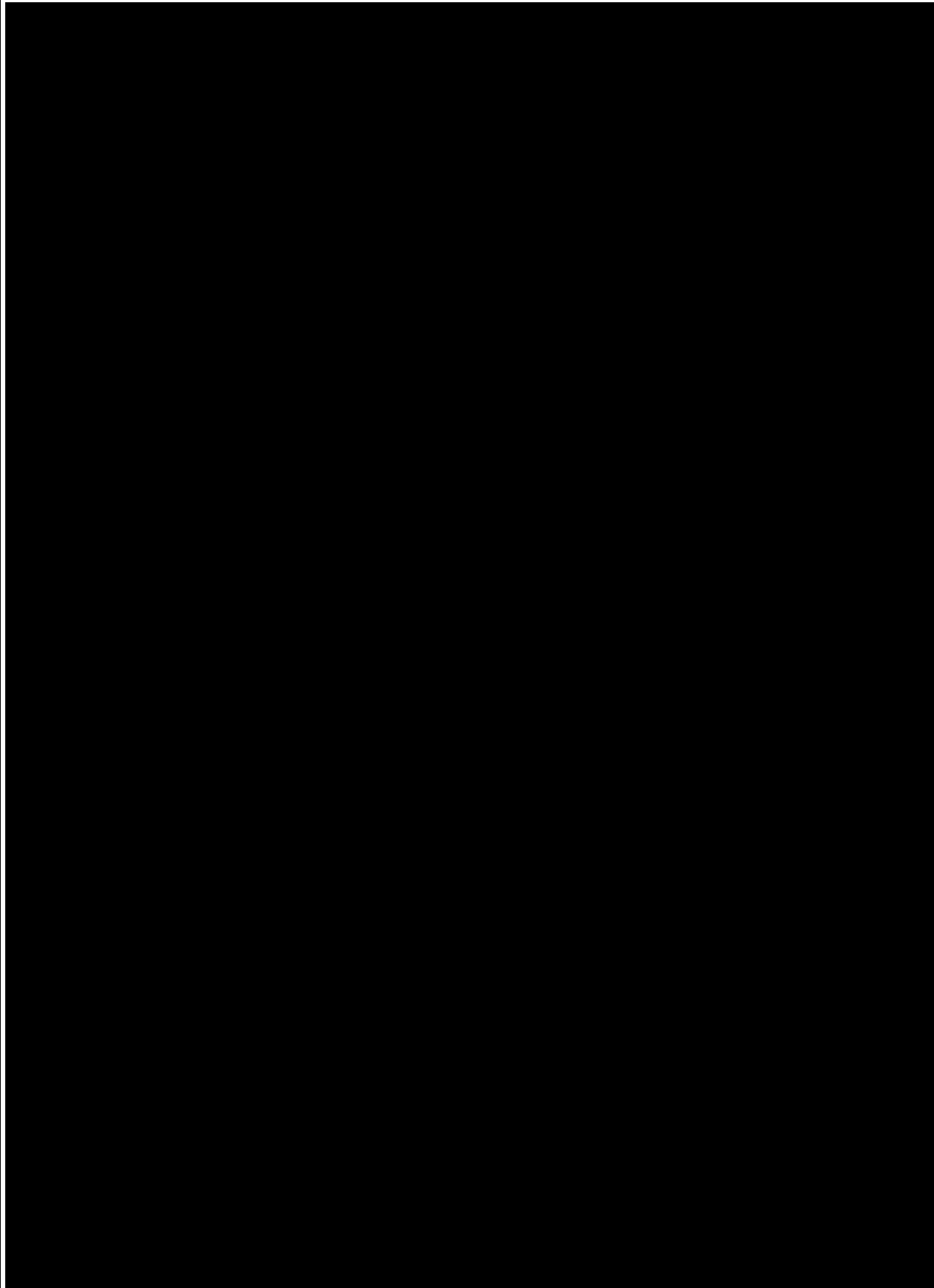
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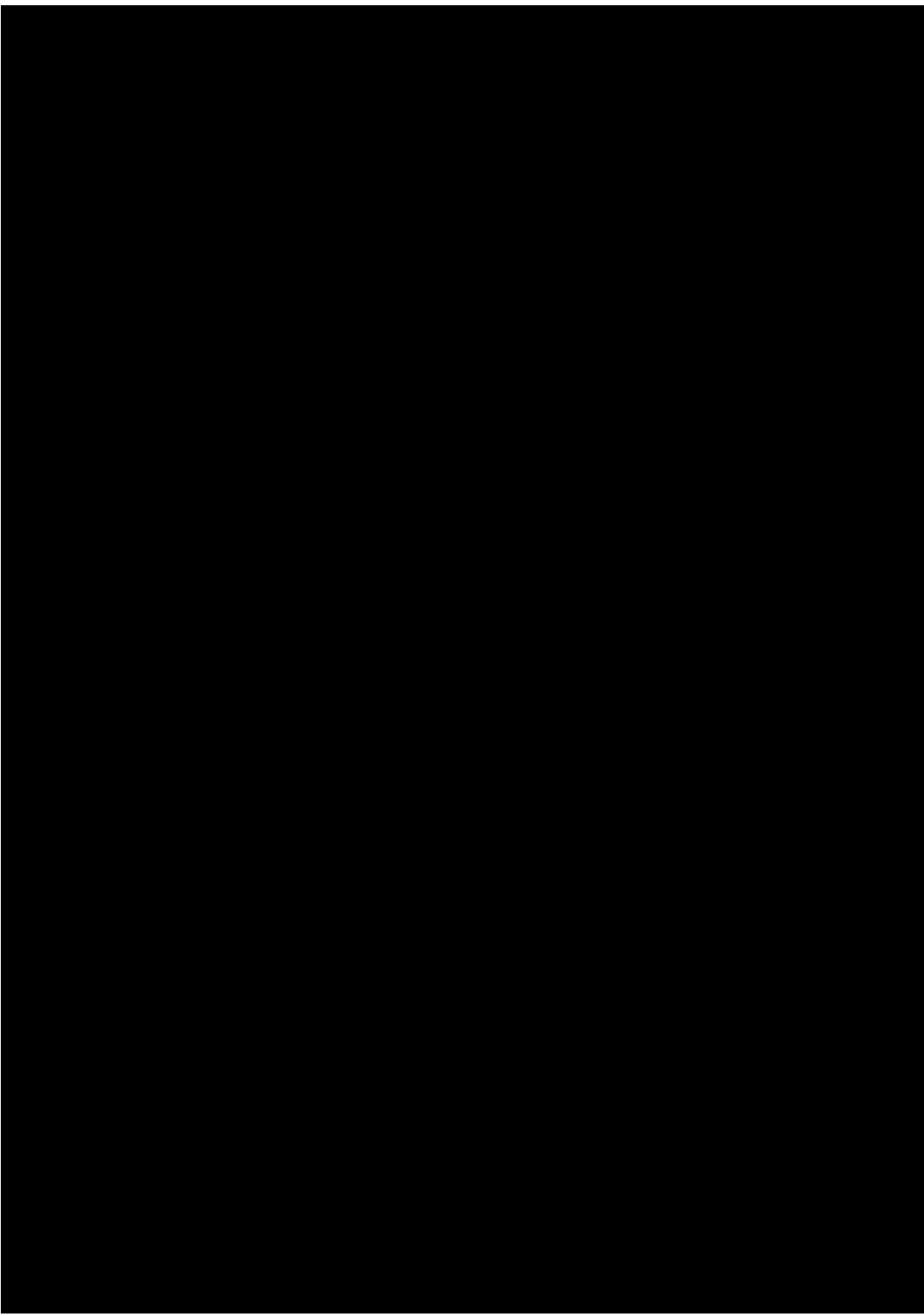
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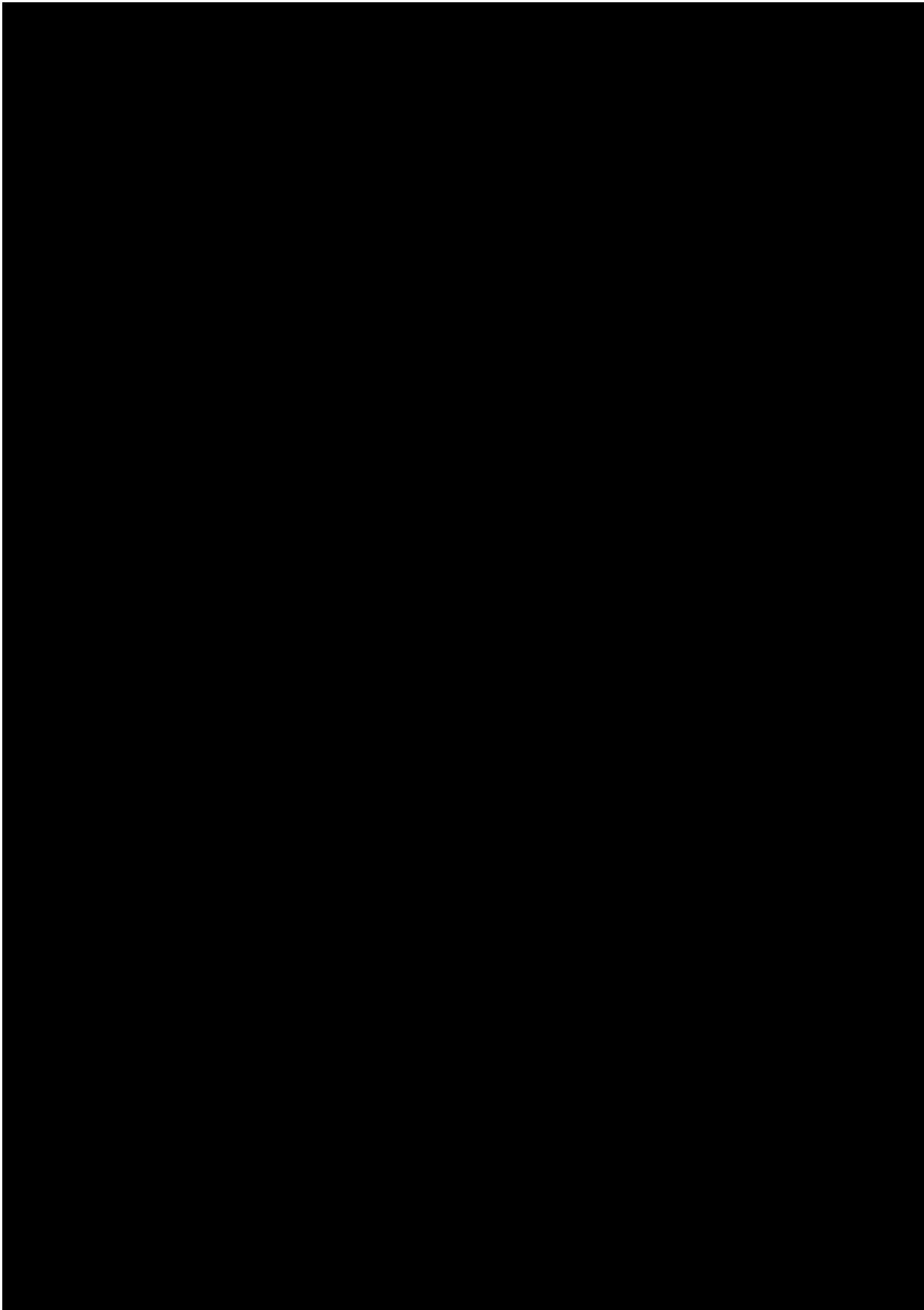
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(End of Attorneys' Eyes Only session.)

1 surface rights, as repeated during their opening
2 presentations in Volume 2, Slides 27 to 29, is
3 premised on Professor Bîrsan's erroneous
4 interpretation of Law 33 of 1994. This
5 interpretation of convenience is contrary to the
6 contemporaneous position of RMGC as reflected in the
7 Resettlement and Relocation Action Plan.

8 It is included in the EIA Report, which
9 clearly states that pursuant to the law, the
10 exploitation of mineral resources is potentially of
11 public utility, the expropriation was subject to a
12 declaration of public utility and that "a commission
13 is to check whether public utility actually applies
14 to the proposed project."

15 Please note here that the translation is
16 incorrect. The original Romanian text refers to
17 public utility and not public interest. This is an
18 issue that is sometimes confused. Public utility
19 refers to surface rights. Public interest refers to
20 other requirements such as the Water Framework
21 Directive. This is clear from page 27 of the
22 Romanian original, which refers to "utilitate

1 publica." You can find that on page 111 of the
2 merged PDF.

3 Professor Bîrsan's interpretation is also
4 inconsistent with Gabriel's contemporaneous
5 regulatory disclosures which provide that the Mining
6 Law does not "provide exploitation, concession
7 holders with the ability to compulsorily acquire
8 land, nor are there specific legal mechanisms under
9 Romanian law to allow a governmental authority to
10 compulsorily acquire land under a mining concession
11 on behalf of a private company." It also separately
12 disclosed that "There can be no assurance that
13 Gabriel will acquire all necessary surface rights."

14 This interpretation of convenience is
15 thoroughly debunked by Professors Sferdian and Bojin.
16 They explained, among other things, that the
17 restrictive regime within a mining perimeter cannot
18 be equated to a de facto expropriation, that the
19 declaration of public utility must follow a
20 prescribed administrative procedure, the outcome of
21 which is not a foregone conclusion. And that if
22 available, expropriation provides for a lengthy

1 procedure, the outcome of which is not guaranteed.

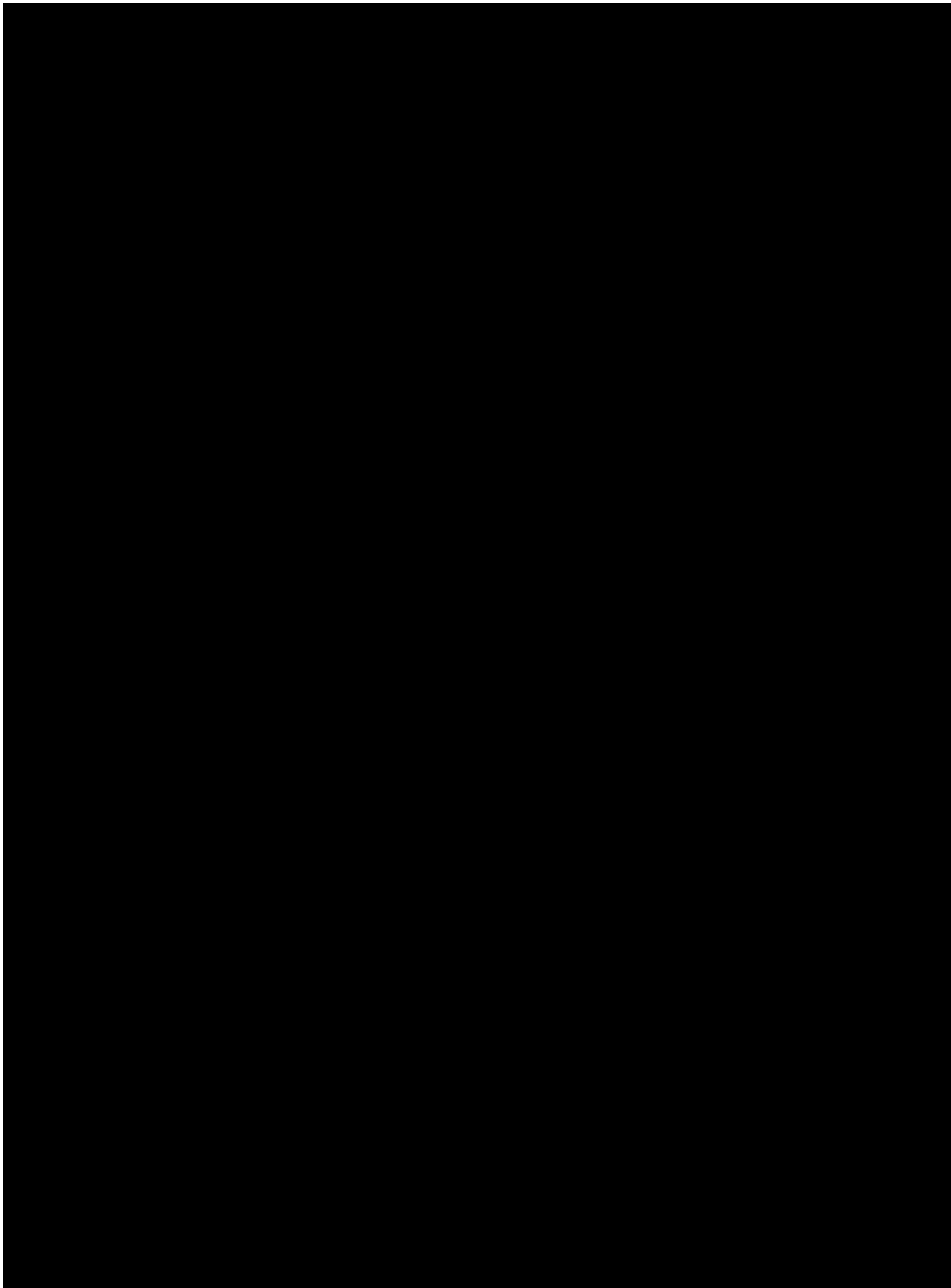
2 In other words, this issue could undermine
3 the feasibility of the Project. Professors Sferdian
4 and Bojin's interpretation of the Law is consistent
5 with Gabriel's and RMGC's contemporaneous
6 interpretation. And while the Respondent has called
7 Professor Bîrsan for examination, the Claimants have
8 not called Professors Sferdian and Bojin.

9 This next section is confidential.

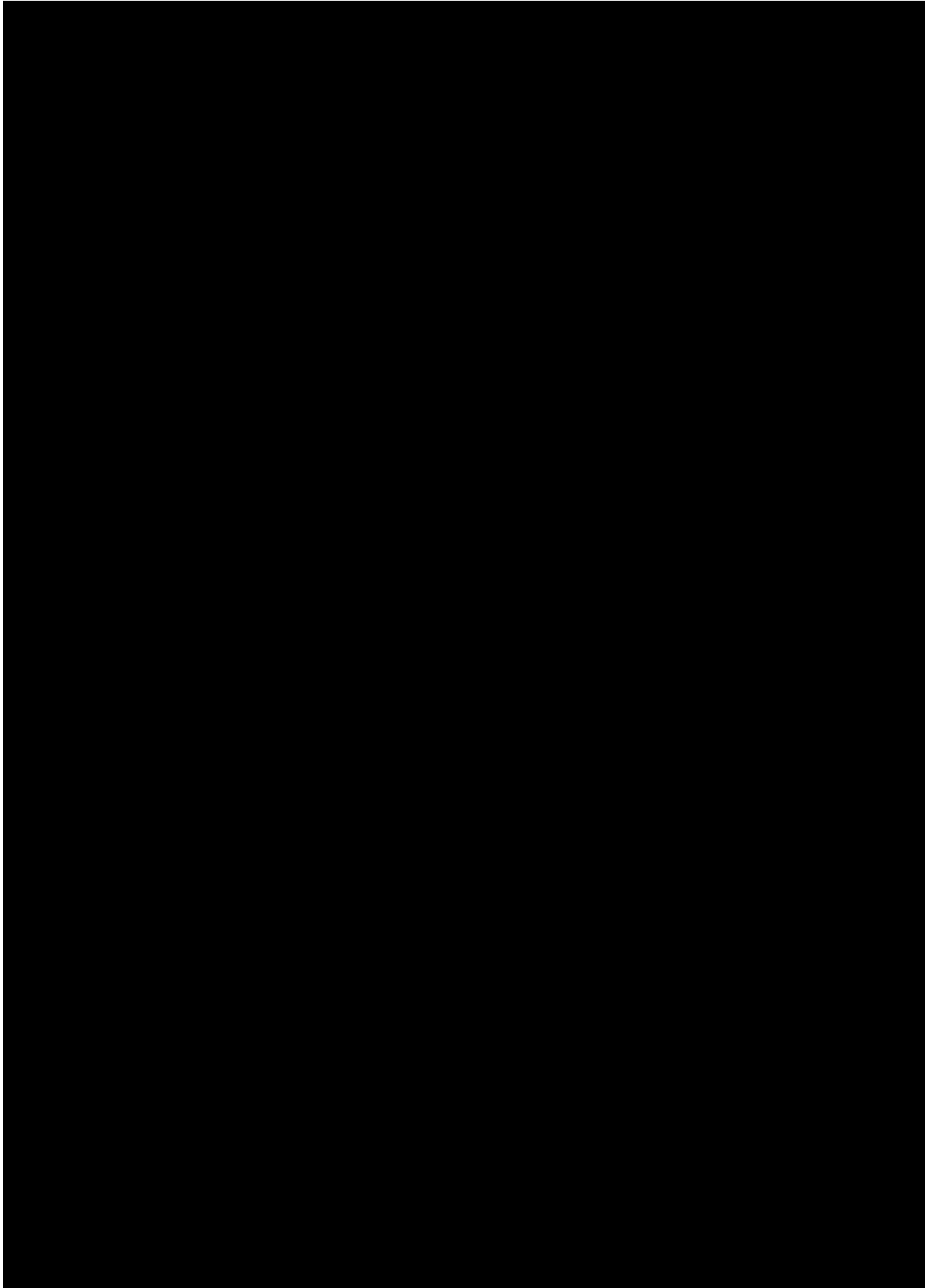
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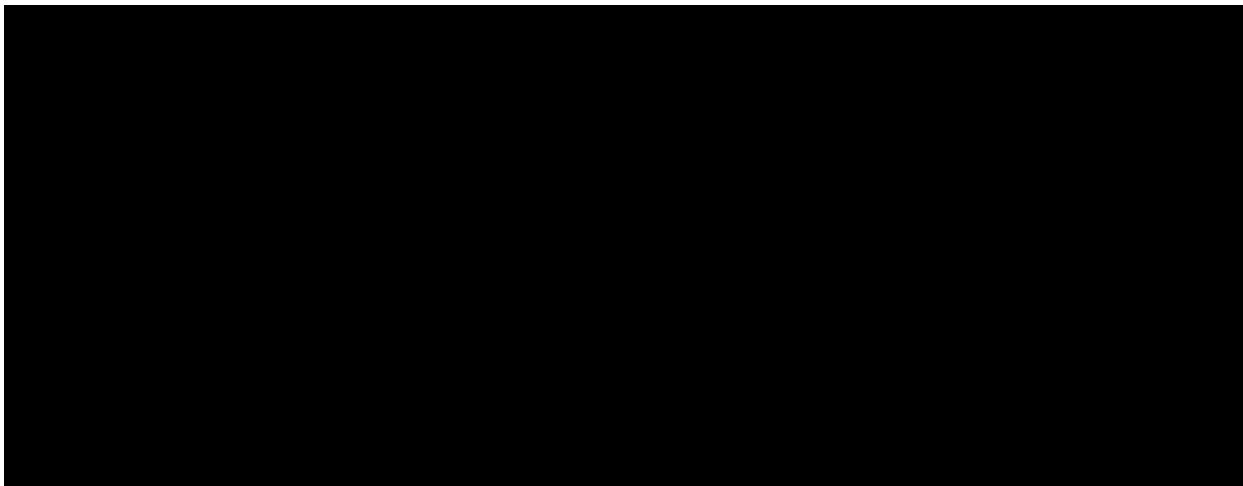
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(End of Attorneys' Eyes Only session.)

1 OPEN SESSION

2 MR. GUIBERT de BRUET: So how did the Rosia
3 Montana Law incorporate the Claimants' requested
4 legislative changes with respect to surface rights?

5 Well, it provides that the Project is "a
6 work of public utility and outstanding national
7 public interest."

8 In Article 5.2.1 the Rosia Montana Law
9 modified Mining Law 85/2003 with two new articles, 6
10 Index 1 and 6 Index 2.

11 Article 6 Index 1 provides for direct
12 assignment of publicly owned lands within the mining
13 perimeter to the owner of the mining concession upon
14 payment of a royalty. Article 6 Index 2 does several
15 things. It changes the expropriation regime, only a
16 few of which I'll be highlighting. There's more.
17 But it changes the expropriation regime from mining
18 projects that were declared to be of public utility
19 from Law Number 33/194 to Law 255 of 2010 which, as
20 previously mentioned, has a streamlined expropriation
21 procedure.

22 It provides that the Romanian State shall

1 expropriate upon request and that it will launch this
2 expropriation procedure within 30 days of this
3 request.

4 It provides that a concession agreement will
5 be concluded with the license holder within 30 days
6 of the completion of the expropriation procedure. It
7 also provides a mechanism whereby the expropriation
8 can be directly financed by the concession holder.

9 With this article, RMGC obtained a
10 fast-track procedure that solved many of its
11 problems. It greatly simplified and expedited the
12 procedure of expropriating the landowners that did
13 not wish to sell their properties. By virtue of
14 Article 9 of Law 255/2010, it enabled RMGC to use the
15 expropriated land while the expropriation process was
16 contested, thereby effectively eliminating an
17 important source of delay and uncertainty for the
18 Project.

19 It provided a specific mechanism for both
20 expropriating and conveying the land to the owner of
21 a private project, an important source of uncertainty
22 and potential delay that Gabriel had identified in

1 its disclosures.

2 These provisions would have enabled RMGC to
3 expropriate Project opponents on an expedited basis
4 and would have removed their ability to stall the
5 permitting of the Project while the contested
6 expropriation made its way through the courts.

7 So if the Tribunal would like, this is a
8 good stopping point. We would next turn to ADCs, but
9 we could do that after the lunch.

10 PRESIDENT TERCIER: Okay. So we start again
11 at 5 minutes past 2:00.

12 Thank you.

13 (Whereupon, at 1:04 p.m., the Hearing was
14 adjourned until 2:05 p.m. the same day.)

1 very much appreciative of the fact that Mr. Boc is
2 here, and we will do our best to accommodate and do
3 our cross-examination by video of Mr. Bode.

4 We haven't had the opportunity to look at
5 the Schedule and figure out how maybe some
6 adjustments need to be made, but in principle,
7 Claimants are prepared to work with that. I think
8 we'll need to consider the logistics in terms of also
9 members of the team who will, I'm sure, on both sides
10 would need to be present, but in principle we're
11 prepared to try and make that work.

12 PRESIDENT TERCIER: Okay. It's clear that
13 you will have to update the Schedule clearly, but I
14 think it's a bit early; otherwise, we'll have a lot
15 of successive drafts, so let's wait a bit.

16 Good. If there is no further points,
17 please. You have the floor, Mr. Guibert de Bruet.

18 MR. GUIBERT de BRUET: Thank you,
19 Mr. President.

20 So, before the break, we had seen that the
21 legislative amendments requested by the Claimants had
22 been incorporated into the Rosia Montana Law such

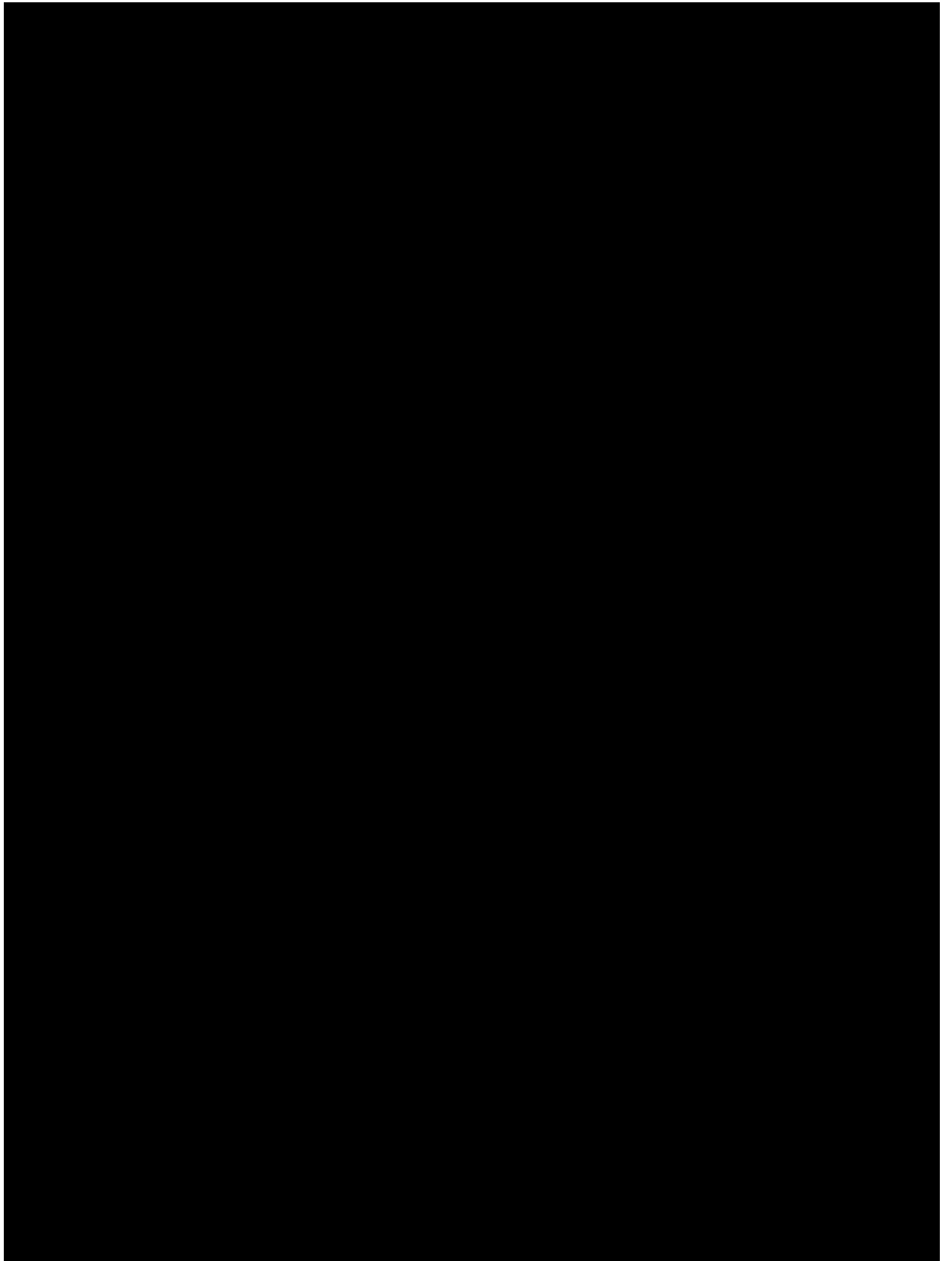
1 that these provisions would have enabled RMGC to
2 expropriate Project proponents on an expedited basis
3 and would have removed their ability to stall the
4 permitting of the Project while the contested
5 expropriation made its way through the courts.

6 So, turning to a different issue which now
7 would be confidential, the issue of ADCs.

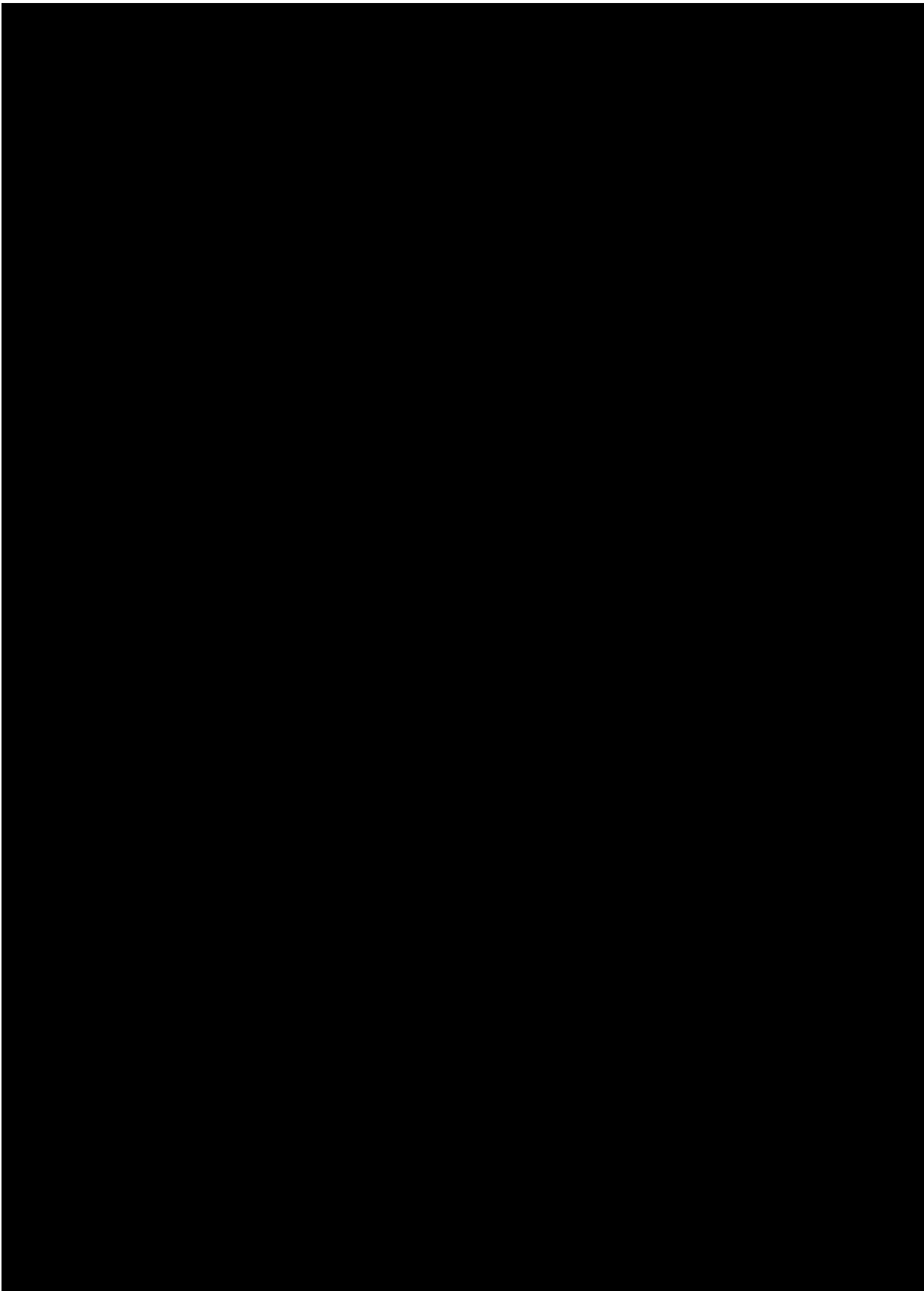
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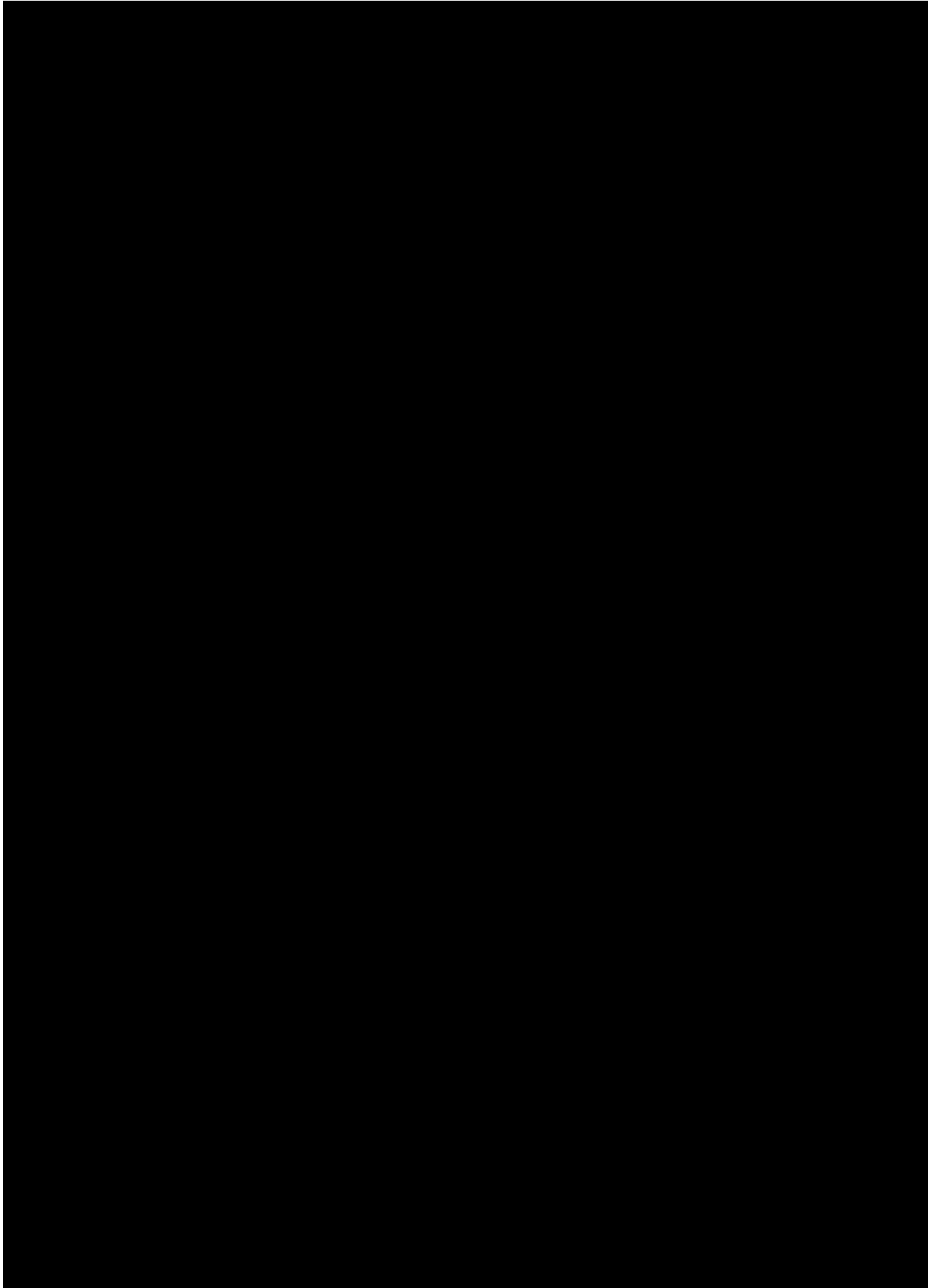
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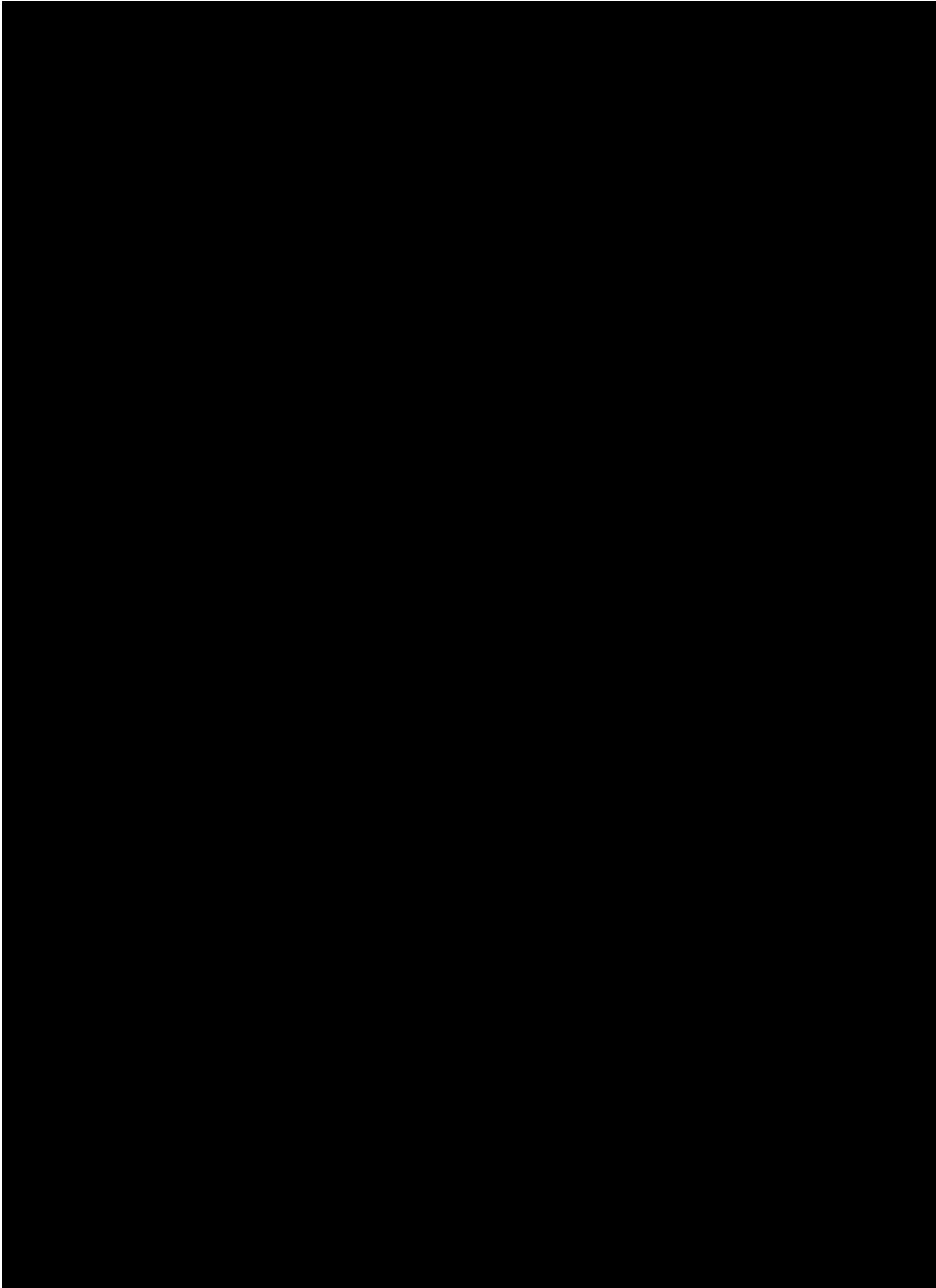
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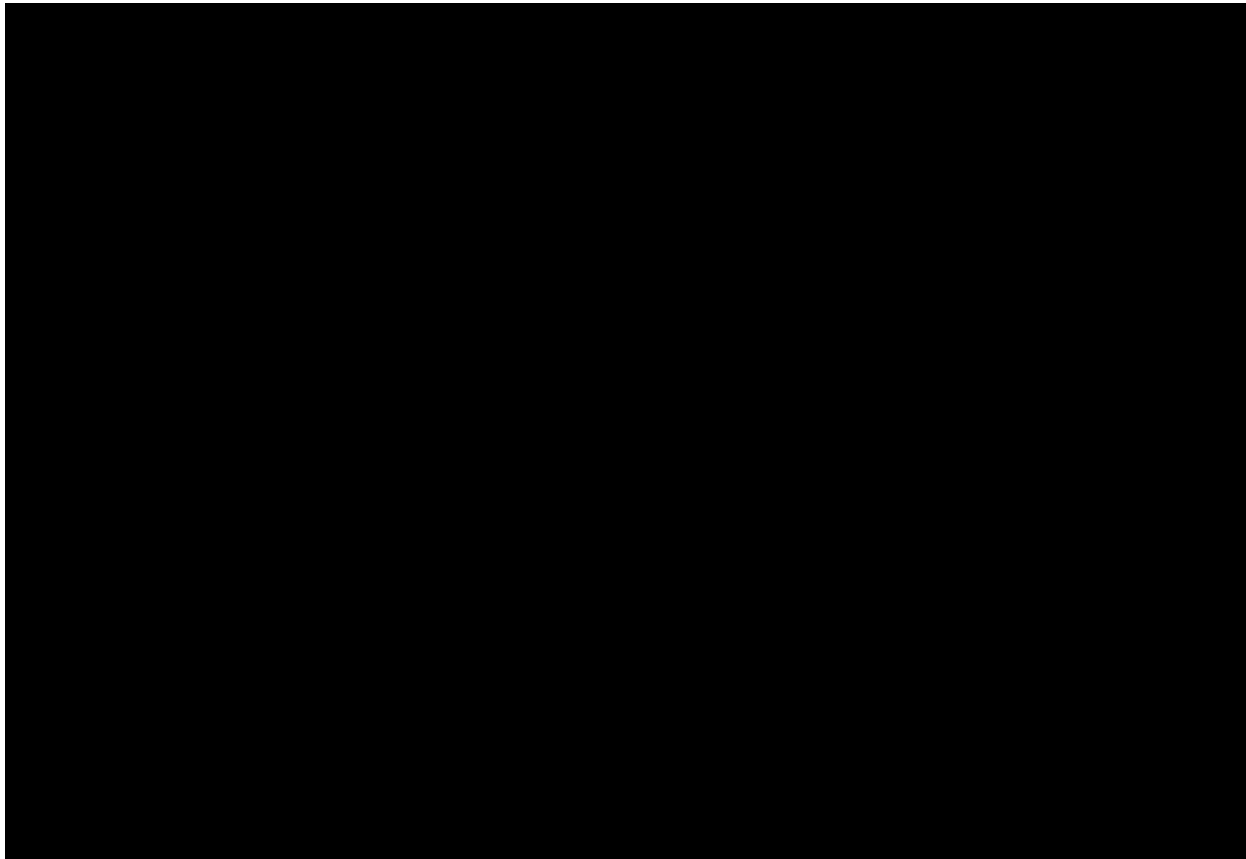
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This portion is nonconfidential.

(End of Attorneys' Eyes Only session.)

1 OPEN SESSION

2 MR. GUIBERT de BRUET: These requested
3 changes were incorporated almost verbatim into the
4 Rosia Montana Law. As you can see, while the Rosia
5 Montana Law does not explicitly state that an ADC is
6 not required prior to the issuance of a building
7 permit, it is clear from the text that RMGC can
8 obtain its building permit for the Project after it
9 submits its archaeological Research Reports. The
10 impact of these provisions on the Project's
11 development is significant.

12 Since the ADC is no longer required--is no
13 longer a requisite, excuse me, for the building
14 permit, Article 7(3) effectively eliminates the
15 abilities of NGOs and Project opponents to delay the
16 Project by requesting the suspension of the ADC. In
17 effect, this provision would have rendered irrelevant
18 the pending litigation on the Cârnic ADC and would
19 have prevented any interruption or potential
20 interruption of the Project's operations as a result
21 of a potential suspension of the Orlea ADC.

22 Turning to the Water Framework Directive,

1 Ms. de Germiny explained that RMGC needed permission
2 to derogate from the Water Framework Directive, and
3 the RMGC knew that it needed the Government to
4 declare the Project to be of overriding or
5 outstanding public interest. As we saw earlier, the
6 Claimants repeatedly requested that the Project be
7 declared of "outstanding national public interest,"
8 which is exactly what they obtained in the Rosia
9 Montana Law.

10 Through this provision, the Claimants
11 satisfied one of the four mandatory requirements
12 imposed by Article 4(7) of the Water Framework
13 Directive, thereby bringing them that much closer to
14 satisfying their permitting requirements.

15 Despite all of these advantages, the
16 Claimants allege that they never wanted the Rosia
17 Montana Law and that they objected to its
18 Project-specific nature. Beyond the self-serving
19 Witness Statements of Messrs. Henry and Tanase, the
20 Claimants have not provided so much as a shred of
21 evidence to support this claim. There is no evidence
22 on the record of any contemporaneous protest,

1 objections or complaints regarding the Submission of
2 the Rosia Montana Law to Parliament. Quite the
3 opposite. Gabriel's public disclosures clearly
4 portray the company's excitement and glowing support
5 for the Rosia Montana Law. In its second quarter
6 2013 disclosures, after noting that Mr. Ponta had
7 been quoted as stating that new law relating to the
8 Project will be drafted for debate in the Parliament
9 in September 2013, Gabriel Canada stated that it,
10 "looked forward to a successful process through
11 Parliament of the Project-specific legislation noted
12 by Mr. Ponta."

13 In a press release issued on the day the
14 Rosia Montana Law was submitted to Parliament,
15 Gabriel Canada stated that it is "pleased to announce
16 that the Romanian Government has approved draft
17 legislation relating to the Rosia Montana Project.
18 If adopted by the Romanian Parliament in its next
19 session commencing September 2nd, 2013, this
20 legislation will set the framework to significantly
21 accelerate the development of Europe's largest gold
22 mine at Rosia Montana and other mining projects in

1 Romania."

2 This Press Release also states that the
3 company is highly encouraged by the recent progress
4 of discussions with the Government since the
5 Project's inclusion in the national plan for
6 strategic investment and job creation in July 2013,
7 and subsequent developments of the Agreement and
8 draft law. This Press Release also quotes
9 Mr. Henry's statement that: "The Romanian
10 Government's decision to approve a law specific to
11 the Rosia Montana Project represents a significant
12 milestone for all stakeholders. We are extremely
13 encouraged by this major step towards progression of
14 the permitting process and consider it to be a clear
15 sign of endorsement by the Government for investment
16 into Romania."

17 Similarly, in a press release issued shortly
18 after the Submission of the Rosia Montana Law to
19 Parliament on 5 September 2013, Gabriel Canada stated
20 that it was "pleased to announce that, further to the
21 approval by the Romanian Government of the draft
22 legislation relating to the Rosia Montana Project,

1 the Draft Law has now passed to the Romanian
2 Parliament for debate. This legislation if approved
3 will establish a framework for the reinvigorating of
4 the mining industry across Romania and assist the
5 development of the Project to become one of Europe's
6 most modern mines."

7 This Press Release also quotes Mr. Henry who
8 stated in relevant part that, "he looked forward to
9 the Romanian Parliament's review of the Rosia Montana
10 Project. The Parliamentary approval and enactment of
11 the Draft Law will enable Gabriel to partner the
12 Romanian State in building Romania's first modern
13 mine."

14 Nor is there any evidence that the Claimants
15 did not want the Project-specific legislation, as we
16 just saw. Although the Claimants expressed a
17 preference during negotiations that certain
18 provisions should be of general applicability rather
19 than Project-specific, in other instances, they
20 expressly acknowledge that certain of their Project-
21 specific requests had to be implemented through
22 legislation. As Dr. Heiskanen explained, the Law was

1 rejected after massive processes--after massive
2 protests ensued, following which Gabriel effectively
3 abandoned the Project in favor of pursuing
4 arbitration.

5 And with that, we turn to Dr. Leaua.

6 PRESIDENT TERCIER: Thank you very much.

7 Please, Dr. Leaua.

8 DR. LEAUA: Good afternoon, Mr. President,
9 Members of the Tribunal.

10 In my presentation, I will refer to events
11 related to the Parties' dispute that occurred after
12 January 2015 and focus on several factual corrections
13 to the Claimants' presentation of facts in this case
14 in respect to three main topics: the UNESCO
15 Application, the 2015 List of Historical Monuments
16 and Minvest's compliance with its obligations as
17 Shareholders of RMGC. In the end, I will briefly
18 address the Bucium Applications.

19 Turning now to the first of these topics.
20 Indeed, on 16 February 2016, Romania applied to the
21 UNESCO tentative list for the Rosia Montana Mining
22 Cultural Landscape to be declared a World Heritage

1 site. On 4 January 2017, Romania submitted a full
2 Application to UNESCO. However, on 2nd July 2018,
3 Romania secured a referral of the UNESCO Application
4 due to the ongoing arbitral proceedings. For this
5 fact you have on record Exhibit C-1920.

6 On 4th of July 2018, following Romania's
7 Request, the UNESCO World Heritage Committee issued a
8 decision stating that it refers the nomination of the
9 Rosia Montana Mining Landscape Romania back to the
10 State Party due to the ongoing international
11 arbitration. That is to be found on Page 6 of the
12 document Exhibit C-1920. As such, the file is no
13 longer submitted to the UNESCO World Heritage
14 Committee but it is now in the hands of Romania.

15 I would like to make two comments related to
16 these facts.

17 Firstly, that Claimants are wrong when
18 arguing that by its request to postpone and not to
19 withdraw the Application, Romania would like to
20 confirm, as Claimants put it in their Reply, it
21 intends never to allow the Project to be developed.
22 The citation is from Page 9, Paragraph AA of the

1 Claimants' Reply.

2 In fact, Romania asked for the file to be
3 referred precisely for the reason of this ongoing
4 international arbitration, which means that it takes
5 into consideration the situation.

6 Secondly, the Claimants wrongly state that
7 the mere application to UNESCO coverage even
8 postponed but not withdrawn would trigger a
9 protection regime for the site on the Romanian law
10 that is incompatible with the notion of Project. The
11 reference is in the Claimants' Reply in
12 Paragraph 283.

13 When taking this position, Claimants rely on
14 their opinion or on the opinion of their legal
15 expert, Professor Podaru, who is, however, providing
16 an erroneous interpretation. In fact, the UNESCO
17 Application in itself cannot have any impact on the
18 Project. As mentioned, following Romania's express
19 request, the UNESCO World Heritage Committee issued a
20 decision stating that it refers the nomination back
21 to Romania due to the ongoing arbitration, as I
22 mentioned.

1 Referring back to Romania the file, it
2 means, as I mentioned, that the applications is in
3 the hands of Romania and obviously no decision was
4 taken by UNESCO to grant protection. So, contrary to
5 the way in which Claimants have presented the
6 situation yesterday, the file is referred back to
7 Romania and not deferred.

8 I will now turn to the second topic I would
9 like to address for certain factual corrections, and
10 that is the 2015 List of Historical Monuments.

11 The Claimants complain that the Government
12 would have declared without legal justification the
13 entire area of the Project as a historical monument
14 in the 2015 List of Historical Monuments and that the
15 issuance of this list was arbitrary and contrary to
16 both law and fact. This idea is to be found in the
17 Claimants' Reply on Page 211 and 128 and following.

18 The Claimants' allegations are baseless.
19 The 2015 List of Historical Monuments was not
20 arbitrary. It contained corrections of errors
21 identified by the National Institute of Heritage on
22 the 2010 List of Historical Monuments, and this

1 correction did not entail the listing of any new
2 monuments that had not been included previously in
3 the List of Historical Monuments.

4 Further, these corrections were consistent
5 with the views expressed by the Cultural Authorities
6 over the years. This can be found in a number of
7 exhibits on record: C-1331, R-558, C-1333, R-559, and
8 R-560. In any case, the List of Historical Monuments
9 is updated every five years, and nothing precludes
10 RMGC from instructing the completion of the necessary
11 archaeological research unless obtaining the
12 remaining Archaeological Discharge Certificates based
13 on which the declassification procedure can be
14 initiated.

15 This brings me to another issue. The
16 Claimants also wrongly complain that the 2015 List of
17 Historical Monuments disregarded an existing
18 Archaeological Discharge Certificate. That is in
19 their Reply on Page 129. The Claimants' position is
20 again wrong. The Archaeological Discharge
21 Certificate do not declassify, but only initiate the
22 declassification of a historical monument. This

1 clearly results from Article XIII of Law 422 of 2001
2 on the protection of Historical Monuments that is on
3 record as Exhibit C-1703 at Page 6.

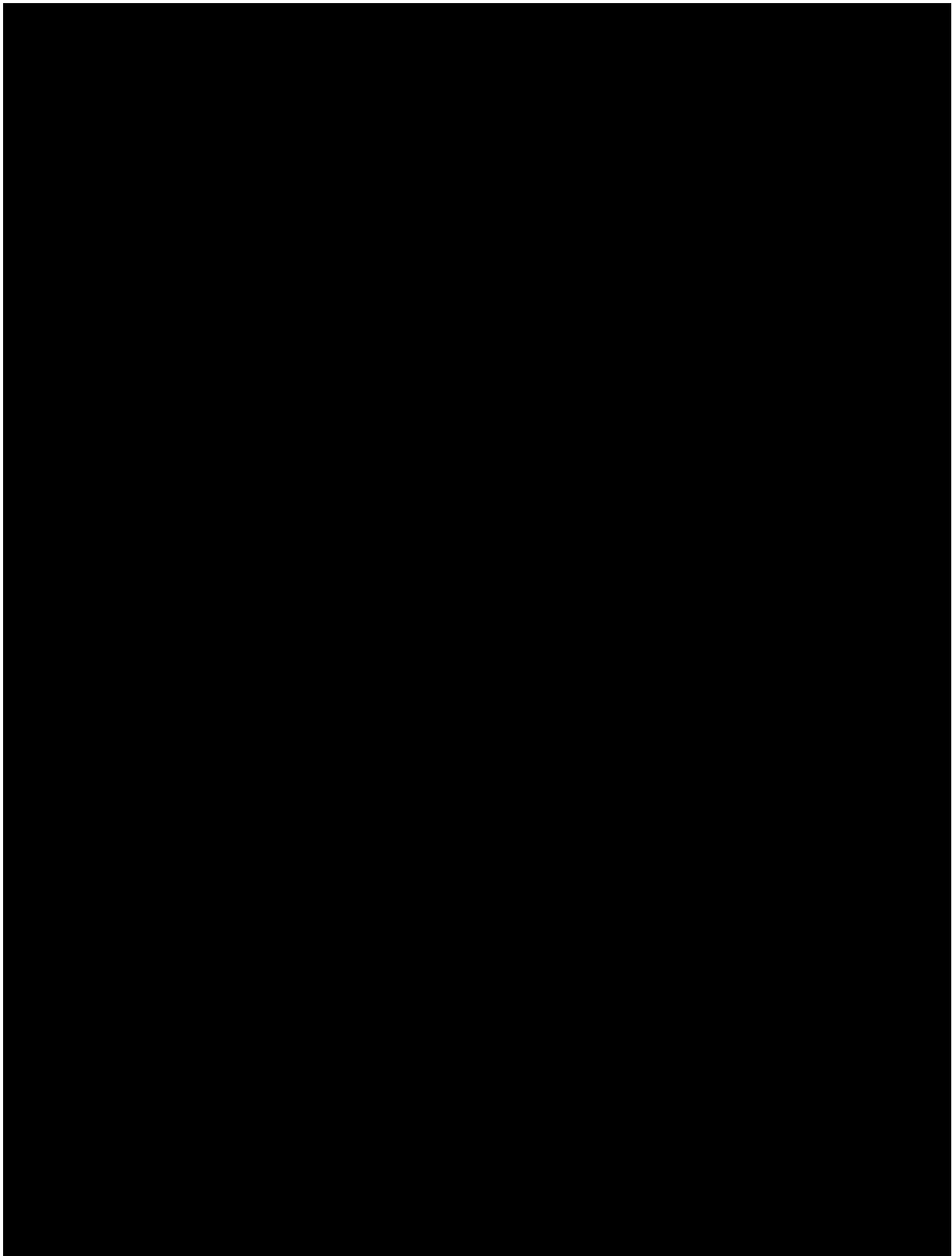
4 The declassification process was initiated
5 based on the Archaeological Discharge Certificate
6 Number 9 of 2011 and continued throughout the end of
7 2012. Following the suspension of this
8 Archaeological Discharge Certificate on 30 of
9 January 2014, the procedure can resume only if the
10 challenge is dismissed, that is, if the
11 Archaeological Discharge Certificate is not annulled.
12 Pending the outcome of the litigation, any complaints
13 related to a failure to declassify the Cârnic Massif
14 are premature.

15 I will turn now to a confidential part.

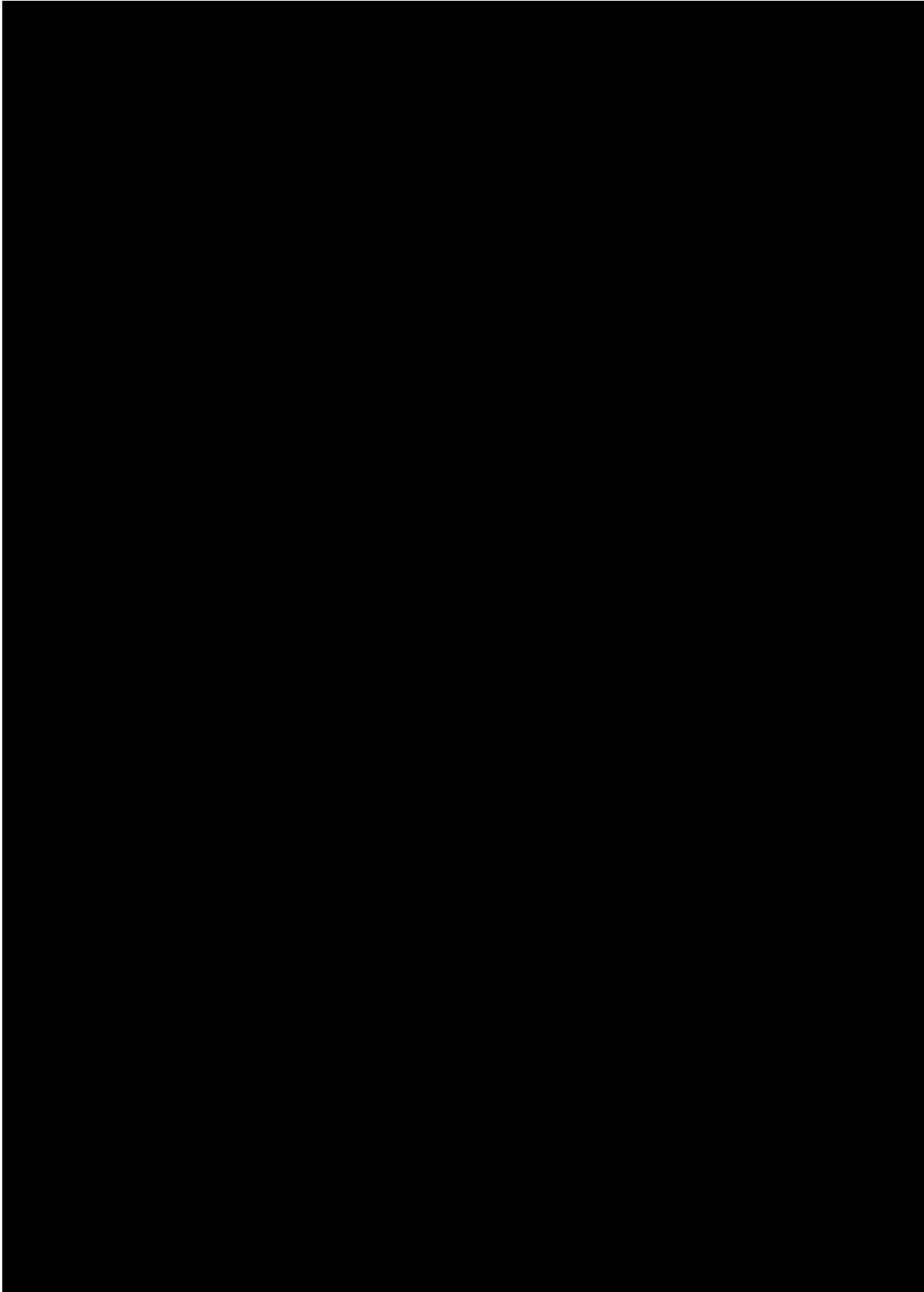
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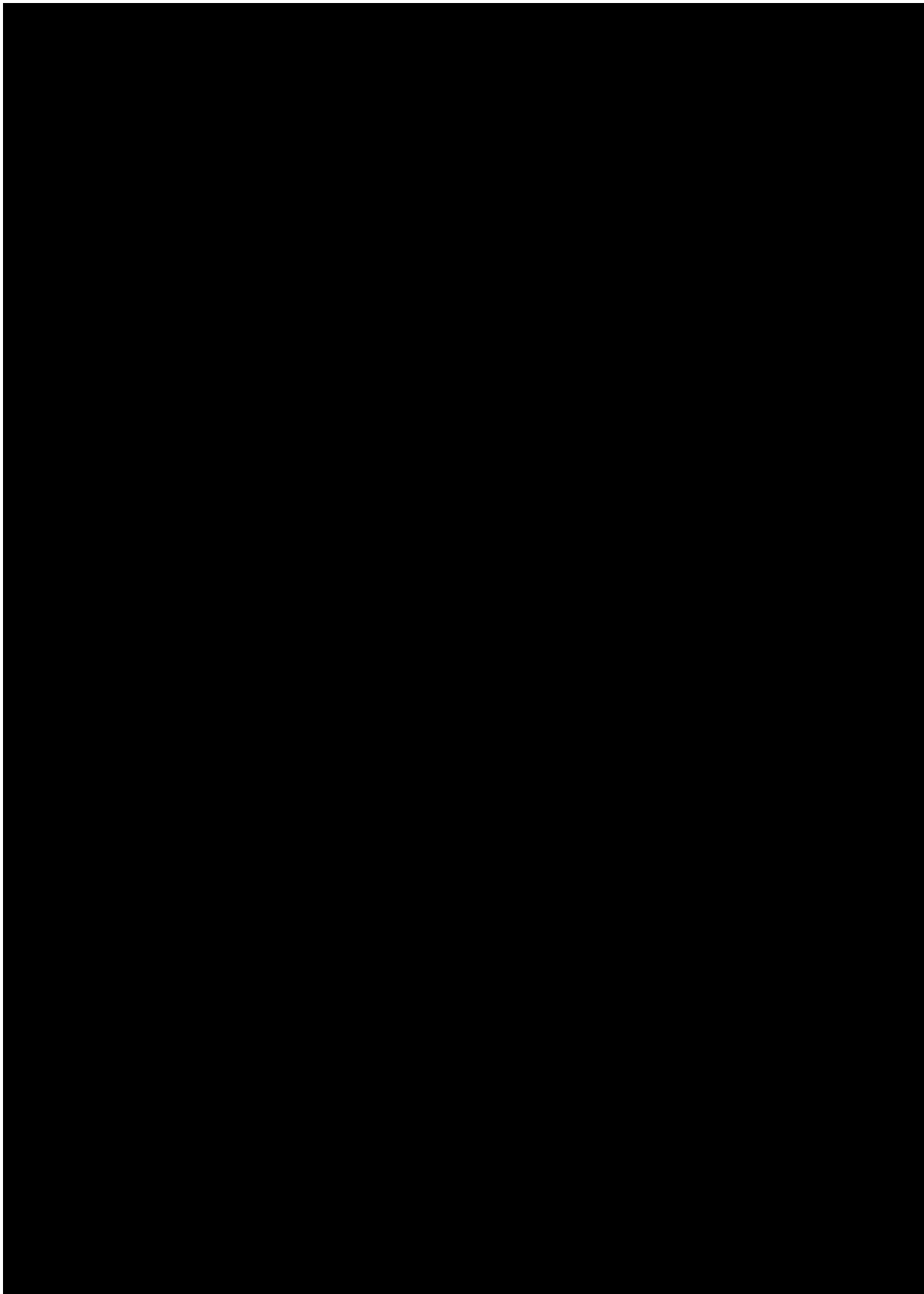
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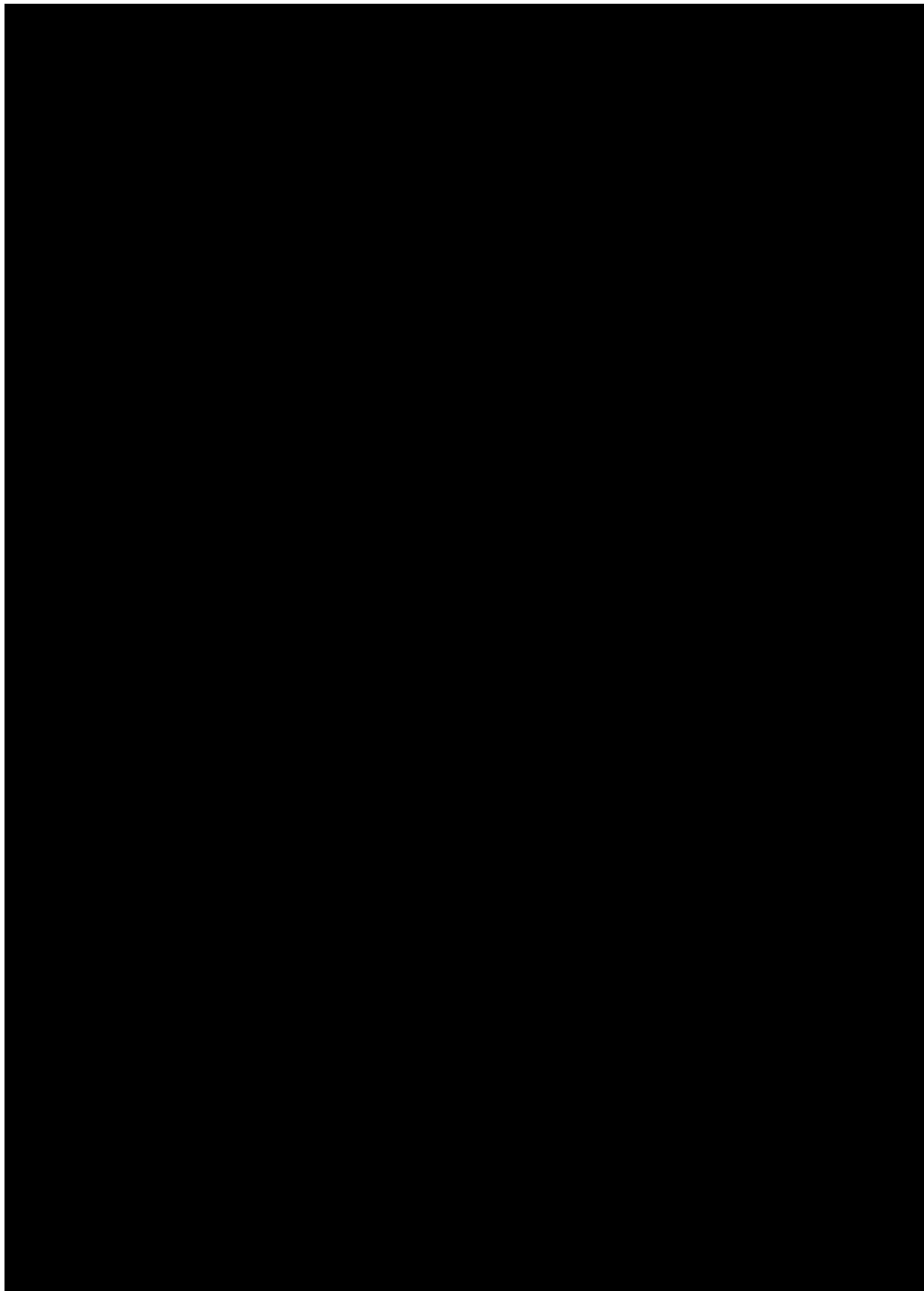
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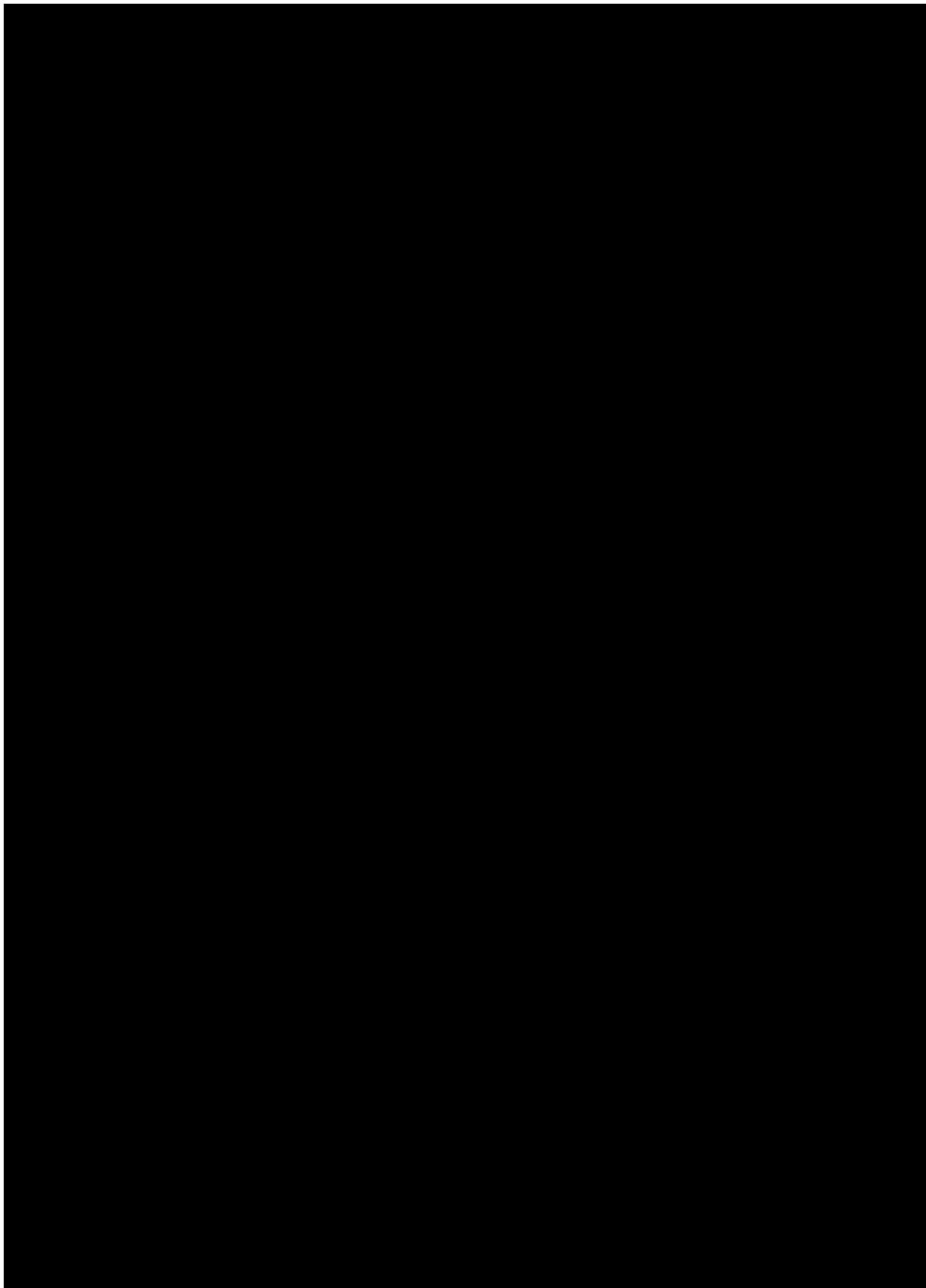
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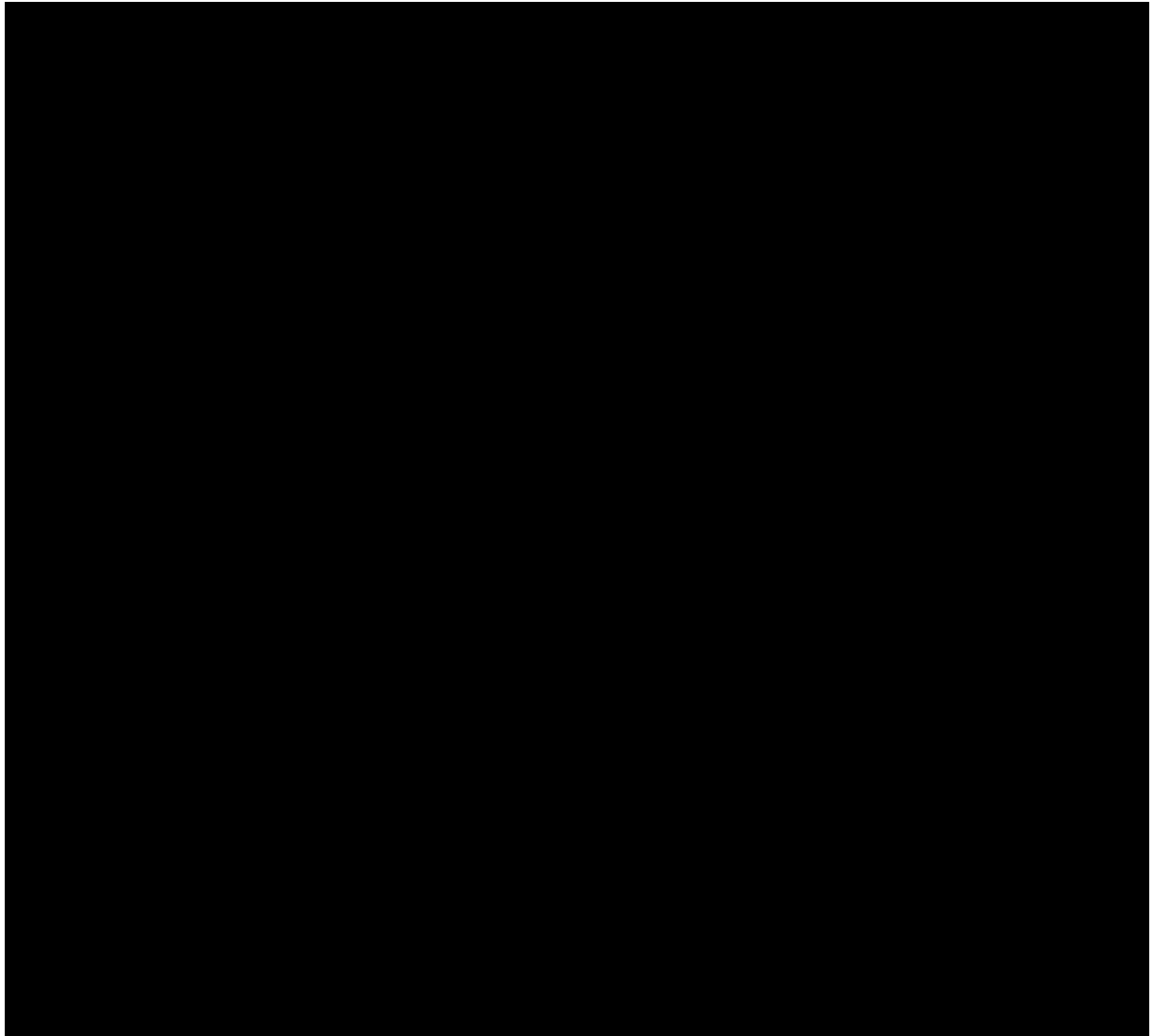
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With this, the confidential part ends.
(End of Attorneys' Eyes Only session.)

