

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 6

HEARING ON THE MERITS

Saturday, December 7, 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 9:30 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
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DR. CRENGUȚA LEAUA
MS. ANDREEA SIMULESCU
MS. MIHAELA MARAVELA
MS. LILIANA DEACONESCU
MS. ANDREEA PIȚURCĂ
MS. ANDRA SOARE FILATOV
Leaua Damcali Deaconu Paunescu
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. I see that everybody seems to be here. I
4 welcome you on the sixth day of the first session of
5 the Hearings in the ICSID Arbitration Case 15/31
6 between Gabriel Resources Limited and Gabriel
7 Resources (Jersey) Limited versus Romania. I thank
8 you very much for having accepted to sit also on
9 Saturday morning.

10 I will start; we have not many points. The
11 first again thanks to our Court Reporters for the
12 Transcript. Thanks to our Secretary of the Report on
13 the time.

14 The program for this morning is clear. We
15 will have the testimony of Mr. Boc.

16 And last point, the proposal of the Arbitral
17 Tribunal for Monday would be to start with
18 Mr. Ariton, then Mr. Mocanu, then Ms. Serban, and
19 Mr. Jurca, if possible, probably Professor Mihai
20 probably will be on Tuesday.

21 Do you have a comment to that on your side?
22 No comment?

1 DR. HEISKANEN: We would need to look at the
2 availabilities and revert during the break.

3 PRESIDENT TERCIER: Okay.

4 DR. HEISKANEN: Or after the break, rather.

5 PRESIDENT TERCIER: Thank you very much.

6 Fine.

7 If you have no further point, I think we
8 could start with the examination of Mr. Boc.

9 EMIL BOC, RESPONDENT'S WITNESS, CALLED

10 PRESIDENT TERCIER: Good morning, Mr. Boc.

11 I welcome you in this room, this proceeding. I'm
12 glad for you being here.

13 I would like to start with the question of
14 the language. In your Witness Statement, at the very
15 last sentence, you write: "While this statement has
16 been prepared in English, if called upon to respond
17 to questions based on it orally, I will do so in
18 Romanian."

19 Is it still the case?

20 THE WITNESS: I can have in English, but in
21 case I need some time, so sometimes translation I
22 will ask, but mainly I can do it in English.

1 PRESIDENT TERCIER: Thank you very much.

2 In any case, if you have the slightest doubt
3 or problem, we will go to the Interpreters who are at
4 our disposal.

5 THE WITNESS: Thank you, Mr. President.

6 PRESIDENT TERCIER: Fine.

7 THE WITNESS: And, of course, I would just
8 like to thank you to you, members of the jury and all
9 of you, for accepting me to be here on Saturday. I
10 appreciate the effort, and I appreciate so much your
11 decision to be here today. Thank you.

12 PRESIDENT TERCIER: Thank you very much.

13 You will be heard in this procedure, as you
14 know, as a witness. I would like to introduce the
15 members of the Arbitral Tribunal. On my left-hand
16 side, Professor Horacio Grigera Naón; on my
17 right-hand side, Professor Zachary Douglas. I'm the
18 Chairman of the Tribunal, and my name is Pierre
19 Tercier. You have Ms. Marzal Yetano, Secretary to
20 the Tribunal; and the Assistant to the Tribunal,
21 Maria Athanasiou.

22 I suppose you know who could be on each side

1 of the room, and I won't introduce them over there.

2 As a witness, may I invite you to read the
3 Declaration that you have in front of you.

4 THE WITNESS: Out loud?

5 PRESIDENT TERCIER: Yes.

6 THE WITNESS: Do I have to--

7 PRESIDENT TERCIER: Yes.

8 THE WITNESS: Yes.

9 I solemnly declare upon my honor and
10 conscience that I shall speak the truth, the whole
11 truth, and nothing but the truth.

12 PRESIDENT TERCIER: Thank you.

13 THE WITNESS: Thank you.

14 PRESIDENT TERCIER: You have prepared for
15 this procedure a witness statement dated 6th of May
16 2019. You have this document on your table?

17 THE WITNESS: It's supposed to be around.
18 Yes, it is right here. I can see now.

19 PRESIDENT TERCIER: My question to you is:
20 Can you confirm the content of this statement? If
21 you have amendments or other points you would like to
22 raise, you can do it.

1 THE WITNESS: Yes. This is the statement.

2 Yes, Mr. President, yes.

3 PRESIDENT TERCIER: And you confirm it?

4 THE WITNESS: Yes.

5 PRESIDENT TERCIER: You know the procedure,
6 after one question or two questions from the
7 Tribunal, you will be examined by Respondent in
8 direct and then cross-examined by counsel for
9 Claimant and then redirect with Claimant for
10 Respondent. This is a procedure. And you know also
11 that the Arbitral Tribunal has the right to intervene
12 whenever it finds it needs to.

13 I want to make one point concerning the
14 Transcript. It is important to have a clear
15 Transcript, that you avoid to speak at the same time
16 as other people, so we--to prevent any overlapping.

17 Good. My questions to you are the
18 following, very easy questions:

19 The first, even if you have answered it in
20 your Witness Statement, if you can, in broad terms,
21 recall us your involvement in the problems in the
22 chronology of the facts that have led us here at

1 issue.

2 THE WITNESS: Mr. President, I was the Prime
3 Minister of Romania between December 2008 until 6th
4 of February 2012. On that capacity, I was also,
5 besides all other important issues of the Government,
6 to be aware of the Project of Rosia Montana. And in
7 my Government program in 2009, we had a very specific
8 point in the program concerning the Rosia Montana
9 Project, so that was my overall capacity.

10 Within the framework of very difficult
11 economical crisis in Romania, in Europe, and in the
12 world. It was a very difficult period of time as it
13 was the worst crisis in Romania for the last 70
14 years, so we had to deal with a lot of issues from
15 the economical side but also from the social side,
16 and public pressure concerning the austerity
17 measures, jobs, and investments.

18 PRESIDENT TERCIER: Okay. Have you been in
19 any way involved in the Project before your term--?

20 THE WITNESS: No. I did not have any
21 capacity, legal capacity, to be involved before.

22 PRESIDENT TERCIER: Okay. And after that,

1 after you quit--

2 THE WITNESS: After that, nothing.

3 PRESIDENT TERCIER: Nothing. Good.

4 My second question to you--probably they
5 will come back to these points certainly over the
6 course of the testimony--

7 THE WITNESS: Of course.

8 PRESIDENT TERCIER: --but my question to you
9 is concerning the Witness Statement. Can you, in a
10 few words, tell us how it has been prepared, your
11 Witness Statement, what you have.

12 THE WITNESS: Mr. President, I was asked by
13 the lawyers to give an answer to some questions.
14 When I was asked, I said "of course," and I provided
15 my answer on my best knowledge concerning the
16 issue--the subject of this issue.

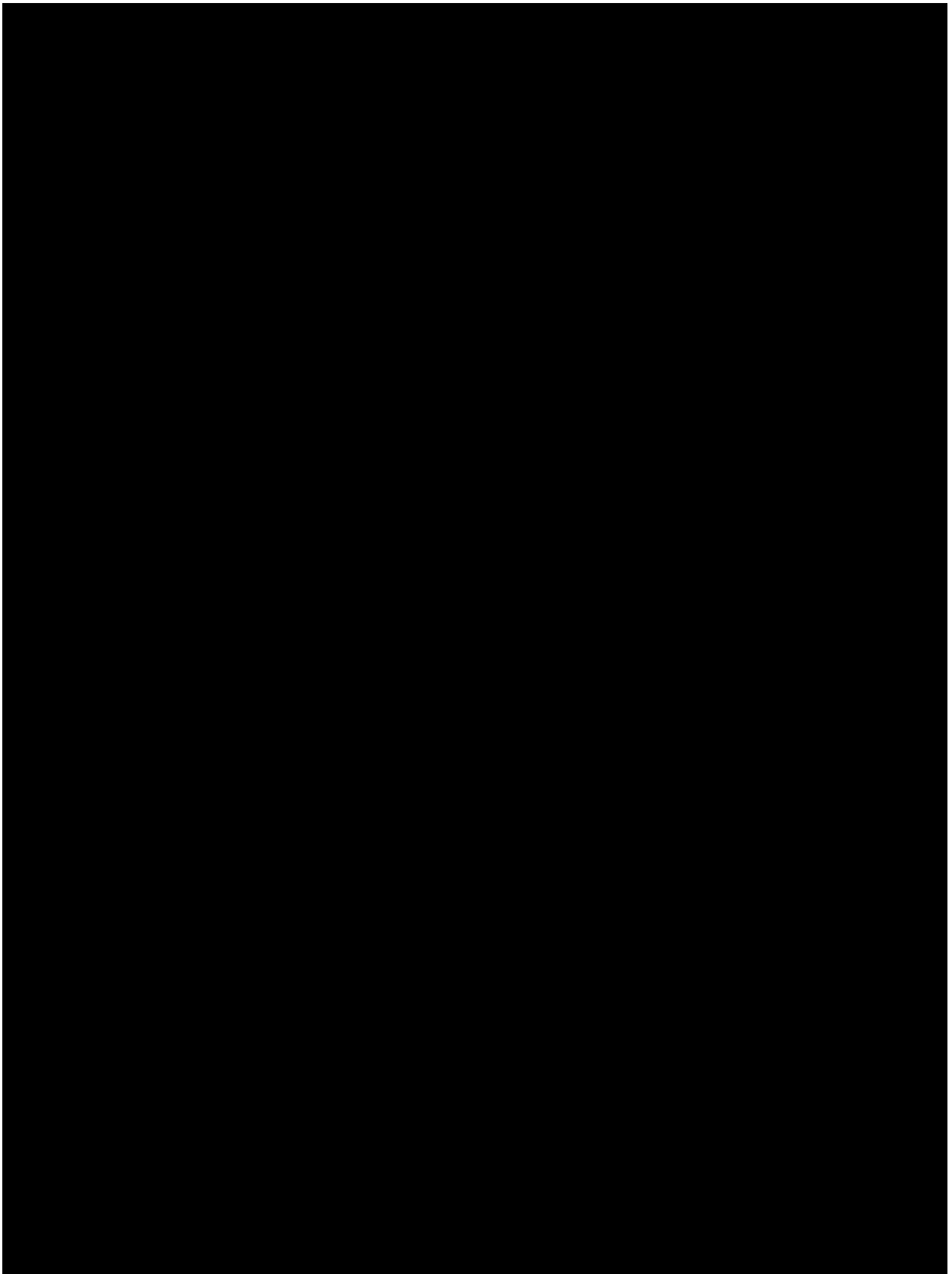
17 PRESIDENT TERCIER: And it has been prepared
18 based on that by the counsel?

19 THE WITNESS: The questions were prepared by
20 the counsel, the answers belongs to me entirely.

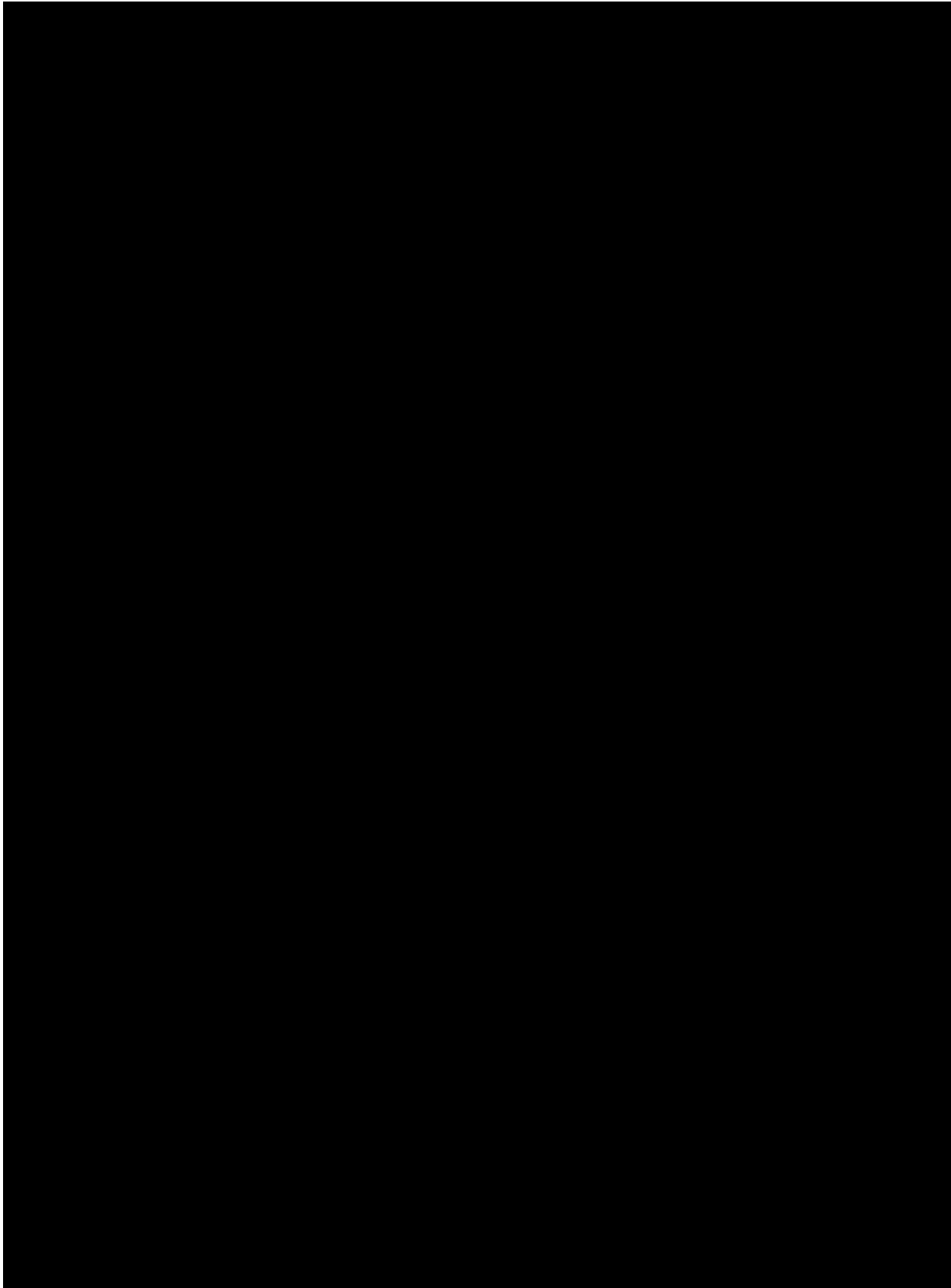
21 PRESIDENT TERCIER: Good. Okay. Fine.

