

INTERNATIONAL CENTRE FOR THE SETTLEMENT OF  
INVESTMENT DISPUTES

-----x  
 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 3

HEARING ON THE MERITS

Wednesday, December 4, 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 9:00 a.m. before:

PROF. PIERRE TERCIER, President of the Tribunal

DR. HORACIO A. GRIGERA NAÓN, Co-Arbitrator

PROF. ZACHARY DOUGLAS, Co-Arbitrator

ALSO PRESENT:

MS. SARA MARZAL YETANO  
Secretary to the Tribunal

MS. MARIA ATHANASIOU  
Tribunal Assistant

Court Reporters:

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Interpreters:

MS. MARLIENA FILIP

MS. ALEXANDRA IULIANA MLADEN

MS. ALEXANDRA DOBRIN

ALSO PRESENT:

Attending on behalf of the Claimants:

MS. ABBY COHEN SMUTNY  
MR. DARRYL LEW  
MR. BRODY GREENWALD  
MR. PETR POLÁŠEK  
MR. HANSEL PHAM  
MR. FRANCIS VASQUEZ JR.  
MR. ANDREI POPOVICI  
MS. GABRIELA LOPEZ  
MR. FRANCIS LEVESQUE  
MR. WILLIAM STROUPE  
MS. NATALIA TCHOUKLEVA  
MR. JACOB TRUMM  
MS. DARA BROWN  
MS. ALYSSA HOWARD  
White & Case, LLP  
701 13th Street, N.W.  
Washington, D.C. 20005  
United States of America

MR. FLORENTIN TUCA  
MS. IDA-LEVANA ZIGMUND  
MS. ANCA DIANA PUSCASU  
MS. OANA-MIRUNA URECHE  
MS. RUXANDRA NIȚĂ  
MS. ANGELICA-IULIANA HOGAȘ-PINTILIE  
MR. CORNEL POPA (via video for Prof. Birsan)  
Țuca Zbârcea & Asociații  
Sos. Nicolae Titulescu nr. 4-8  
America House, Aripa de Vest, et. 8  
Sector 1, 011141, Bucuresti  
Romania

APPEARANCES:

Represent Gabriel Resources Ltd.:

MR. SIMON LUSTY

MR. RICHARD BROWN

MR. DANIEL KOCHAV

MS. RUTH TEITELBAUM

Representing Roşia Montană Gold Corporation:

MR. MIHAI BOTEA

APPEARANCES: (Continued)

Attending on behalf of the Respondent:

DR. VEIJO HEISKANEN  
MR. MATTHIAS SCHERER  
MS. NORADÈLE RADJAI  
MS. LORRAINE de GERMINY  
MR. CHRISTOPHE GUIBERT de BRUET  
MR. DAVID BONIFACIO  
MR. BAPTISTE RIGAUDEAU  
MS. EMILIE McCONAUGHEY  
MS. NICOLE CHALIKOPOULOU  
MR. PATRICIO GRANE  
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CH - 1207 Geneva  
Switzerland

DR. CRENGUȚA LEAUA  
MS. ANDREEA SIMULESCU  
MS. MIHAELA MARAVELA  
MS. LILIANA DEACONESCU  
MS. ANDREEA PIȚURCĂ  
MS. ANDRA SOARE FILATOV  
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10 Zborului Street, sector 3  
030595, Bucharest  
Romania

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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 third day of  
4 the Hearing, First Session of the Hearing in the ICSID  
5 Arbitration Case 15/31 between Gabriel Resources  
6 Limited and Gabriel Resources (Jersey) Limited versus  
7 Romania. I hope you had a pleasant evening, and  
8 again, for the third time, I express that you will  
9 have a very serene and constructive day.

10           I have a few points before starting with the  
11 examination of Mr. Tănase. First point, I would like  
12 again to thank our Court Reporters for the Transcripts  
13 that they have prepared and that we have received.

14           I would like also to note receipt of the list  
15 of issues and rebuttal document prepared by Claimants.  
16 You have received it. I would like to thank both  
17 Parties for having sent the electronic version of  
18 their Opening Statements.

19           I would like to thank Sara for having made  
20 the report of the time used and the time remaining;  
21 used by Claimants, five hours 31 minutes; by  
22 Respondent, six hours 13 minutes; and by the Arbitral

1 Tribunal, one hour and five minutes.

2 We have received Claimants' letter concerning  
3 the request to add Mr. Pierre Amariglio as a  
4 participant.

5 Have you a comment on your side, Respondent?

6 DR. HEISKANEN: Yes.

7 If he is a member of Gabriel's Board or an  
8 employee of Gabriel, we have no objection, but if he  
9 is merely a shareholder of the Company, we do have an  
10 objection.

11 PRESIDENT TERCIER: Respondent--Claimants?

12 MS. COHEN SMUTNY: He is an employee of a  
13 shareholder.

14 PRESIDENT TERCIER: Good. In that case, no  
15 objection.

16 DR. HEISKANEN: Then we have an objection.  
17 If he's an employee of the Shareholder, he's not an  
18 employee of Gabriel. Gabriel is the Party to this  
19 arbitration, not Tenor Capital. This is now a  
20 confidential hearing, as we have agreed, and he cannot  
21 be considered a party representative.

22 PRESIDENT TERCIER: Claimants?



1 MS. COHEN SMUTNY: My understanding is that  
2 there are no formal rules about who can be a party  
3 representative, and if the Party designates a person  
4 to be its representative, that that's--that's  
5 acceptable.

6 PRESIDENT TERCIER: Respondent?

7 DR. HEISKANEN: We understand that he has  
8 already identified himself for purposes of this  
9 Hearing as a representative or somebody who is  
10 associated with Tenor Capital when he signed up for  
11 the Hearing.

12 PRESIDENT TERCIER: Okay.

13 (Tribunal conferring.)

14 PRESIDENT TERCIER: Okay. We have considered  
15 both Parties' argument.

16 This Hearing is a confidential hearing.  
17 Indeed, we do not see reasons for Mr. Amariglio to be  
18 in the room, so we would like him to leave. It's not  
19 that we have distrust, but it is just for application  
20 of the rule. He's not here. Okay, good.

21 MS. COHEN SMUTNY: He's not in the room. We  
22 understood that that was dependent upon your decision,

1 so that's fine.

2 PRESIDENT TERCIER: Okay, good. That's fine.

3 Next point for me, you remember that I asked  
4 you whether Ms. Mocanu and Ms. Şerban could possibly  
5 be present already this week?

6 DR. HEISKANEN: Yes, Ms. Şerban will be  
7 available Friday.

8 PRESIDENT TERCIER: Okay. So, I'll ask our  
9 Secretary to see how she could now prepare a new  
10 updated version of the program so that we can discuss  
11 it.

12 And you remember also that we still have one  
13 issue for us to decide; it is the request for the  
14 European Commission that you have received now.

15 SECRETARY MARZAL YETANO: Yes. I confirm  
16 that I received a letter late yesterday, and I have  
17 not been able to transmit it yet.

18 Sorry.

19 PRESIDENT TERCIER: Okay. I'm not worried.  
20 It will come. It is not urgent, but in any case, once  
21 we have received it, we would be happy to take a few  
22 minutes to have your last argument concerning their

1 participation so that the Tribunal could decide. We  
2 have informed the EC that we would decide this week,  
3 okay?

4 Good. I have nothing else.

5 On your side, have you another point you  
6 would like to raise?

7 MS. COHEN SMUTNY: Nothing further.

8 PRESIDENT TERCIER: Okay. On your side?

9 DR. HEISKANEN: Yes, simply to indicate that  
10 there is a new person on the Respondent's side  
11 attending the Hearing, Professor Dragoş, legal expert  
12 of the Respondent. And we also have Mr. Găman and  
13 Mr. Ariton attending because the Claimants have  
14 indicated that Mr. Tănase will be providing rebuttal  
15 evidence during the direct examination on their  
16 evidence.

17 PRESIDENT TERCIER: Thank you very much.

18 You remind me politely that I should have  
19 started with this, so we take note of the new  
20 attendees.

21 And on your side, no new--nobody joined the  
22 club?

1 MS. COHEN SMUTNY: No, no.

2 PRESIDENT TERCIER: Good. In that case, we  
3 may proceed.

4 DRAGOS TĂNASE, CLAIMANTS' WITNESS, CALLED

5 PRESIDENT TERCIER: Good morning, Mr. Tănase.  
6 I don't know how to spell your name. I do my best.  
7 How would you?

8 THE WITNESS: Good morning. I think you are  
9 pronouncing it fine.

10 PRESIDENT TERCIER: Okay, fine. Good. You  
11 know that you will be heard in this procedure as a  
12 witness. You had already had opportunity to do that.  
13 I would like to introduce the Members of the Arbitral  
14 Tribunal that you already know. On my left-hand side,  
15 Professor Horatio Grigera Naón, and on my right-hand  
16 side, Professor Zachary Douglas. My name is Pierre  
17 Tercier; I'm new, you know that because I've replaced  
18 Ms. Teresa Cheng. You know the Secretary of the  
19 Tribunal, and on her left side is the Assistant to the  
20 Tribunal, Ms. Maria Athanasiou.

21 You will be heard as a witness. May I ask  
22 you to read the Declaration, yes, that you have in

1 front of you.

2 THE WITNESS: I solemnly declare upon my  
3 honor and conscience that I shall speak the truth, the  
4 whole truth, and nothing but the truth.

5 PRESIDENT TERCIER: Okay. Good.

6 Just a few words before starting. You know  
7 already how it will go. I will come to it in a  
8 moment. There will first be direct examination. It  
9 is--I will again explain; it goes a little bit further  
10 than what is usual; then you have the  
11 cross-examination, and then the redirect, and the  
12 Arbitral Tribunal have the right at any time to ask  
13 you questions.

14 You have prepared for these proceedings three  
15 Witness Statements. The first that was for the first  
16 phase and the Provisional Measures was dated 28th of  
17 July 2016; the second for this on the merits was the  
18 30th of June 2017; and the third, for the 2nd of  
19 November 2018. Have you these documents before you?

20 THE WITNESS: Yes, I have the documents in  
21 front of me.

22 PRESIDENT TERCIER: Okay. Can you confirm

1 the content of these Witness Statements, or do you  
2 wish to make amendments?

3 THE WITNESS: I confirm the content of the  
4 Witness Statements. I have no amendments to make at  
5 this point.

6 PRESIDENT TERCIER: Good. So, you know that  
7 this is your testimony. You know the procedure.

8 I said a moment ago that the direct will be a  
9 little bit special because, for reasons that were  
10 connected to the way the documents have been  
11 submitted, it has been agreed that the counsel for  
12 Claimants have the right to ask you also questions of  
13 documents that have been submitted very recently,  
14 so-called "rebuttal documents." So, that will be the  
15 first part. Then again, as I said, cross and  
16 redirect.

17 For the benefit of the Transcript, I invite  
18 you first to answer concisely to the questions, and  
19 secondly to avoid to speak/interrupt the speaker, in  
20 order to avoid overlap, possible overlapping of  
21 statements, okay?

22 THE WITNESS: Okay.

1           PRESIDENT TERCIER: Good.

2           THE WITNESS: I understand.

3           PRESIDENT TERCIER: Can you in just a few  
4 words tell us what was your involvement in this case  
5 when you joined Gabriel and then what was your  
6 position very shortly, just in order to refresh our  
7 memory; everything in your statement we know that, but  
8 just in order to introduce yourself.

9           THE WITNESS: Thank you.

10           So, I'm Romanian. I joined the Project in  
11 2008 as Vice President of Finance, and then in a few  
12 months I became the General Manager of Rosia Montana  
13 Gold Corporation in Romania.

14           I reported at the time to Gabriel Resources  
15 CEO Alan Hill.

16           Then I spent my last, basically from 2008 to  
17 2018 I was General Manager as of RMGC.

18           In 2018, in August, I was appointed as CEO of  
19 Gabriel Resources.

20           And since August 2018, I have a double  
21 capacity, CEO of Gabriel Resources and General Manager  
22 of Rosia Montana Gold Corporation.

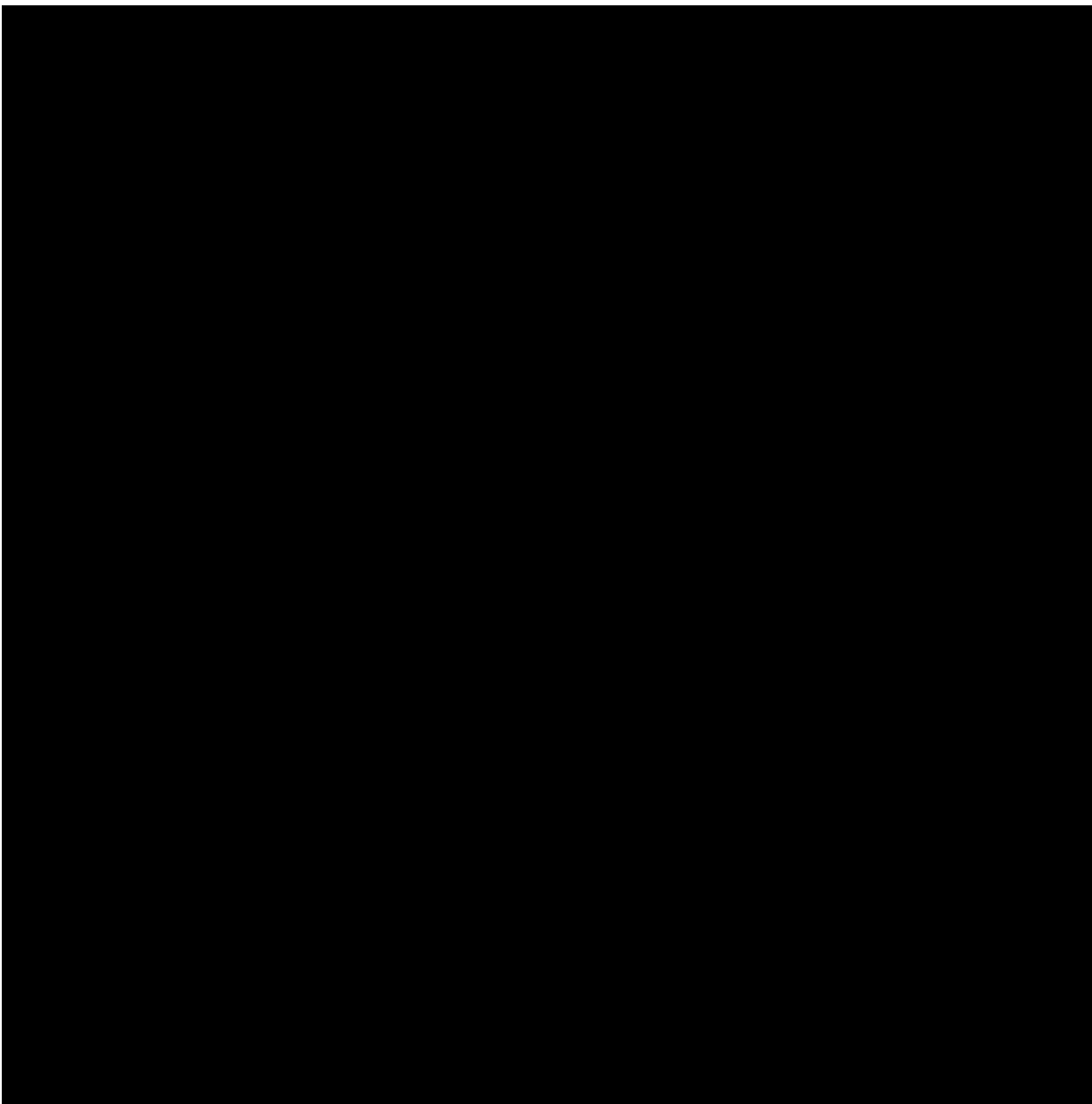
1           PRESIDENT TERCIER: Very good.

2           Okay. No question from my co-Arbitrators, in  
3 the benefit of time, I give the floor to counsel for  
4 Claimants.

5           MR. GREENWALD: Thank you, Mr. President.

6                           DIRECT EXAMINATION

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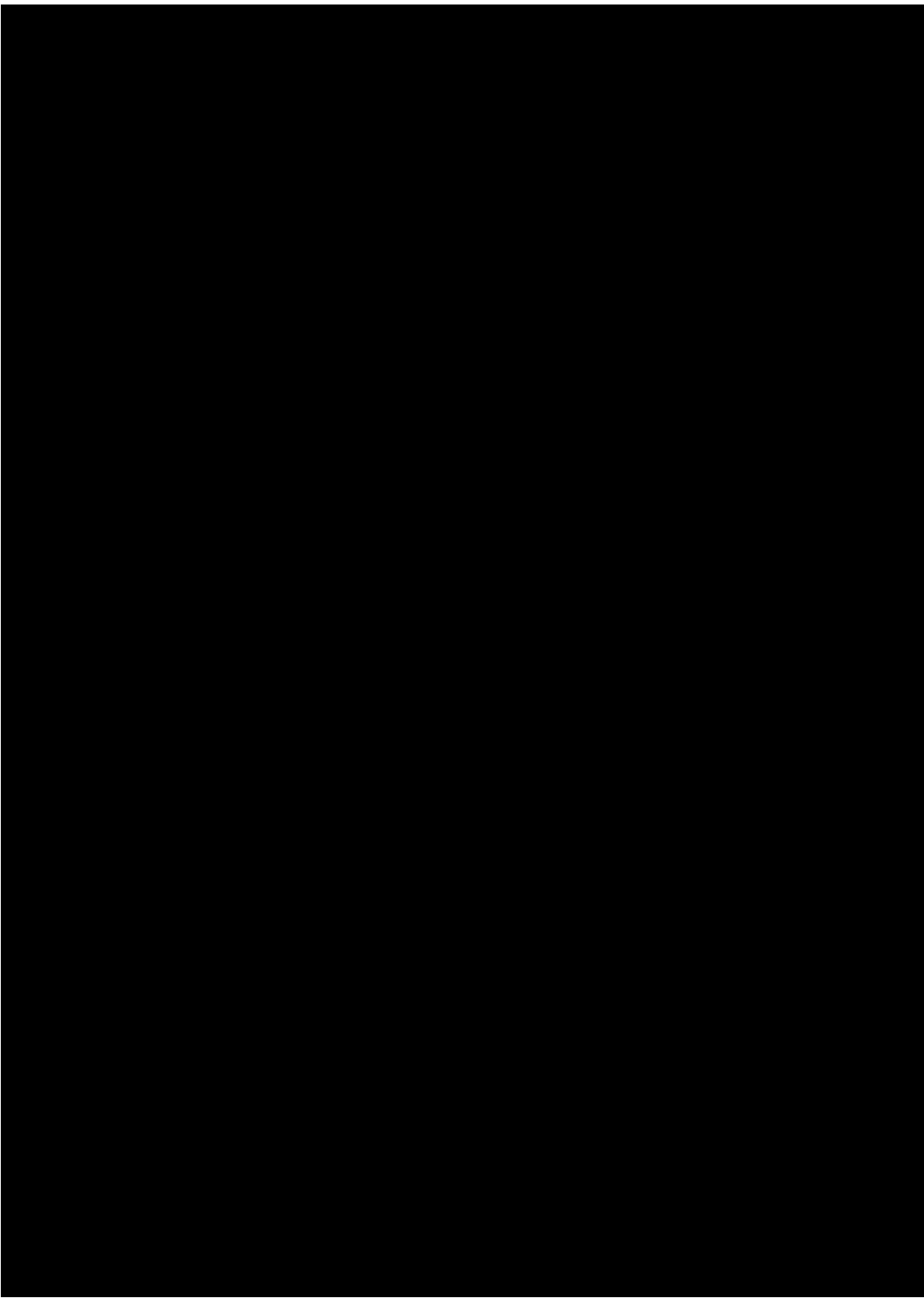




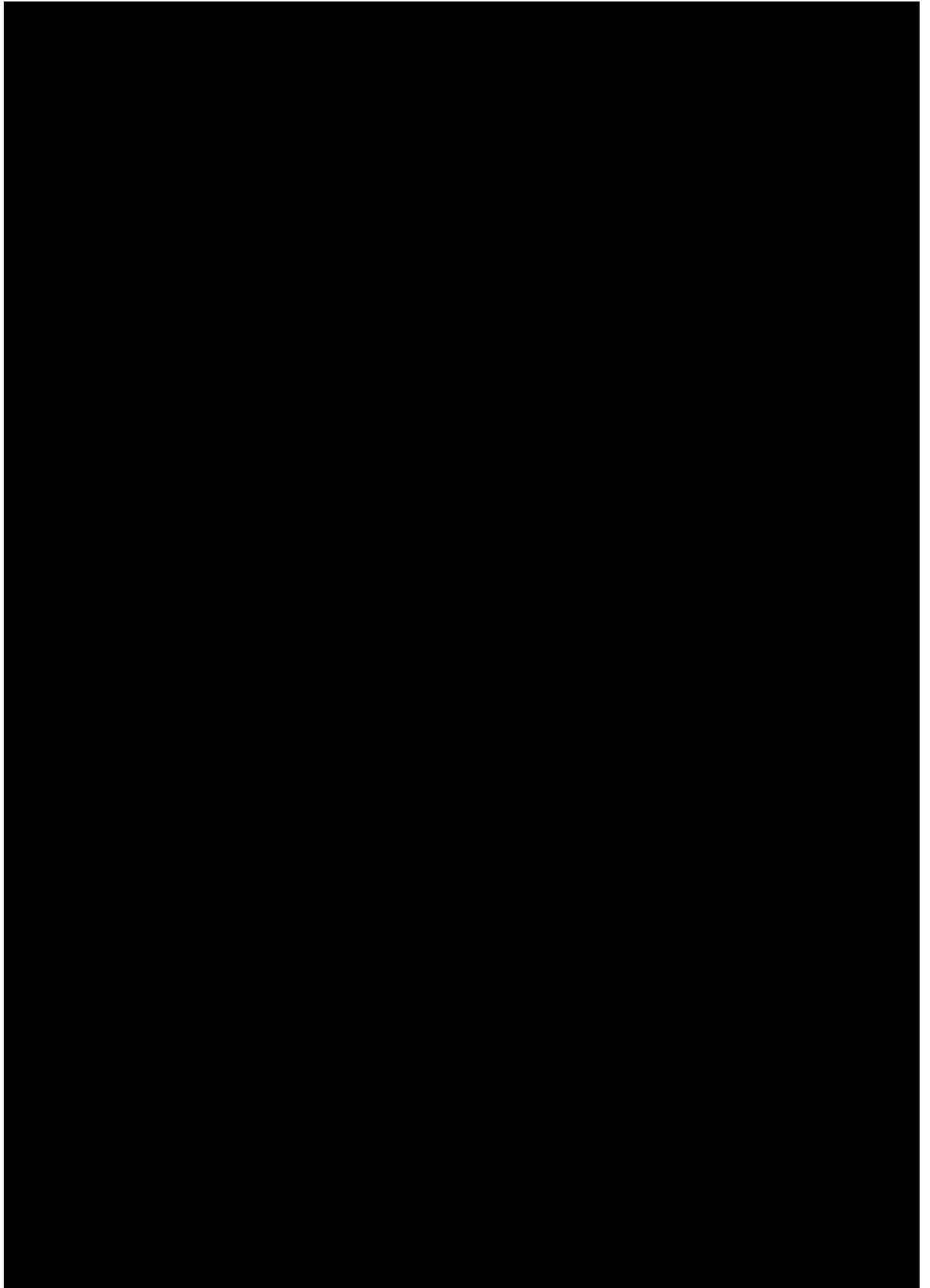
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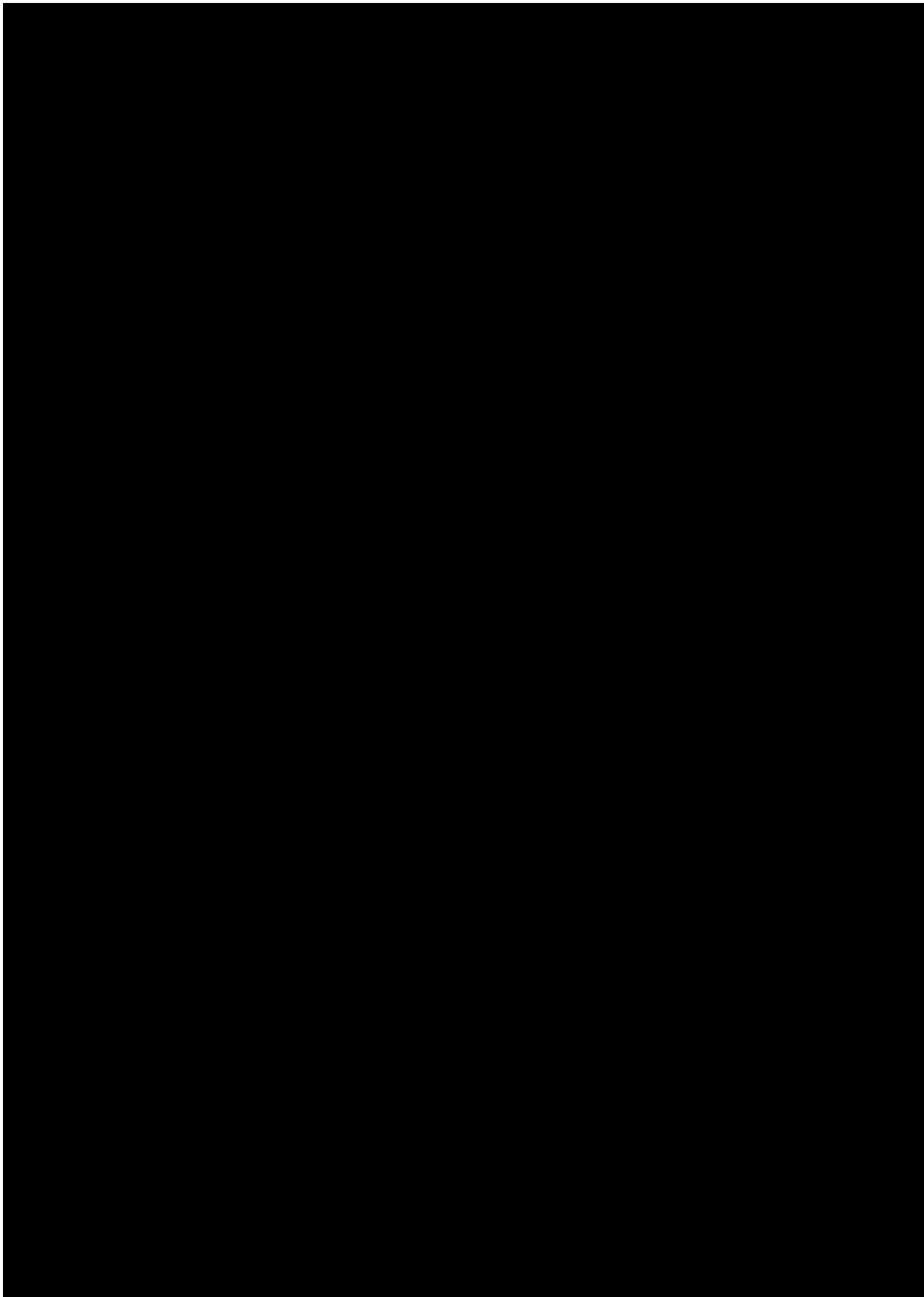
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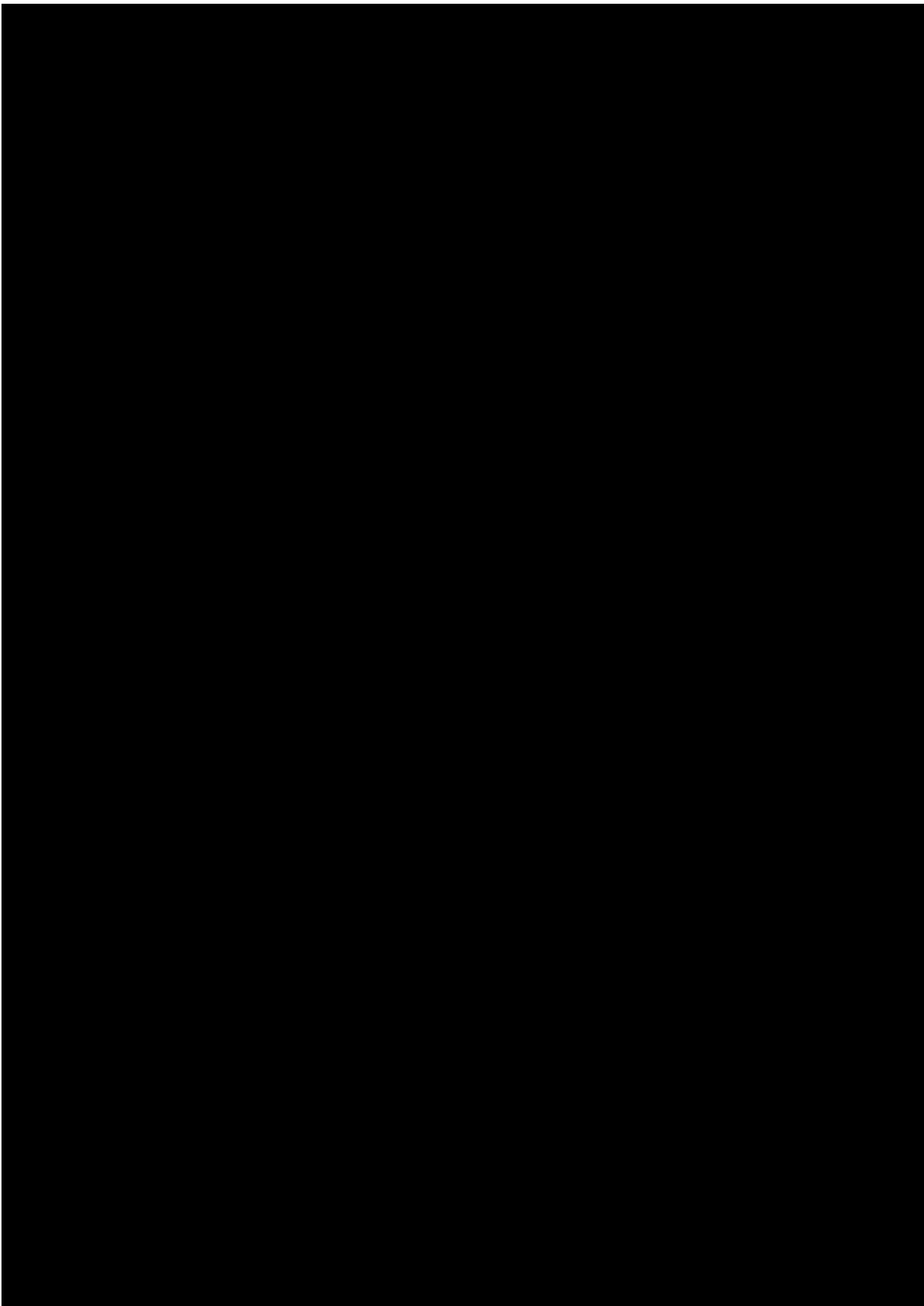
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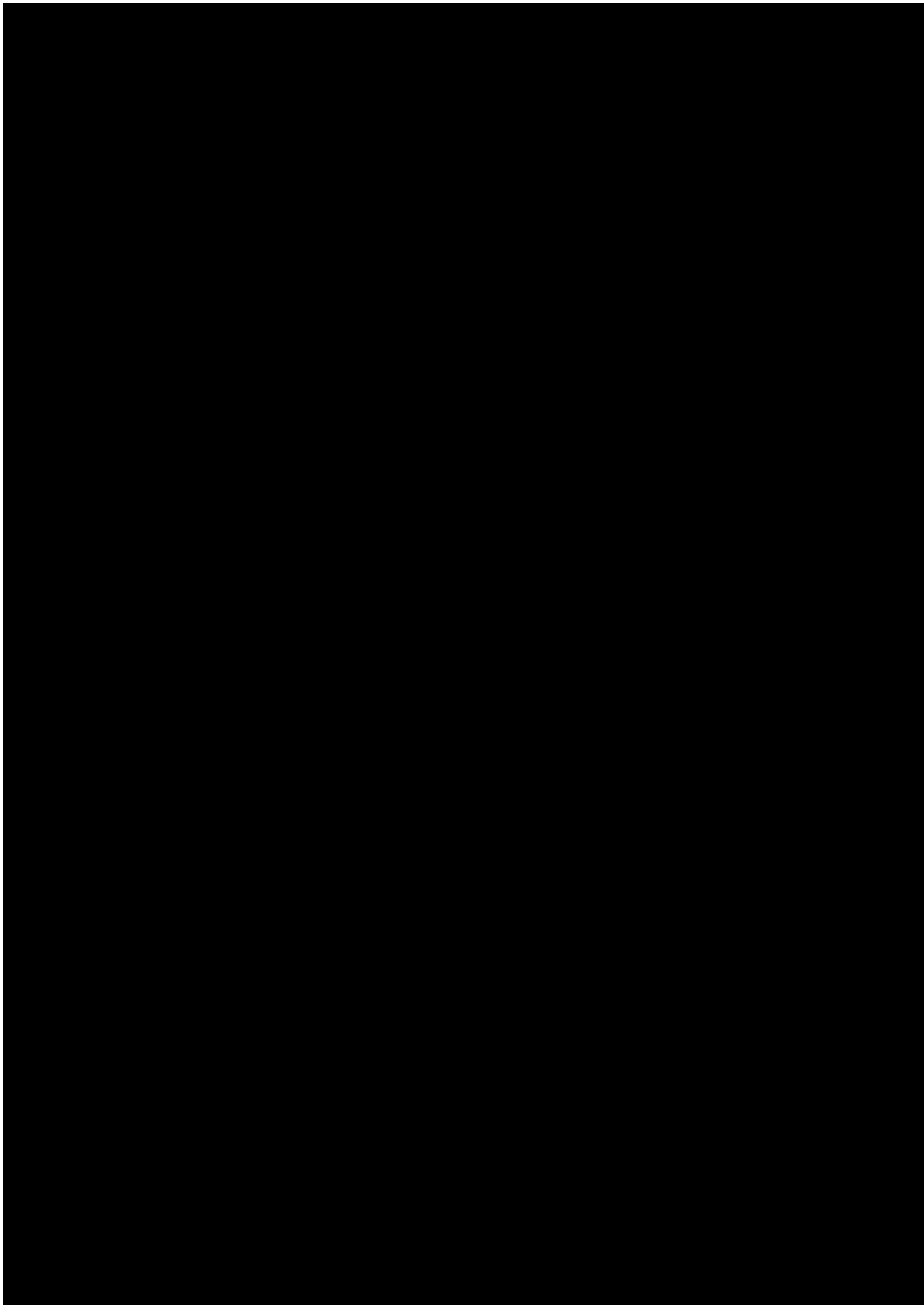
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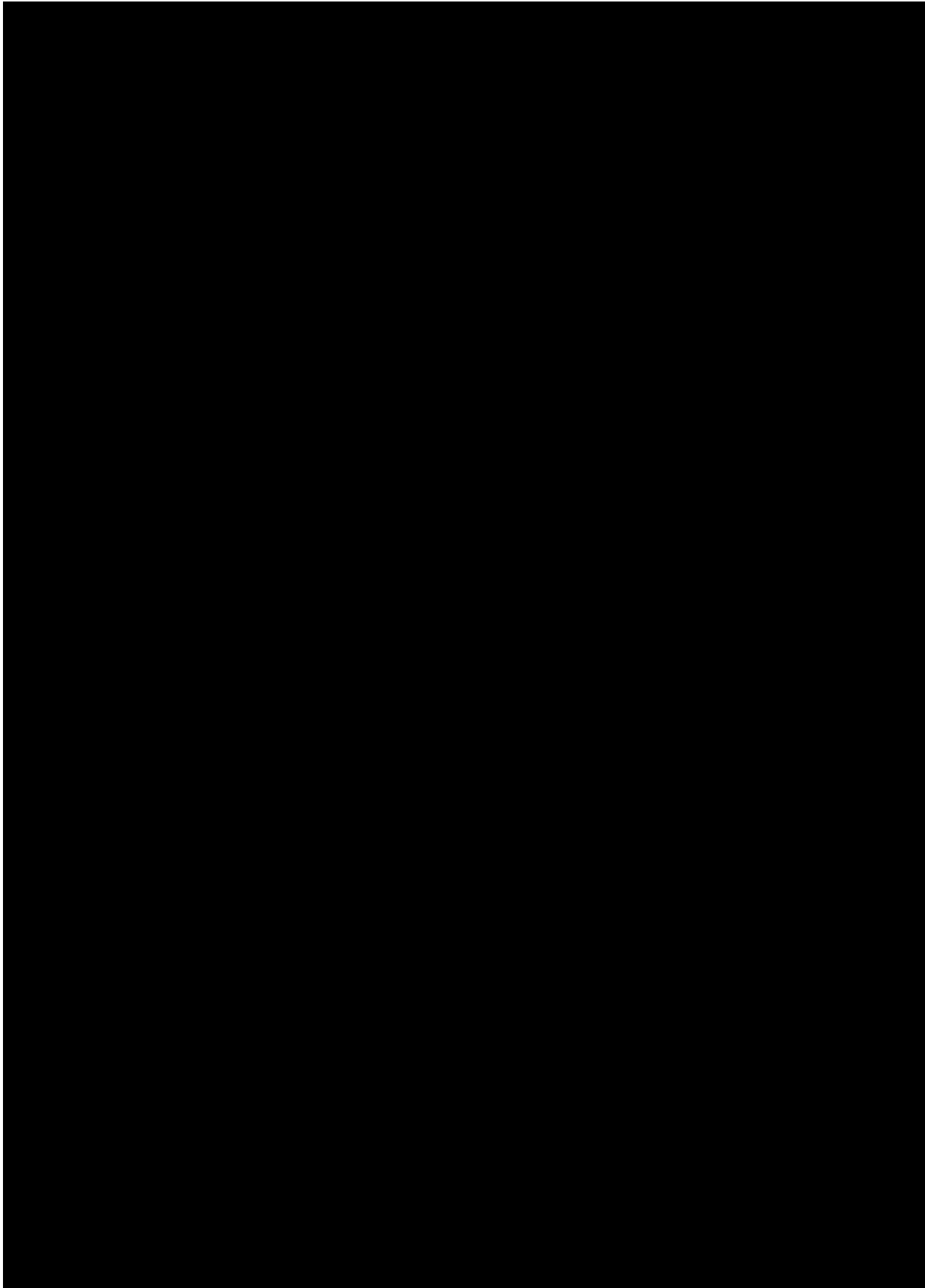
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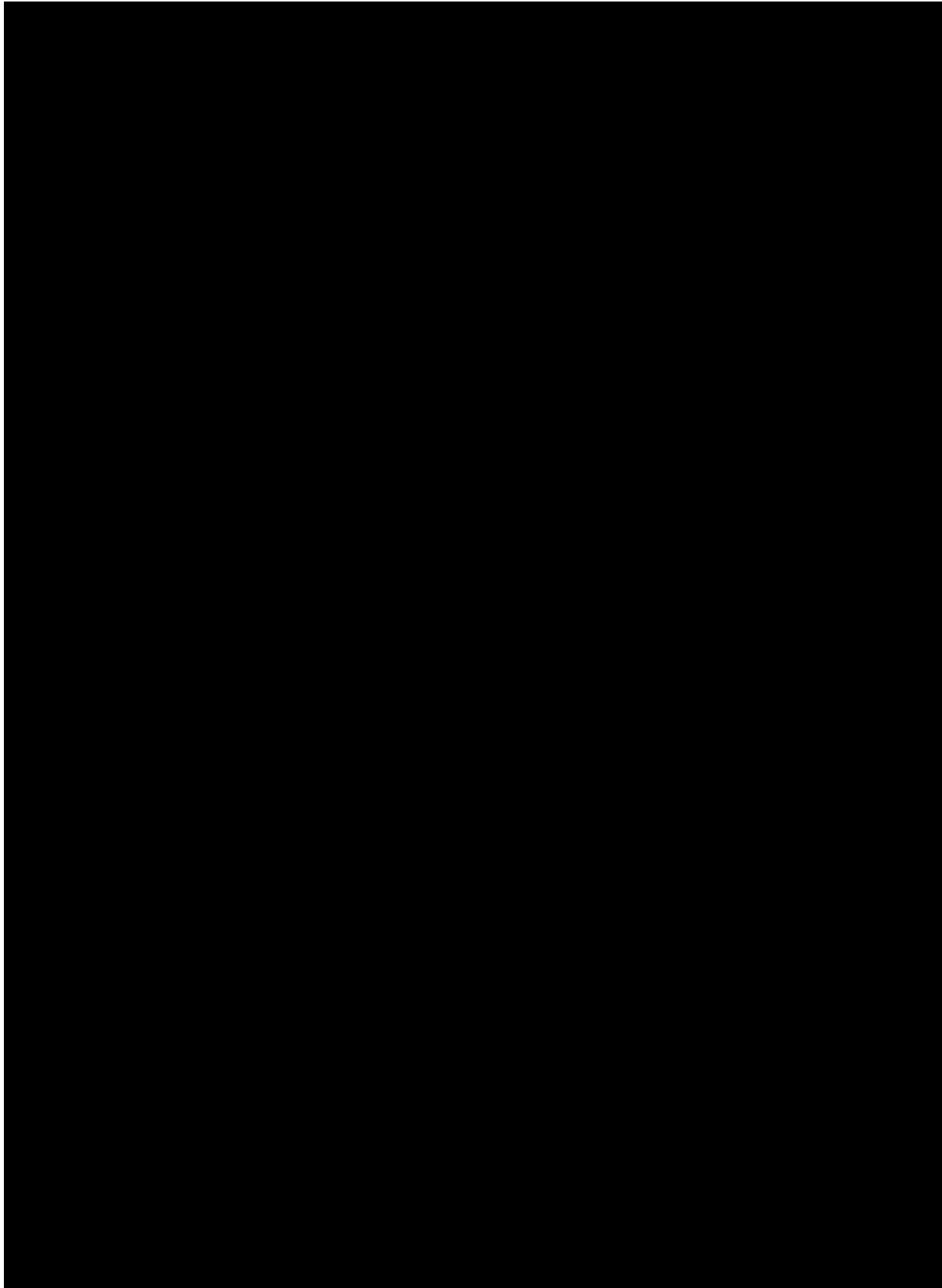
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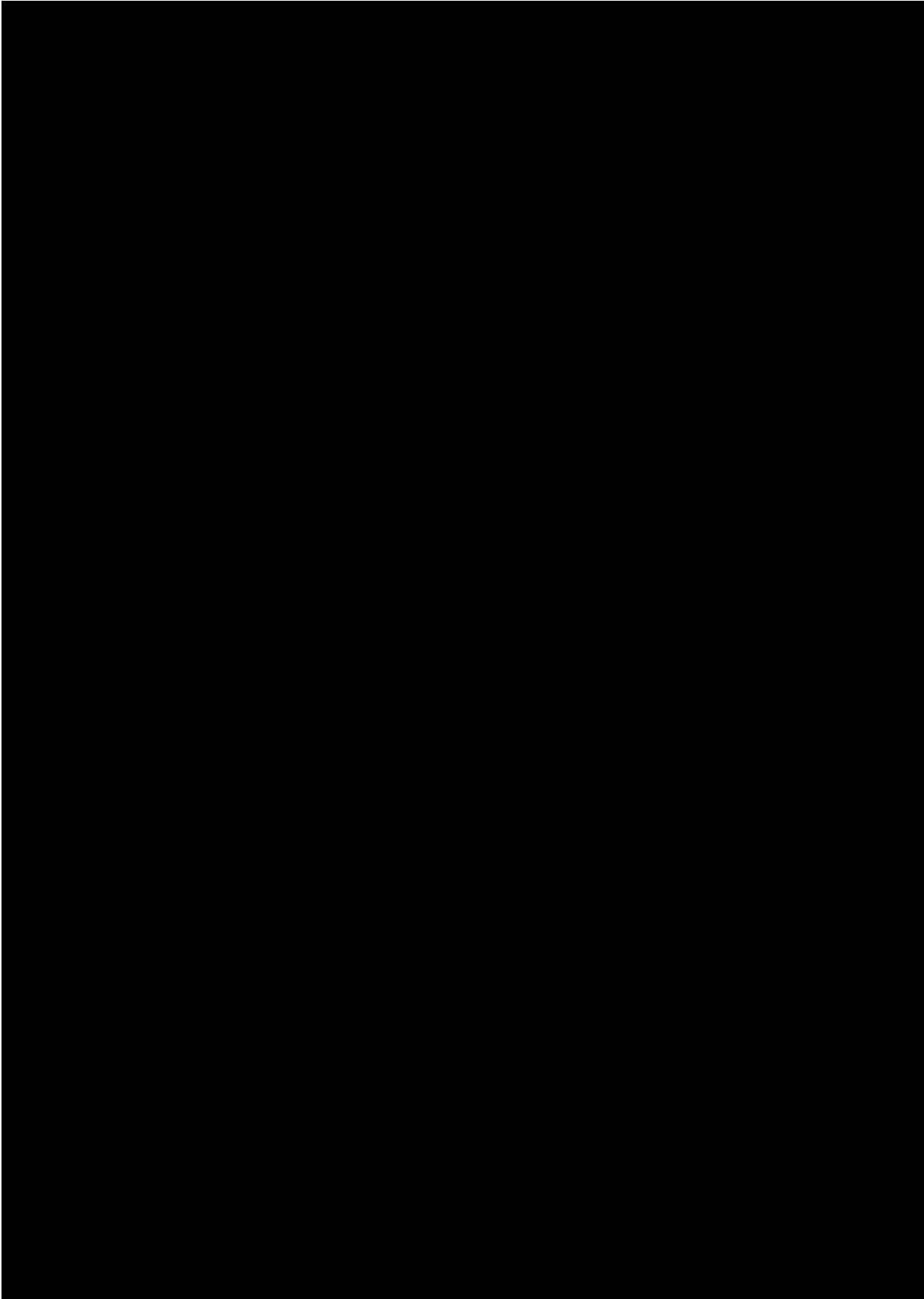


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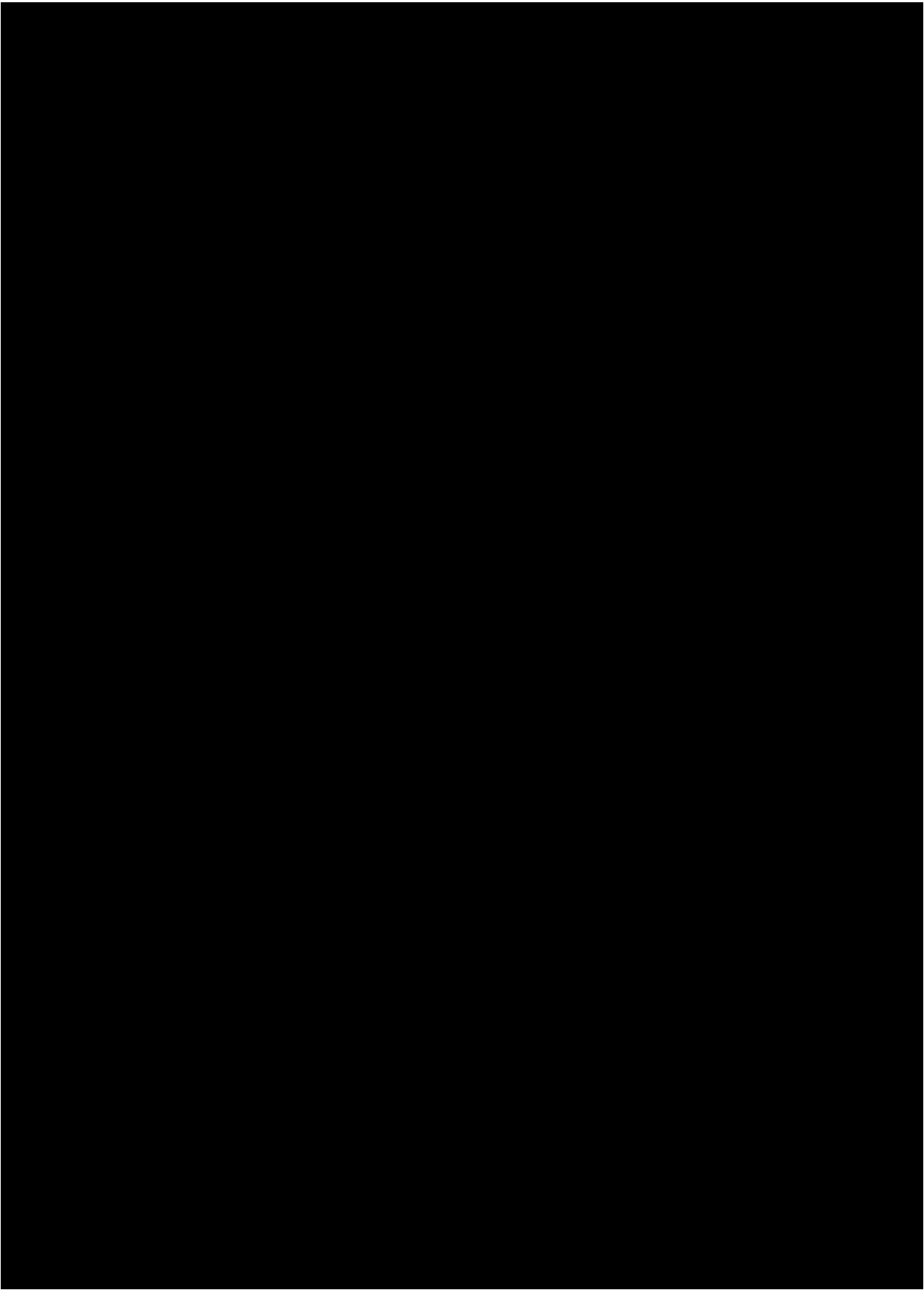




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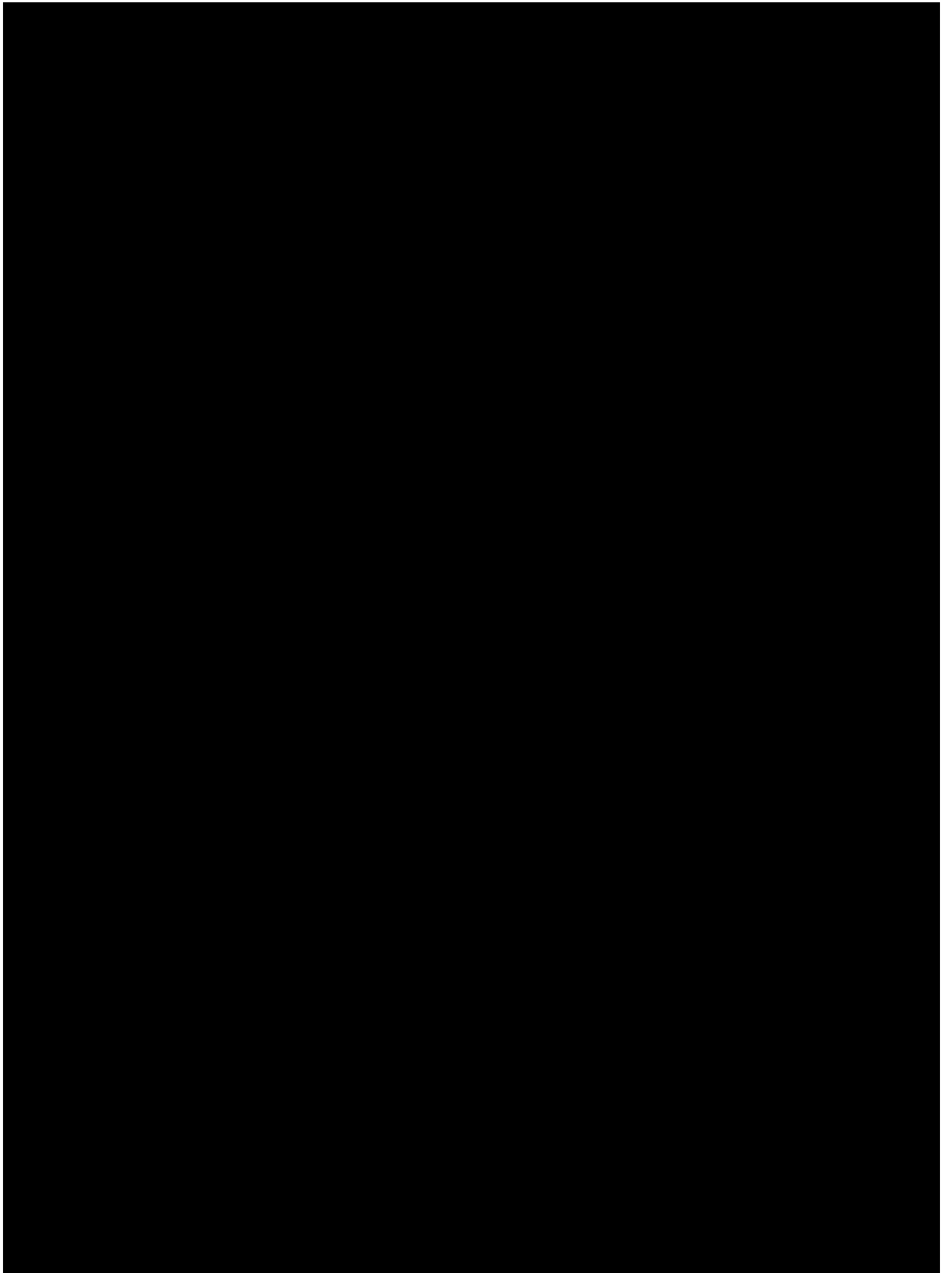
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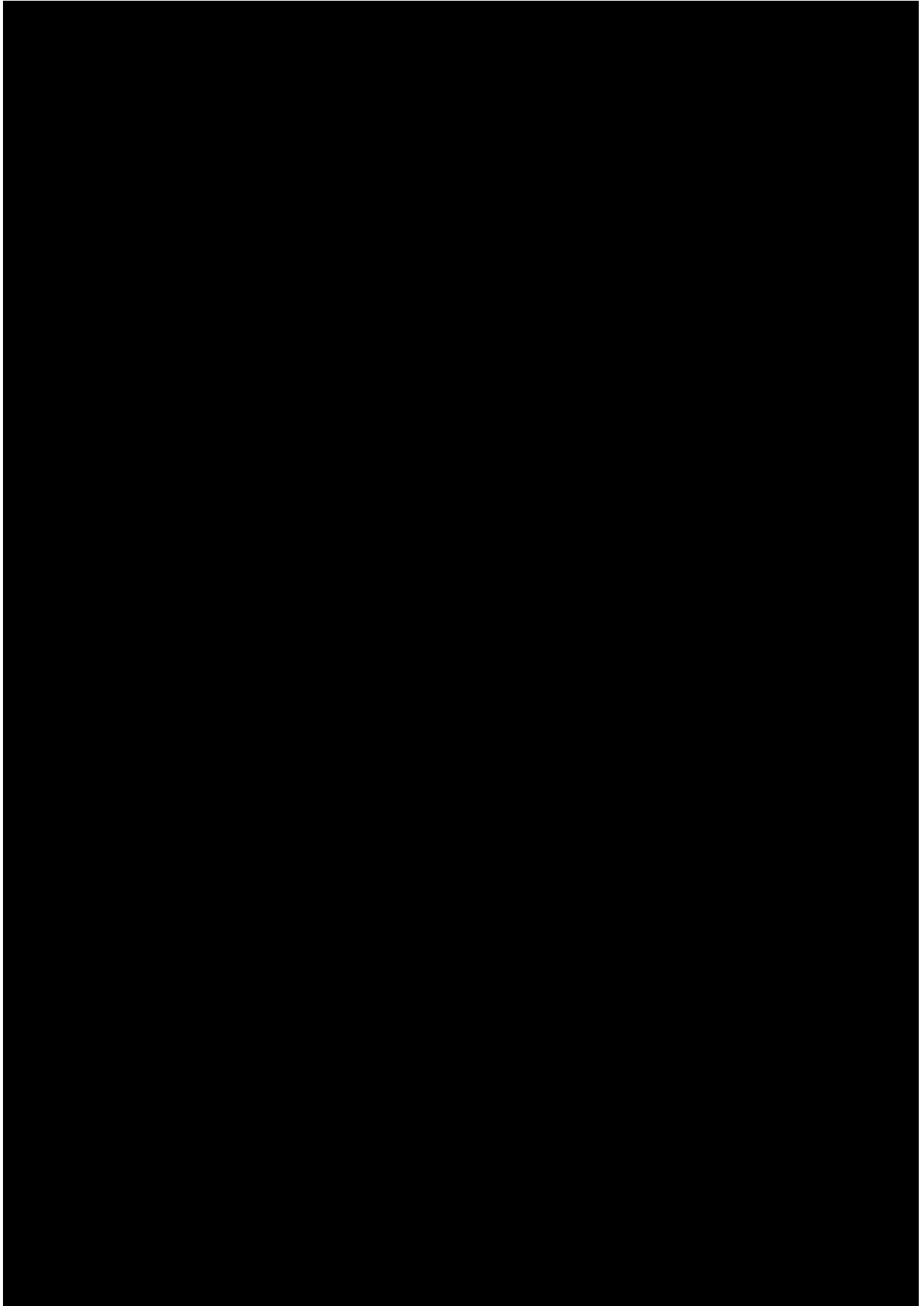
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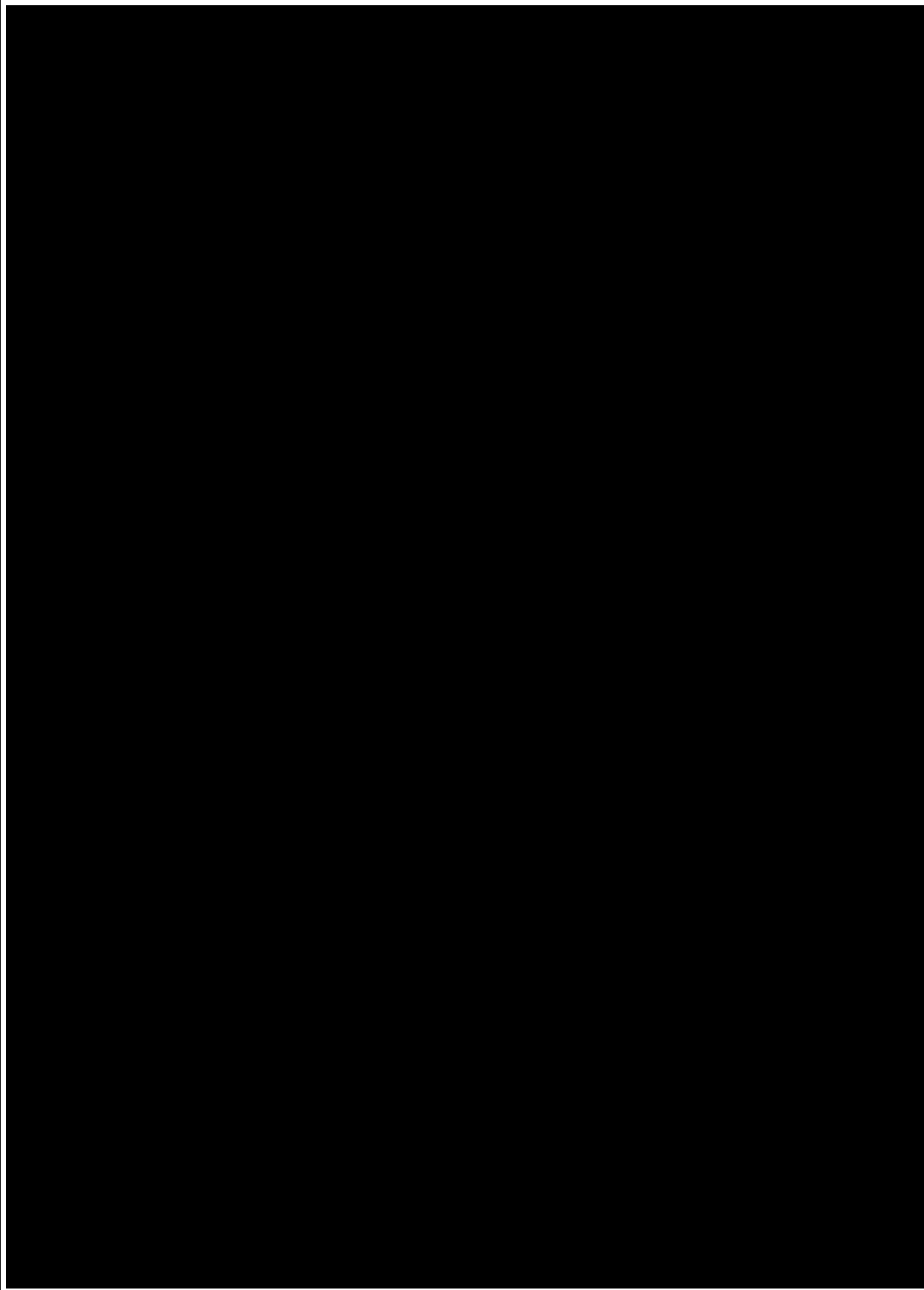
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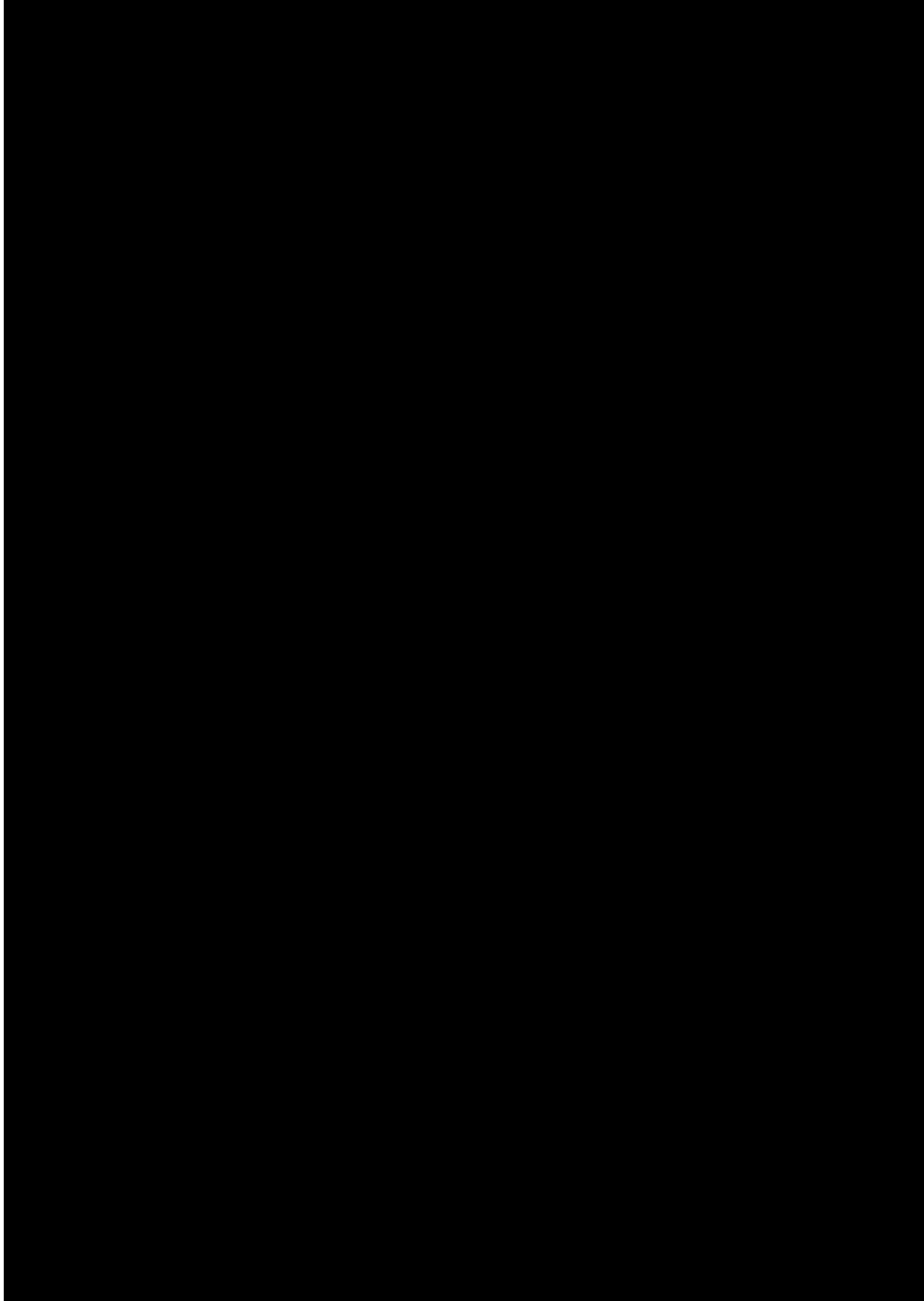
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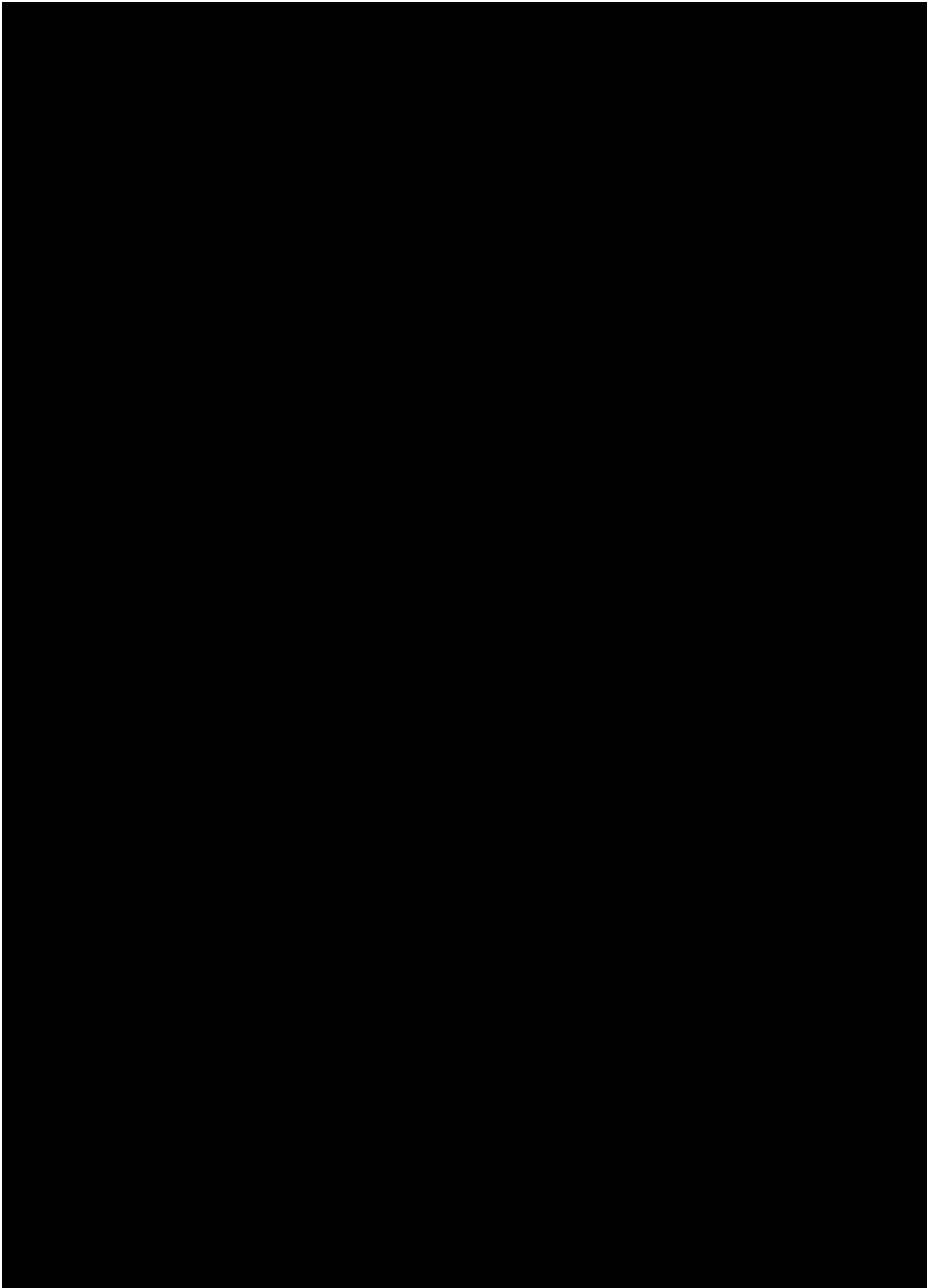


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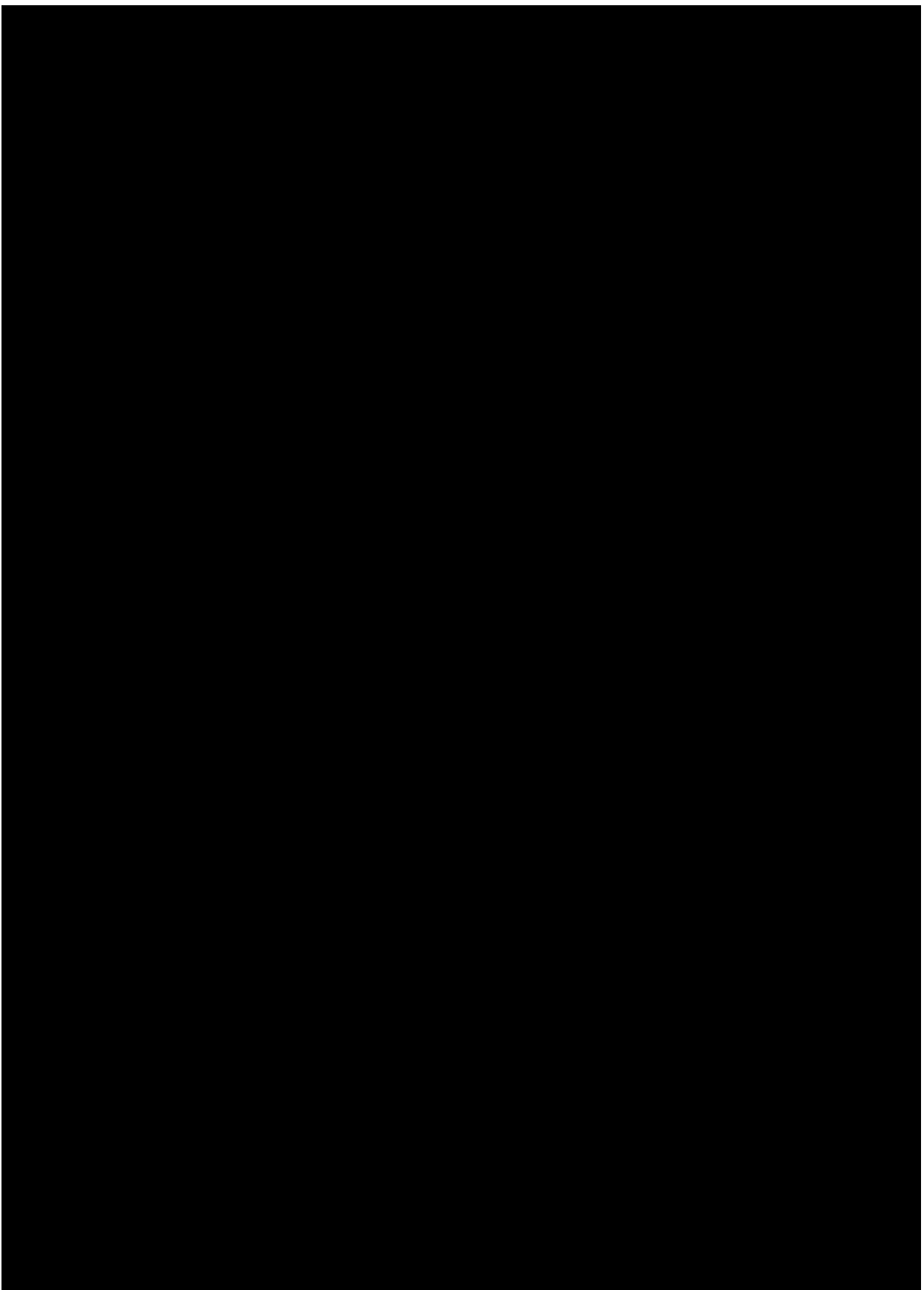




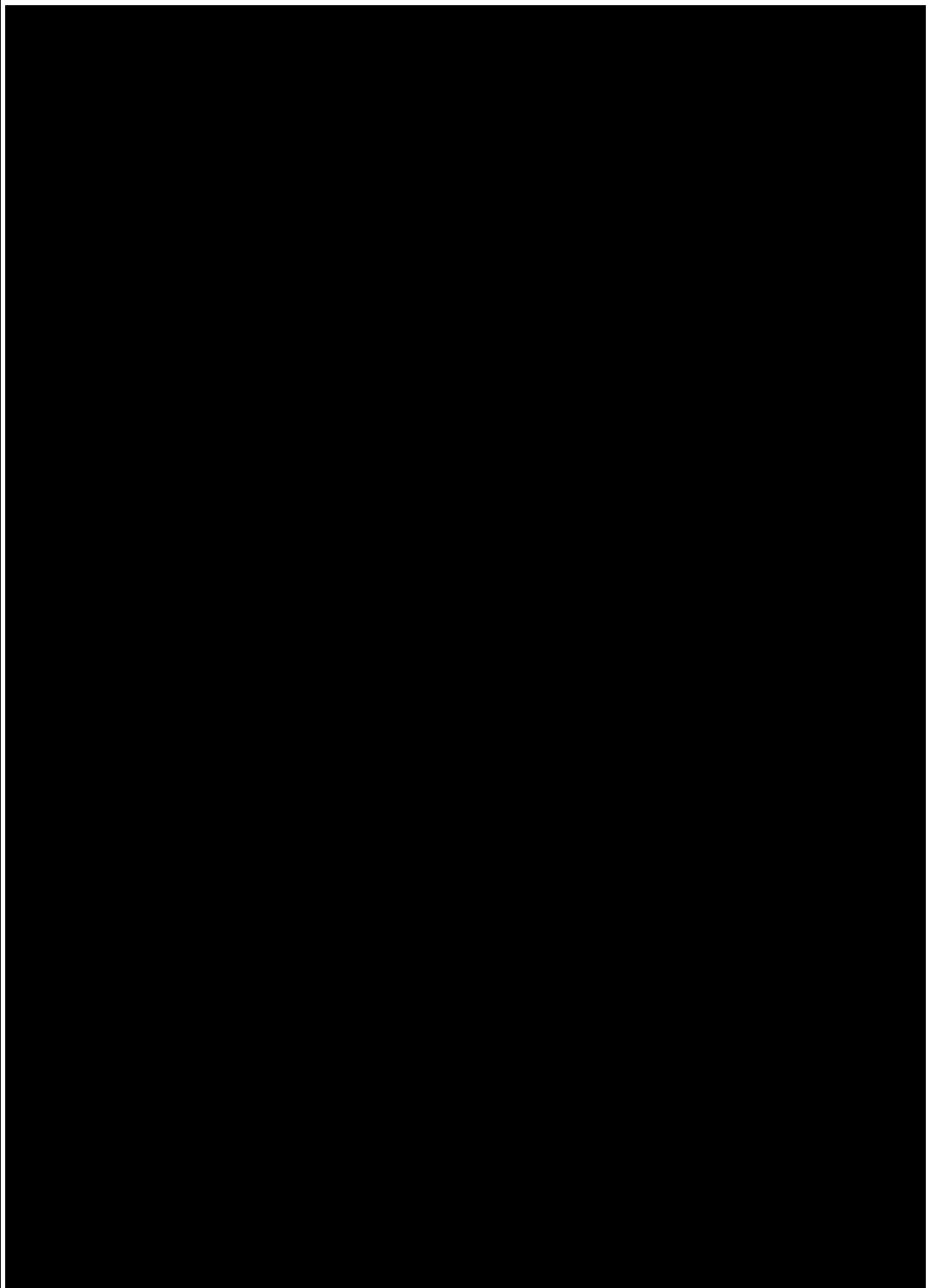
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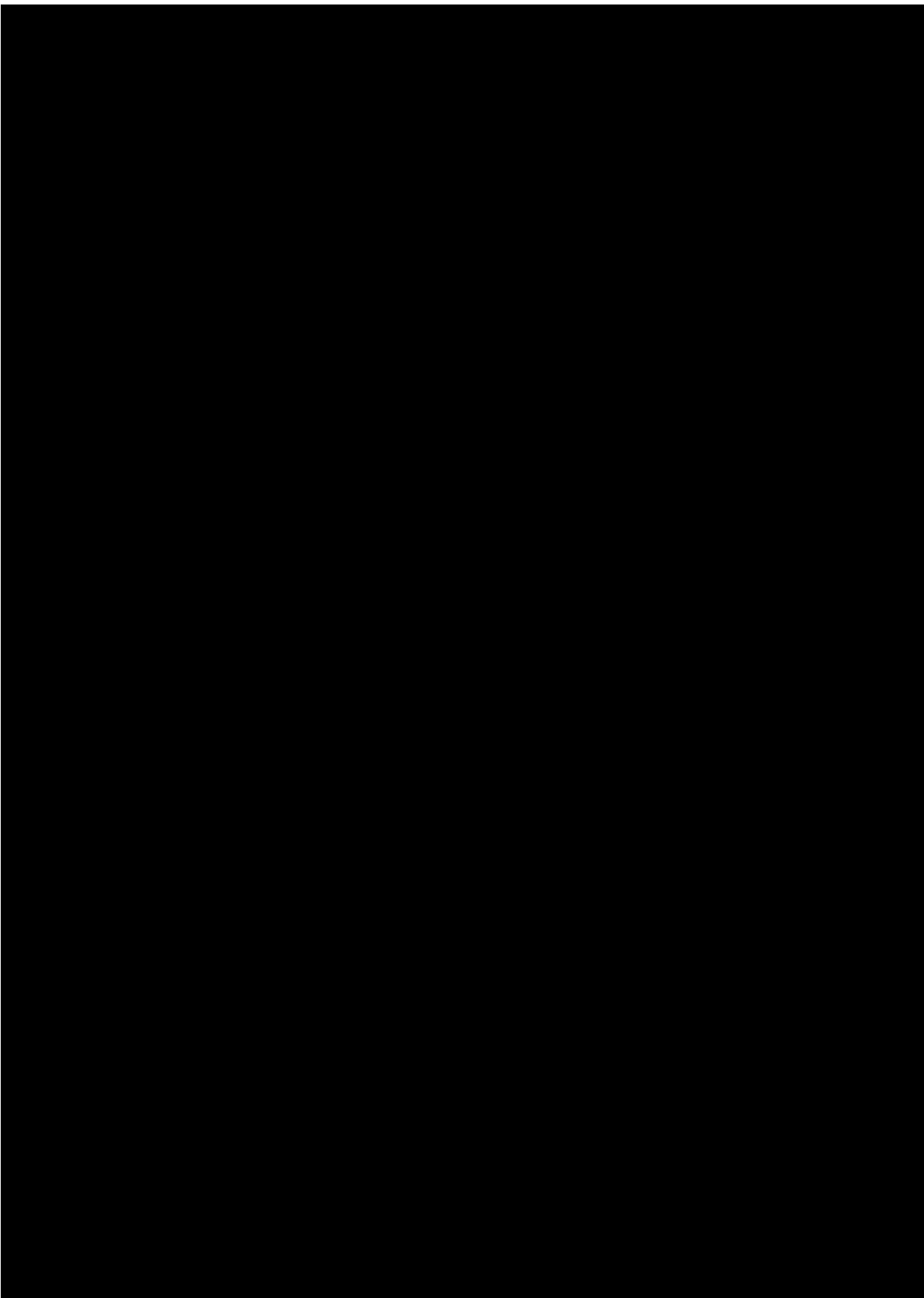
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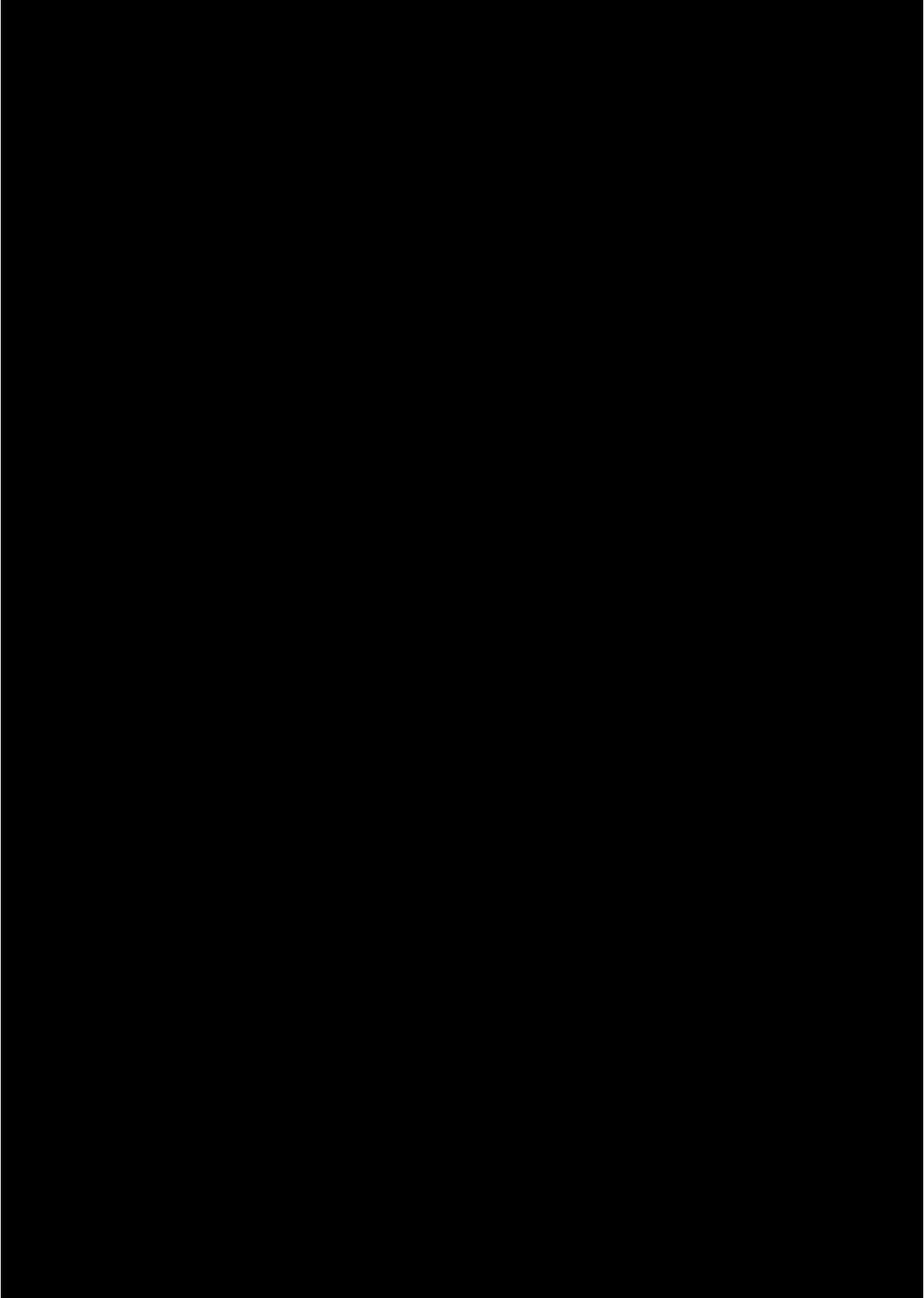
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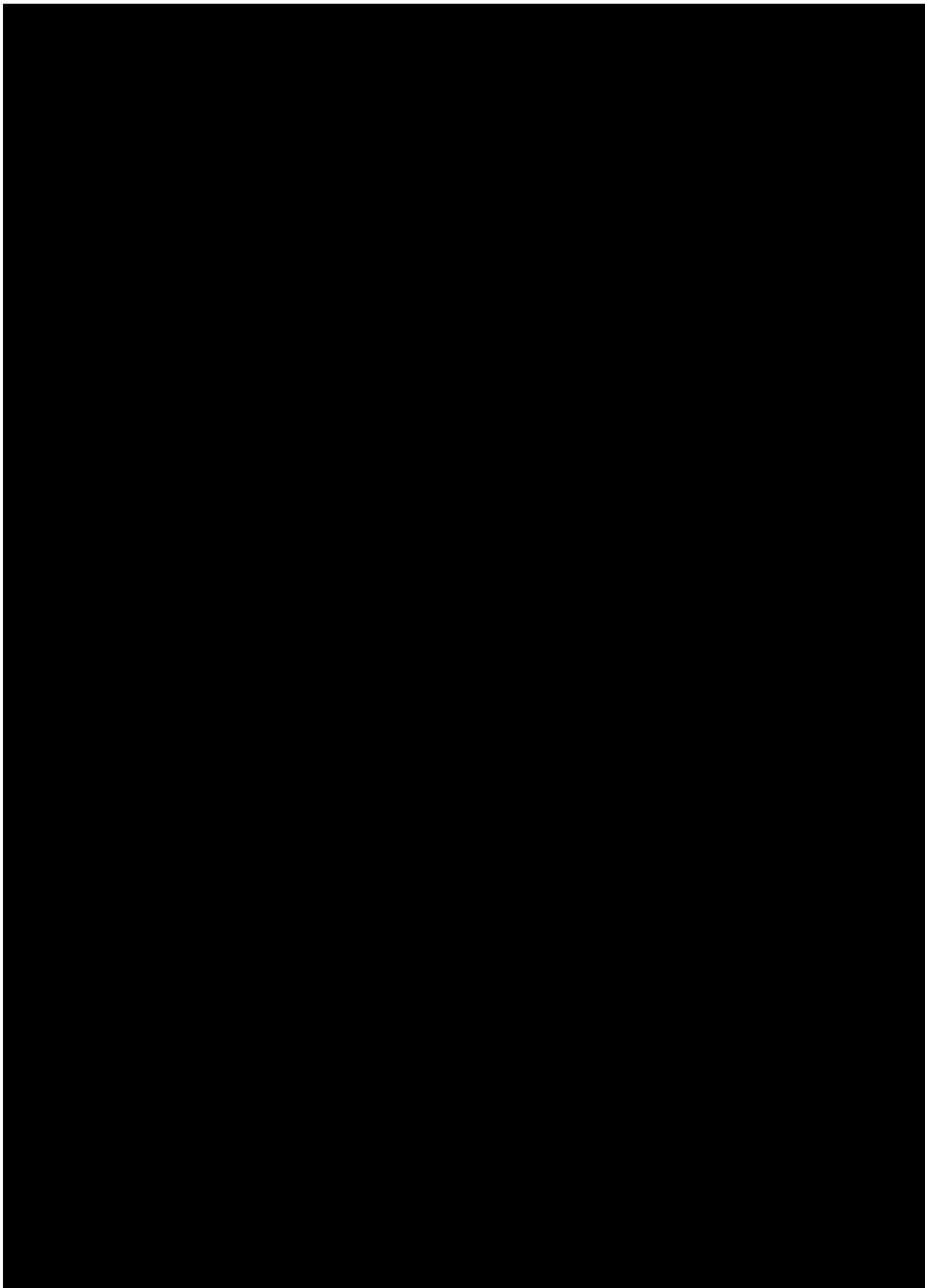
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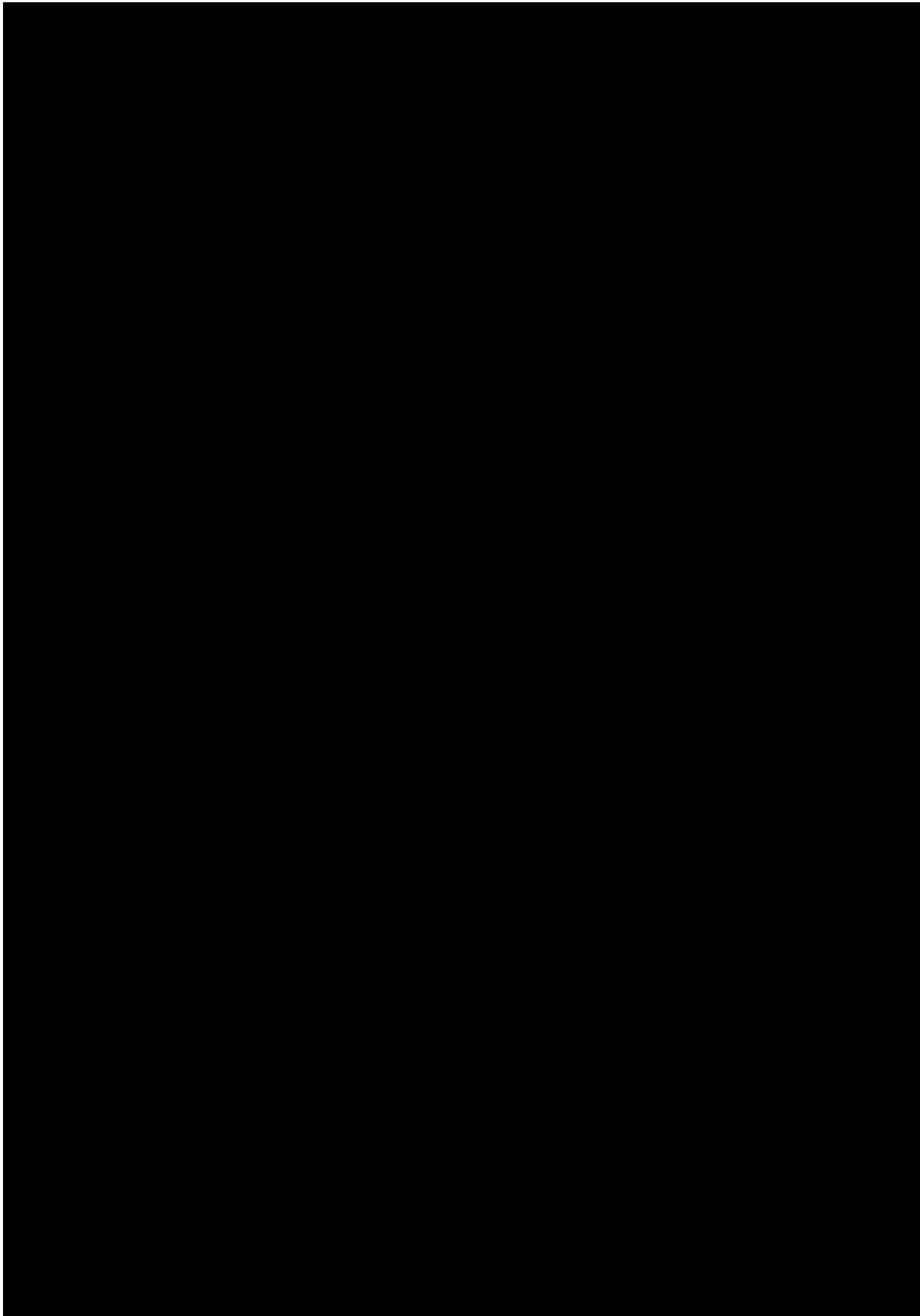
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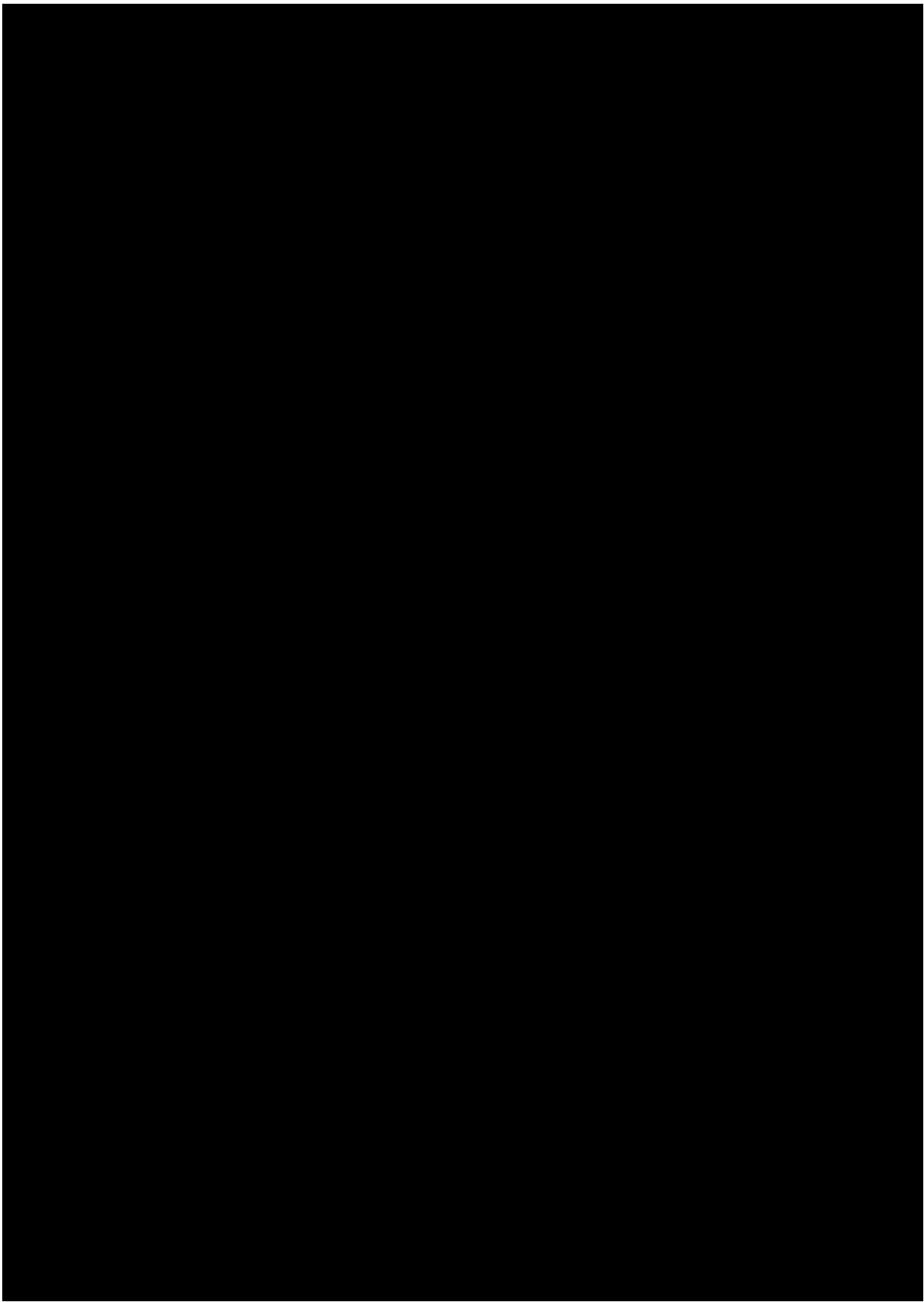
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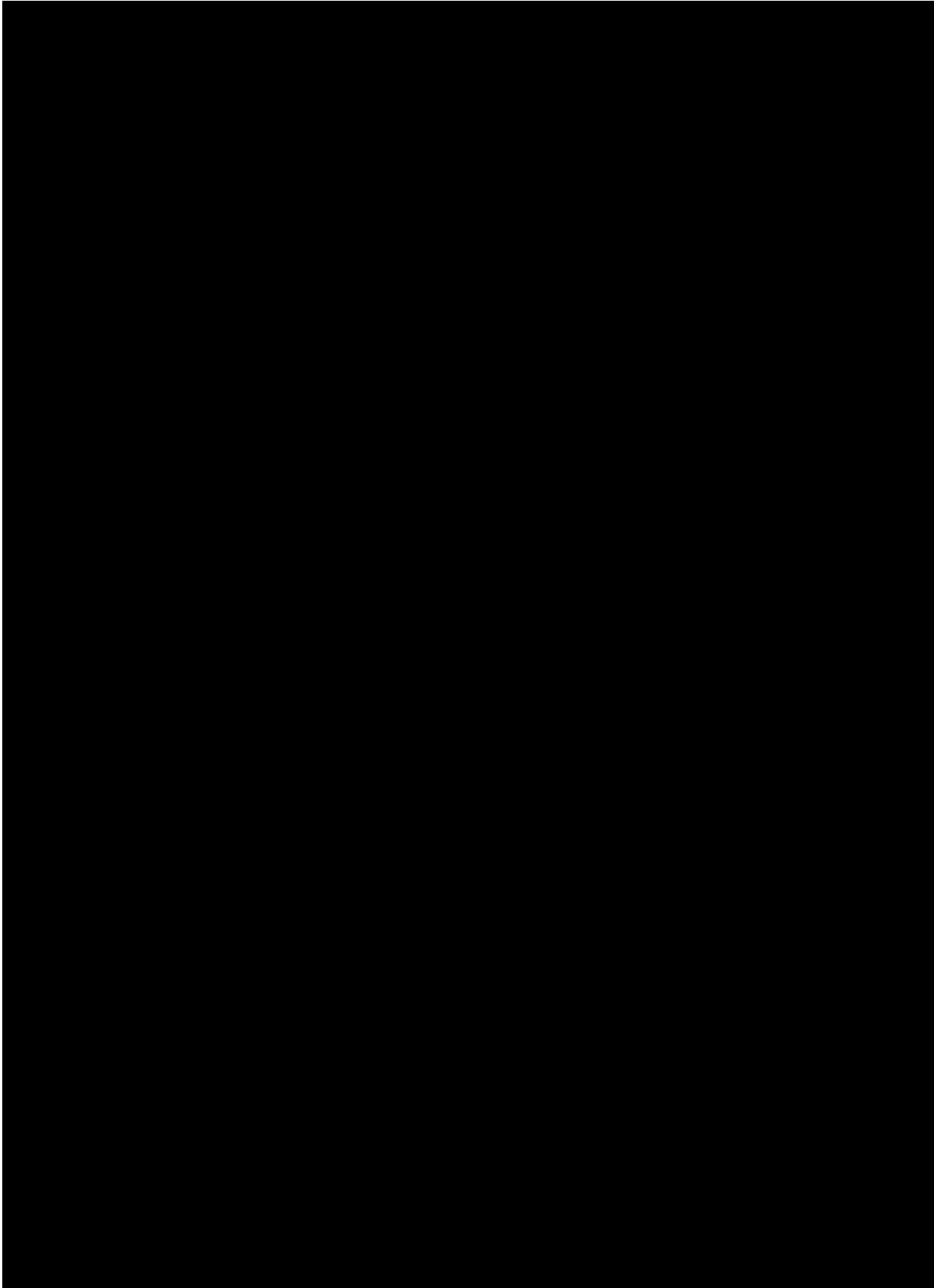


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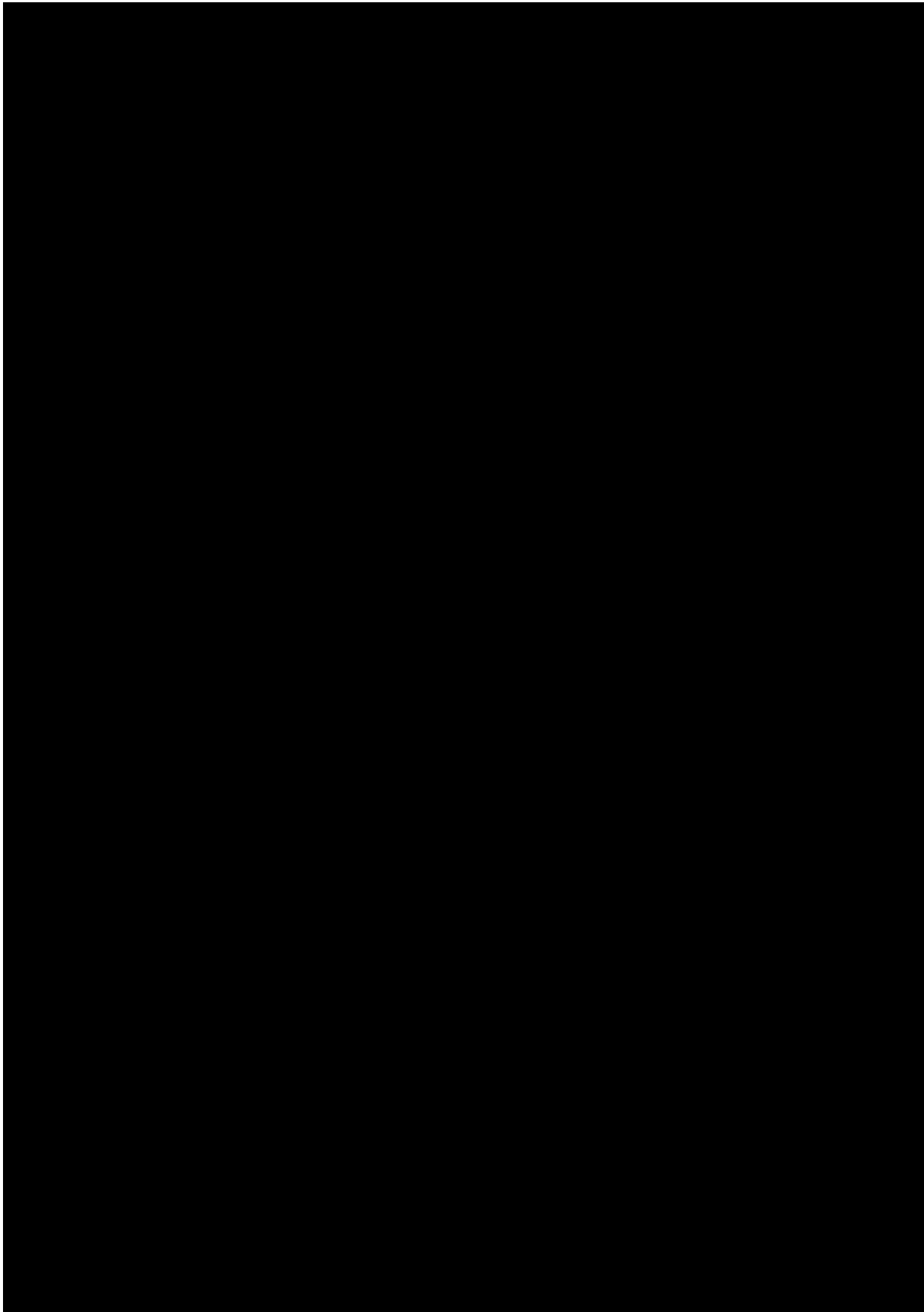




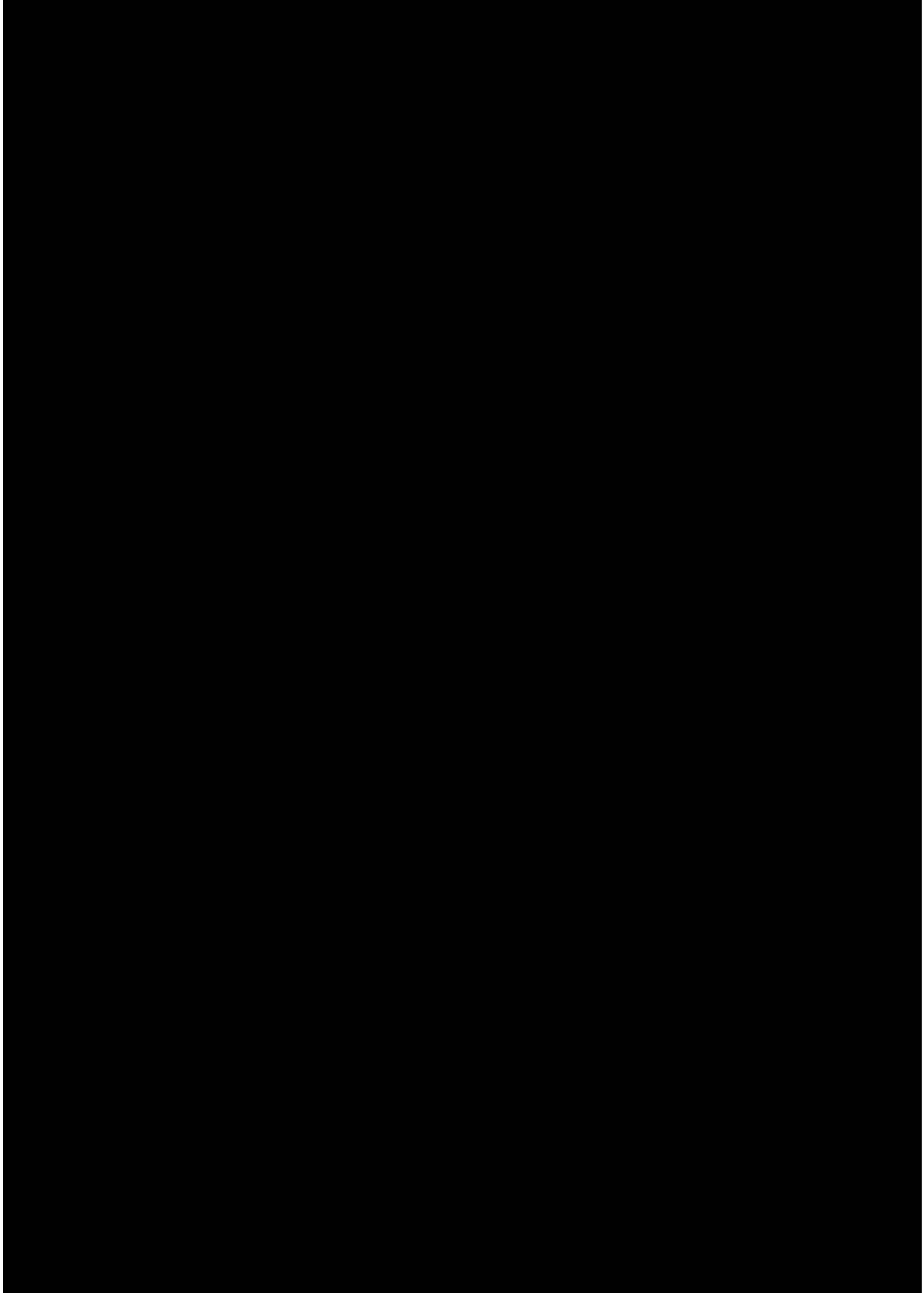
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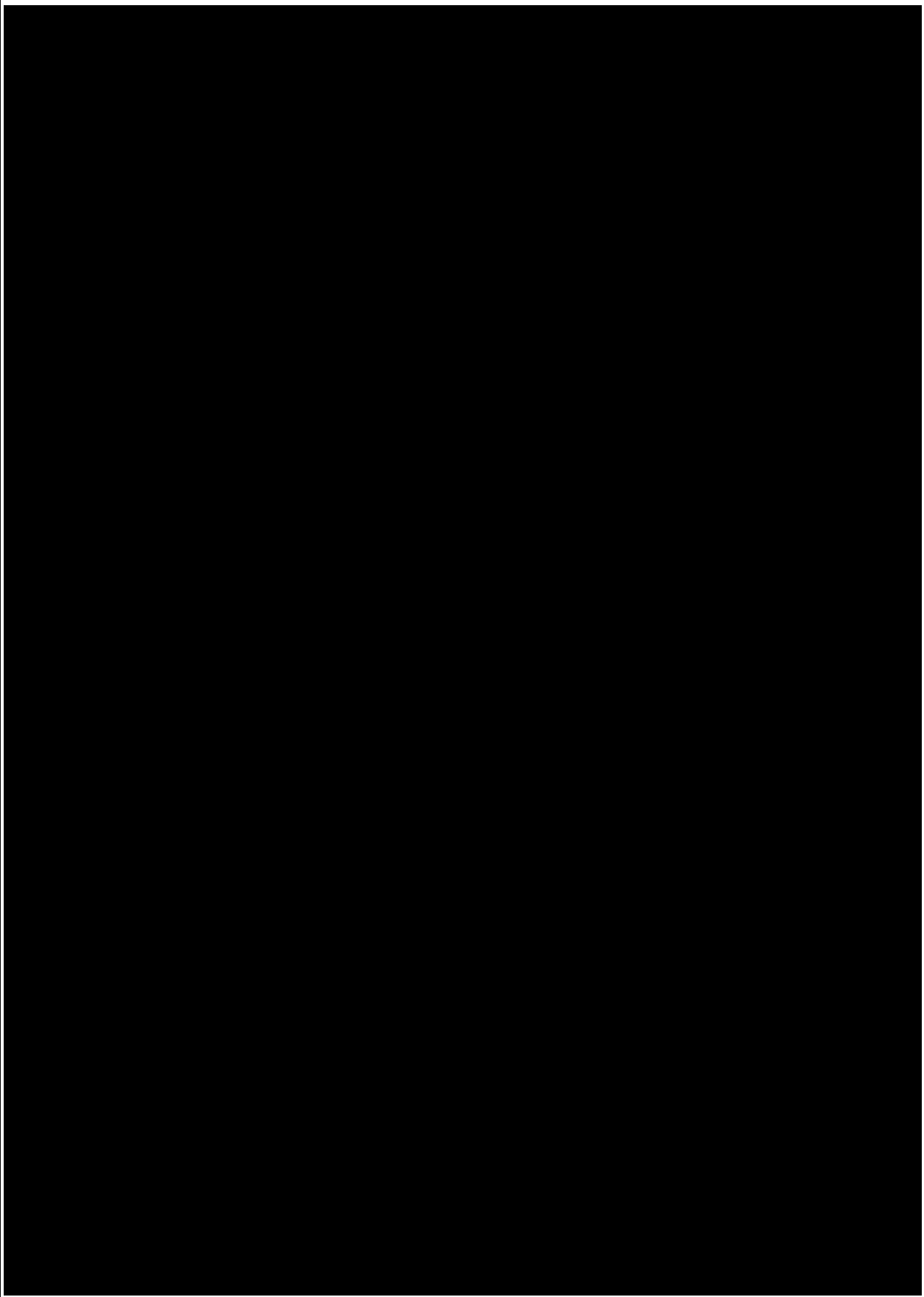
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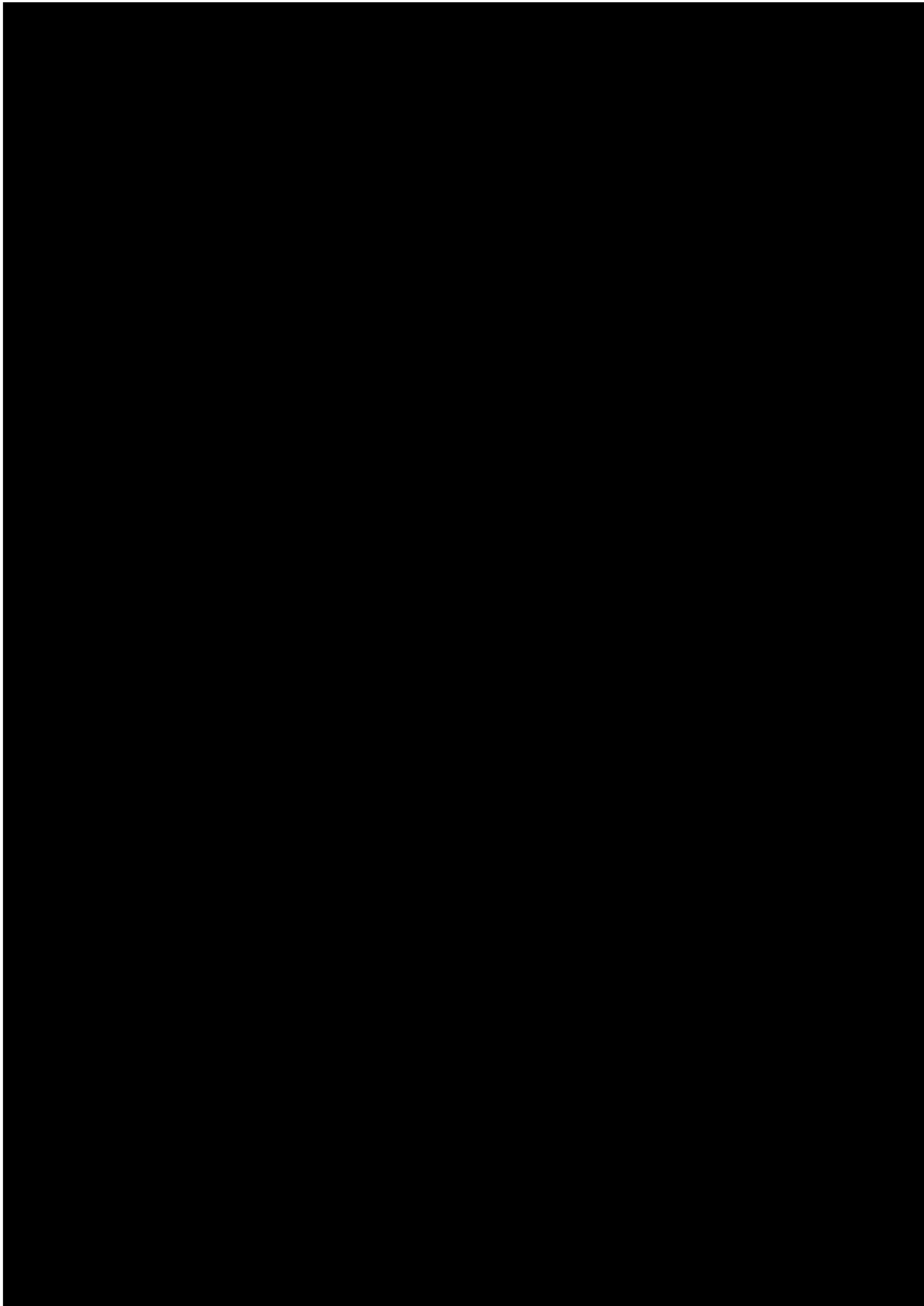
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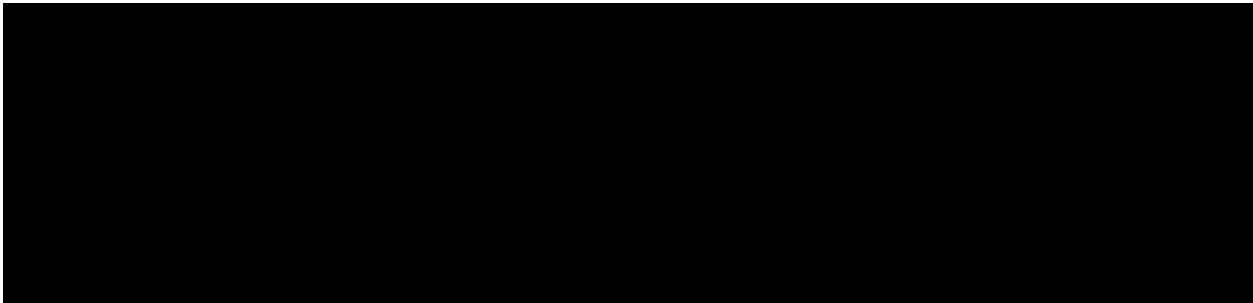
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PRESIDENT TERCIER: Thank you very much.

In that case, on Respondent's side, who will lead the cross-examination?

DR. HEISKANEN: Mr. President, I will start, and then Ms. Radjai will have a few questions.

PRESIDENT TERCIER: Okay.

DR. HEISKANEN: But let's make the hard copy binders available to Mr. Tanase first.

MR. GREENWALD: And we will wait for Mr. Ariton, too, and Mr. Găman.

DR. HEISKANEN: Yes.

PRESIDENT TERCIER: Thank you.

(Pause.)

MR. GREENWALD: Do you have a copy for us?

(Comment off microphone.)

DR. HEISKANEN: The Tribunal's ruling on this issue, the hard copy, as you will recall, will be made available to this Witness, and both the Tribunal and

1 counsel on the other side will be relying on the  
2 electronic documents. This is simply a matter of  
3 logistics. The service provider we have here in  
4 Washington, D.C. is not simply able to provide at  
5 short notice, or at reasonable notice, this form of  
6 documentation.

7 MR. GREENWALD: Well, one observation is, at  
8 least can we have an index of the documents that are  
9 in there before we begin?

10 And second observation is, as we've discussed  
11 with you both by e-mail and earlier in the Hearing,  
12 we're not going to be providing binders to Respondent  
13 to have Respondent not reciprocate and provide binders  
14 to the Claimants.

15 Again, going back to what we said on the  
16 first day, we want the Parties to play by the same  
17 rules.

18 PRESIDENT TERCIER: Okay. We have a problem  
19 now. We cannot really copy three volumes in order to  
20 satisfy.

21 One point would be the first request would be  
22 to have a copy of the list of exhibits that will be



1 submitted. I think this should be--

2 DR. HEISKANEN: That we can make available.  
3 We can refer back to the Tribunal's ruling on this  
4 issue. As you will, this was discussed during the  
5 pre-hearing conference, and the Claimants' position at  
6 the time was that they will be using electronic  
7 documents during the examination of our witnesses.  
8 The Respondent's position was that we will be--we  
9 reserve the right to use cross-examination binders,  
10 and the Tribunal's ruling on the issue was that if the  
11 Respondent or if either Party uses cross-examination  
12 binders, they will be made available to the Witness  
13 and to the Court Reporter. And that is the ruling we  
14 are complying with.

15 There has been communication between counsel  
16 and whether we would be able to make available at  
17 additional copies of the cross-examination binders to  
18 the Claimants' counsel. We indicated that we will try  
19 to do that as a matter of courtesy on the  
20 understanding or on the condition that the service  
21 provider will be able to make a sufficient number of  
22 hard copies. That was possible for Mr. Henry

1 yesterday. It was not possible because of the volume  
2 for Mr. Tanase.

3 This is a matter that was discussed during  
4 the pre-hearing conference.

5 MS. COHEN SMUTNY: There are a number of  
6 concerns. One of them is when Claimants made the  
7 proposal to proceed with an electronic record, it  
8 would have been an agreed record, and it would have  
9 been an agreed of set of iPads that would have--and  
10 both Parties would have been able to see what happens  
11 when you hit a certain tab. Claimants' counsel is  
12 concerned to know what is exactly behind those tabs  
13 that the Witness is being asked to look at.

14 I think if the Claimants' counsel are not  
15 having a copy exactly of this binder and we need to  
16 pull it up, someone from our team needs to be able to  
17 verify what is actually put in Mr. Tanase's binder  
18 that he's looking at. This is a basic due-process  
19 issue that I think should be well-understood by  
20 counsel that before you show Claimants or a Party's  
21 witness a document, counsel for that party should be  
22 able to see the same thing, so that one sees what the

1 Witness precisely is looking at.

2 That's a large part of the issue.

3 DR. HEISKANEN: Mr. President, I can add to  
4 that, that these are just exhibits which are on  
5 record. They will be also shown to the Tribunal and  
6 to the Witness electronically on the screen, so  
7 exactly the same document.

8 MS. COHEN SMUTNY: No, no, no because the  
9 Party--a witness has to be able to, when it looks at a  
10 document not only look at a paragraph. A witness is  
11 given a copy of a full exhibit so that a witness can  
12 look and familiarize him or herself with the document  
13 that's put in front of the person. So looking at a  
14 little couple of lines on the screen is not sufficient  
15 for these purposes. It aids others to follow, but  
16 that's not the answer to the fundamental question.

17 PRESIDENT TERCIER: Okay. I think we cannot  
18 now suspend the Hearing and wait until we have another  
19 document--sorry, yeah?

20 MR. LEW: Can I make a suggestion?

21 PRESIDENT TERCIER: Yes.

22 MR. LEW: Which is, one of the challenges, of

1 course, for counsel is to know what documents are  
2 being shown, and if there's not a binder, there seem  
3 to be a lot of documents. If we could get the index  
4 of the documents and allow us time to pull them up  
5 electronically because, as you know, it takes time to  
6 find a document in the record, and the questions may  
7 just go on, and we won't be able to keep up with the  
8 documents as the questions are being asked, so that  
9 may require a few minutes for us to be able to  
10 identify and then pull up electronically on a laptop  
11 the documents that are being--

12 PRESIDENT TERCIER: Okay. So, we have now to  
13 decide in order to make this Hearing take place. I  
14 would like, really, to have a copy of the list of the  
15 documents that will be submitted.

16 DR. HEISKANEN: We are happy to provide an  
17 index. That's not the issue.

18 I just refer the Tribunal back to its ruling  
19 in Procedural Order Number 25, Paragraph 48, and that  
20 is the ruling on the basis of which we have operated.  
21 As you will recall, the Parties at the time had a  
22 different approach to the cross-examination of

1 witnesses. The Claimants' approach that they will be  
2 relying on electronic documents only and that there  
3 will be no need for hard copies at all. The  
4 Respondent reserves the right to use hard-copy  
5 documents for examination of witnesses.

6 And again, as I indicated, the same exhibits  
7 that the Witness has in these binders will also be  
8 shown on the screen as we are in exactly the same  
9 passages on which we will be asking questions.

10 PRESIDENT TERCIER: Okay. I suggest the  
11 following:

12 First, could you provide--this really must  
13 not be a complicated task--a copy as soon as possible,  
14 a copy of the list, you have a lot of people, if one  
15 of them can now prepare the list or index of the  
16 document that you will have, is possible.

17 DR. HEISKANEN: As I indicated, the list is  
18 available, and we will make a copy available to the  
19 Claimants' counsel.

20 PRESIDENT TERCIER: Thank you.

21 Secondly, when you receive the document in  
22 the bundle, indeed we will have the reference to the

1 exhibit, and we will wait until we have it. I will  
2 give green light because I'm certainly the one who is  
3 the slower in the group until we have it so that  
4 everybody has the electronic version. That is what  
5 you wish to have.

6 Now, the third question would be whether  
7 there is a discrepancy between the document that is in  
8 the file and the document that is on the  
9 screen--first, I already trust that will not be the  
10 case; and, secondly, the Witness himself could check  
11 with the version that you have in paper and the  
12 version that is on the screen whether this is the  
13 case. In case you have the slightest doubt, you  
14 mention it.

15 Would that be agreeable with you, Claimants?

16 DR. HEISKANEN: Mr. President, we are in the  
17 process of e-mailing the index to the Claimants'  
18 counsel and also providing a hard copy, but again I  
19 can--it's the same exhibits that you will be on the  
20 screen, the three binders only contain exhibits that  
21 are on record.

22 MR. GREENWALD: I think we should wait until

1 the index is provided in hard copy to proceed.

2 MR. LEW: Yes.

3 PRESIDENT TERCIER: In hard copy?

4 MR. GREENWALD: A hard copy of the index.

5 PRESIDENT TERCIER: Oh, the index. I thought  
6 the binders--

7 MR. GREENWALD: It can't be more than a  
8 couple pages, it should be not more than a few minutes  
9 for them to print it.

10 DR. HEISKANEN: We suggest then we have a  
11 short break.

12 PRESIDENT TERCIER: Yes.

13 You tell us when this is done.

14 MR. LEW: Thank you.

15 (Brief recess.)

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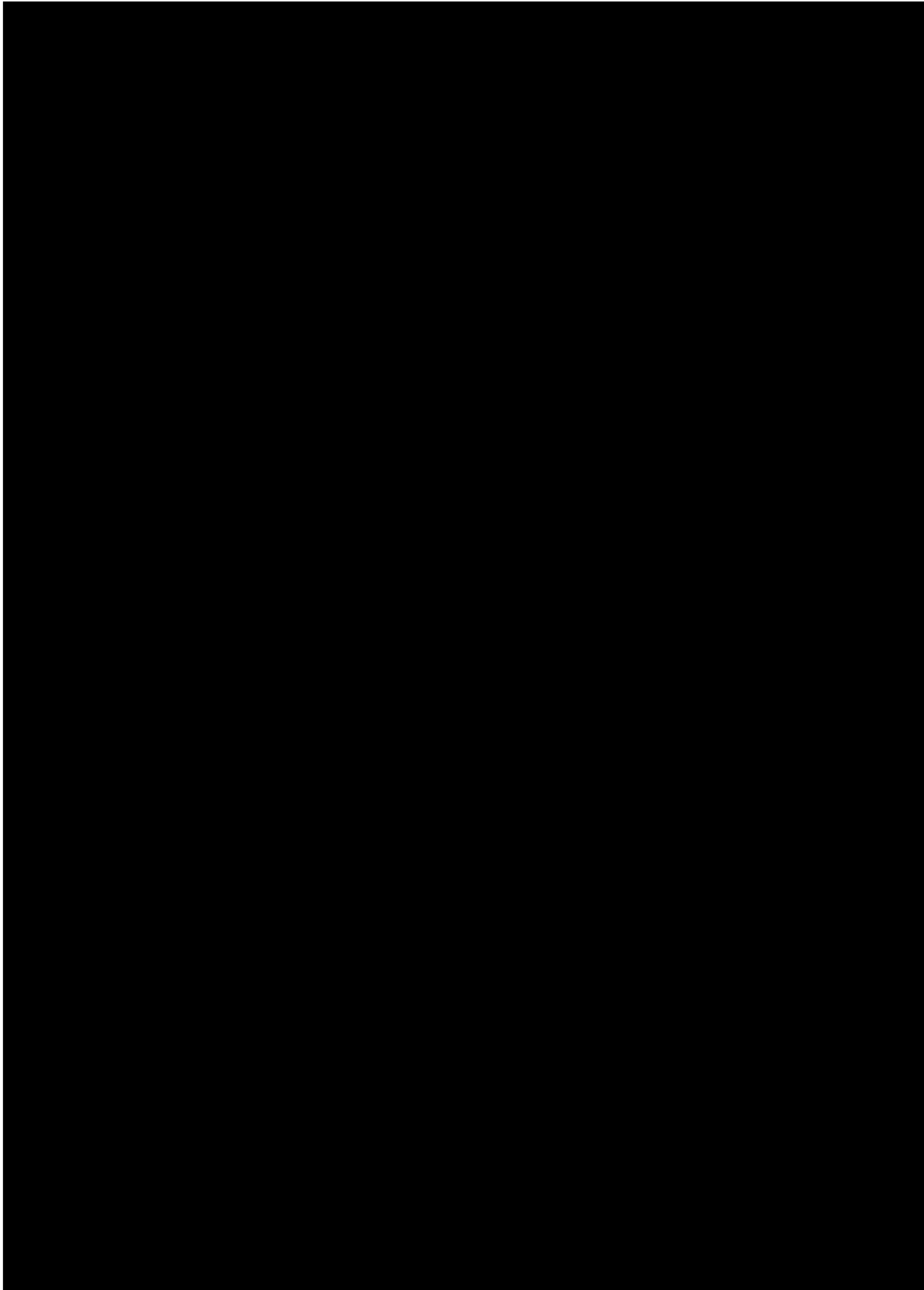
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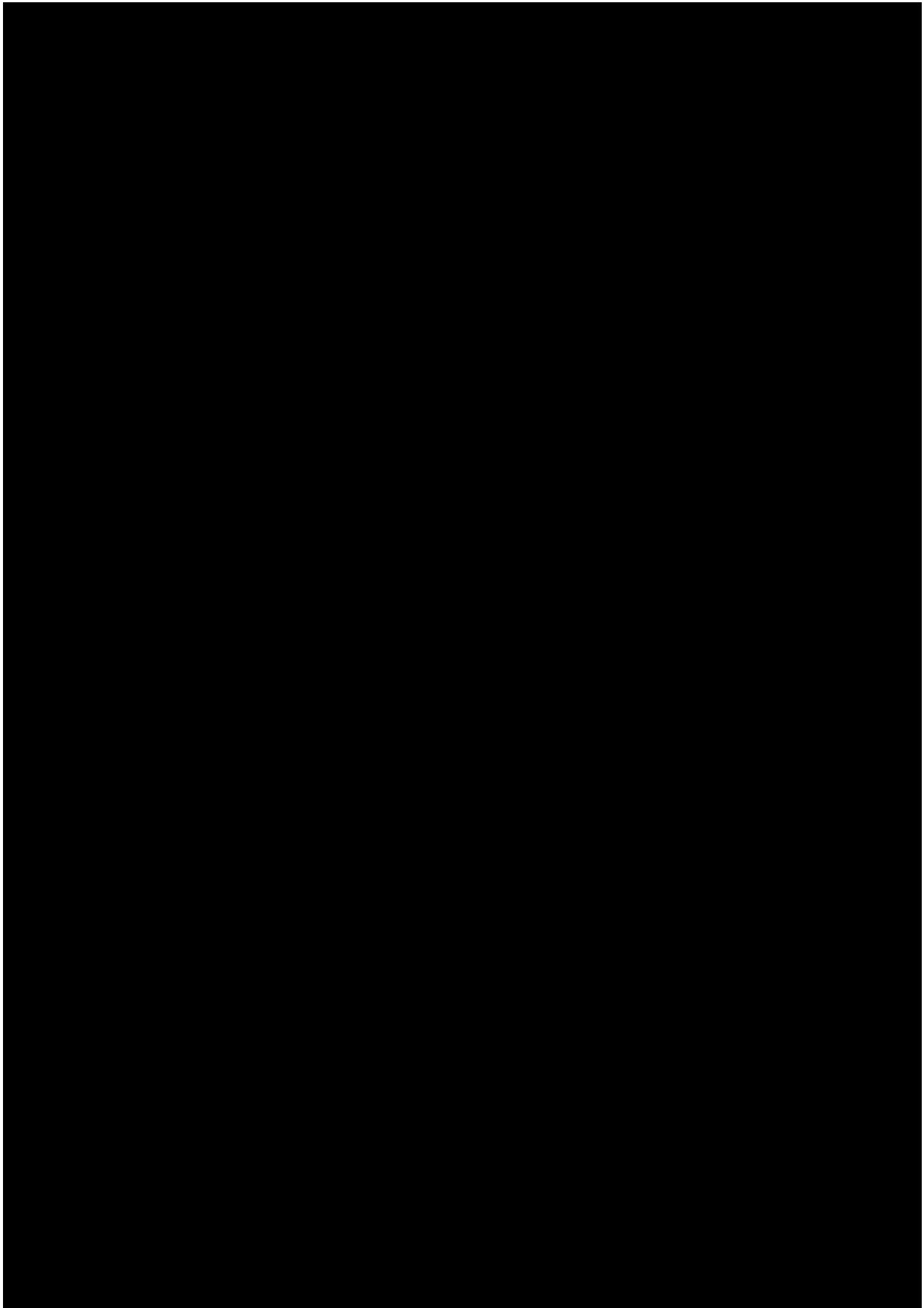
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1           PRESIDENT TERCIER: Yeah.

2                           CROSS-EXAMINATION

3           BY DR. HEISKANEN:

4           Q. Good morning, Mr. Tănase.

5           A. Good morning.

6           Q. My name is Veijo Heiskanen, counsel for the  
7 Respondent. I will be asking you a few questions this  
8 morning, and then my colleague, Ms. Radjai, will have  
9 a few further questions on another subject.

10                    You should have now the documents in front of  
11 you, but, as we explained, they will also be available  
12 on the screen. So, if you find it more convenient to  
13 look at the document on the screen, you can also do  
14 that.

15                    Now, as you have explained in your Witness  
16 Statement, you joined RMGC in January 2008?

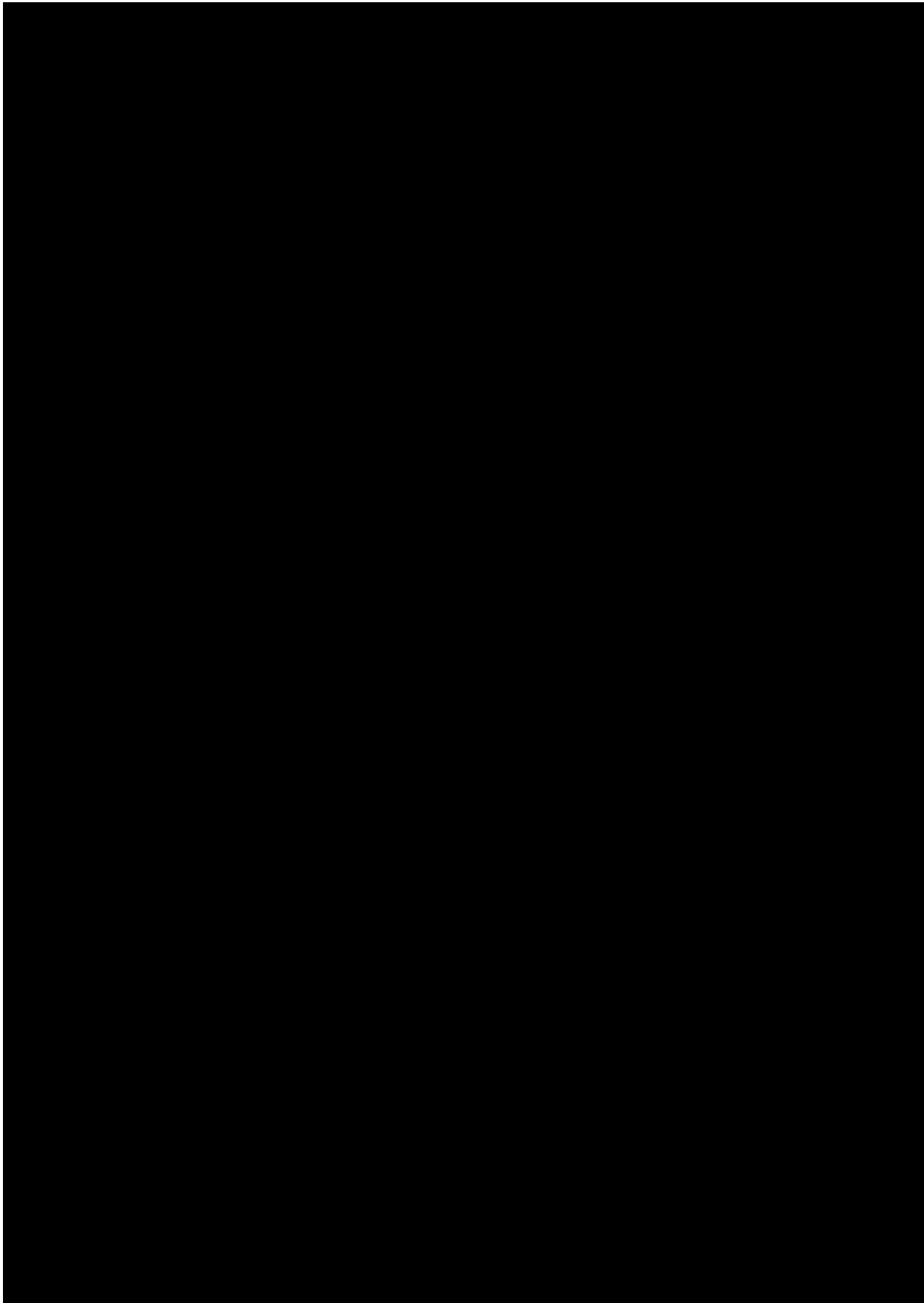
17           A. I believe it was February, but that's  
18 correct. Yeah. January 2008. Yeah, that's correct.

19           Q. And you began as general manager in April of  
20 2008?

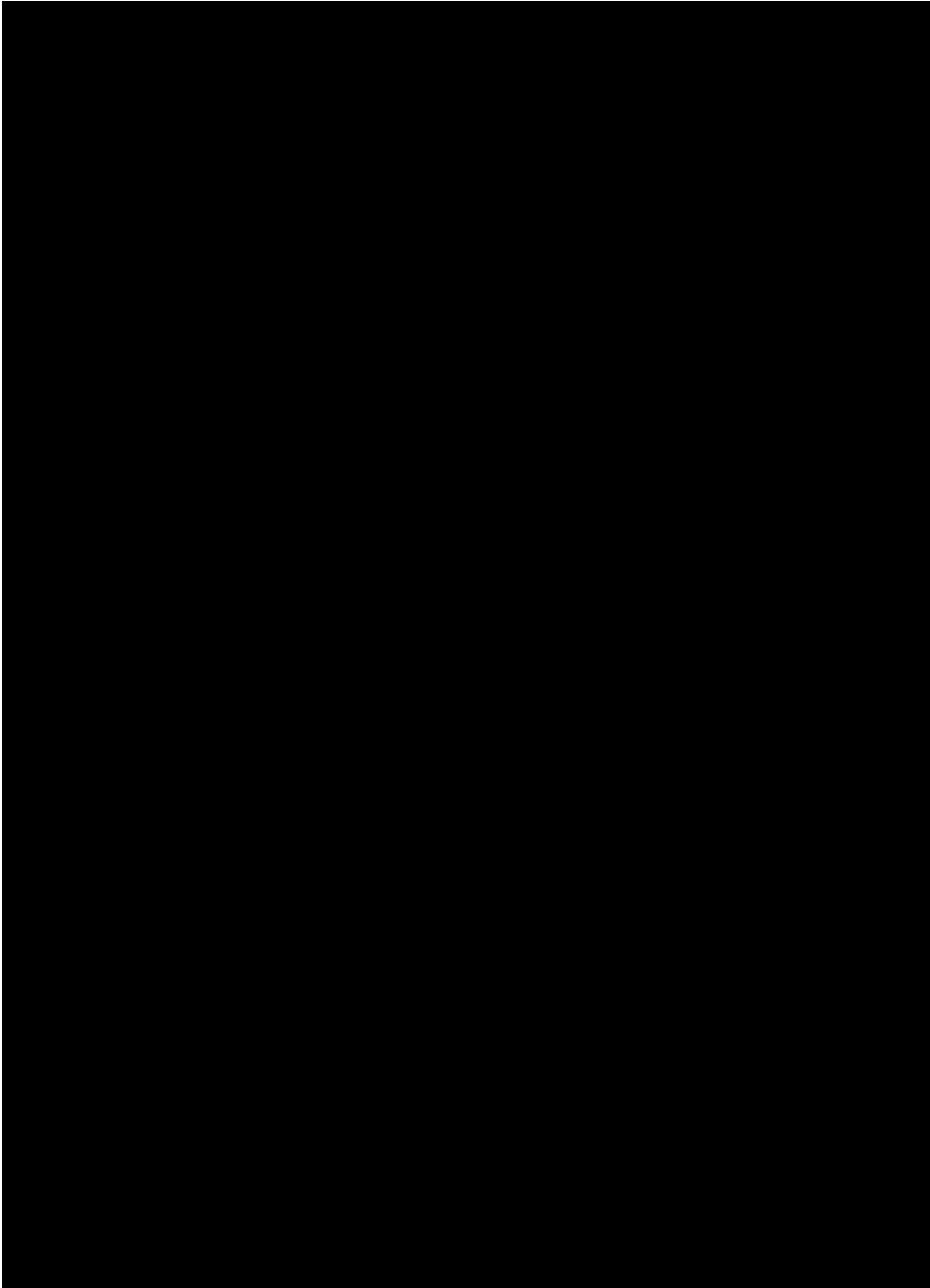
21           A. That's correct.