1 OPEN SESSION

2 DR. LEAUA: Finally, I would like to refer
3 to the Claims brought by the Claimants in this
4 arbitration arising out from Bucium Application
5 submitted by RMGC to the National Agency of Mineral
6 Resources in October 2007. These claims are also
7 without merit. RMGC Bucium Applications are pending.
8 A decision of those Applications requires completion
9 of the homologation process. This consists notably
10 in the review of the updated technical documentation
11 submitted to date, most recently in 2015, when RMGC
12 submitted the revised documentation requested by the
13 National Agency of Mineral Resources. The process is
14 highly technical, and it's still underway.

15 Finally, I would like to underline that
16 Claimants' position and description on the facts--of
17 the facts, is not reliable. Initially, Claimants'
18 legal experts, Professor Bîrsan, argued in his first
19 legal opinion, that the National Agency of Mineral
20 Resources should have concluded an Exploitation
21 License--on the Exploitation License submitted to it
22 that, within 90 days after the Application, and that

1 is in January 2008. This is to be found in Bîrsan
2 First Legal Opinion Page 89, Paragraph 403.

3 Then, Respondent demonstrated in the
4 Counter-Memorial that, if that were true, the Claim
5 would be time-barred under the Canada-Romania BIT,
6 Article XIII(3). After seeing such defense of the
7 Respondent, Claimant adjusted their position in the
8 Reply to avoid the time-bar issue, claiming now that
9 the National Agency of Mineral Resources, in fact,
10 needed to decide the Application in March 2013
11 following the homologation of the Rosia Montana
12 Resources and Reserves.

13 I refer now to Page 166, Paragraph 372 of
14 the Claimants' Reply.

15 Such change is not credible and shows the
16 Claimants' position in this arbitration does not
17 reflect the facts.

18 Mr. President, Members of the Tribunal, this
19 concludes the Respondent's opening presentation, and
20 I thank you for your attention.

21 PRESIDENT TERCIER: Thank you very much.

22 I don't know if my co-Arbitrators have

1 questions?

2 No questions at this juncture.

3 Fine. Thank you very much again.

4 We will now turn to the first examination,
5 the examination of Mr. Henry.

6 Probably we have some logistic point to see
7 where is Mr. Henry? He's probably there, and who
8 will be the two that will also come, Mr. Ariton and
9 Mr. Găman?

10 (Brief recess.)

11 JONATHAN HENRY, CLAIMANTS' WITNESS, CALLED

12 PRESIDENT TERCIER: Apparently everything is
13 now ready.

14 Good afternoon, Mr. Henry.

15 THE WITNESS: Good afternoon.

16 PRESIDENT TERCIER: I would like to welcome
17 you in this club.

18 THE WITNESS: Thank you.

19 PRESIDENT TERCIER: You probably know
20 already two co-Arbitrators on my left-hand side,
21 Professor Horatio Grigera Naón; on my right-hand
22 side, Professor Zachary Douglas. You don't know me

1 because I'm new. I replaced as the Chairman Ms.
2 Teresa Cheng.

3 You know our Secretary on the left-hand side
4 is Ms. Maria Athanasiou; she is Assistant to the
5 Tribunal, and I think I do need to introduce the
6 teams who are on both sides of the room.

7 I would like to recall you that you will be
8 heard in this proceeding as a witness; and, as such,
9 I would like to invite you--you are not an expert,
10 you are a witness. You must have a sheet of paper in
11 front of you with the declaration that. Could you
12 please read it aloud.

13 THE WITNESS: I solemnly declare upon my
14 honor and conscience that I shall speak the truth,
15 the whole truth, and nothing but the truth.

16 PRESIDENT TERCIER: Thank you.

17 You know already the procedure, and I don't
18 want to be long or length of time. You have prepared
19 for this proceeding two witness statements. The
20 First Witness Statement is dated the 30th of
21 June 2017, and the second is dated, if I'm not
22 mistaken, though you're writing 31st of October 2018;

1 am I right?

2 THE WITNESS: That's correct, yes.

3 PRESIDENT TERCIER: Okay. You have those
4 two documents in front of you?

5 THE WITNESS: I do, yes.

6 PRESIDENT TERCIER: Yes.

7 Can you confirm the content of these
8 documents, or do you wish to make amendments or
9 something else?

10 THE WITNESS: I can confirm them.

11 PRESIDENT TERCIER: Okay. So you know the
12 procedure that it is now your Witness Statement, it
13 is your testimony.

14 THE WITNESS: I understand.

15 PRESIDENT TERCIER: You know so the
16 procedure; I will start with one or two very
17 classical questions. It will then be for counsel for
18 Claimant, to so-called "direct," I will come to it in
19 a moment, and then there will be cross-examination,
20 and a redirect at the end.

21 Everything will be on Transcript, and there
22 is also a time limit. We will see how it works.

1 You remember that, for the benefit of the
2 Transcript, you should not interrupt the speaker
3 before you so that we have a clear Transcript.

4 The specificities here is that, in the
5 direct, the Arbitral Tribunal has agreed that each
6 Party had the right to submit new documents after the
7 Rejoinder that had been submitted very recently after
8 the procedure. And it has been also agreed that you
9 may be asked in the direct on these exhibits and on
10 special issue that you had written, presented or
11 prepared by the Claimants. You understand it, so
12 it's a bit special; it is an exceptional situation.

13 THE WITNESS: I understand it.

14 PRESIDENT TERCIER: You understand it?

15 THE WITNESS: I understand, yes.

16 PRESIDENT TERCIER: Fine. I have just two
17 very, very general questions.

18 The first question is your role as the Head
19 of Claimants from the time you started in 2010 and
20 then the time you resigned.

21 Can you just describe in short terms what
22 was your activities recent time?

1 THE WITNESS: Yes.

2 So, I became the Chief Executive Officer of
3 Gabriel and joined the Board in June 2010. At the
4 time, the Company had a head office in Toronto, so it
5 was listed on the Toronto Stock Exchange. Because I
6 was located in England, I was tasked with really
7 putting a new management team at my discretion with
8 regard to where and how together with regard to
9 getting Rosia Montana through the permitting process.

10 I relocated the head office to London in the
11 first year. I employed some new Senior Management,
12 some of whom are in this room, in London, and we were
13 relocated, so we were a European-based business. I
14 empowered the Romanian management team, who you will
15 meet some of them in the next couple of days. One of
16 the reasons why I joined the business is their
17 professionalism, and I empowered them to operate in
18 Romania and spent the first six months, really about
19 half my time in Romania, and my role was really to
20 manage the listed entity, to report to the Board, who
21 obviously had a care and responsibility to the
22 Shareholders, and I did that with a team of

1 professionals based in London but traveling to
2 Romania and Europe as necessary, and Canada for board
3 meetings. So, I was really the overseer, as you
4 would imagine, as with any Chief Executive Officer
5 role.

6 So, I also signed off on our--as well as the
7 Chief Financial Officer signed off on our disclosure
8 documentation, obeying all Securities Law in Canada.

9 Is that what you--

10 PRESIDENT TERCIER: Yes.

11 And now, you resigned. When did you leave
12 the Company?

13 THE WITNESS: I left the Company I want to
14 say in July 2018, so about a year-and-a-half ago.

15 PRESIDENT TERCIER: Okay. Good.

16 So, I think for certainly--this was at this
17 point with the green light. Have you been informed,
18 that if there are confidential questions or answers,
19 we will have somebody asking for it, and we could
20 have then the red light. I don't know if that will
21 be--no?

22 MR. LEW: I think after these initial

1 questions, we would consider Mr. Henry's testimony to
2 be confidential.

3 PRESIDENT TERCIER: The whole testimony?

4 MR. LEW: (Nods head.)

5 DR. HEISKANEN: Well, it depends on the
6 questions whether his evidence is confidential or
7 not.

8 MR. LEW: Yeah. I think our position has
9 been that the Witness Statements are confidential,
10 and that extends to the testimony about the topics
11 addressed.

12 DR. HEISKANEN: That is not the Respondent's
13 understanding, and there is no Tribunal's decision on
14 the record which says that the Witness Statements are
15 confidential or witness testimony to be presented at
16 the Hearing will be confidential. We are prepared to
17 conduct the cross-examination on the basis of the
18 rules that have been established by the Tribunal.
19 When we are dealing with confidential documents, we
20 will indicate that, and we'll be going to the
21 confidential mode, but much of the questioning will
22 not be confidential.

1 PRESIDENT TERCIER: But you have no
2 objection to the direct being confidential?

3 DR. HEISKANEN: We do, if the questions do
4 not relate to confidential information.

5 MR. LEW: But we think the principle has
6 been established as to how the Witness Statements
7 have been treated; that is to say, as confidential.
8 His testimony is going to address matters that were
9 within the Witness Statements by summary in addition
10 to a new document that's going to discuss an aspect
11 of the negotiations which were also addressed in the
12 Witness Statement.

13 And so, we think that all of this is
14 confidential.

15 PRESIDENT TERCIER: Okay. So, we have to
16 decide.

17 (Tribunal conferring.)

18 PRESIDENT TERCIER: You are the first, we
19 had to refresh our memory and look at PO3. According
20 to PO3, that Witness Statement, Expert Report or
21 Exhibits, 2.6, shall be presumed to contain
22 confidential information and to be treated

1 accordingly. However, either Party may at any time
2 propose to reclassify their own or the other side's
3 supporting Witness Statement, Expert Report and
4 exhibit on the ground that it does not constitute or
5 contain confidential information. And then 2.8, if
6 proposed designation of confidential information are
7 not received within the 14-day period specified in
8 2.2, that could be reclassified.

9 So, the principle decided by the Tribunal is
10 that the Witness testimony will be confidential.

11 MR. LEW: Thank you, Mr. President.

12 DR. HEISKANEN: Mr. President, two comments
13 on this one. We are, of course, aware of this ruling
14 of the Tribunal; it's just for the record. The
15 practice of the Parties has been throughout this
16 proceeding that when Witness Statements are quoted in
17 the Submissions, the information is confidential only
18 to the extent that the substance of the evidence is
19 confidential. So, there are two--that has been the
20 practice of the Parties.

21 We understand the Tribunal's ruling, but
22 then it must apply equally to witnesses of both

1 Parties.

2 PRESIDENT TERCIER: Yeah, I do not see any
3 reason not to do that.

4 Okay. Good.

5 MS. COHEN SMUTNY: I'm not quite sure--

6 PRESIDENT TERCIER: The second point, I mean
7 equal--the first point is a comment that you made on
8 your side; right?

9 DR. HEISKANEN: The first point is a comment
10 for the record, on our part, which explains what the
11 position, why the Respondent's position is what it is
12 on this Issue. Of course, we accept the Tribunal's
13 ruling. That is not what I meant.

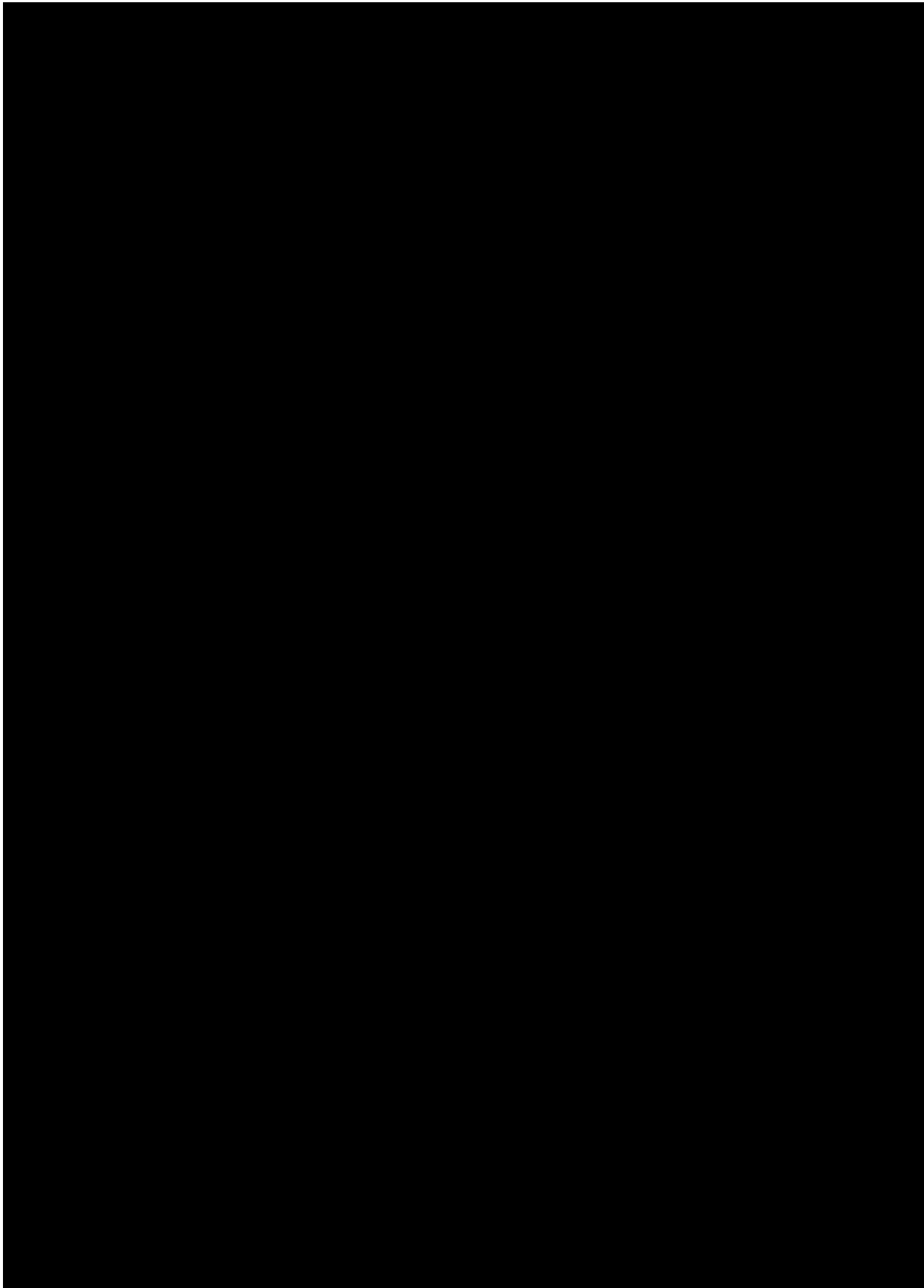
14 But the second point is that, if the witness
15 testimony is considered confidential for the
16 Claimants' witnesses, then the same rule must apply
17 to the Respondent's witnesses.

18 PRESIDENT TERCIER: It is what I had in
19 mind; yeah?

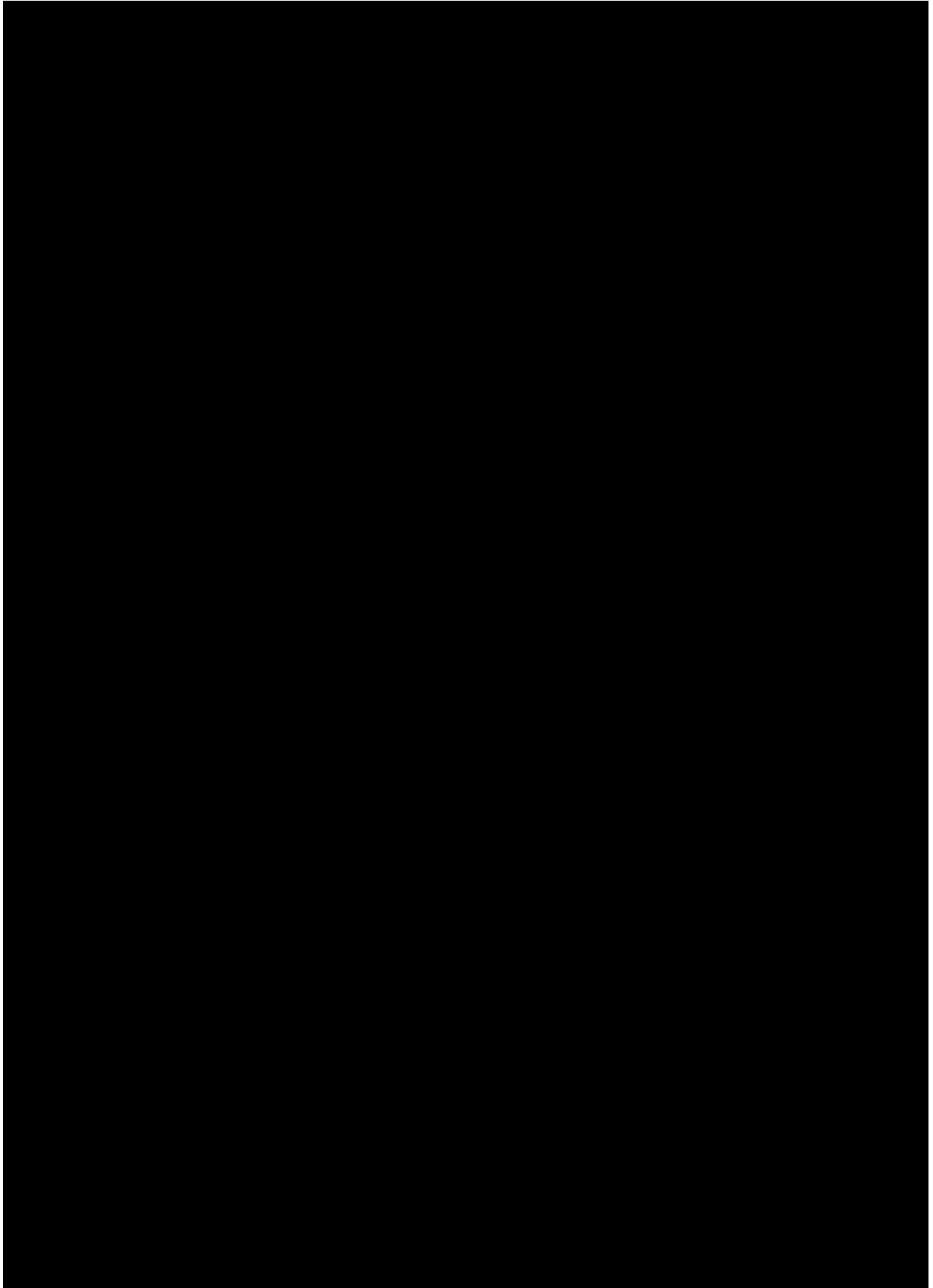
20 MS. COHEN SMUTNY: On that last point, of
21 course, we do agree.