22 THE WITNESS: And also, I was adding

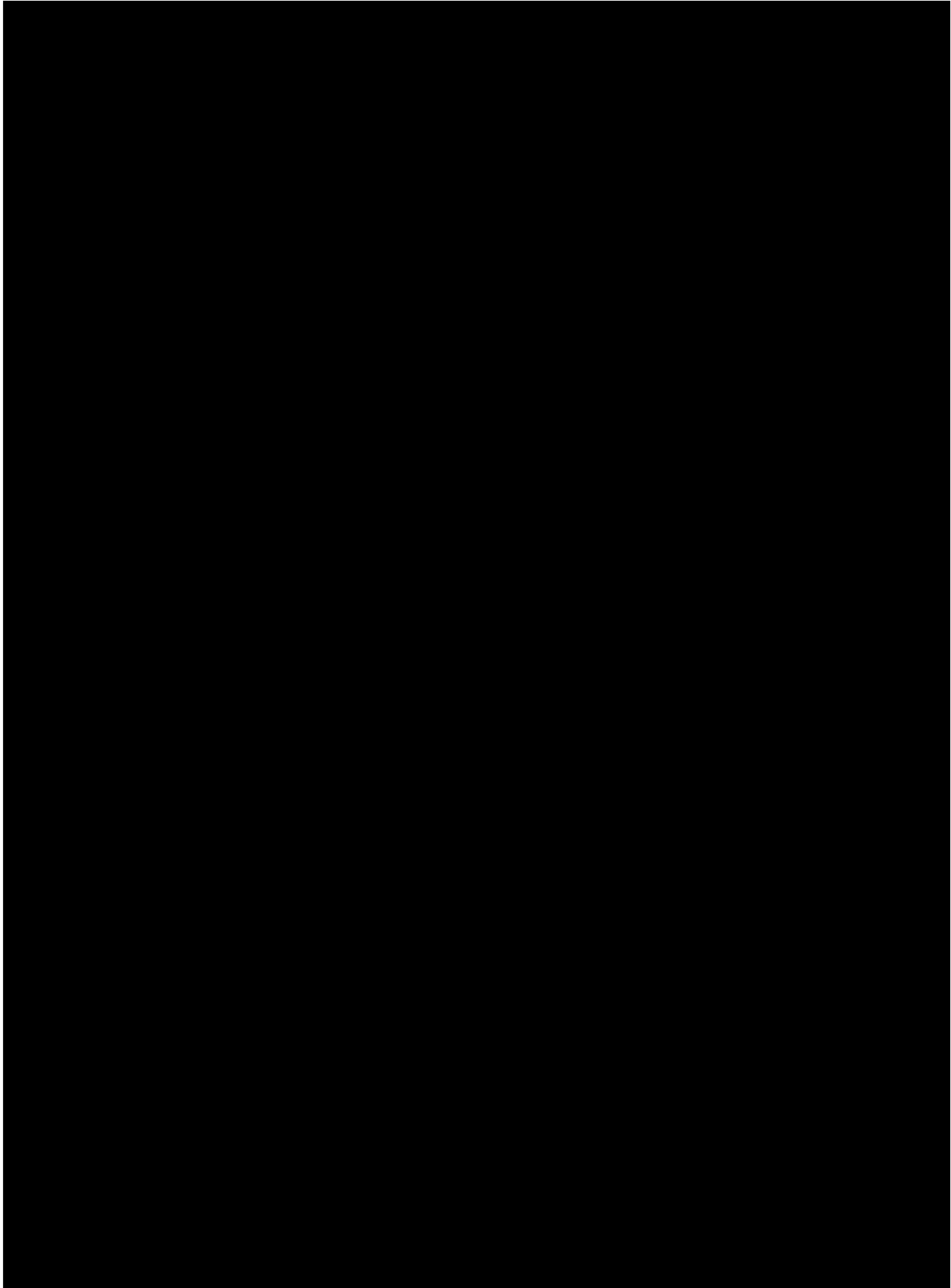
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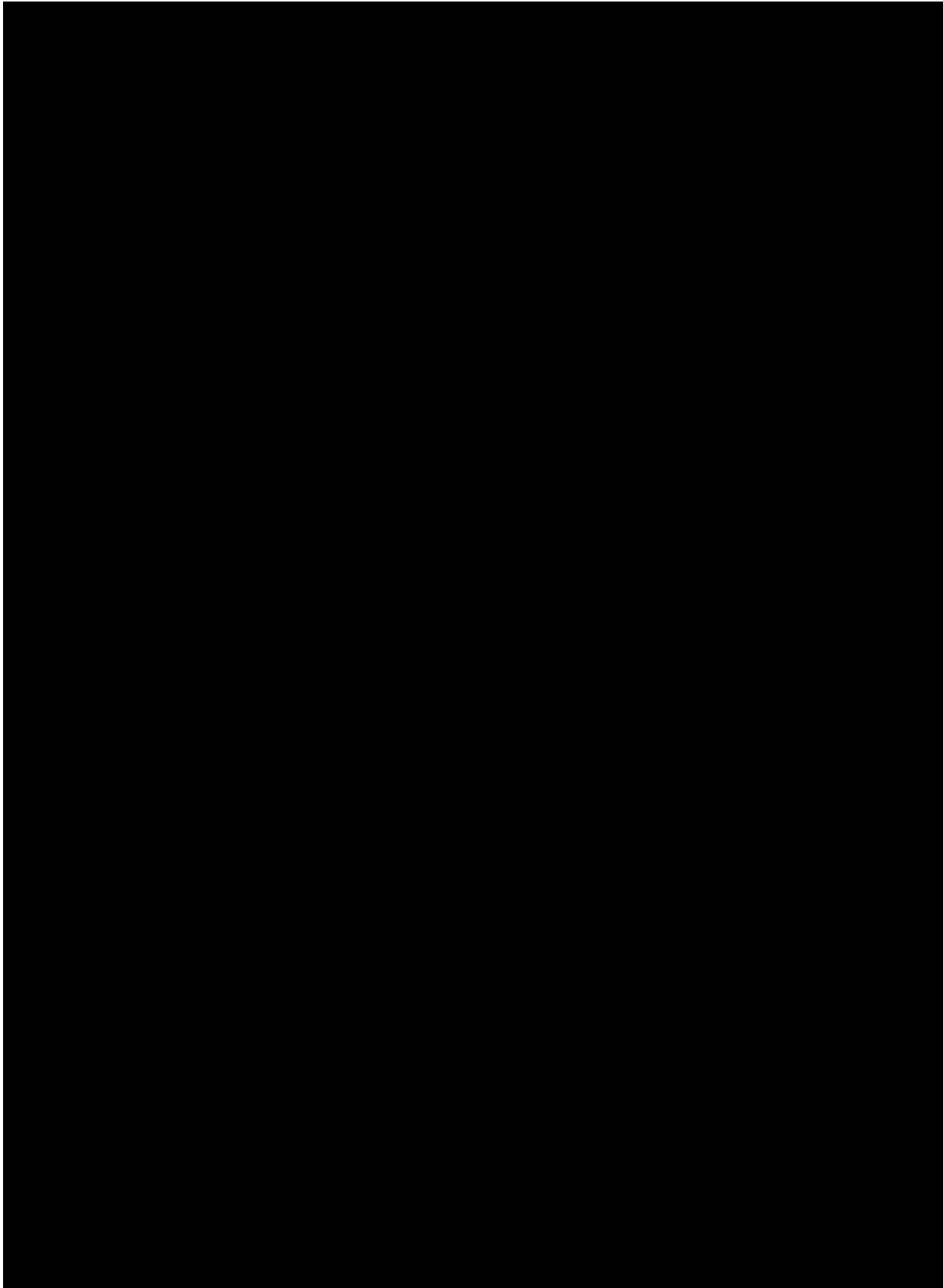
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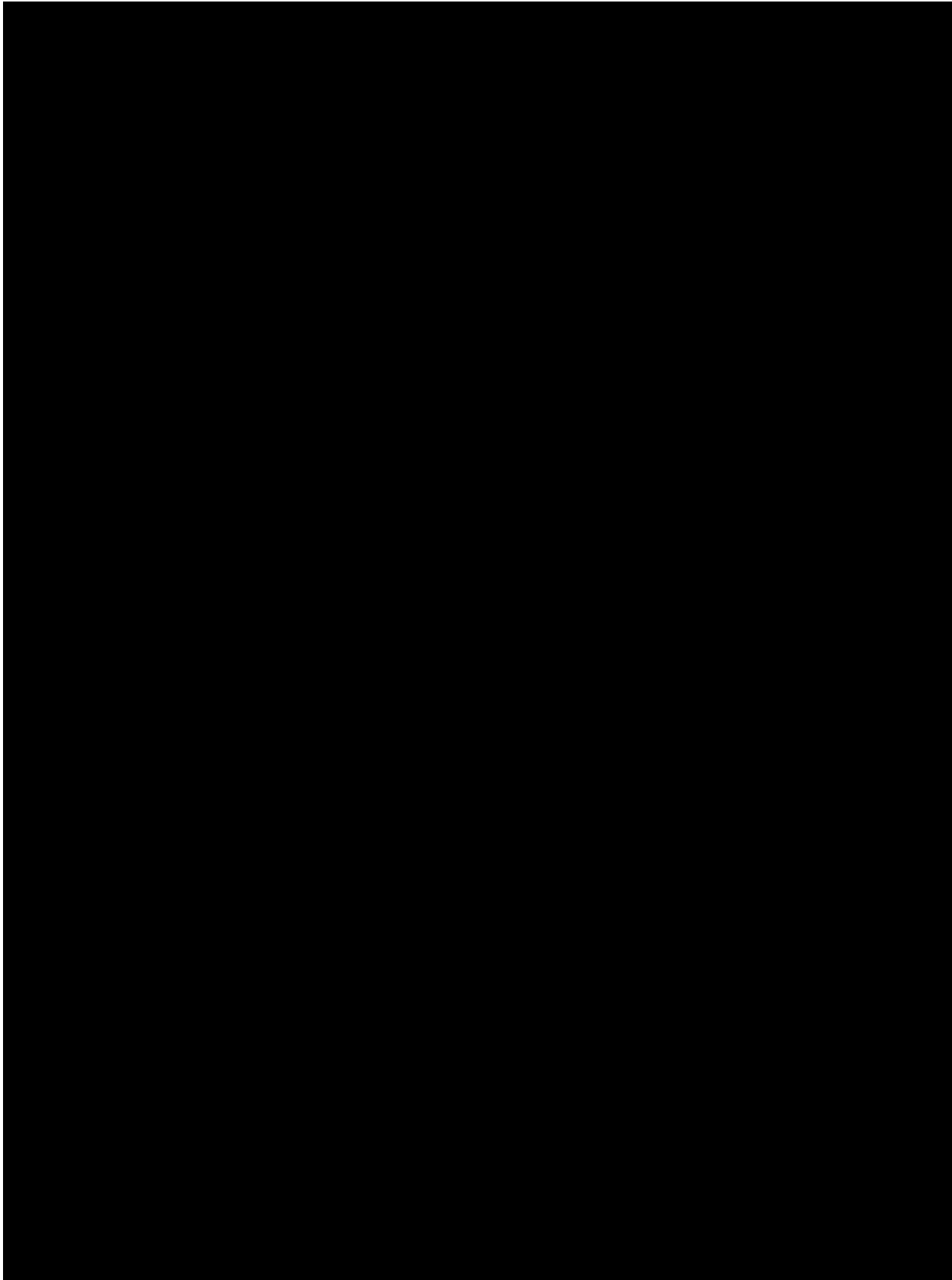
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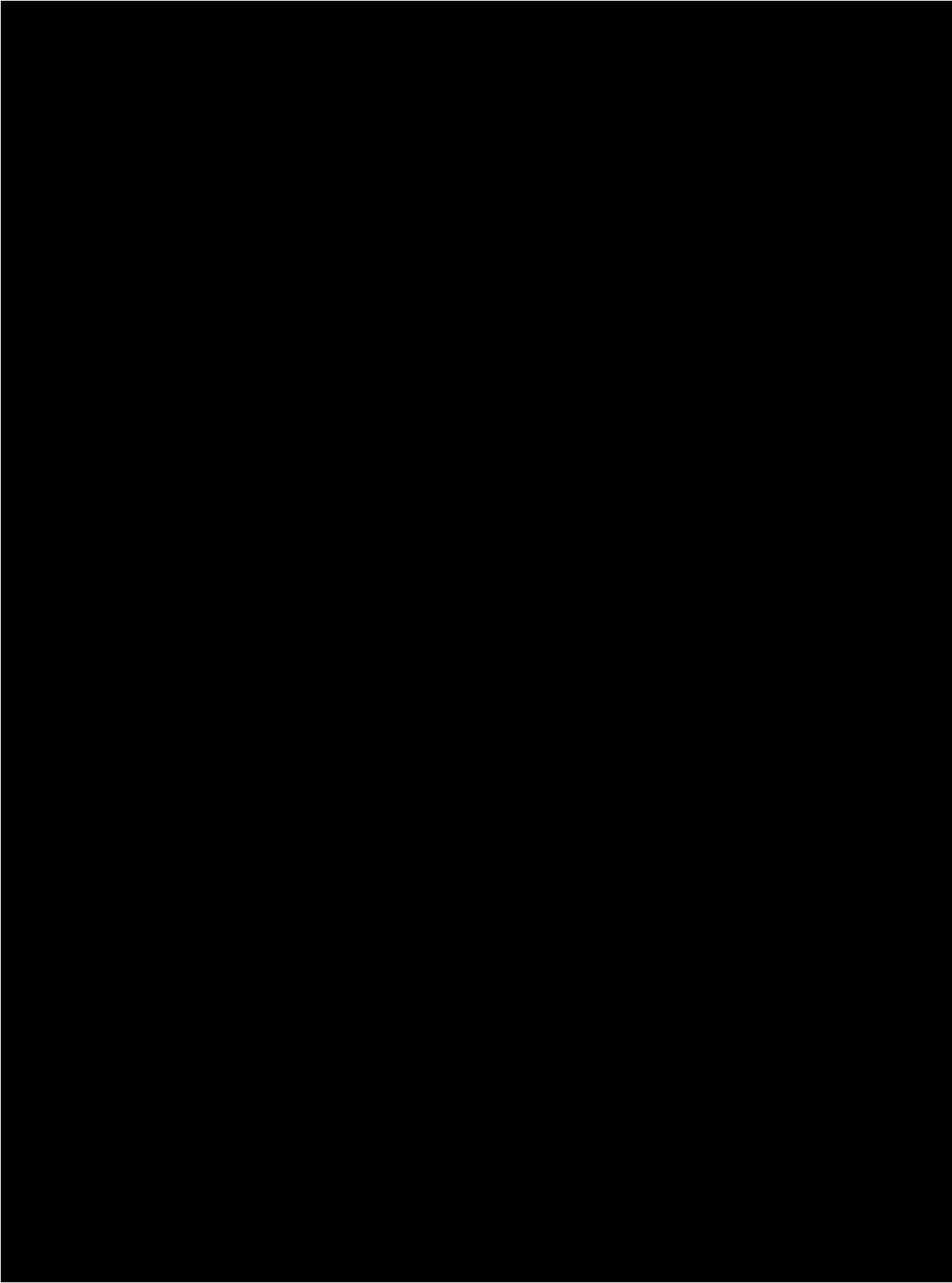
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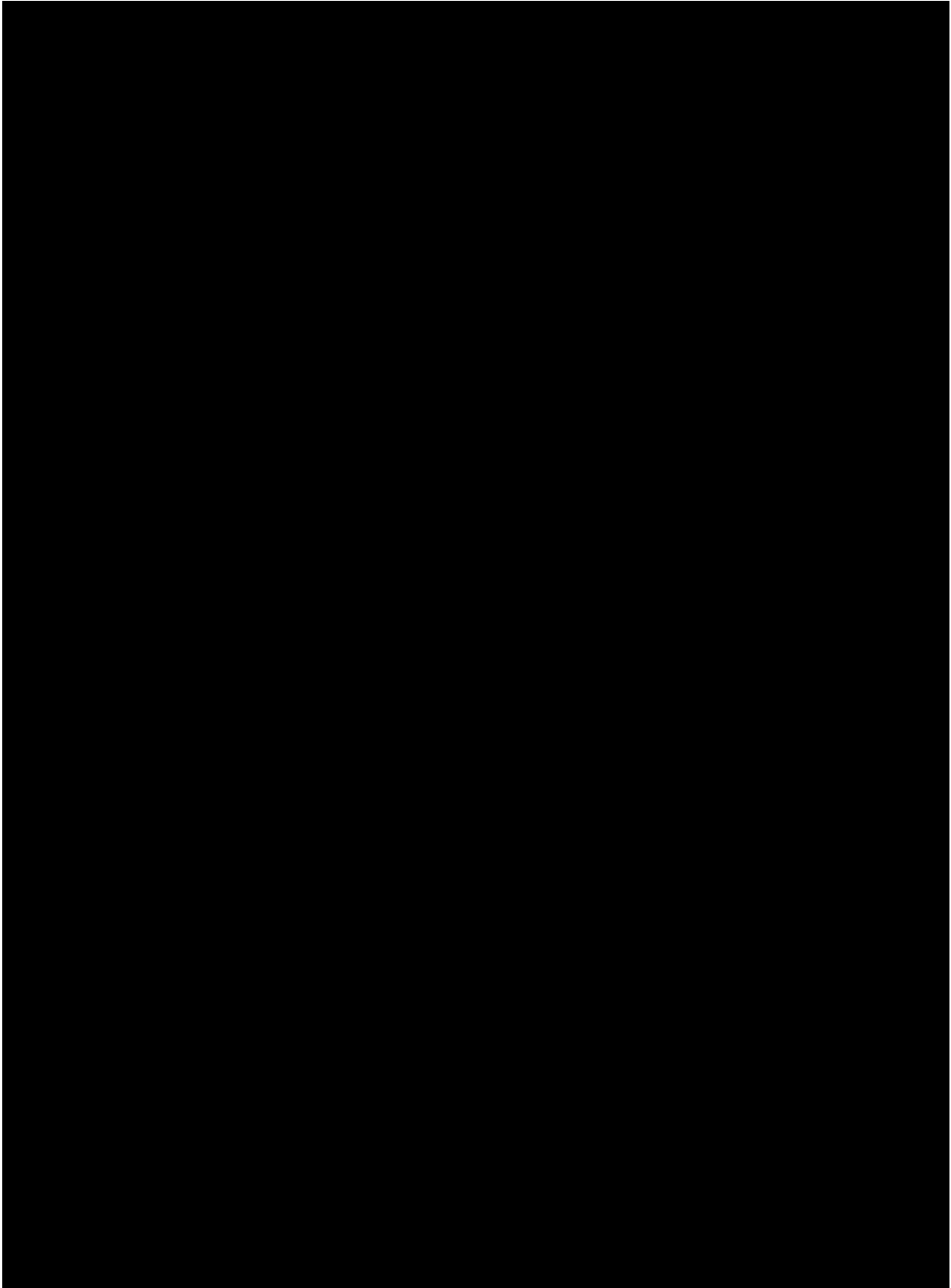
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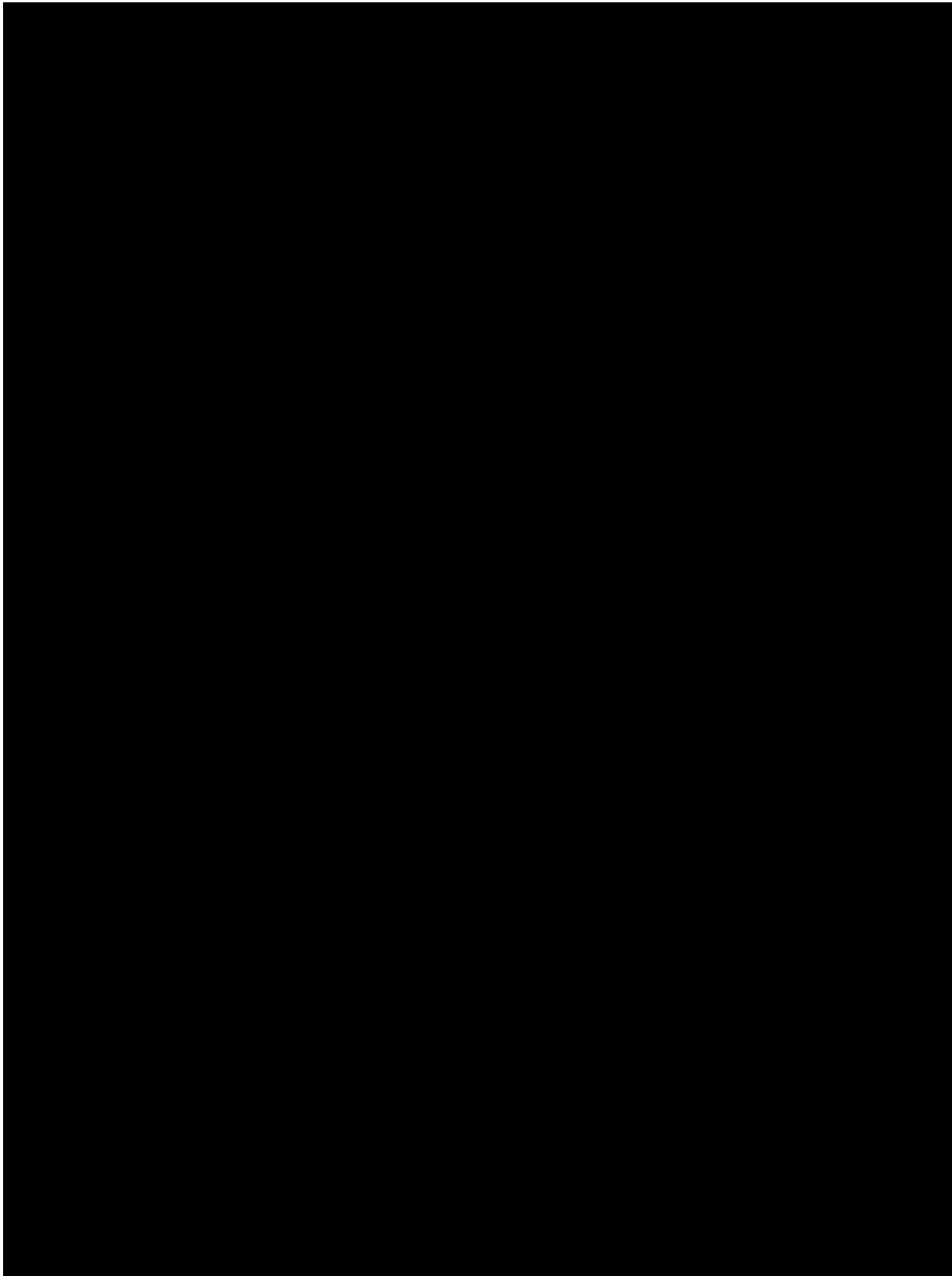
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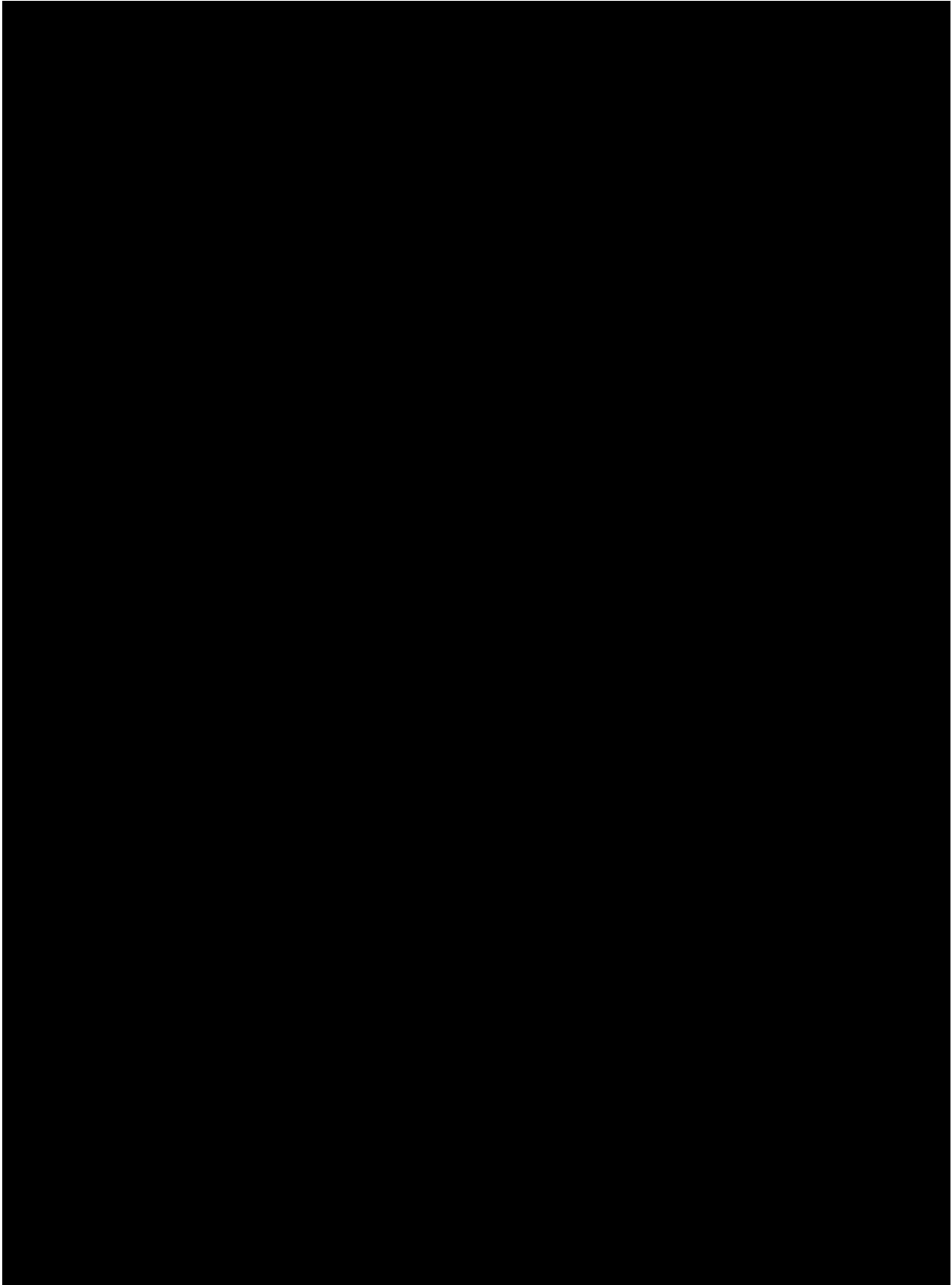
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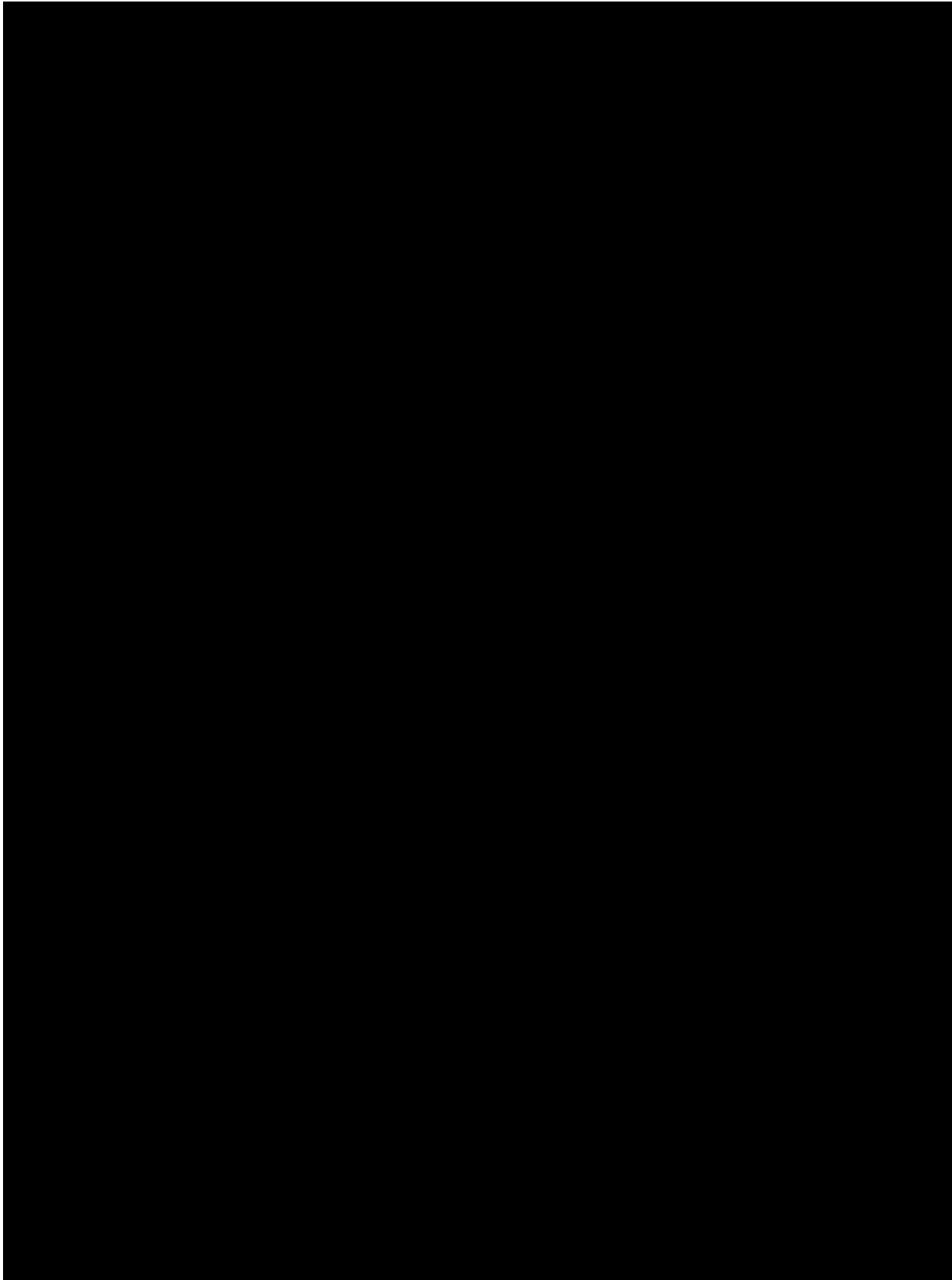
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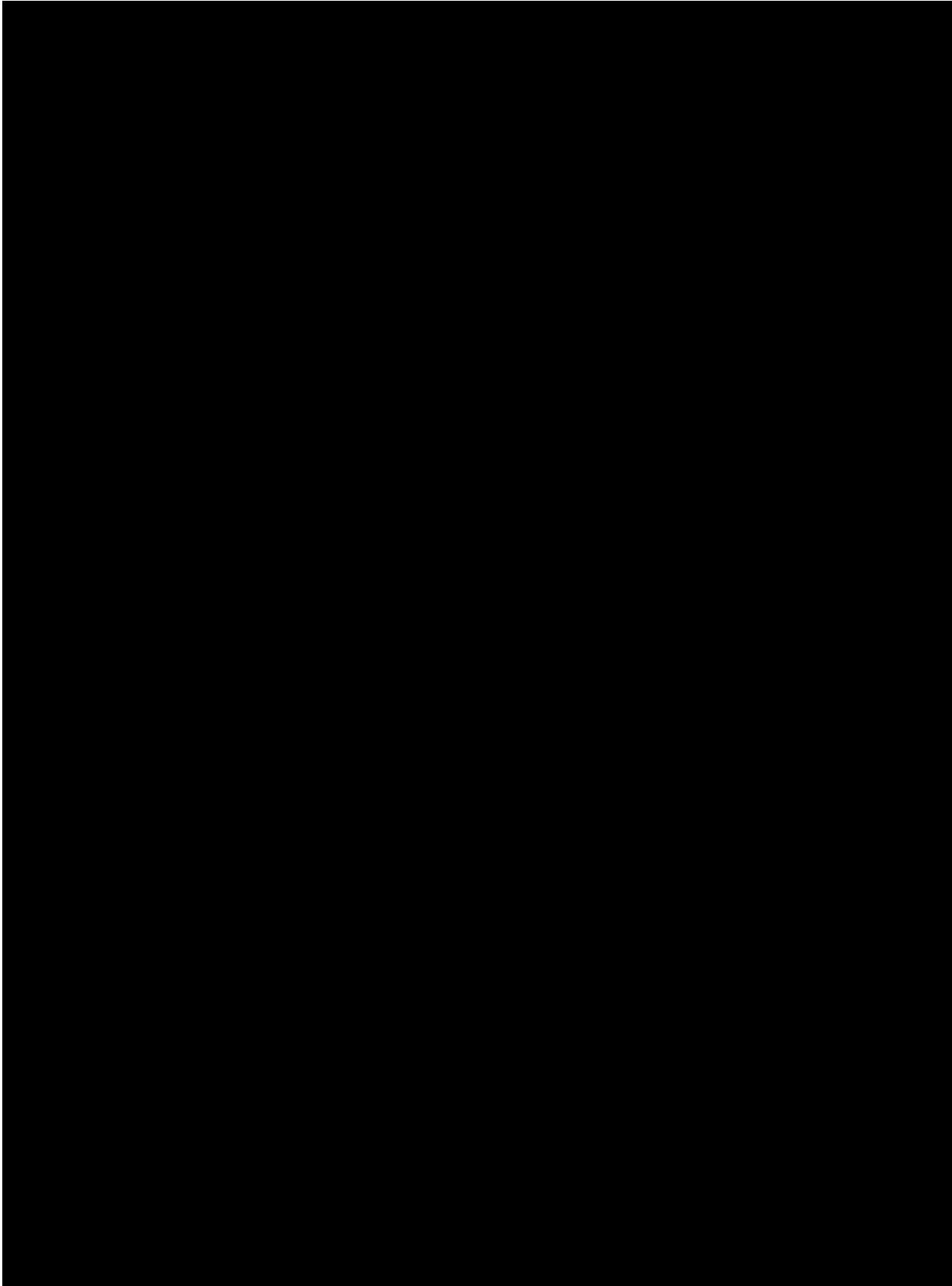
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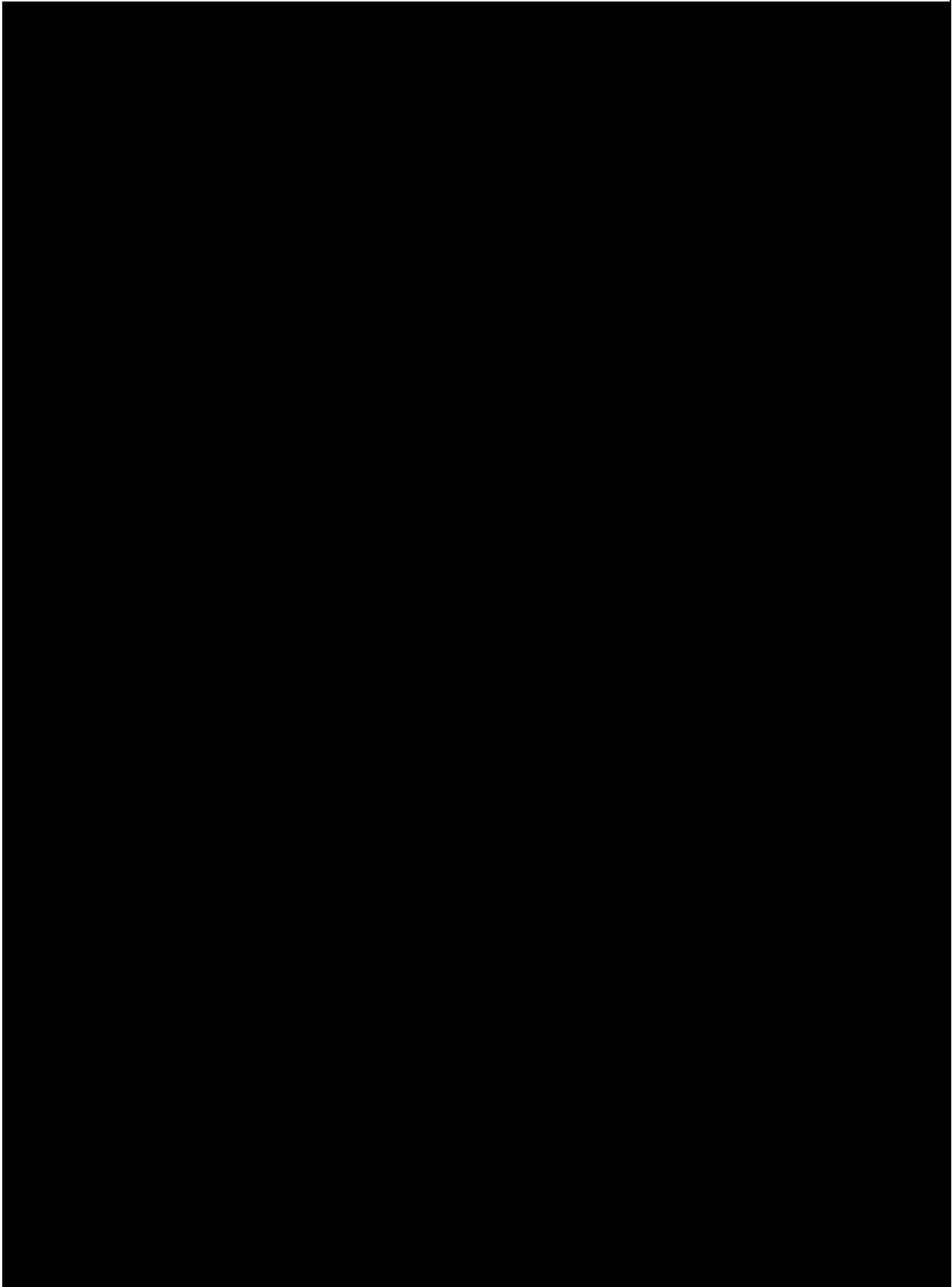
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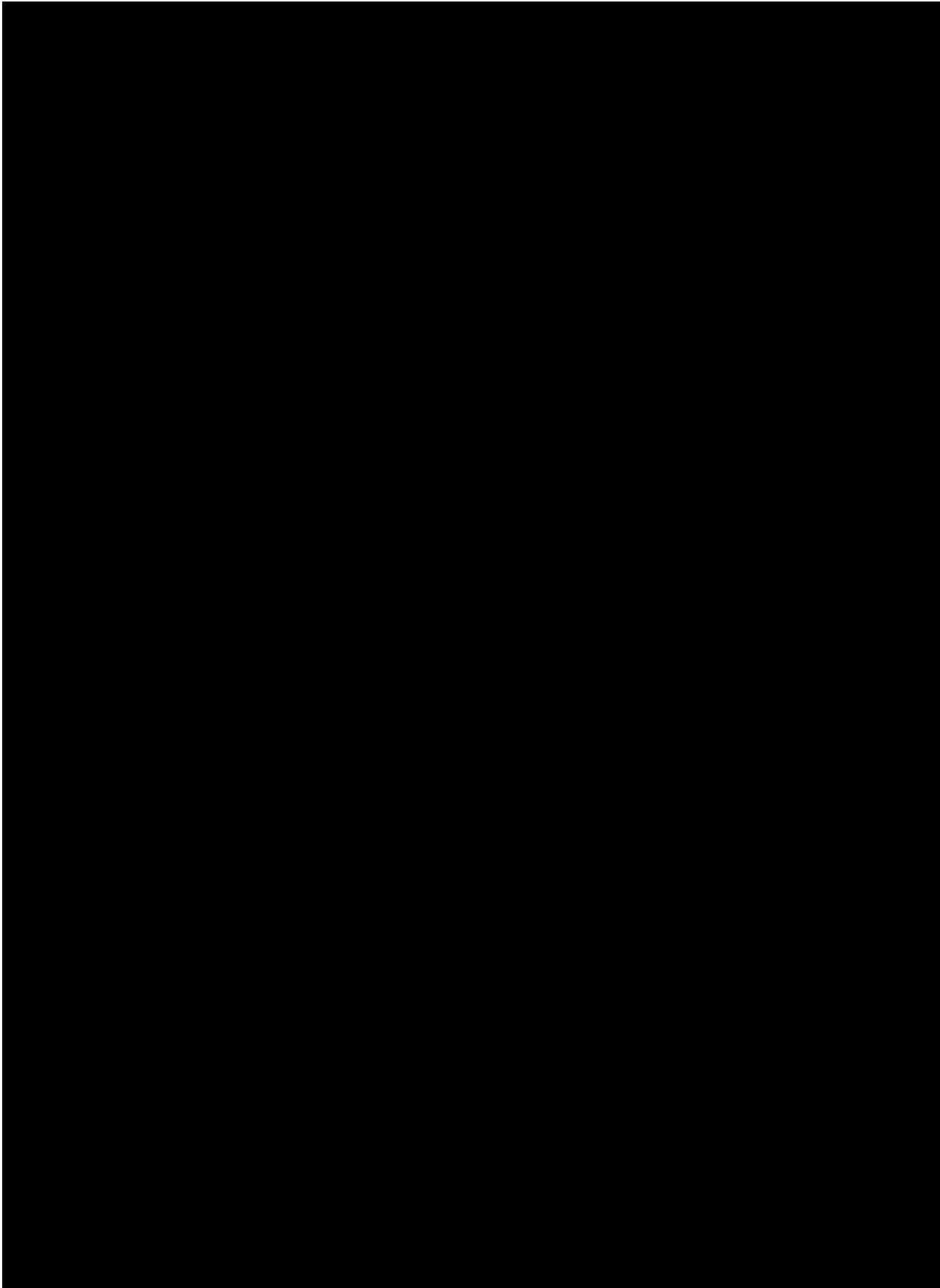
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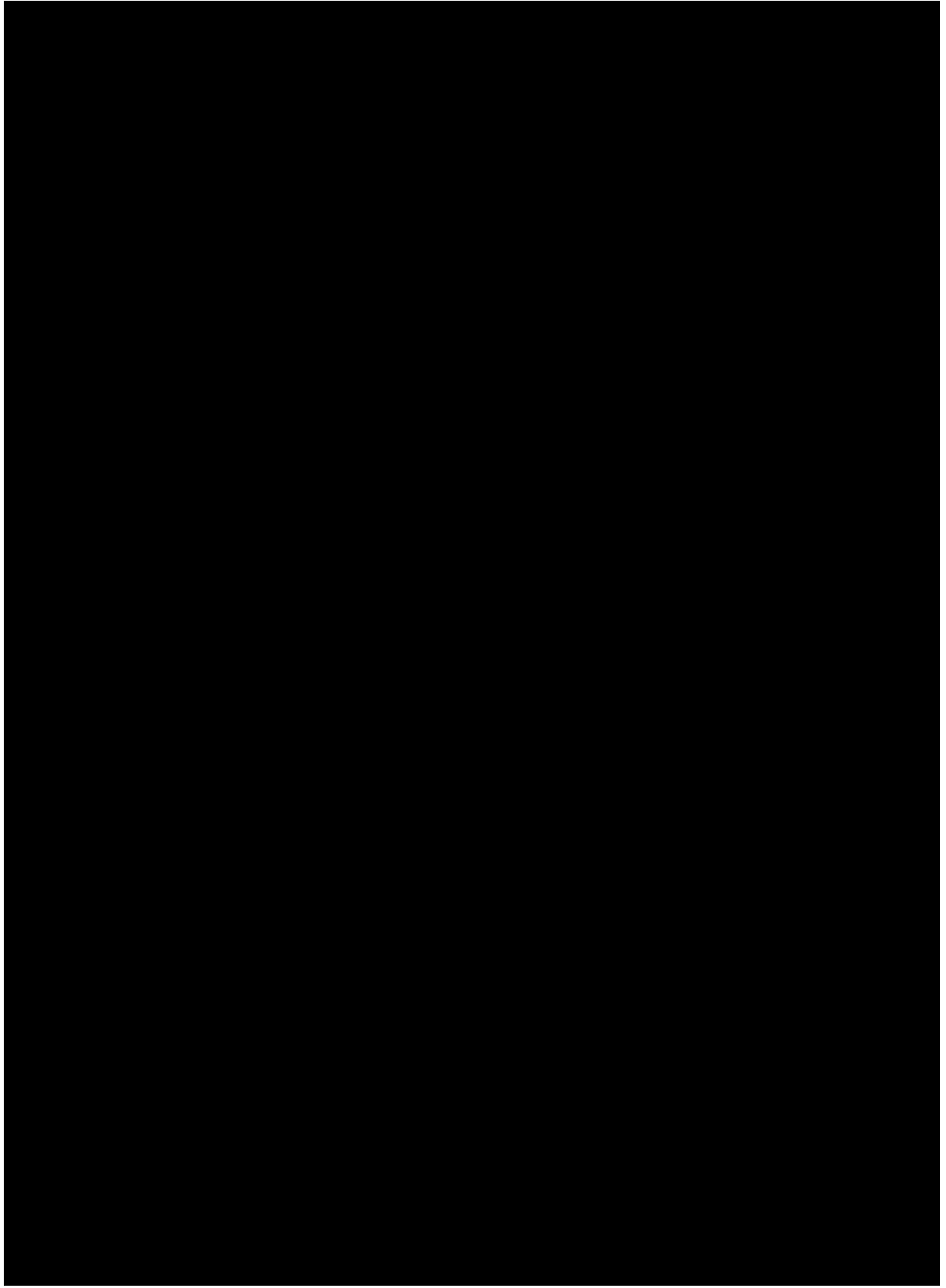
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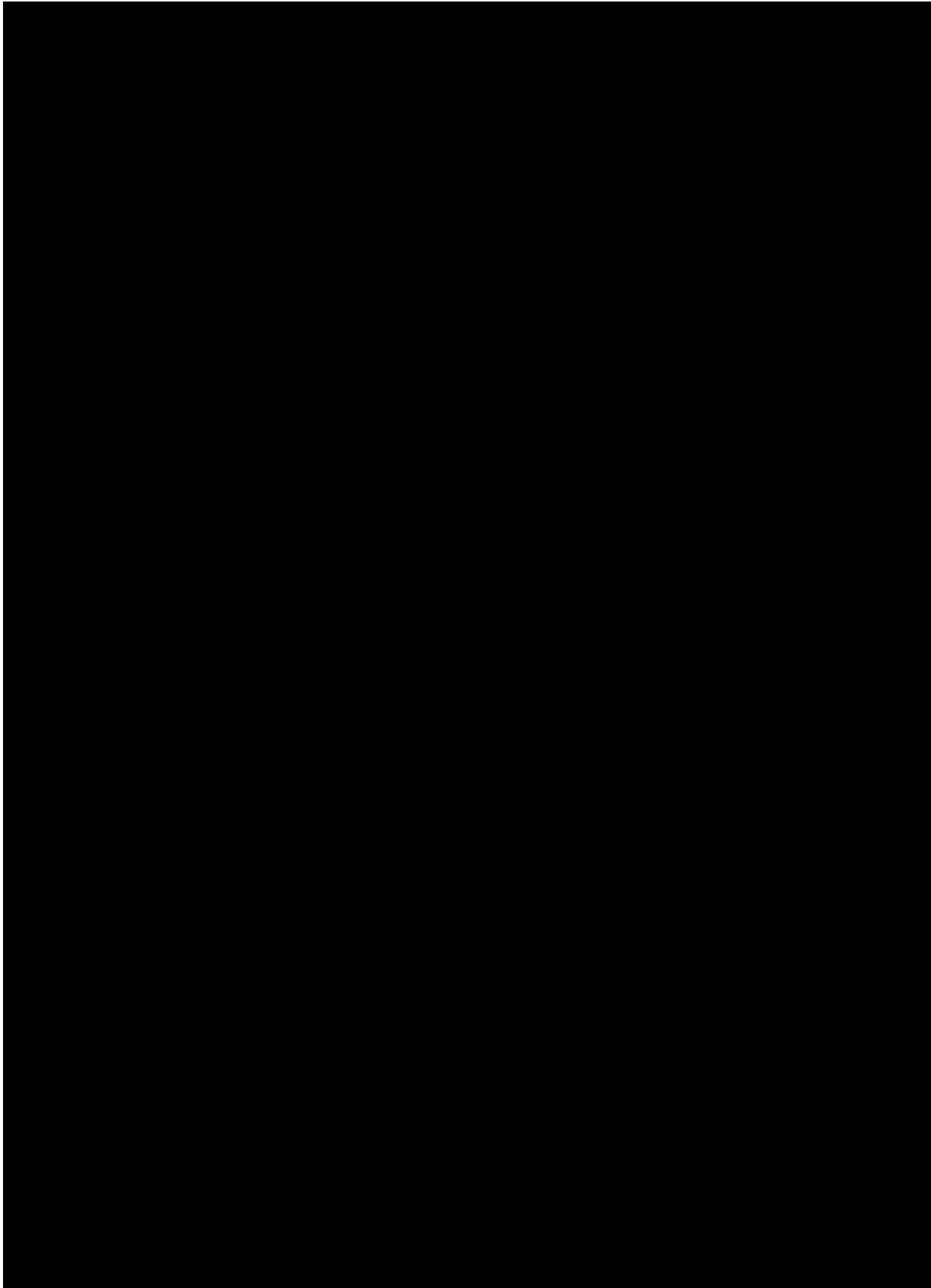
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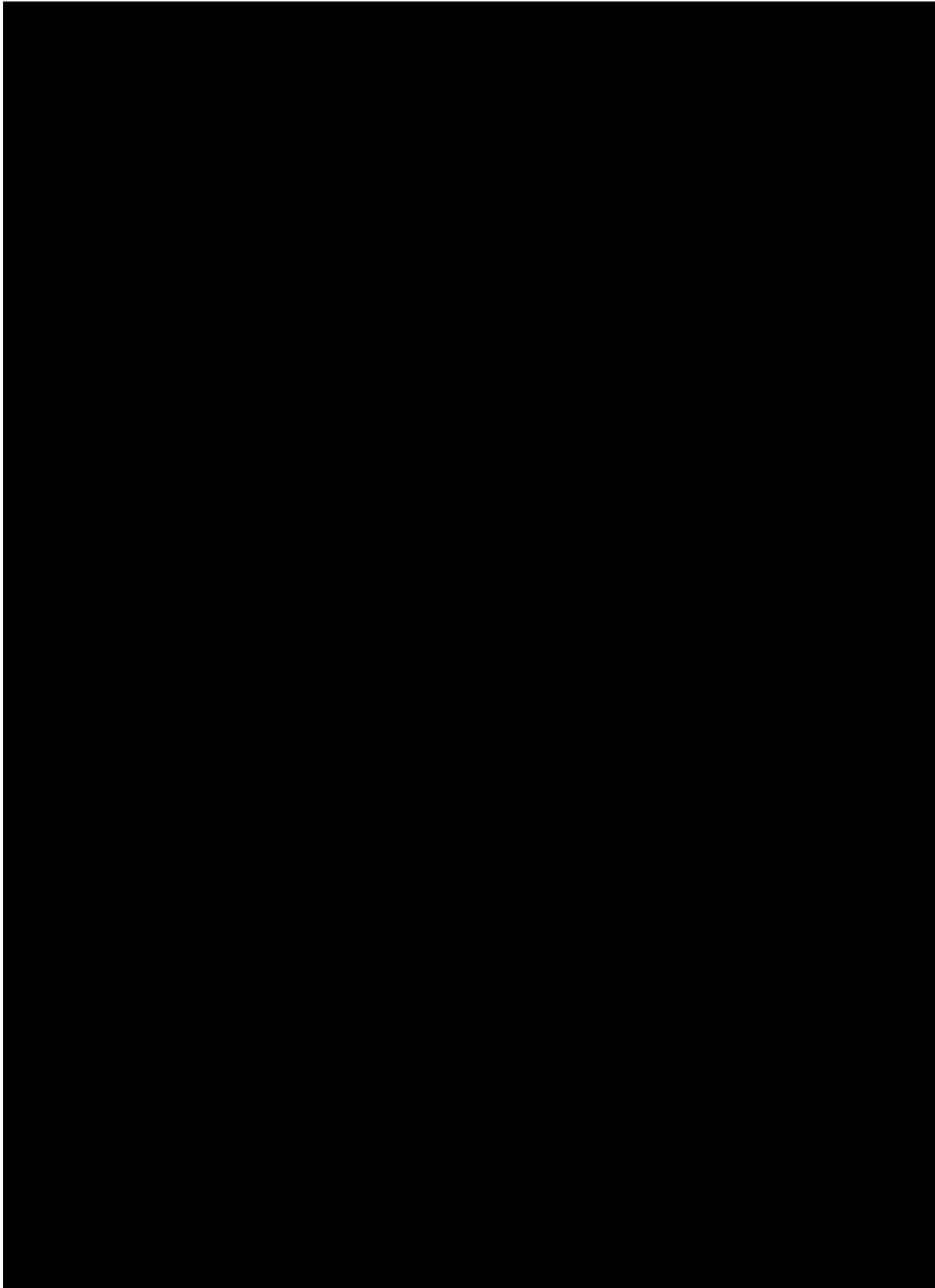
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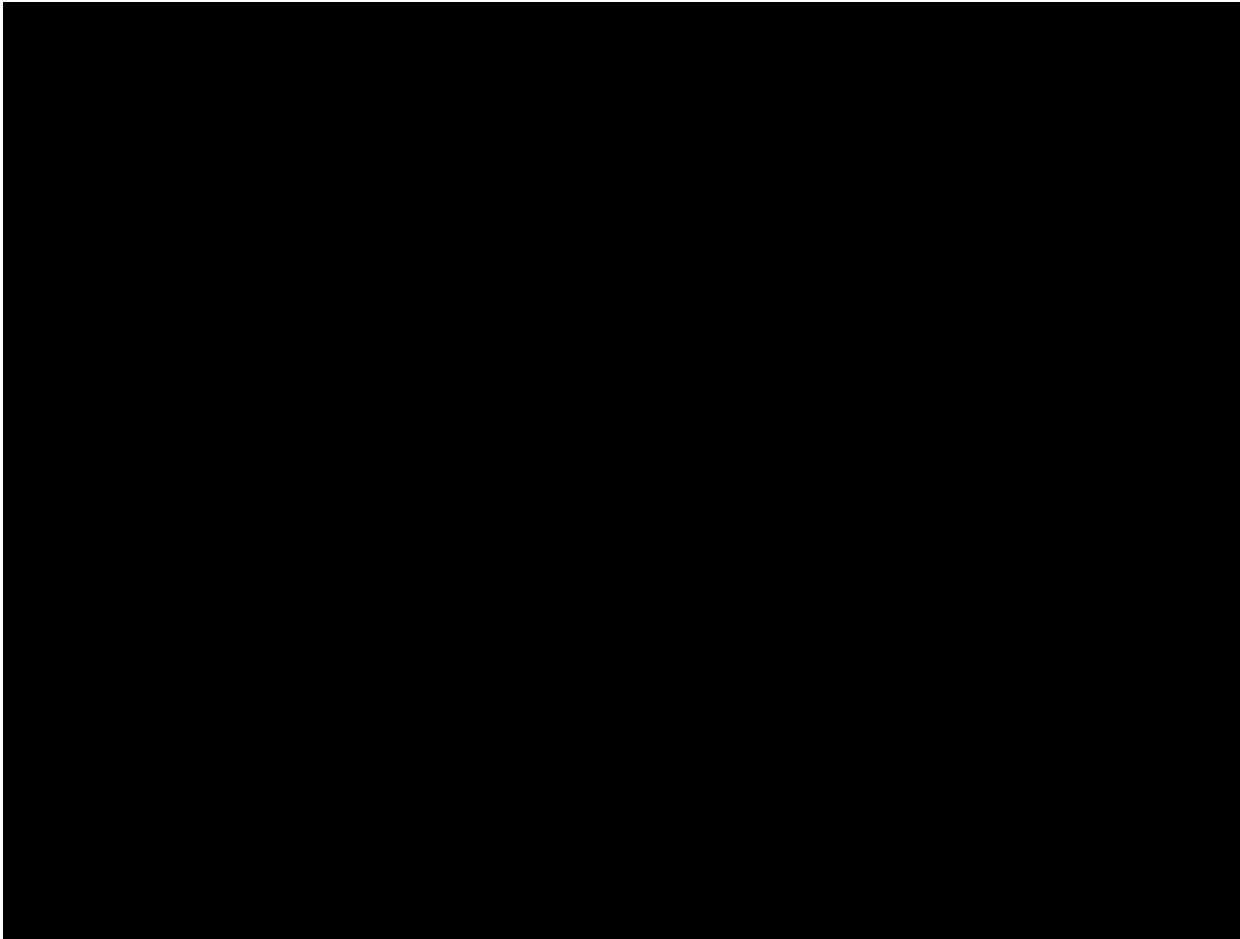
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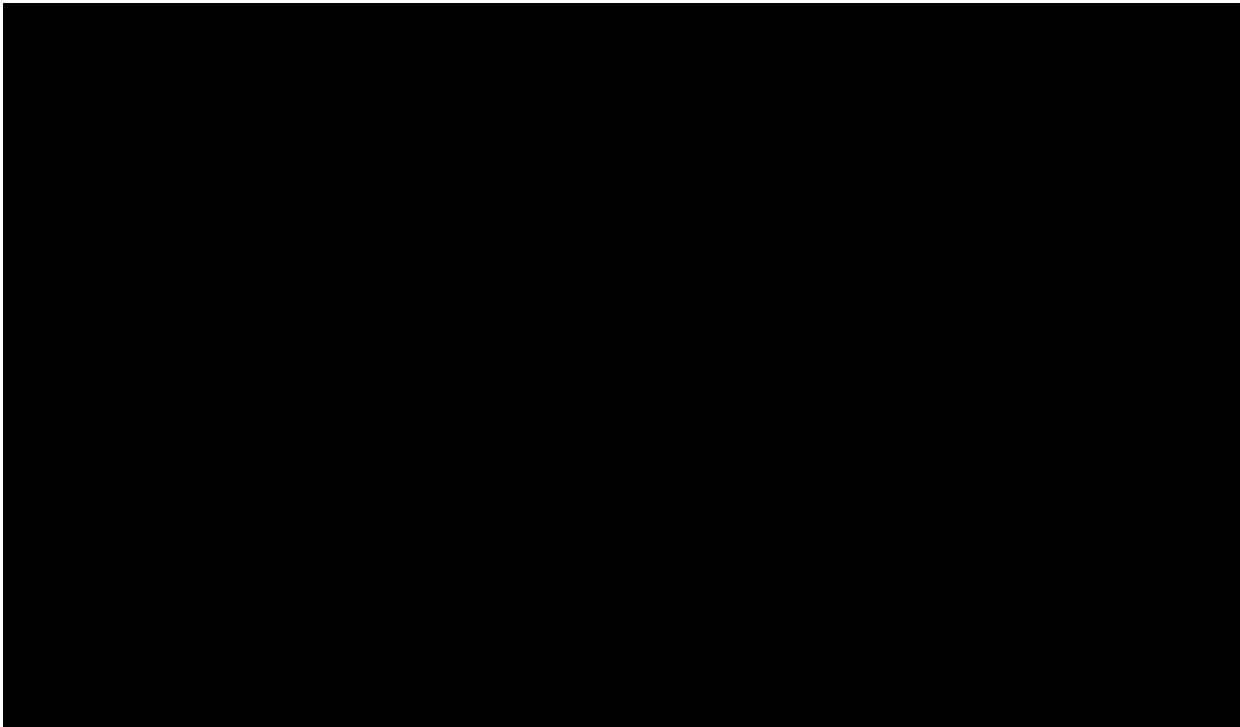
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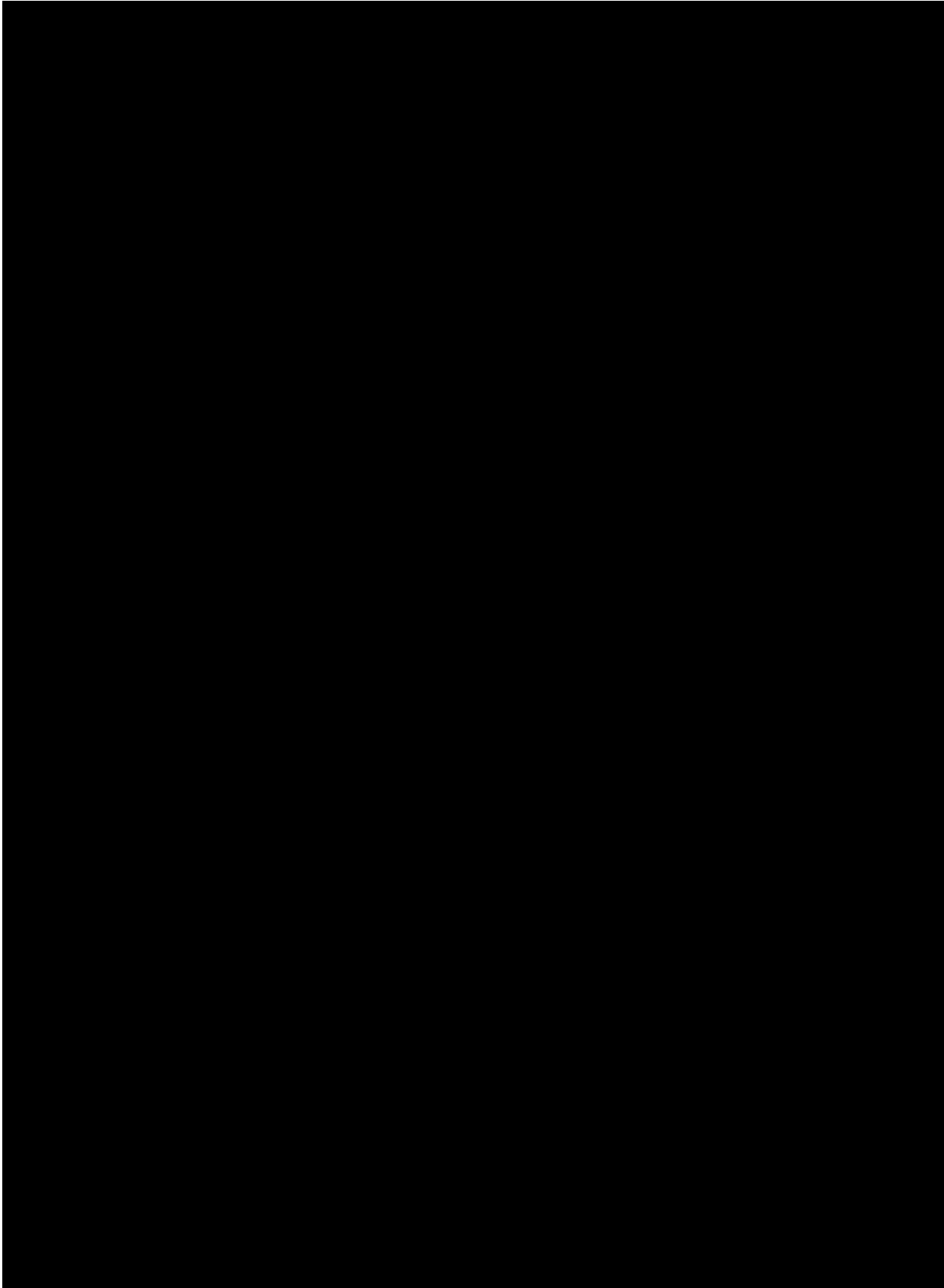
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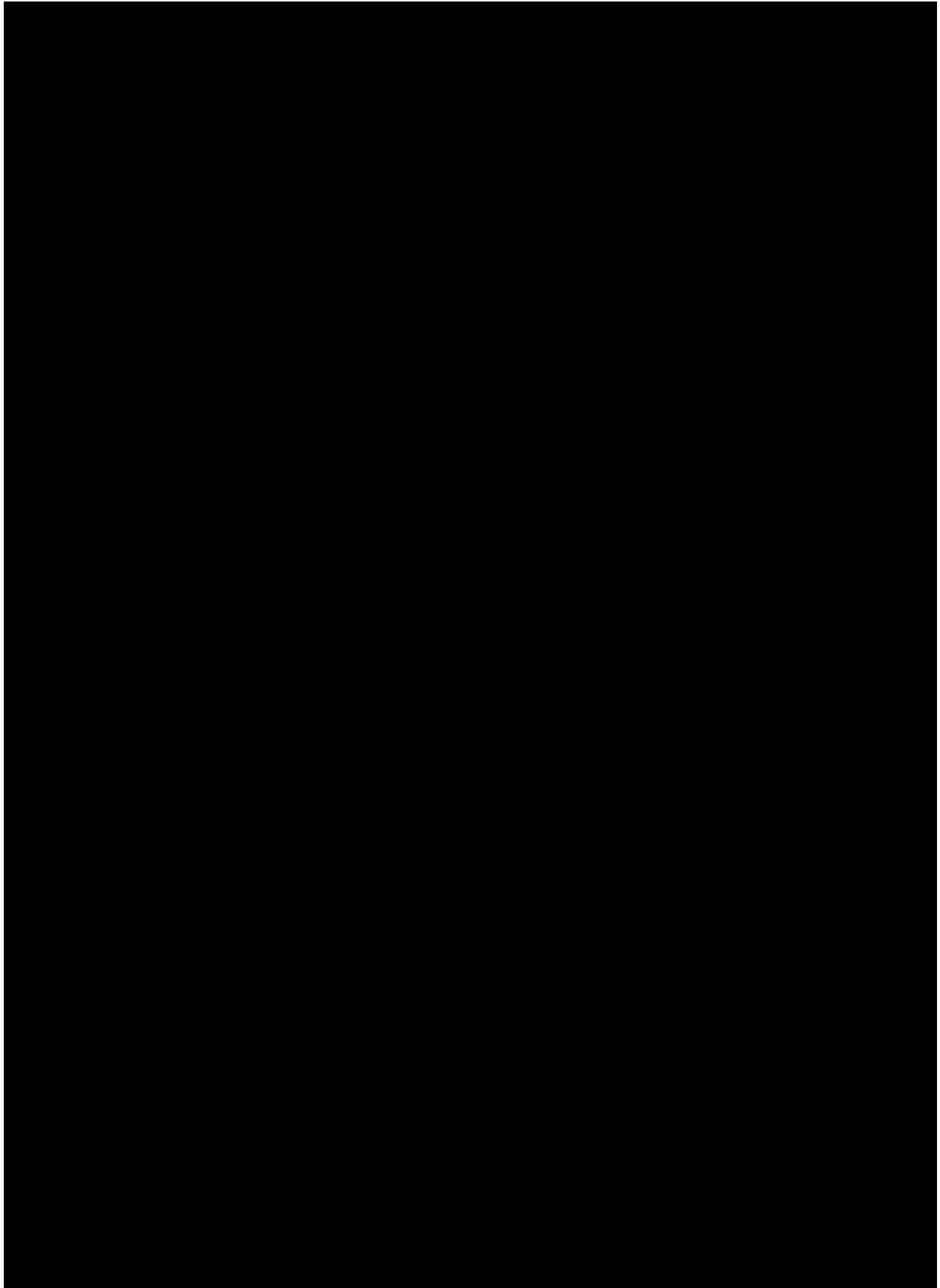
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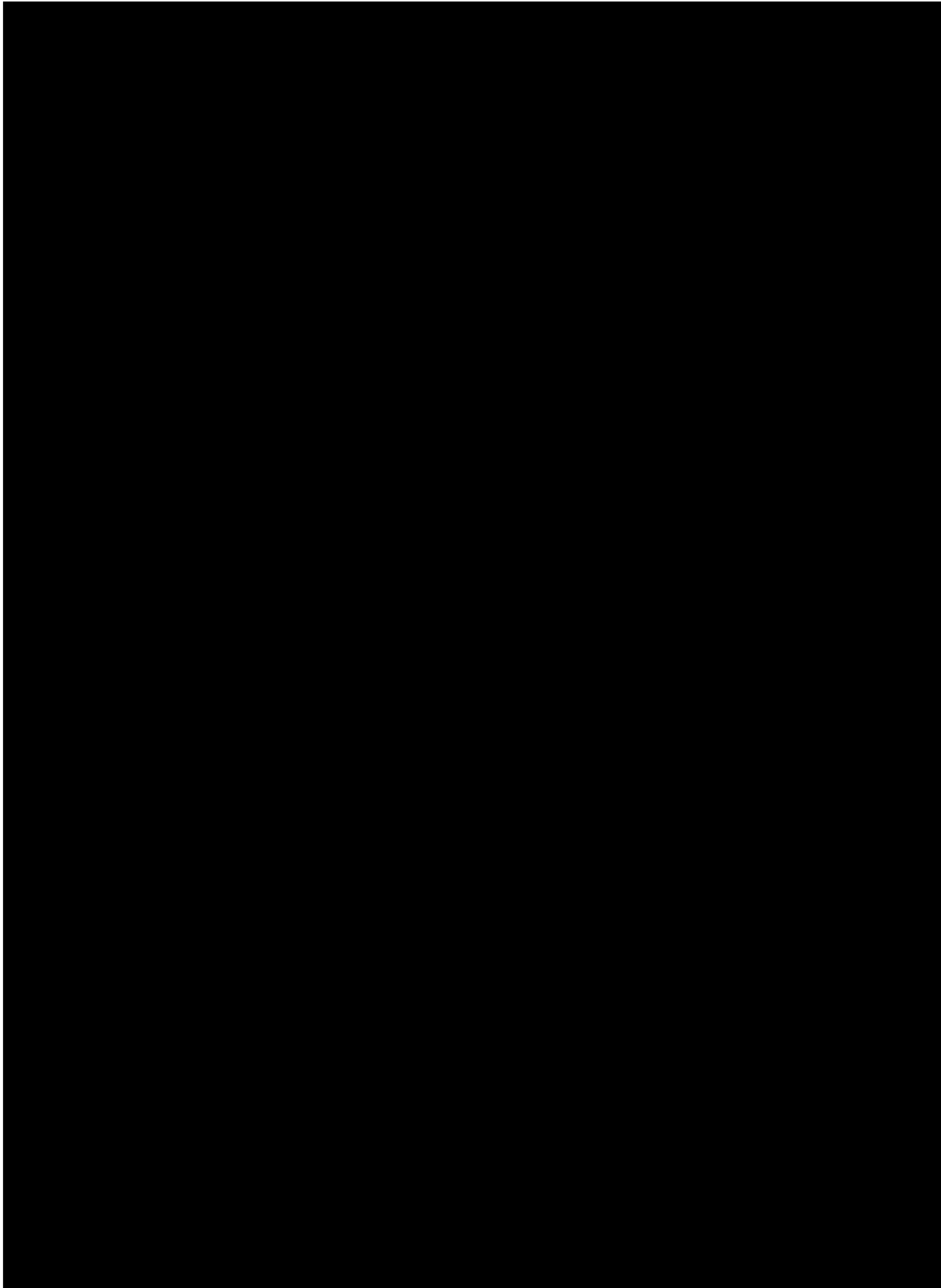
