

INTERNATIONAL CENTRE FOR THE SETTLEMENT OF
INVESTMENT DISPUTES

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 In the Matter of Arbitration :
 Between: :
 :
 GABRIEL RESOURCES LTD. and GABRIEL :
 RESOURCES (JERSEY) LTD., :
 : Case No.
 Claimants, : ARB/15/31
 :
 and :
 :
 ROMANIA, :
 :
 Respondent. :
 -----x Volume 10

HEARING ON THE MERITS

Thursday, December 12, 2019

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

The hearing in the above-entitled matter came on
at 8:30 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

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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

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
MS. STELA NEGRAN
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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
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 welcome you in this tenth Day of the
4 First Session of hearings in the ICSID Arbitration
5 Case 15/31 between Gabriel Resources Limited and
6 Gabriel Resources (Jersey) Limited.

7 I would like first few points, the first
8 point again and again thanking Court Reporters for
9 their Transcript, thanking our Secretary for the
10 Report on the time. The time is, indeed, an issue.
11 As we decided yesterday, we have started now at 8:30
12 already. We'll also start tomorrow morning at 8:30,
13 so already an hour gain. We are ready to work this
14 evening until at 6:30 and we still have reserve time
15 tomorrow afternoon in order--no need to do that. We
16 don't want to give now the time because it seems to us
17 if it is good to go forward and to see how it looks
18 like.

19 Could you agree with this procedure?

20 MS. COHEN SMUTNY: Yes, we do.

21 PRESIDENT TERCIER: Respondent?

22 DR. HEISKANEN: Fine with us as well.

1 PRESIDENT TERCIER: Good. In that case, we
2 may proceed with the examination of Mr. Witold Henisz.

3 WITOLD HENISZ, CLAIMANTS' WITNESS, CALLED

4 PRESIDENT TERCIER: Good morning, Mr. Henisz.

5 THE WITNESS: Good morning.

6 PRESIDENT TERCIER: You had also to wake up
7 earlier because we changed our program.

8 You will be heard in this proceeding as a
9 witness. I would like to introduce to you the members
10 of this Tribunal--

11 MR. POLÁŠEK: Sorry, microphone, please.

12 THE WITNESS: Sorry.

13 PRESIDENT TERCIER: I would like to introduce
14 you to the Members of the Tribunal. On my left-hand
15 side, Professor Horacio Grigera Naón; on my right-hand
16 side, Professor Zachary Douglas, and we have the
17 Secretary to the Tribunal and the Assistant to the
18 Tribunal, and I admit that you have already understood
19 who are on each side of the table. You will be heard
20 in this procedure as a witness; as such, I would like
21 to invite you to read the Declaration that I think you
22 have before you.

1 THE WITNESS: I solemnly declare upon my
2 honor and conscience that my statement will be in
3 accordance with my sincere belief.

4 PRESIDENT TERCIER: Thank you. No, this
5 isn't the one. This is an expert. It should be the
6 Witness.

7 Sorry, it's not that I mistrust you, if you
8 will, according to your credentials, but indeed you
9 have to read the right one.

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

13 PRESIDENT TERCIER: Okay. You have prepared
14 for this procedure a witness statement that has been
15 dated the 21st of October 2018.

16 Have you this document in front of you?

17 THE WITNESS: Yes, I do.

18 PRESIDENT TERCIER: Can you confirm the
19 content of this document or you wish to make
20 amendments?

21 THE WITNESS: I confirm this is my statement.
22 I have no wish to make an amendment.

1 PRESIDENT TERCIER: Okay. I do not think it
2 is necessary for me to explain to you how it will--how
3 the examination will be conducted. I will ask you one
4 or two questions, then direct and cross and redirect.

5 Just one important point, as you know, we
6 have a transcript, and it is important for the clarity
7 of the Transcript to avoid to have overlapping during
8 the course of the examination. Fine.

9 I would like just to ask you two general
10 questions, the first question, to introduce yourself
11 very shortly, and we also have information in your
12 Witness Statement, but we would like also to know the
13 process that has been followed for the preparation of
14 your Witness Statement, please.

15 THE WITNESS: My name is Witold Henisz. I'm
16 a Deloitte Professor of Management at the Wharton
17 School of Business at the University of Pennsylvania--

18 PRESIDENT TERCIER: I forgot to tell you that
19 you have also to speak slowly.

20 THE WITNESS: My name is Witold Henisz. I'm
21 the Deloitte & Touche Professor of Management at The
22 Wharton School of Business of the University of

1 Pennsylvania, where I've been on the standing faculty
2 for 21 years.

3 Throughout that time, my research, my
4 teaching, my consulting focuses on the materiality,
5 the financial importance of a firm's relationships
6 with its external stakeholders, political, civil
7 society, community members, trying to demonstrate that
8 maintaining a strong relationship with these
9 stakeholders is beneficial to the organizational
10 purpose of the enterprise. This is sometimes referred
11 to as the "Social License to Operate."

12 In addition to extensive publications across
13 a wide array of academic journals, I've also consulted
14 with leading extractive companies and companies in
15 multiple industries in helping them advance their
16 internal processes to win and obtain the Social
17 License.

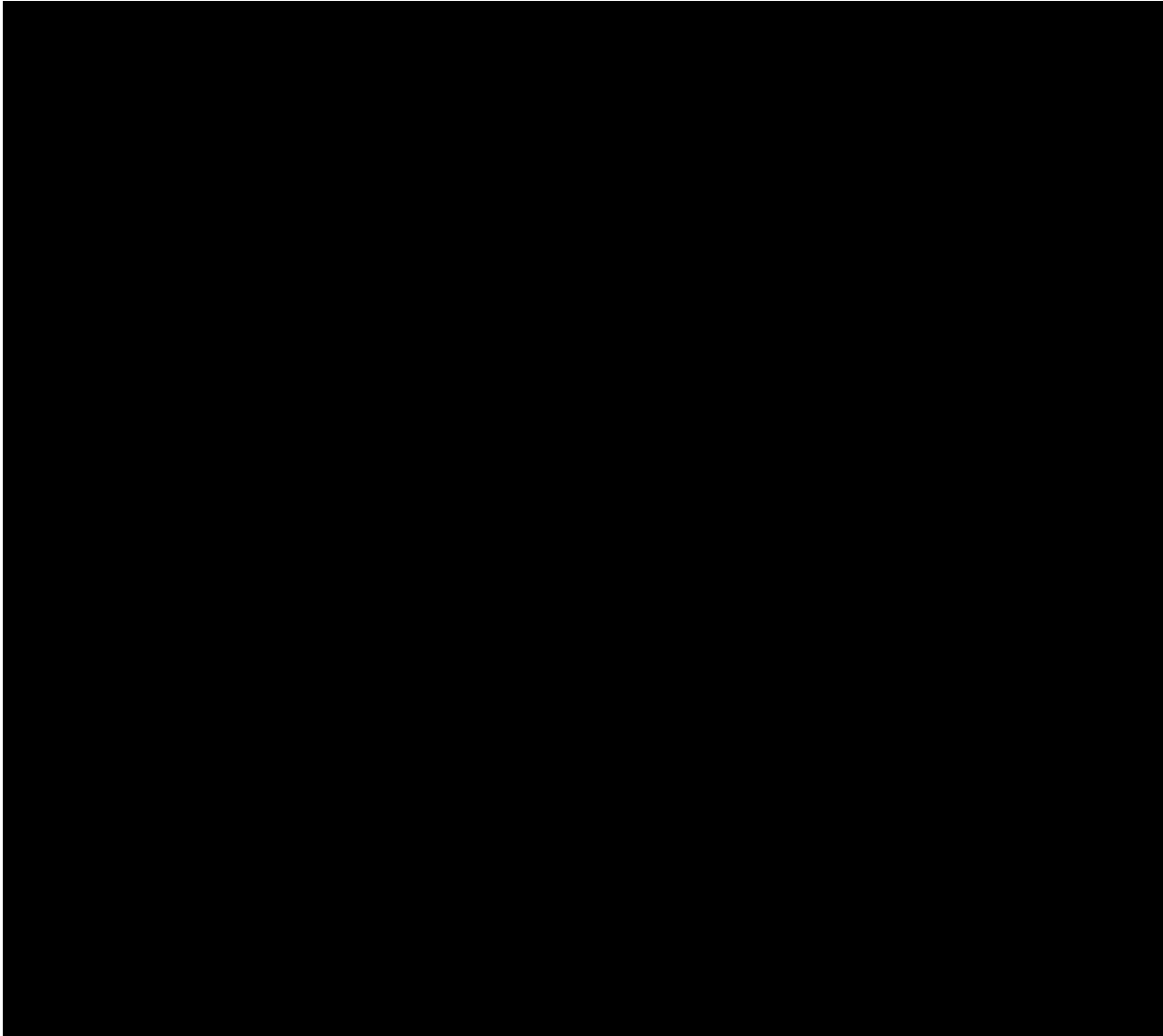
18 In terms of the statement, the statement was
19 drafted by myself, with consultation with counsel.
20 They provided some stylistic and other feedback, but I
21 had the final word as to the contents of the
22 manuscript--of the statement.

1 PRESIDENT TERCIER: Thank you very much.
2 Okay. I think we may proceed with the
3 direct.

4 MR. POLÁŠEK: Good morning, Mr. President.
5 I'm Petr Polášek, counsel for Claimants. We have a
6 short direct examination.

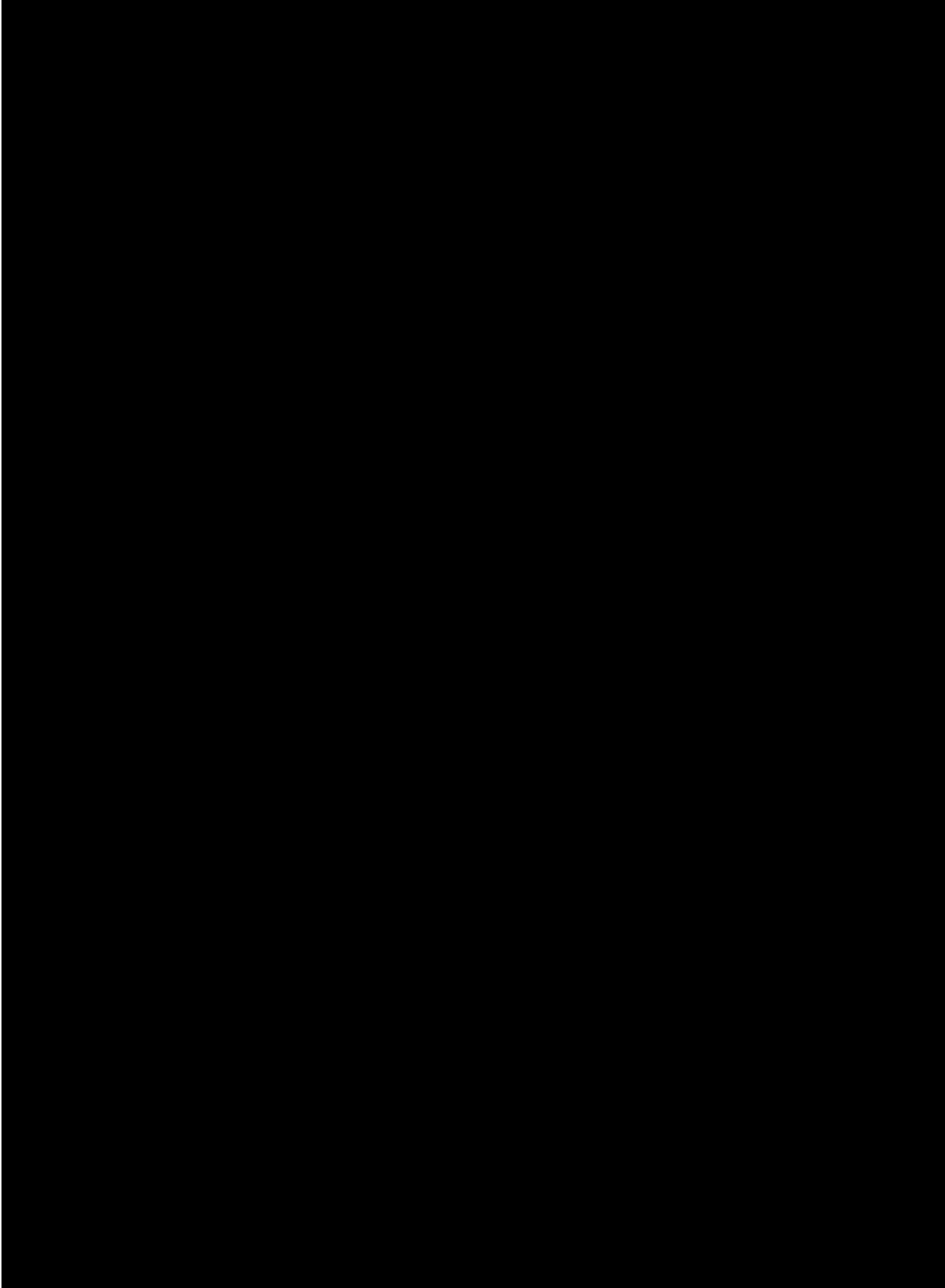
7 PRESIDENT TERCIER: Please.

8 DIRECT EXAMINATION

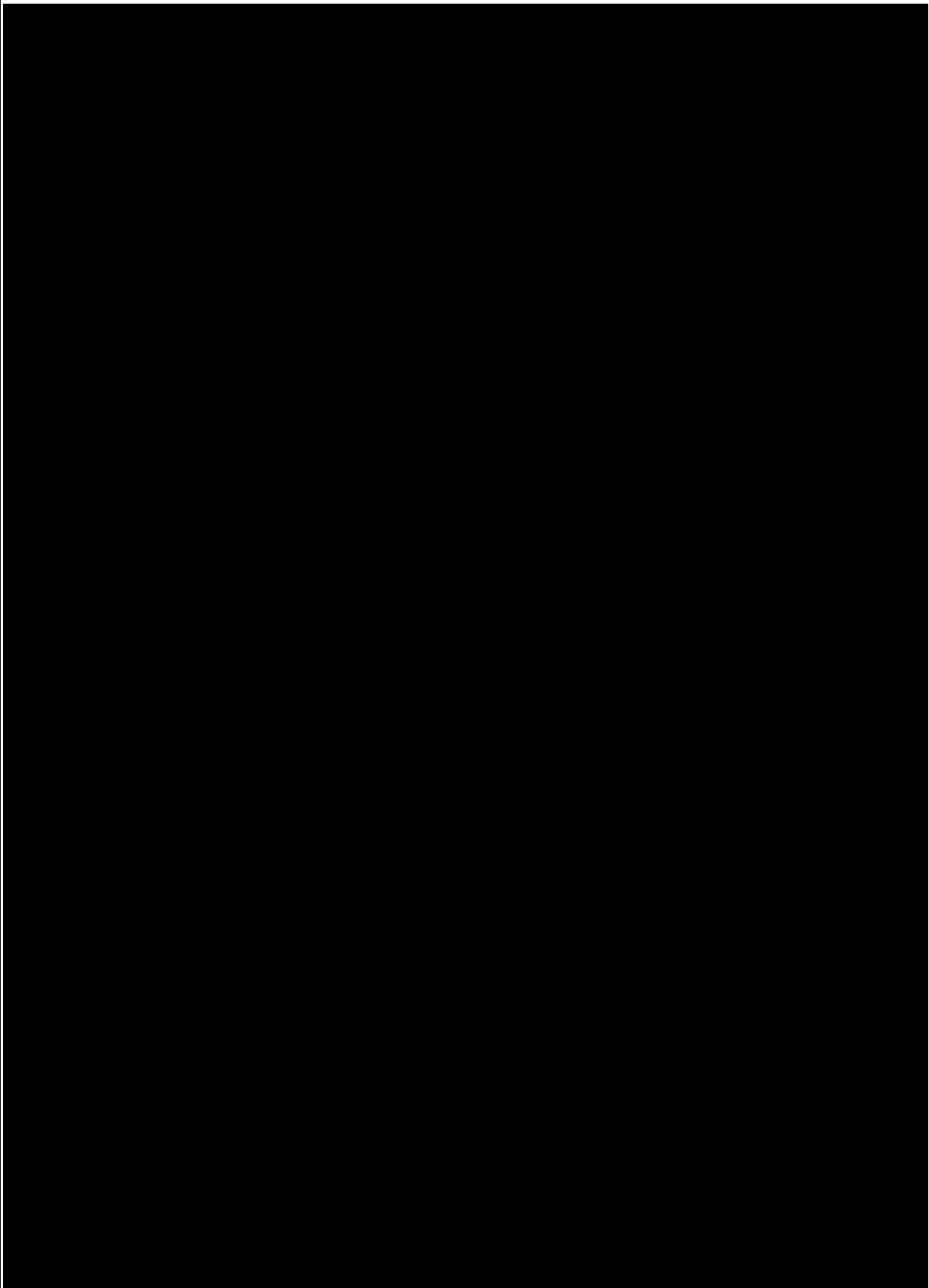


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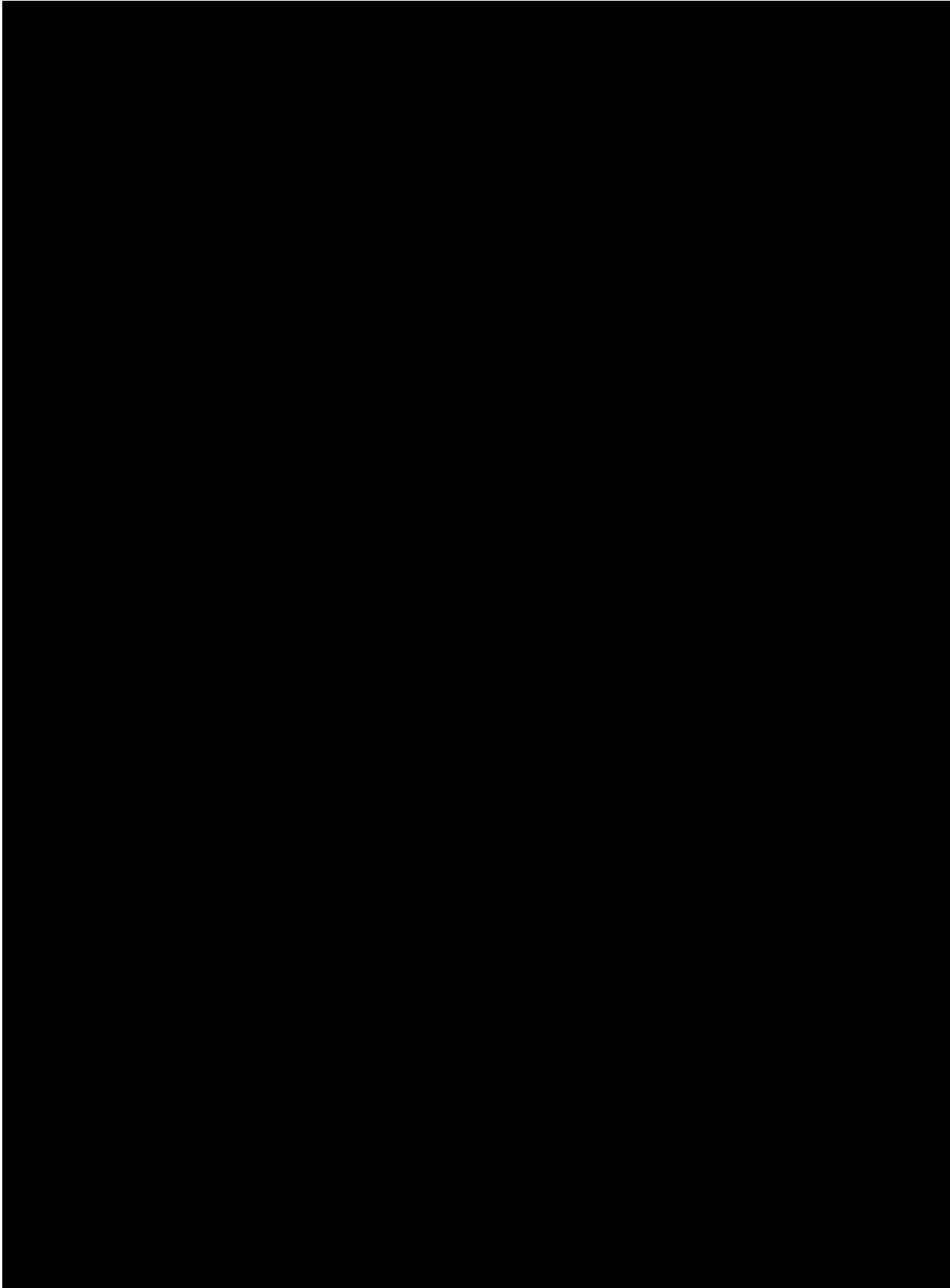
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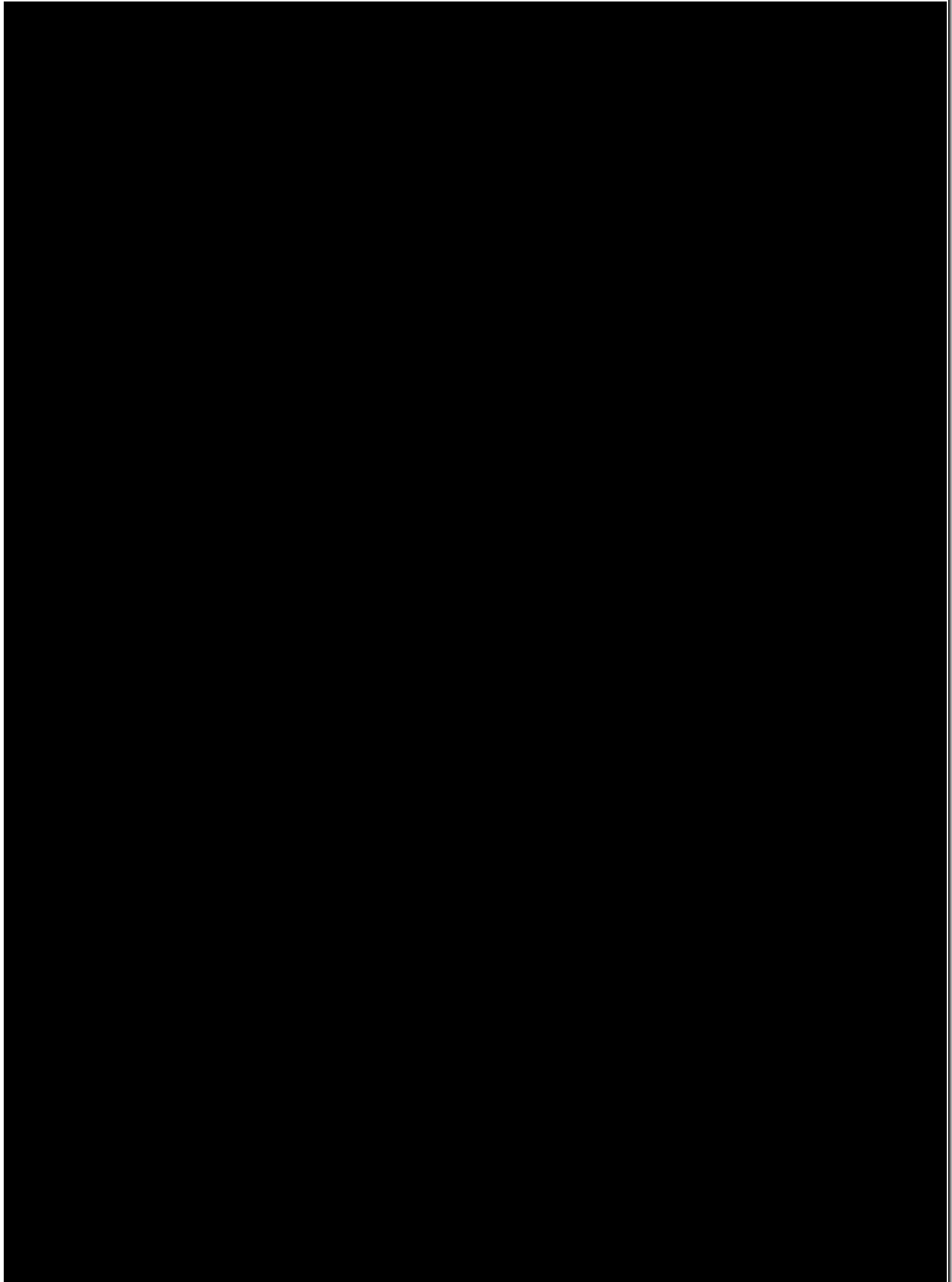
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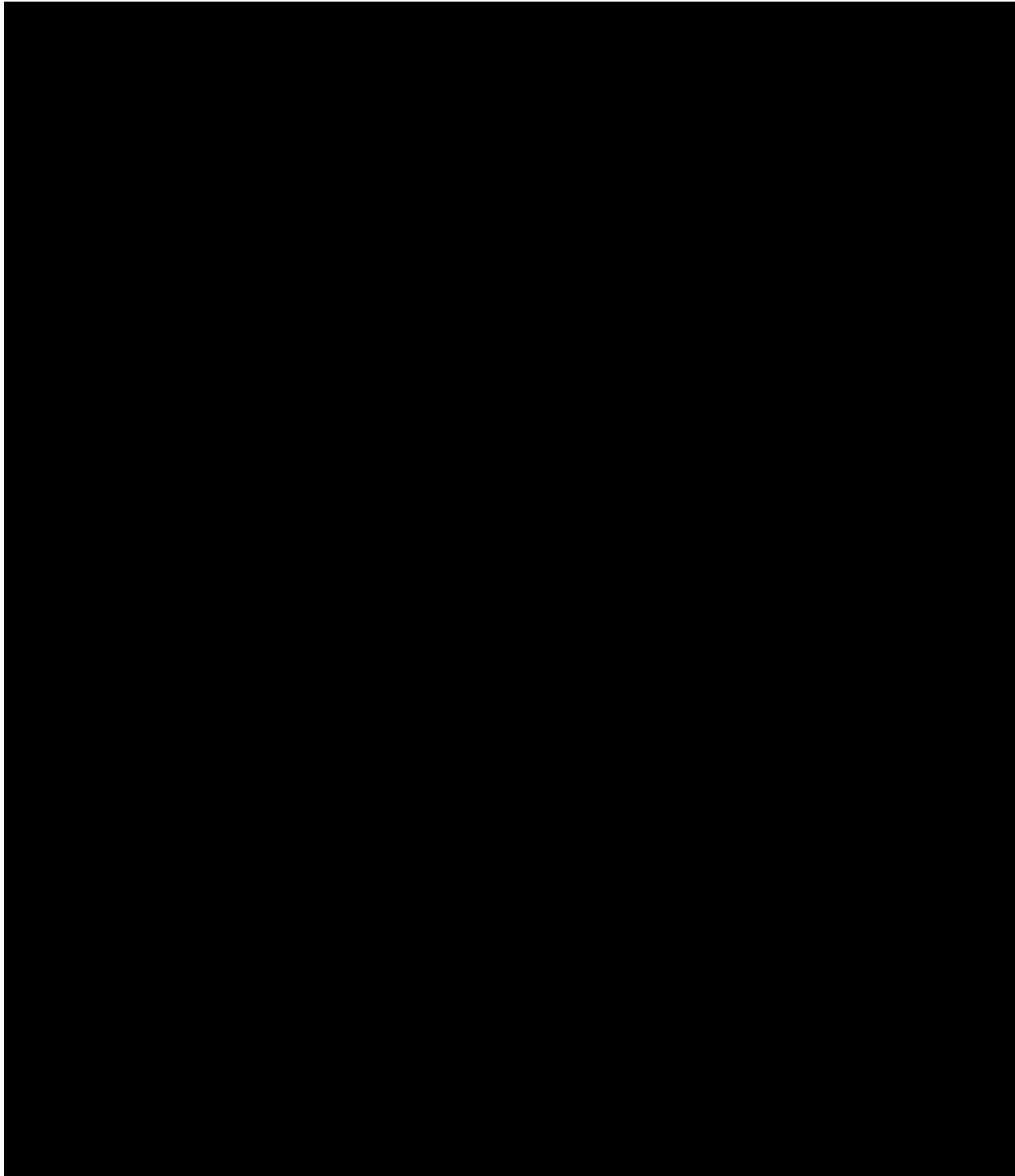
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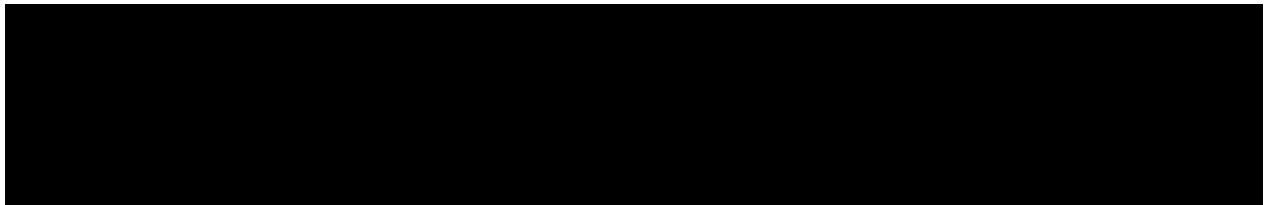
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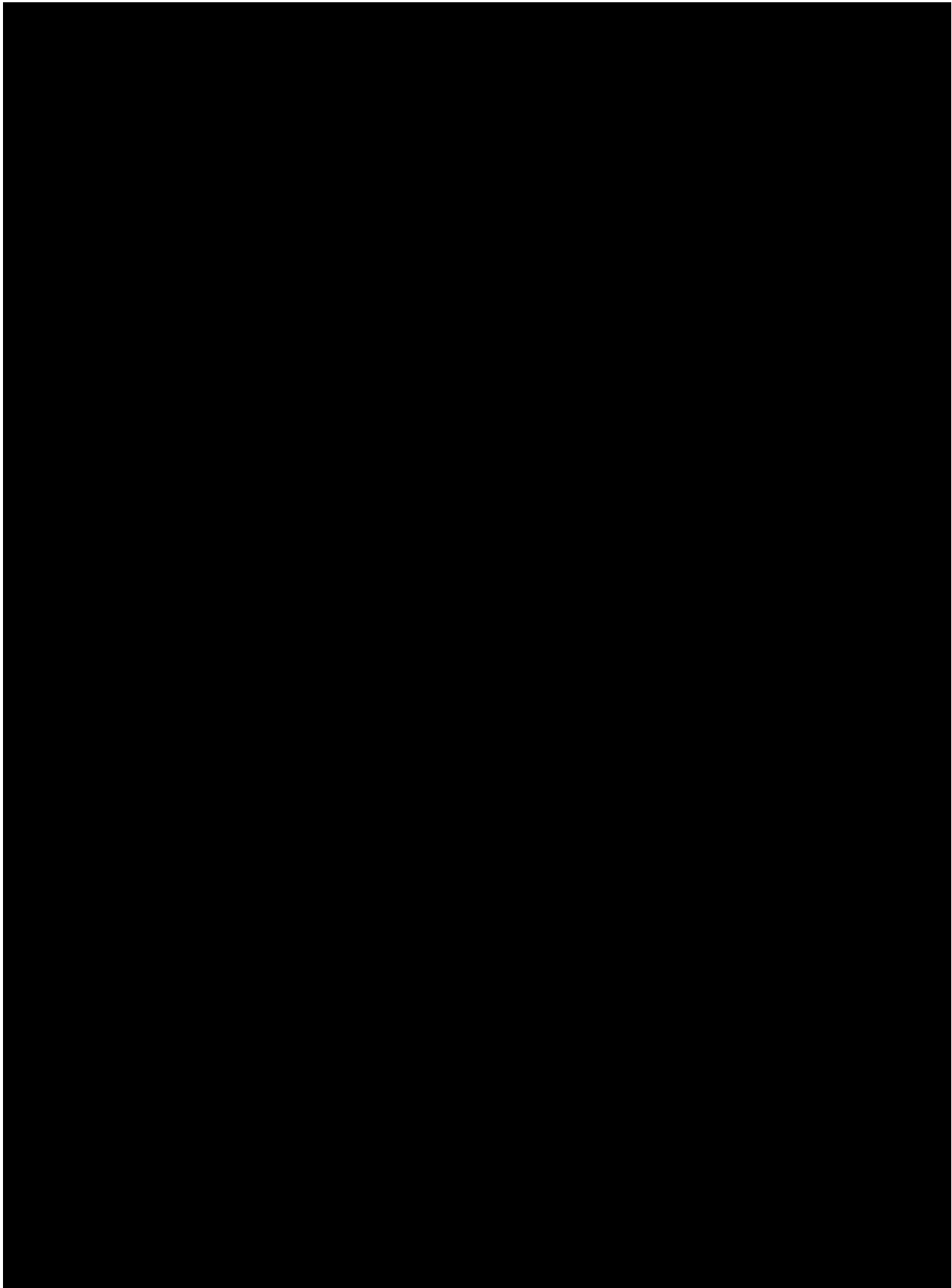
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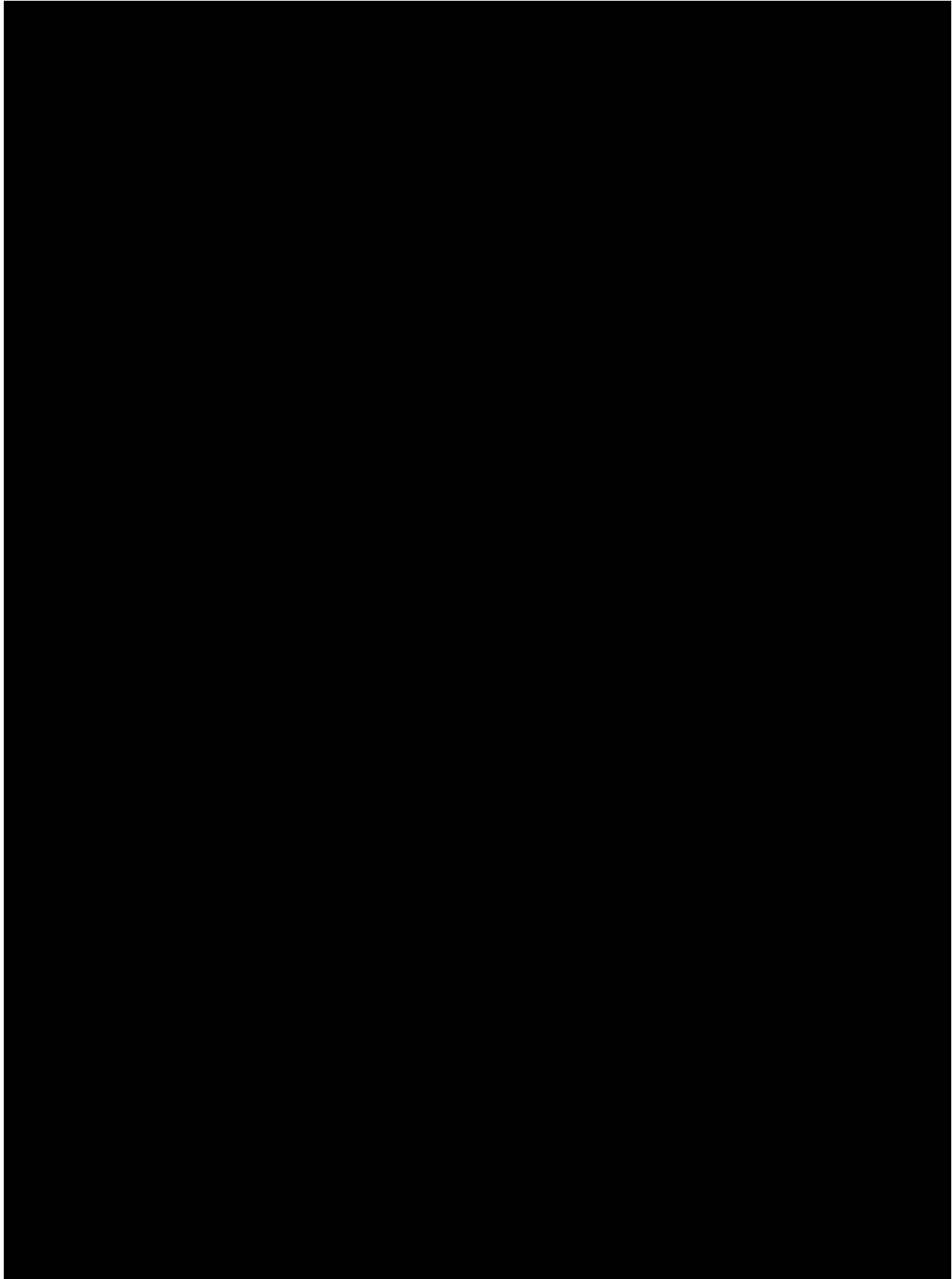
CROSS-EXAMINATION



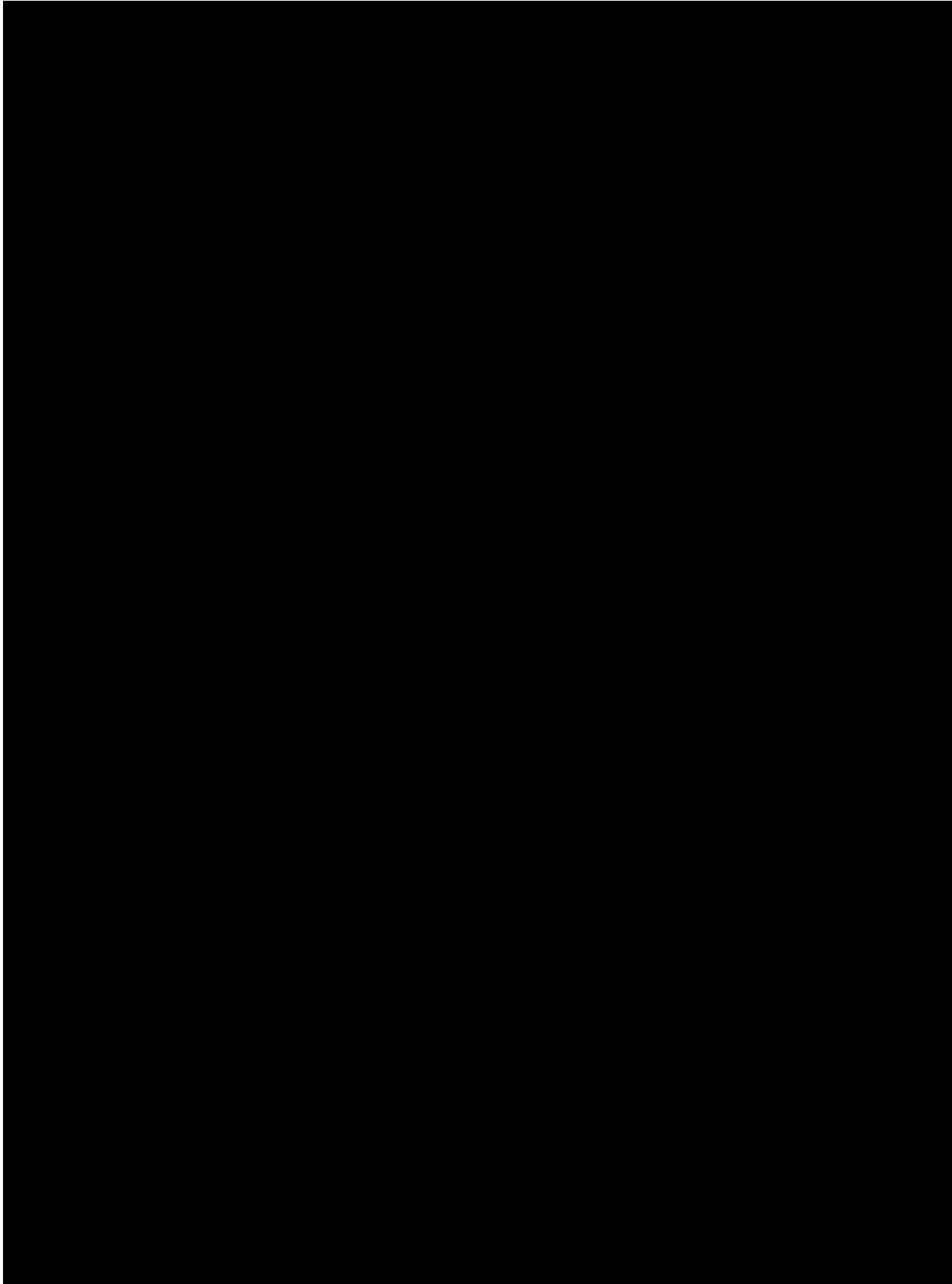
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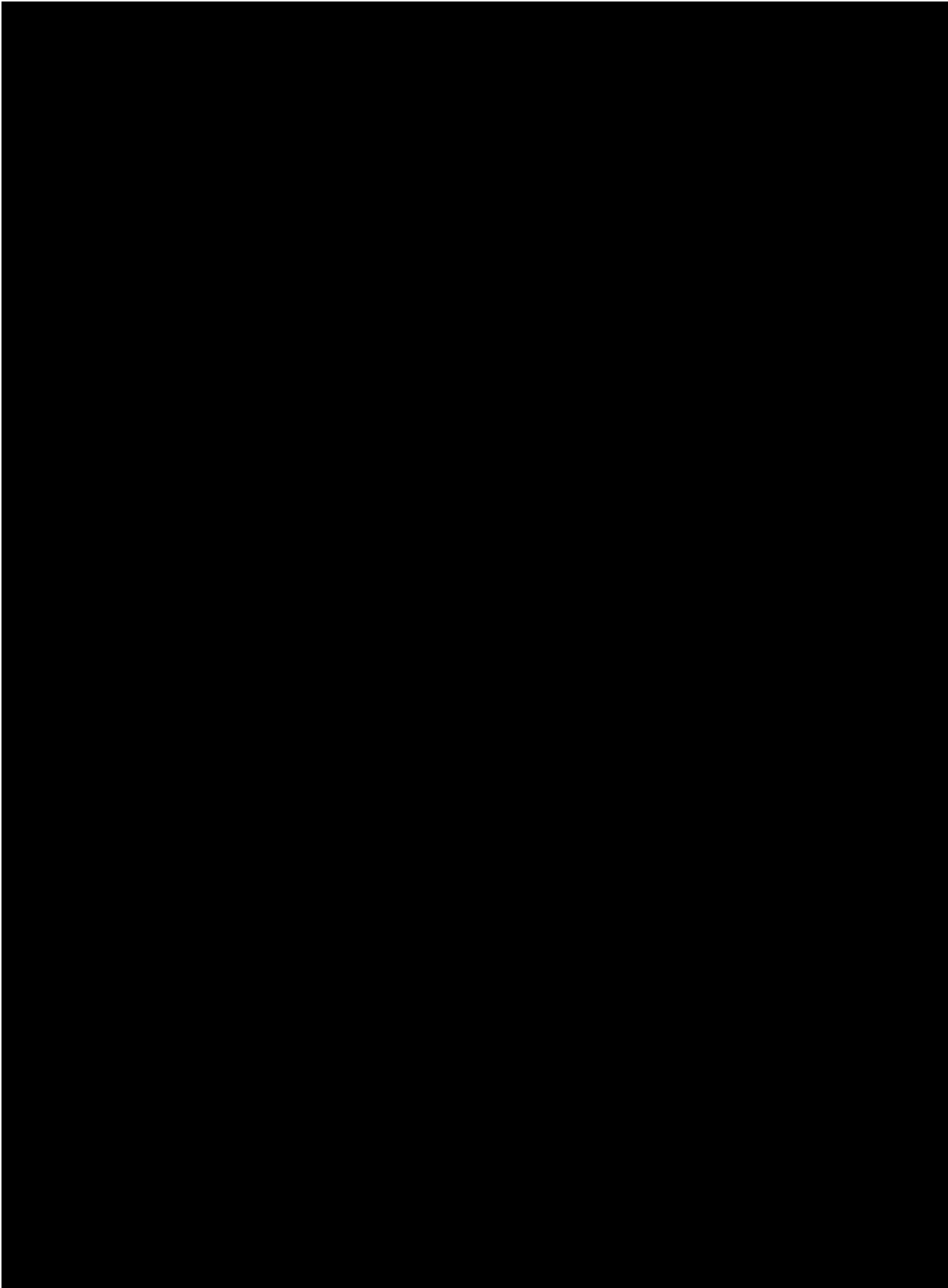
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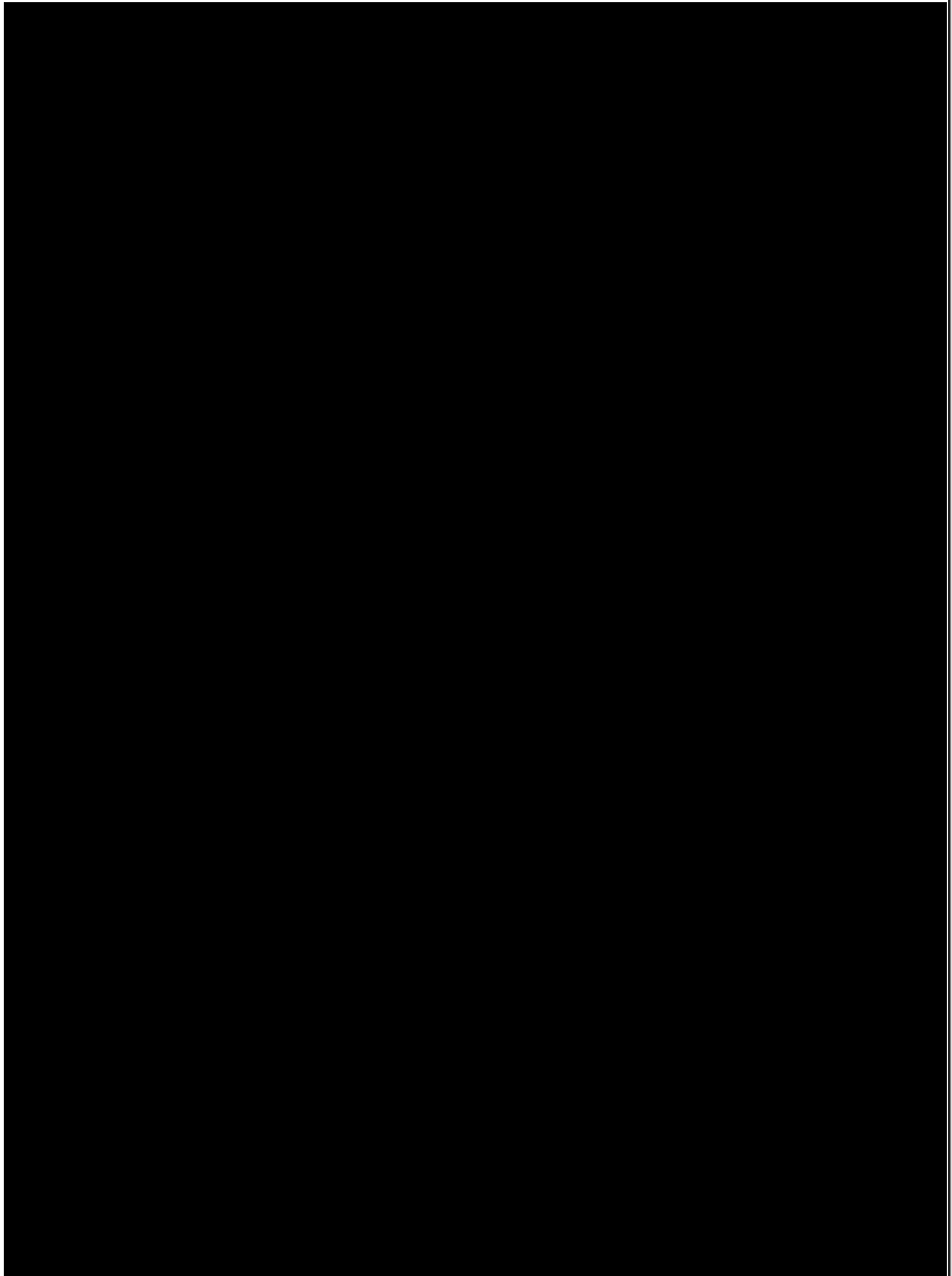
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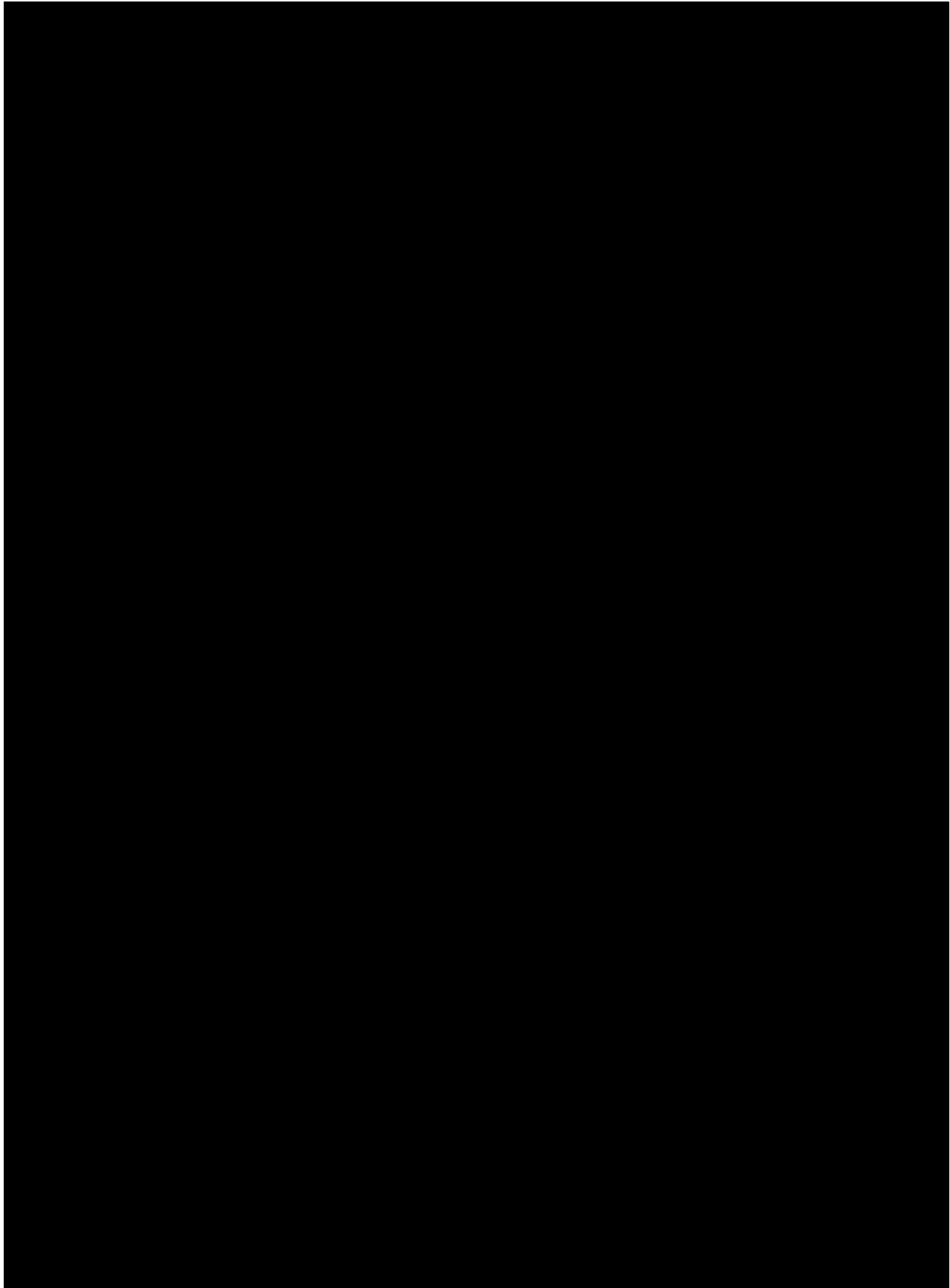
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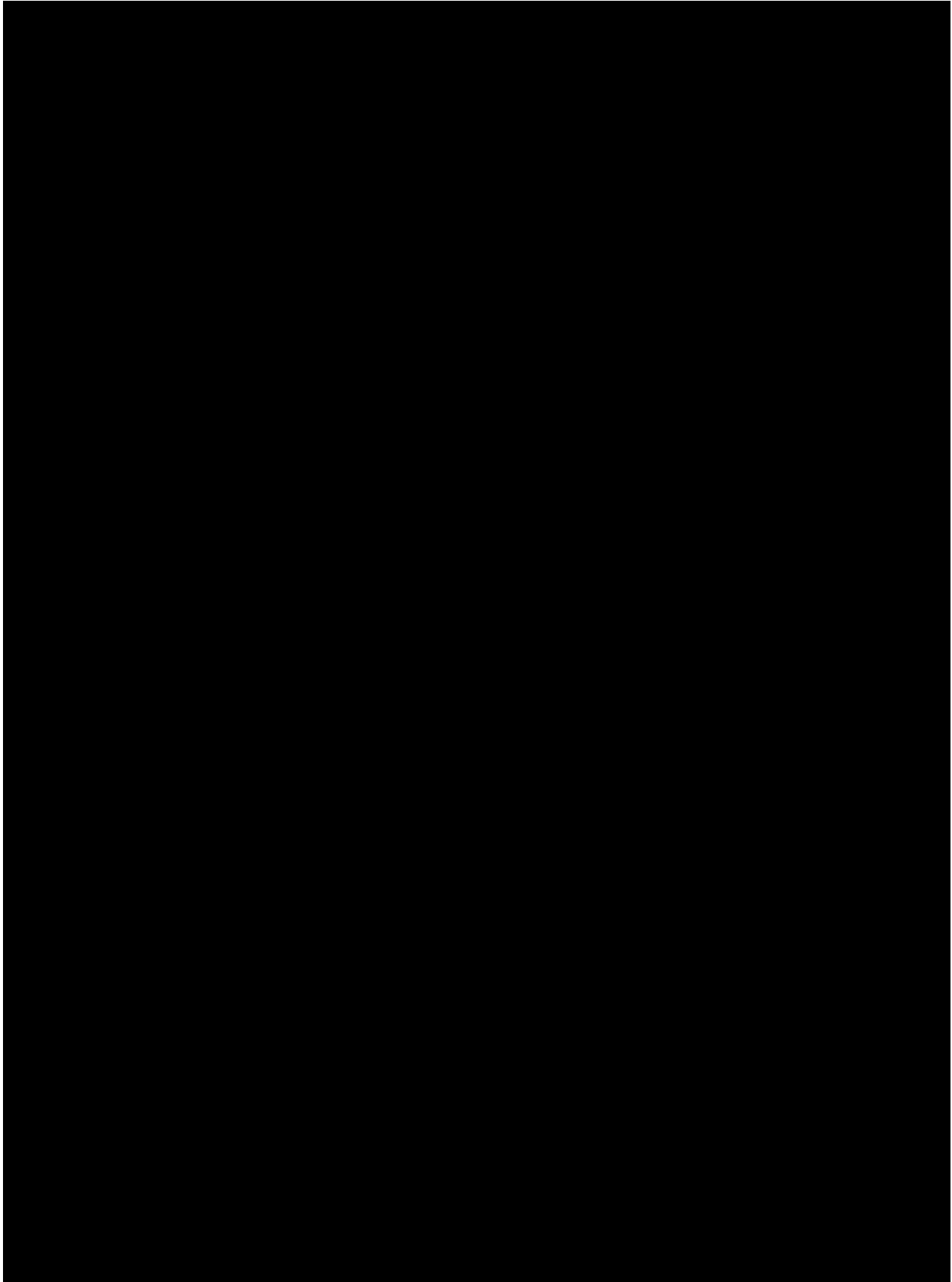
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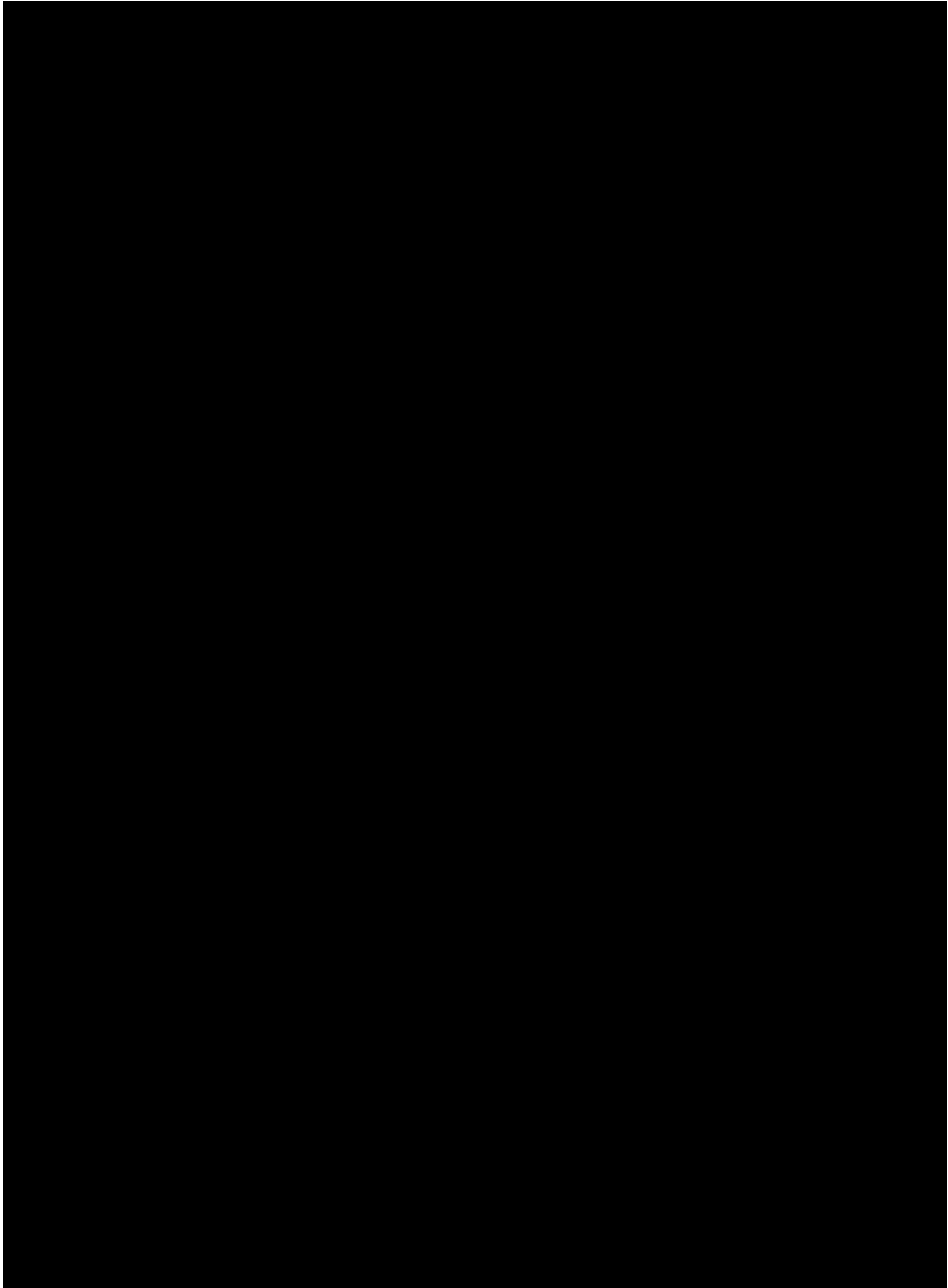
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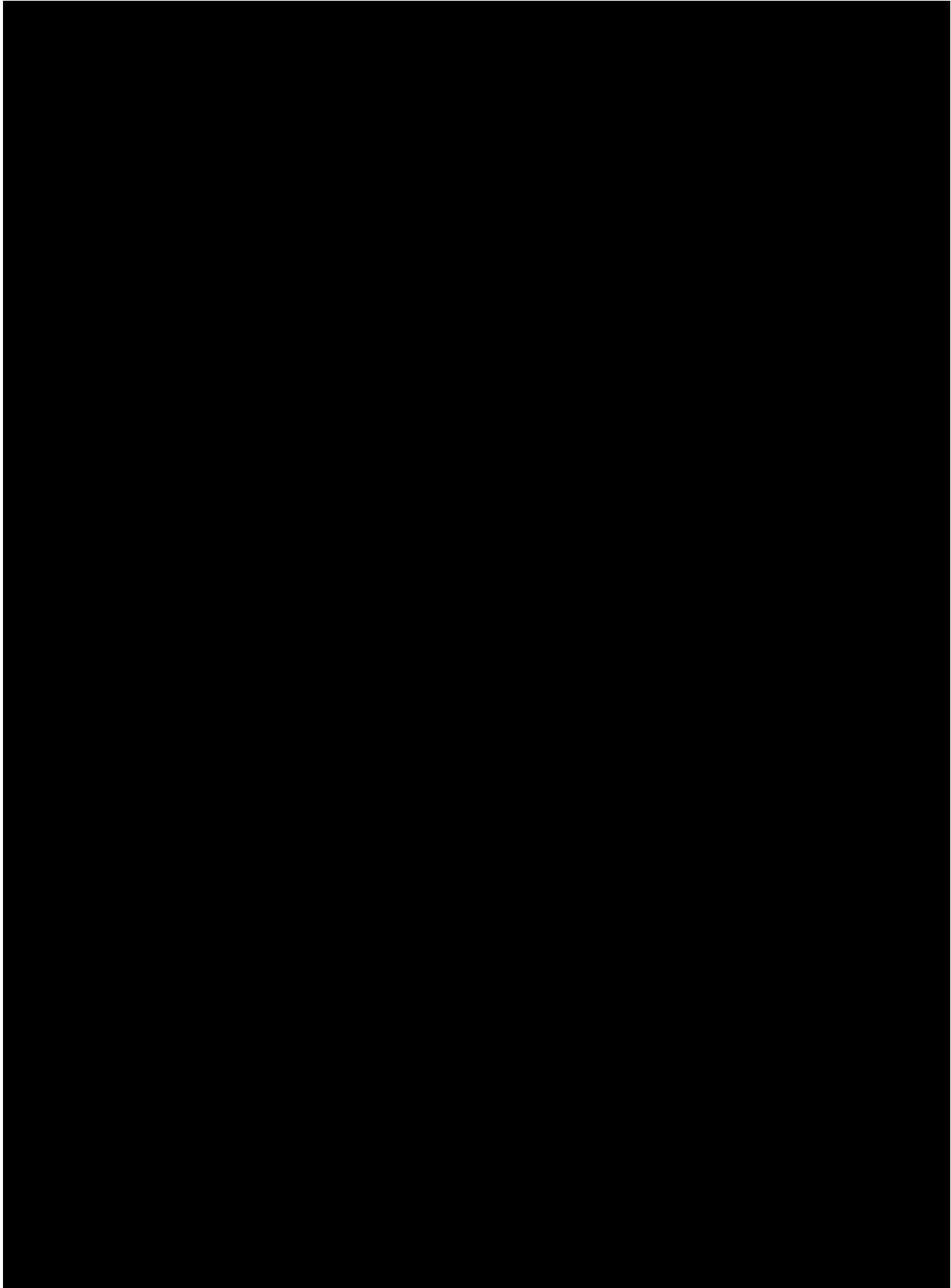
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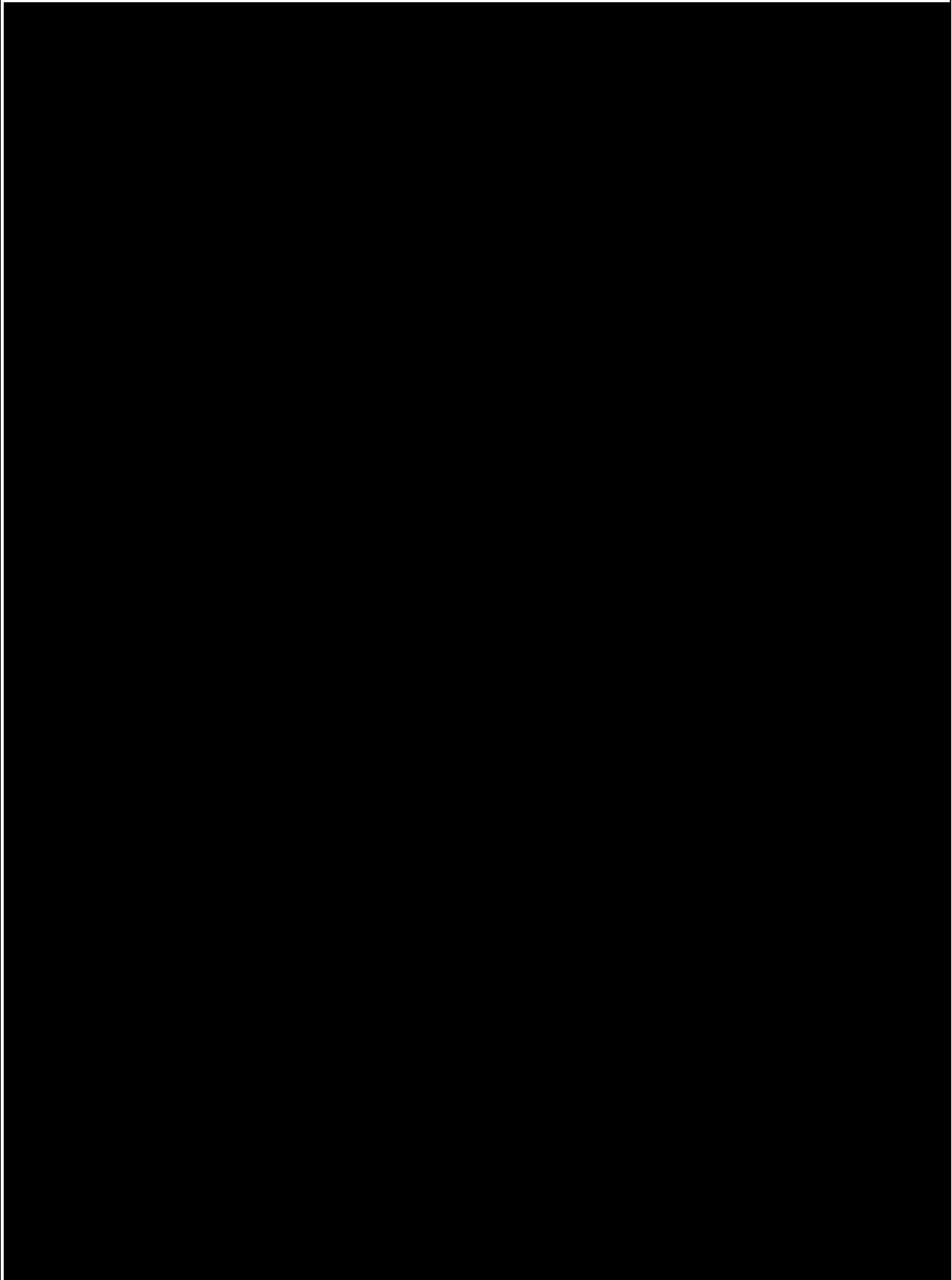
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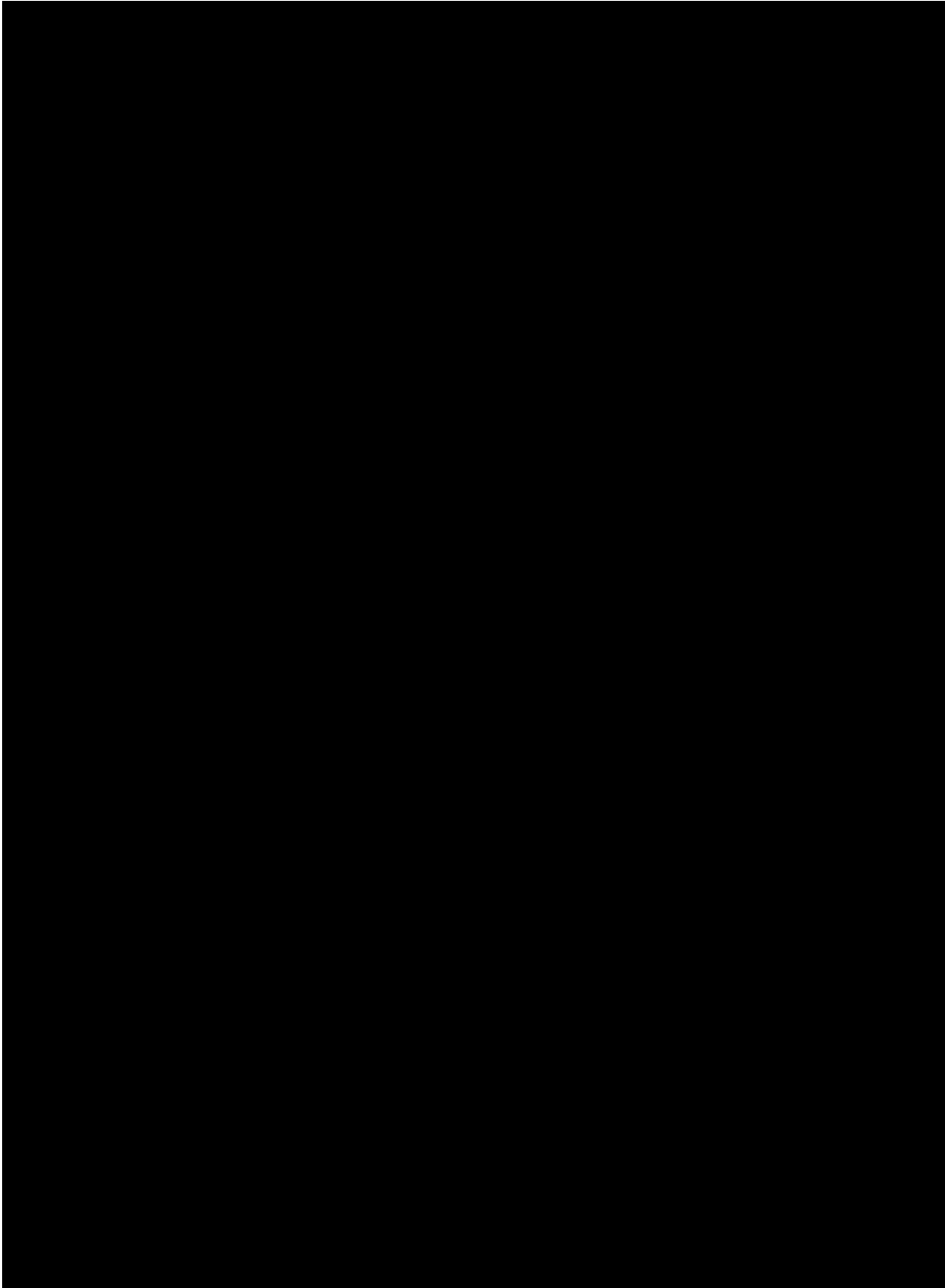
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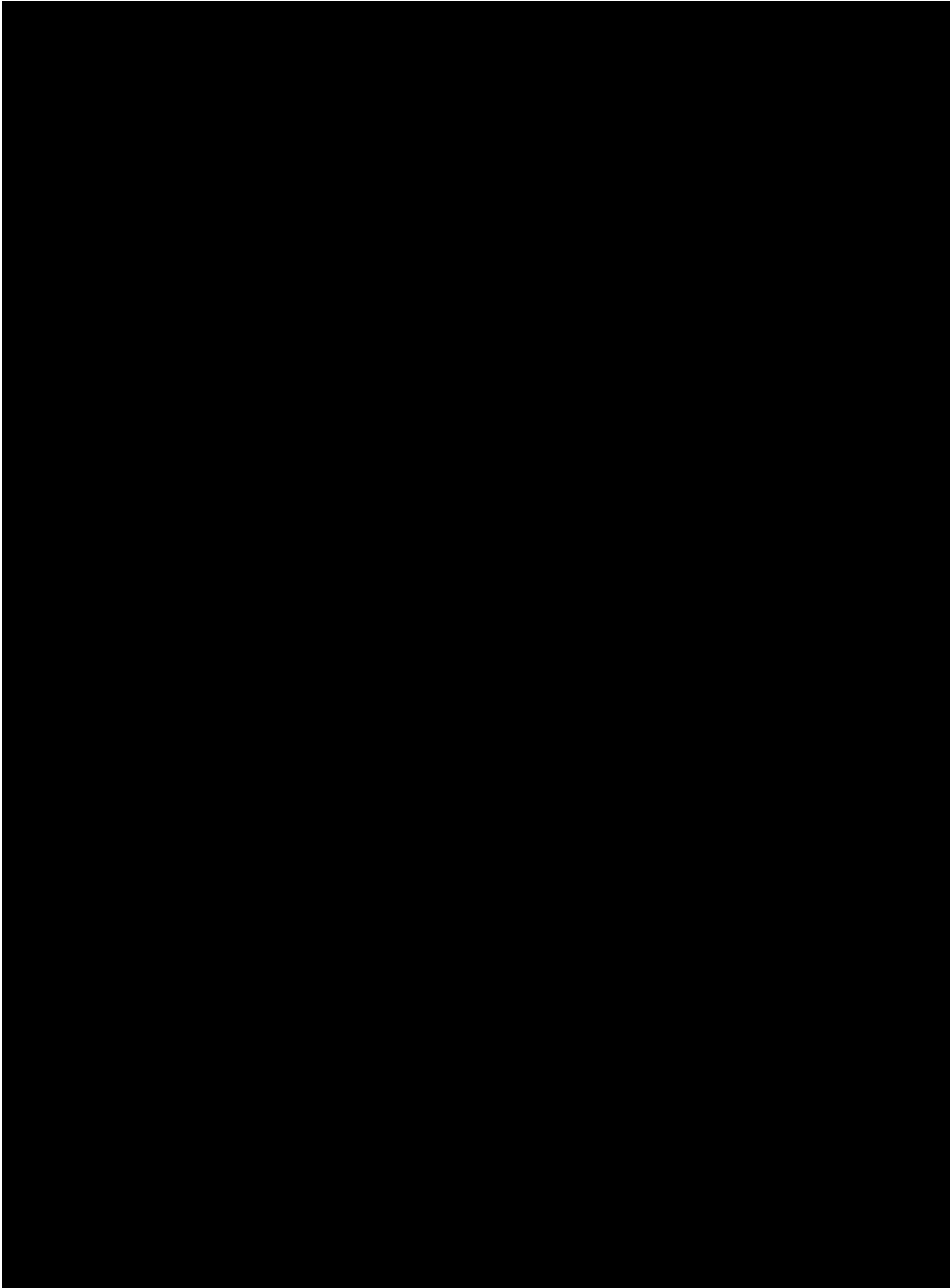
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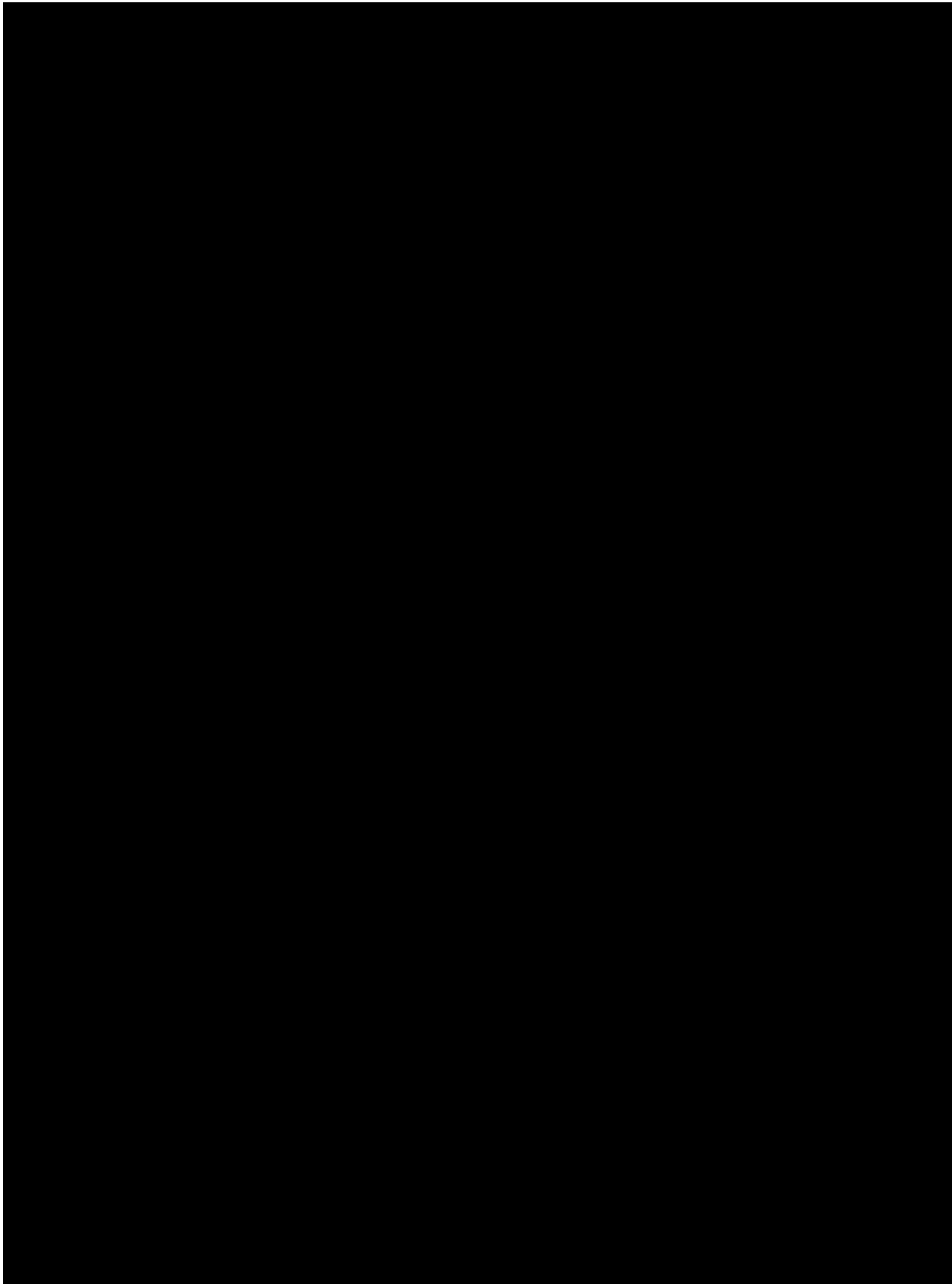
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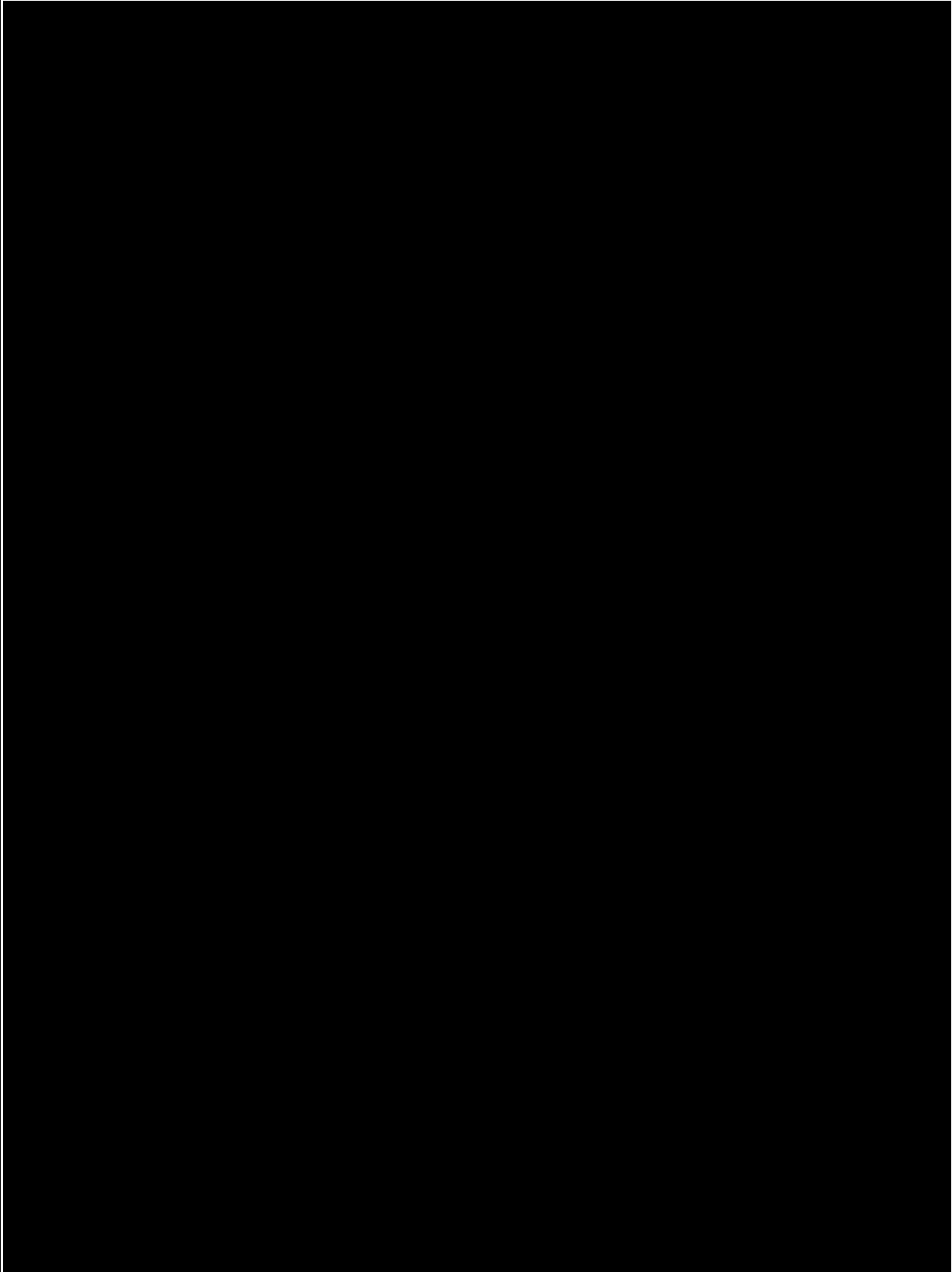
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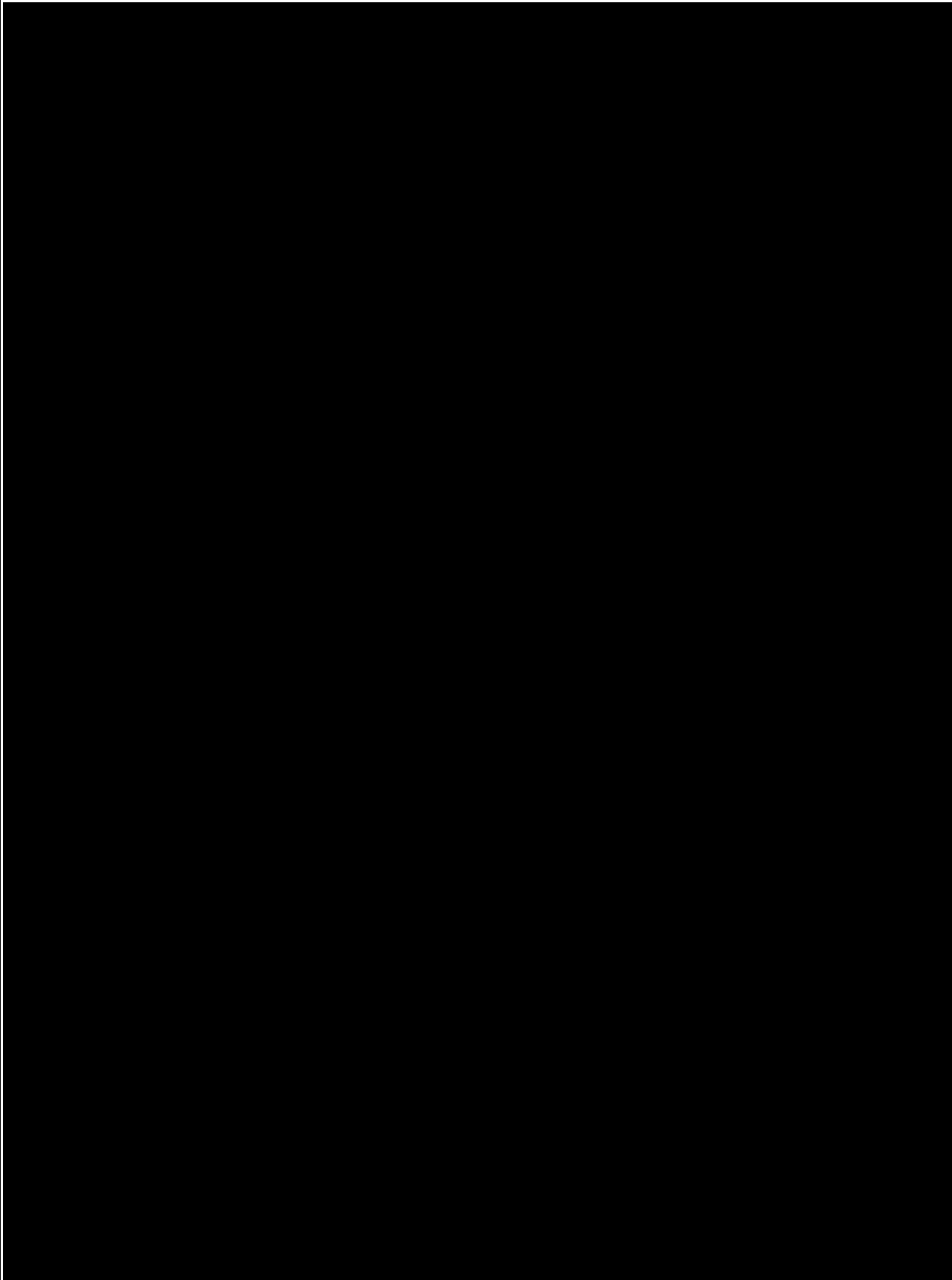
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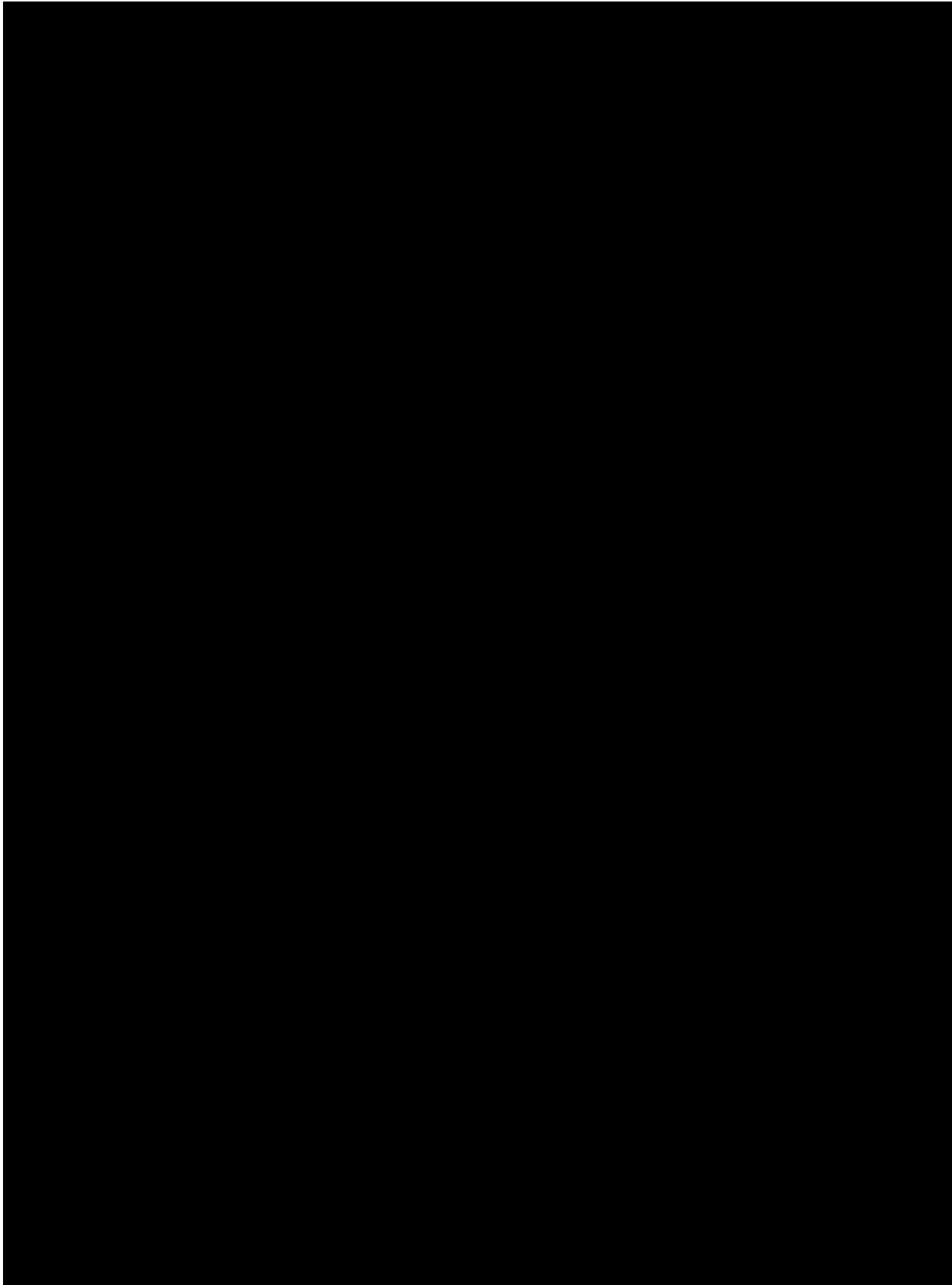
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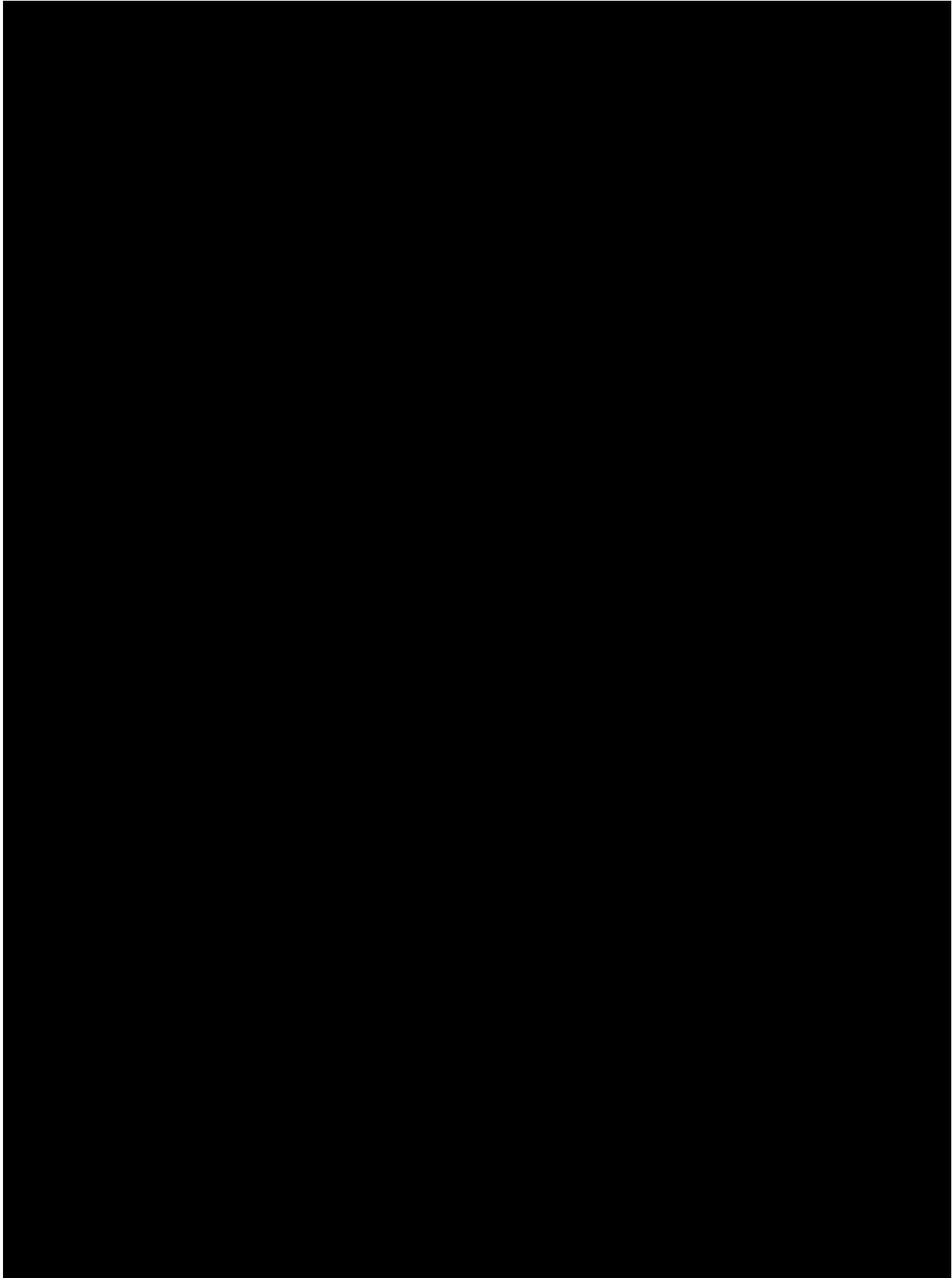
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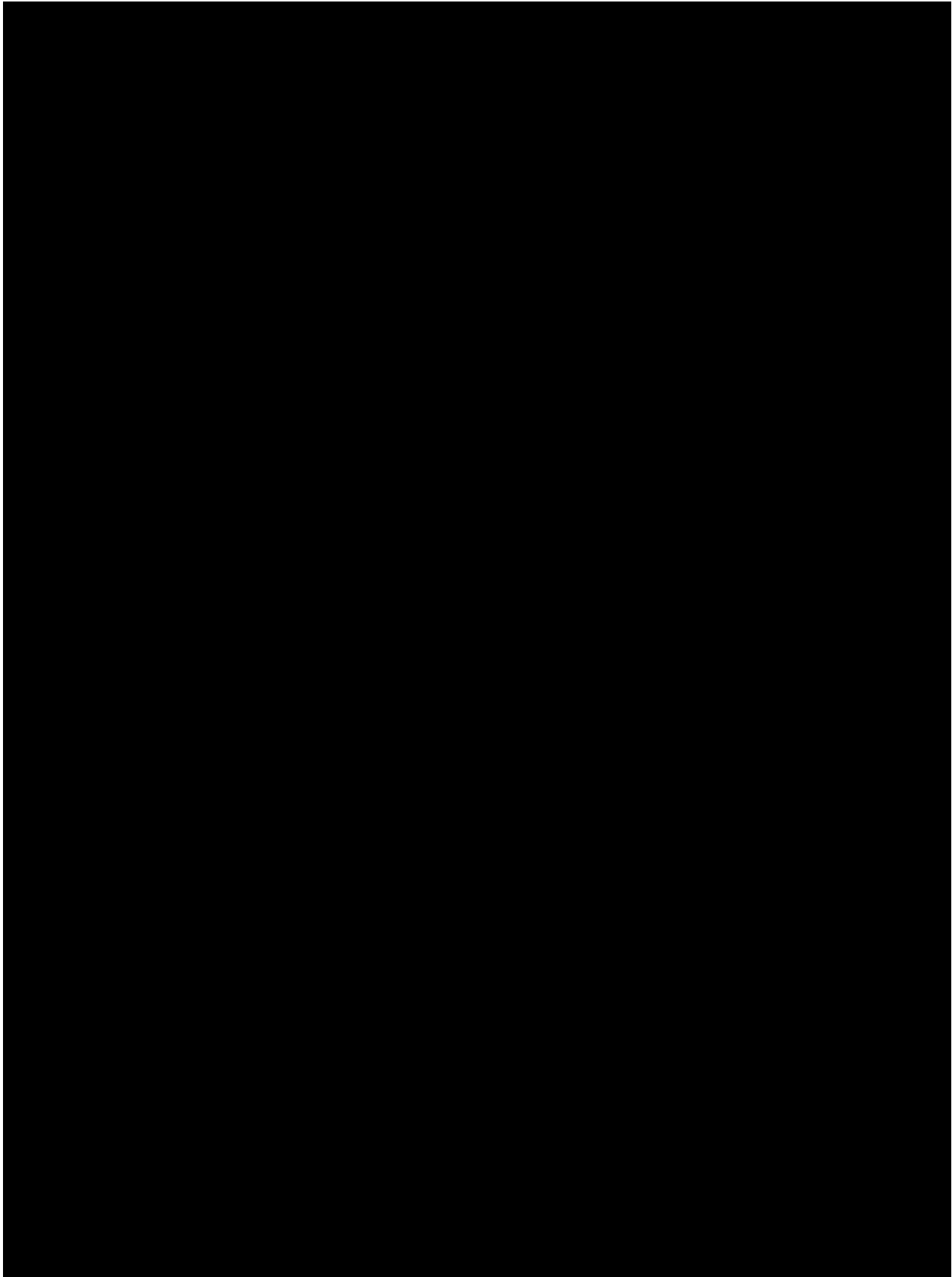
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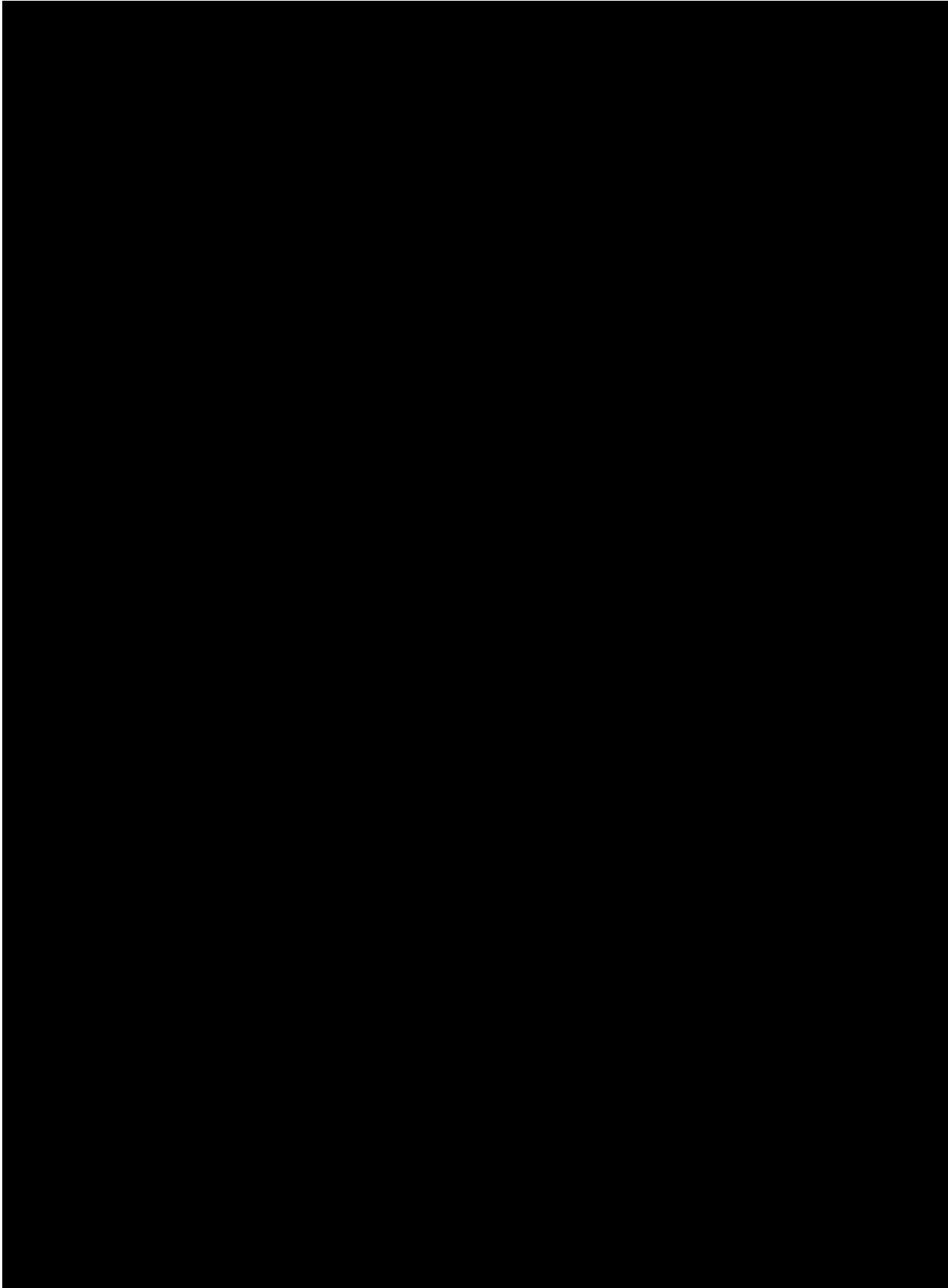
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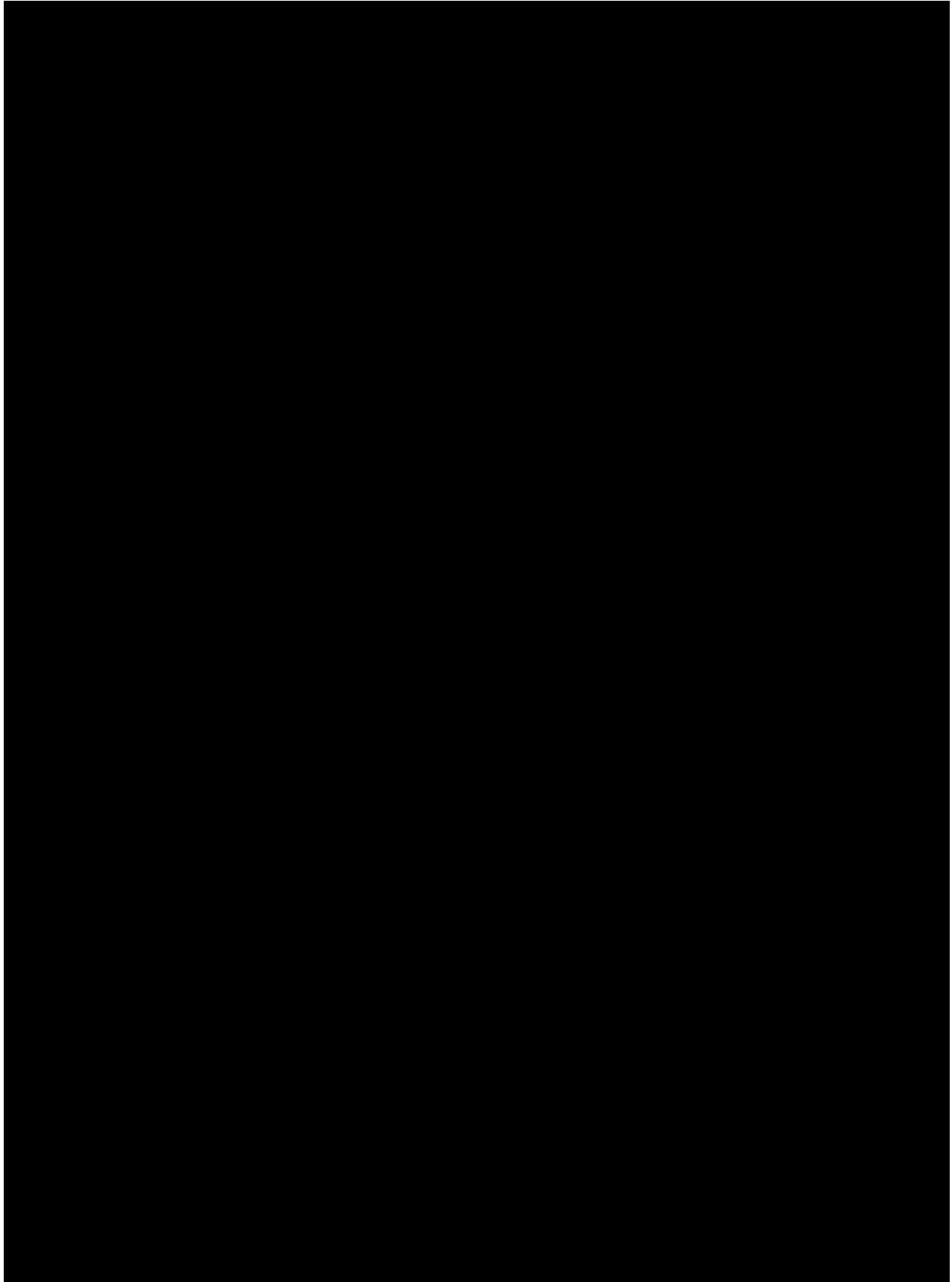
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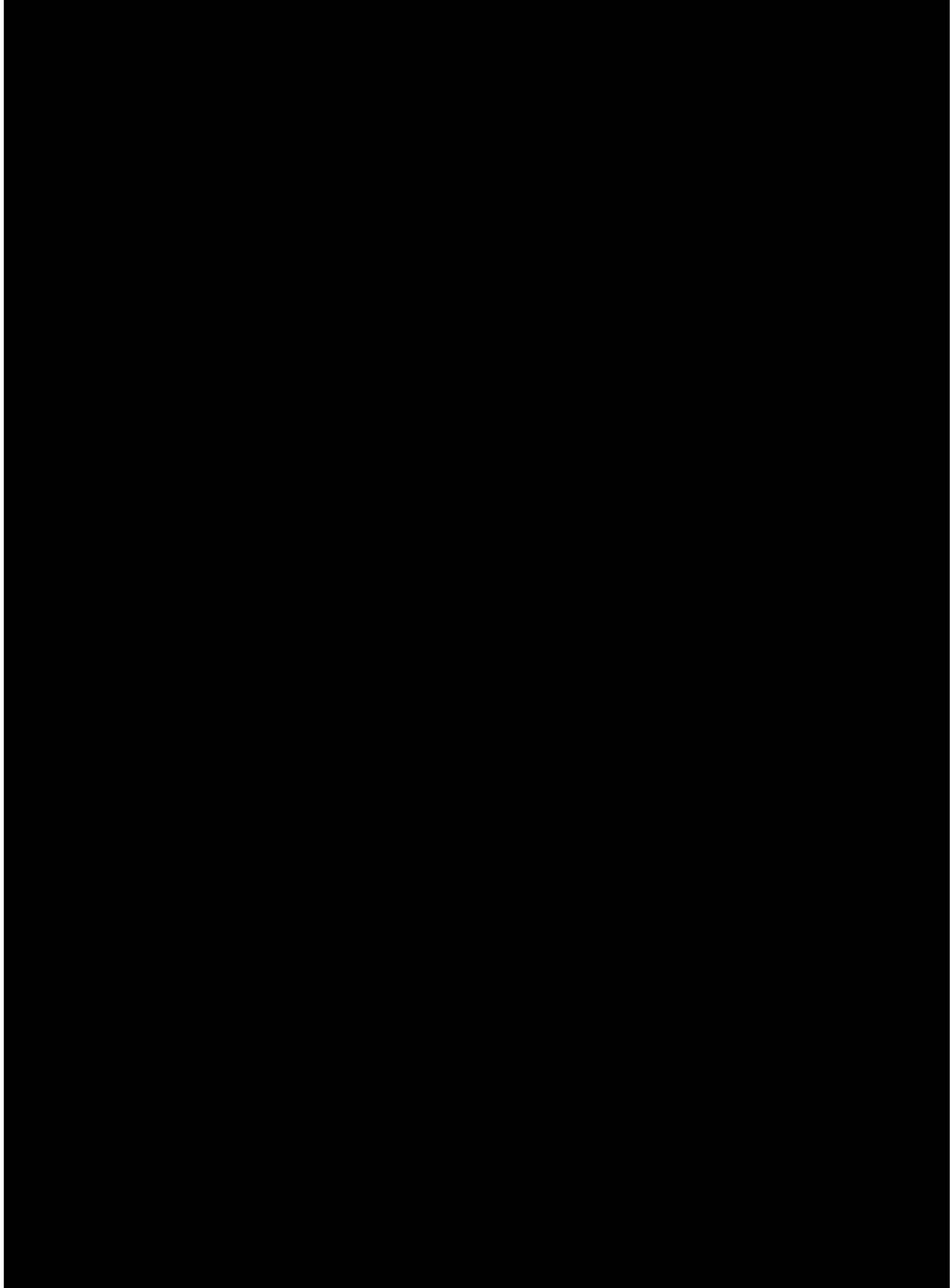
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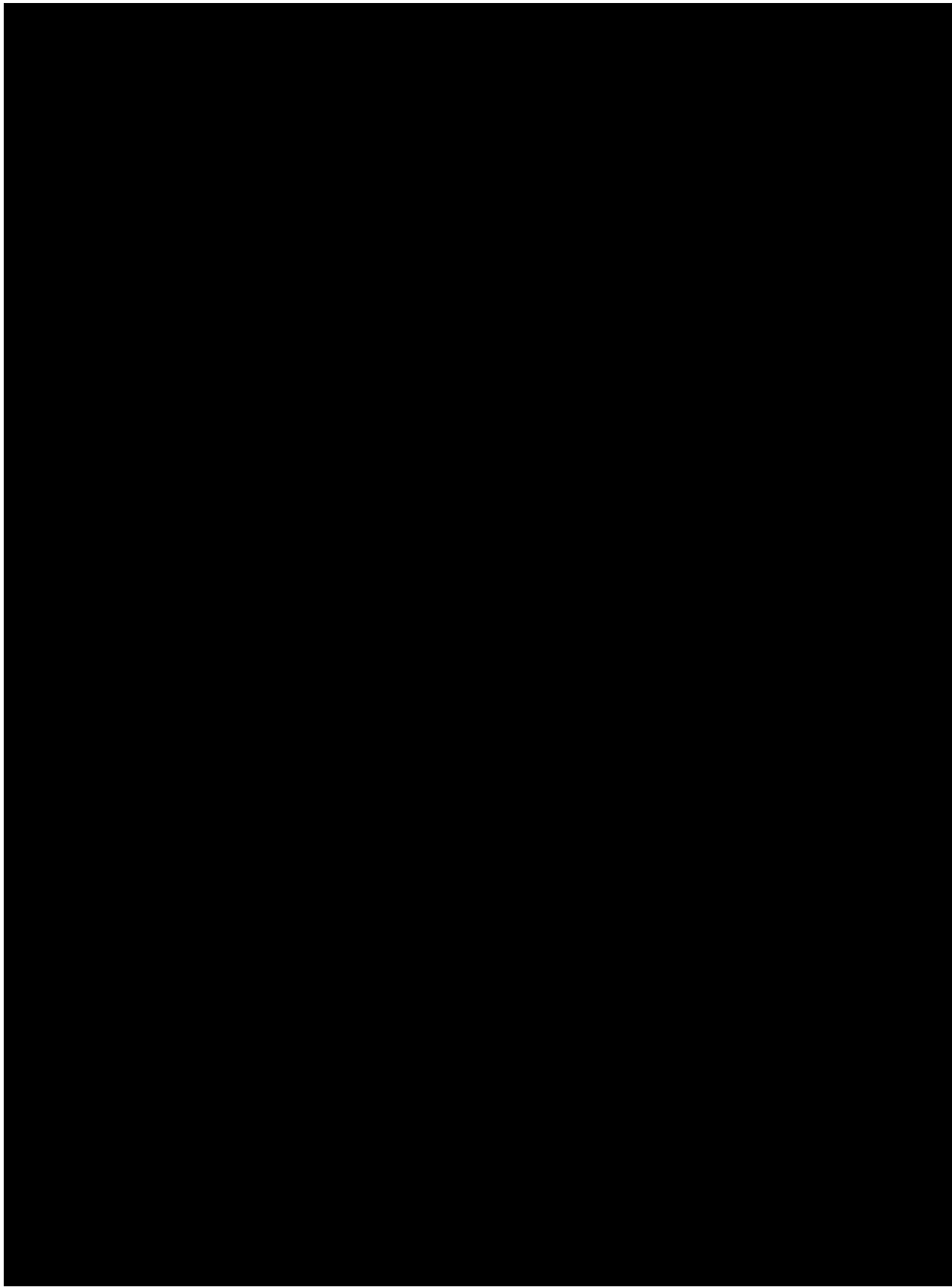
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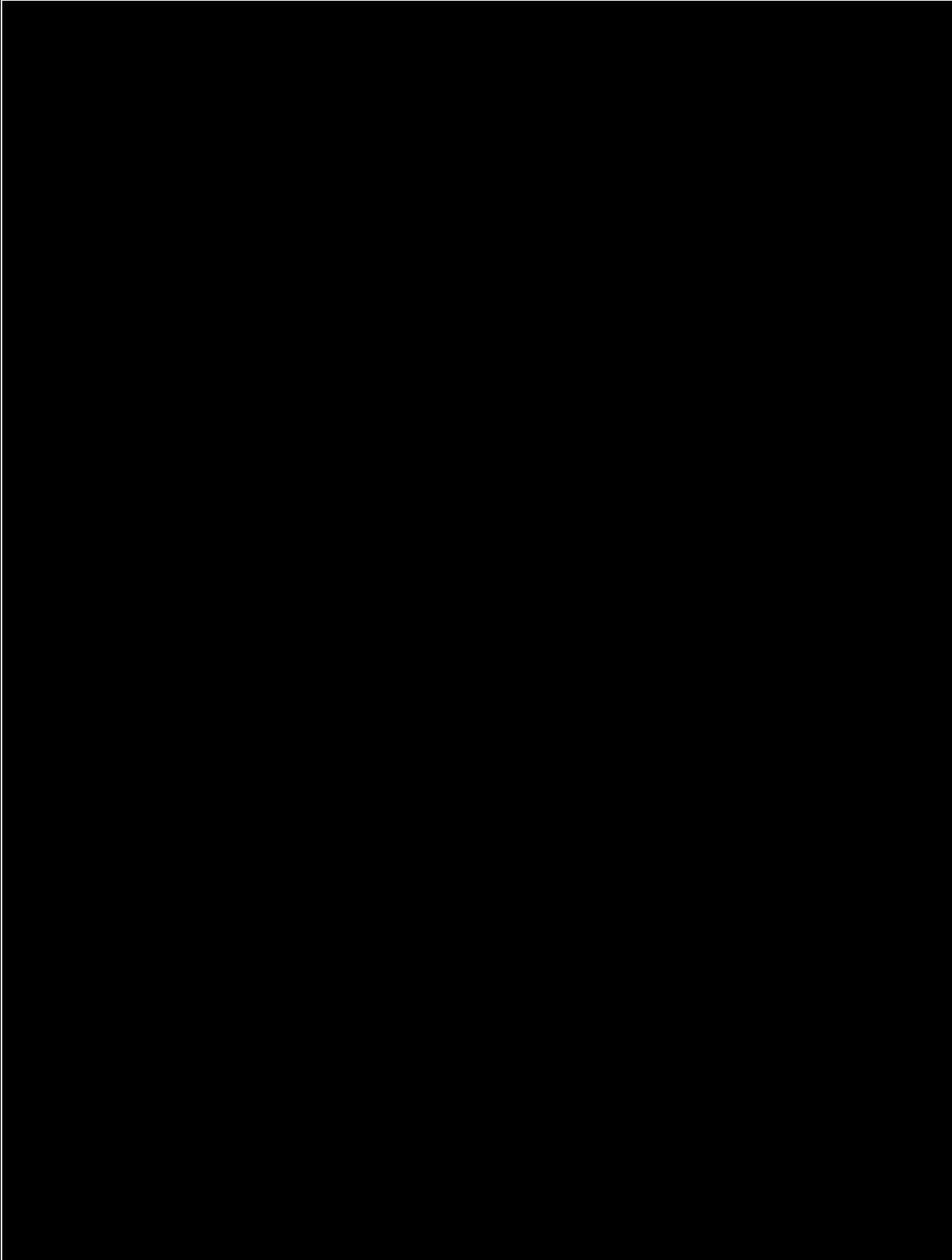
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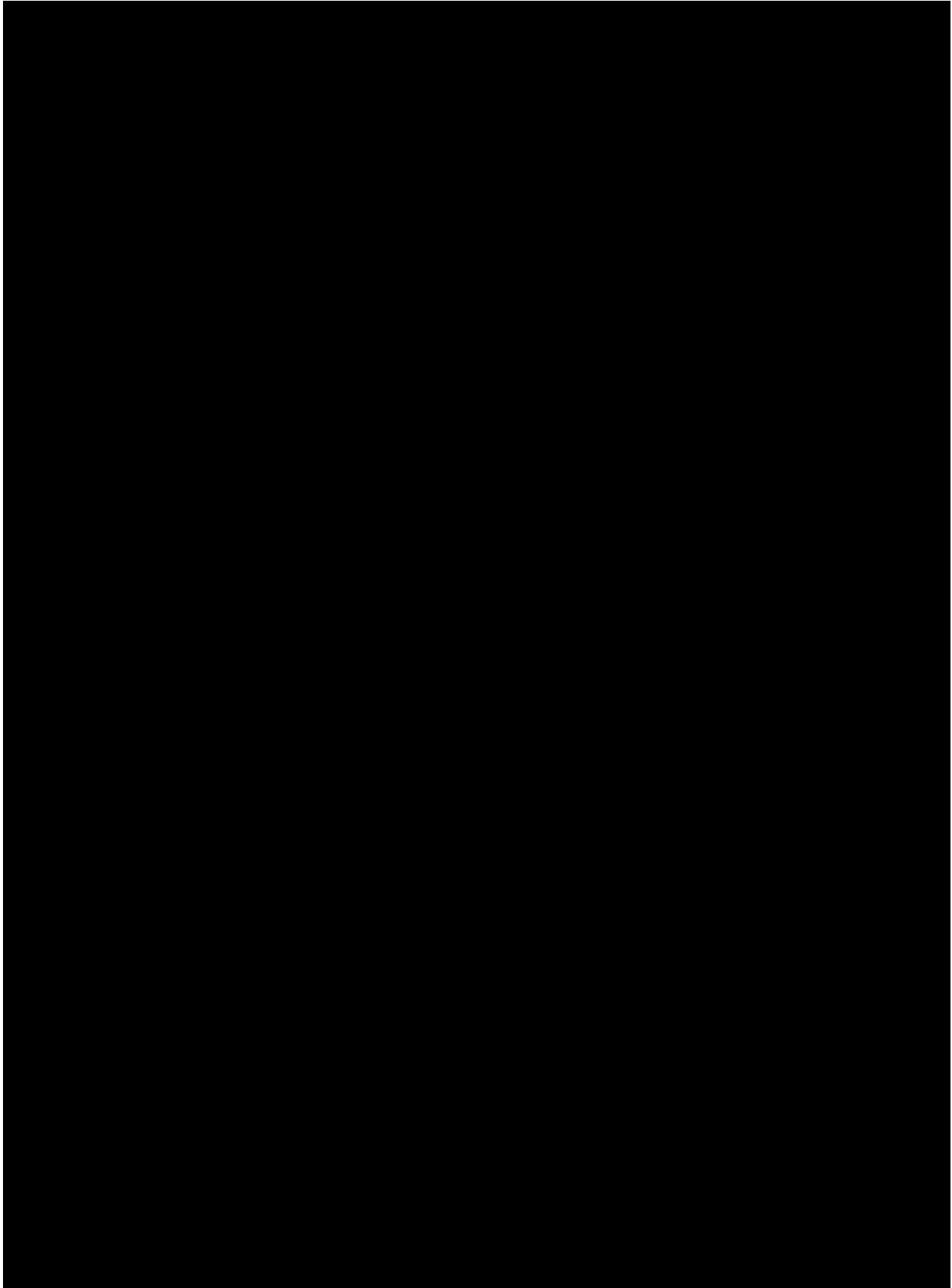
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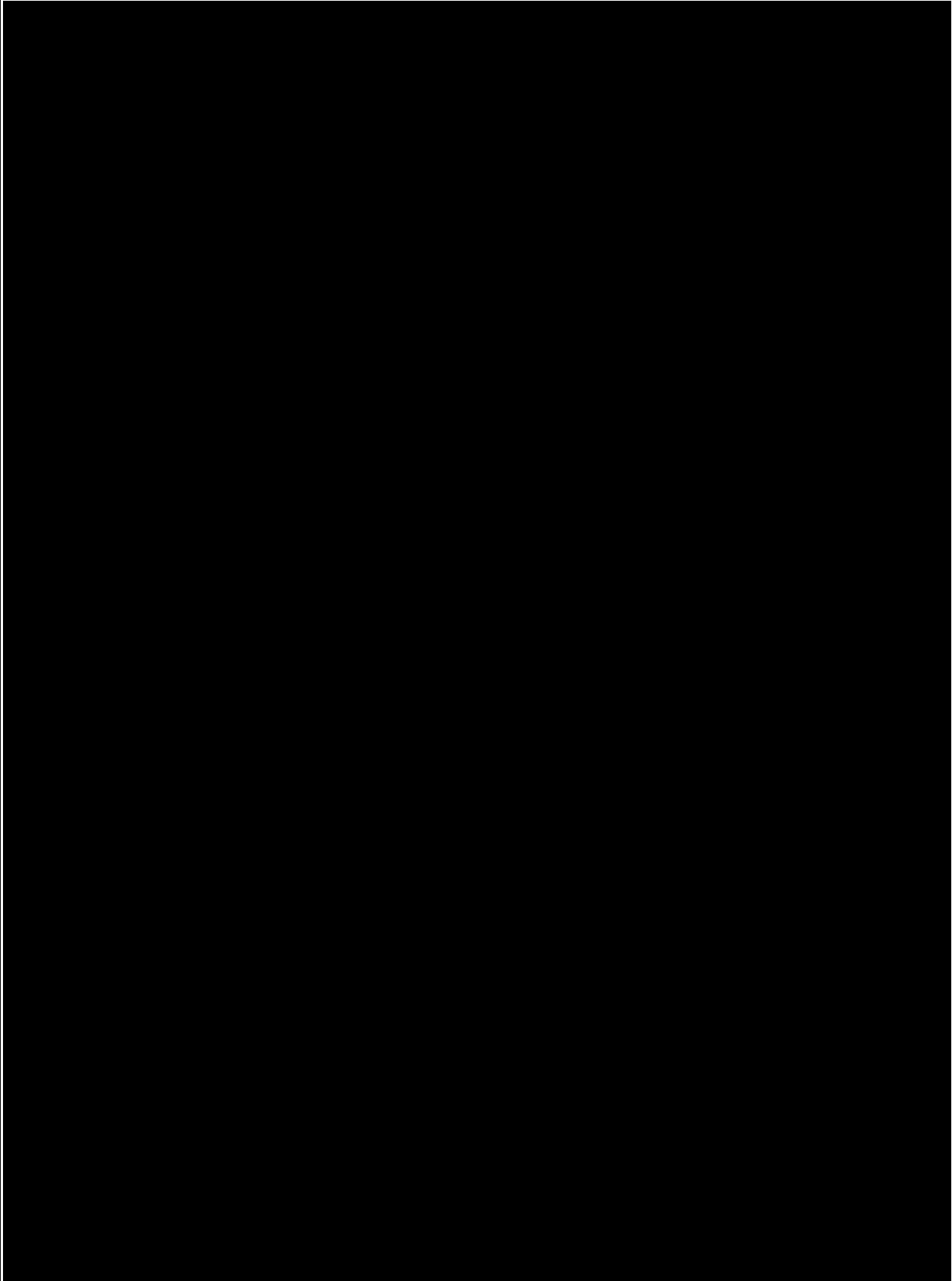
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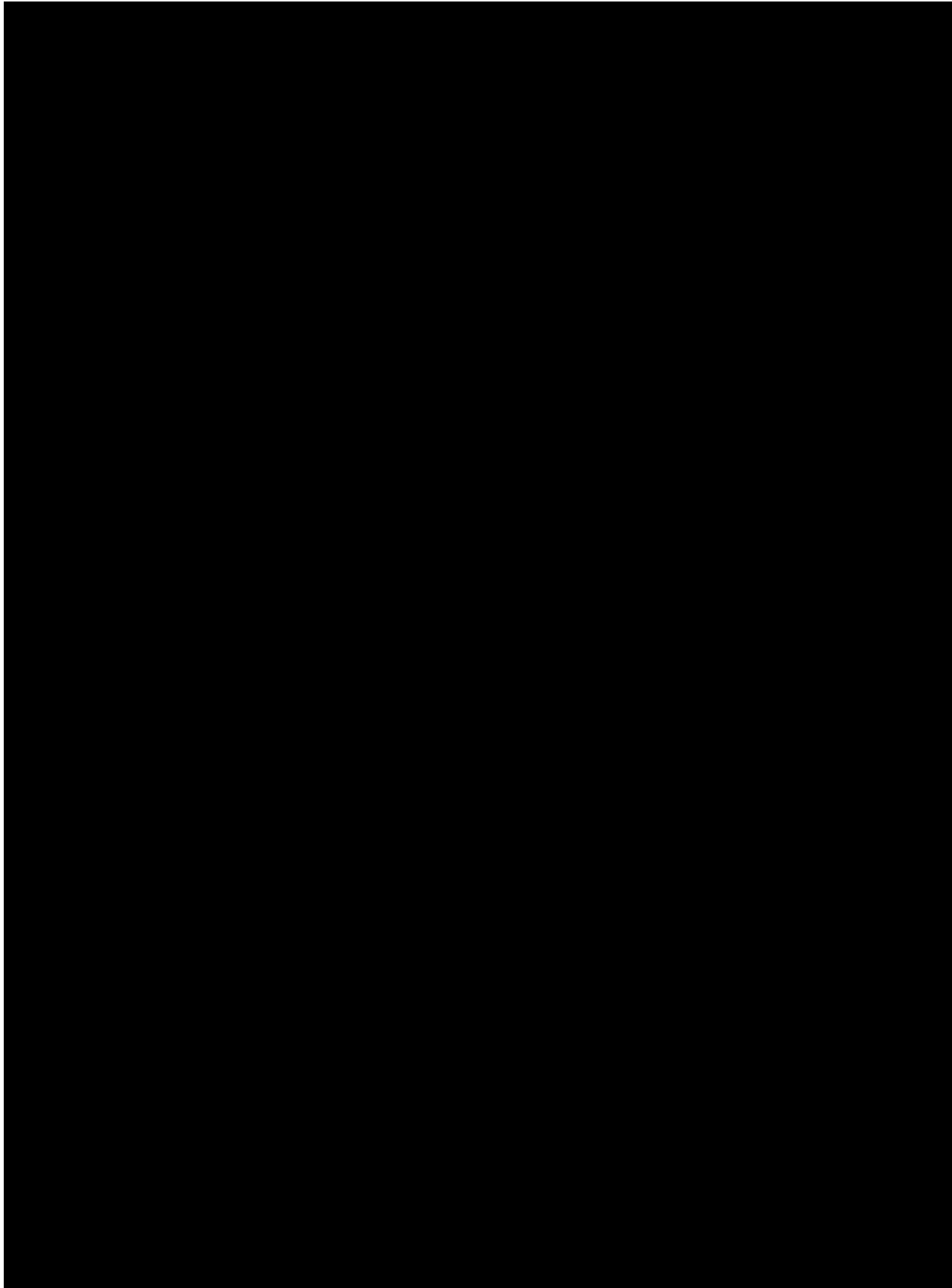
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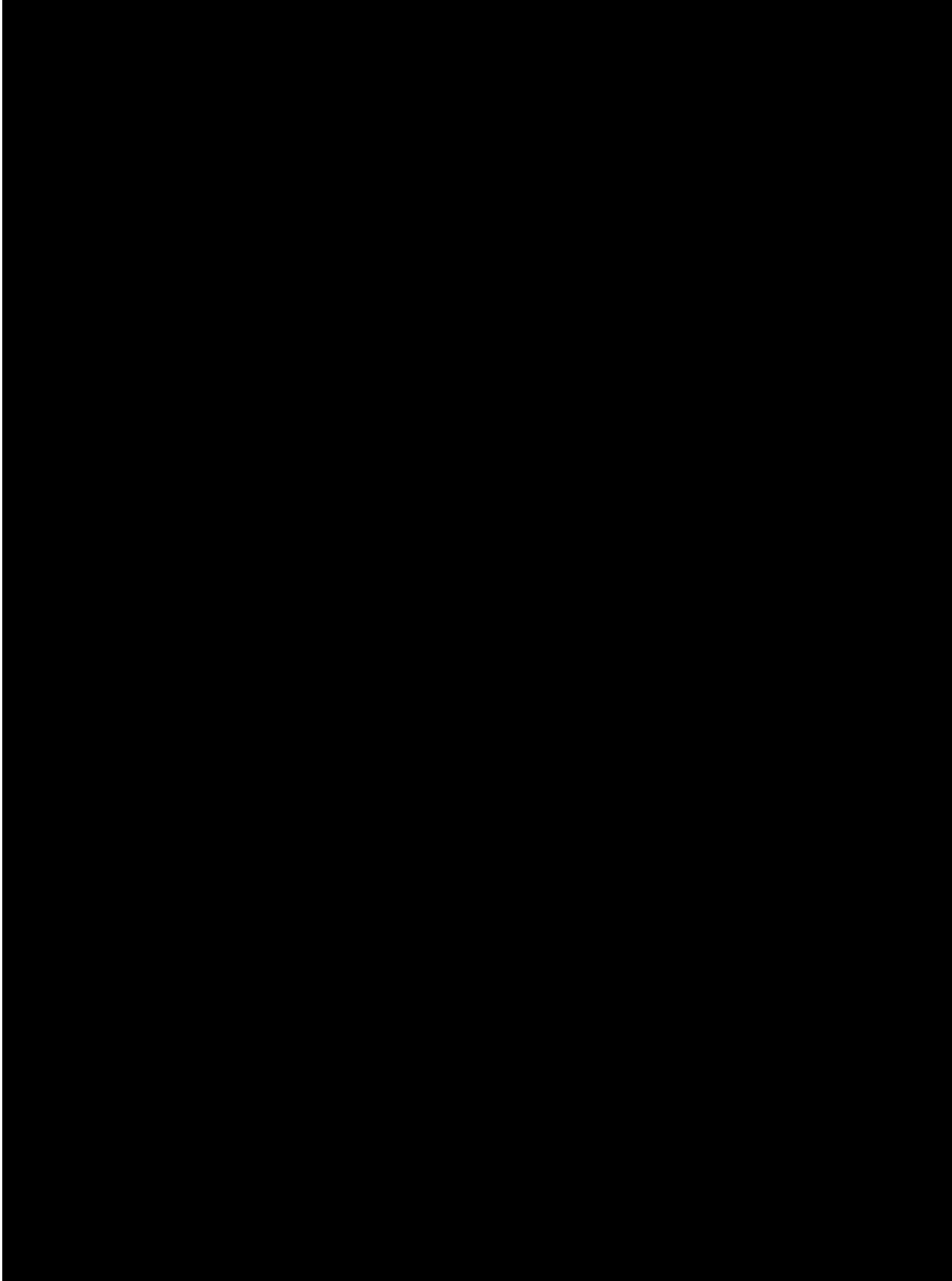
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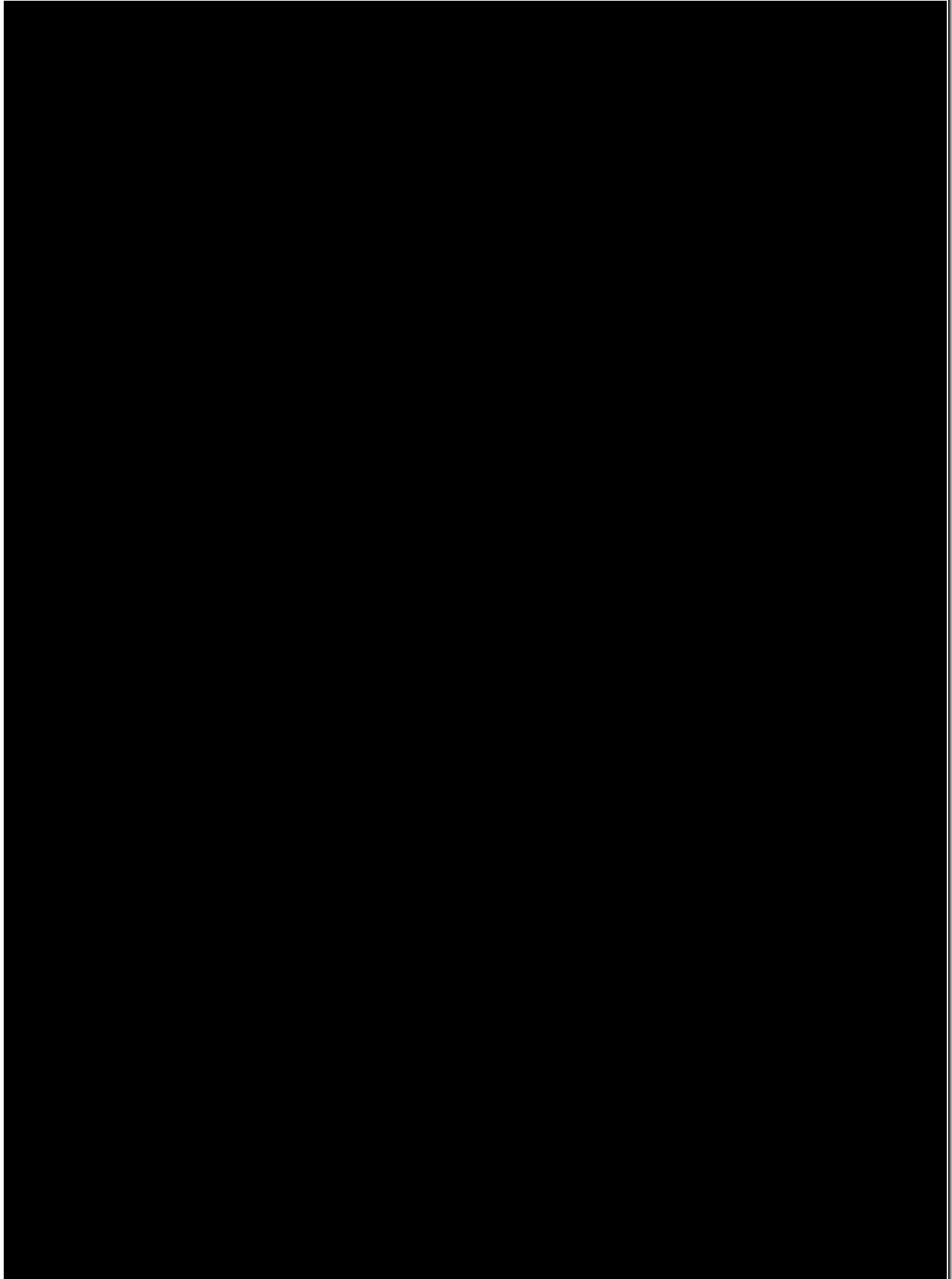
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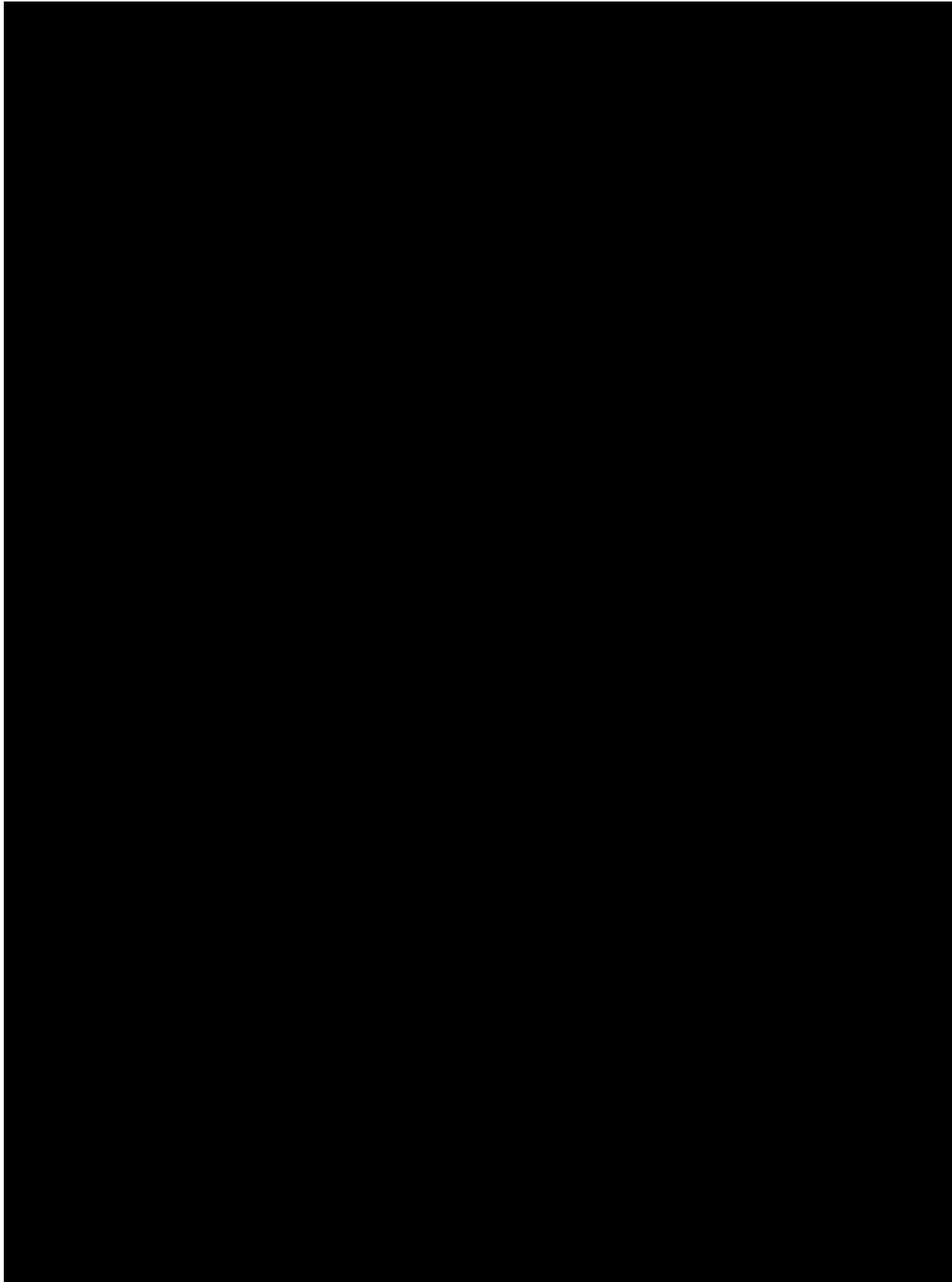
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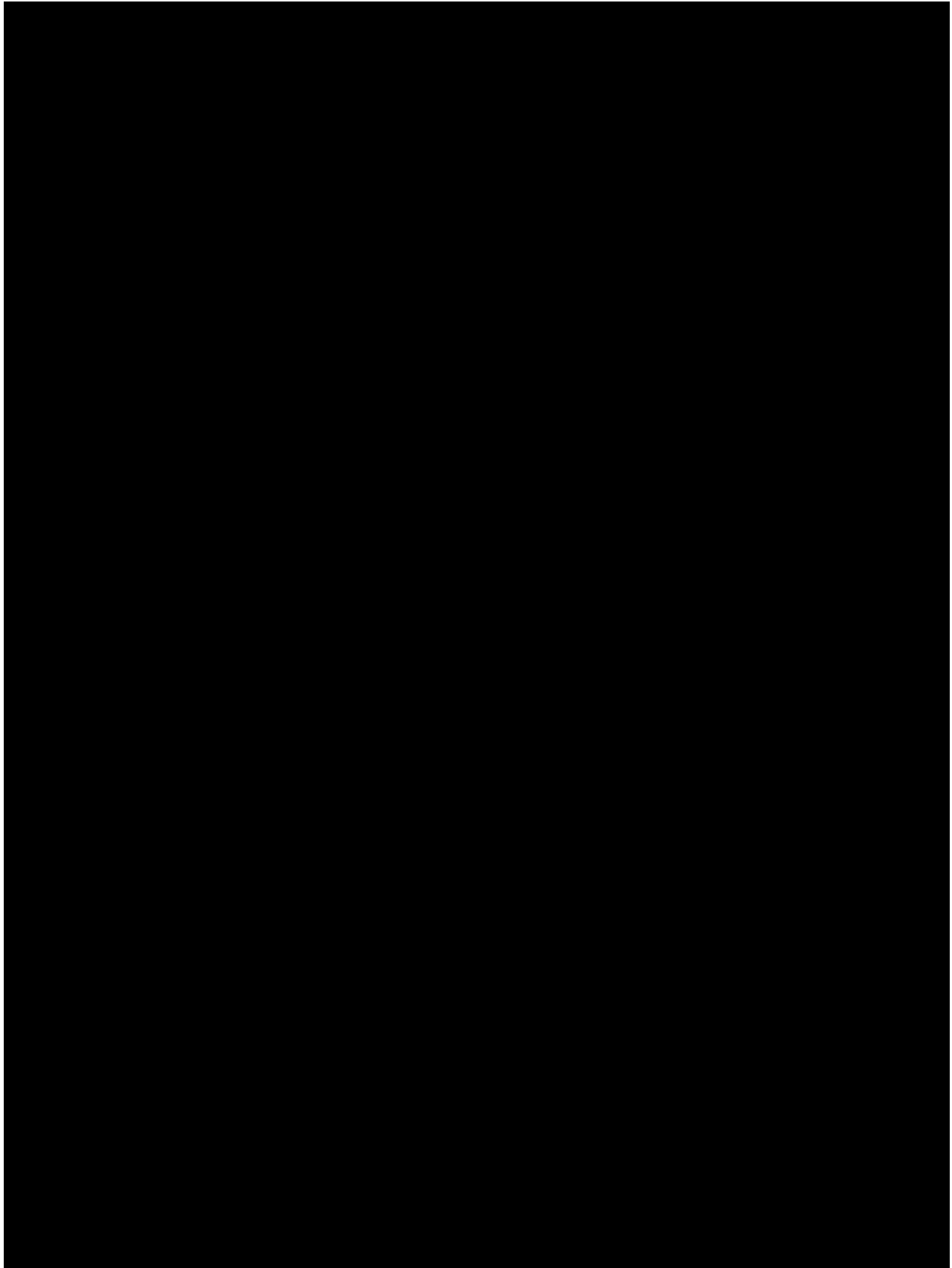
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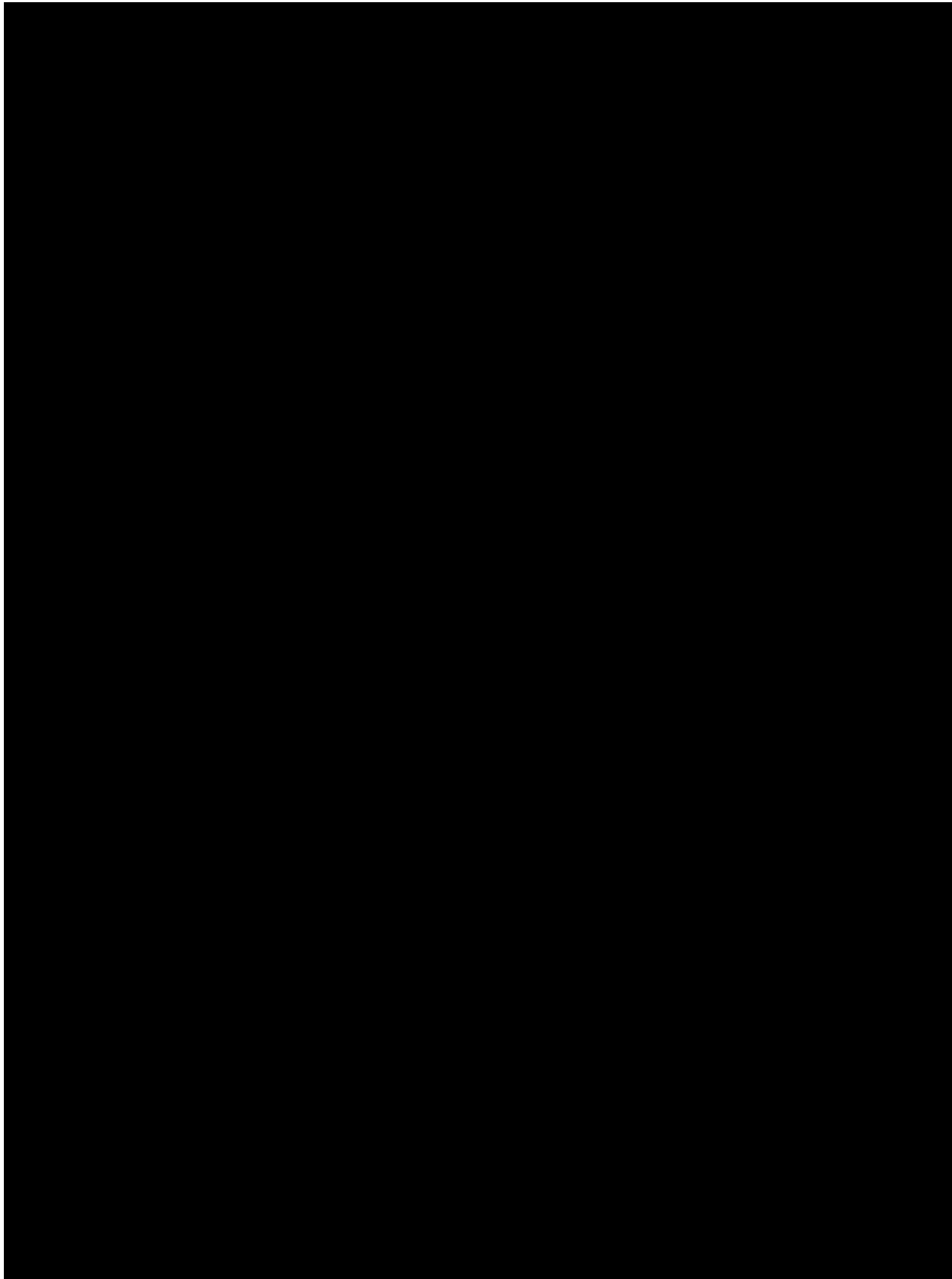
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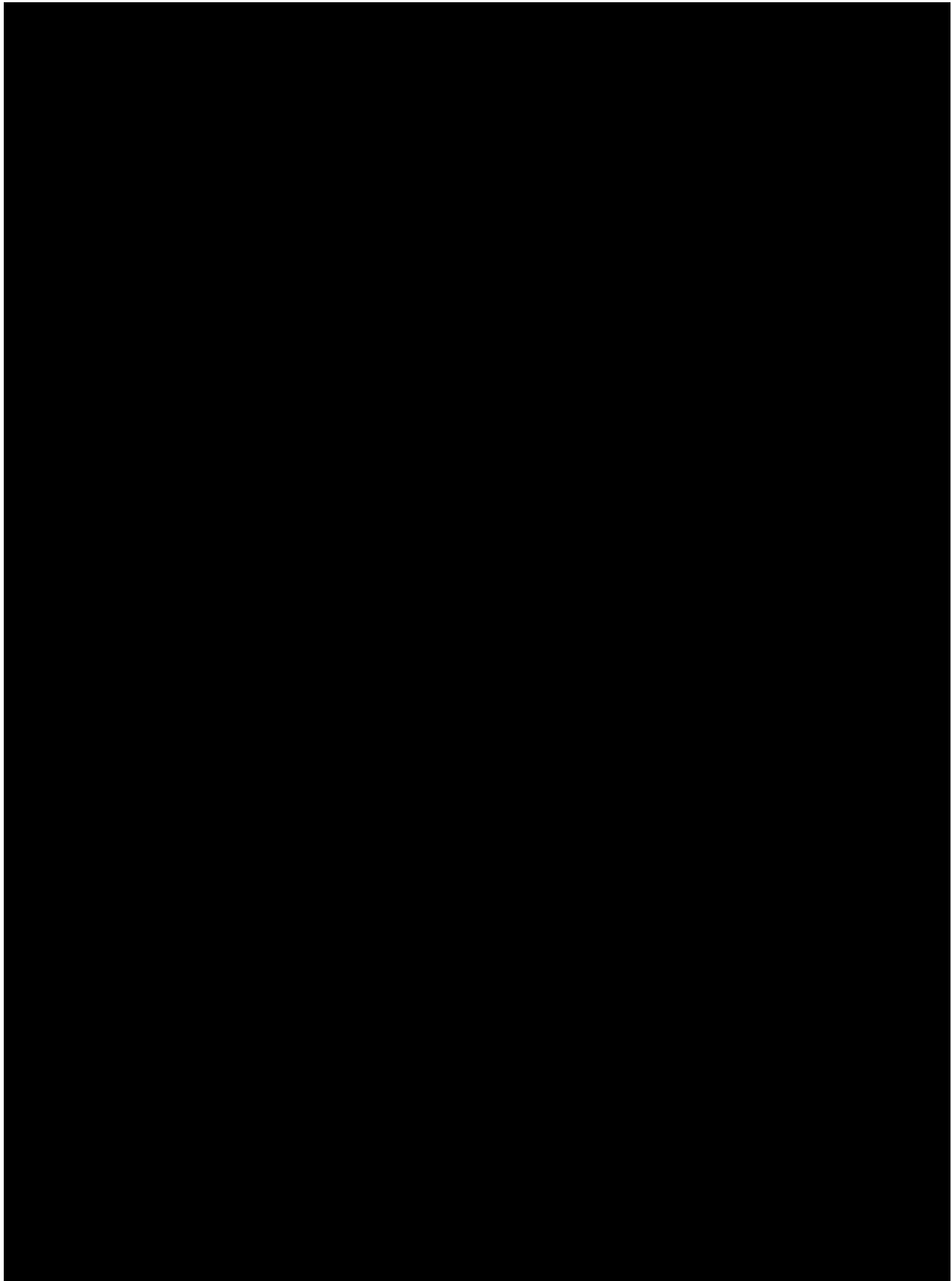
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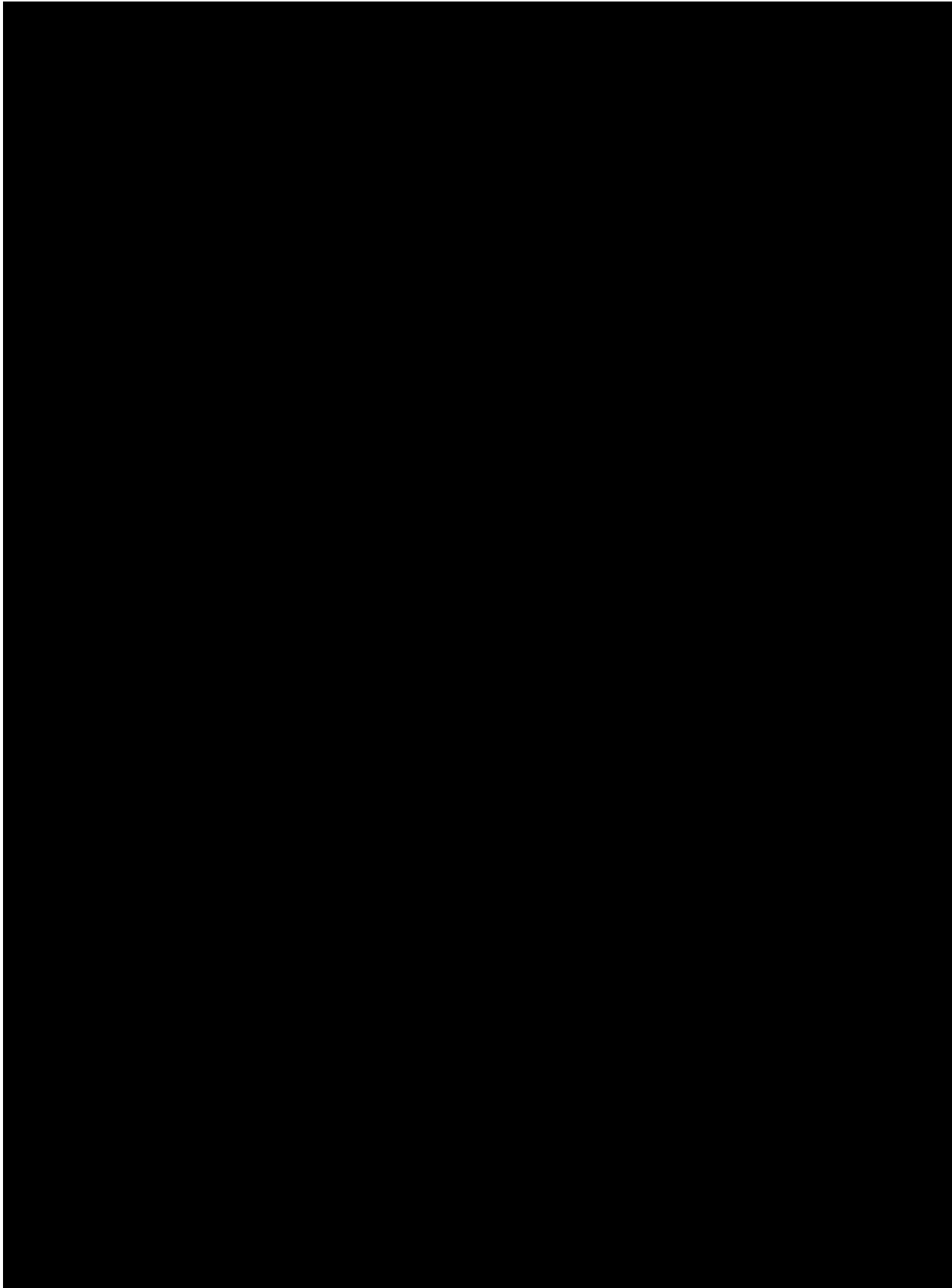
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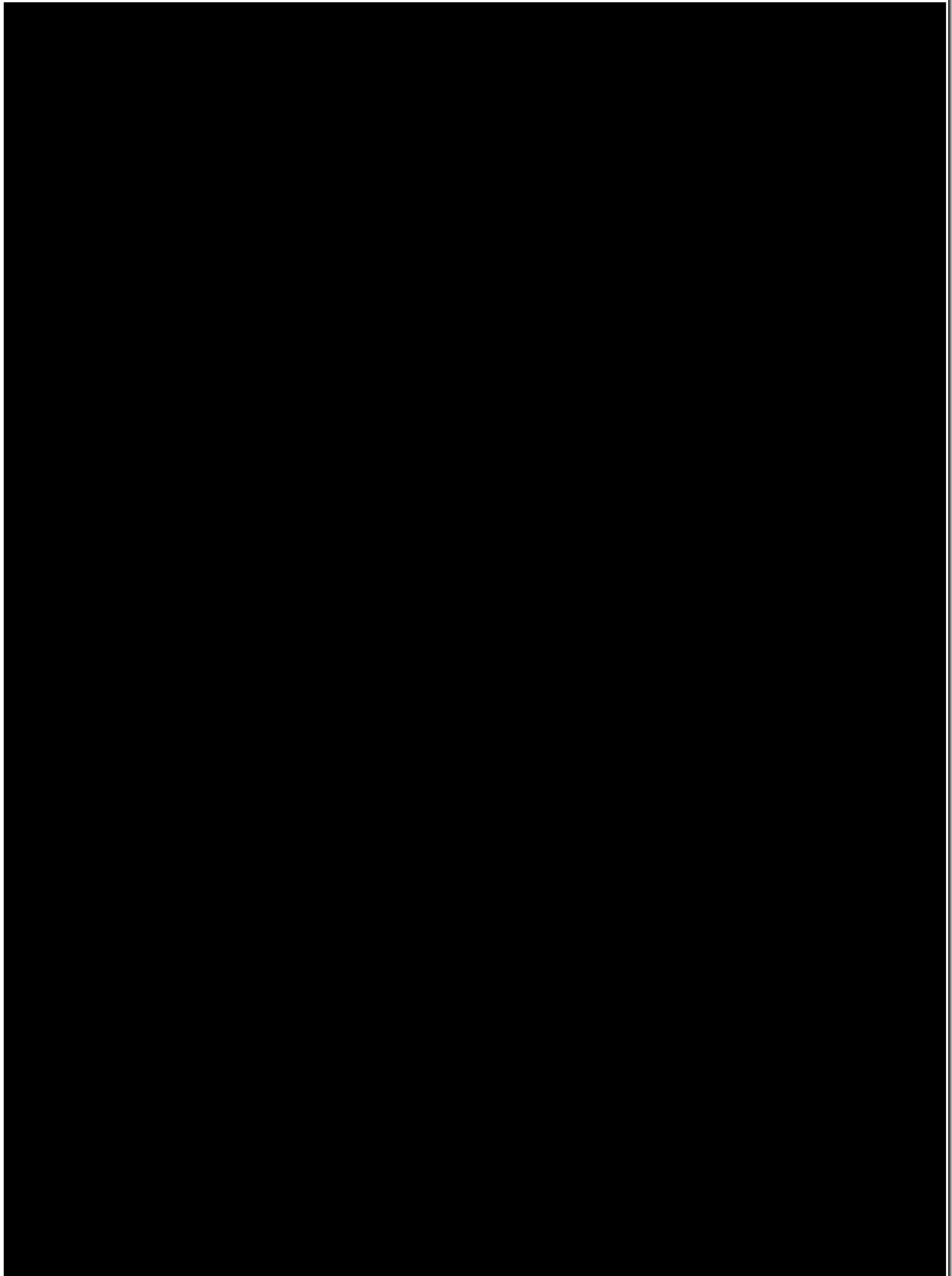
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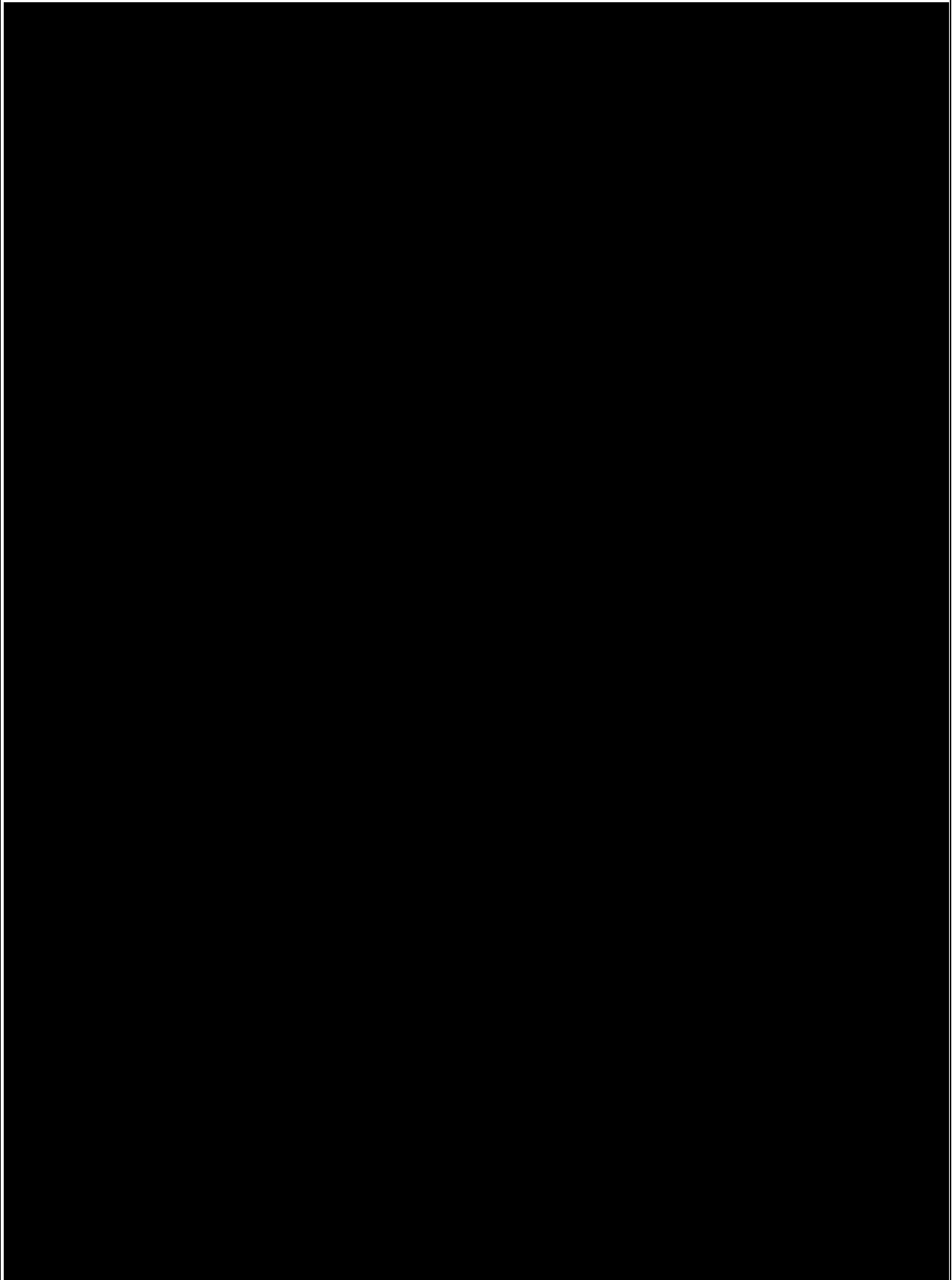
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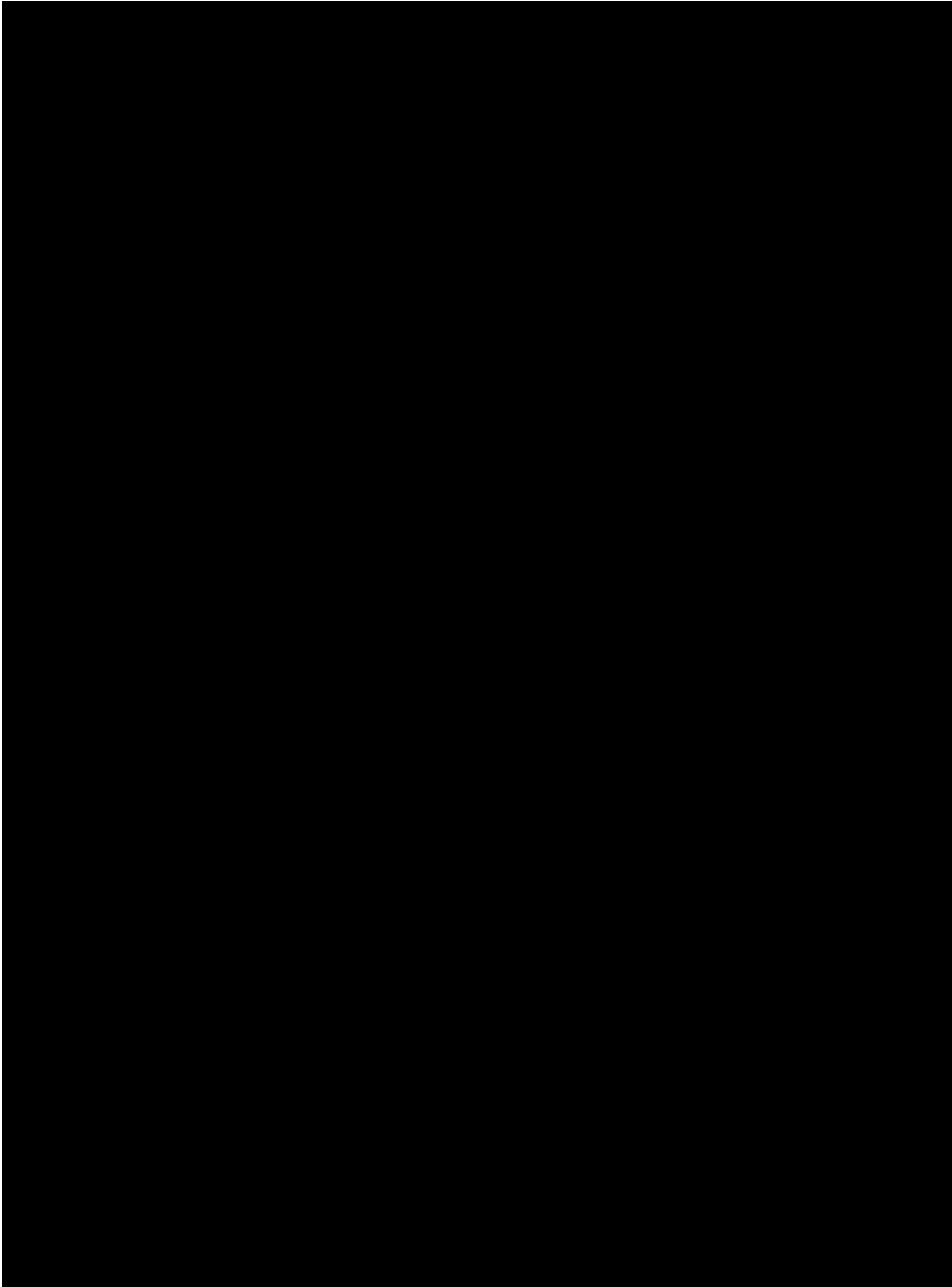
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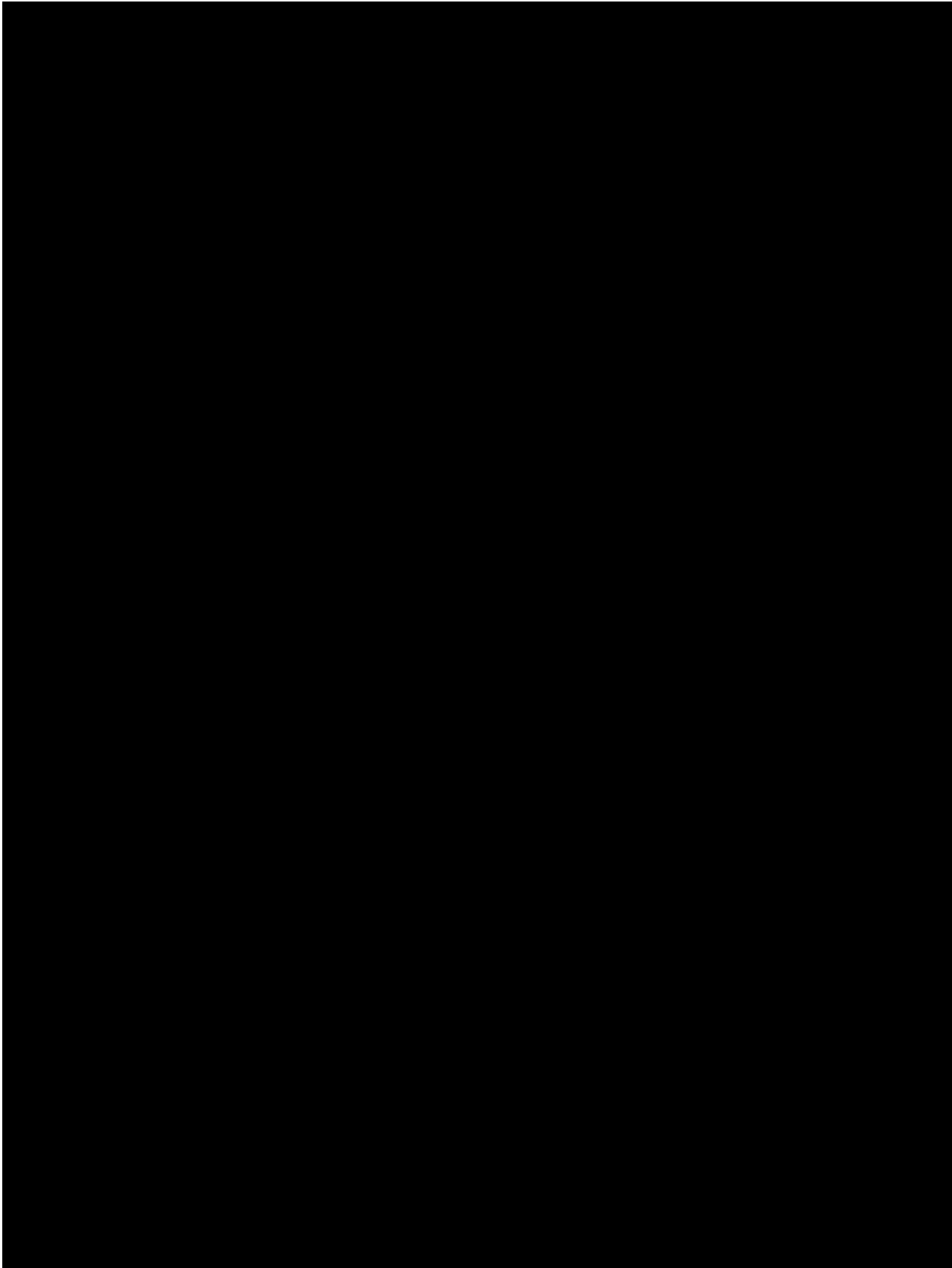
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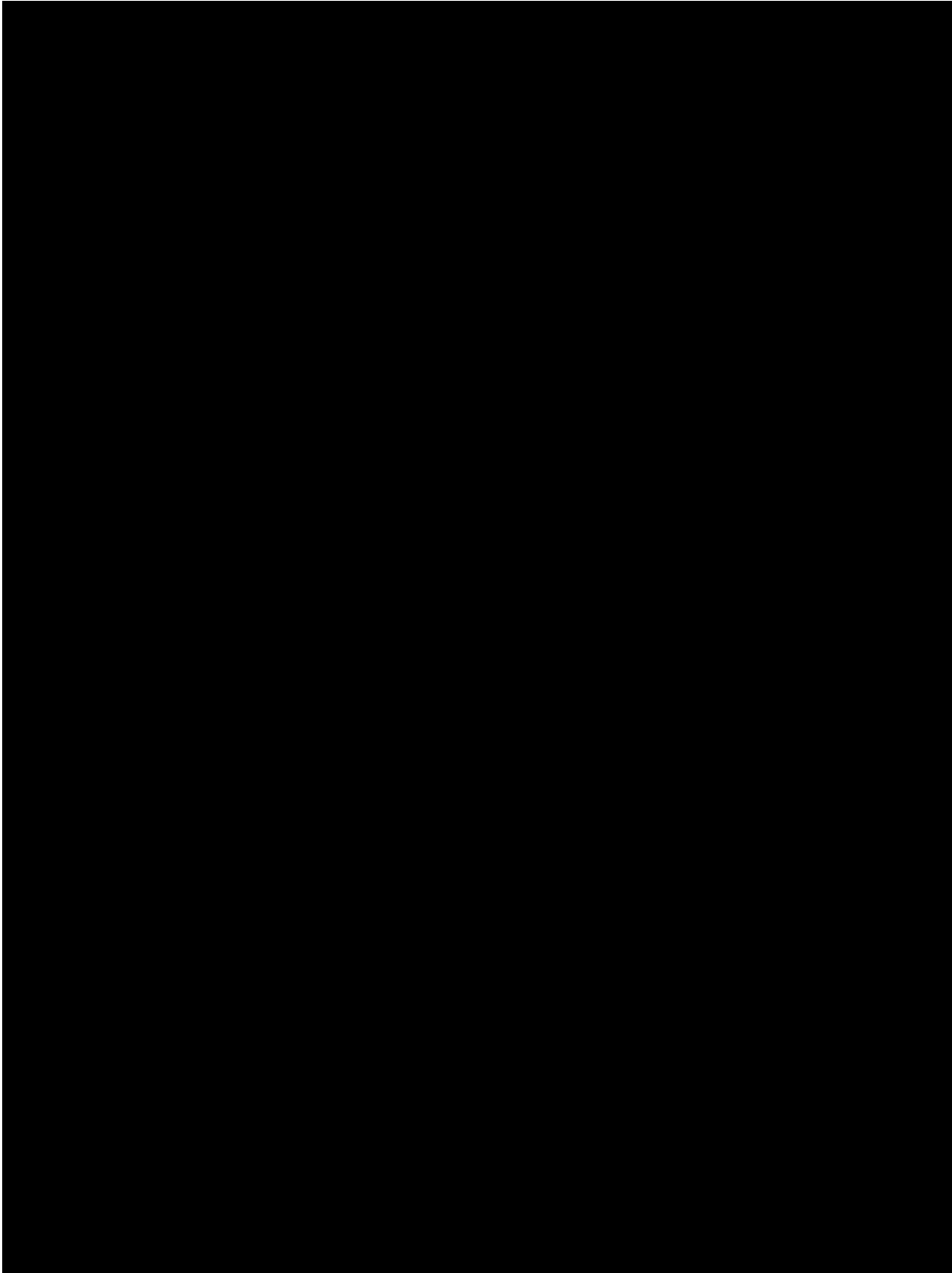
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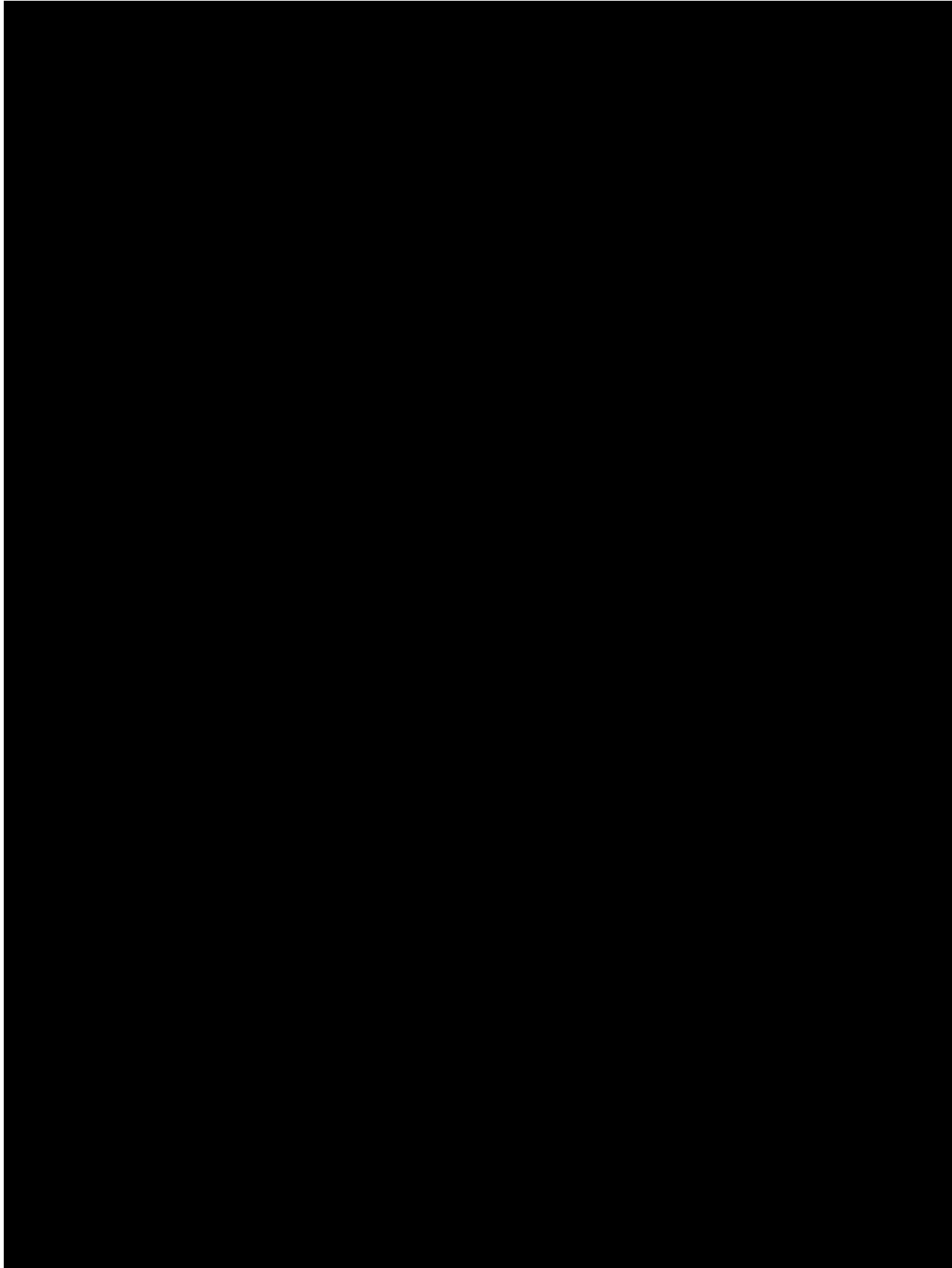
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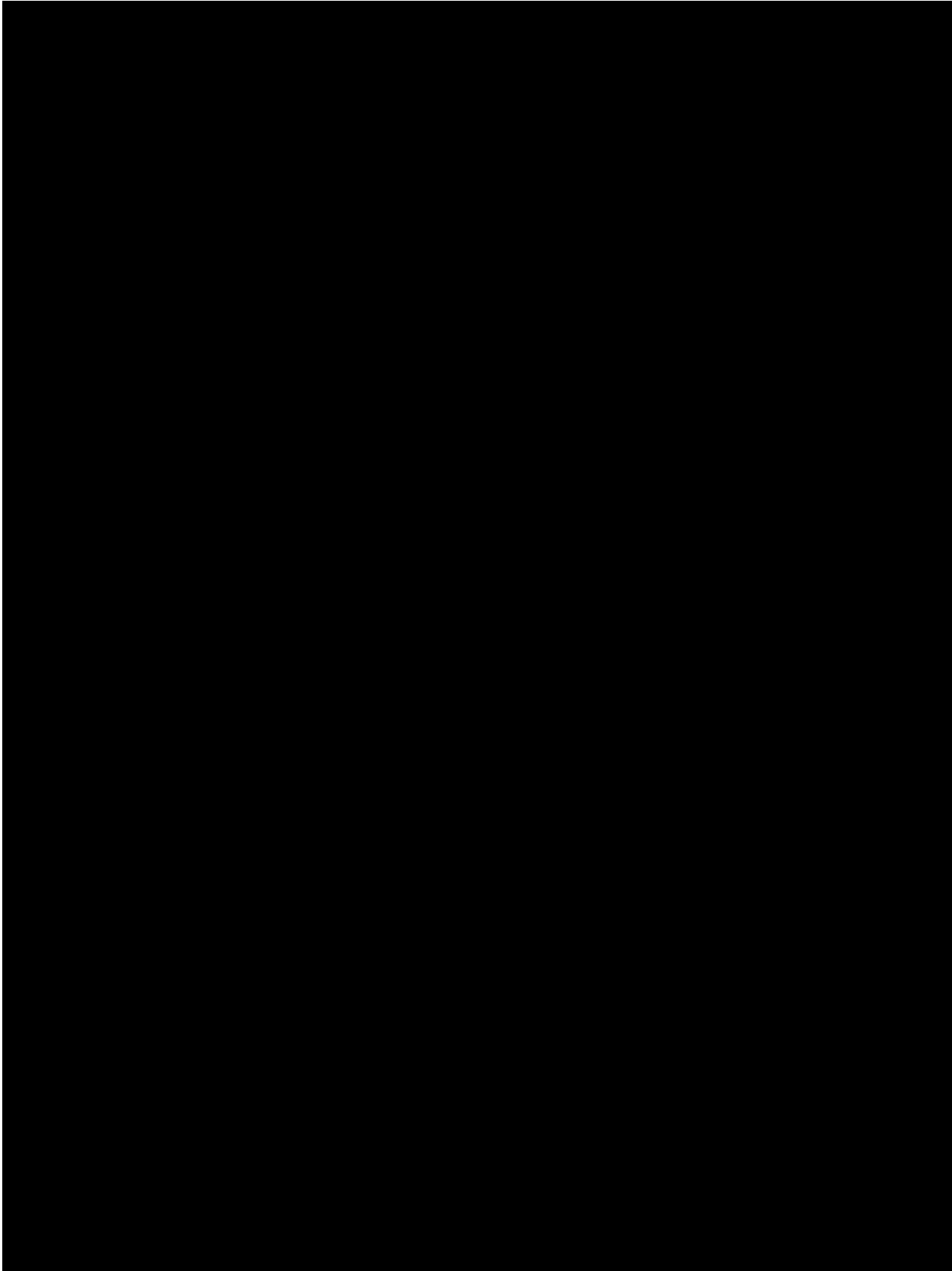
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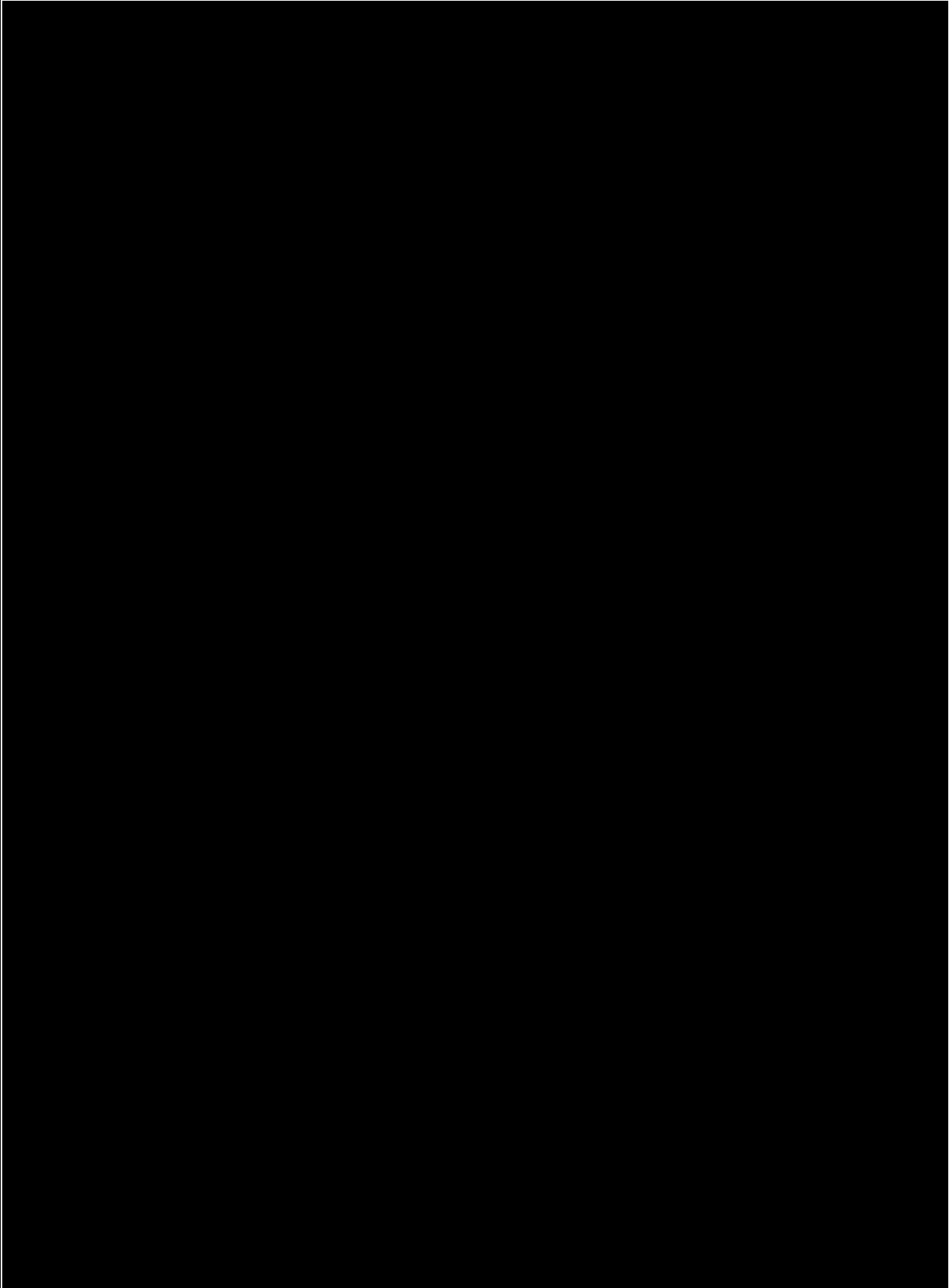
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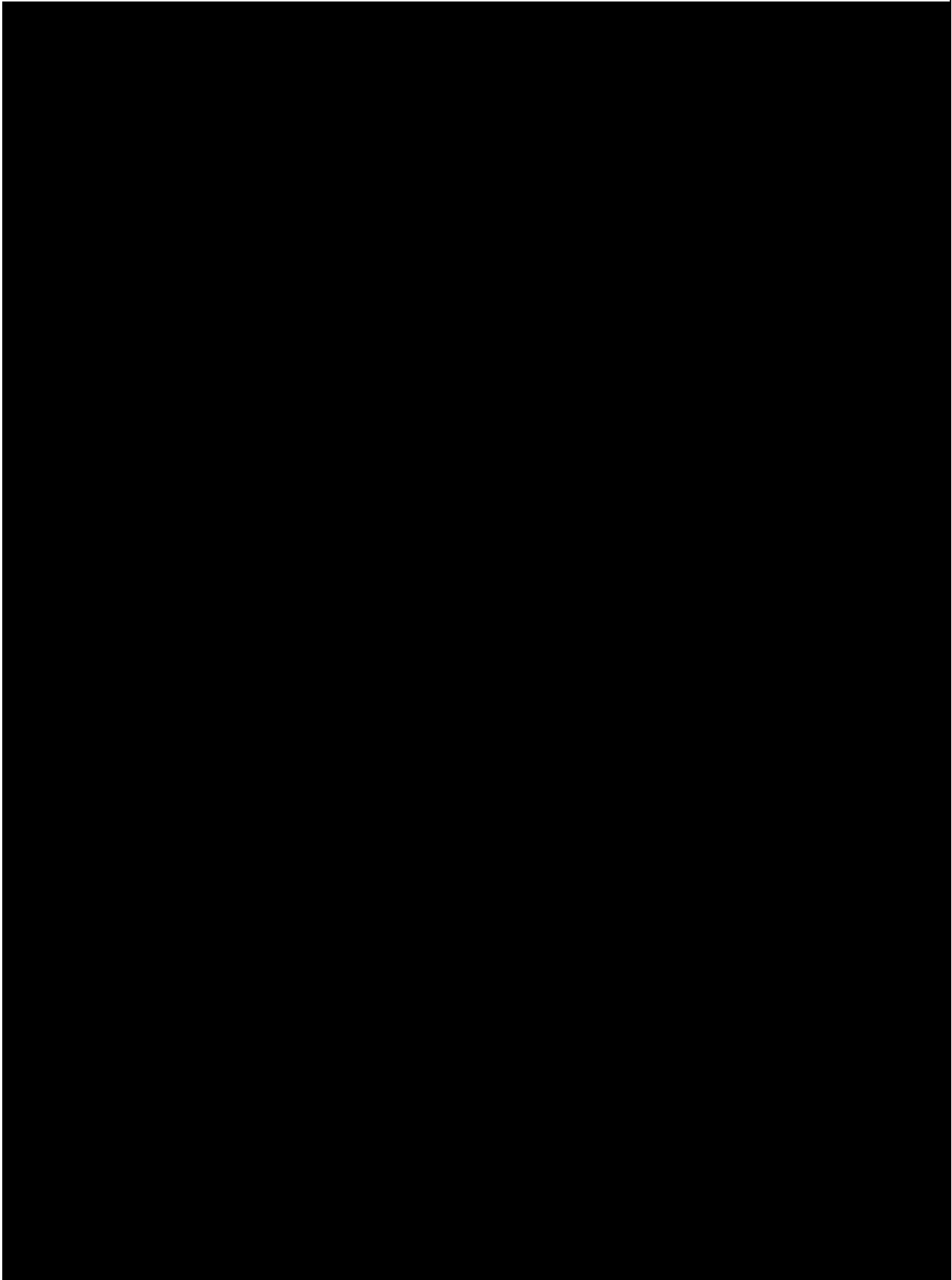
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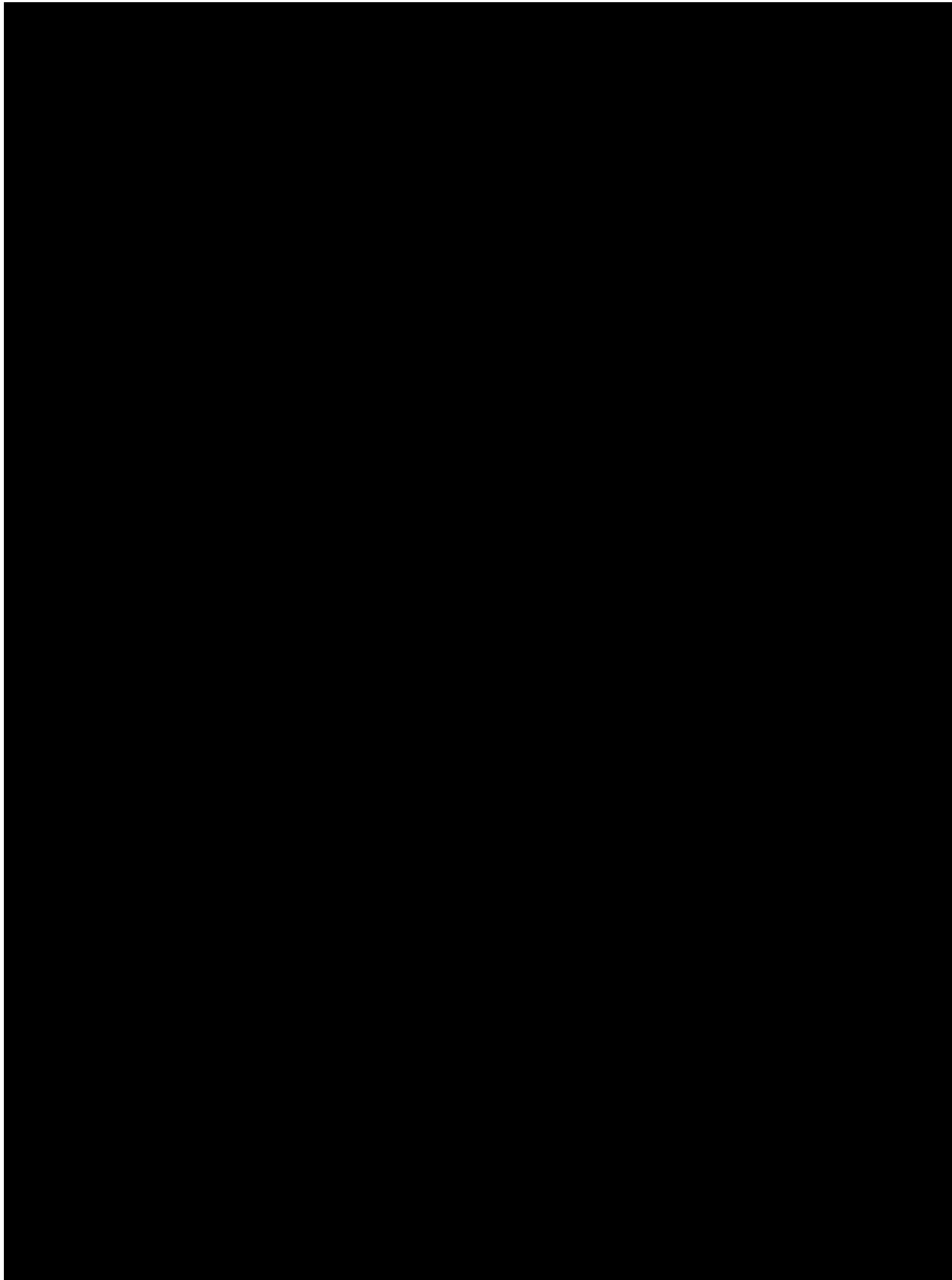
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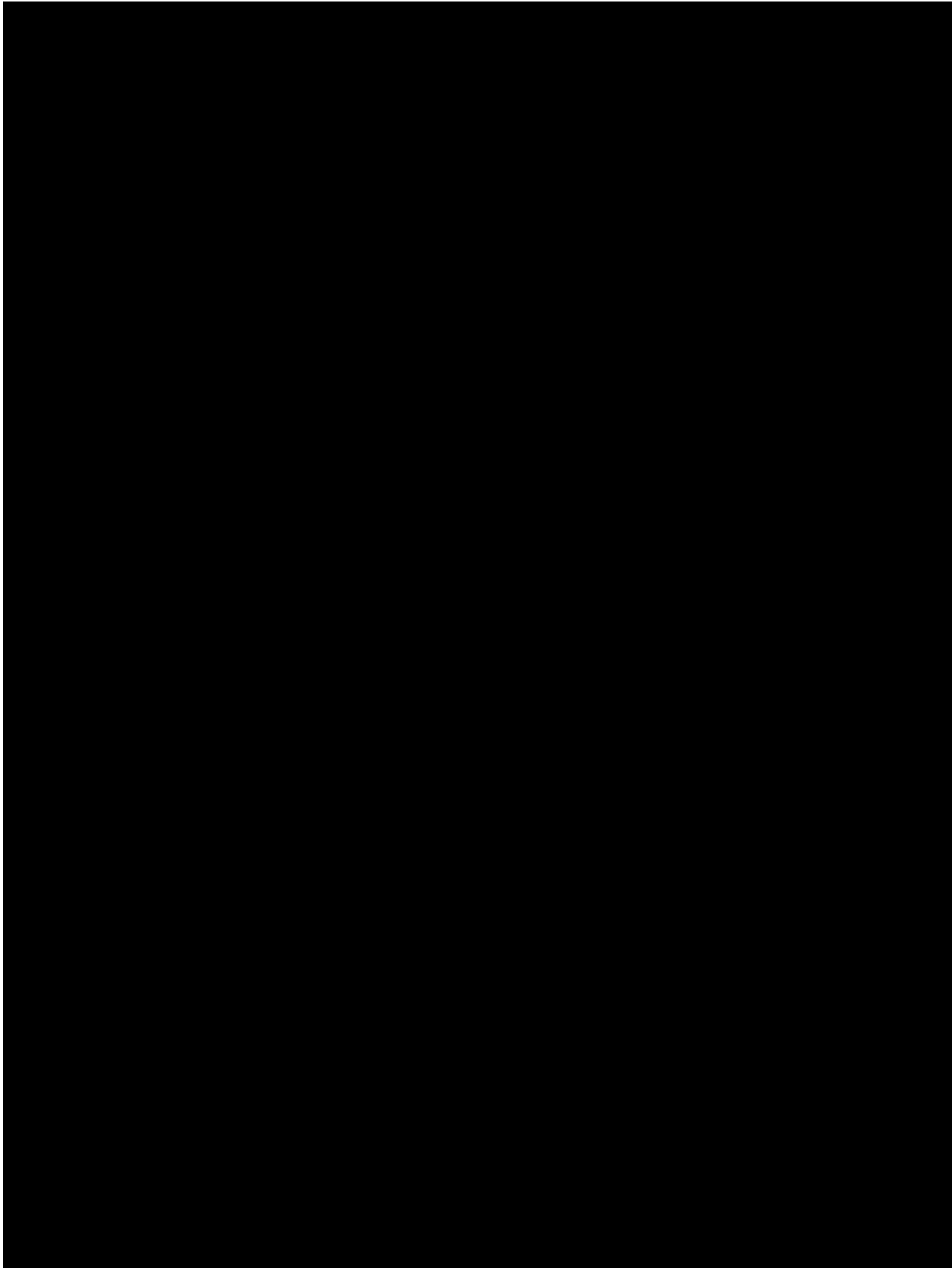
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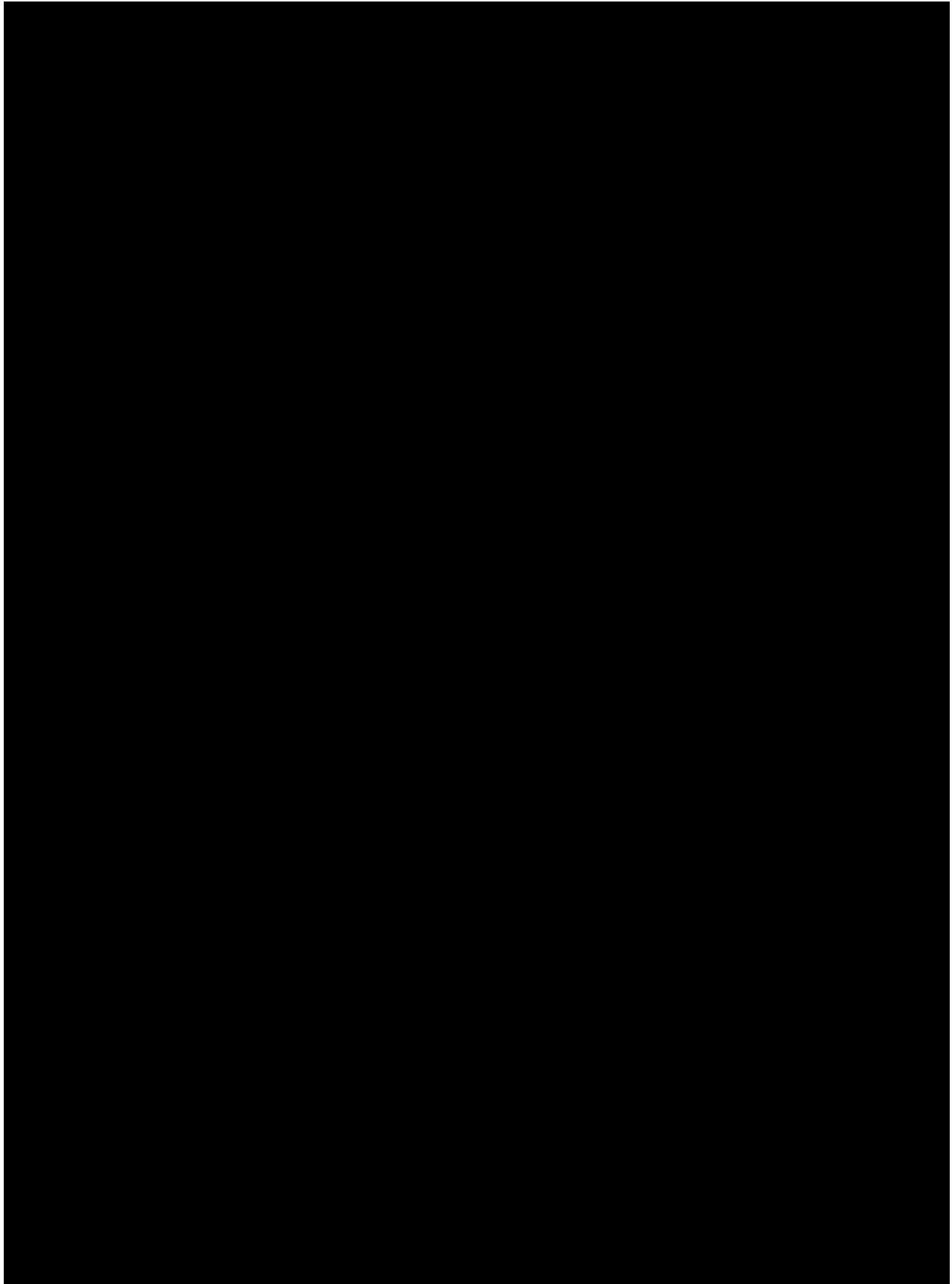
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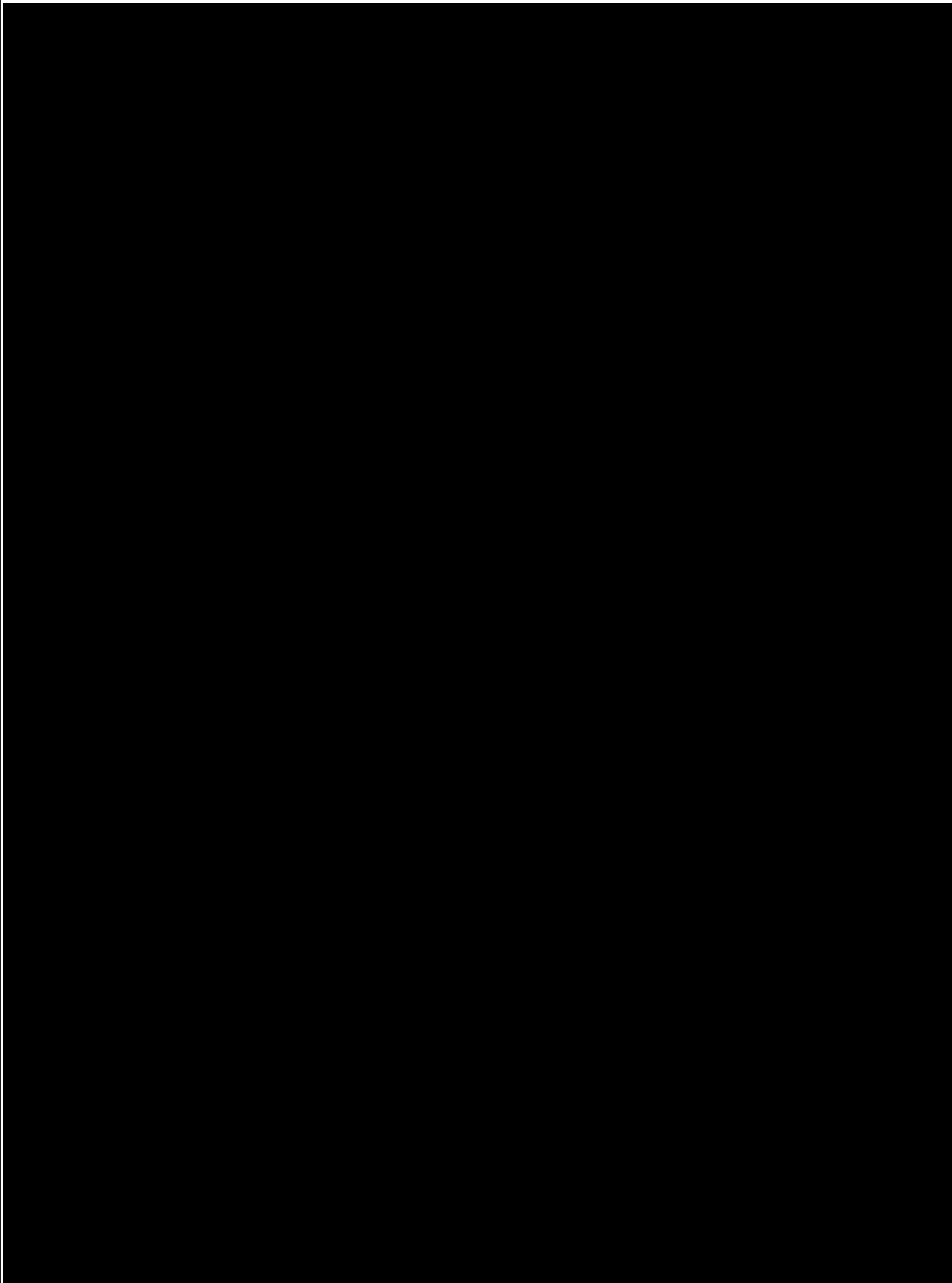
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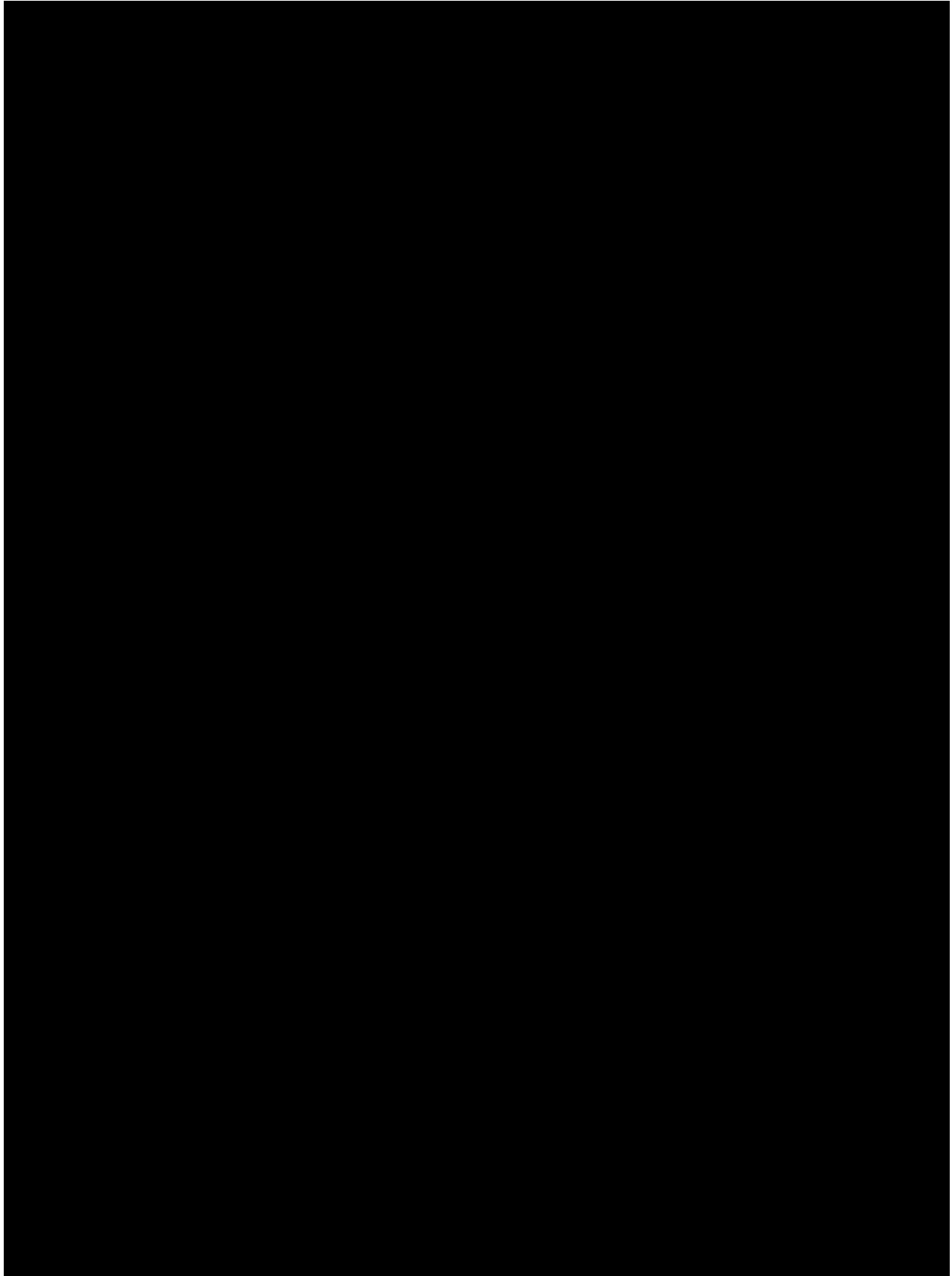
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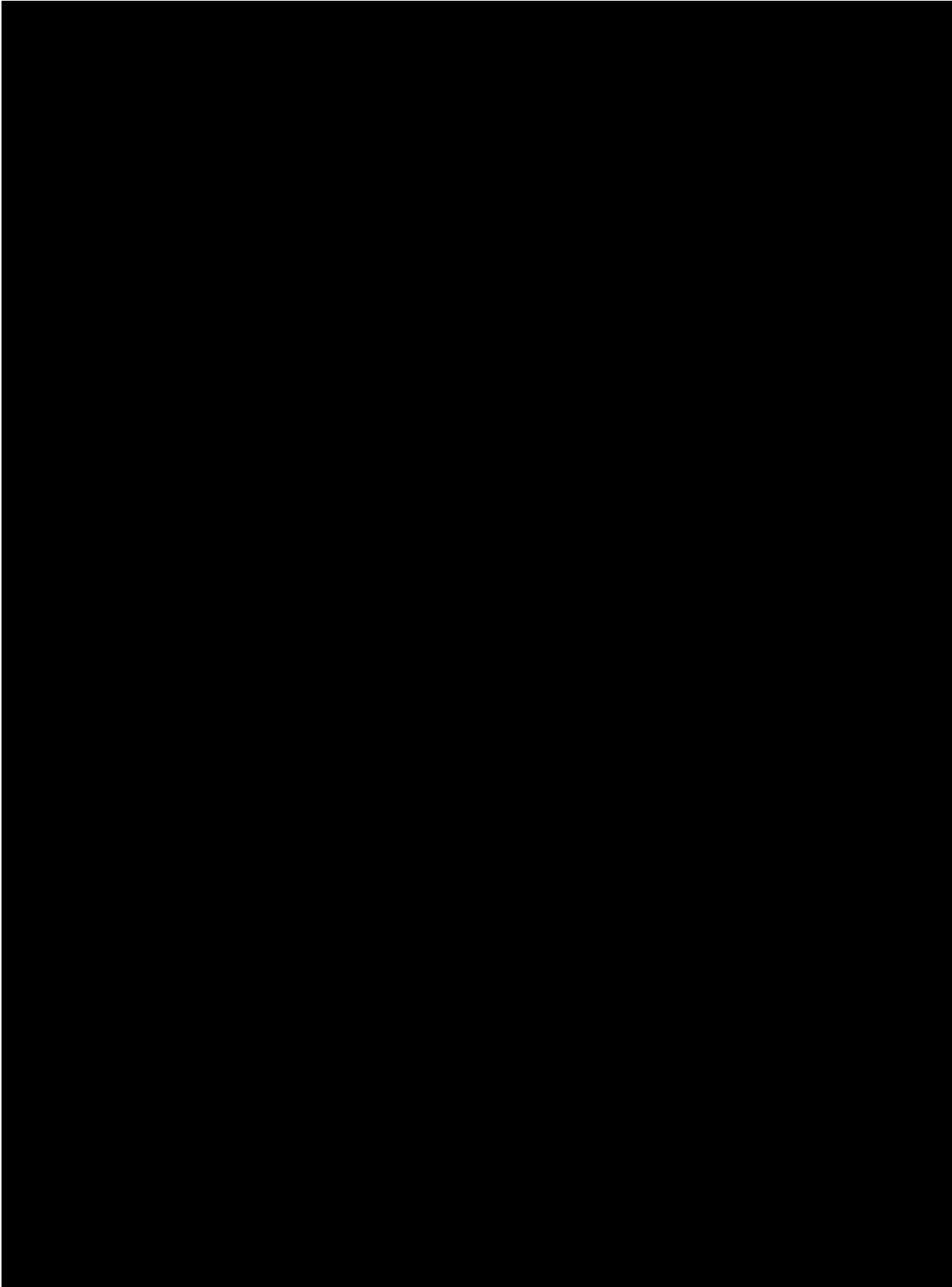
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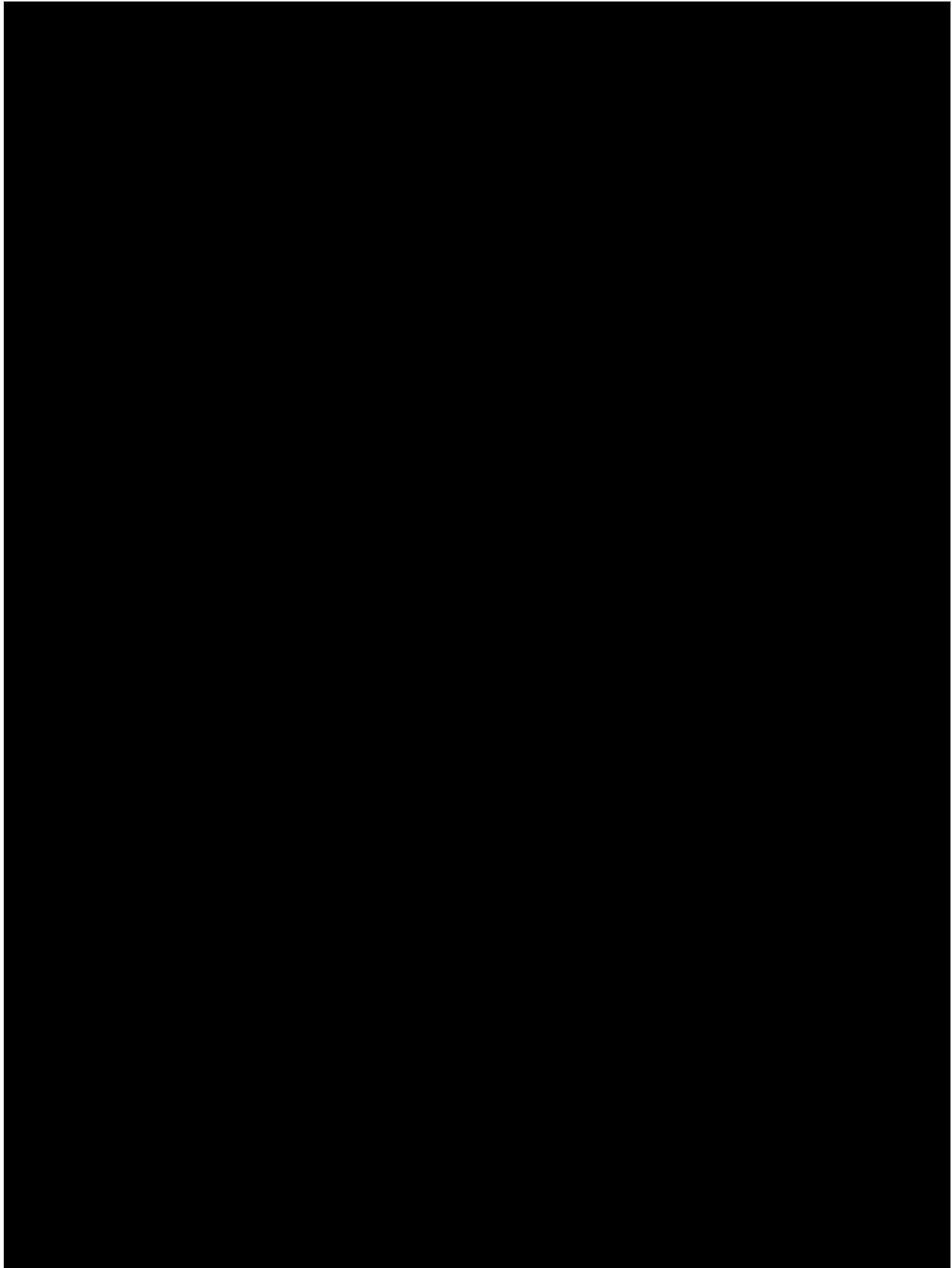
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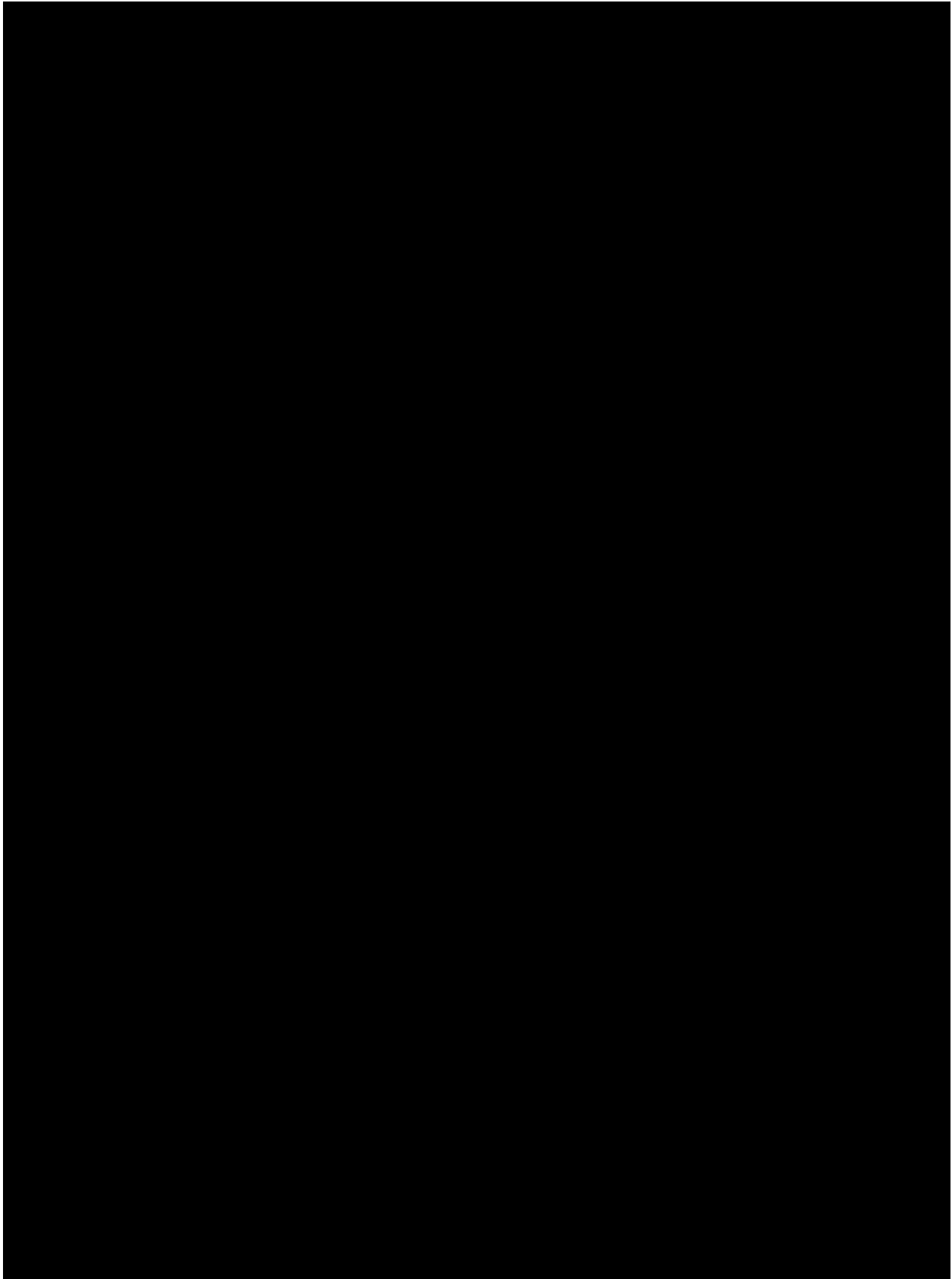
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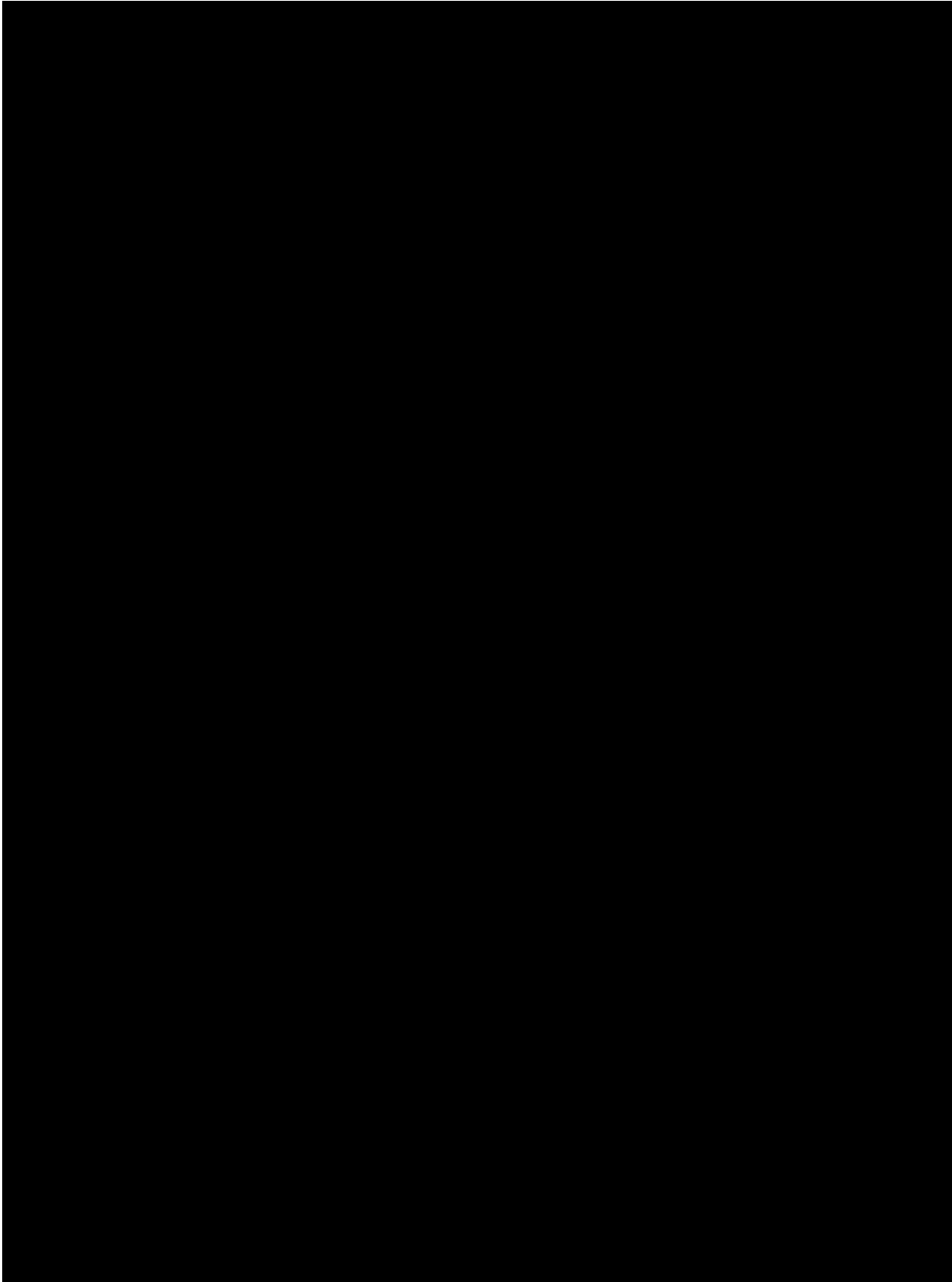
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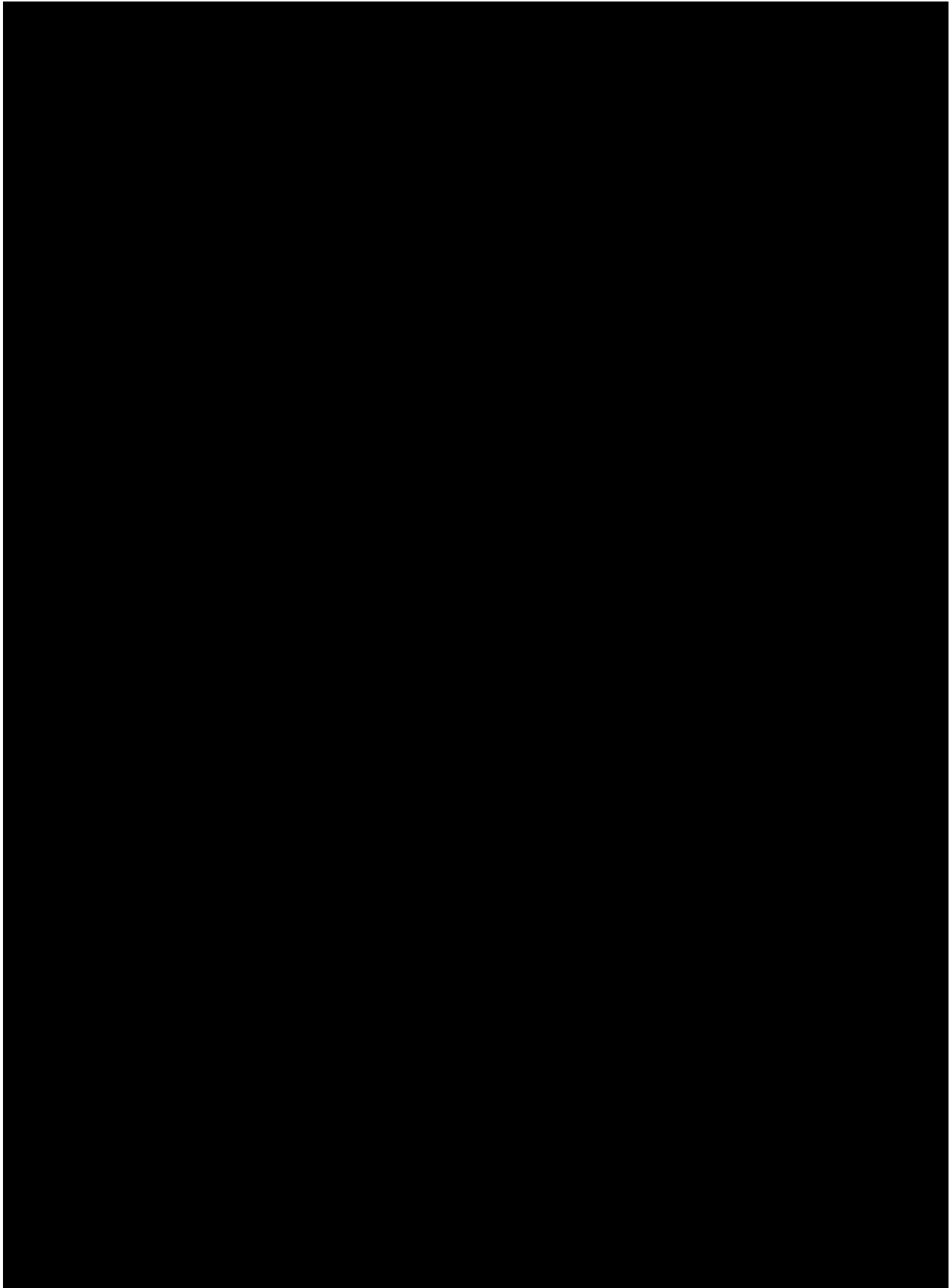
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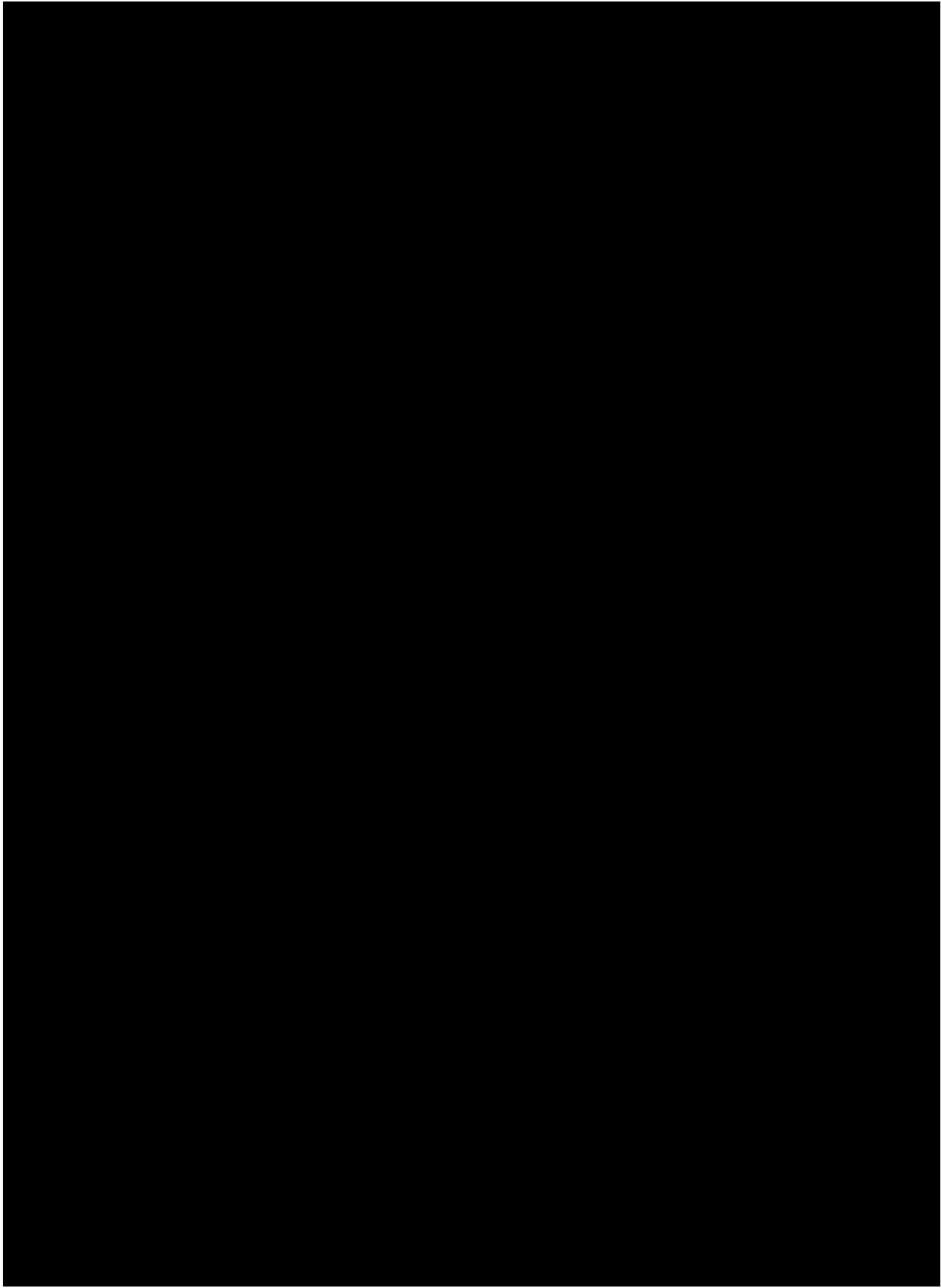
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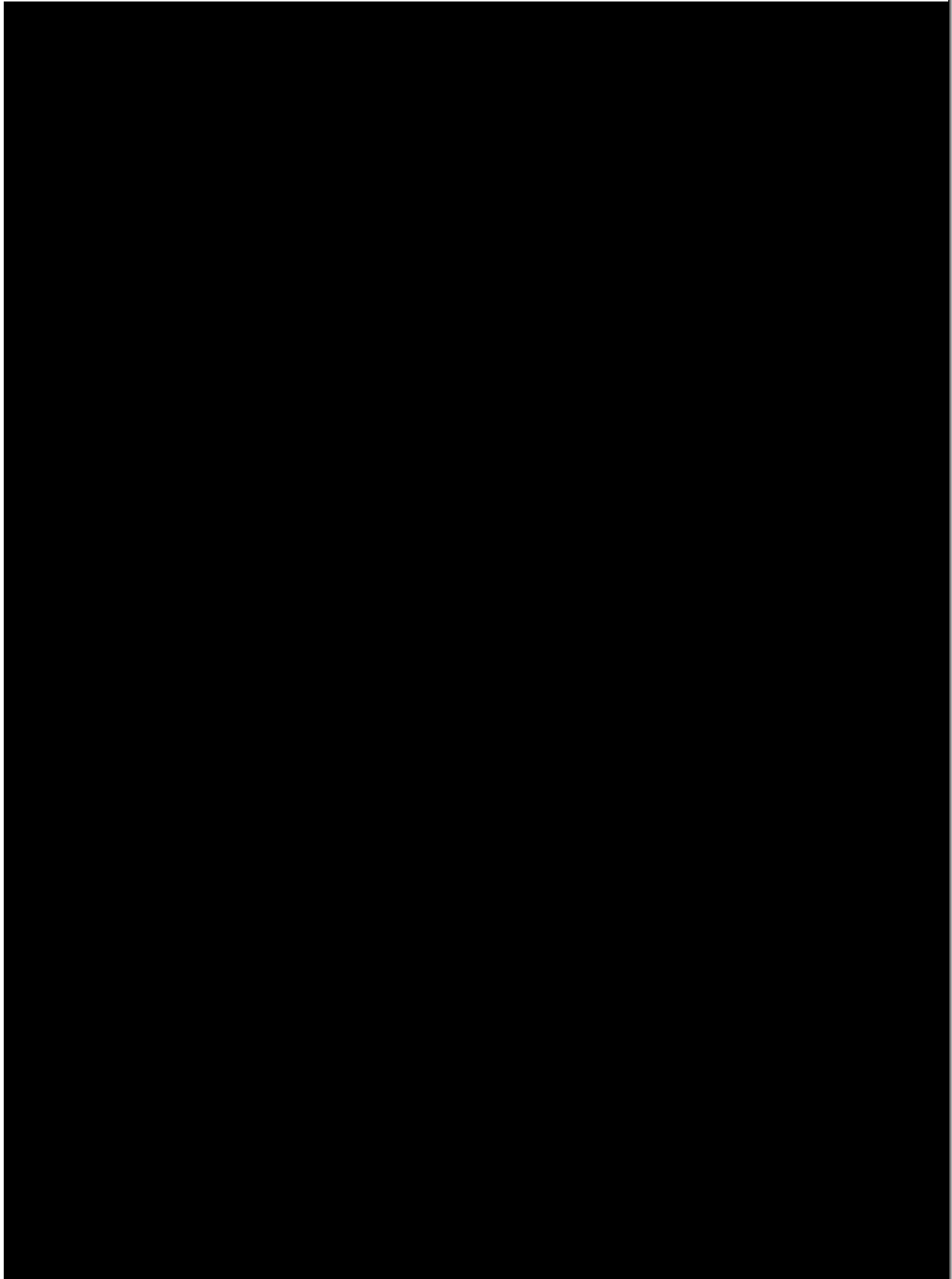
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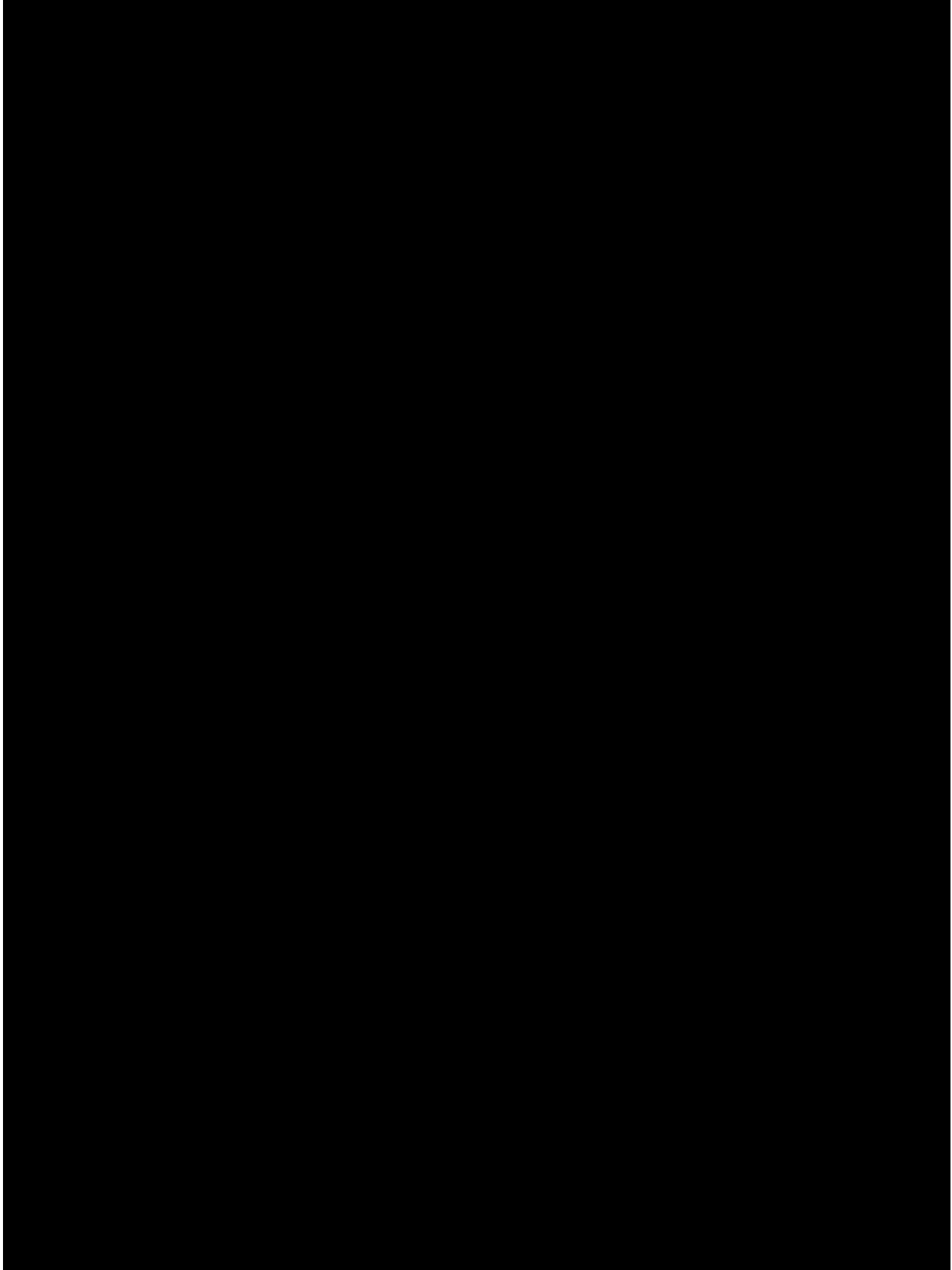
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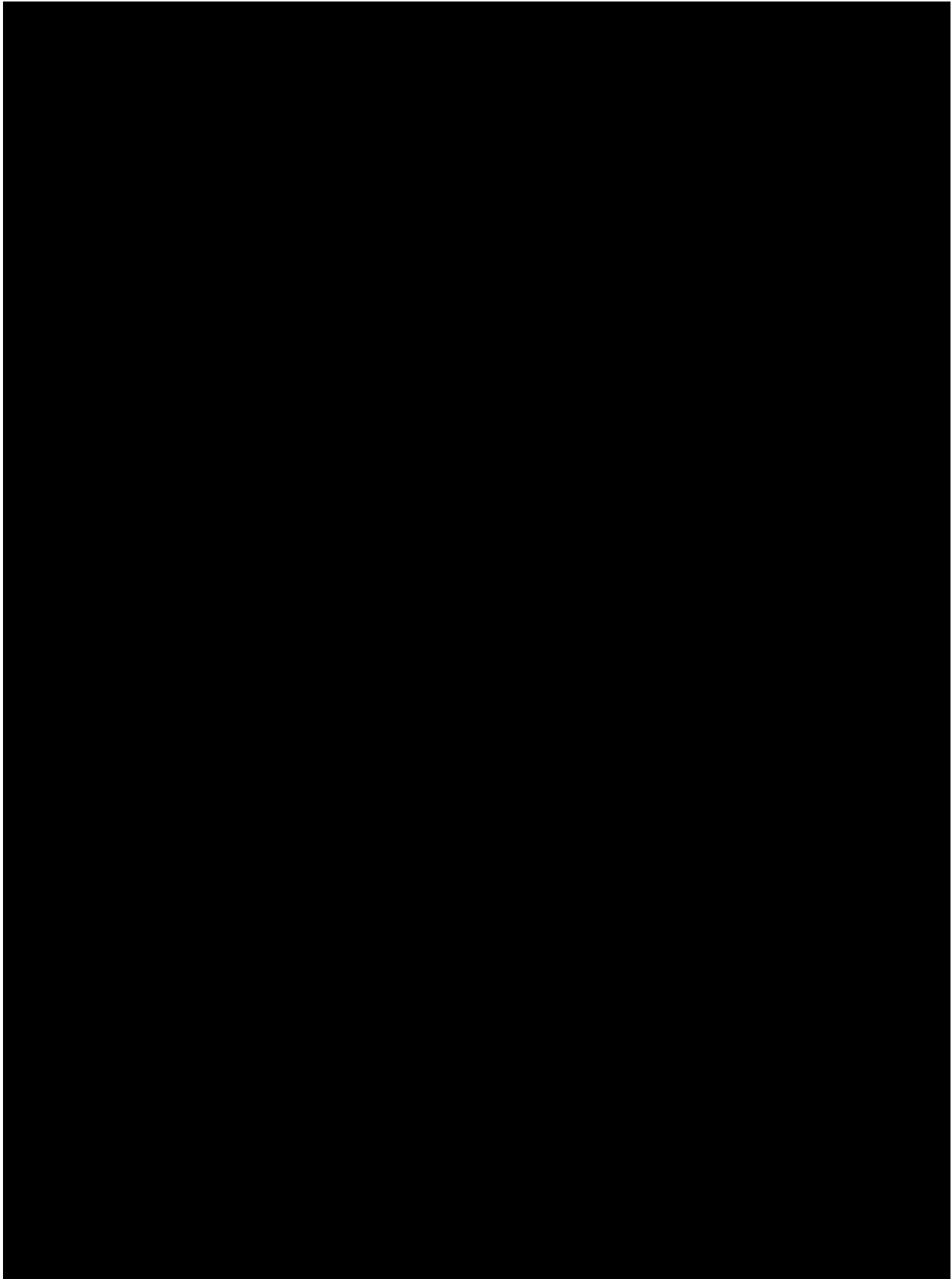
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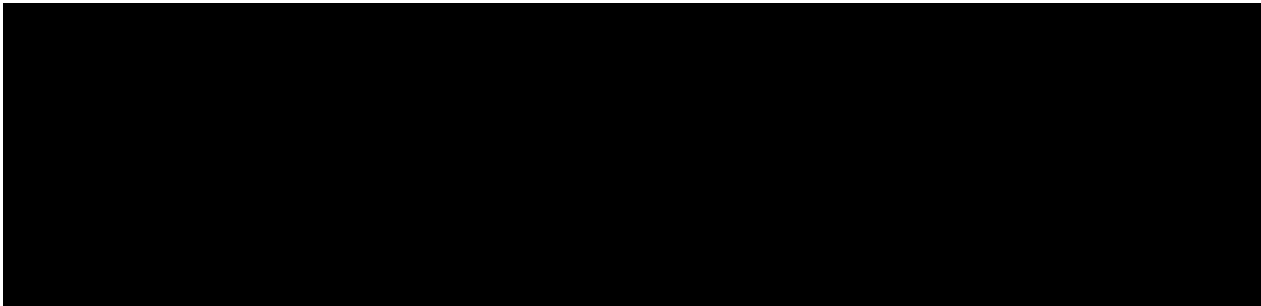
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PRESIDENT TERCIER: Thank you very much.