22           Q. You were not involved in the Project before

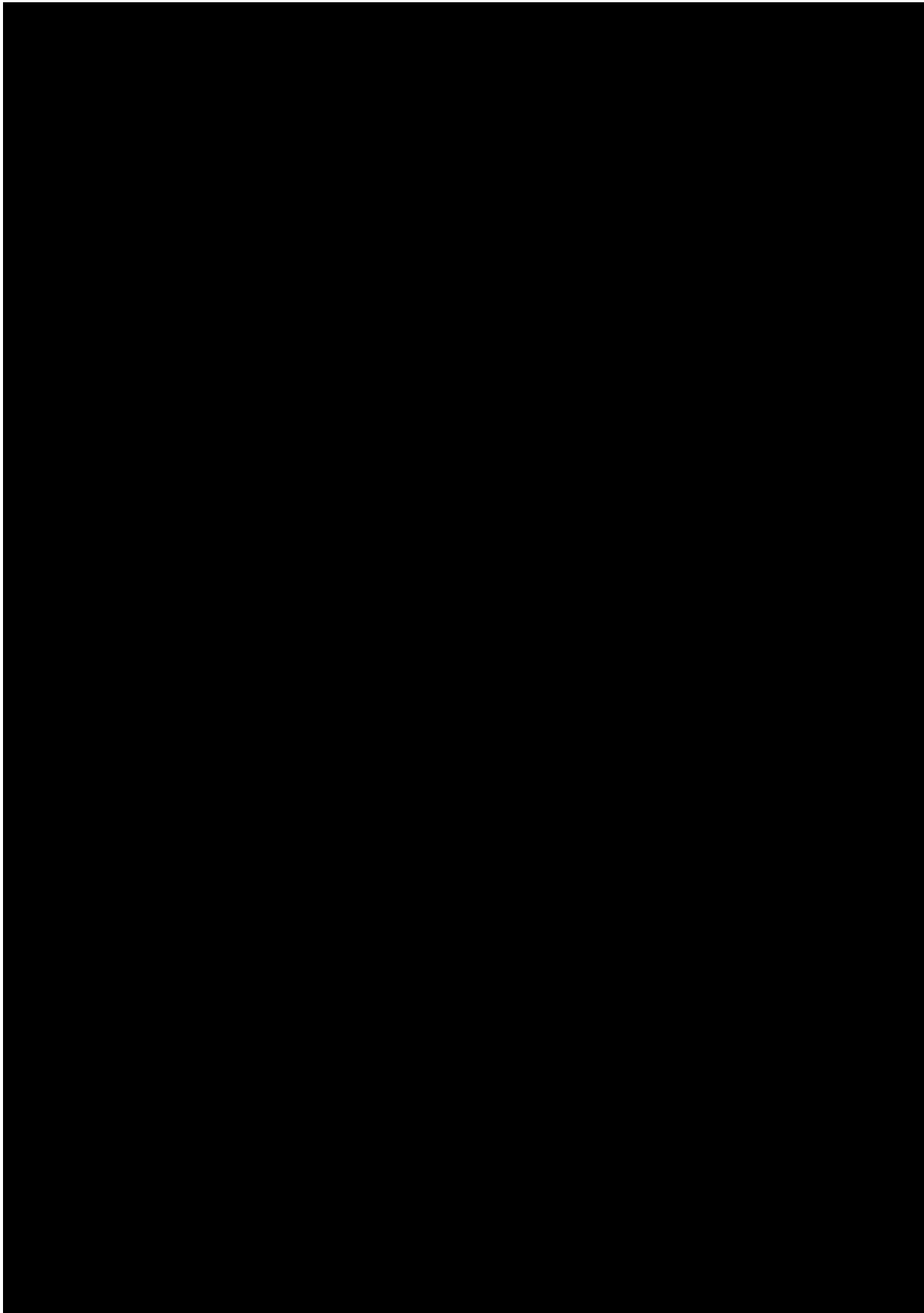
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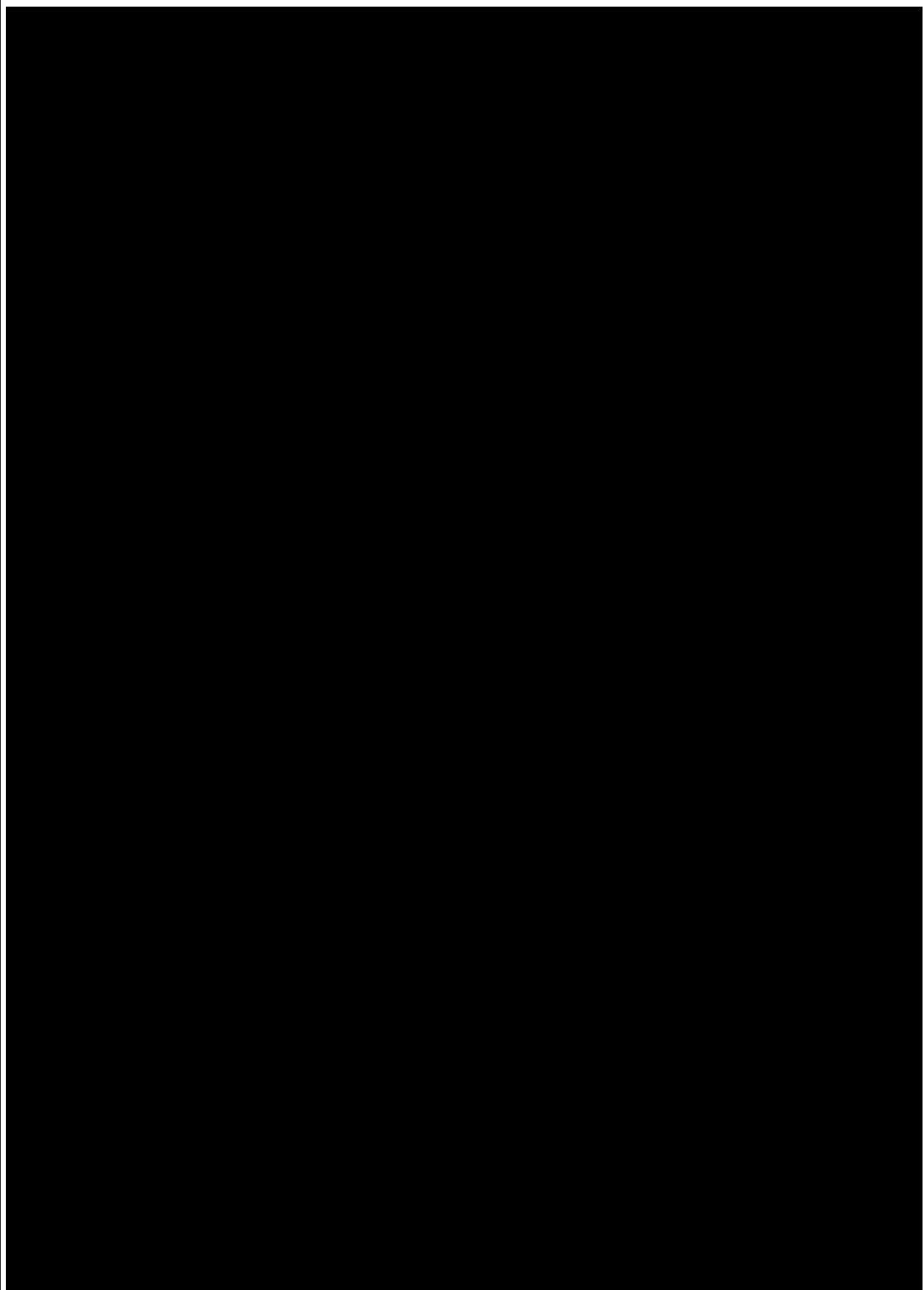
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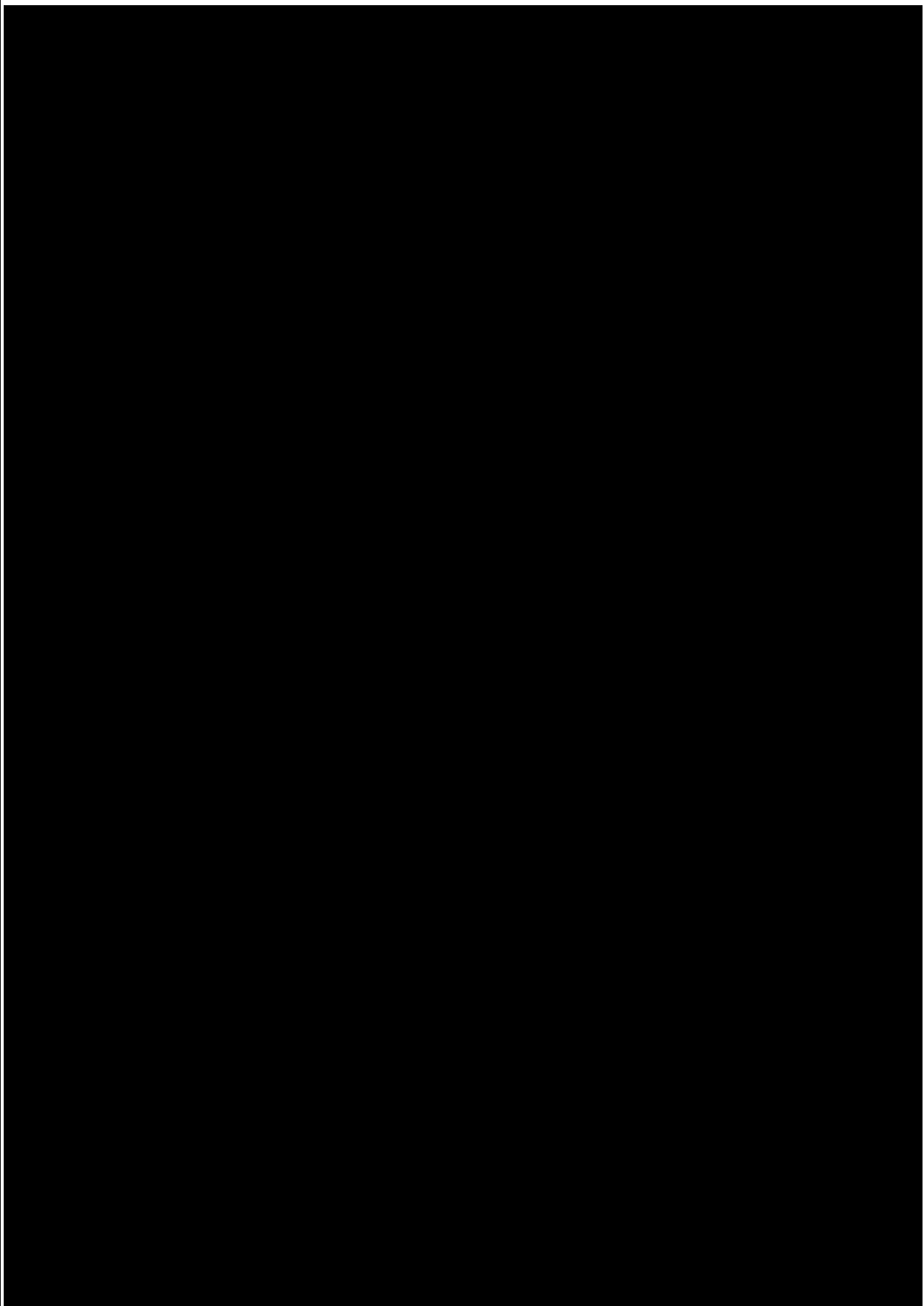
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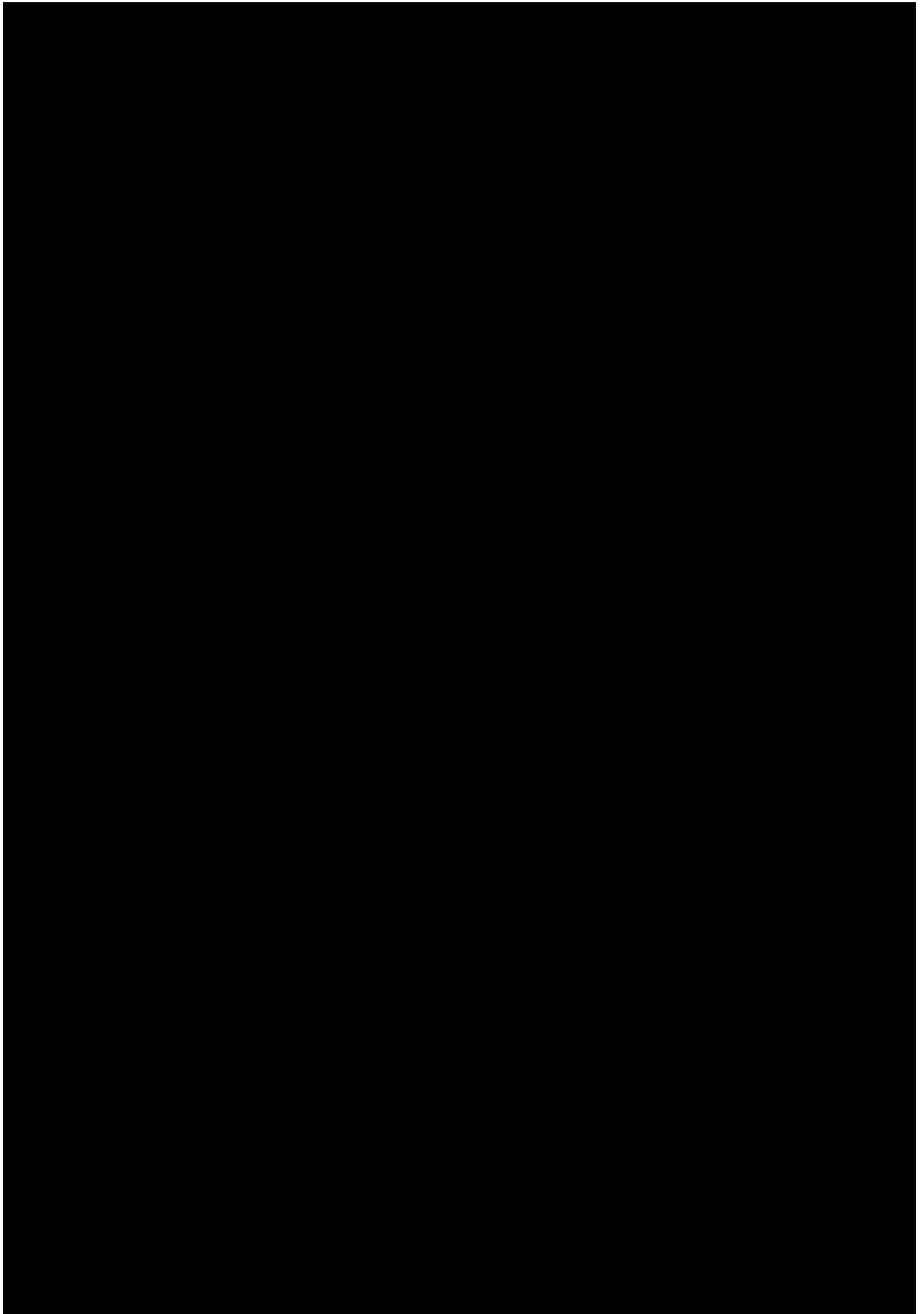


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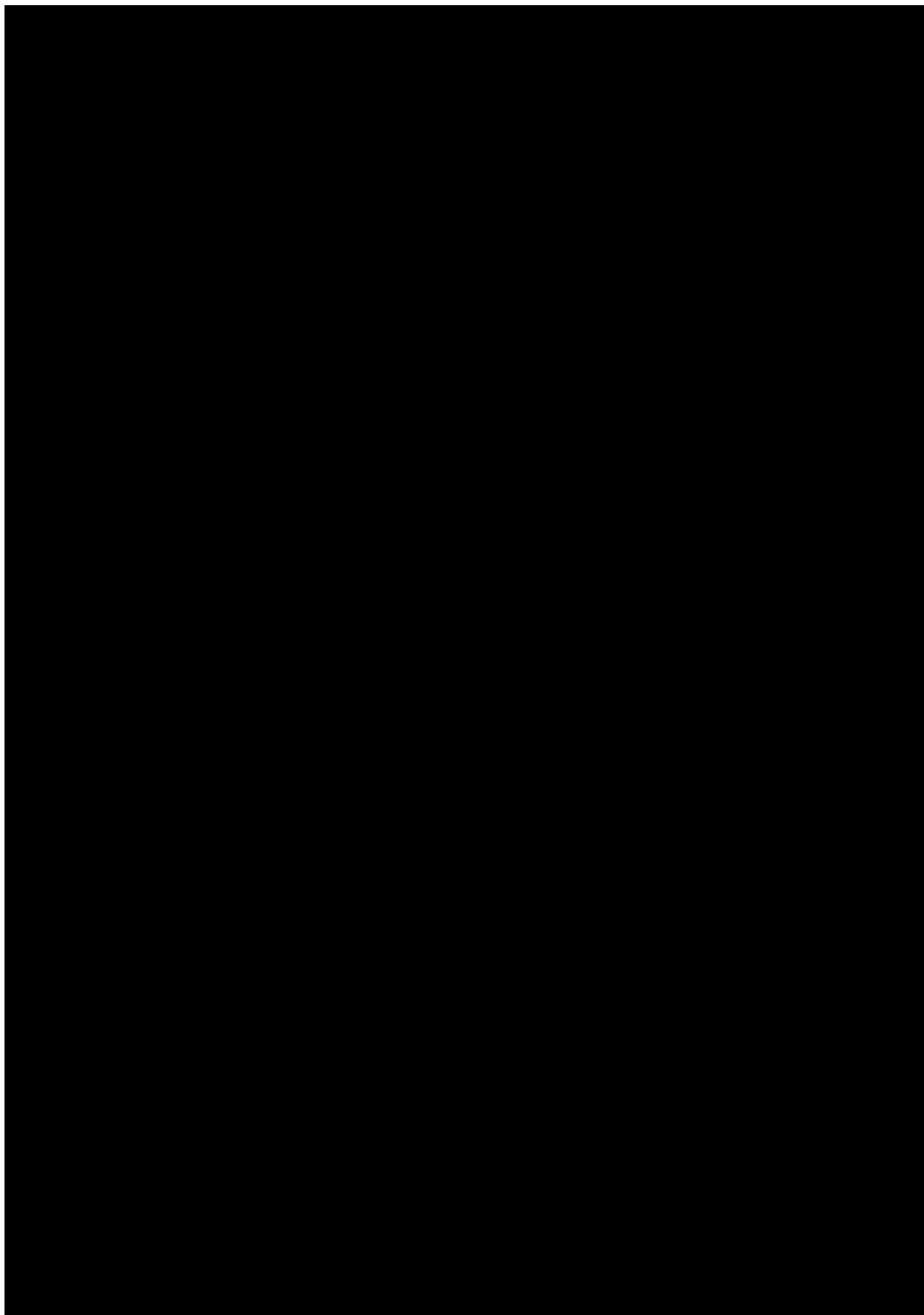




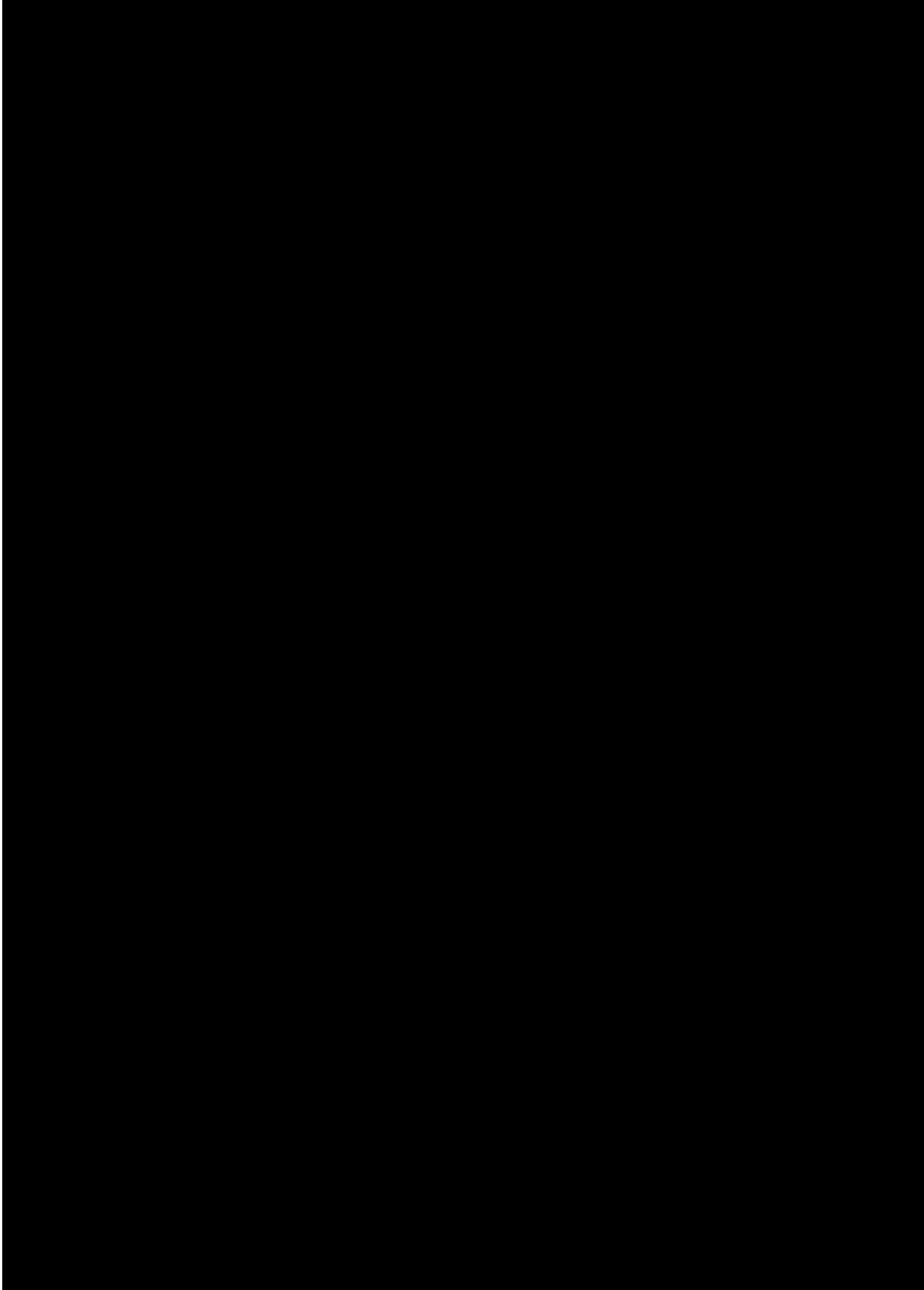
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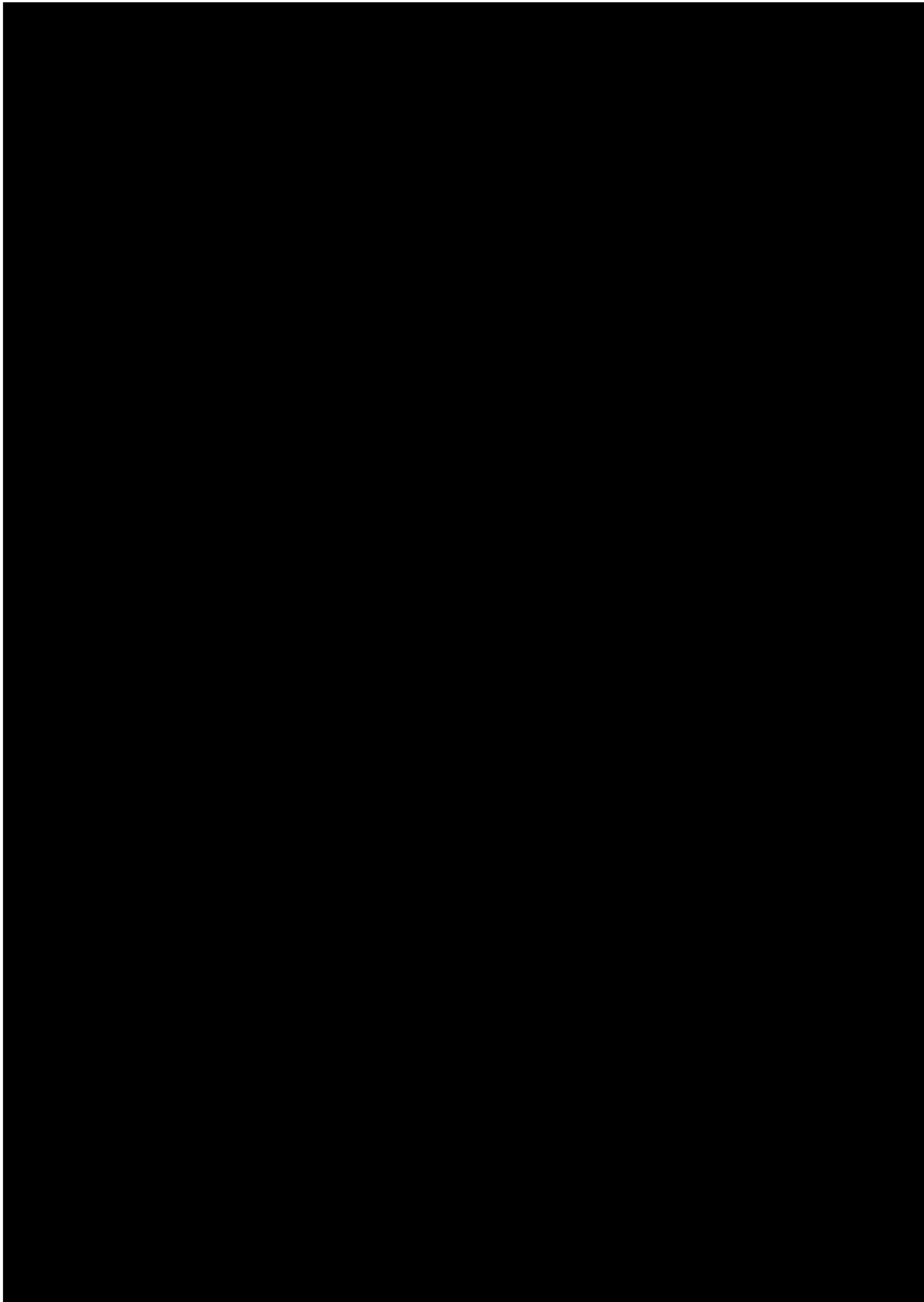
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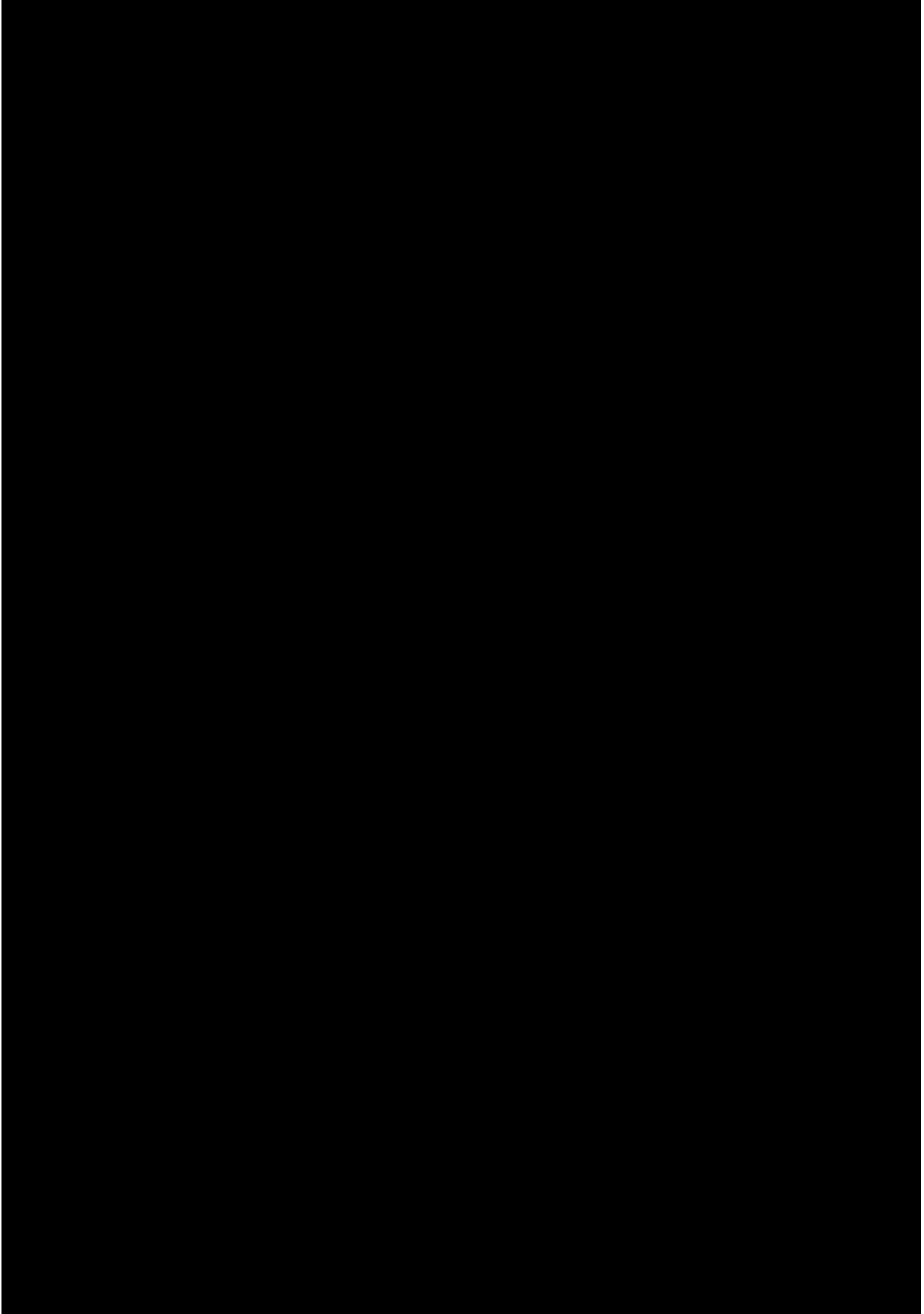
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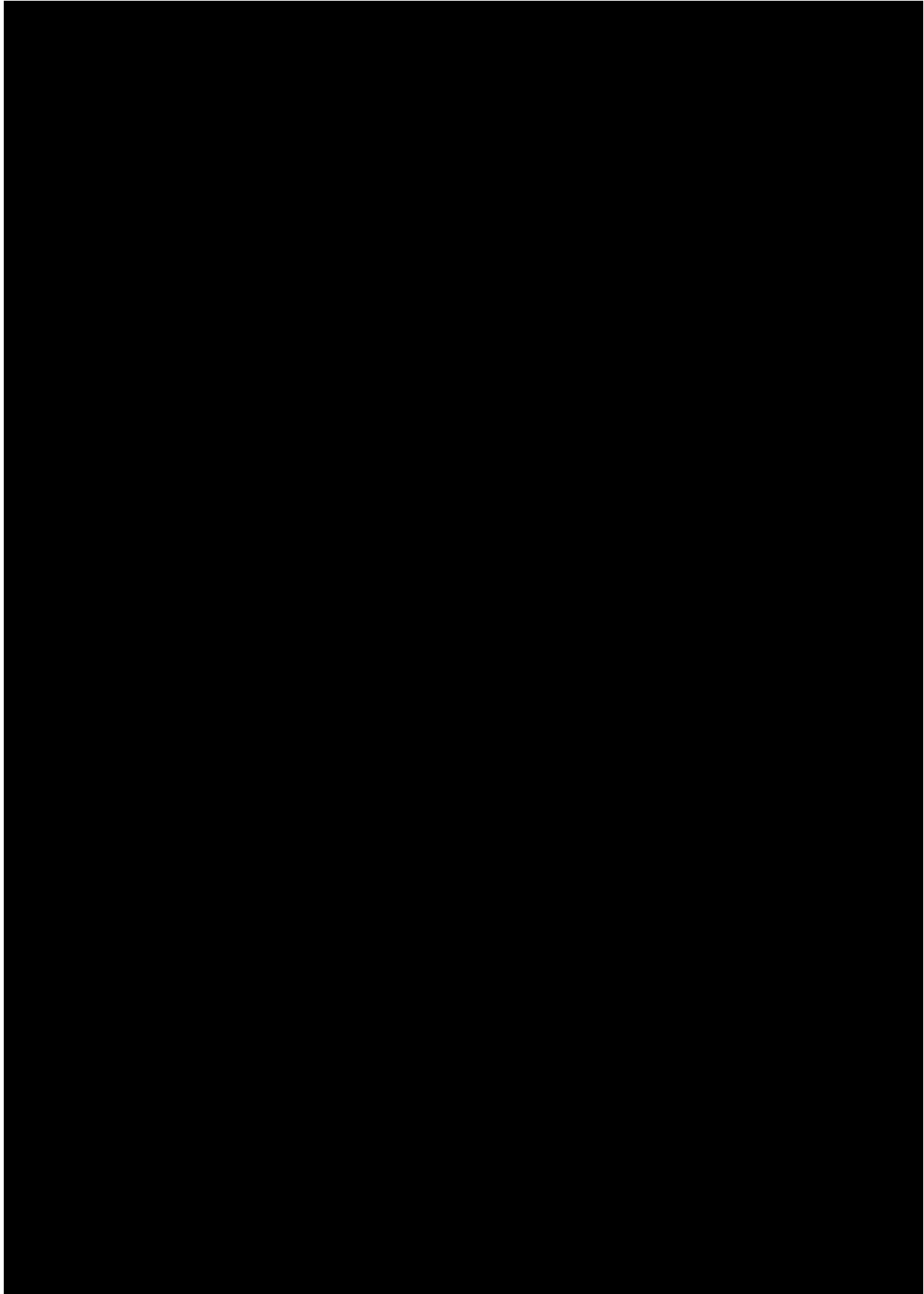
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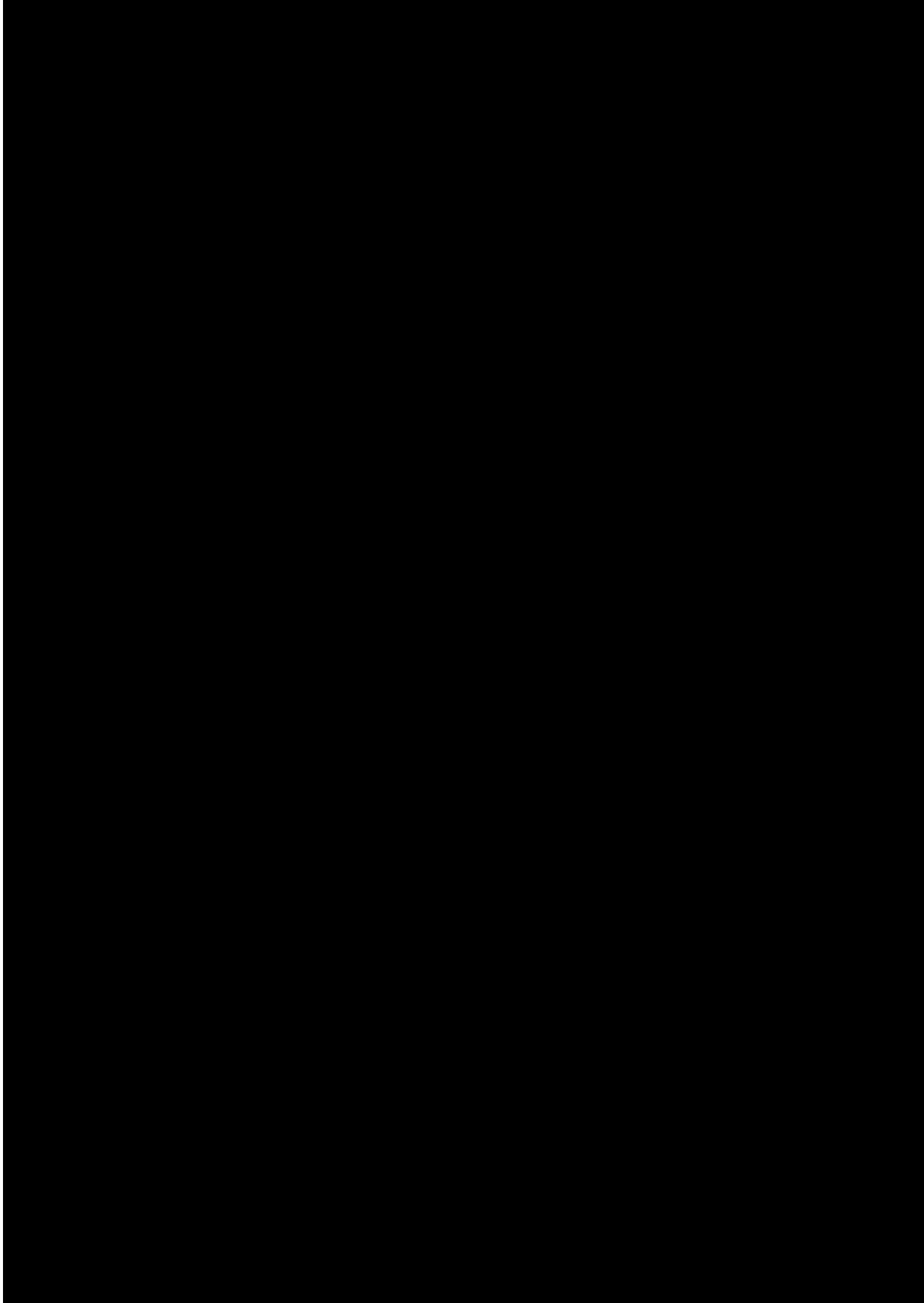
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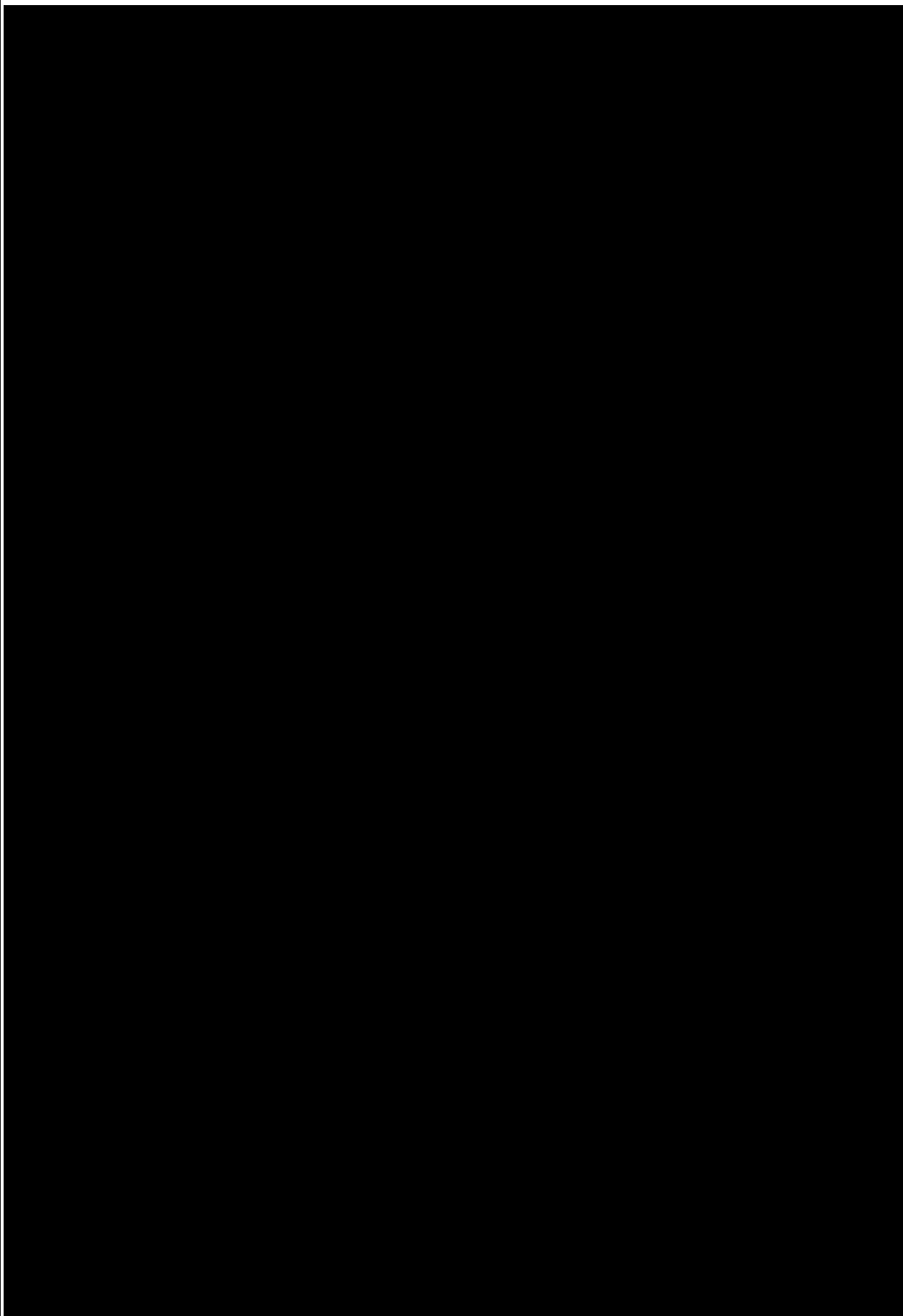
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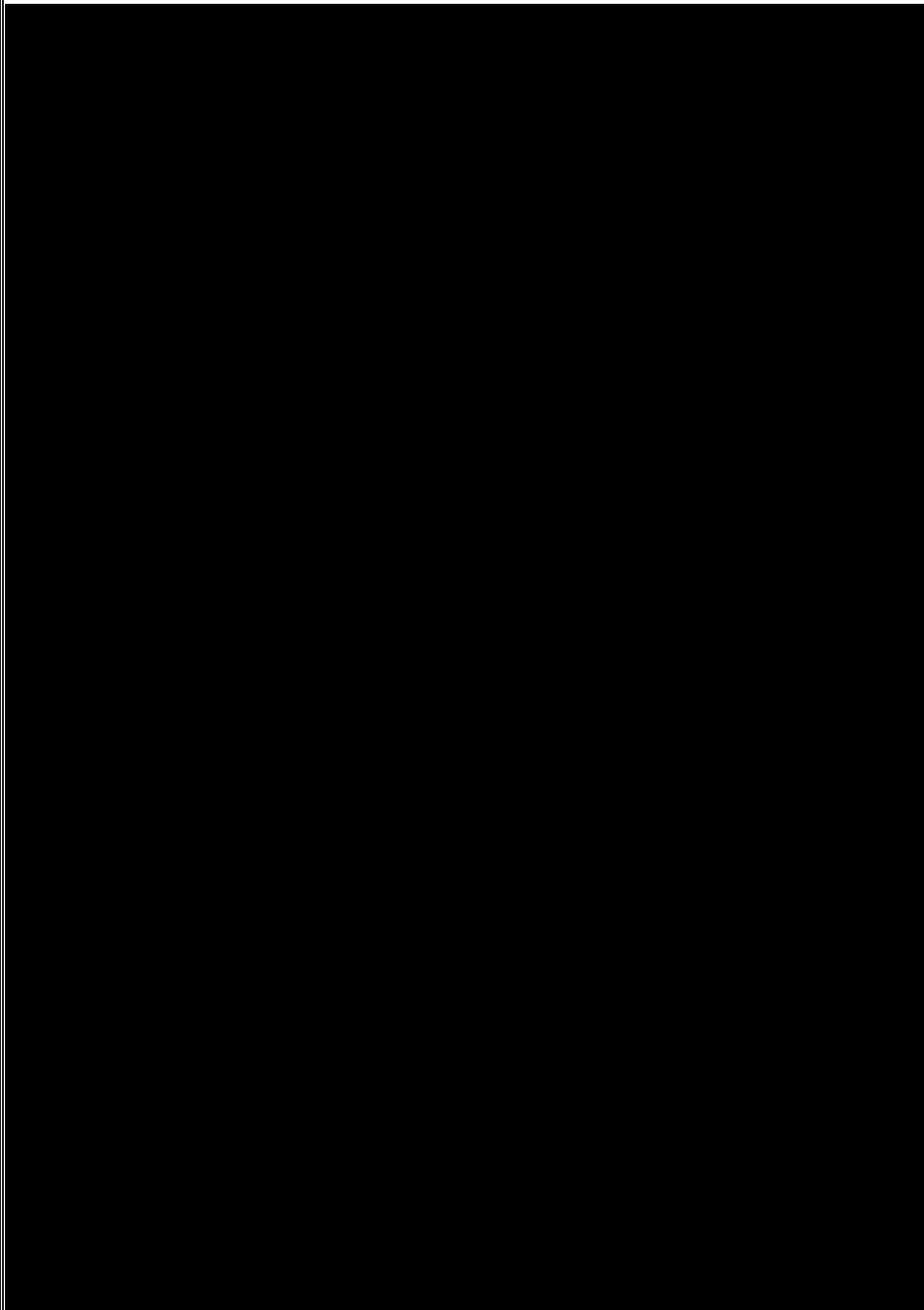


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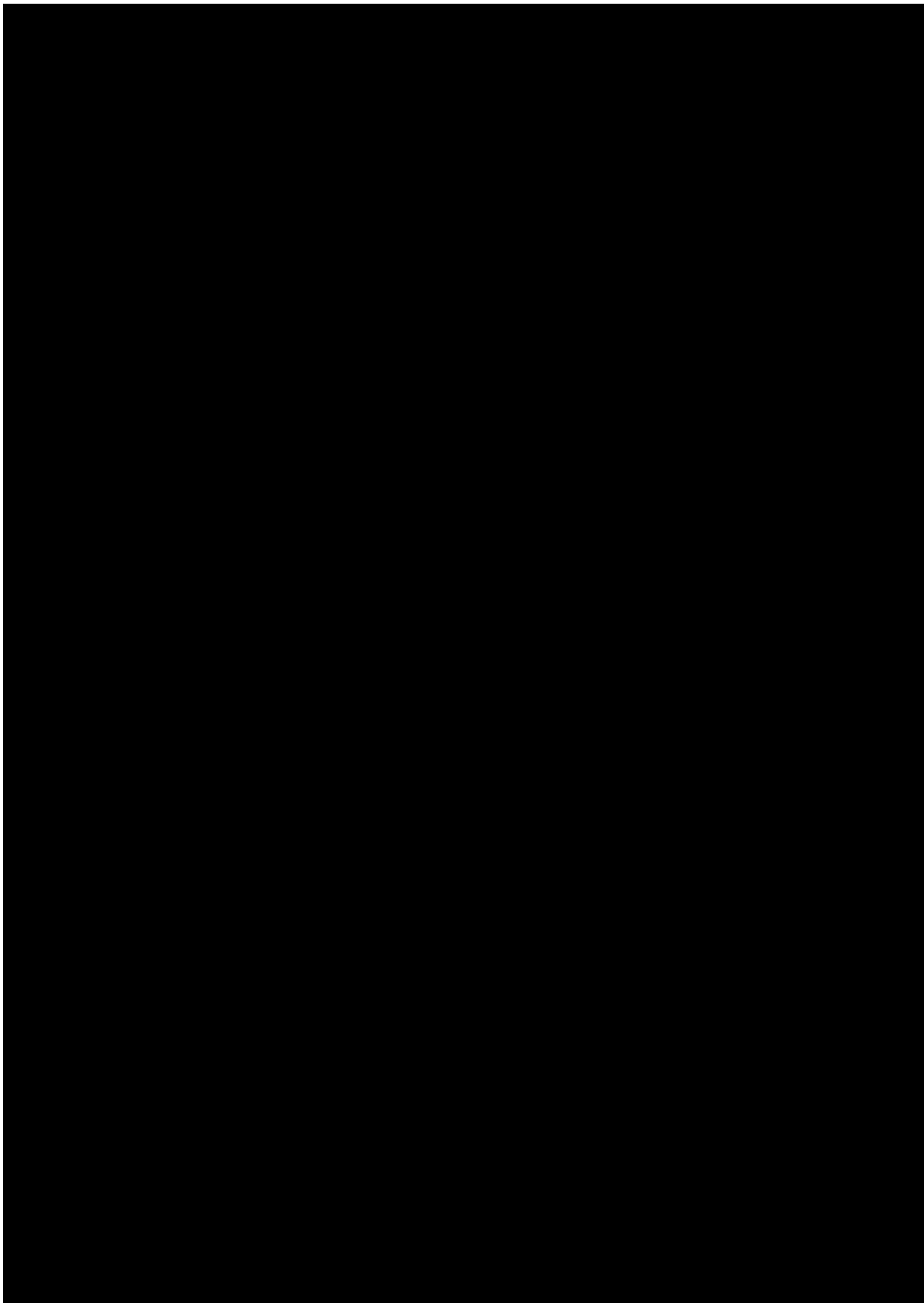




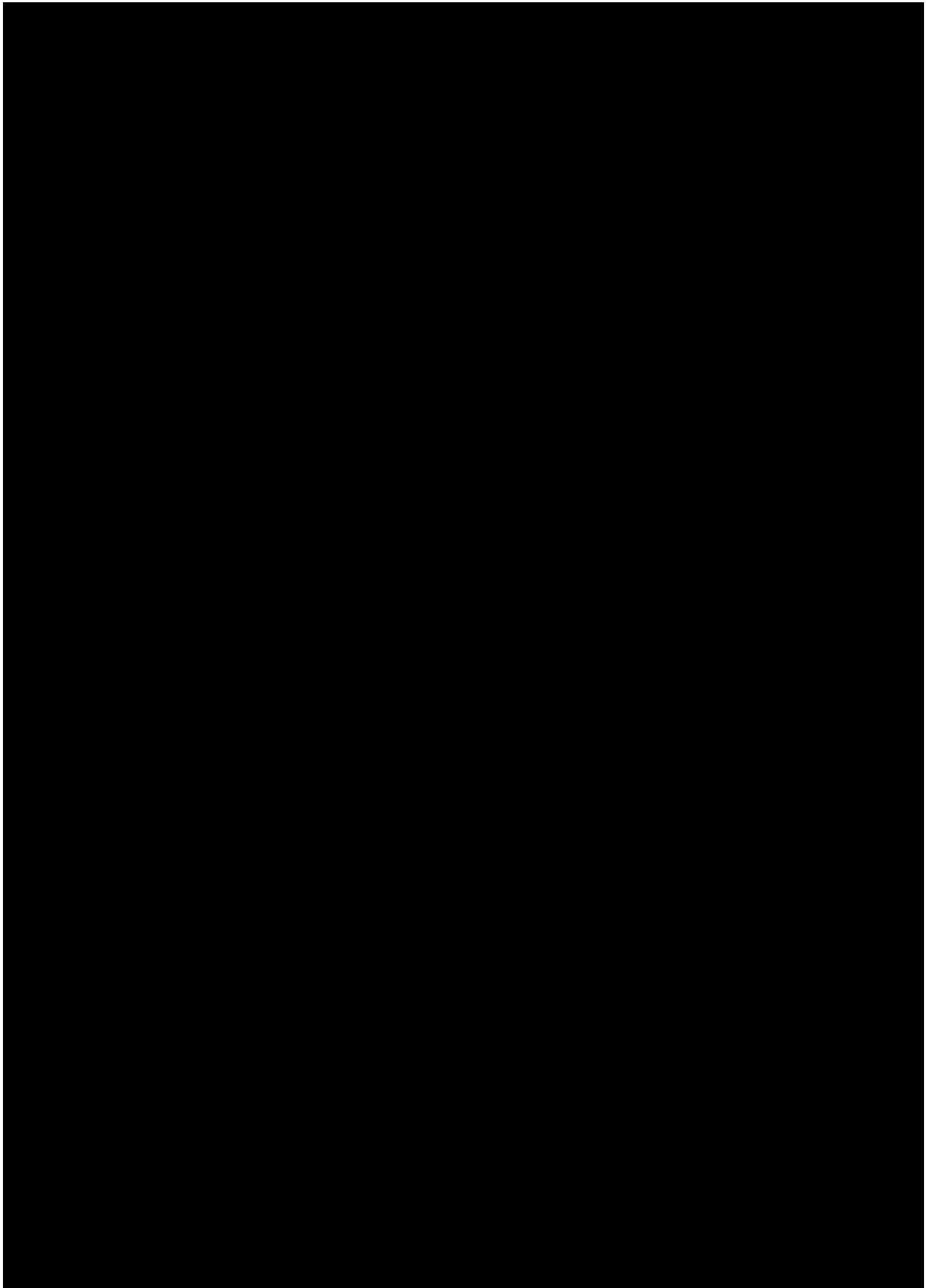
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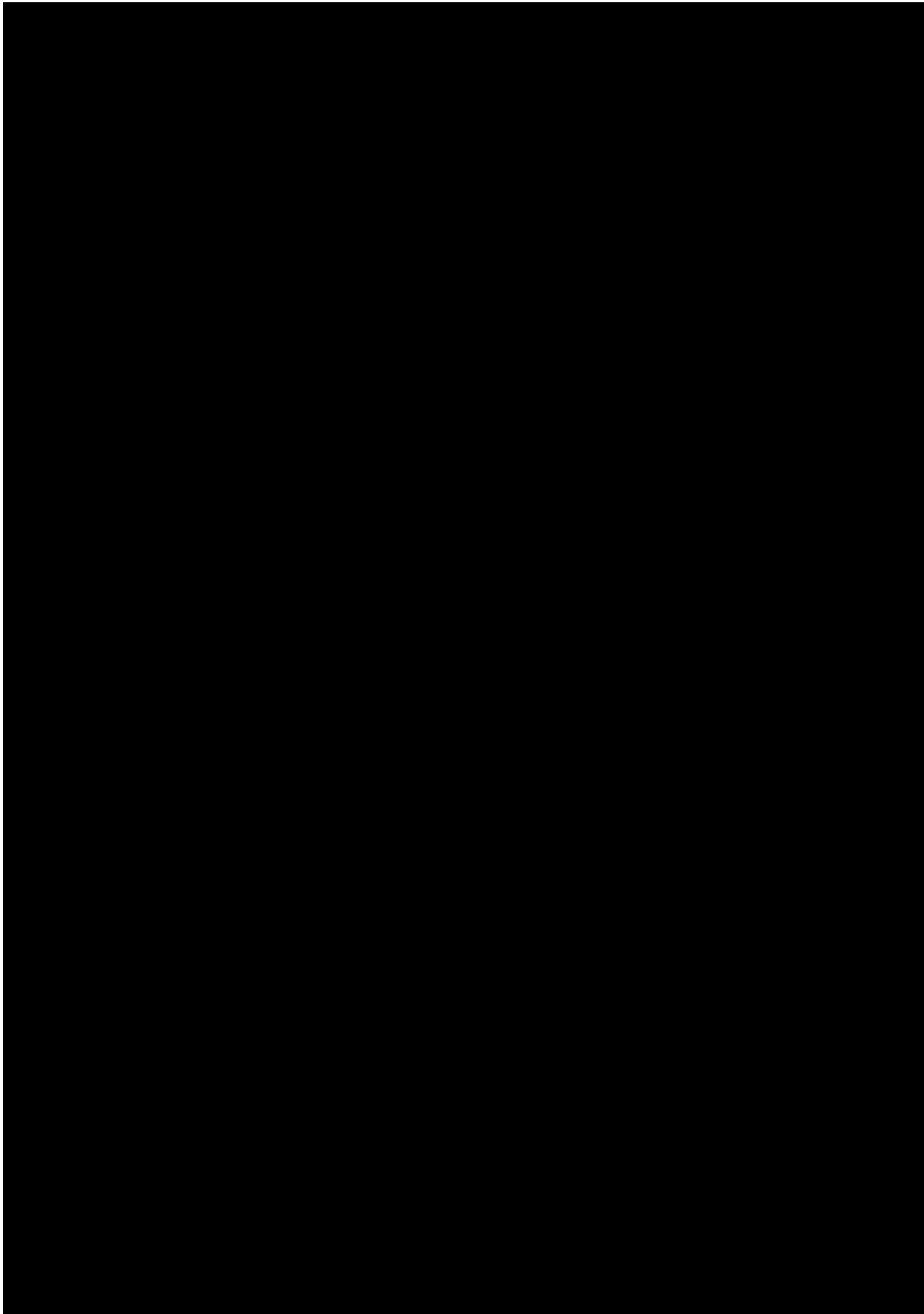
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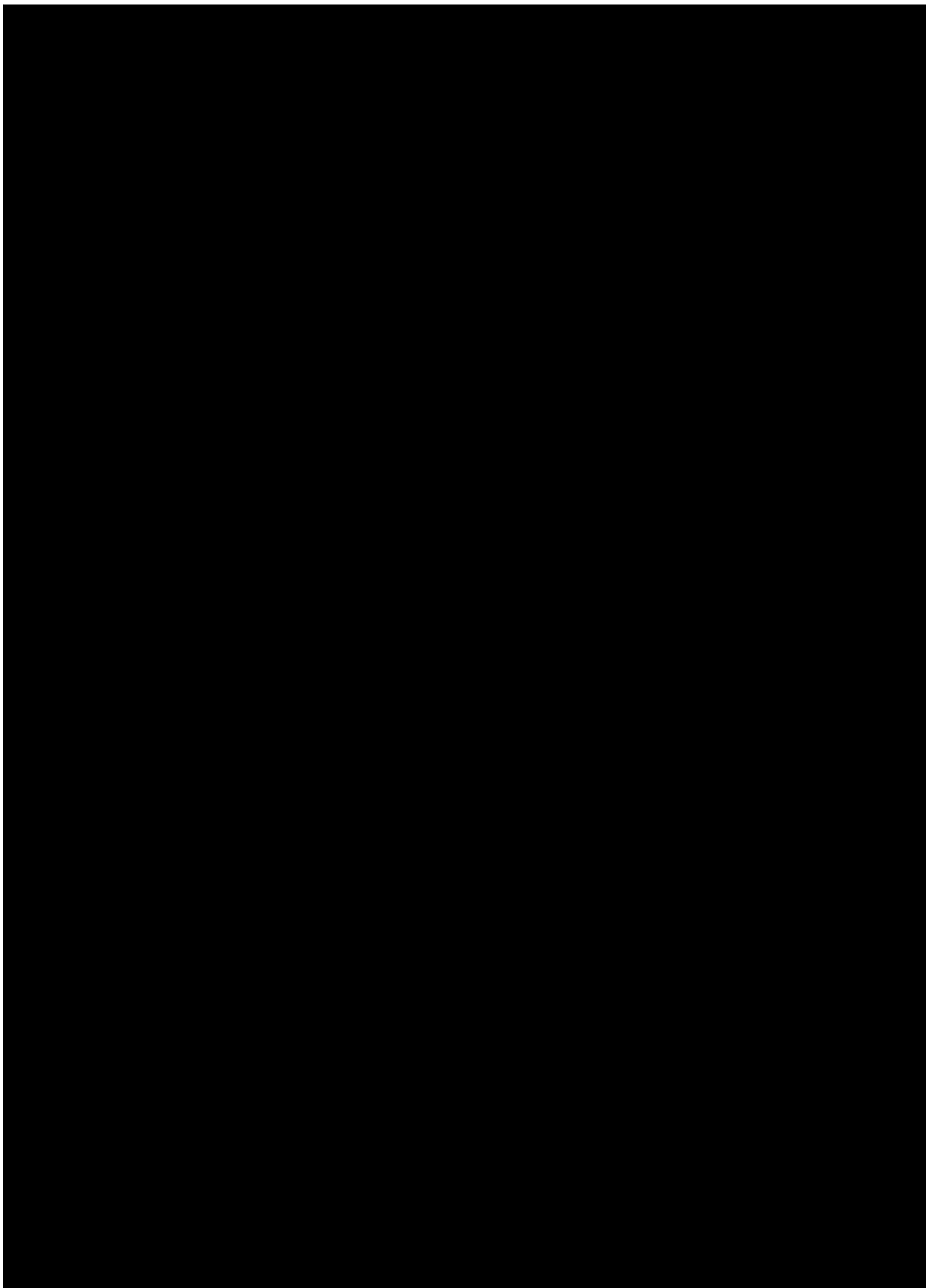
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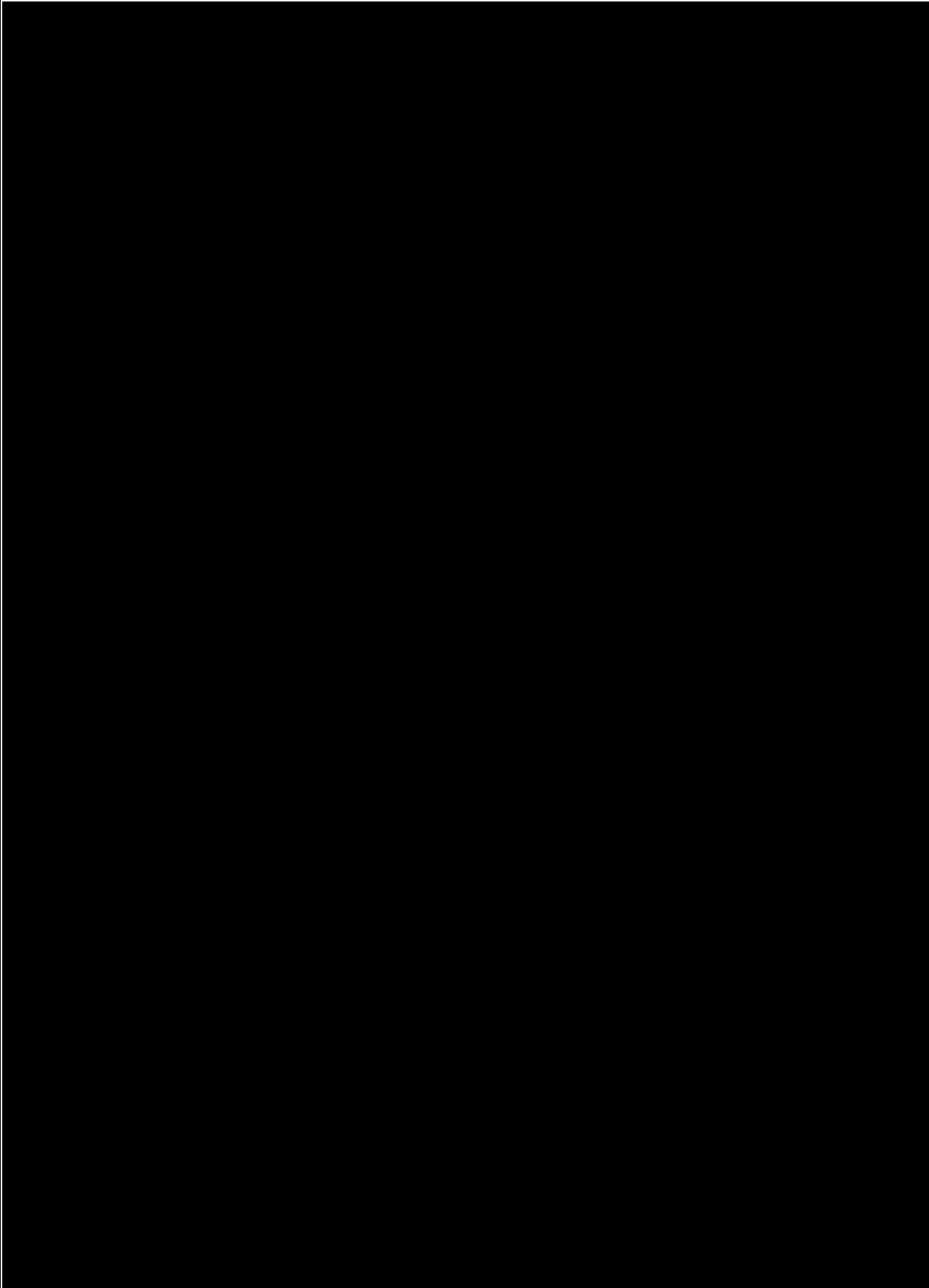
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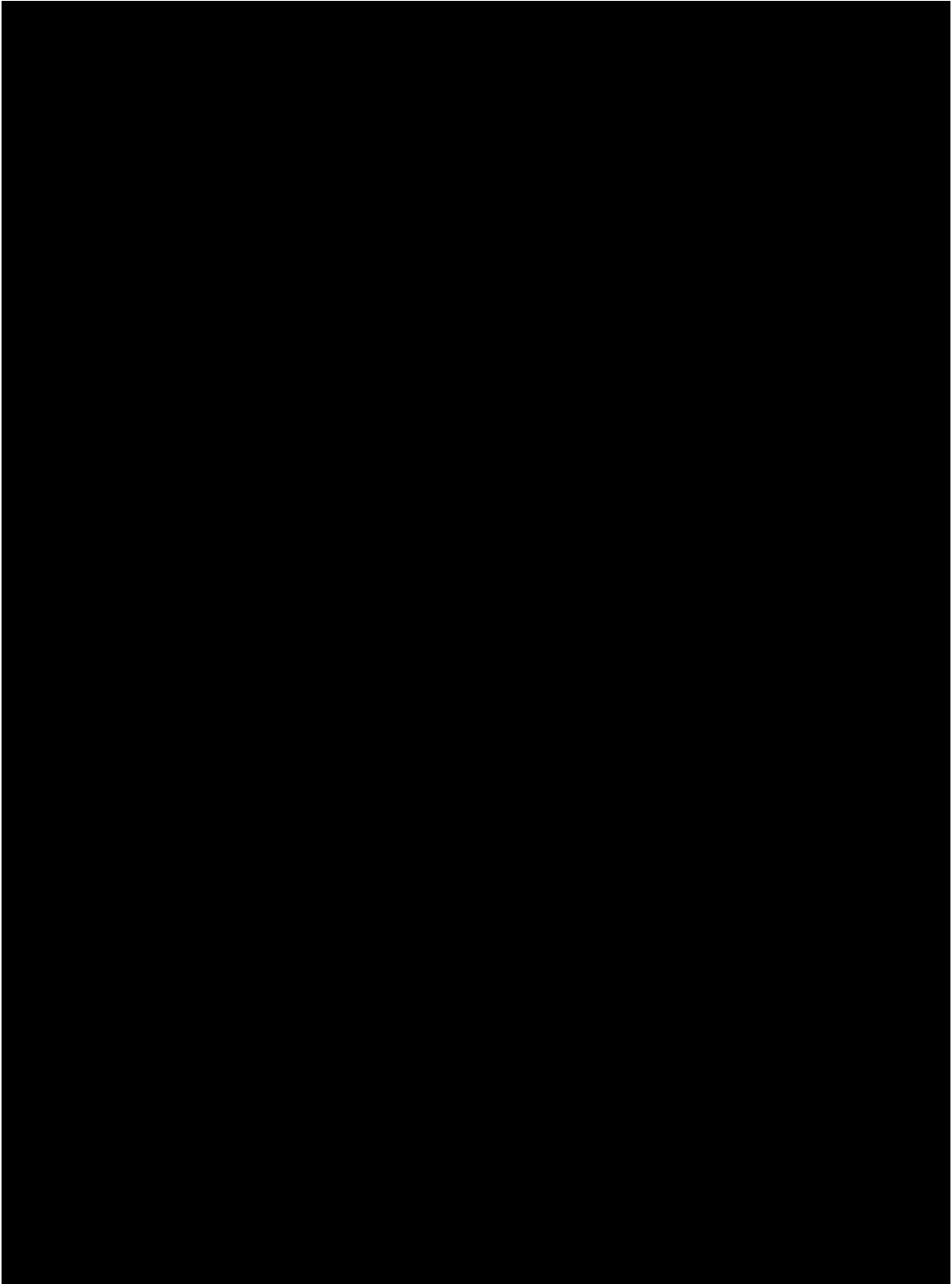
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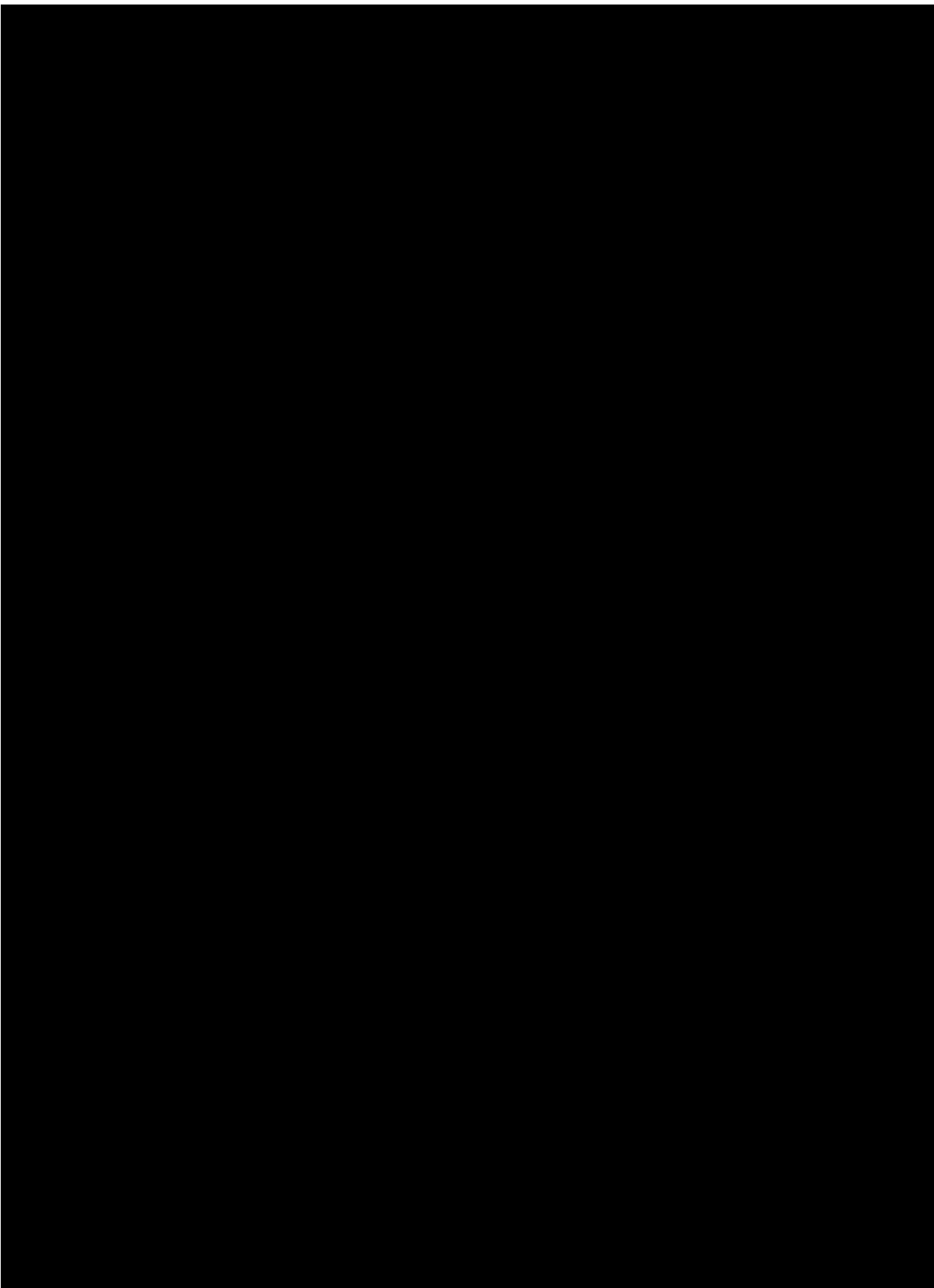
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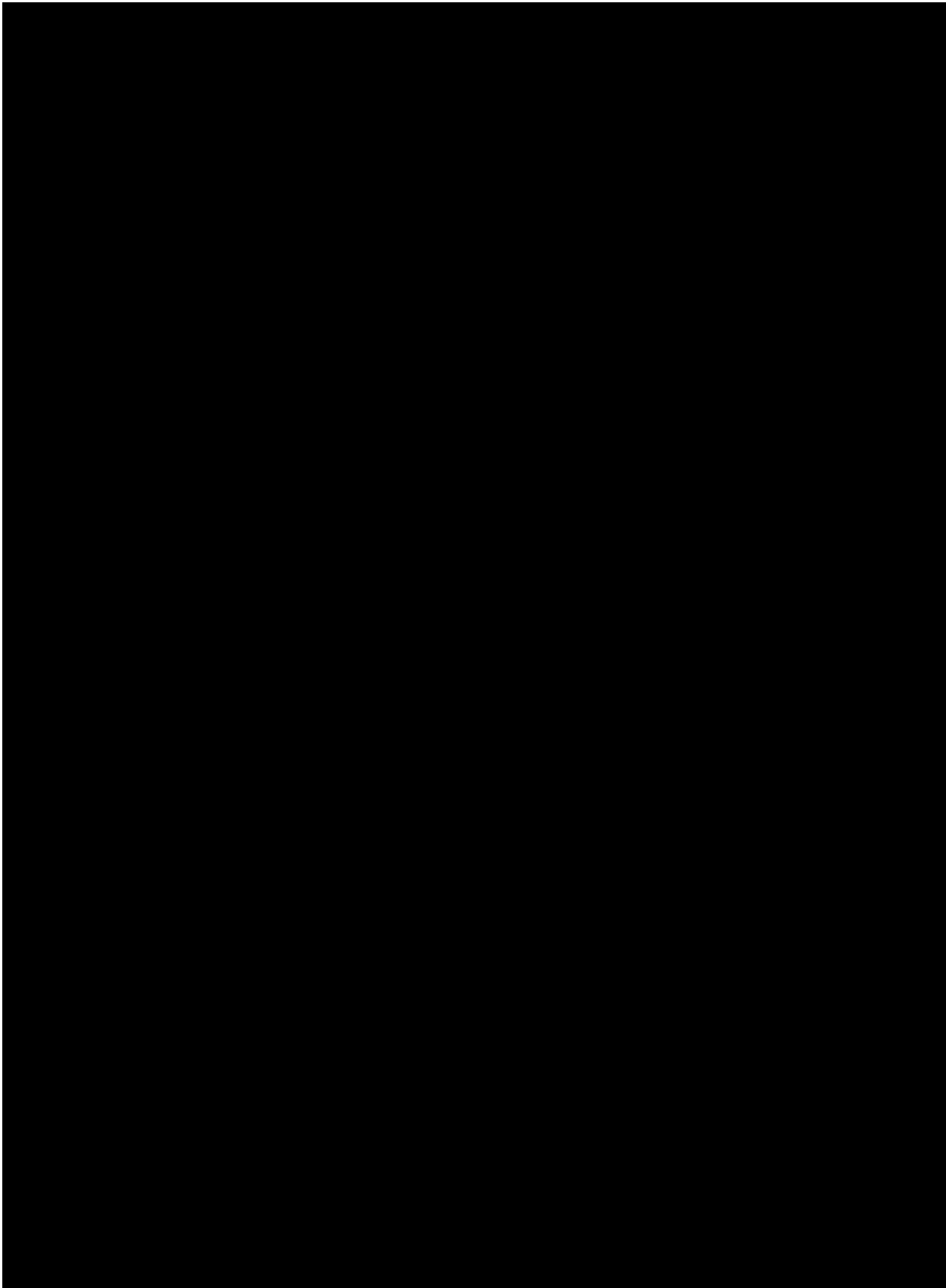


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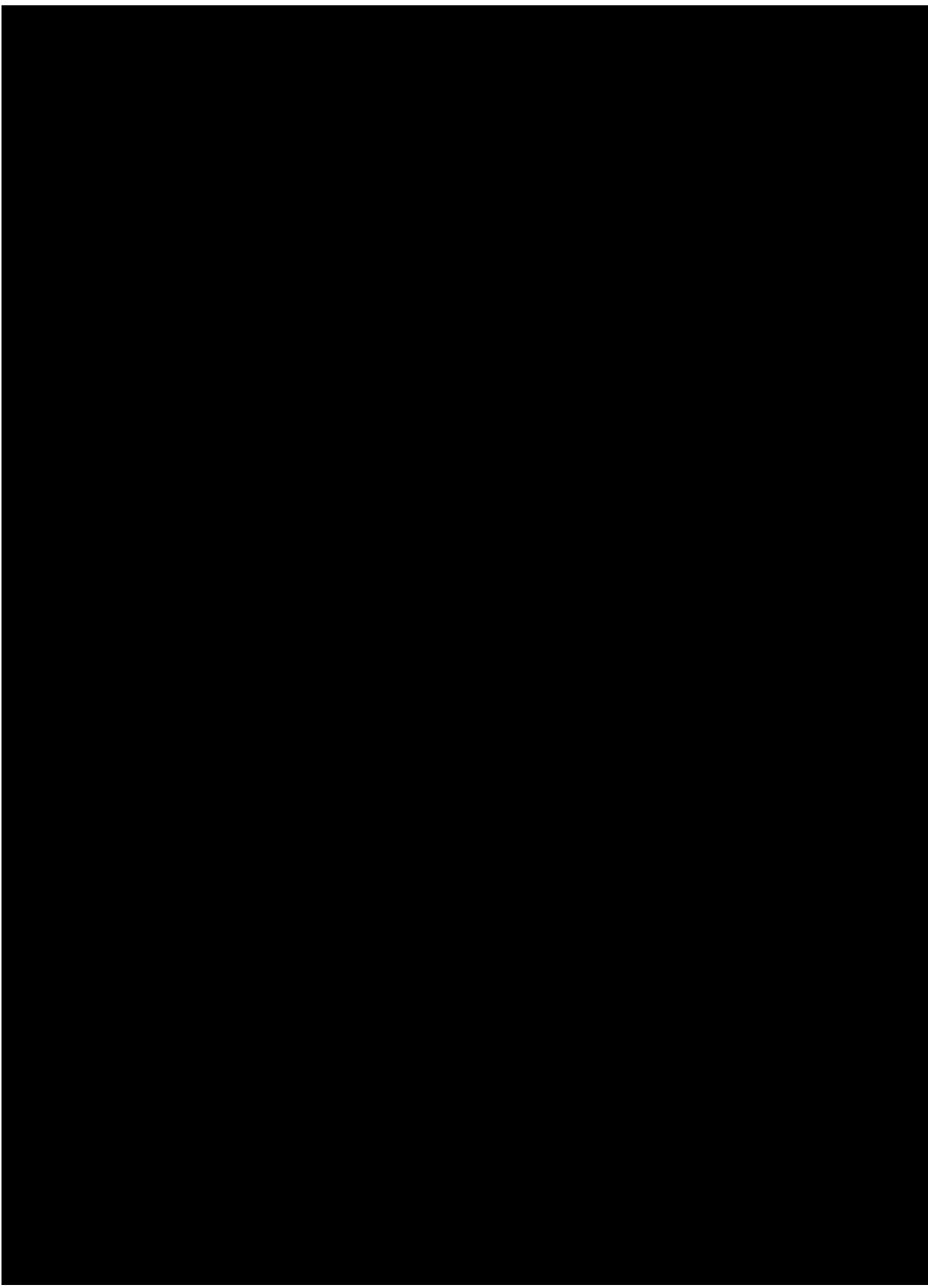




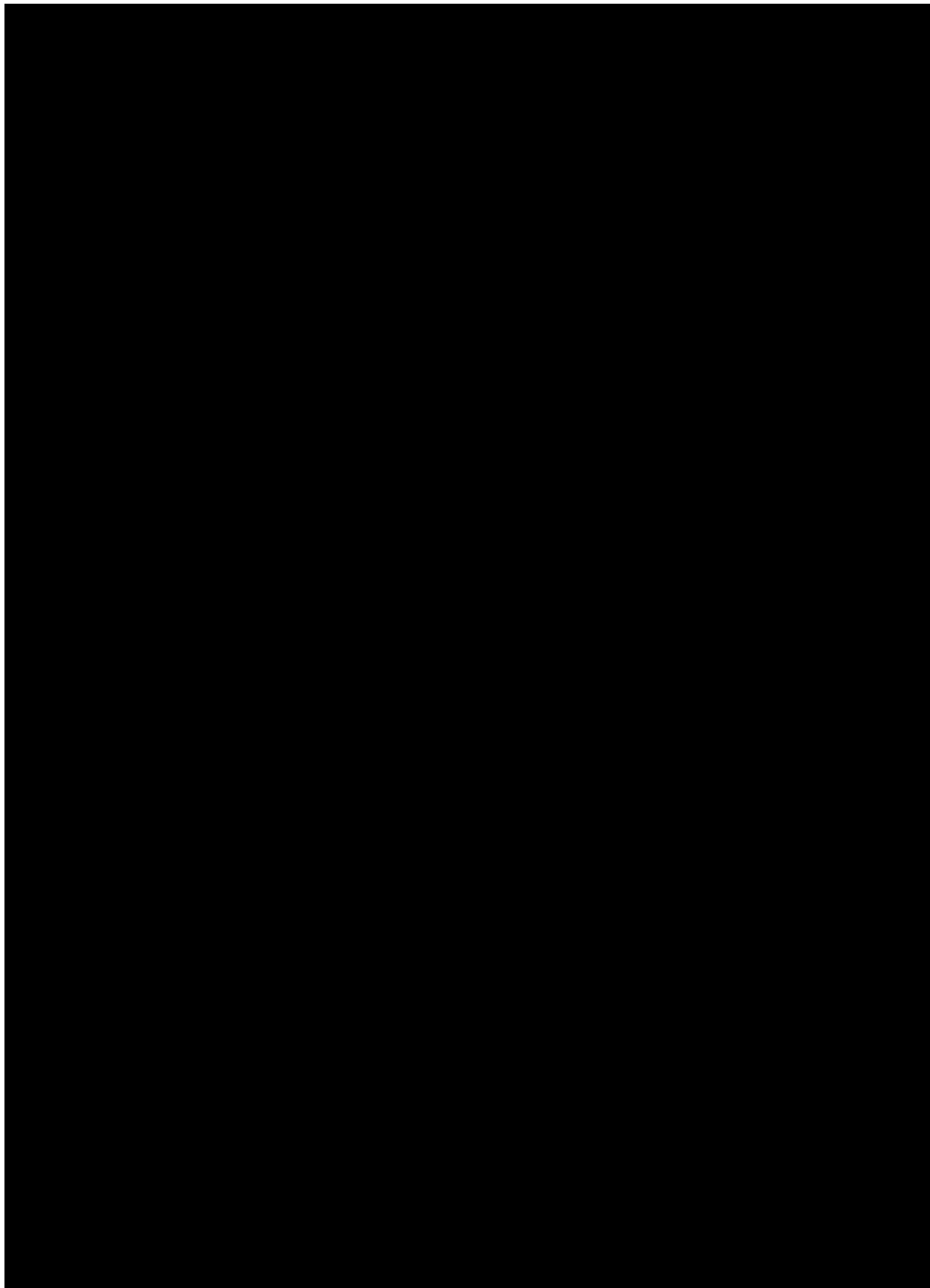
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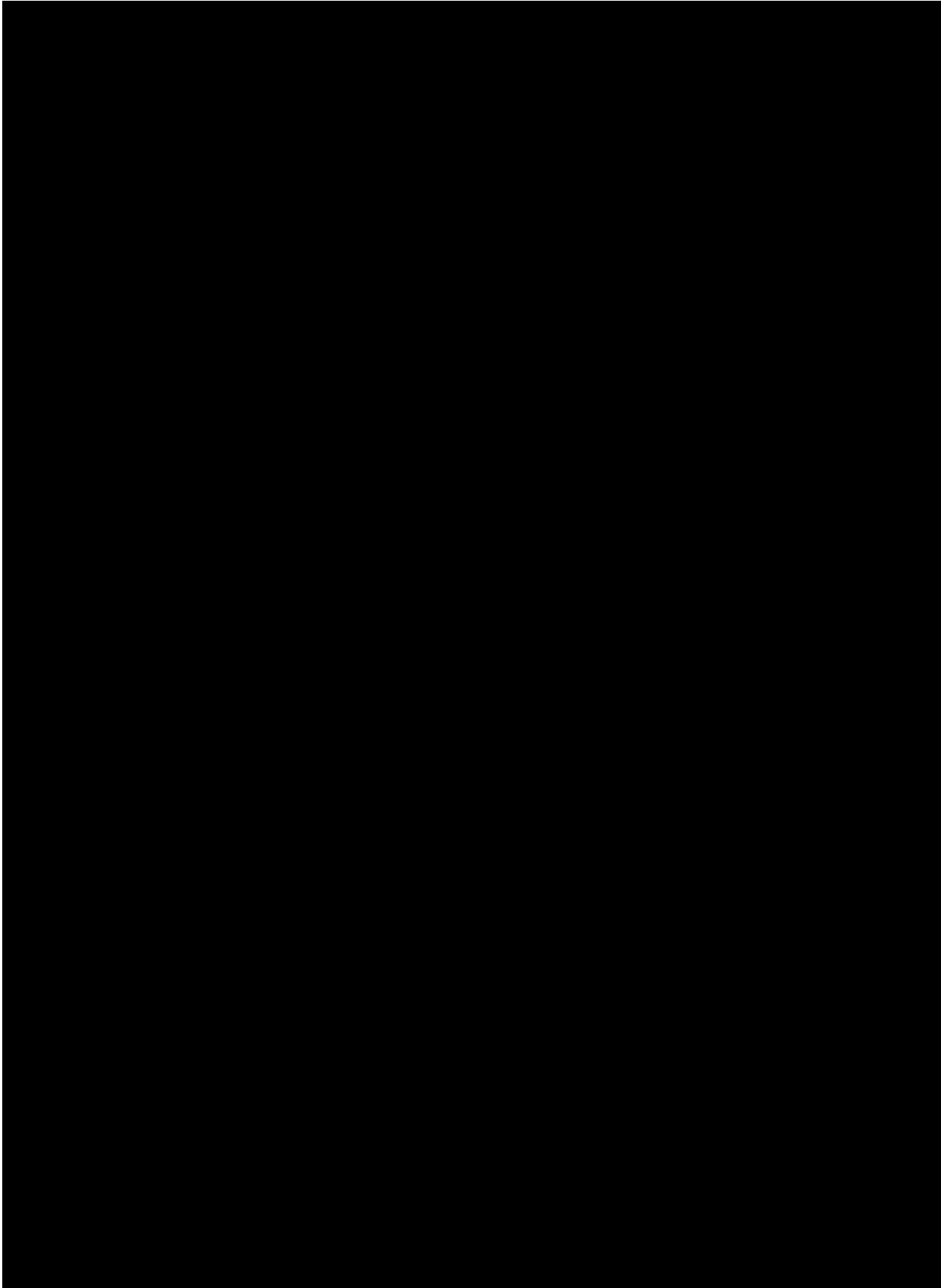
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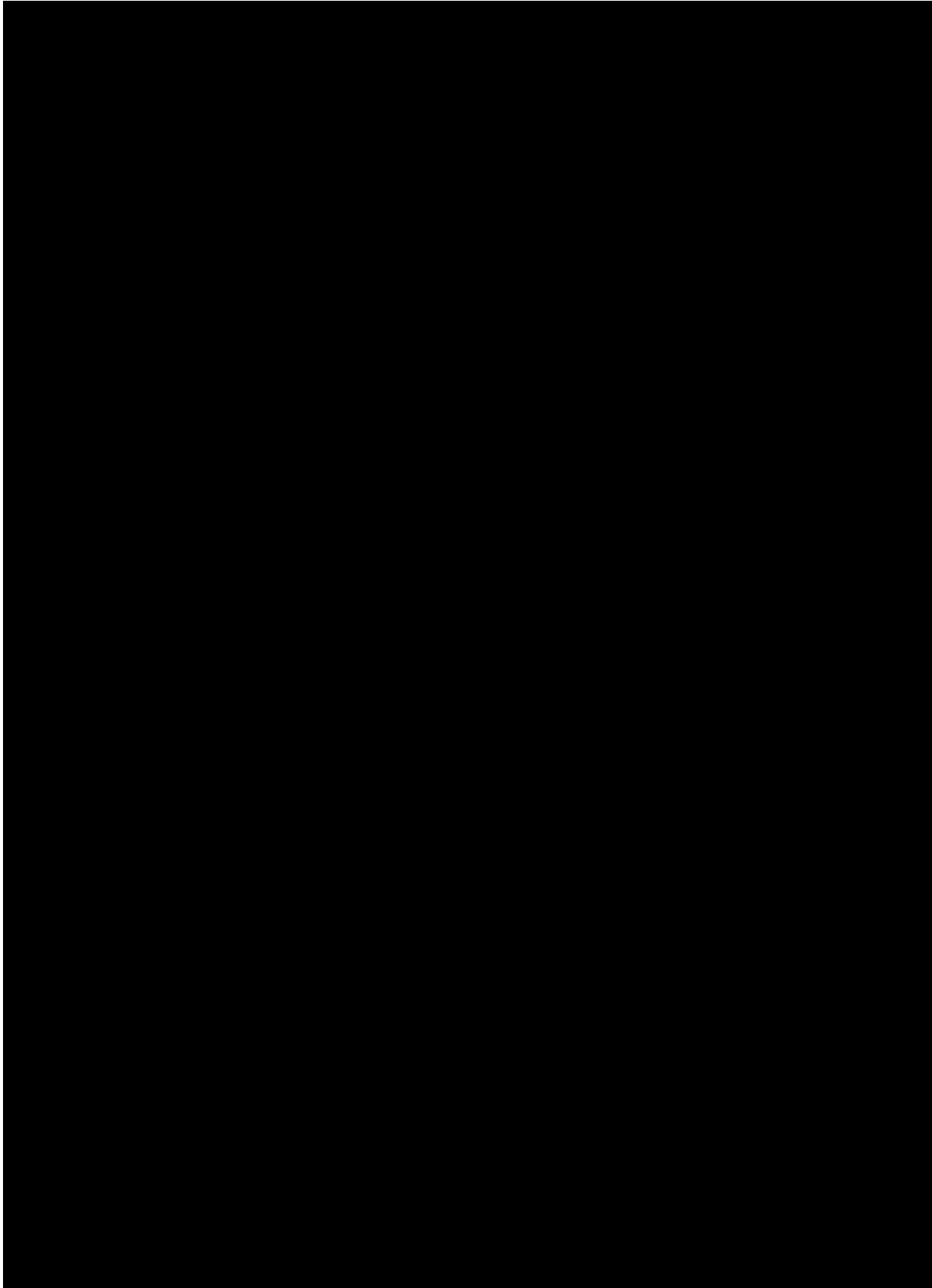
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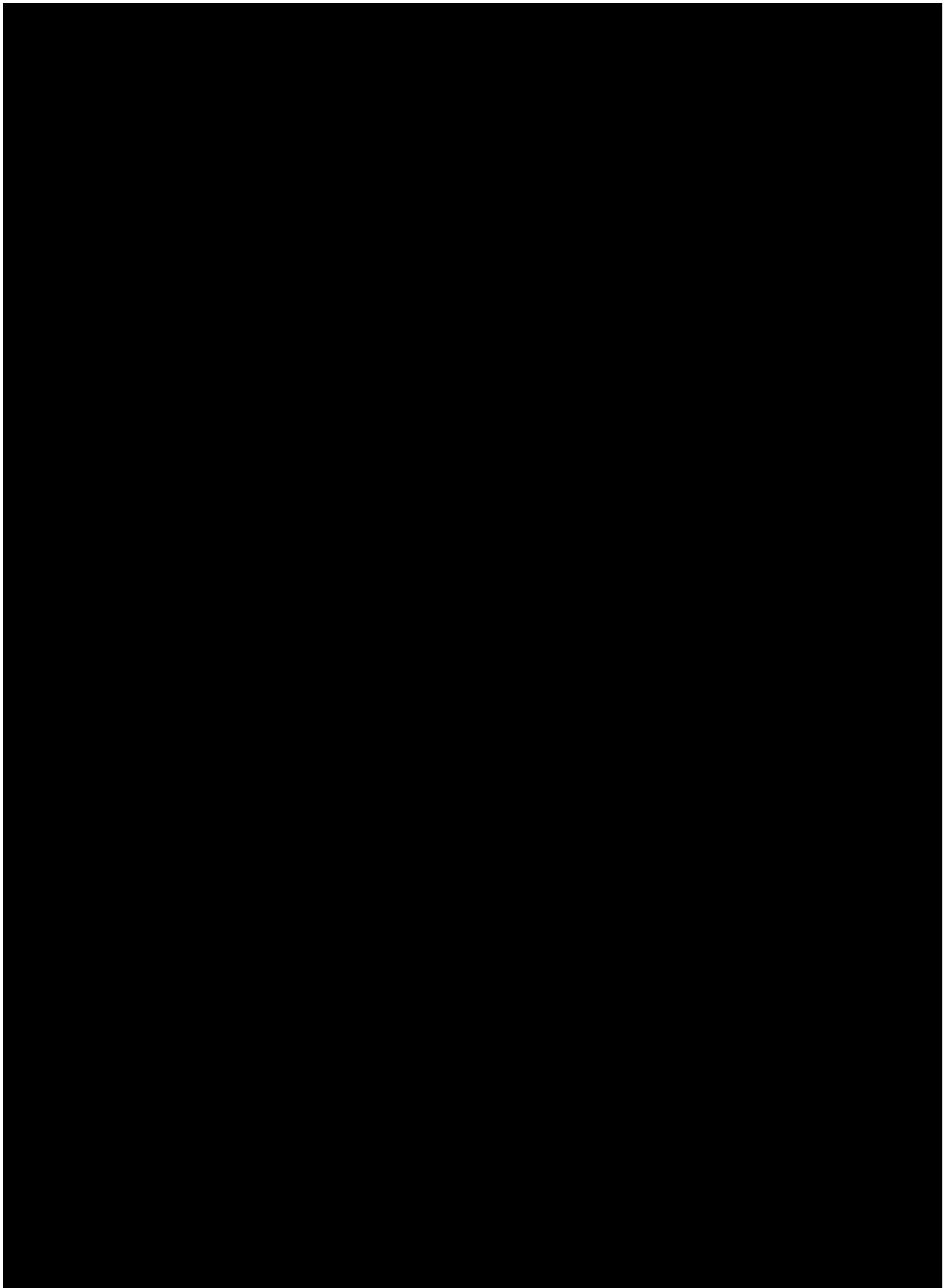
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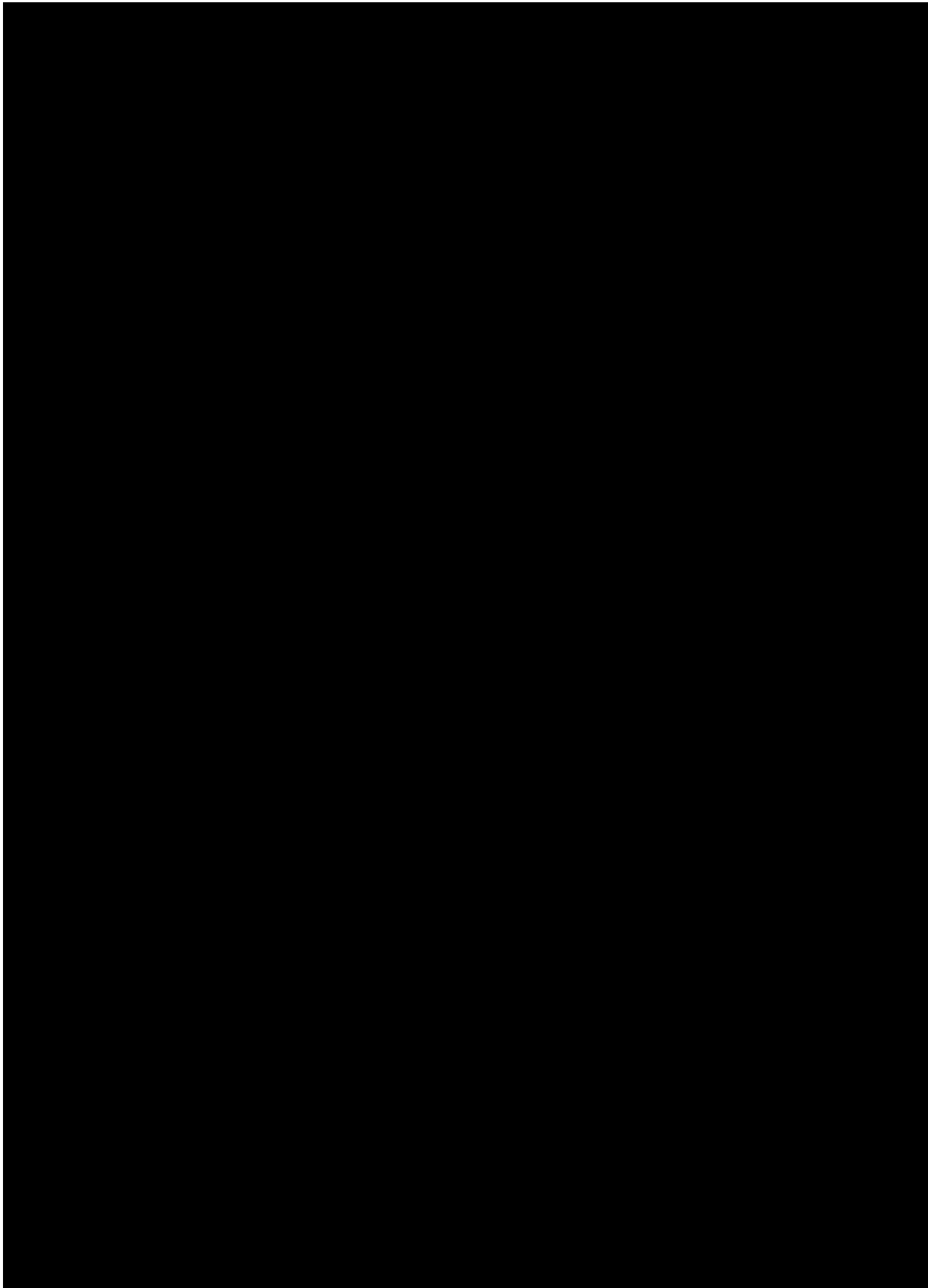
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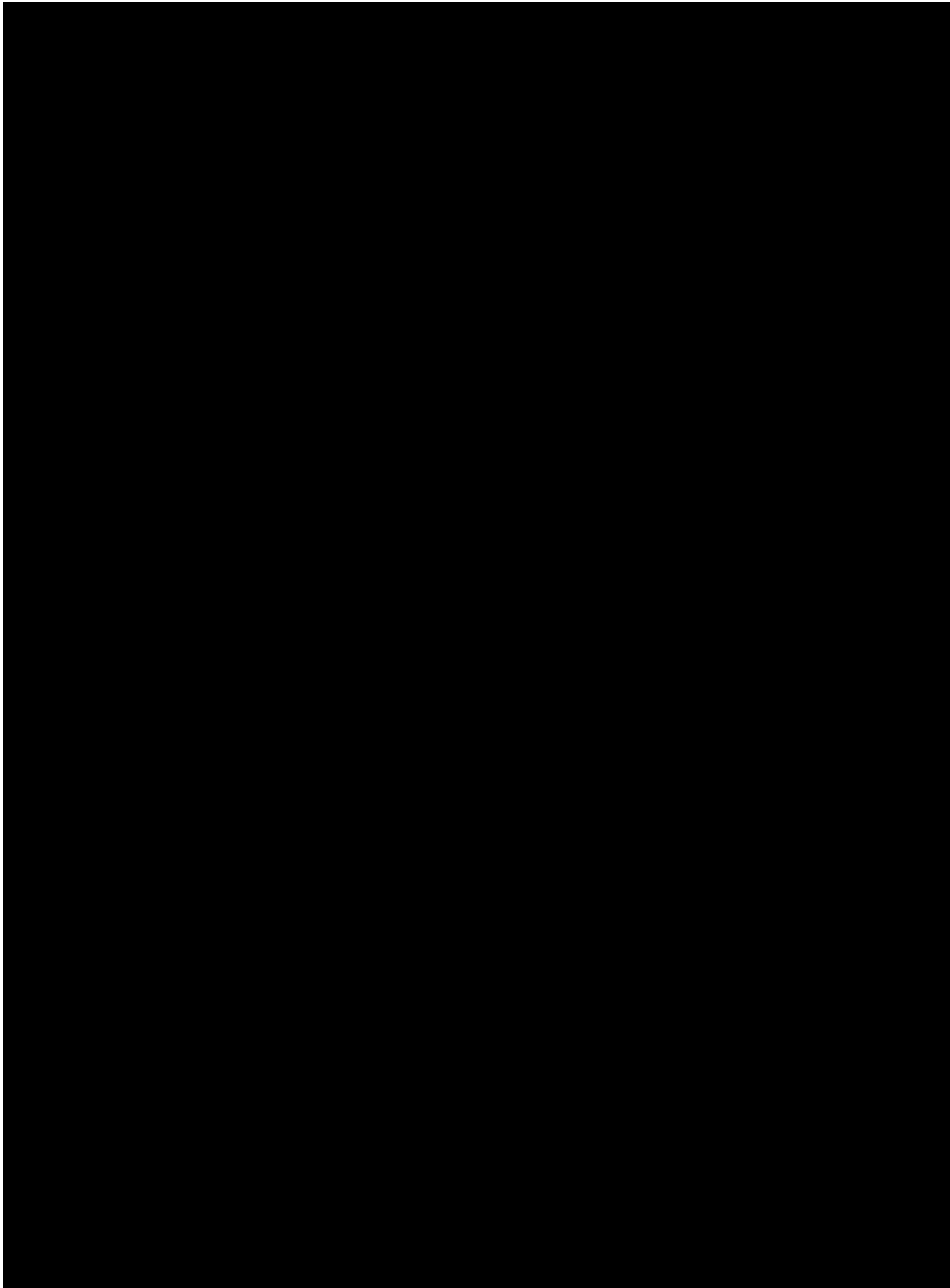


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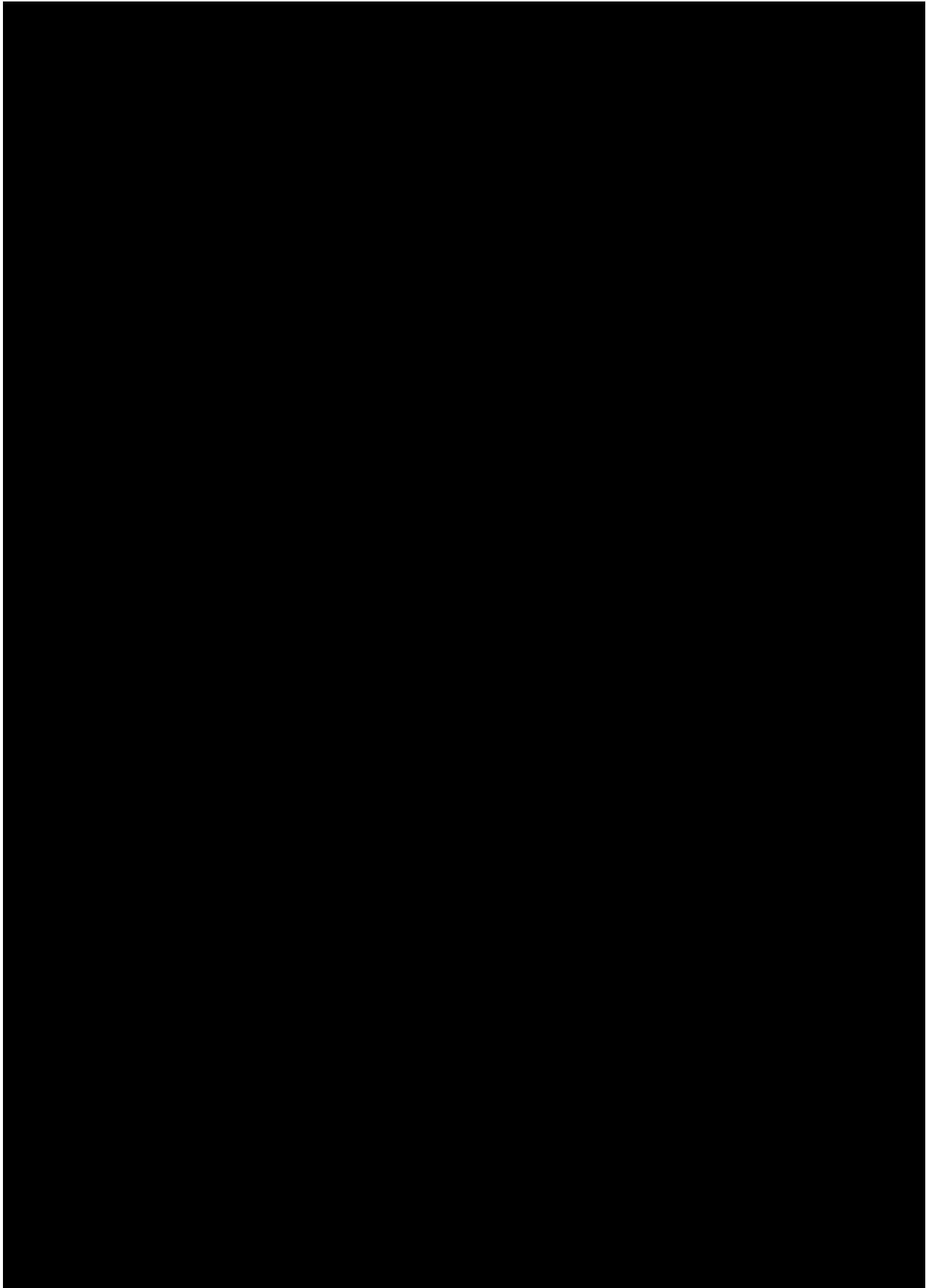




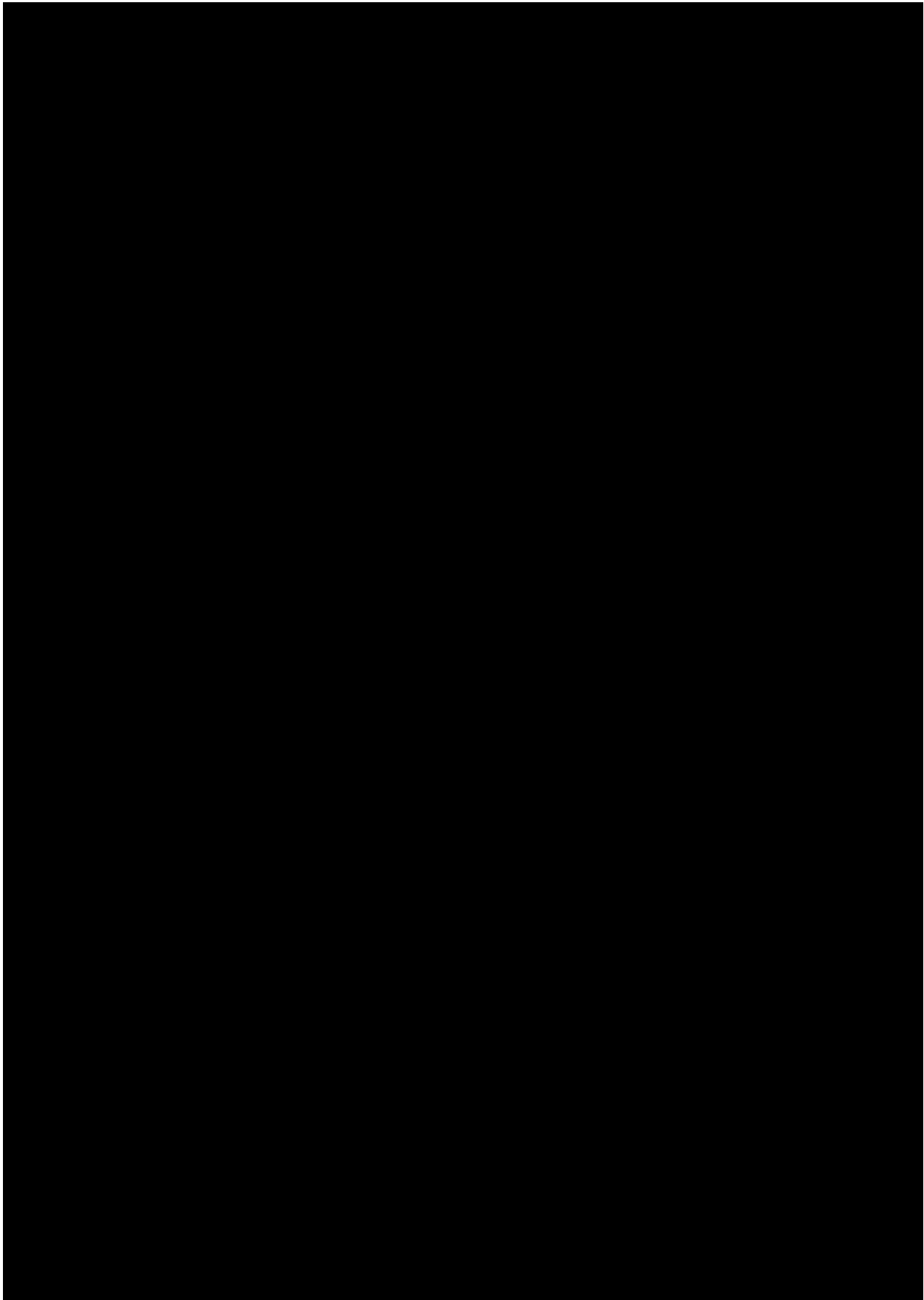
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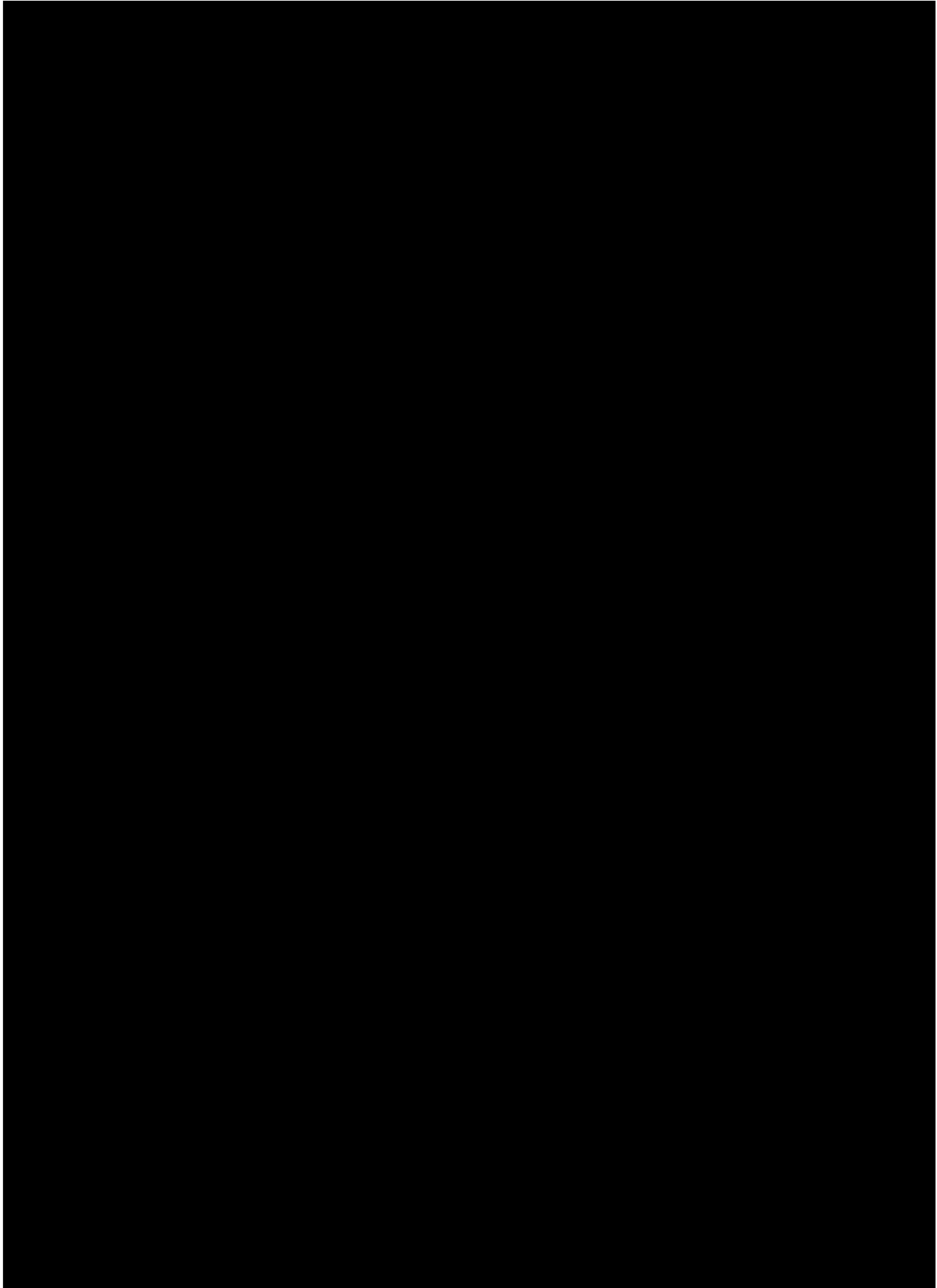
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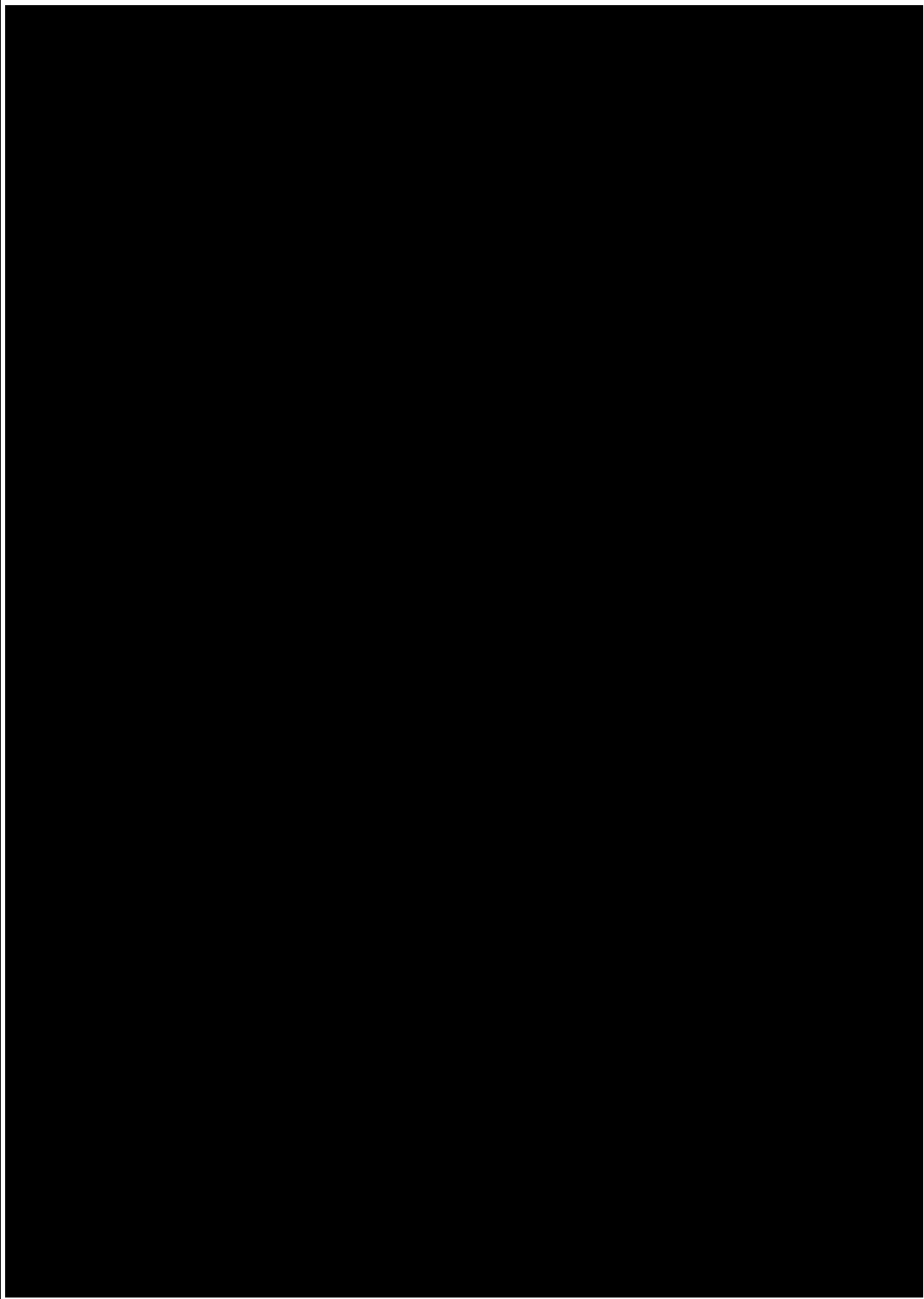
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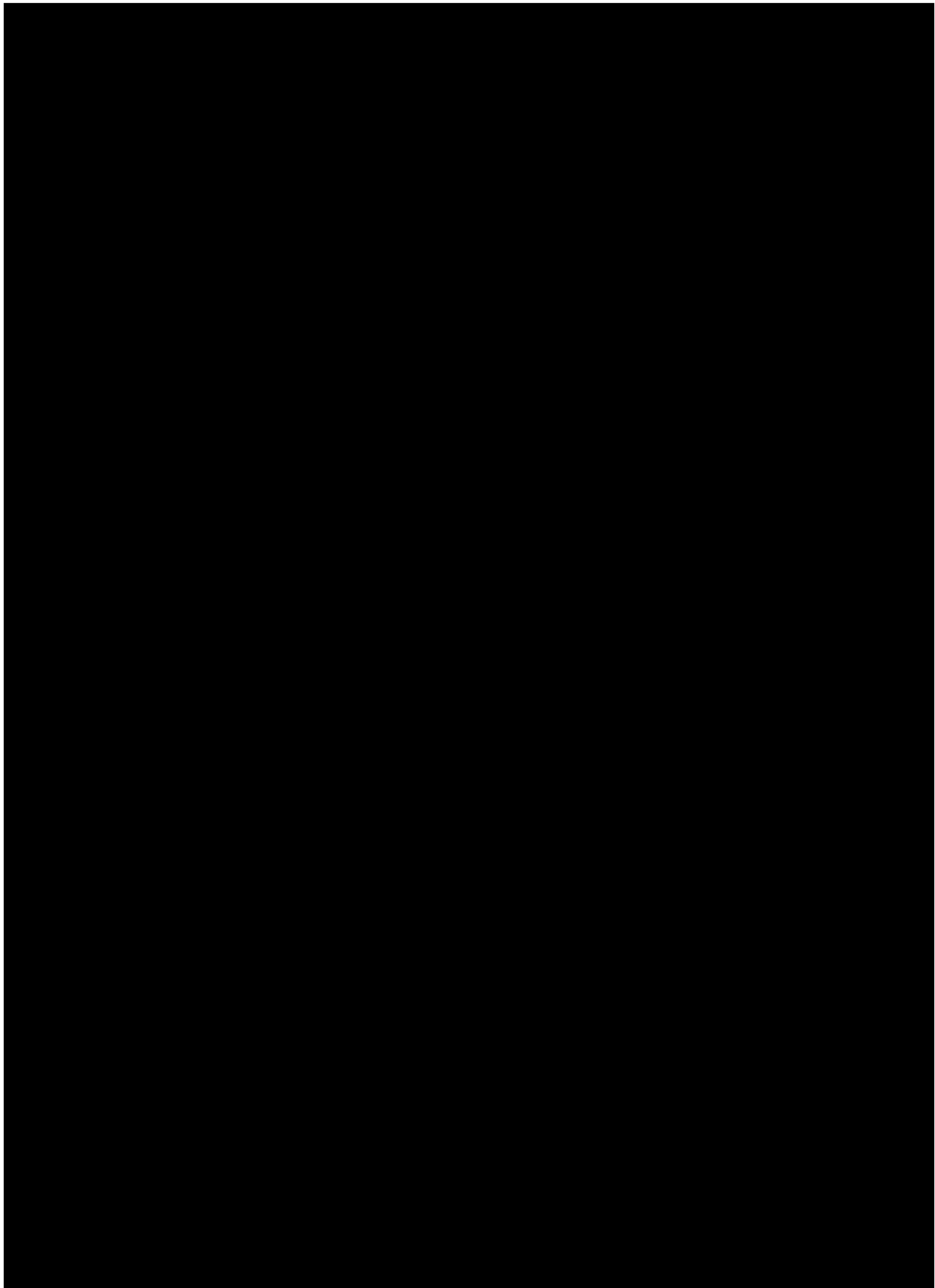
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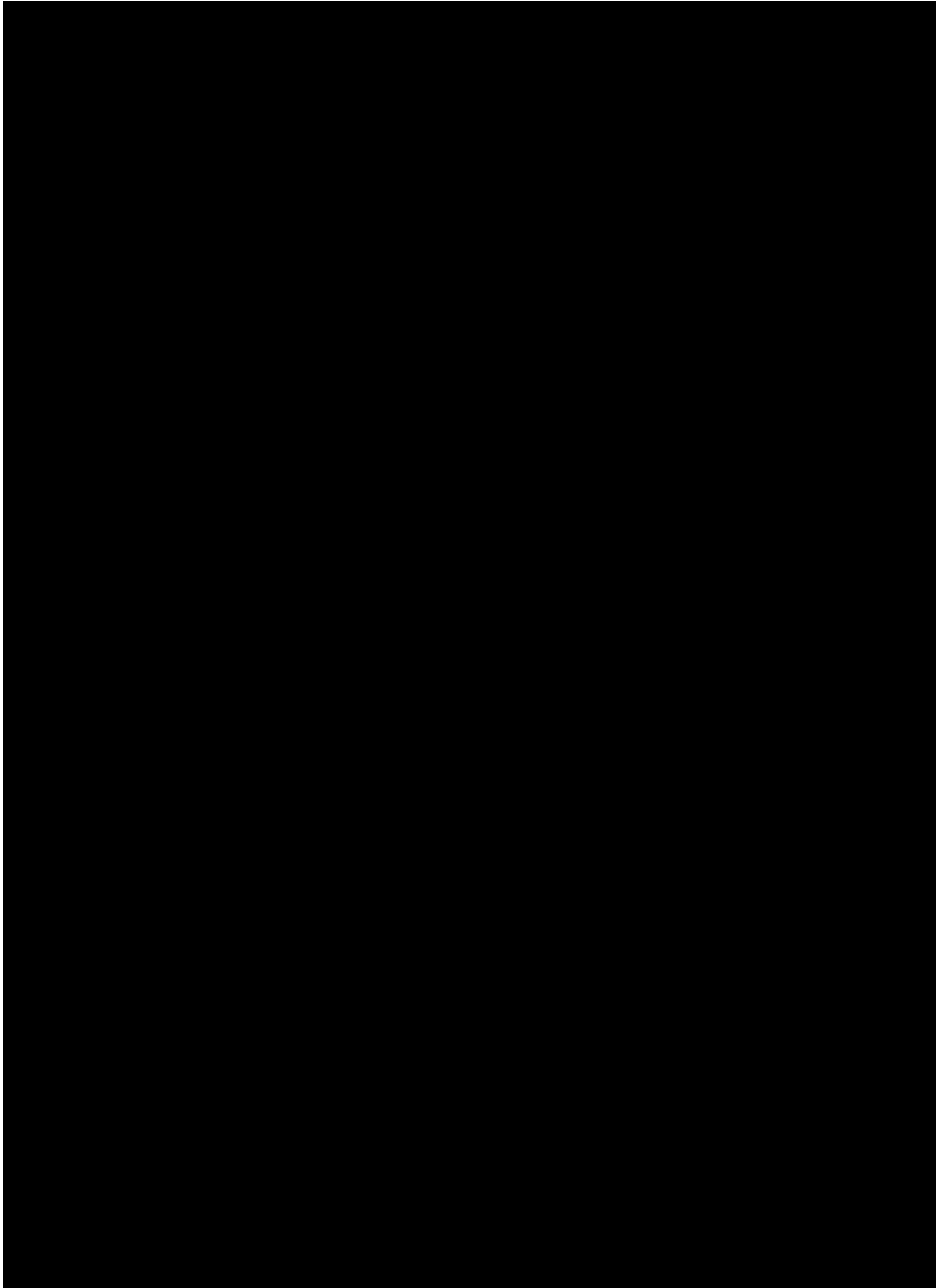
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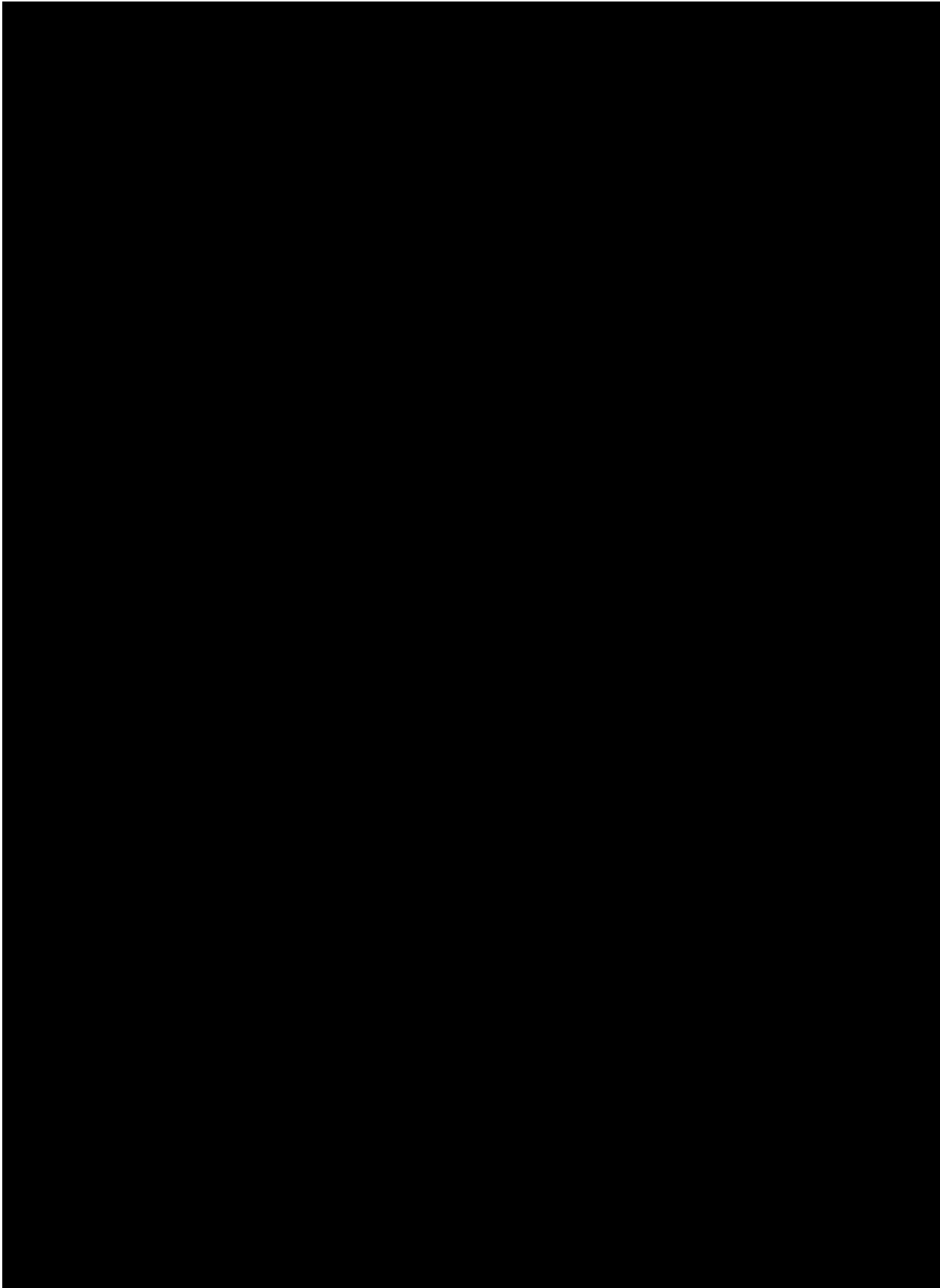
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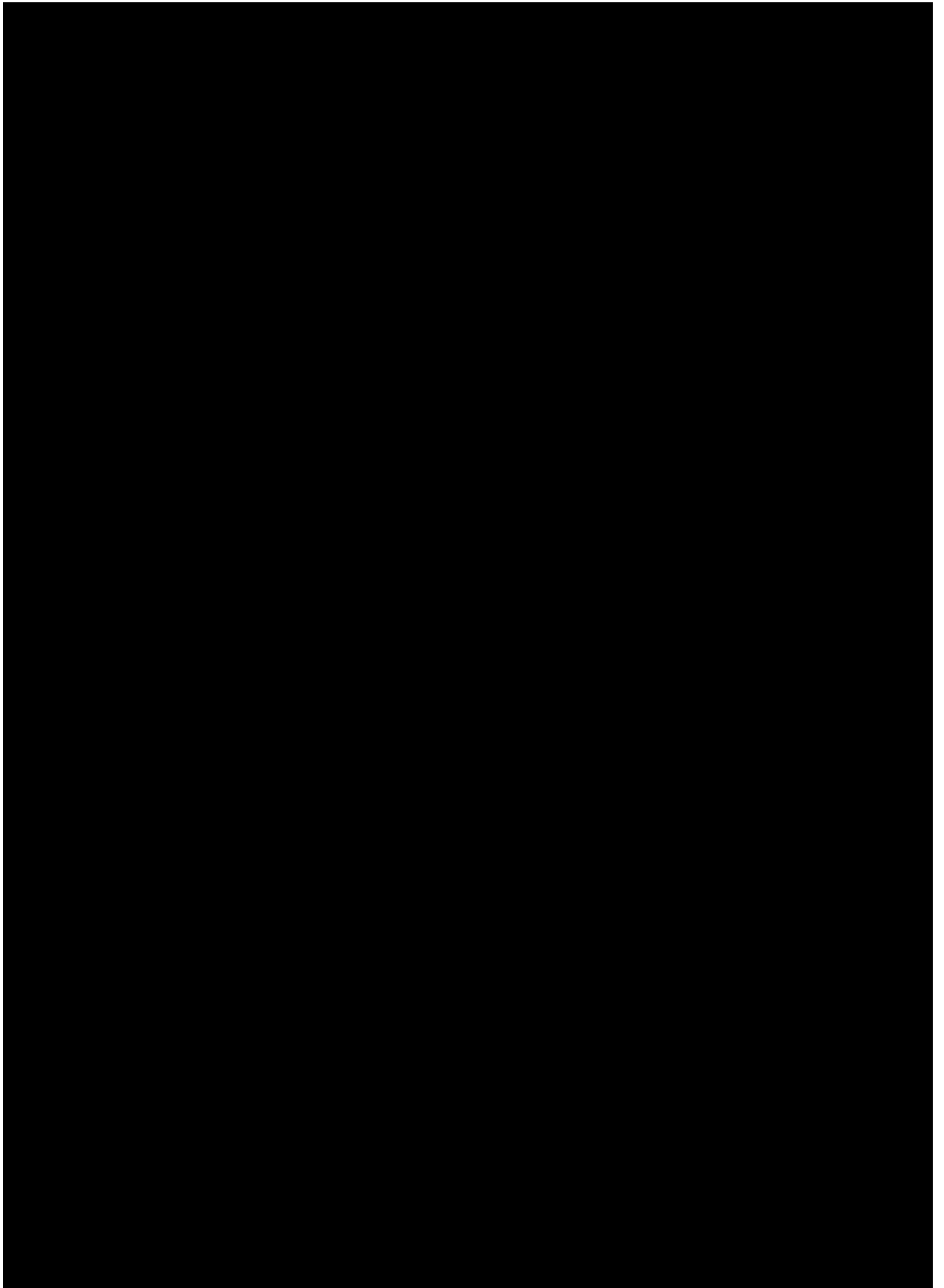


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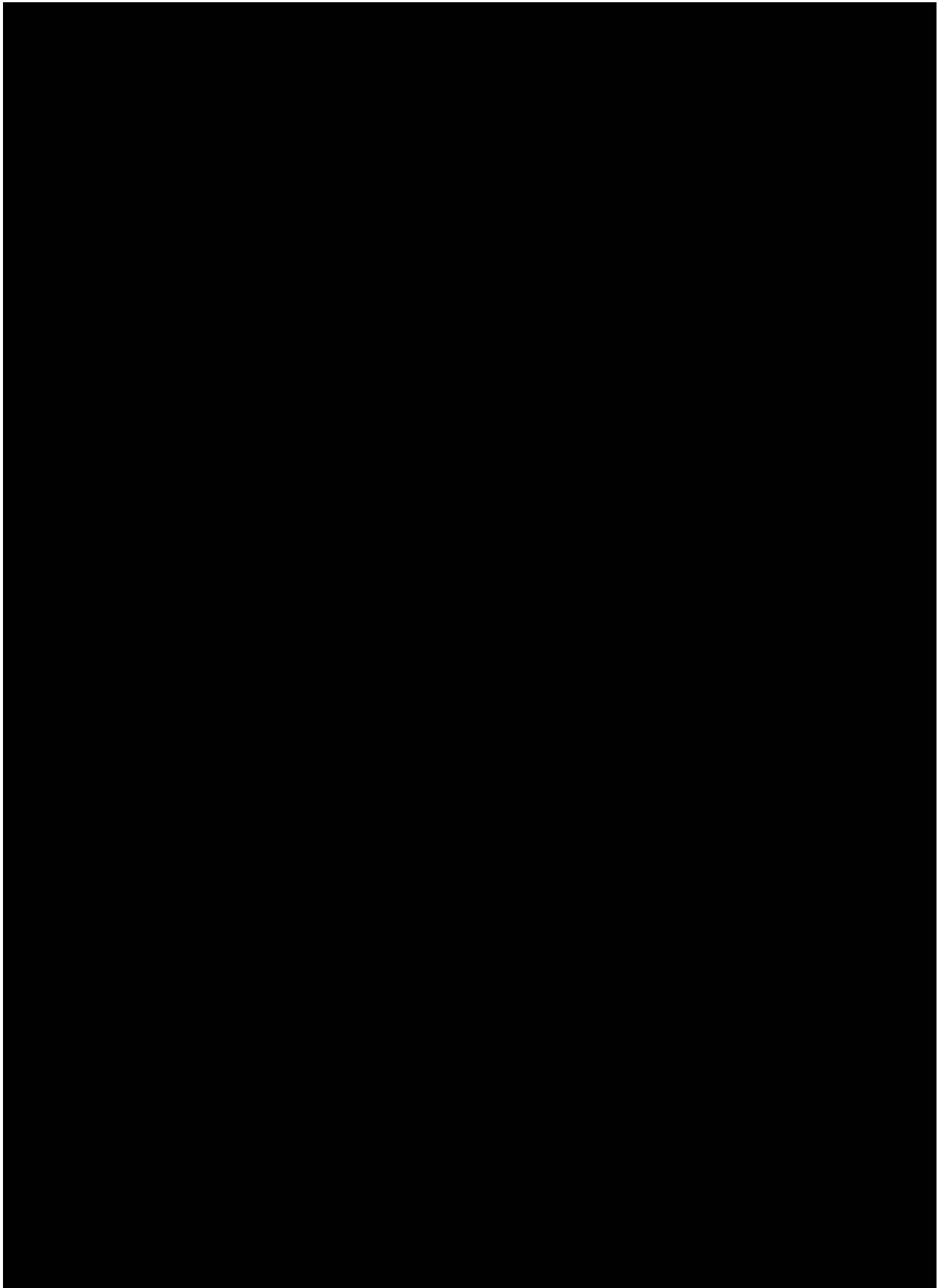




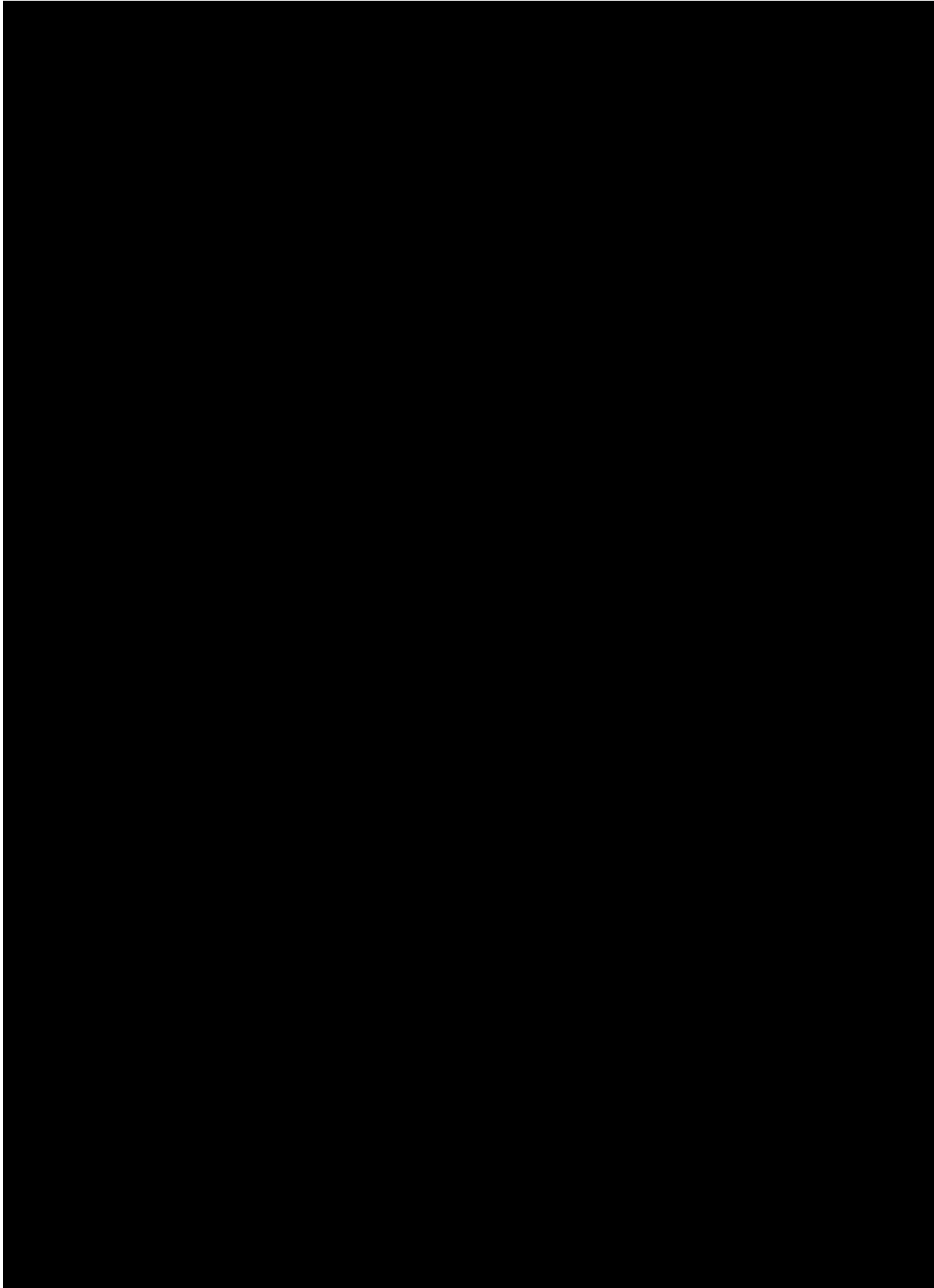
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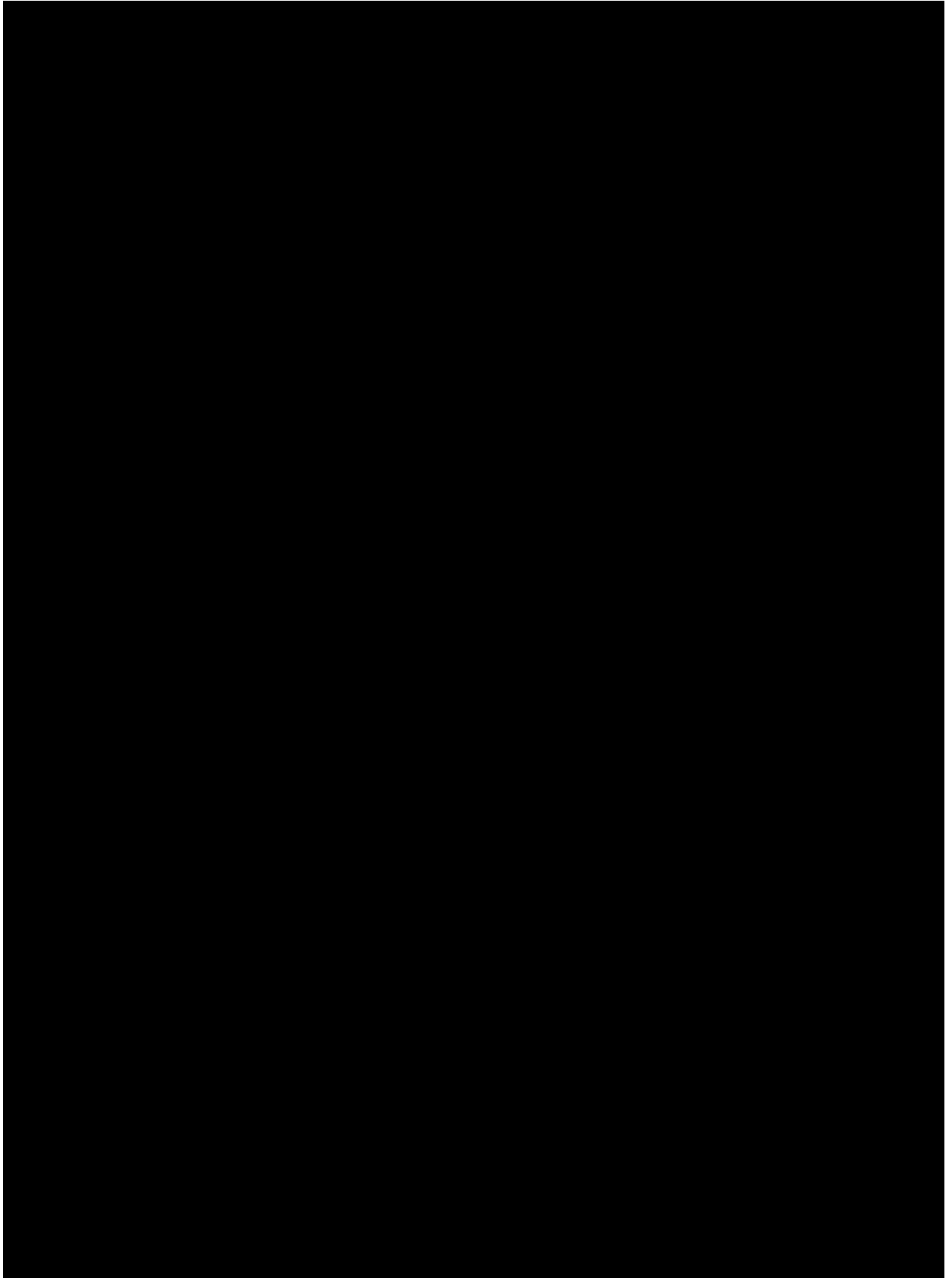
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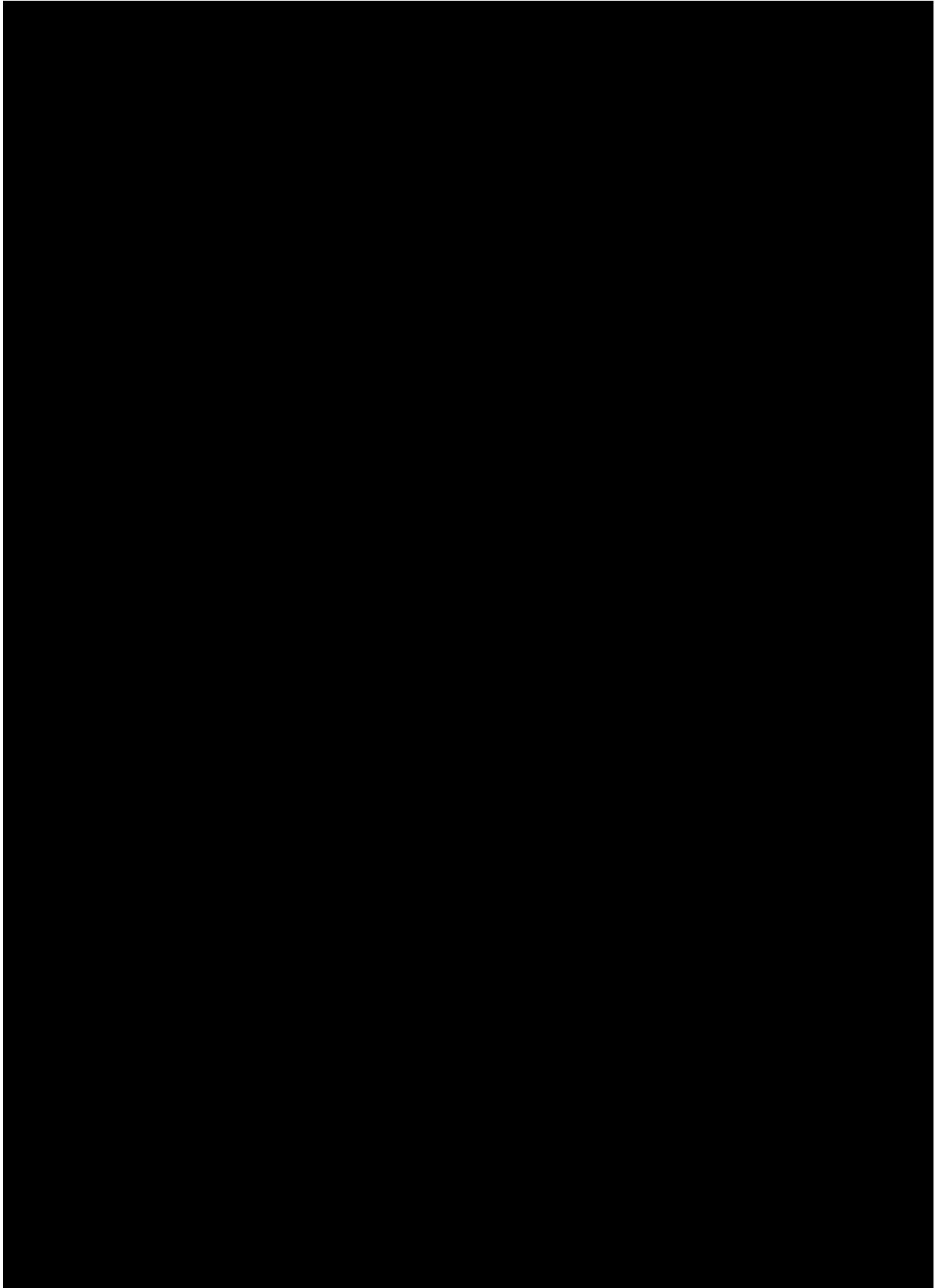
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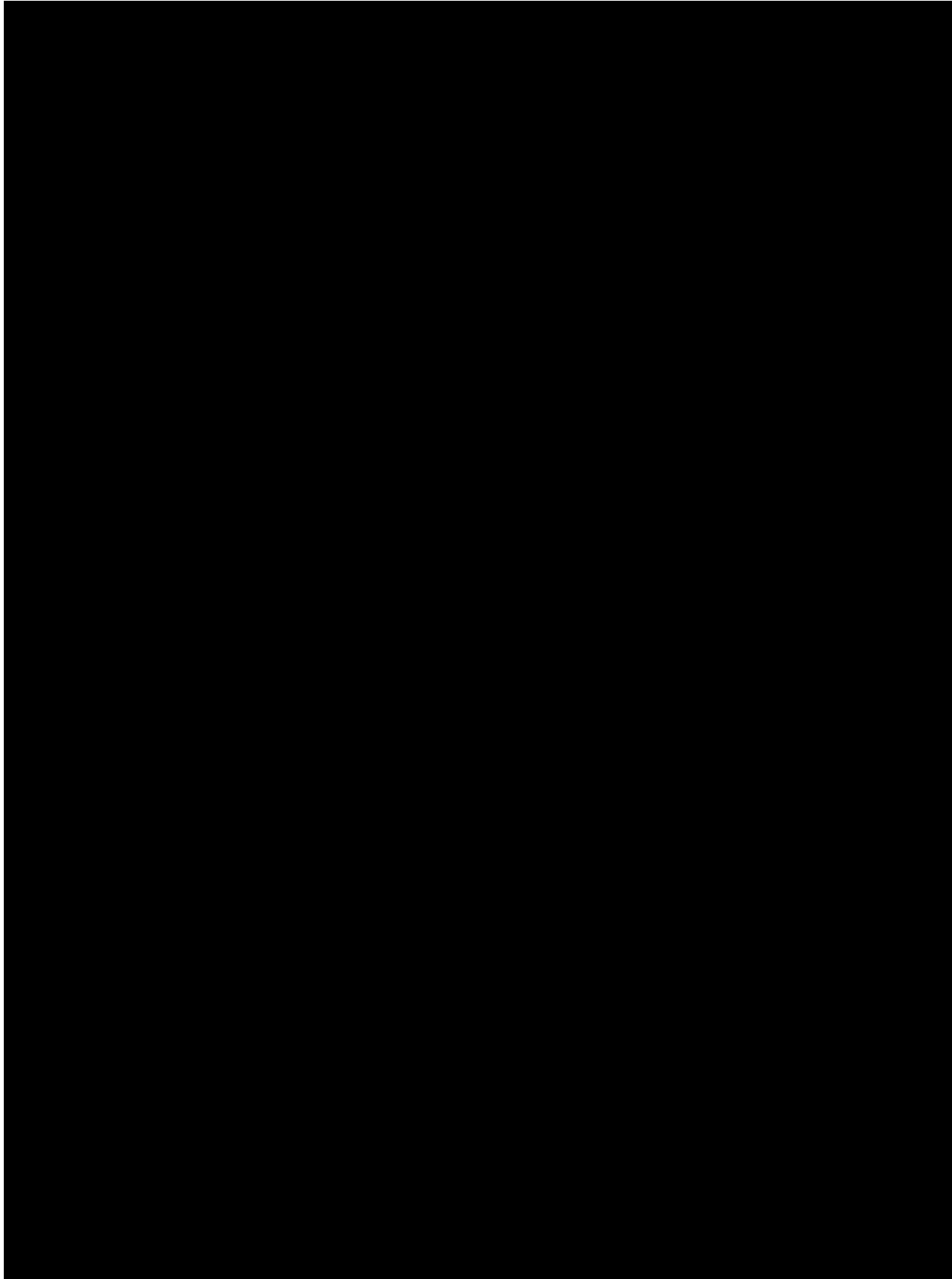
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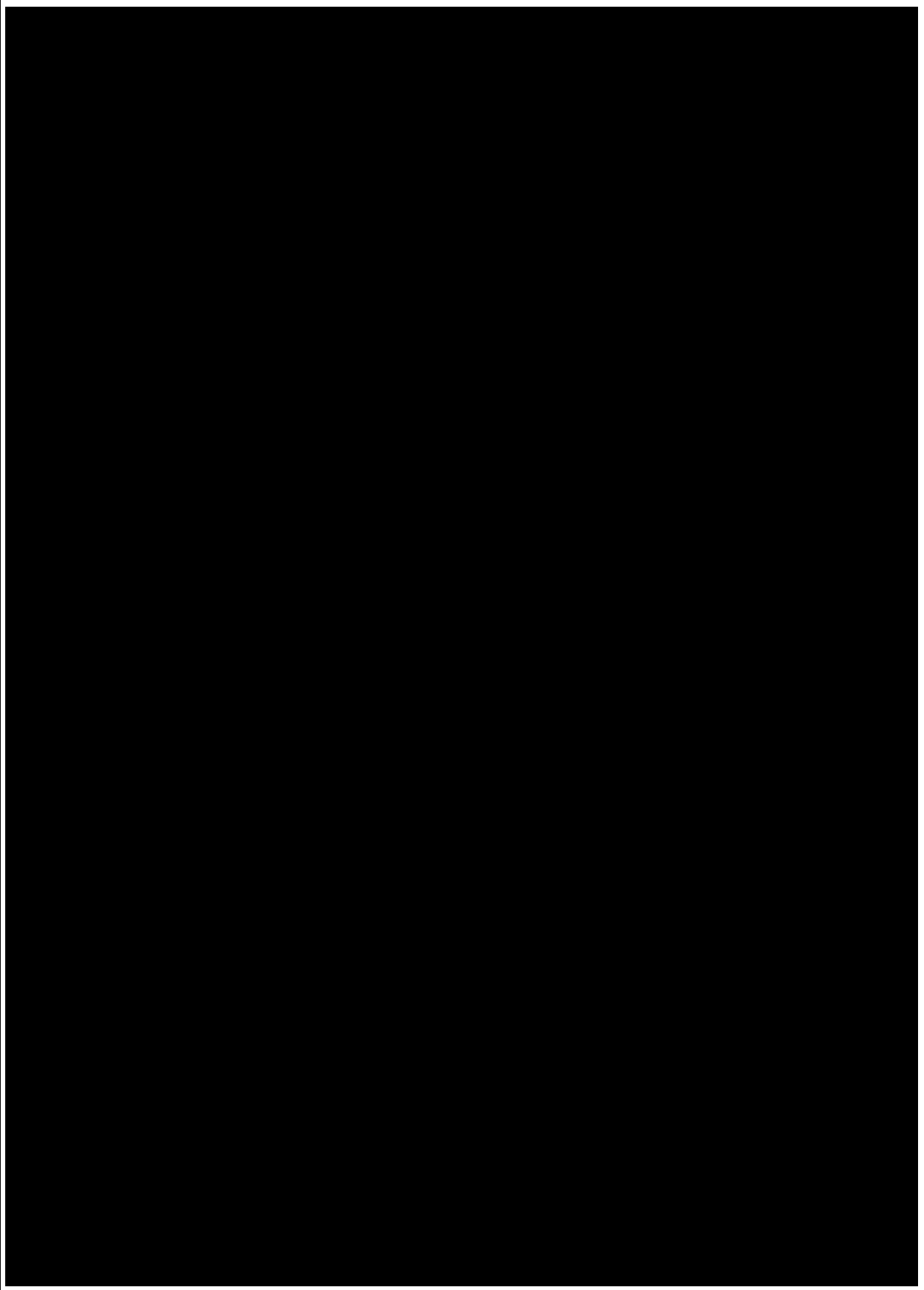
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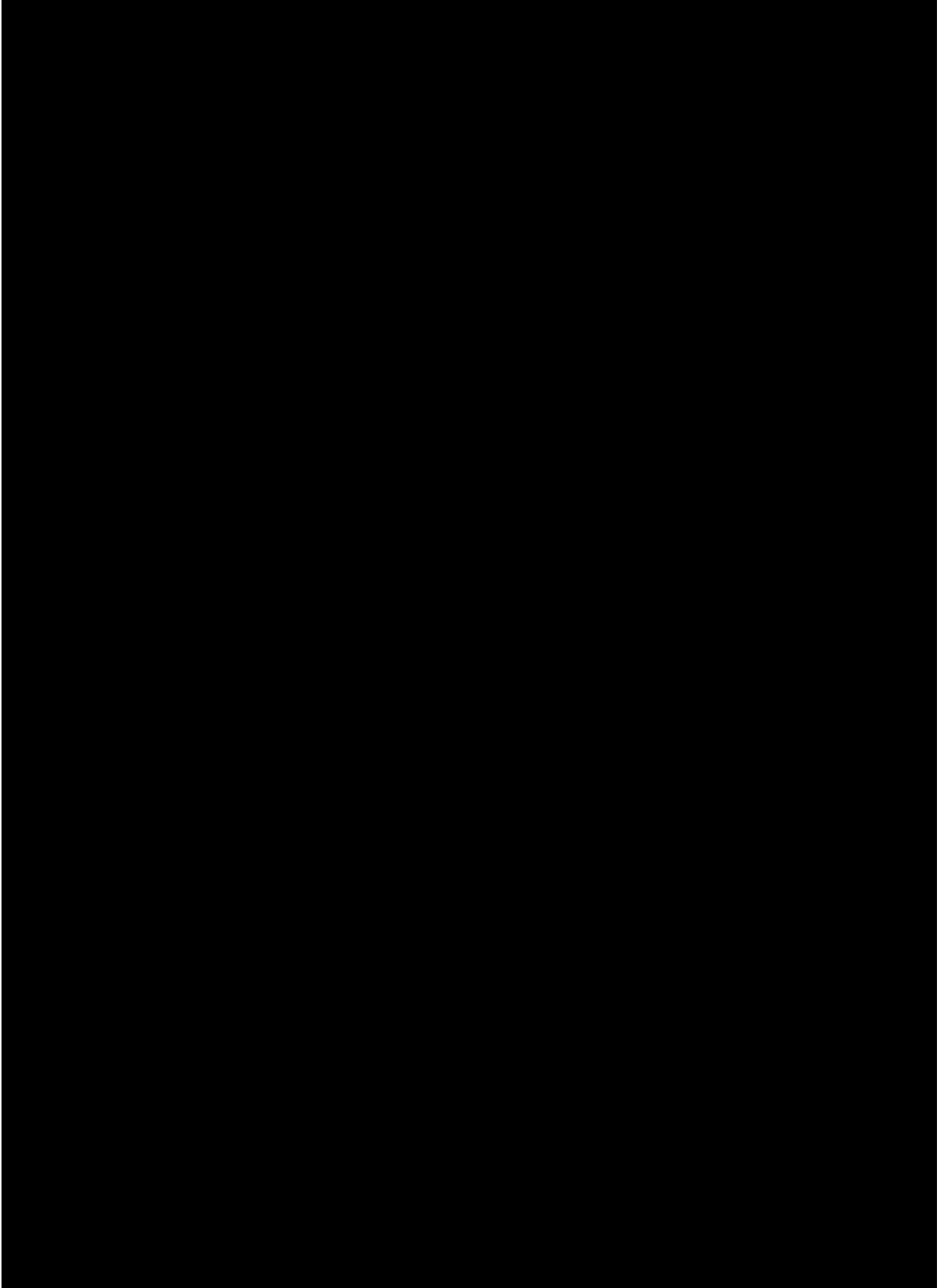


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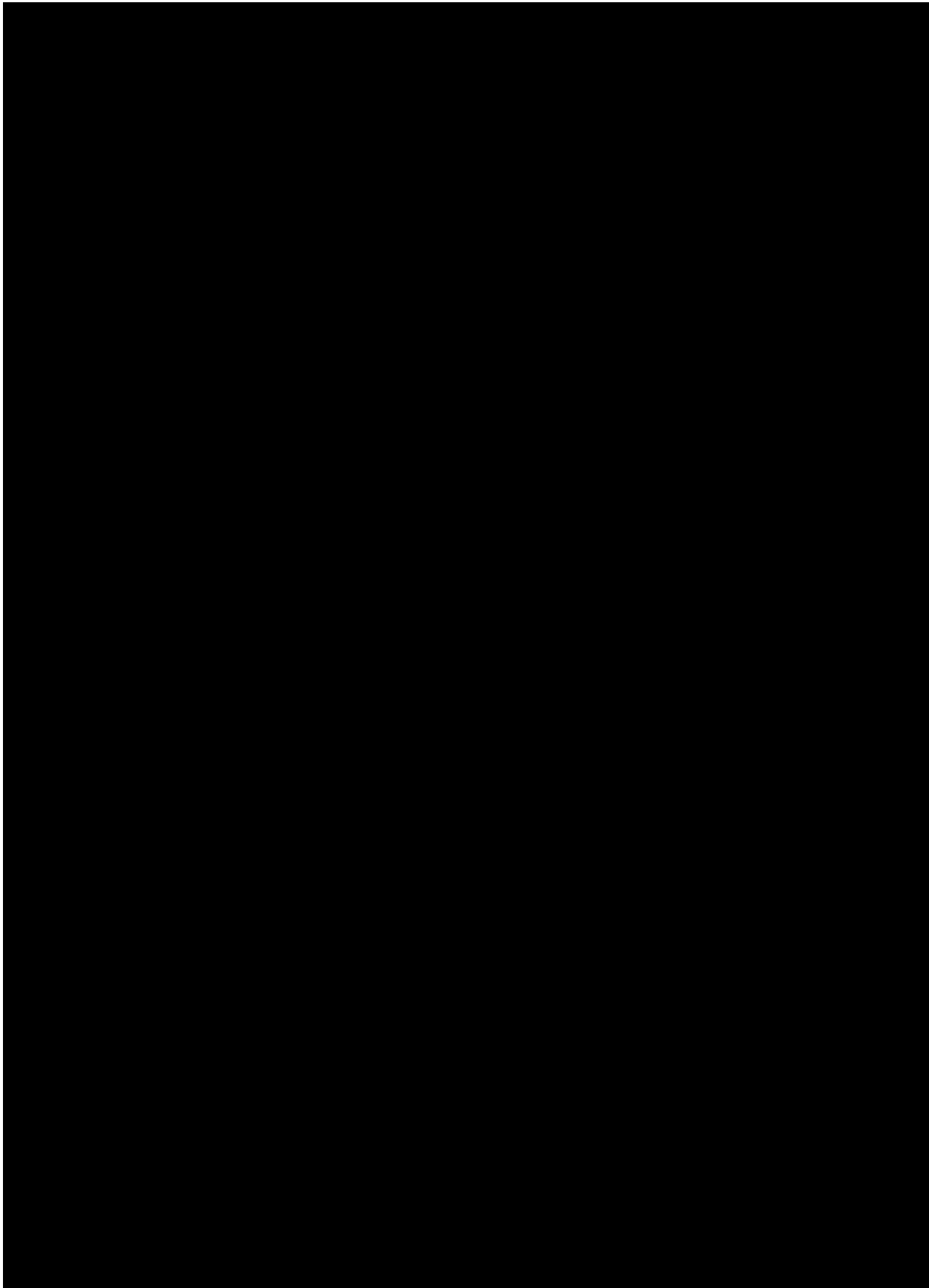