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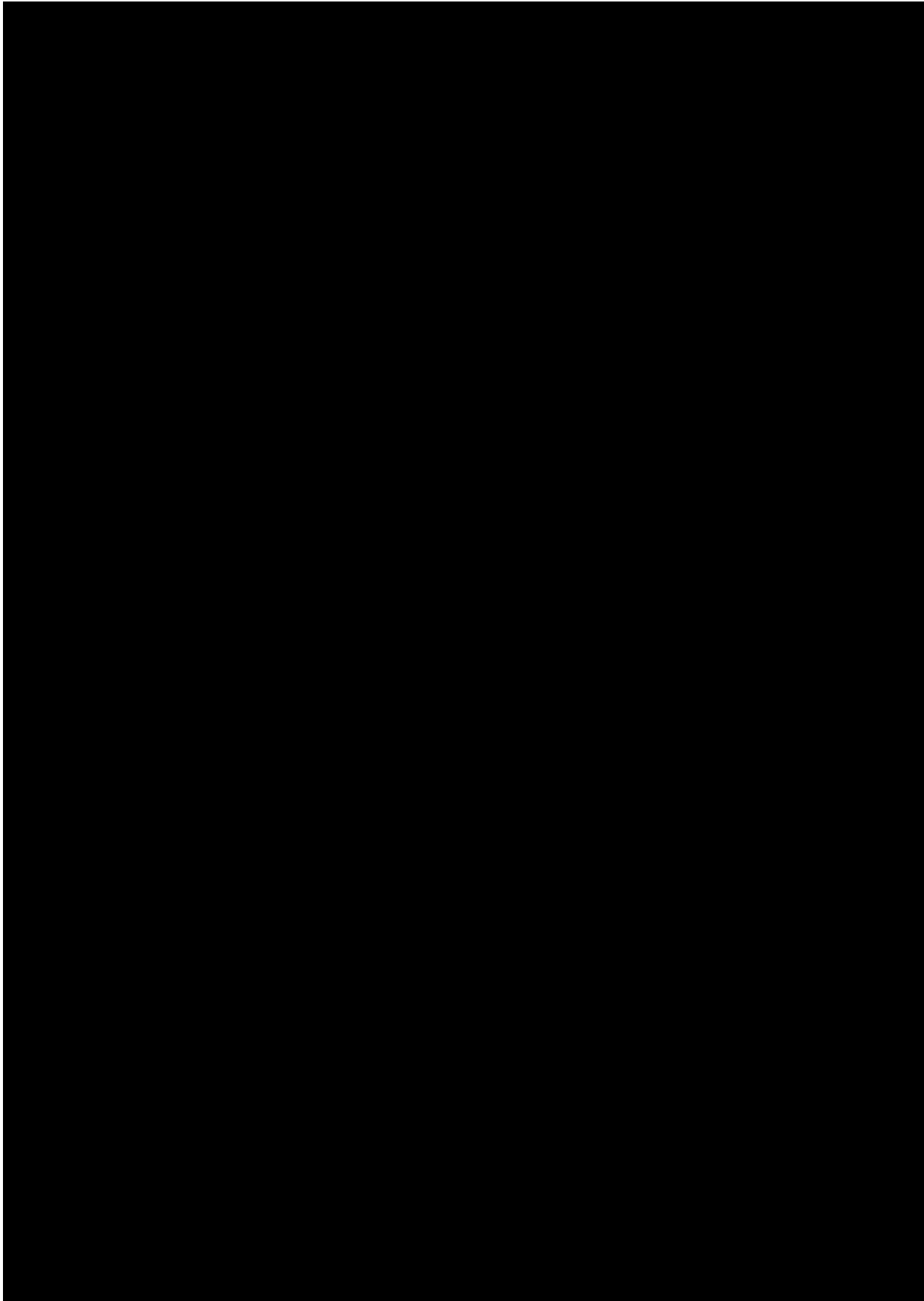
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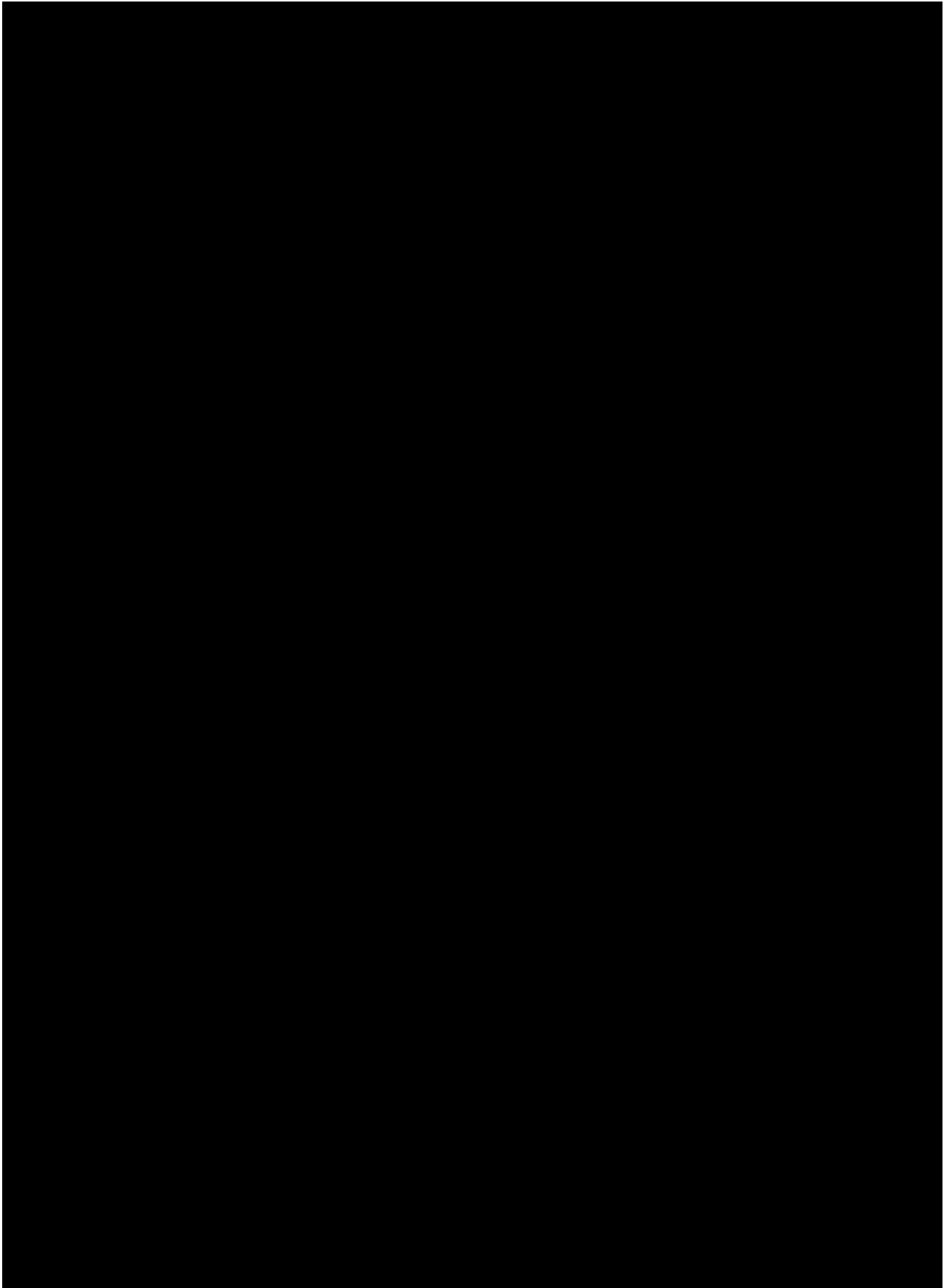
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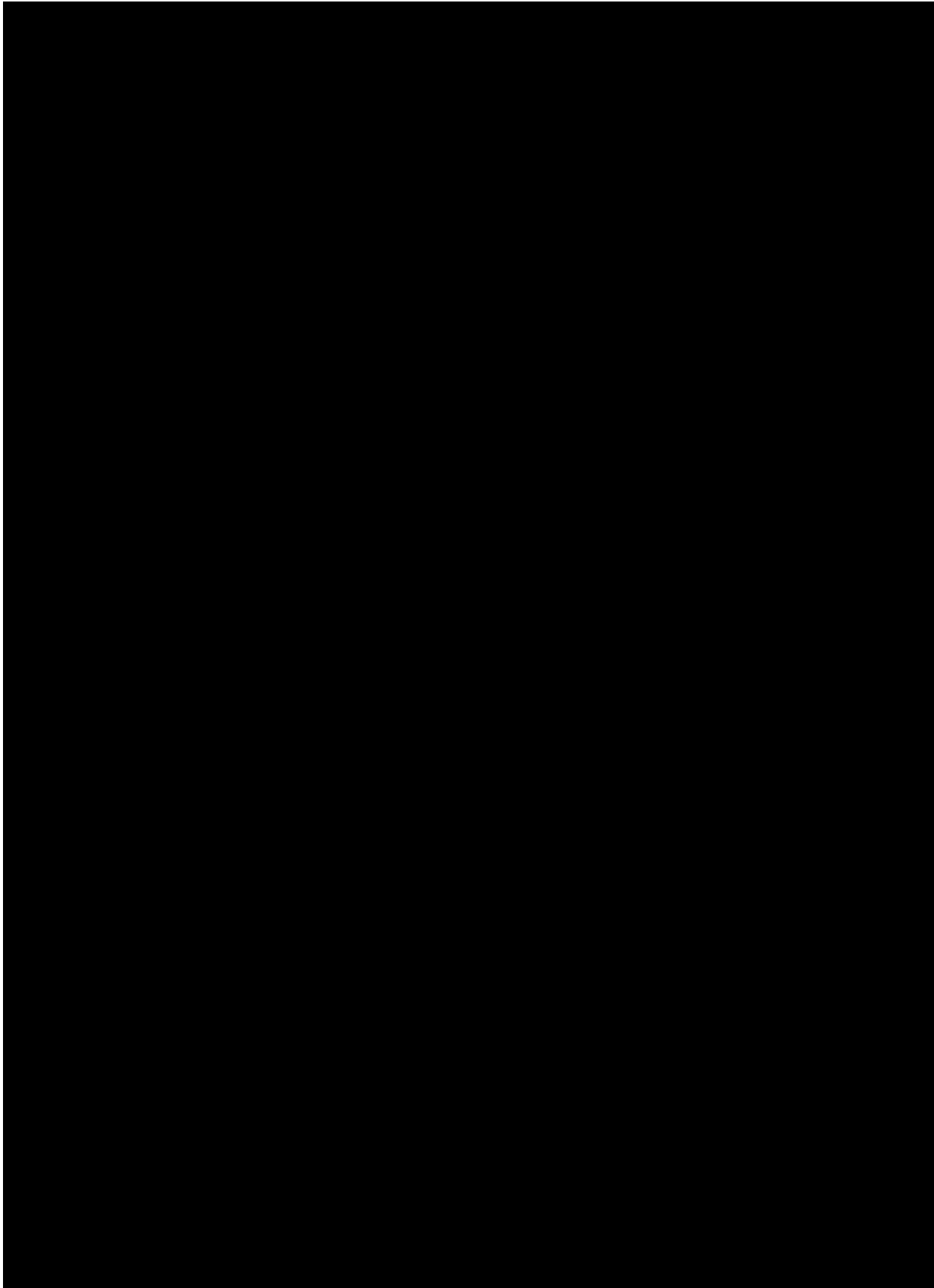
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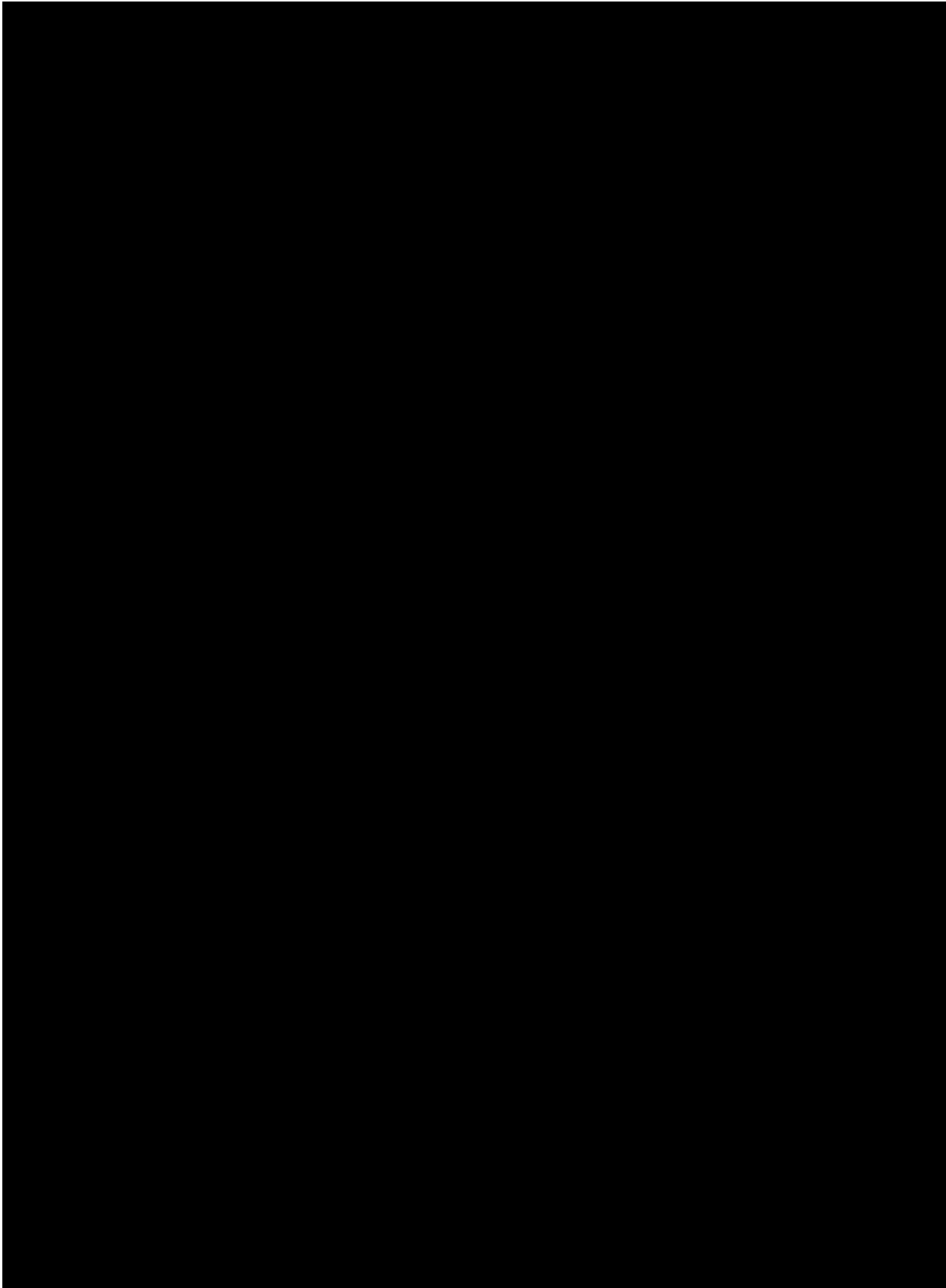
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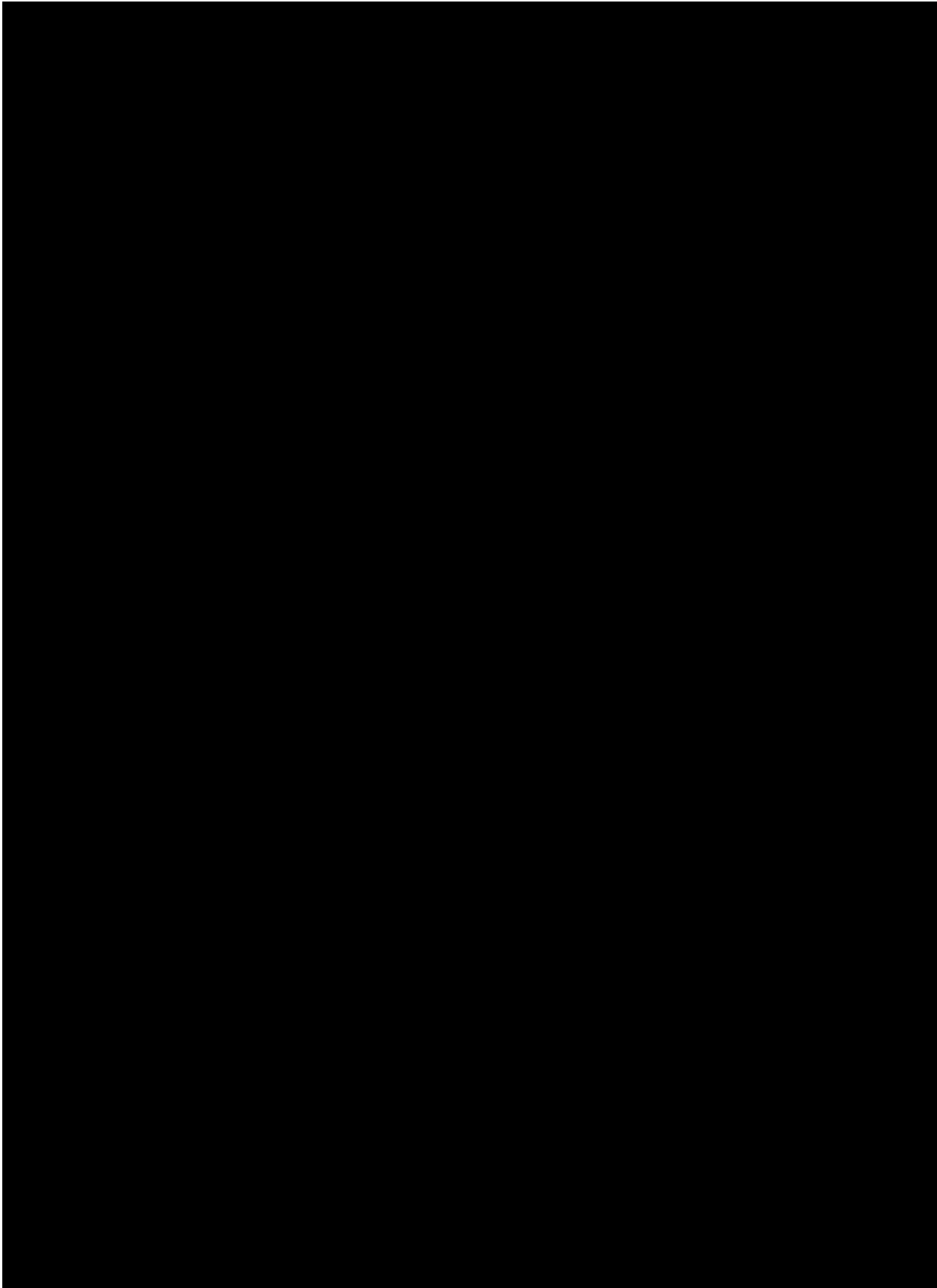
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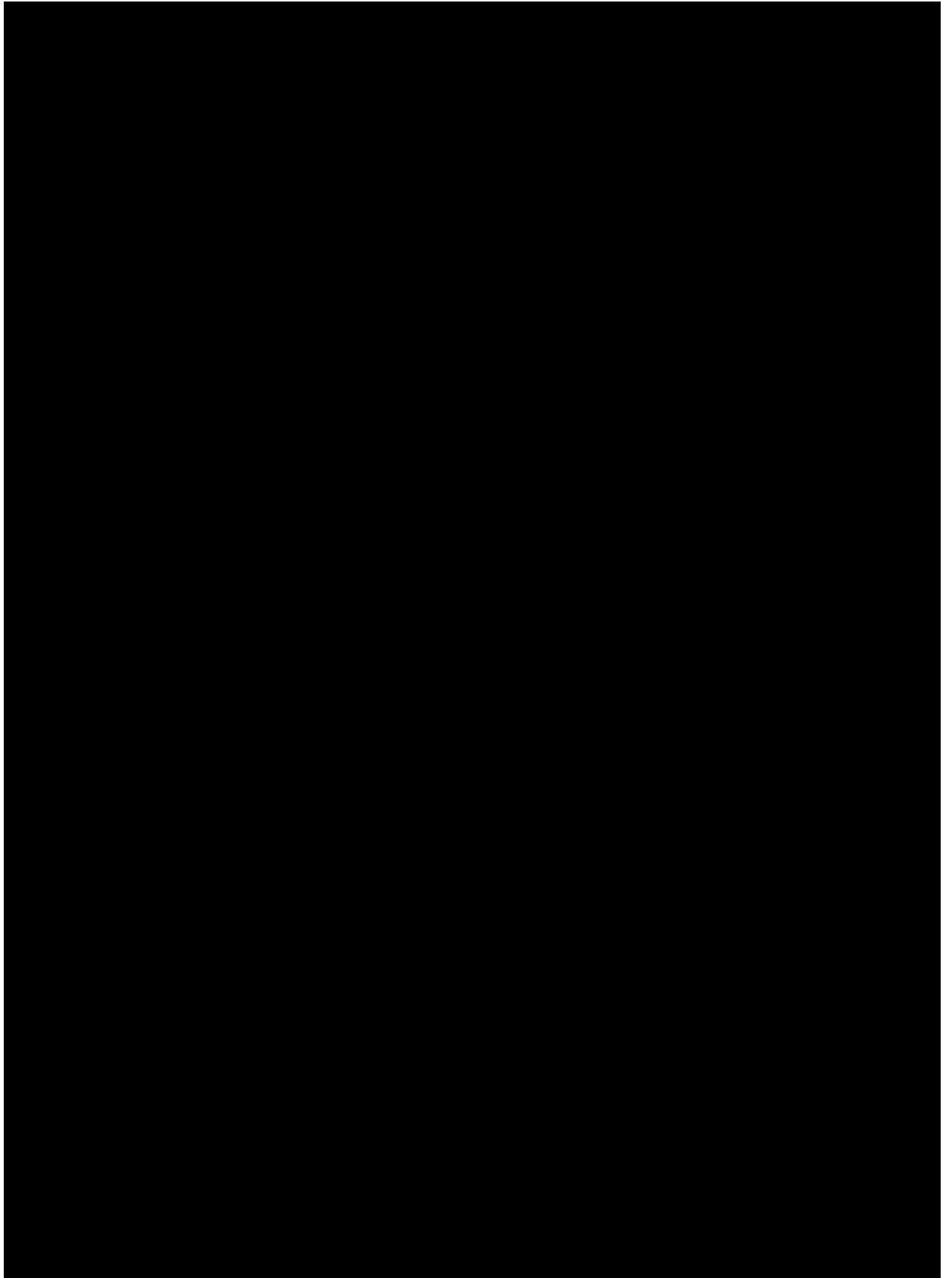
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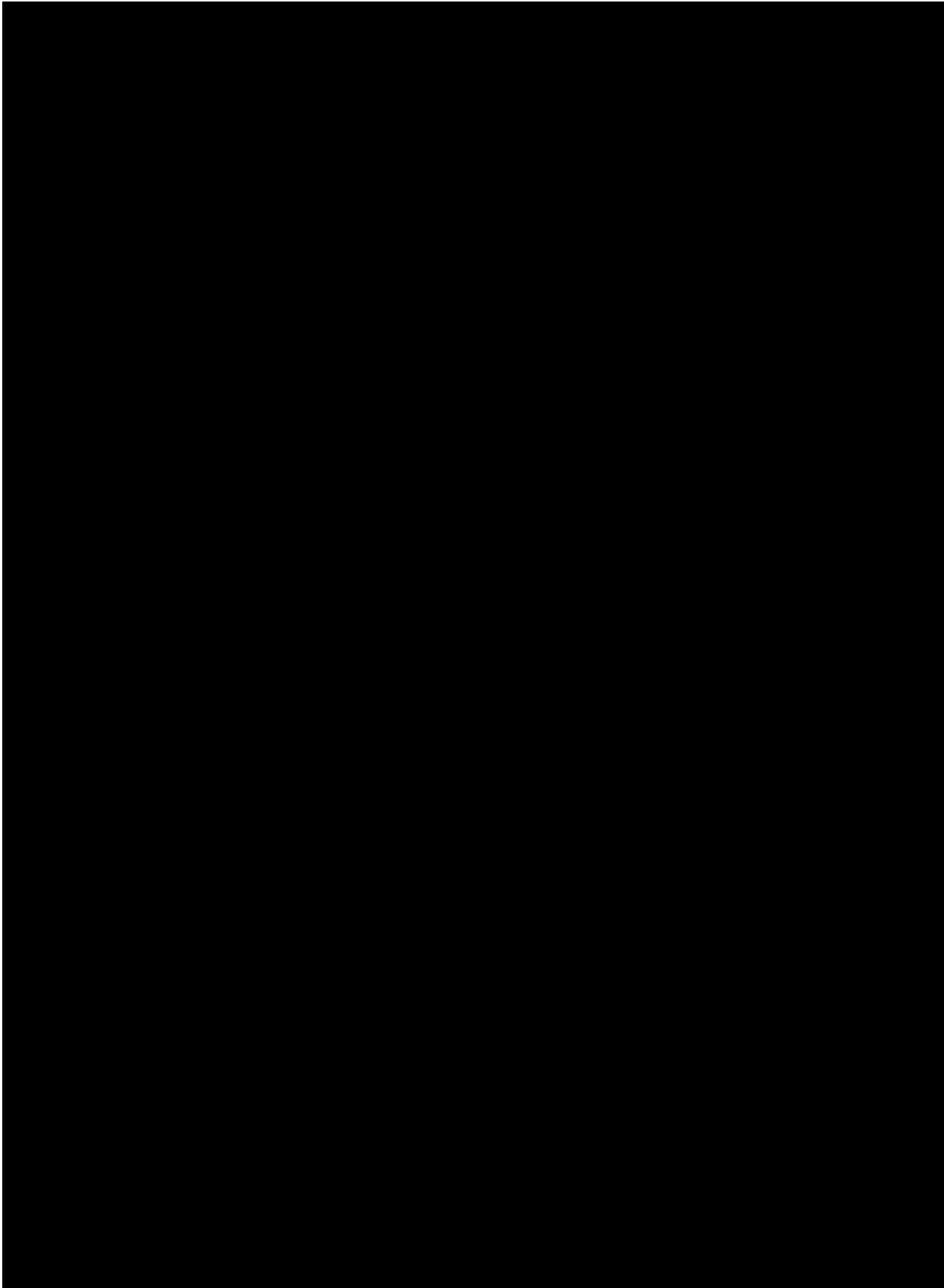
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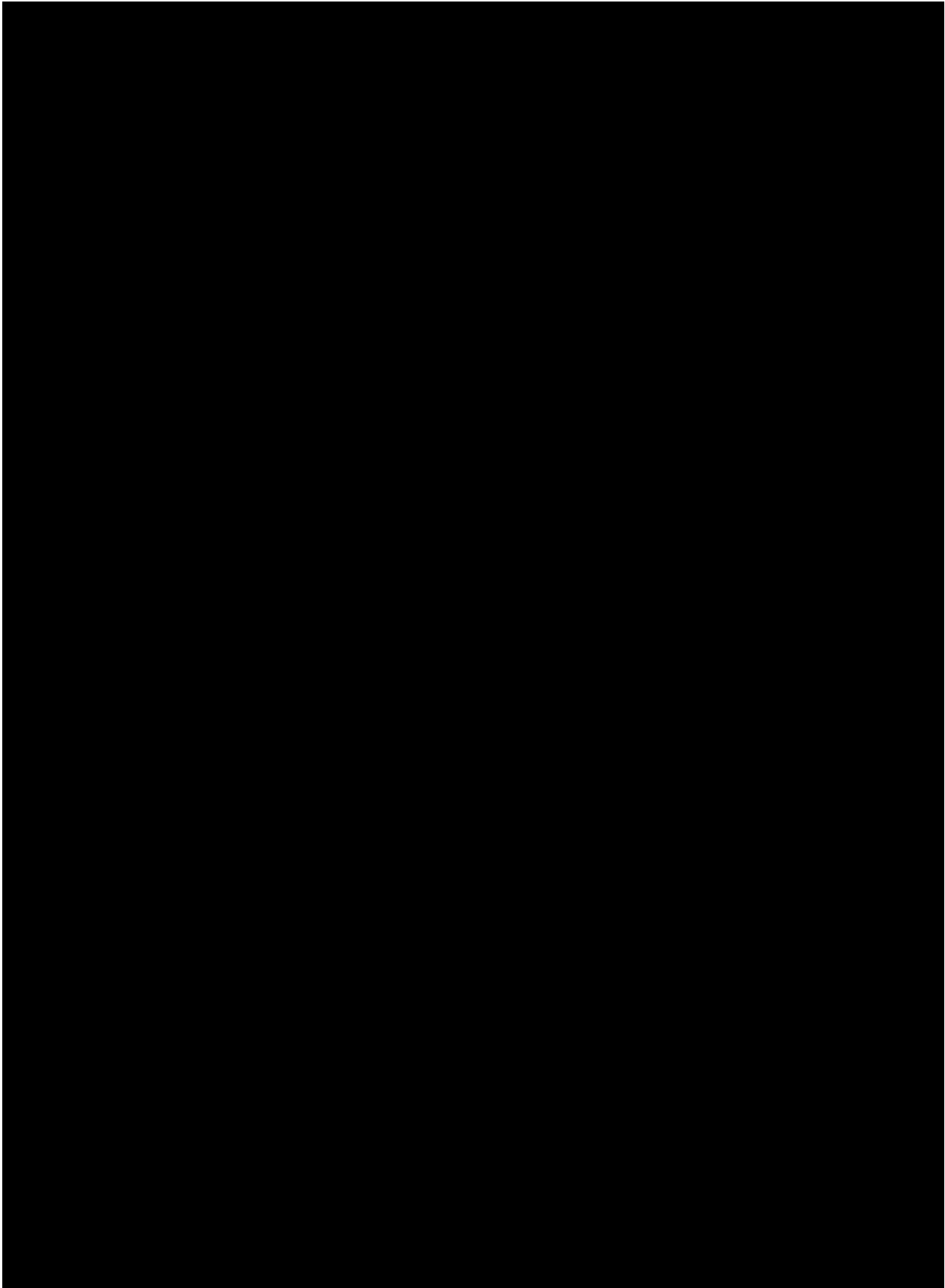
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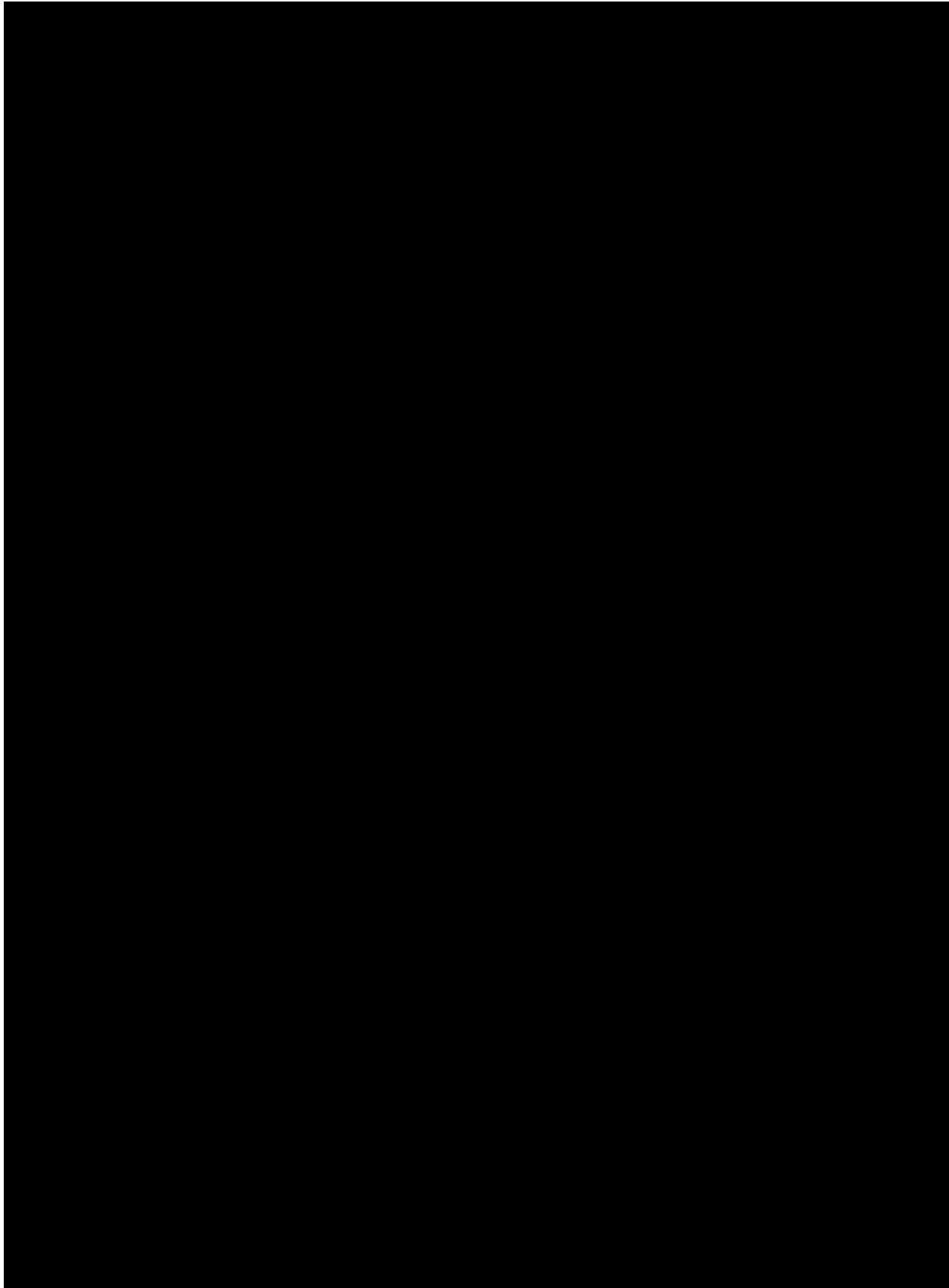
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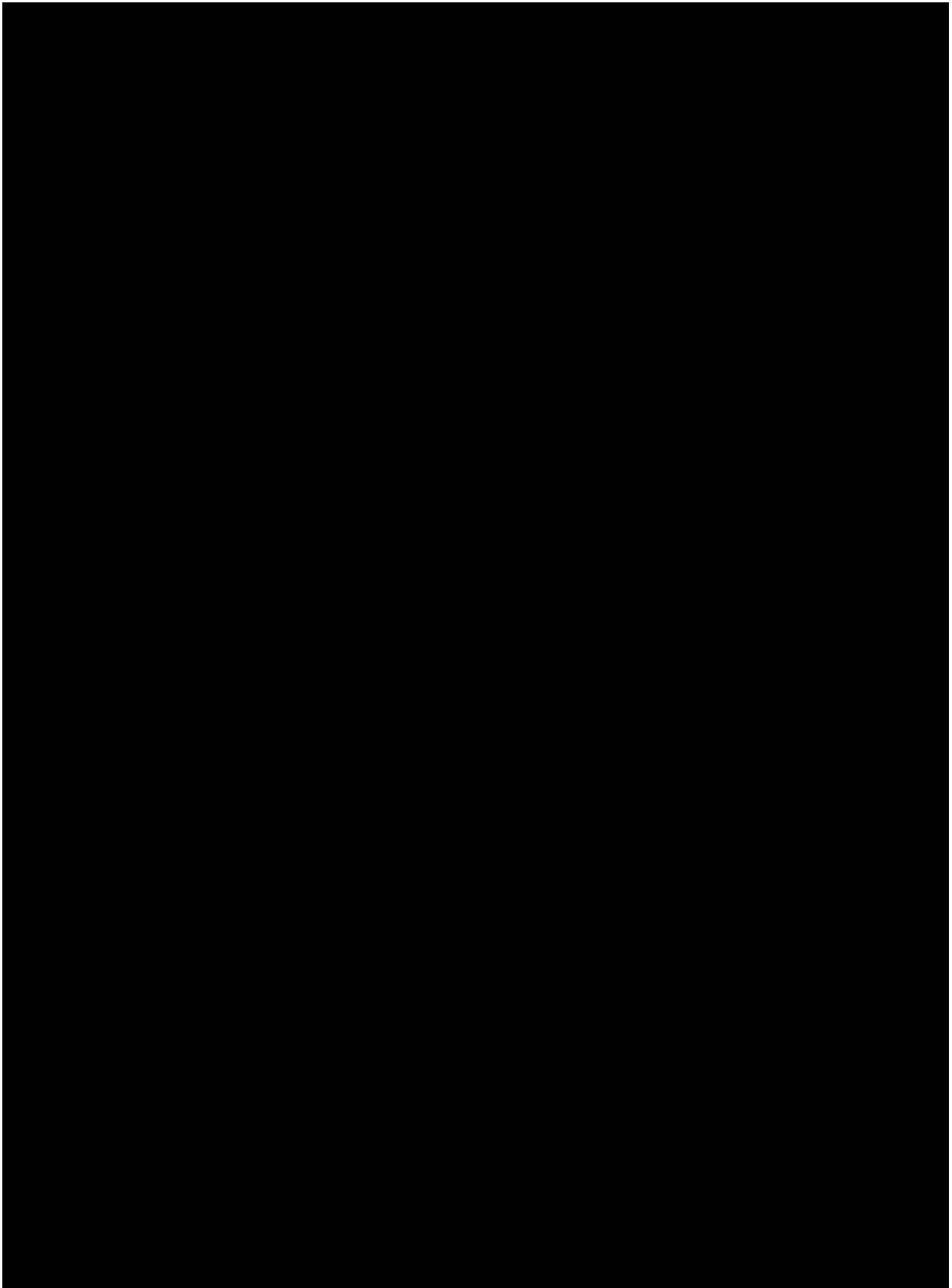
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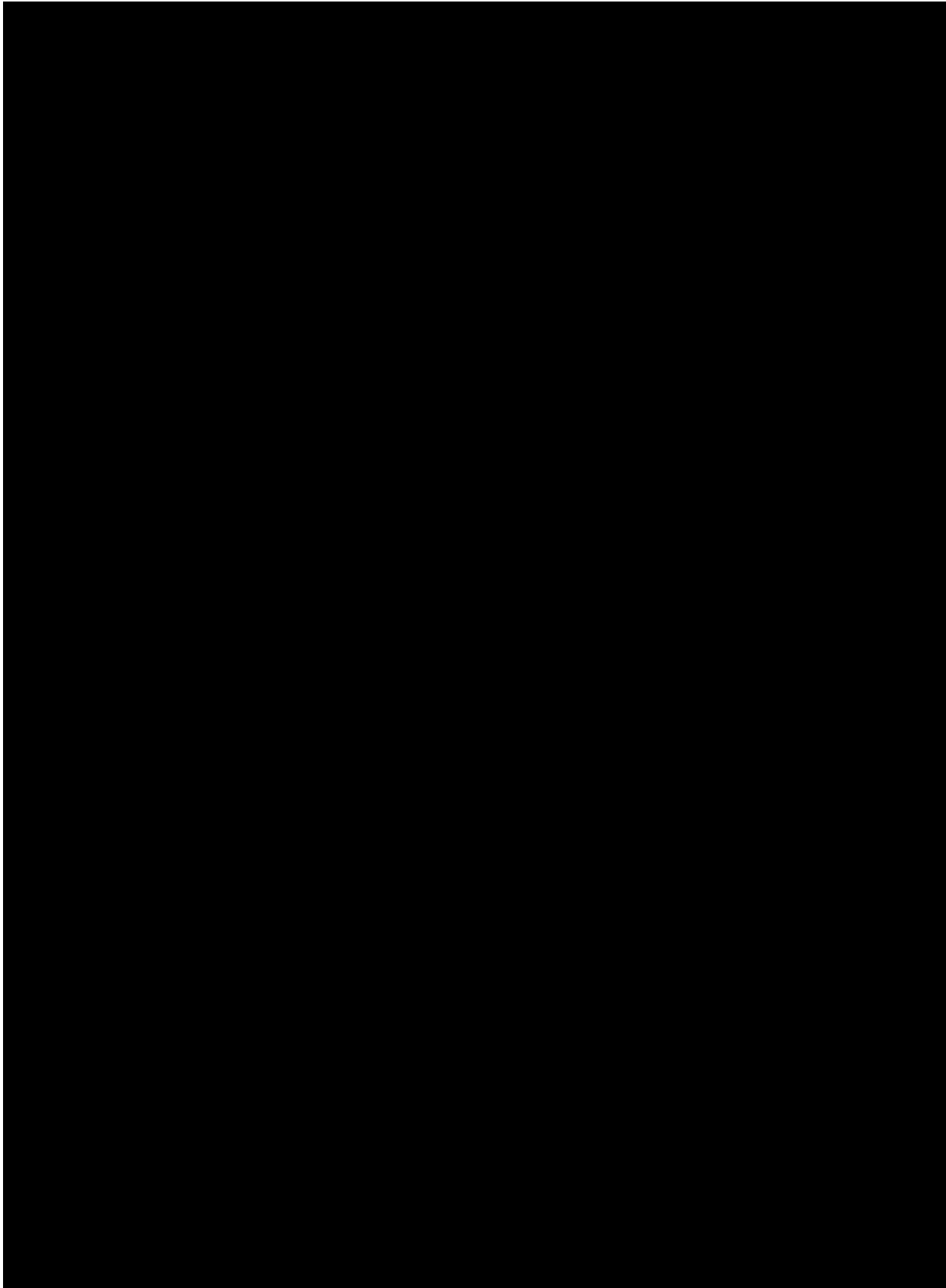
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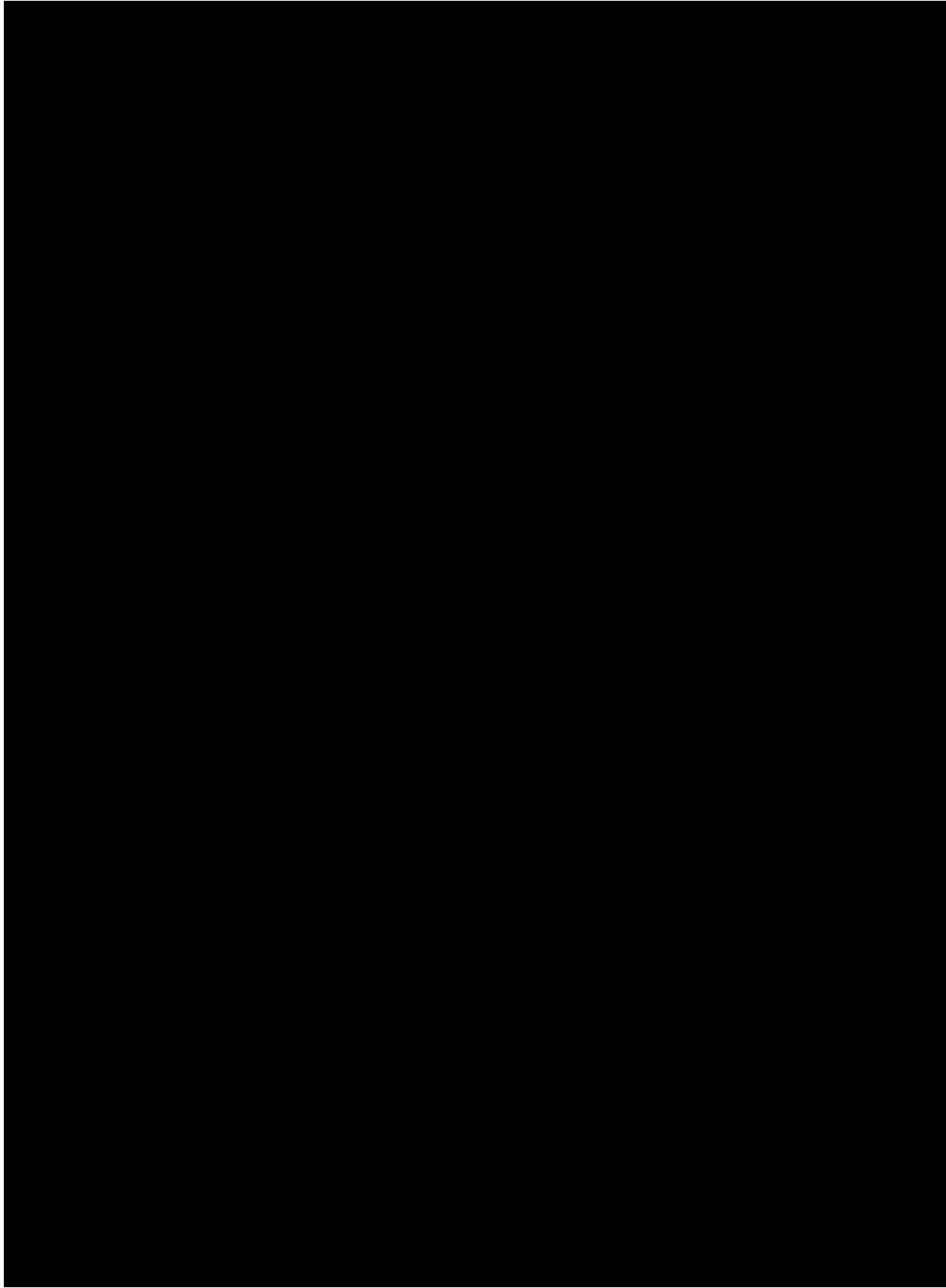
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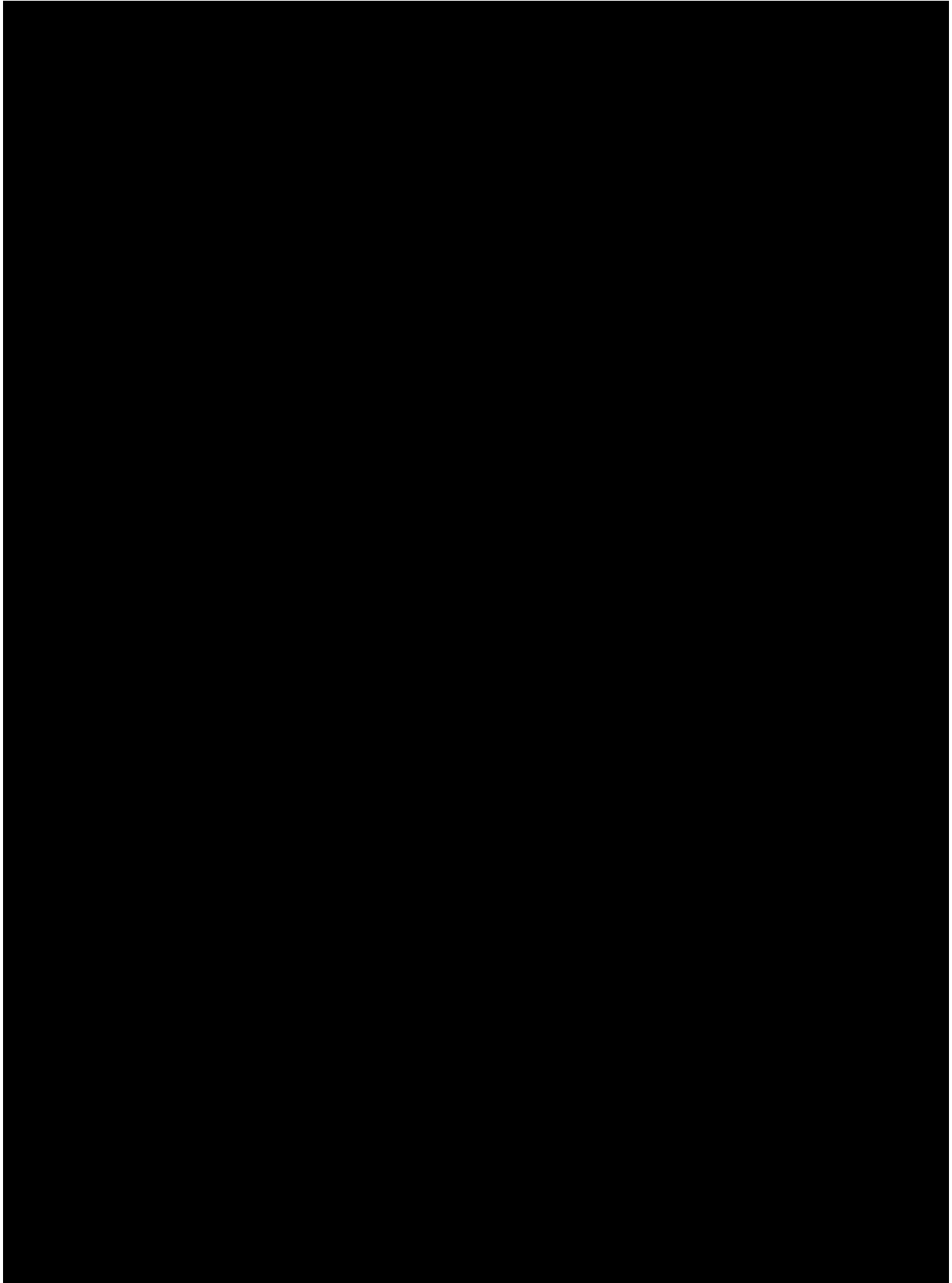
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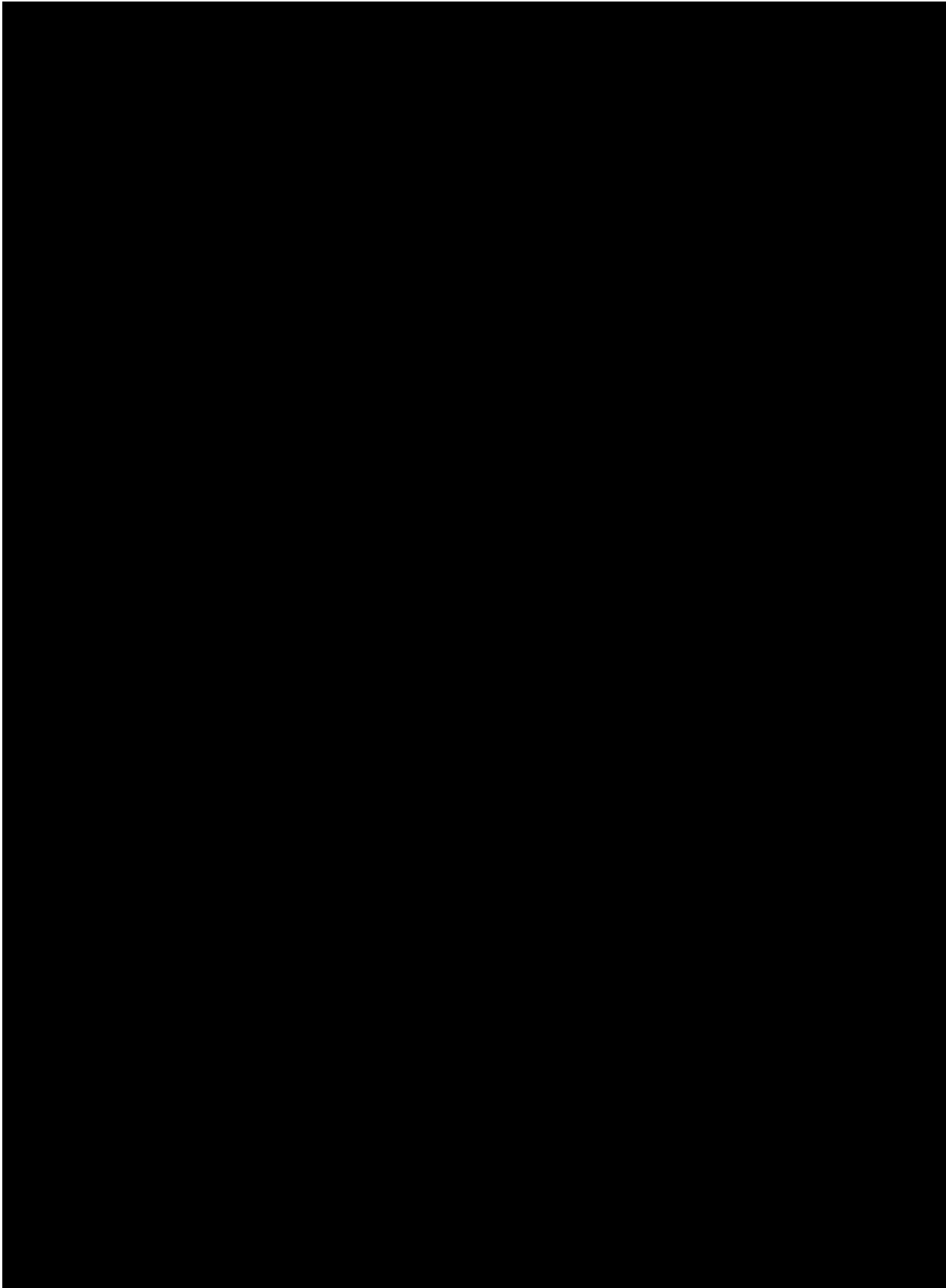
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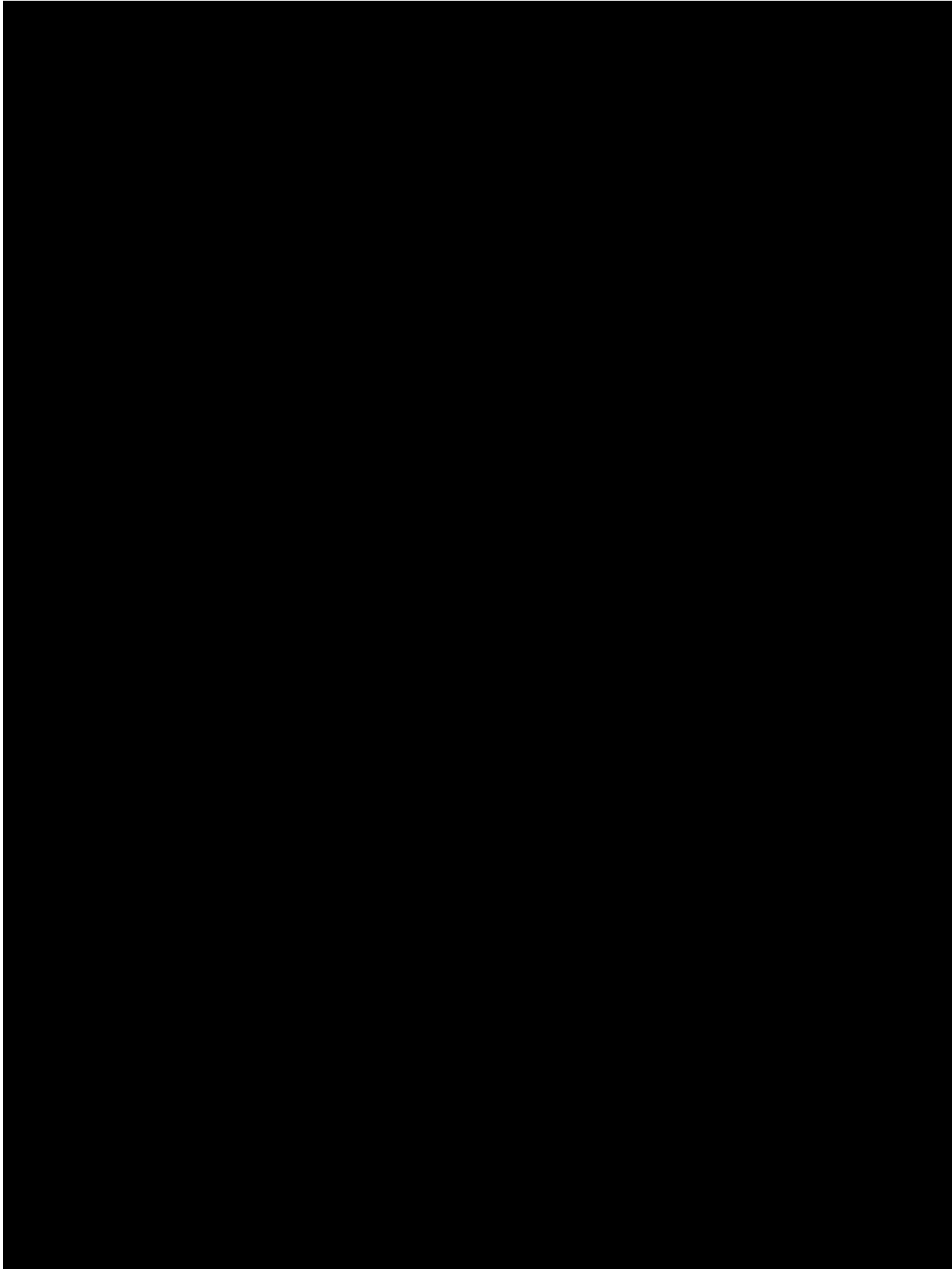
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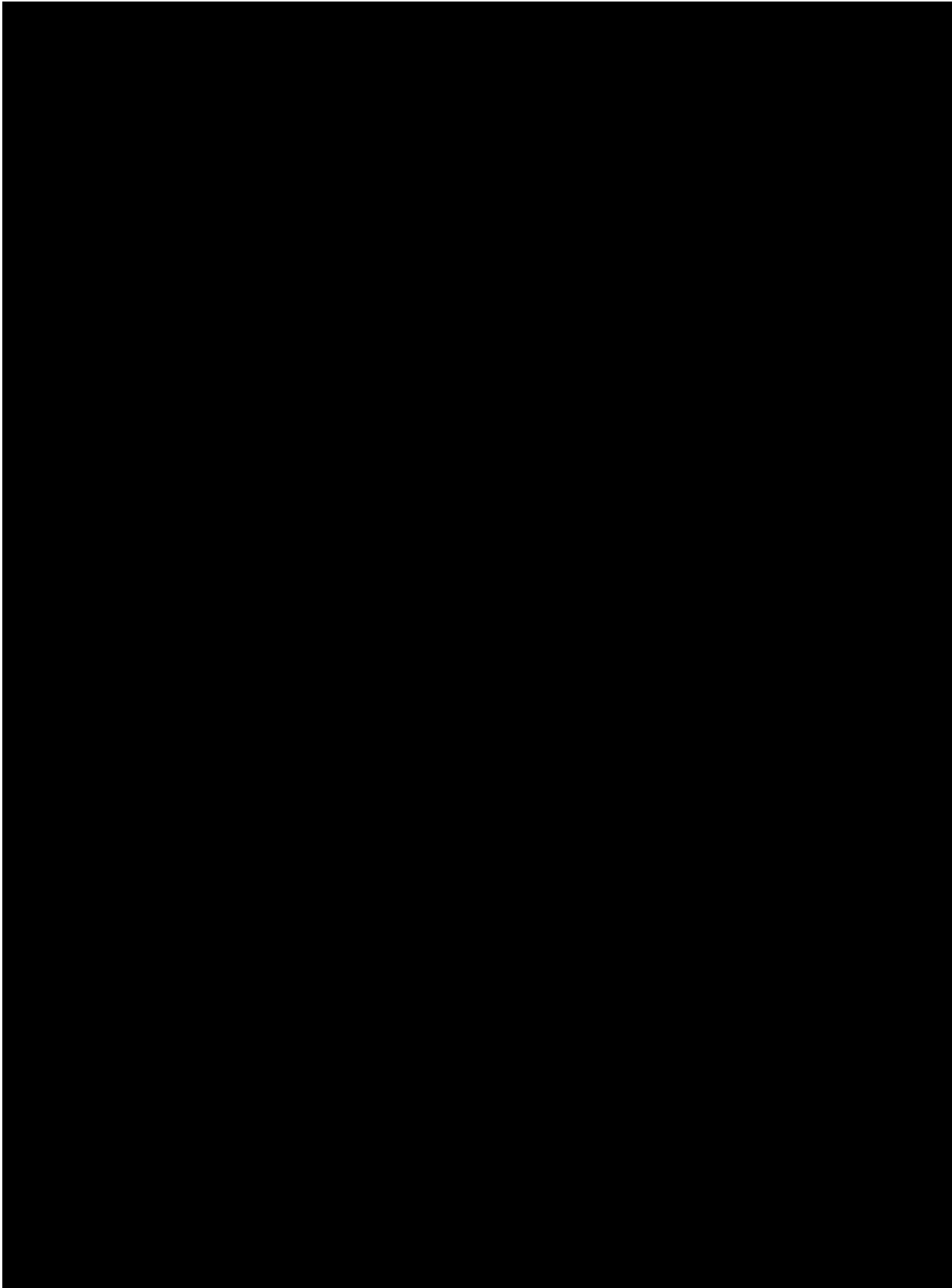
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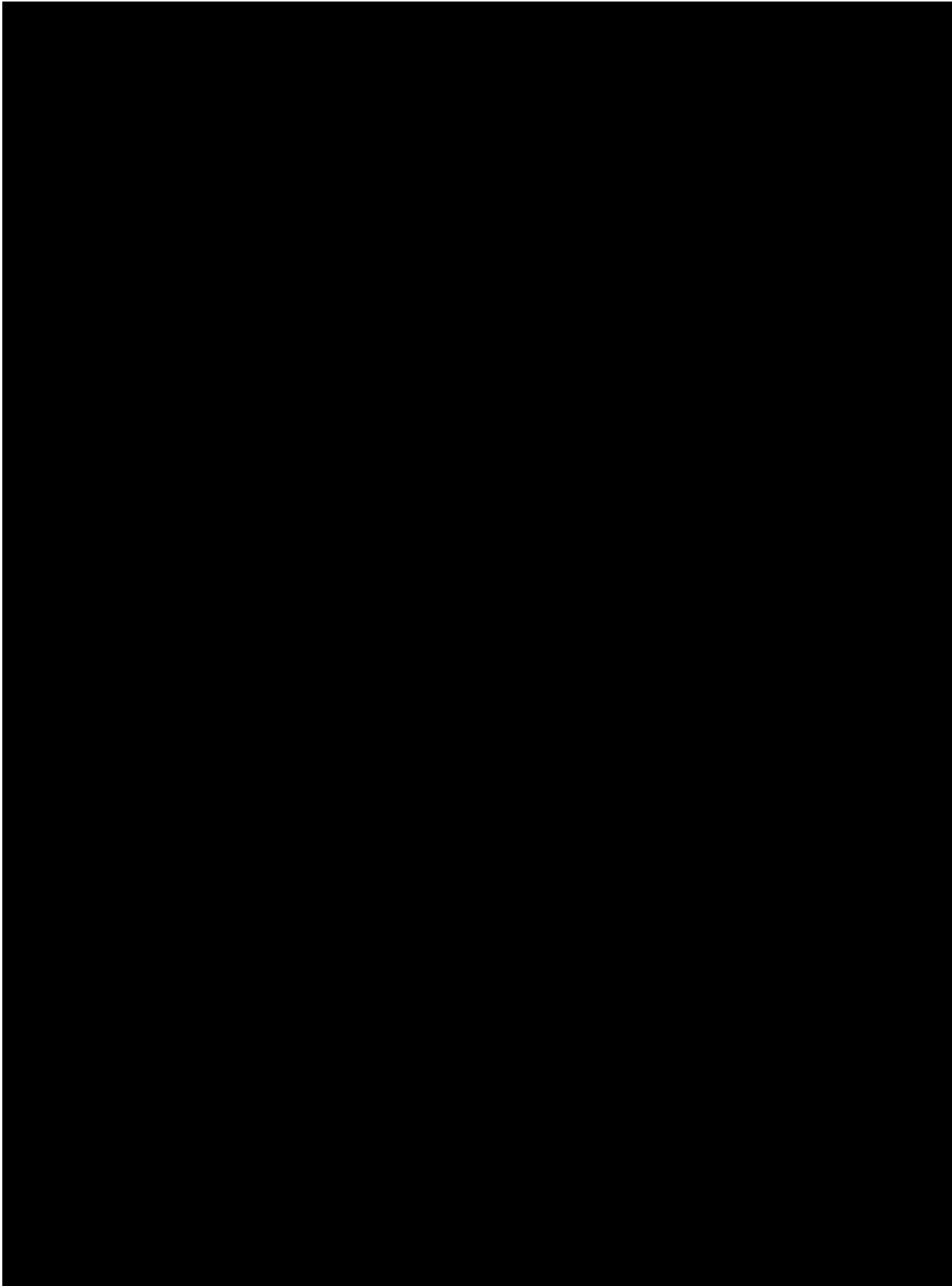
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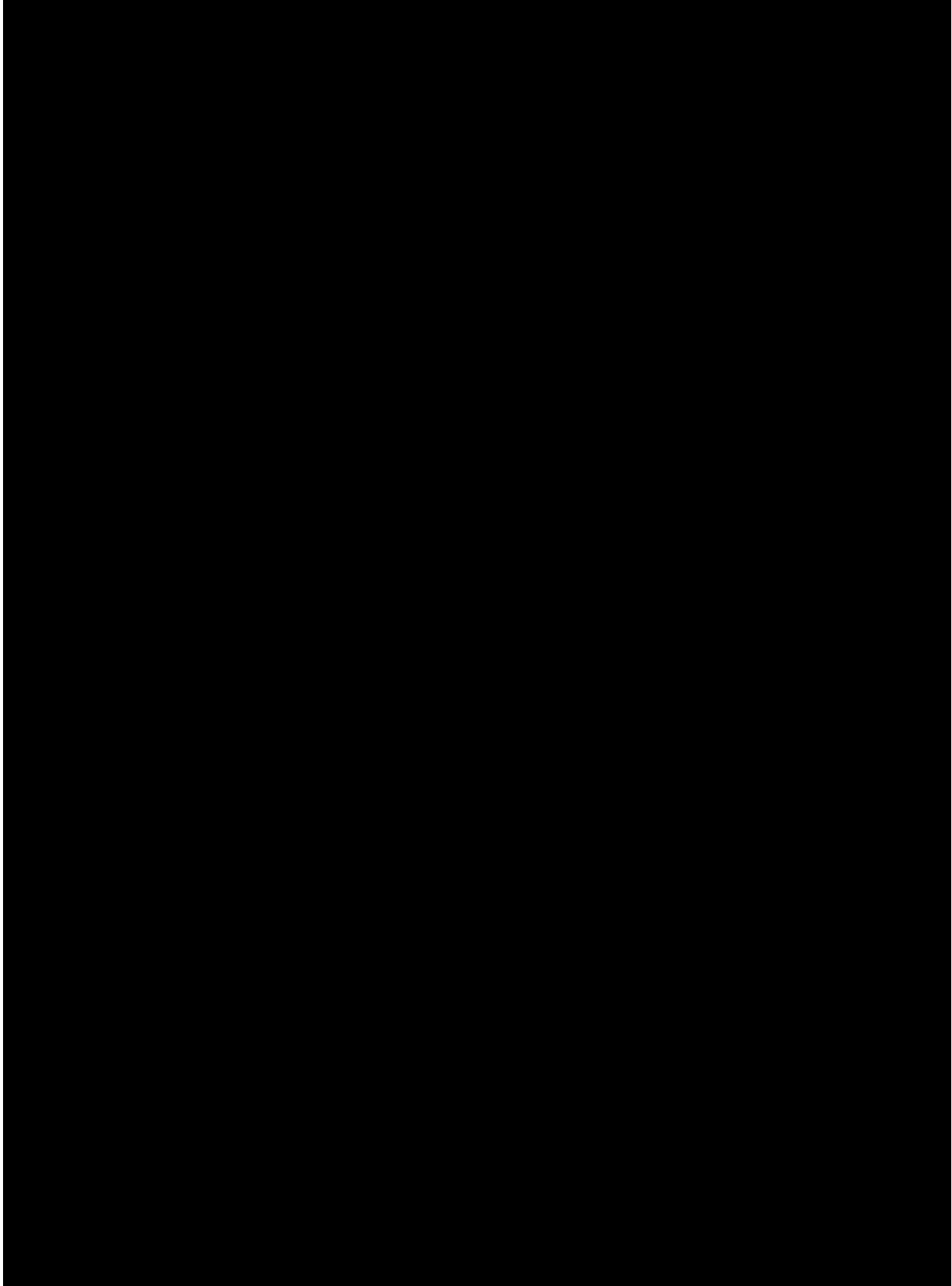