22 PRESIDENT TERCIER: Okay. Good.

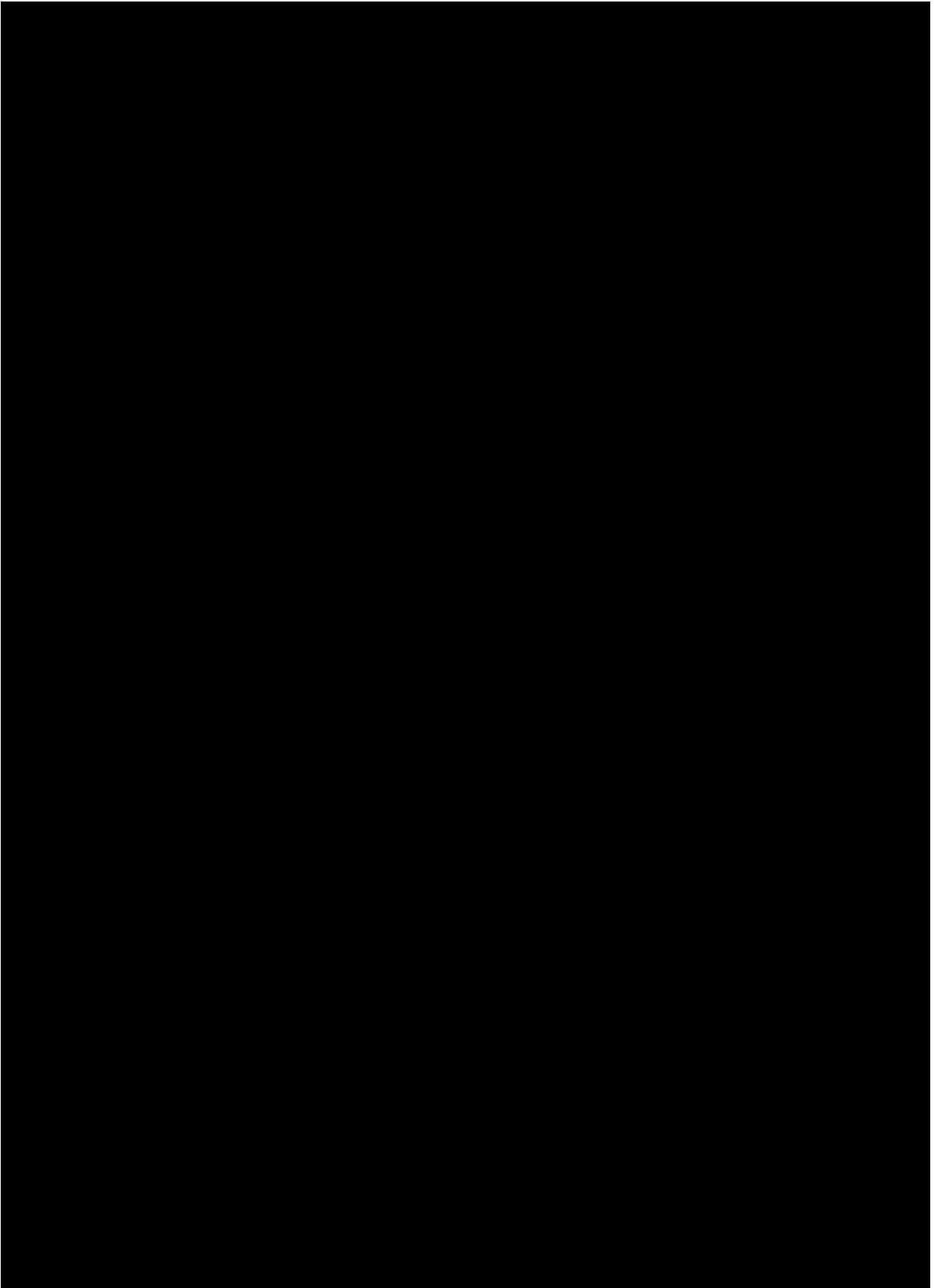
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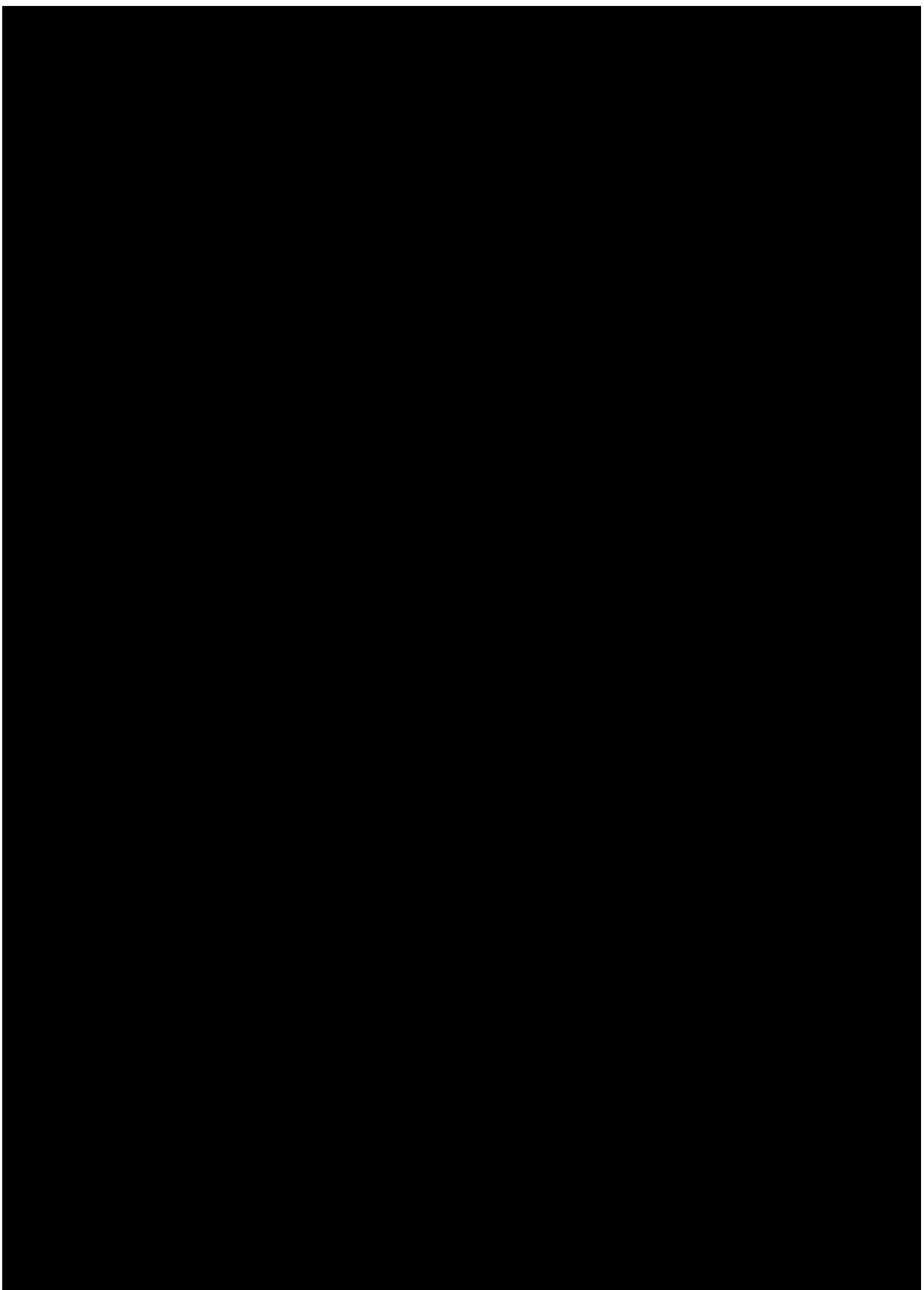
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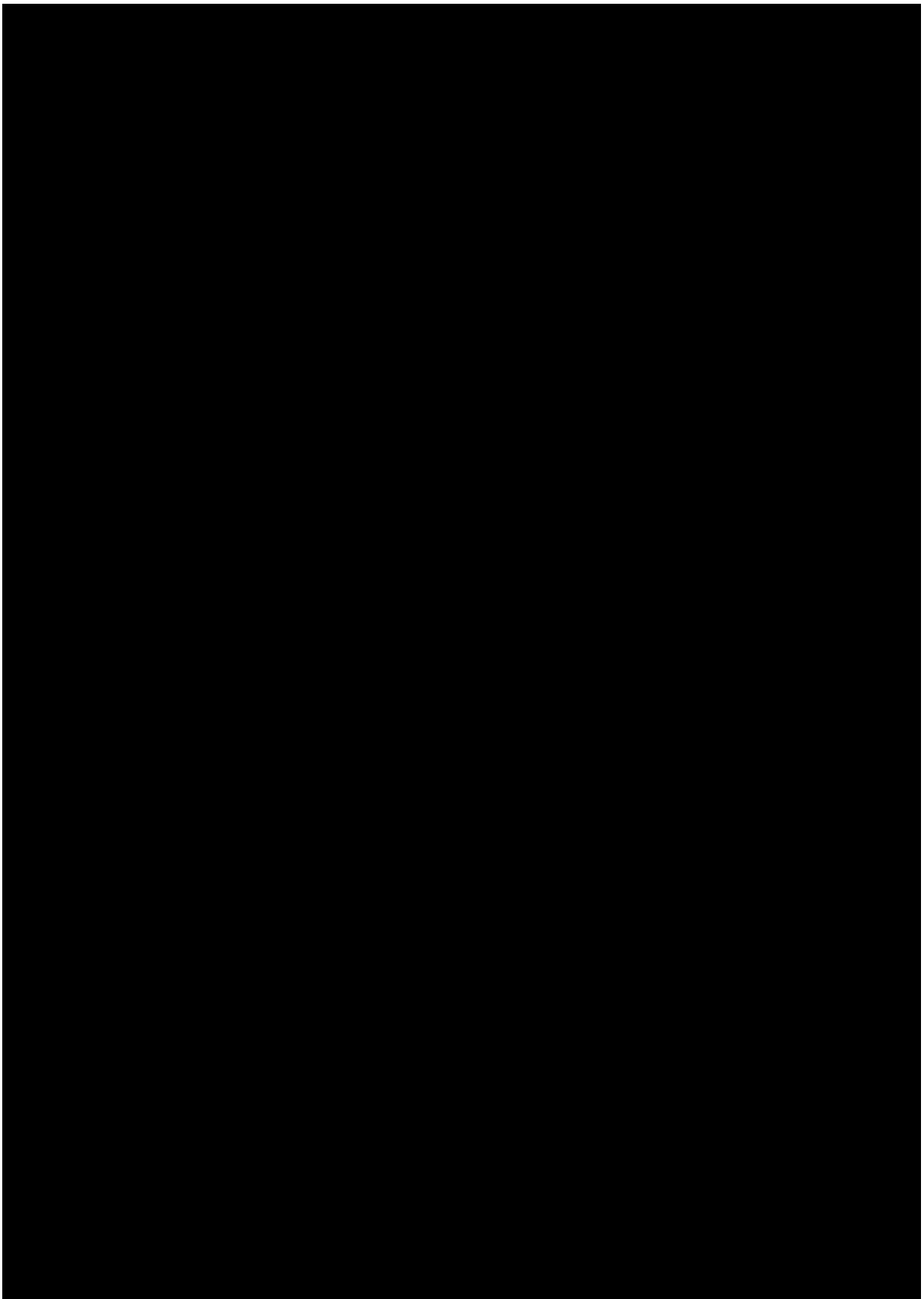
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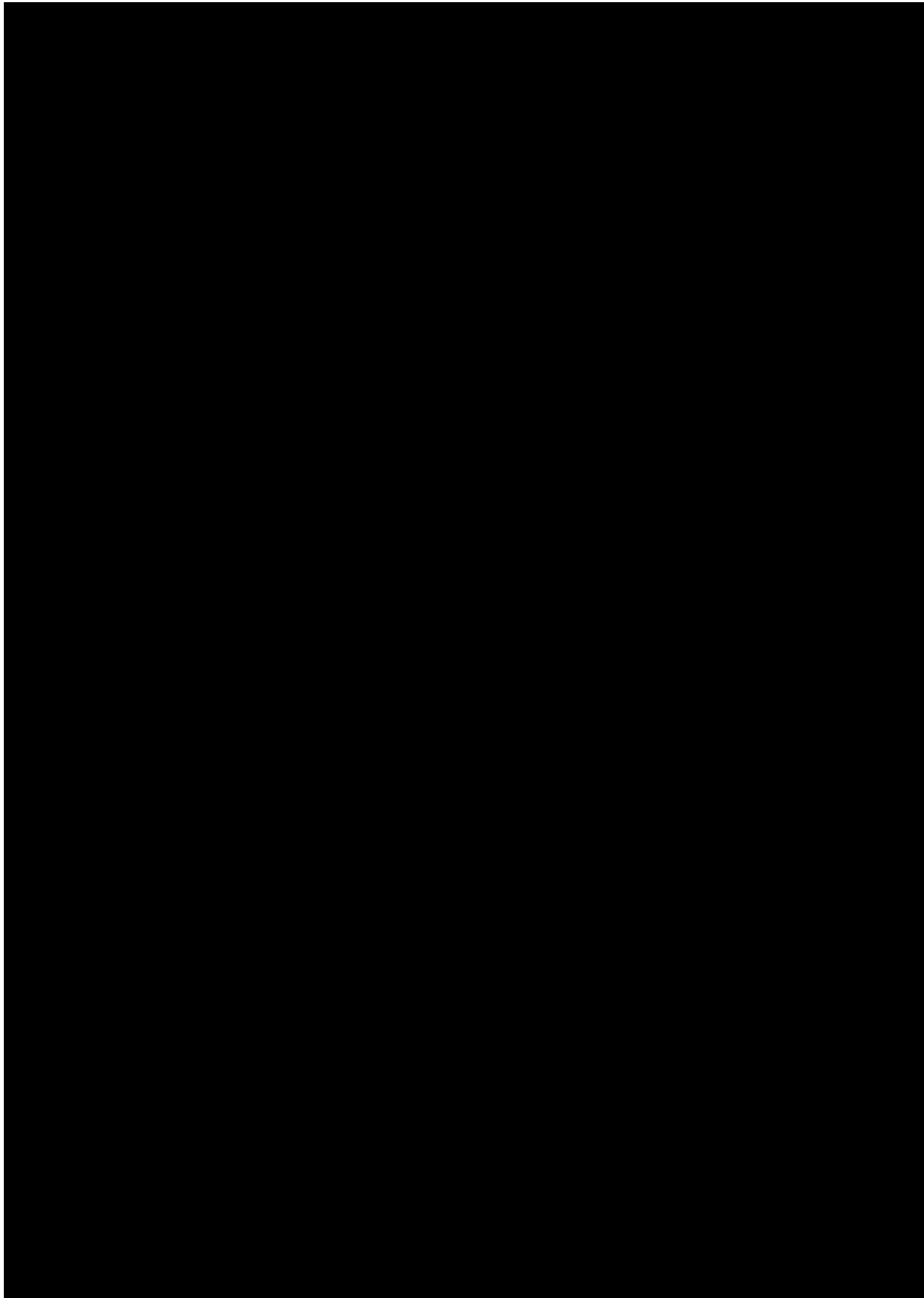
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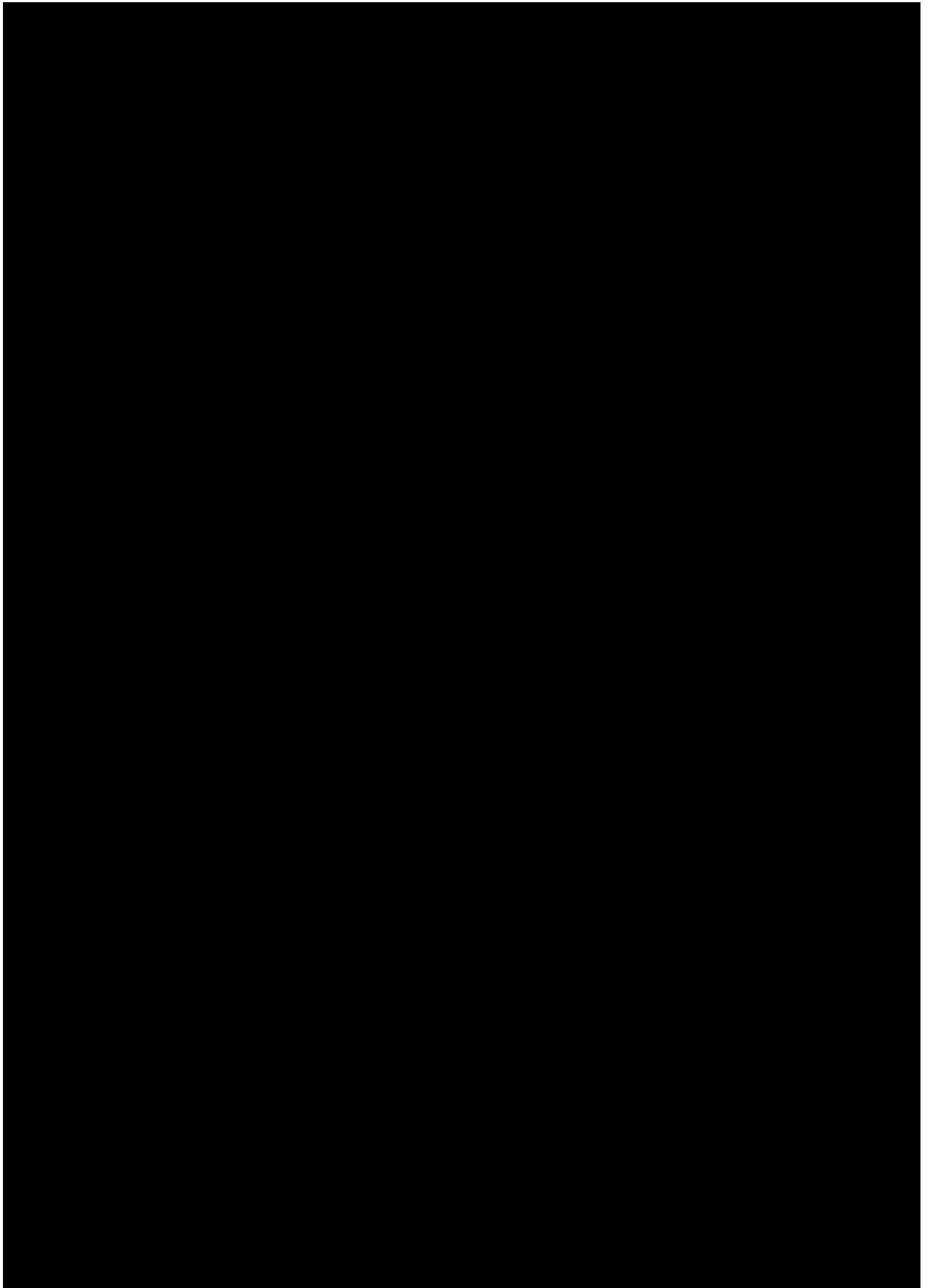
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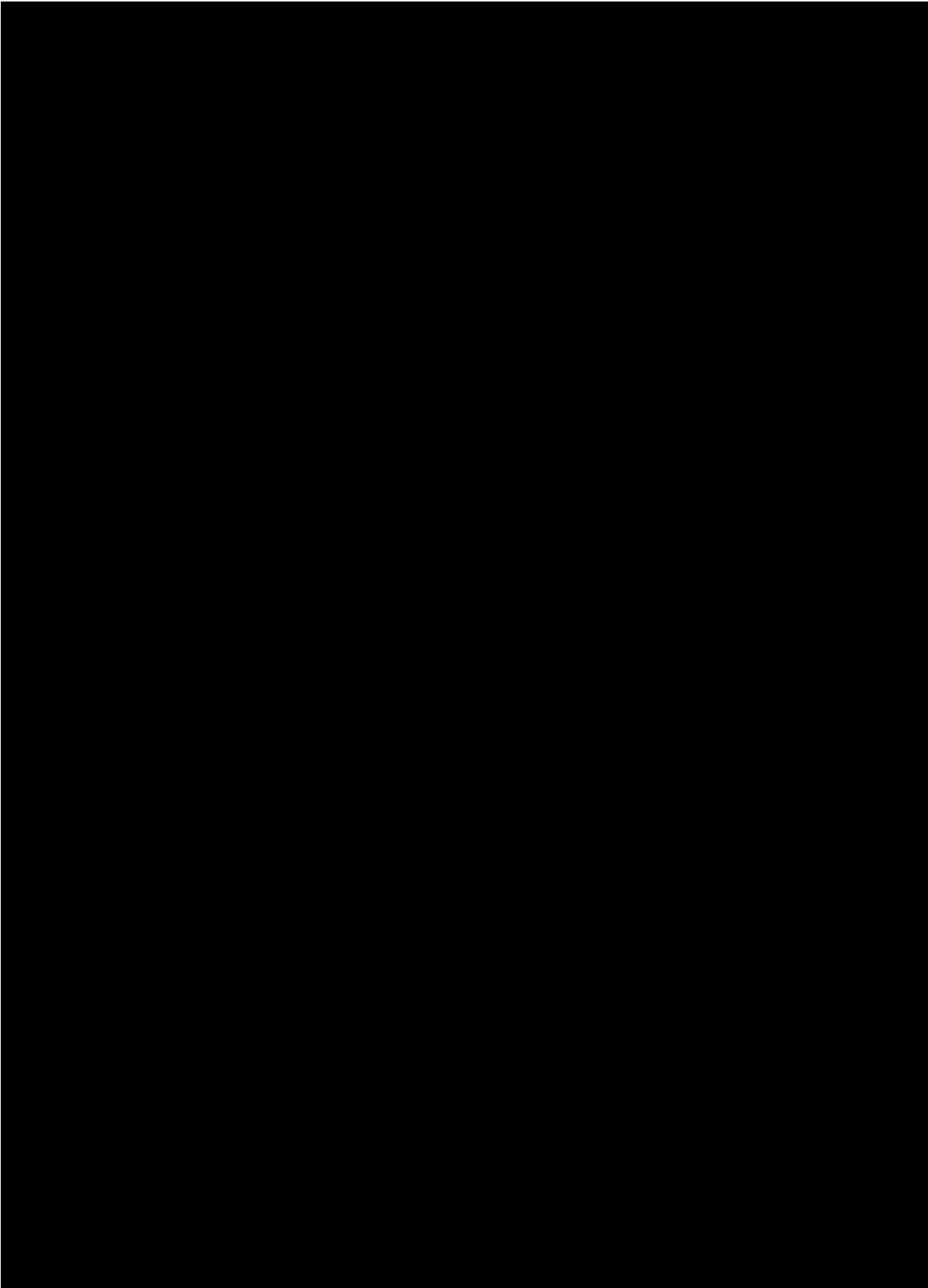
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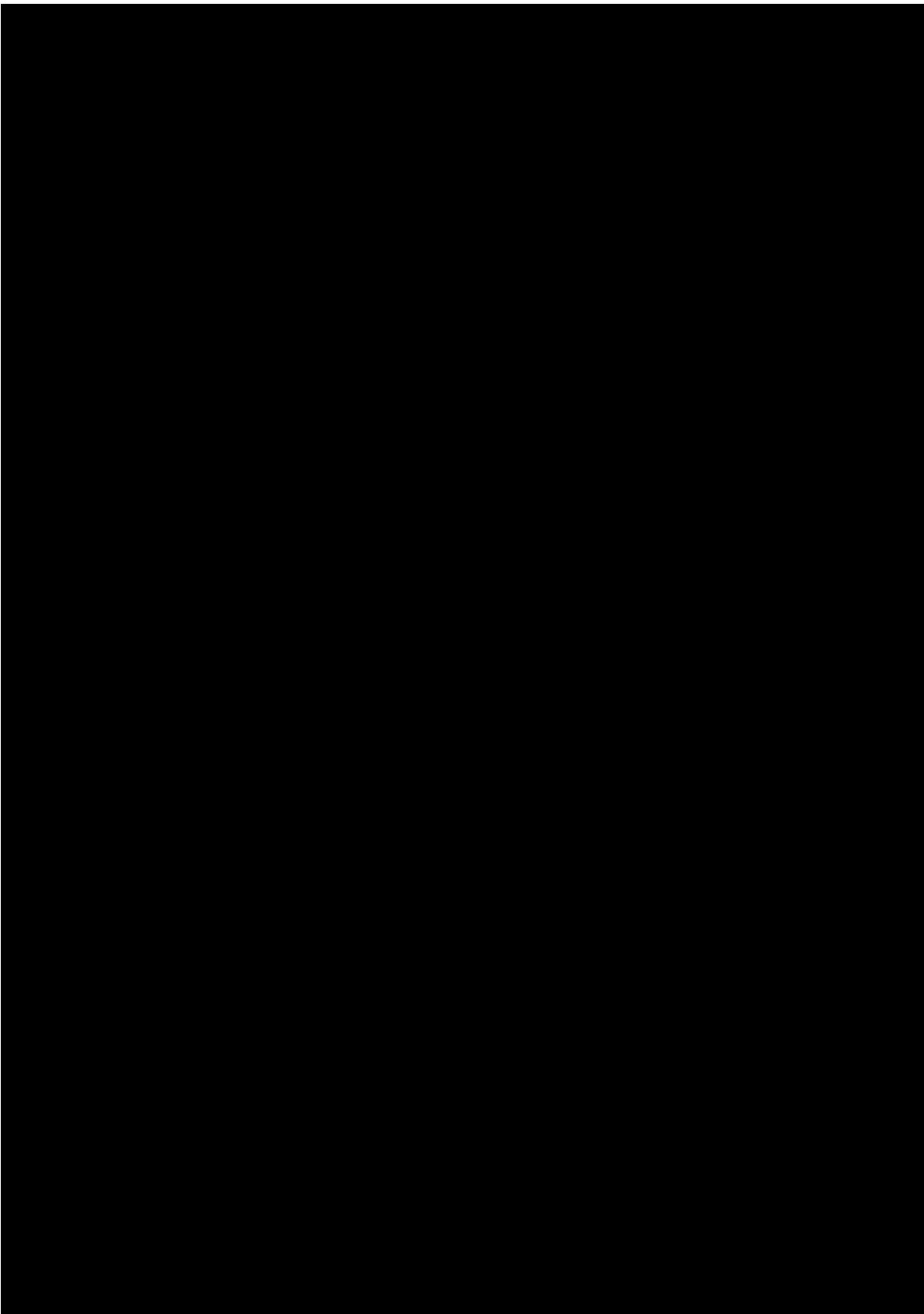
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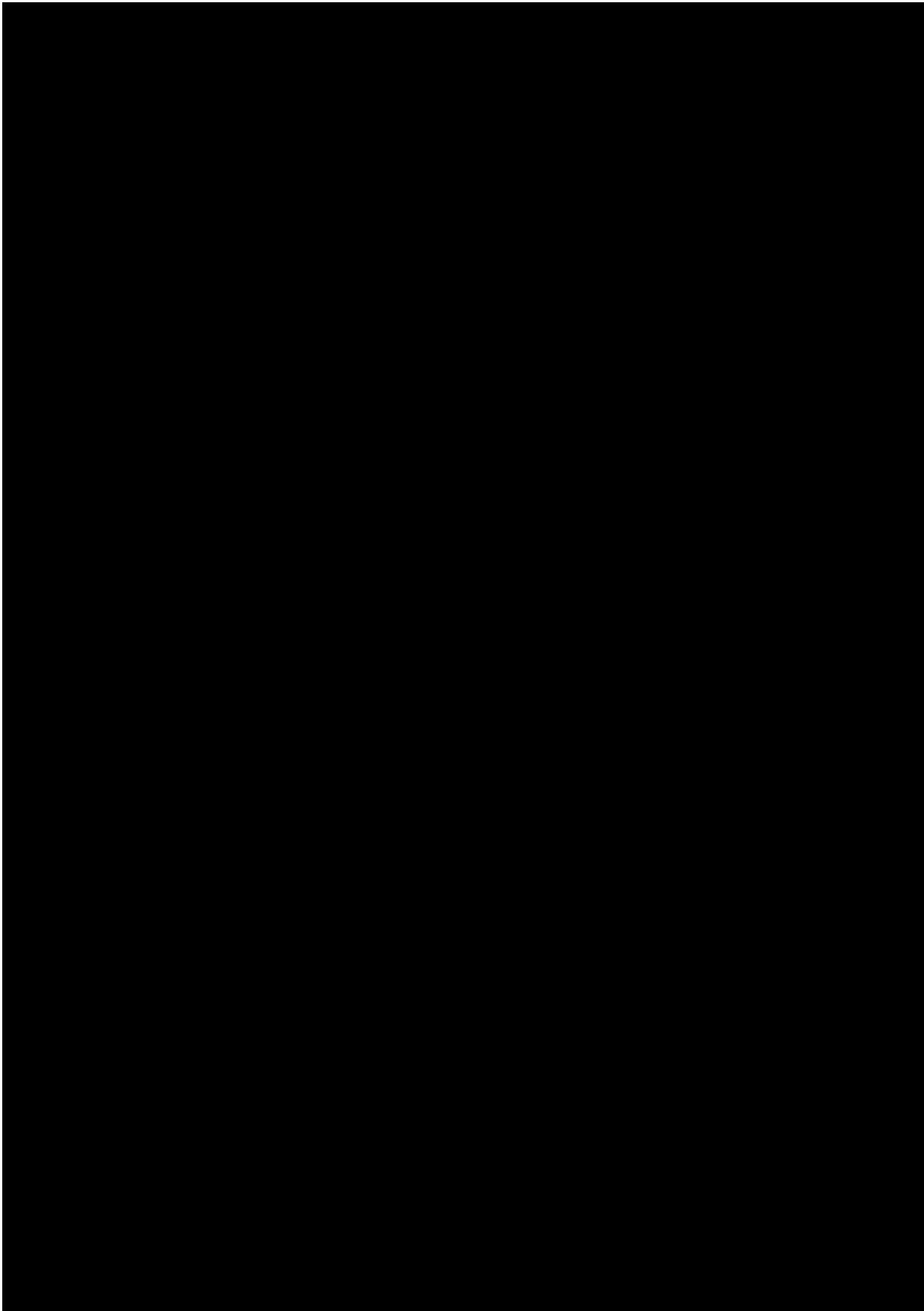
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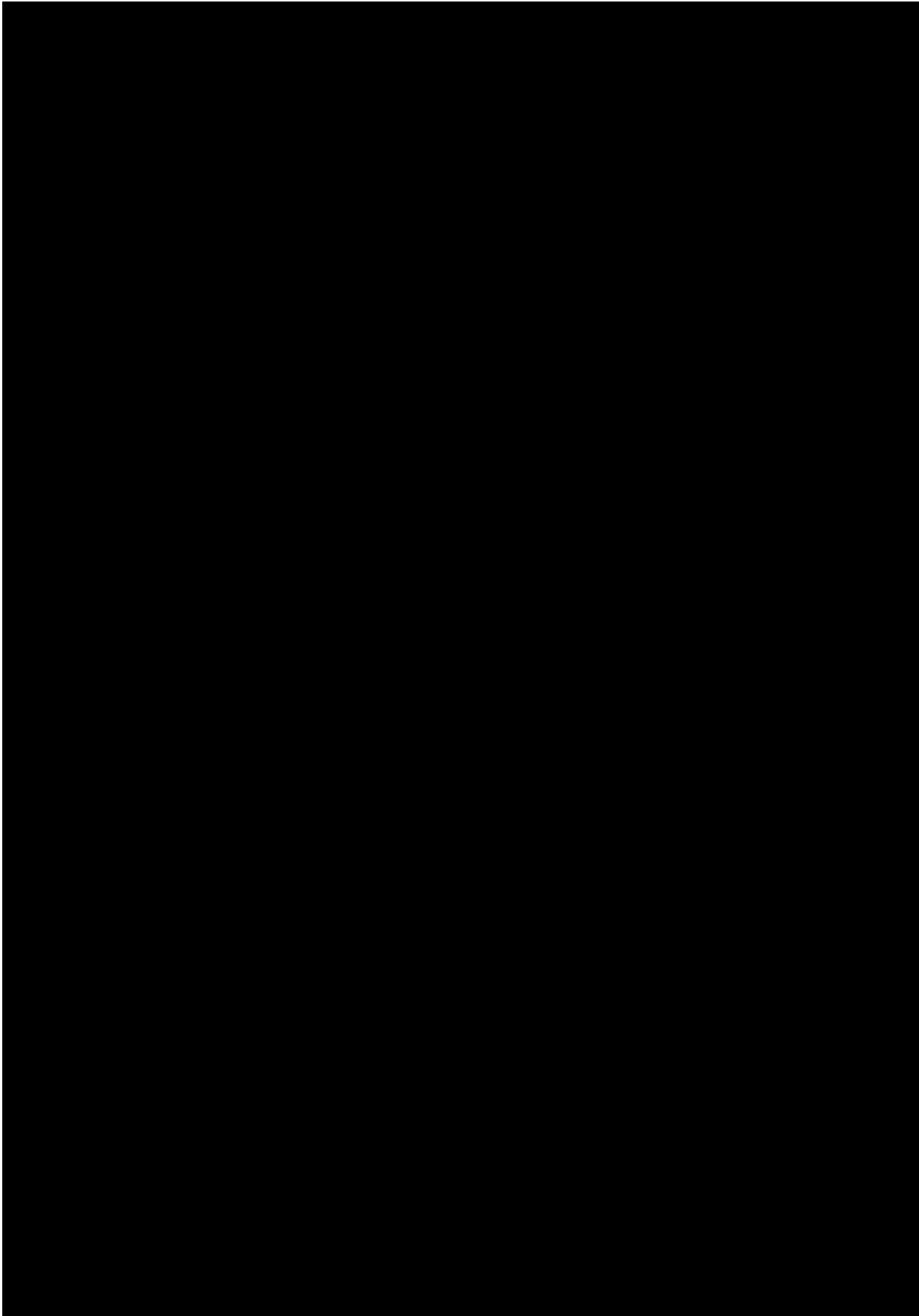
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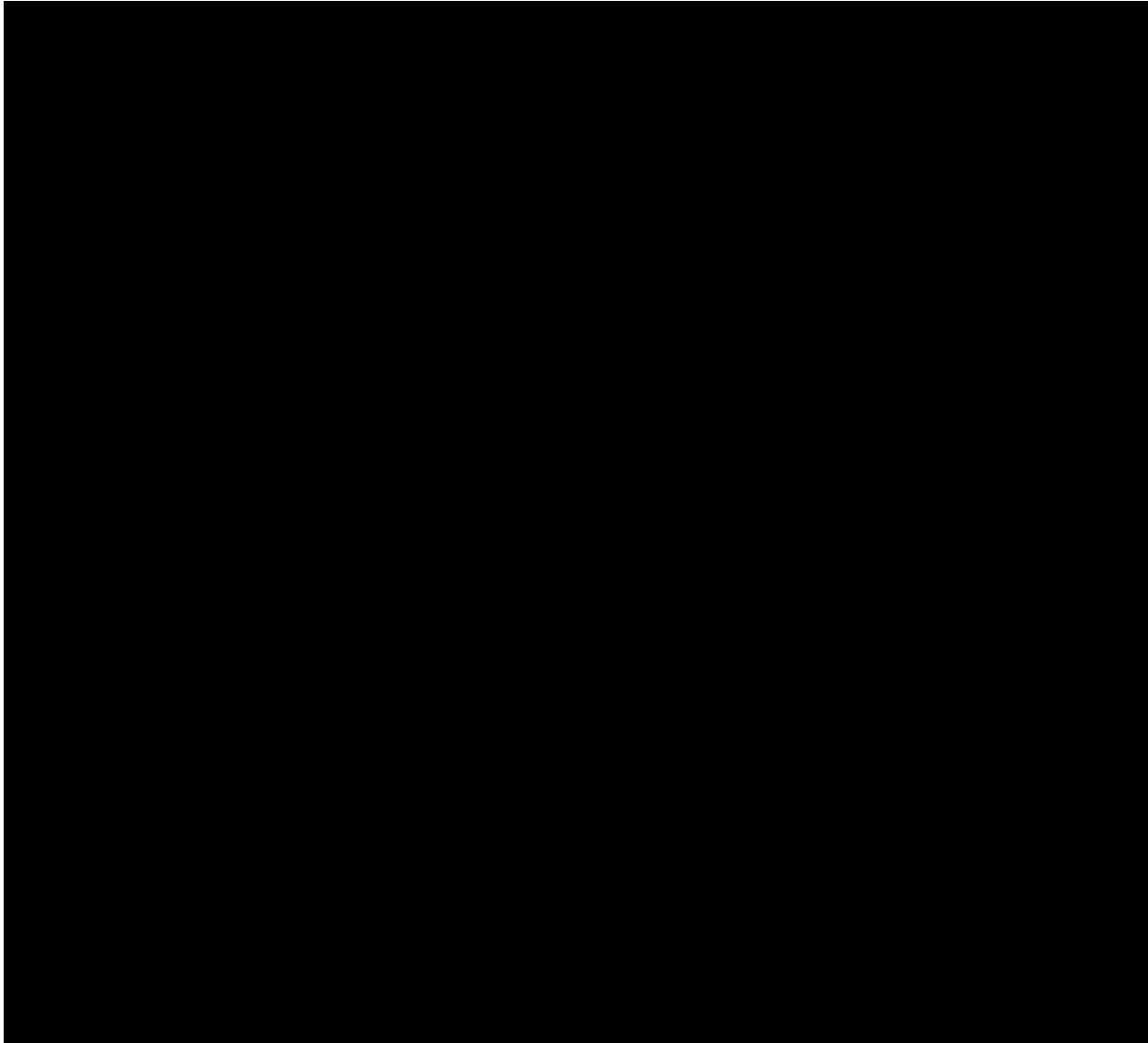
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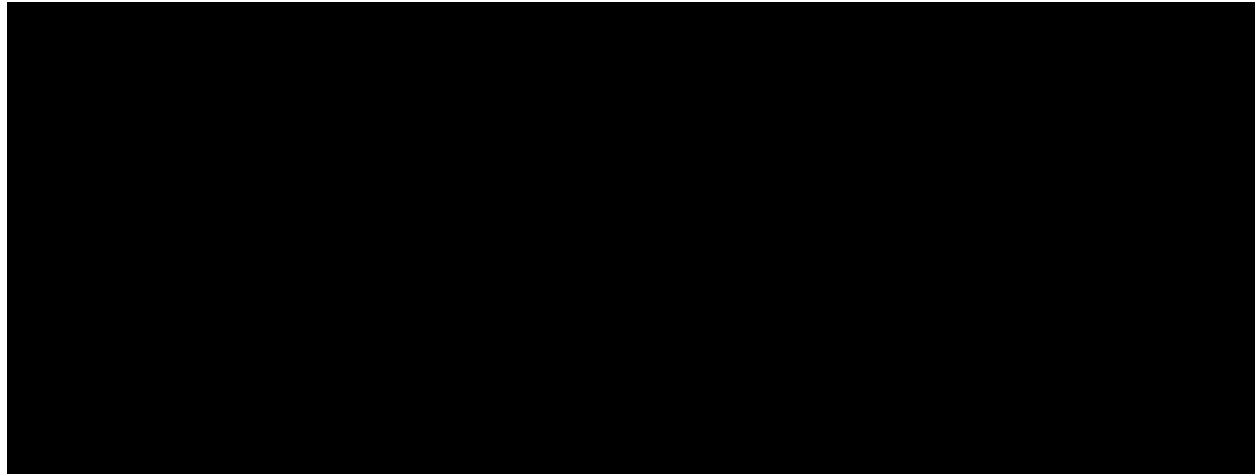
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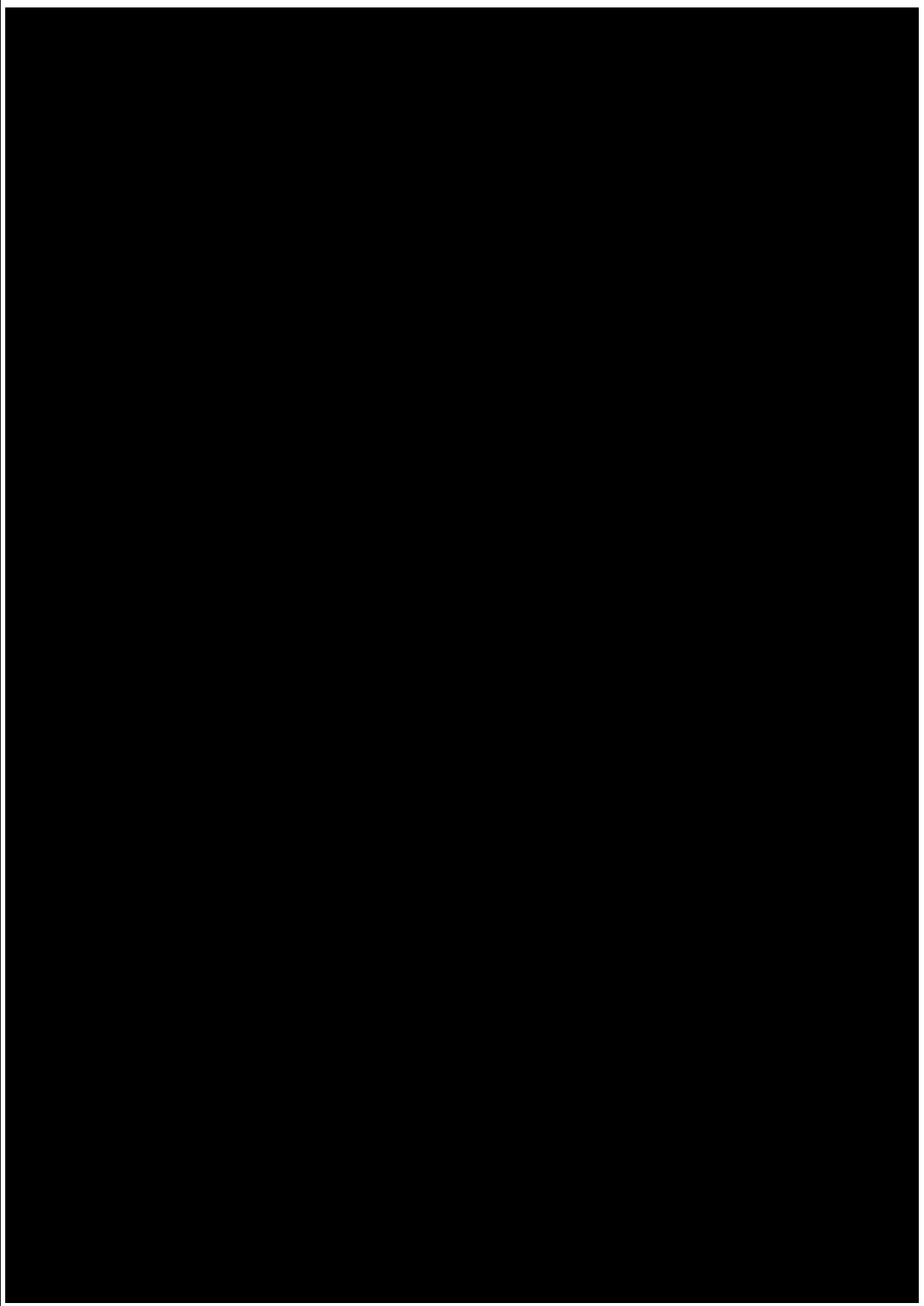
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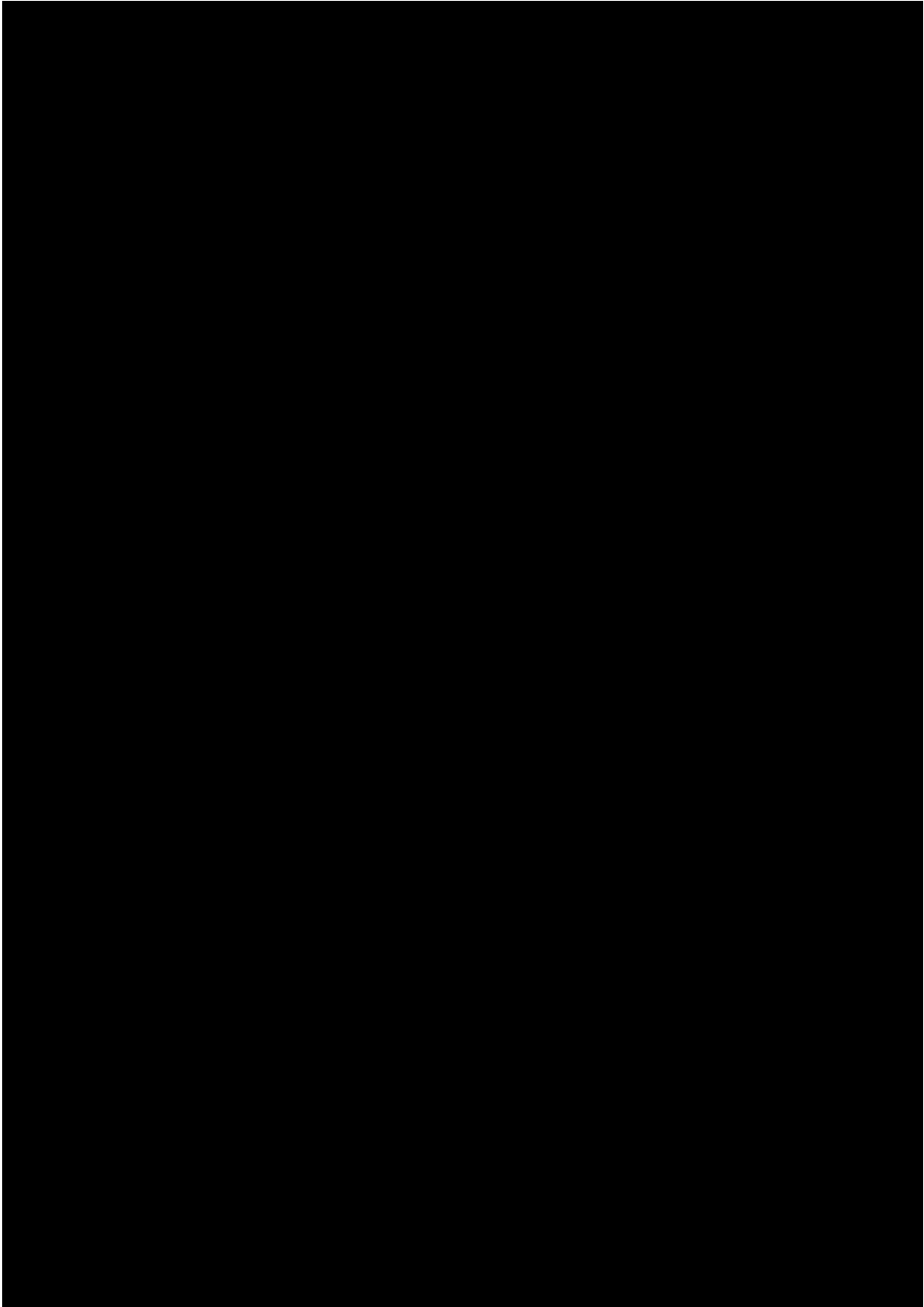
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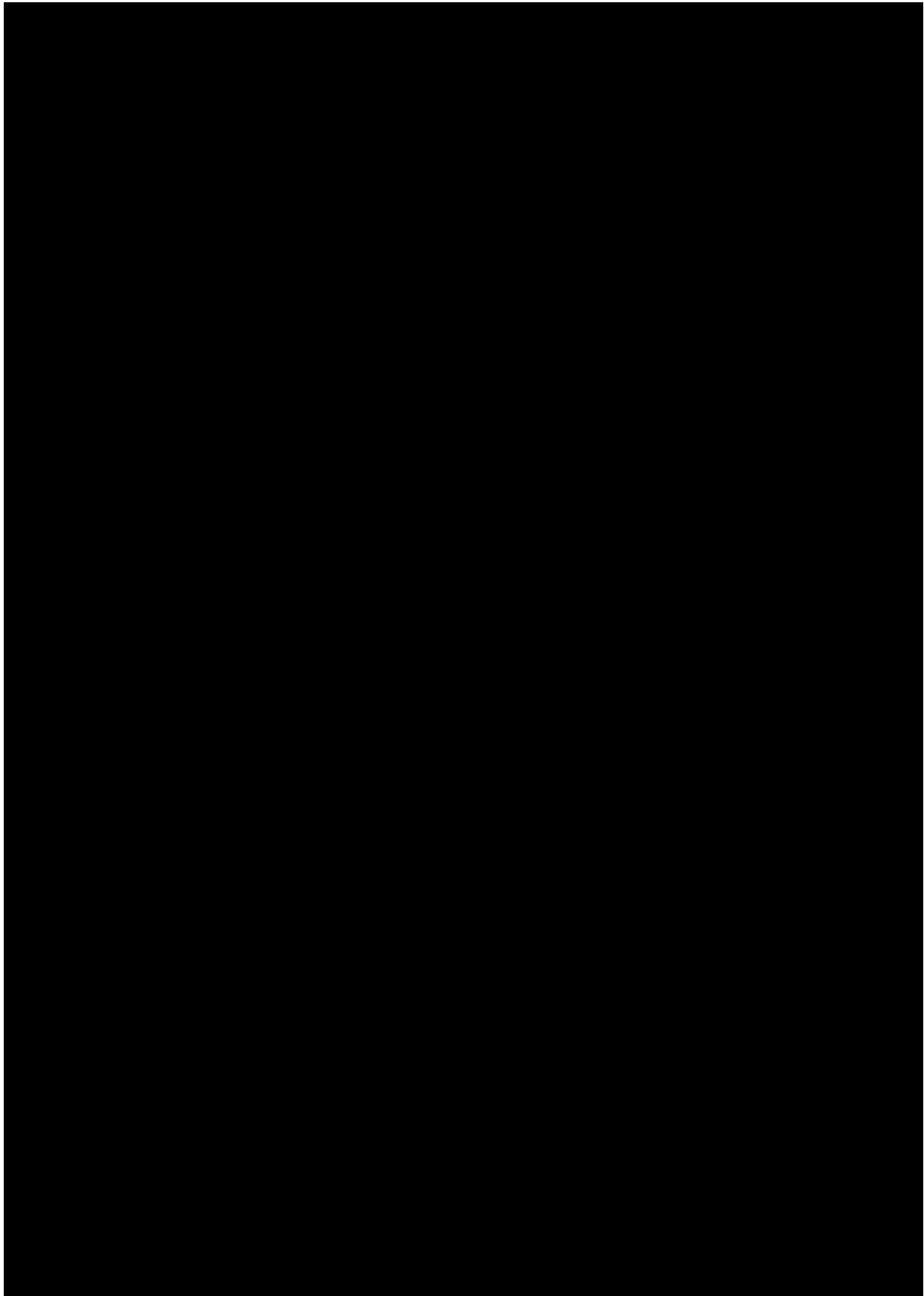
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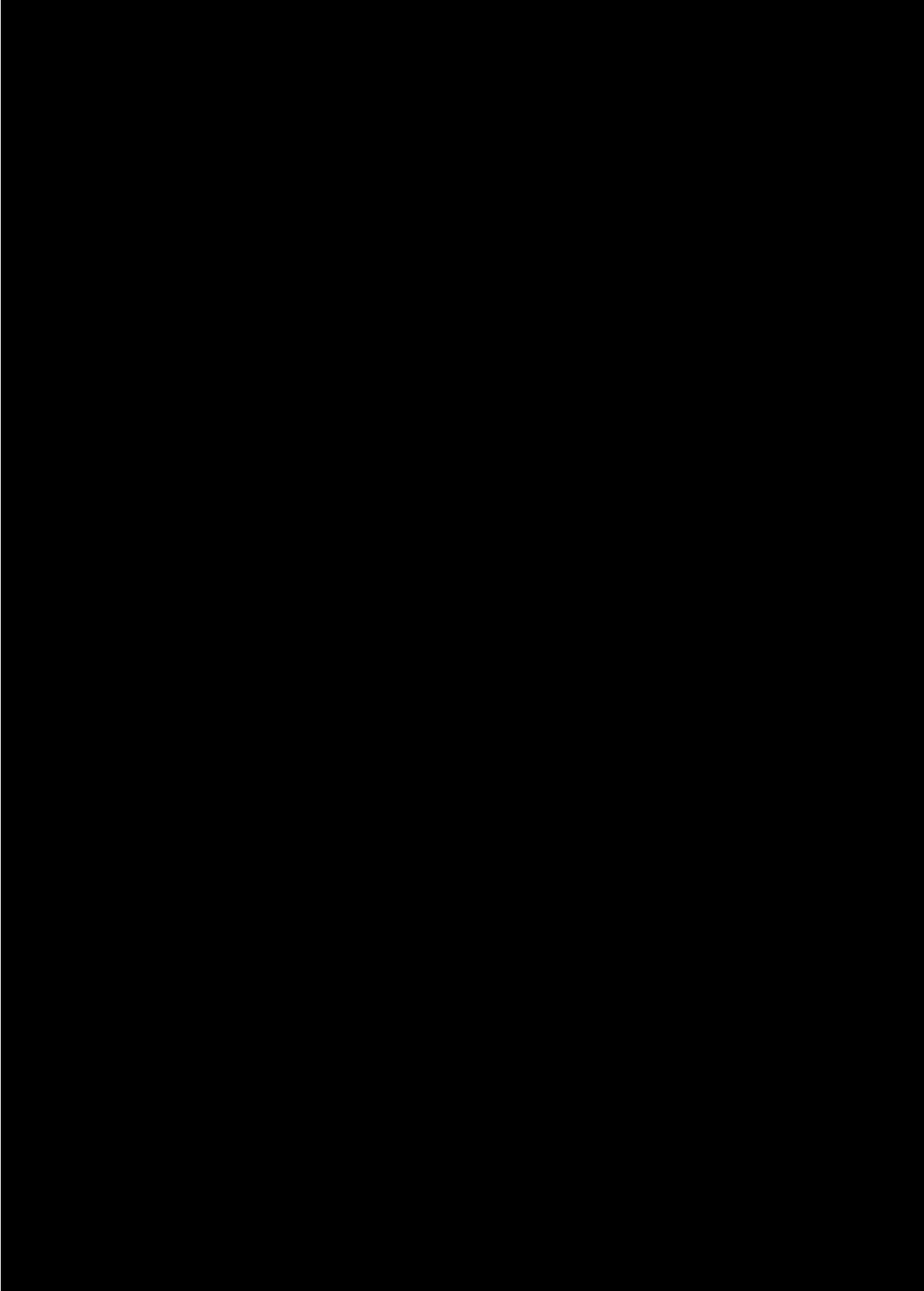
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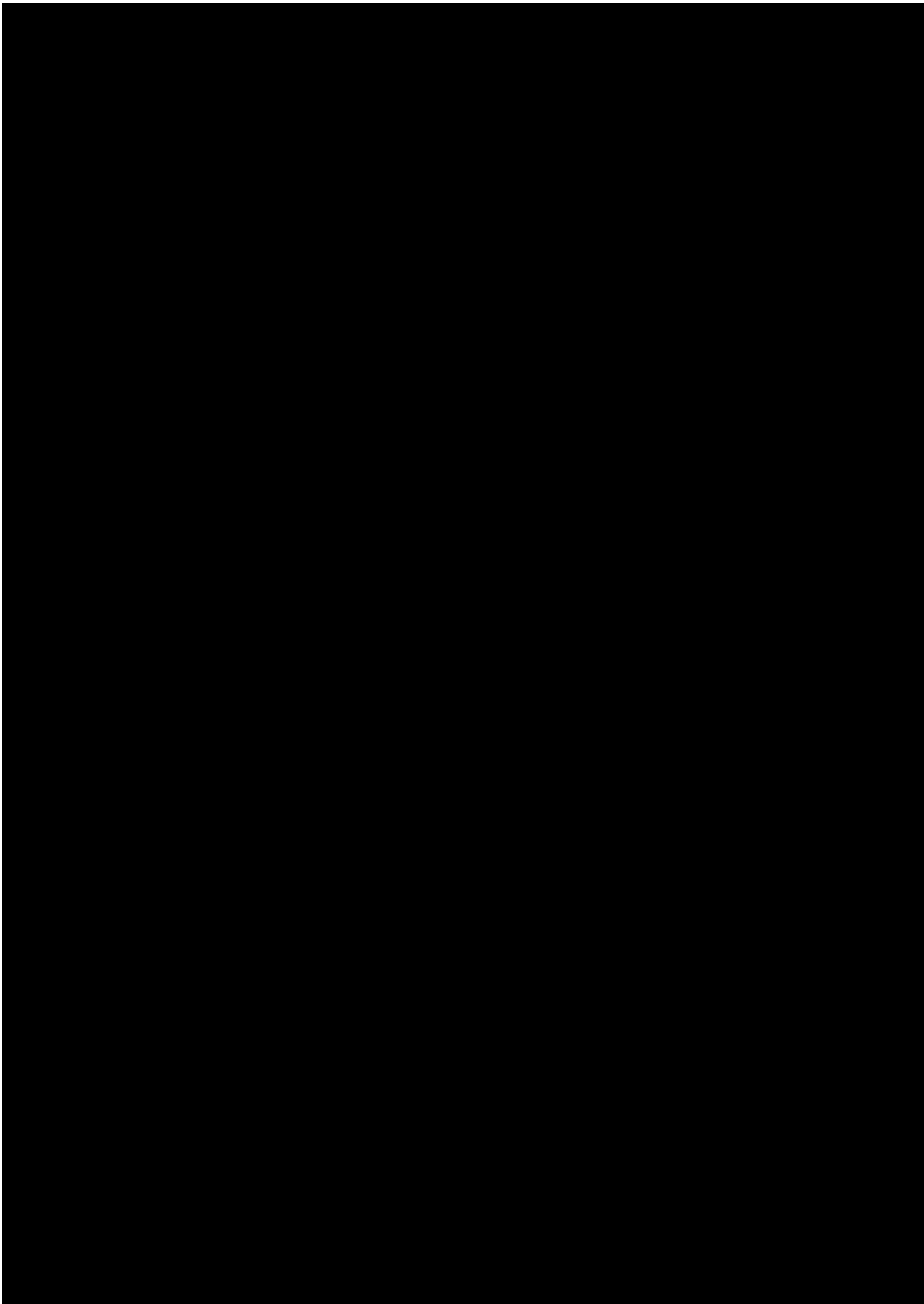
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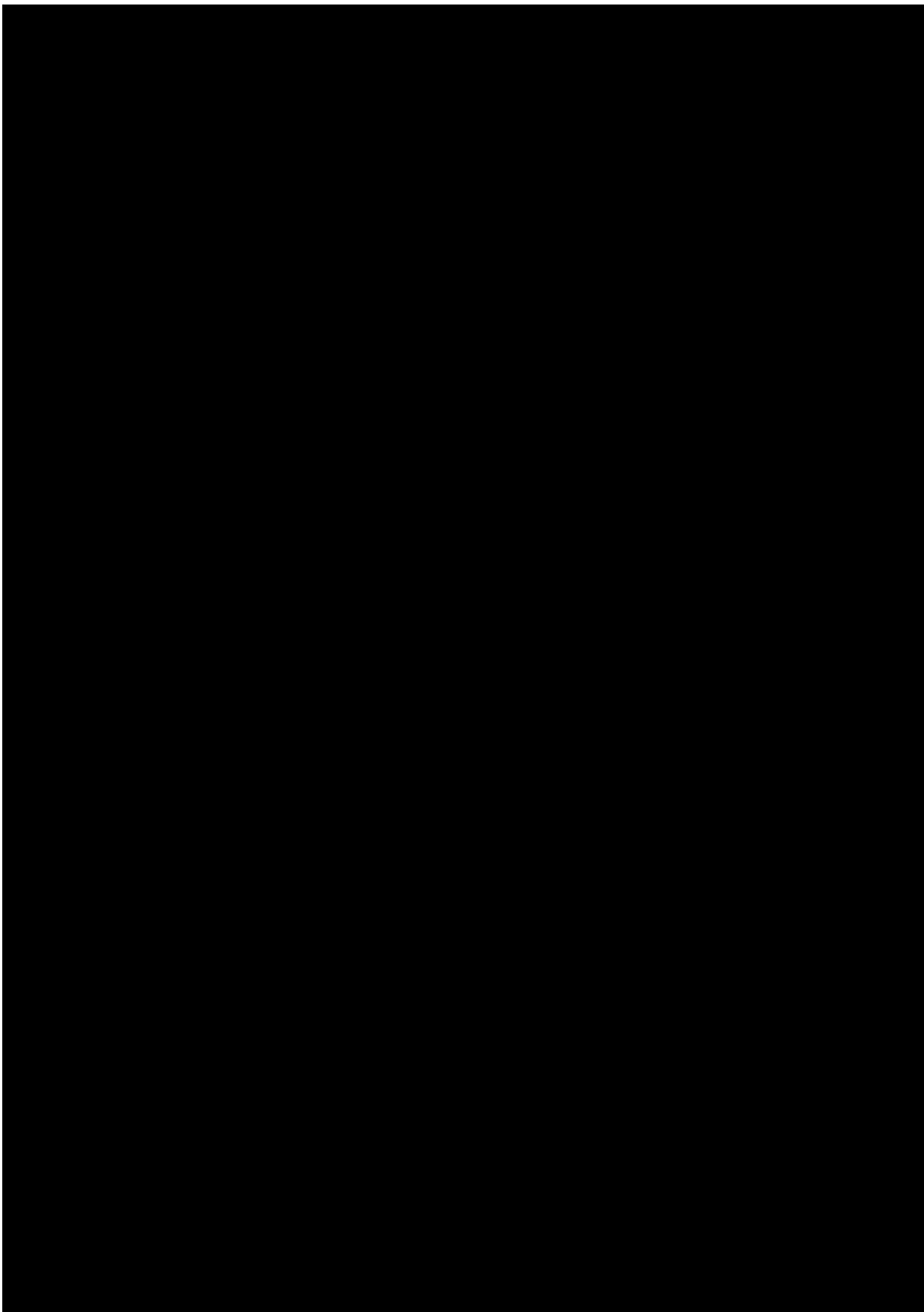
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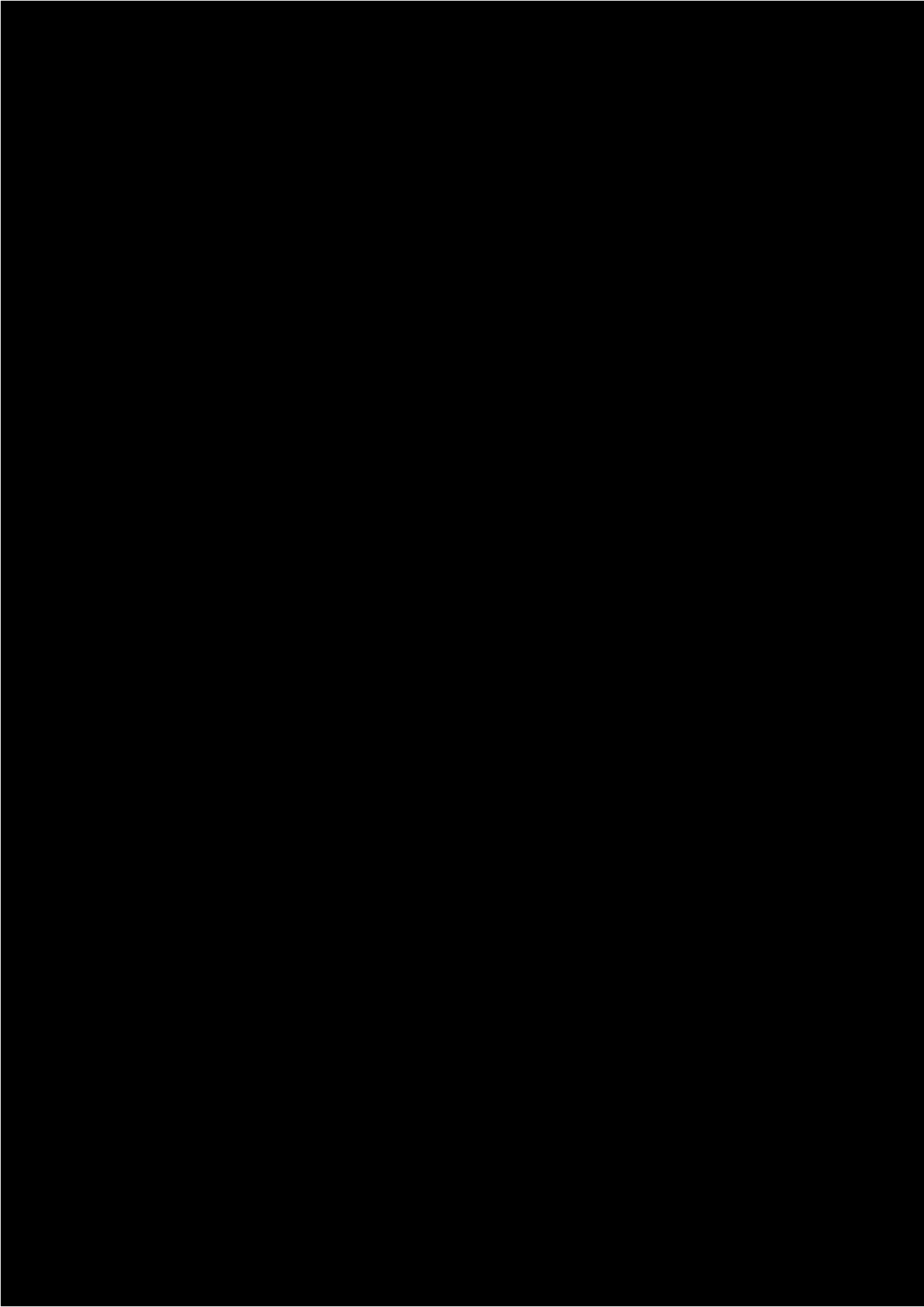
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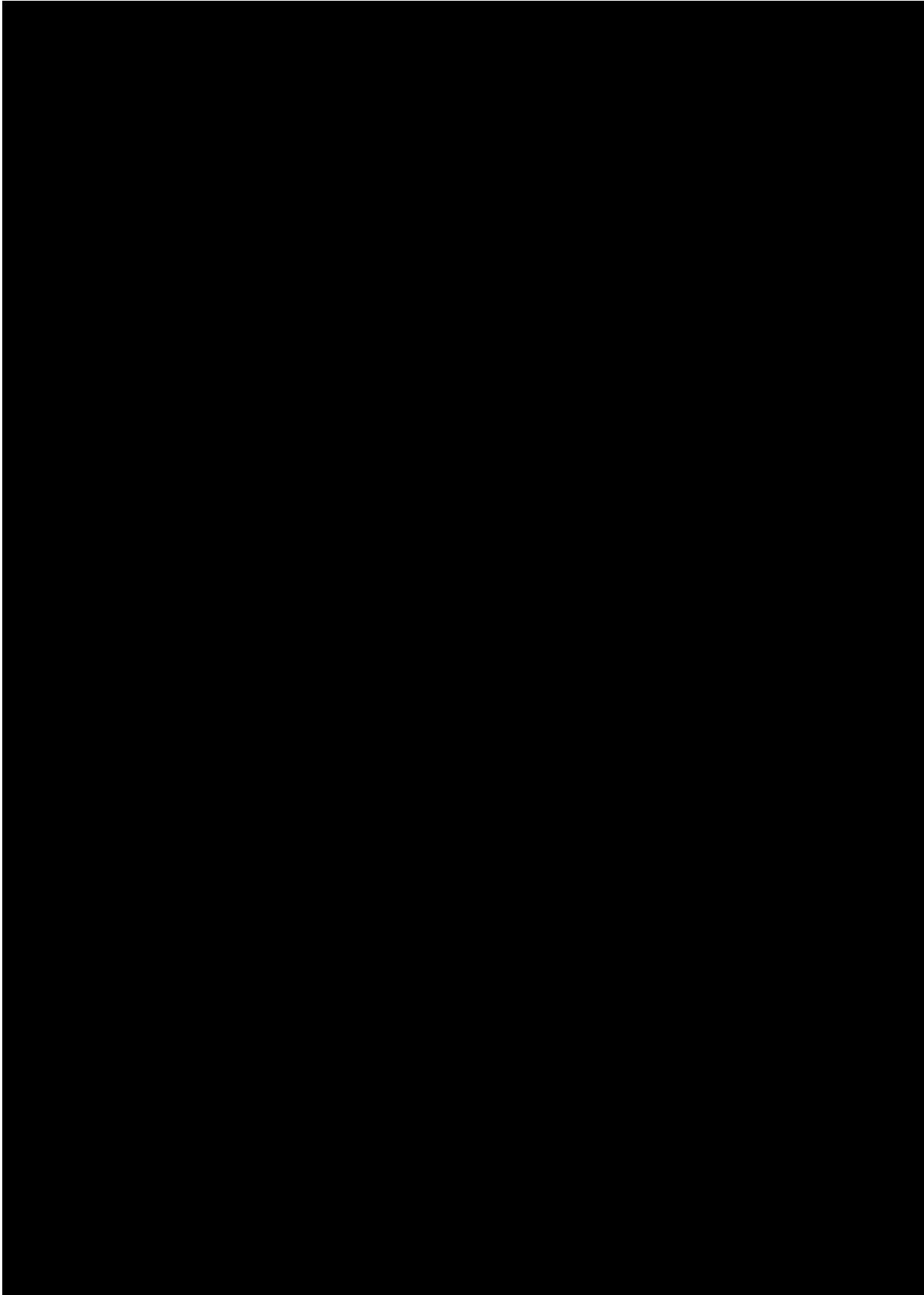
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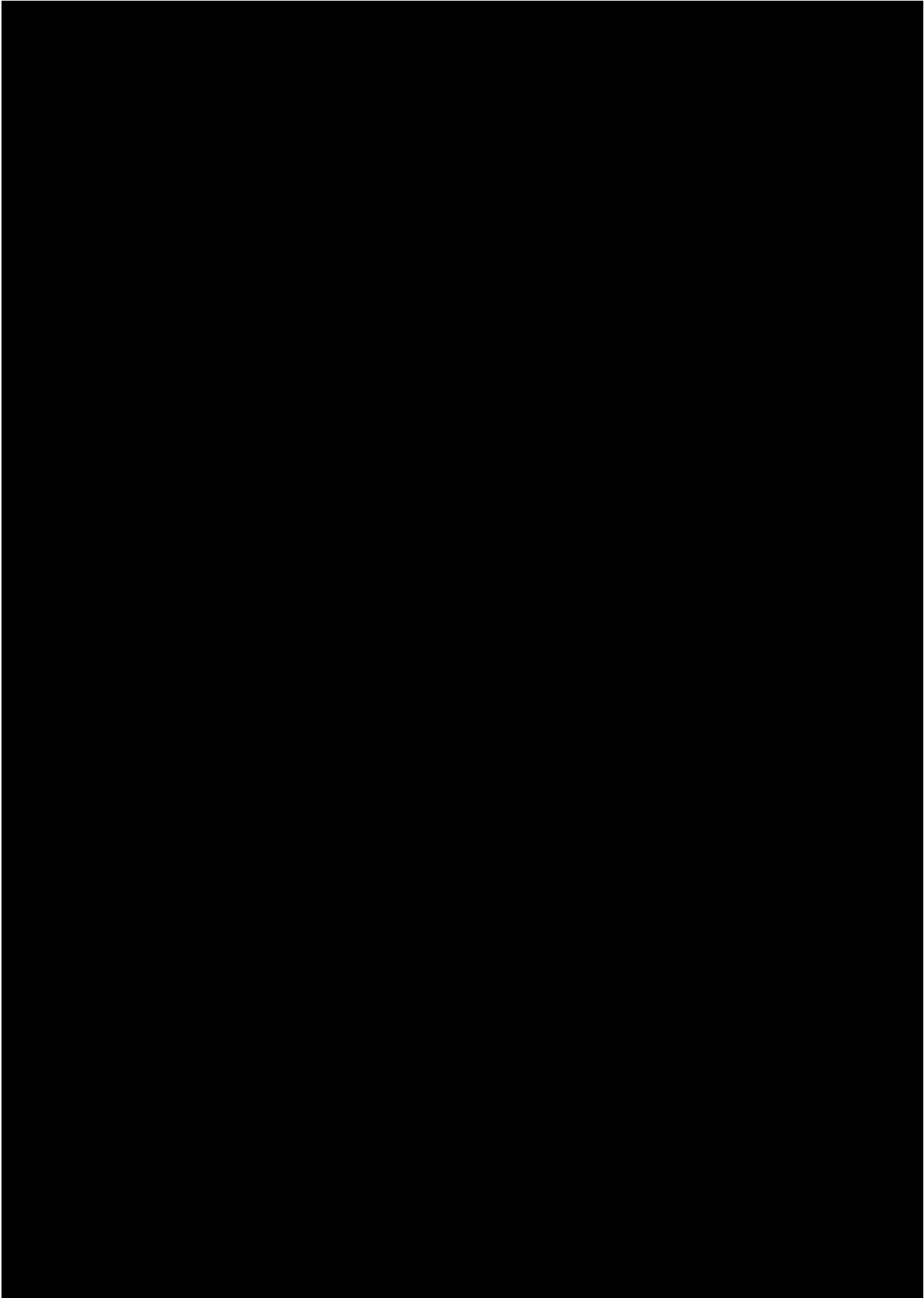
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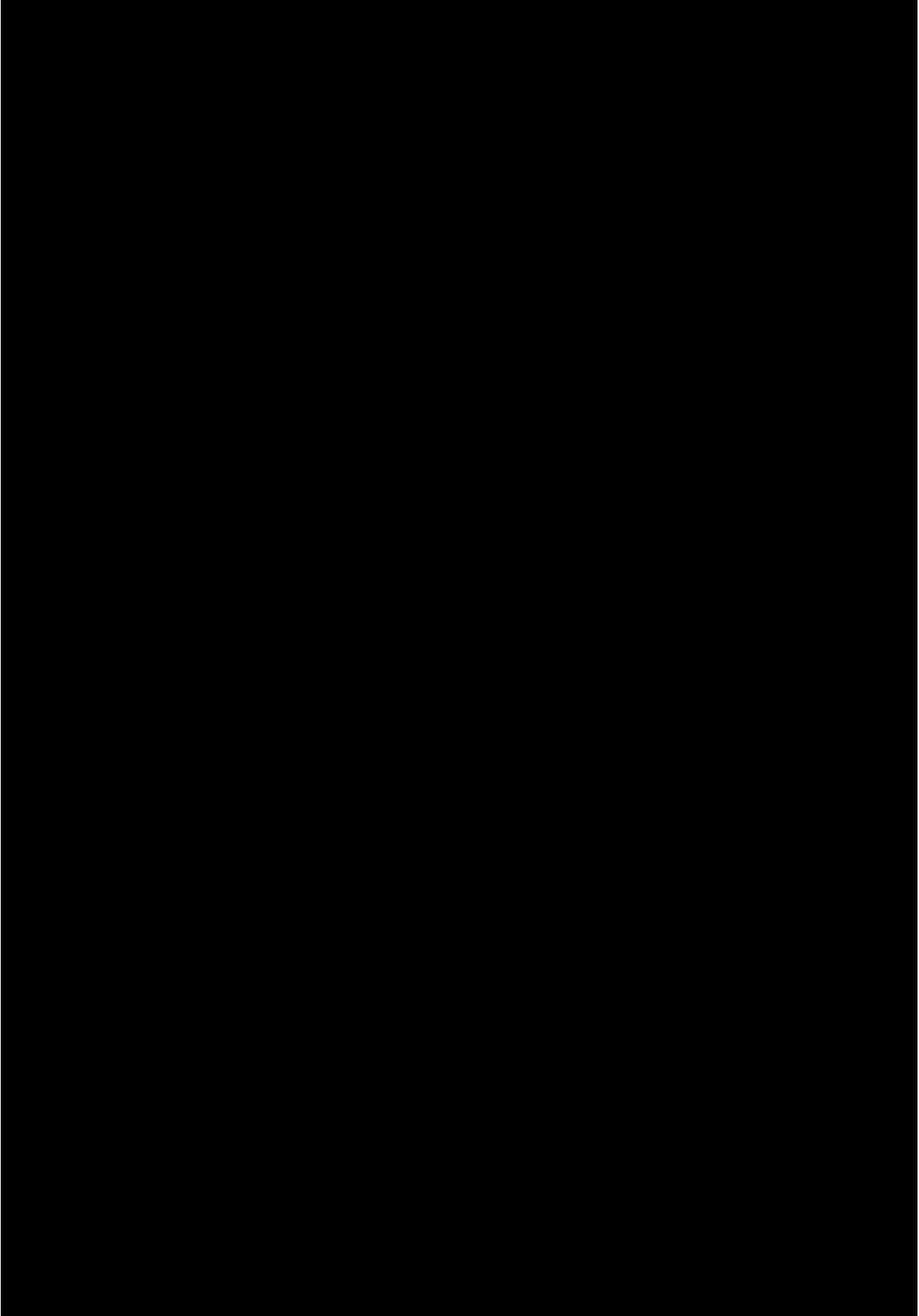
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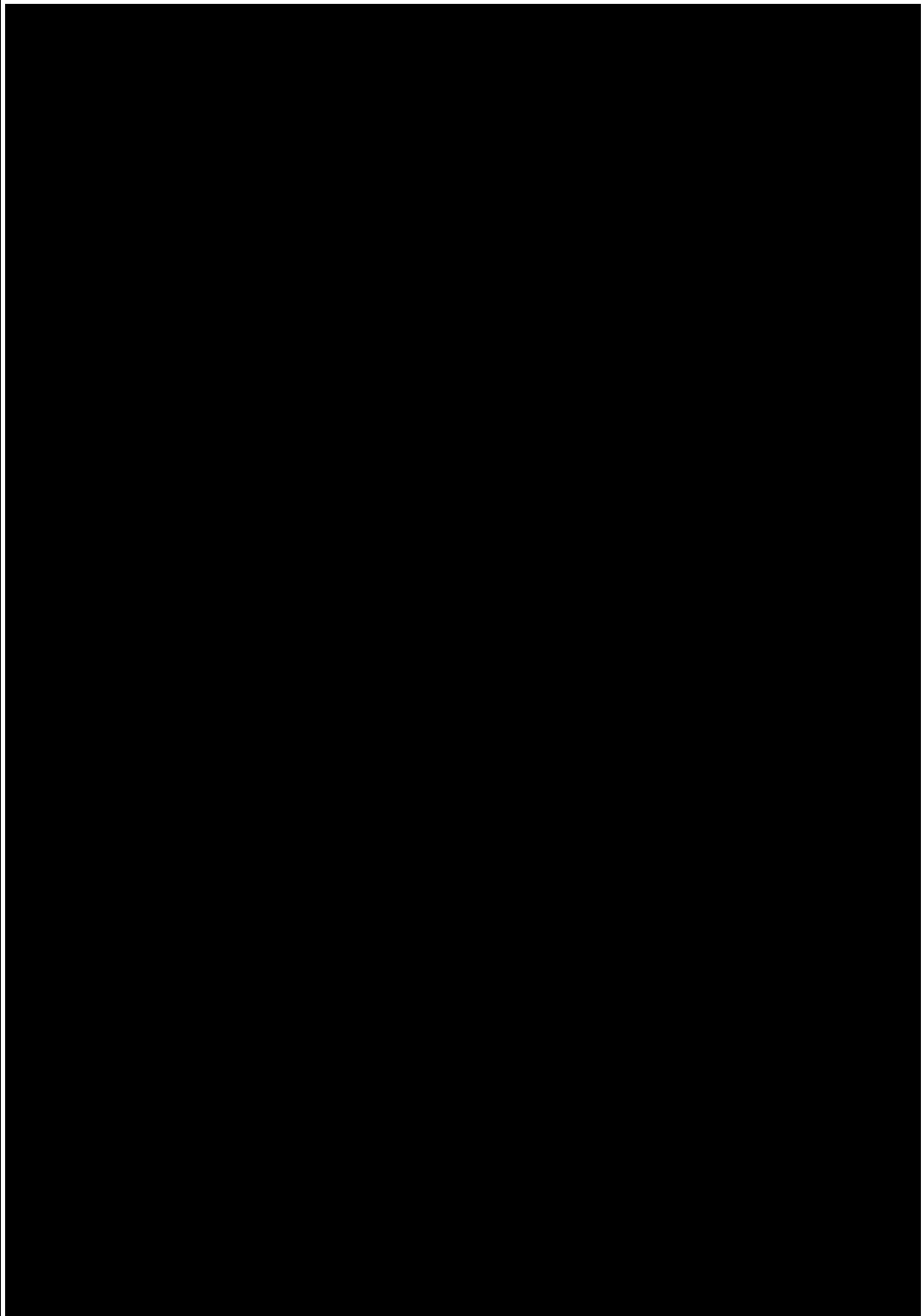
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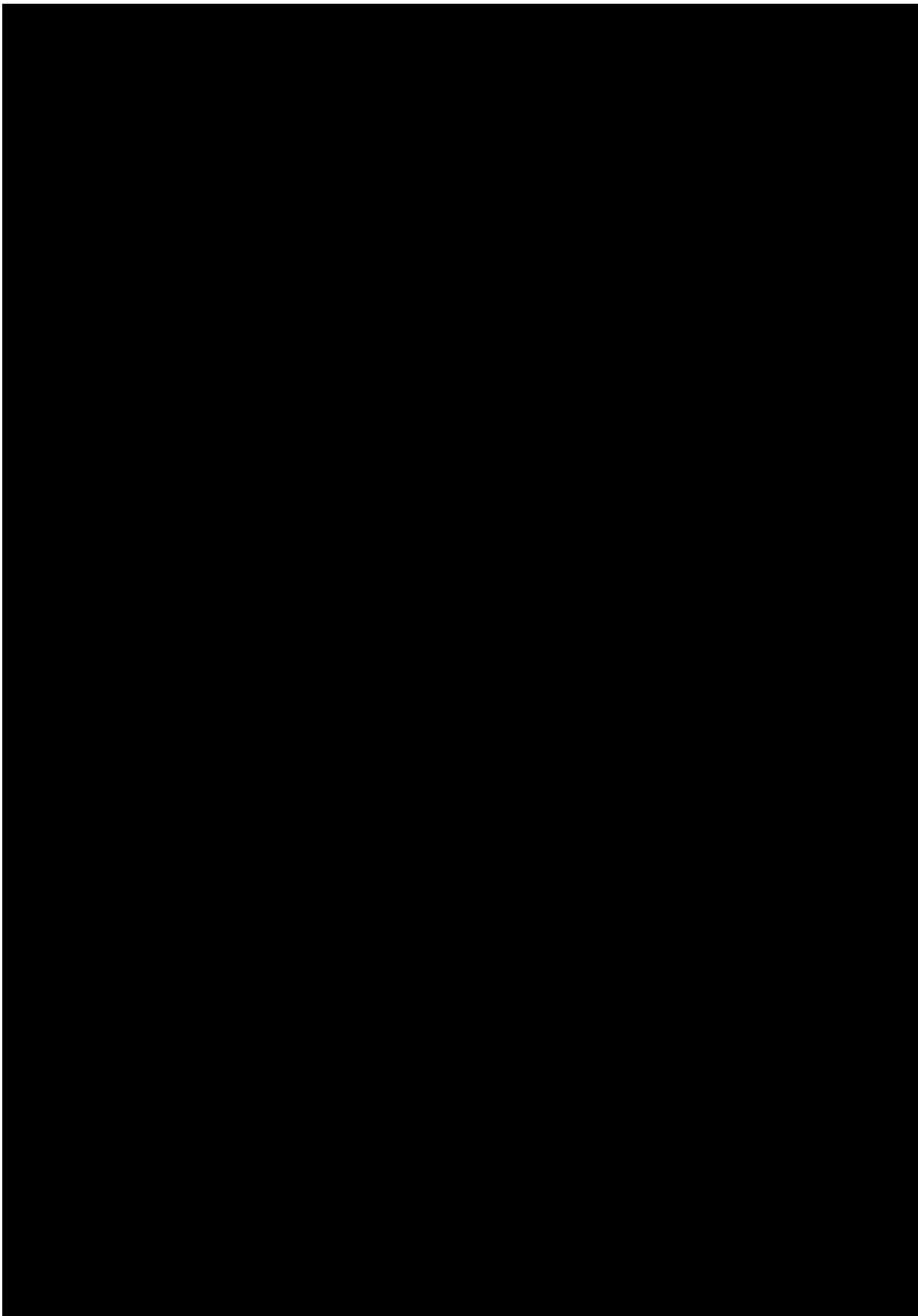
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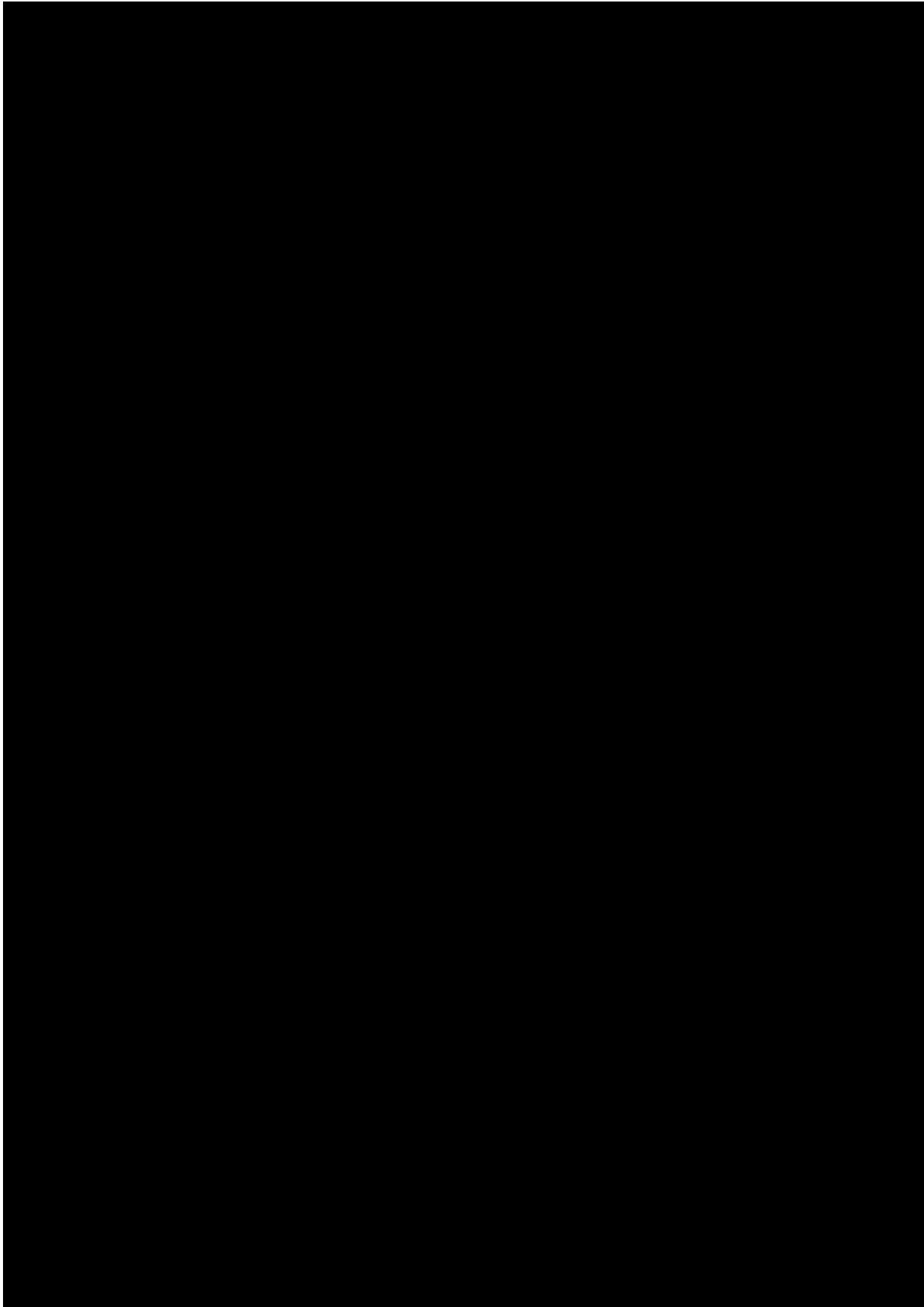