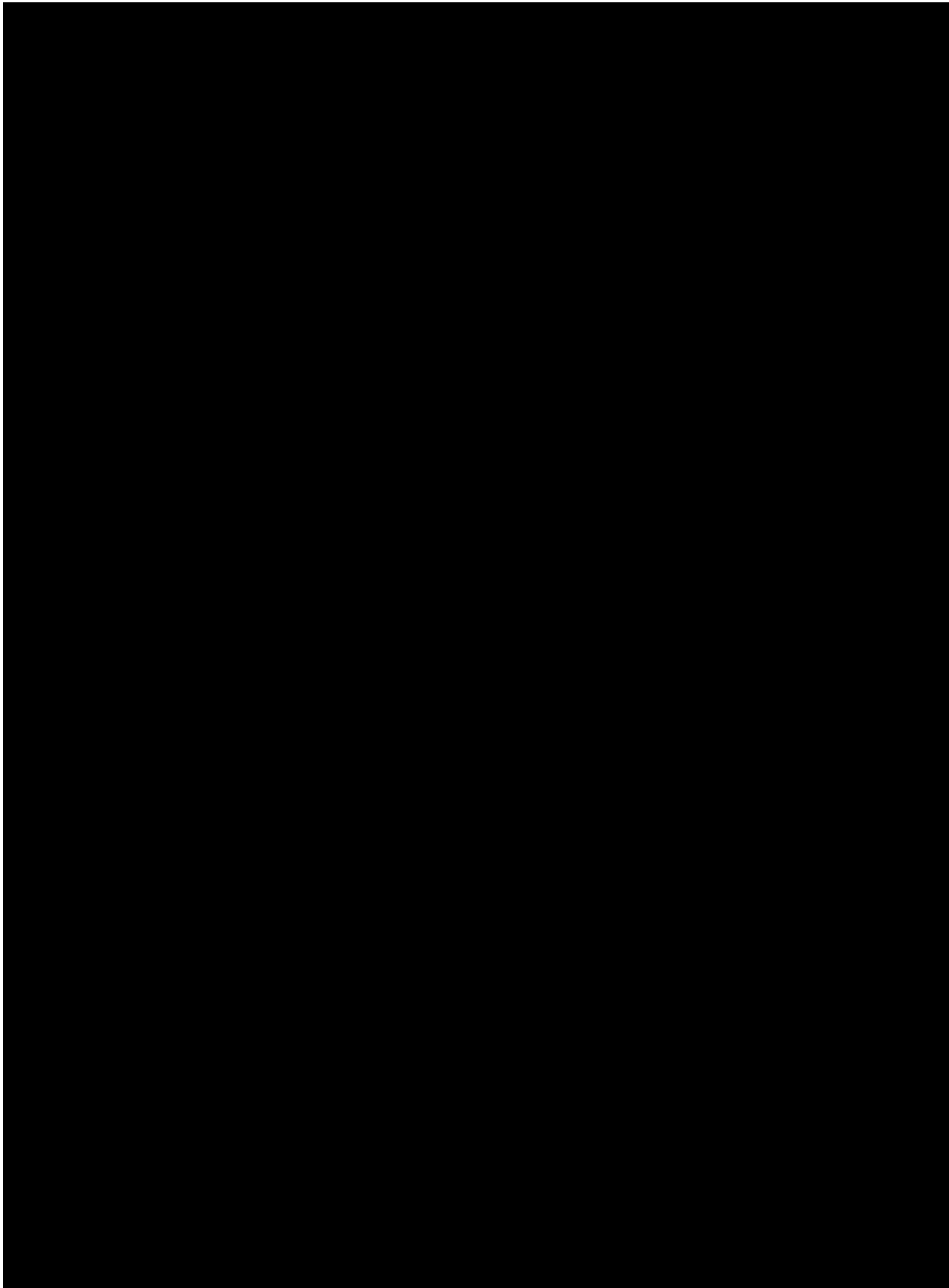
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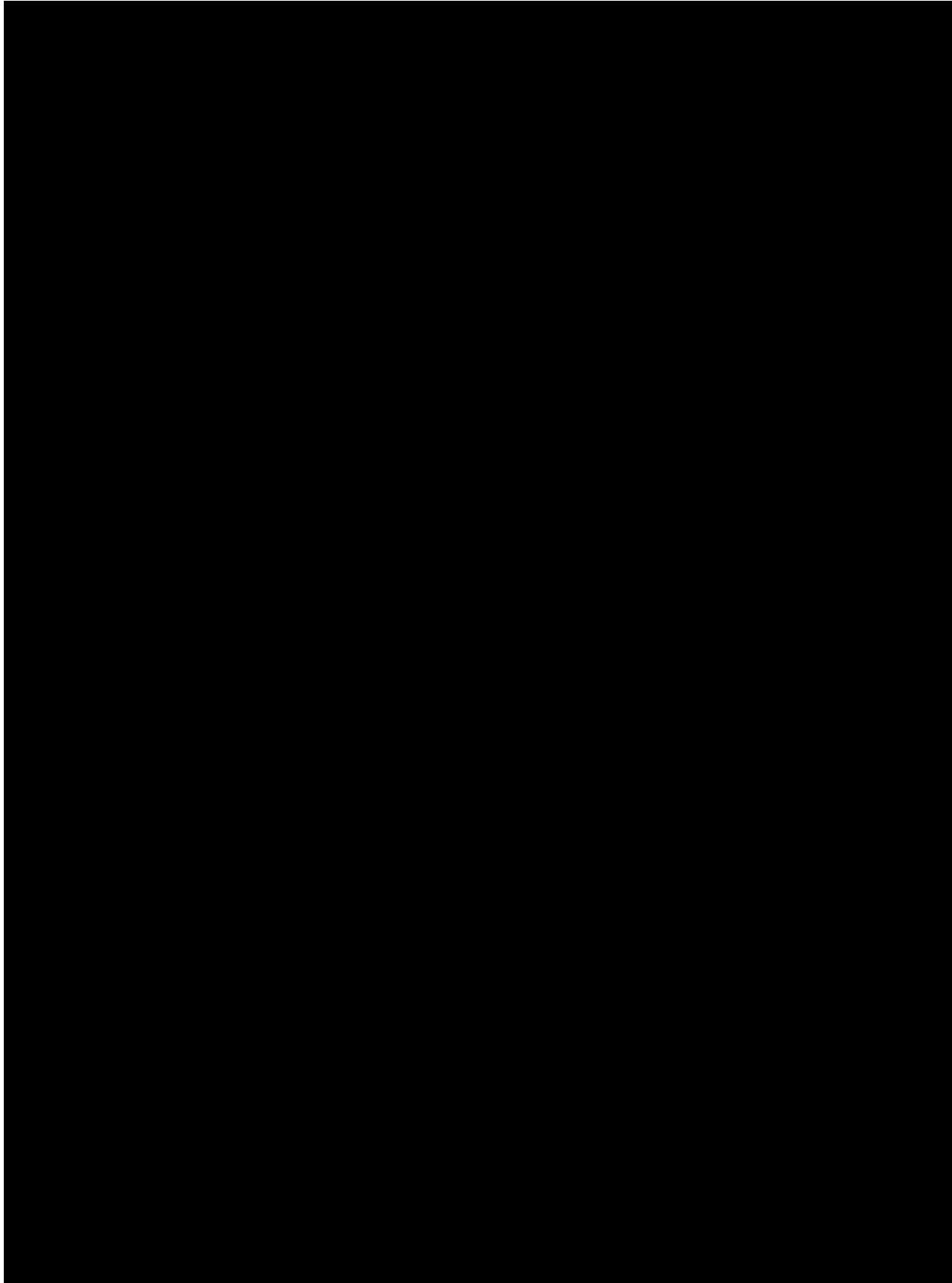
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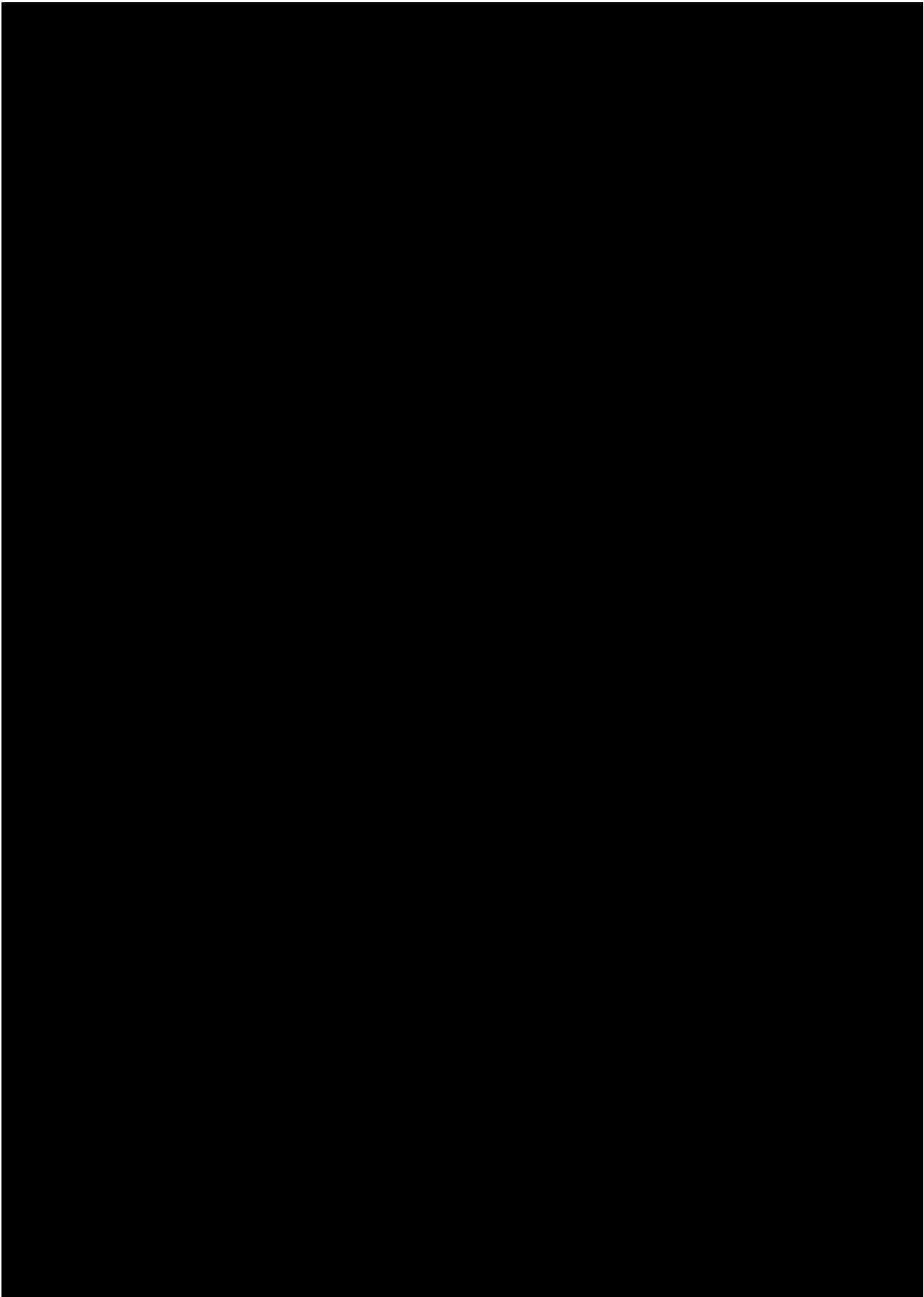
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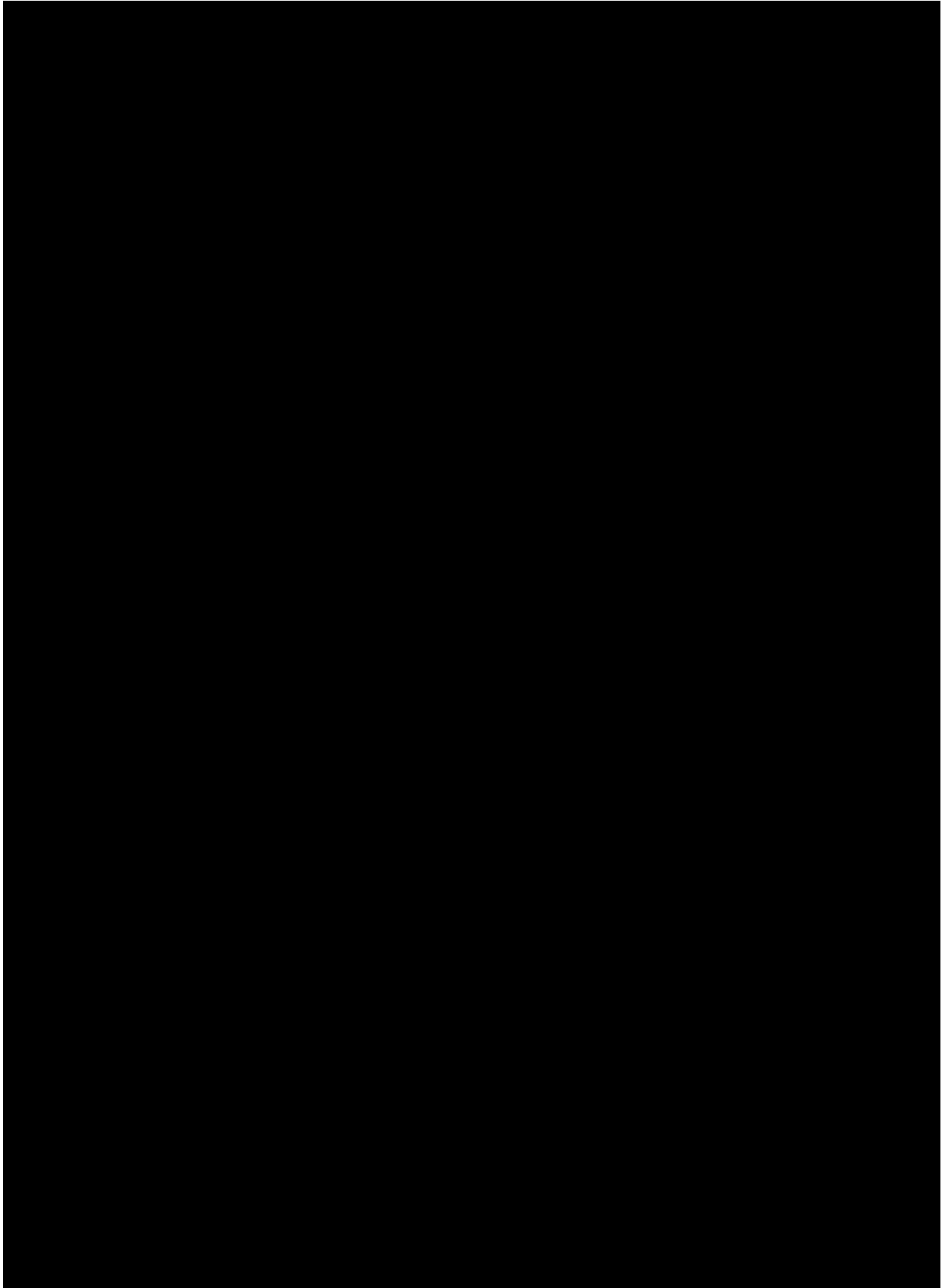
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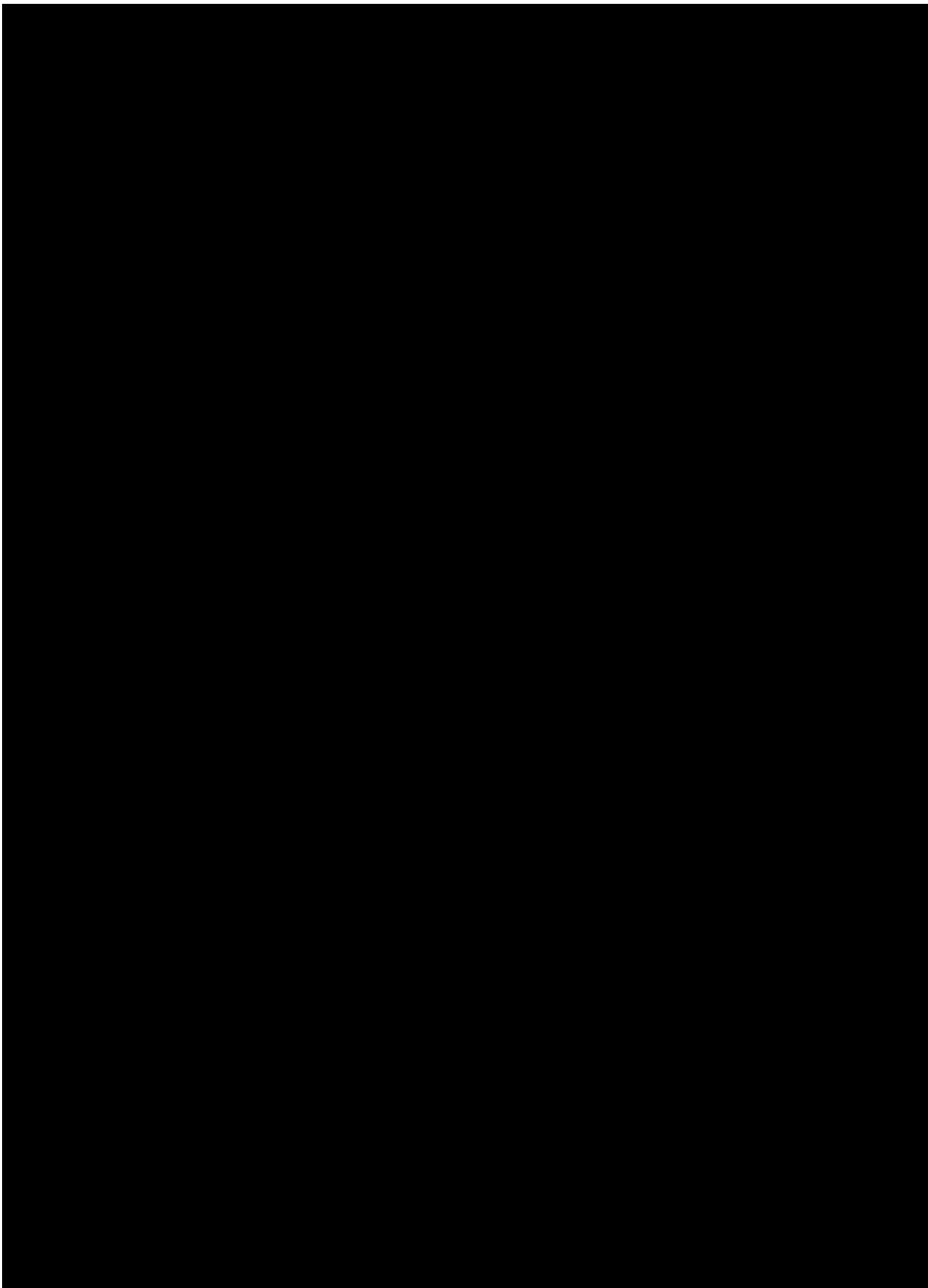
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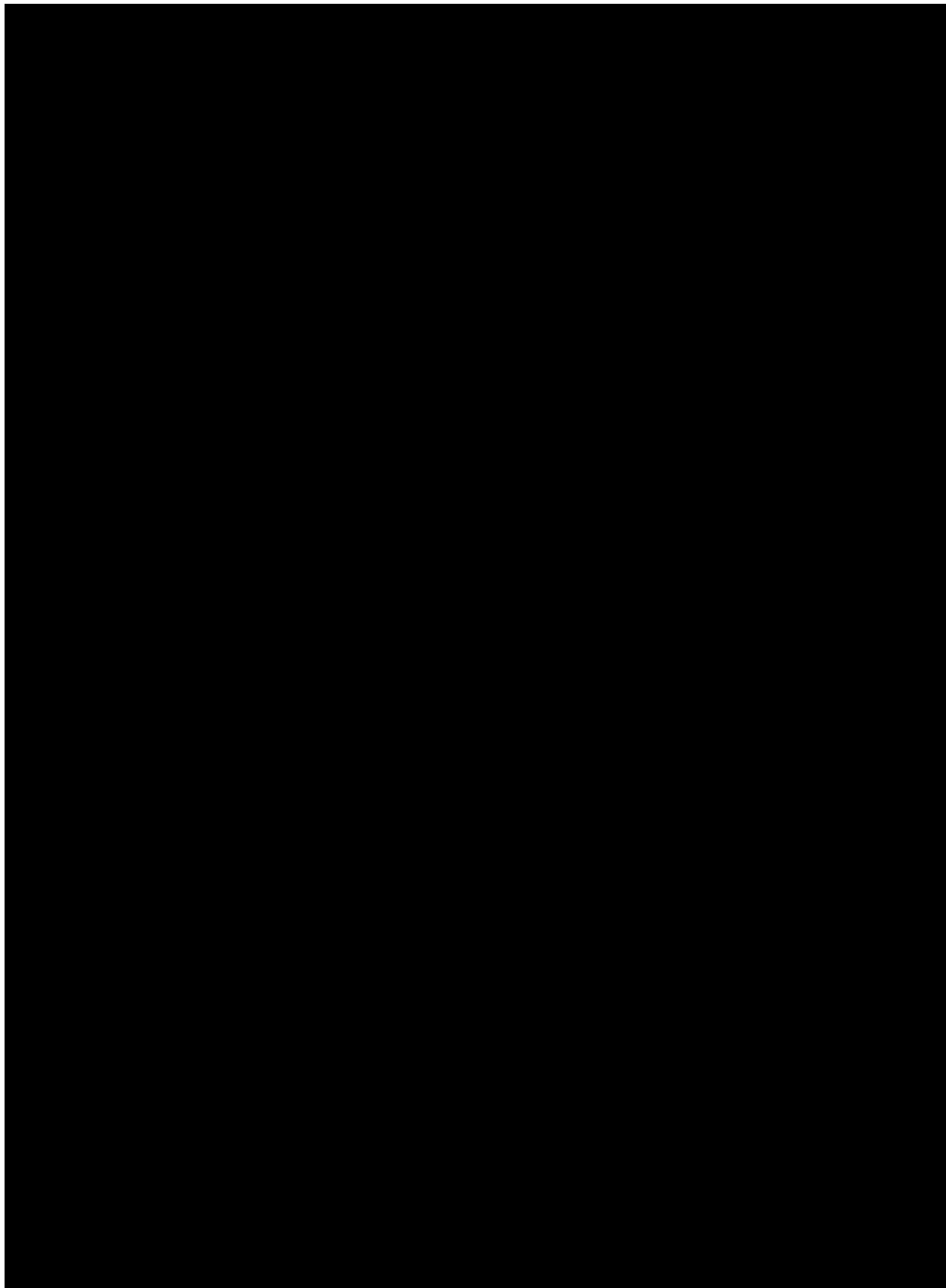


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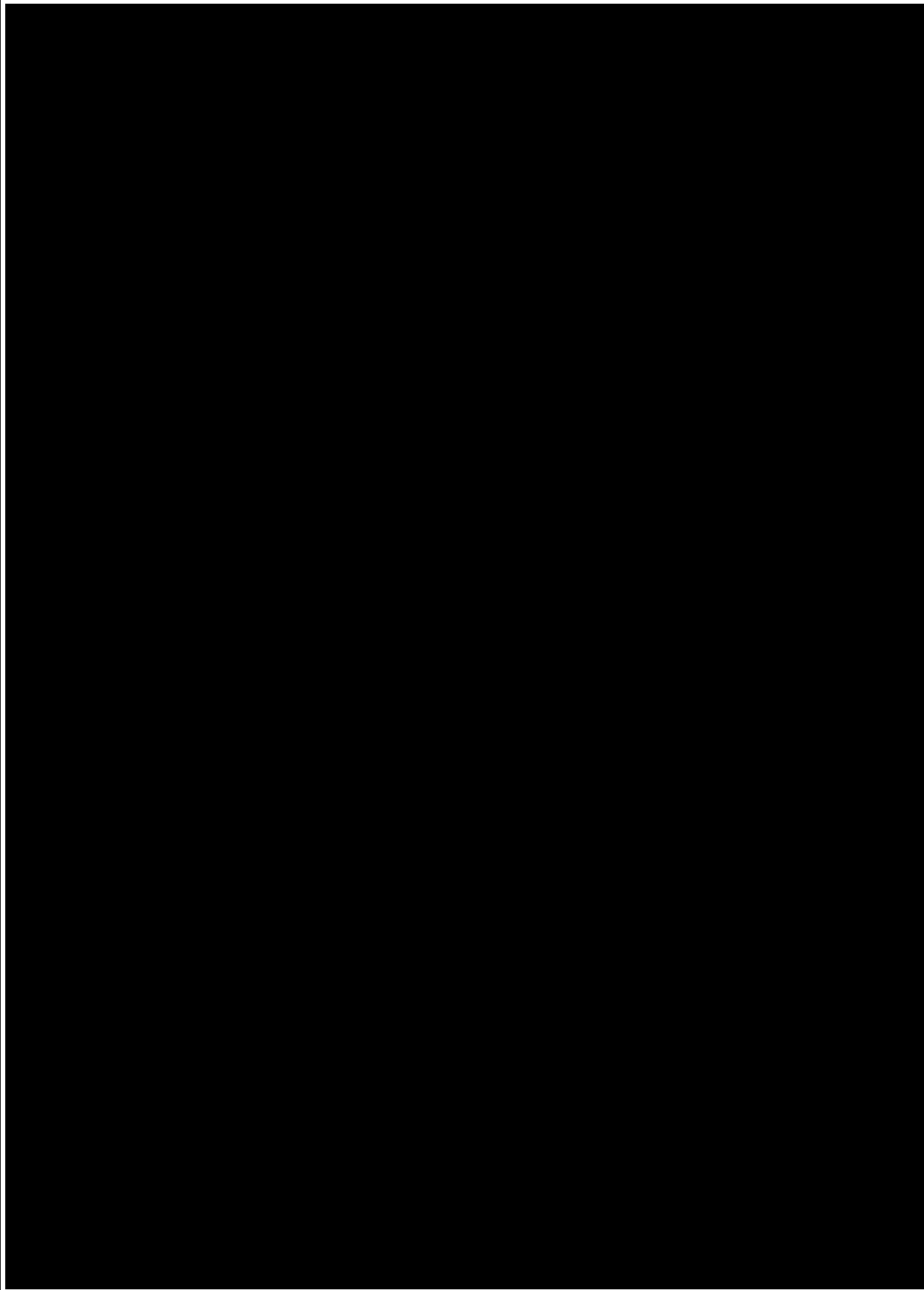




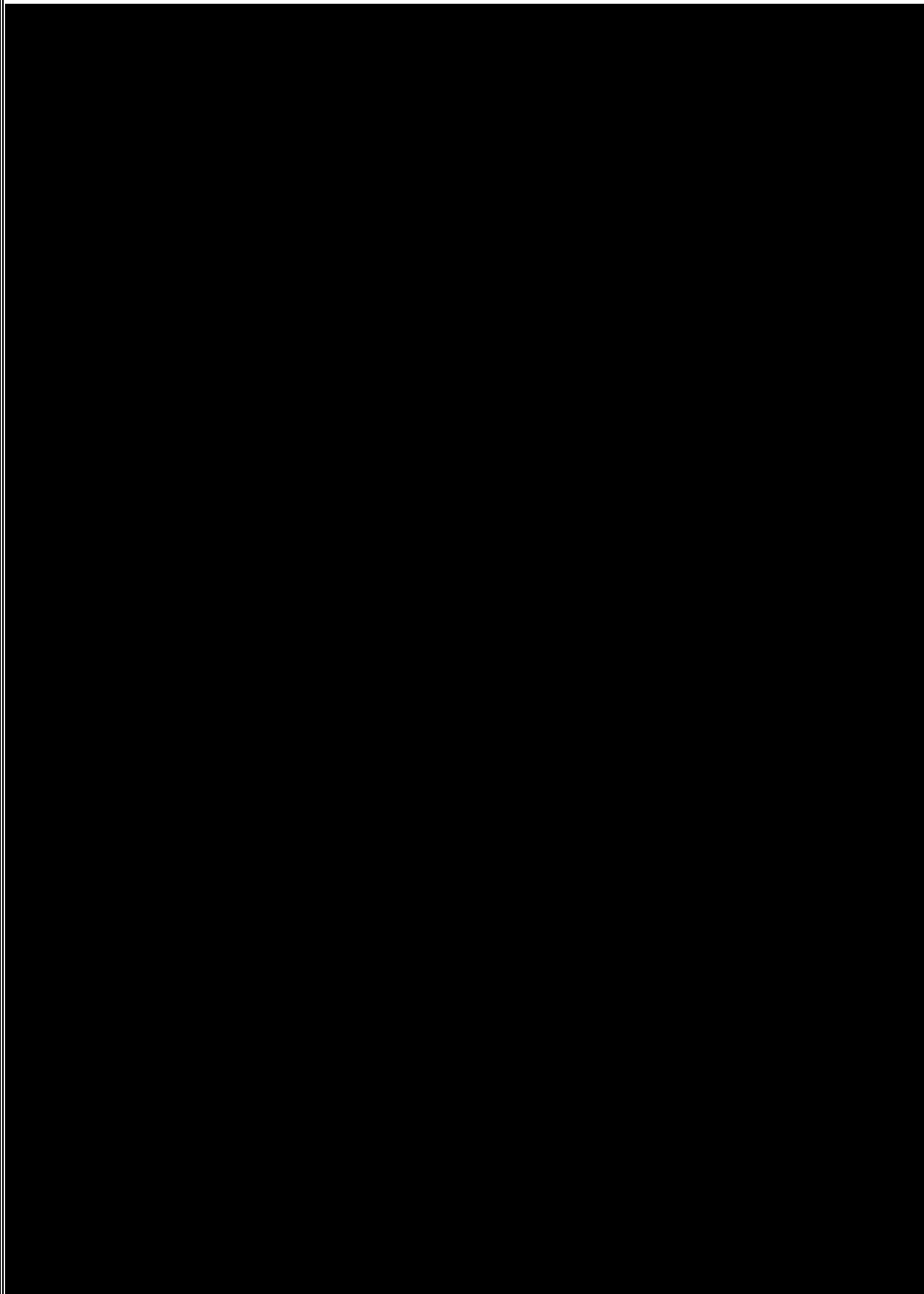
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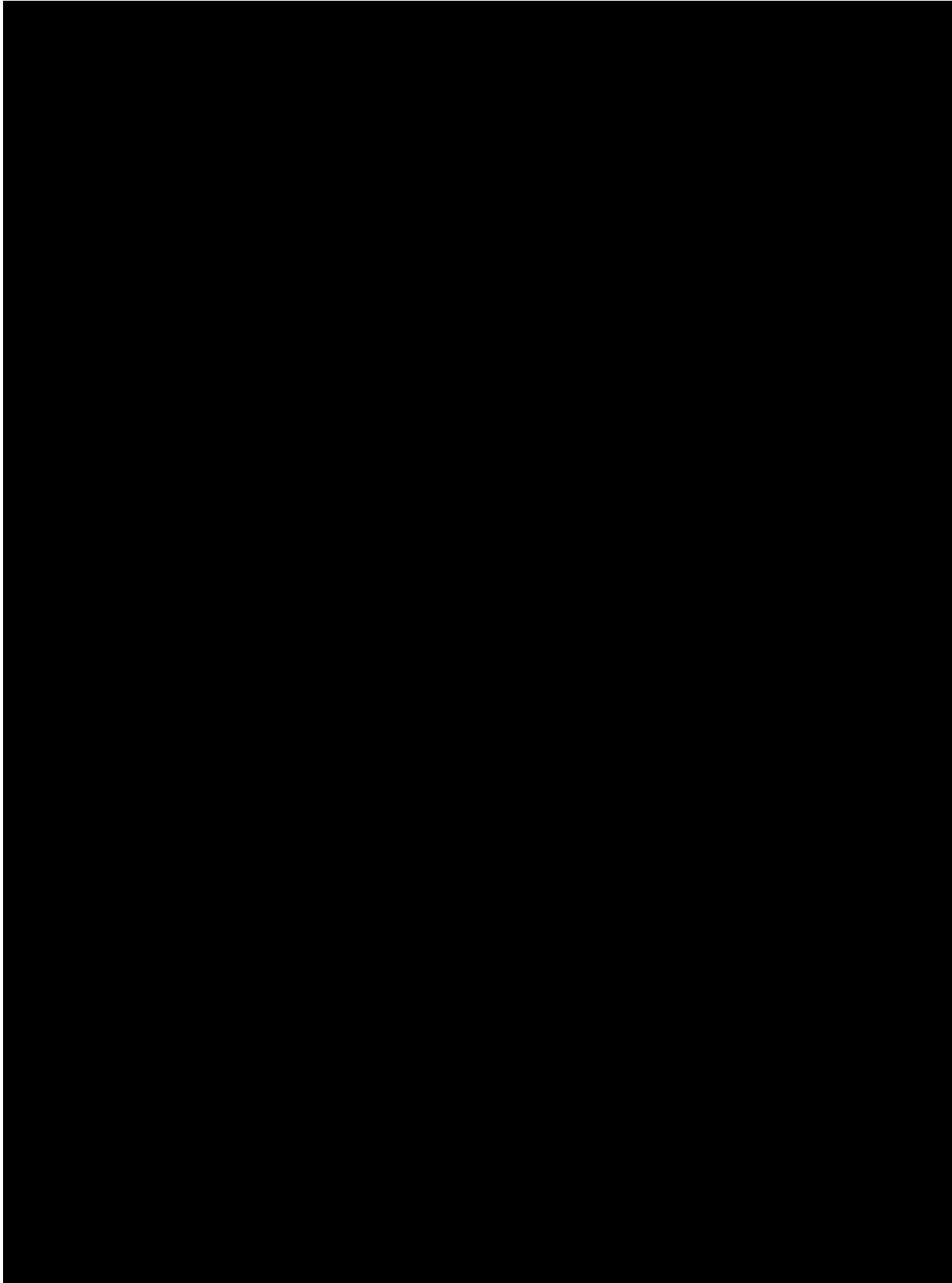
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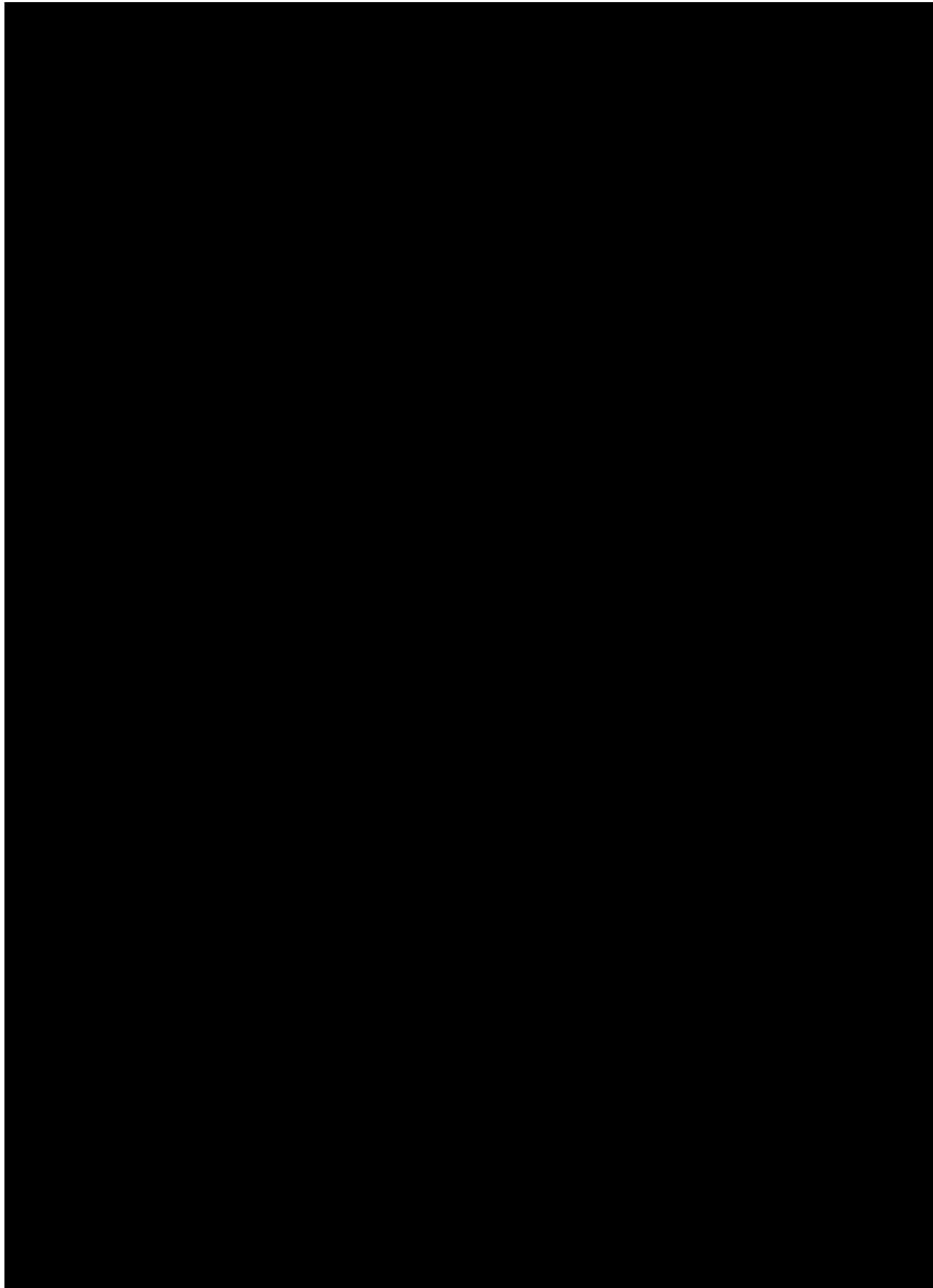
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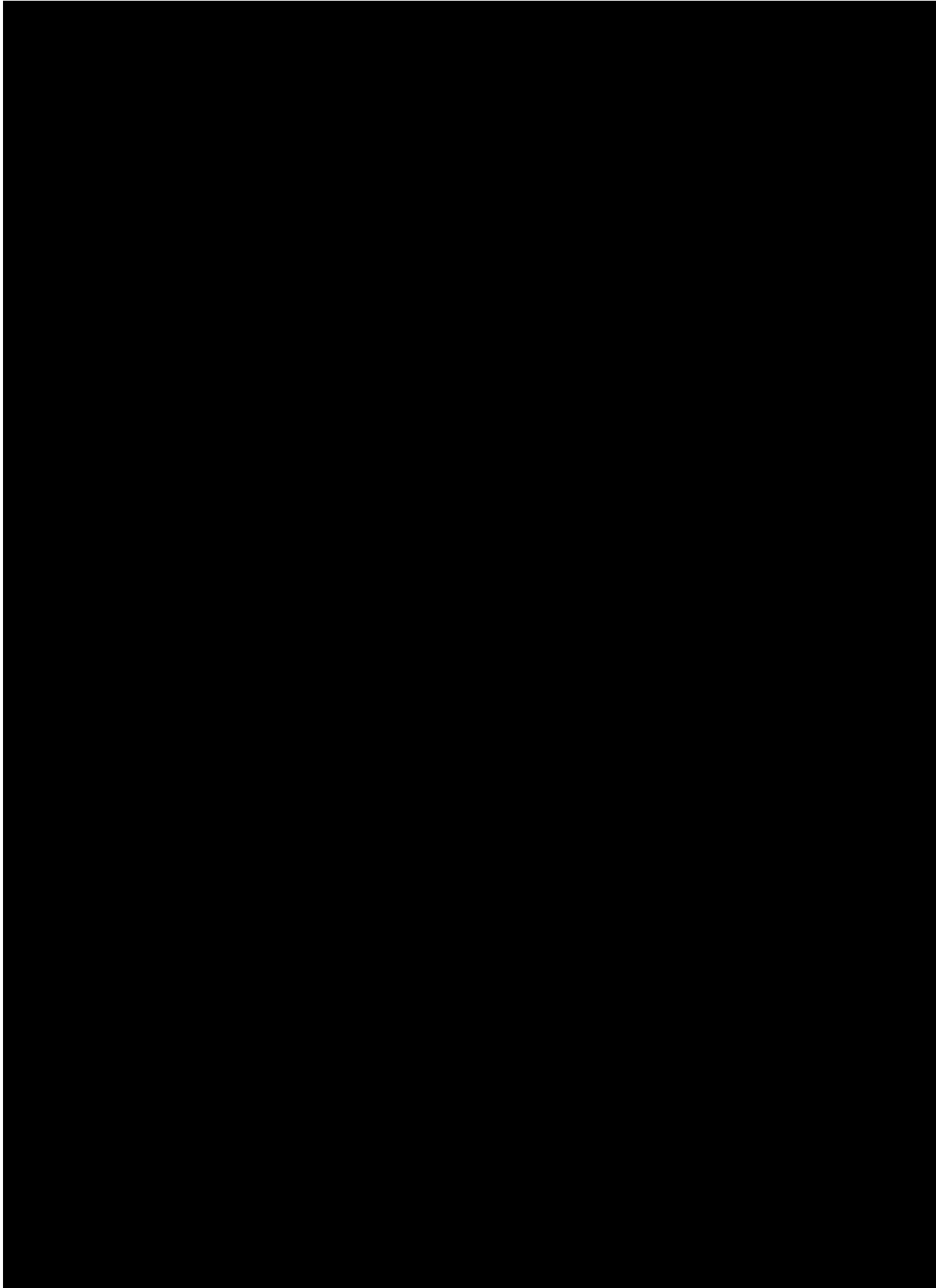
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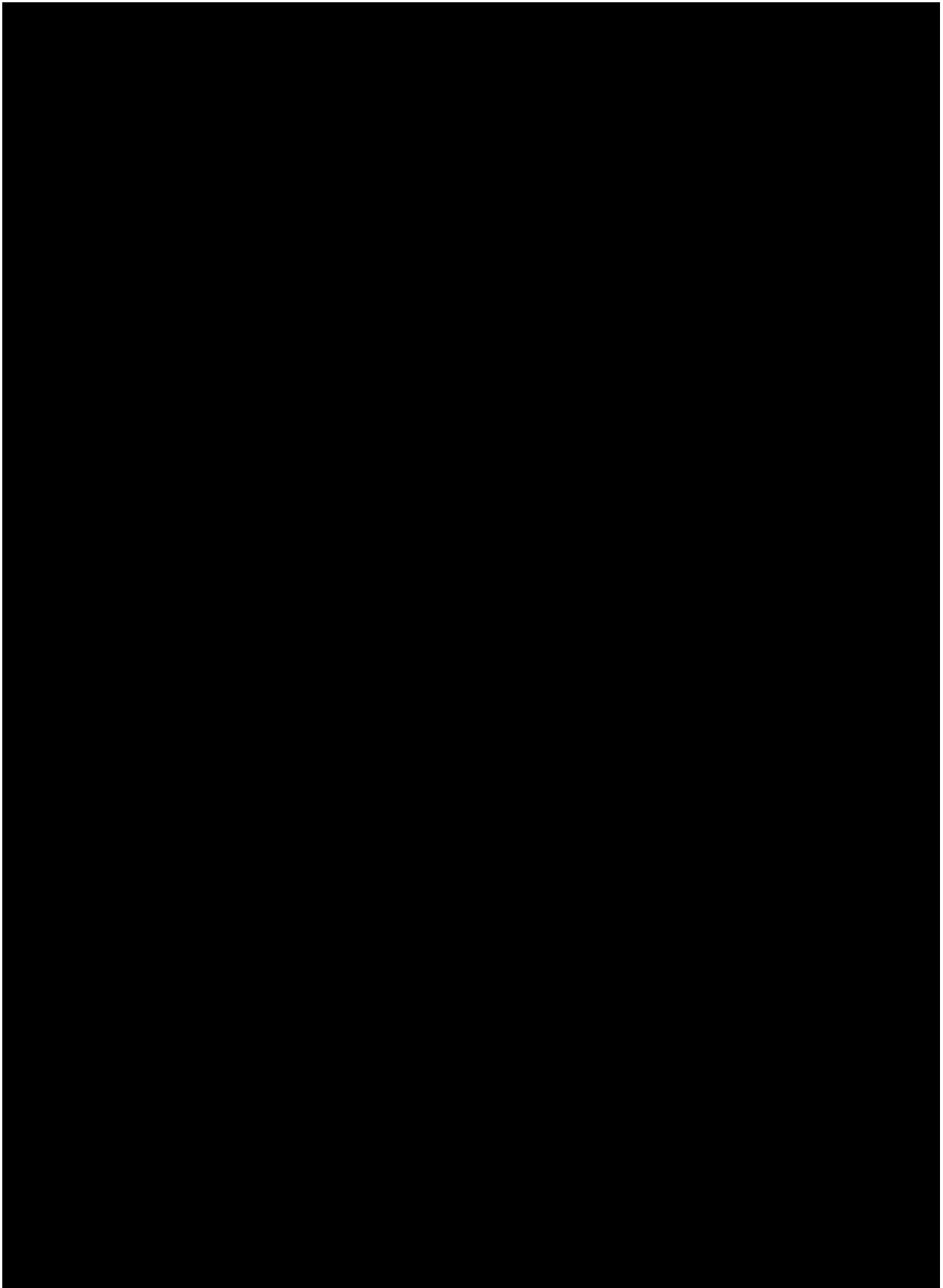
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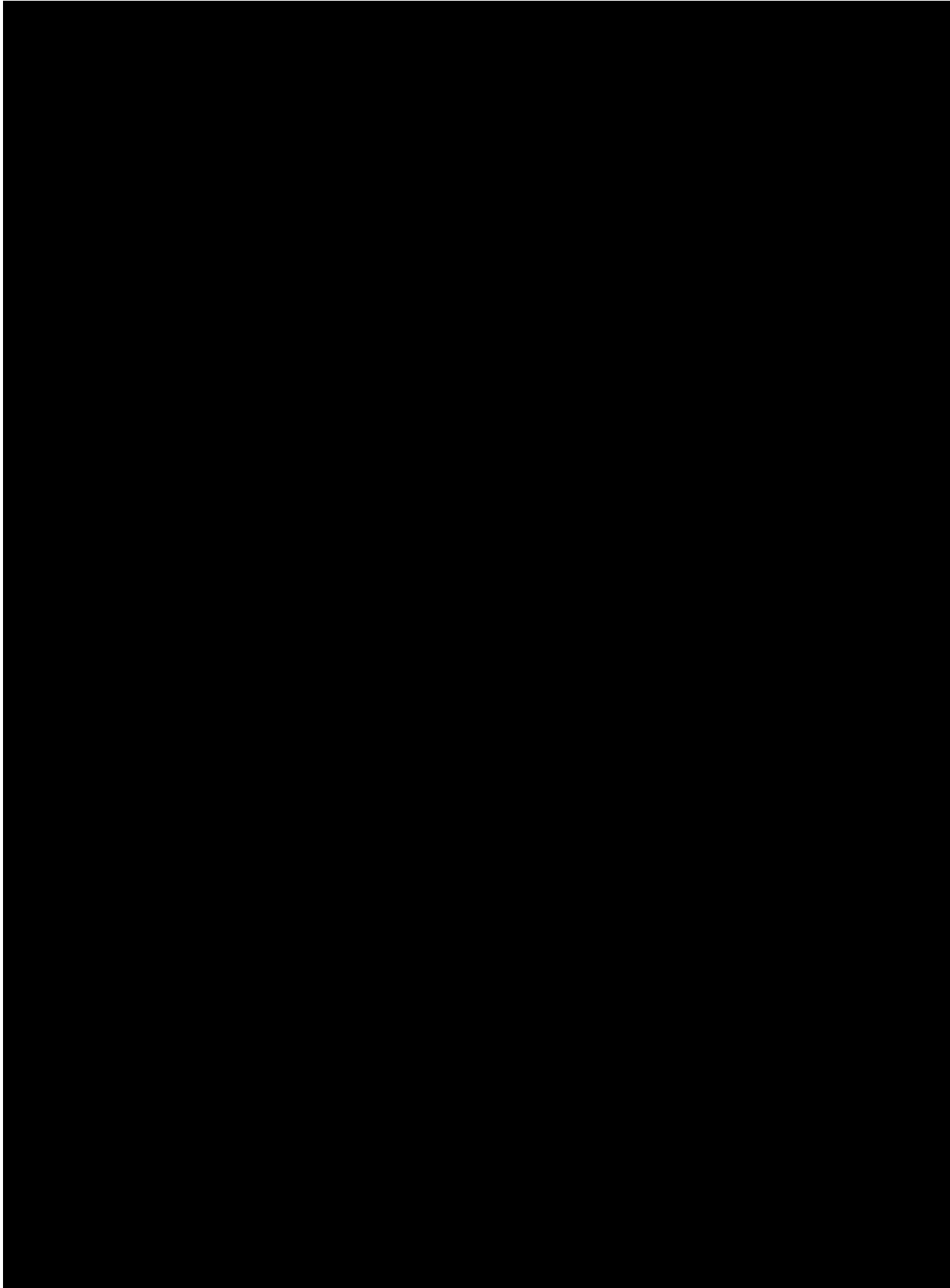
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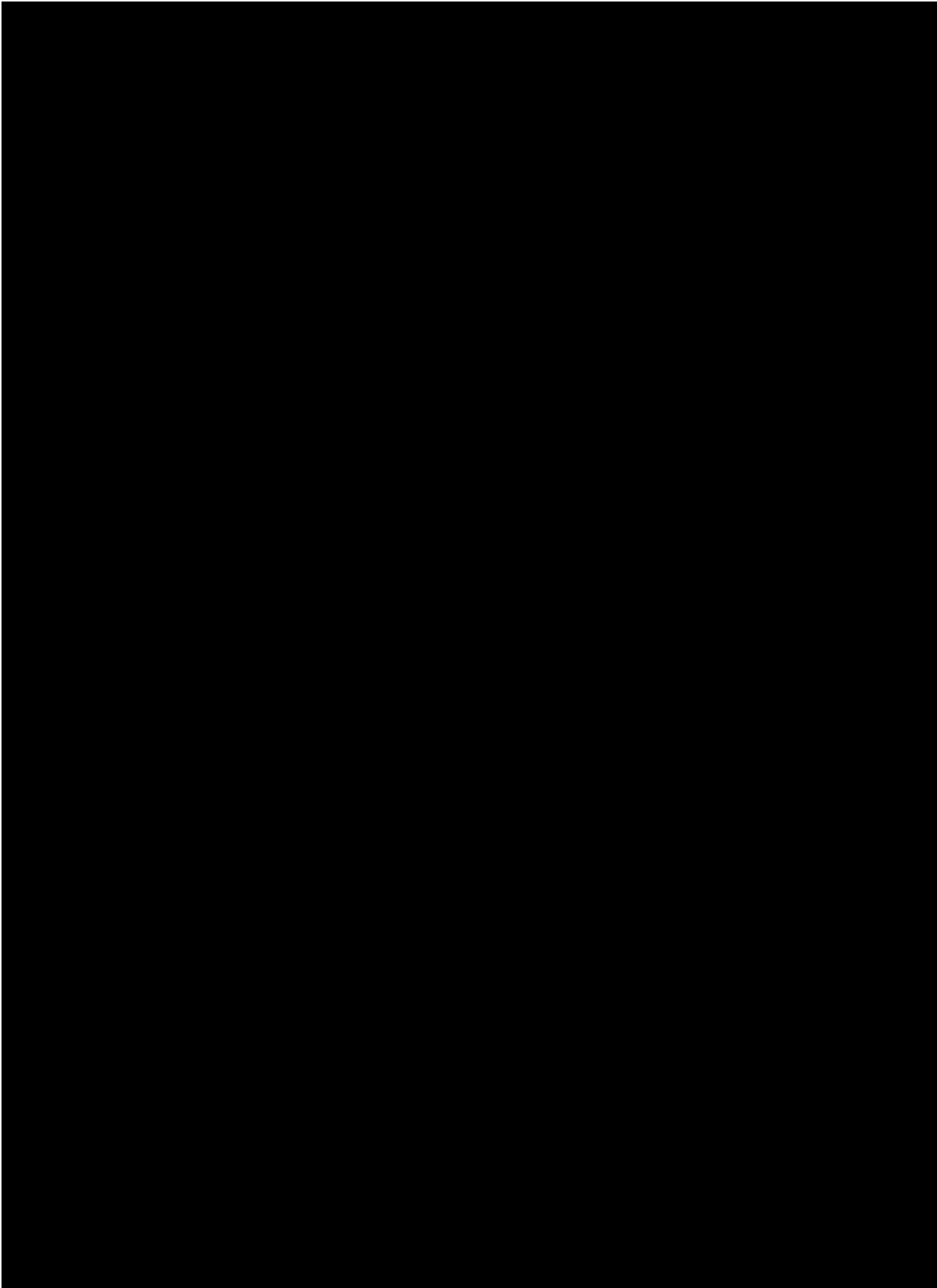


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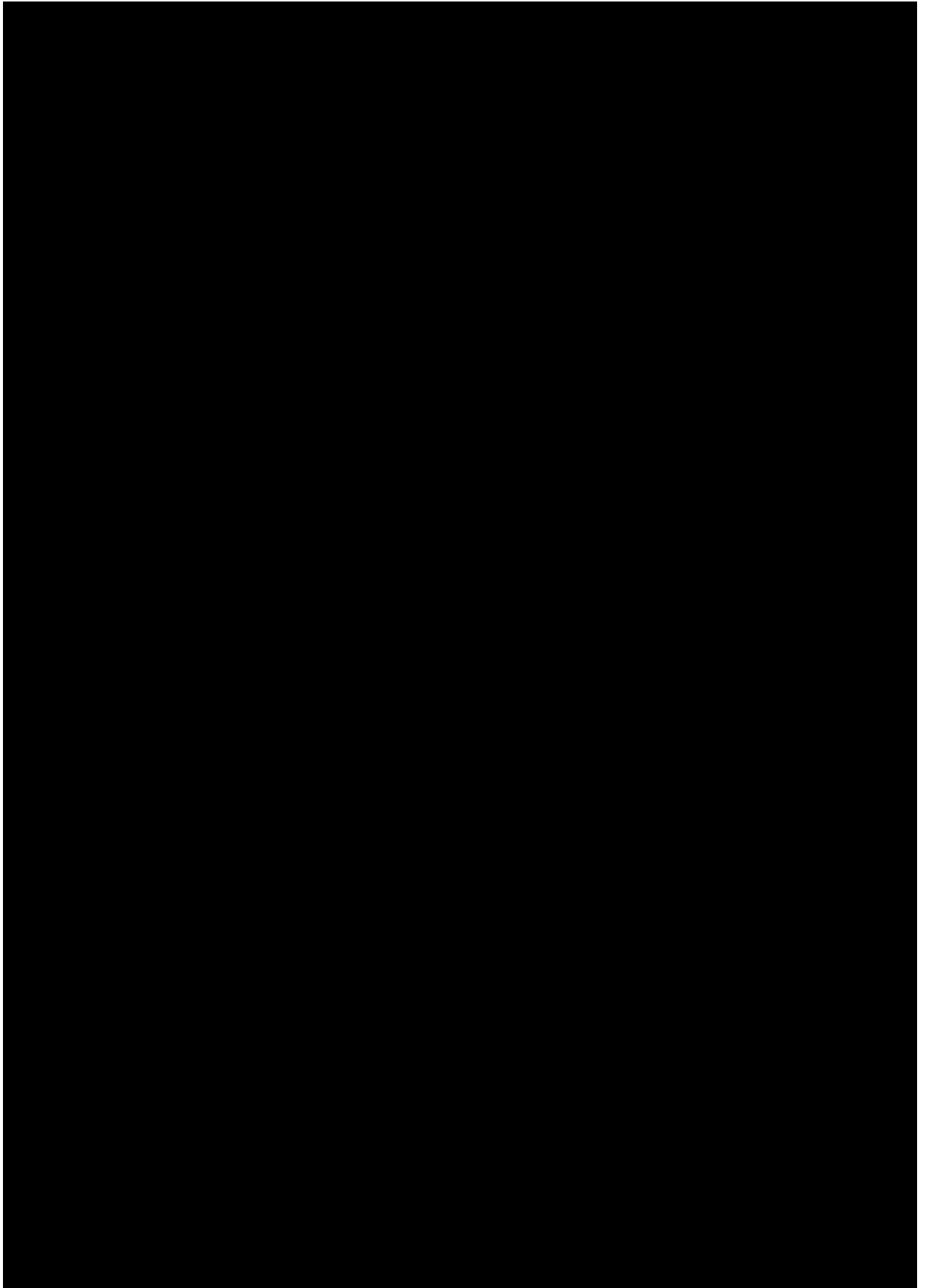




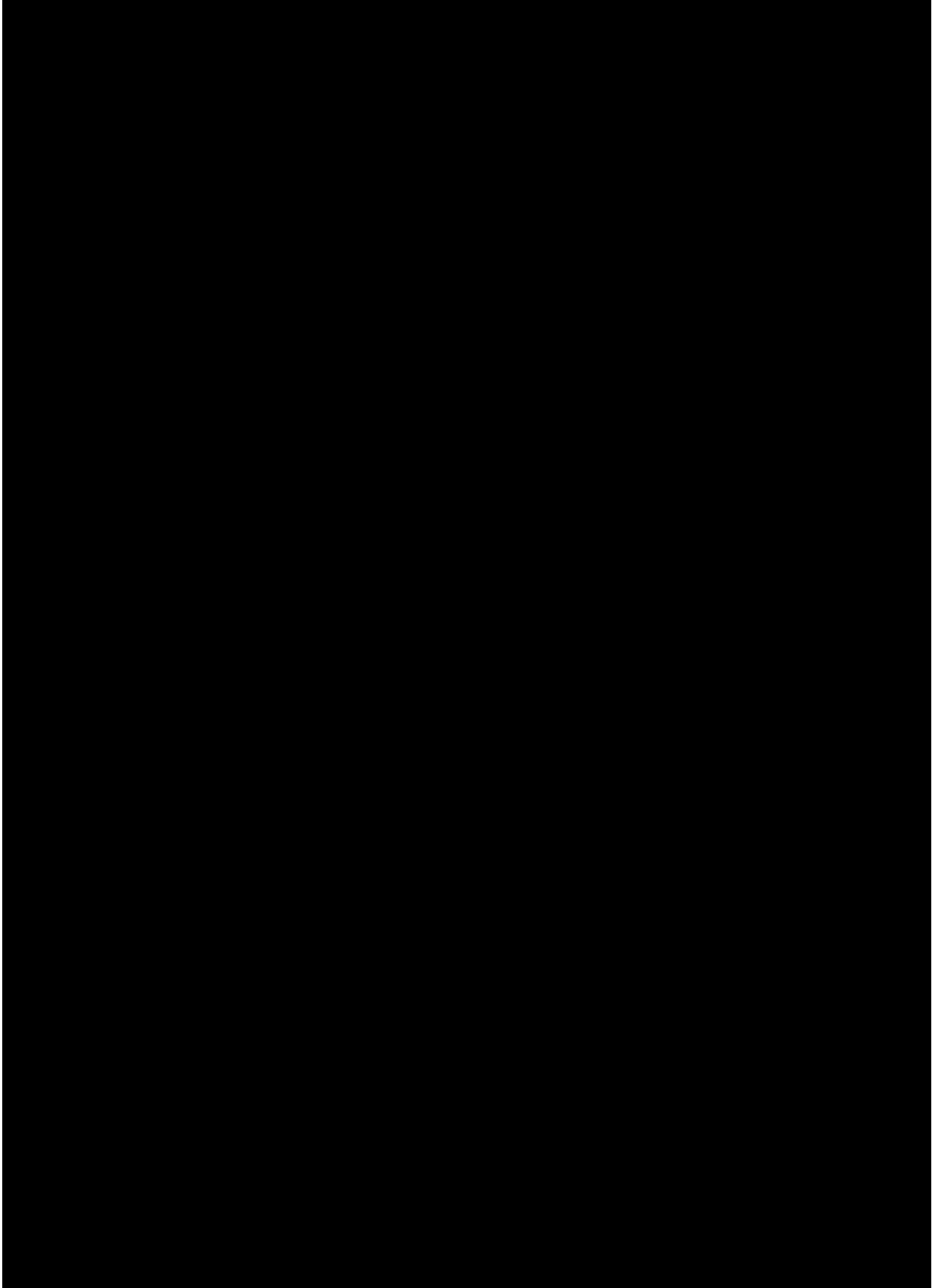
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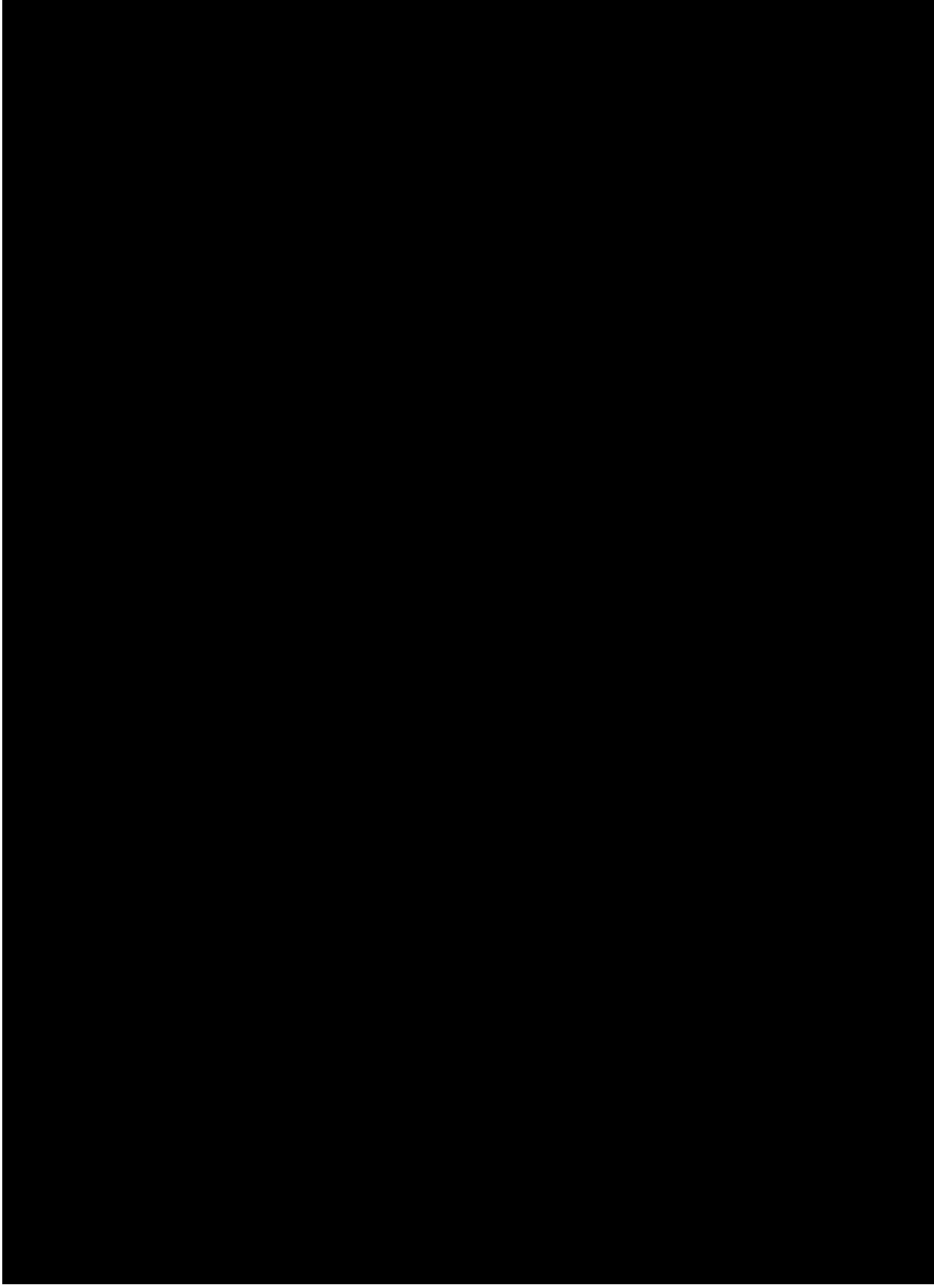
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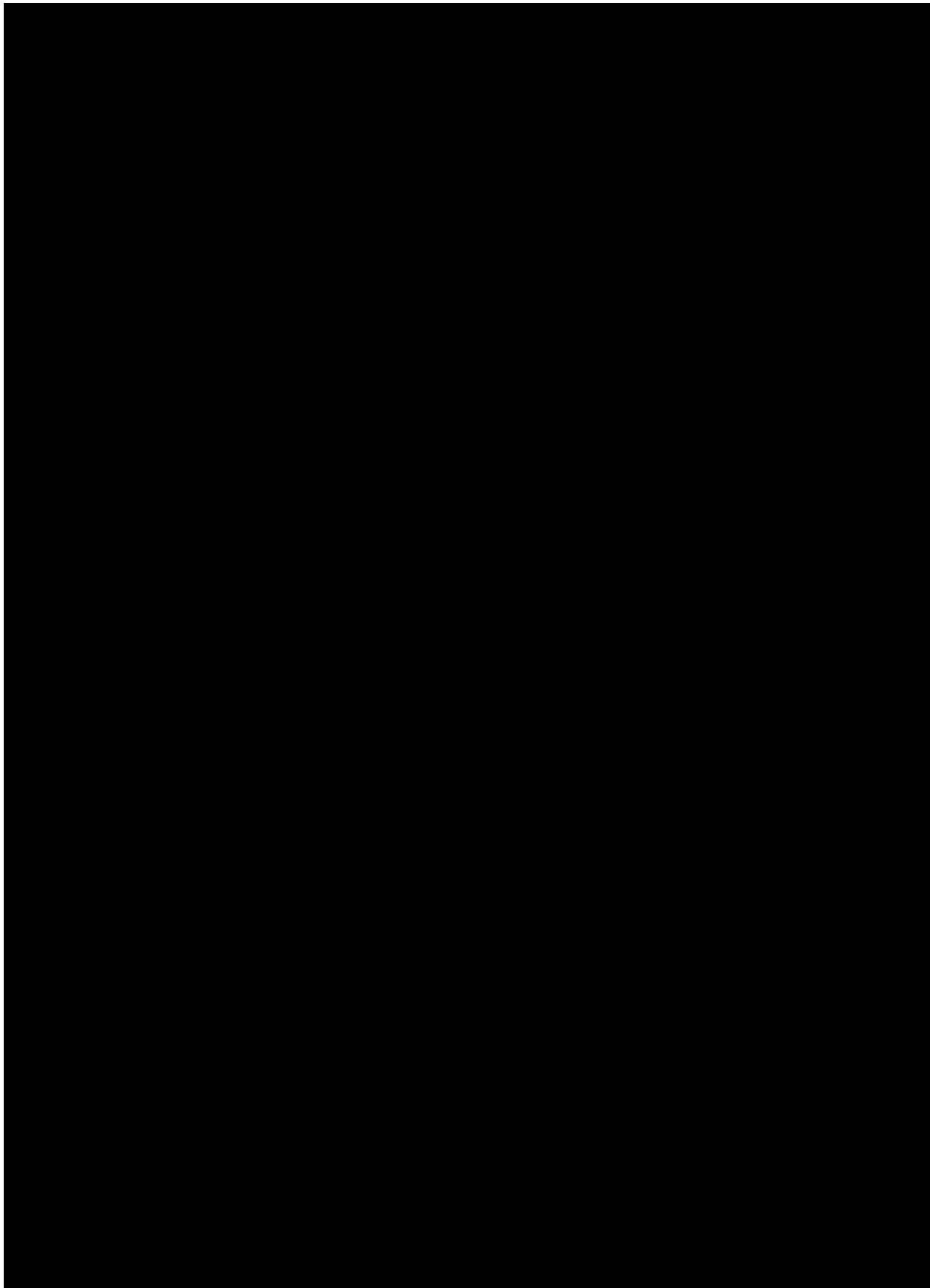
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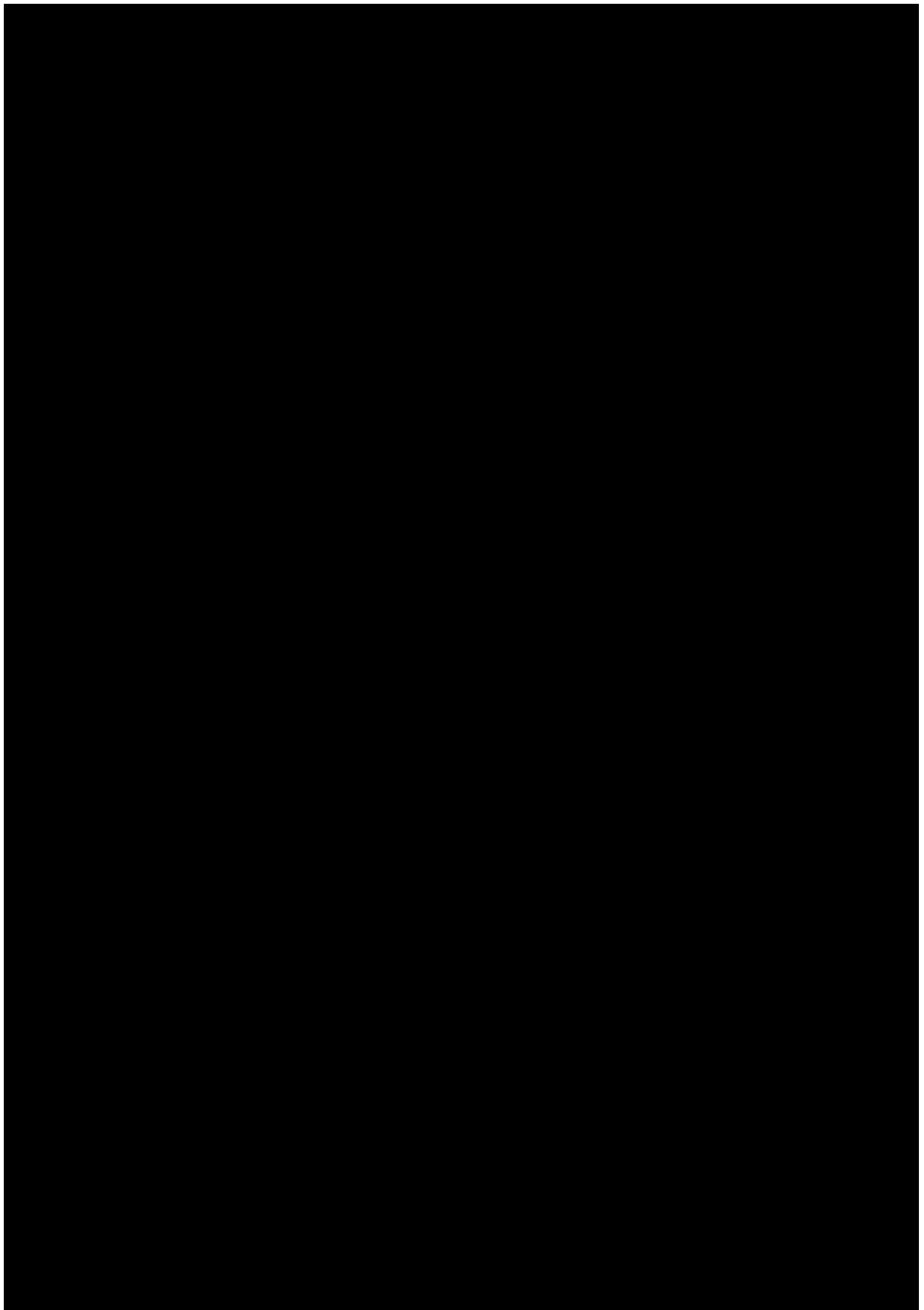
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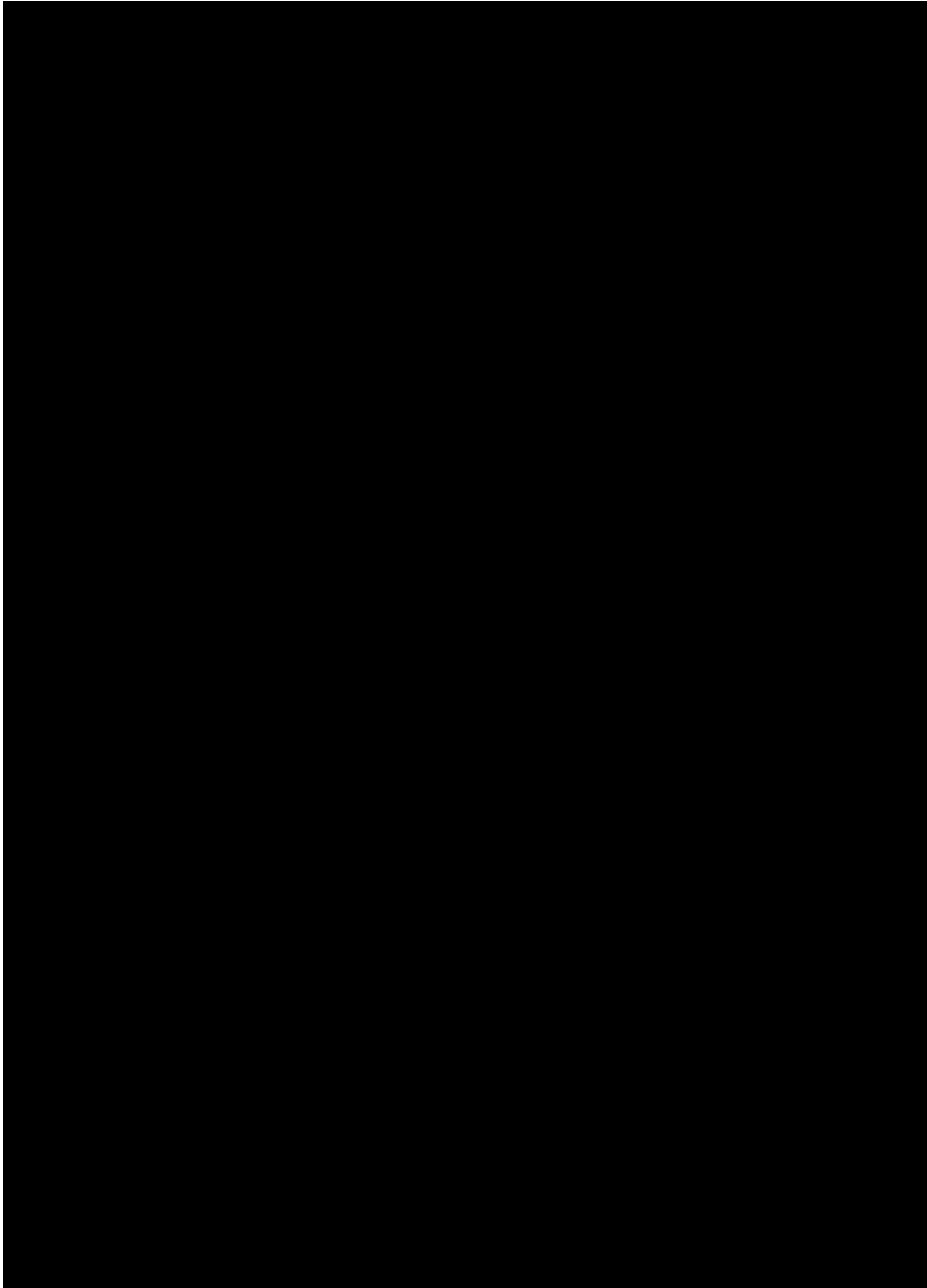
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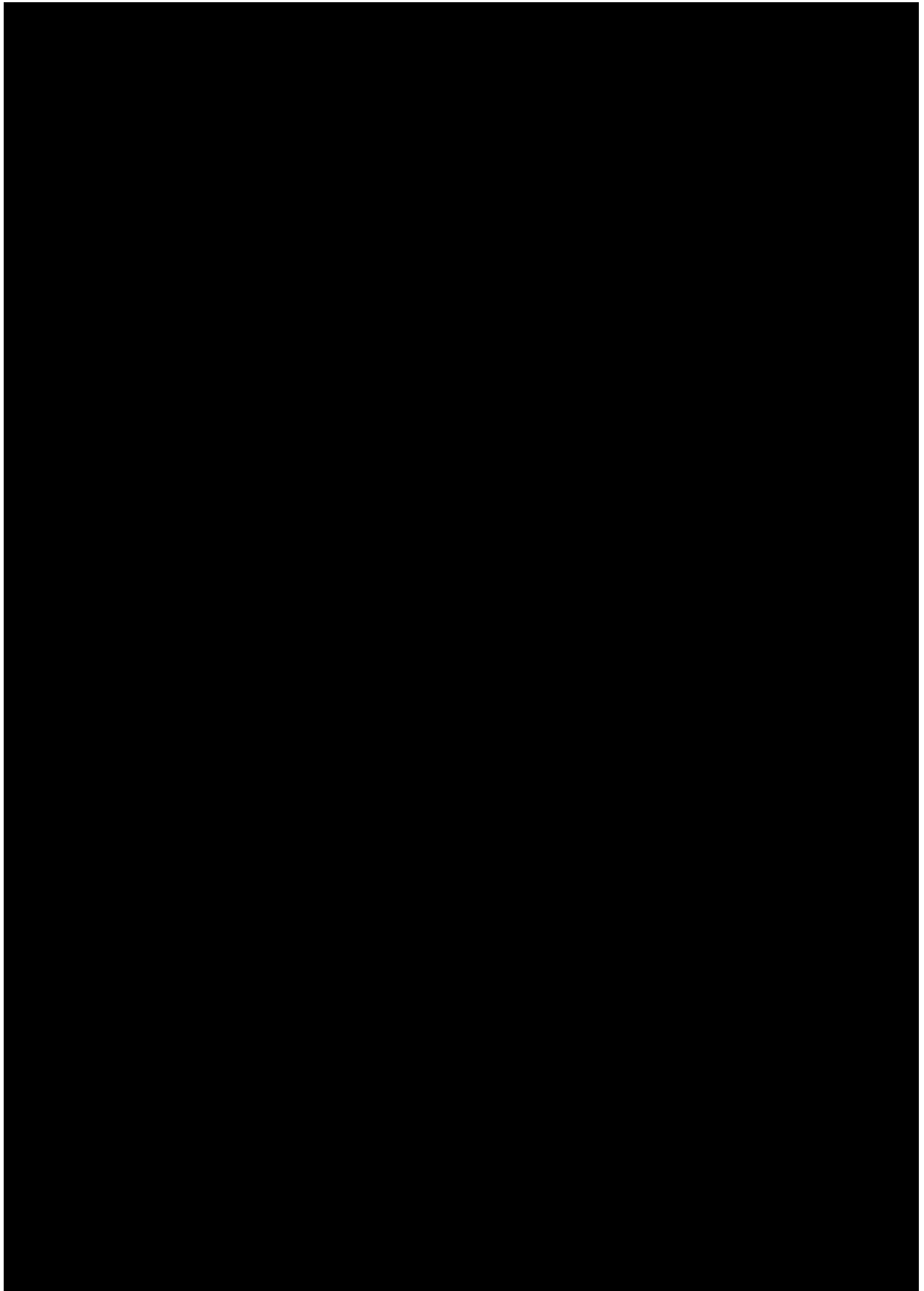
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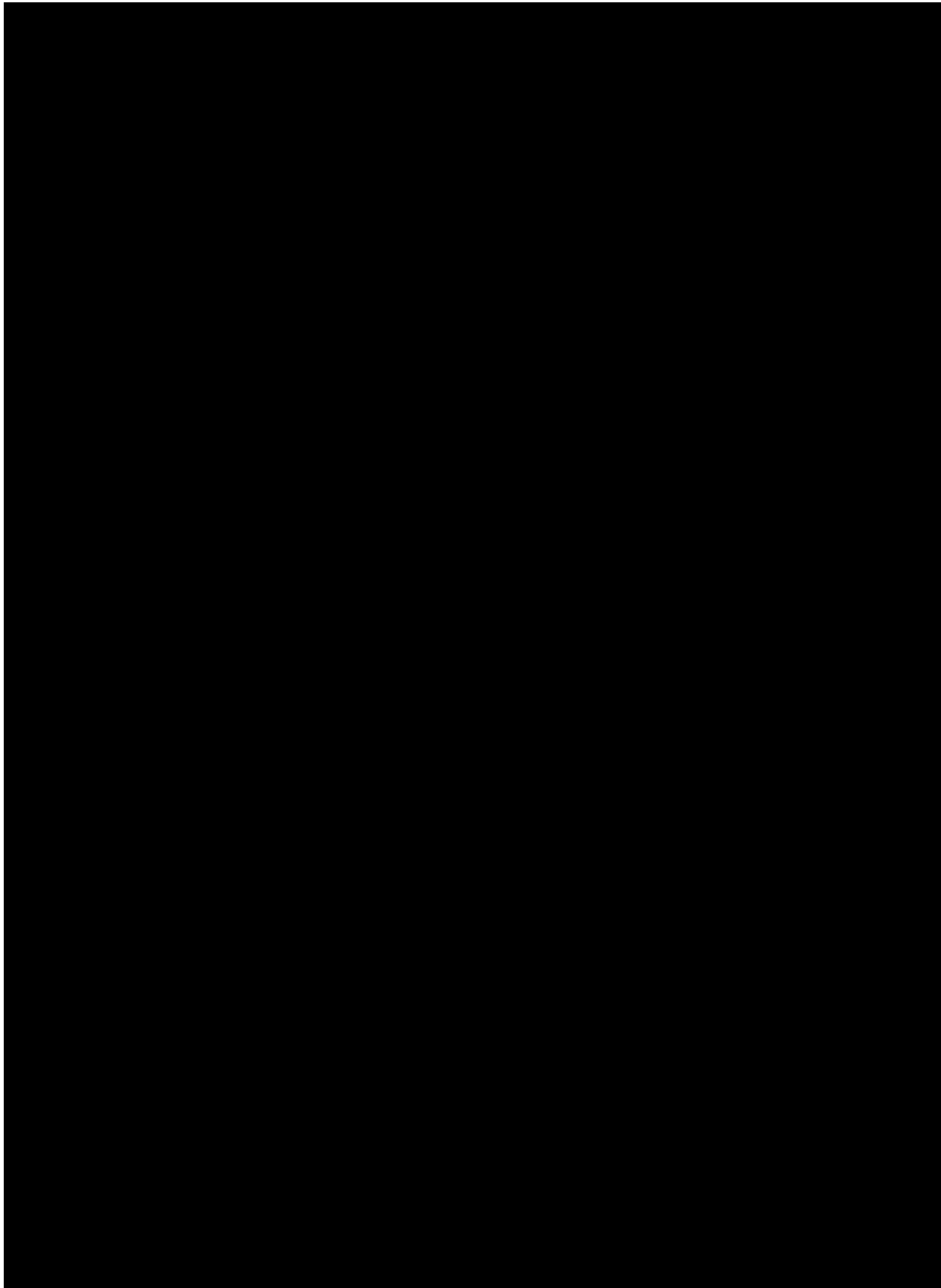


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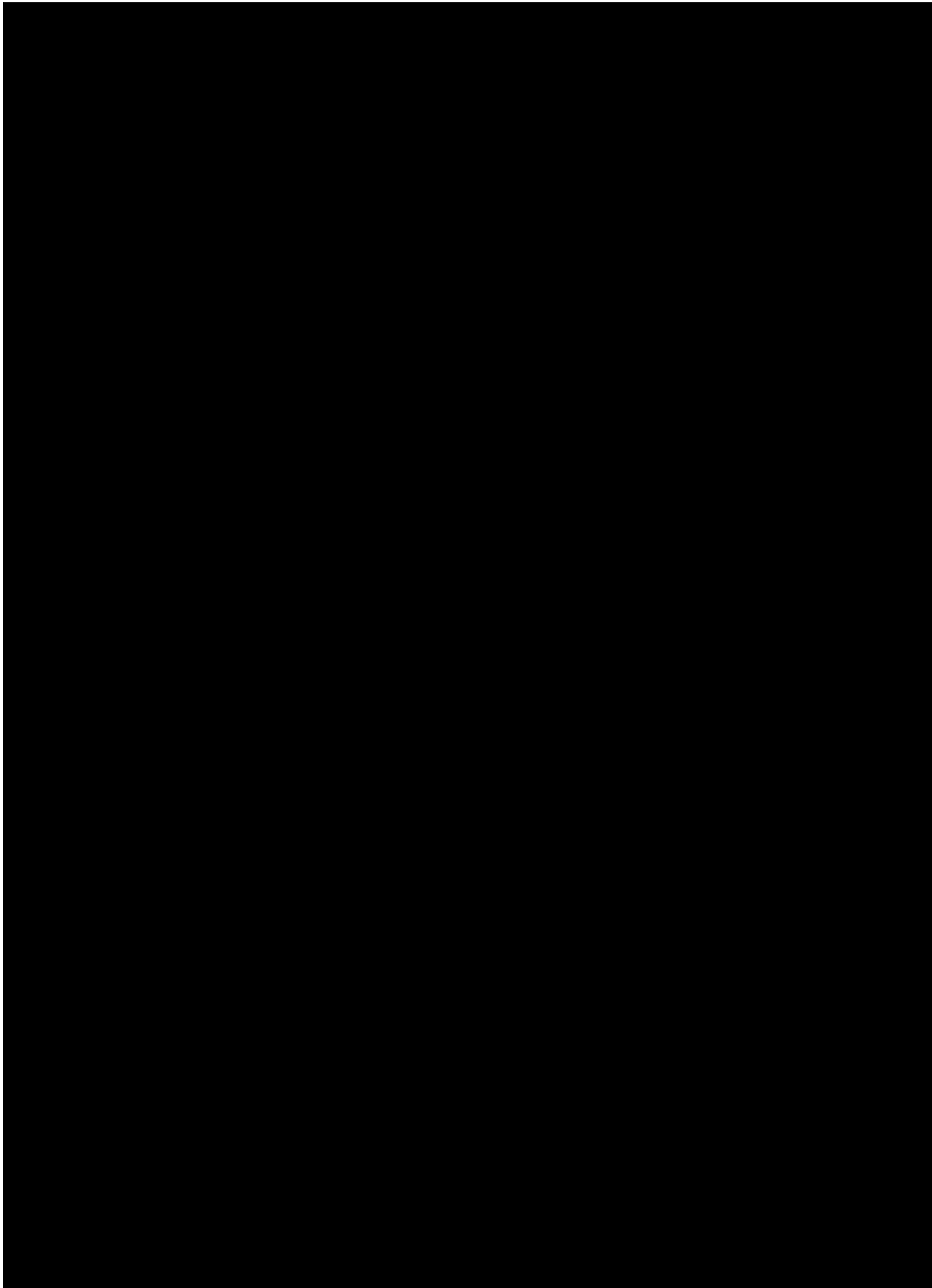




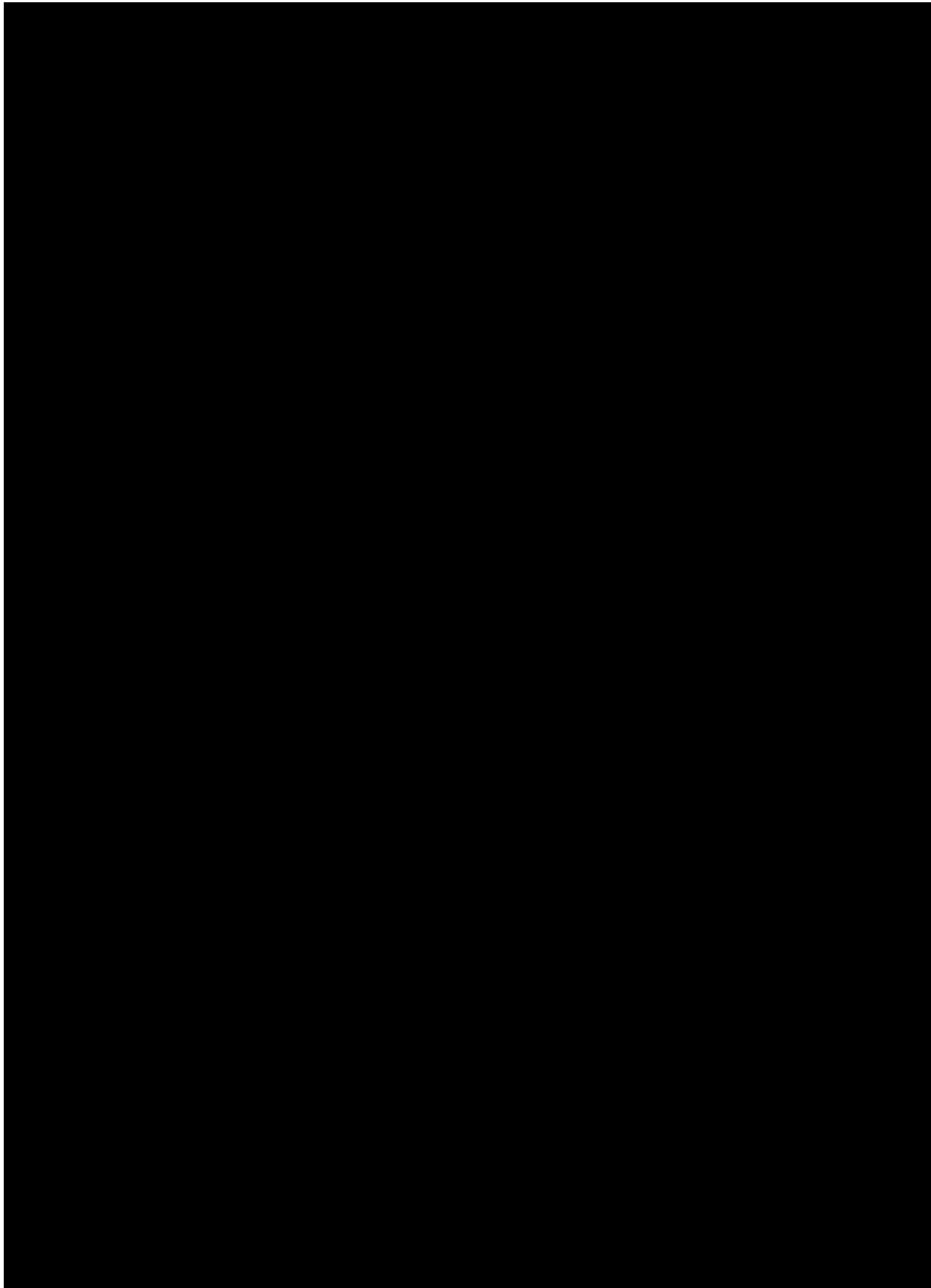
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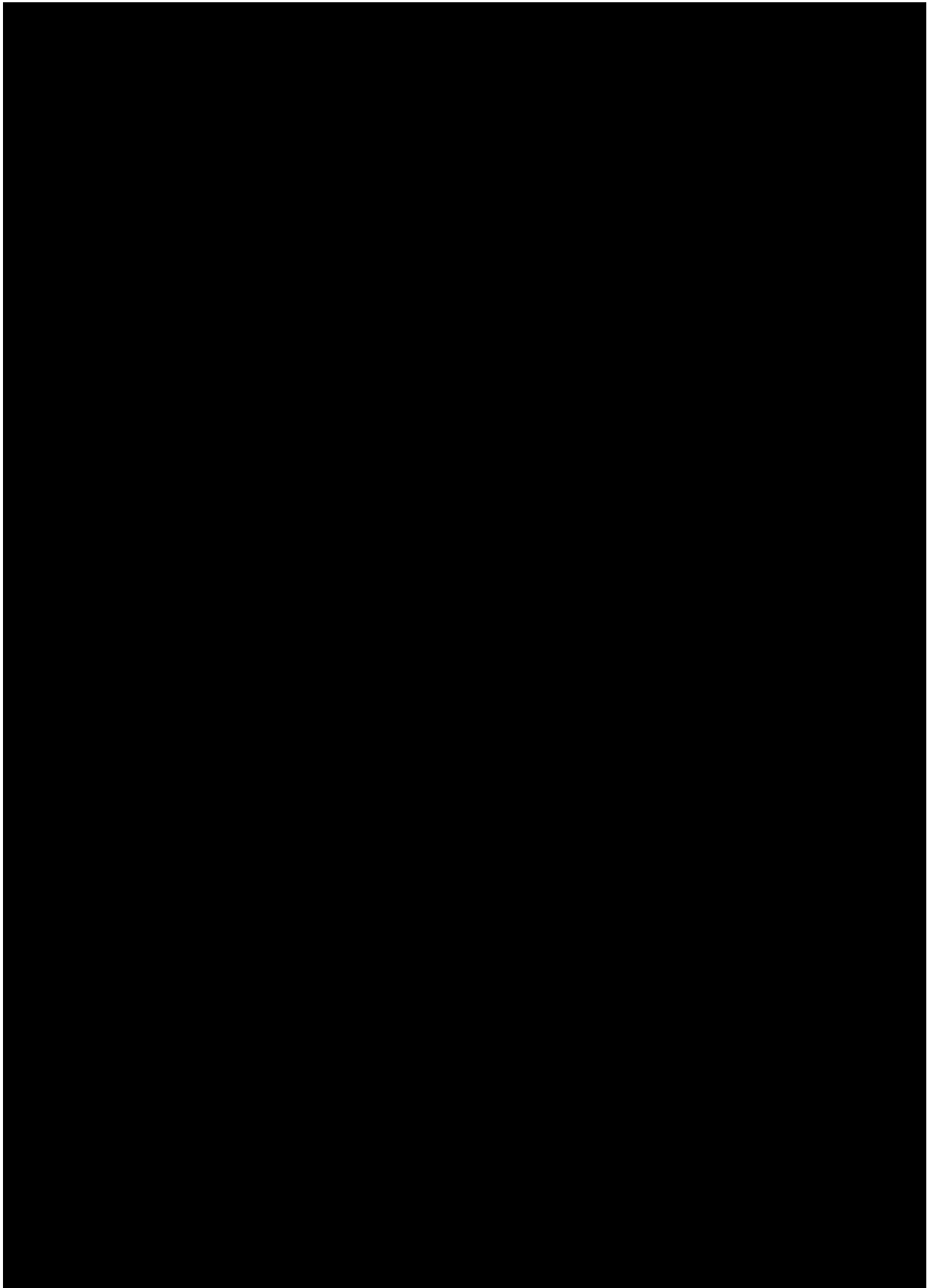
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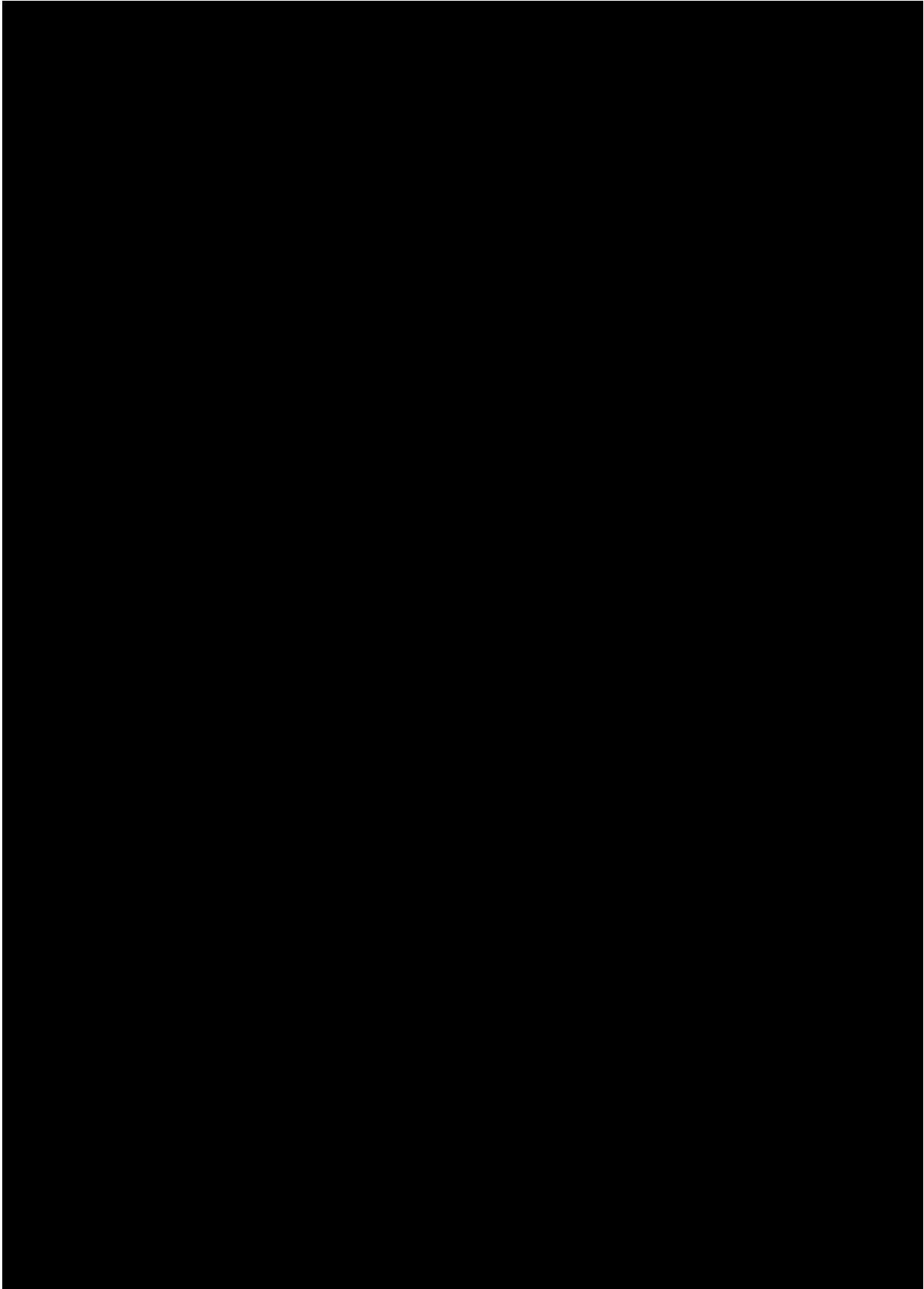
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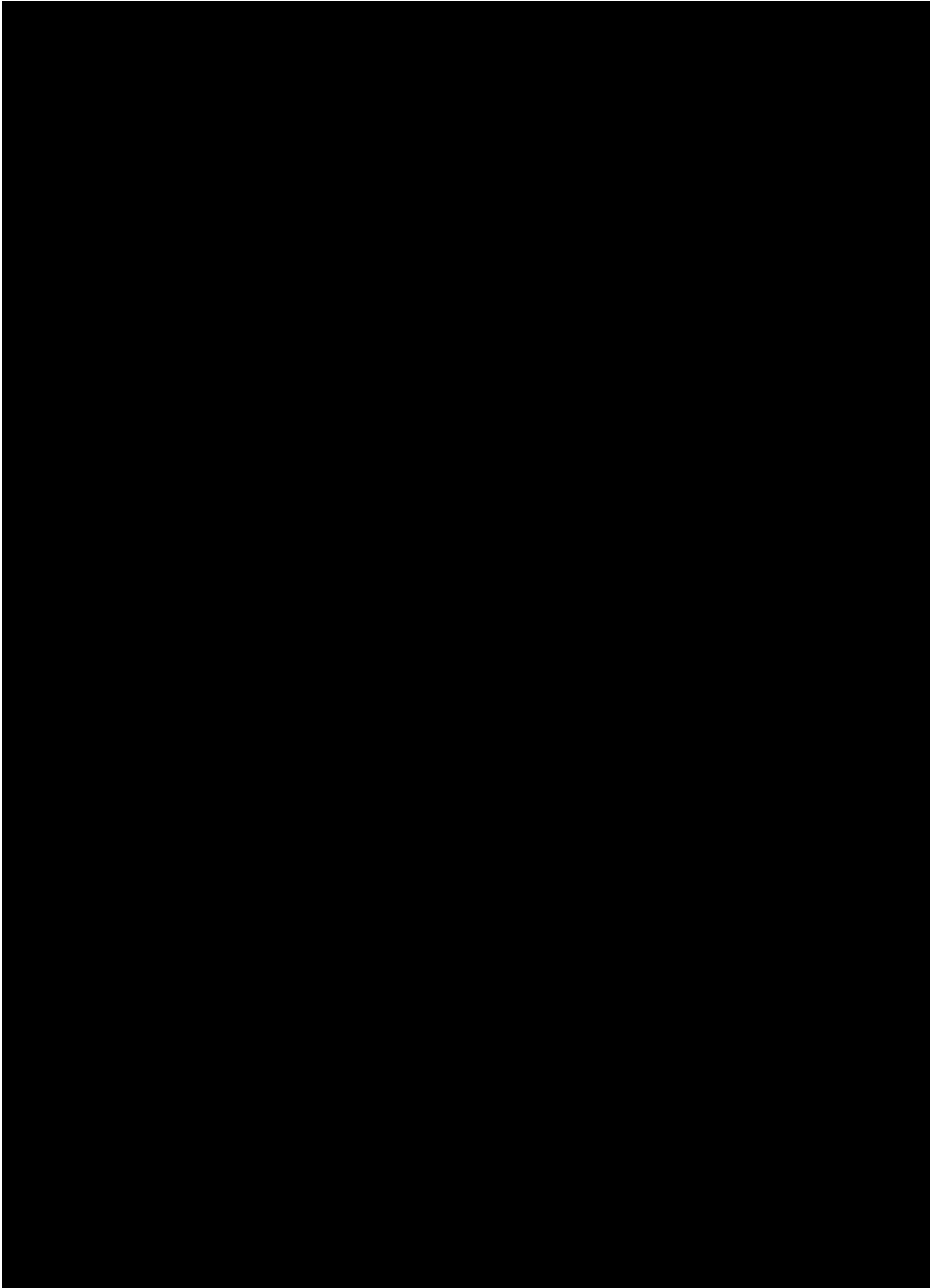
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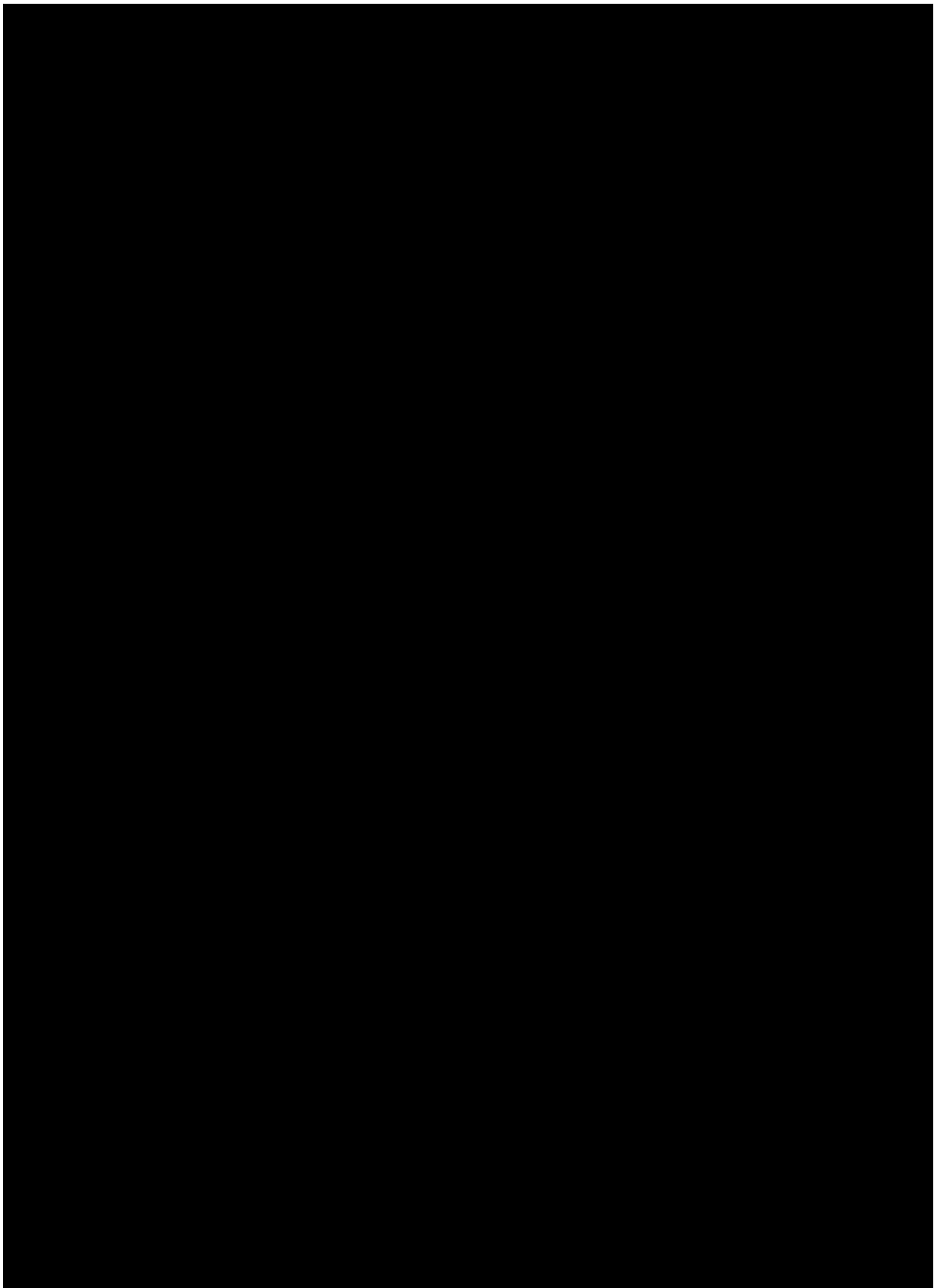
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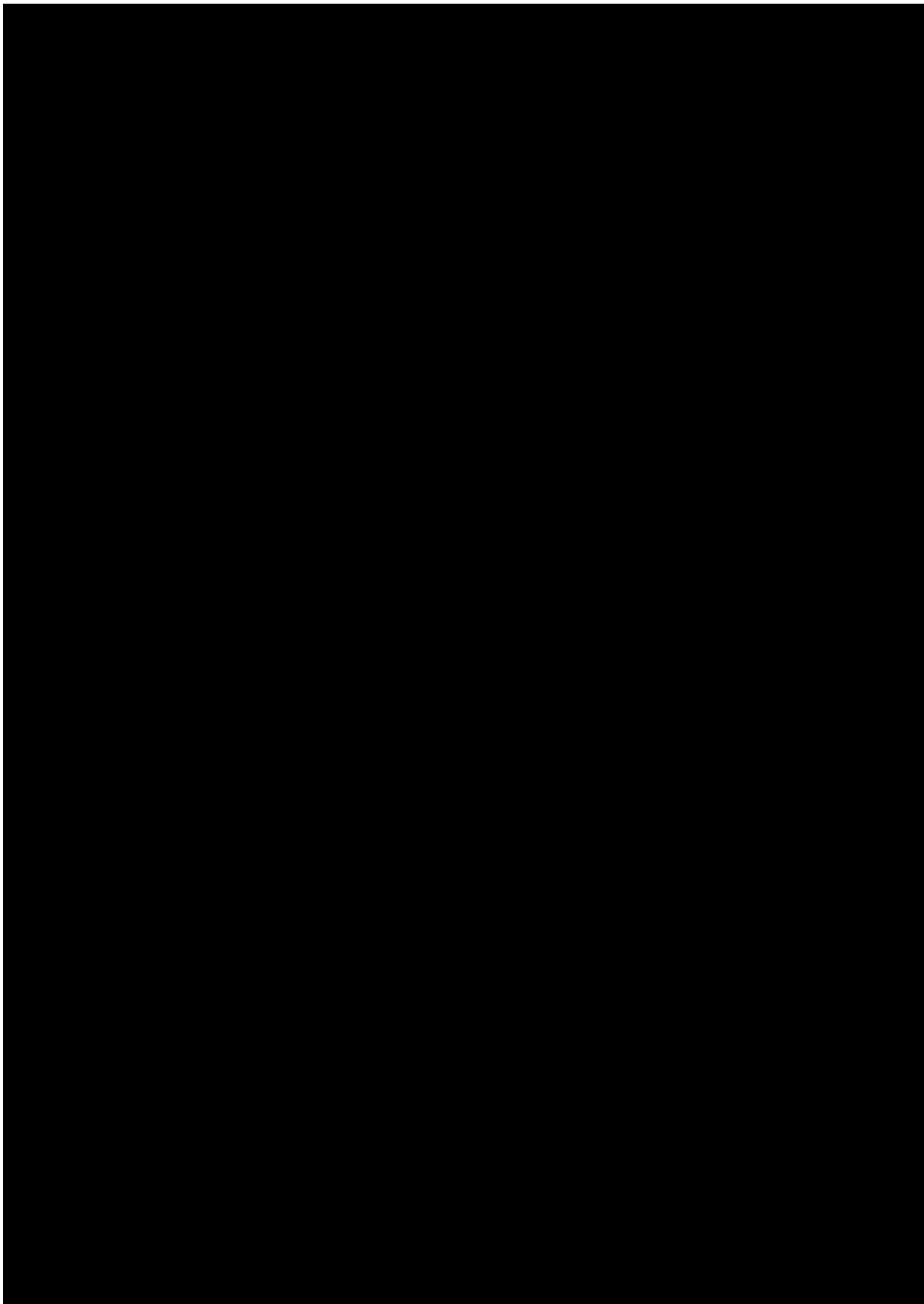
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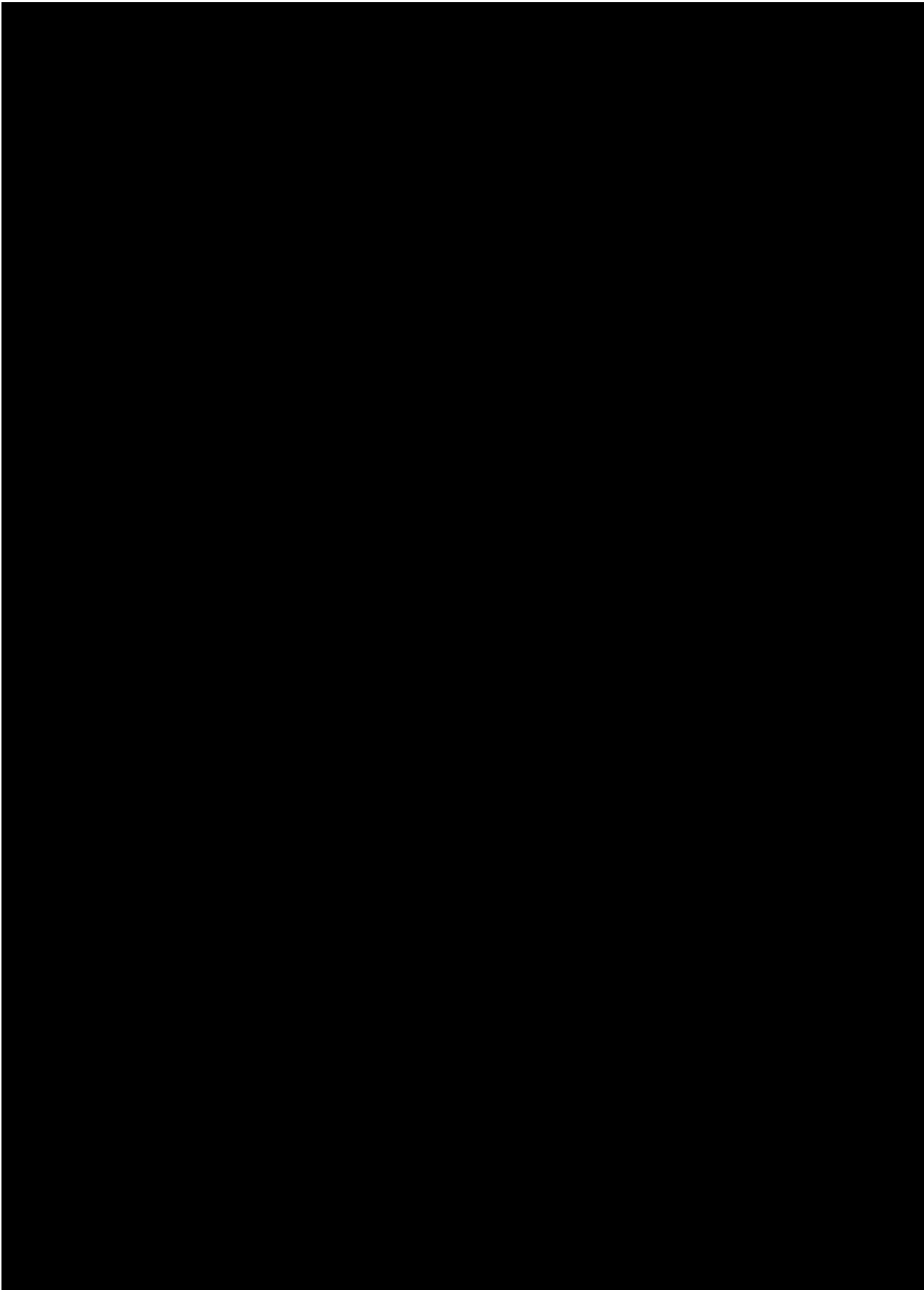


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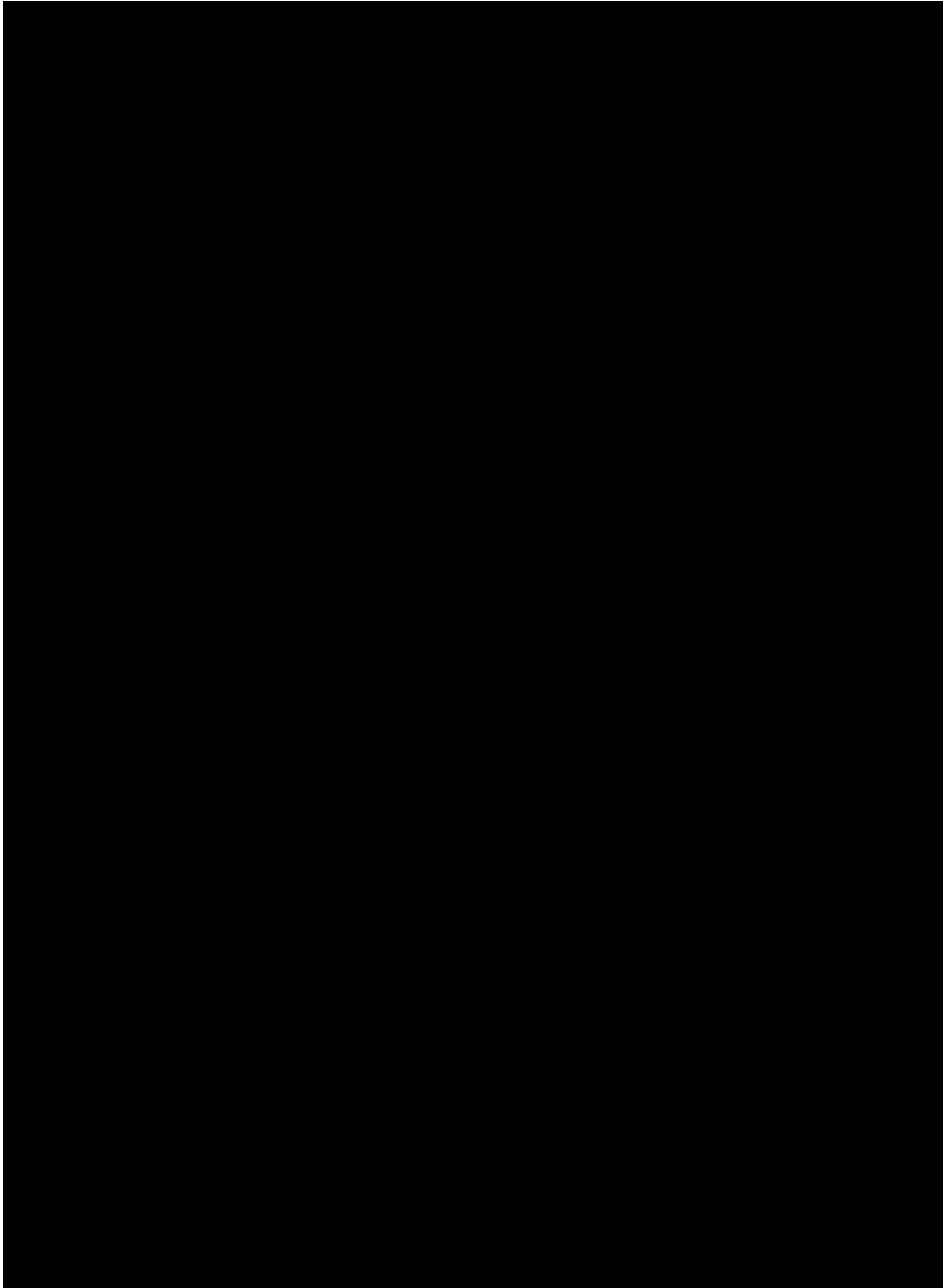




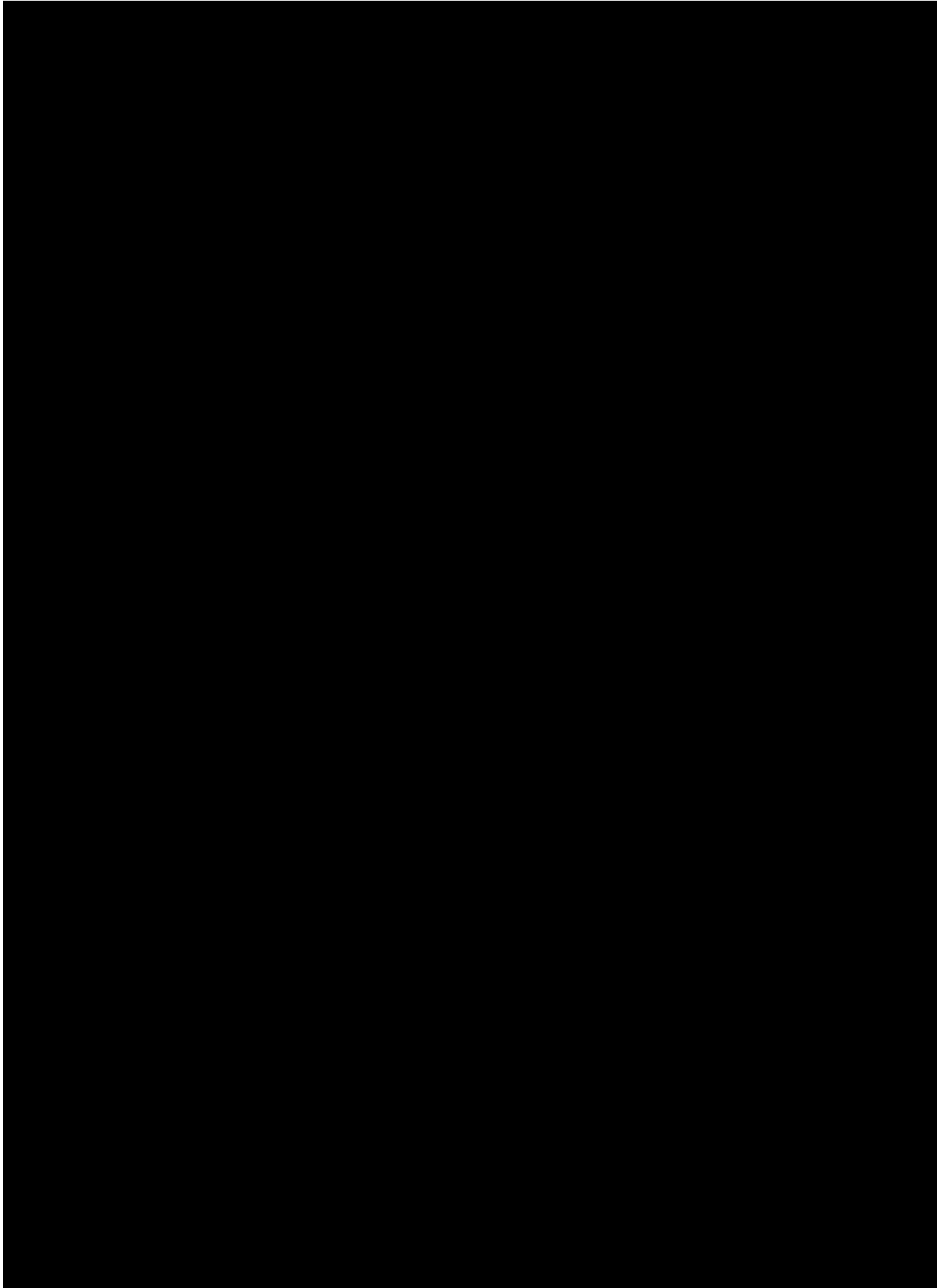
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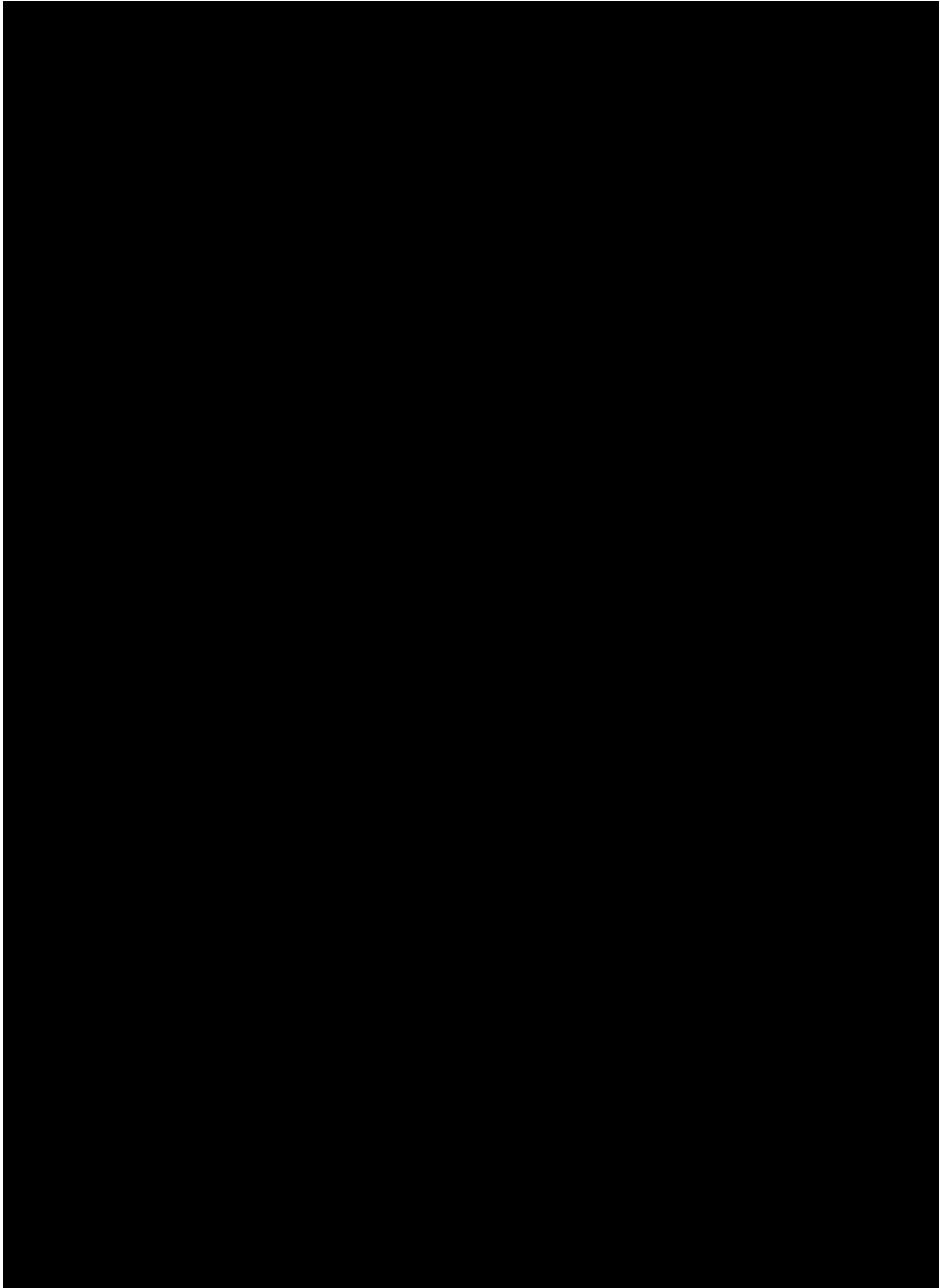
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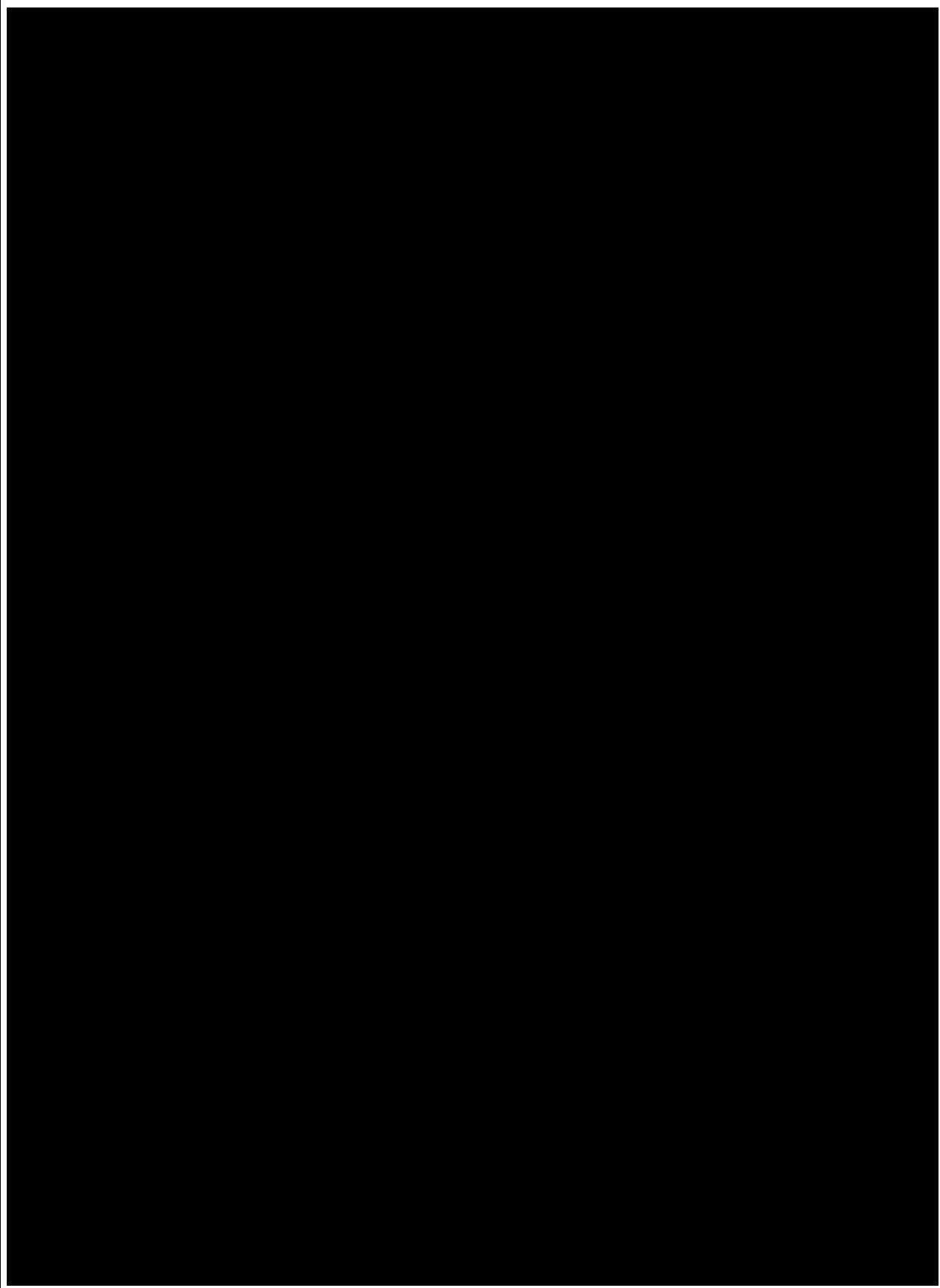
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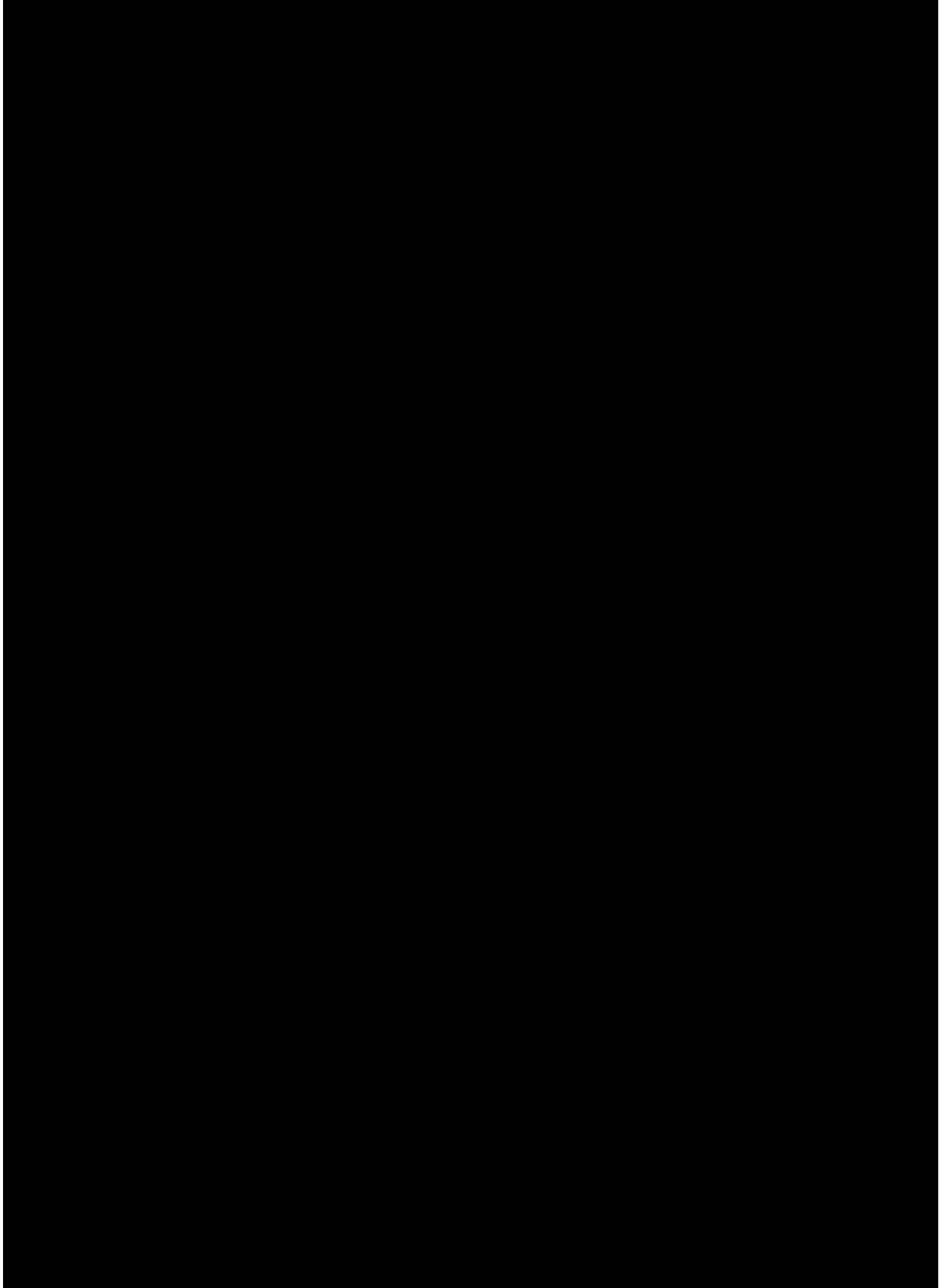
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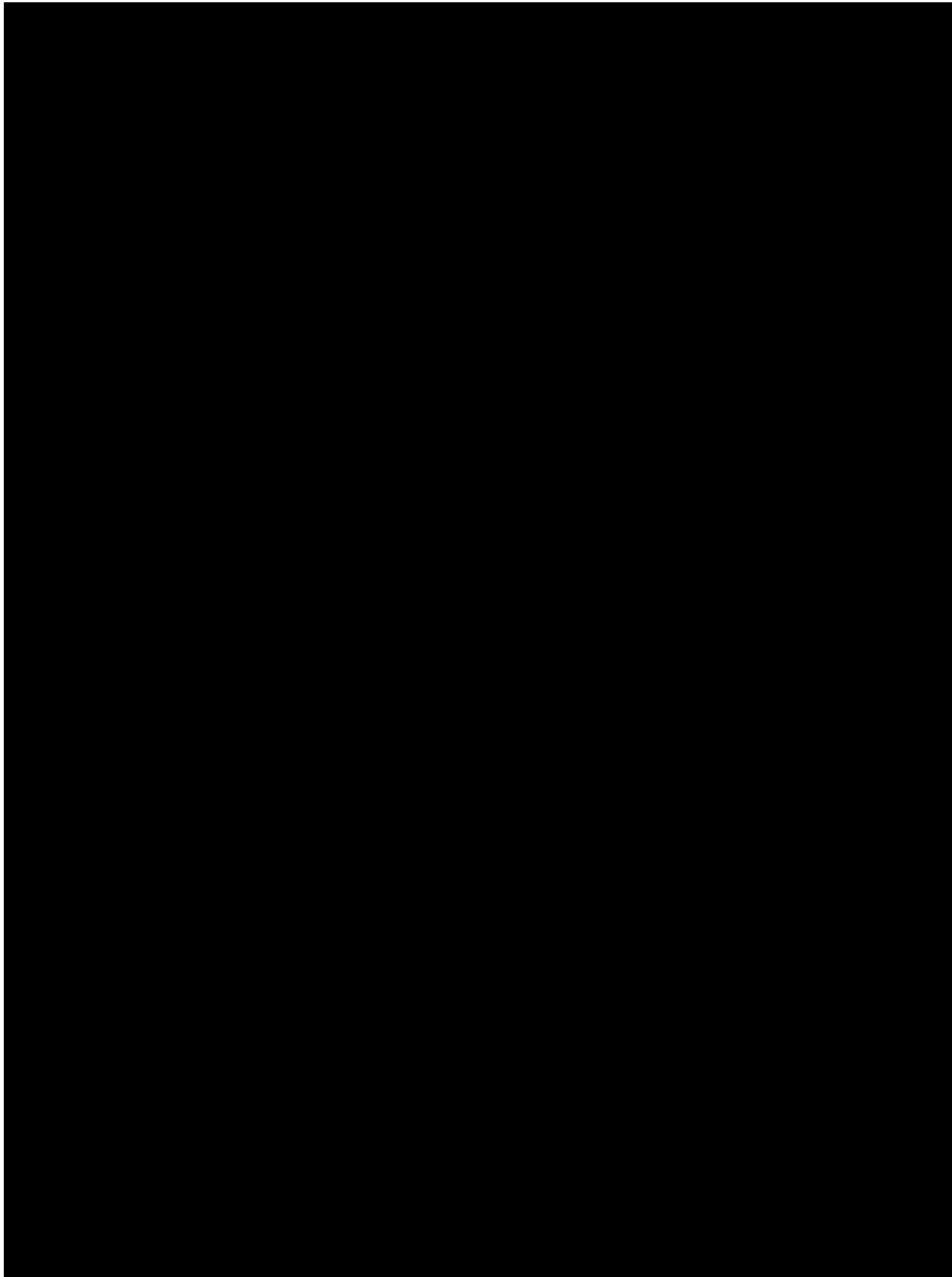
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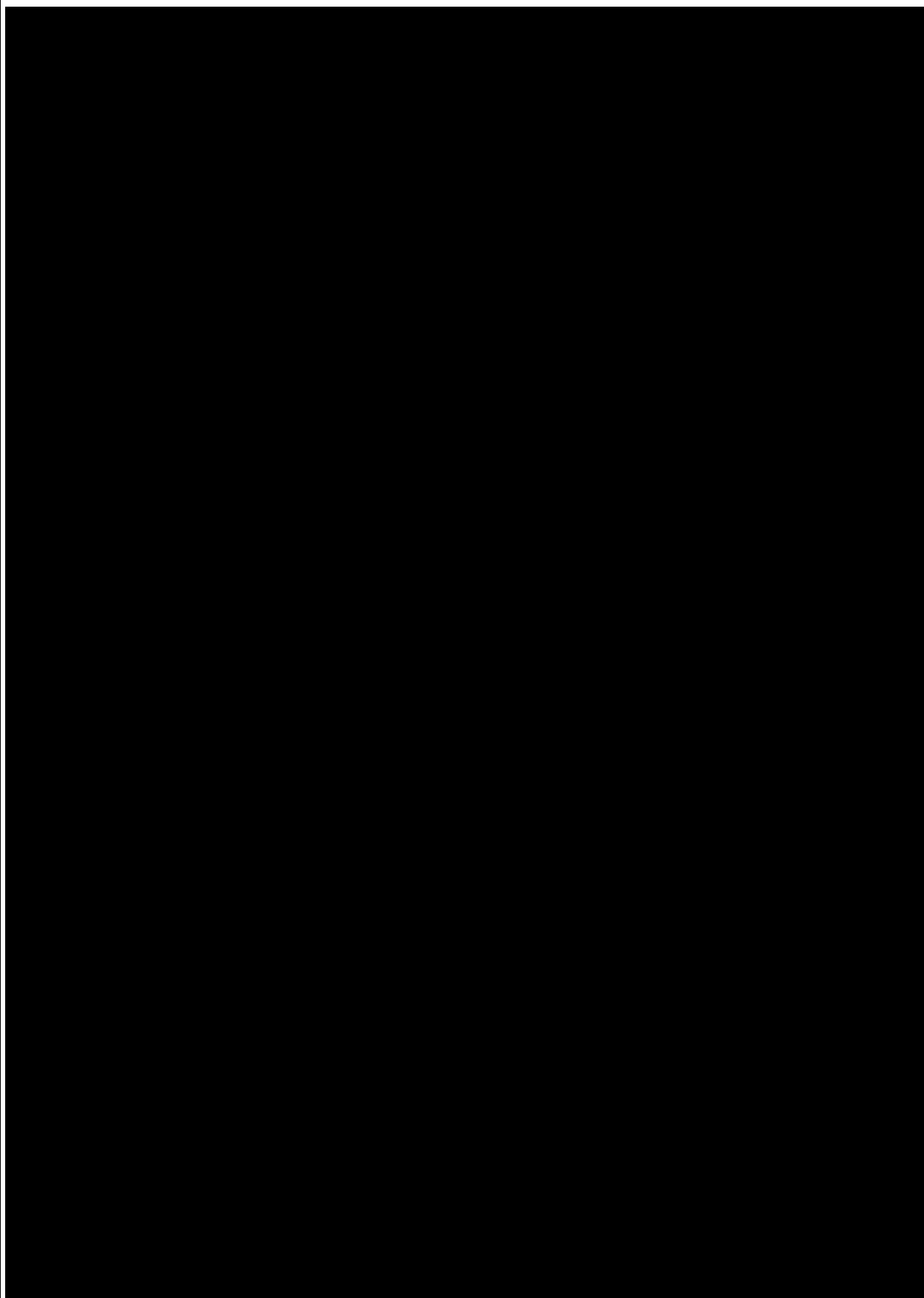
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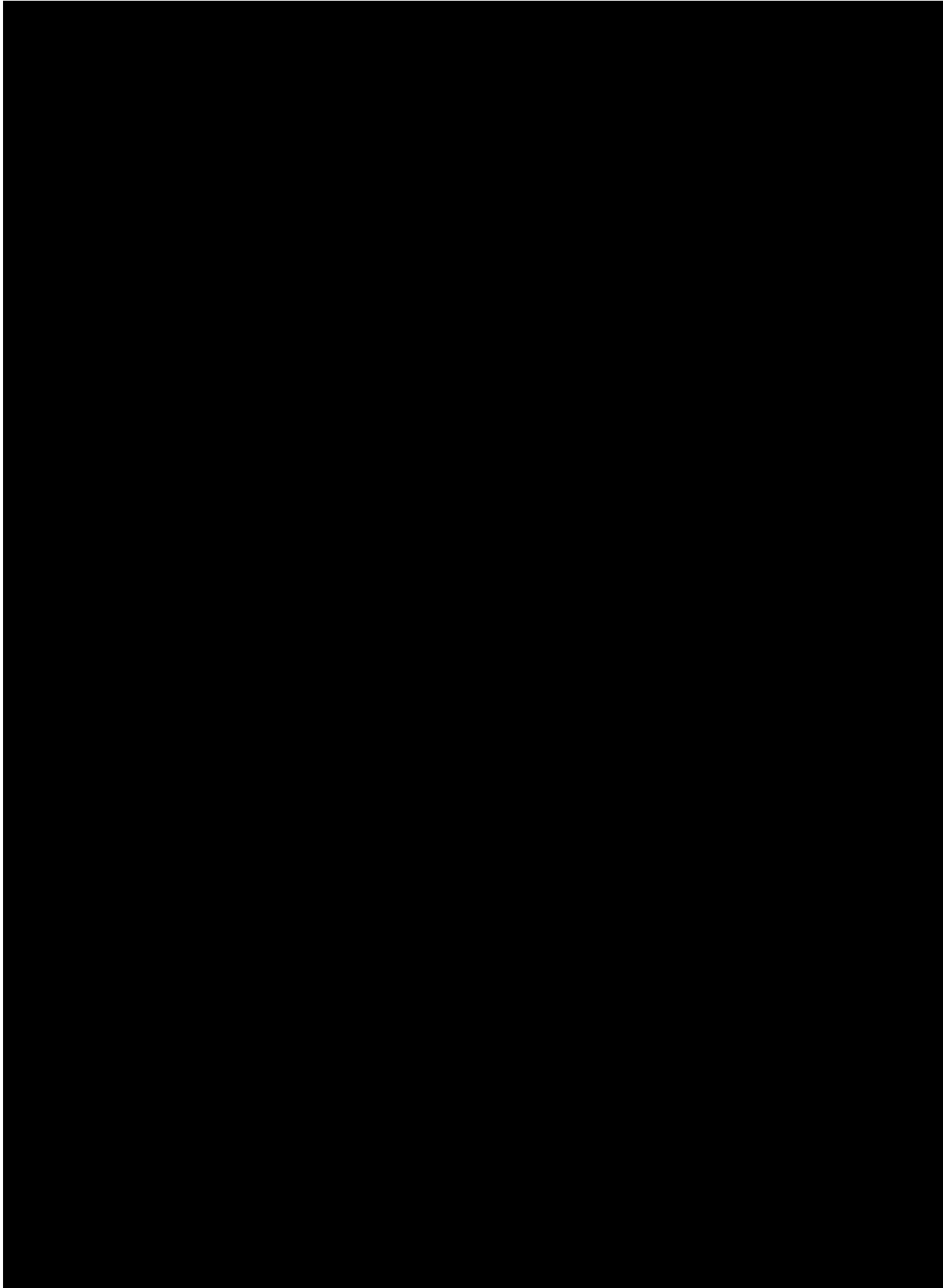


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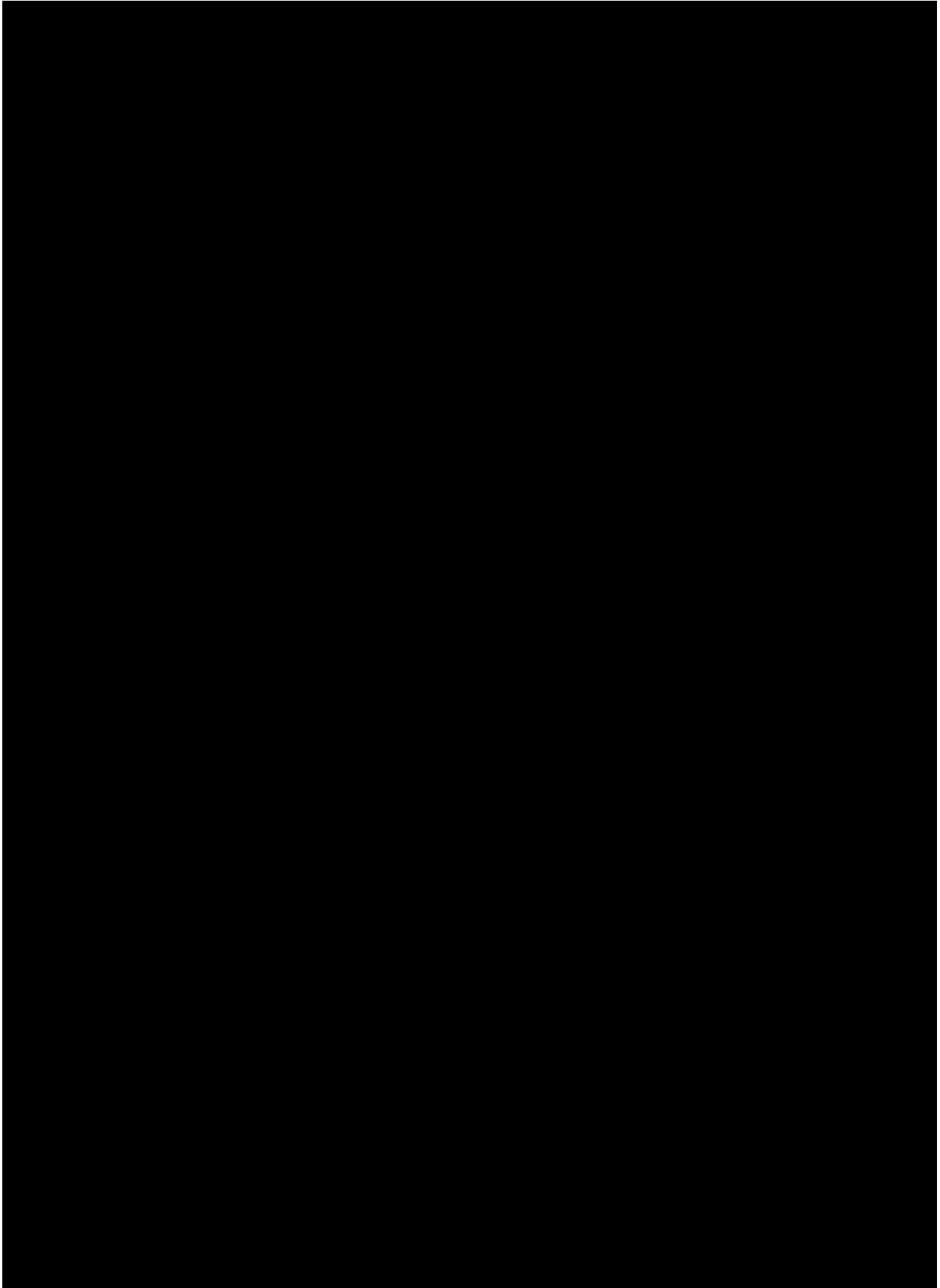