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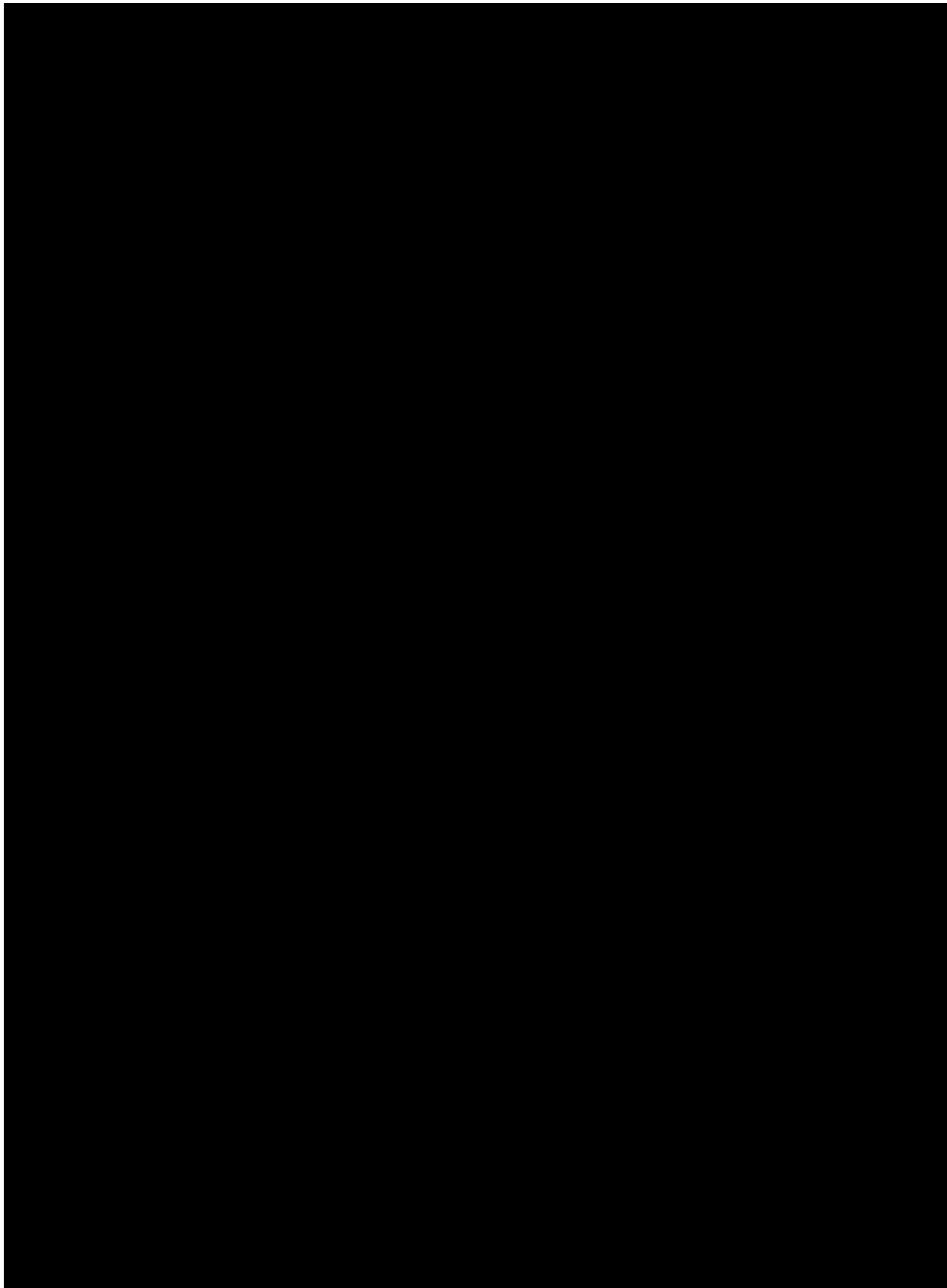
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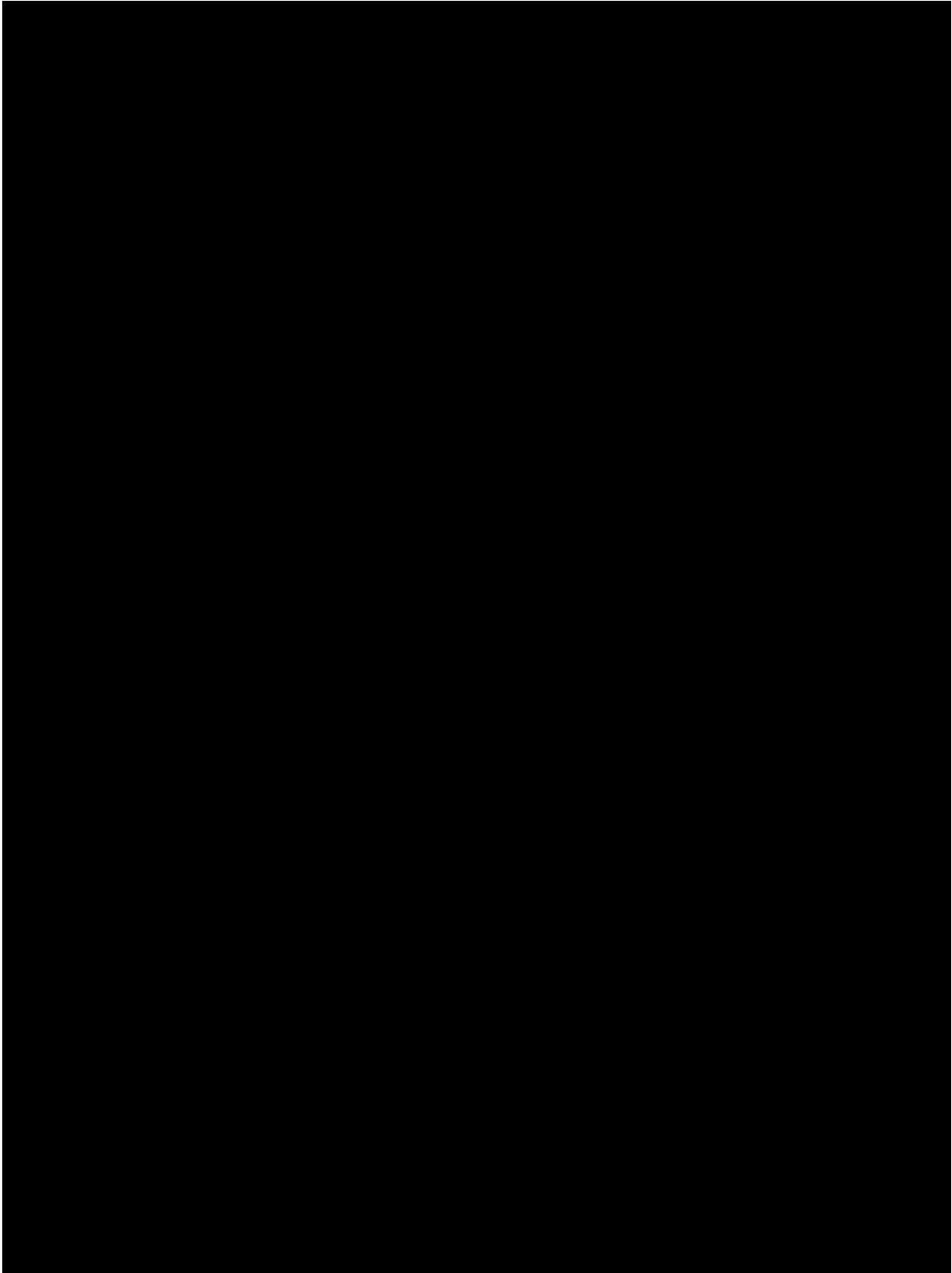
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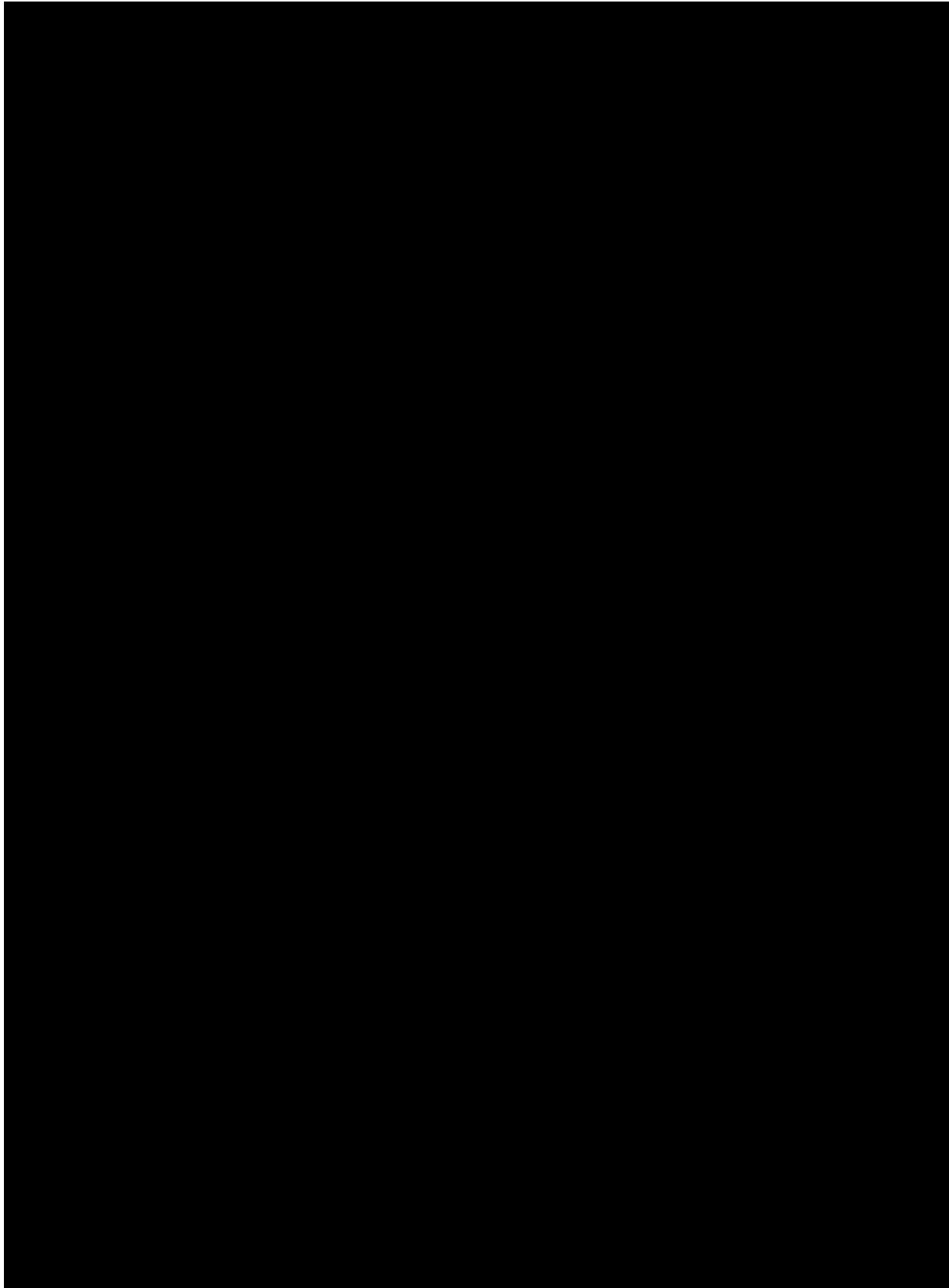
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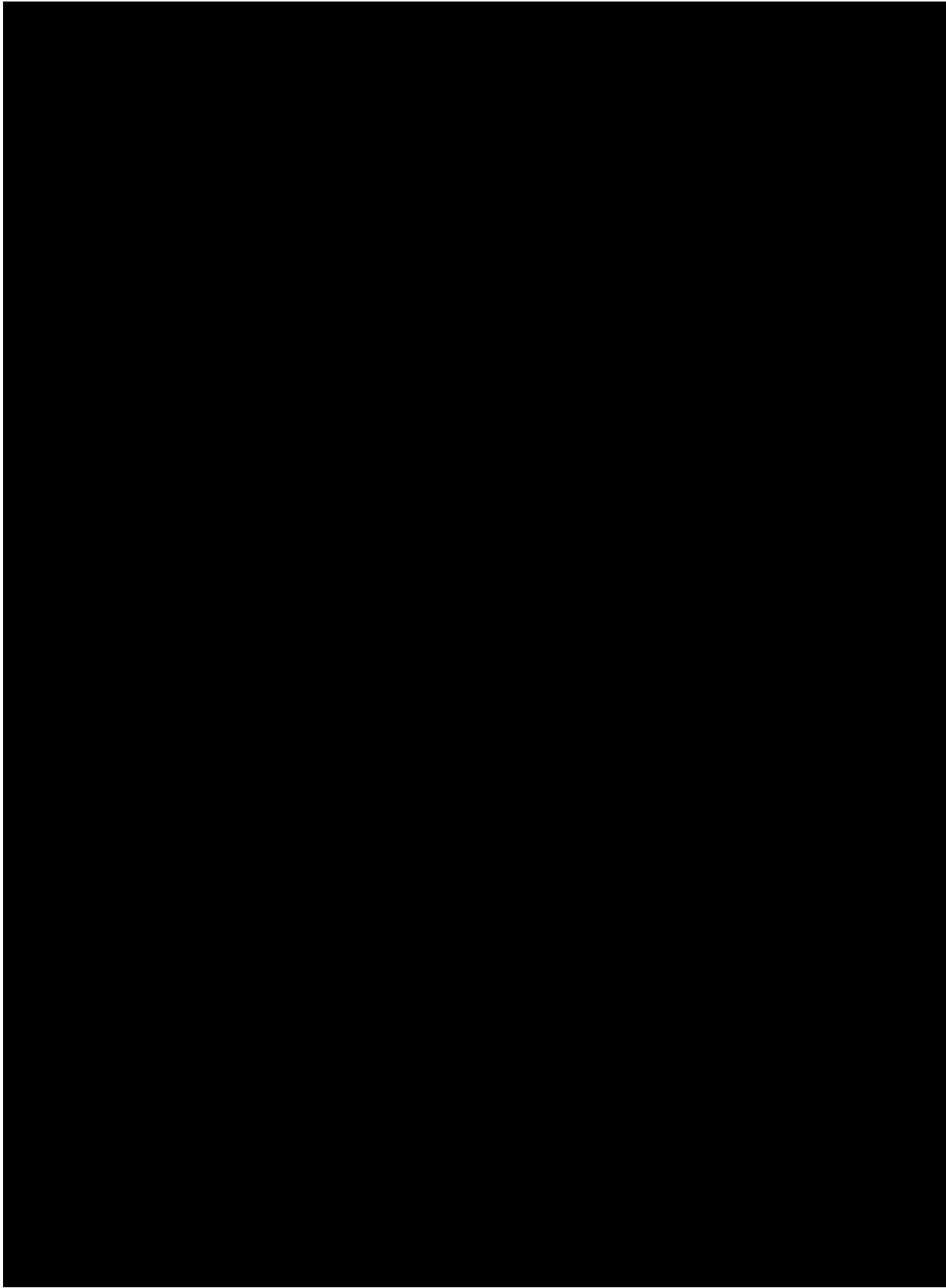
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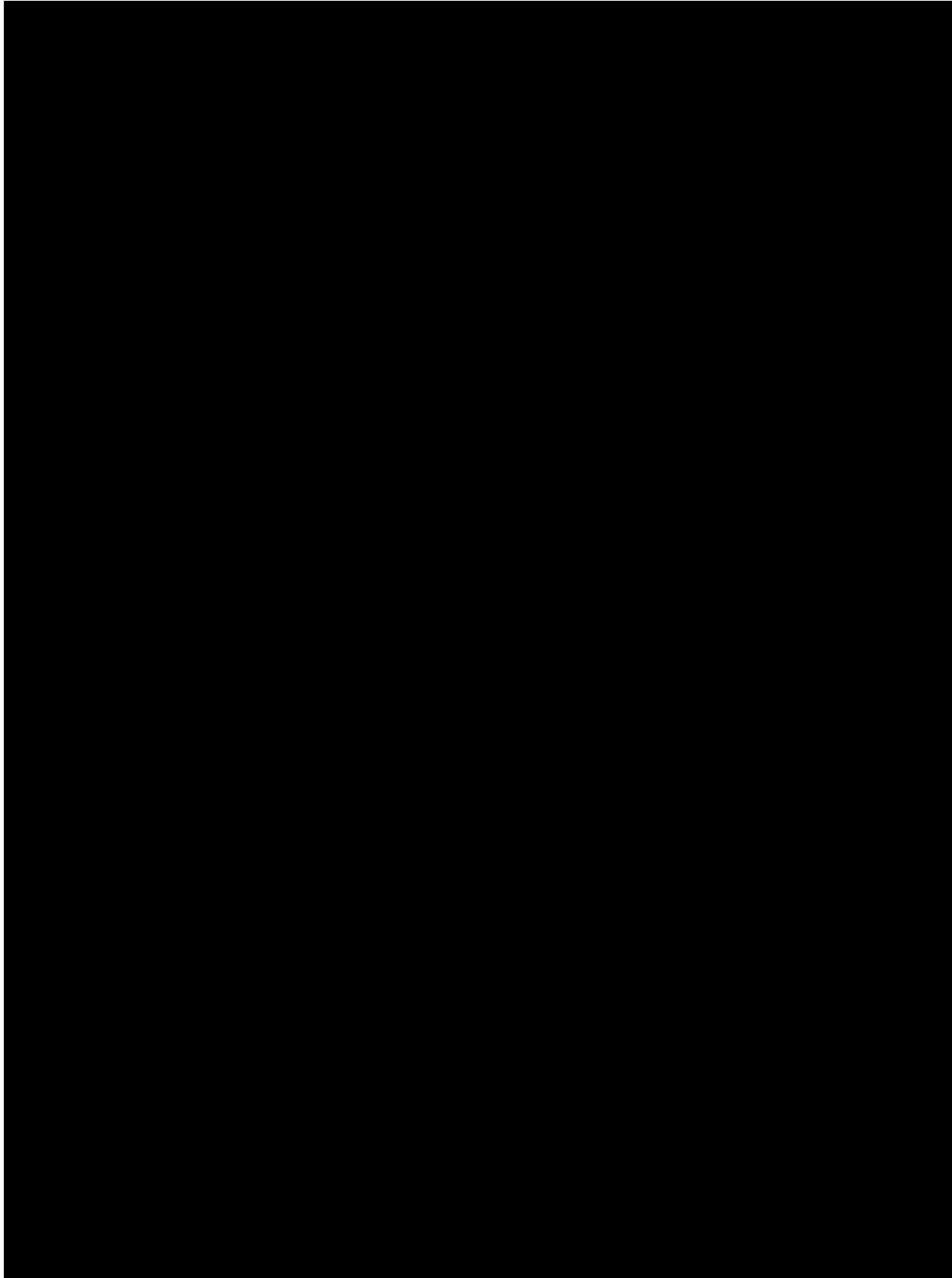
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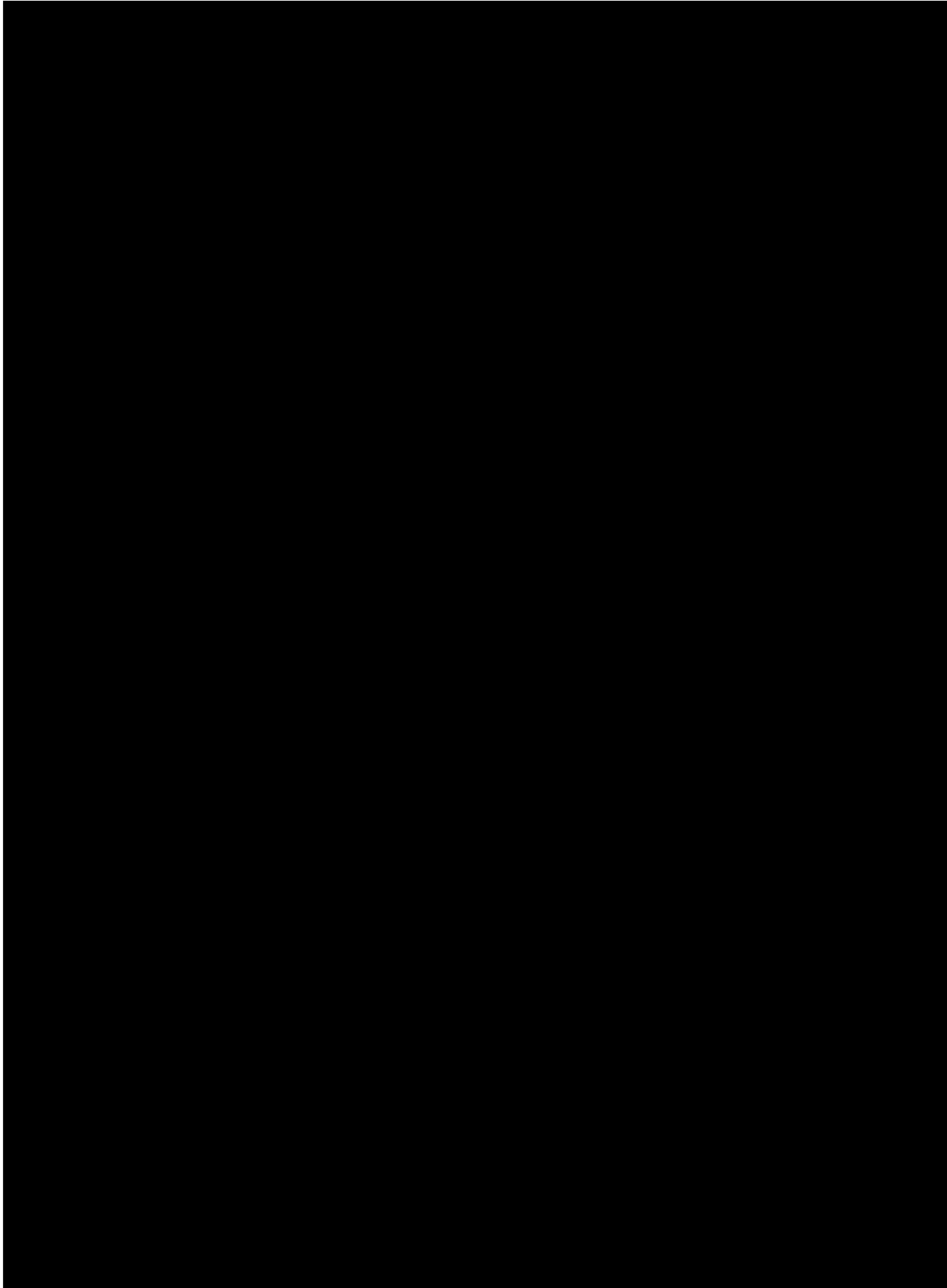
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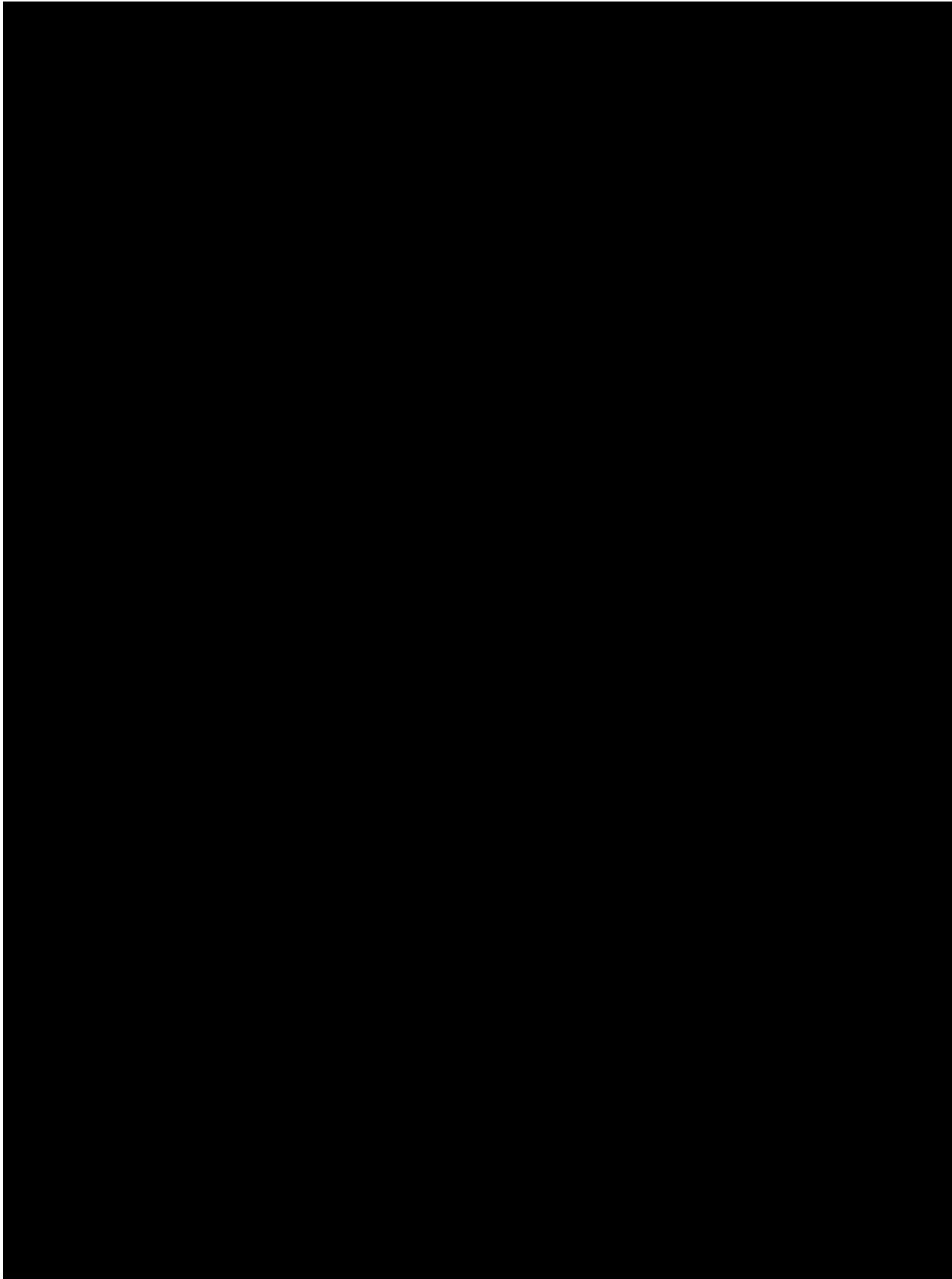
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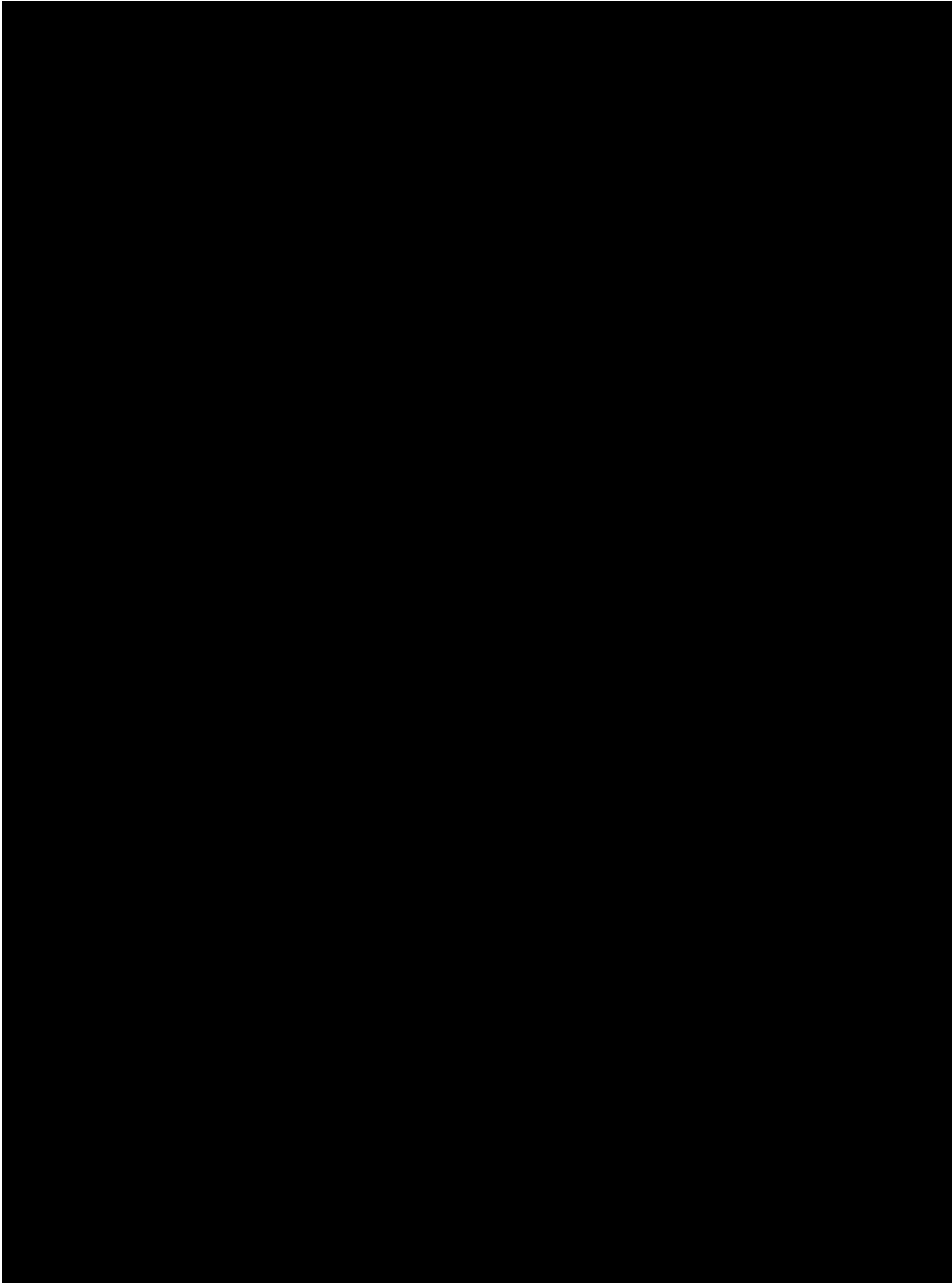
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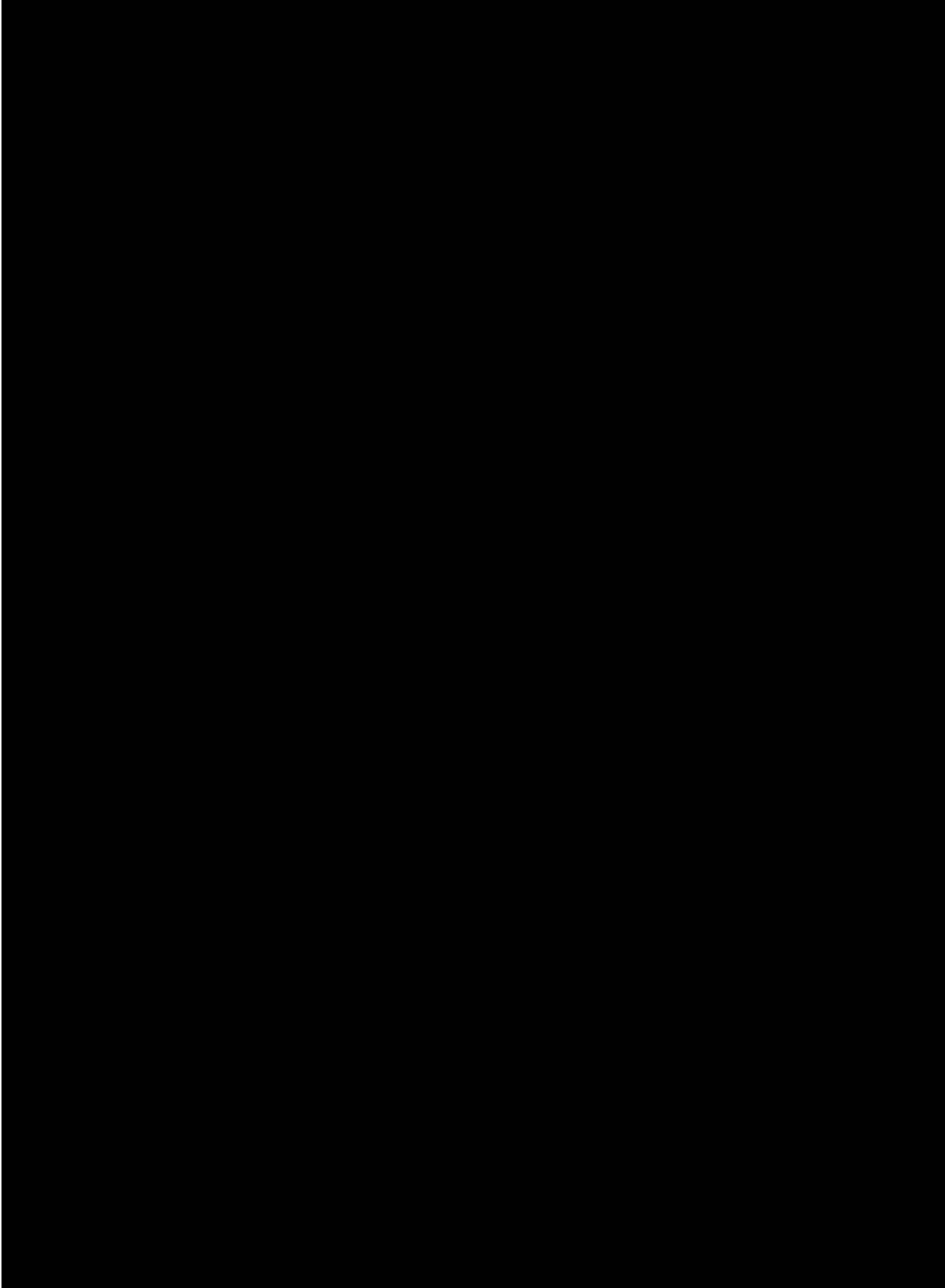
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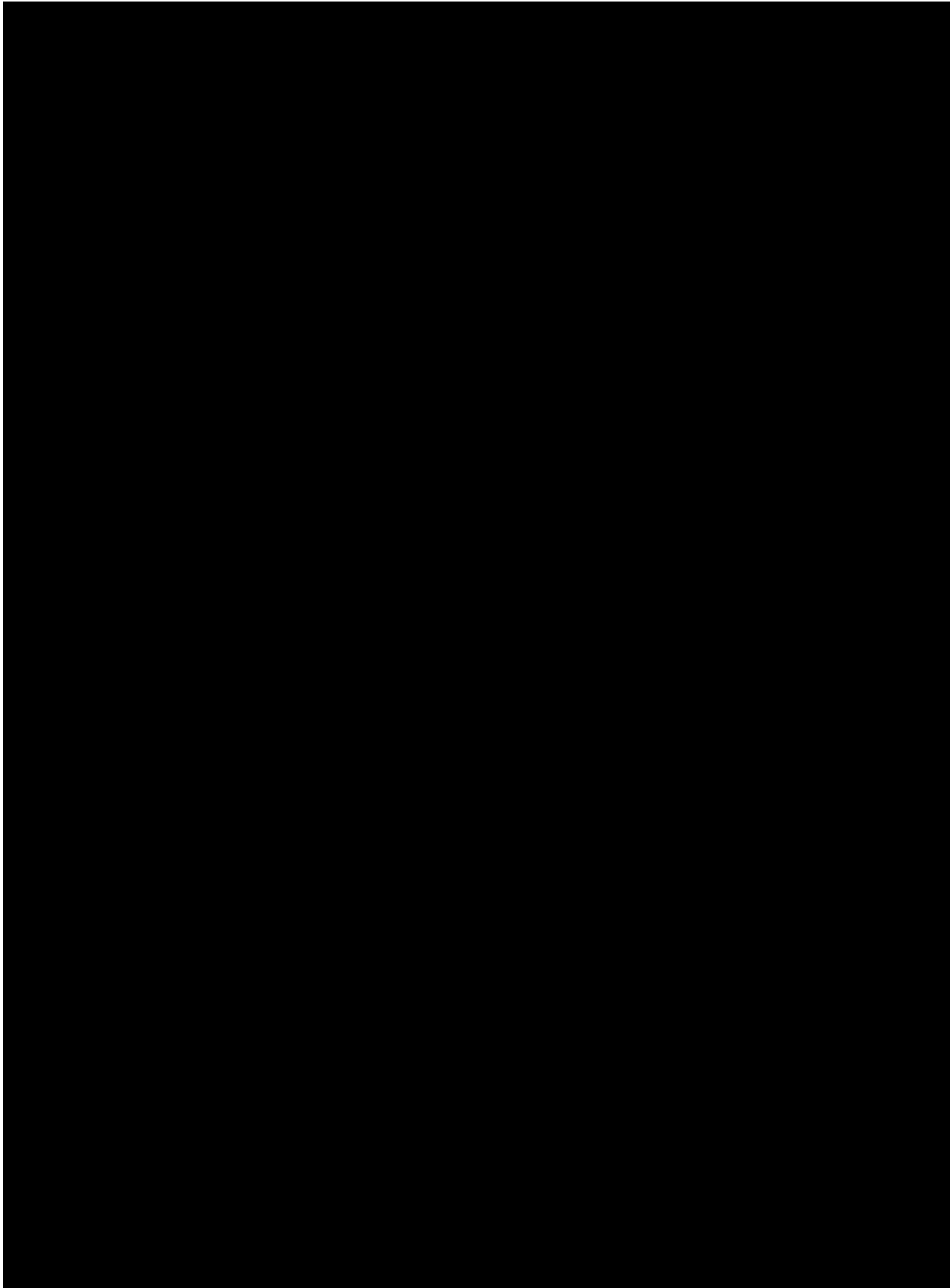
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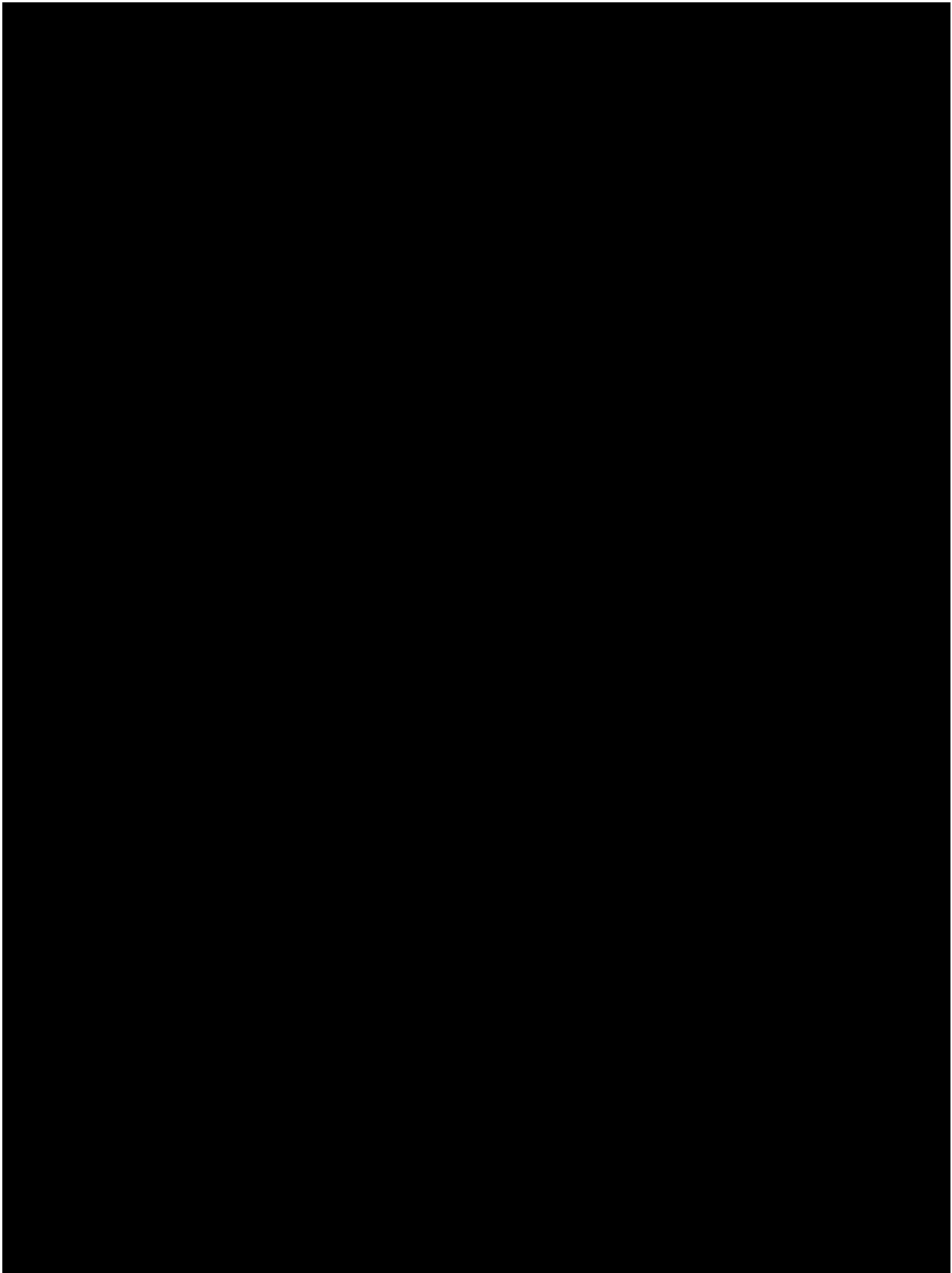
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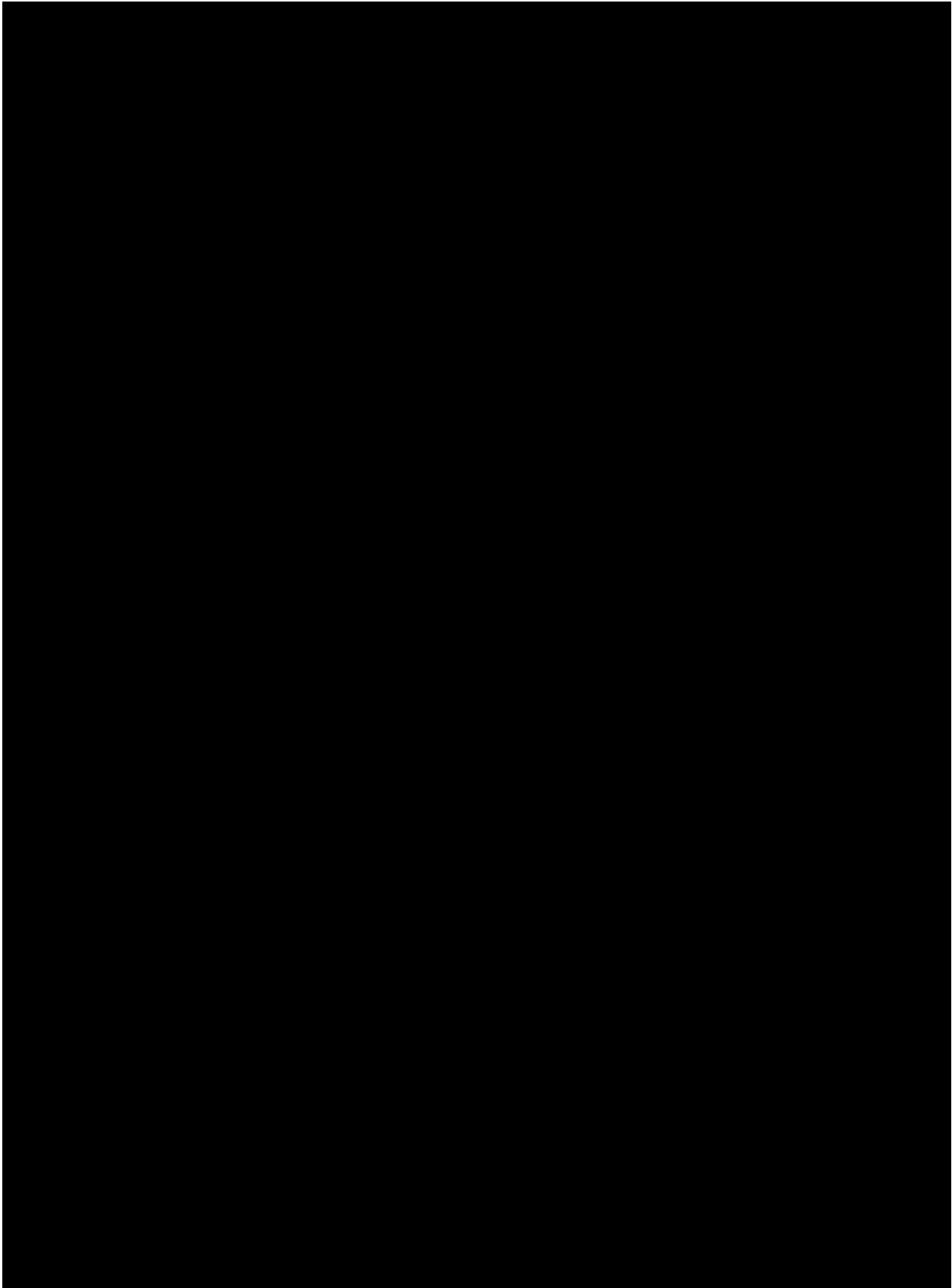
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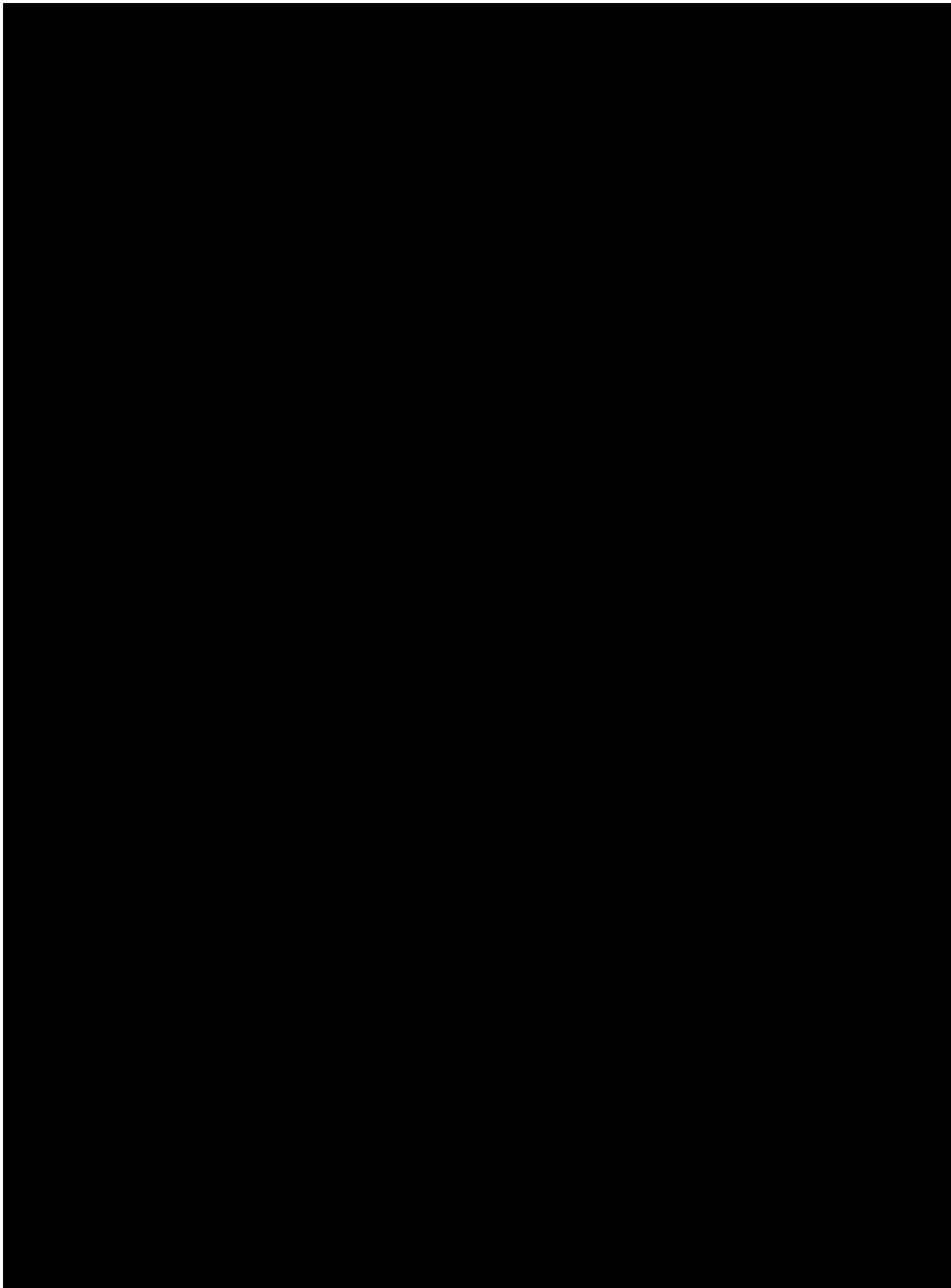
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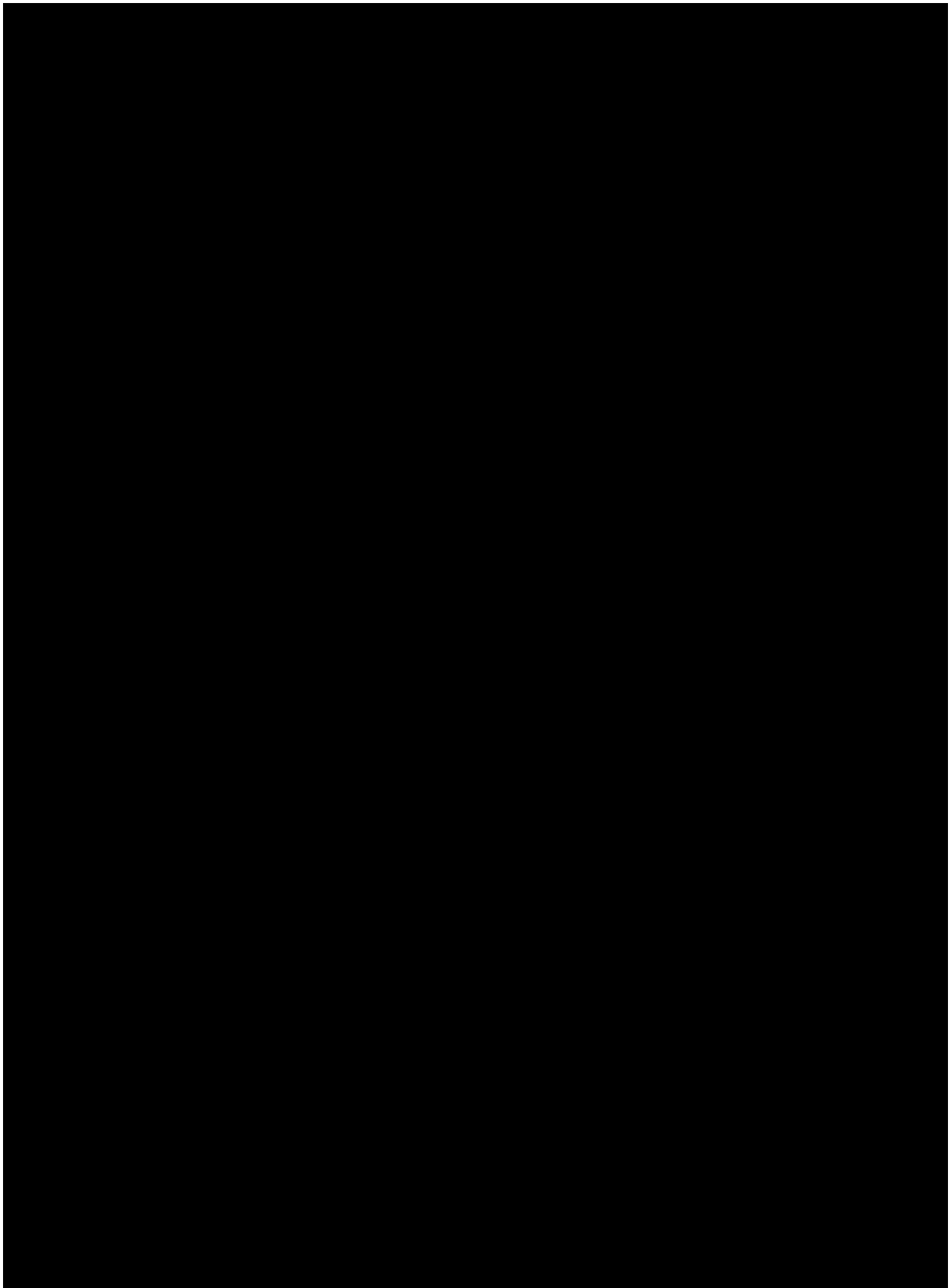
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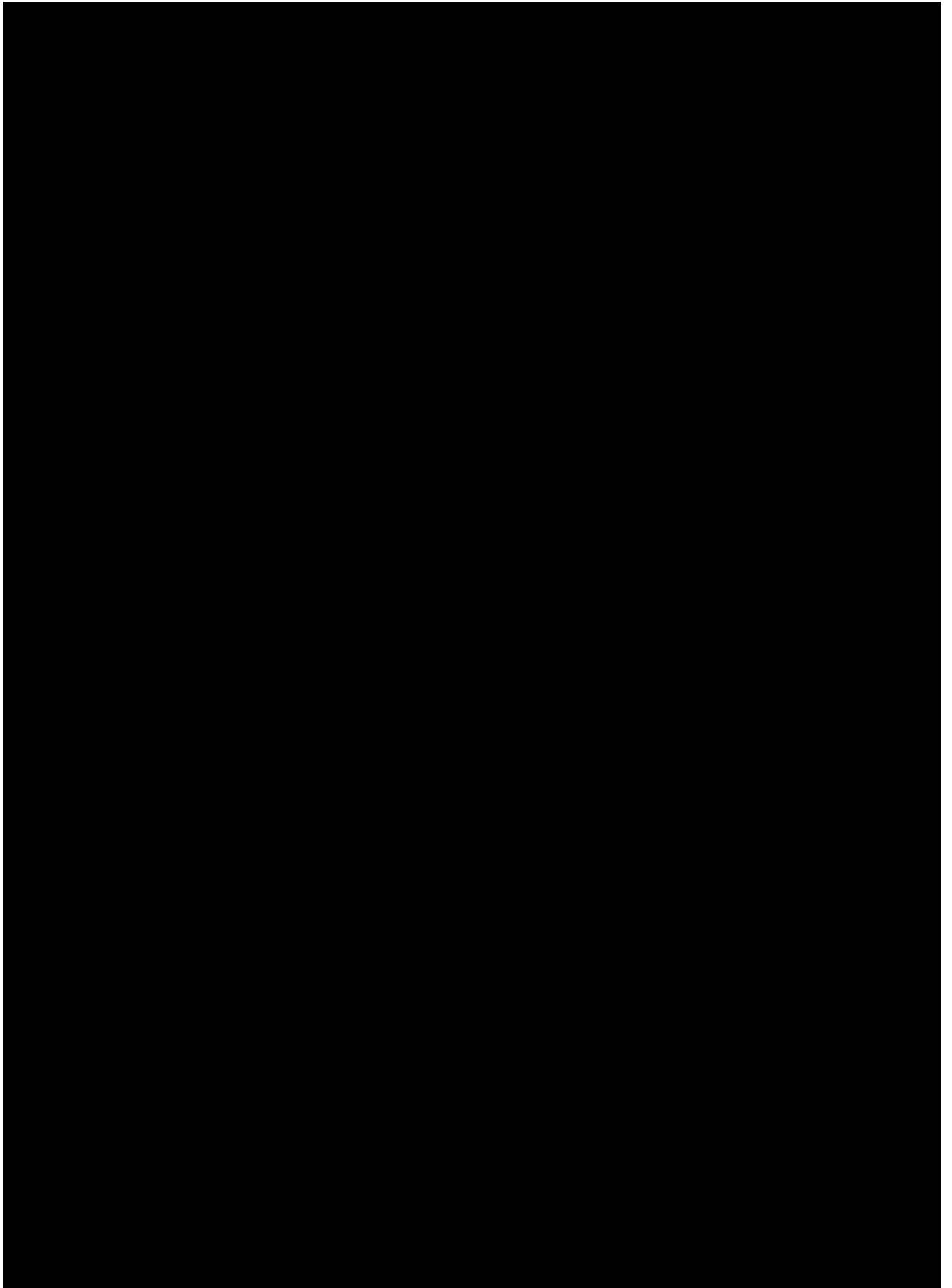
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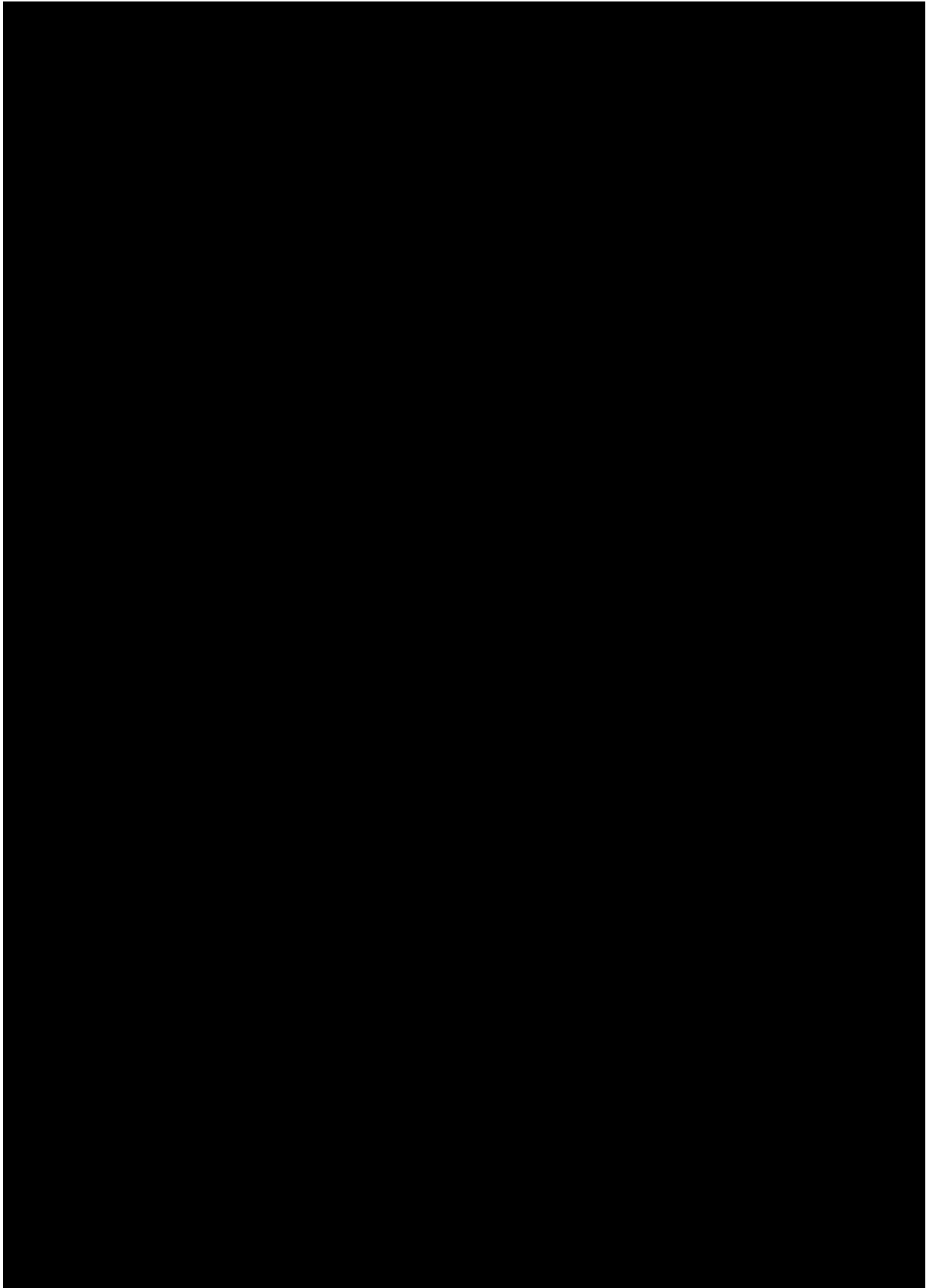
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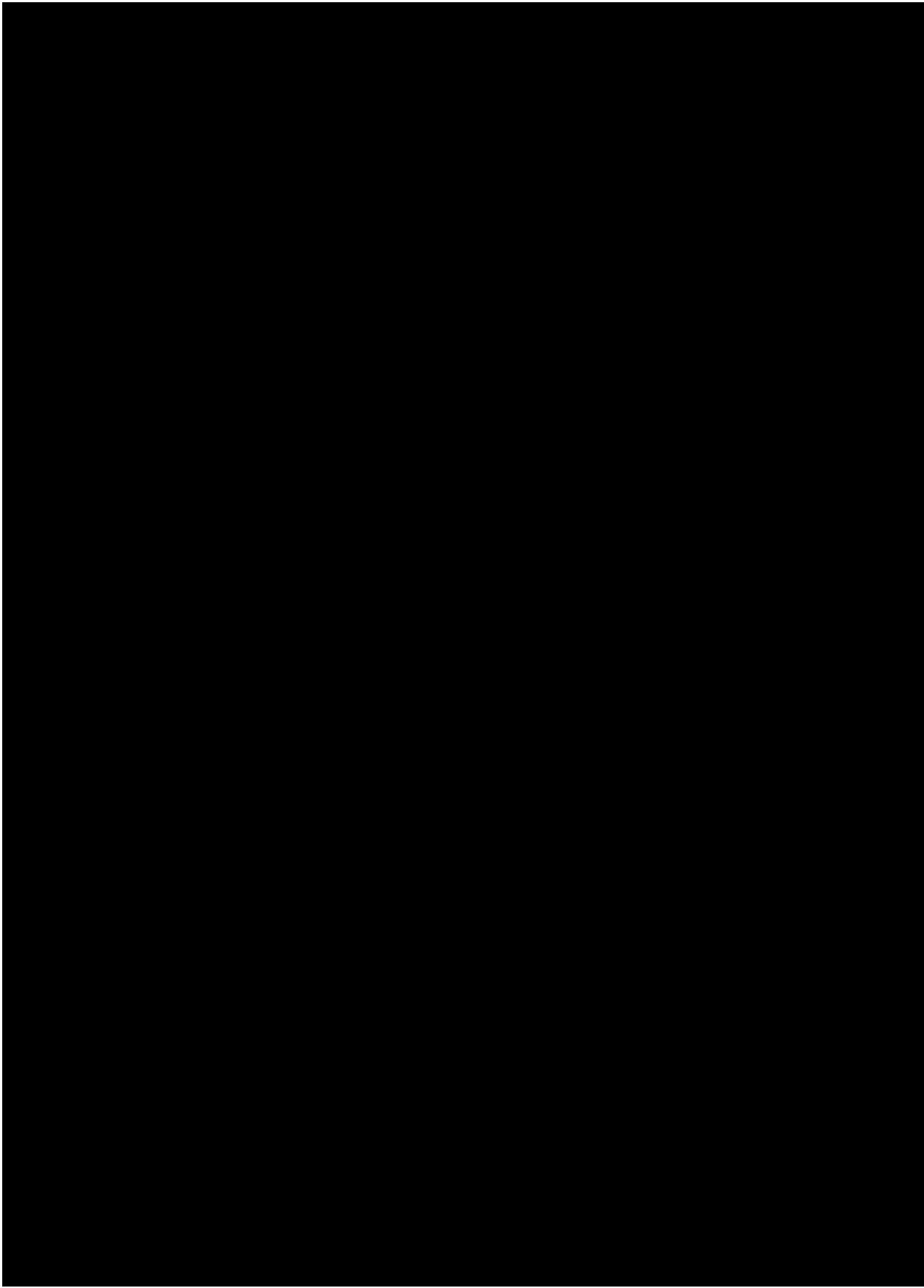
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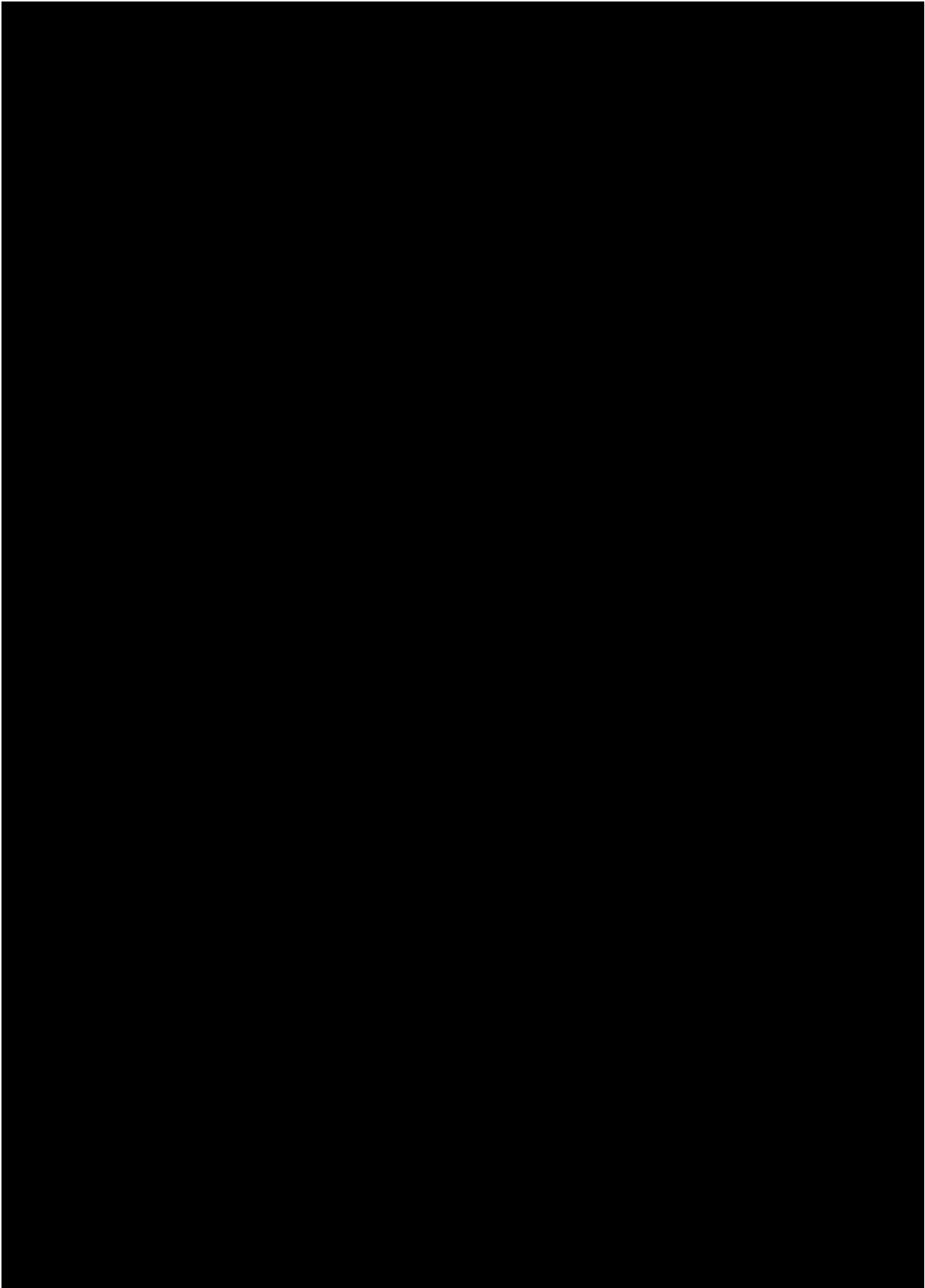
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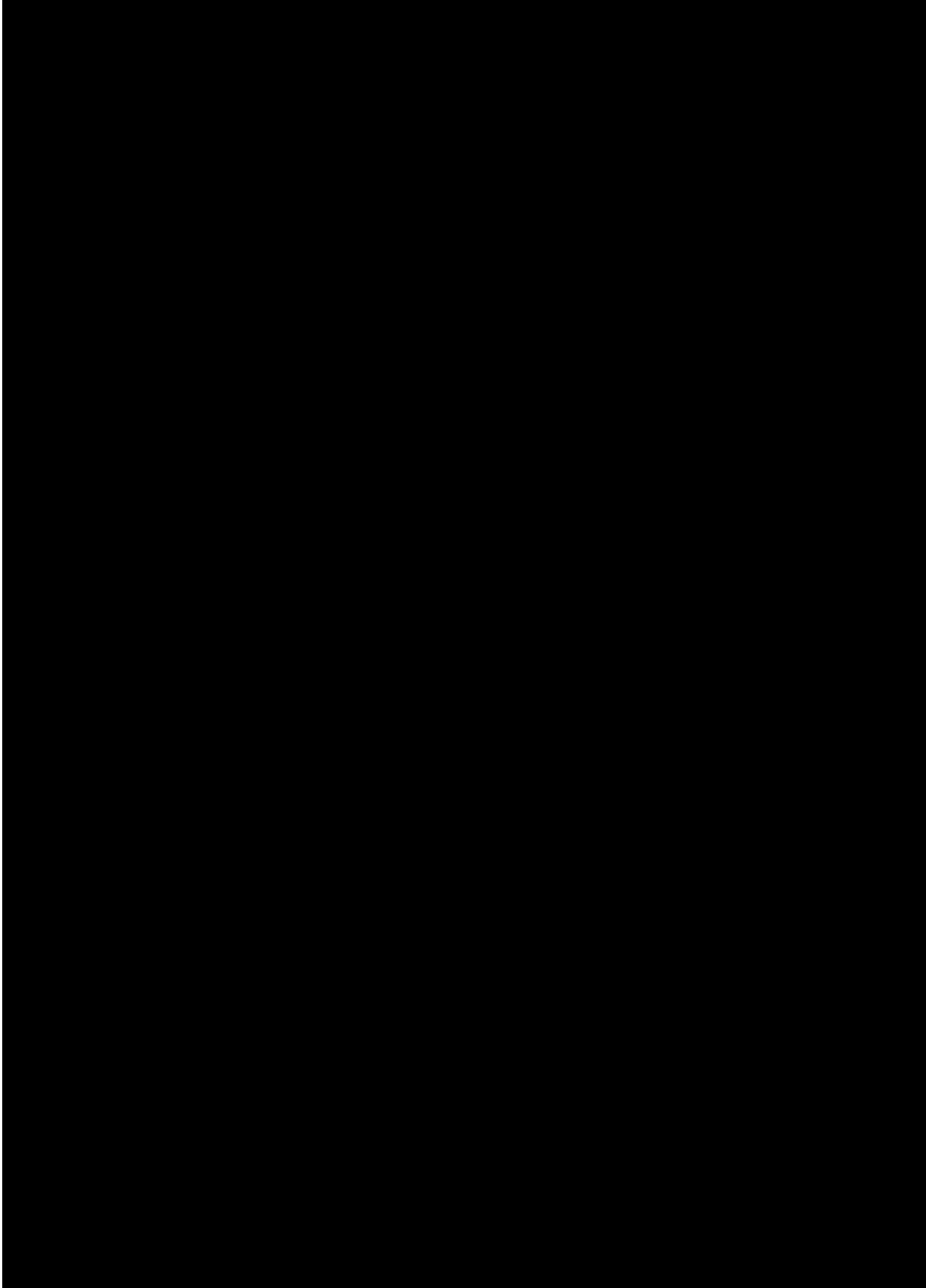