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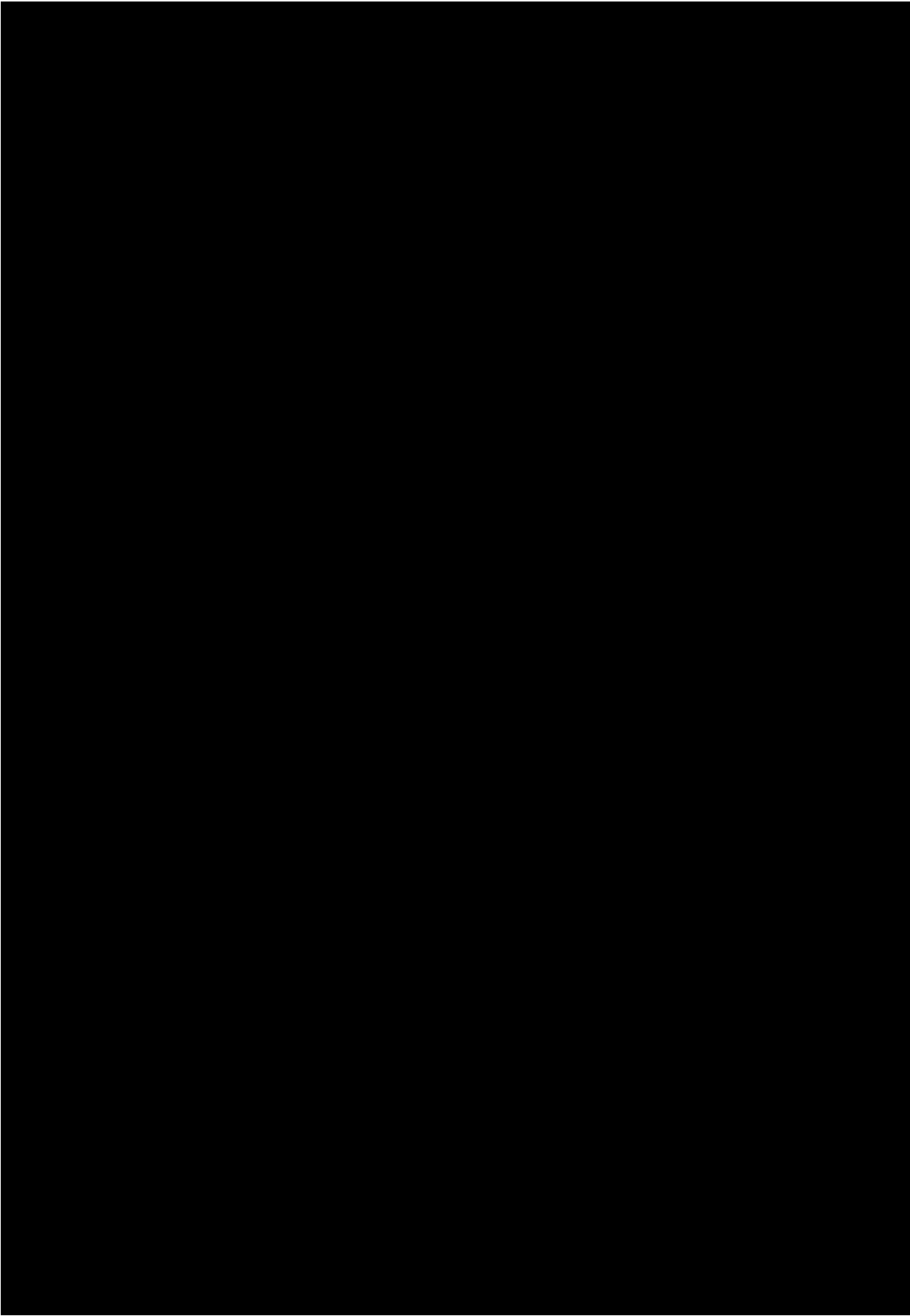
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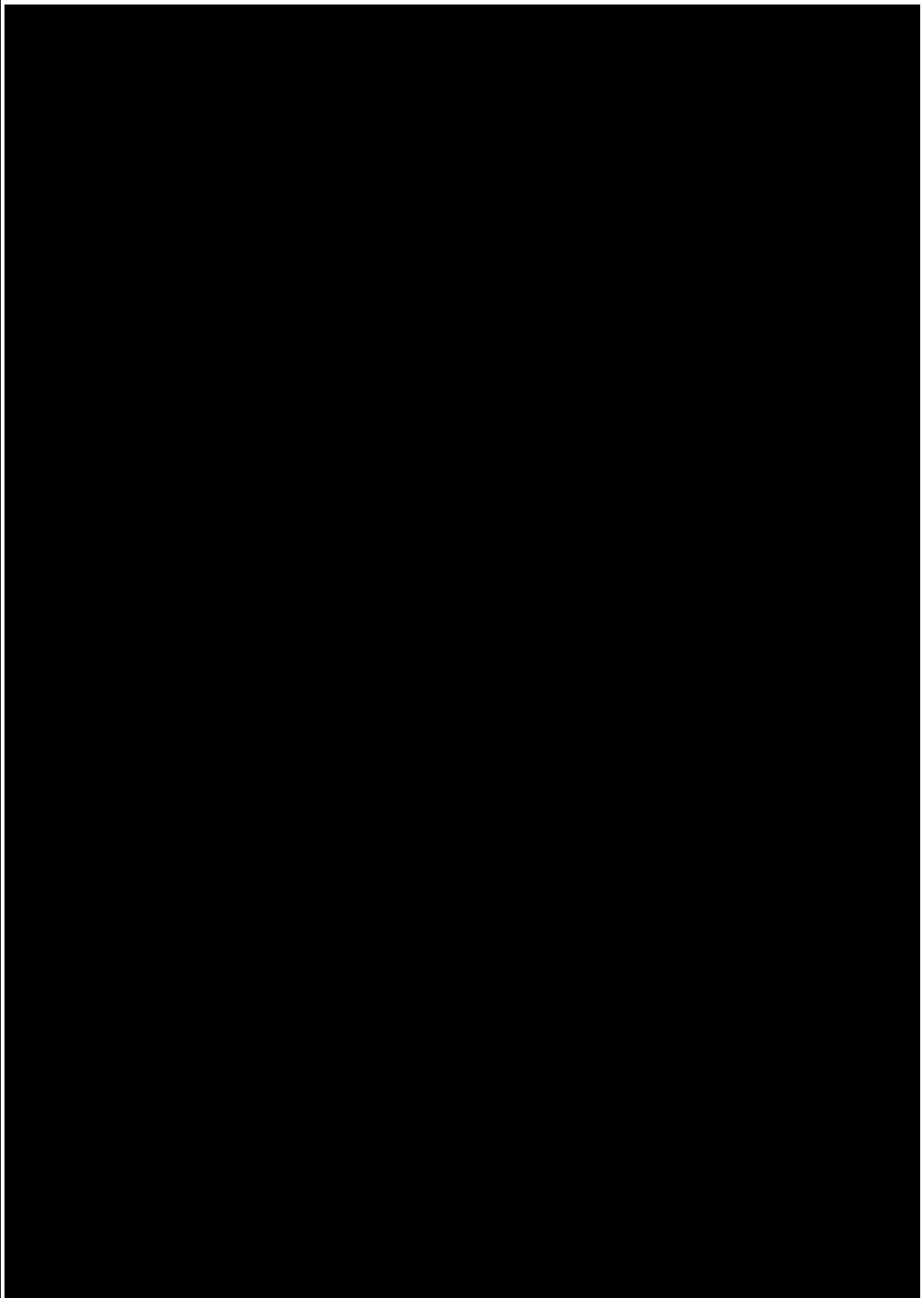
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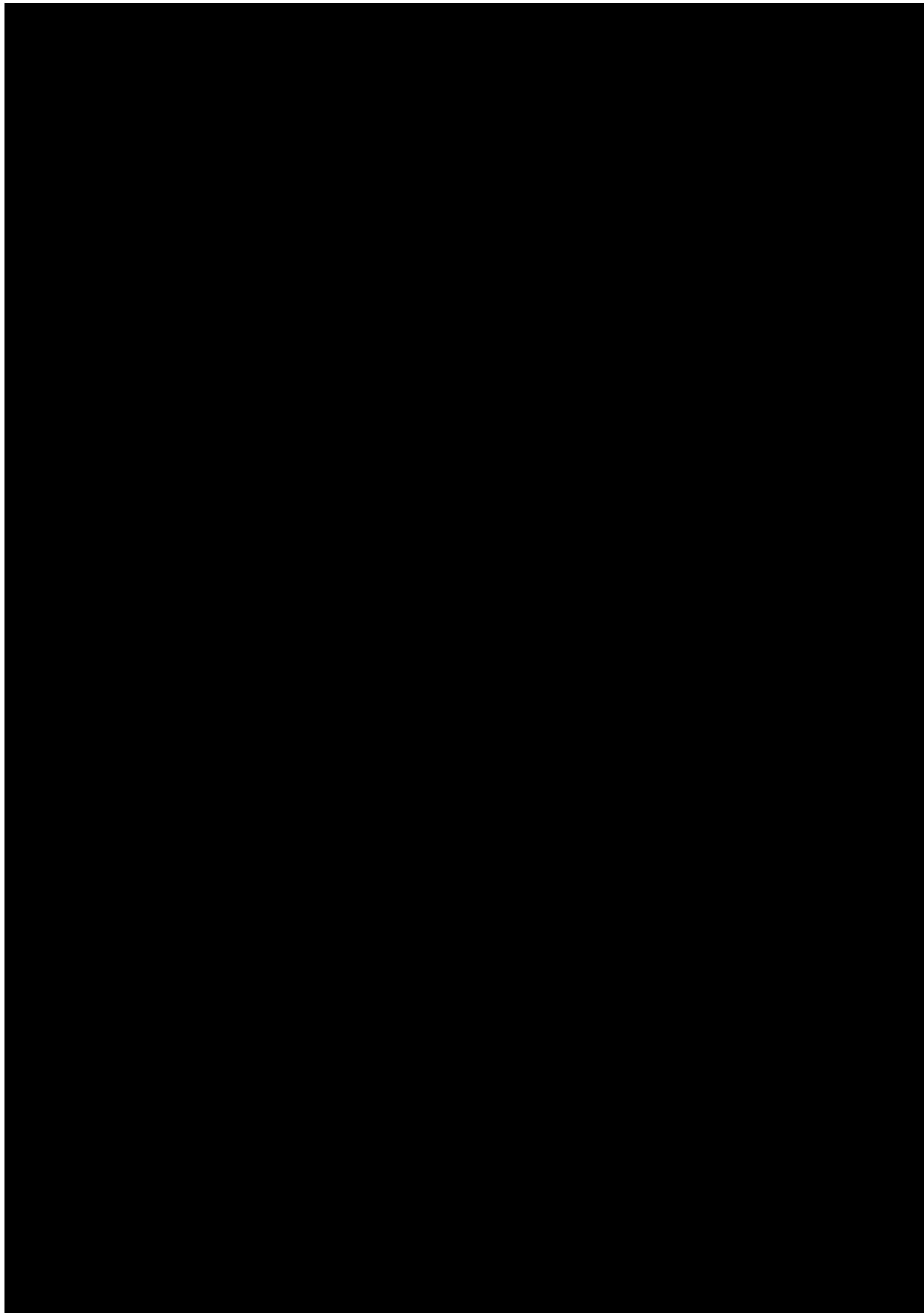
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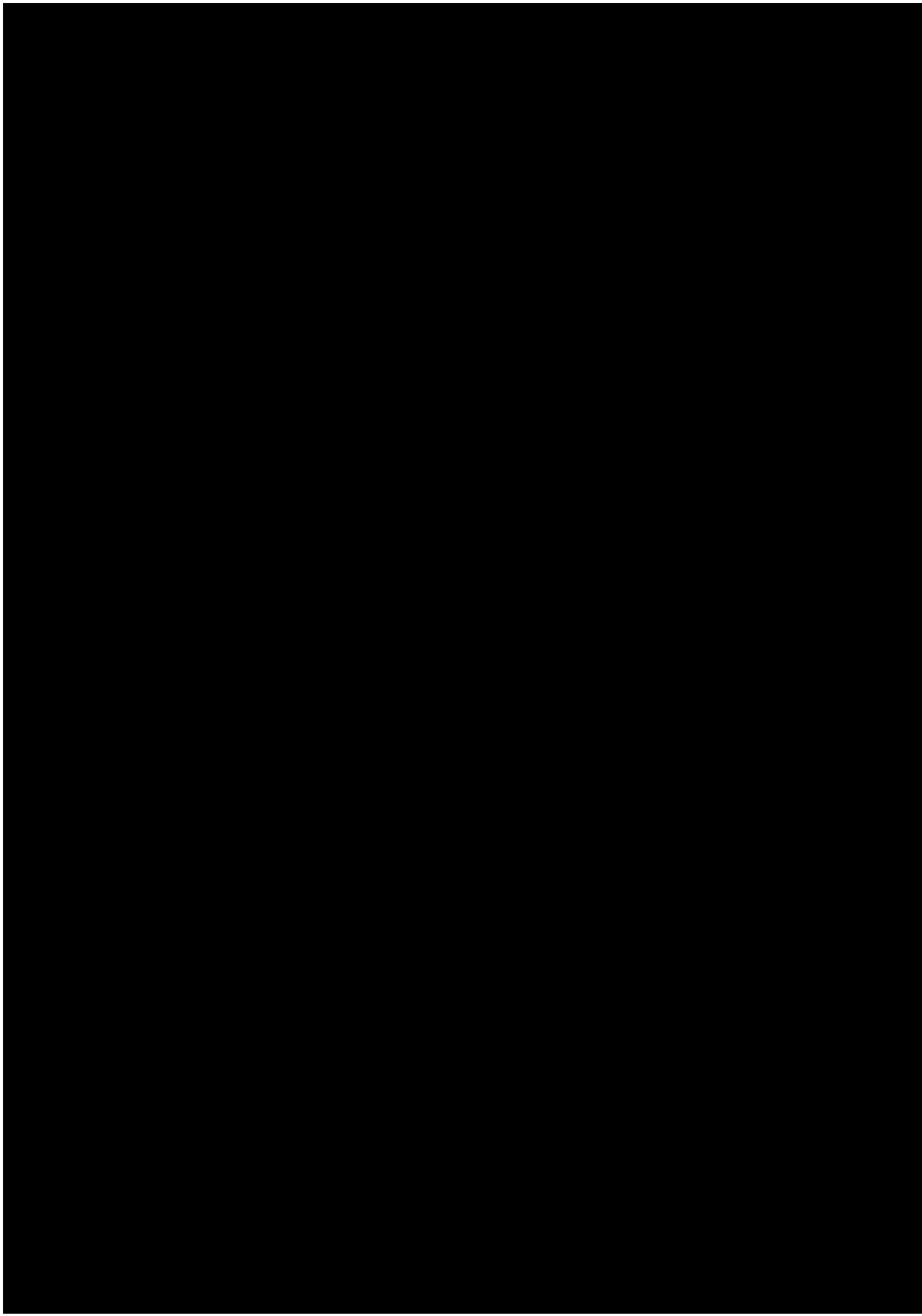
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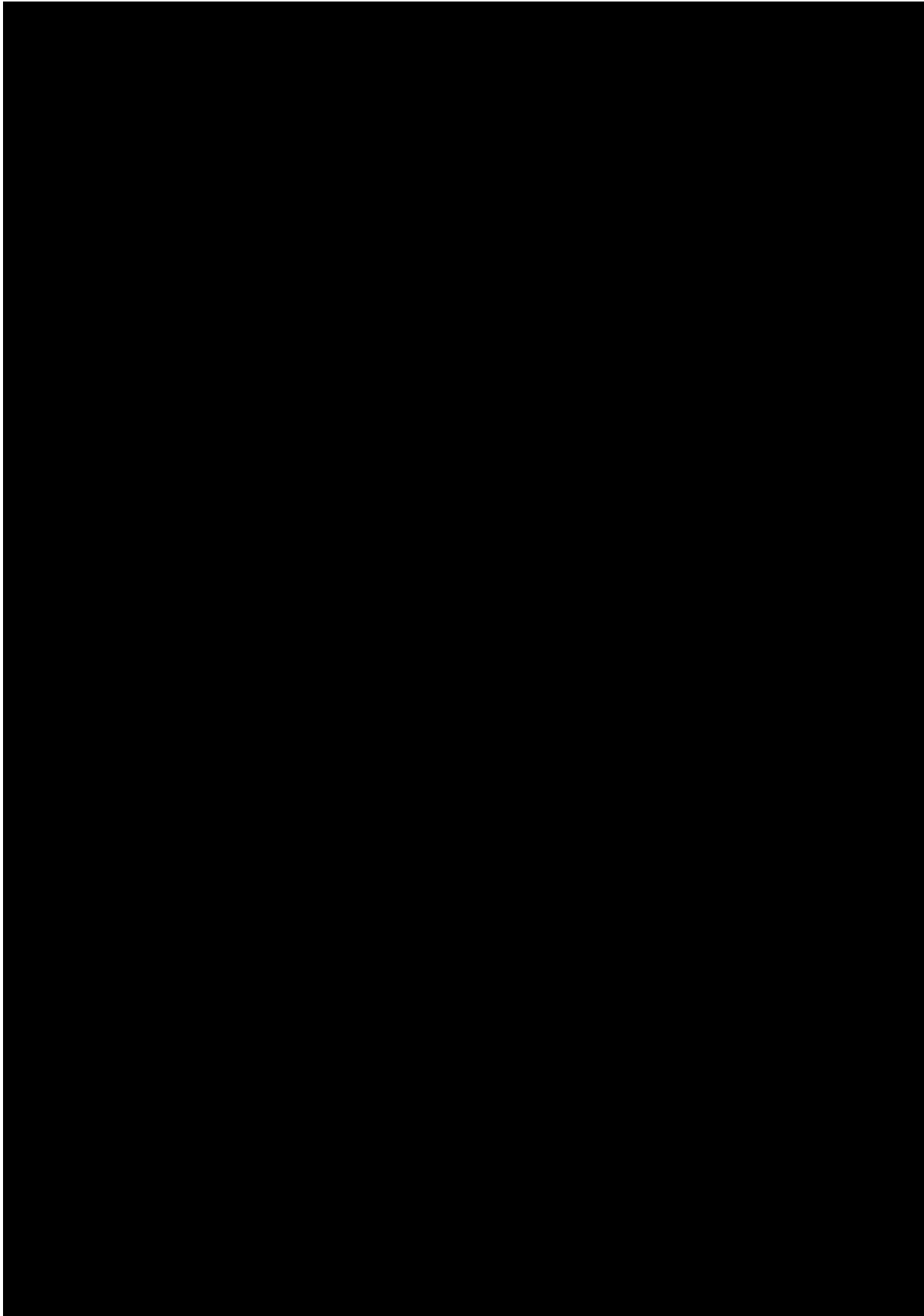
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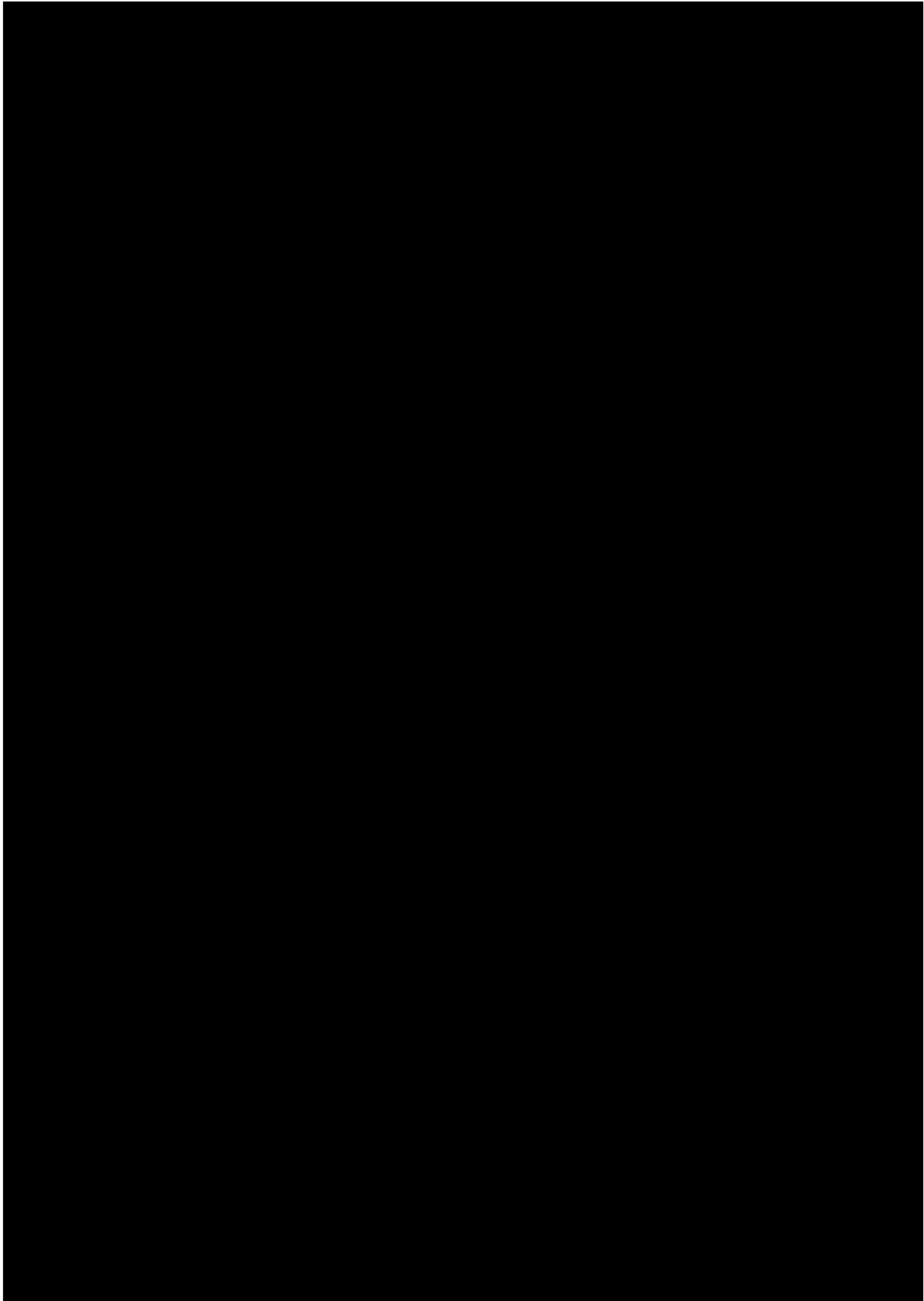
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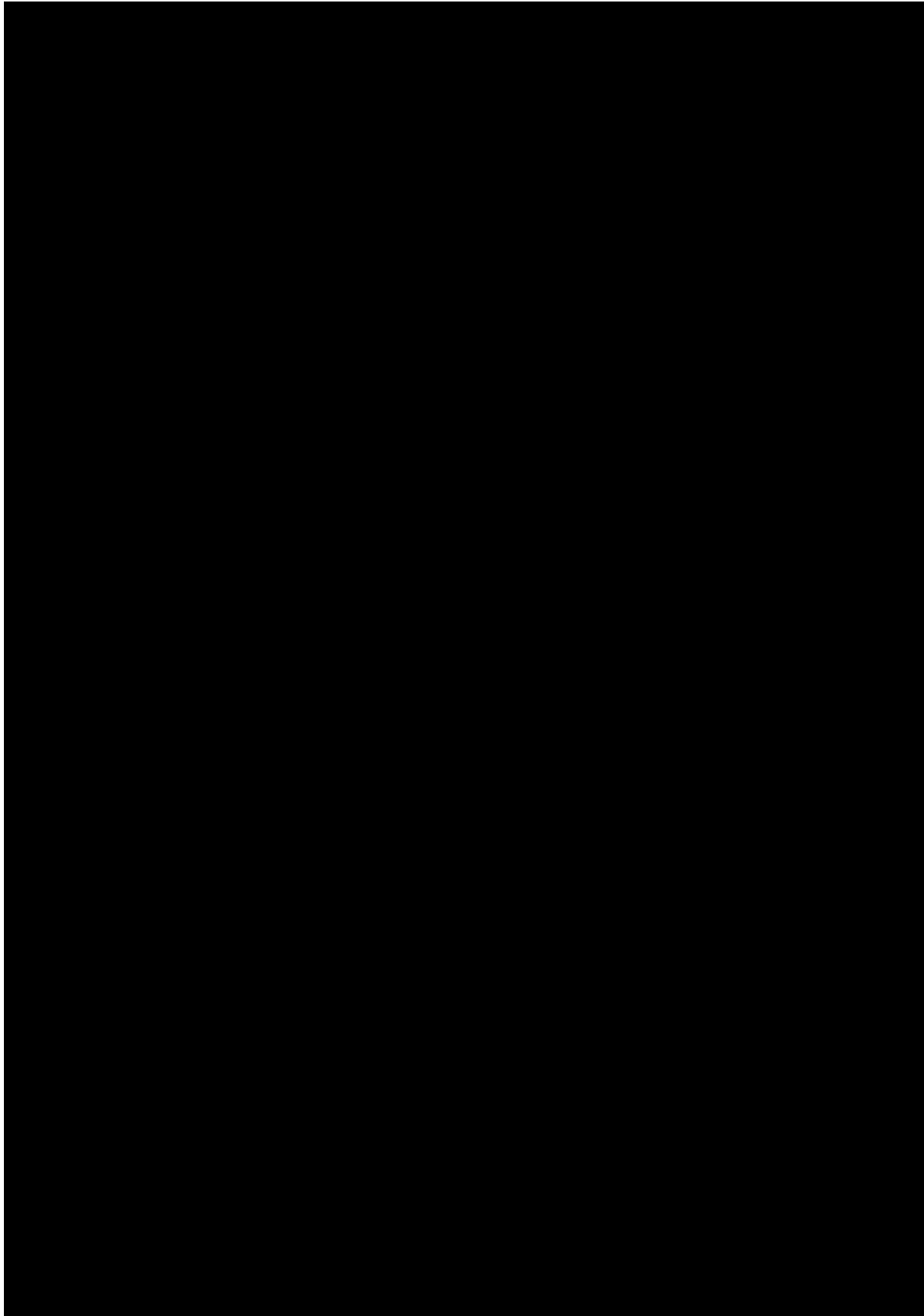
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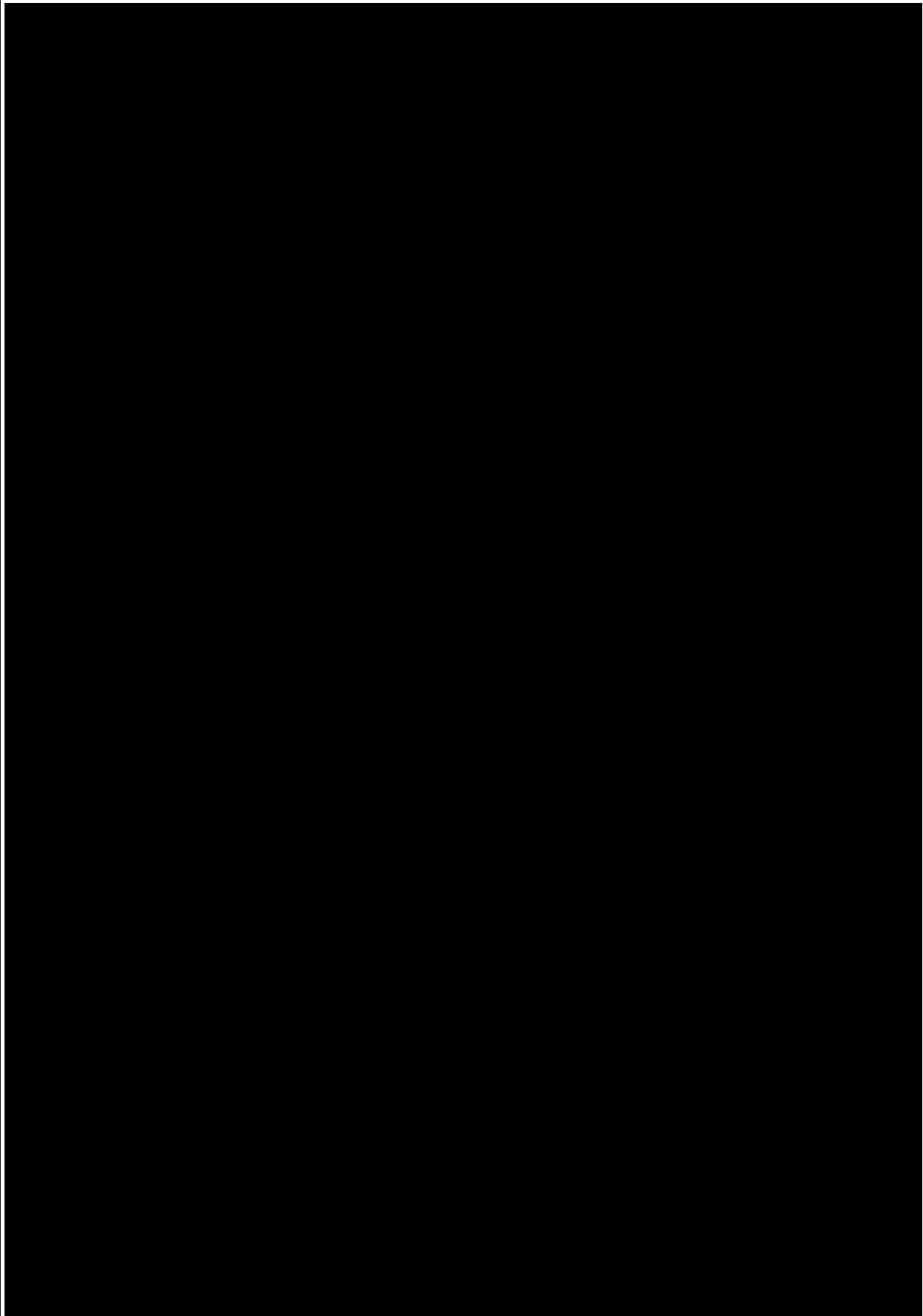
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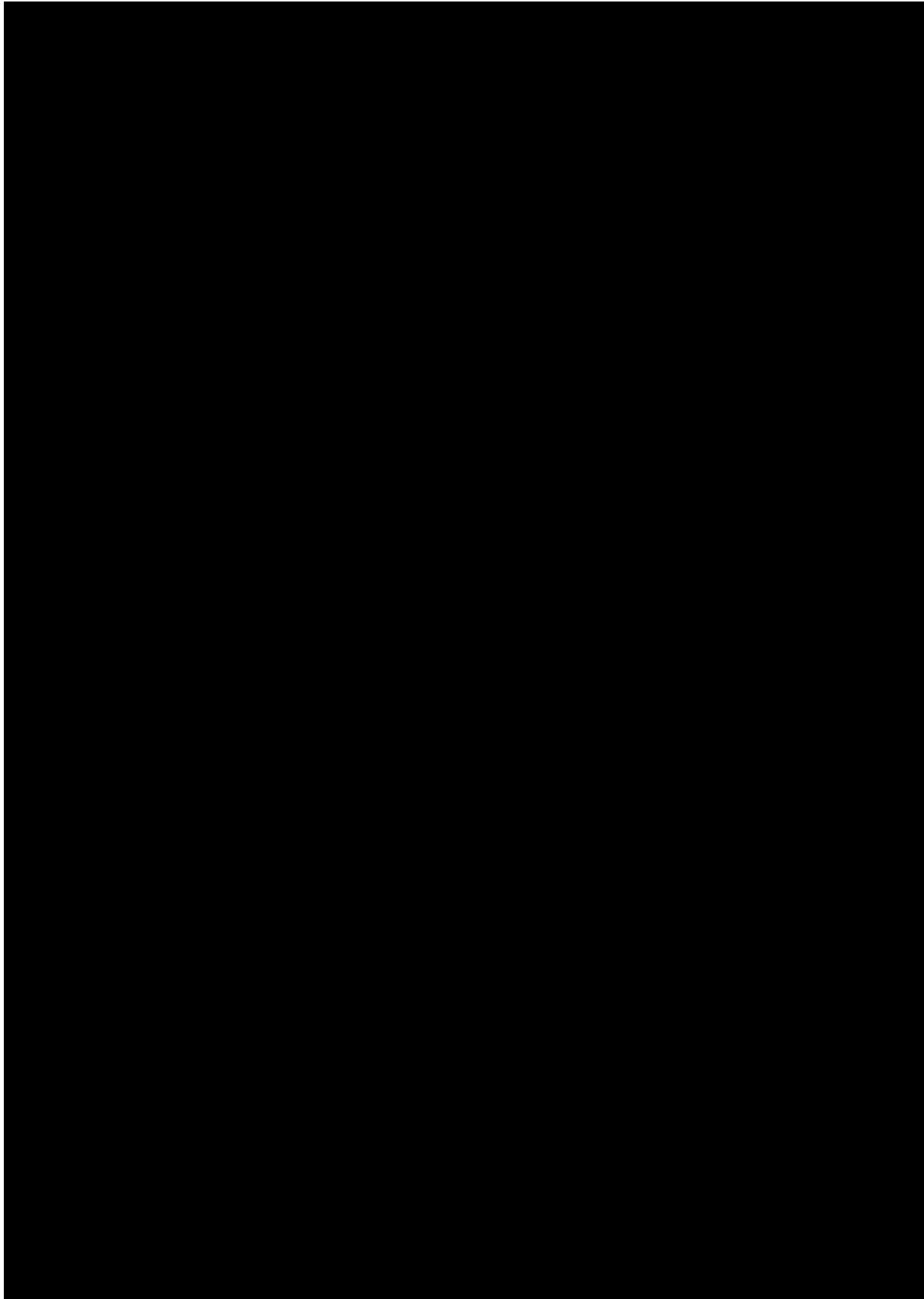
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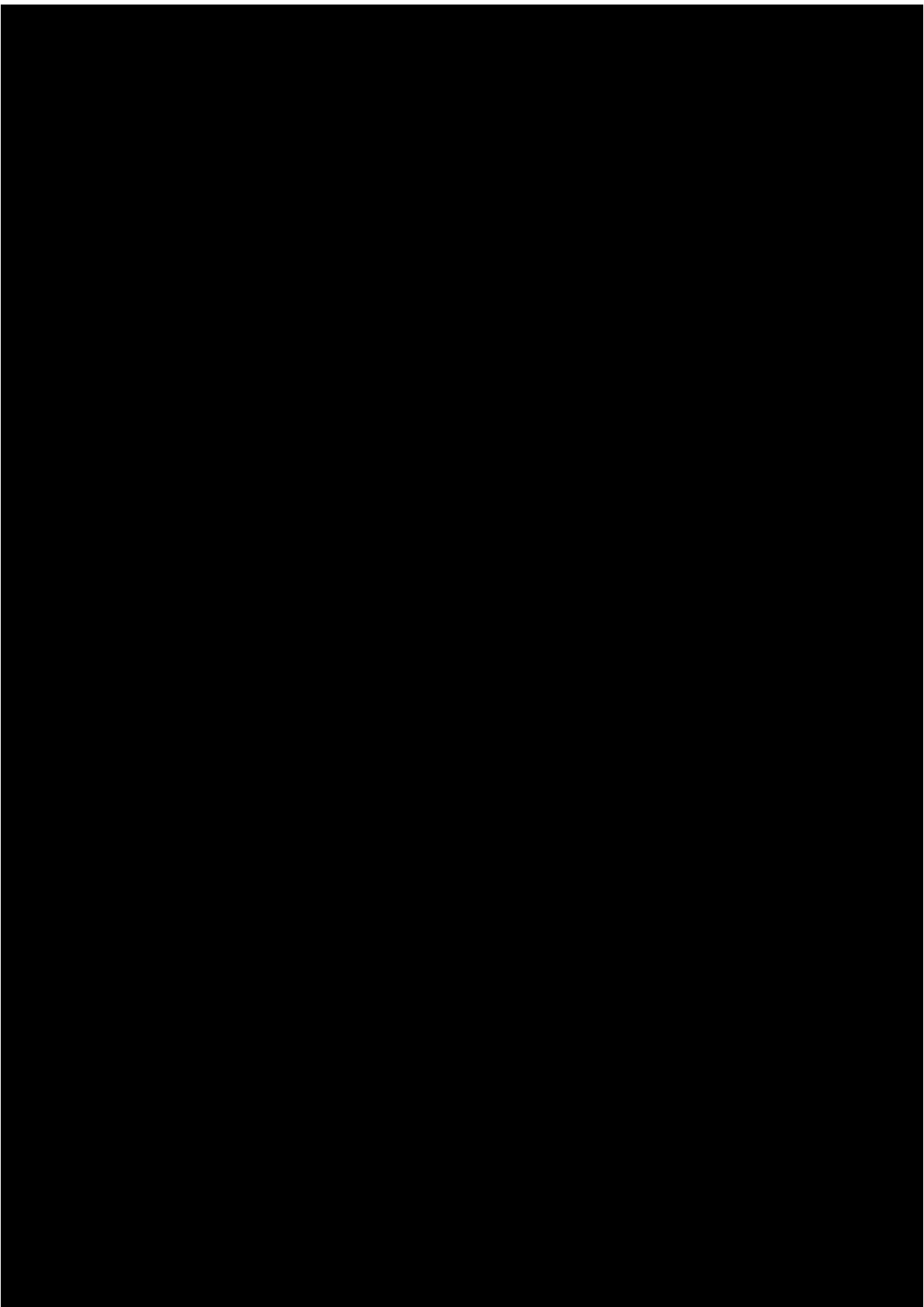
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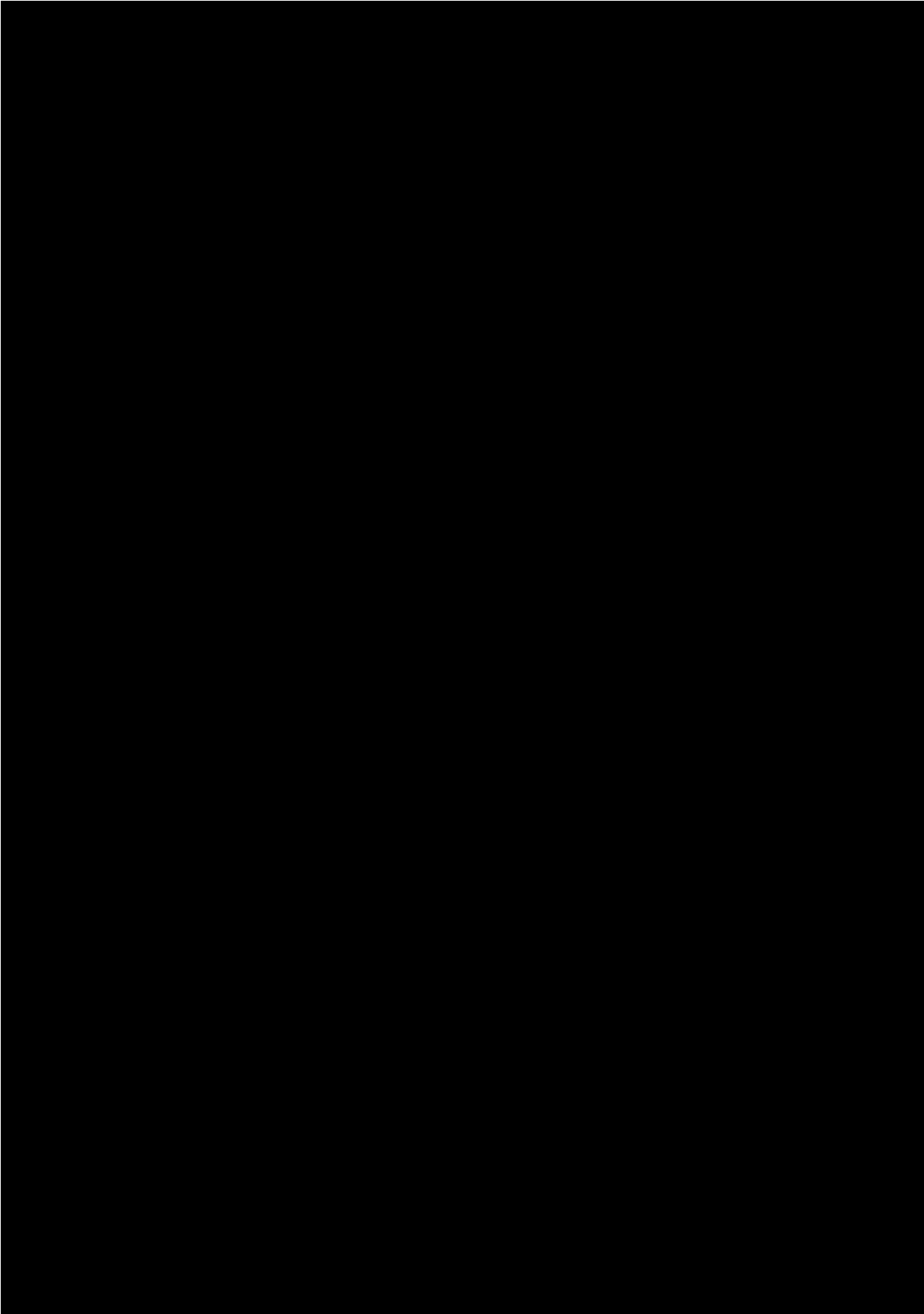
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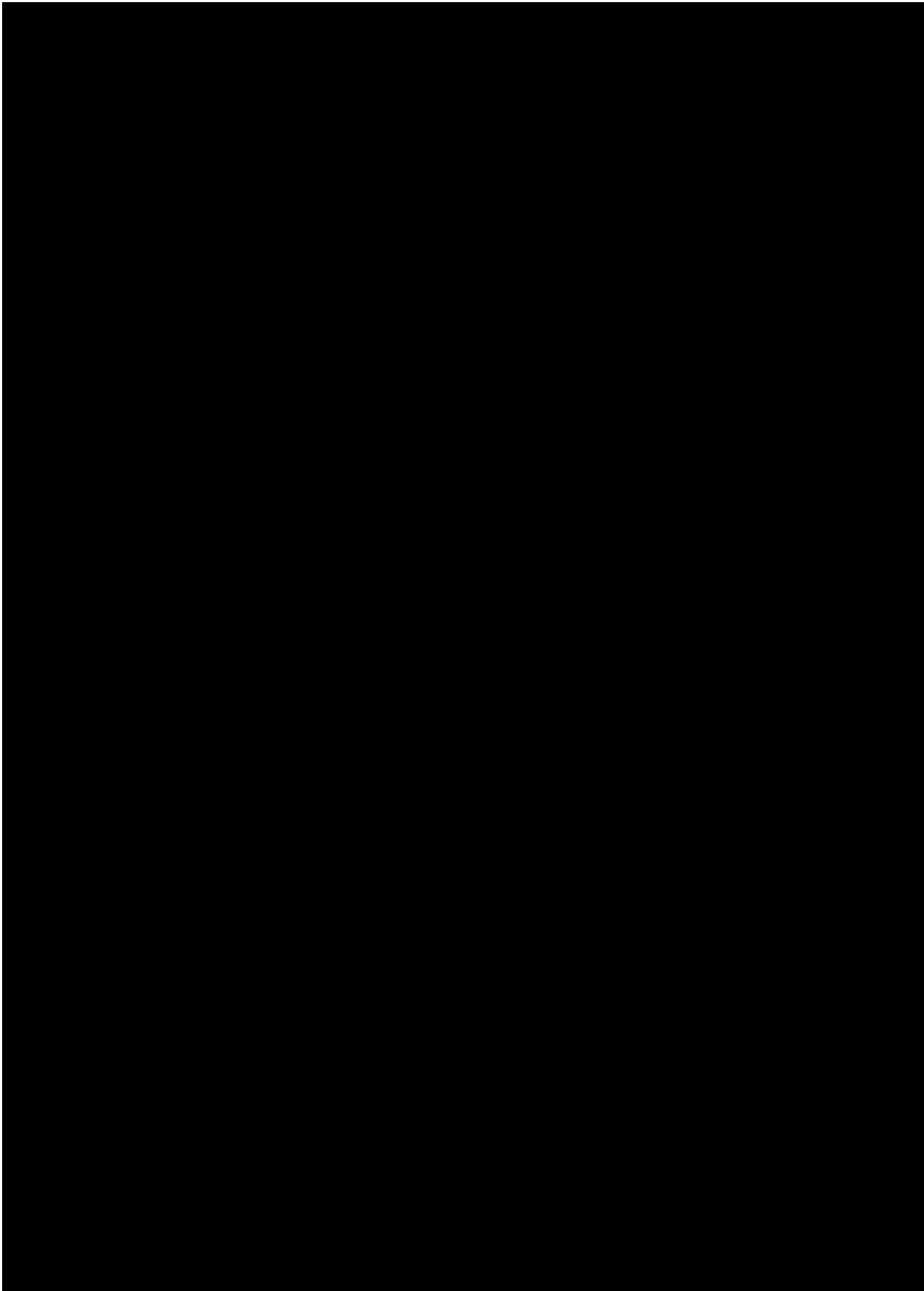
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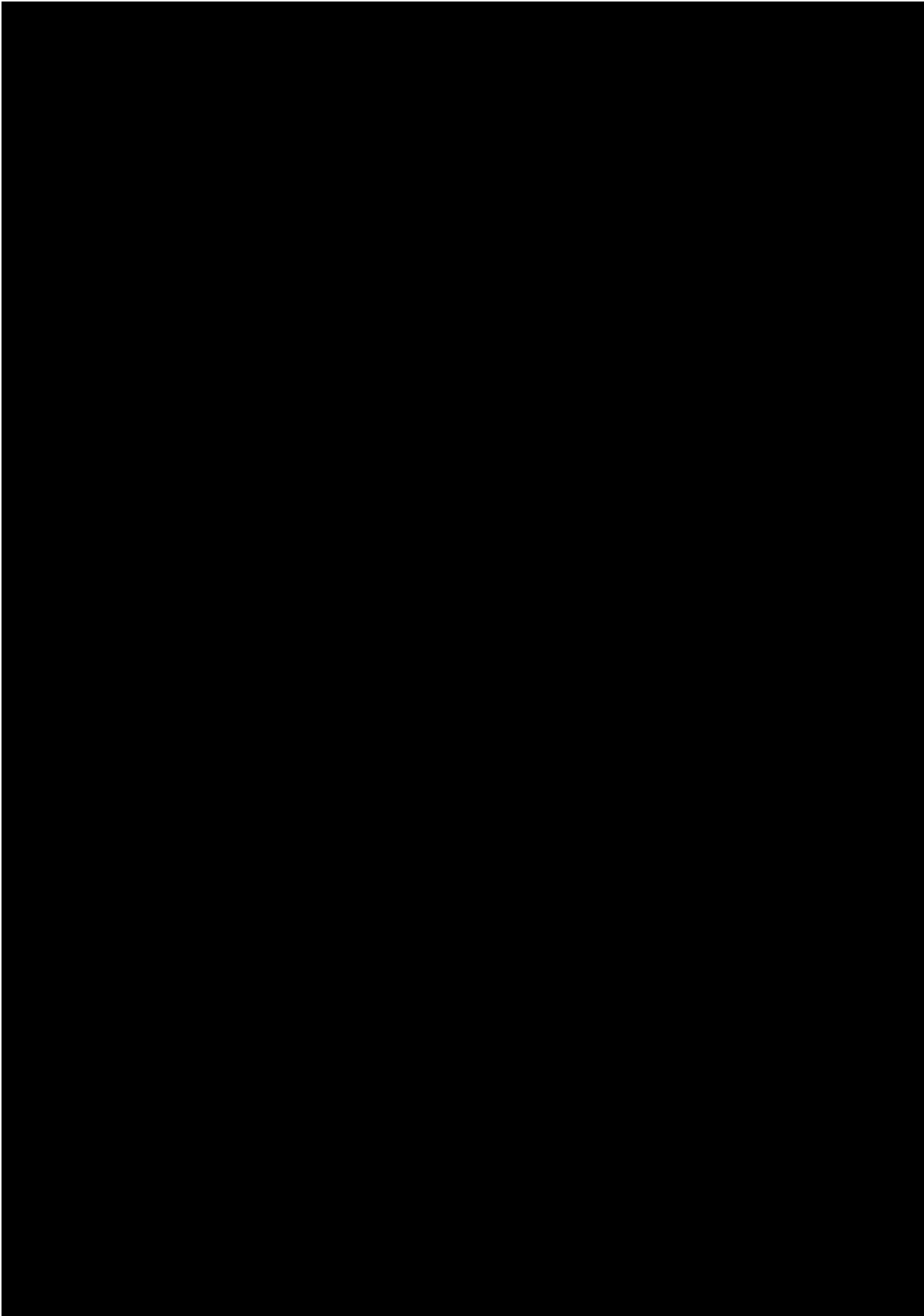
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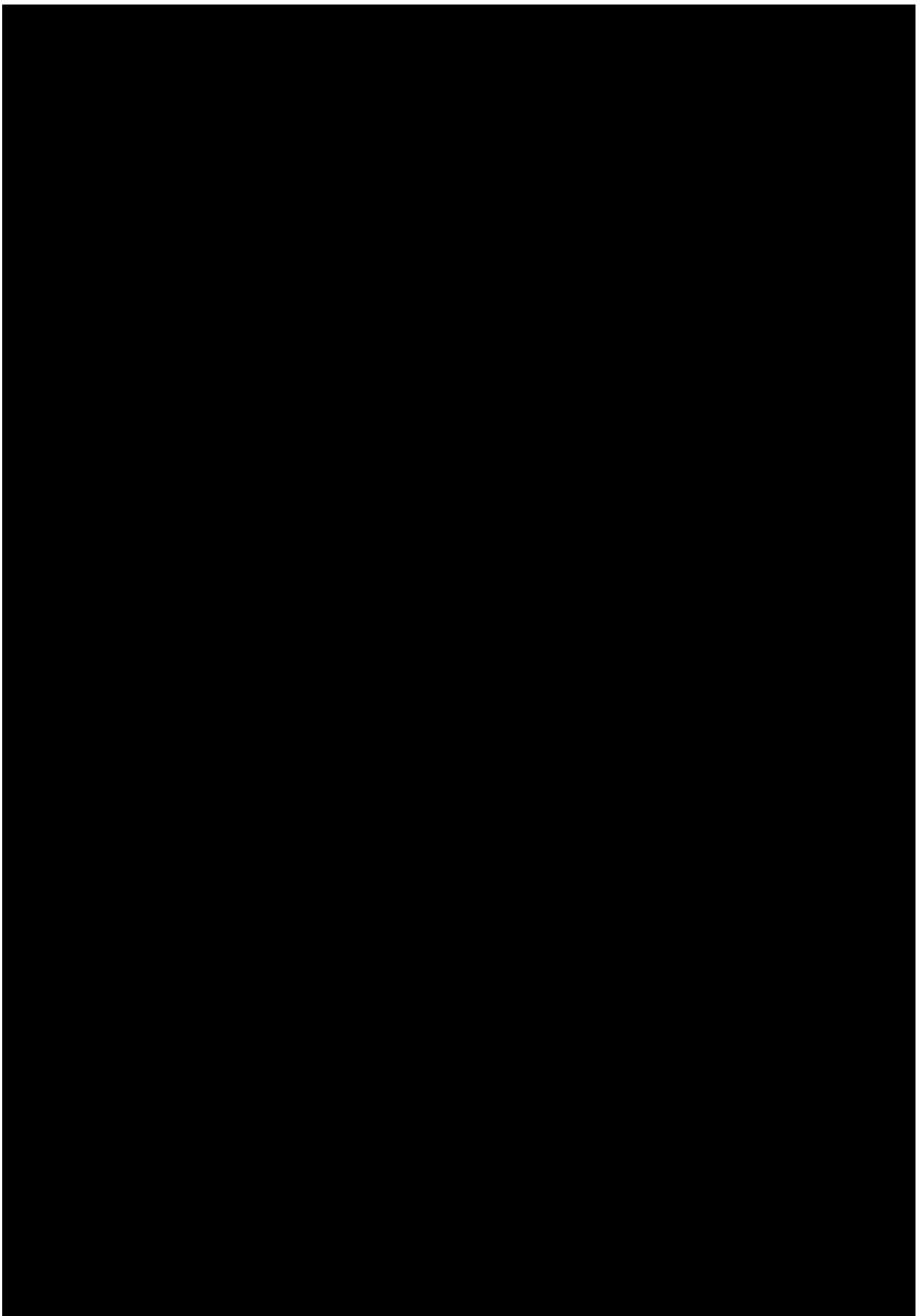
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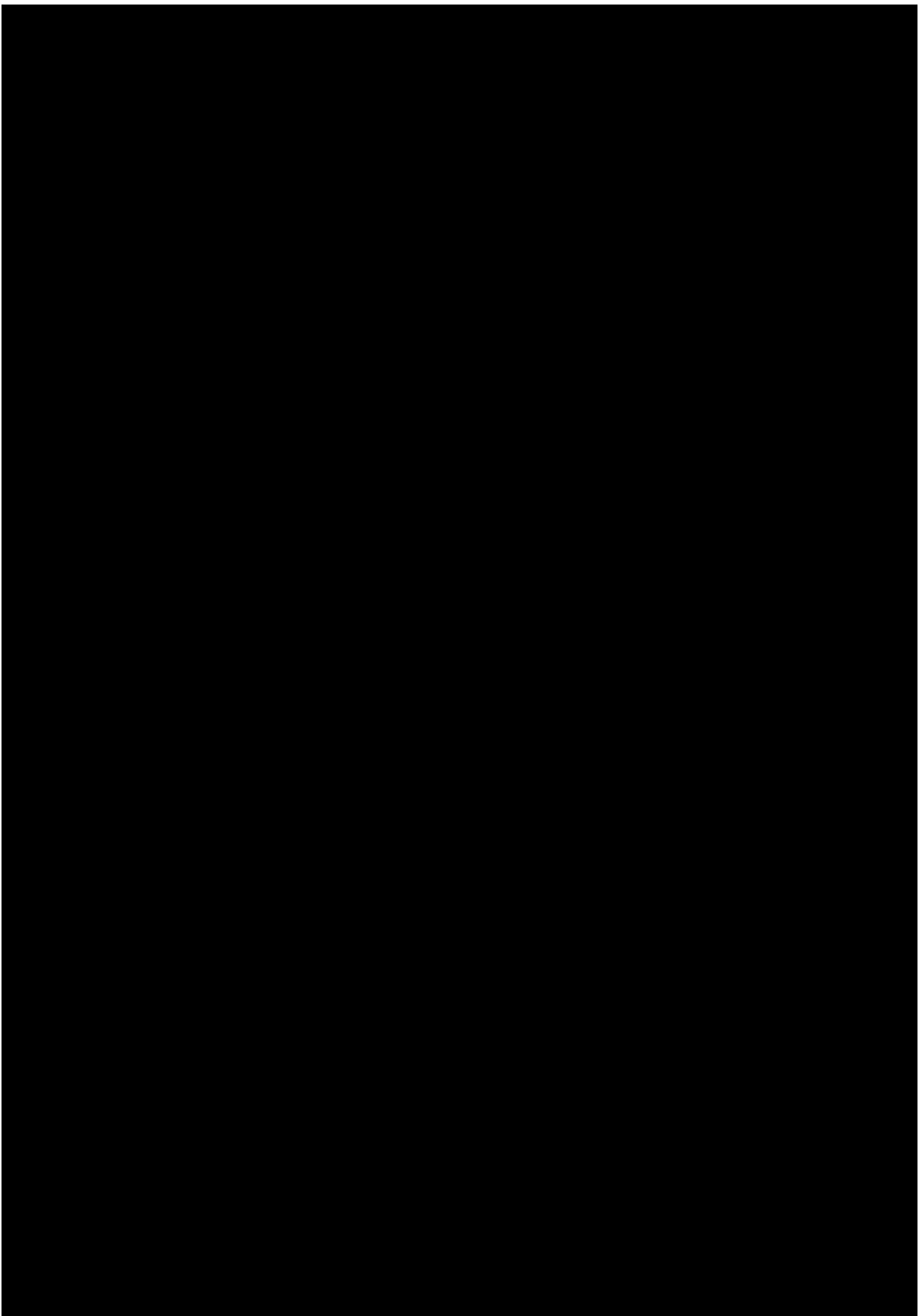
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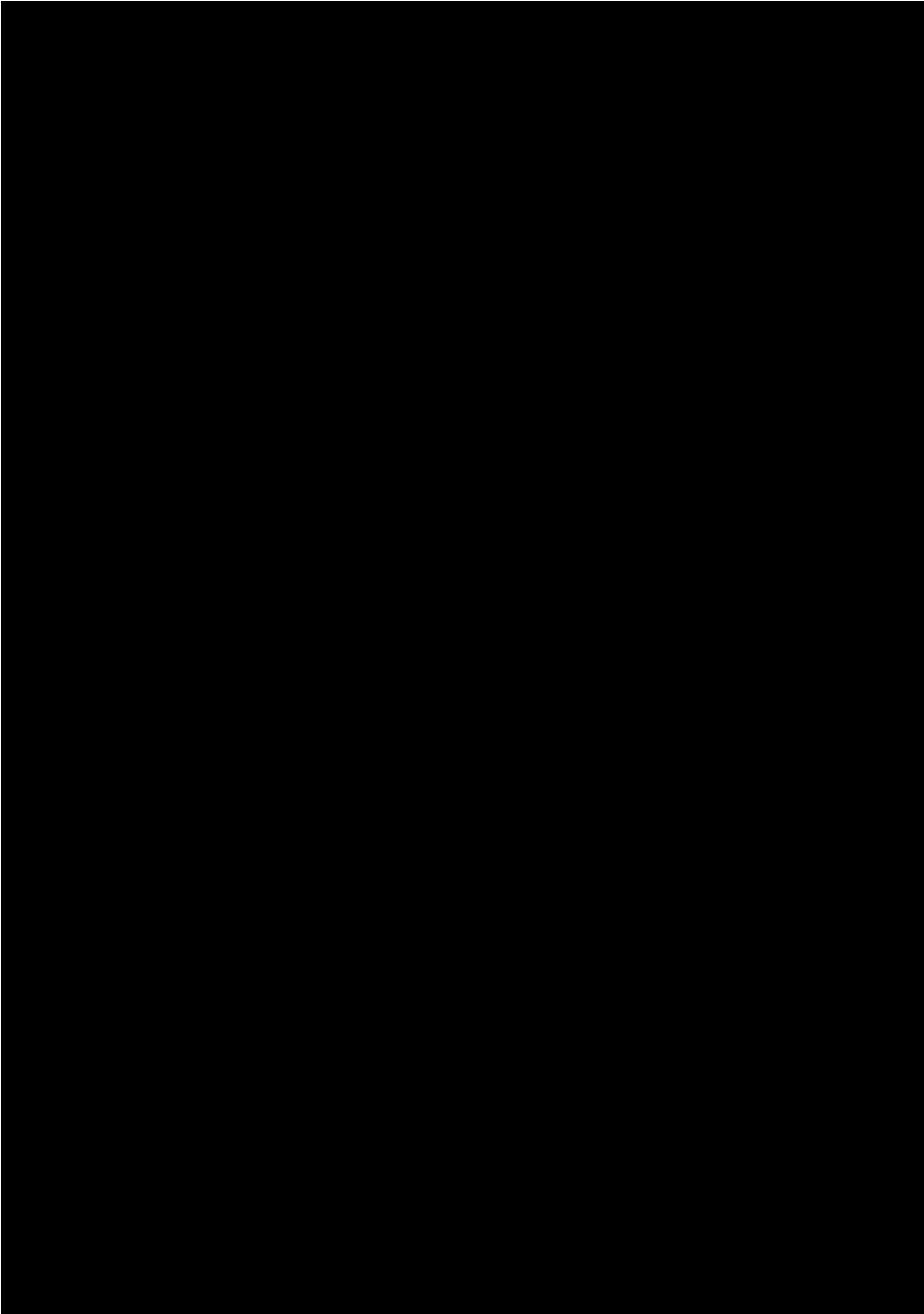
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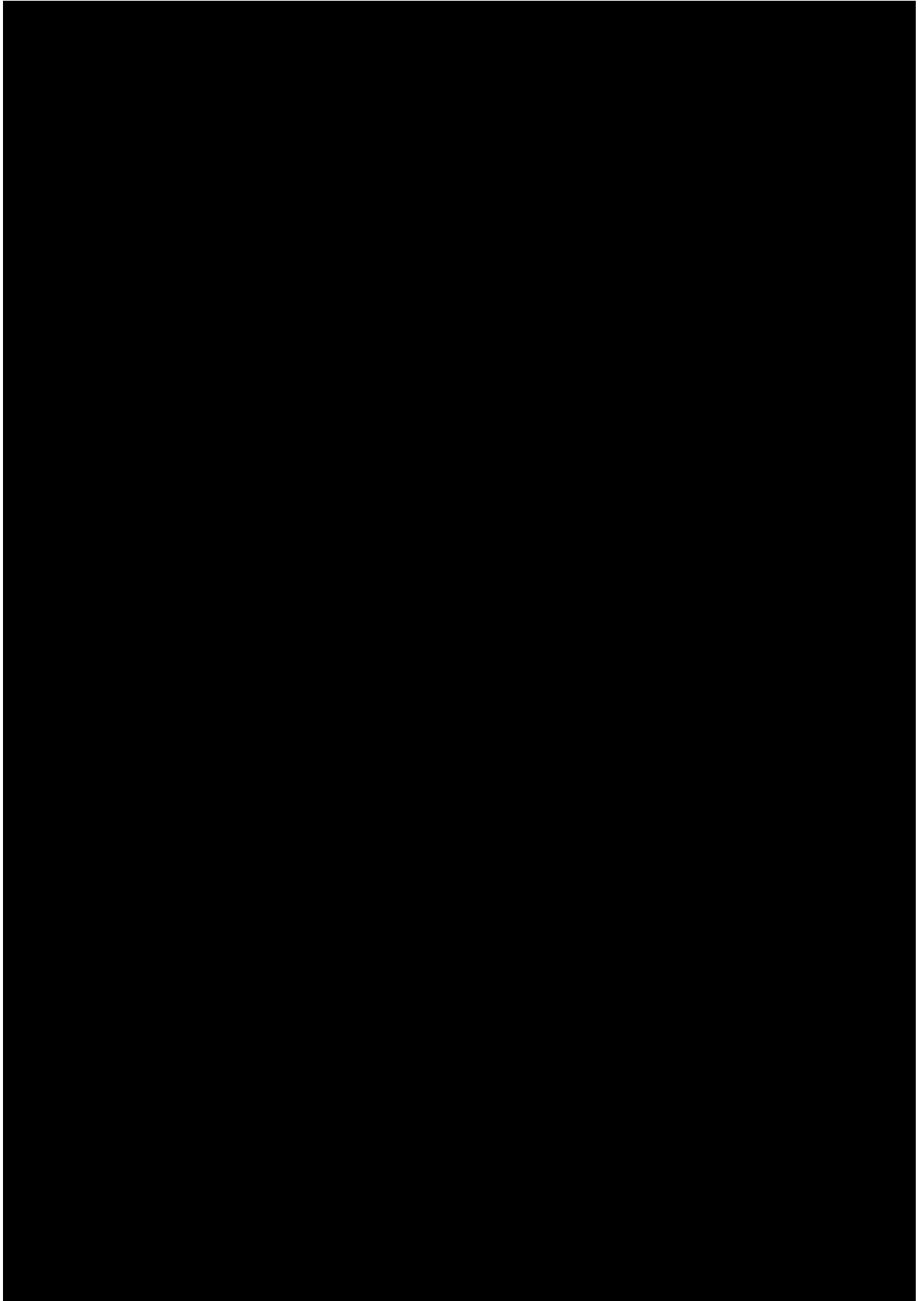
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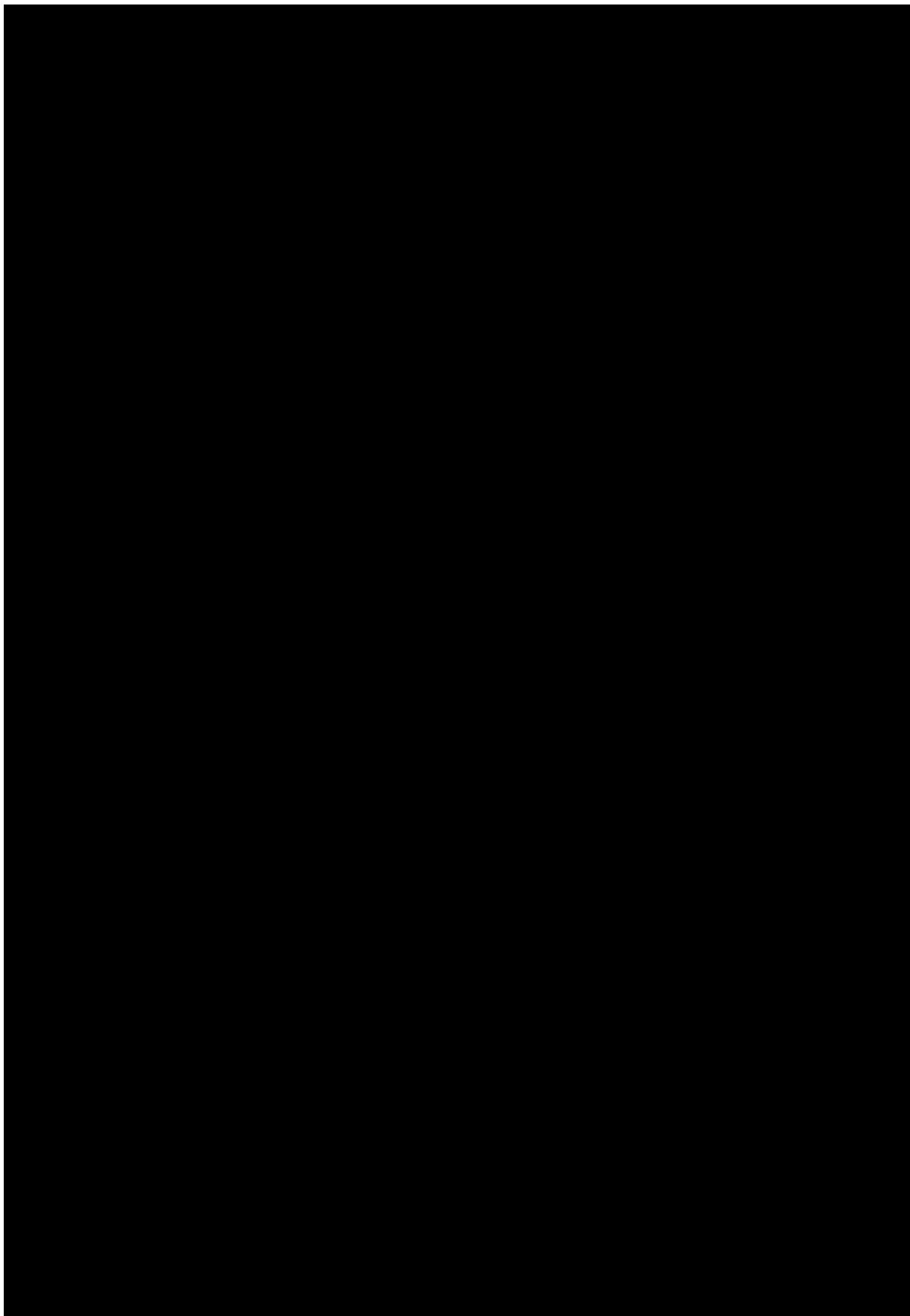
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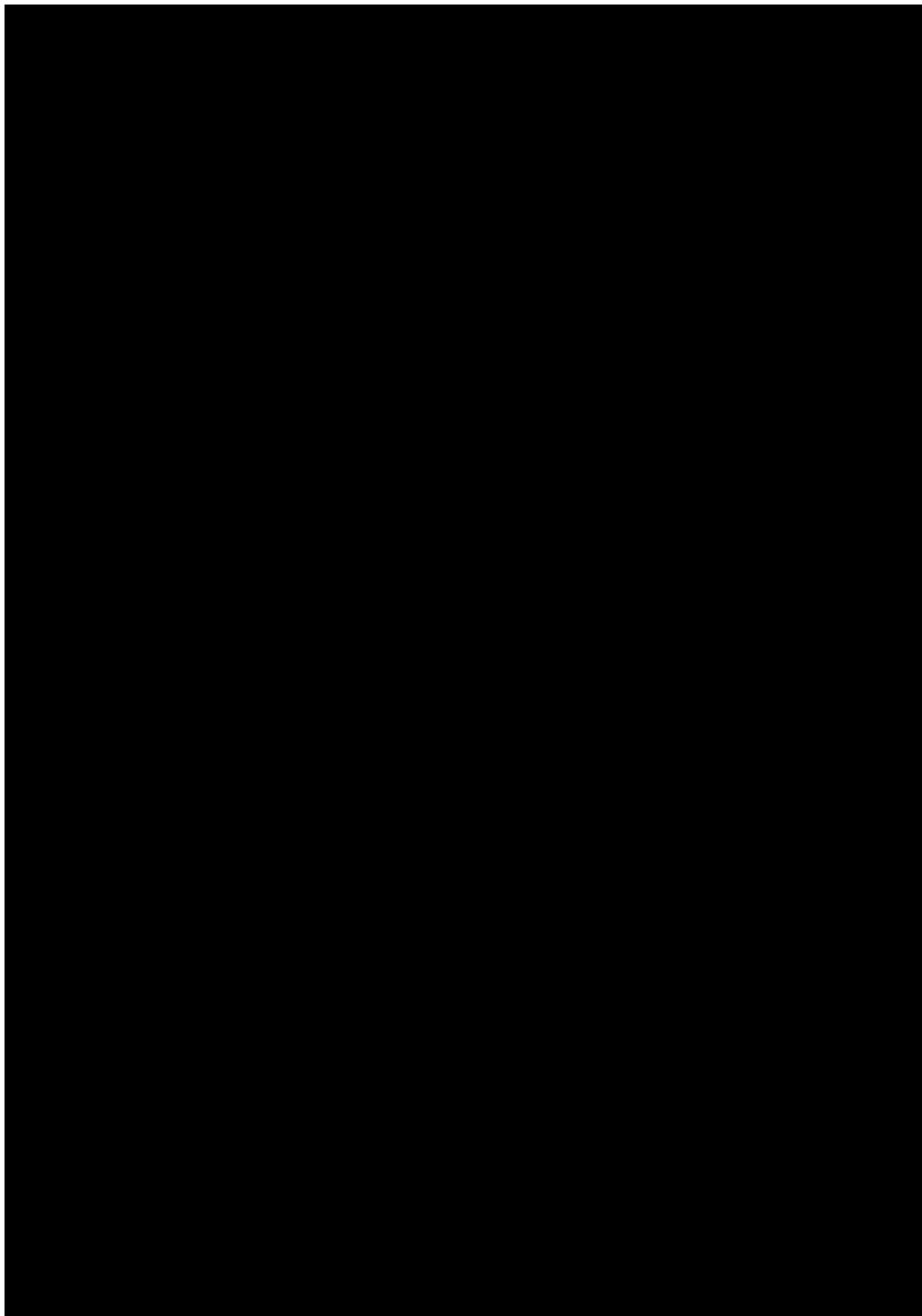
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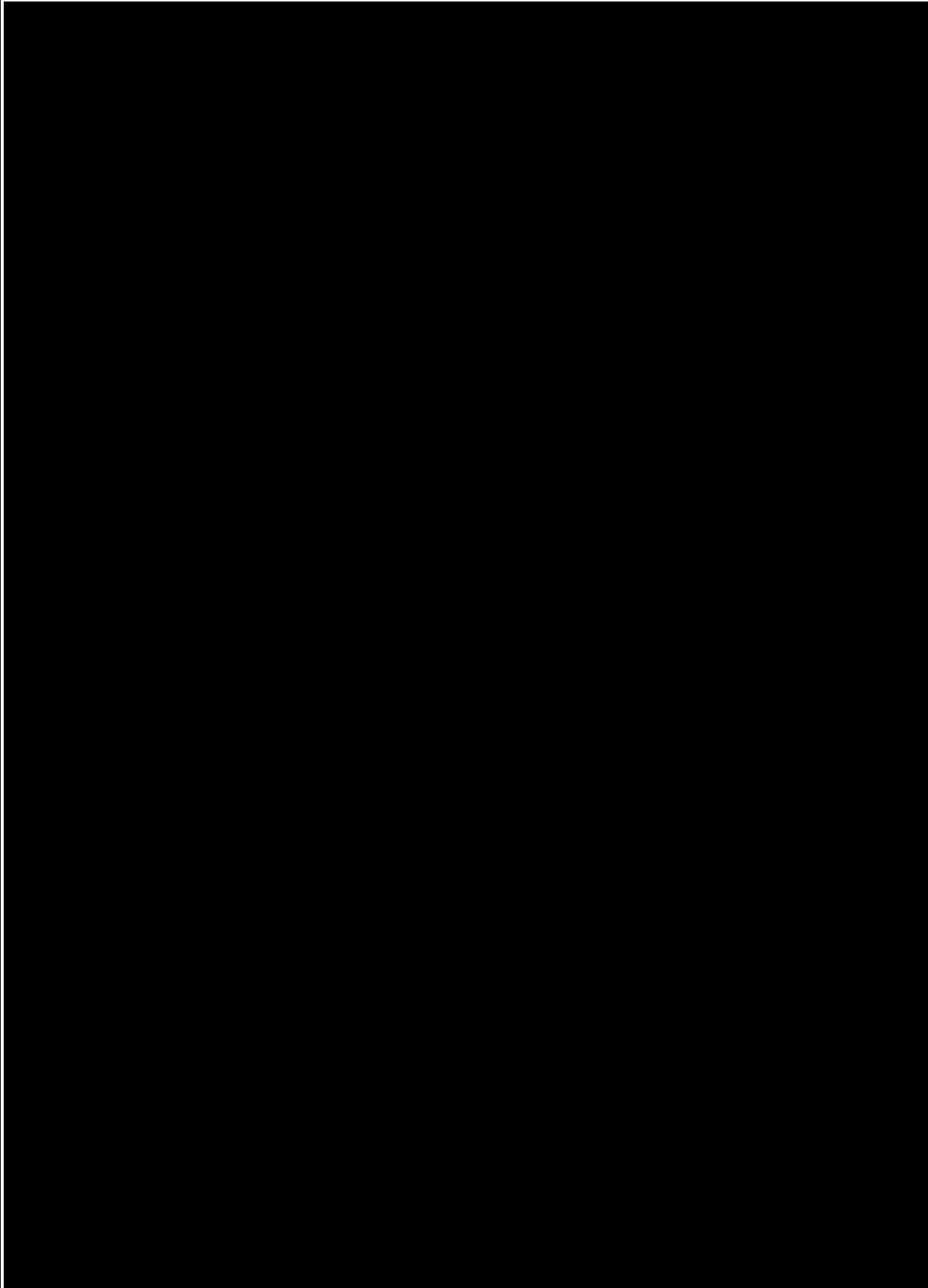
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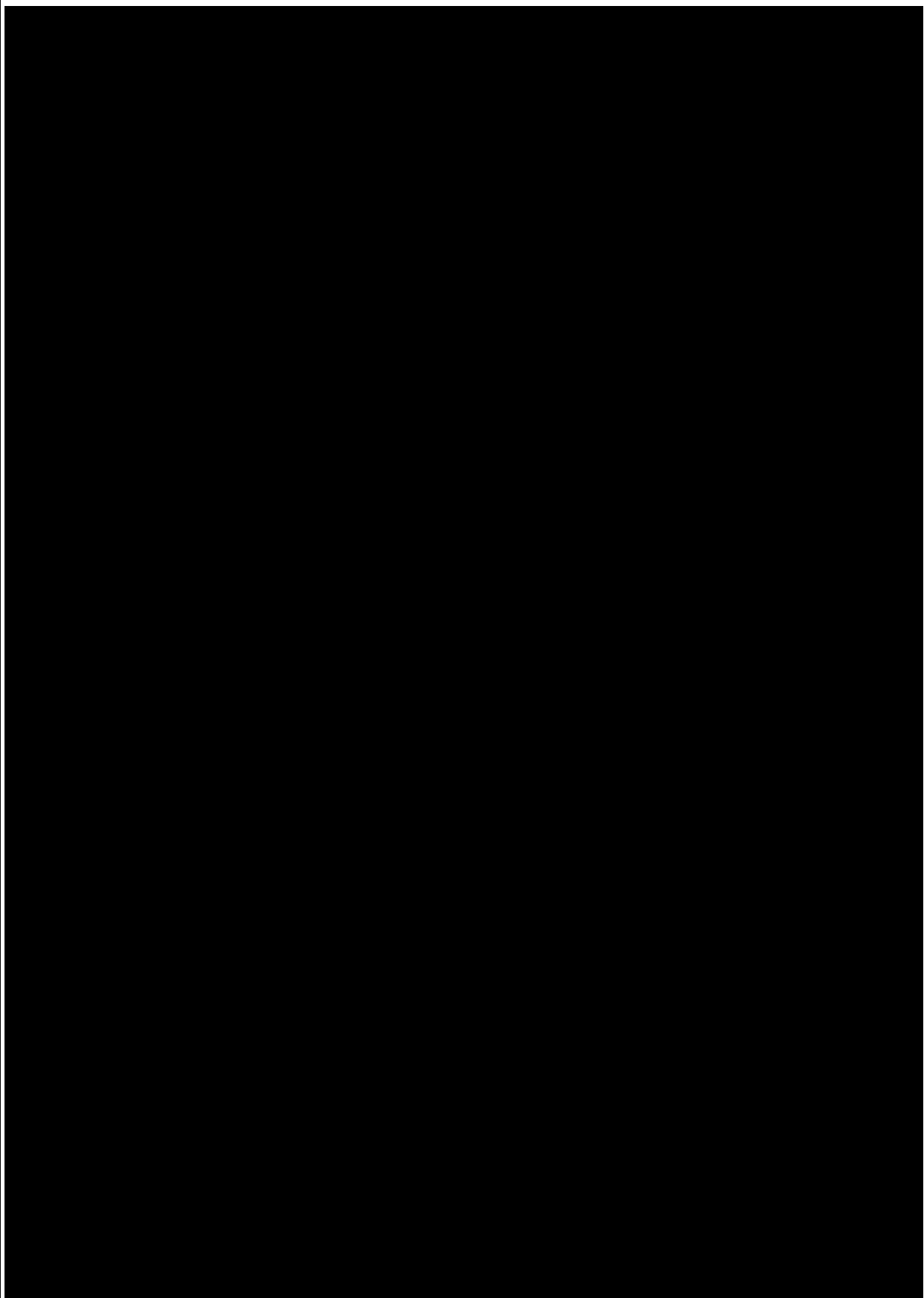
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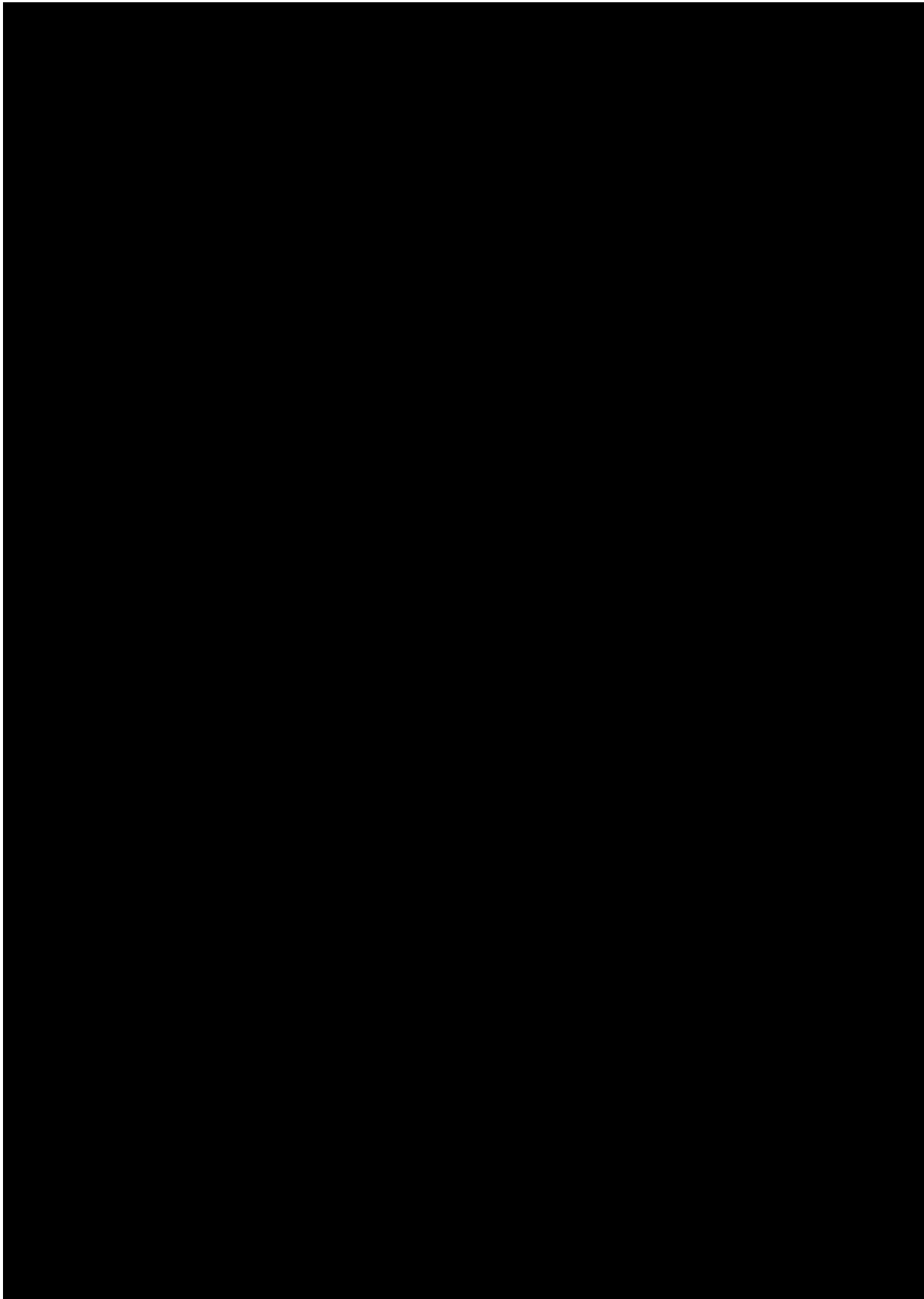
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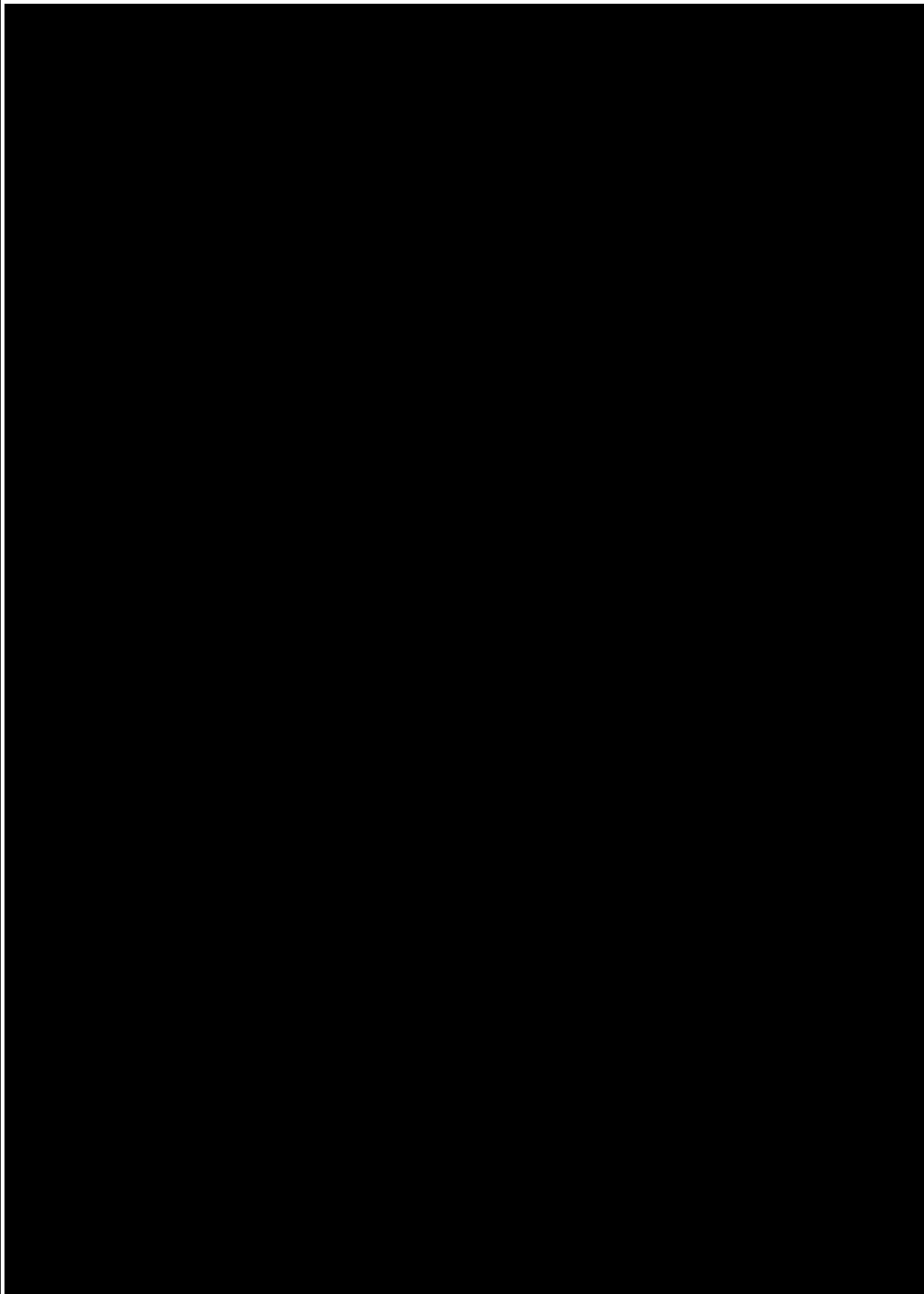
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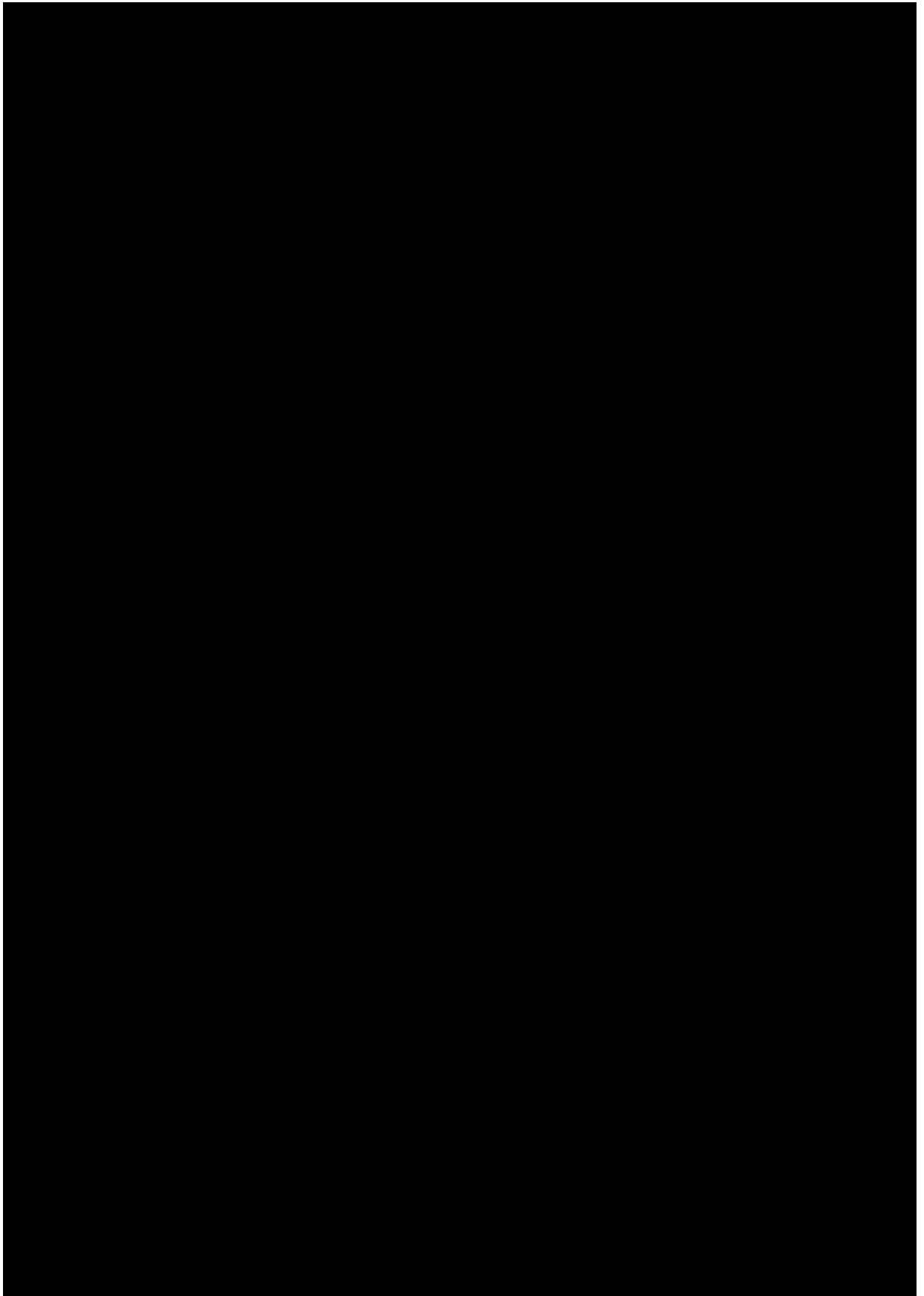