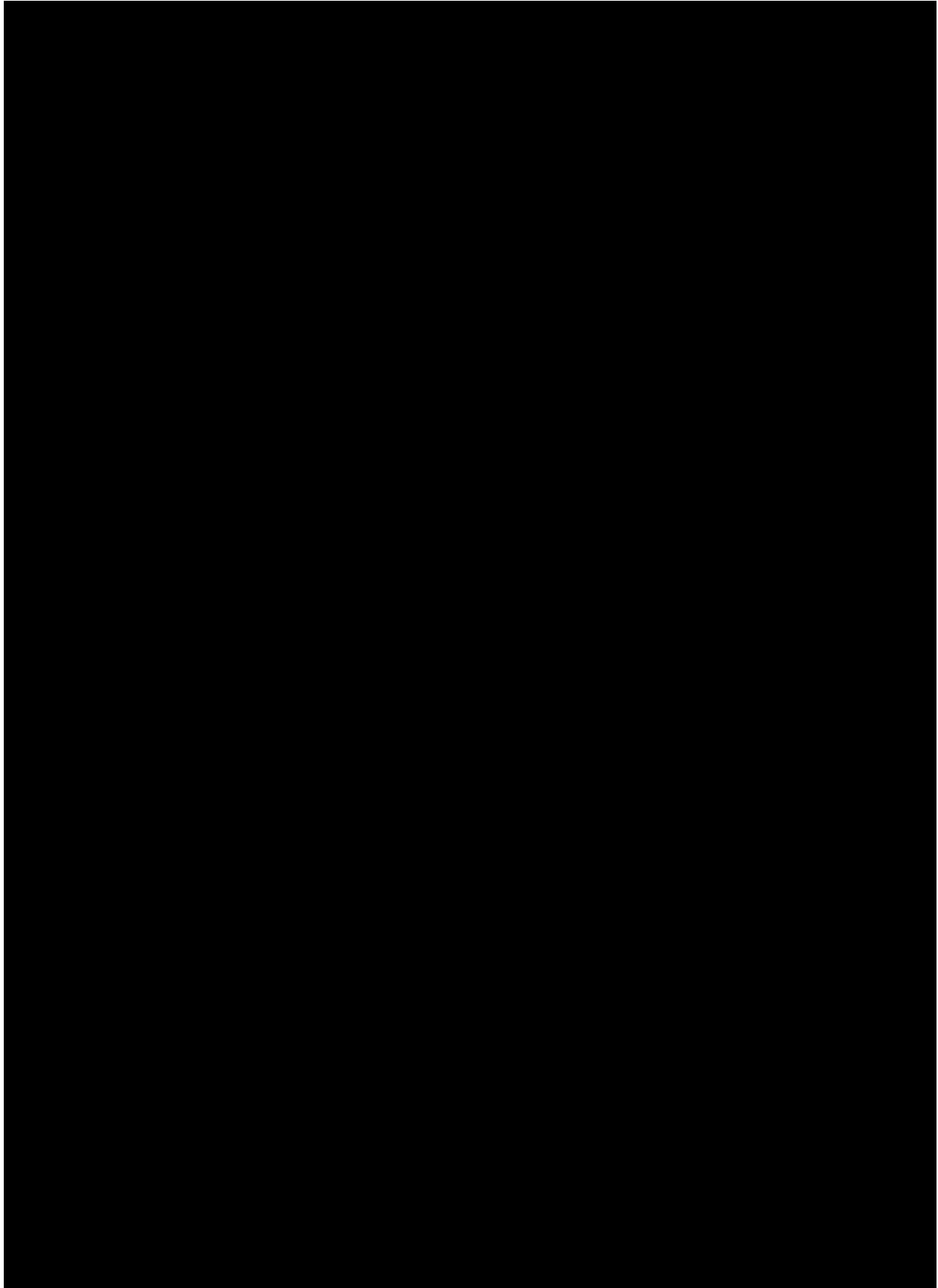
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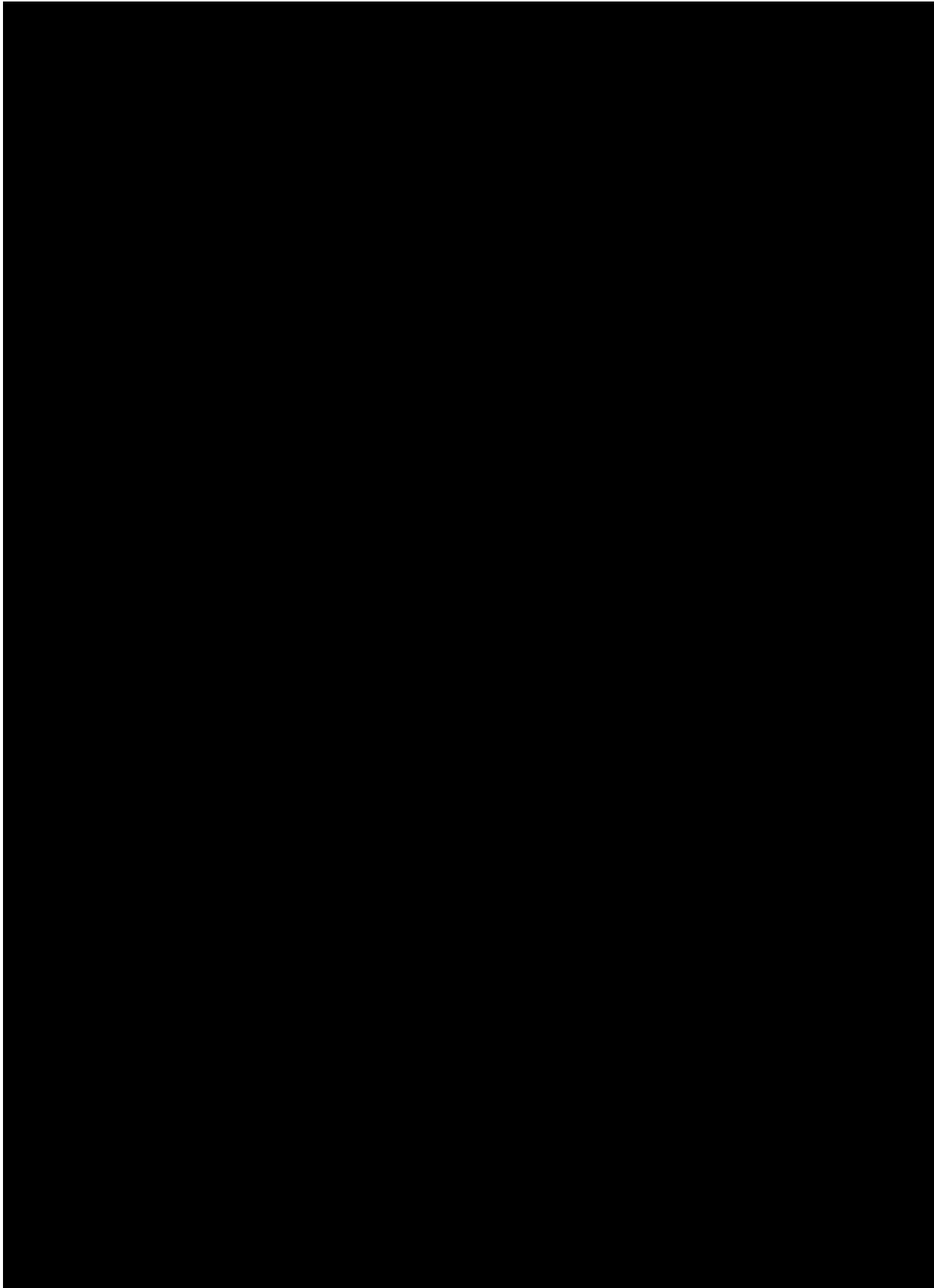
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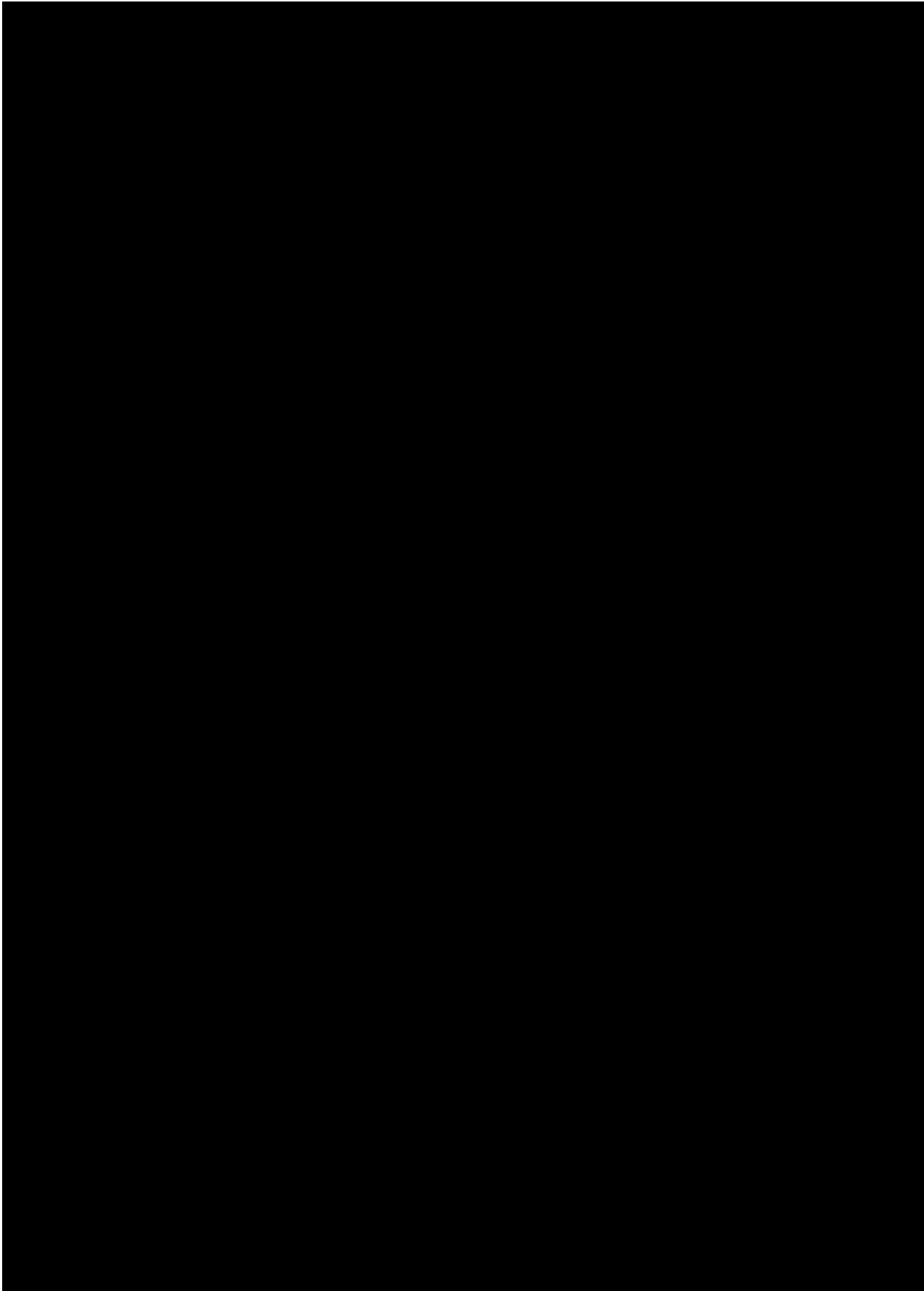
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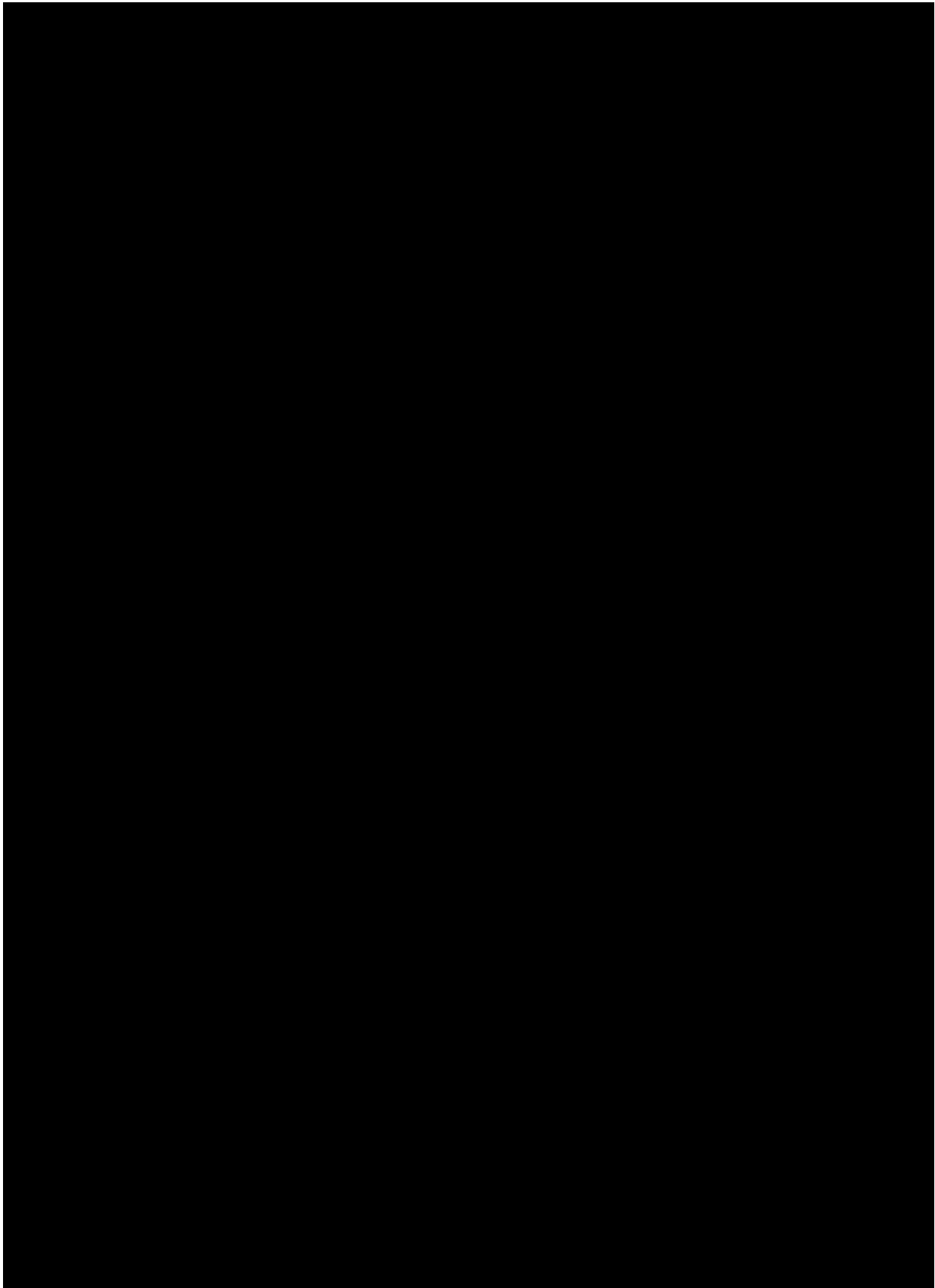
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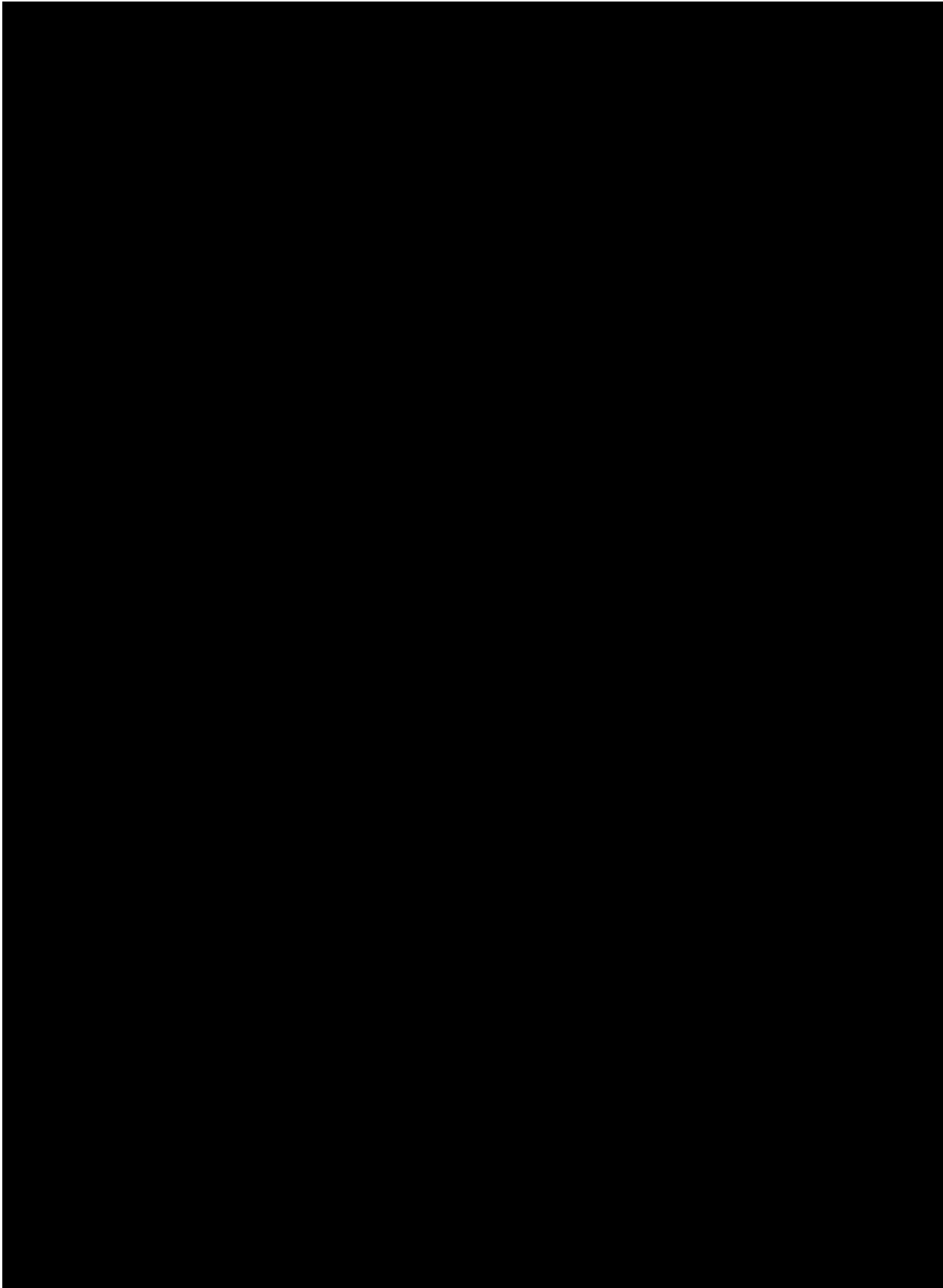
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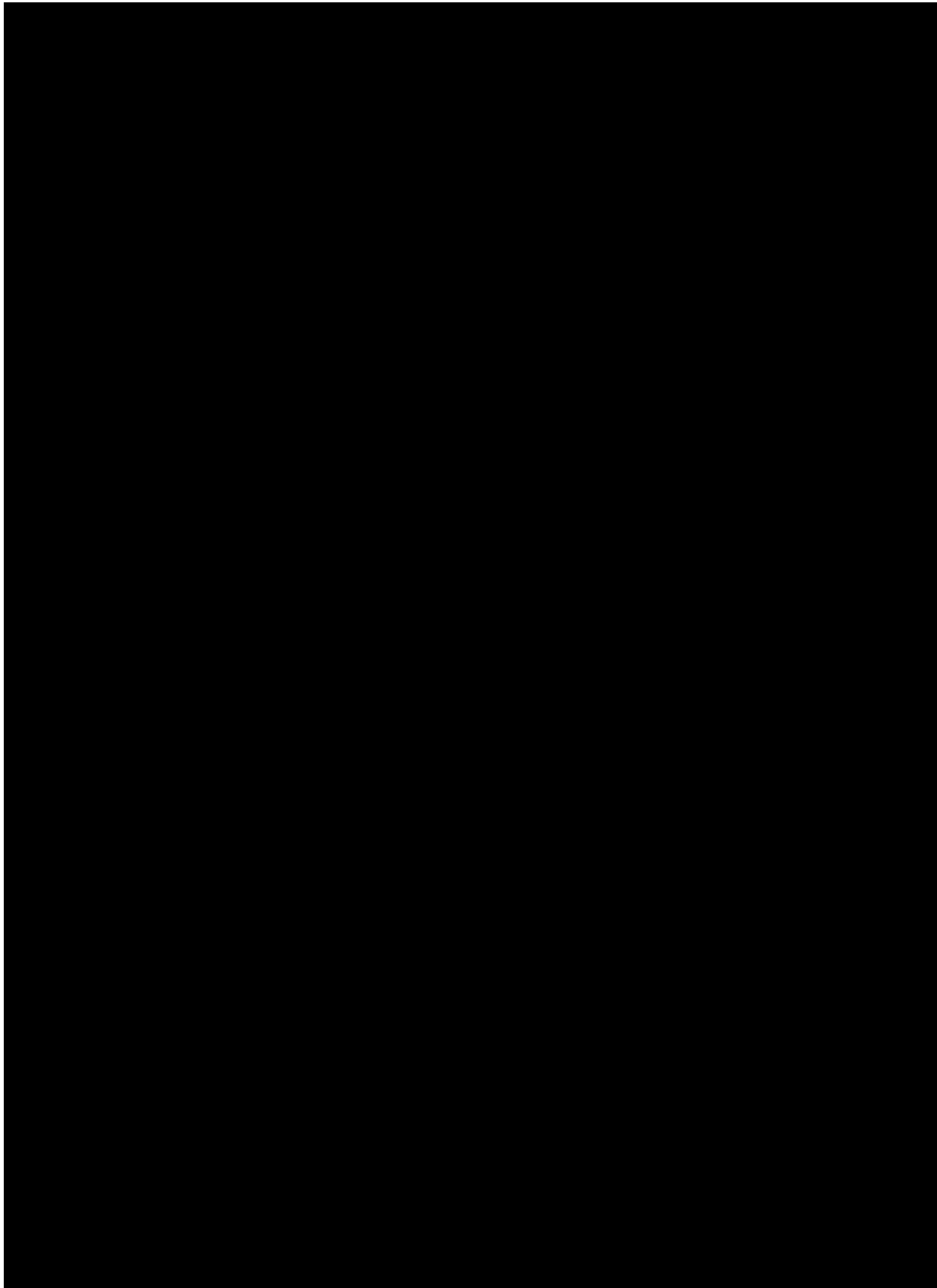
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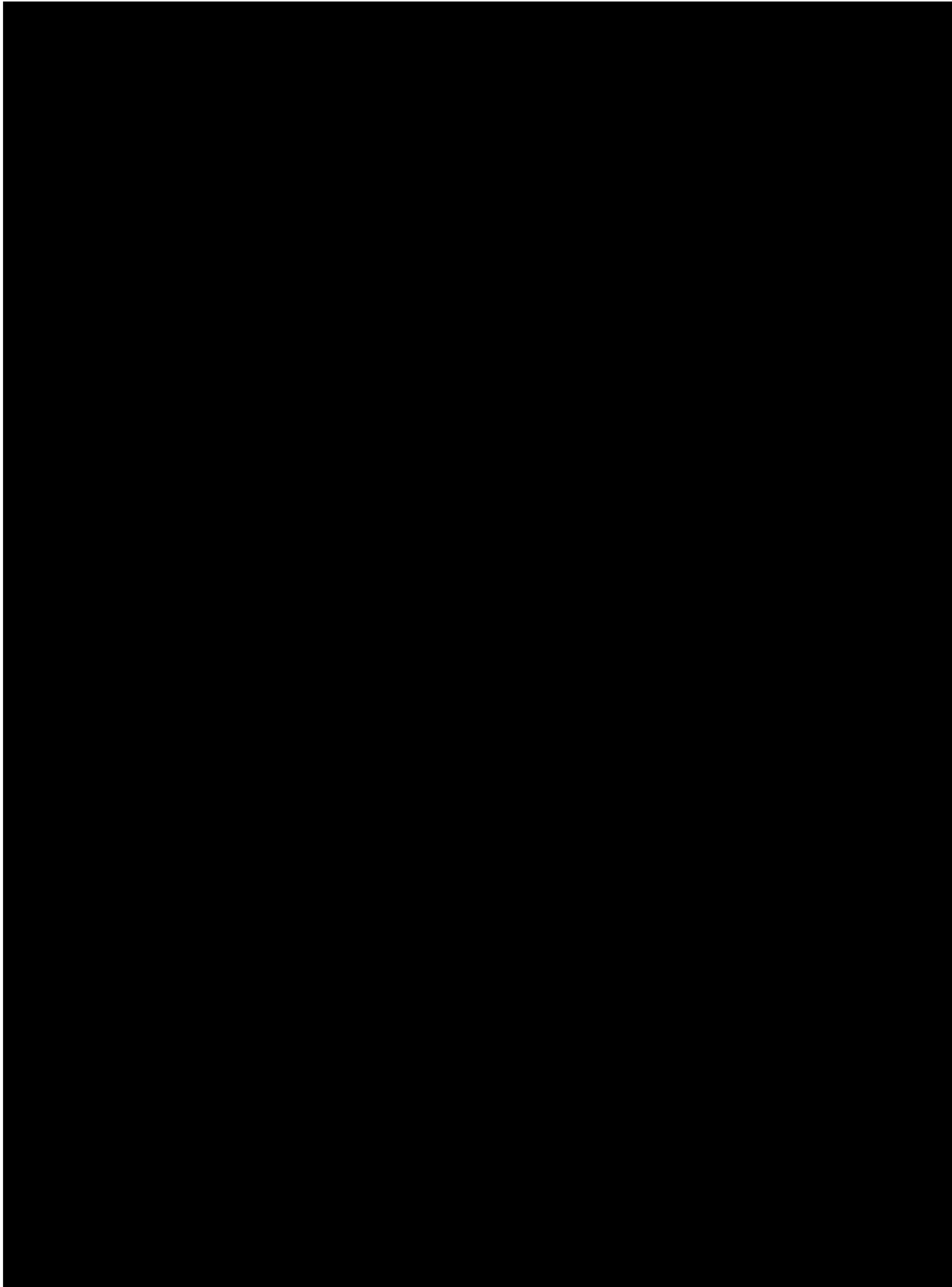


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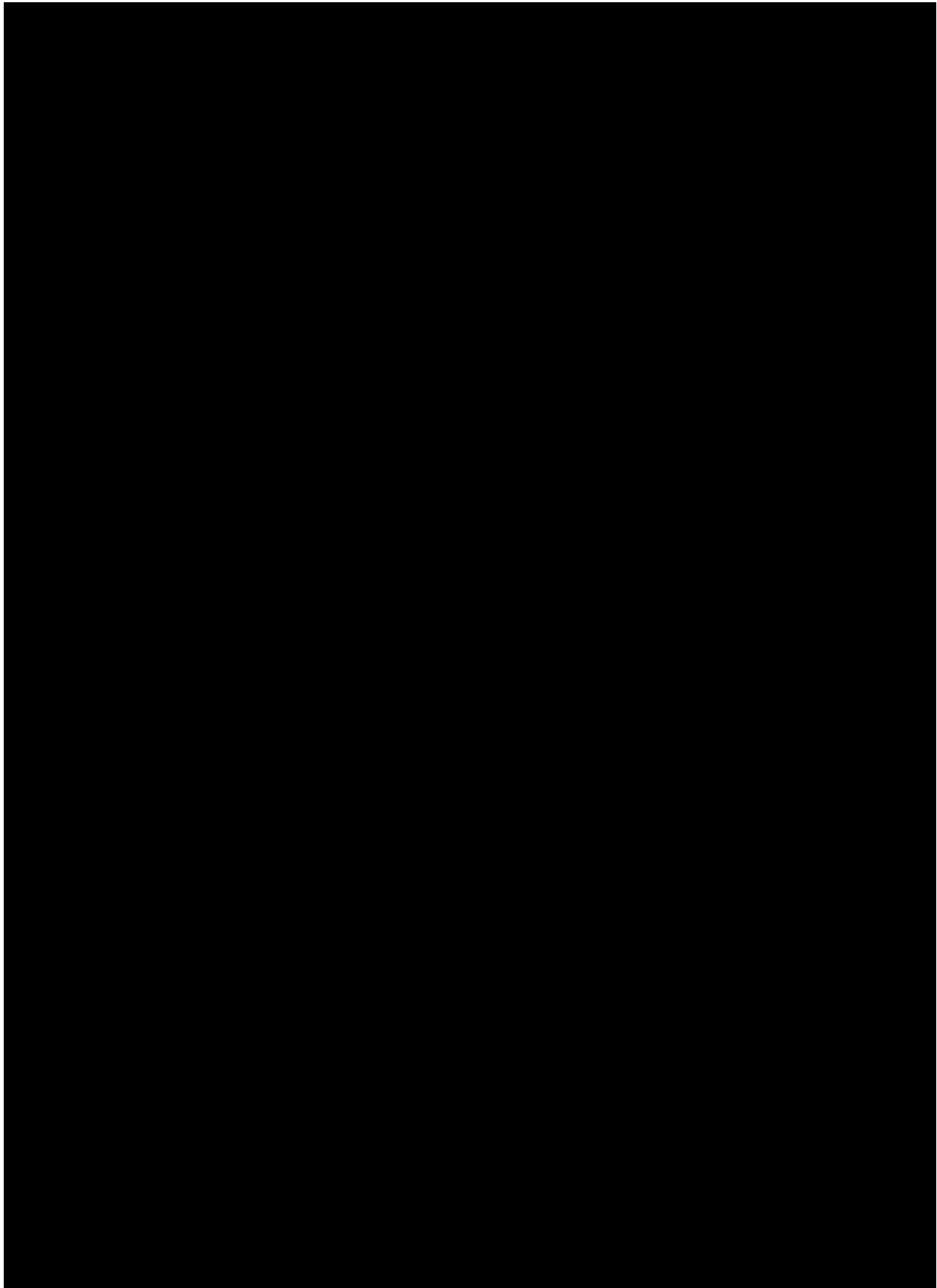




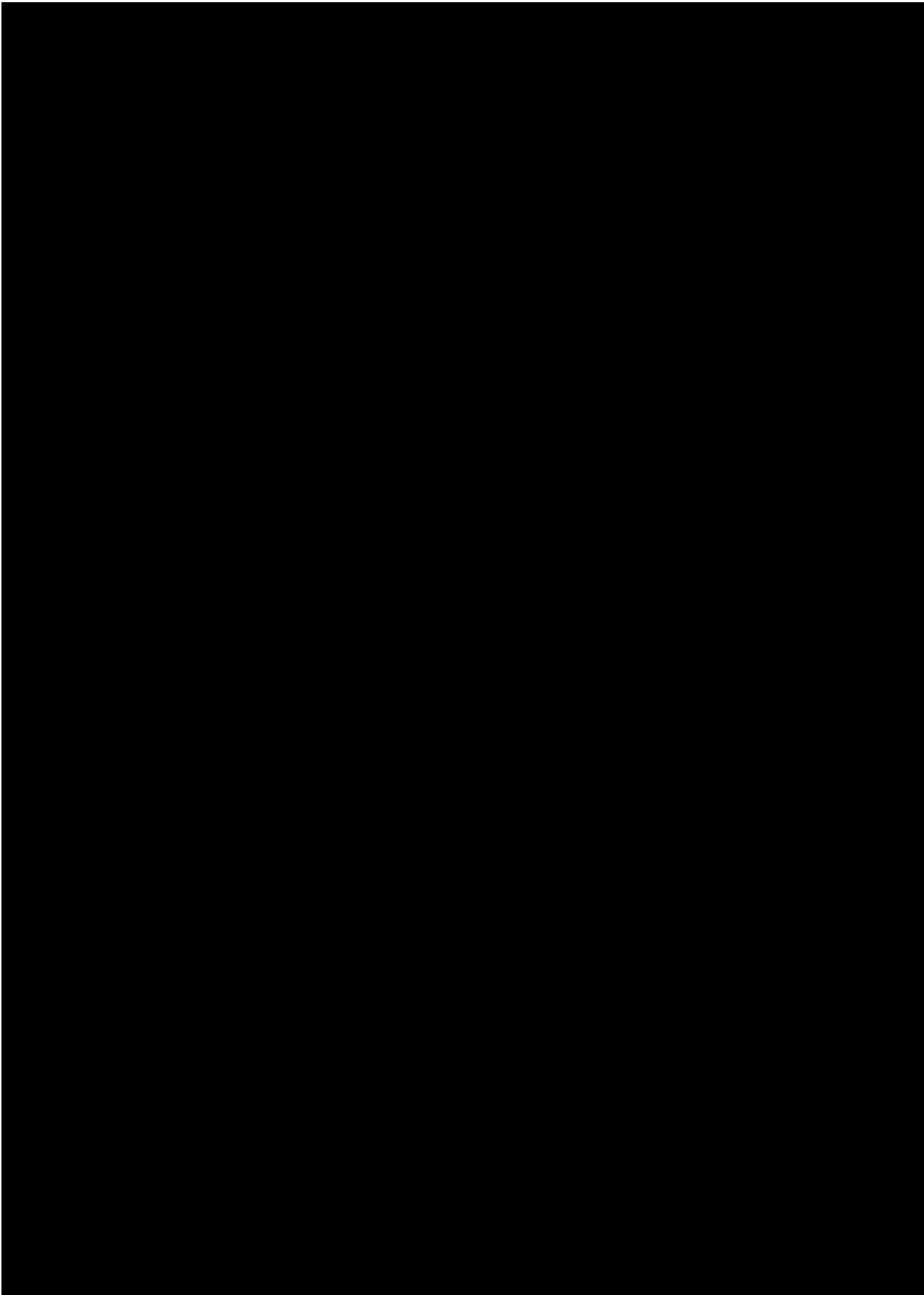
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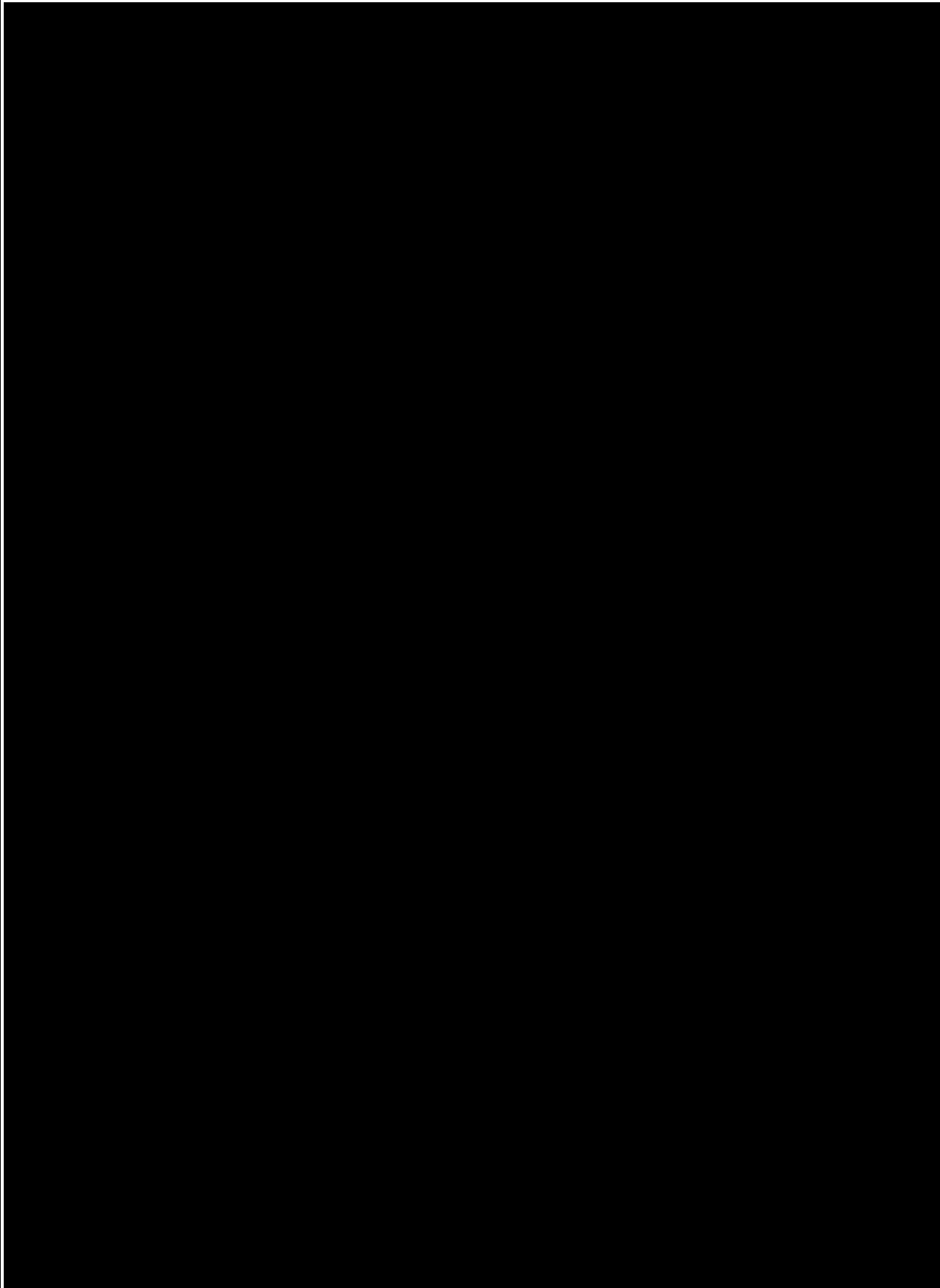
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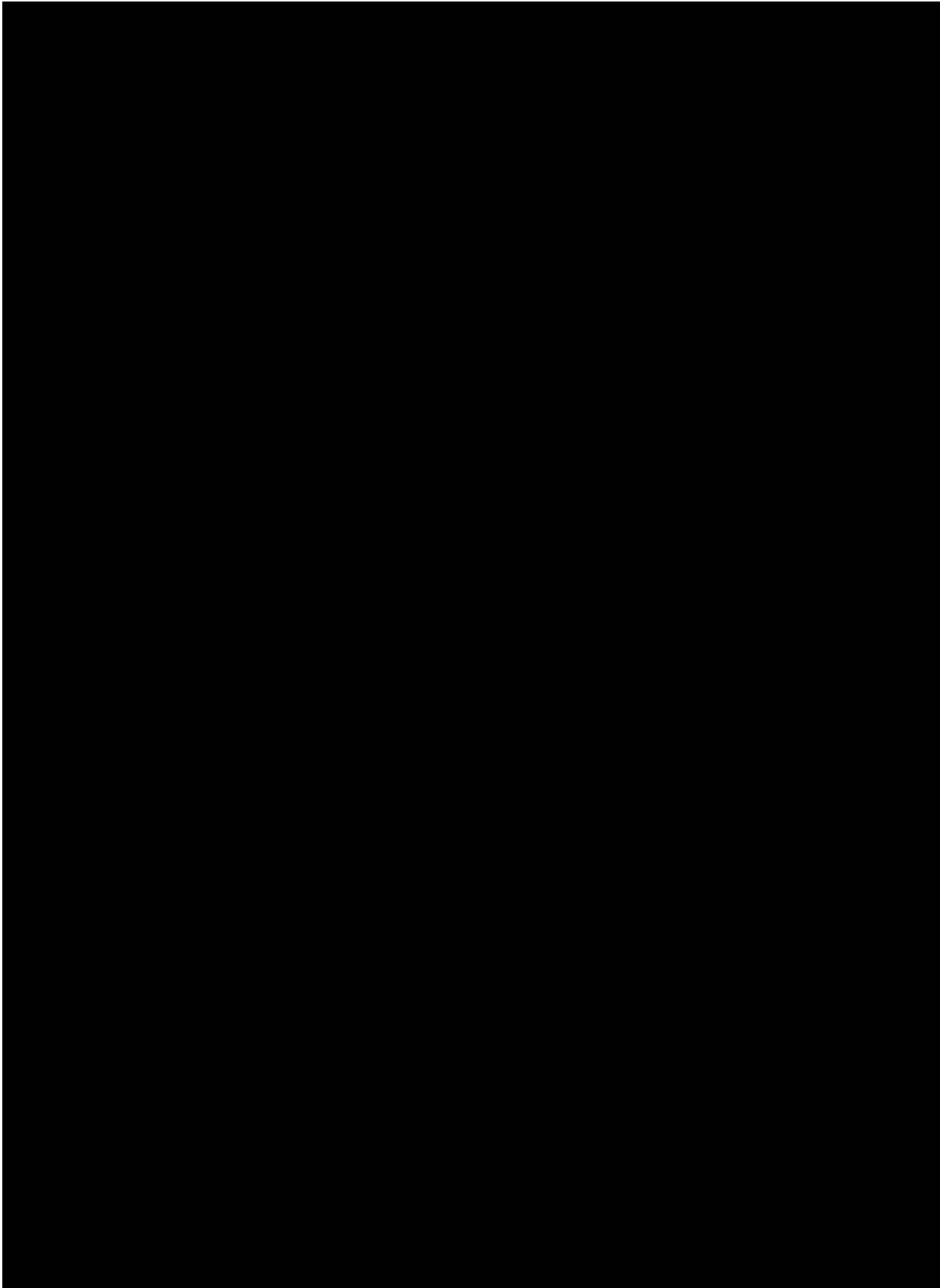
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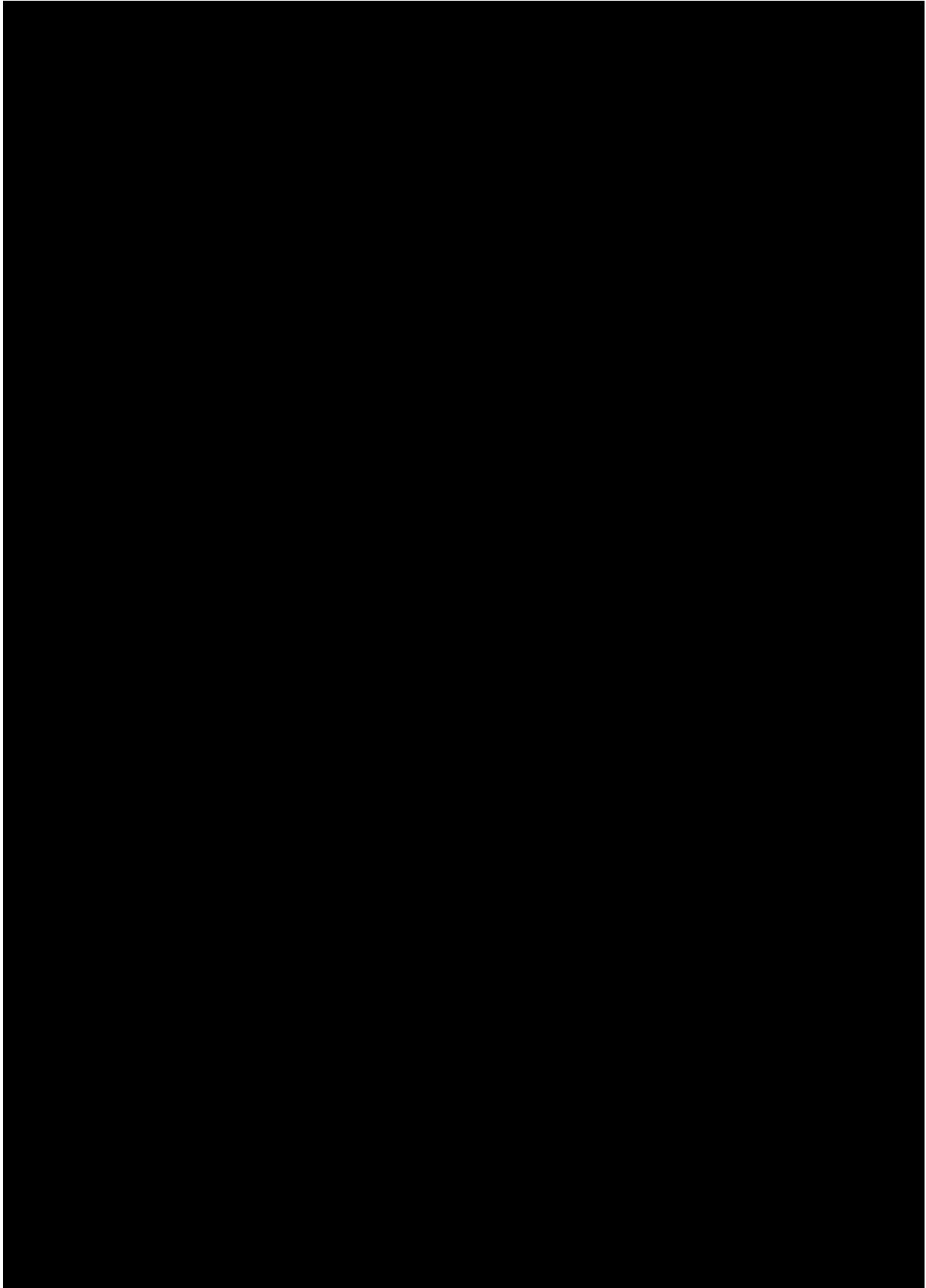
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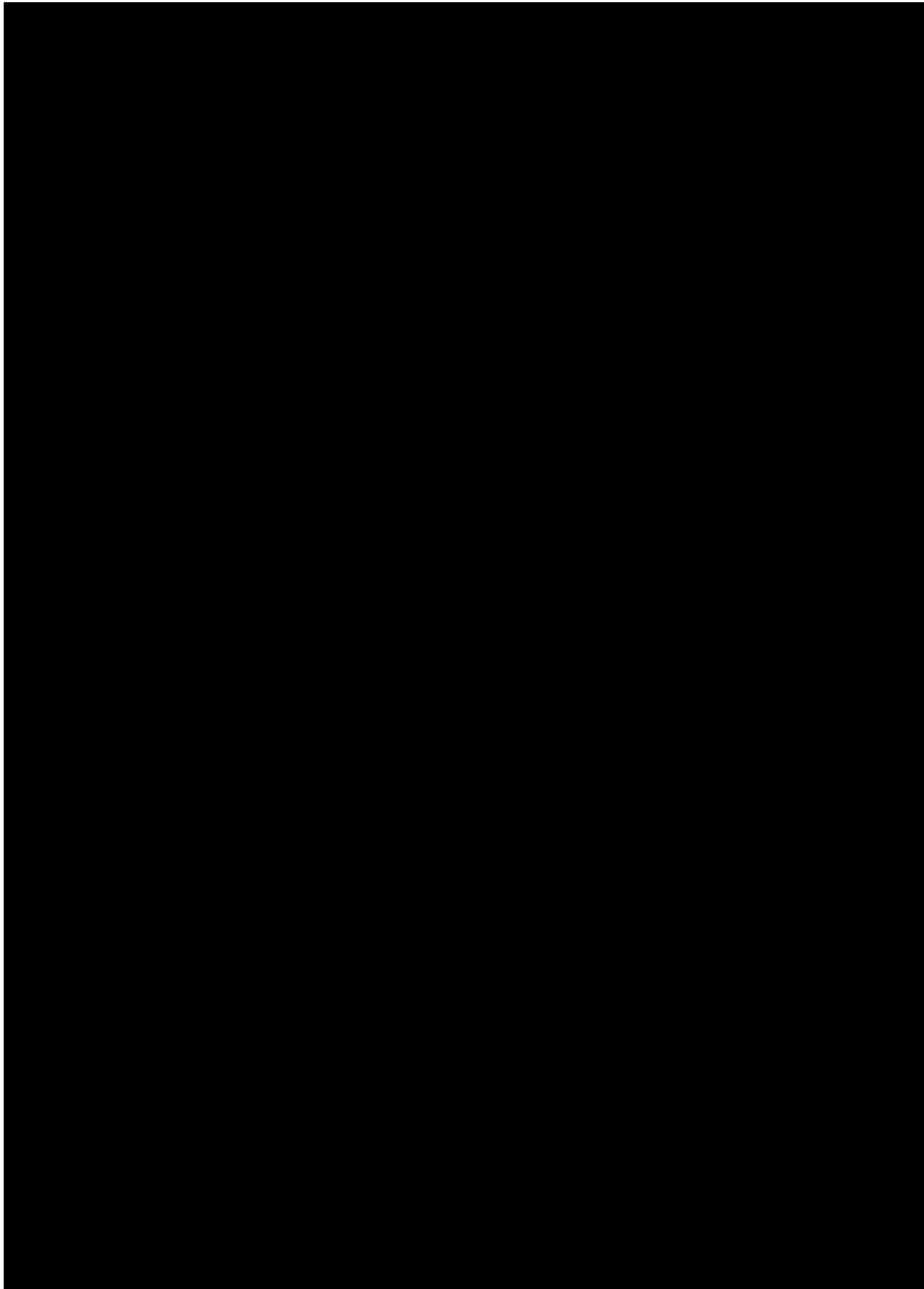
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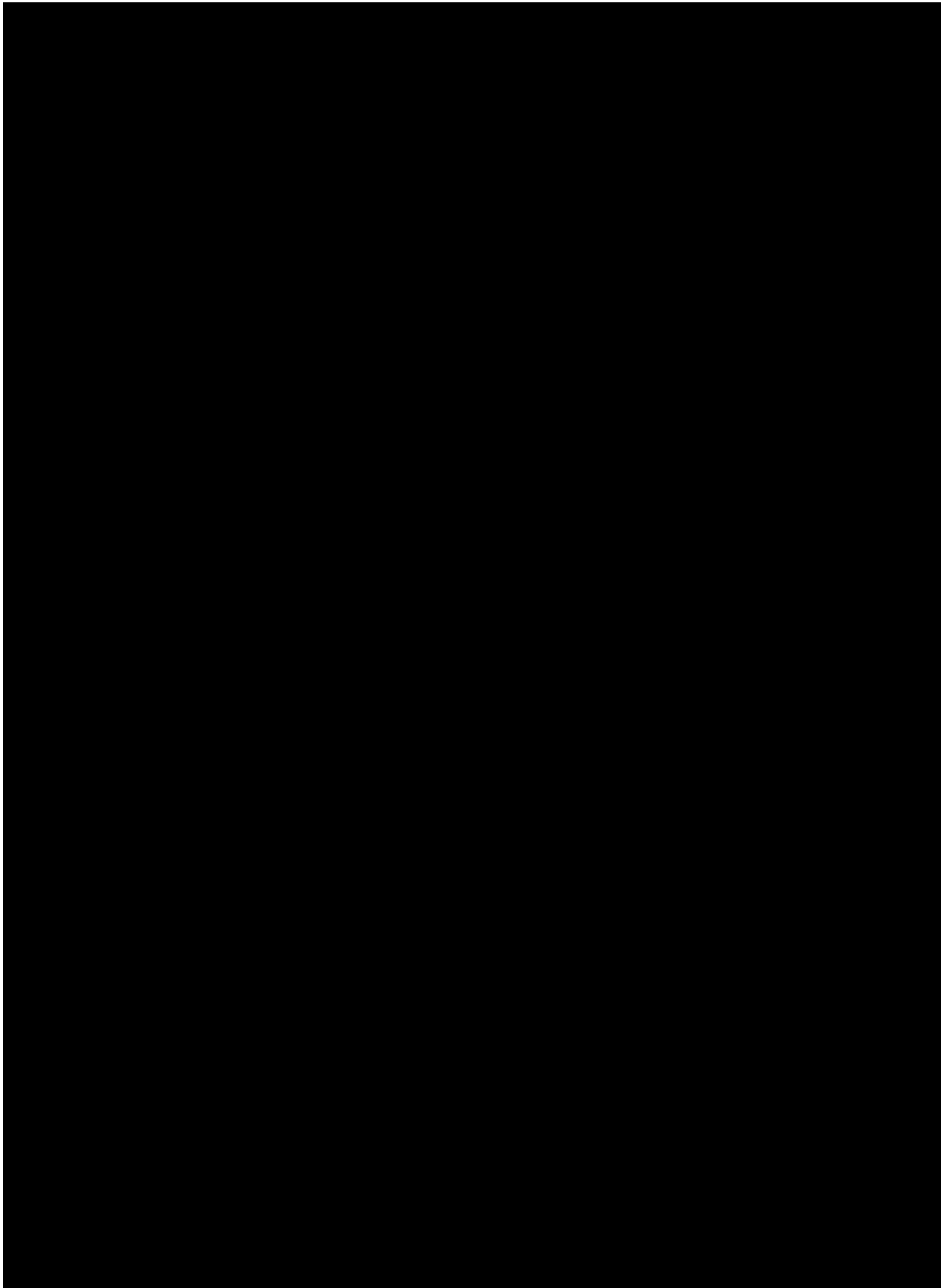
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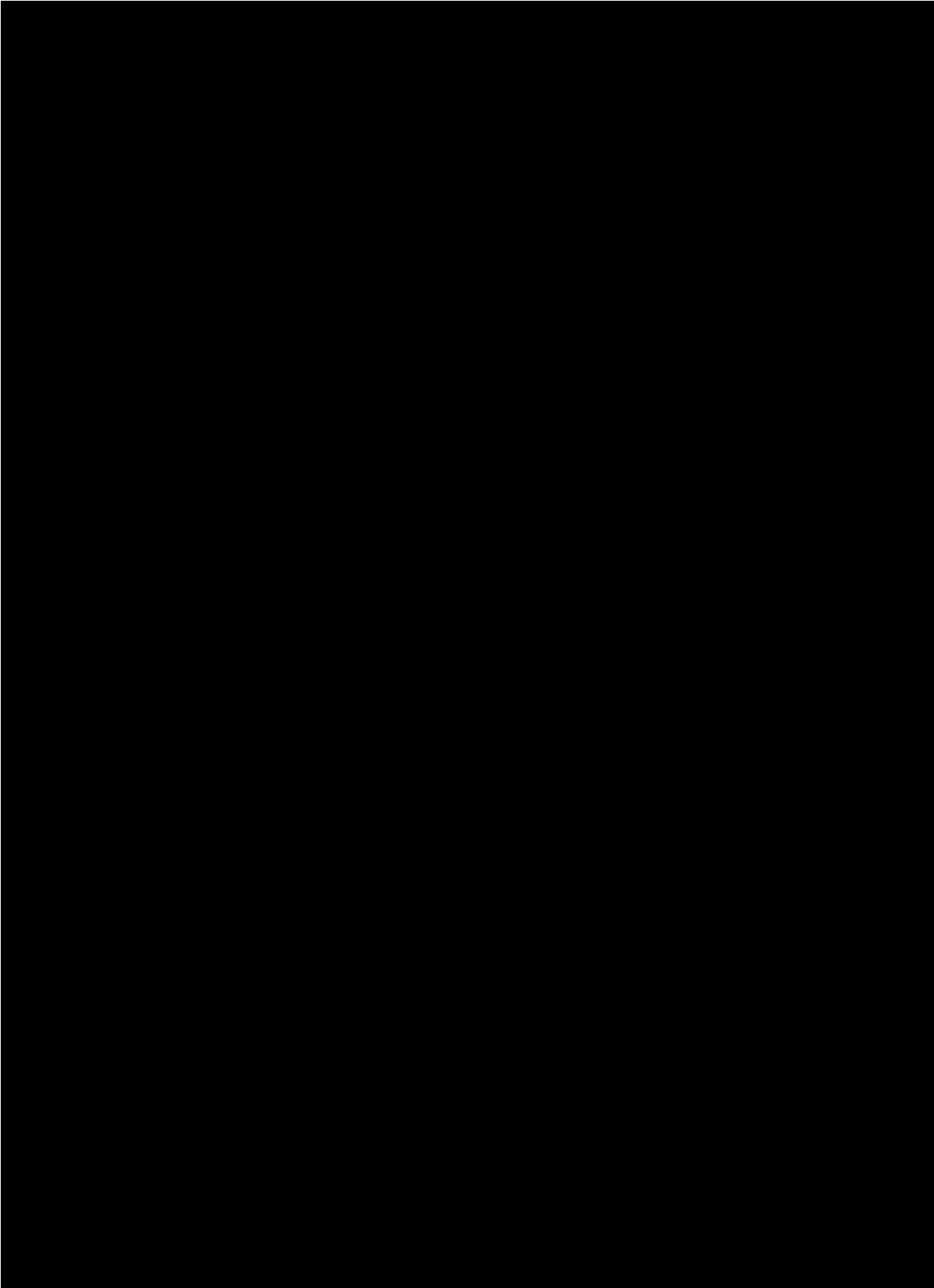


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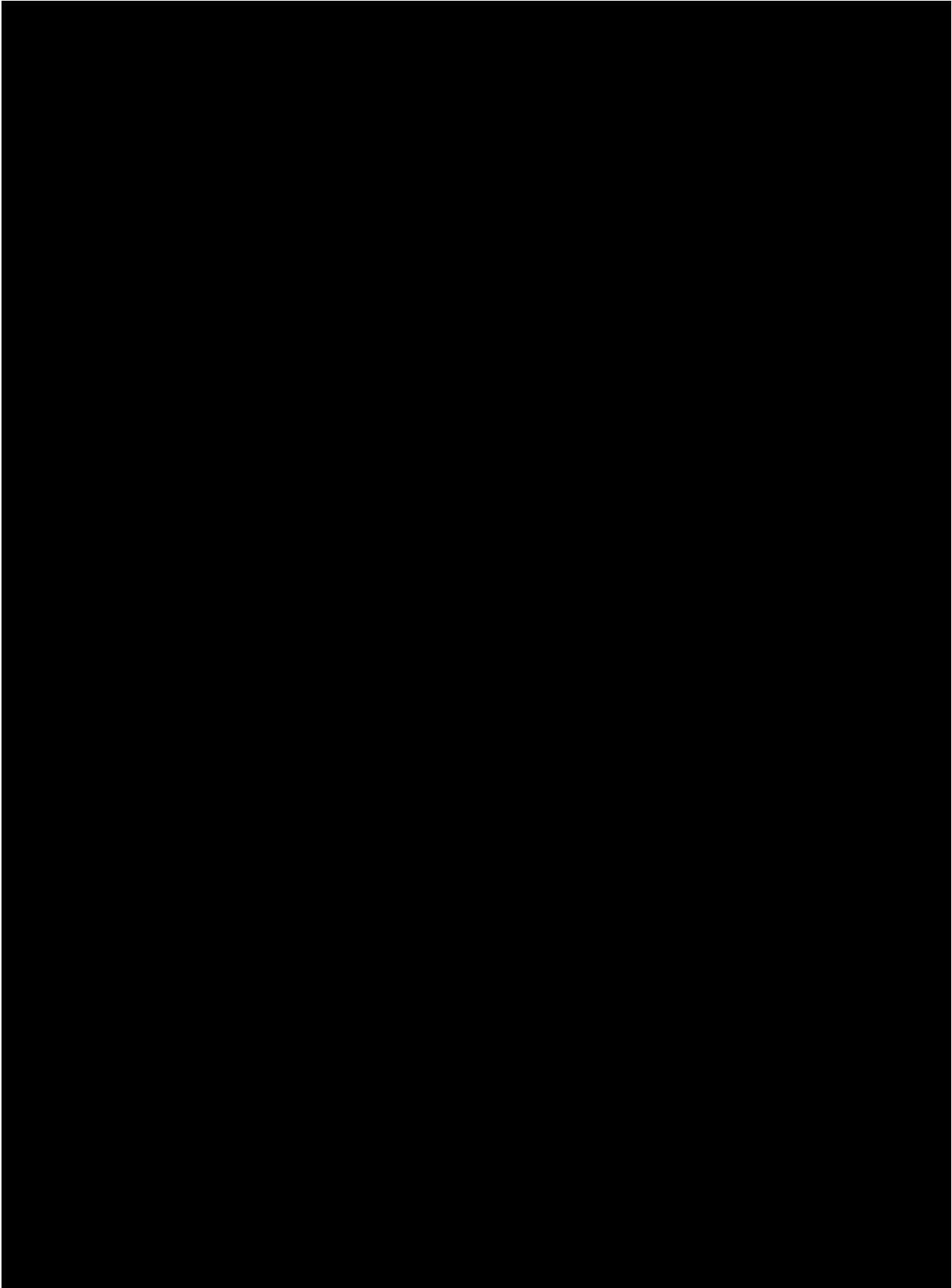




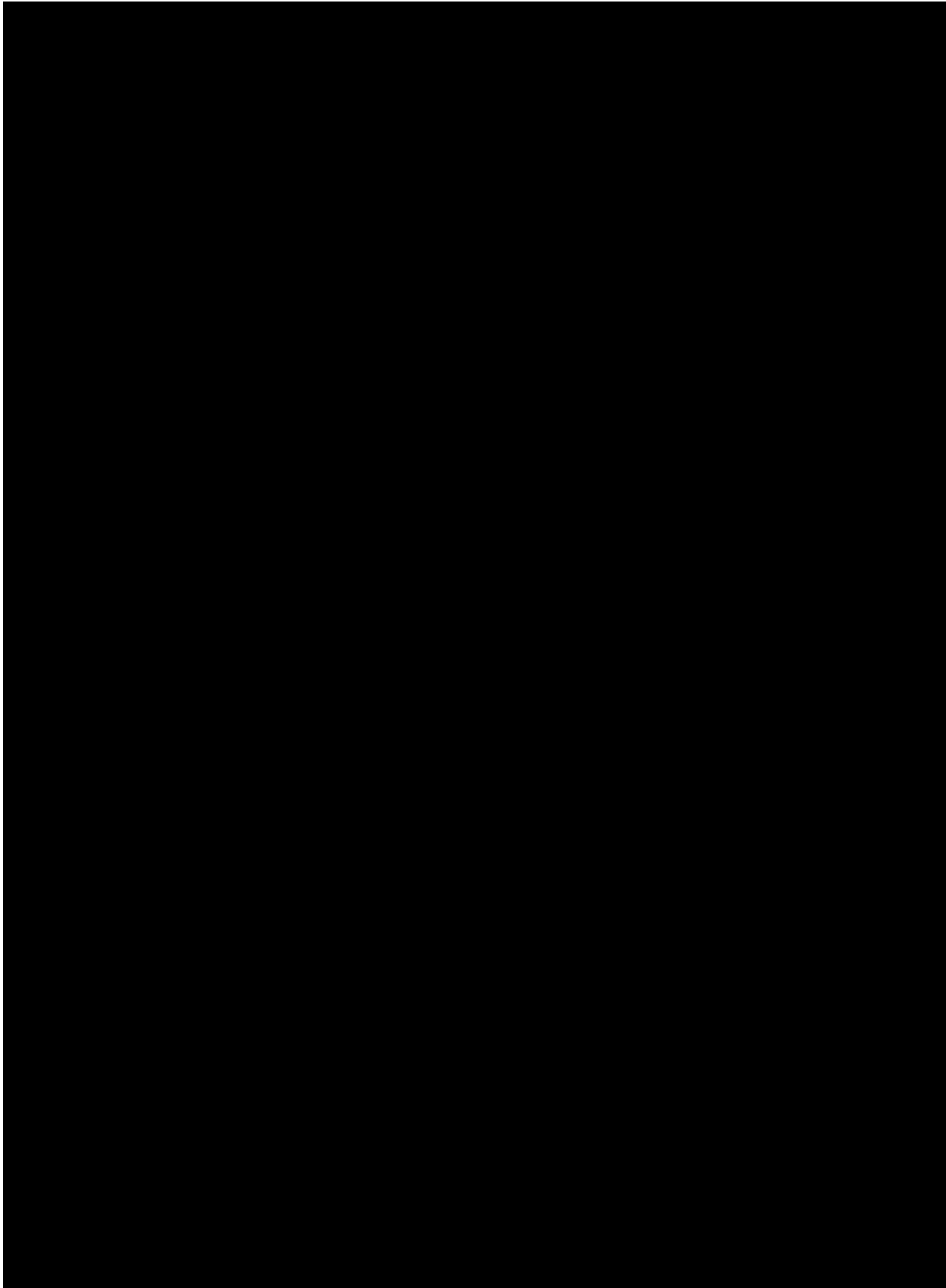
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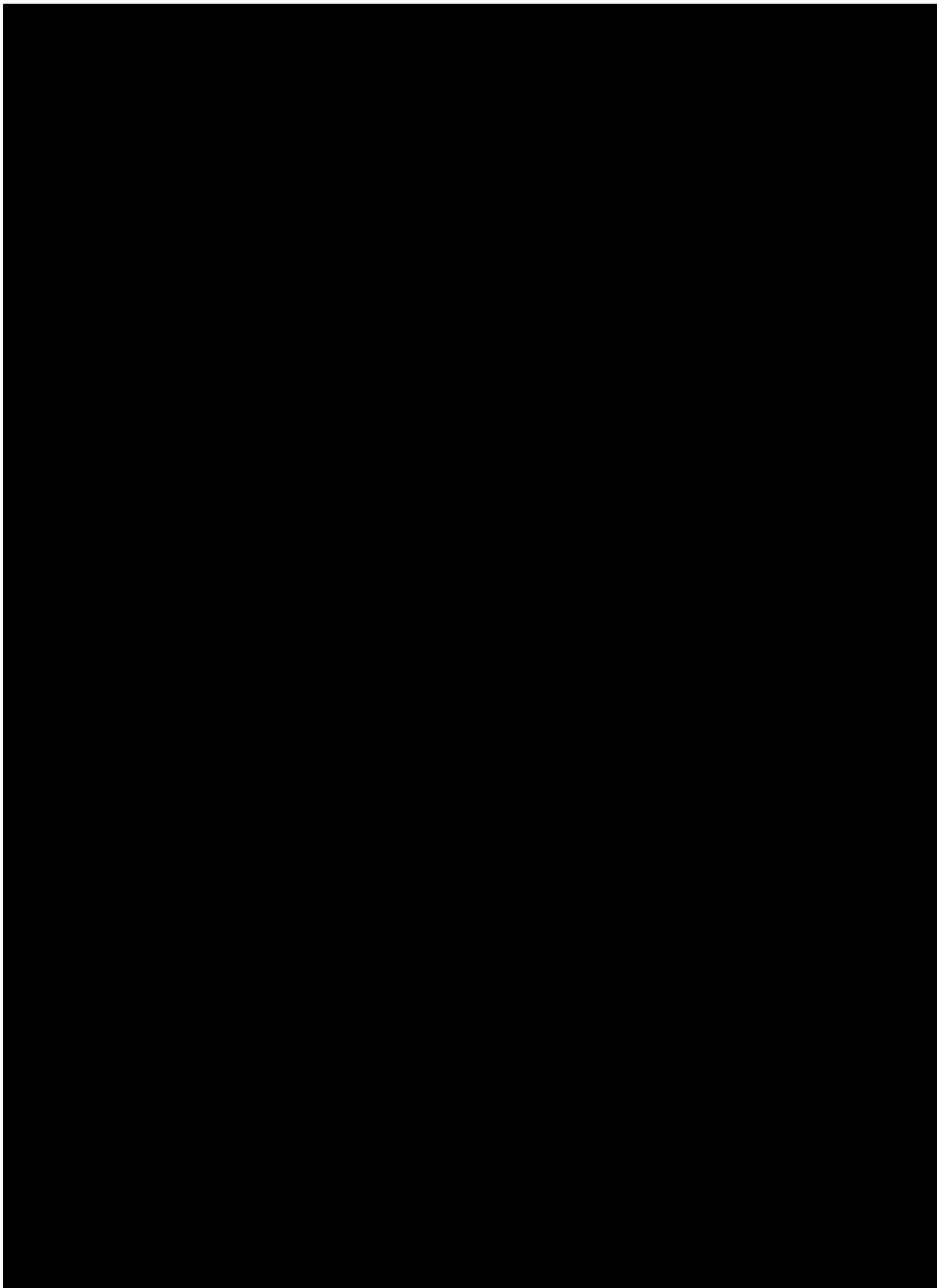
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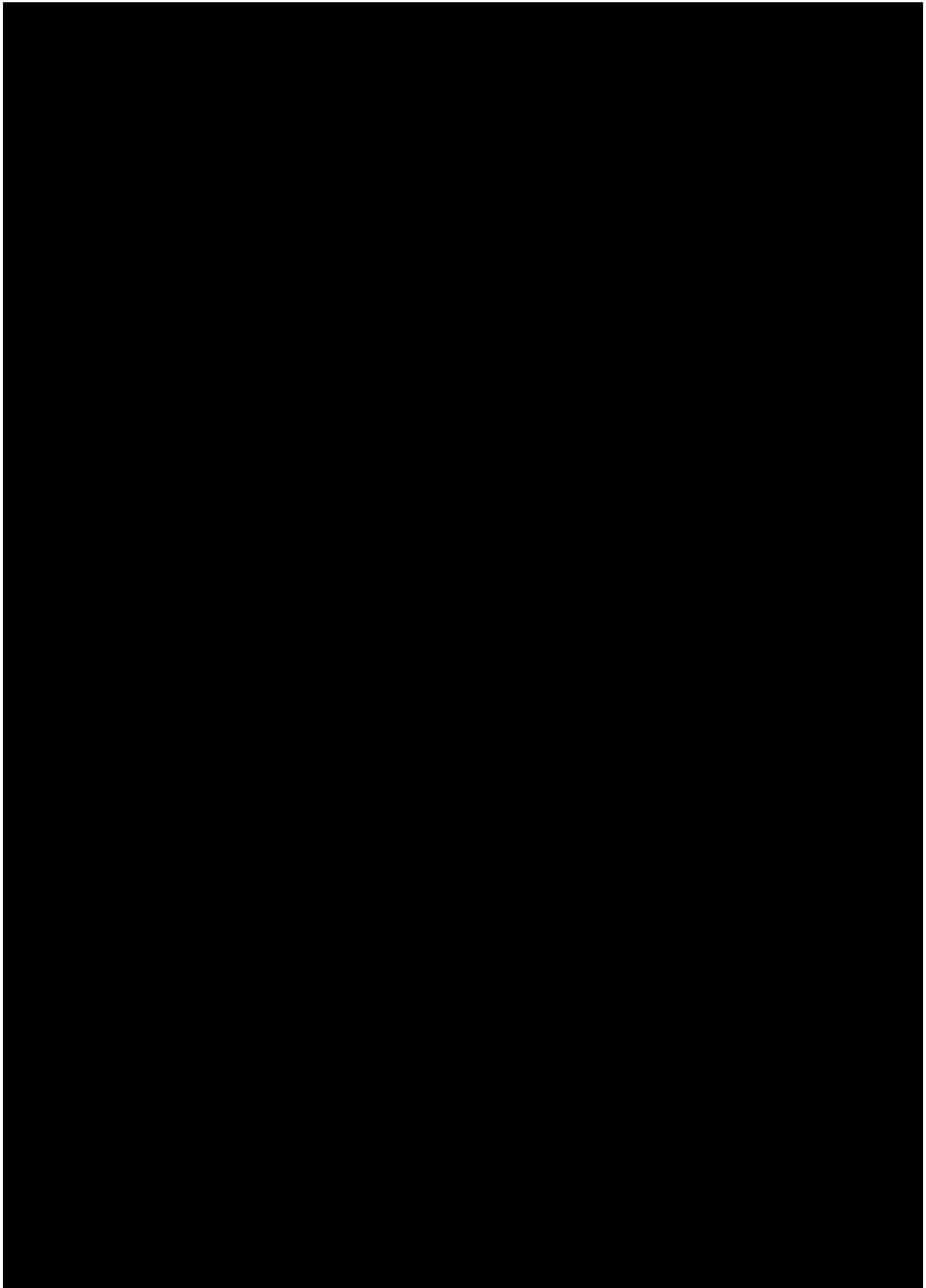
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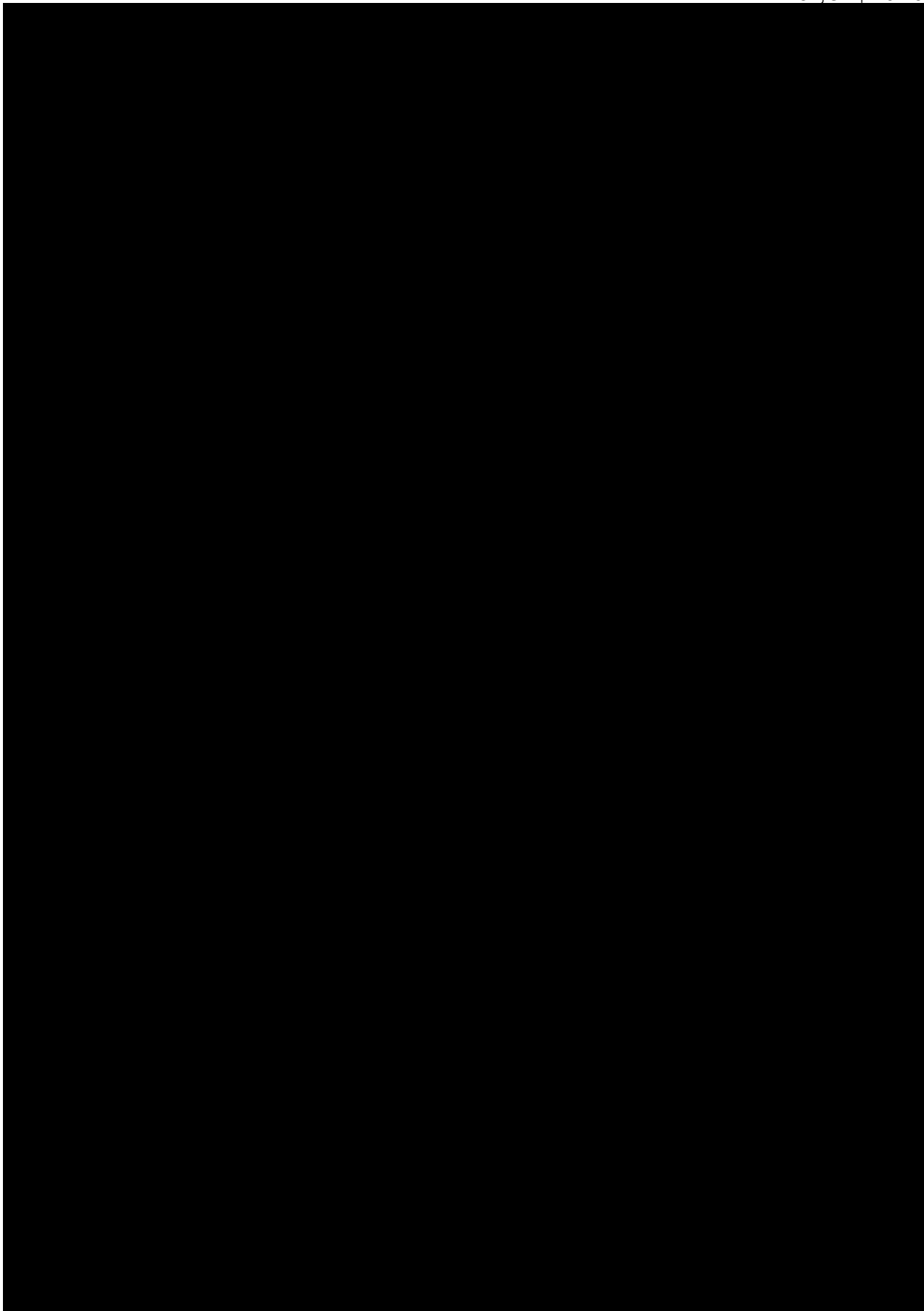
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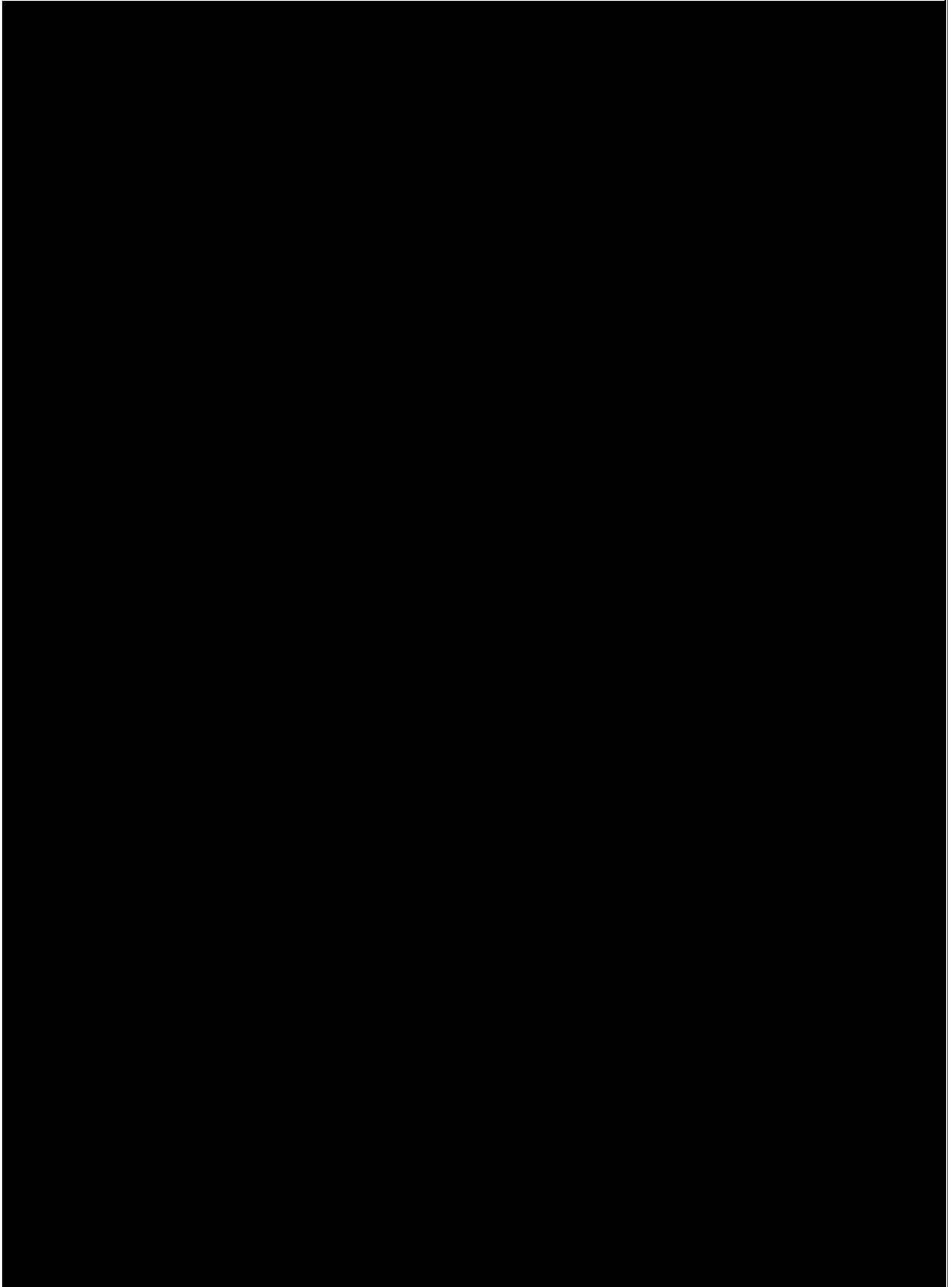
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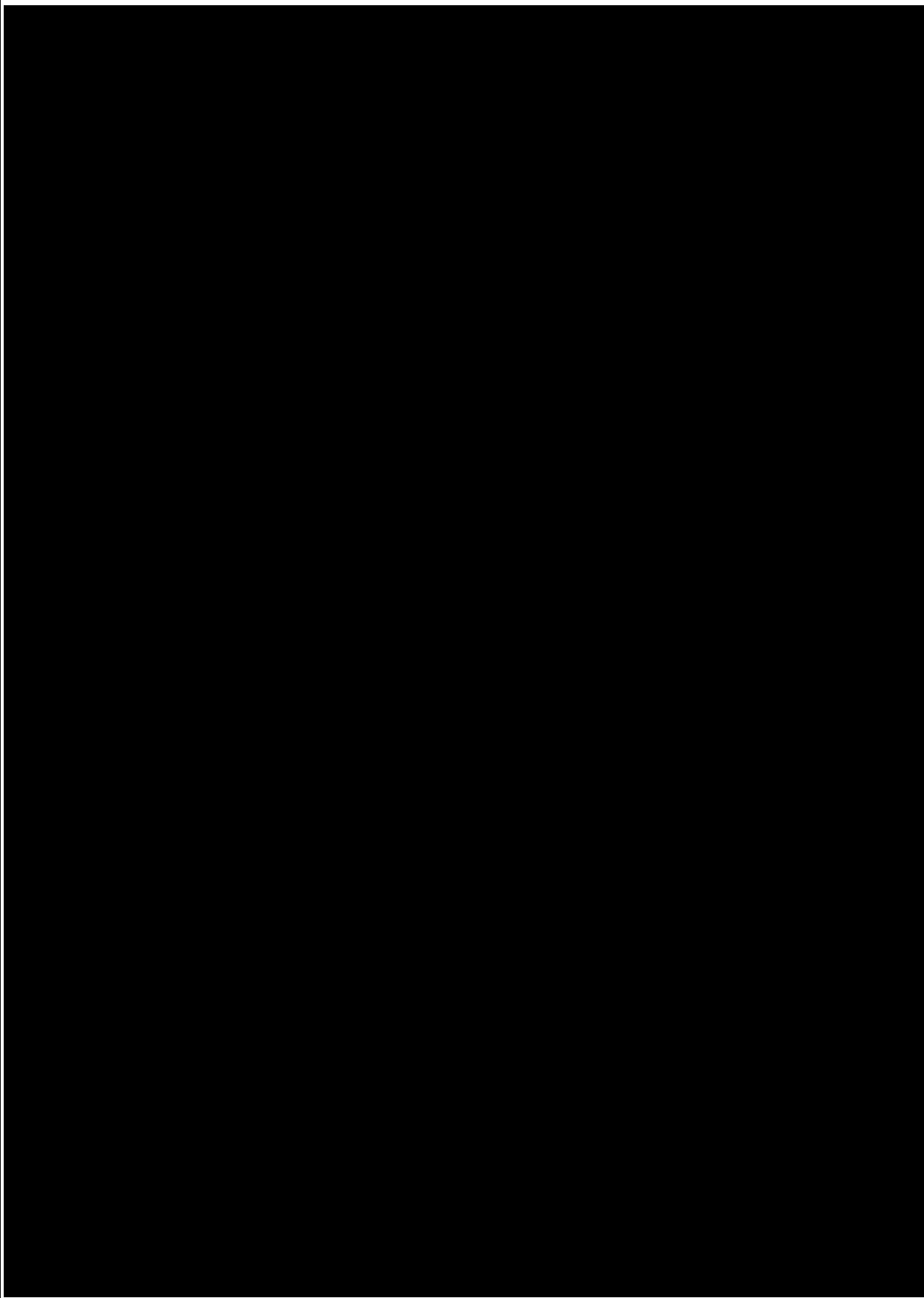
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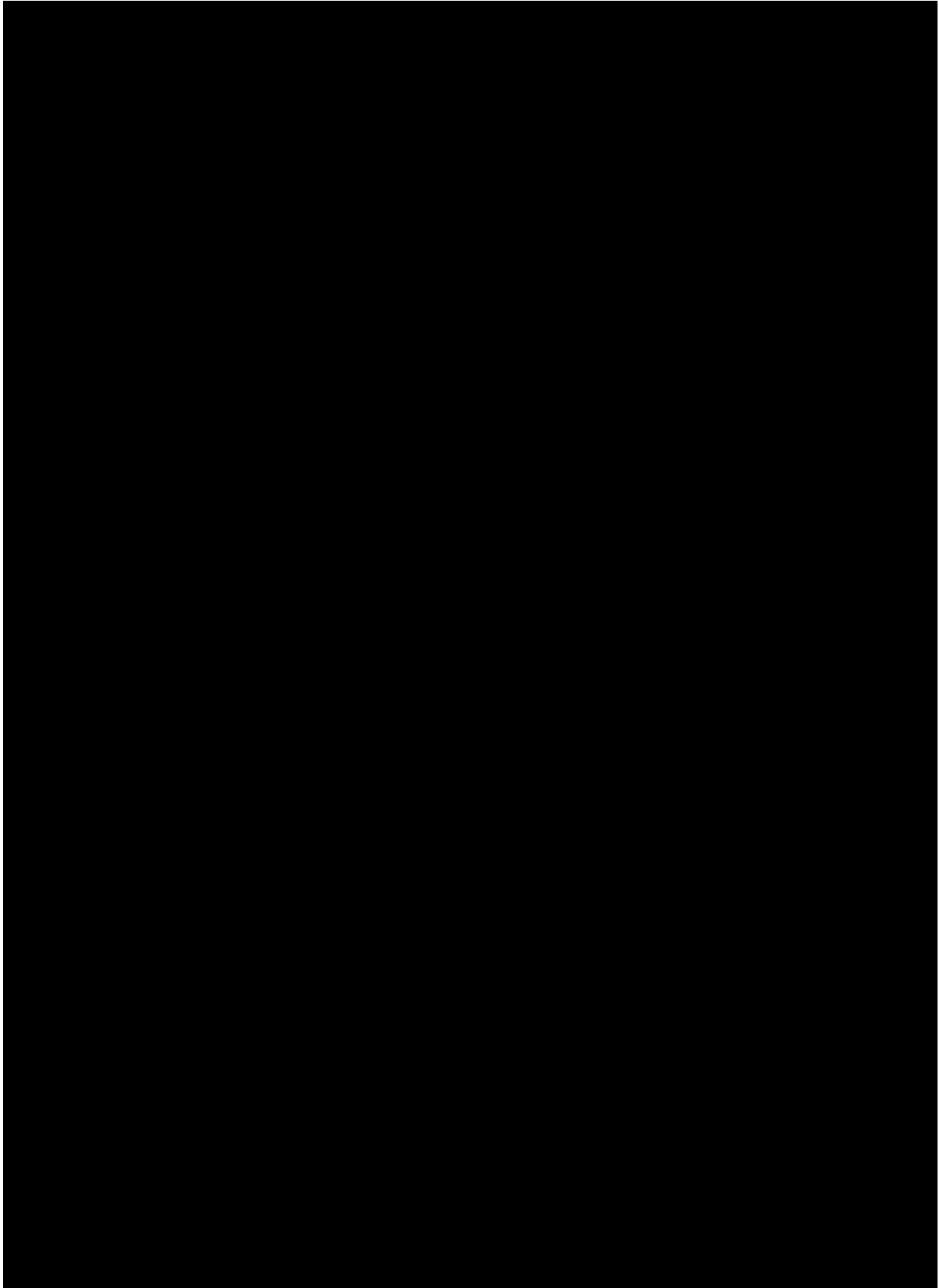


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1           No further point?

2           MS. COHEN SMUTNY: I'm sorry, I need to make  
3 a correction from before. This is about the  
4 attendance in the room. I misunderstood, and Ms. Ruth  
5 Teitelbaum, since we last had spoken, she has not been  
6 in the room. She is only an advisor to the  
7 Arbitration Committee, and for that reason she's not  
8 any longer at the Hearing.

9           PRESIDENT TERCIER: Good. Thank you very  
10 much.

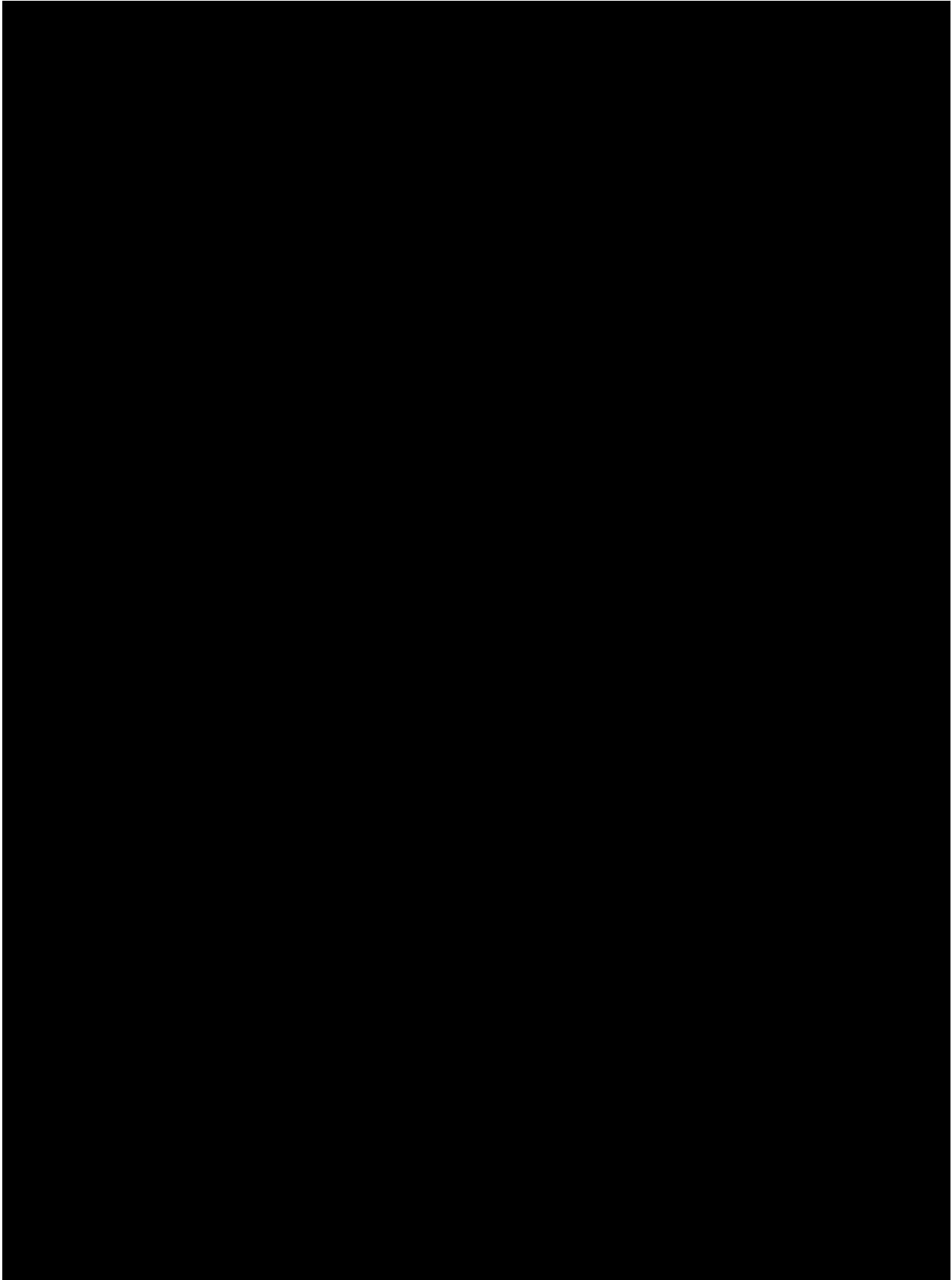
11           Fine. Please, Ms. Radjai, you have the  
12 floor.

13           MS. RADJAI: Thank you, Mr. President.

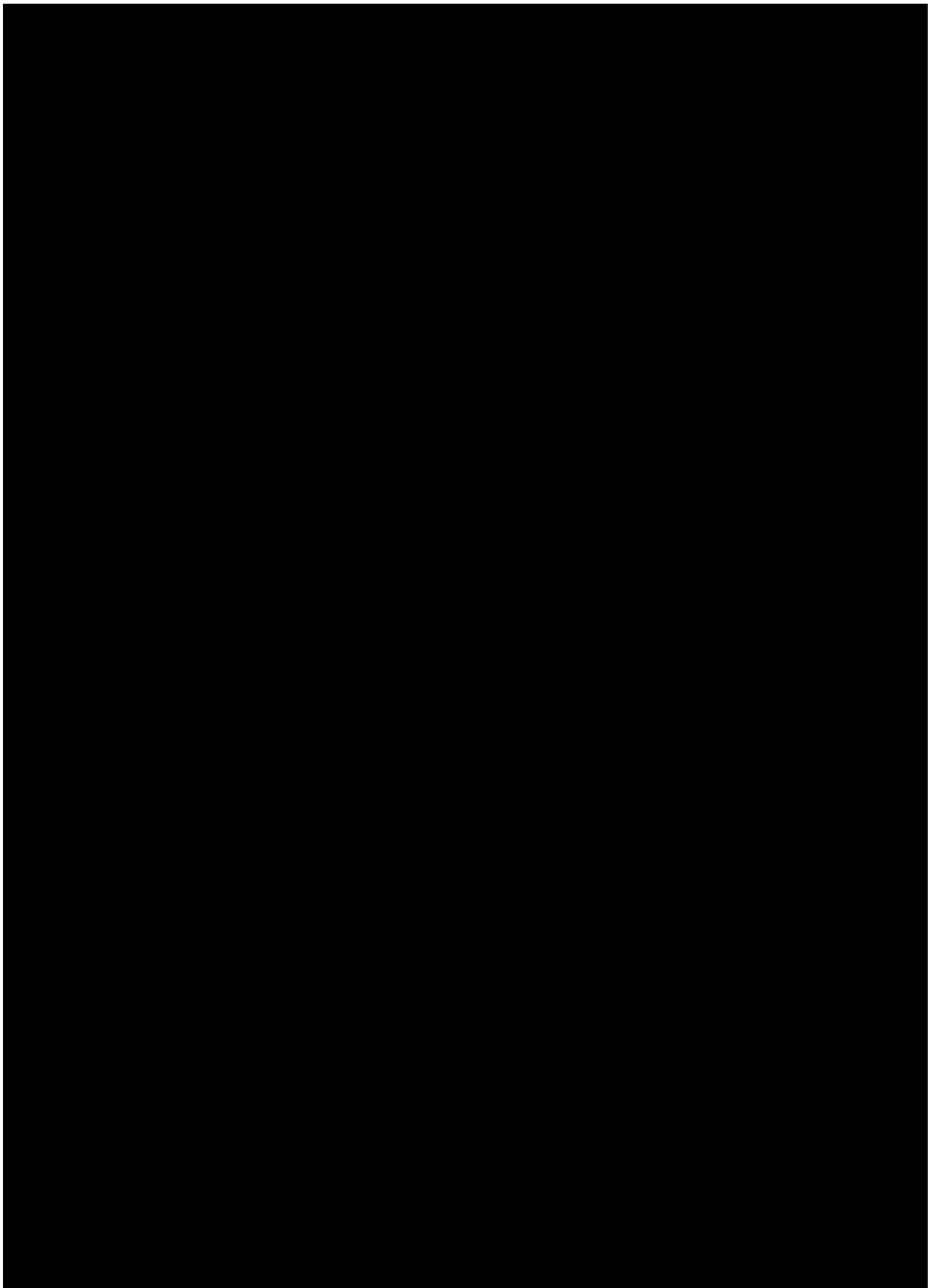
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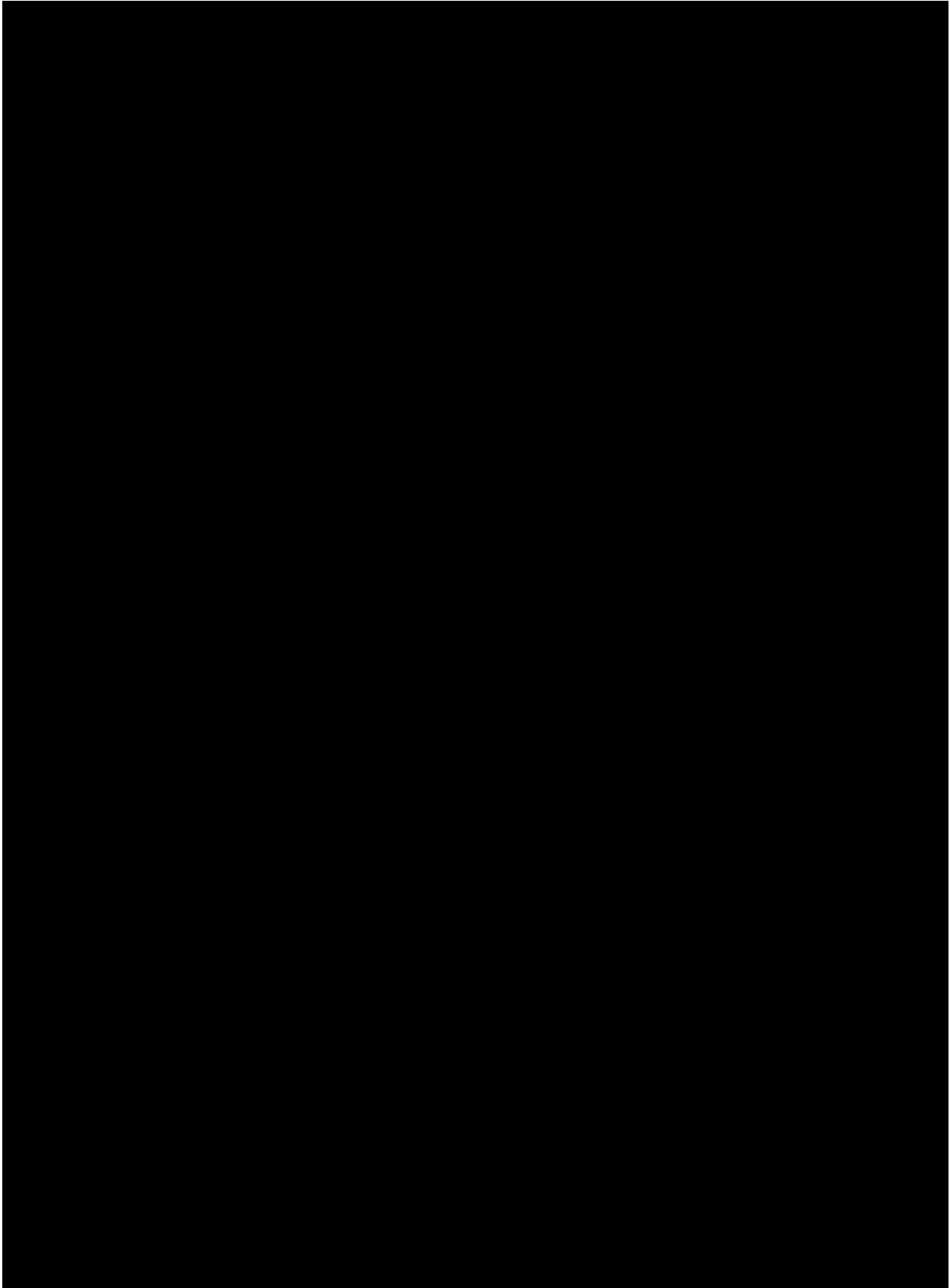
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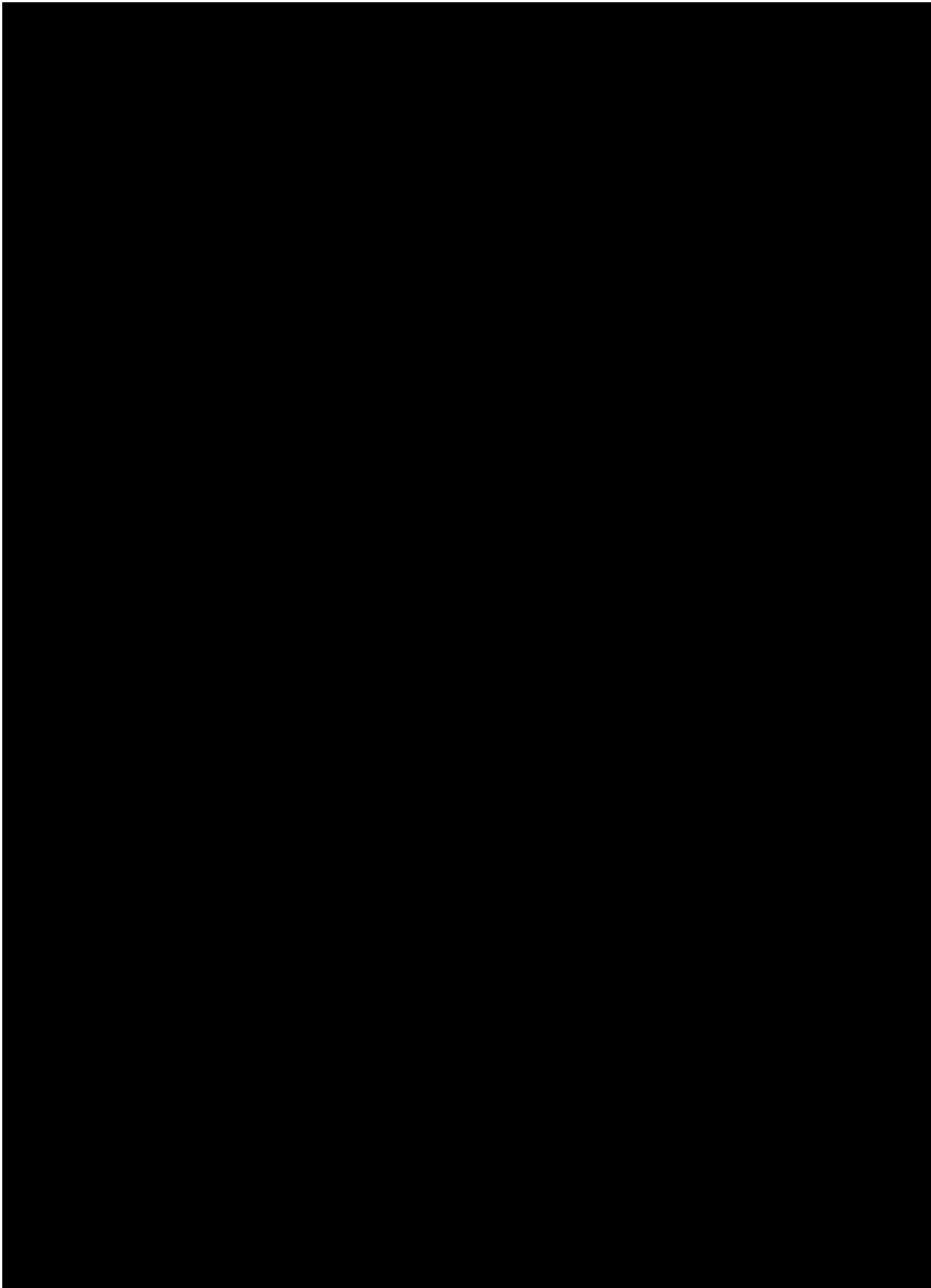
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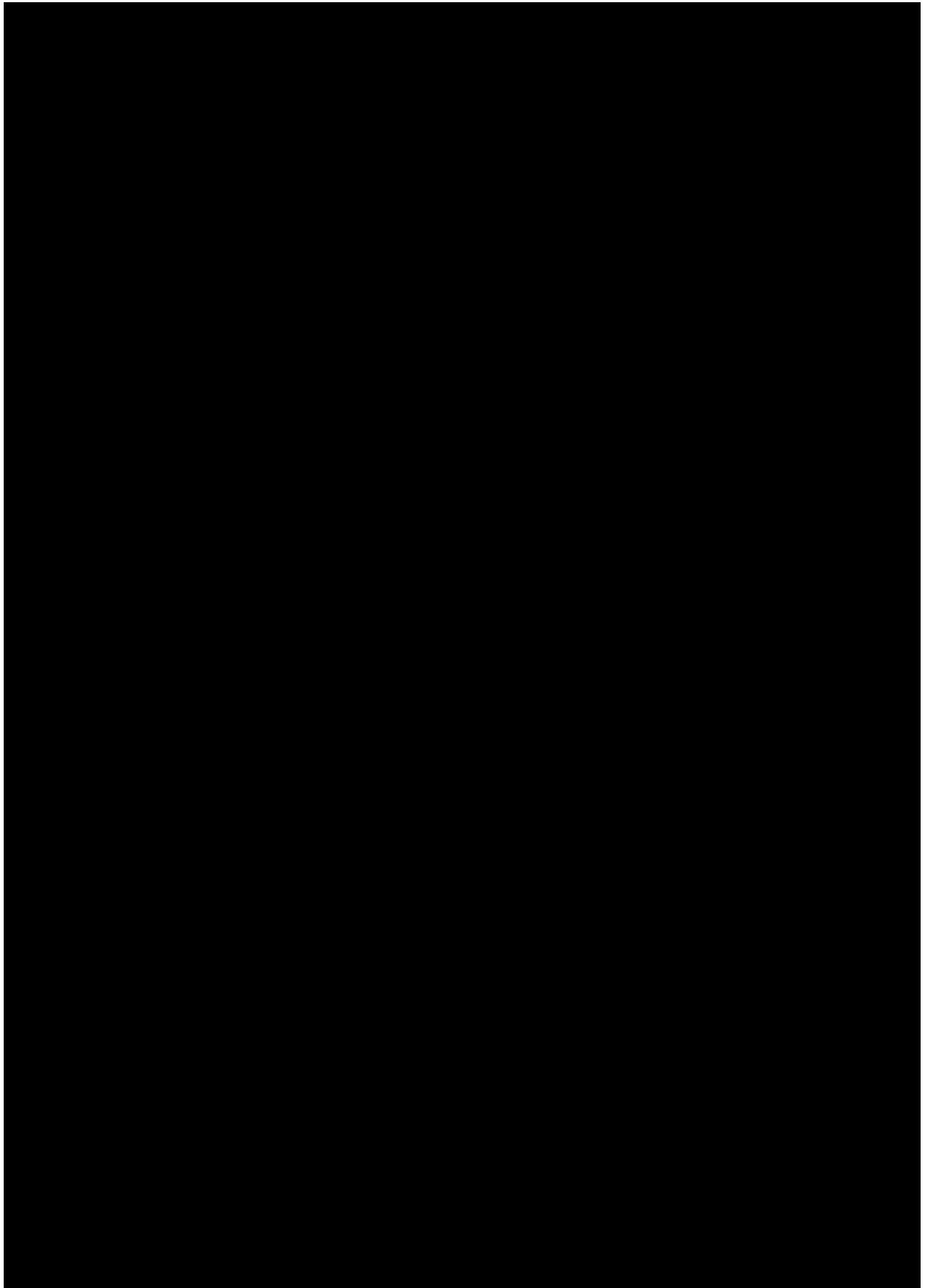


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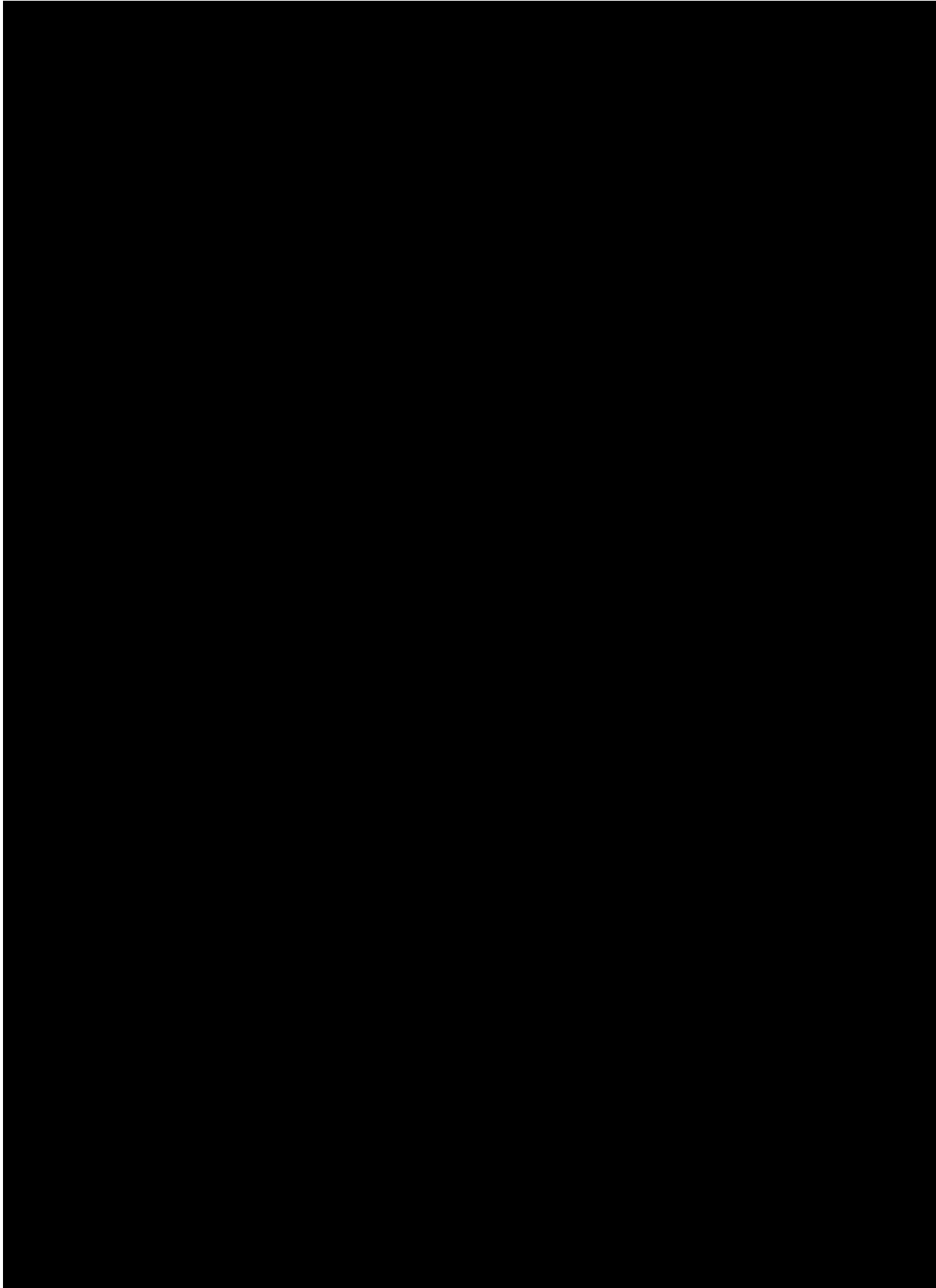




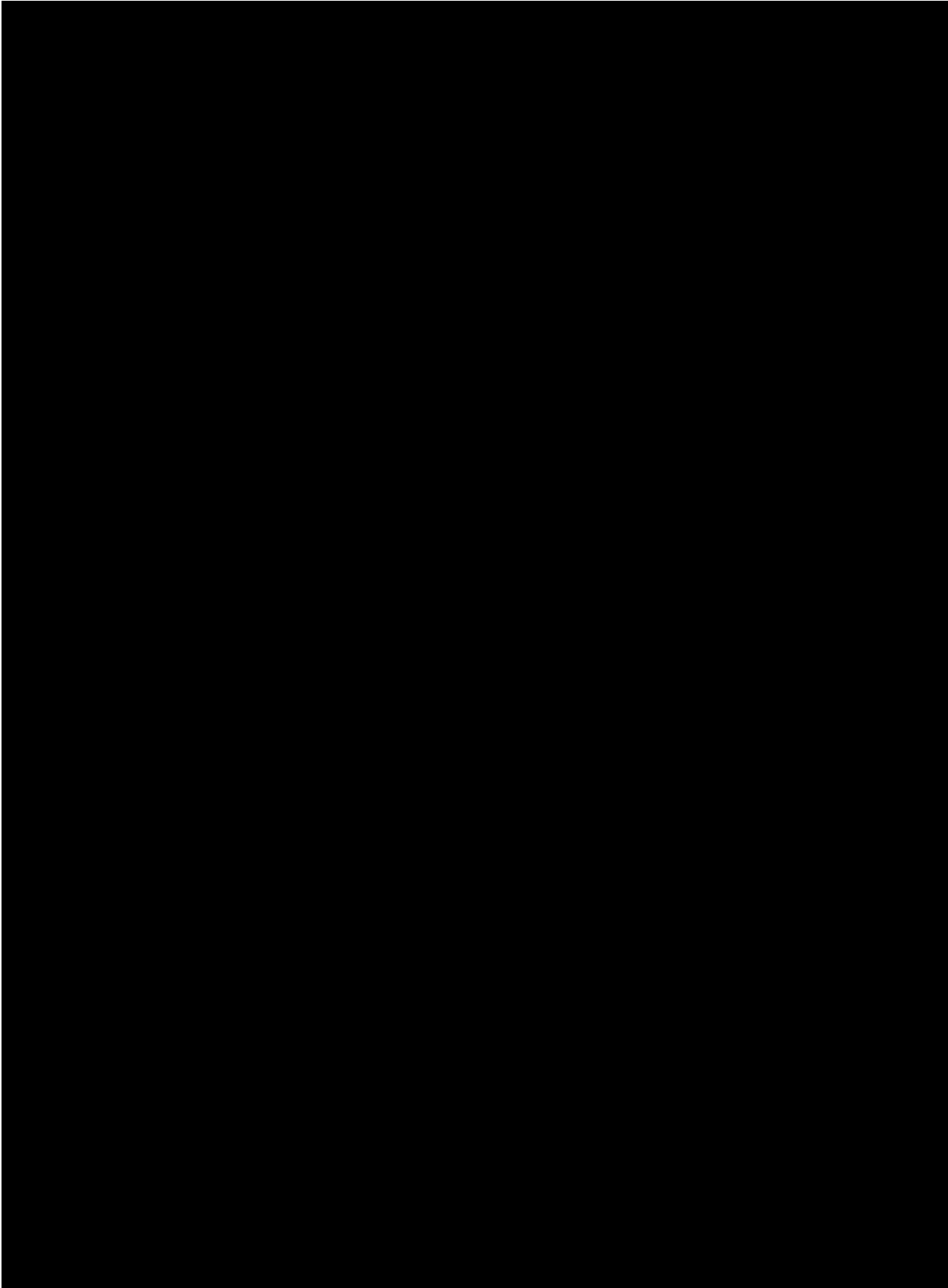
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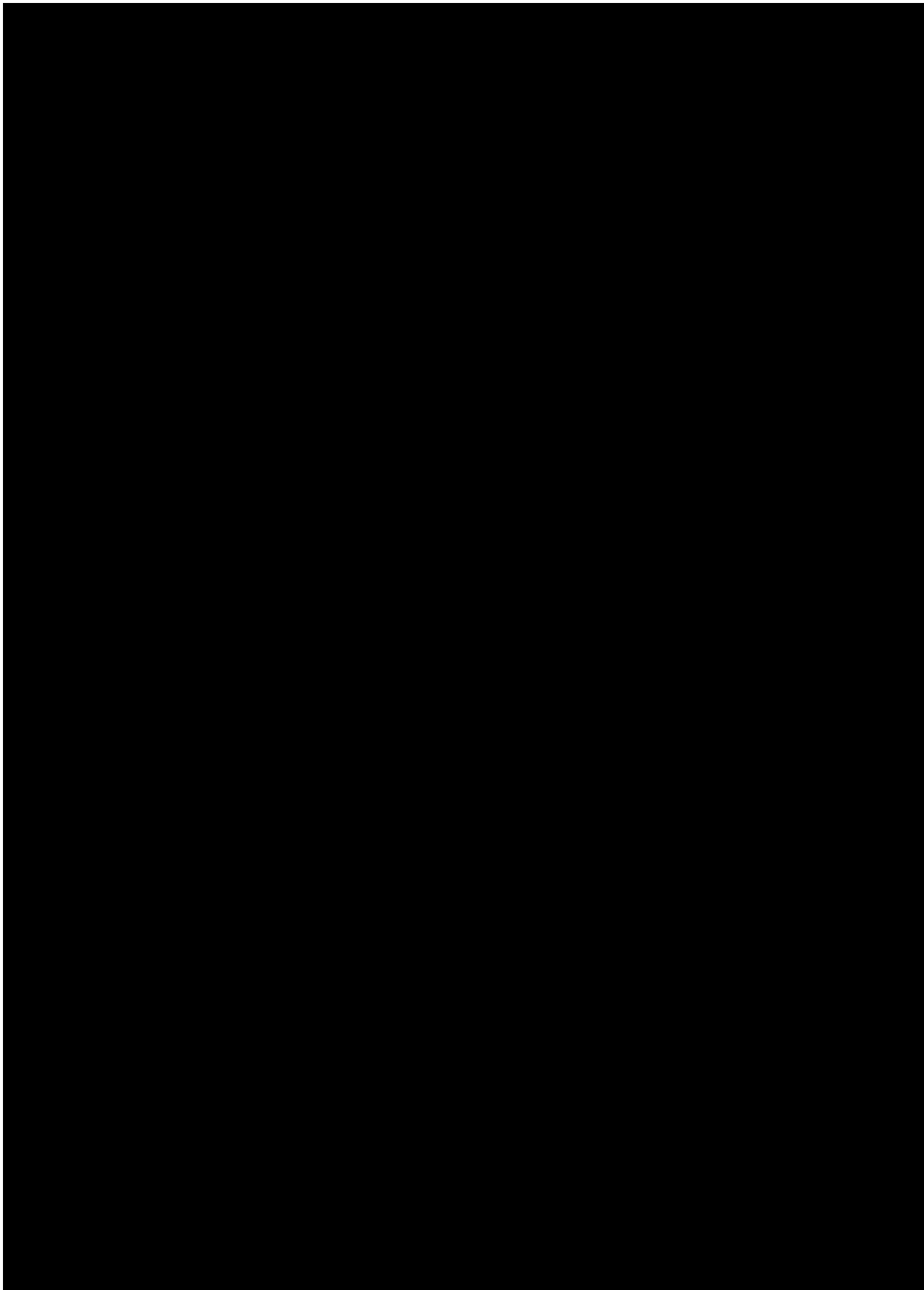
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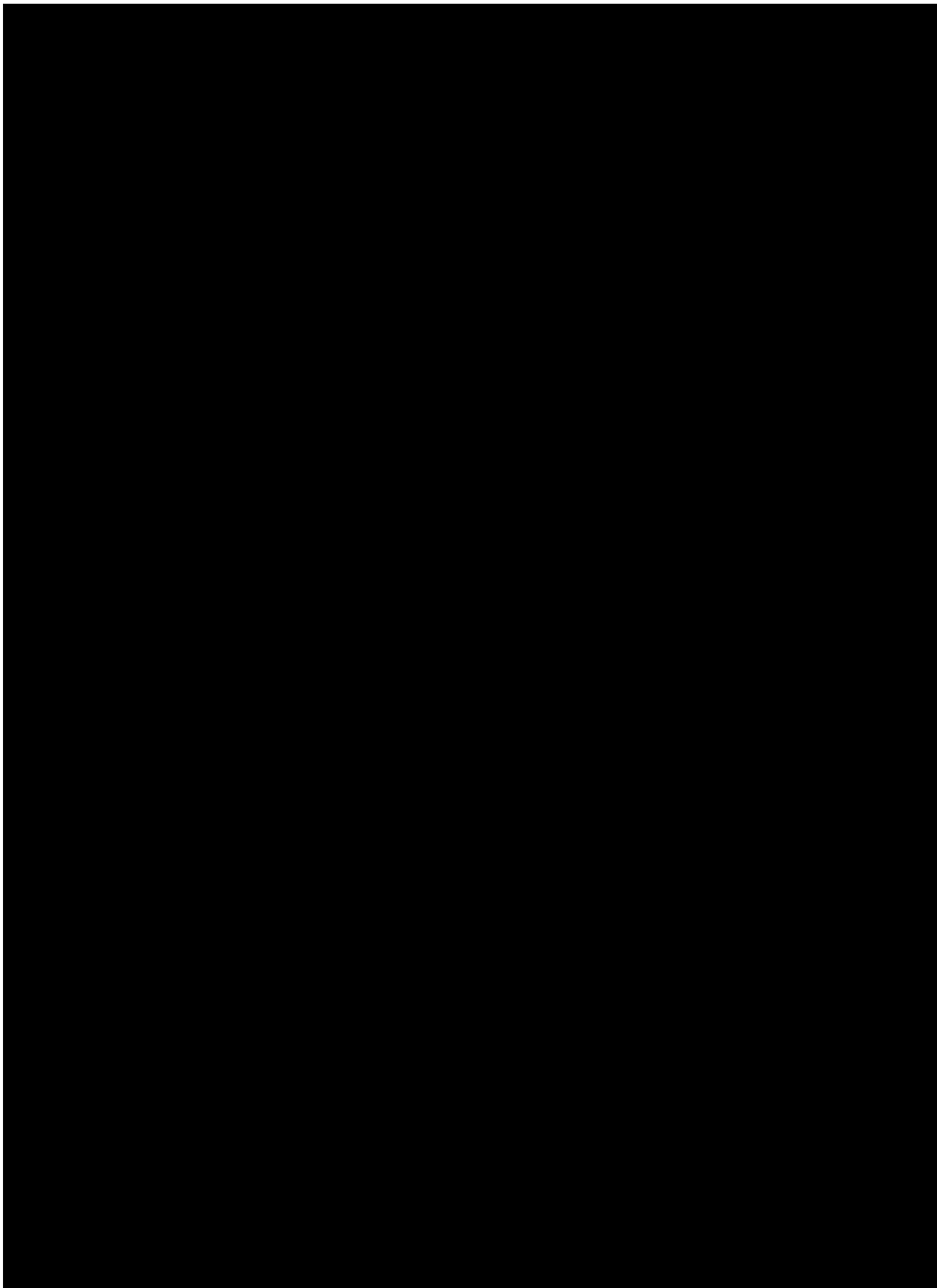
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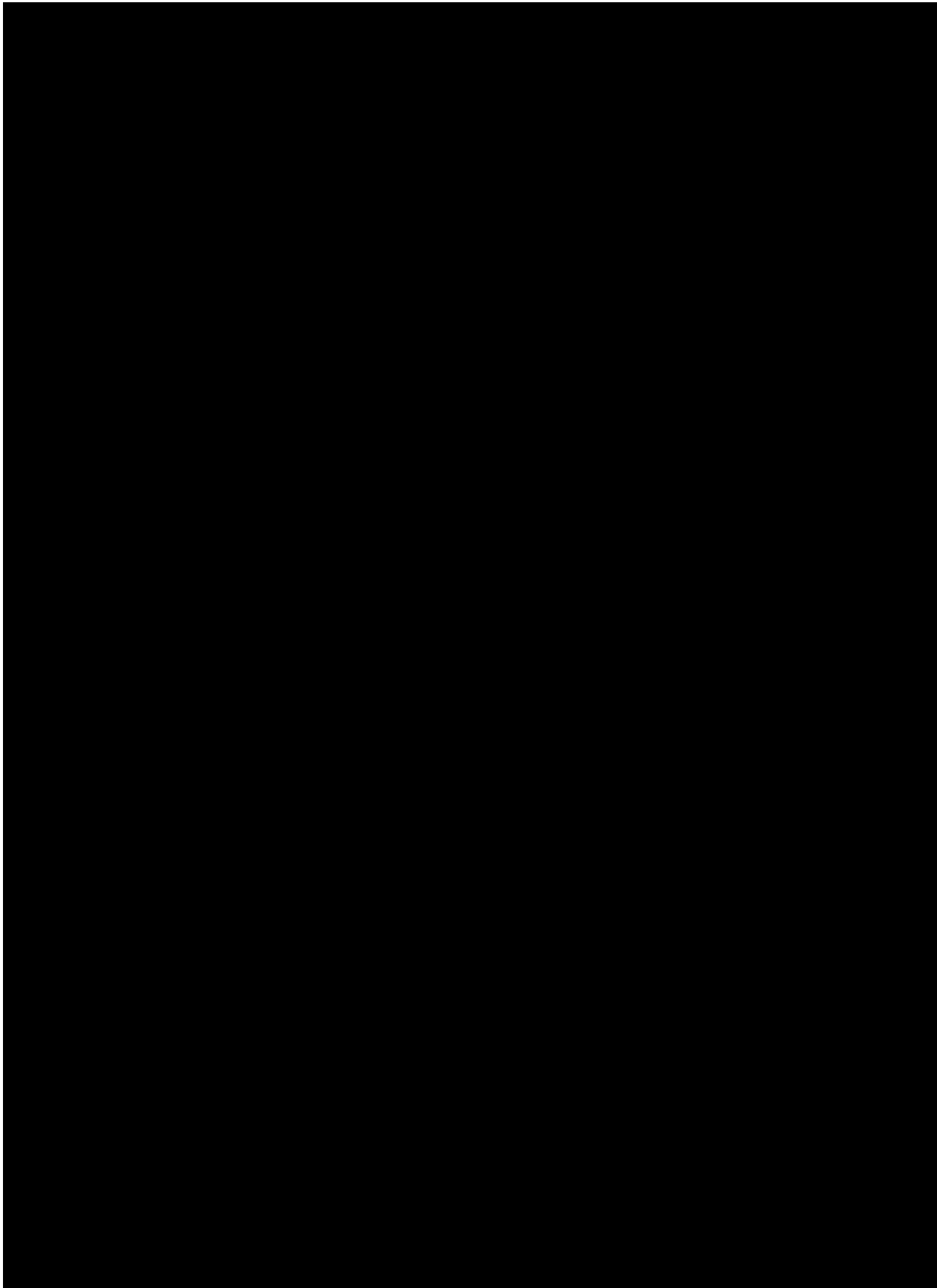
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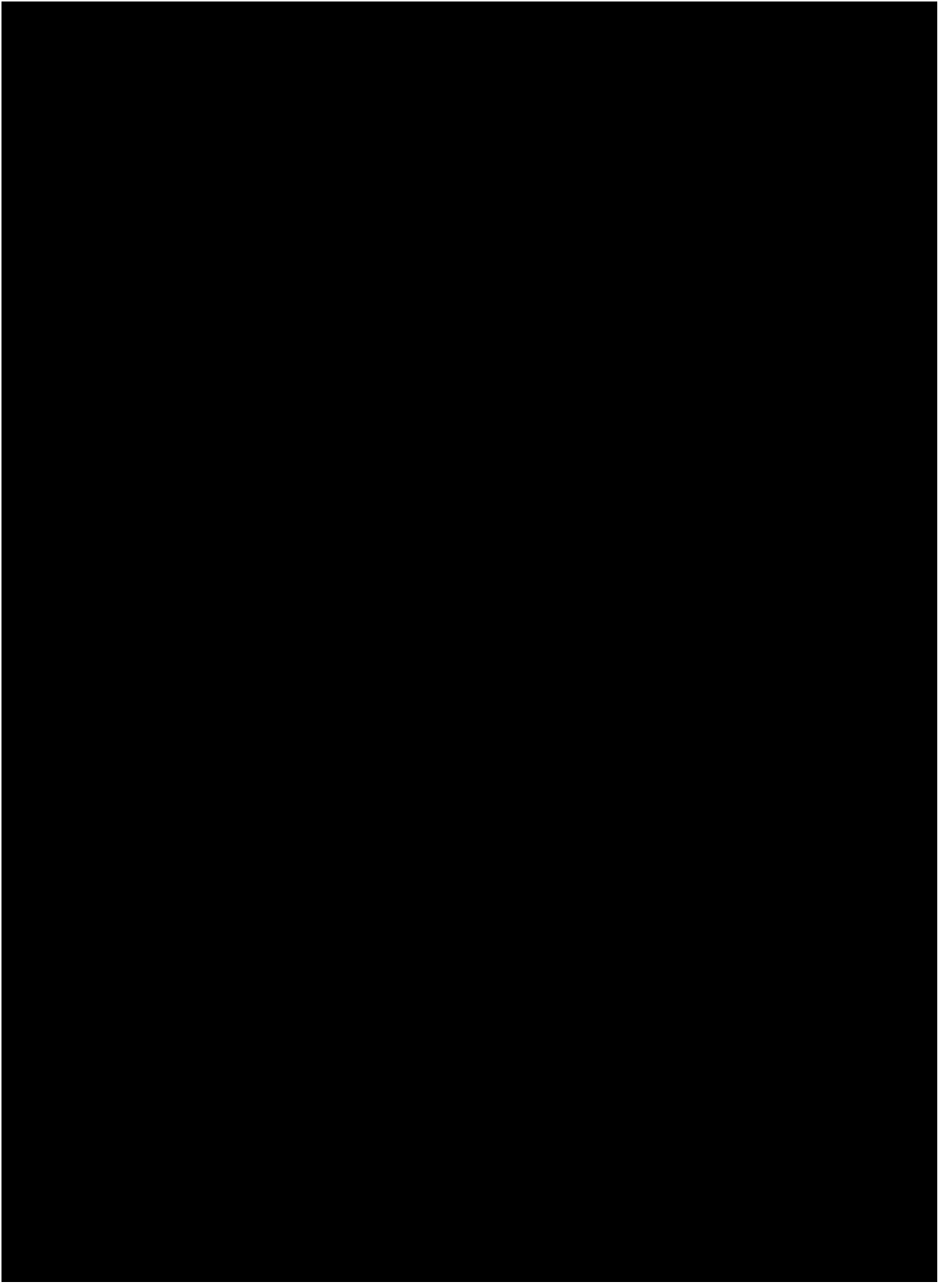
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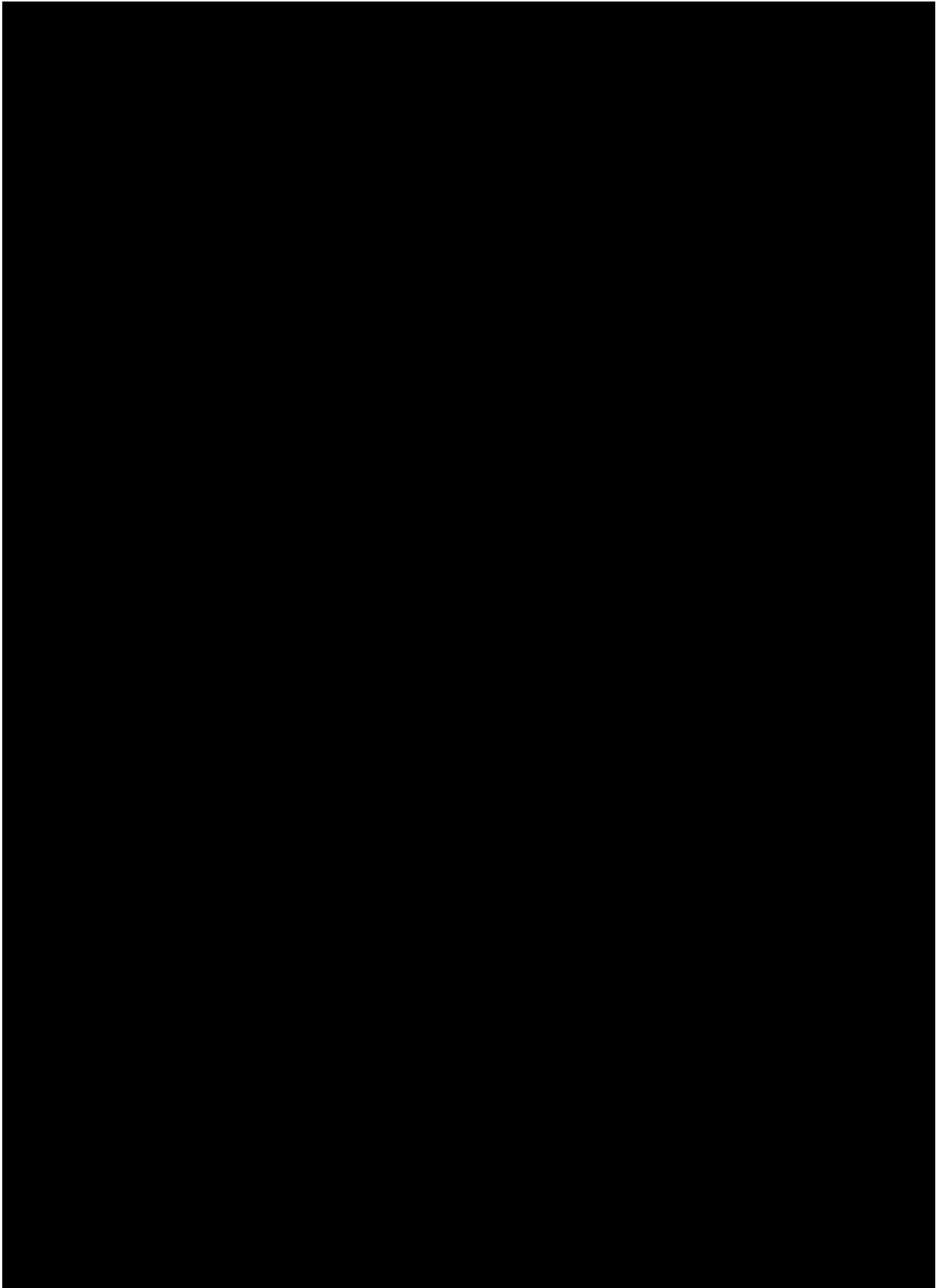
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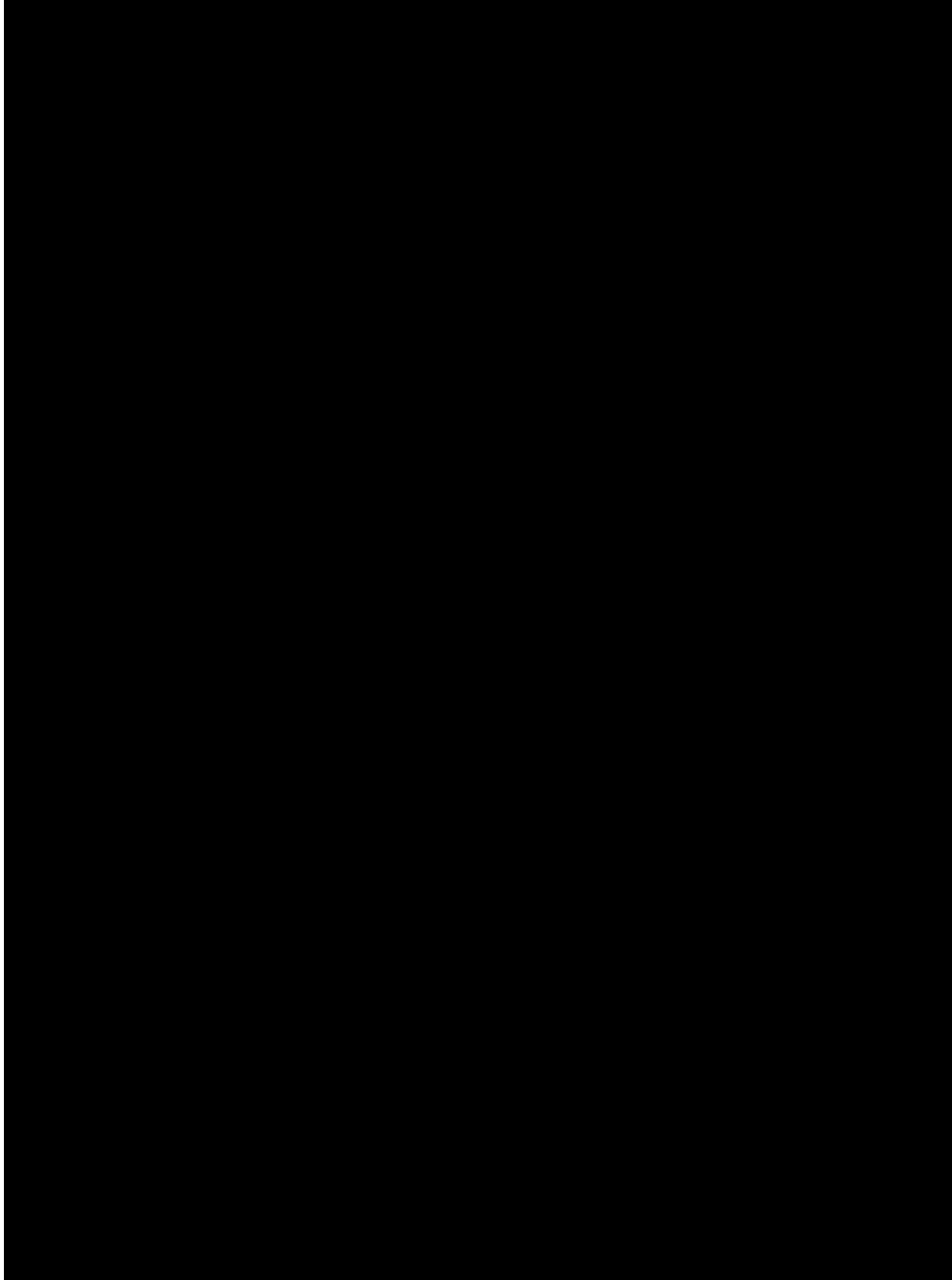


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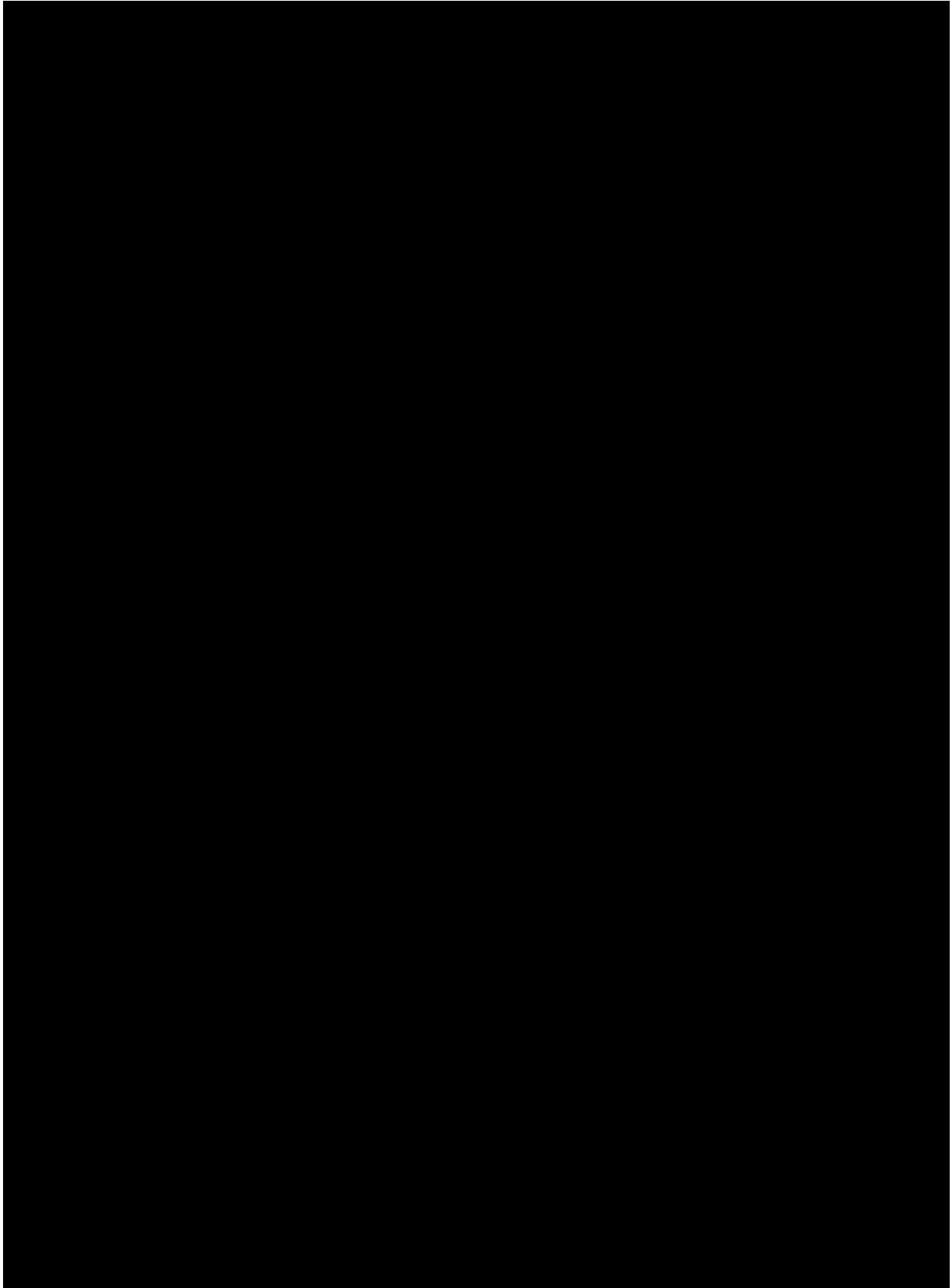