Mr. Polášek, you have the floor.

MR. POLÁŠEK: Thank you, Mr. President.

We do have a redirect, which is a couple of questions at least, so I would suggest that this would be a good time to break, if we may, five minutes and then we resume.

PRESIDENT TERCIER: Okay, five minutes.

It is a qualified break or a simple? Do we have the time to go for coffee?

MR. POLÁŠEK: In that case, let's extend it for 10 minutes and we would have time for coffee.

PRESIDENT TERCIER: In that case, it's a qualified one.

Good. Sir, you remember or I tell you that you are under testimony. This is a rule. That means that you have not the right to speak, sorry, to representatives or counsel of both sides but

1 especially on that side. You have, of course, the
2 right to go out and take a coffee.

3 THE WITNESS: Thank you, sir.

4 (Brief recess.)

5 PRESIDENT TERCIER: Okay. I think everybody
6 is--I'm sorry. Yes, Dr. Heiskanen, do you have a
7 point?

8 Can you put your microphone on, please.

9 DR. HEISKANEN: Yes. I failed to mention
10 this morning that there's a new member attending the
11 hearing on the Respondent side, George Leaua, who is a
12 member of the support team of LDDP.

13 PRESIDENT TERCIER: Okay. Thank you for
14 answering a question that I forgot to ask as to
15 whether there are new attendees in the room.

16 On your side?

17 MR. POLÁŠEK: On our side, we have
18 Dr. Boutilier, I believe. Yes, over there. And
19 that's it. No one new on our side.

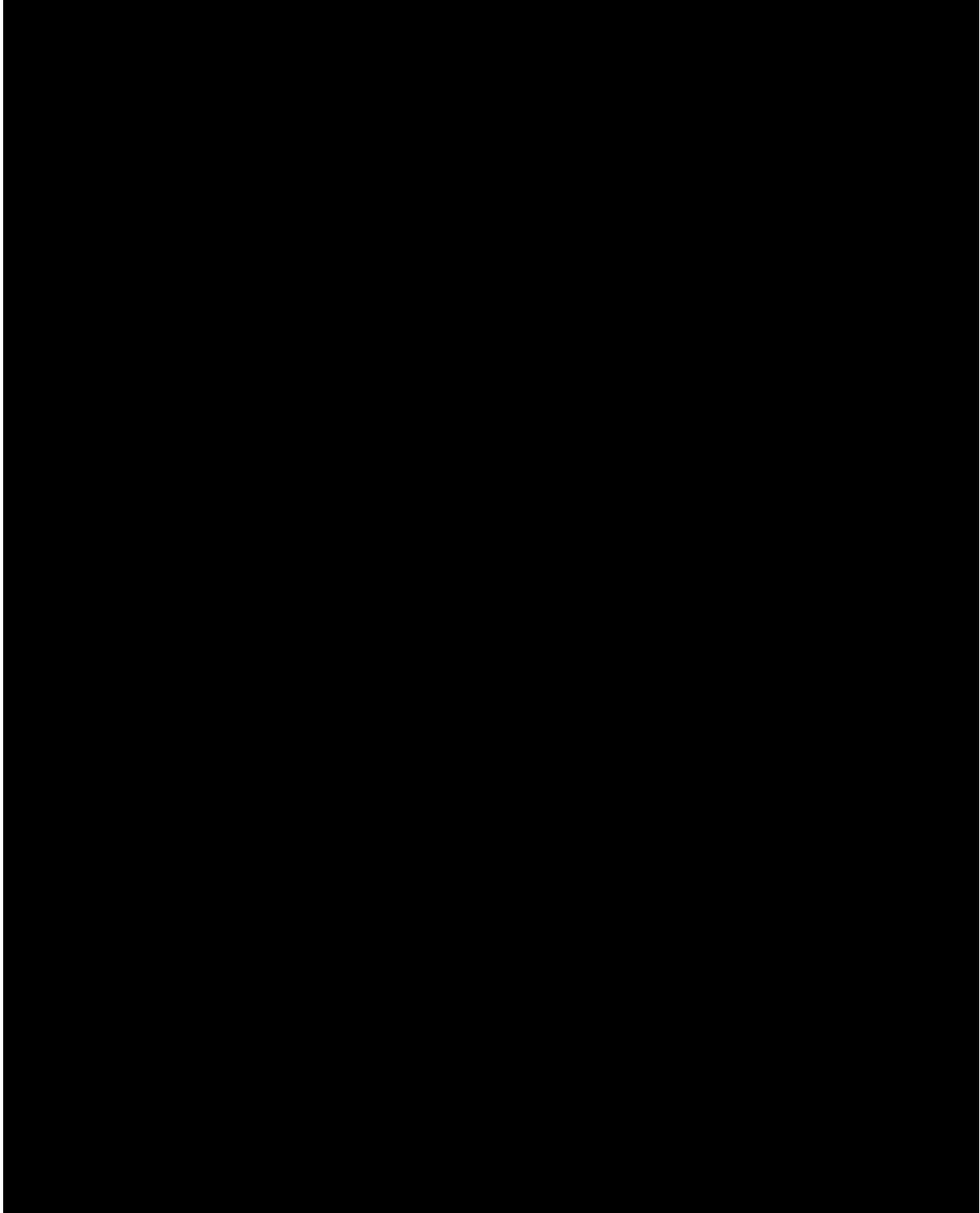
20 PRESIDENT TERCIER: Fine. Thank you.

21 So, Mr. Polášek, you have the floor for
22 redirect examination.

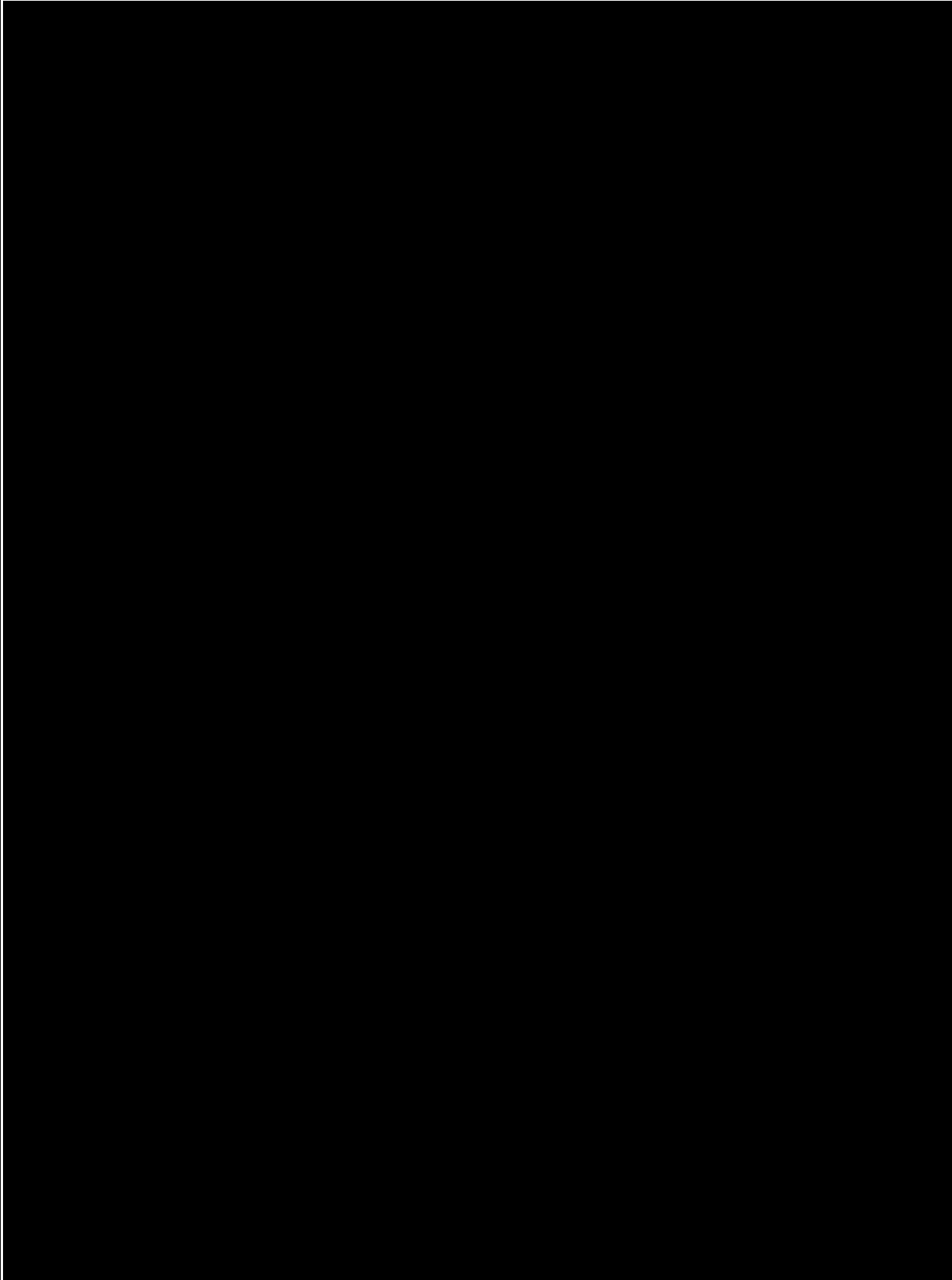
1 MR. POLÁŠEK: Thank you, Mr. President.

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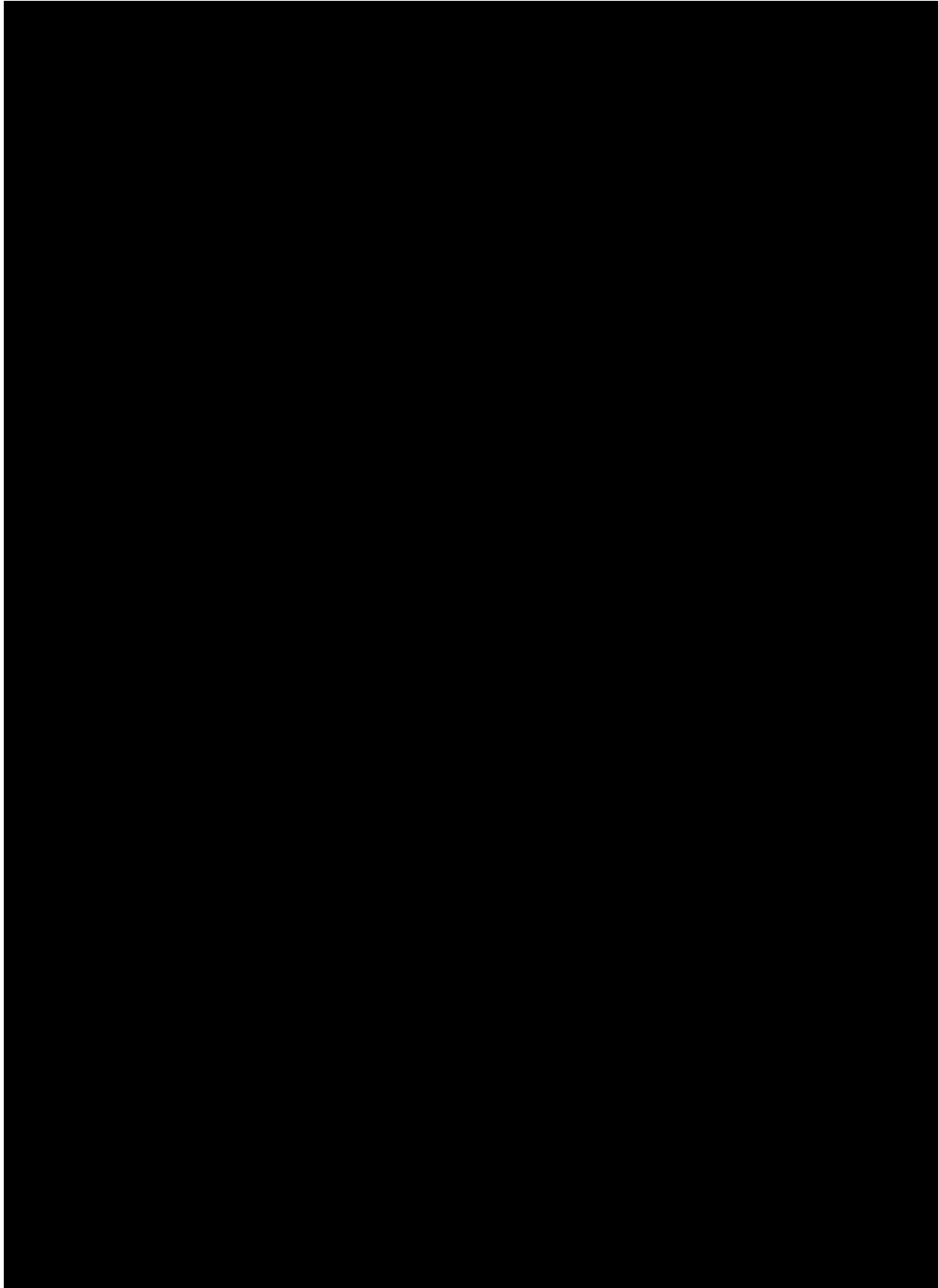
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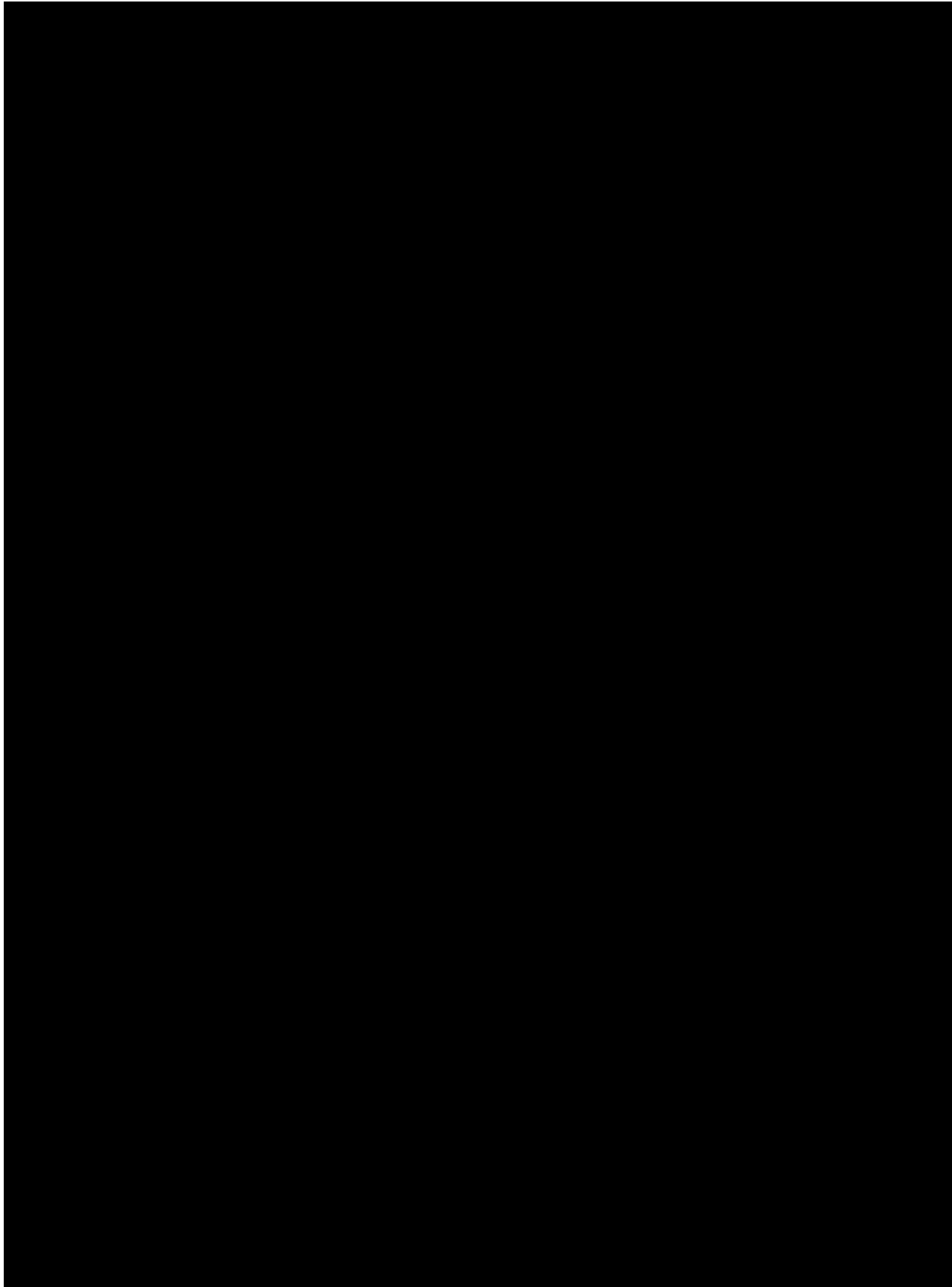
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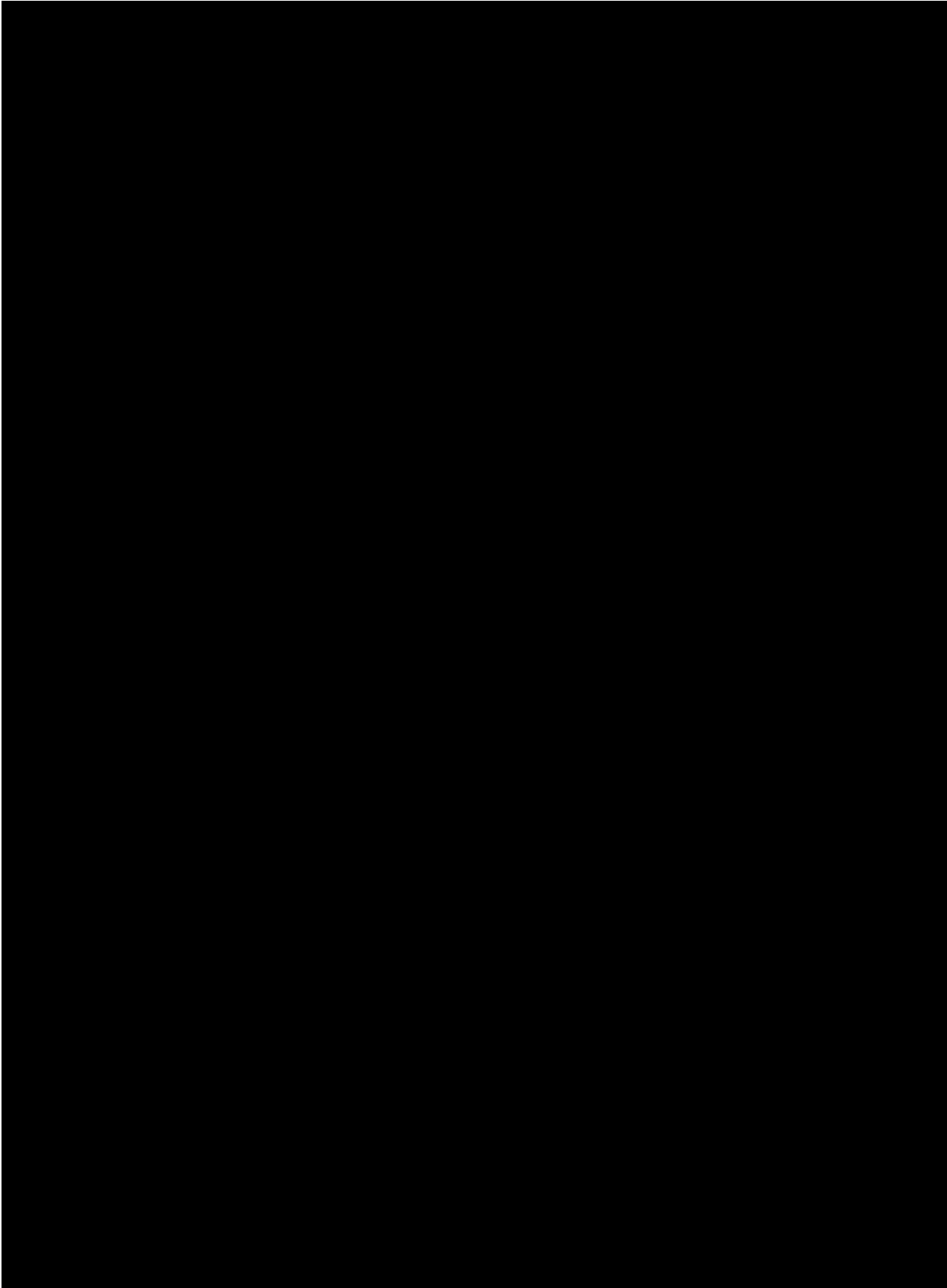
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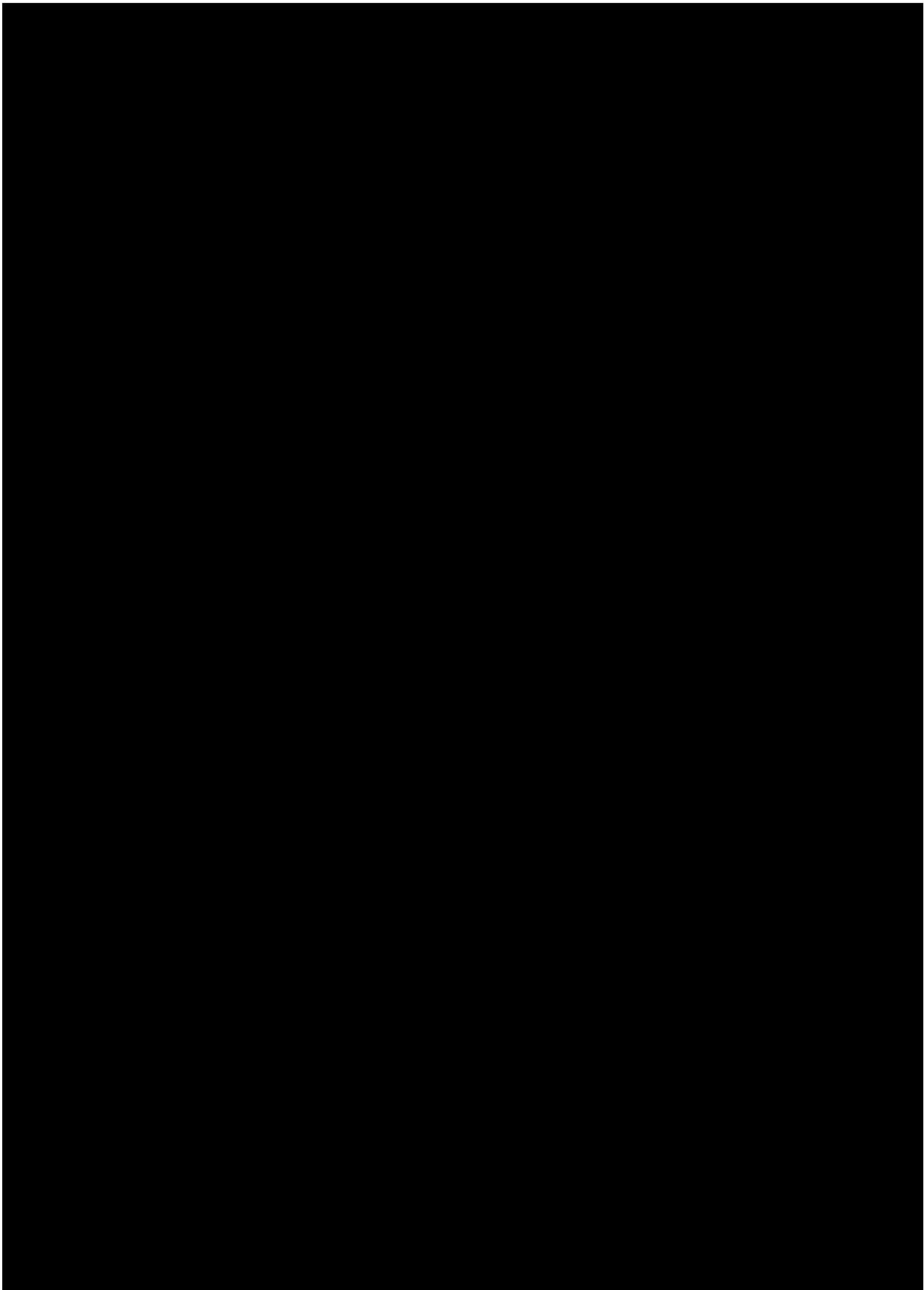
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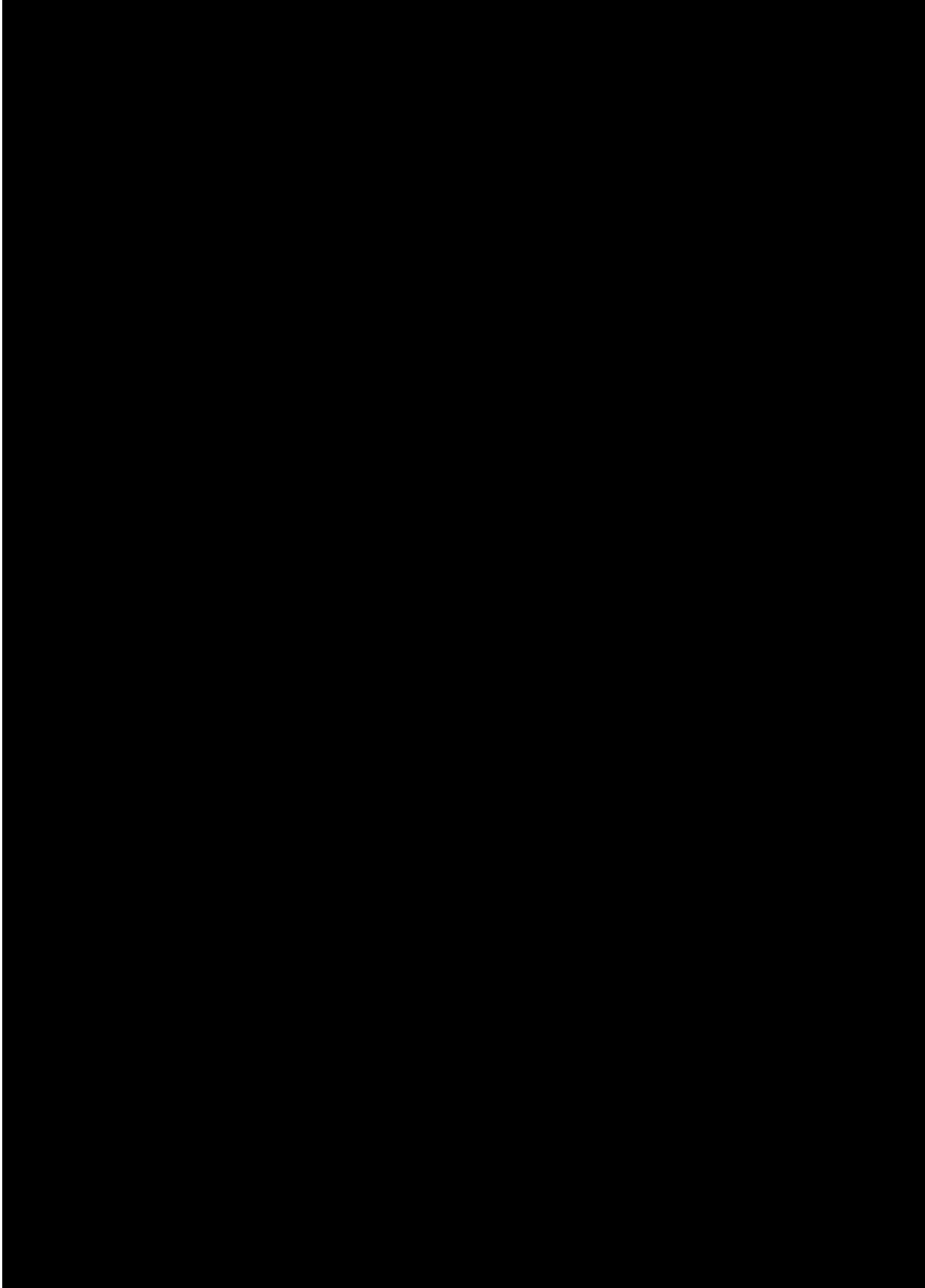
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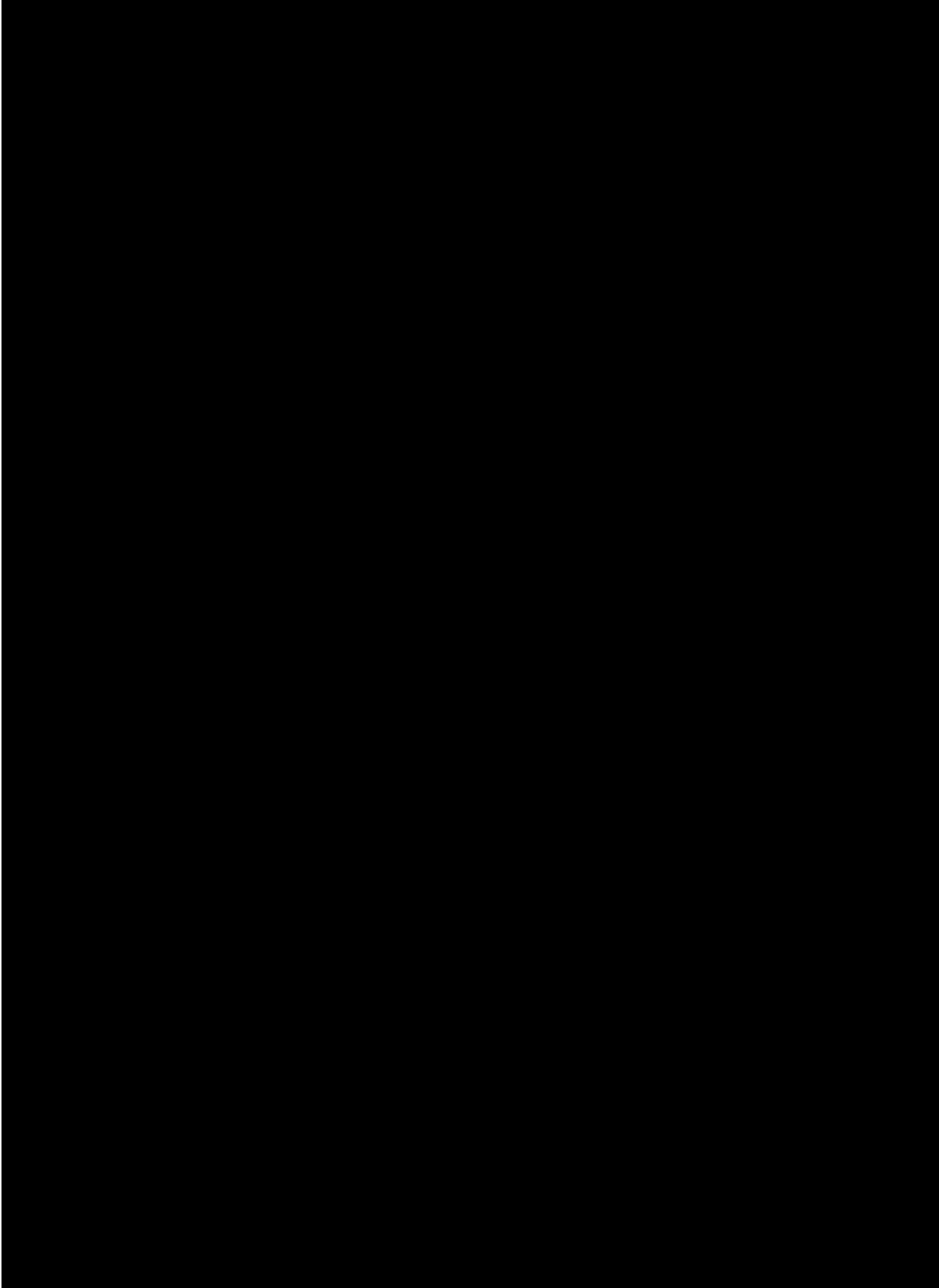
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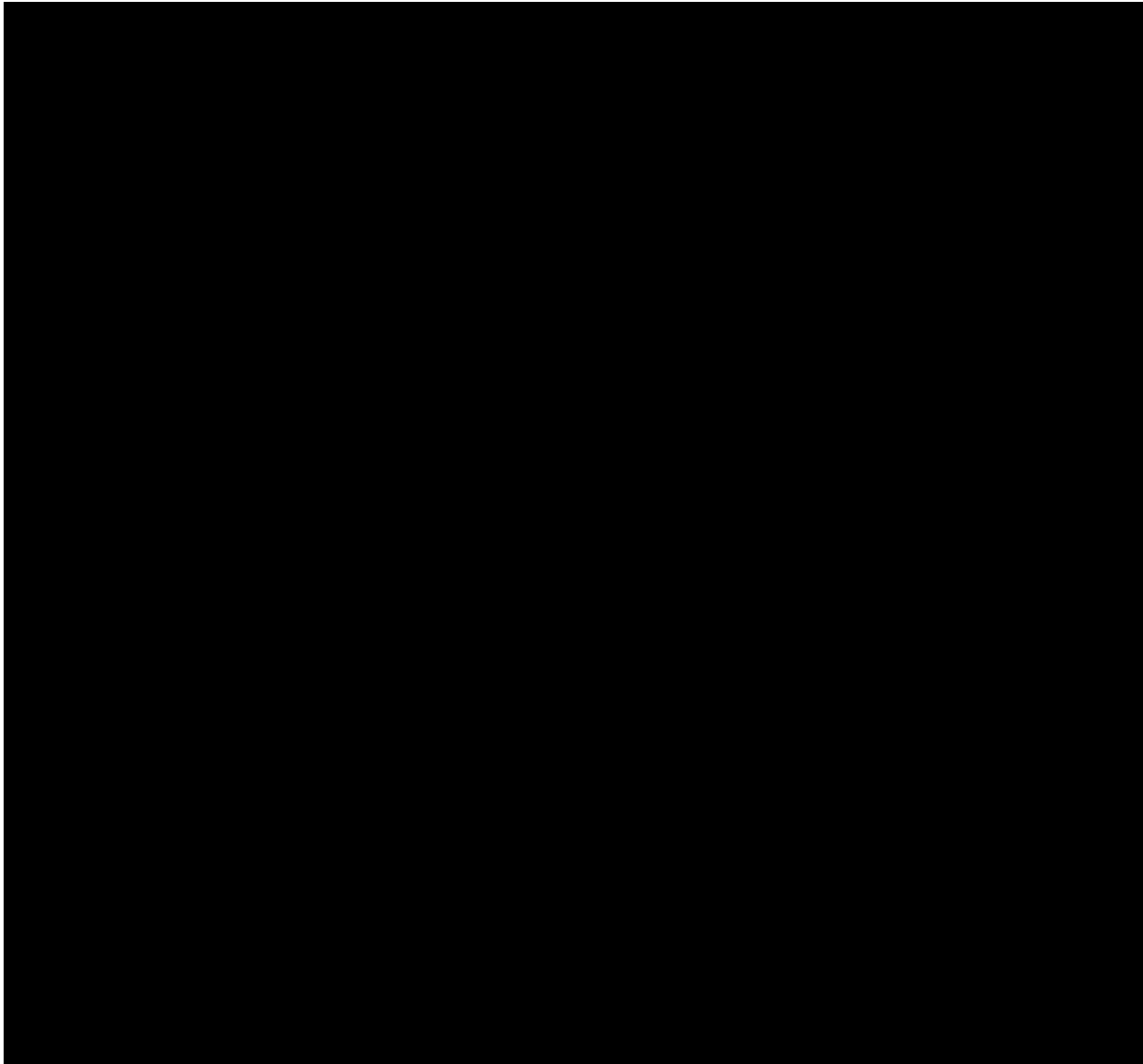
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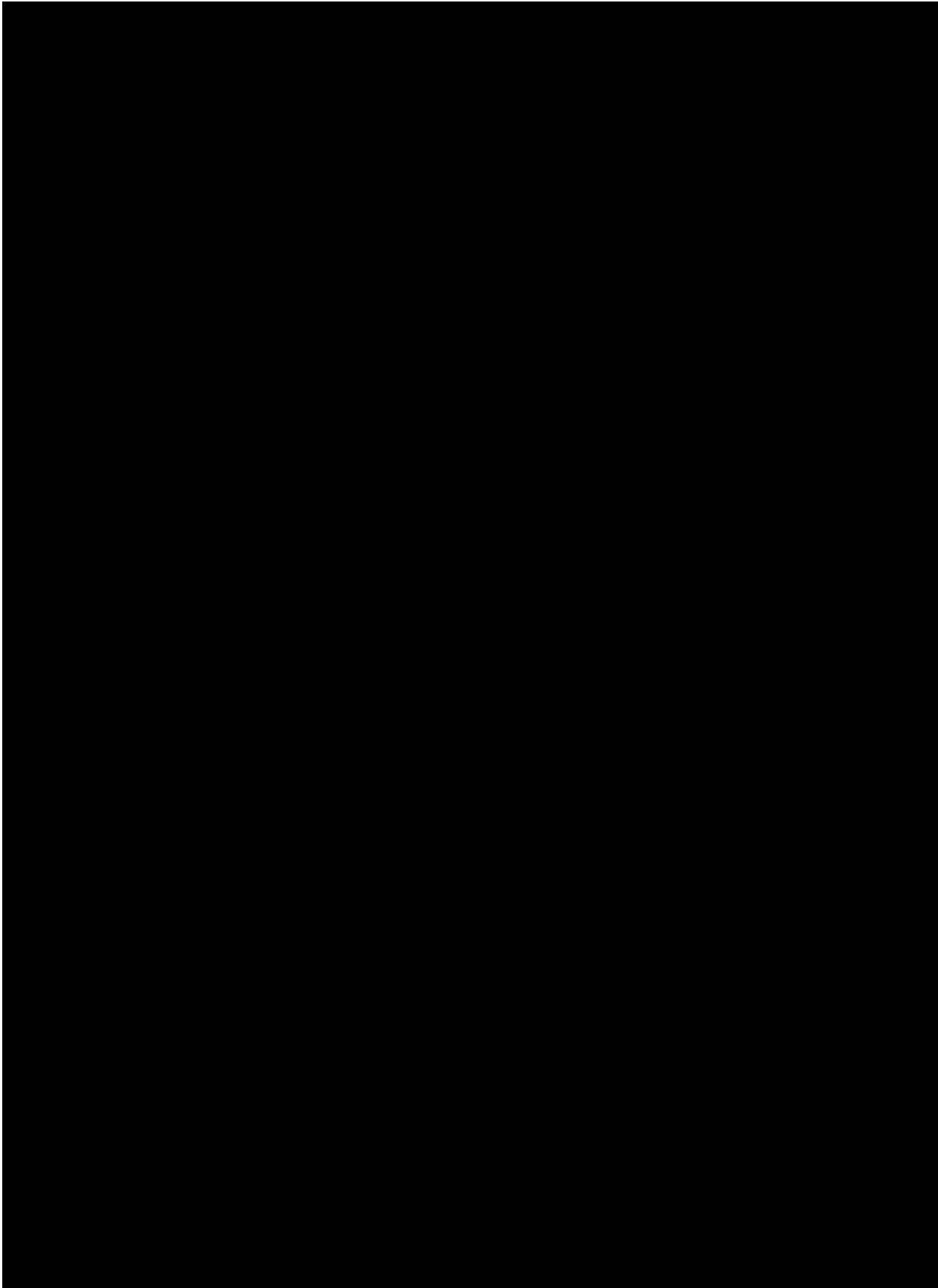


Professor Grigera Naón.

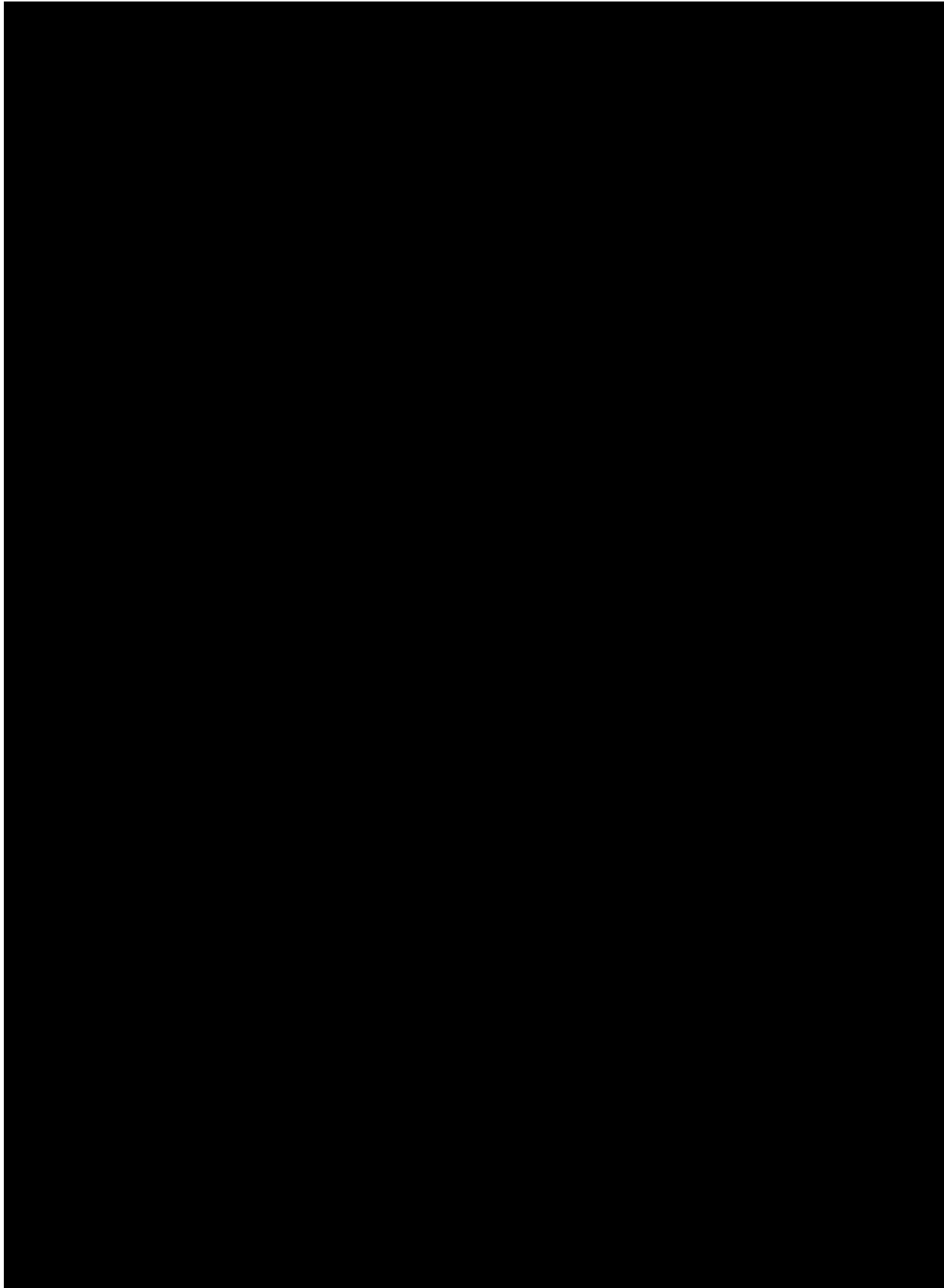
QUESTIONS FROM THE TRIBUNAL



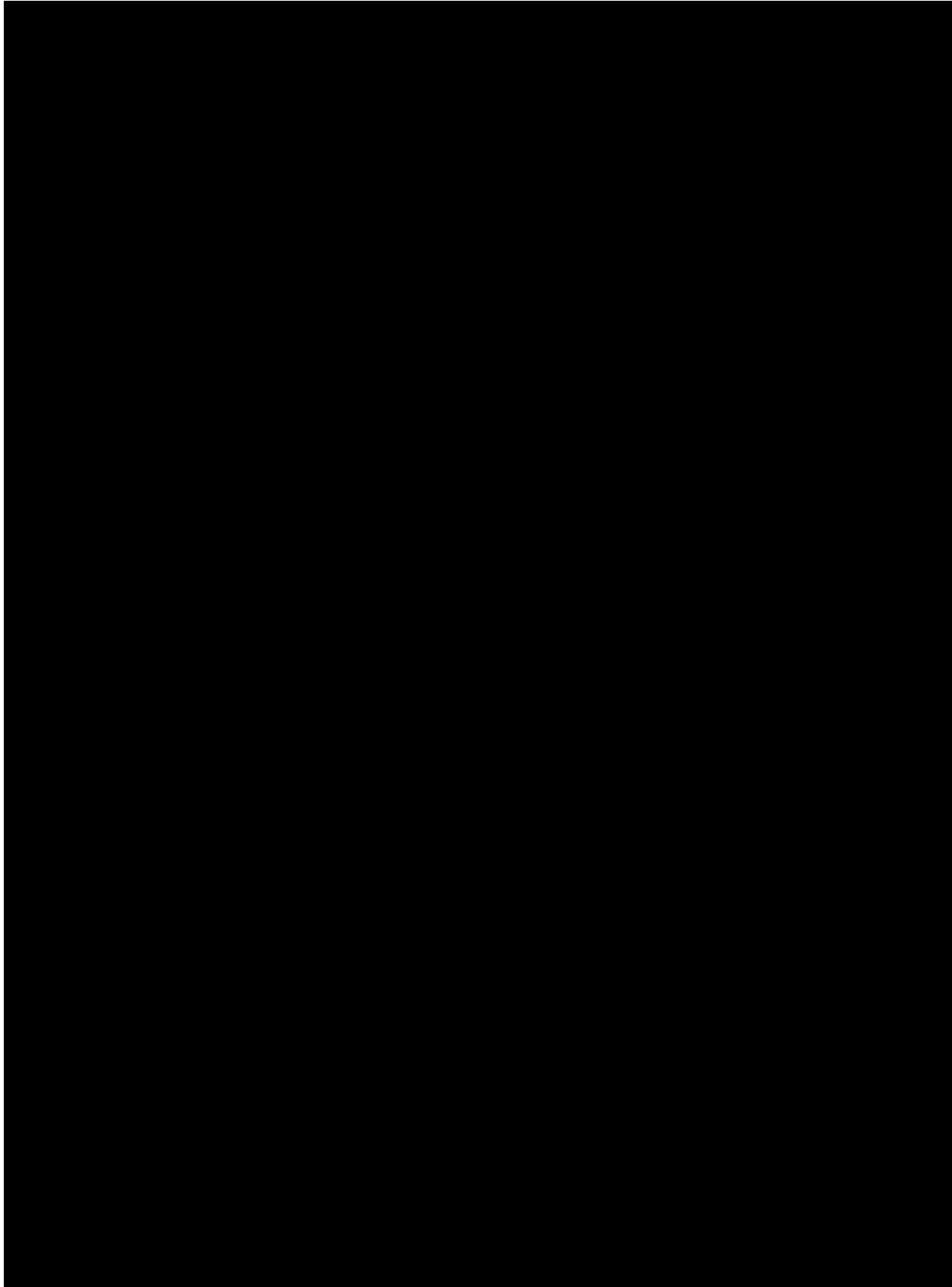
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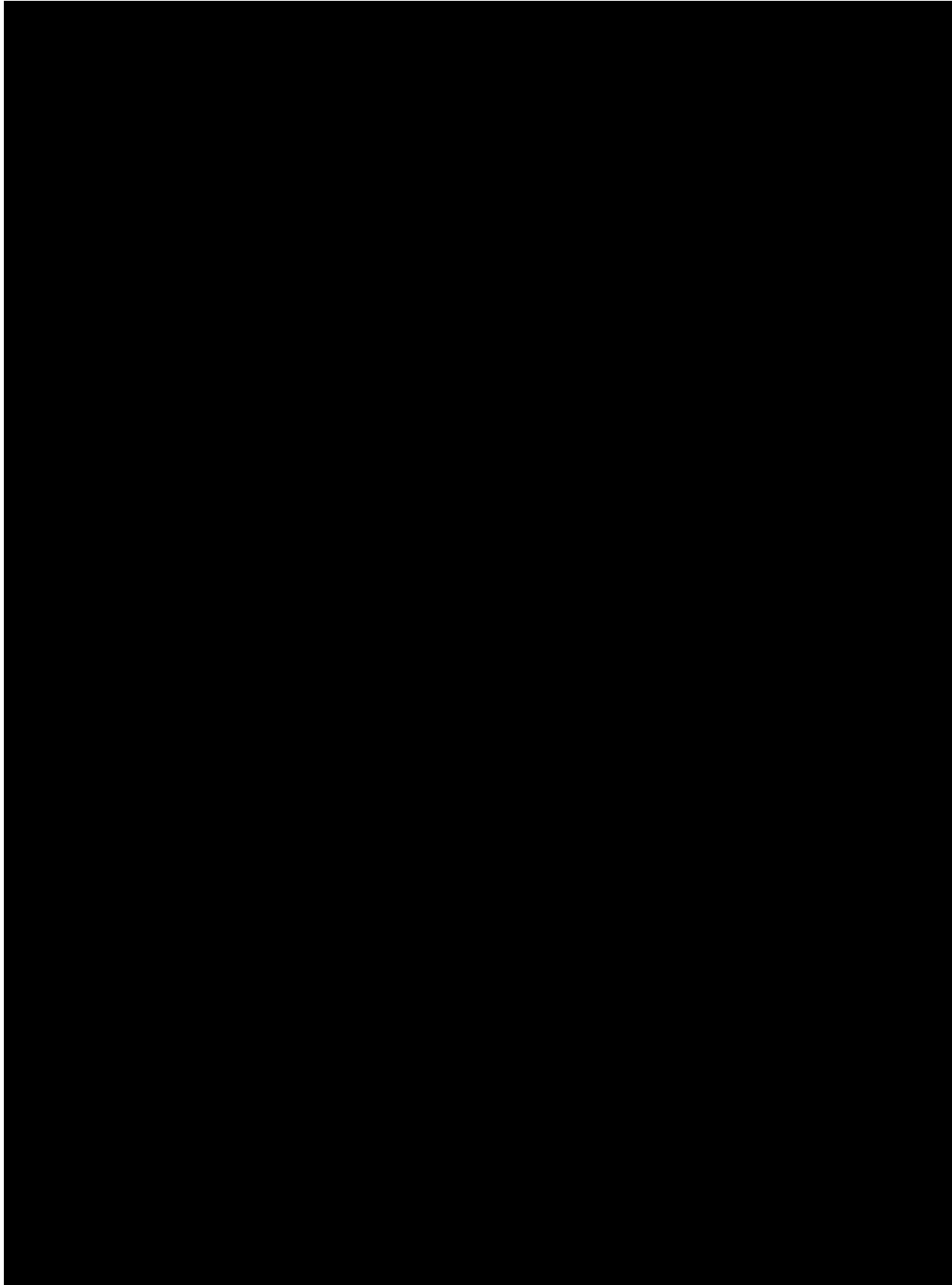
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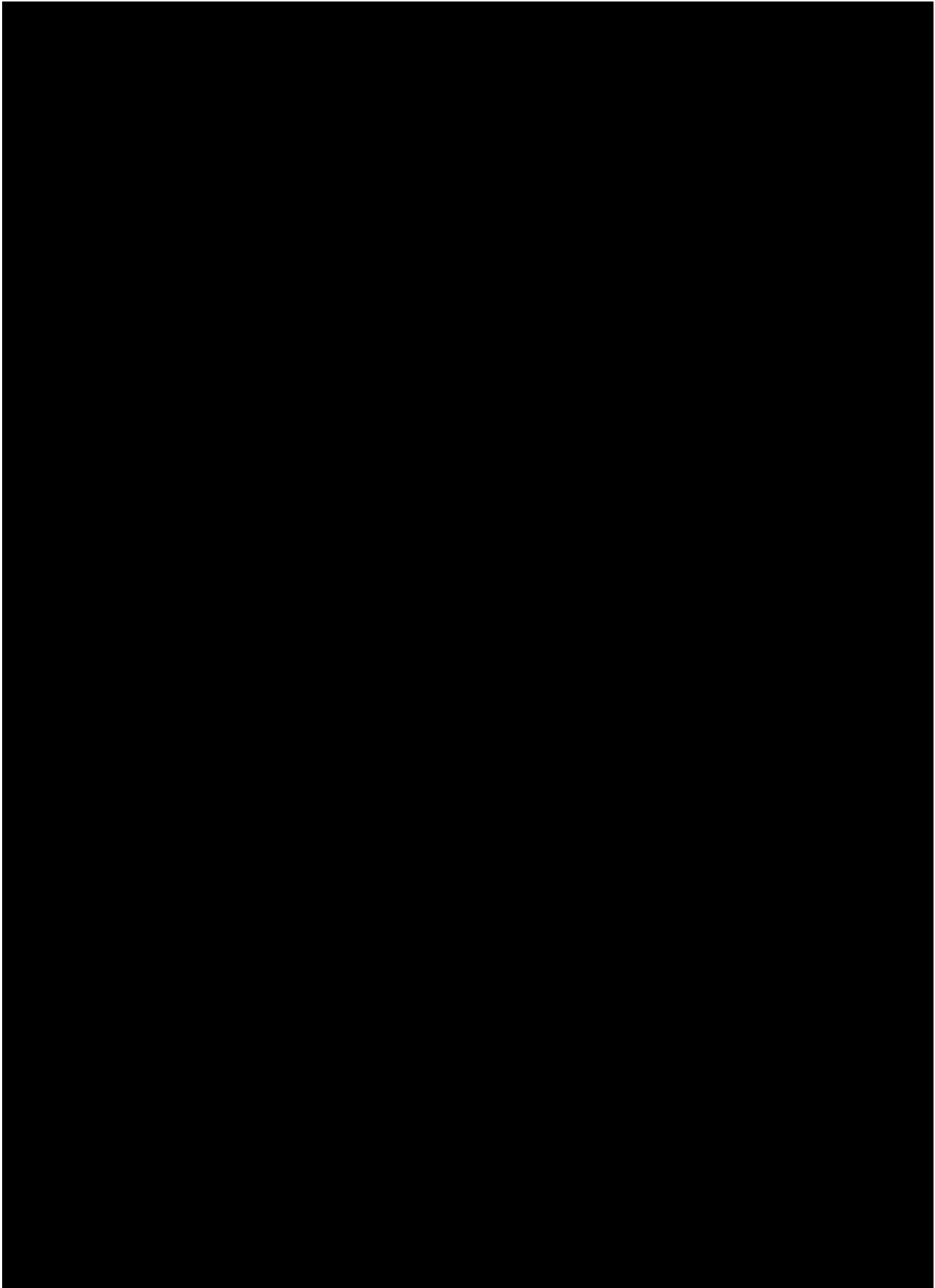
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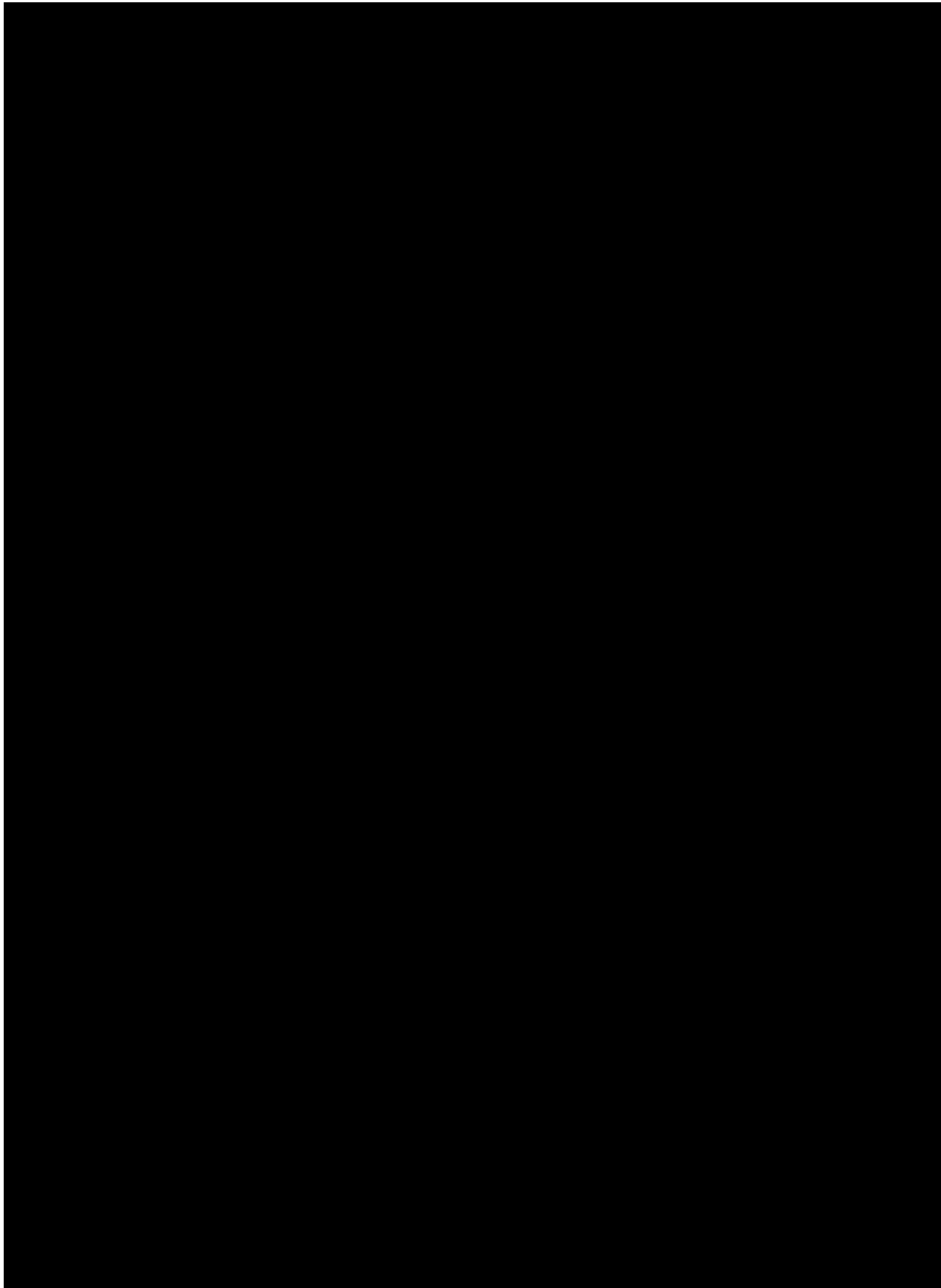
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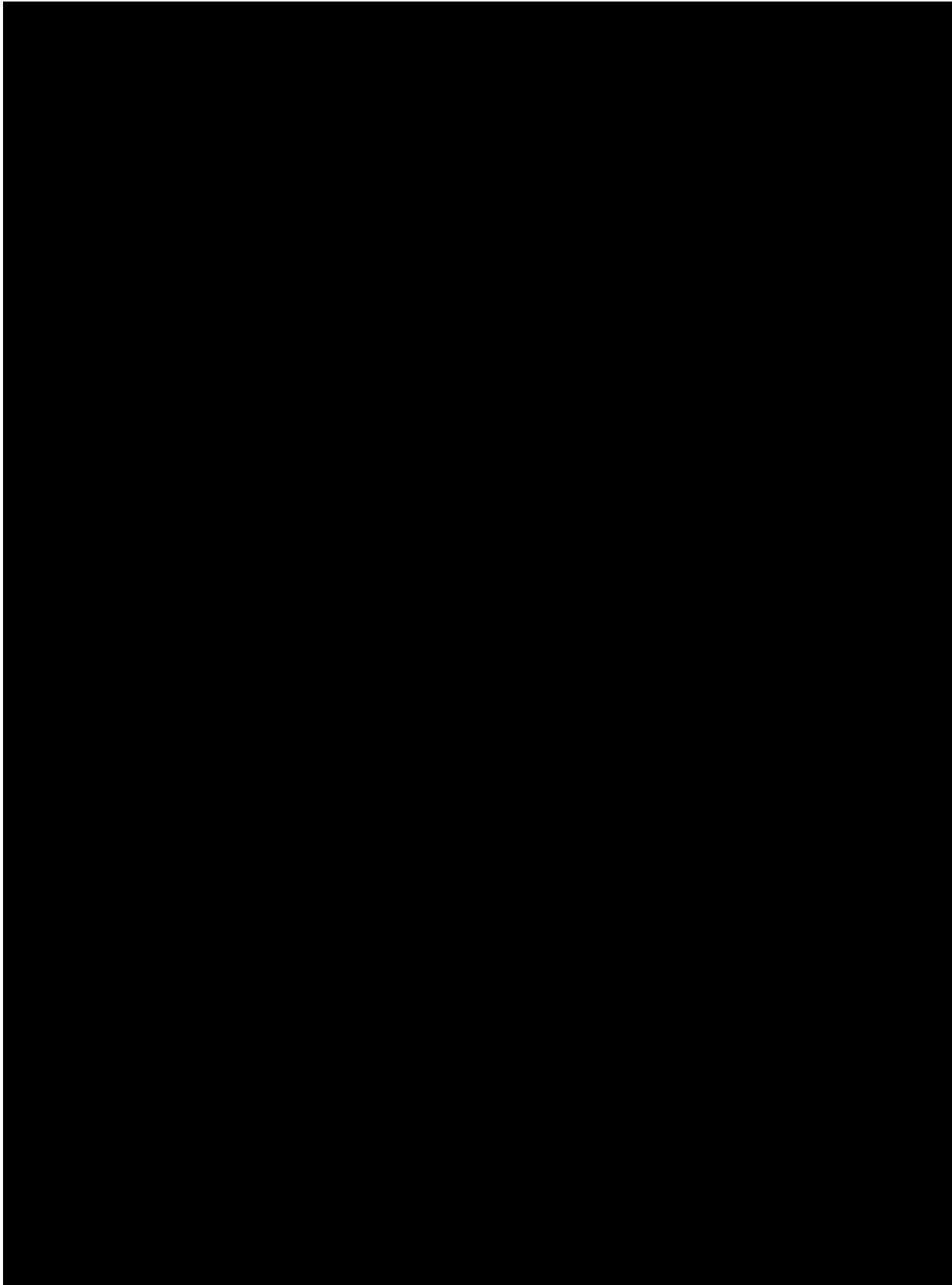
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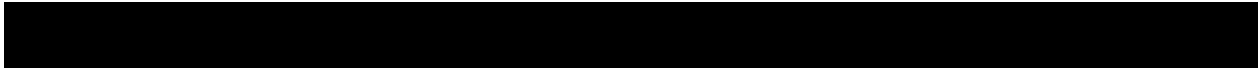
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PRESIDENT TERCIER: Thank you.

Further questions? No.

So, thank you very much for your testimony.
So, again, now we are--you are free, if I may say so,
and I would like to thank you.

THE WITNESS: Thank you for my freedom, sir.

(Witness steps down.)

PRESIDENT TERCIER: Okay. Now we will come
to Mr. Boutilier. He's in the room? Yeah, here he
is.

Do we need a short break or not?

MS. COHEN SMUTNY: I think just two or three
minutes to set up and maybe get a fresh water and
change the name.

PRESIDENT TERCIER: Okay.

(Brief recess.)

ROBERT BOUTILIER, CLAIMANTS' WITNESS CALLED

PRESIDENT TERCIER: So, let's resume.

Good morning, Mr. Boutilier. I would like to
welcome you here in this room. You were present a
moment ago, so I don't need to introduce you to the

1 Members of the Arbitral Tribunal.

2 I would like to invite you to read the
3 Declaration that is in front of you concerning the
4 Expert. It is by your arm. You have the microphone.

5 THE WITNESS: I solemnly declare, upon my
6 honor and conscience, that my statement will be in
7 accordance with my sincere belief.

8 PRESIDENT TERCIER: Thank you very much.

9 You have prepared for this procedure an
10 expert witness opinion in the matter of the Social
11 License to Operate dated the 1st of November 2018.

12 Have you this document in front of you?

13 THE WITNESS: Yes.

14 PRESIDENT TERCIER: Can you confirm the
15 content of this document?

16 THE WITNESS: I wrote this document. It's my
17 own opinion.

18 PRESIDENT TERCIER: And you confirm it? You
19 confirm the content of the document?

20 THE WITNESS: Yes.

21 PRESIDENT TERCIER: Okay. In your Expert
22 Report, you--the last sentence, "If, subsequently, I

1 consider that this opinion requires any correction,
2 modification, or qualification, I will notify the
3 Parties of this Arbitration and the Arbitral Tribunal
4 forthwith."

5 I suppose it was not the case, so it's a
6 confirmation that you're making?

7 THE WITNESS: Correct.

8 PRESIDENT TERCIER: Fine.

9 Can you, in a few words, start by introducing
10 yourself. And then the second question, just sort of
11 warming up--if I may say so--in introducing, tell us
12 how the process--what is the process that has been
13 followed for the preparation of your Report.

14 Please.

15 THE WITNESS: Okay. My name is Robert
16 Boutilier. I was born in Canada, but I live in Mexico
17 now. And my educational background is in psychology.
18 I'm a social psychologist, although my publications
19 now are more in management science and applied
20 sociology. I did marketing research and public
21 opinion polling for 20 years in Canada.

22 I was vice president of a national opinion

1 polling company in Toronto. Around 1999 I began doing
2 stakeholder research in the mining industry and
3 developed a stakeholder approach and methodology which
4 has evolved into an approach for measuring the Social
5 License.

6 I now do consulting with mostly mining
7 companies and some infrastructure and energy companies
8 around the world, Africa, Latin America, Australasia,
9 North America. And I published four books on the
10 stakeholder relations and the Social License, a dozen
11 academic articles and chapters, and about--over 60
12 conference presentations, mostly on stakeholder
13 relations, the Social License, and a view on
14 corruption as well.

15 The process of writing this Report. I was
16 contacted by counsel for the Claimant. They asked me
17 if I would be interested in contributing to my
18 expertise in this case. I acknowledged that Dr. Ian
19 Thomson is a co-author of mine, and we worked to--the
20 first thing that happened was I reviewed a great deal
21 of material on the case that was available and then
22 tried to organize it into something that would tell

1 the story of what level of Social License the Project
2 had.

3 And I wrote drafts of the Report, and counsel
4 commented on them. And then I re-wrote them and added
5 additional information and had the final editorial
6 control.

7 PRESIDENT TERCIER: Okay. What was the role
8 played by Mr. Ian Thomson?

9 THE WITNESS: I had no contact with him on
10 this. We know that we are each involved in this case.
11 We have both signed confidentiality agreements. And
12 so, we look forward to the final publication of this
13 case so that we can talk about it.

14 (Laughter.)

15 PRESIDENT TERCIER: Good. It could be a good
16 proposal.

17 But you had Ian's Report--

18 THE WITNESS: Yes.

19 PRESIDENT TERCIER: --before, and you
20 analyzed it?

21 THE WITNESS: That's right.

22 PRESIDENT TERCIER: Okay. Fine.

1 We have been told that you will make a
2 presentation, that is the way that you have announced,
3 and that you have one hour for that. That's correct?

4 THE WITNESS: Correct.

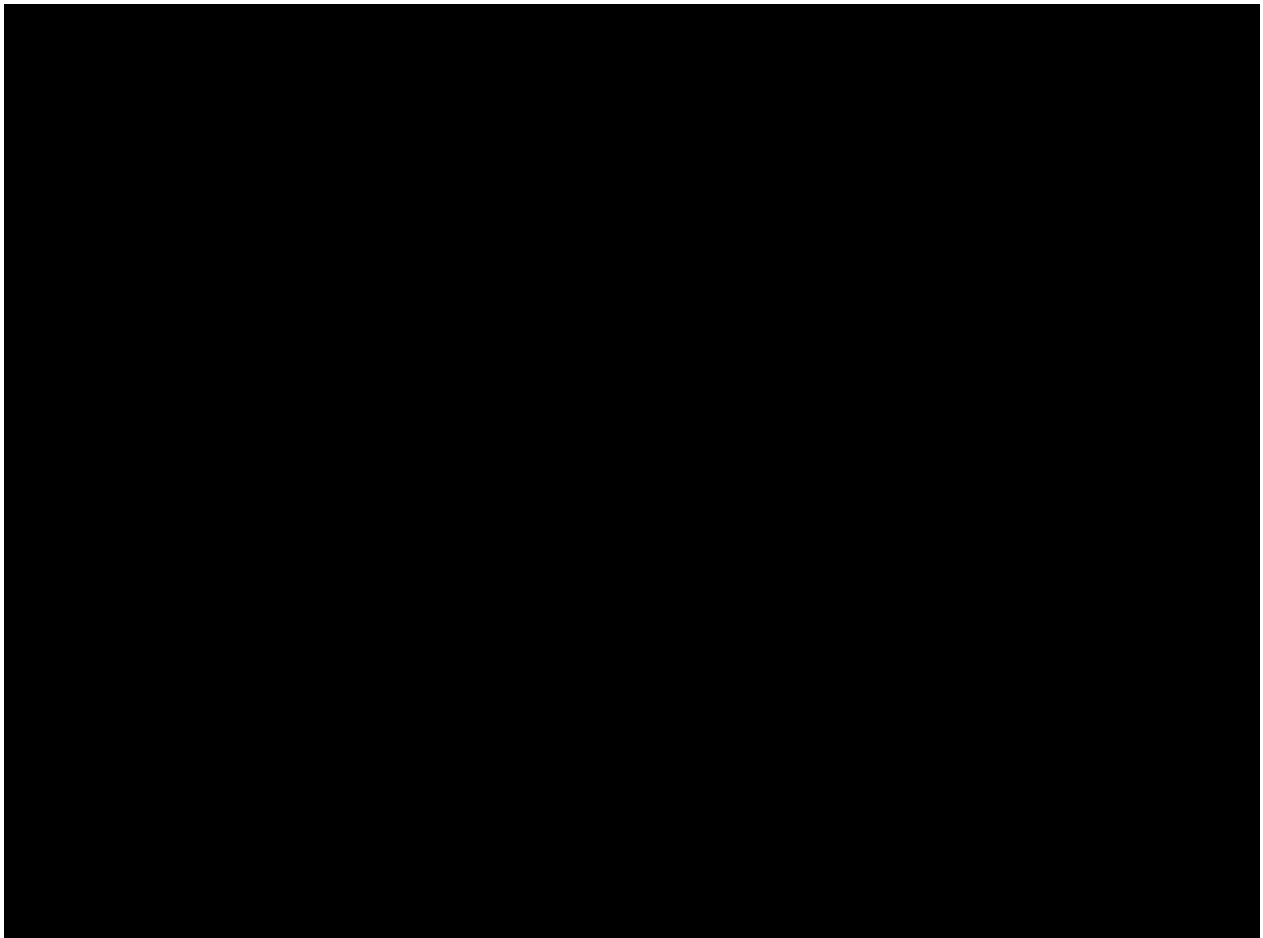
5 PRESIDENT TERCIER: If you could stick to the
6 time, it would be good.

7 THE WITNESS: Okay.

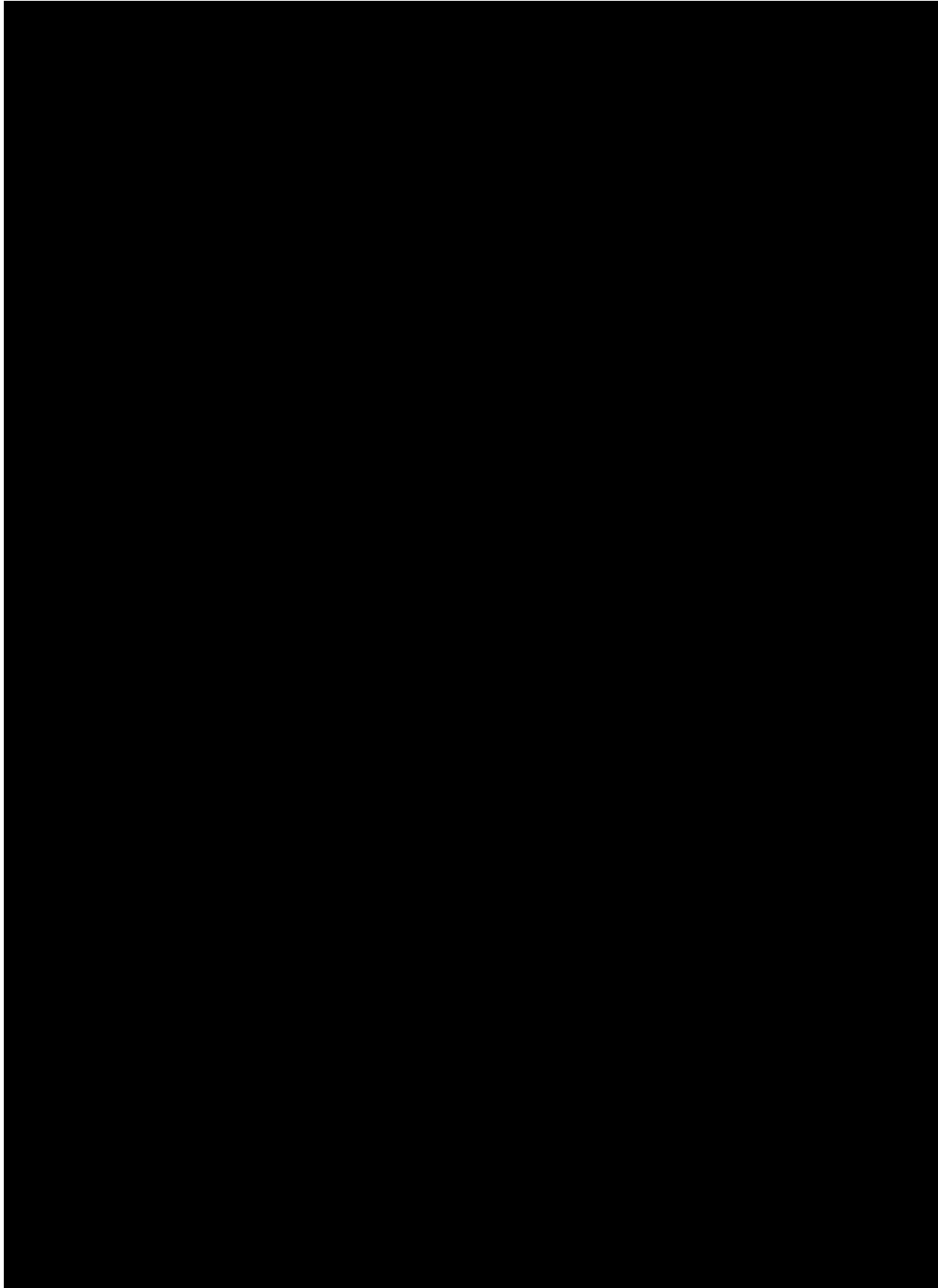
8 PRESIDENT TERCIER: You have the floor.