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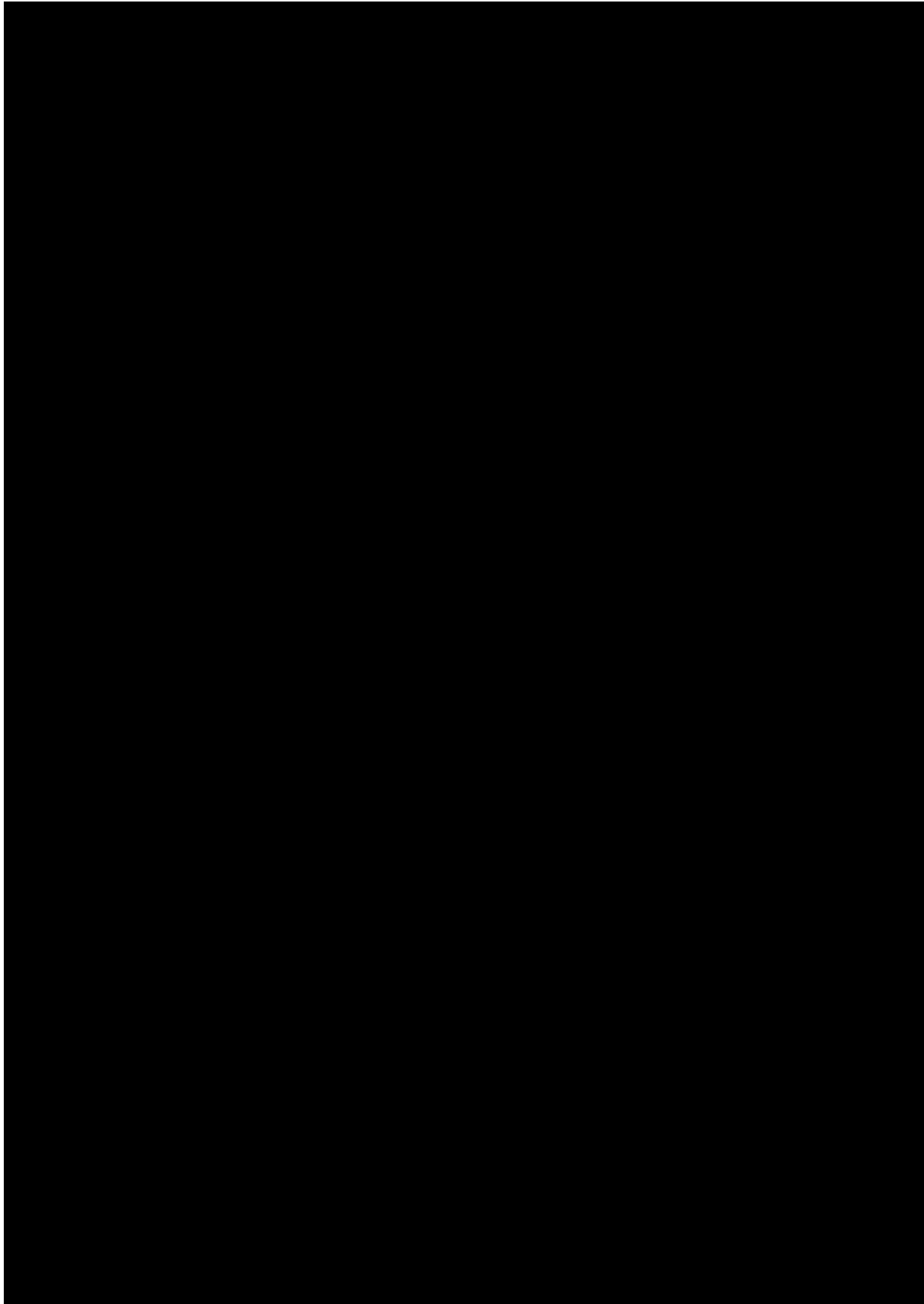
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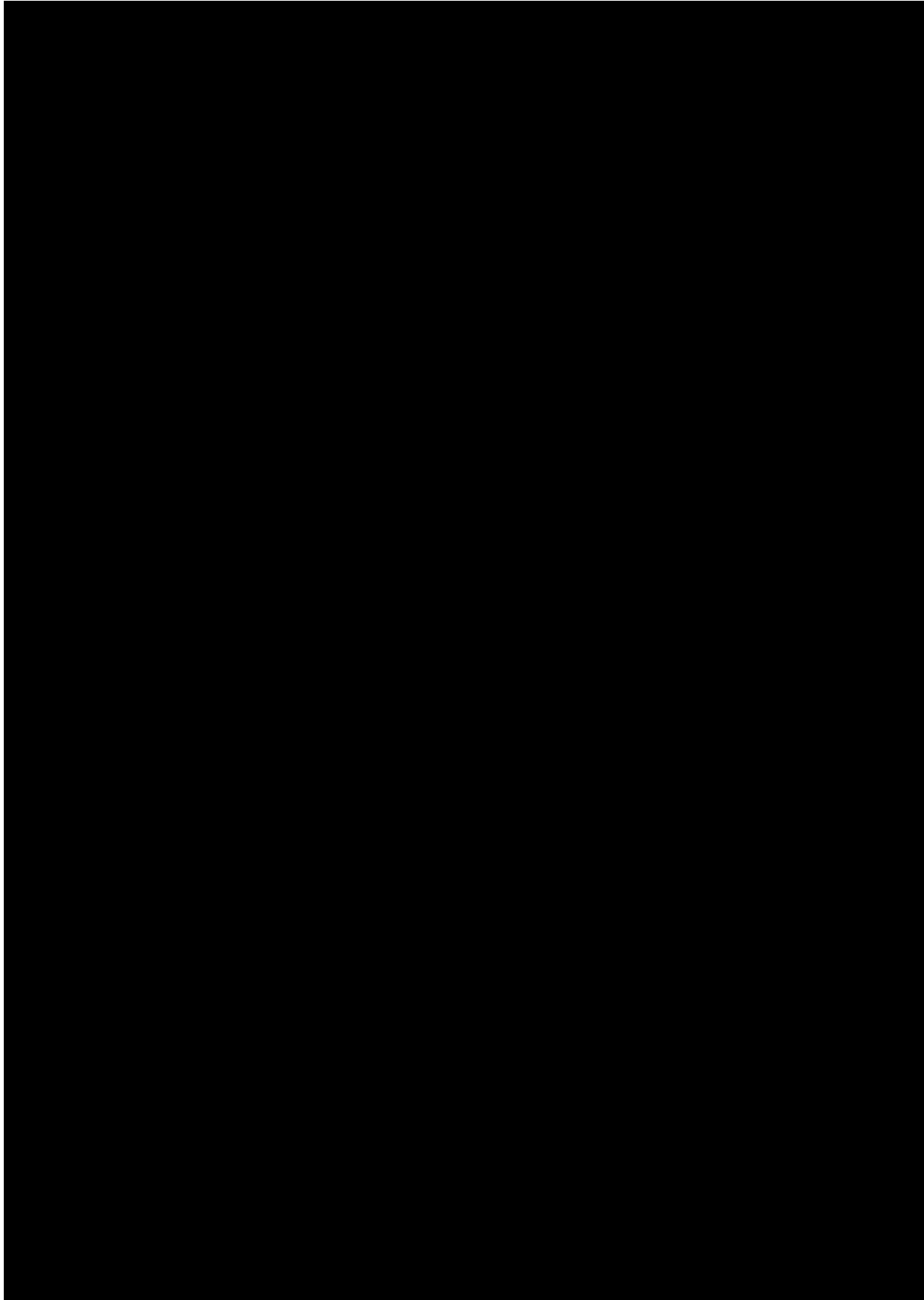
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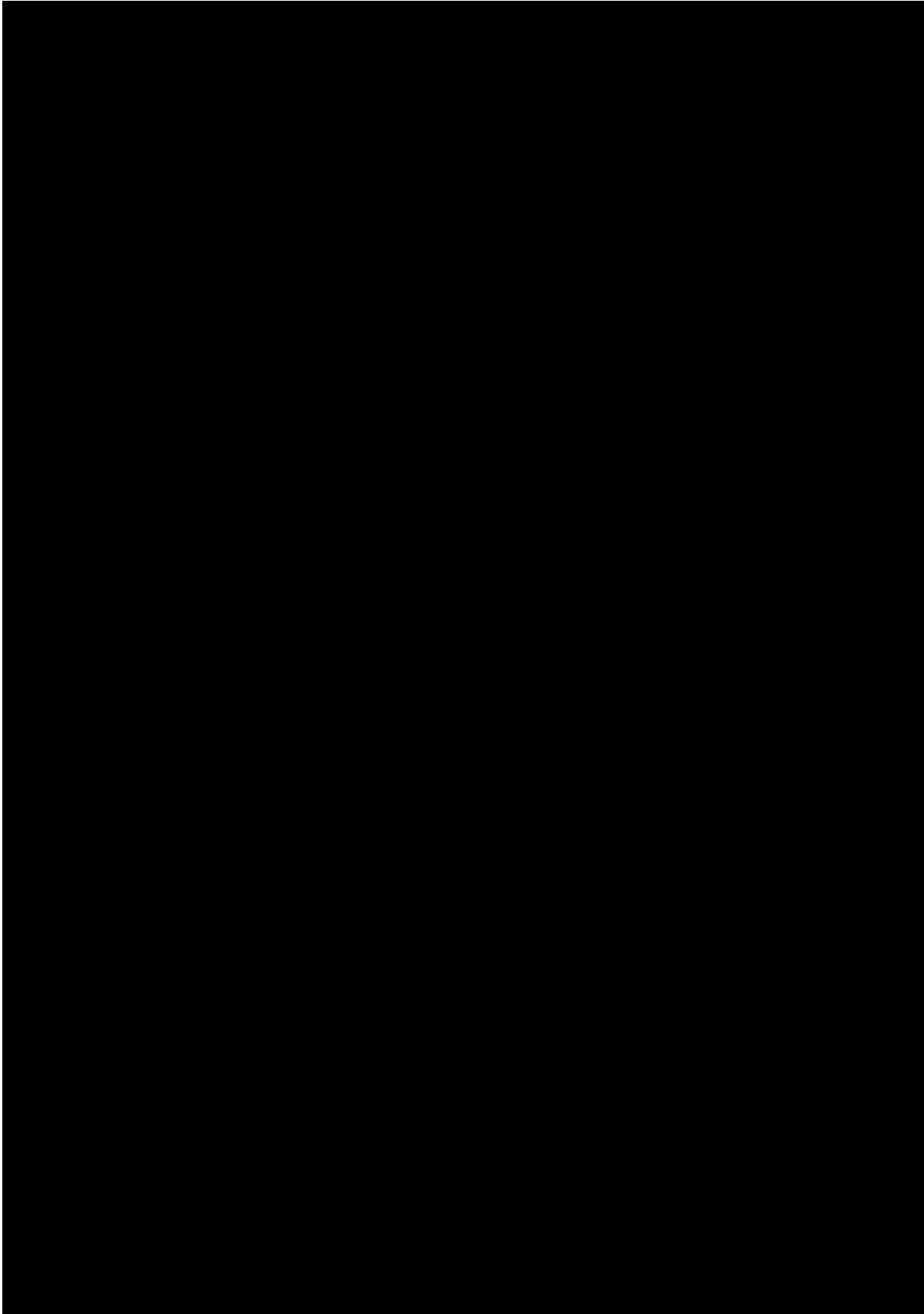
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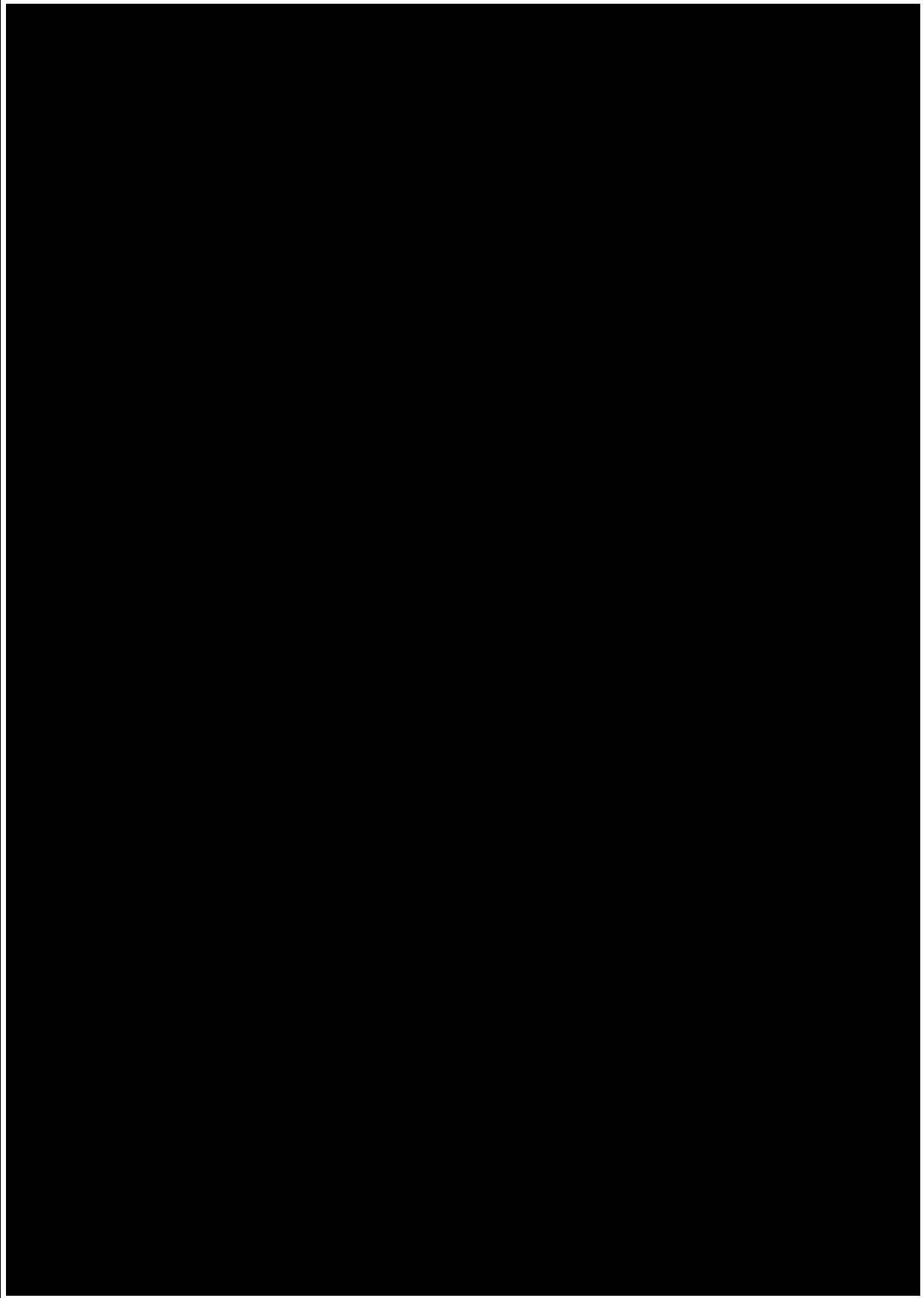
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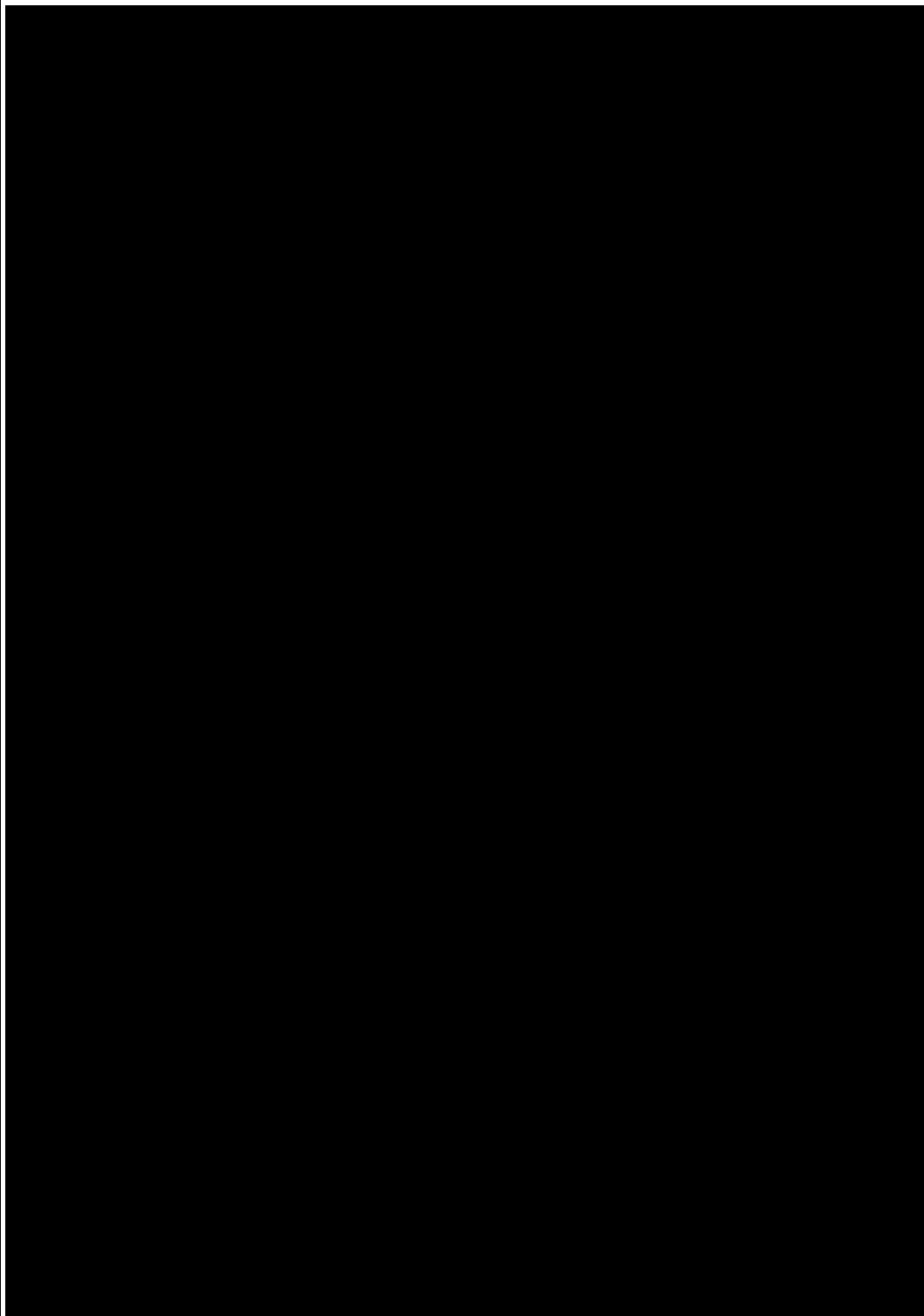
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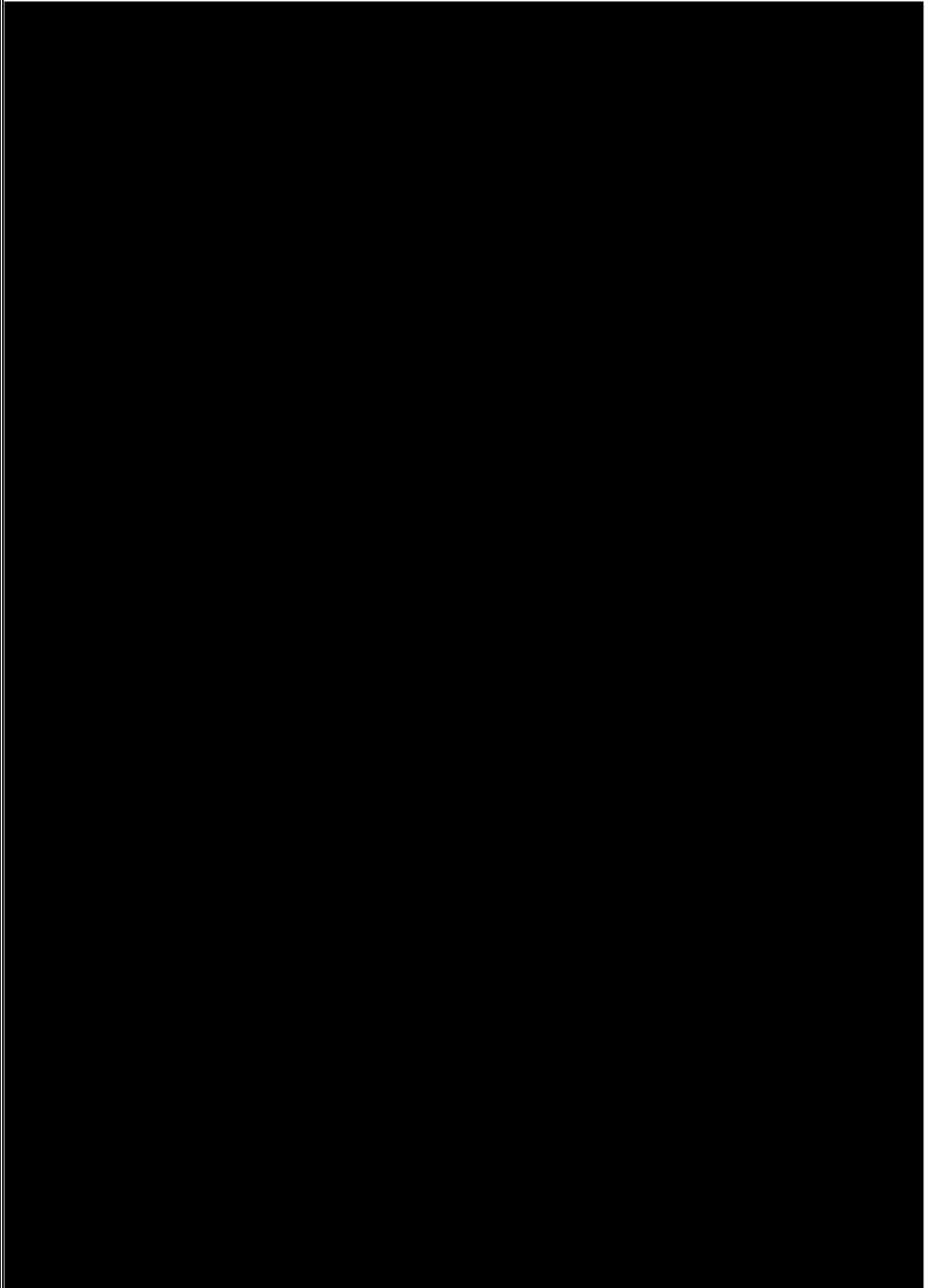
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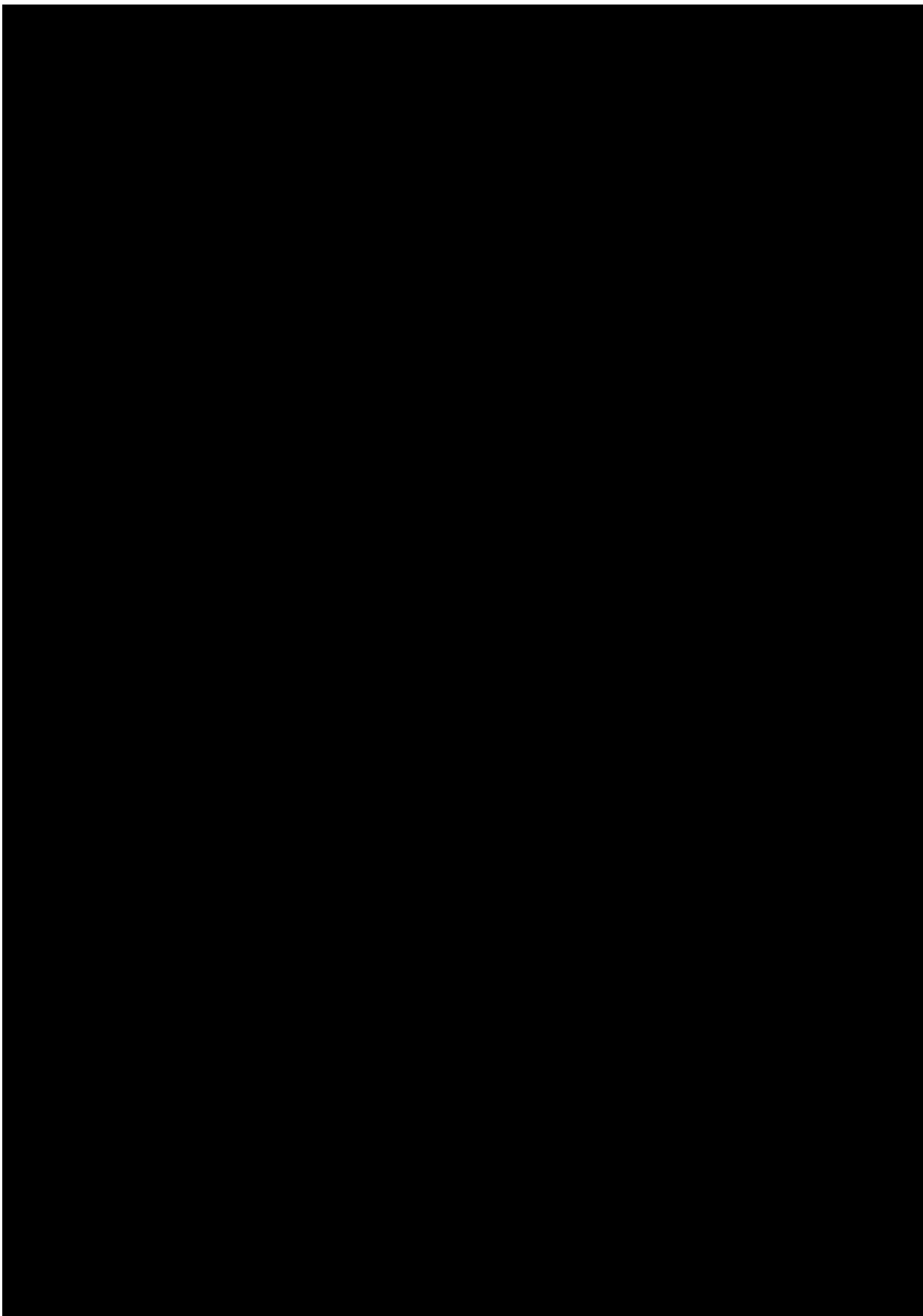
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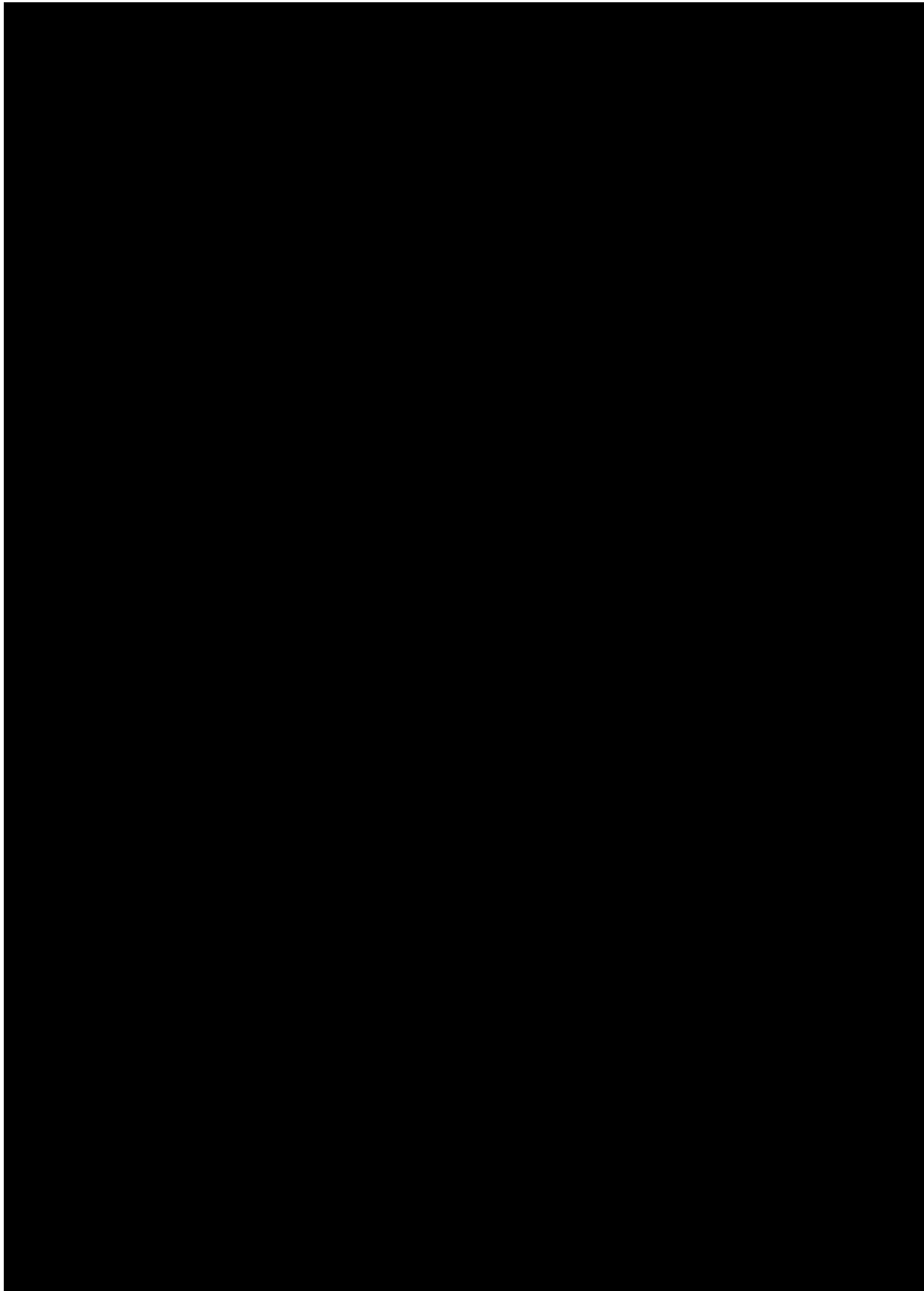
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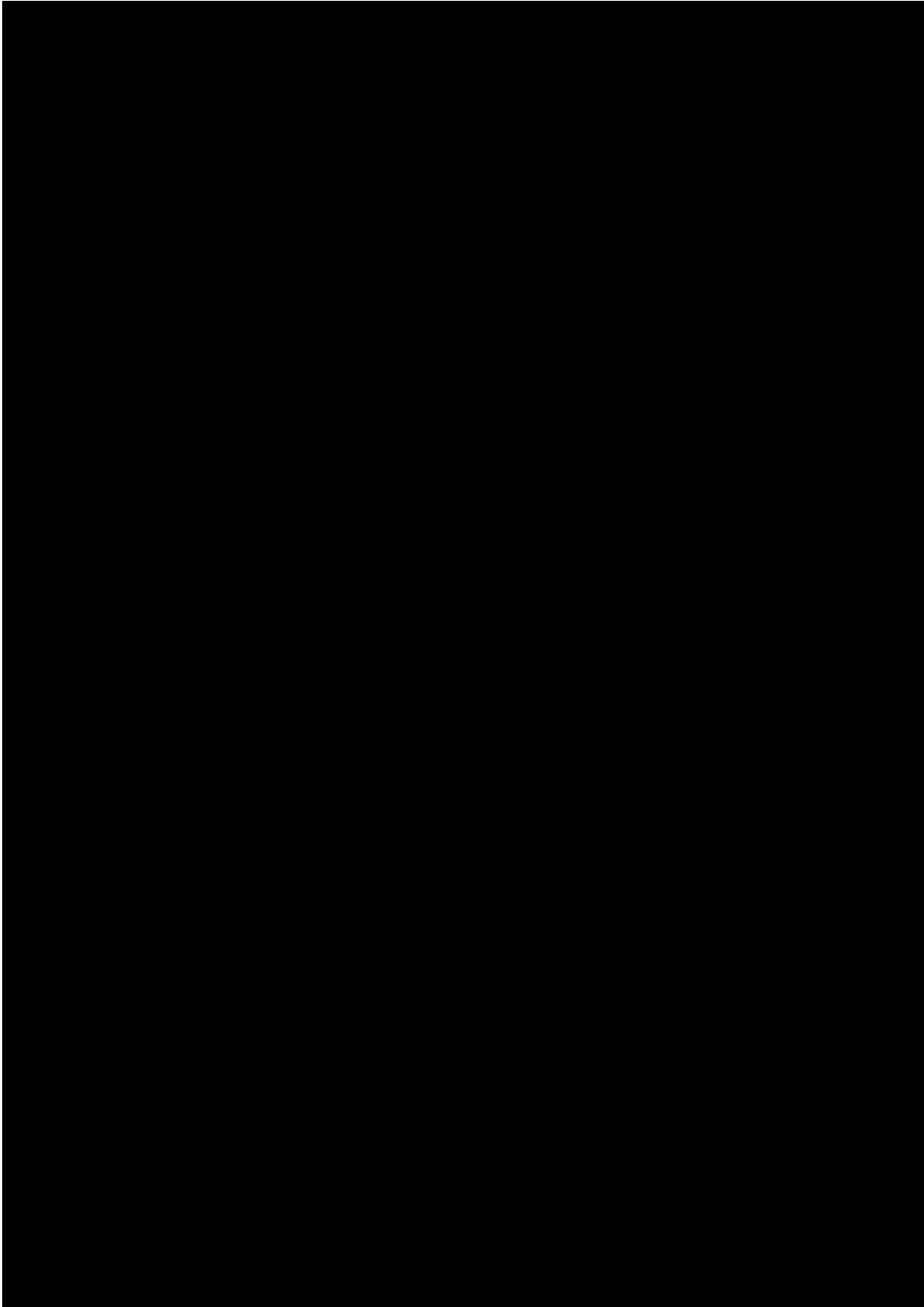
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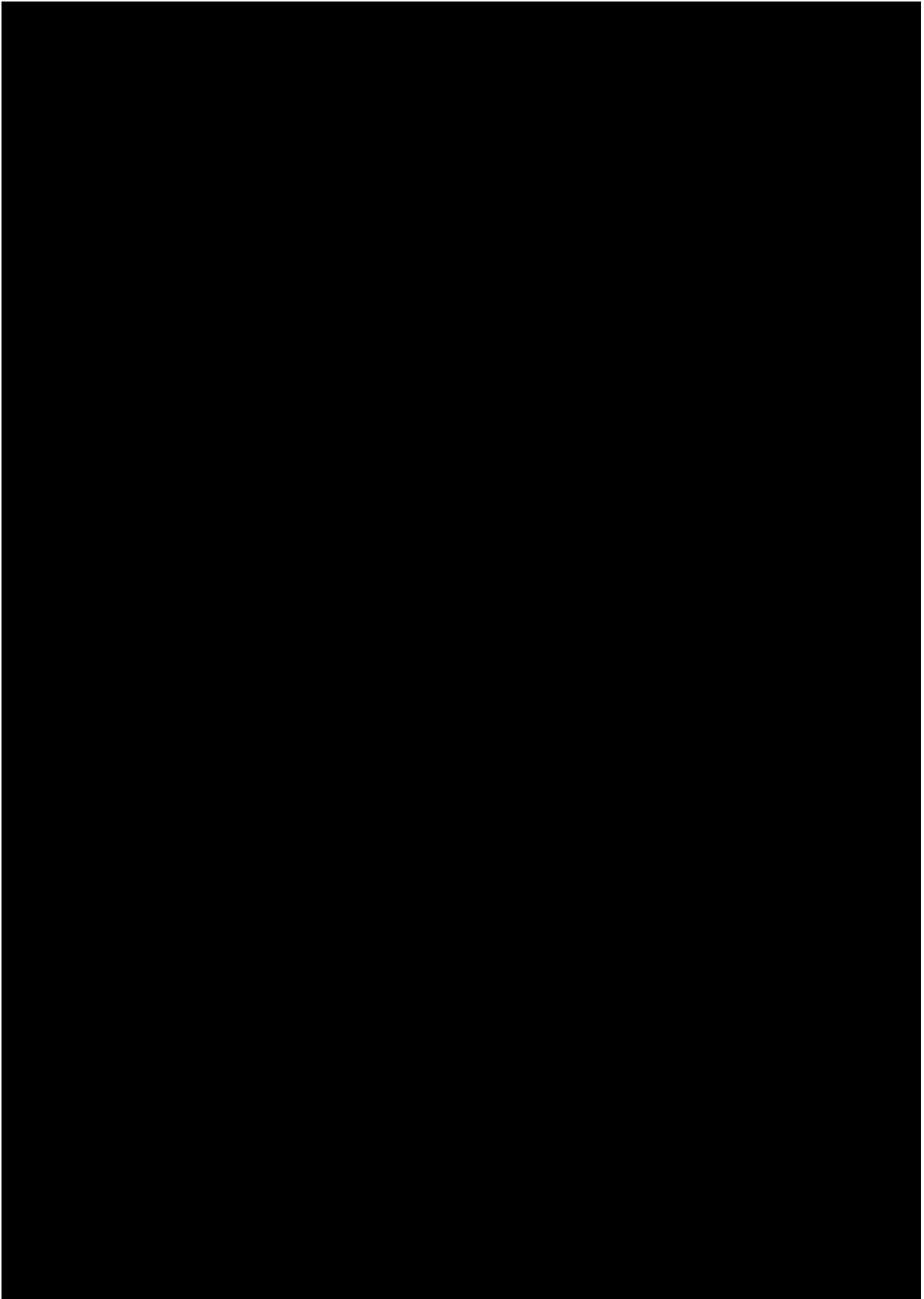
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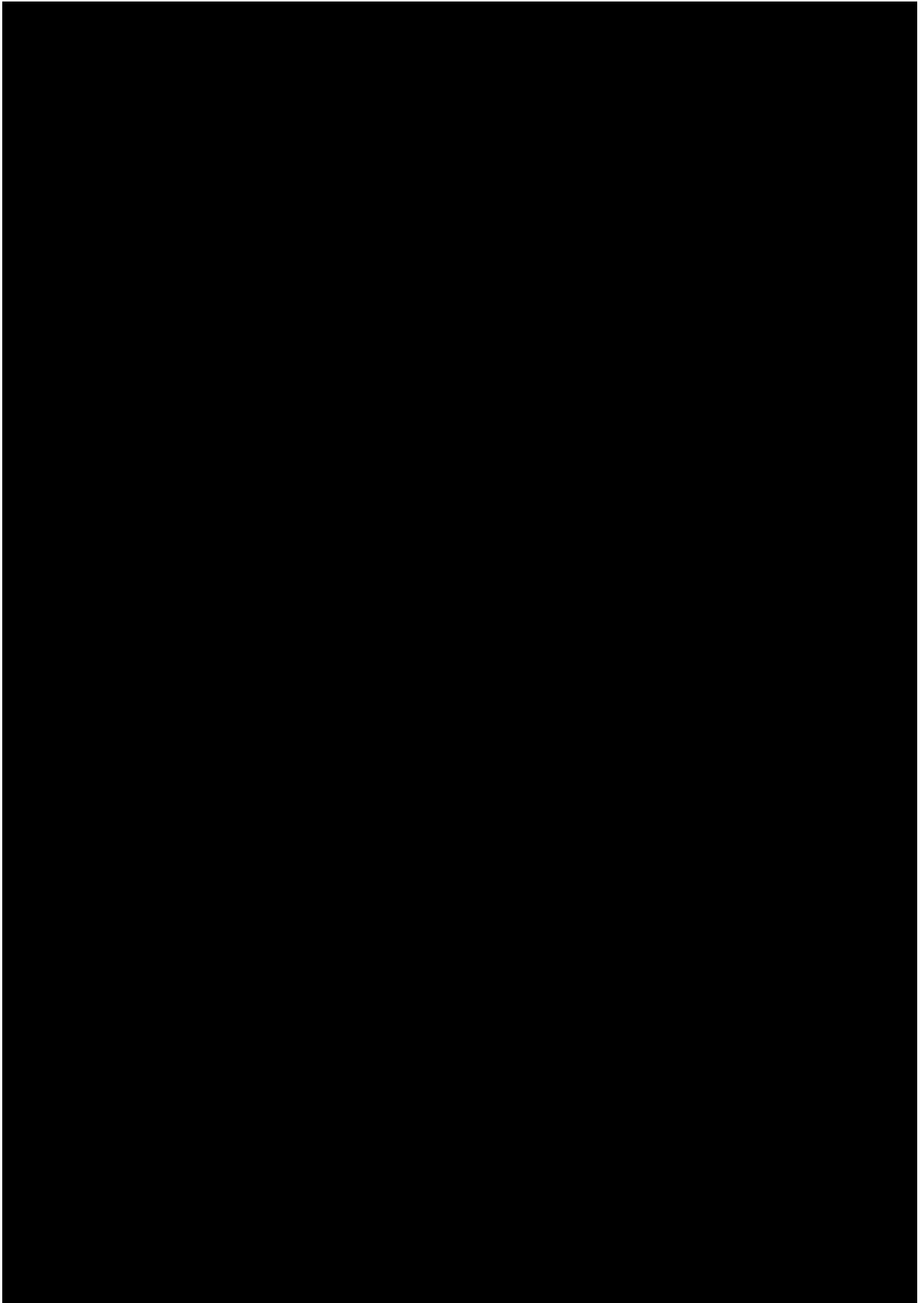
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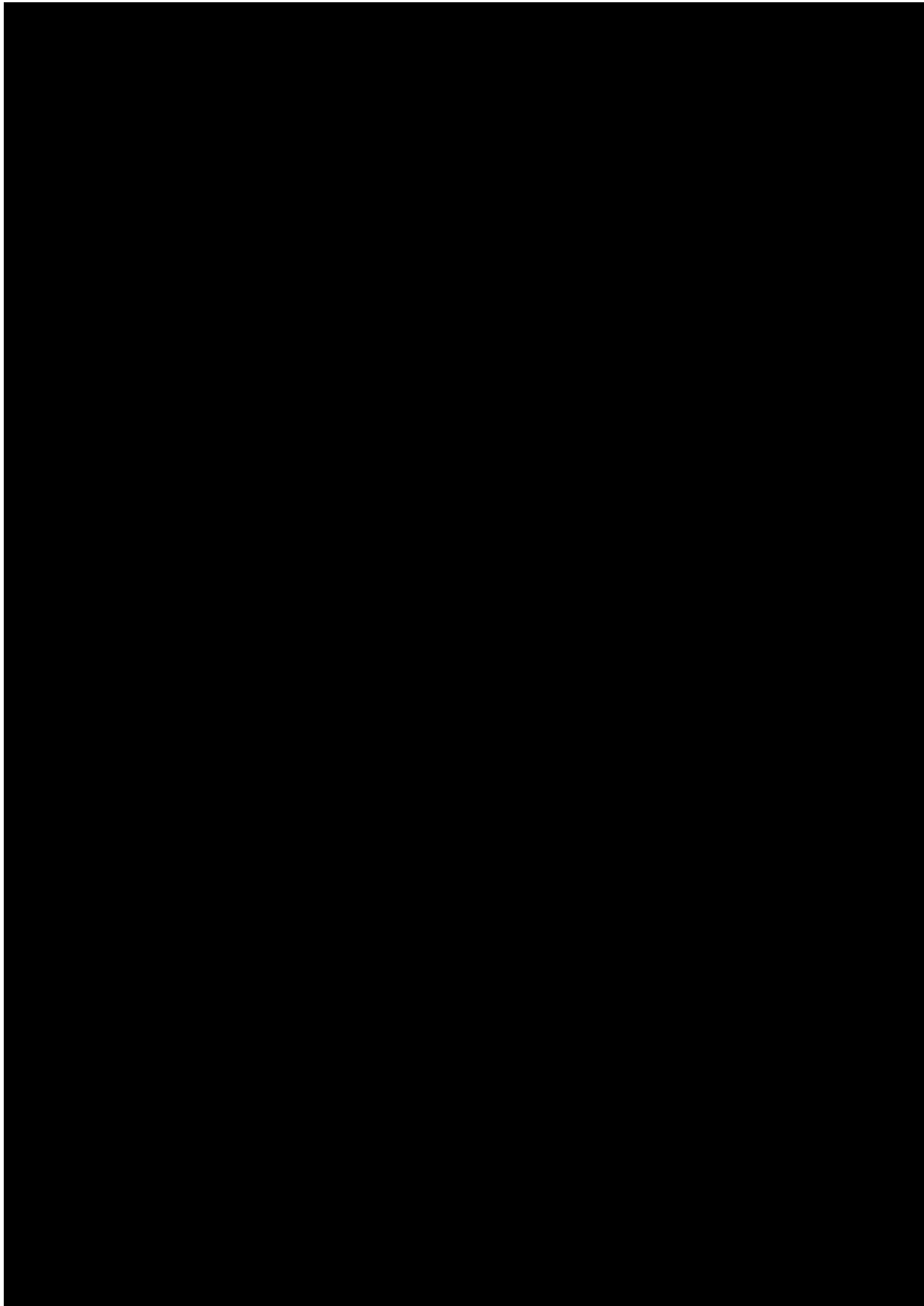
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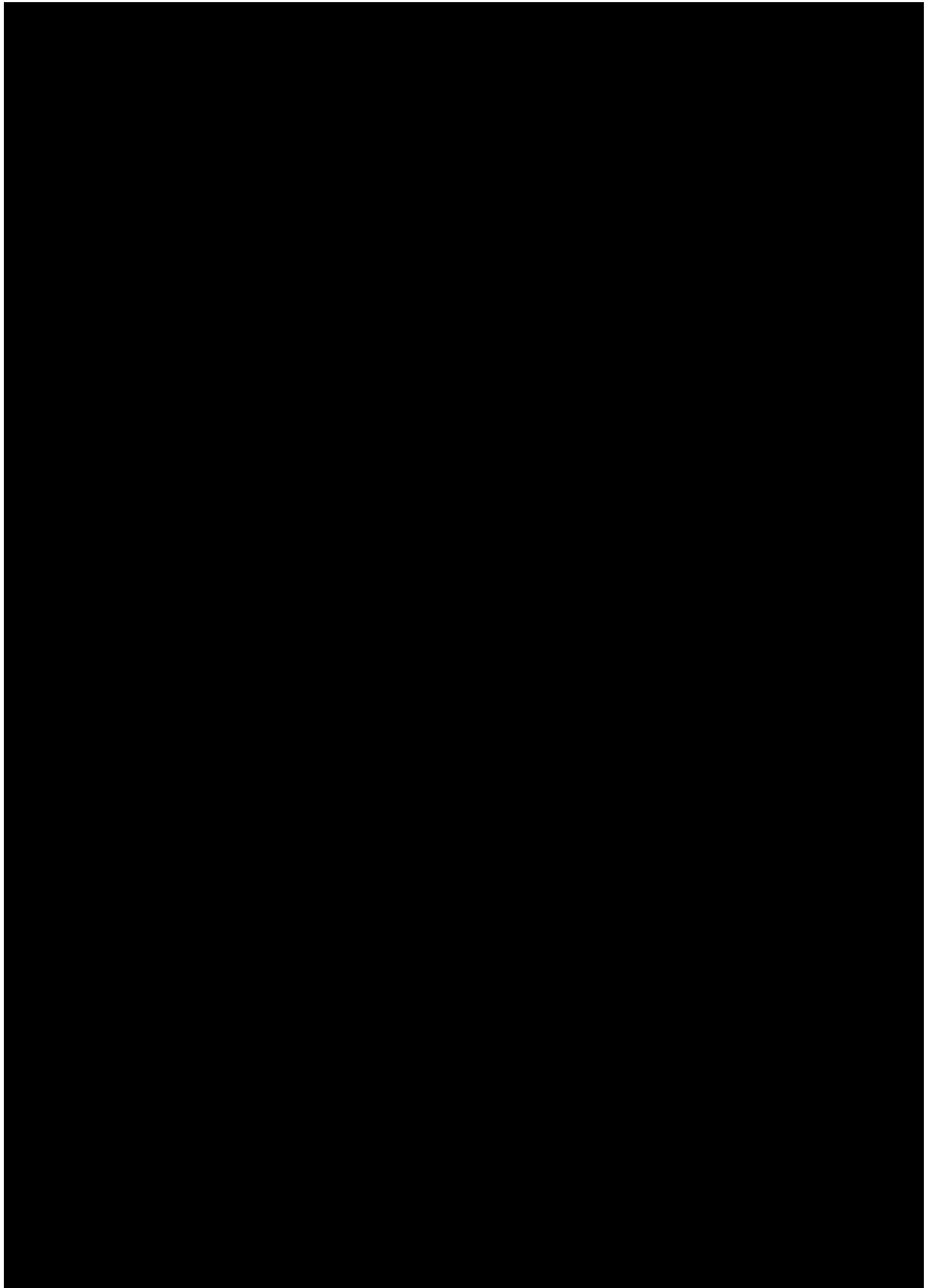
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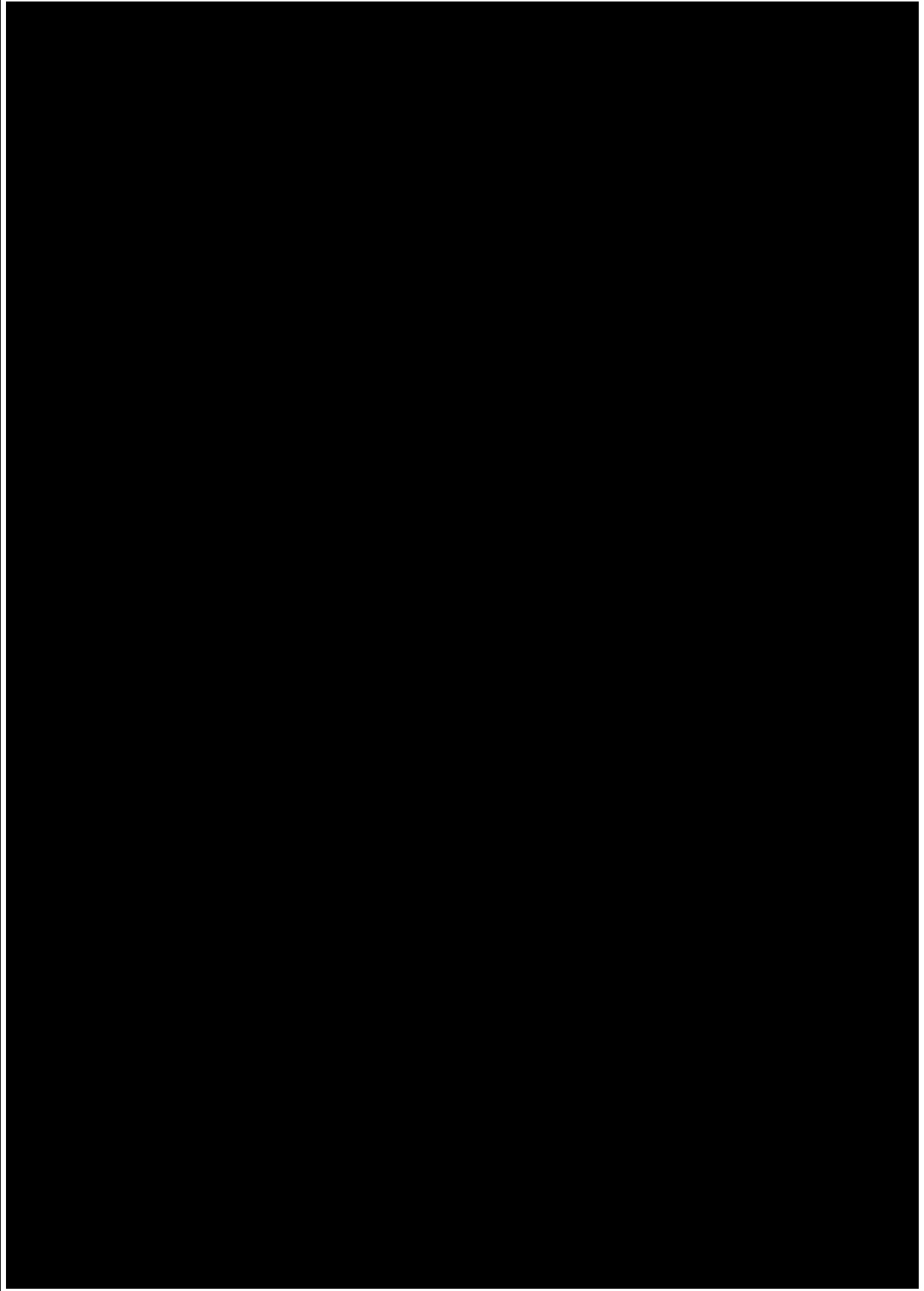
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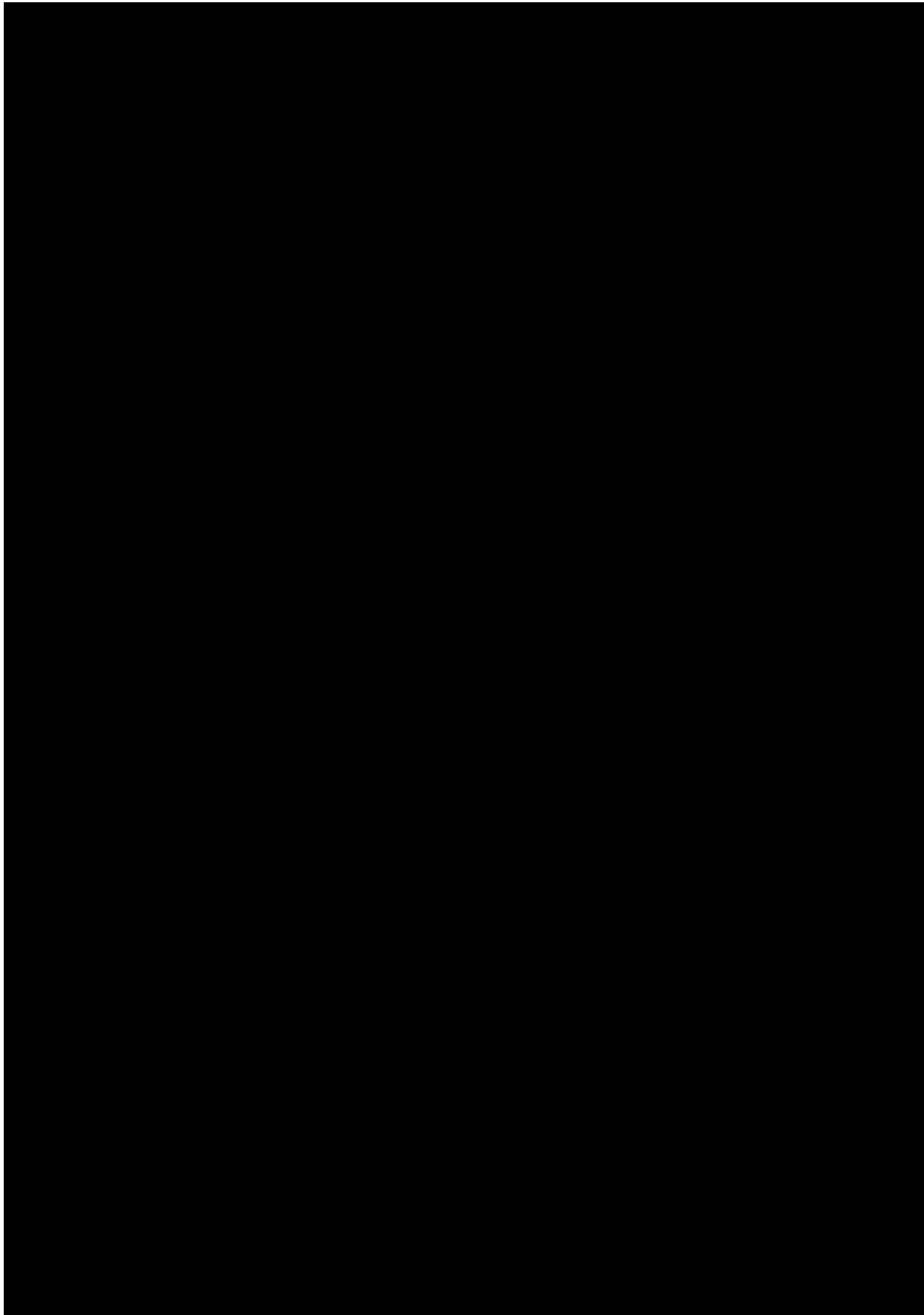
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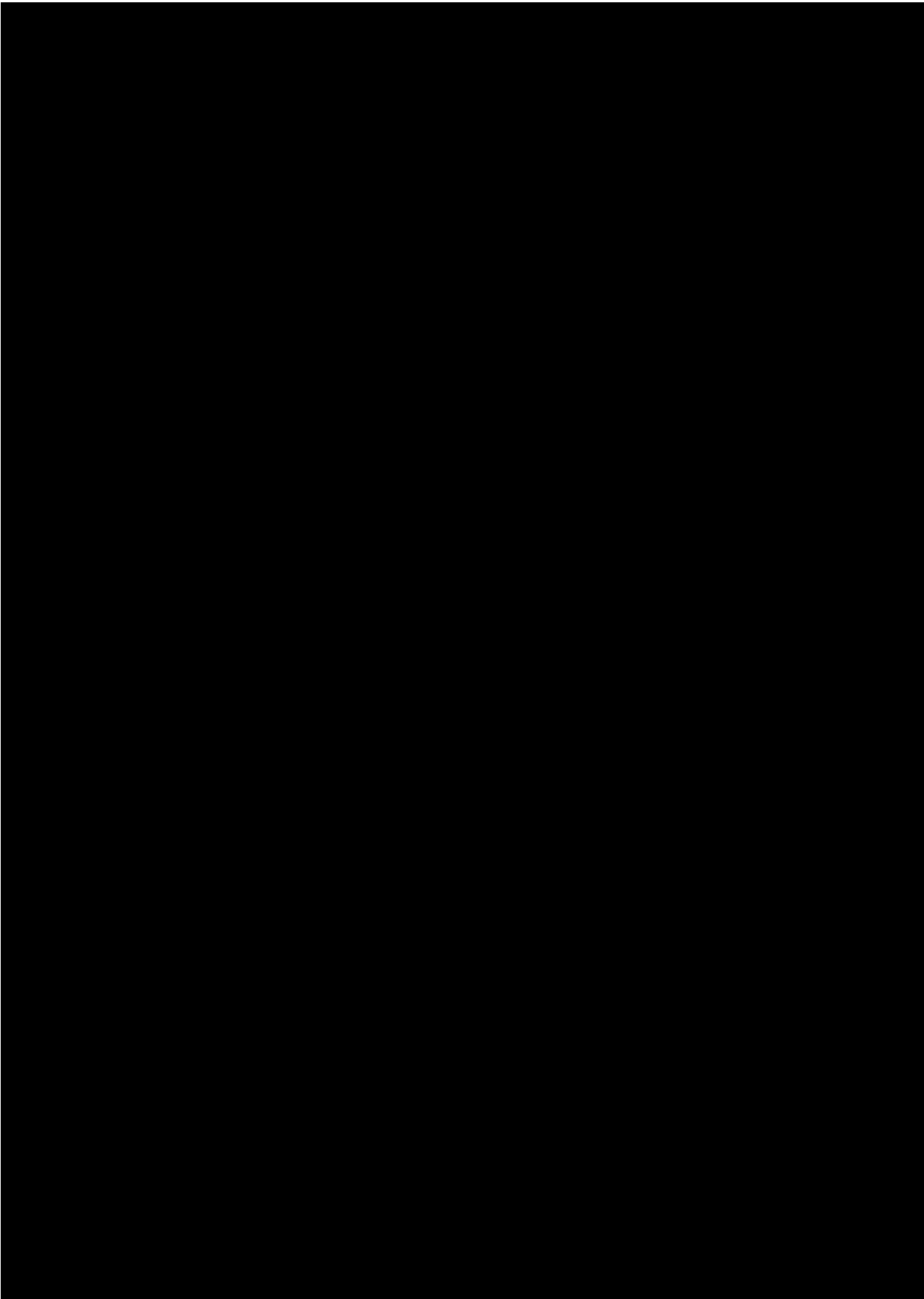
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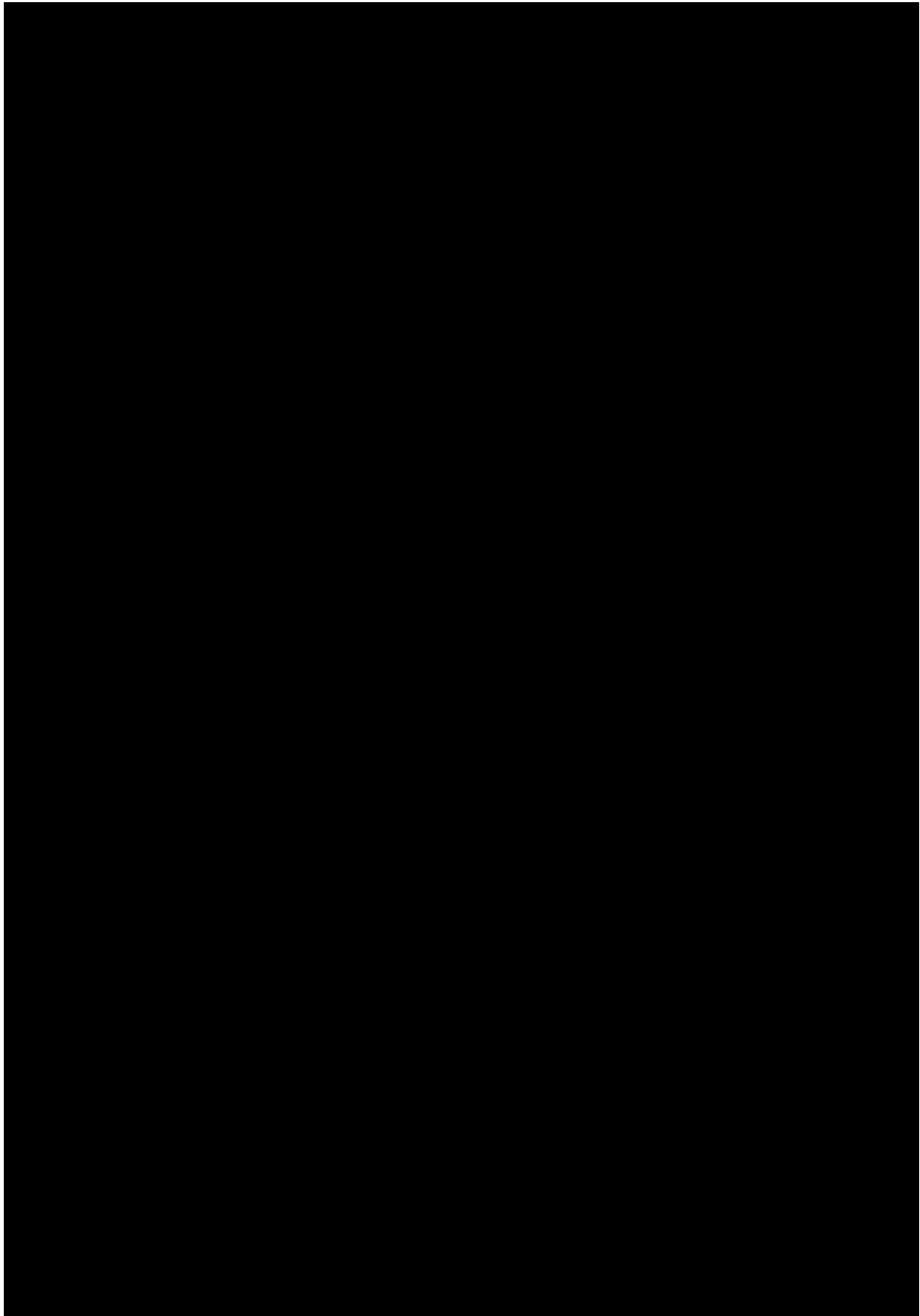
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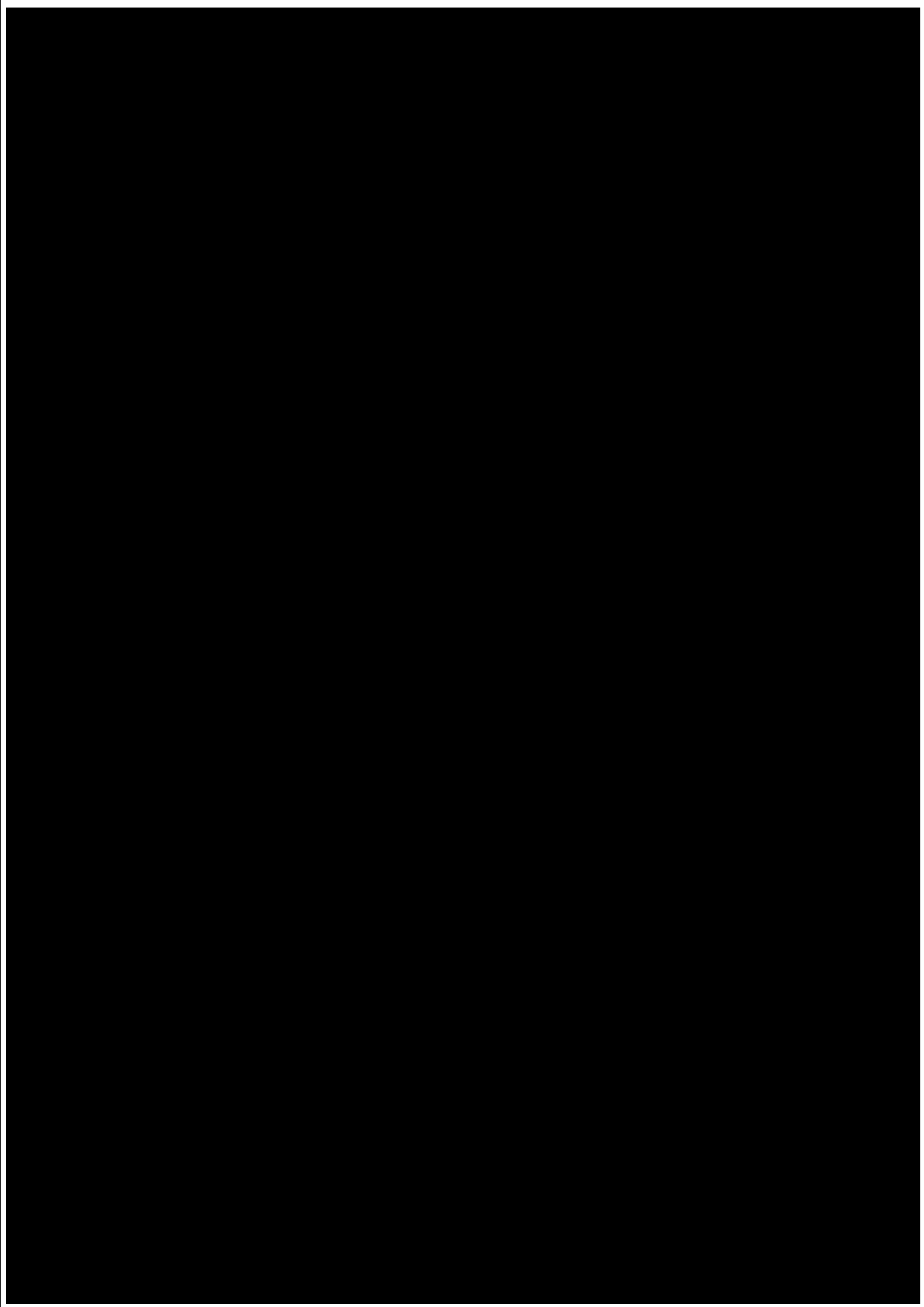
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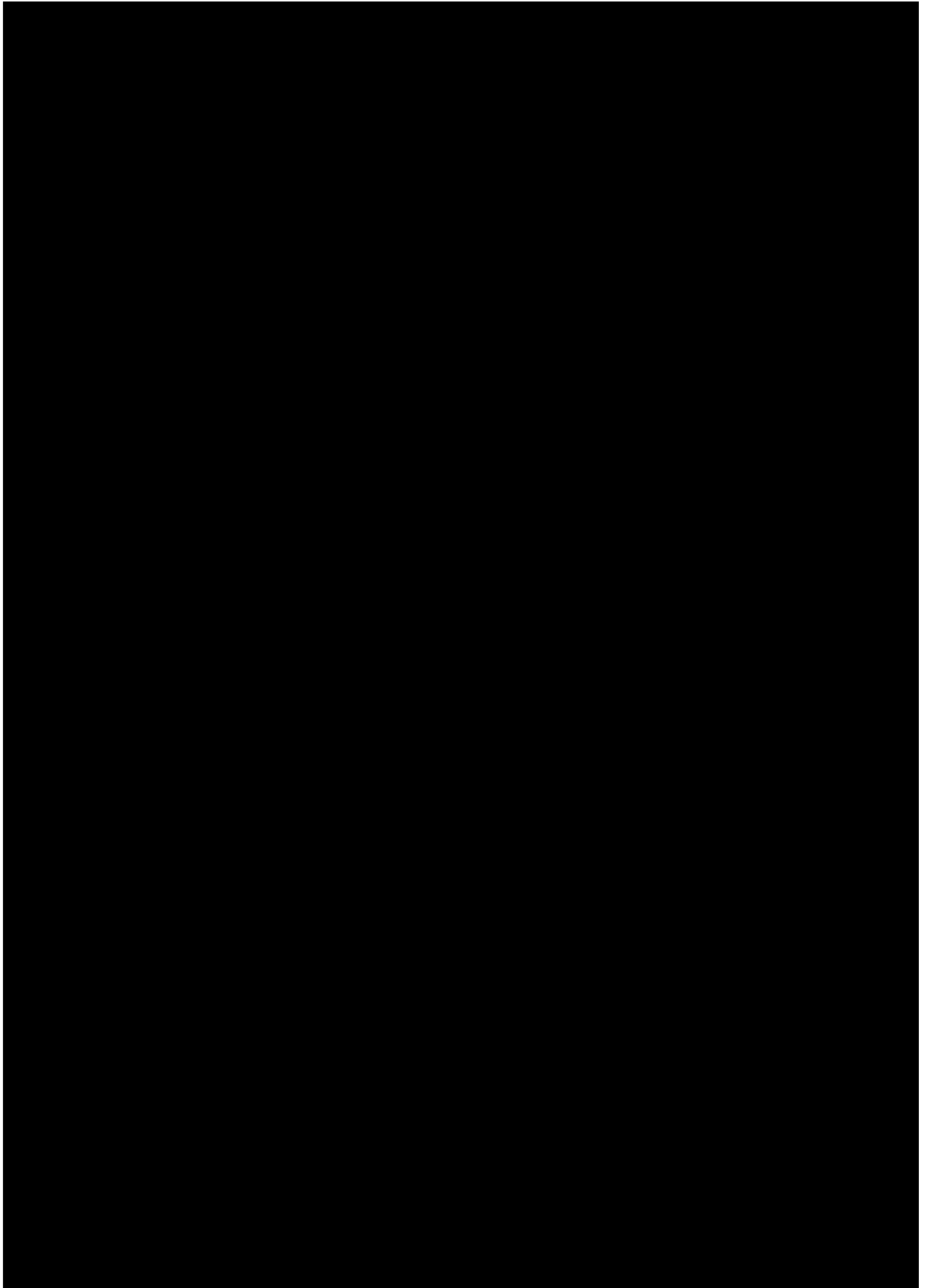
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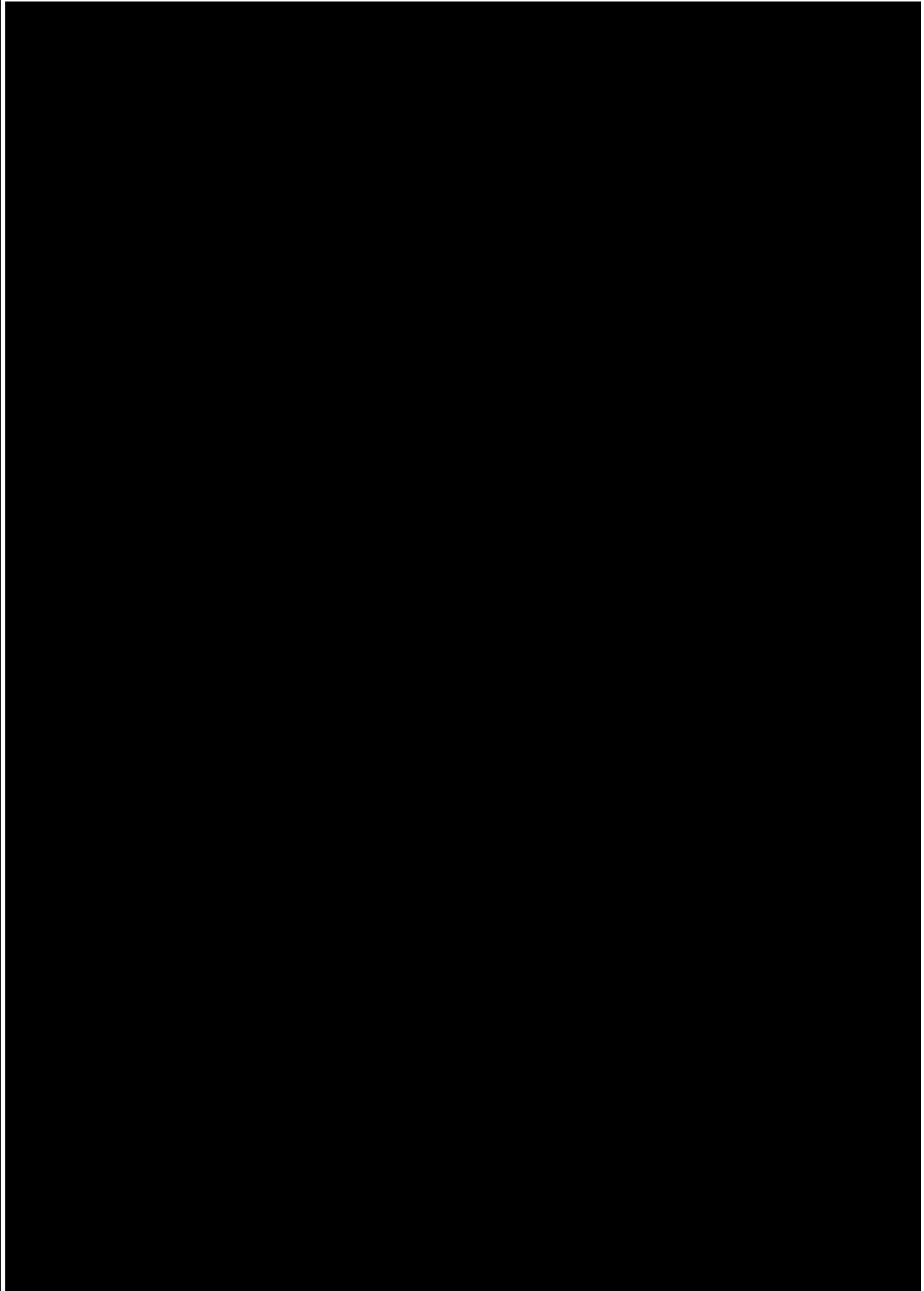
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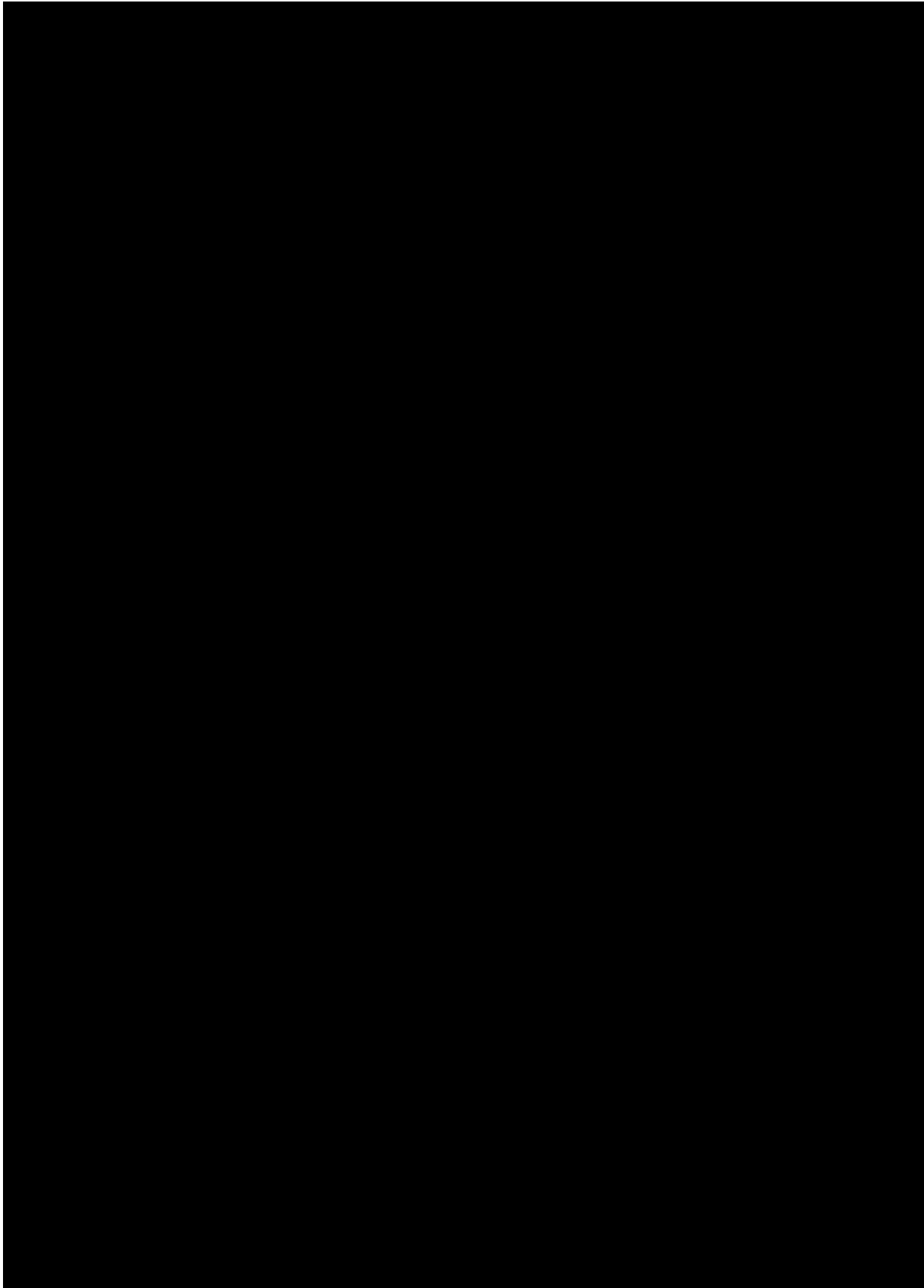
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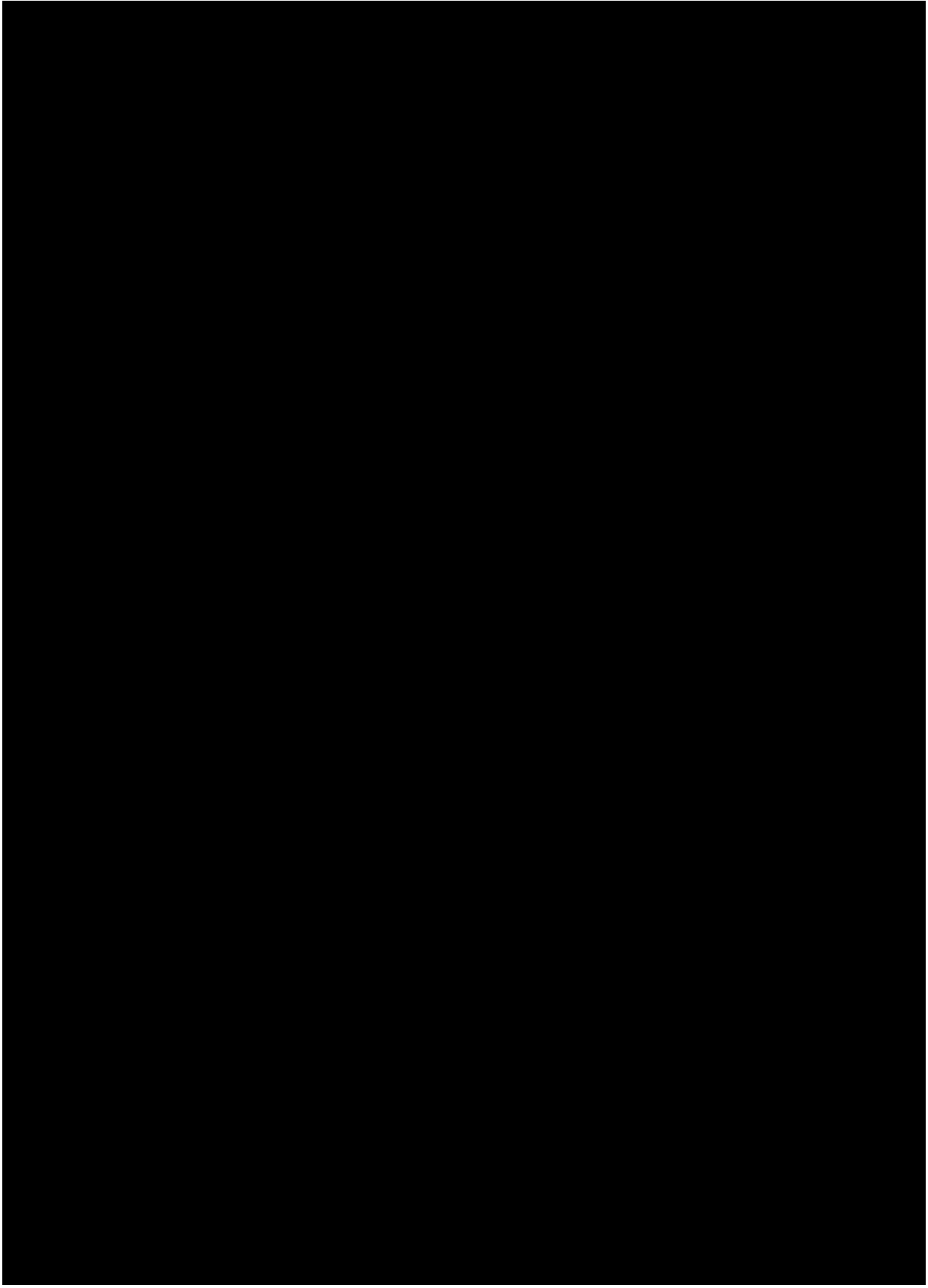
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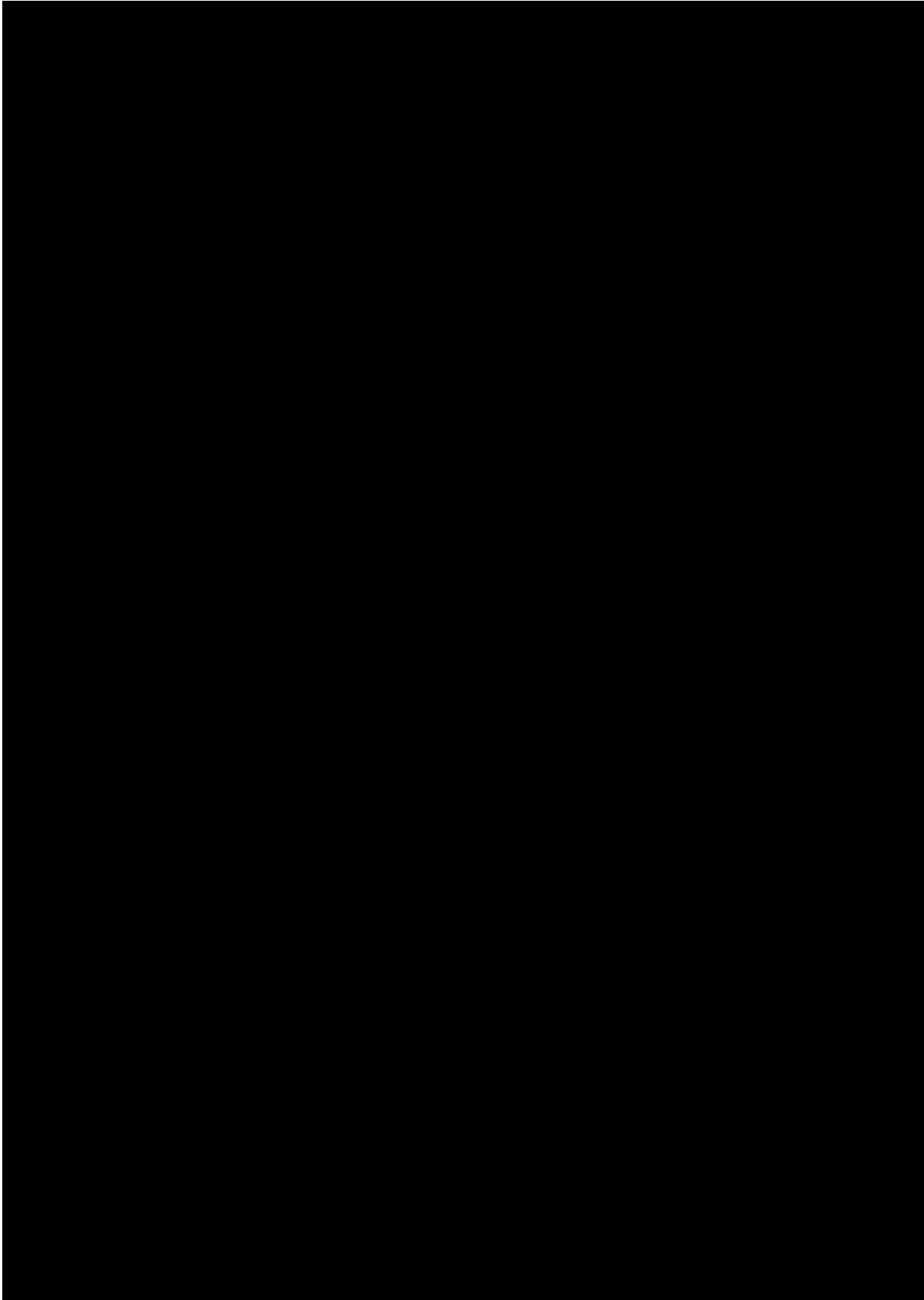
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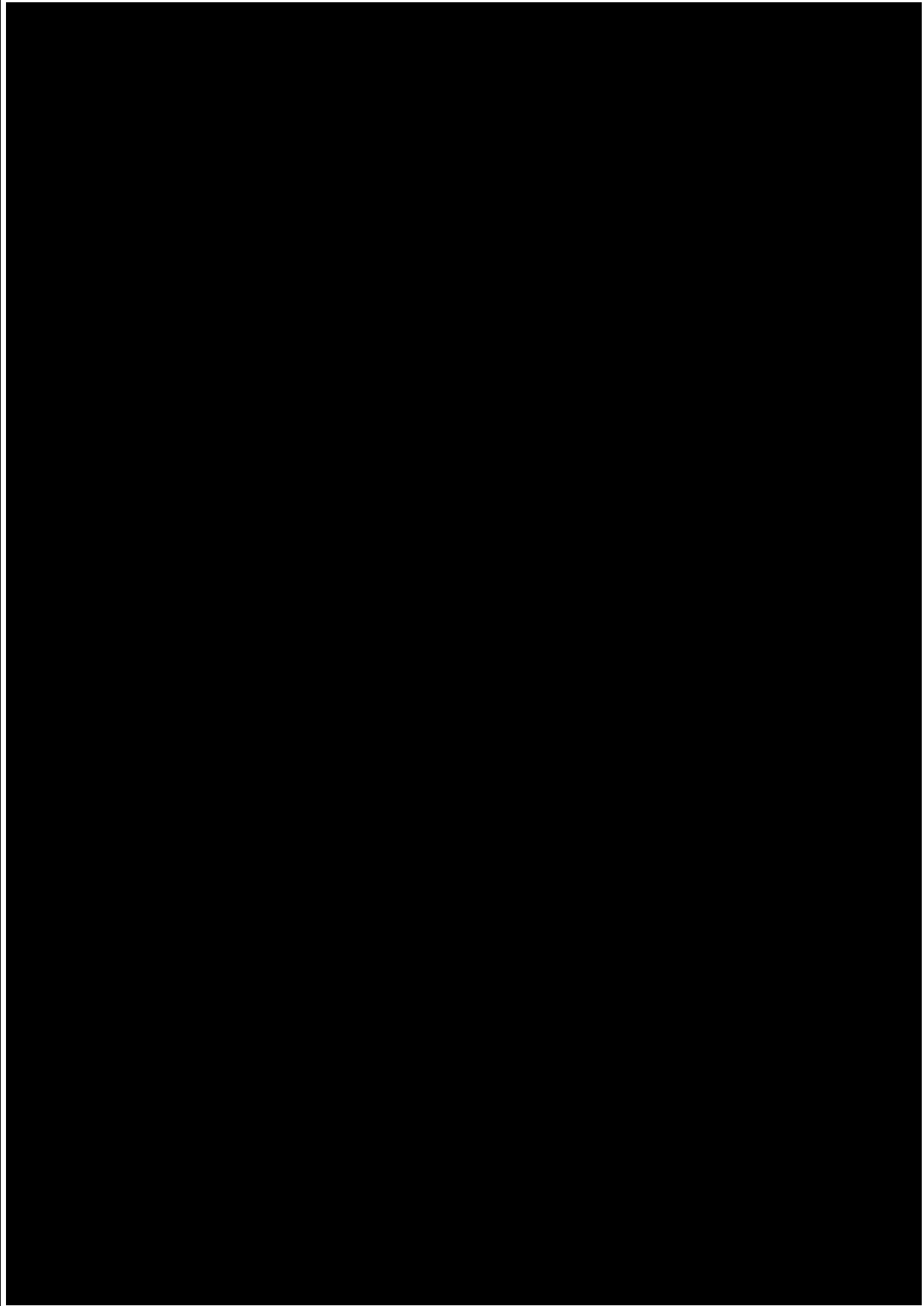