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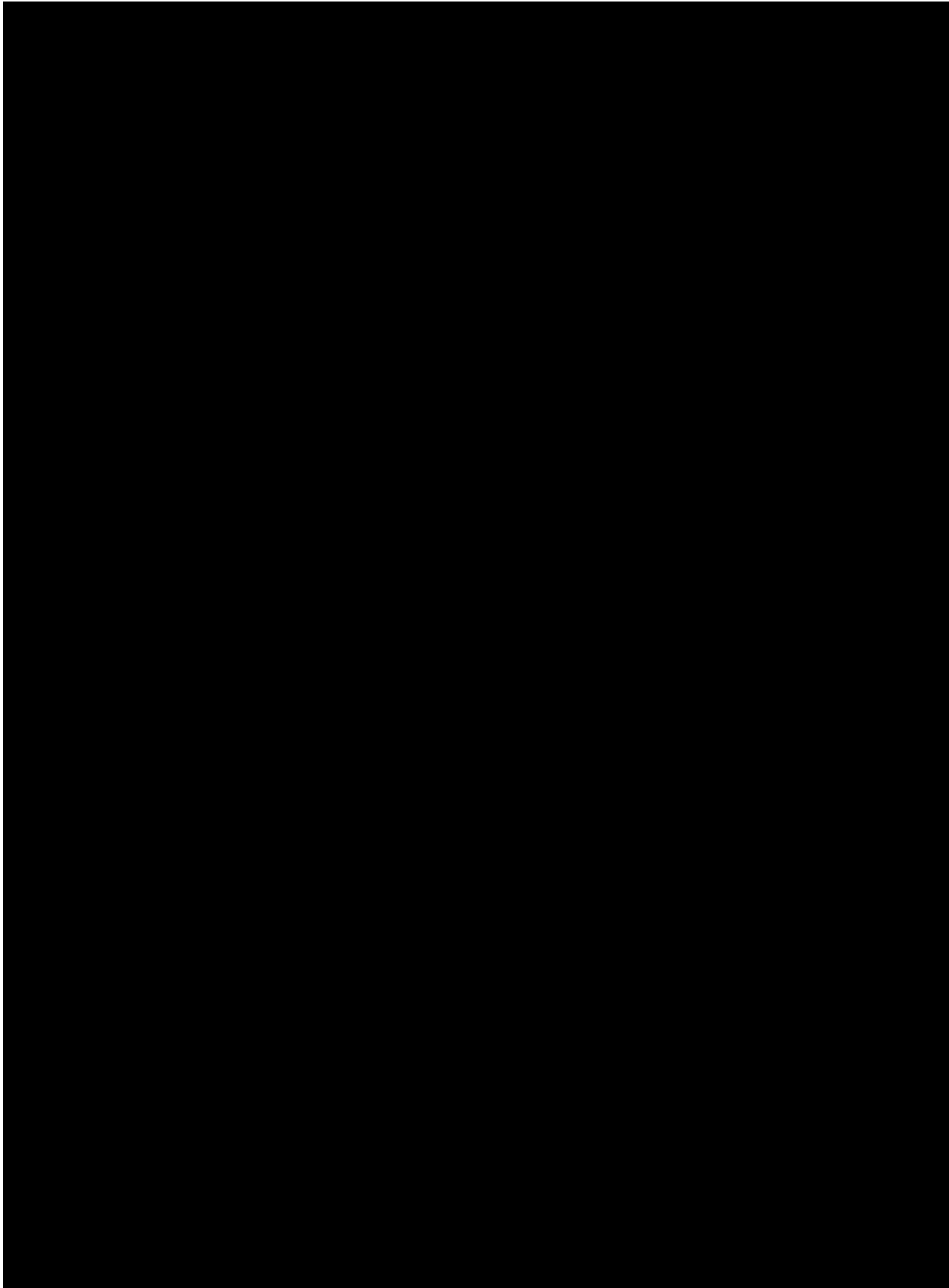
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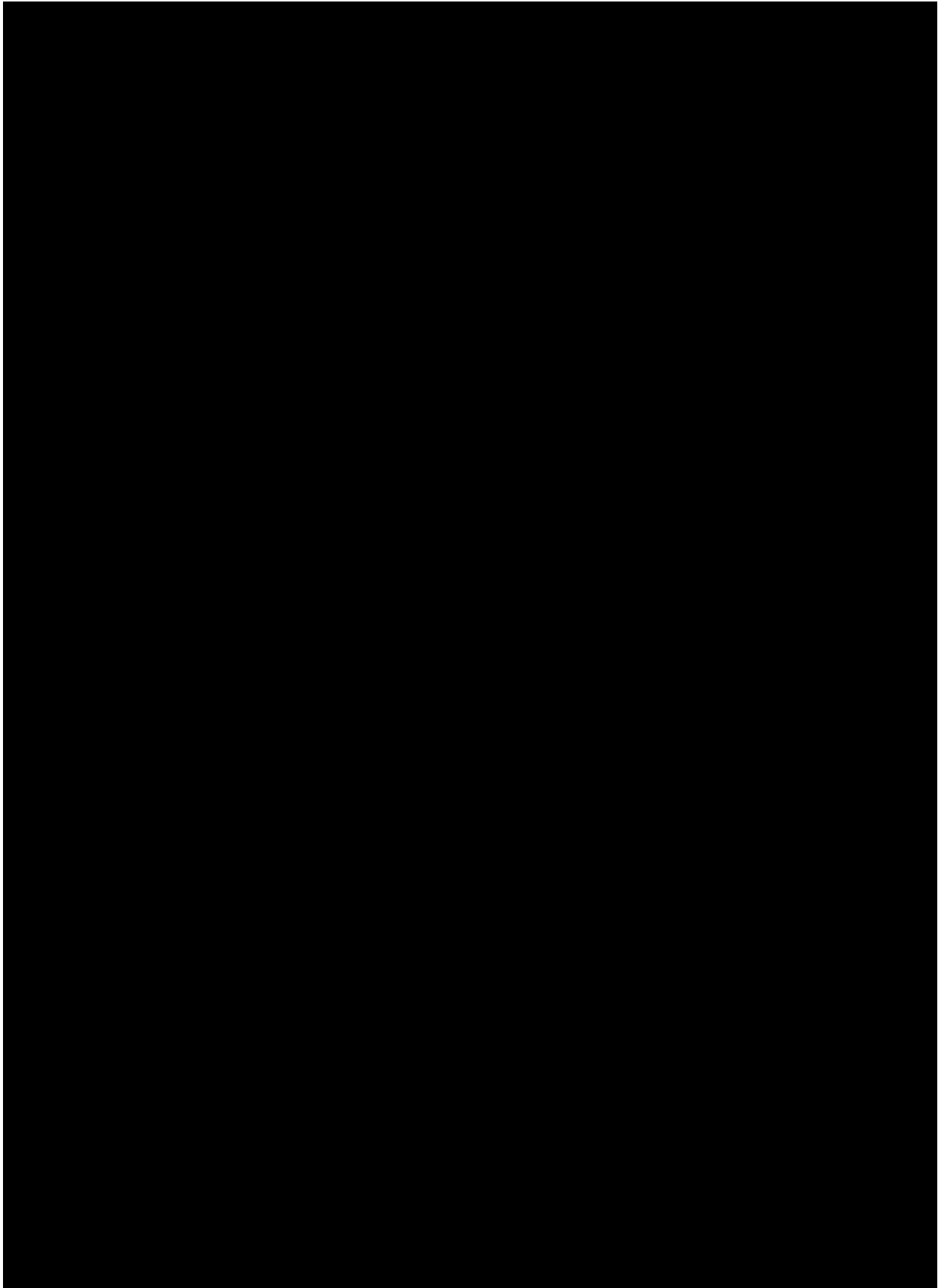
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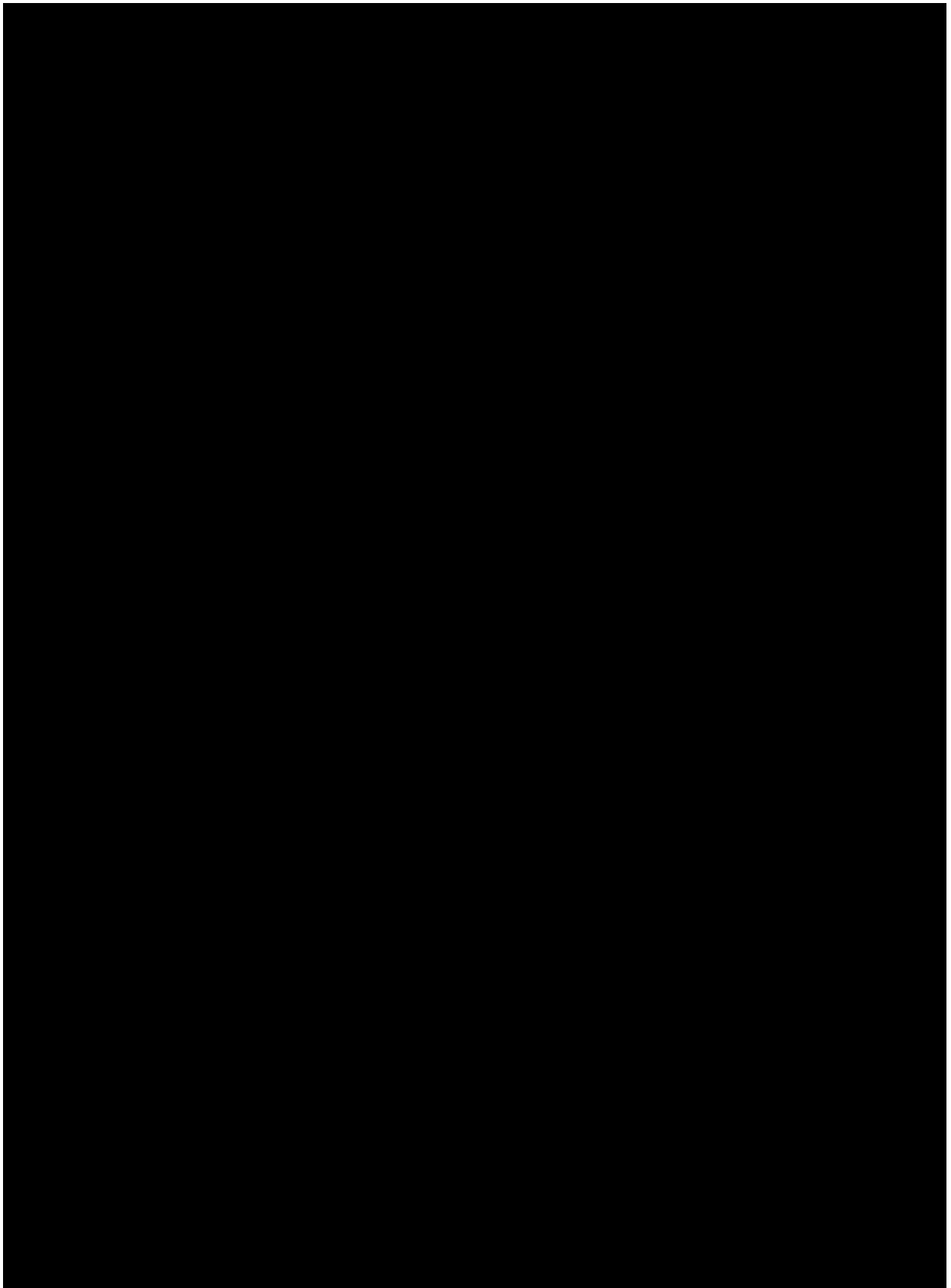
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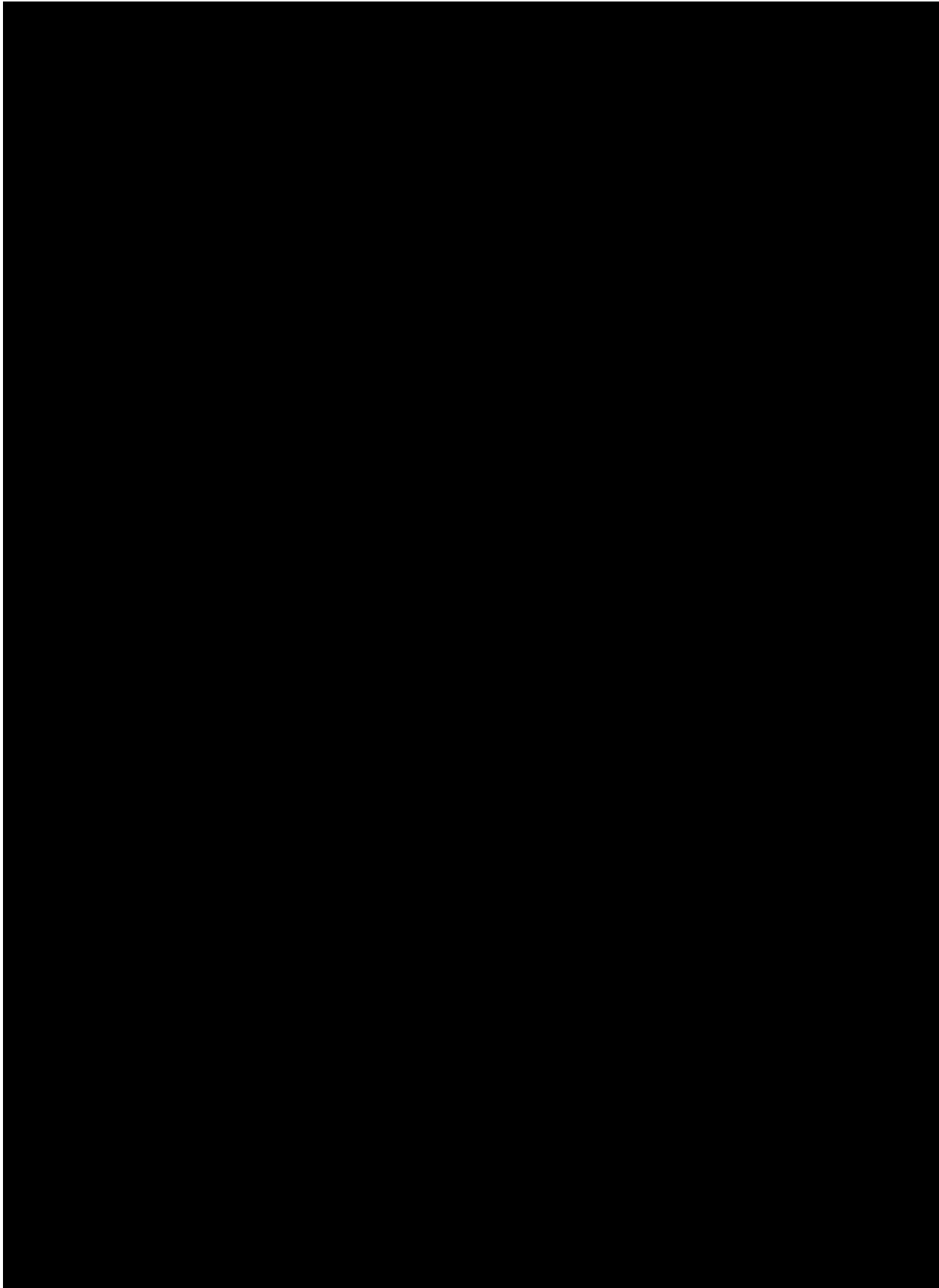
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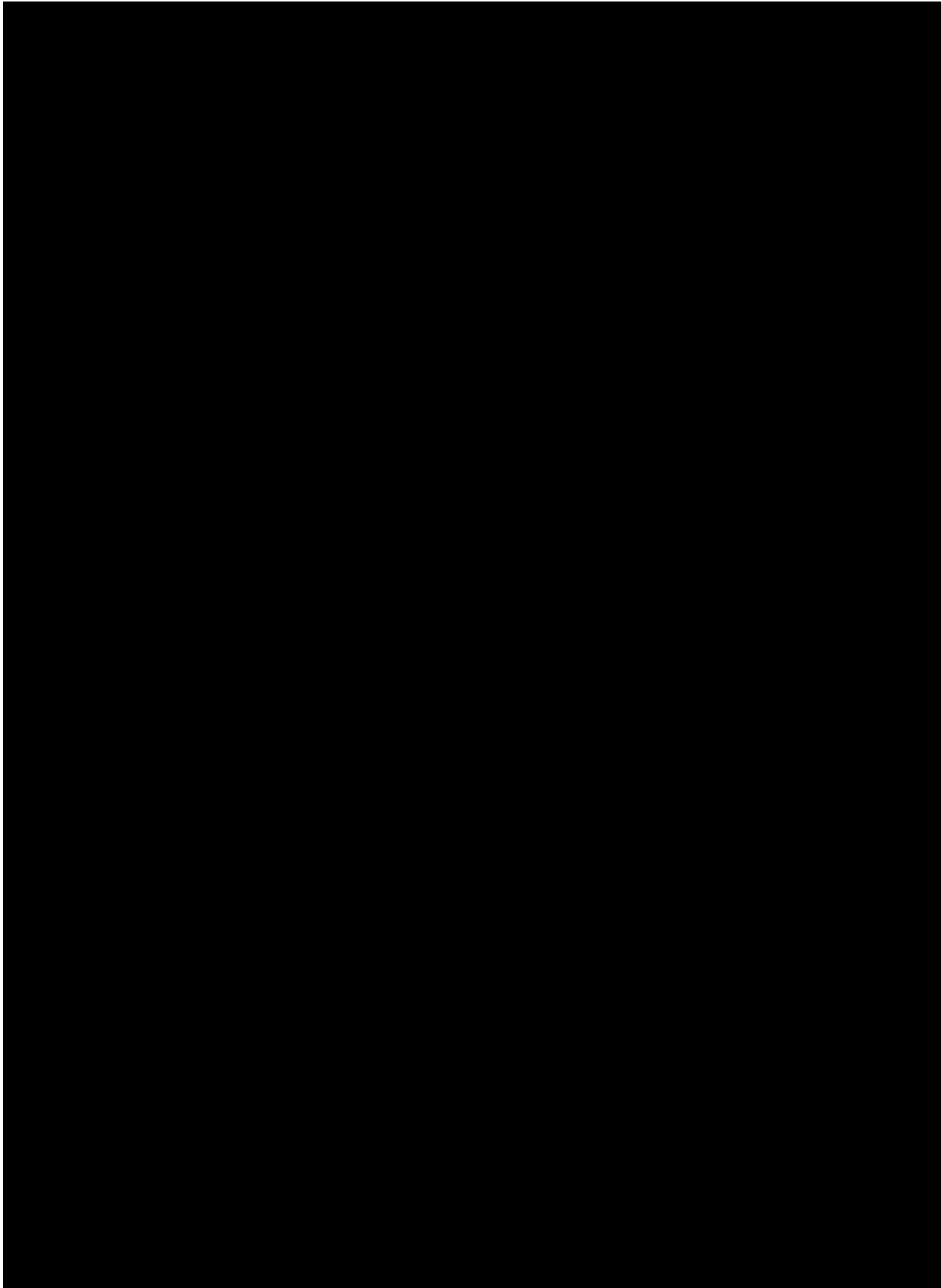
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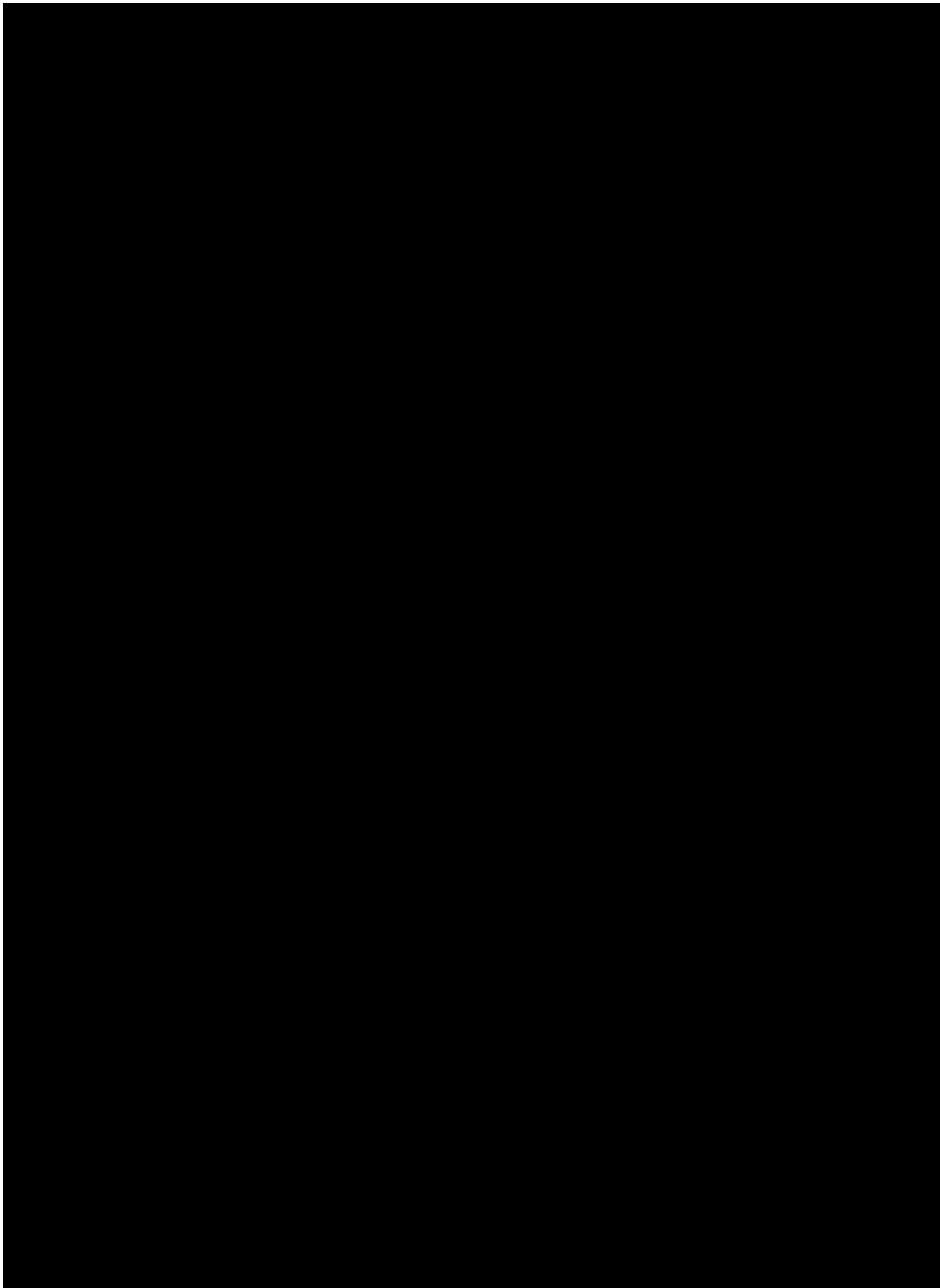
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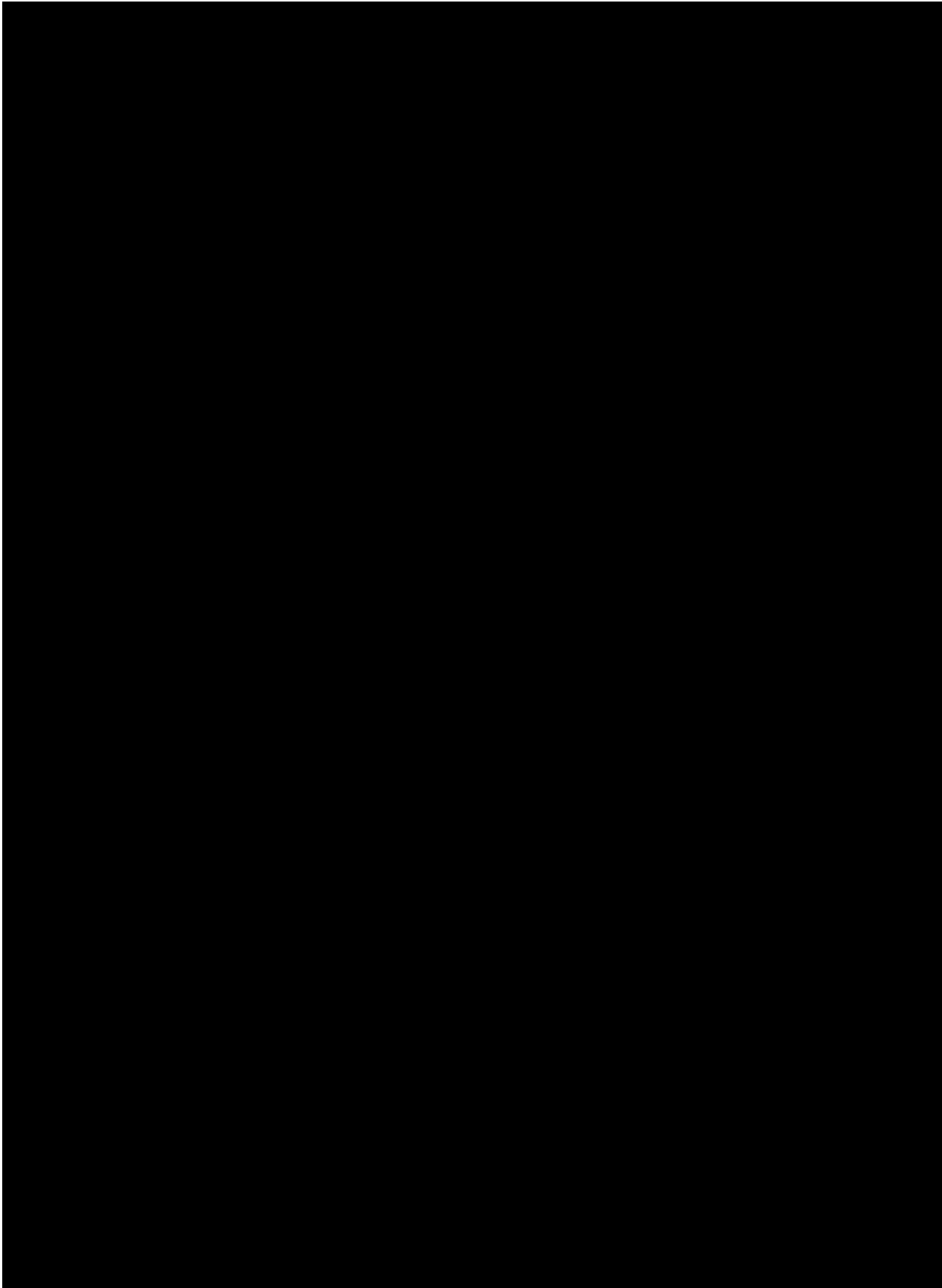
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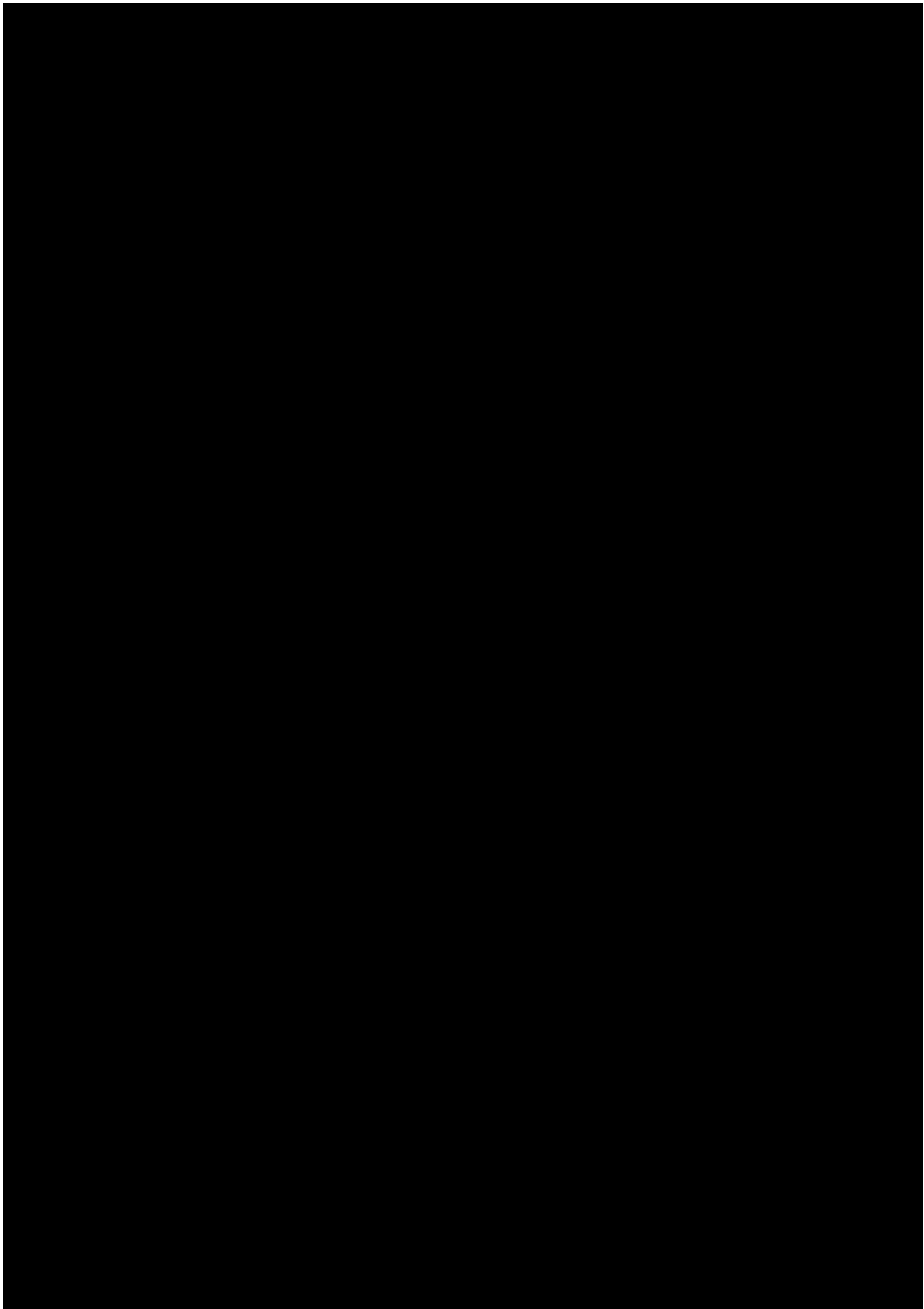
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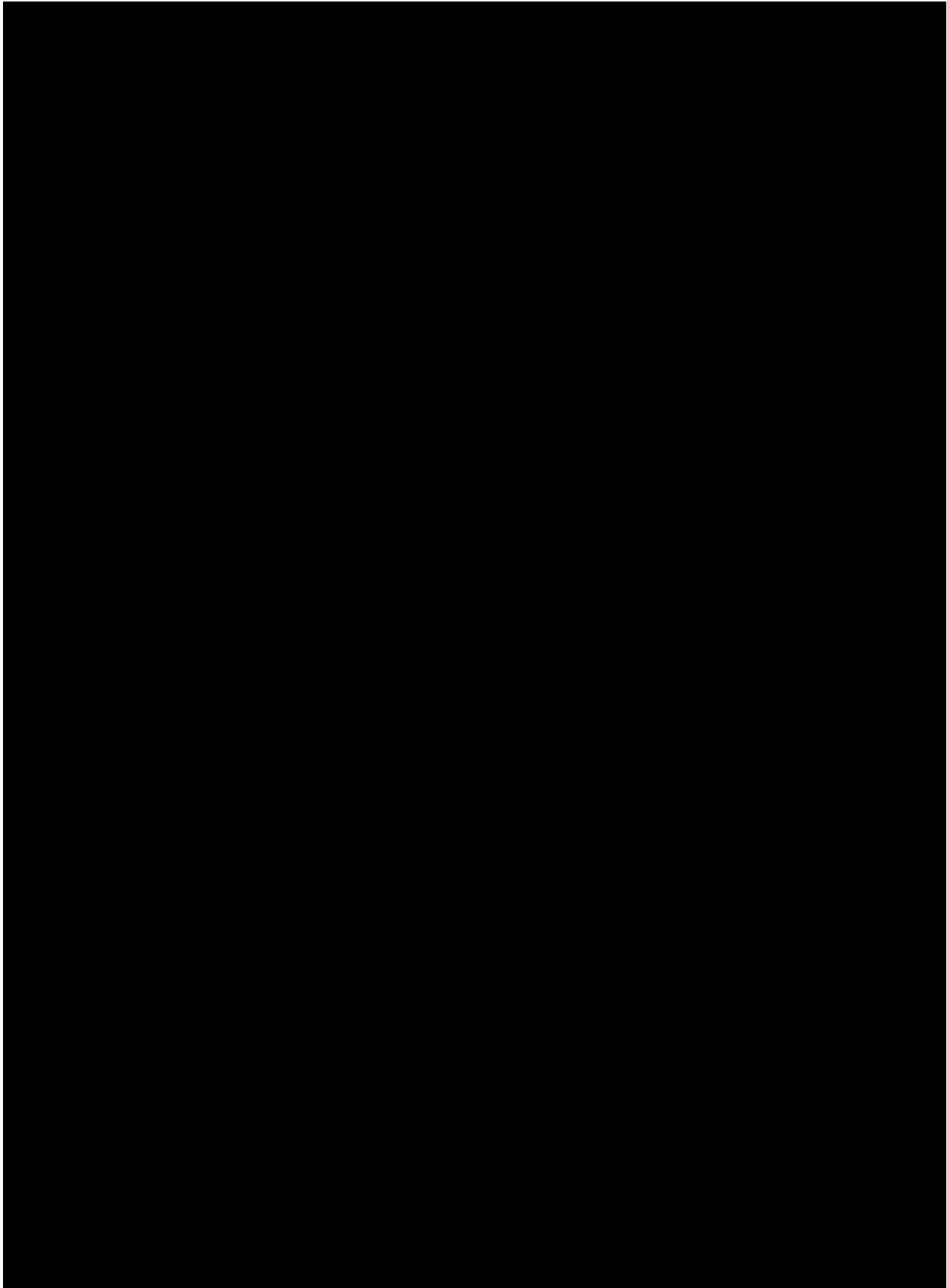
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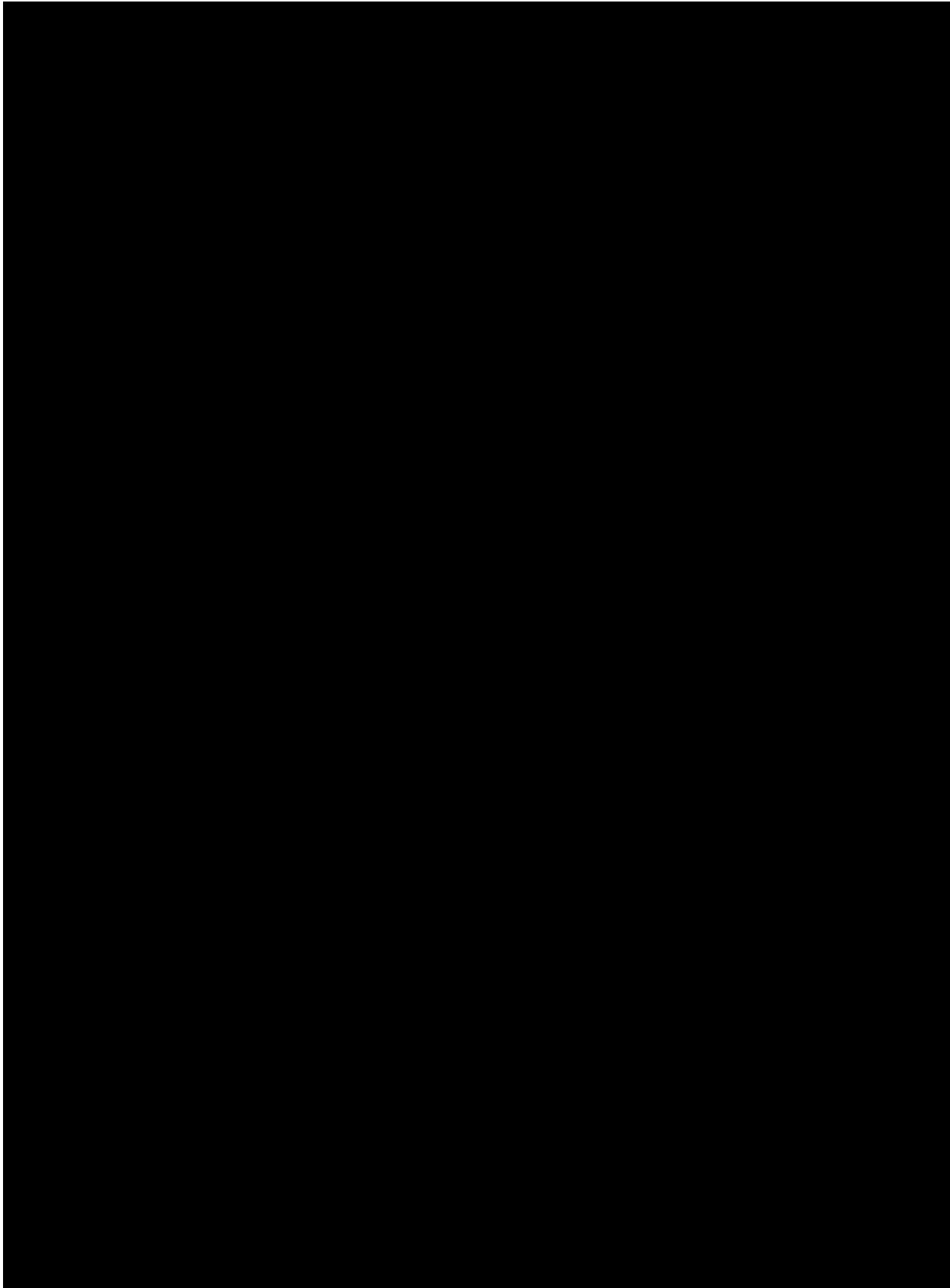
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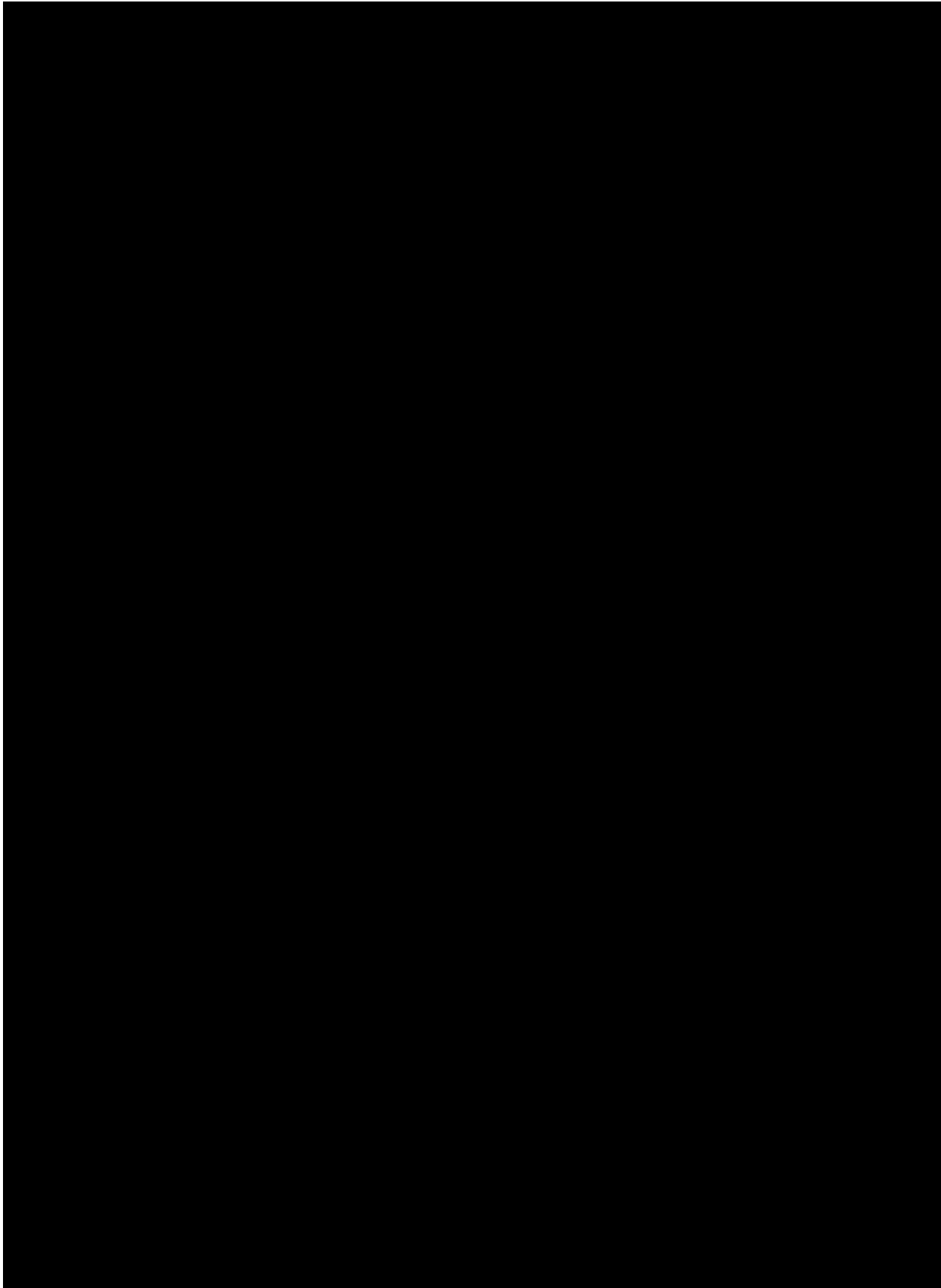
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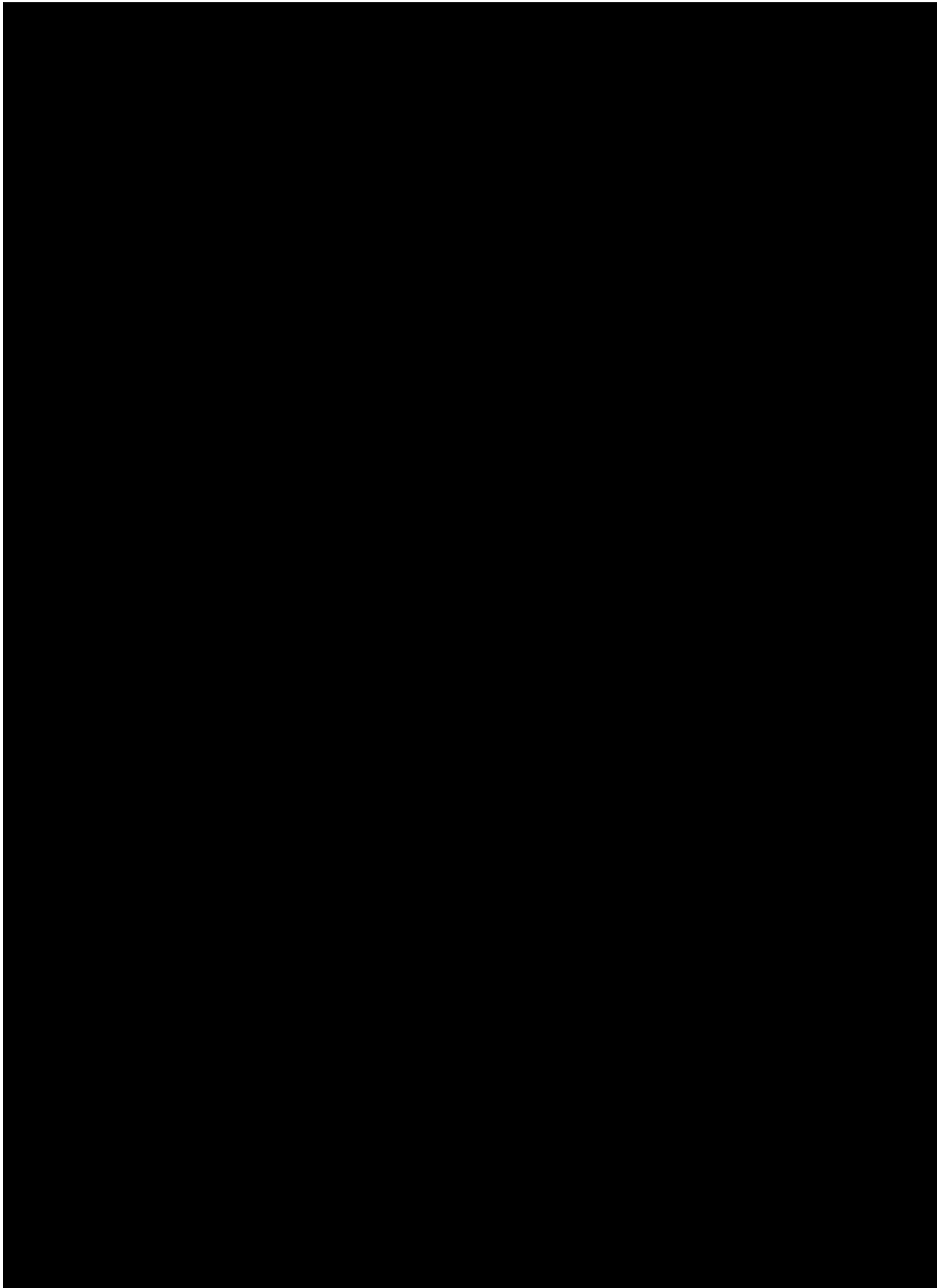
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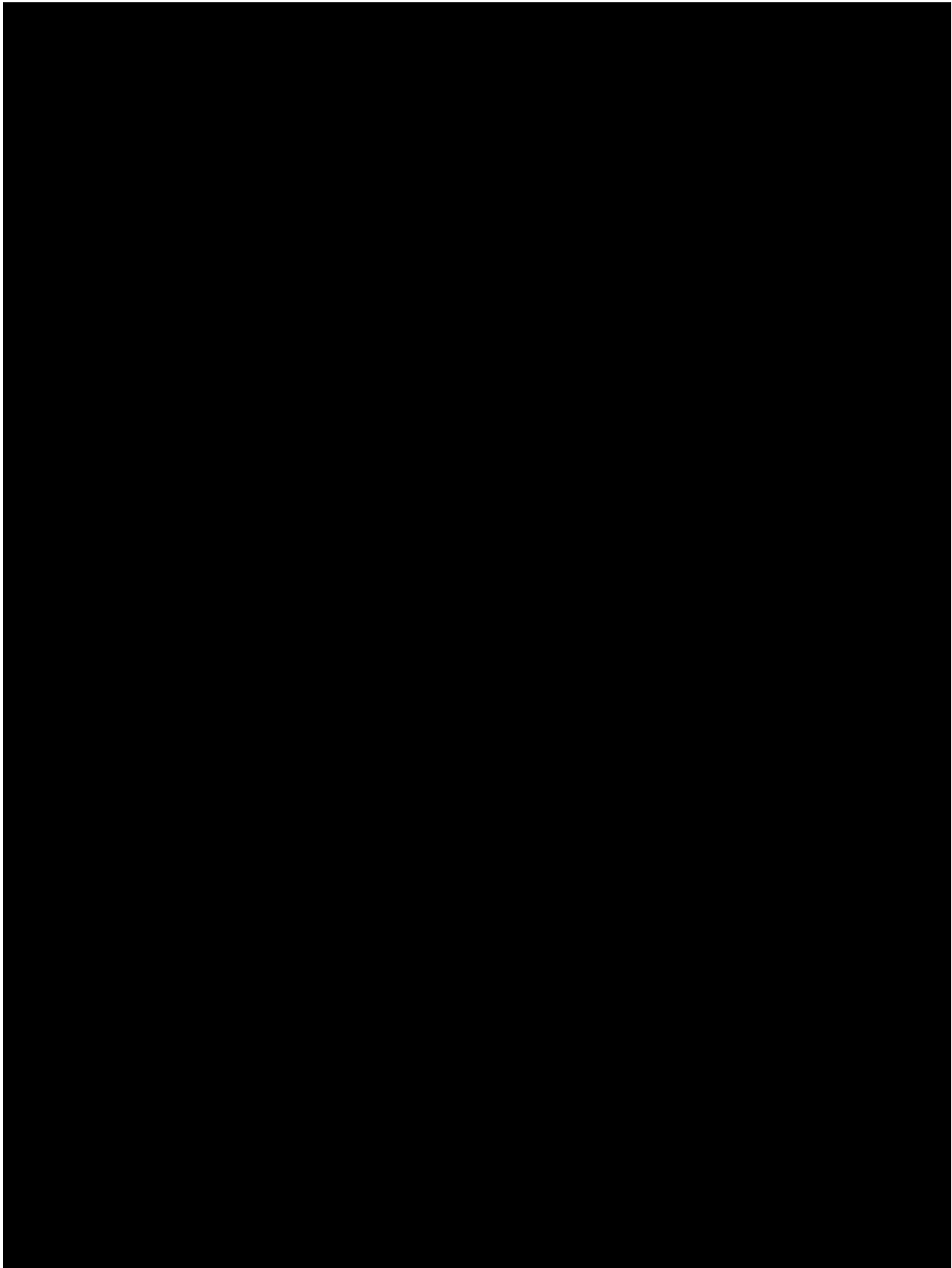
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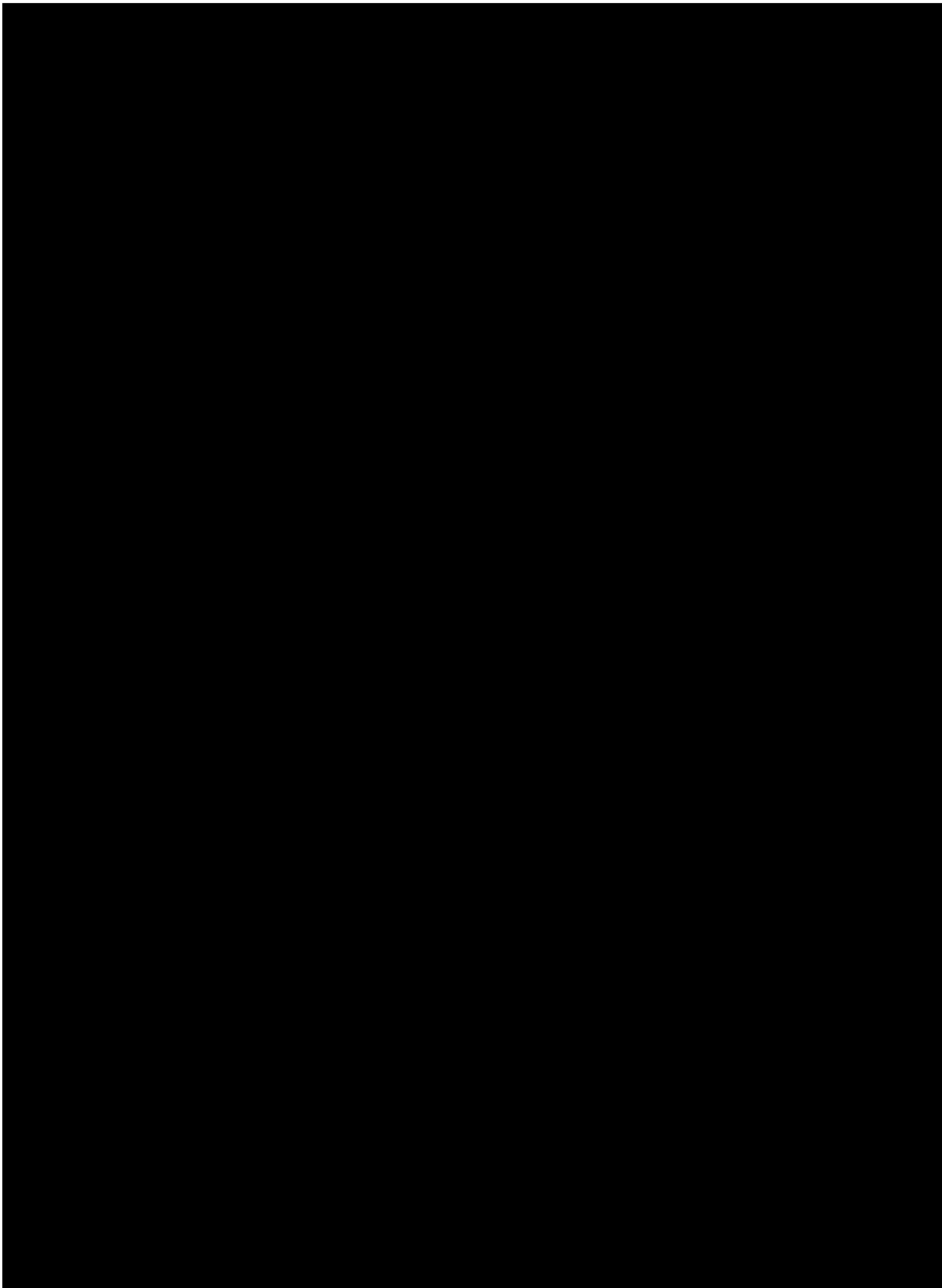
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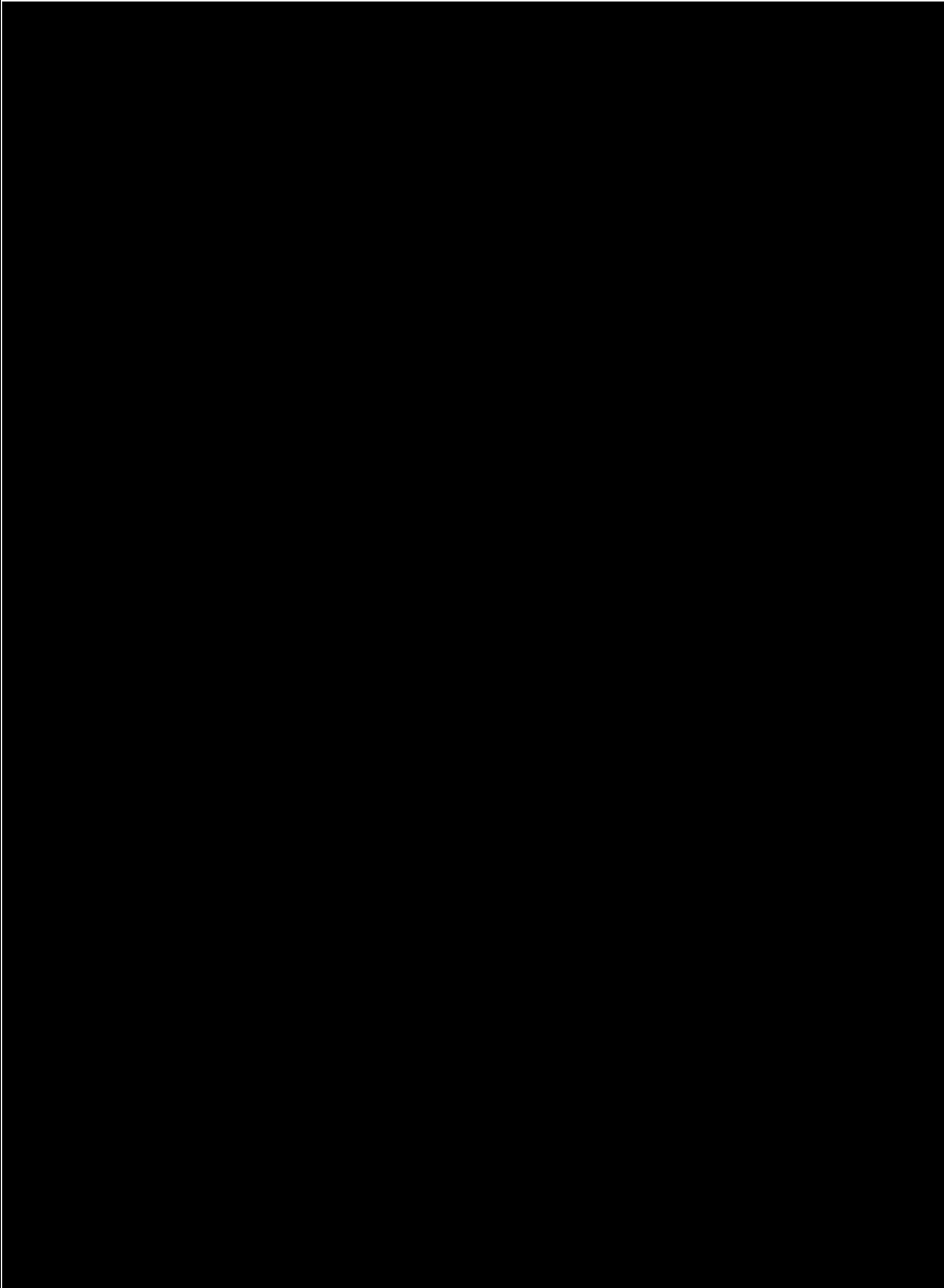
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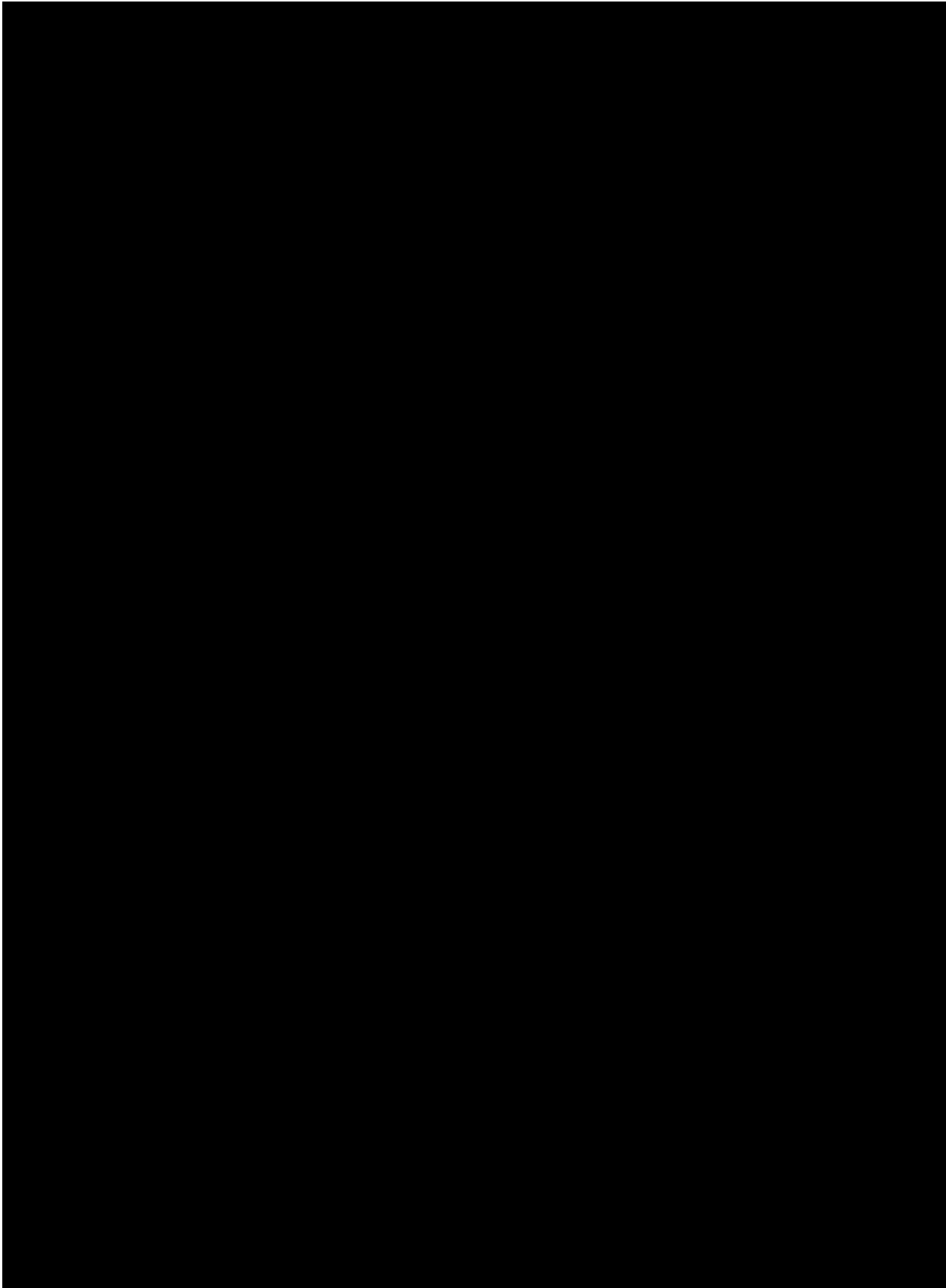
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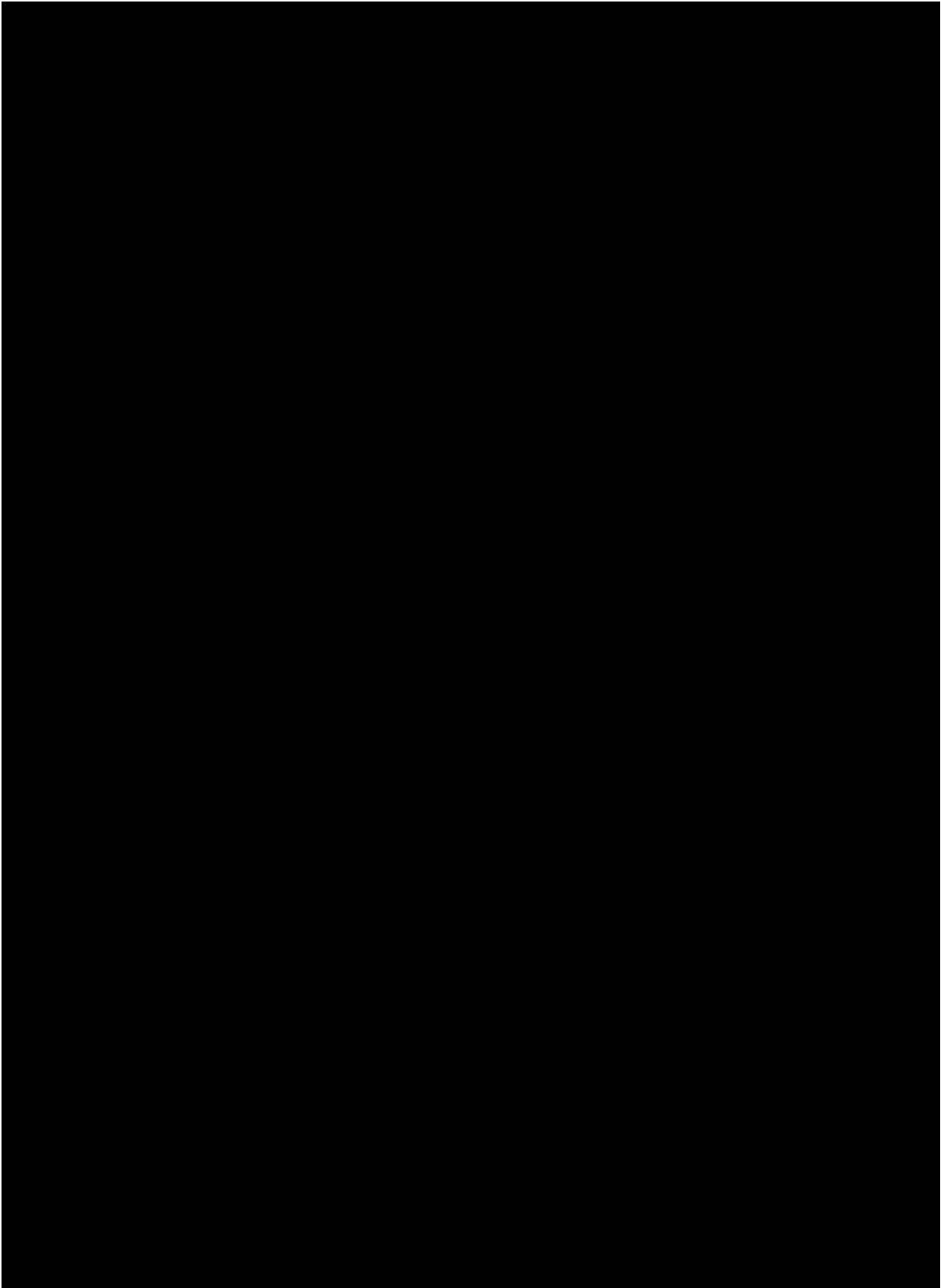
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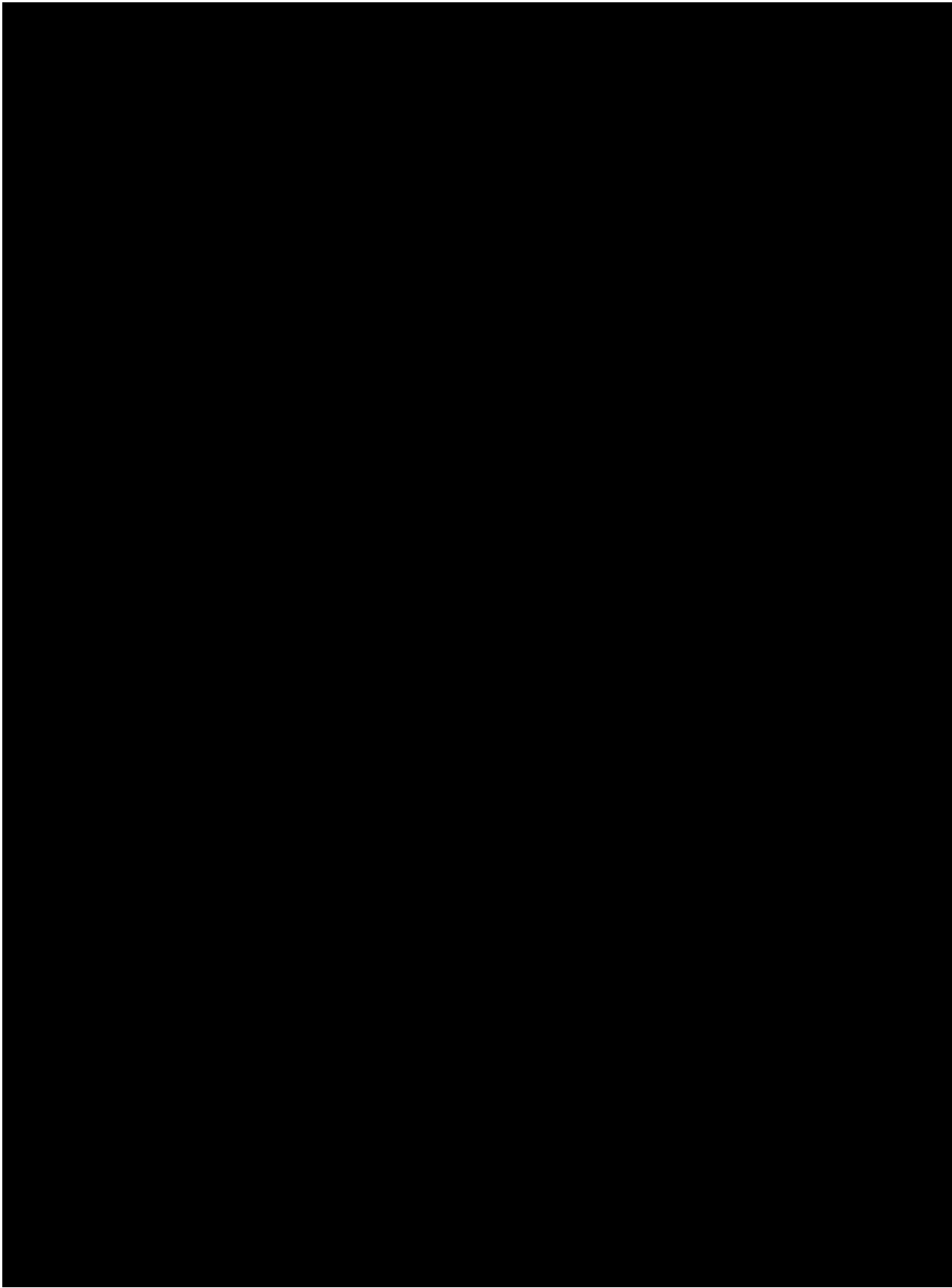
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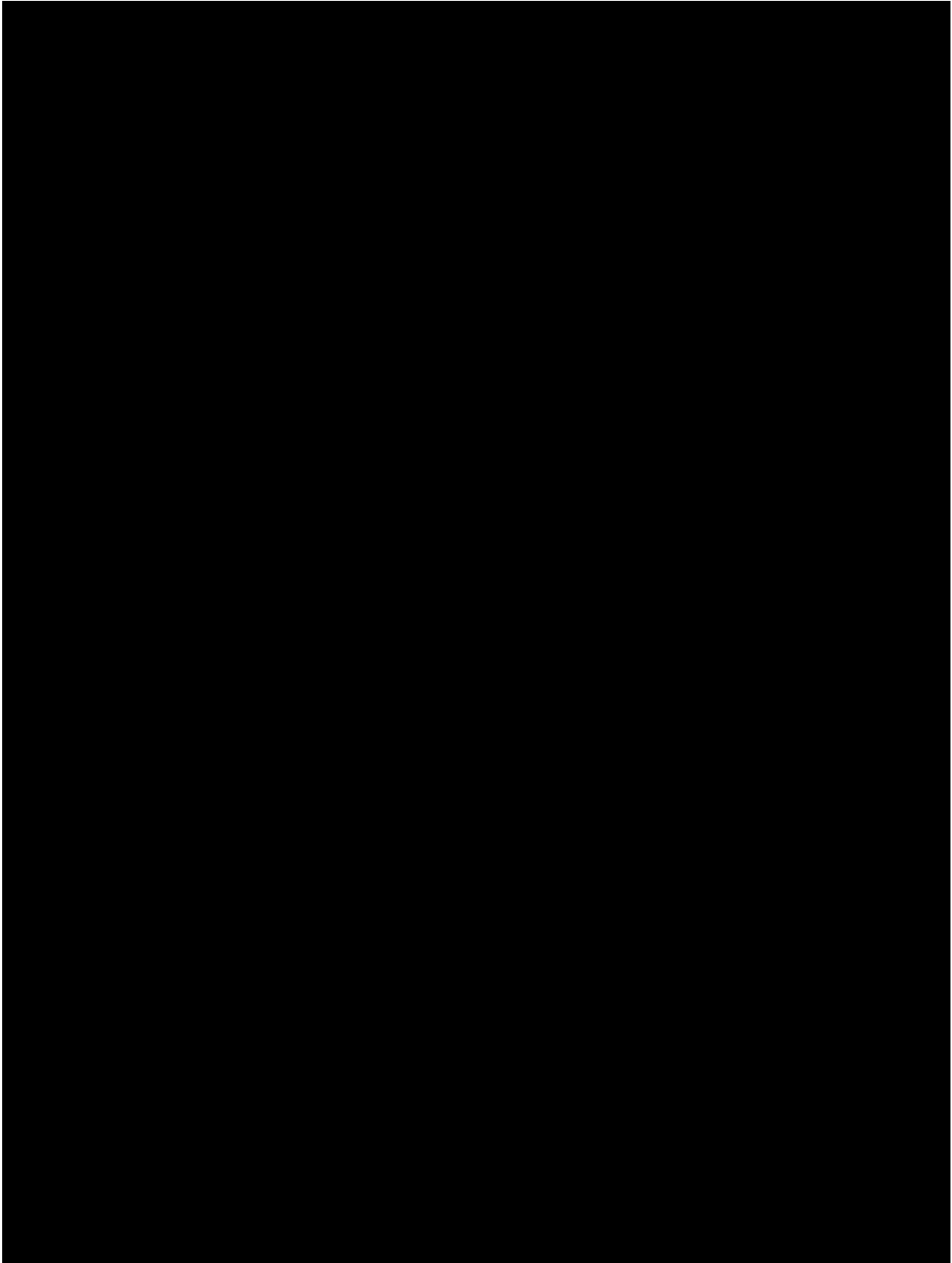