9 THE WITNESS: Thank you.

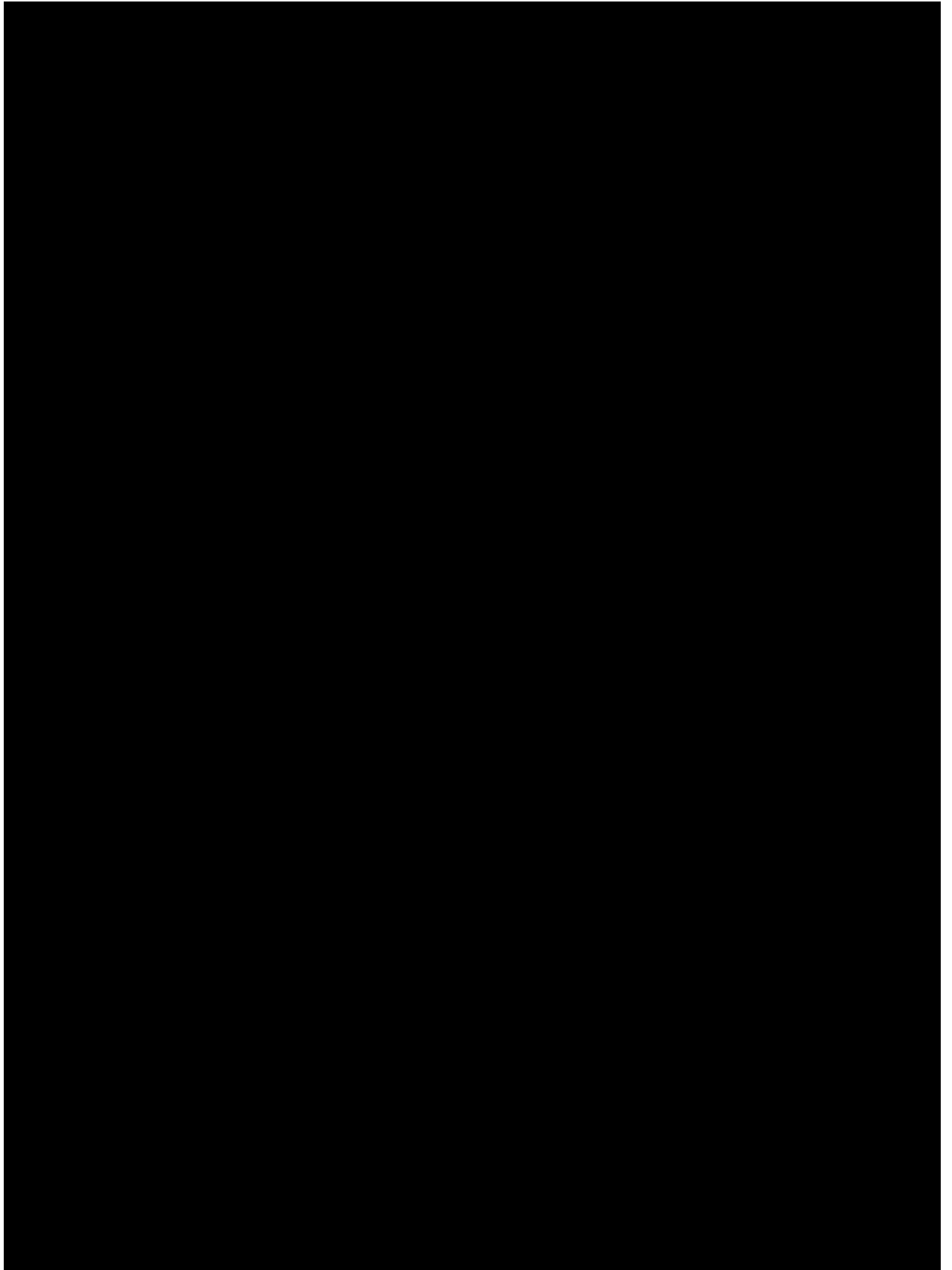
10 DIRECT PRESENTATION



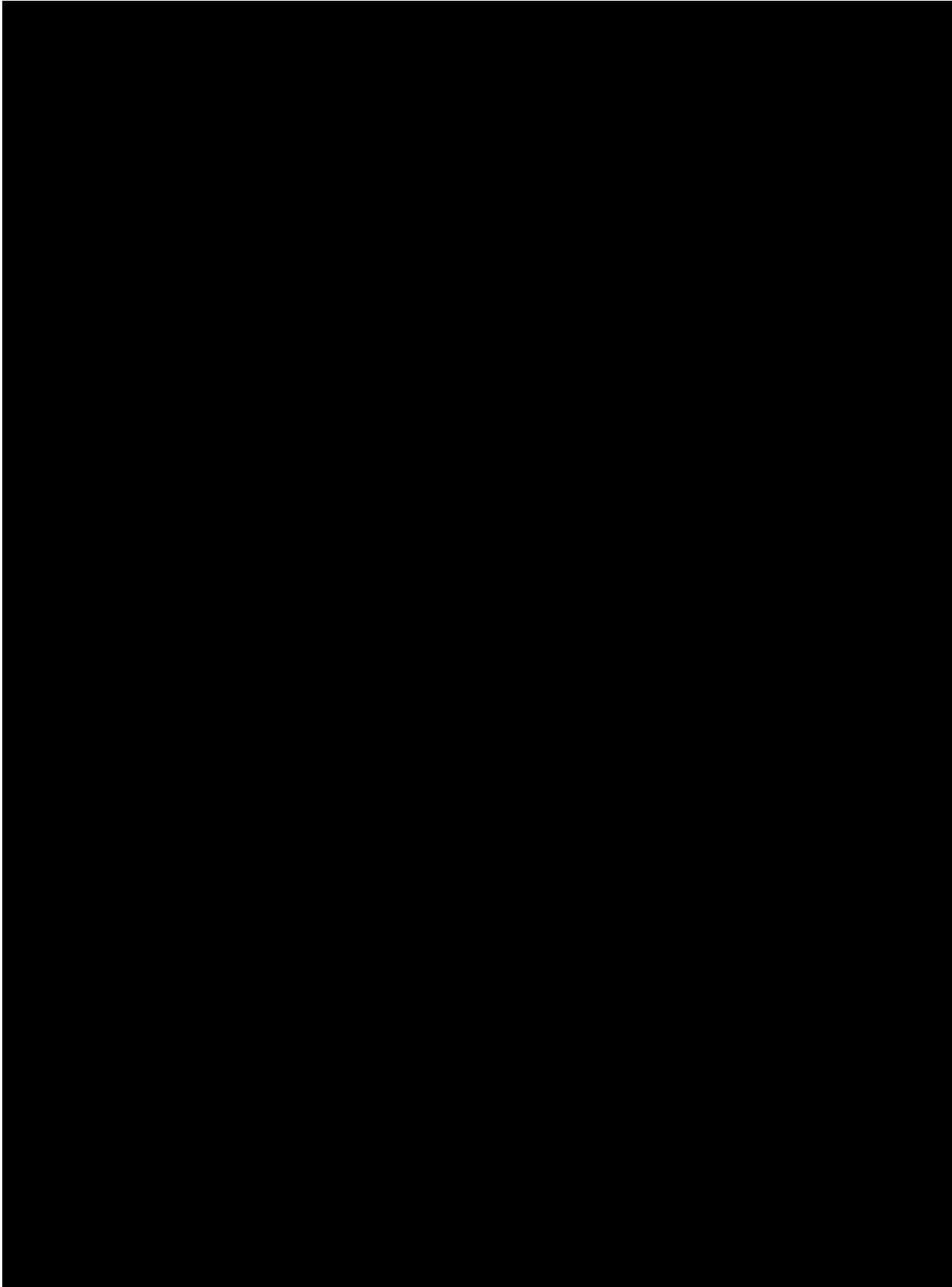
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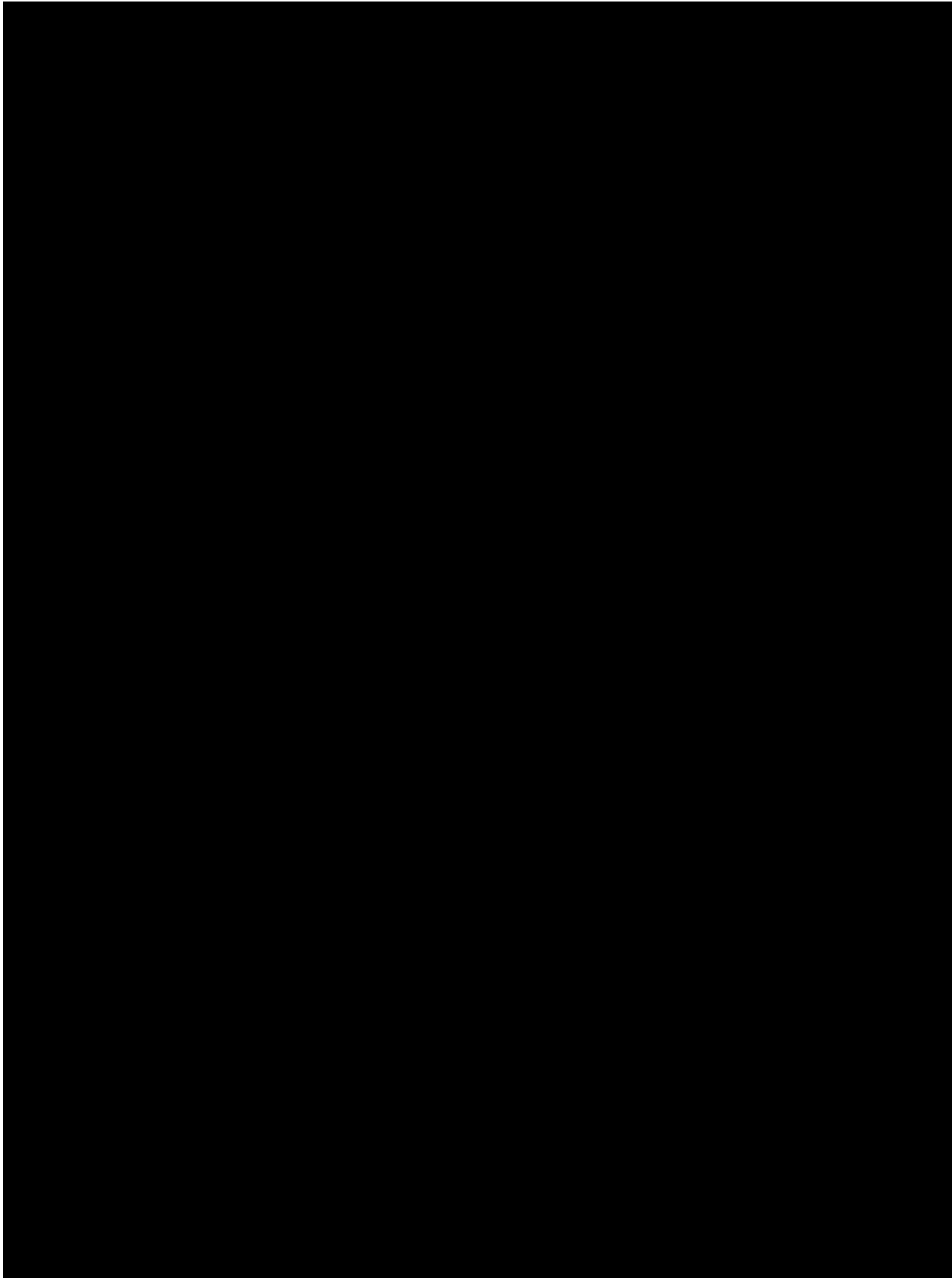
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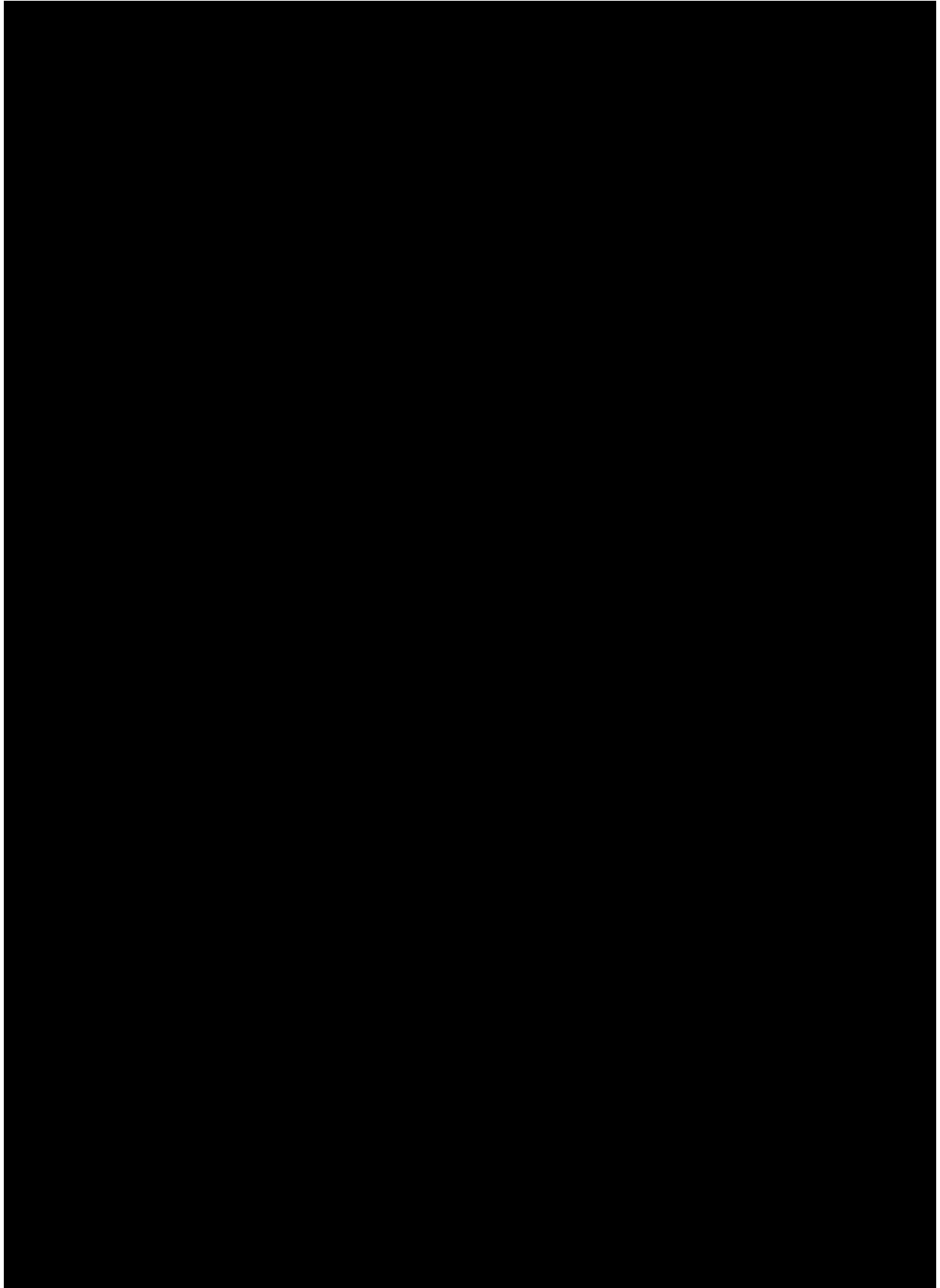
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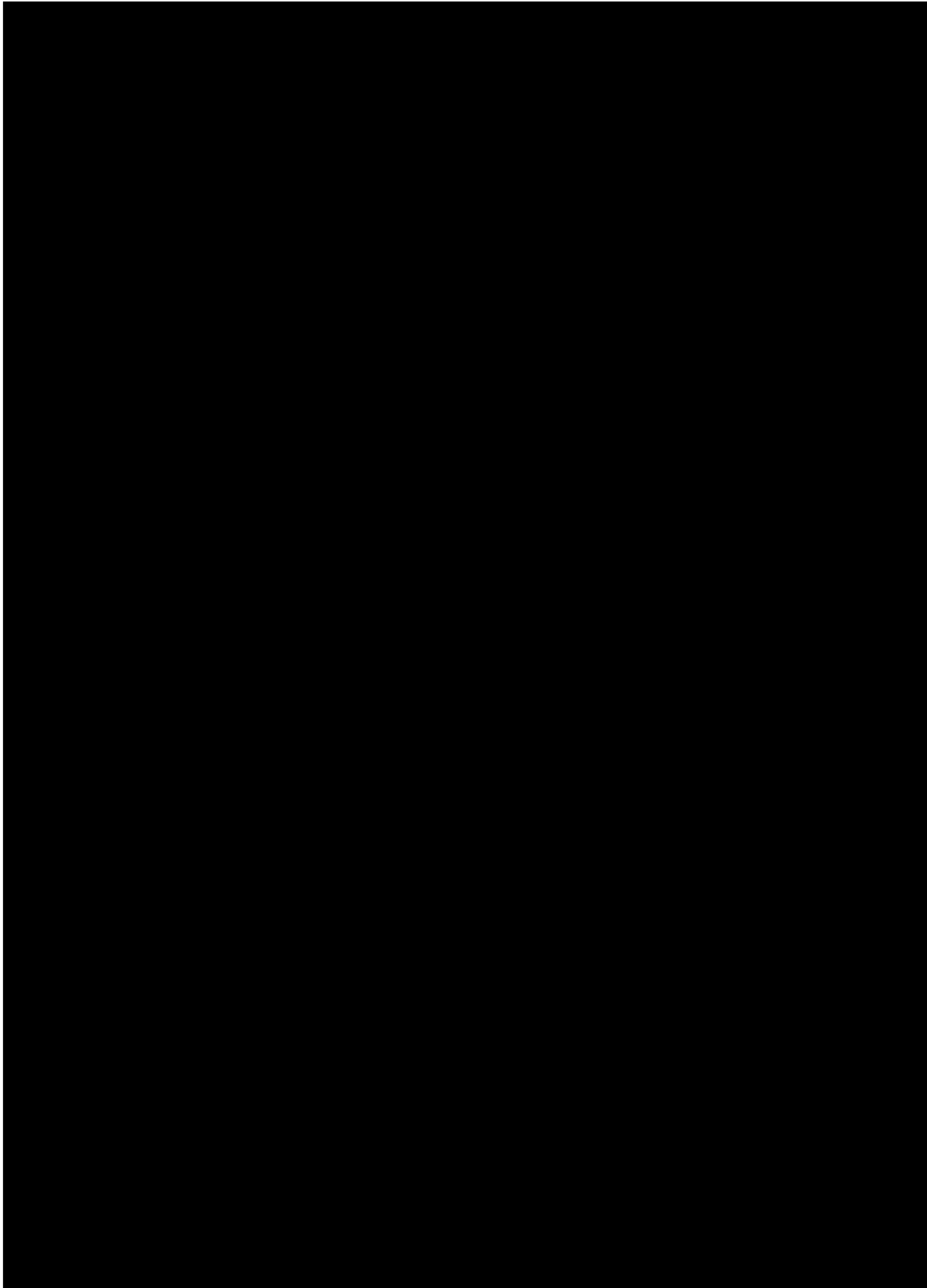
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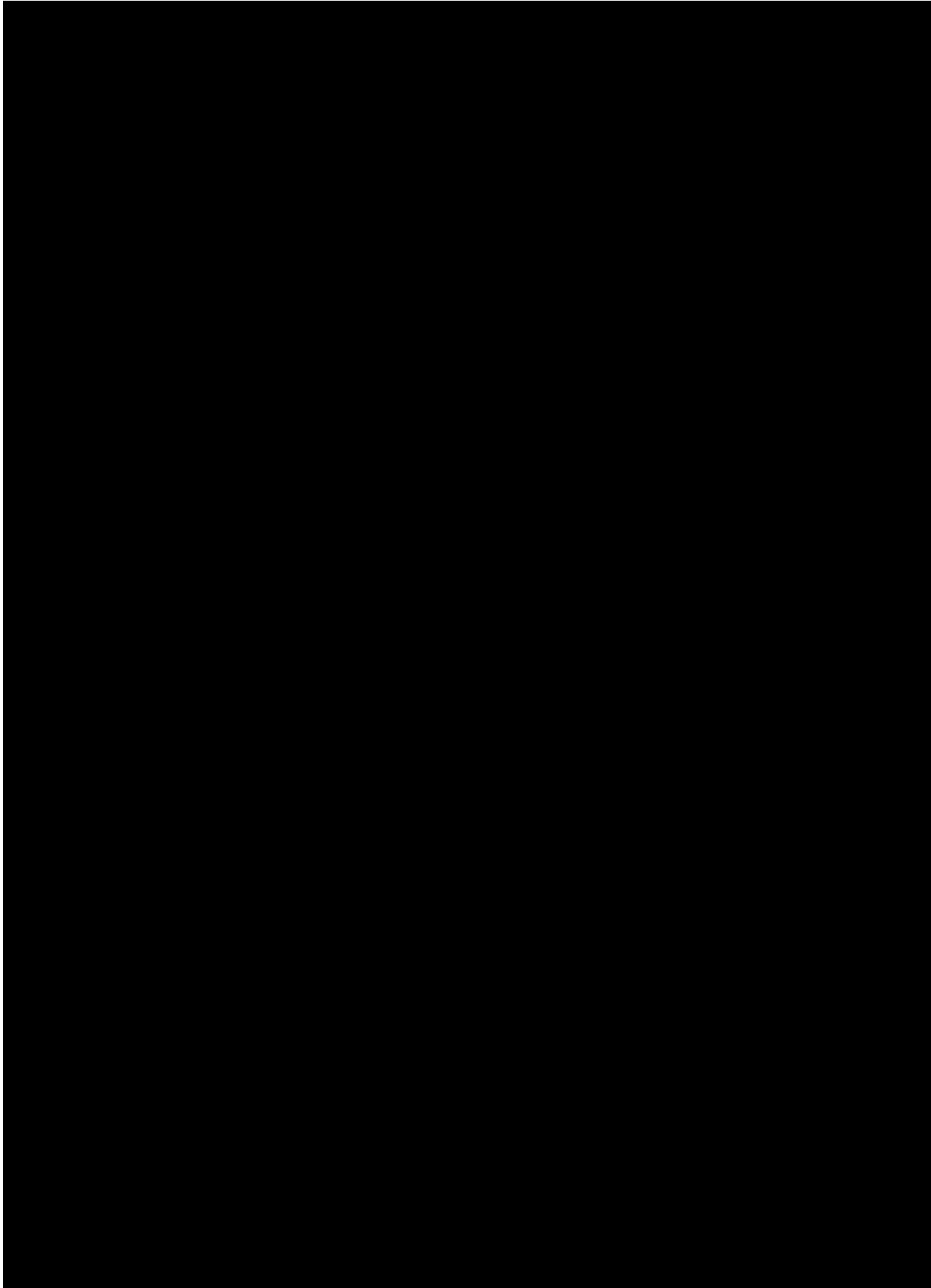
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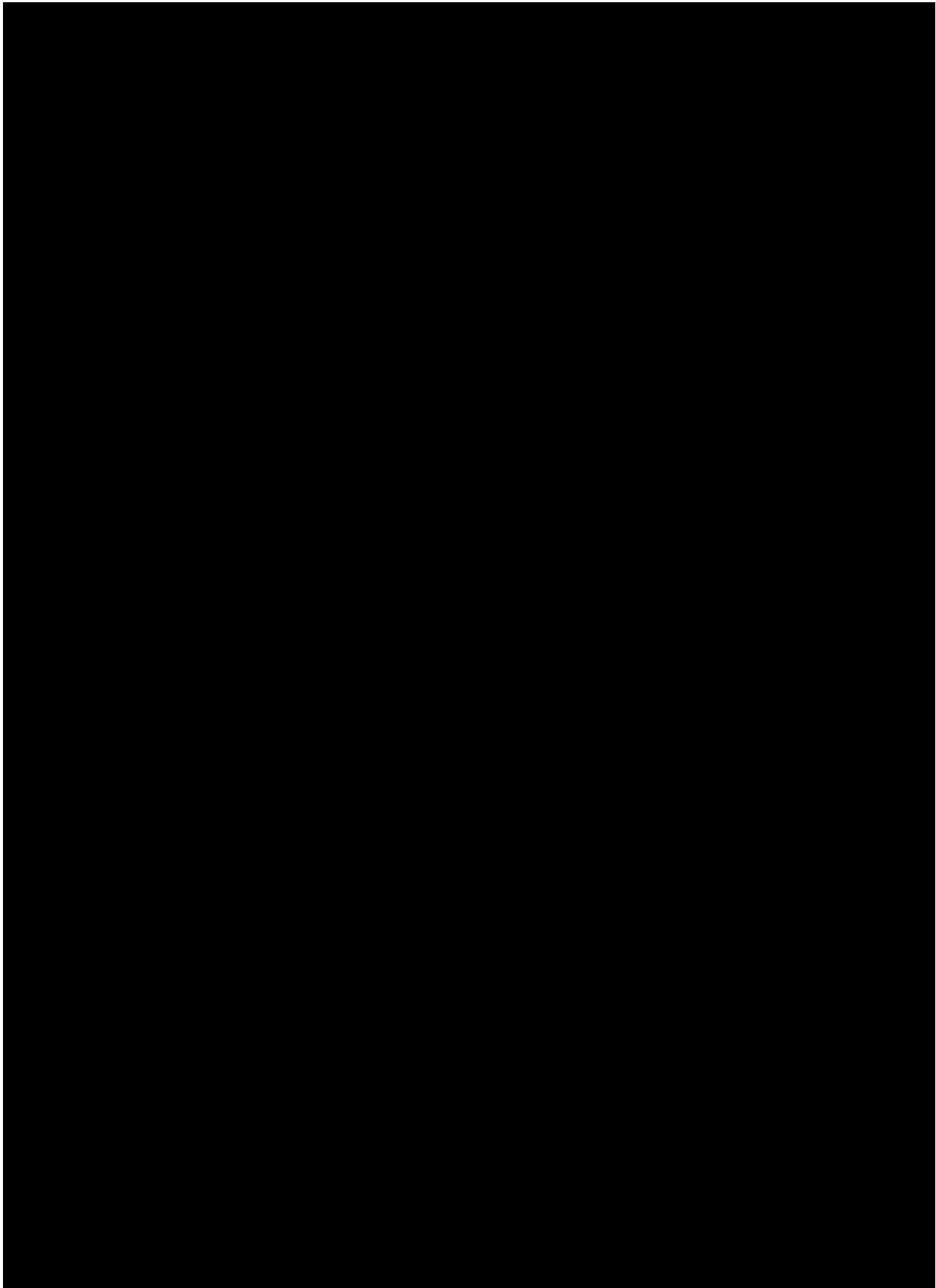
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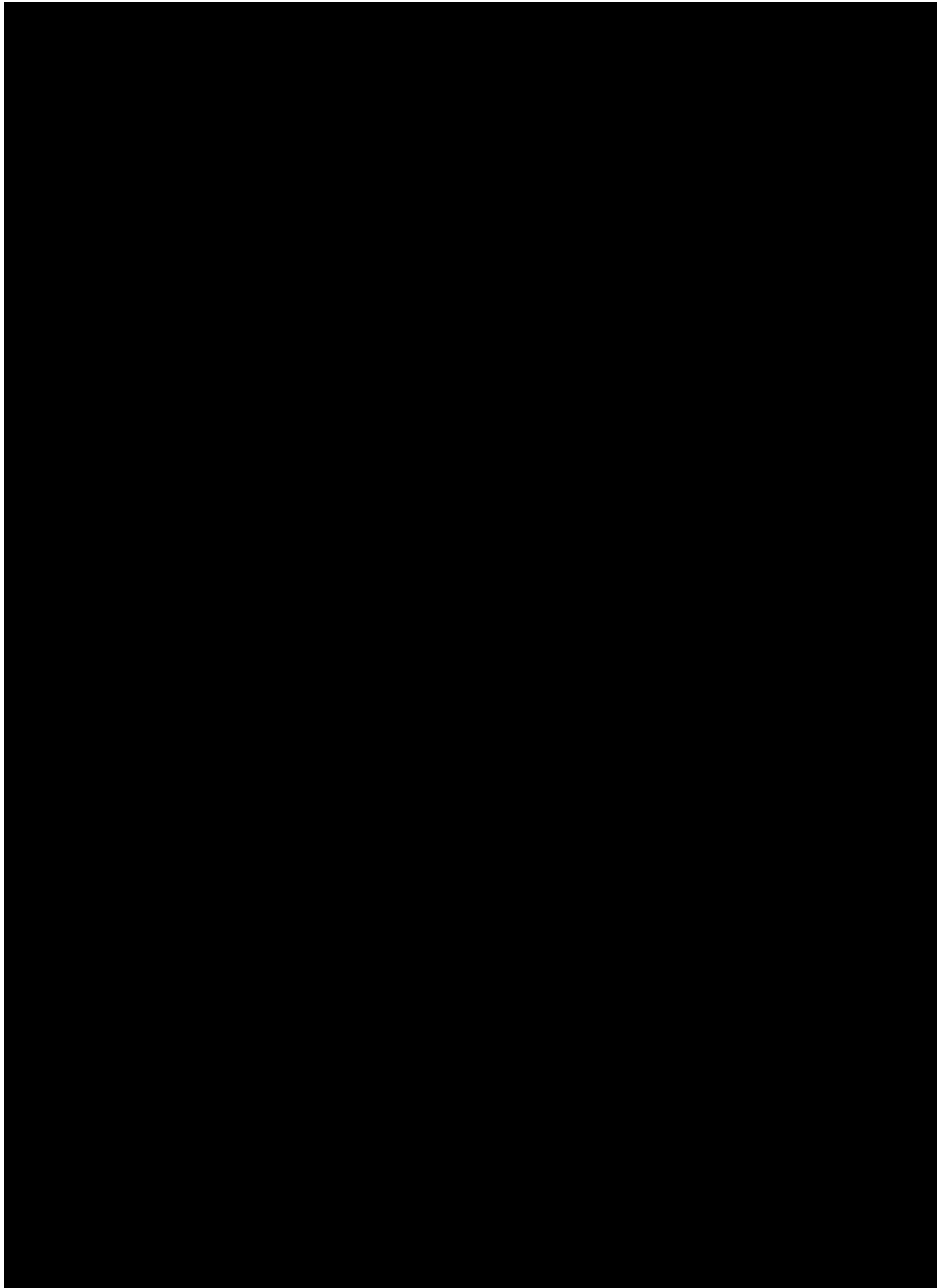
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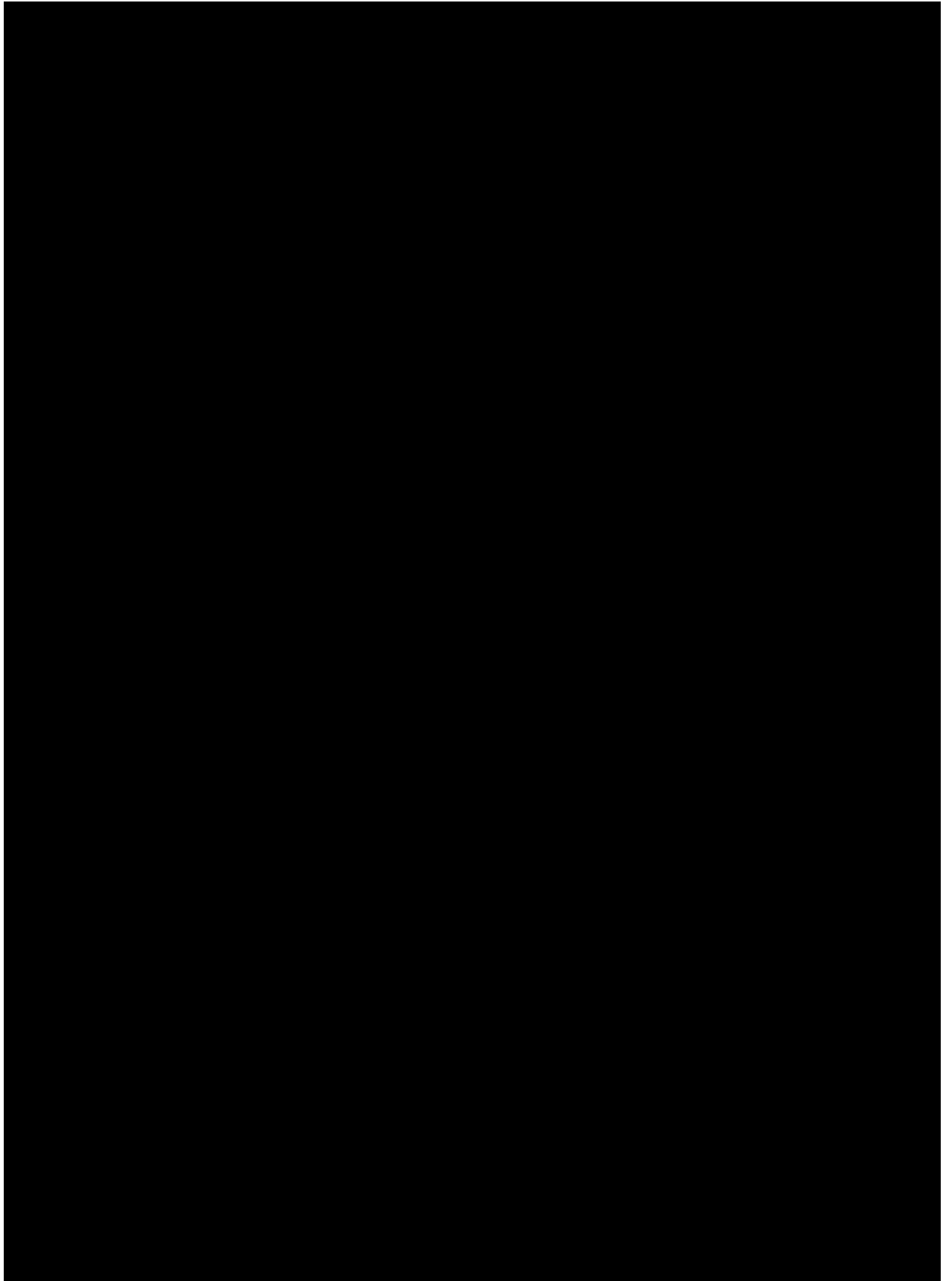
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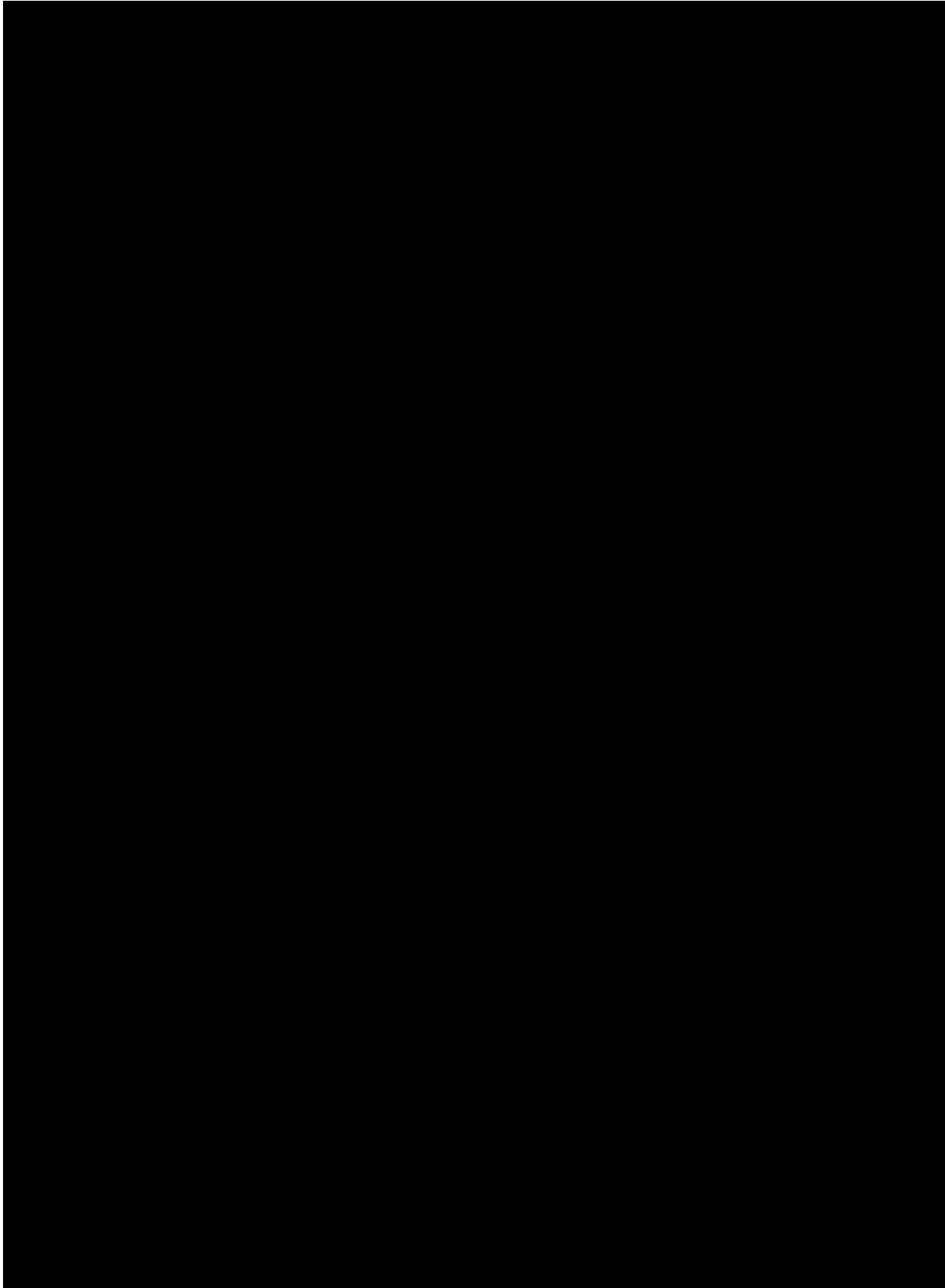
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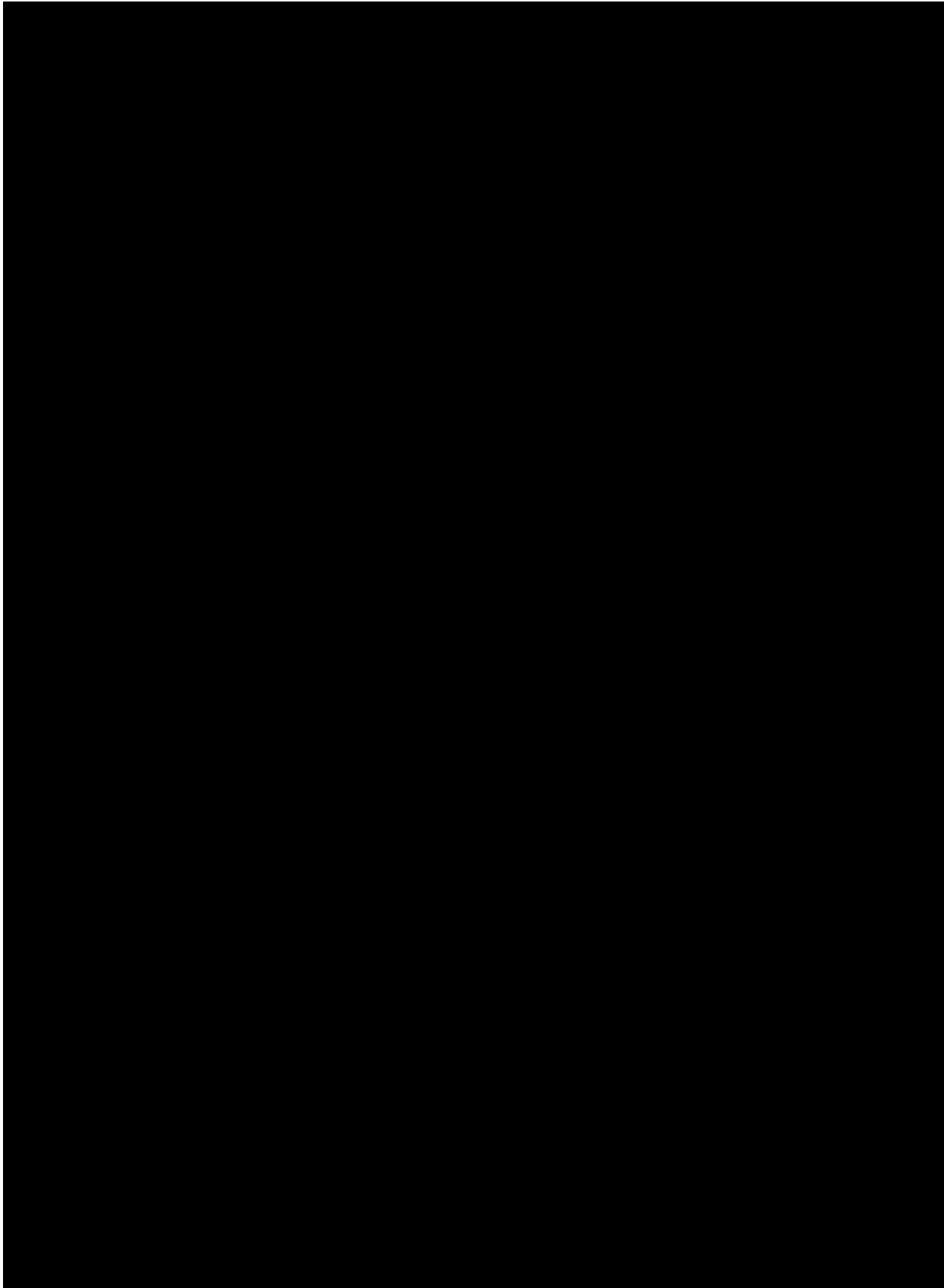
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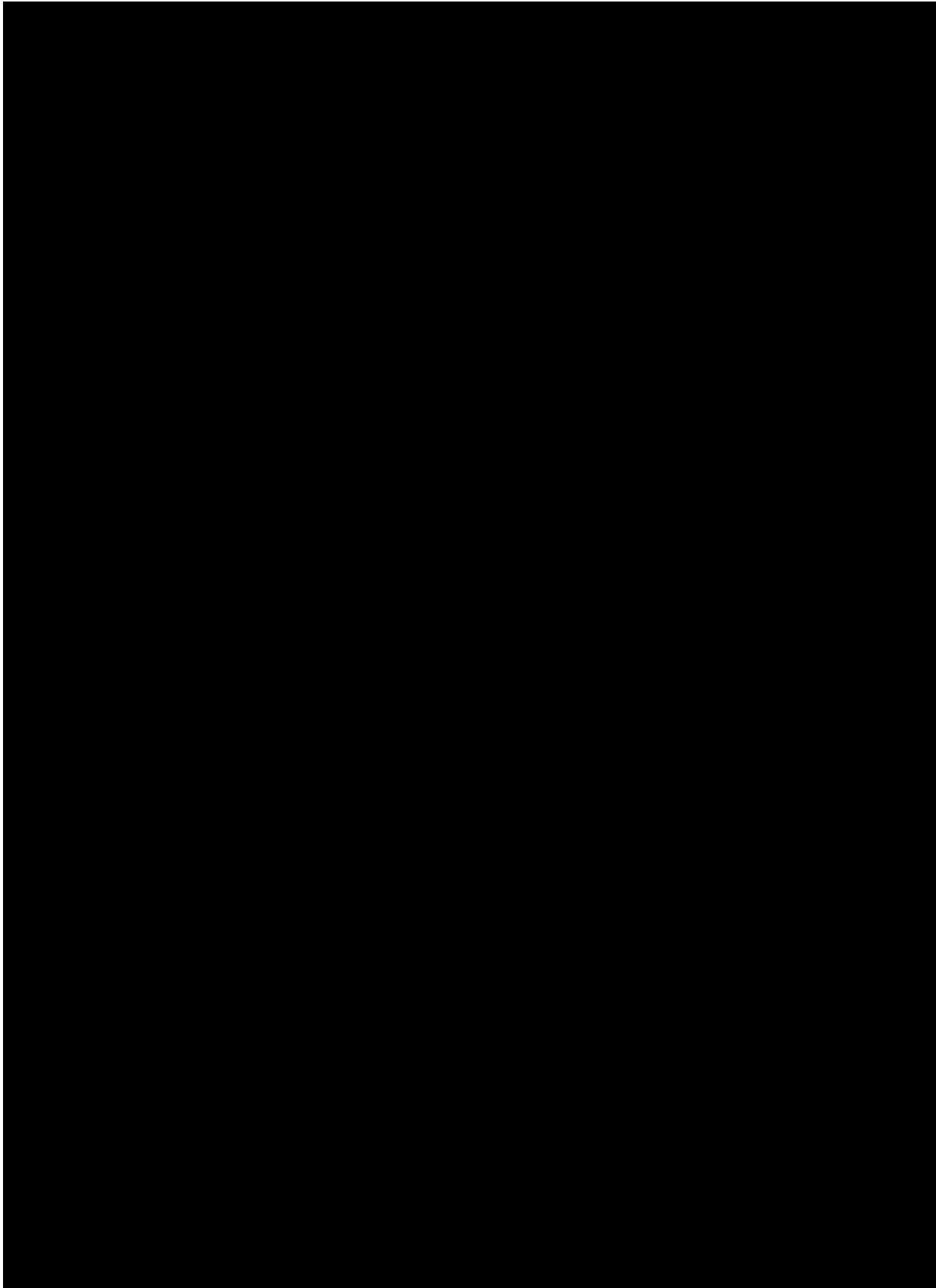
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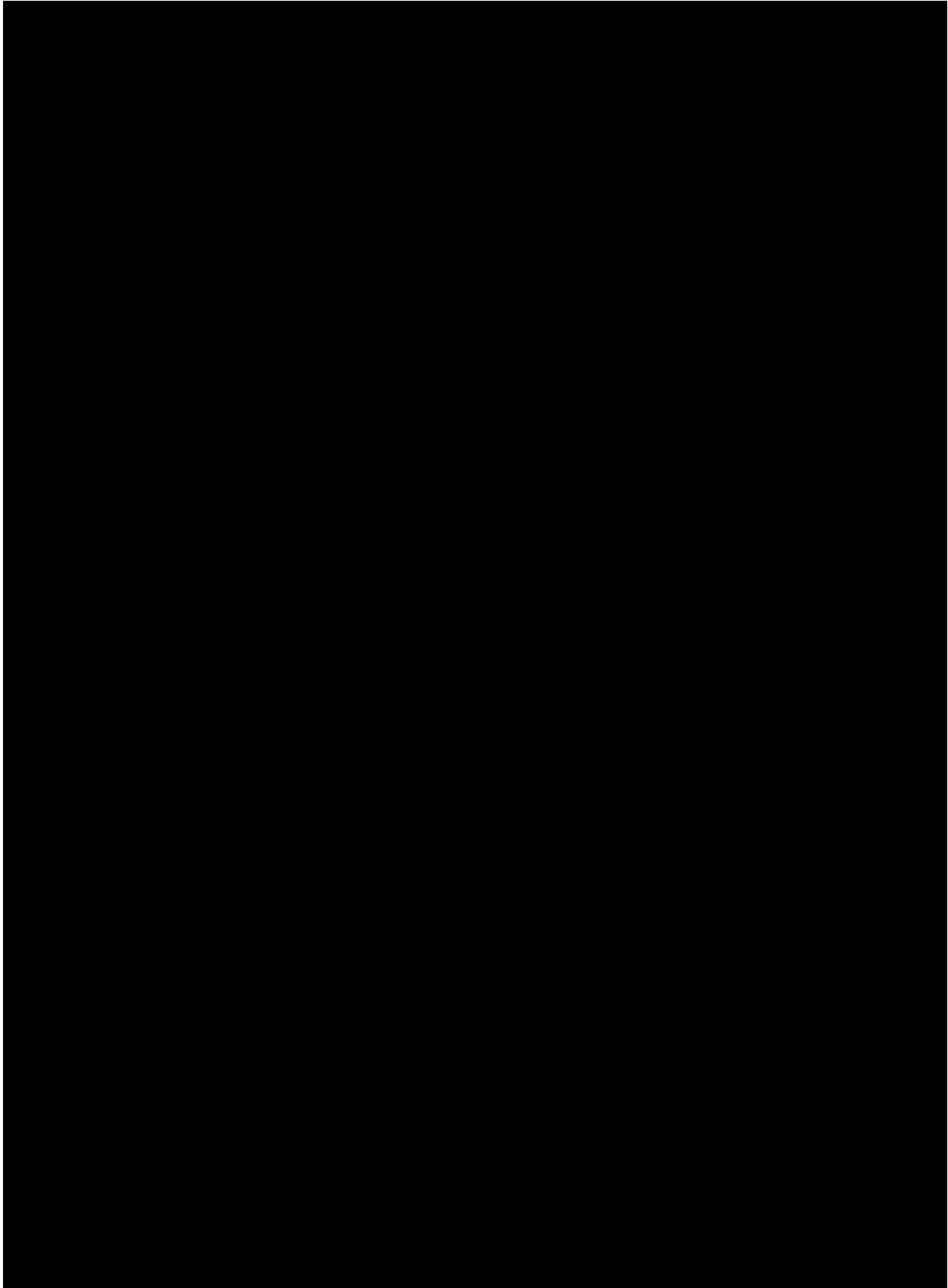
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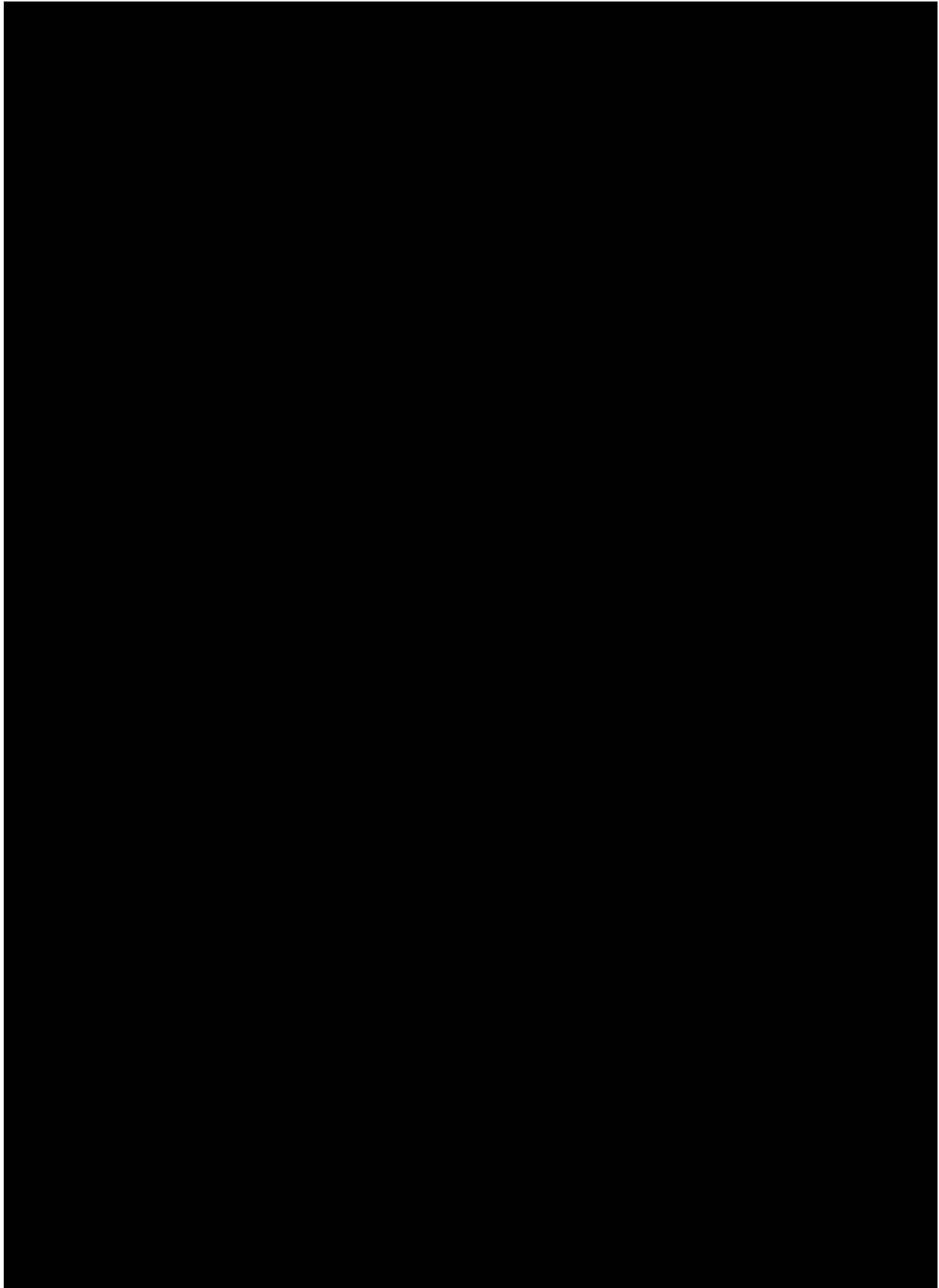
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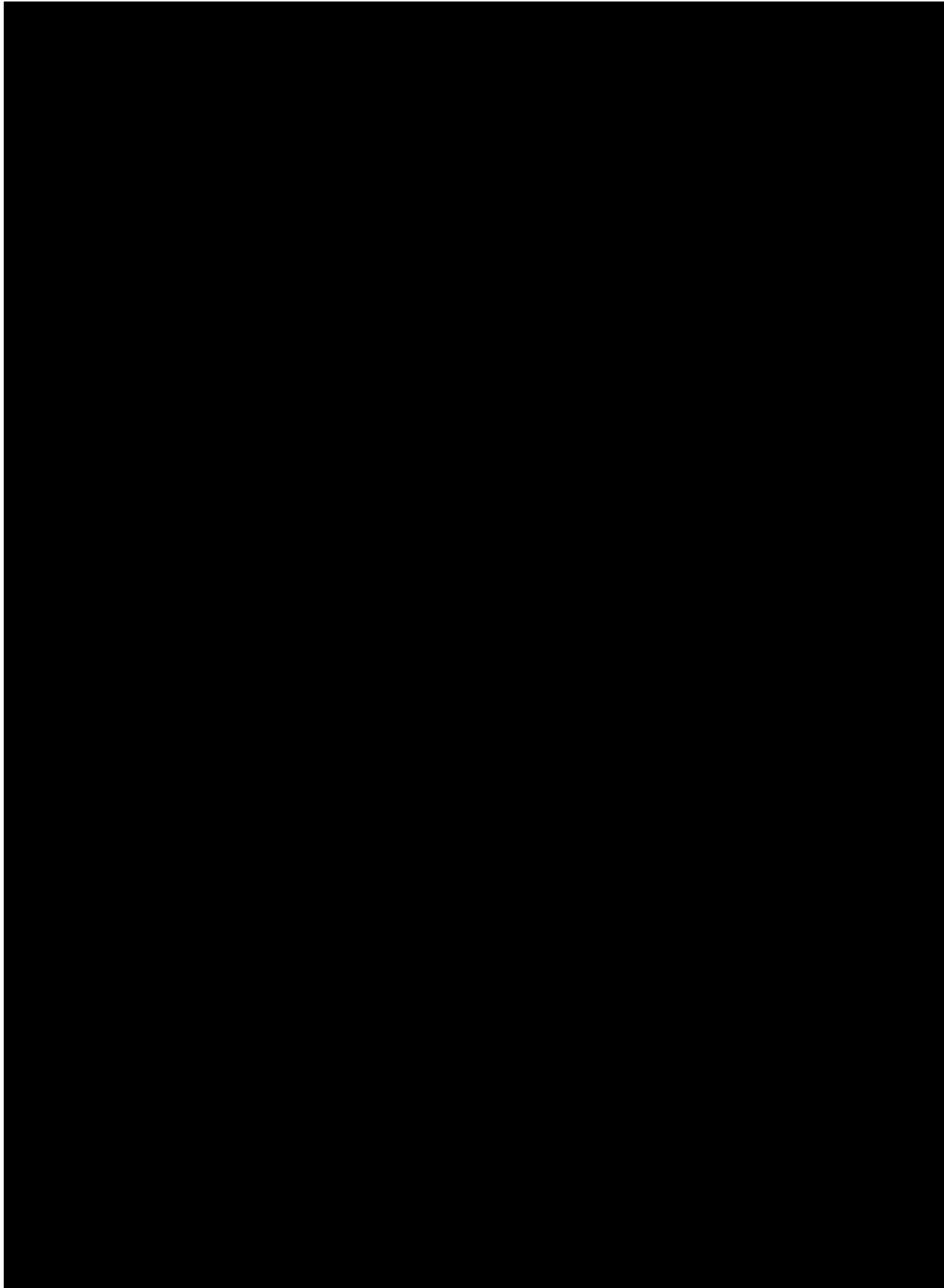
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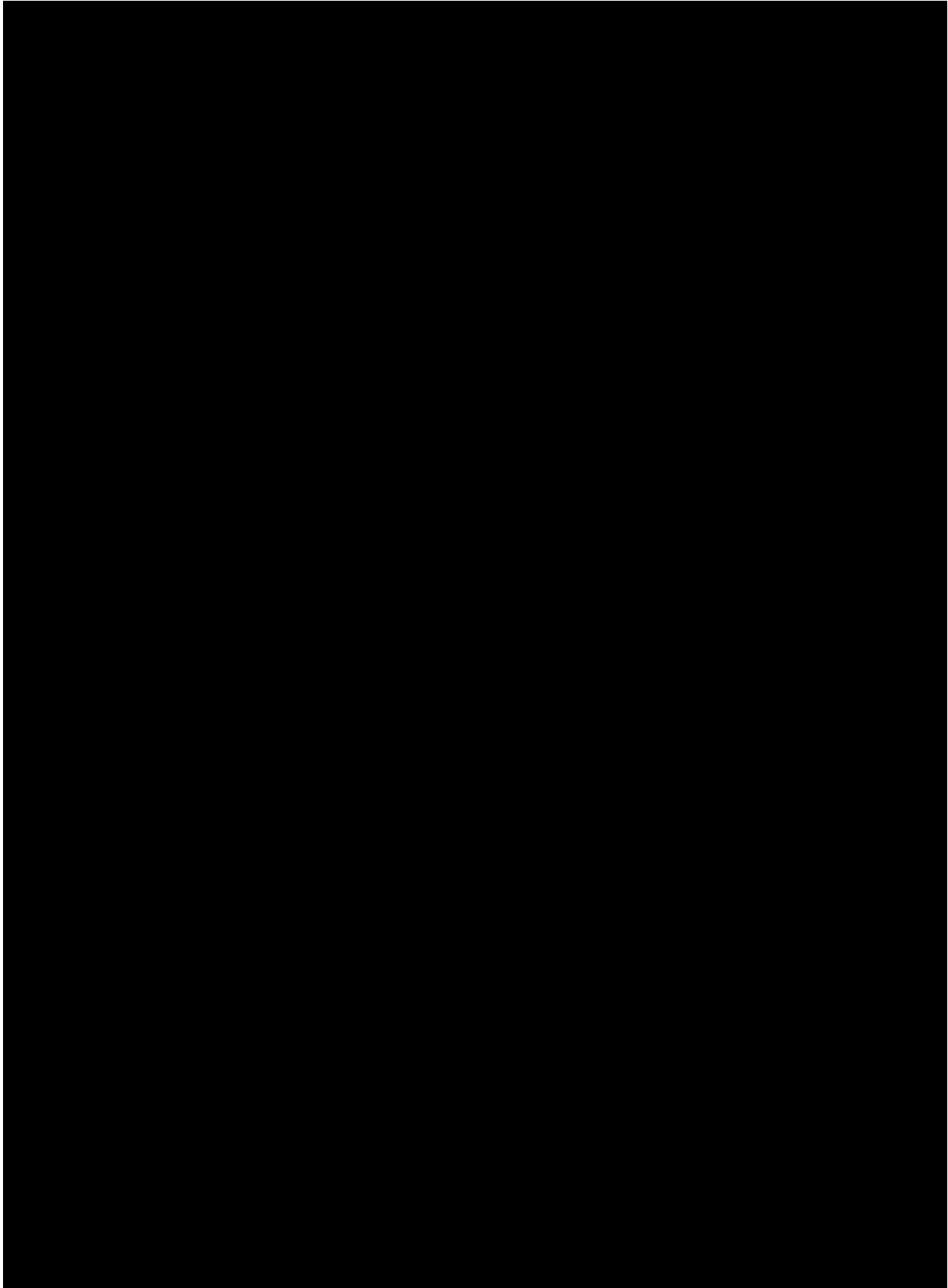
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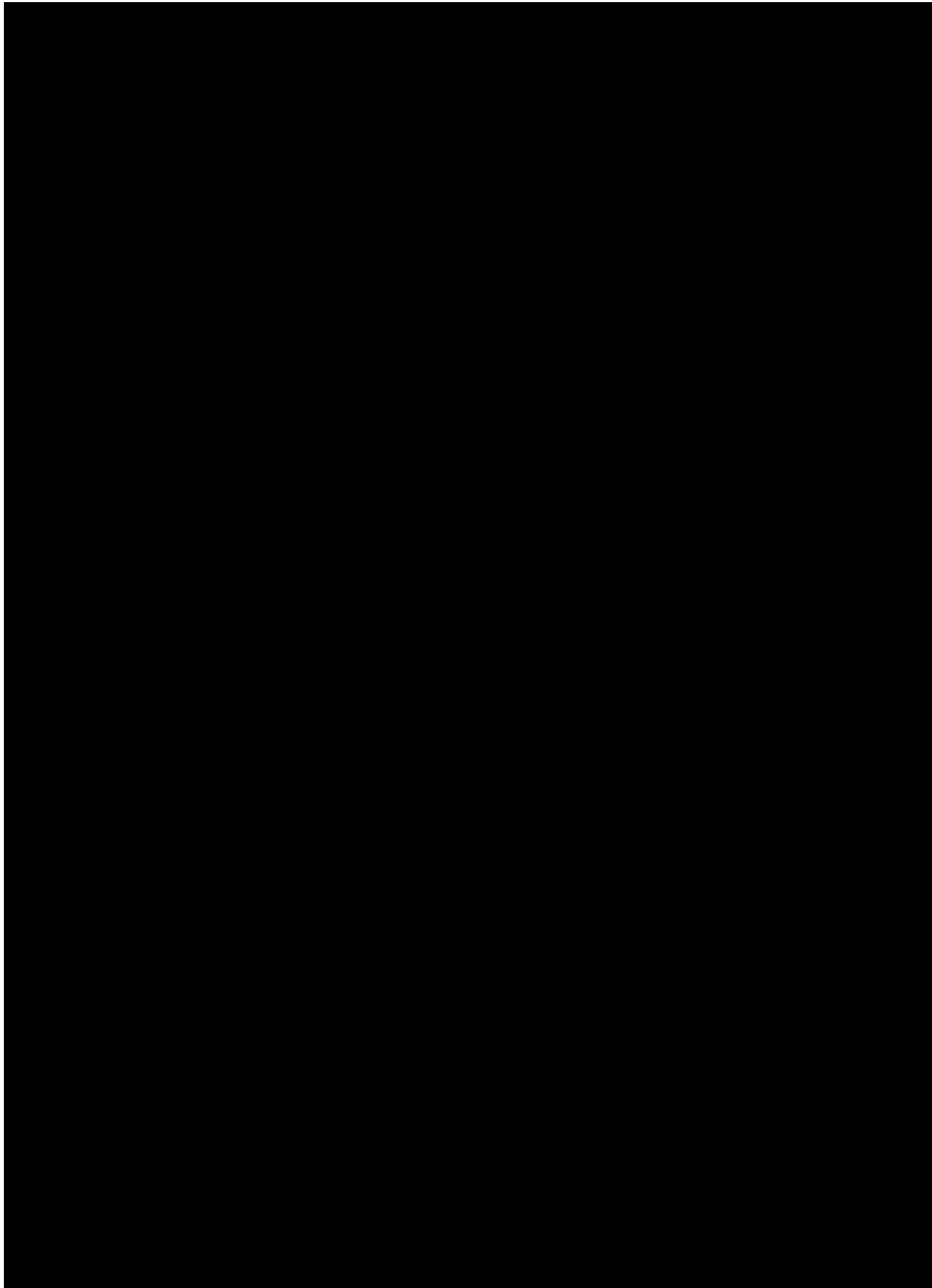
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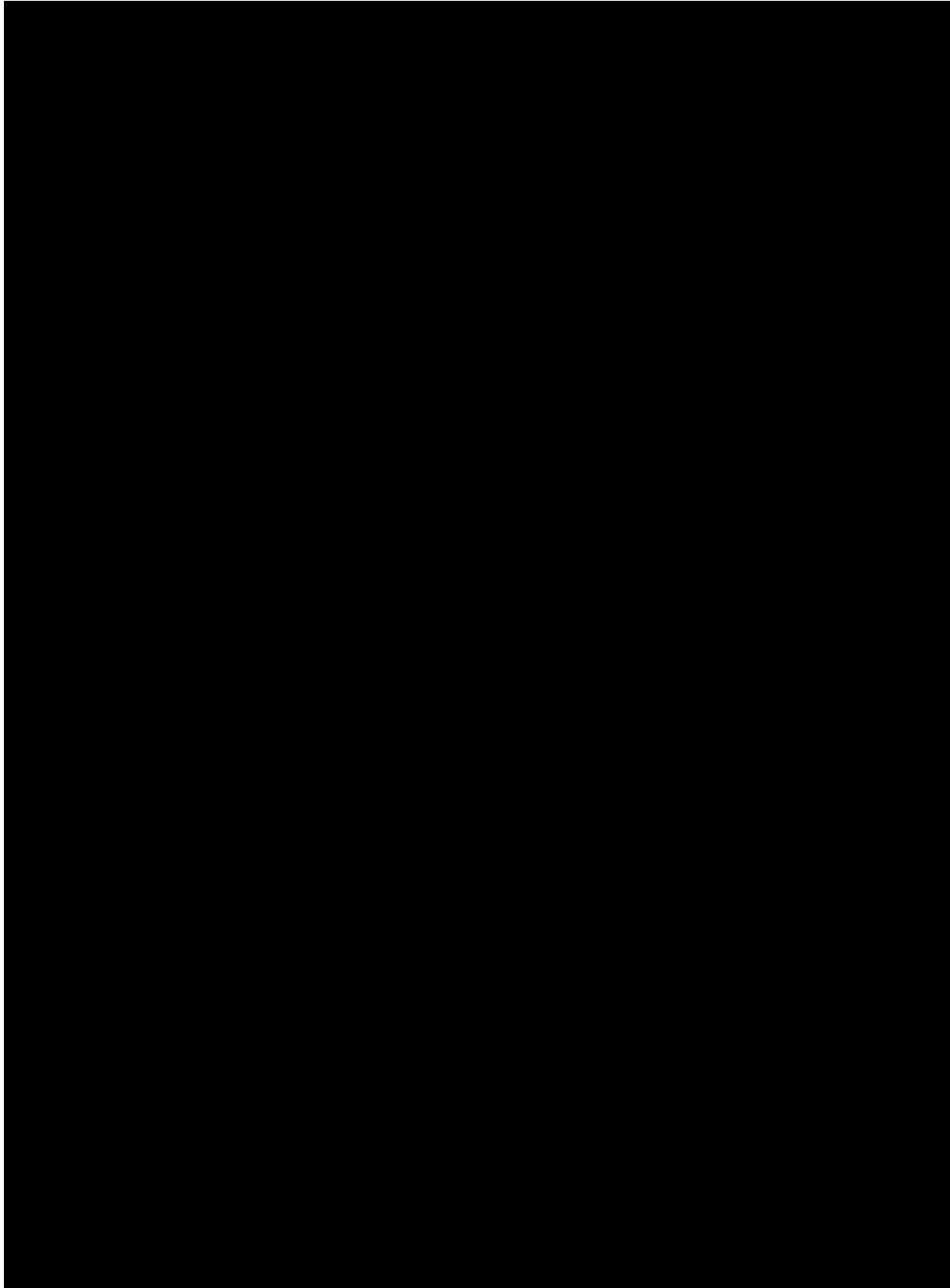
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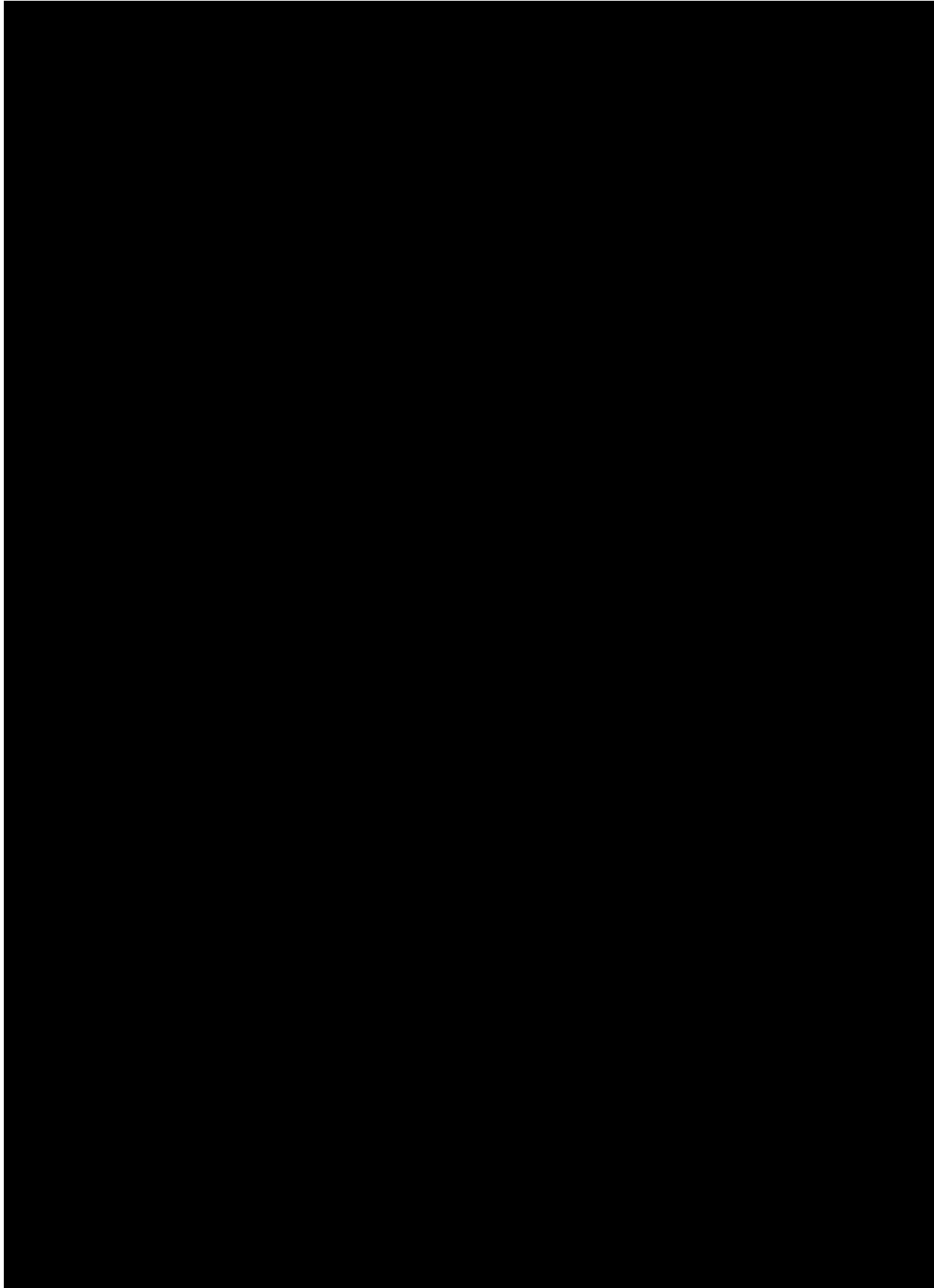
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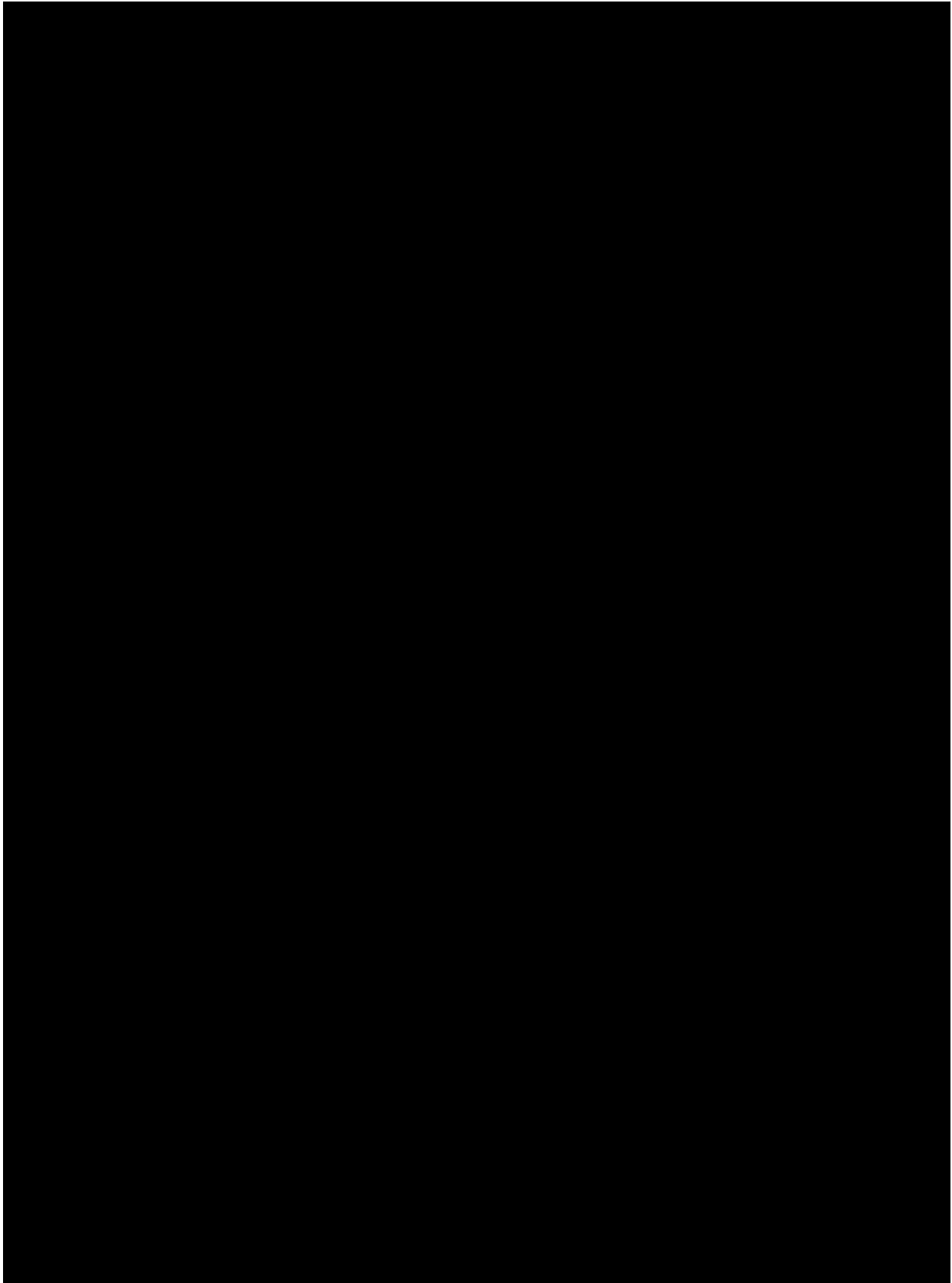
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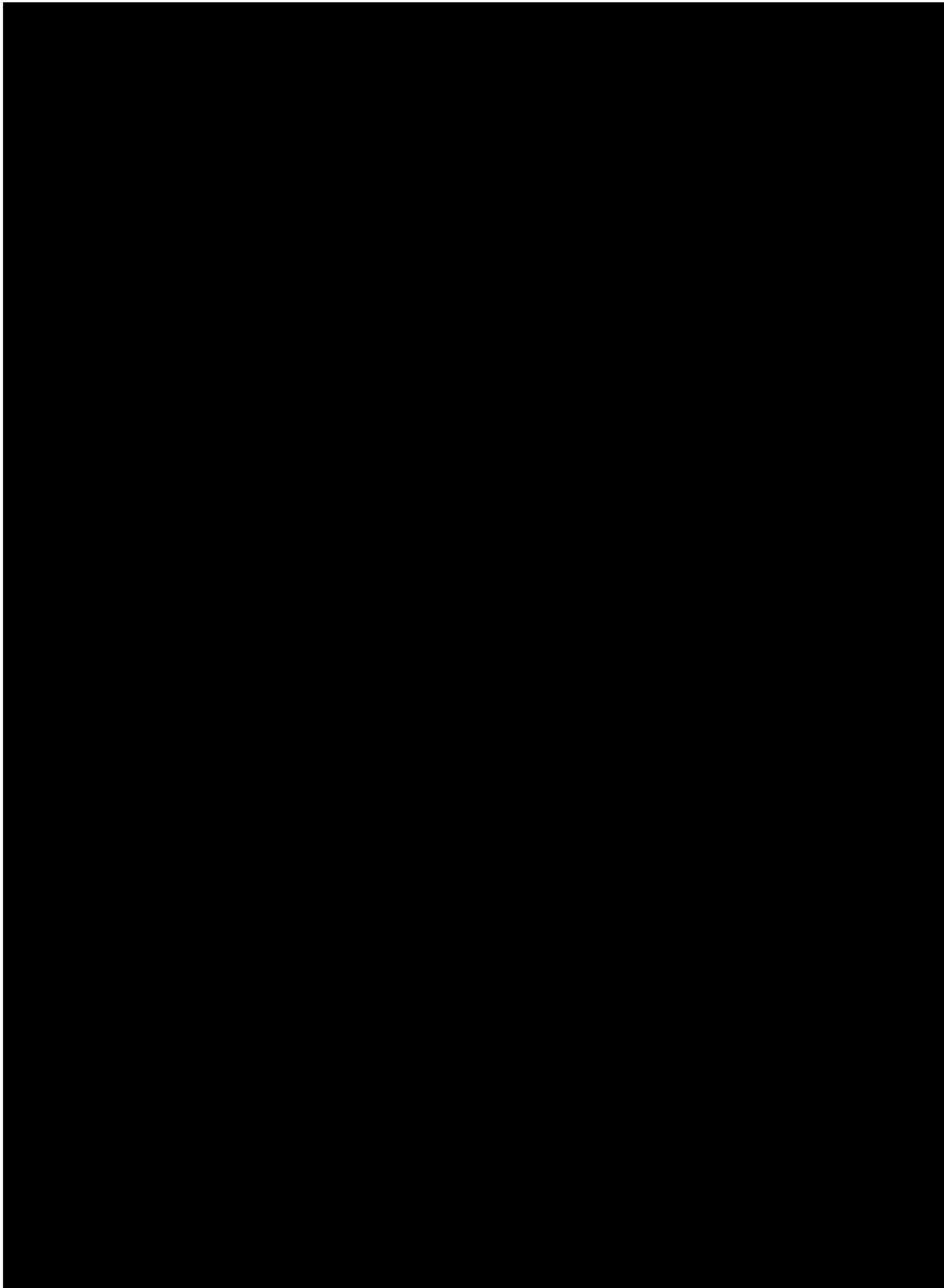
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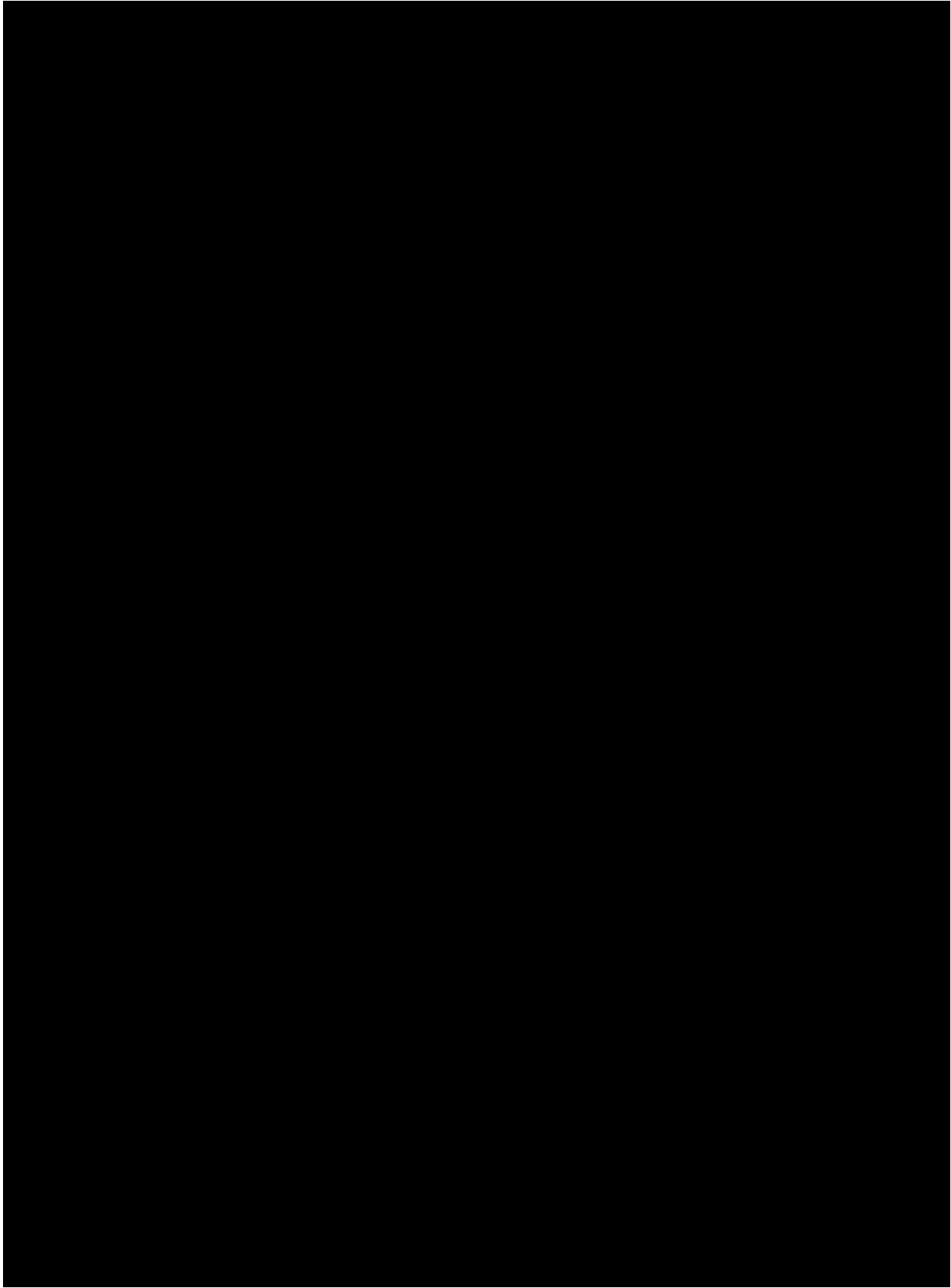
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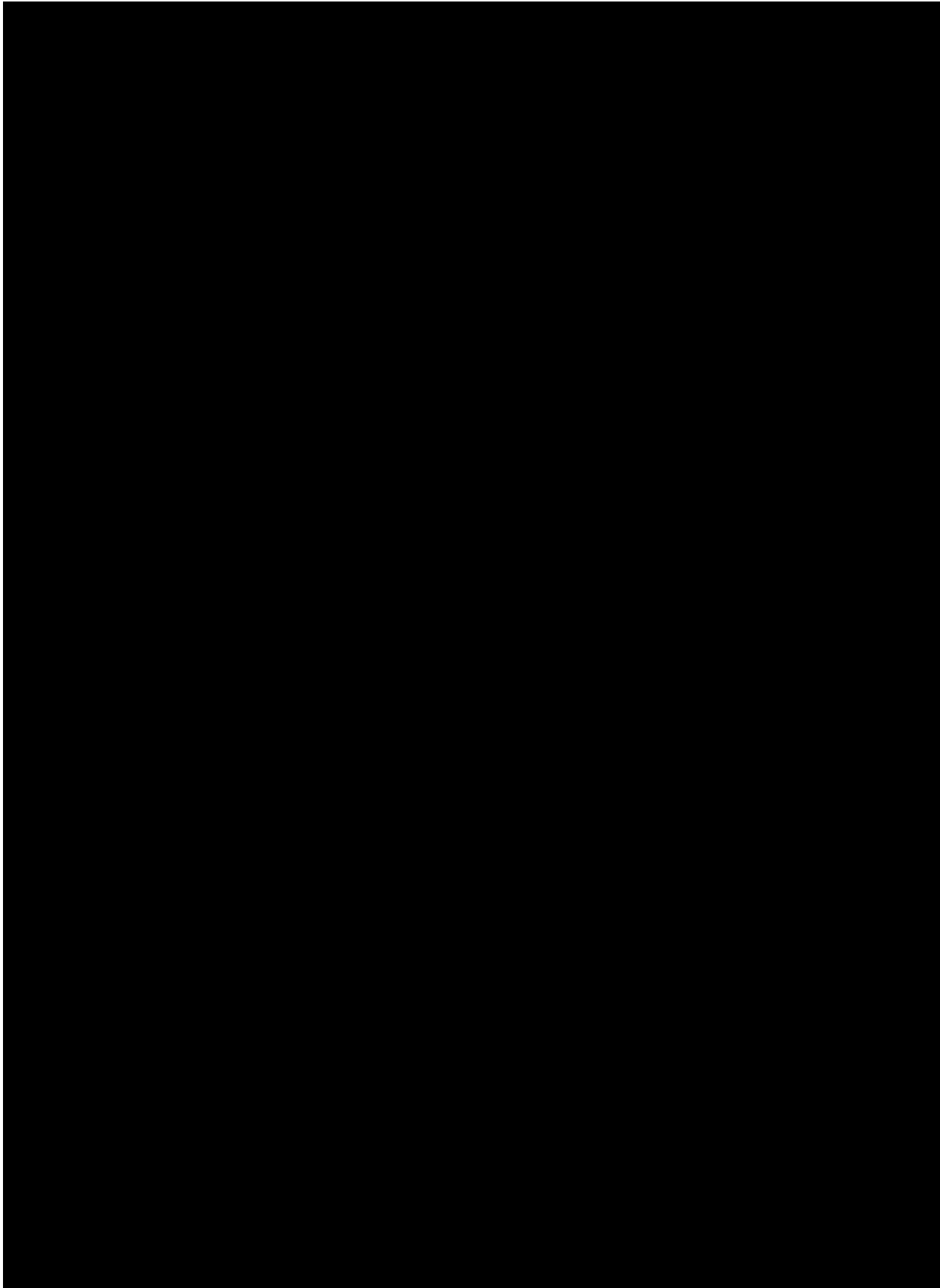
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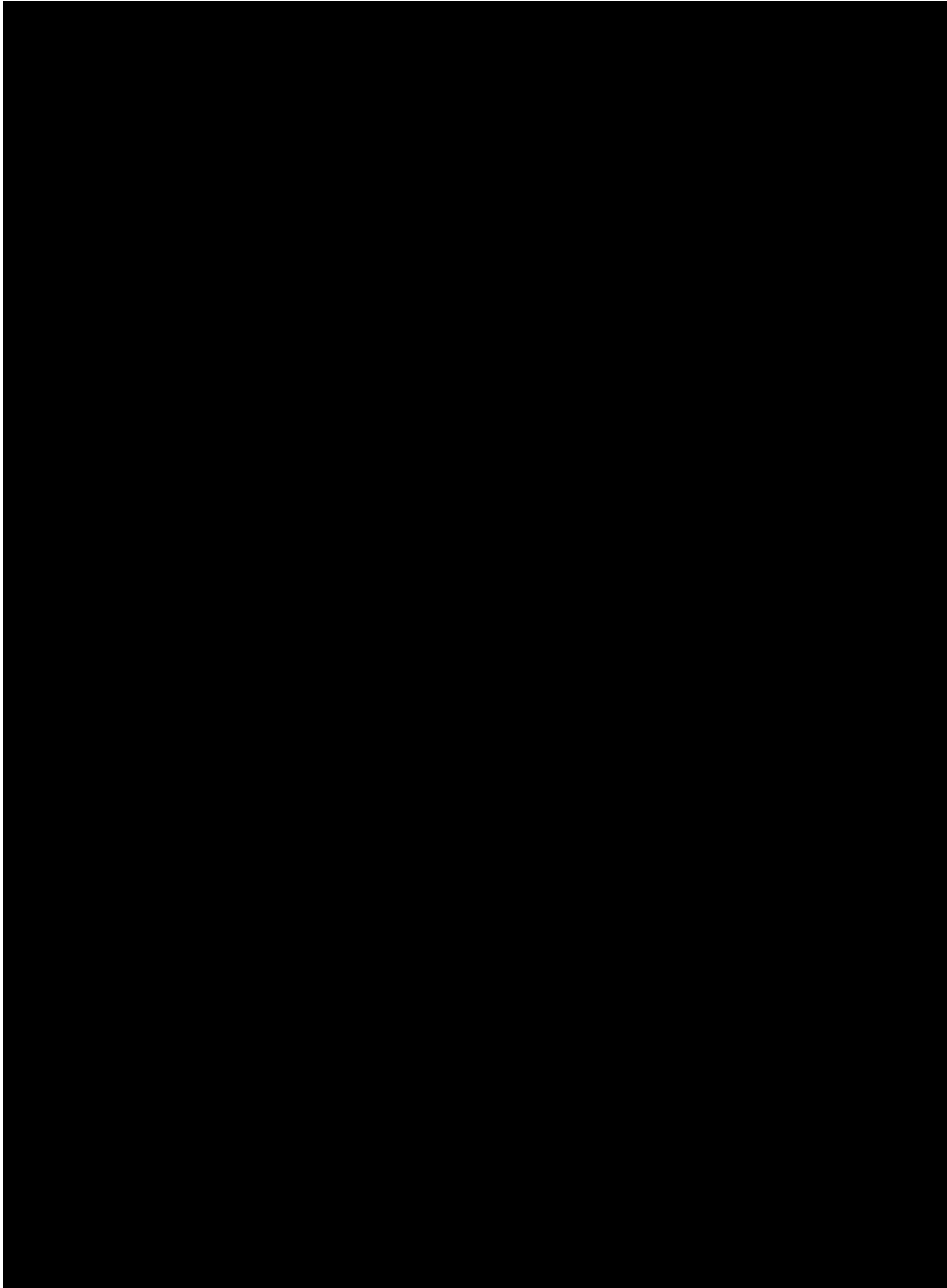
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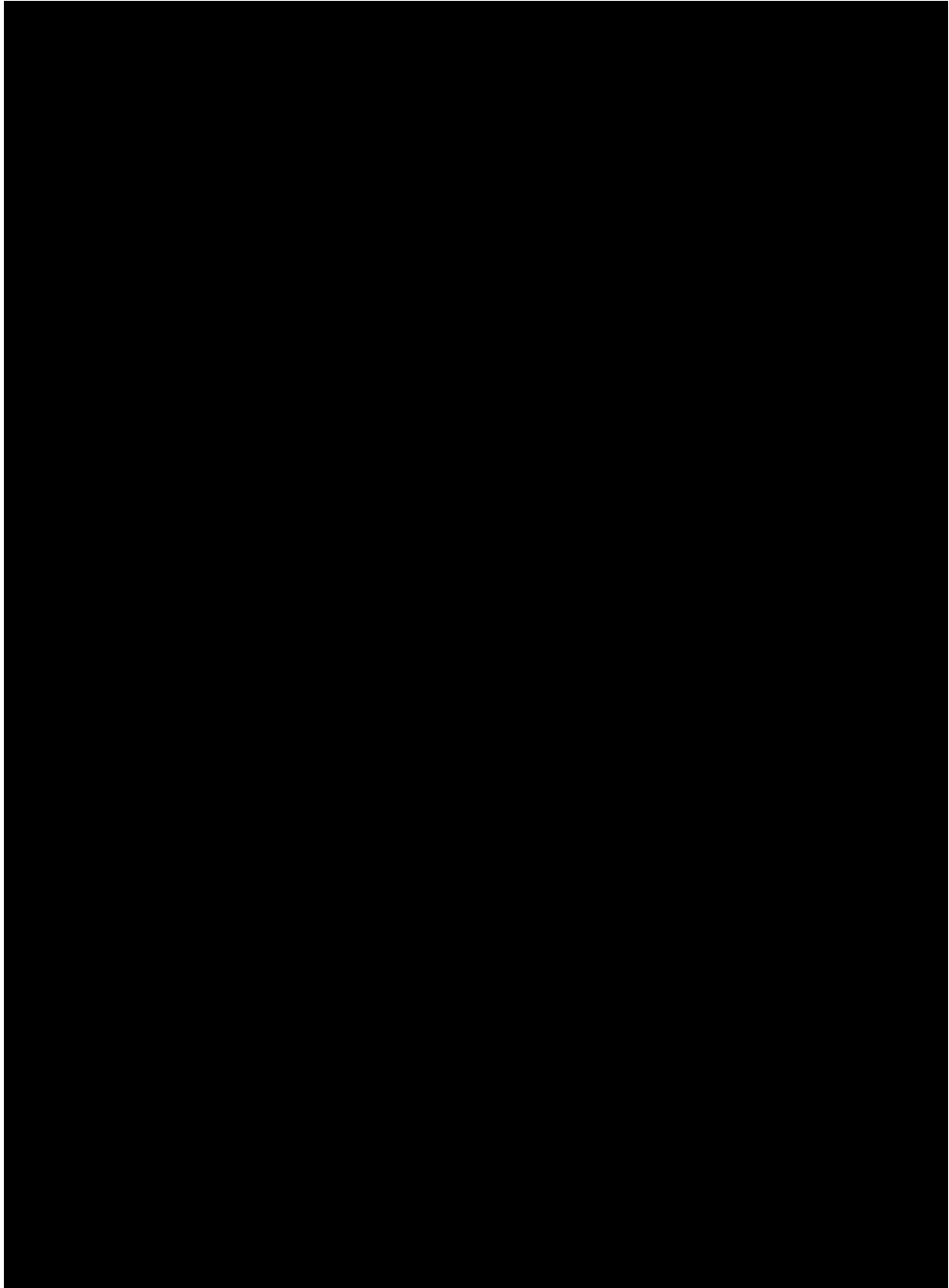
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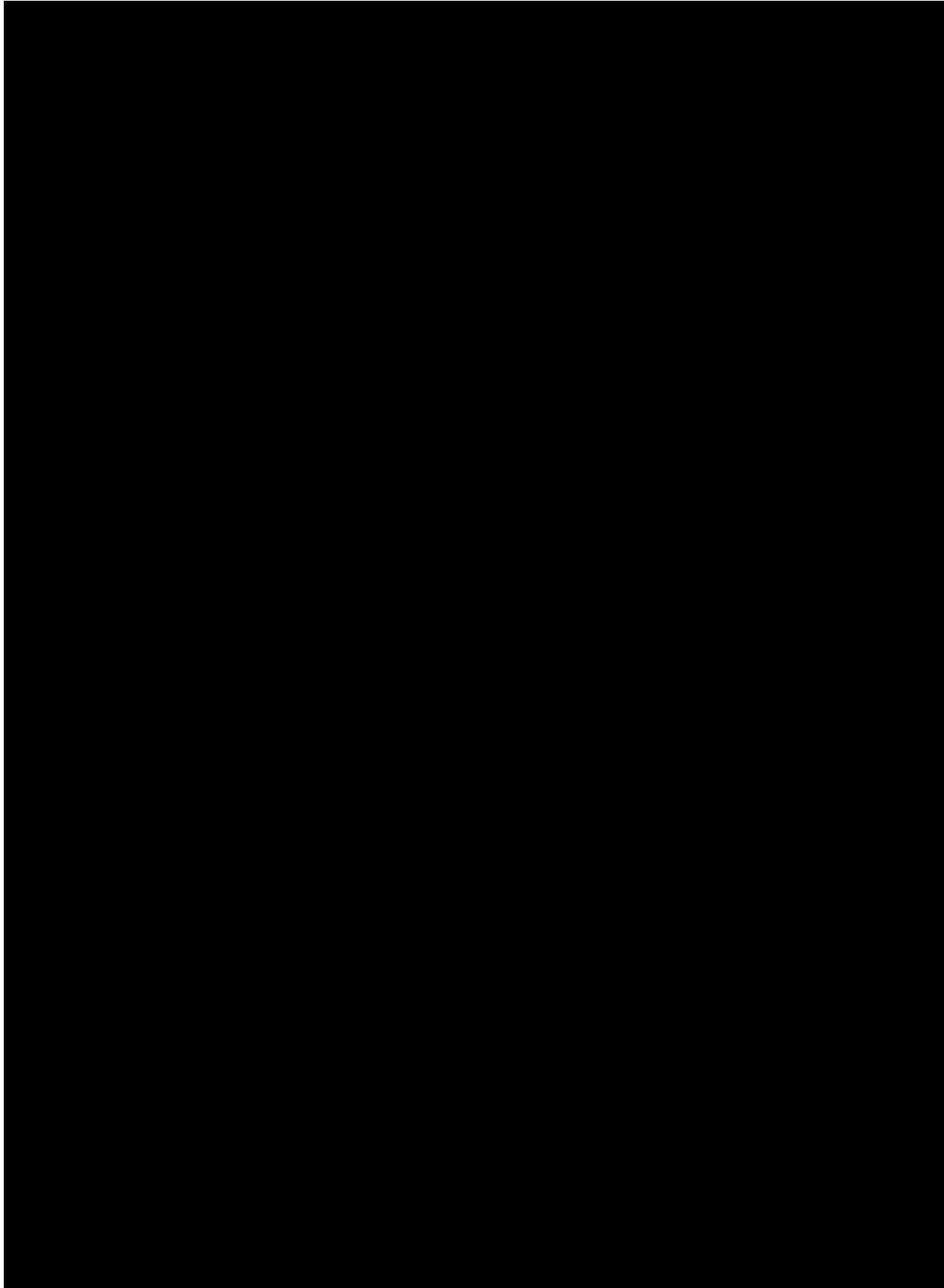
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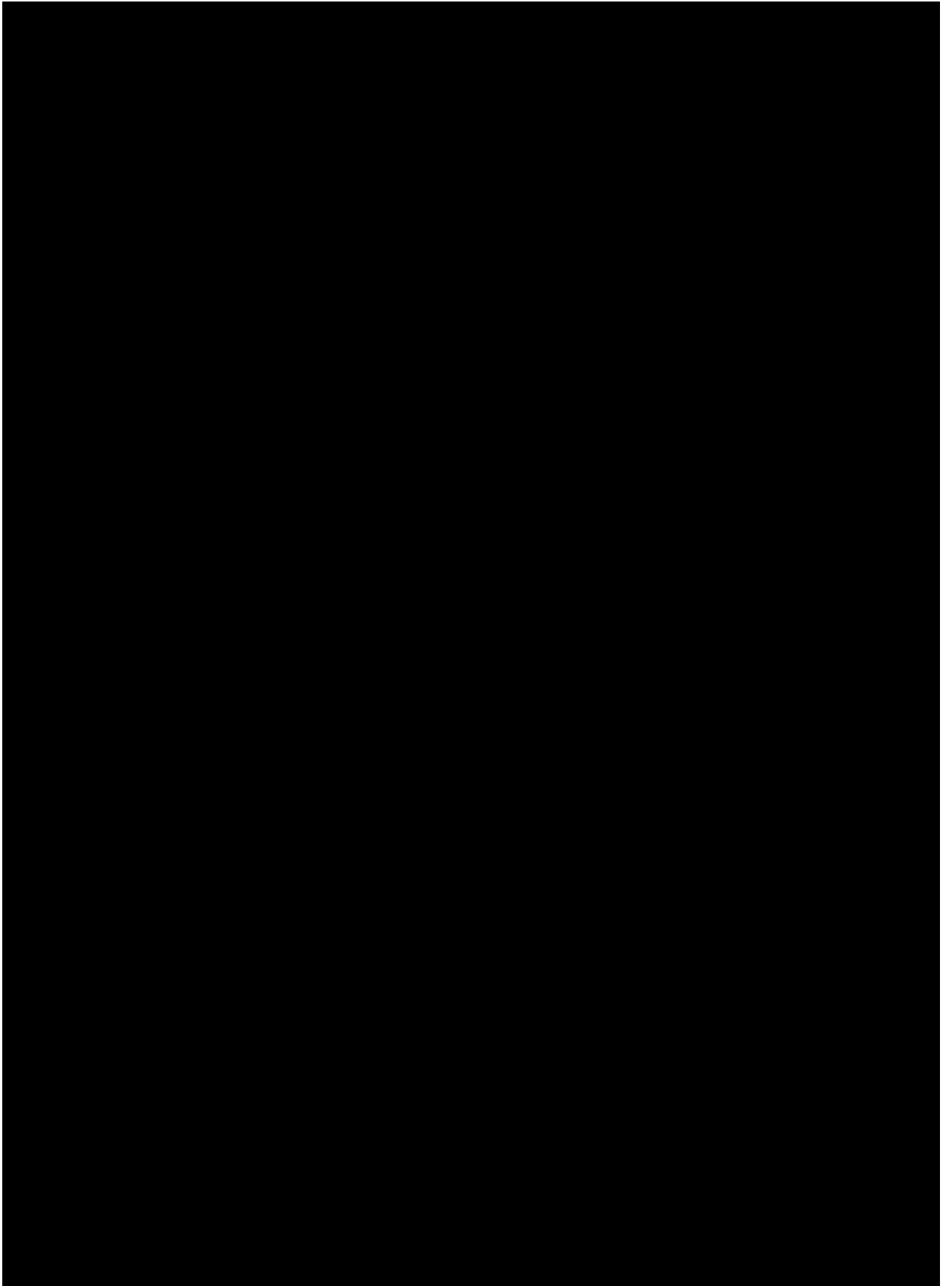
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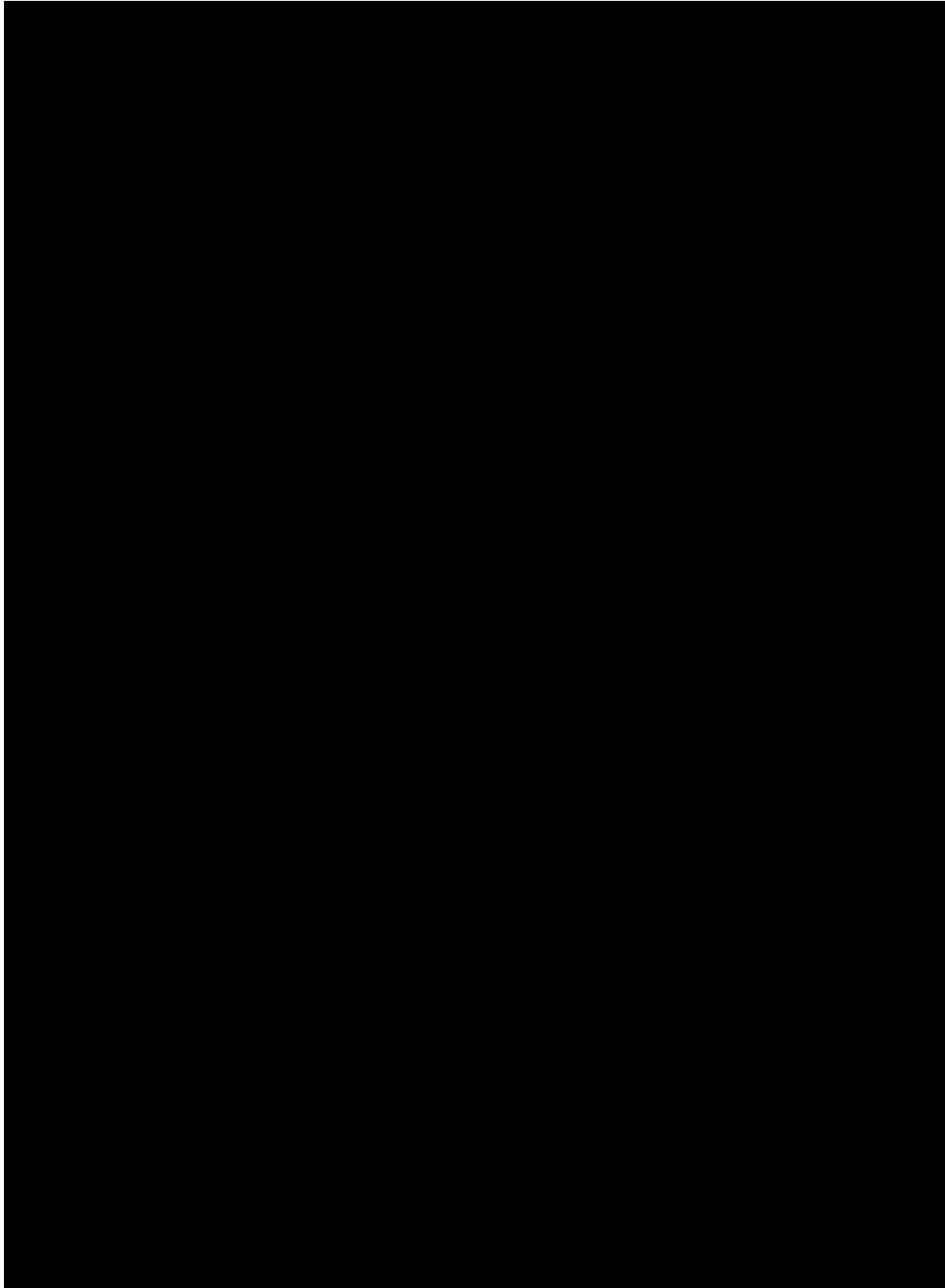
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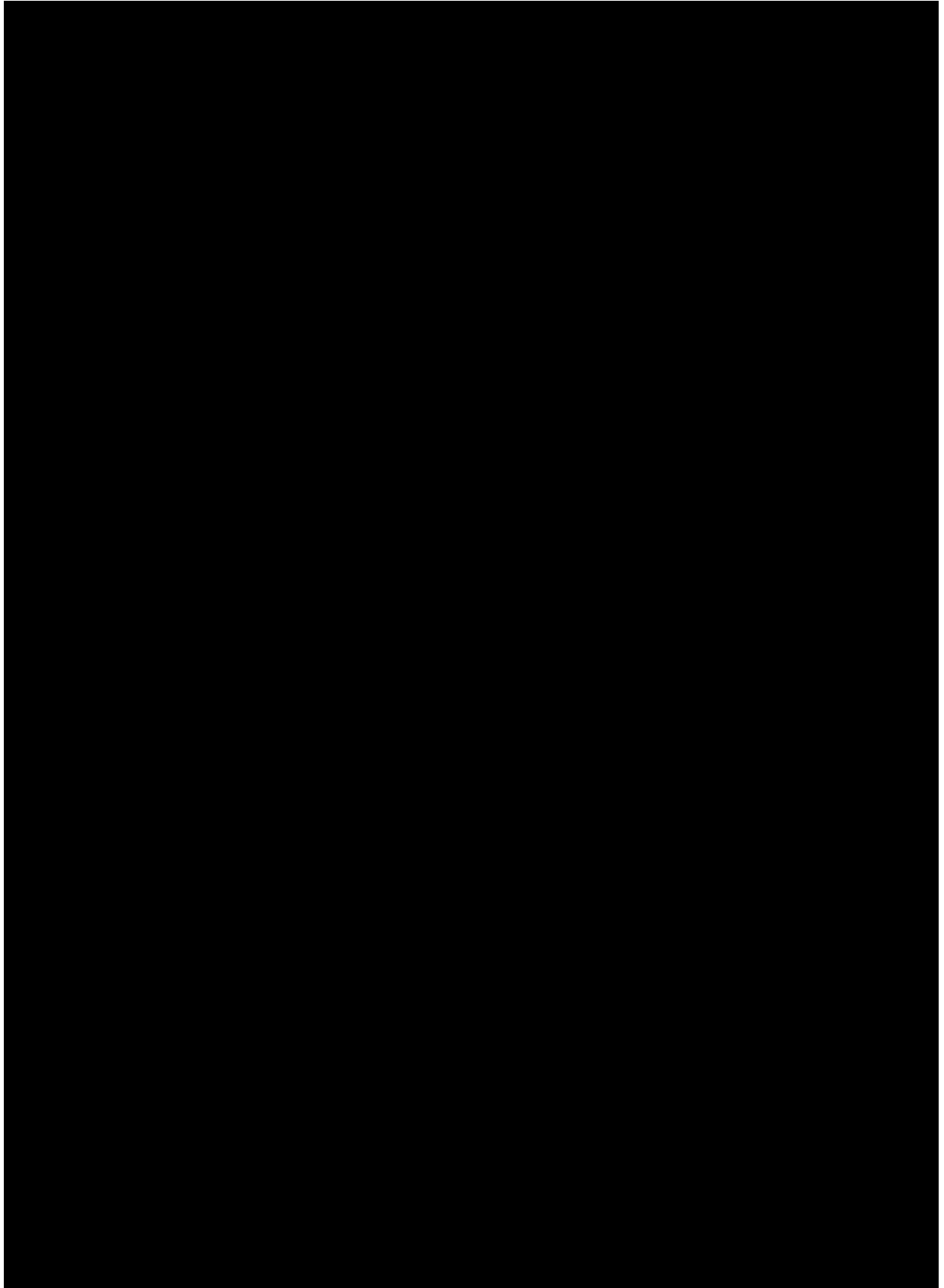
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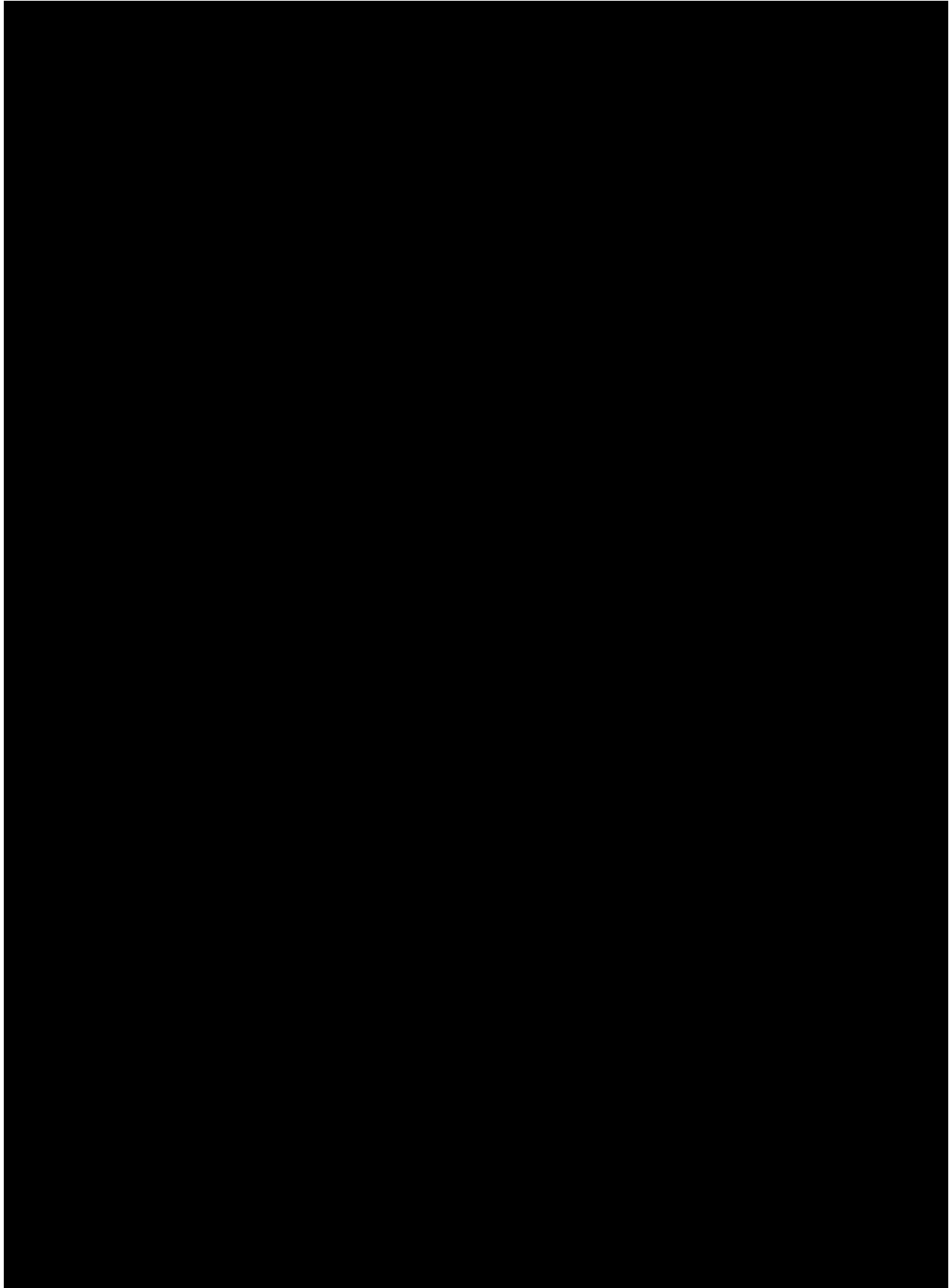
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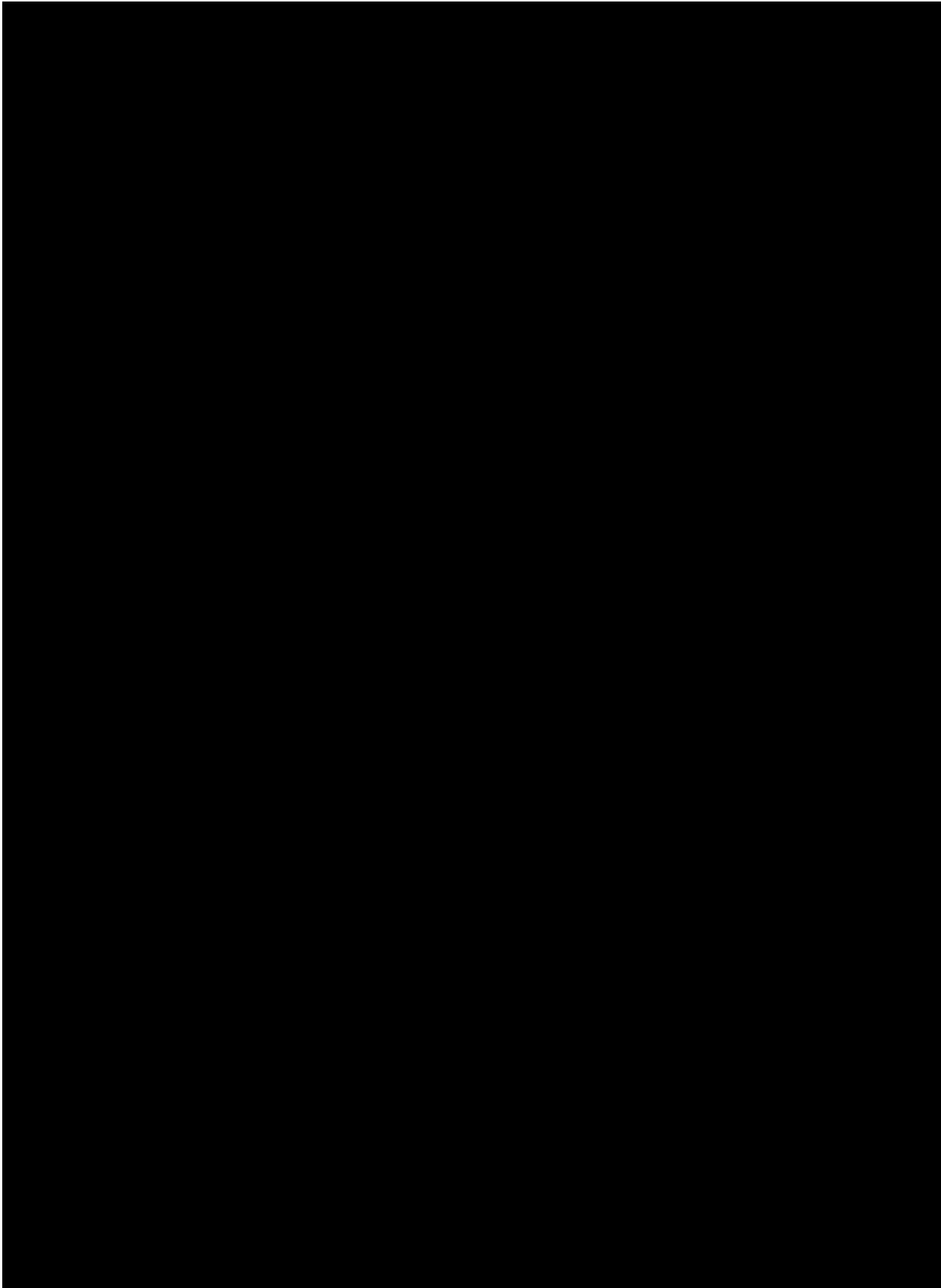
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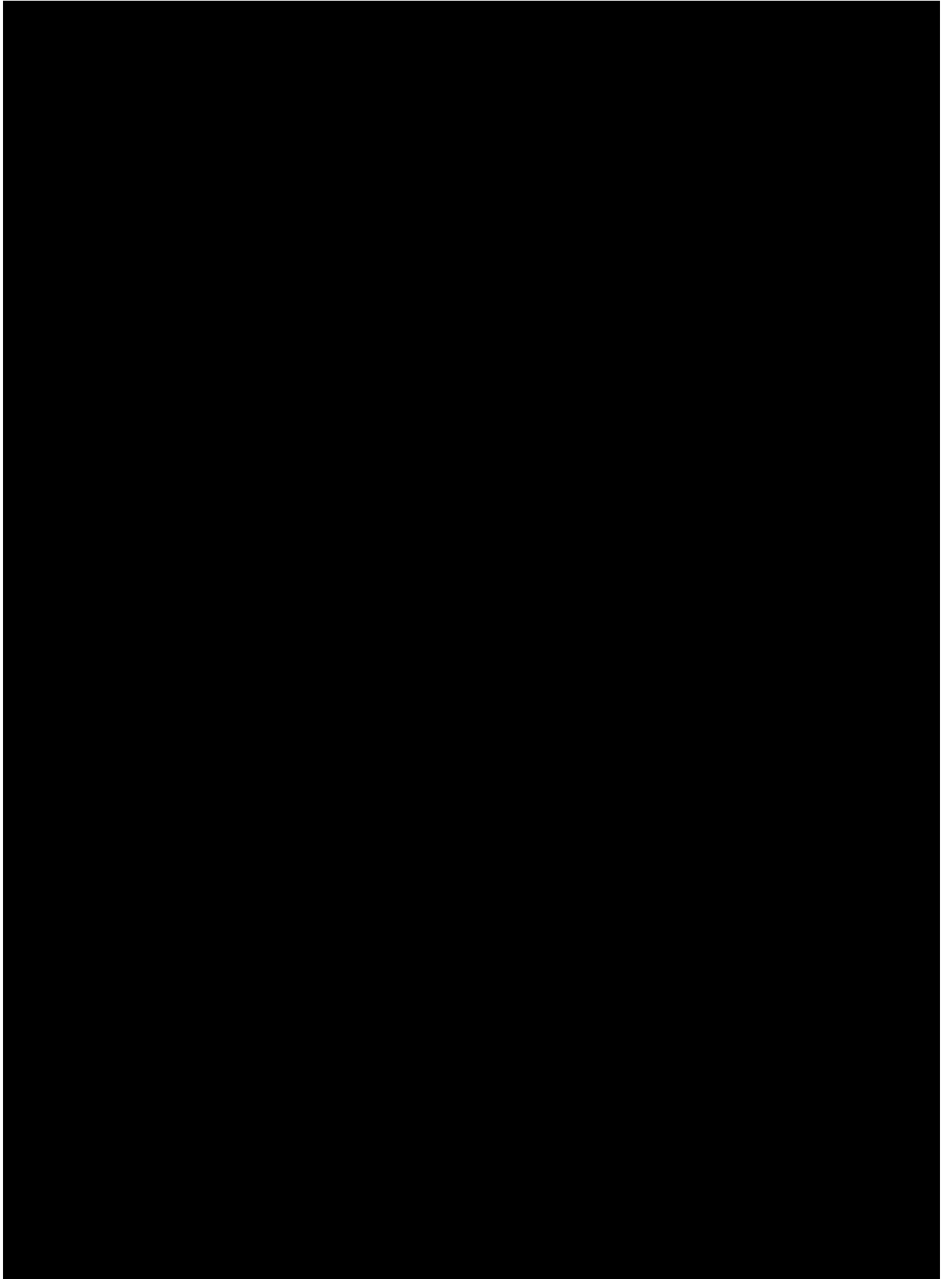
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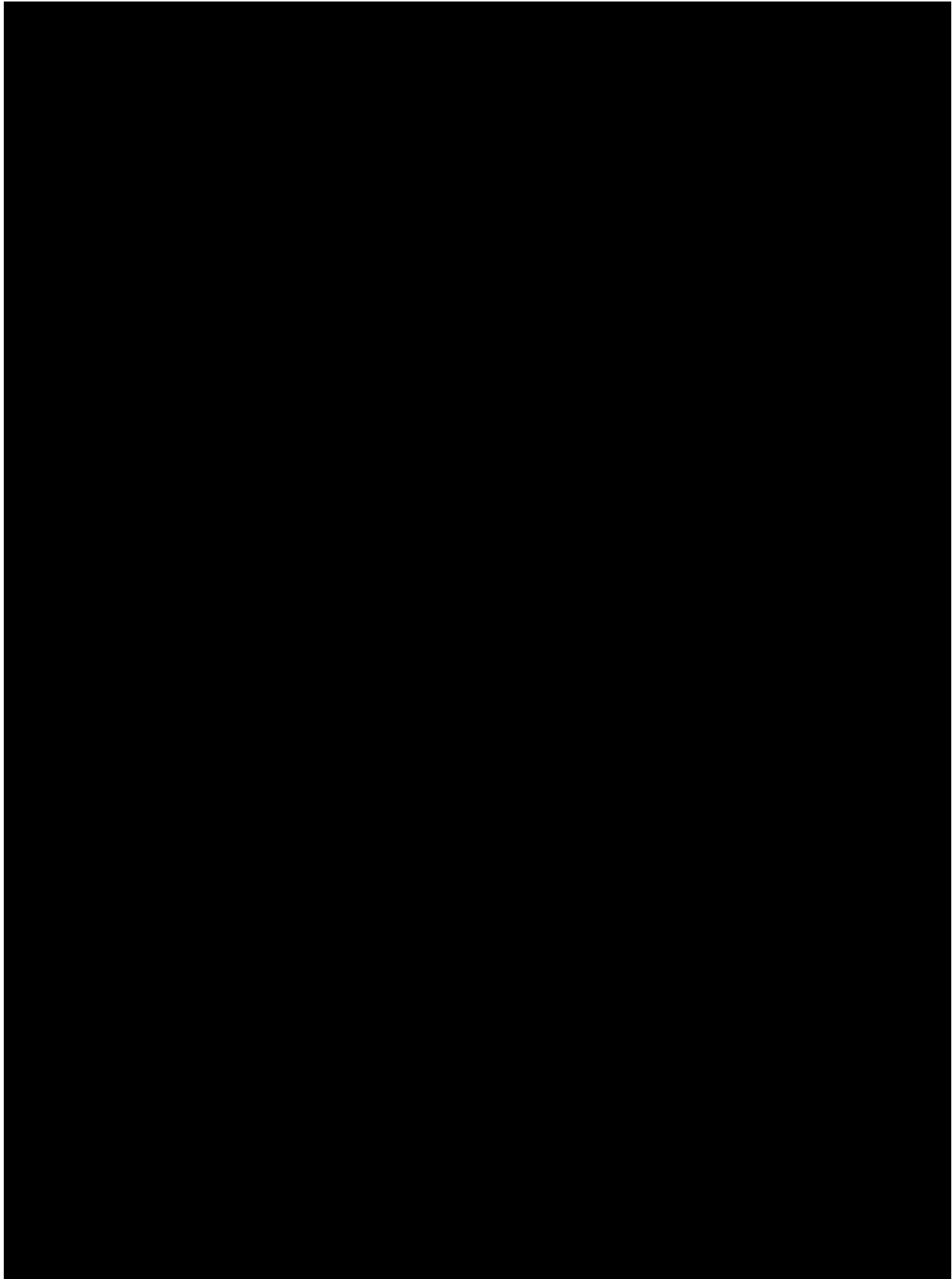
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PRESIDENT TERCIER: Thank you very much,

10

Professor Boutilier.

11

Do you think you will start now? We have one

12

and a half hour. It's quite long, really. Will you

13

have a break now or--

14

DR. HEISKANEN: Yeah, maybe a short break, go

15

have a cup of coffee, and then we can go on a bit

16

longer, until 1:00 o'clock or something?

17

PRESIDENT TERCIER: Okay. So, Mr. Boutilier,

18

you know the rule. You are under testimony. So, you

19

are not allowed to have contact with the

20

representative of the counsel of this firm.

21

Of course, you are allowed to take a coffee

22

and take some time.

1 (Brief recess.)

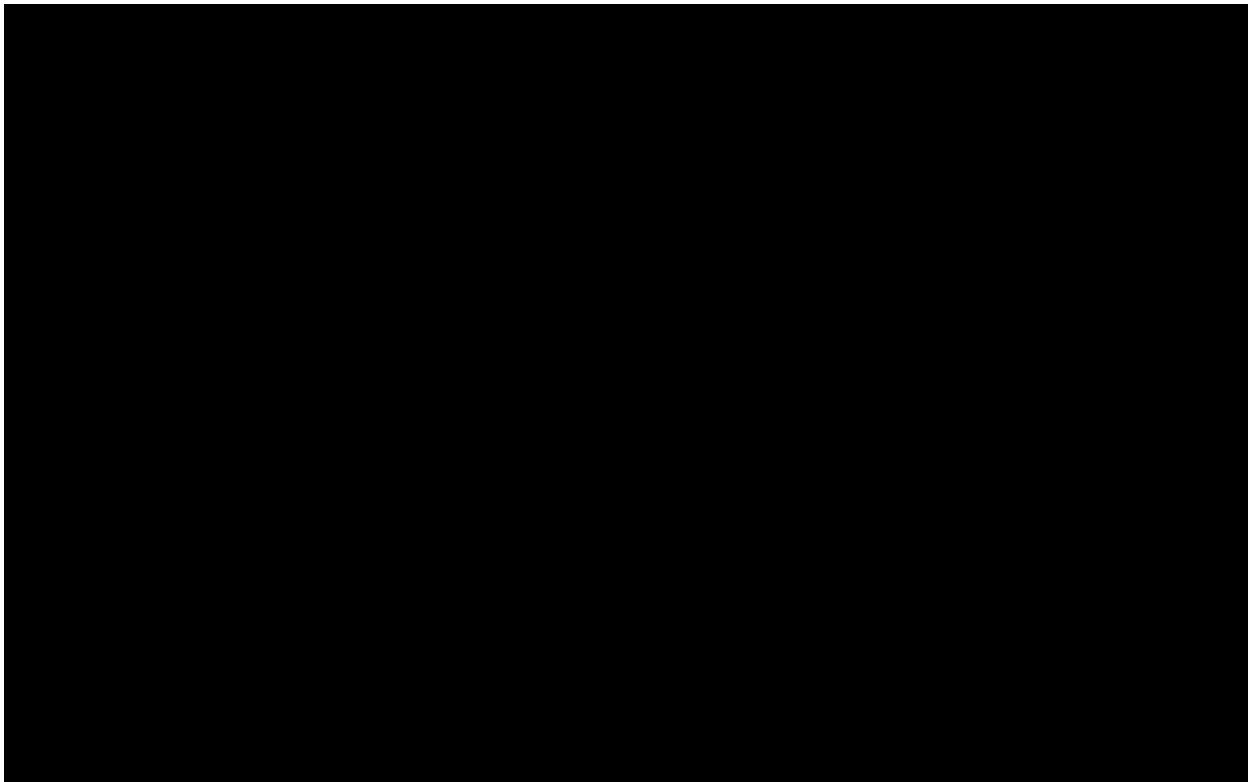
2 PRESIDENT TERCIER: Before going further, I
3 would like to note for the protocol that we had an
4 internal discussion with counsel for both Parties, and
5 that we have agreed that there will be no hearing on
6 Saturday morning. We will do our best to forge and
7 reach the end of this examination tomorrow evening.

8 Fine. So, now, Dr. Heiskanen, you have
9 the floor for the cross-examination of
10 Professor Boutilier.

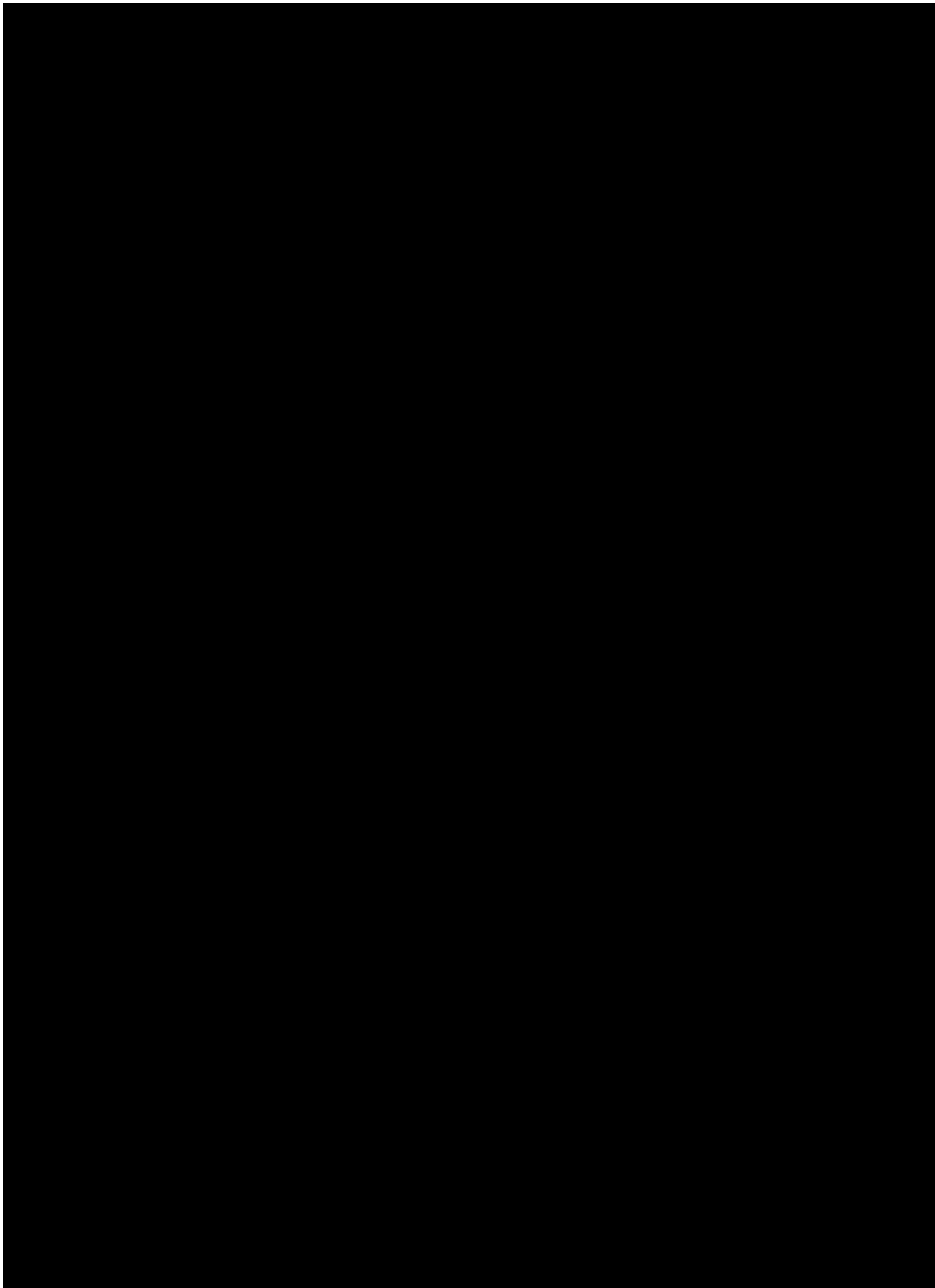
11 DR. HEISKANEN: Thank you, Mr. President.