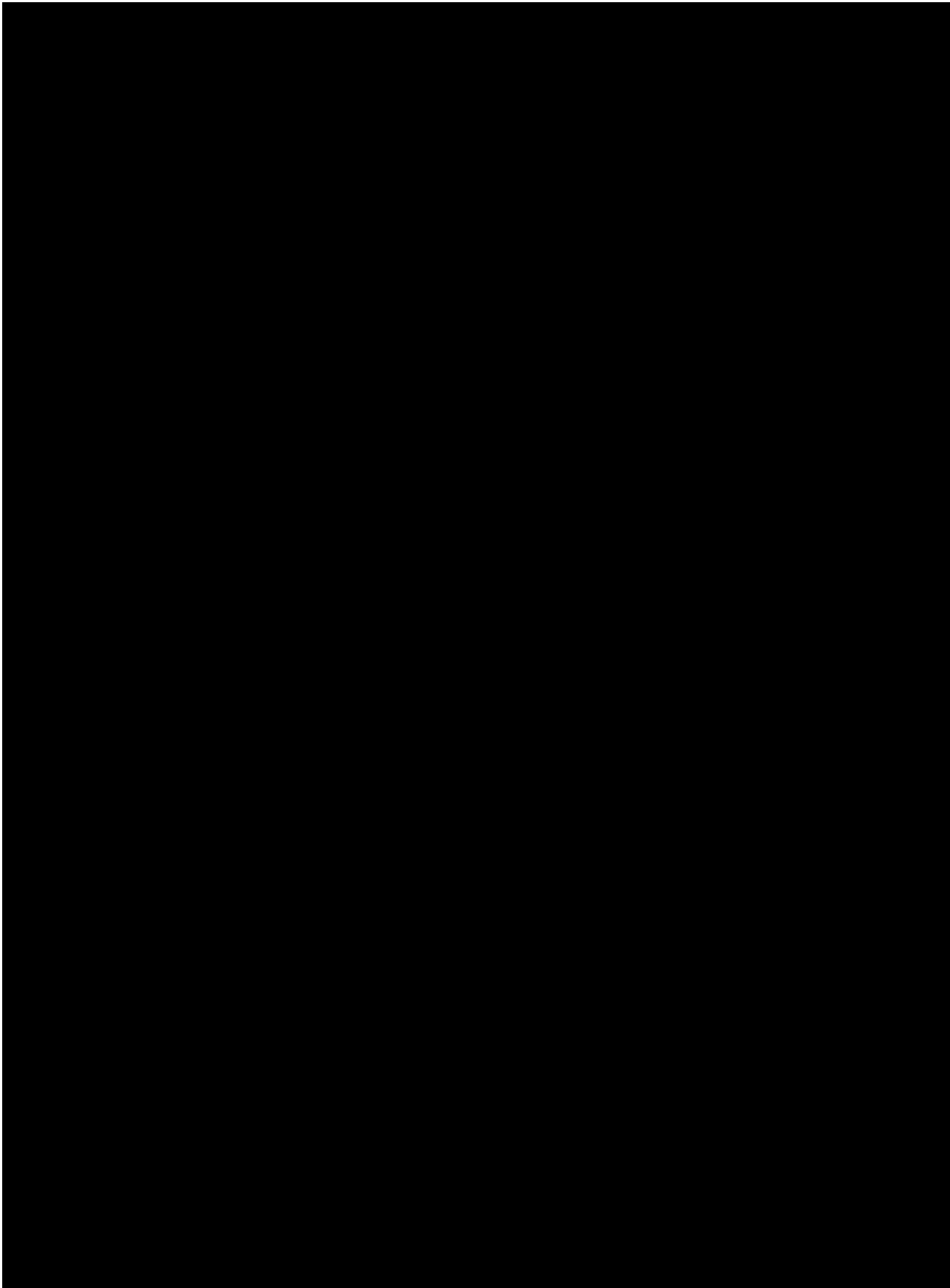
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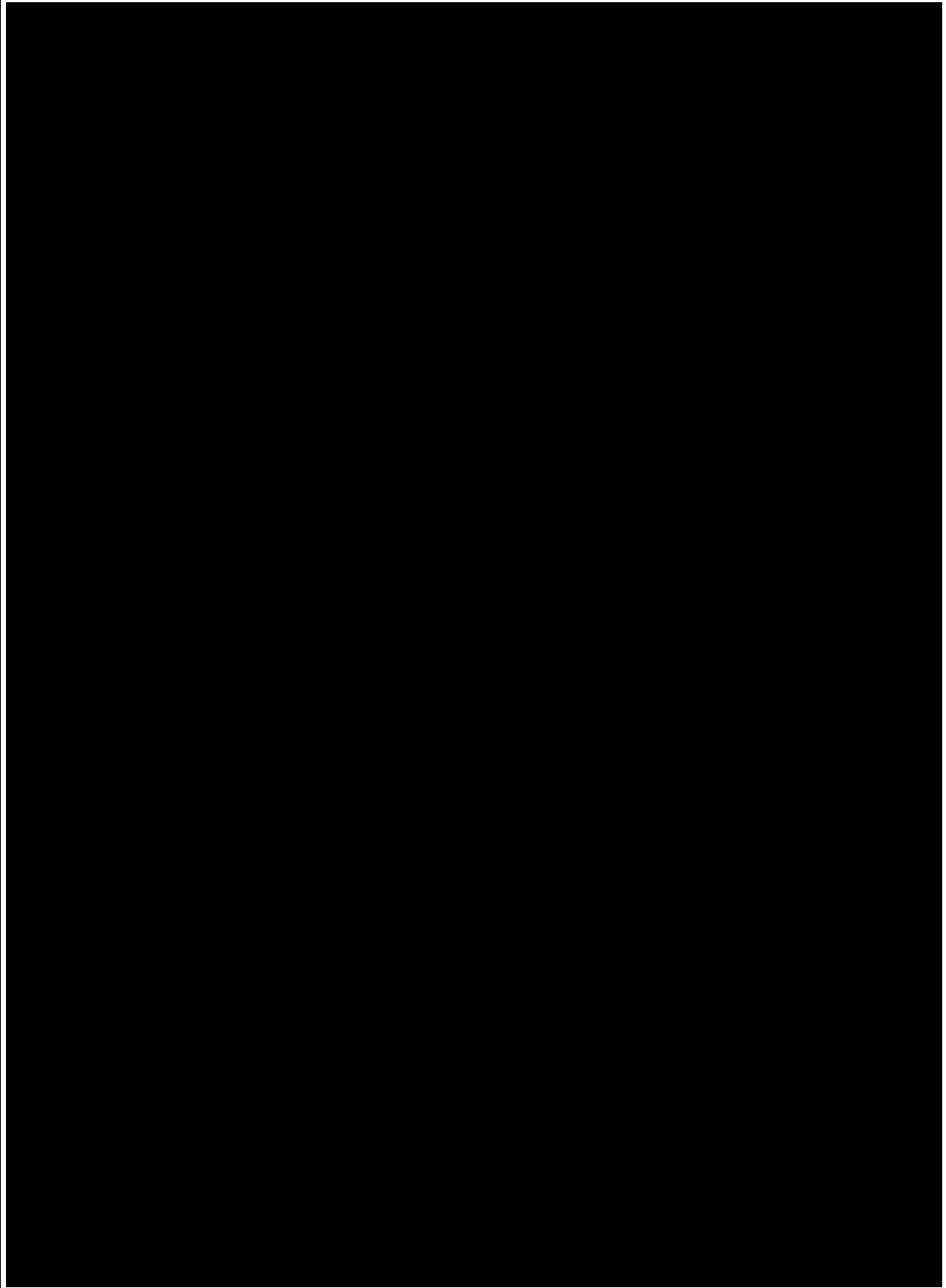
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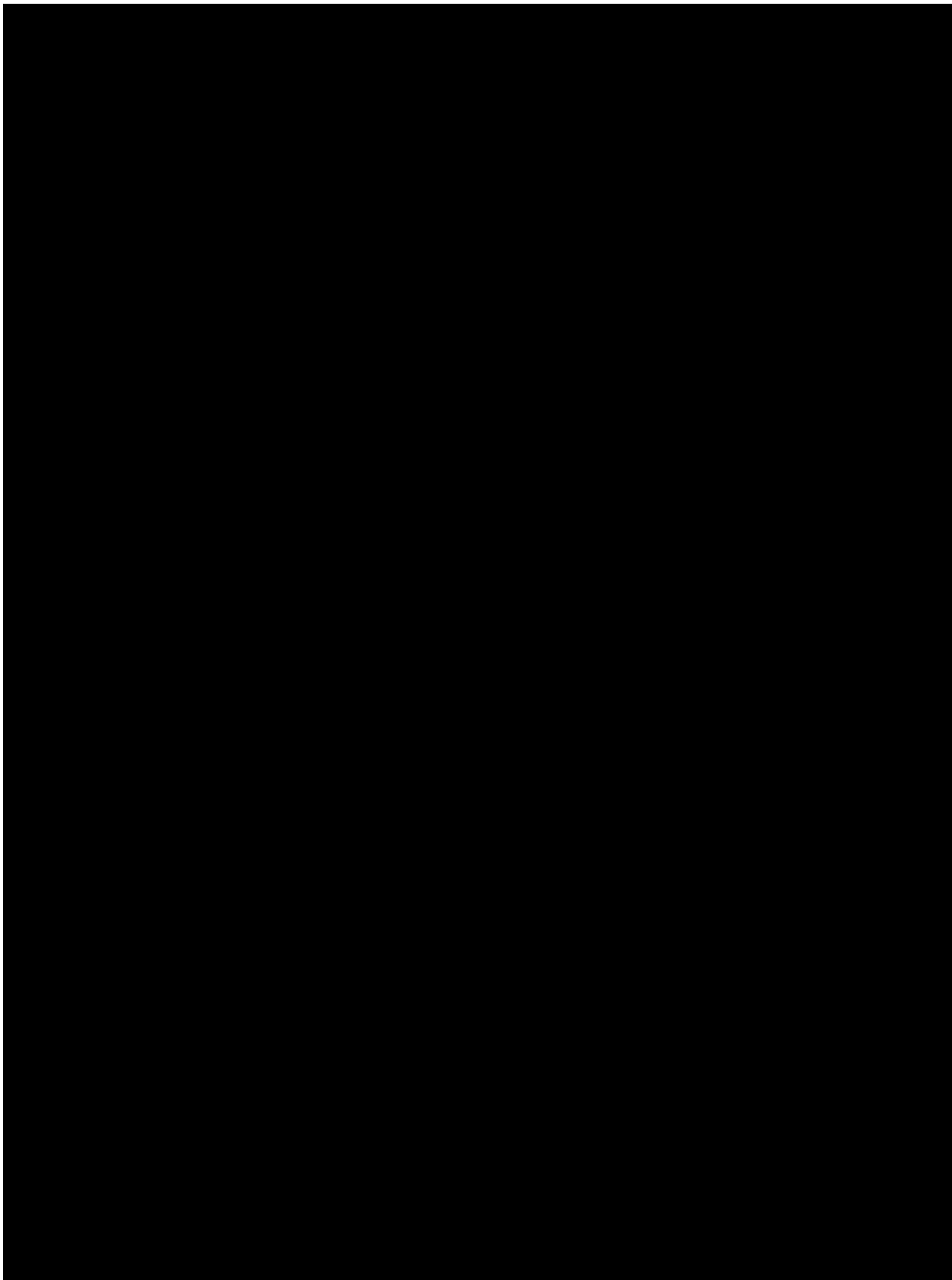
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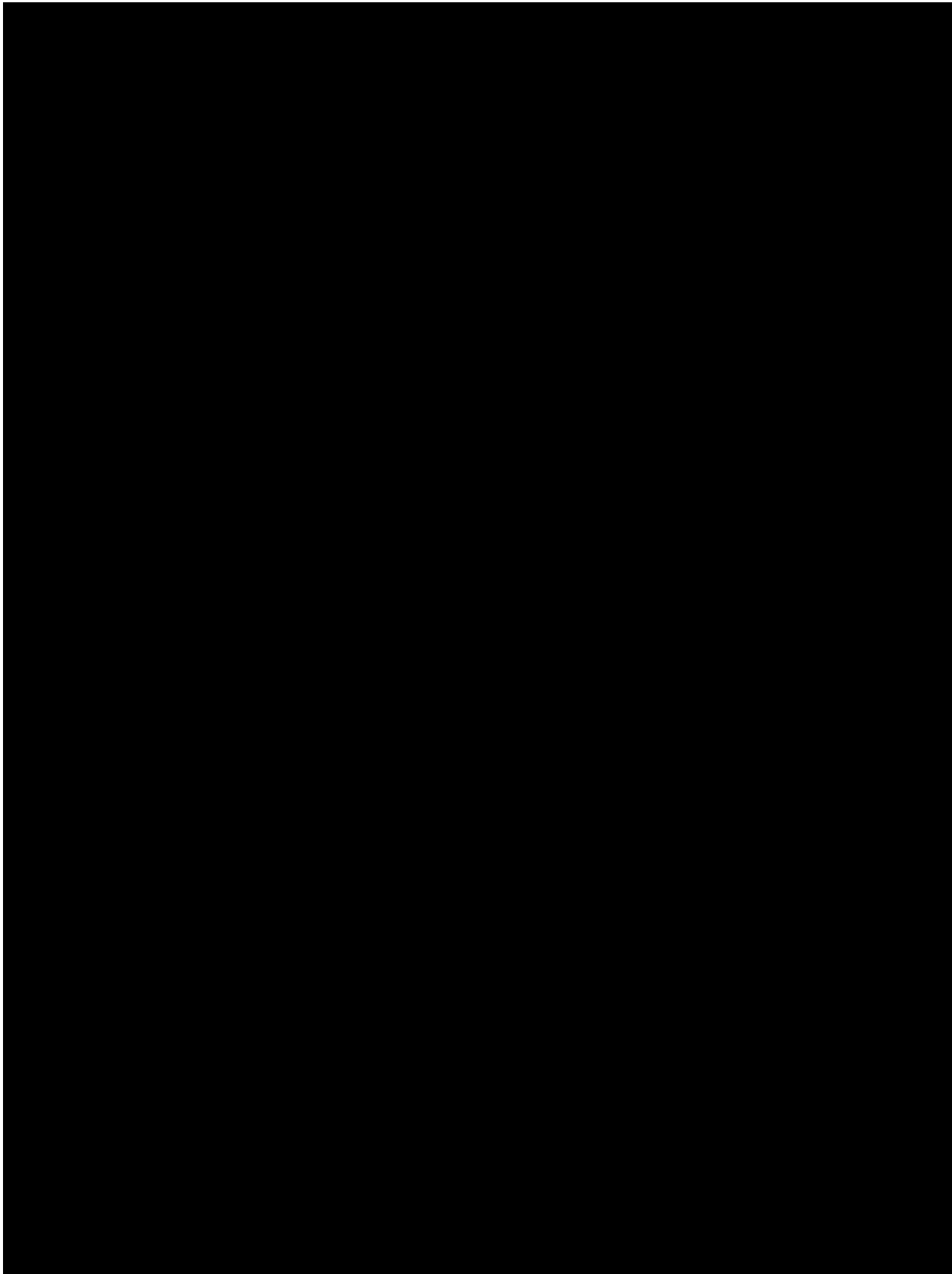
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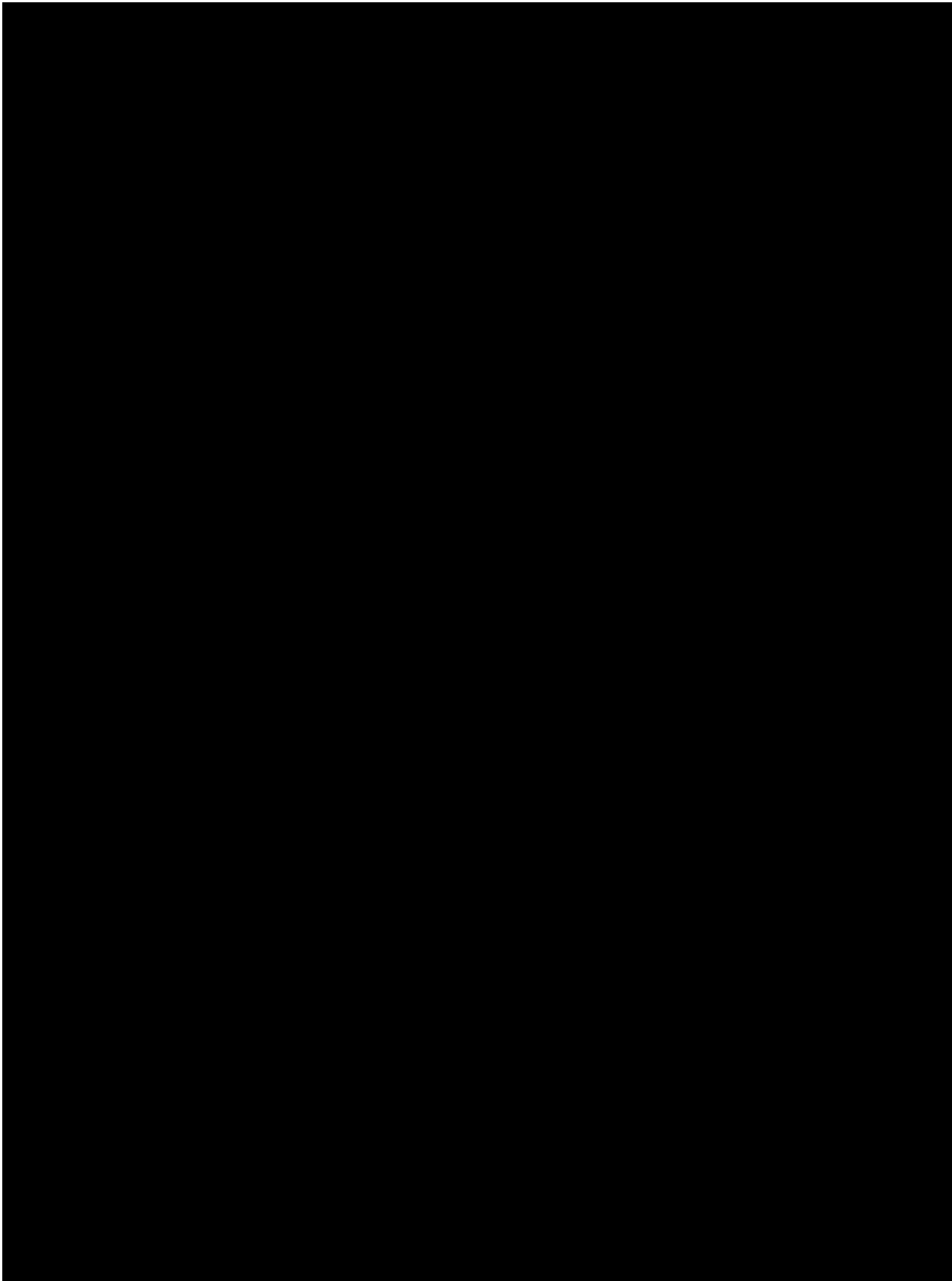
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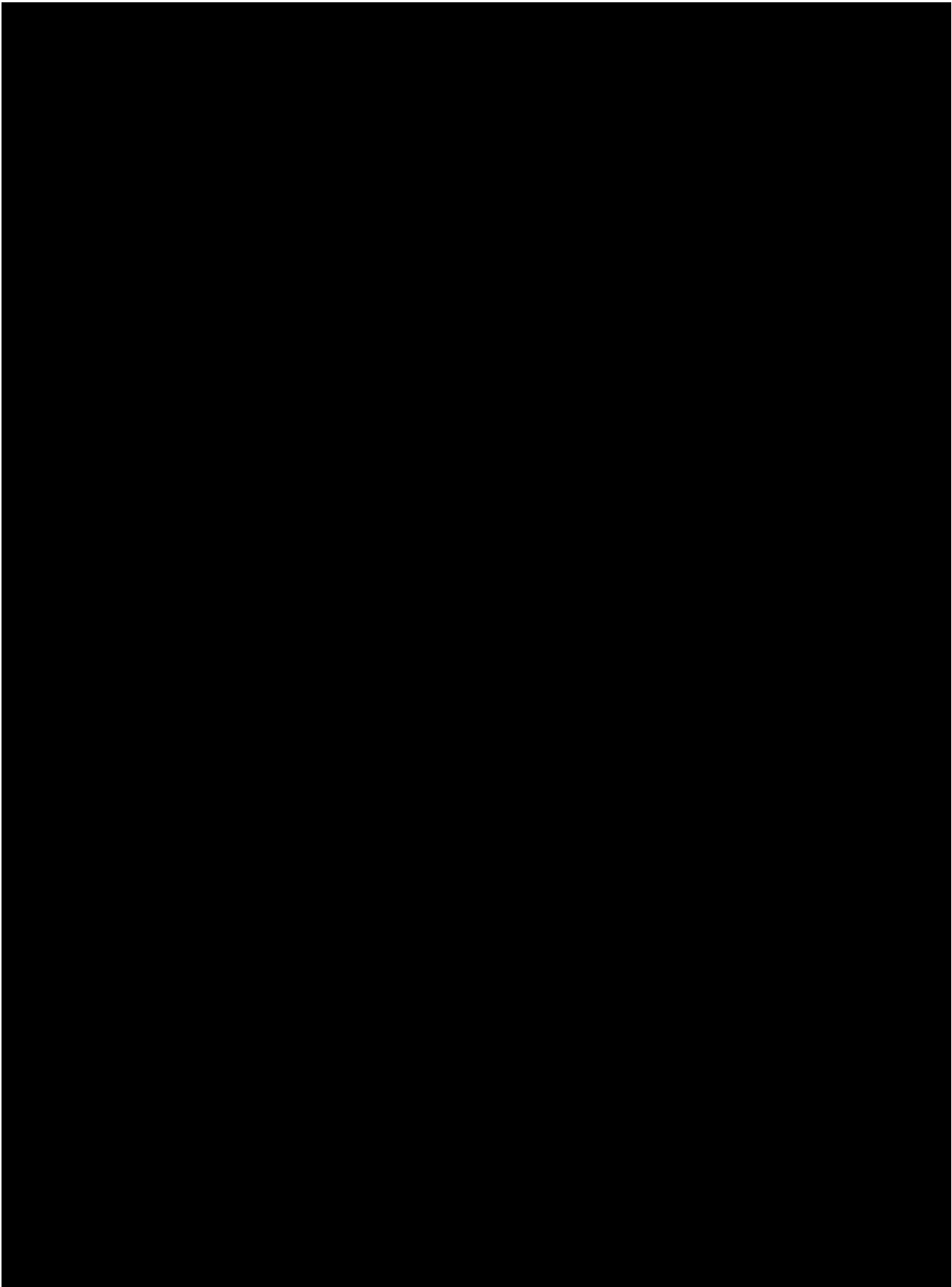
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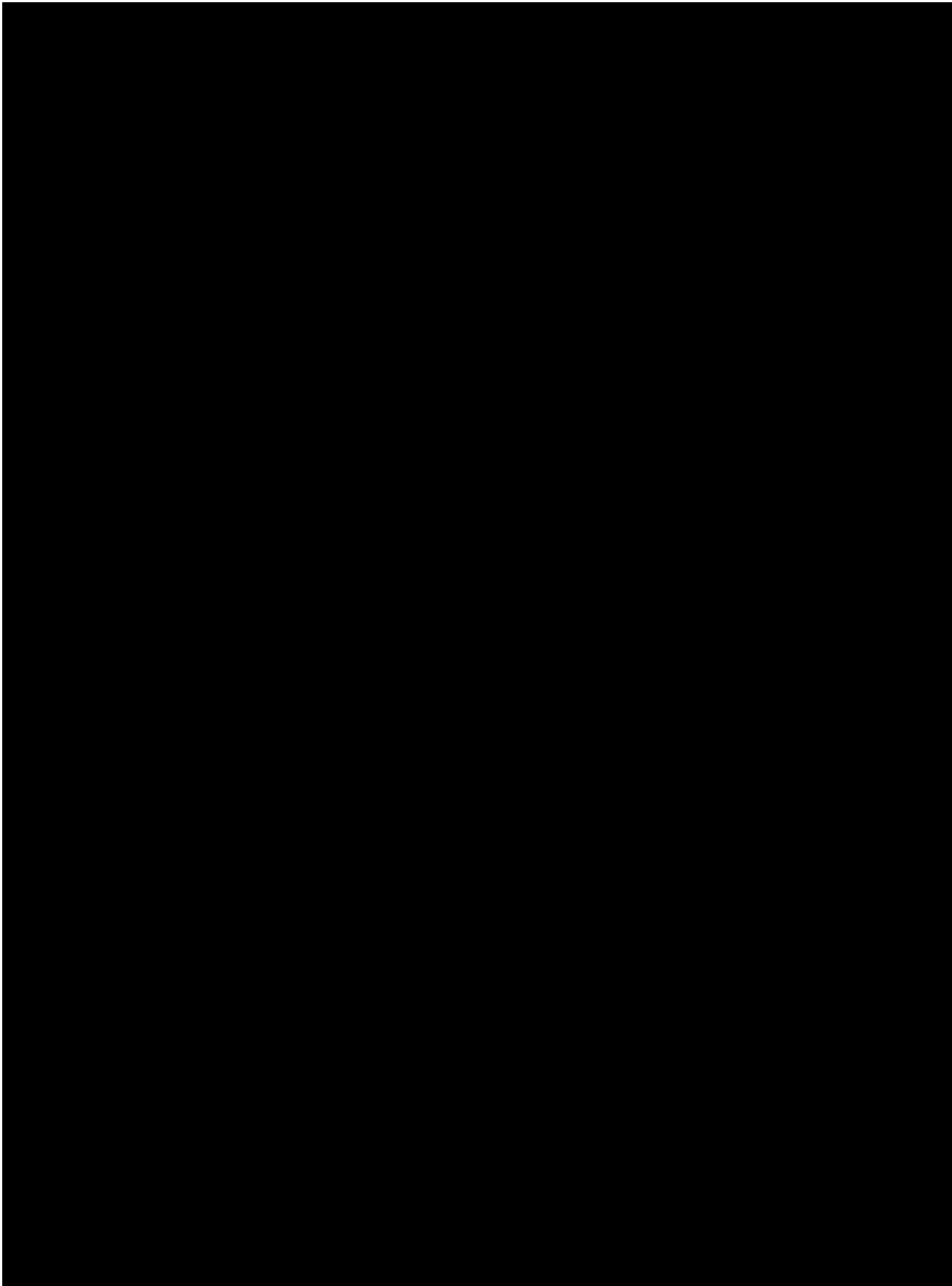


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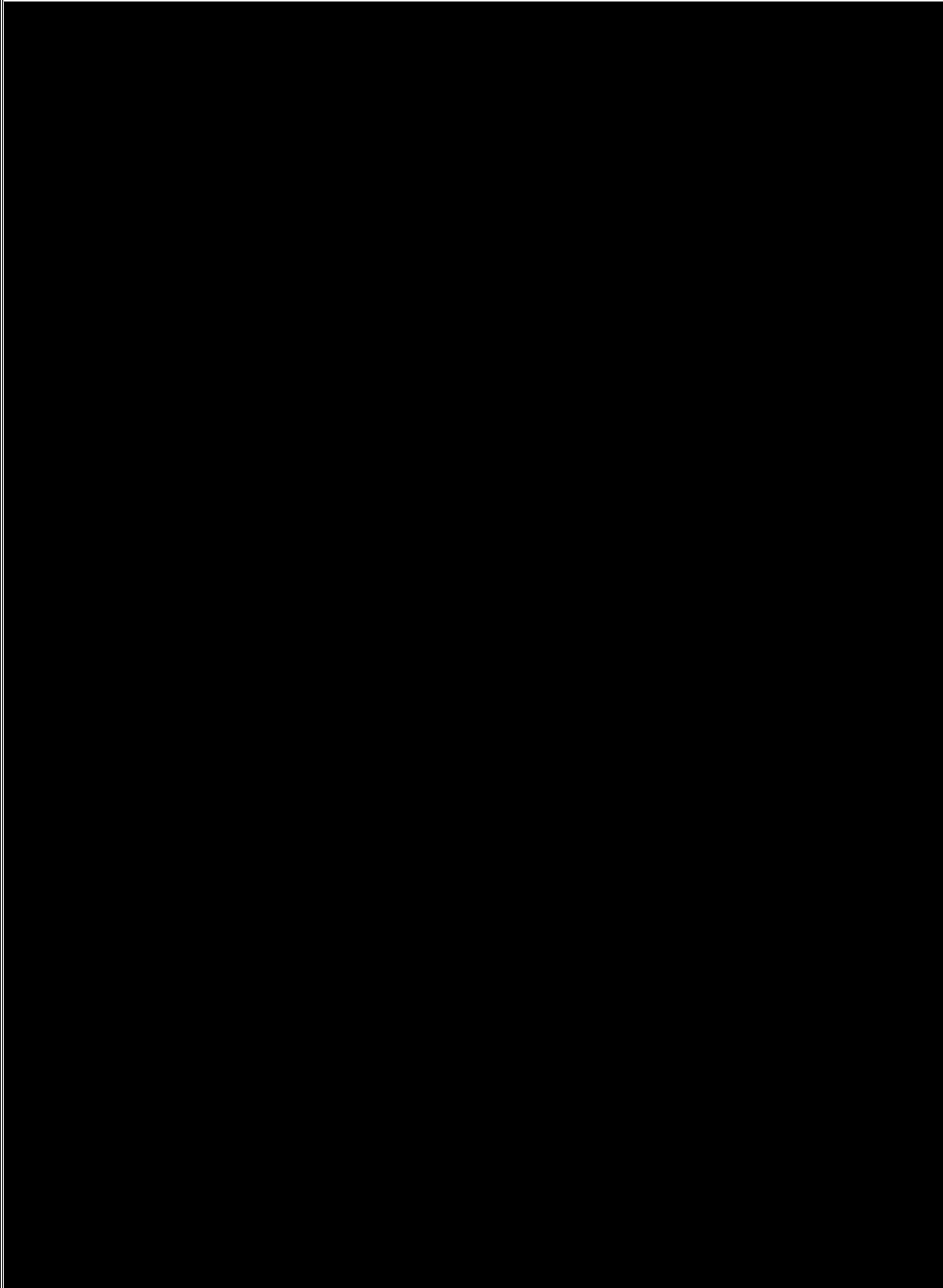




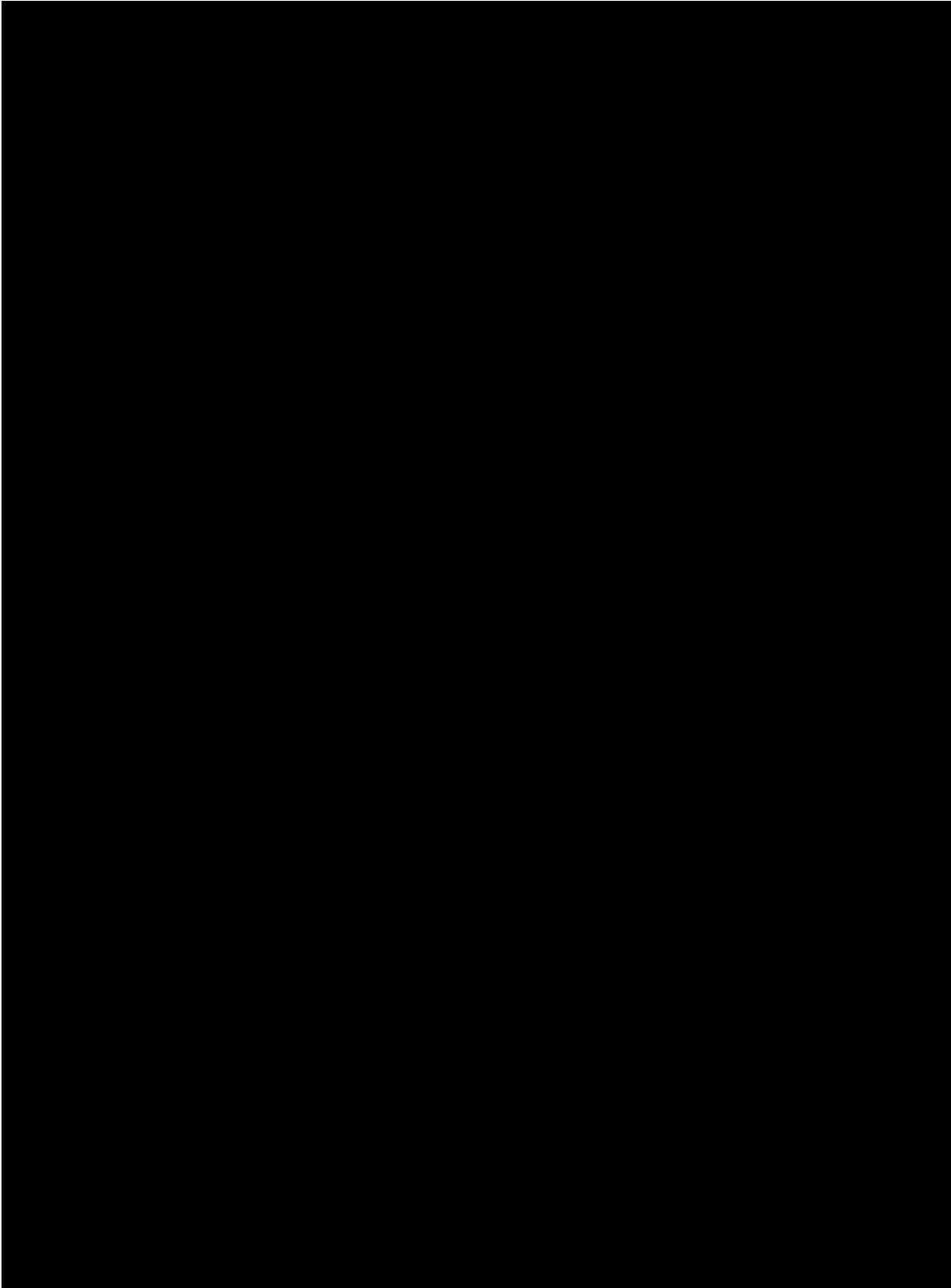
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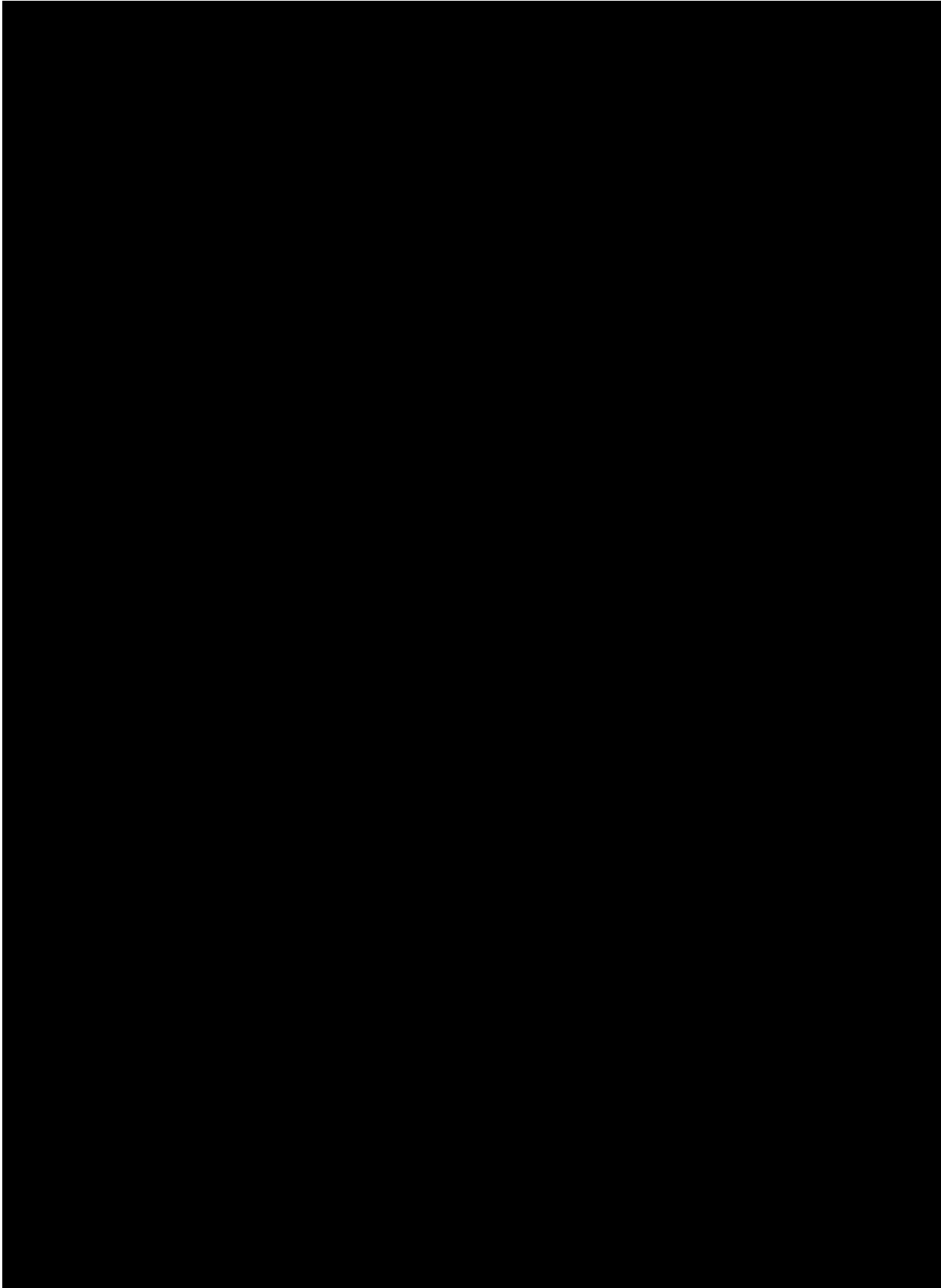
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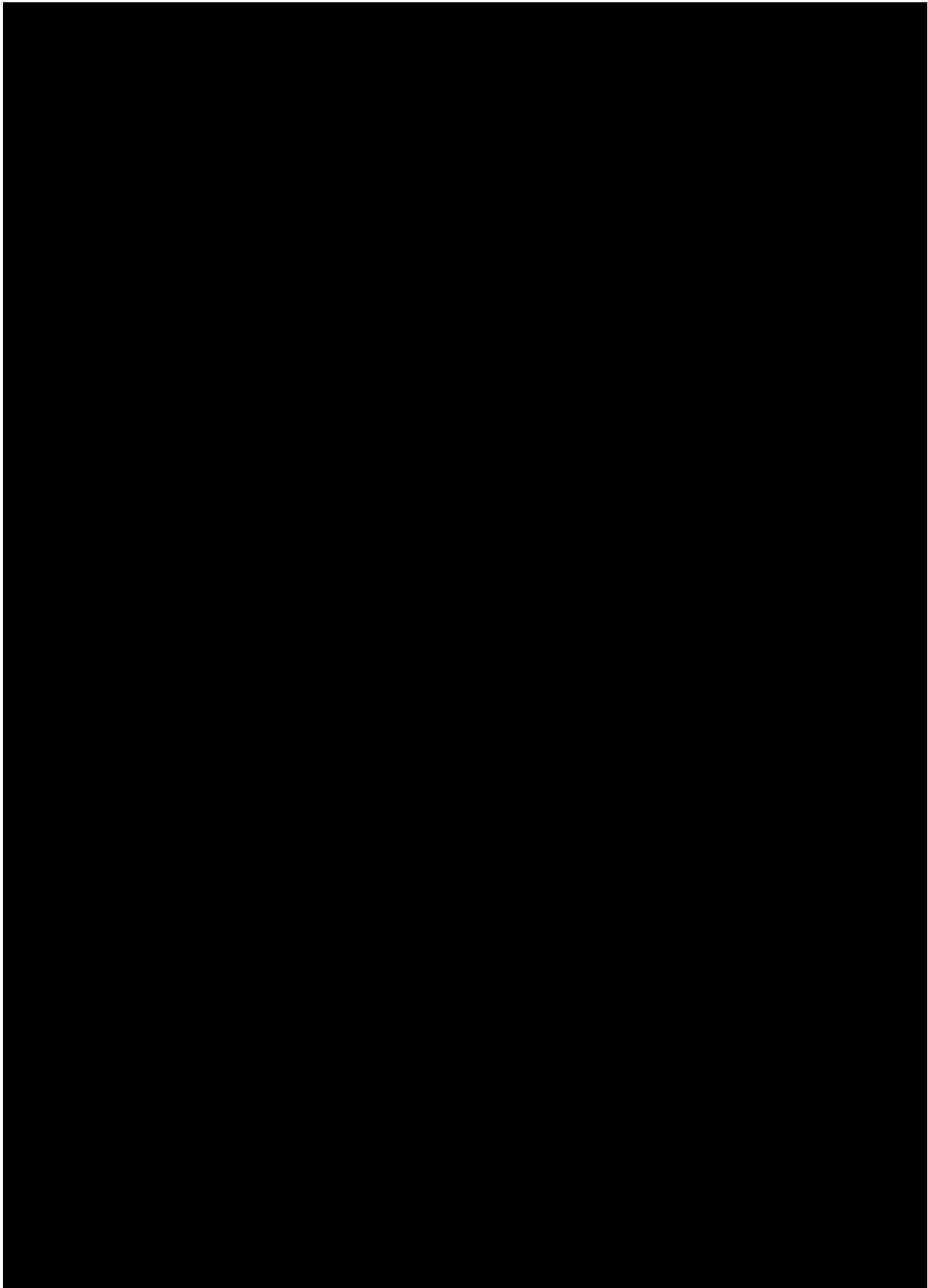
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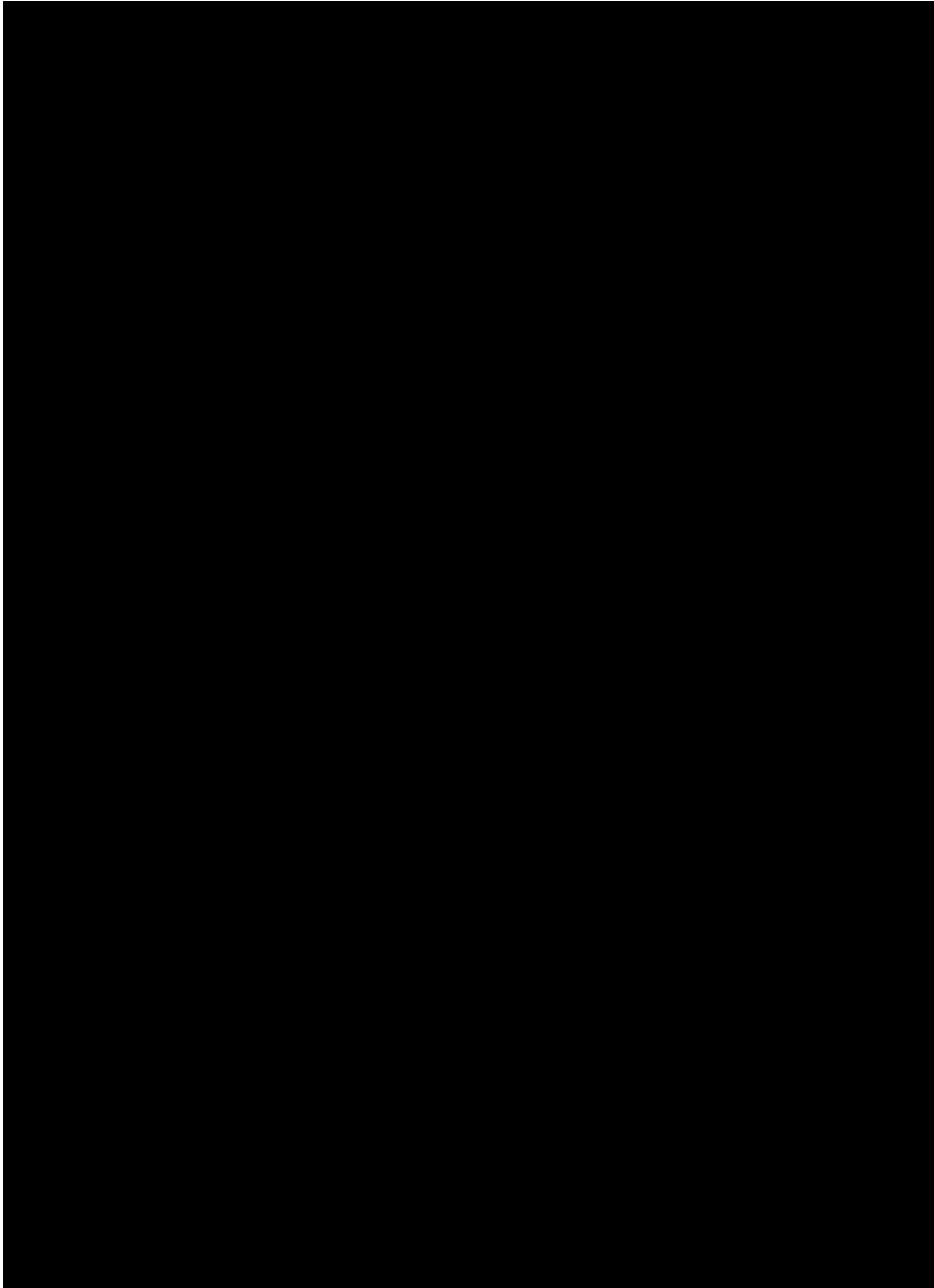
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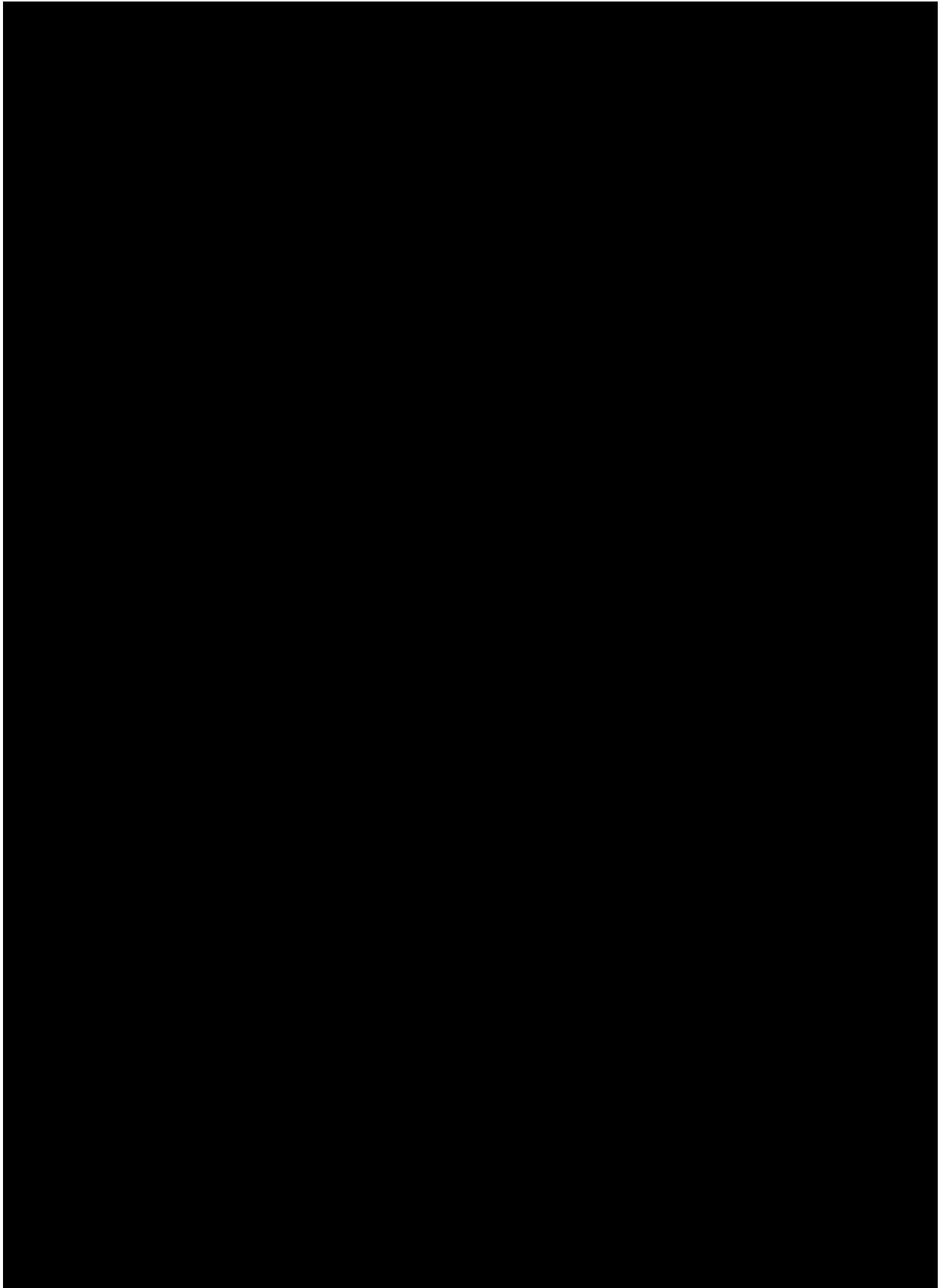
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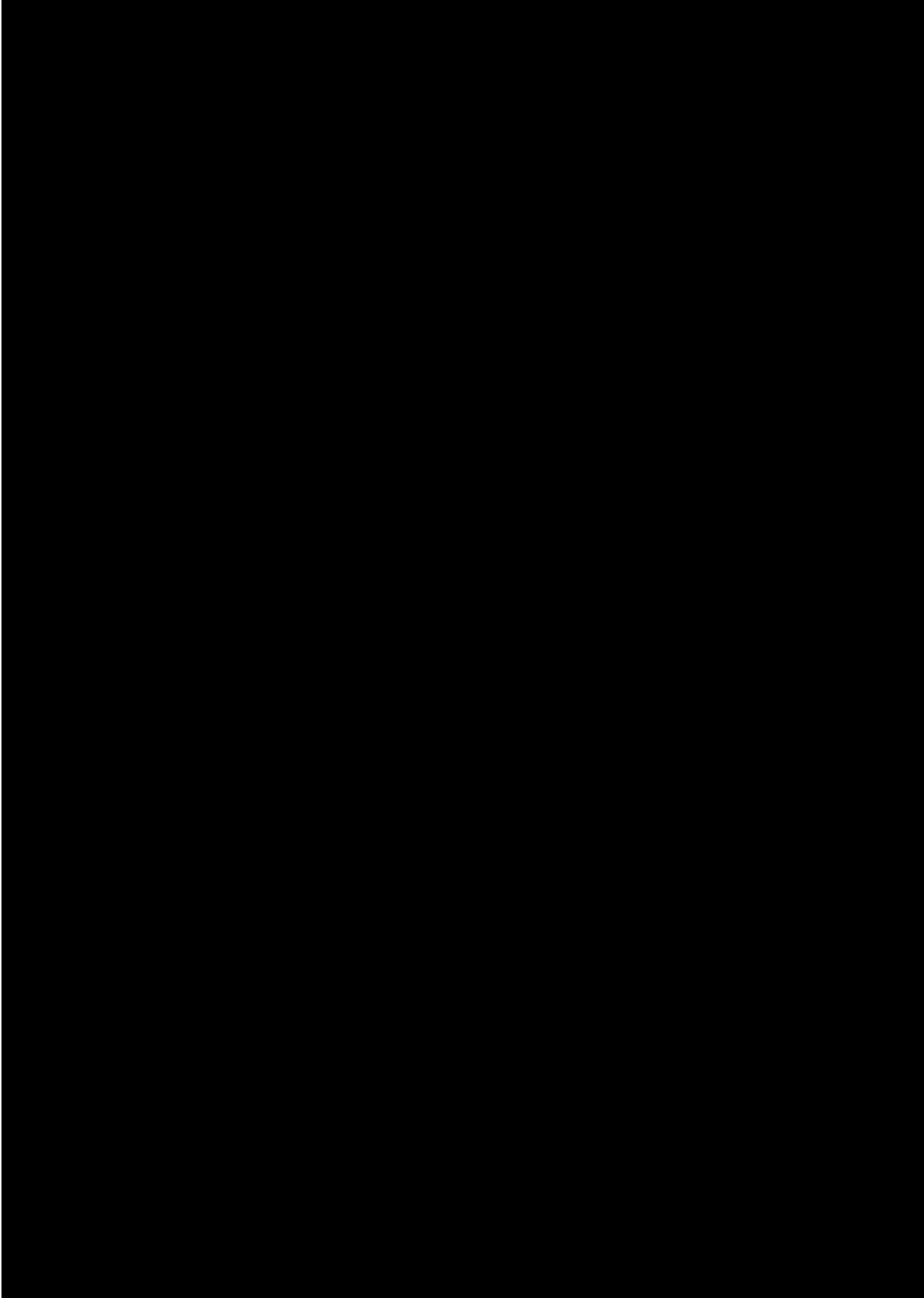
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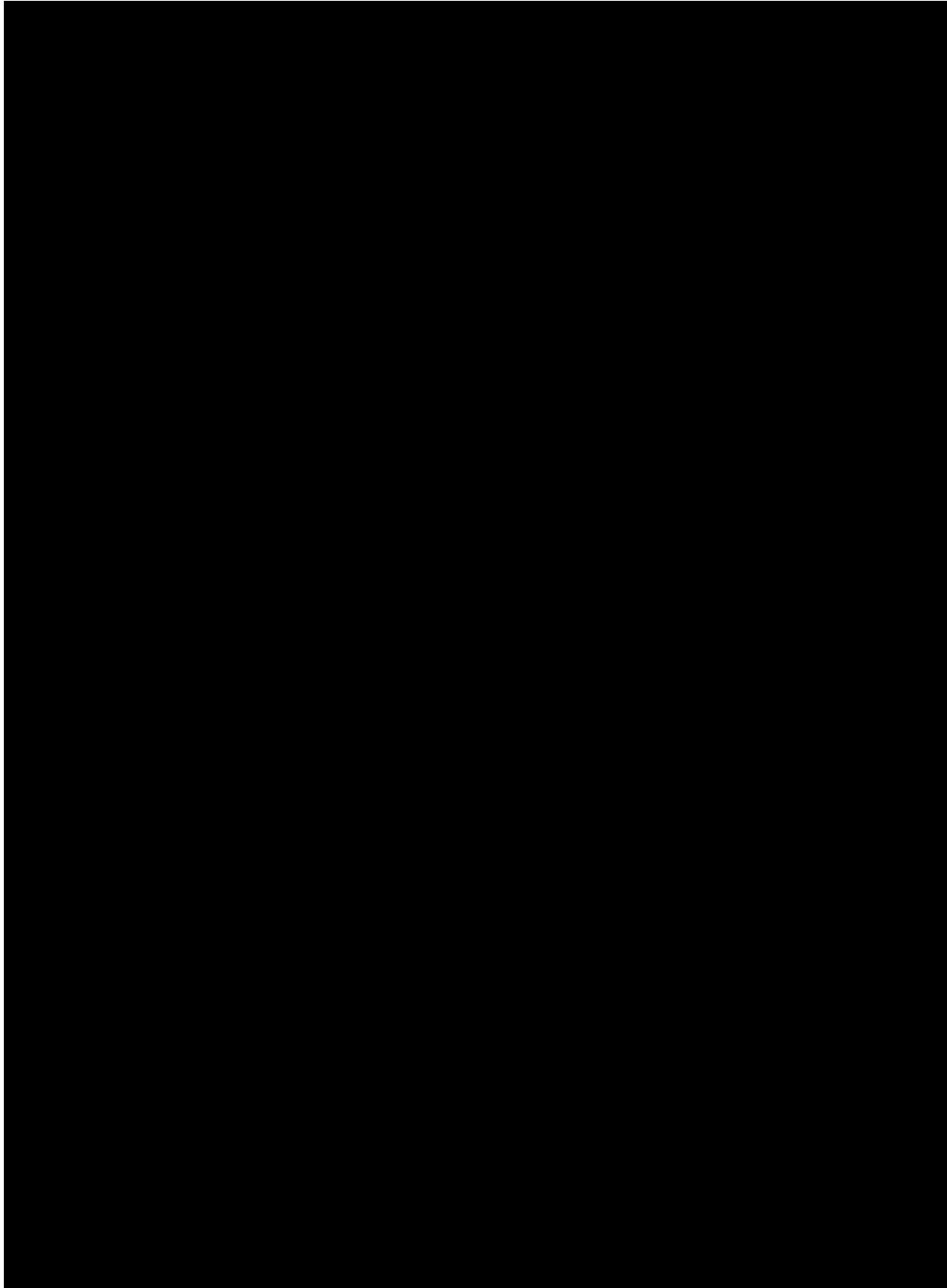


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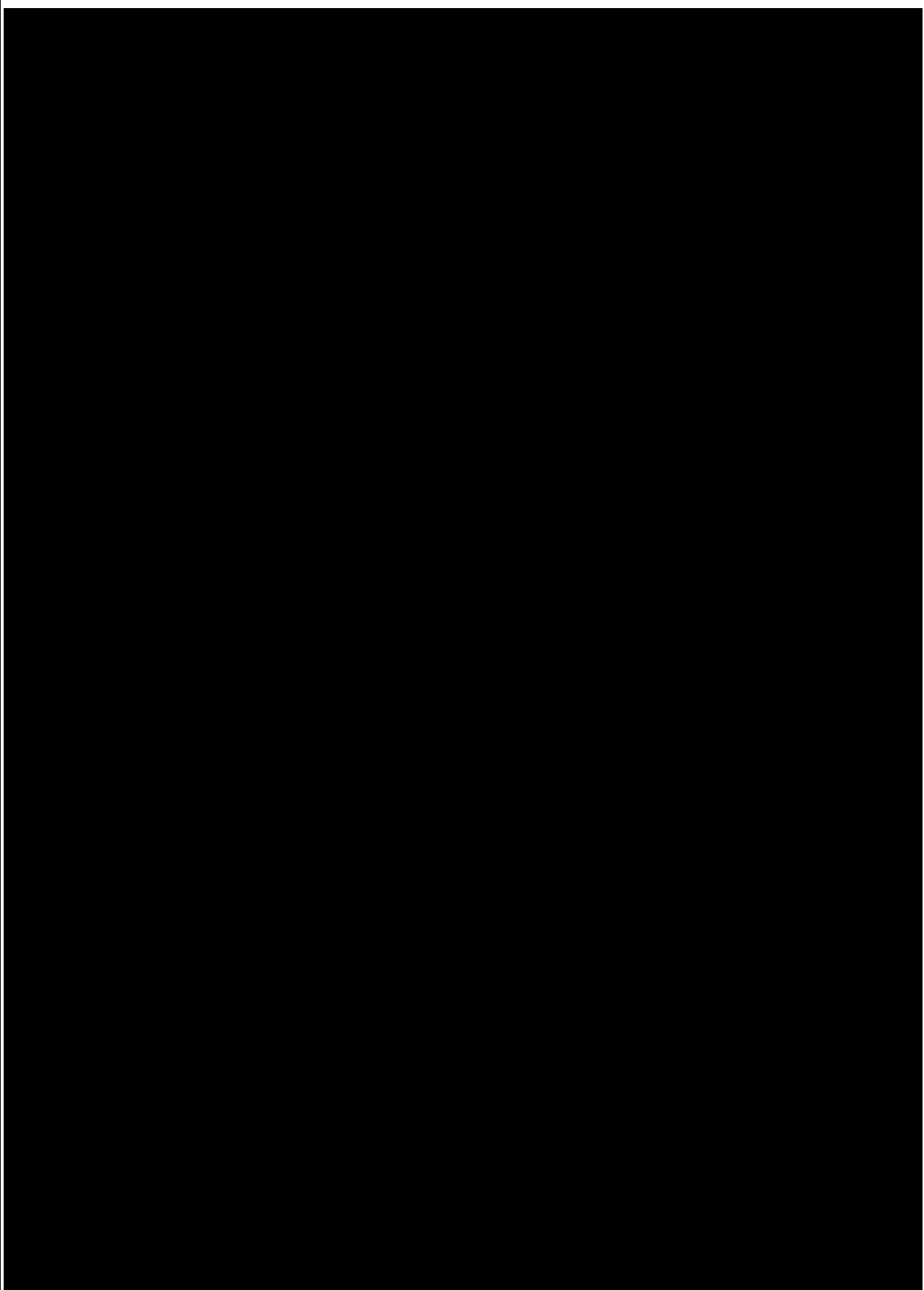




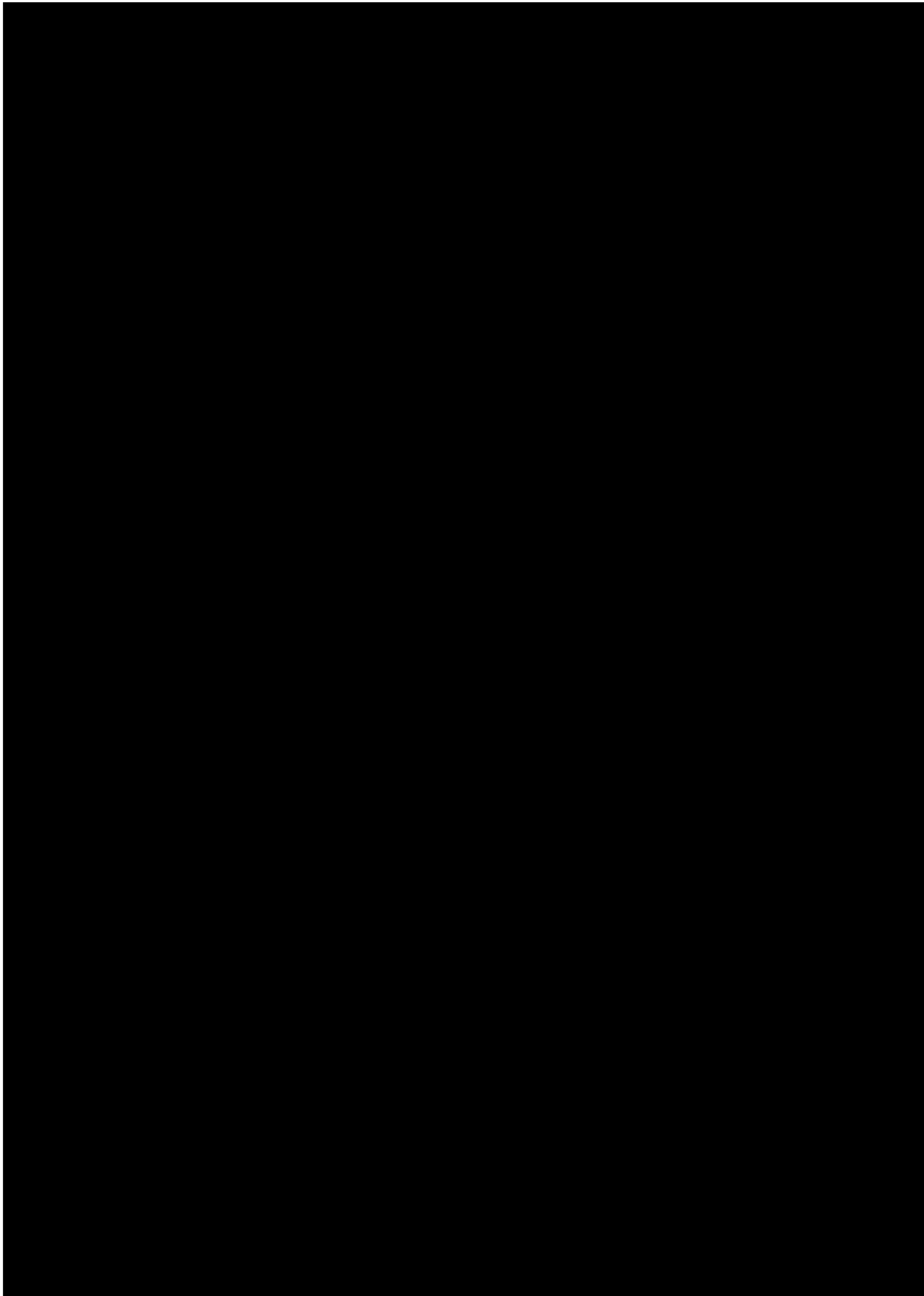
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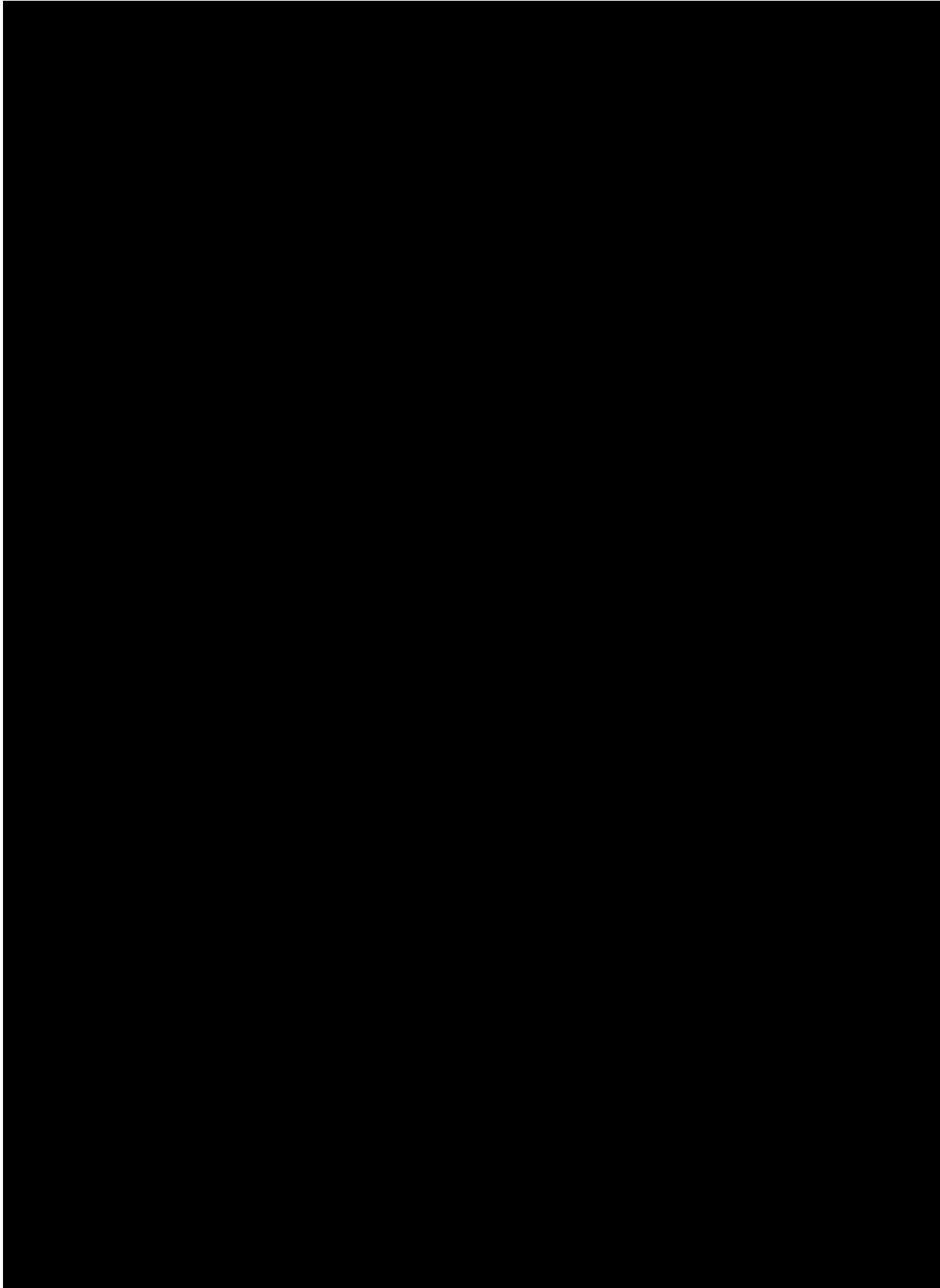
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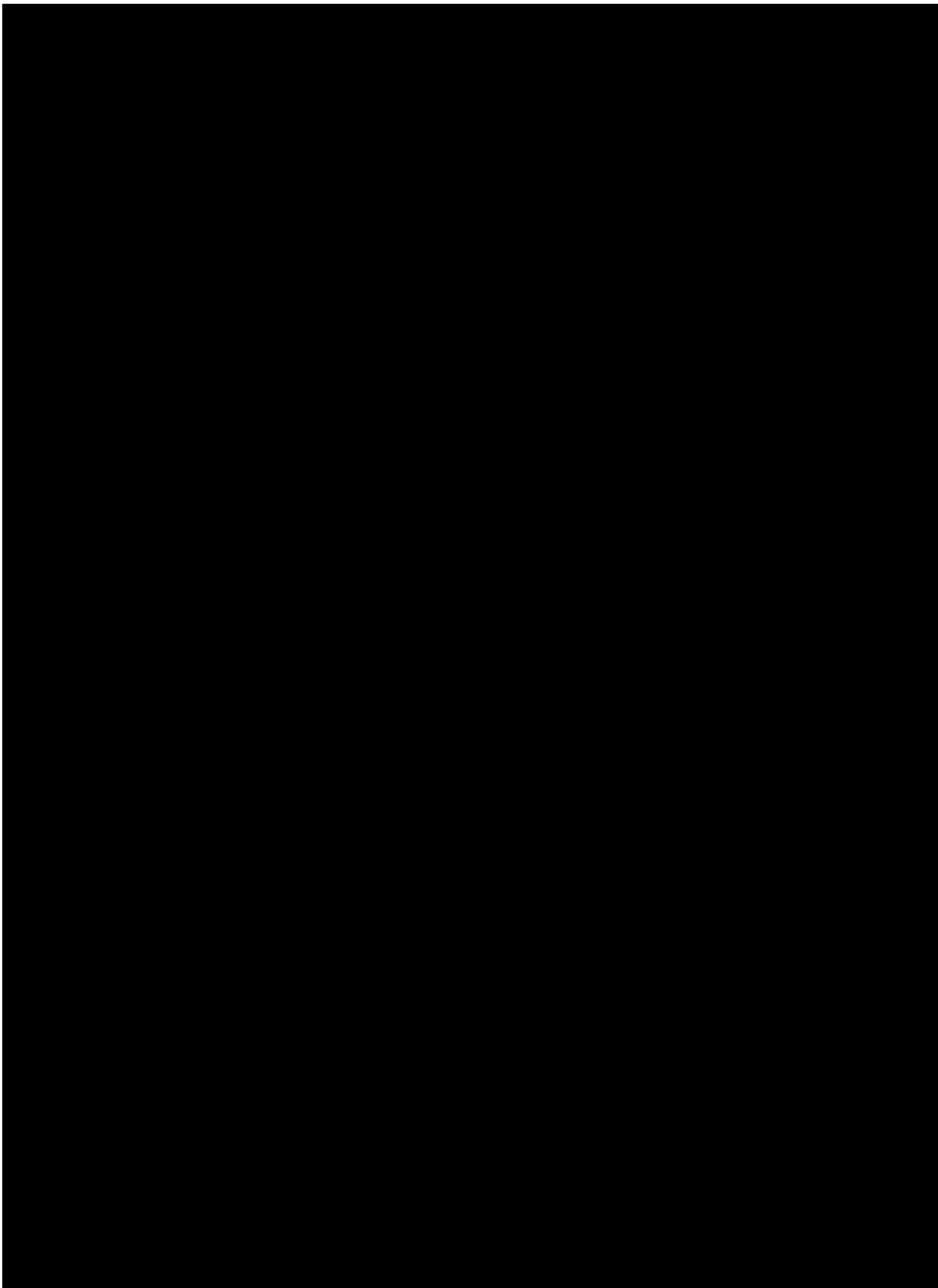
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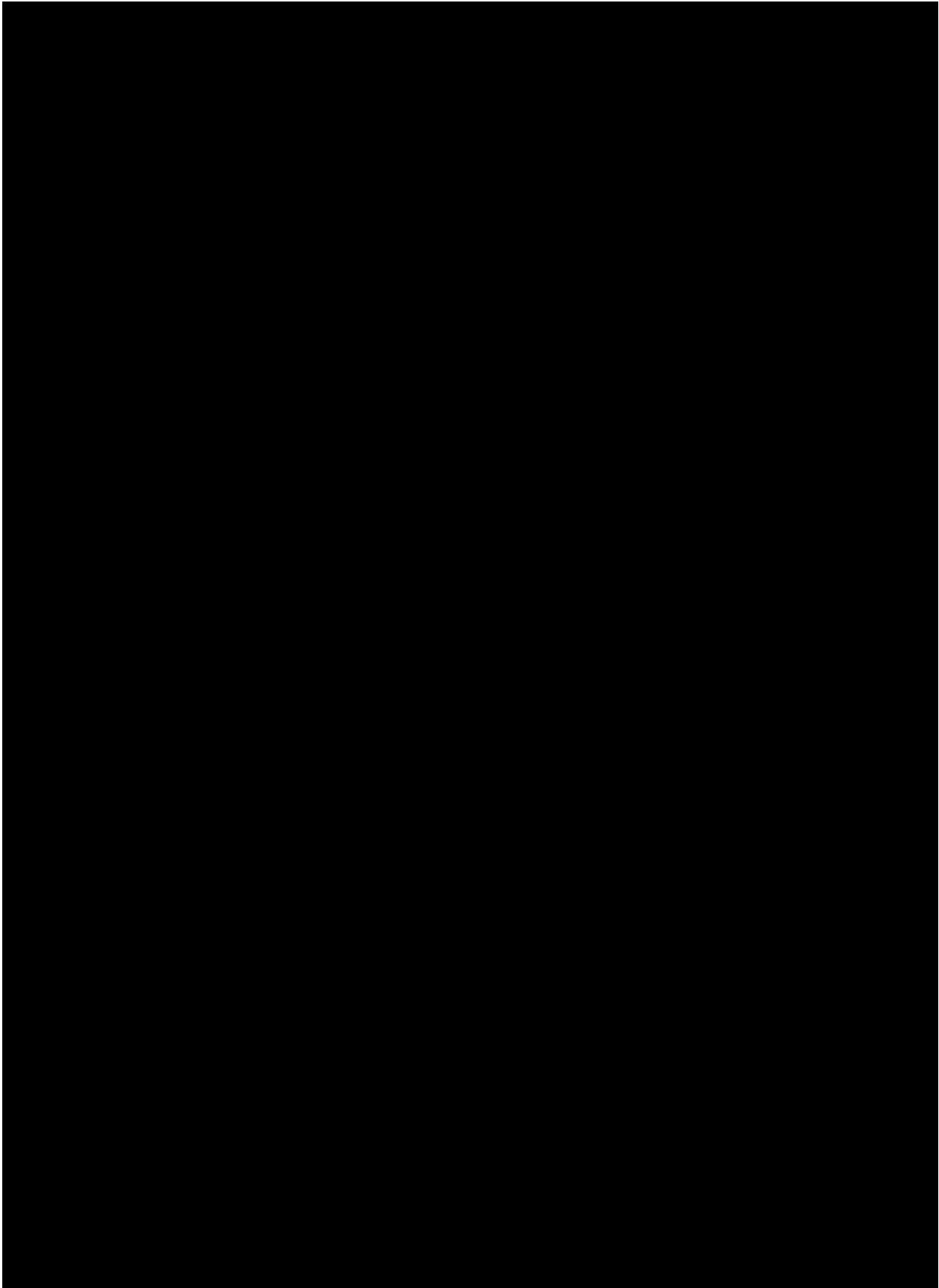
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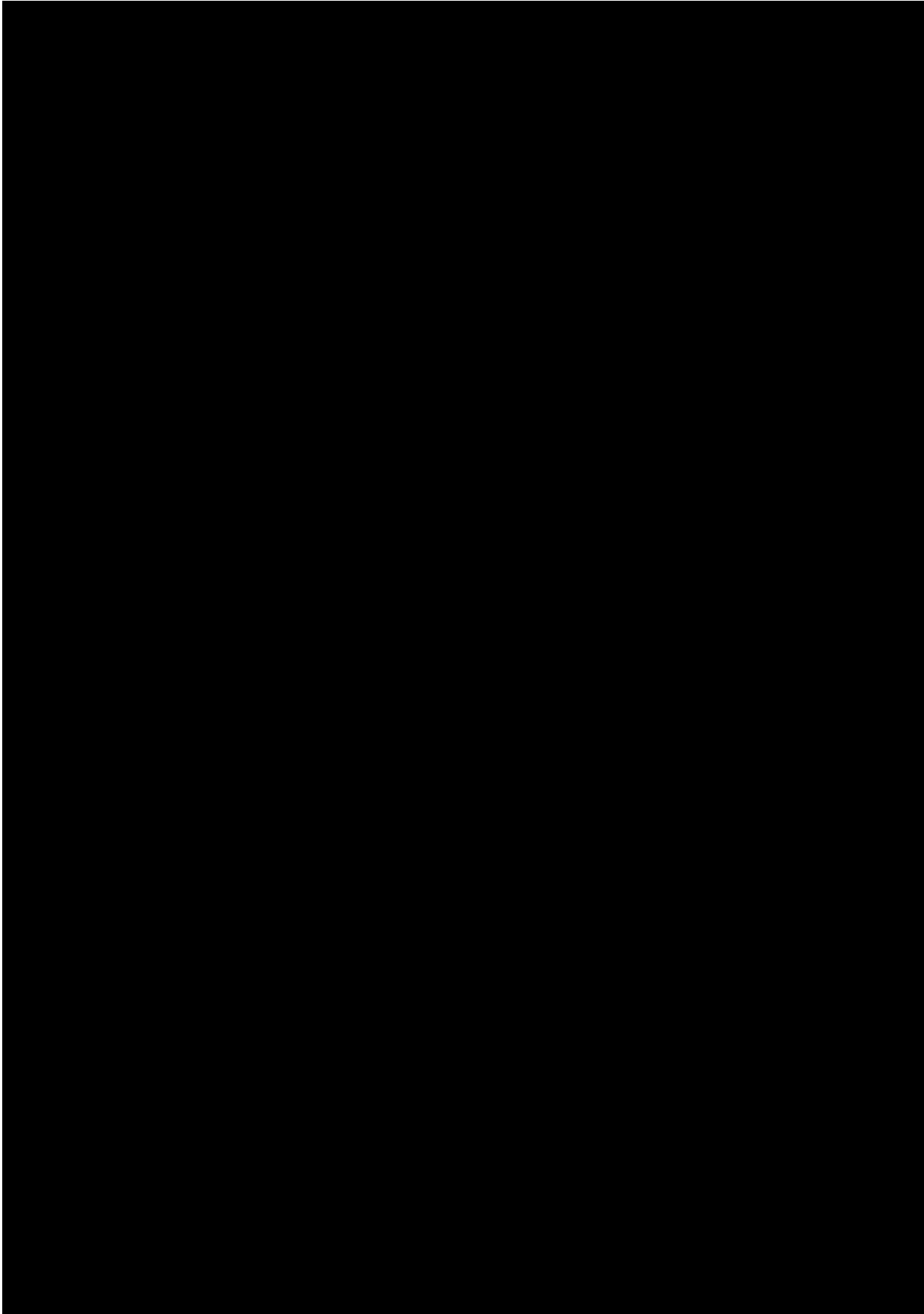
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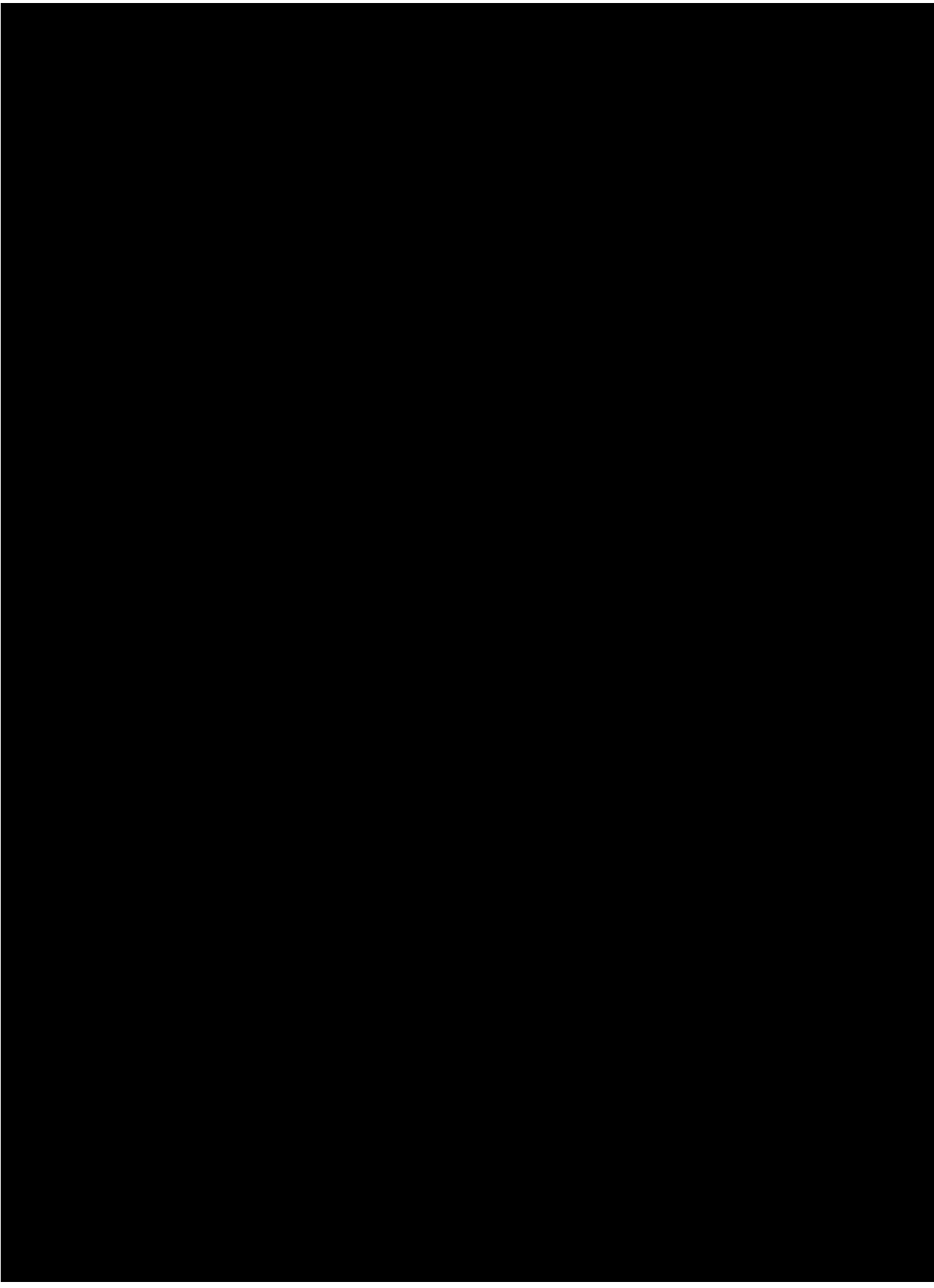
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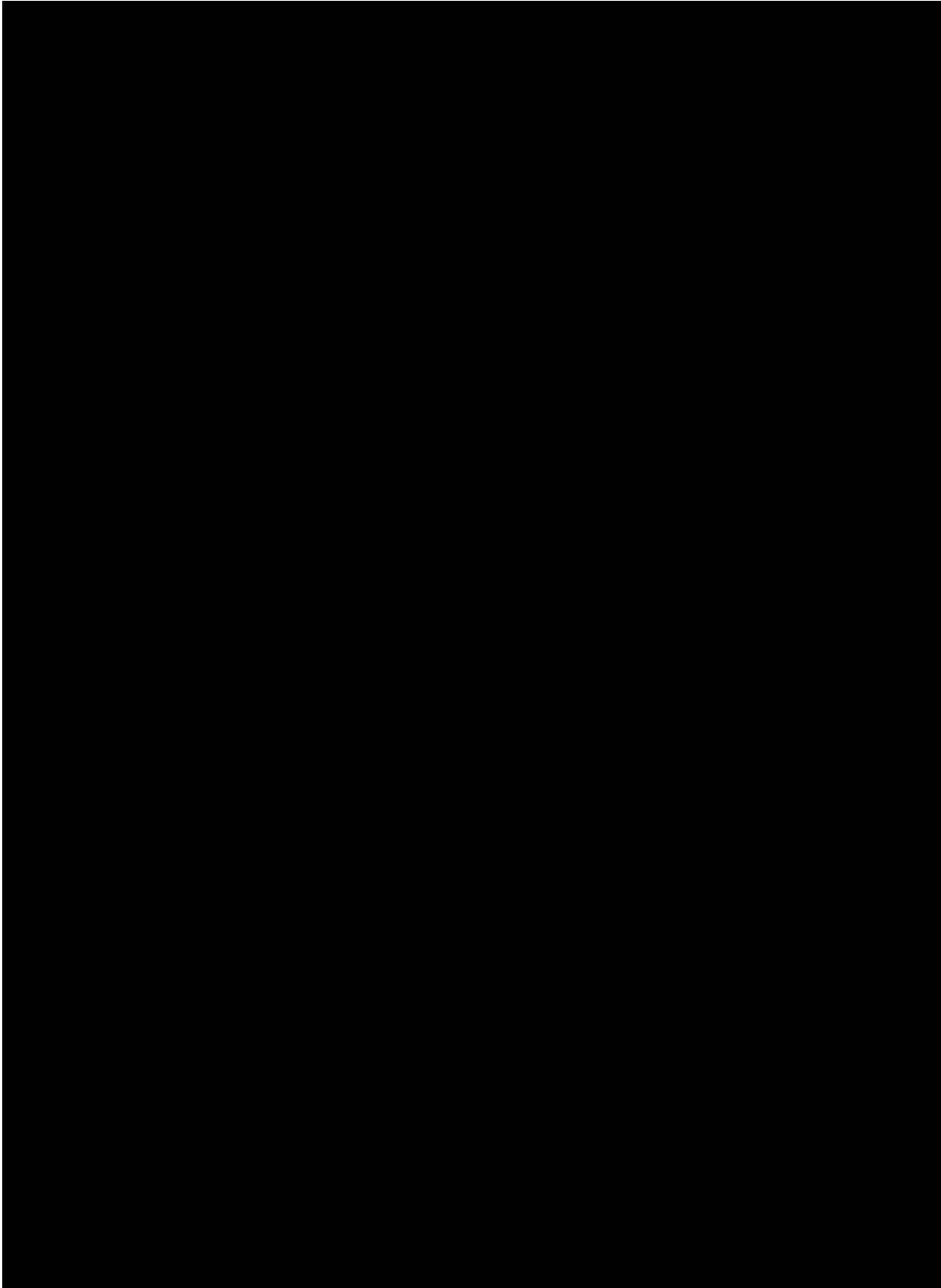


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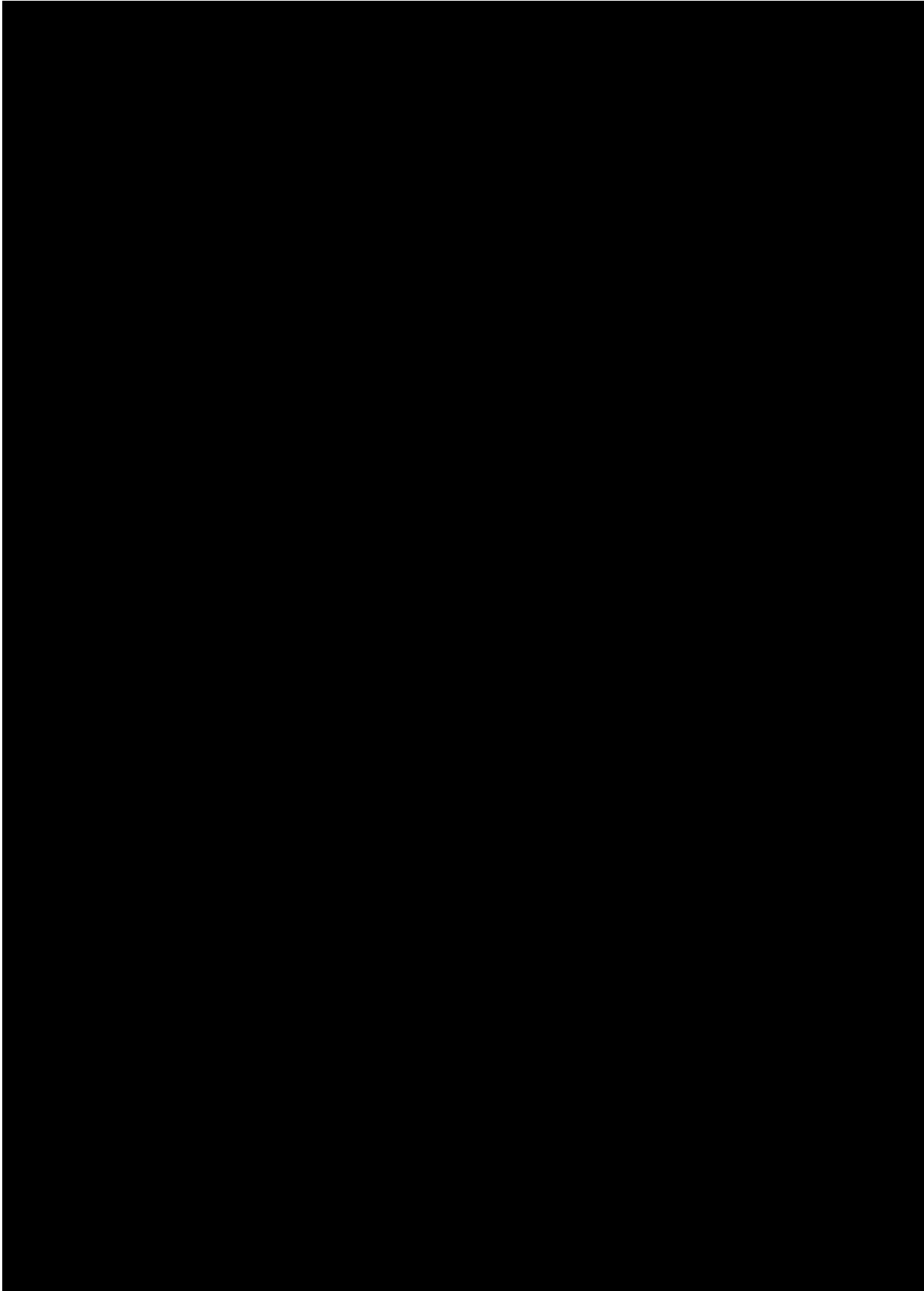




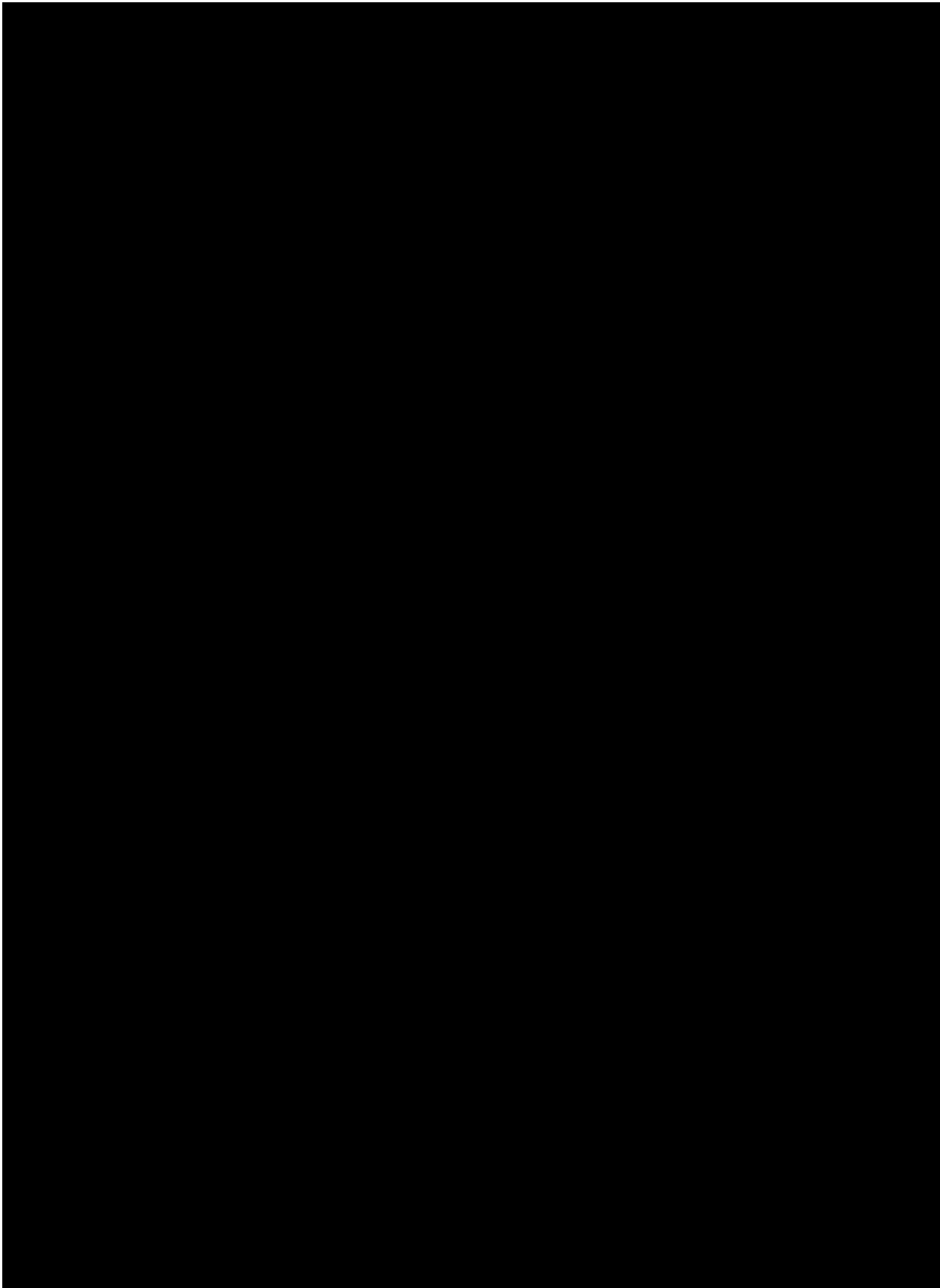
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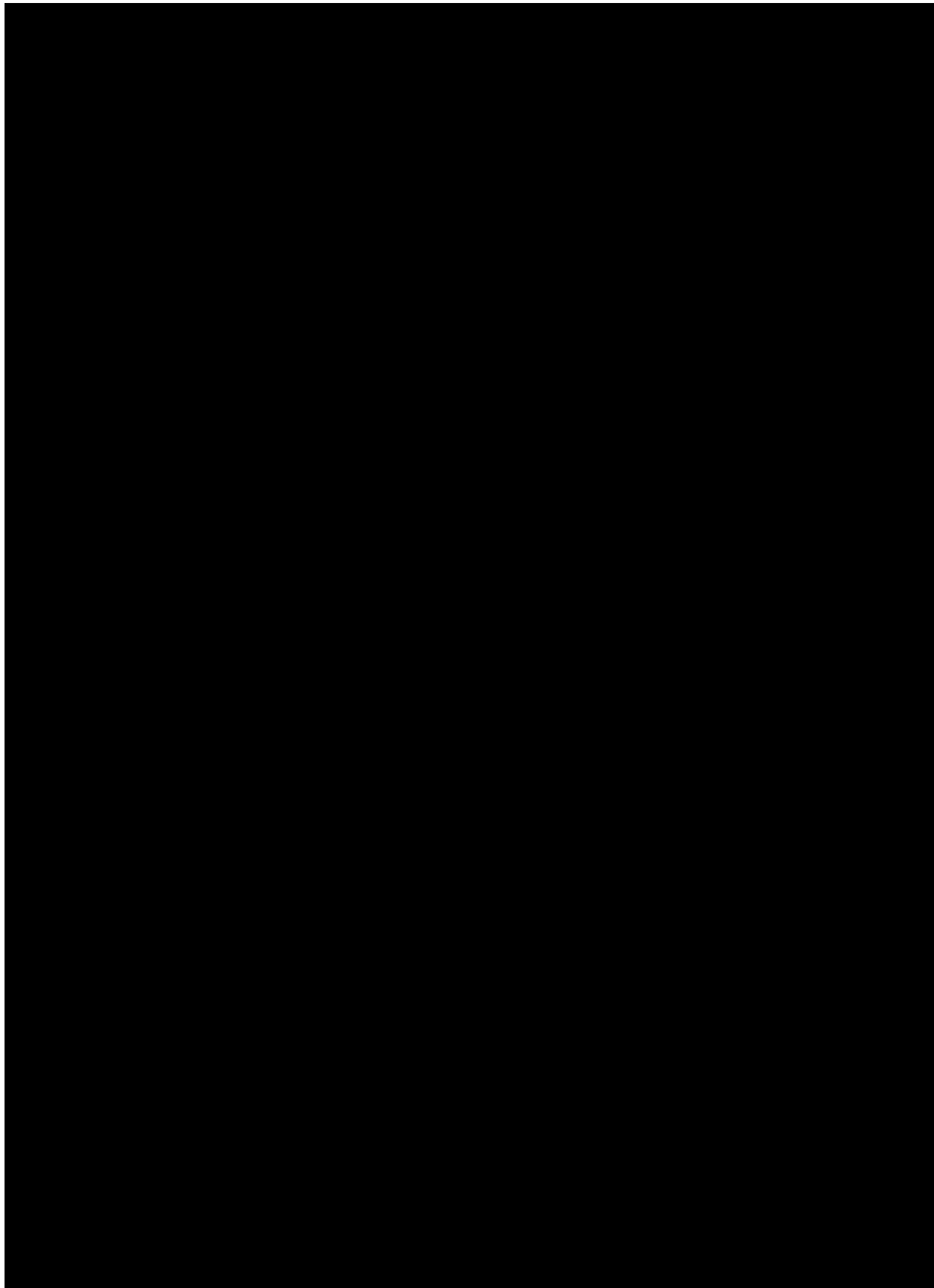
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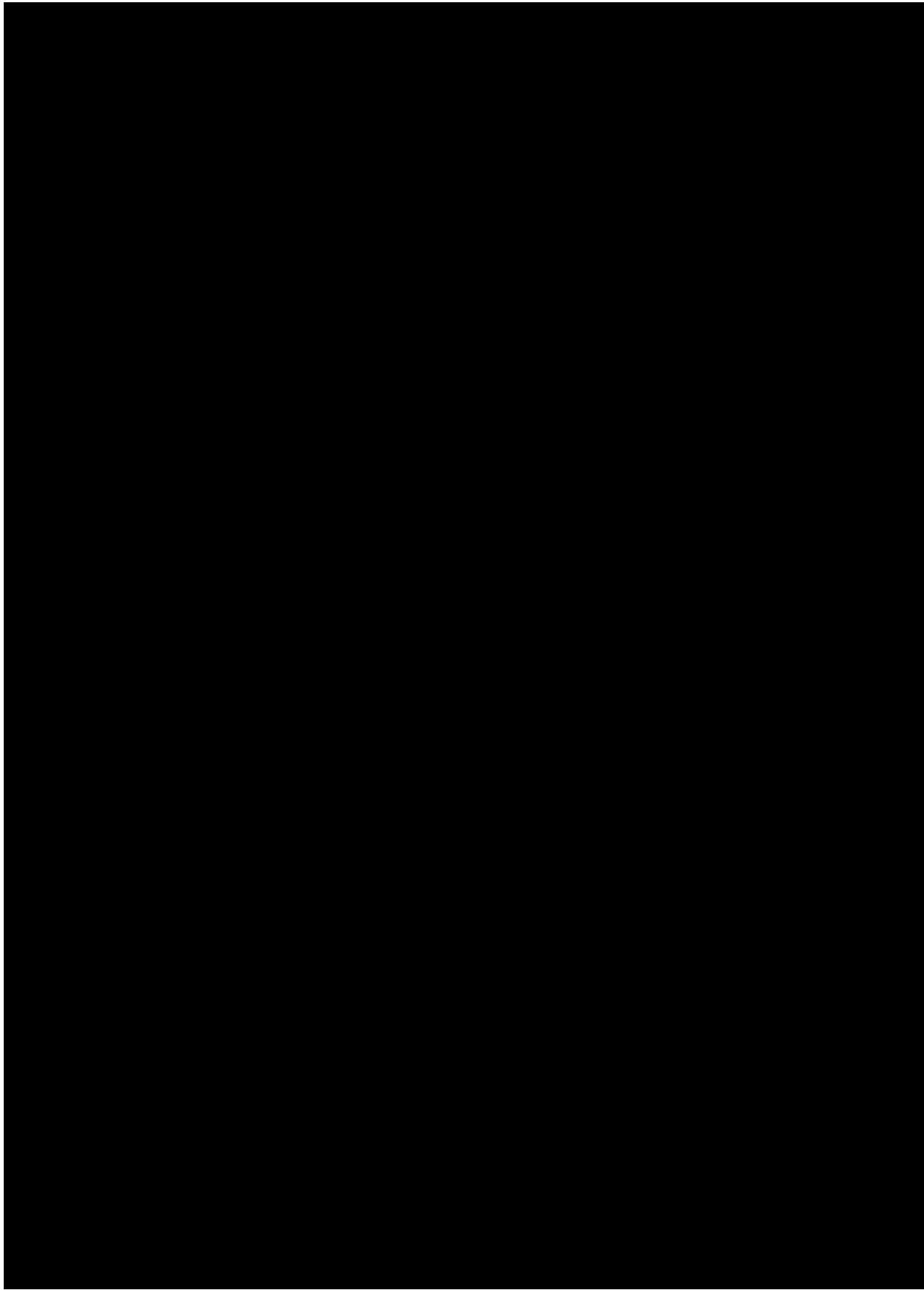
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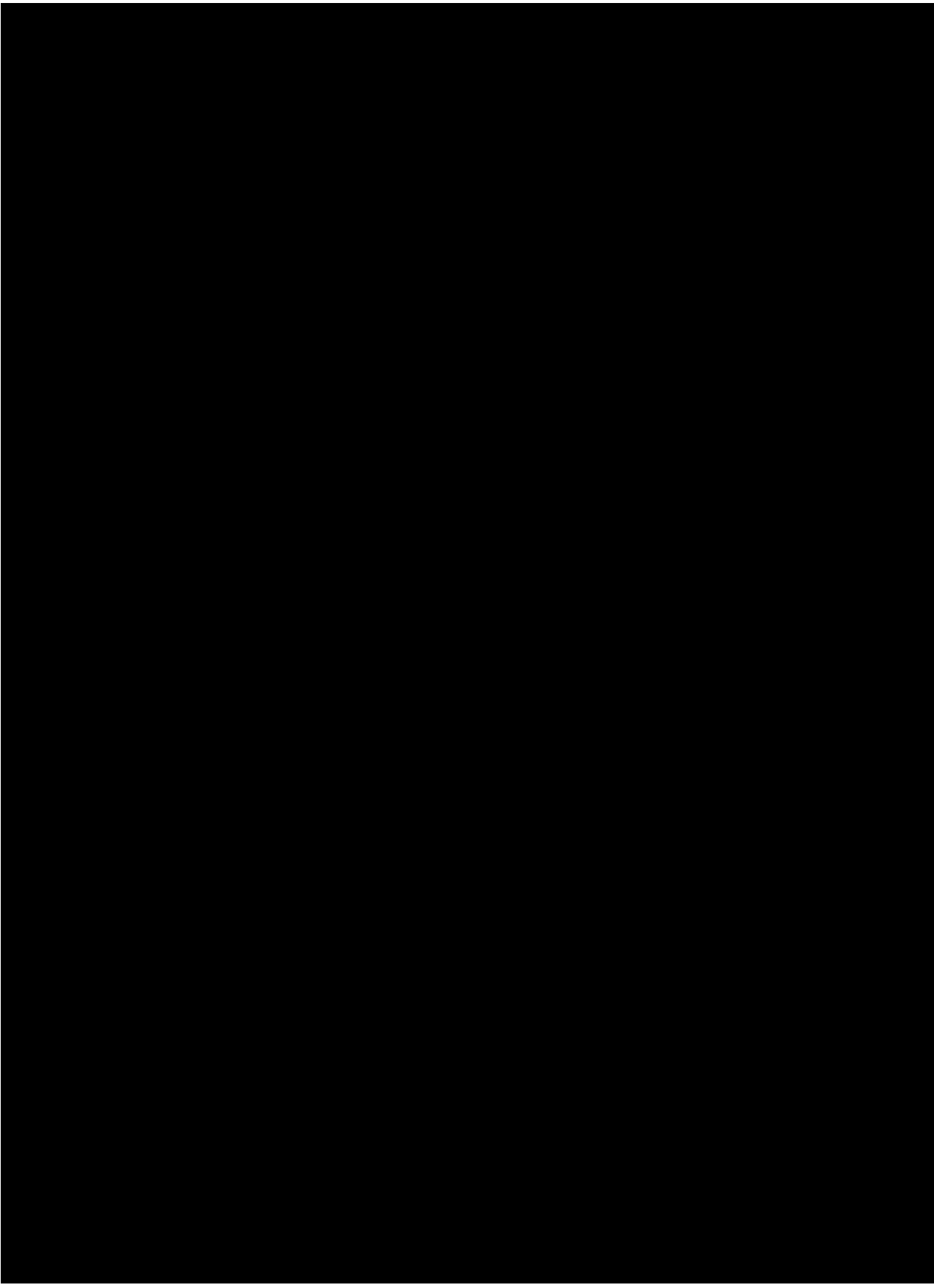
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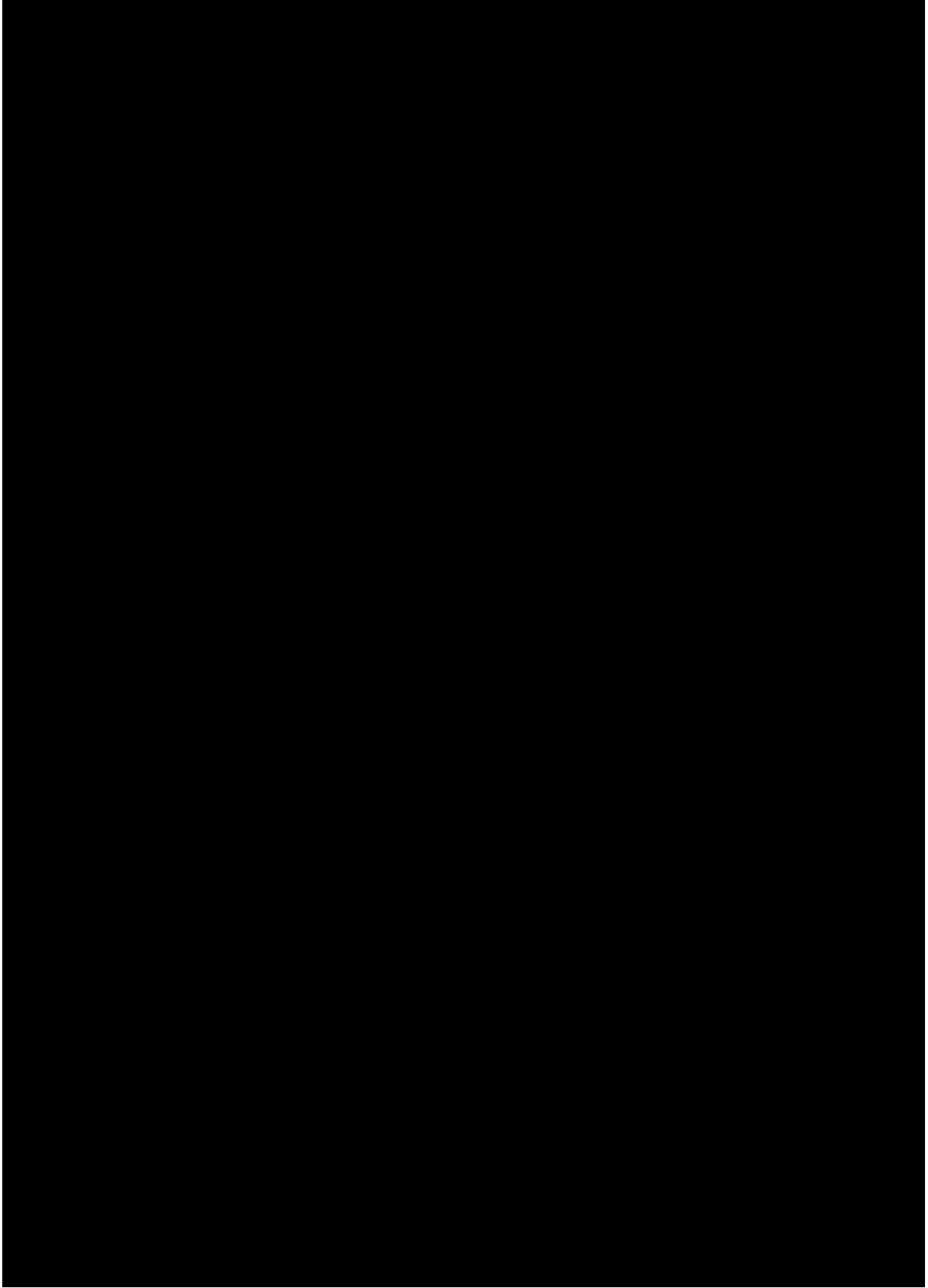
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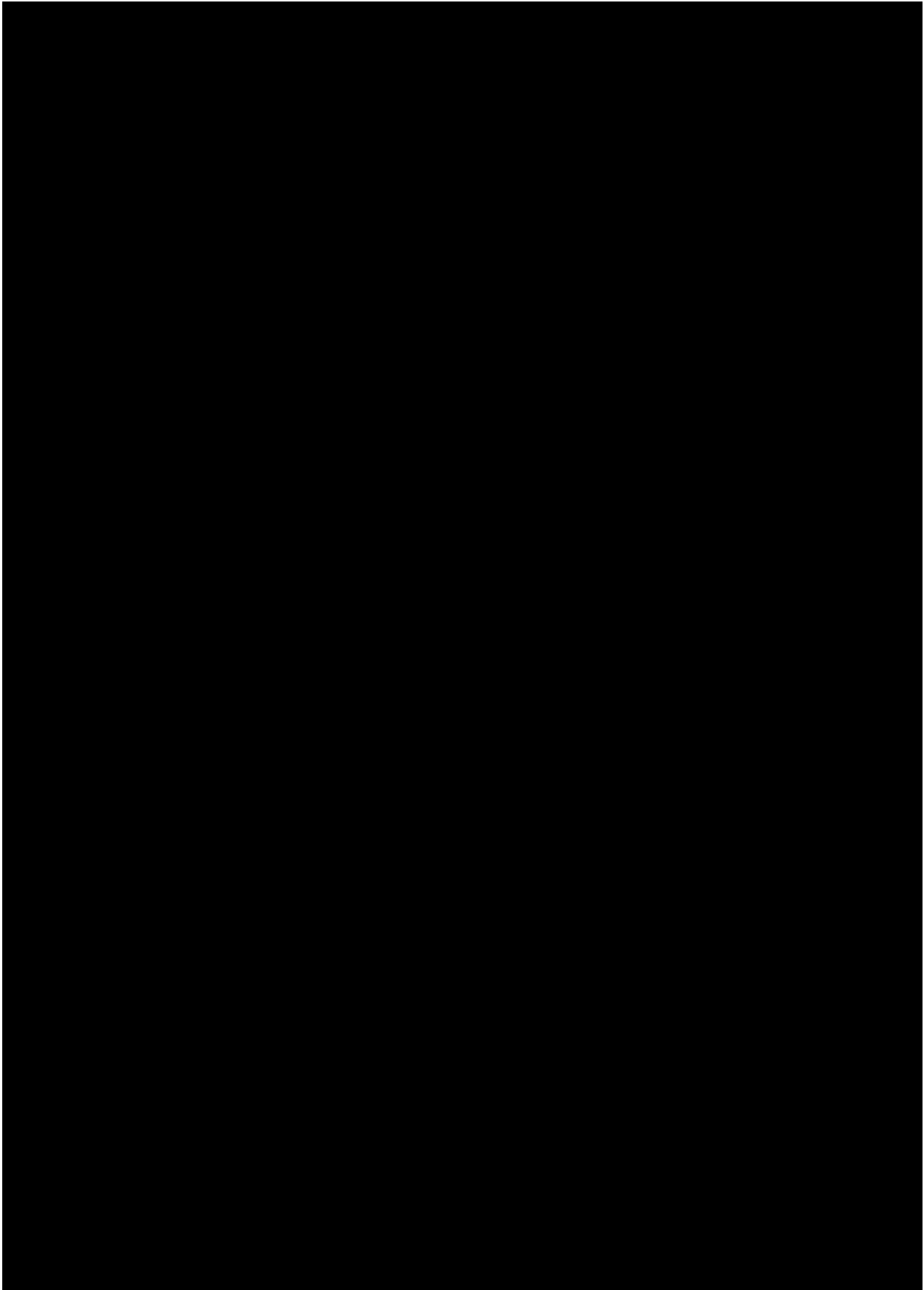
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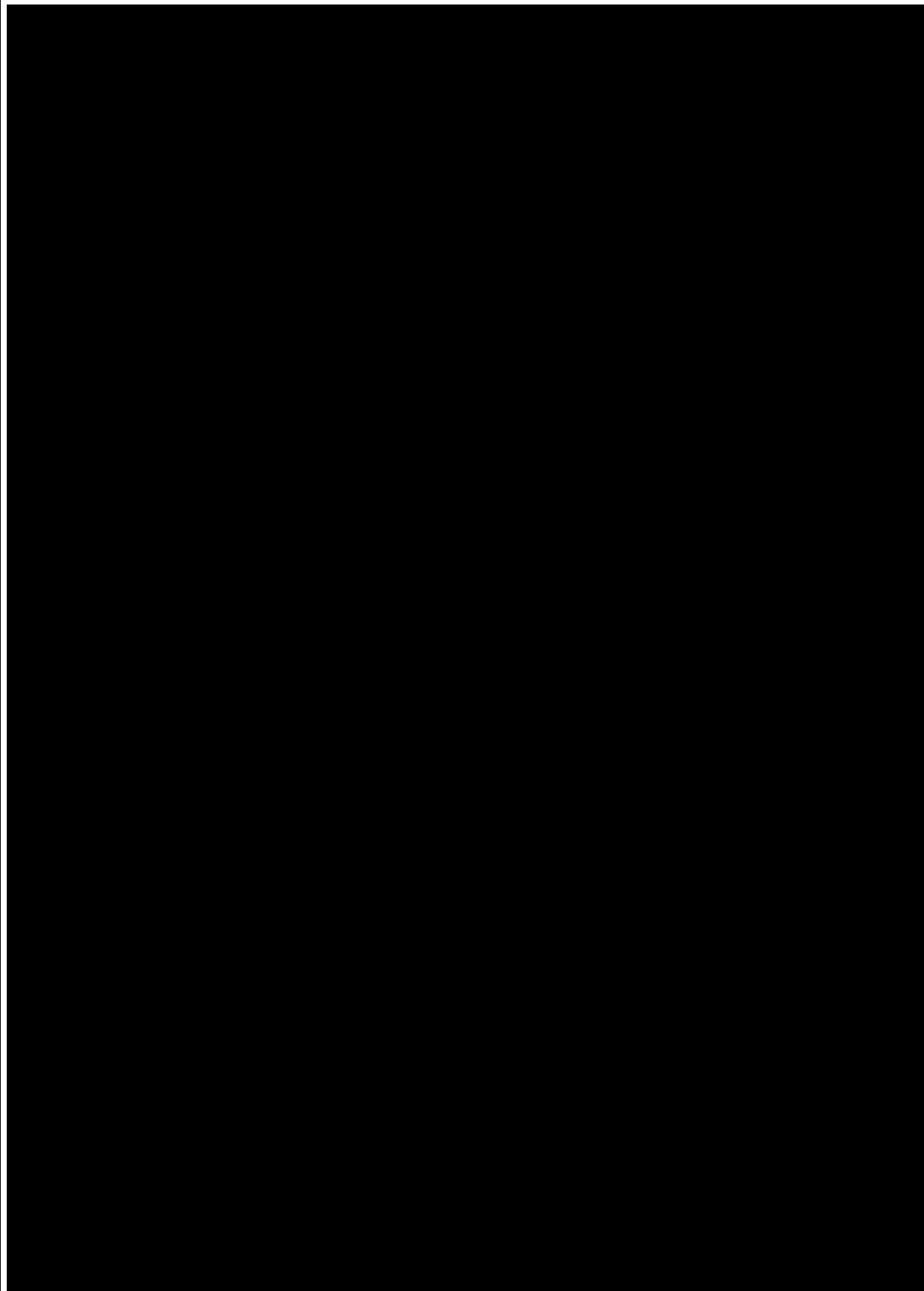


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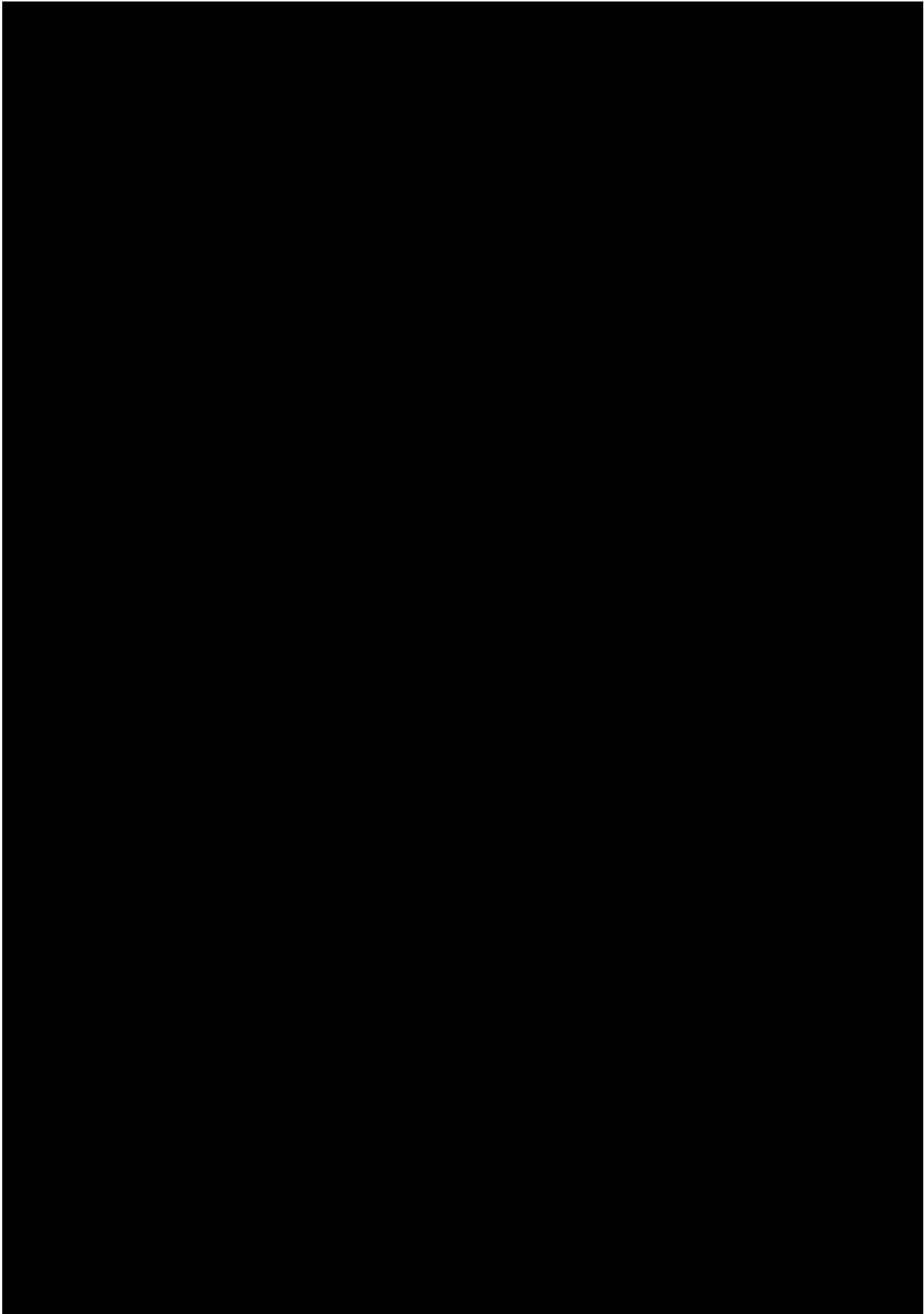




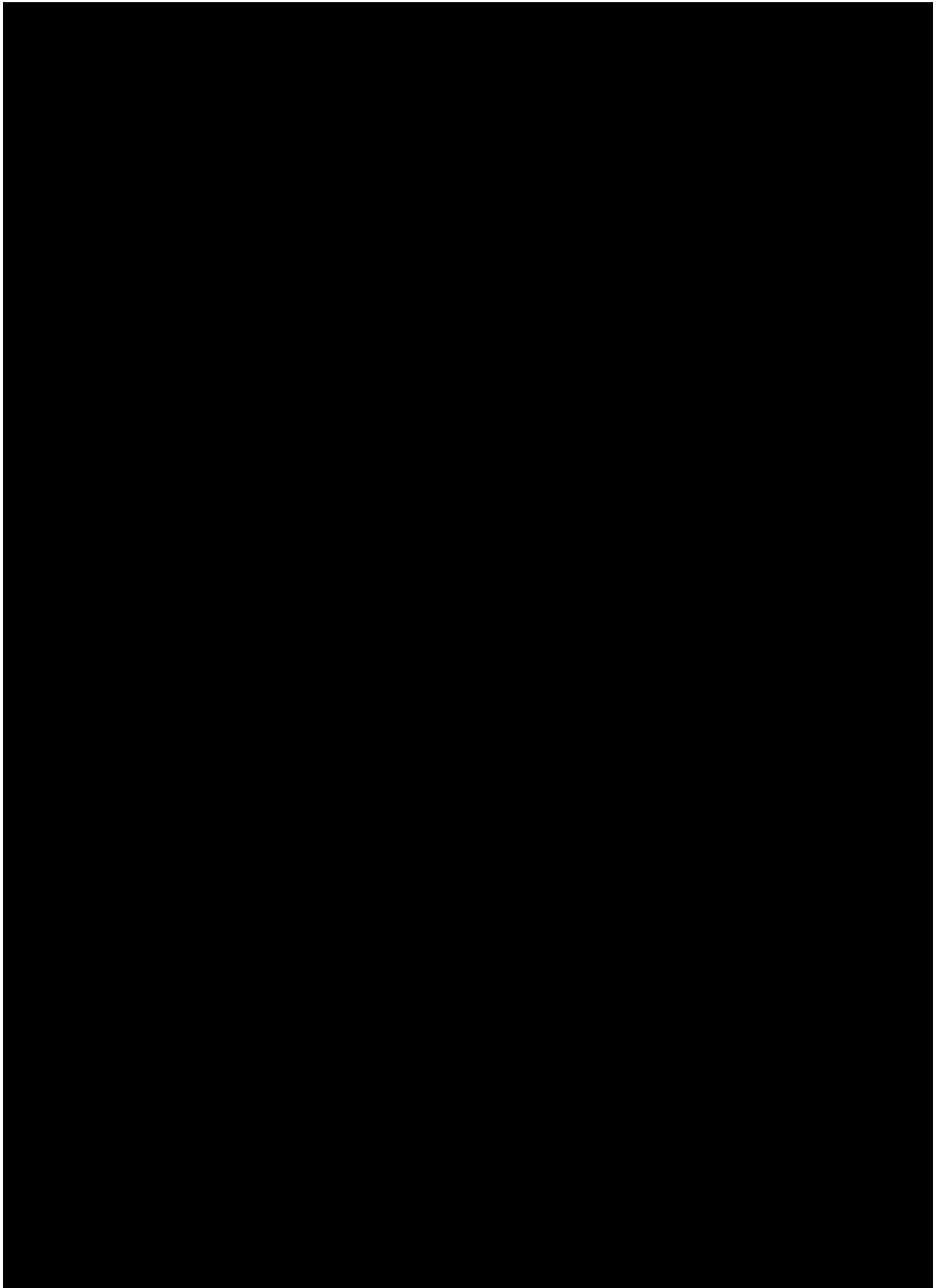
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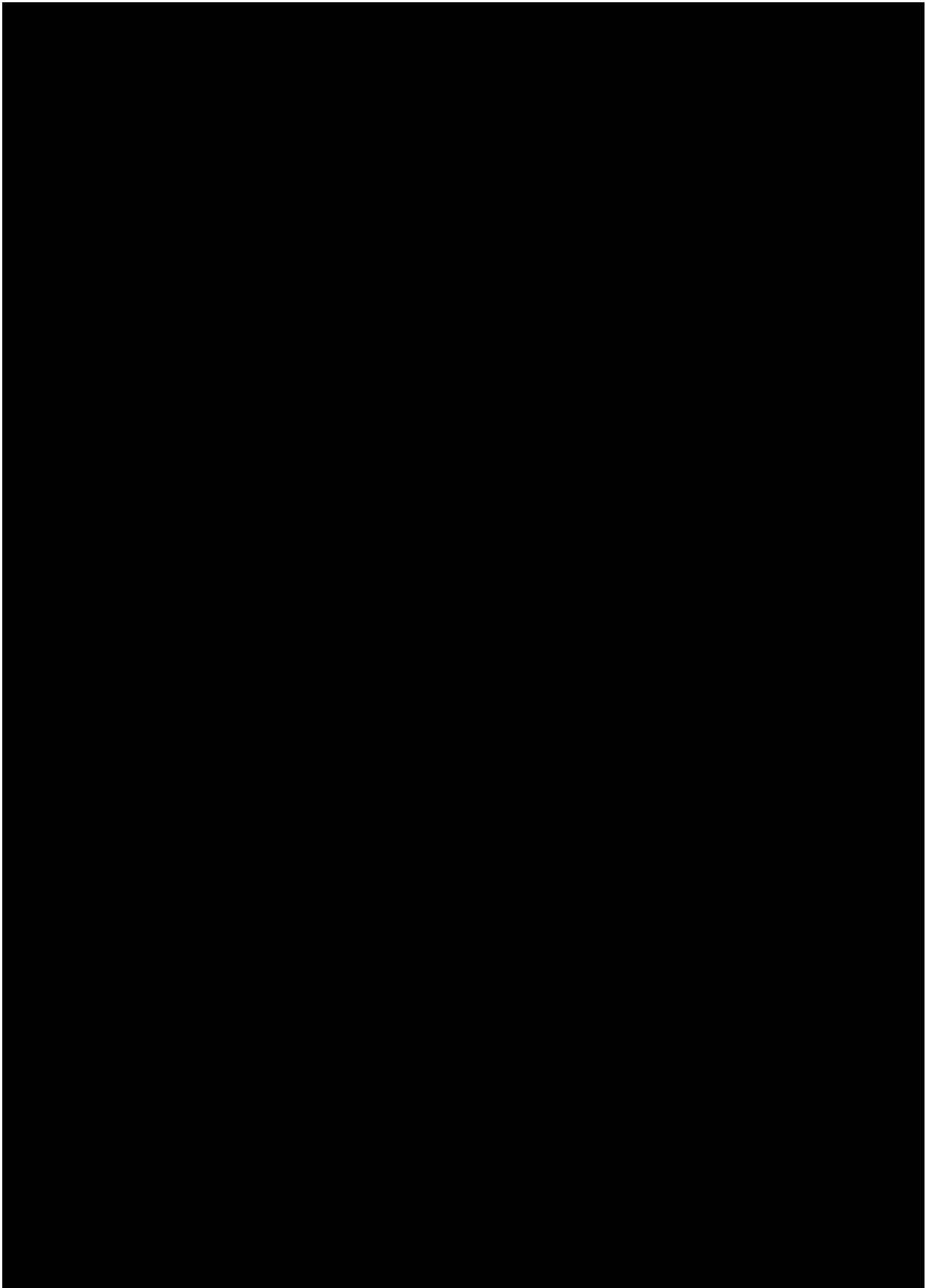
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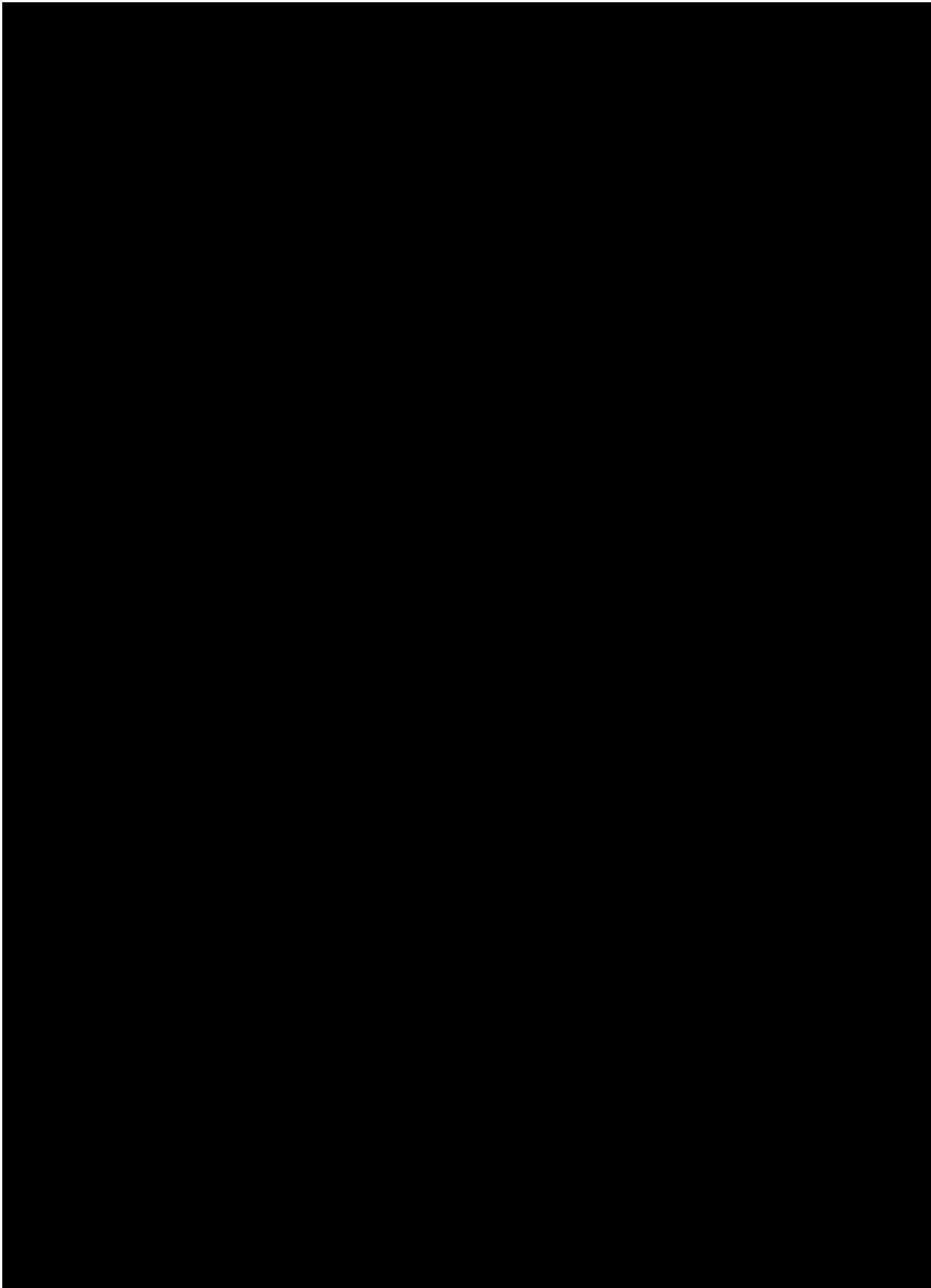
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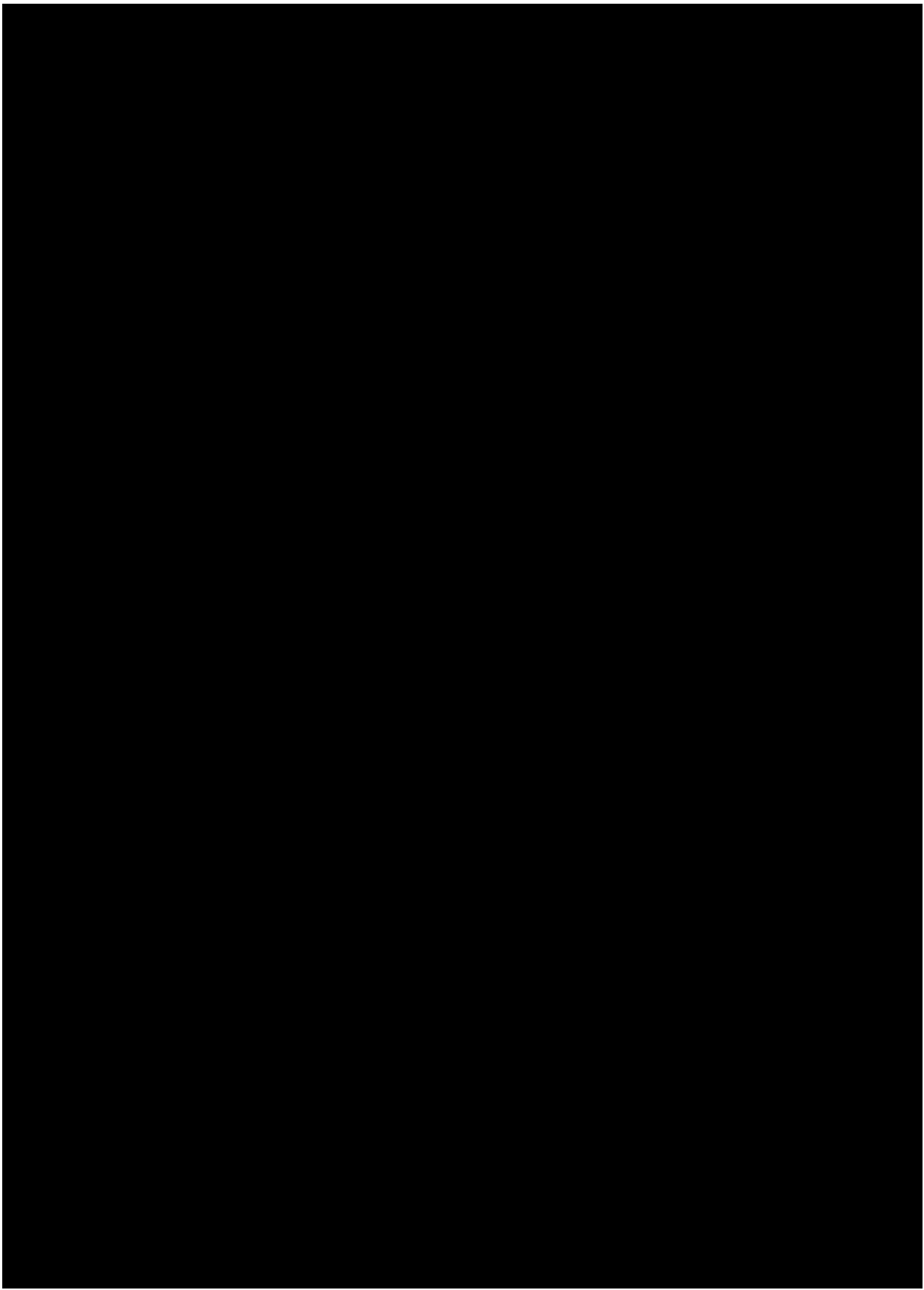
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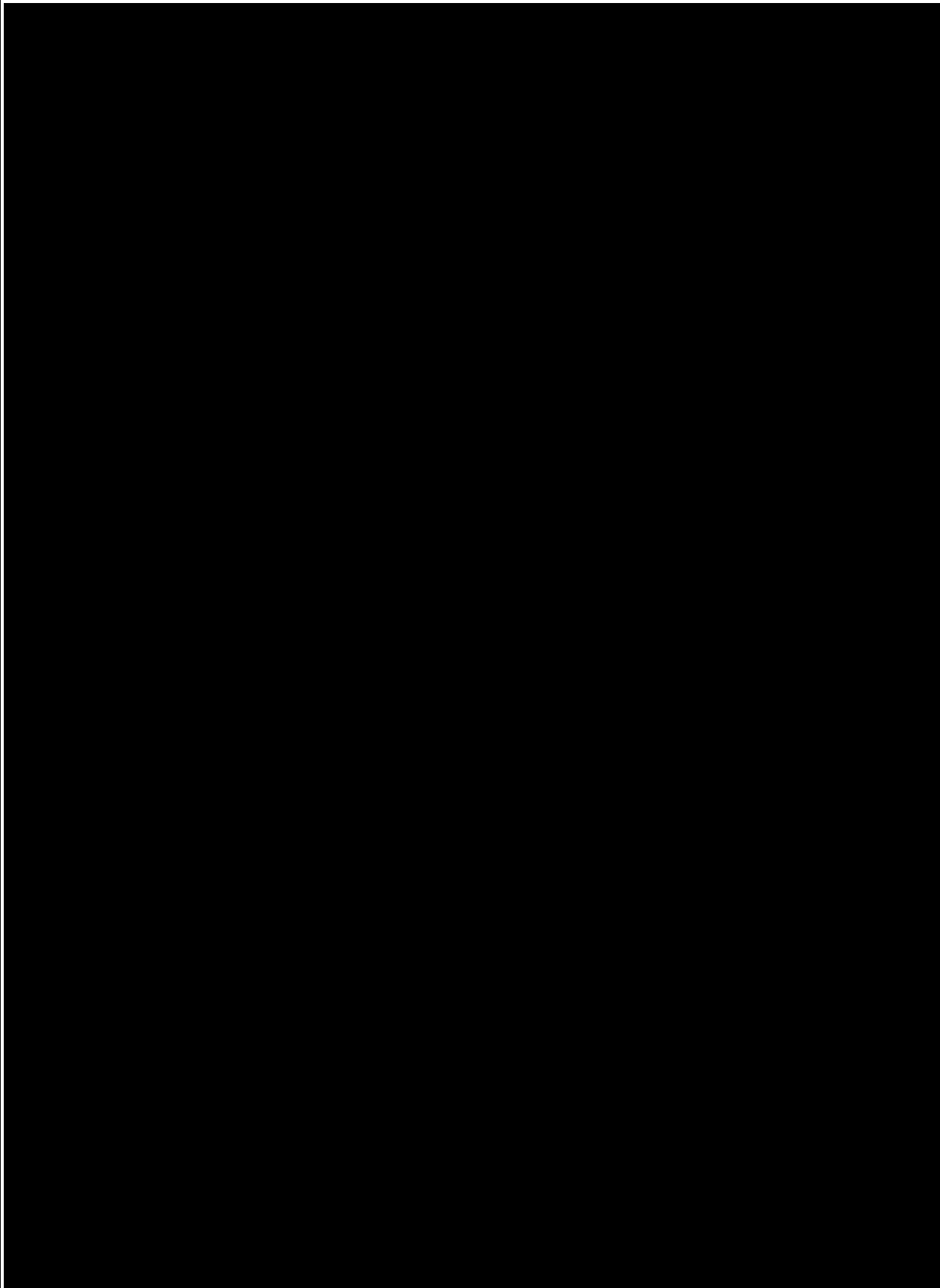
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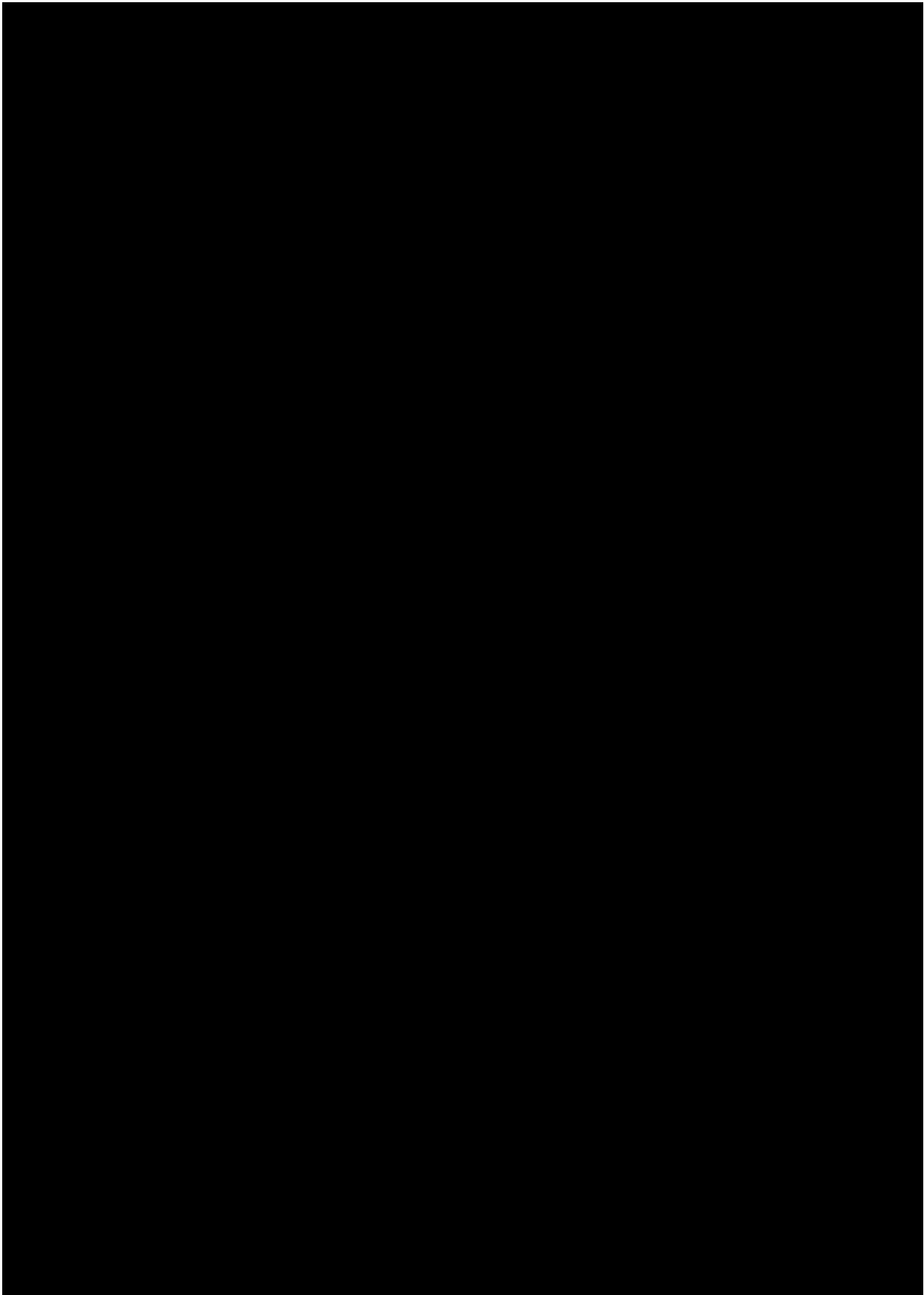


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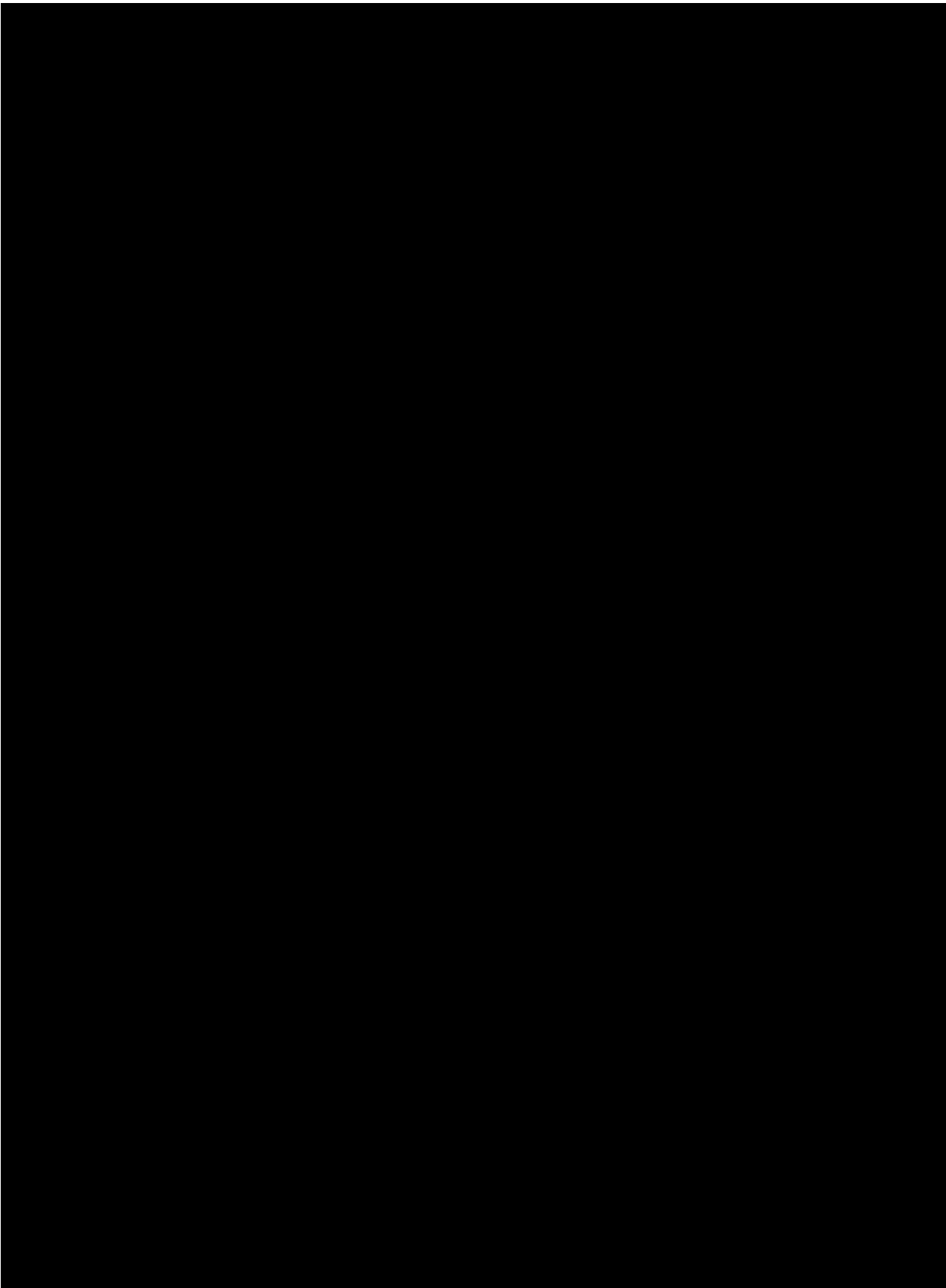




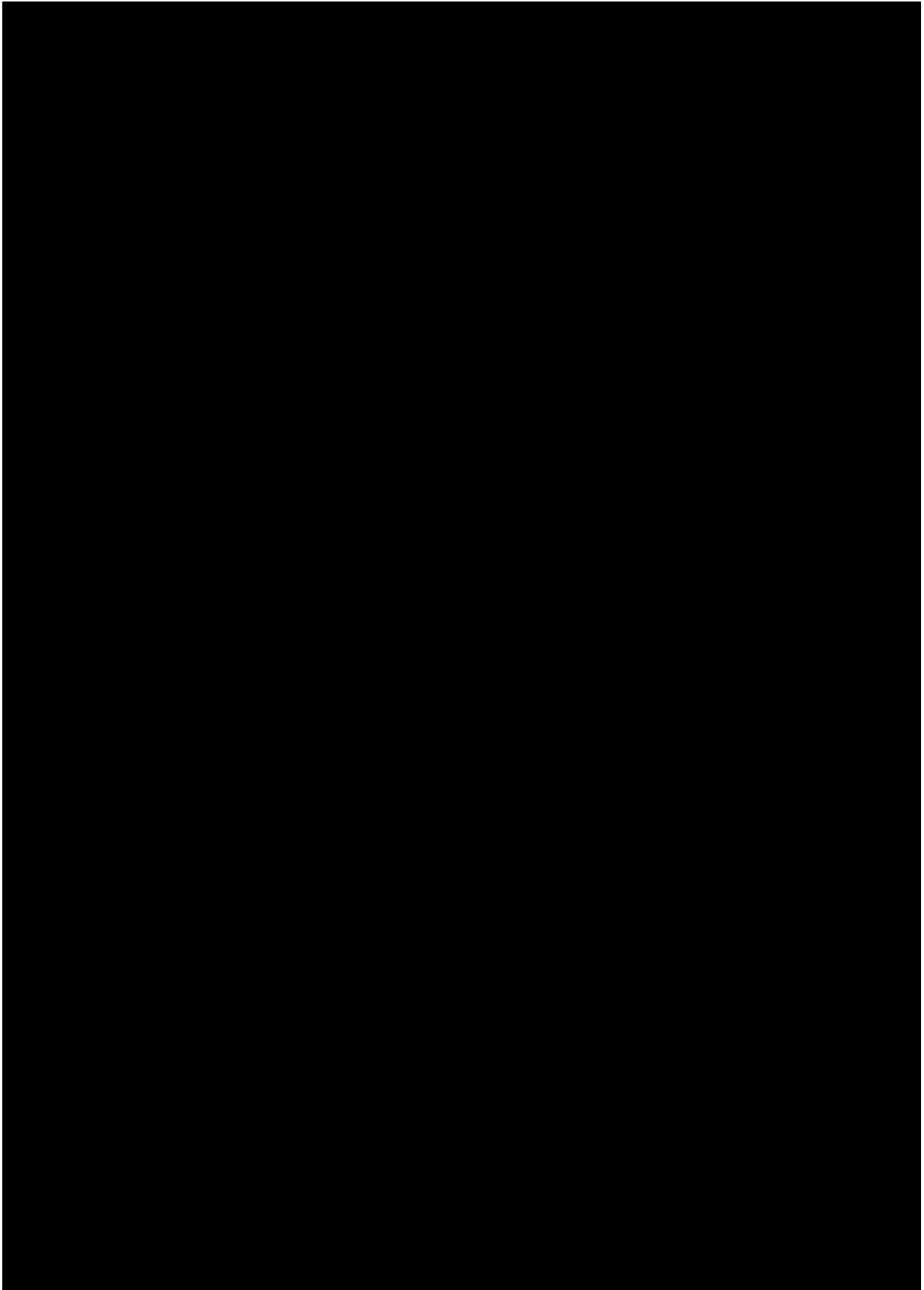
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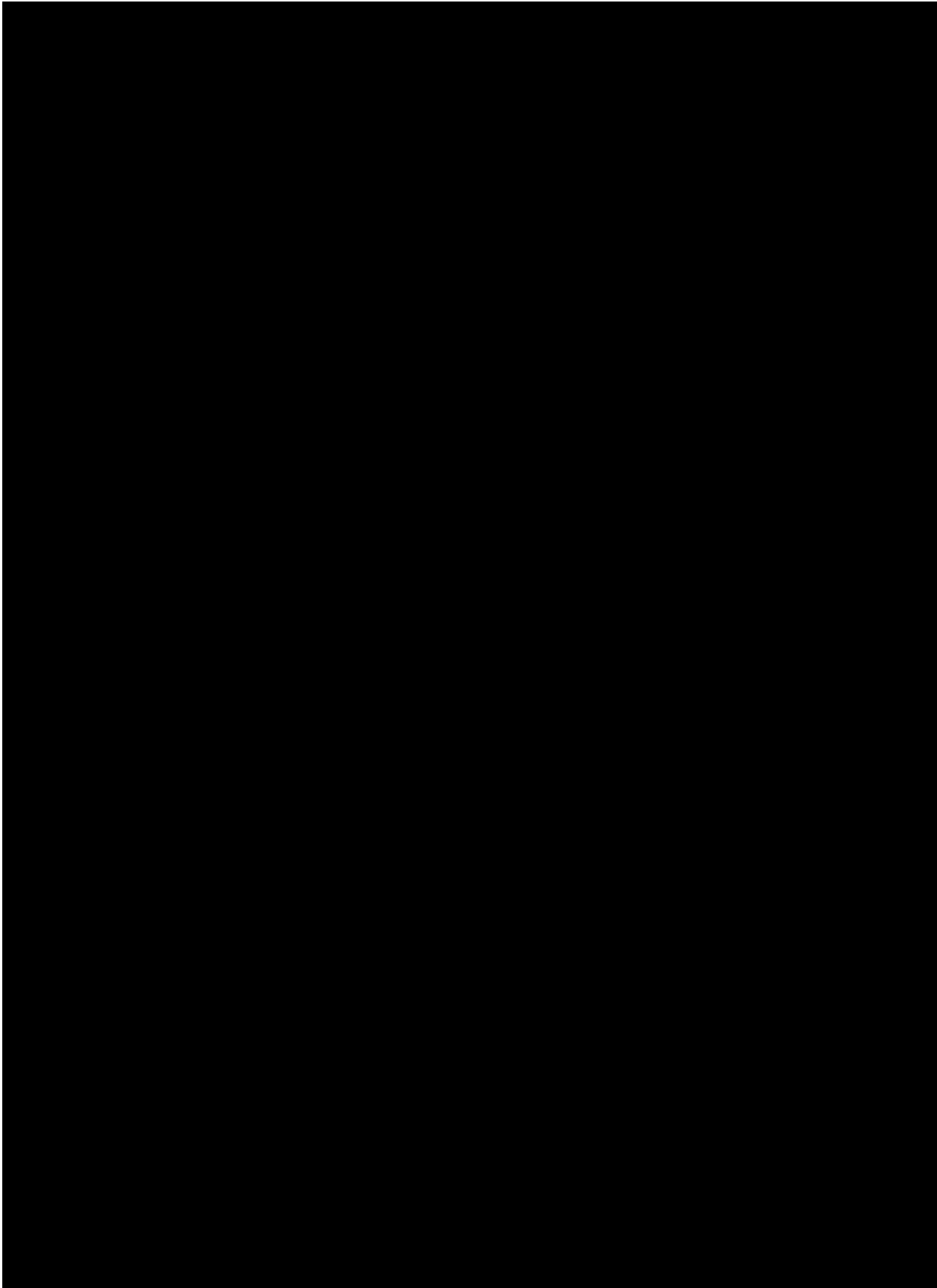
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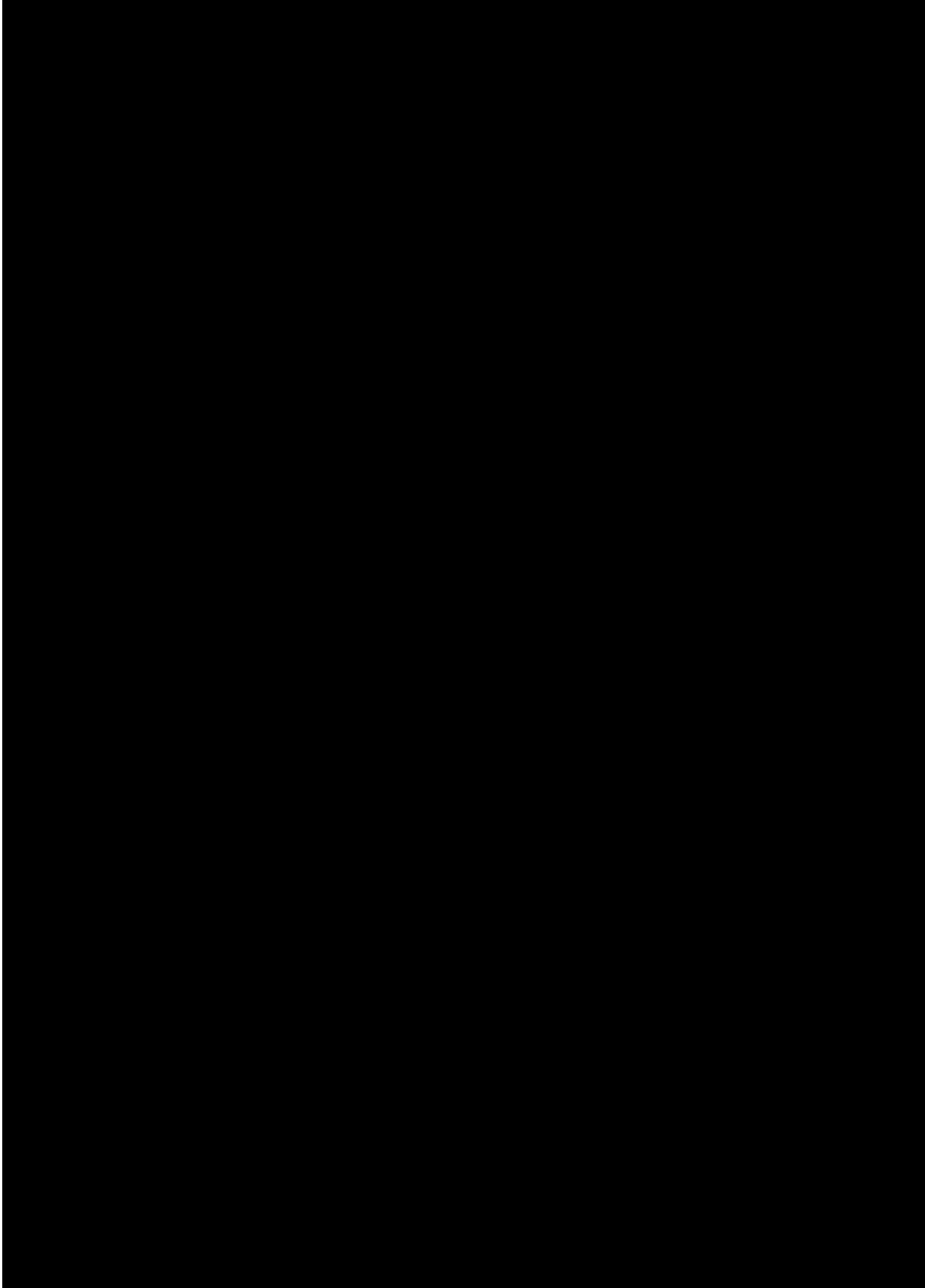
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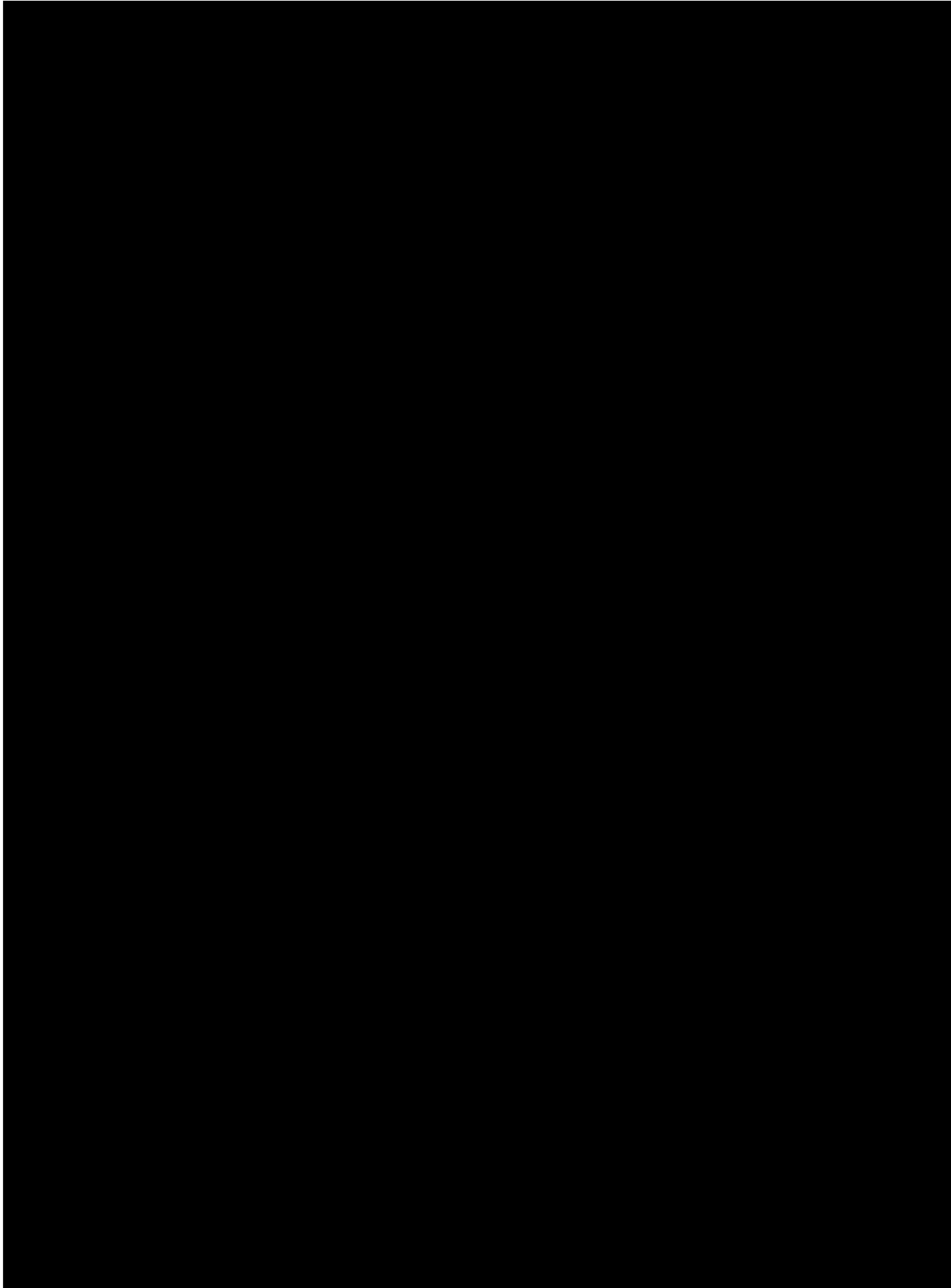
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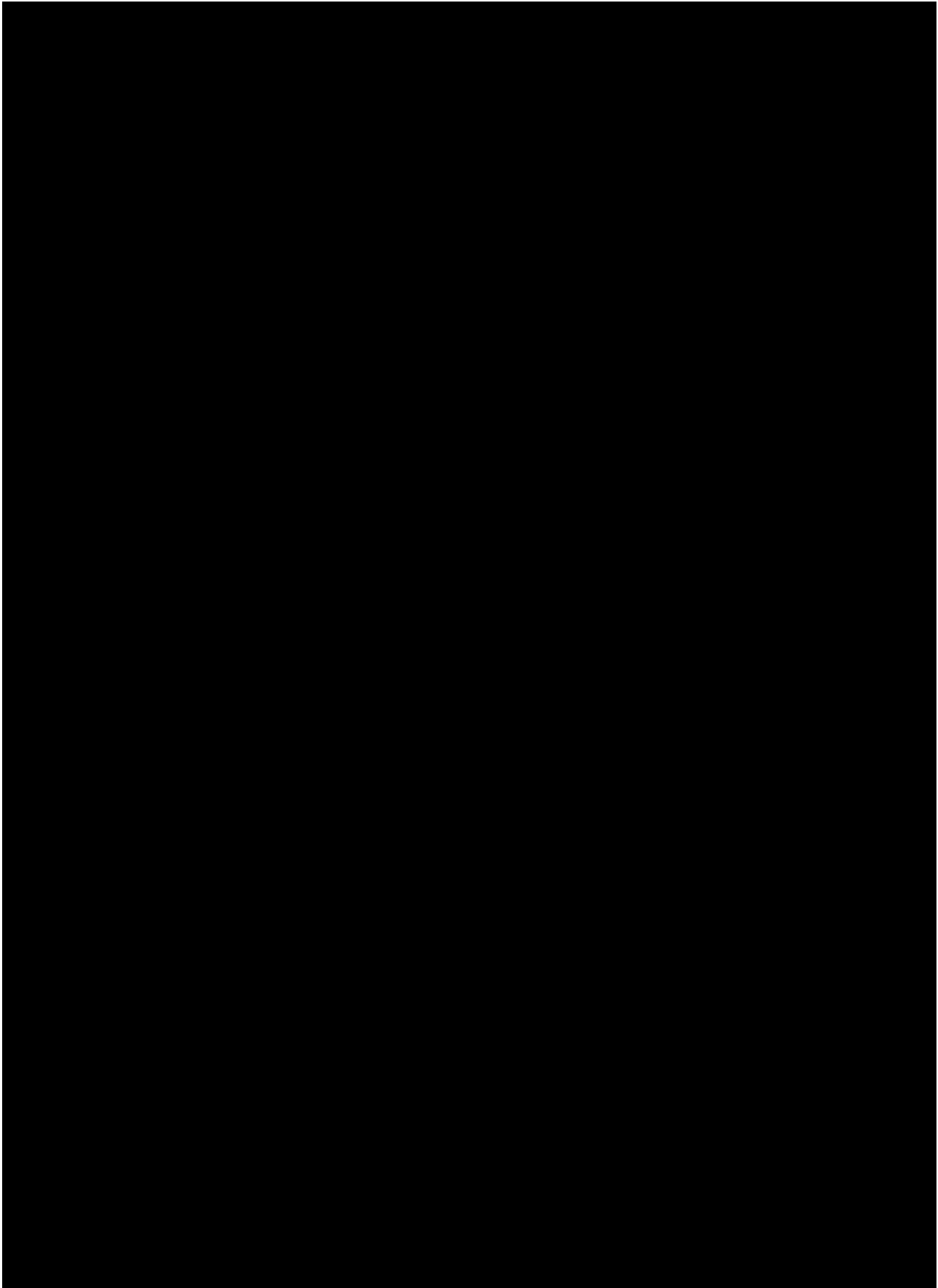
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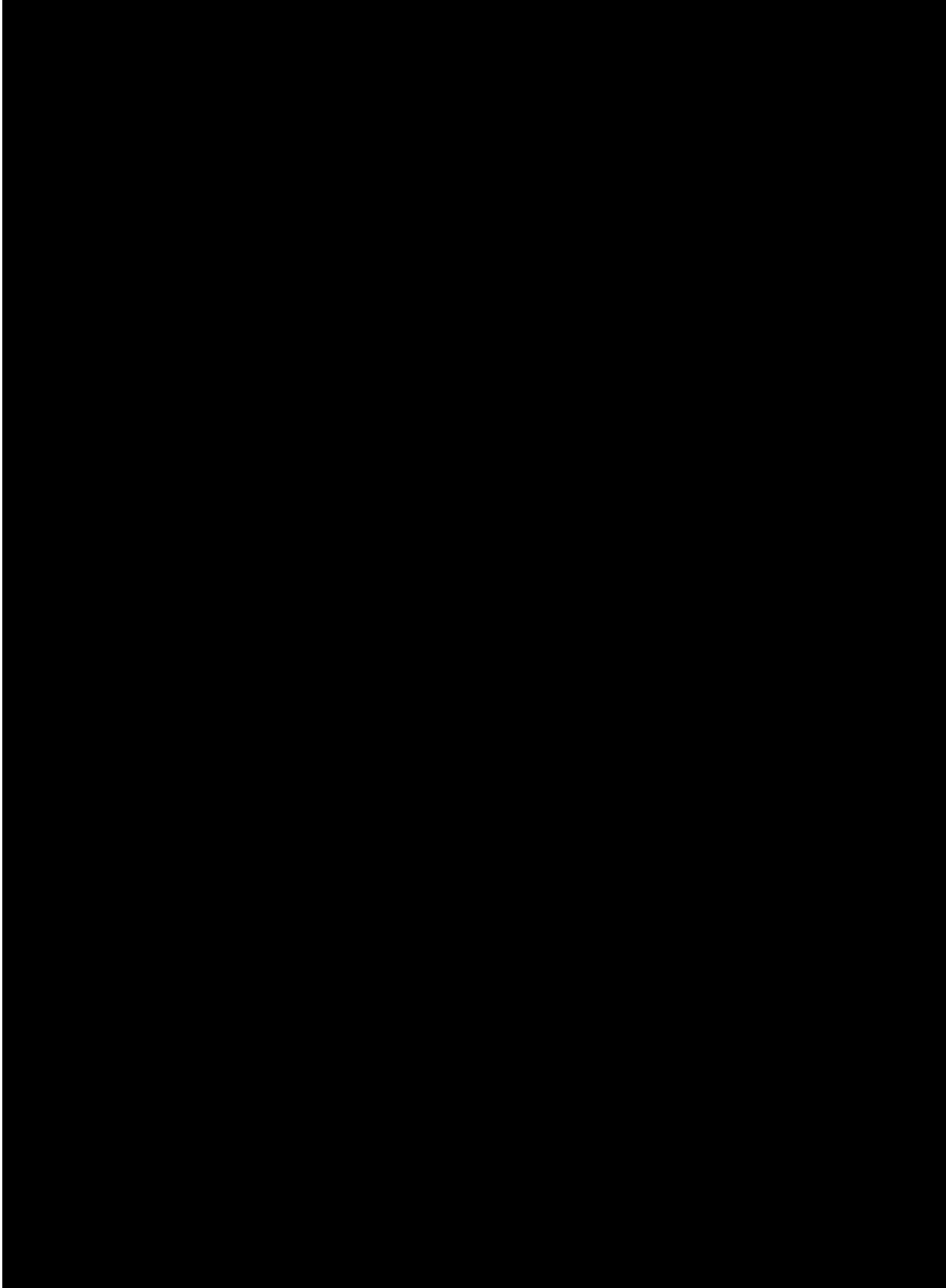
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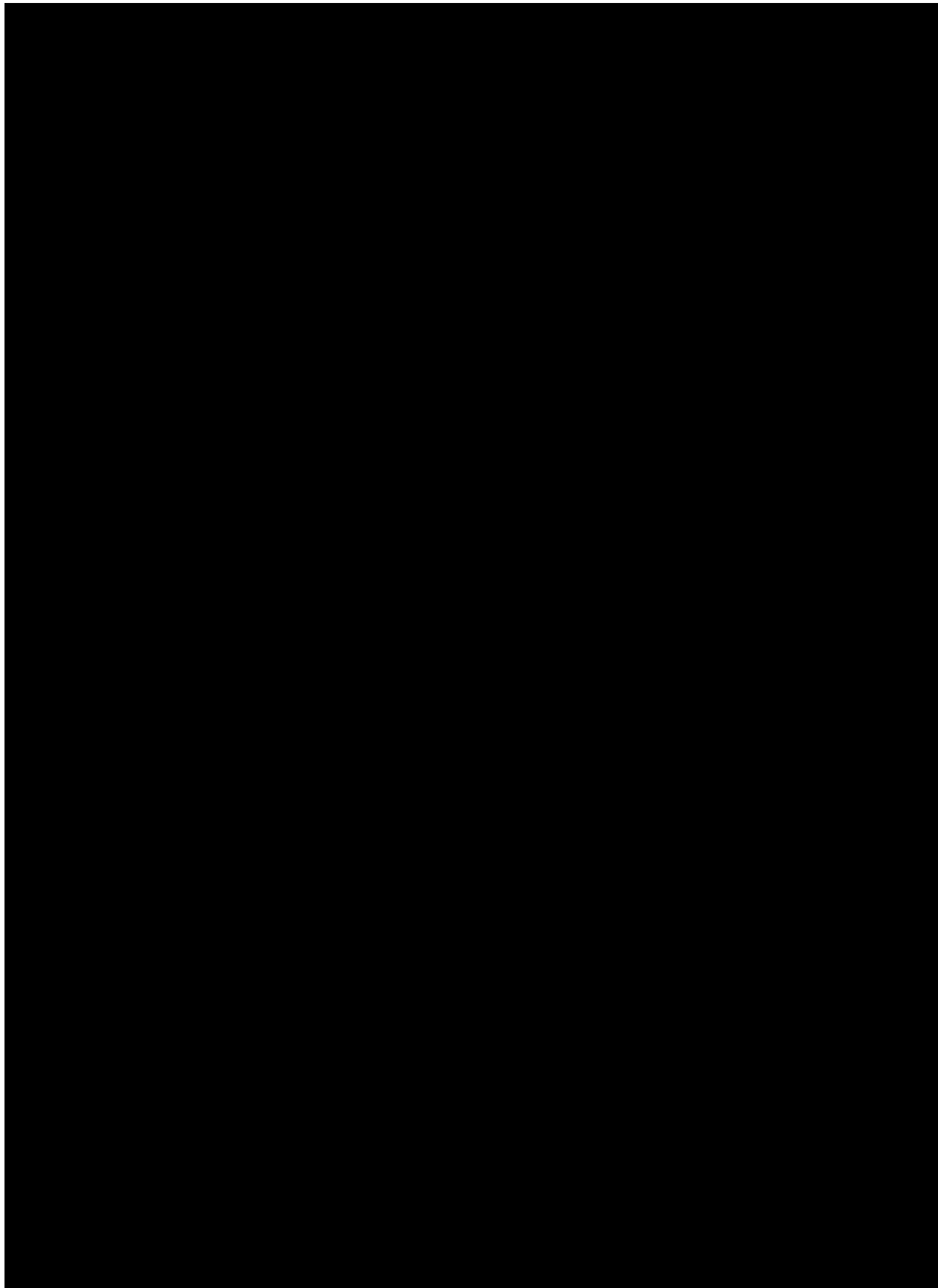