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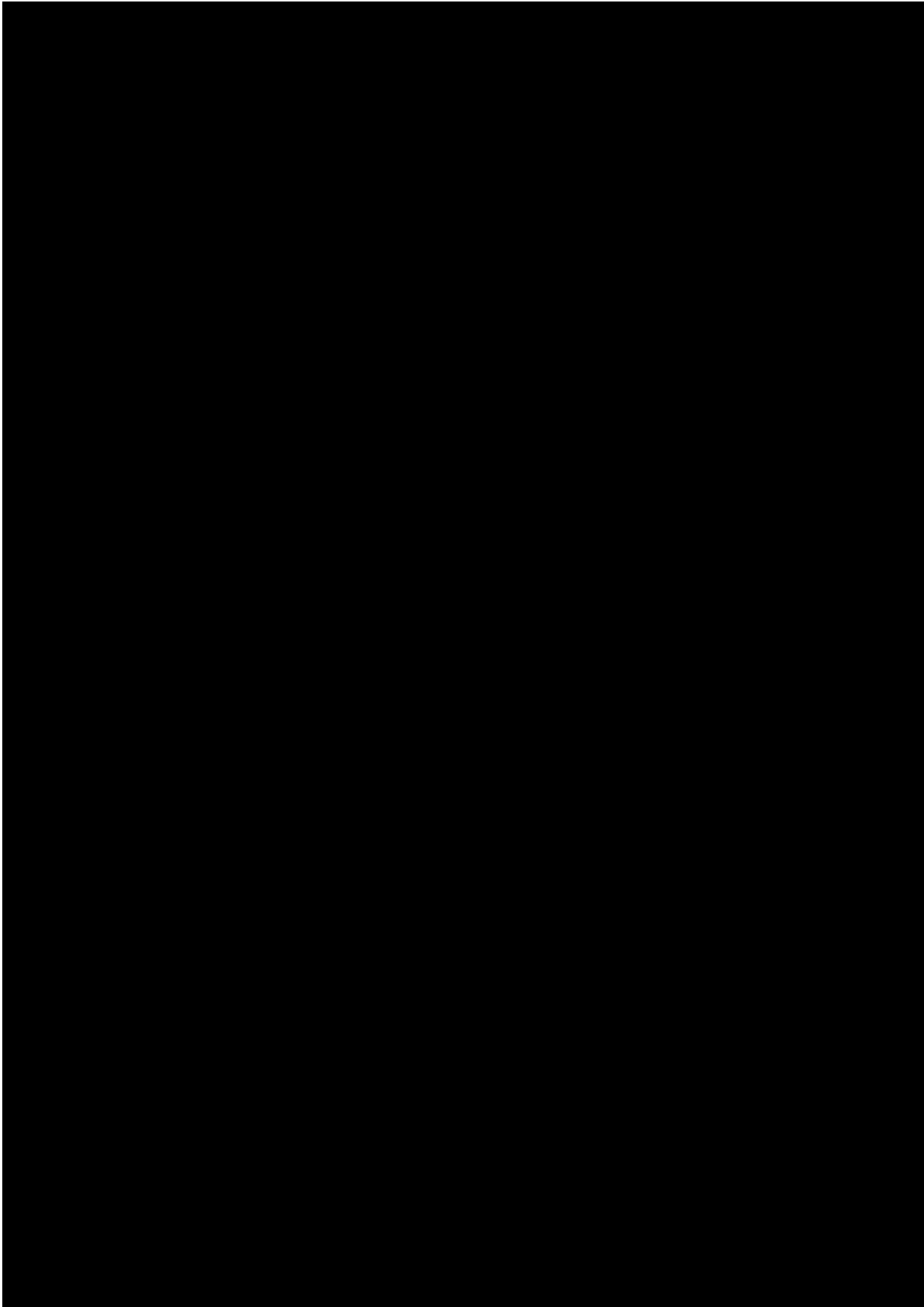
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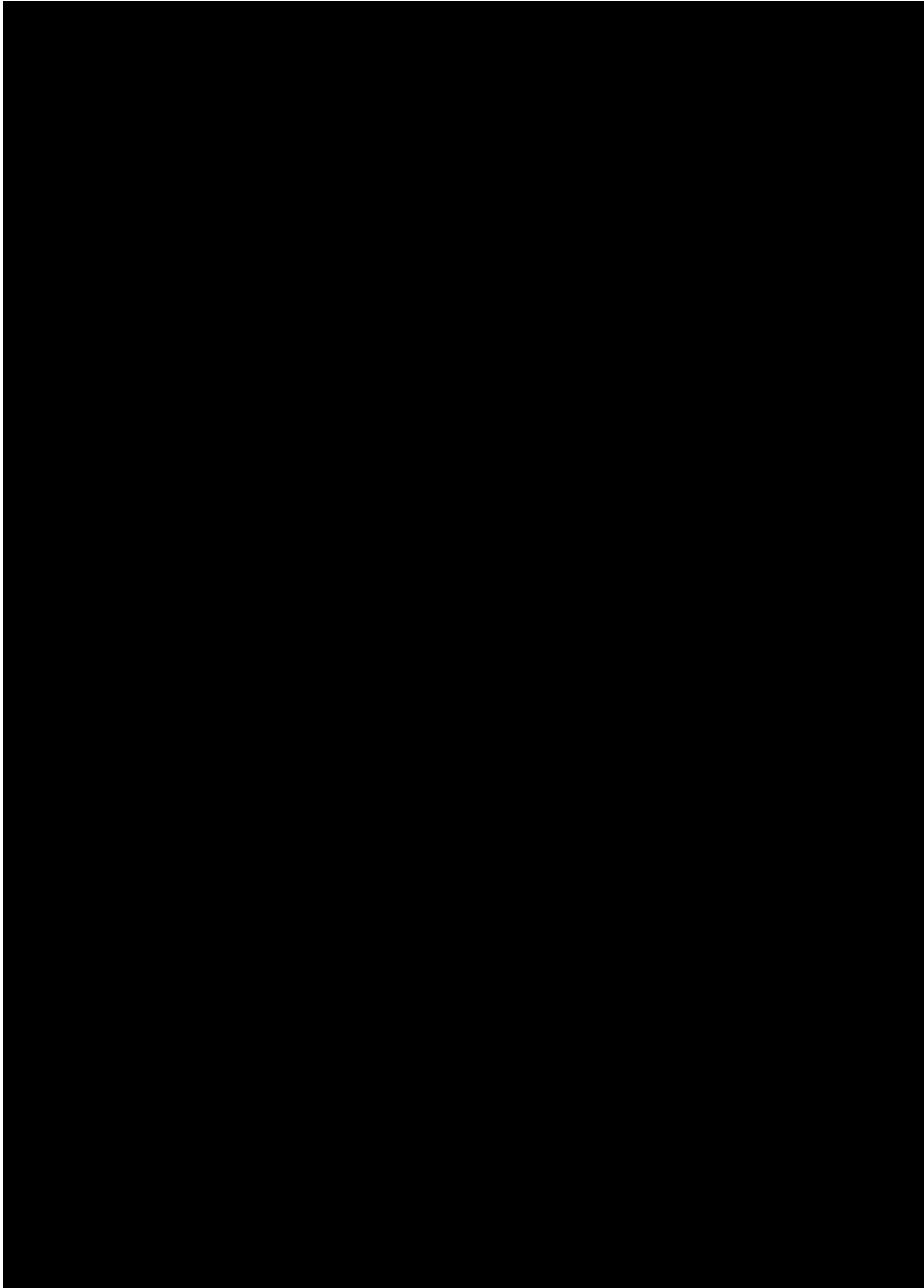
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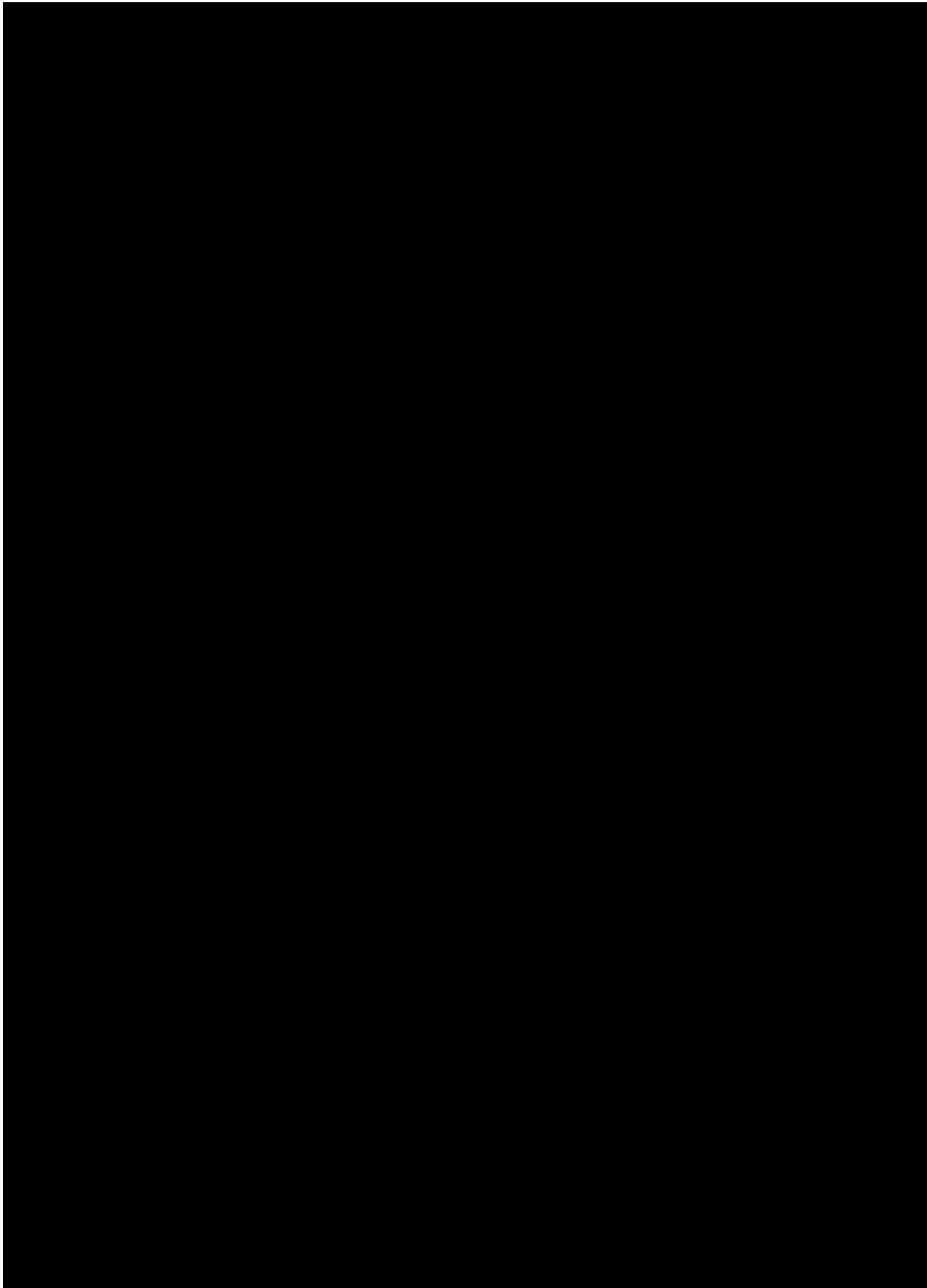
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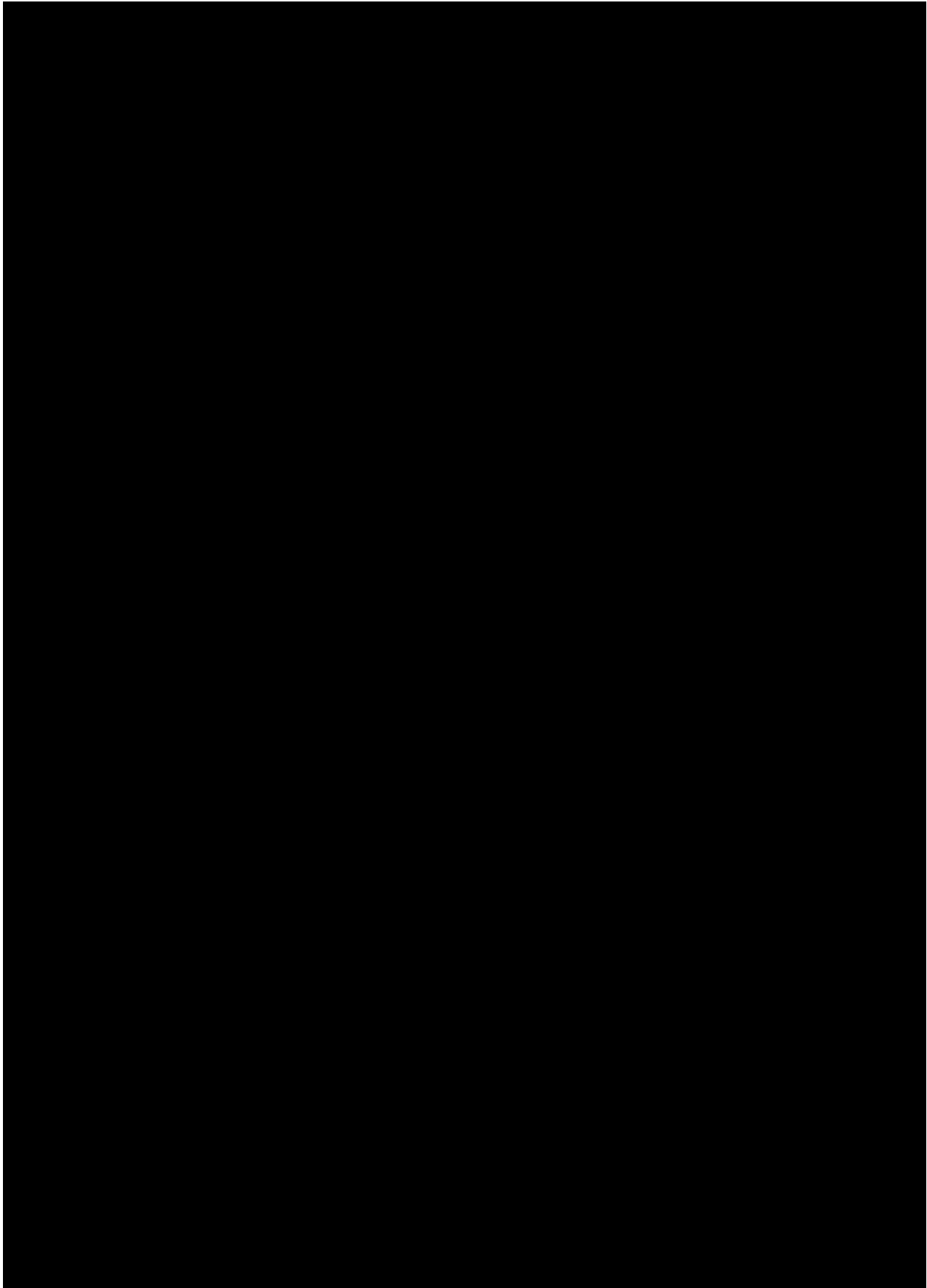
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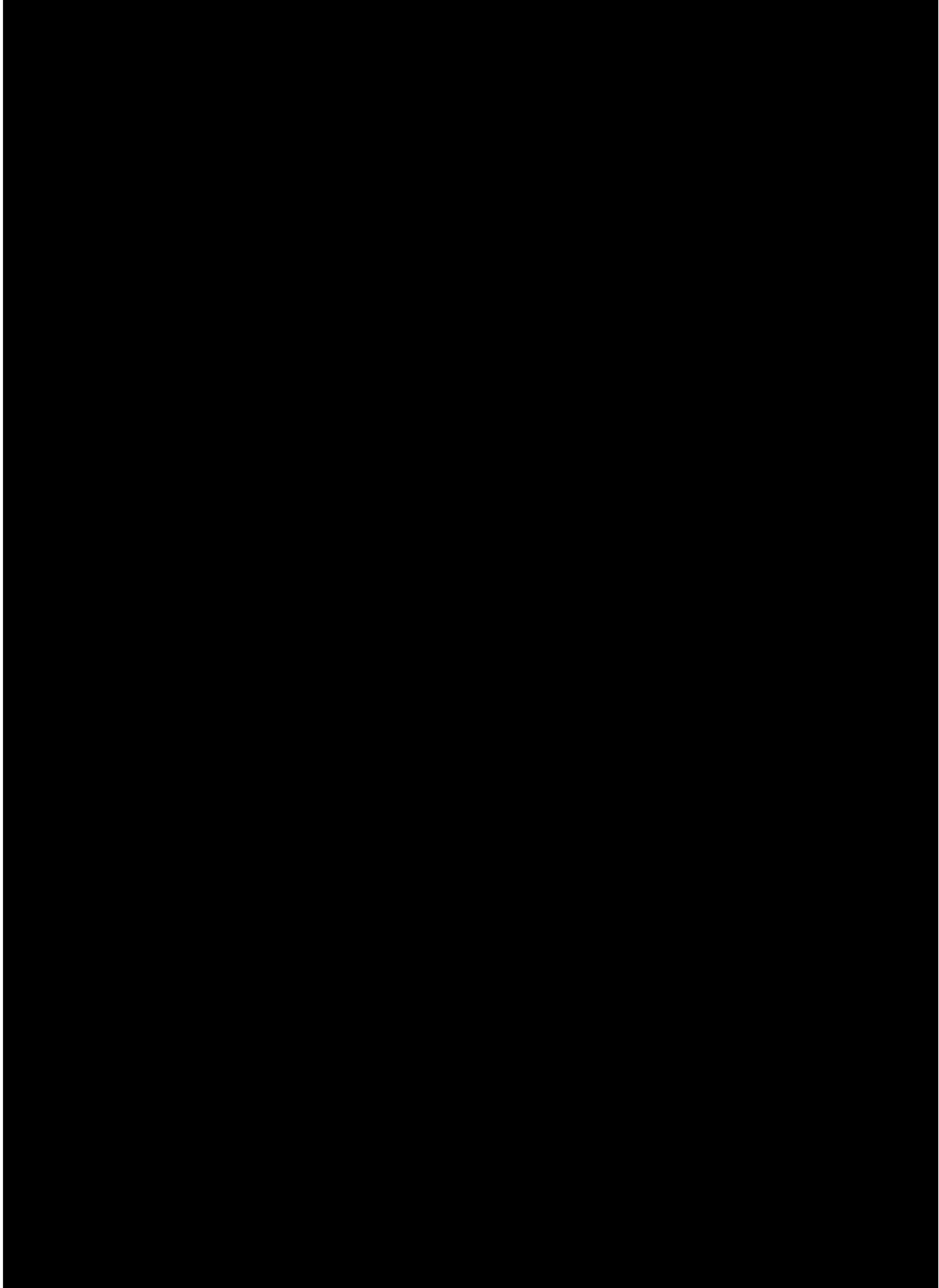
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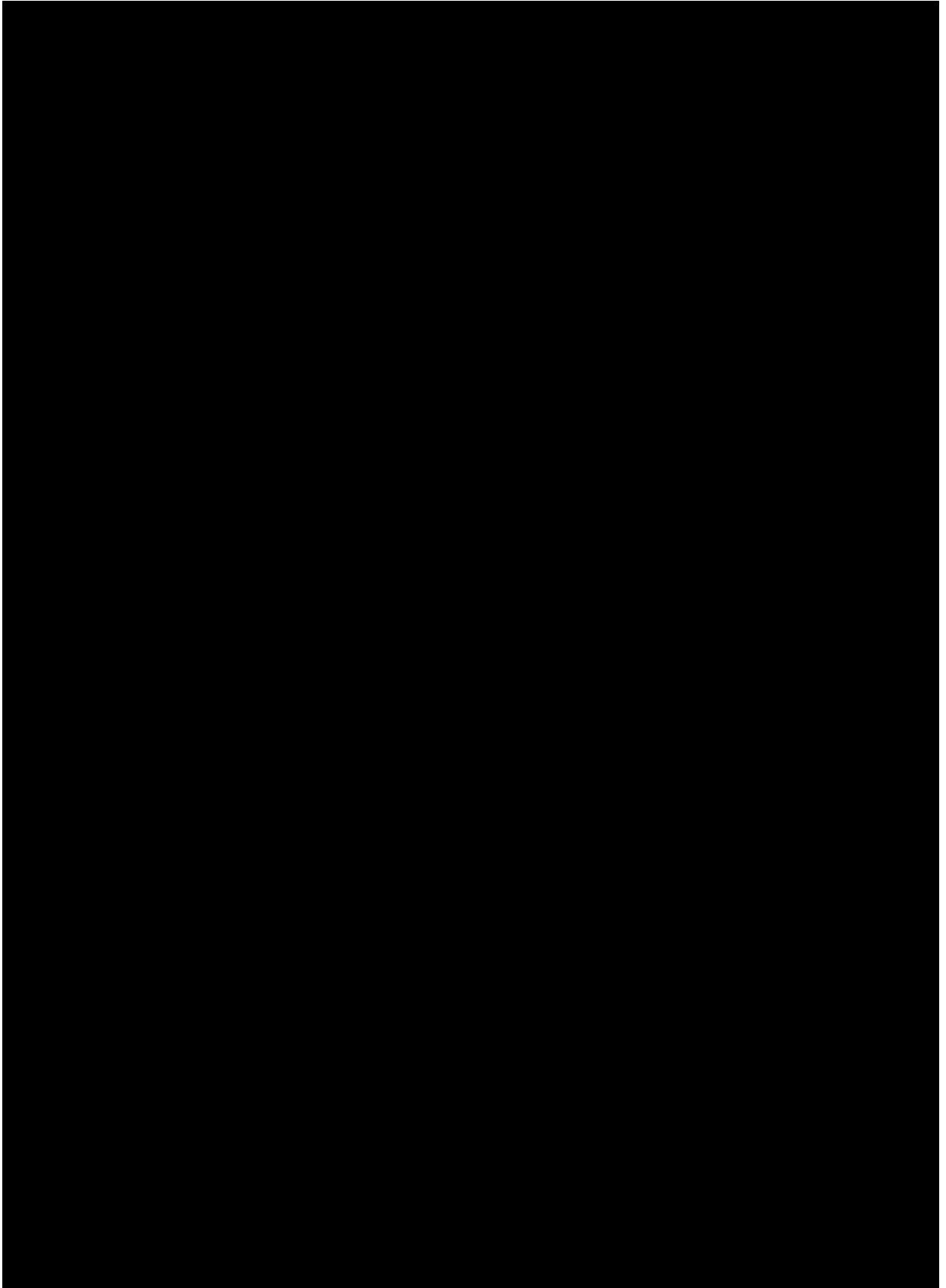
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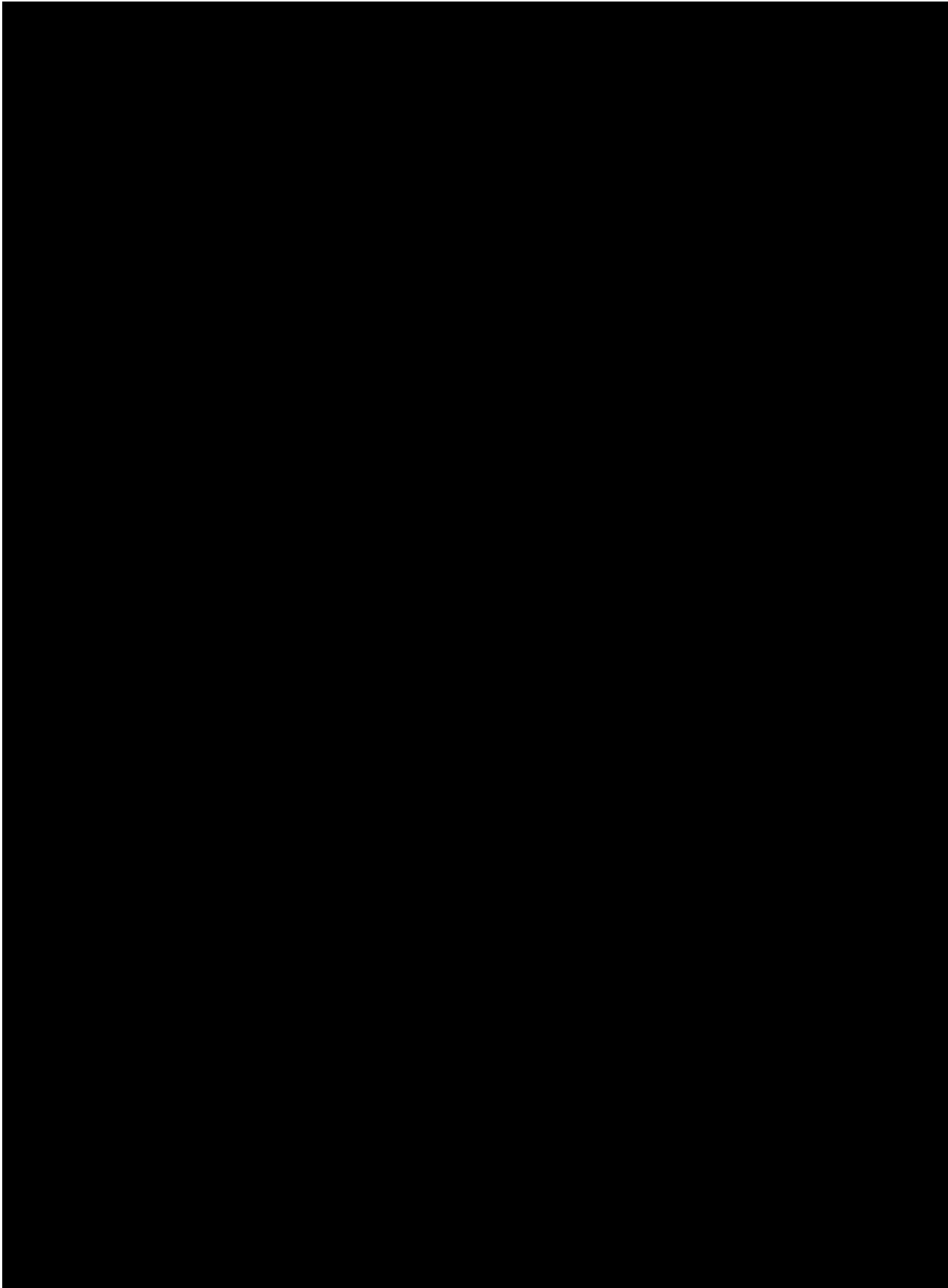
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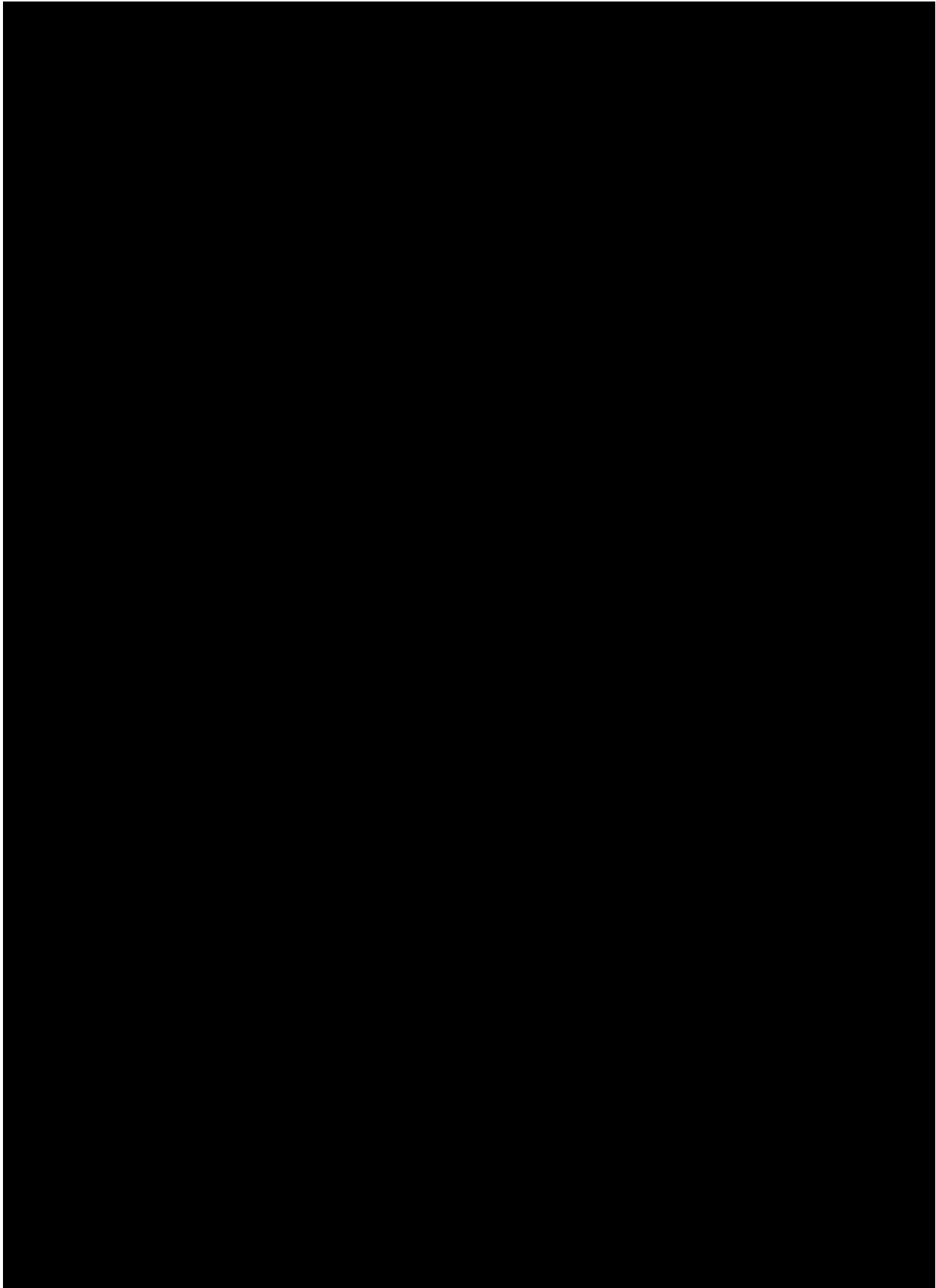
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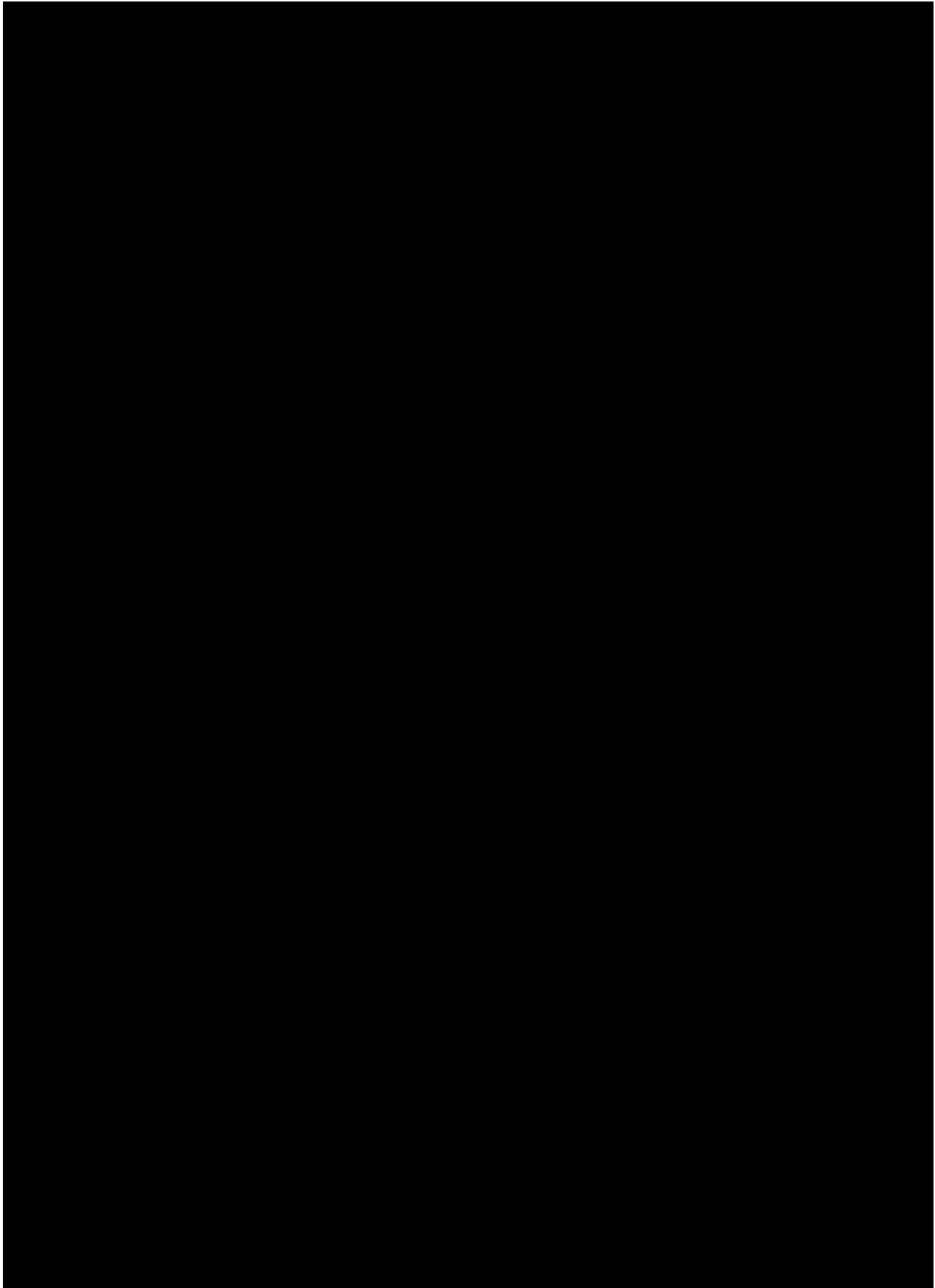
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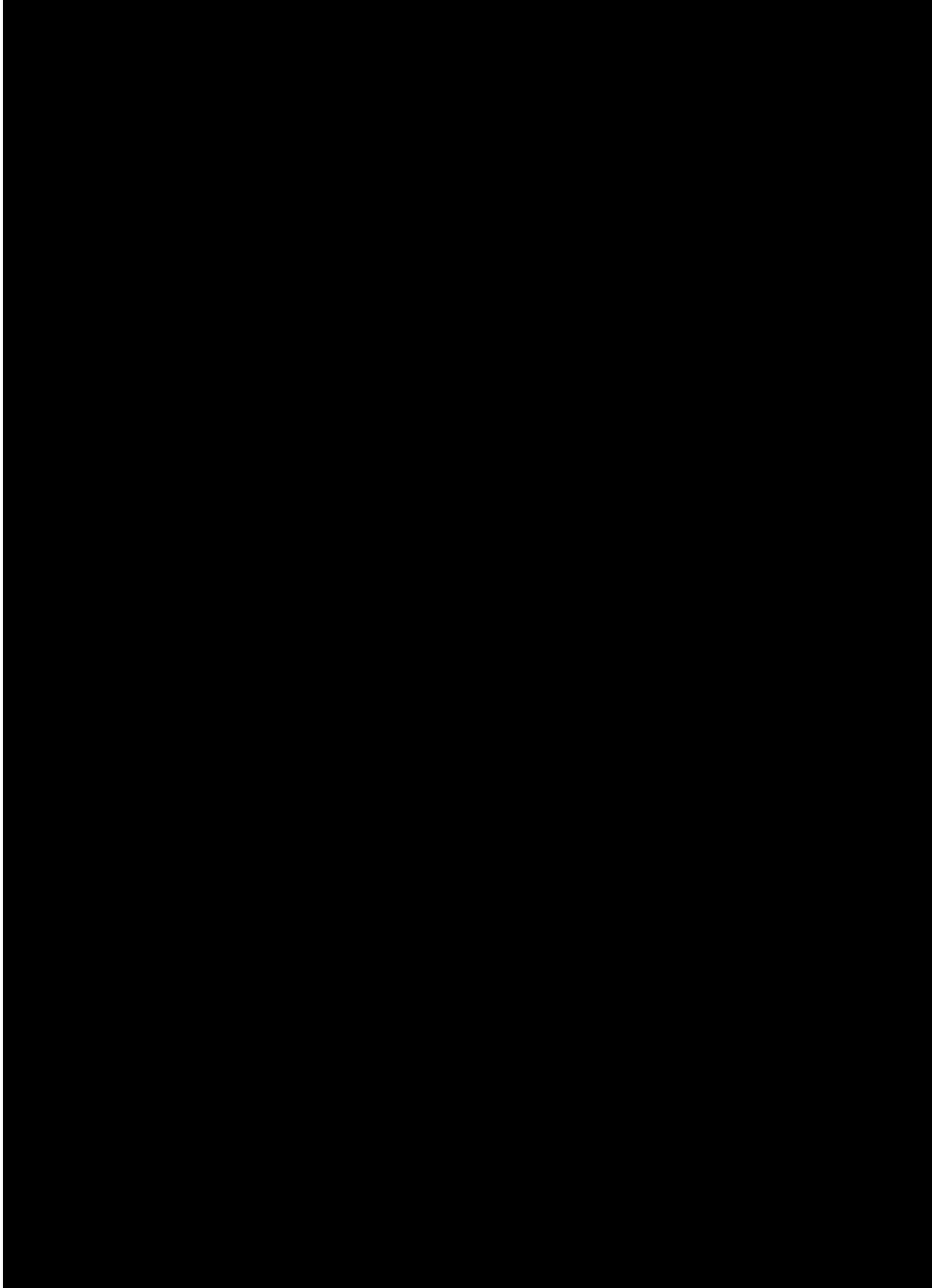
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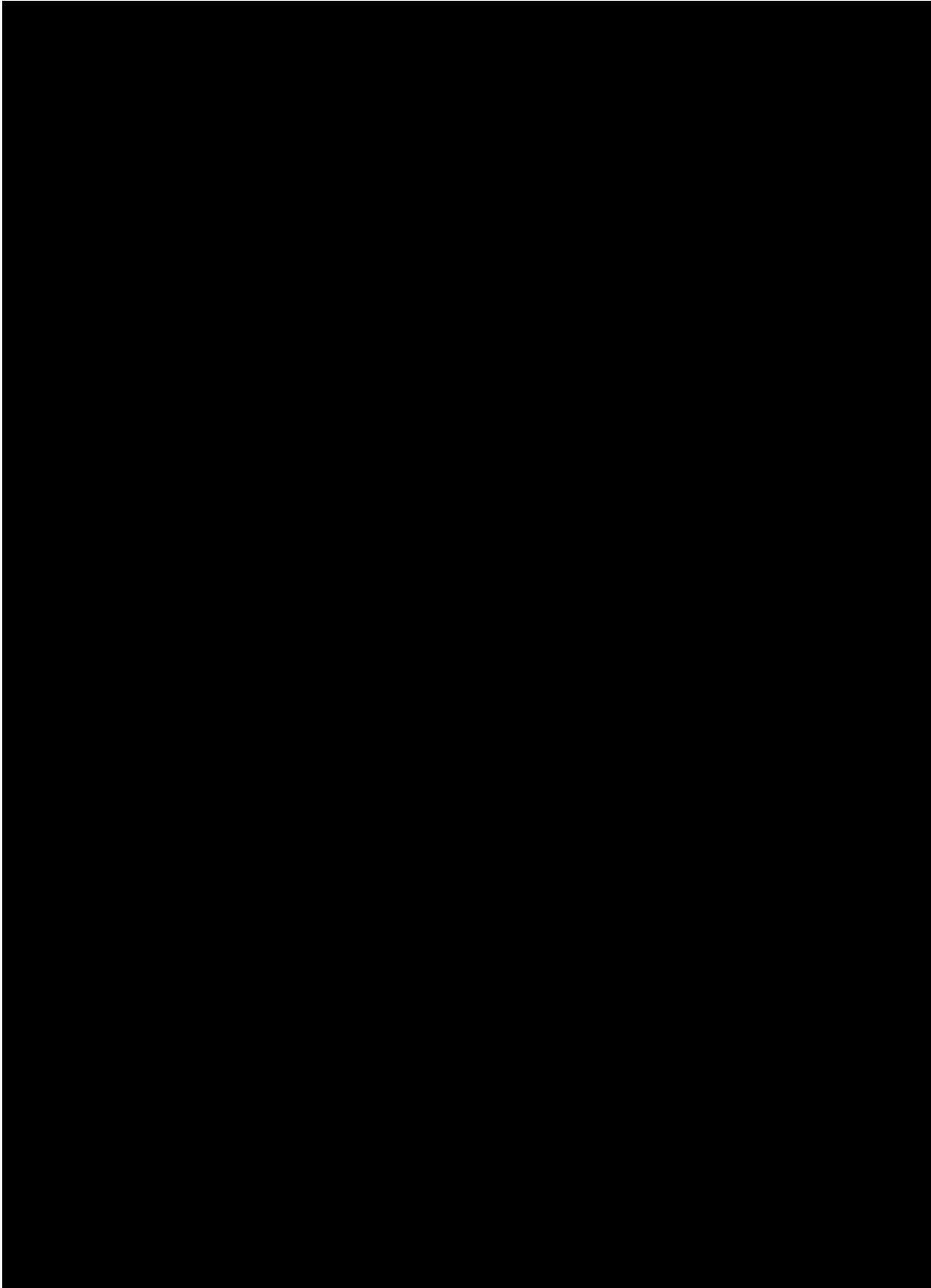
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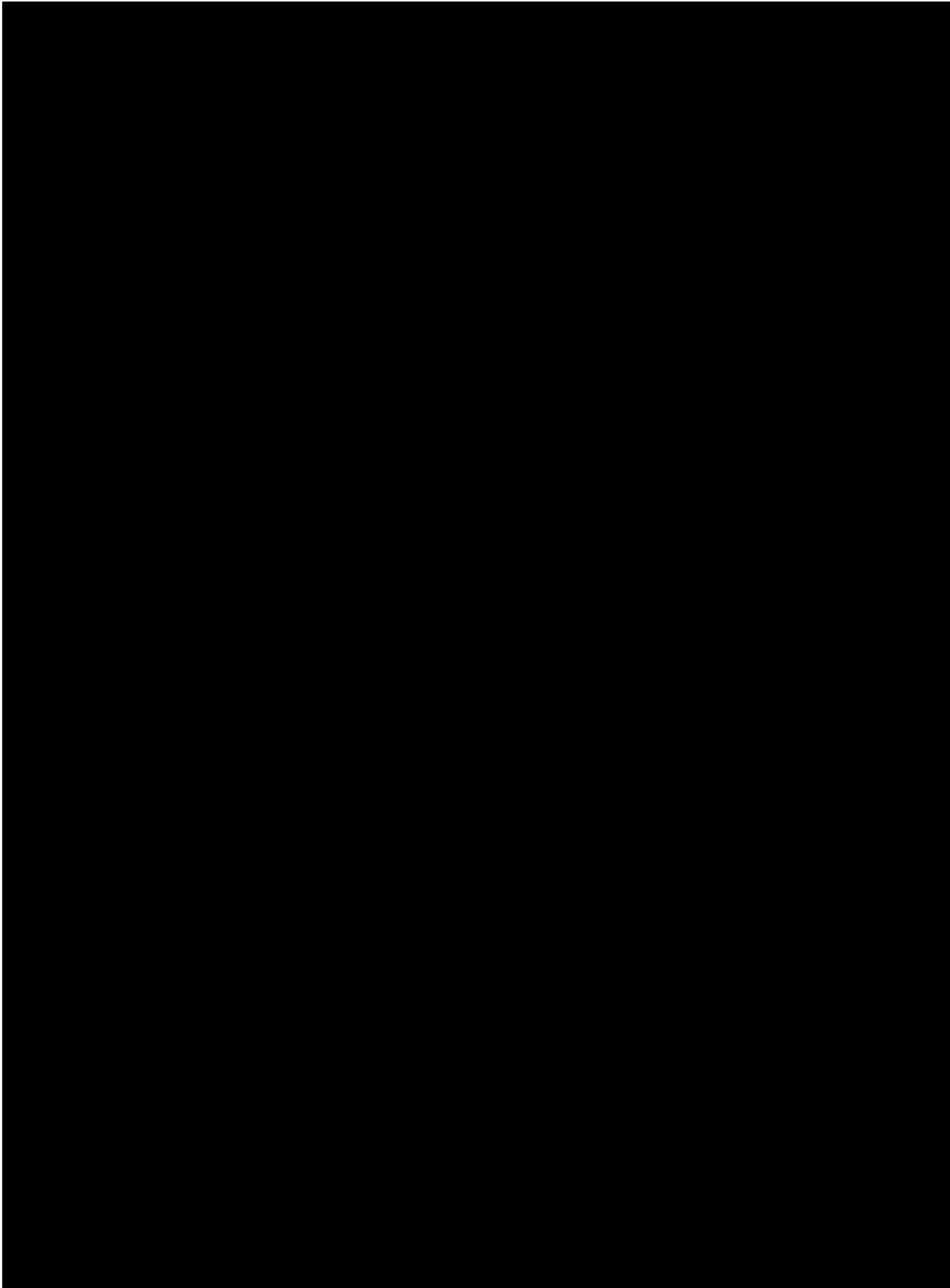
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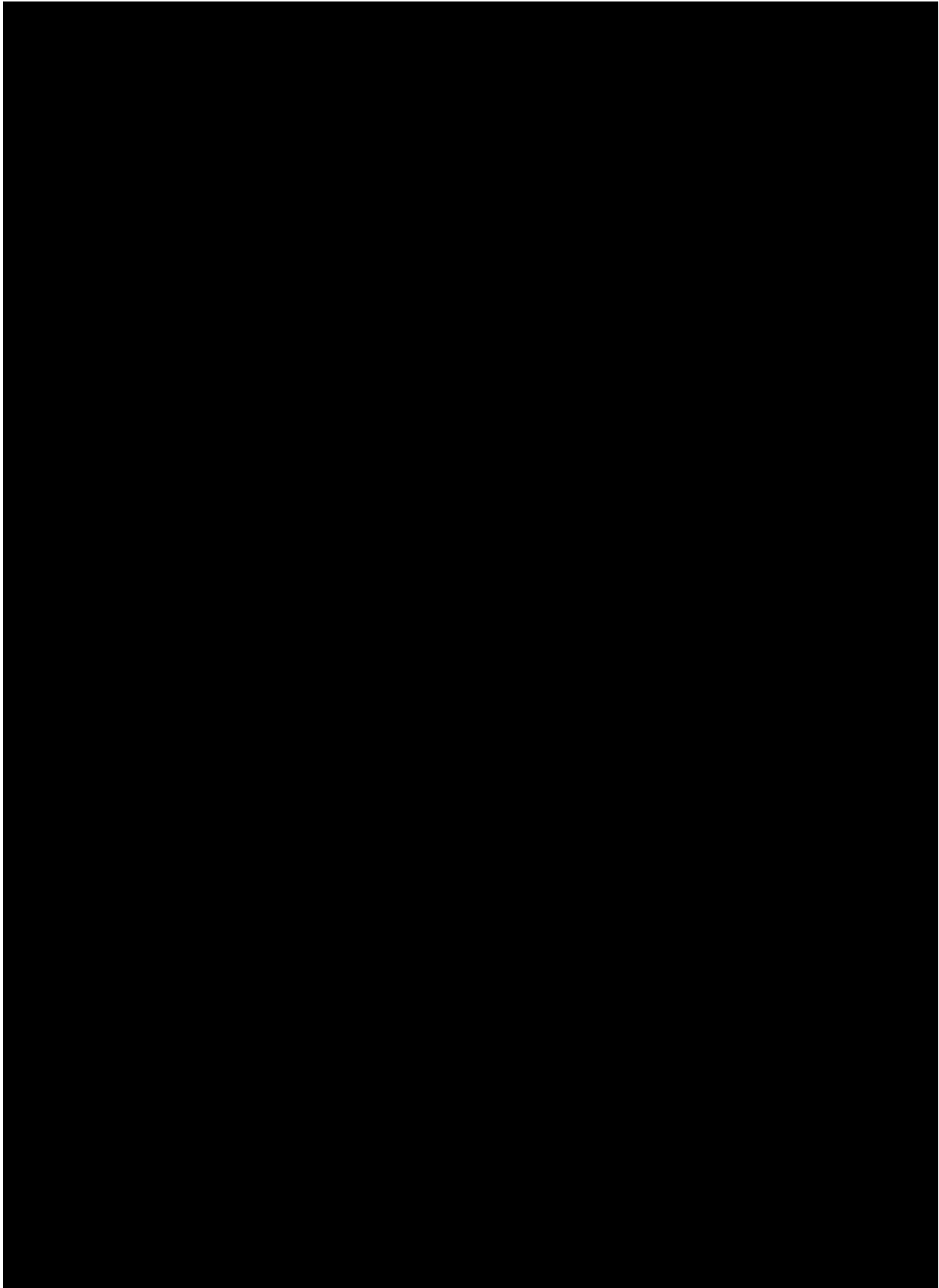
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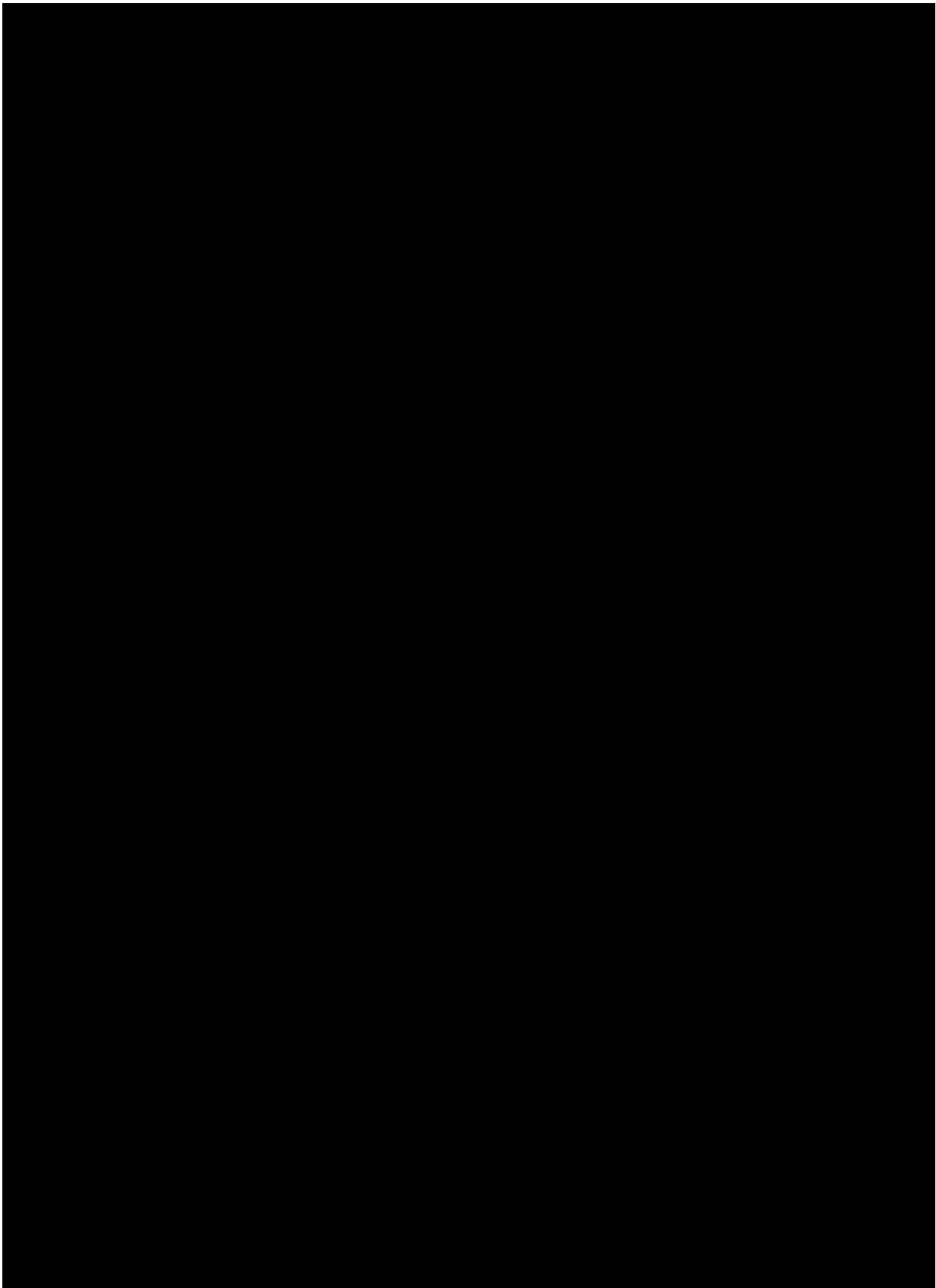
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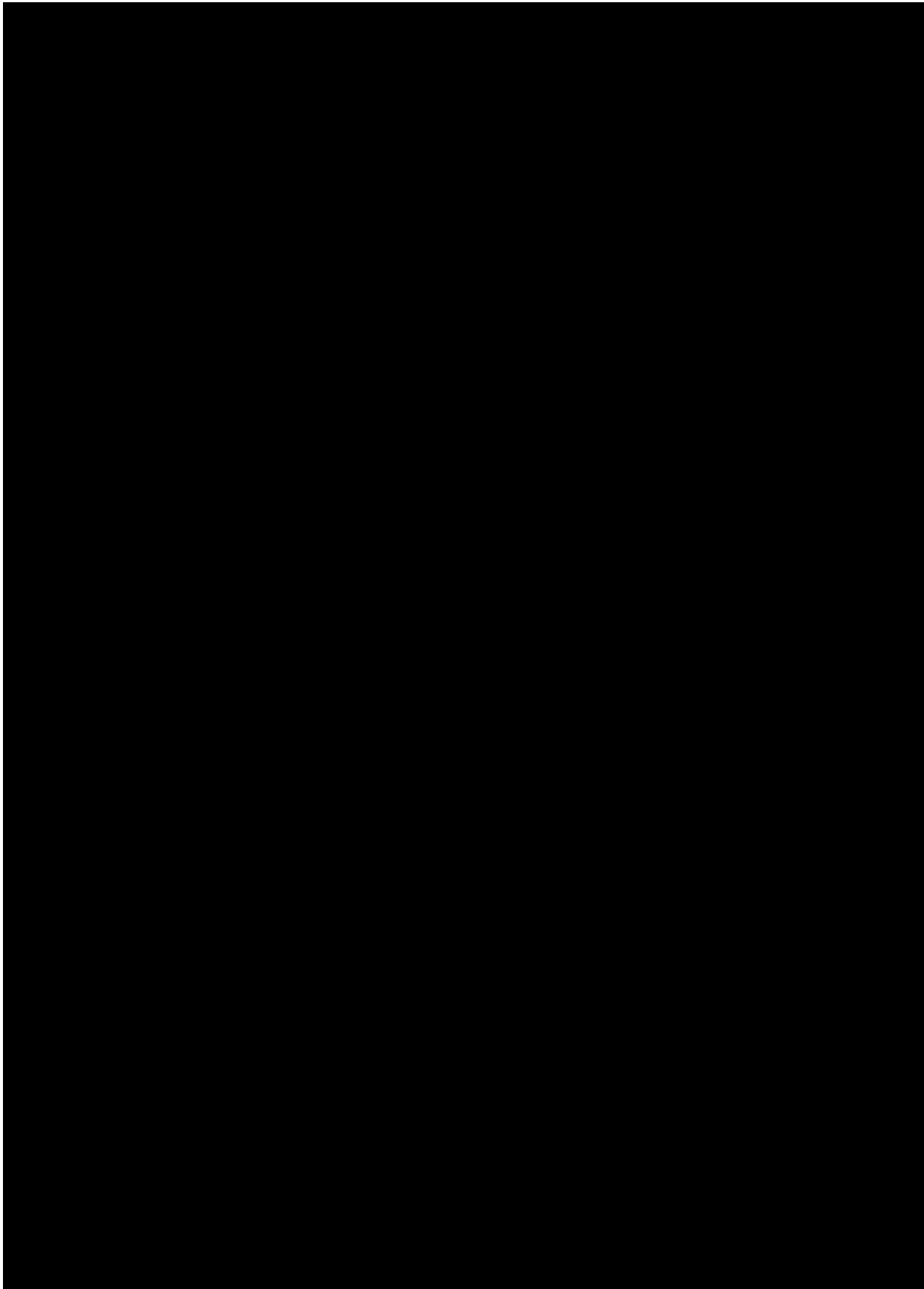
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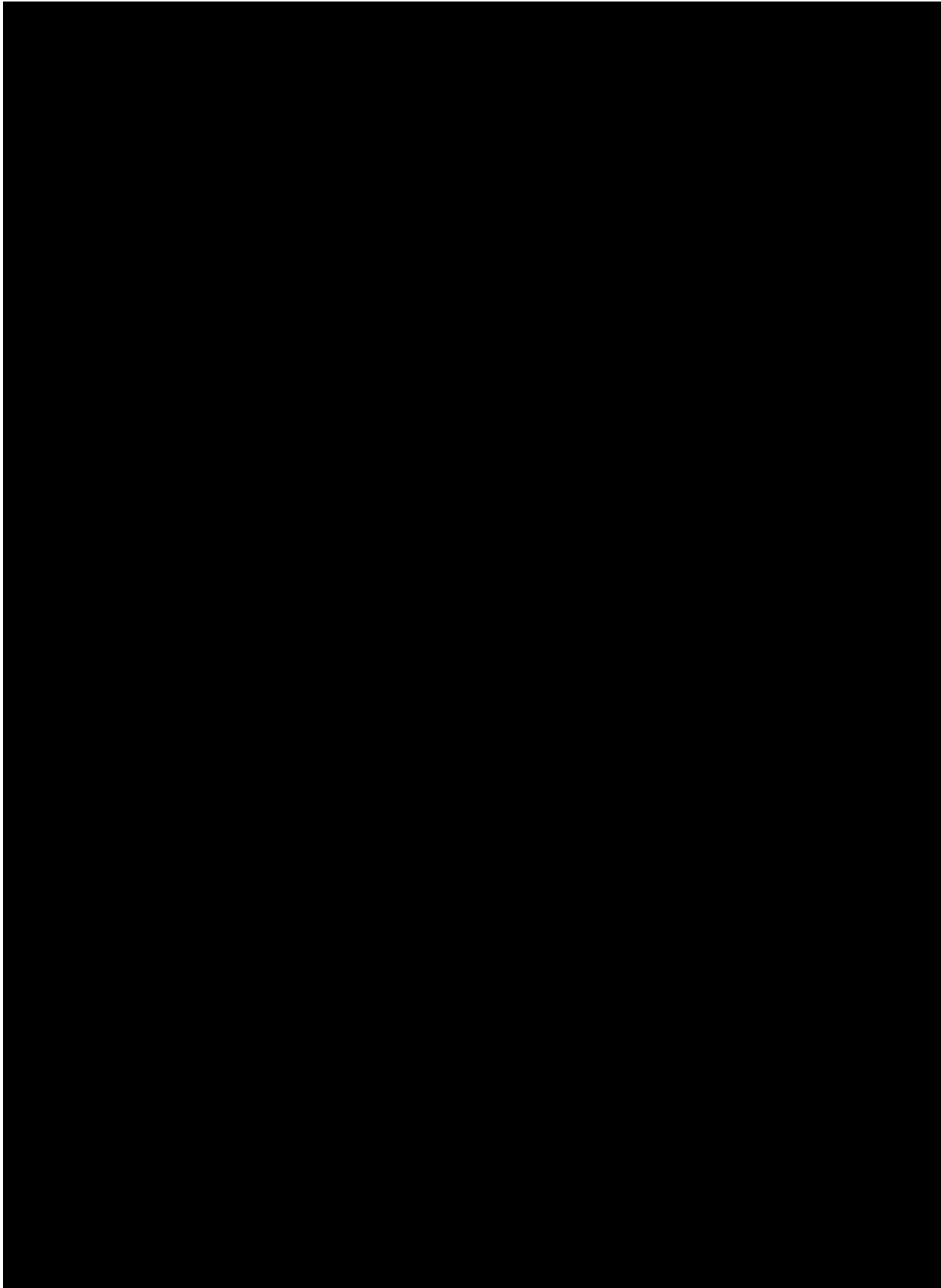
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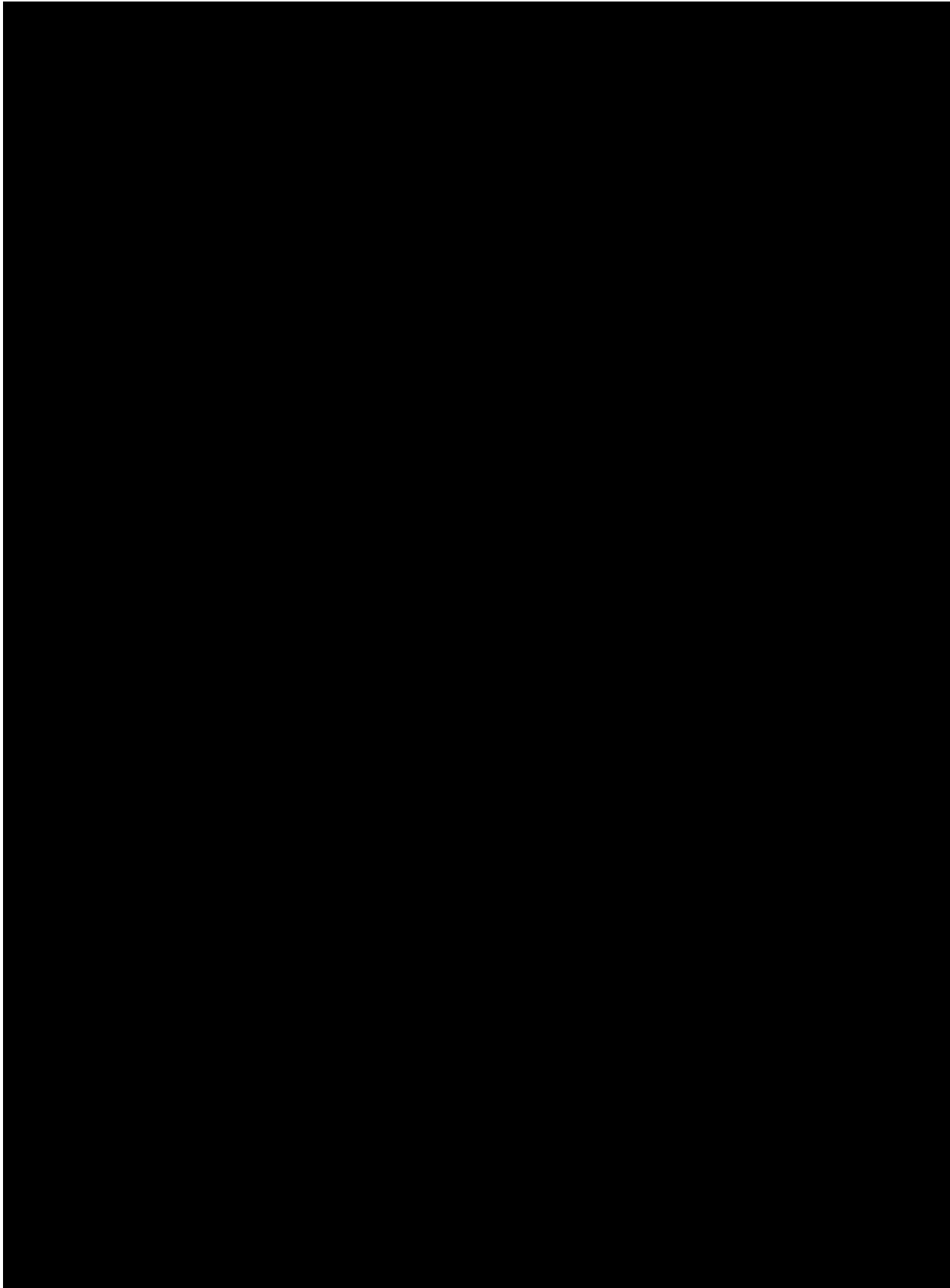
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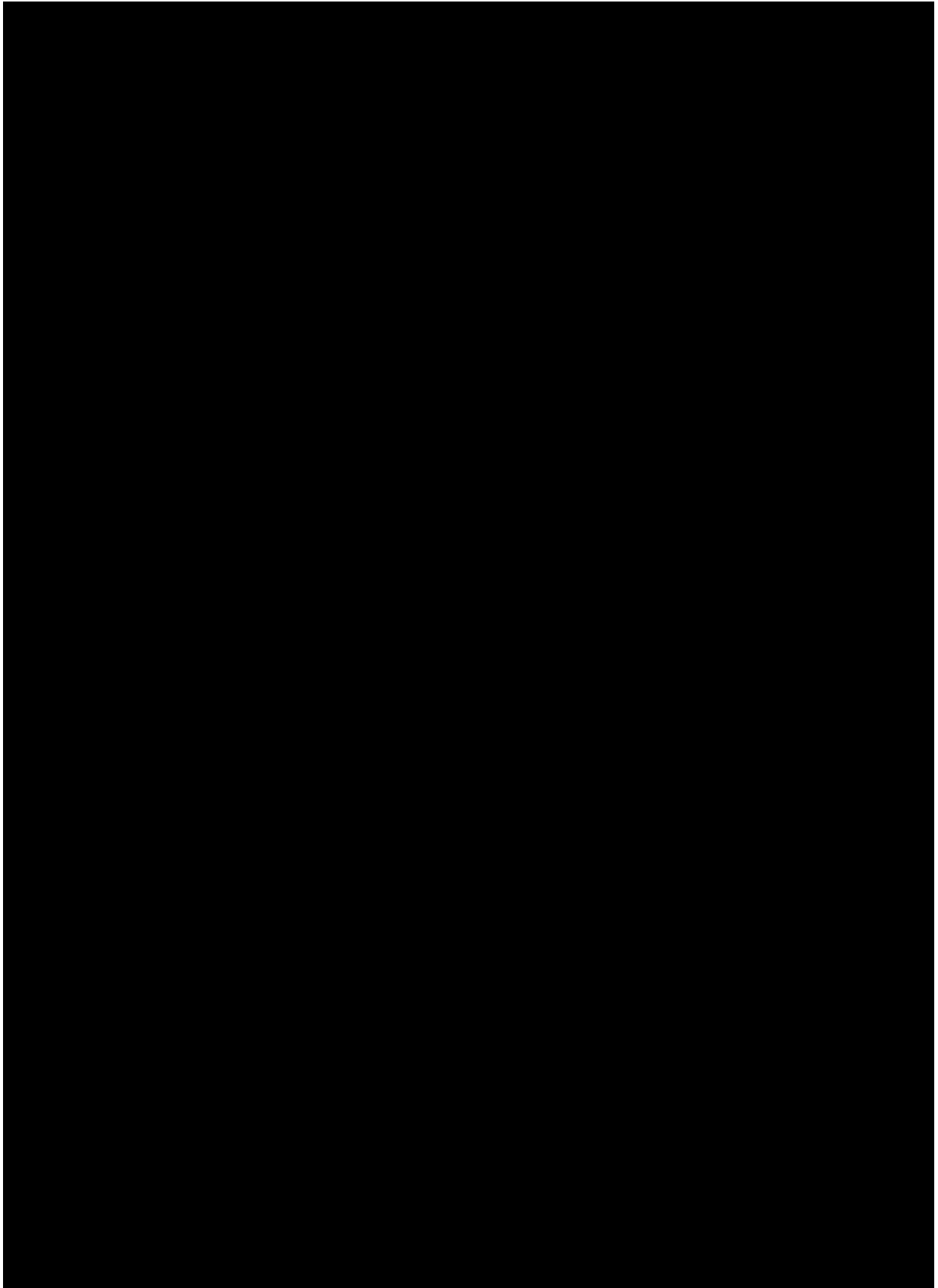