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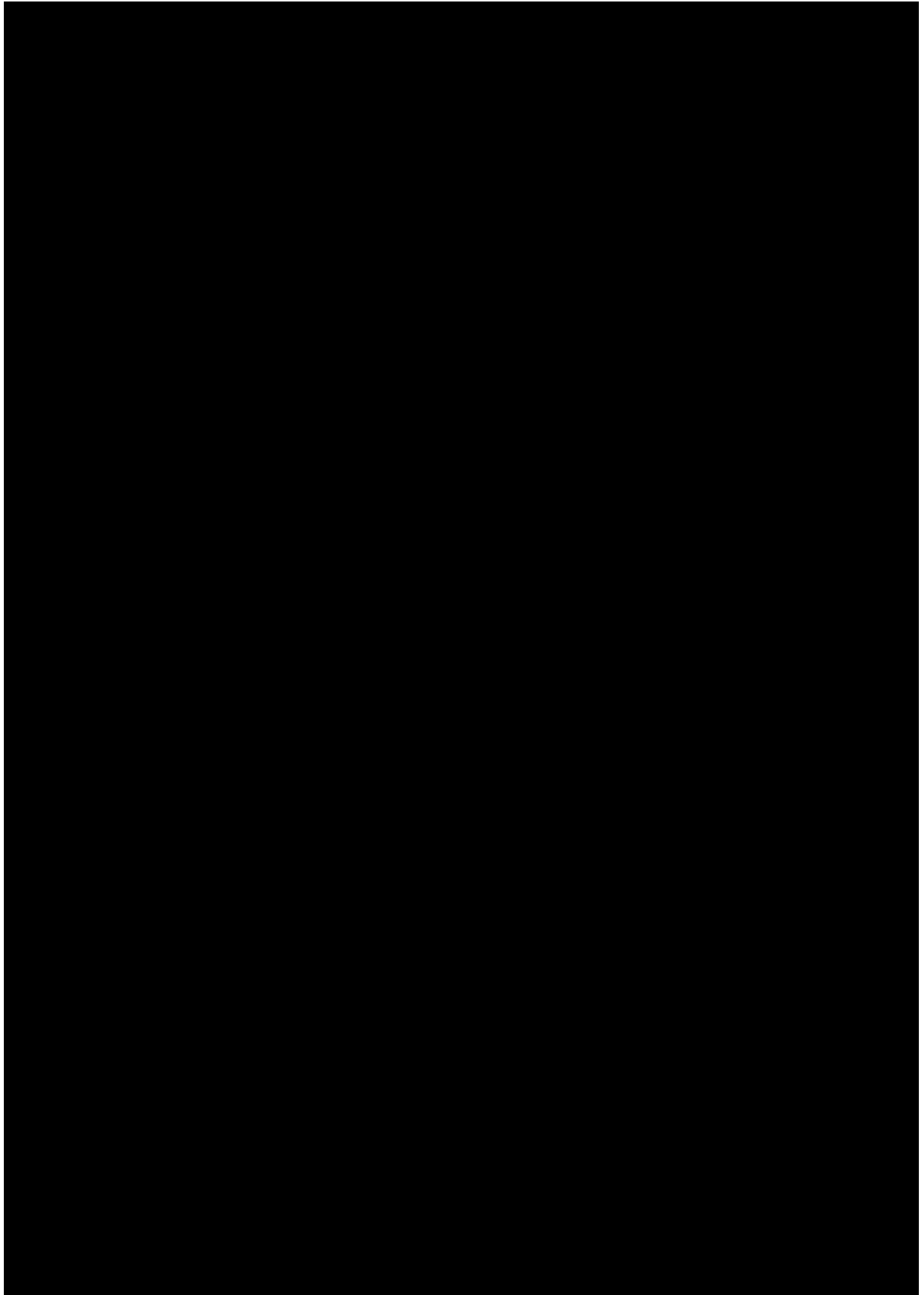
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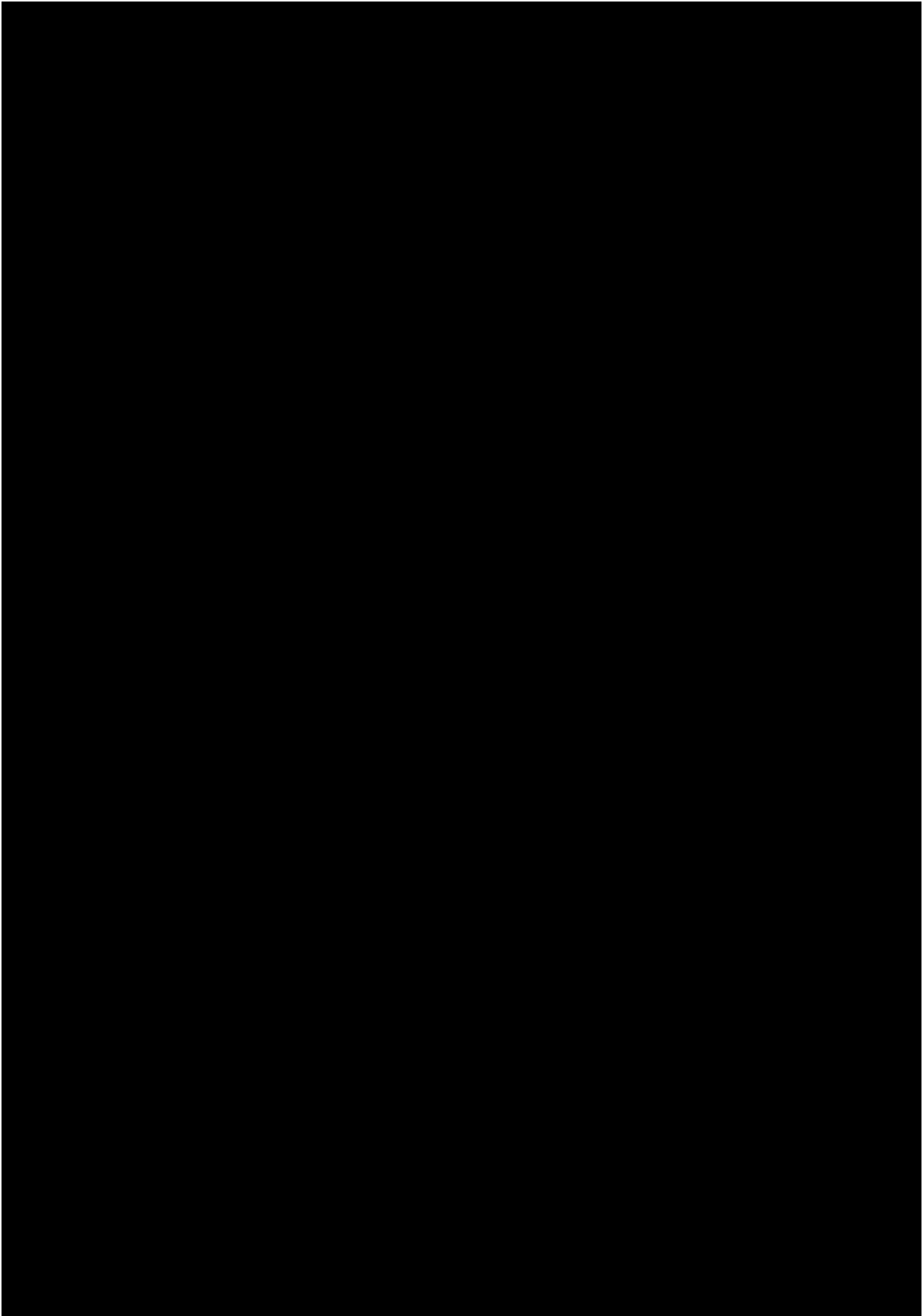
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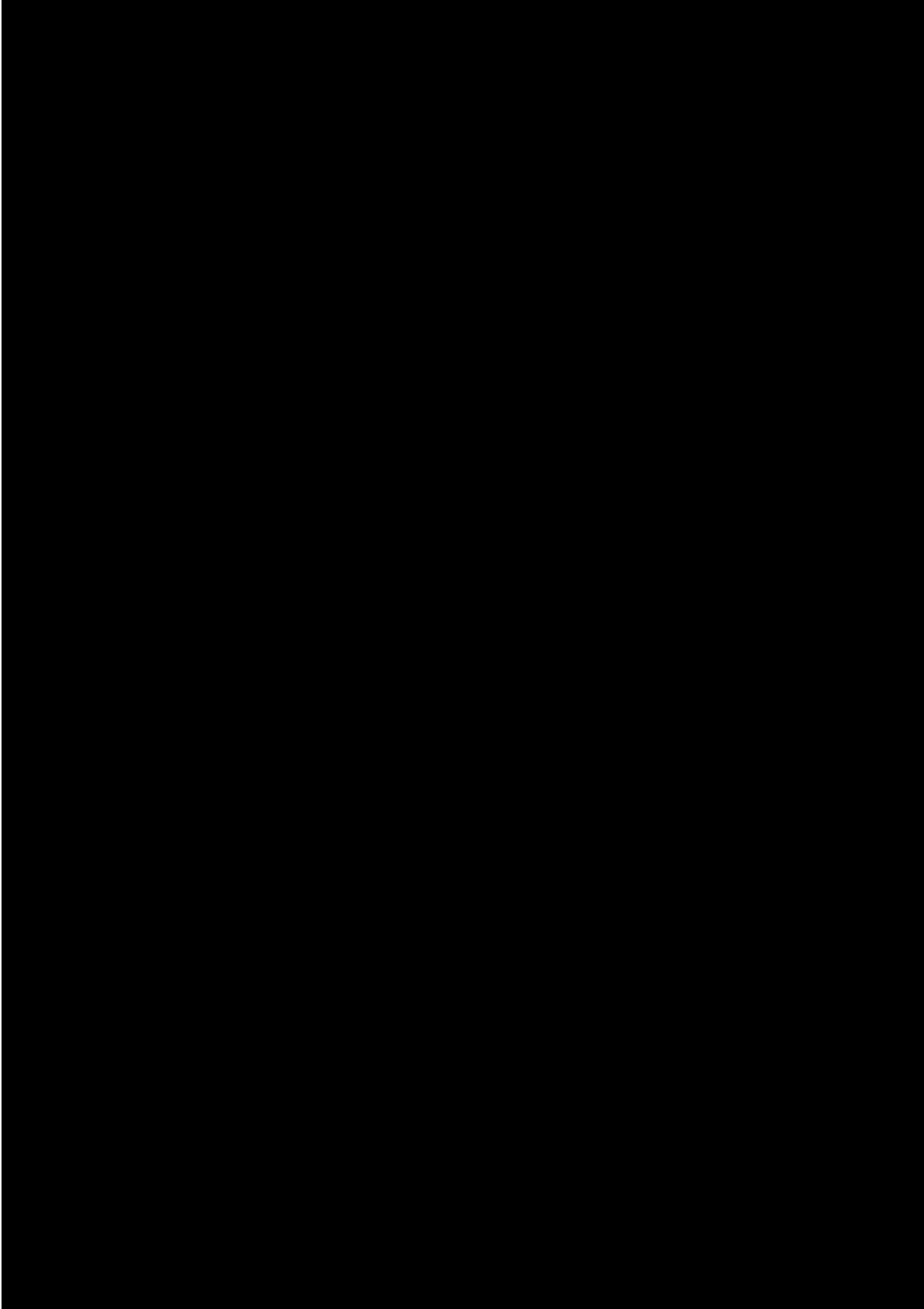
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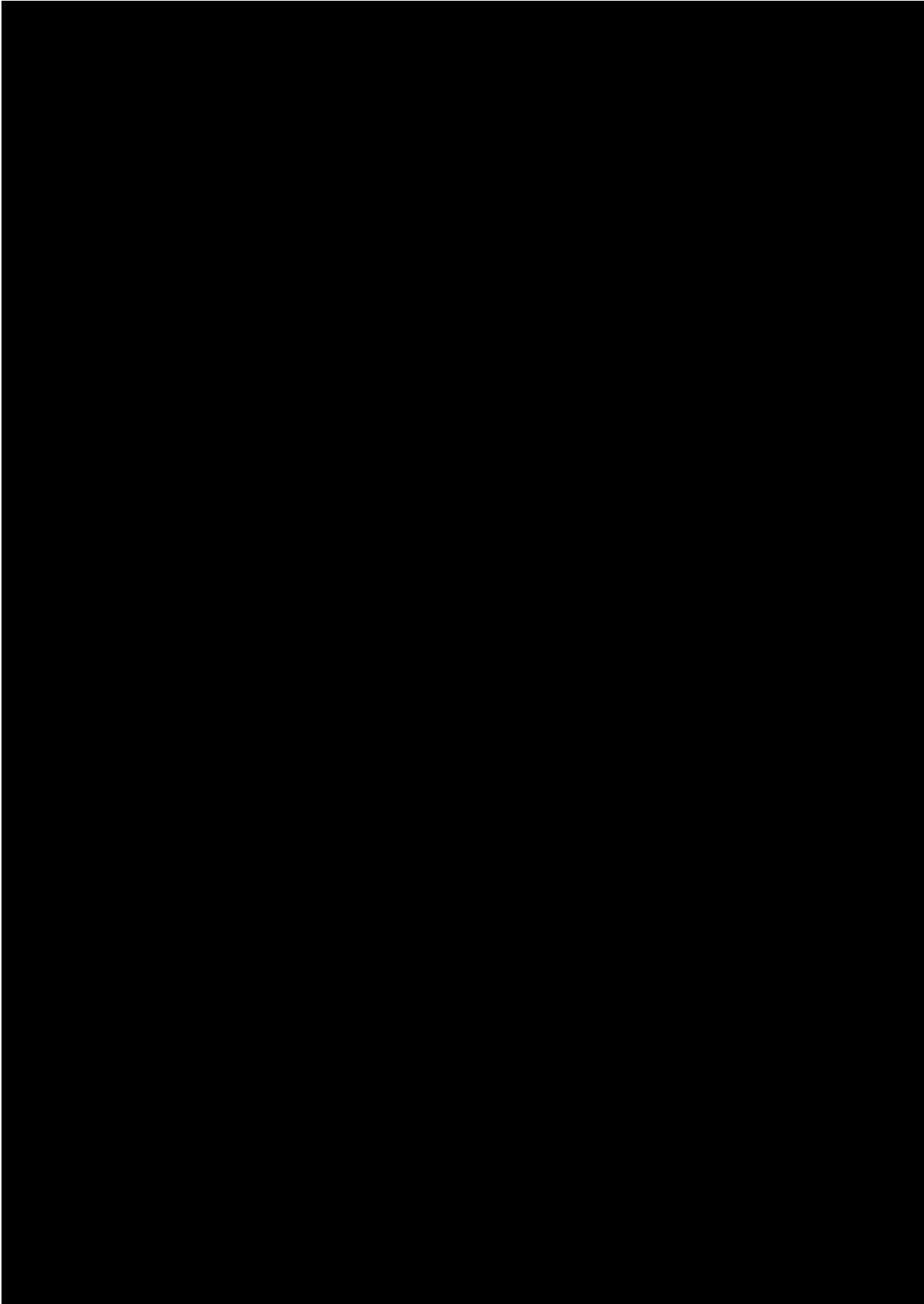
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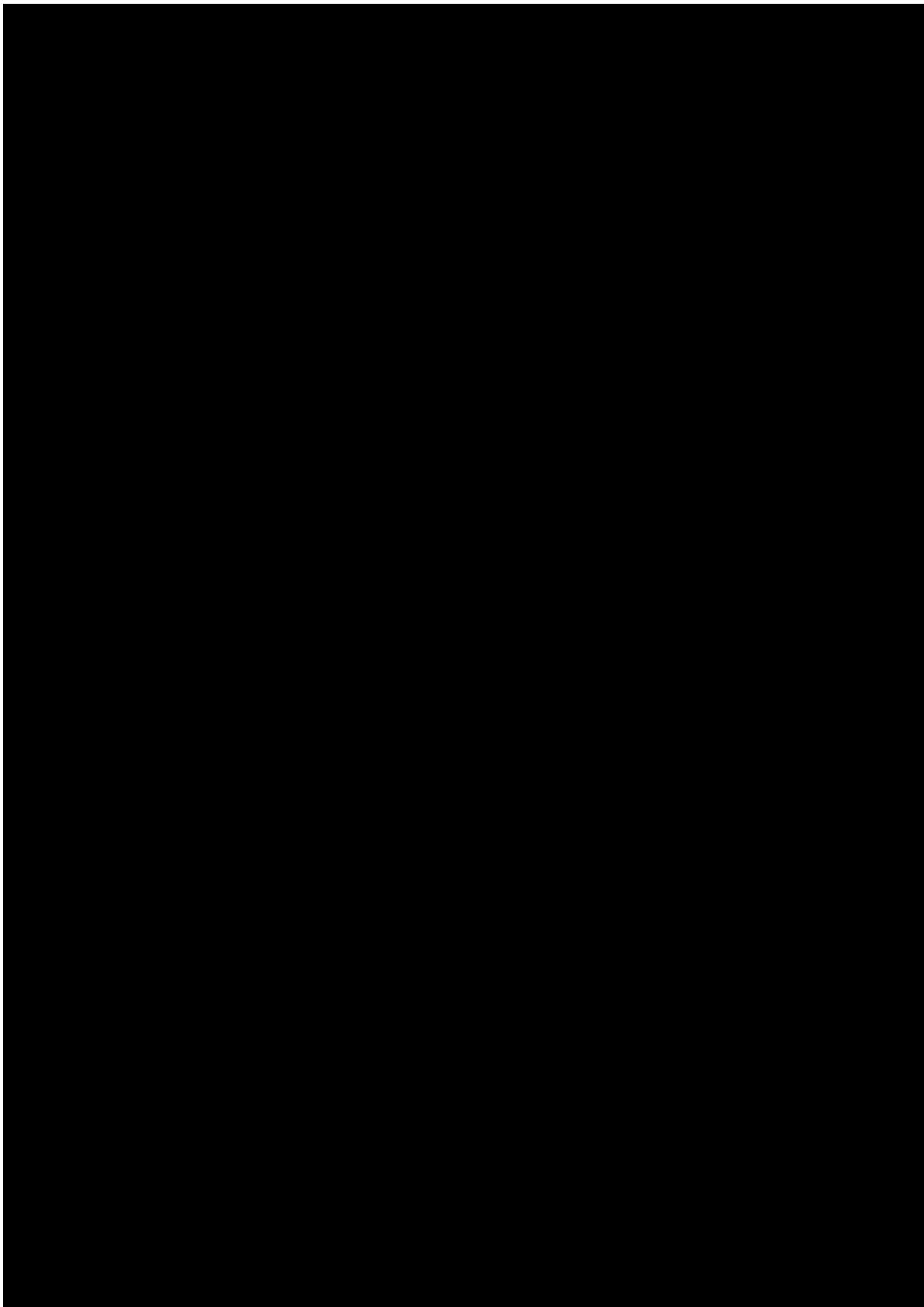
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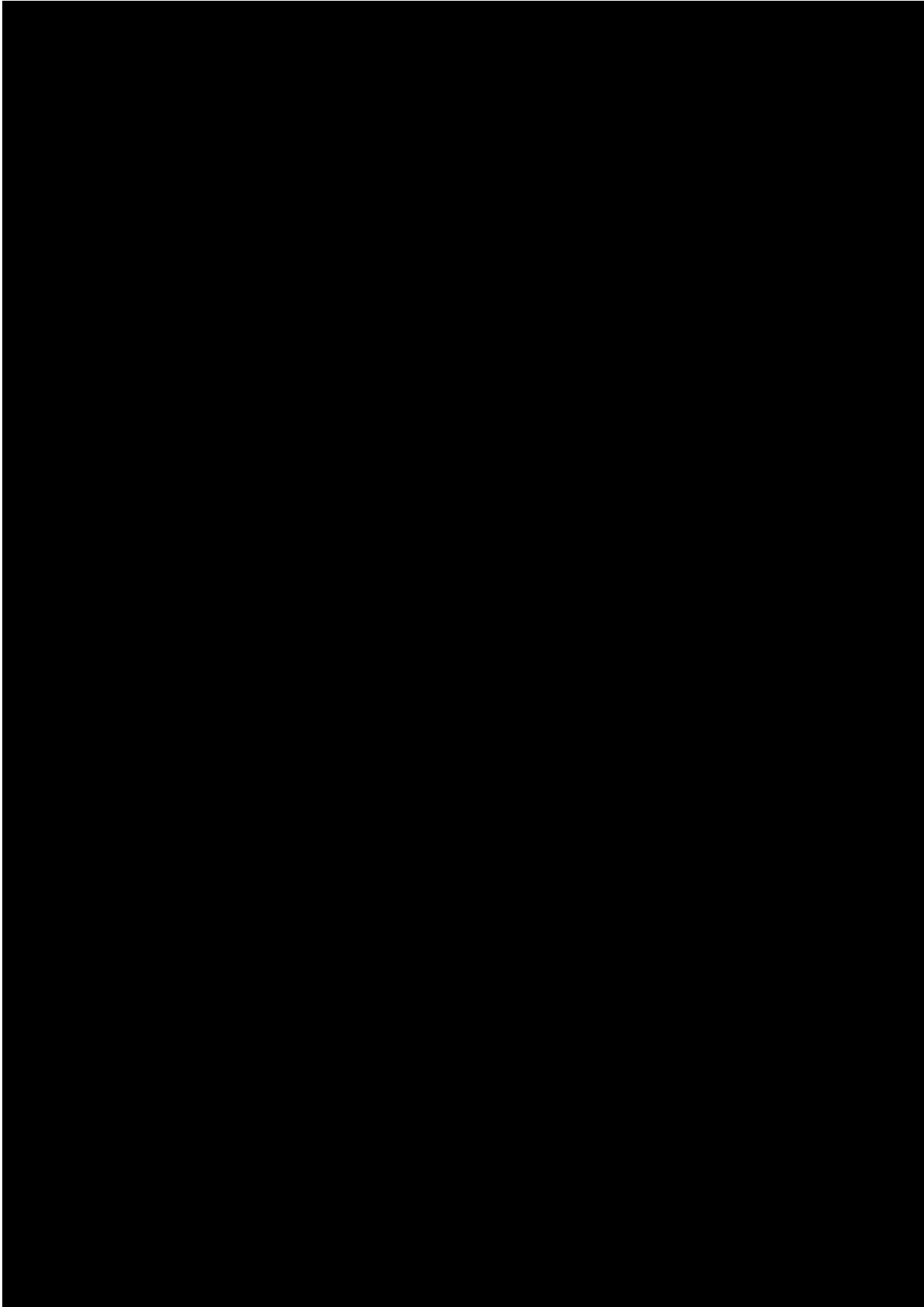
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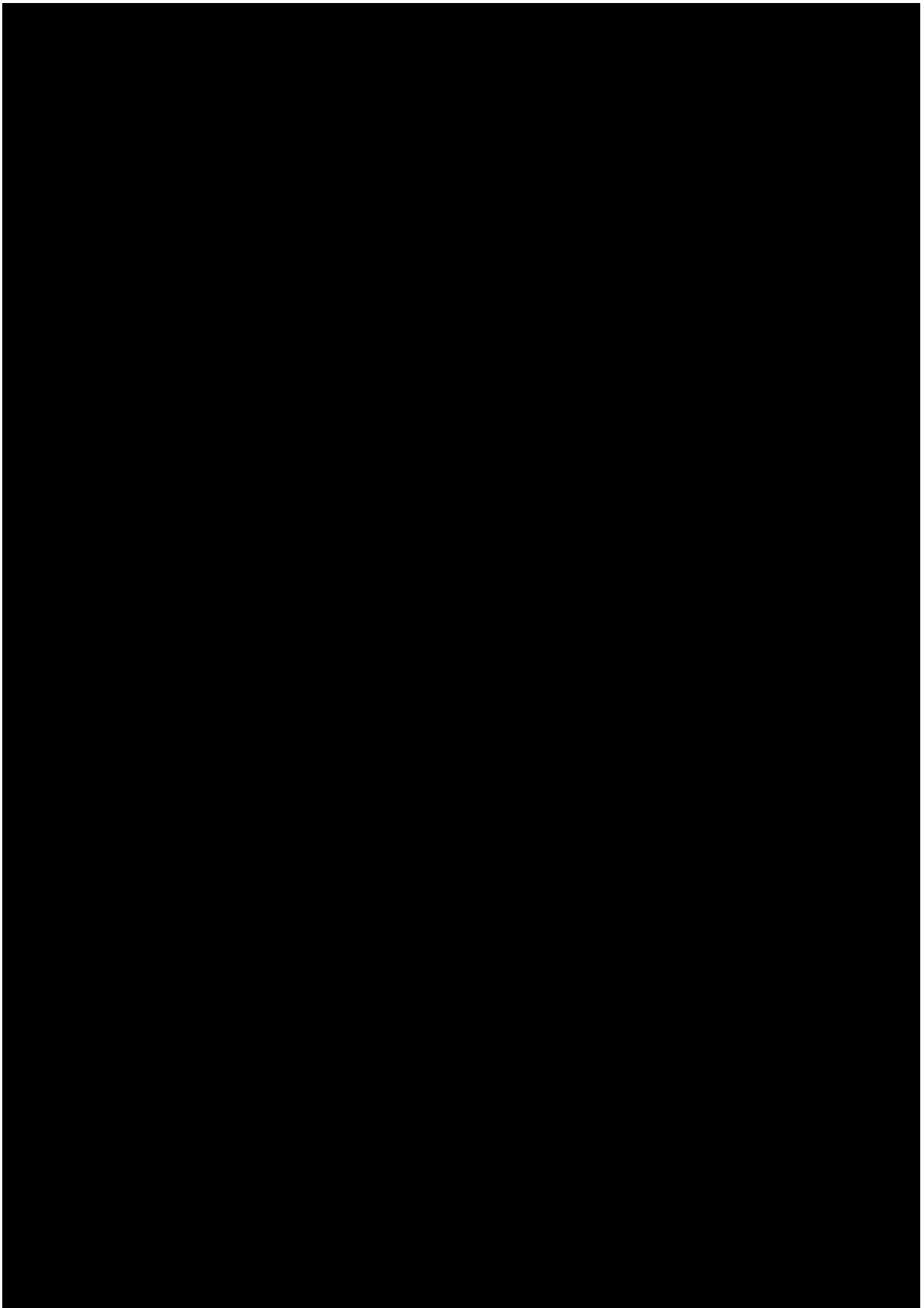
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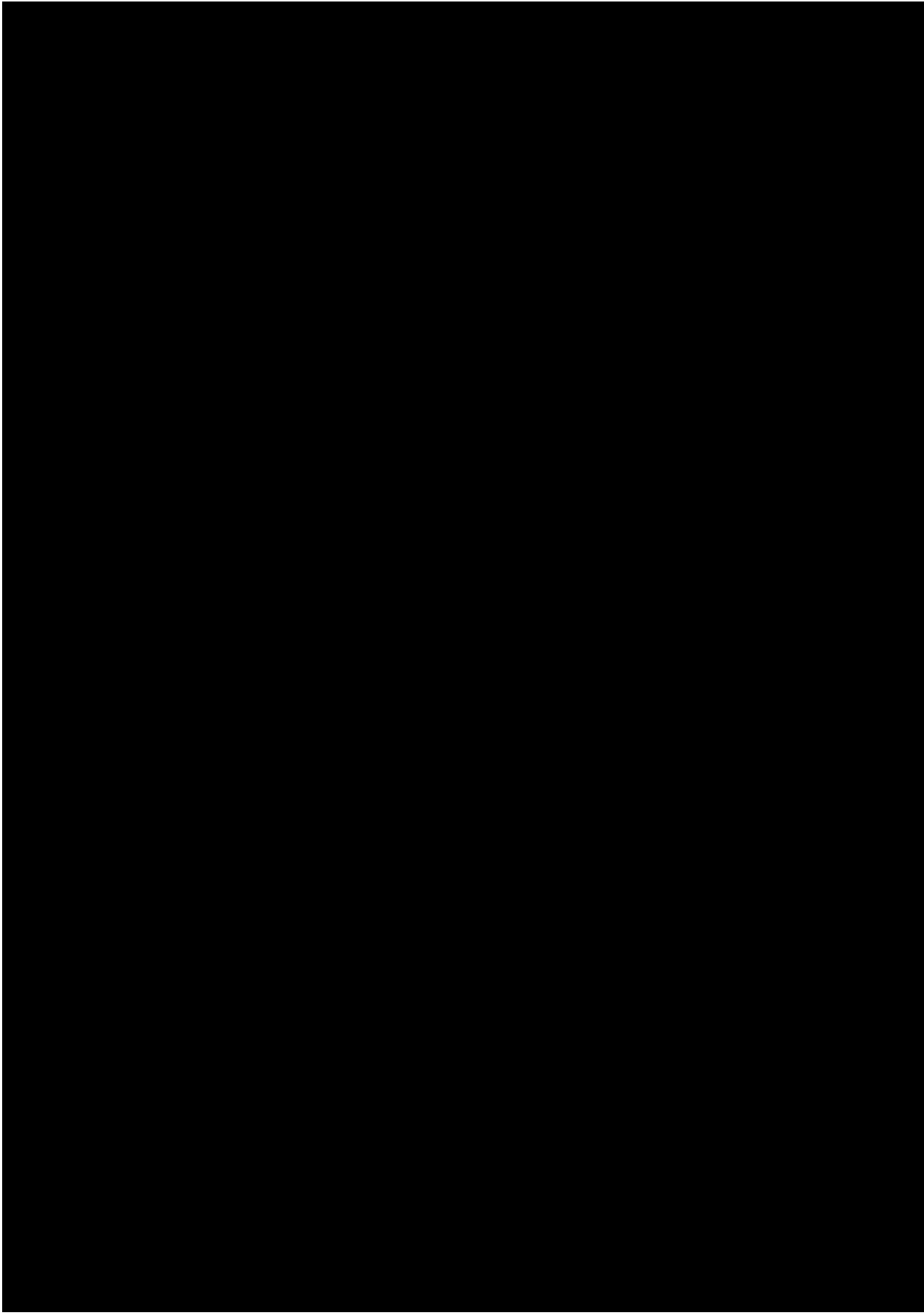
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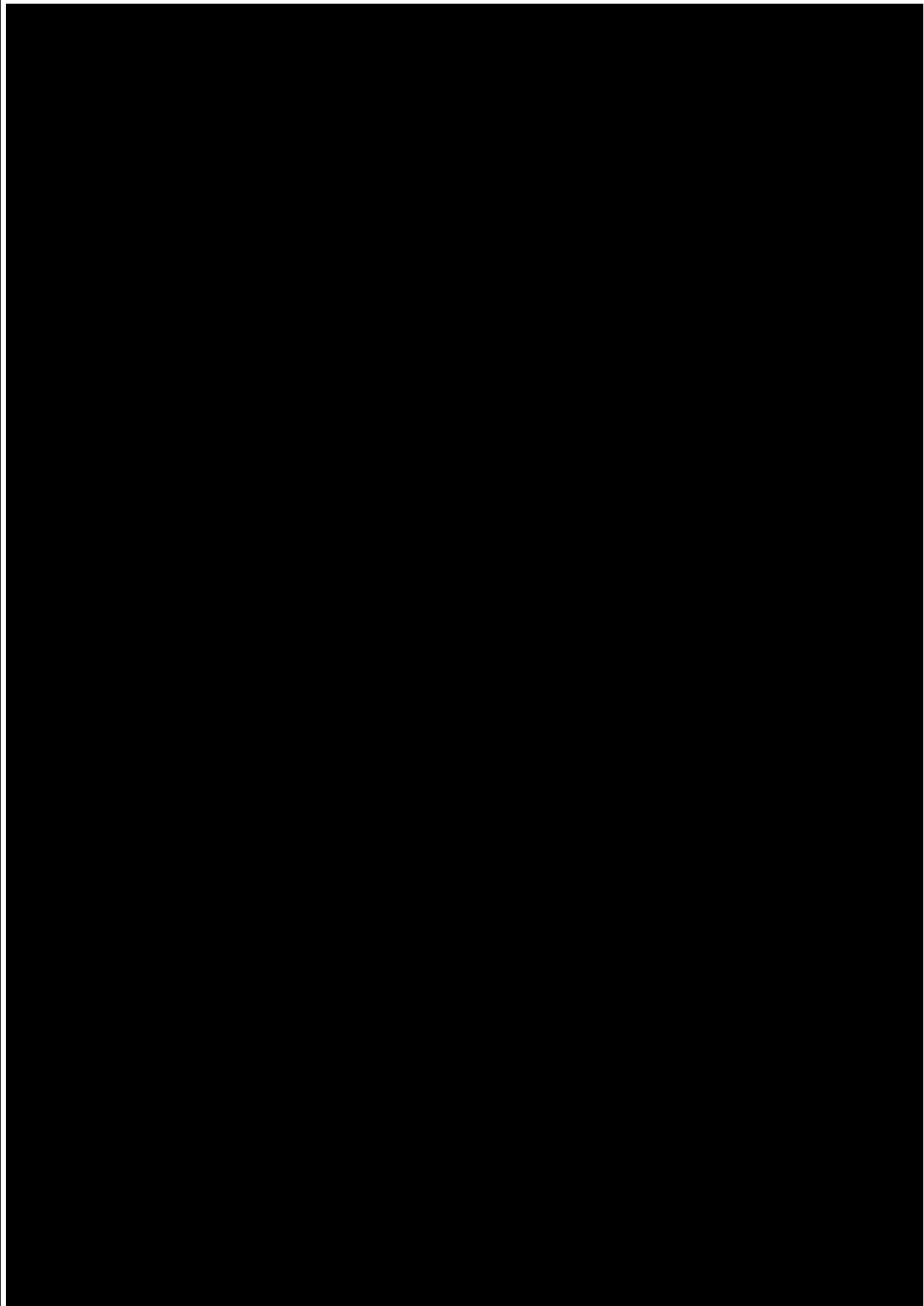
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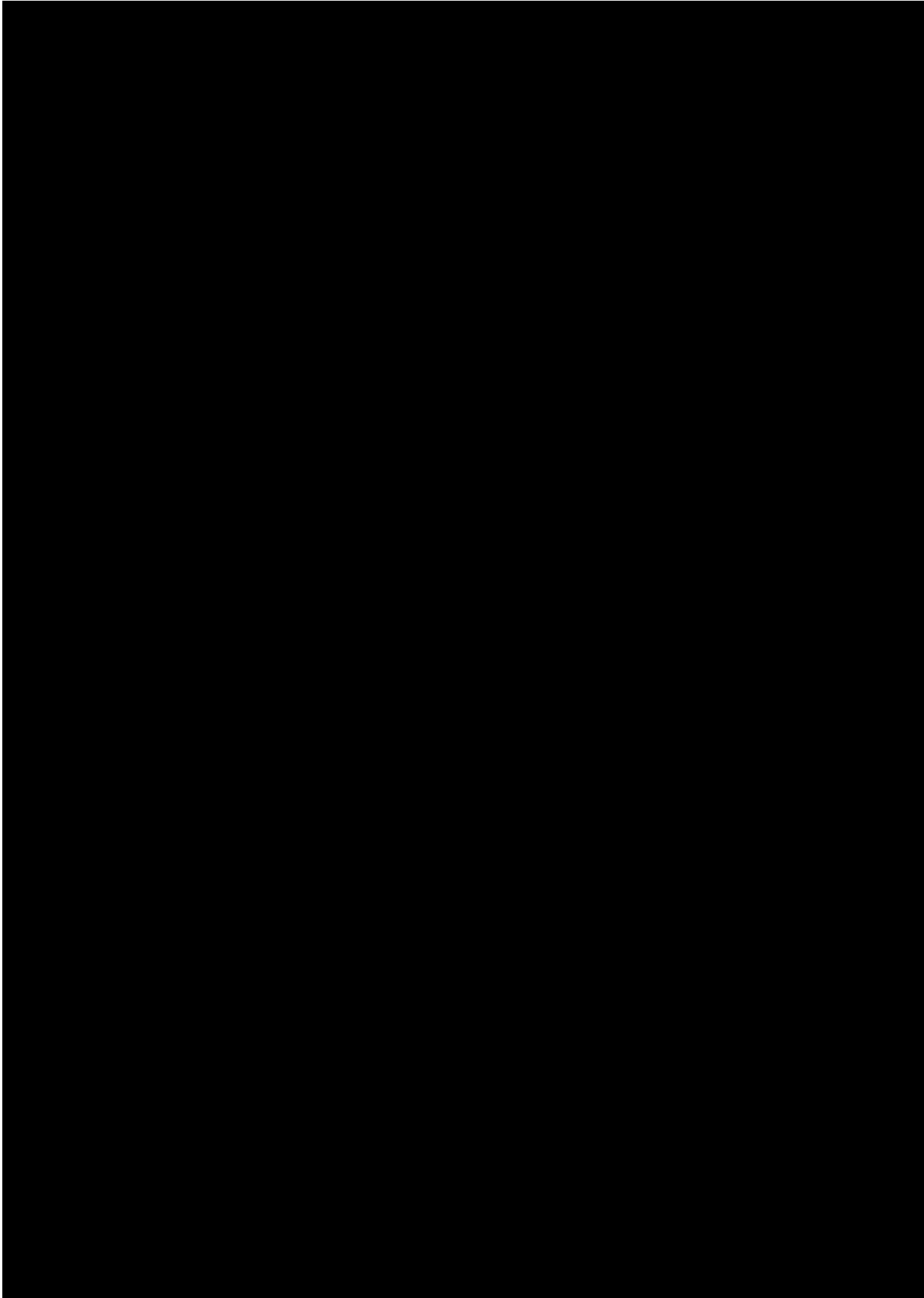
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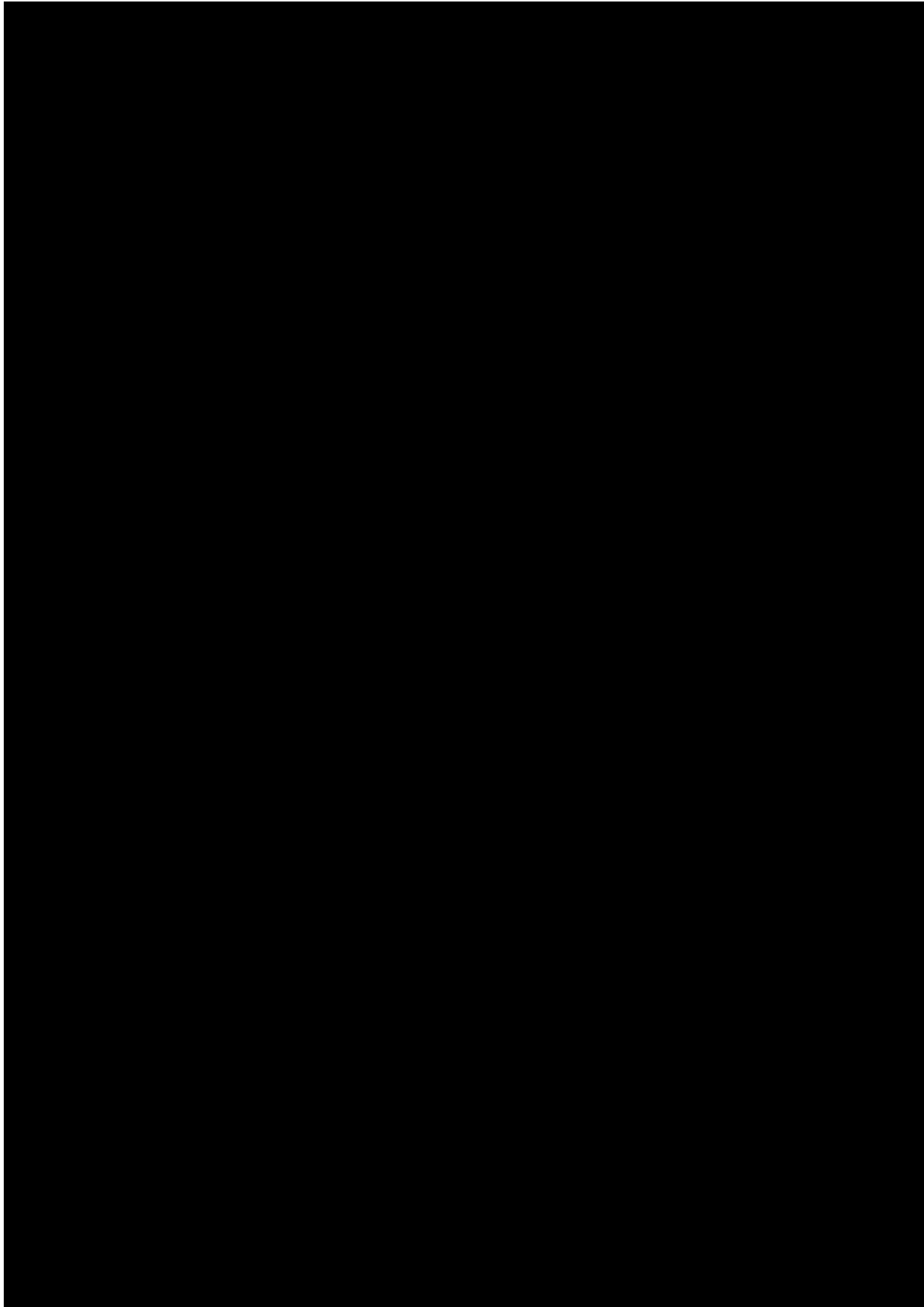
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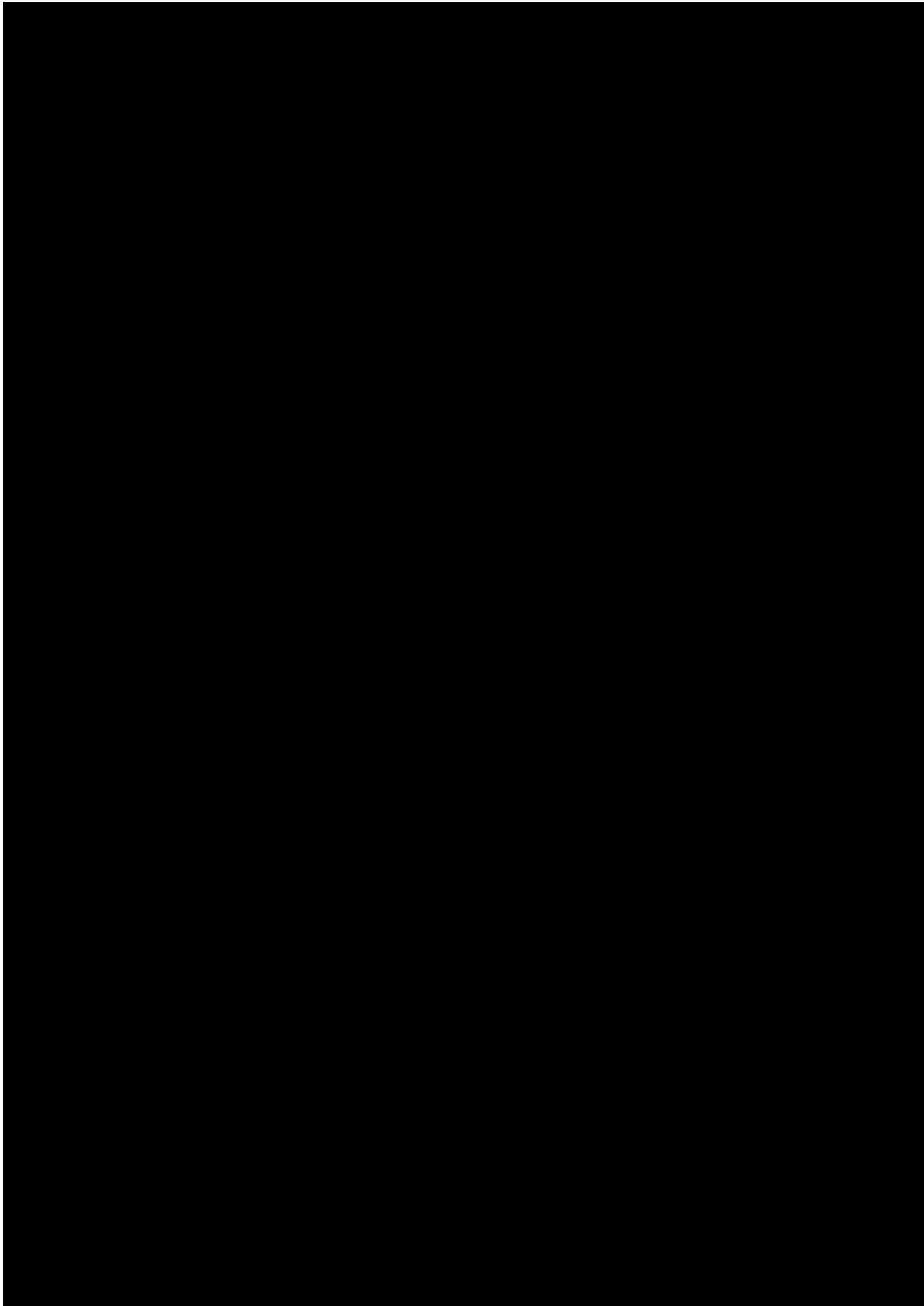
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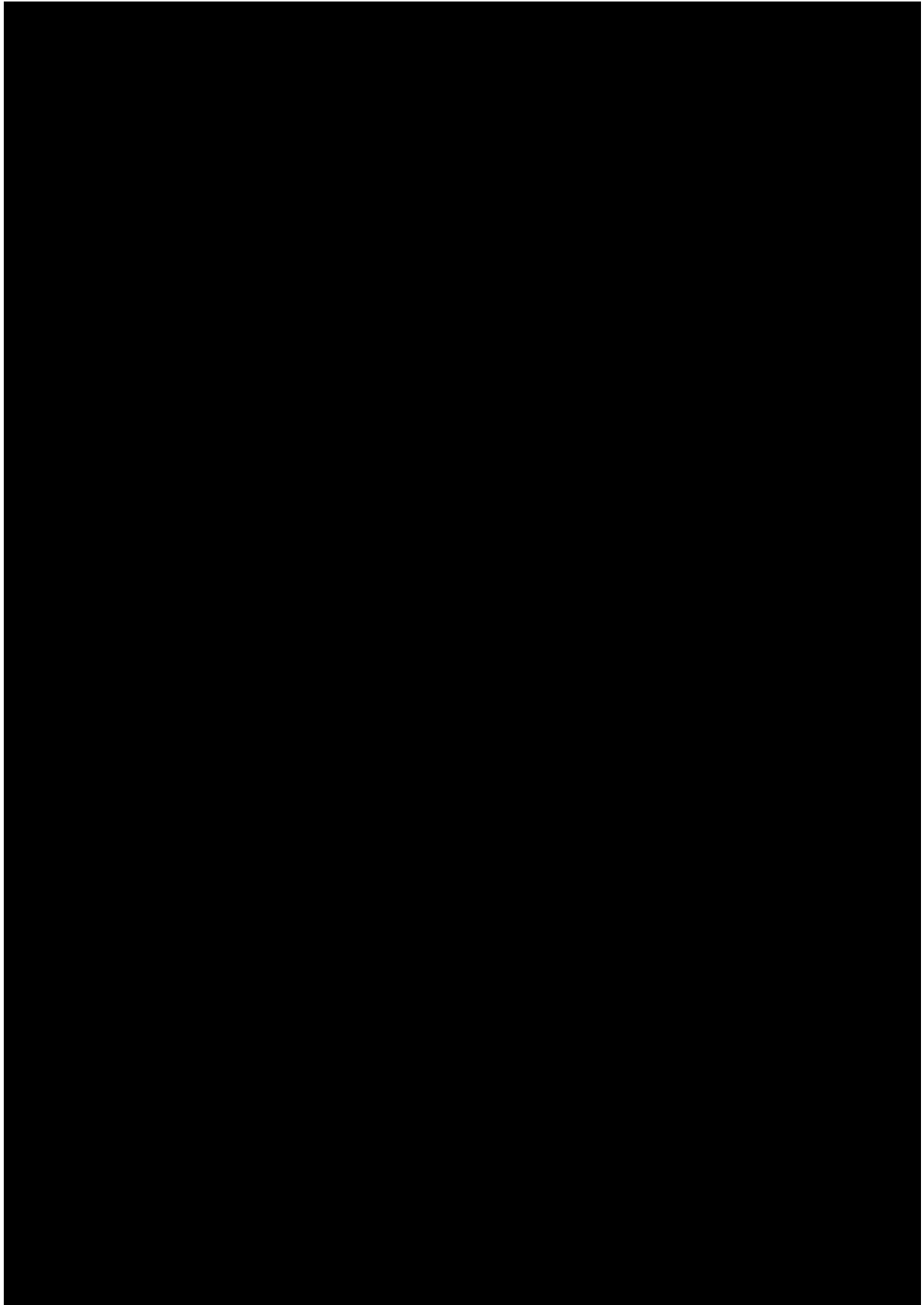
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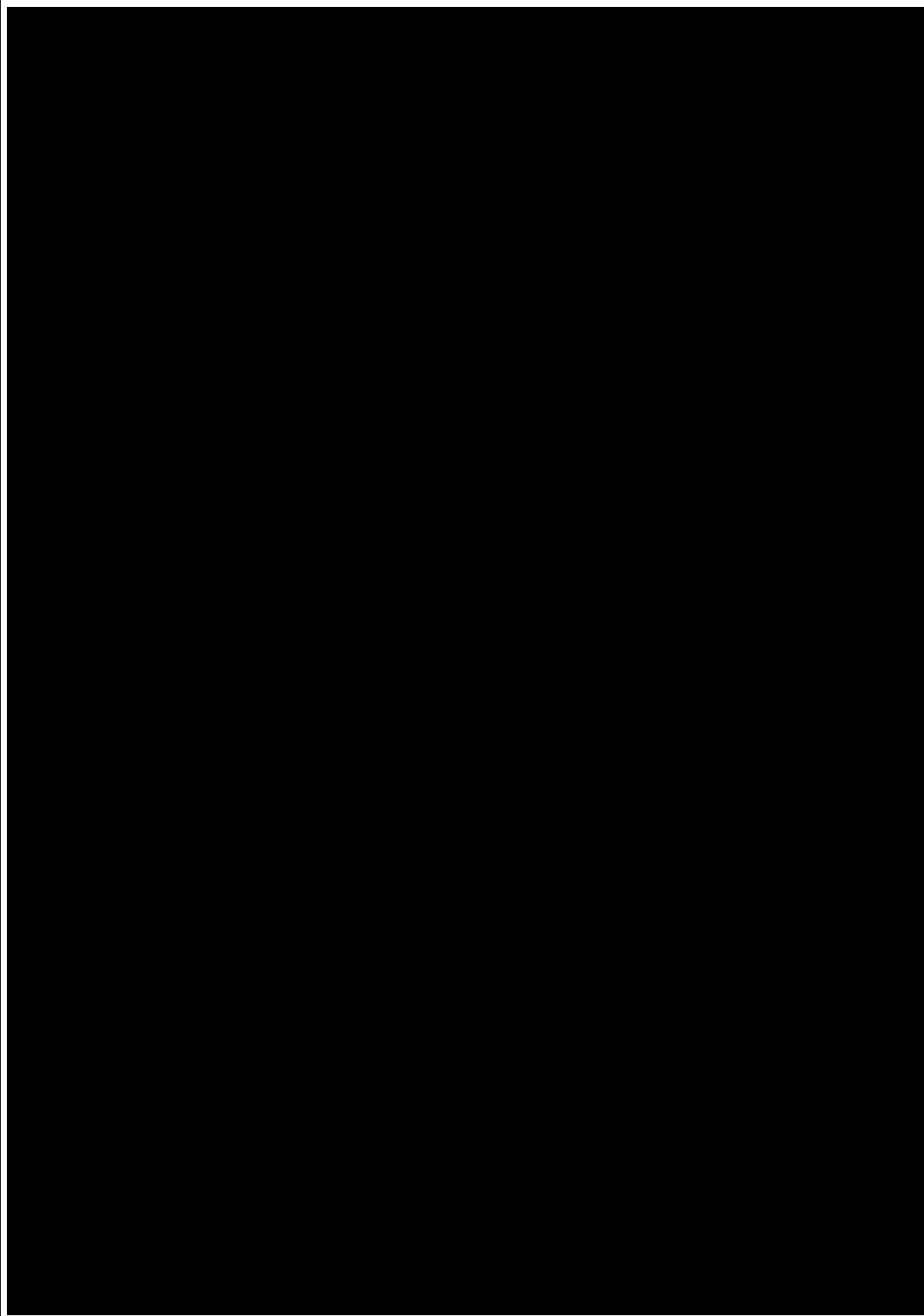
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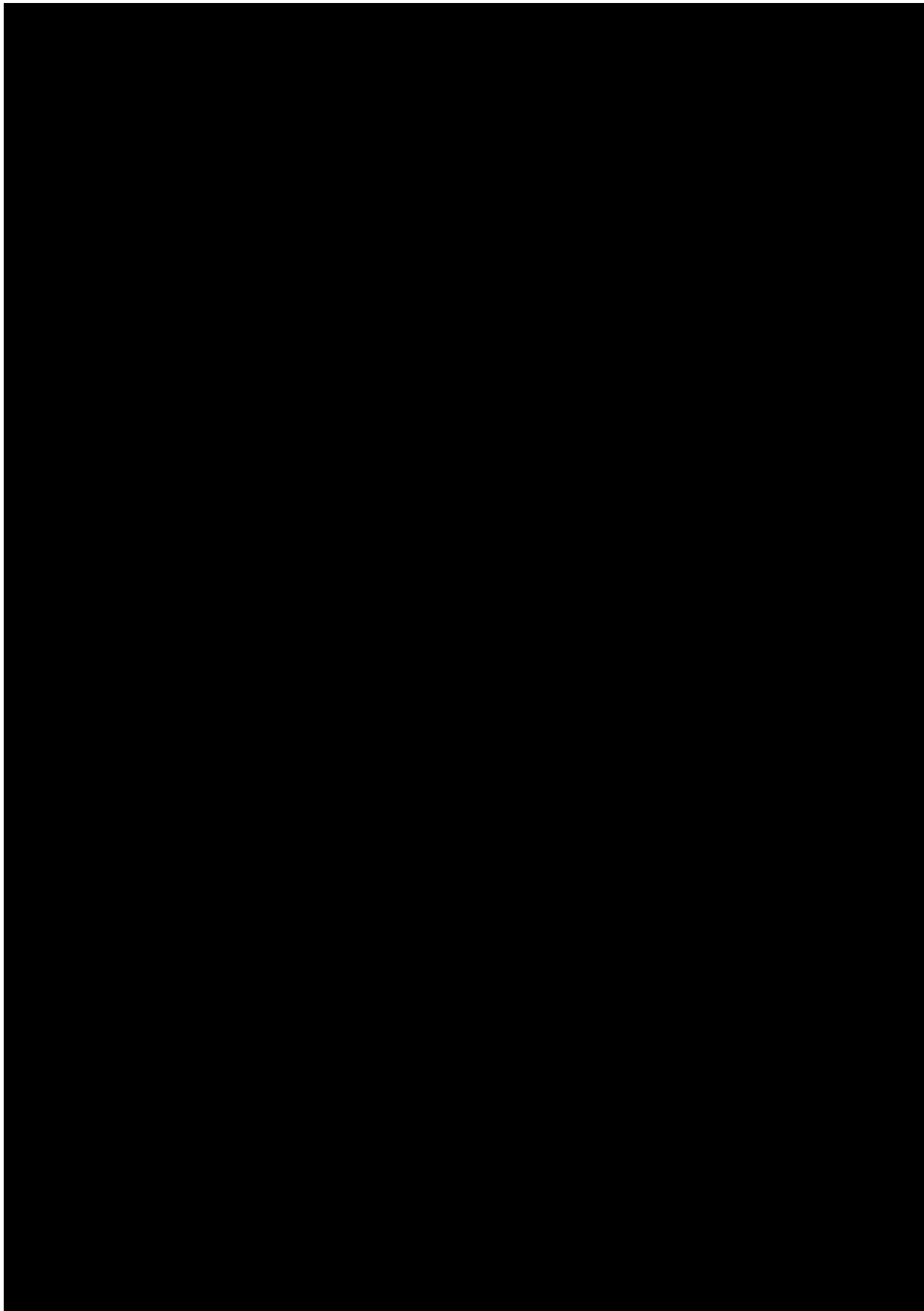
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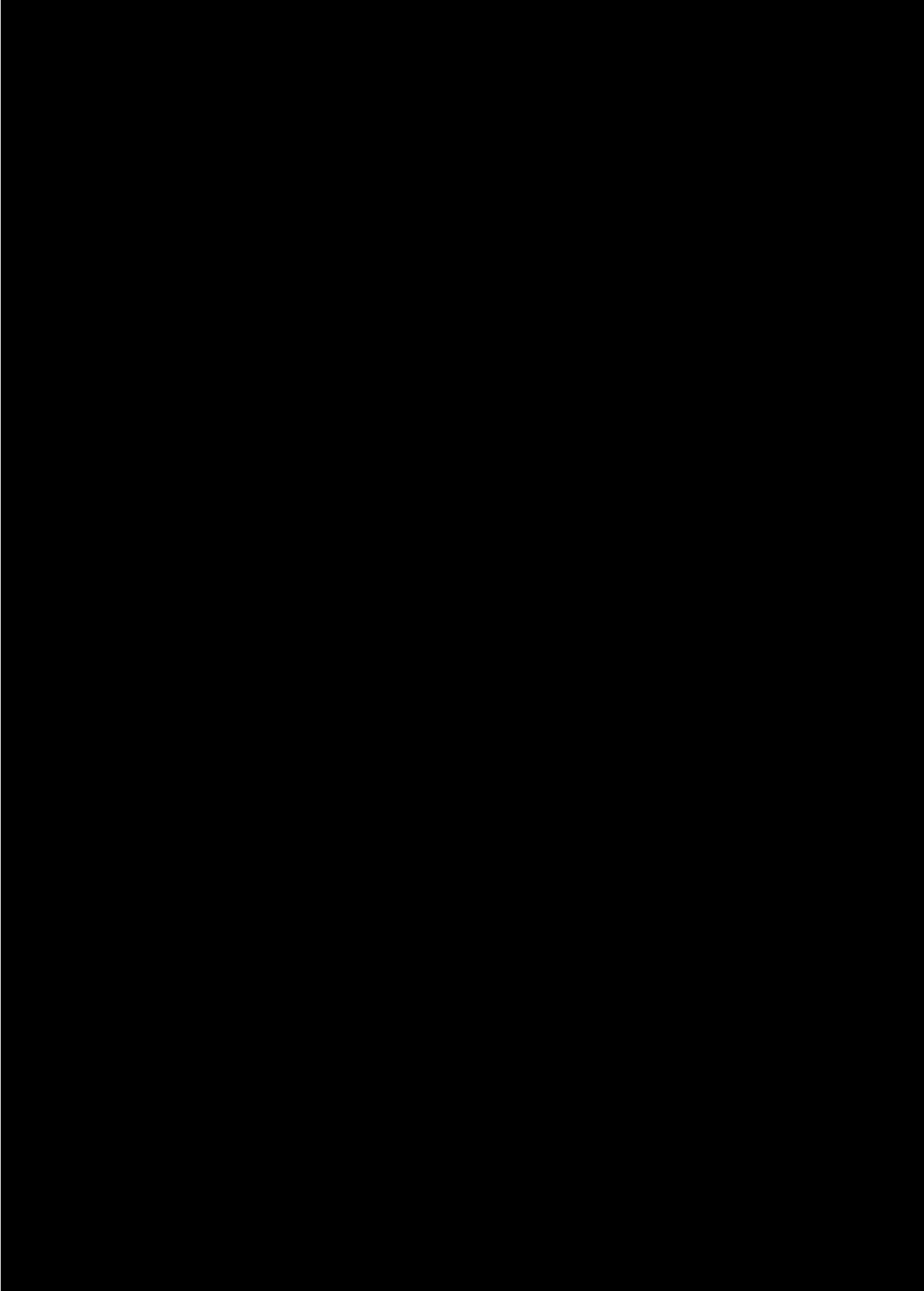
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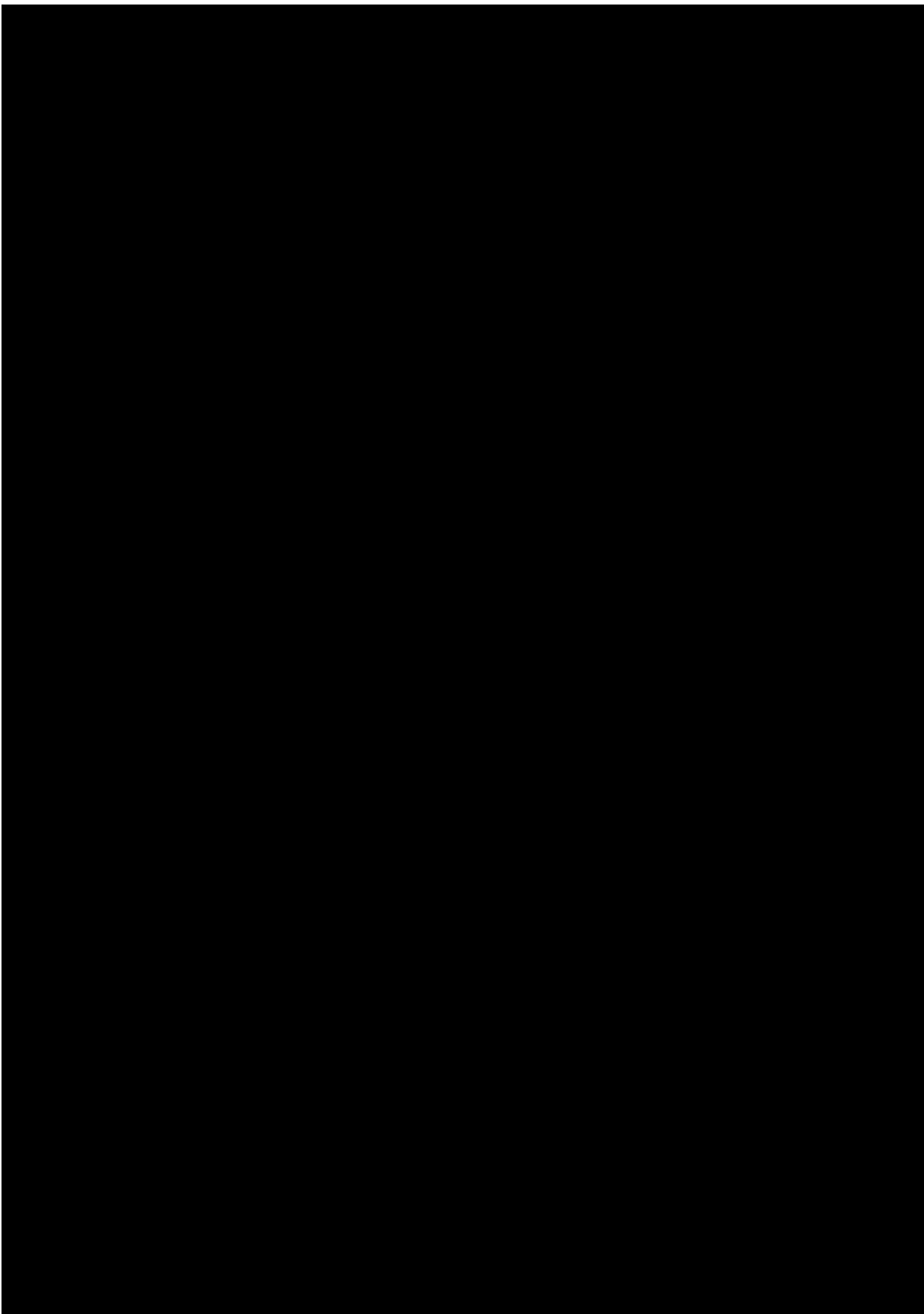
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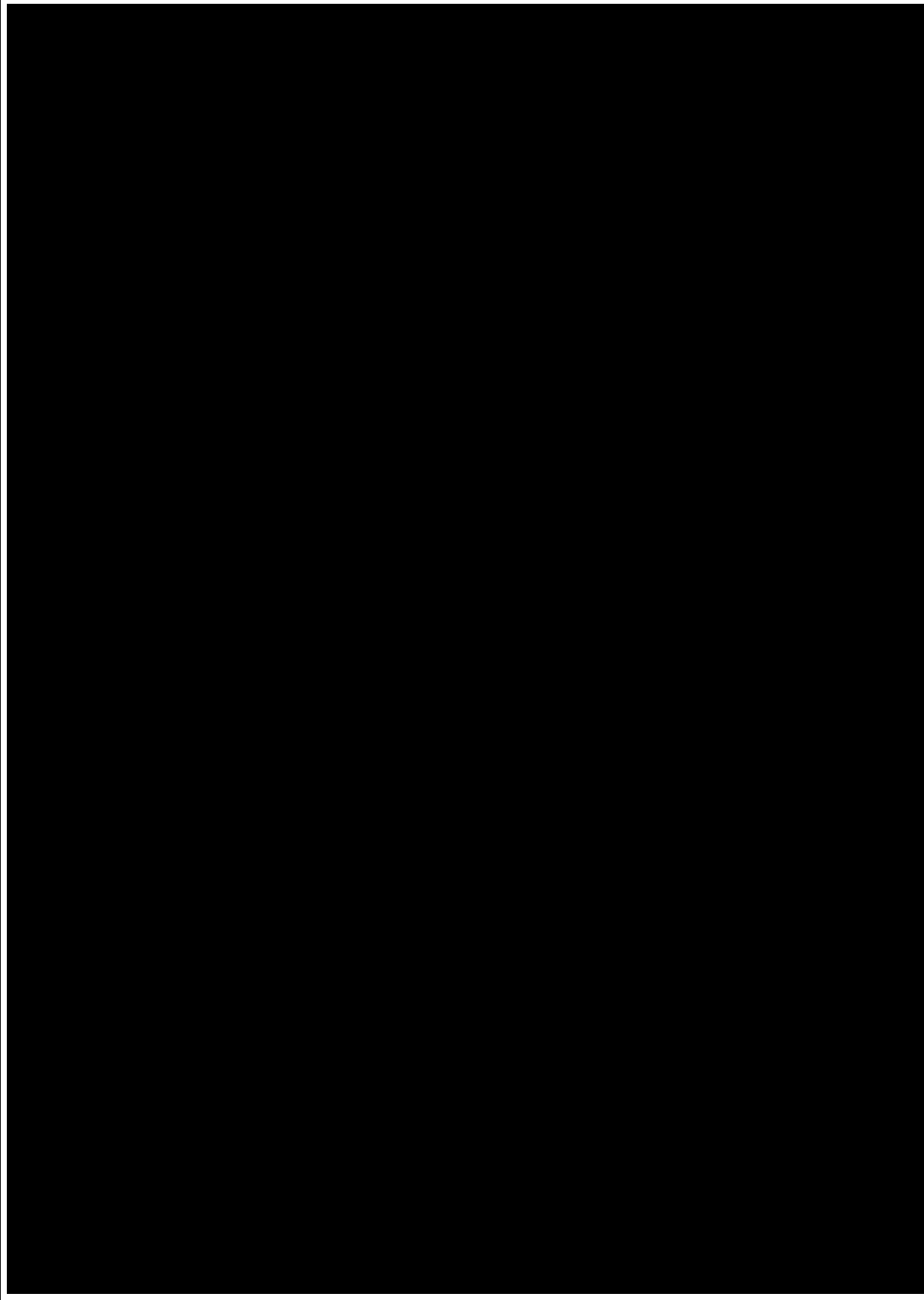
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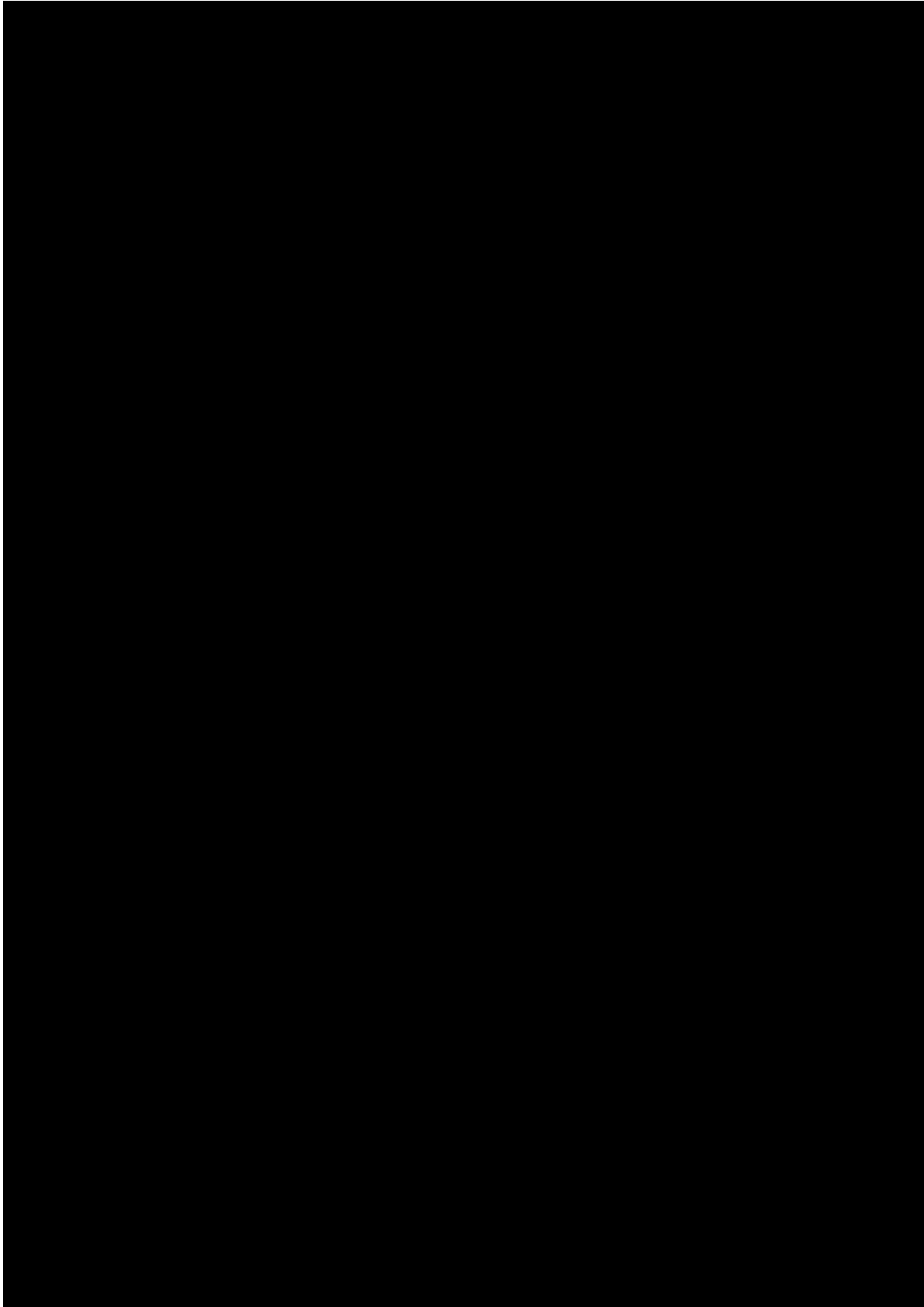
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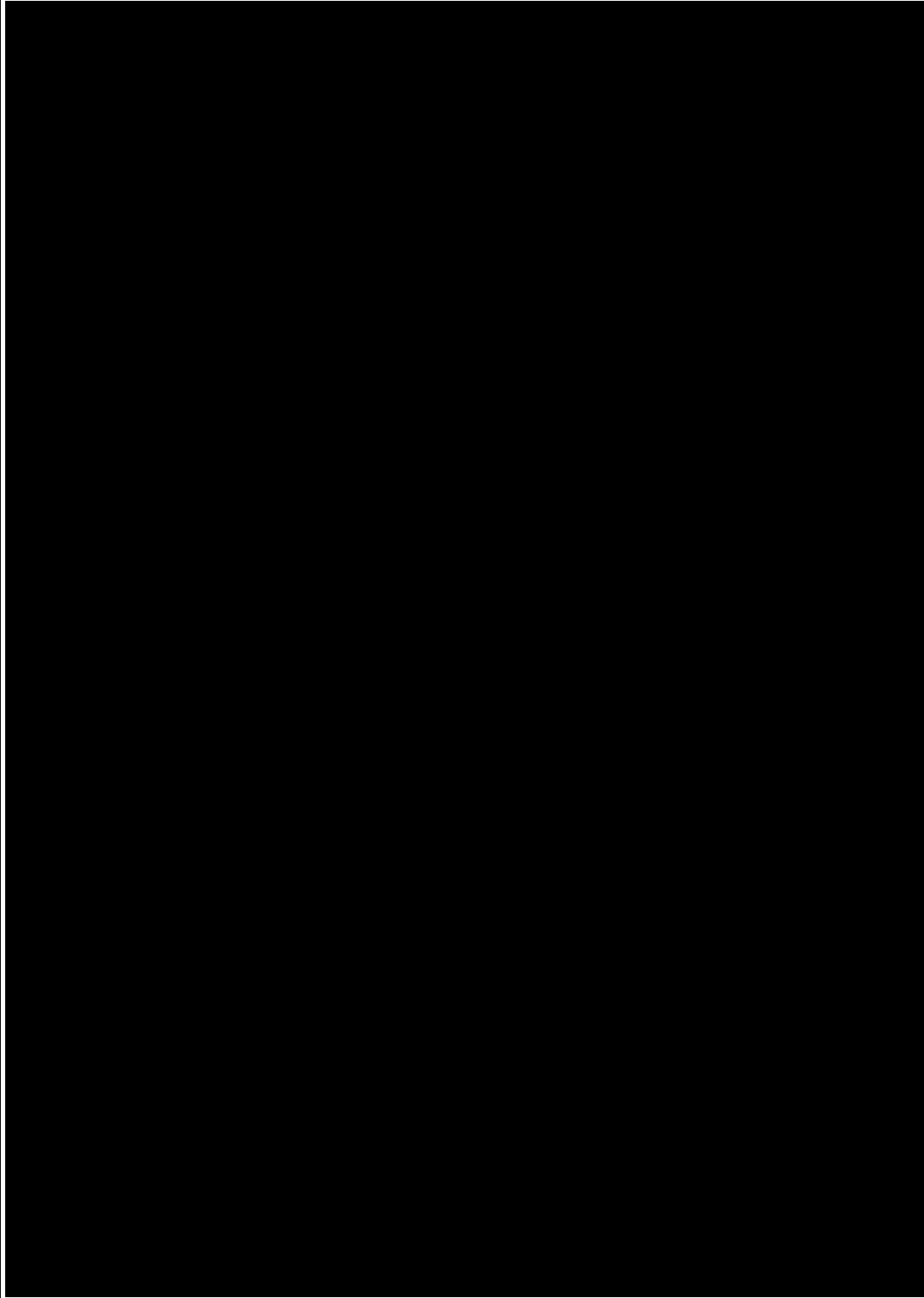
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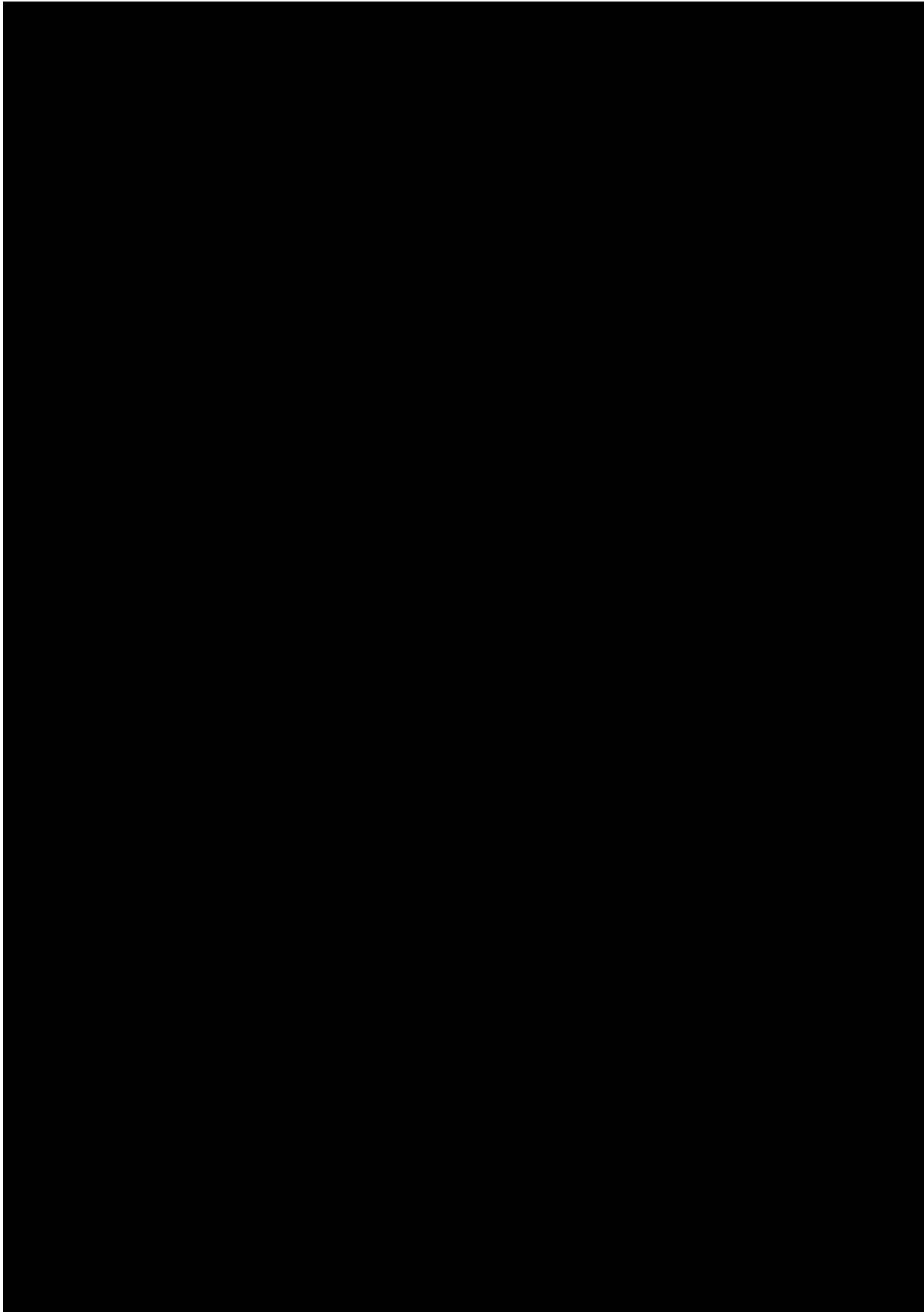
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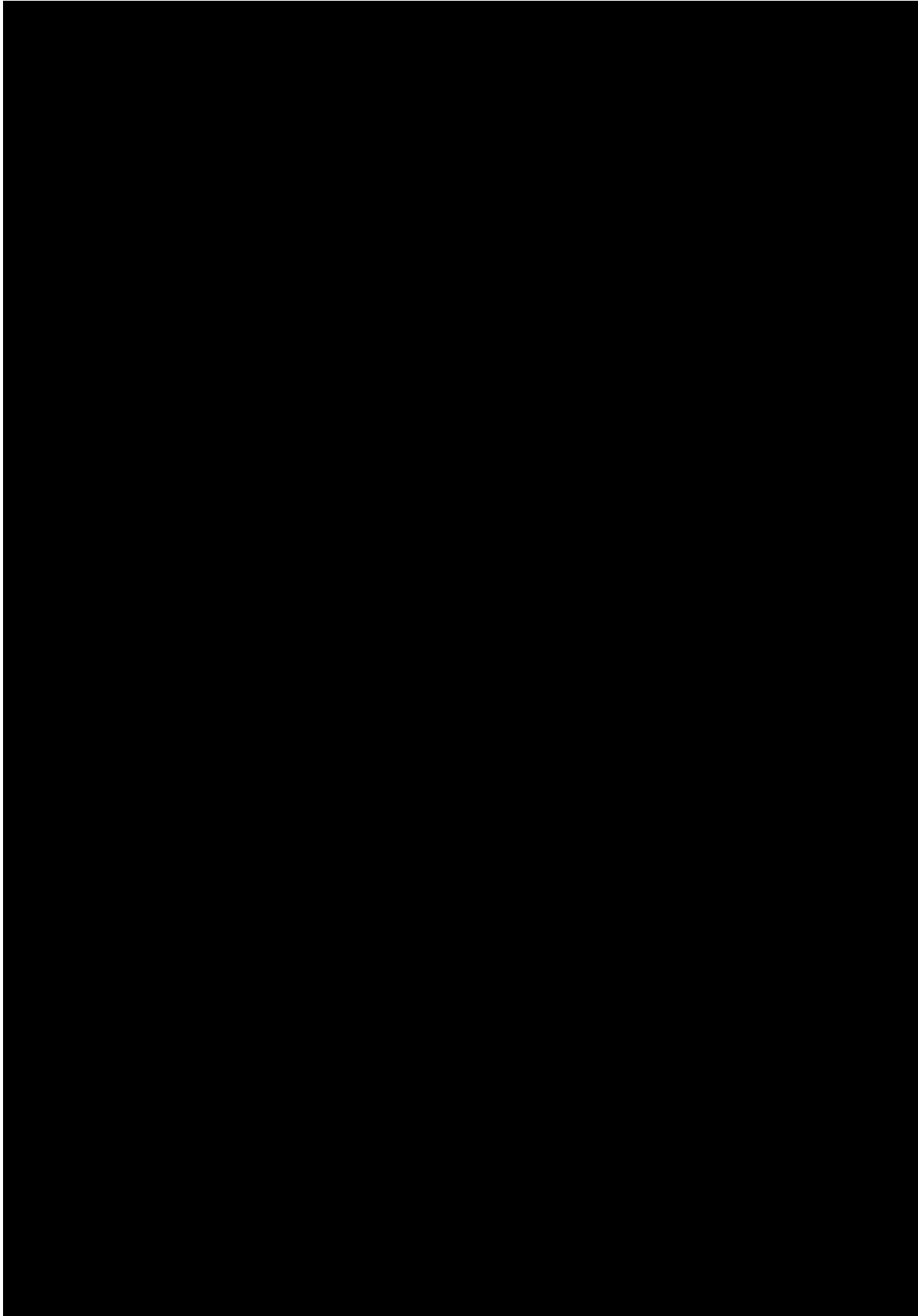
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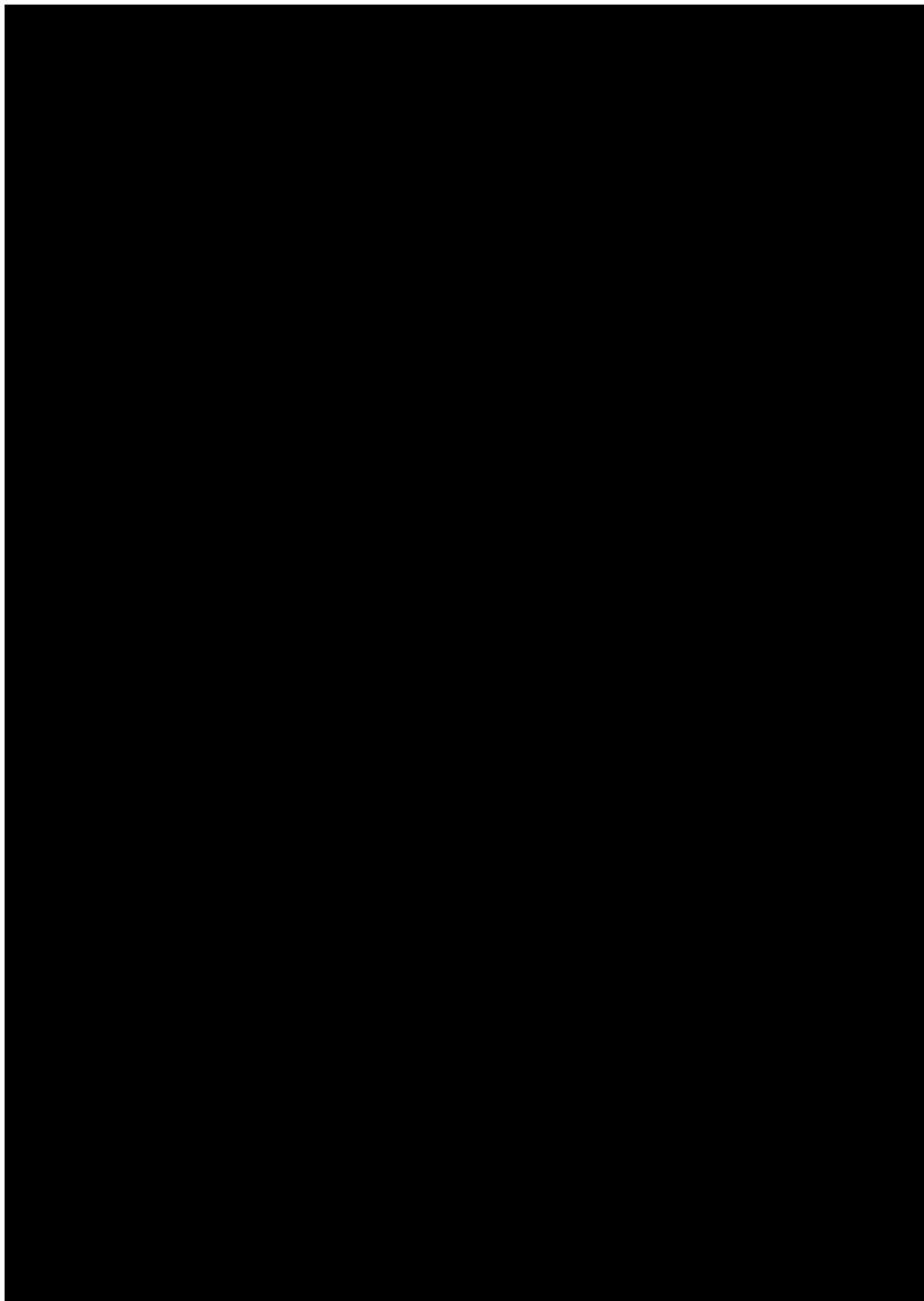
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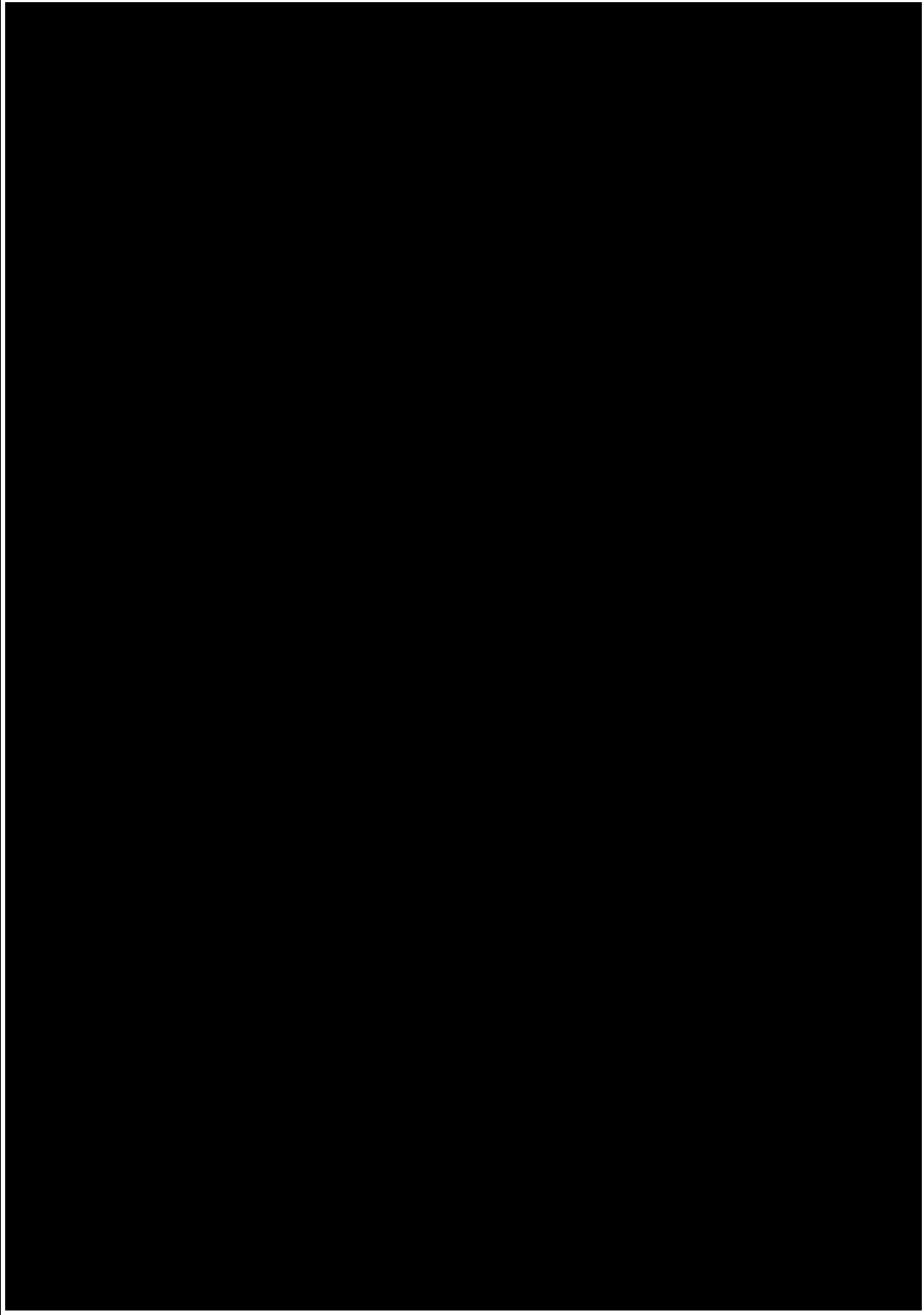