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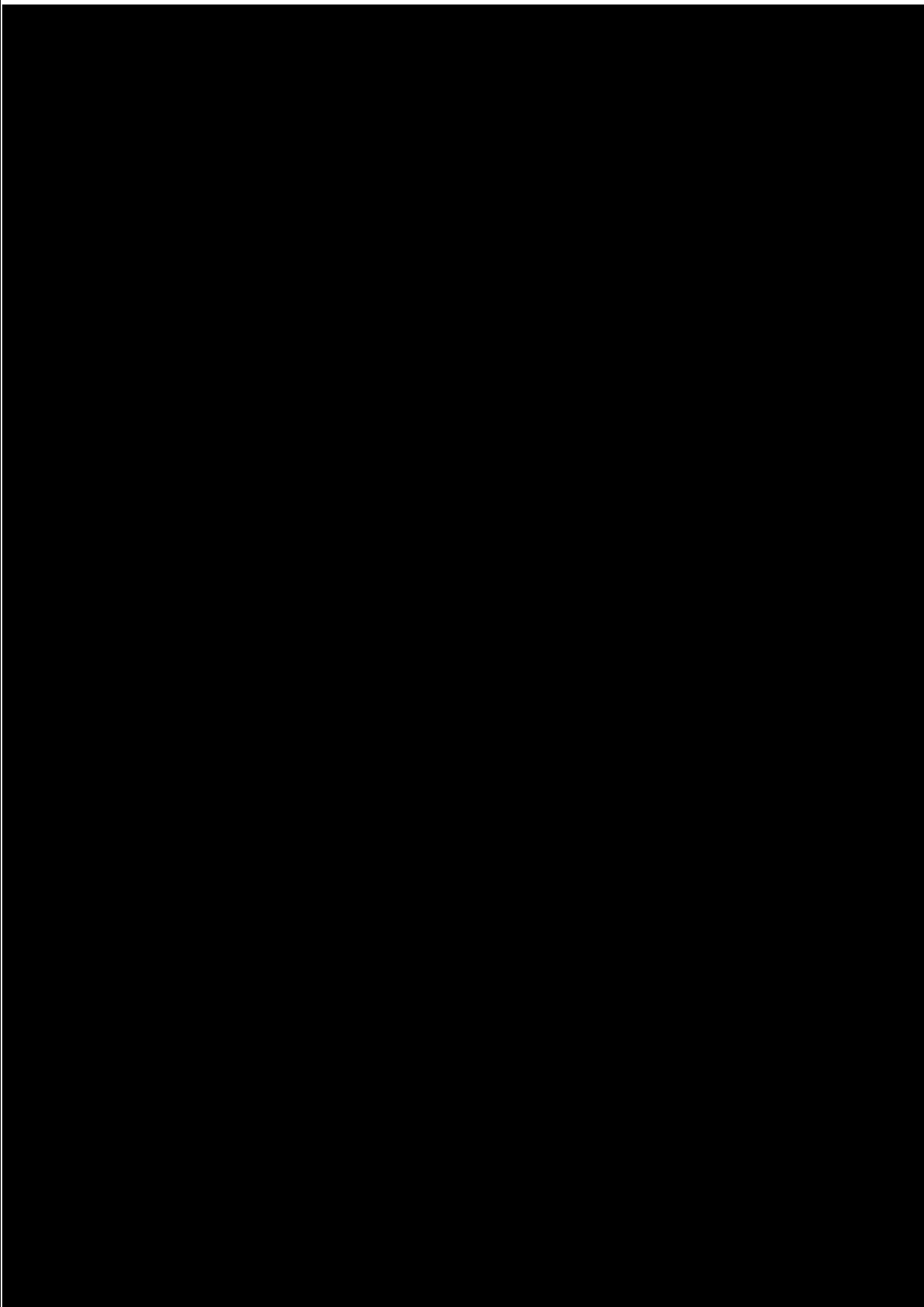




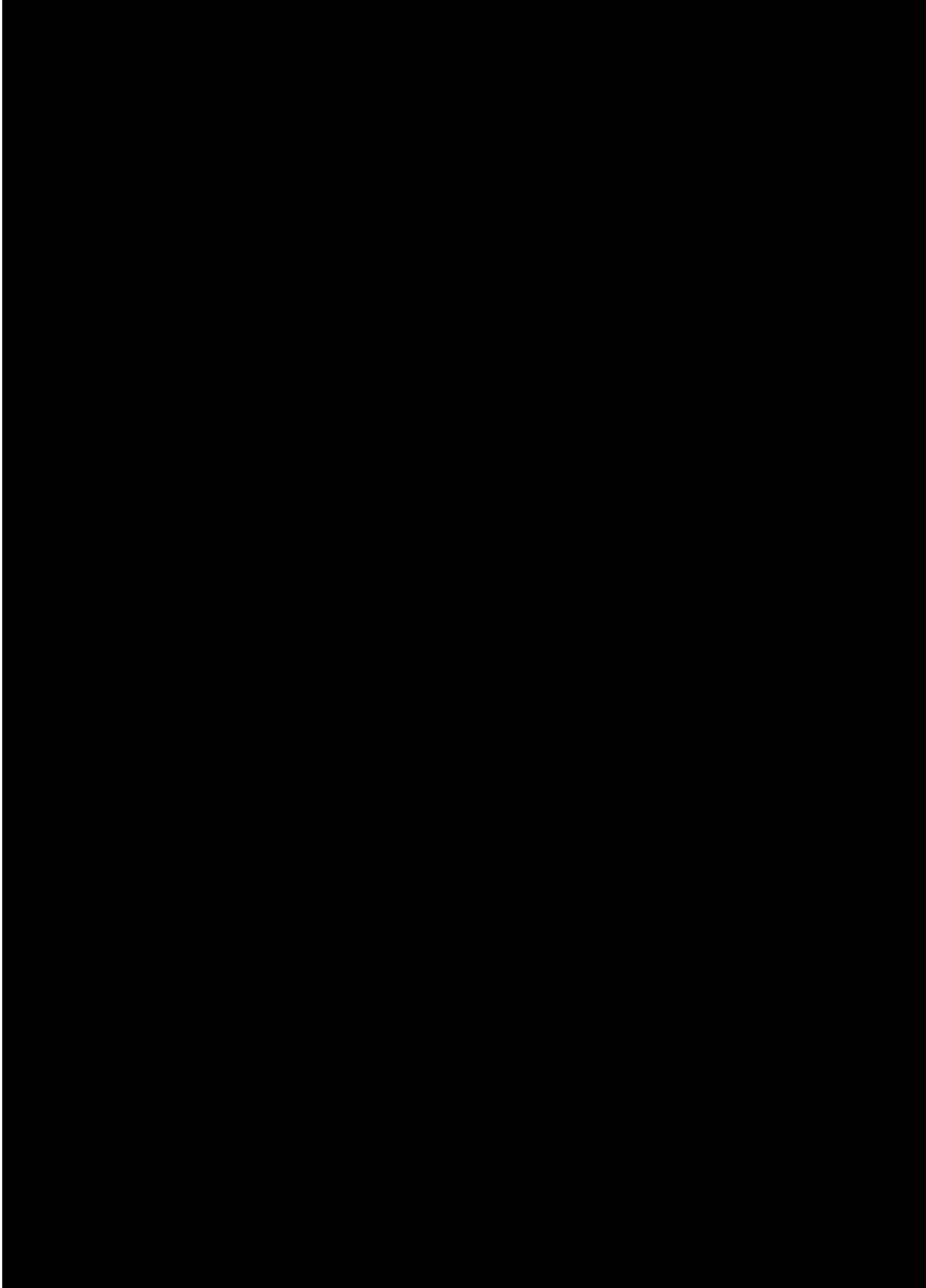
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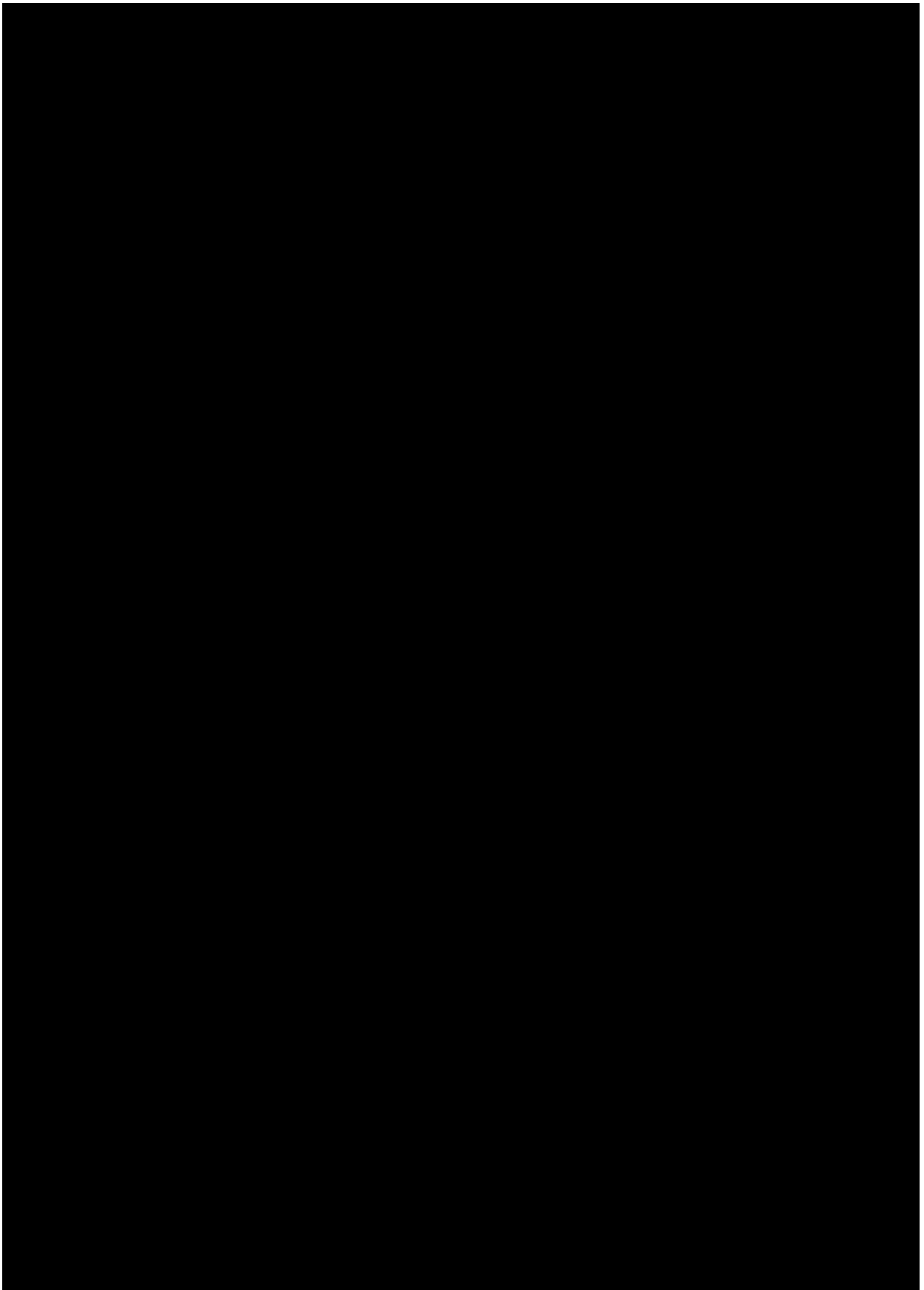
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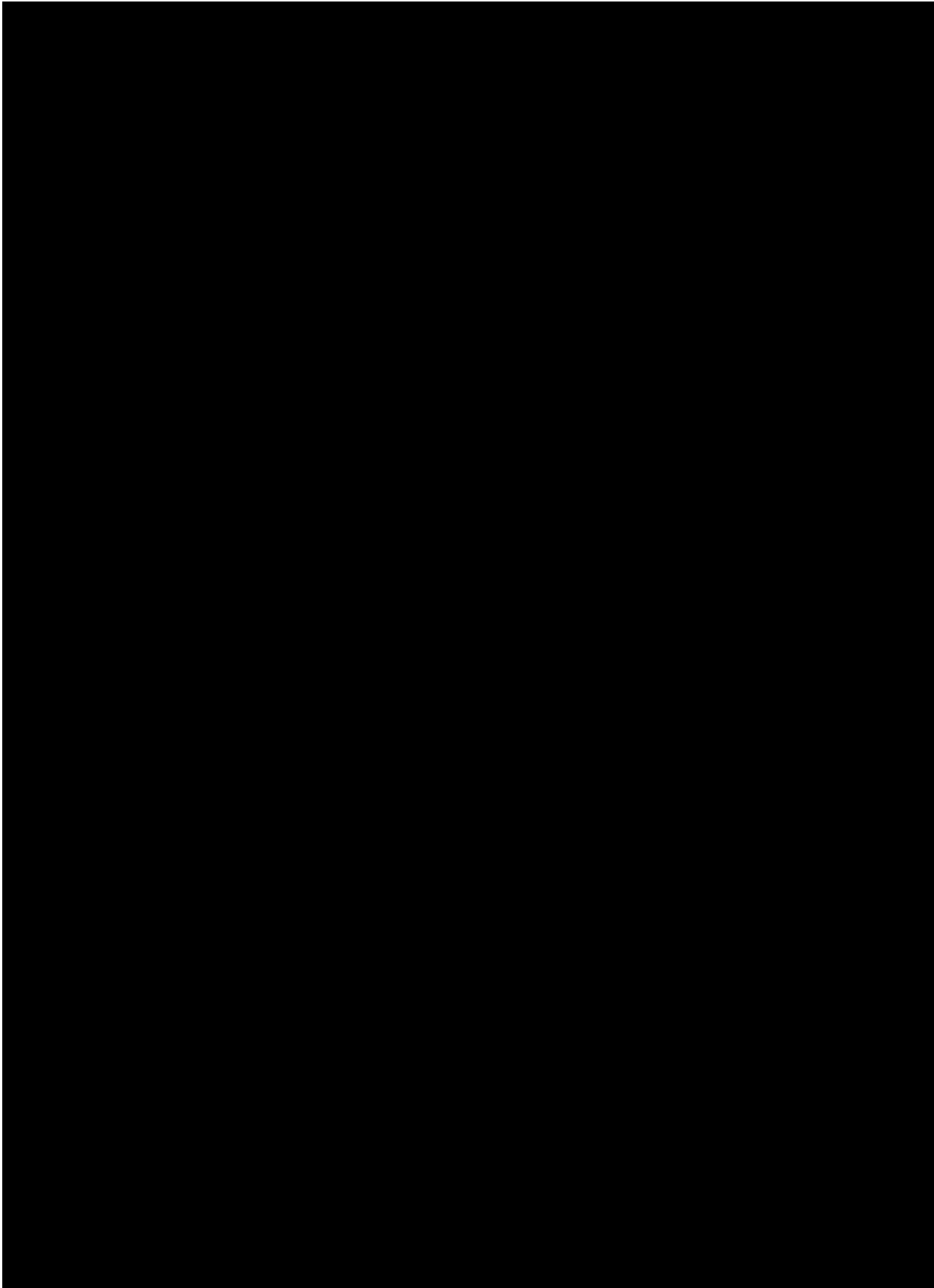
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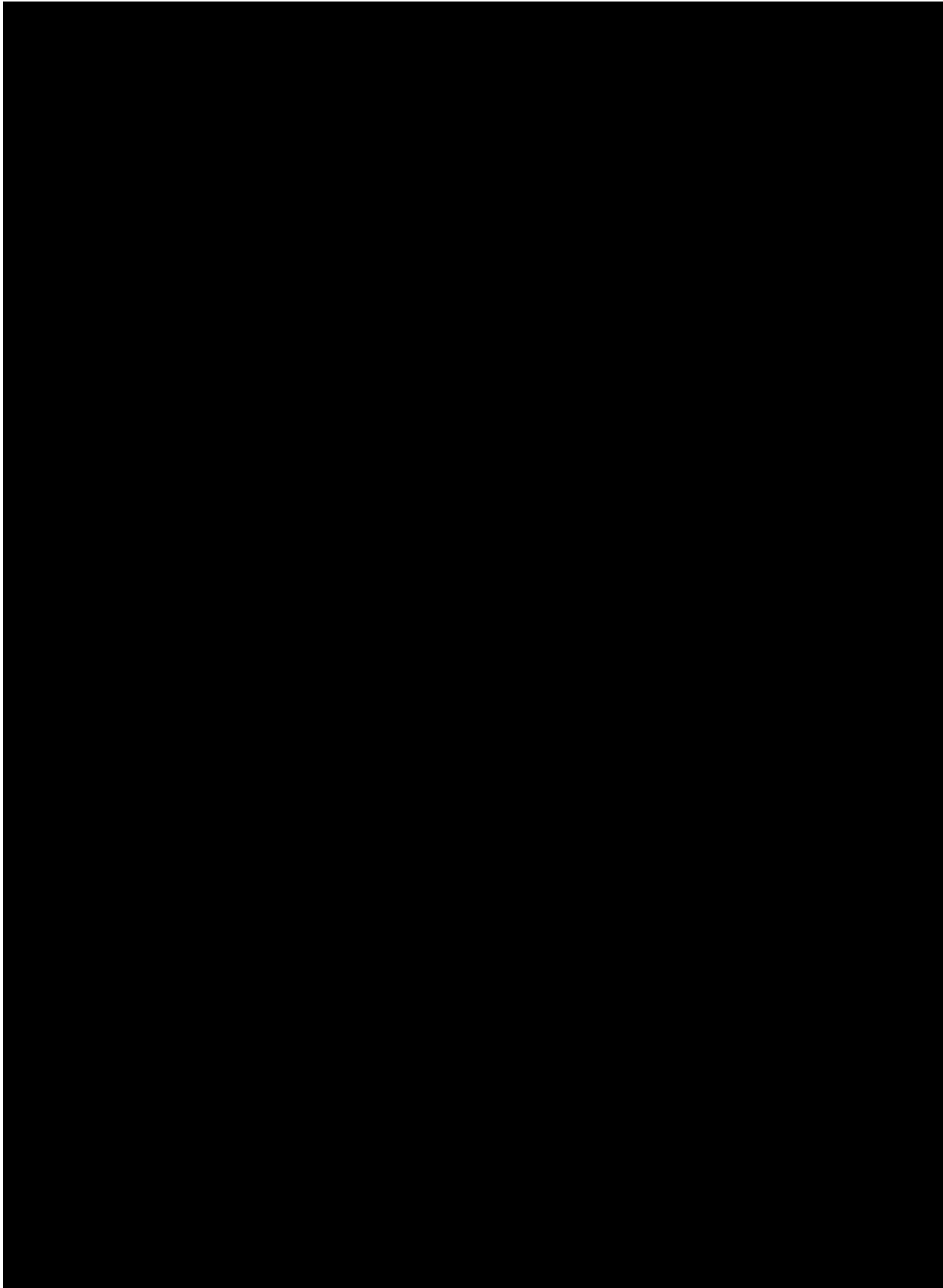
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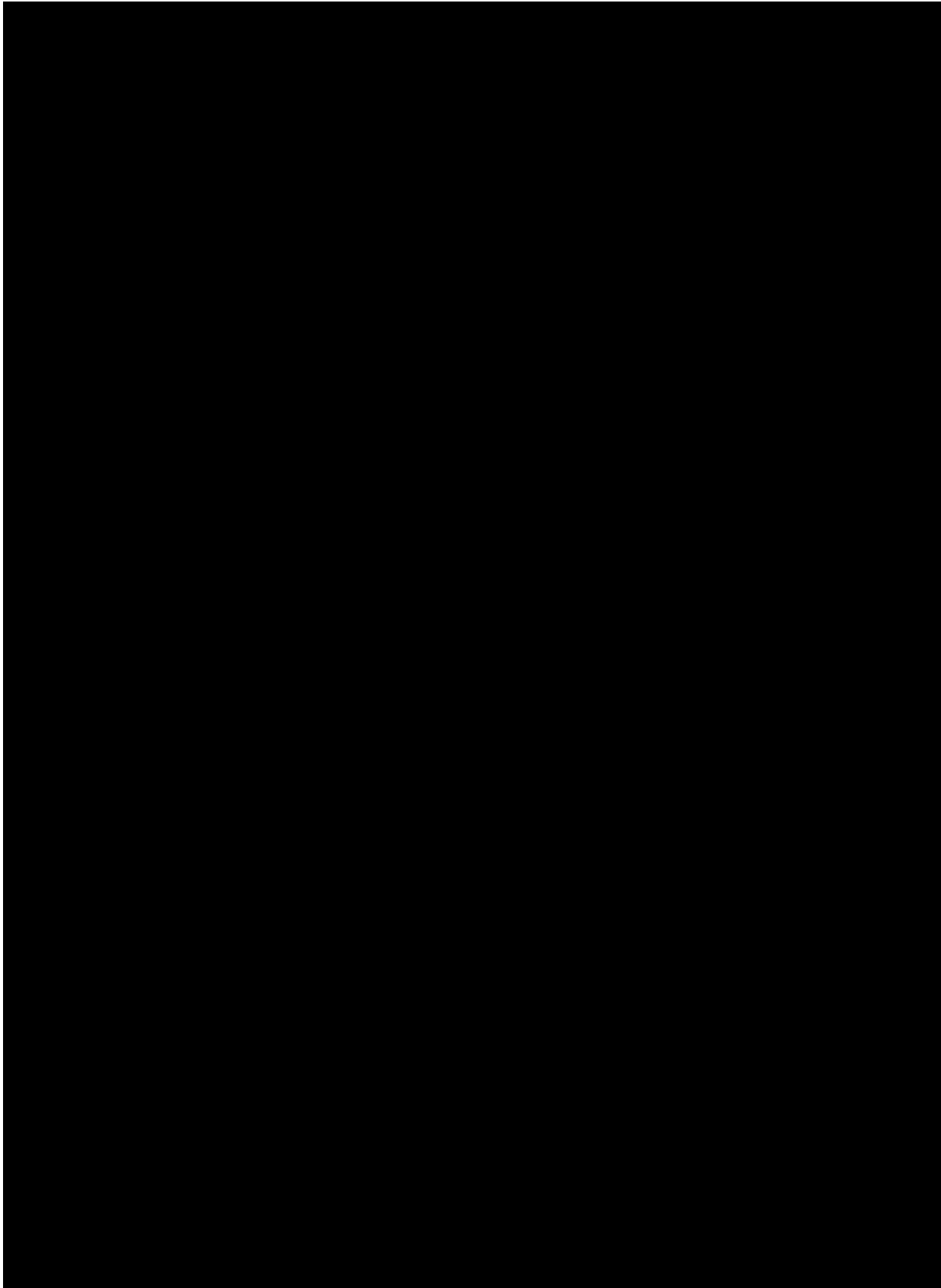
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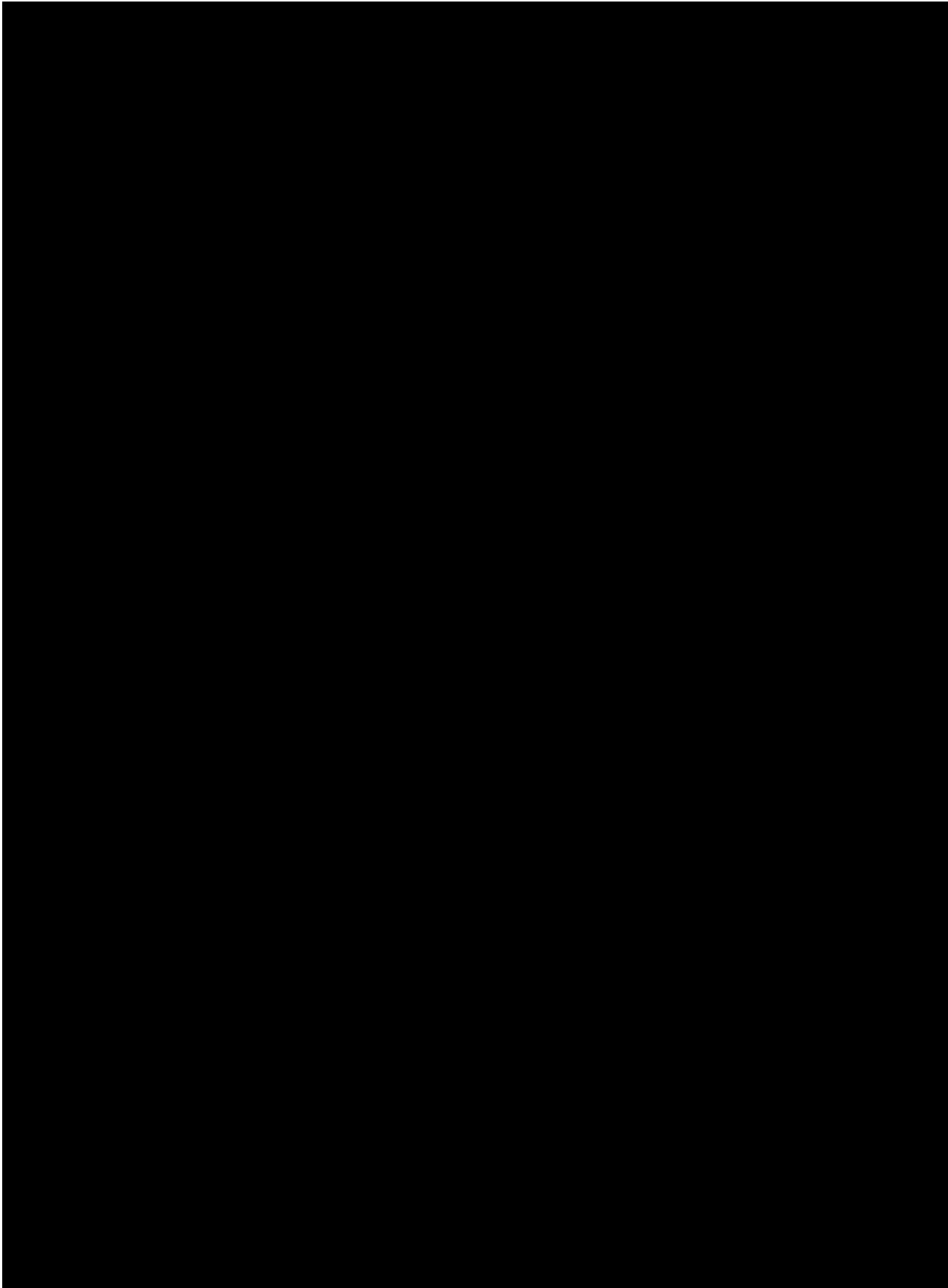
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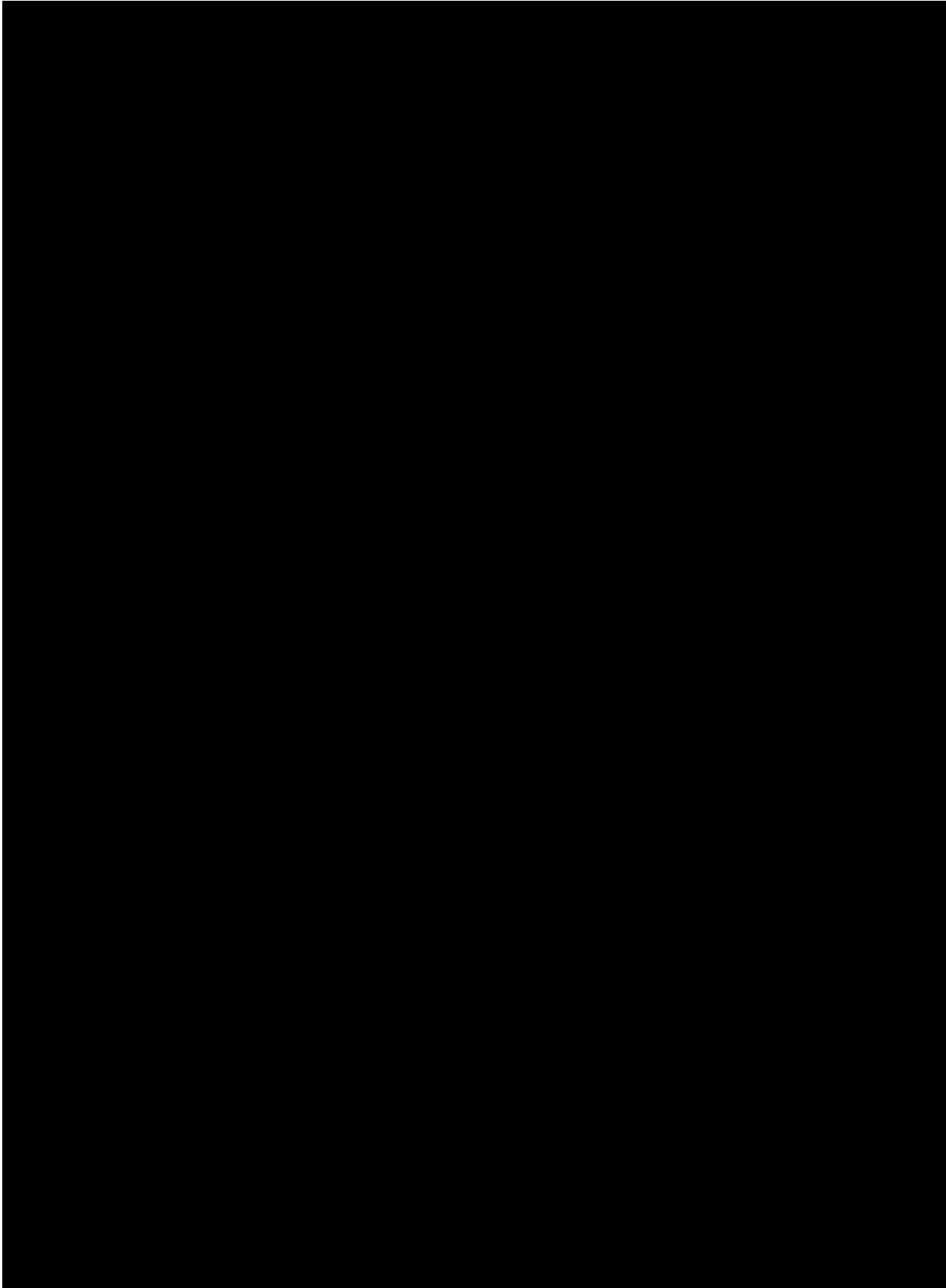


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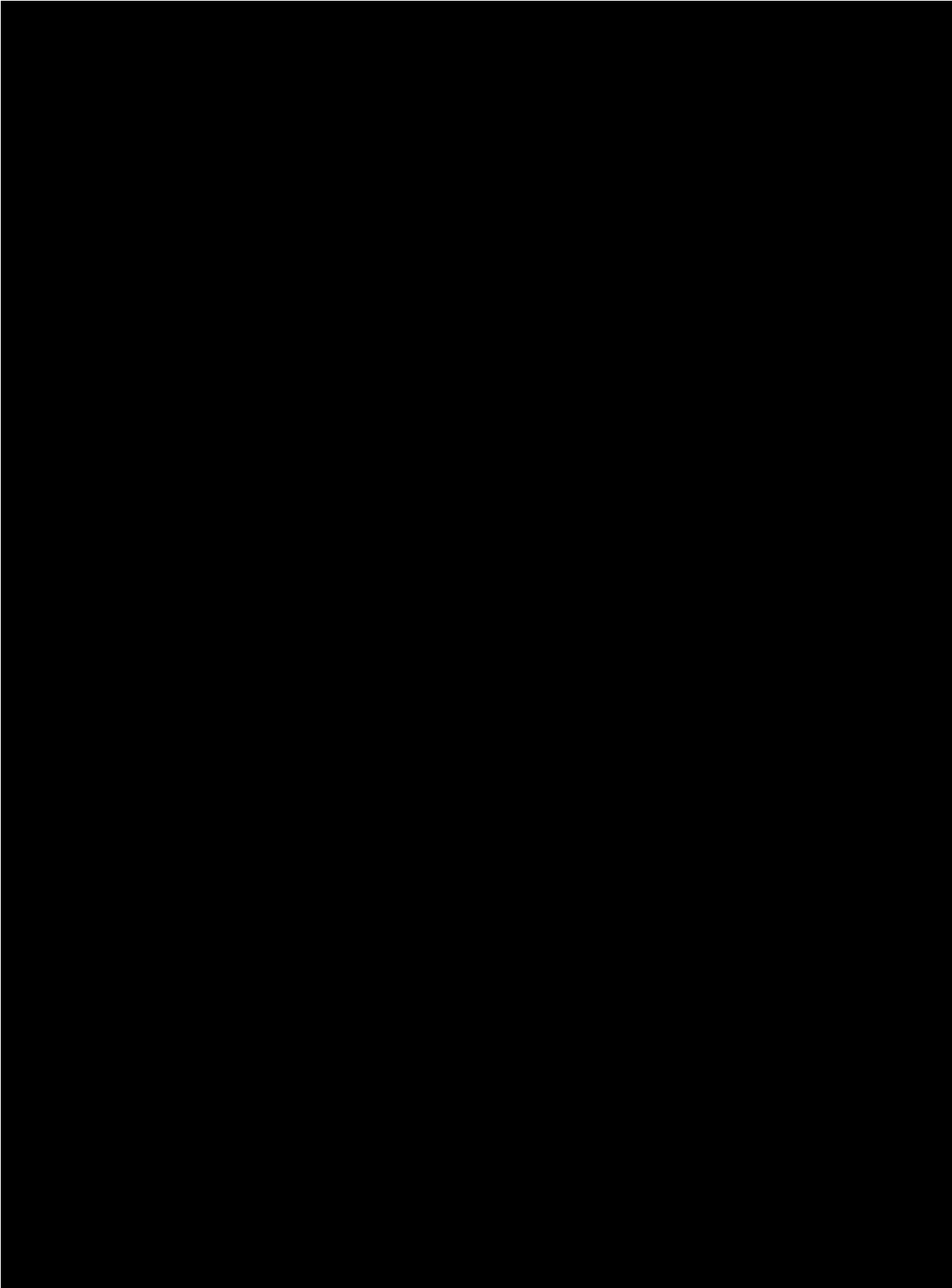




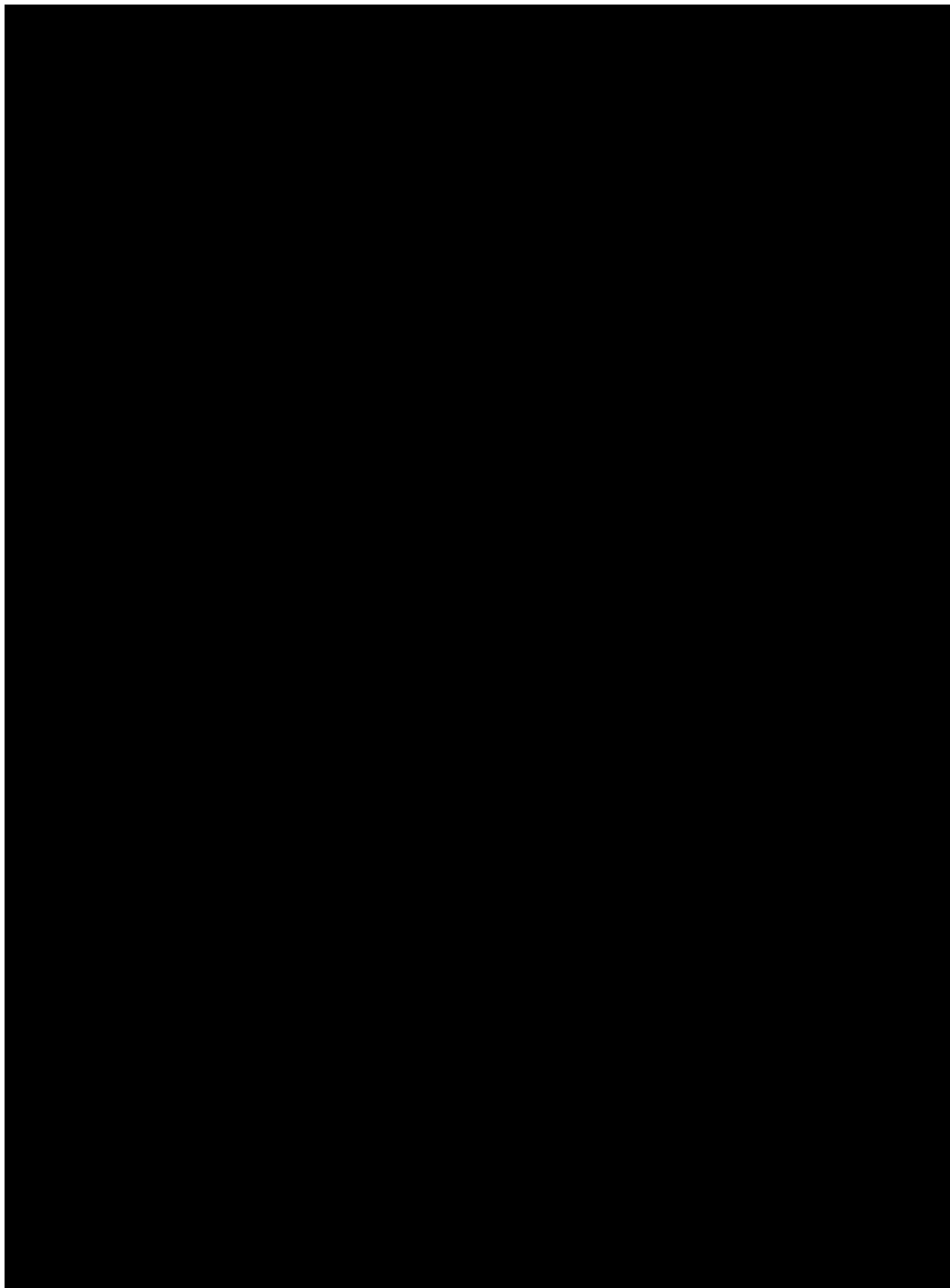
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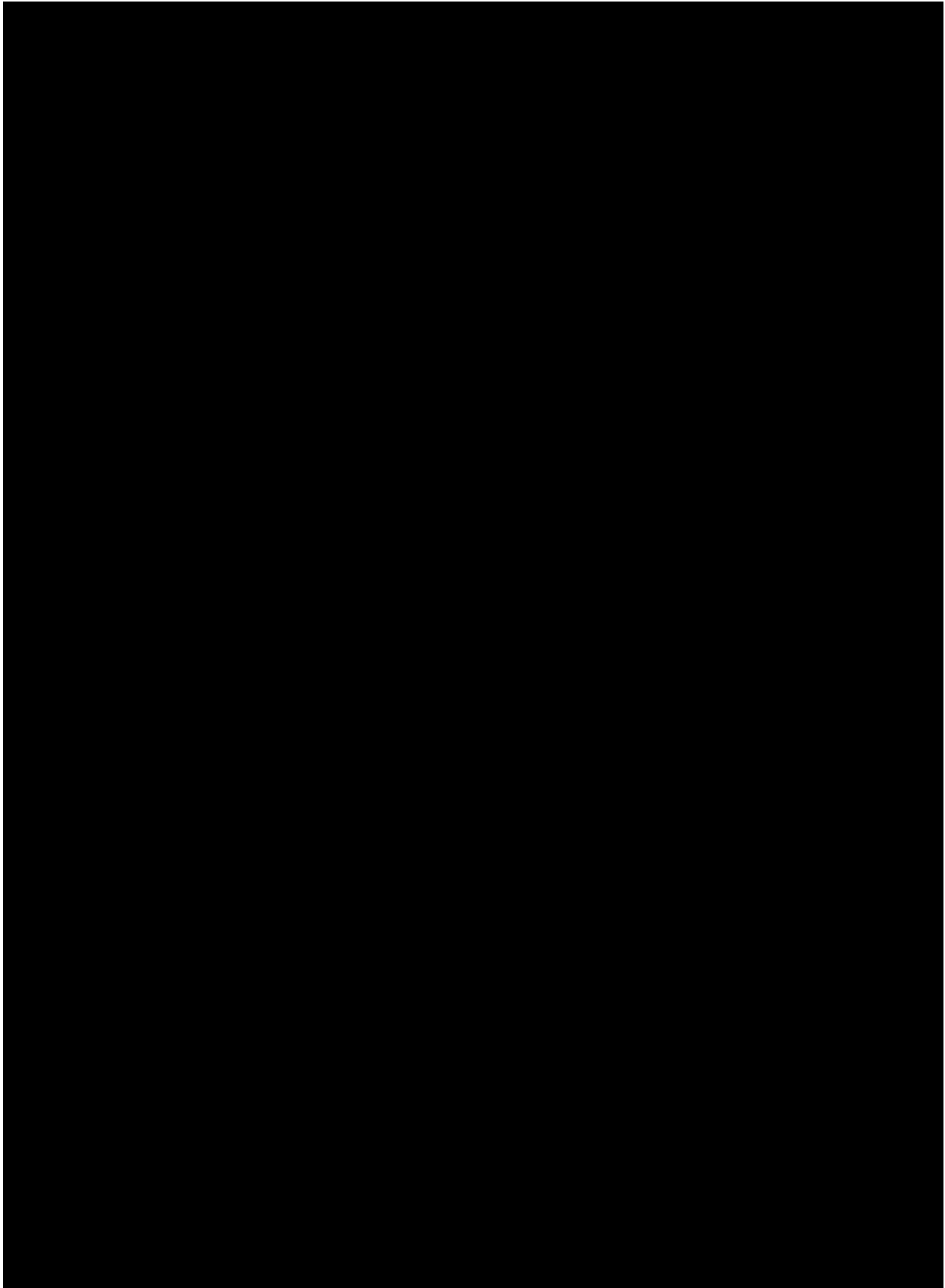
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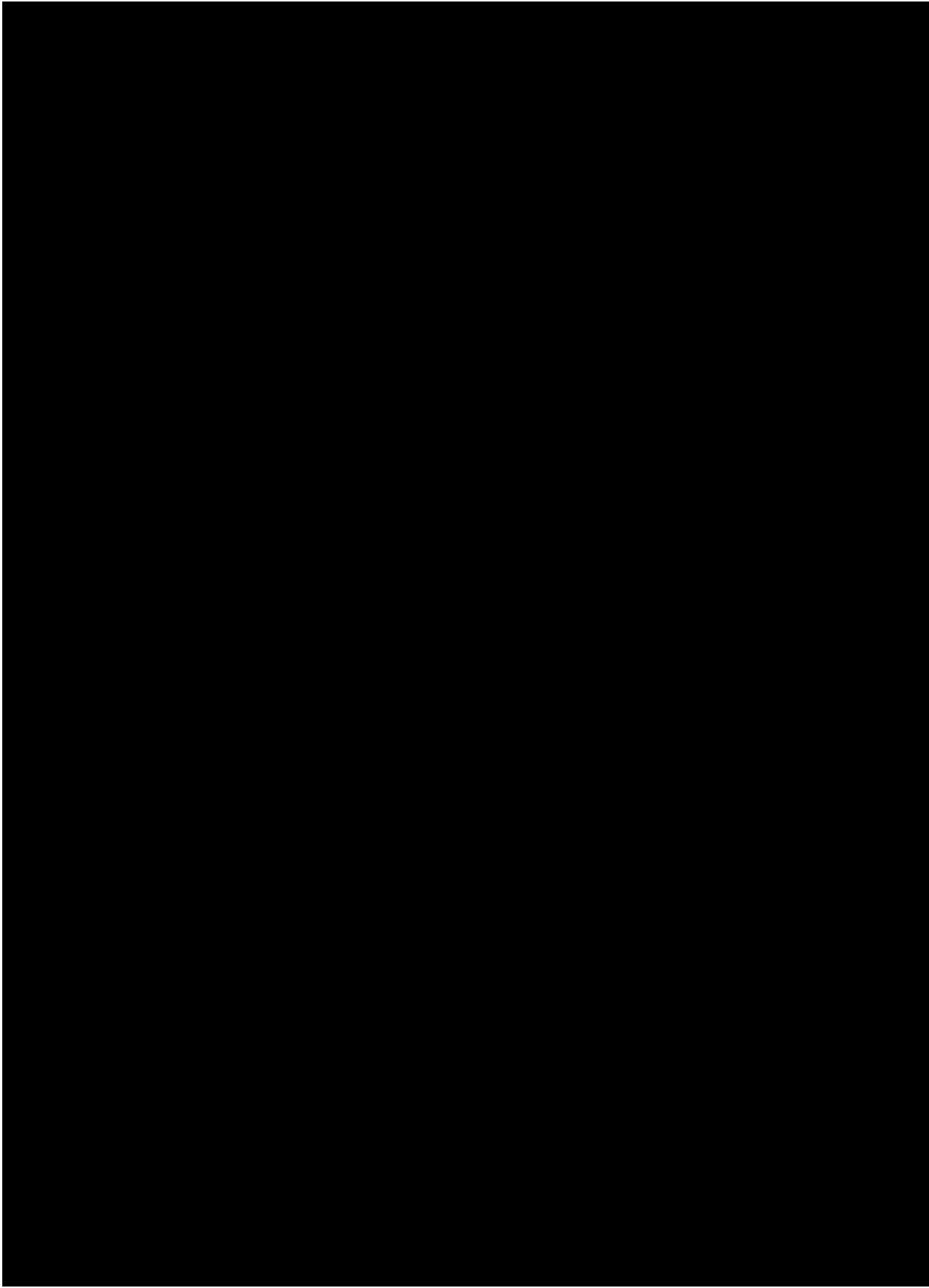
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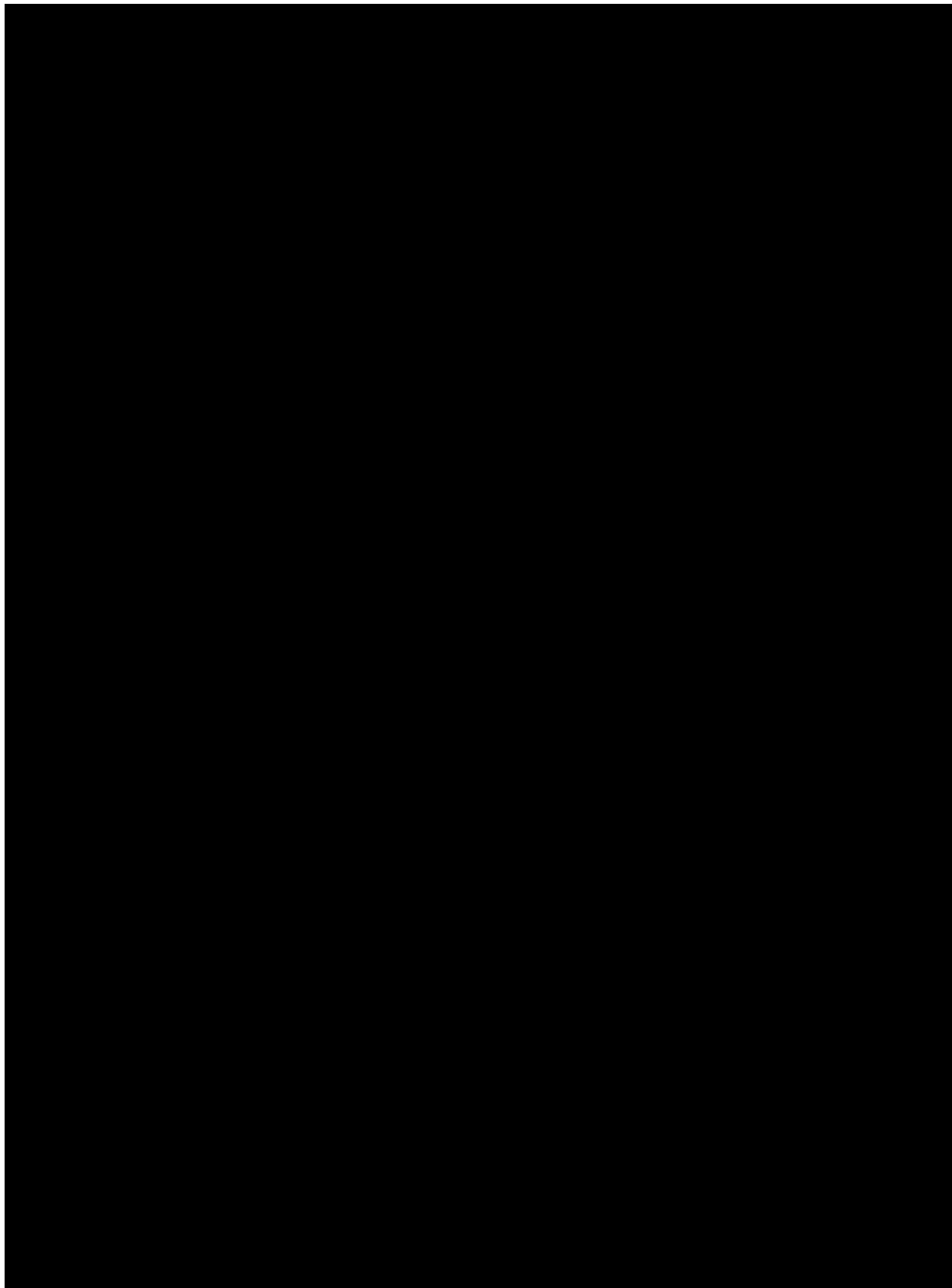
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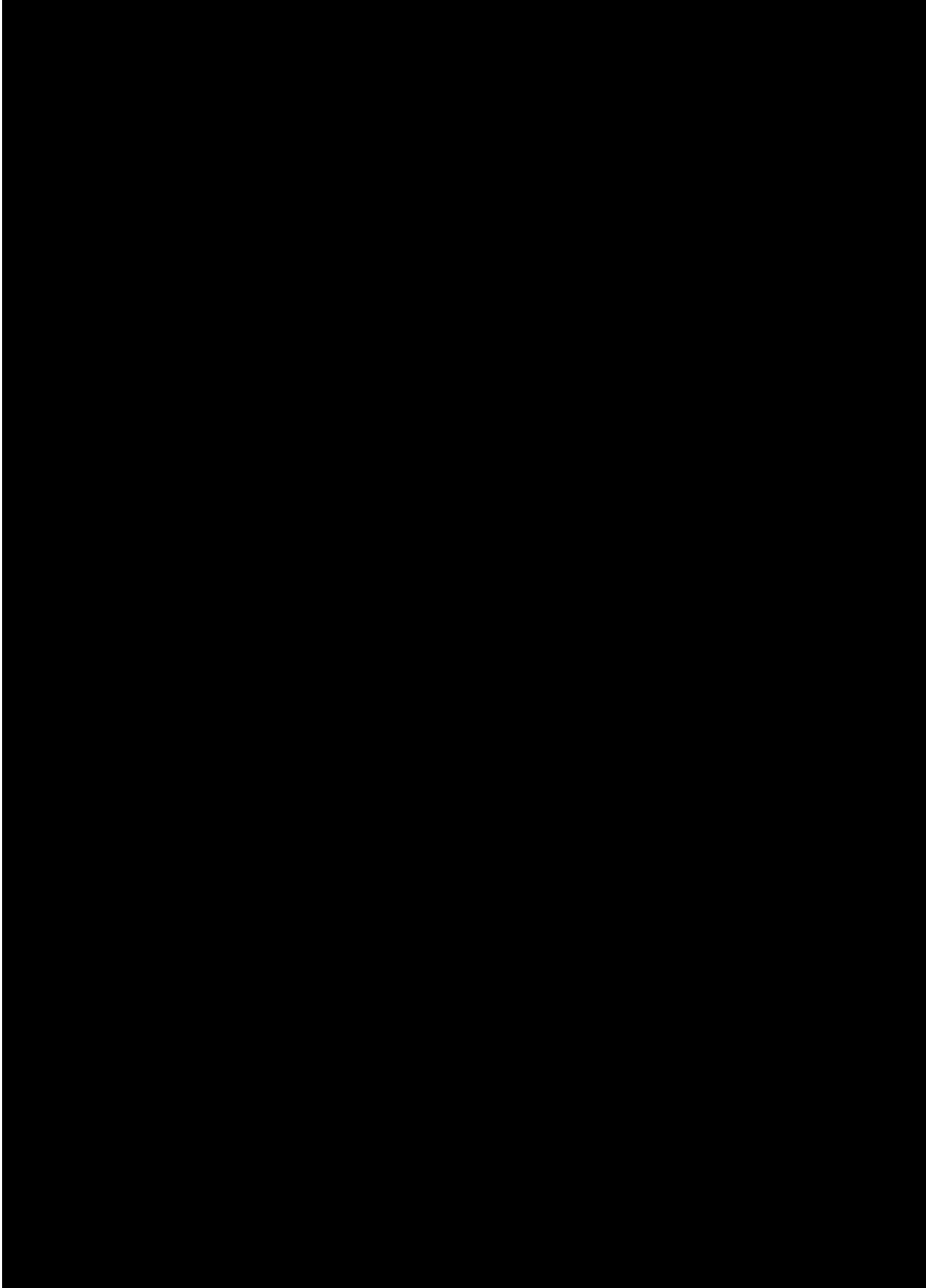
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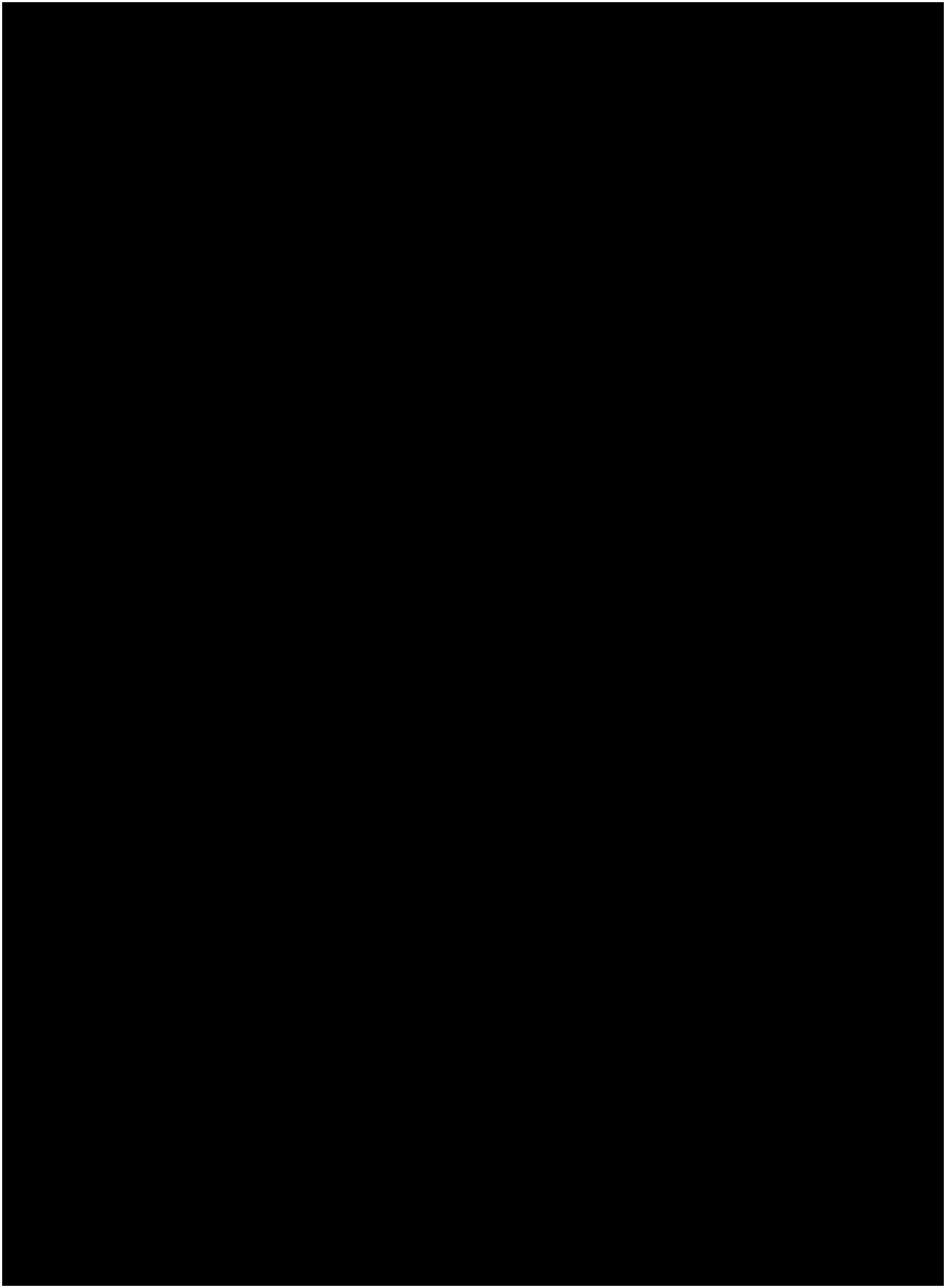
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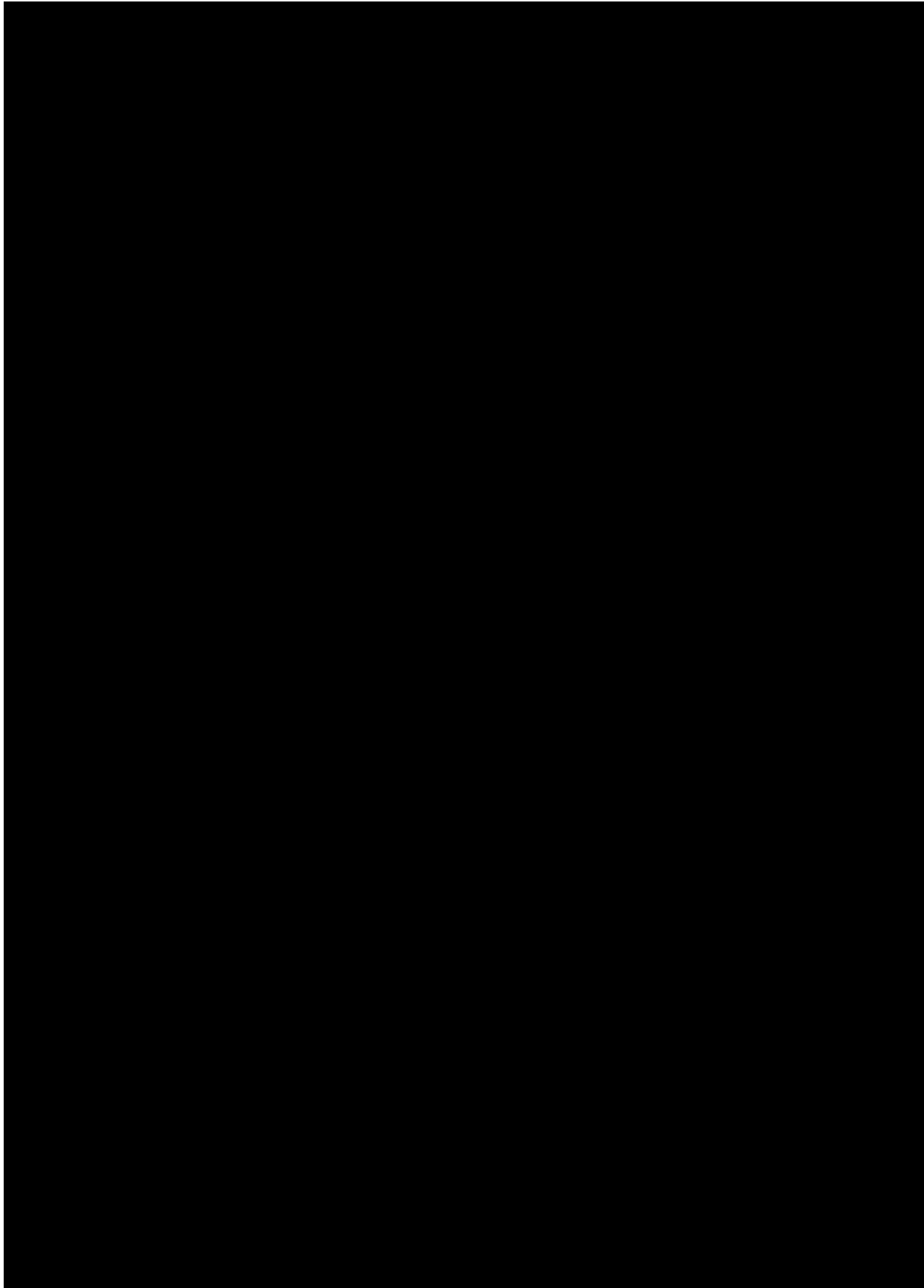


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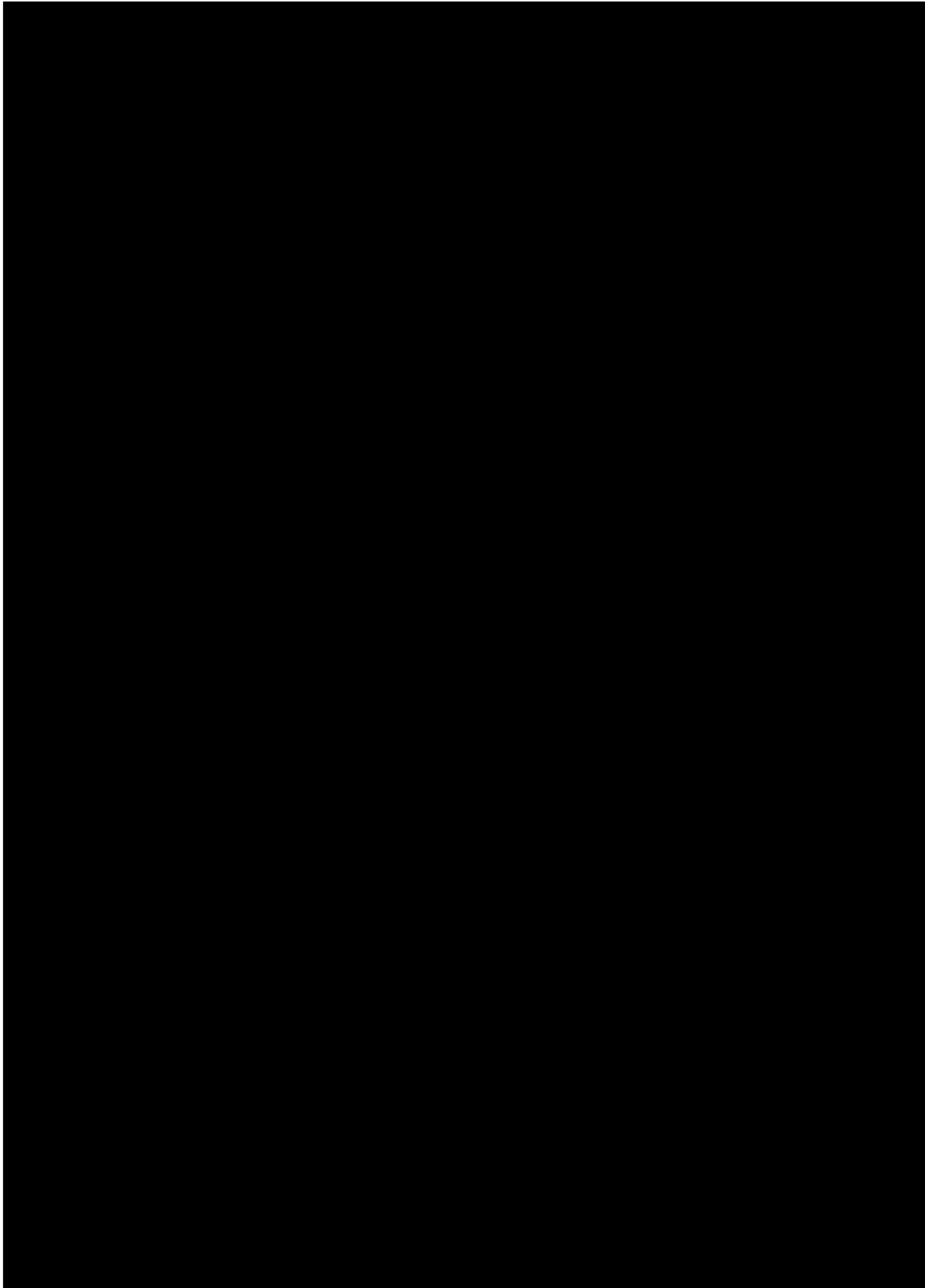




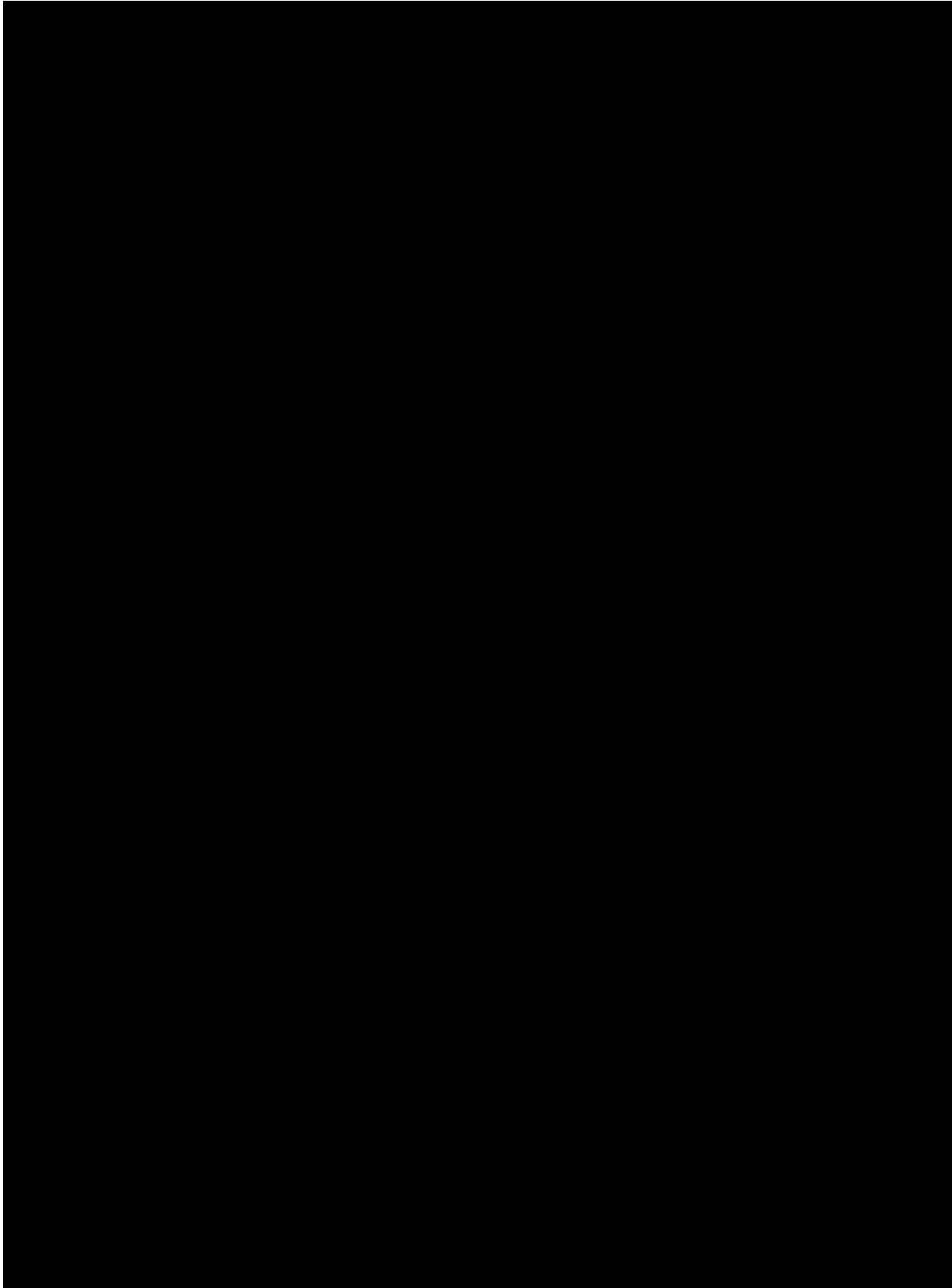
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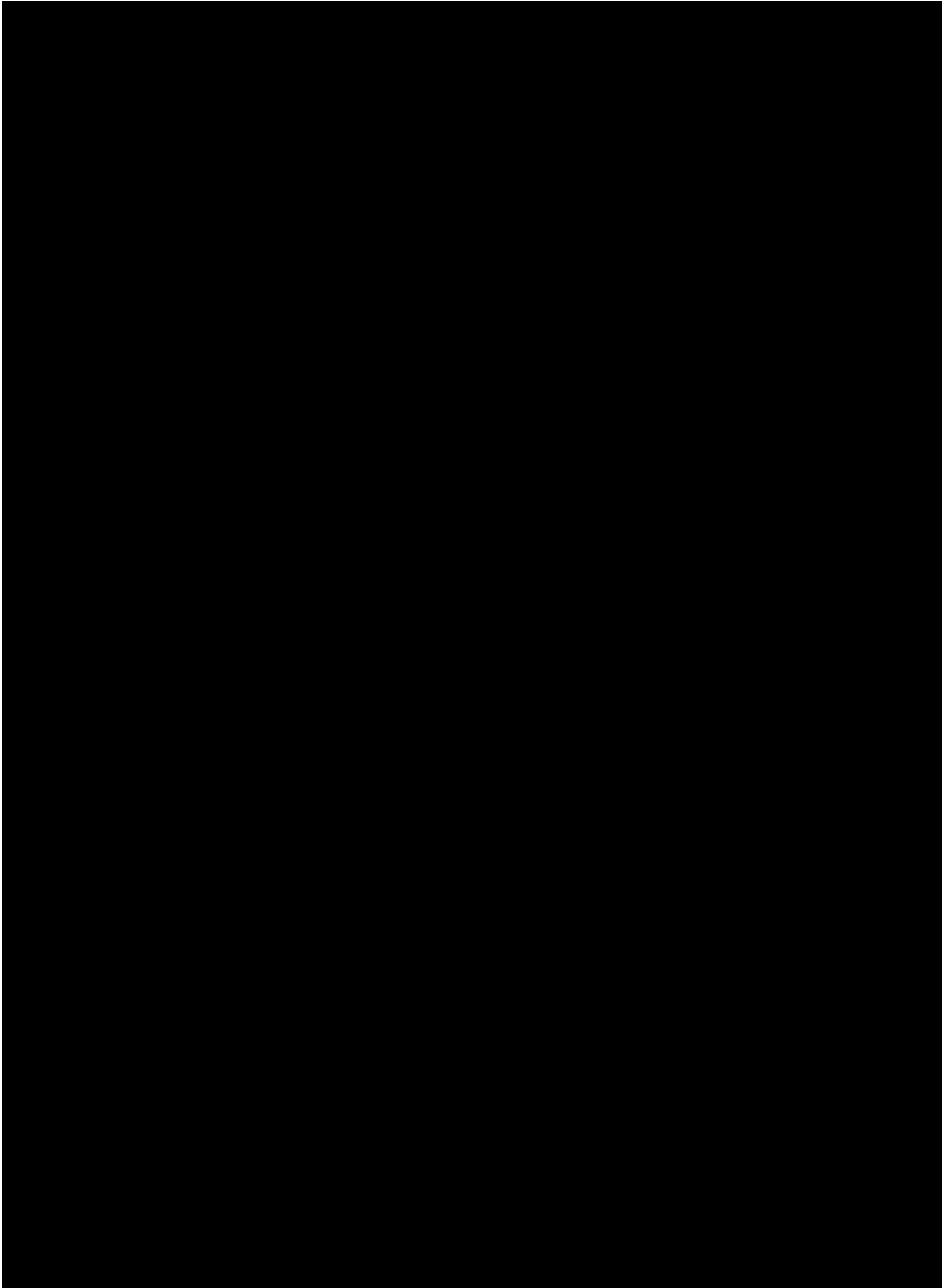
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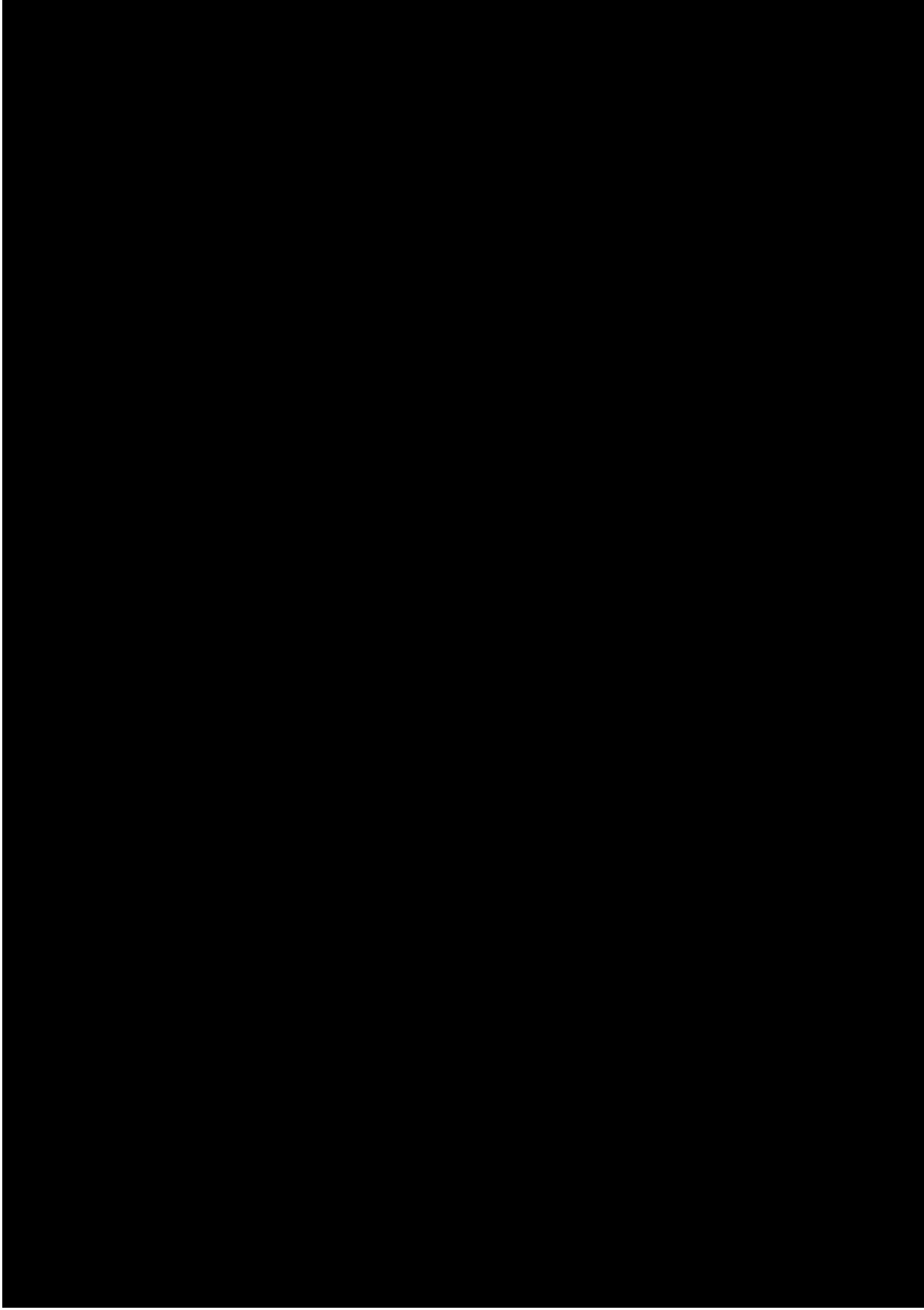
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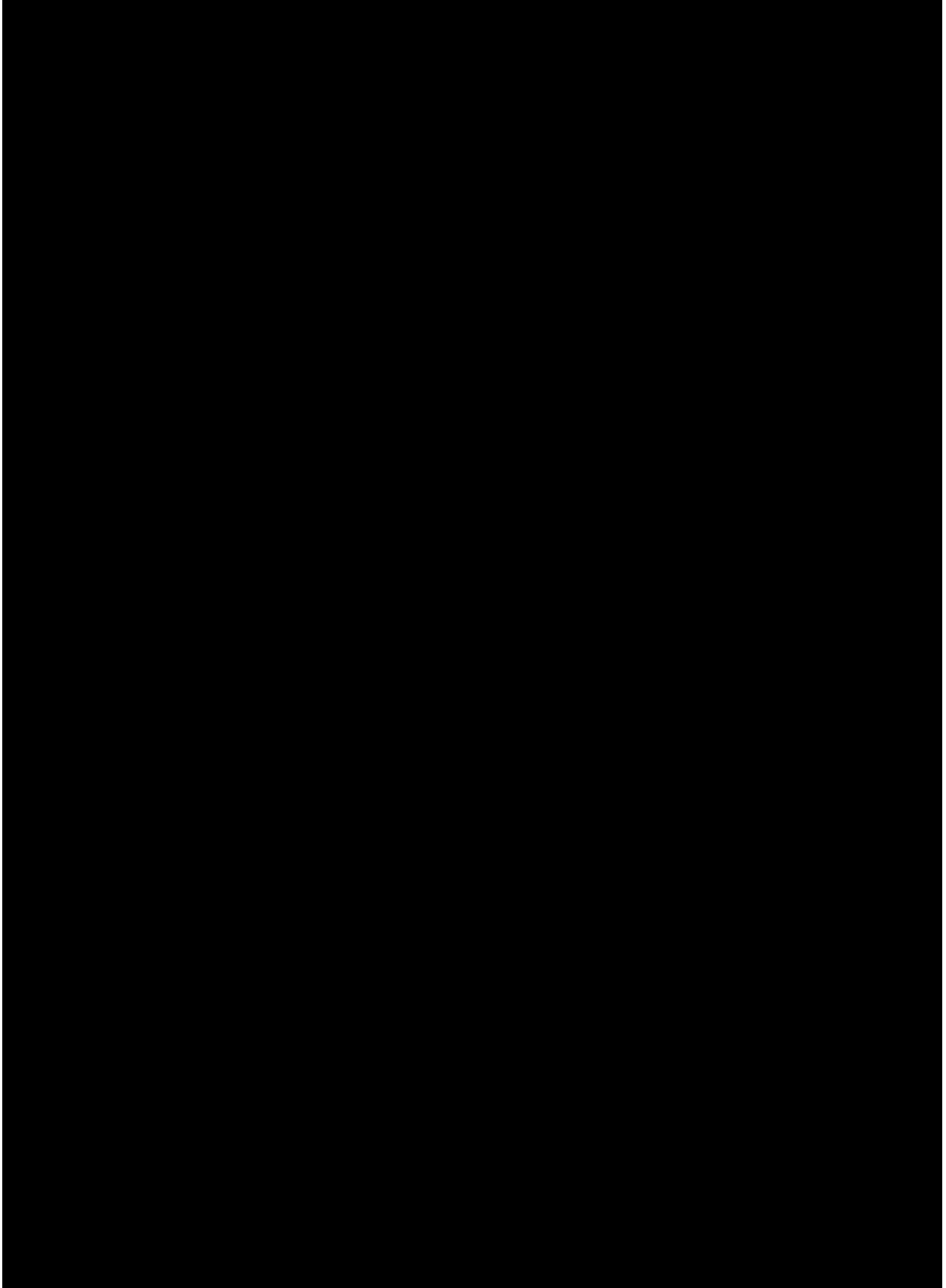
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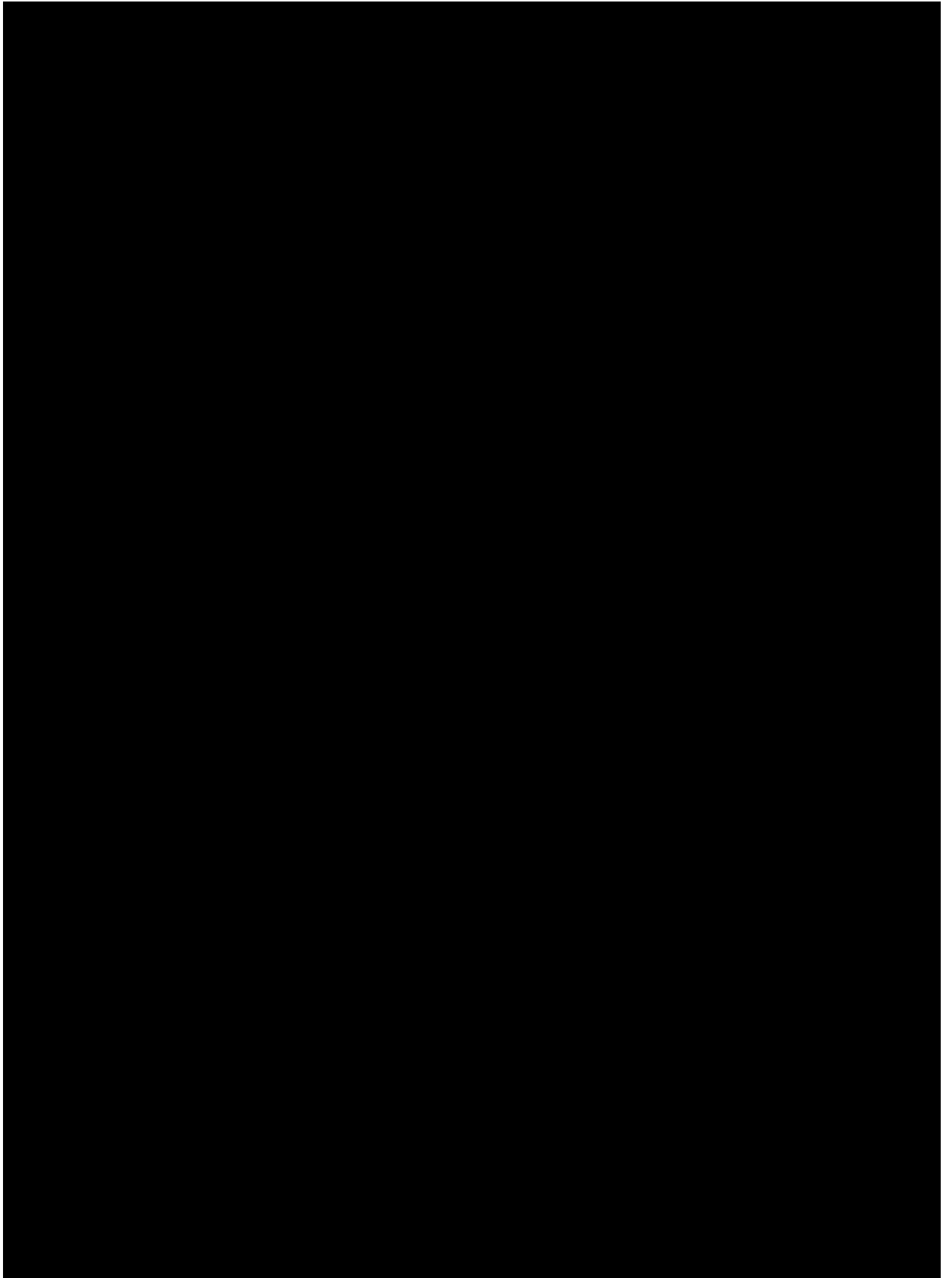
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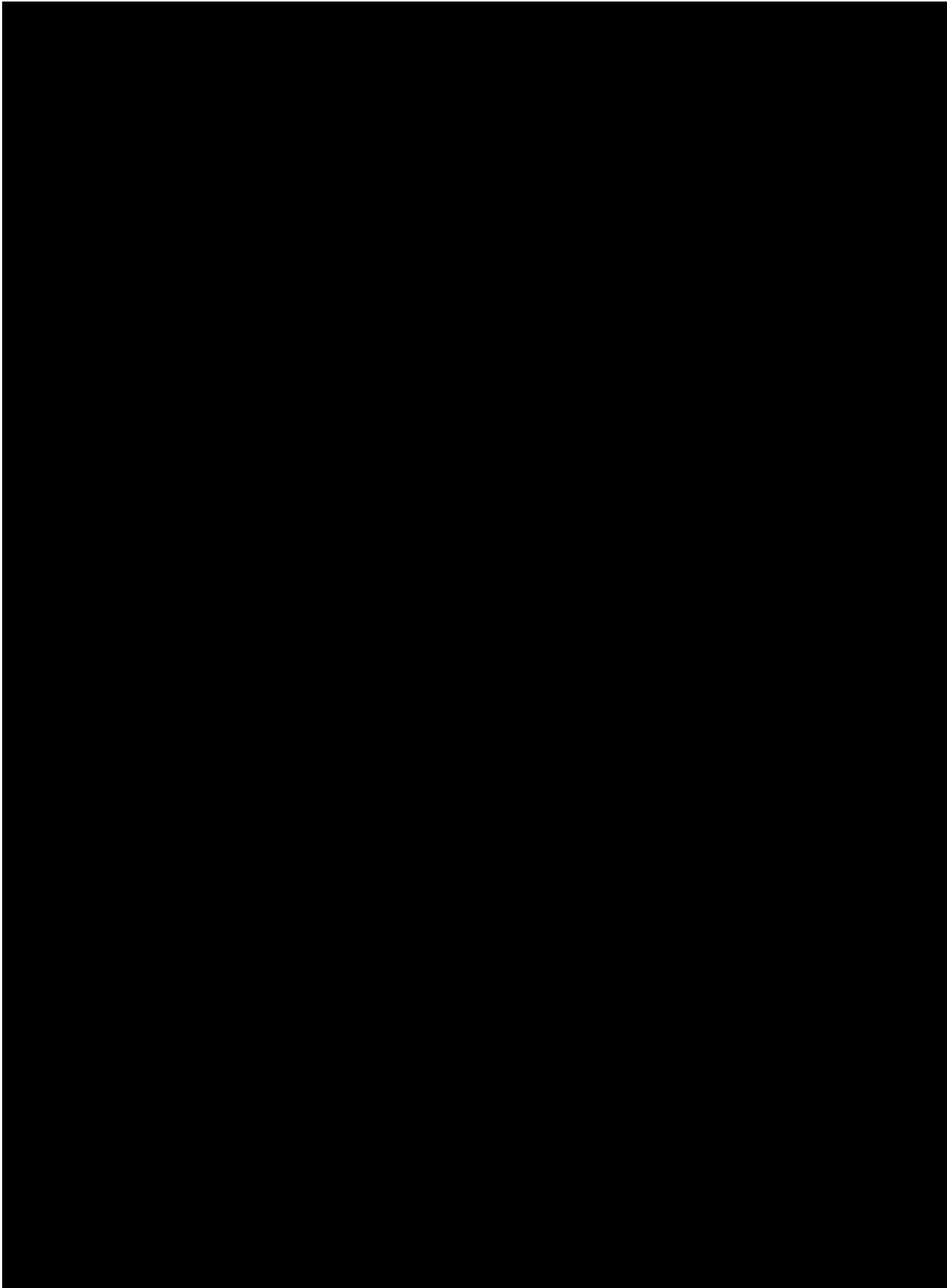
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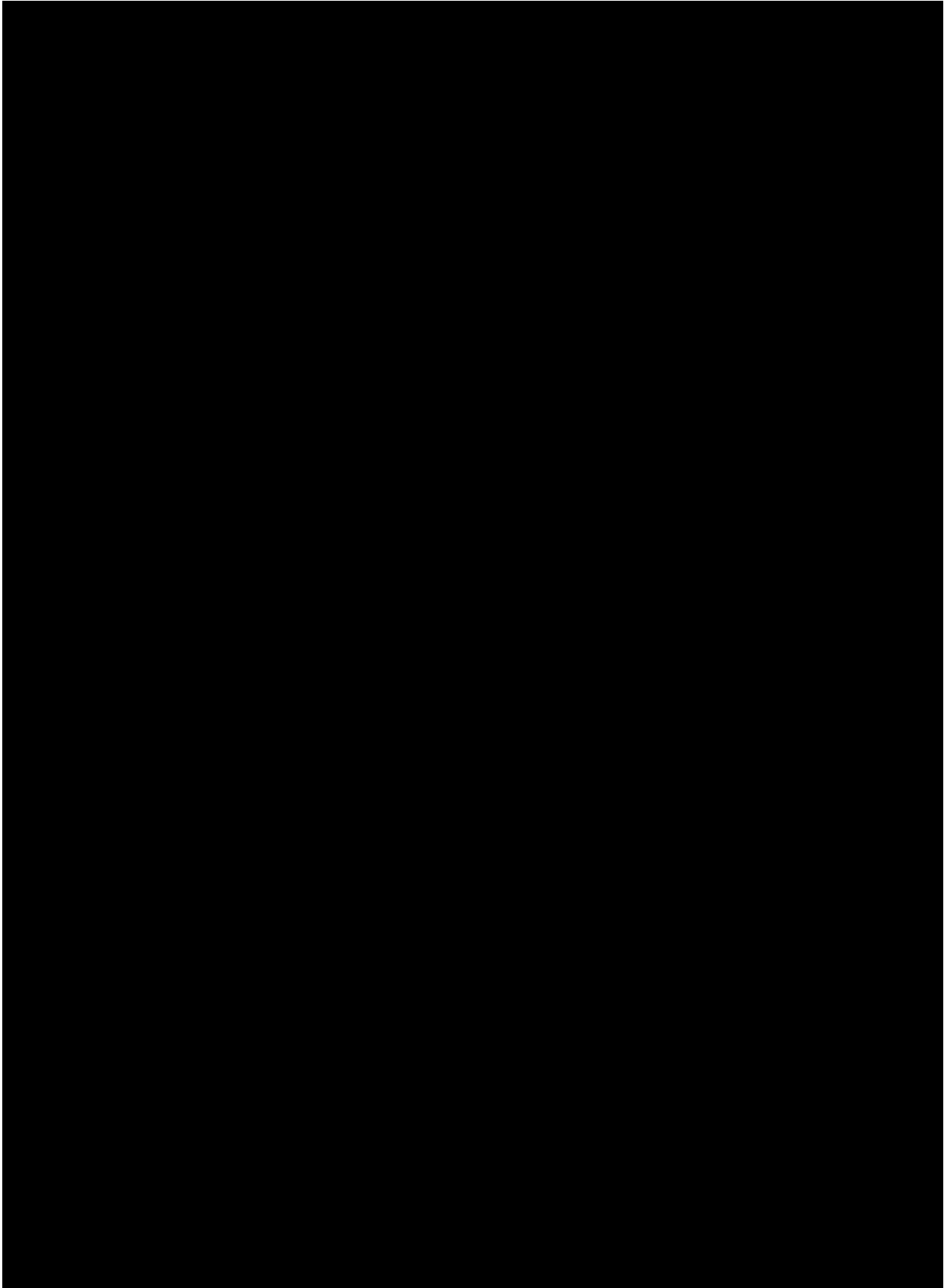


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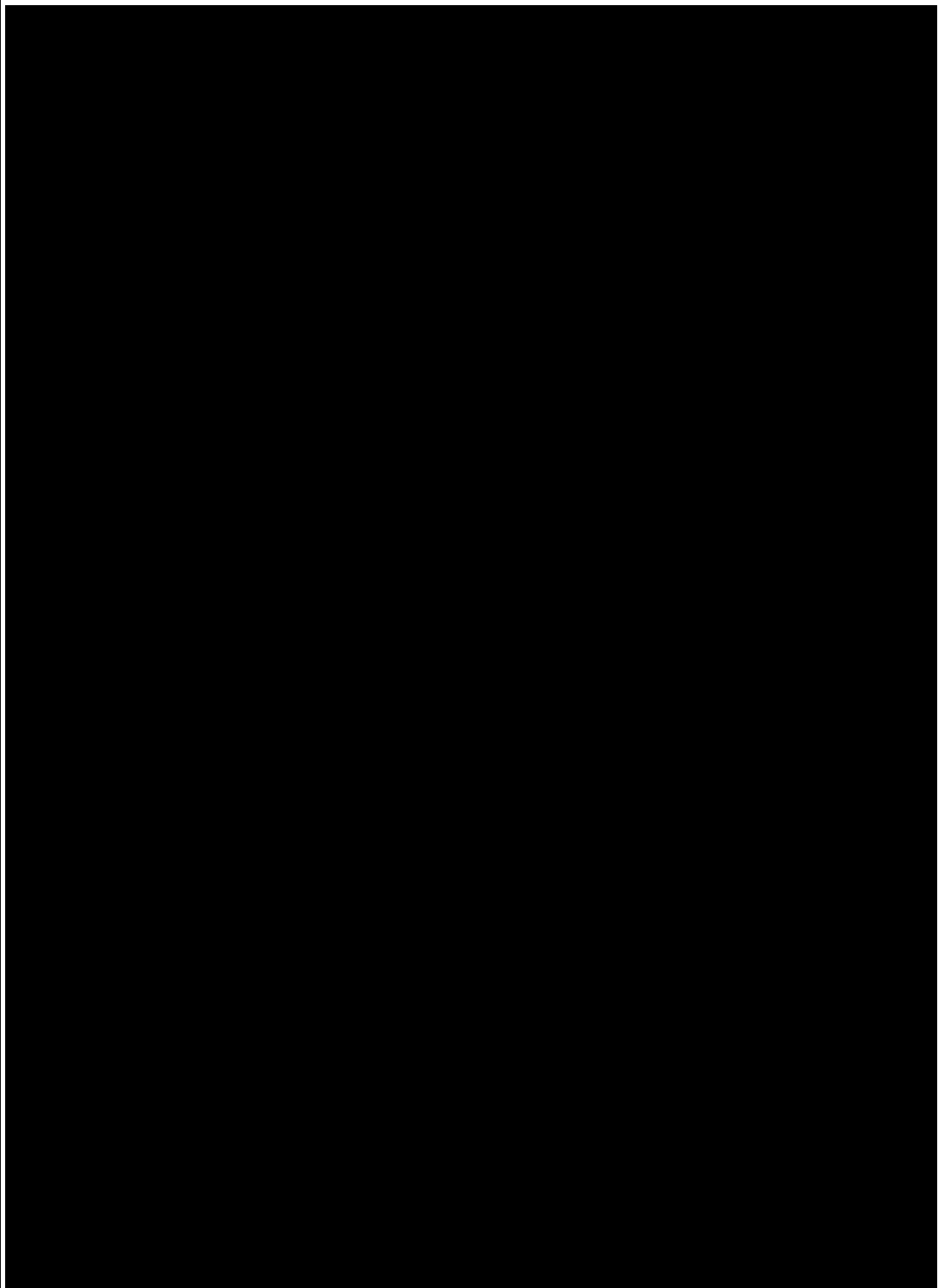




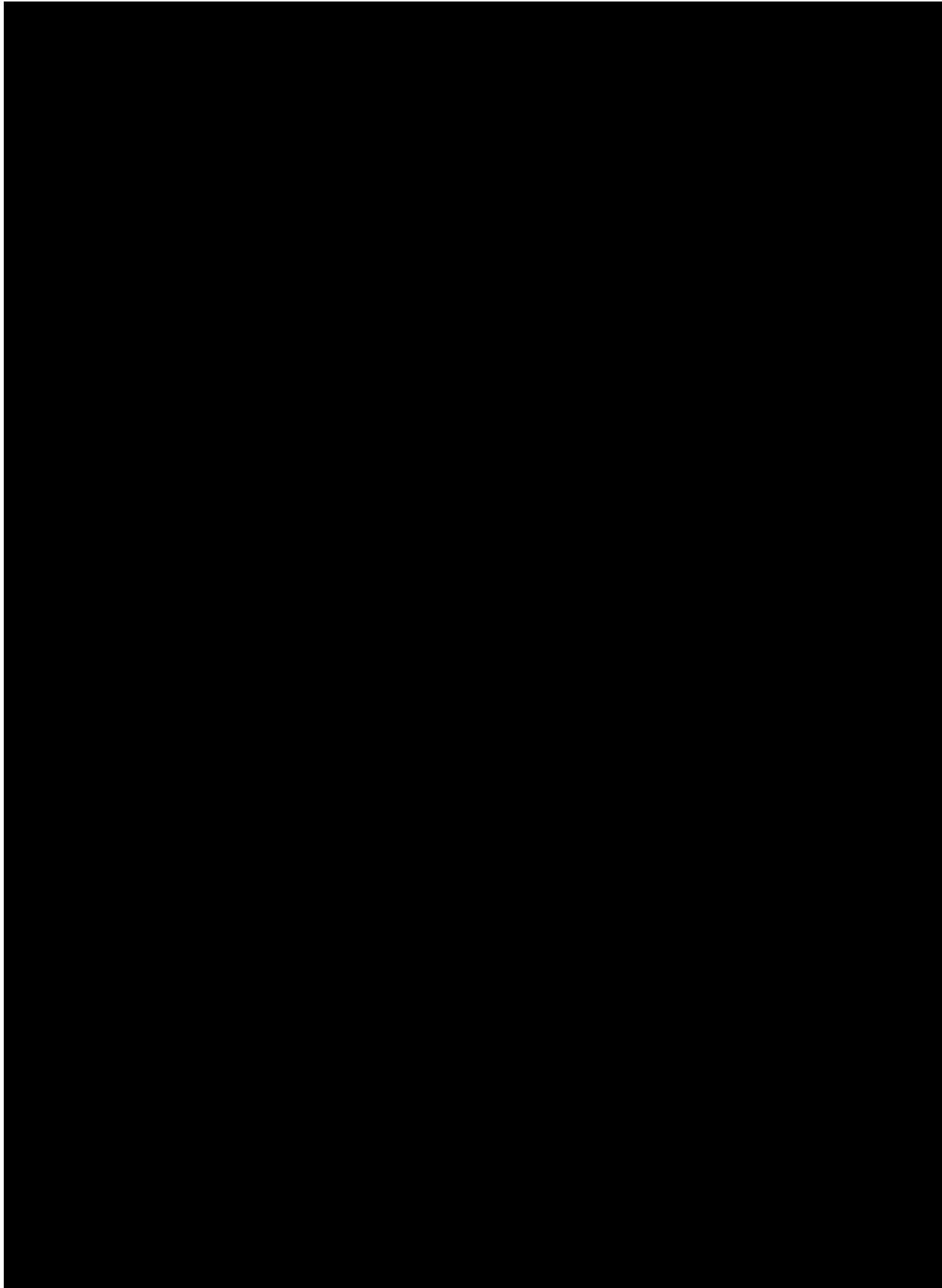
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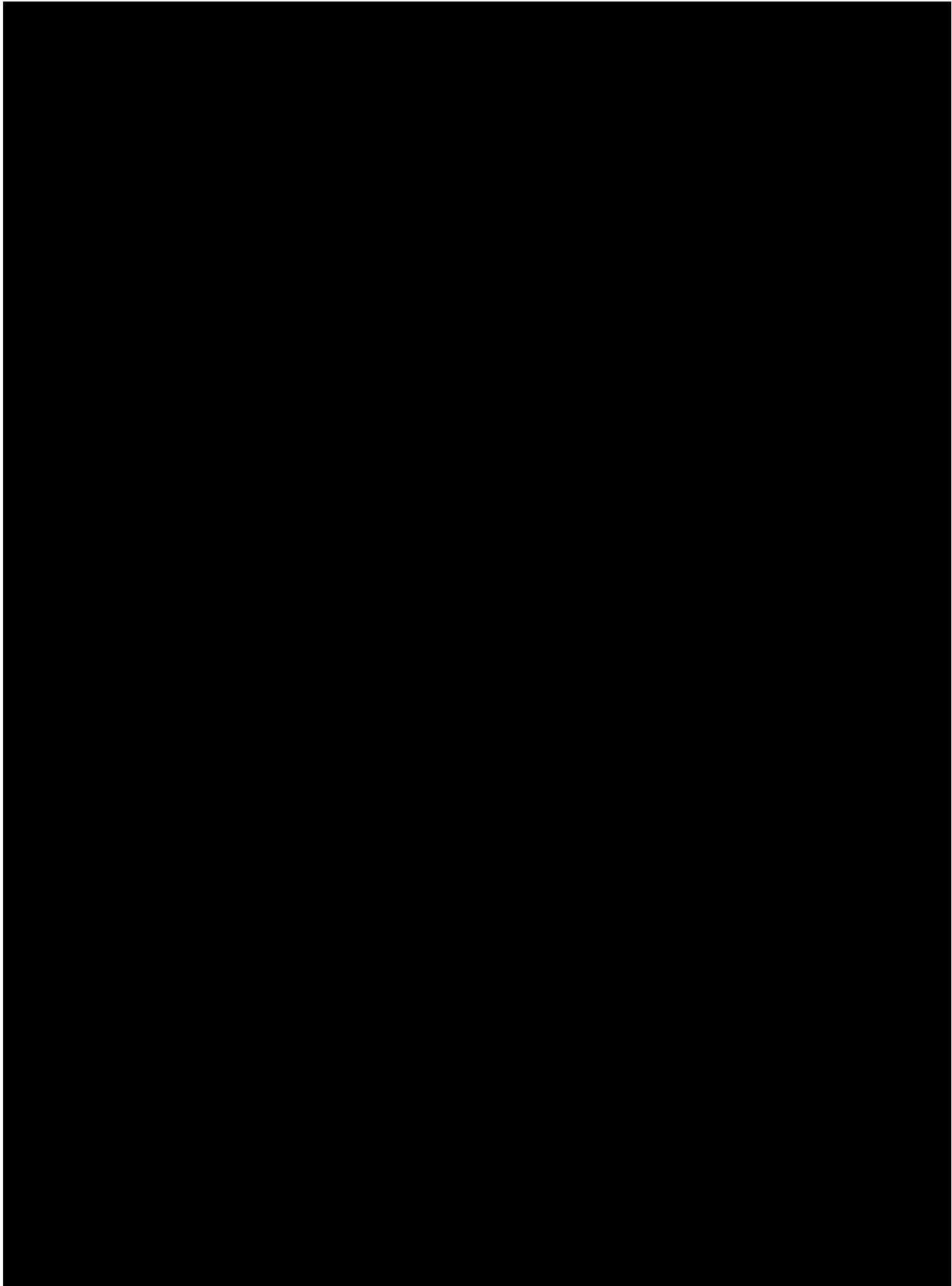
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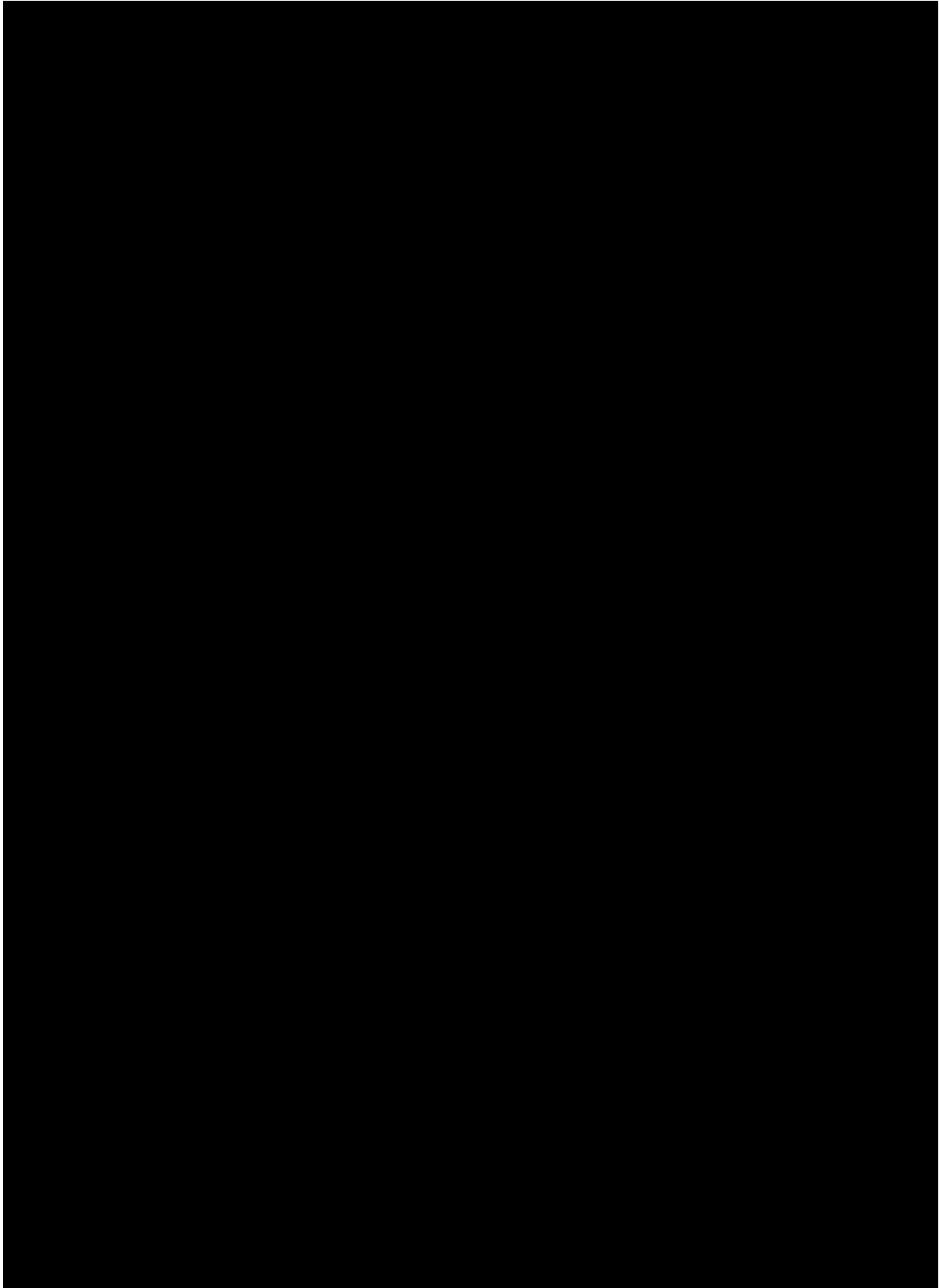
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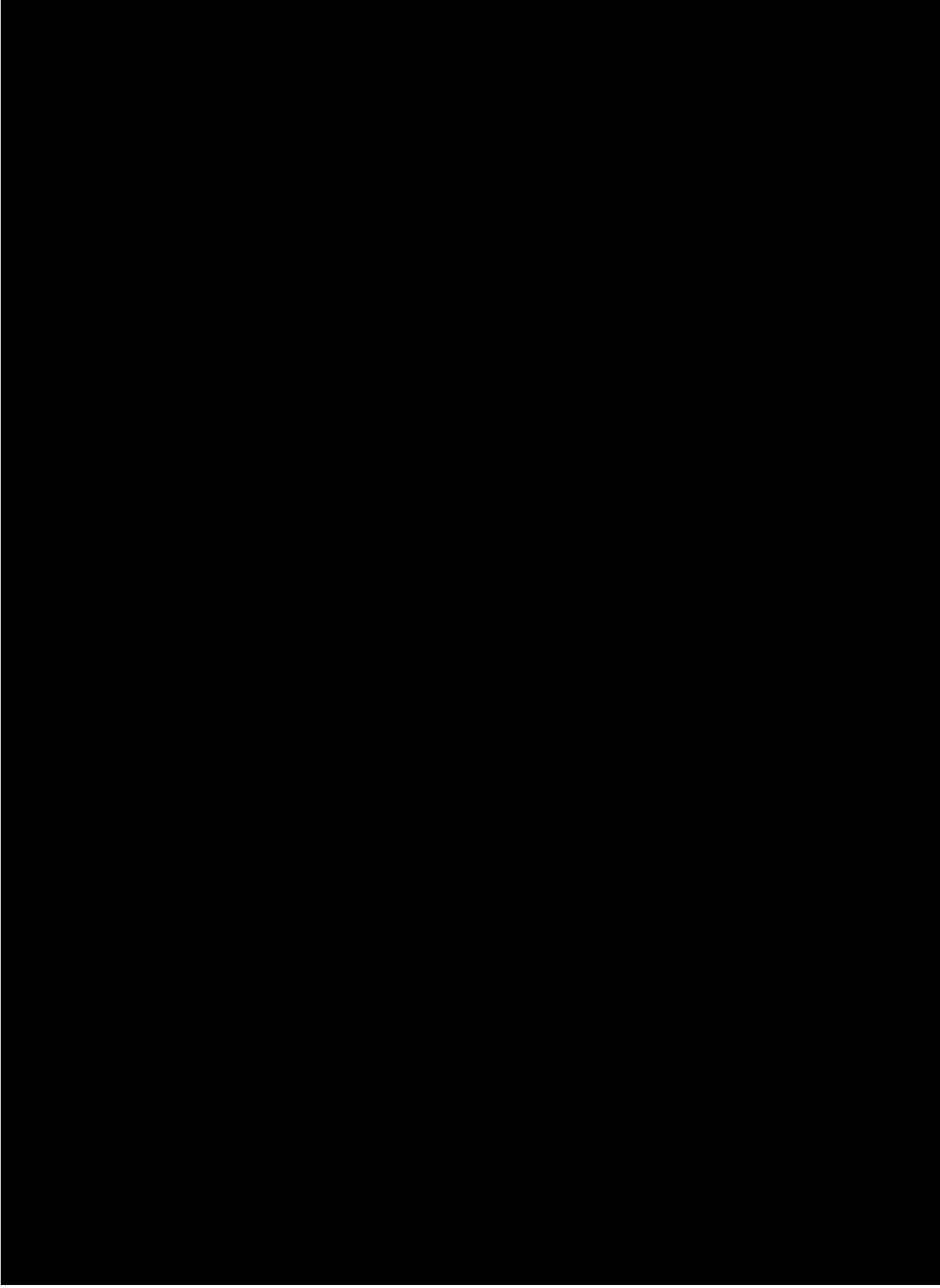
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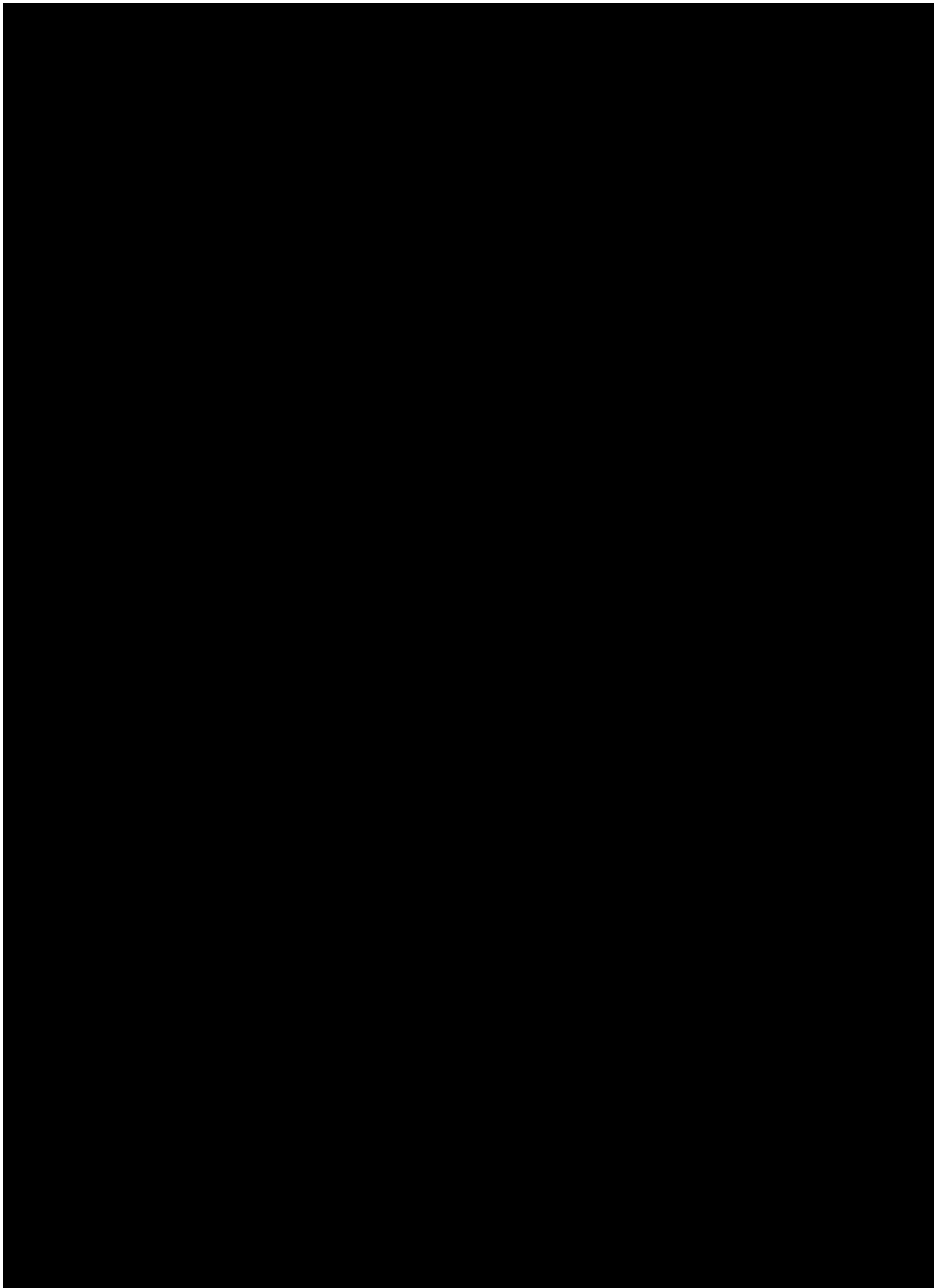
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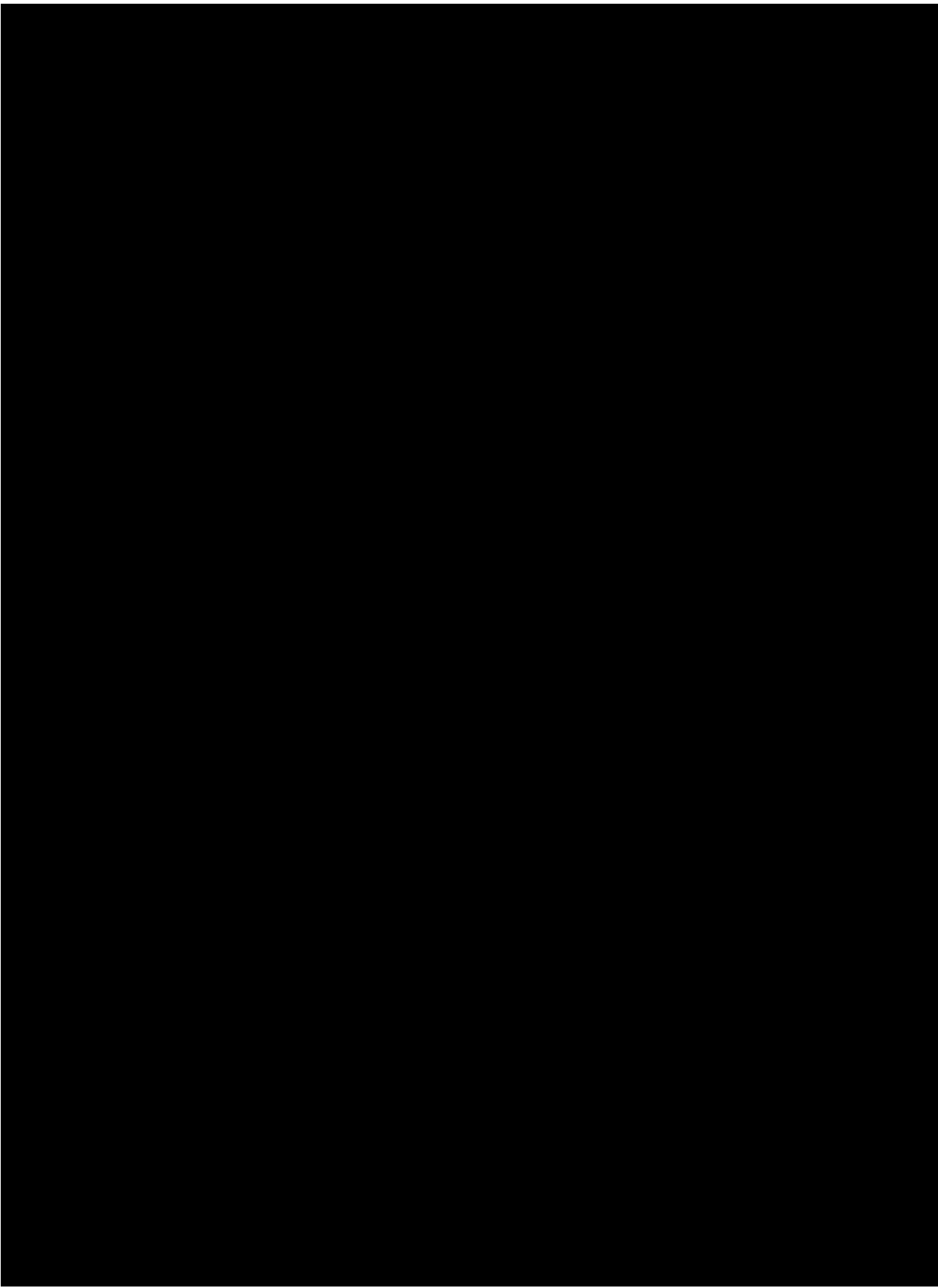
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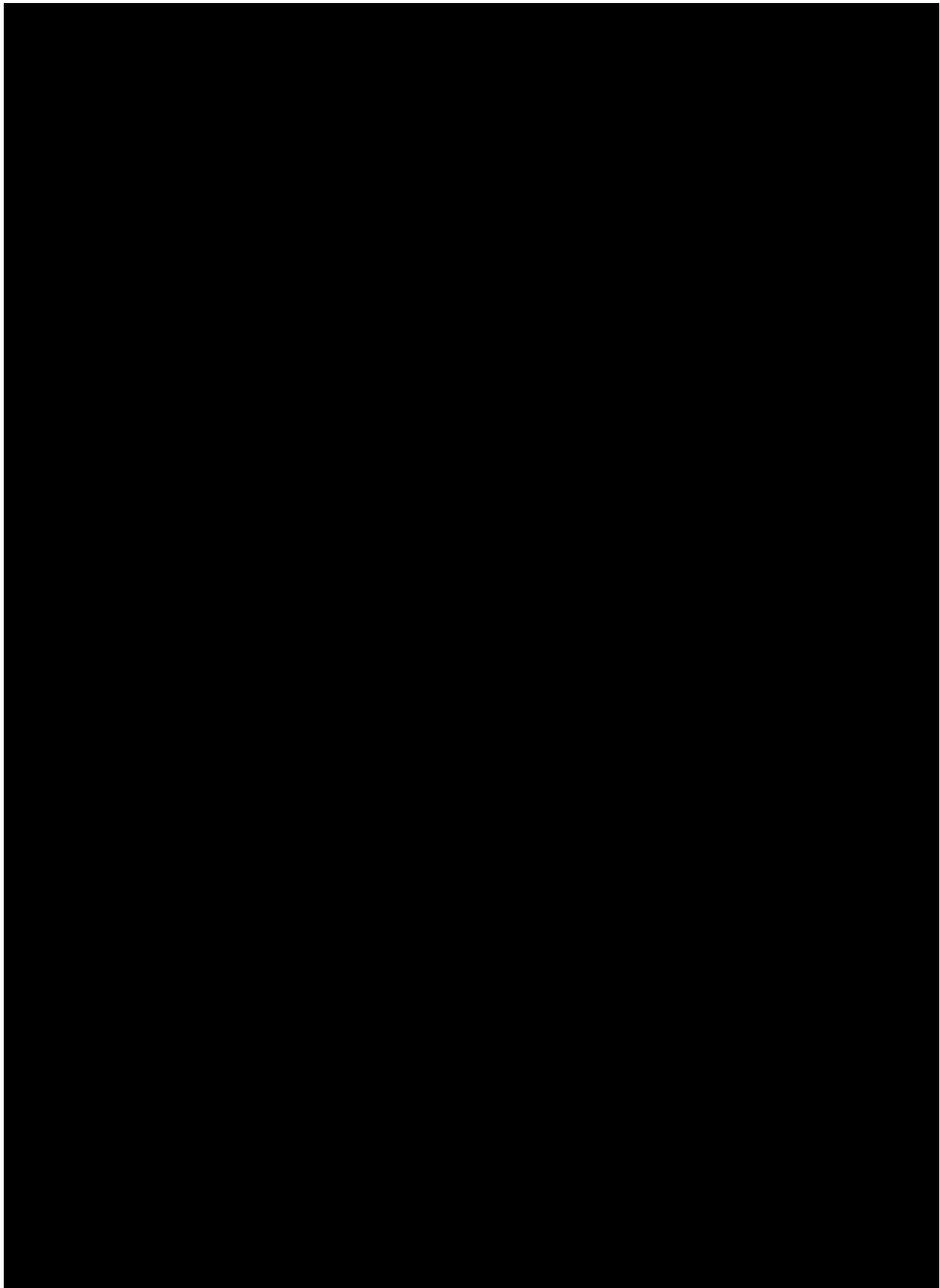


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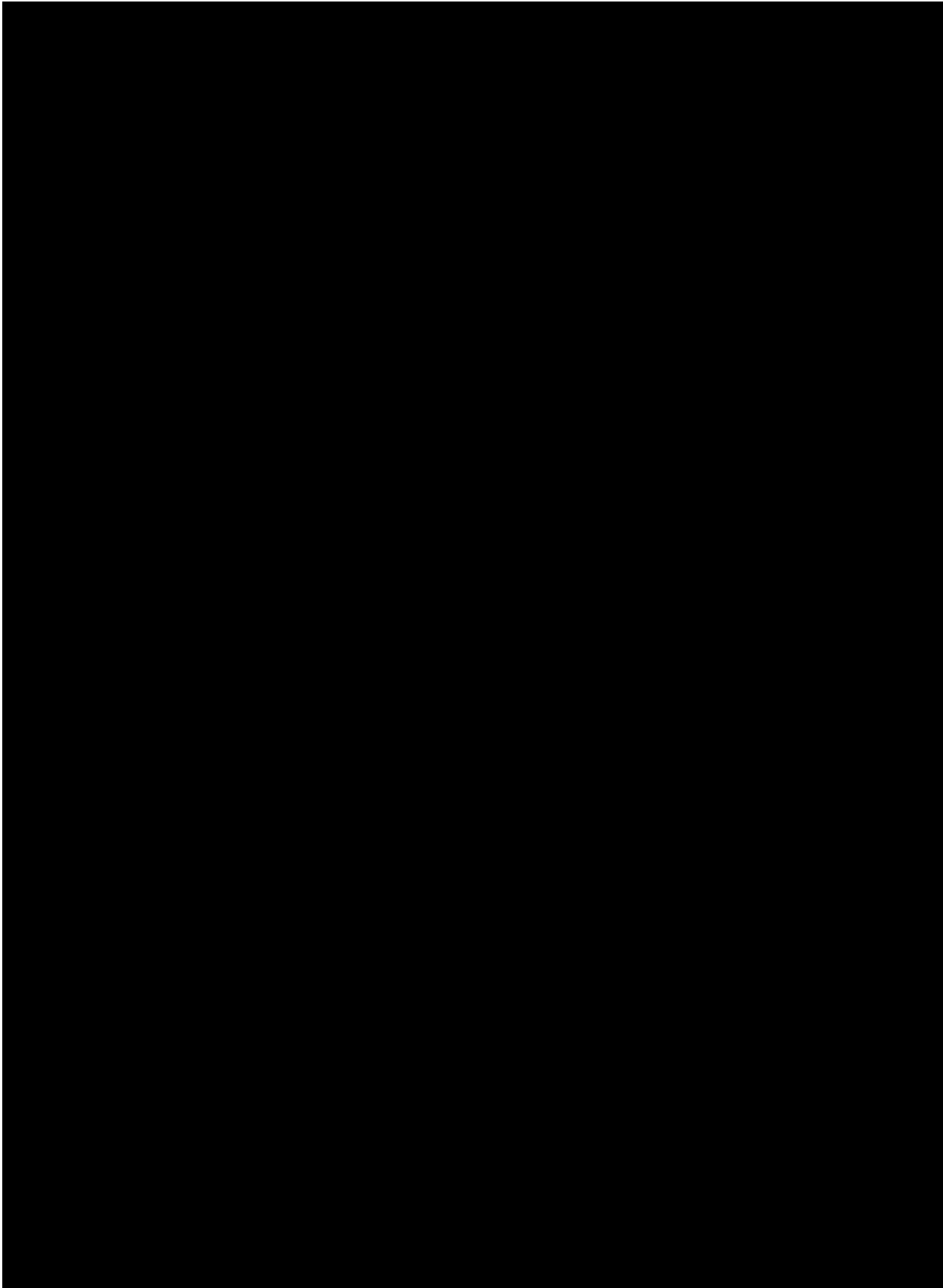




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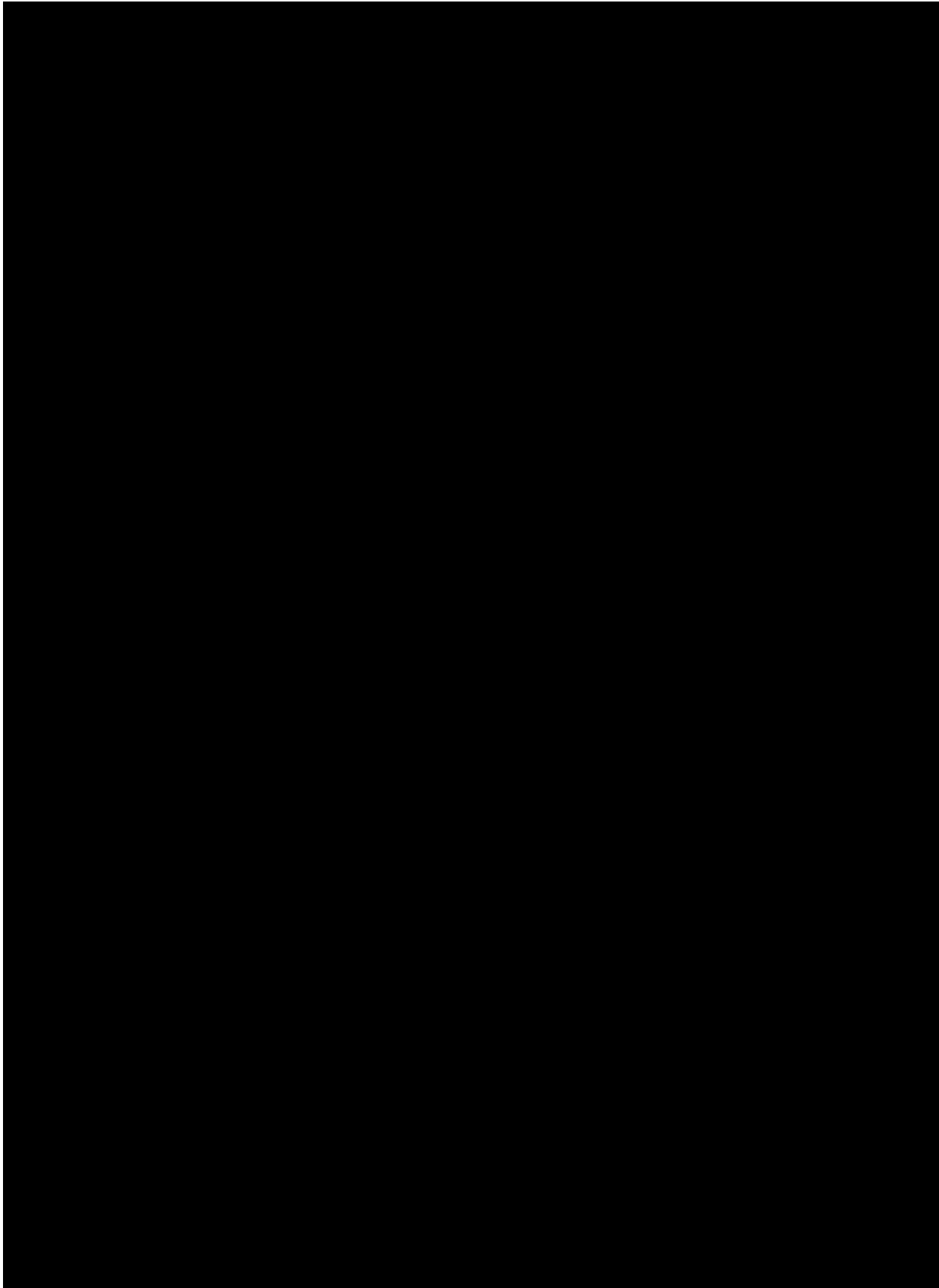
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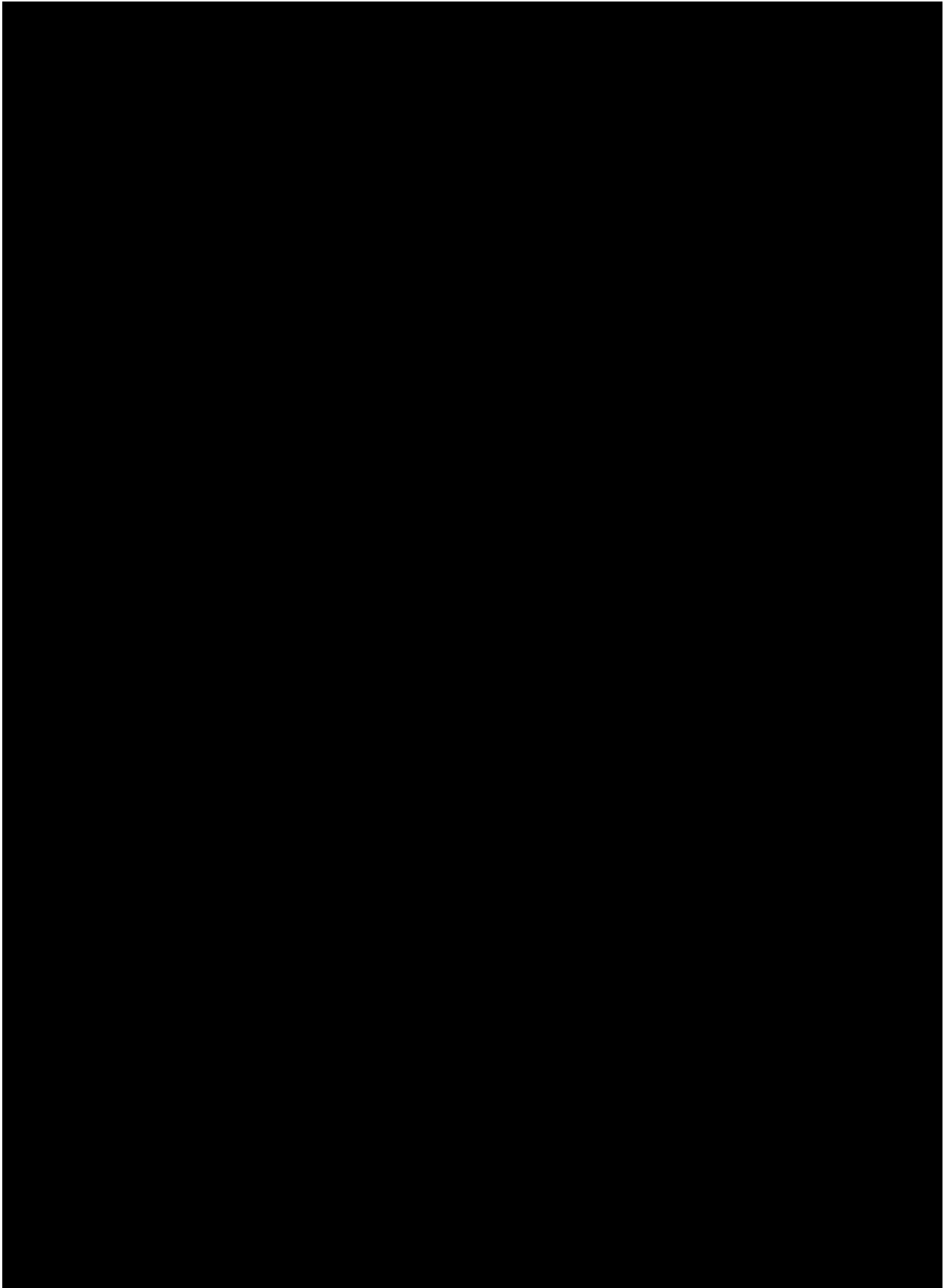
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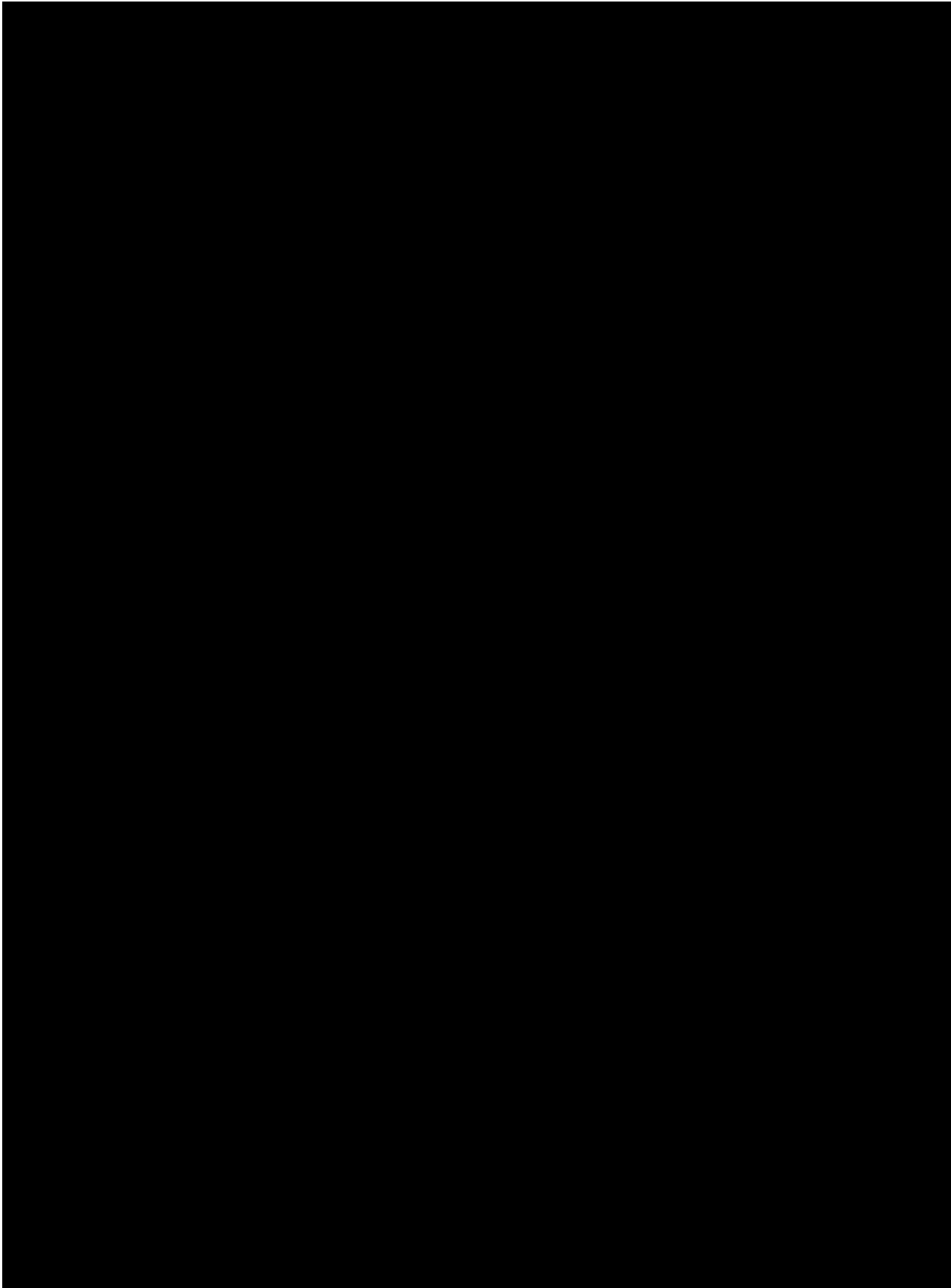
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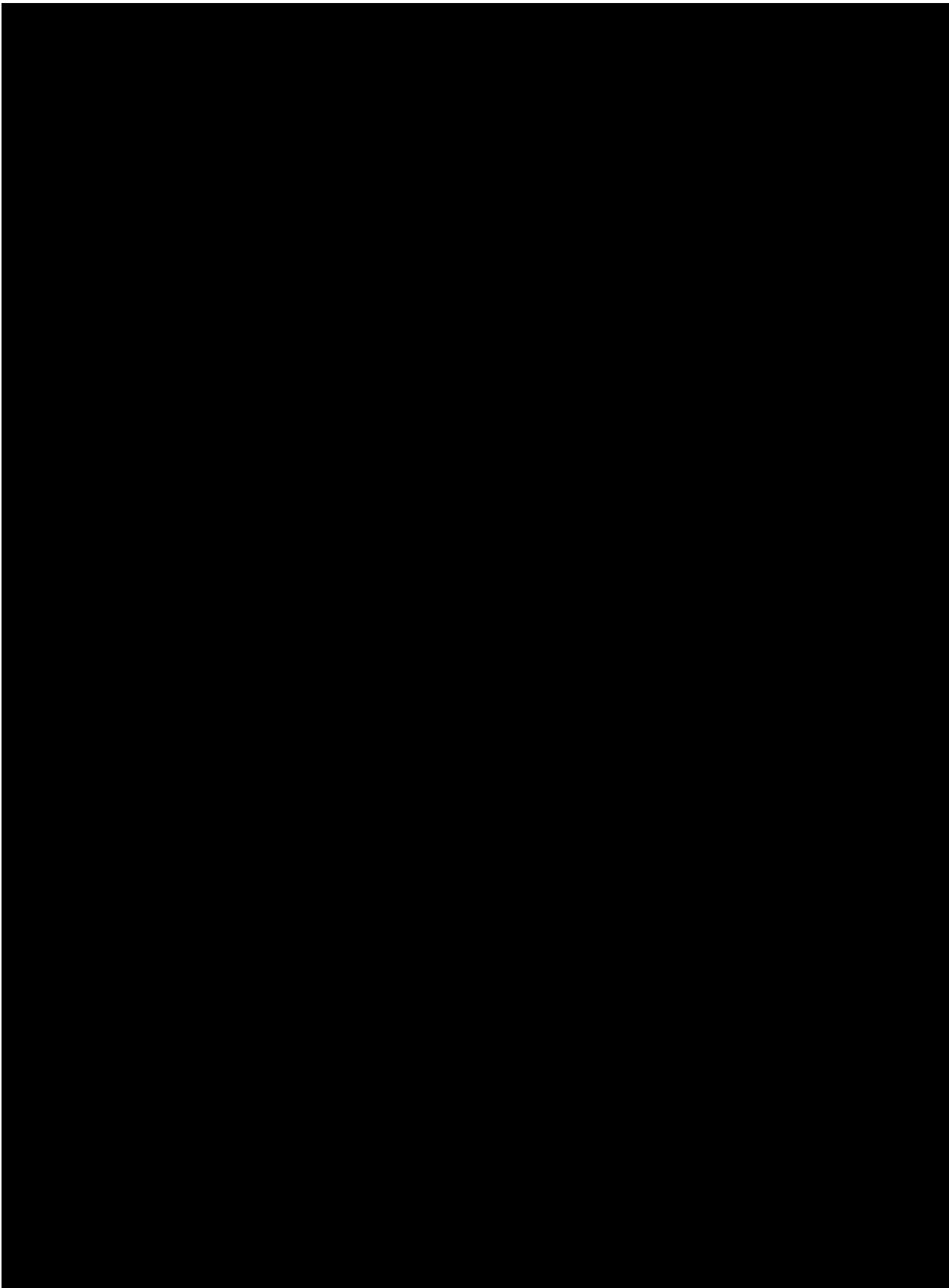
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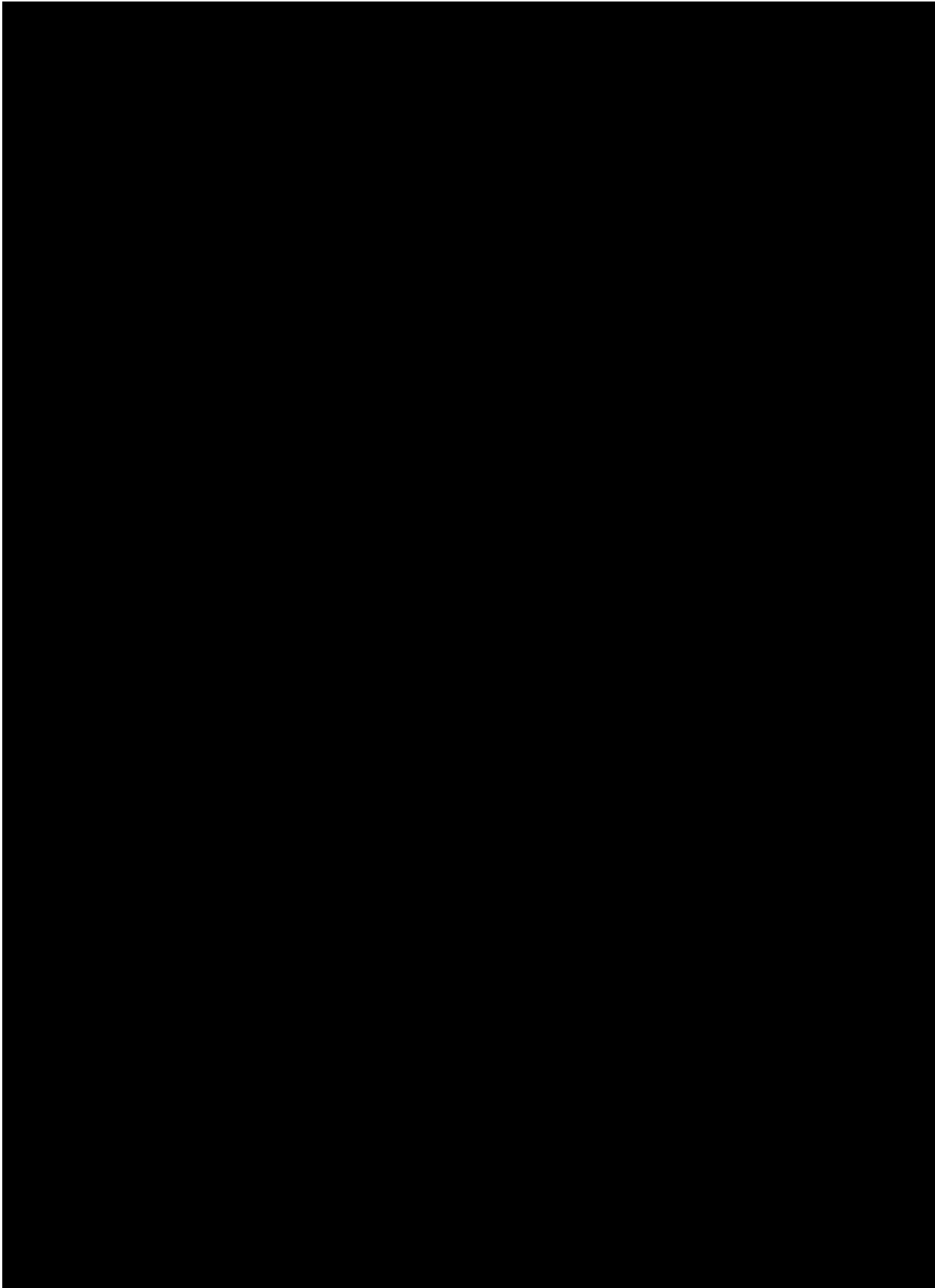
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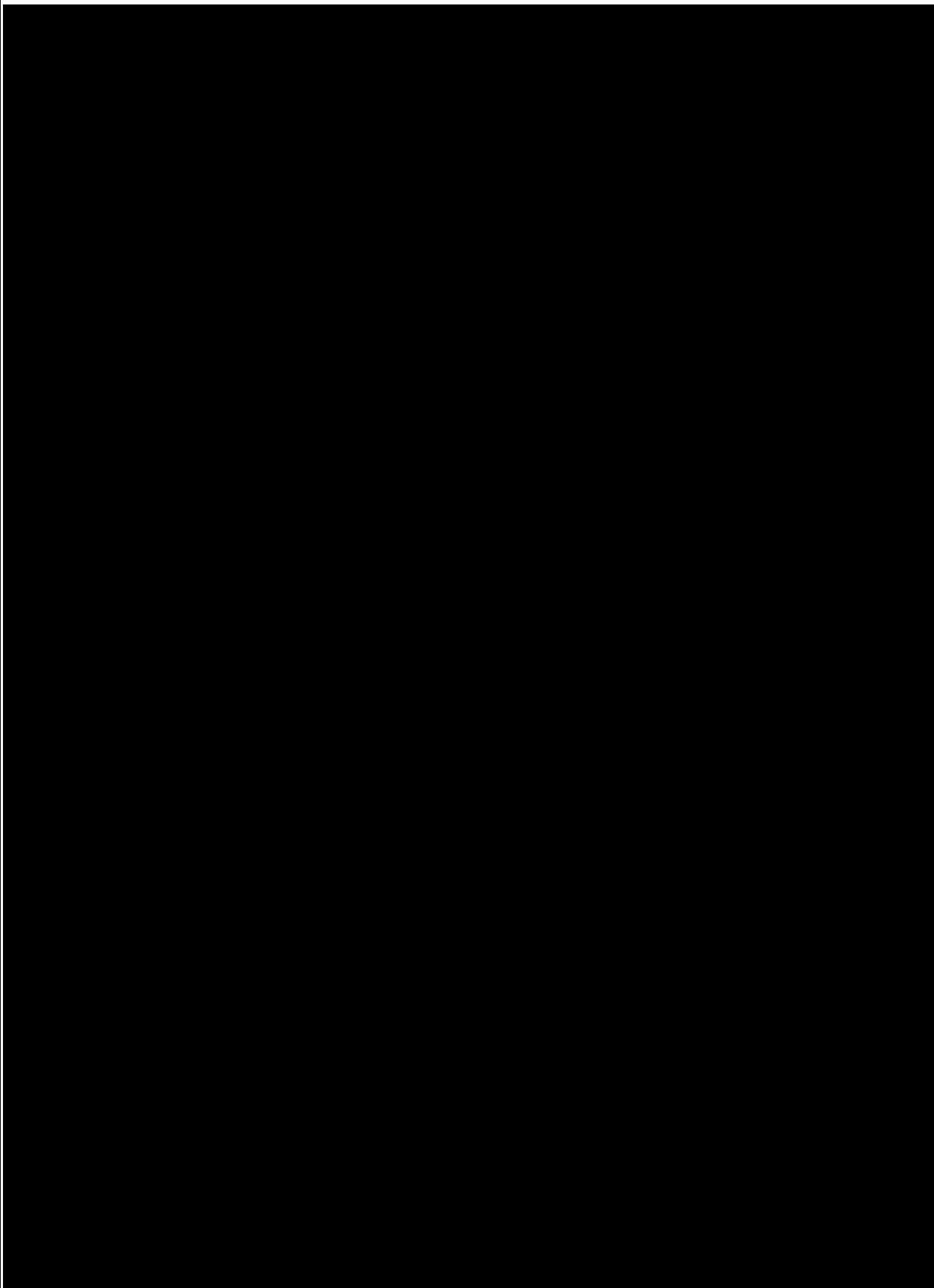