12 CROSS-EXAMINATION

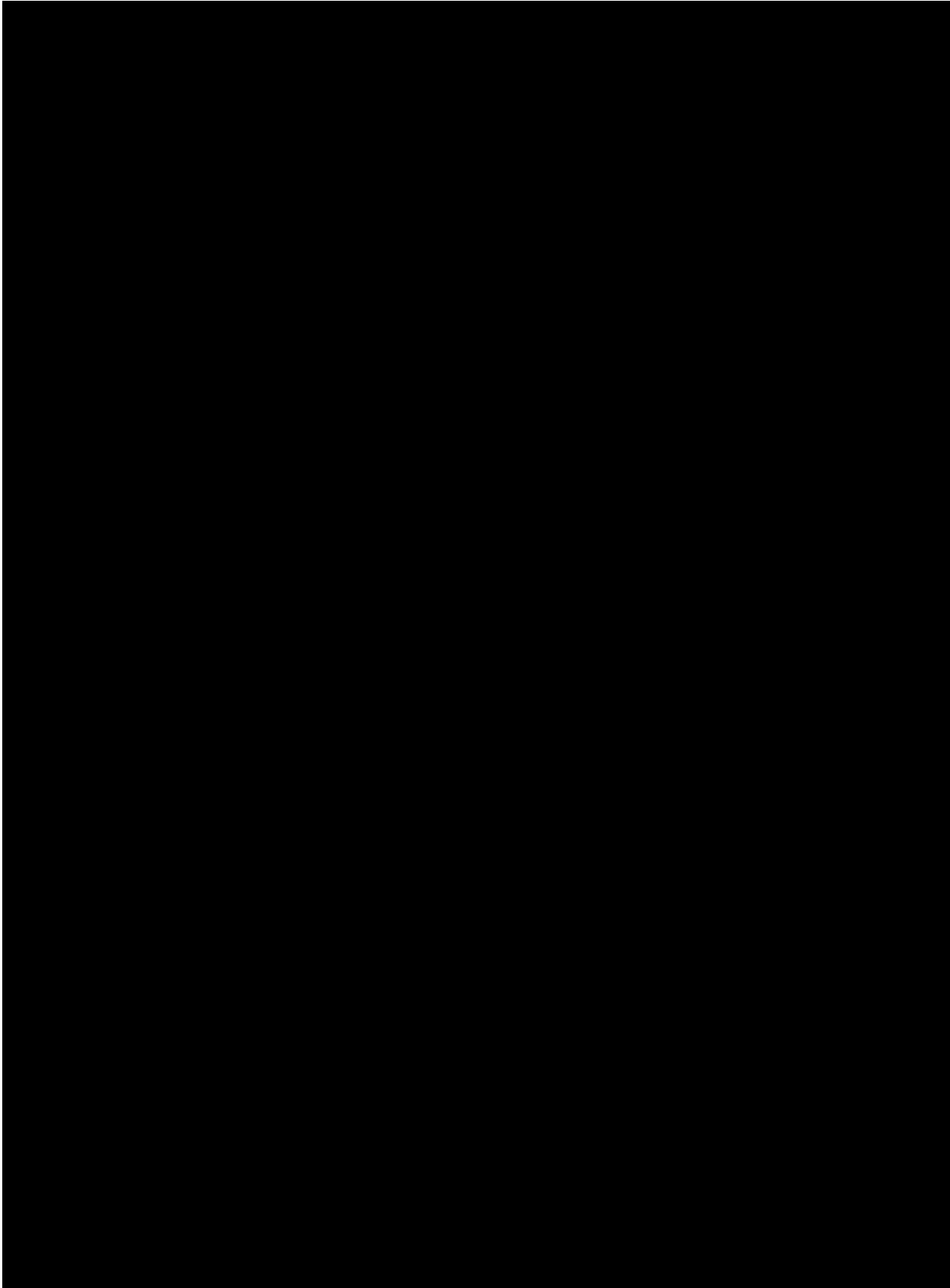
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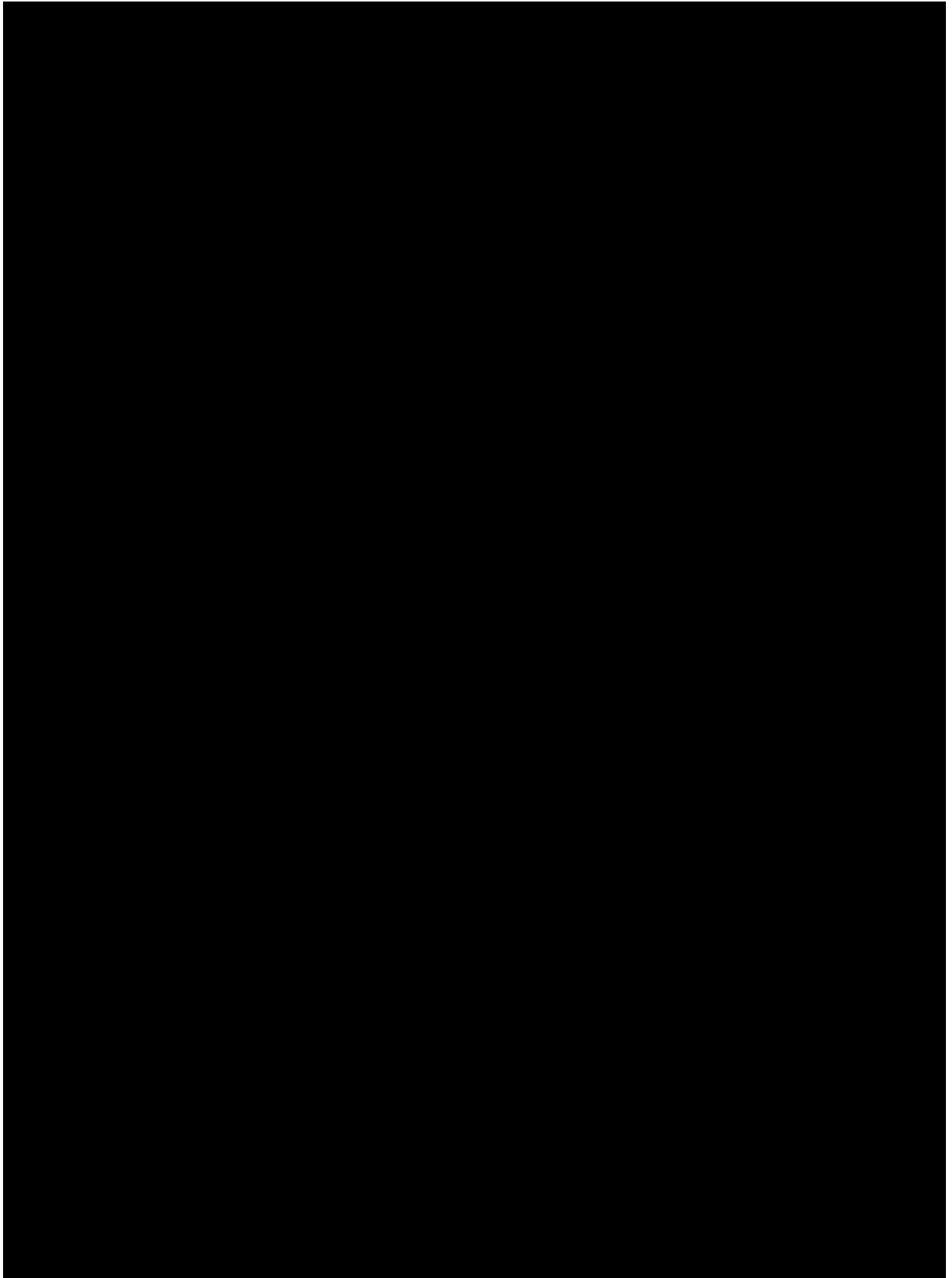
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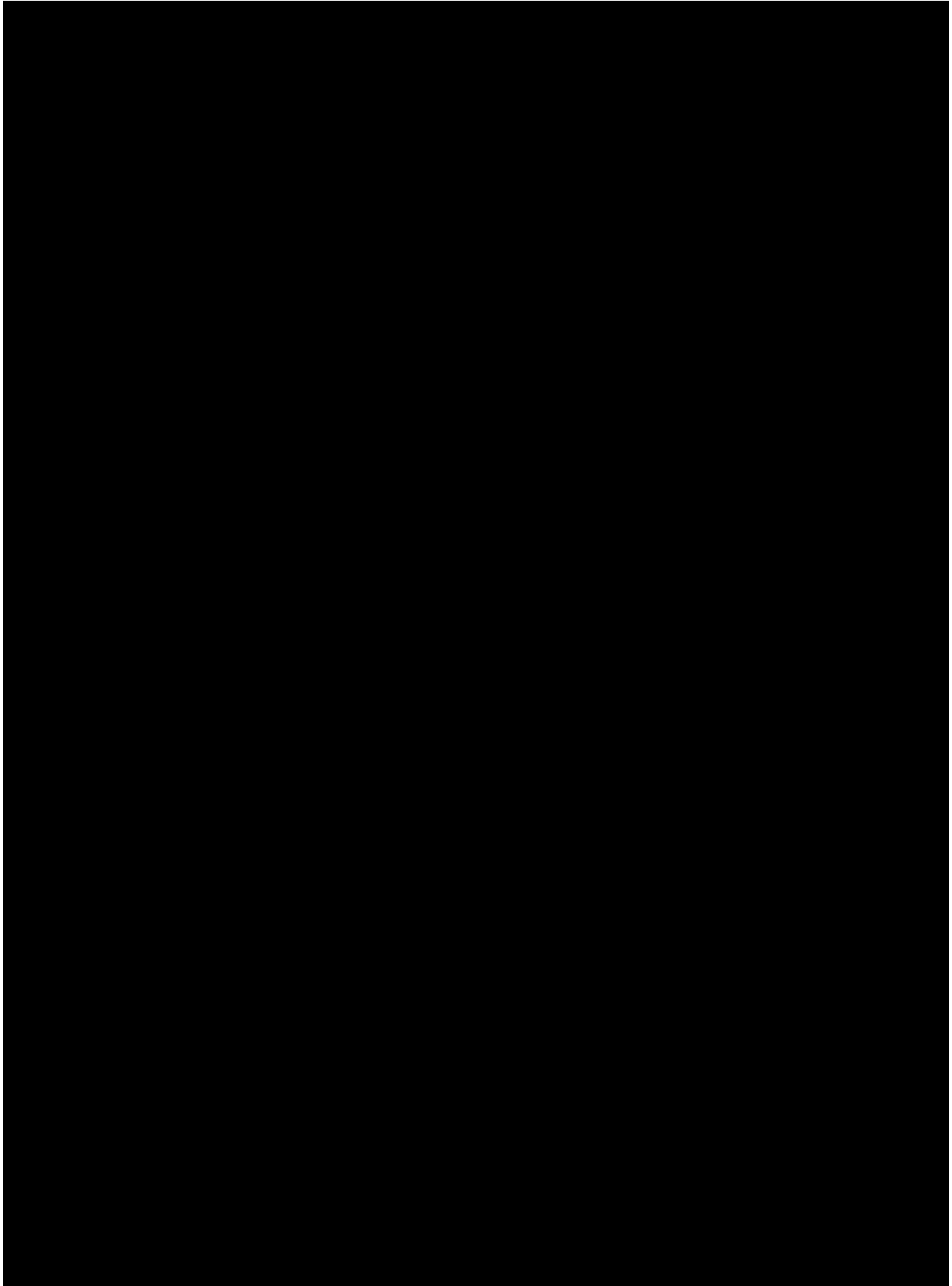
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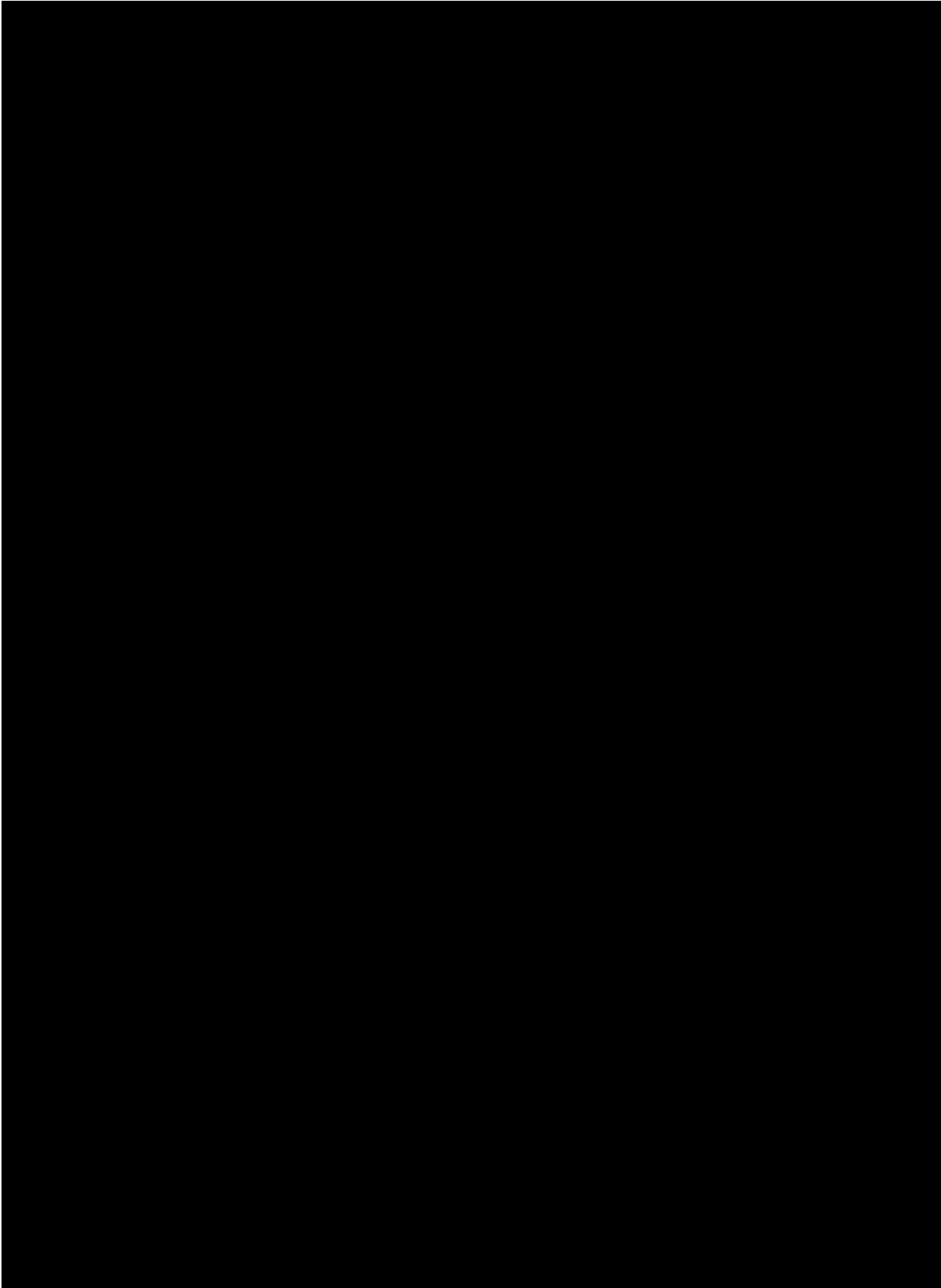
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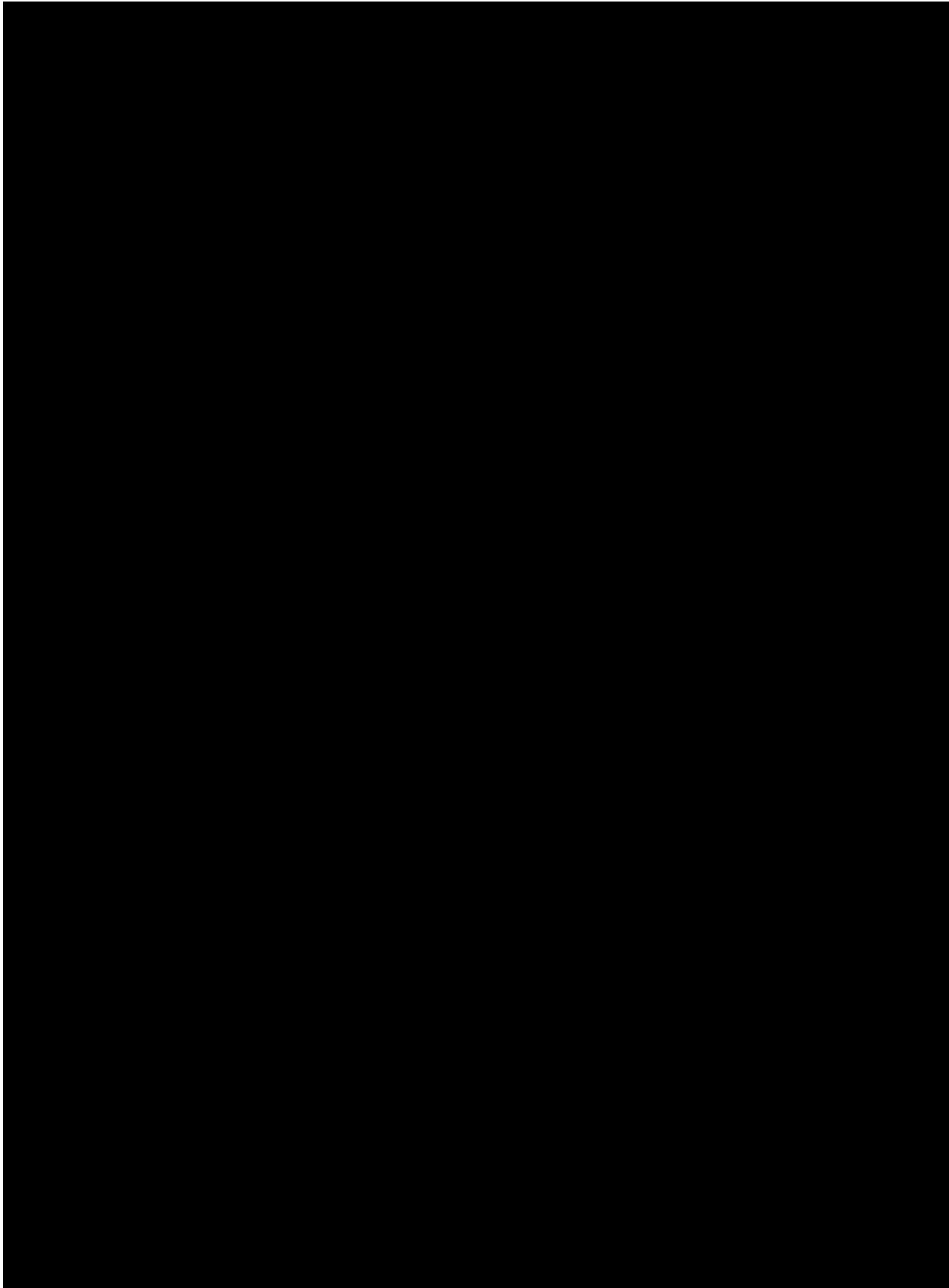
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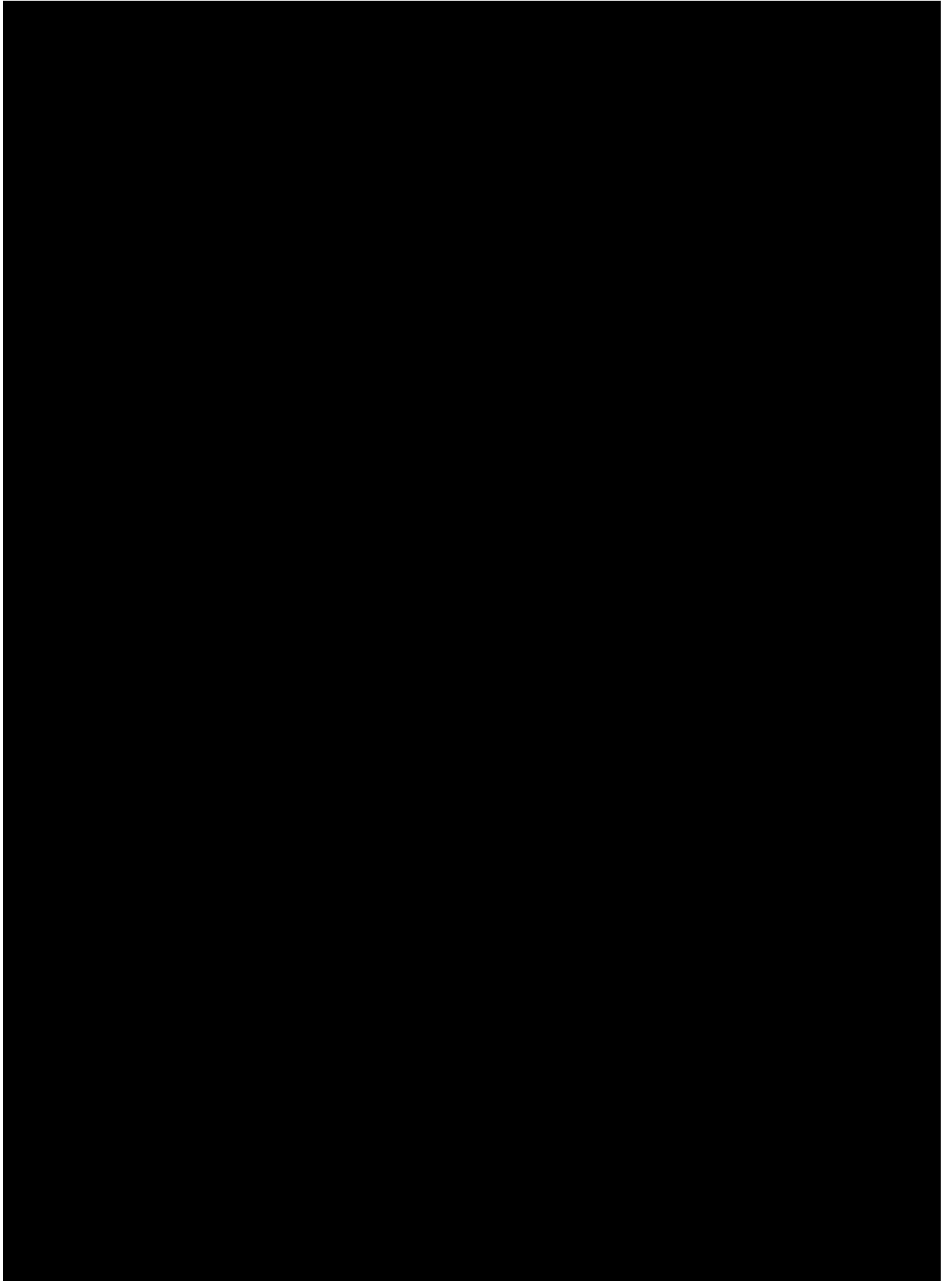
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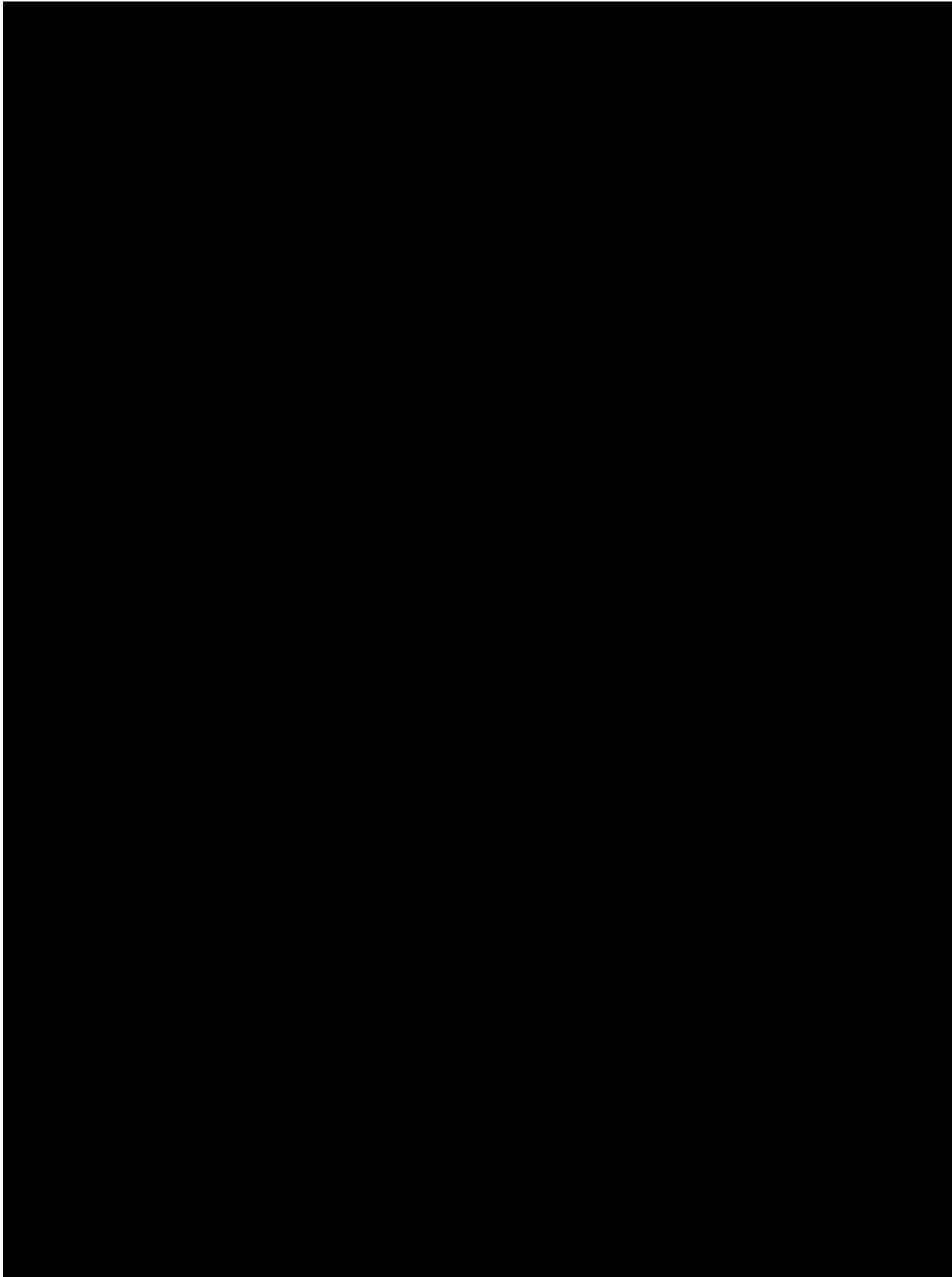
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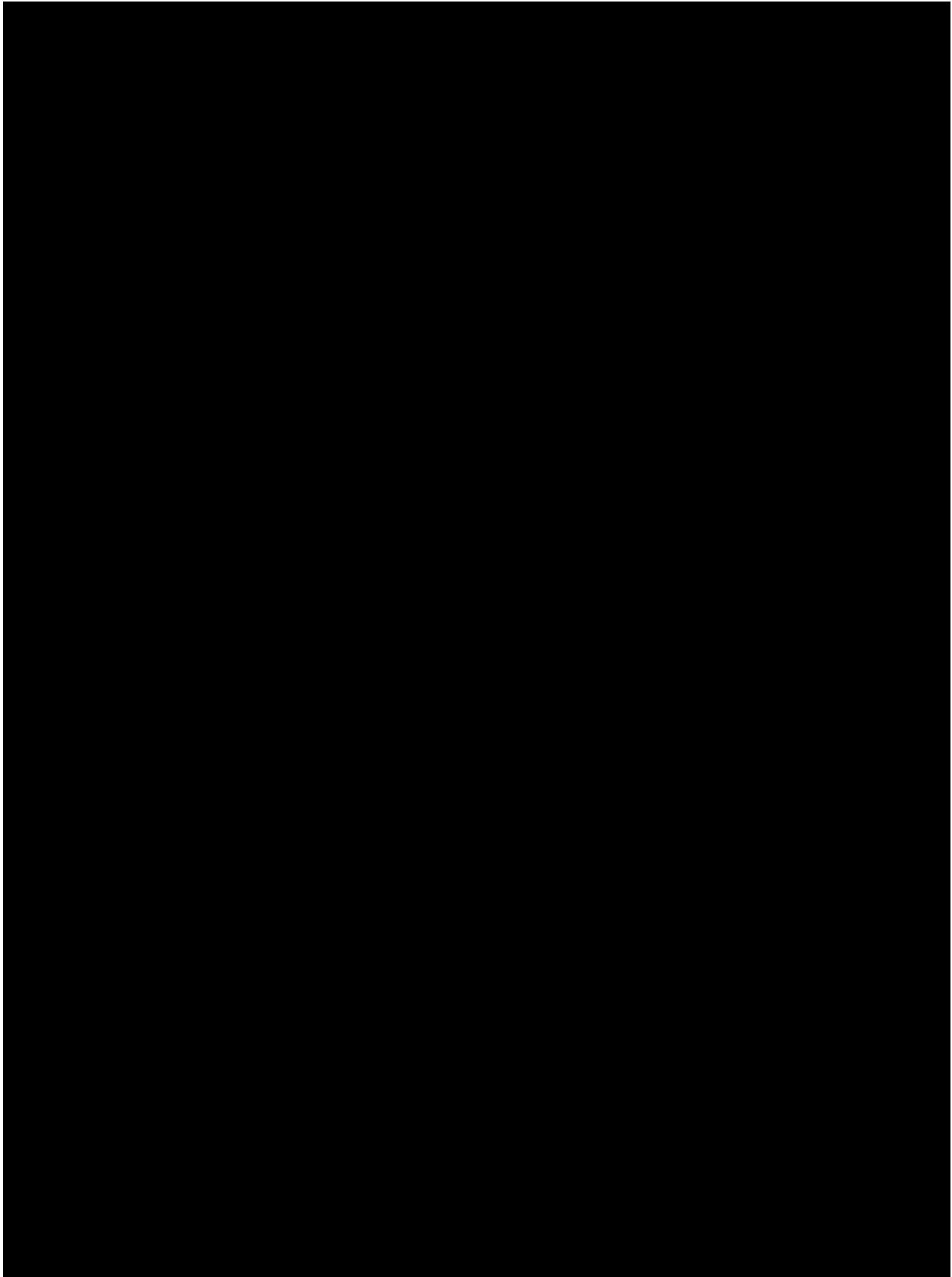
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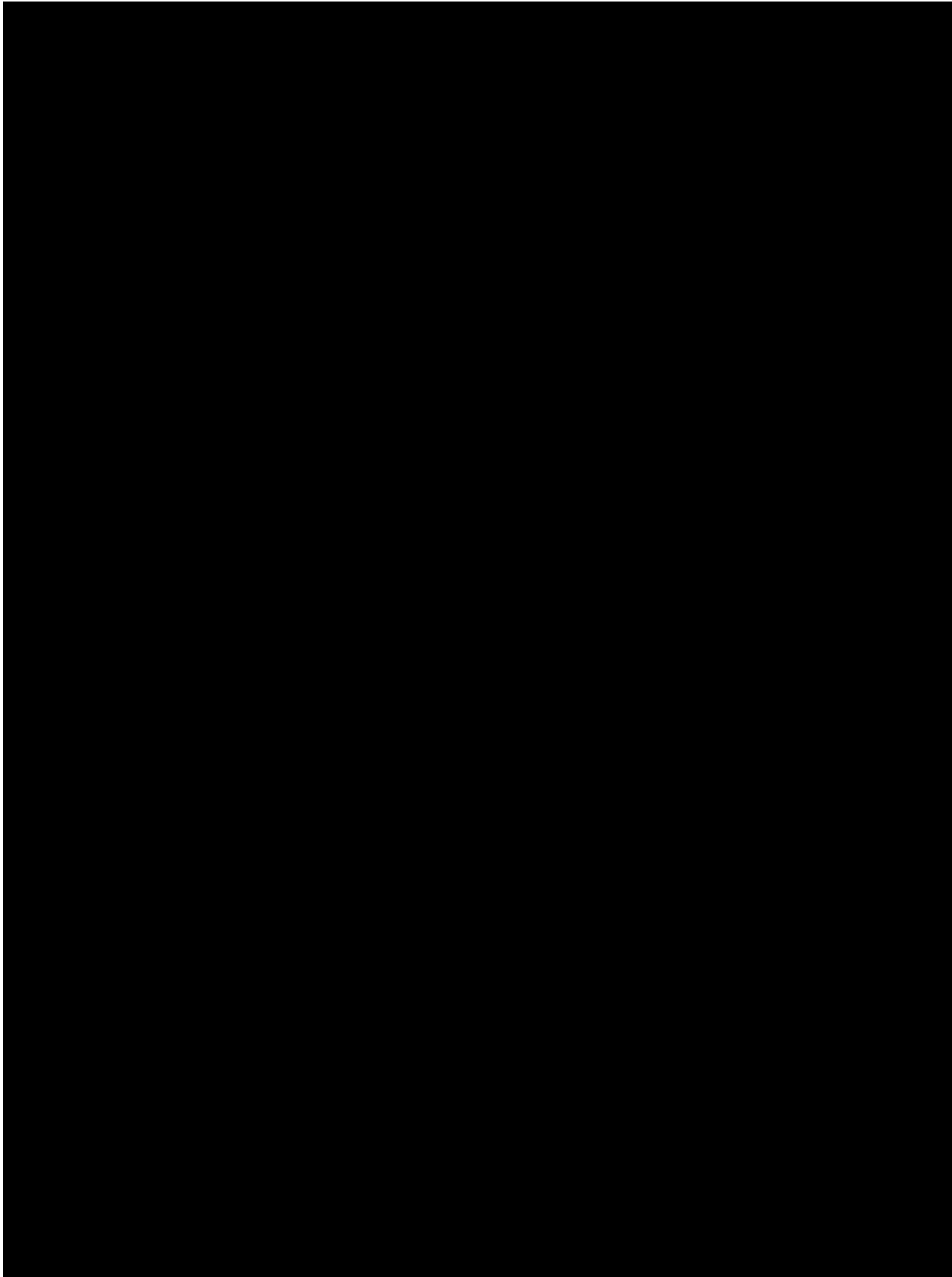
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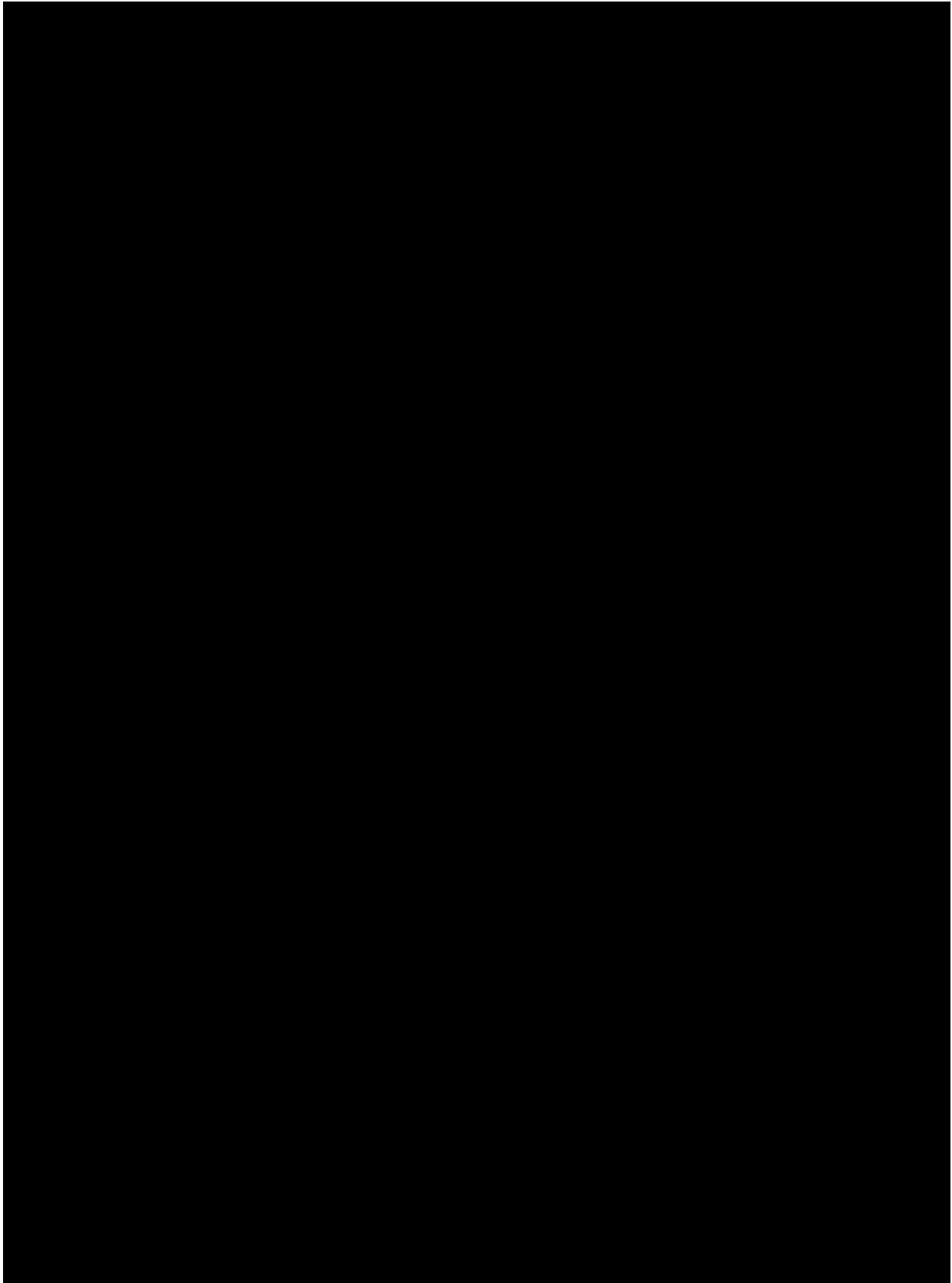
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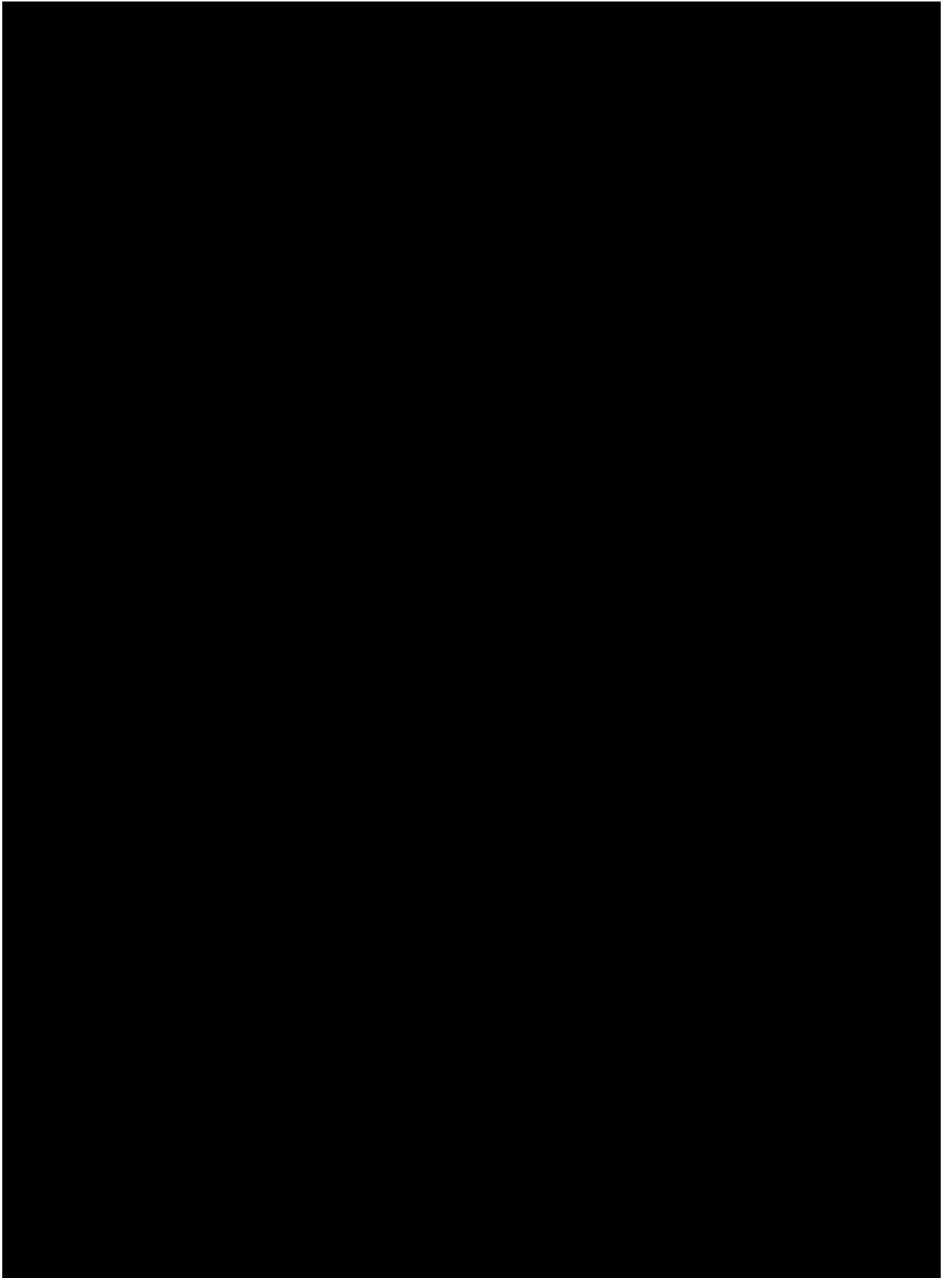
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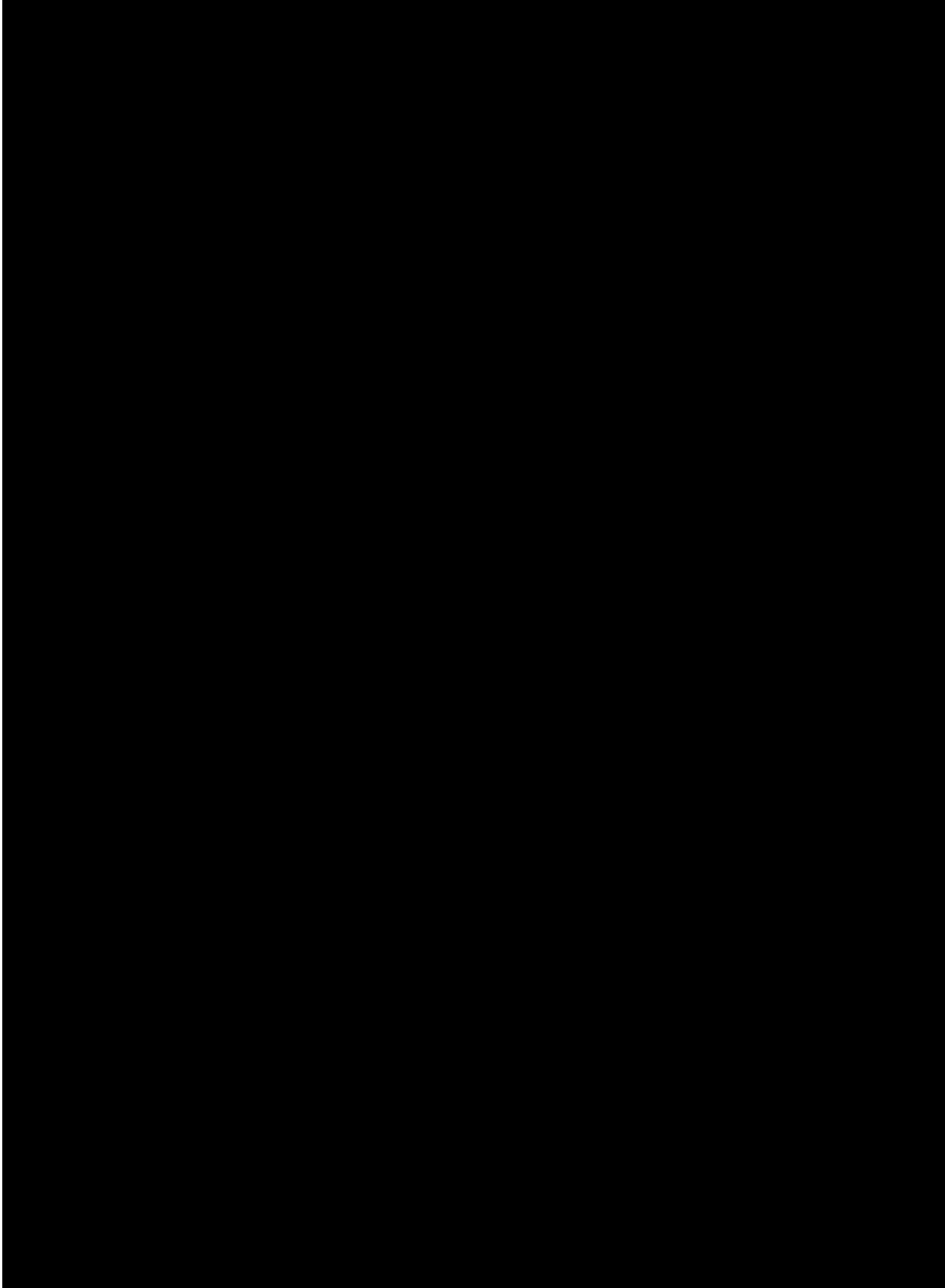
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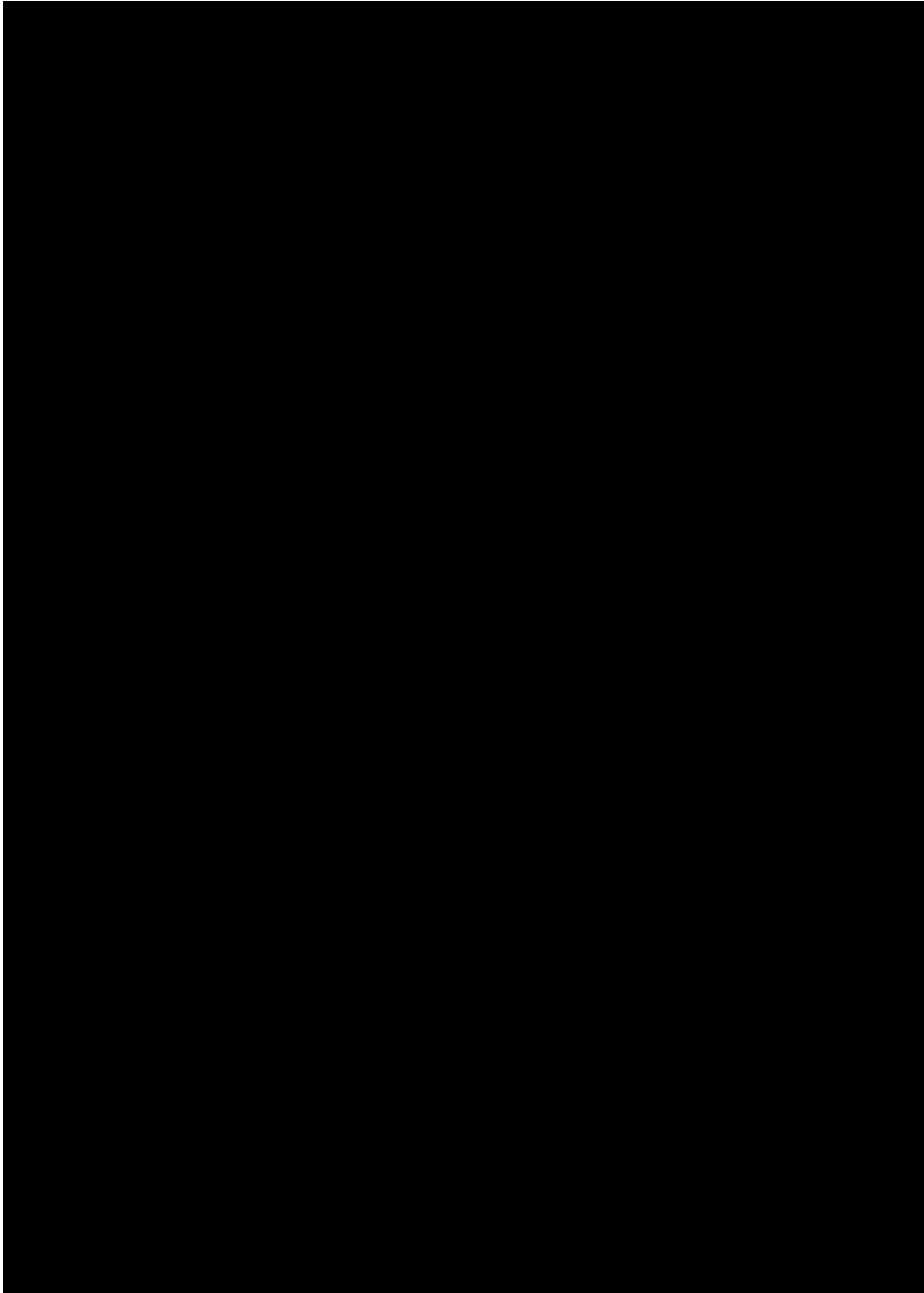
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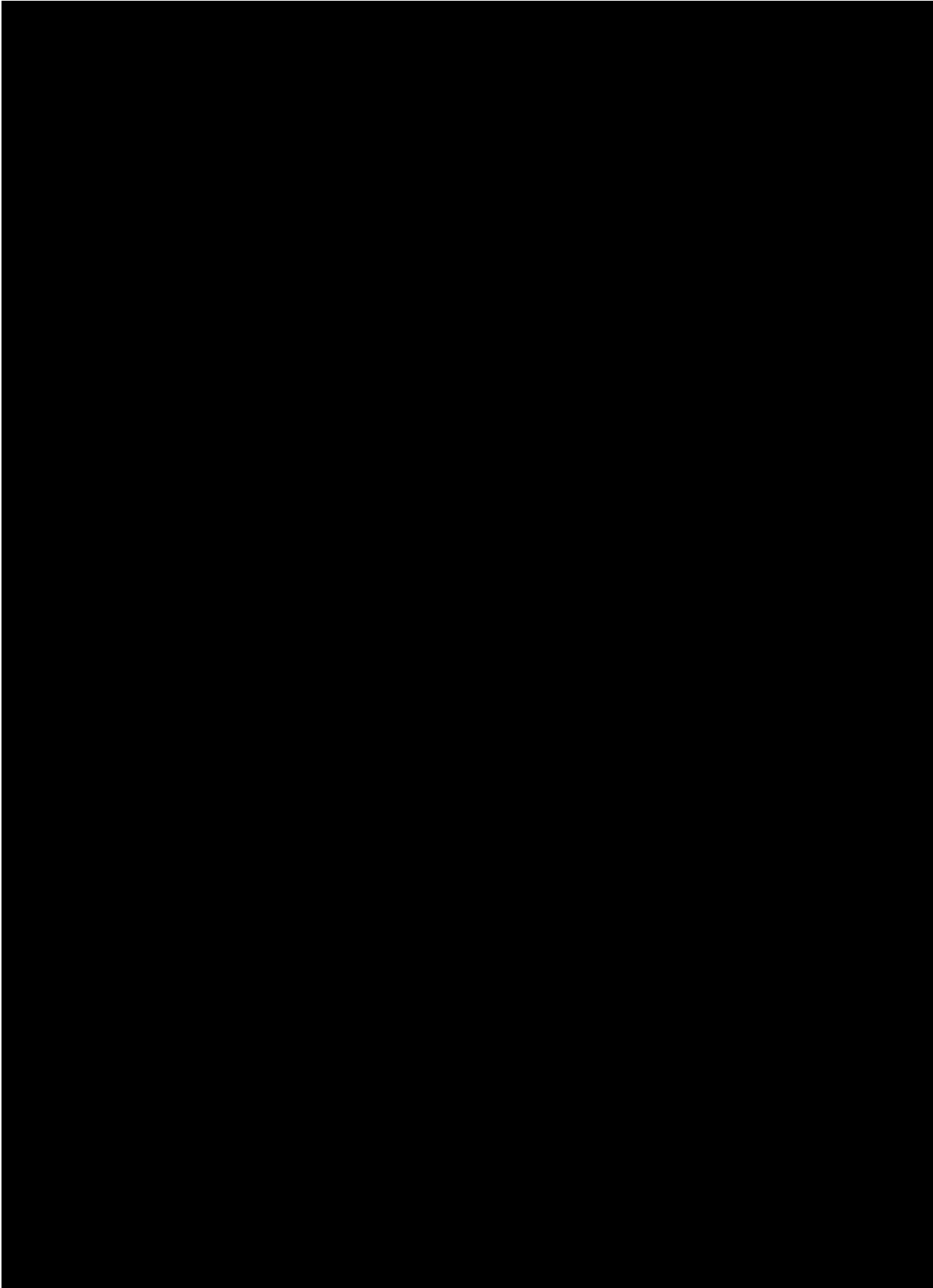
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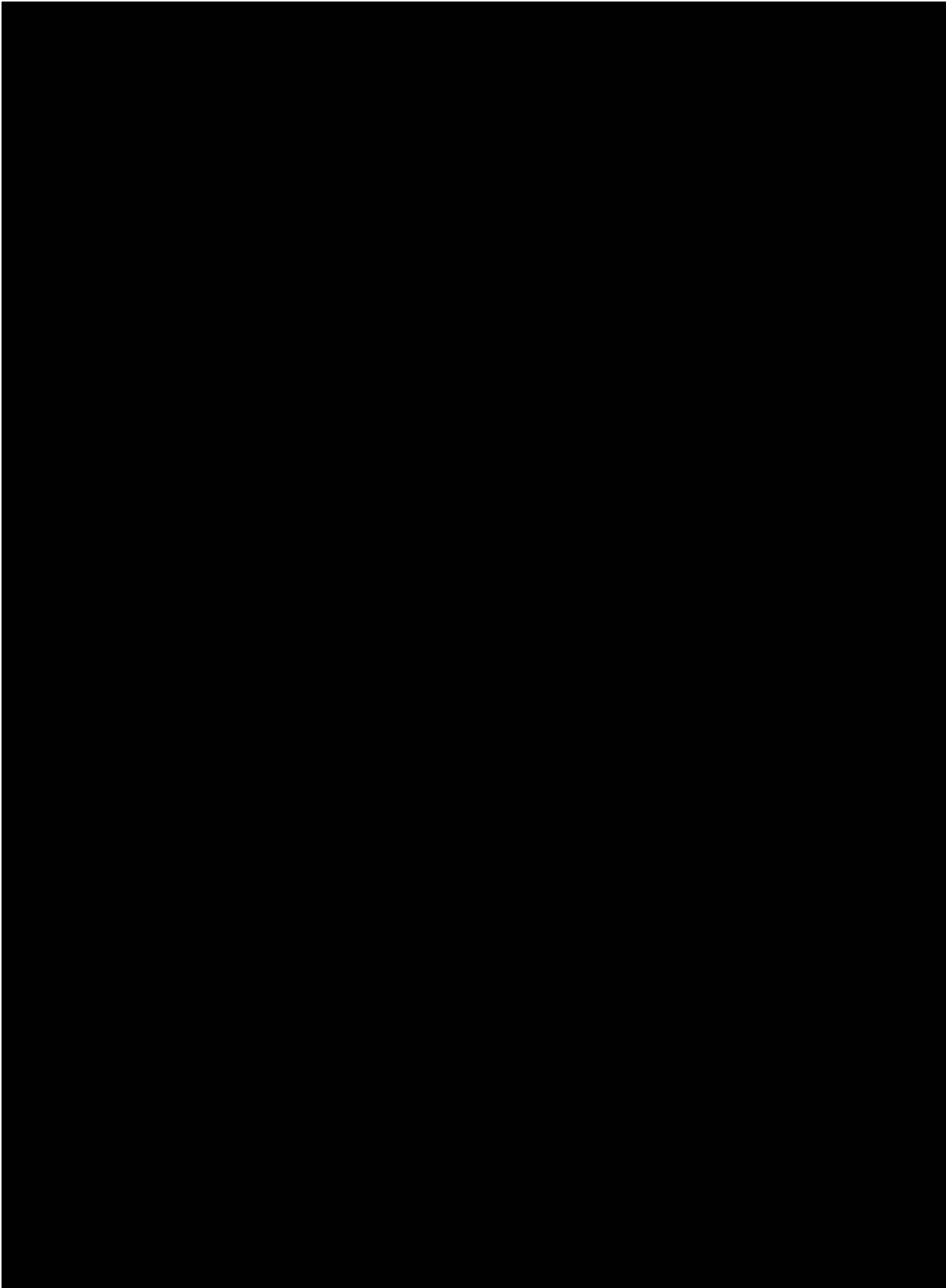
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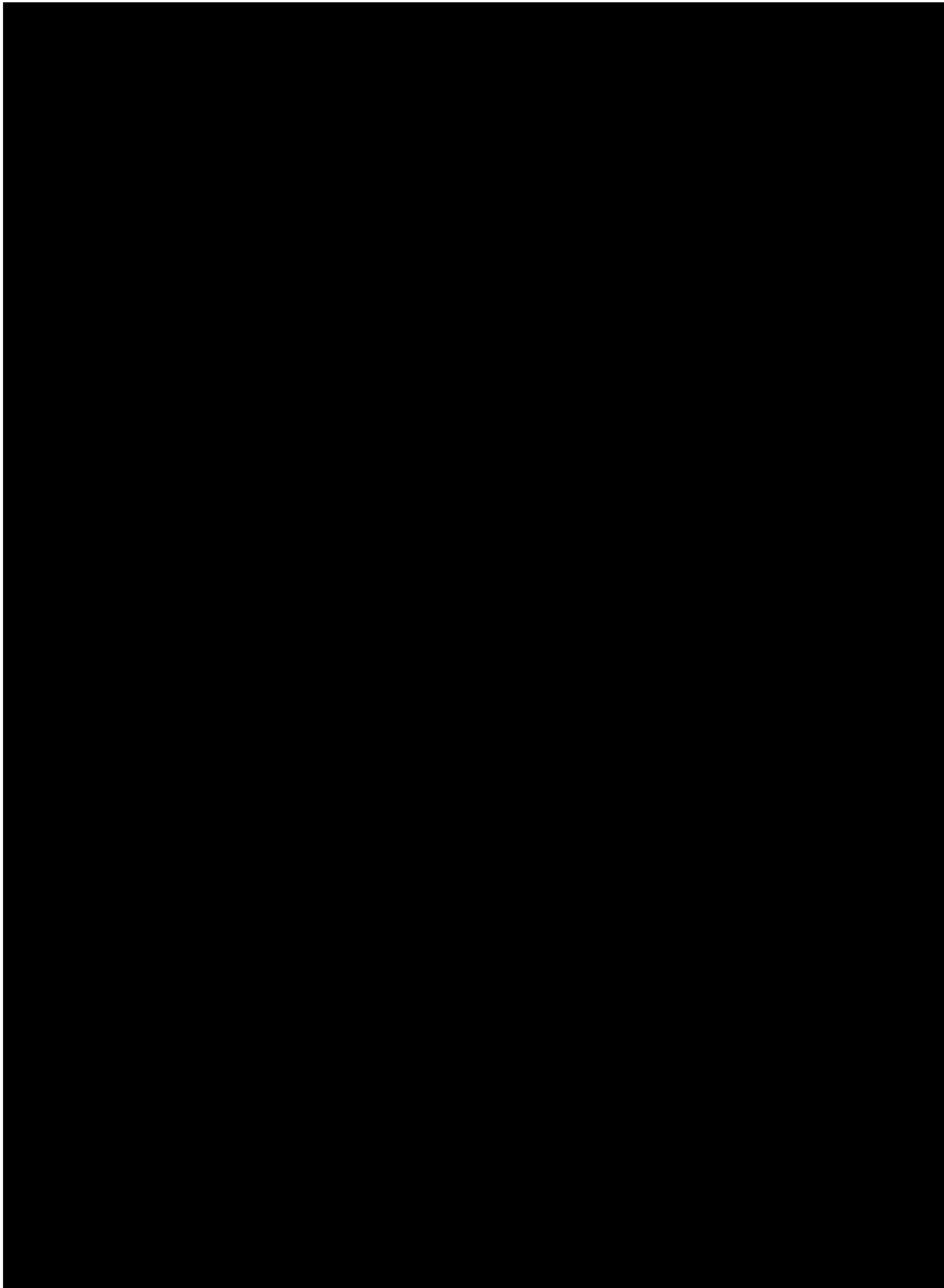
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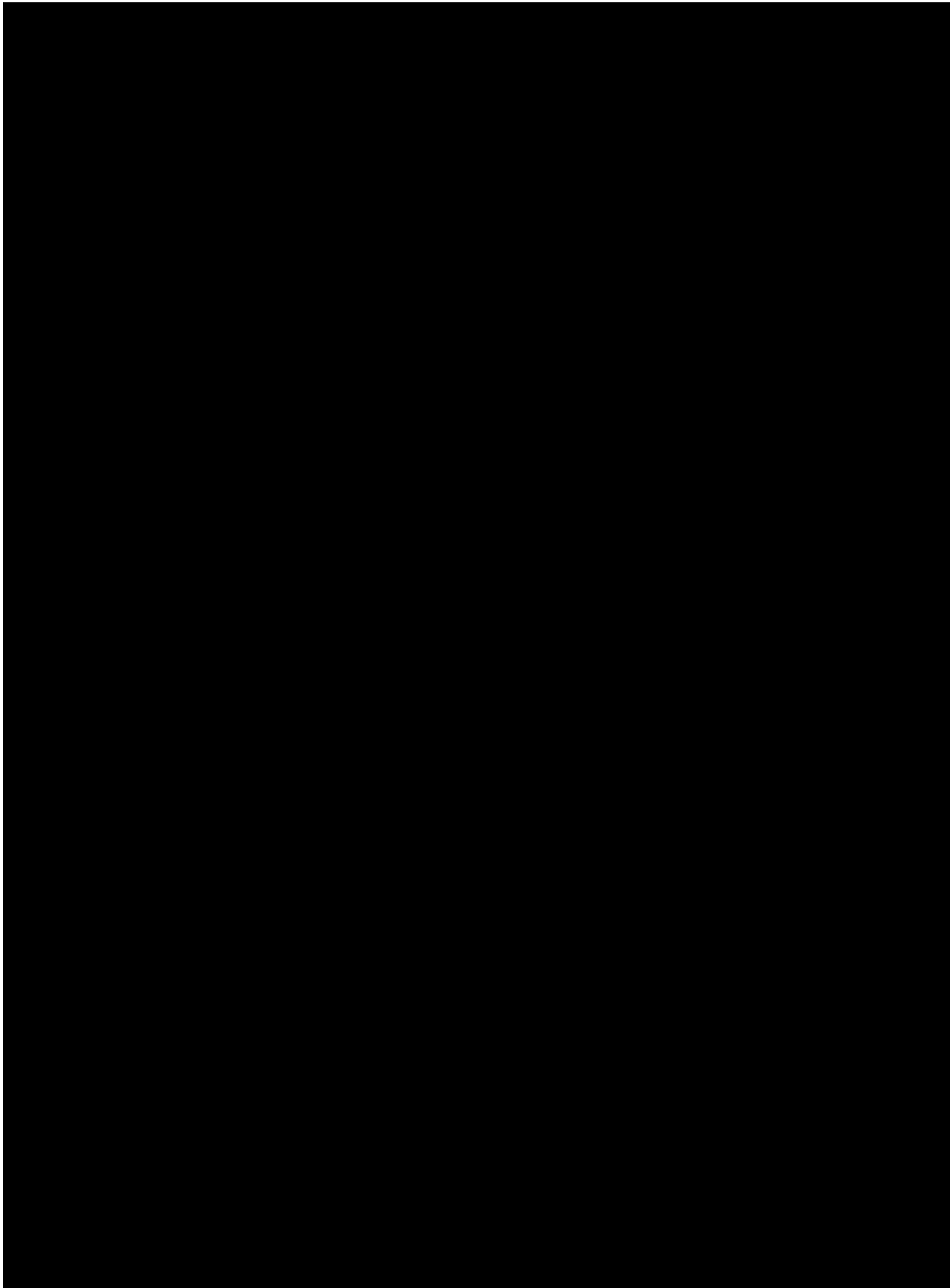
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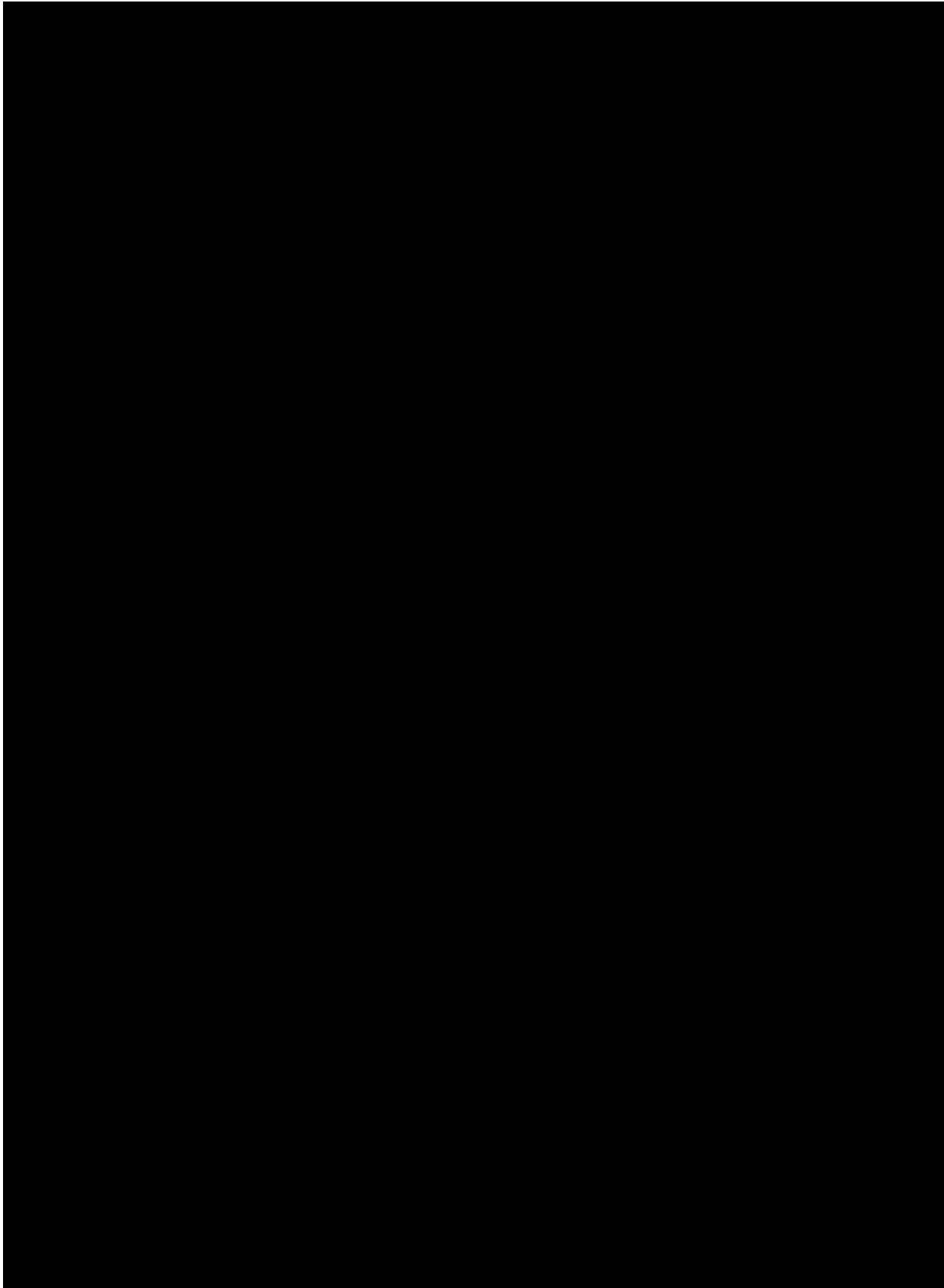
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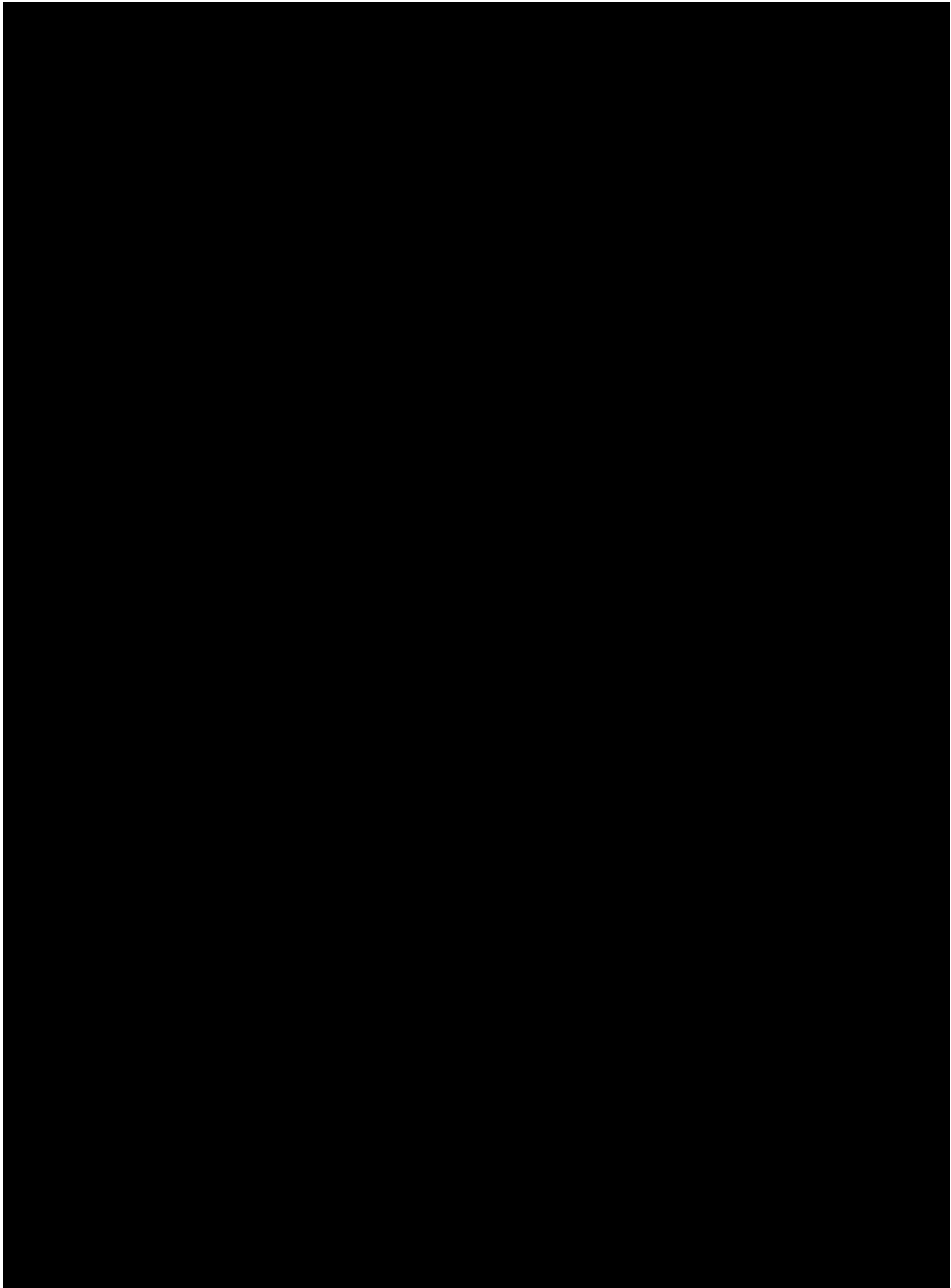
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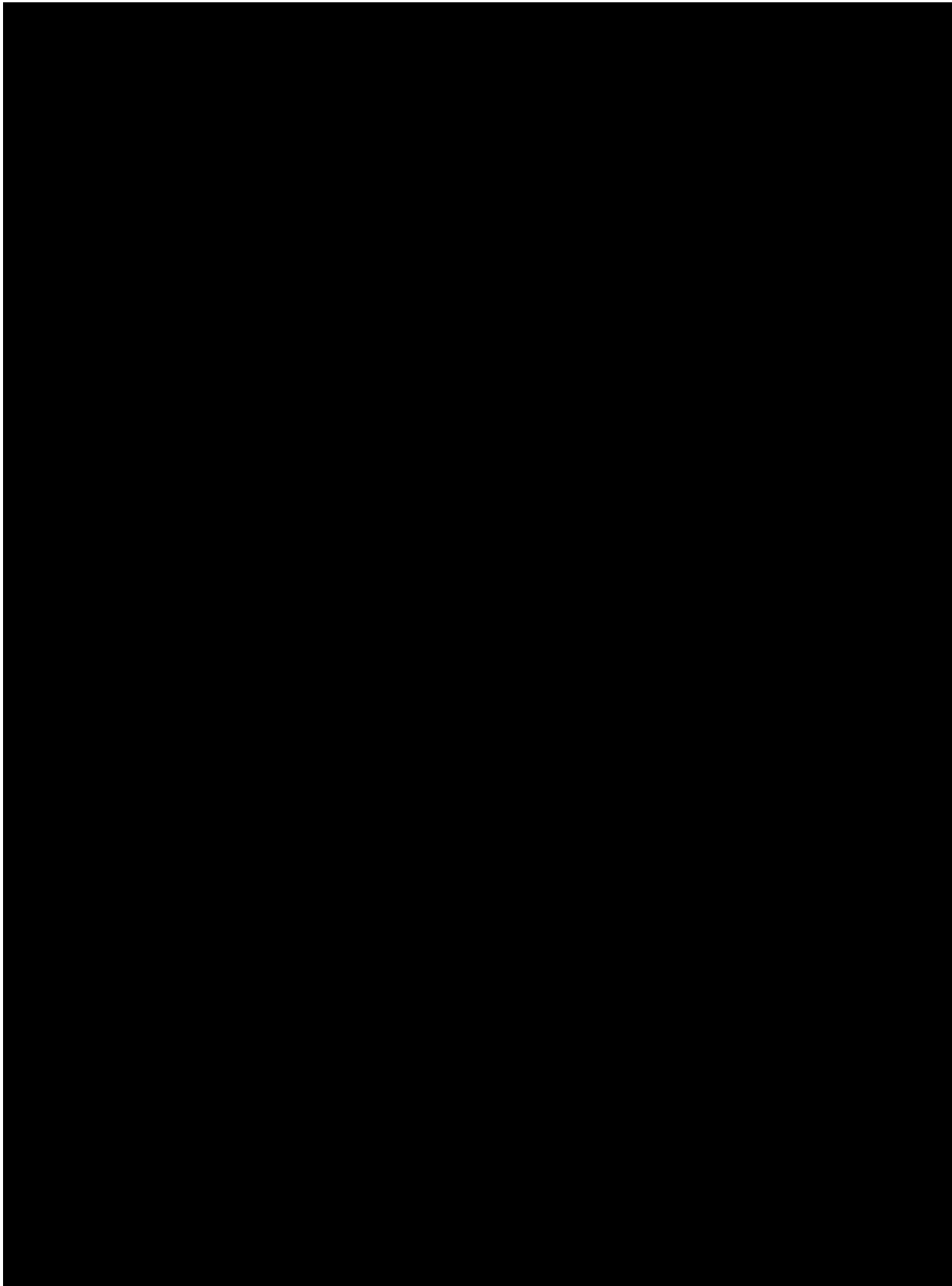
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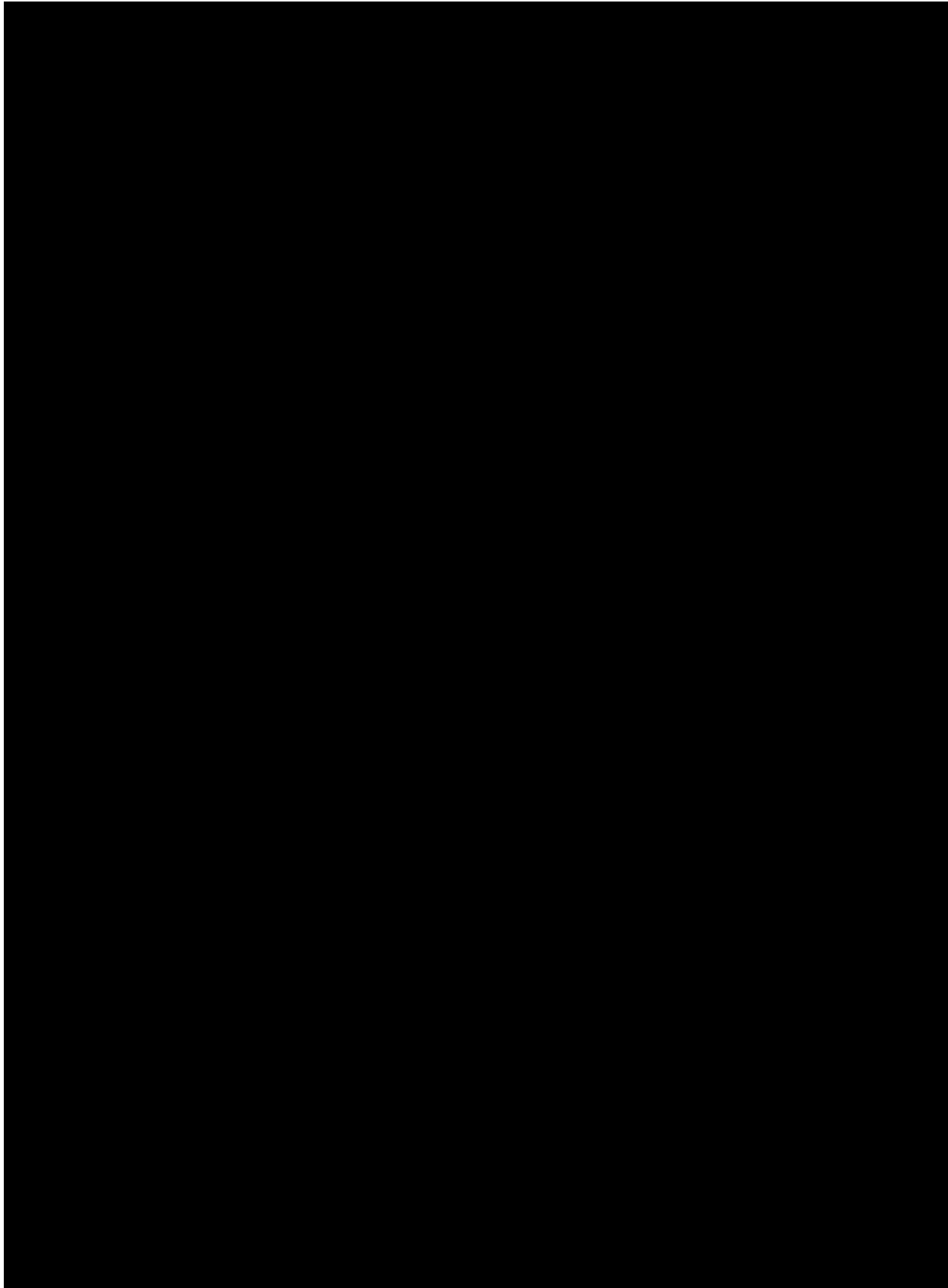
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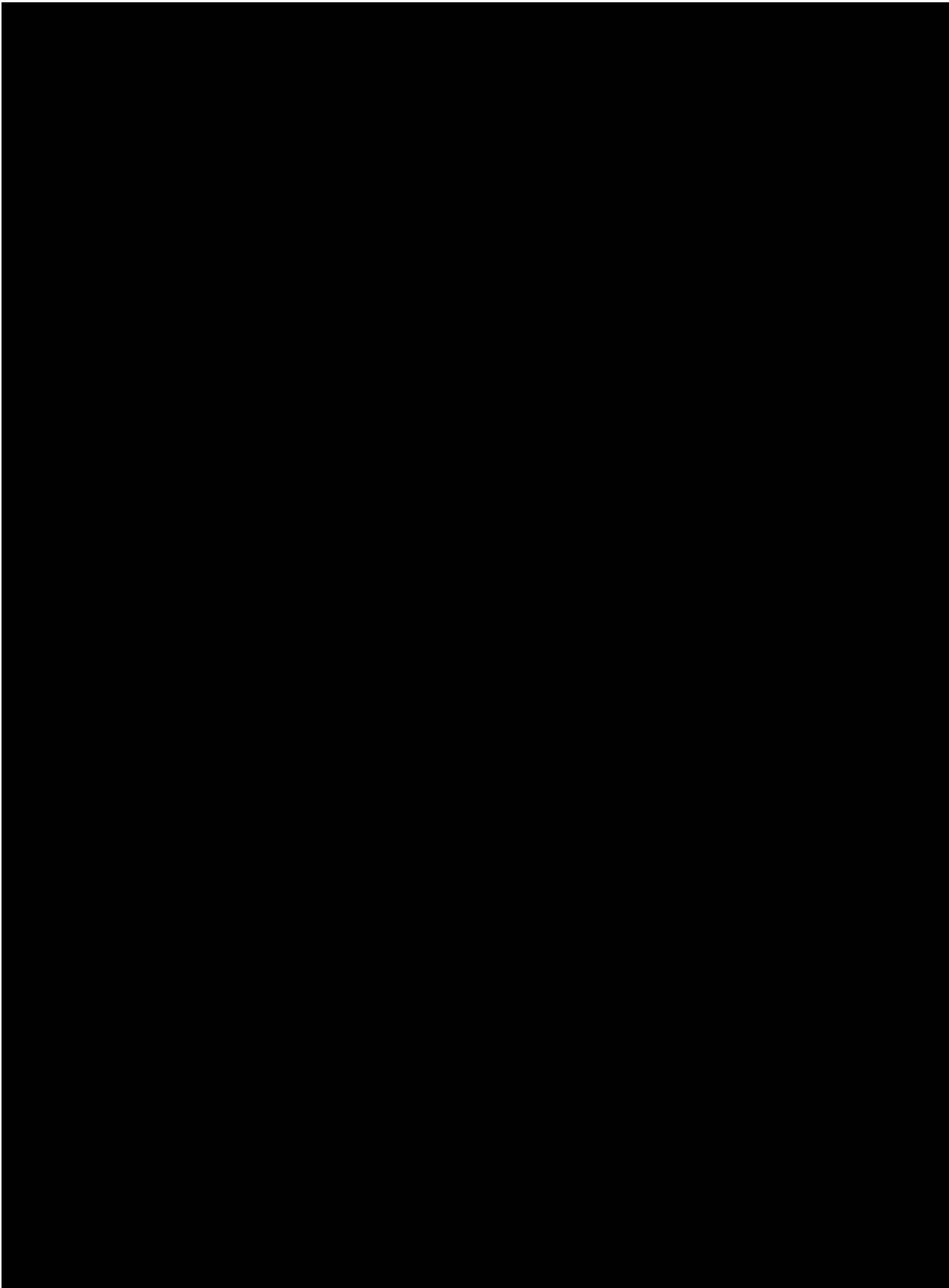
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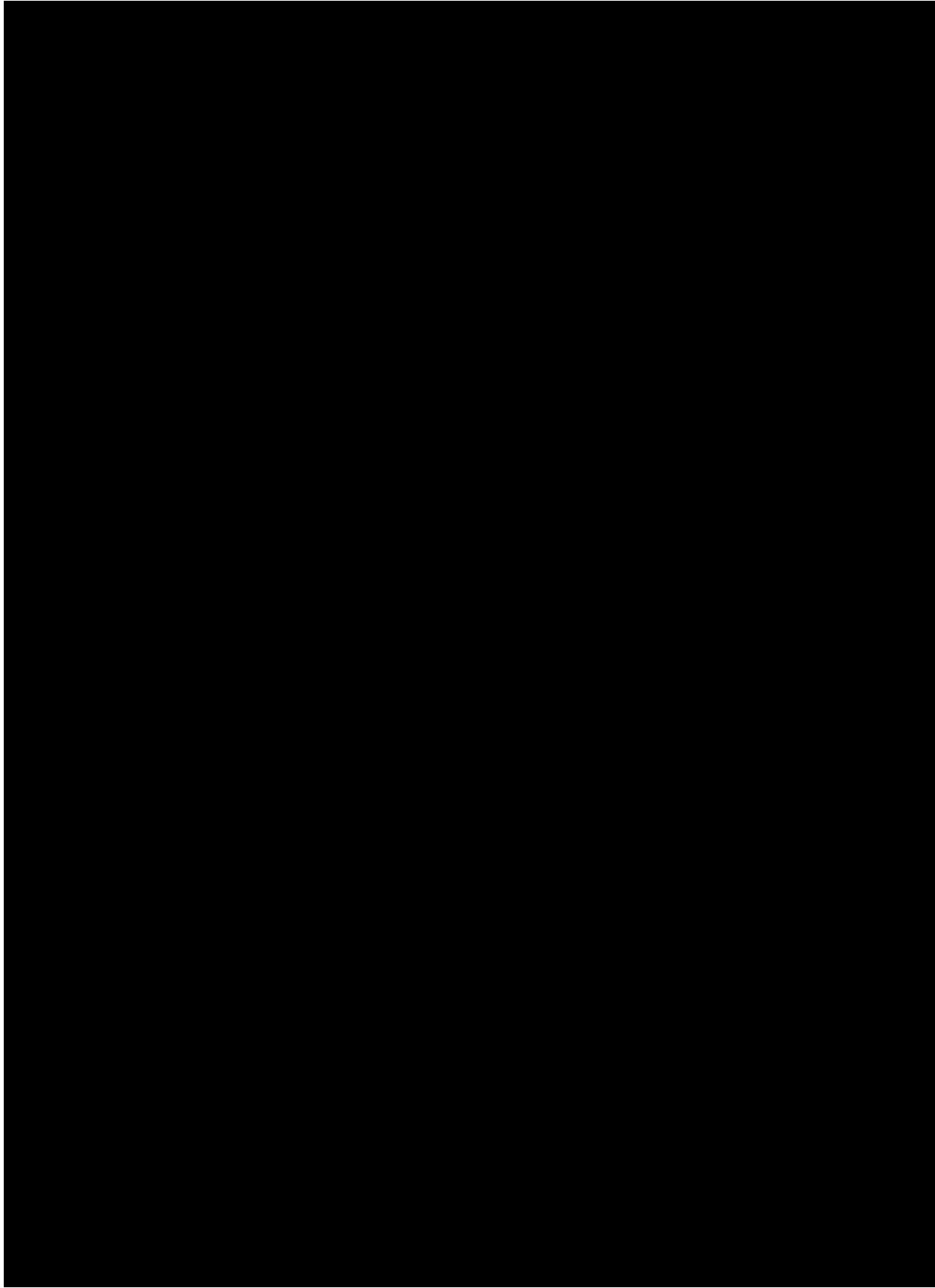
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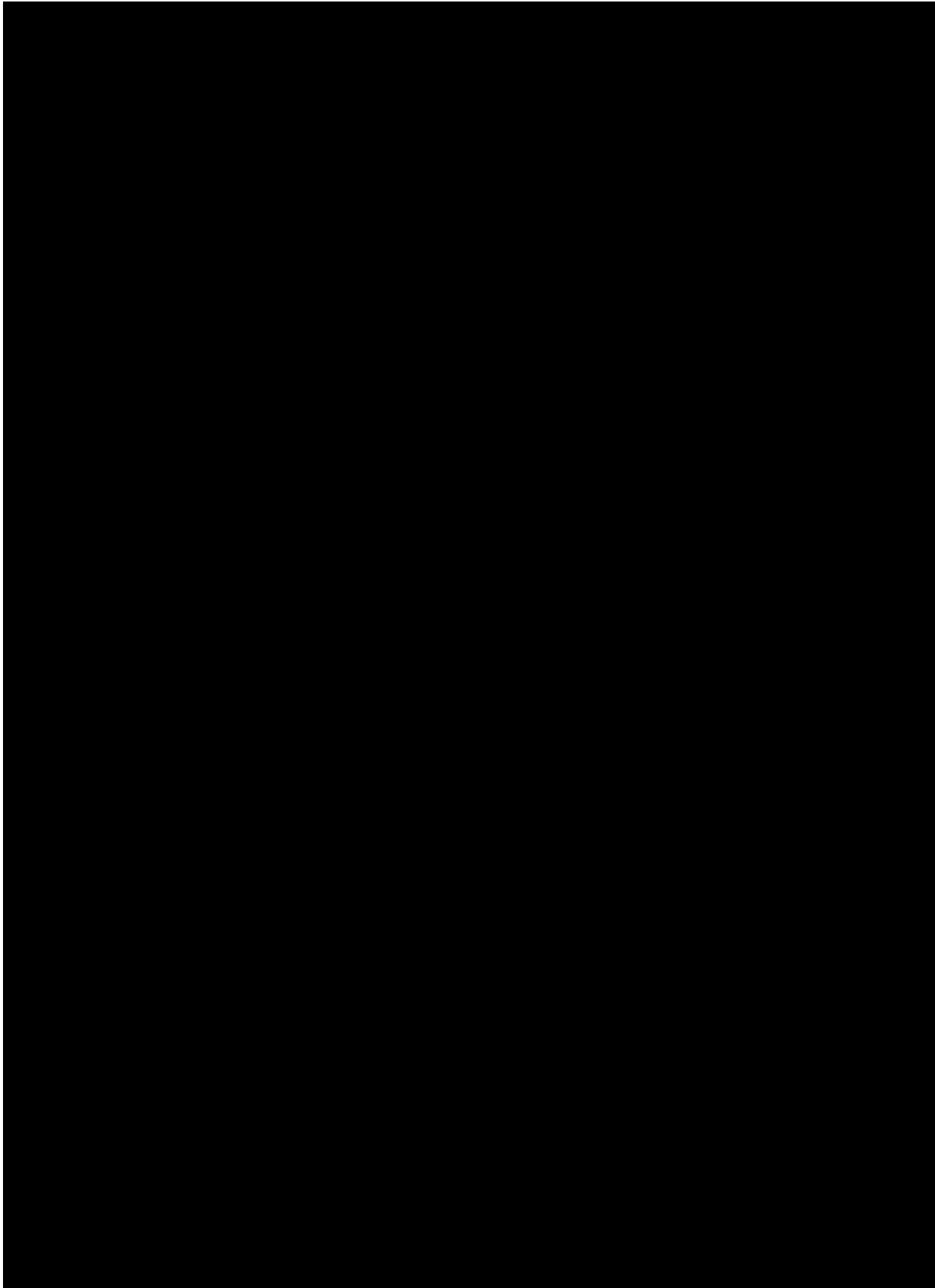
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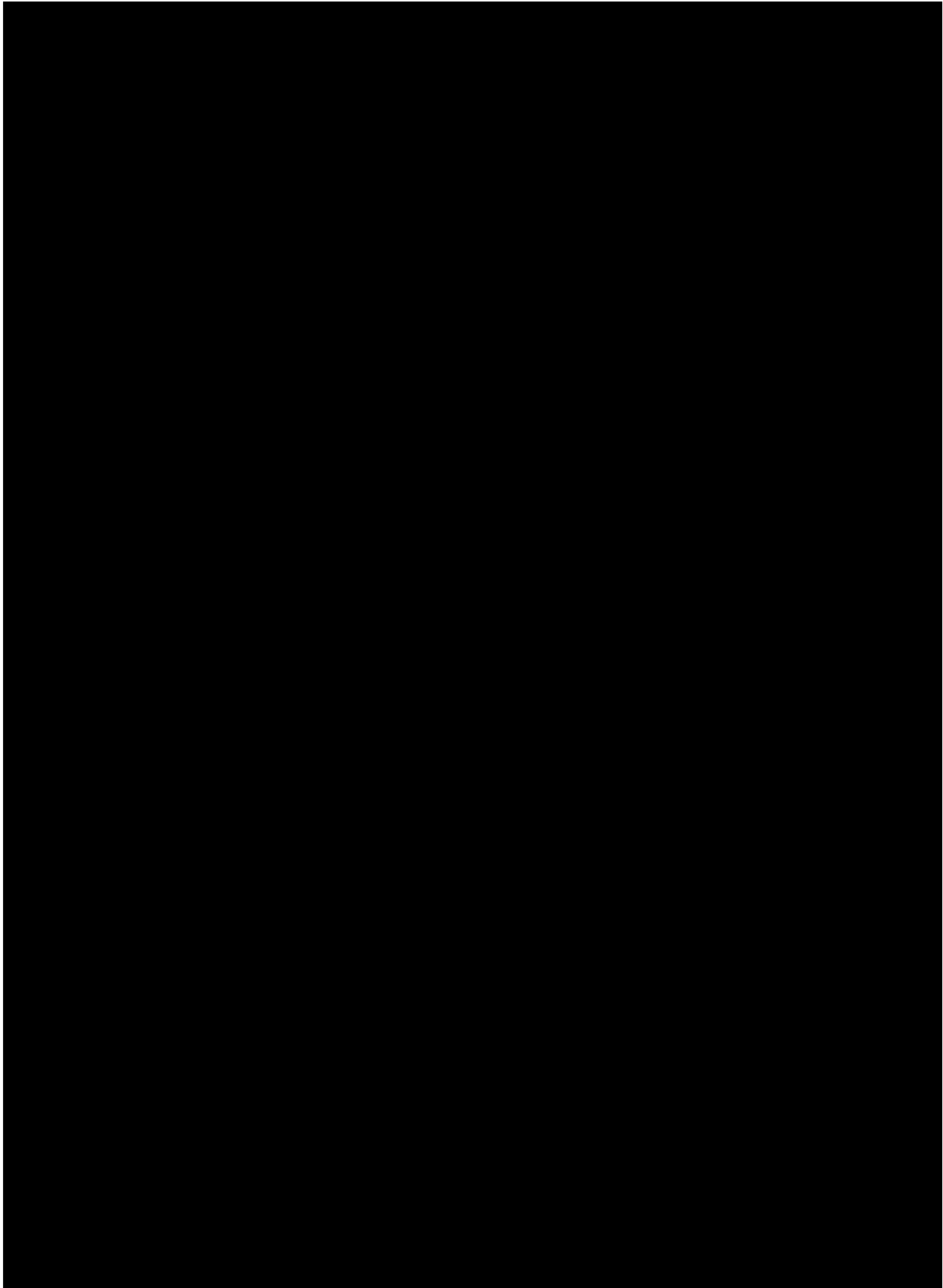
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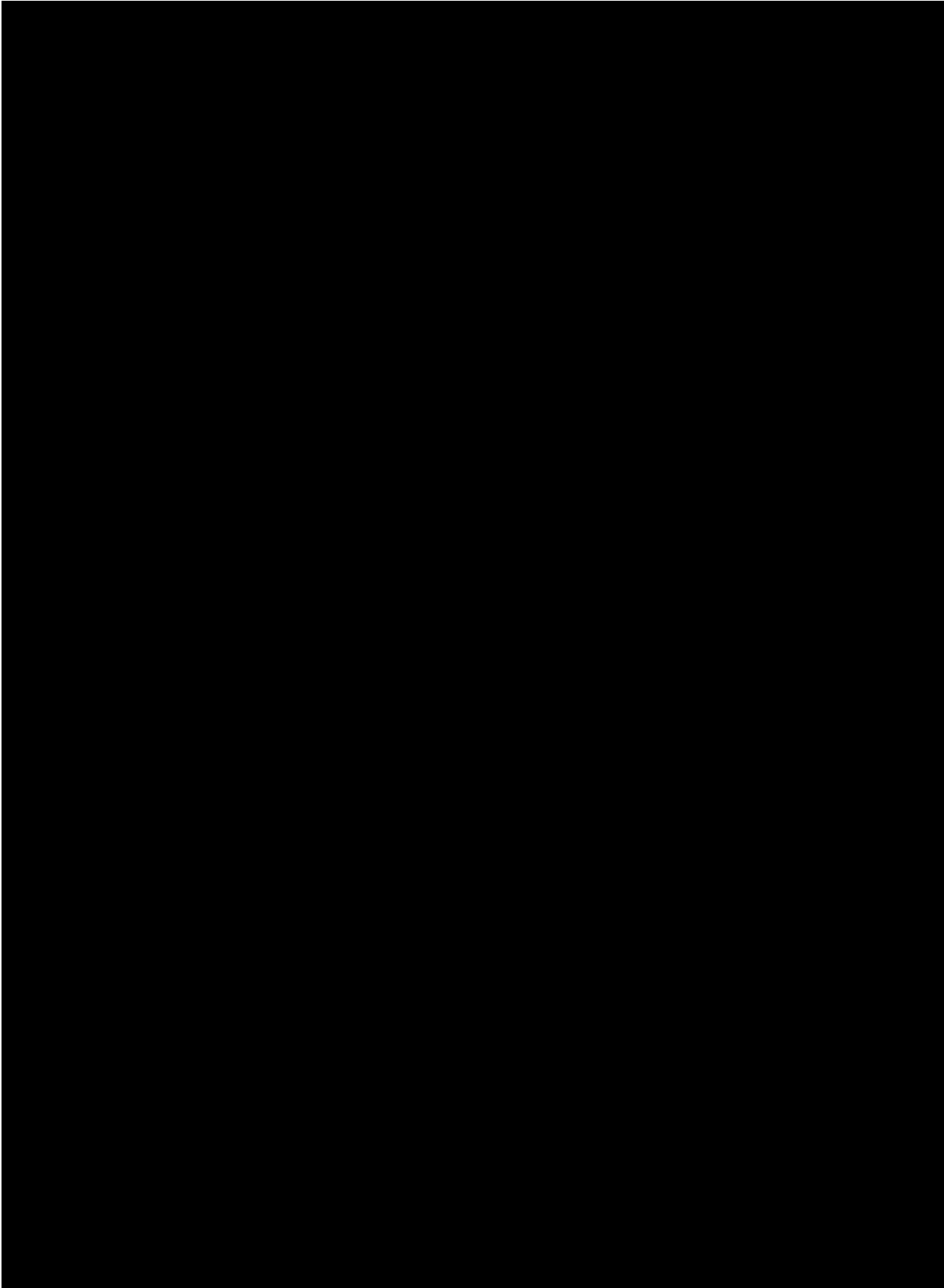
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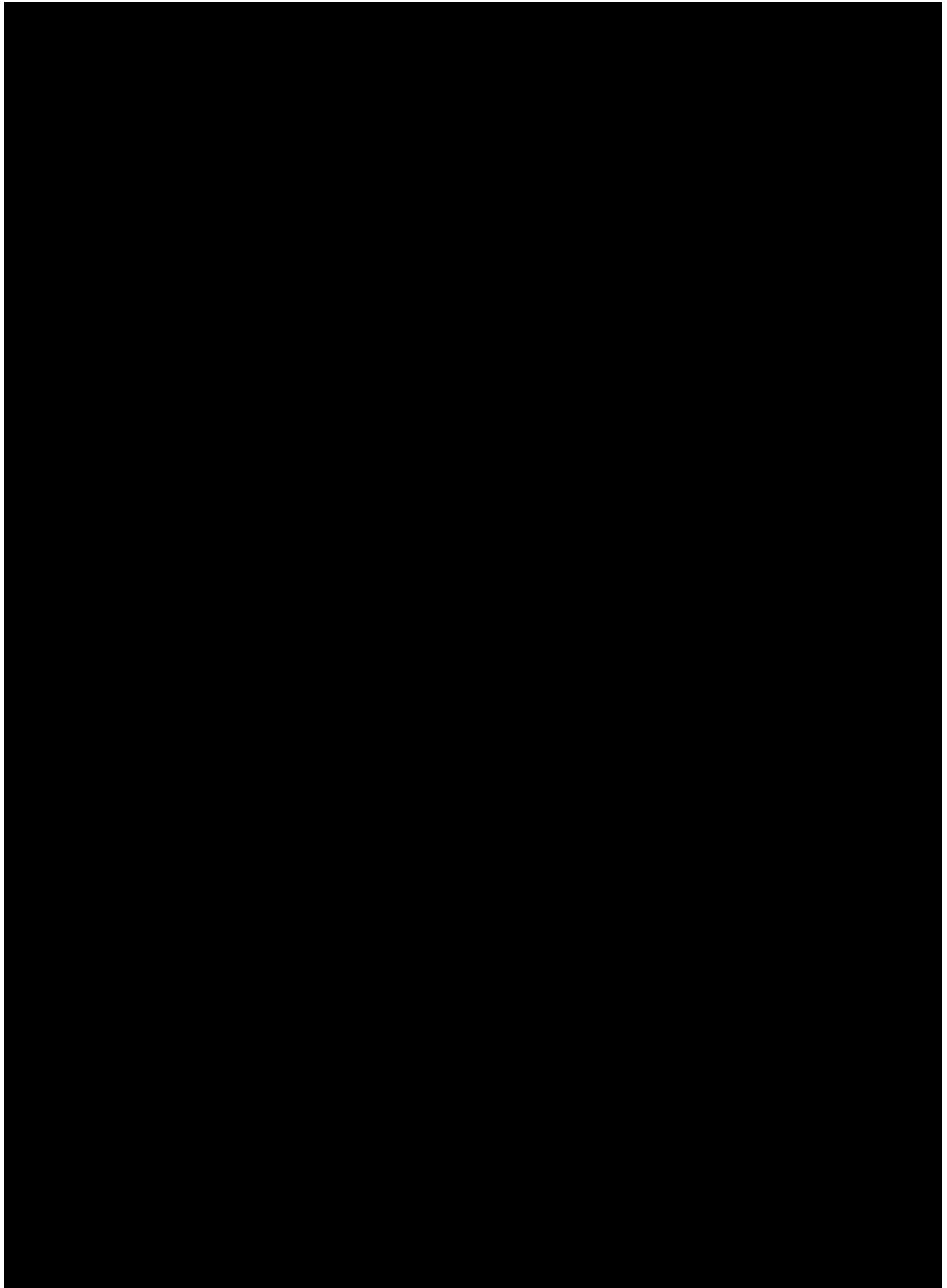
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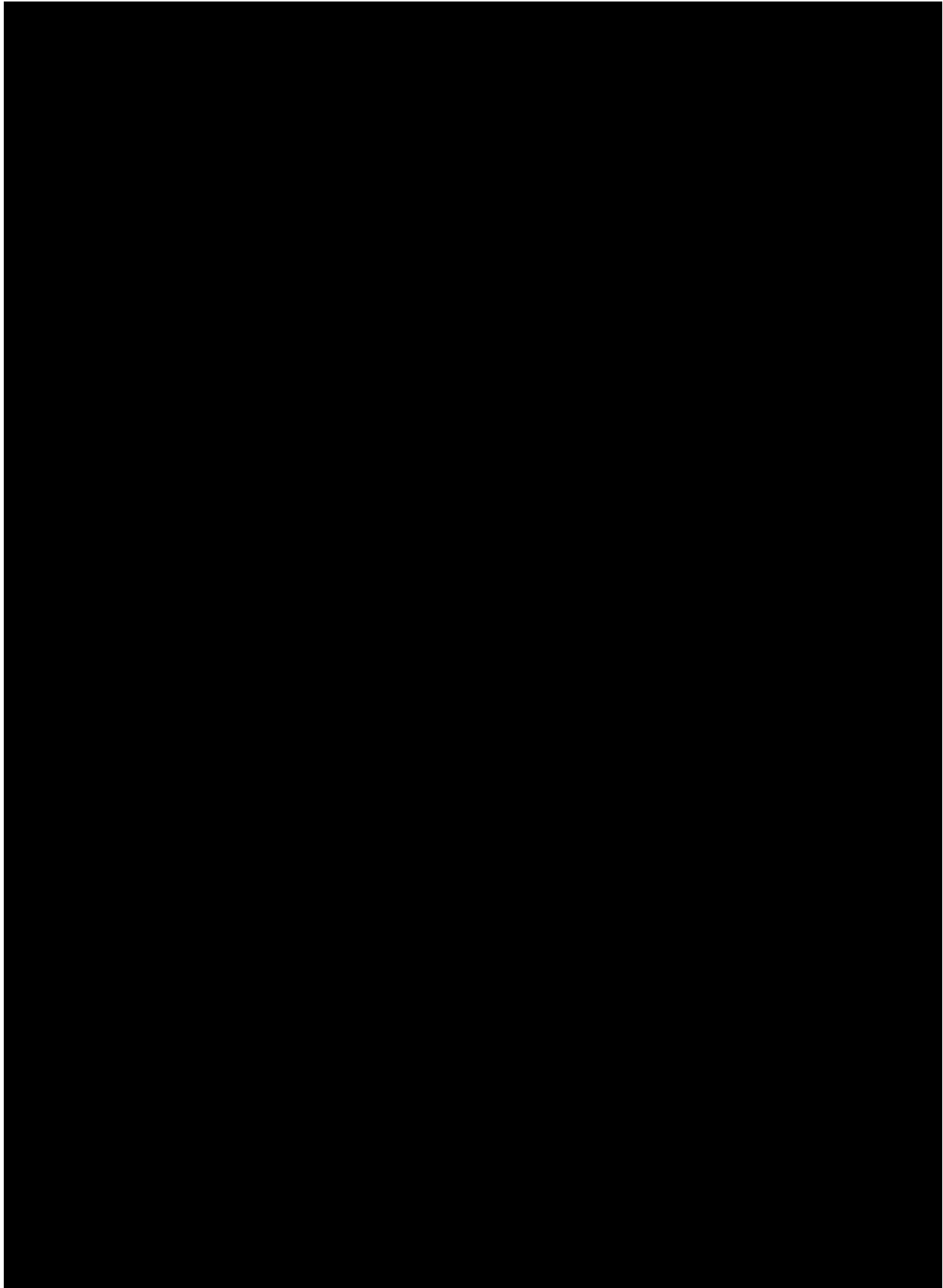
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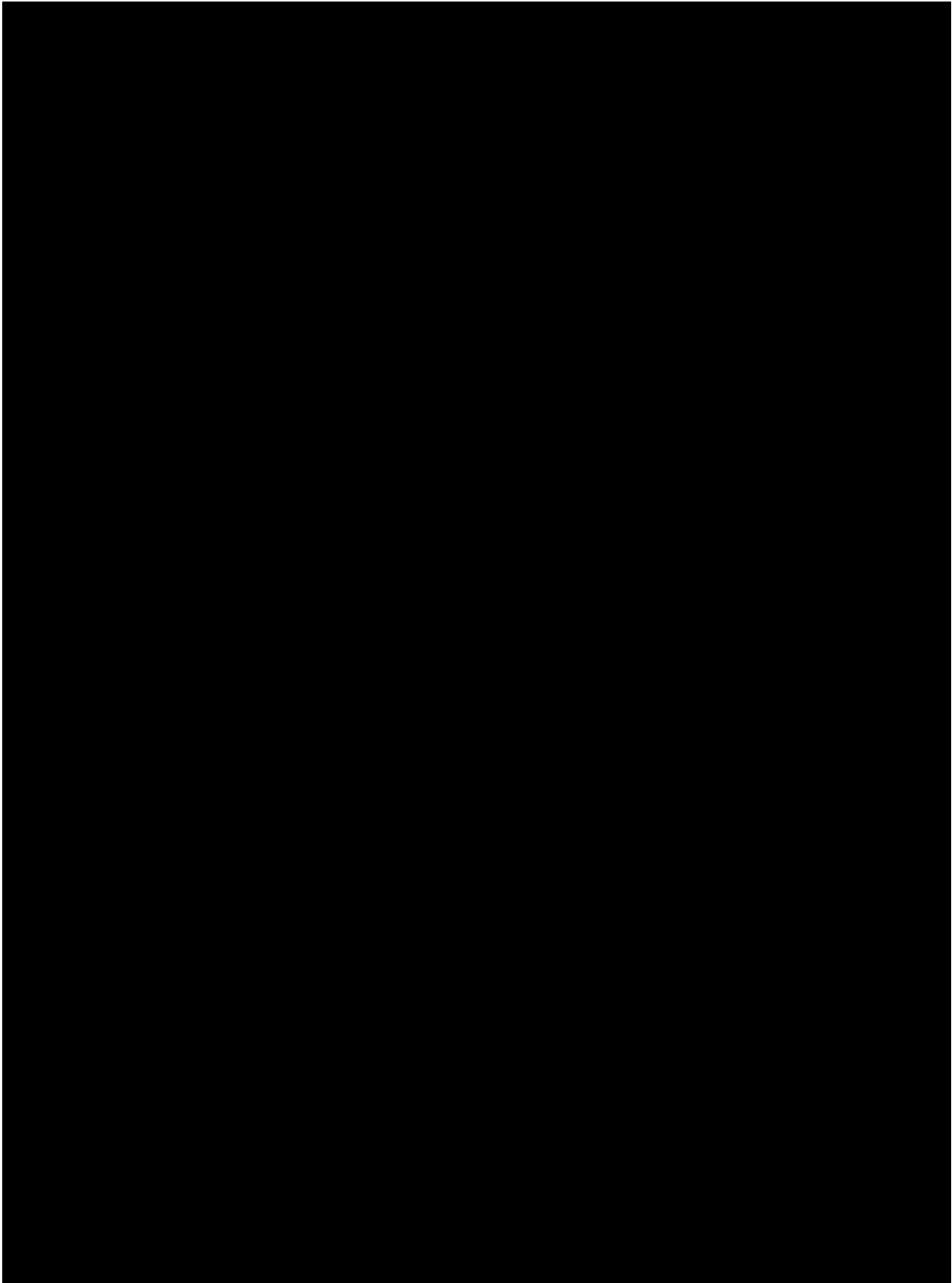
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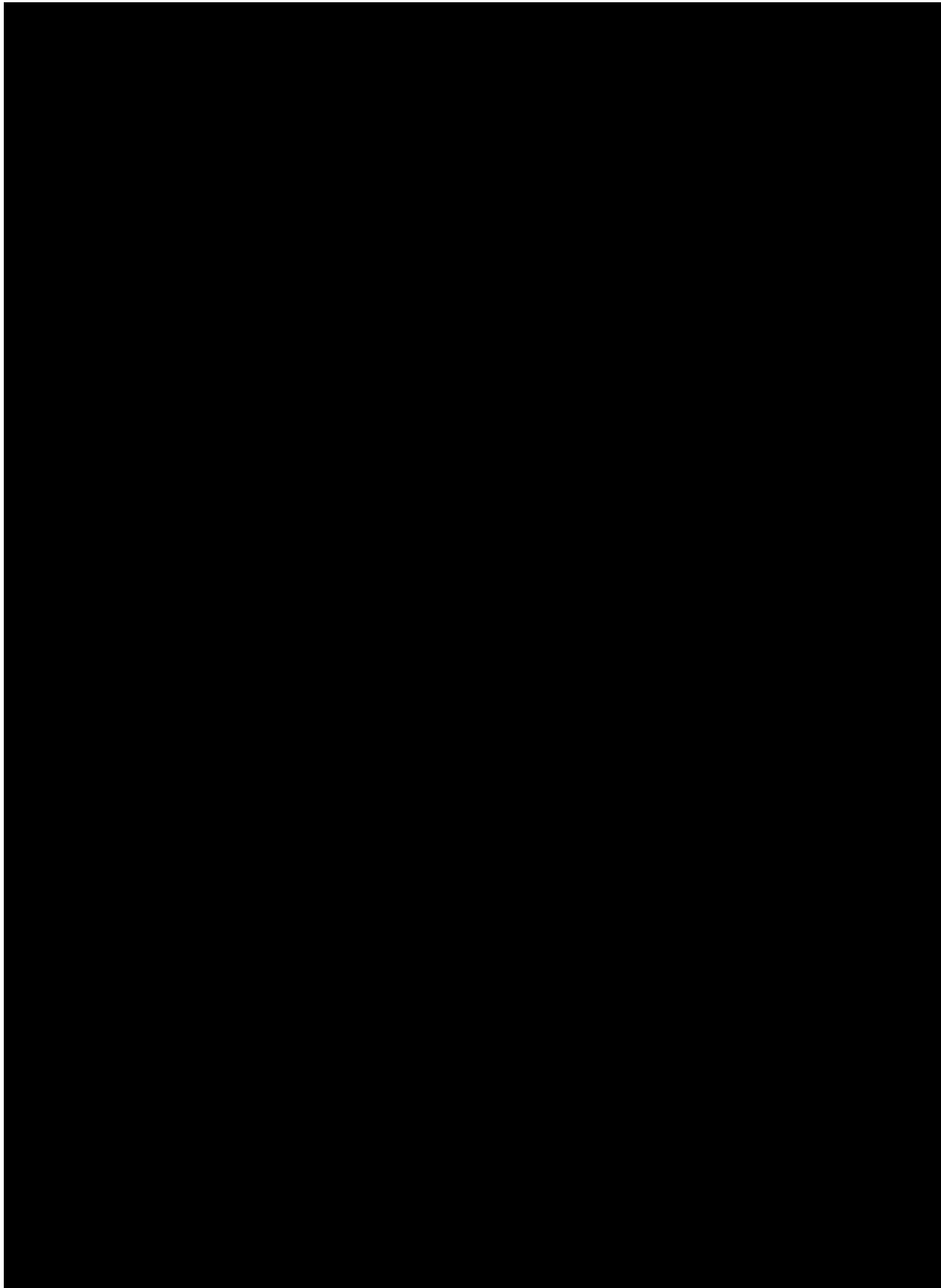
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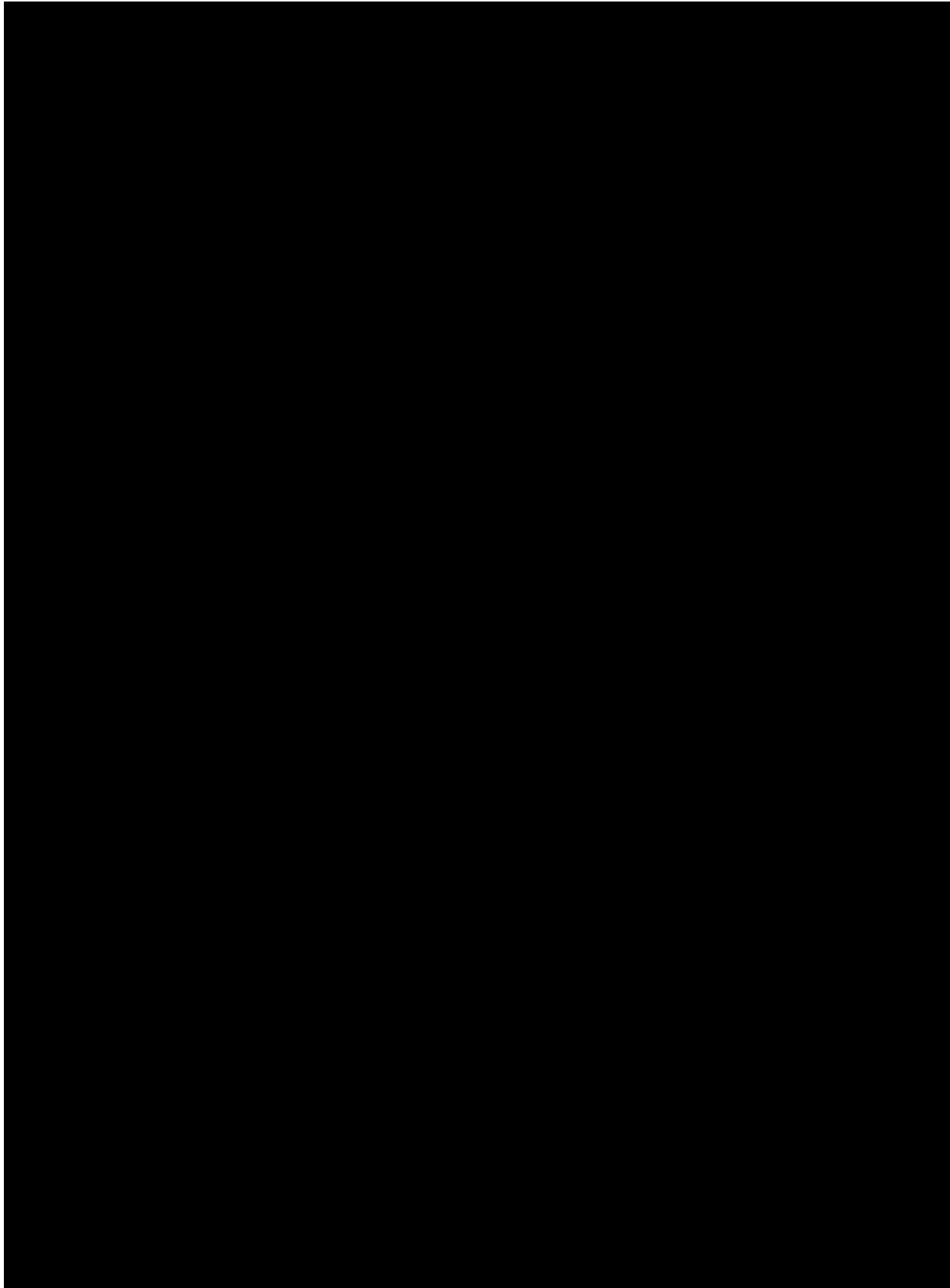
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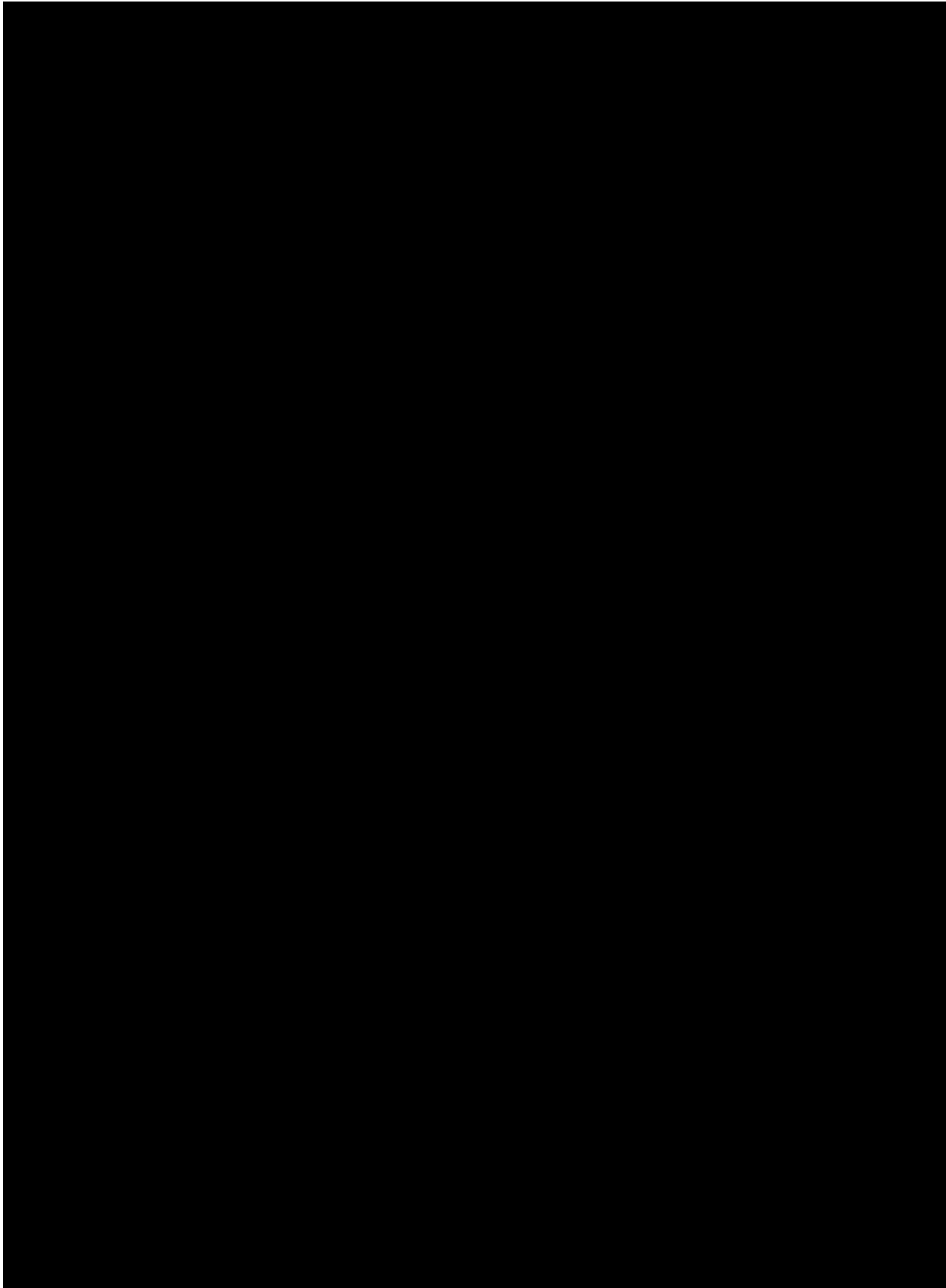
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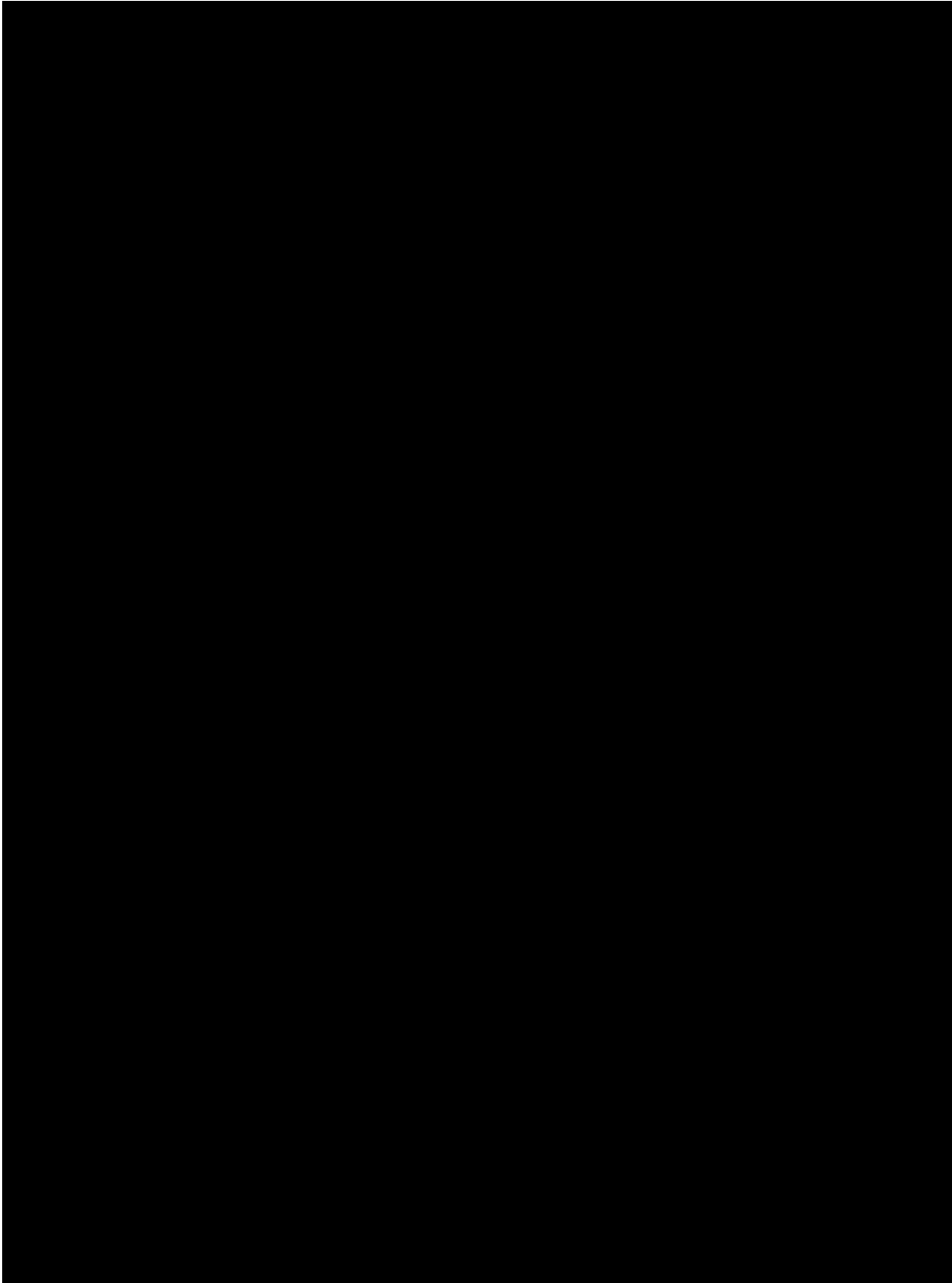
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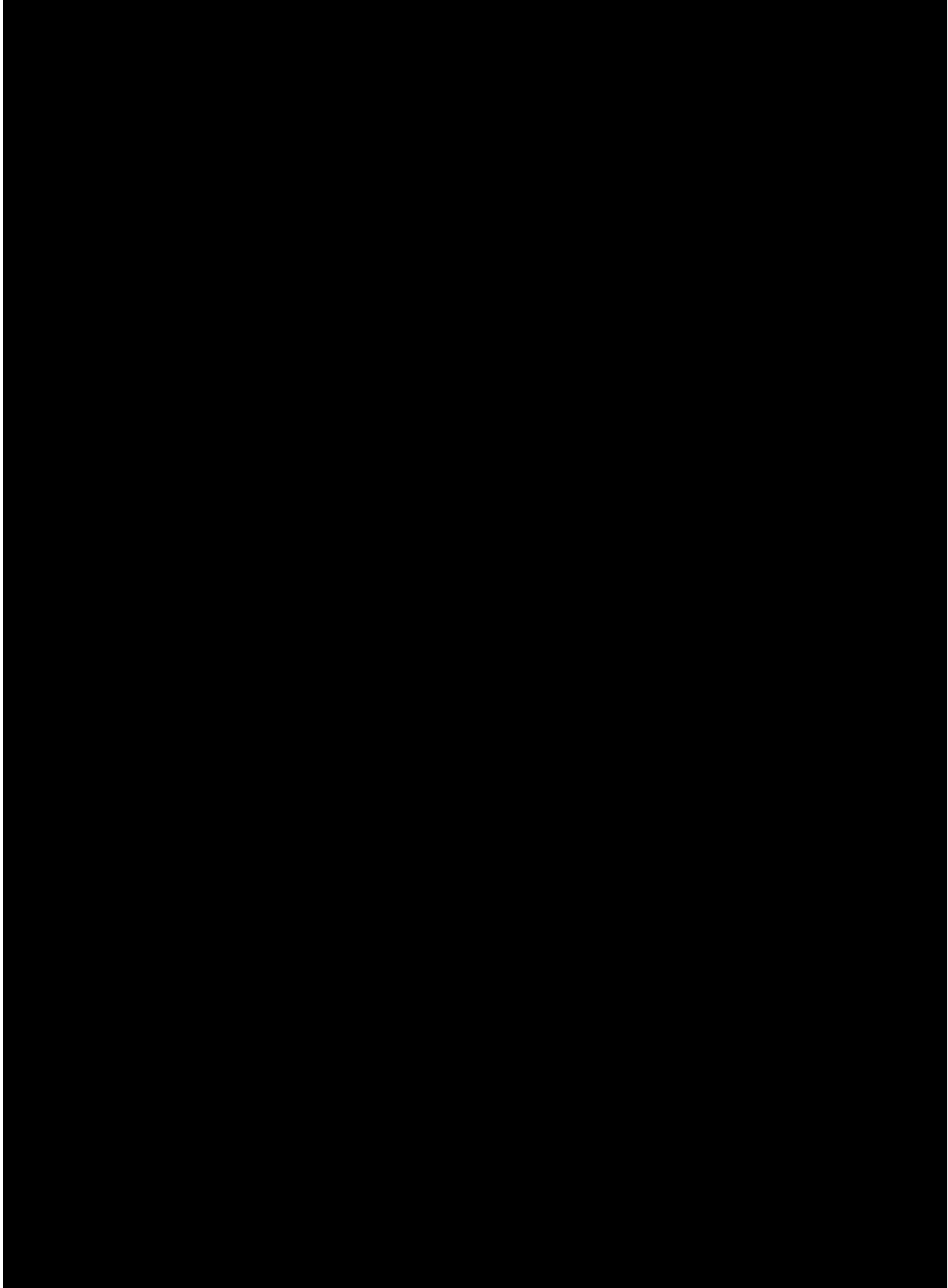
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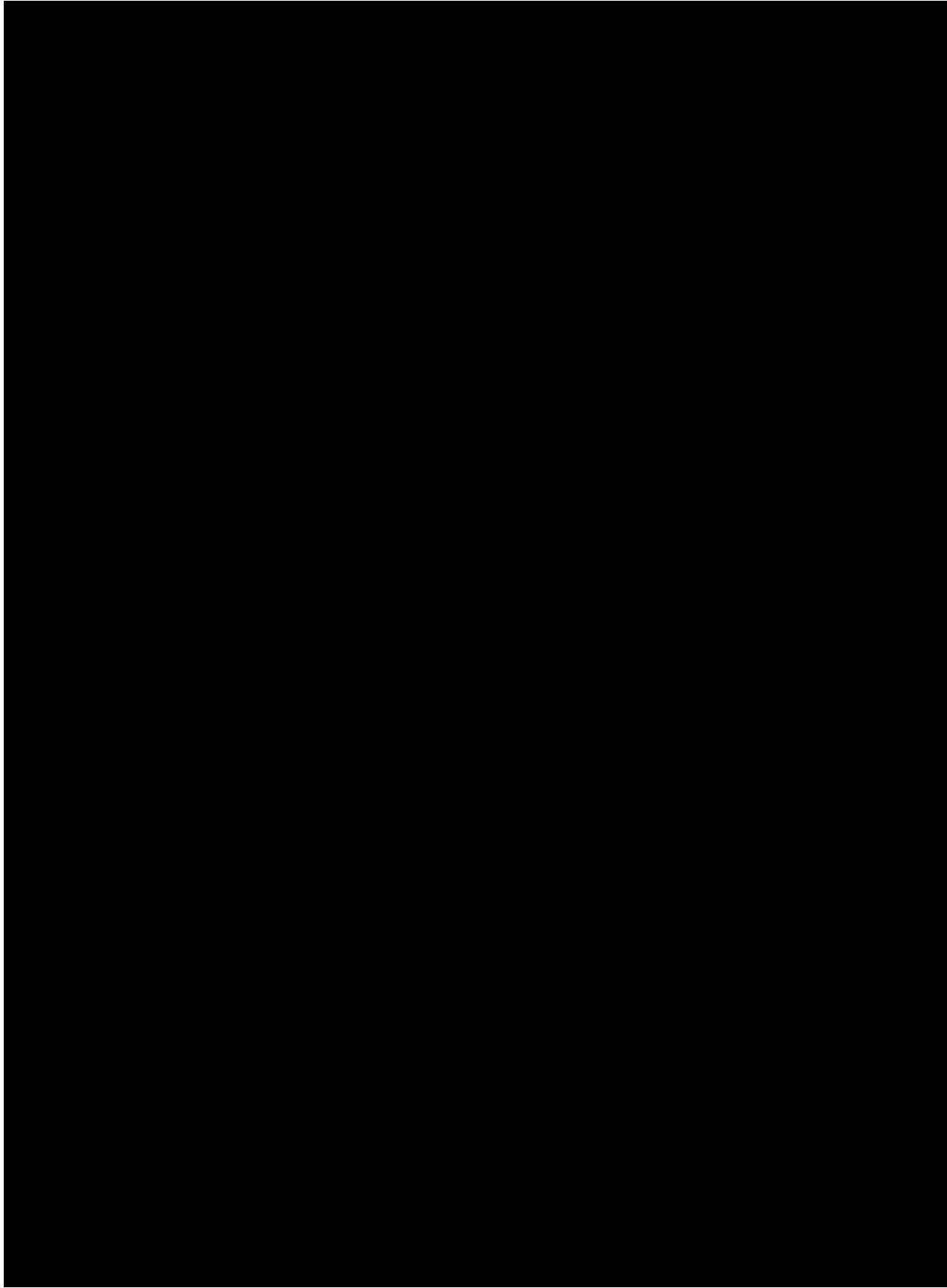
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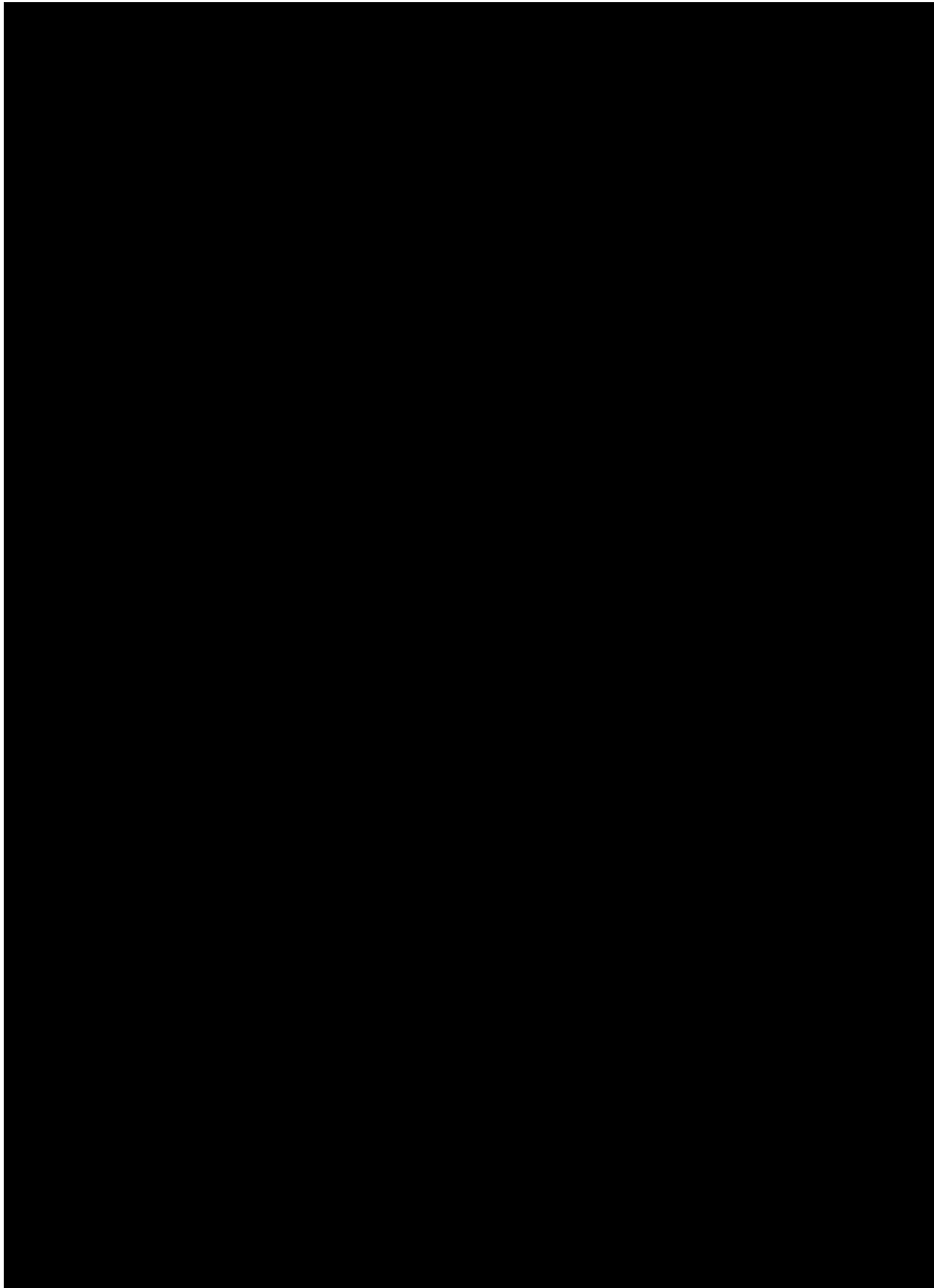
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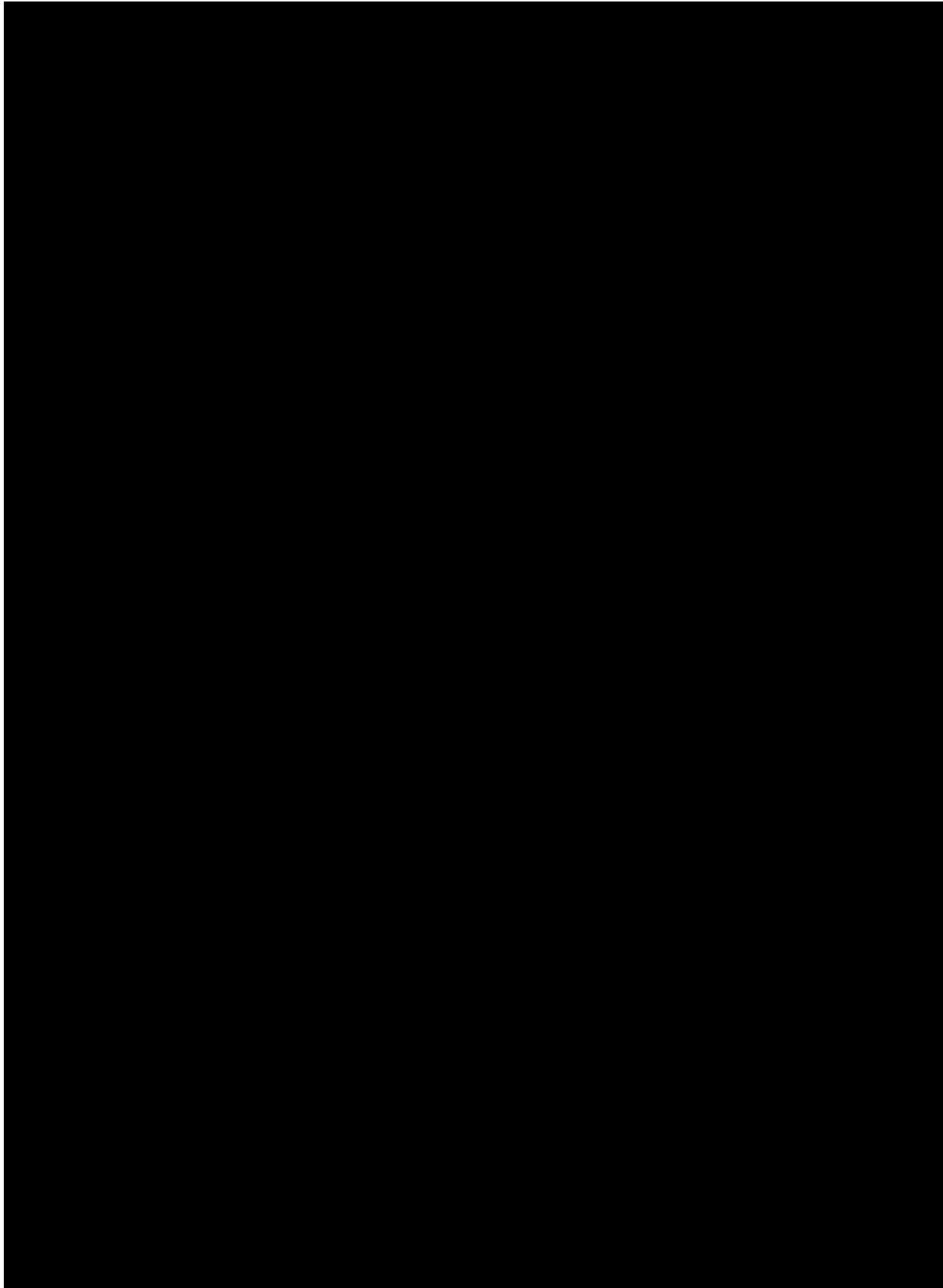
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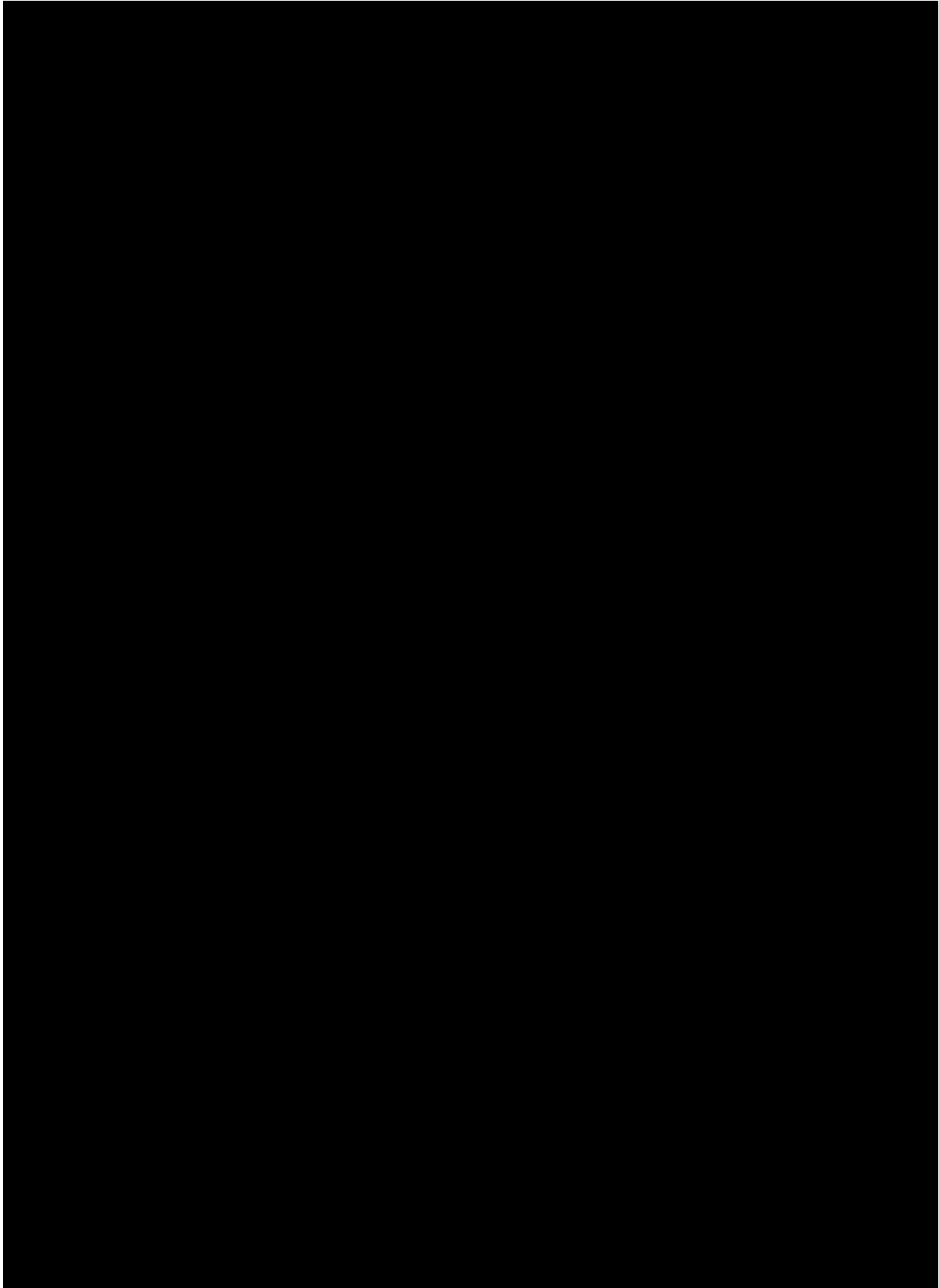
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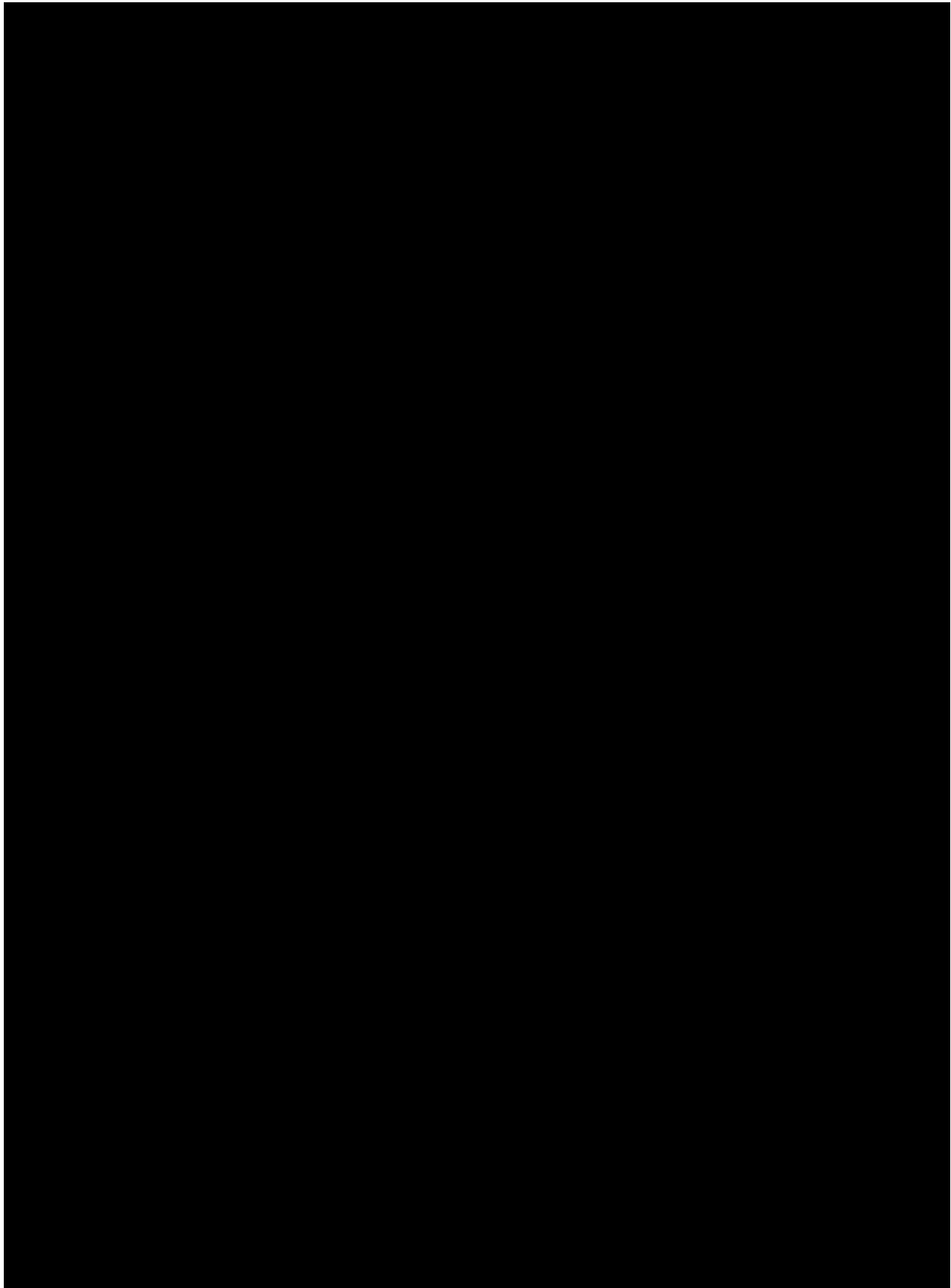
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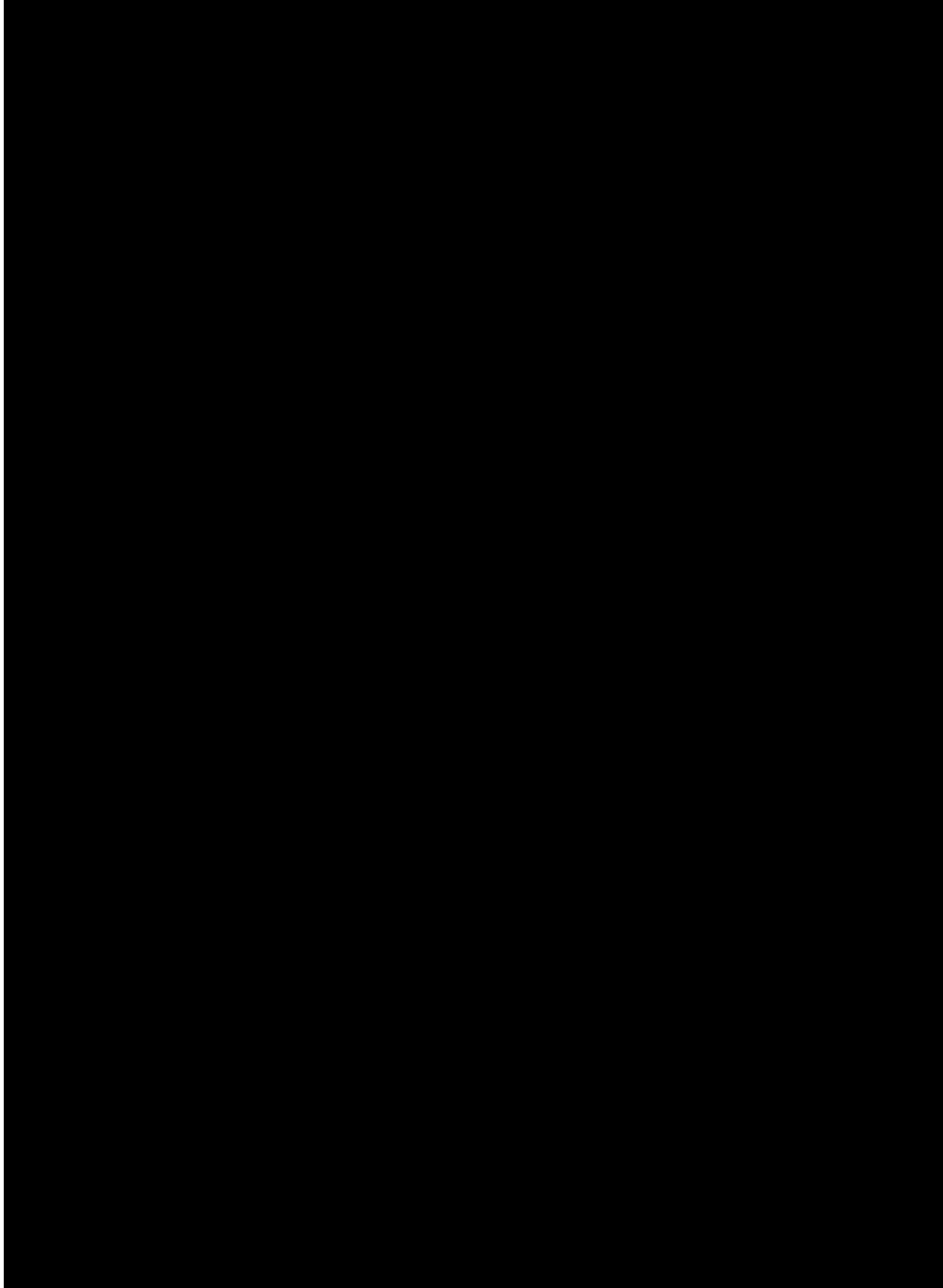
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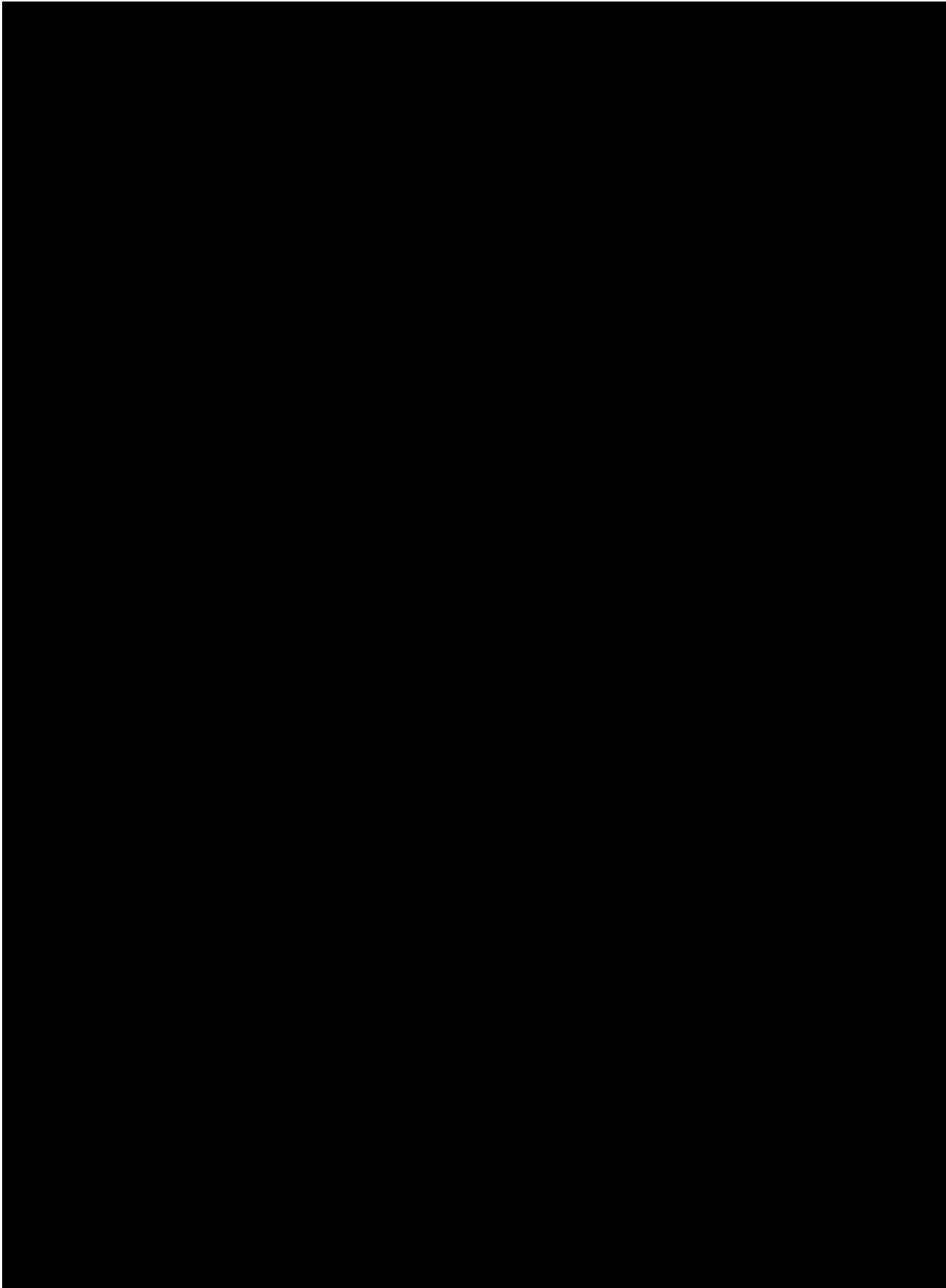
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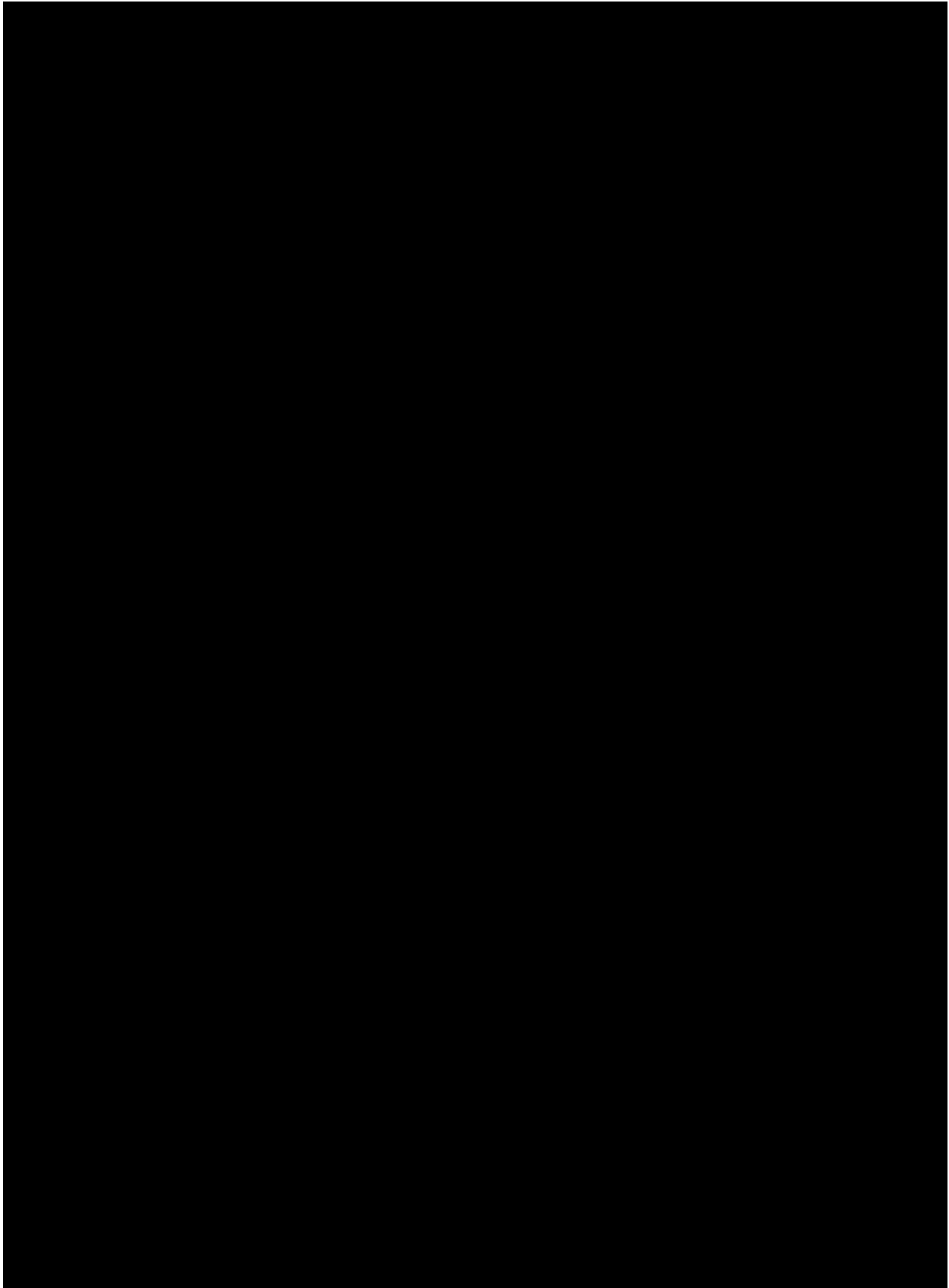
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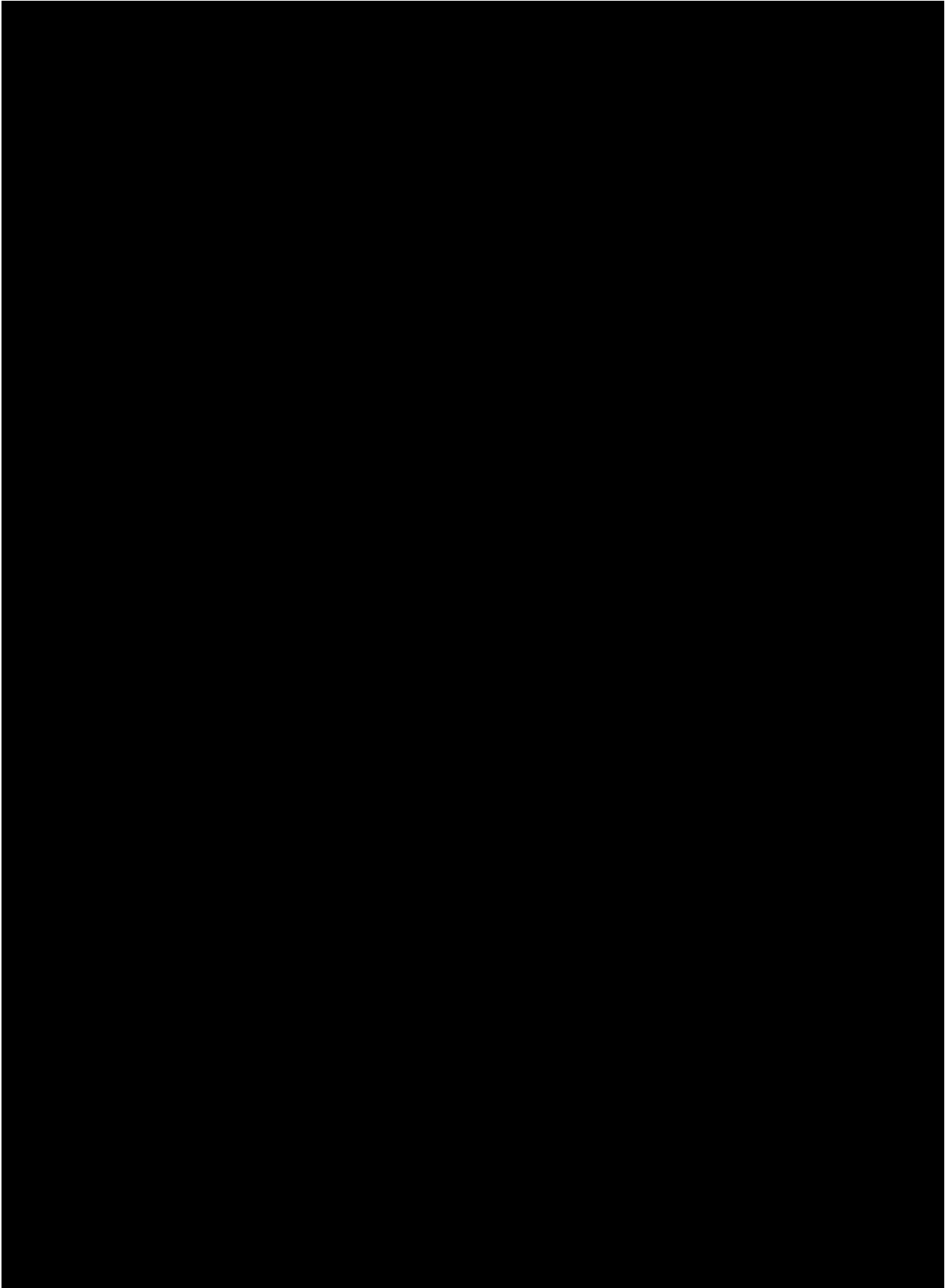
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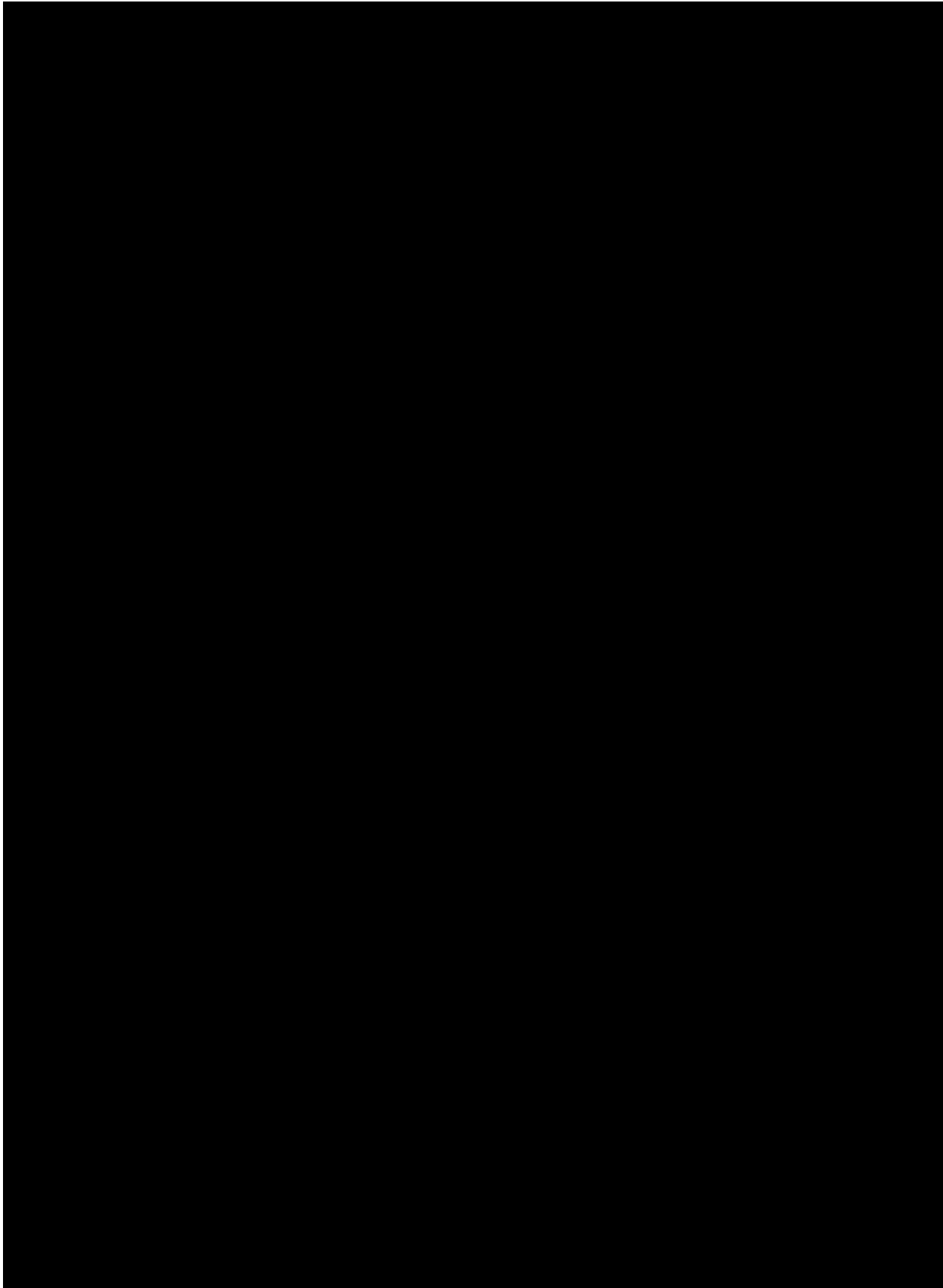
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16 PRESIDENT TERCIER: Thank you very much,

17 Dr. Heiskanen.

18 So, we have one hour. We will start again to
19 quarter to 2:00.

20 Professor Boutilier, I again to remind you
21 that you are still under testimony, and the same rule
22 applies. Okay? But you can, of course, go out and

1 have lunch.

2 THE WITNESS: Thank you.

3 PRESIDENT TERCIER: Okay. Good.

4 (Whereupon, at 12:48 p.m., the Hearing was
5 adjourned until 1:45 p.m., the same day.)

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AFTERNOON SESSION

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PRESIDENT TERCIER: Good afternoon, ladies and gentlemen. We will resume before I have to come on. One important and difficult question, it is a question of the dates for the second session.

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You remember that it had been agreed between the Parties that--before I was the Chairman--that it was necessary to have two weeks and that it appeared that it was simply not possible. And I think now we have the demonstration that it would not have been possible to have 13 more witnesses and experts enjoying these two weeks.

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So, the problem is, of course, as you can imagine, to find dates available and, if possible, not too late. And the Members of the Arbitral Tribunal have tried, first, to find dates. And the first proposal we made was the week of the 13th of July.

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Unfortunately, this is not possible for Claimant because of the availability of your experts, I was told.

Okay. So, we went back and we have proposals. The earliest--but it is with a

1 caveat--would be the week of the 10th of February.

2 Would it be possible for you? Of course, you
3 don't know because you have to look at the--but if you
4 can check. But there is one caveat. It should be in
5 Paris because--I don't want to give the reasons, but
6 it should be in Paris.

7 The next would be the 17th of August. The
8 next would be the 24th of August, the week, of course.
9 And the last, 28th of September.

10 We are, of course, conscious that it is
11 extremely--it is too long, but it is due to the
12 situation--to the circumstances as it occurred.

13 Now, I would be grateful if you could see on
14 your side which dates would be--would be possible for
15 you. And I have to add, the 28th of September has
16 still a question mark. The 28th of September with a
17 question mark.

18 MR. POLÁŠEK: Mr. President, just for
19 clarification, because the previously communicated
20 earliest dates were in July of this year, are these
21 dates for the next year, 2020, or are we talking about
22 2021?

1 Our understanding is that this is 2020, but I
2 just wanted to--

3 PRESIDENT TERCIER: Sorry. What is the
4 question?

5 MR. POLÁŠEK: It is. Okay. Thank you.

6 I just wanted to reconfirm that these dates
7 are 2020, not 2021, but I understand these are 2020.

8 PRESIDENT TERCIER: For 2020. All good.

9 MR. POLÁŠEK: Thank you.

10 PRESIDENT TERCIER: I hope I am still alive.

11 Okay. So, if you could check what is
12 possible, really, we will do our best.

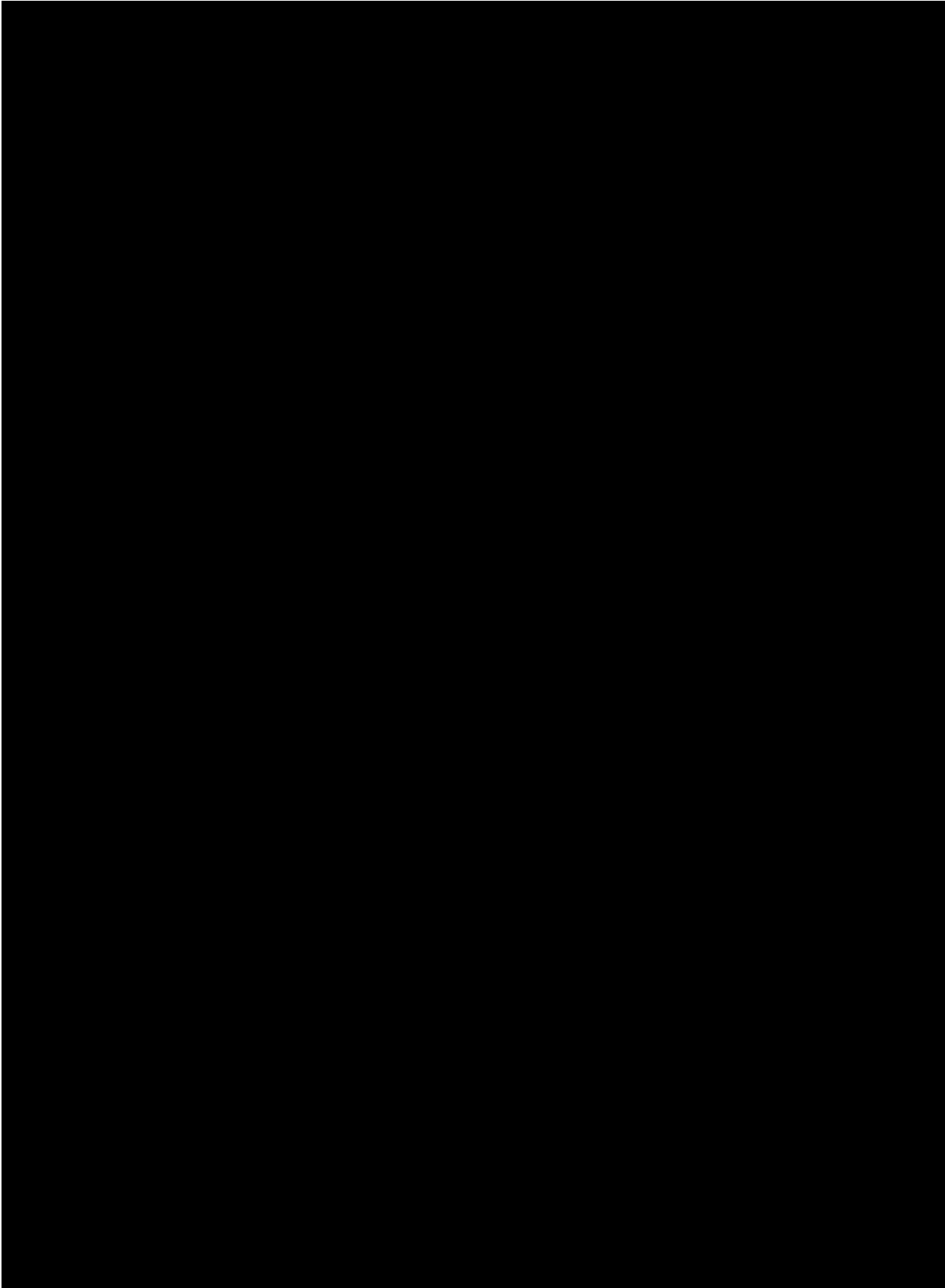
13 Good. If there are no further questions,
14 Dr. Heiskanen, you have the floor for the second part
15 of your--and, again, I don't know how long it will be,
16 but you should not be too long.

17 DR. HEISKANEN: Thank you, Mr. President. We
18 spent the lunch break looking for ways to be as
19 concise as possible.