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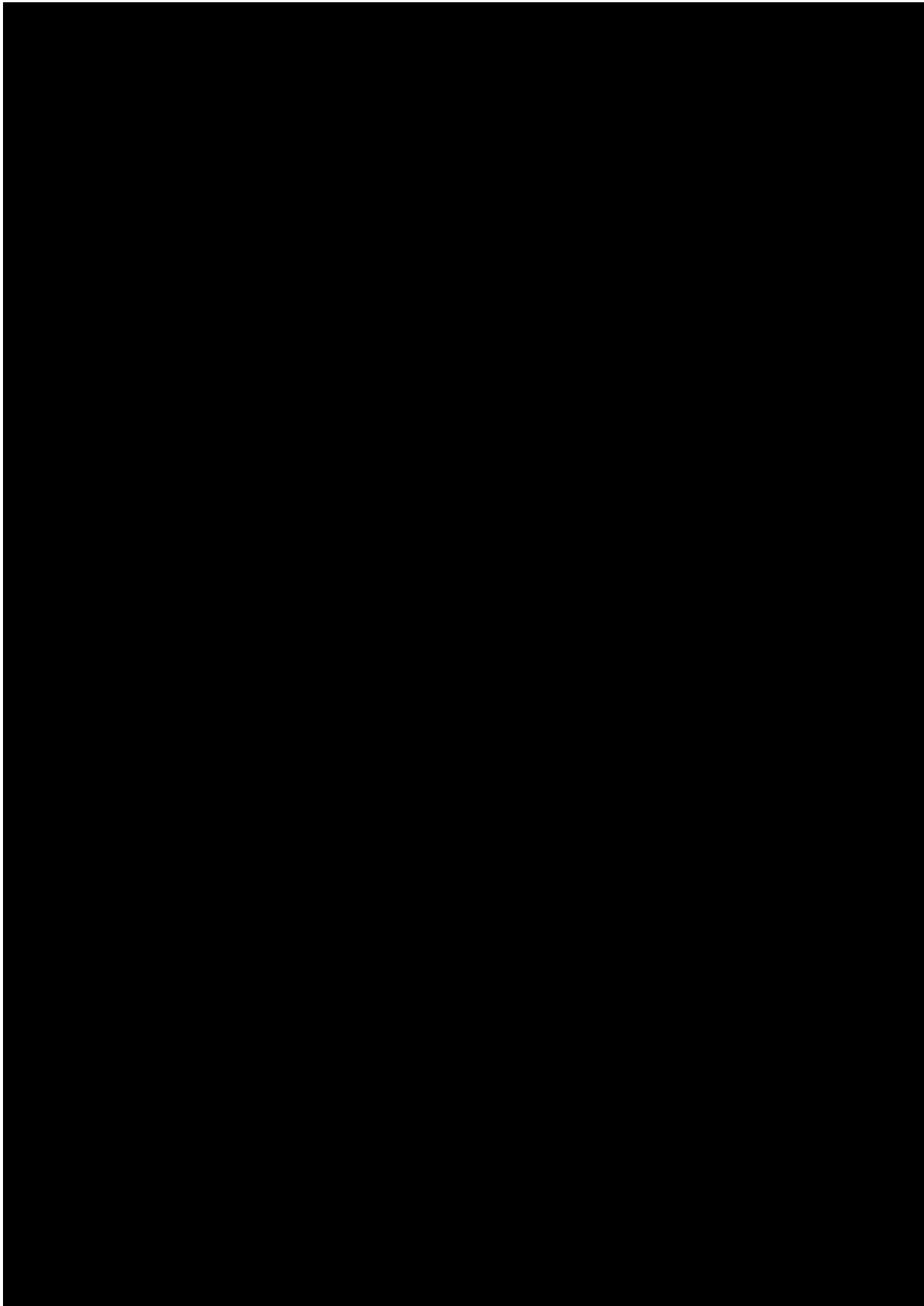
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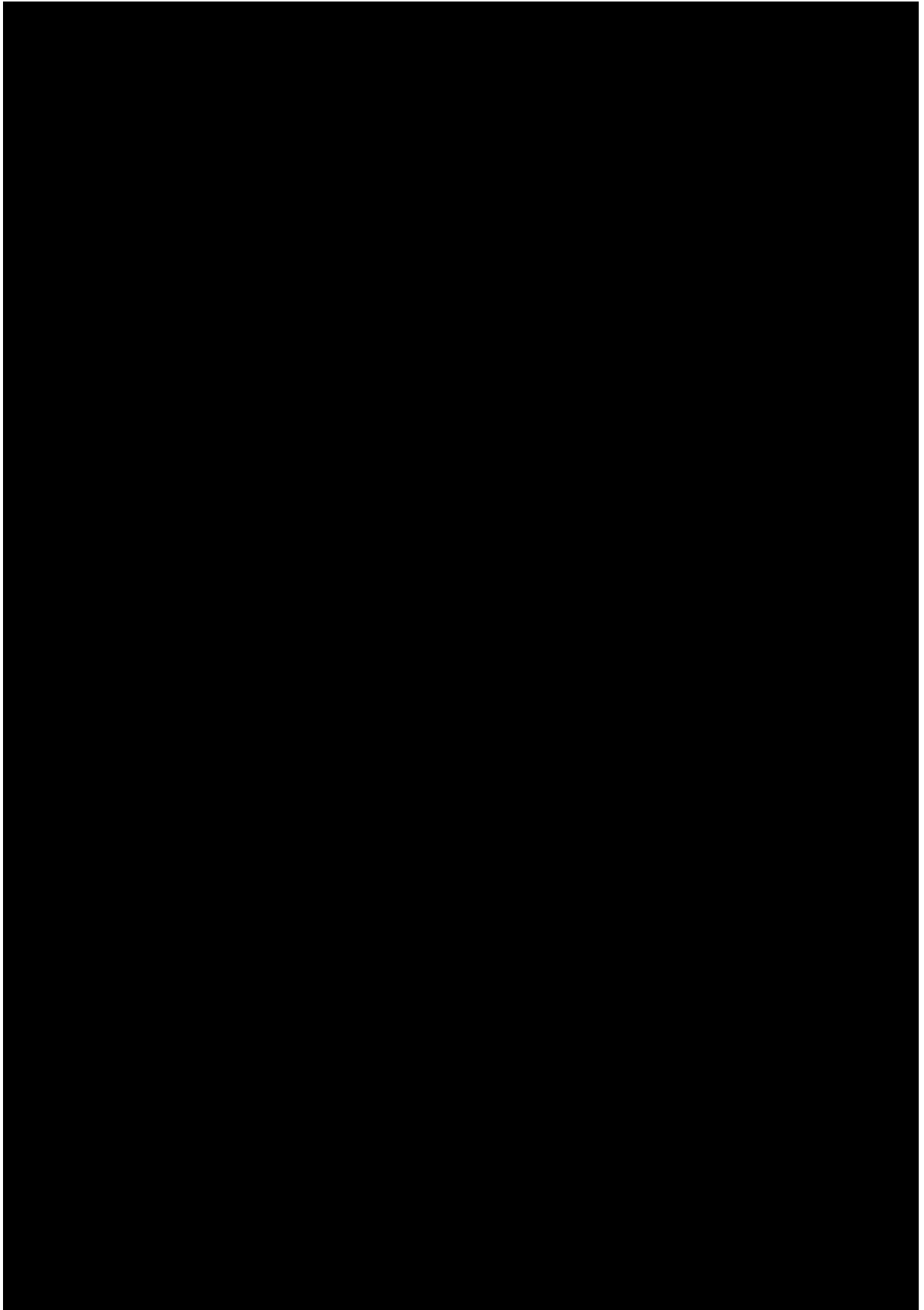
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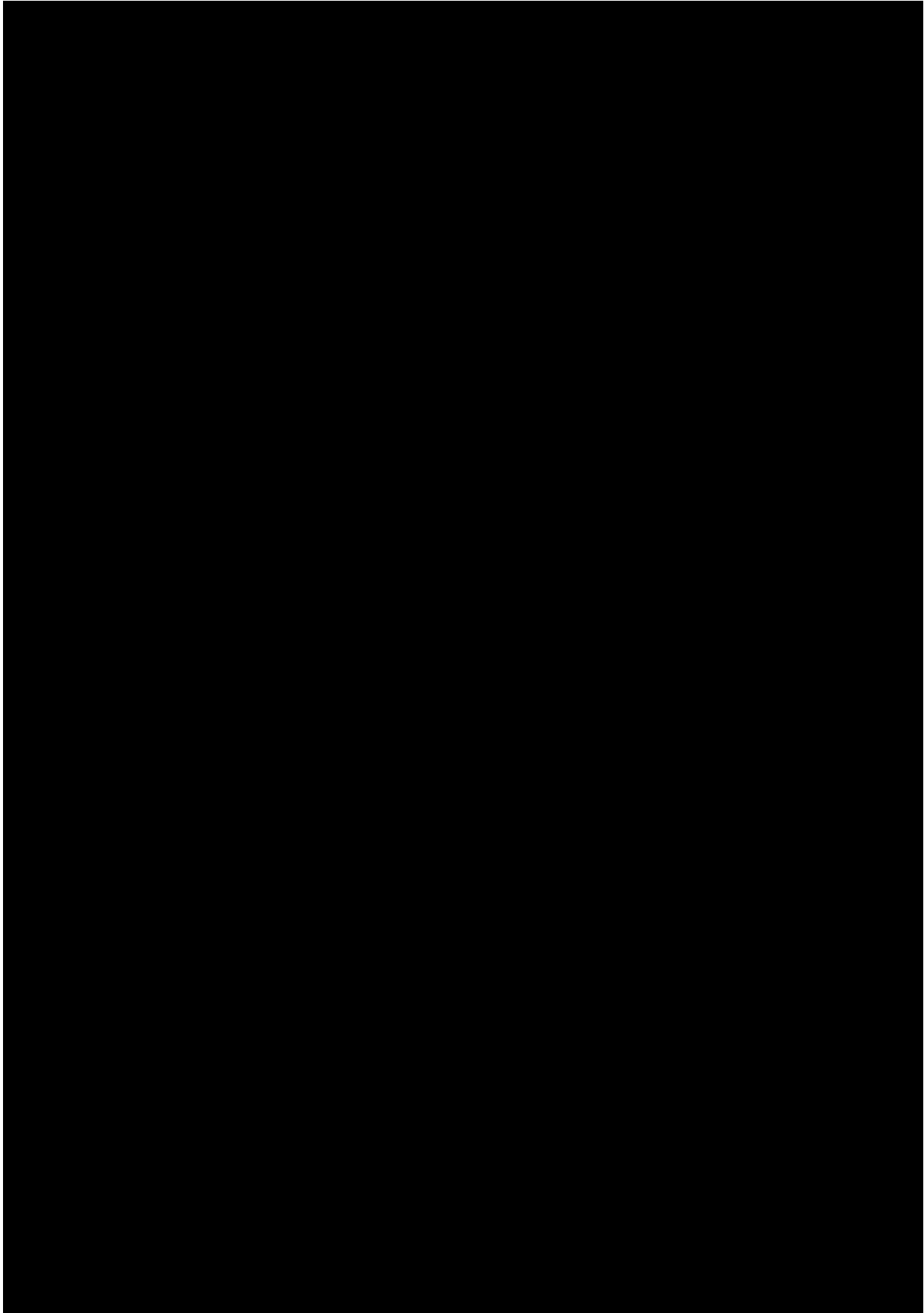
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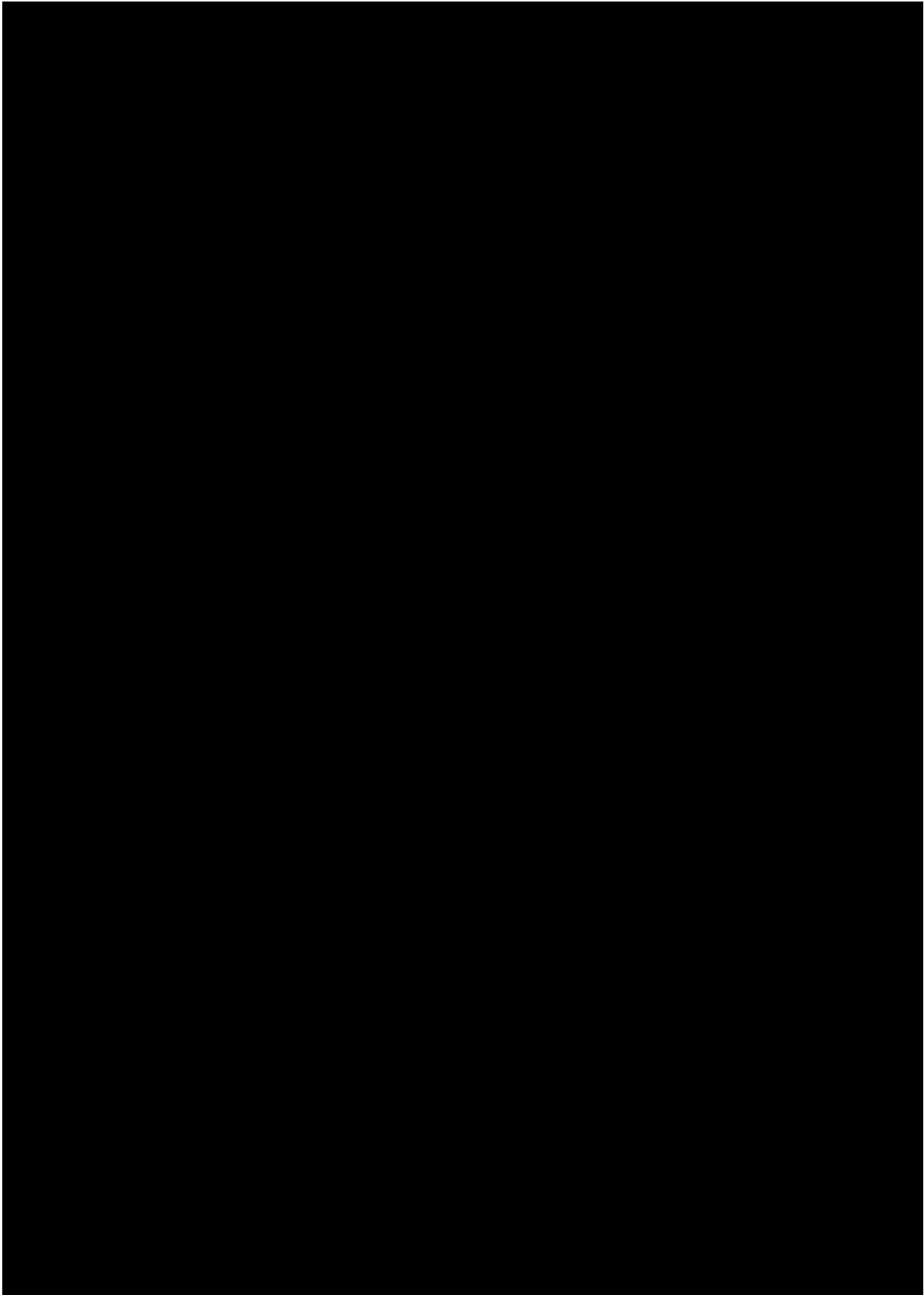
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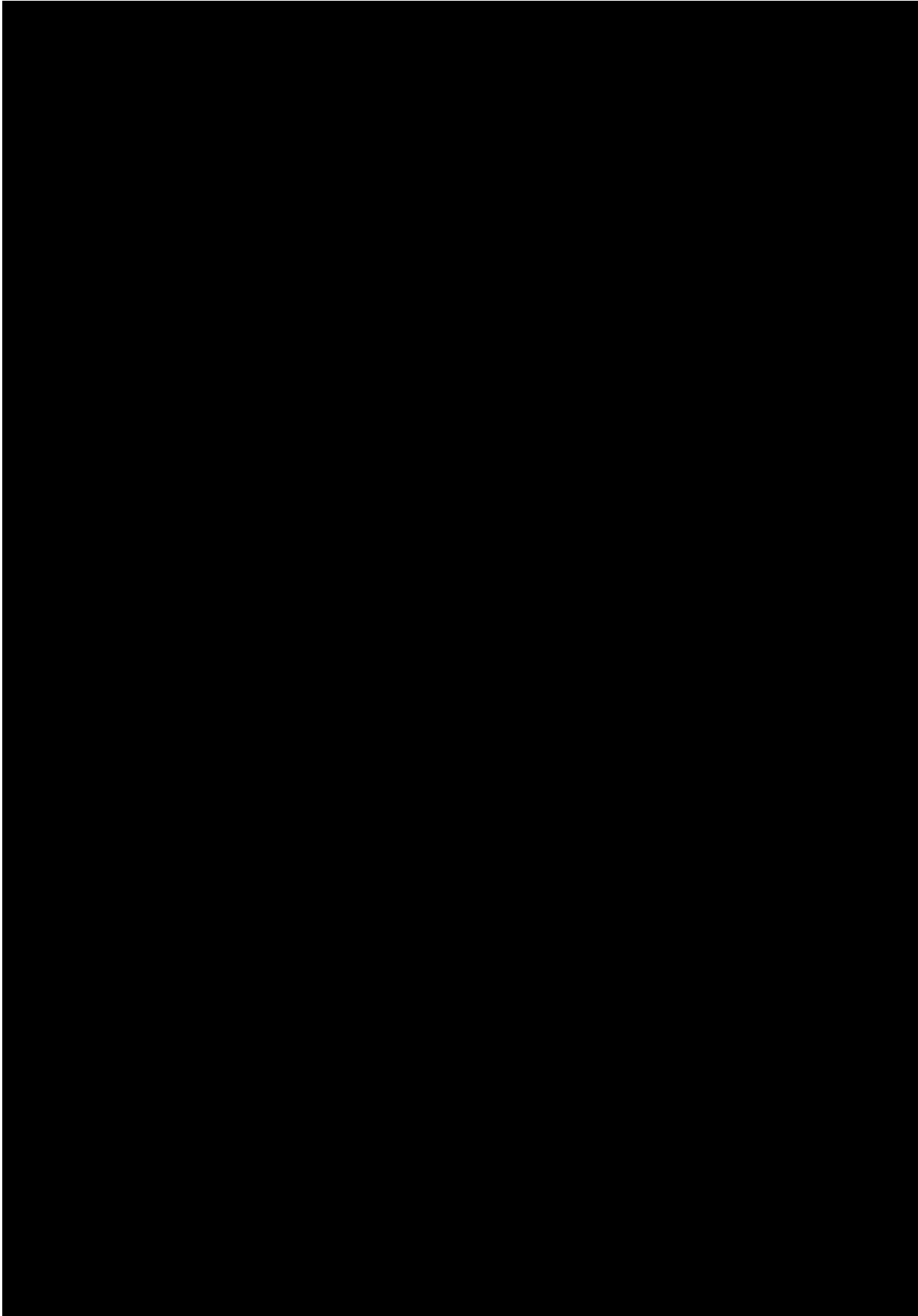
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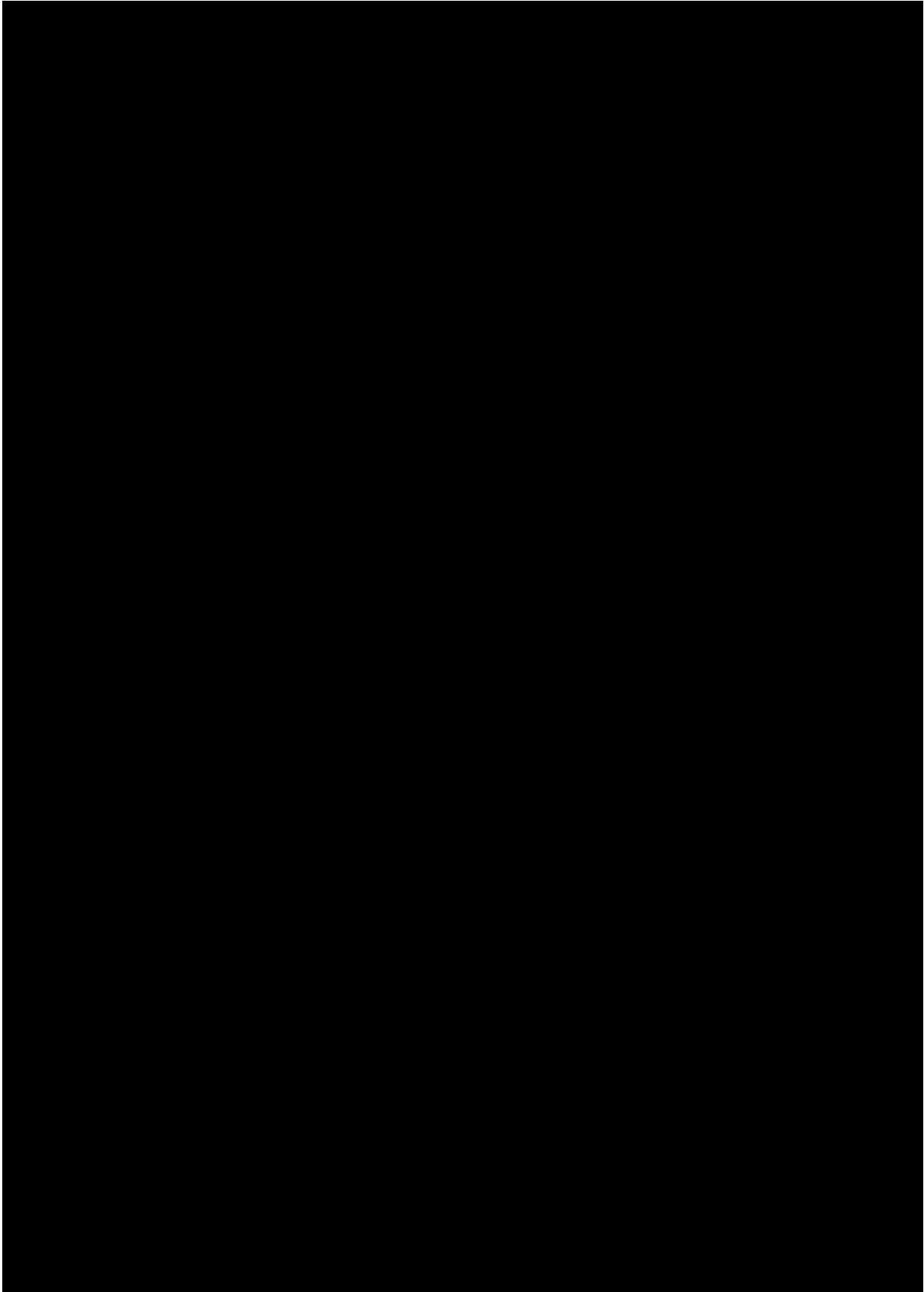
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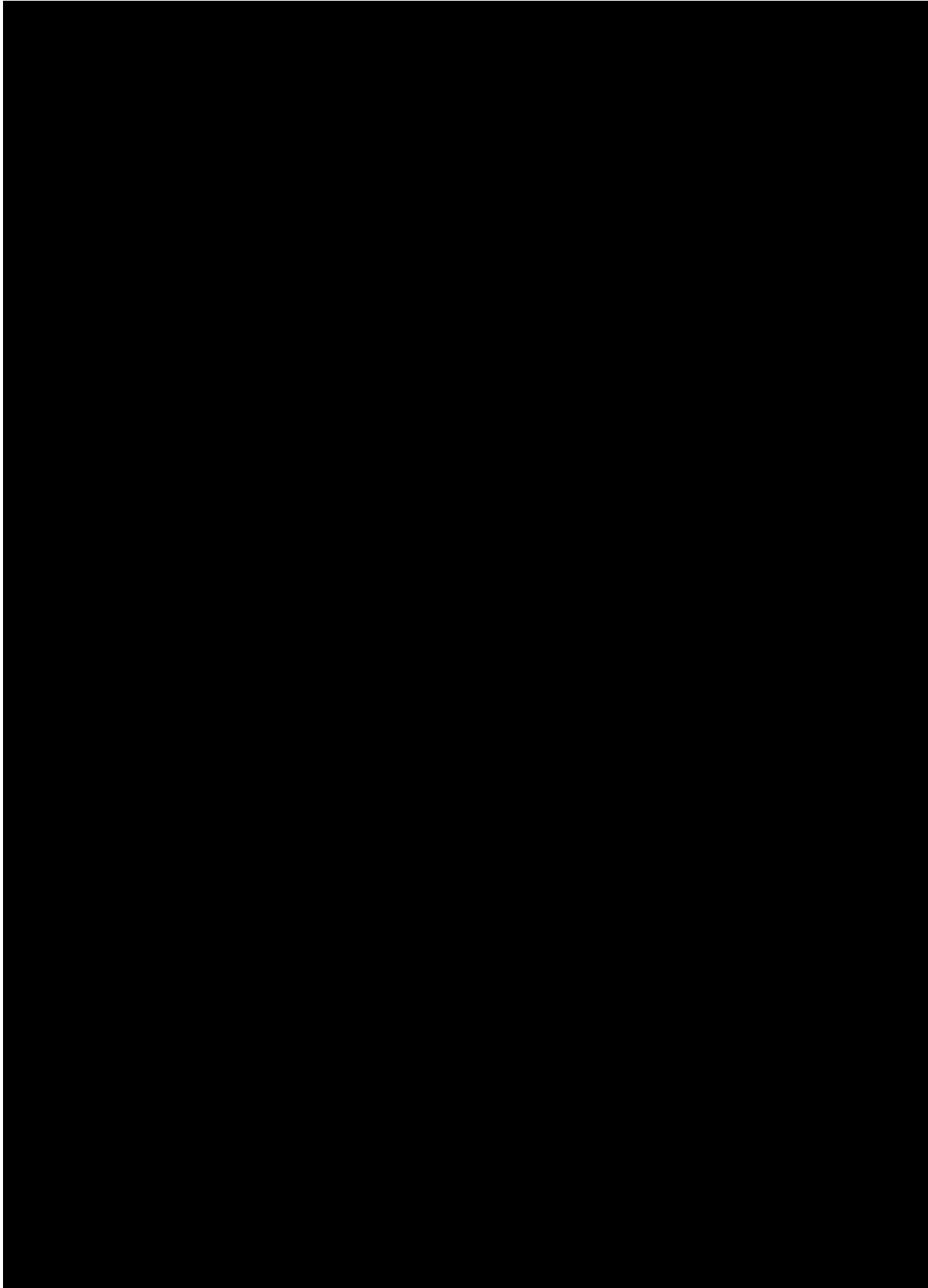
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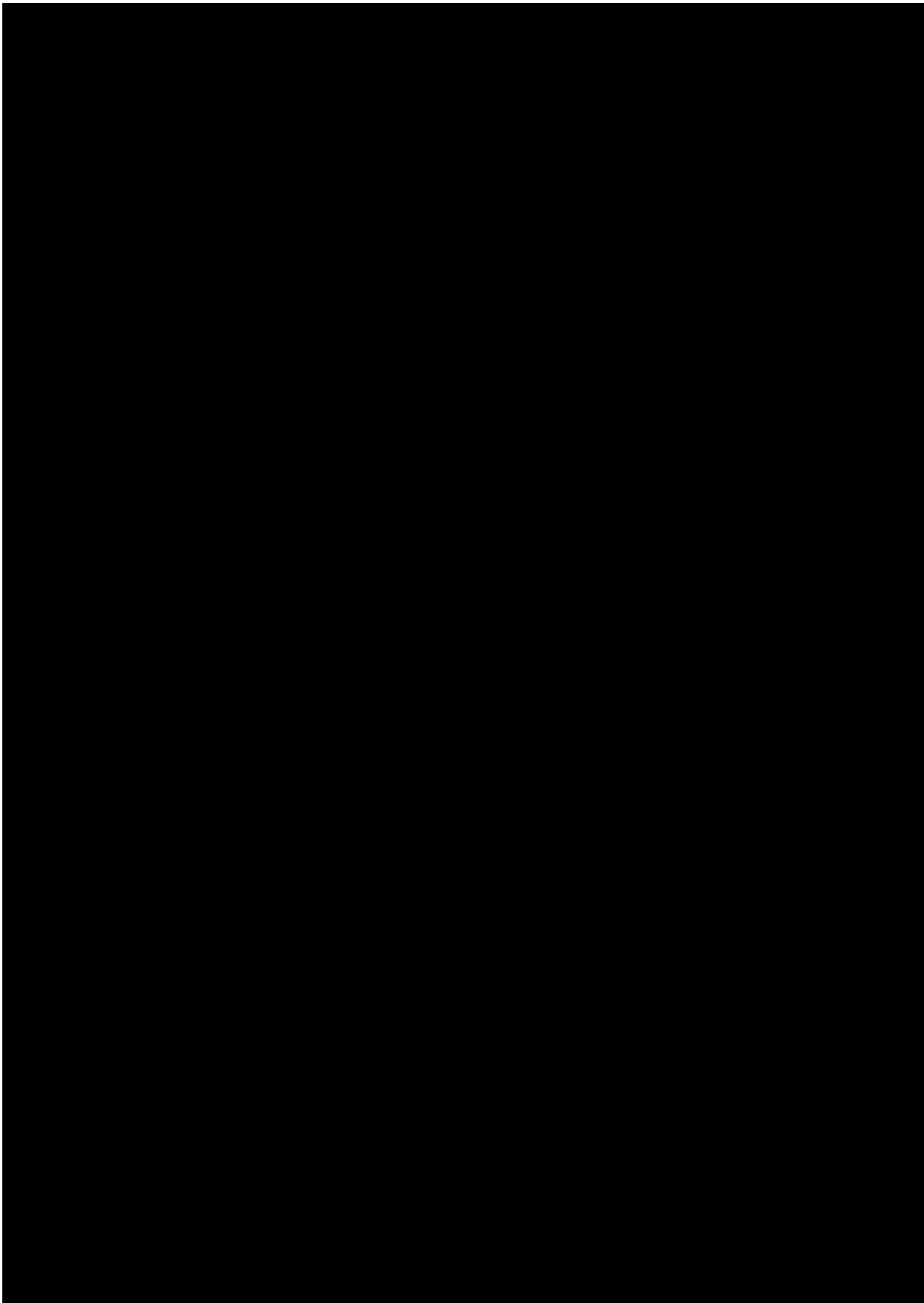
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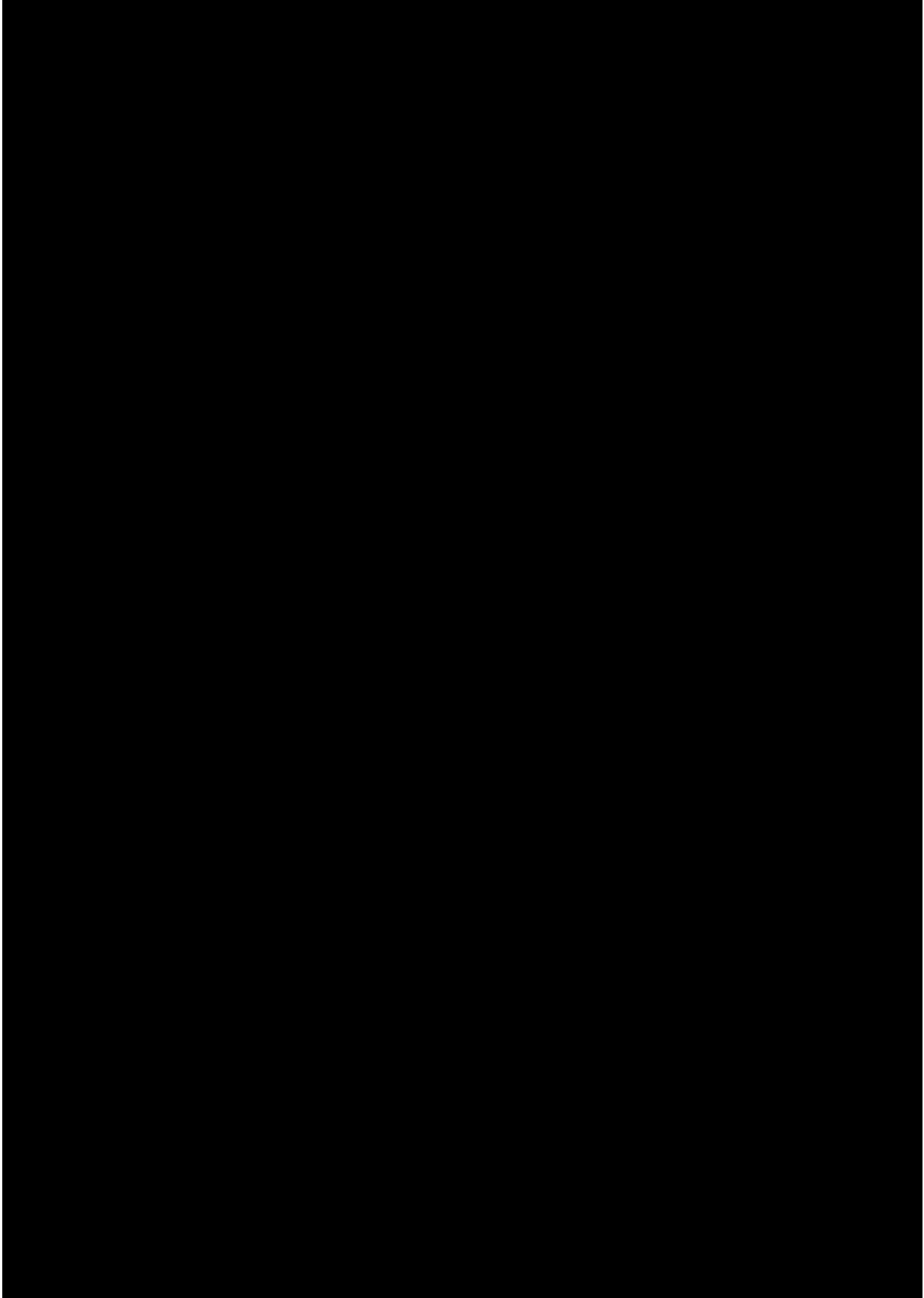
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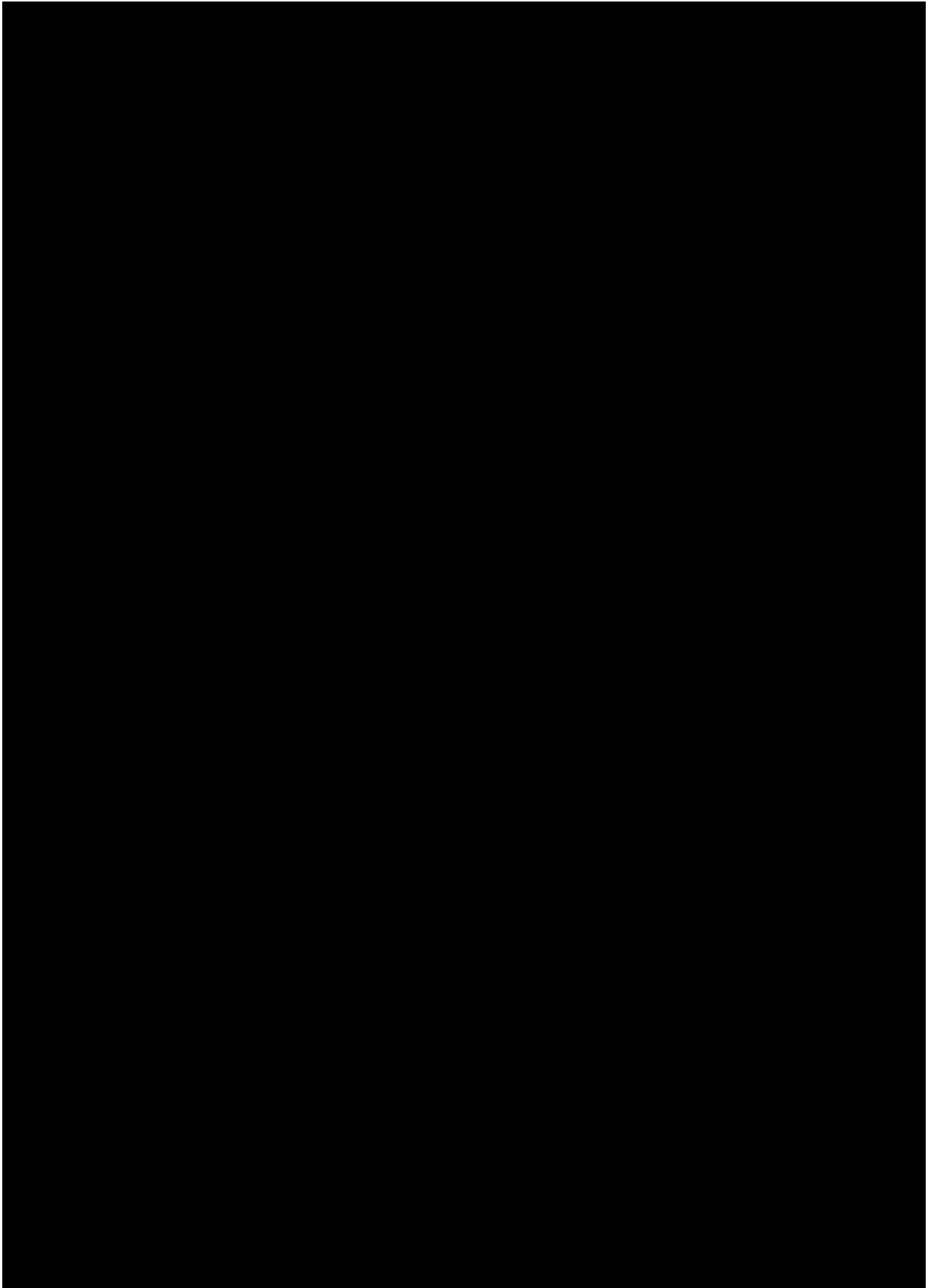
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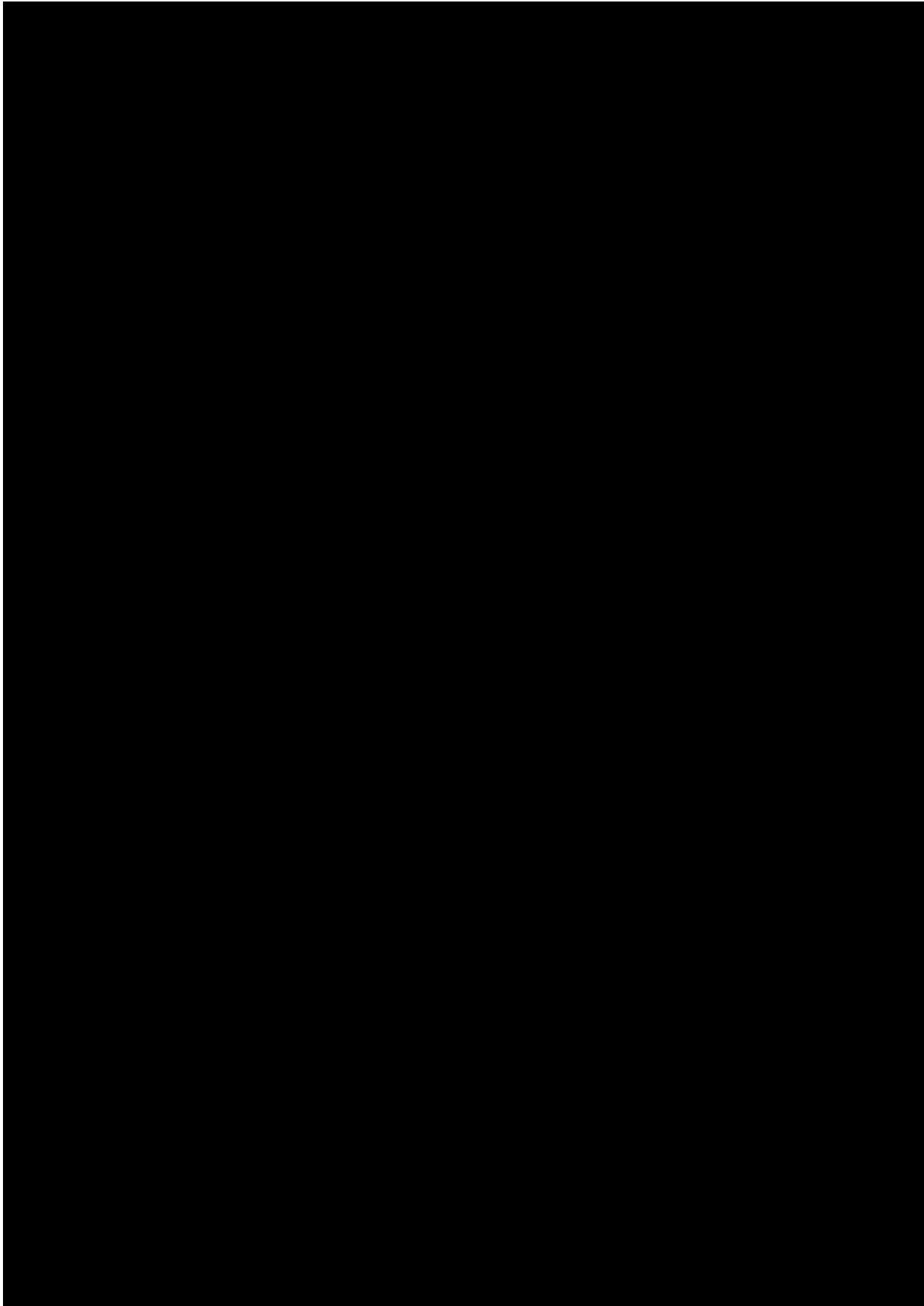
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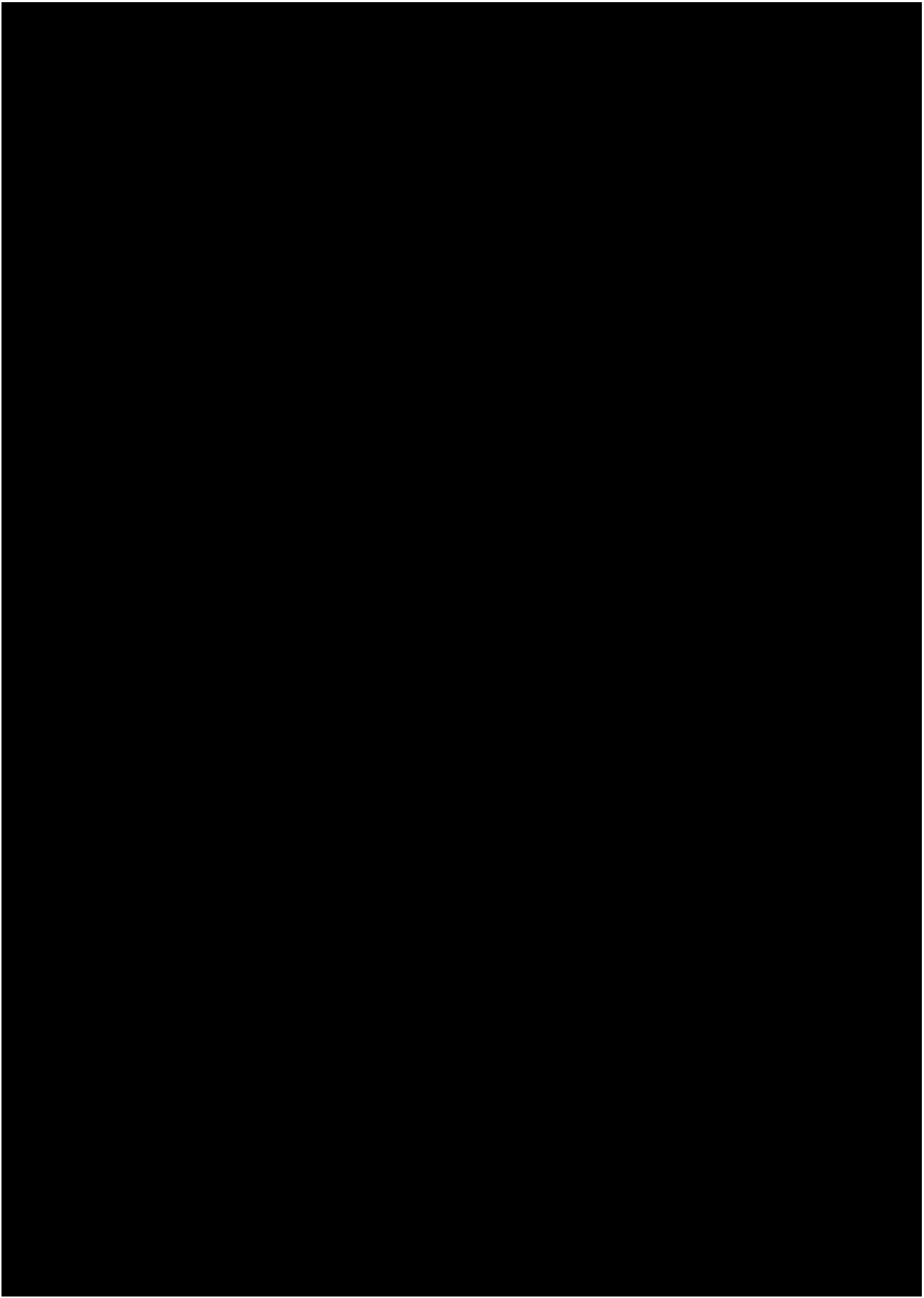
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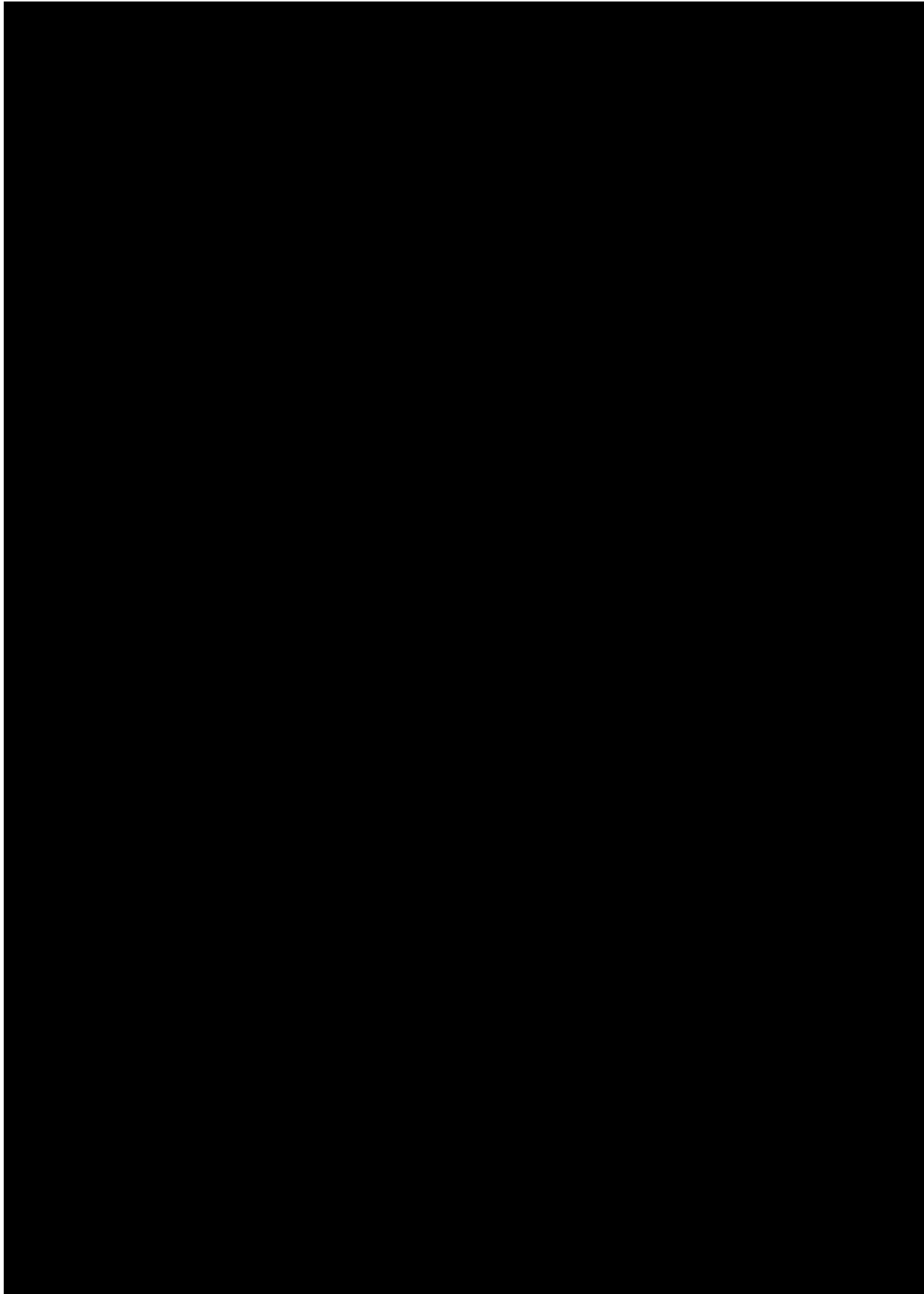
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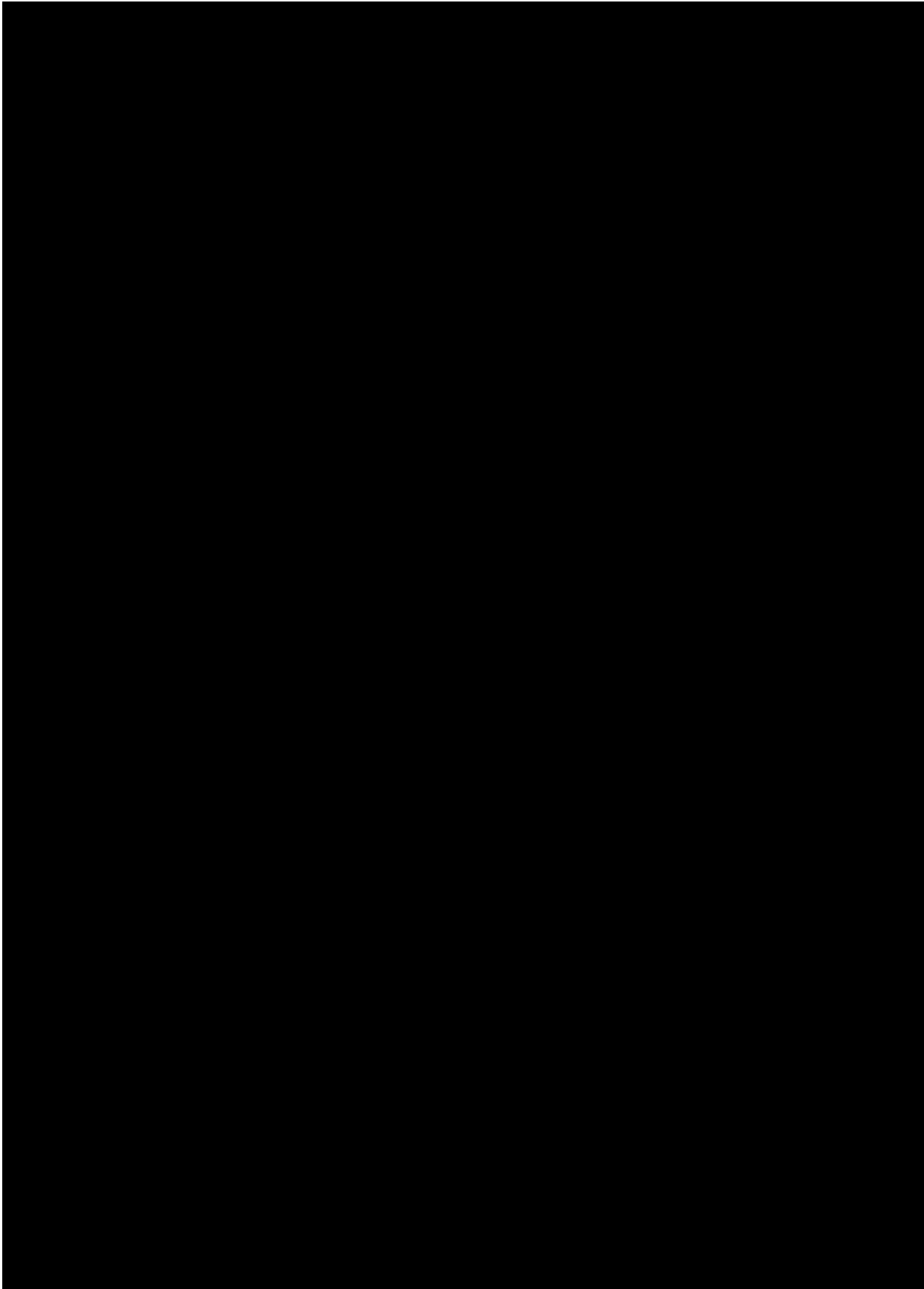
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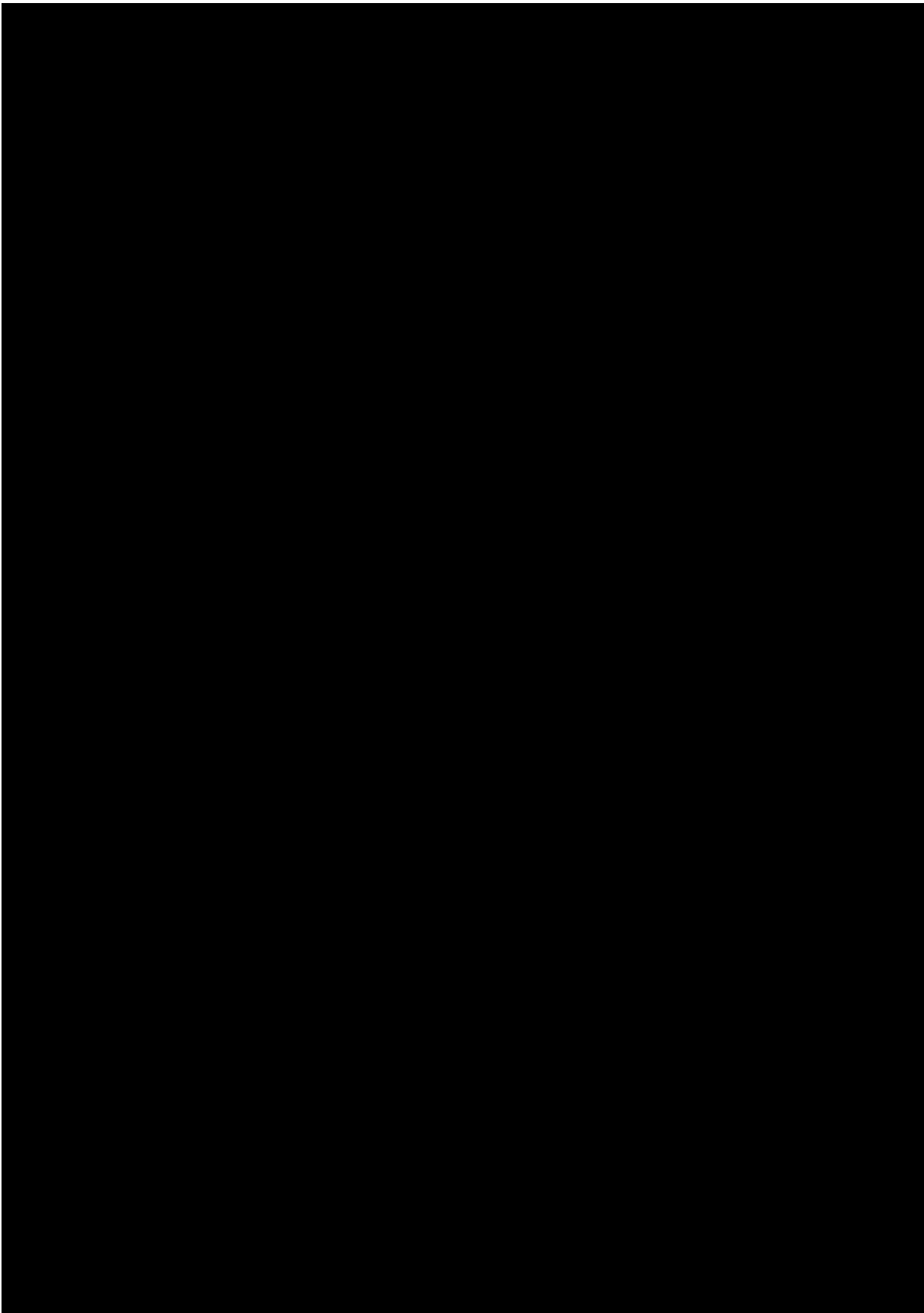
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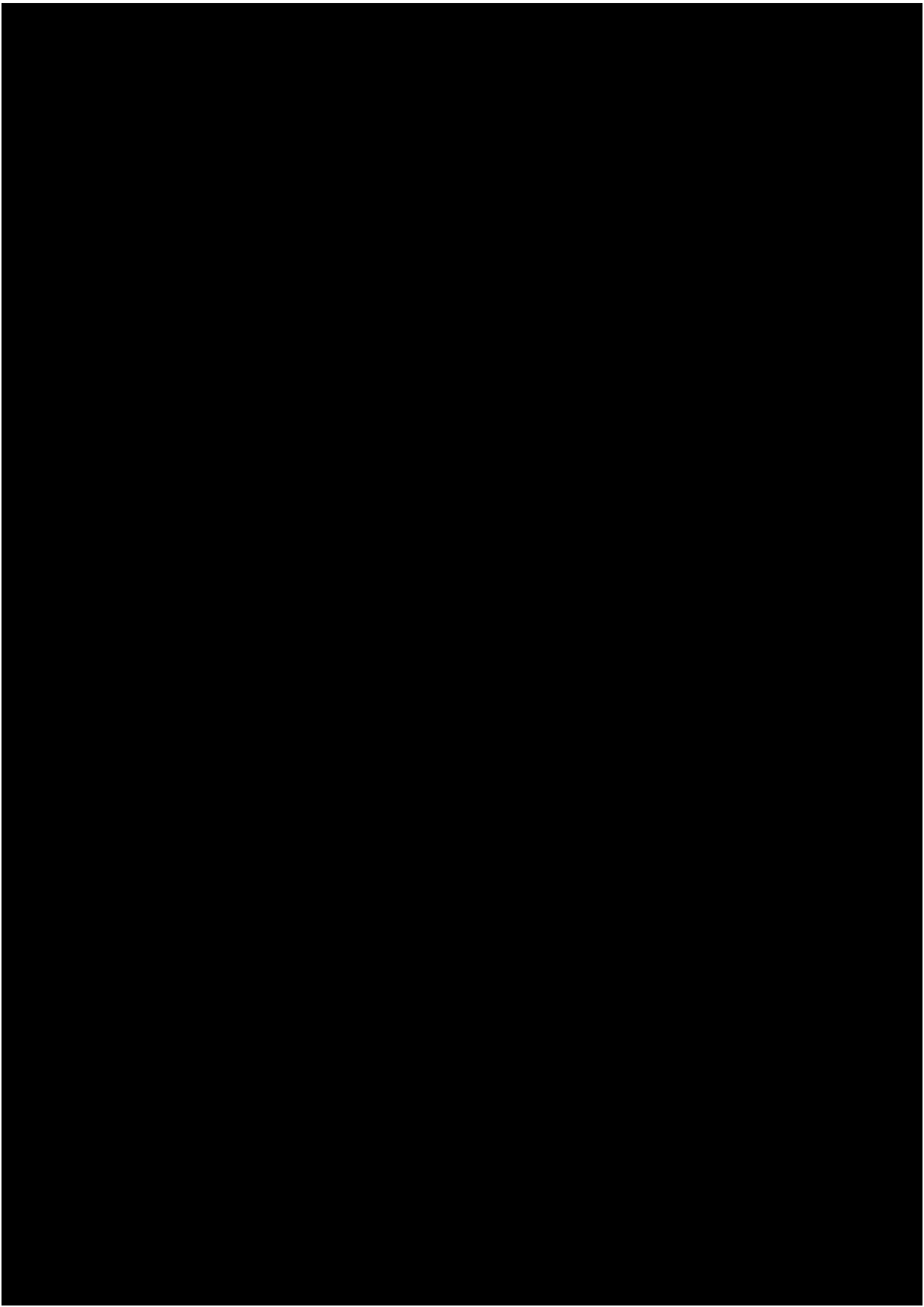
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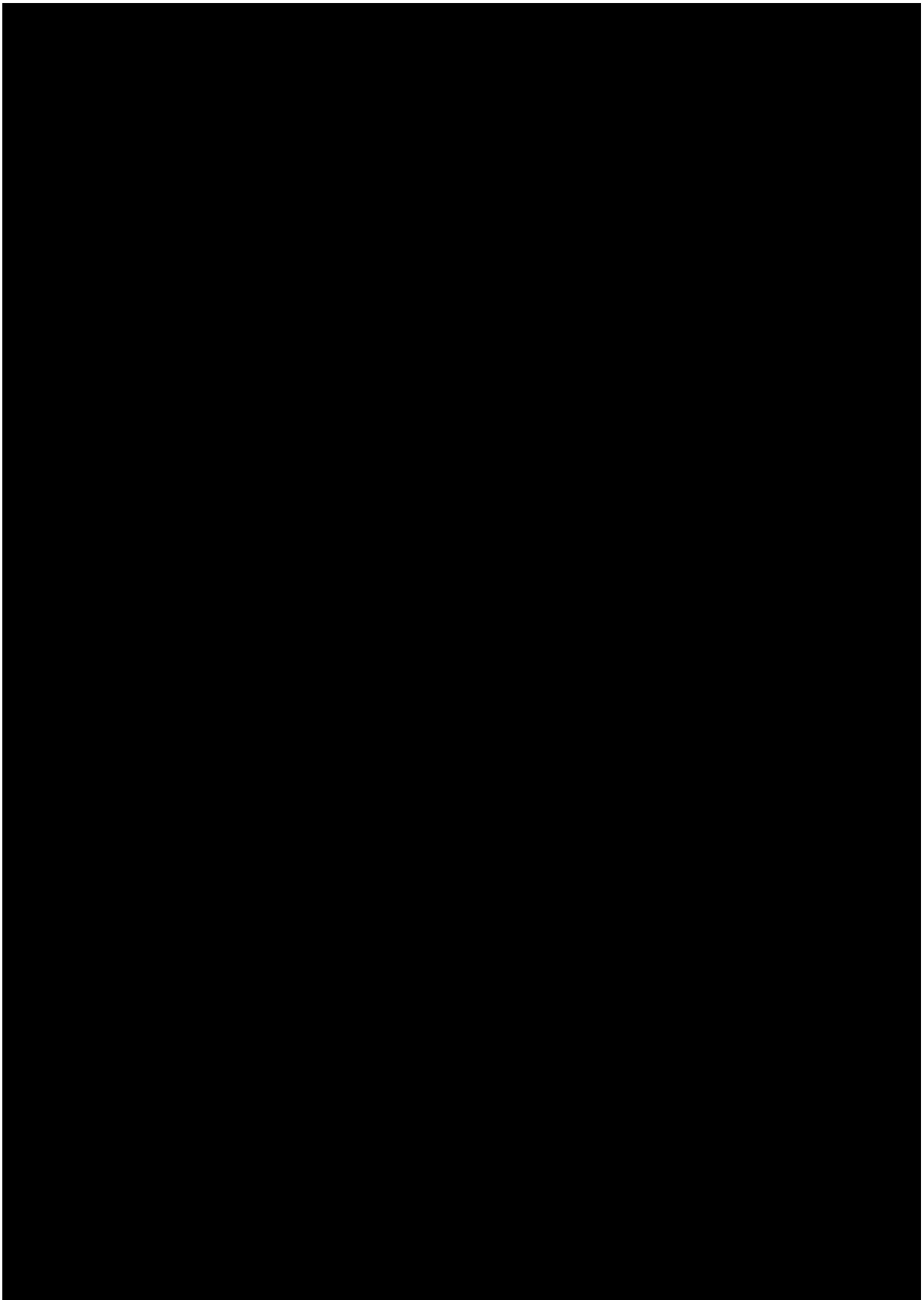
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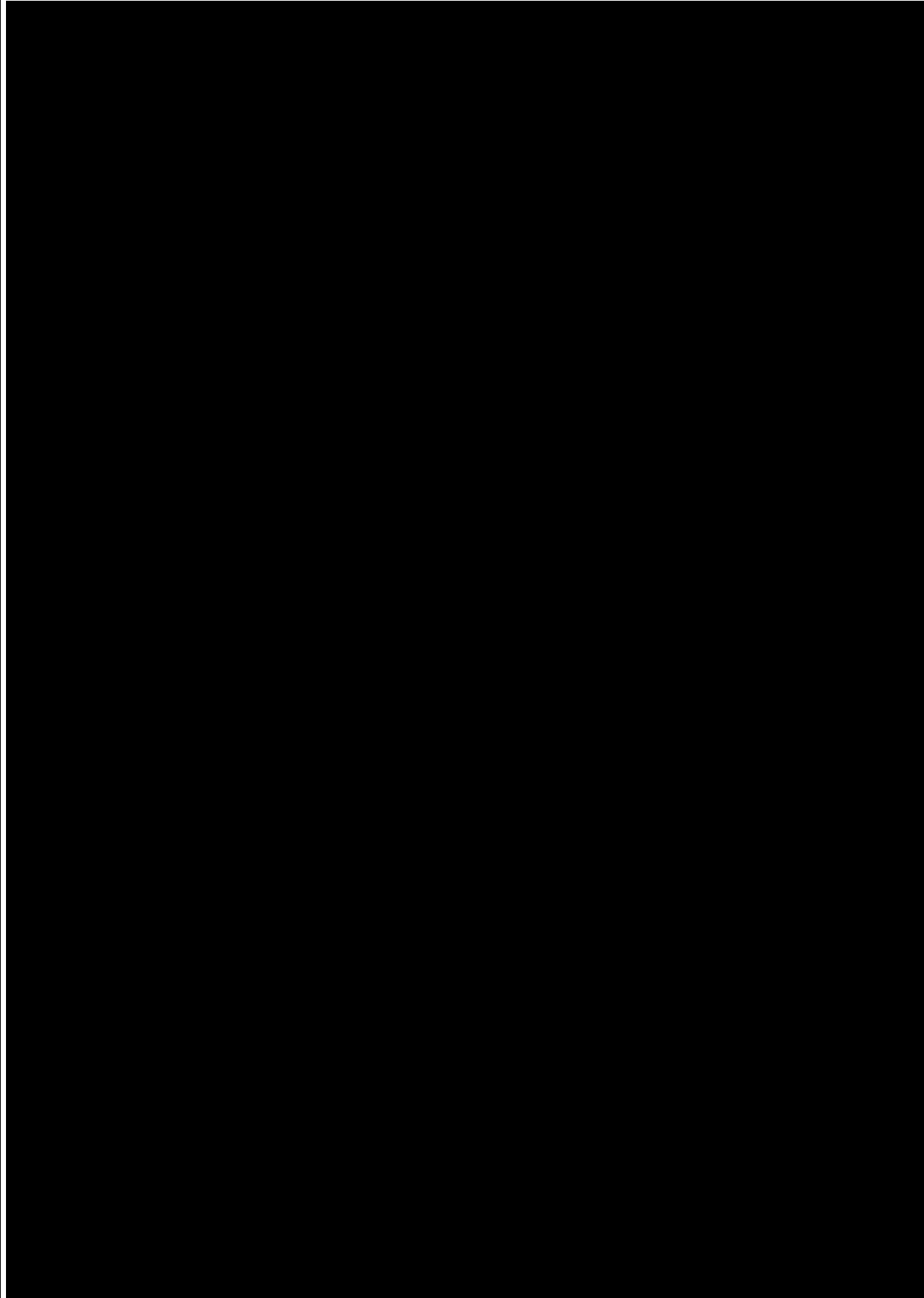
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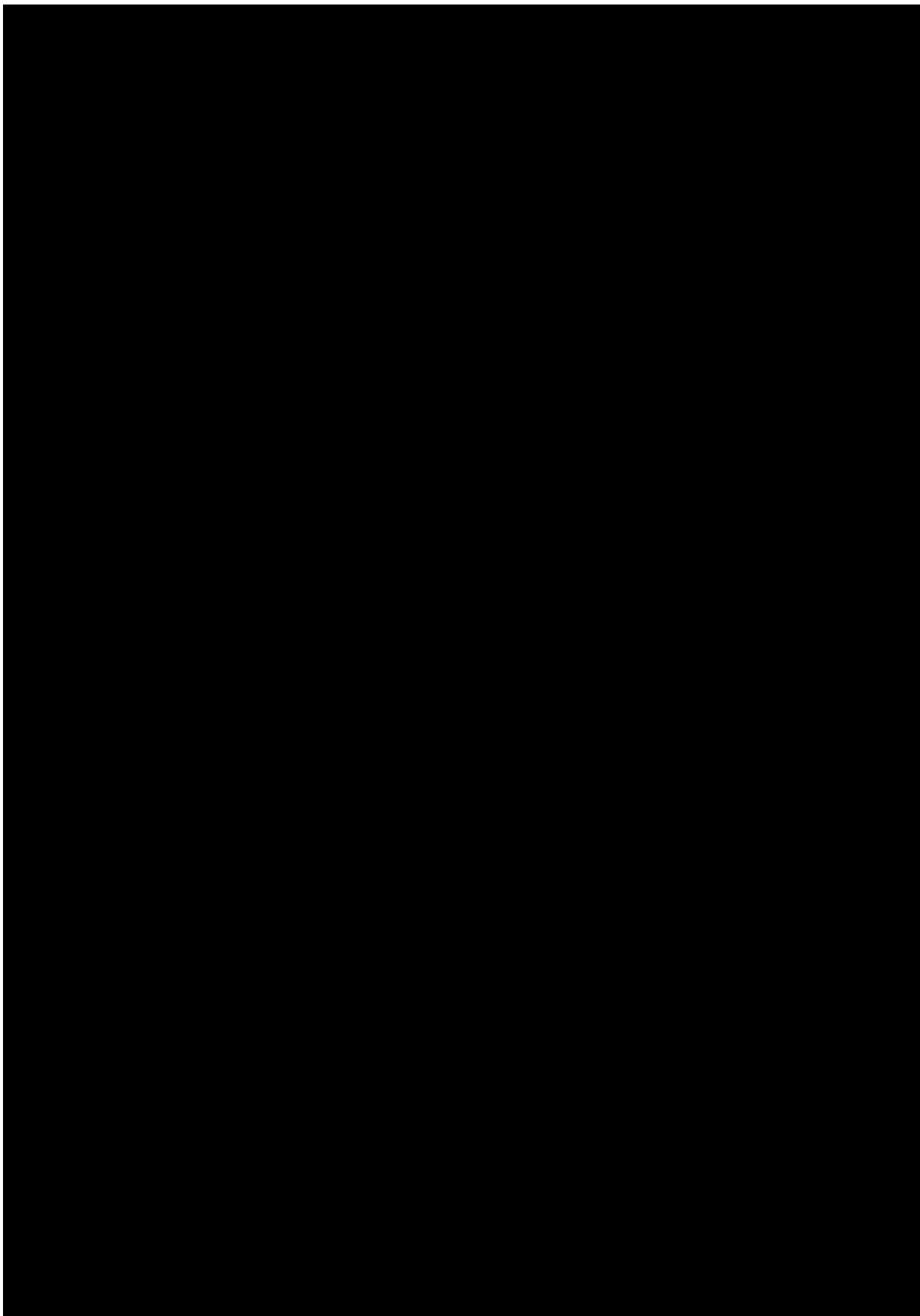
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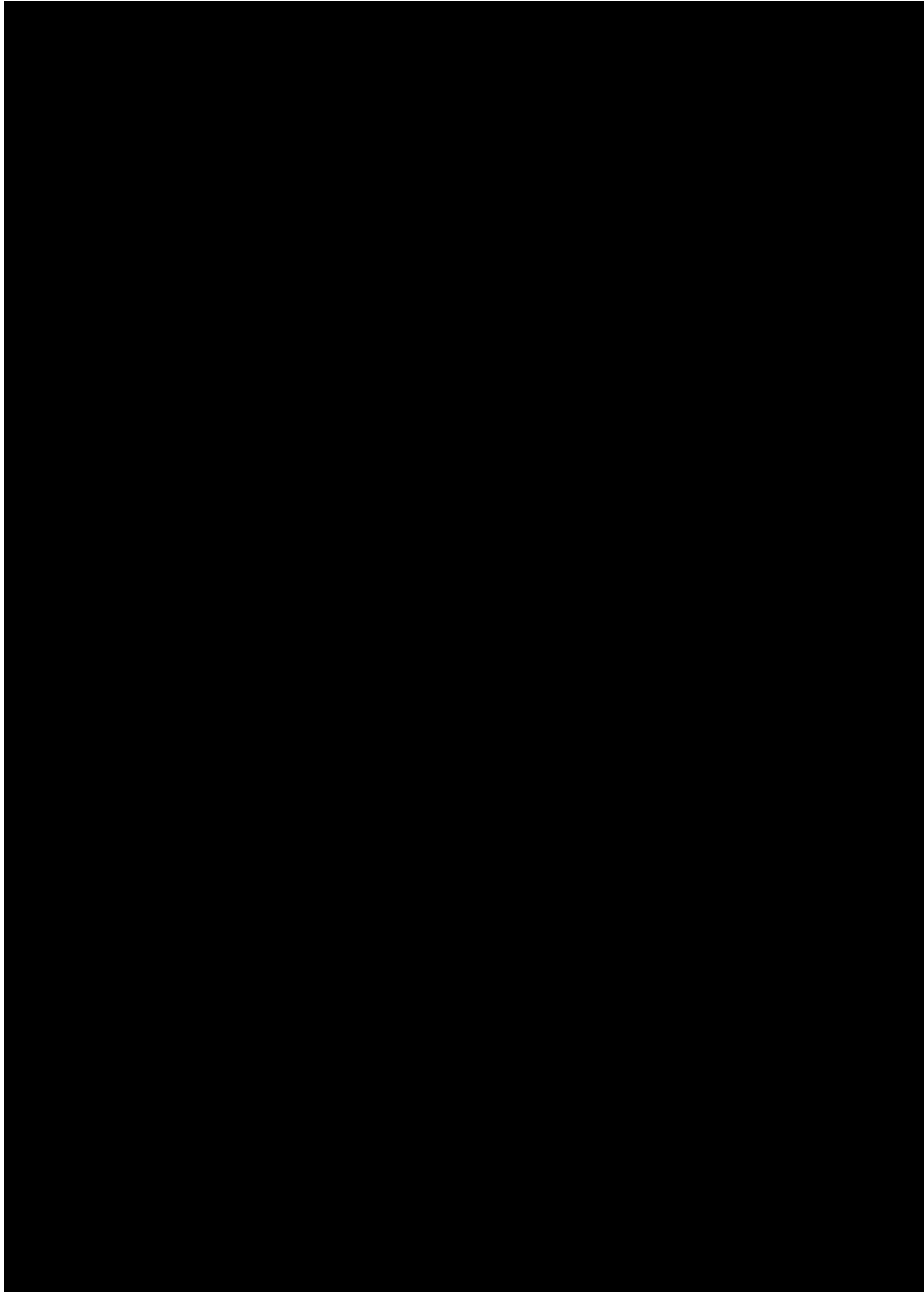
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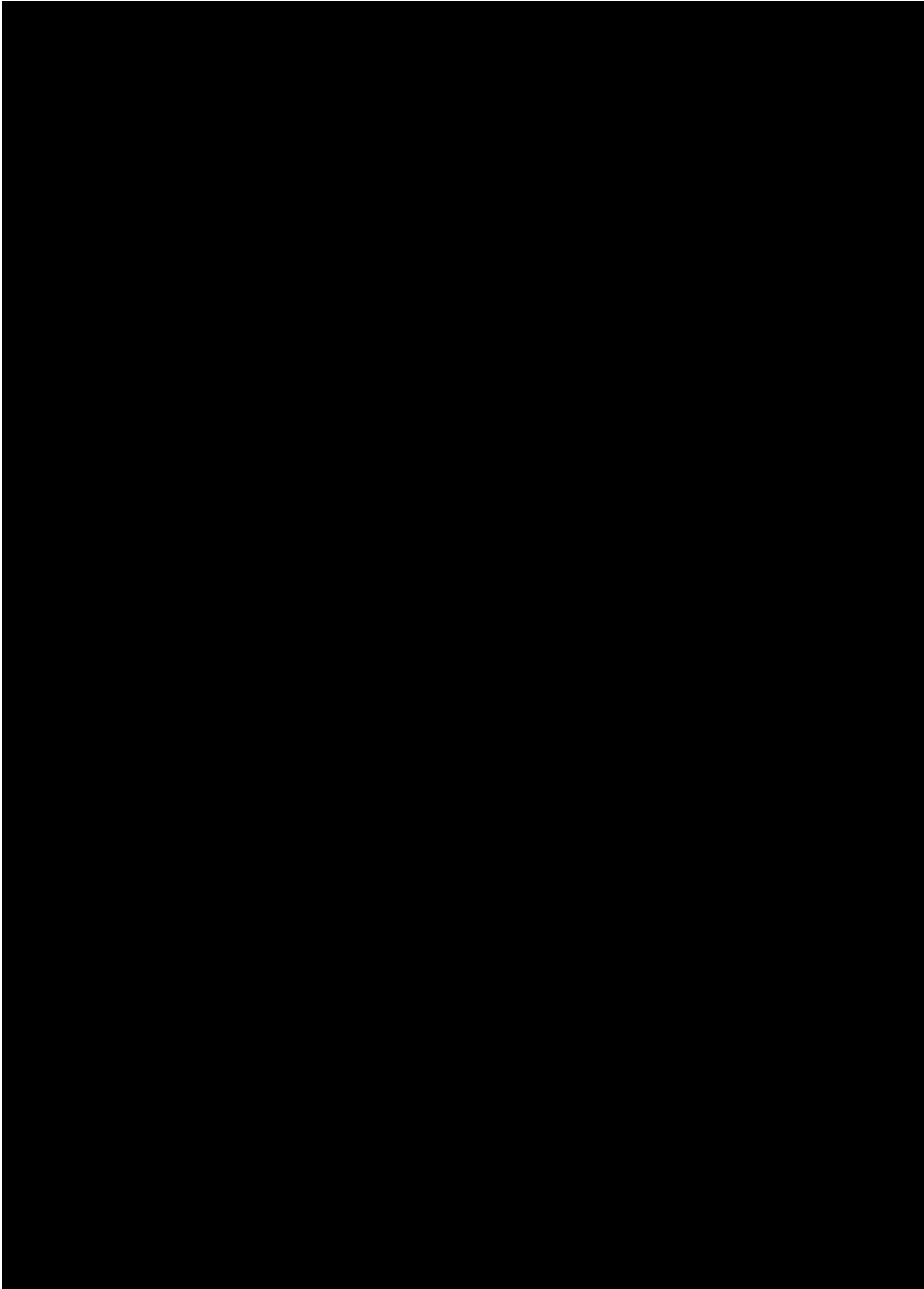
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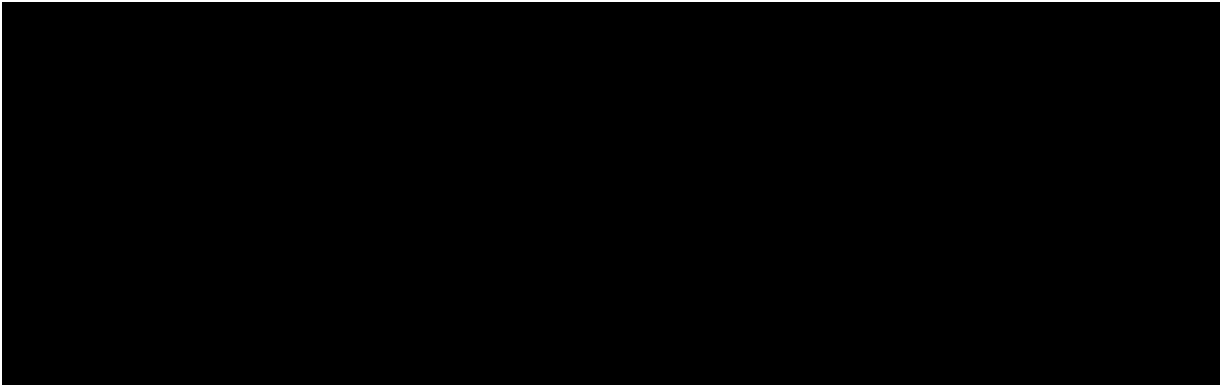
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PRESIDENT TERCIER: Okay. Dr. Heiskanen, if I may interrupt you one second, you have seen where we are on the timing?