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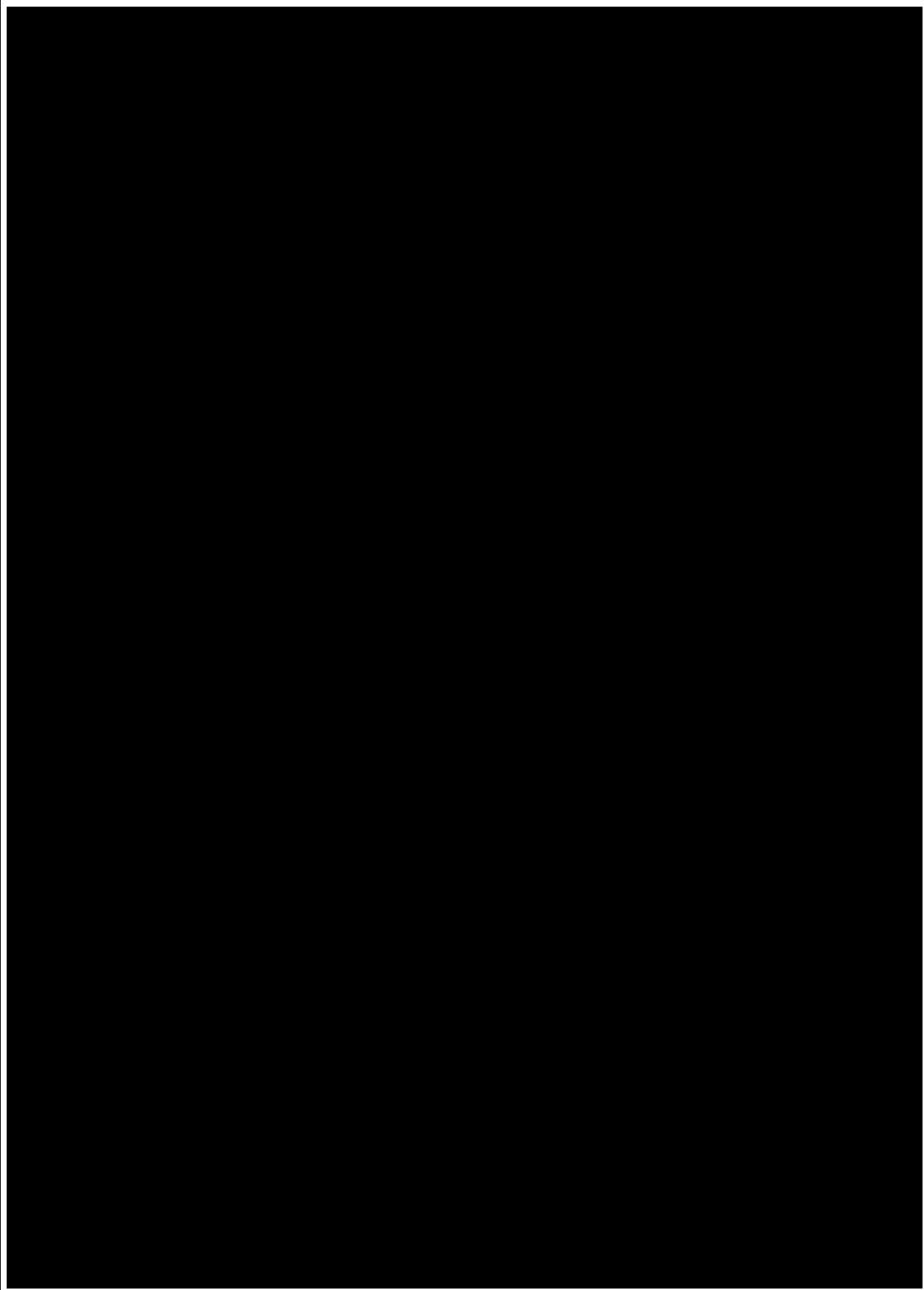




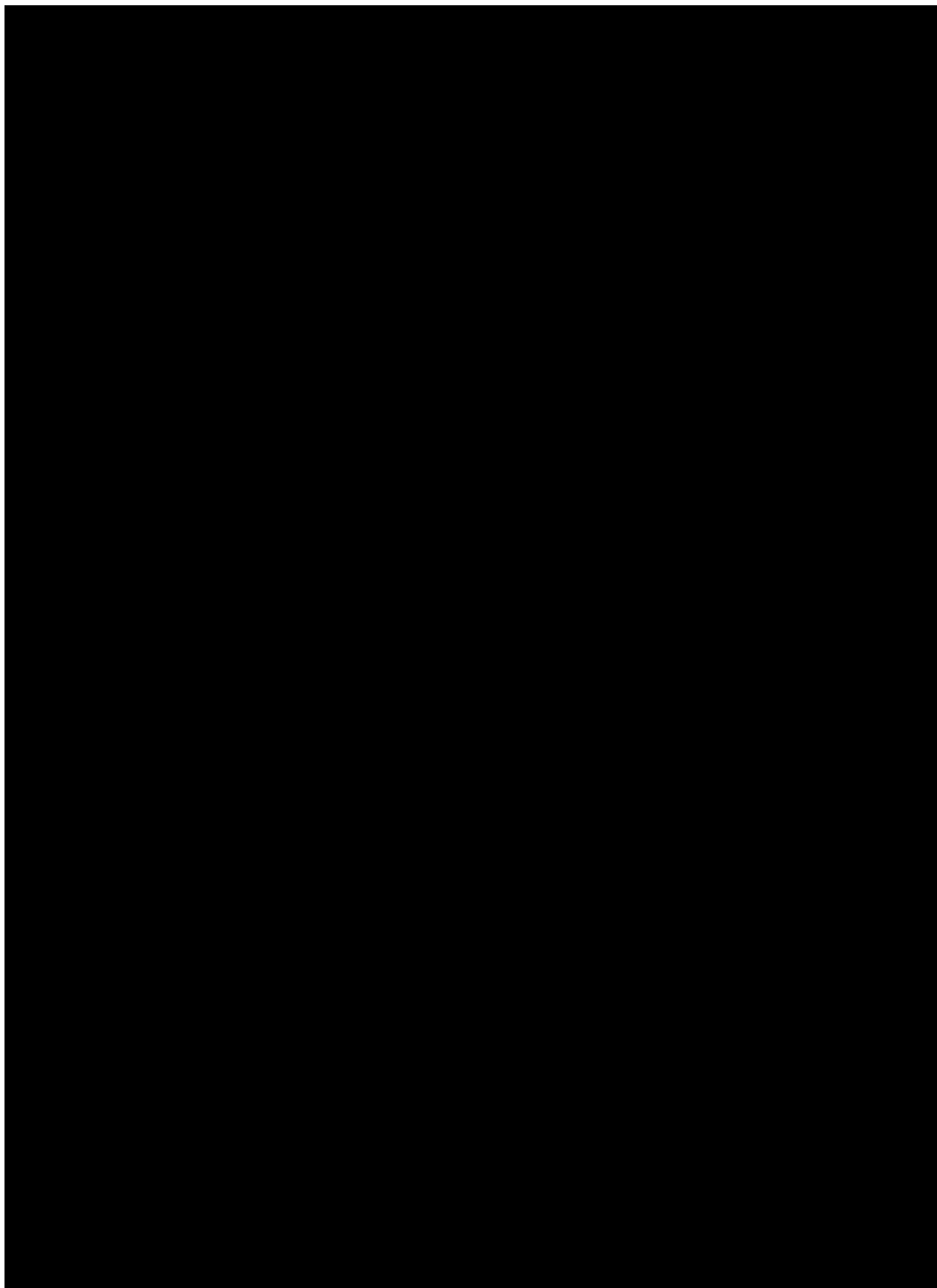
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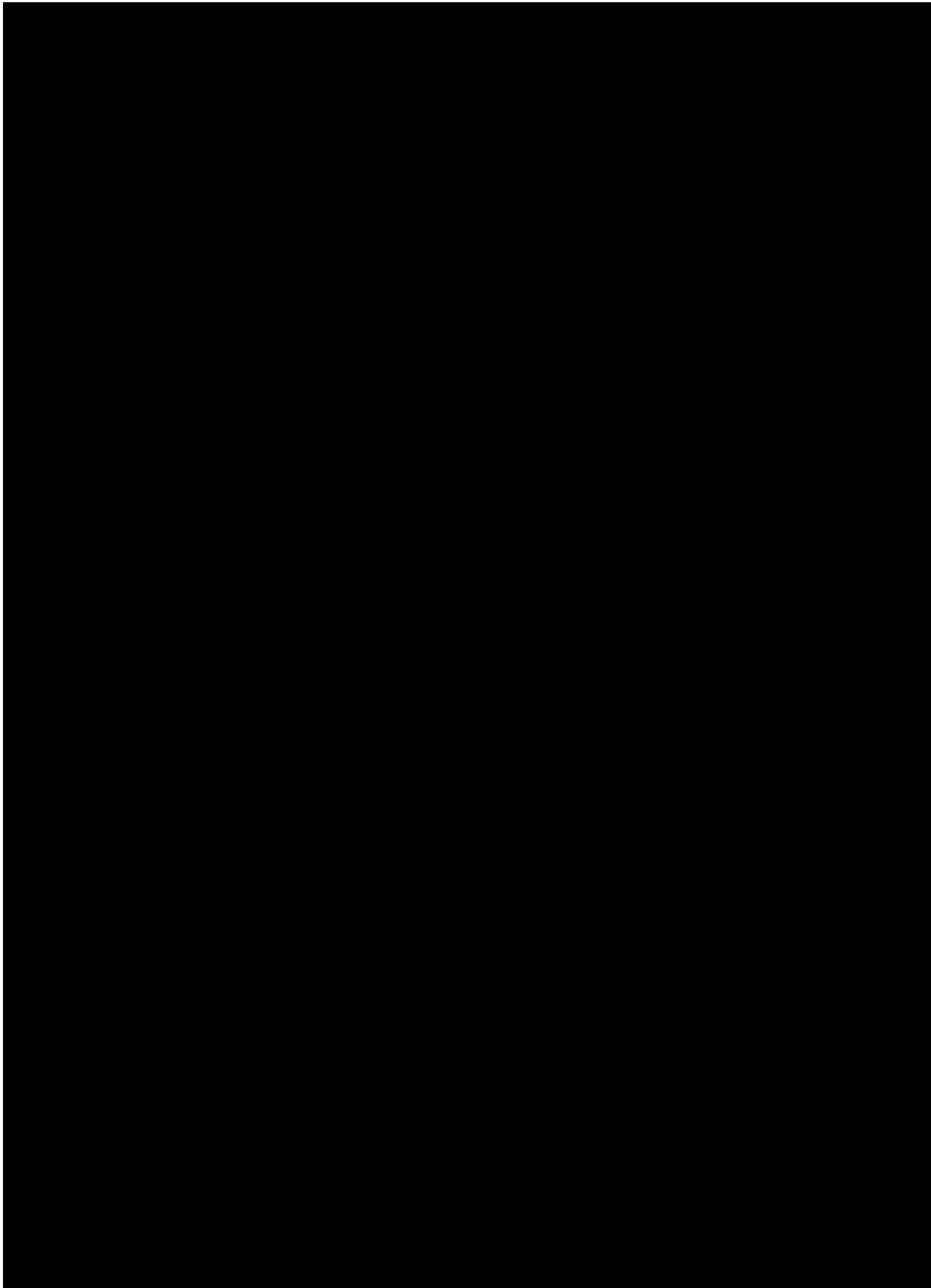
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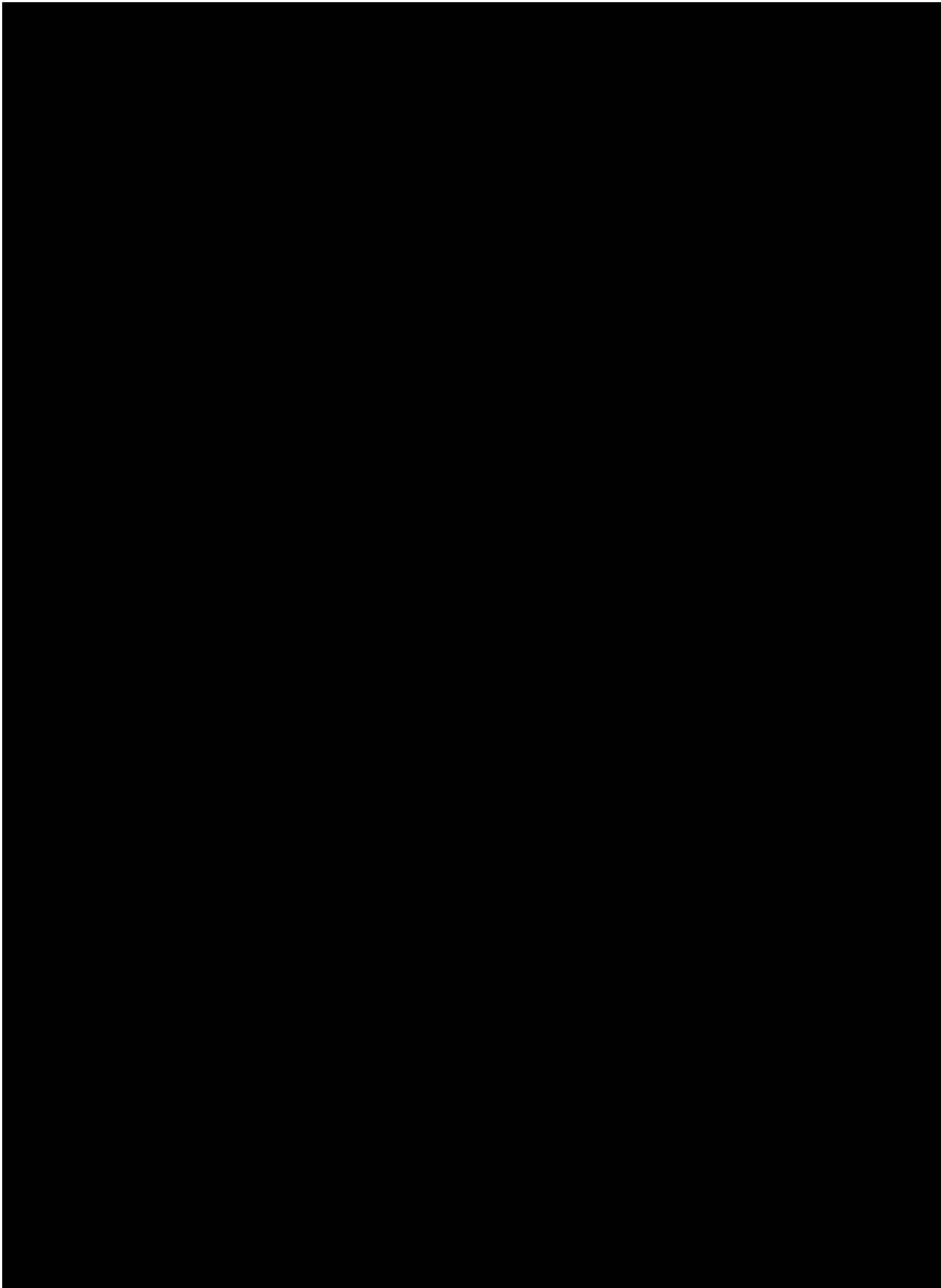
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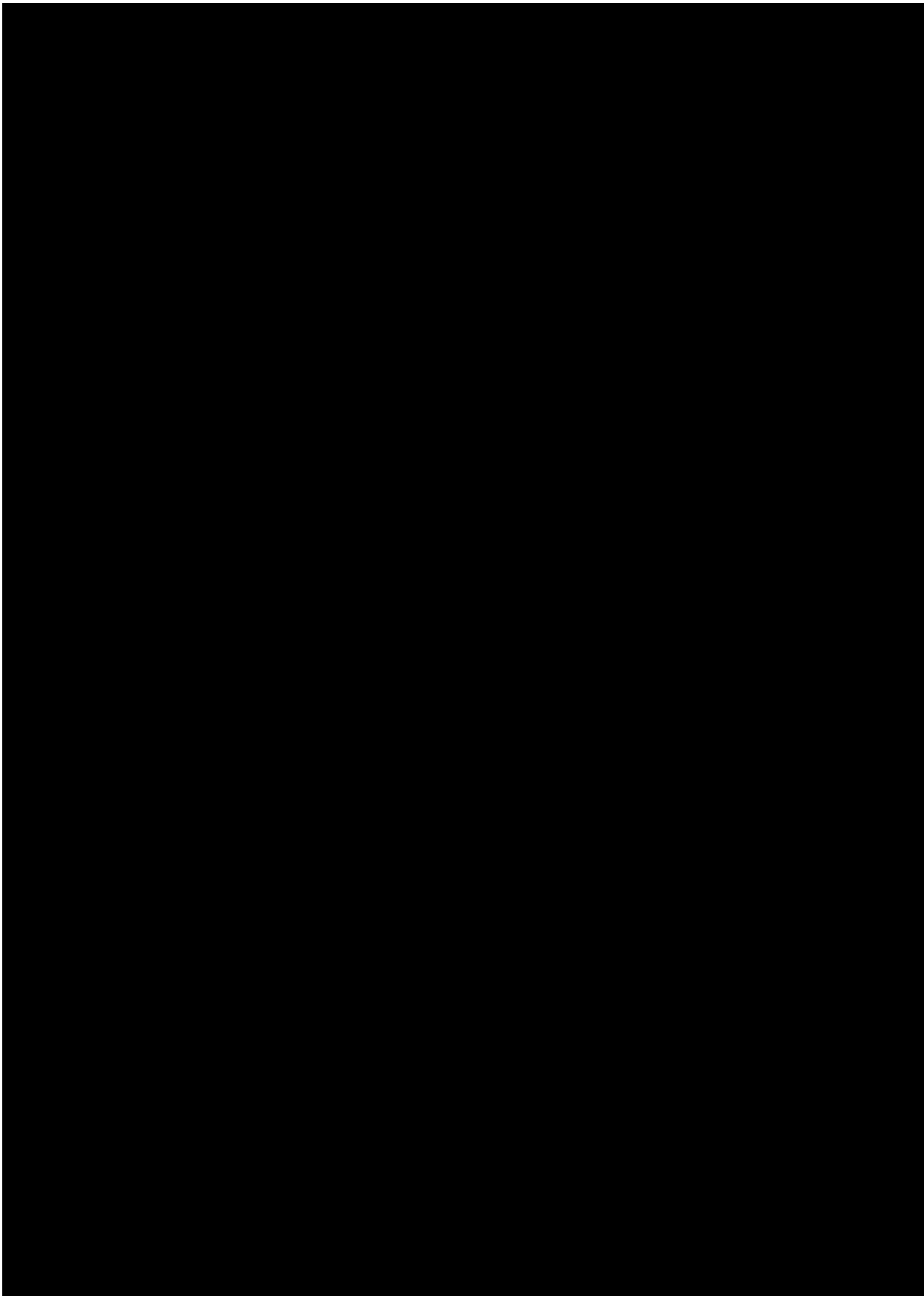
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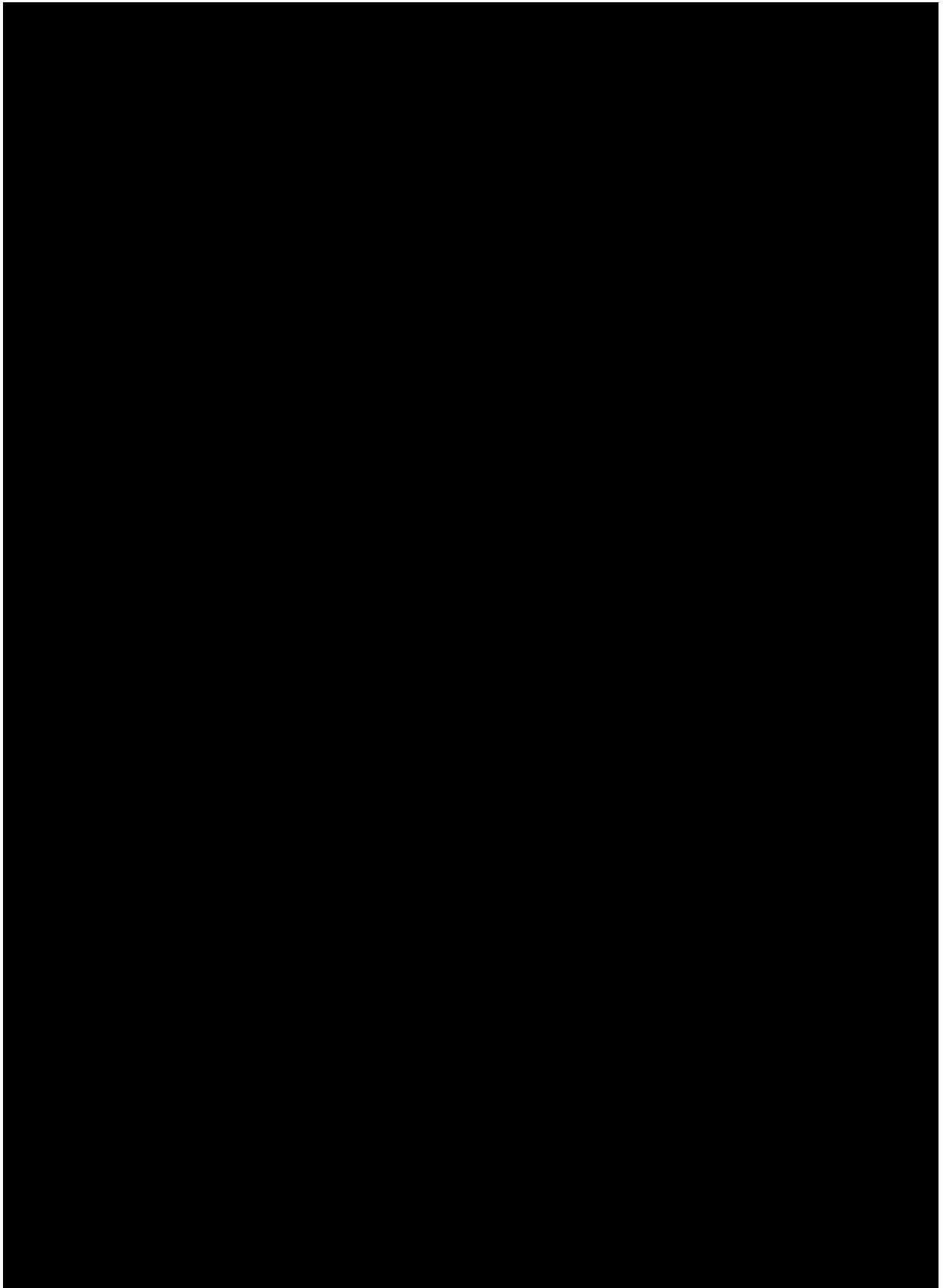
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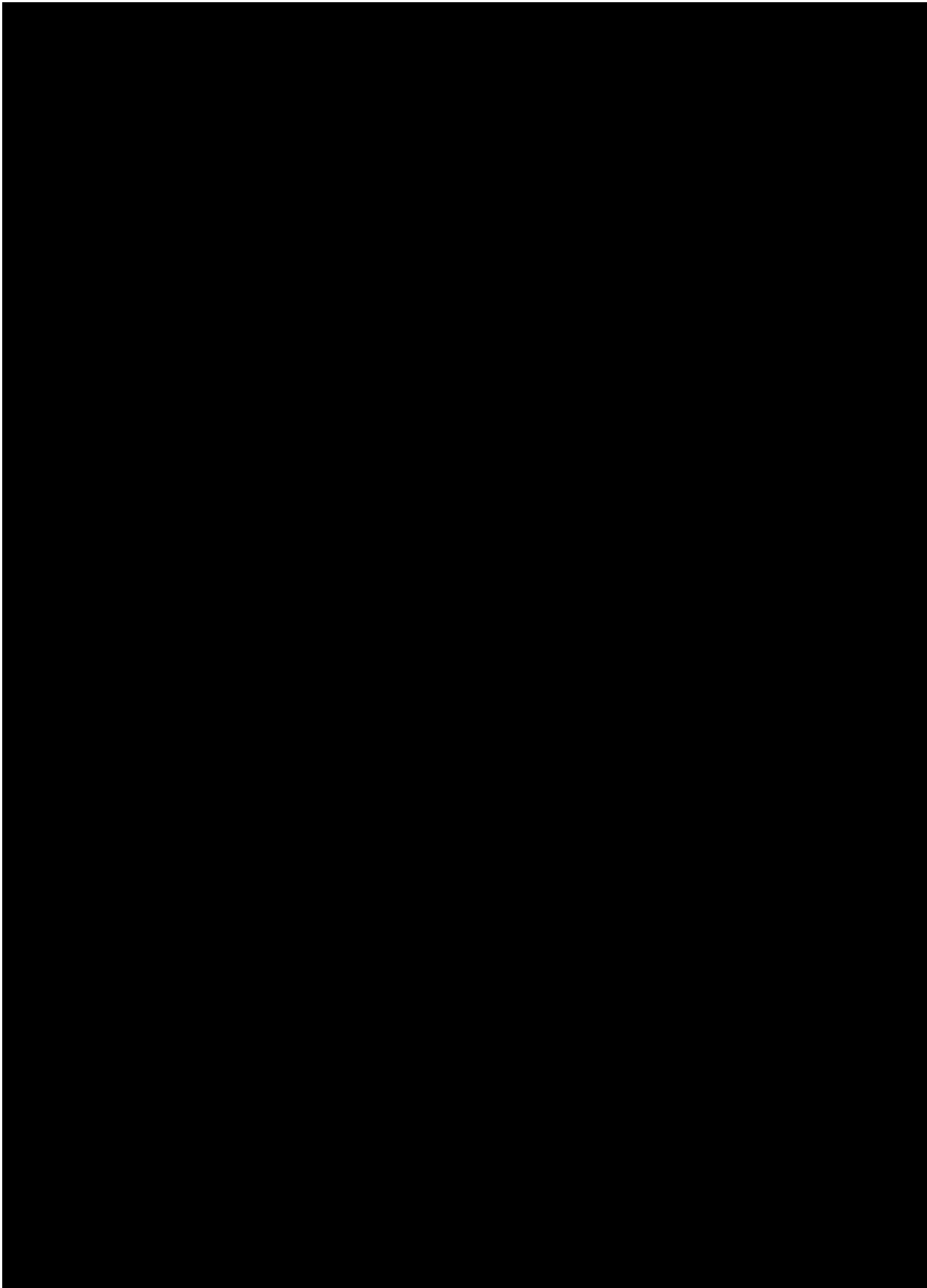
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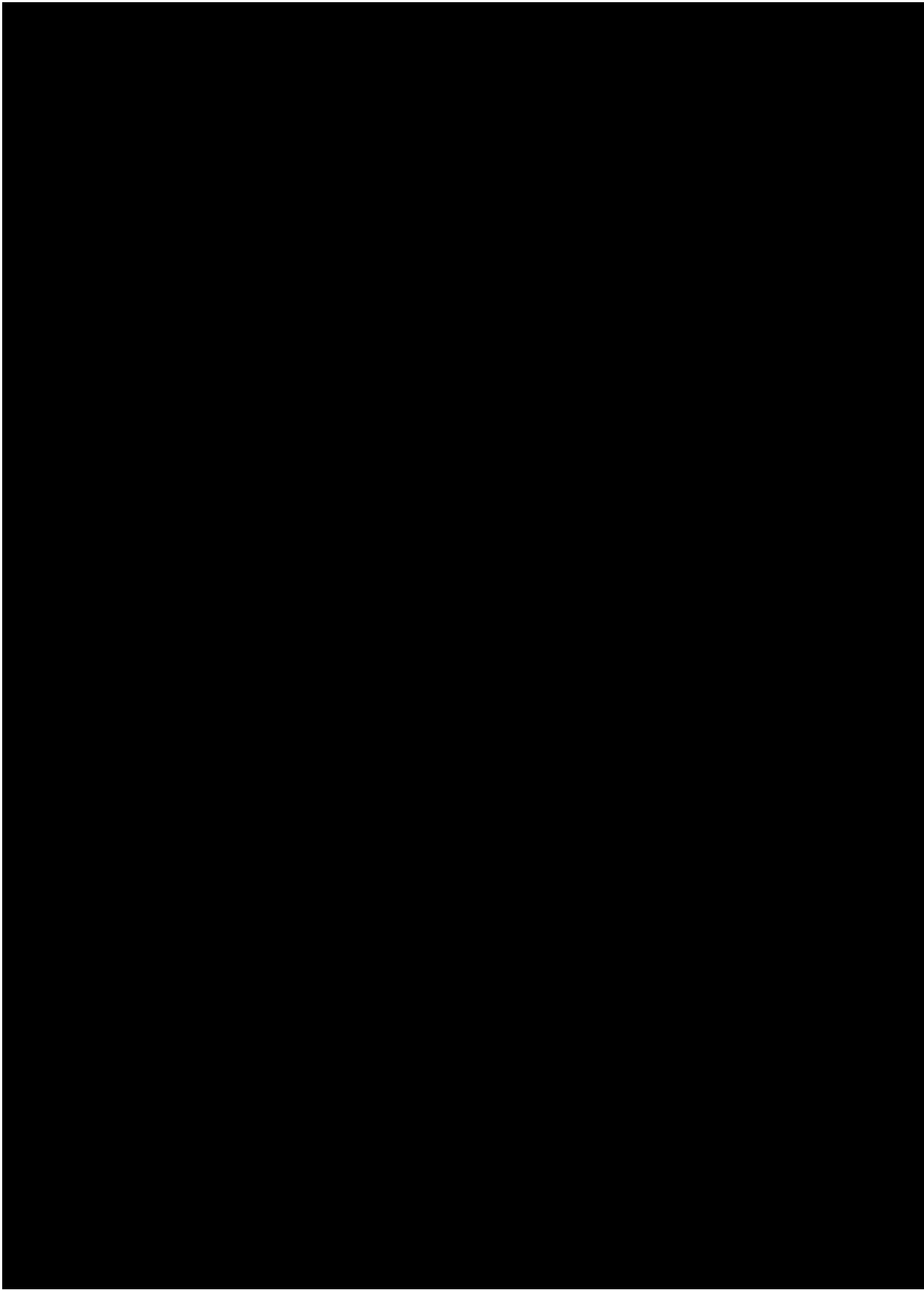


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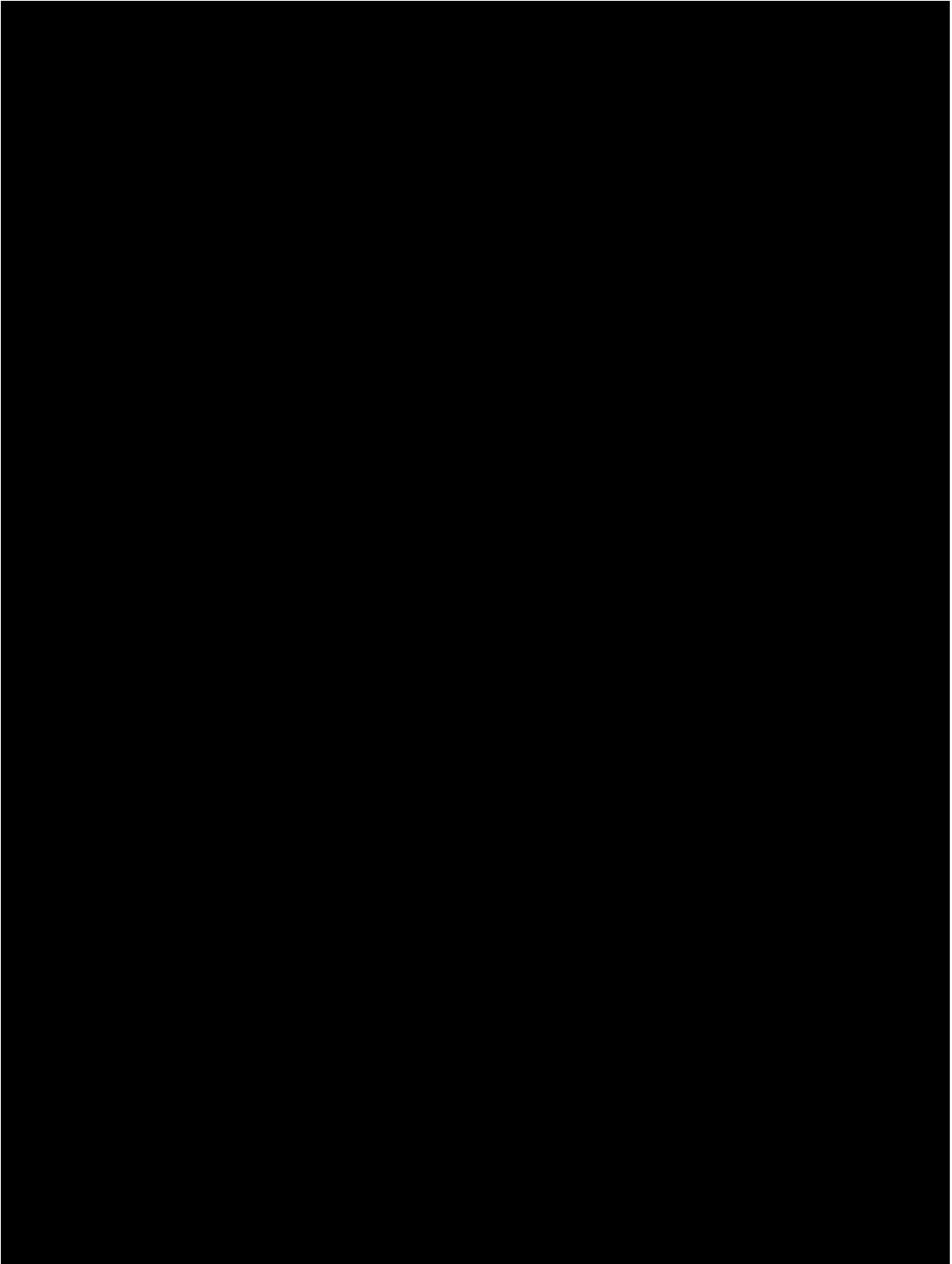




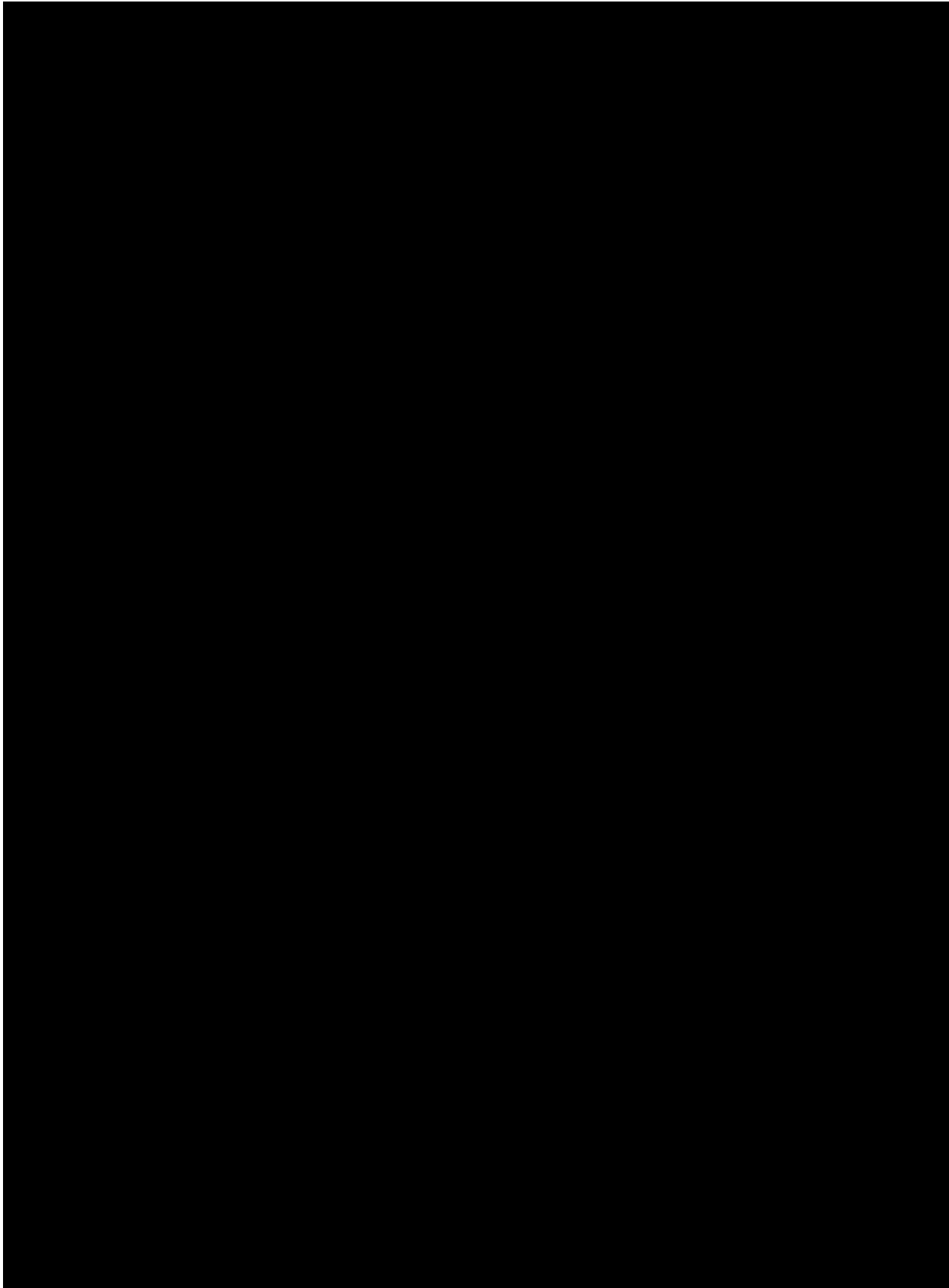
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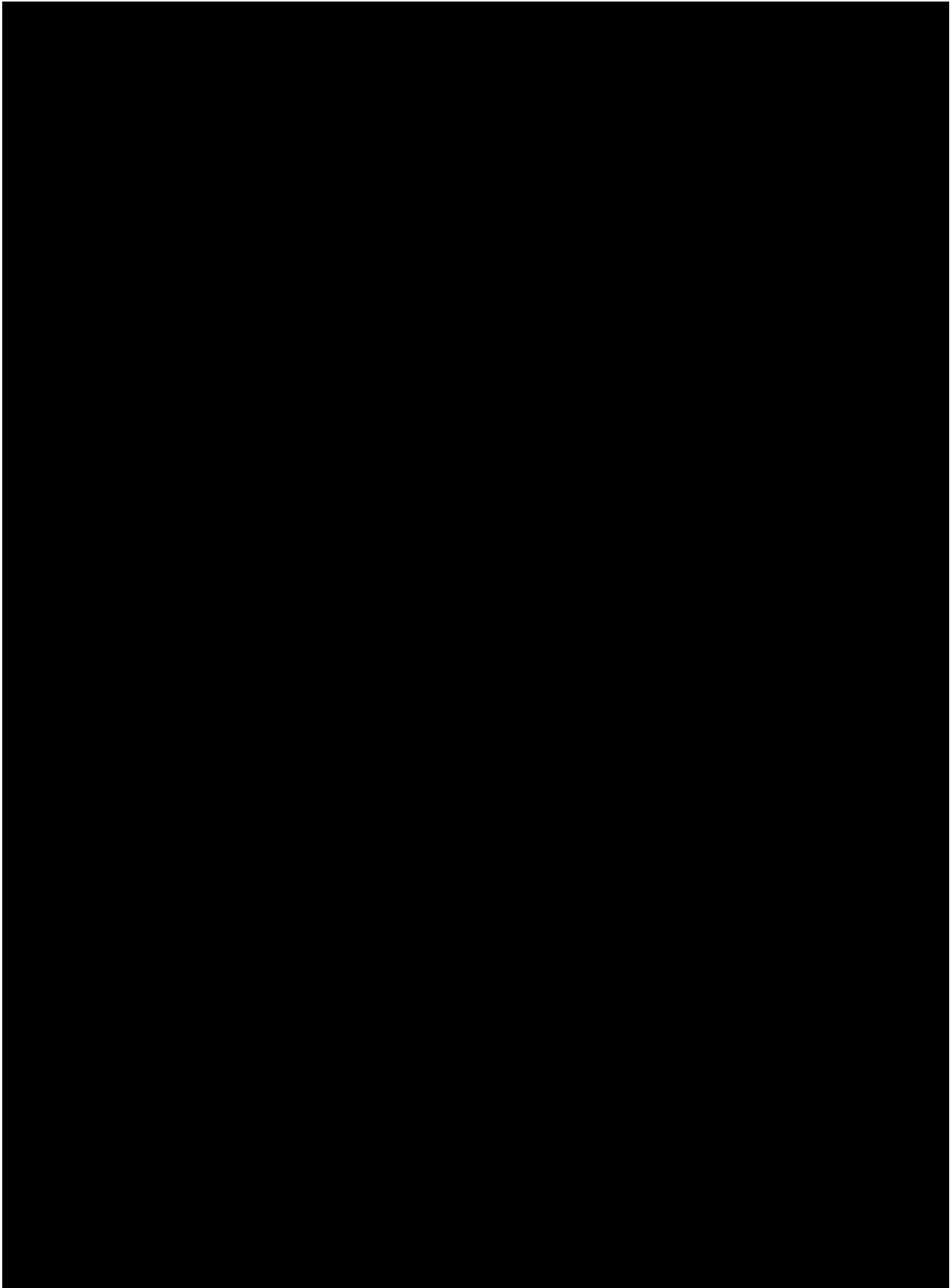
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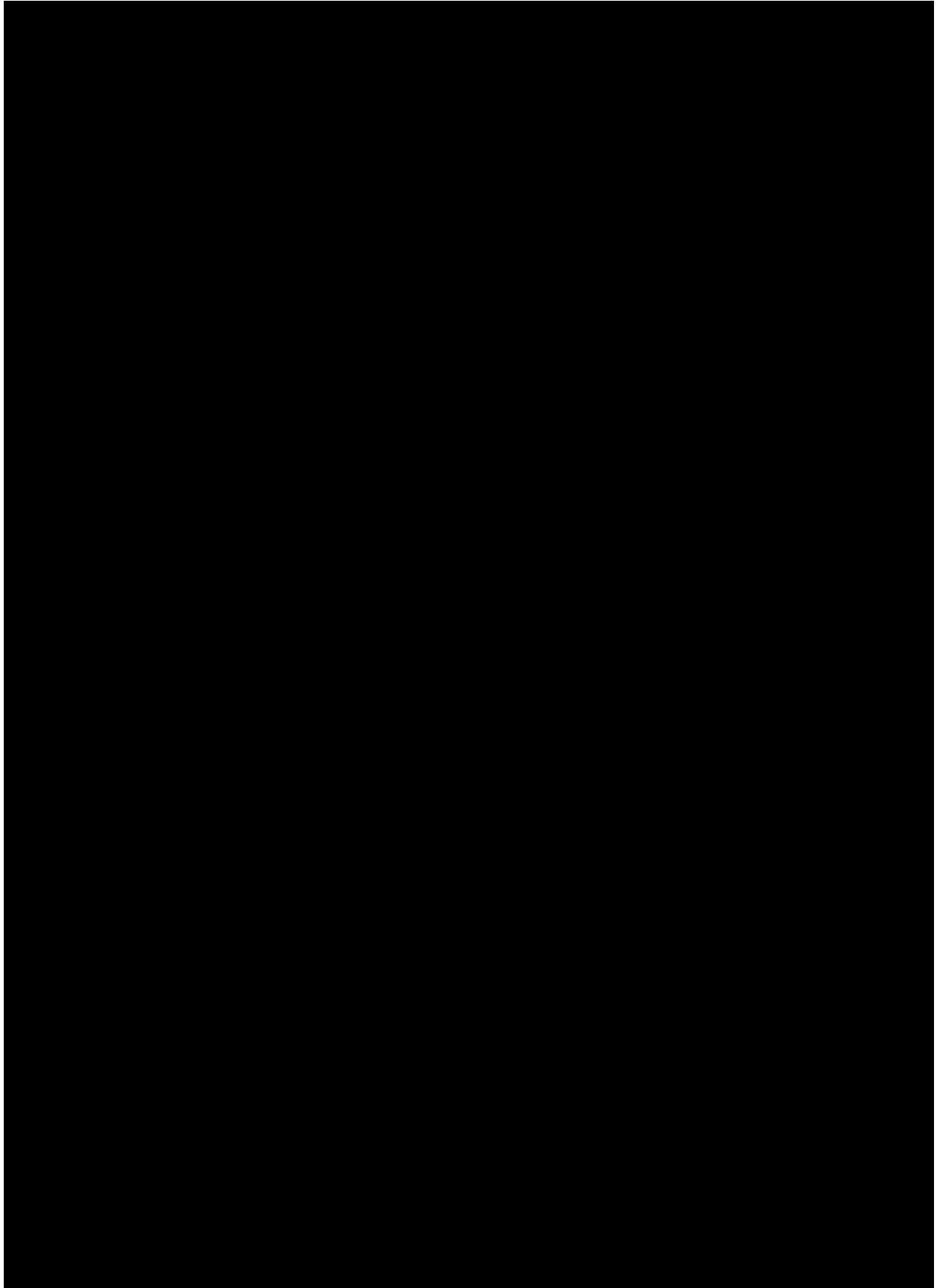
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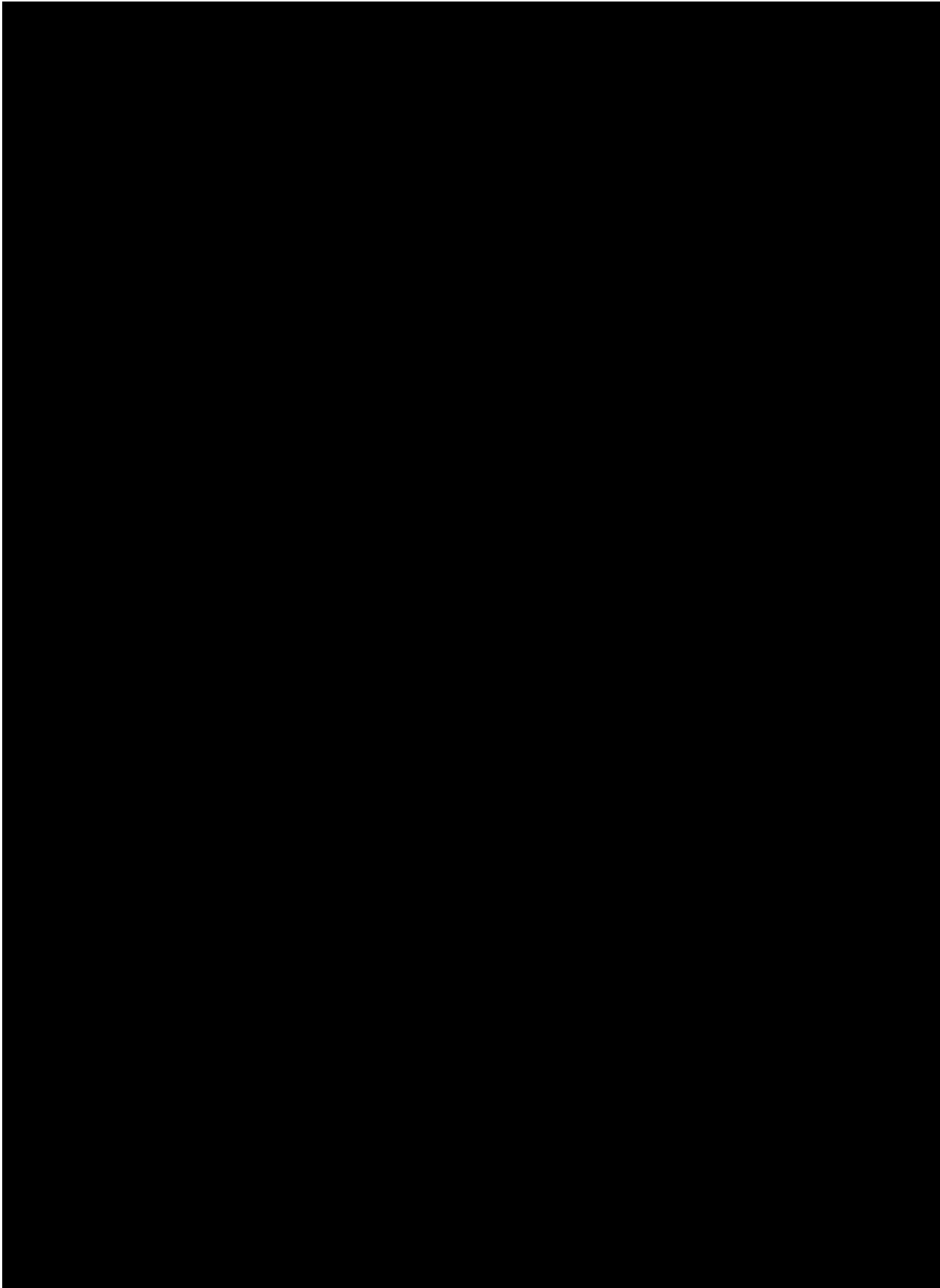
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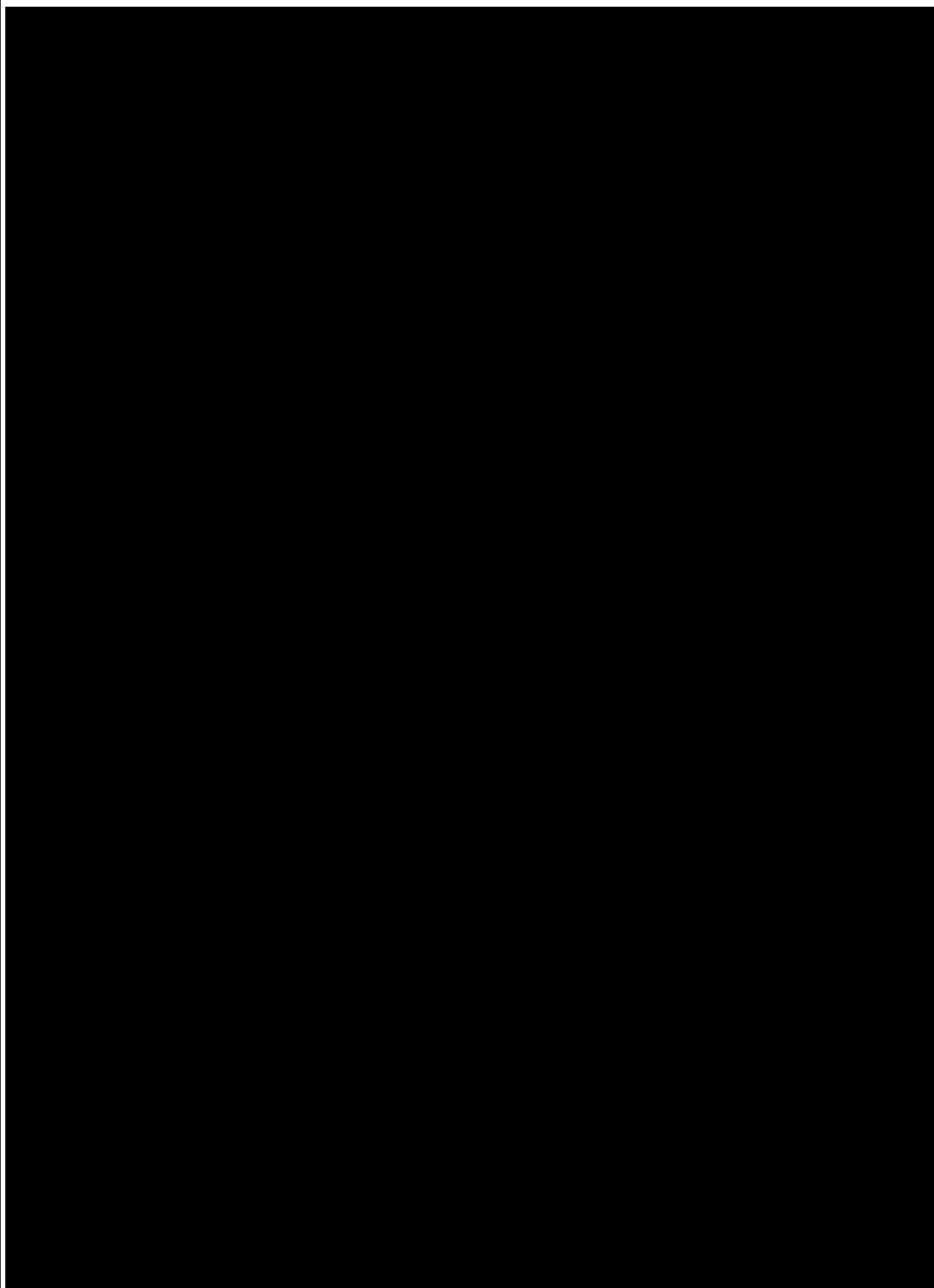
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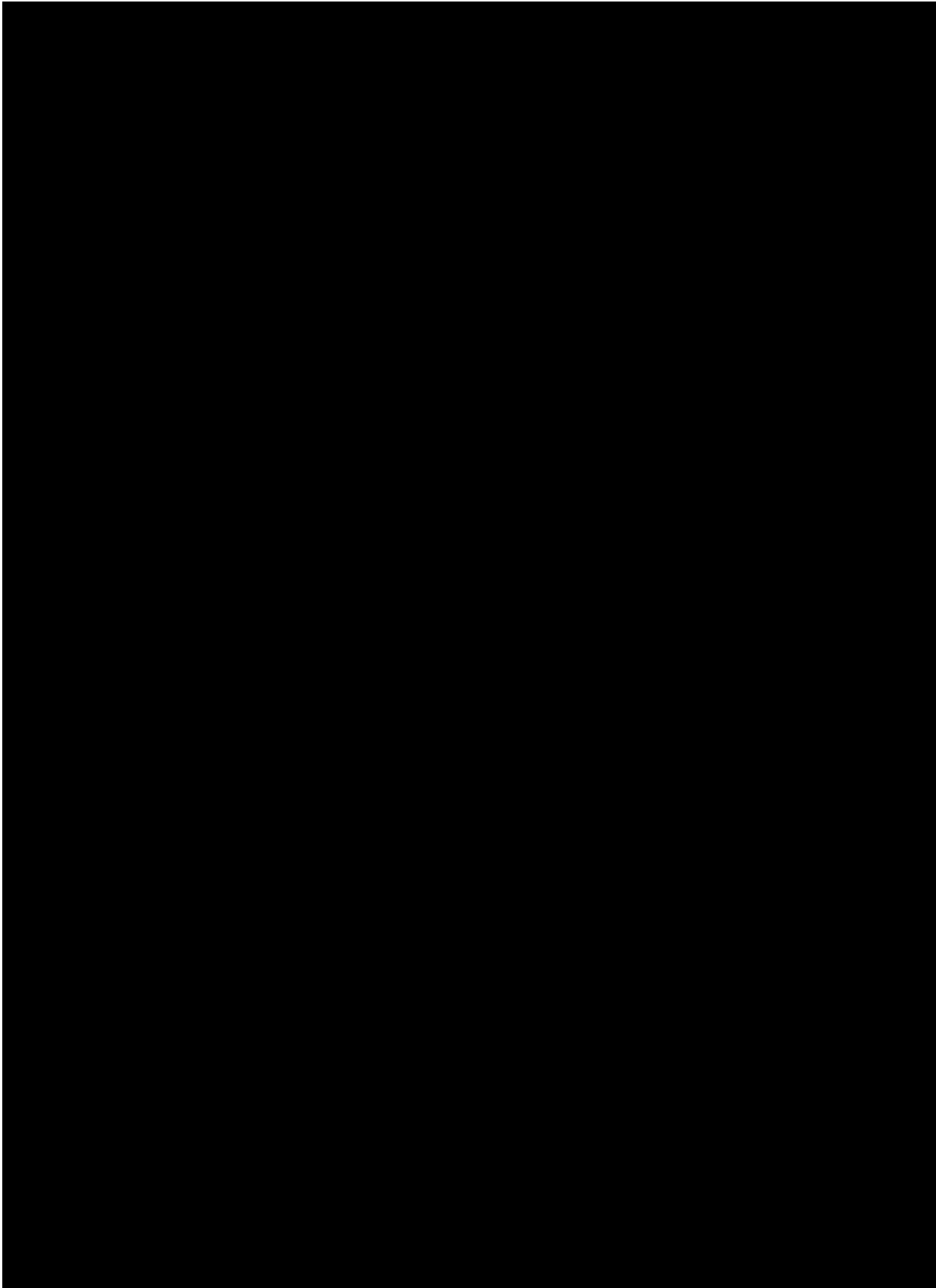
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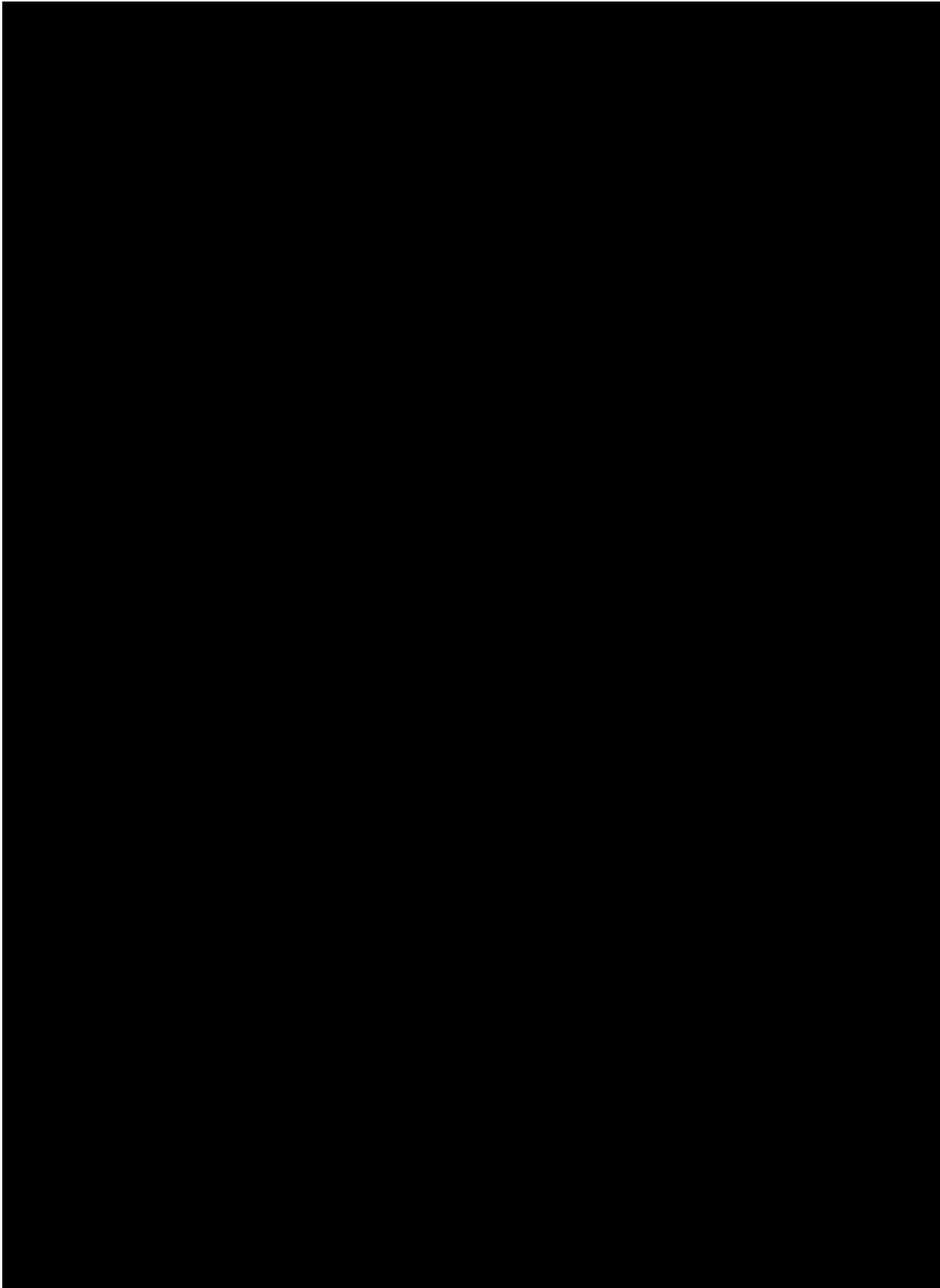


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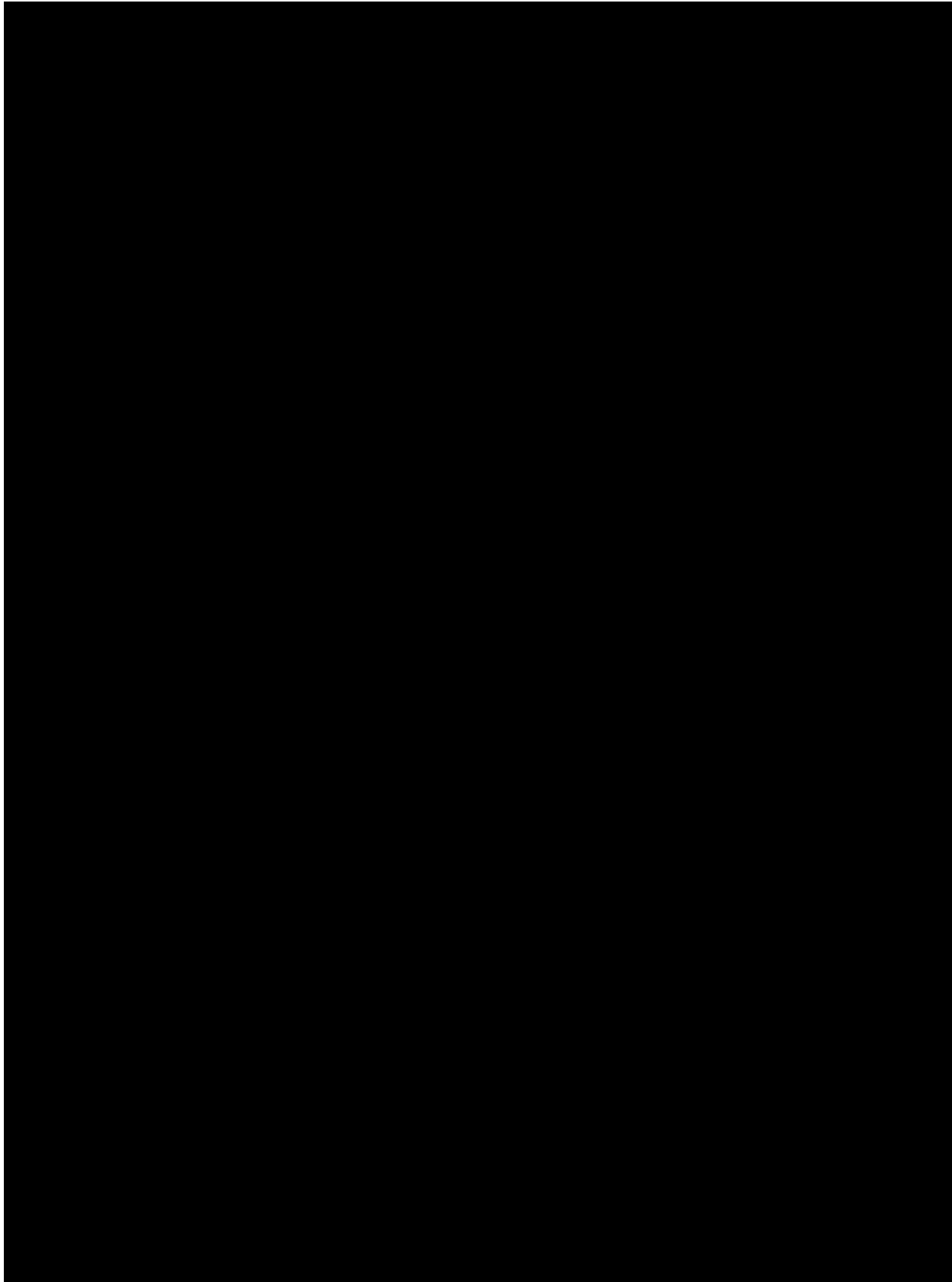




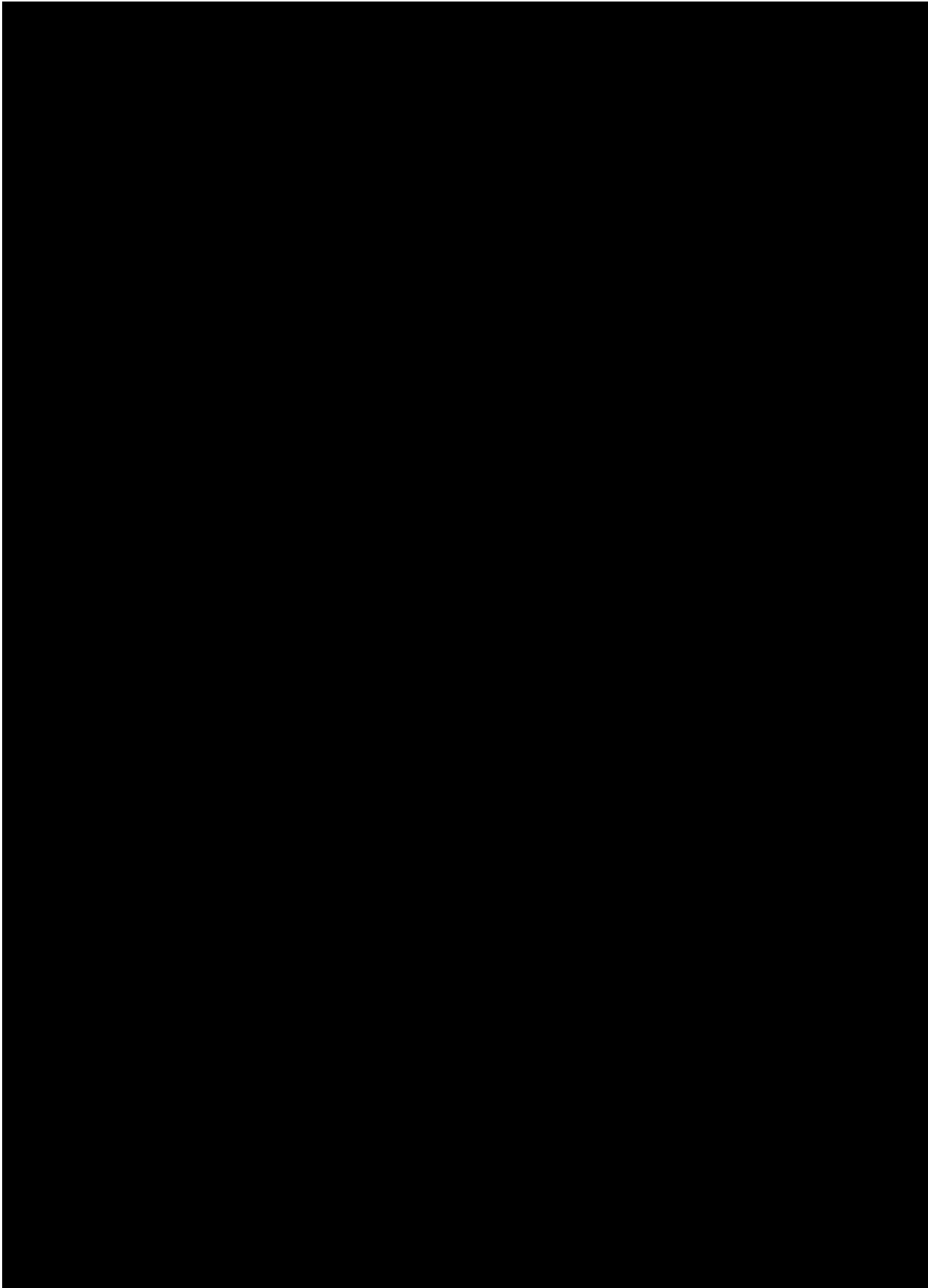
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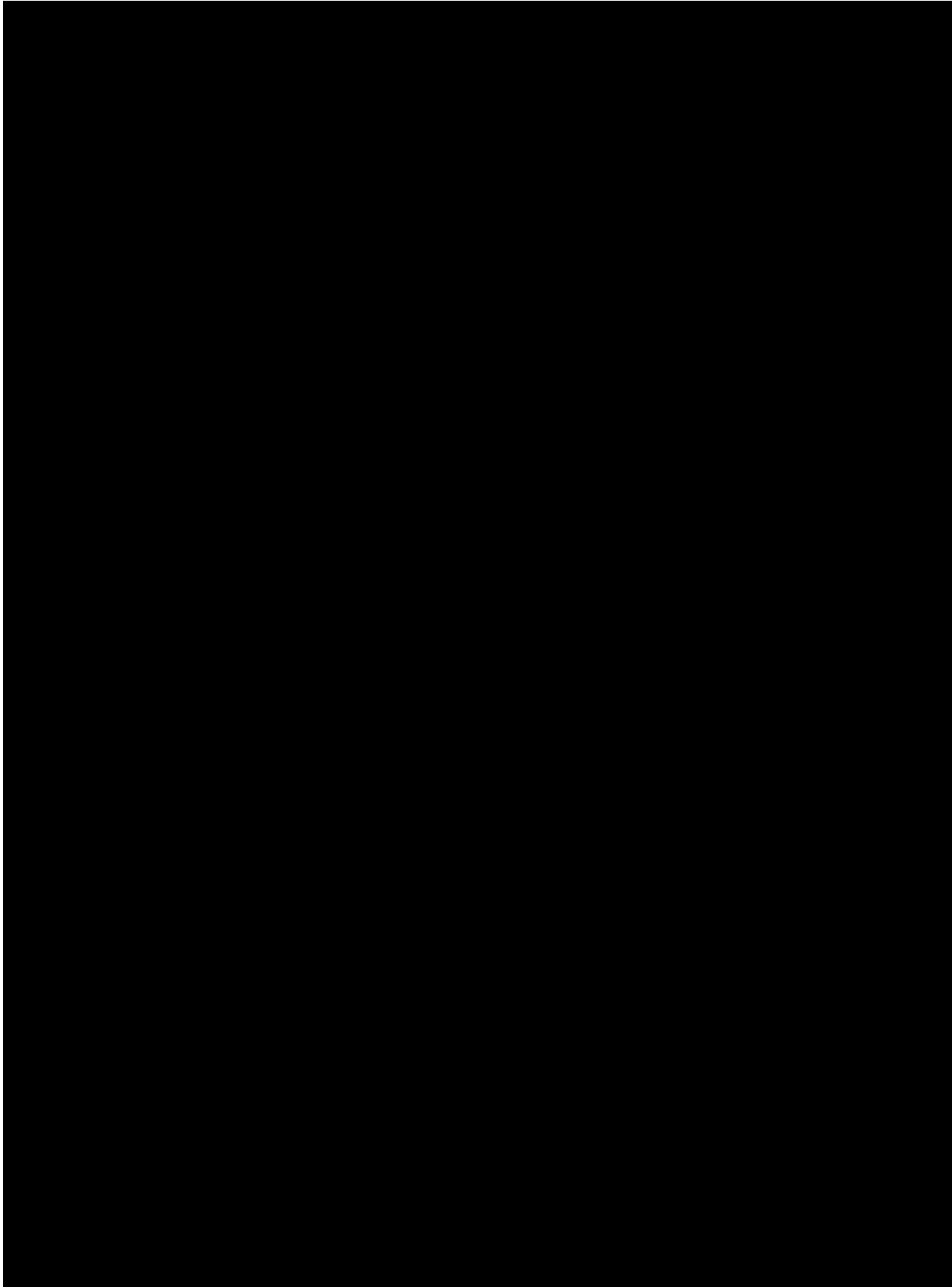
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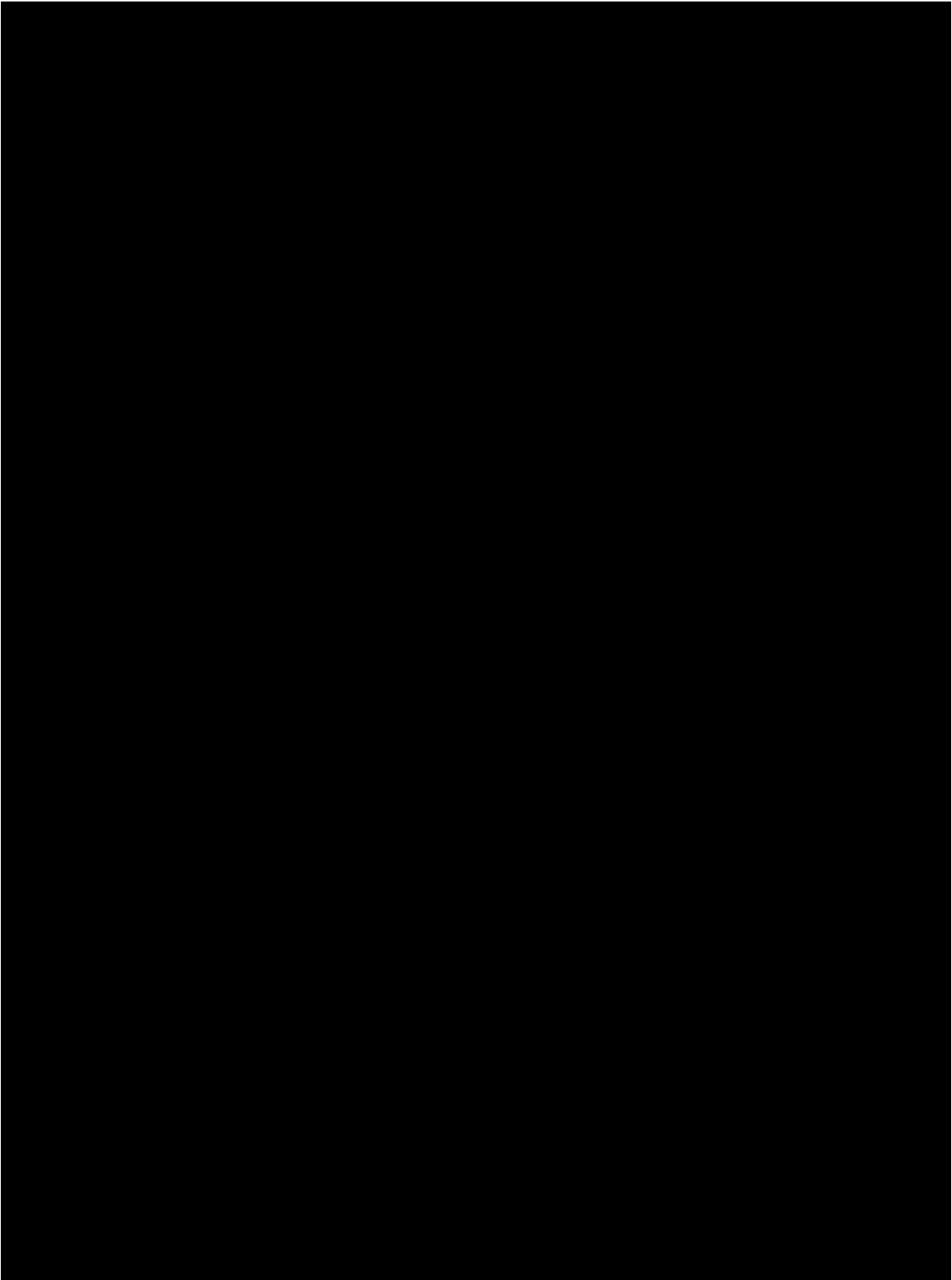
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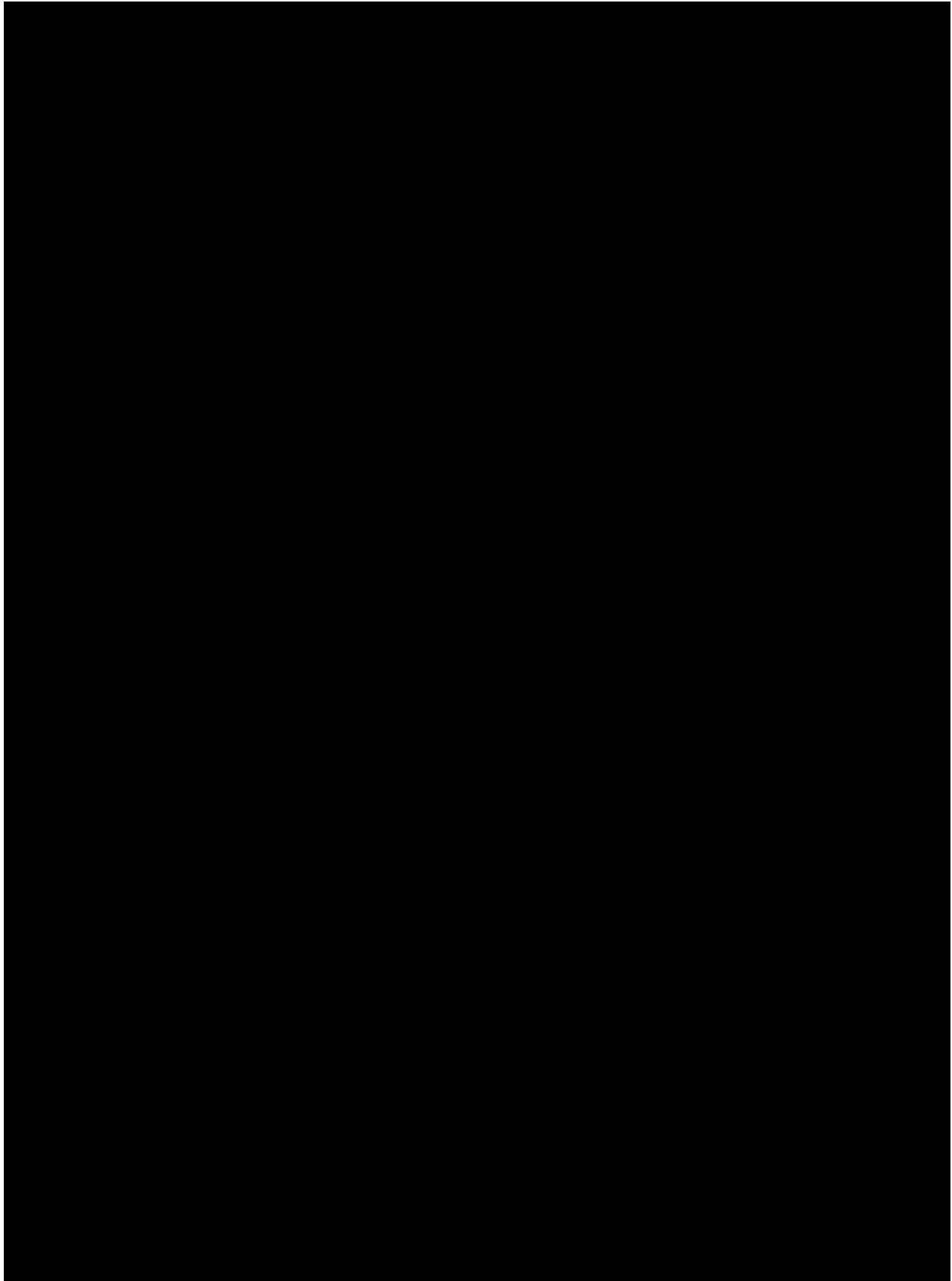
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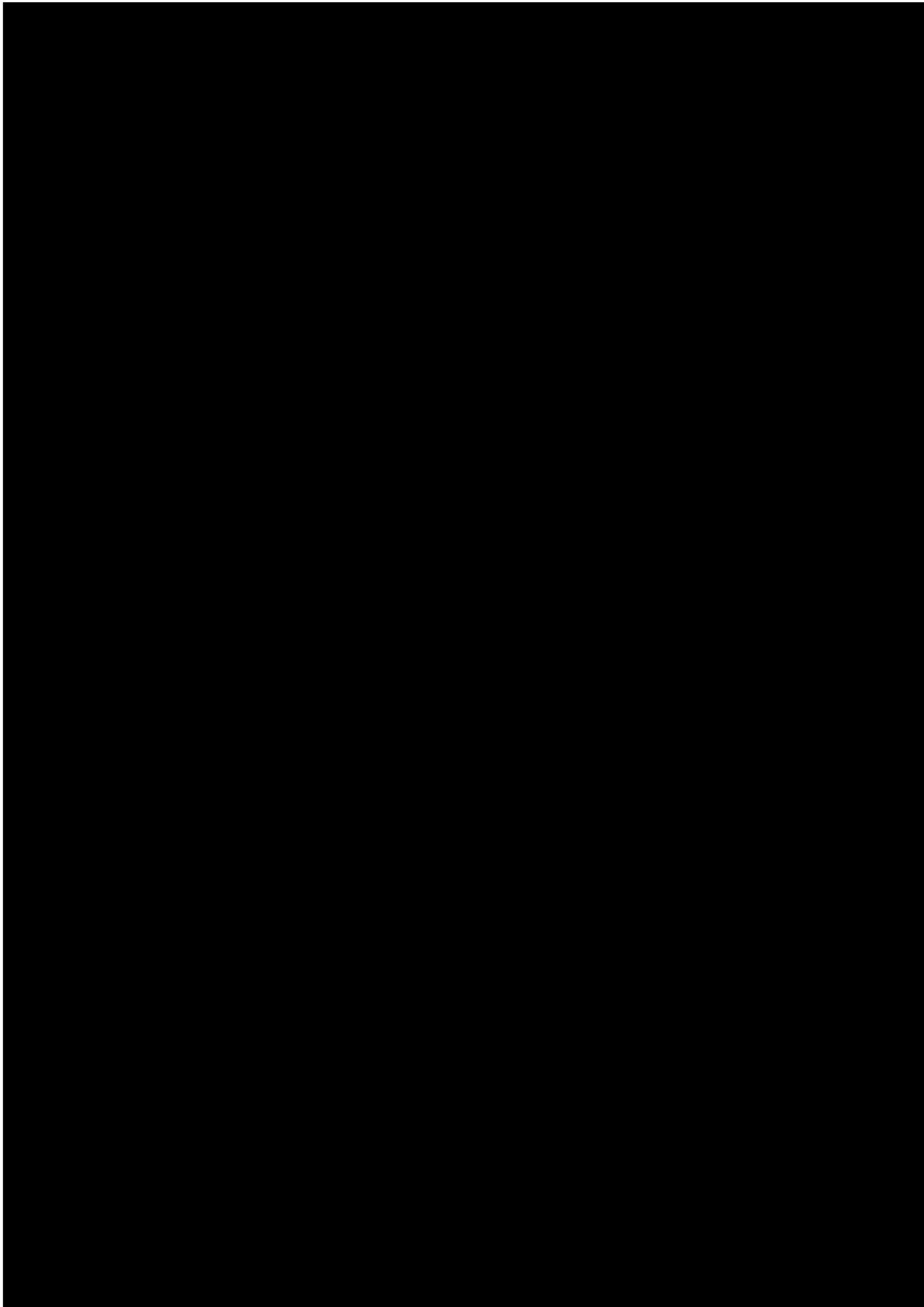
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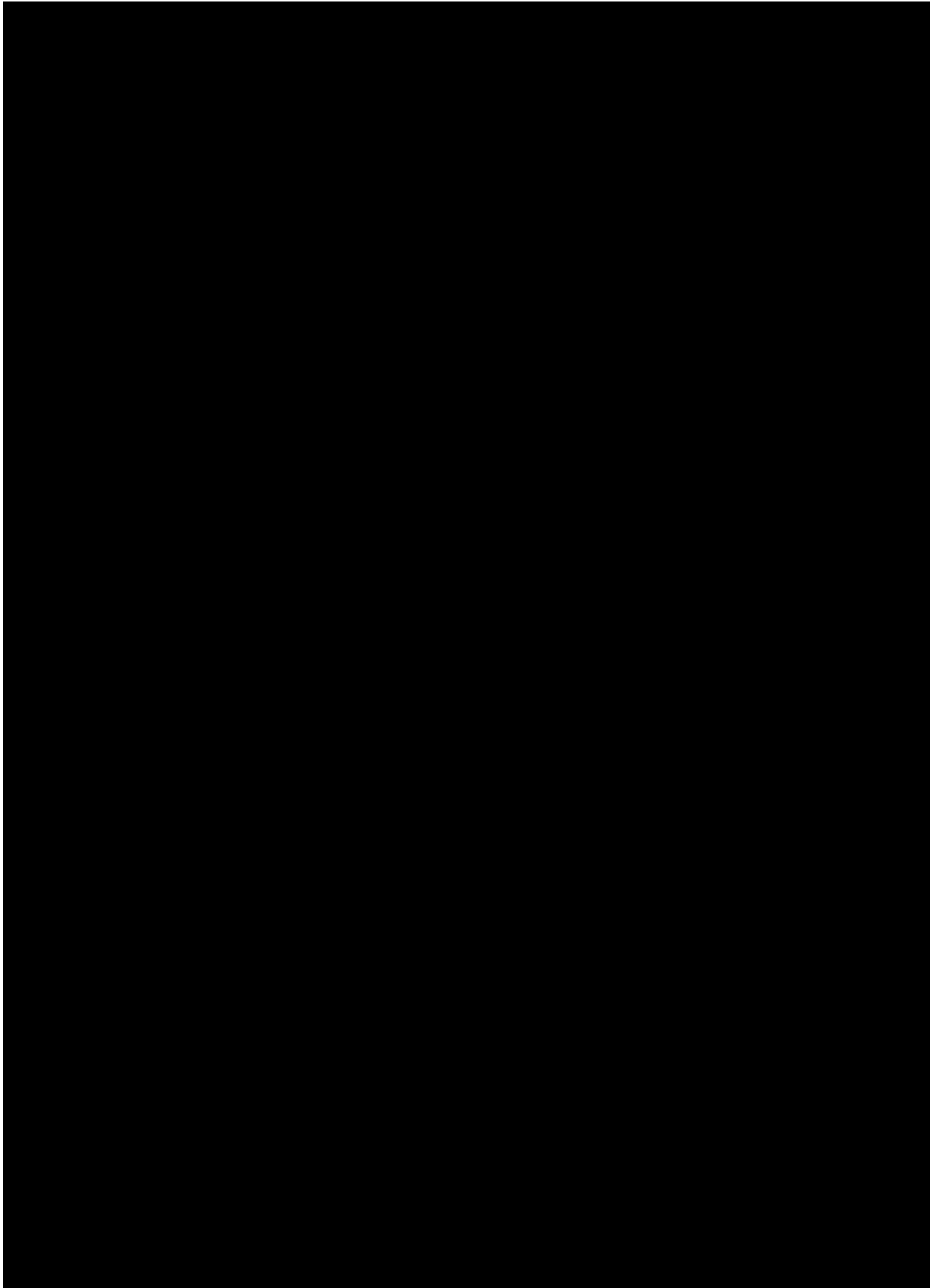
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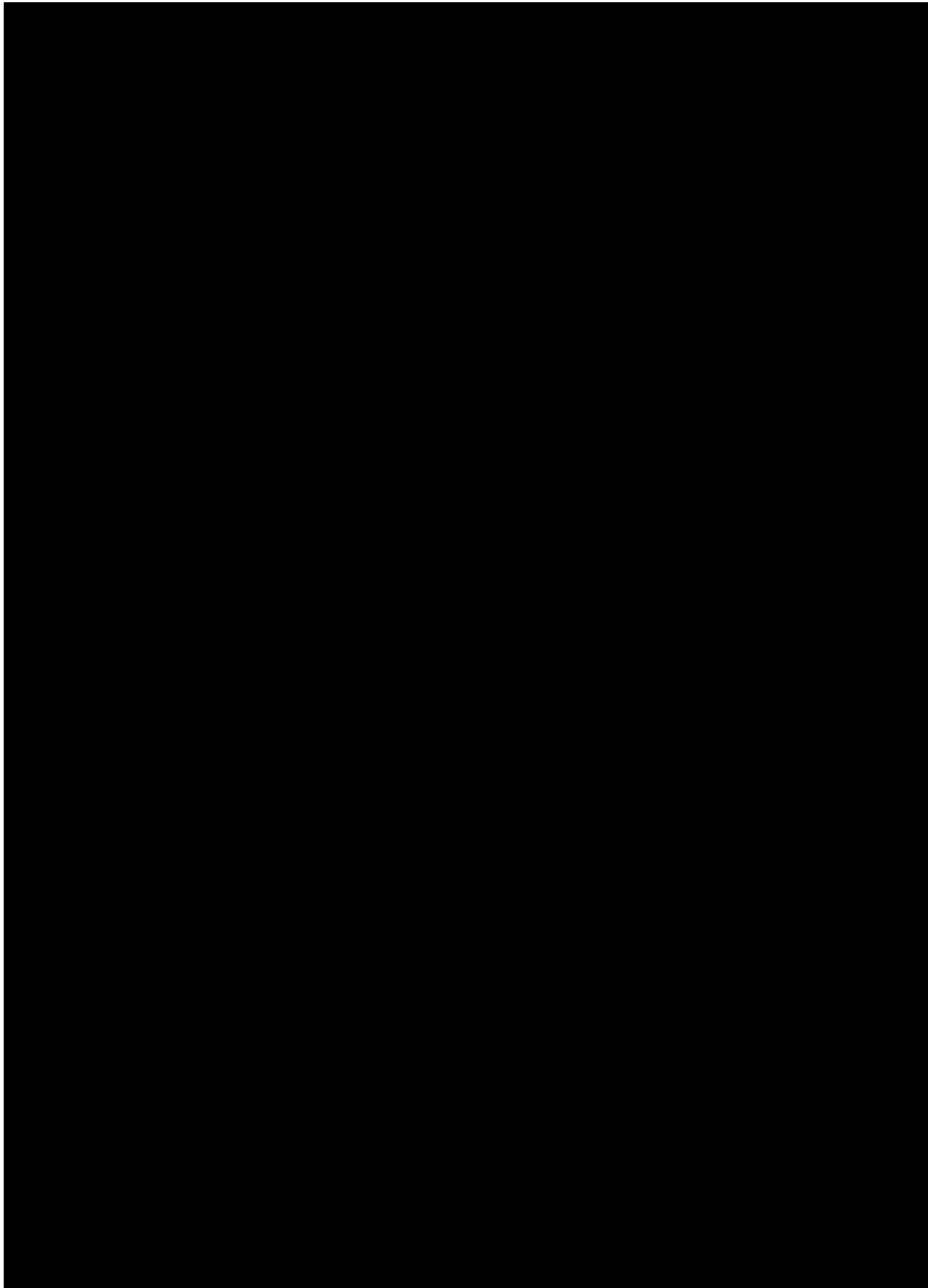


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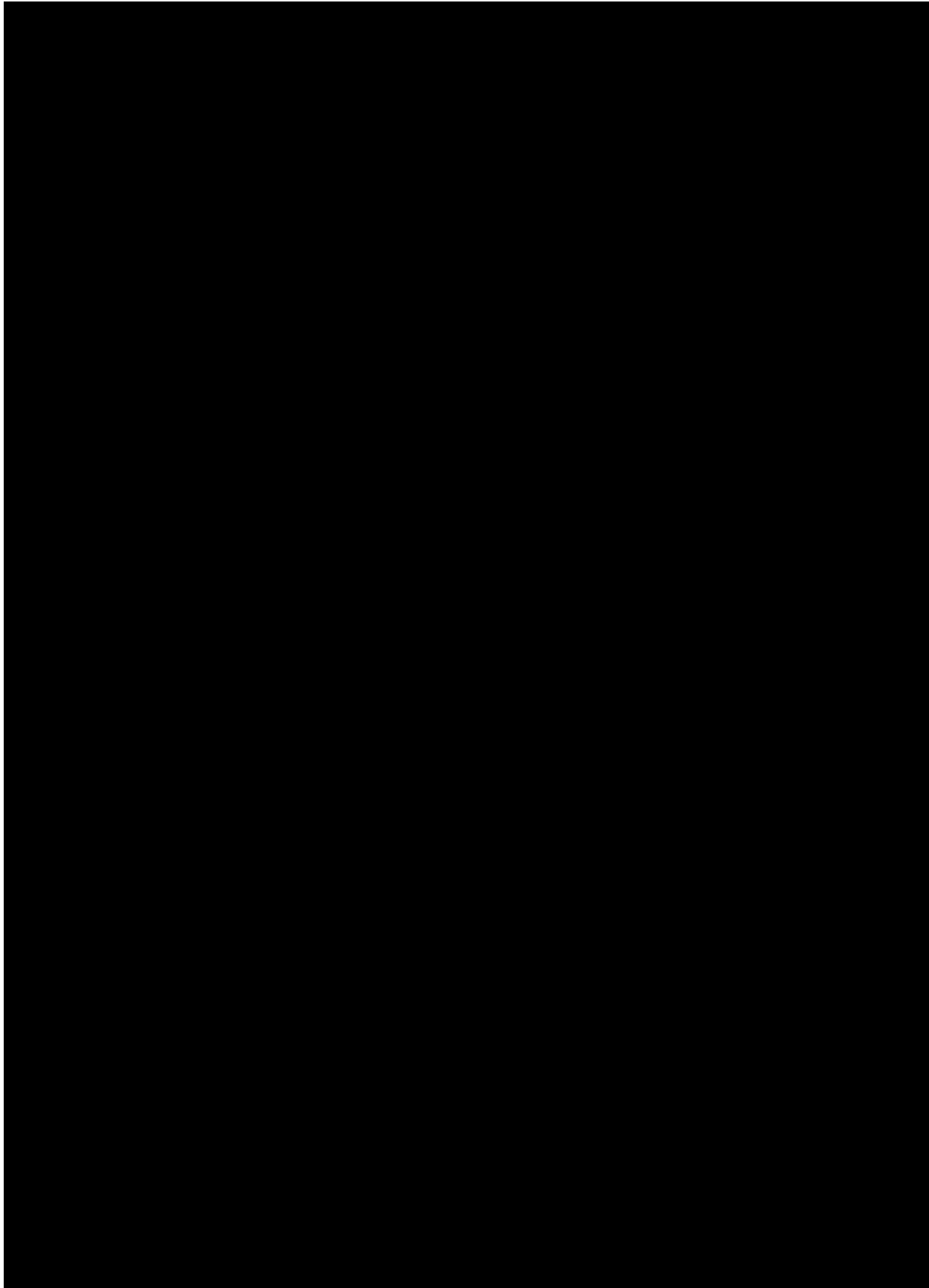




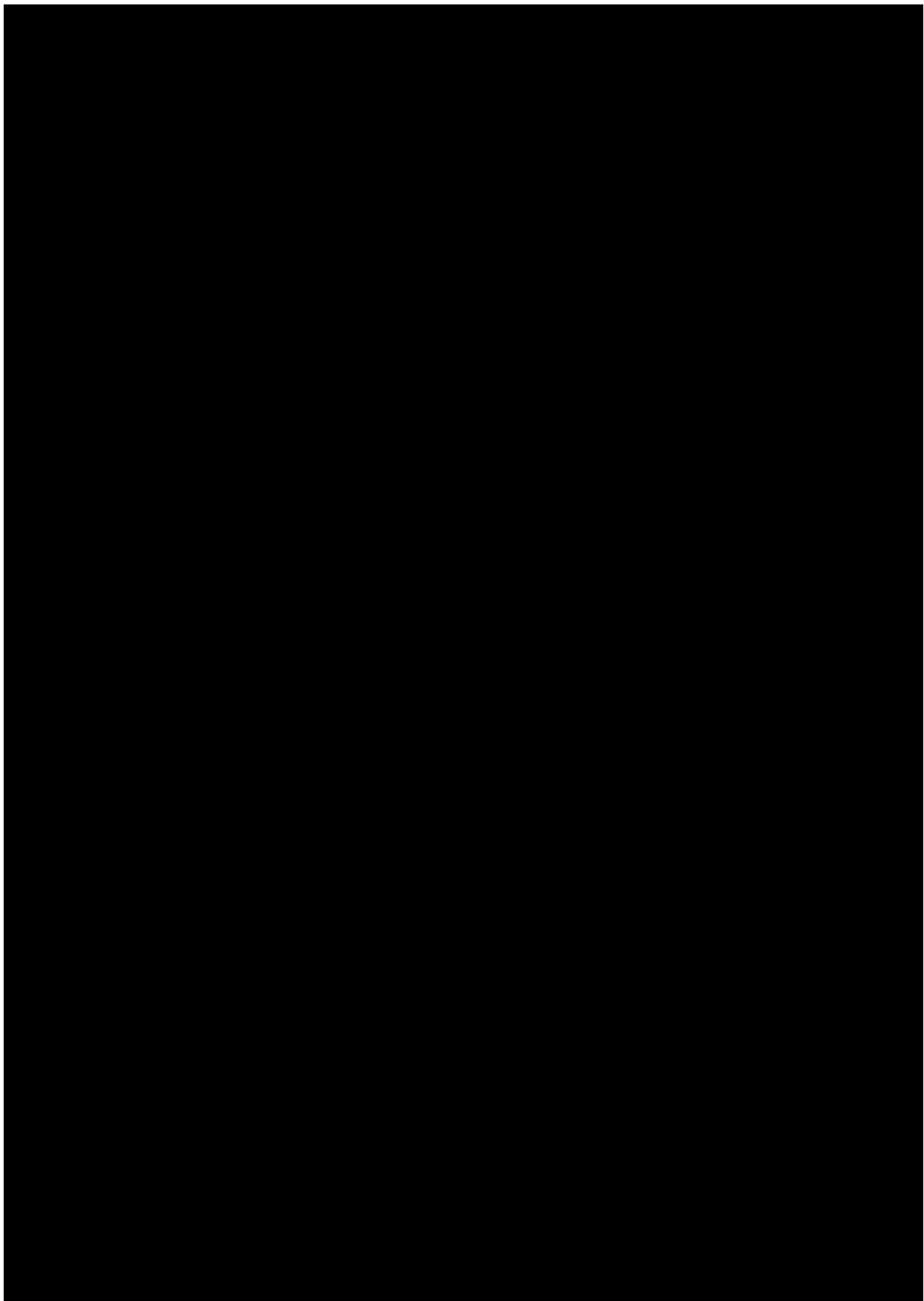
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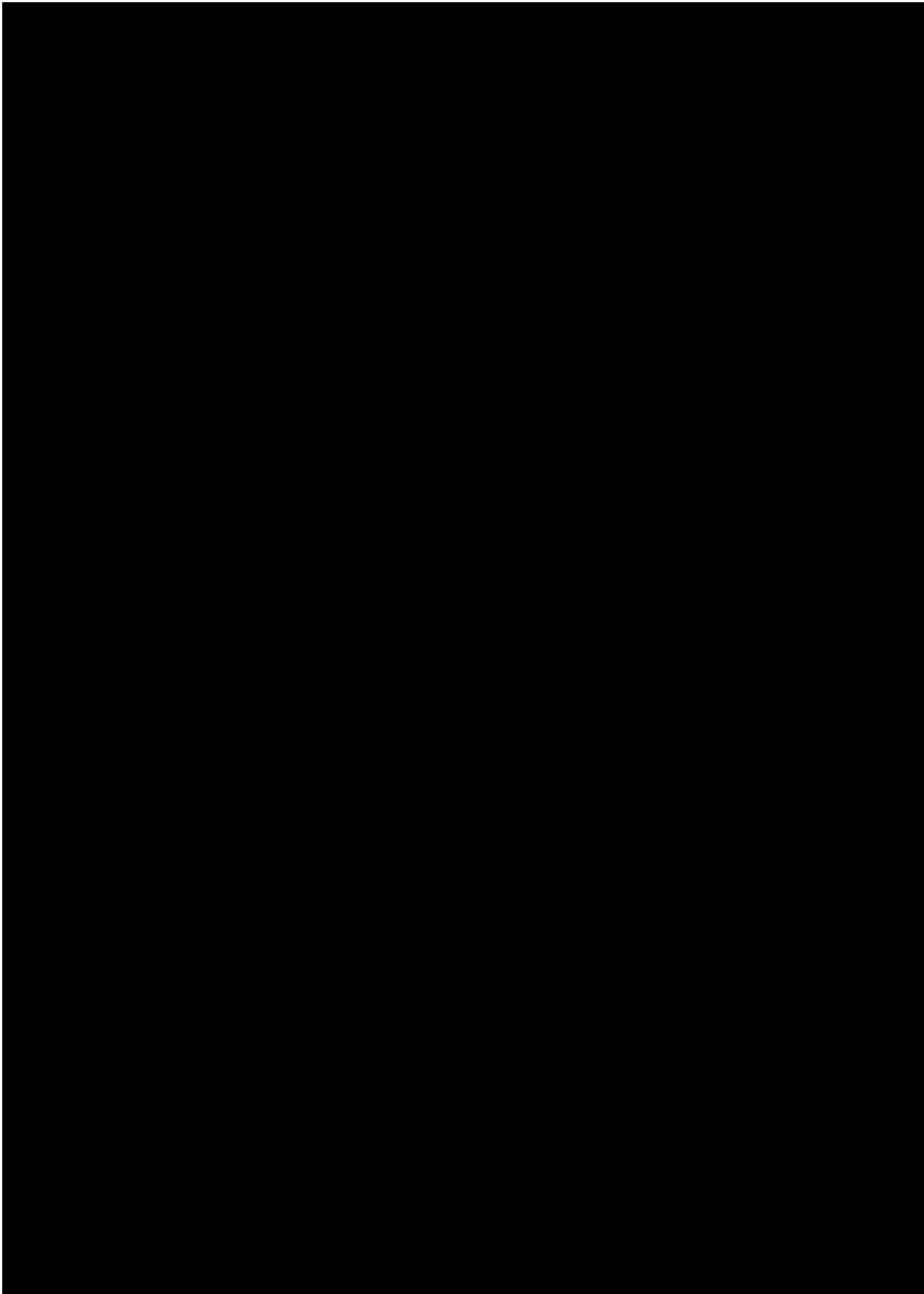
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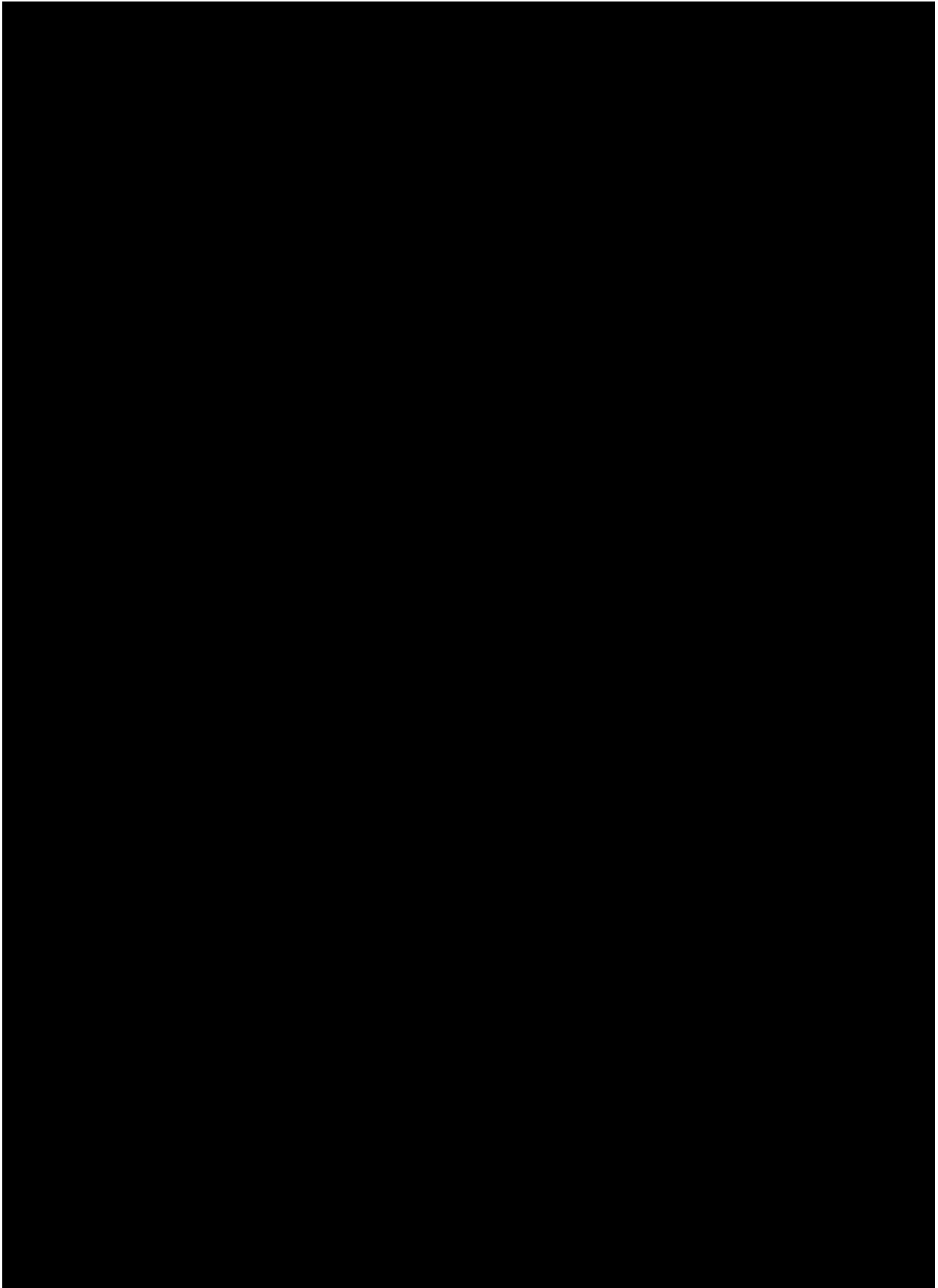
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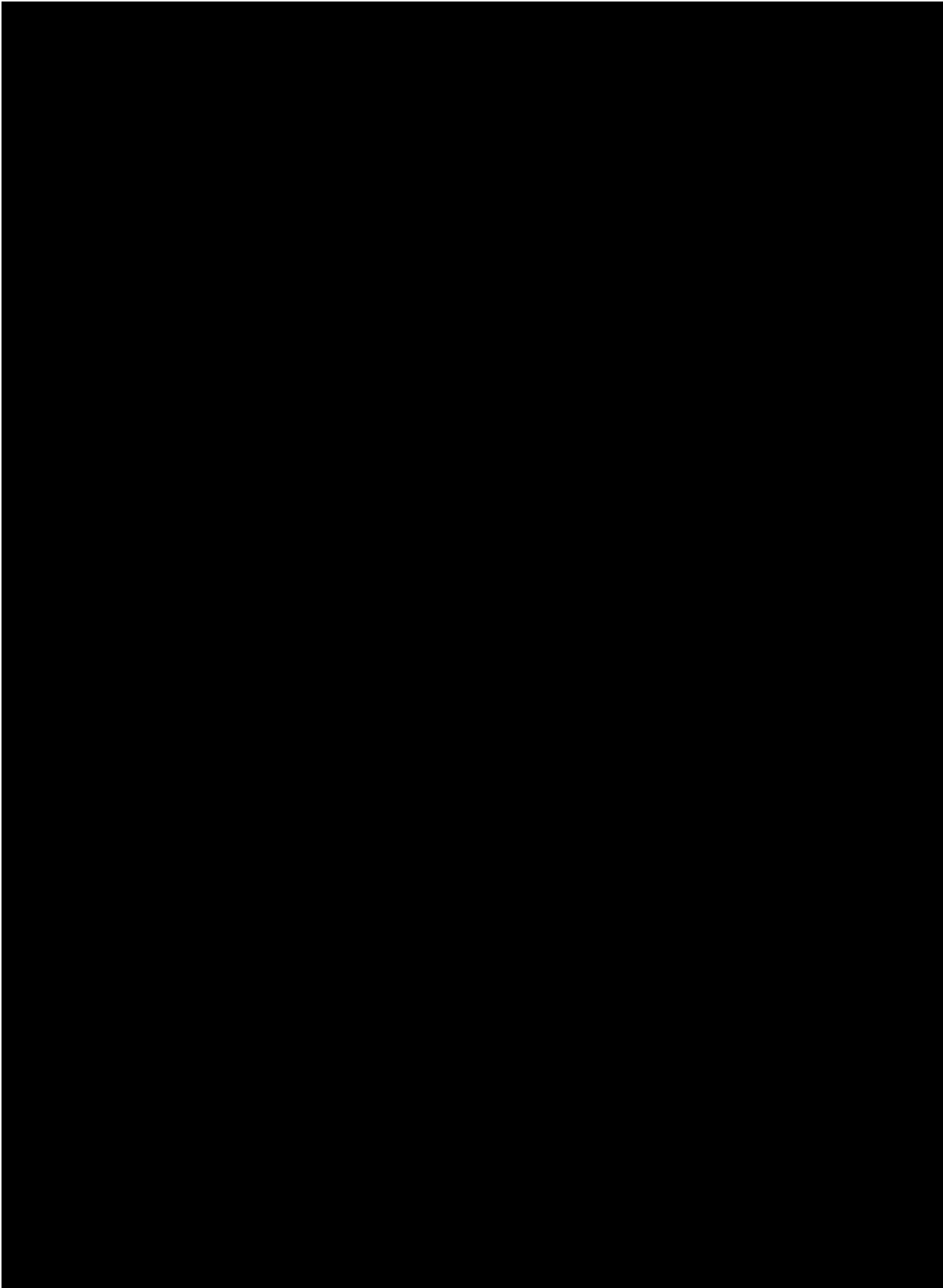
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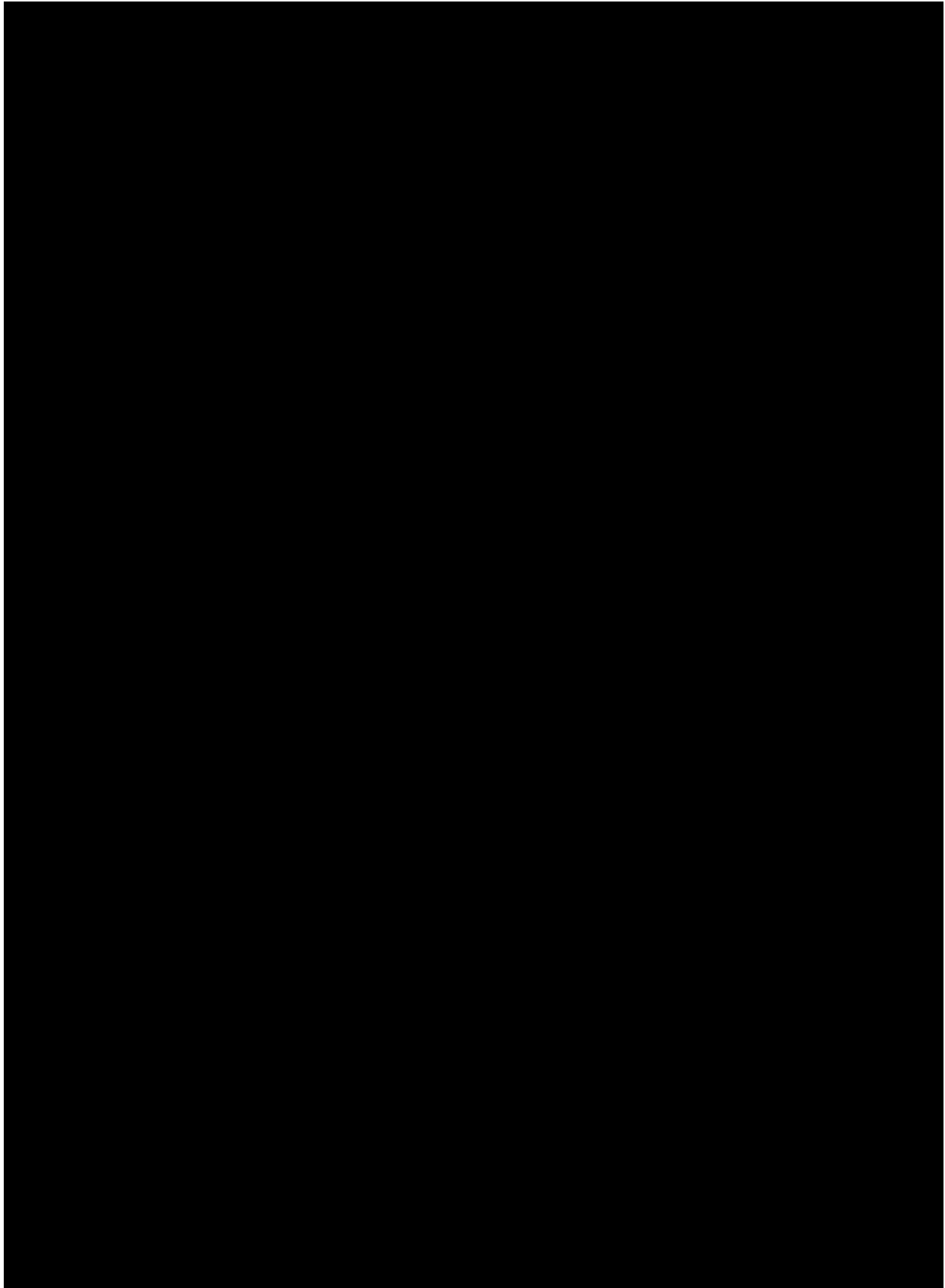
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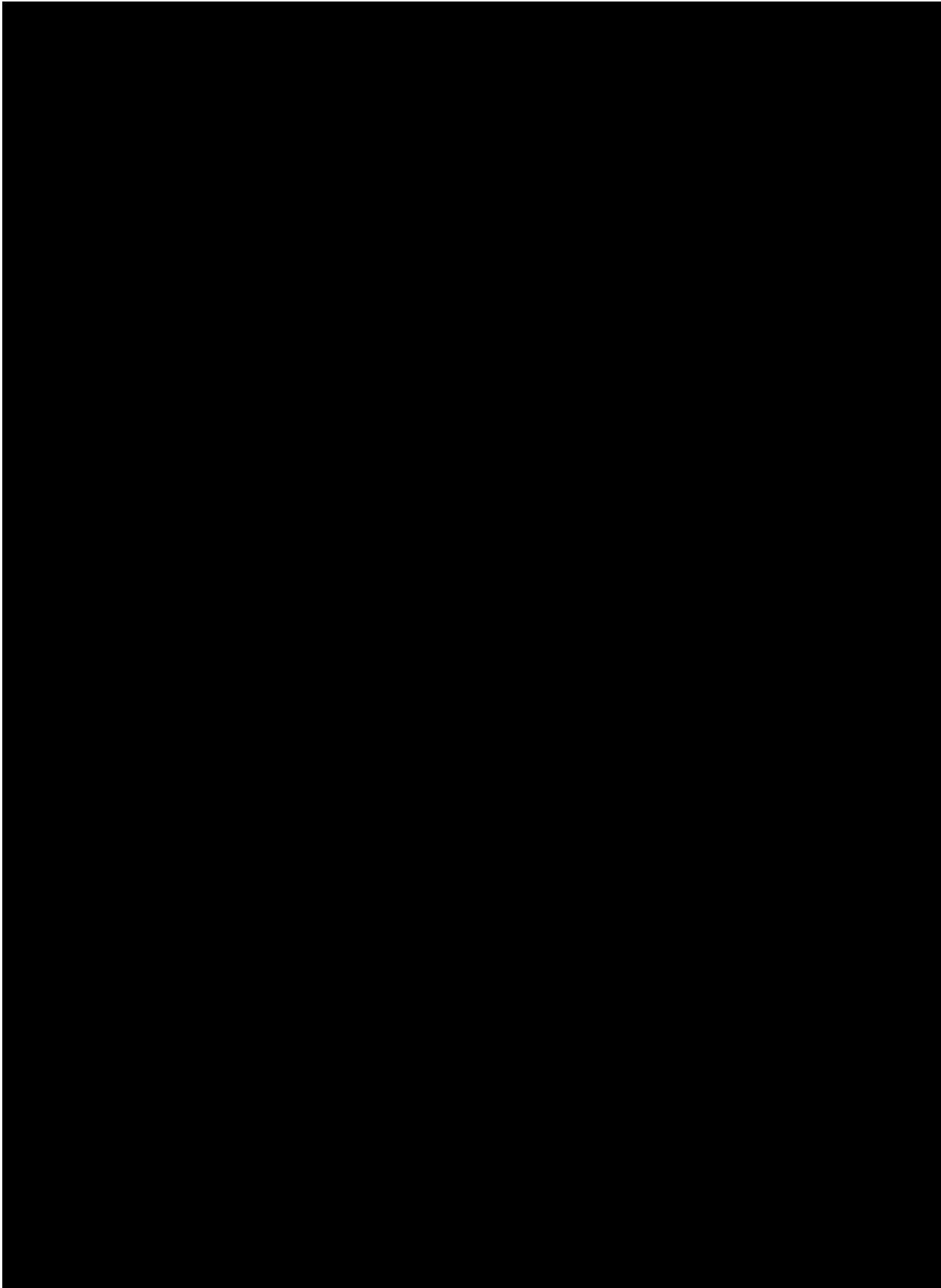
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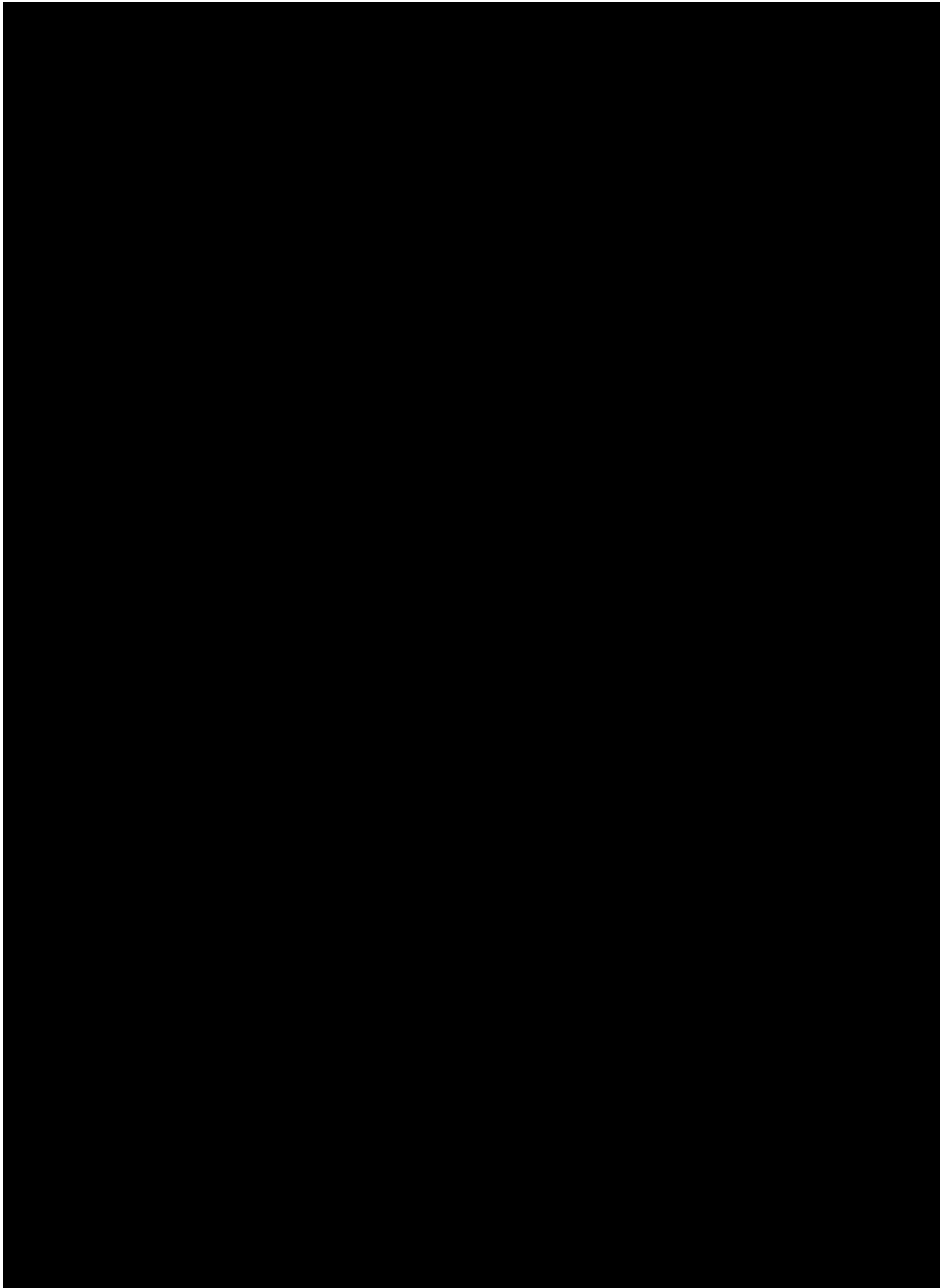
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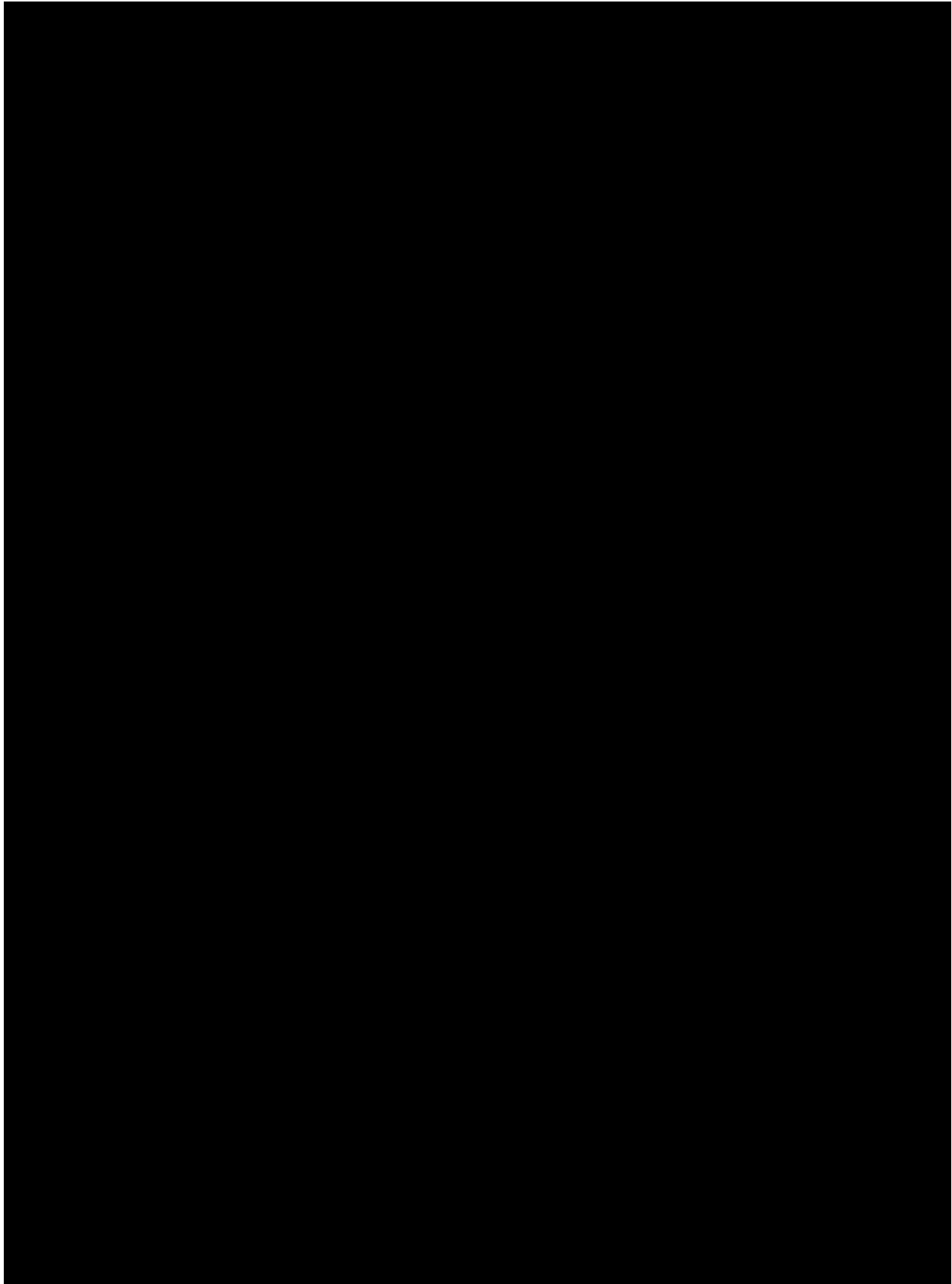




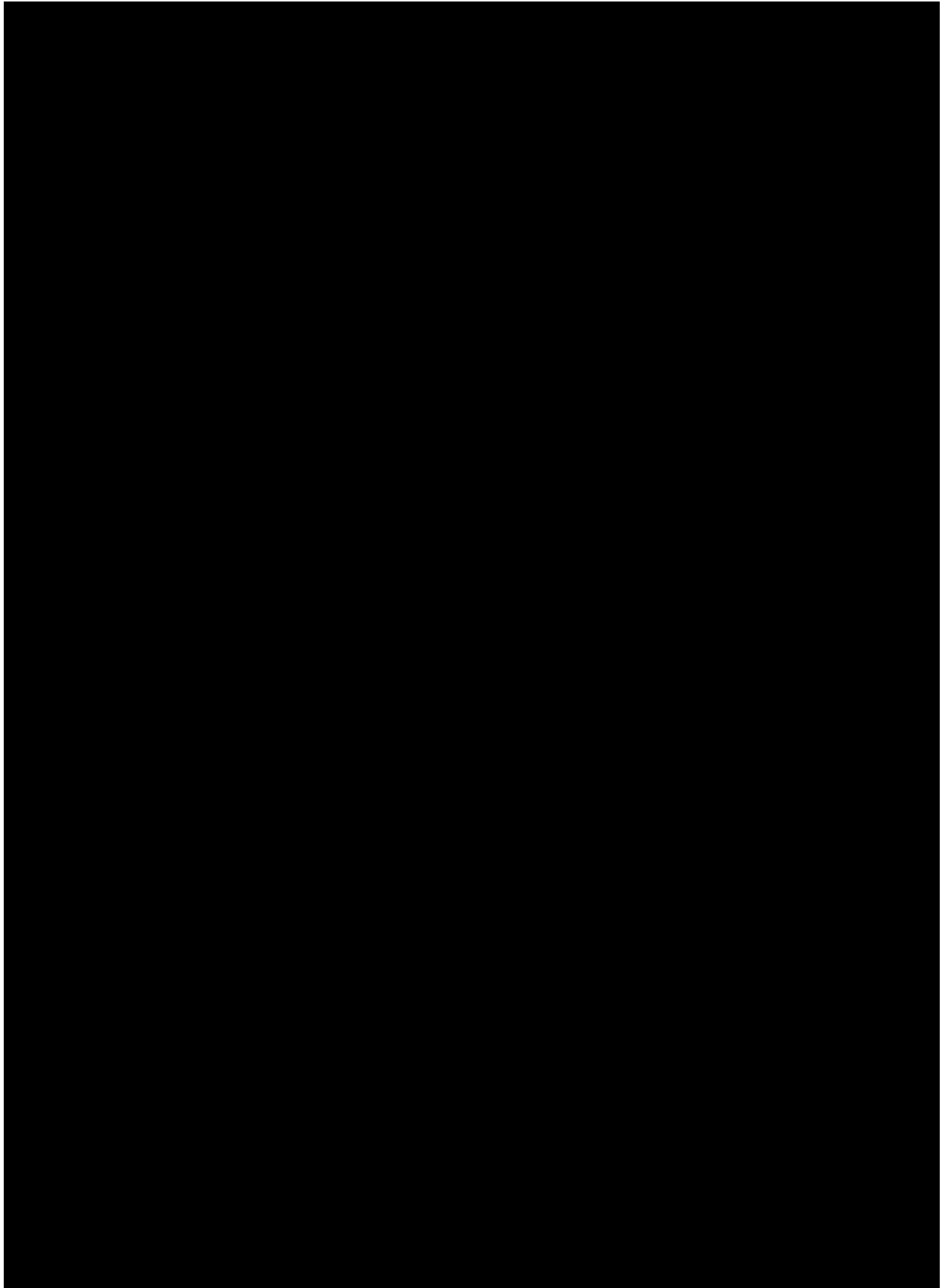
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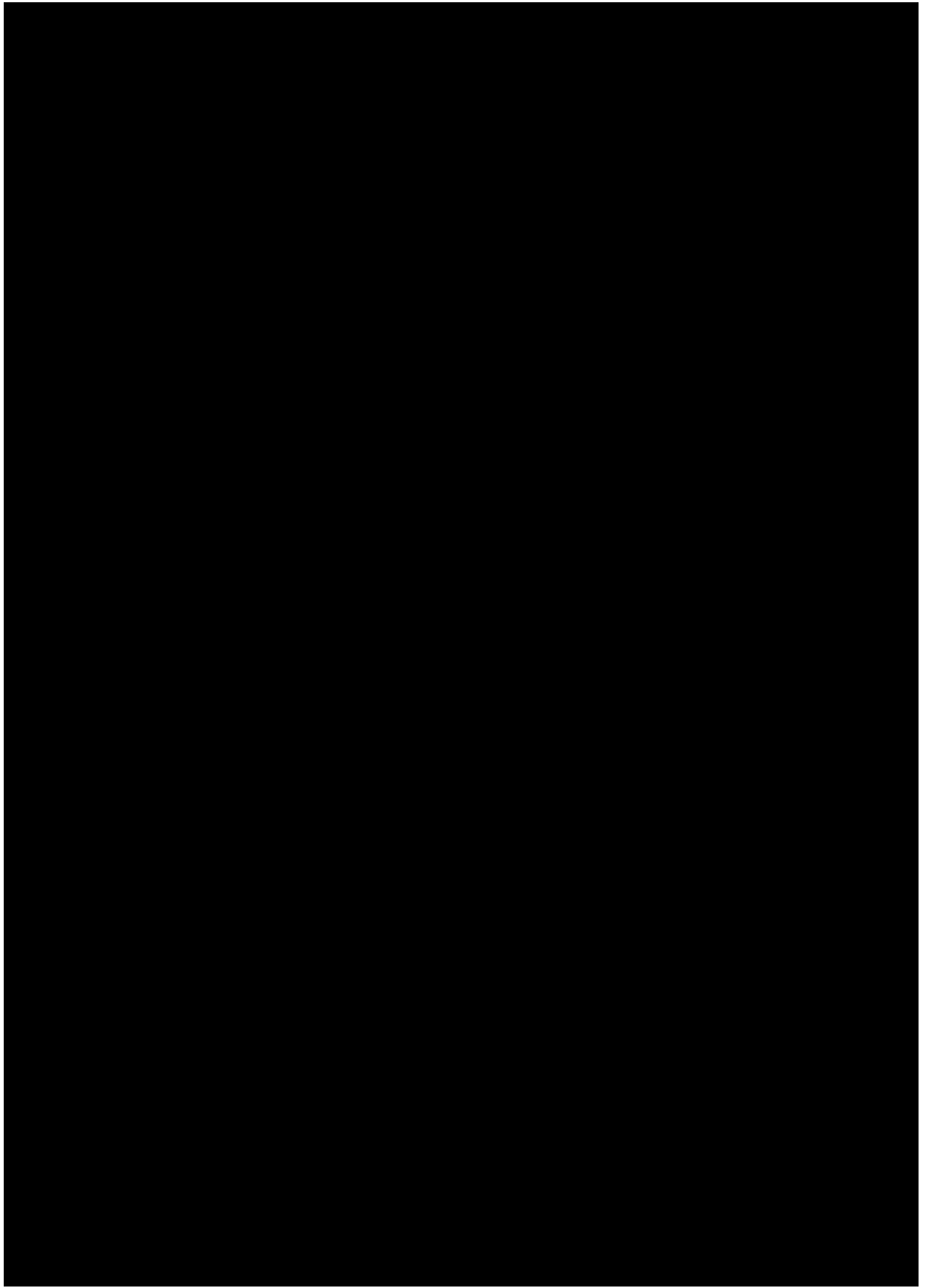
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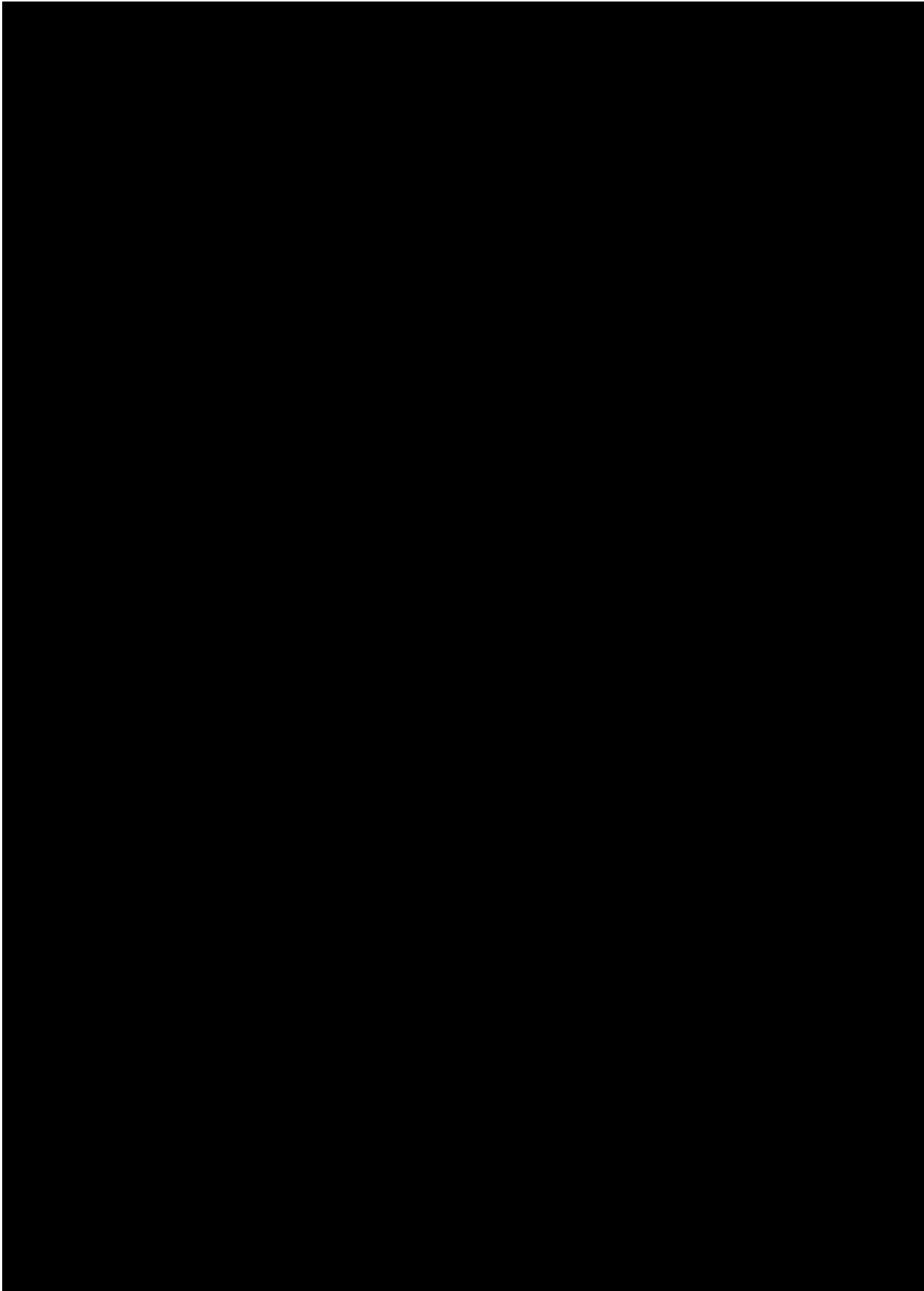
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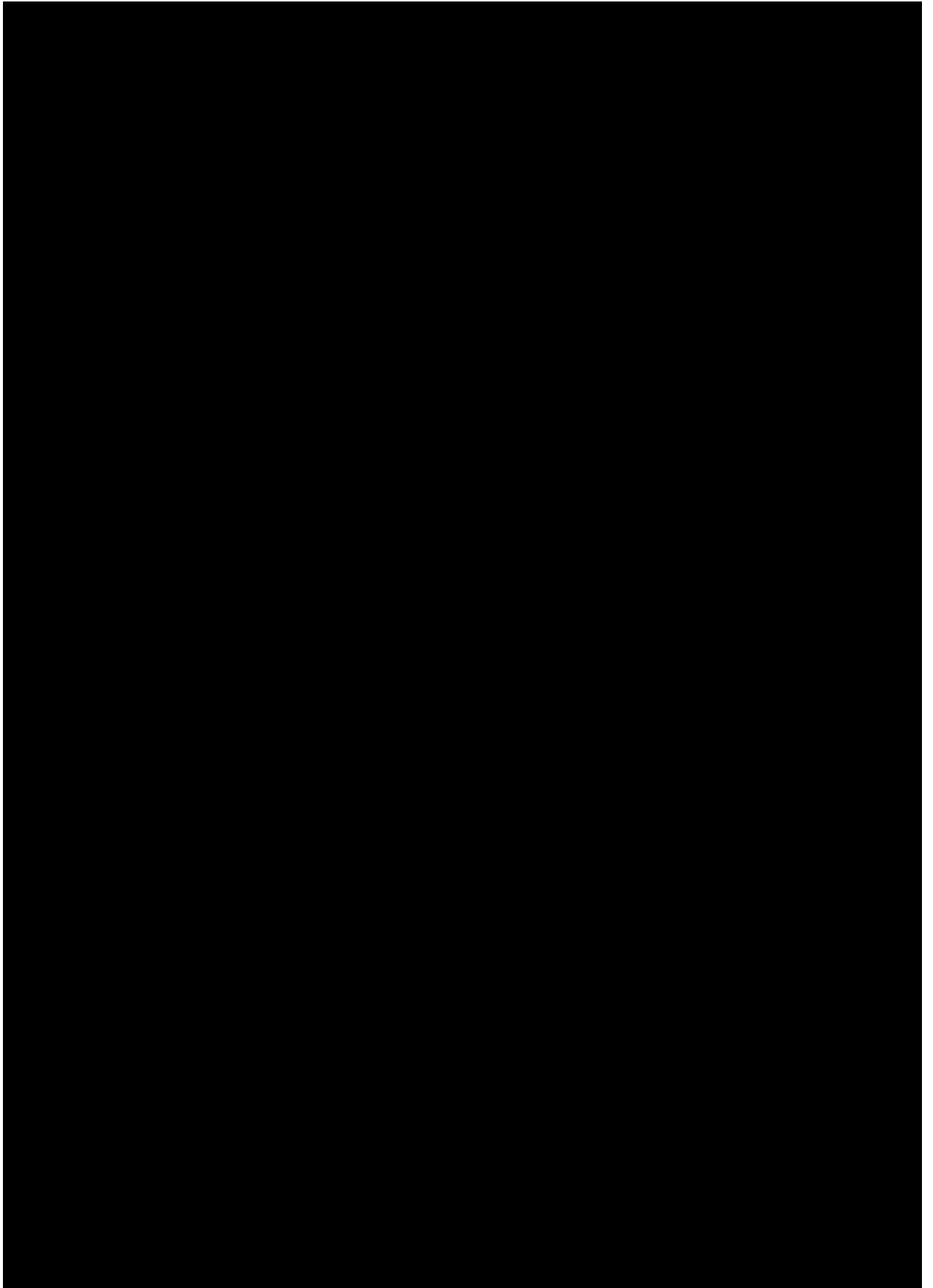
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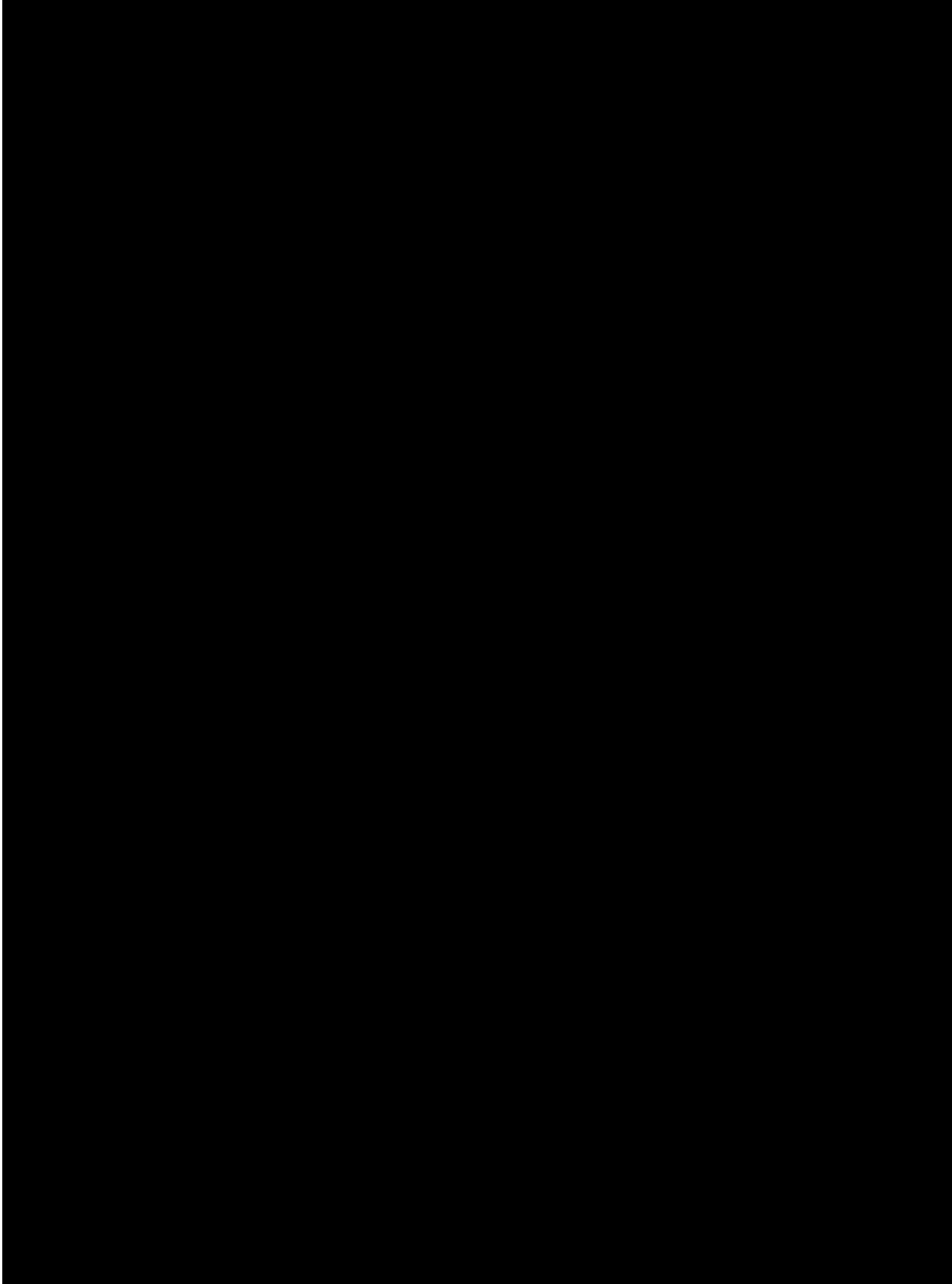
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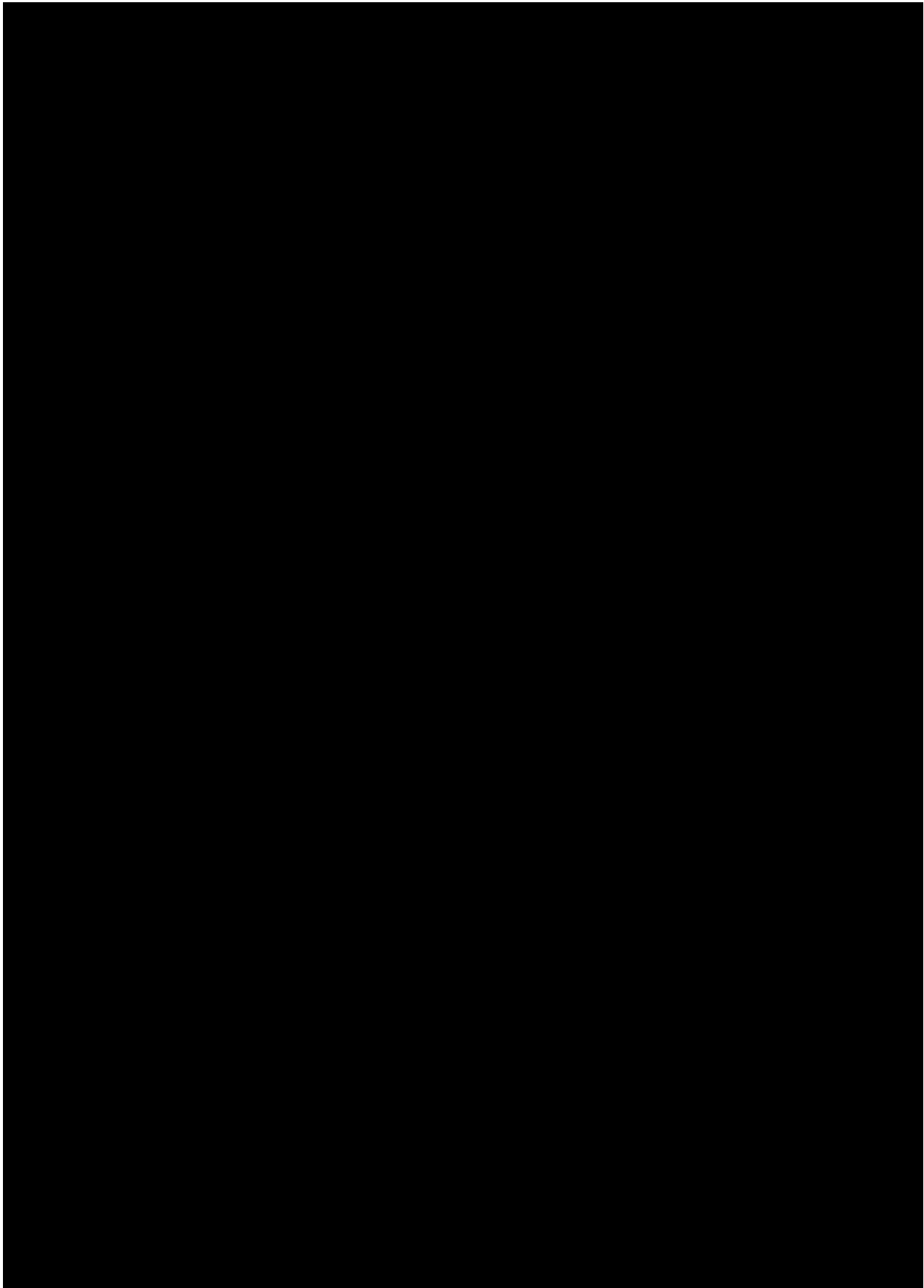
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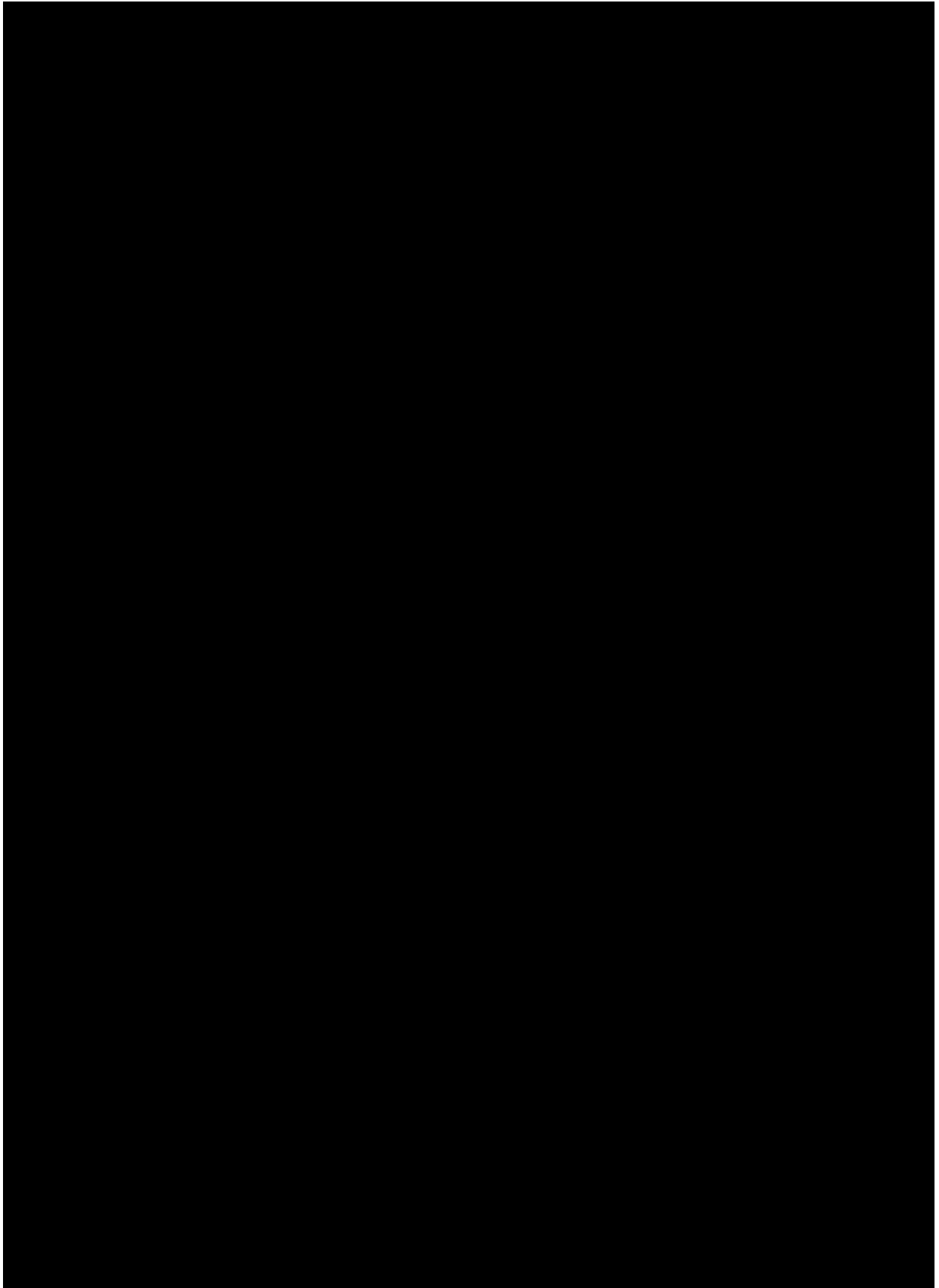