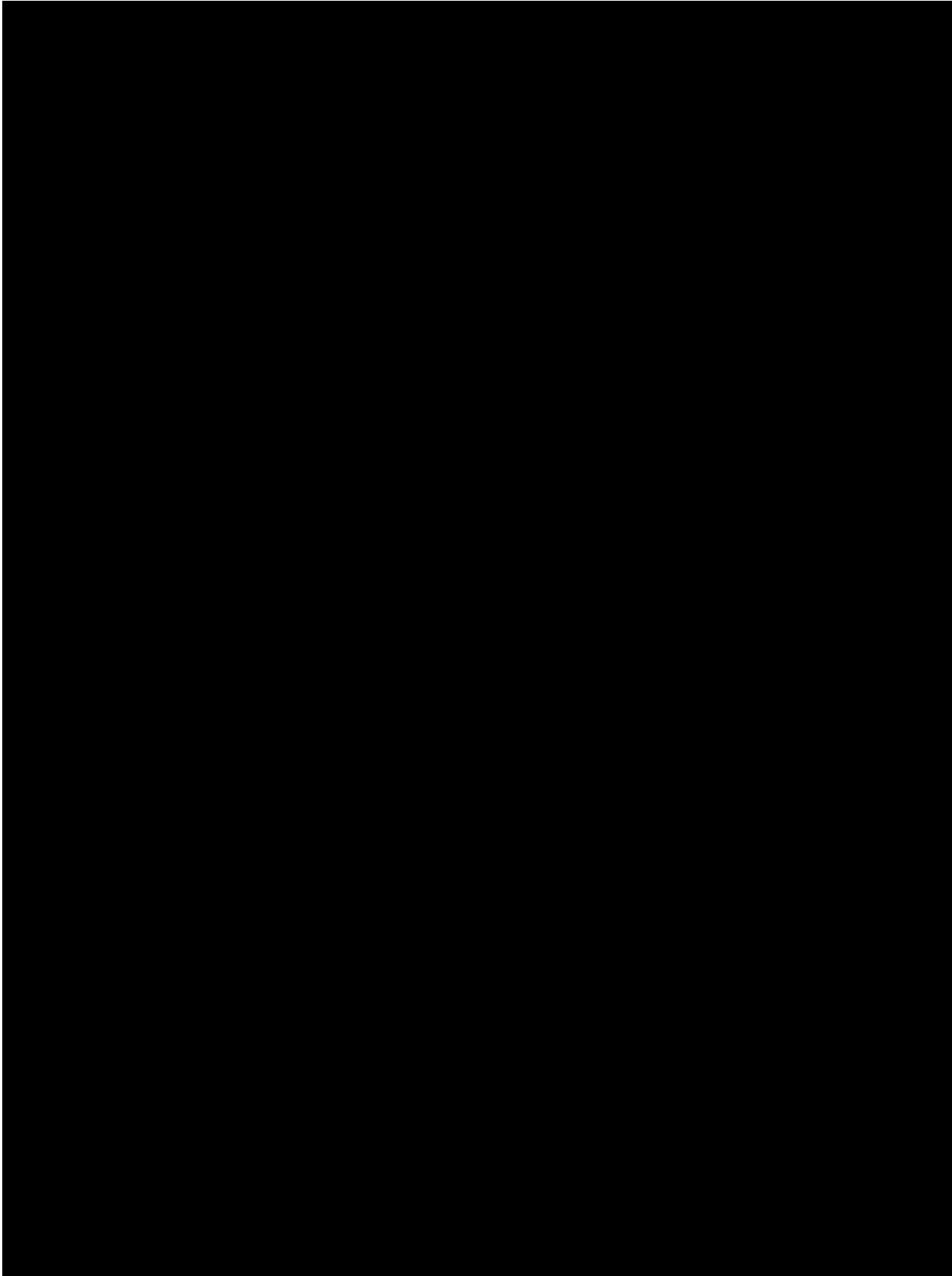
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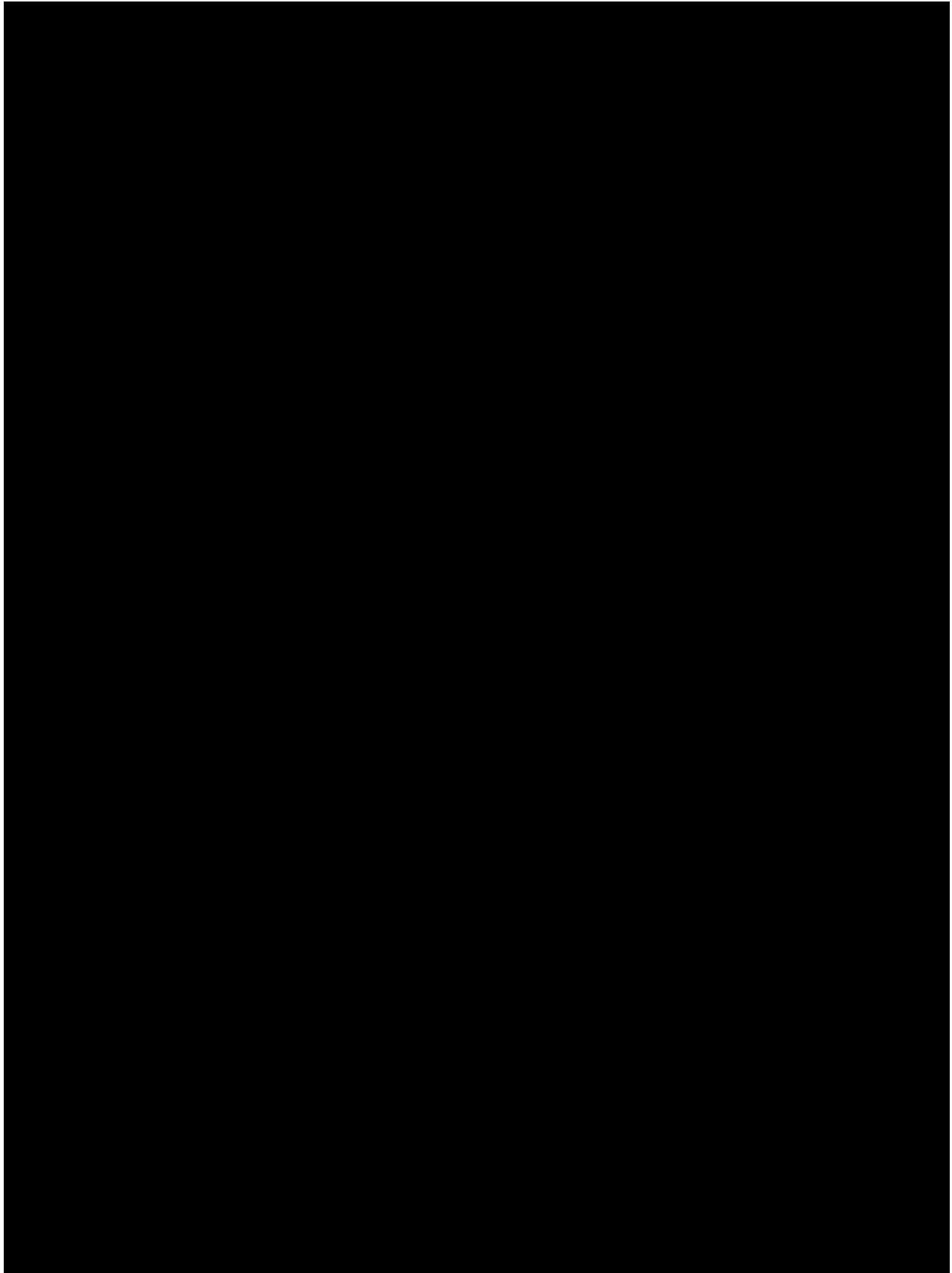
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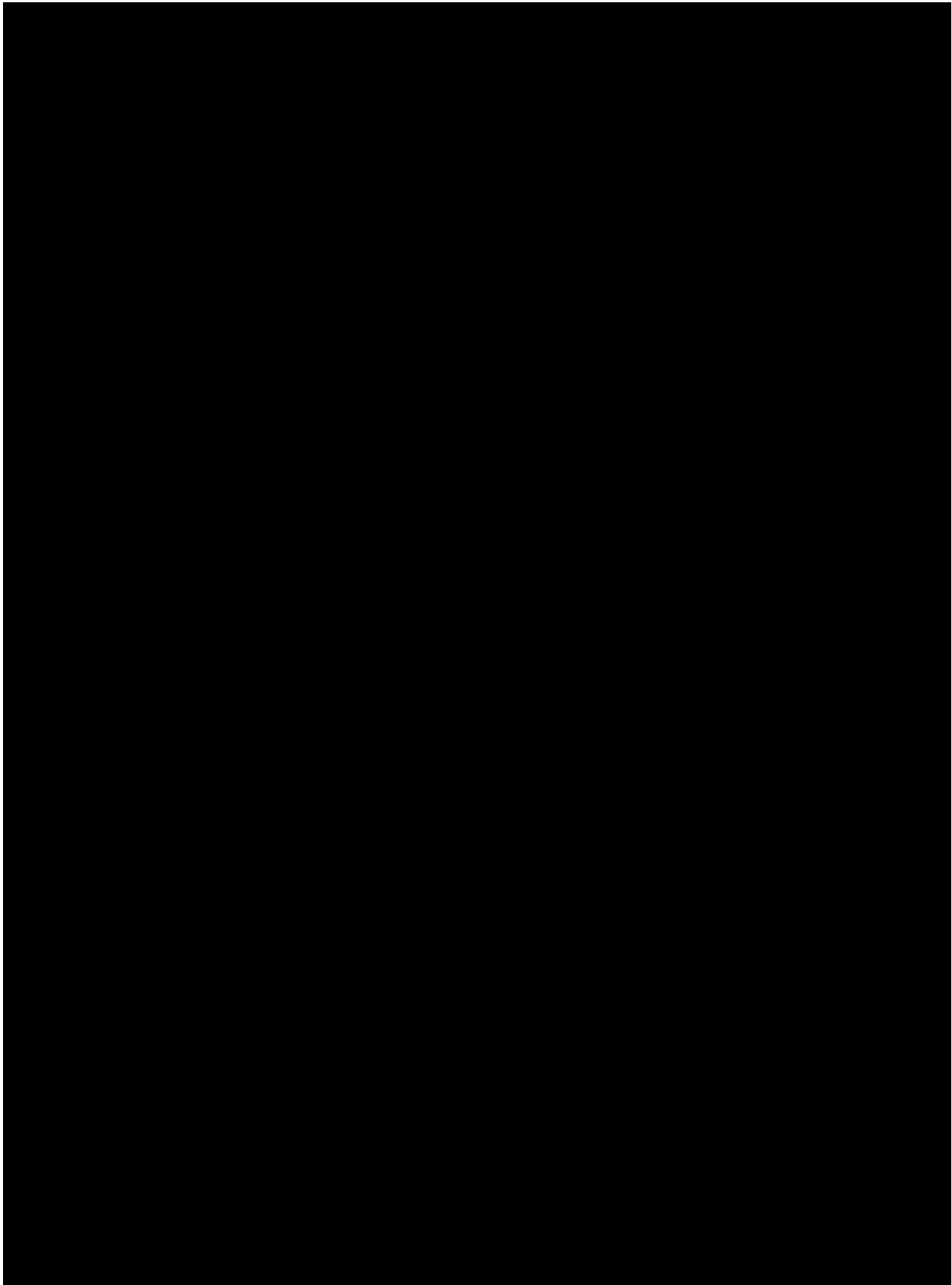
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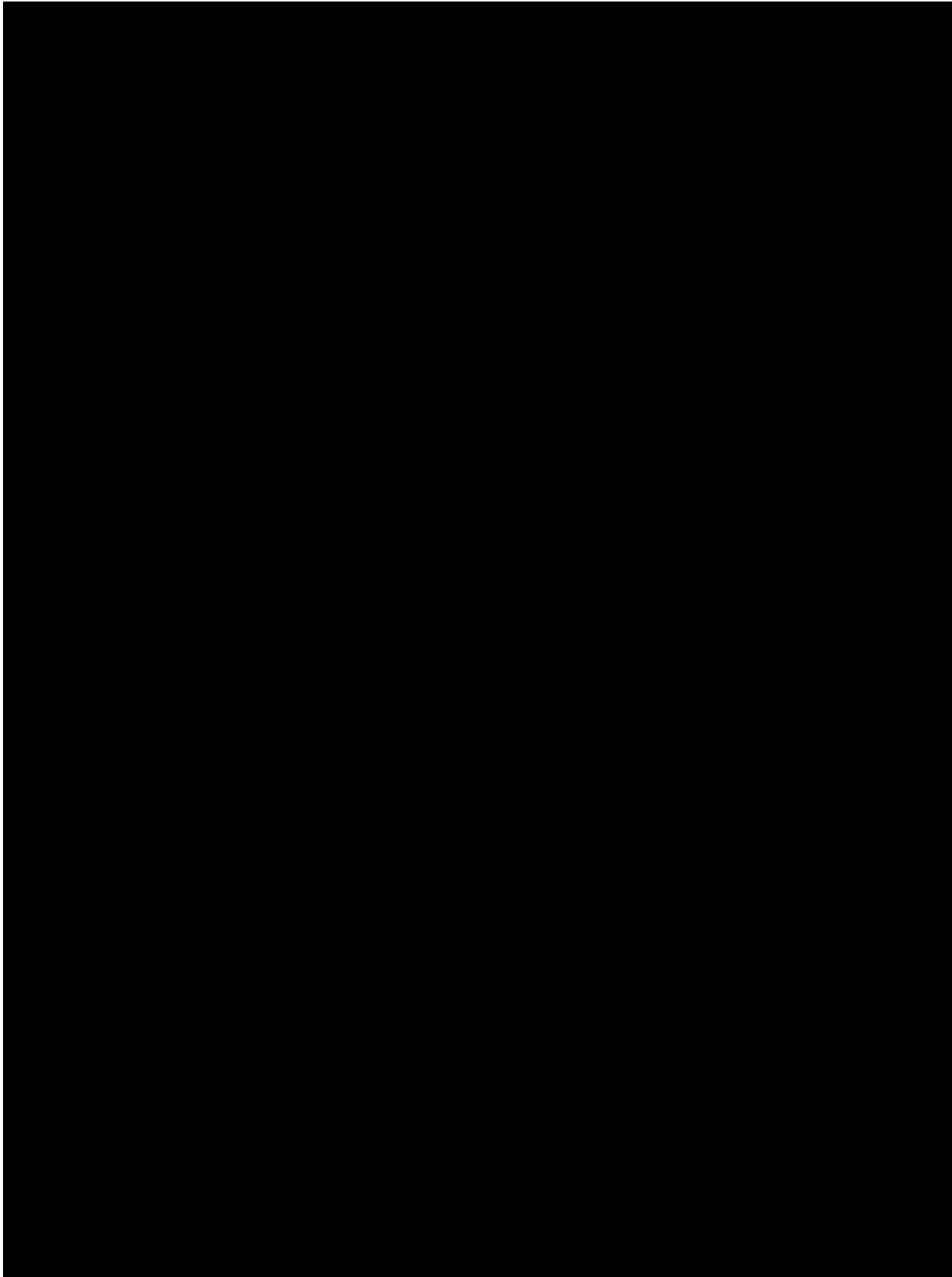
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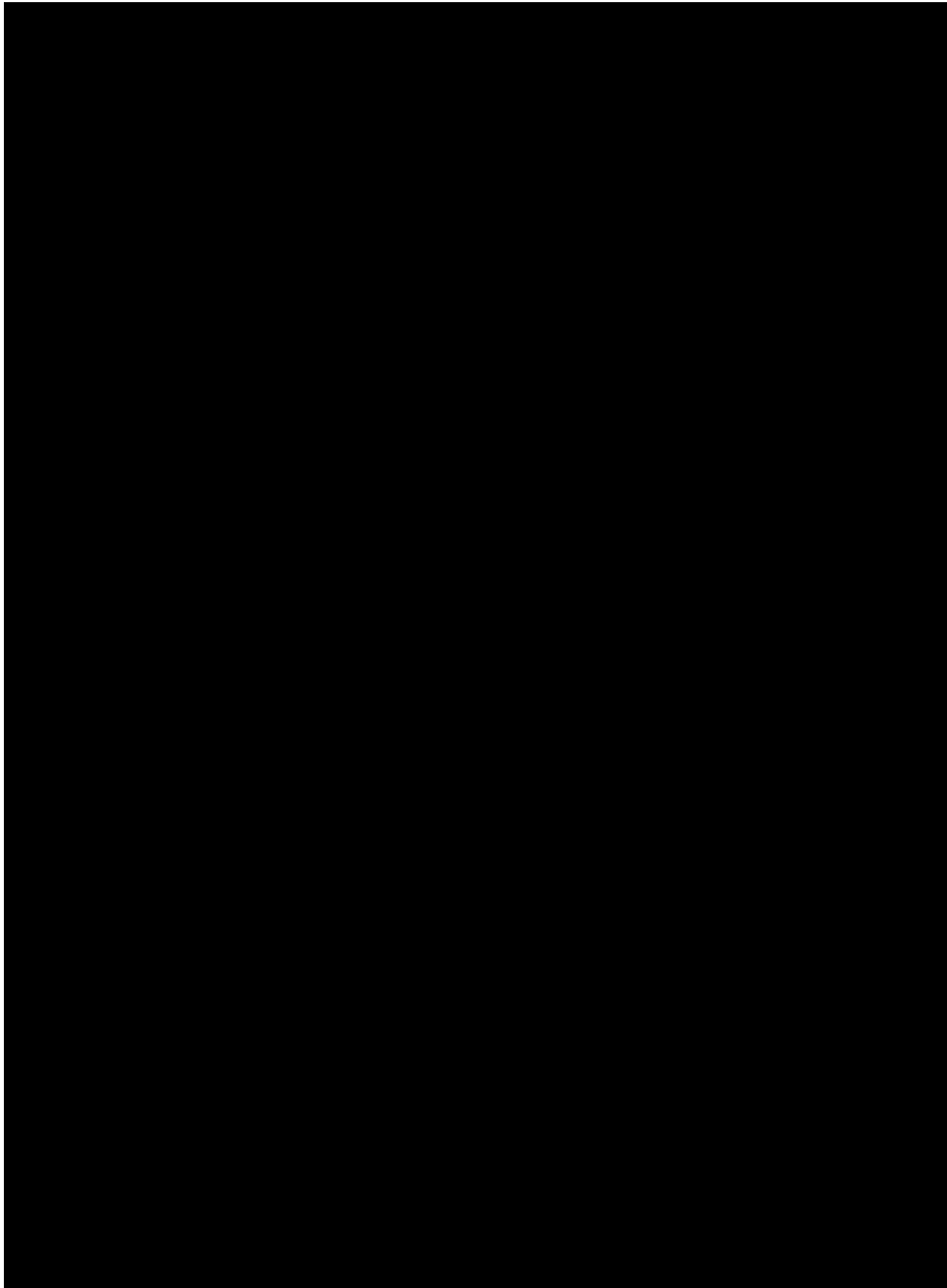
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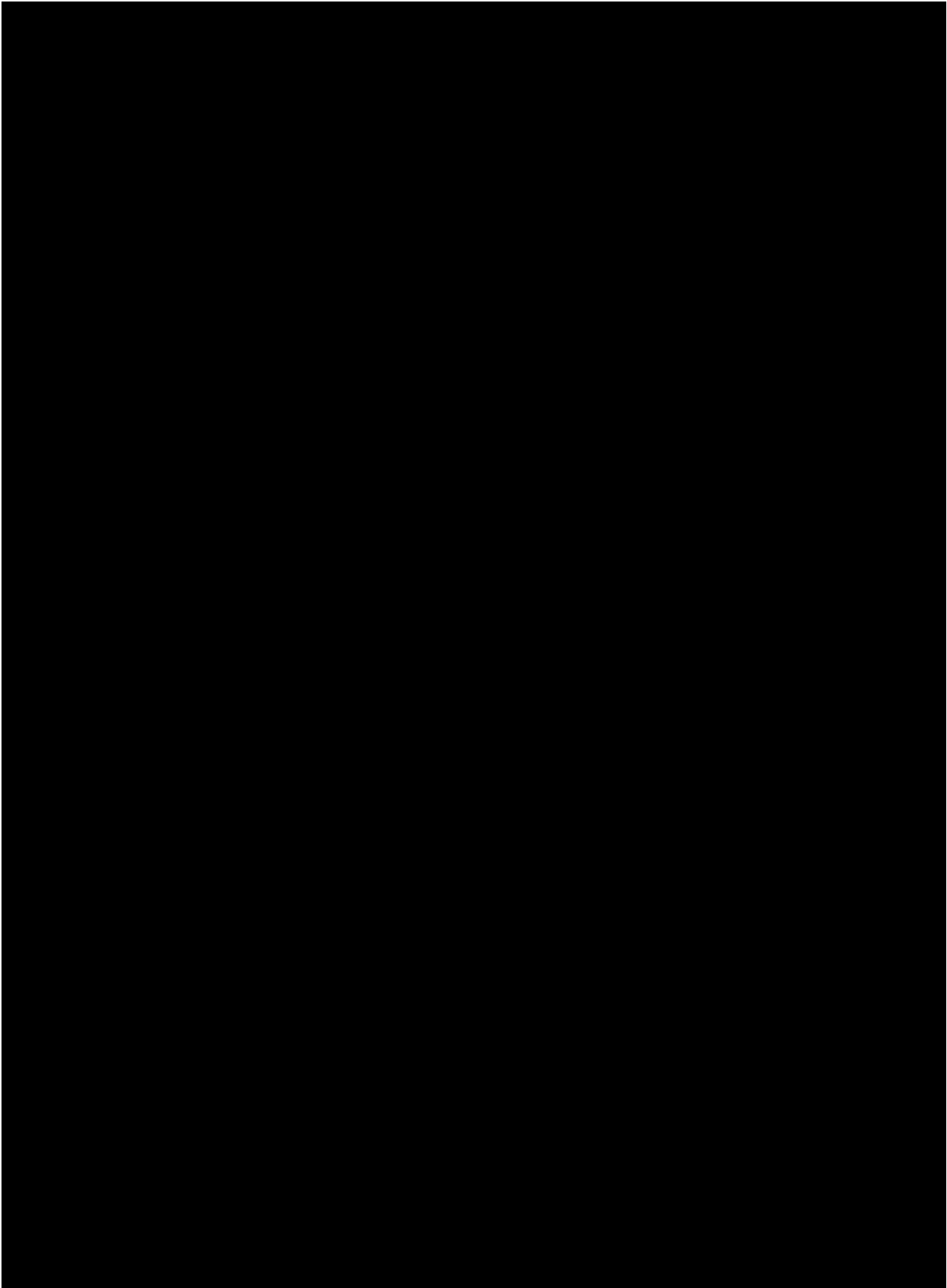
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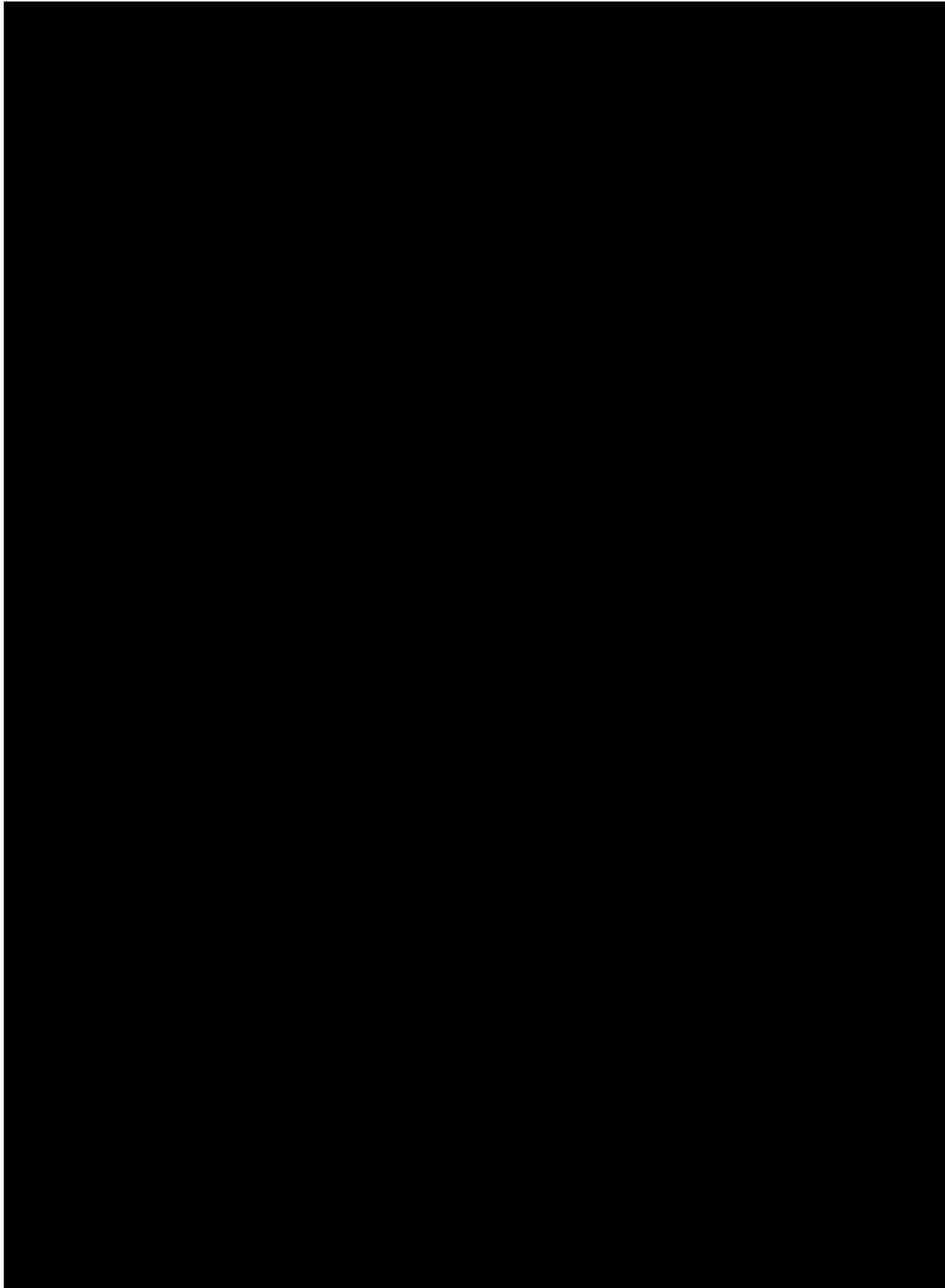
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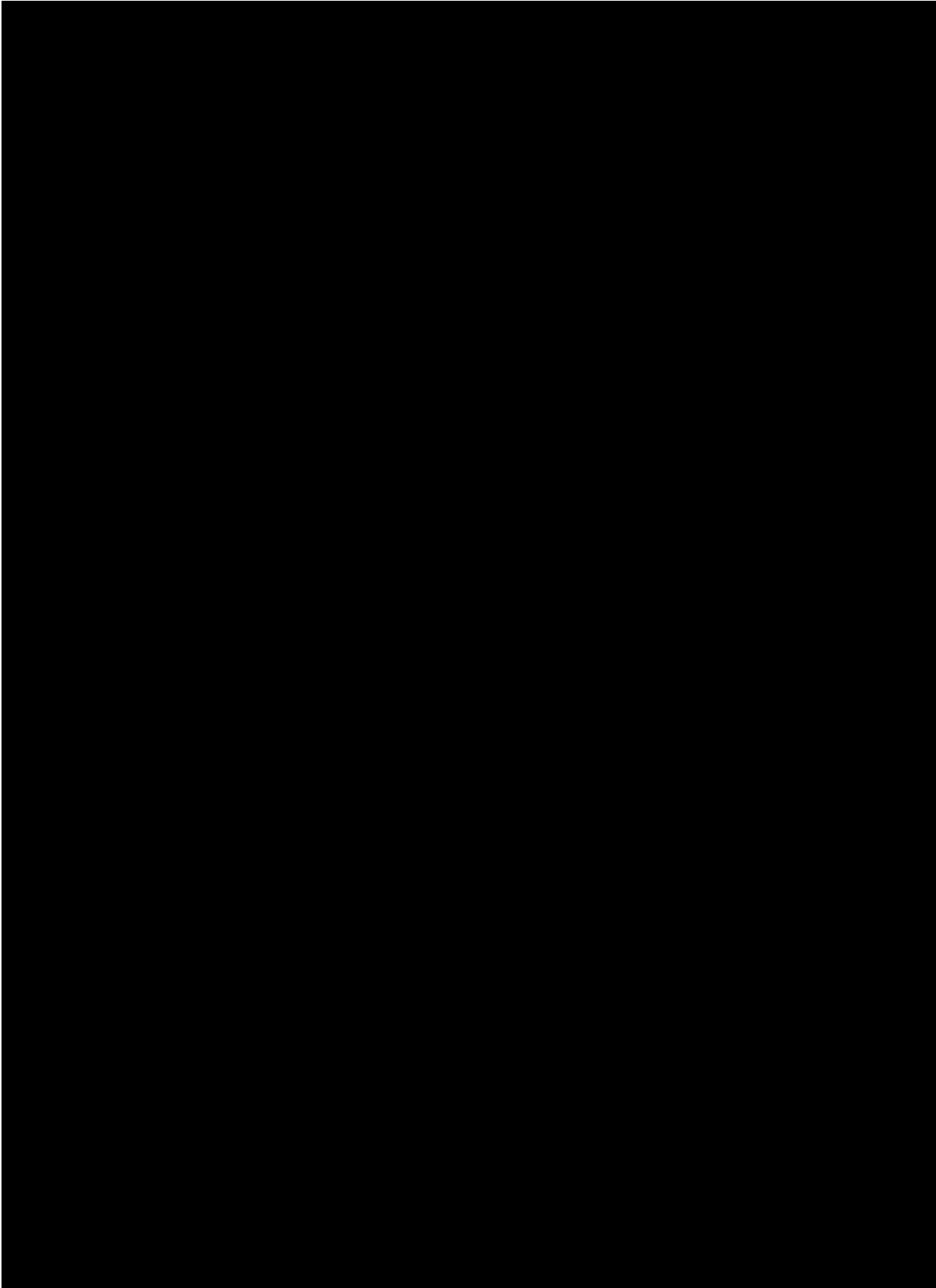
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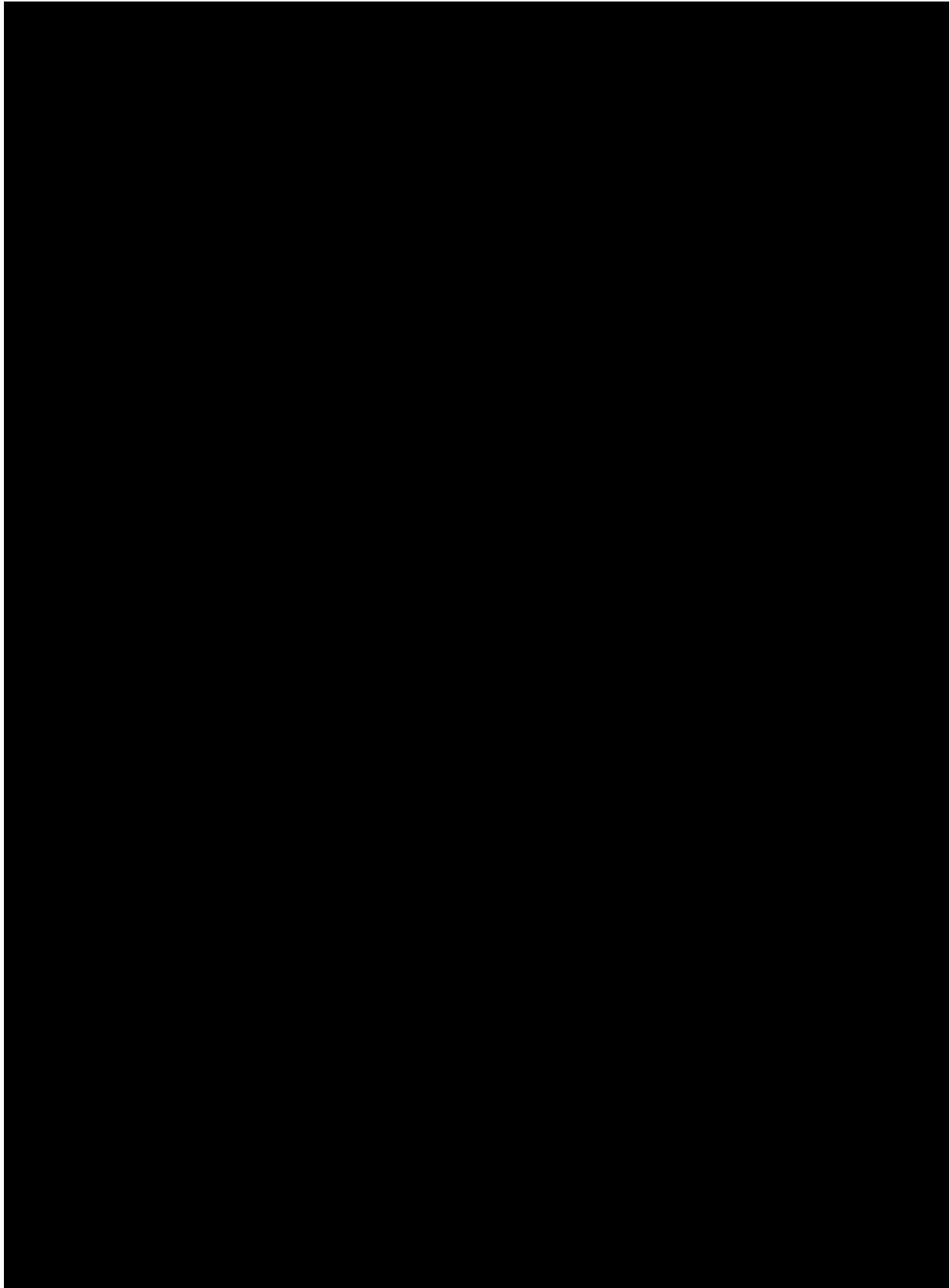
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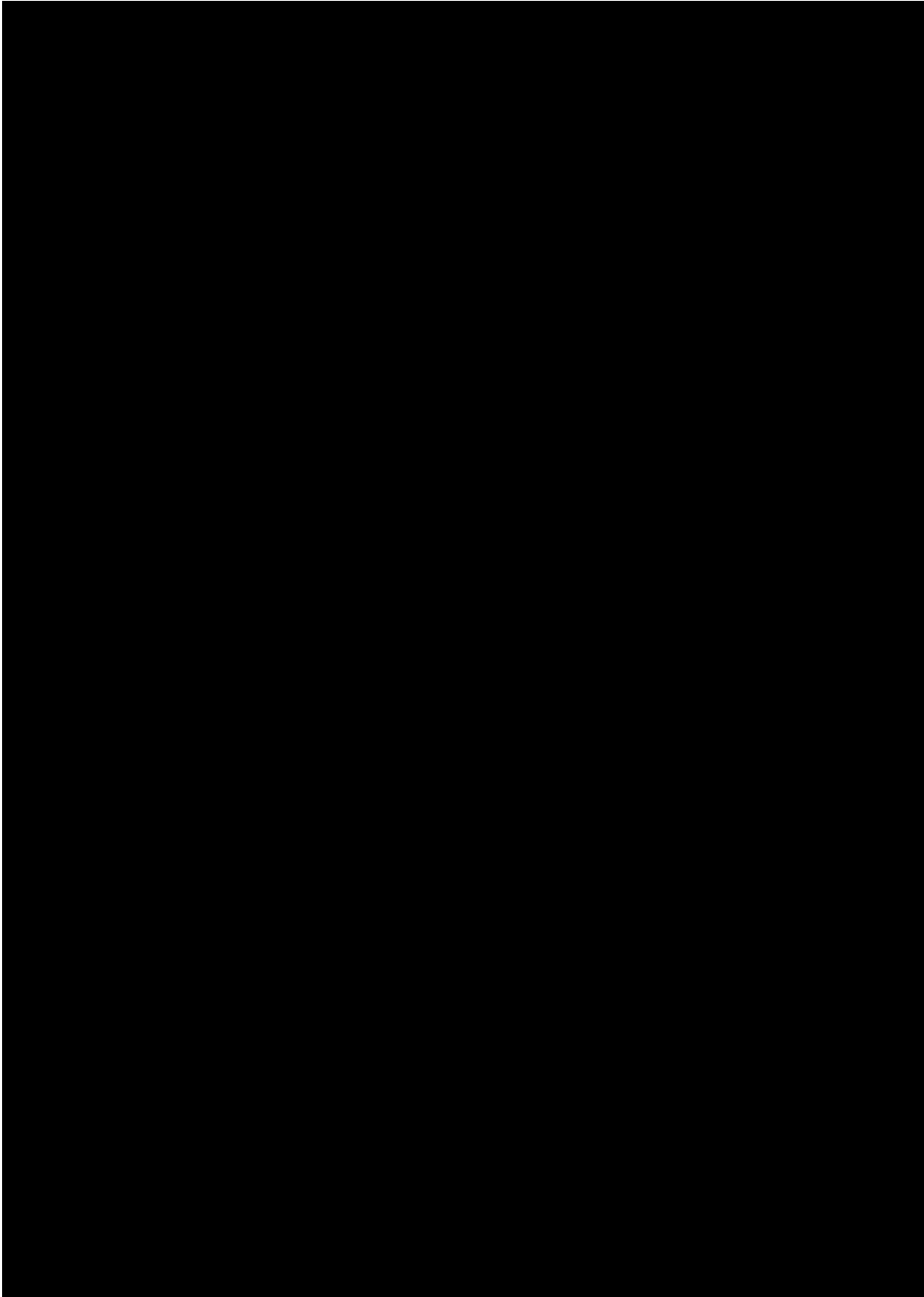
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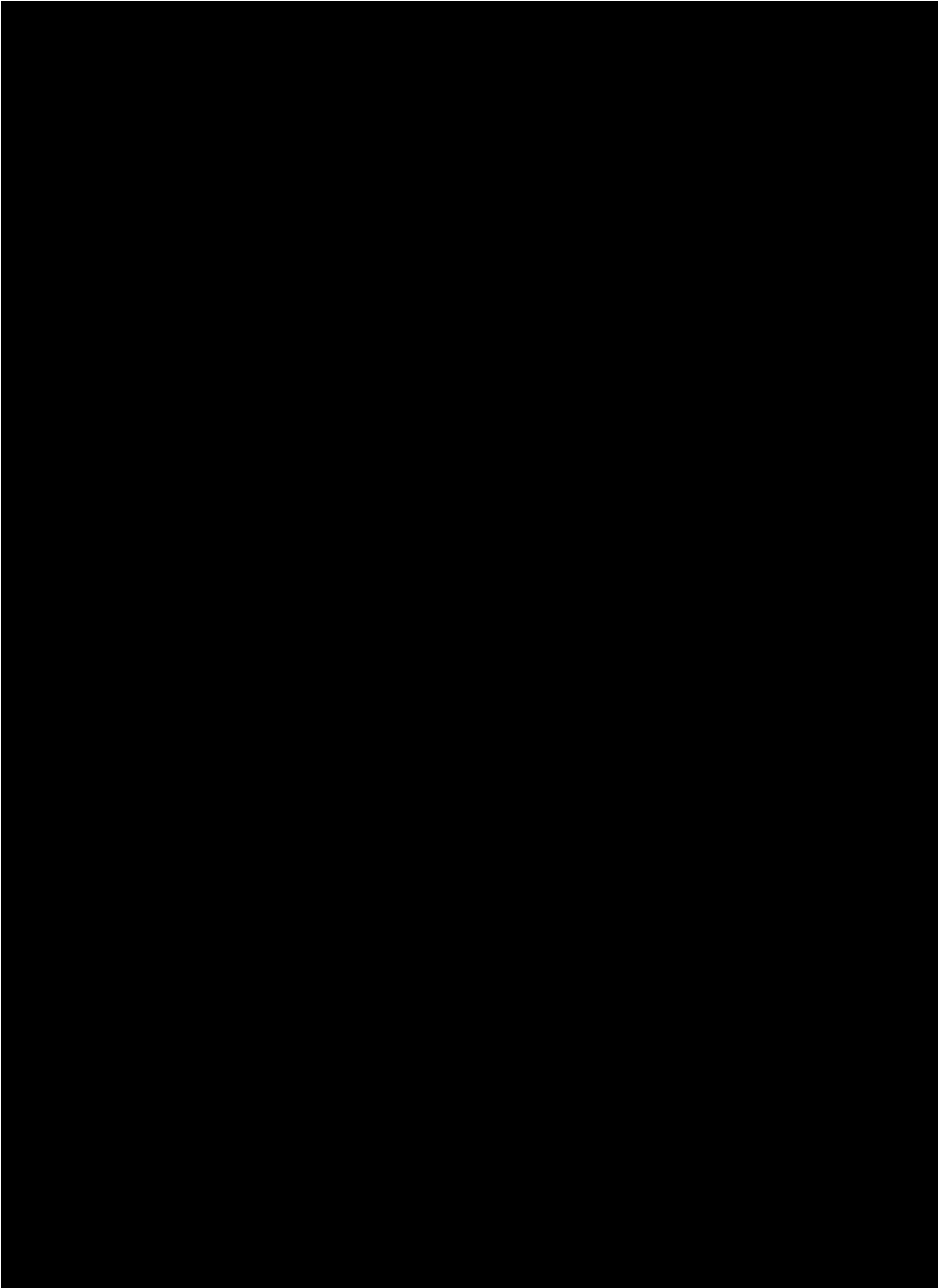
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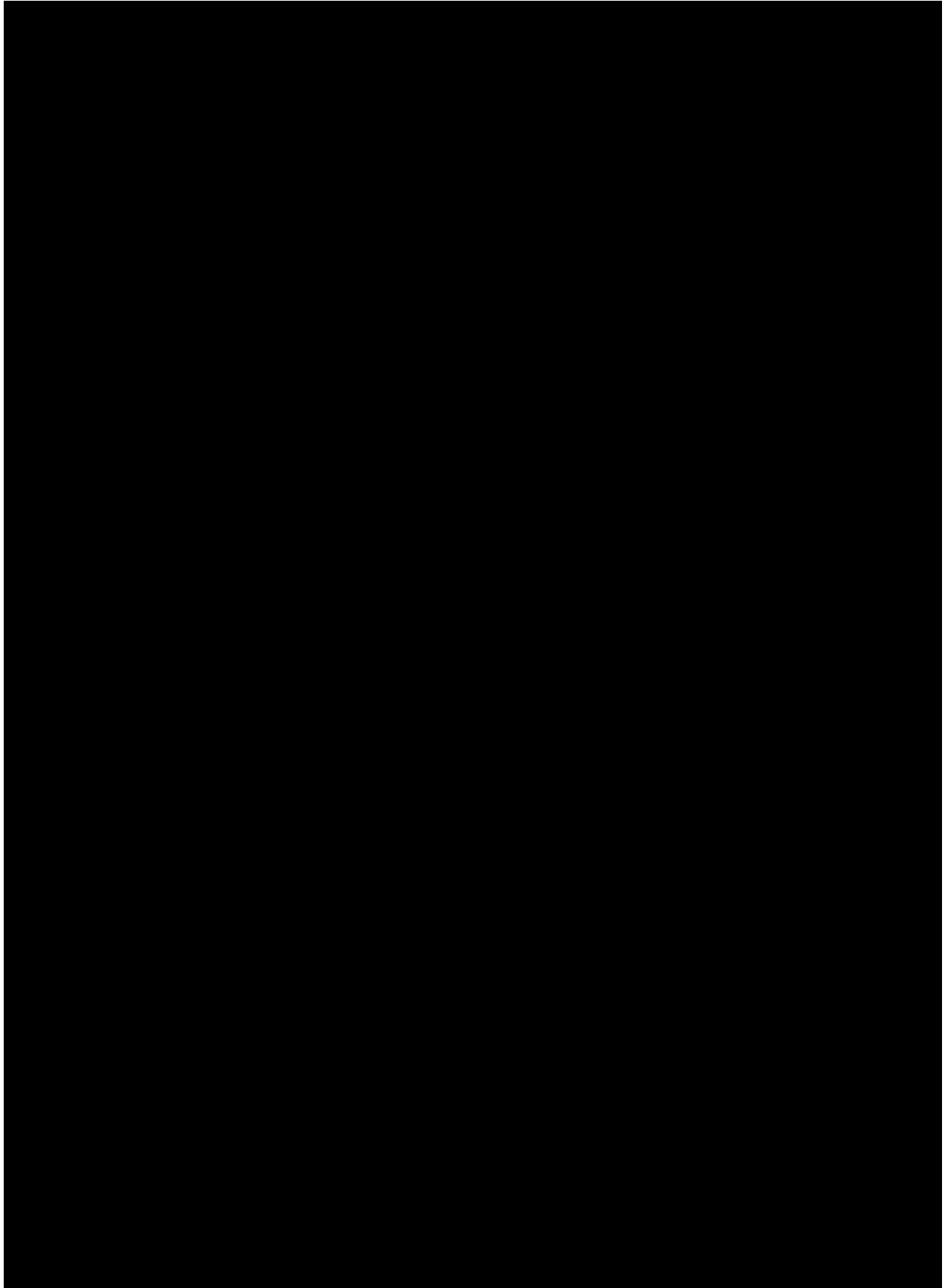
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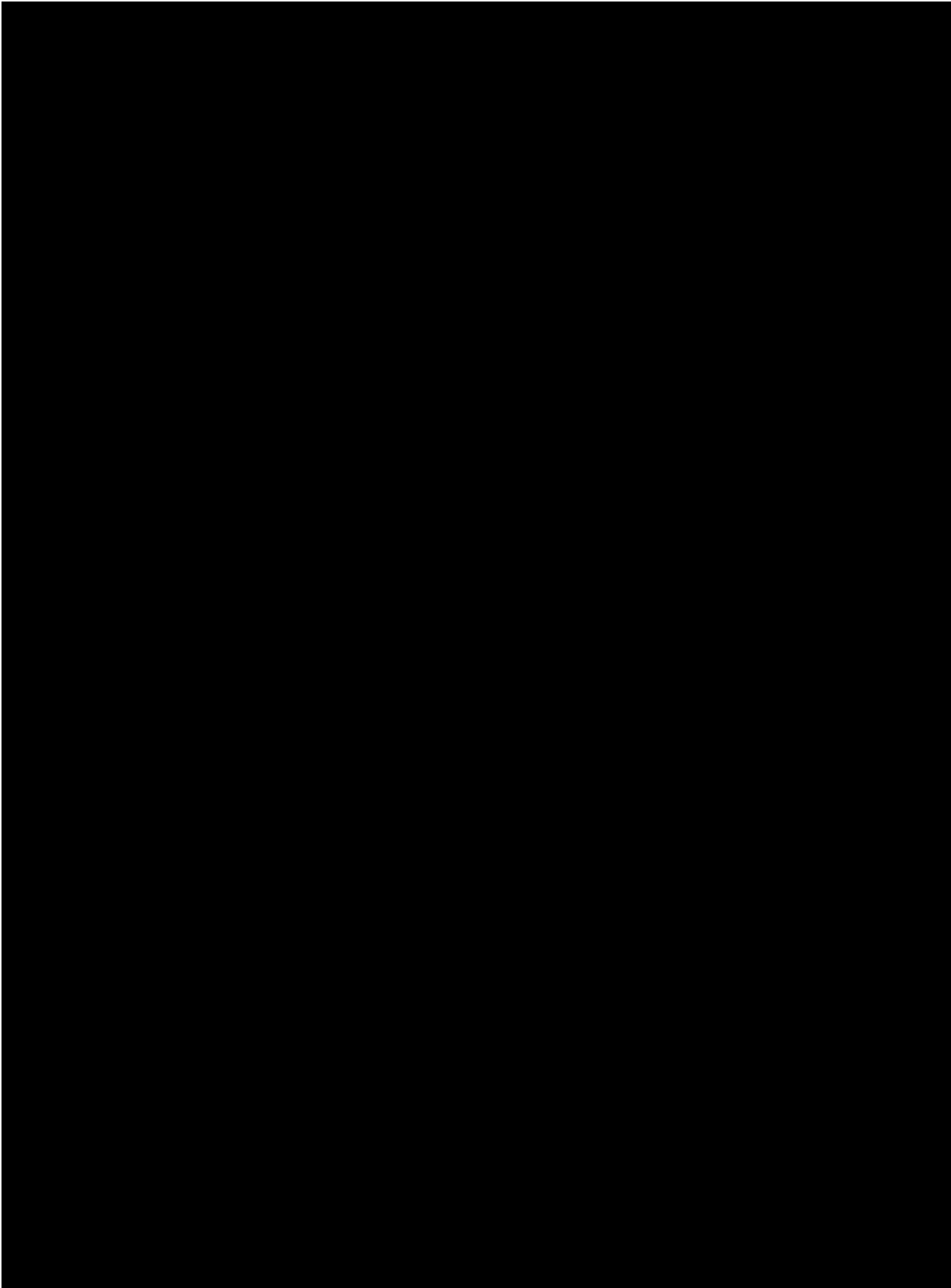
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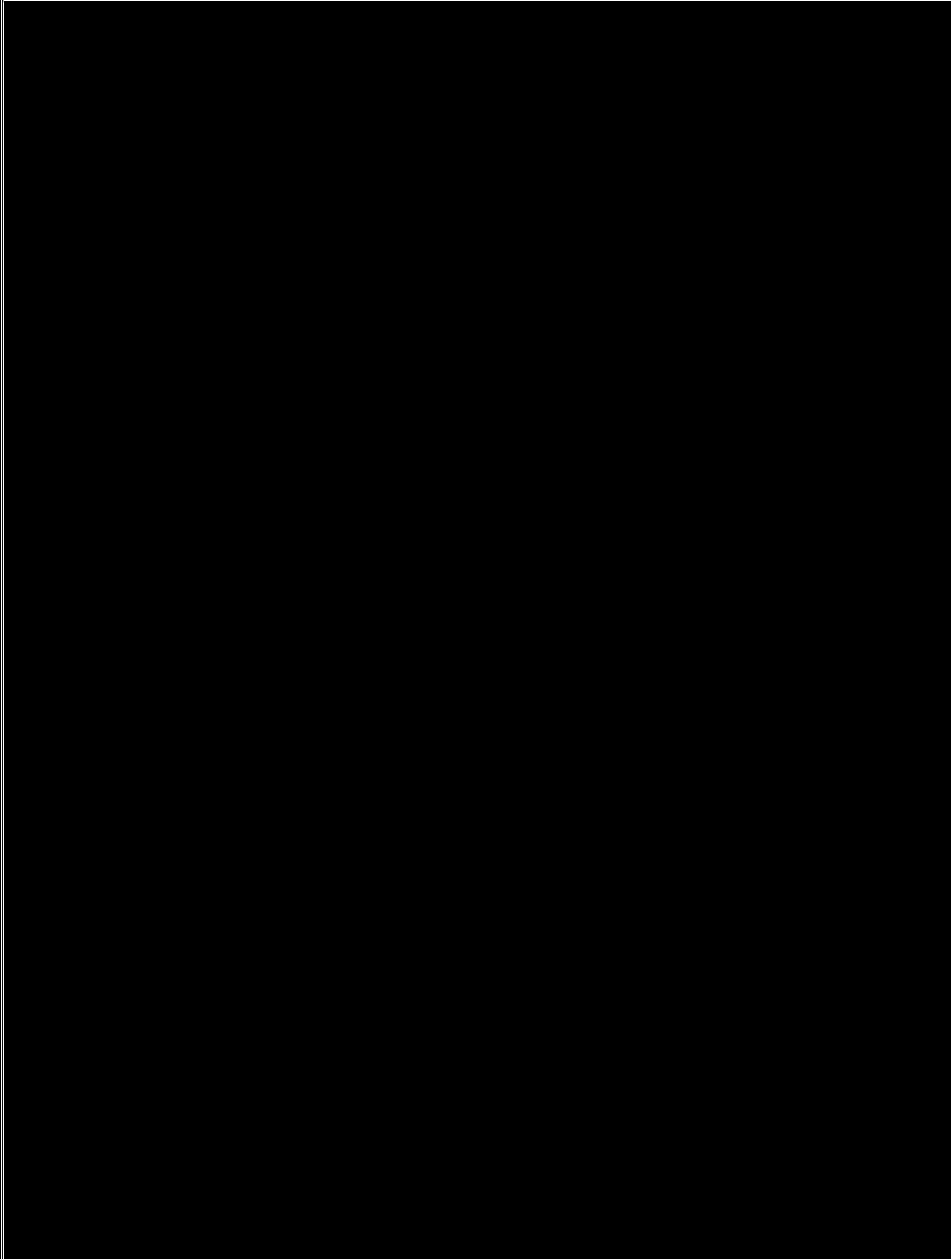
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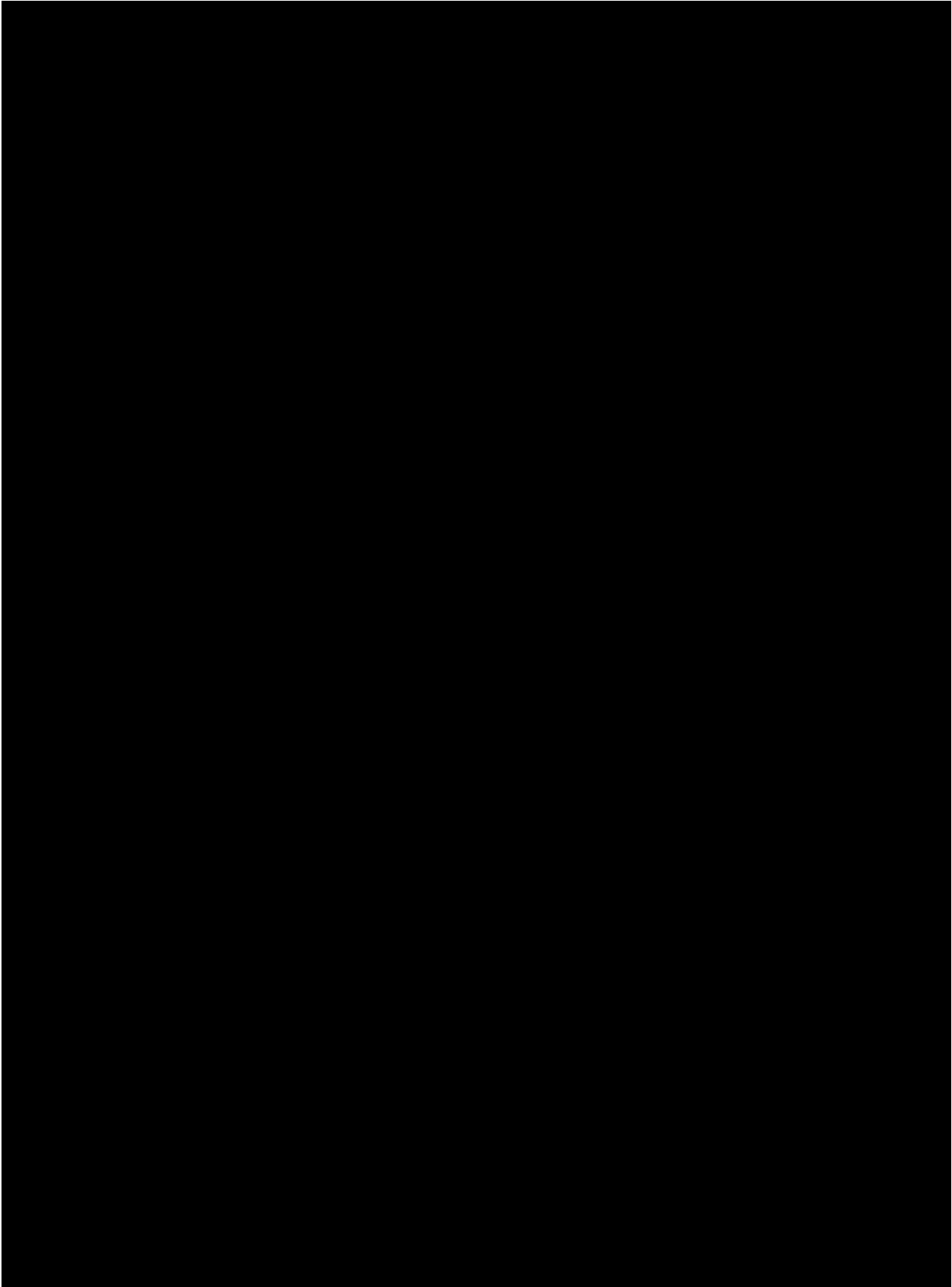
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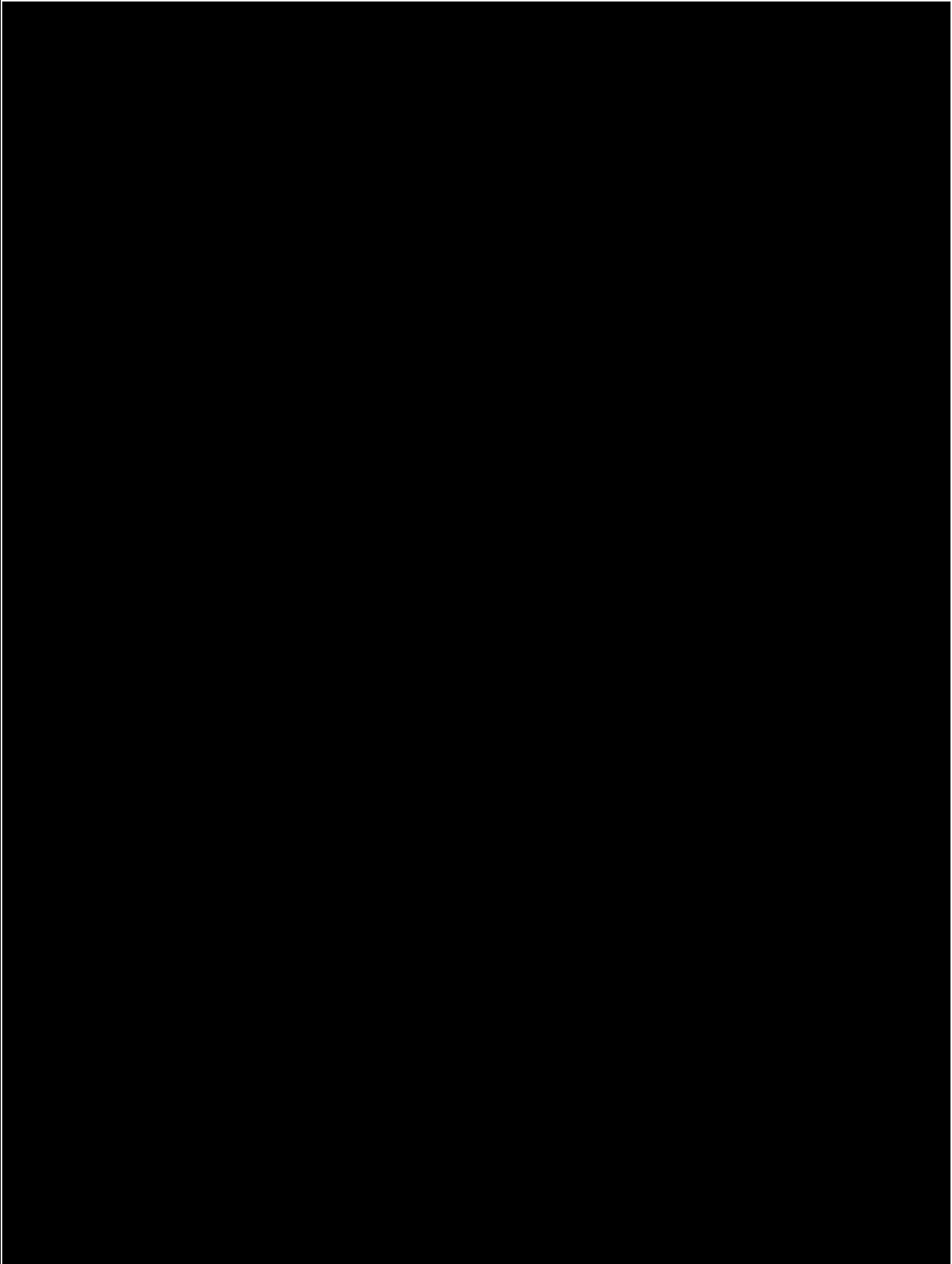
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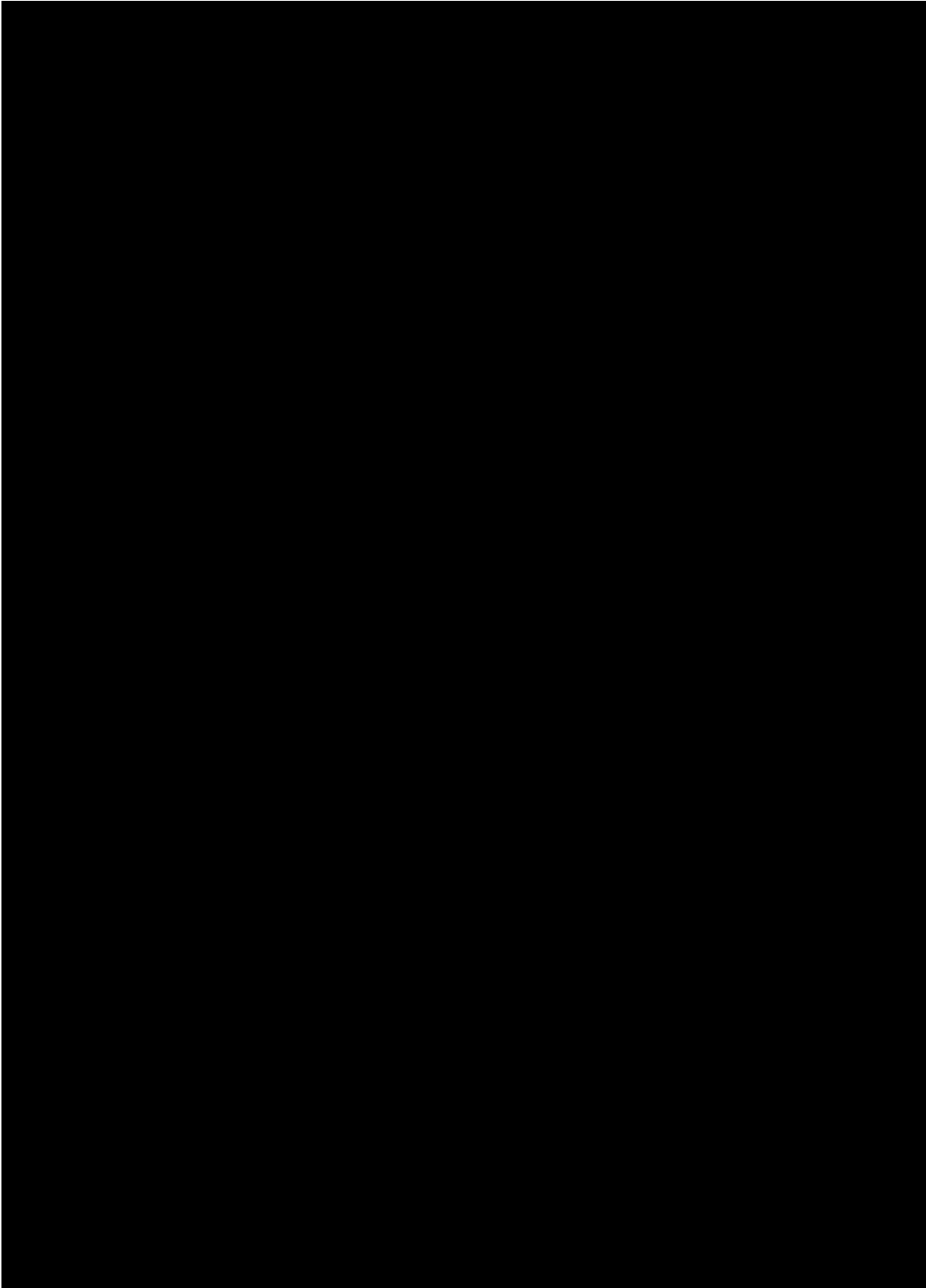
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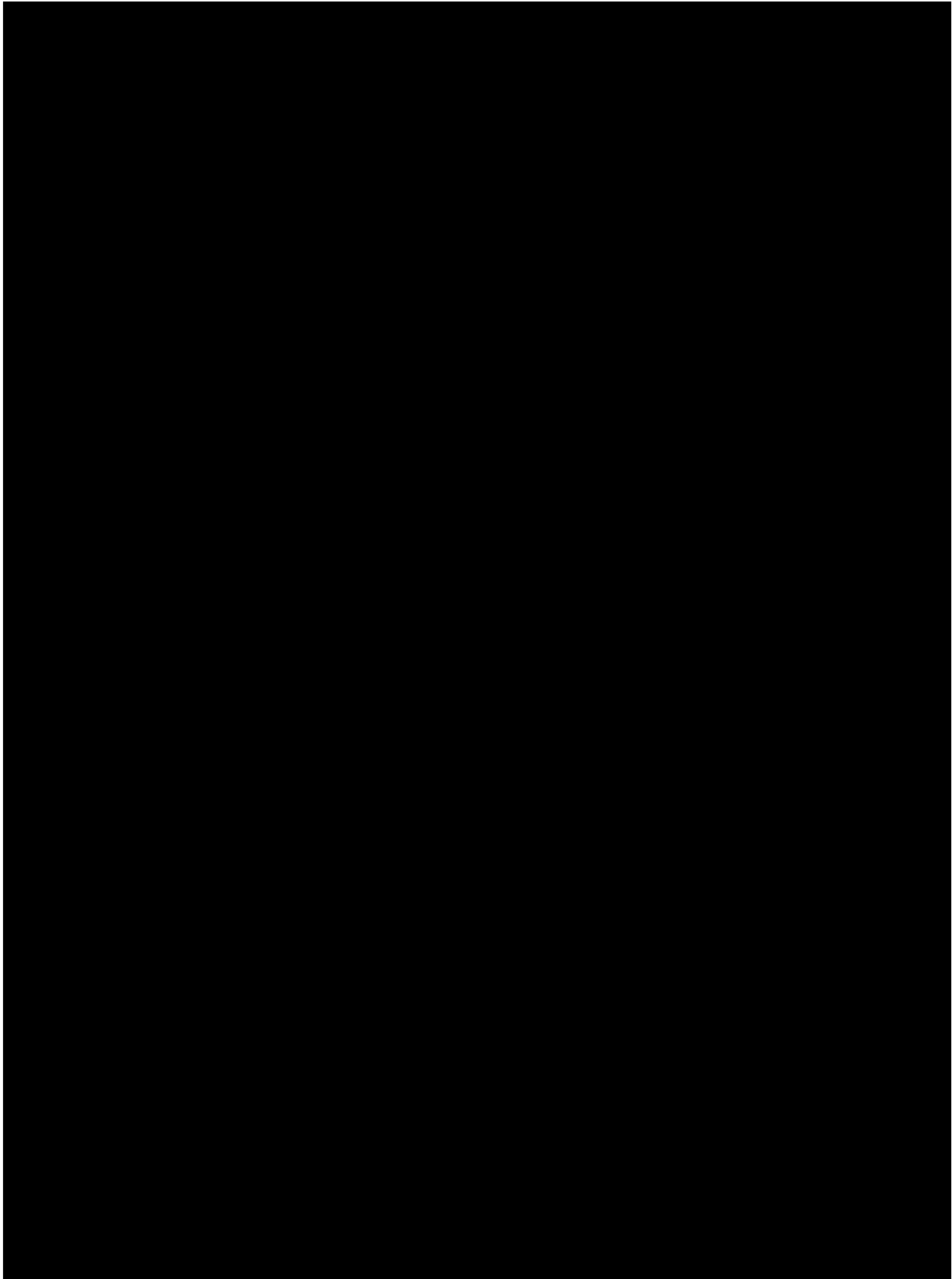
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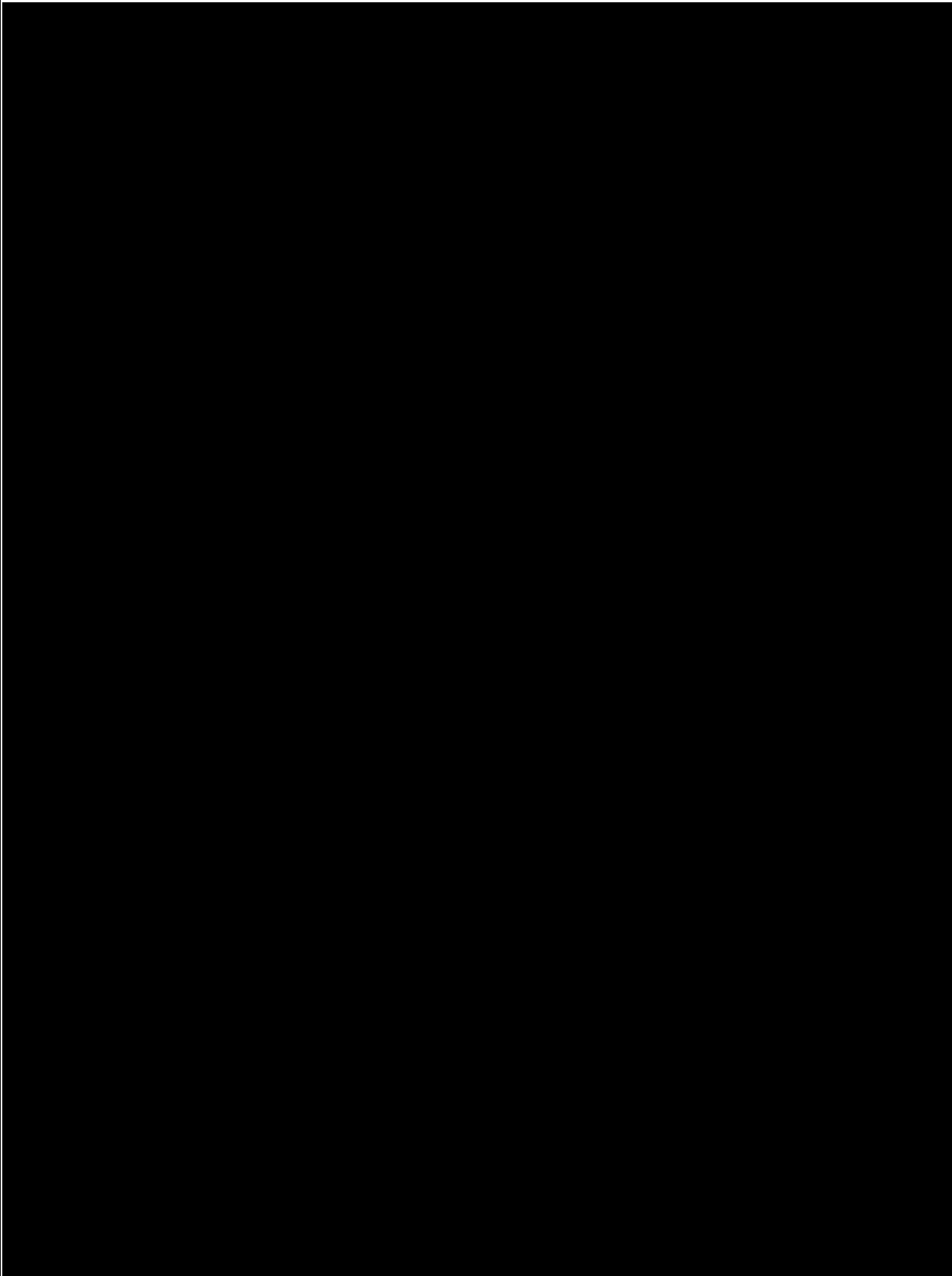
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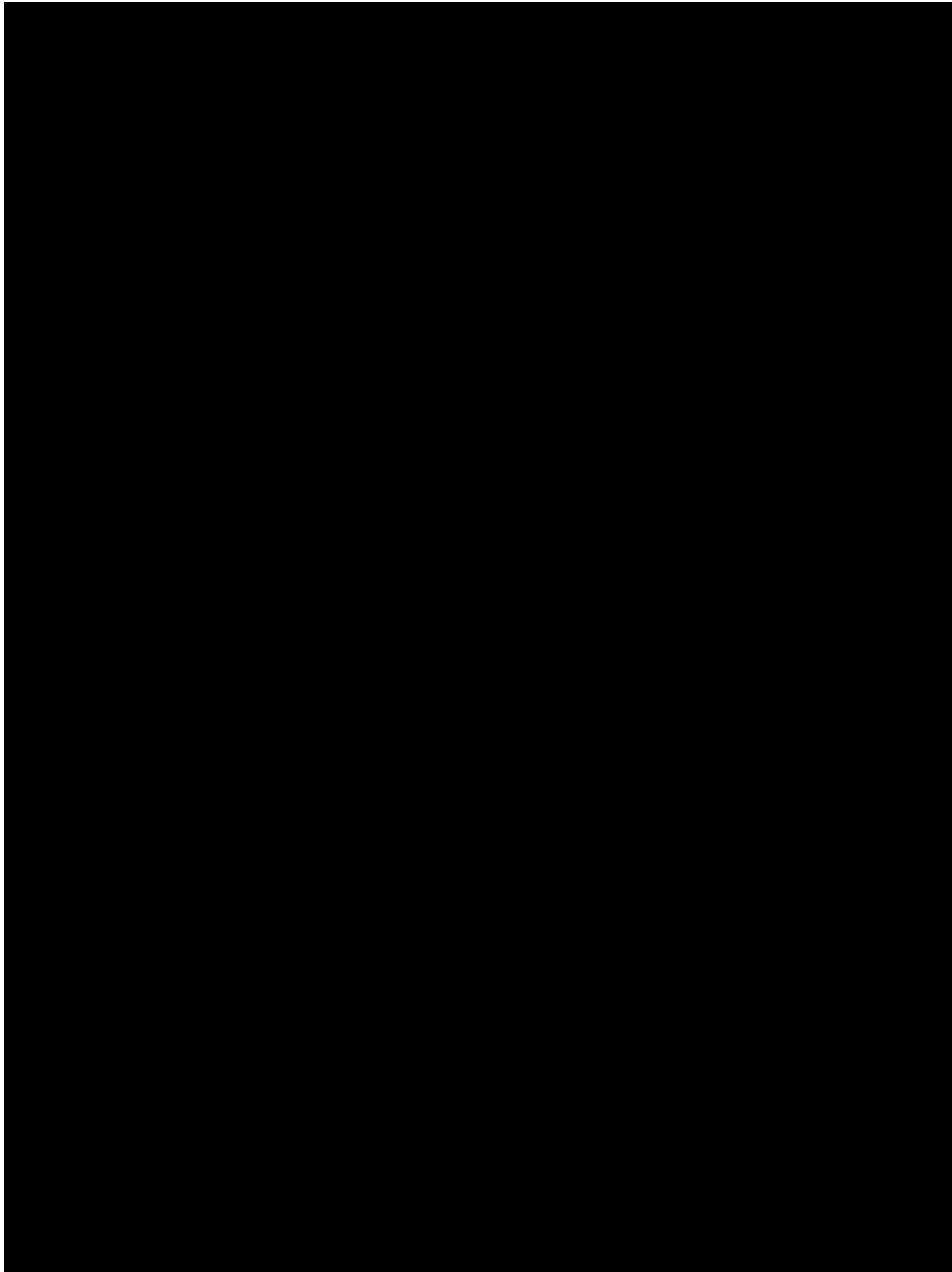
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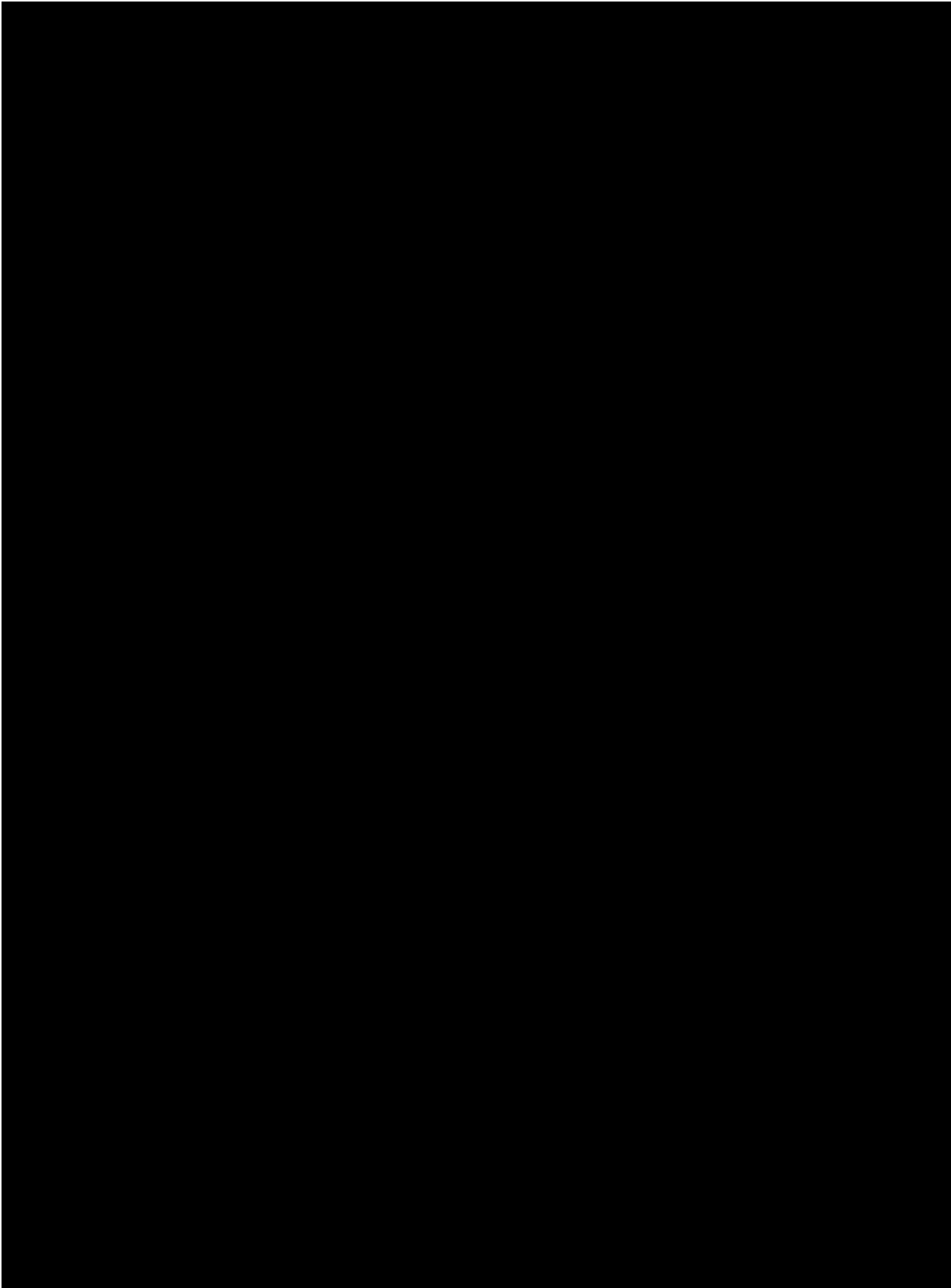
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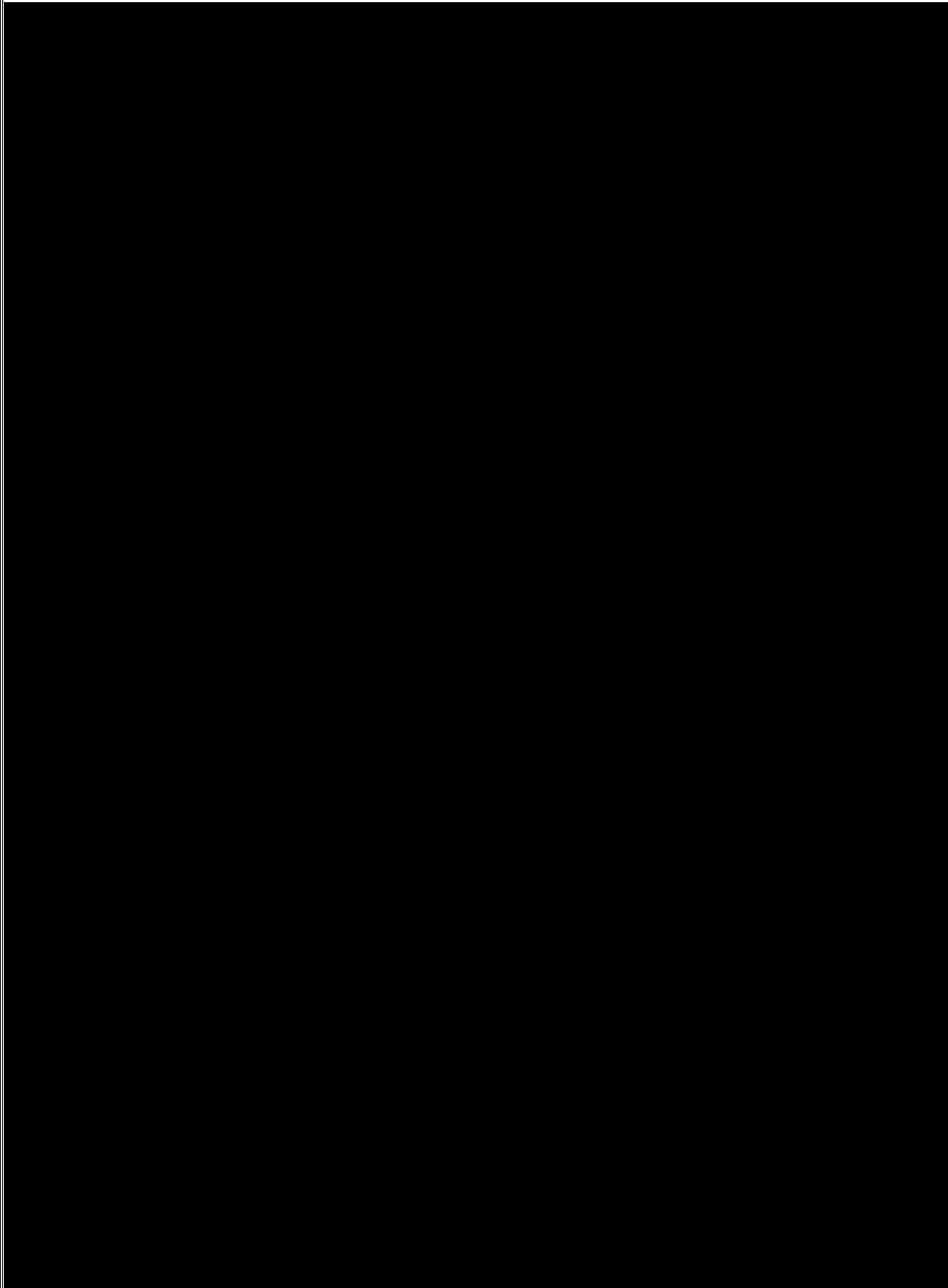
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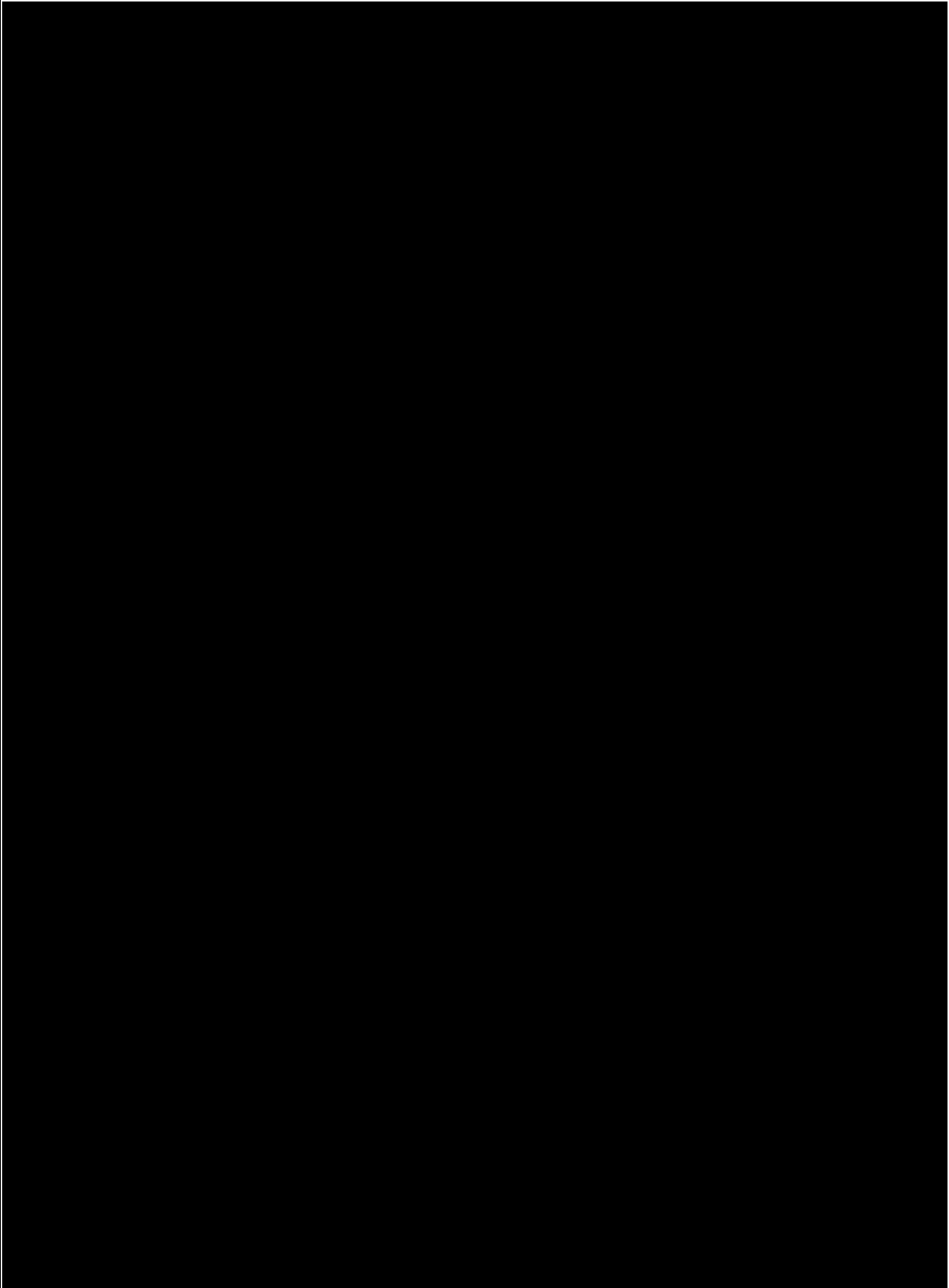
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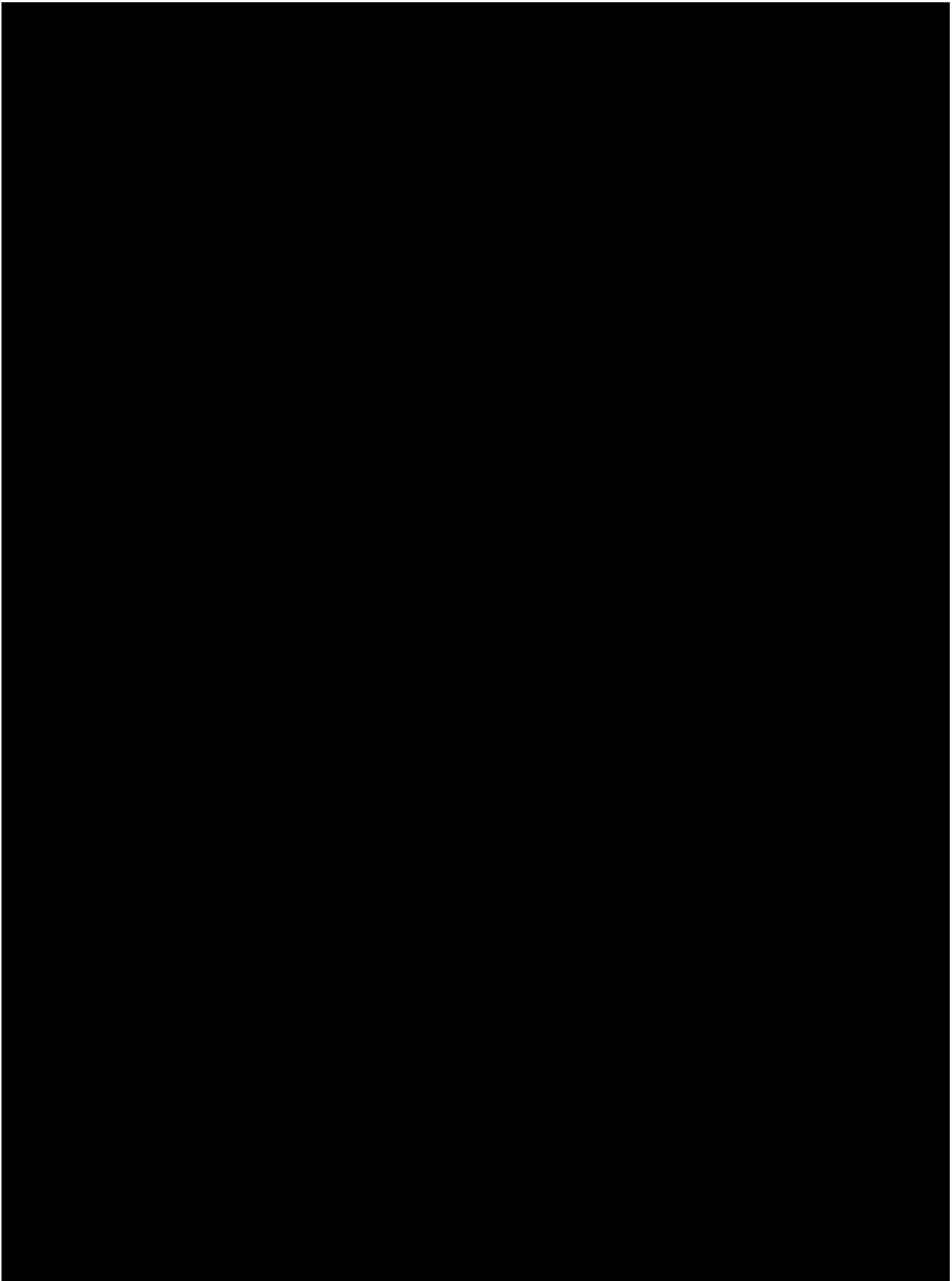
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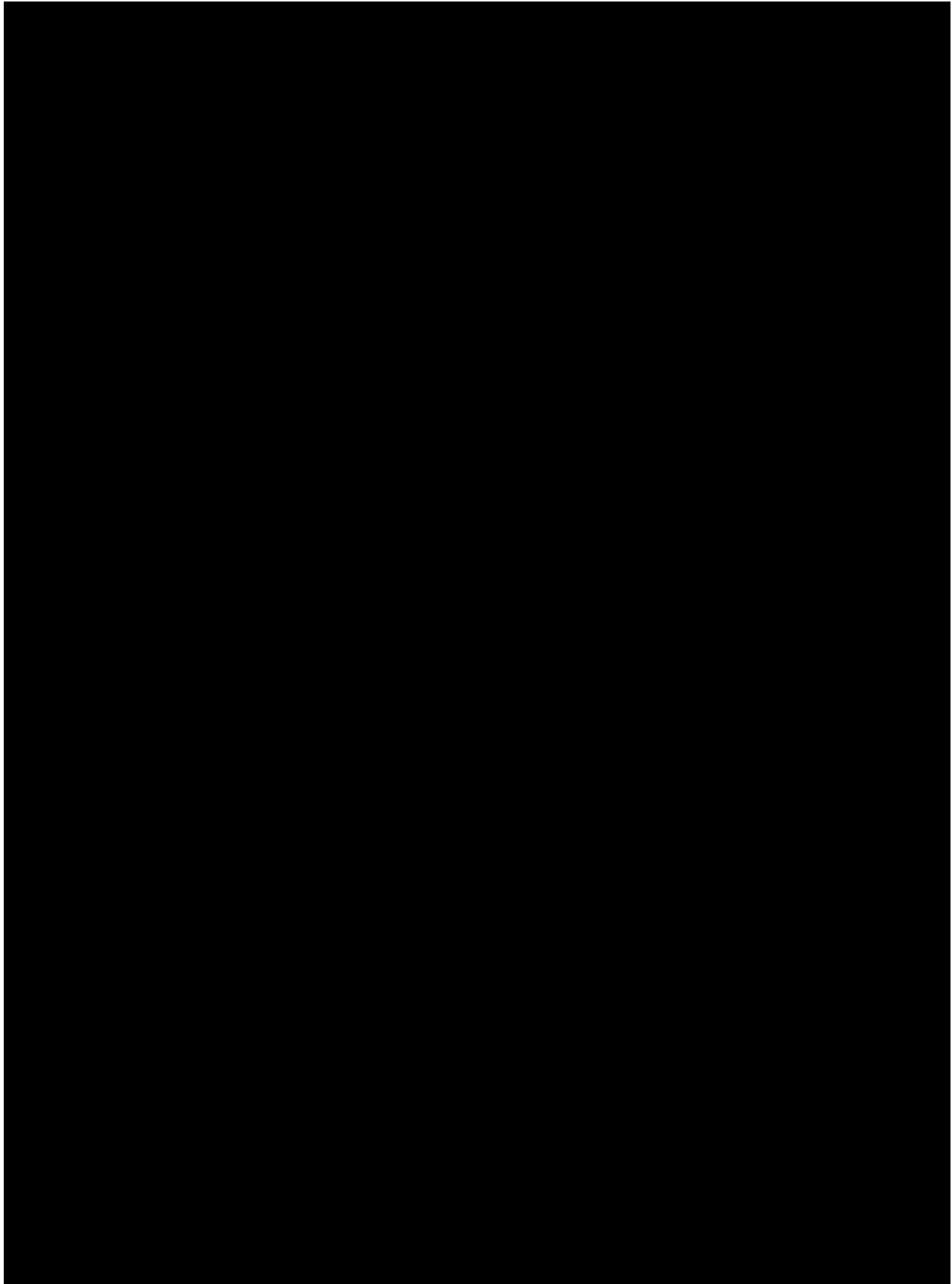
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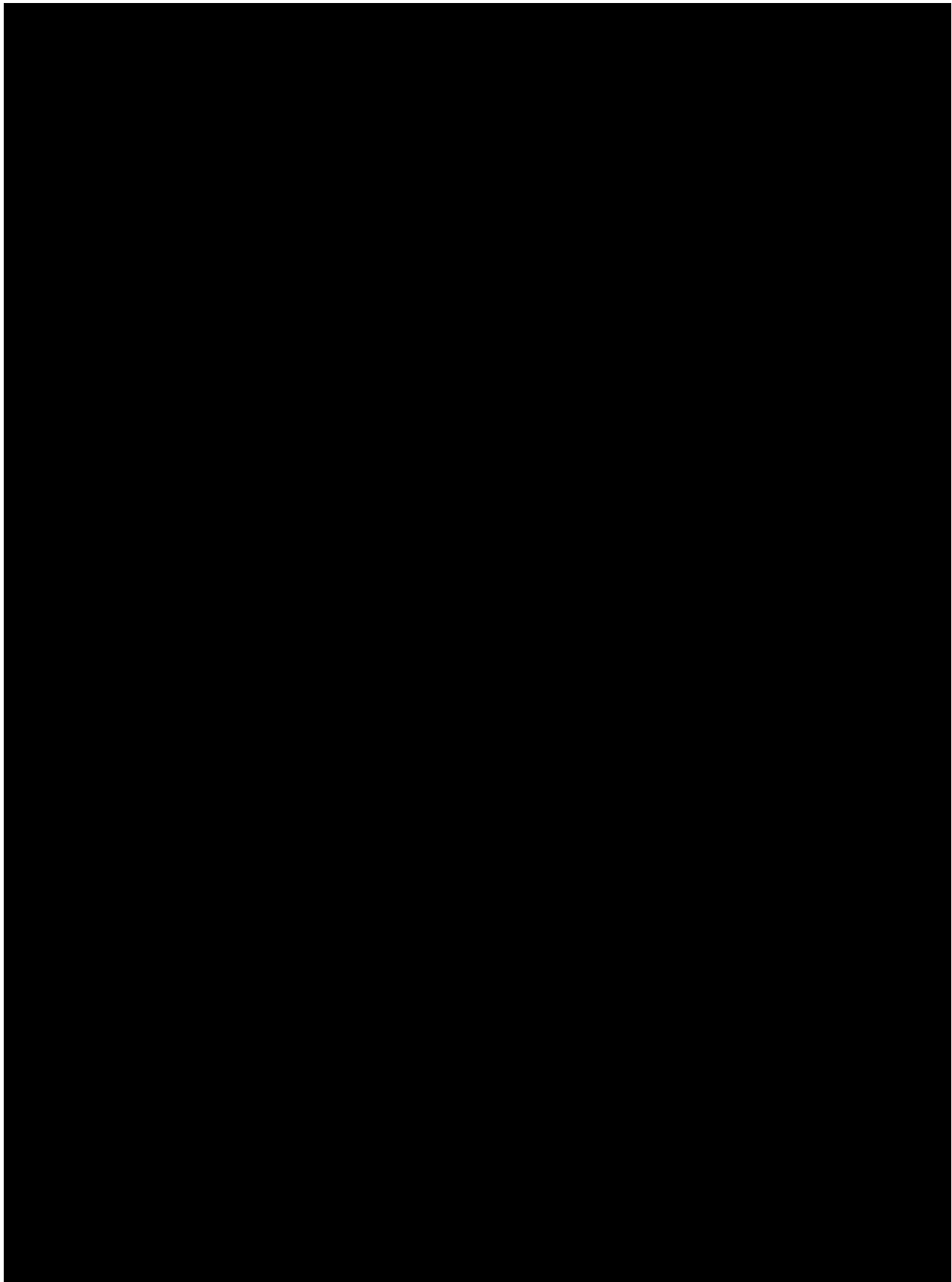
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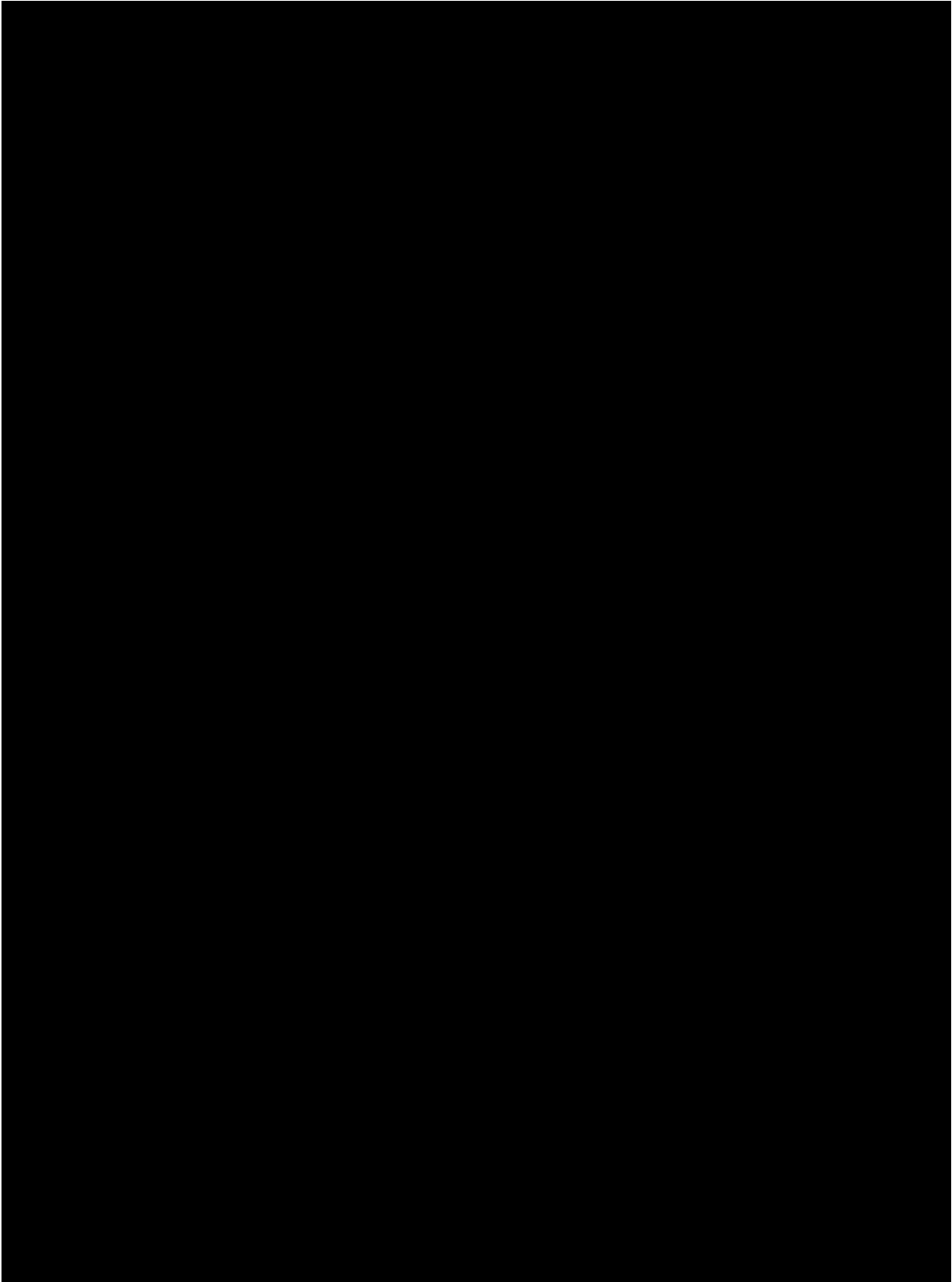
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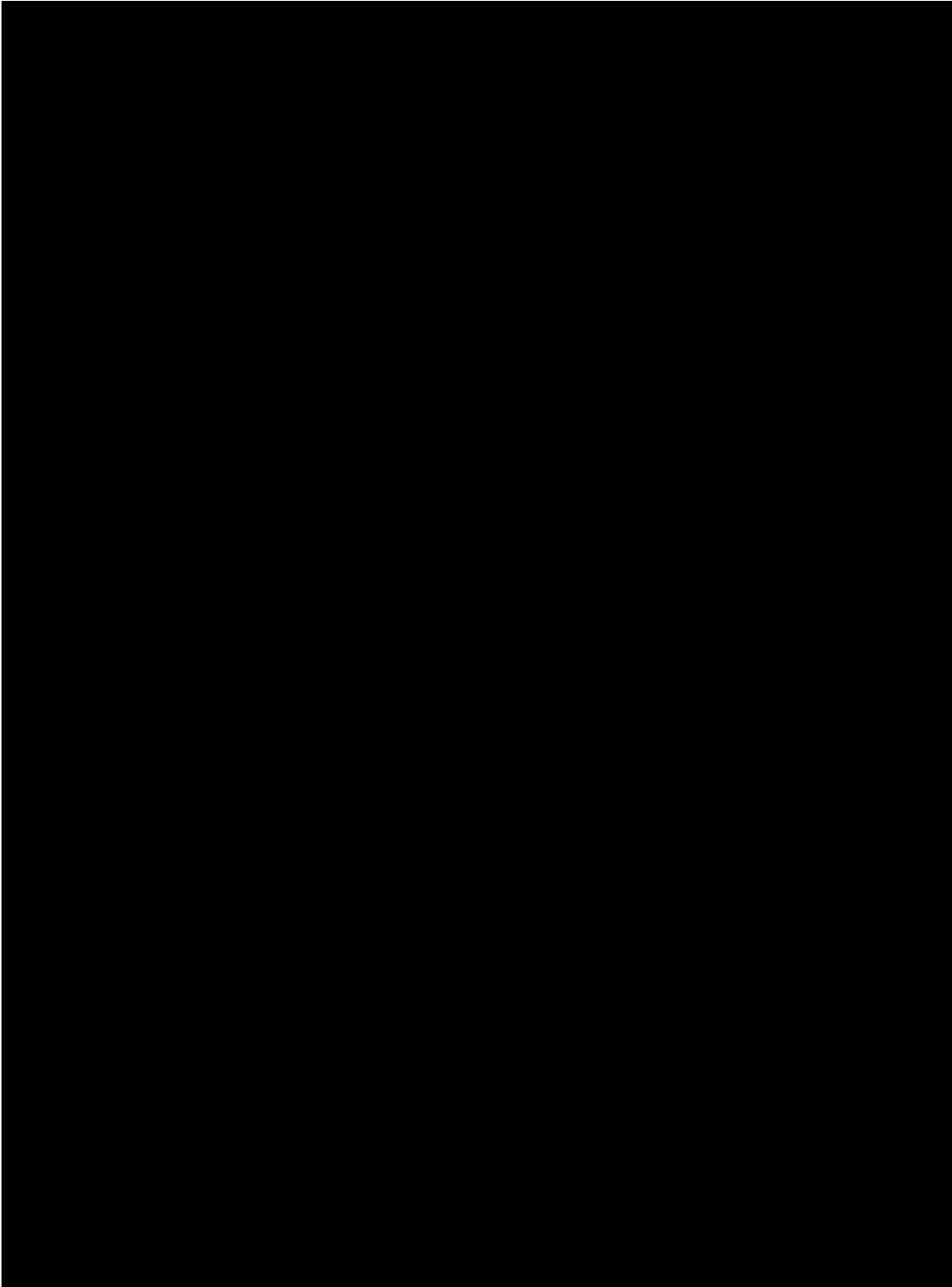
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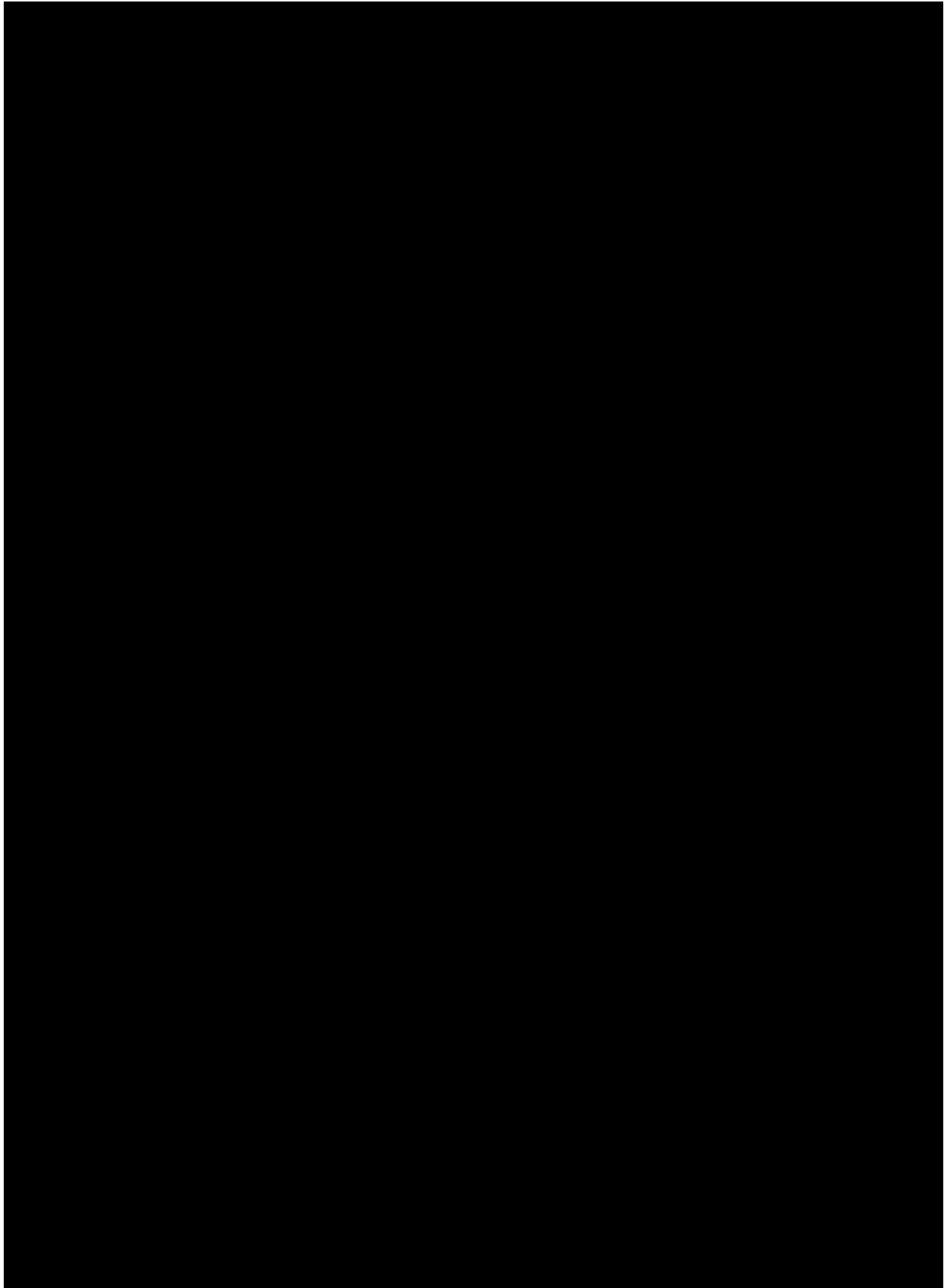
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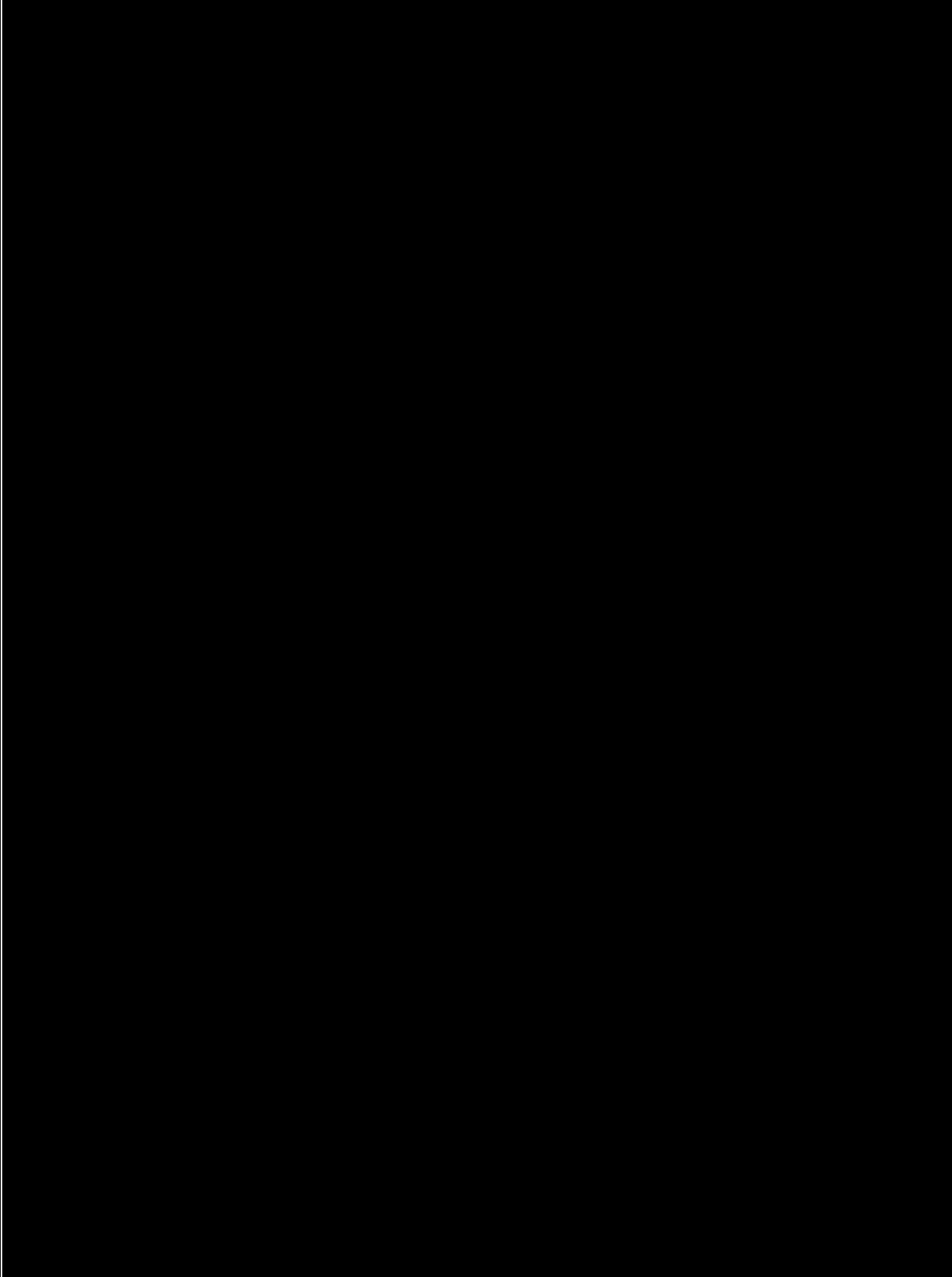
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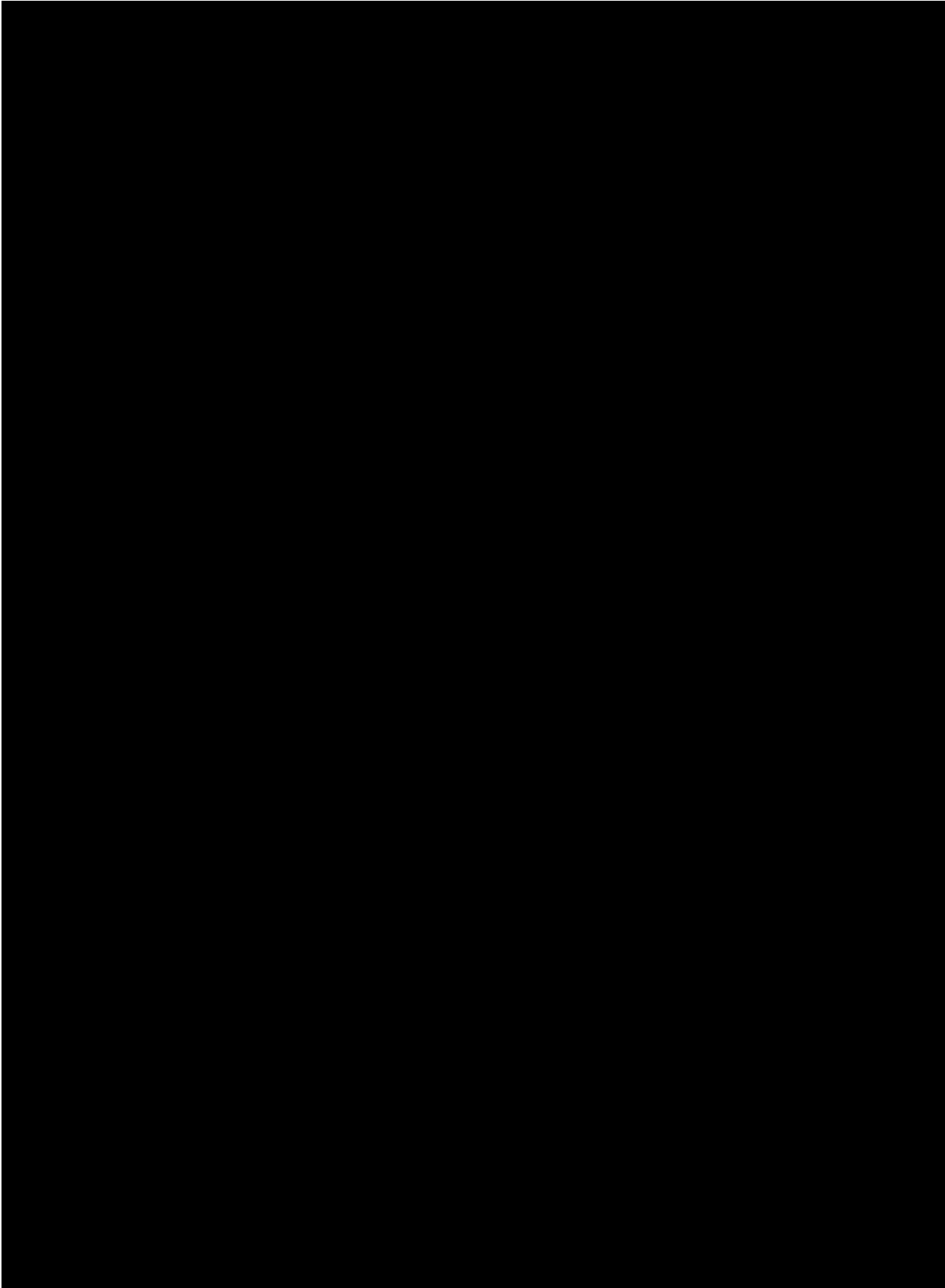
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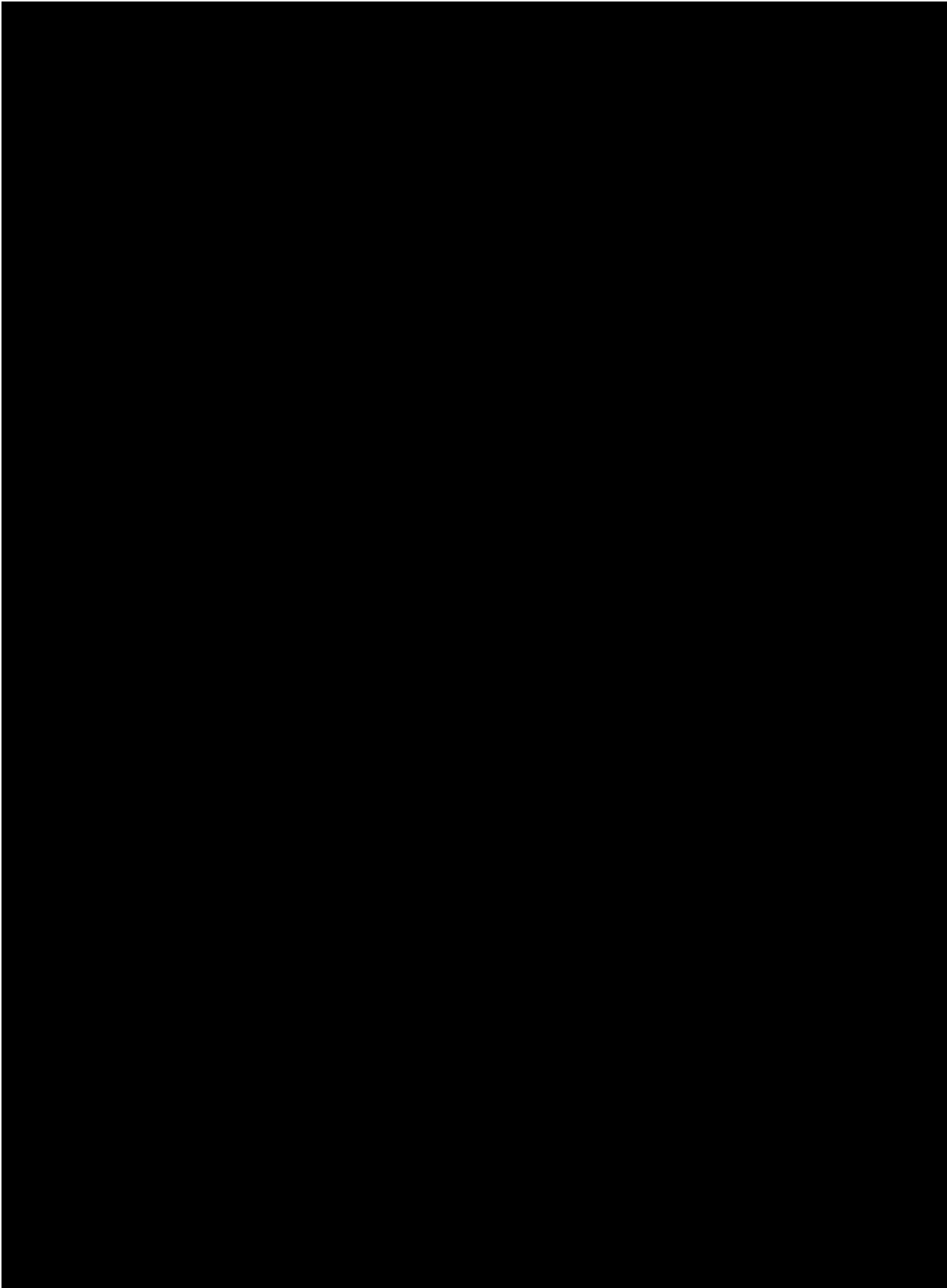
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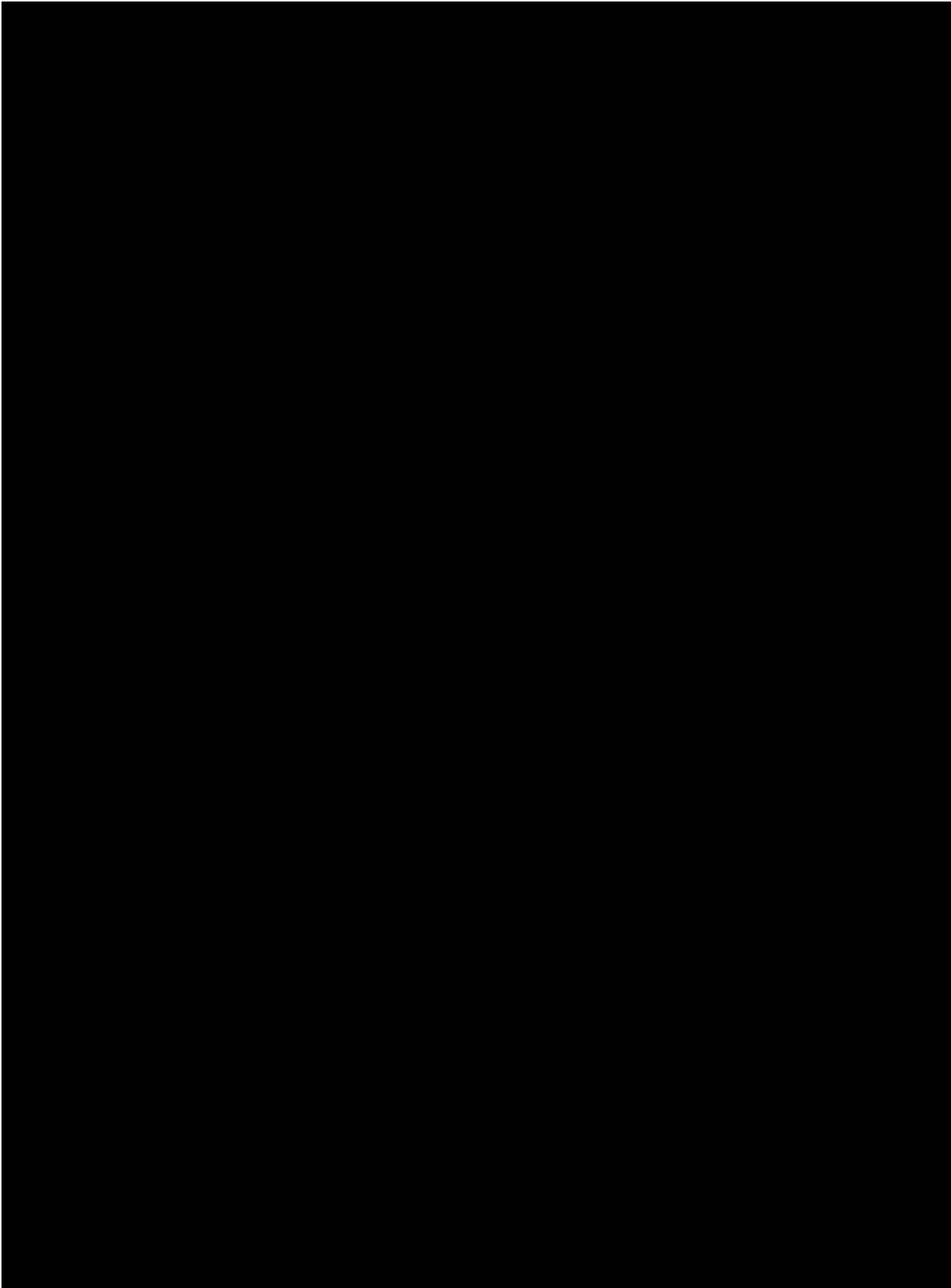
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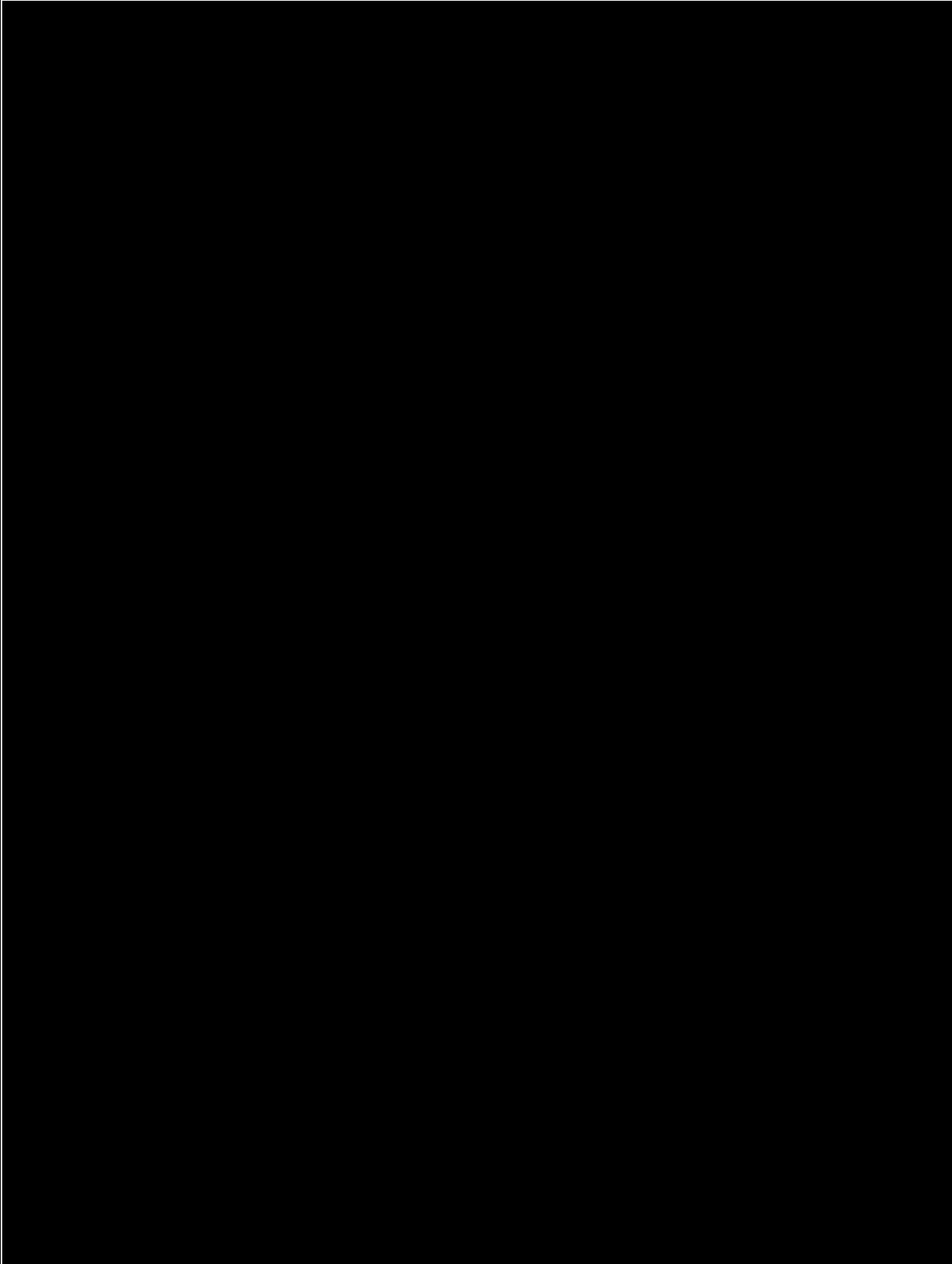
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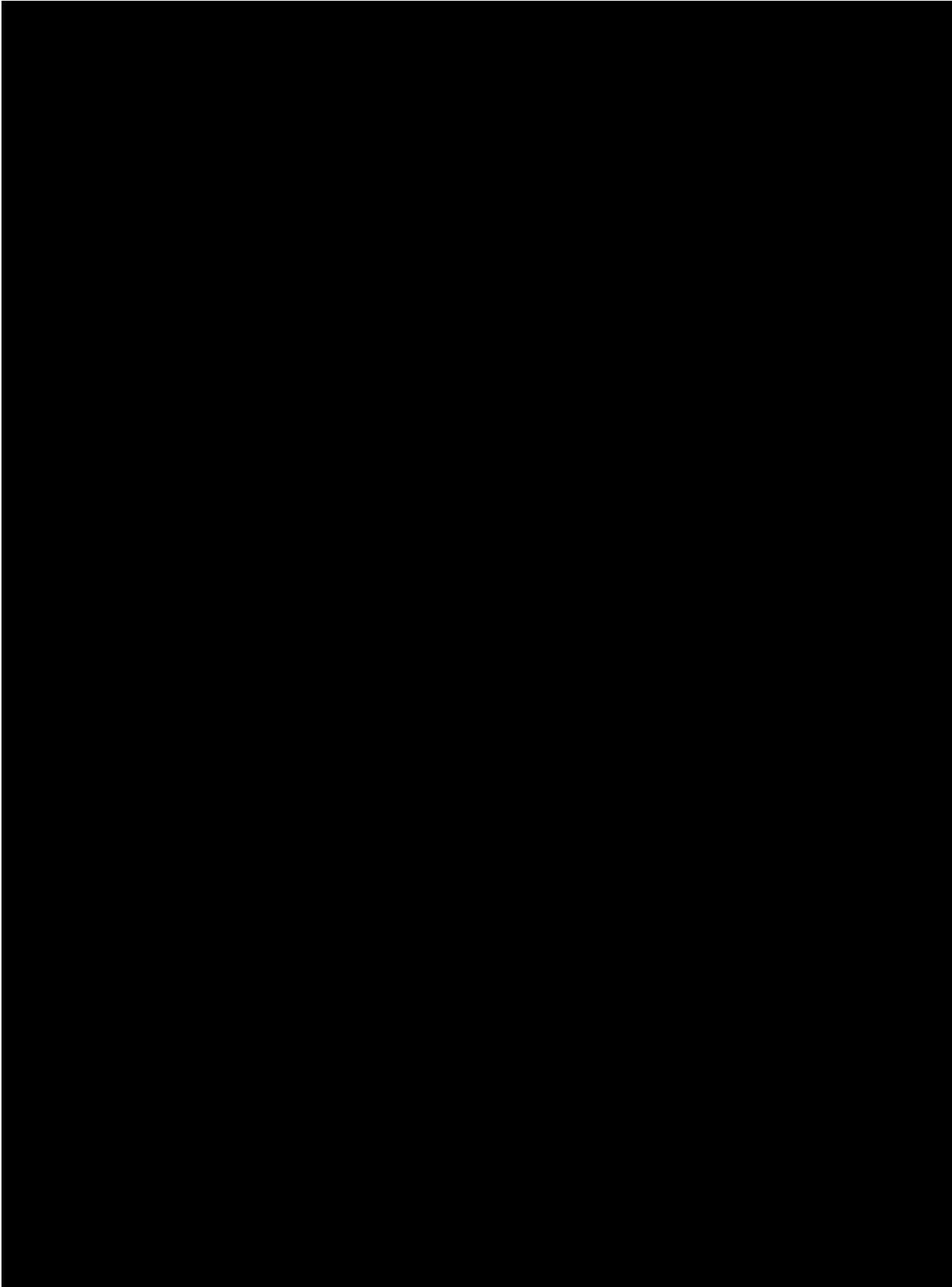
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PRESIDENT TERCIER: Thank you very much.

10

11

Do you wish that we make a short break, or do you want on your side to have a short break,

12

Mr. Polášek?

13

14

15

MR. POLÁŠEK: I think we need two minutes, three minutes, a very short break, and then we can proceed to redirect examination.

16

17

18

PRESIDENT TERCIER: Okay. I do not believe to two minutes nor to three minutes, but we'll take the time necessary, I would say. If we can just--

19

20

21

MR. POLÁŠEK: Thank you. I think we can stay put unless someone prefers a break, and we will confirm that also.

22

PRESIDENT TERCIER: Okay. Thank you. That's

1 okay with you?

2 THE WITNESS: Yes.

3 (Pause.)

4 MR. POLÁŠEK: I think we are ready,

5 Mr. President.

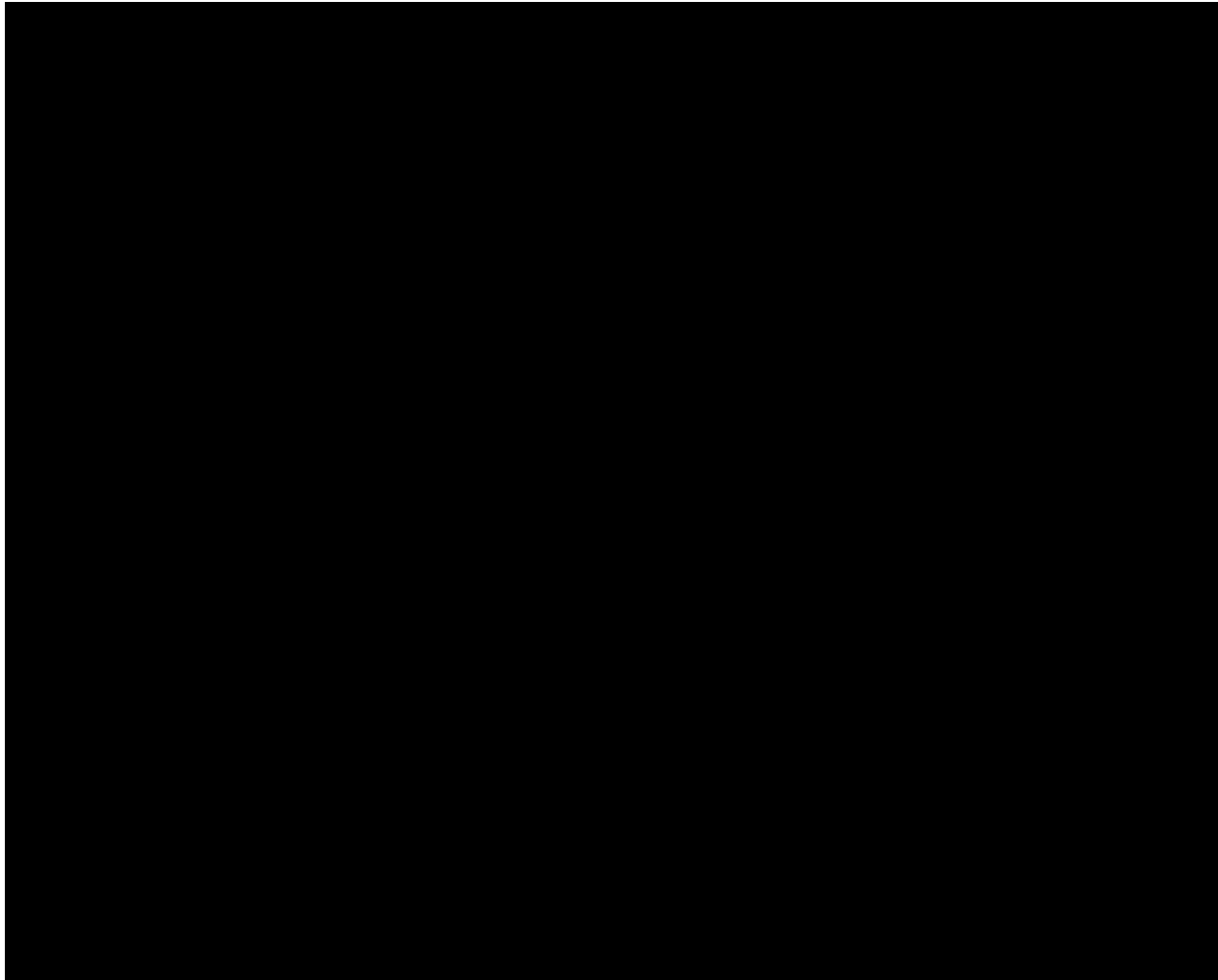
6 PRESIDENT TERCIER: Yes.

7 Please, Mr. Polášek.

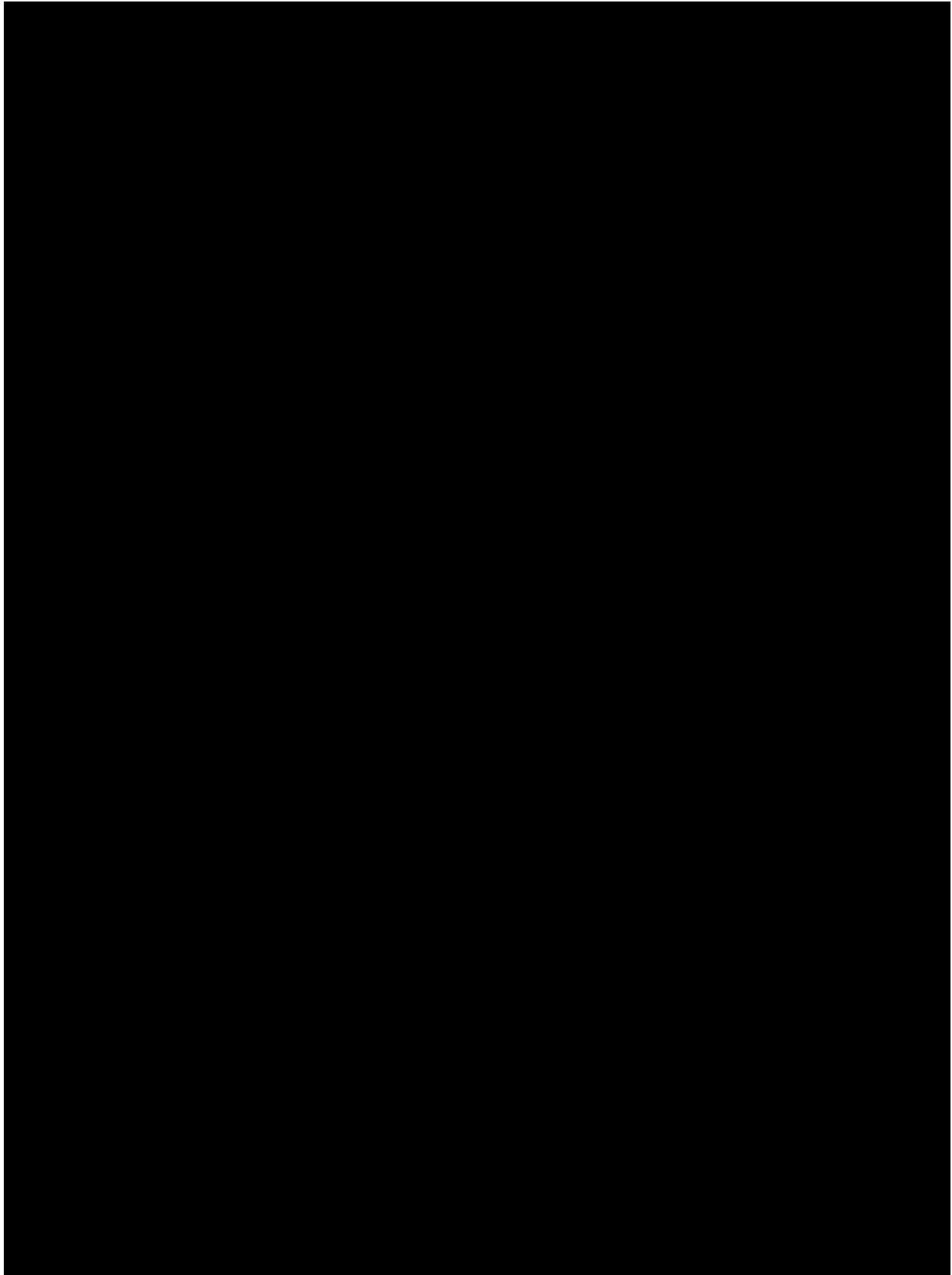
8 MR. POLÁŠEK: Thank you.

9 REDIRECT EXAMINATION

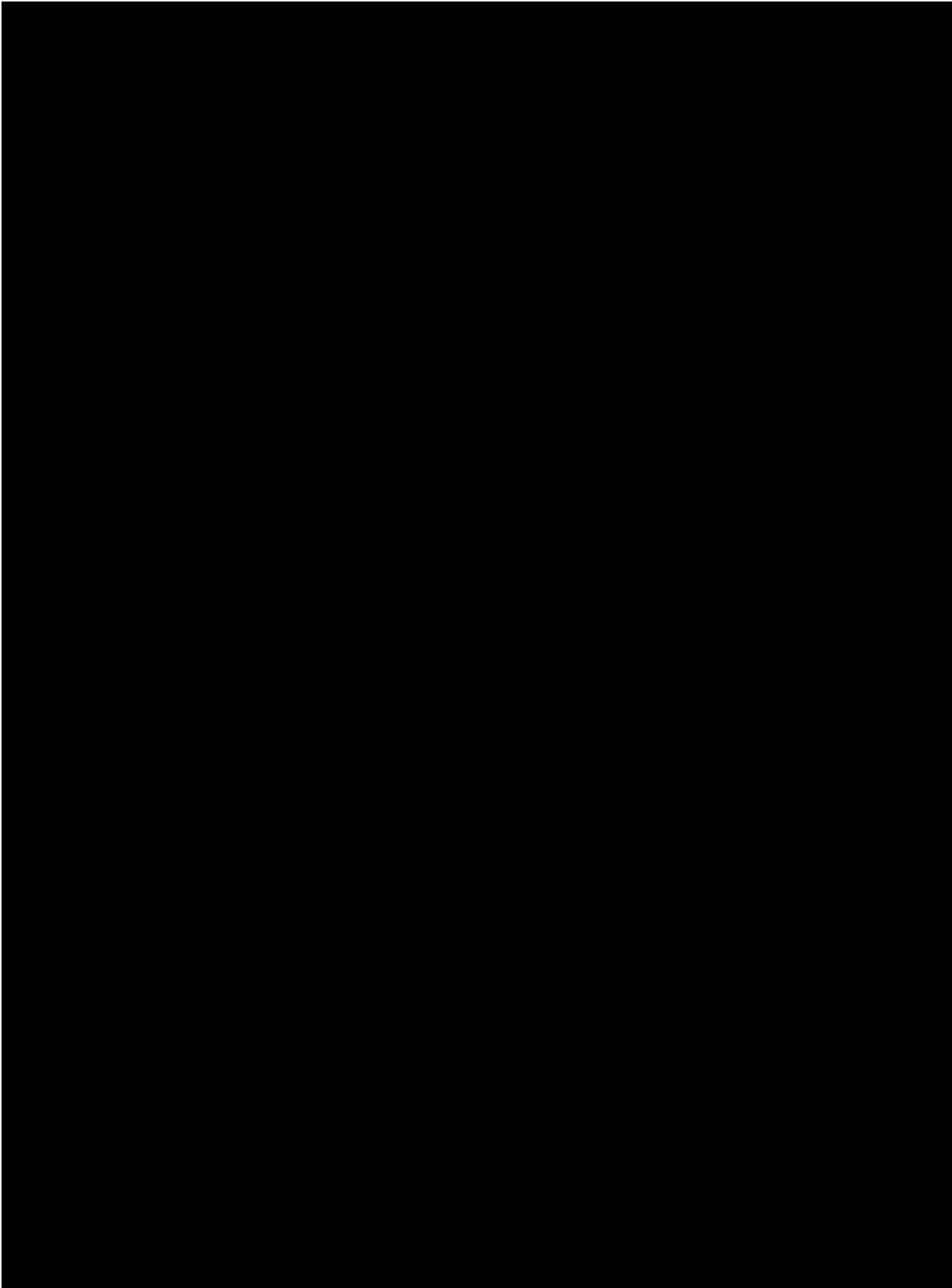
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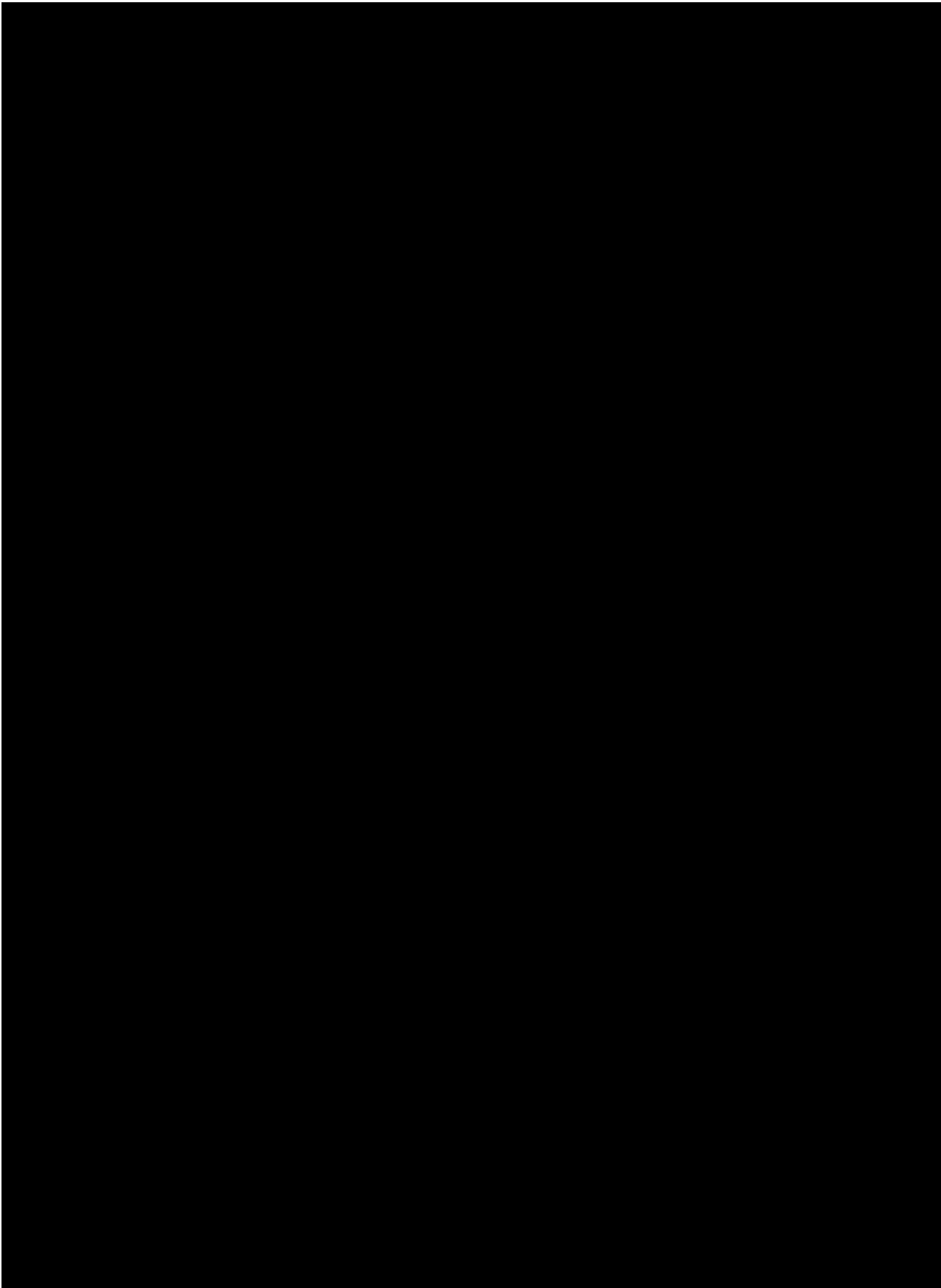
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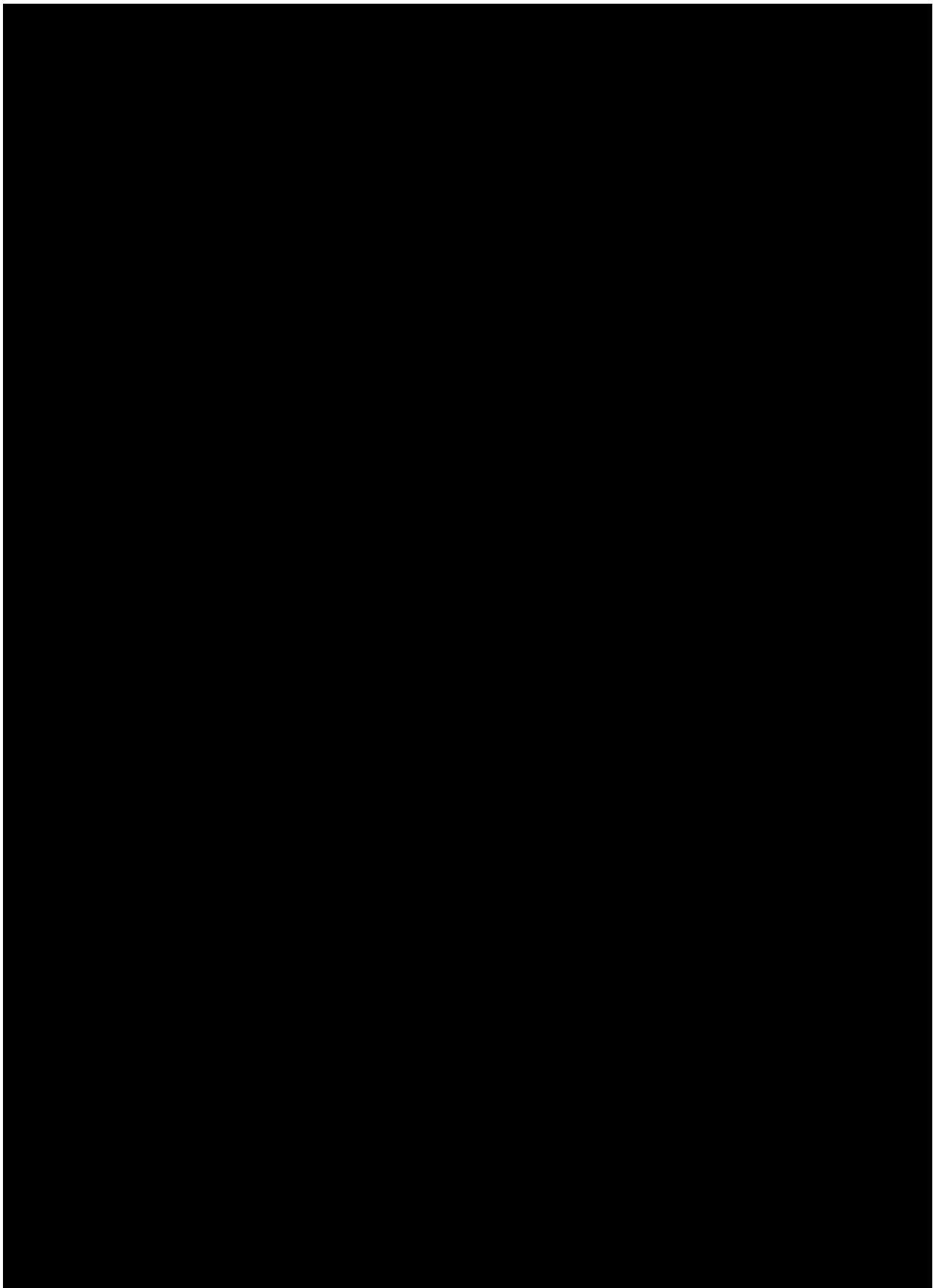
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QUESTIONS FROM THE TRIBUNAL

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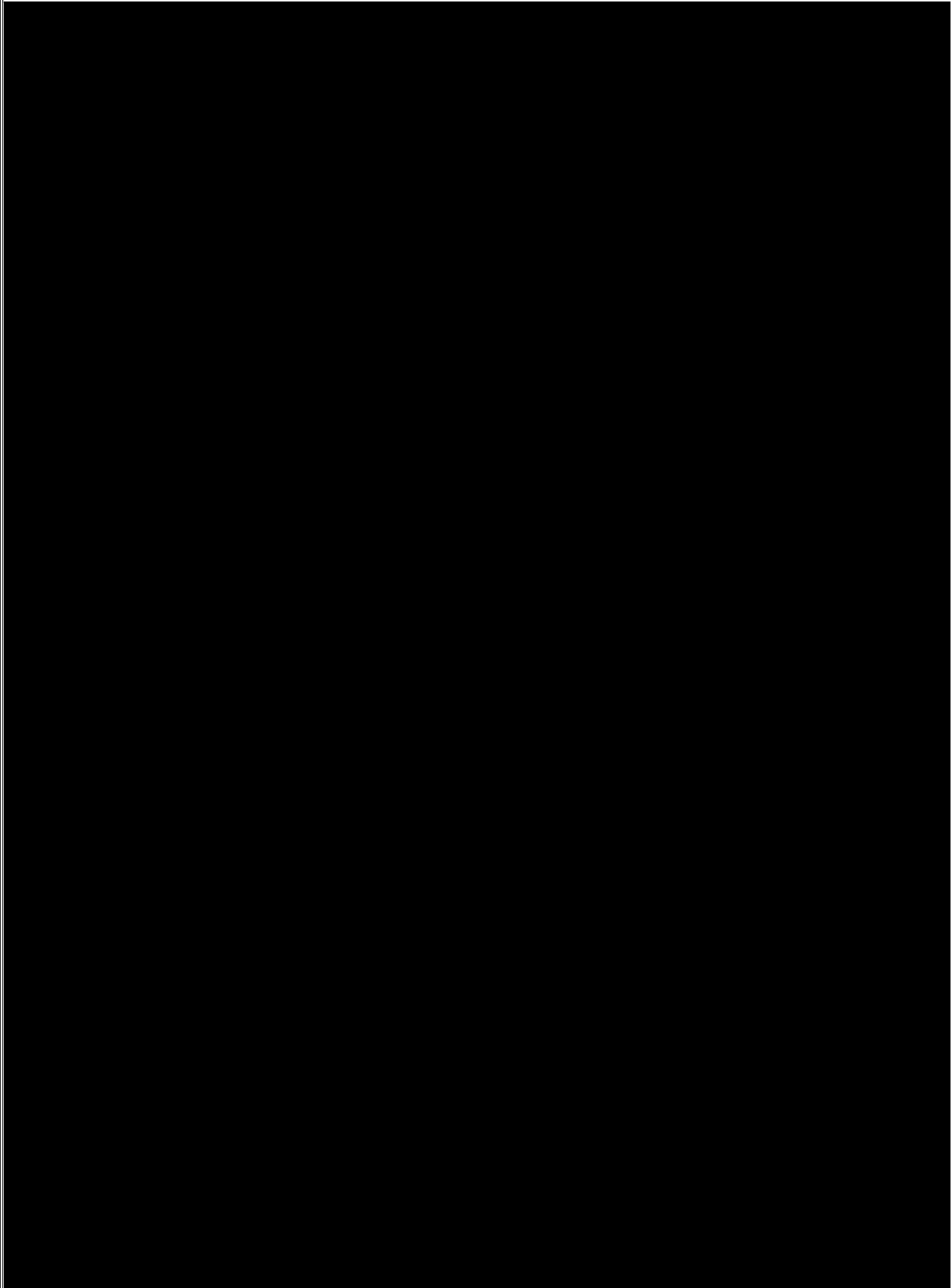
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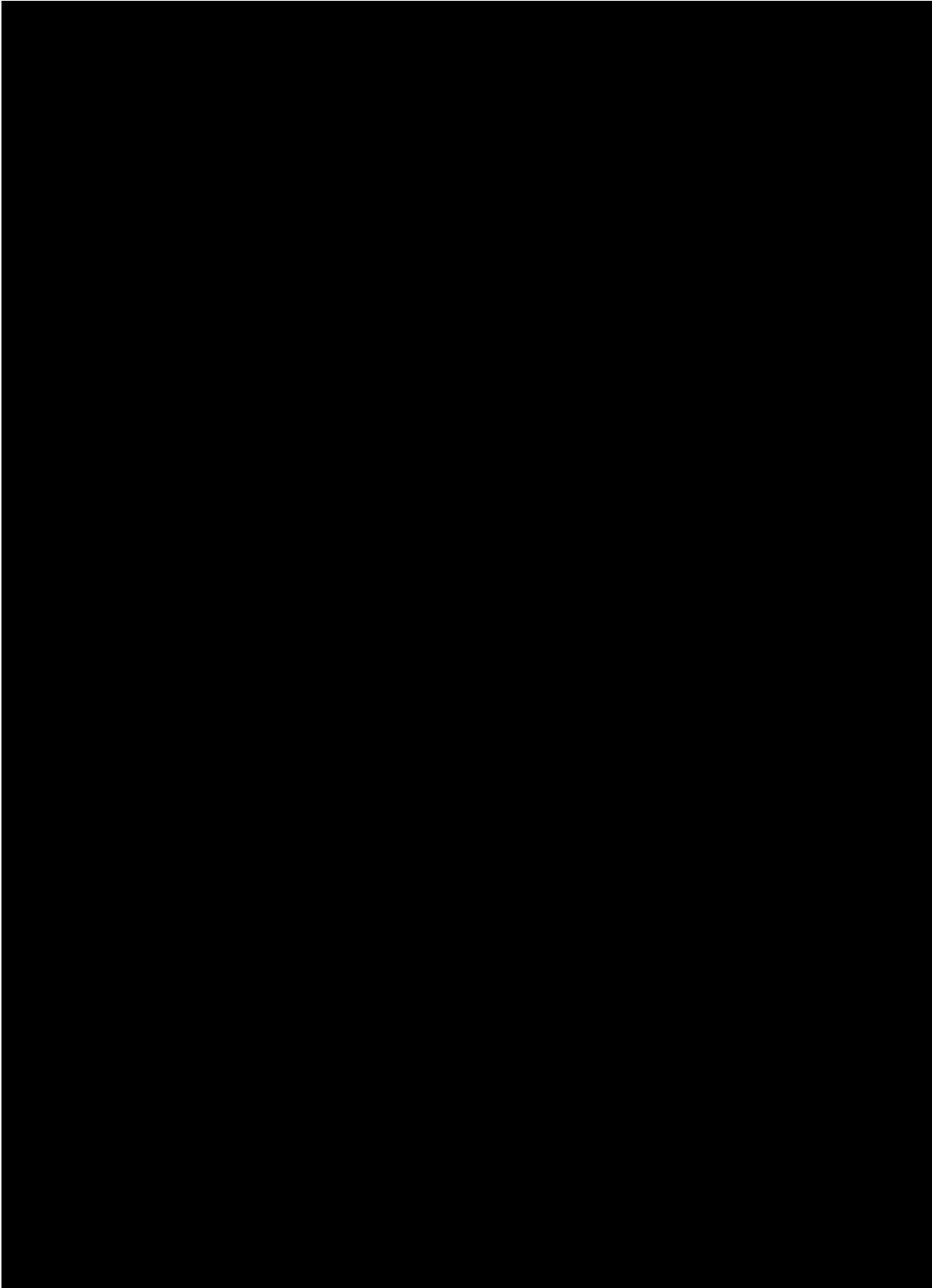
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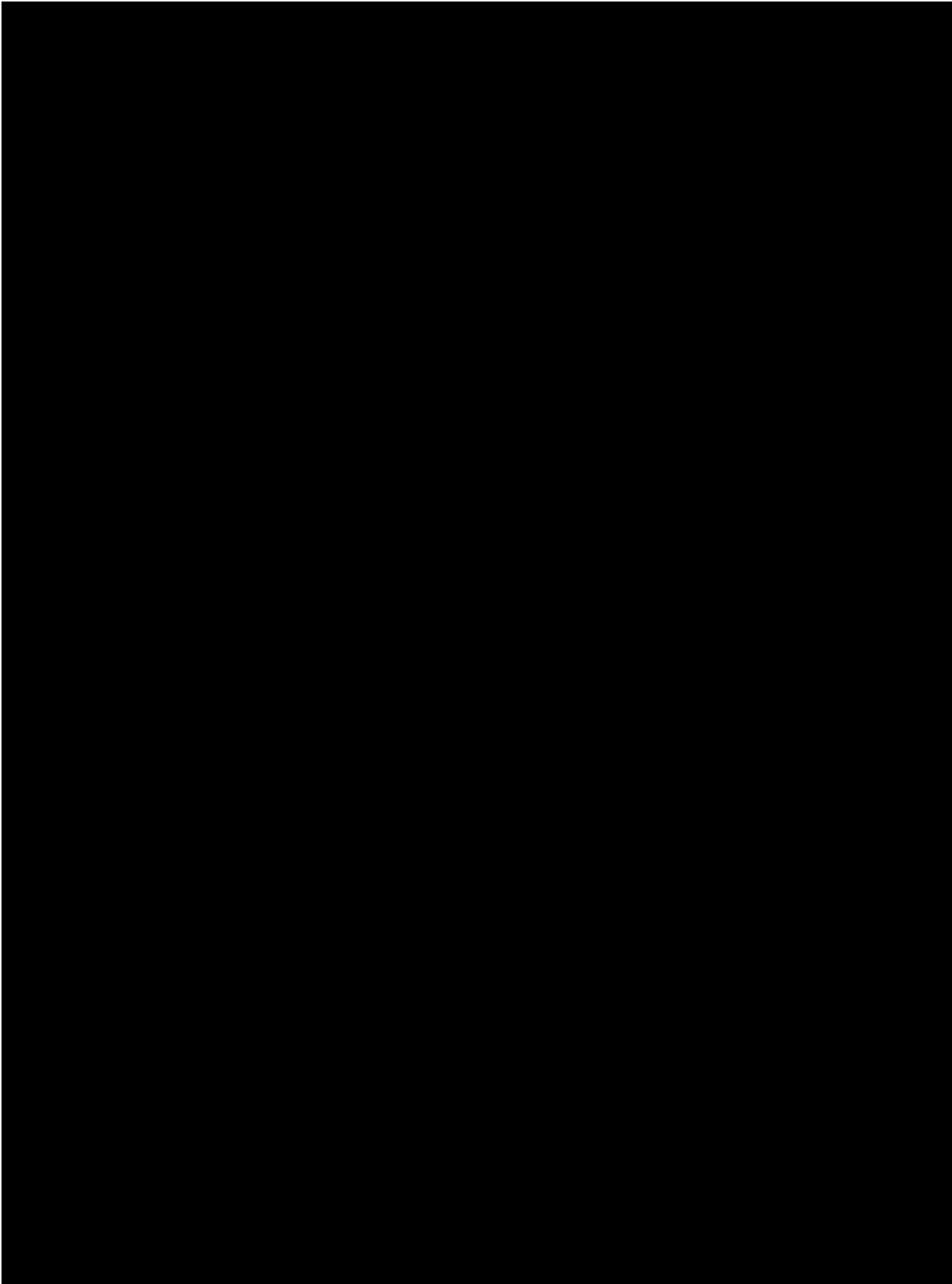
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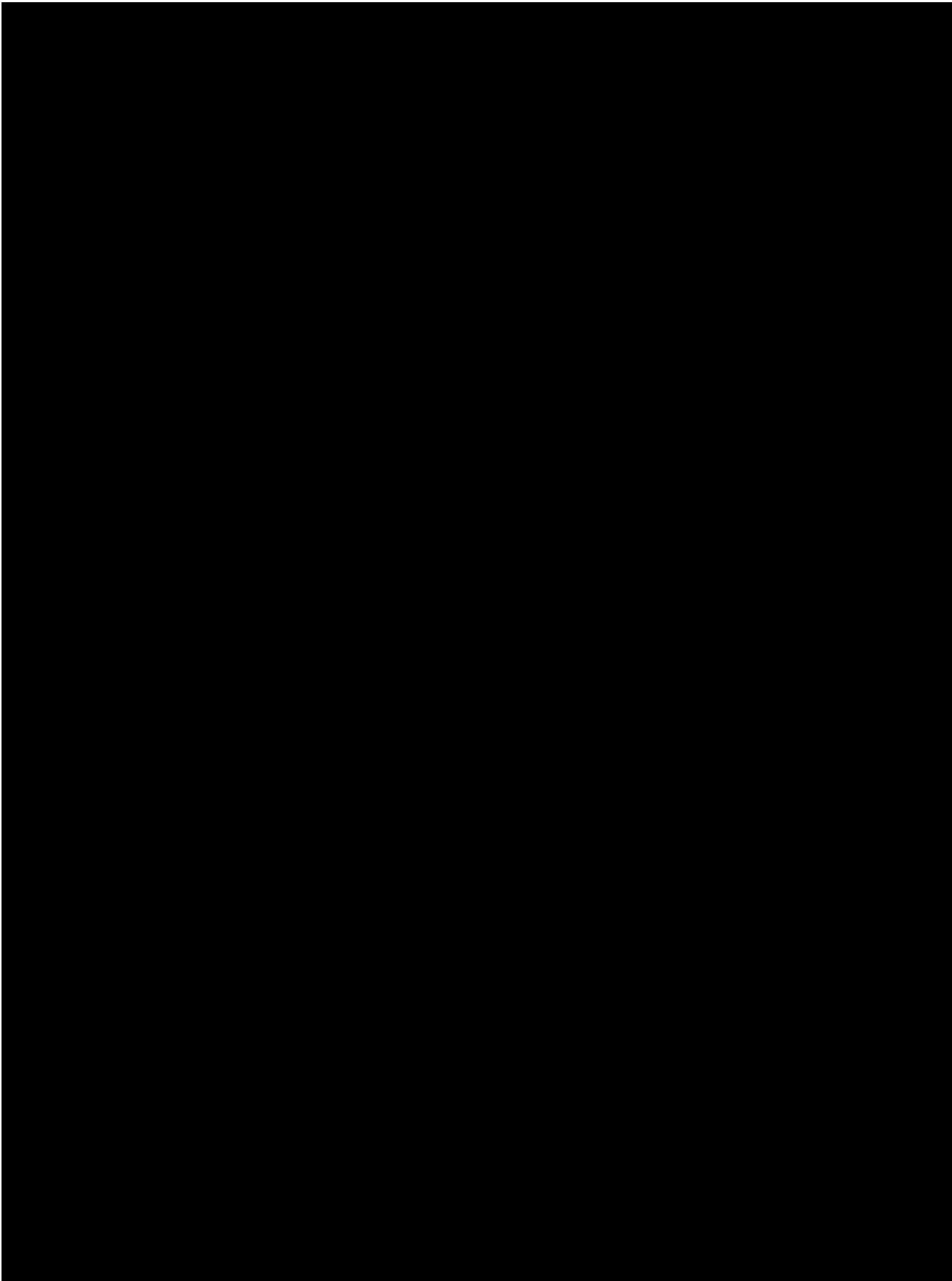
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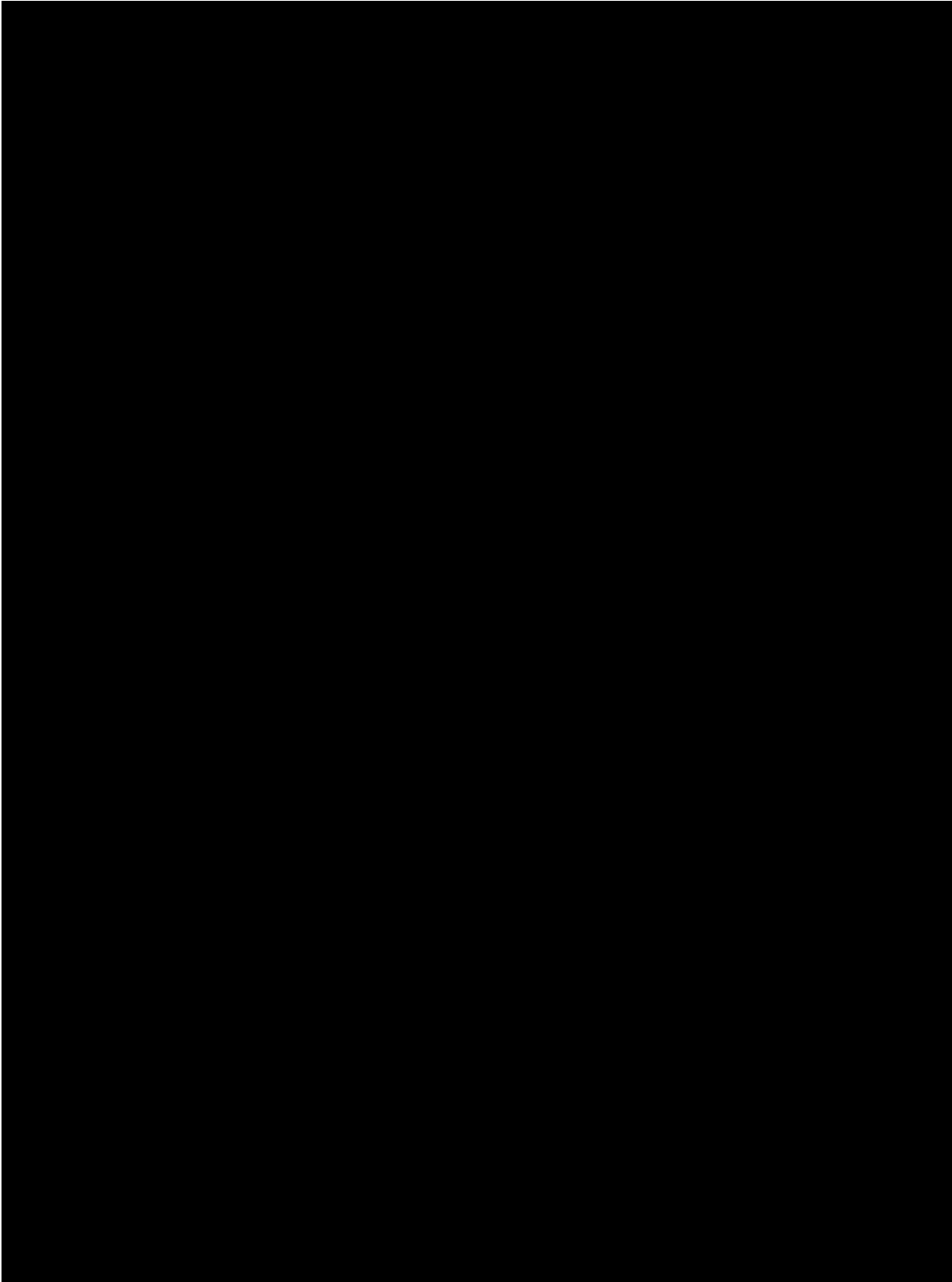
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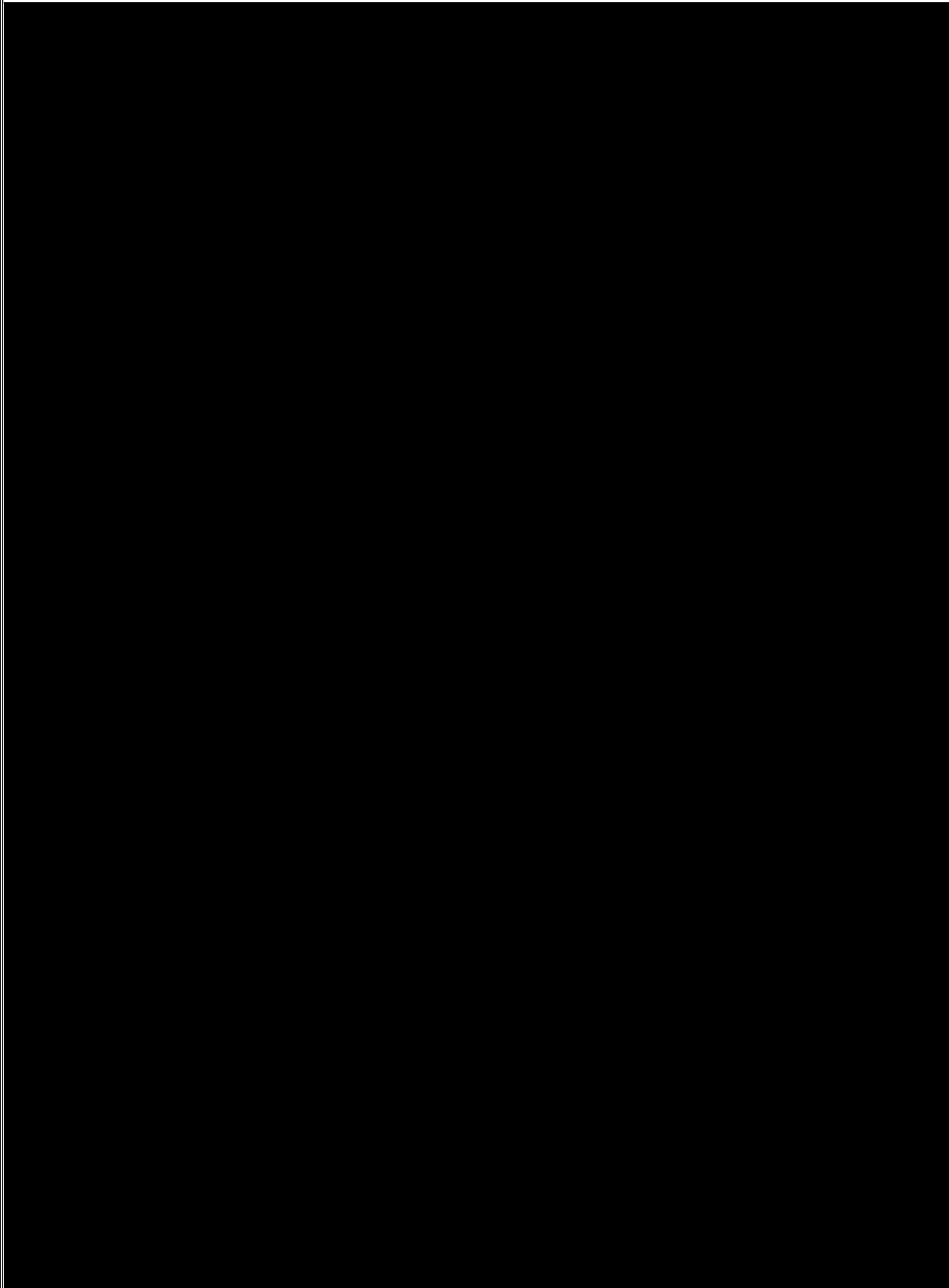
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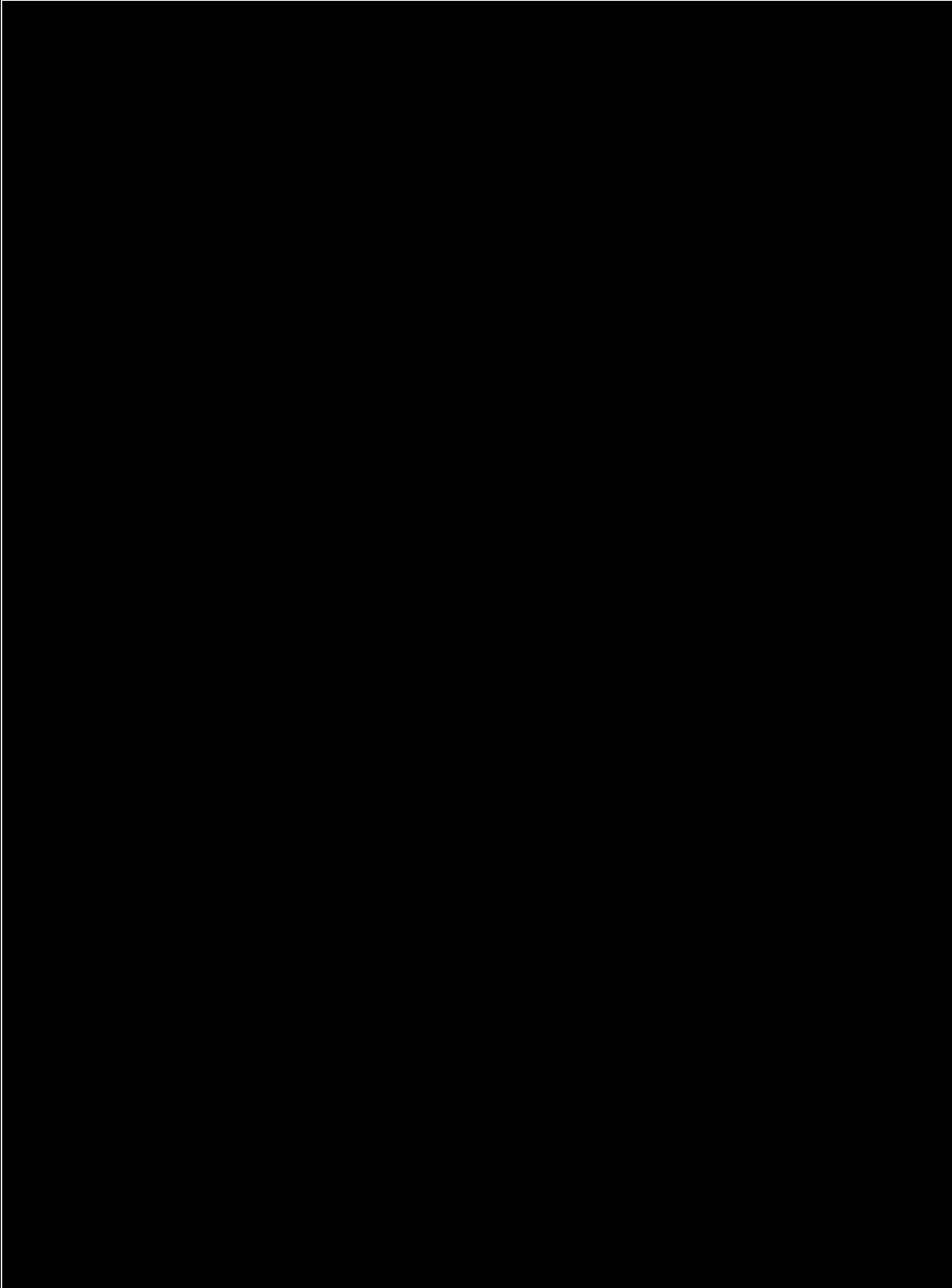
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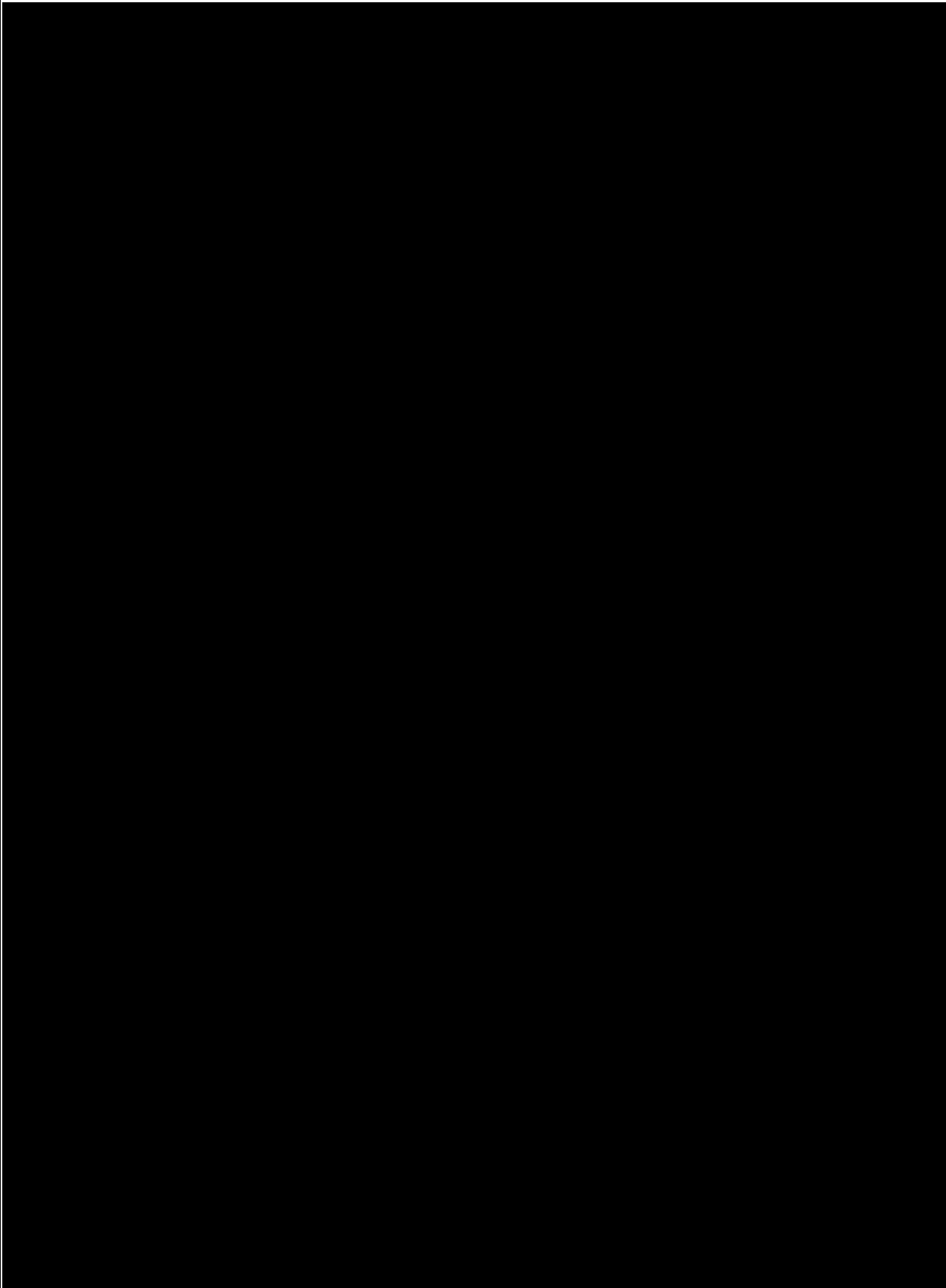
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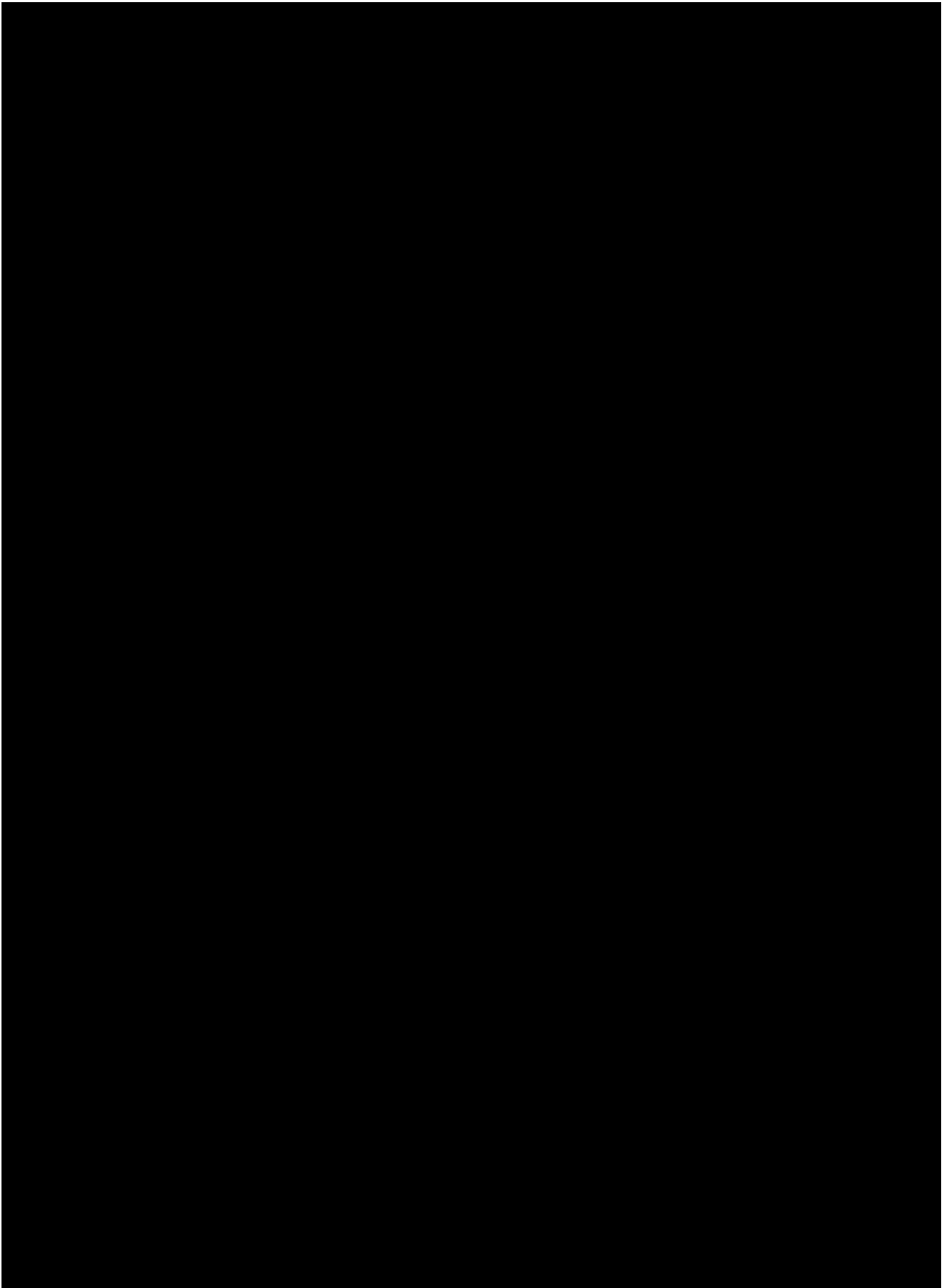
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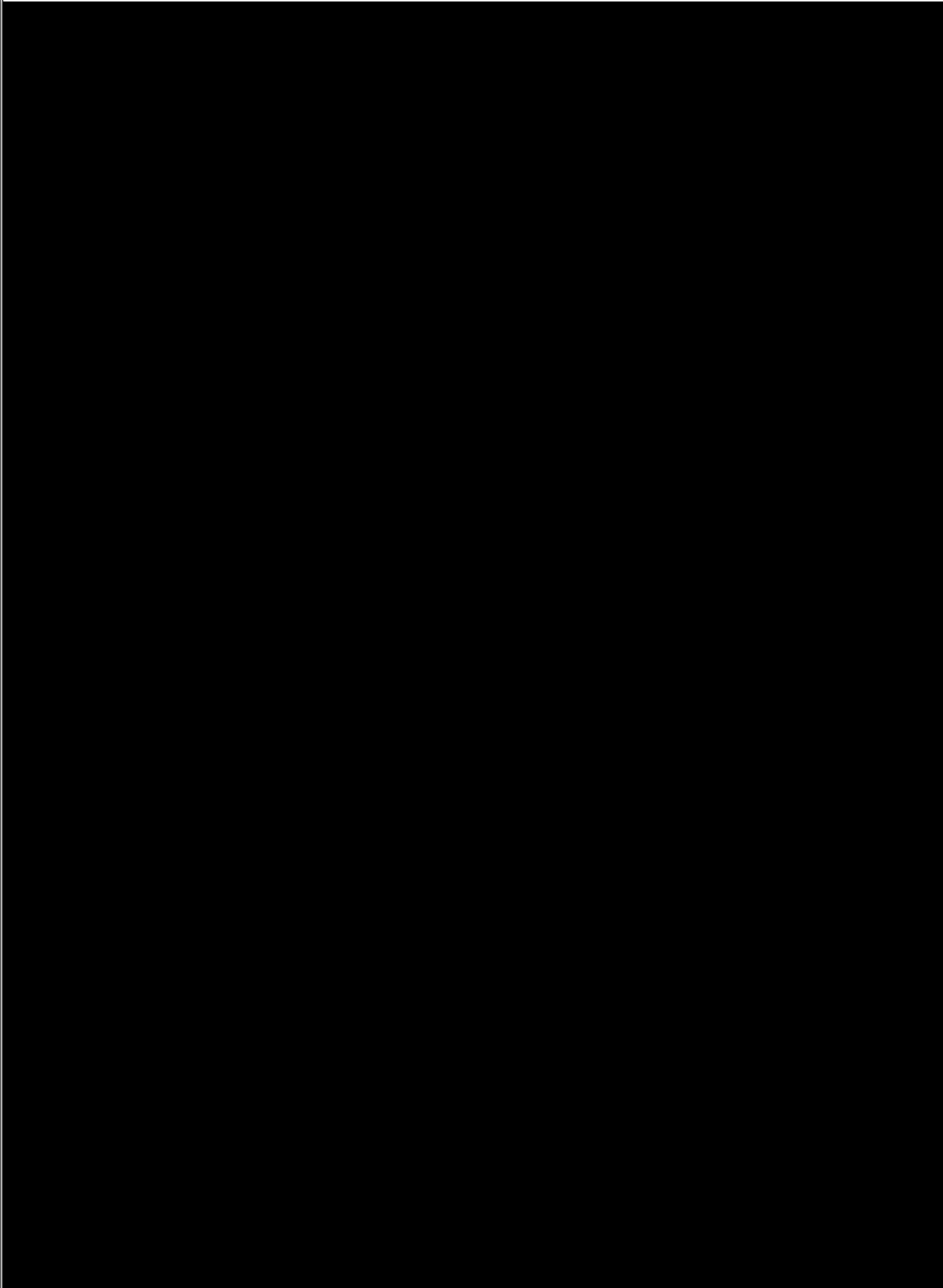
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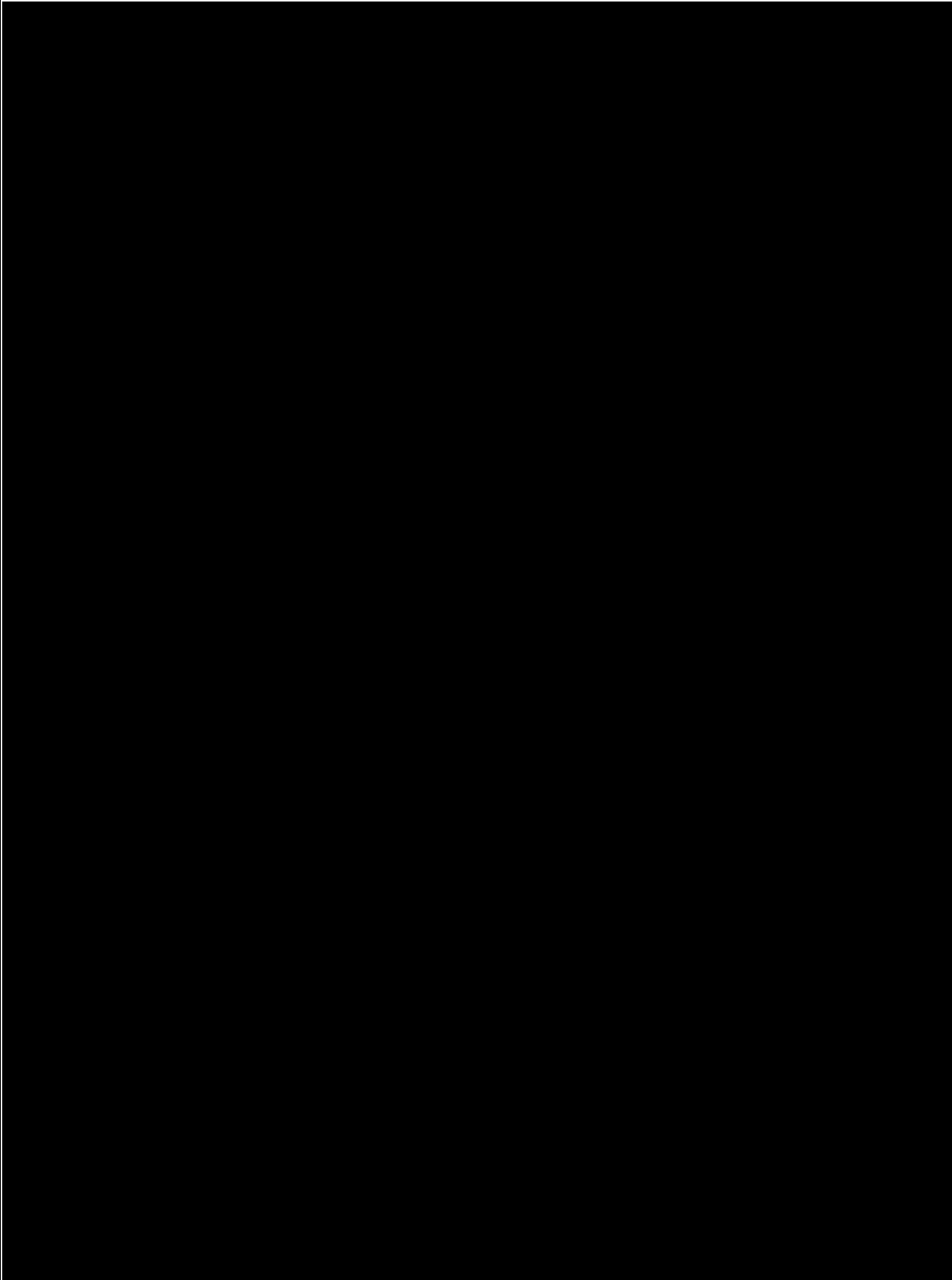
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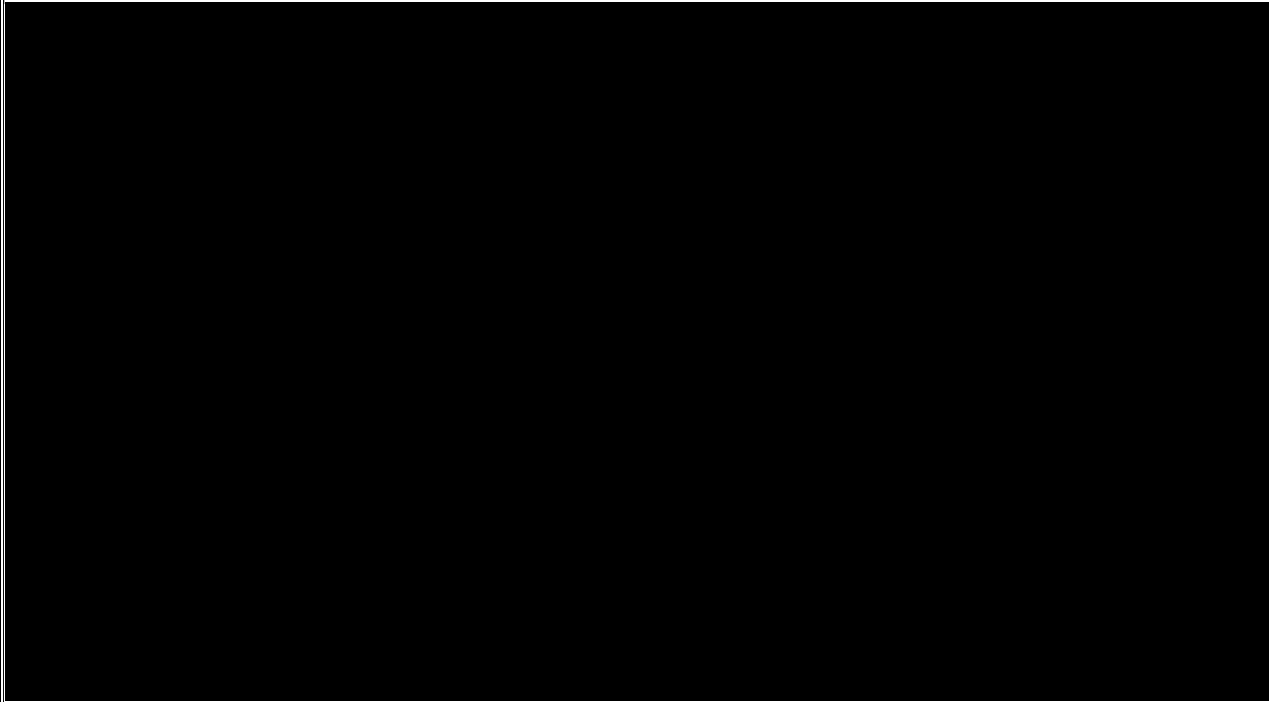
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10 (Witness steps down.)