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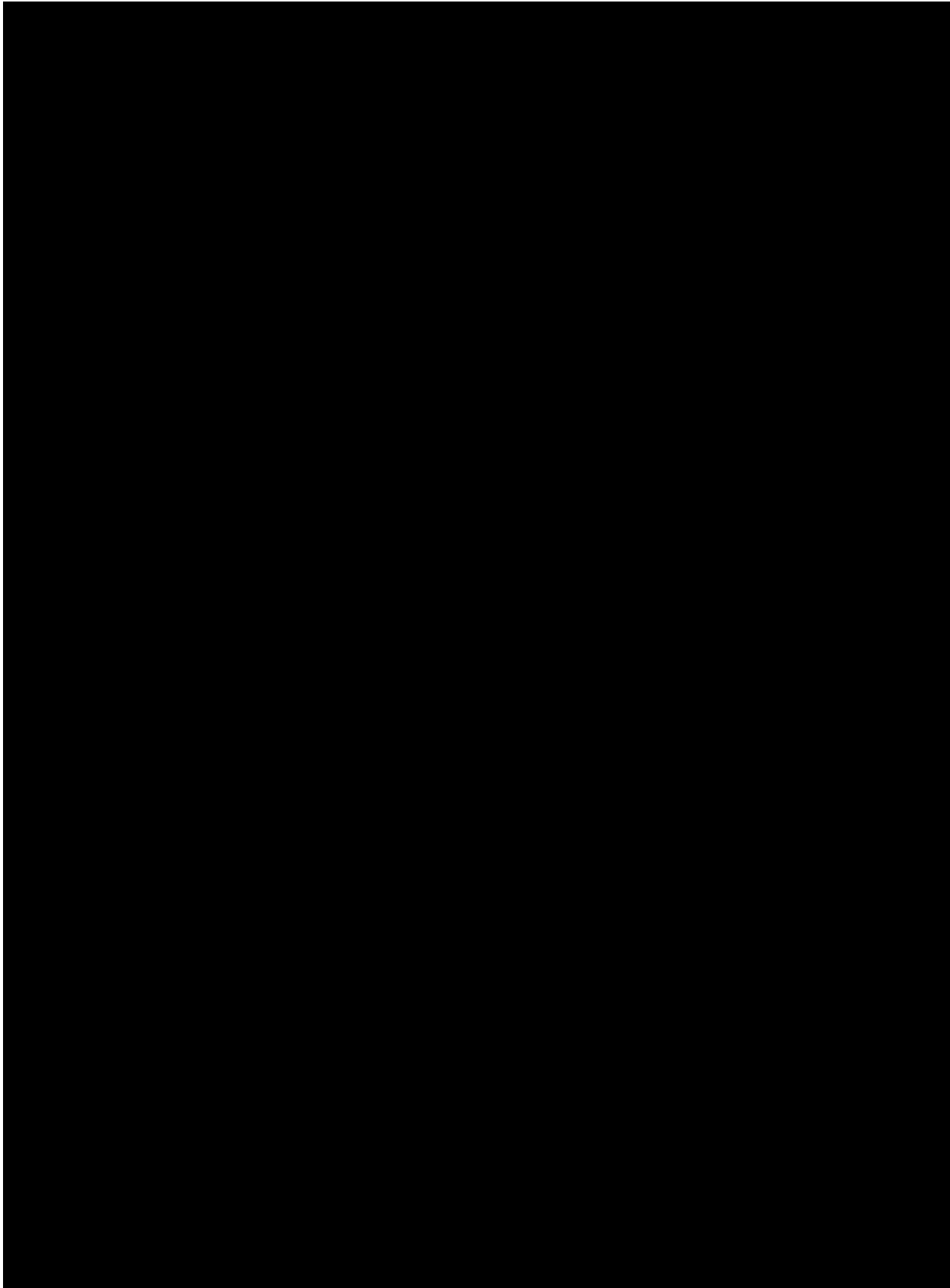
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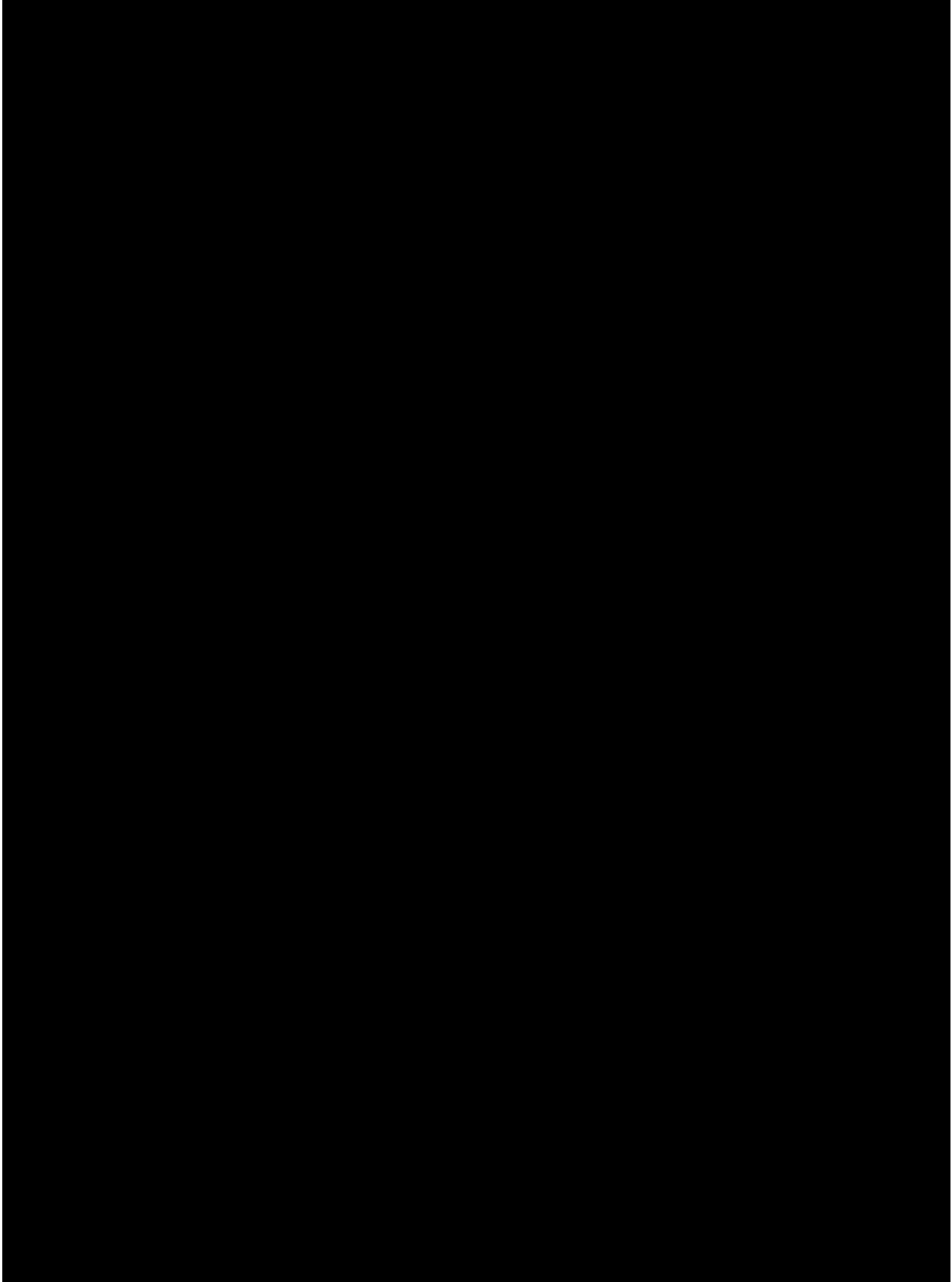
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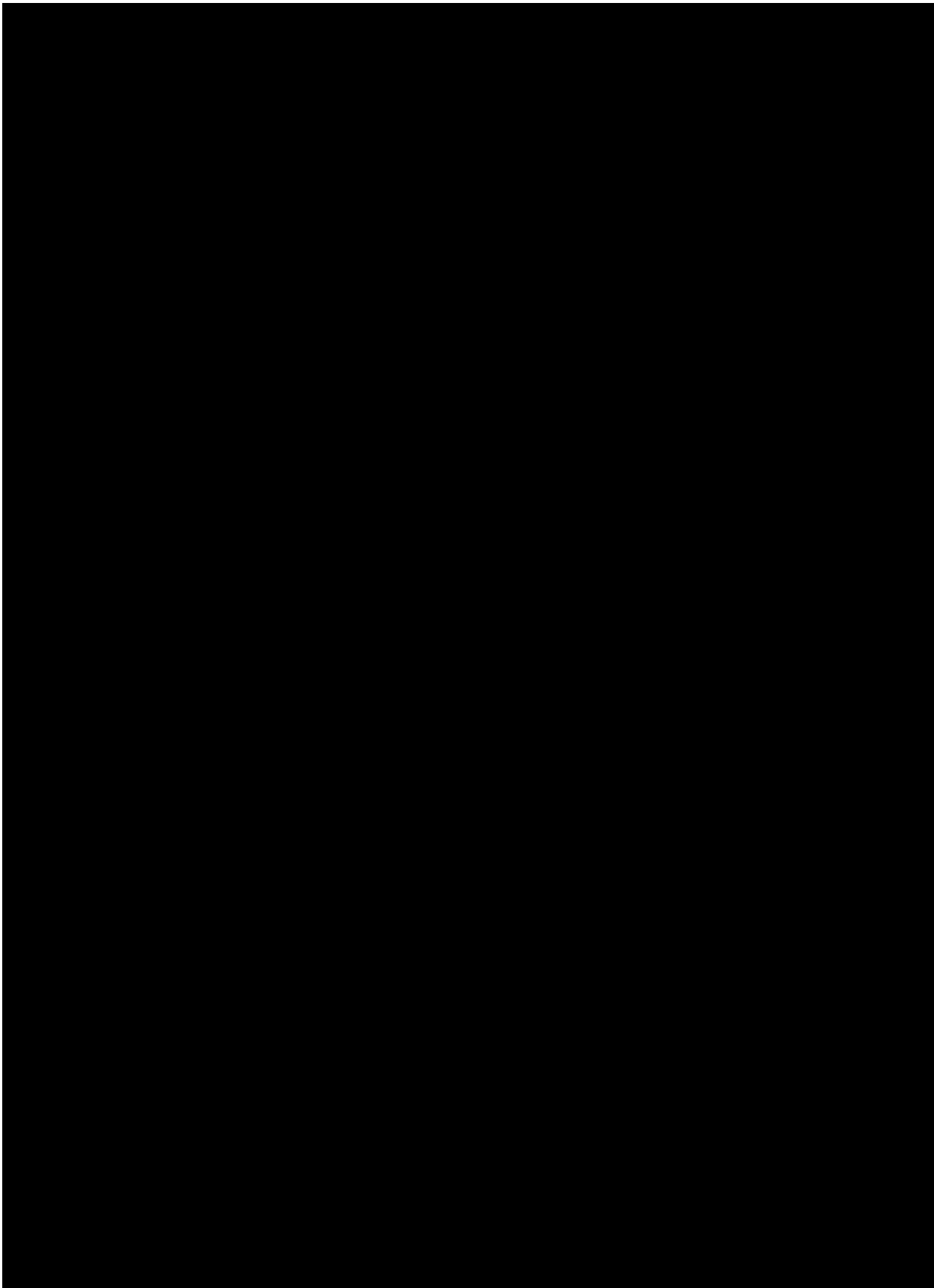
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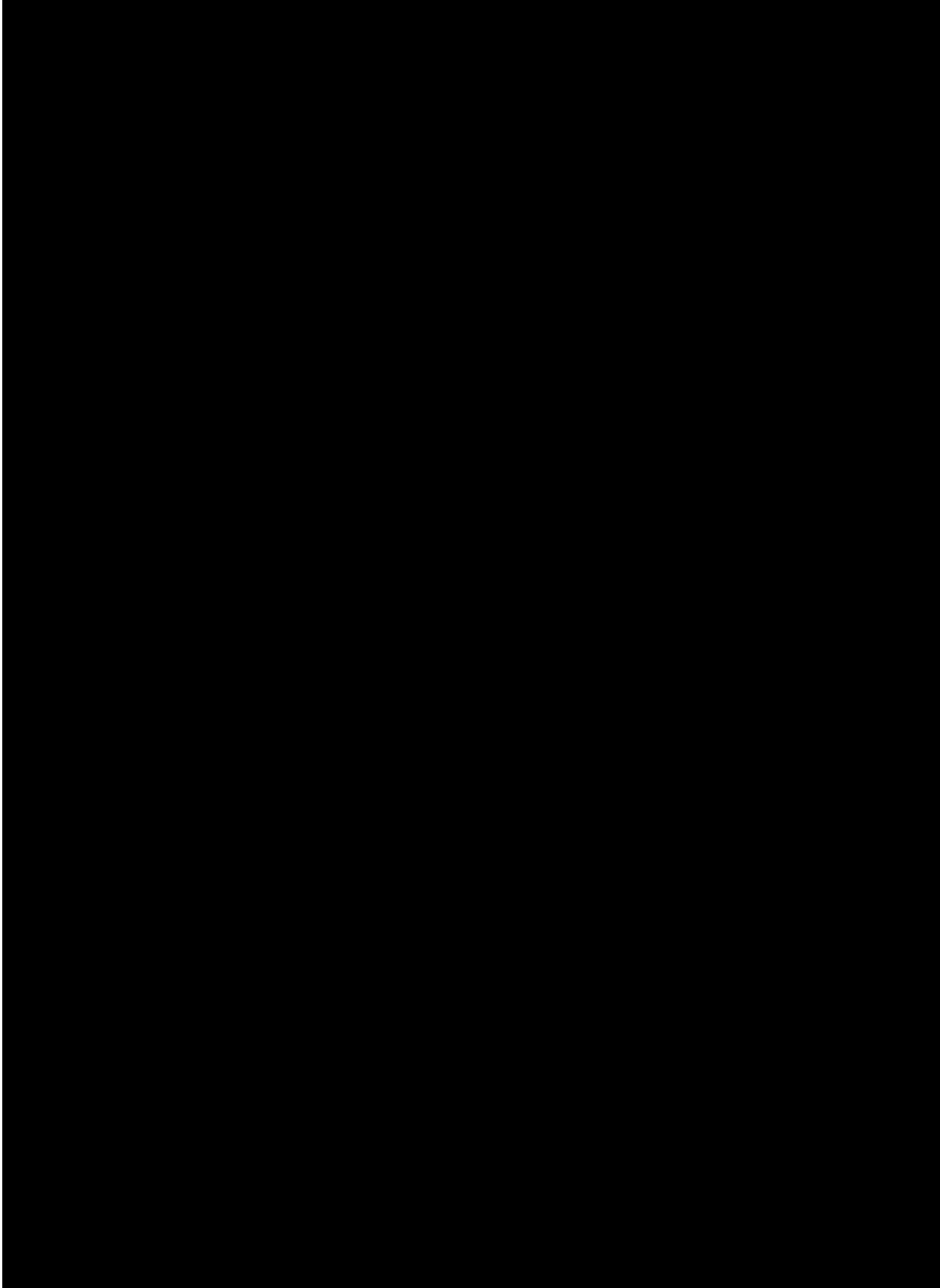
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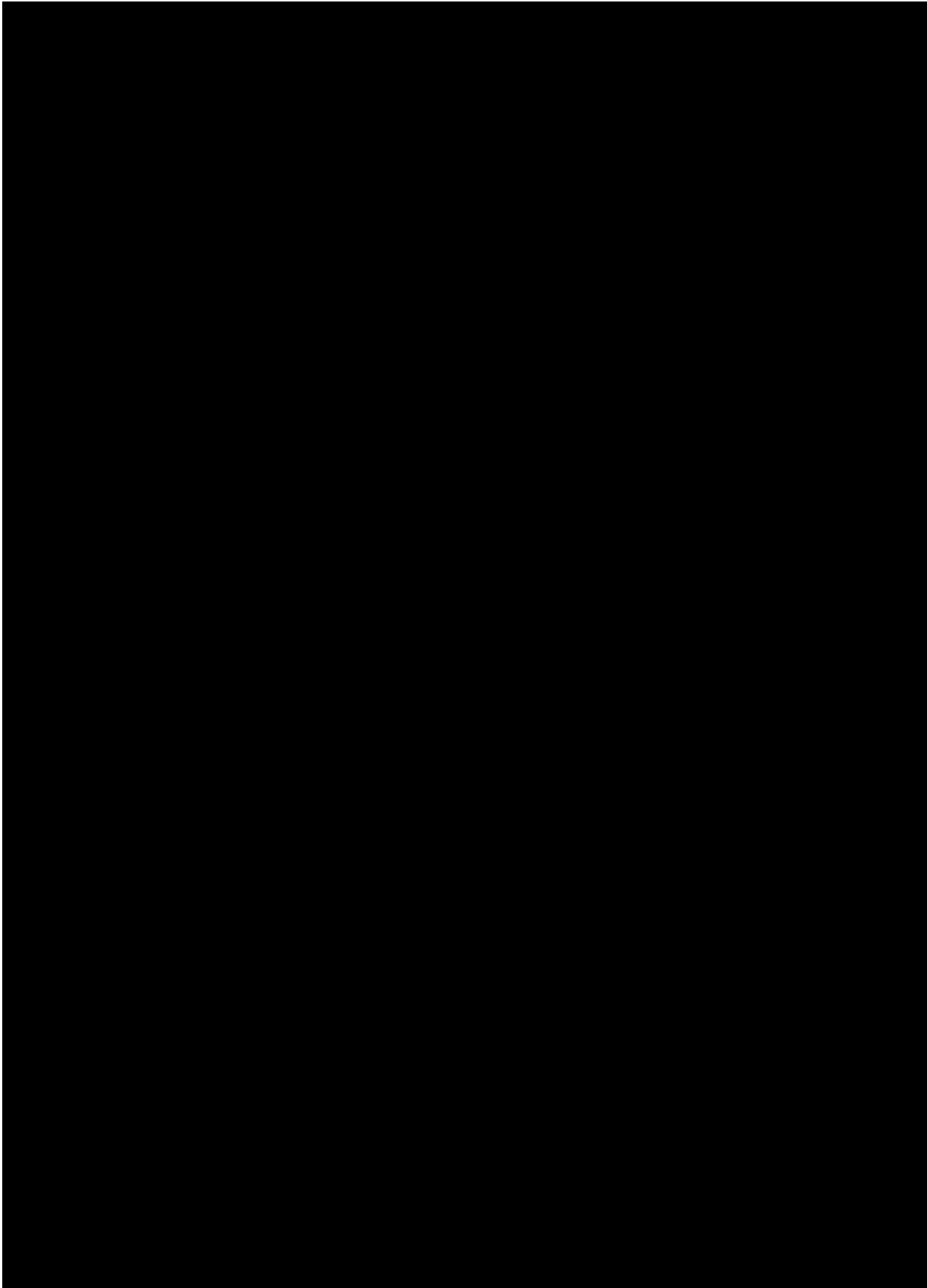
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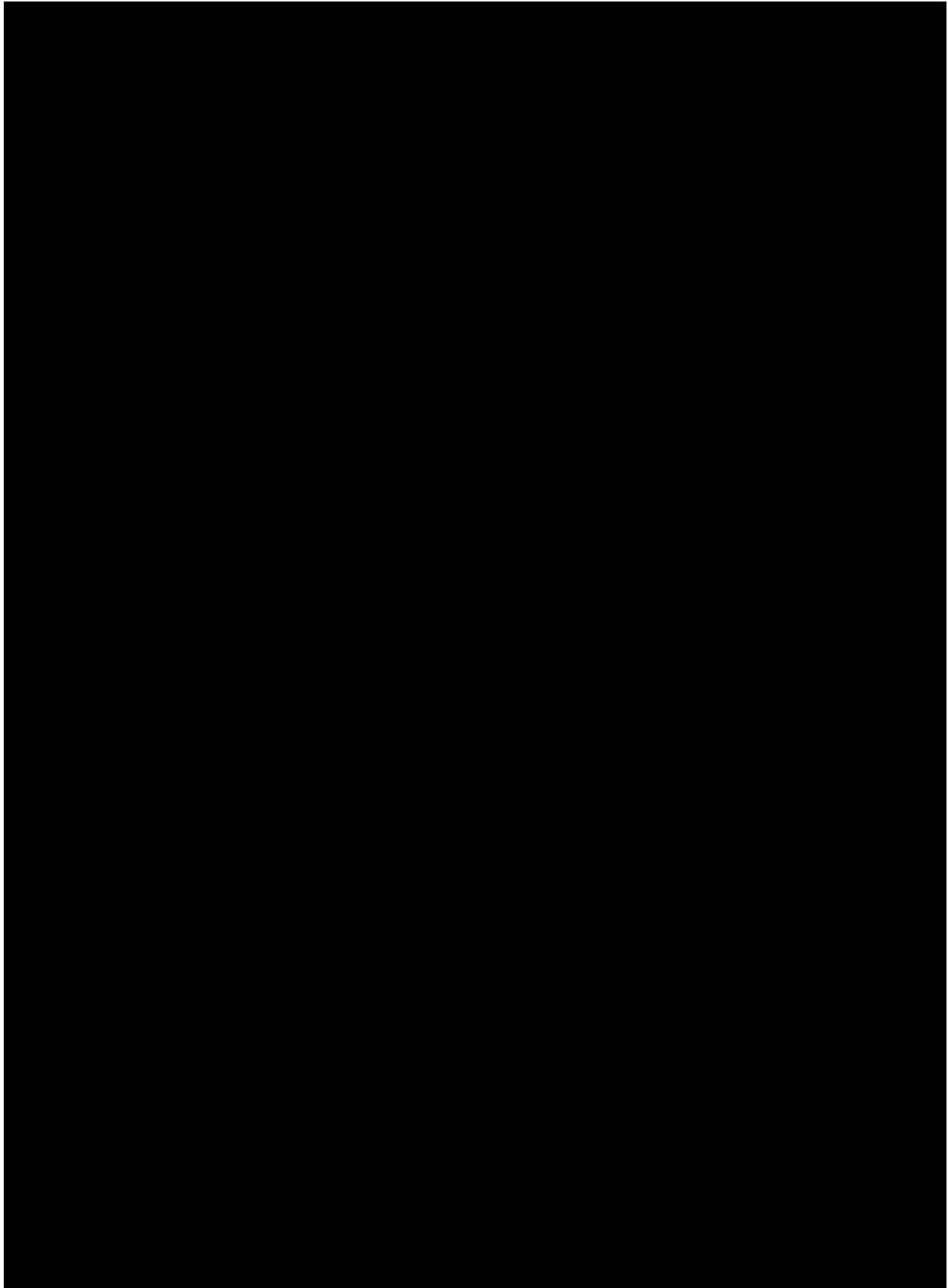
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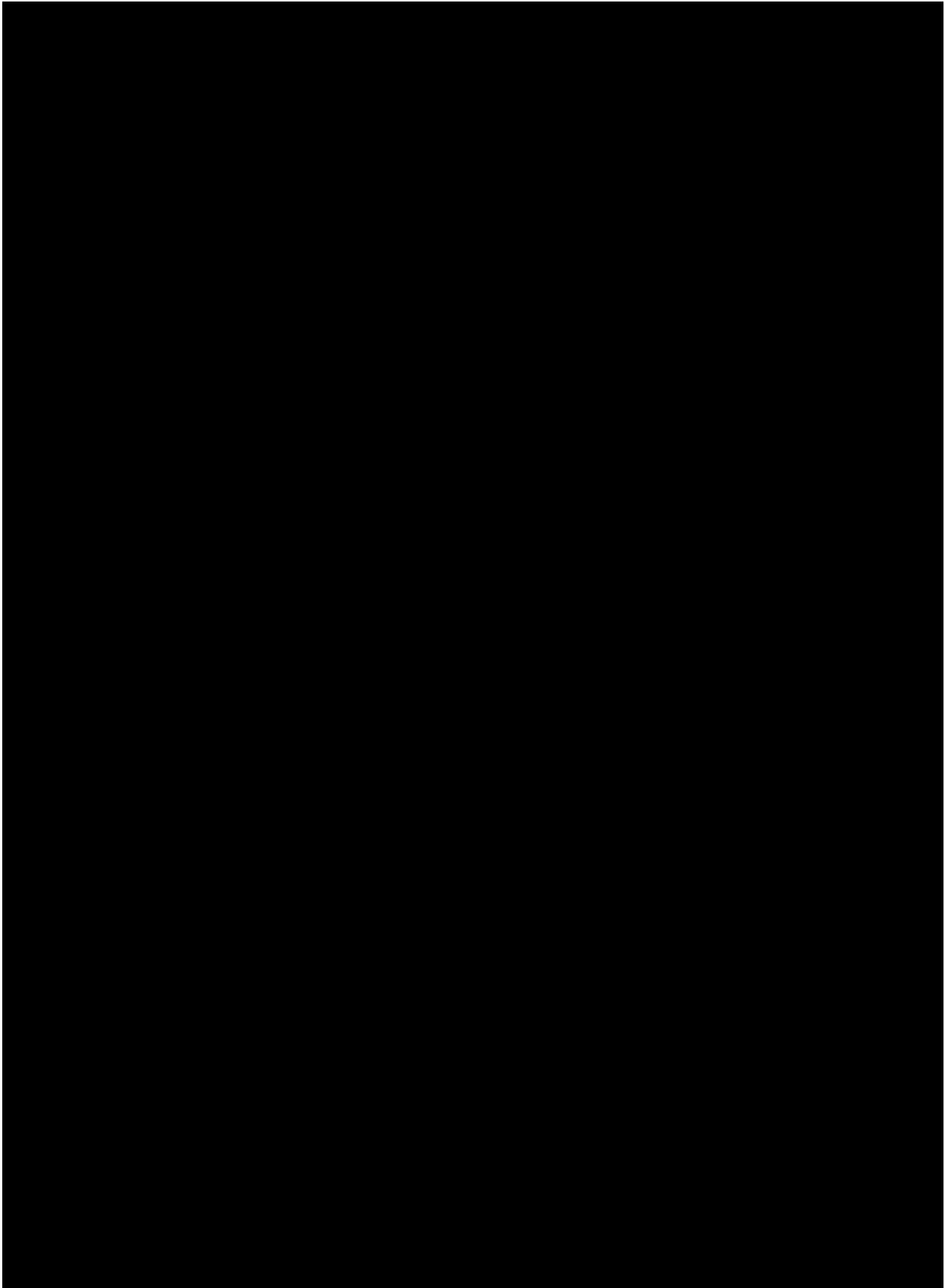
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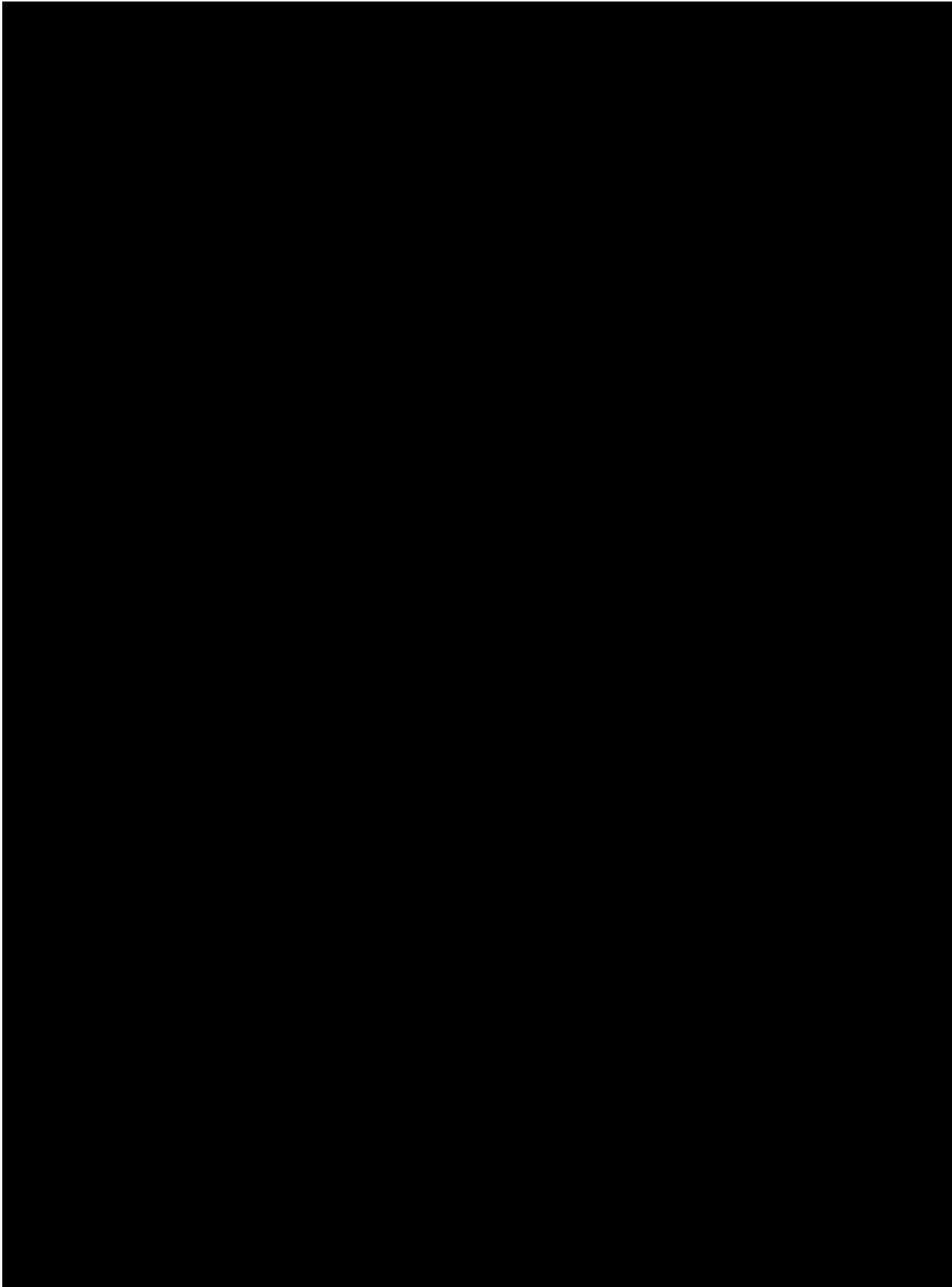
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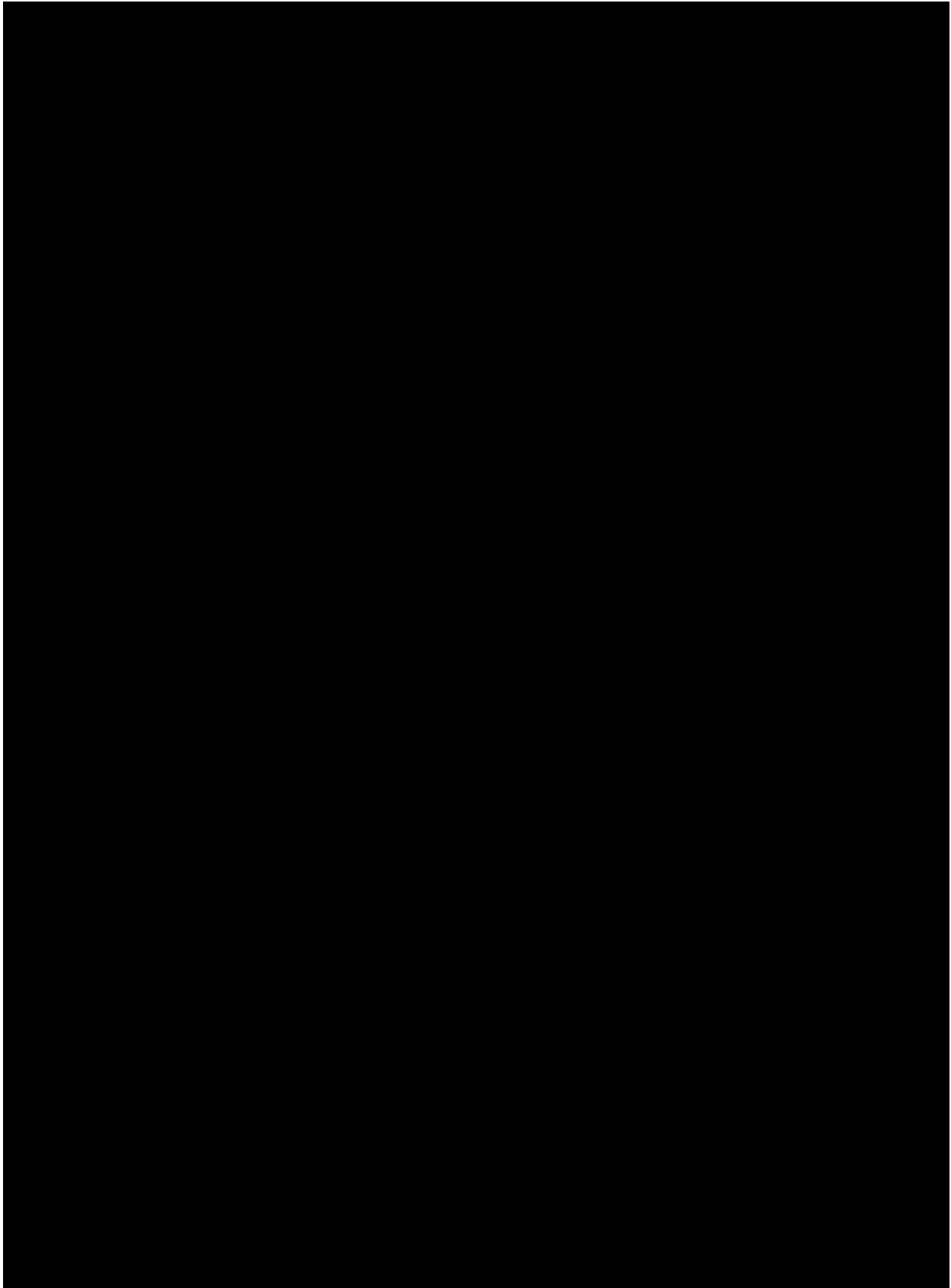
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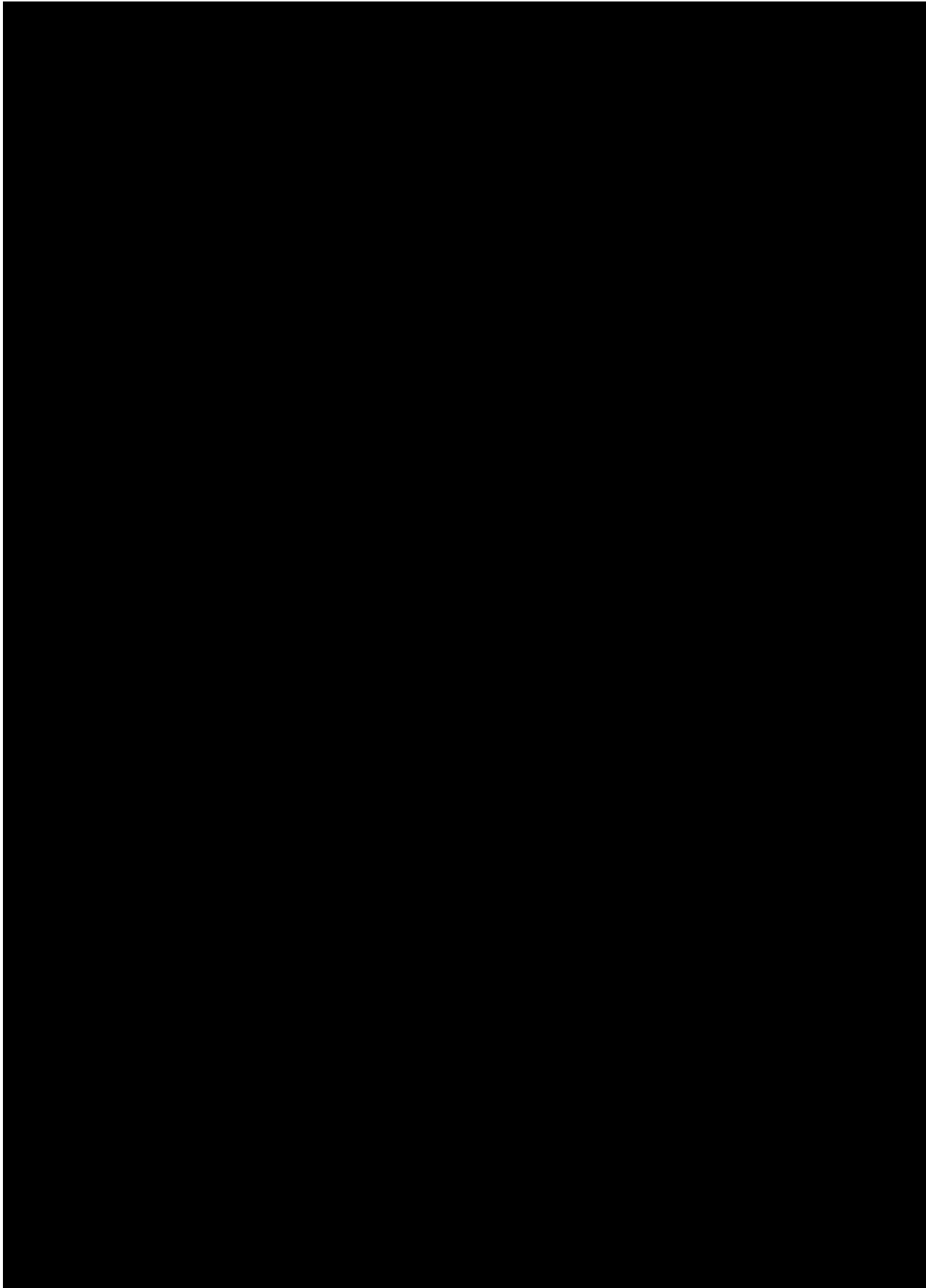
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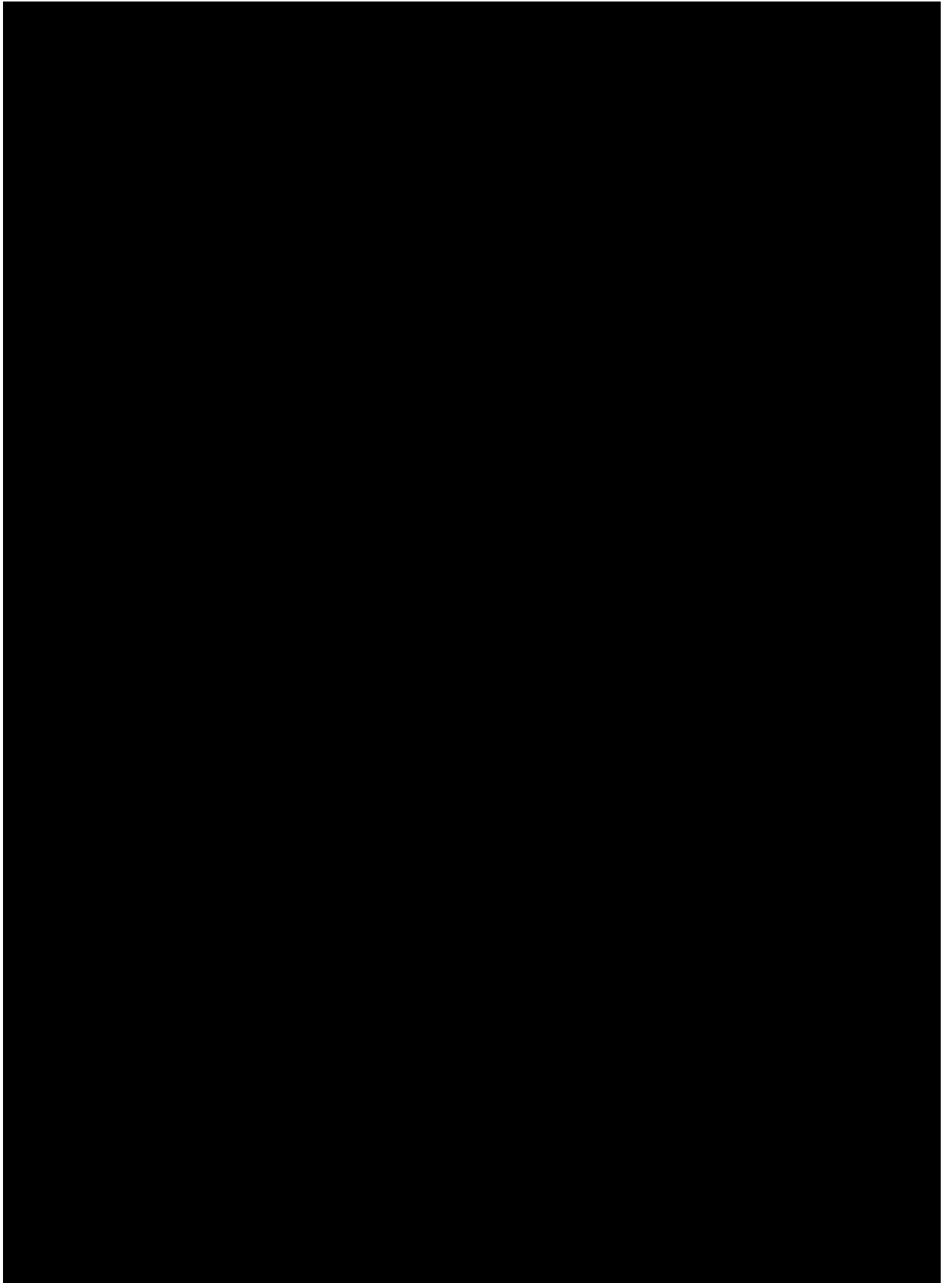
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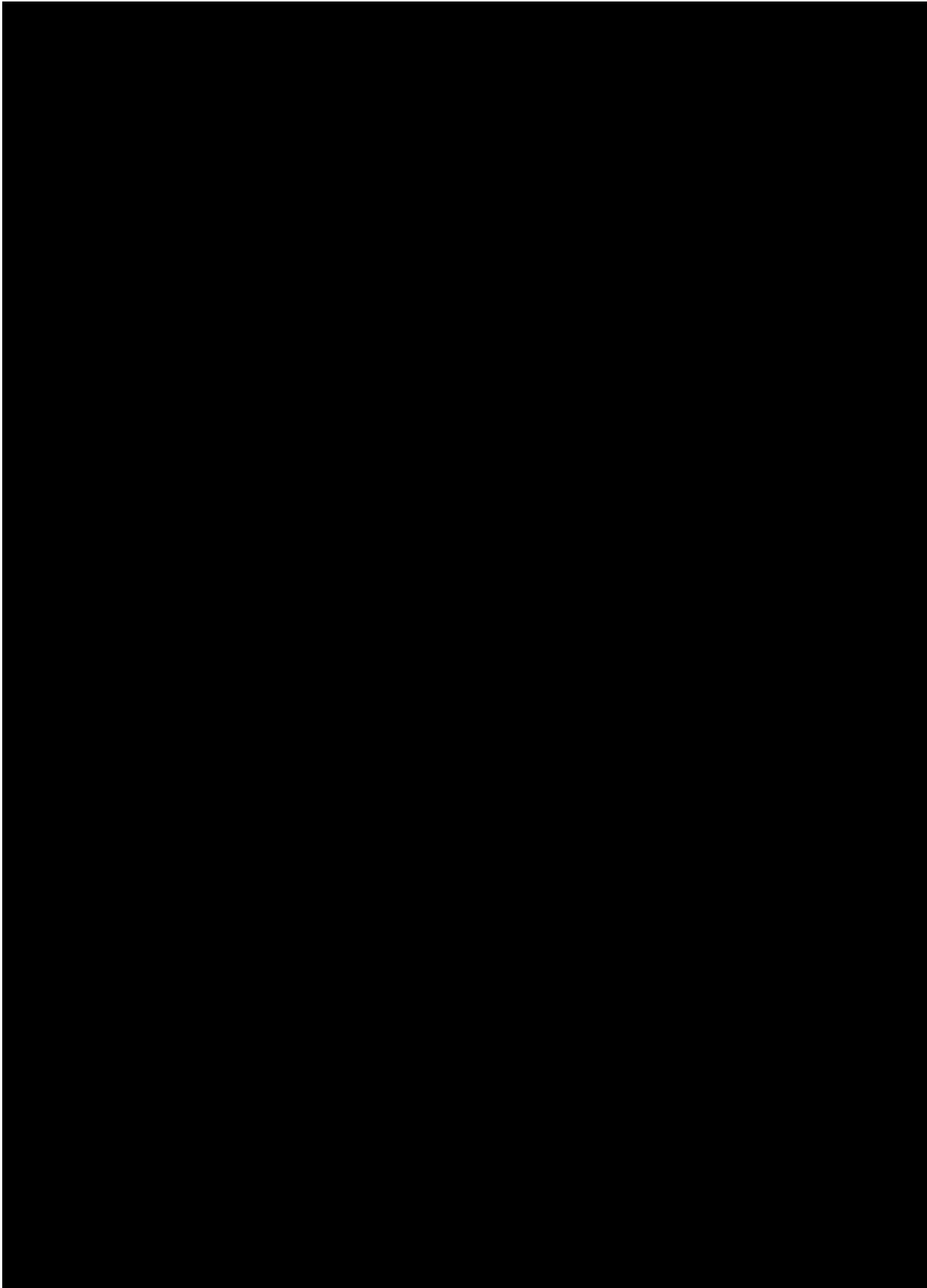
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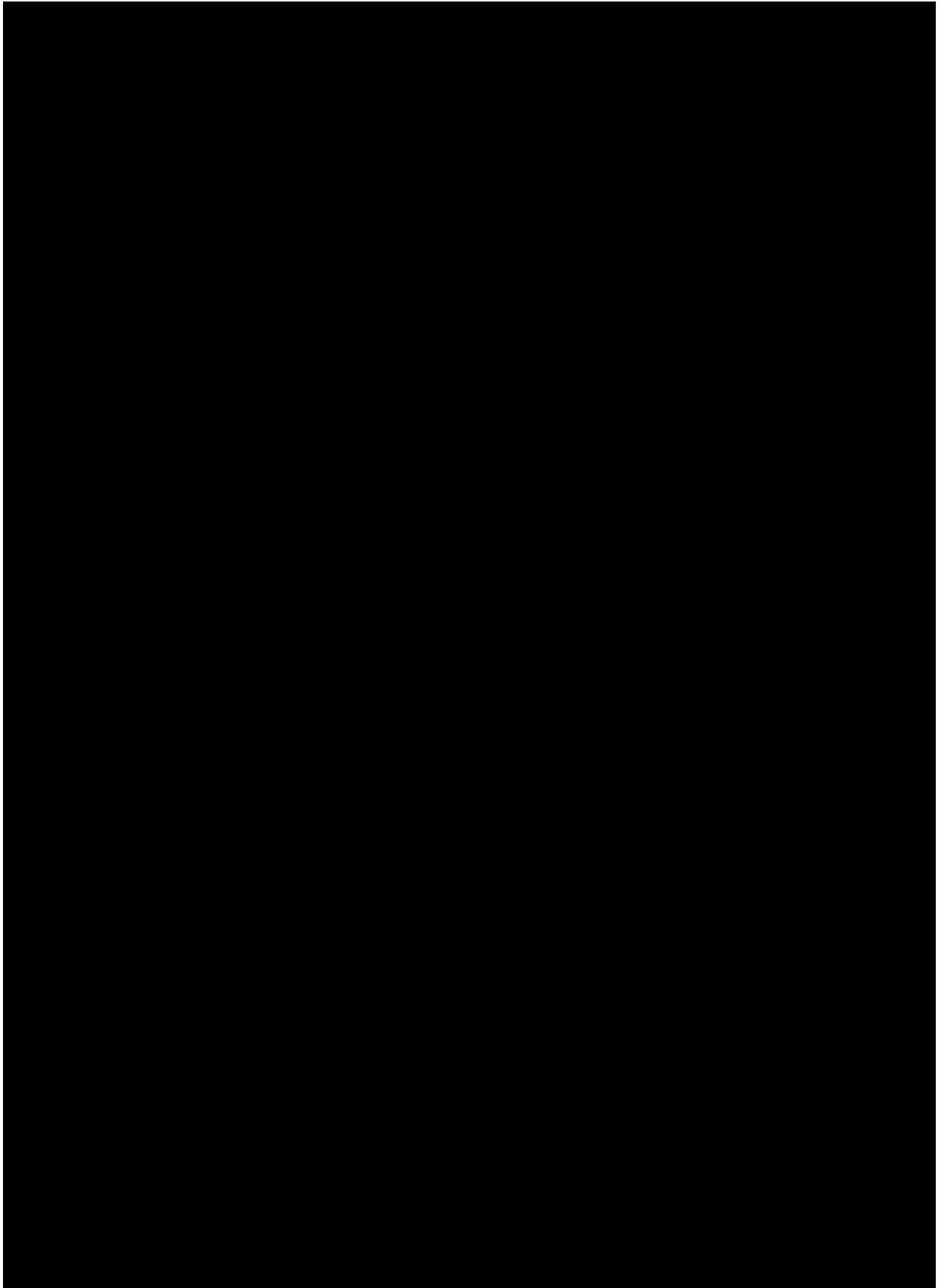
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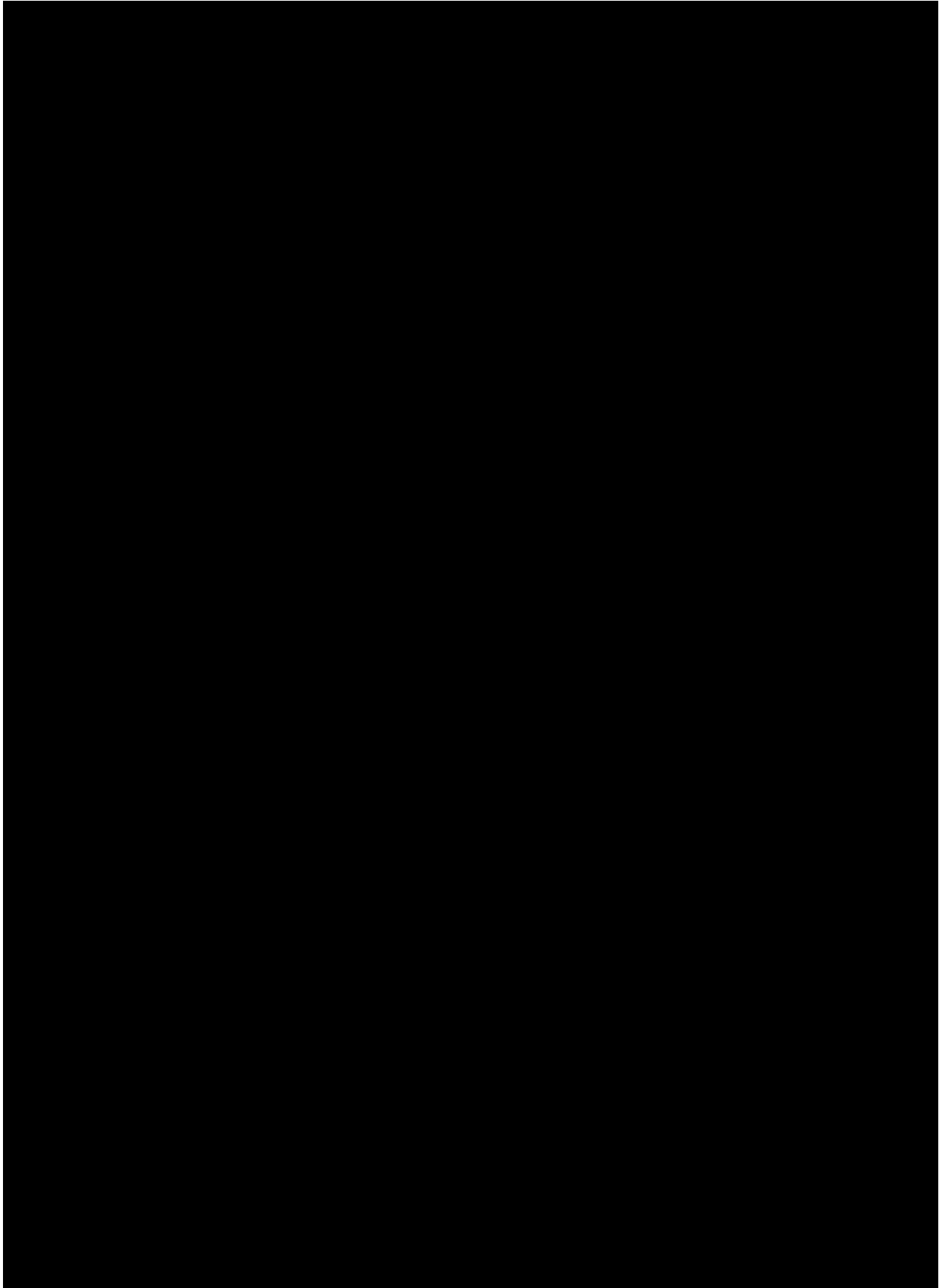
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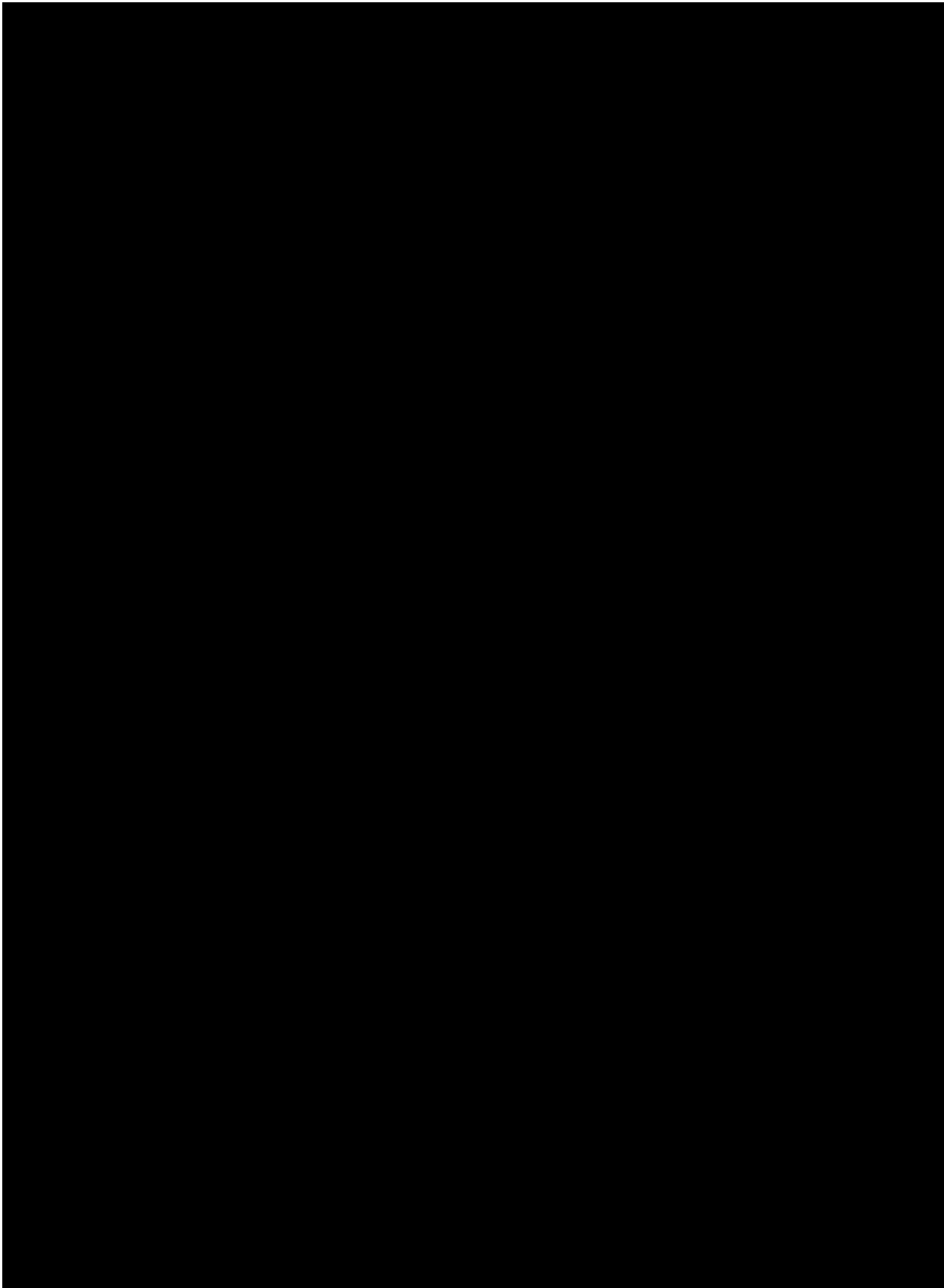
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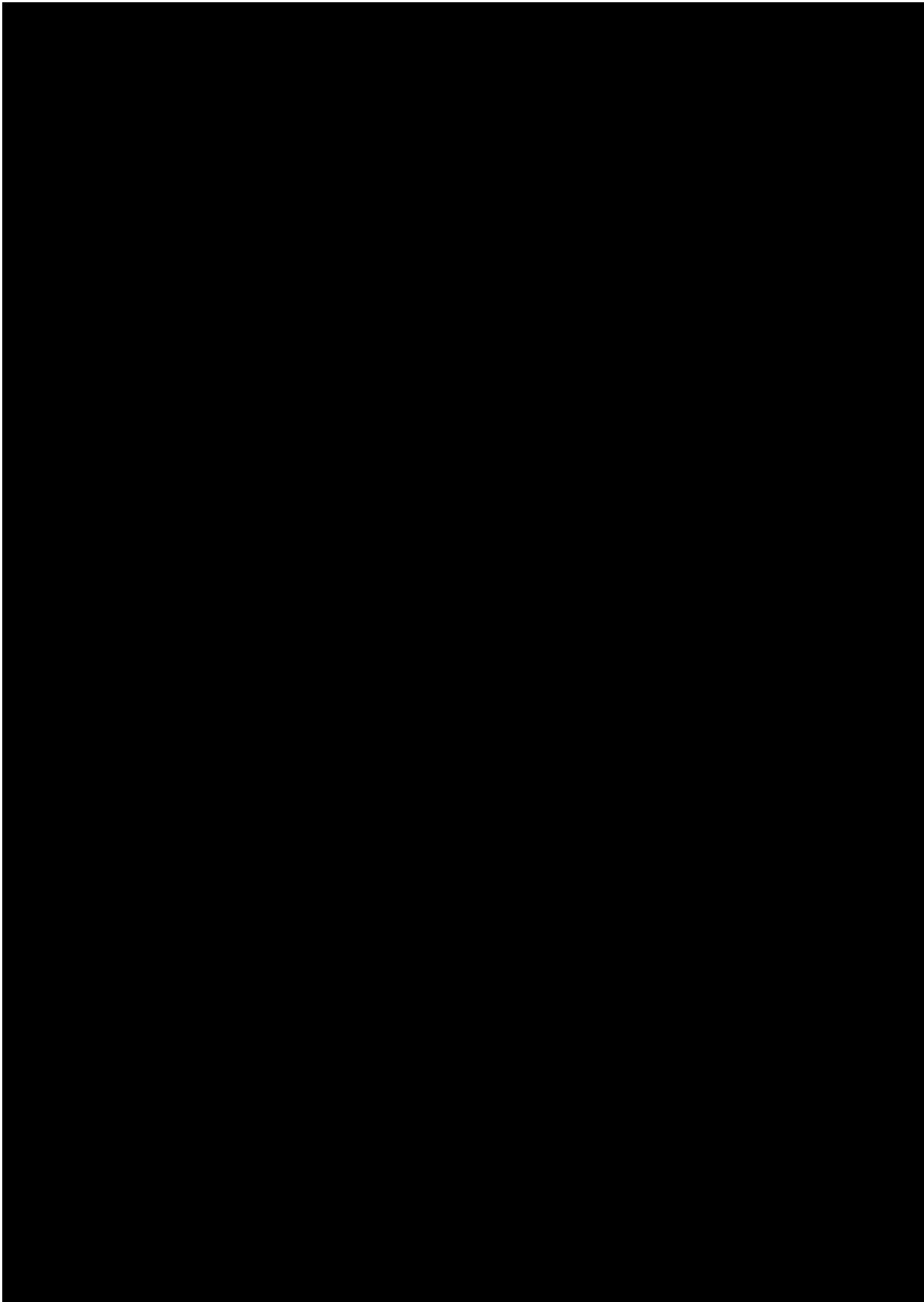
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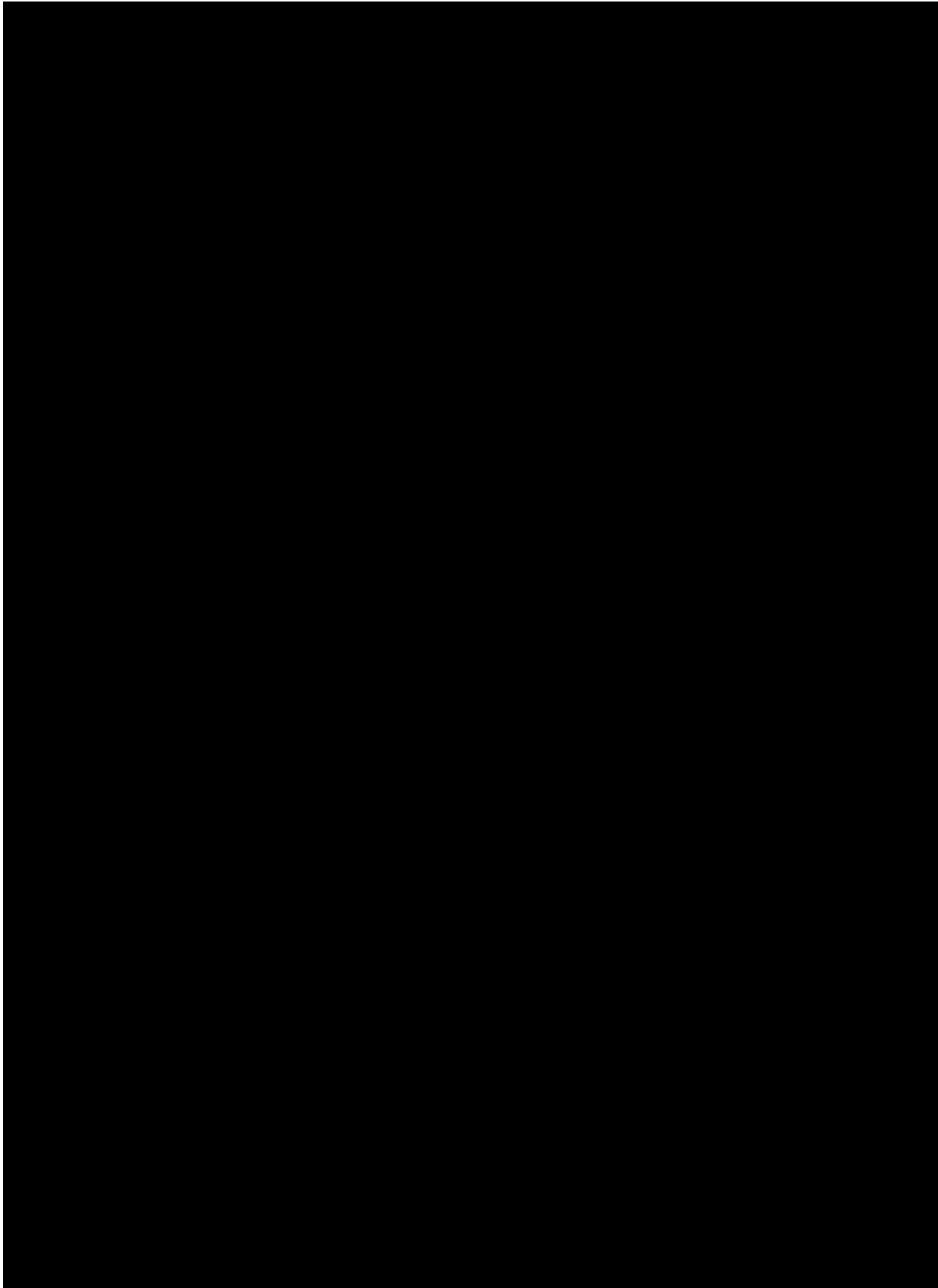
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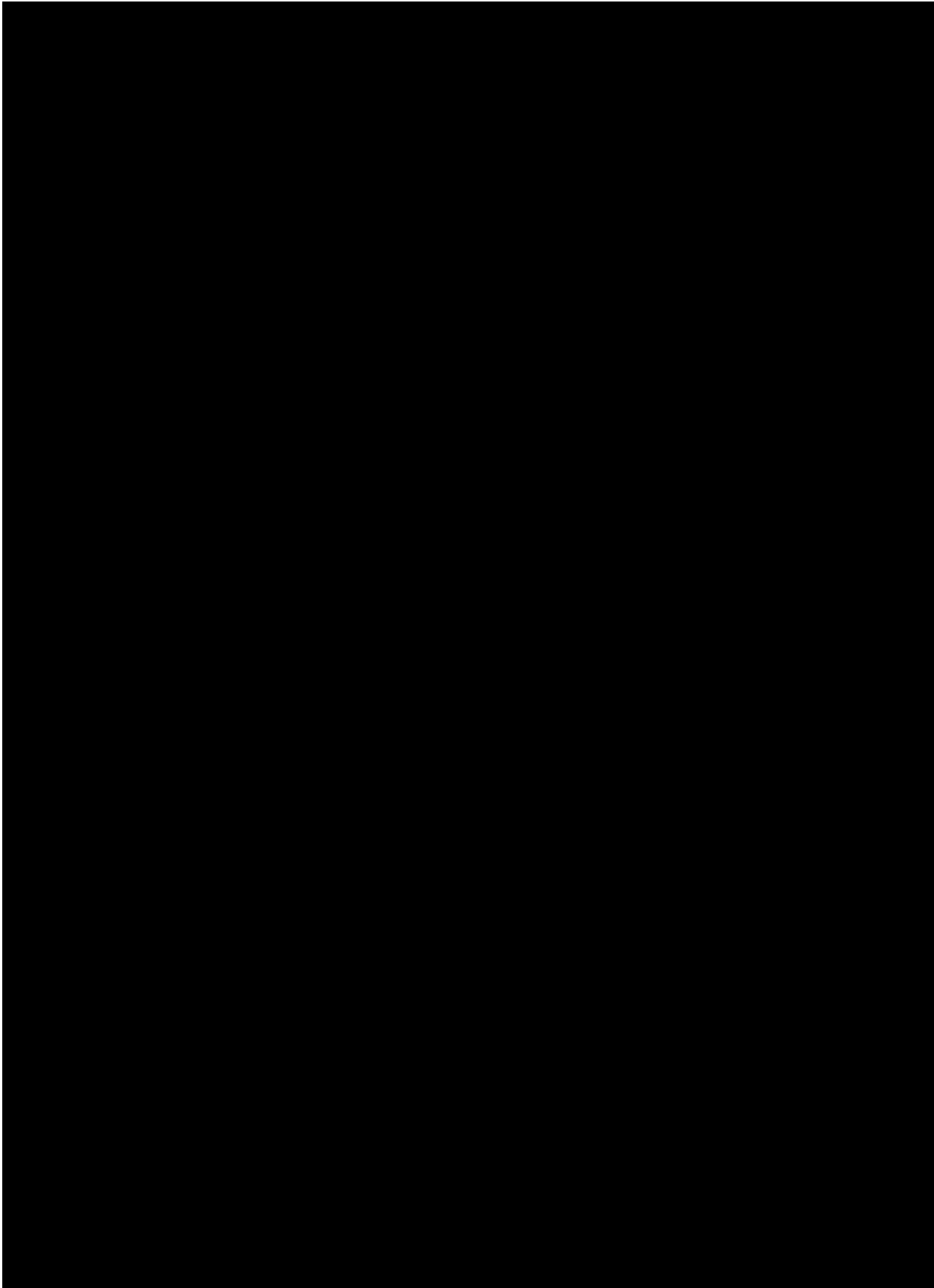
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11 PRESIDENT TERCIER: Thank you very much.