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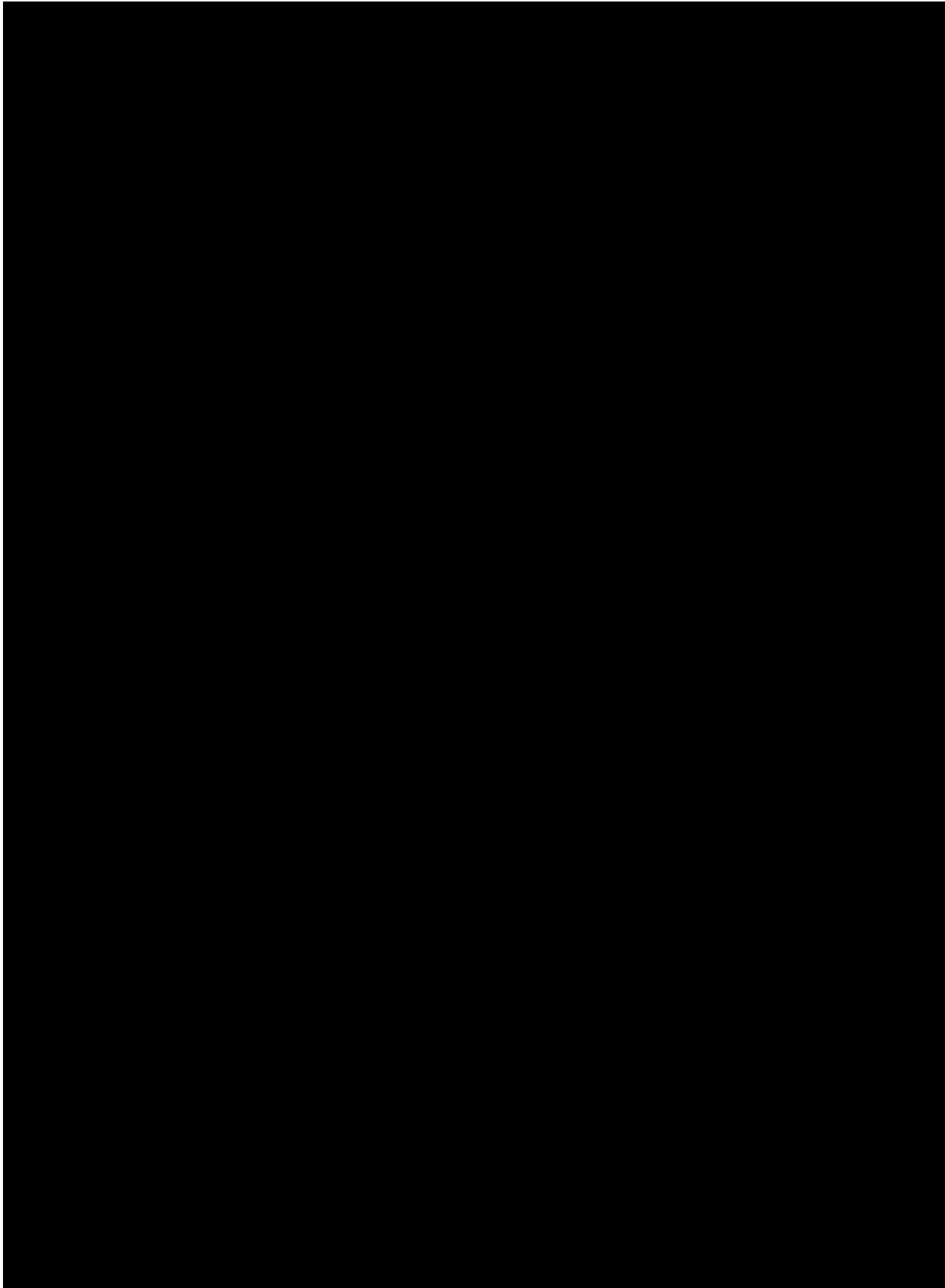




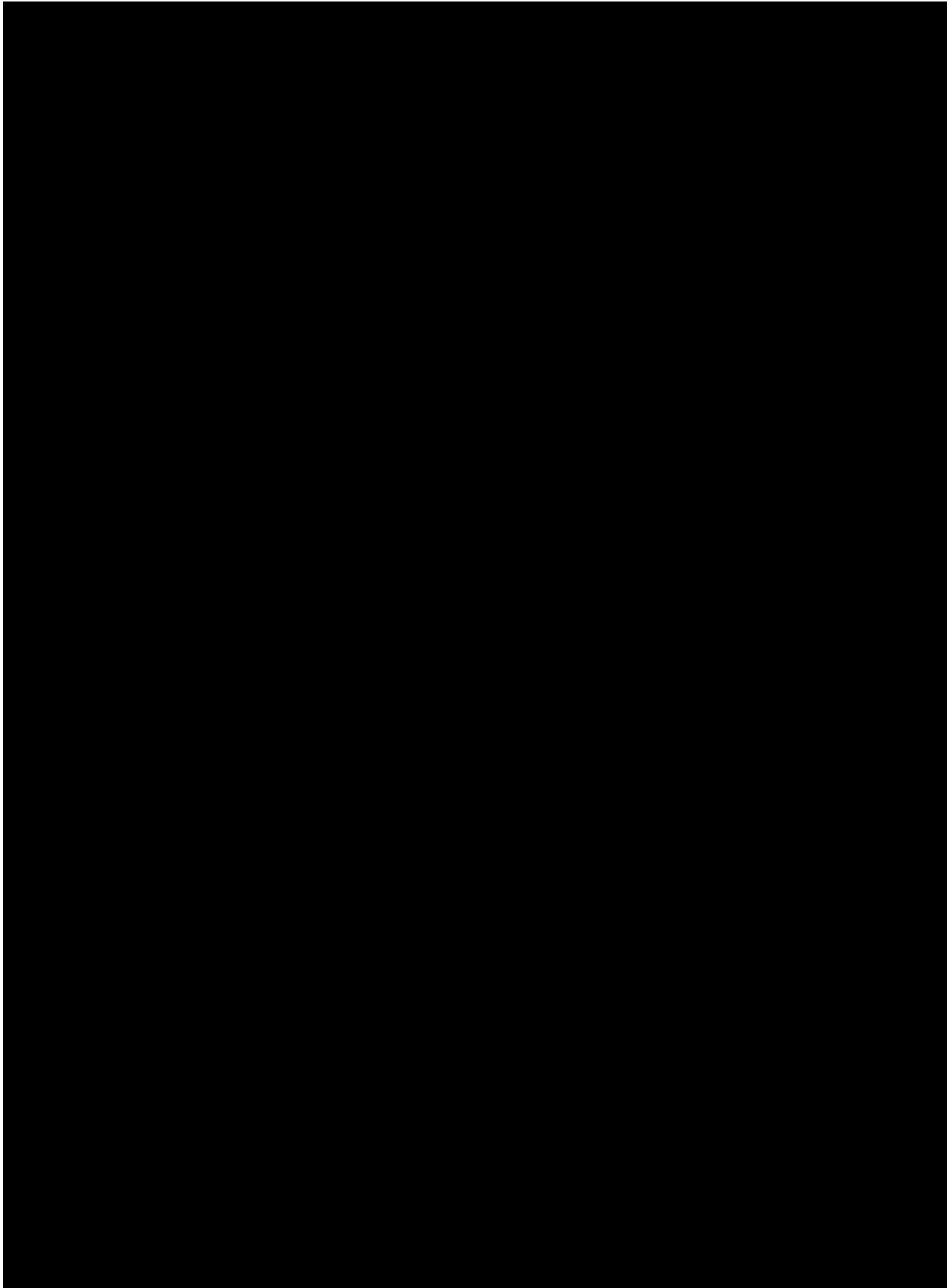
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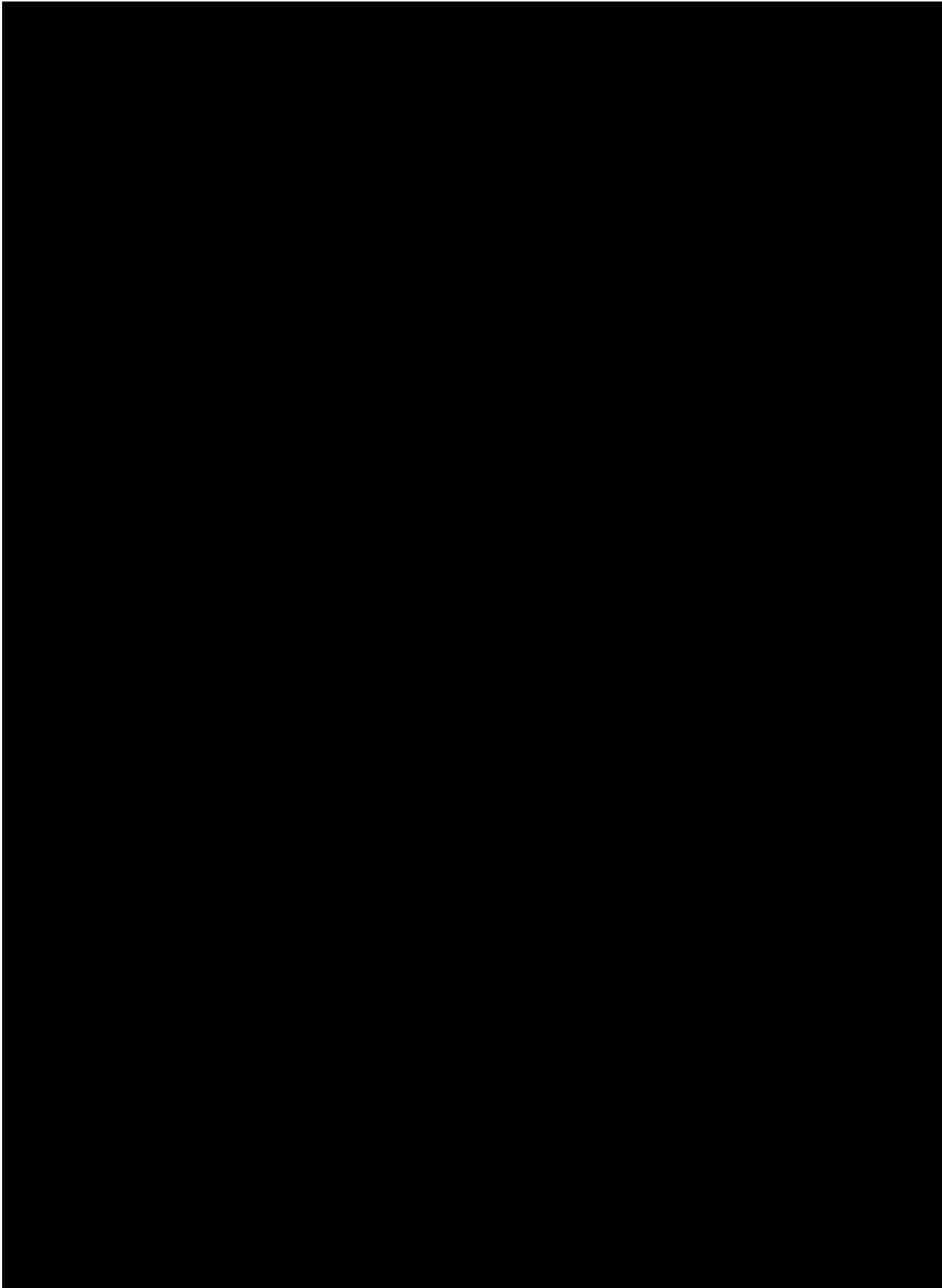
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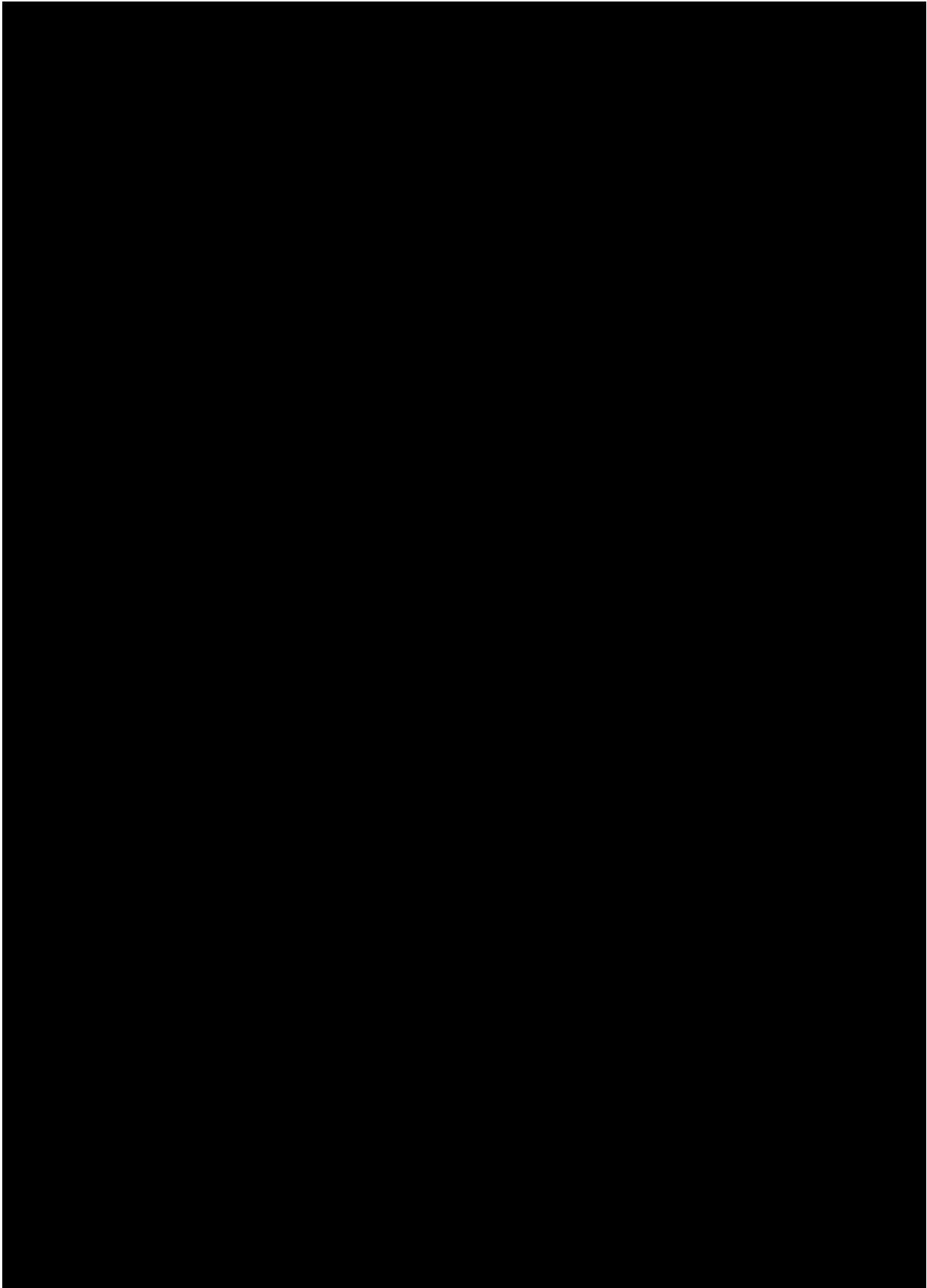
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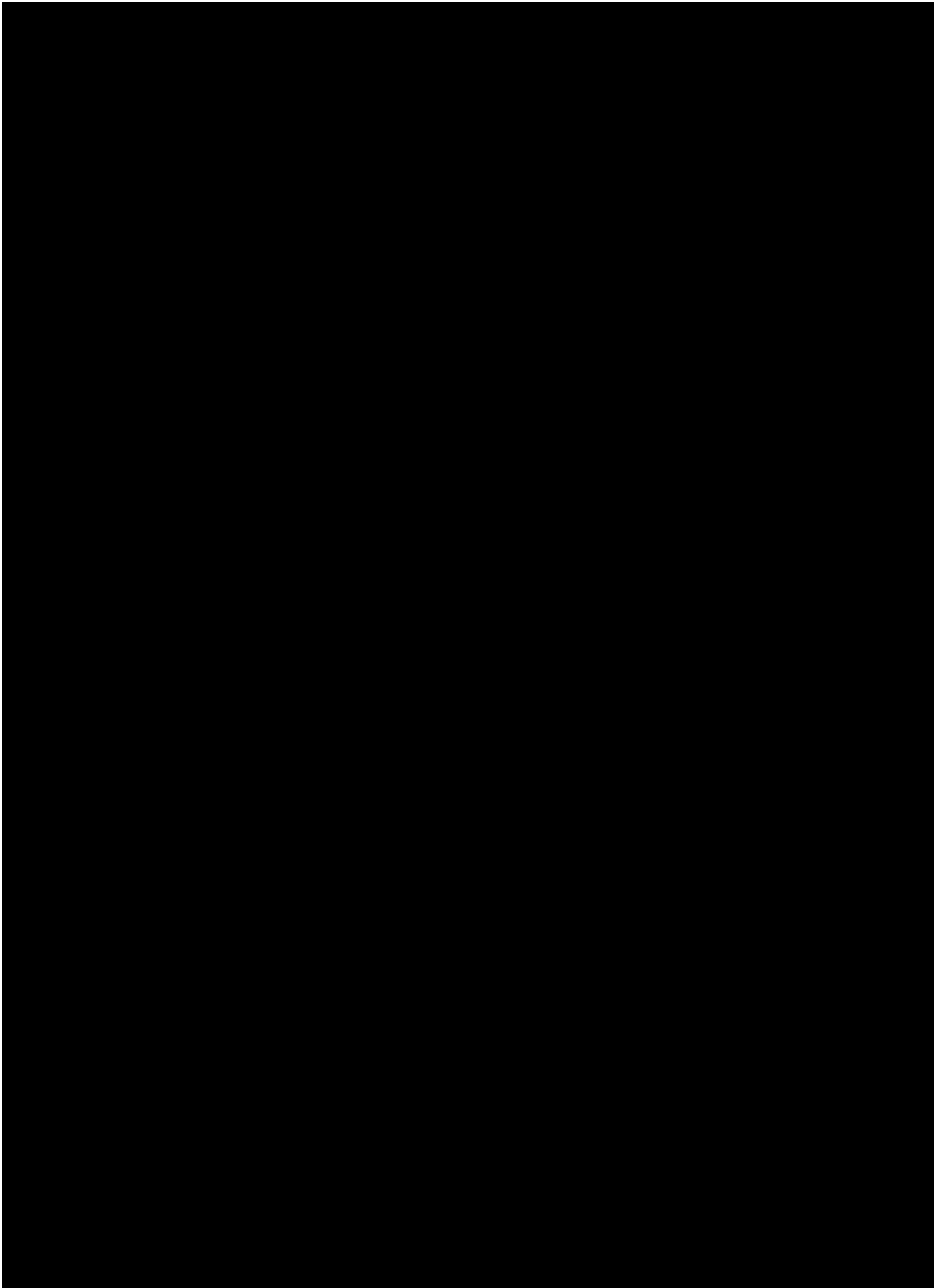
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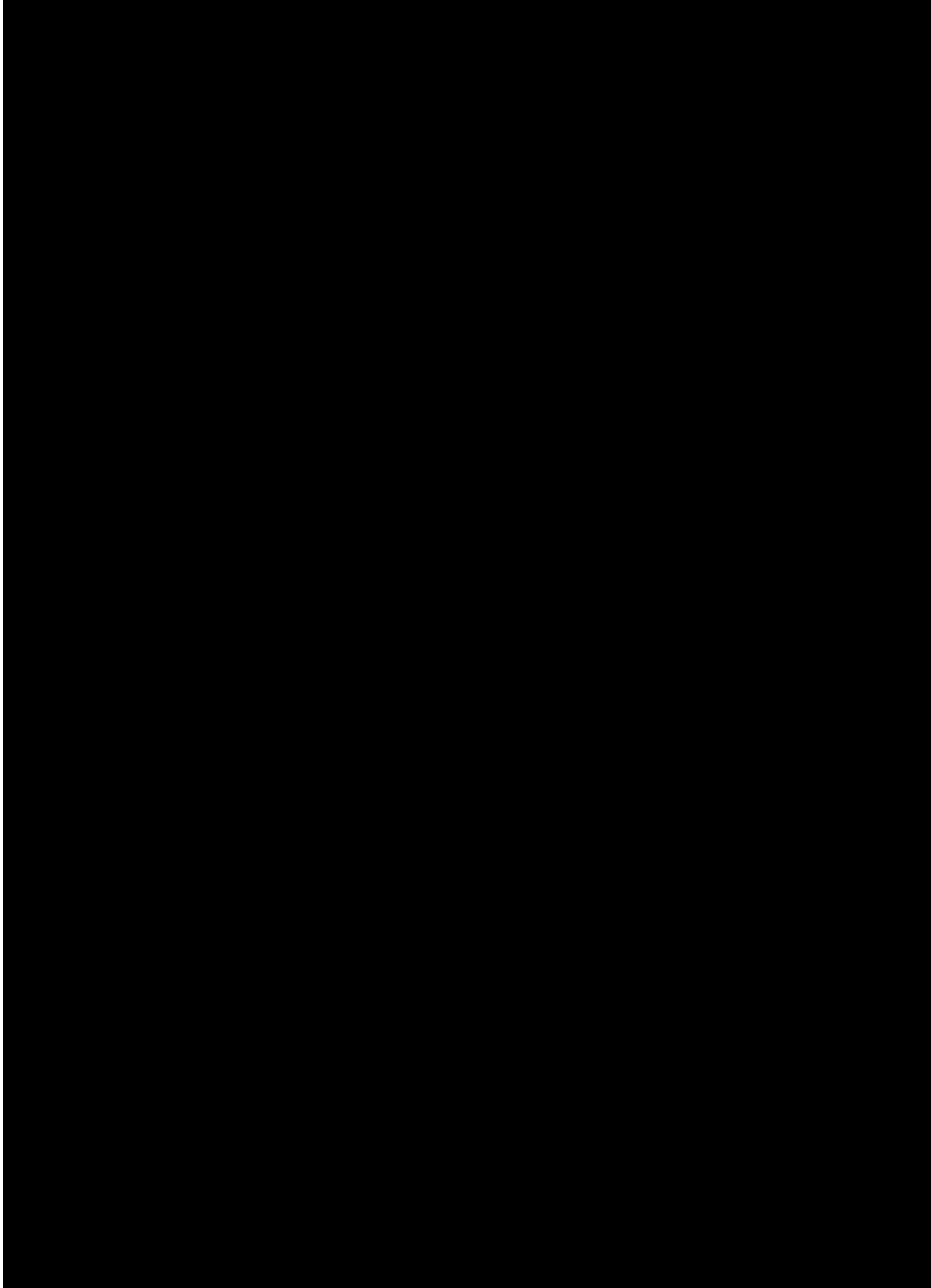
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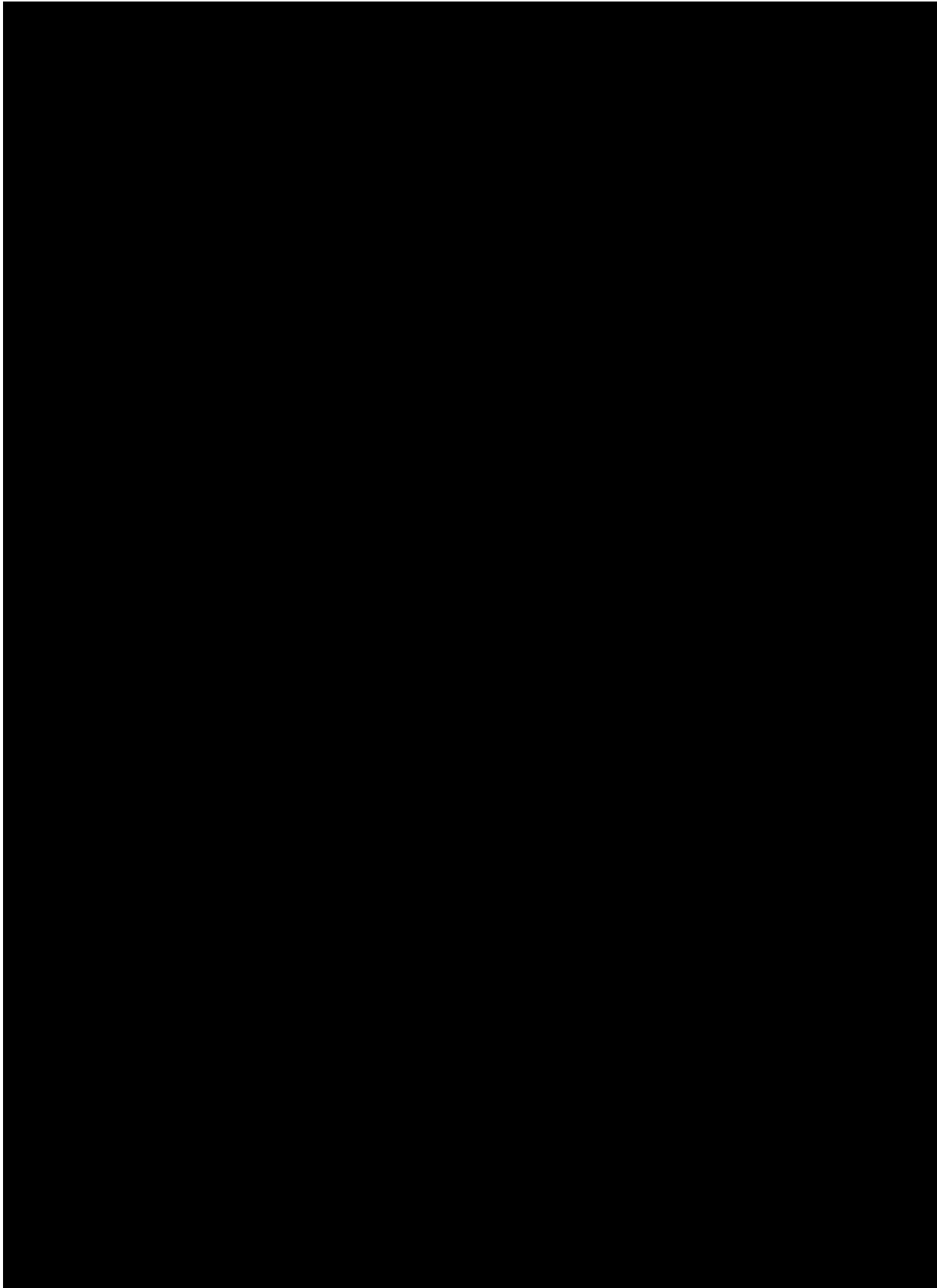
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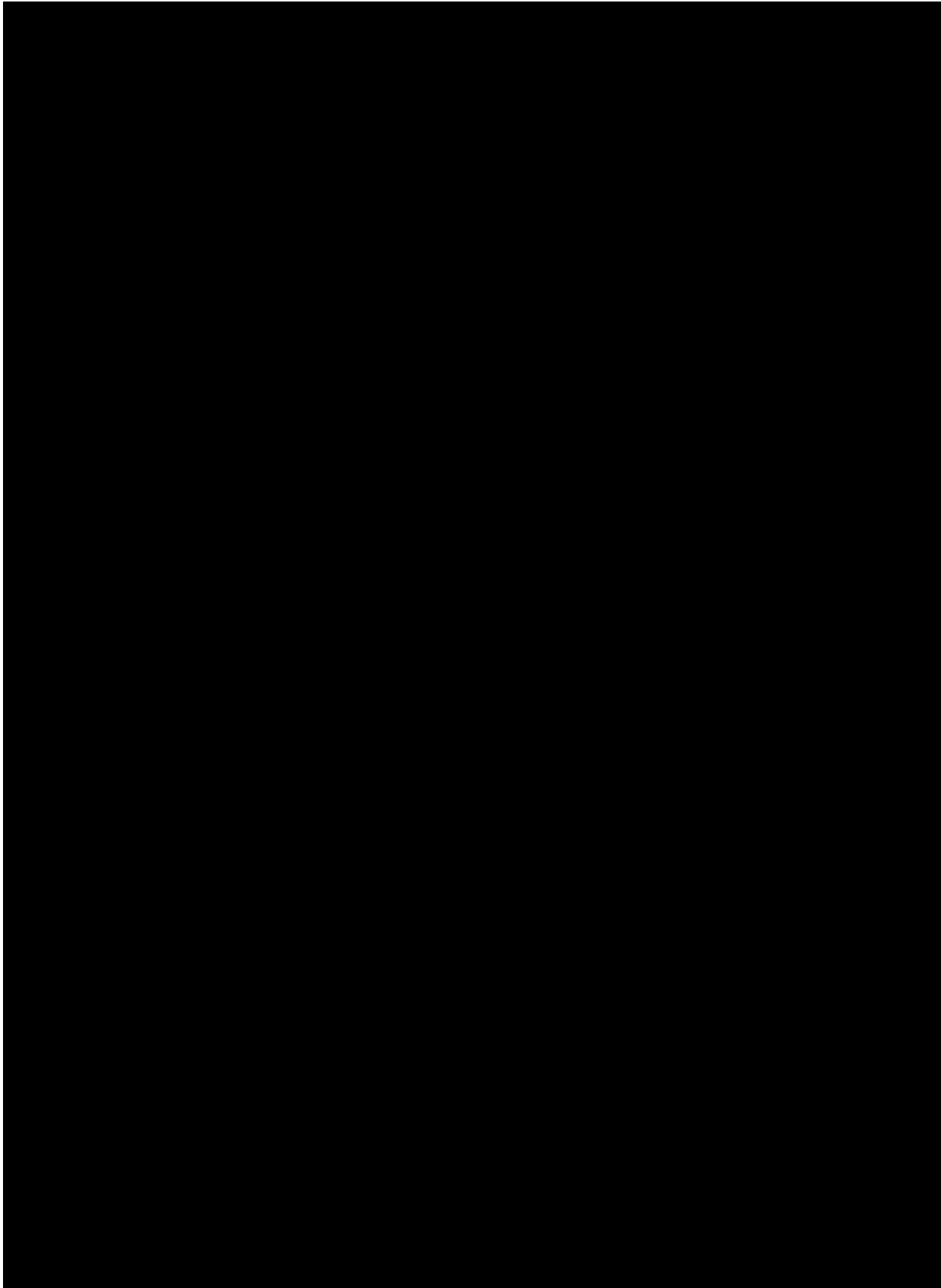


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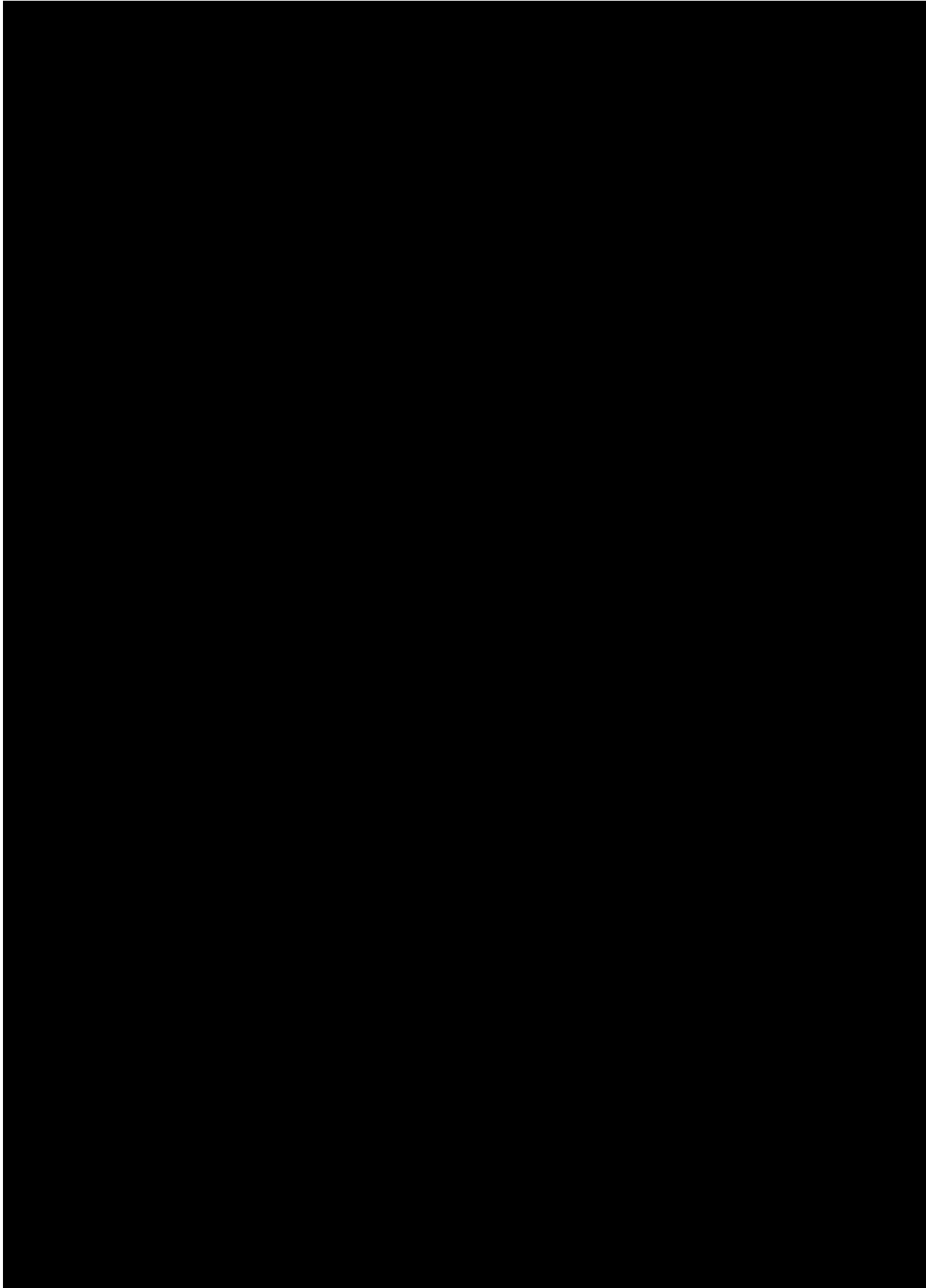




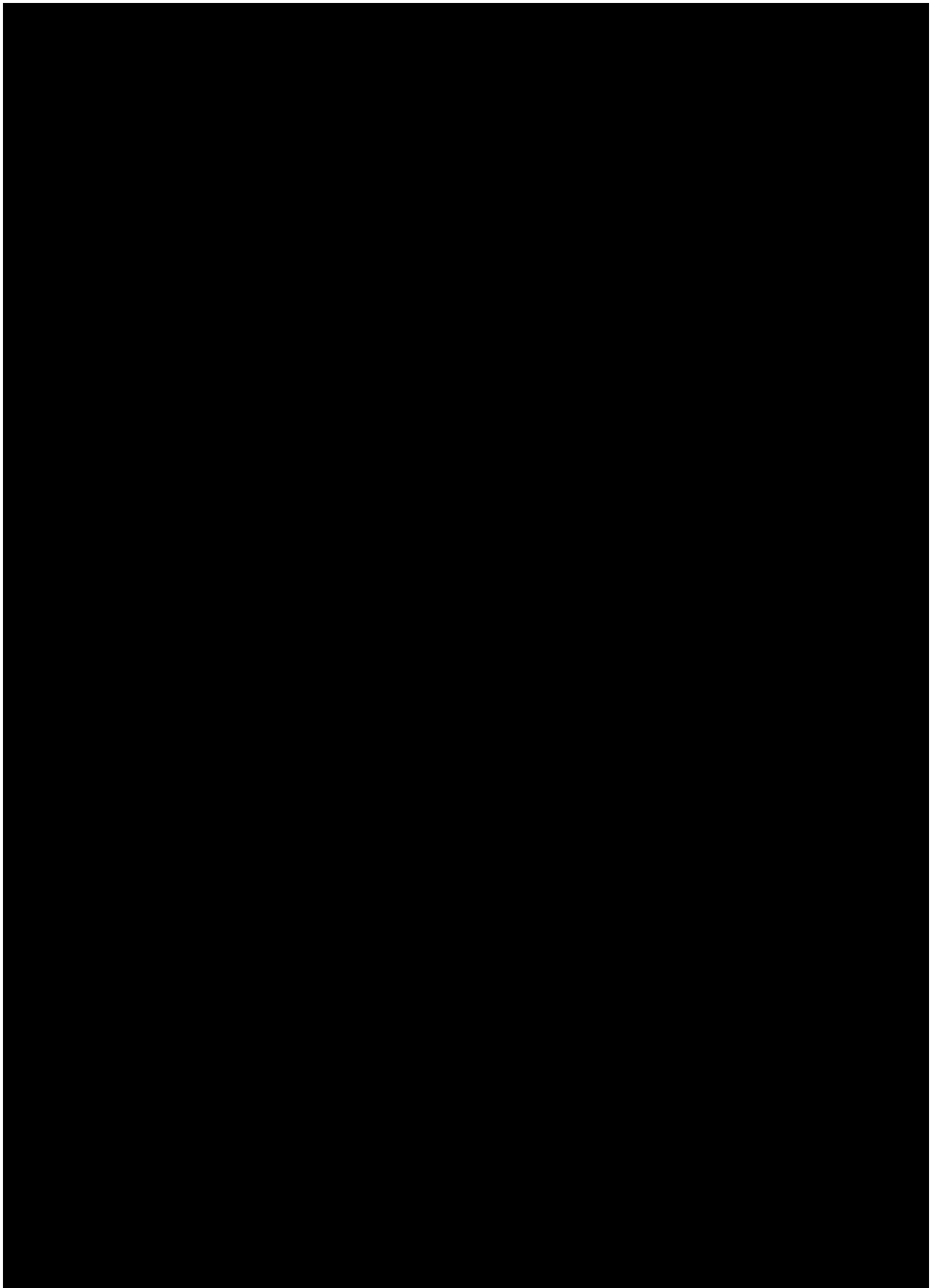
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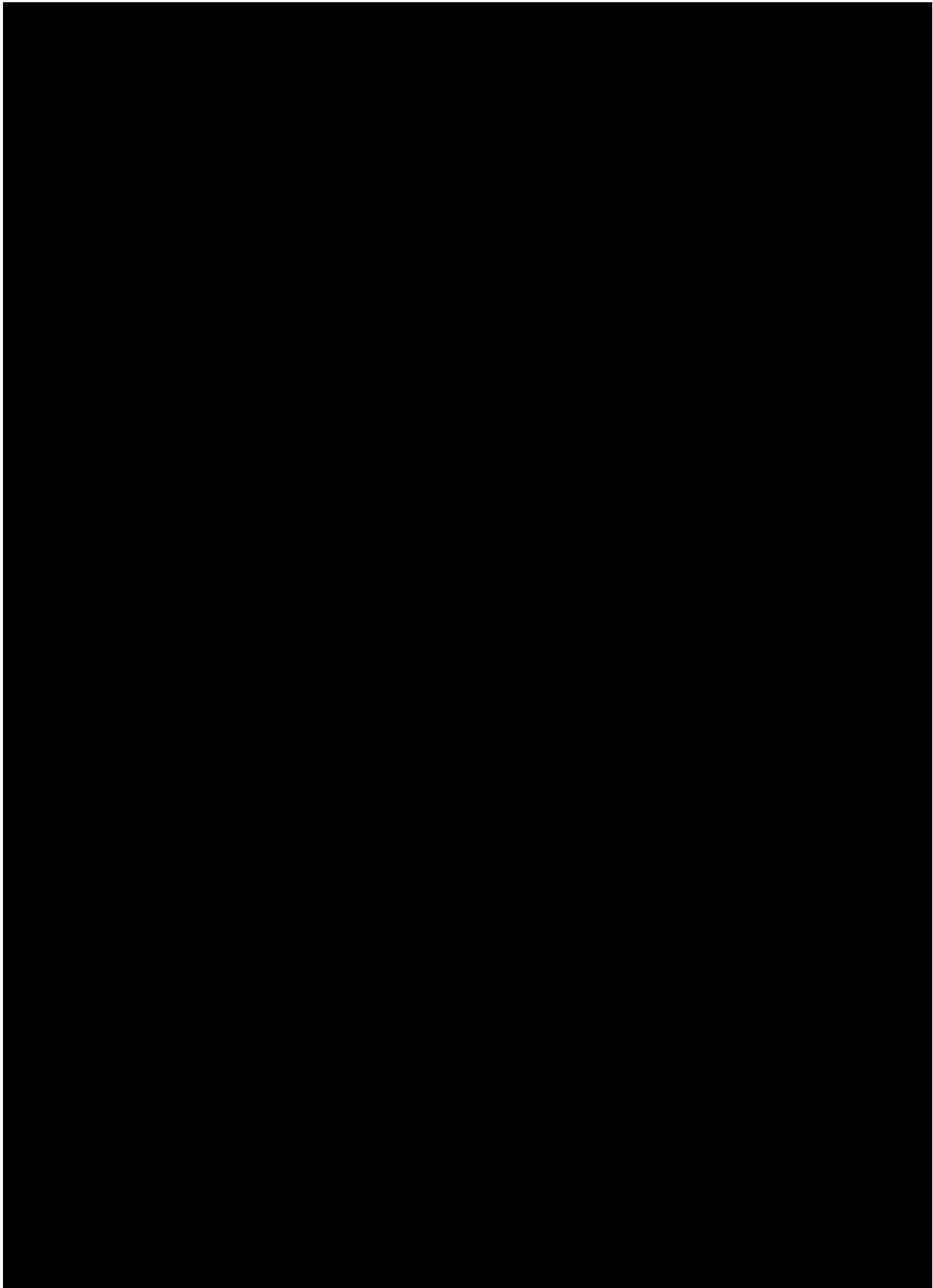
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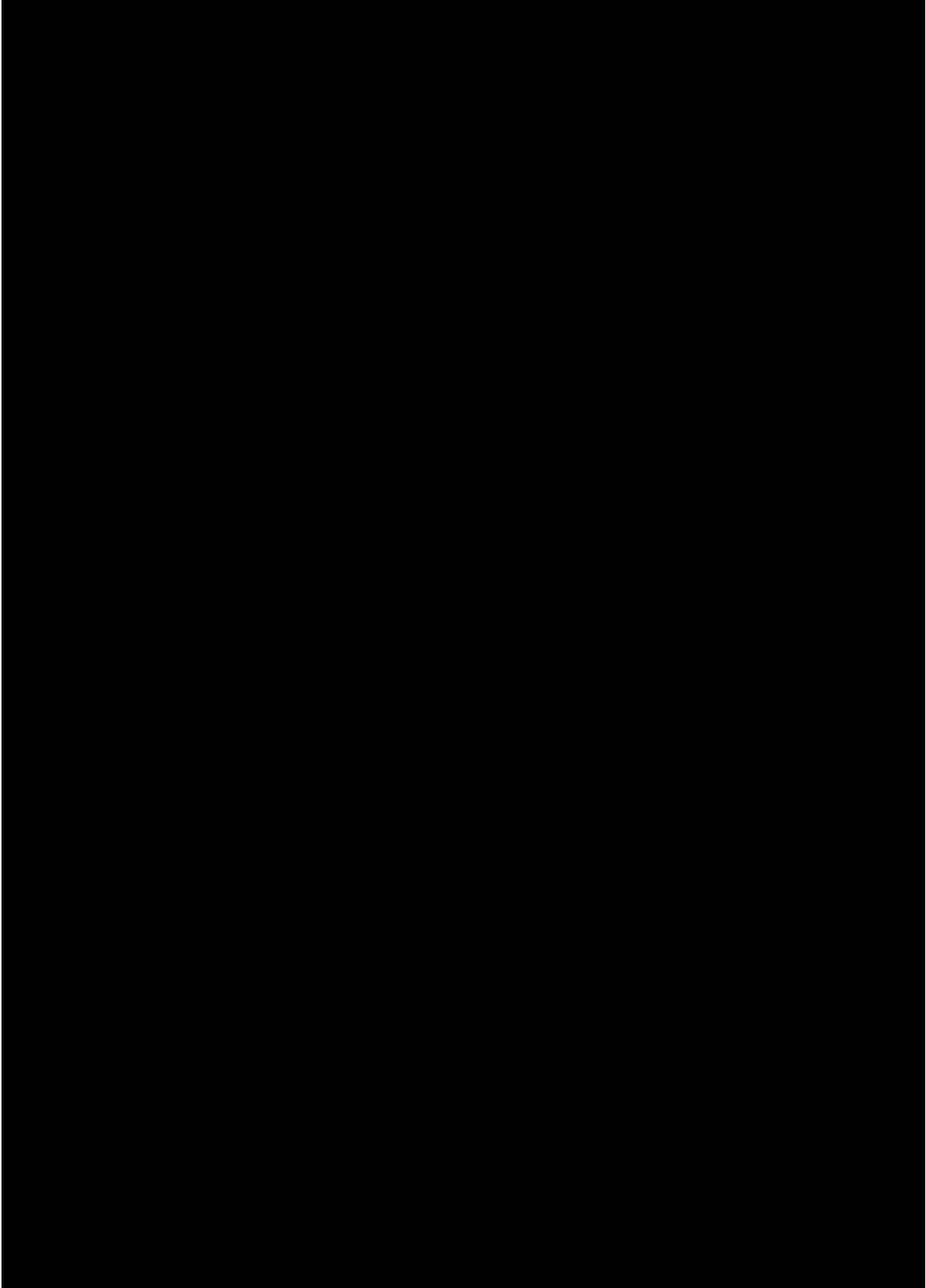
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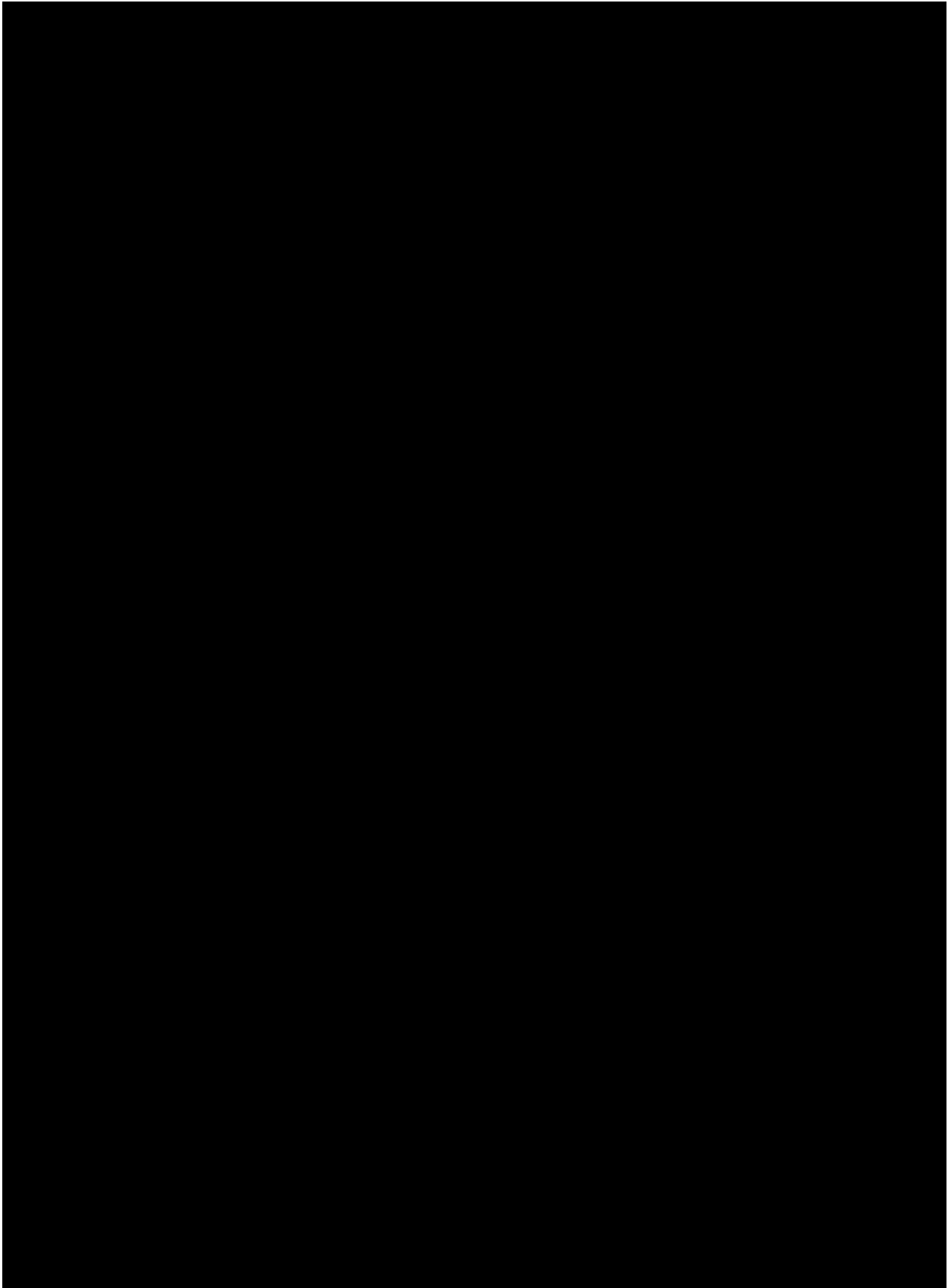
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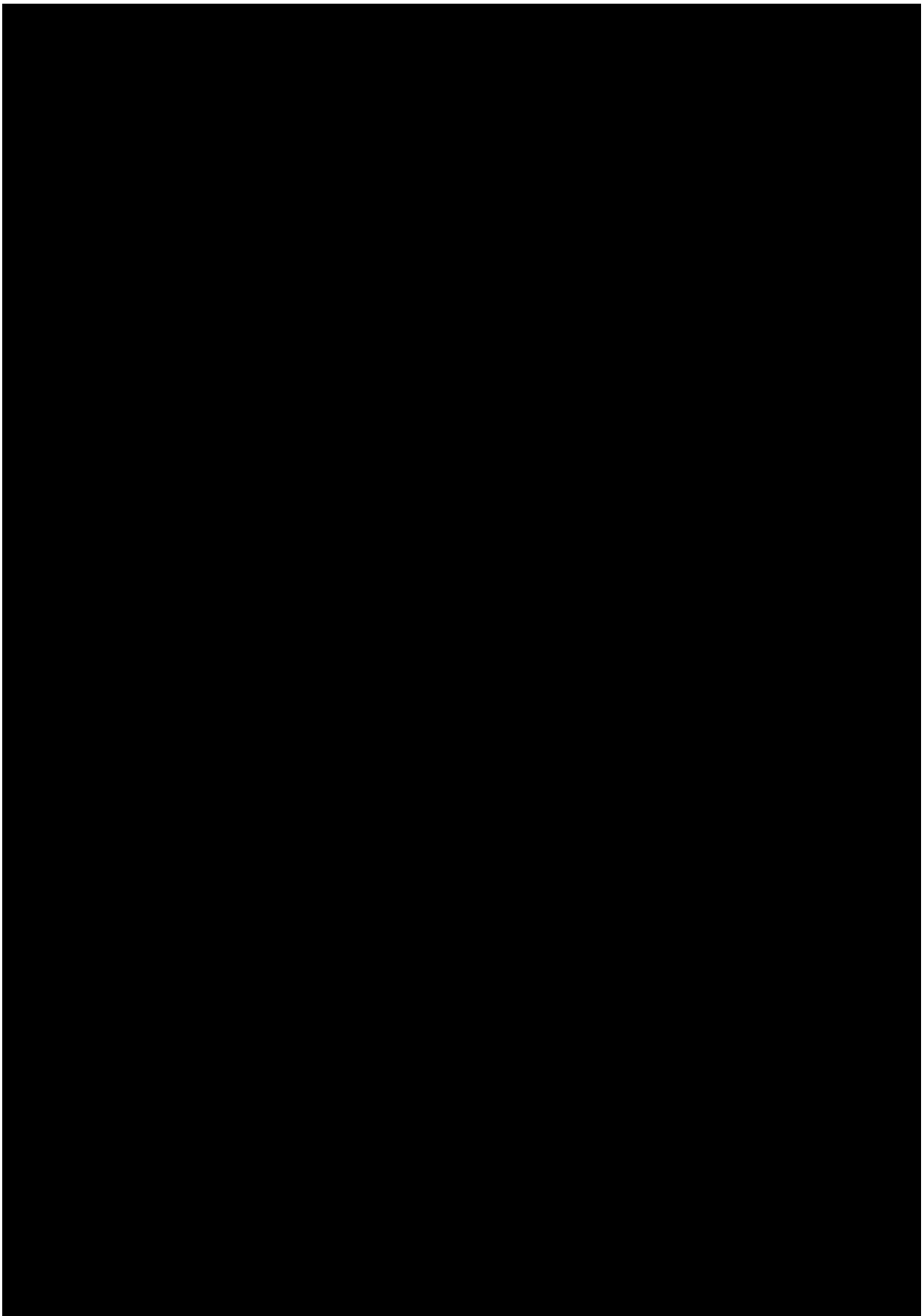
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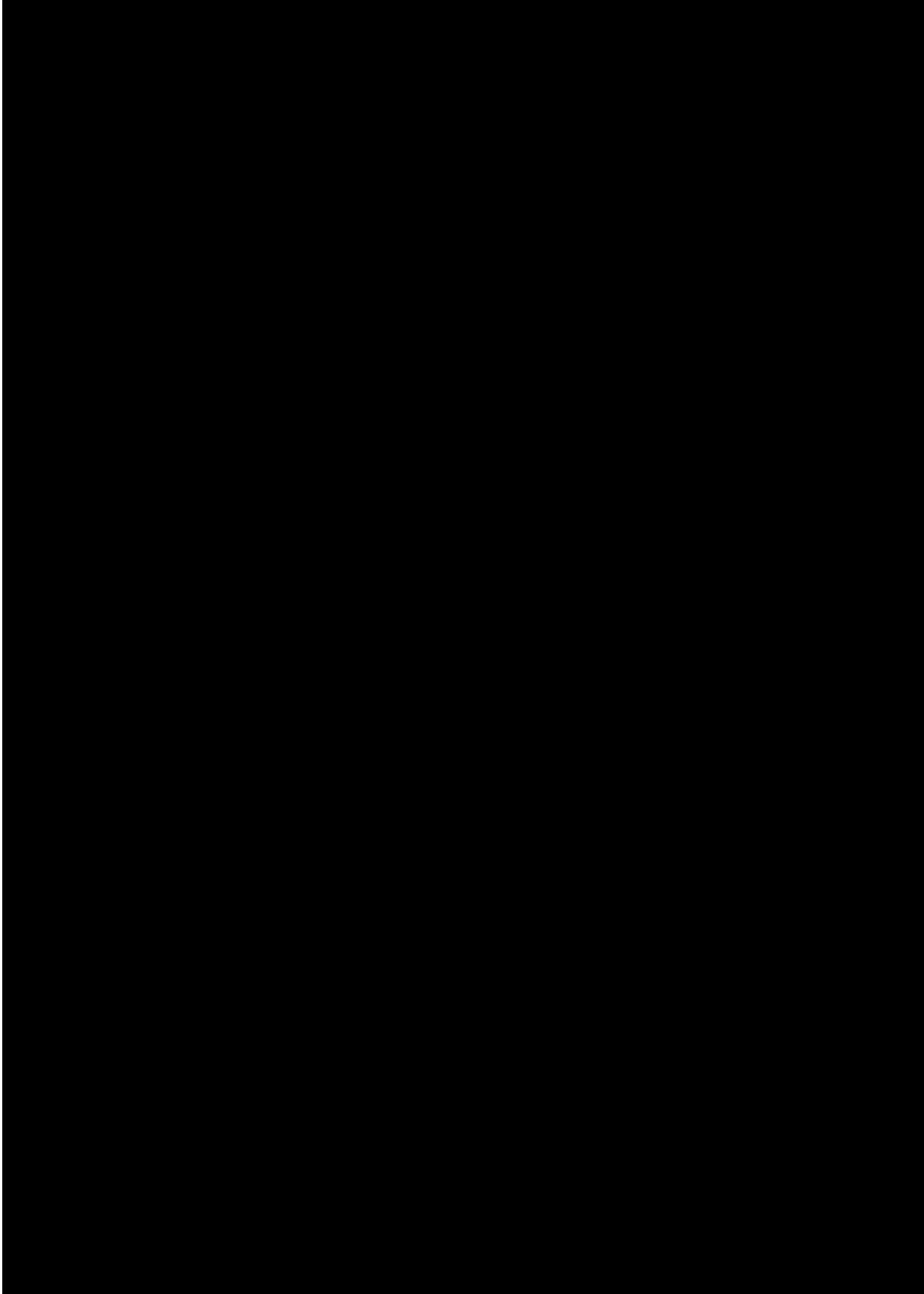
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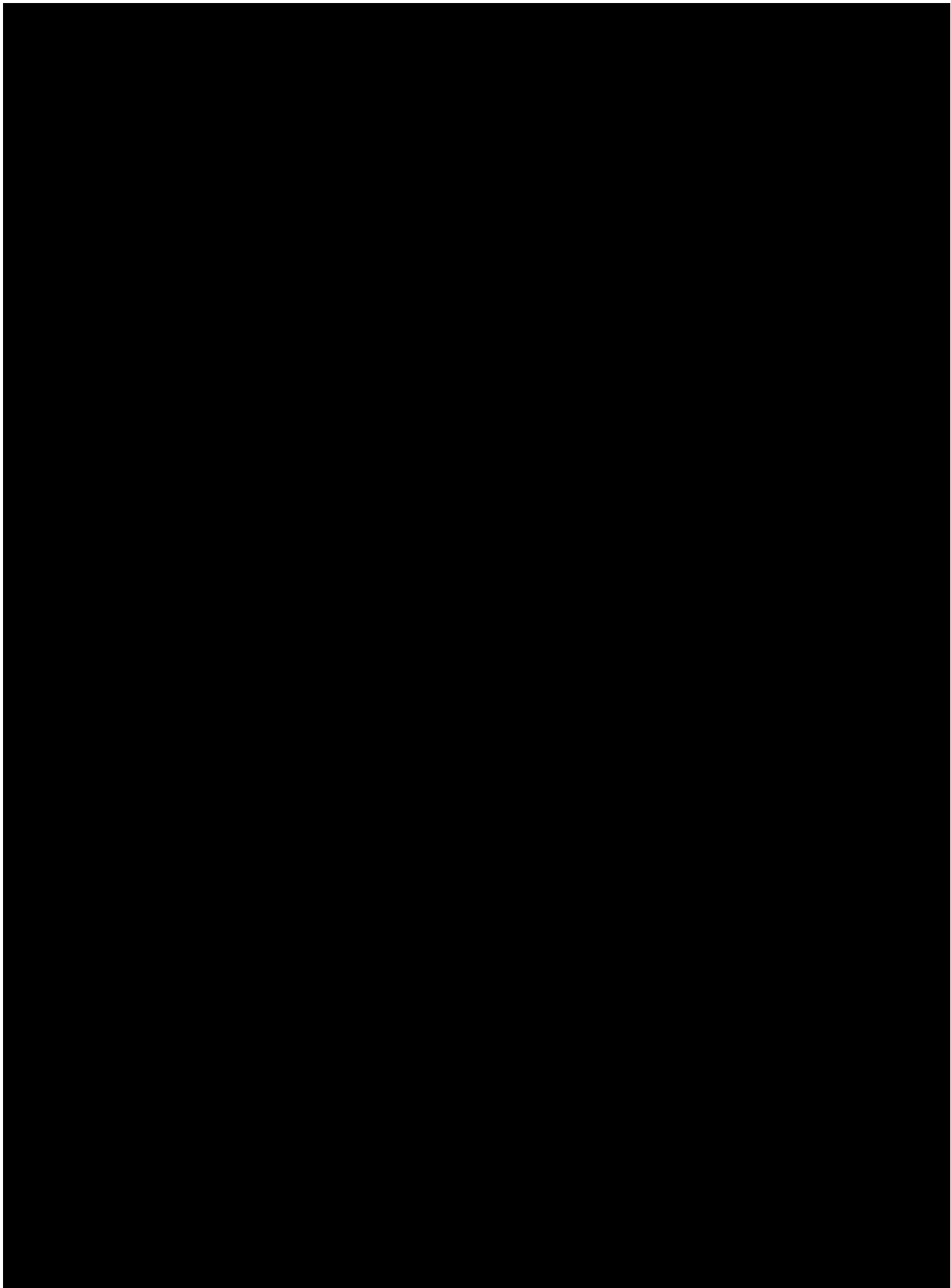


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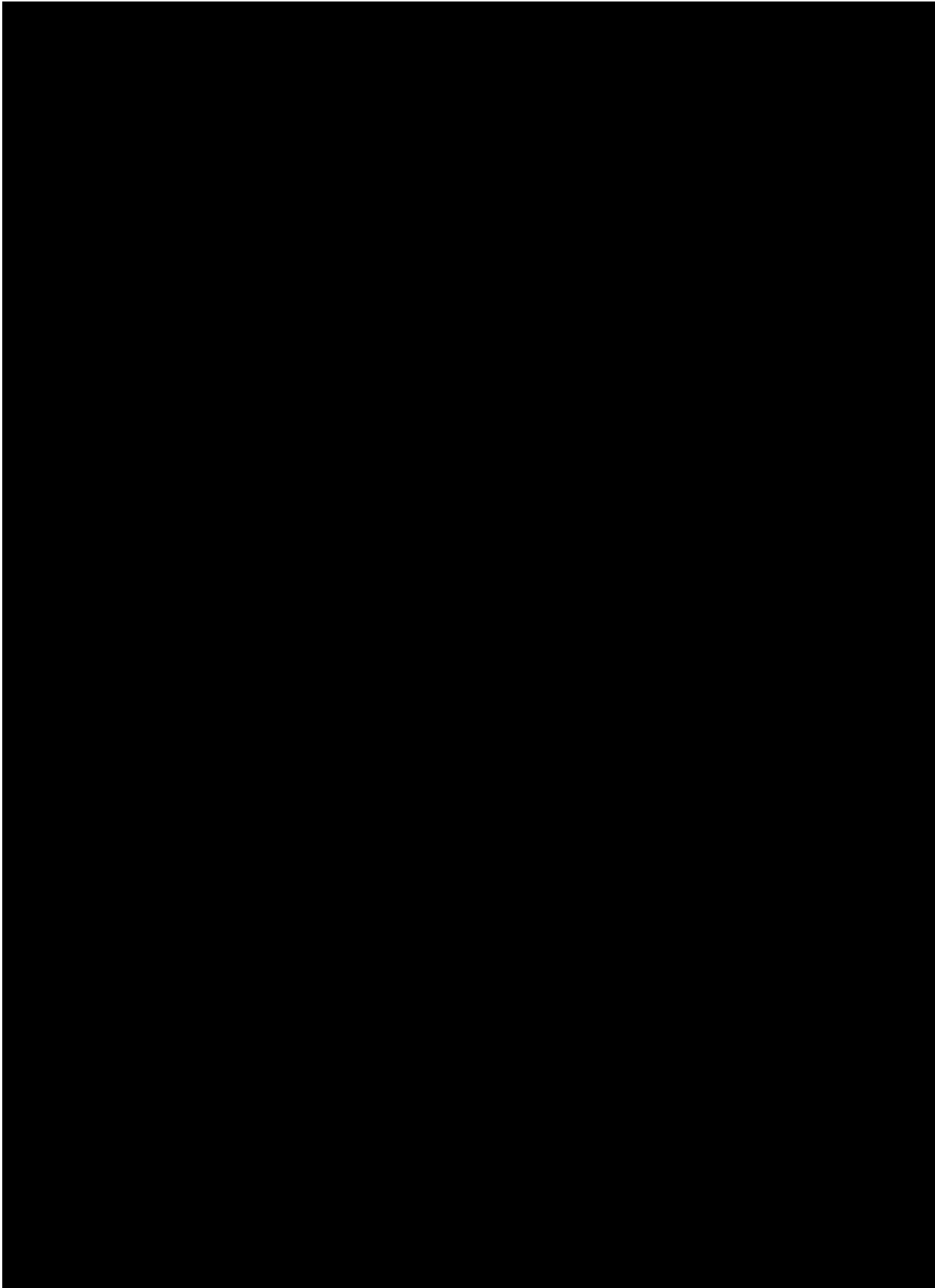




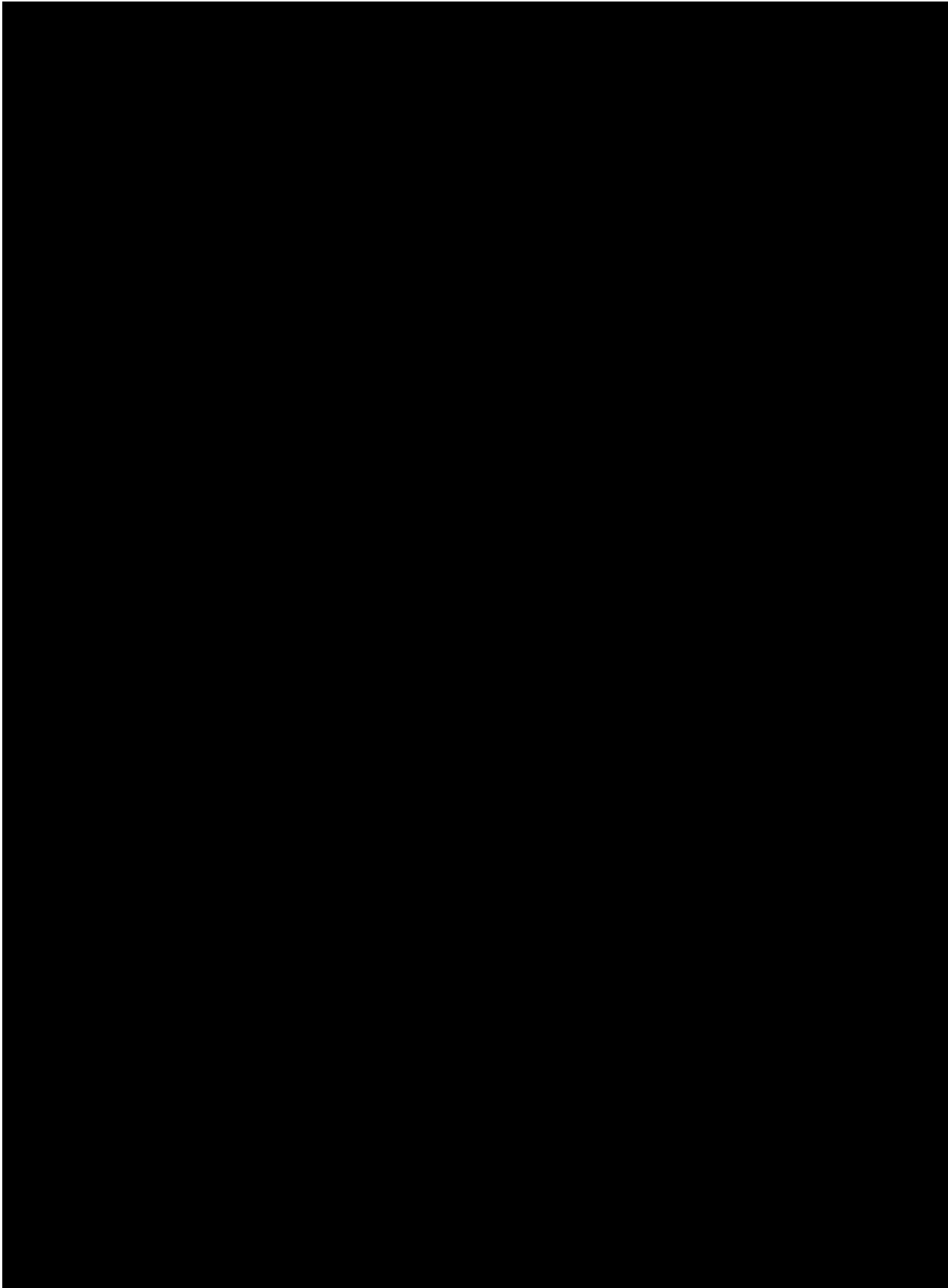
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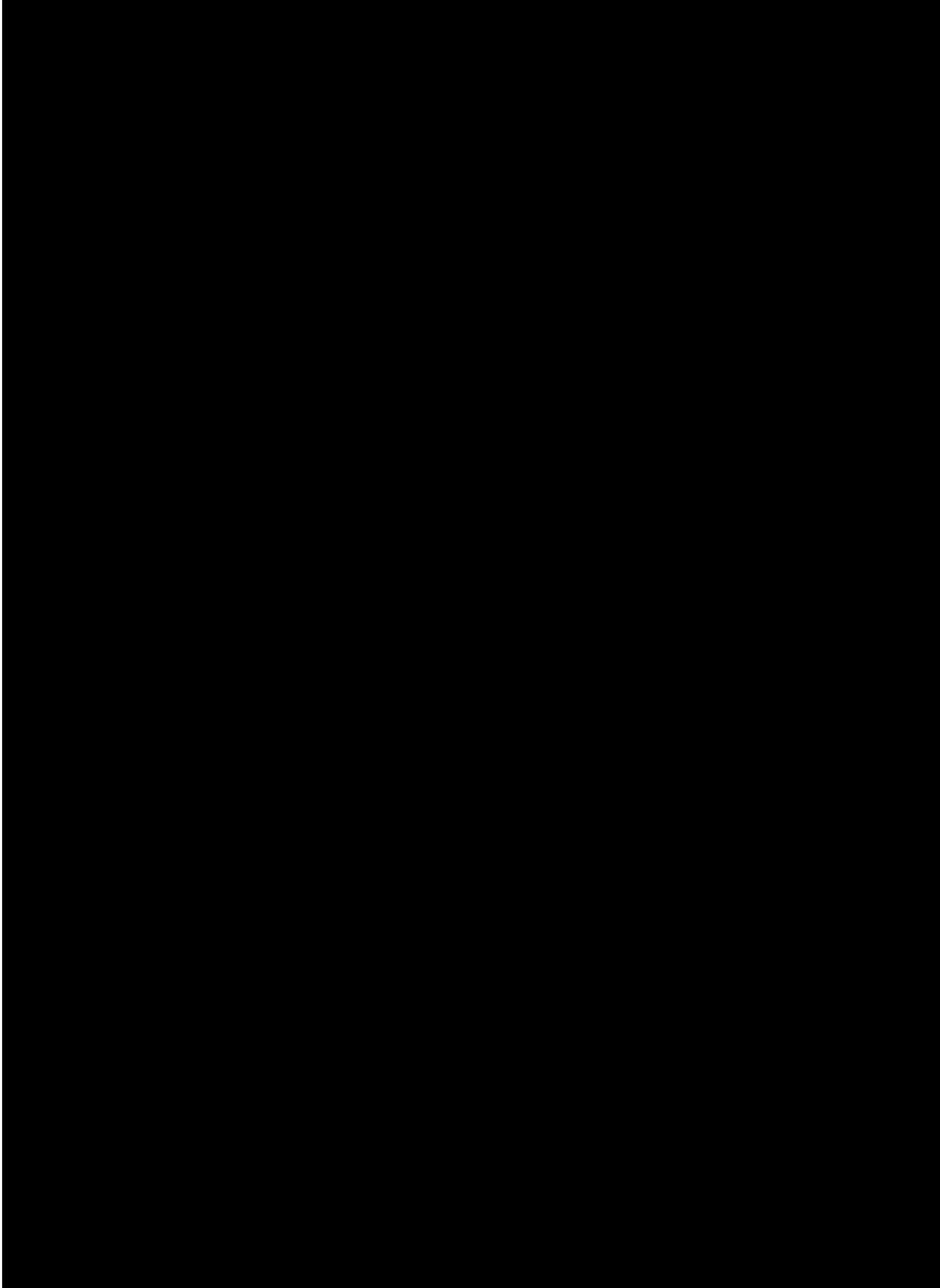
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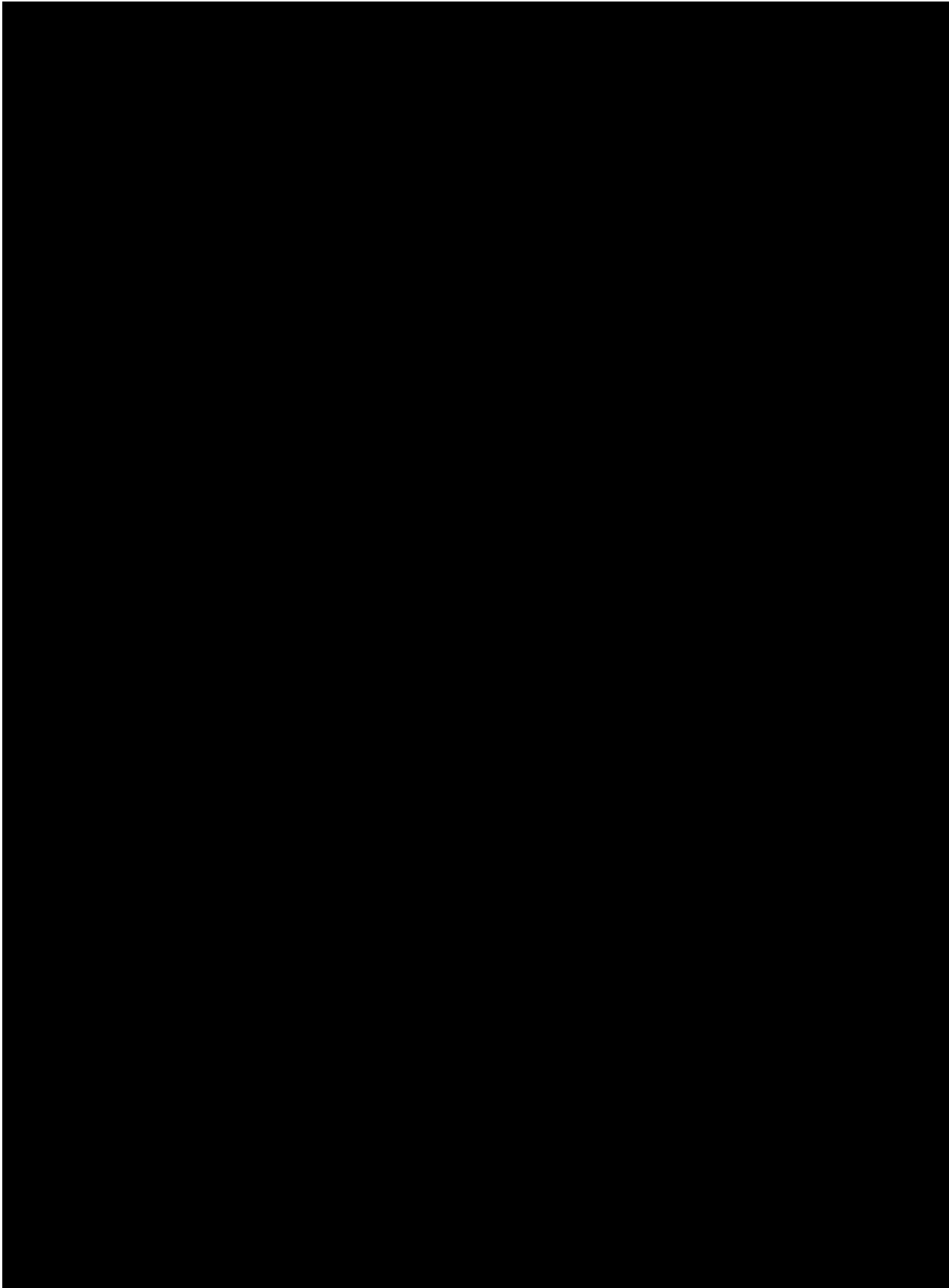
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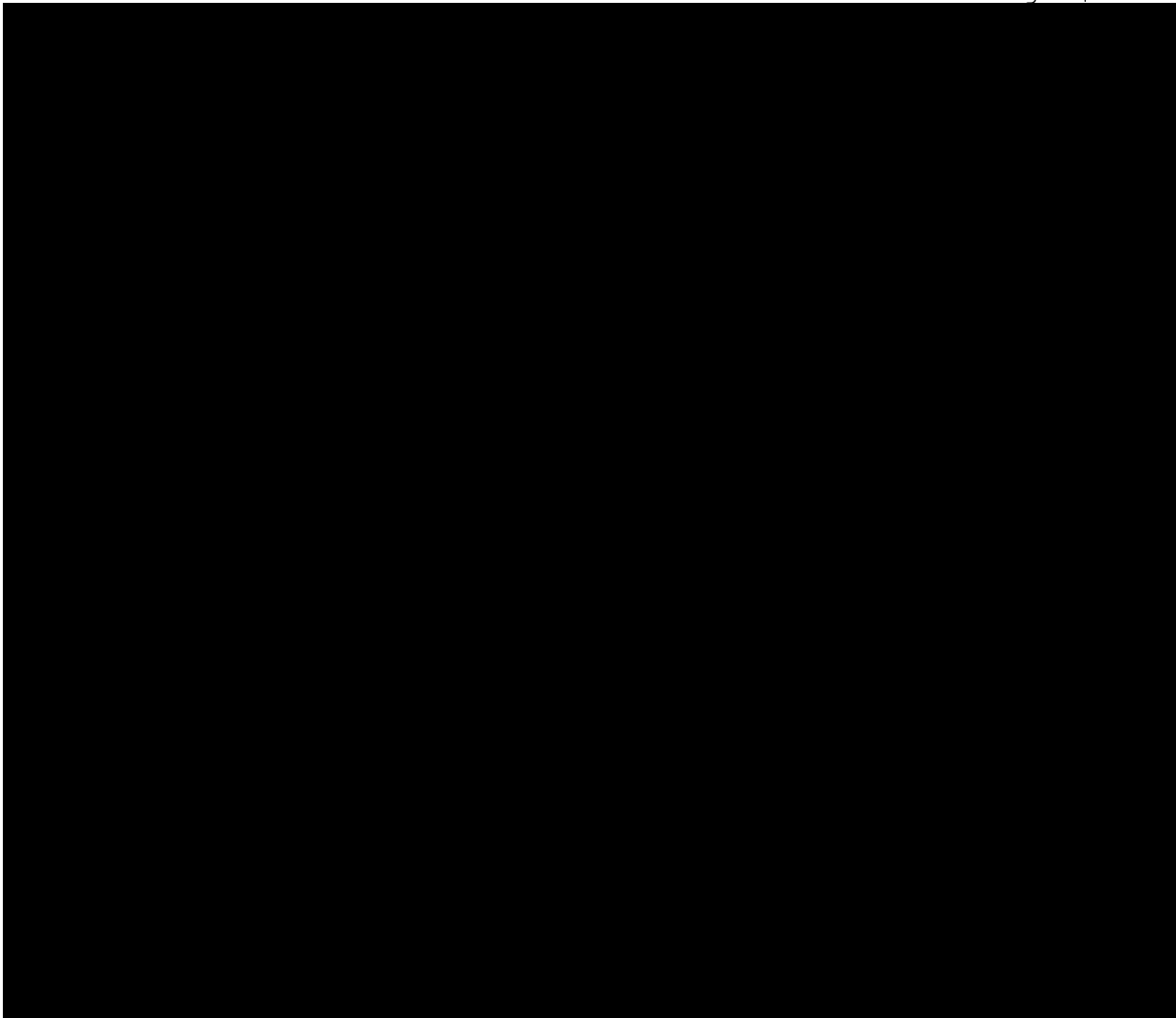
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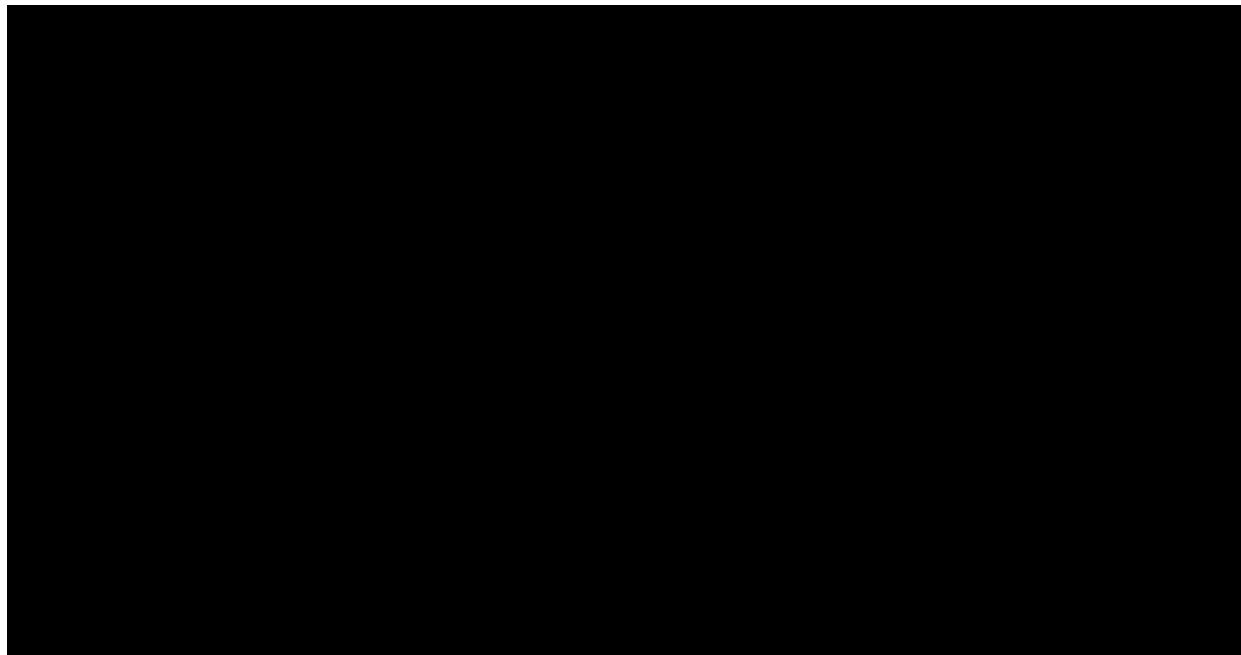
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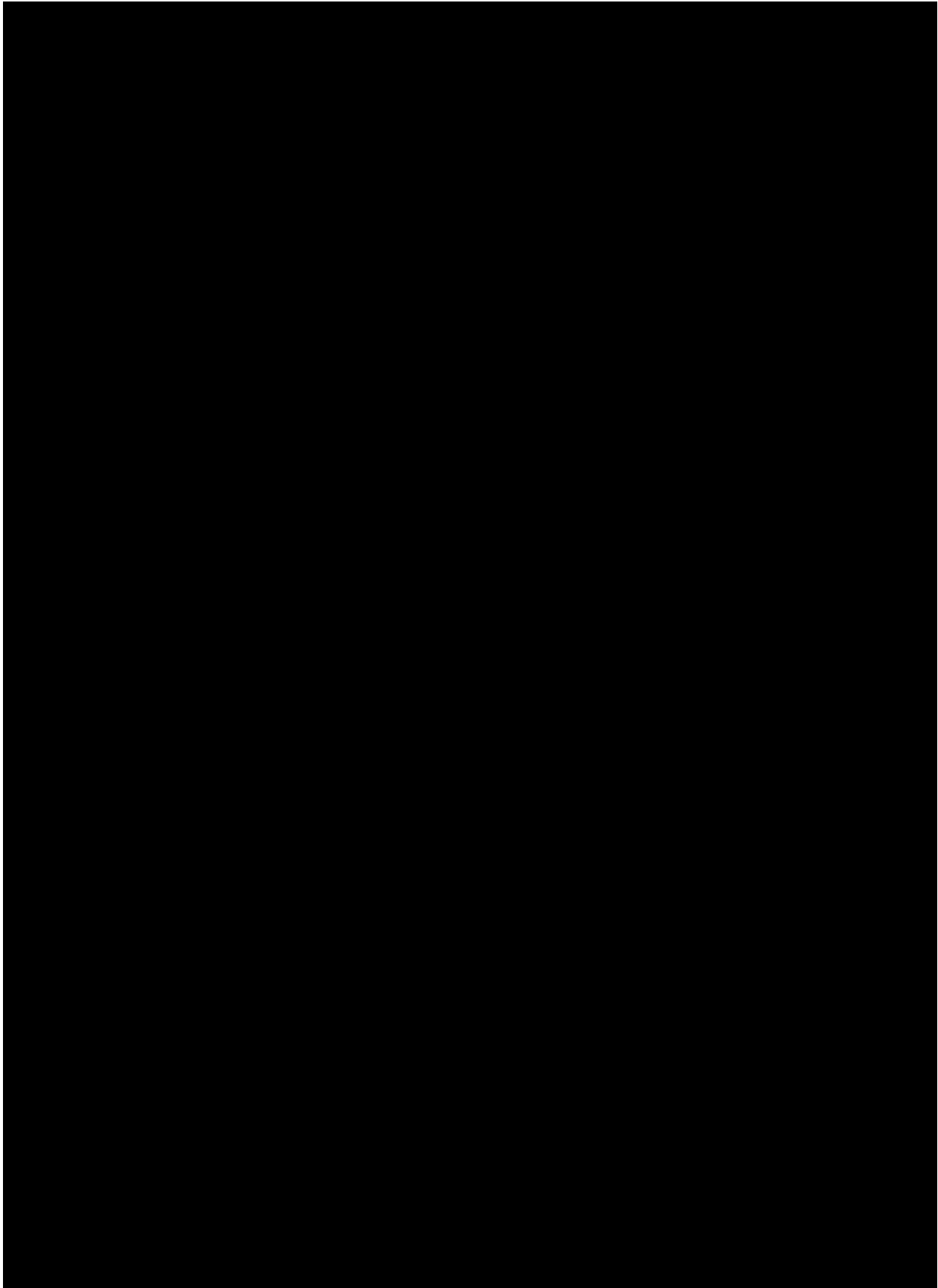
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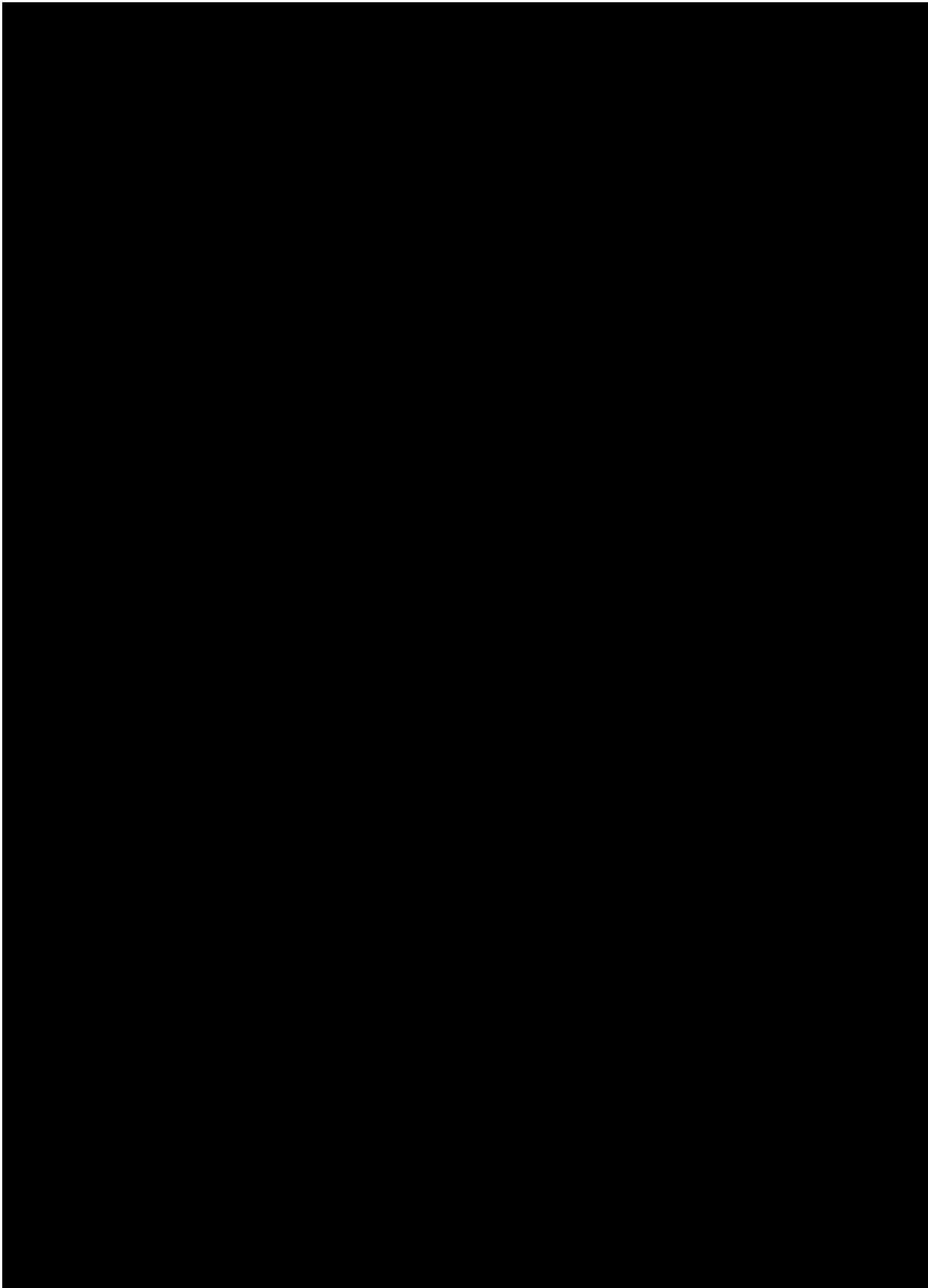
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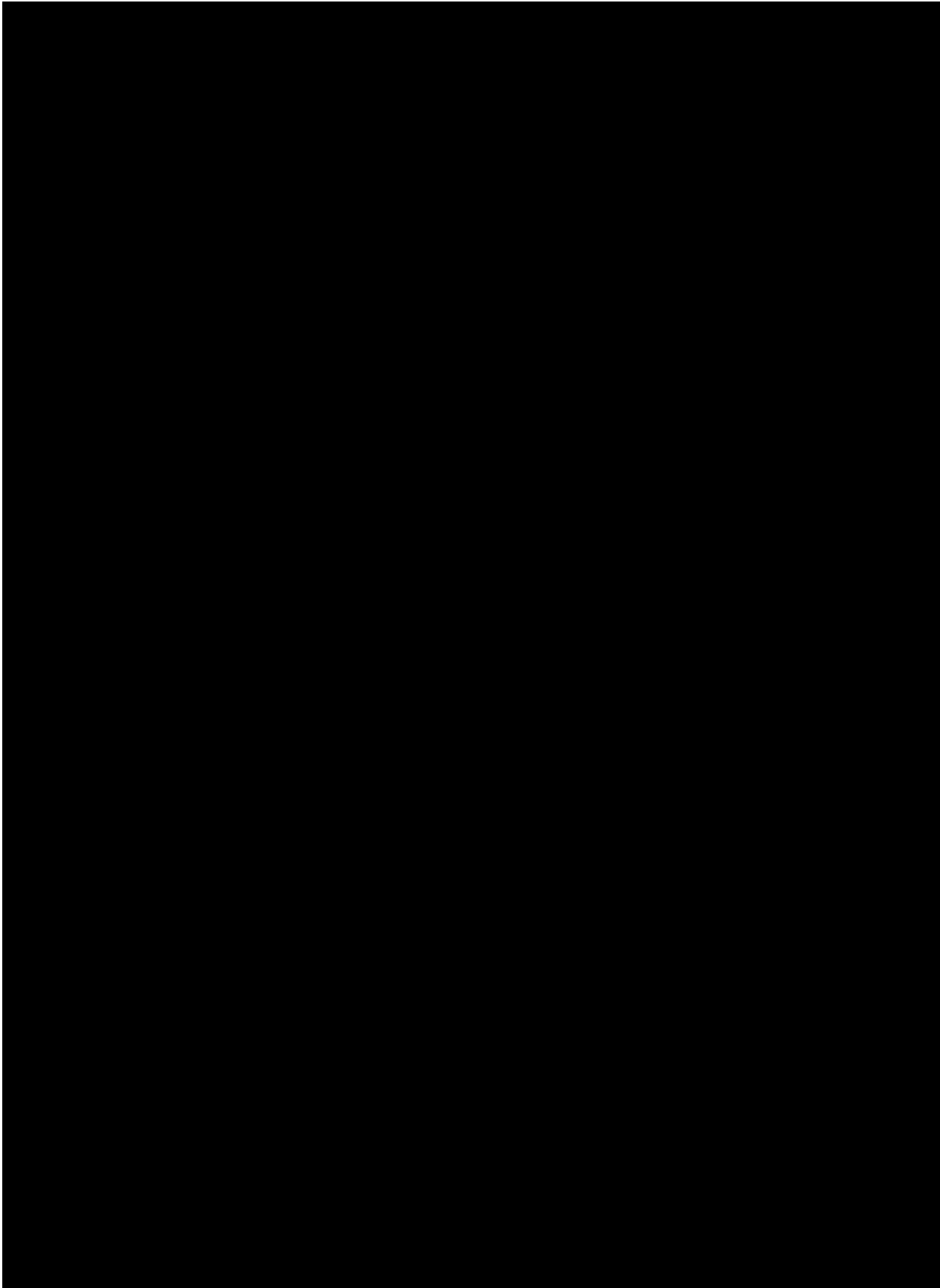


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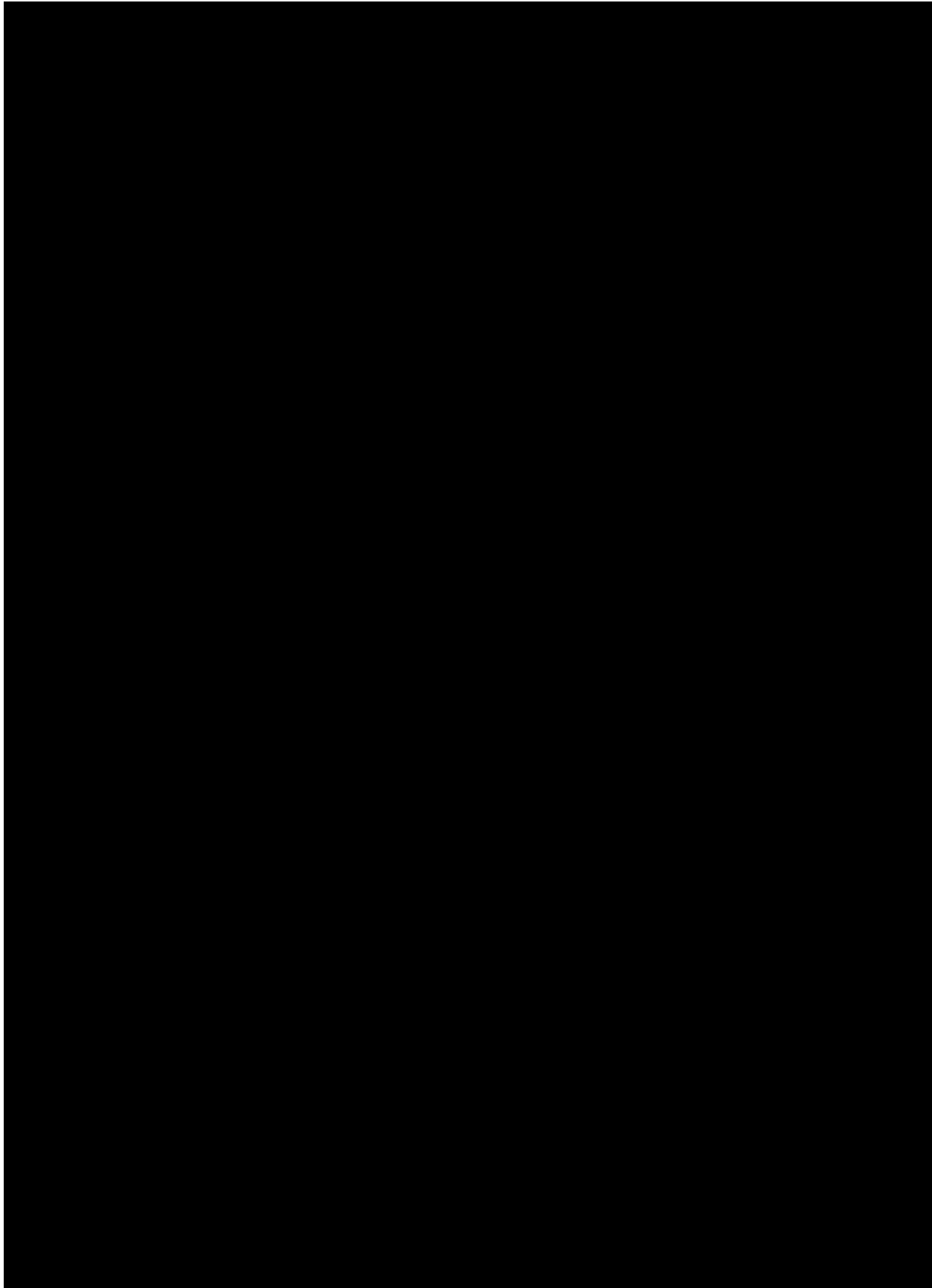




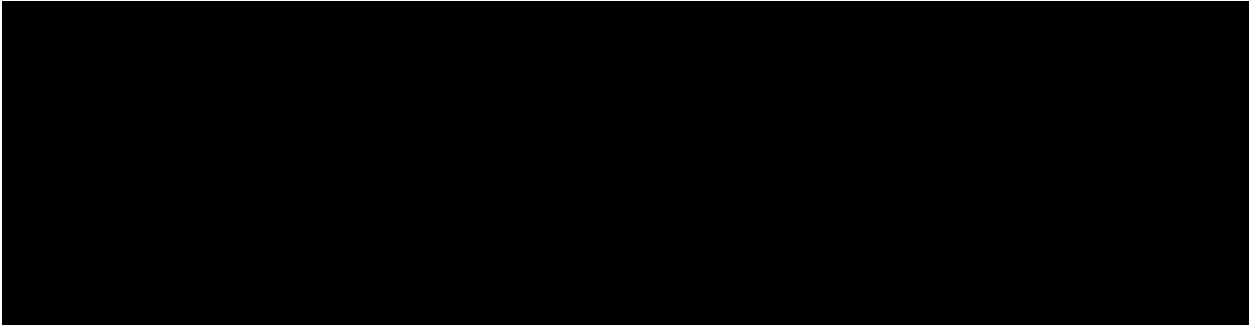
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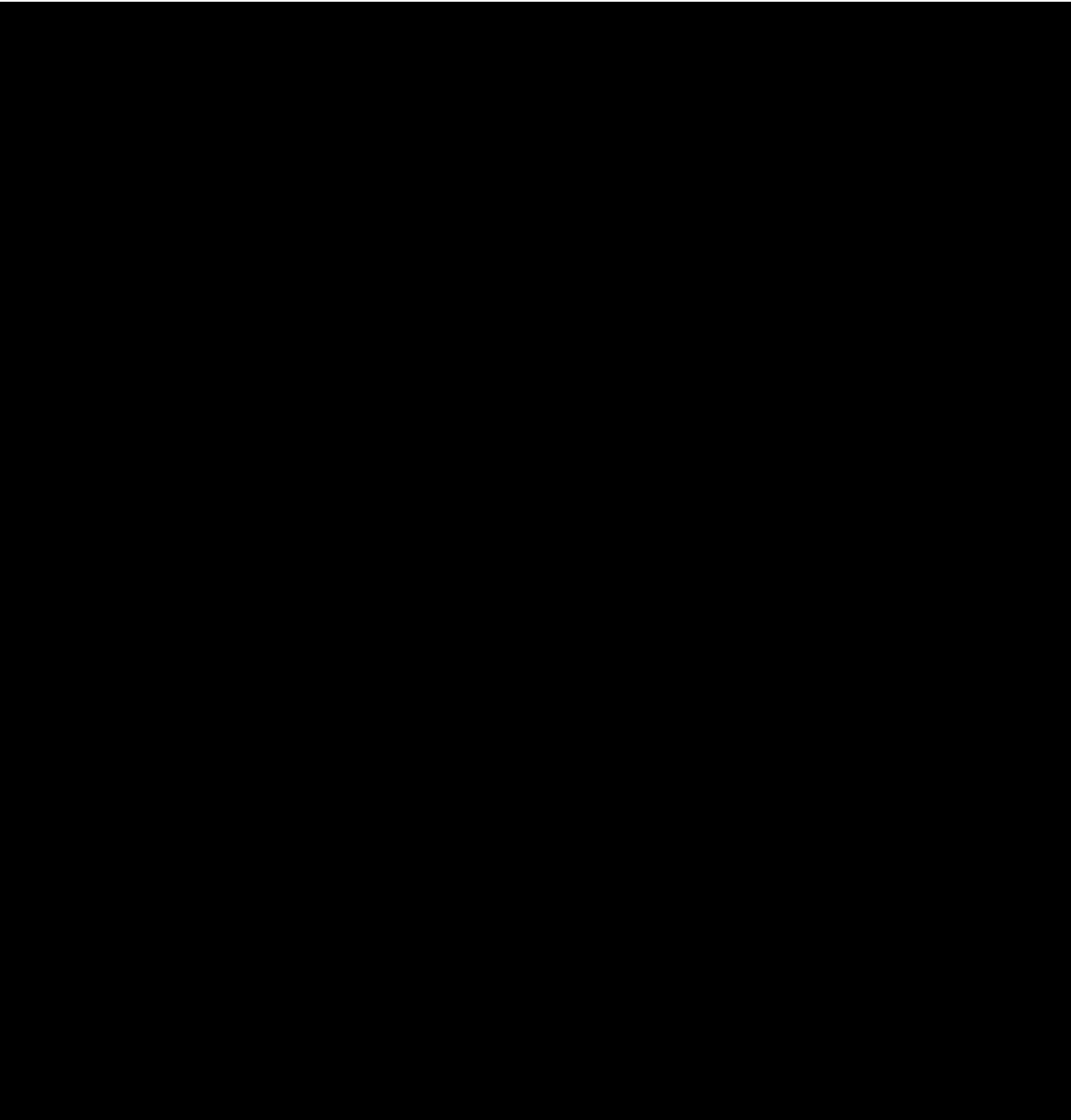
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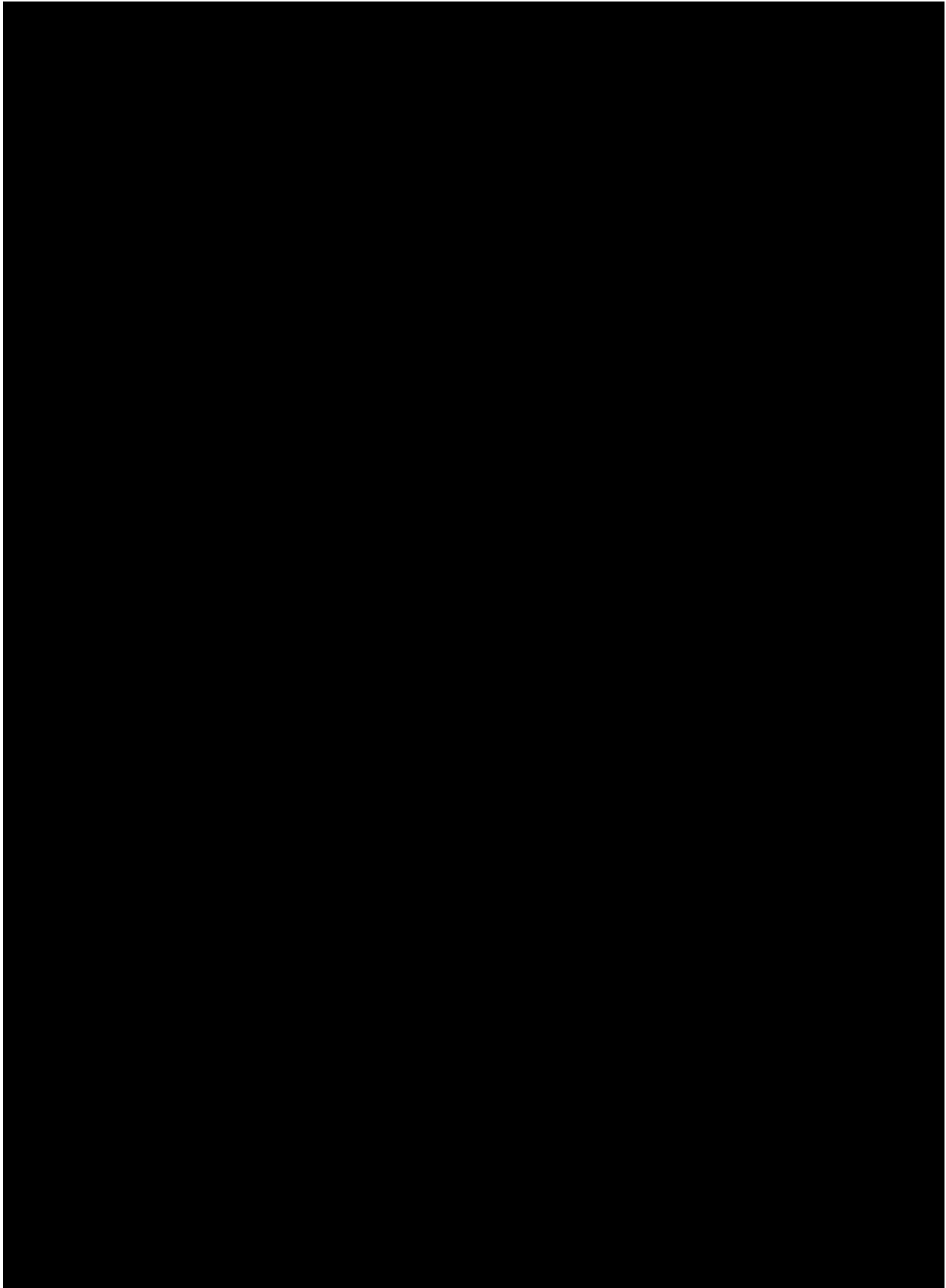
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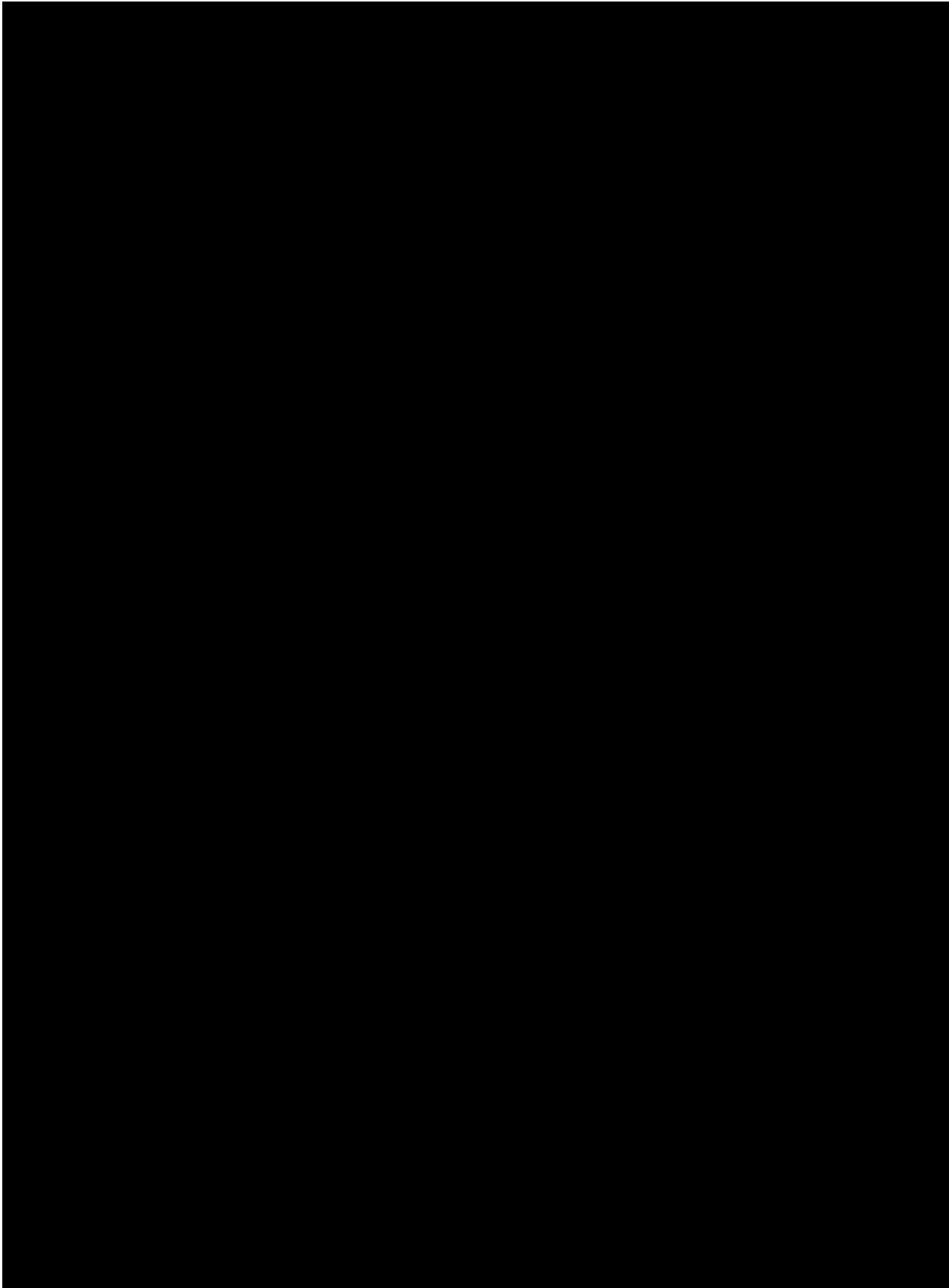
QUESTIONS FROM THE TRIBUNAL



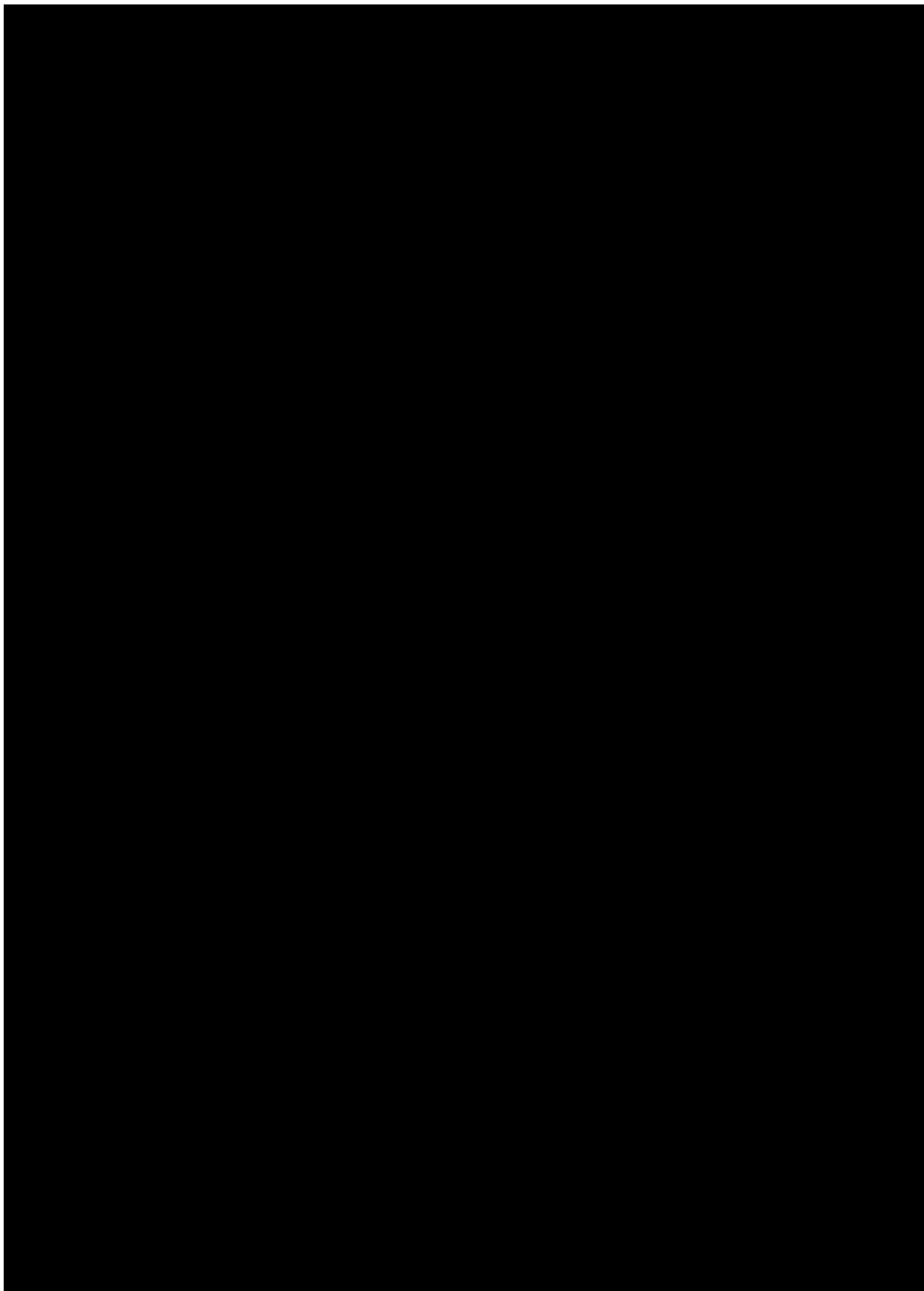
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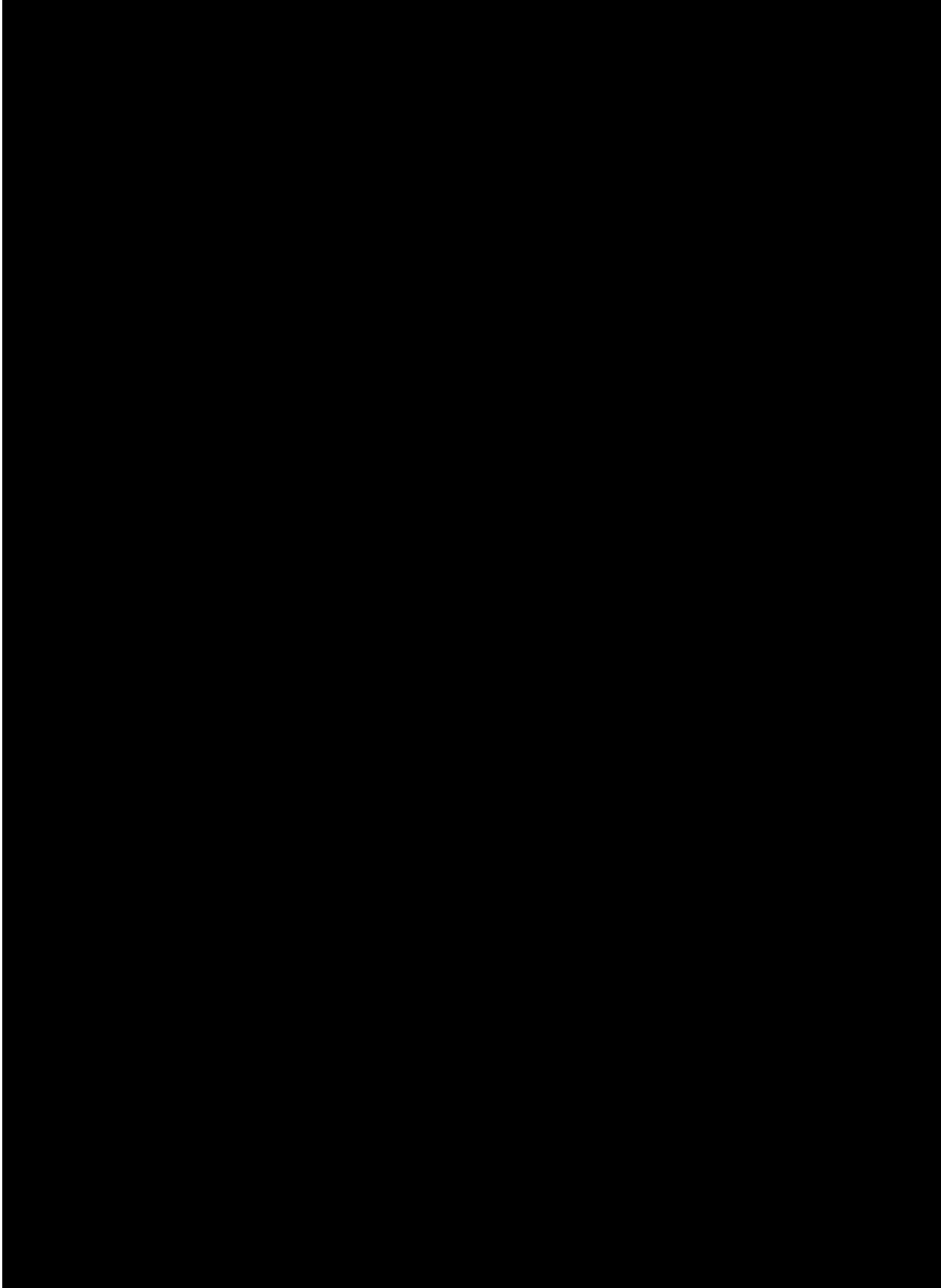
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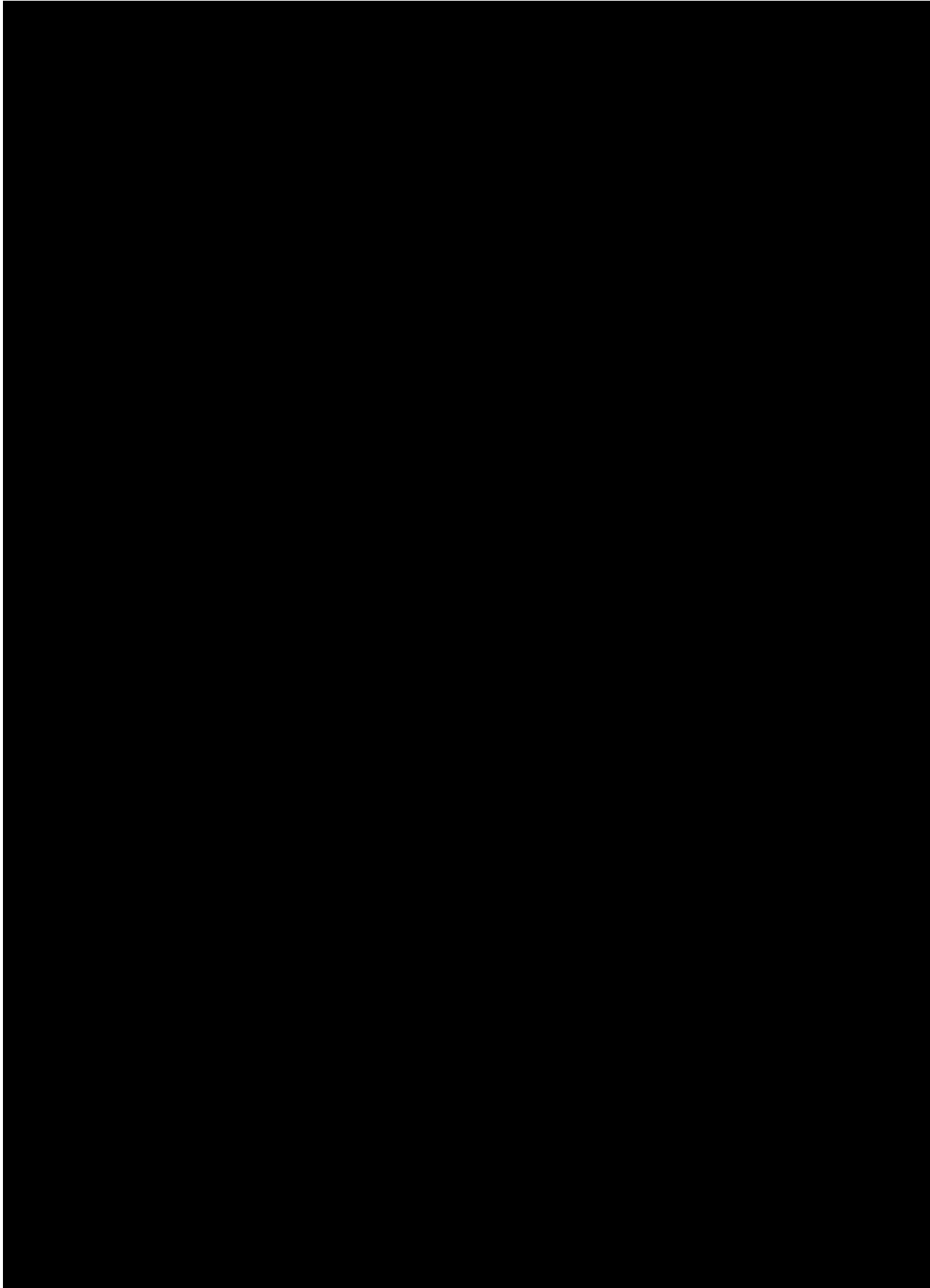
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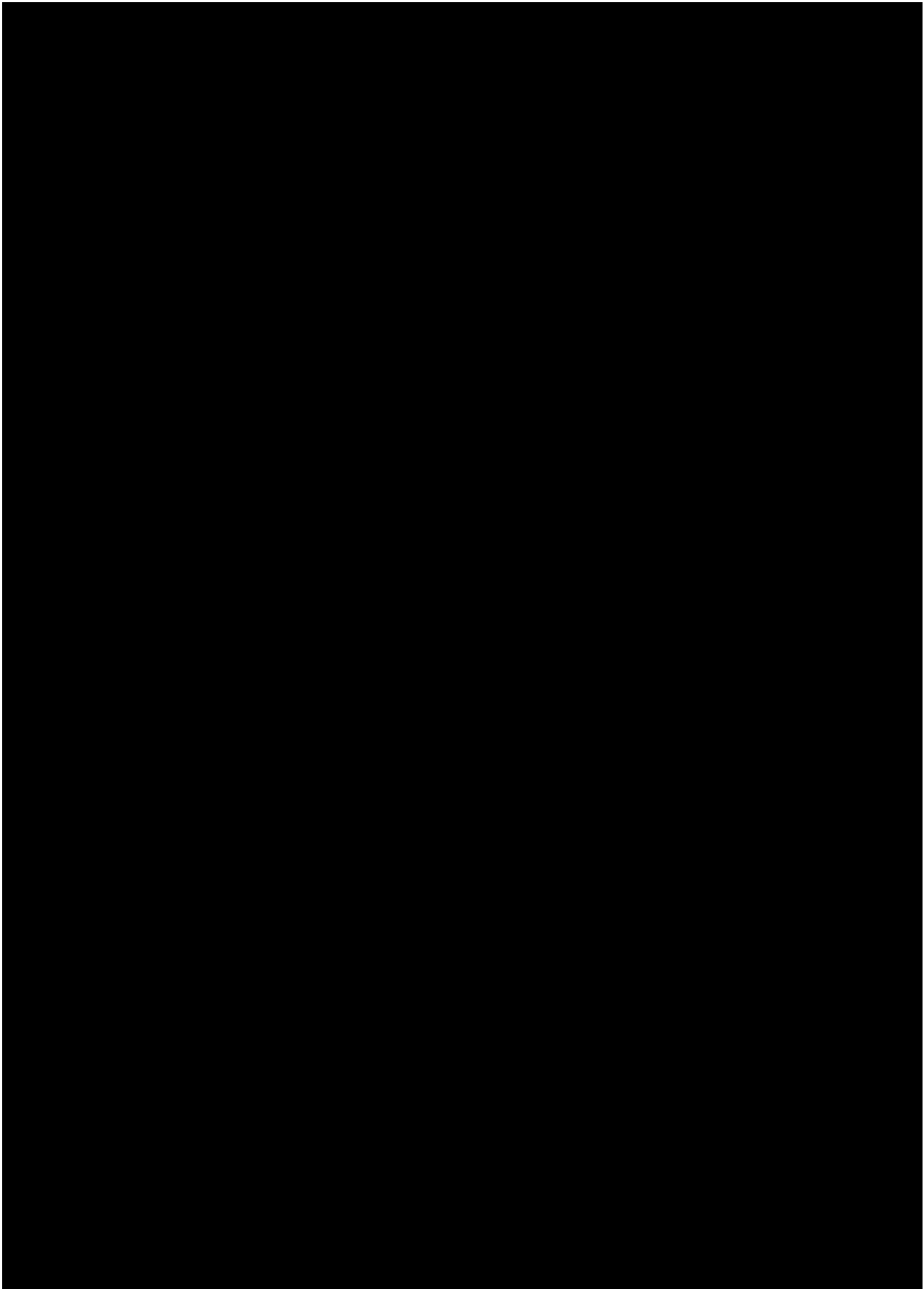


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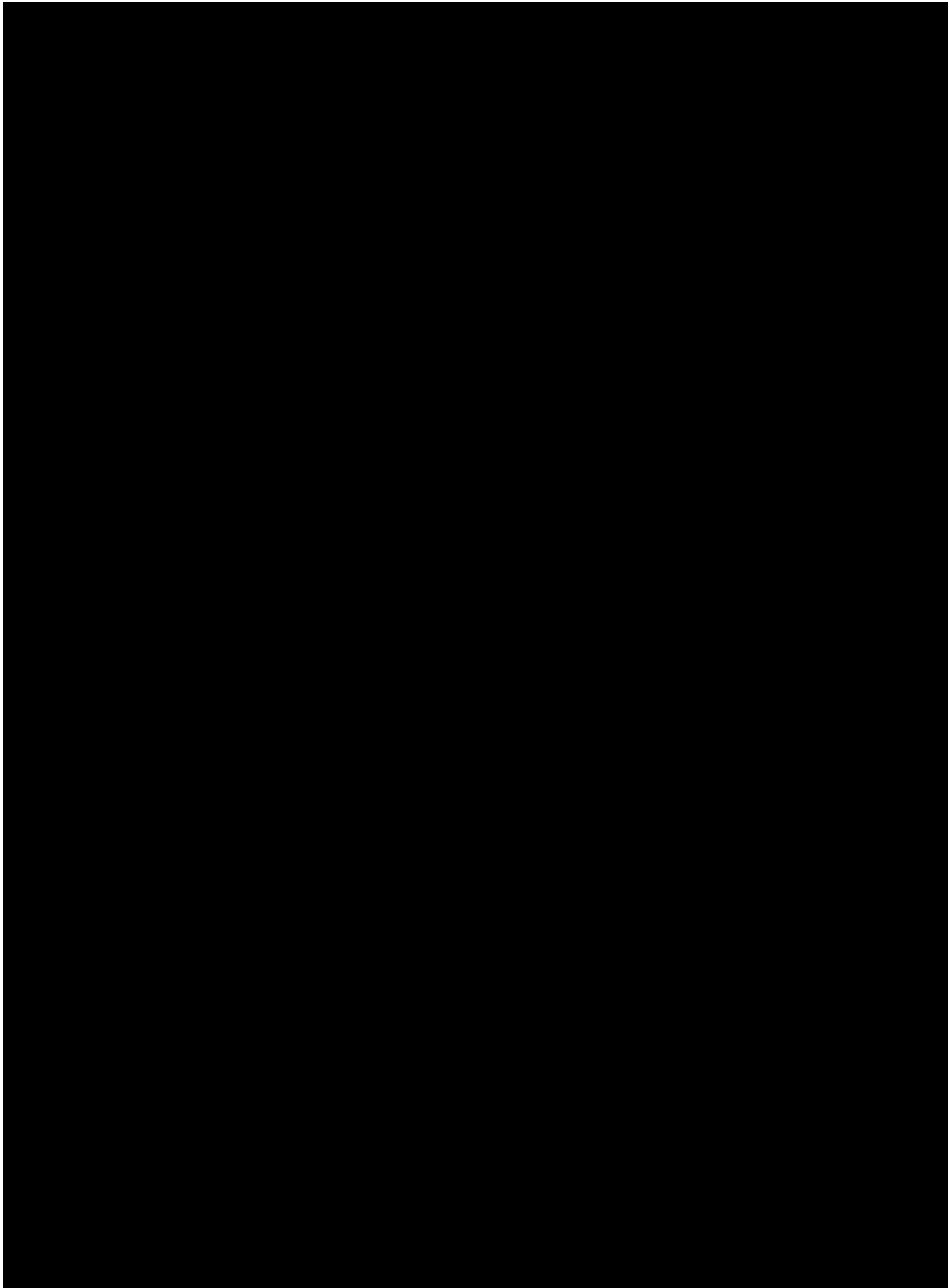




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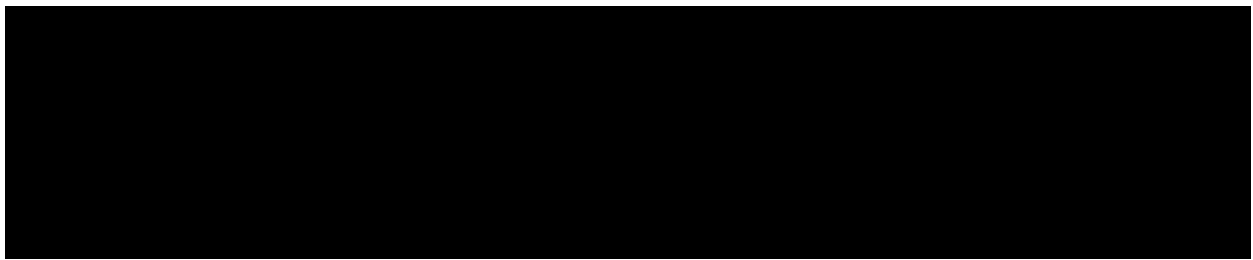
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PRESIDENT TERCIER: Good. Mr. Tanase, so we are at the end of your examination. I would like to thank you.

7

I would like to have a few minutes, one or two points that we should address before going forth.

8

9

First, the time, Ms. Secretary Marzal, can you give the time, the result.

10

11

SECRETARY MARZAL YETANO: Yes.

12

THE WITNESS: Thank you, everybody. I will go.

13

14

PRESIDENT TERCIER: Yes, of course.

15

(Witness steps down.)

16

SECRETARY MARZAL YETANO: So the total times are for Claimants' remaining 28 hours and 15 minutes; for Respondent--

17

18

19

PRESIDENT TERCIER: Can you also say the time that has been used?

20

21

SECRETARY MARZAL YETANO: Well, I can do the subtractions.

22

1           PRESIDENT TERCIER: Okay, you can do it  
2 tomorrow.

3           SECRETARY MARZAL YETANO: I can send an  
4 e-mail tonight.

5           PRESIDENT TERCIER: Yeah.

6           SECRETARY MARZAL YETANO: I just need to do  
7 the subtractions. But Claimants, 28 hours, 15  
8 minutes; Respondent, 23 hours and 6 minutes; Tribunal,  
9 3 hours and 35 minutes.

10           I believe that Respondent spent today 5 hours  
11 and 24 minutes, and I need to do the subtraction for  
12 Claimants.

13           PRESIDENT TERCIER: Okay. Good. That's  
14 Points Number 1.

15           Point Number 2, I recall that, in line with  
16 the decision that was taken, you should prepare the  
17 list of exhibits and the issues for the--we have it  
18 already from Mr. Avram, but from Mr. Gligor, from  
19 Ms. Lorincz, and on your side you should do the same  
20 for Mr. Găman.

21           Third point concerning the program, we will,  
22 of course, start with Mr. Avram, then Mr. Gligor, then

1 Mrs. Lorincz. The goal should be really to have still  
2 room for the first part of the examination of  
3 Mr. Găman, so I hope--not only I hope, I urge really  
4 that this should be possible.

5 I would like to recall you that as far as I'm  
6 informed Mr. Avram, Mr. Gligor, and Mrs. Lorincz will  
7 be--will need an interpreter, so it will take a bit  
8 more time, as we all know by experience.

9 The fourth point, you remember that I asked  
10 the Parties to make a few comments concerning their  
11 requests and your requests or the request of the EC.  
12 We have already received Claimants' position. I would  
13 be happy to have your position whether you can do that  
14 so the Arbitral Tribunal could take its Decision.

15 Yes, Dr. Heiskanen?

16 DR. HEISKANEN: We will communicate it  
17 tomorrow morning.

18 PRESIDENT TERCIER: Good. Very good.

19 These are the points that I had on my list.  
20 Have you another point you would like to raise?

21 MS. COHEN SMUTNY: I think that Claimants  
22 think there maybe should be some clarity about the

1 direct for Mr. Avram because he will not be speaking  
2 about new so-called "rebuttal documents" but only  
3 these most recent exhibits. I forget the number now,  
4 215 and 655, he will only make some comments about  
5 that, that will be the only thing.

6 So, the question is, it seems to us that this  
7 does not warrant Ms. Mocanu to be in the room for  
8 direct. I don't know if that was what the Respondent  
9 expected. We just think that we should at least be  
10 clear so that we don't have a disagreement about that  
11 tomorrow.

12 And if there's any difference of view on this  
13 issue, that maybe we should just discuss that briefly  
14 now what the expectation is.

15 PRESIDENT TERCIER: Dr. Heiskanen?

16 DR. HEISKANEN: Certainly if there is any new  
17 evidence or comments on these new exhibits, Ms. Mocanu  
18 would have to be able to participate and attend the  
19 Hearing.

20 MS. COHEN SMUTNY: The challenge is that  
21 Ms. Mocanu is also presumably going to say something  
22 new about the document that Respondent put in, and so

1 now I think the Parties are entirely in an equal  
2 position on this Issue and, I think that--but yet  
3 Mr. Avram is going to be examined first, and it just  
4 doesn't seem that it's appropriate in this  
5 circumstance for Ms. Mocanu to have the advantage to  
6 hear whatever it is that Mr. Avram is going to say,  
7 and then say something else.

8           It's just not in the same circumstance as we  
9 were for the other categories.

10           PRESIDENT TERCIER: Dr. Heiskanen?

11           DR. HEISKANEN: You know, in our view, it's  
12 exactly the same situation. It's rebuttal evidence.

13           MS. COHEN SMUTNY: Well, it's not rebuttal  
14 evidence.

15           PRESIDENT TERCIER: Okay. So, the Arbitral  
16 Tribunal will decide and communicate the decision to  
17 you.

18           It would be for Mrs. Mocanu?

19           MS. COHEN SMUTNY: I don't know if--because  
20 Mr. Avram is not providing any rebuttal in his direct,  
21 we don't see any need for any of Respondent's Experts  
22 to sit in on the limited direct he will be giving.

1           PRESIDENT TERCIER:   Okay.   The Arbitral  
2 Tribunal will decide and communicate its Decision  
3 after this meeting.

4           Do you have another point?   Do you have  
5 another point?

6           MR. GREENWALD:   If it's possible to have  
7 clarification--I understand the Tribunal's preference  
8 would be to have Mr. Găman start tomorrow in the late  
9 afternoon, if possible, and what we're asking is if  
10 the Respondent's position is if that's going to happen  
11 realistically.   We would like to know.

12          DR. HEISKANEN:   Fair enough.   We will be  
13 seeing where we are after the Hearing, and we will  
14 communicate by e-mail to the Tribunal and counsel for  
15 the Claimants as to where we are for tomorrow.

16          PRESIDENT TERCIER:   Good.

17          MR. GREENWALD:   Thank you.

18          PRESIDENT TERCIER:   Do you have on your side  
19 other points you would like to raise?

20          DR. HEISKANEN:   There is just one, if I could  
21 get a minute.

22          MS. COHEN SMUTNY:   If I used the word



1 "expert," I did not mean to do so.

2 DR. HEISKANEN: Can I confer for a moment?

3 (Discussion off the record.)

4 DR. HEISKANEN: Yes, Mr. President, we just  
5 wanted to confirm our understanding of what the  
6 Claimants' counsel just said about the rebuttal  
7 evidence that Mr. Avram is going to produce tomorrow  
8 morning, so I understand now that he's not going to  
9 comment on the evidence of Ms. Serban or Ms. Mocanu on  
10 direct examination.

11 MS. COHEN SMUTNY: That is correct because we  
12 understand the Tribunal to be saying that rebuttal  
13 evidence can only be comments on new rebuttal  
14 documents, and we are to indicate in advance what  
15 those documents would be. And so, although we don't  
16 consider them rebuttal documents, we identified the  
17 three basically those exhibits that are about 215 and  
18 655, that's it, and so Mr. Avram necessarily is not  
19 going to be giving any testimony that would be  
20 characterized as "rebuttal."

21 DR. HEISKANEN: Okay. That confirms our  
22 understanding, and that is fine, thank you very much

1 for the clarification.

2           PRESIDENT TERCIER: Does it change the  
3 position that you had?

4           DR. HEISKANEN: No--well, it means that we  
5 have no longer a pending request to allow Ms. Mocanu  
6 and Ms. Serban to attend the direct examination of  
7 Mr. Avram tomorrow morning, except for the issue of  
8 the new--two new exhibits for which the Tribunal is  
9 now going to take a decision, as you indicated a few  
10 minutes ago.

11           PRESIDENT TERCIER: Ah-ha. I thought it was  
12 the answer to our--okay. Fine.

13           Okay. Otherwise, do you have another?

14           DR. HEISKANEN: No issues on our side. Thank  
15 you very much.

16           PRESIDENT TERCIER: Thank you very much.

17           I have a very important point is to thank you  
18 all for a long day, especially our Court Reporters  
19 that are still in front of the Tribunal, and I look  
20 whether they are still smiling or not. I think they  
21 are. I wish you all a very pleasant evening, and we  
22 will meet tomorrow morning at 9:00.

1                   (Whereupon, at 6:22 p.m., the Hearing was  
2 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.



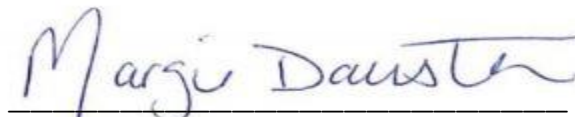
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DAVID A. KASDAN

## 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