11 PRESIDENT TERCIER: And we will now really
12 have a break, and then we will turn to Mr. Thomson,
13 okay? Good. So, we start again--we are extremely
14 precise, at quarter past 3:00.

15 (Brief recess.)

16 IAN THOMSON, RESPONDENT'S WITNESS, CALLED

17 PRESIDENT TERCIER: Good afternoon again,
18 ladies and gentlemen. We will now resume with the
19 examination of Mr. Ian Thomson.

20 Mr. Thomson, good afternoon. Welcome in this
21 proceeding. You were already in the room a moment
22 ago, so you have heard the examination of

1 Mr. Boutilier. You will be heard in this procedure as
2 an expert; as such I would like to invite you to read
3 the Declaration that you have before you.

4 THE WITNESS: I solemnly declare upon my
5 honor and conscience that my statement will be in
6 accordance with my sincere belief.

7 PRESIDENT TERCIER: Thank you.

8 You have prepared for this proceeding two
9 Witness Statements, the first expert--no, sorry,
10 expert opinion in the matter of Social License to
11 Operate dated 19 February 2018, and the second titled,
12 Second Expert Opinion on the same matter, and it was
13 dated 6th of May 2019.

14 You have these two expert opinions in front
15 of you?

16 THE WITNESS: I do.

17 PRESIDENT TERCIER: Okay. You have not
18 mentioned or communicated any changes. Can you
19 confirm it means you have no amendments or no
20 corrections to make?

21 THE WITNESS: There, I must point out an
22 error.

1 PRESIDENT TERCIER: Okay.

2 THE WITNESS: In my Second Opinion,
3 Paragraph 213, it talks about in the third sentence,
4 "people, albeit in reduced"--

5 PRESIDENT TERCIER: Wait a second. 213;
6 yeah?

7 THE WITNESS: Yeah. It's a sentence, it's
8 the fourth line down, beginning: "People, albeit in
9 reduced number," it mentions seven of whom have
10 provided Witness Statements. In my footnote I only
11 list six, so there's an error, there's an
12 inconsistency there, and that paragraph should not
13 read seven; it should read six.

14 PRESIDENT TERCIER: Okay. We have taken note
15 of it.

16 Can you now, just to start, in a few words,
17 introduce yourself. This is my classical question,
18 the first. And the second, if you can in a few words
19 also tell us how you came to the two expert opinions
20 that you have prepared?

21 THE WITNESS: Okay, my name is Ian Thomson.
22 I'm semi-retired, supposedly, independent consultant.

1 I was born and educated in the United Kingdom. I hold
2 a Bachelor's degree and a doctorate degree from the
3 University of London Imperial College. I have 48-plus
4 years' experience in the mining industry having worked
5 in various capacities. For the first 20-plus years
6 essentially as a technical and Management side of the
7 mining business, and mostly in mineral exploration,
8 and for the last 20-plus years essentially as a social
9 specialist and consulting, providing advice and
10 assistance to companies, to banks, to governments, to
11 communities, to non-governmental organizations, fairly
12 broad experience mostly working out with junior mining
13 companies, one way or another, mostly at the
14 exploration level, but also with operating mines and
15 with development Projects and that, I think, sort of
16 sums me up right now. I do have more information
17 which I will move through as quickly as I can.

18 PRESIDENT TERCIER: And the second question
19 concerning the process that was followed for the
20 preparation of your opinions?

21 THE WITNESS: I was approached by Lalive and
22 asked if I would review the information available

1 around the Rosia Montana Project and provide an
2 opinion on Social License. I received written Terms
3 of Reference, and I will present them shortly as part
4 of my presentation.

5 PRESIDENT TERCIER: Okay. Good.

6 In that case, you will start with the
7 presentation in my note 40 minutes, so you think you
8 will.

9 THE WITNESS: I hope so.

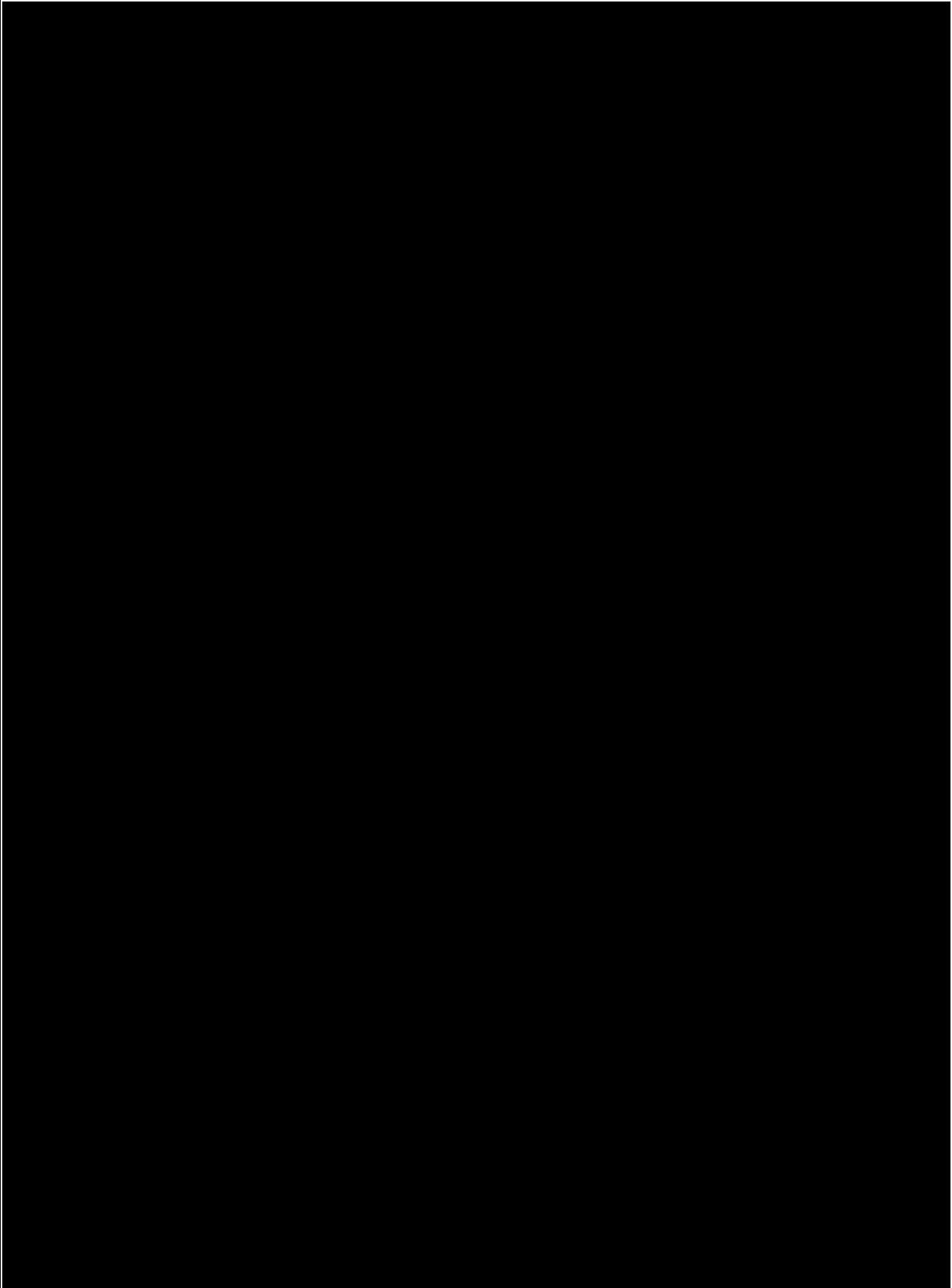
10 PRESIDENT TERCIER: Good. Please do it.

11 DIRECT PRESENTATION

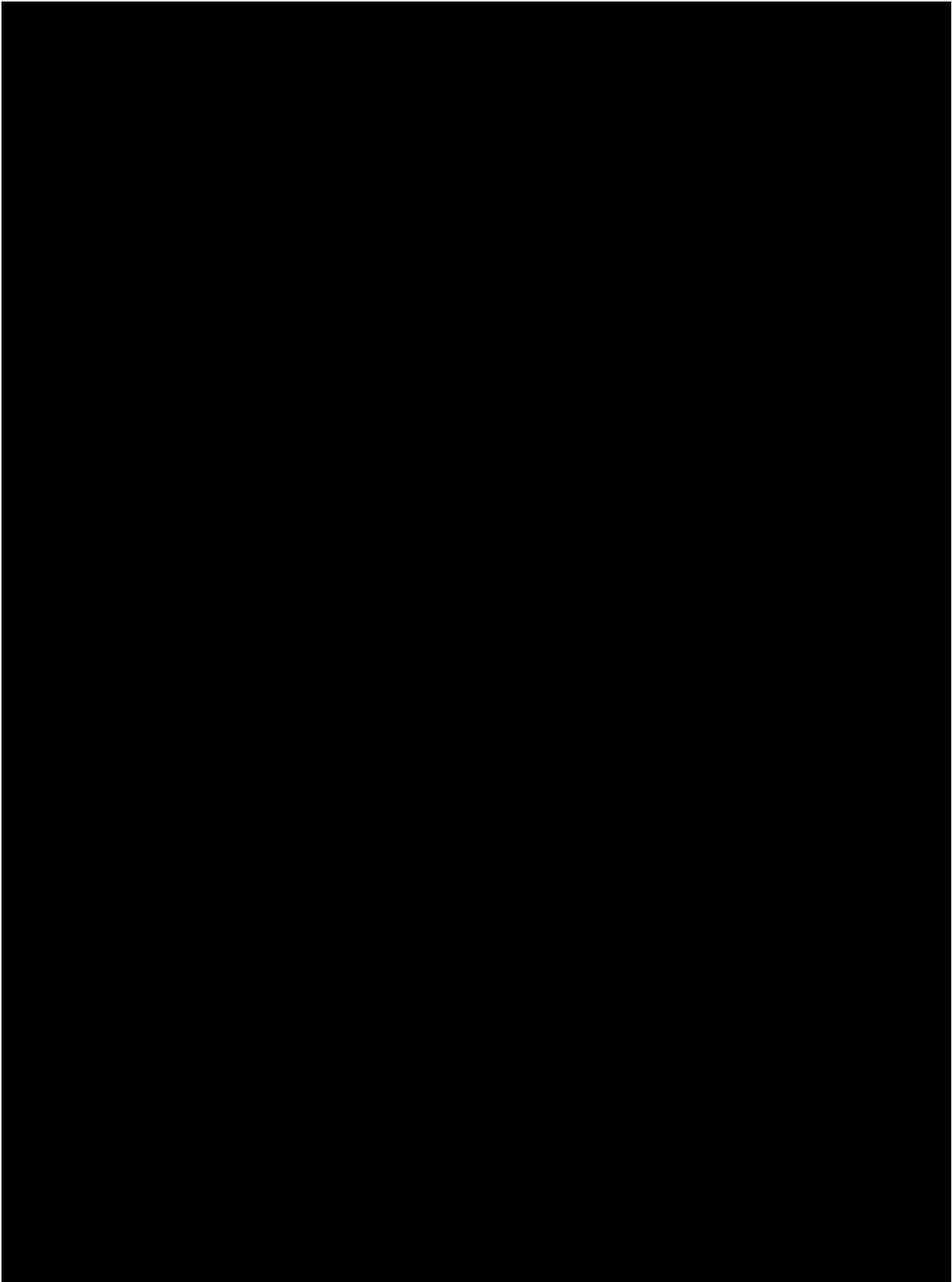
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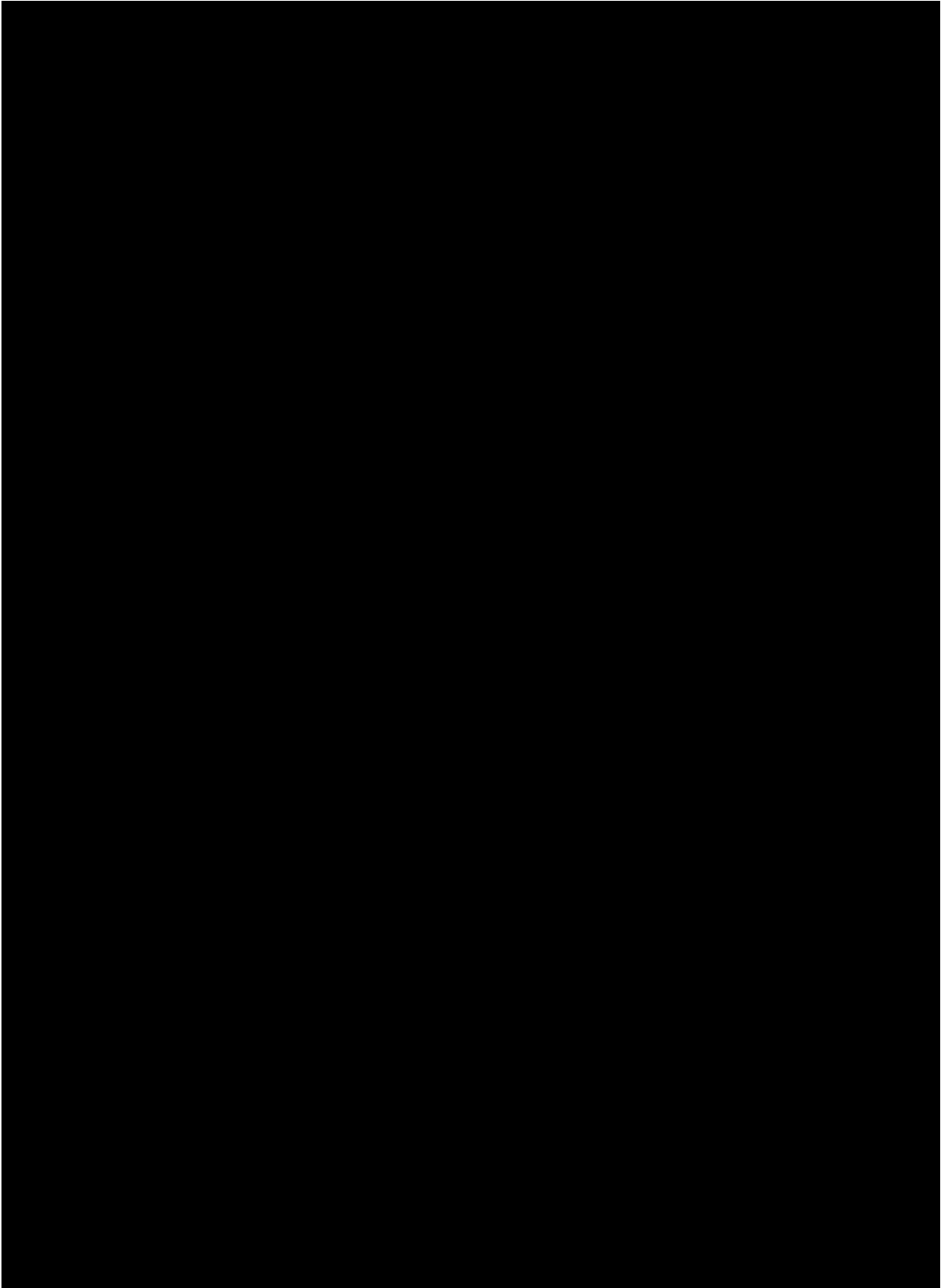
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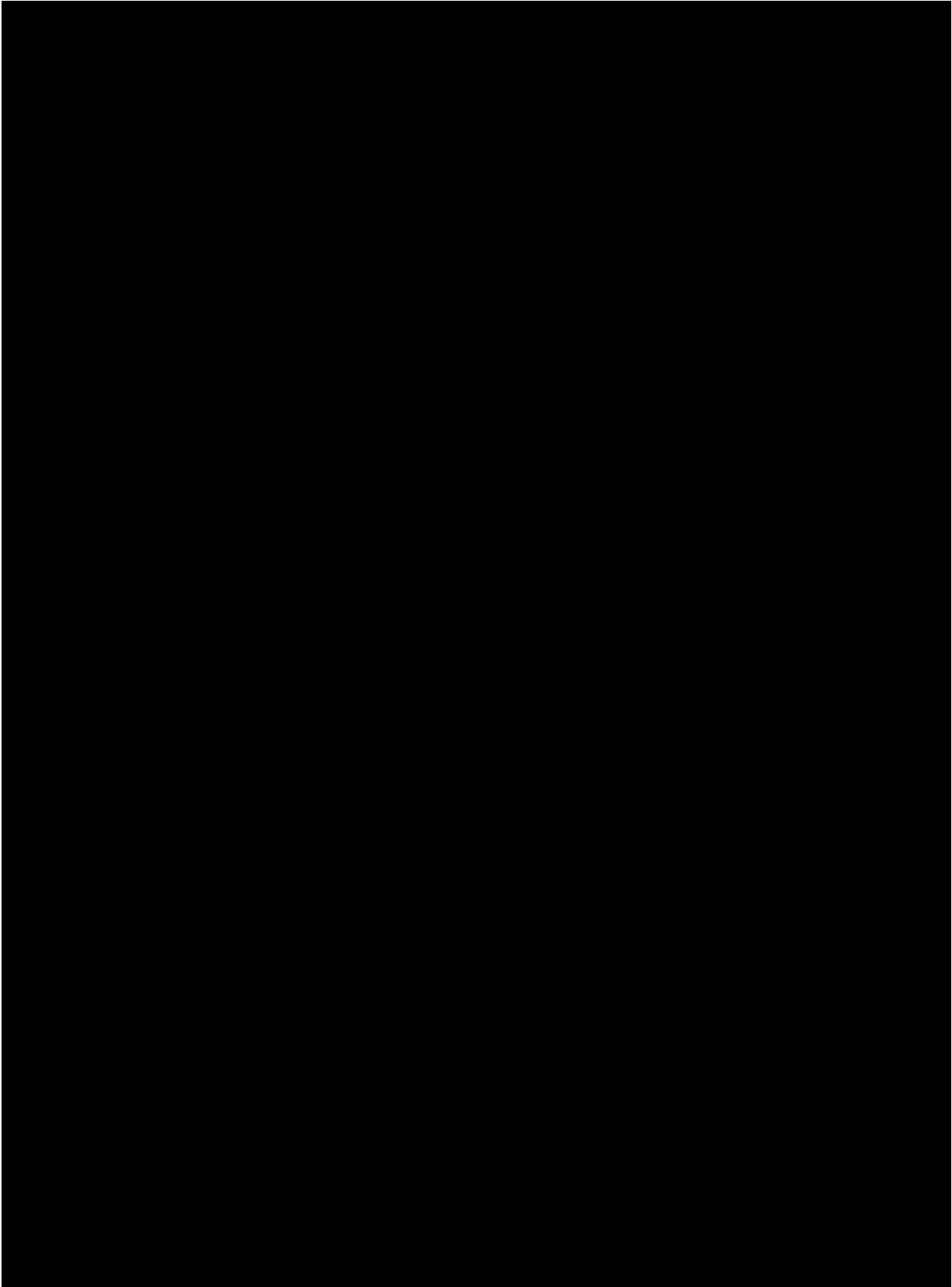
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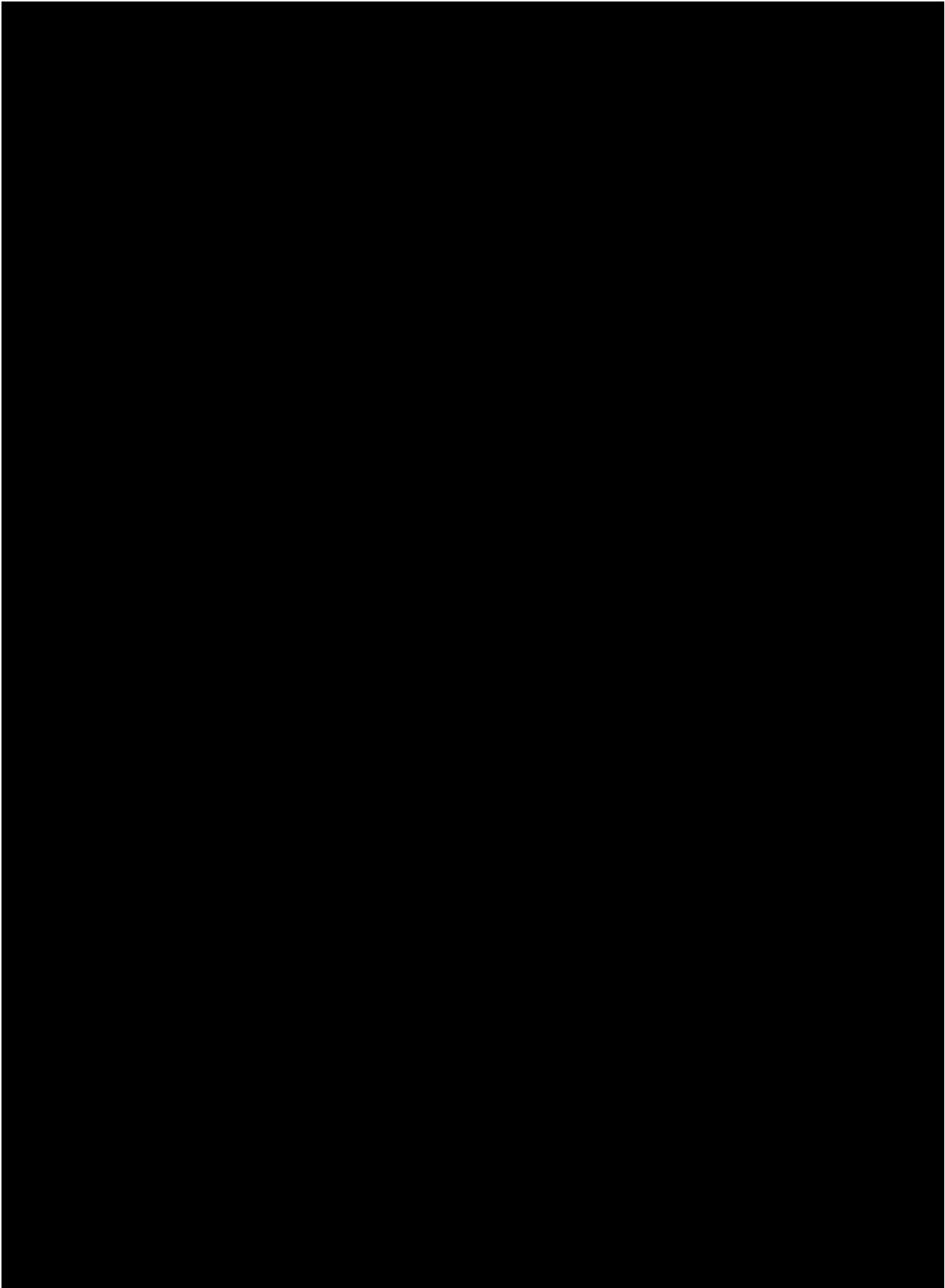
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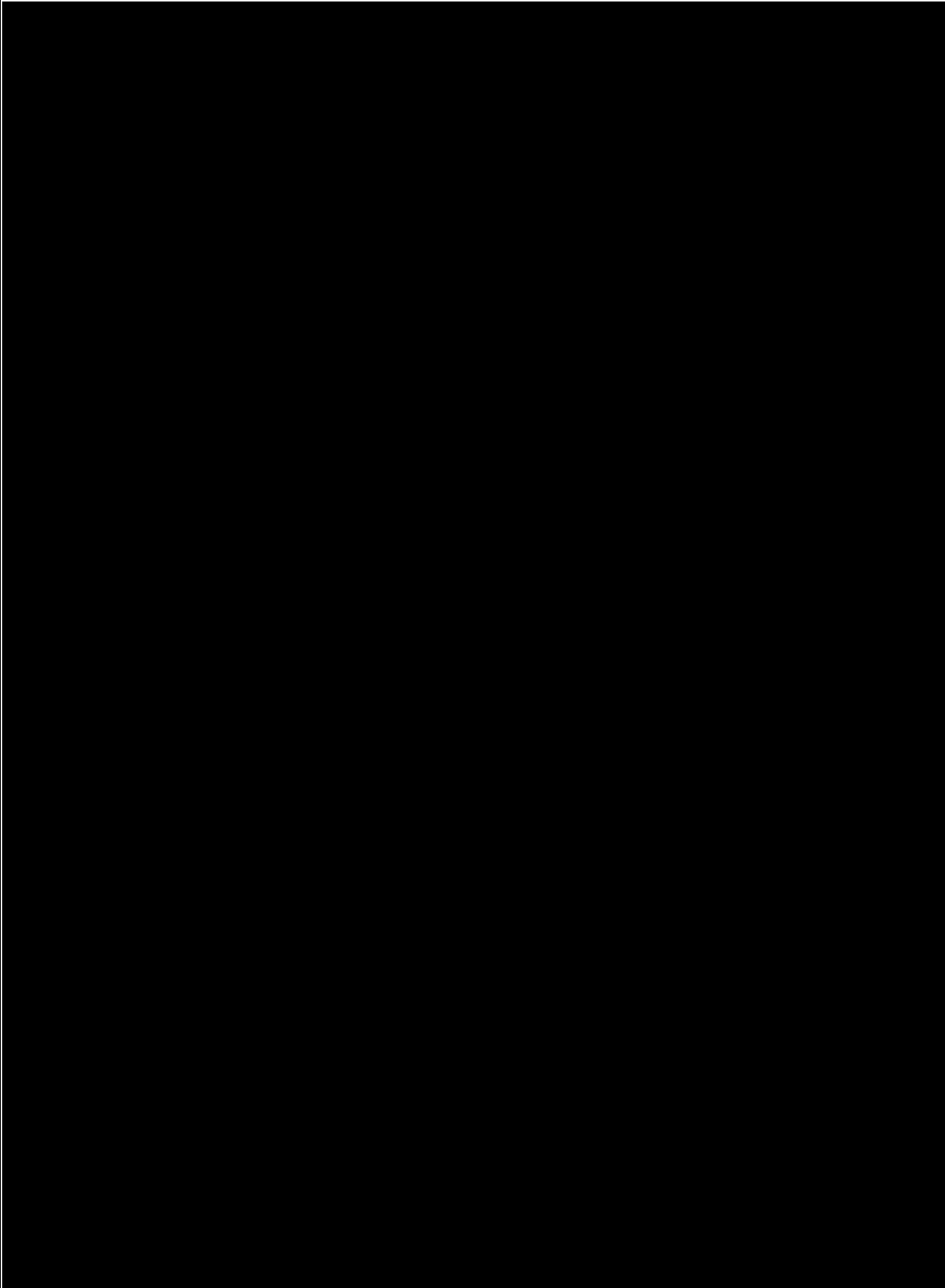
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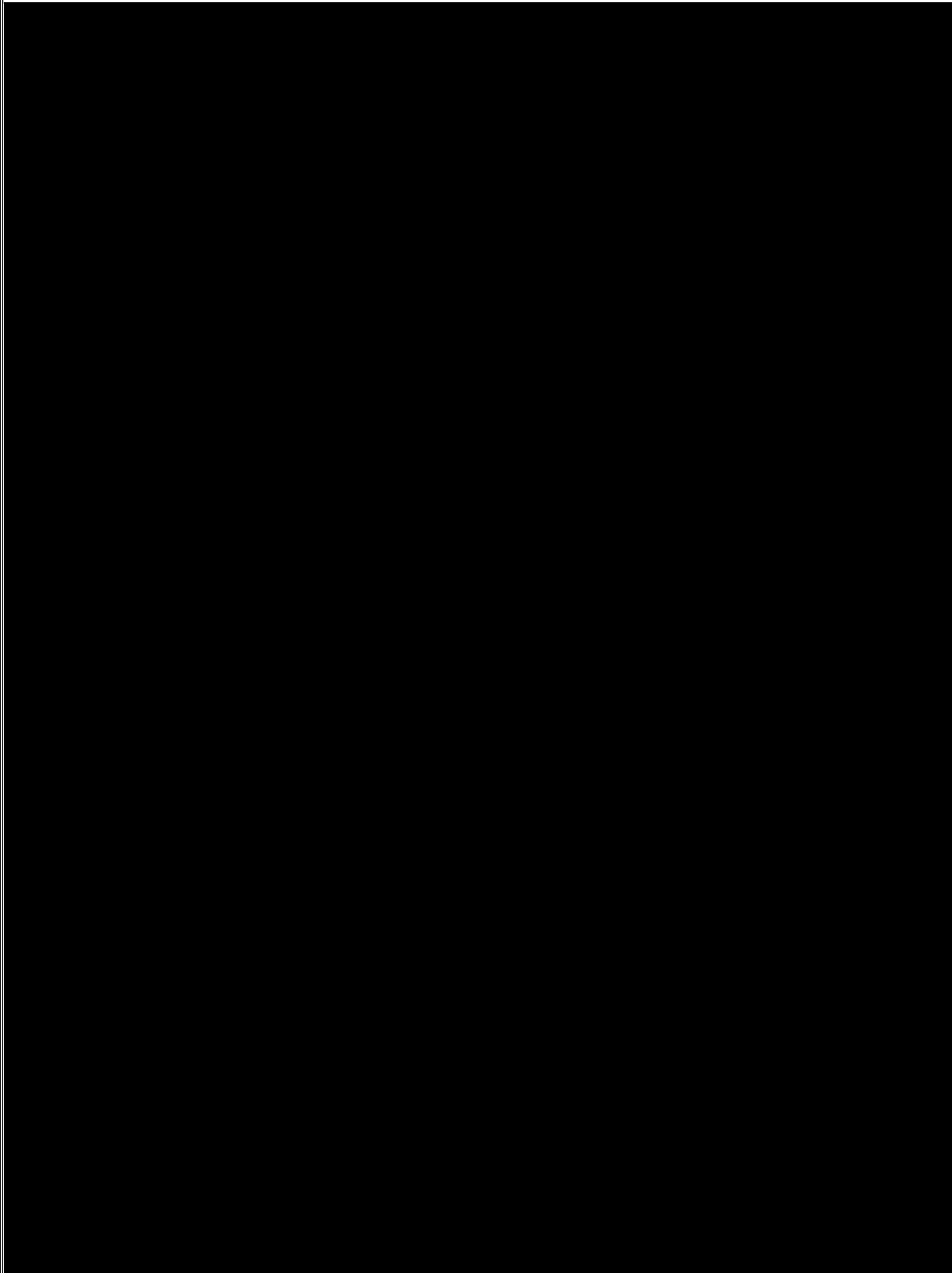
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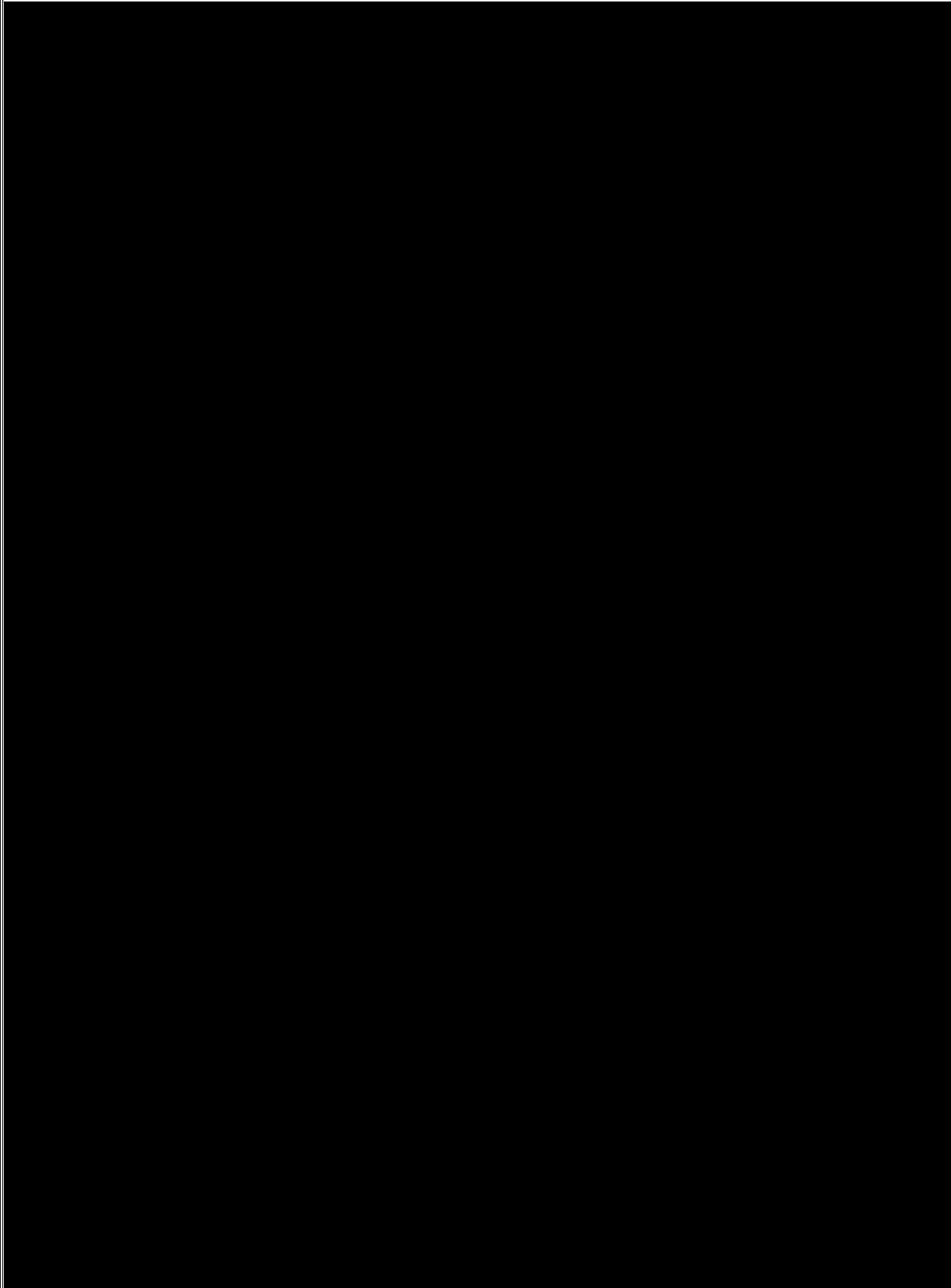
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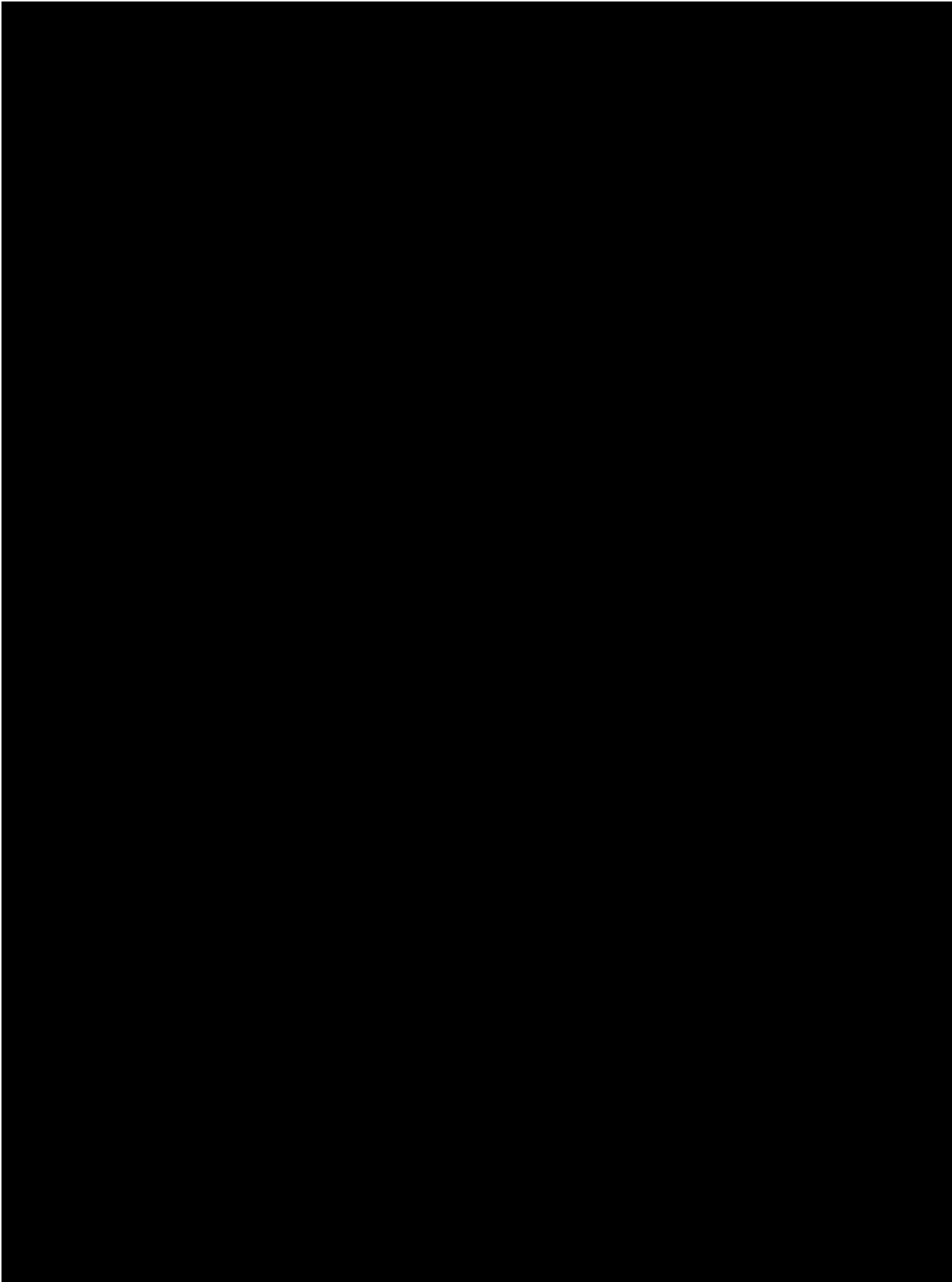
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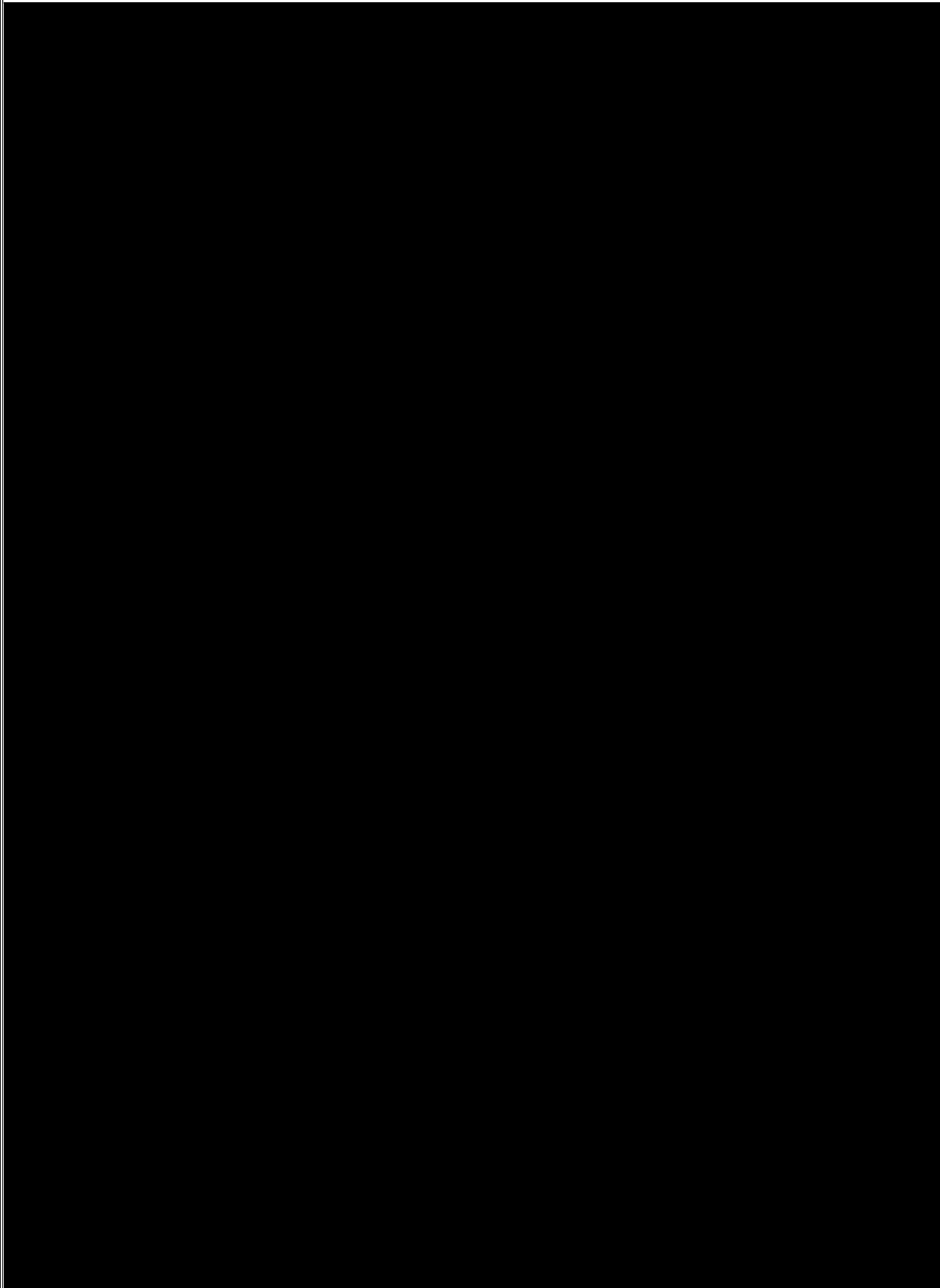
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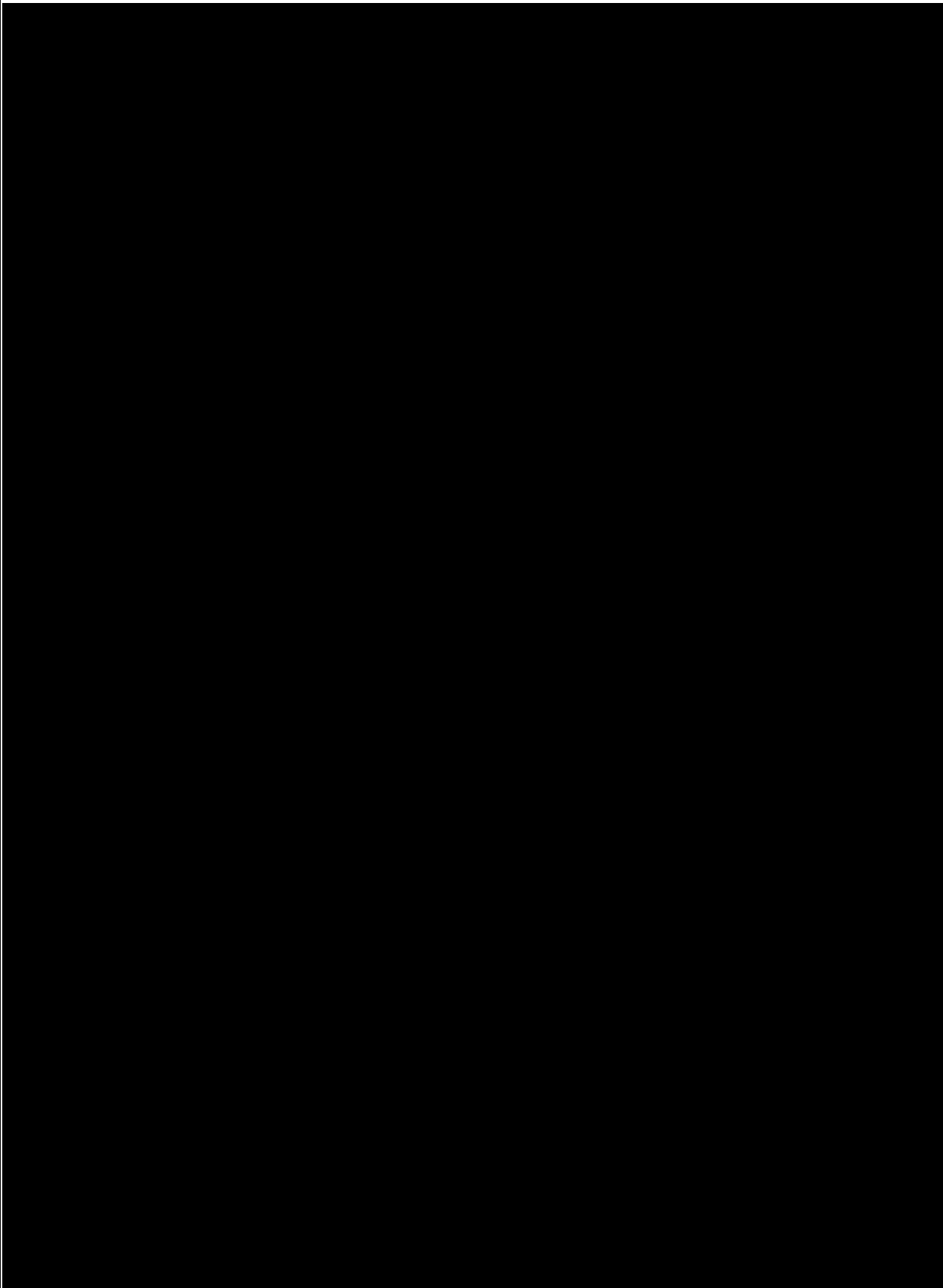
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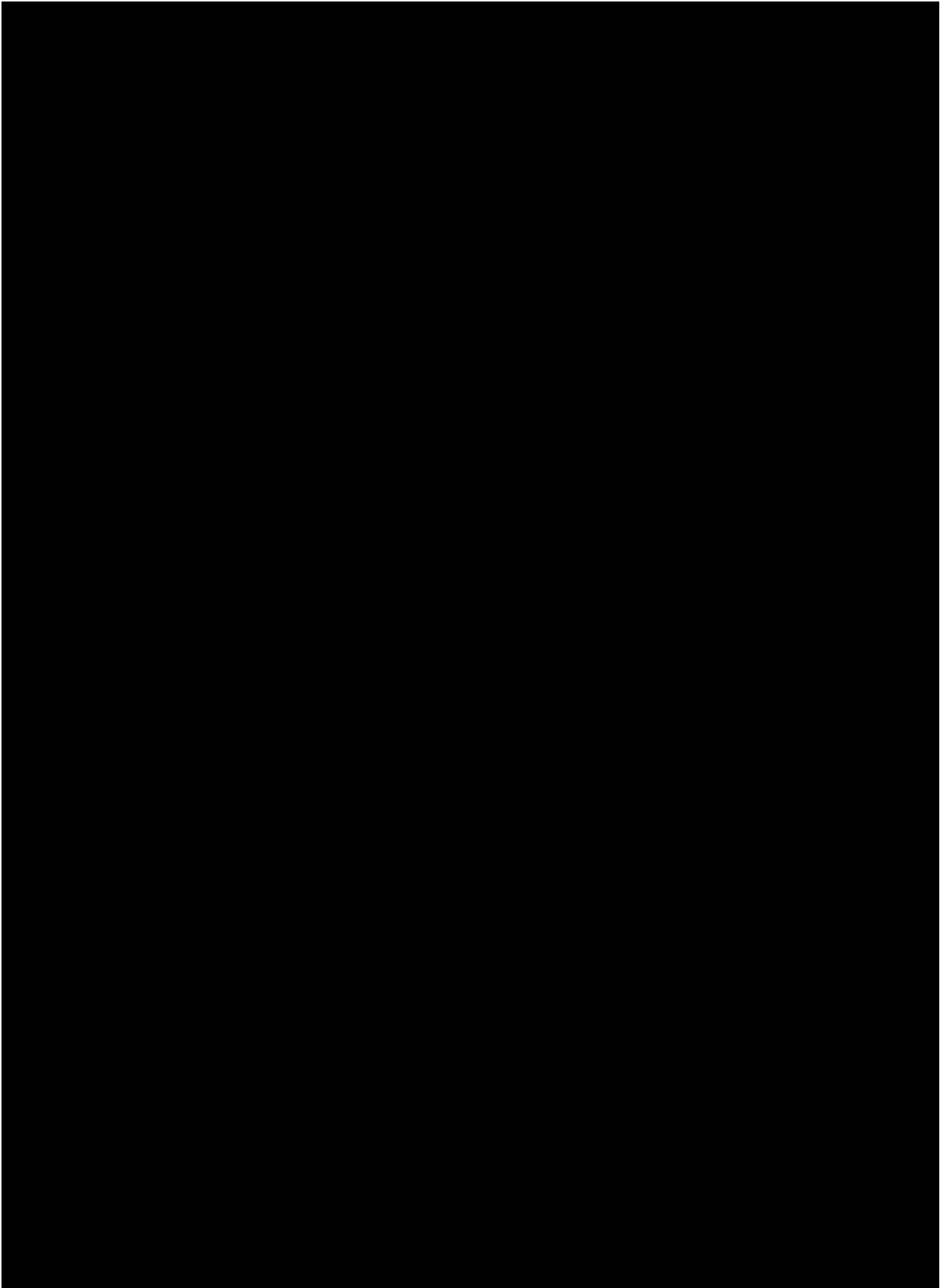
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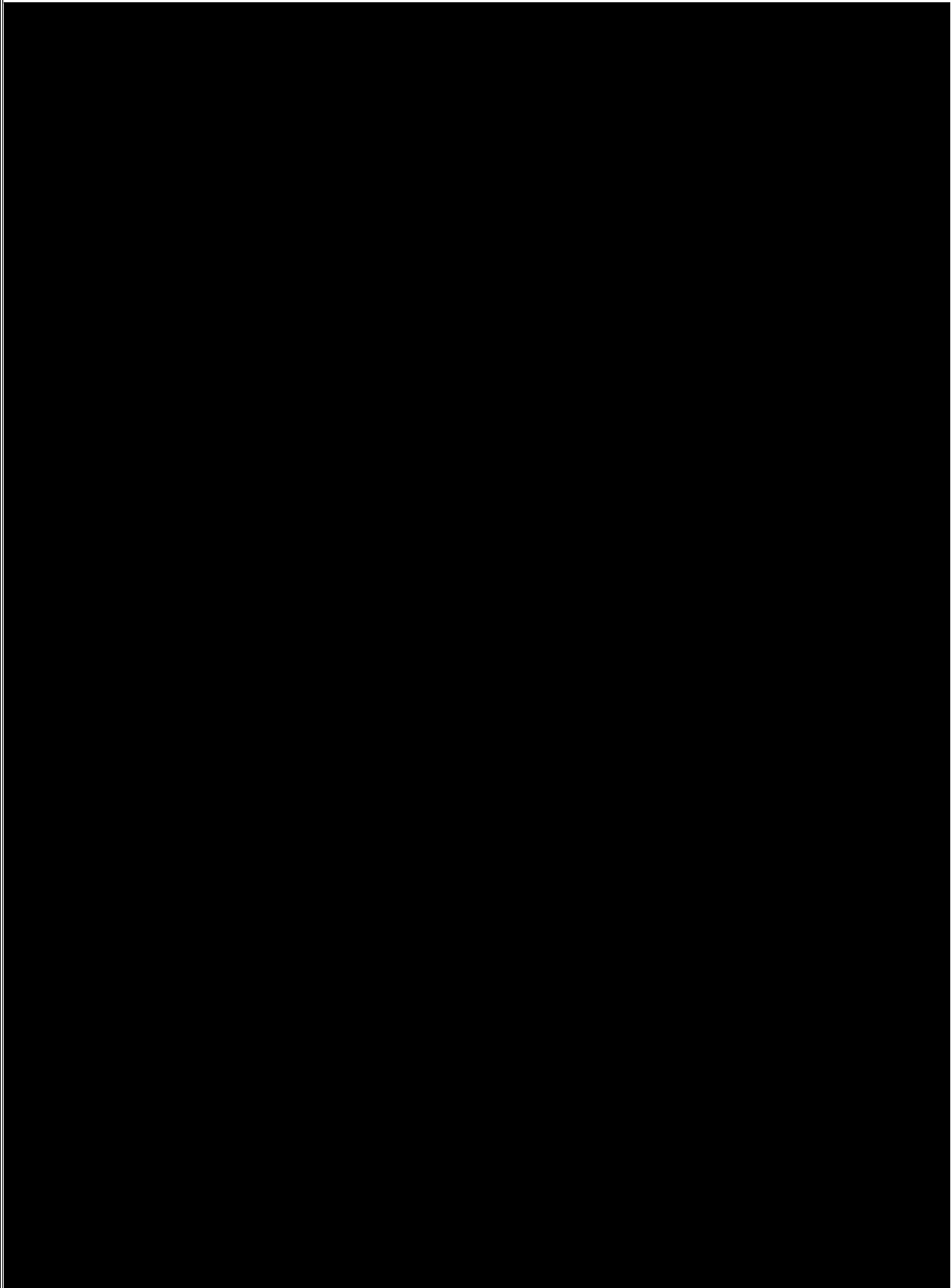
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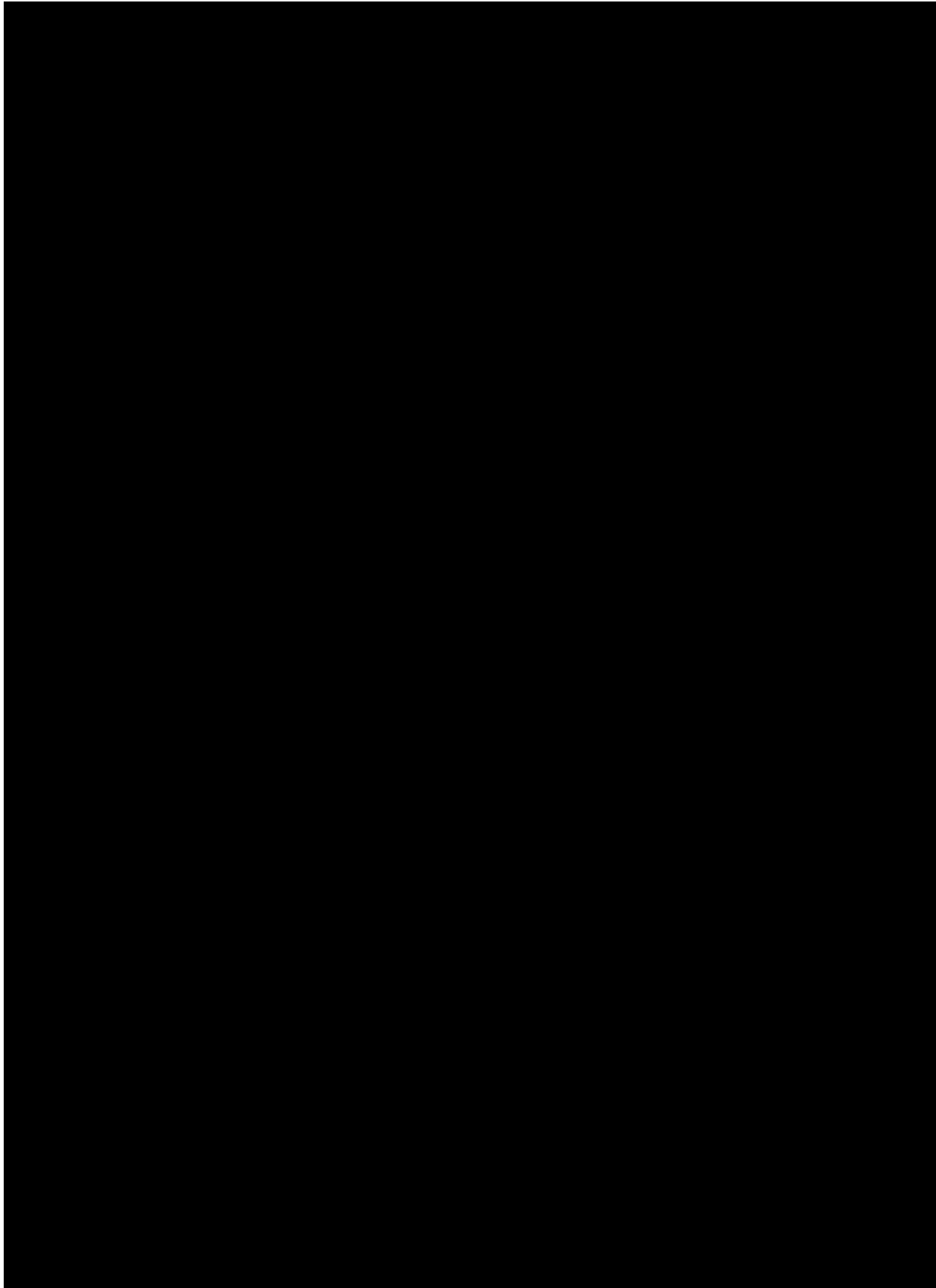
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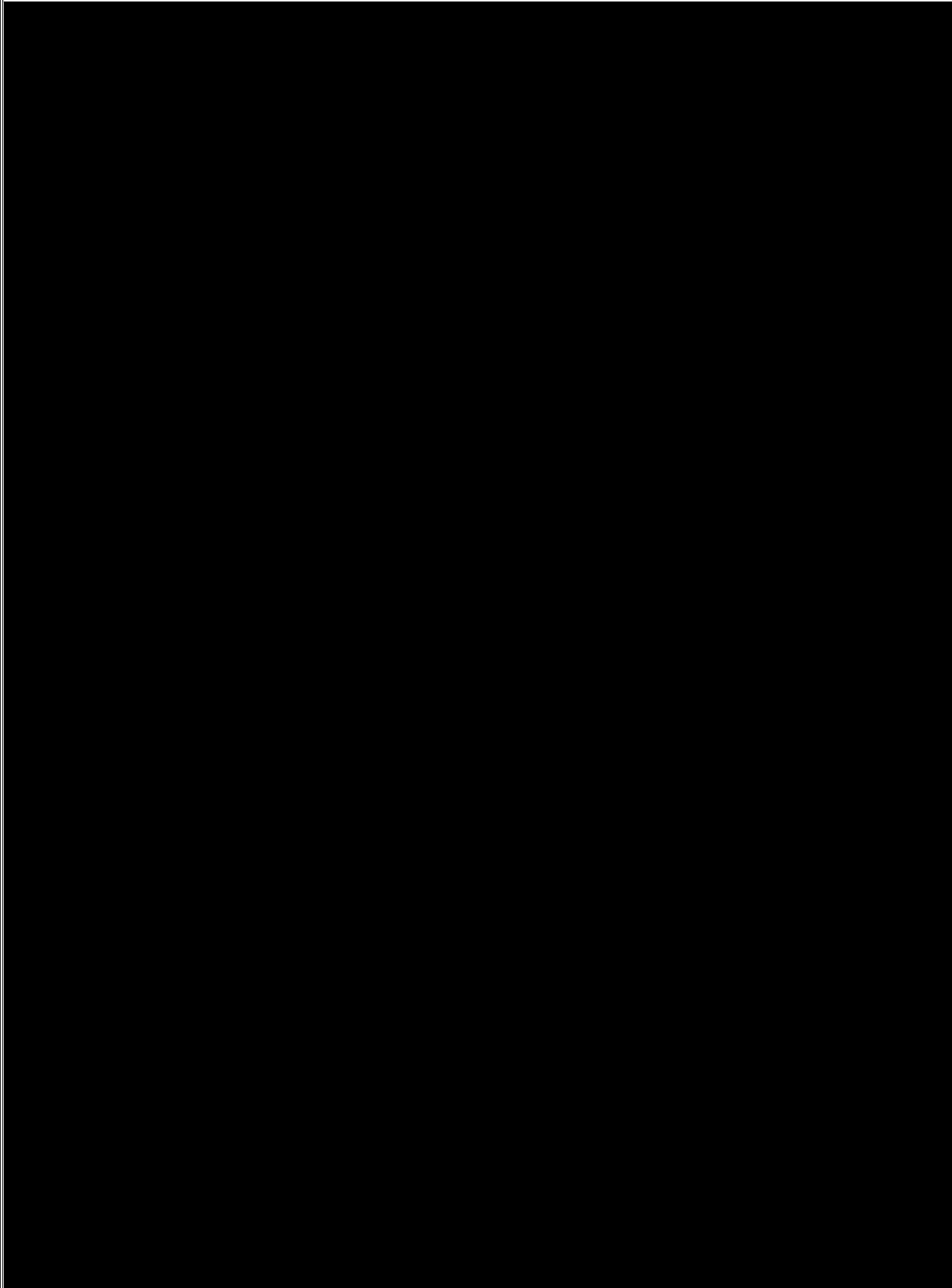
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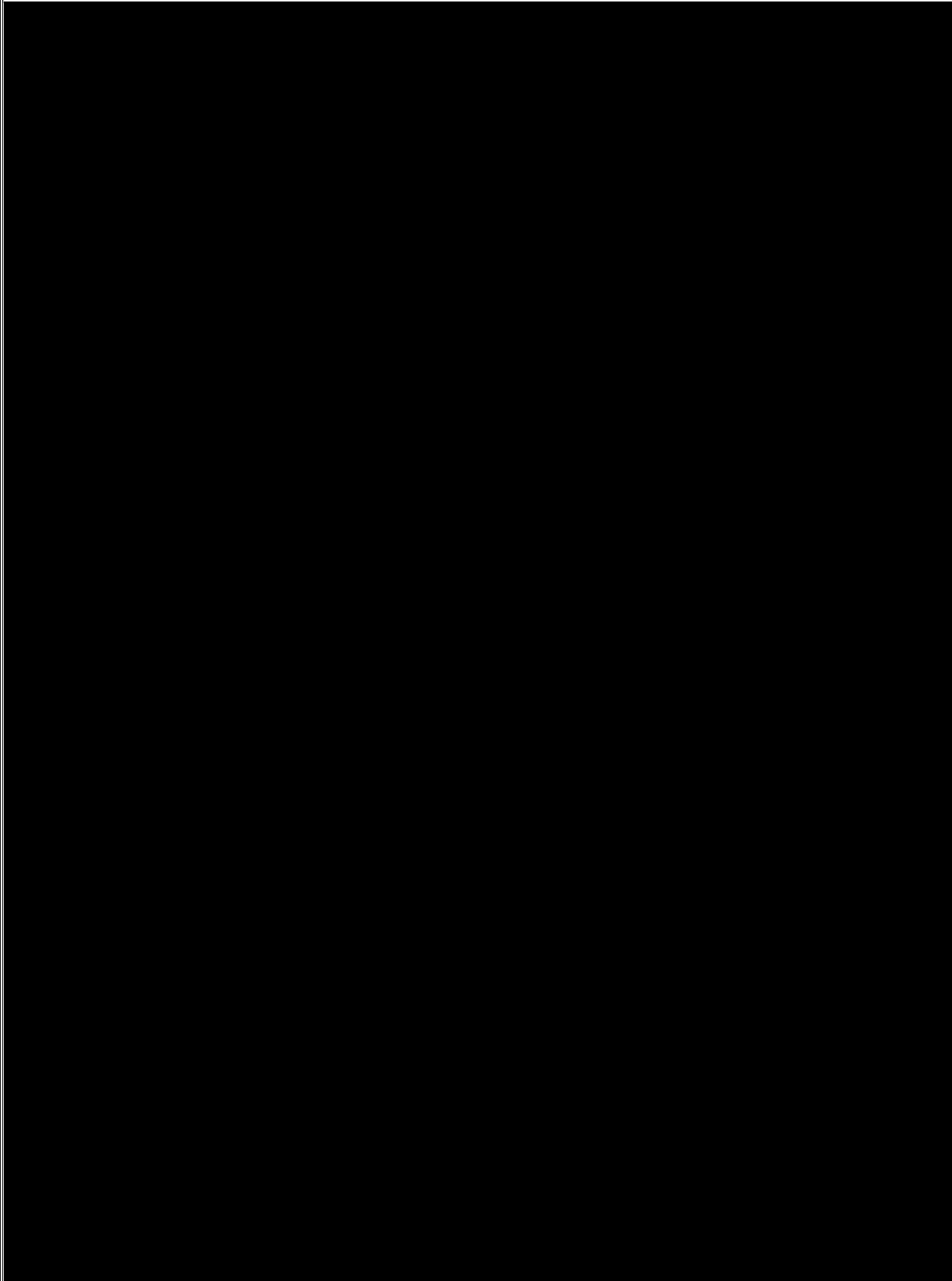
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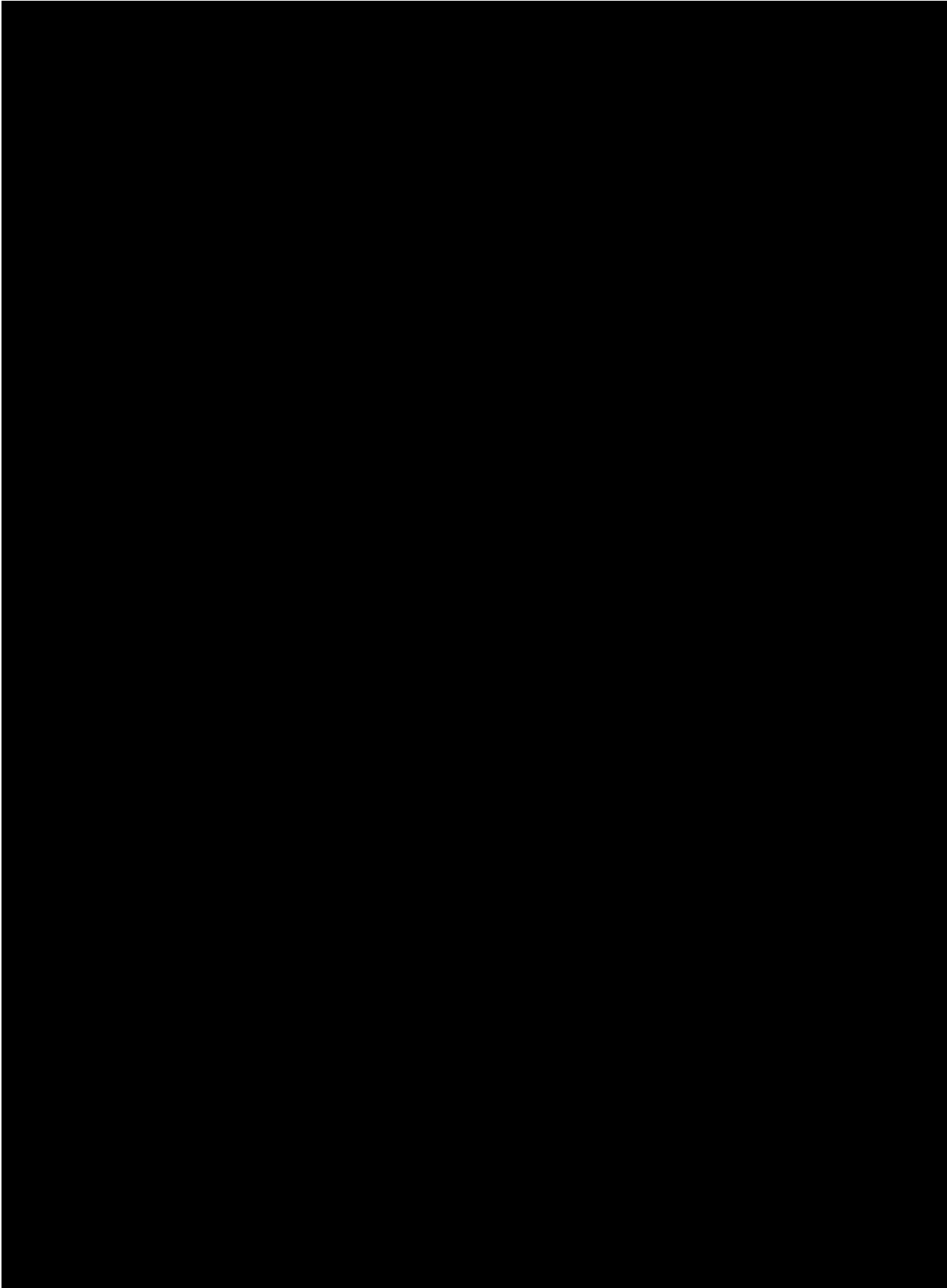
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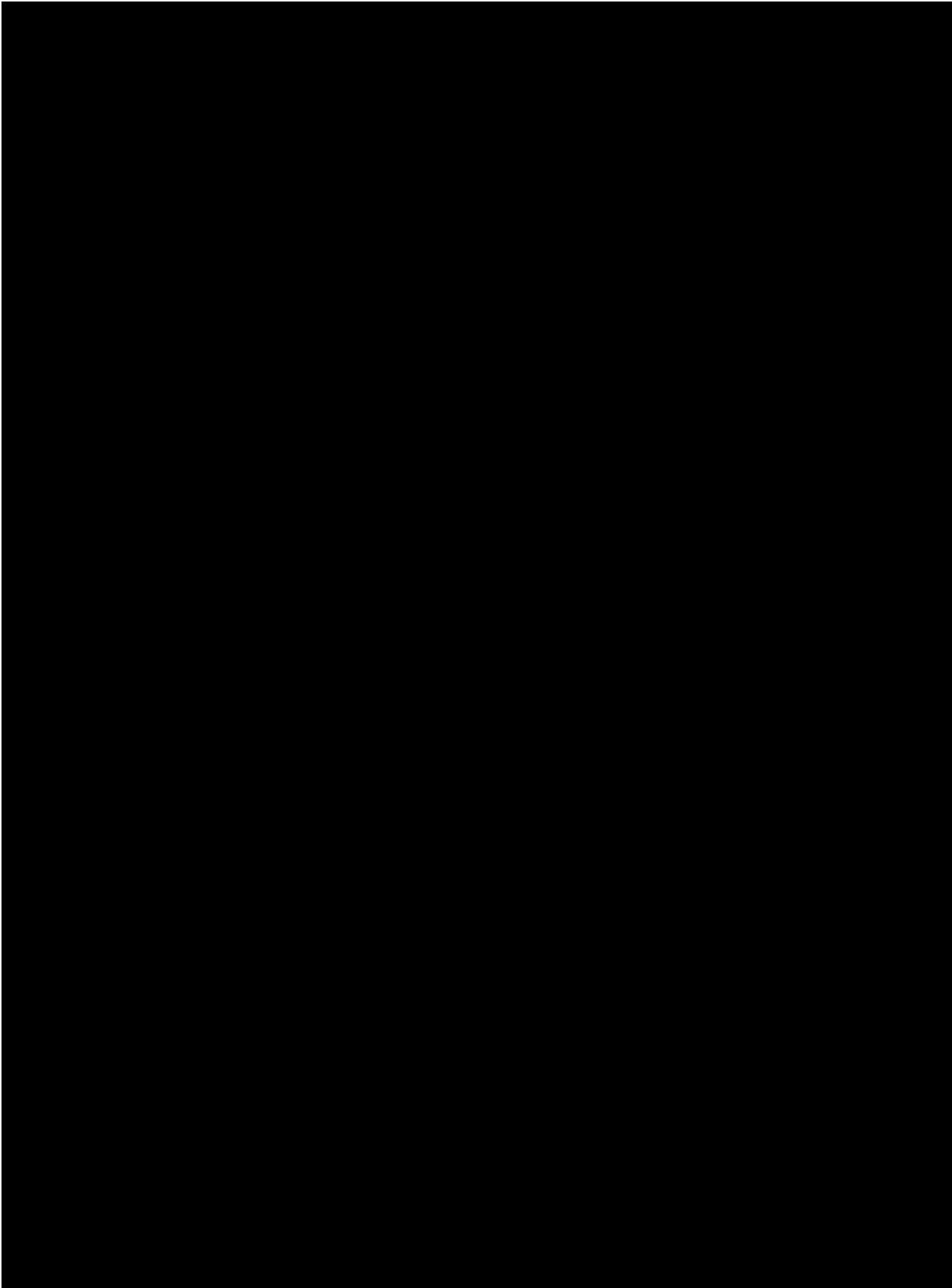
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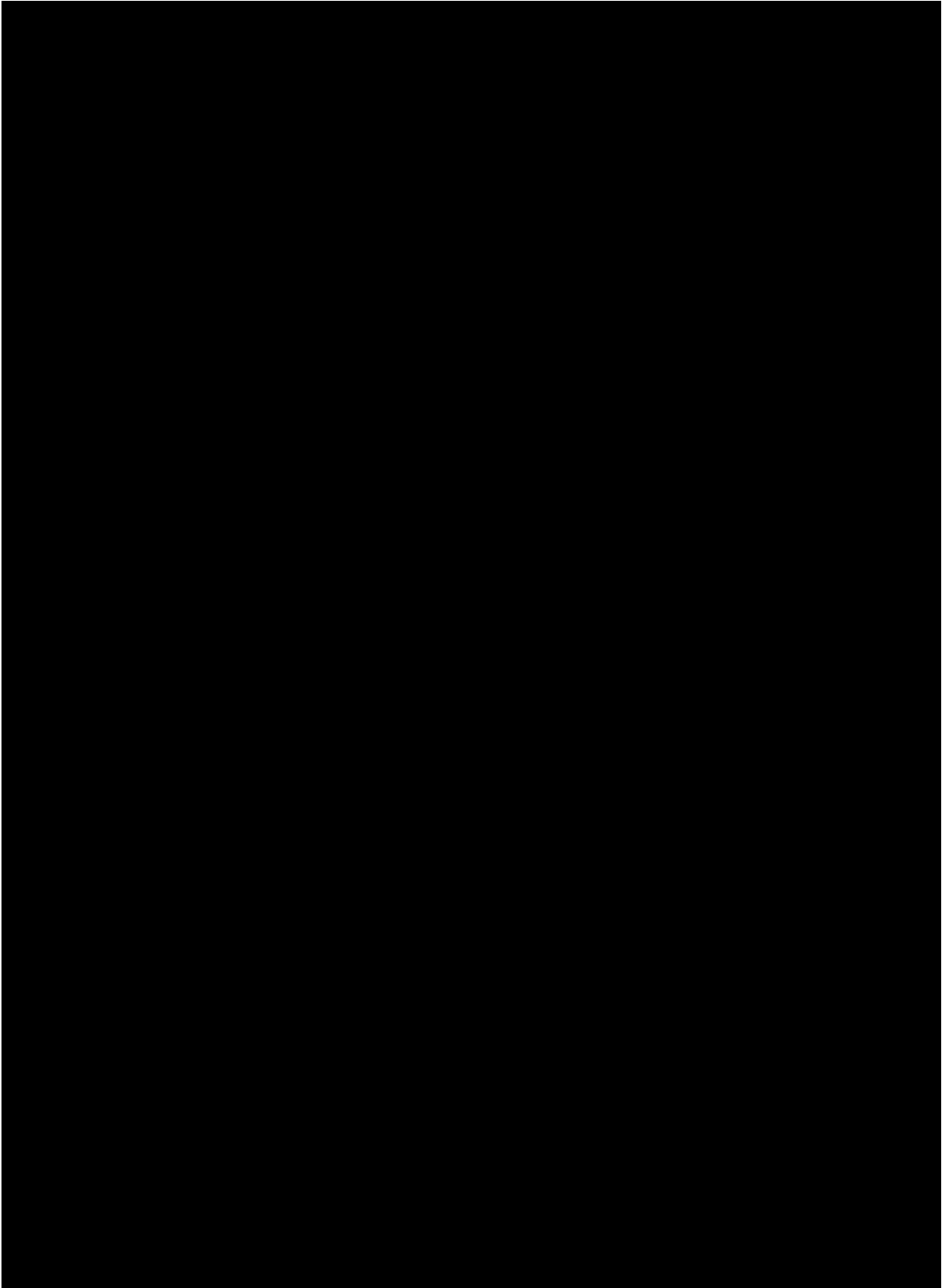
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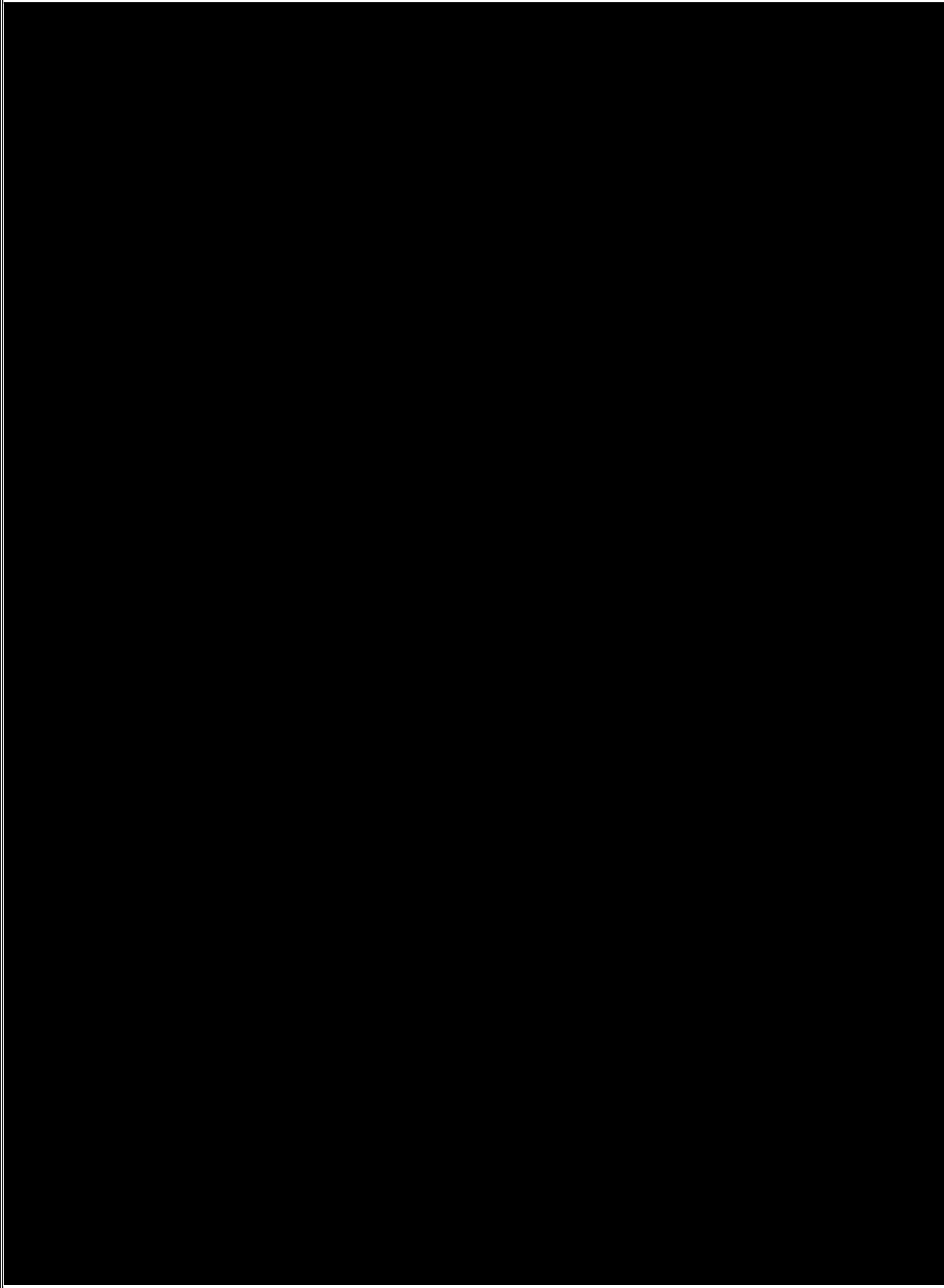
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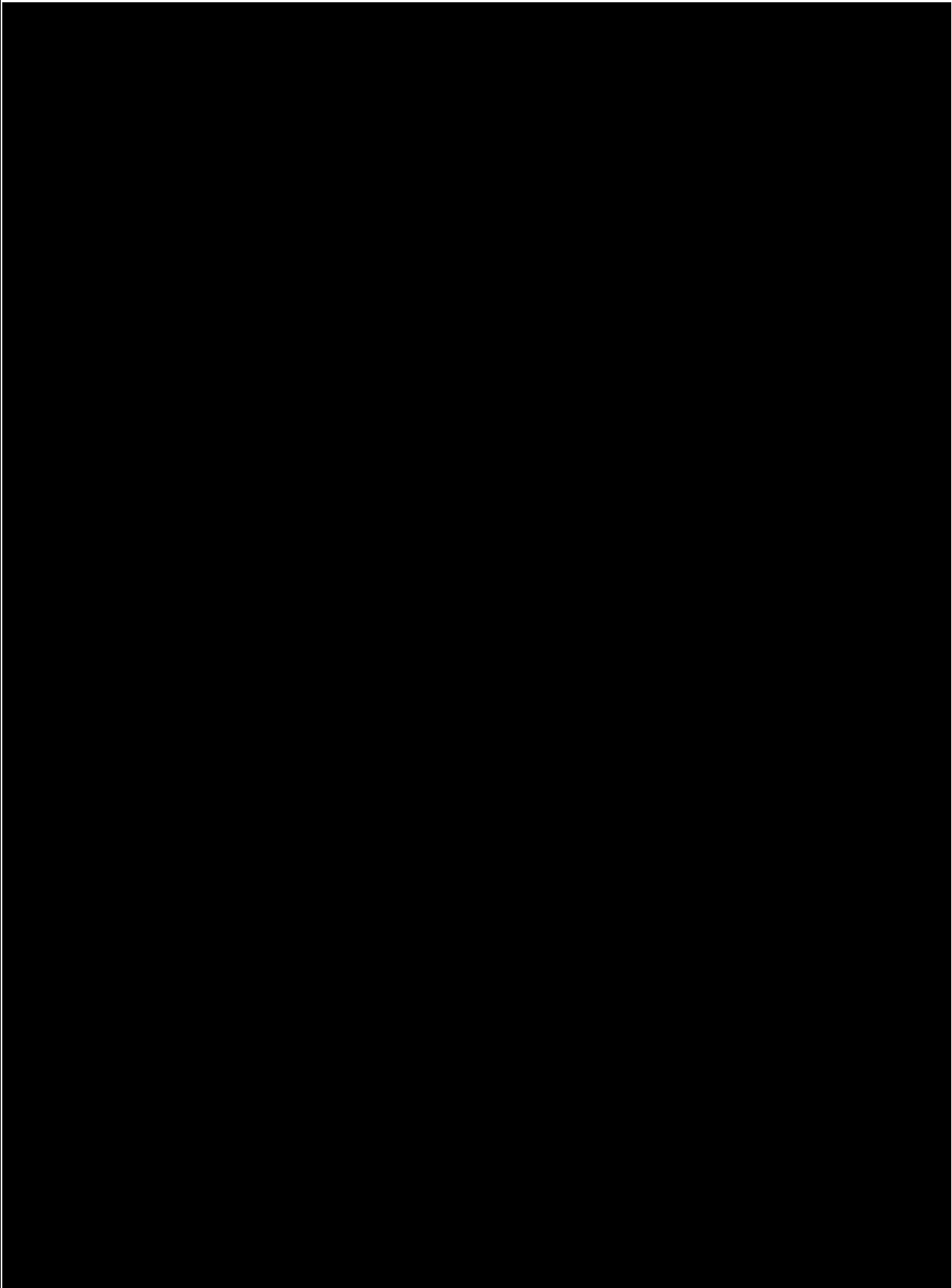
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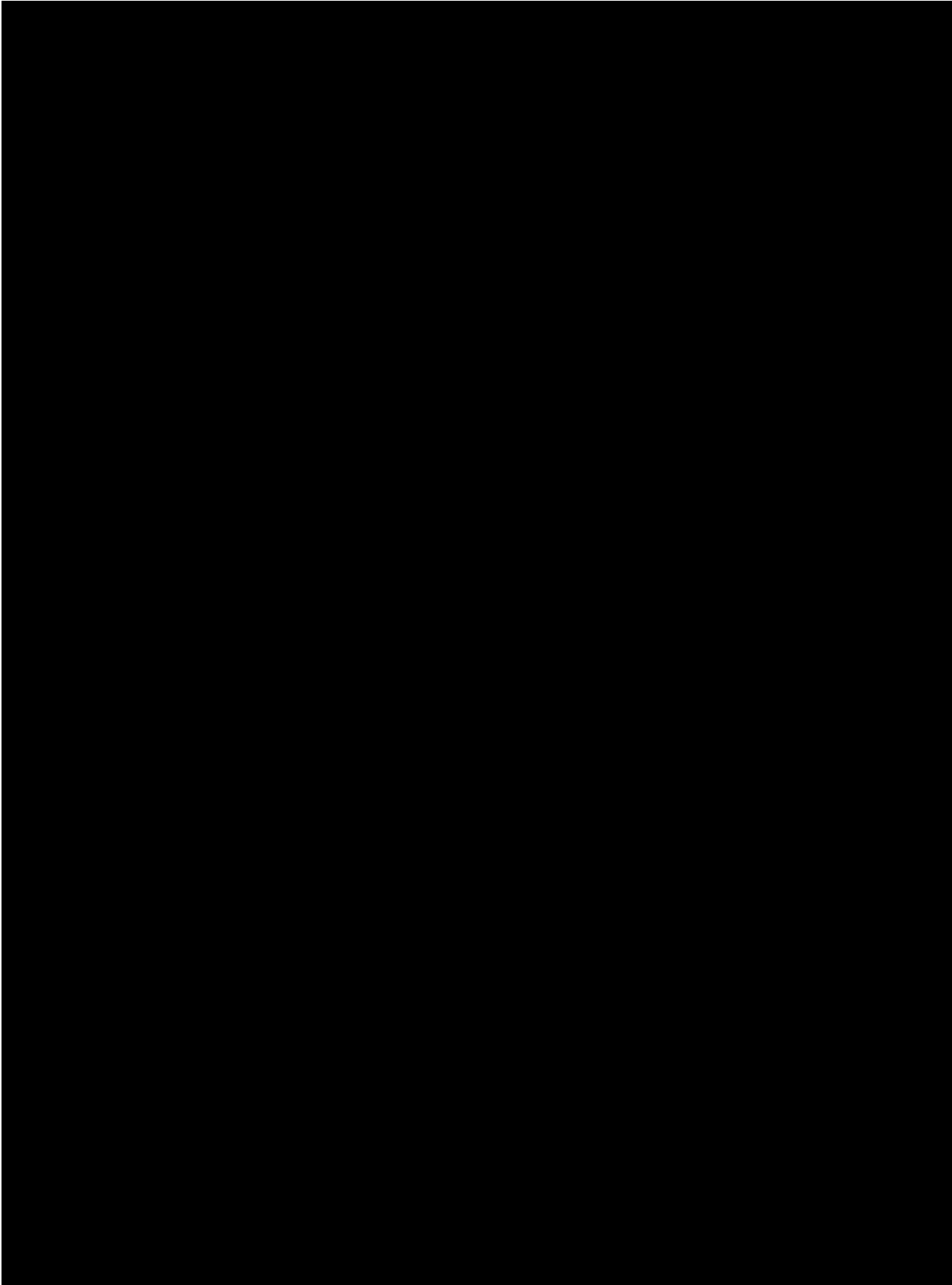
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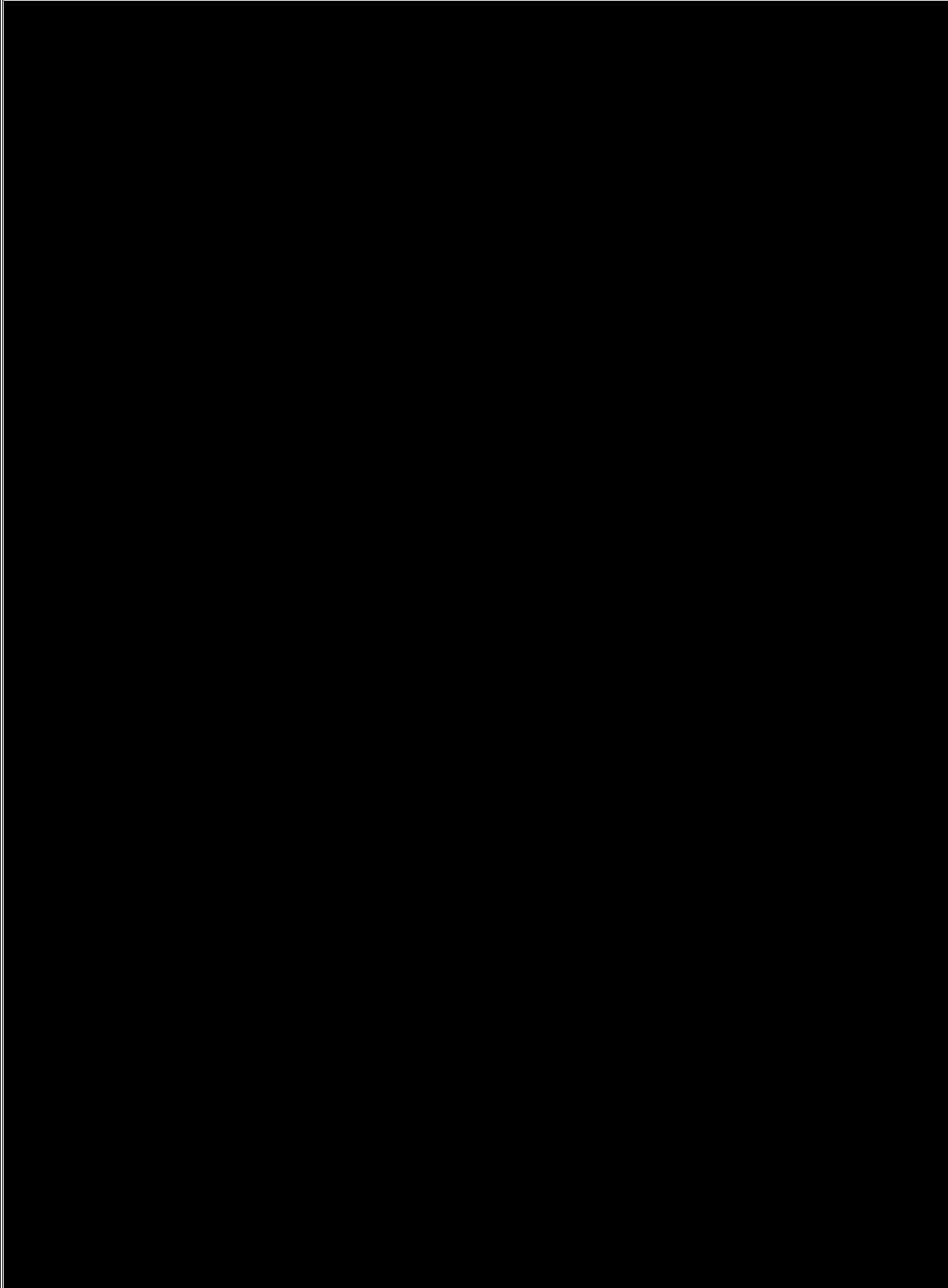
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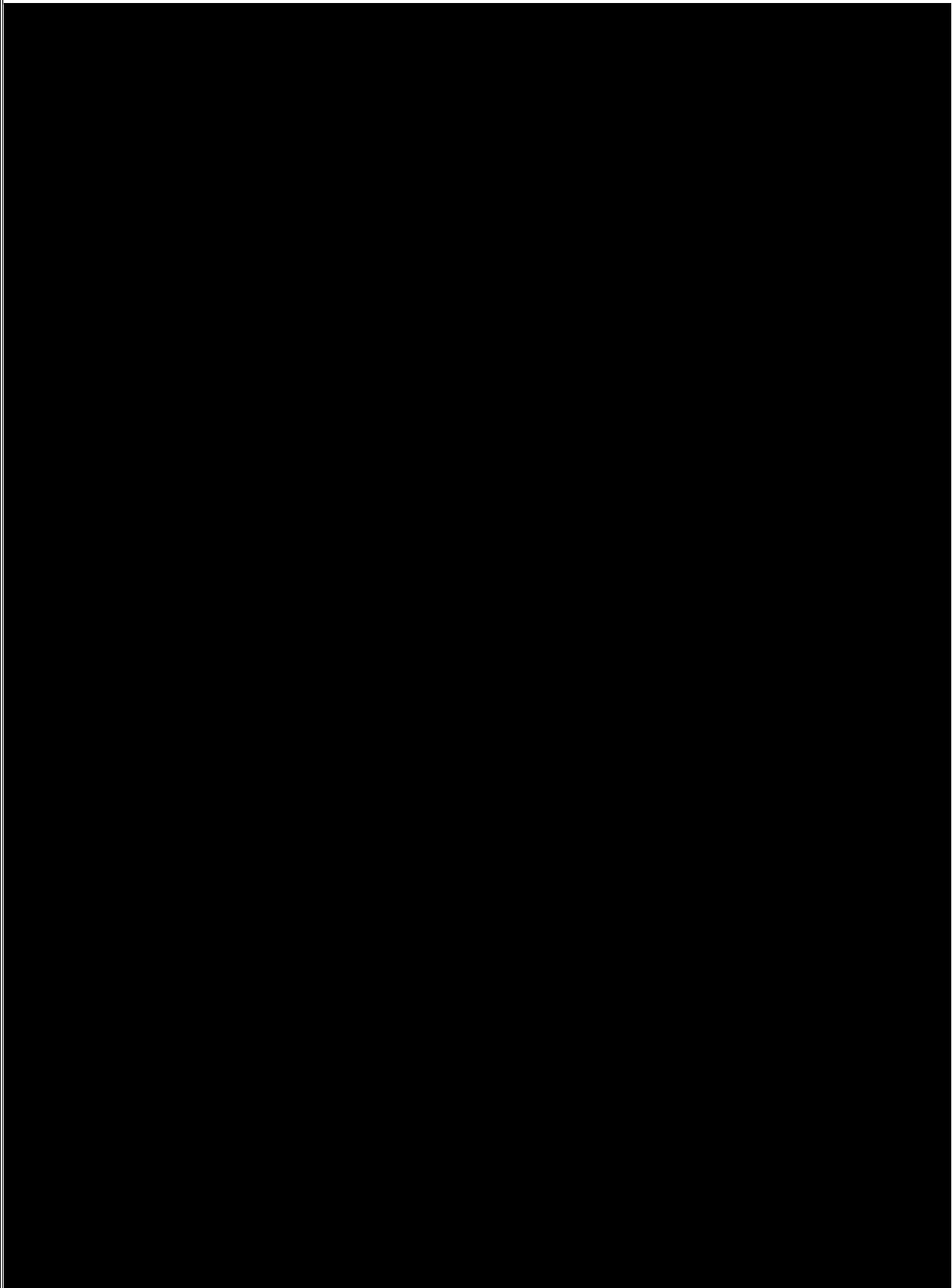
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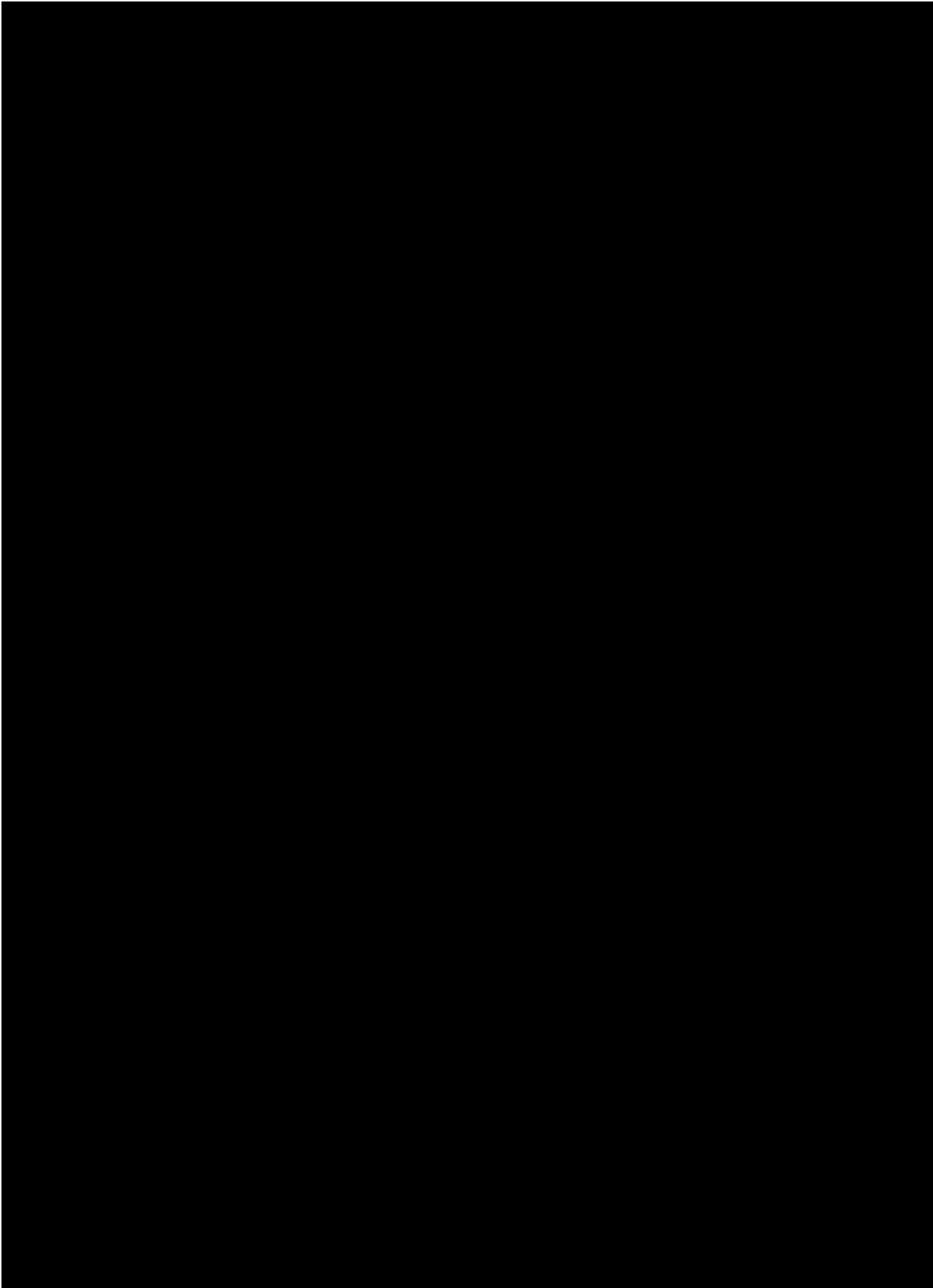
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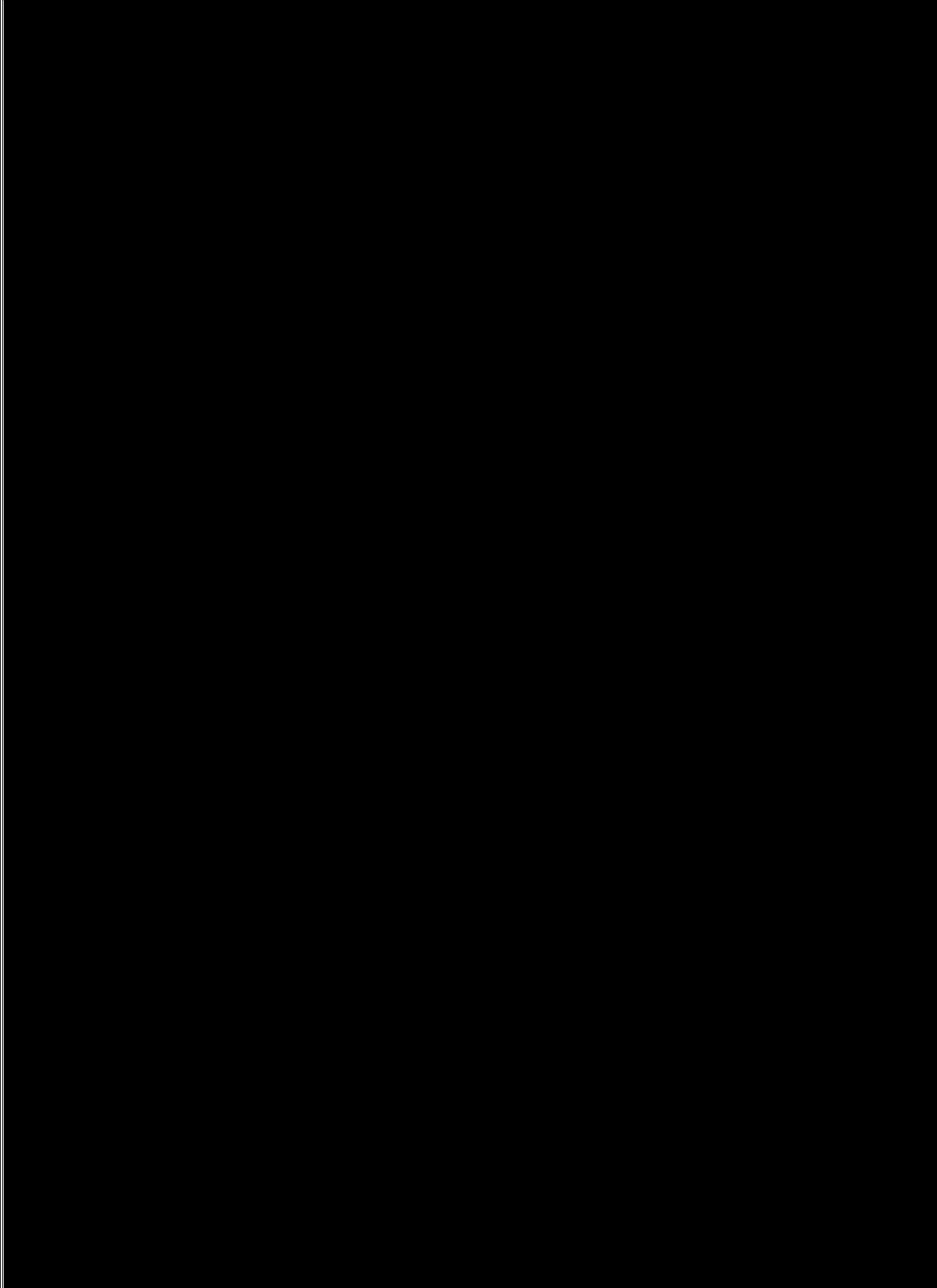
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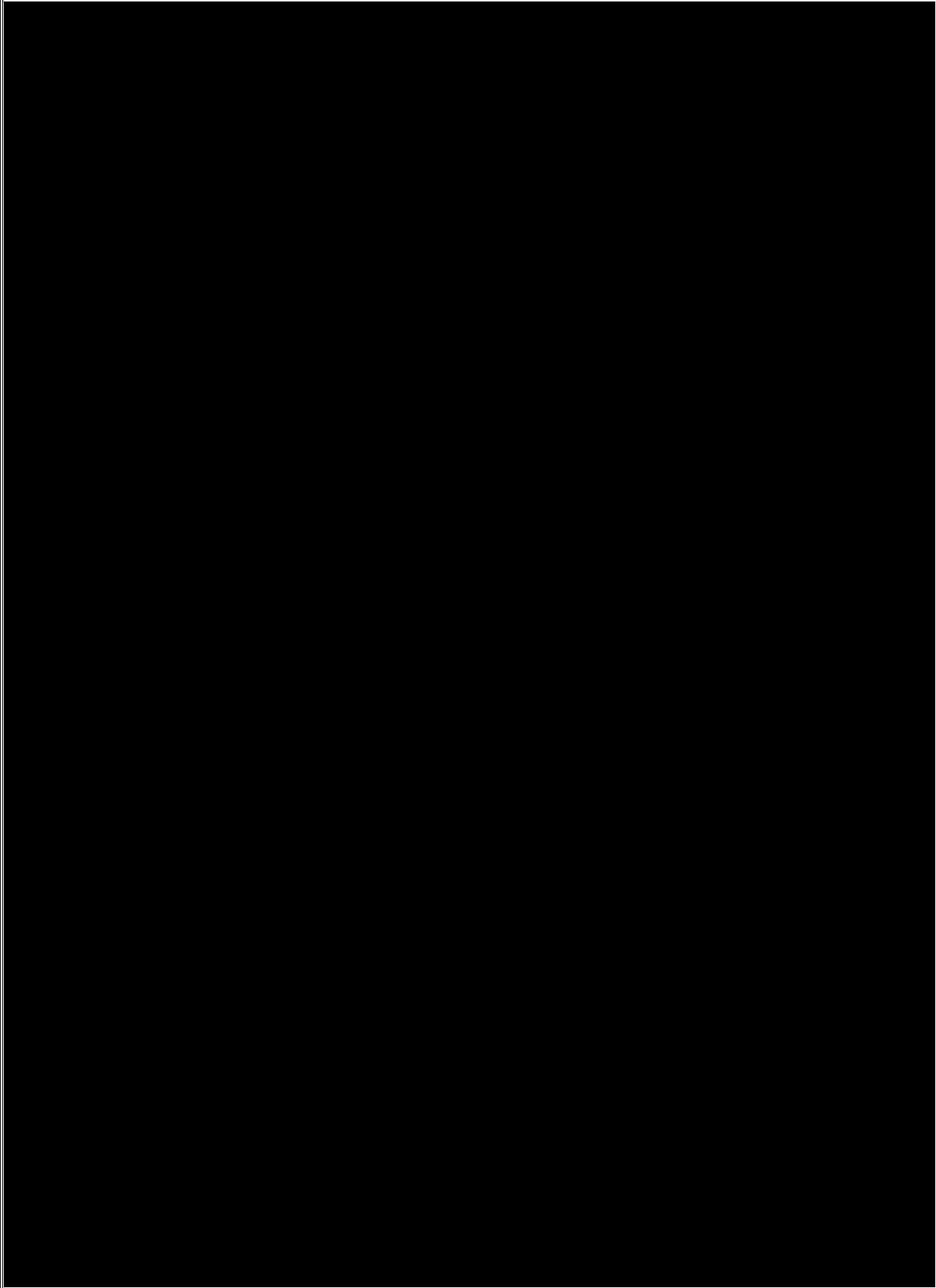
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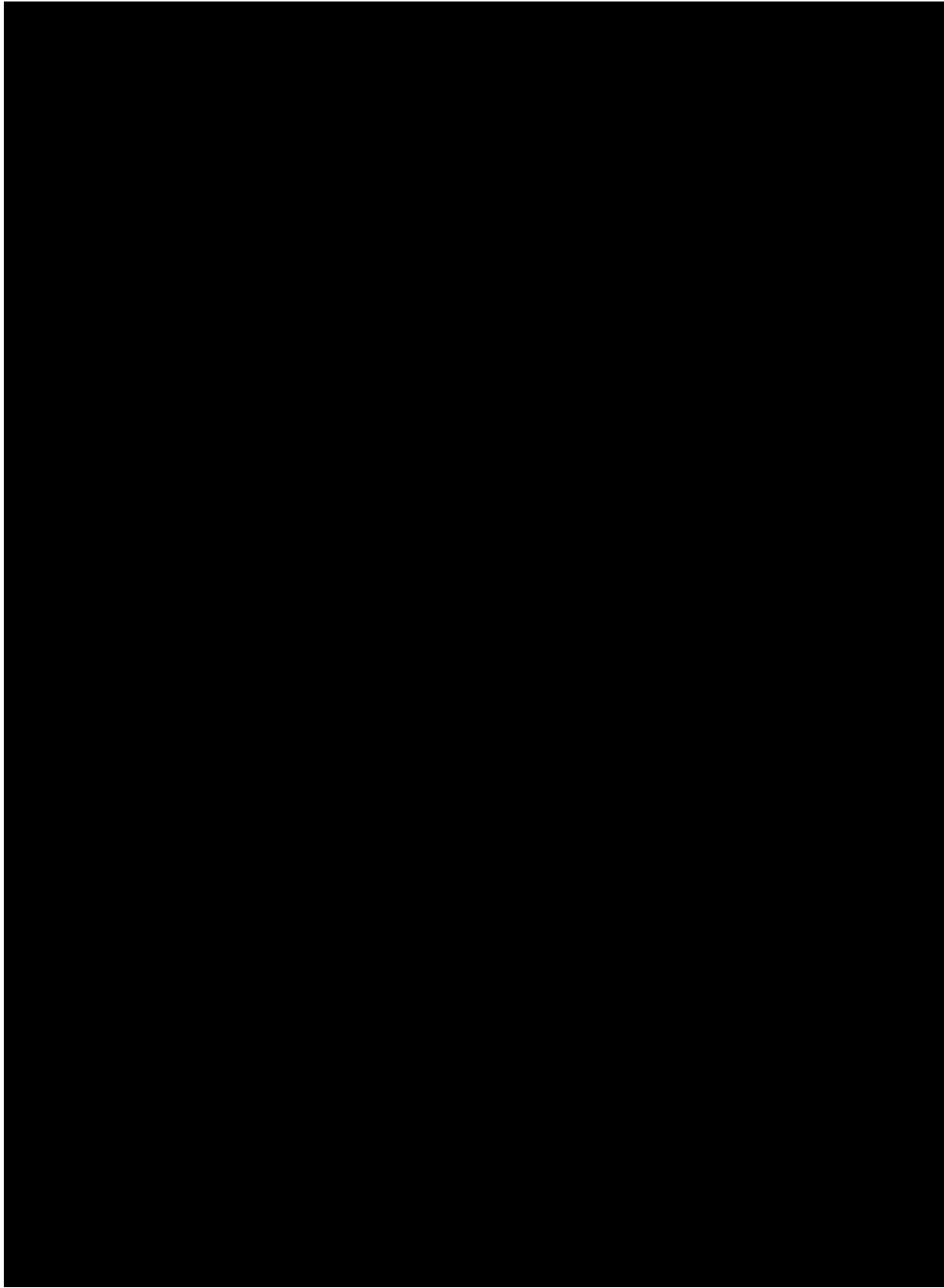
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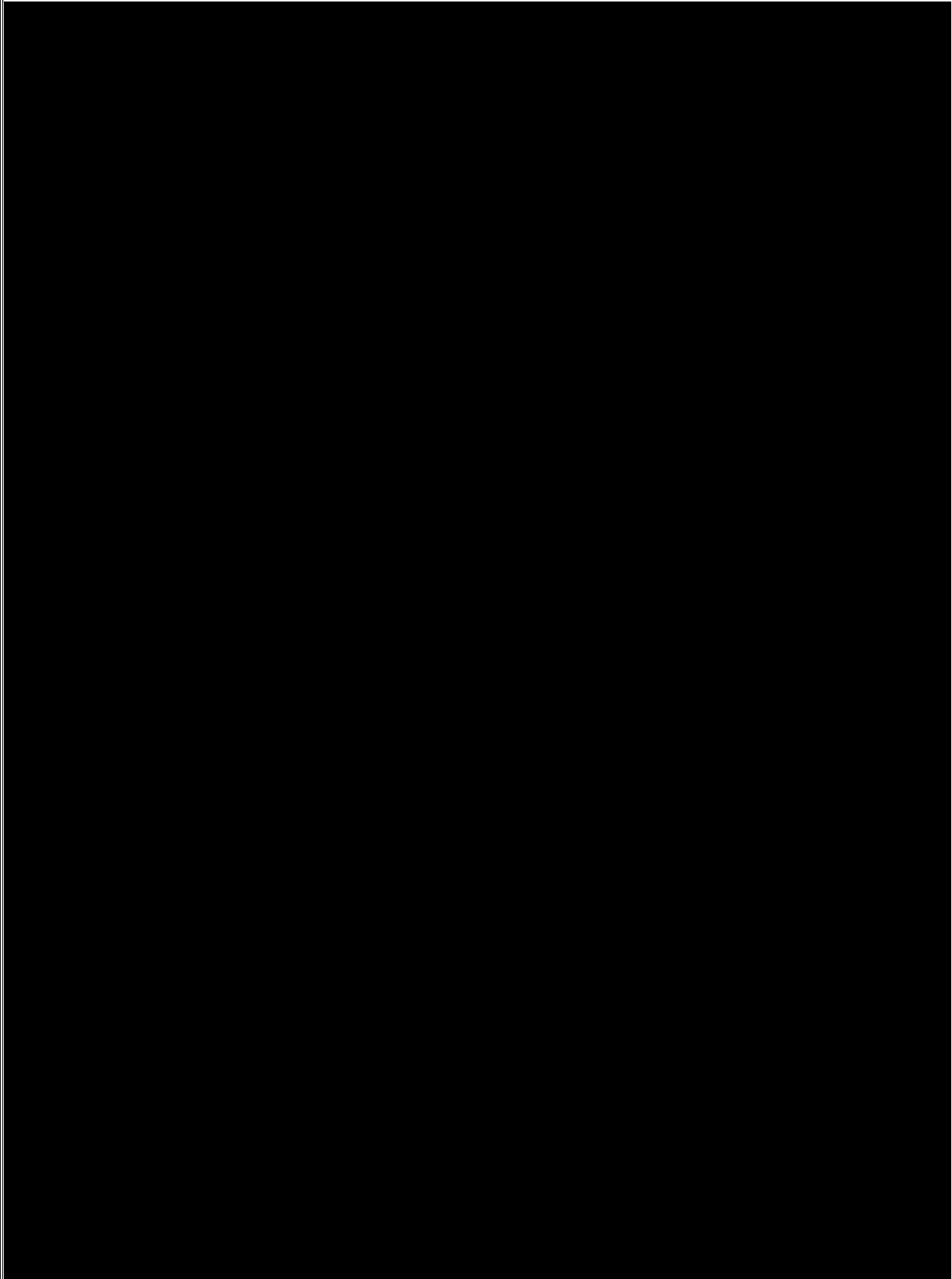
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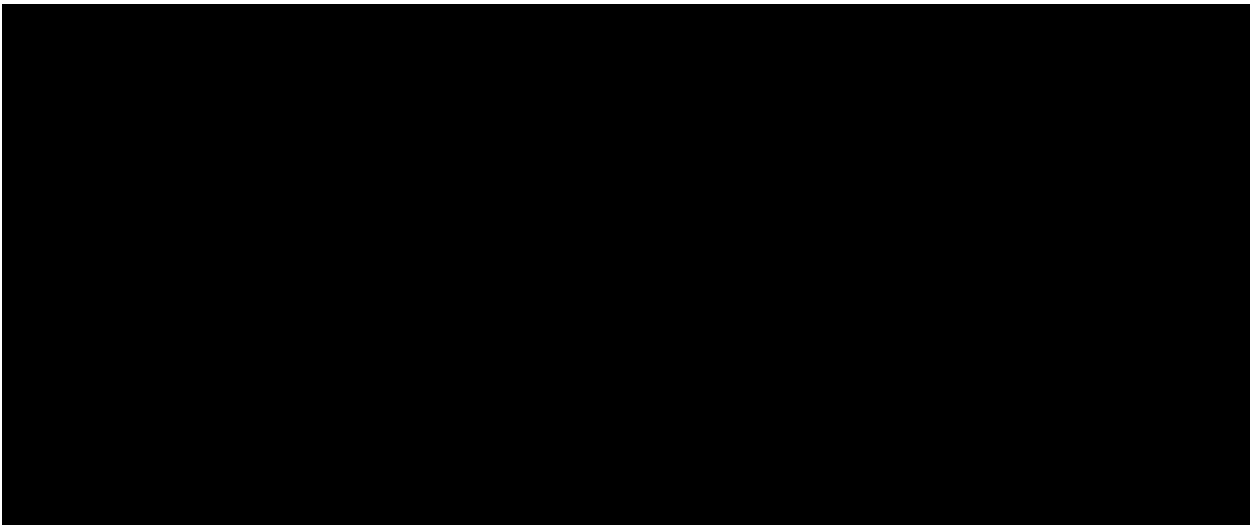
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PRESIDENT TERCIER: Thank you very much,
Mr. Thomson.

MR. POLÁŠEK: Yes, Mr. President.

PRESIDENT TERCIER: Your time is 2 hours, 10
minutes, and we would have, then, 15 minutes' cross.

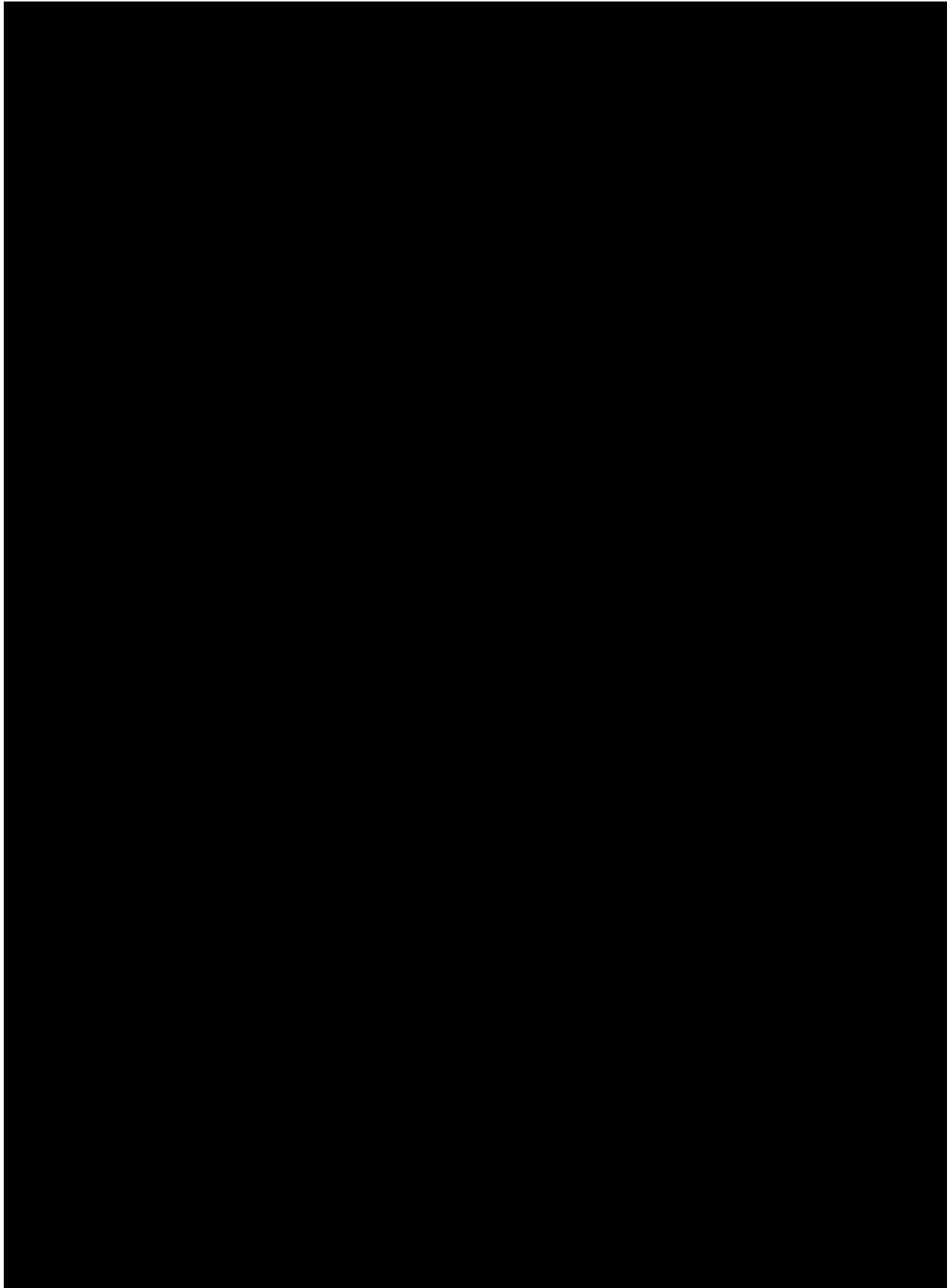
MR. POLÁŠEK: Yes, Mr. President. I cannot
promise that we will stick to it. We will do what we
can. But we will also need to consider the remaining
time that is available to us and then adjust
accordingly.

I just cannot say at this point. It depends
on how it will go.

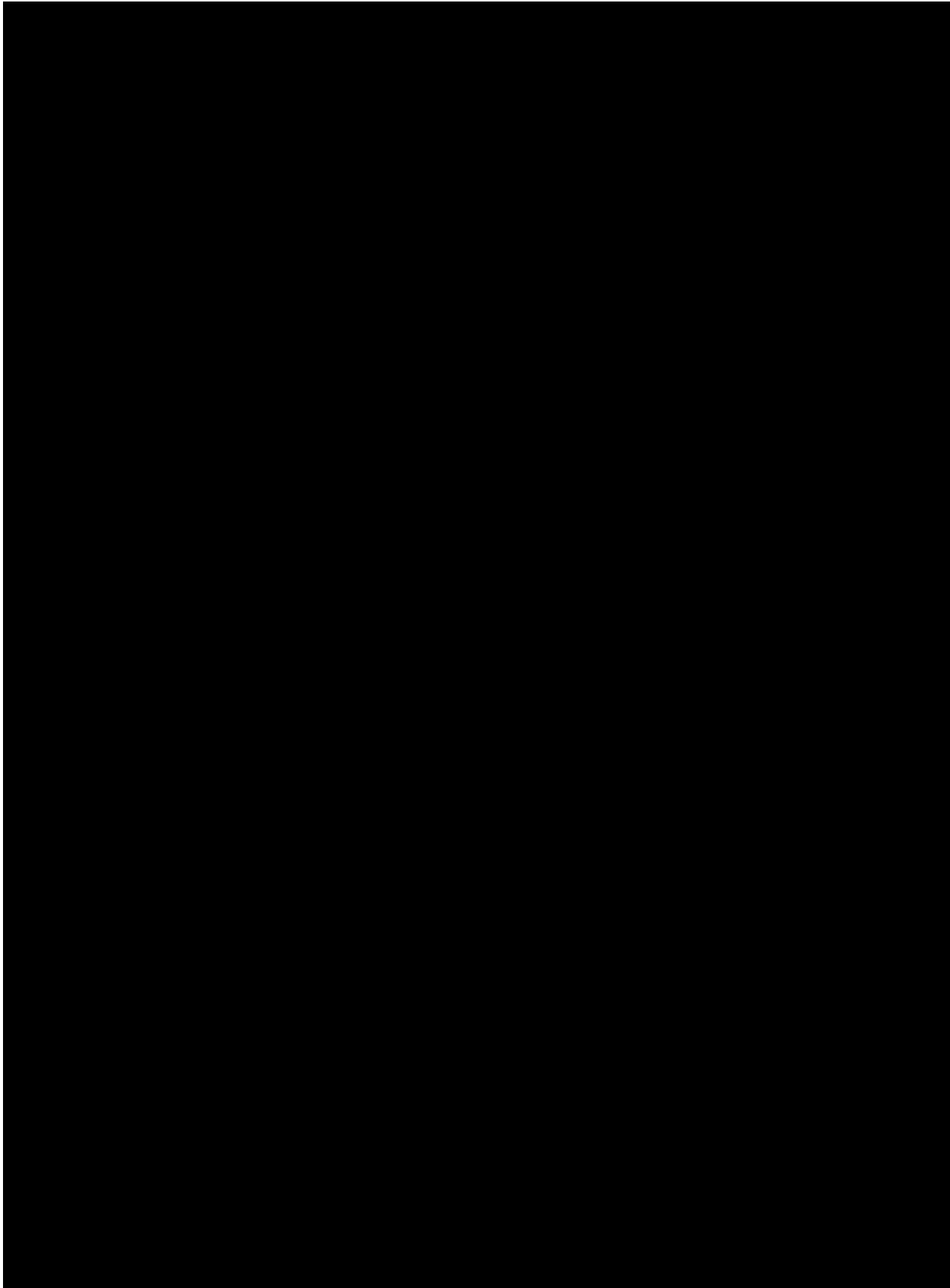
PRESIDENT TERCIER: Okay. But we have the
impression that there are still reserves. Okay.