DR. HEISKANEN: That is a very good timing also because I have completed my examination.

PRESIDENT TERCIER: It was not the goal of my question.

DR. HEISKANEN: That is not because of your question but because I'm truly done.

Thank you very much, Mr. Henry.

PRESIDENT TERCIER: Thank you very much.

THE WITNESS: Thank you.

PRESIDENT TERCIER: Wait we have, of course, we have further points.

Redirect?

MR. LEW: Can we have just a couple minutes to consider whether we have any questions? I just

1 want to confer with my colleagues.

2 PRESIDENT TERCIER: Yes.

3 MR. LEW: Thanks.

4 (Pause.)

5 MR. LEW: I think we maybe have one
6 question.

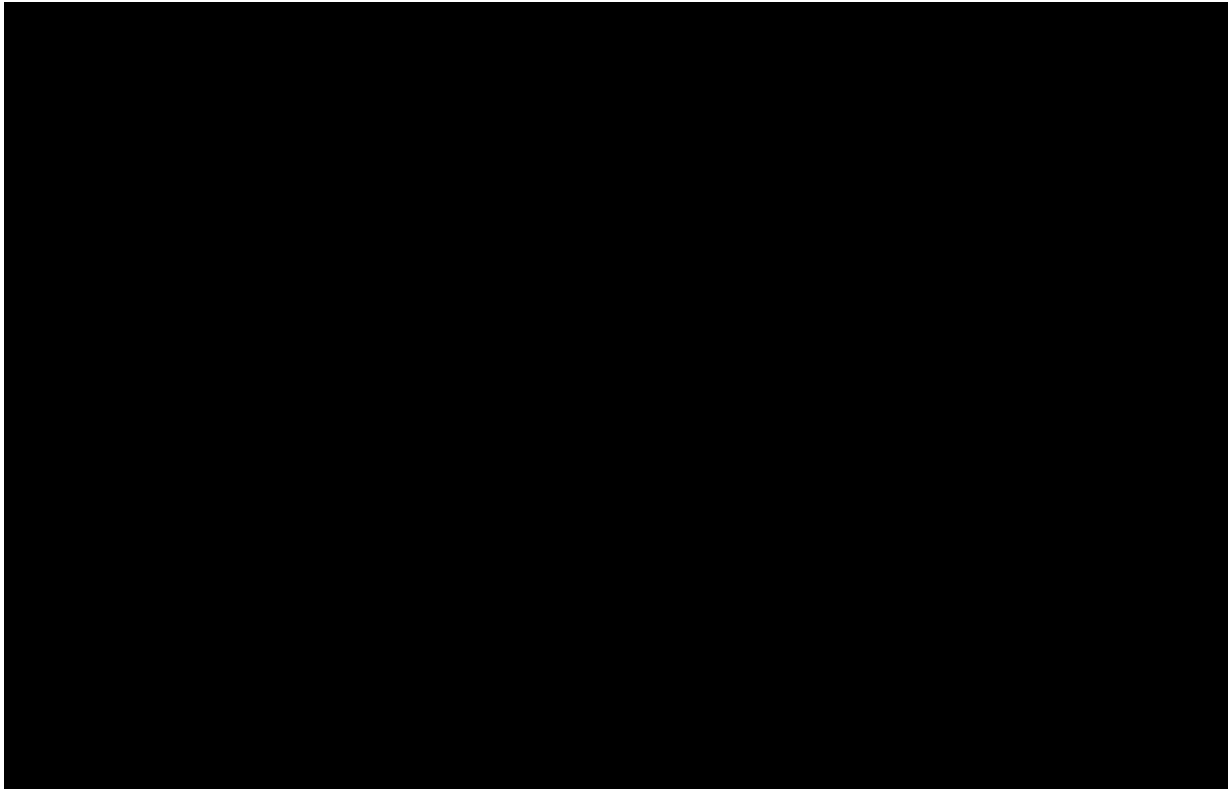
7 PRESIDENT TERCIER: Okay. We will have one
8 or two points to discuss after you.

9 MR. LEW: Sure, of course.

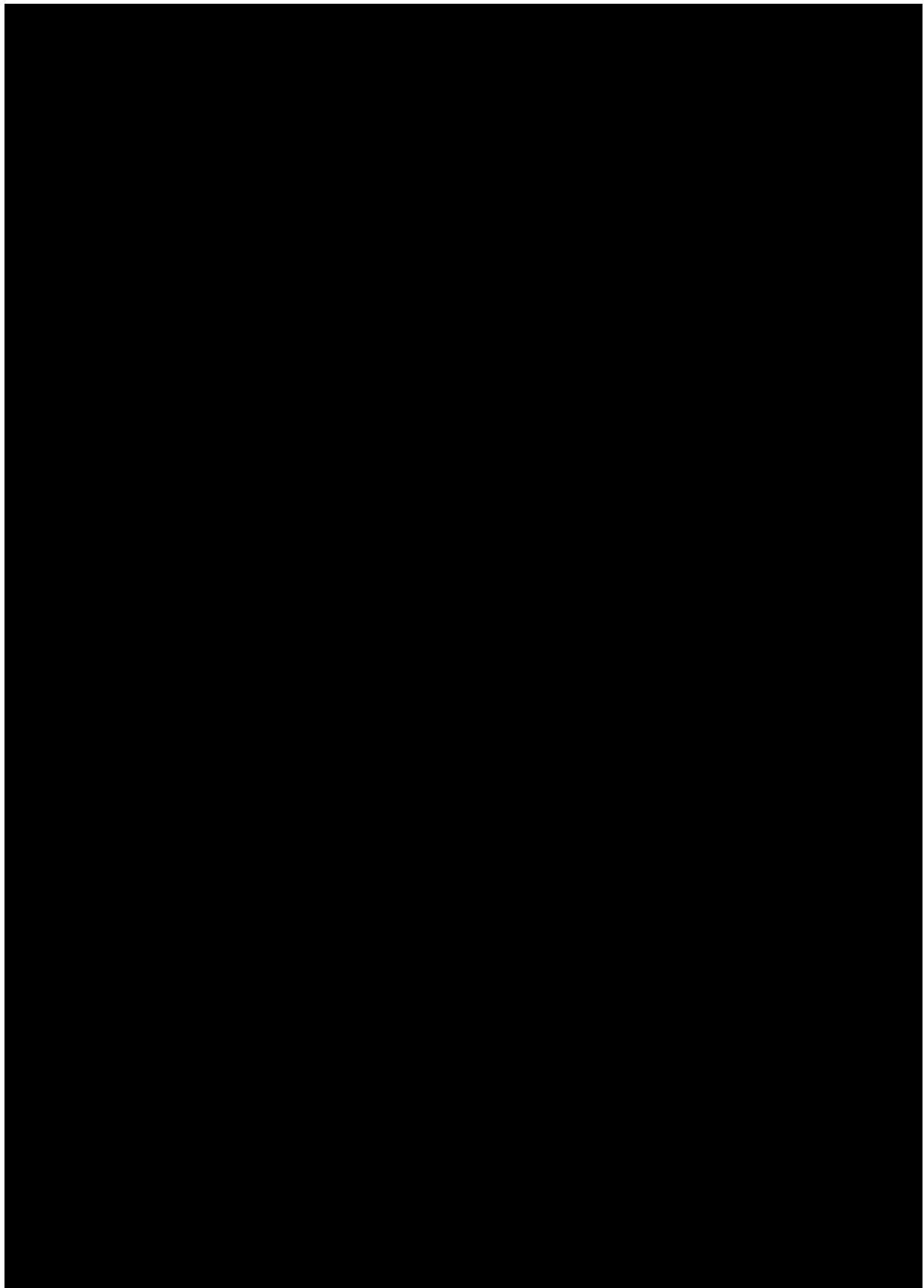
10 PRESIDENT TERCIER: Sorry. Yes, please,
11 sorry, I'm back.

12 REDIRECT EXAMINATION

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1 MR. LEW: No further questions.

2 PRESIDENT TERCIER: Thank you very much,
3 Mr. Henry.

4 I would like to make a few points for the
5 organization.

6 First point for tomorrow, we will start with
7 Mr. Tanase, and then, according to the program, it
8 would be Mr. Avram. He will be available, certainly
9 tomorrow, and the question now for me is whether we
10 should already envisage a possibility to start or to
11 have Mr. Gligor.

12 DR. HEISKANEN: We don't think so.

13 PRESIDENT TERCIER: Okay. So, we would have
14 tomorrow Mr. Tanase and Mr. Avram, okay?

15 Concerning Mr. Avram, we have now the
16 procedure, and your homework to prepare. We have it
17 from Mr. Tanase but we have not from Mr. Avram.

18 MR. LEW: Understood.

19 PRESIDENT TERCIER: Okay. Good. That's
20 Point Number 1.

21 Point Number 2, we have to look at the
22 overall schedule because now Mr. Bode will only

1 come--not "only," but, yeah, the second week, and it
2 means that we will have more time on Friday,
3 apparently. Would it be possible to have Mrs. Mocanu
4 or Mrs. Serban already on Friday?

5 DR. HEISKANEN: We need to confer and see
6 whether that's possible.

7 PRESIDENT TERCIER: Okay. But you've
8 understood I'm not pushing but just trying
9 to--otherwise we're all sitting and watching--so we
10 can try to and see where. I don't remember where
11 Mr. Bode, Mr. Bode would be on Wednesday, if I'm not
12 mistaken. He said that it will take place then, so
13 we have to reorganize a bit, okay, if you can check
14 it.

15 Third point, we have questions--sorry, you
16 have to help me a bit.

17 Sara, can you just explain what's the point.

18 (Pause.)

19 SECRETARY MARZAL YETANO: We just wanted to
20 have clarification on--we understand that Claimants
21 have requested a pass for Pierre Amariglio indicating
22 affiliation of Gabriel Resources, and also I

1 understand that Robin Shah is here for Gabriel
2 Resources, but they've also signed for the
3 broadcasting room as Tenor Capital, so the Tribunal
4 would like to have clarification.

5 MR. POLÁŠEK: Yes, Mr. President. I'm Petr
6 Polášek, counsel for Claimants.

7 Yes, we confirm that we requested those
8 passes, these are representatives of Gabriel
9 Resources, and they will be attending the Hearing.
10 They have not--to the extent they don't have the
11 passes yet, they obviously are not here at this room,
12 but they would like to attend, and that's why we
13 asked for those passes, thank you.

14 PRESIDENT TERCIER: Comment on Respondent's
15 side?

16 DR. HEISKANEN: The question really is,
17 which was not answered, is whether they're employees
18 or representatives of Gabriel Resources.

19 PRESIDENT TERCIER: Answer?

20 MR. POLÁŠEK: They would be here in the same
21 capacity as Ms. Teitelbaum, for example, it's the
22 same thing, if that answers the question.

1 DR. HEISKANEN: It's unclear to us what that
2 capacity is.

3 MS. COHEN SMUTNY: As a matter of public
4 record, Tenor Capital has a seat on the Board of
5 Gabriel Resources, so there is an affiliation at the
6 Shareholder-Investor level in Gabriel.

7 PRESIDENT TERCIER: And Mr. Amariglio?

8 MS. COHEN SMUTNY: They're all affiliated
9 with the same organization.

10 PRESIDENT TERCIER: Oh, yeah. True.

11 DR. HEISKANEN: Which is a third-party
12 funder for Gabriel?

13 MS. COHEN SMUTNY: No, they're not a
14 third-party funder. They're an investor and
15 Shareholder in the company with a seat on the Board.

16 DR. HEISKANEN: We need to reflect on
17 whether--potentially seek advice on whether we need
18 to comment on that any further.

19 PRESIDENT TERCIER: You will do it tomorrow
20 morning?

21 DR. HEISKANEN: Yes.

22 (Tribunal conferring.)

1 PRESIDENT TERCIER: Okay. Sorry, we would
2 wait first for your position, if you have question,
3 probably that will be answered by Claimants and the
4 Arbitral Tribunal will decide whether to have the
5 possibility to have a pass here. So know if you can
6 just inform them that we will decide tomorrow morning
7 after having reviewed it.

8 MR. POLÁŠEK: Yes, will do, Mr. President.
9 Thank you.

10 PRESIDENT TERCIER: Sorry, can you repeat?

11 MR. POLÁŠEK: Yes, just confirming that we
12 will do that. Thank you, Mr. President.

13 PRESIDENT TERCIER: Okay. Good.

14 Then next and last point that I would like
15 to mention is the fact that, as you have probably
16 seen, we have received a new letter from the EC, the
17 European Commission--no?

18 SECRETARY MARZAL YETANO: It hasn't been
19 transmitted.

20 PRESIDENT TERCIER: Sorry; you're doing it.

21 So, you will receive it, and then we would
22 be happy to have your comments again on the requests

1 made by the EC, so that the Arbitral Tribunal can
2 decide what we can do.

3 Sorry, Sara, I thought you had already done
4 it.

5 Do you have another point that you would
6 like to raise?

7 MS. COHEN SMUTNY: None from Claimant.

8 PRESIDENT TERCIER: Before, I have one, the
9 time. You have the total time?

10 SECRETARY MARZAL YETANO: Yes.

11 PRESIDENT TERCIER: I was about to--

12 SECRETARY MARZAL YETANO: Claimants have 29
13 hours and 14 minutes remaining; Respondent 28 hours,
14 31 minutes remaining; and Tribunal, 3 hours and 54
15 minutes.

16 PRESIDENT TERCIER: Okay. Good.

17 So no further point on your side,

18 Dr. Heiskanen?

19 DR. HEISKANEN: Nothing further from us.

20 PRESIDENT TERCIER: Okay. Good. So thank
21 you very much to all of you. I wish you again a very
22 lovely and good evening. We will see you tomorrow

1 morning. 9:00 would be okay. If you want to
2 absolutely be before, we may, but we will start at
3 9:00.

4 (Whereupon, at 6:07 p.m., the Hearing was
5 adjourned until 9:00 a.m. the following day.)

CERTIFICATE OF REPORTER

I, David A. Kasdan, RDR-CRR, Court Reporter, do hereby certify that the foregoing proceedings were stenographically recorded by me and thereafter reduced to typewritten form by computer-assisted transcription under my direction and supervision; and that the foregoing transcript is a true and accurate record of the proceedings.

I further certify that I am neither counsel for, related to, nor employed by any of the parties to this action in this proceeding, nor financially or otherwise interested in the outcome of this litigation.



DAVID A. KASDAN

CERTIFICATE OF REPORTER

I, Margie Dauster, RMR-CRR, Court Reporter, do hereby certify that the foregoing proceedings were stenographically recorded by me and thereafter reduced to typewritten form by computer-assisted transcription under my direction and supervision; and that the foregoing transcript is a true and accurate record of the proceedings.

I further certify that I am neither counsel for, related to, nor employed by any of the parties to this action in this proceeding, nor financially or otherwise interested in the outcome of this litigation.


MARGIE DAUSTER