12 Mrs. Radjai, you have the floor for the
13 redirect.

14 MS. RADJAI: We may have a couple of
15 questions. I'm not sure.

16 Do you mind if we take a five-minute break
17 just to consult and see if we have anything?

18 PRESIDENT TERCIER: Take the break. Five
19 minutes.

20 MS. RADJAI: Okay.

21 (Brief recess.)

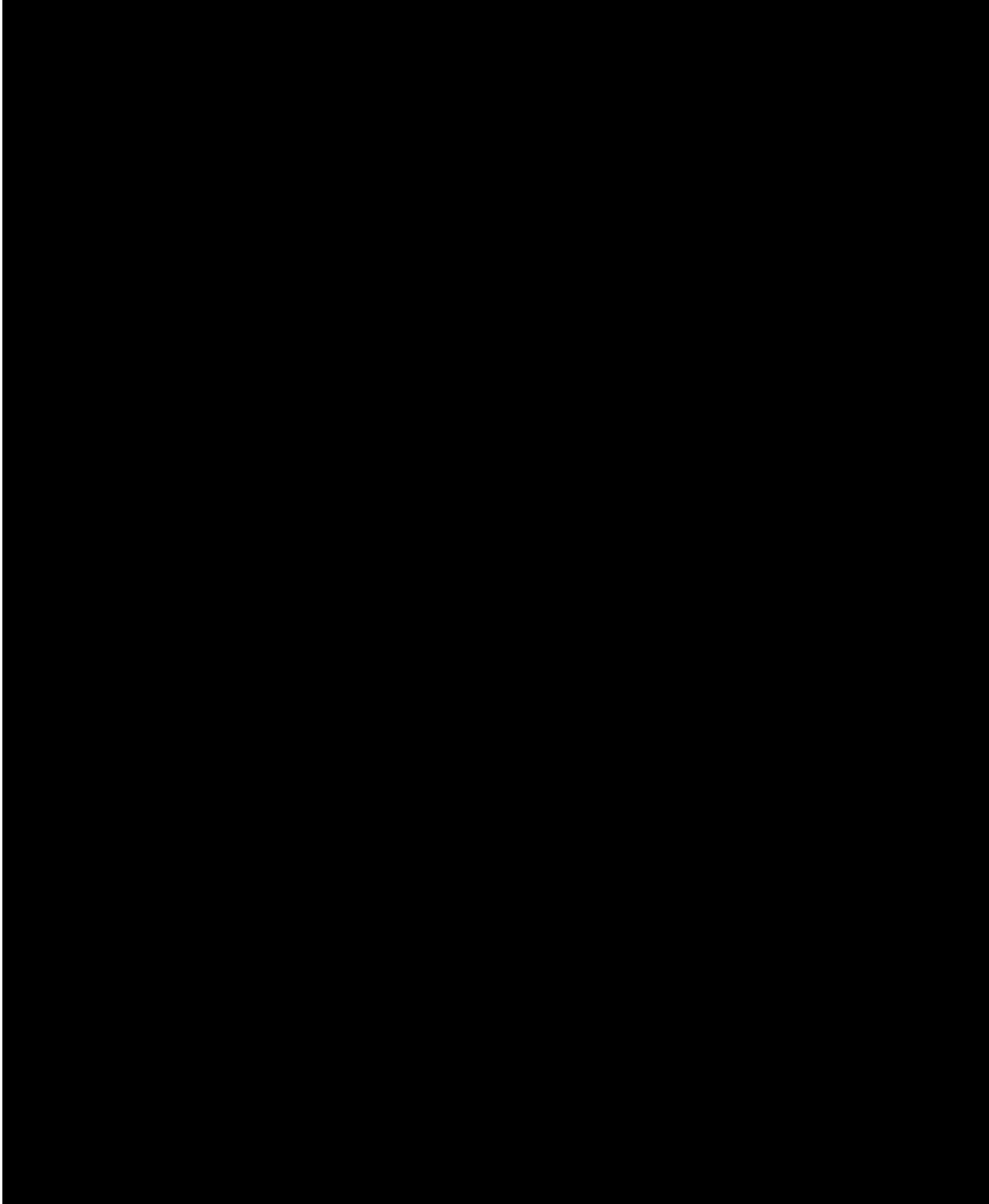
22 PRESIDENT TERCIER: So, let's resume.

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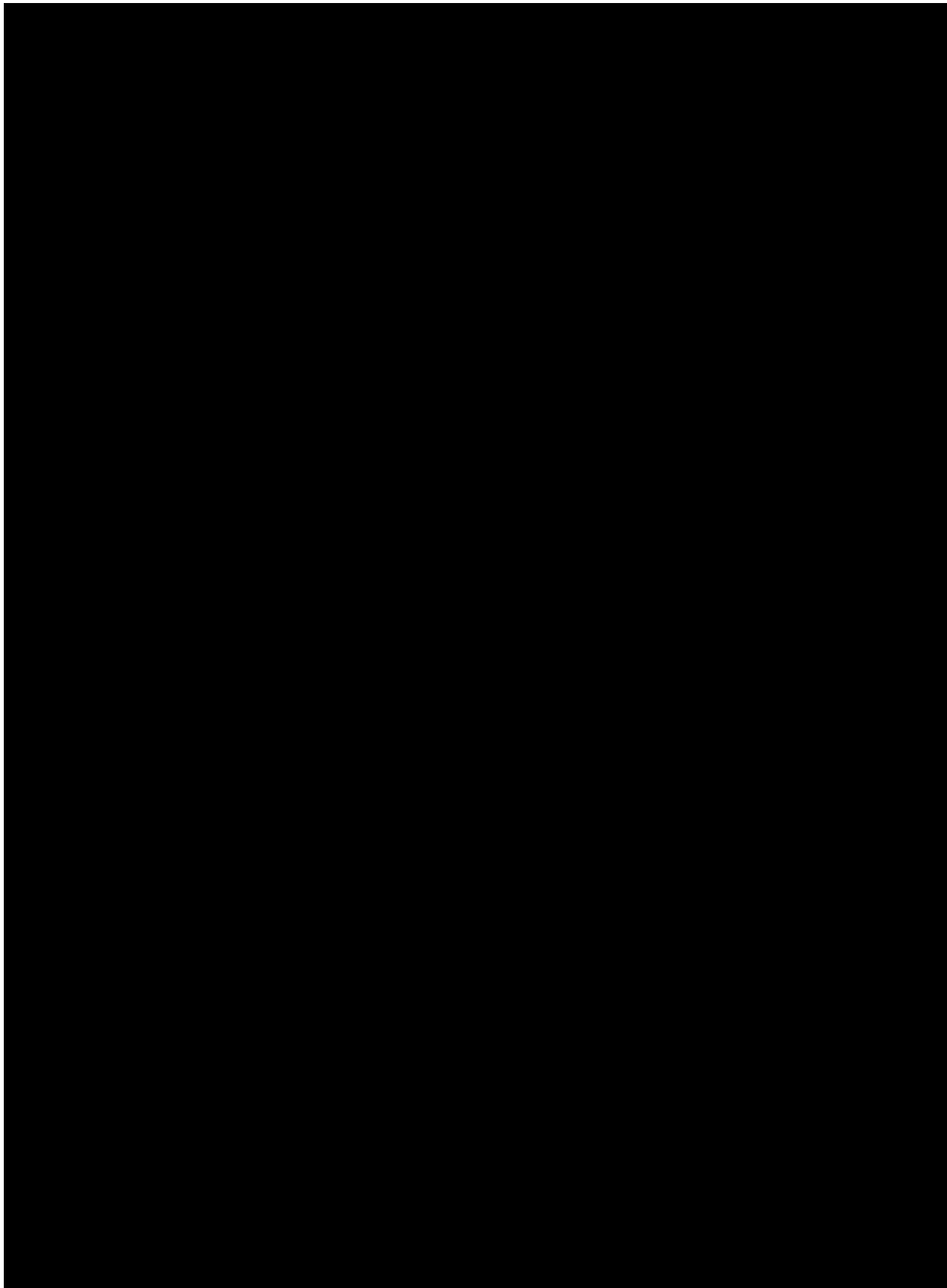
Ms. Radjai, you have the floor.

MS. RADJAI: Thank you, Mr. President.

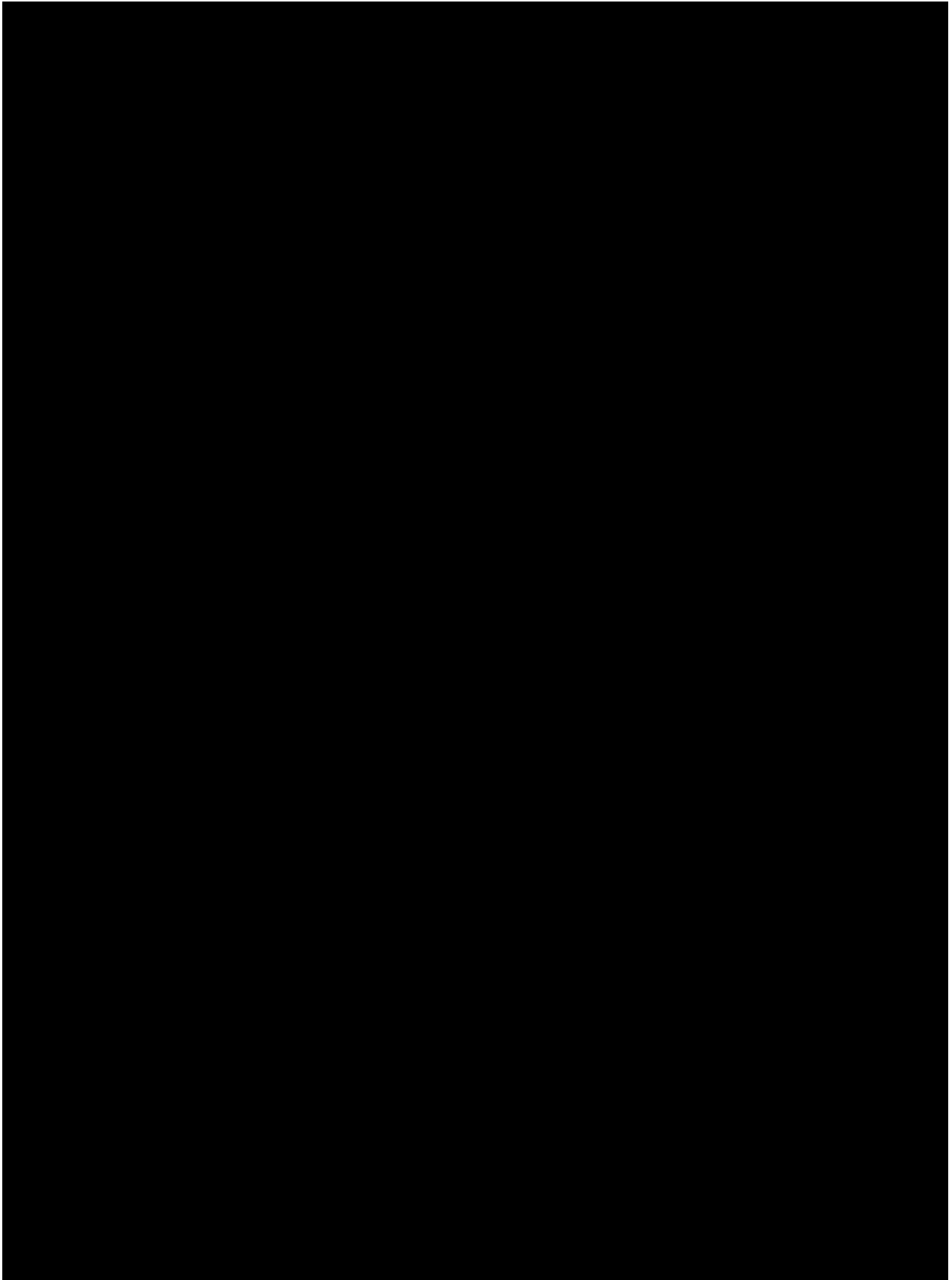
REDIRECT EXAMINATION



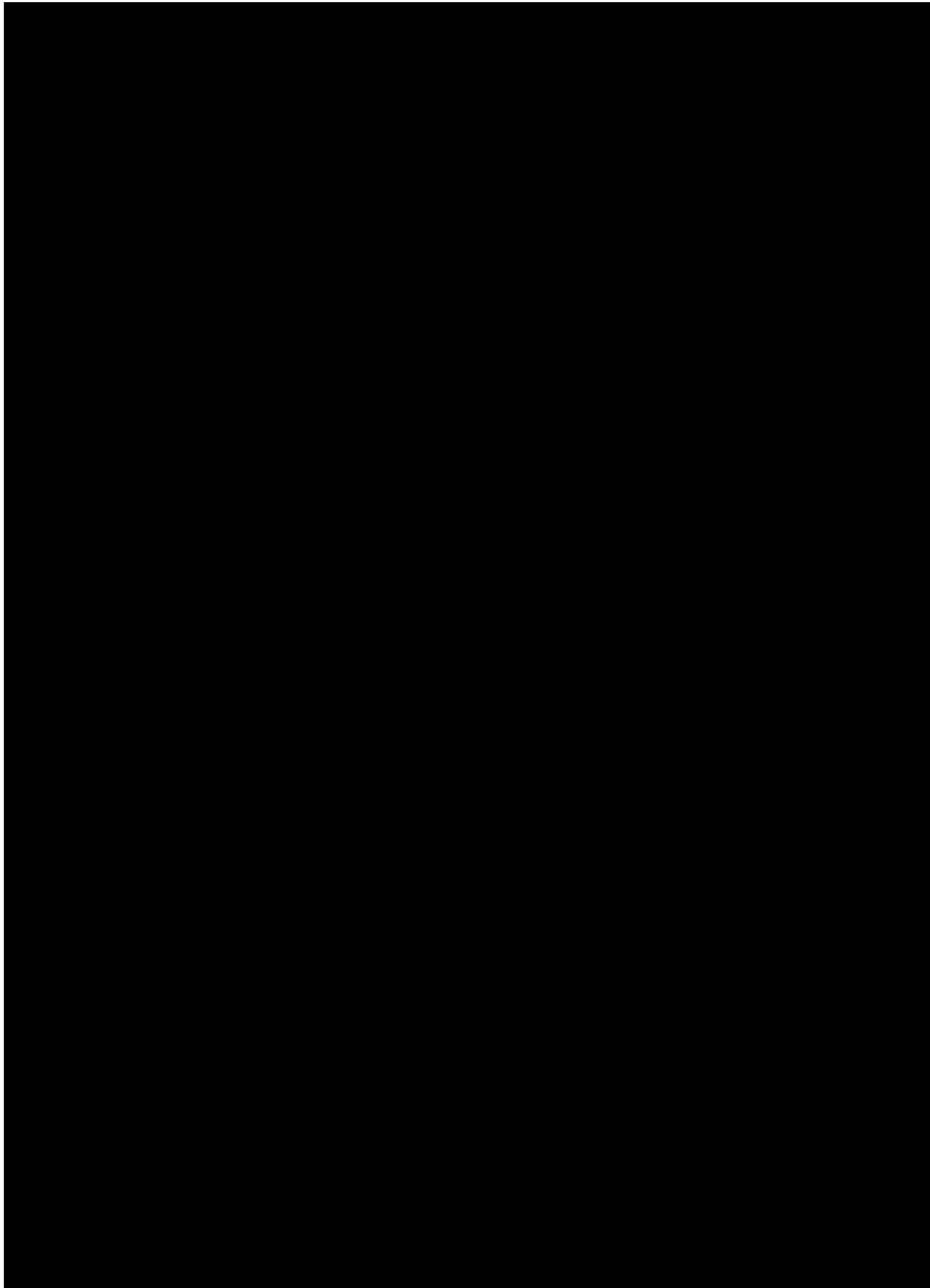
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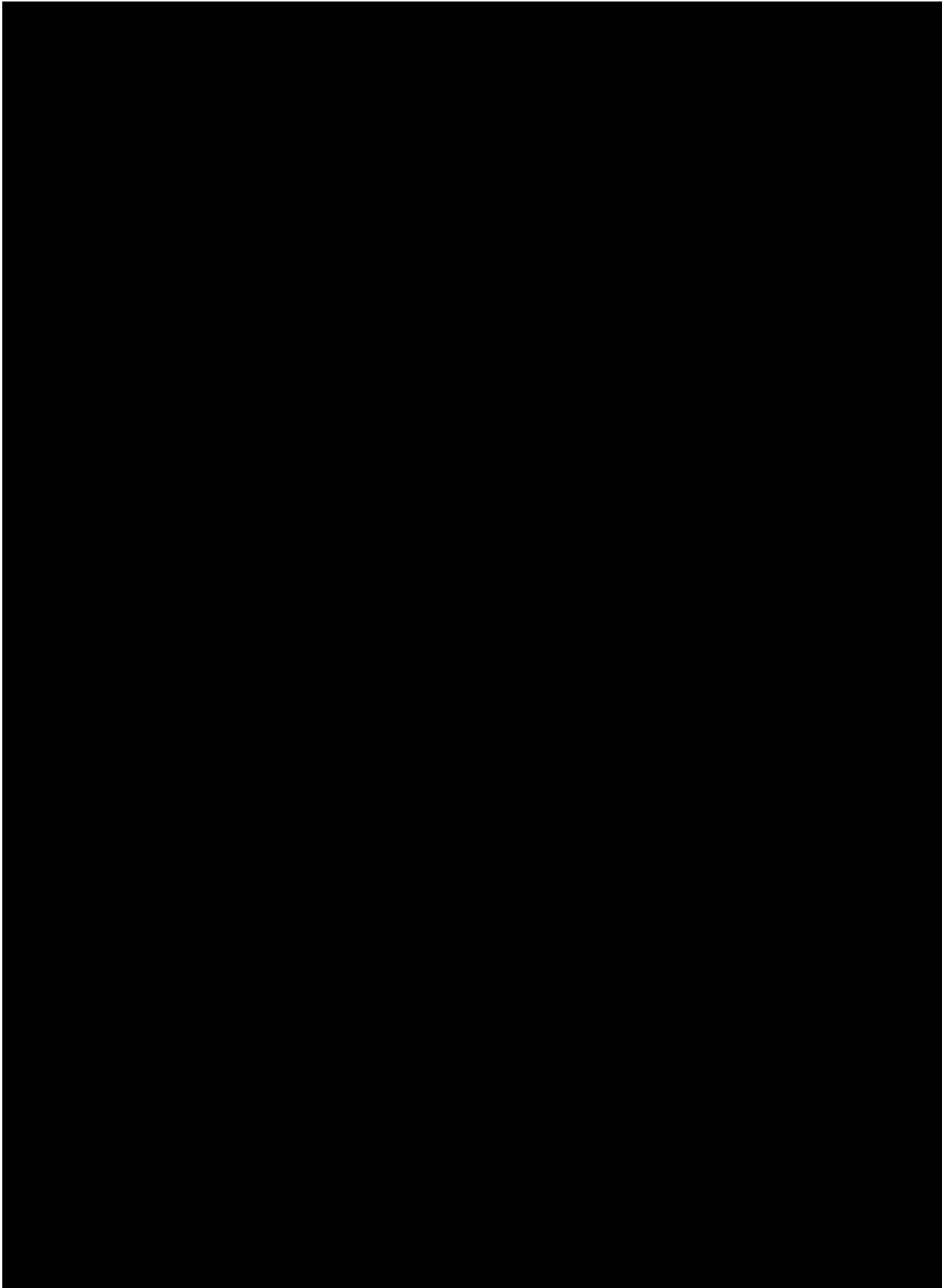
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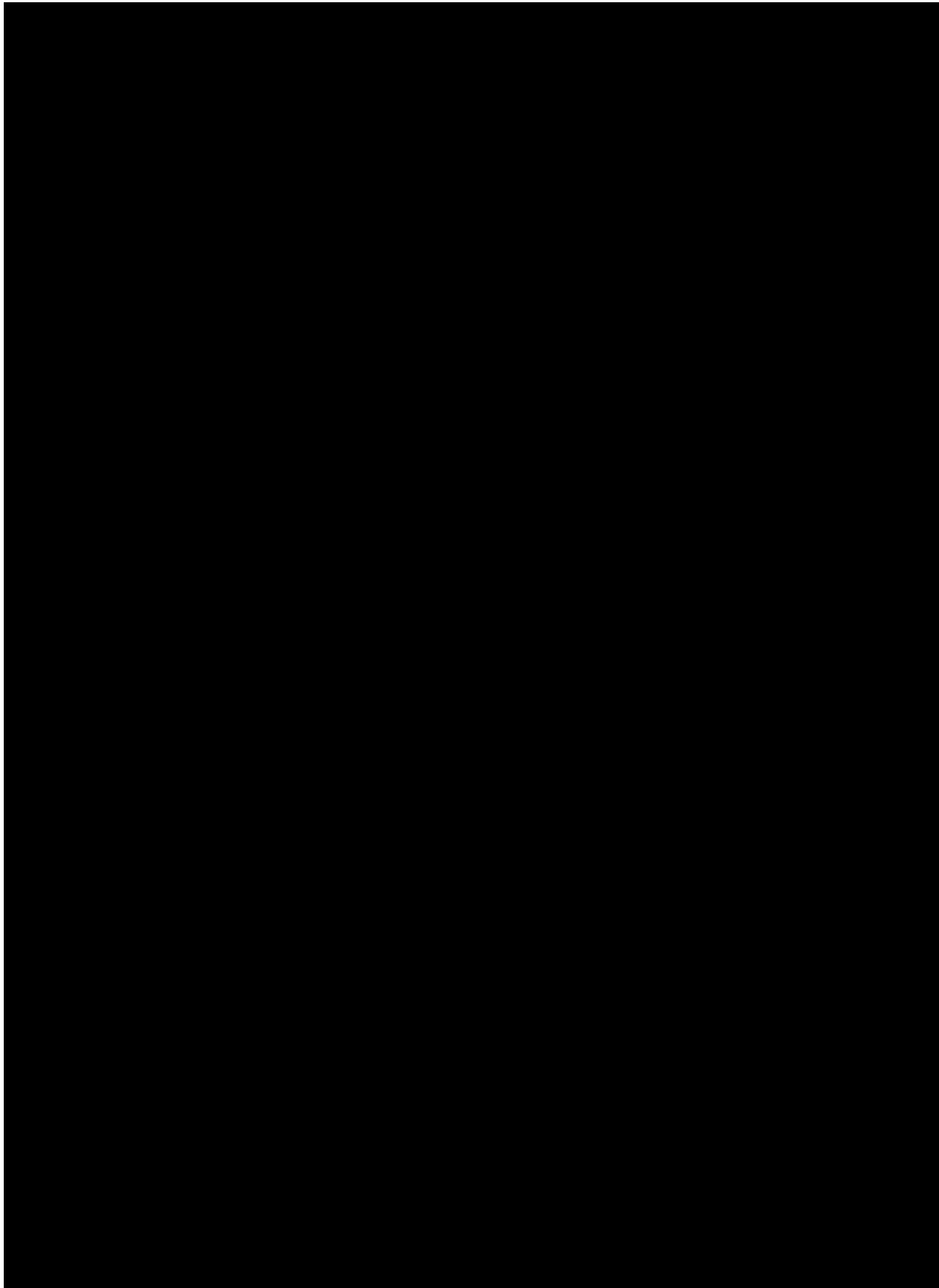
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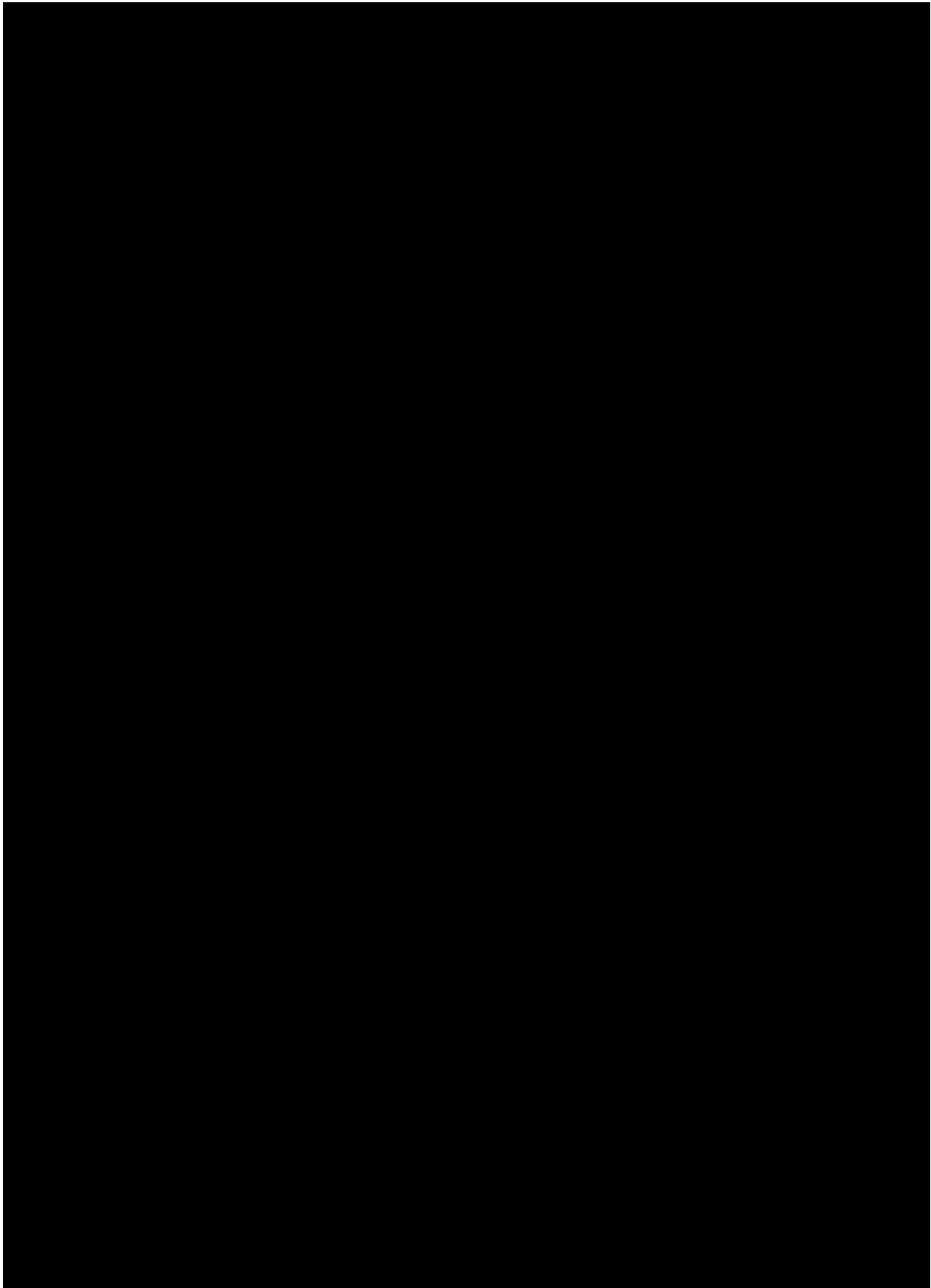
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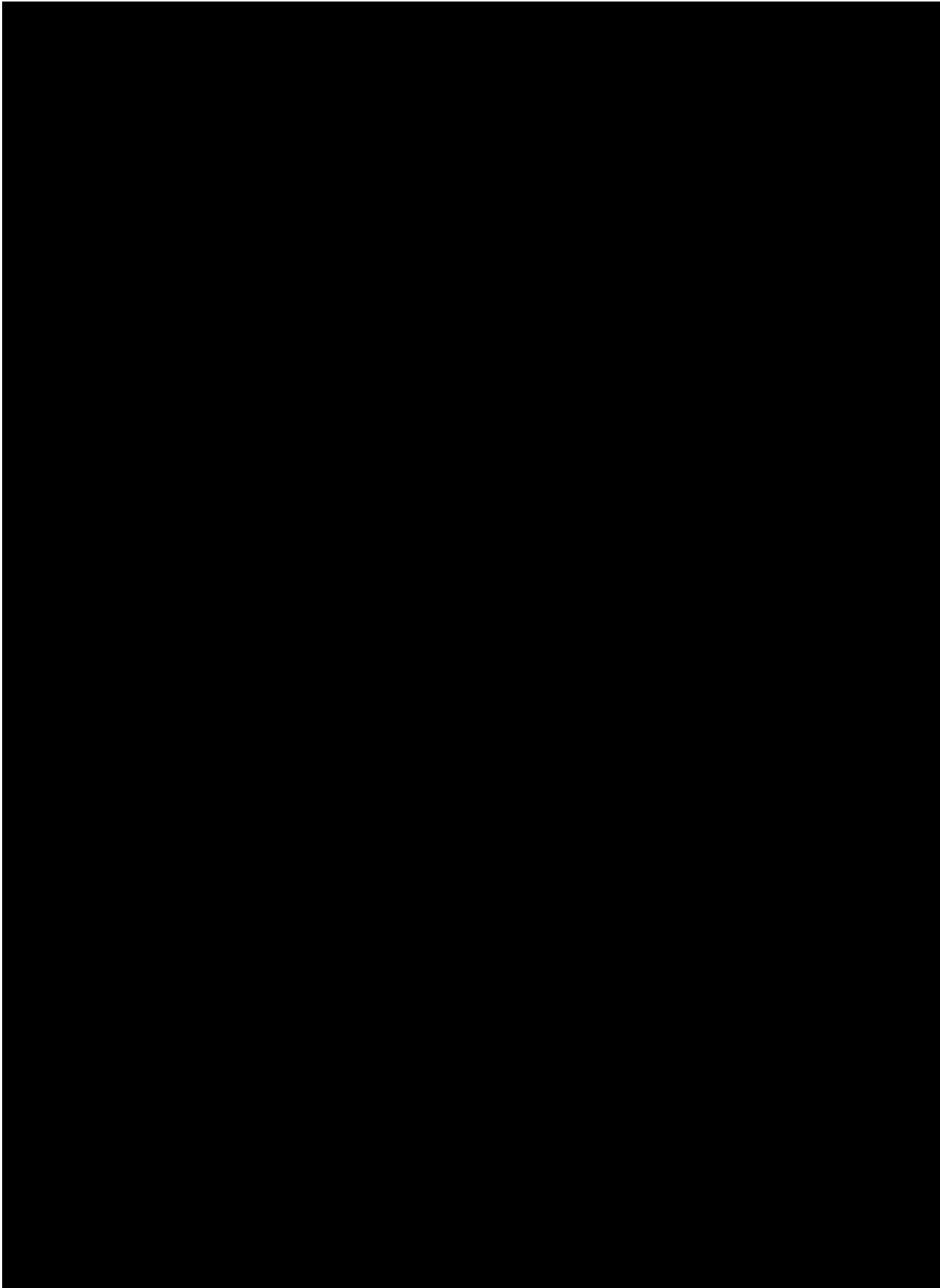
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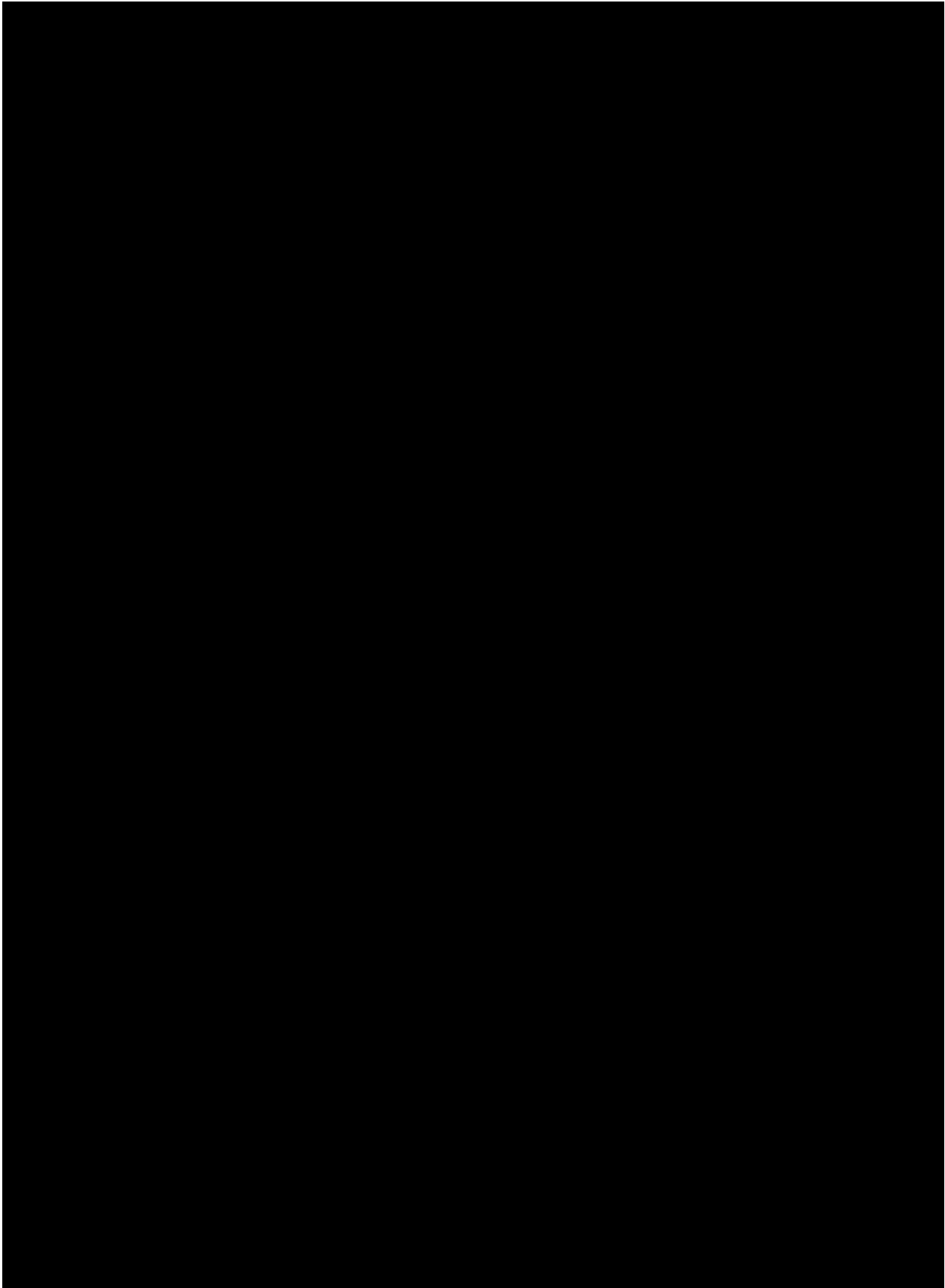
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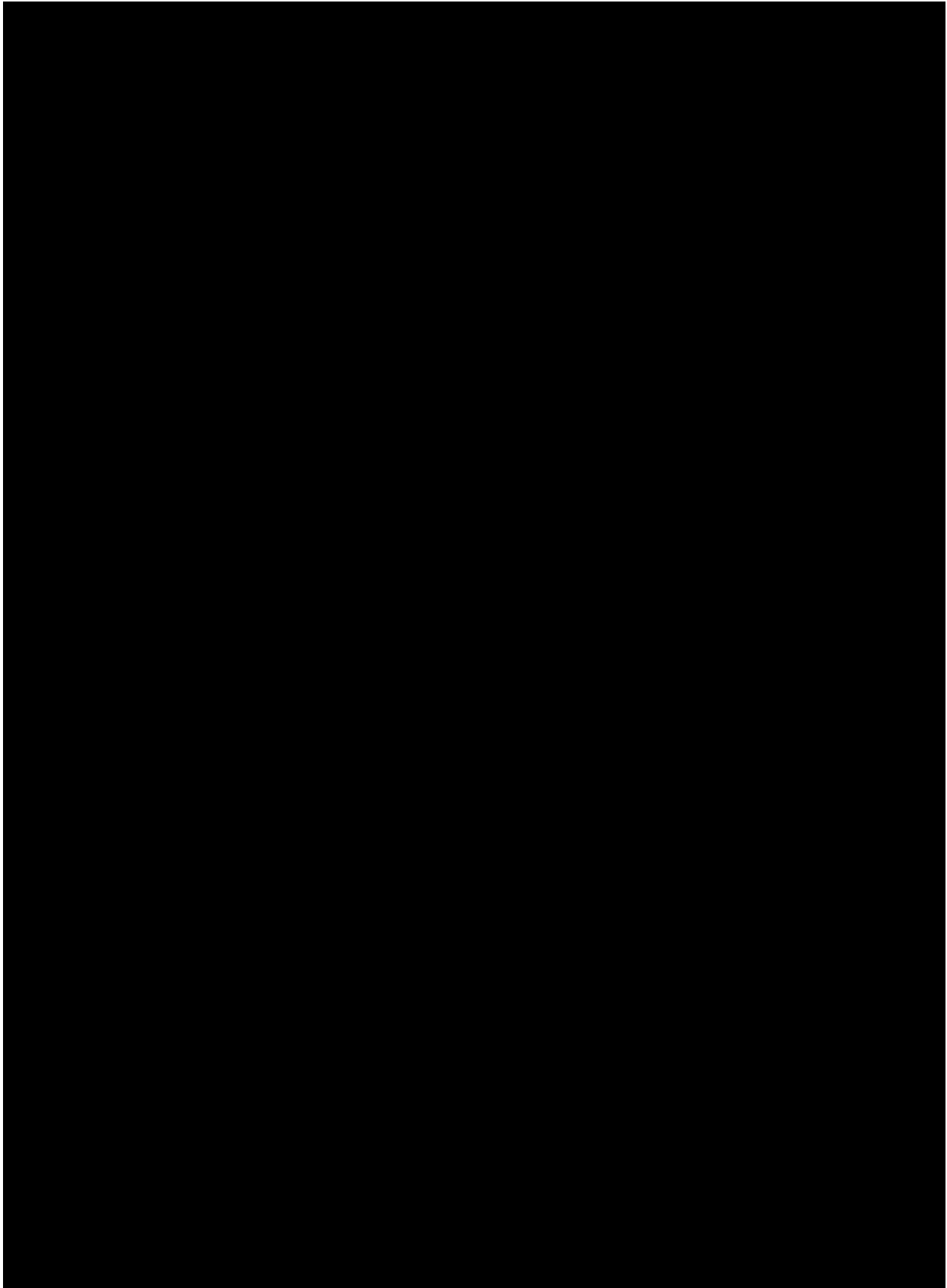
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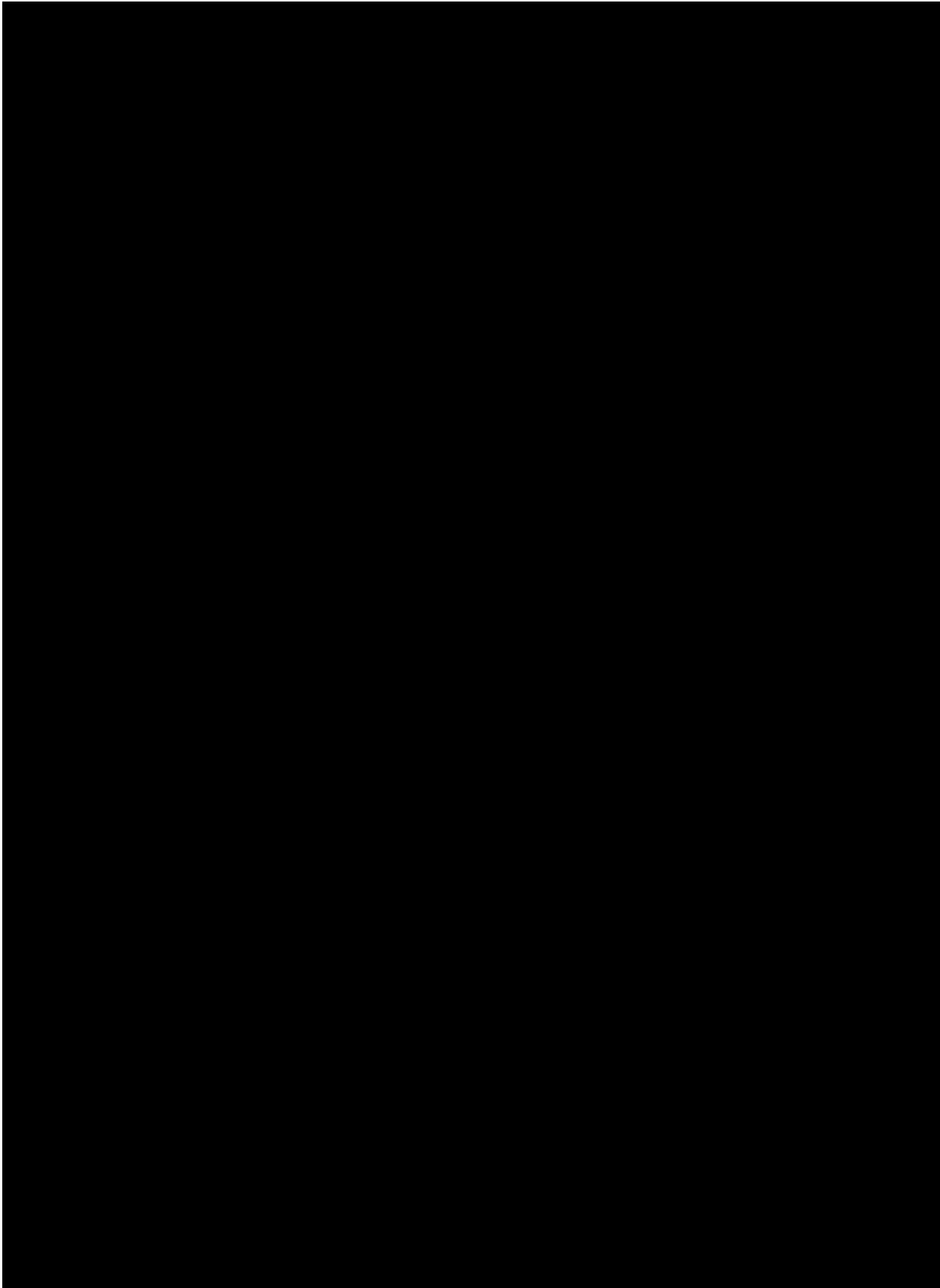
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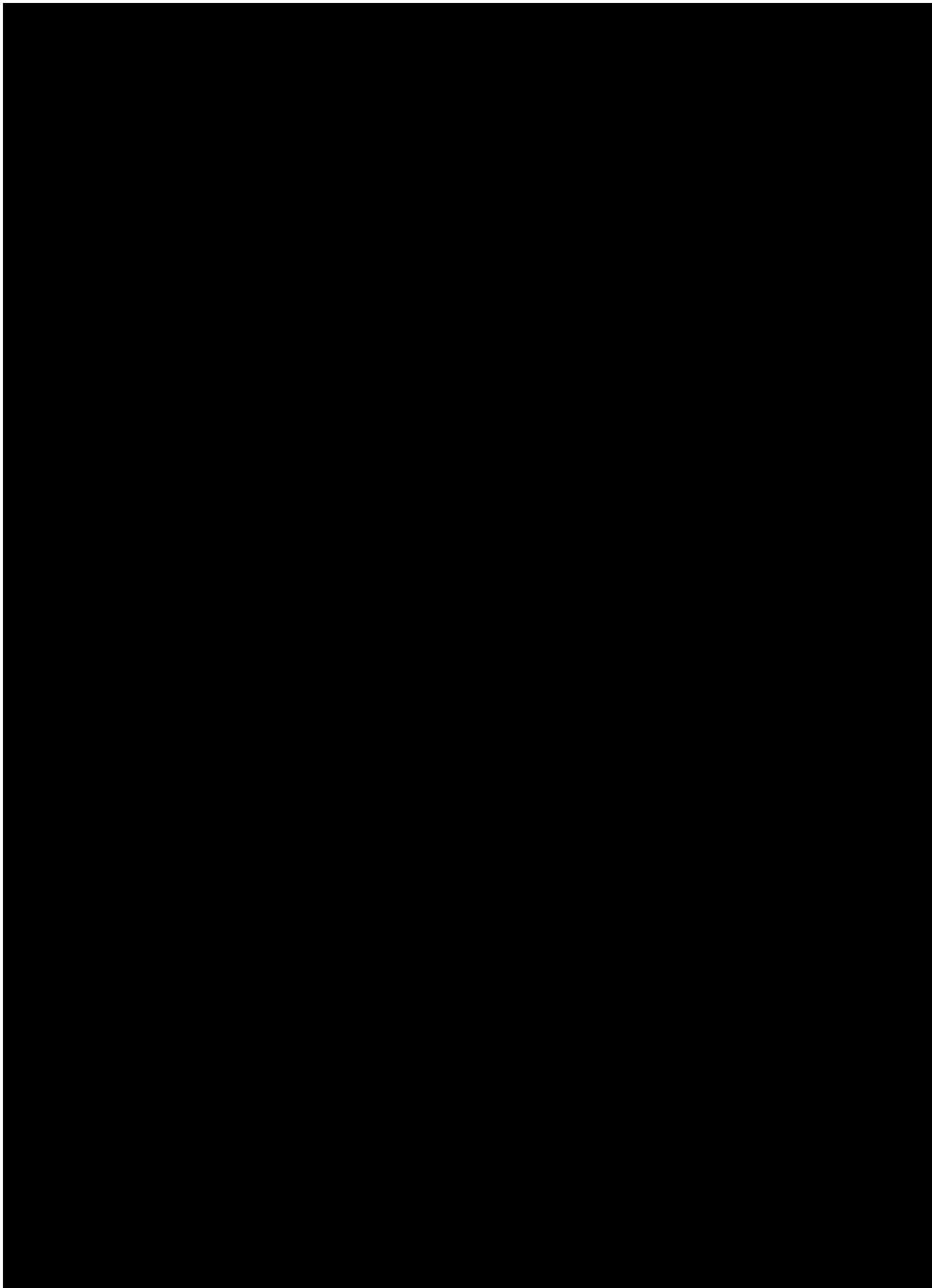
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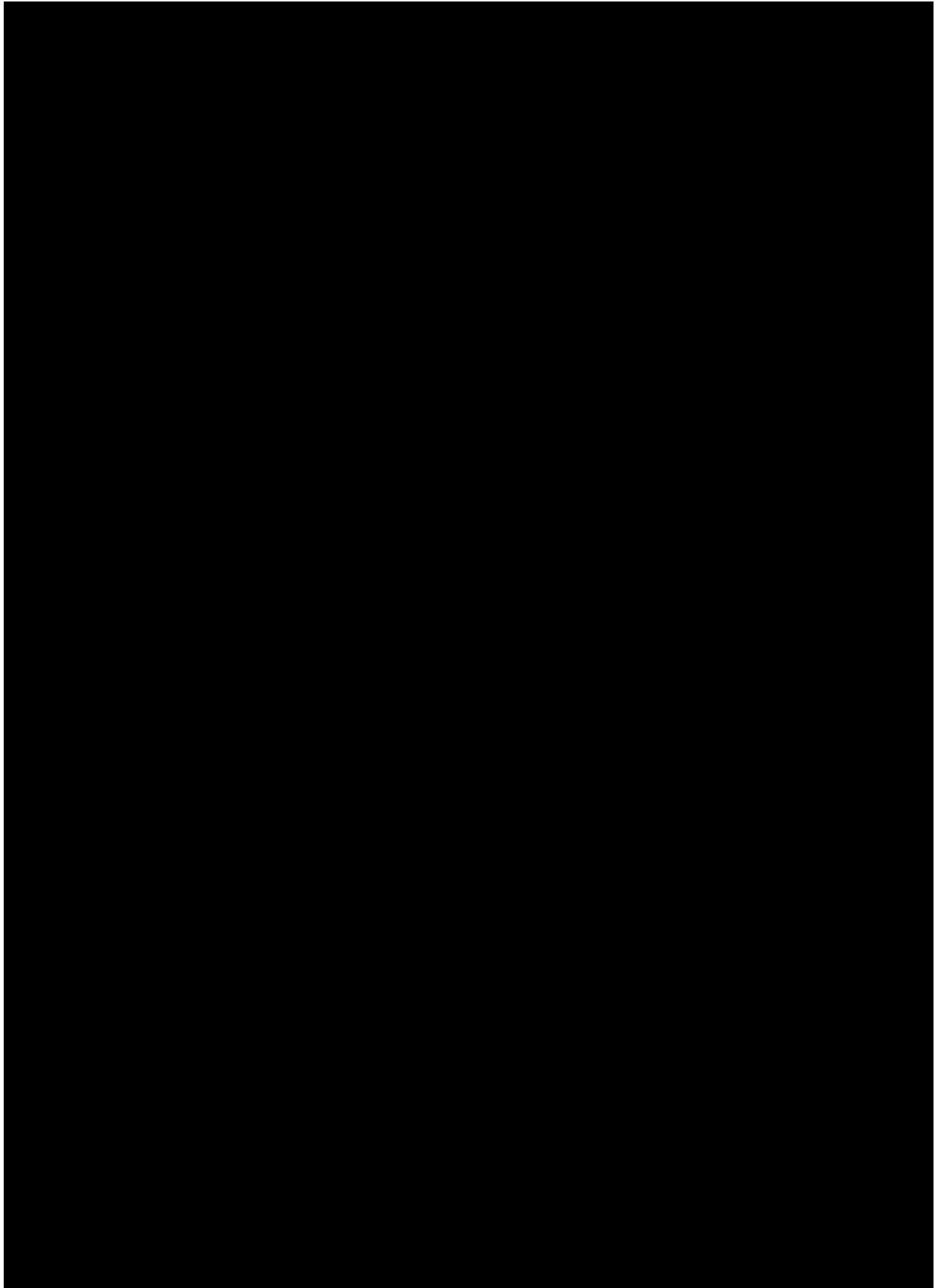
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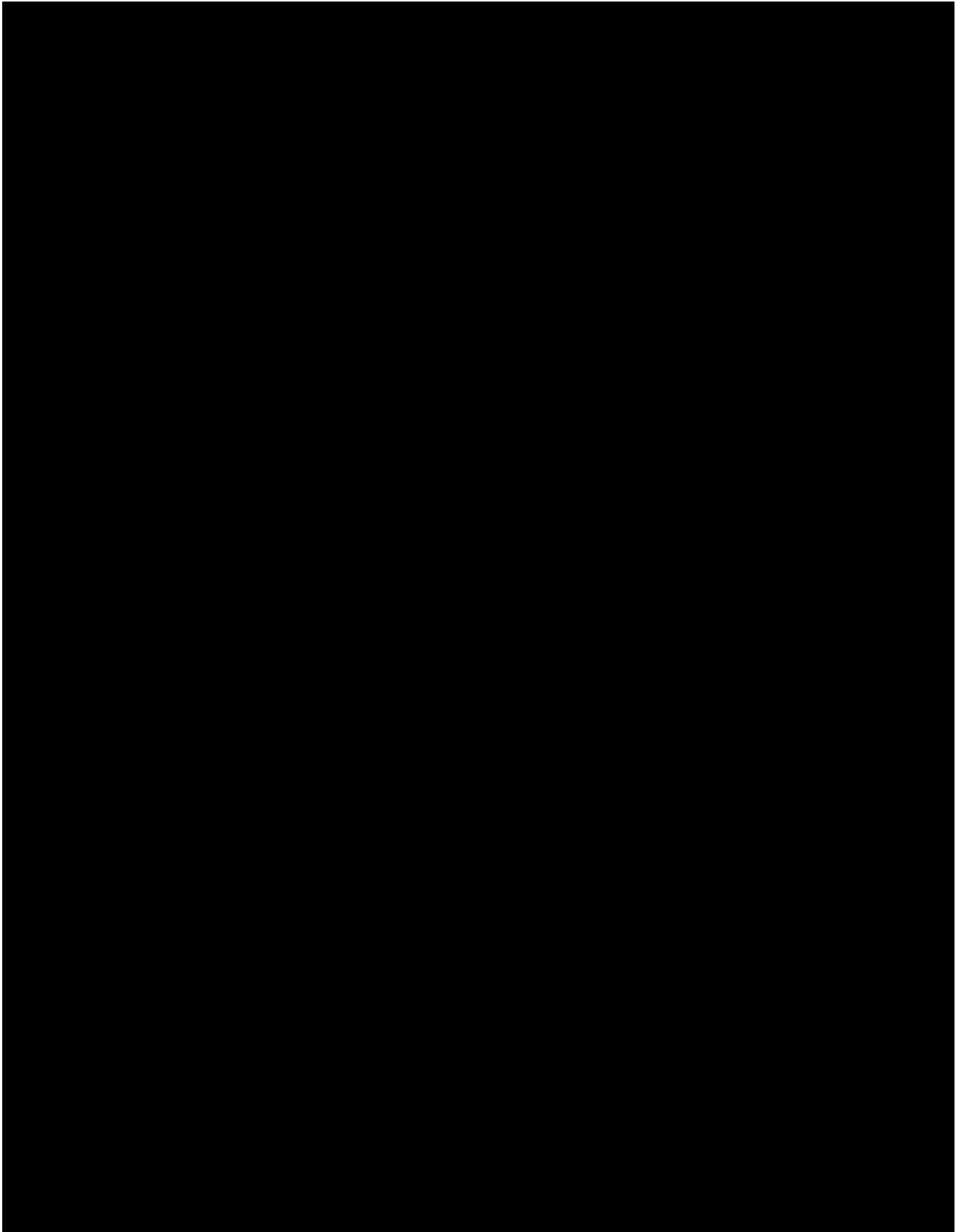
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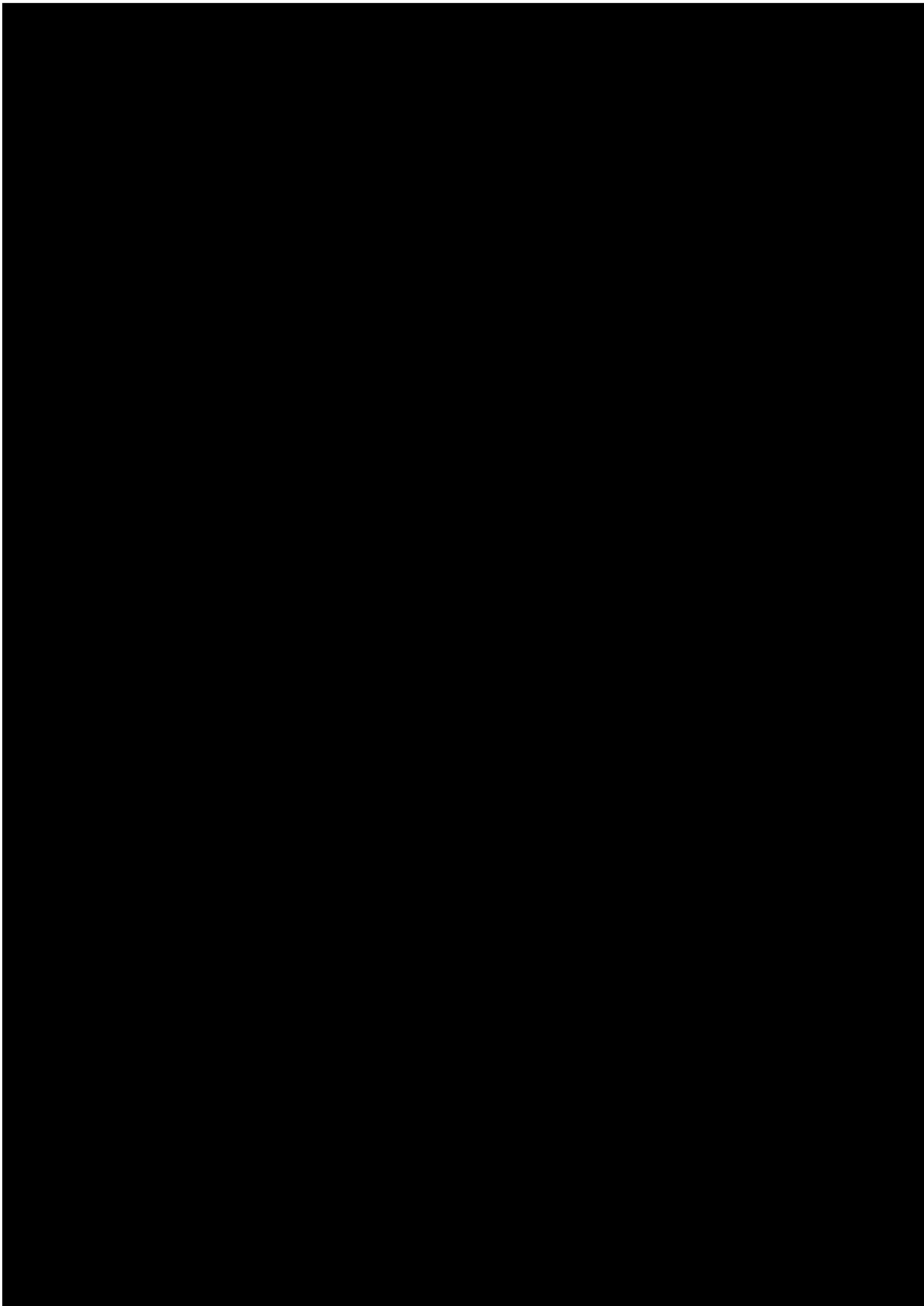


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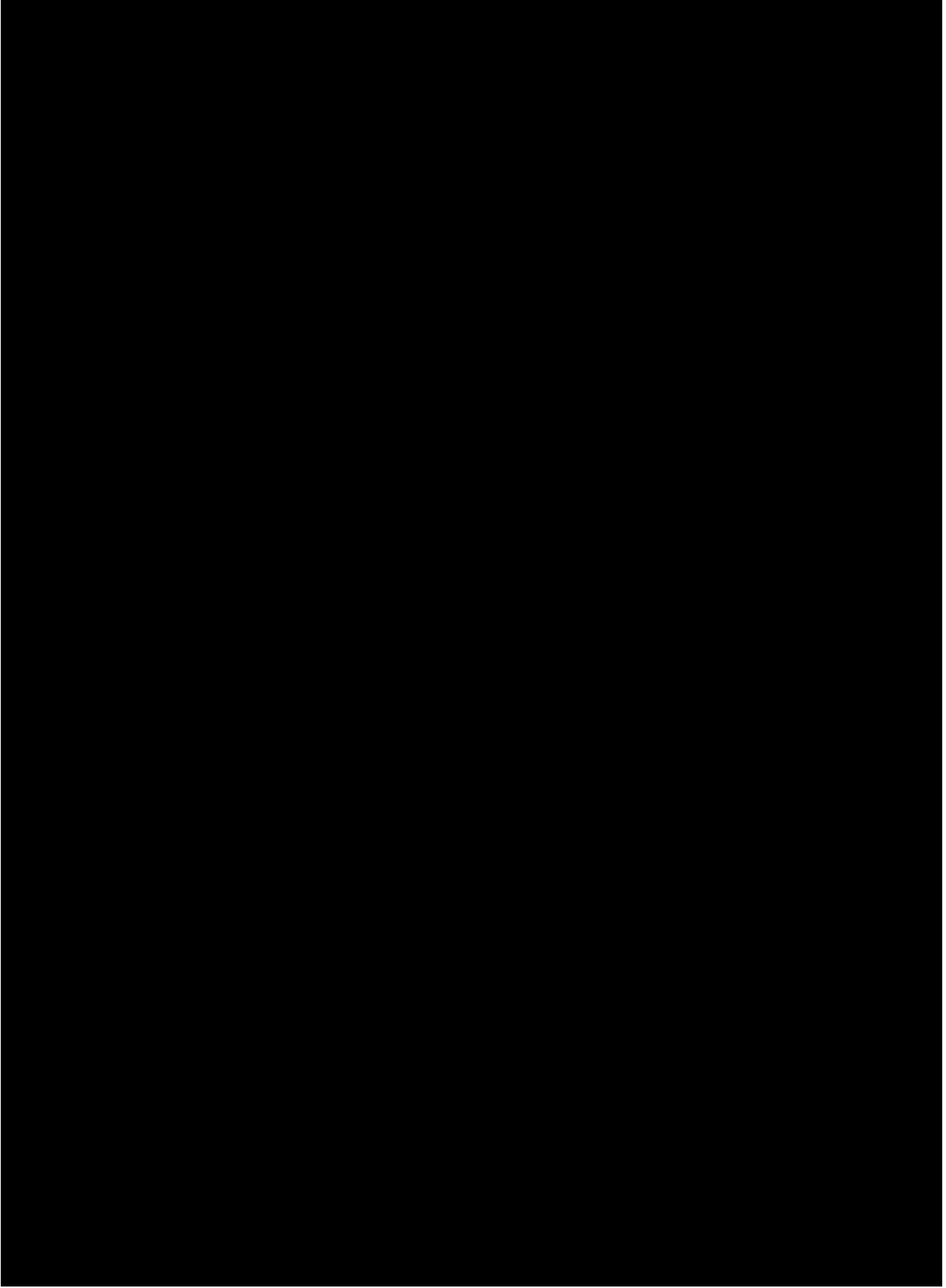


QUESTIONS FROM THE TRIBUNAL

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16 PRESIDENT TERCIER: I would like to keep you
17 just for a few moments for some points.

18 The first point, you may have received the
19 letter from ICSID concerning the statement of the
20 EC Commission. We have decided that this document
21 will be in the file. But you will also see that you
22 have--that you--the decision whether you want to

1 comment yes or no, and we will have to discuss--if
2 yes, if you would wish to--the timing, and we can
3 discuss it at the end.

4 At the first point, I think you will receive
5 the declaration, if you have not already. Sent it
6 over. It will be received. So, you have your
7 homework for the weekend.

8 Second--no. It's a joke. I hope so. On
9 Saturday afternoon, I have the right to make a joke.

10 Second point, we have--our Secretary was
11 kind enough to prepare a new tentative schedule for
12 Monday, going step by step. And it would indeed be
13 Mr. Arinton, Ms. Mocanu, Ms. Serban, and Mr. Jurca.

14 You made a reservation or you had to make
15 sure that they would be available. Is it the case?

16 DR. HEISKANEN: We haven't been able to
17 check that during the brief break that we had, but we
18 will report to the Tribunal as soon as we can this
19 afternoon.

20 PRESIDENT TERCIER: Okay. May I urge you to
21 find out, if possible?

22 DR. HEISKANEN: As soon as possible, yes.

1 PRESIDENT TERCIER: Otherwise, really, we
2 will be in difficulty. I'm sure they will because
3 they had also to be present during the hearings.

4 That's the Point Number 2. I do not see any
5 further point on my side.

6 Do you have a point that you would like to
7 raise?

8 MR. LEW: No, Mr. President.

9 PRESIDENT TERCIER: And on your side?

10 DR. HEISKANEN: Nothing from us. Thank you.

11 PRESIDENT TERCIER: Thank you very much. So
12 my last point is to wish you a very pleasant weekend.
13 Thank you very much, all of you.

14 (Whereupon, at 12:22 p.m., the Hearing was
15 adjourned until 9:00 a.m., Monday, December 9, 2019.)

16

CERTIFICATE OF REPORTER

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

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

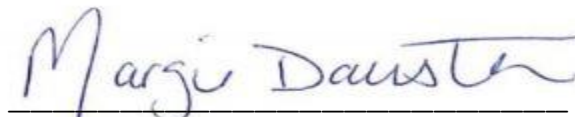


DAVID A. KASDAN

CERTIFICATE OF REPORTER

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

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


MARGIE DAUSTER