CROSS-EXAMINATION

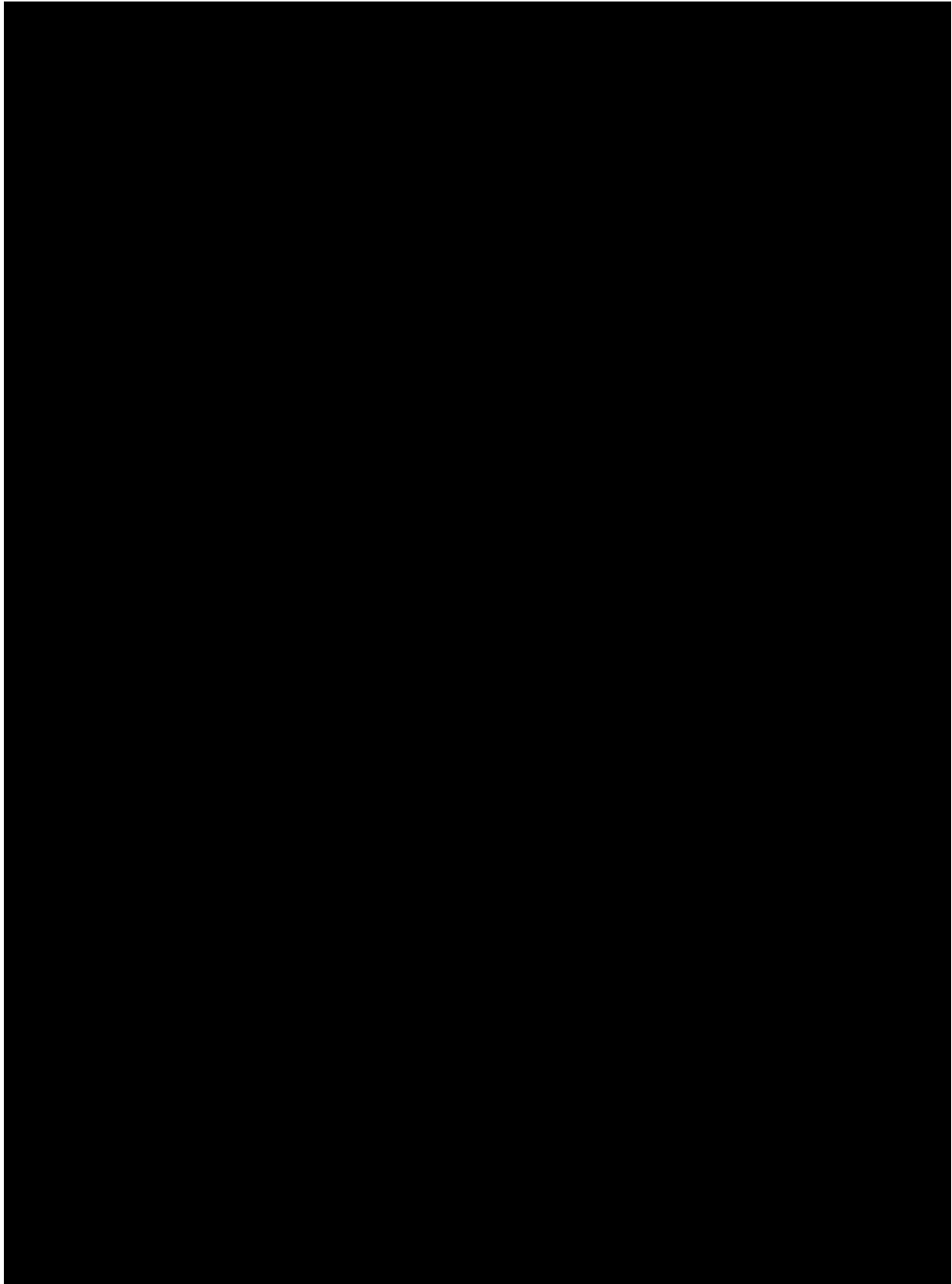
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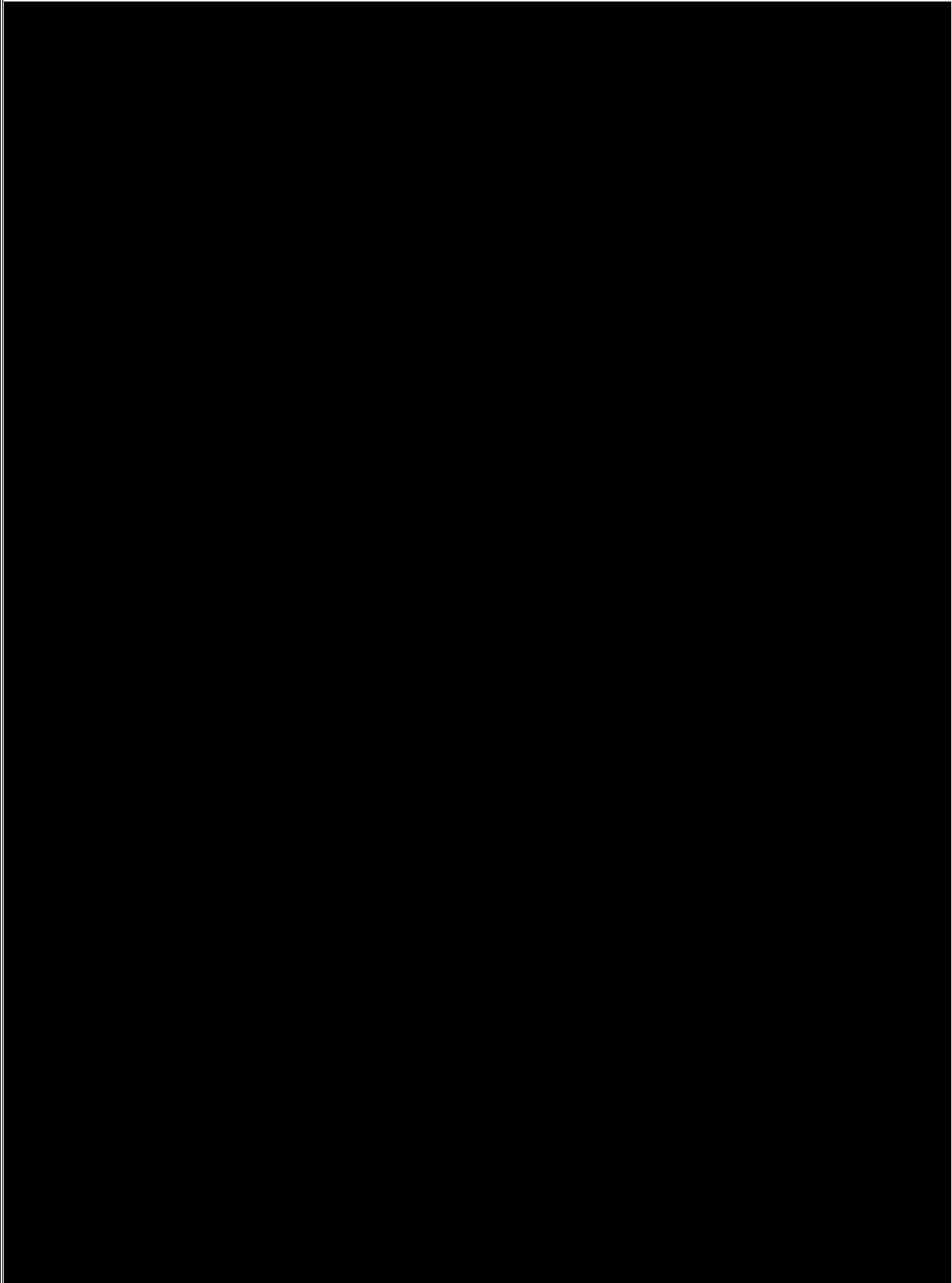
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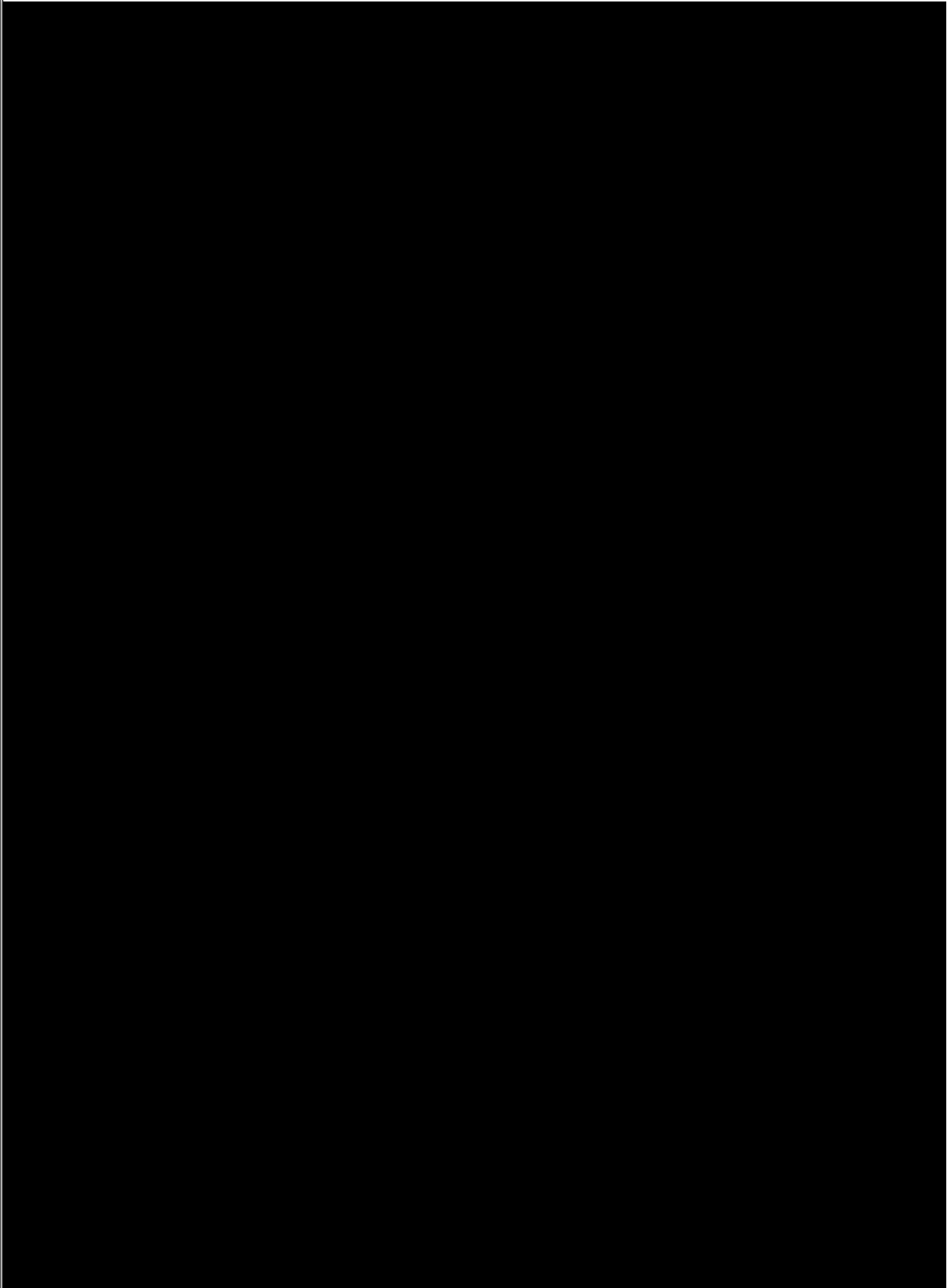
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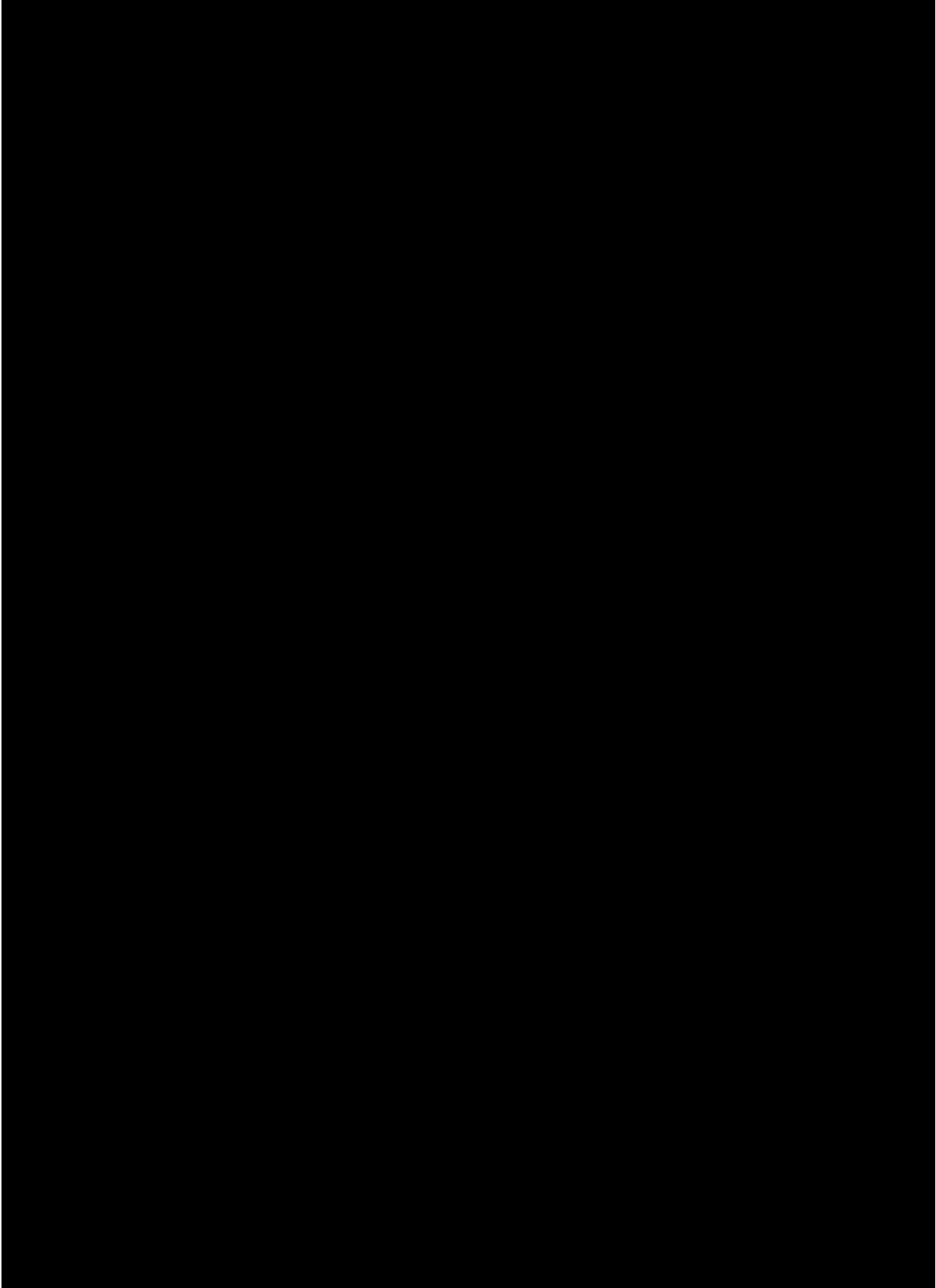
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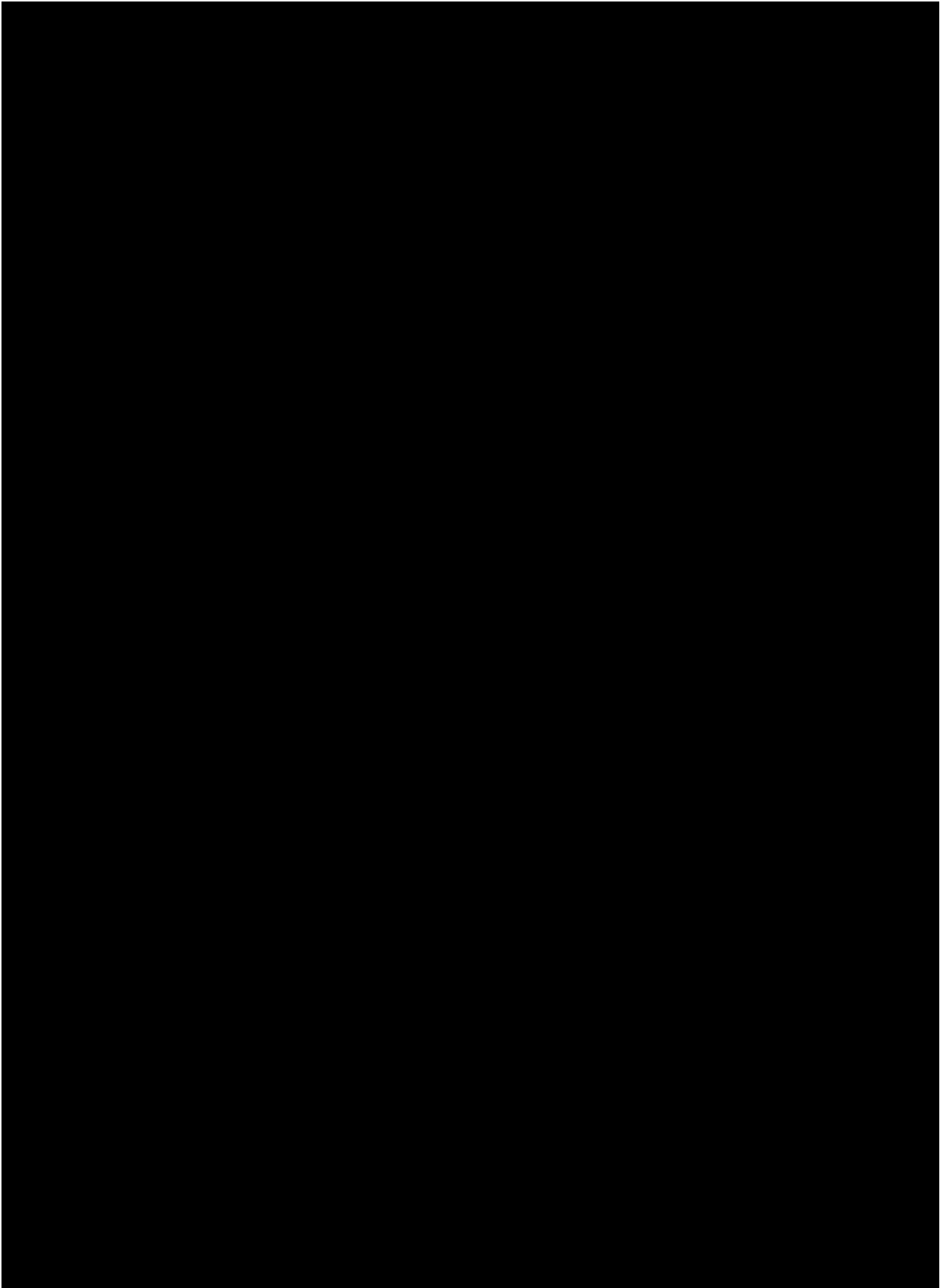
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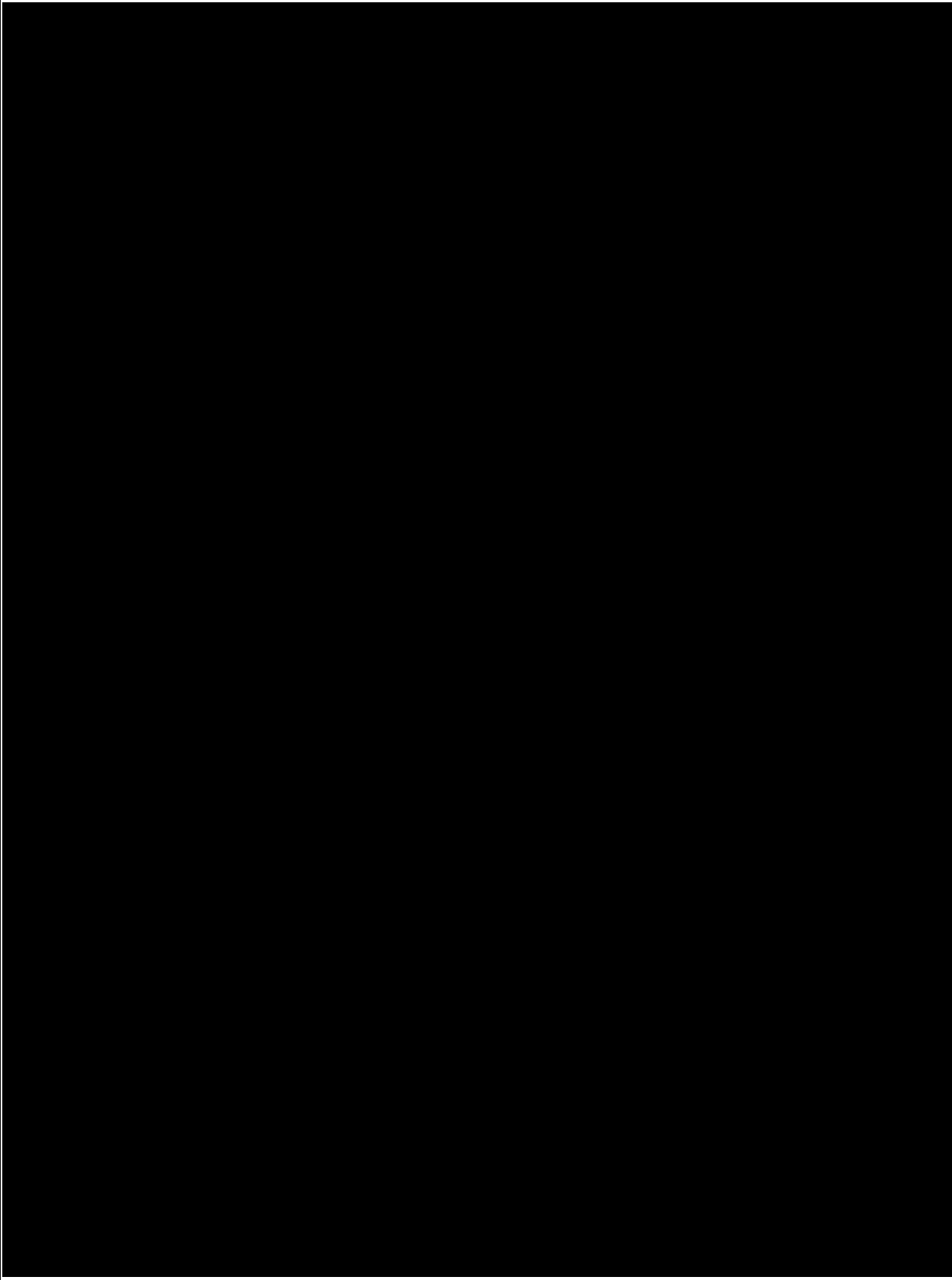
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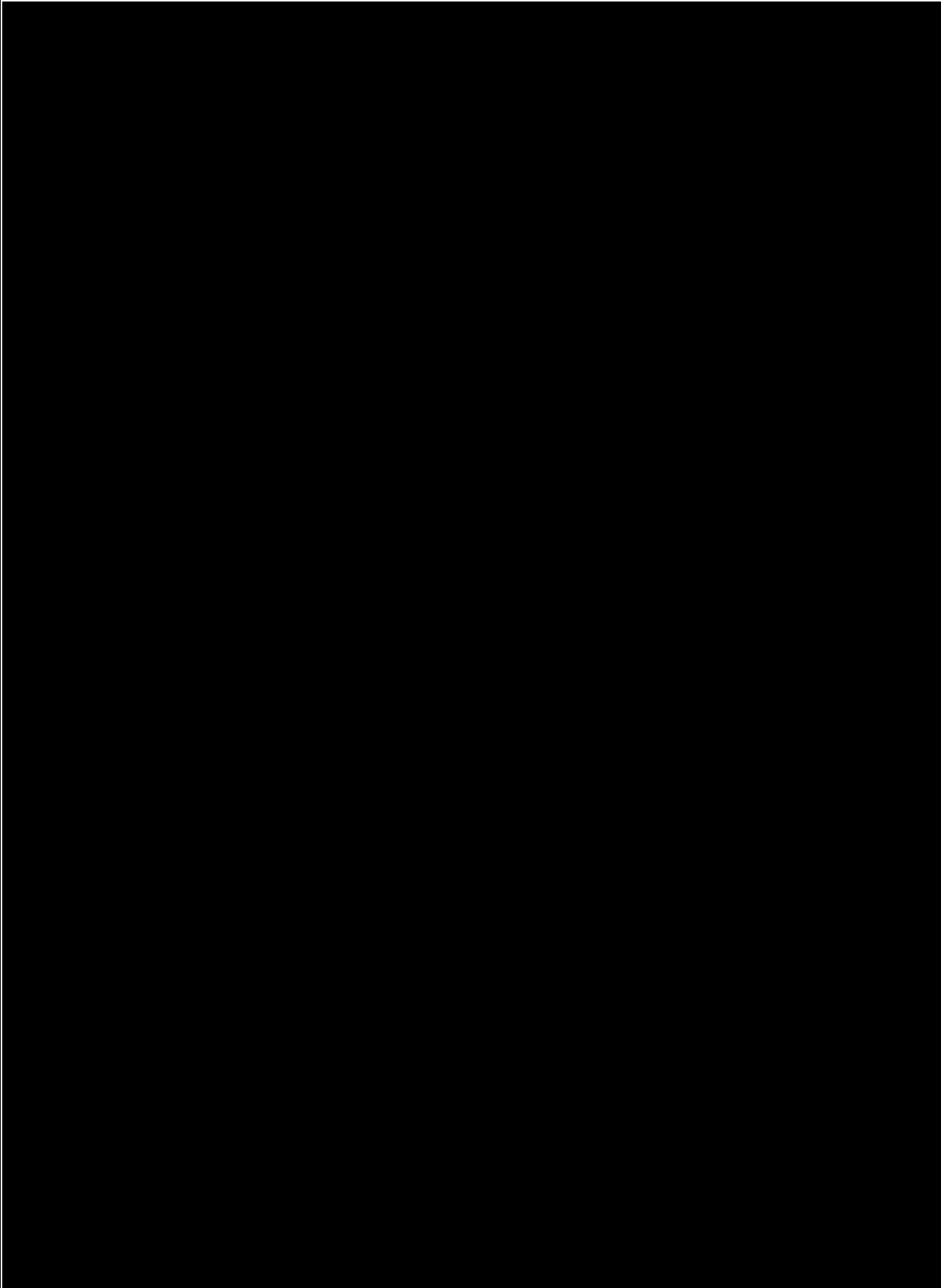
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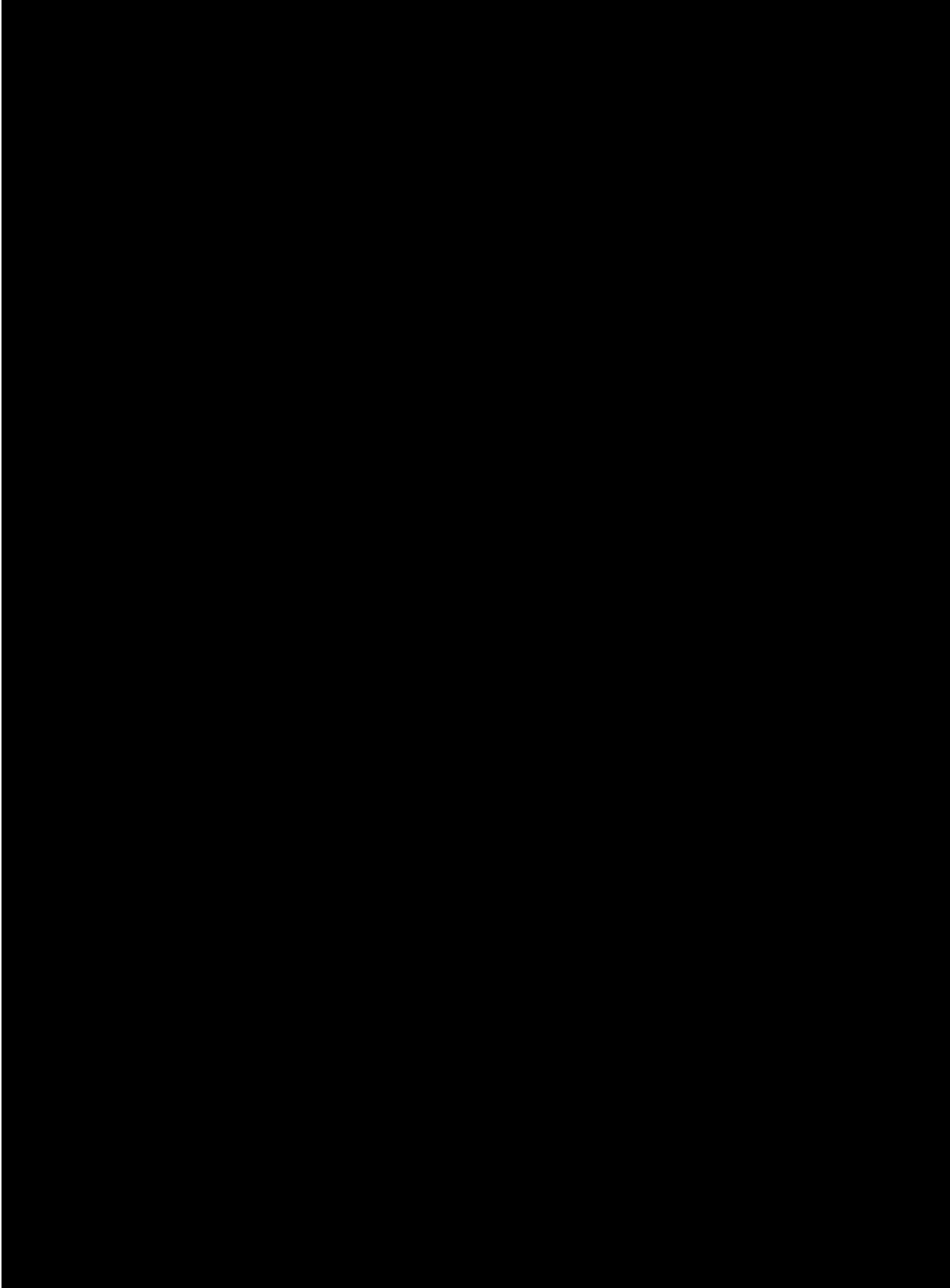
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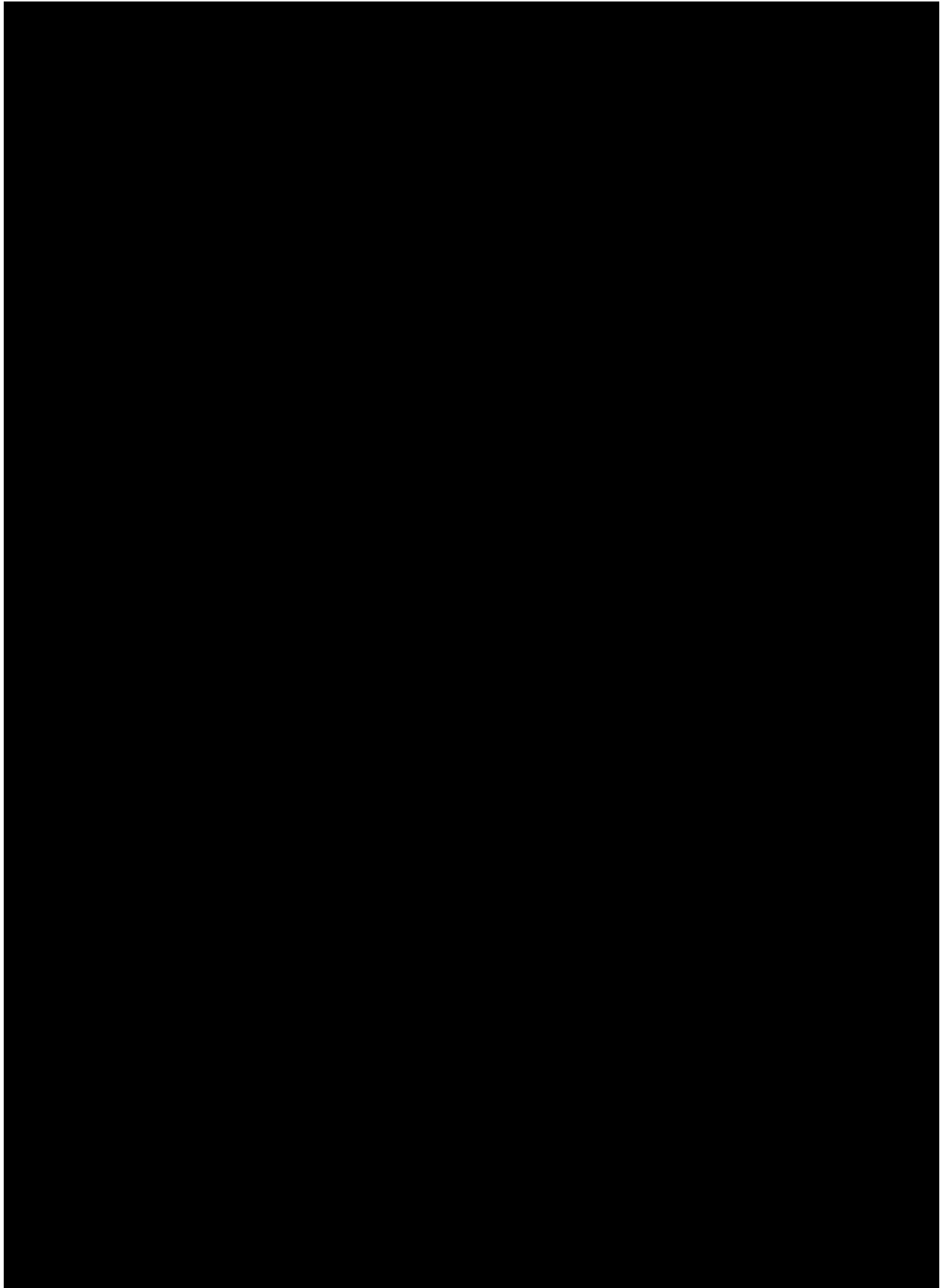
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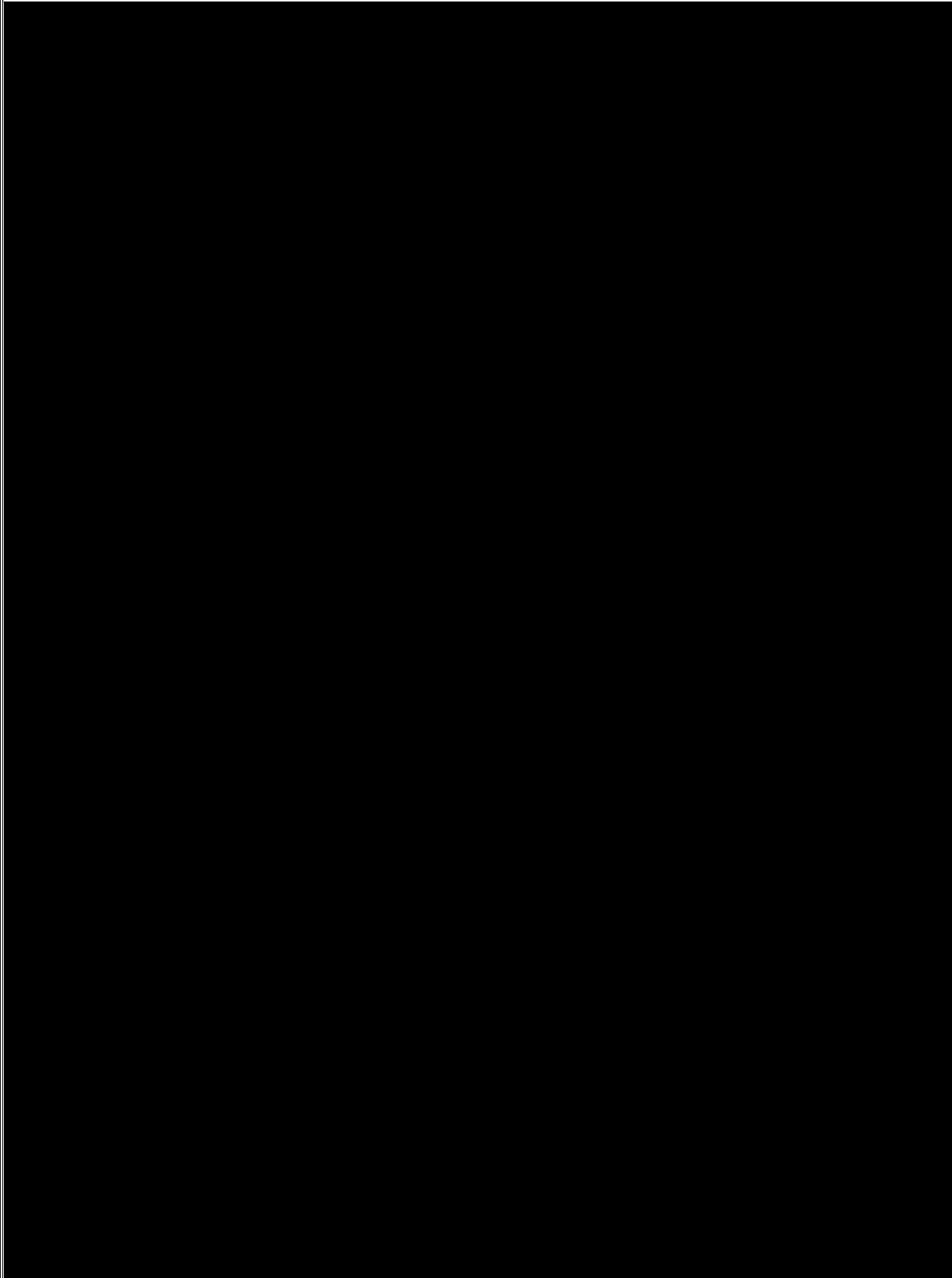
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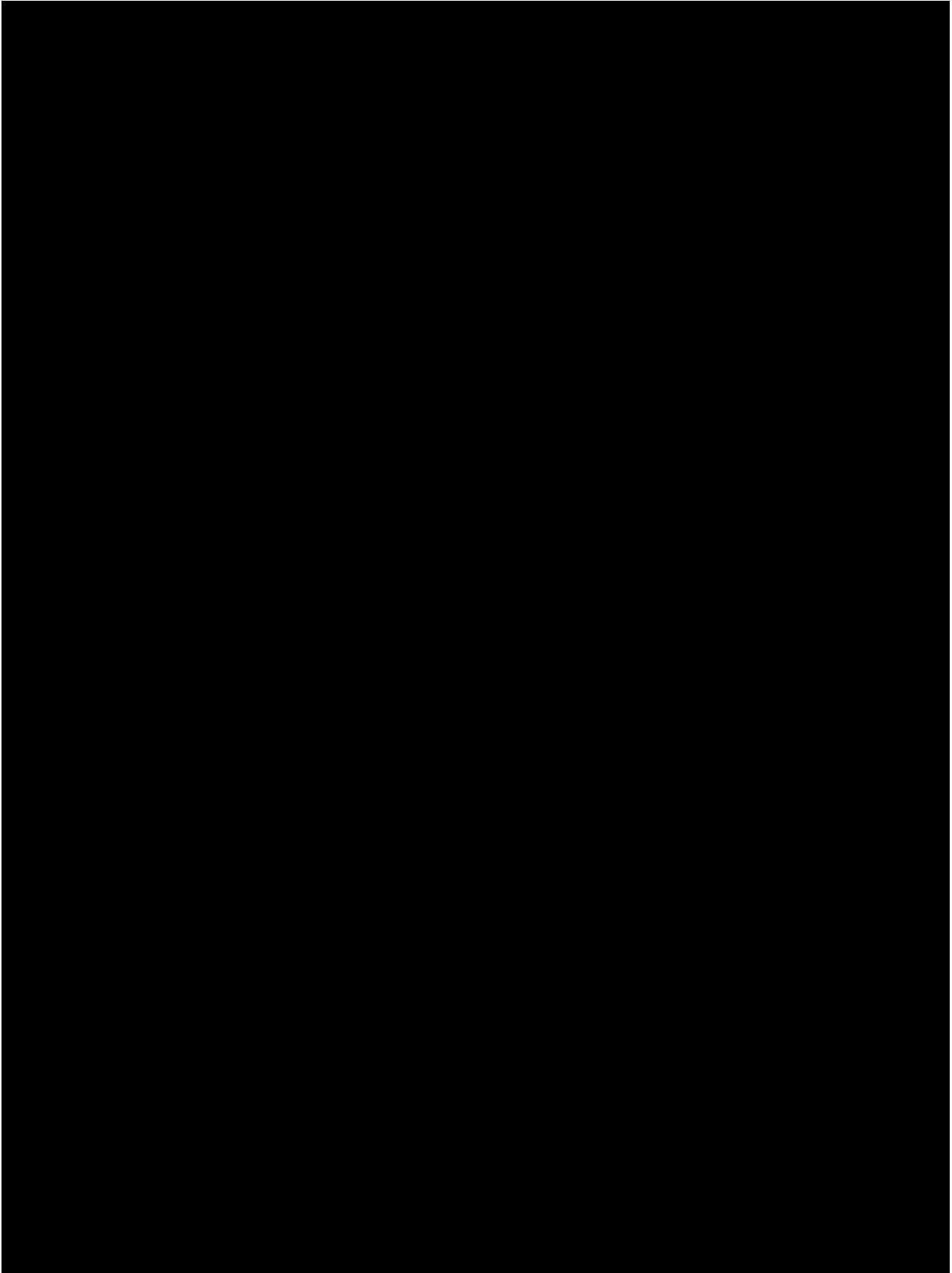
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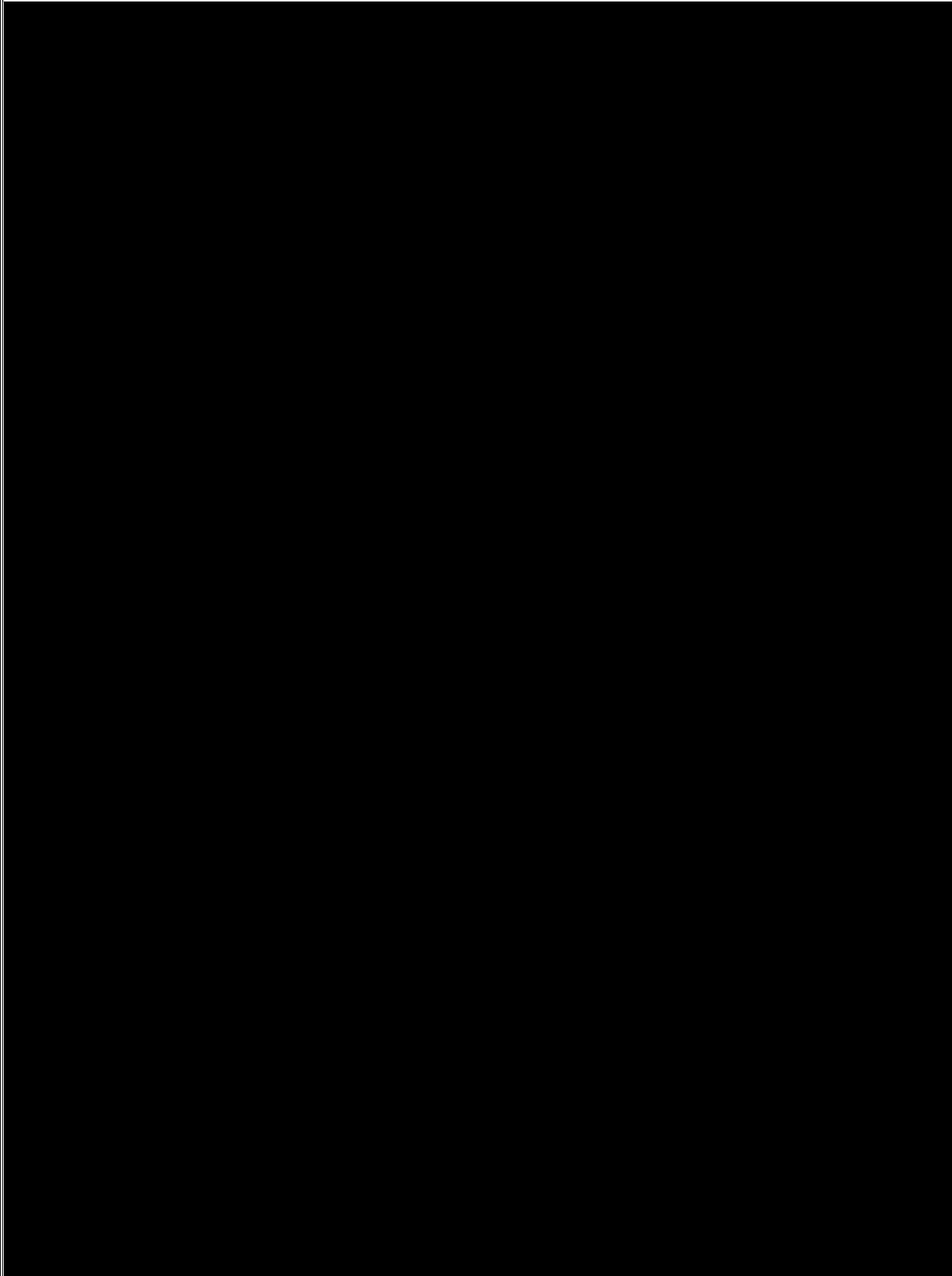
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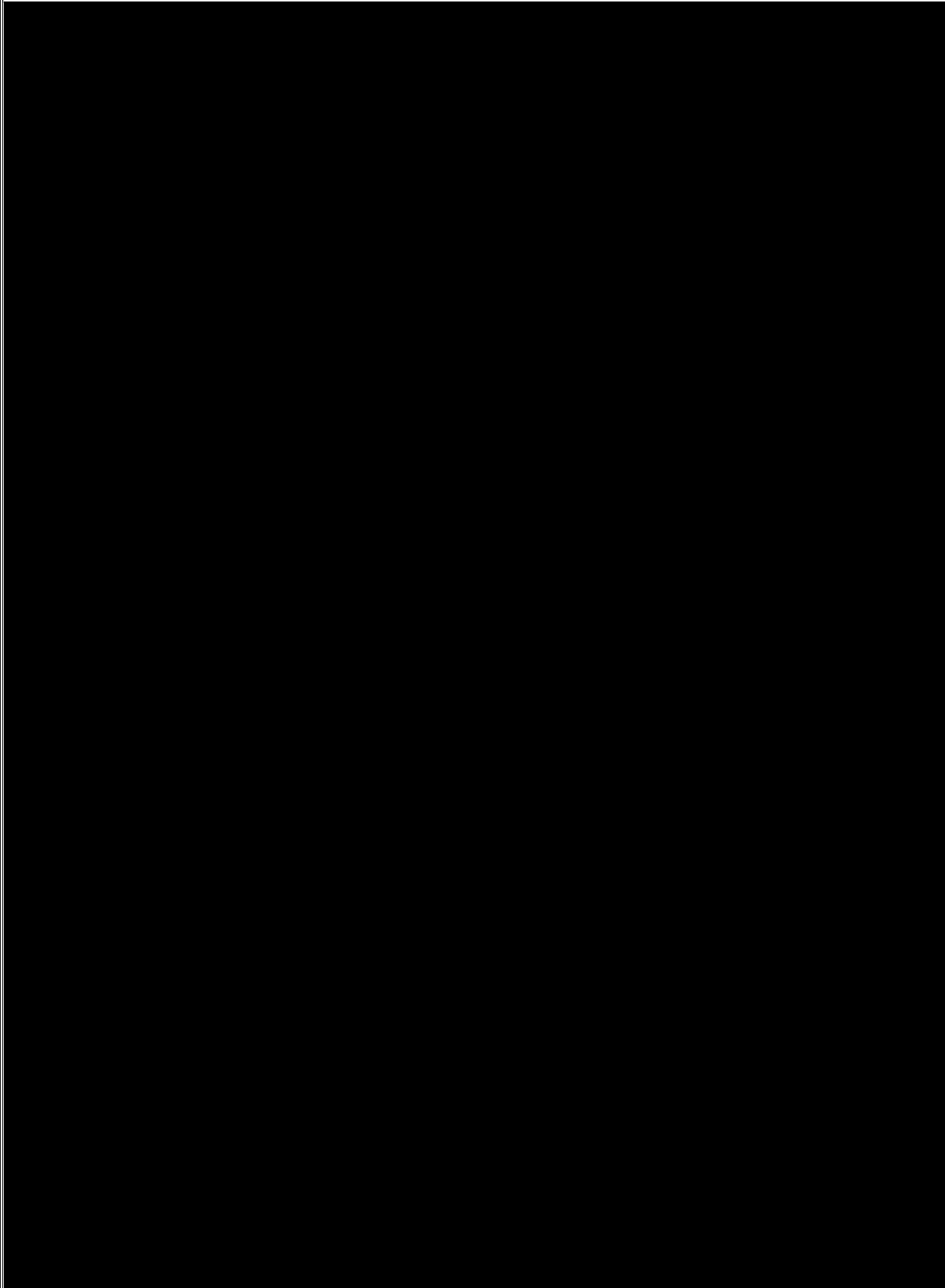
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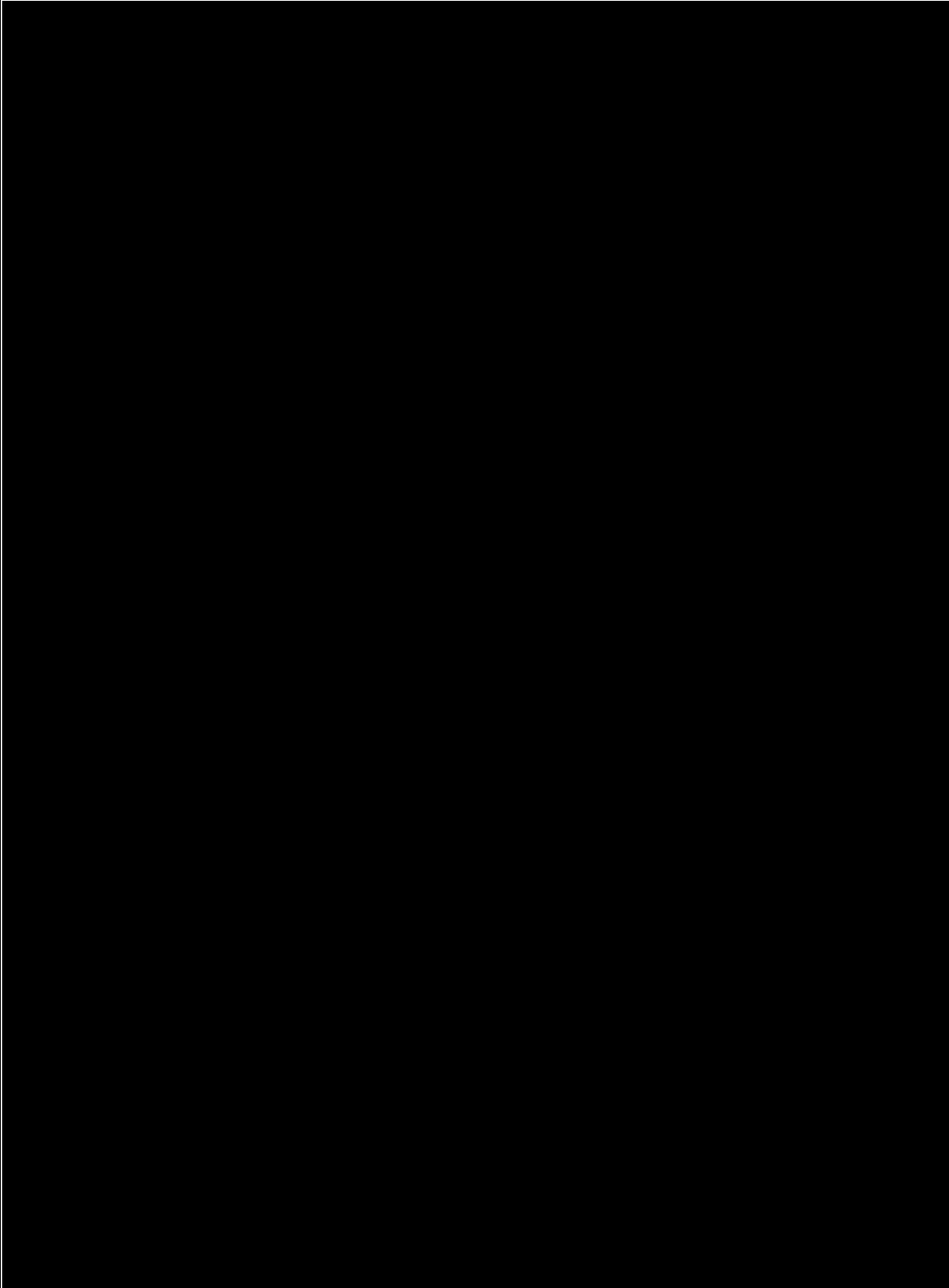
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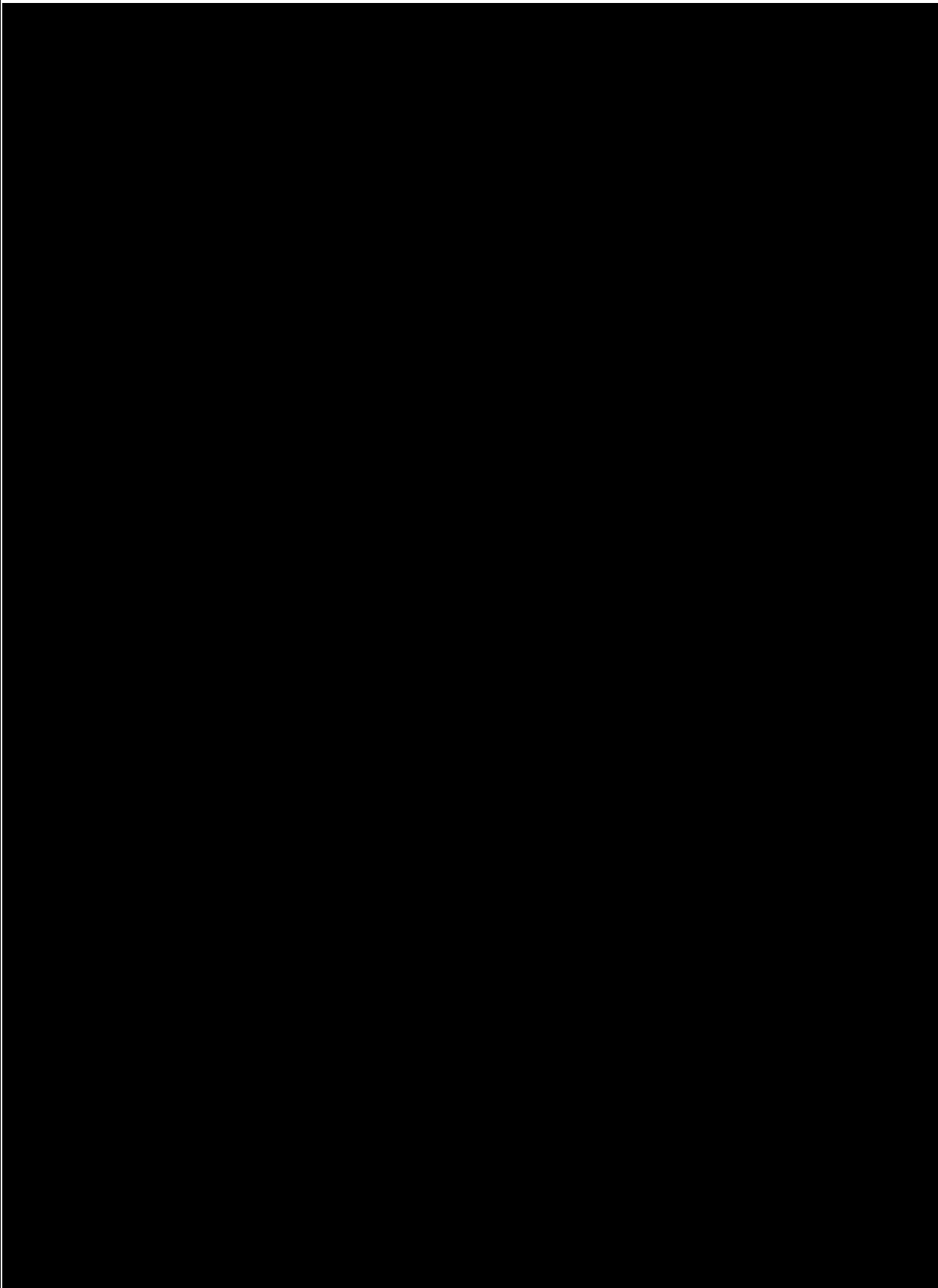
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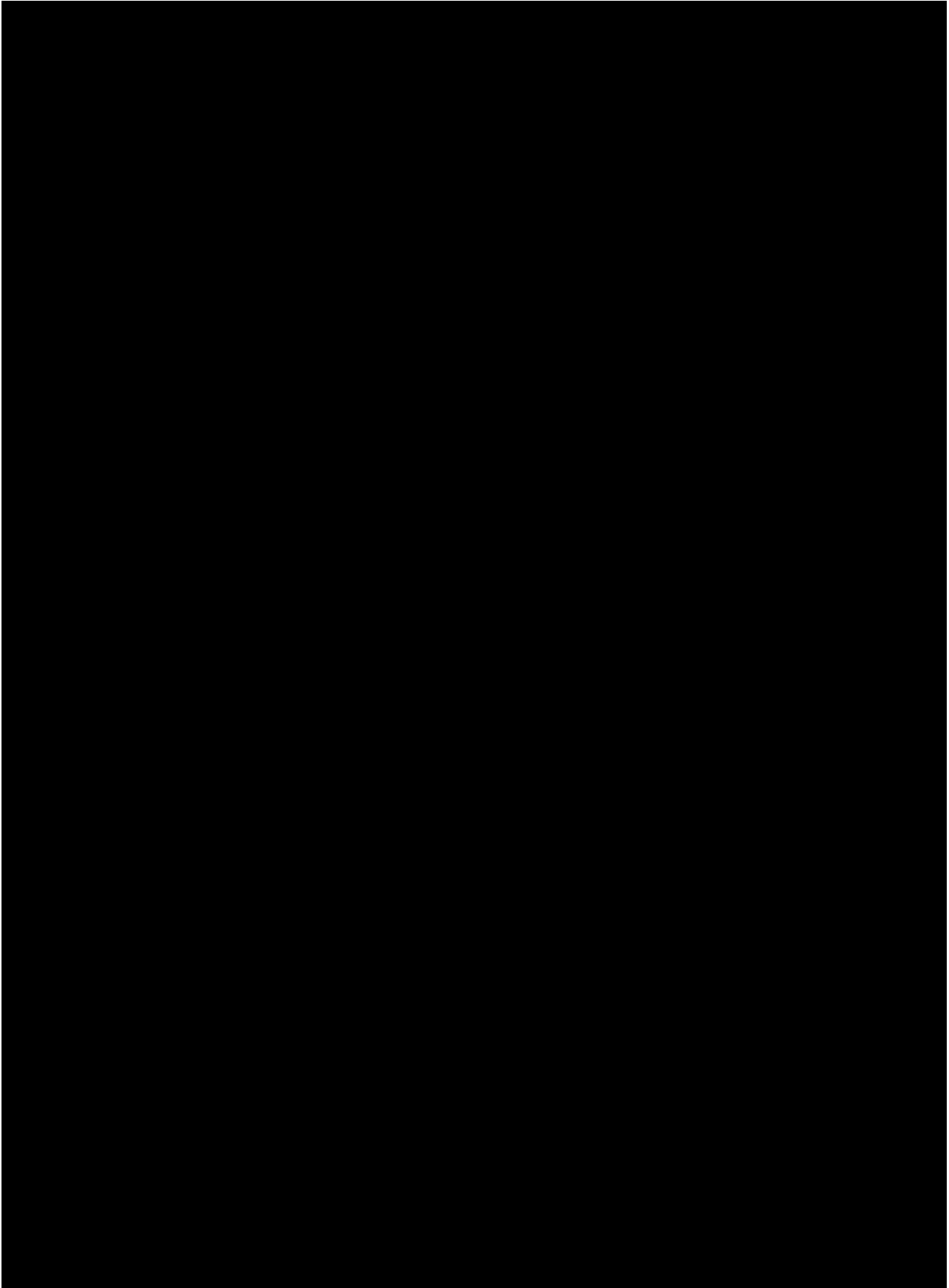
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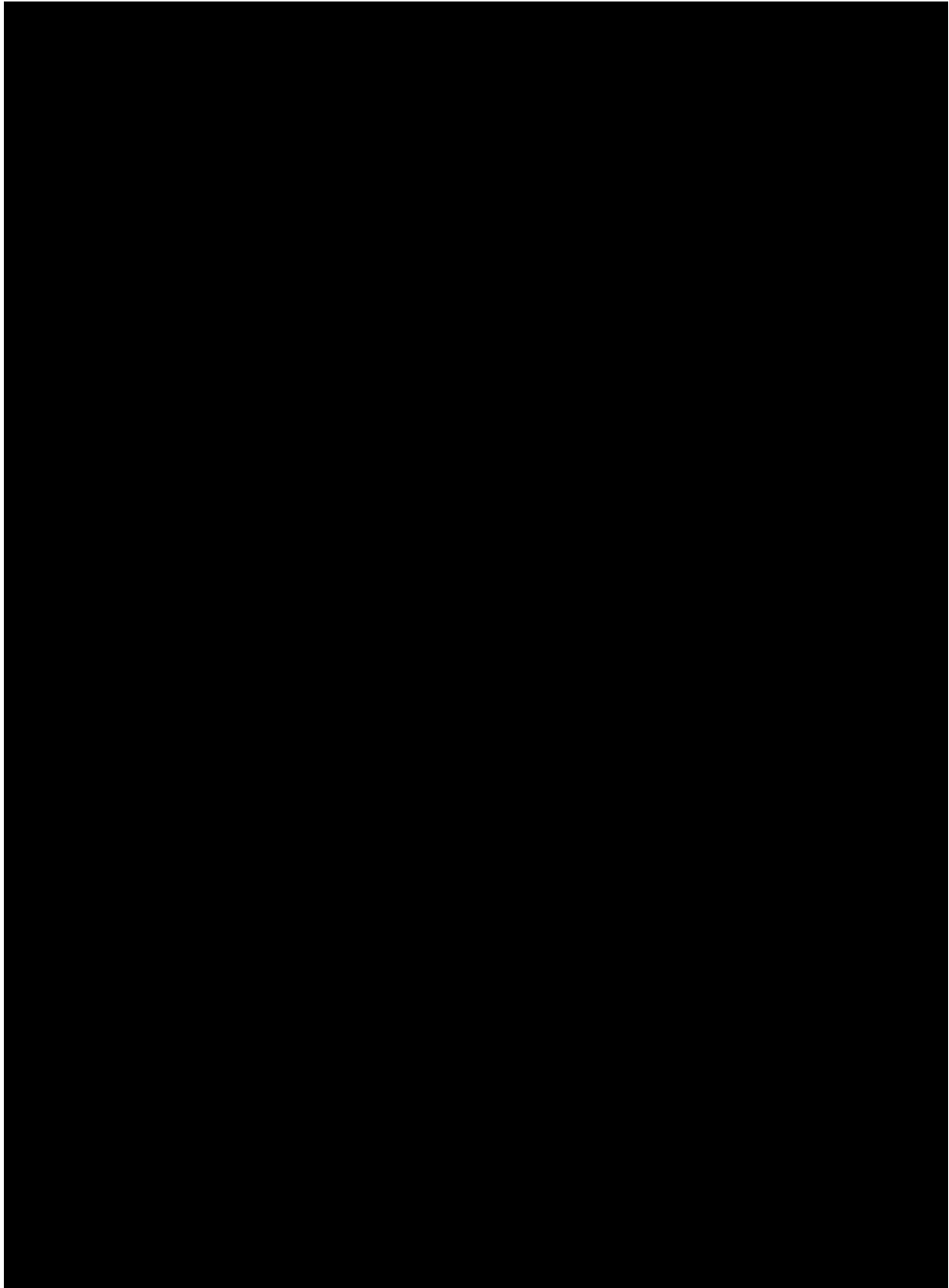
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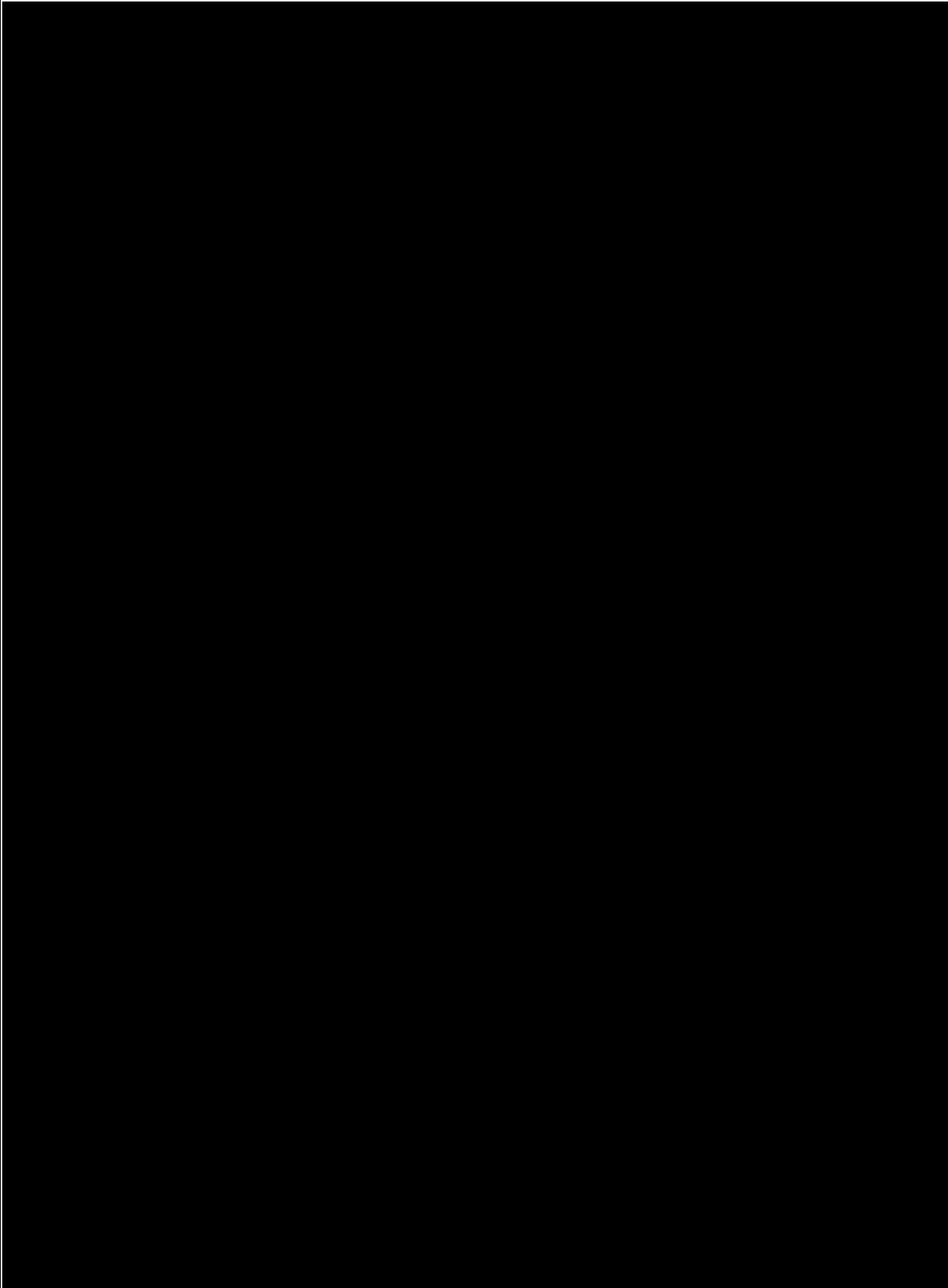
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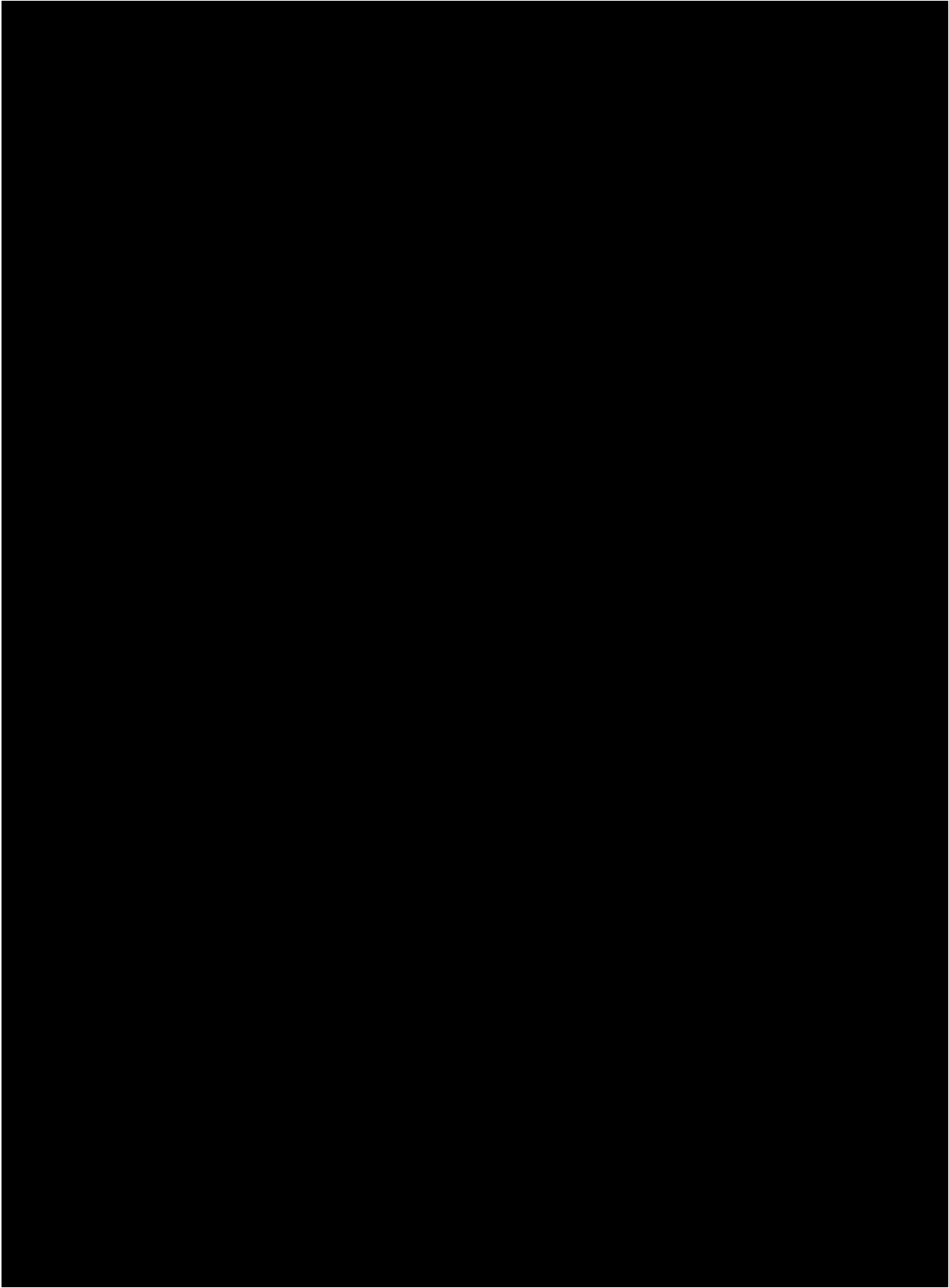
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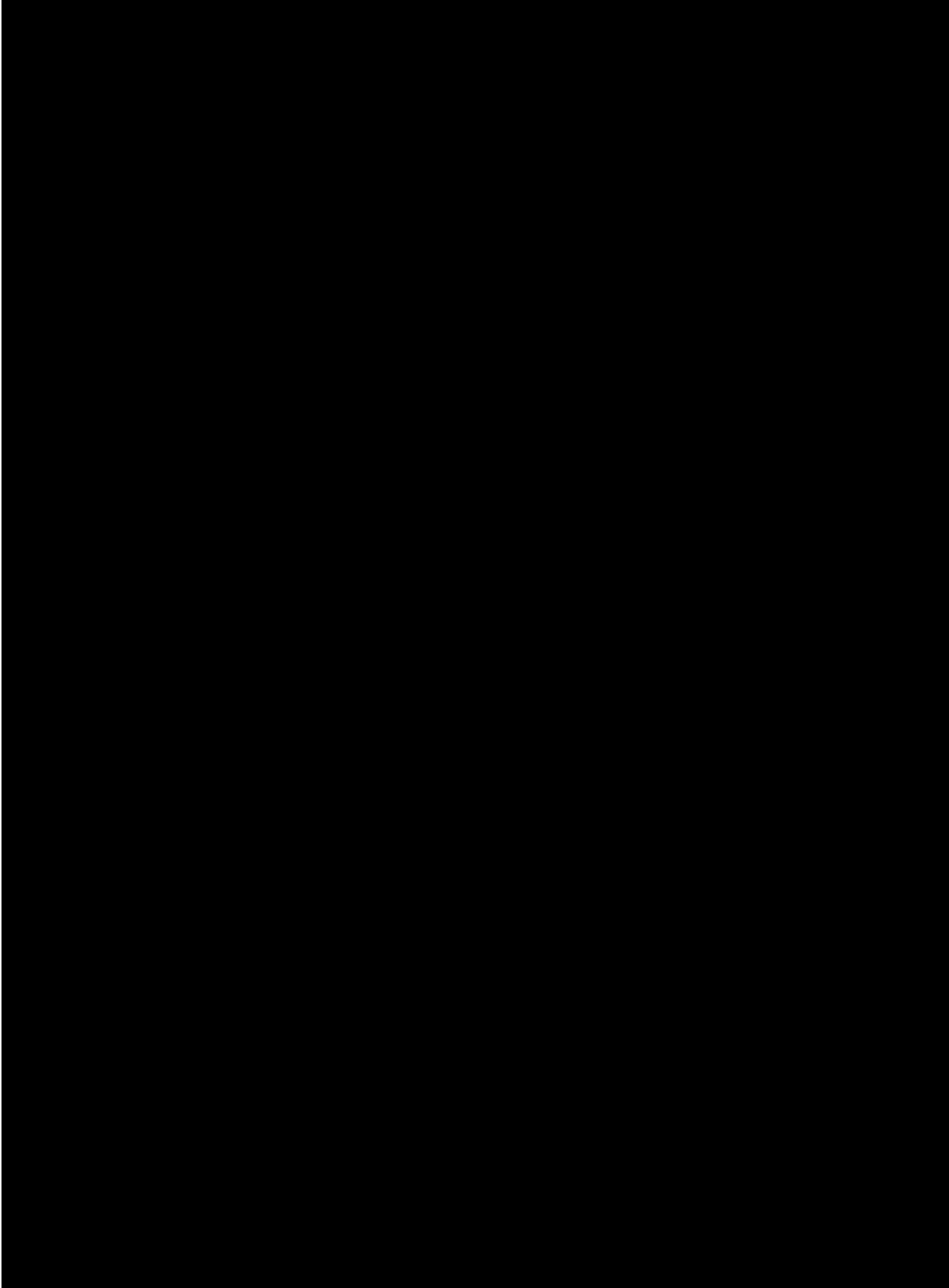
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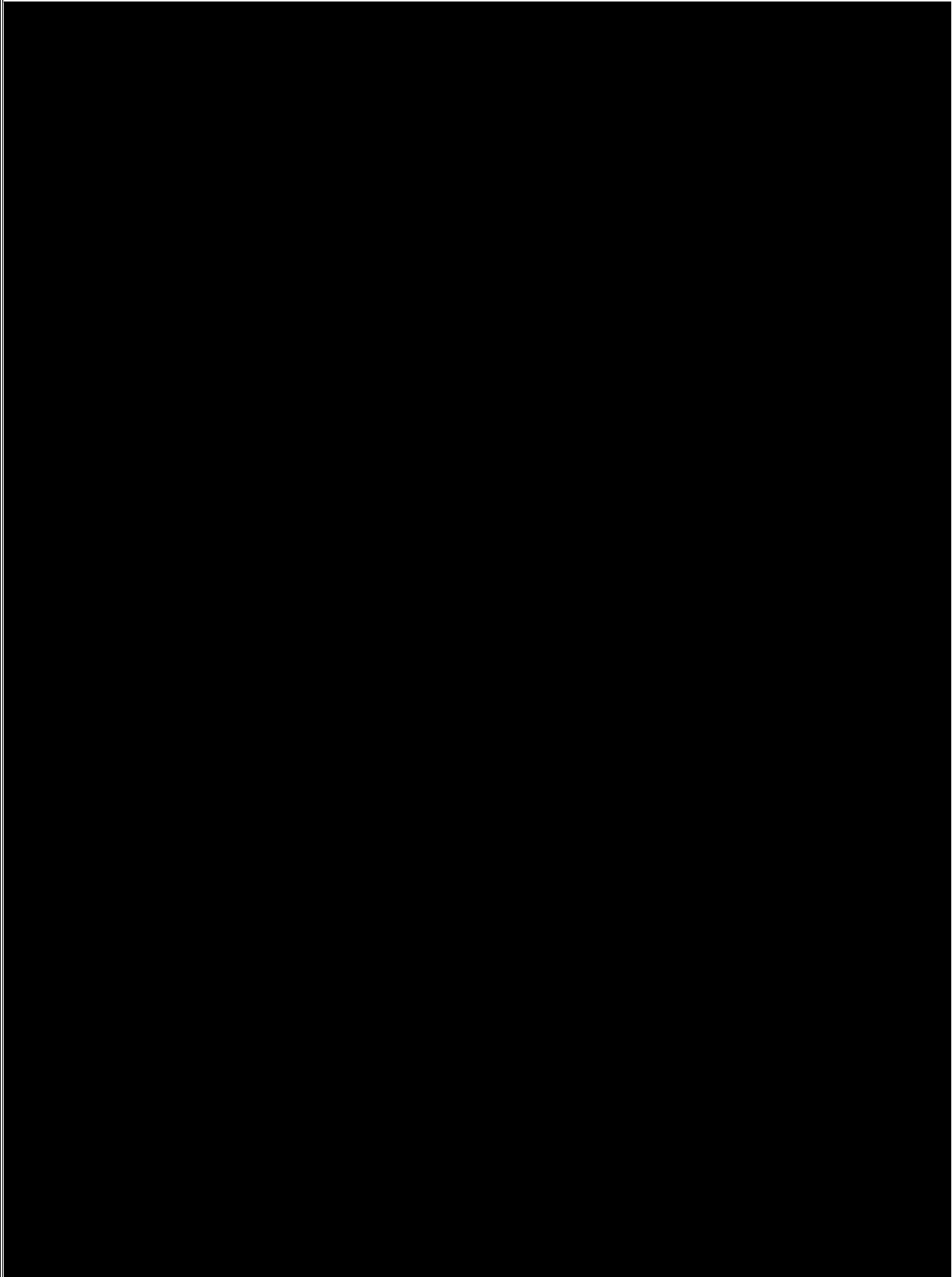
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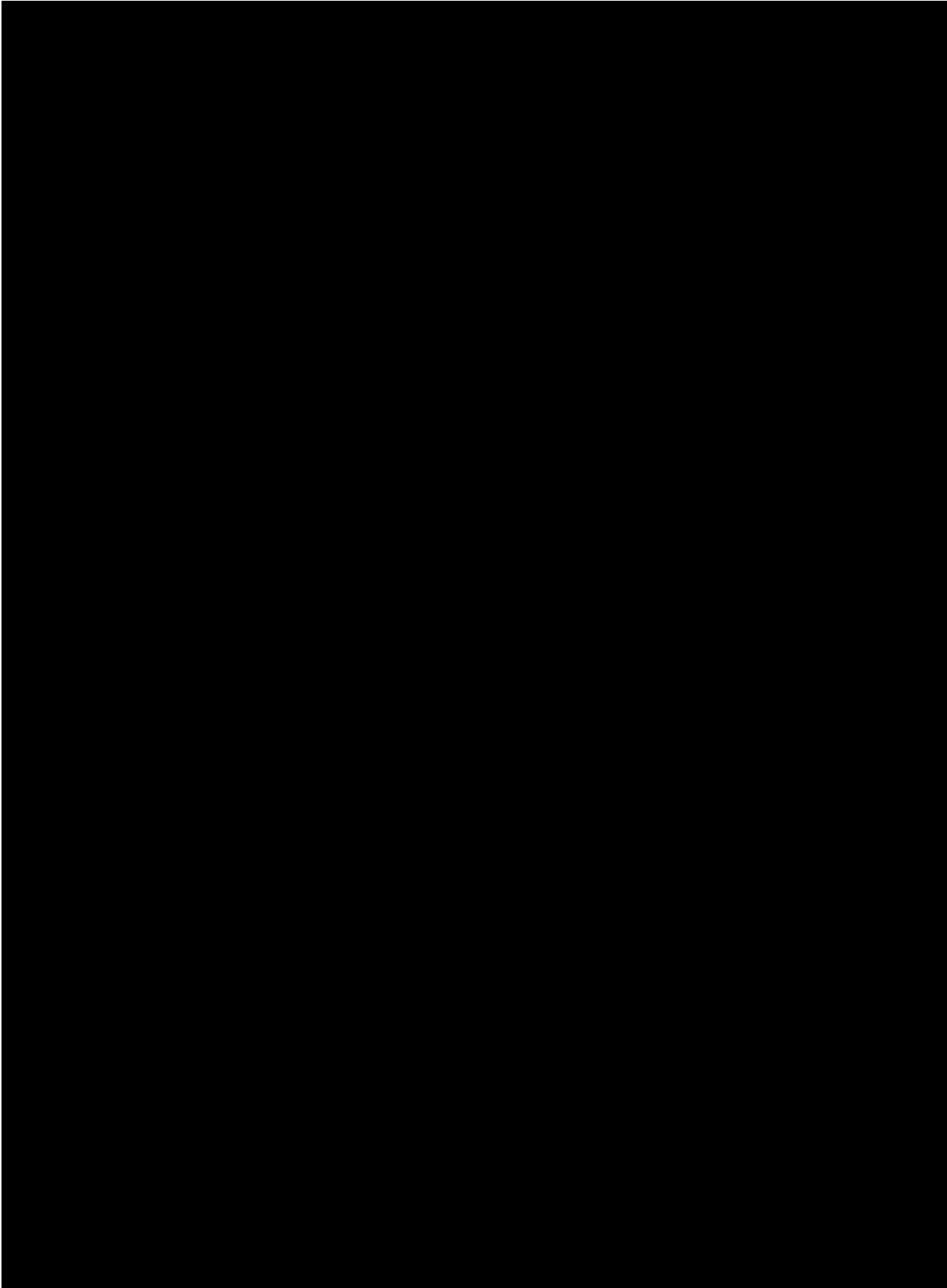
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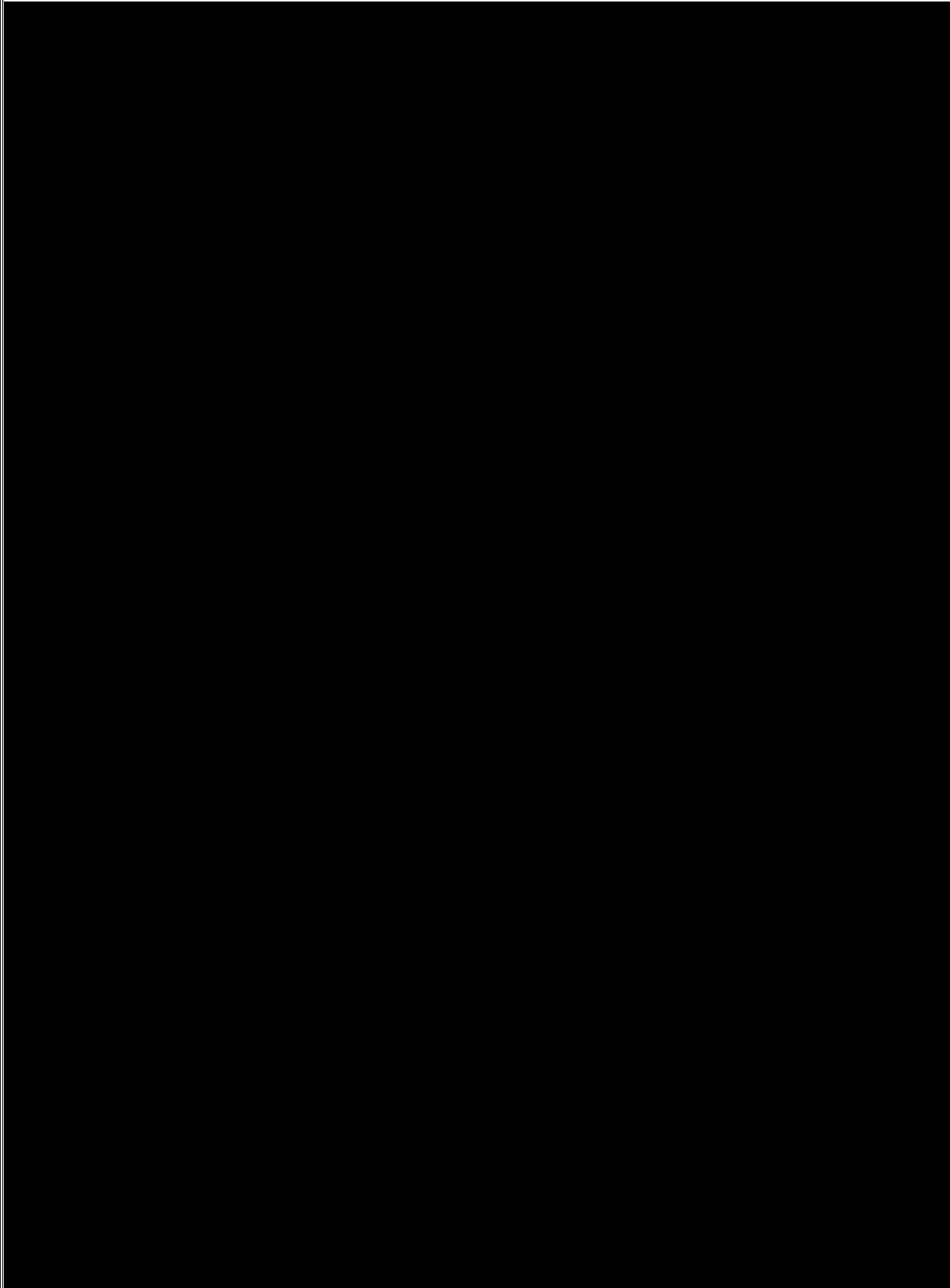
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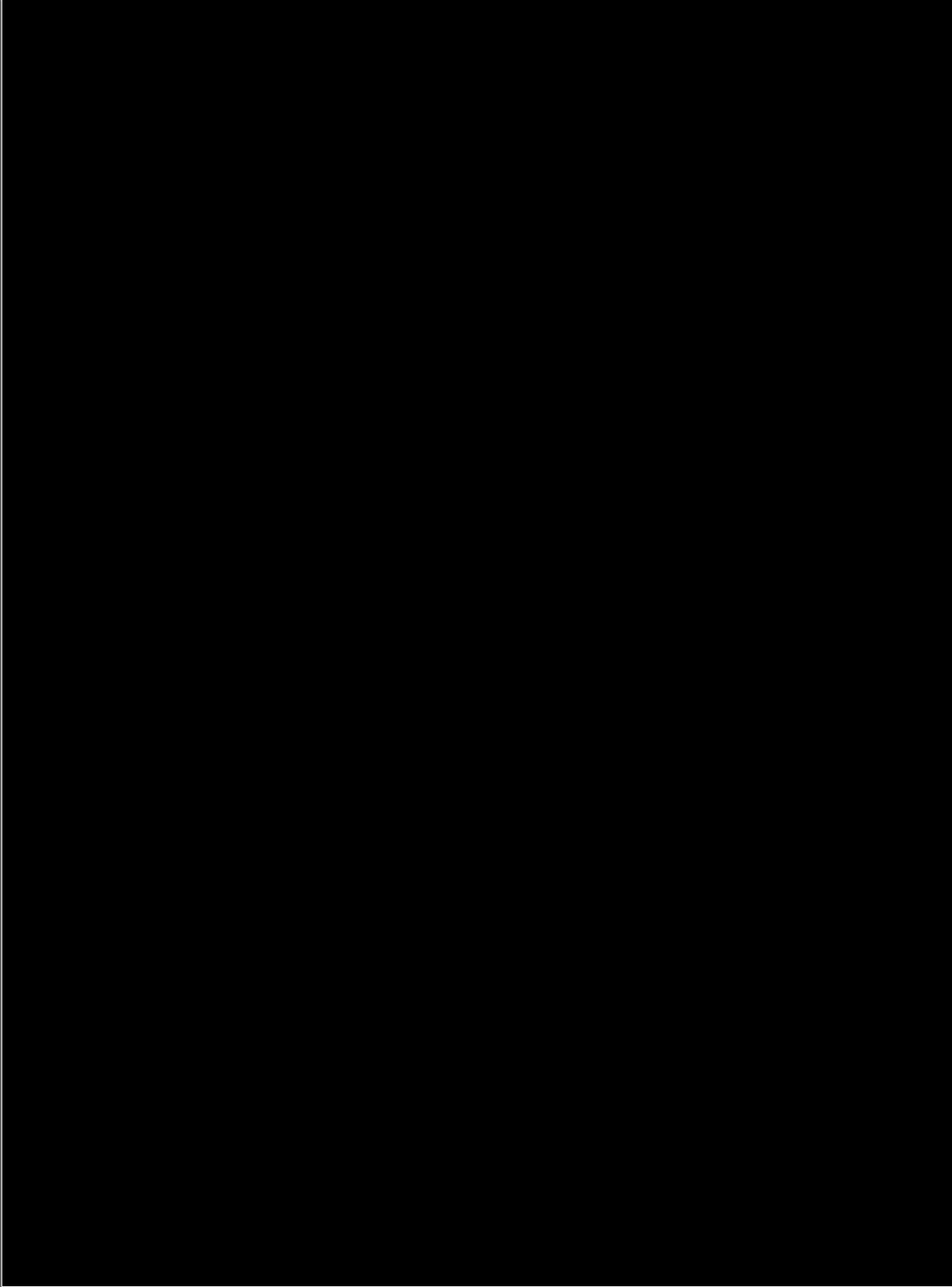
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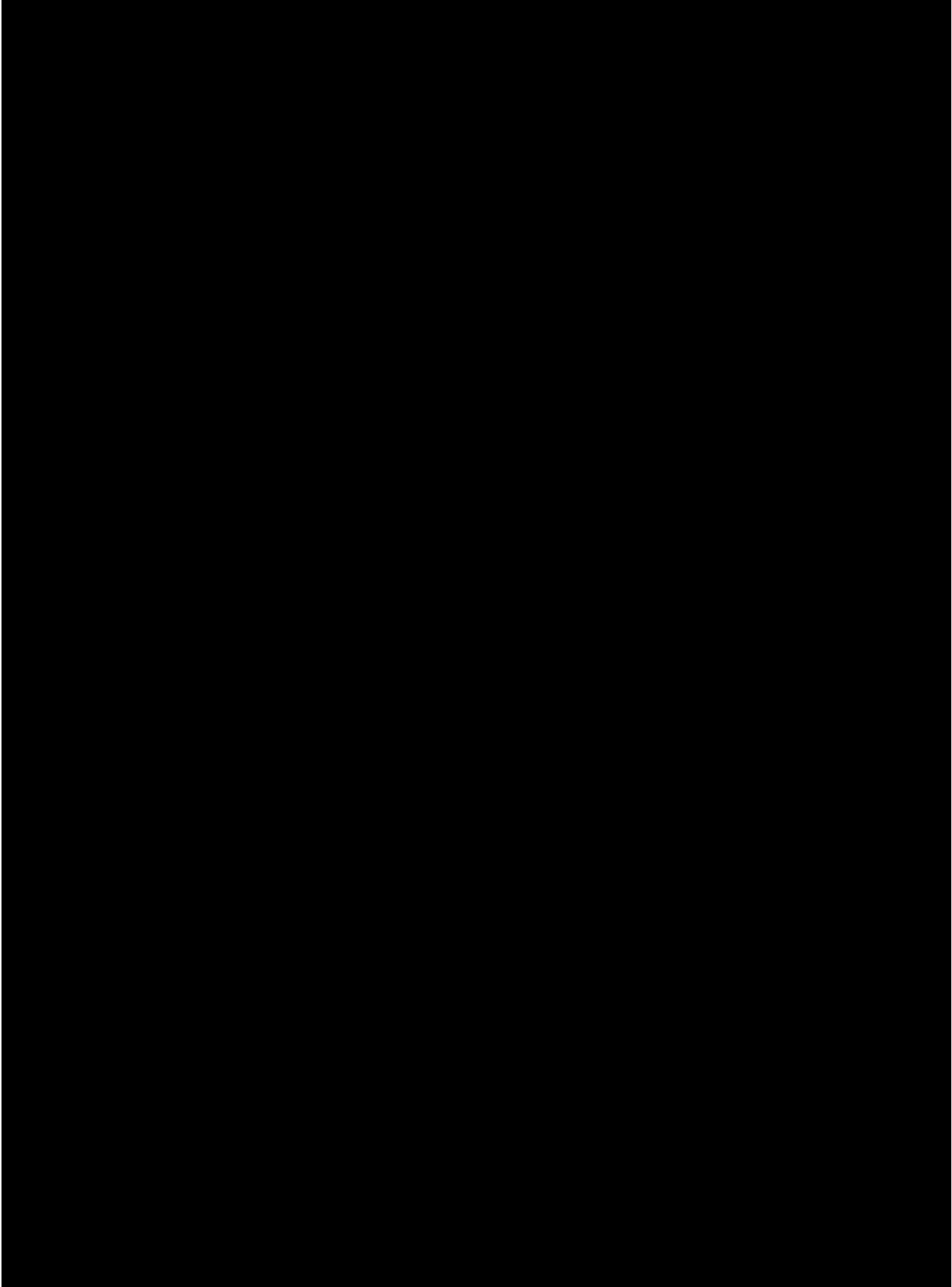
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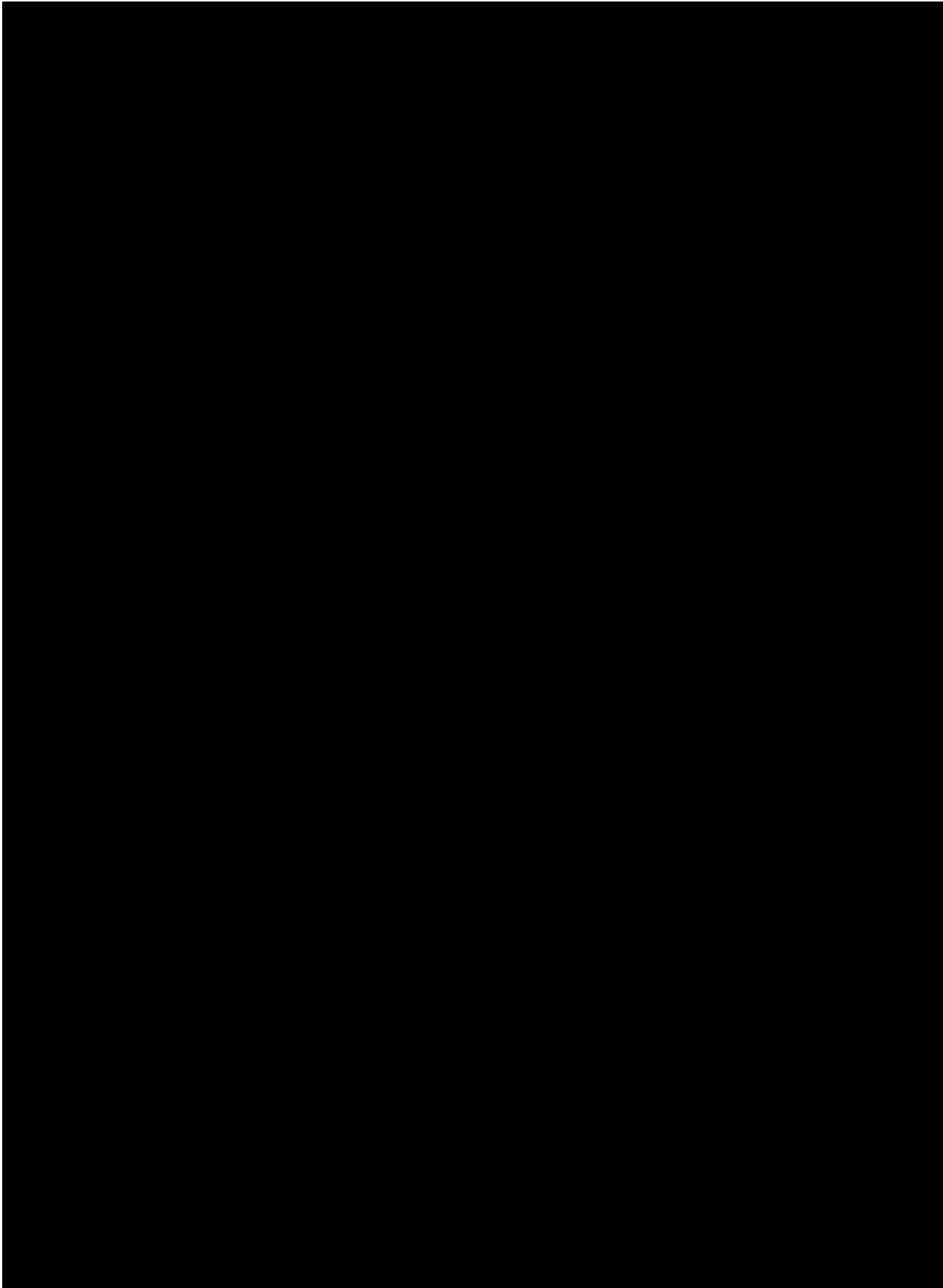
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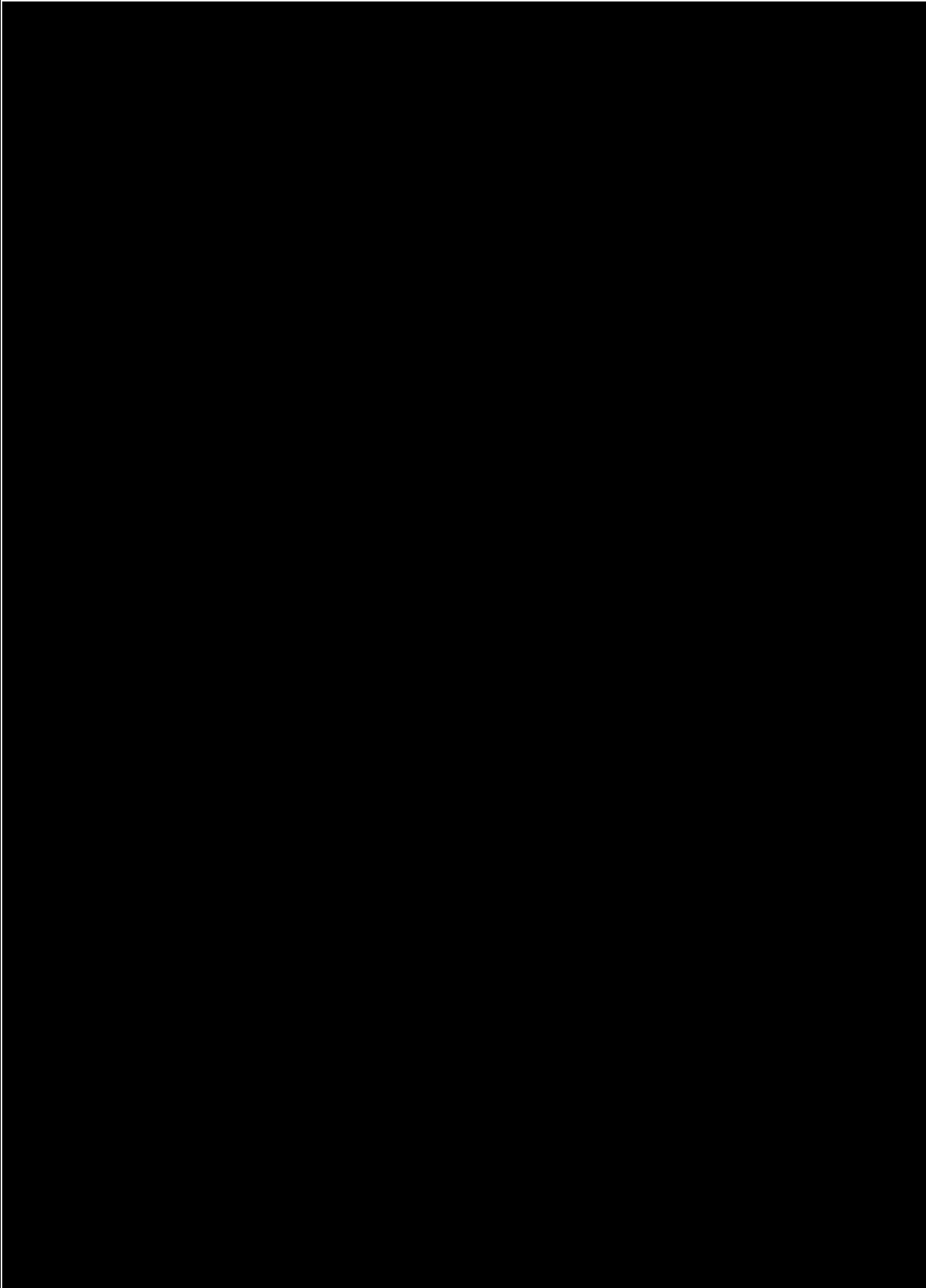
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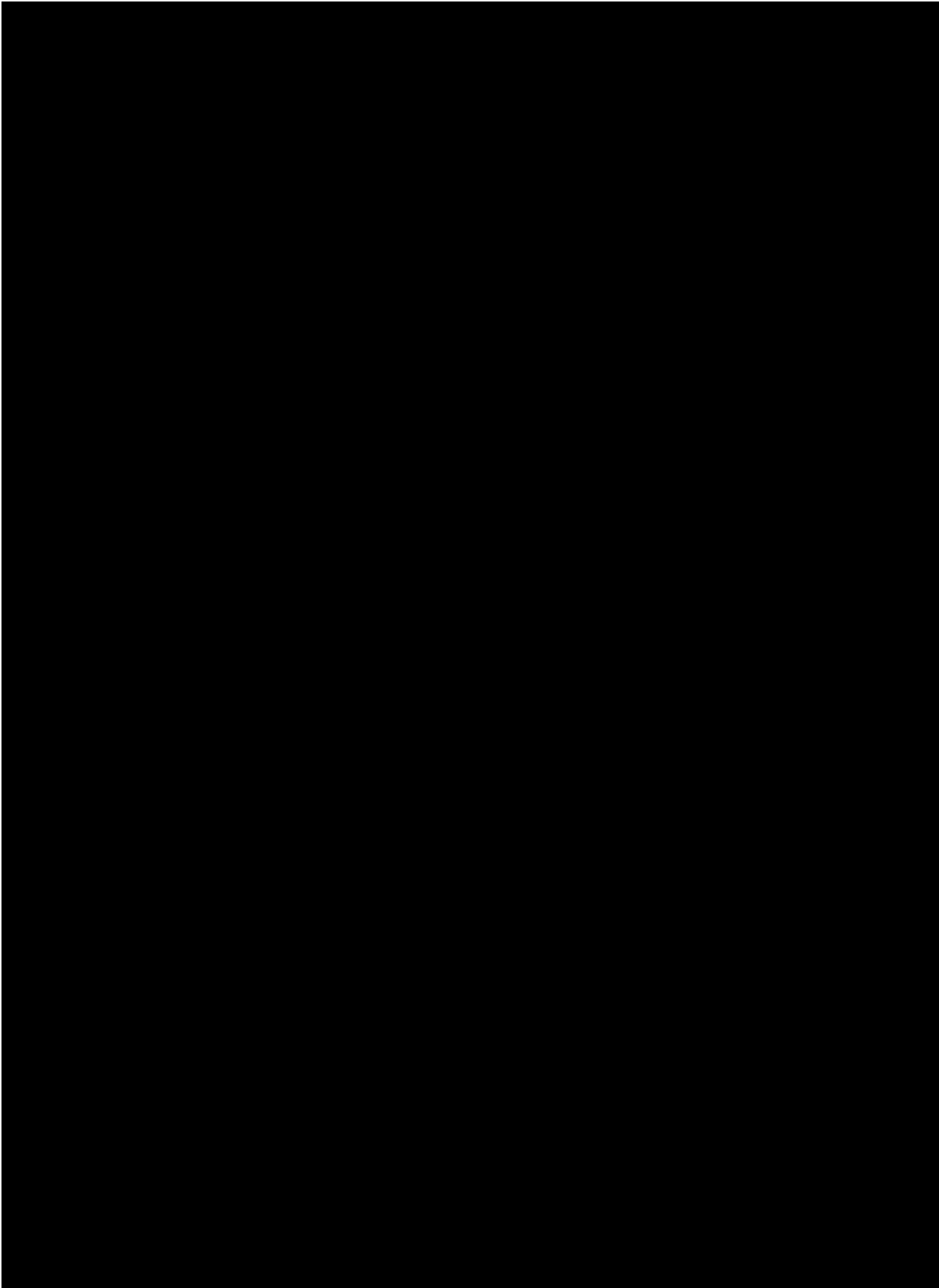
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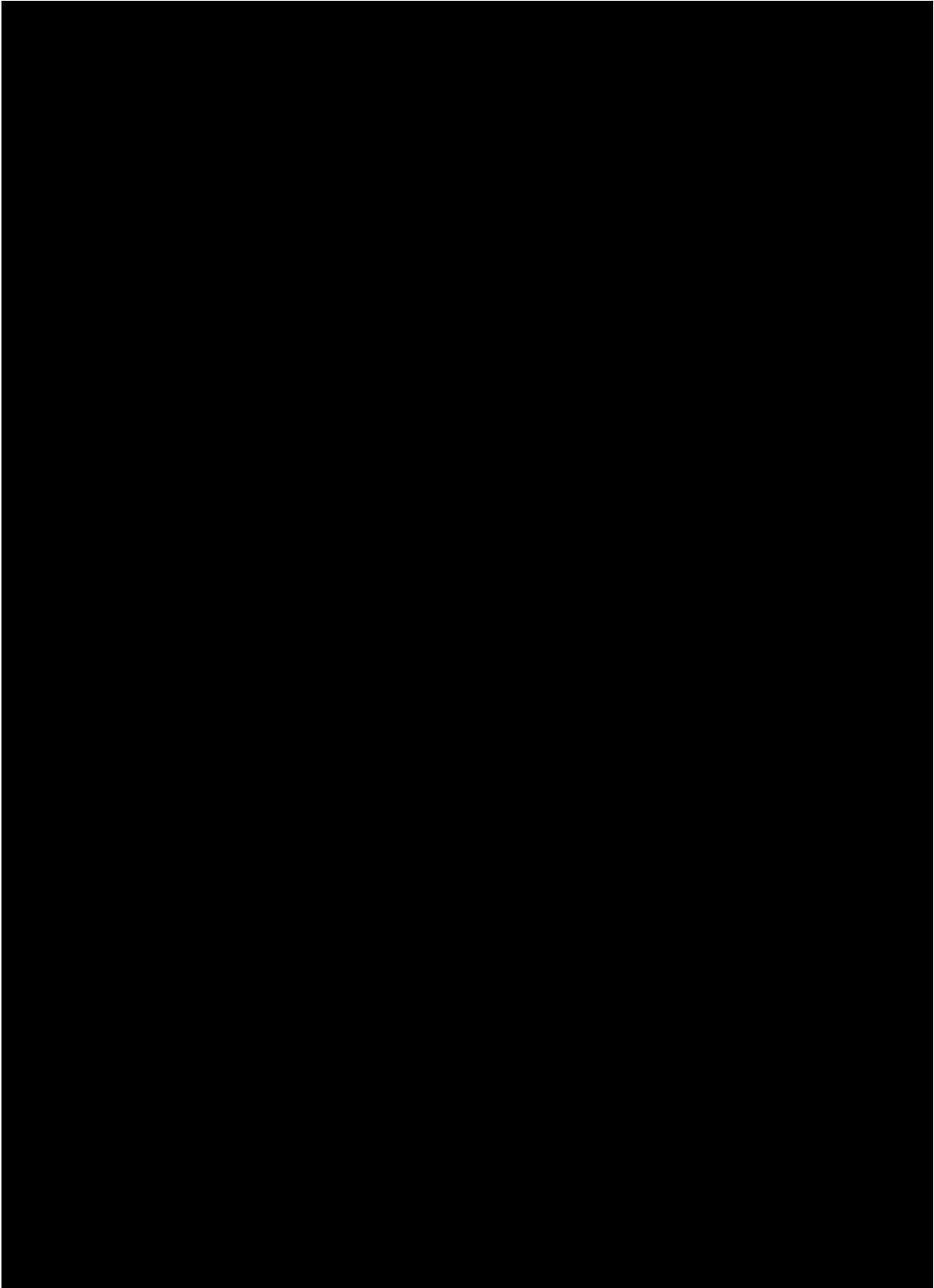
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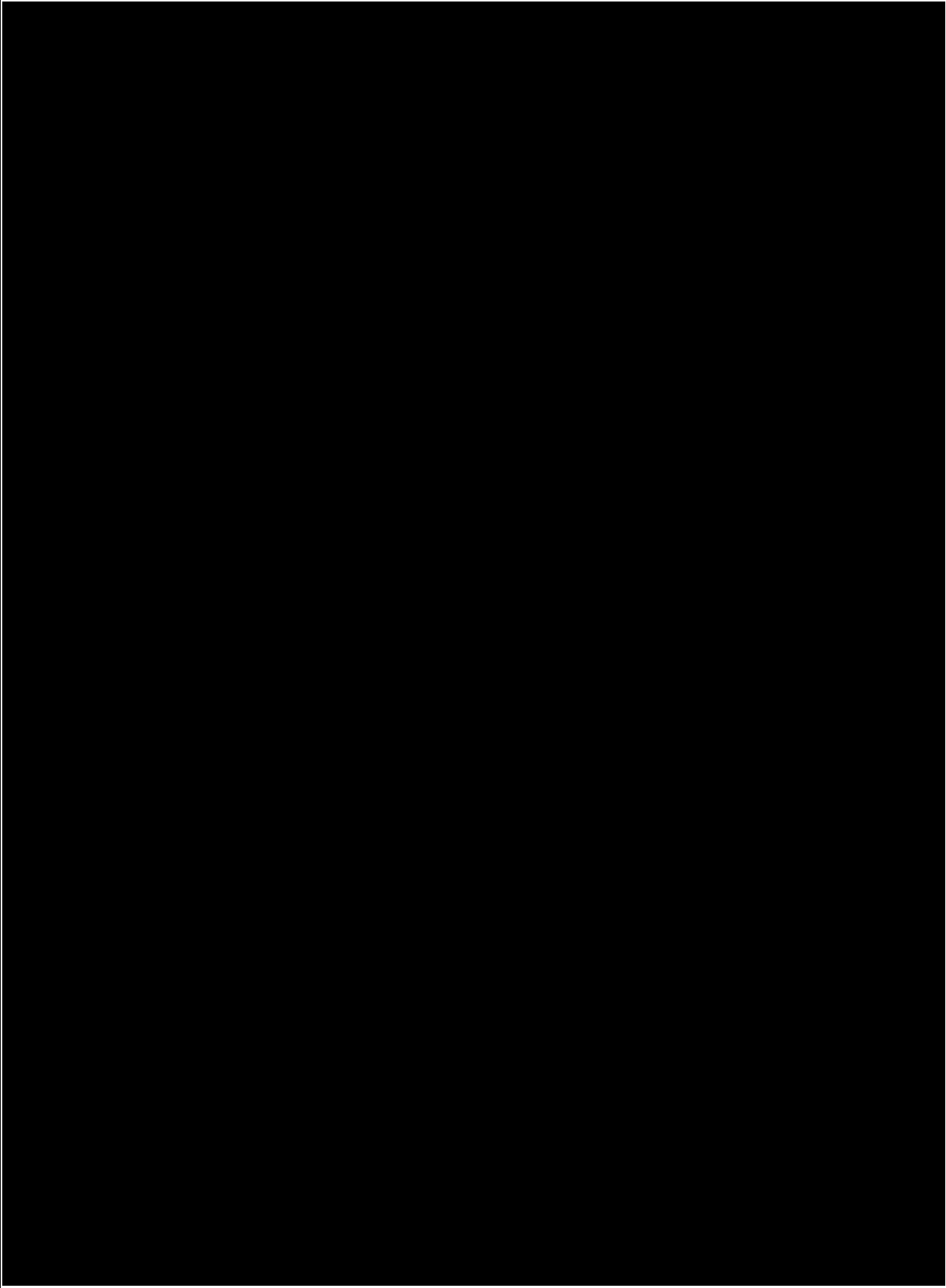
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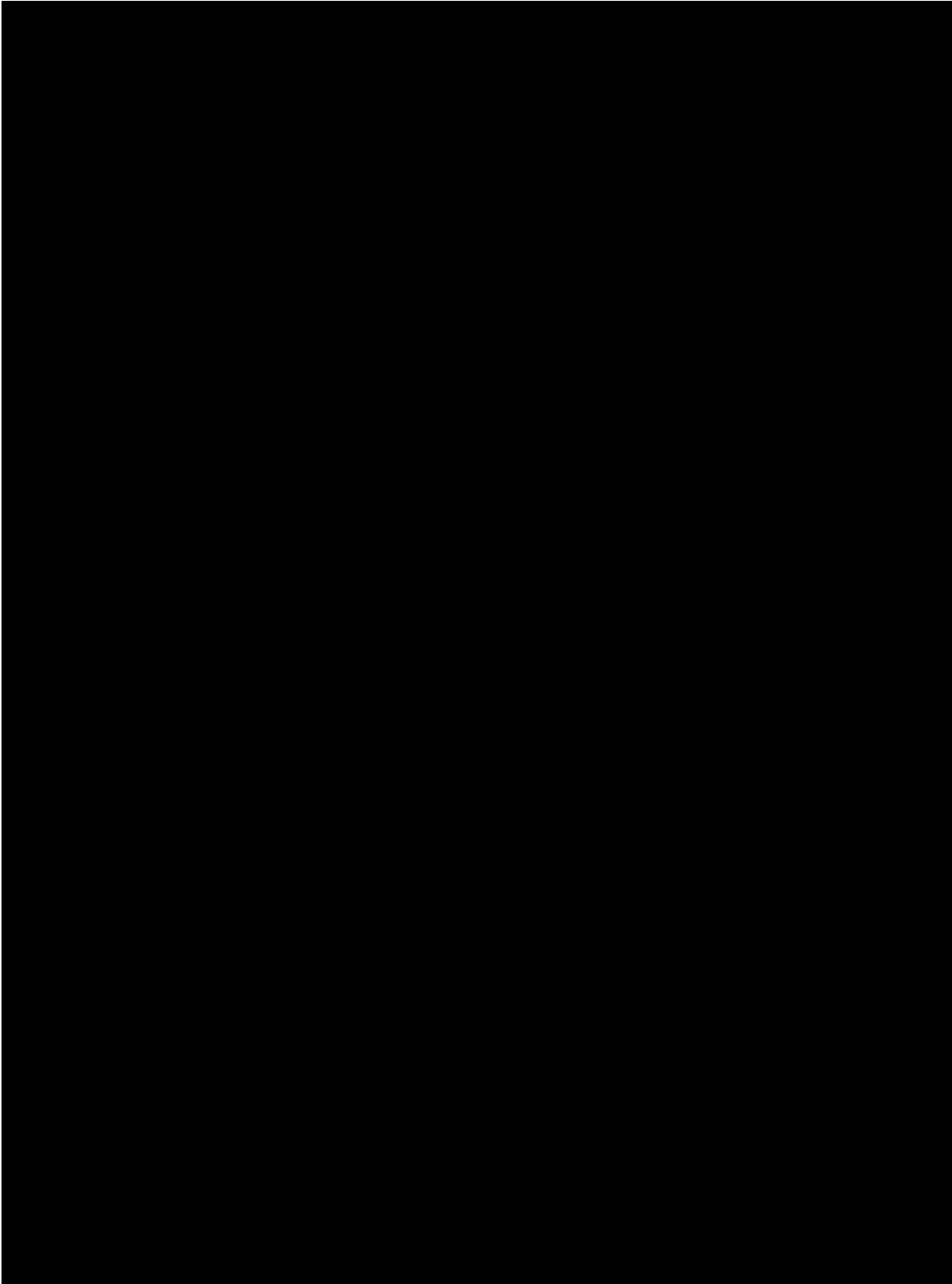
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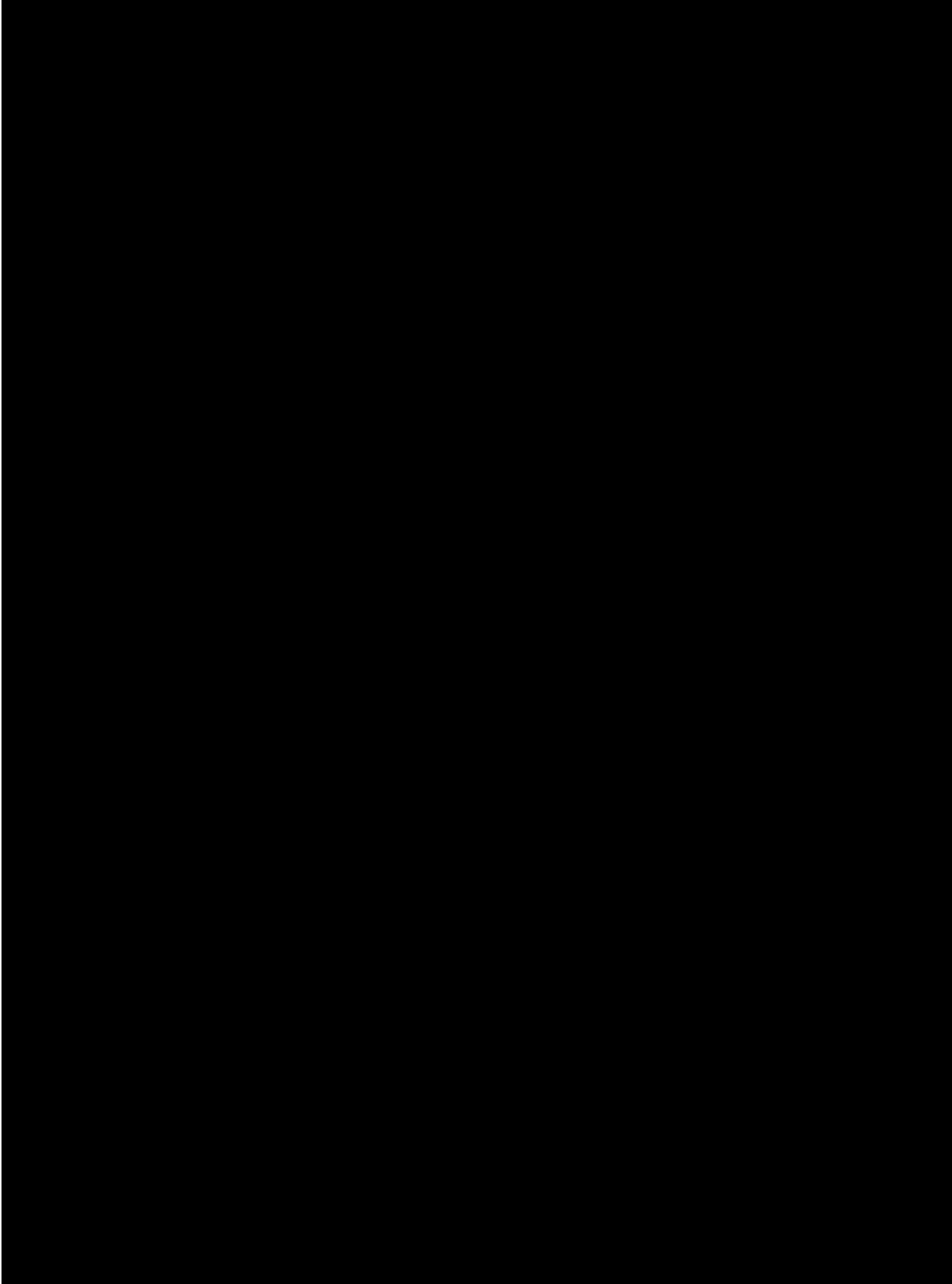
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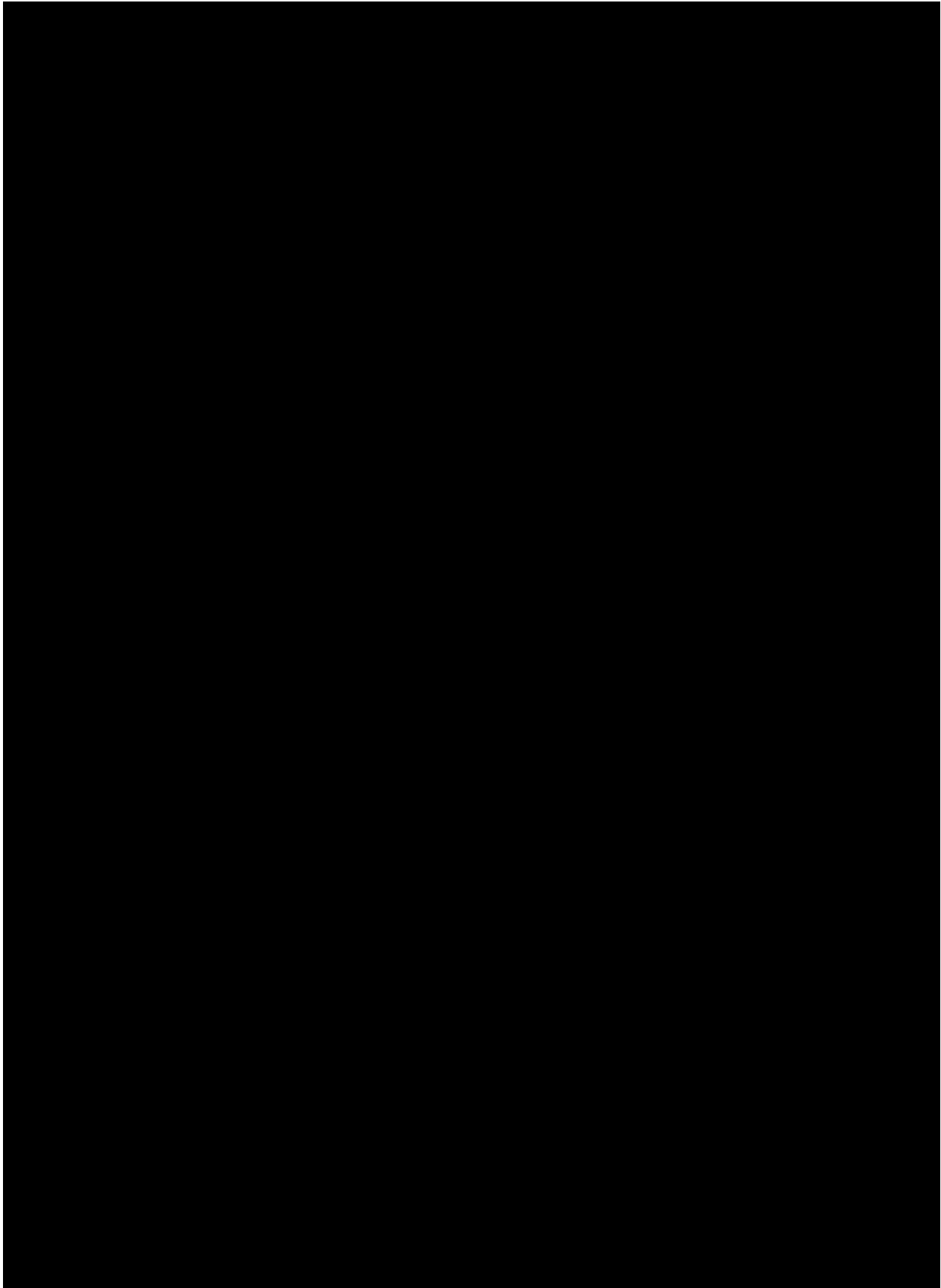
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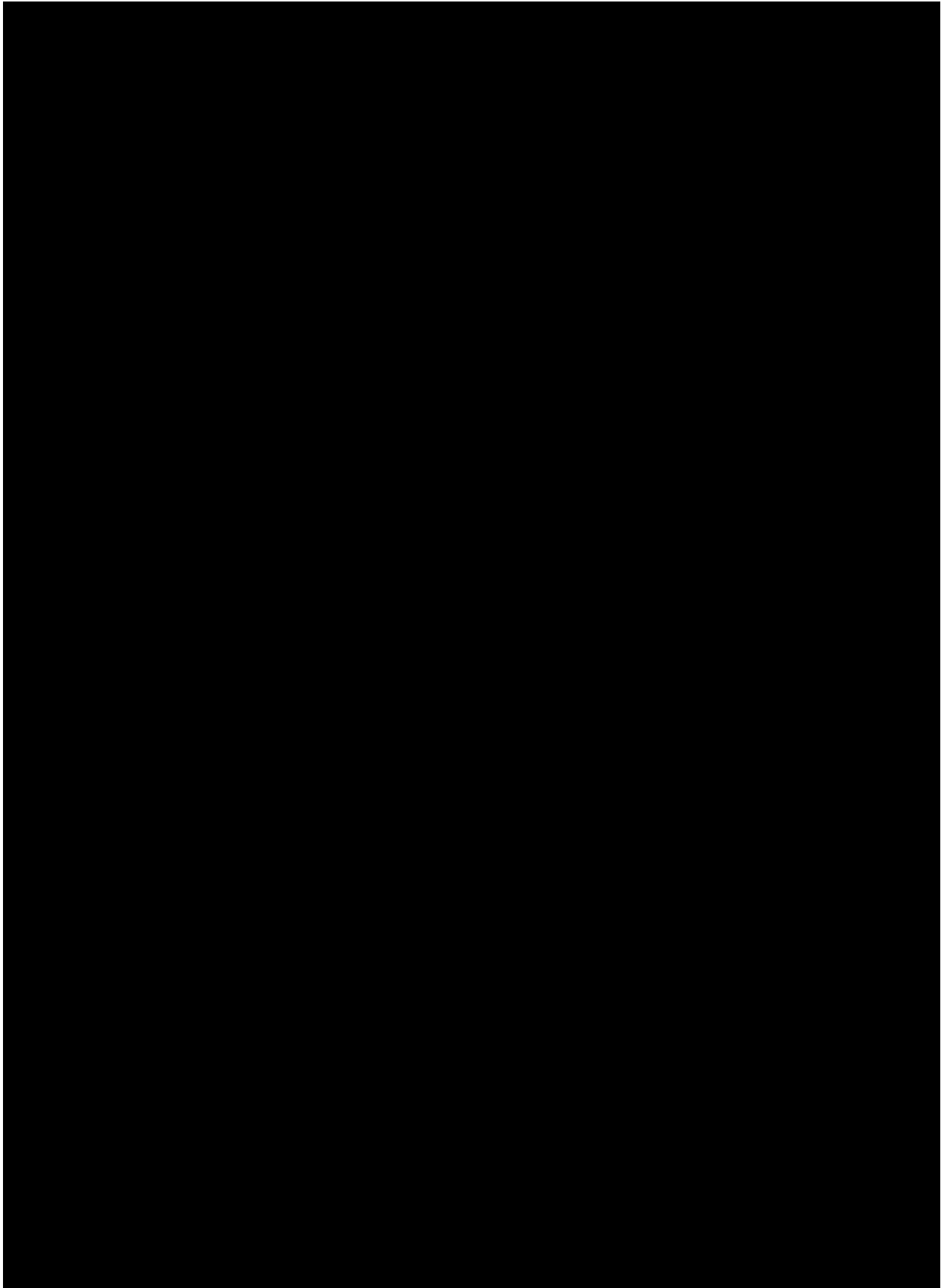
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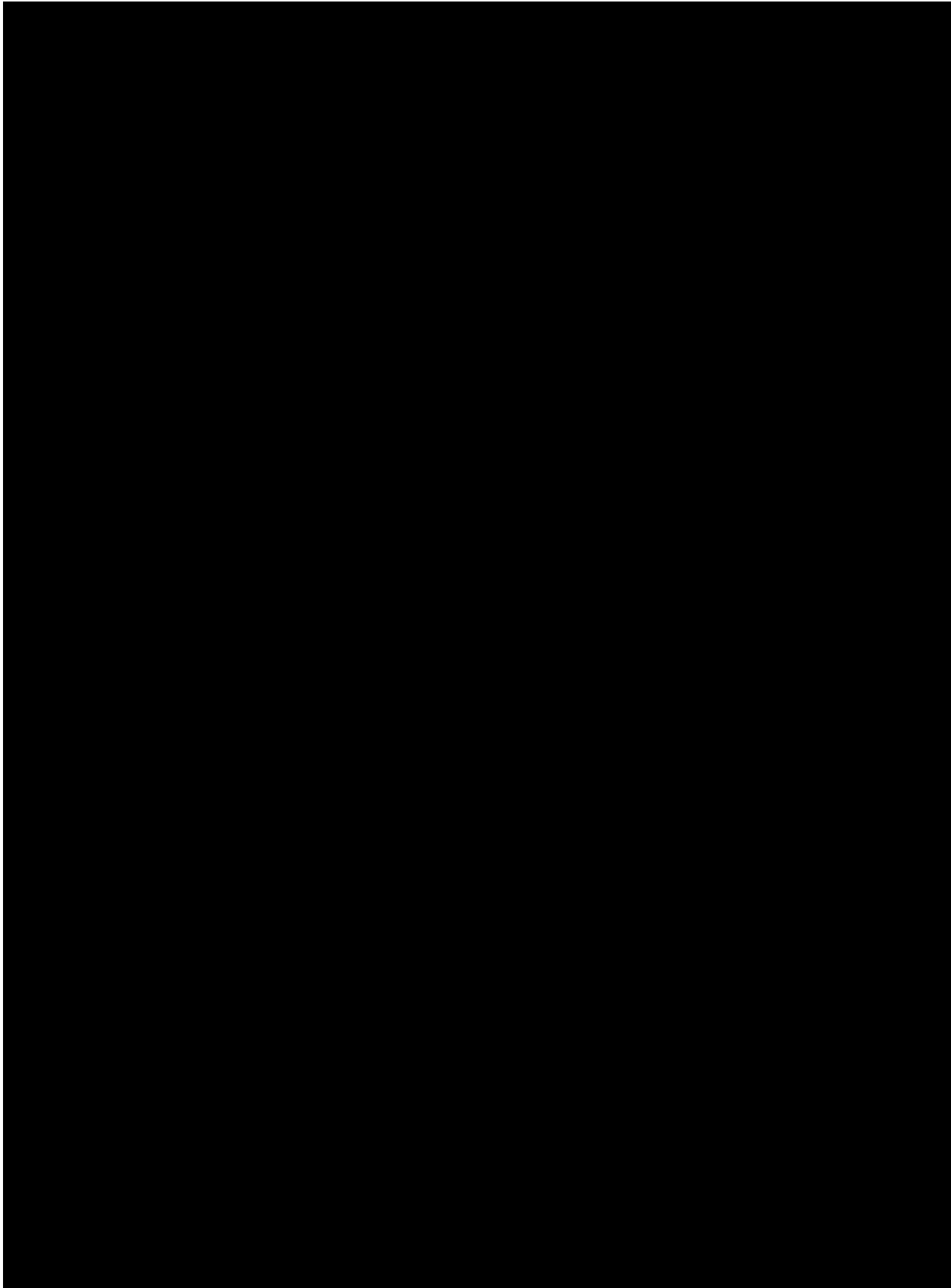
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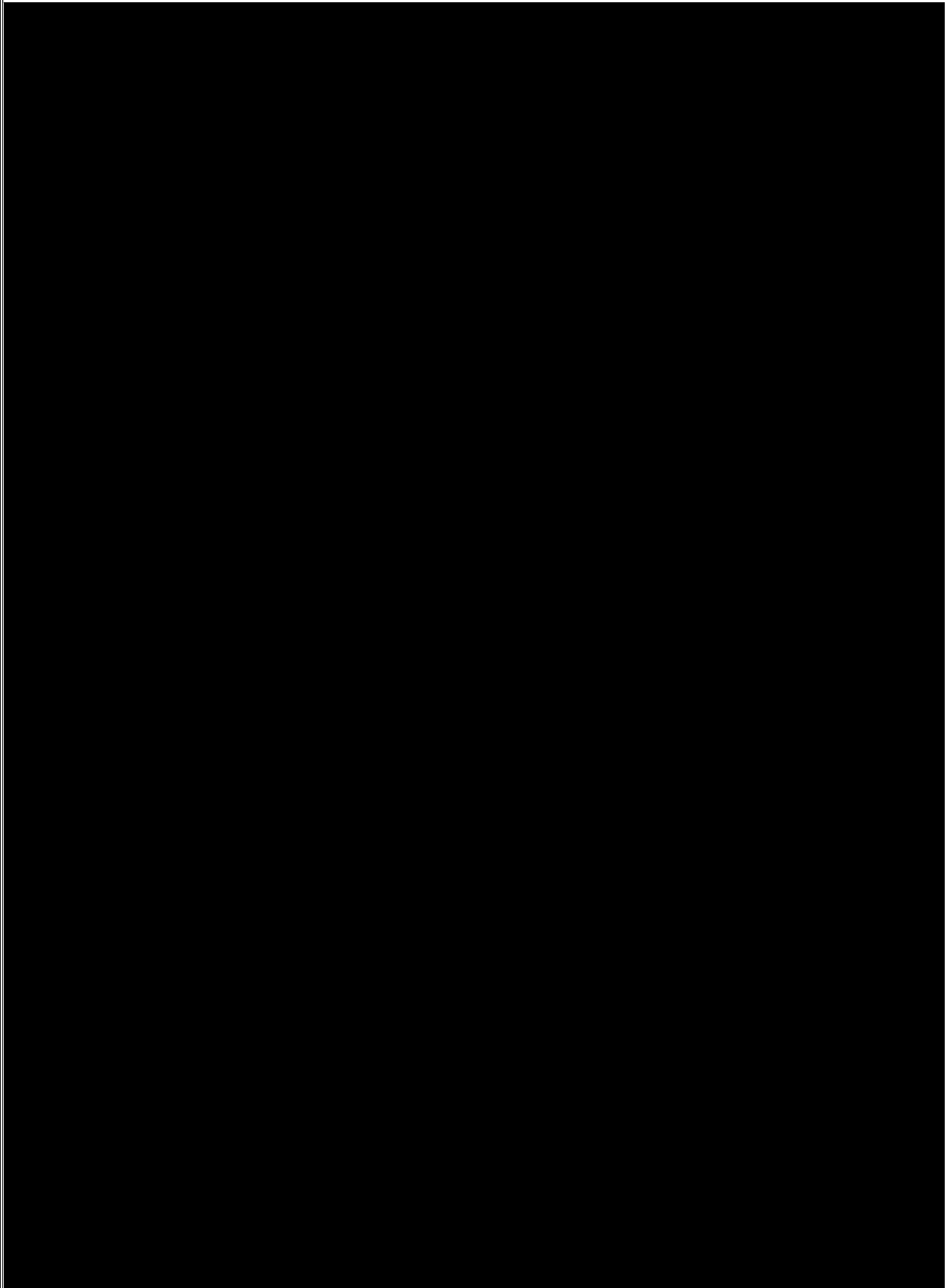
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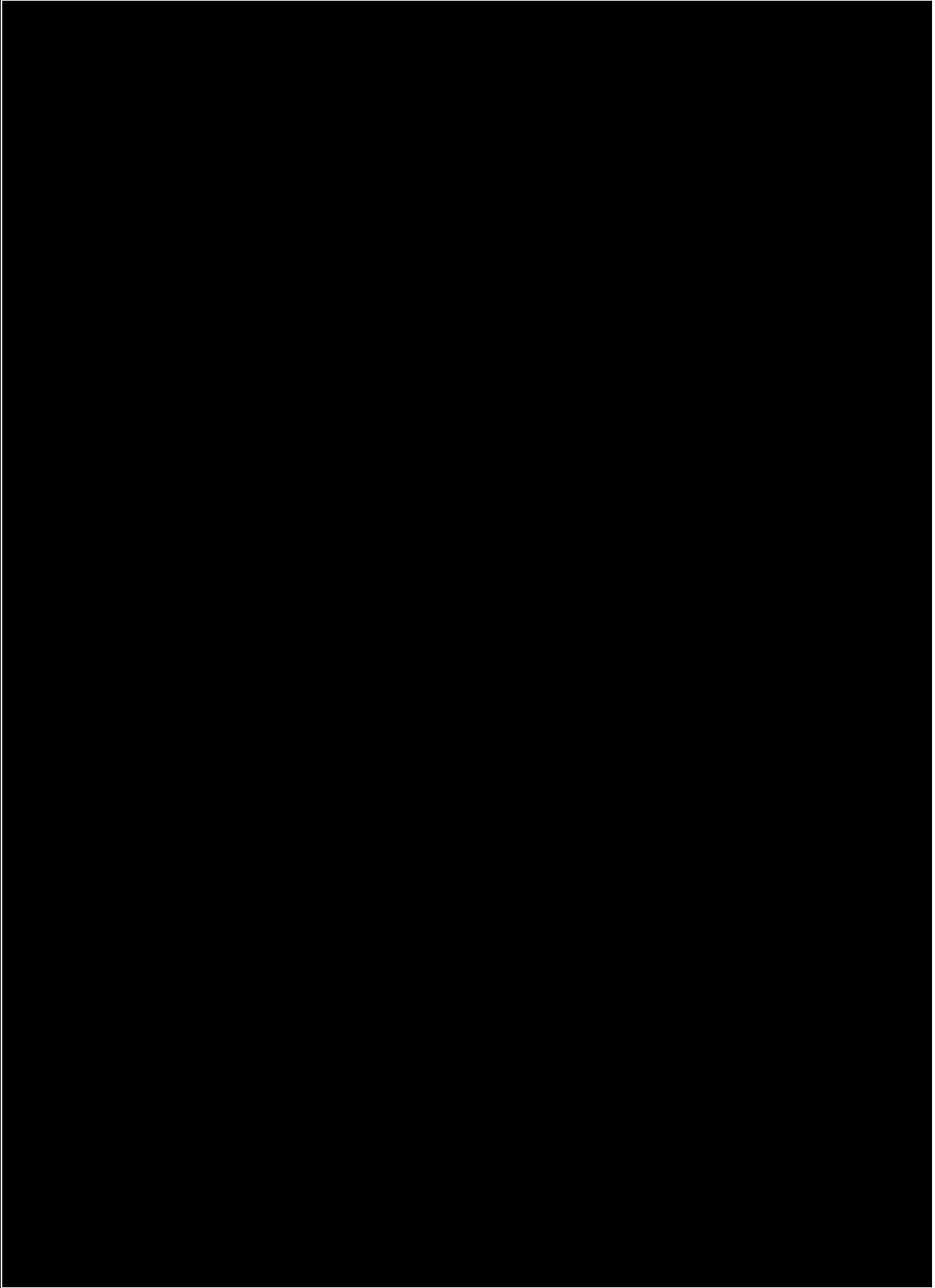
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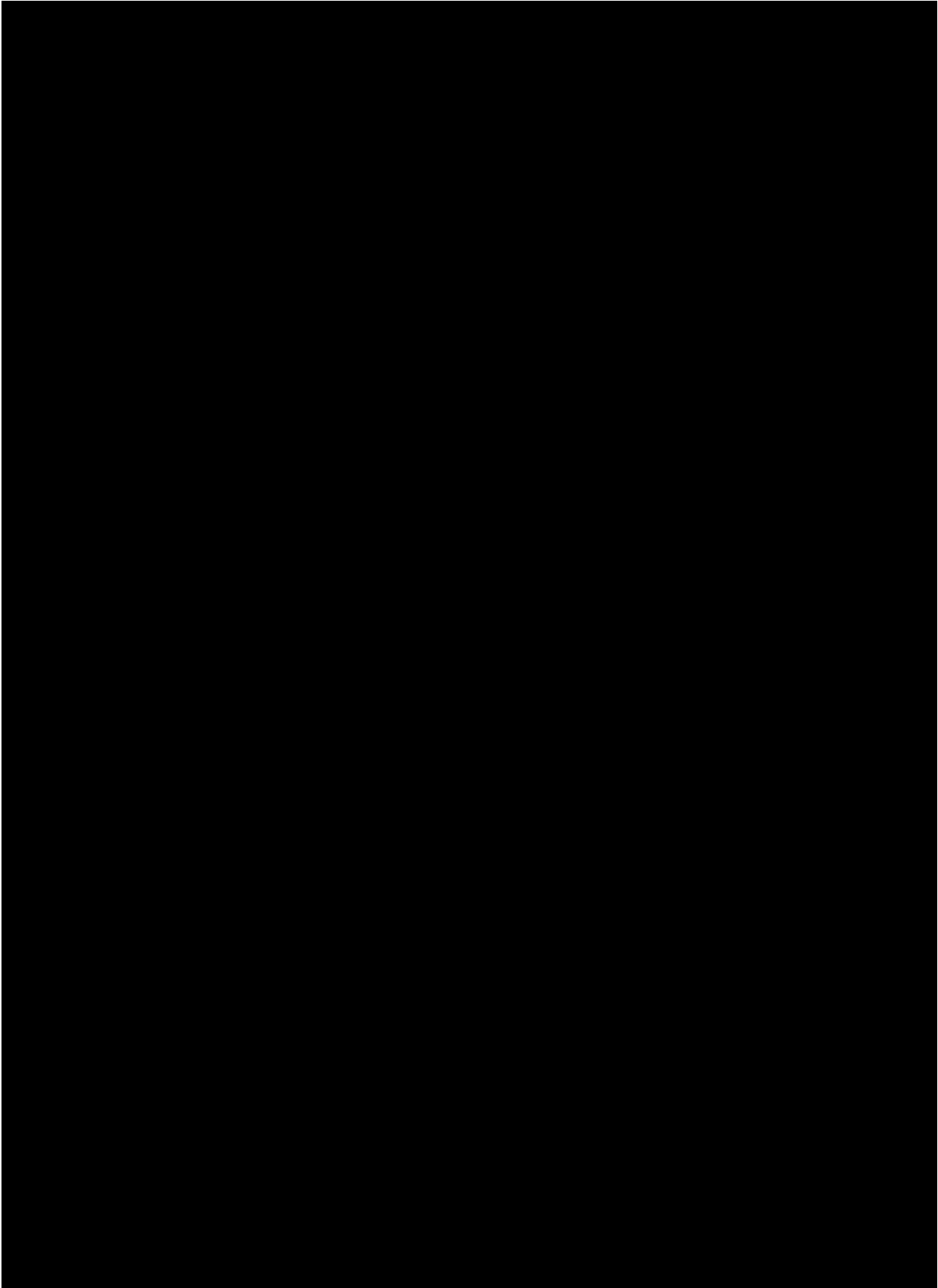
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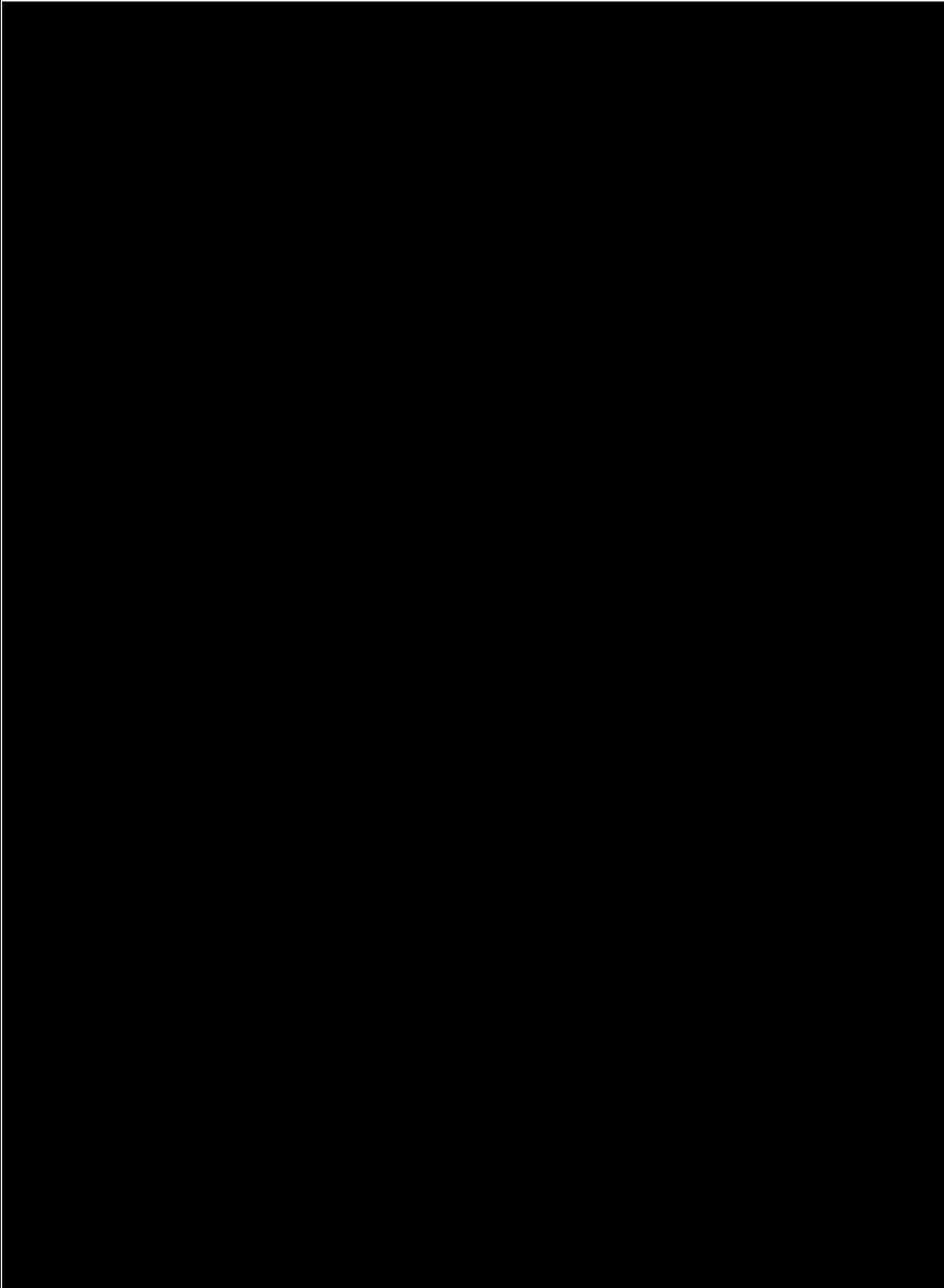
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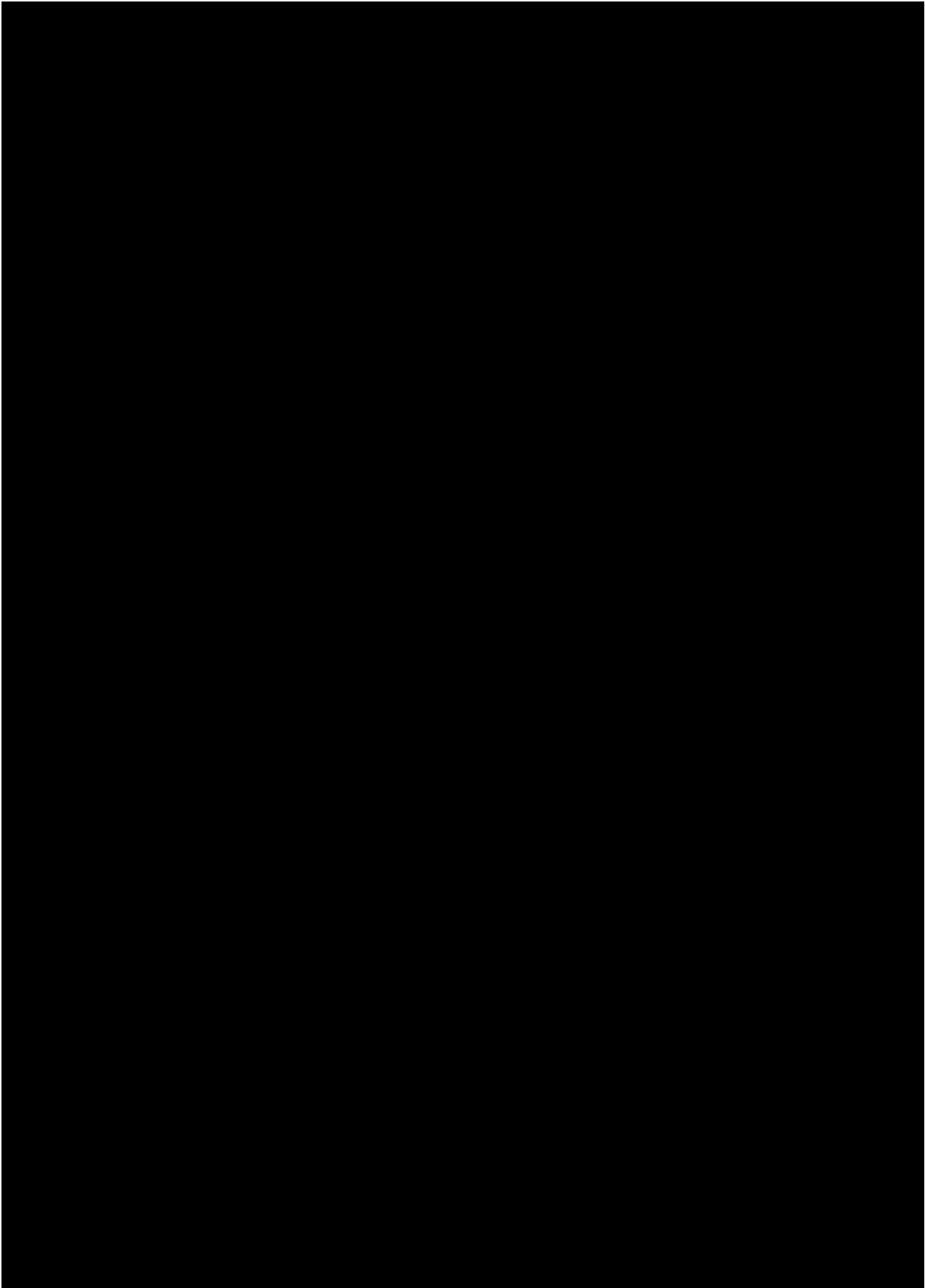
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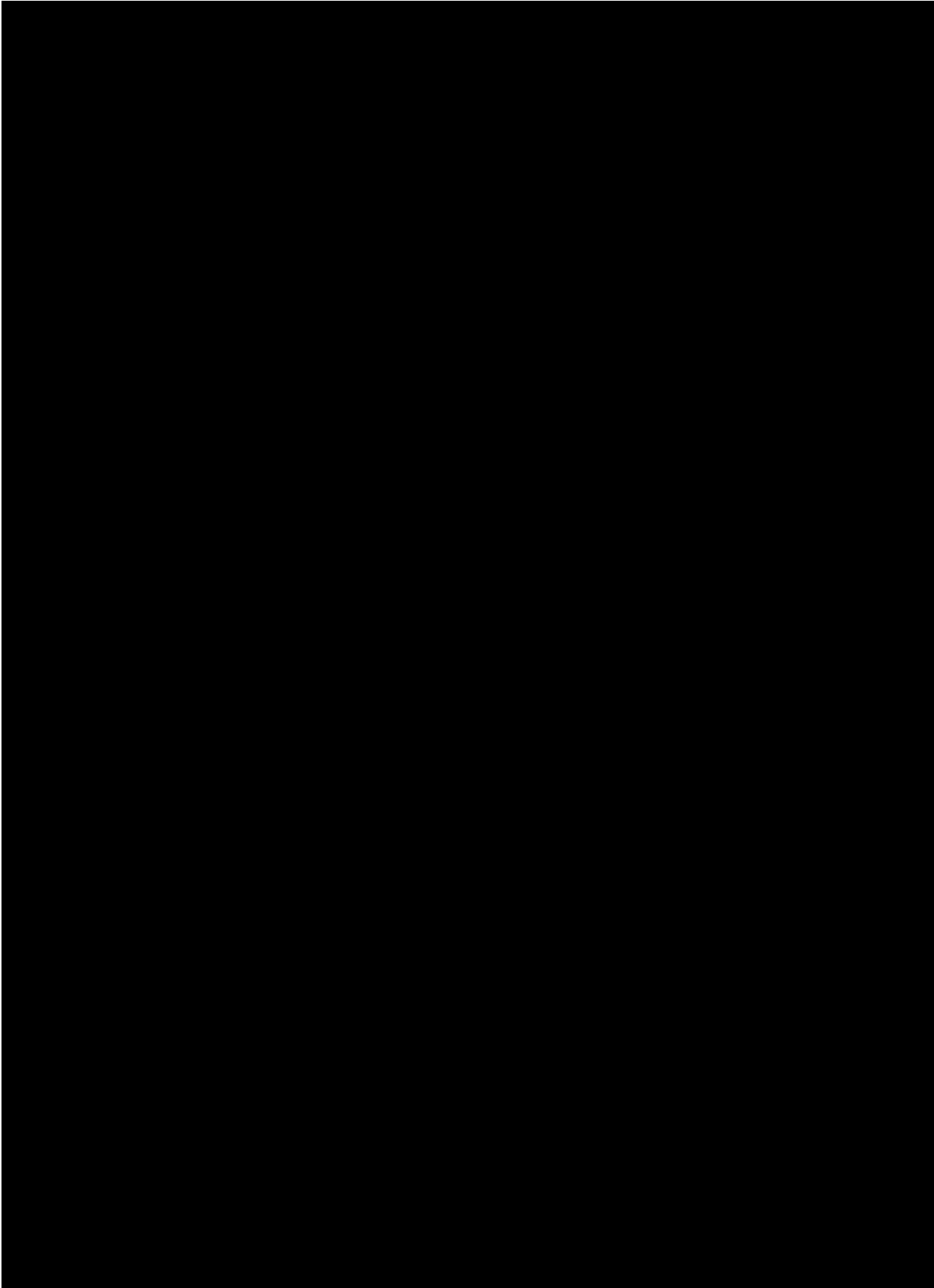
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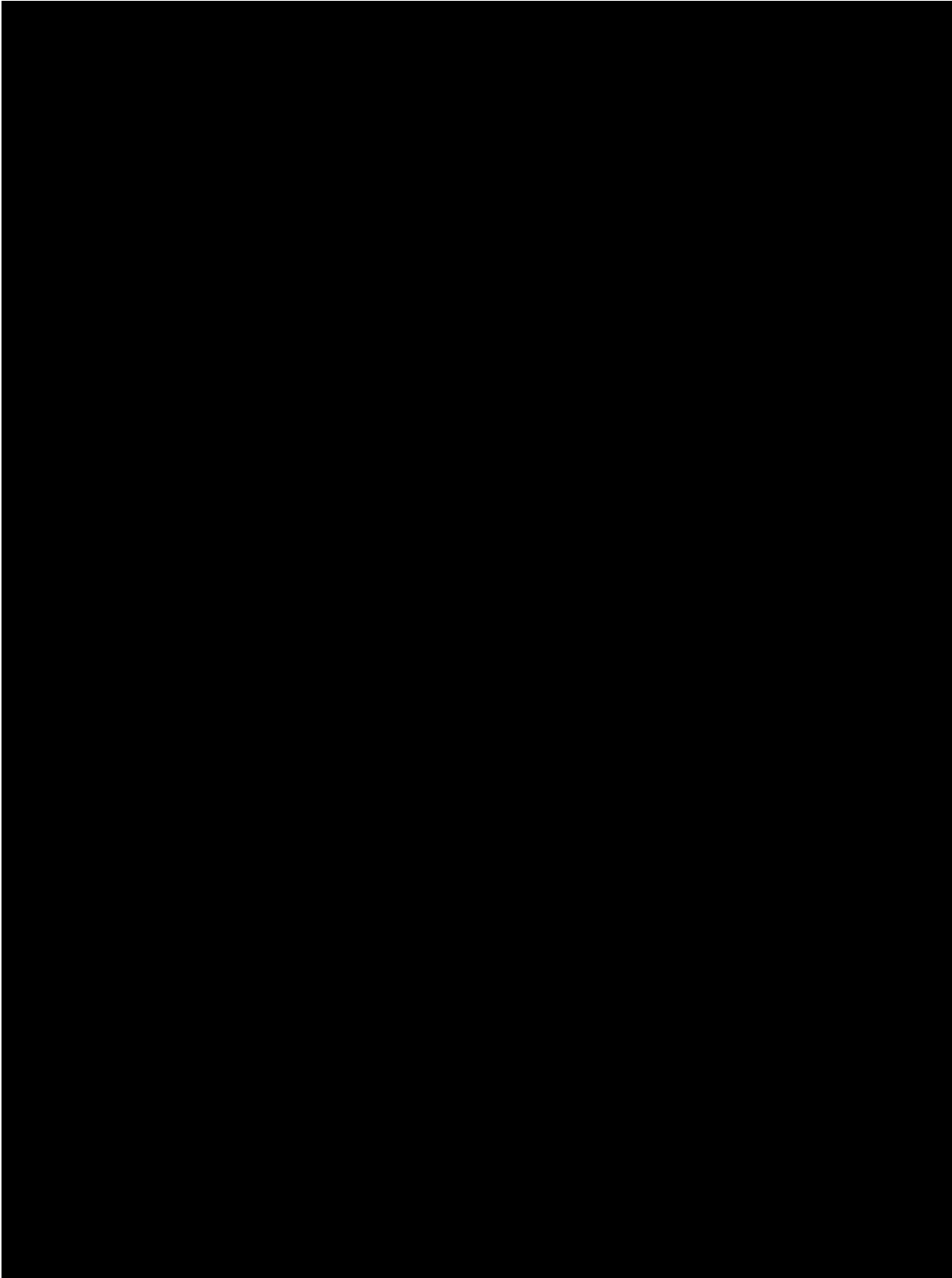
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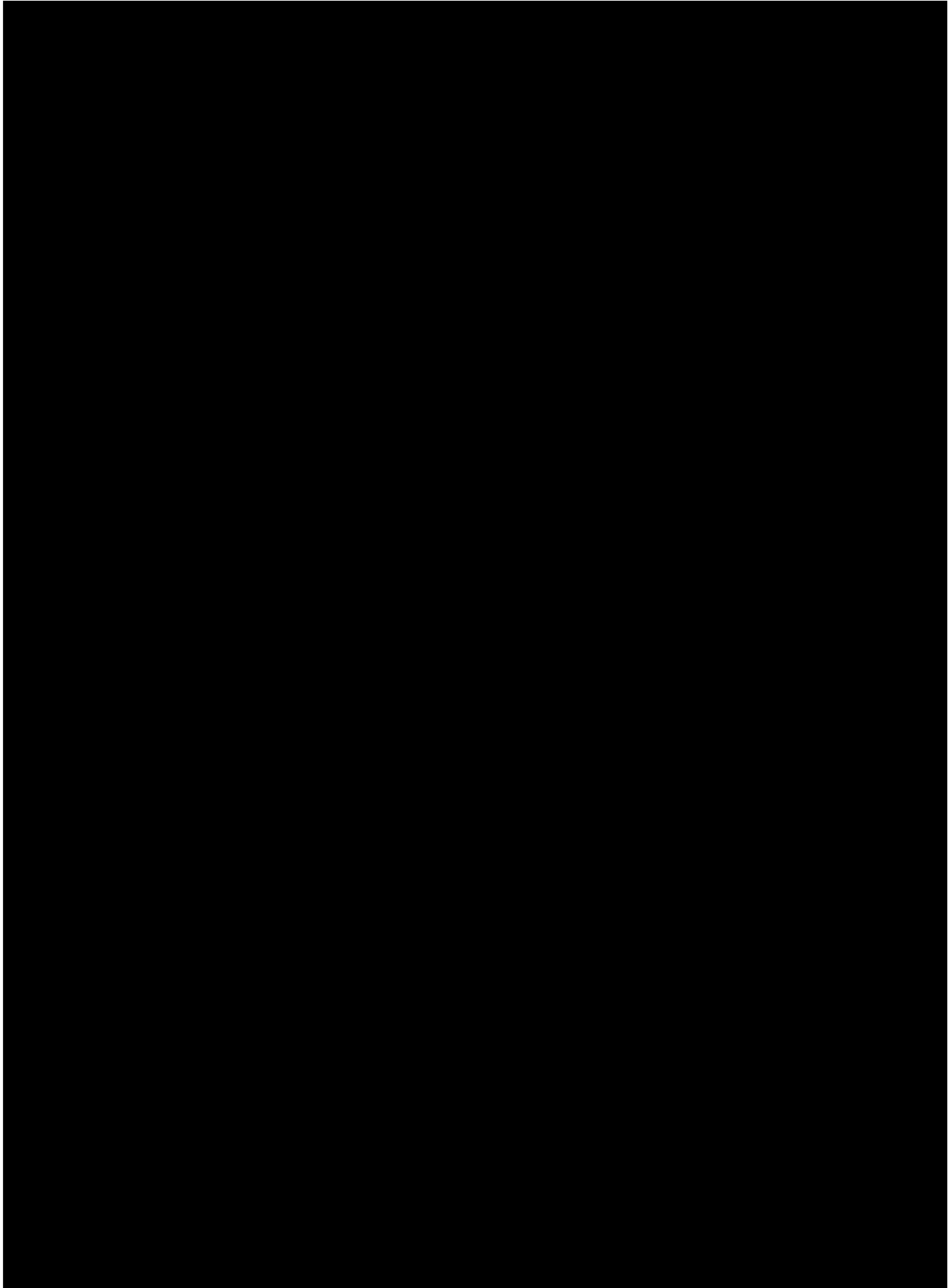
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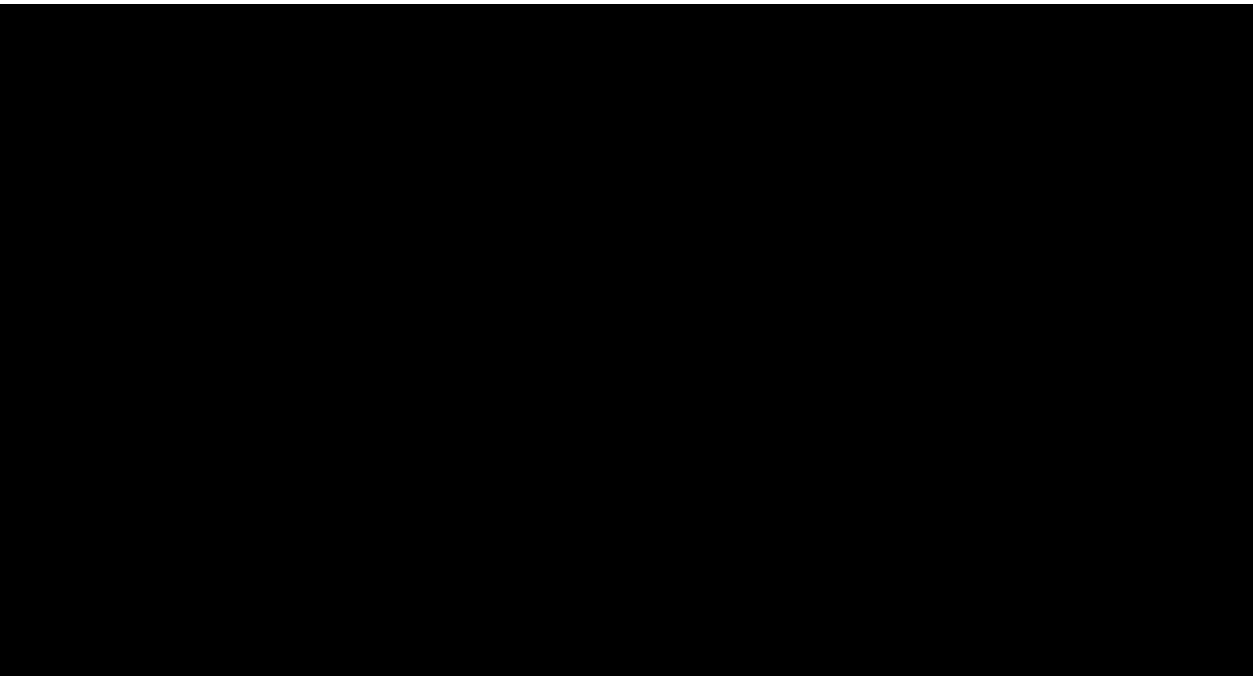
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10 MR. POLÁŠEK: Okay. I think we can break at
11 this point.

12 PRESIDENT TERCIER: Okay. We take 15 minutes
13 and start again at 5 past 5:00.

14 You know that you are under testimony again.
15 It doesn't mean that you have to stay here, but come
16 back and have no contact with representatives or
17 counsel, okay? From Respondent.

18 (Brief recess.)

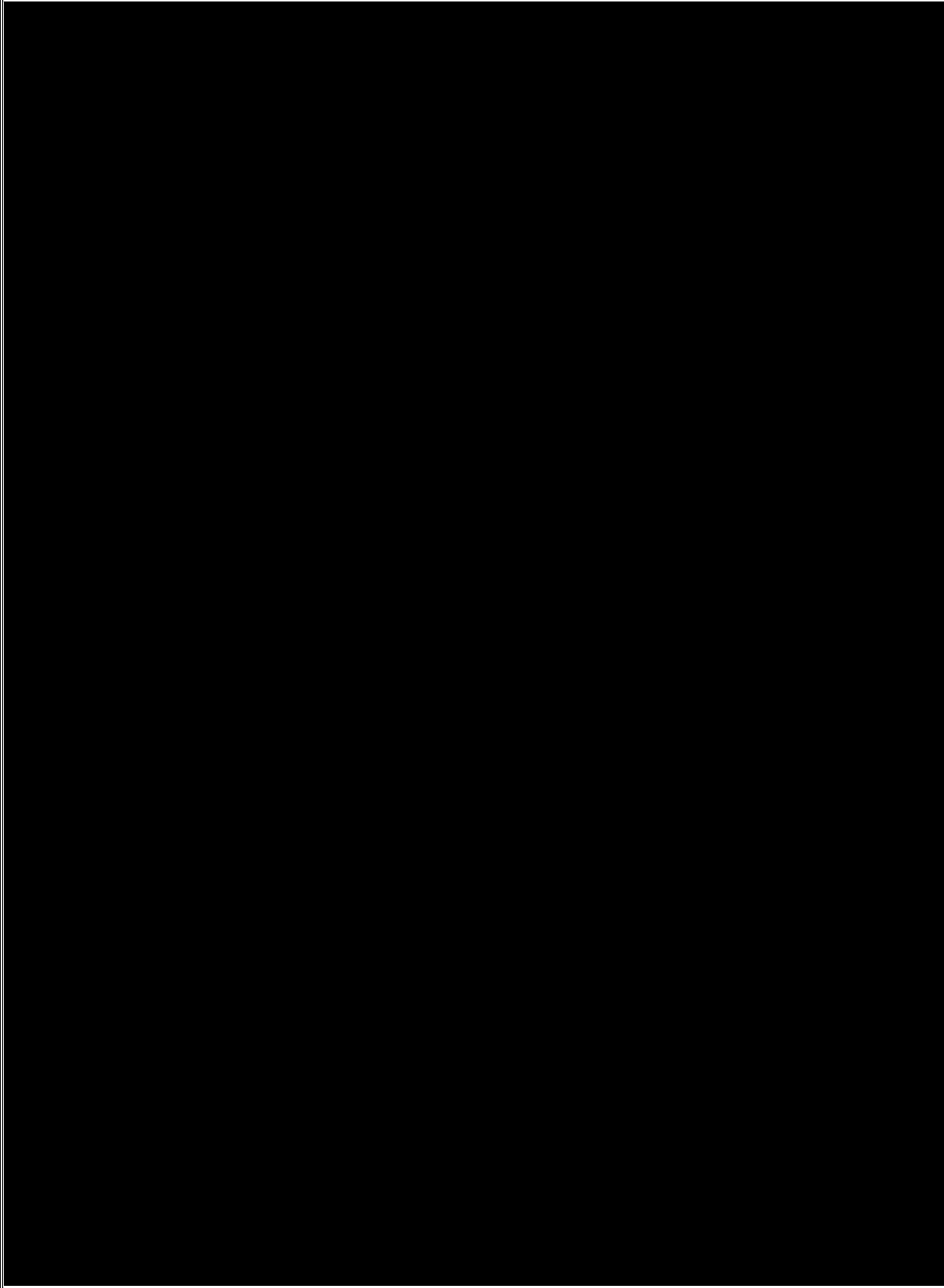
19 PRESIDENT TERCIER: Okay. I think we can now
20 proceed.

21 Please, Mr. Polášek.

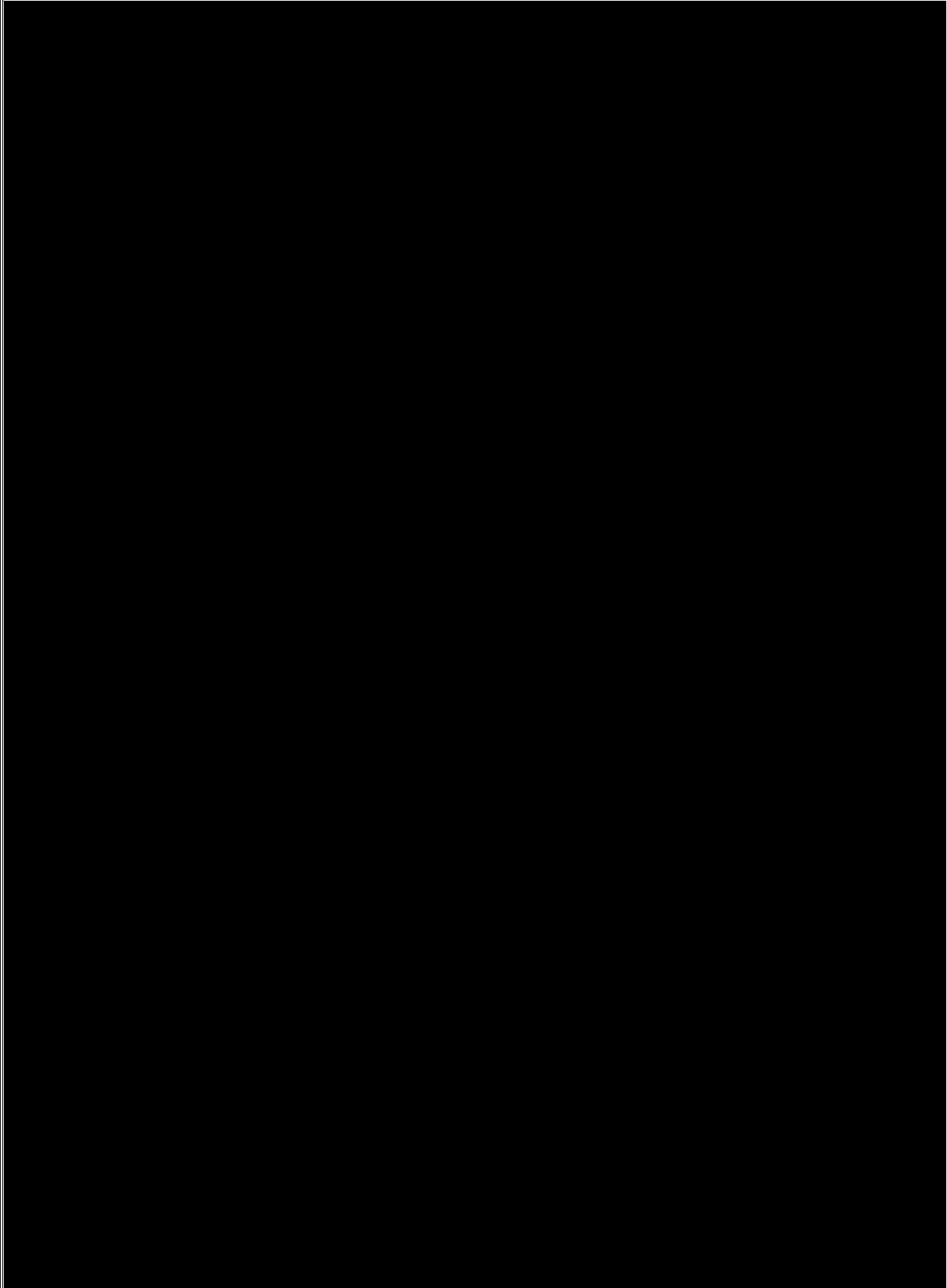
22 MR. POLÁŠEK: Thank you, Mr. President.

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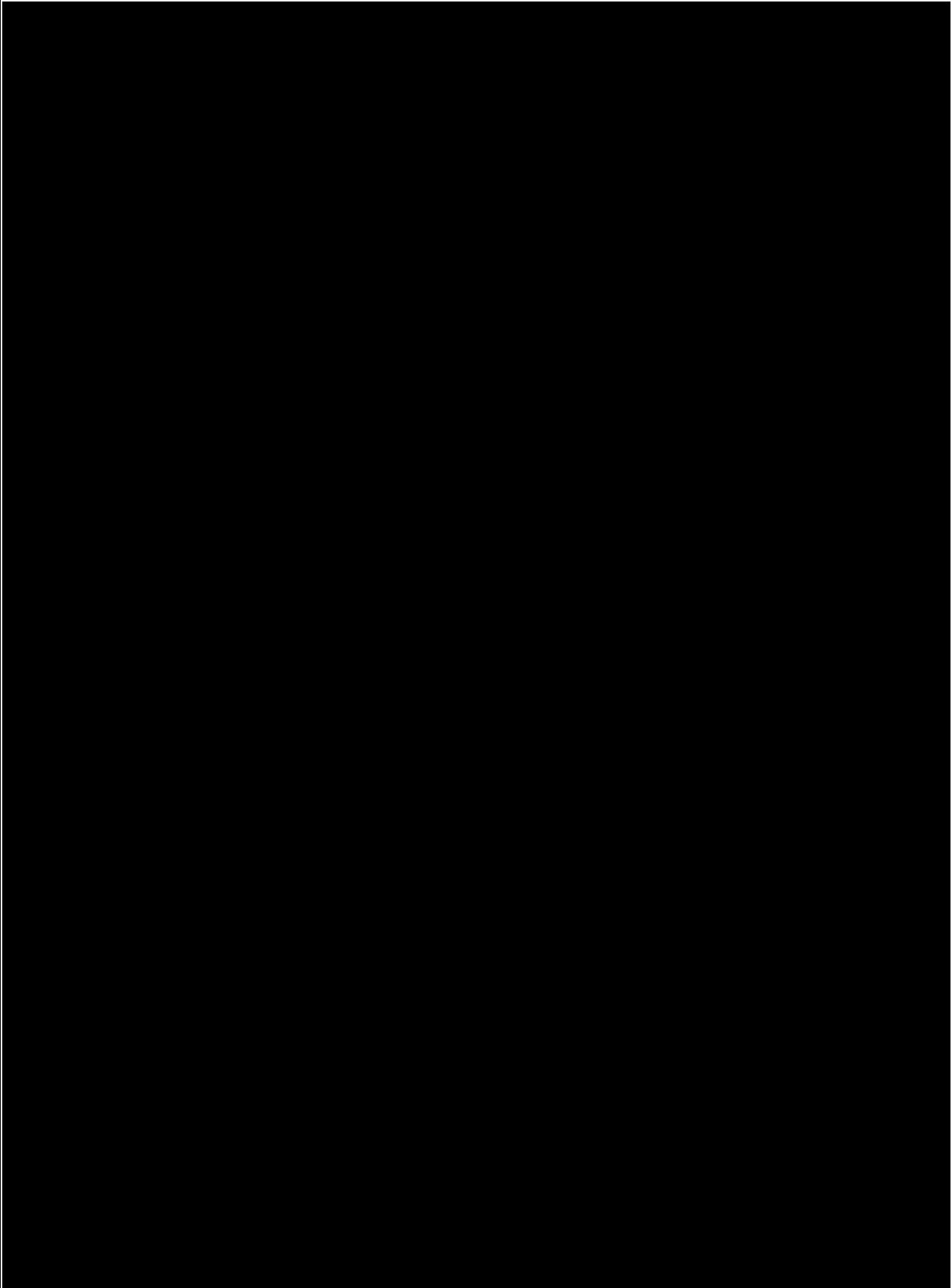
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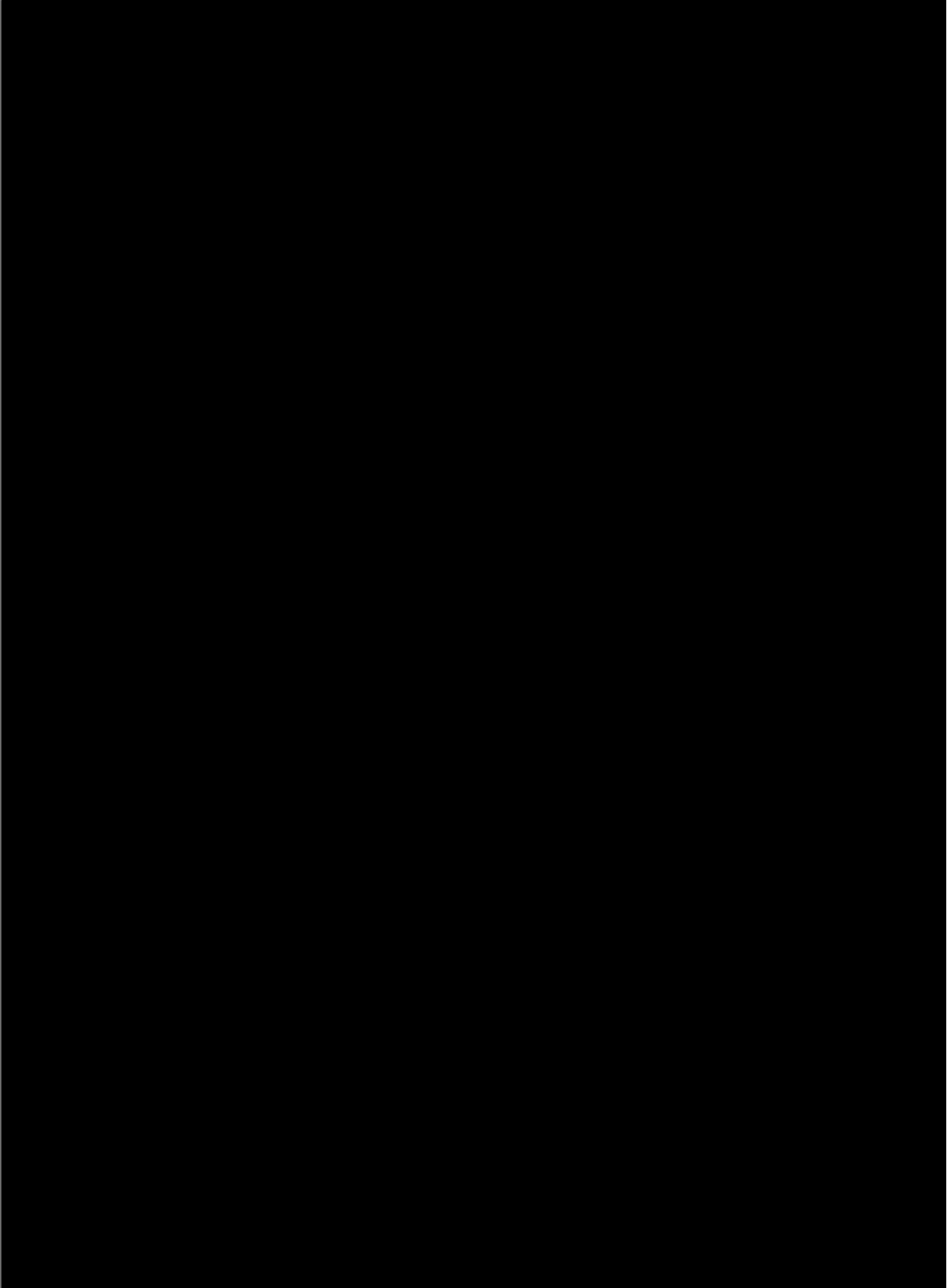
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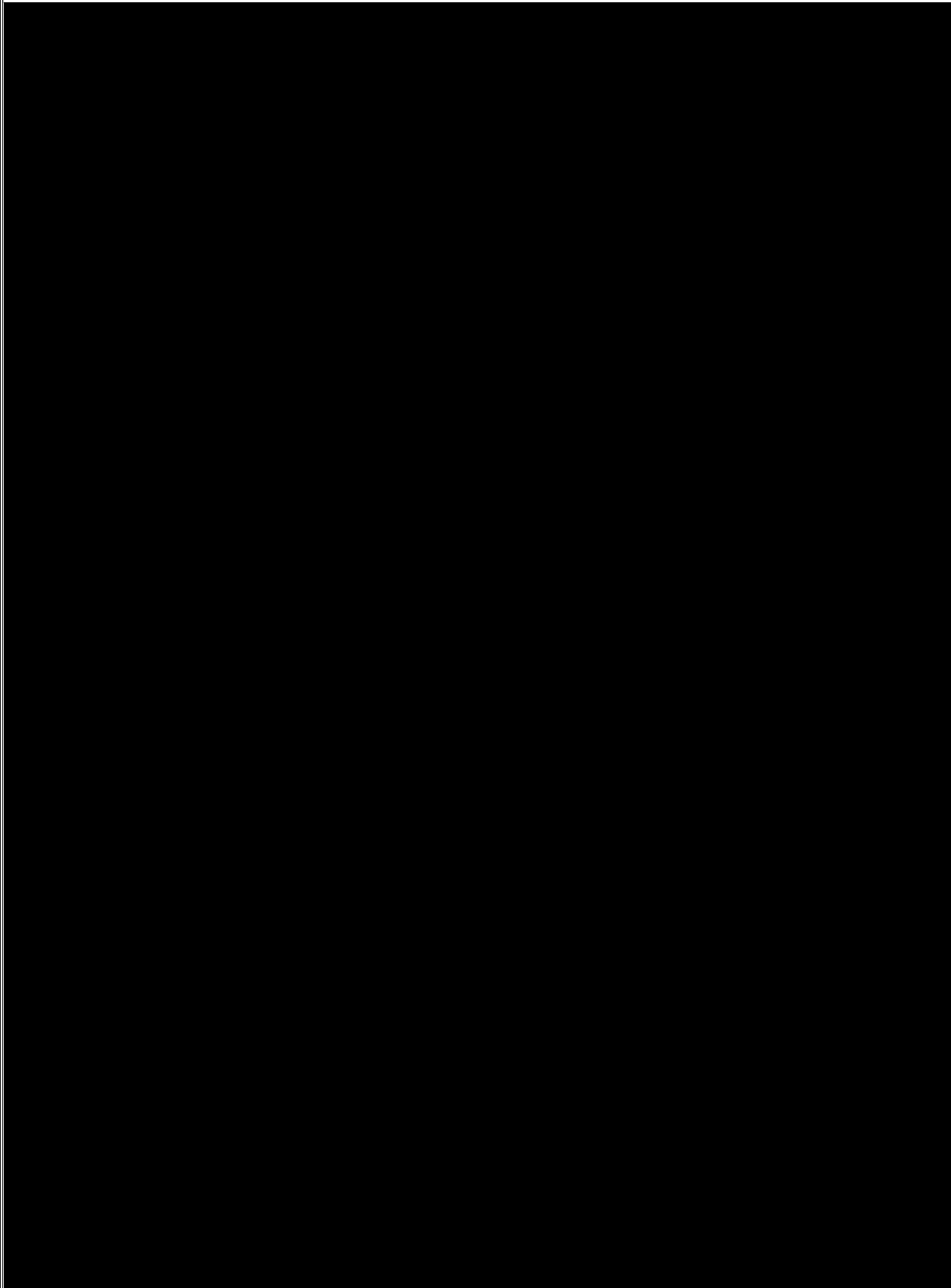
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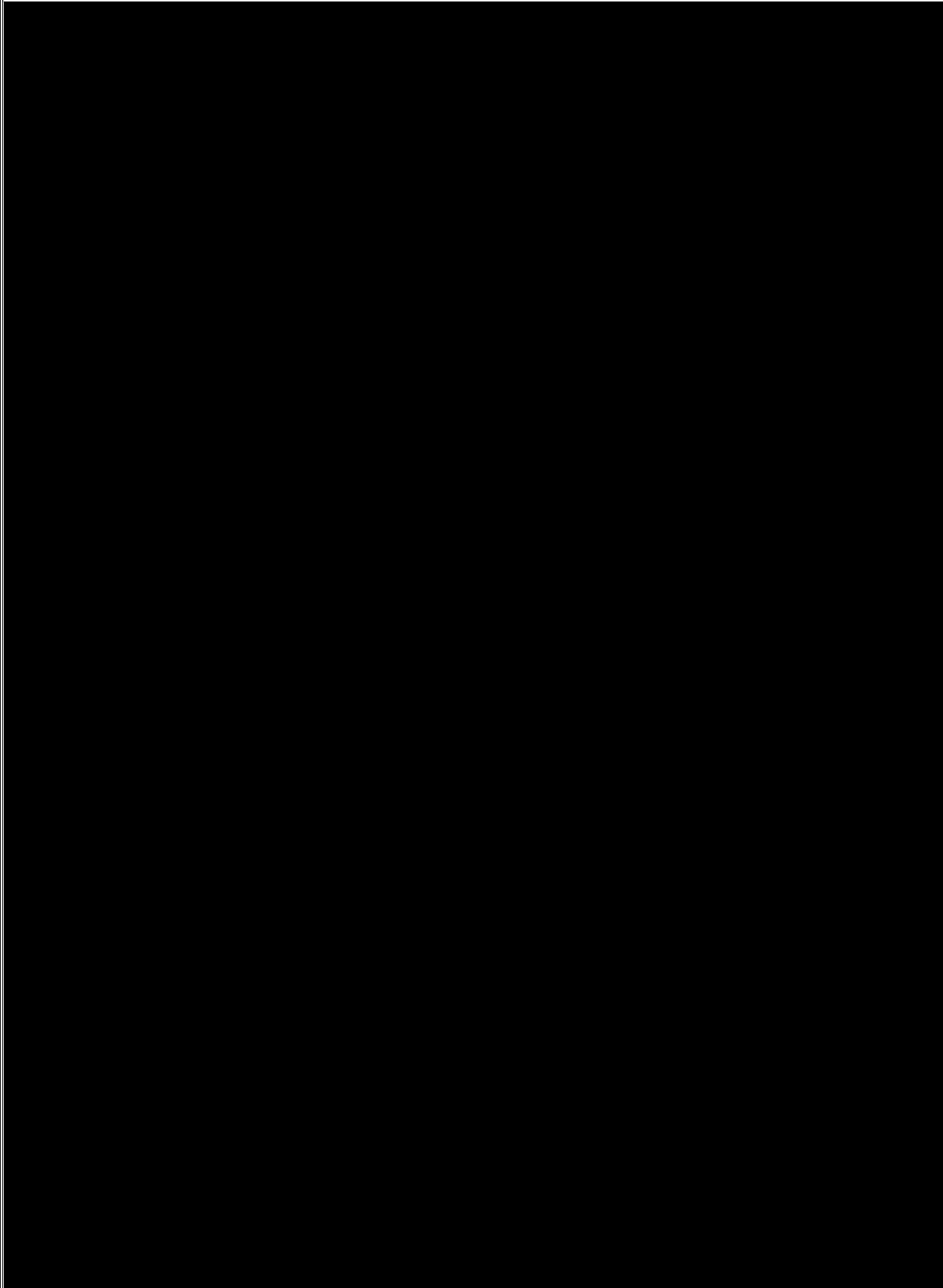
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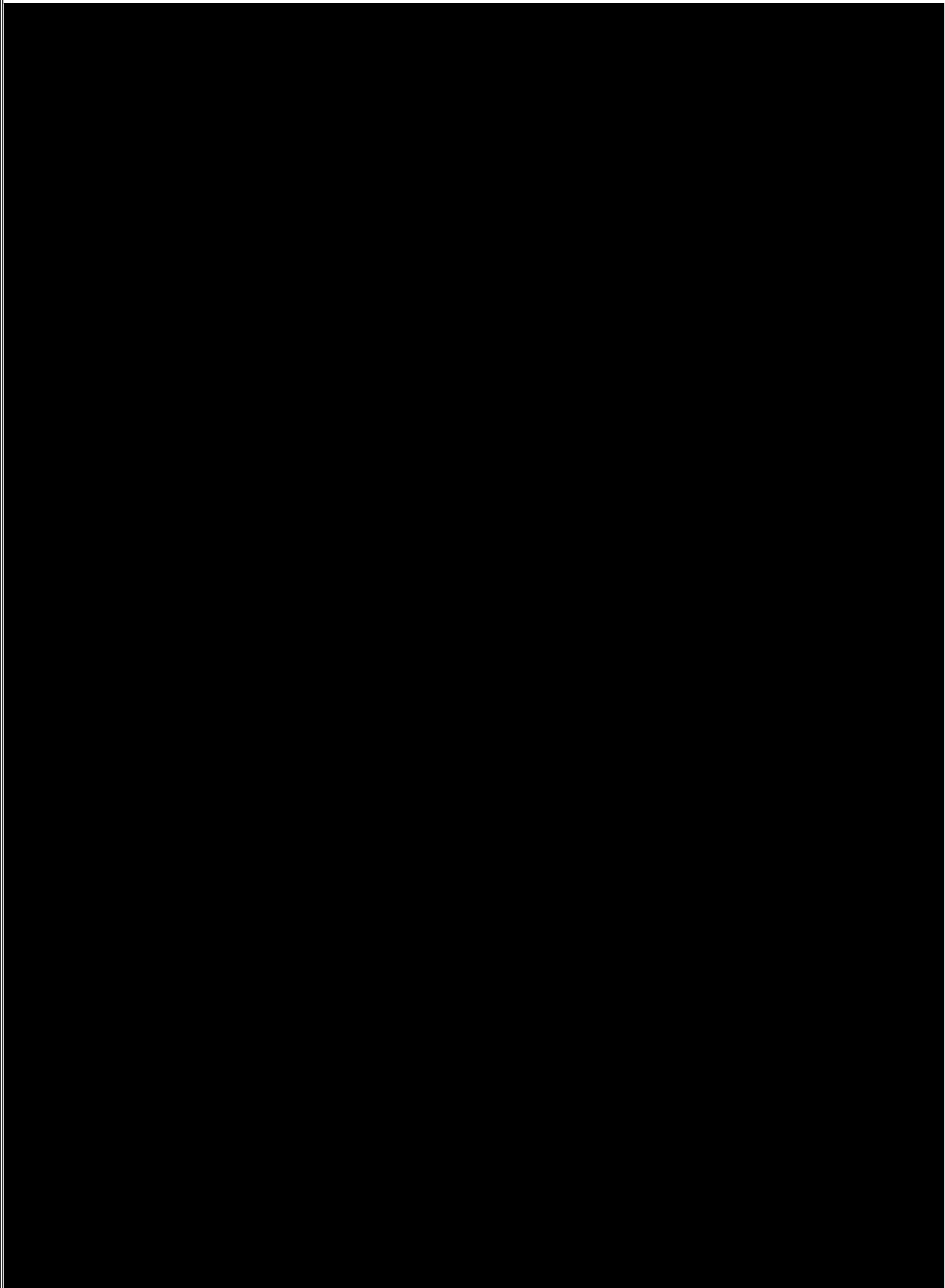
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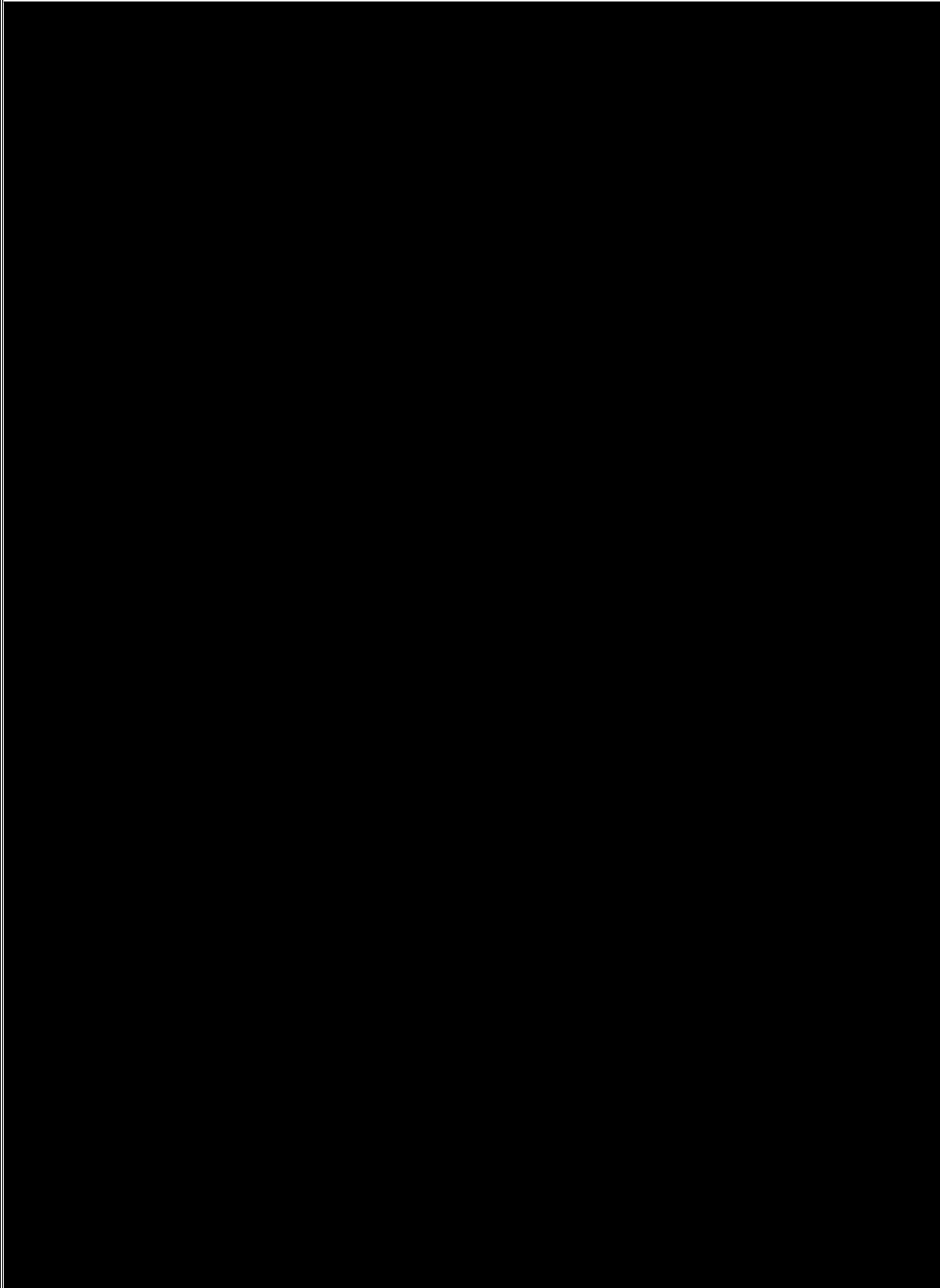
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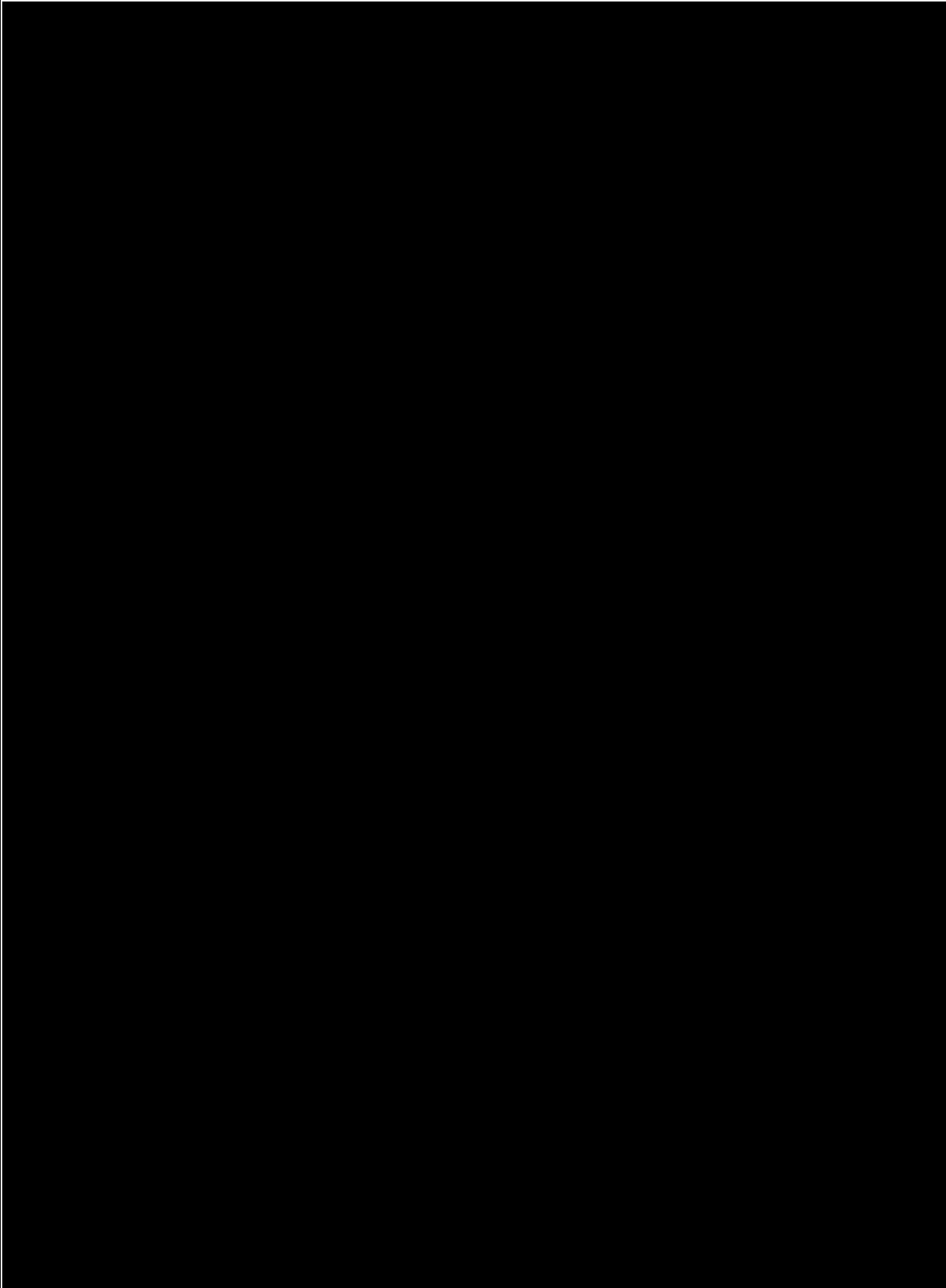
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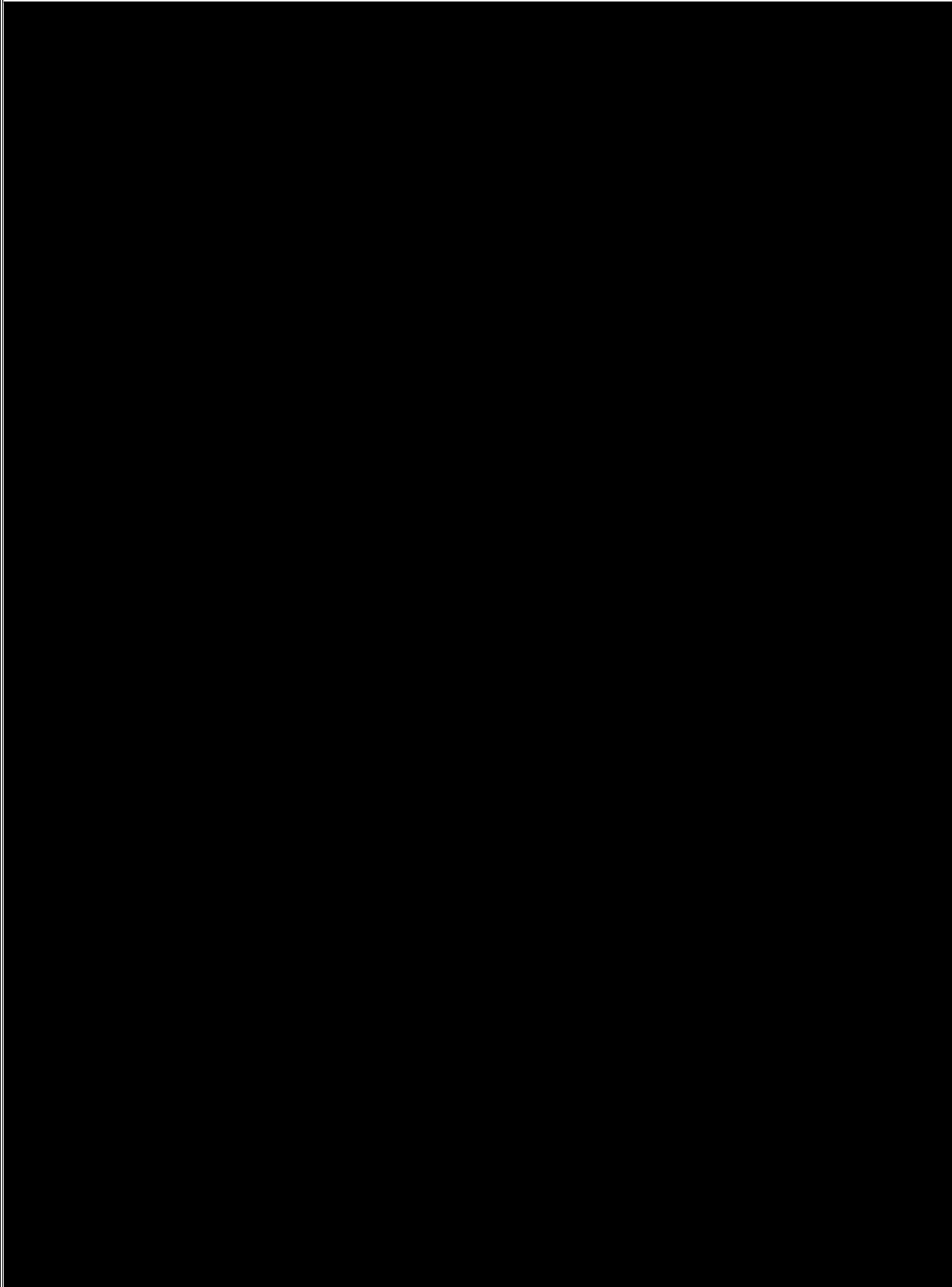
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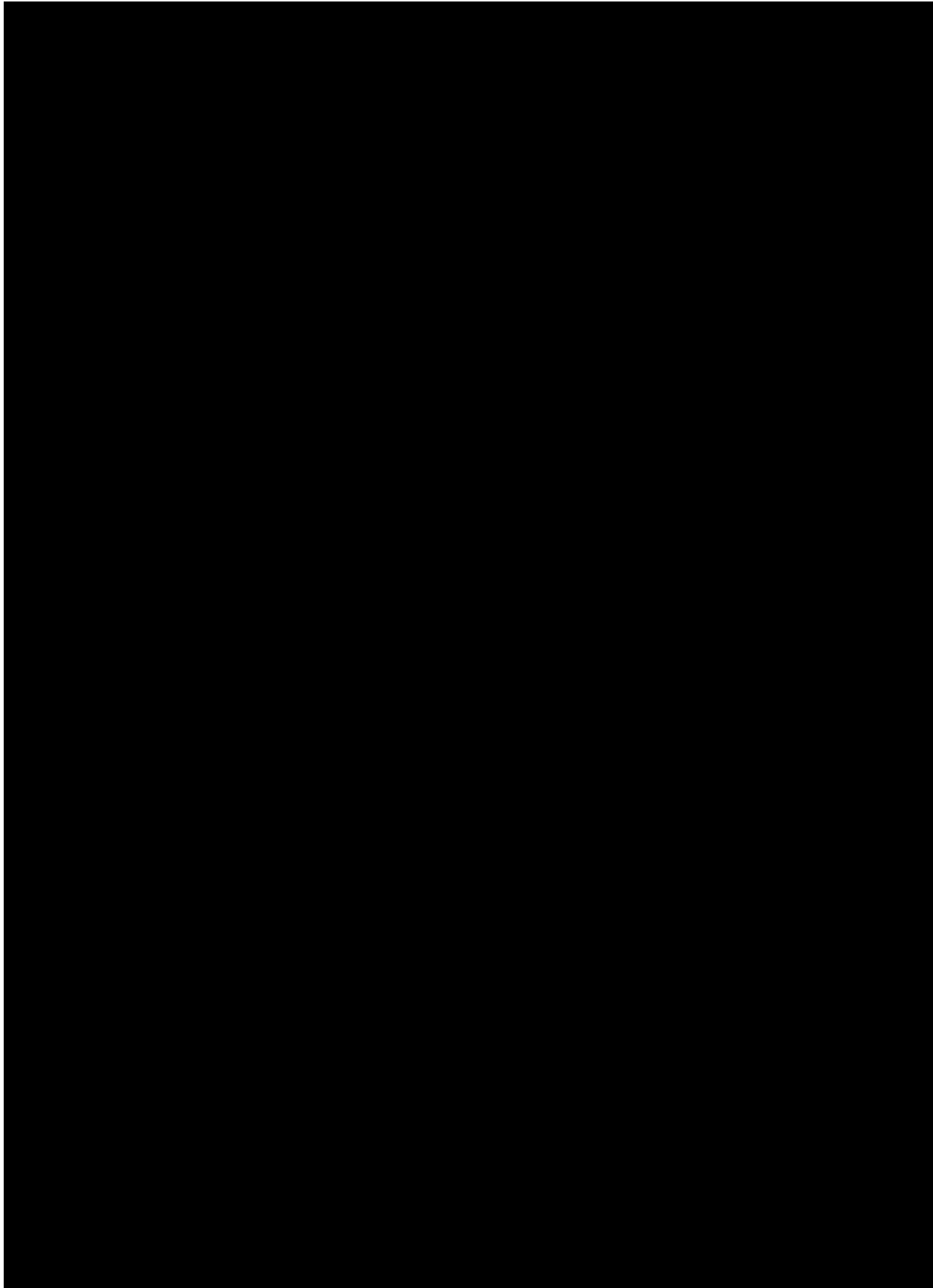
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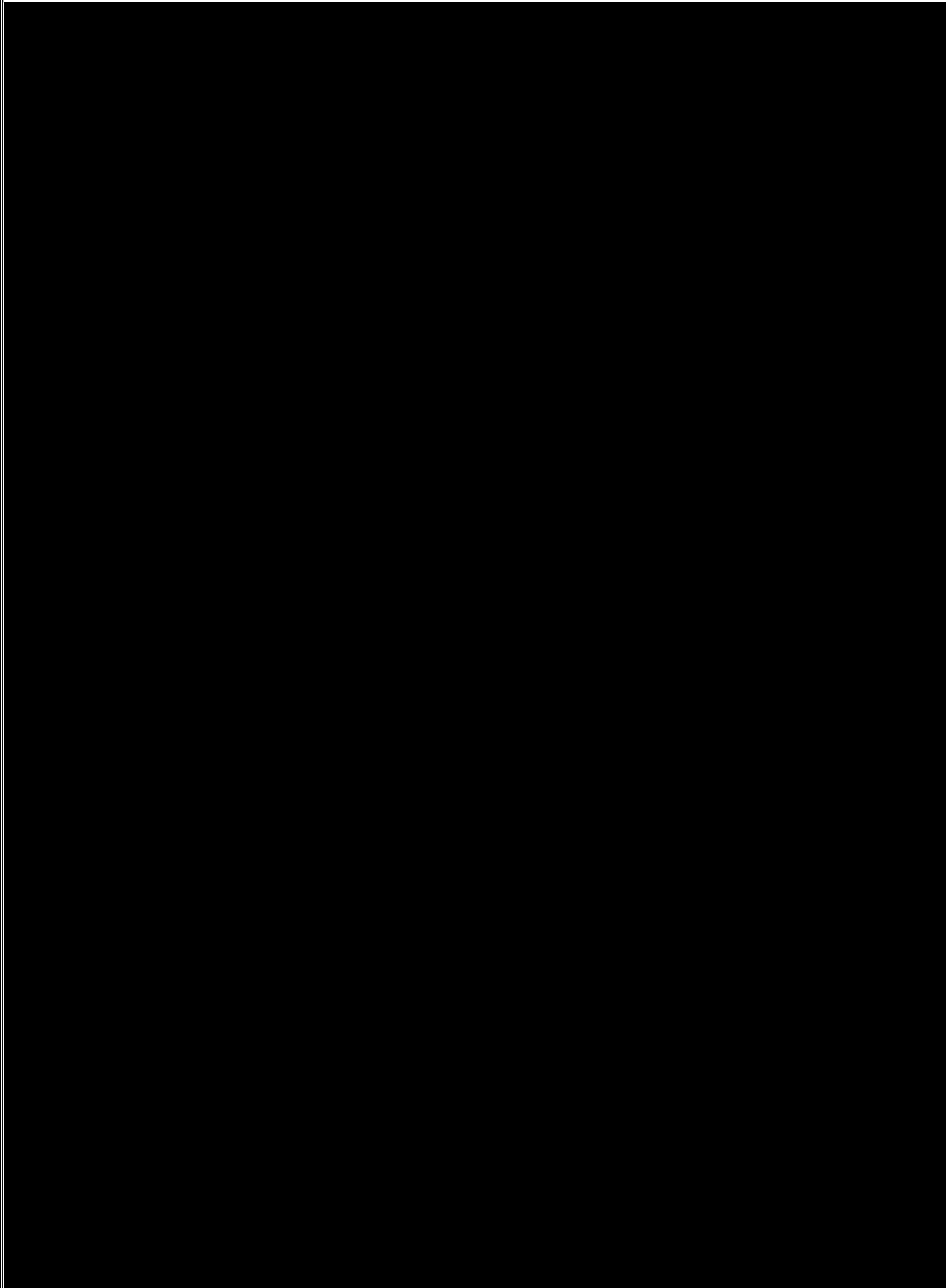
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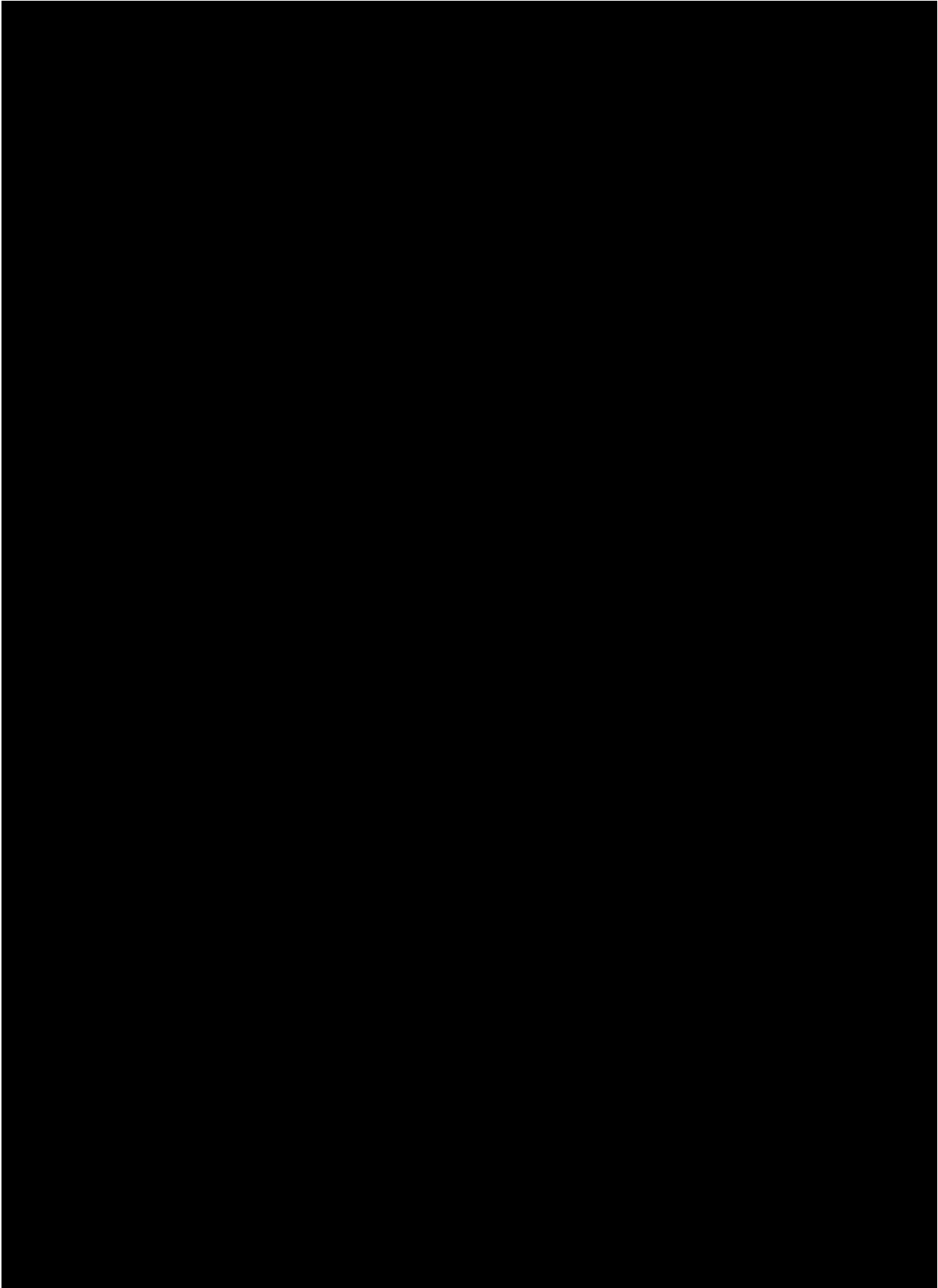
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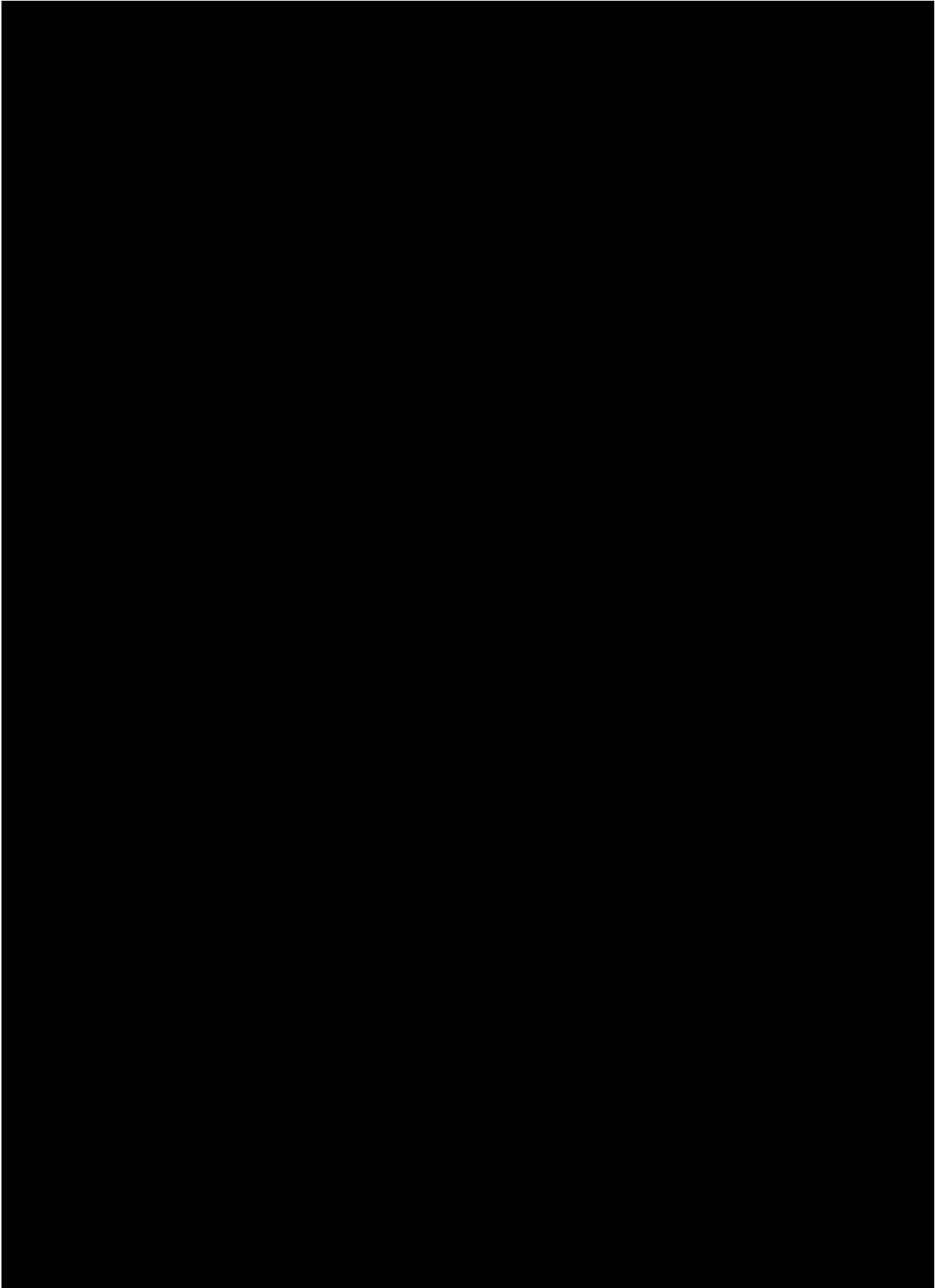
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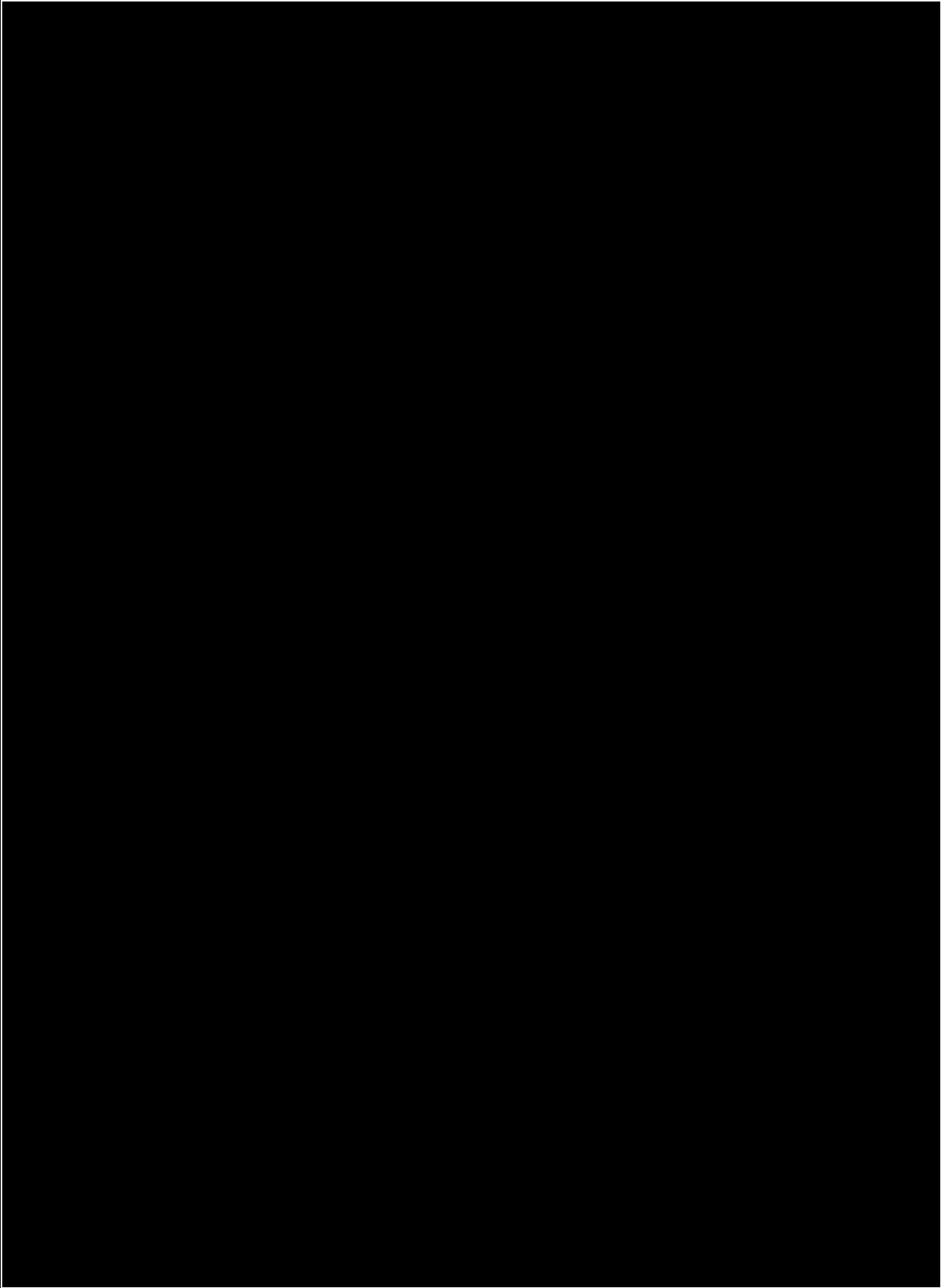
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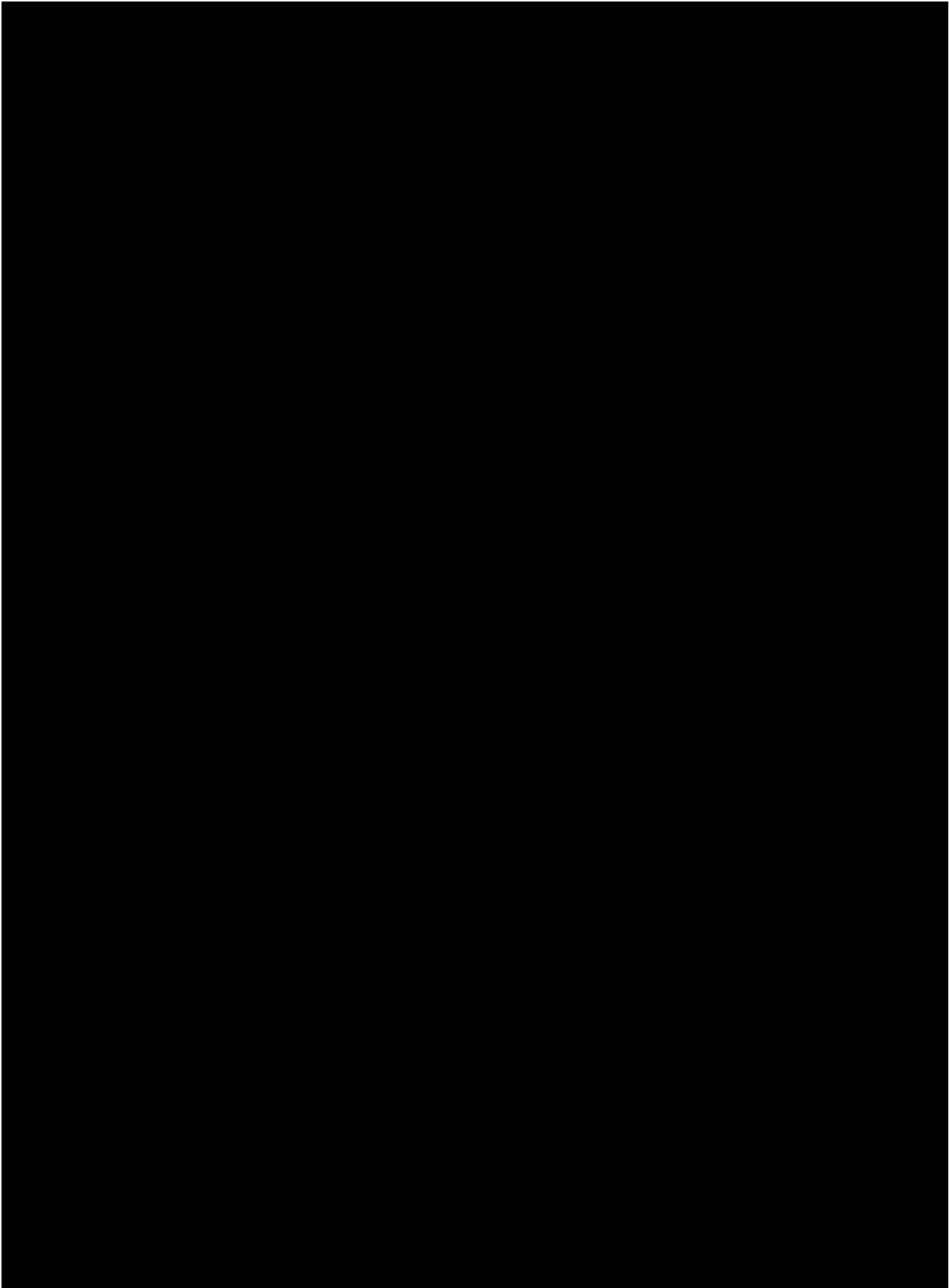
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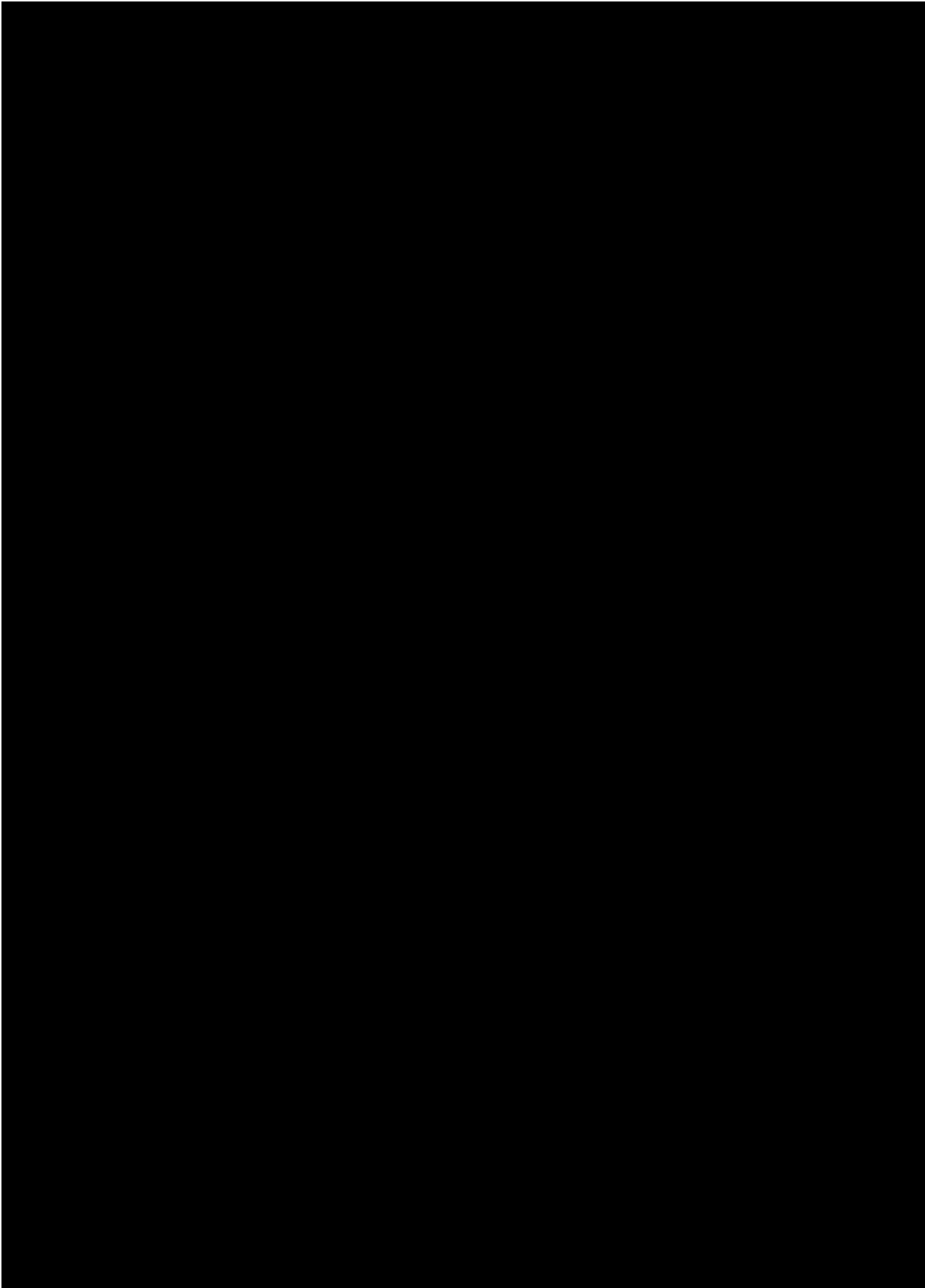
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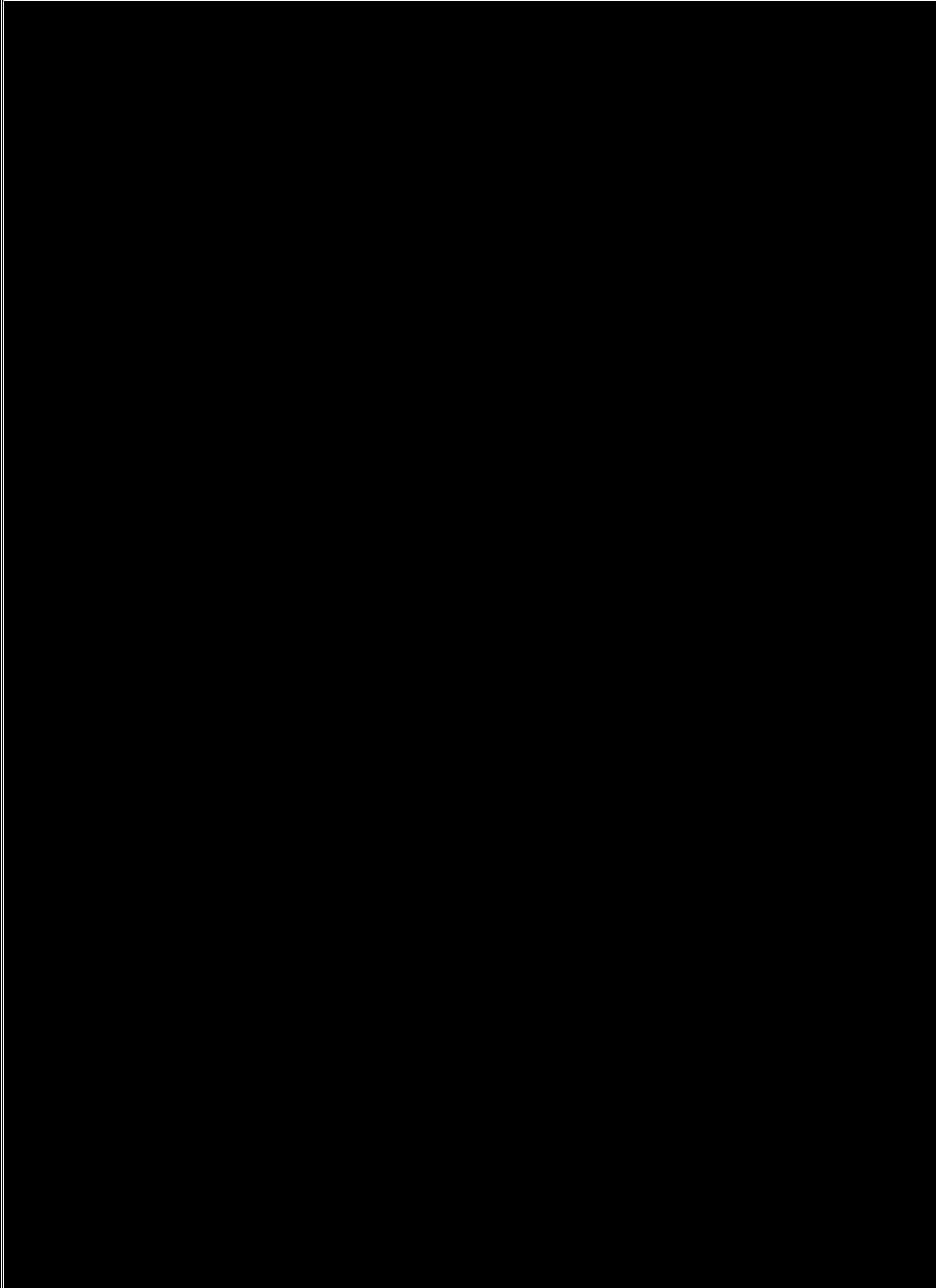
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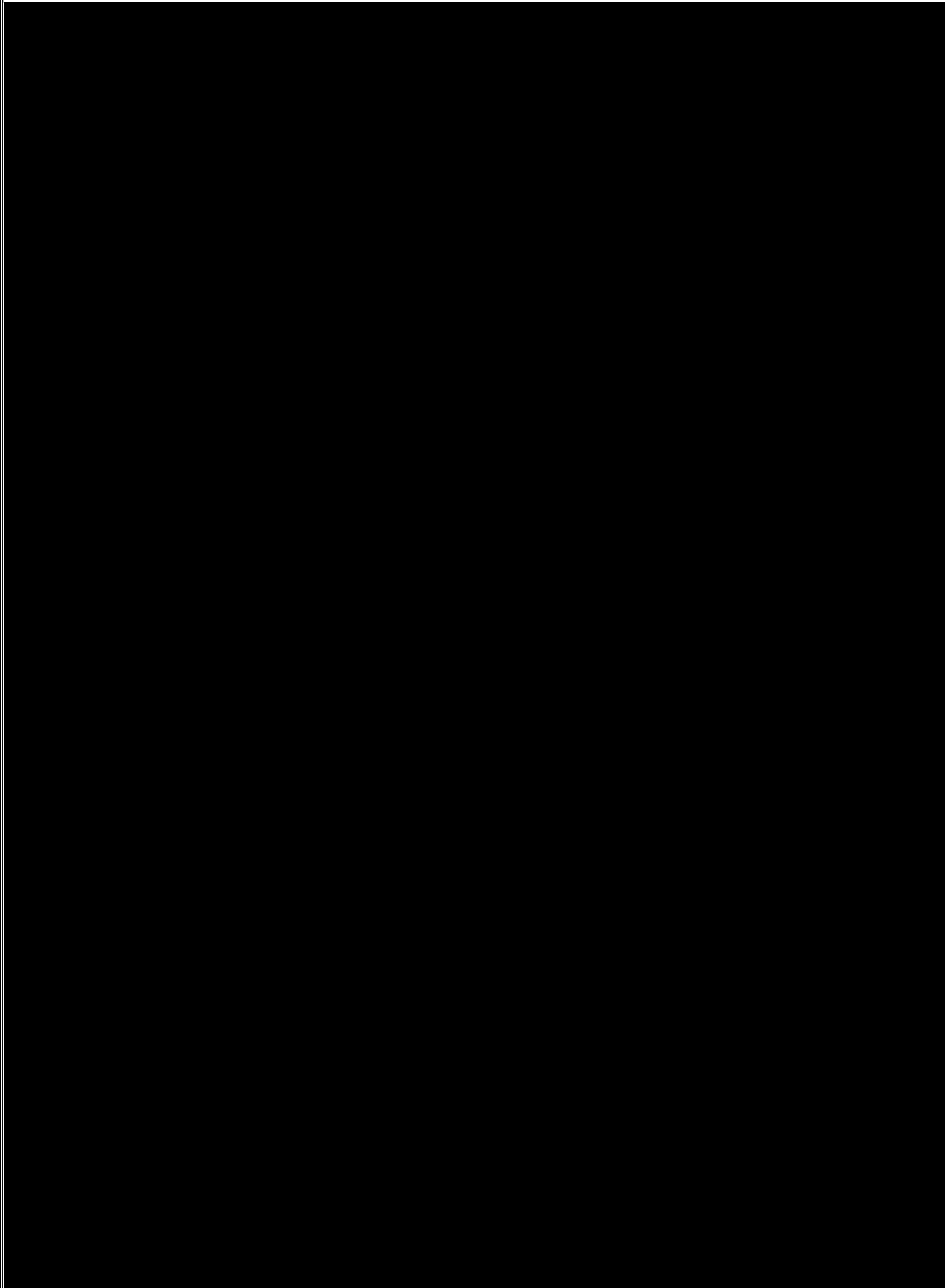
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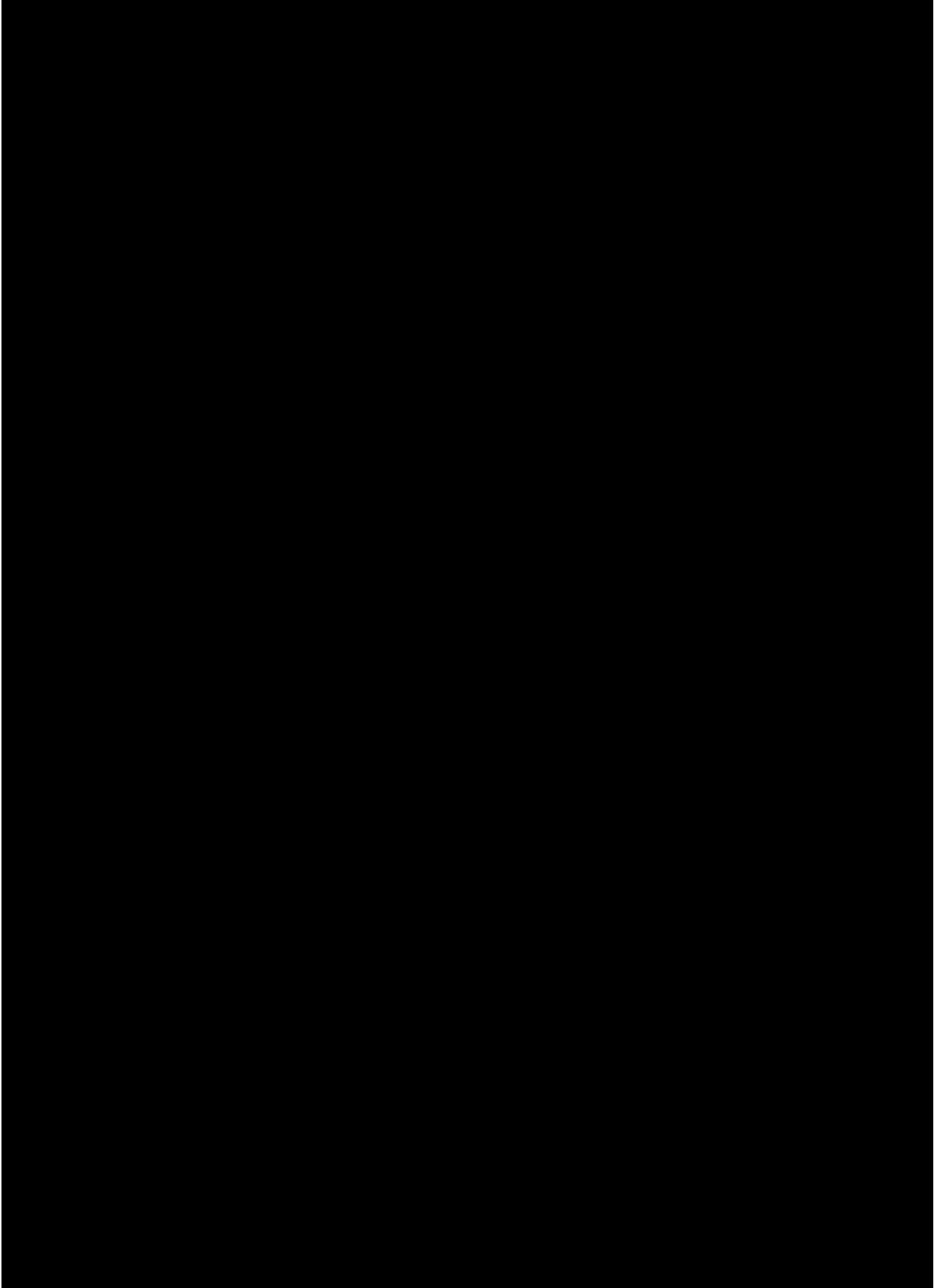
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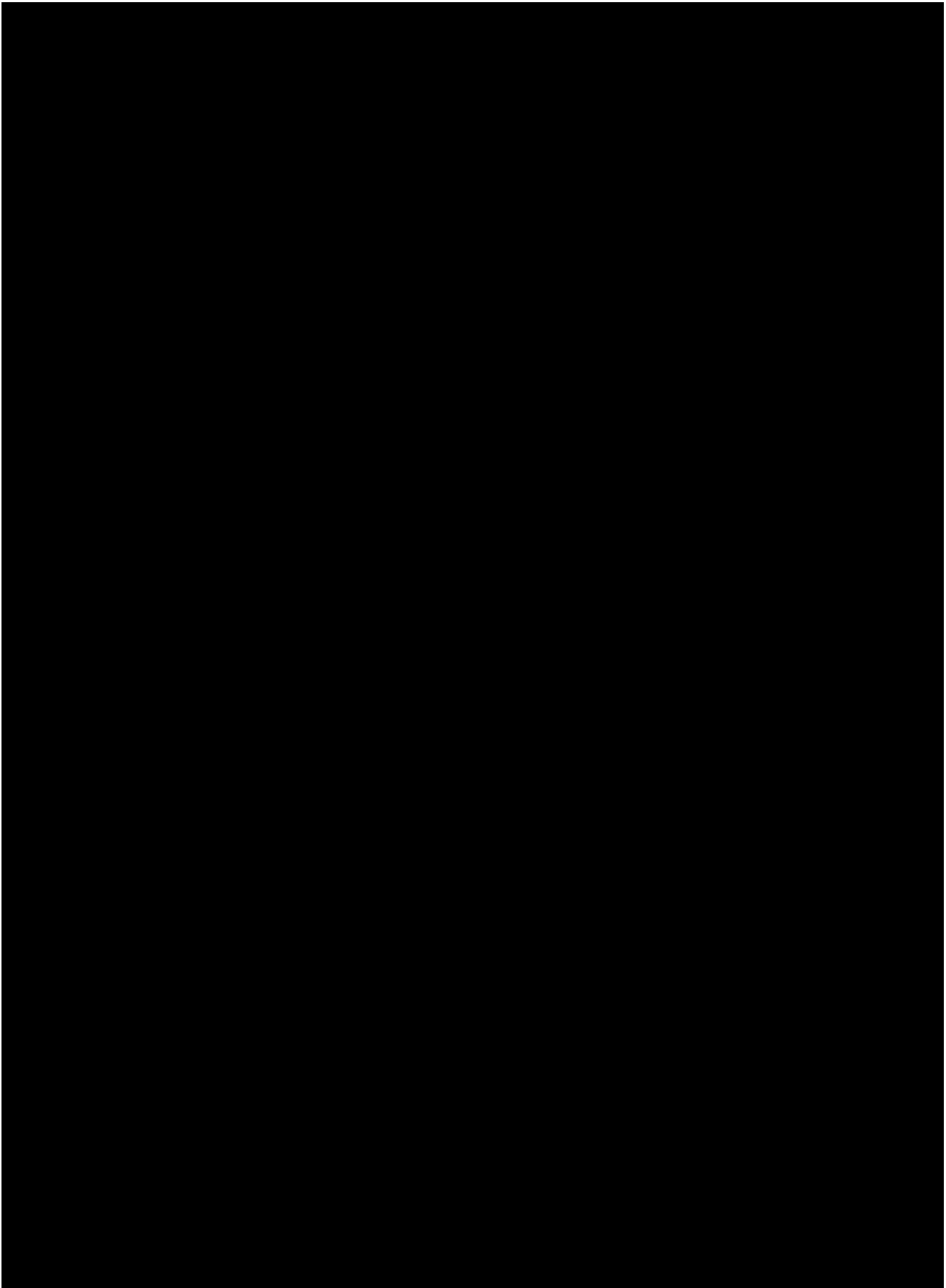
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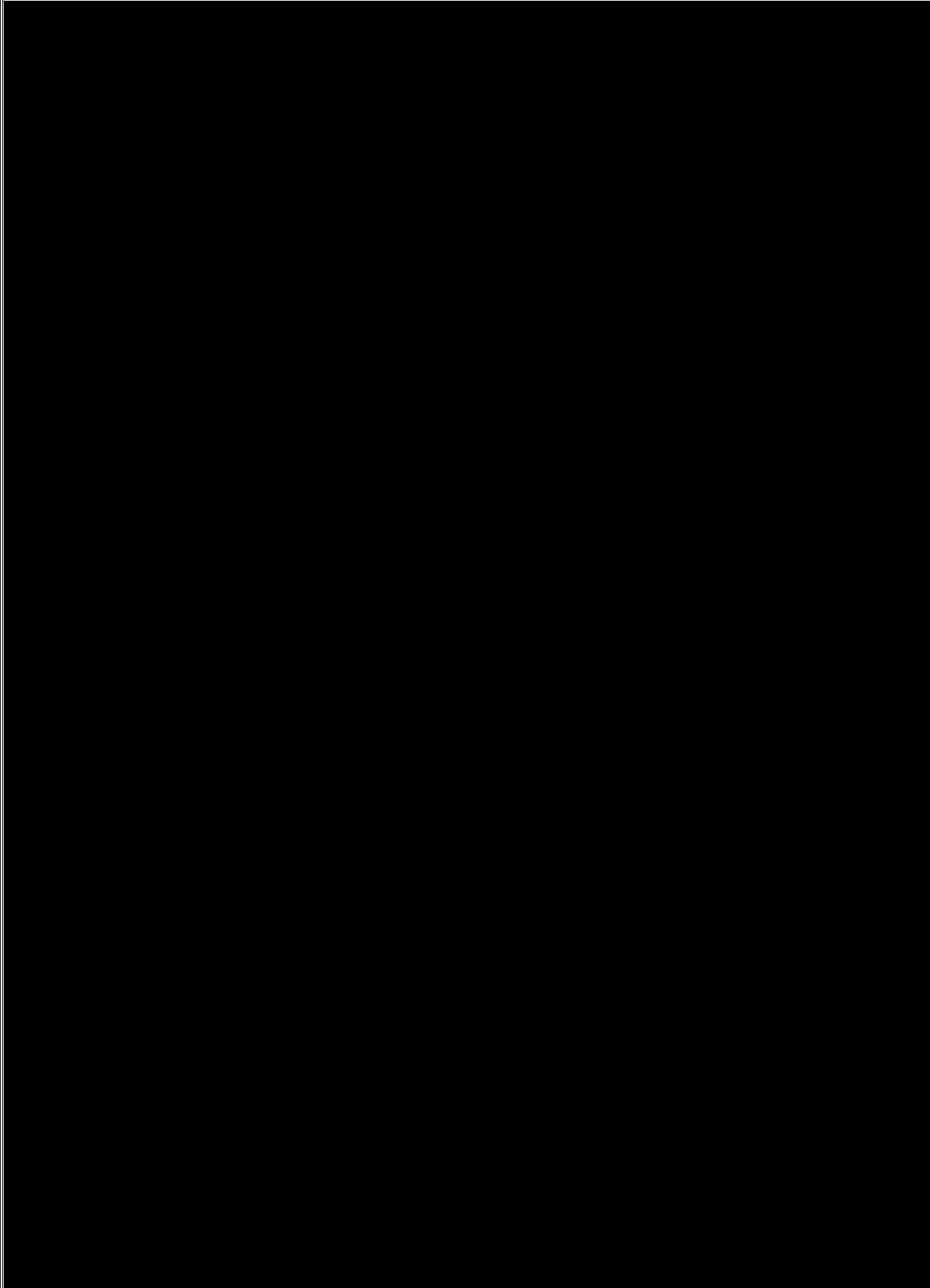
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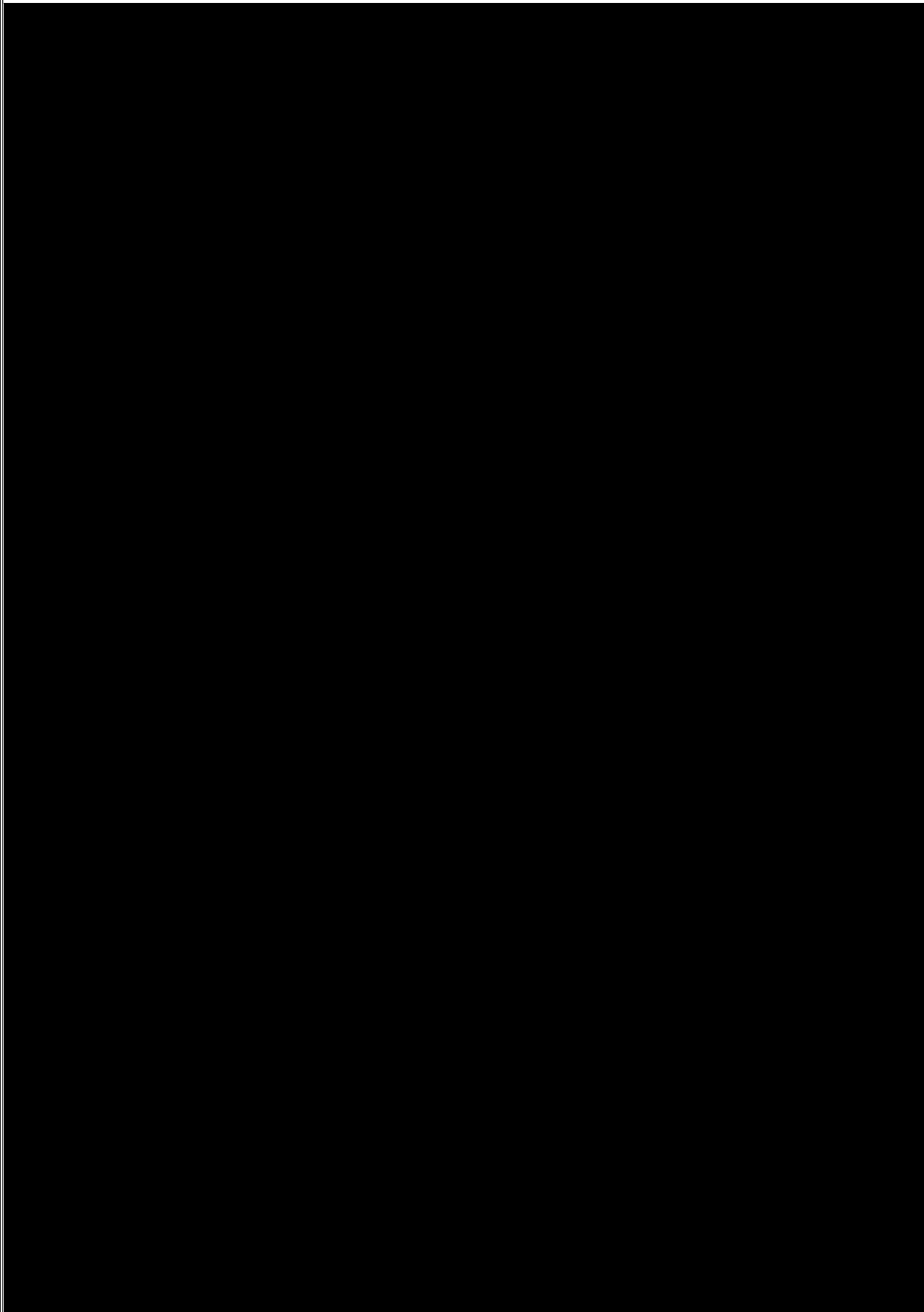
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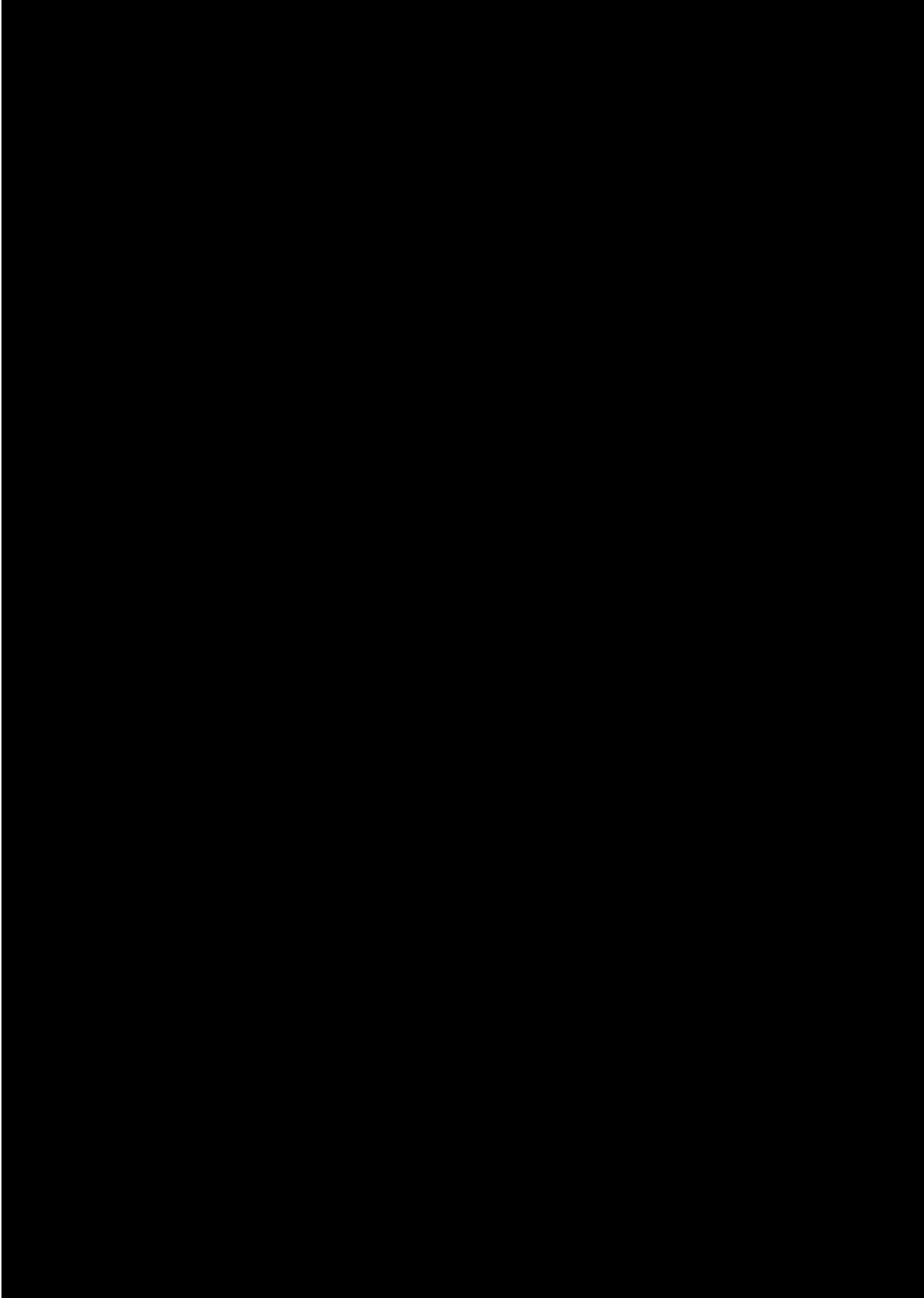
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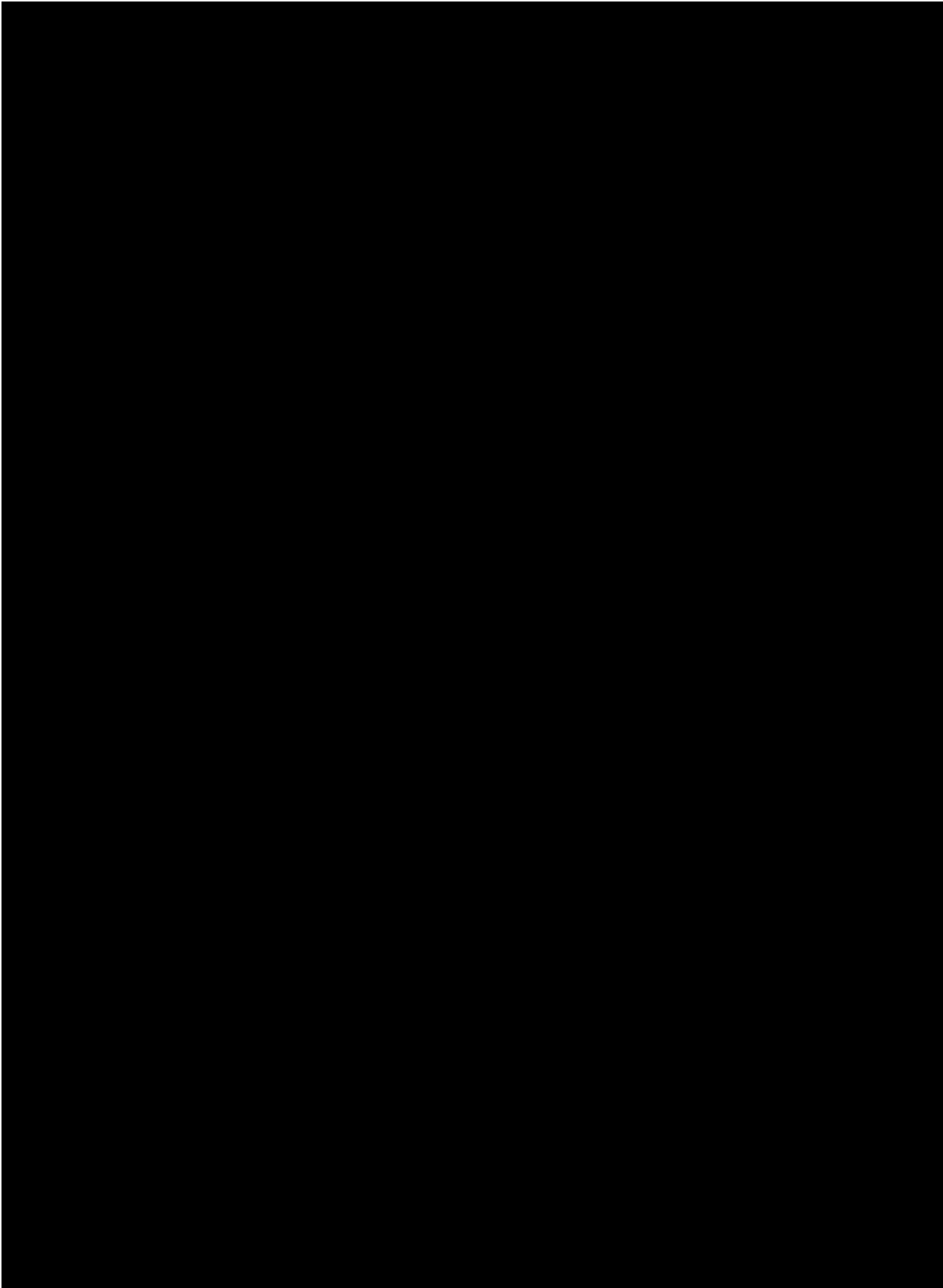
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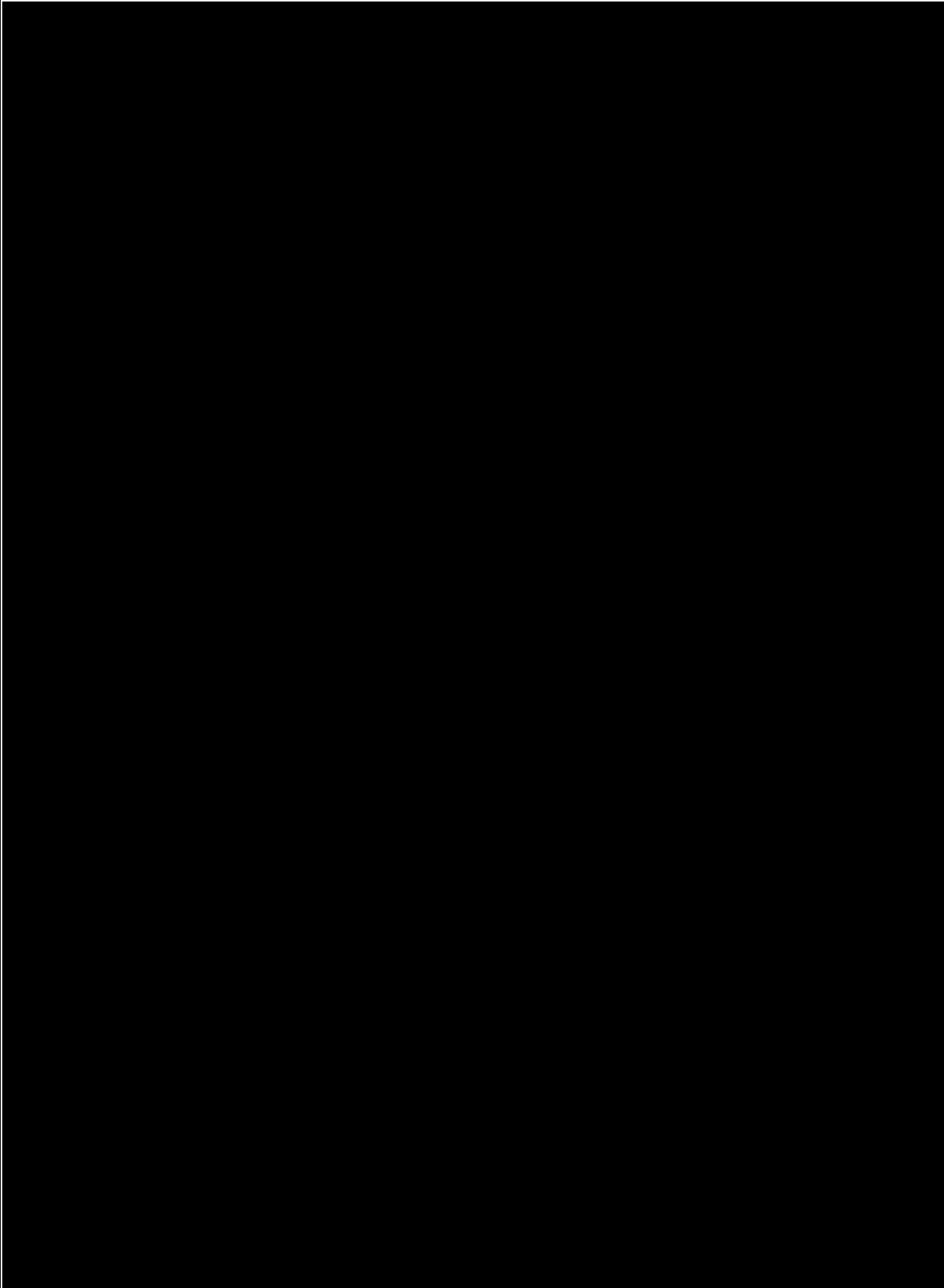
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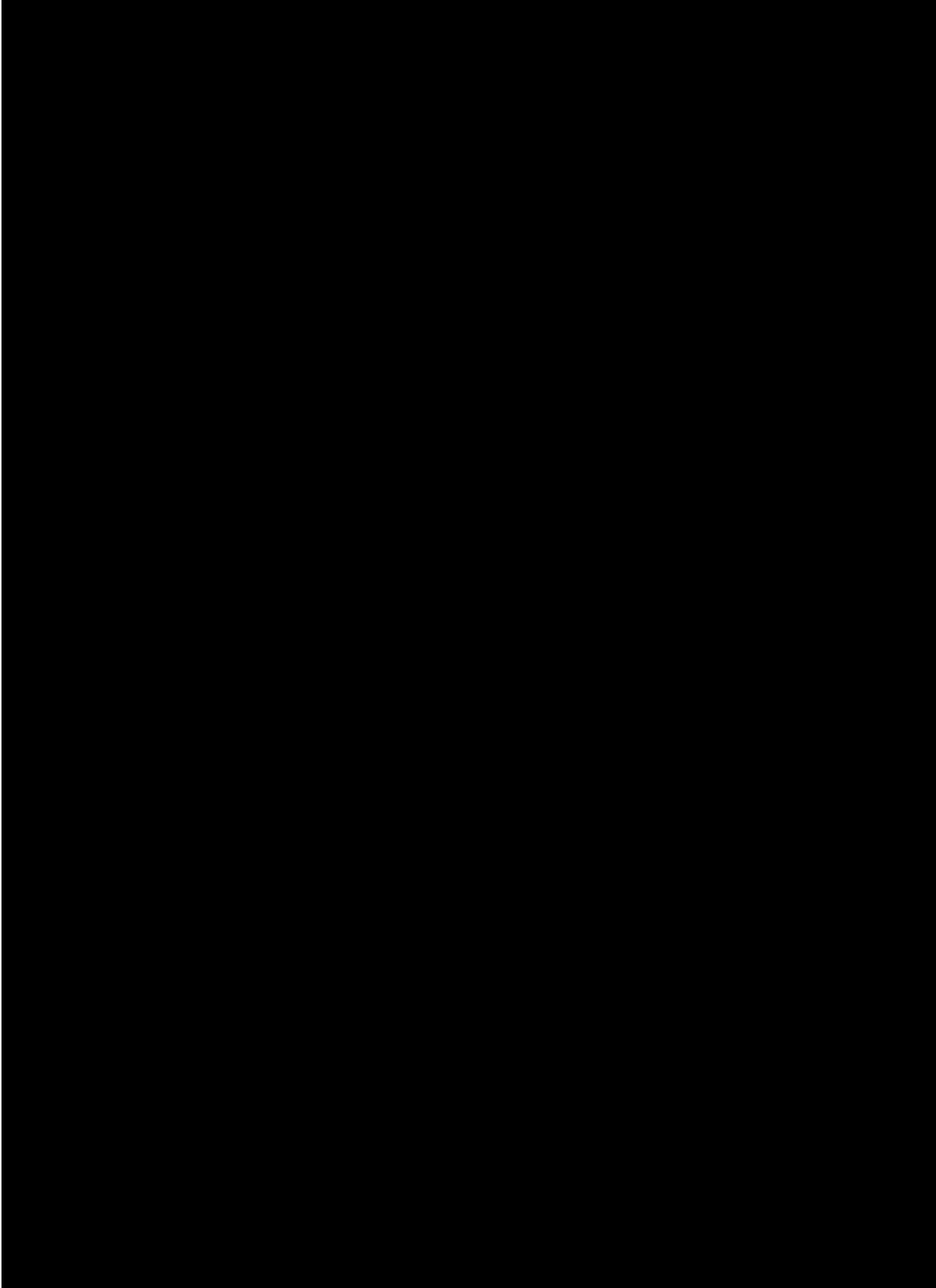
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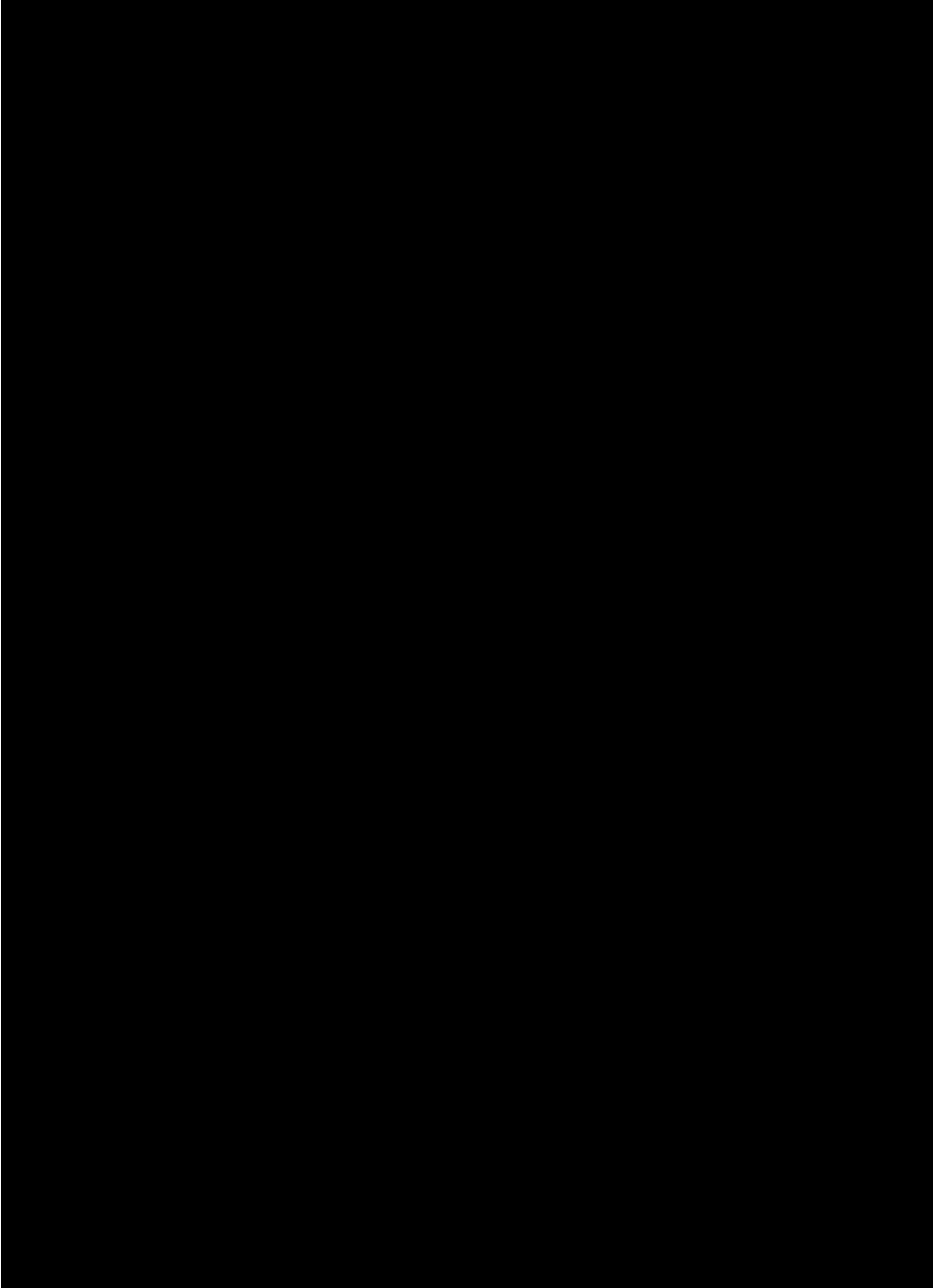
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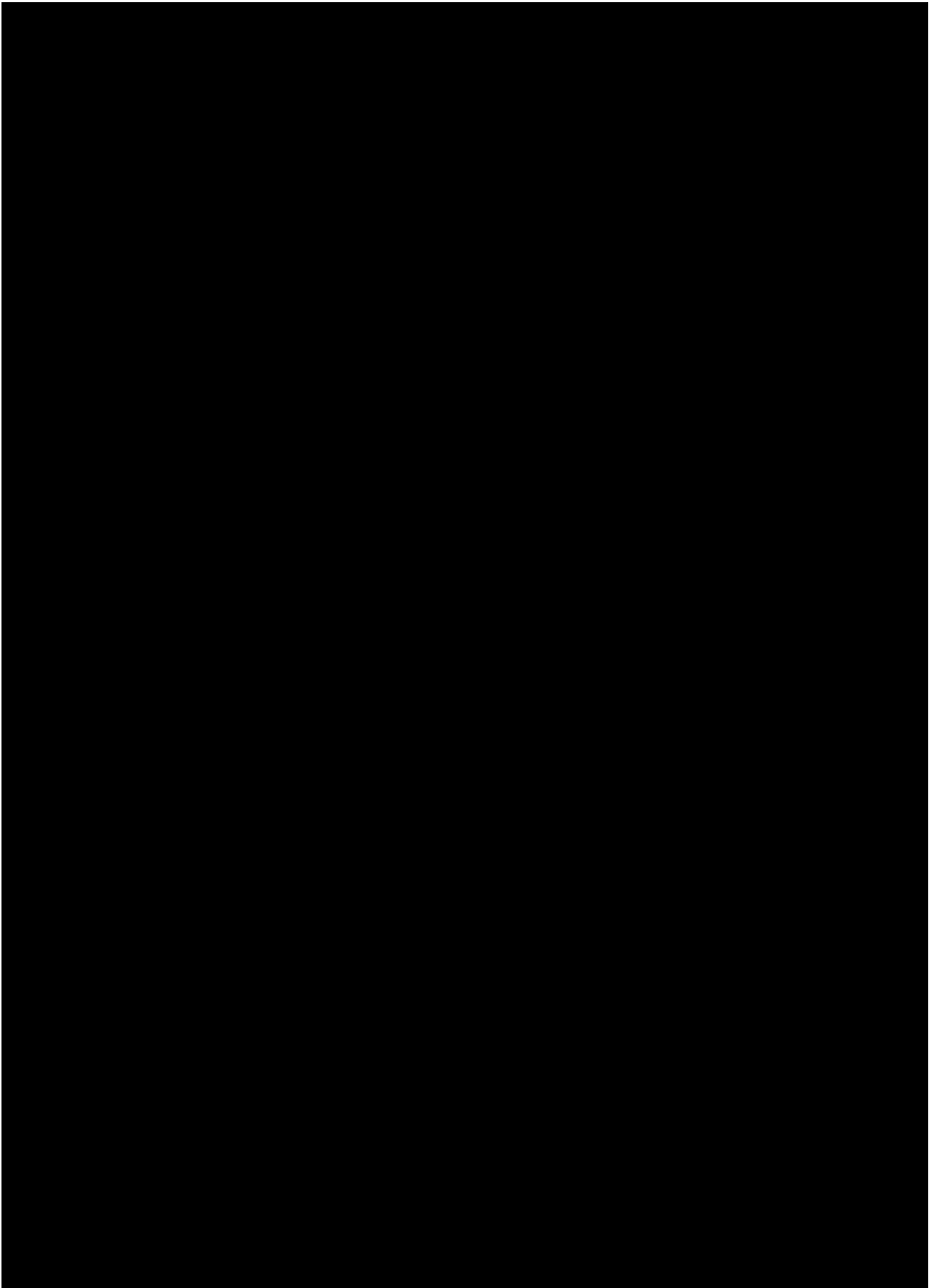
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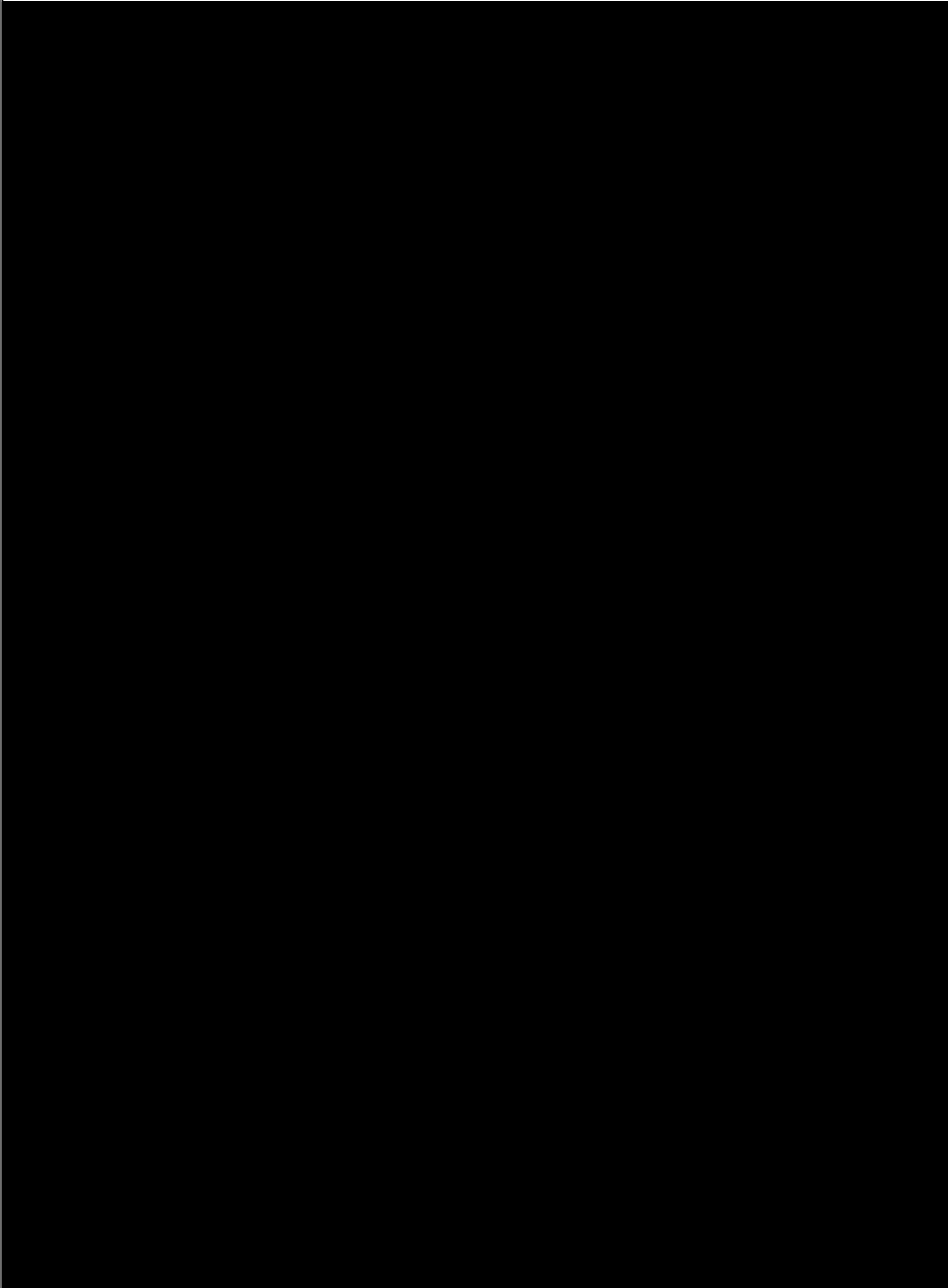
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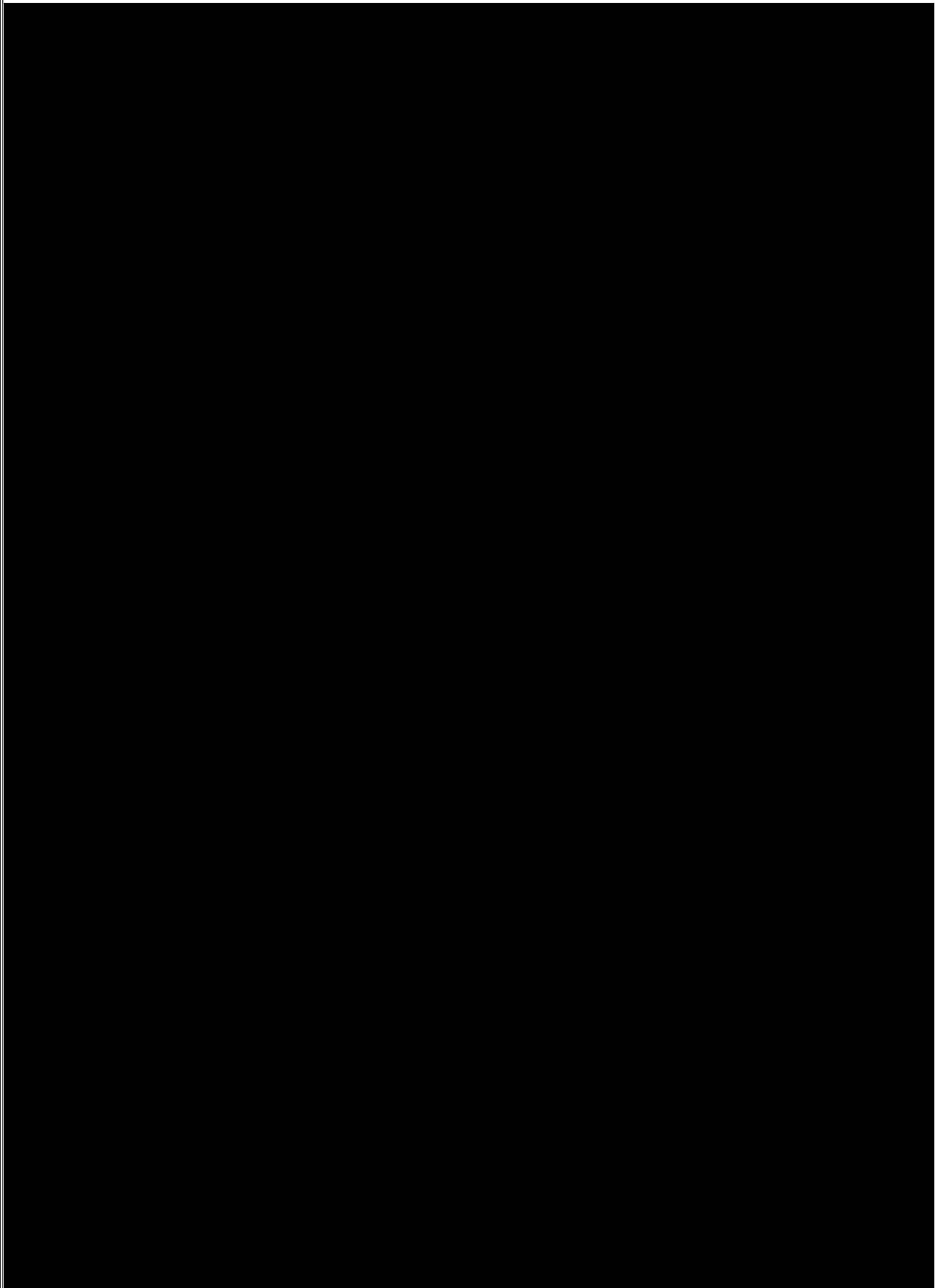
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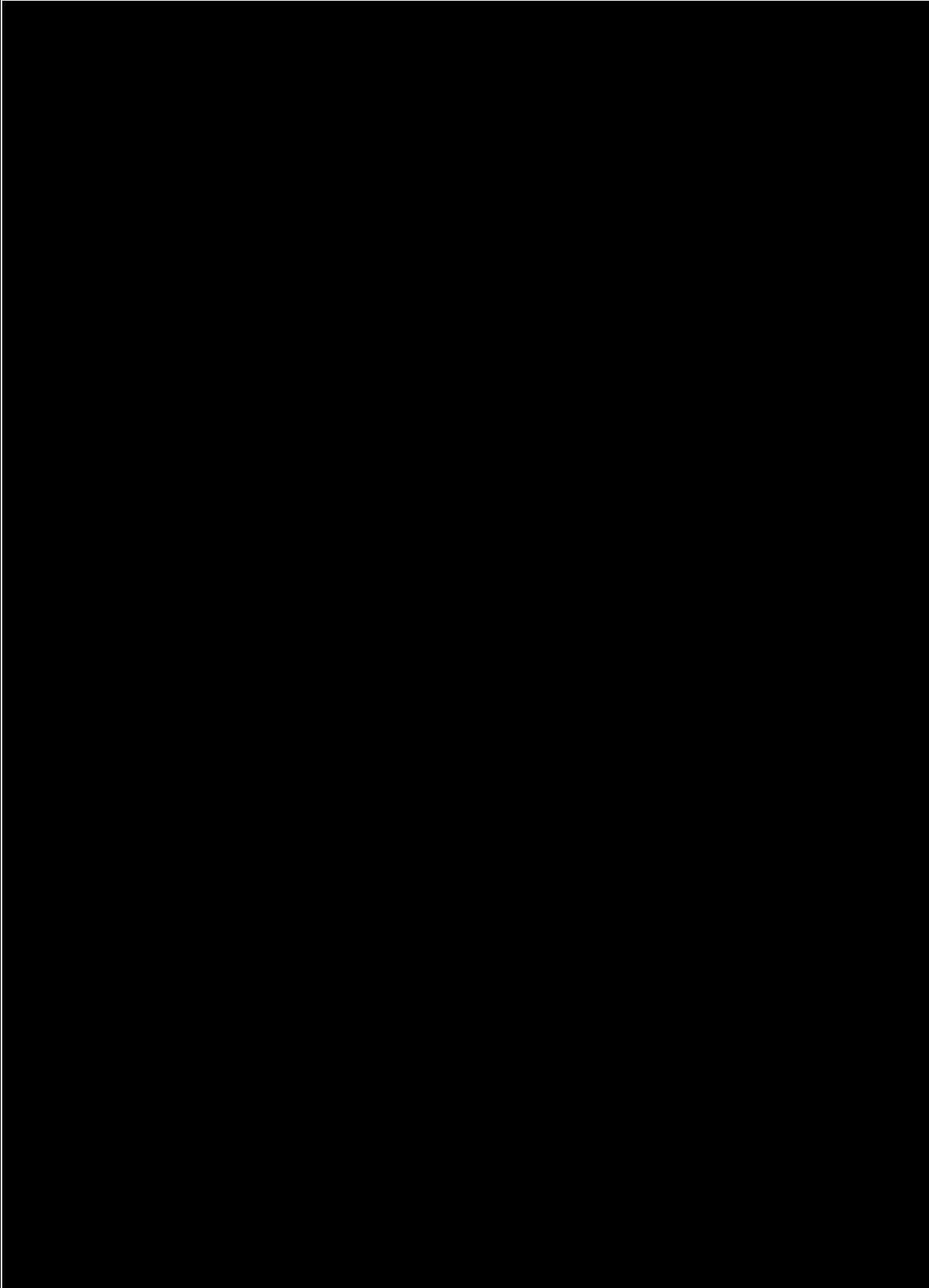
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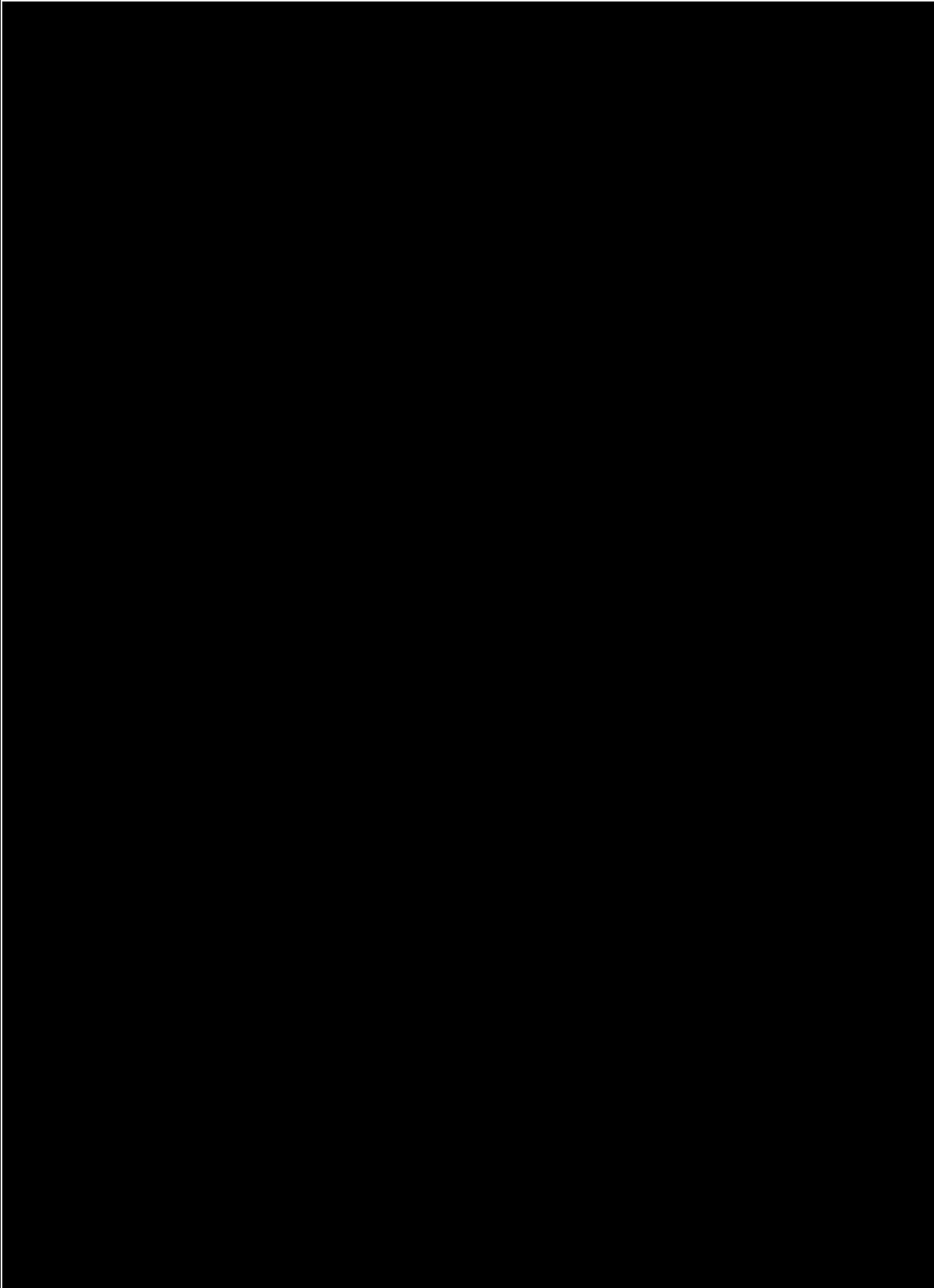
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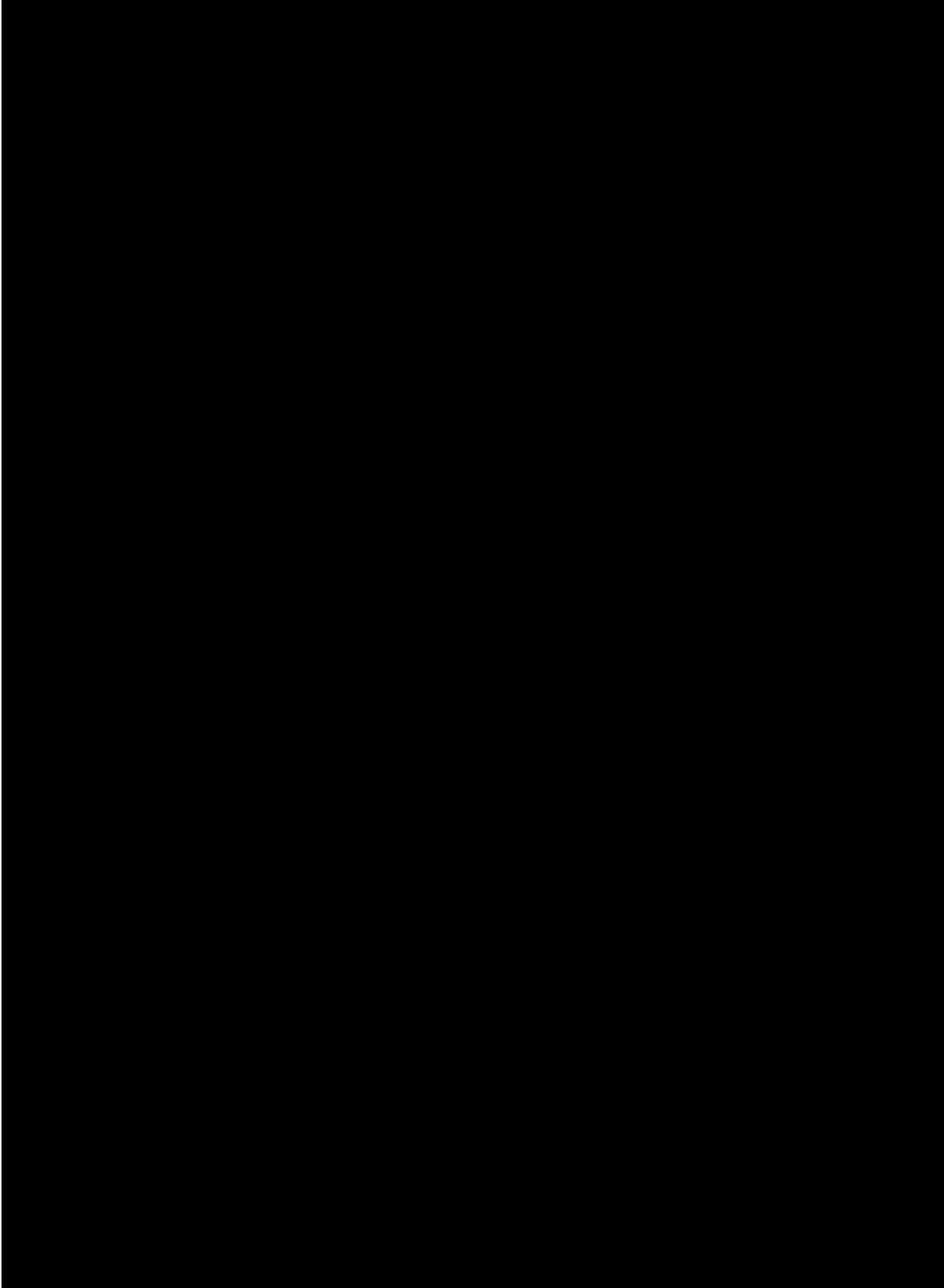
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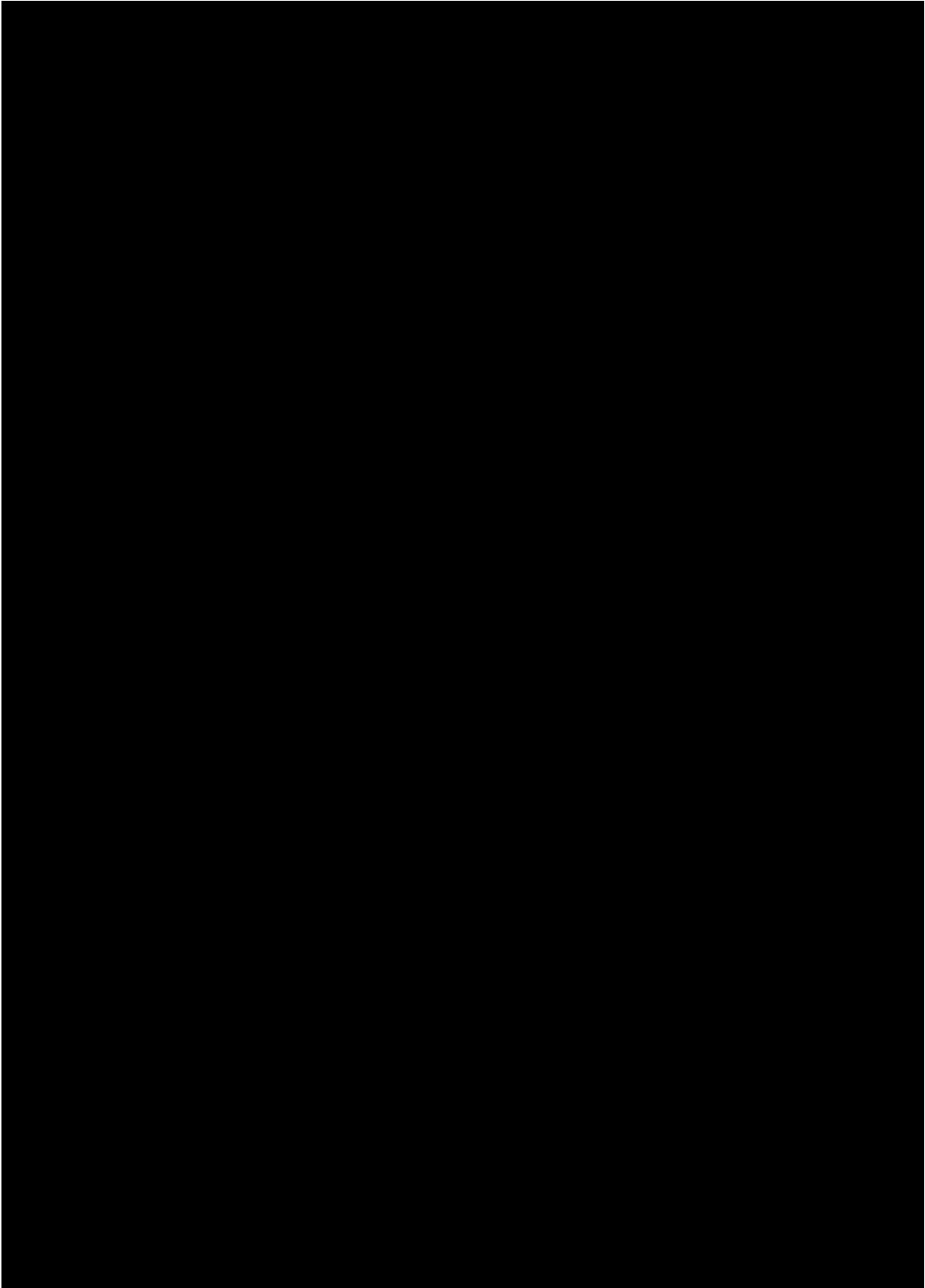
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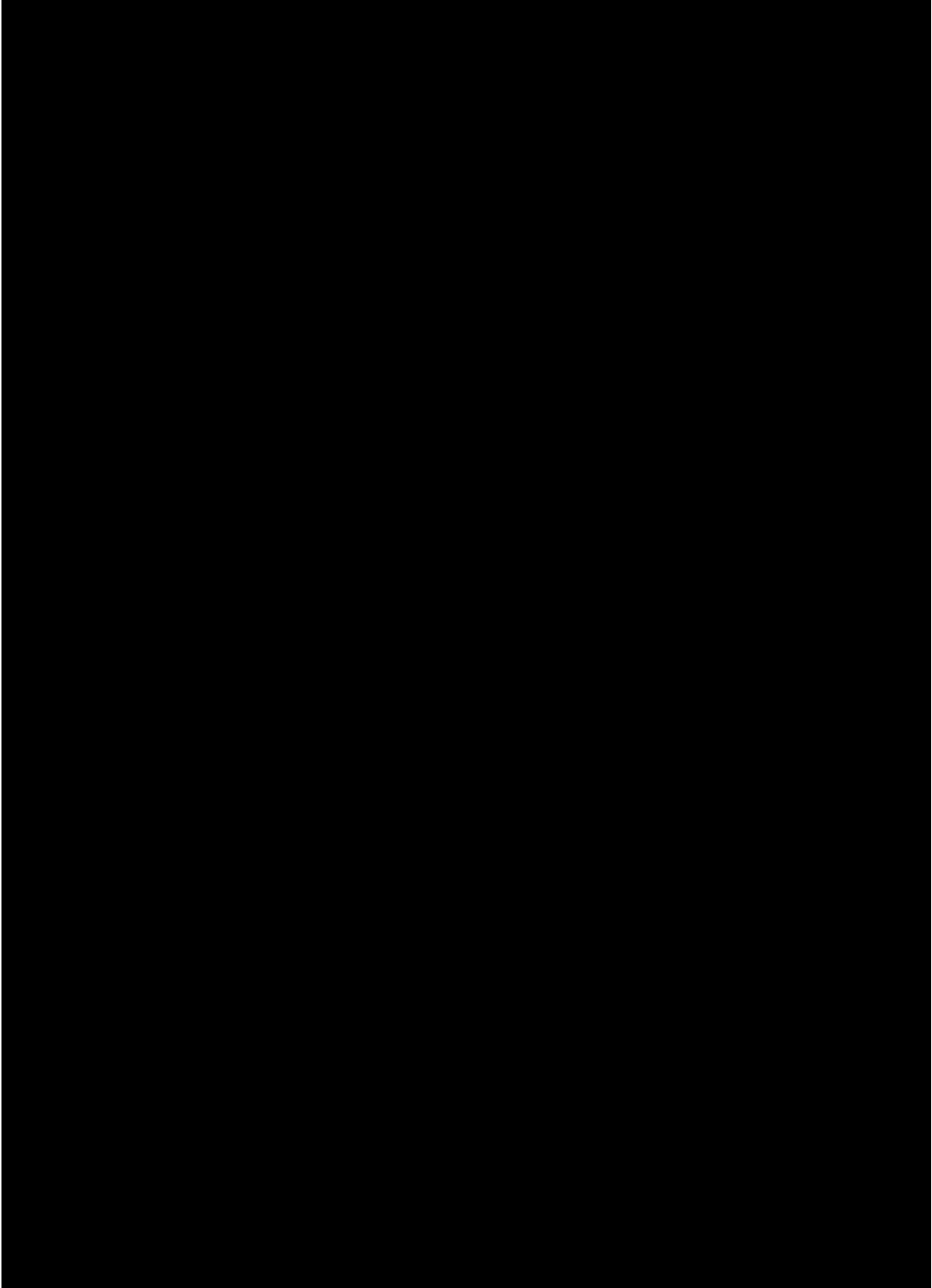
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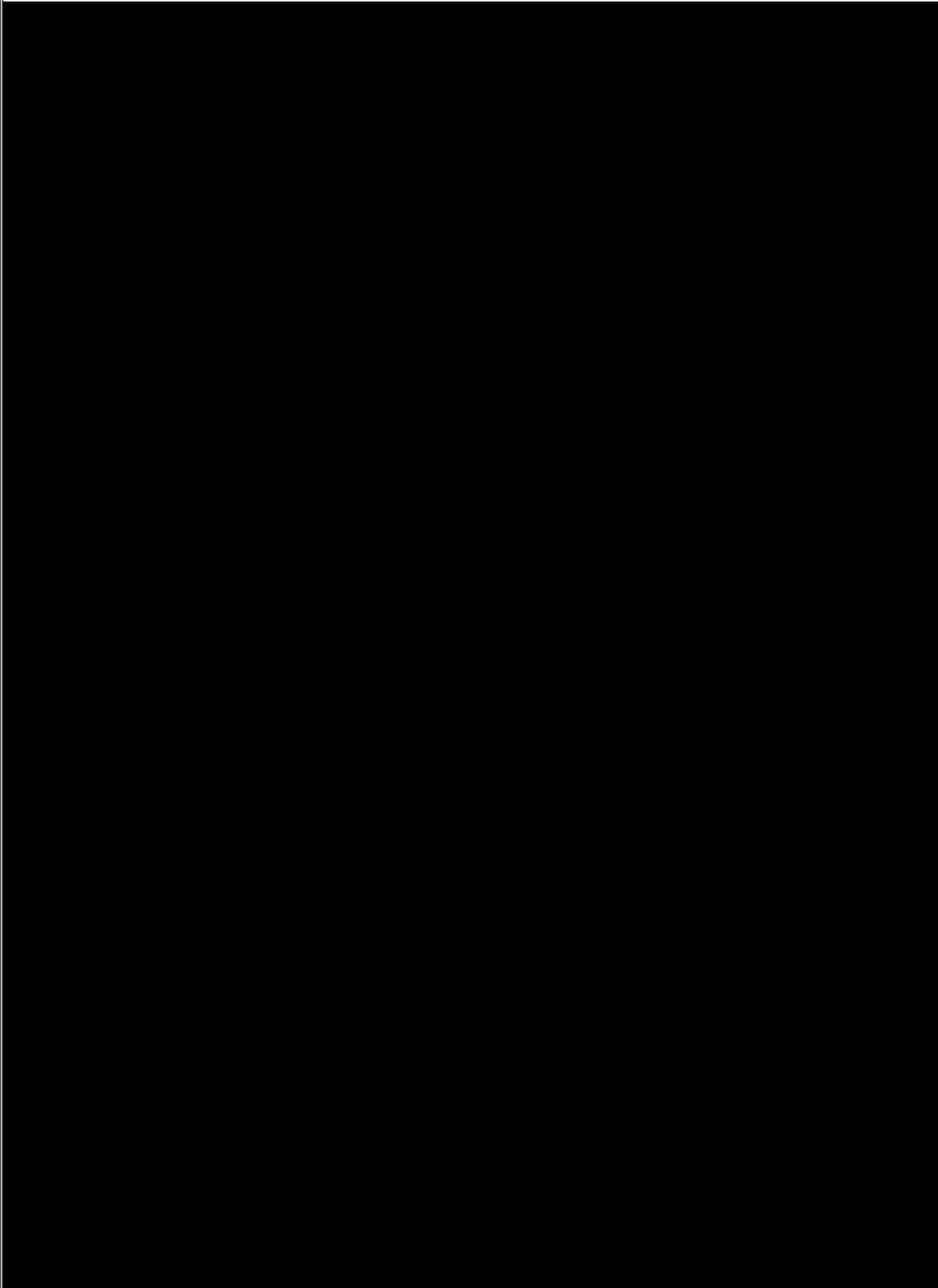
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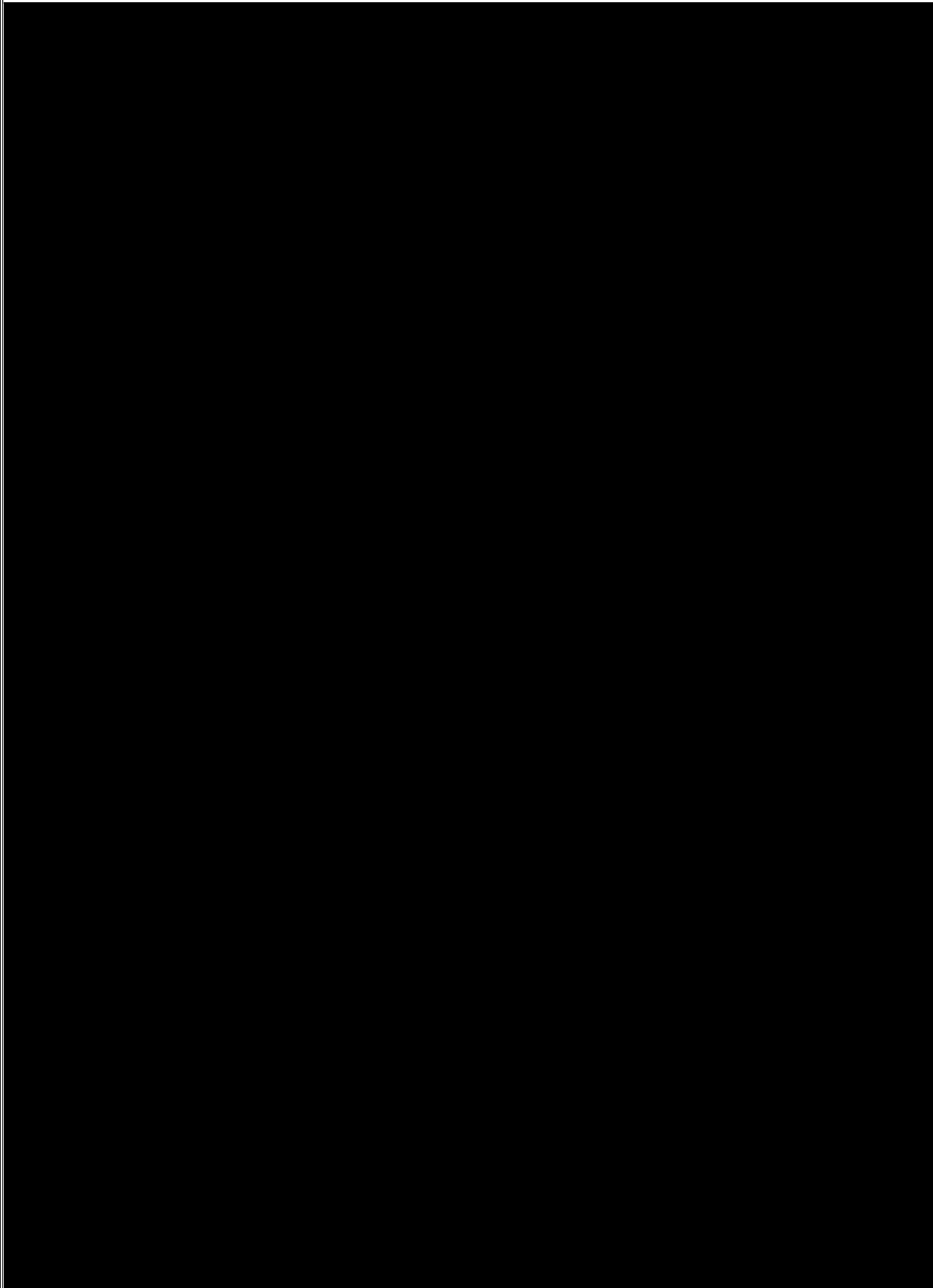
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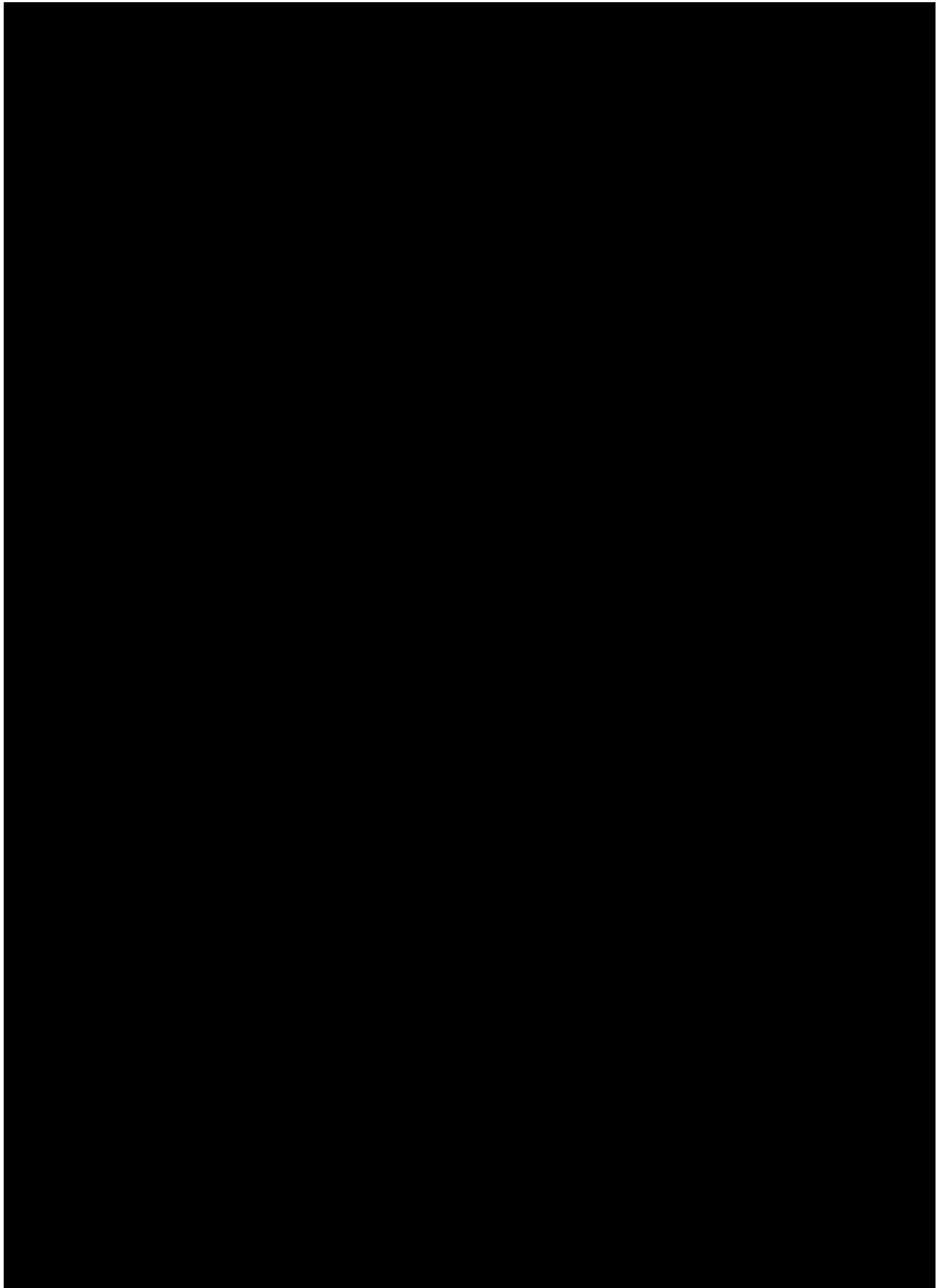
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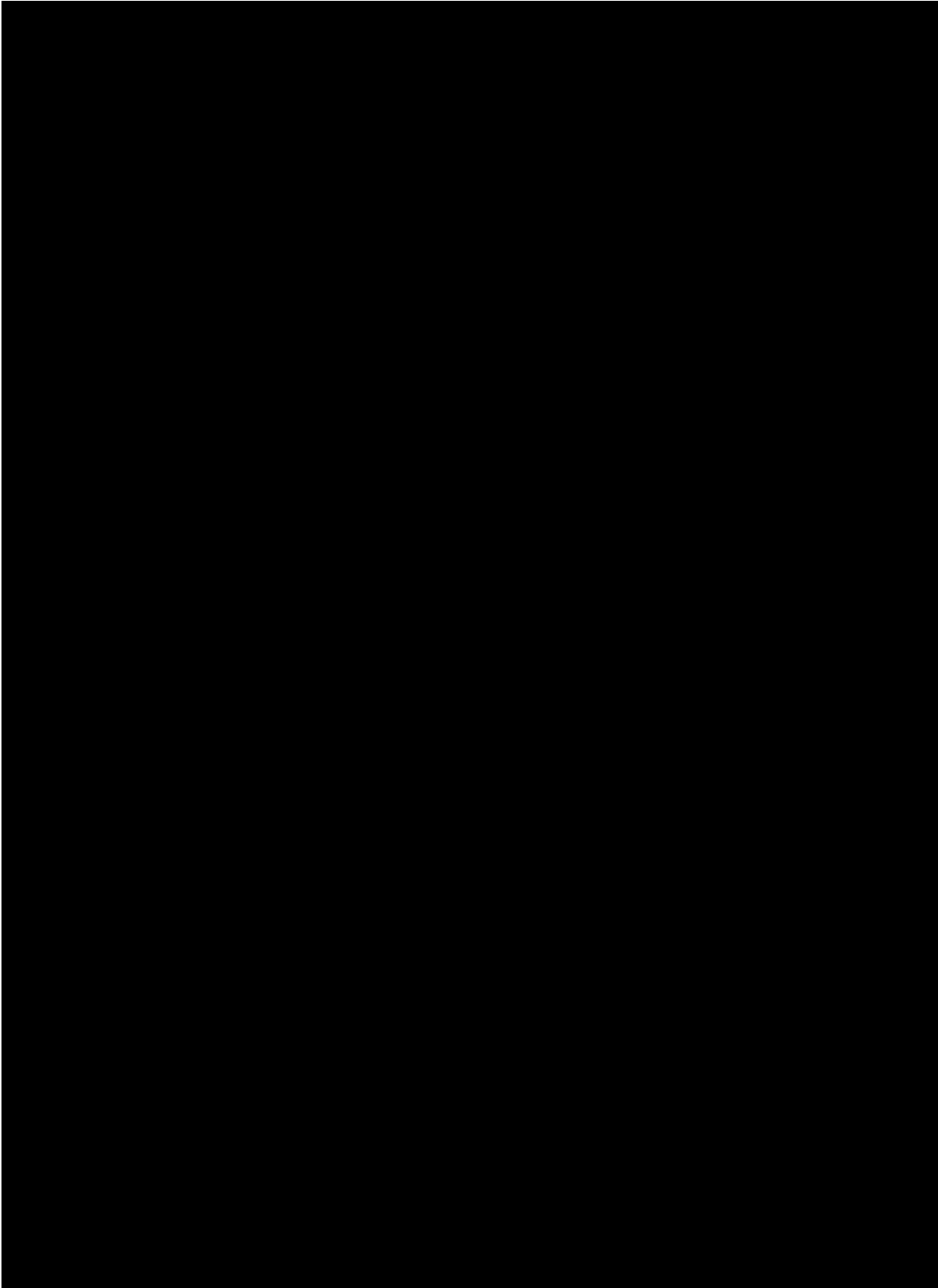
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PRESIDENT TERCIER: Mr. Polášek, sorry for intervening. In 5 minutes it is 6:00. We know that we have an extra time, but I would like to know how we would organize now the remaining half an hour.

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MR. POLÁŠEK: Mr. President, it is clear that we will not be able to complete tonight. So, we can go as long as you--you can take it as long as you wish, and we will need to resume tomorrow.

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DR. HEISKANEN: Then it may be better to break now. I understand it's going to go on for another hour. But we have a very short day foreseen for tomorrow, 2 hours 45 minutes. So, if we add an hour to that, it's still going to be a short day, and we would finish early afternoon.

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MR. GREENWALD: That's not correct.

MR. POLÁŠEK: We do feel that we will need to use the time that is available to us. I think it was pretty clear that the time would be divided equally.

We feel that we need to address the evidence

1 that was presented in the Rejoinder, including
2 Dr. Thomson's Second Report, through
3 cross-examination.

4 And so, the notion that tomorrow is going to
5 be a short day, unfortunately, is not correct. It is
6 going to be a long day, and I would suggest that we
7 continue tonight as long as we can.

8 DR. HEISKANEN: It would be worth seeing how
9 much time is left for each party before--

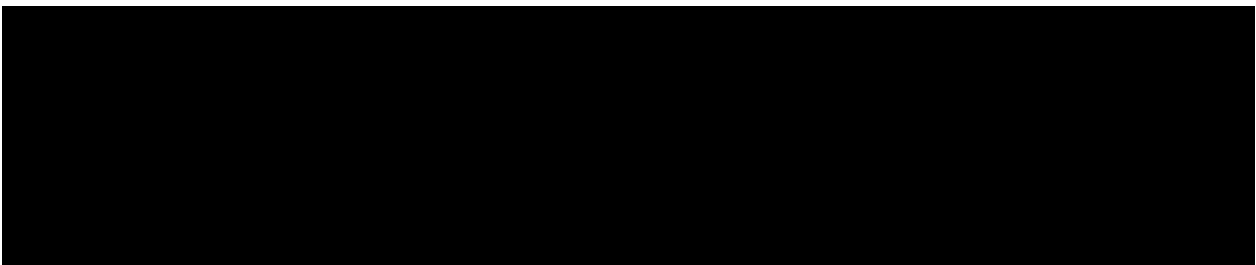
10 PRESIDENT TERCIER: That's what I was about
11 to ask. Yeah.

12 SECRETARY YETANO: Claimants have 6 hours and
13 23 minutes. Respondents, 4 hours and 33 minutes.

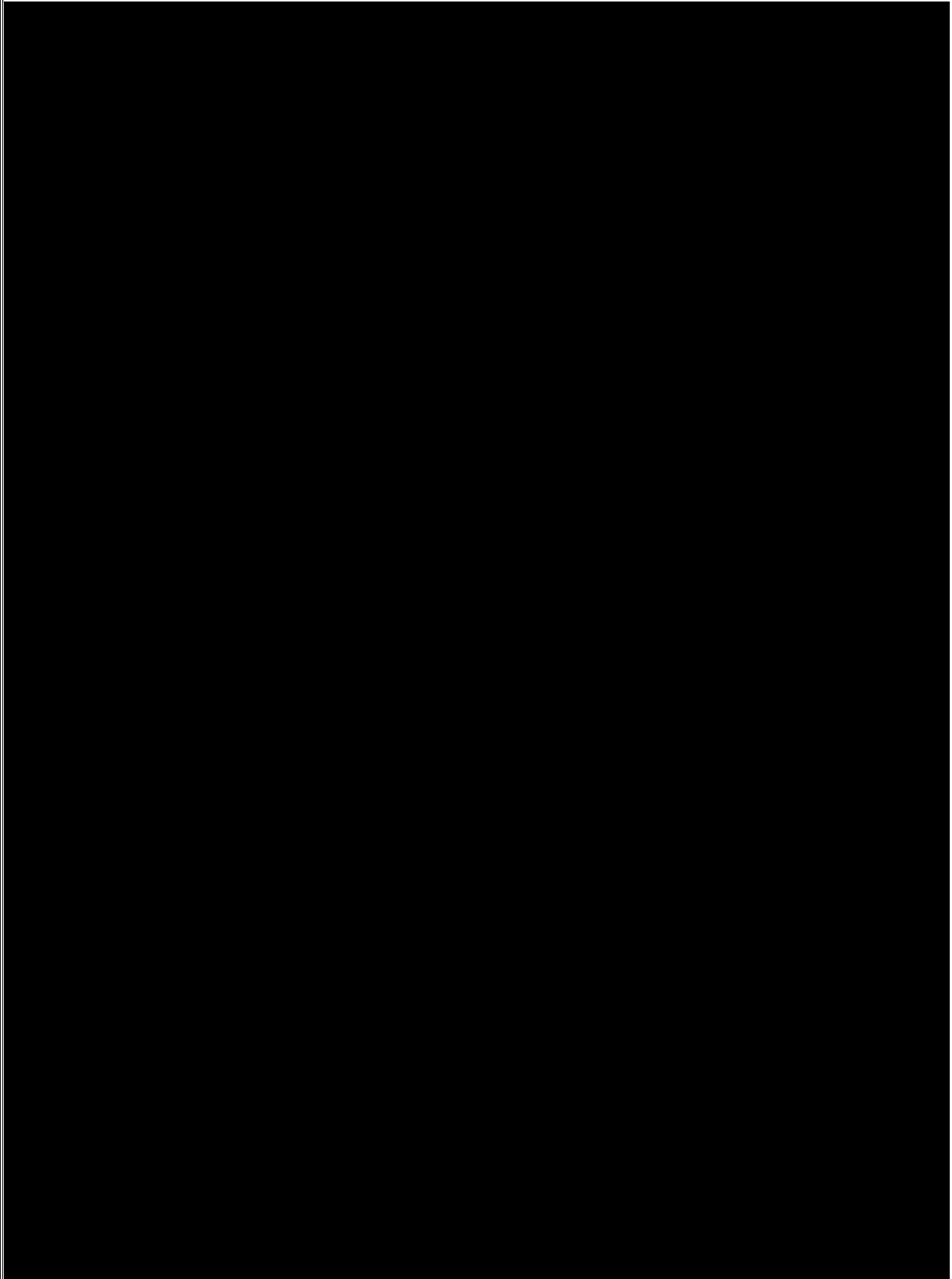
14 (Tribunal conferring.)

15 PRESIDENT TERCIER: Okay. I think we will
16 split the baby and give you a quarter of an hour,
17 until 6:15, and then we'll break and continue tomorrow
18 morning.

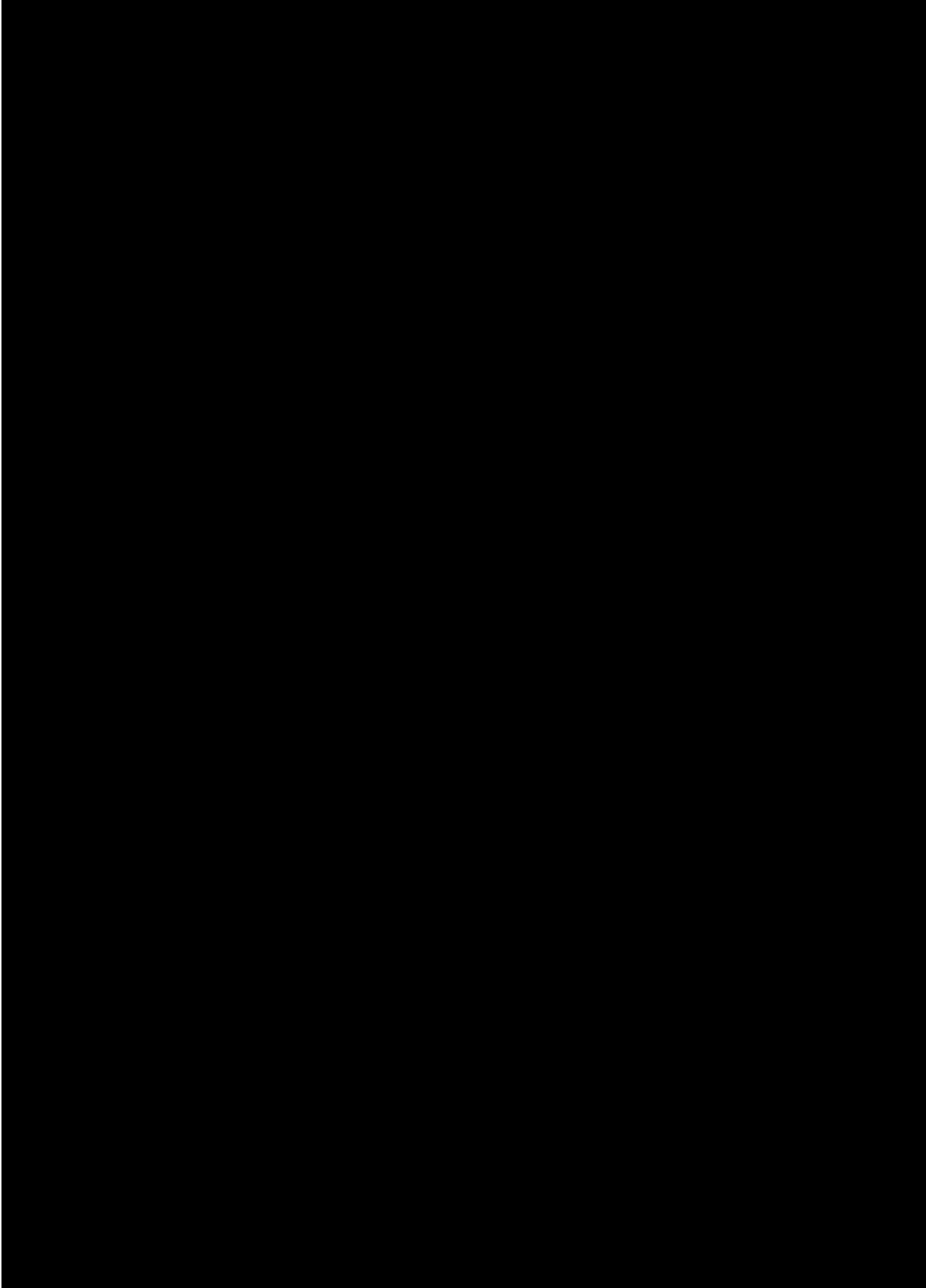
19 MR. POLÁŠEK: Okay.



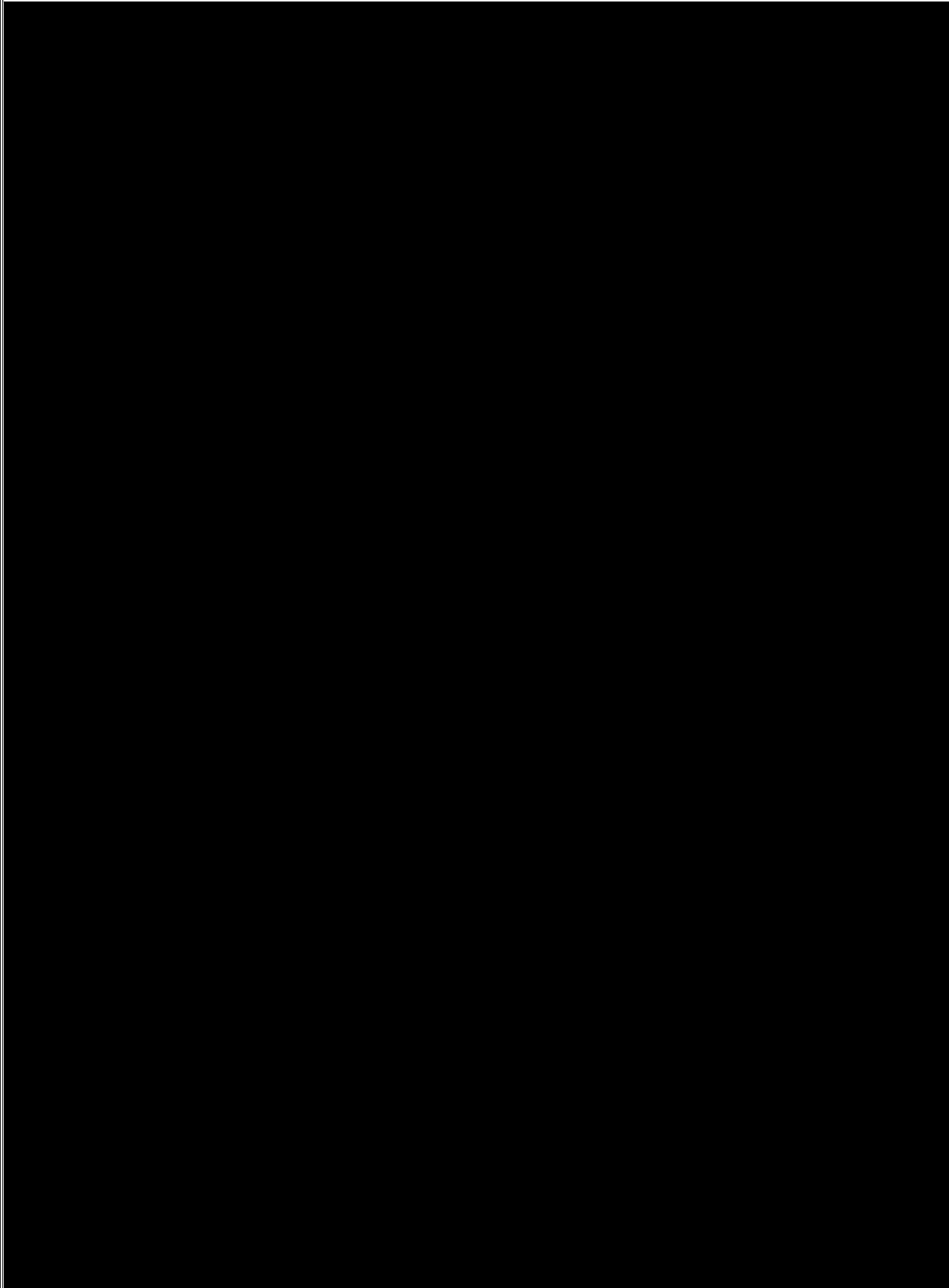
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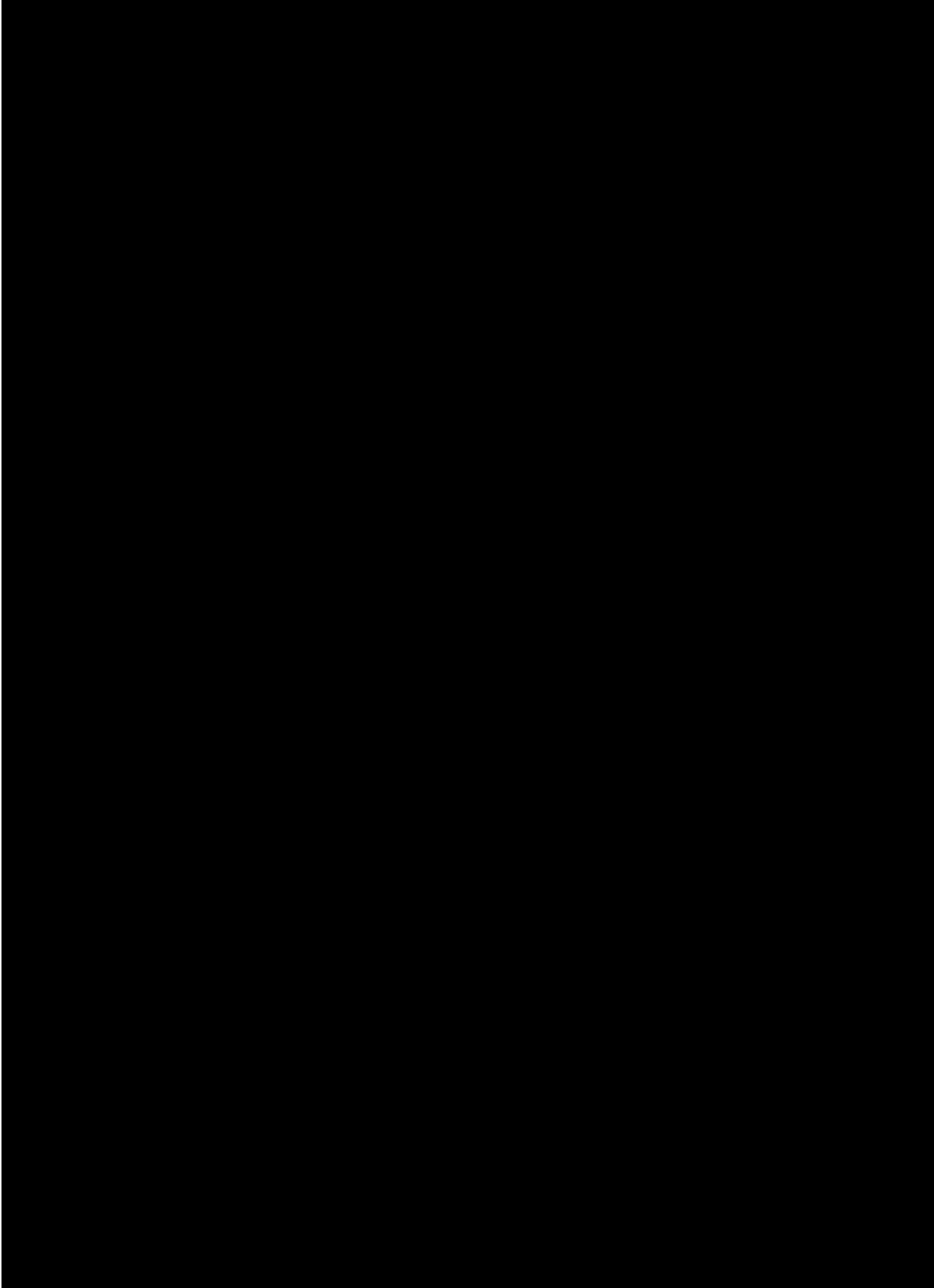
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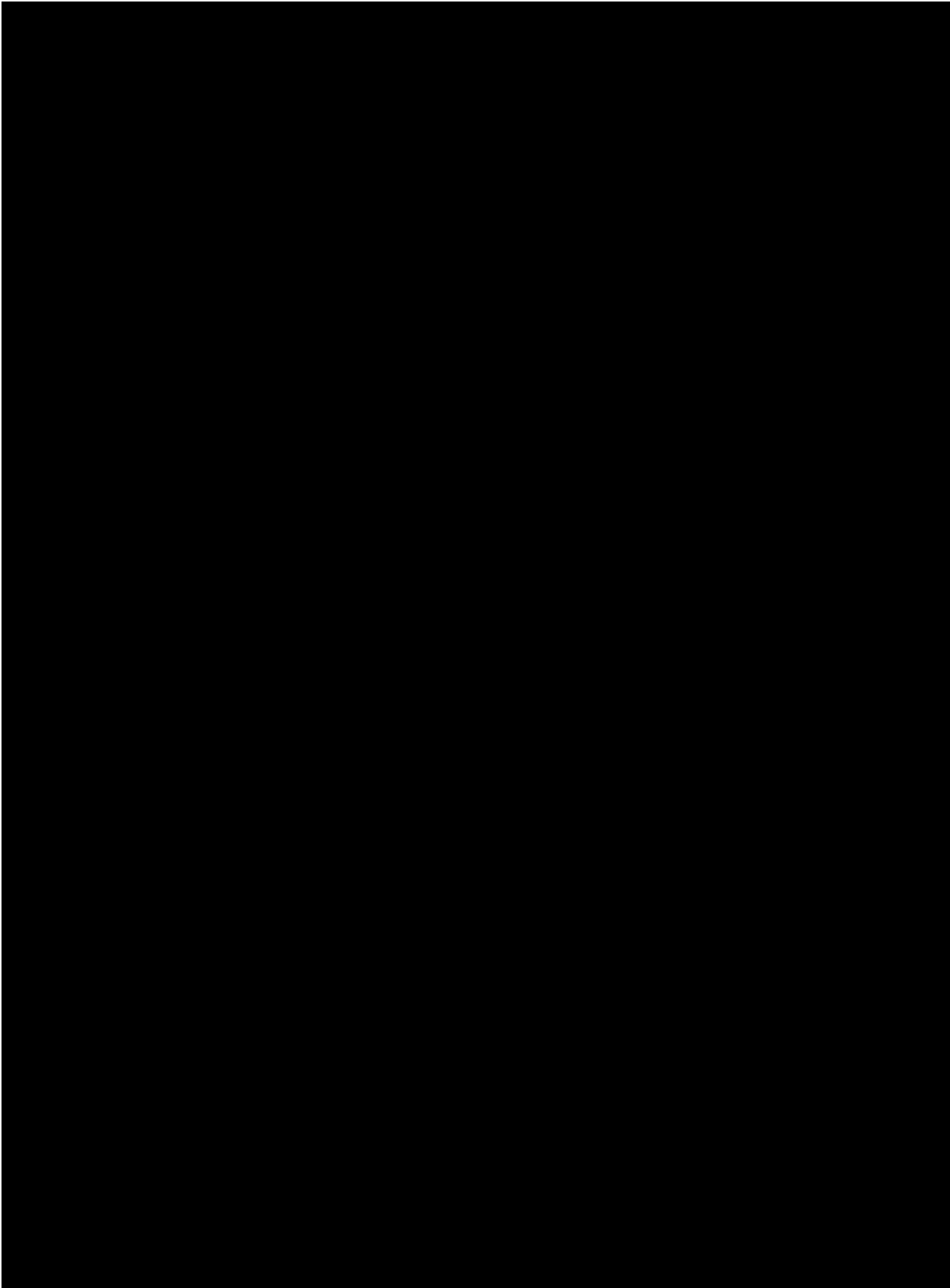
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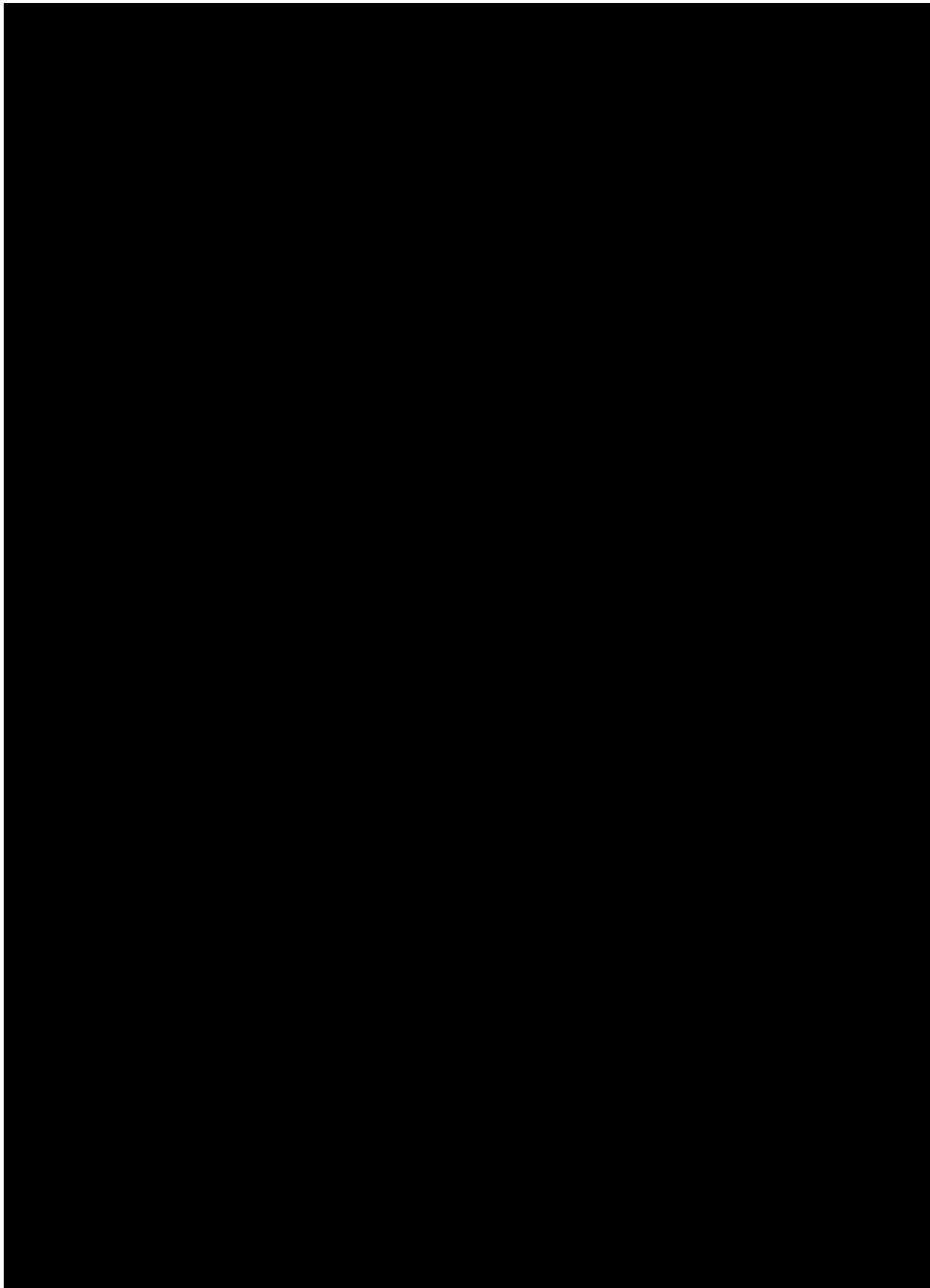
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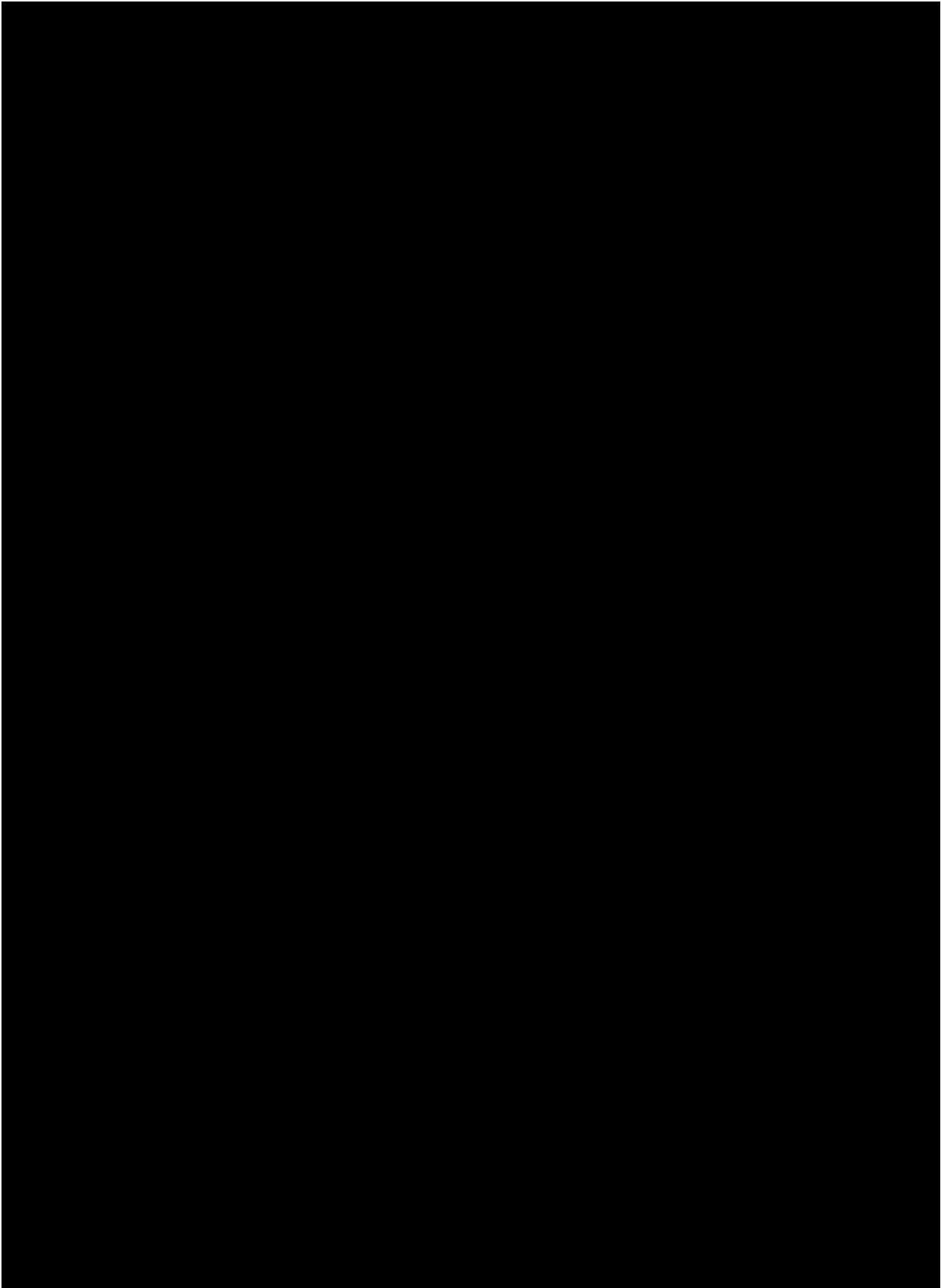
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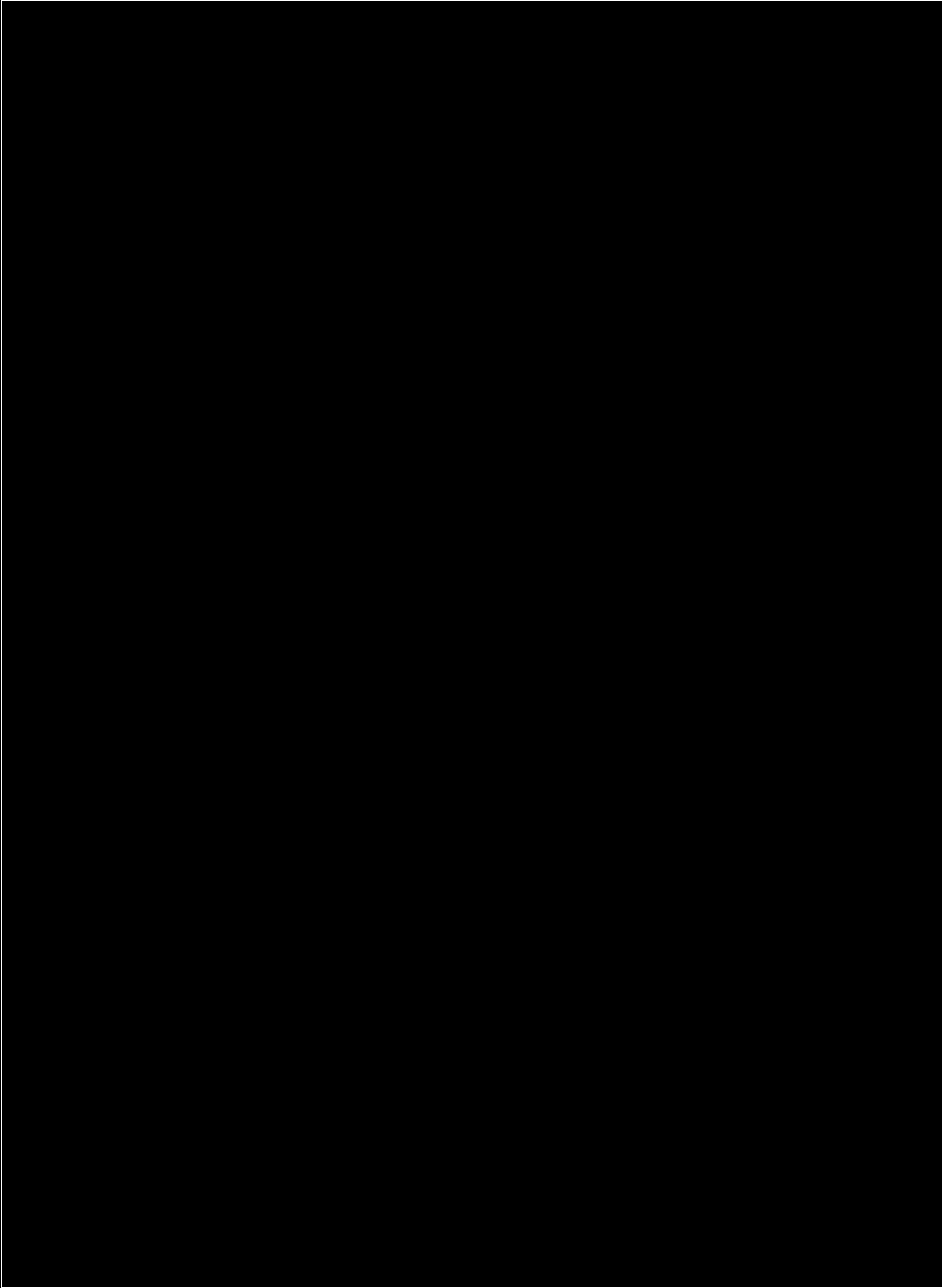
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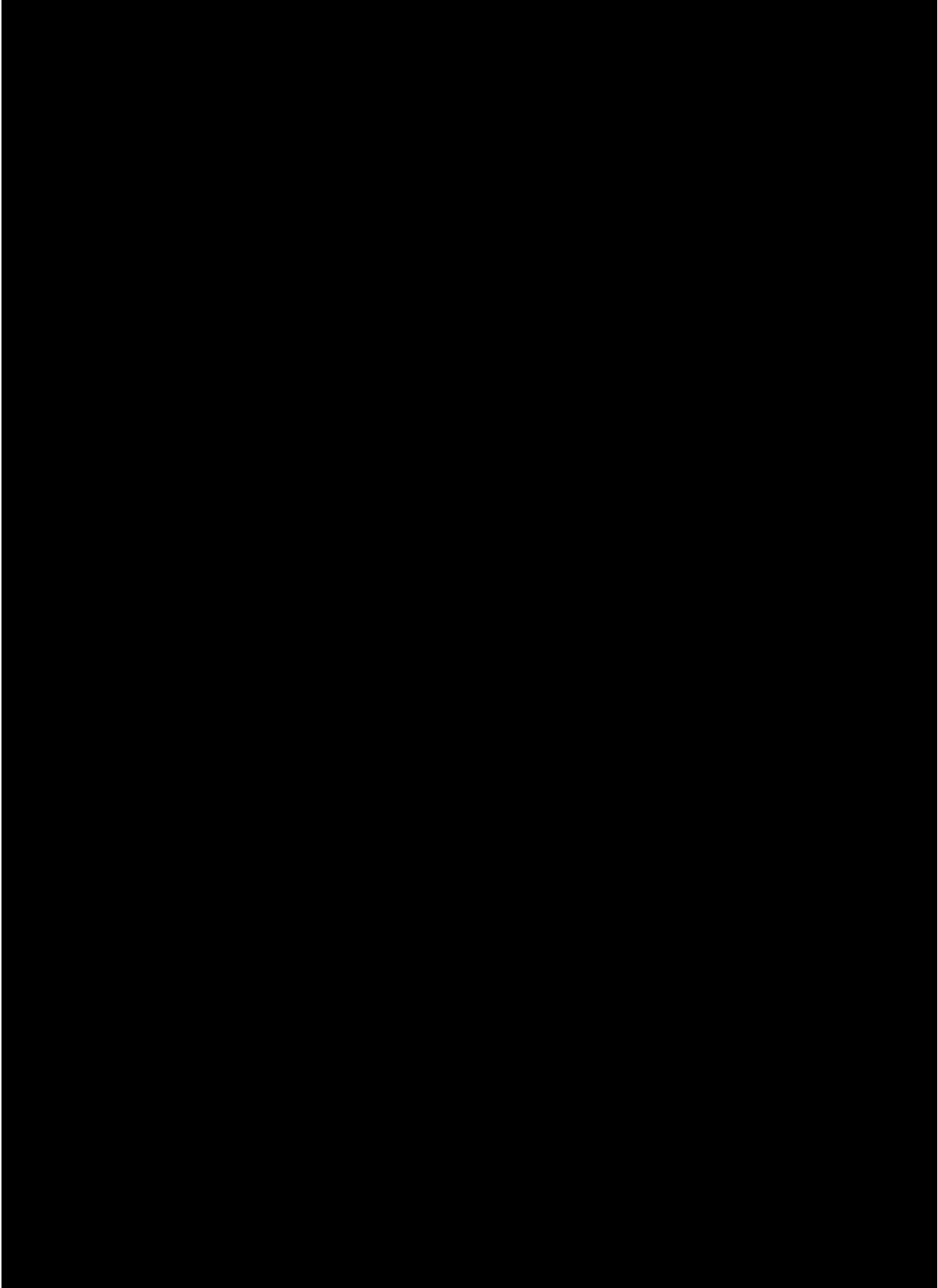
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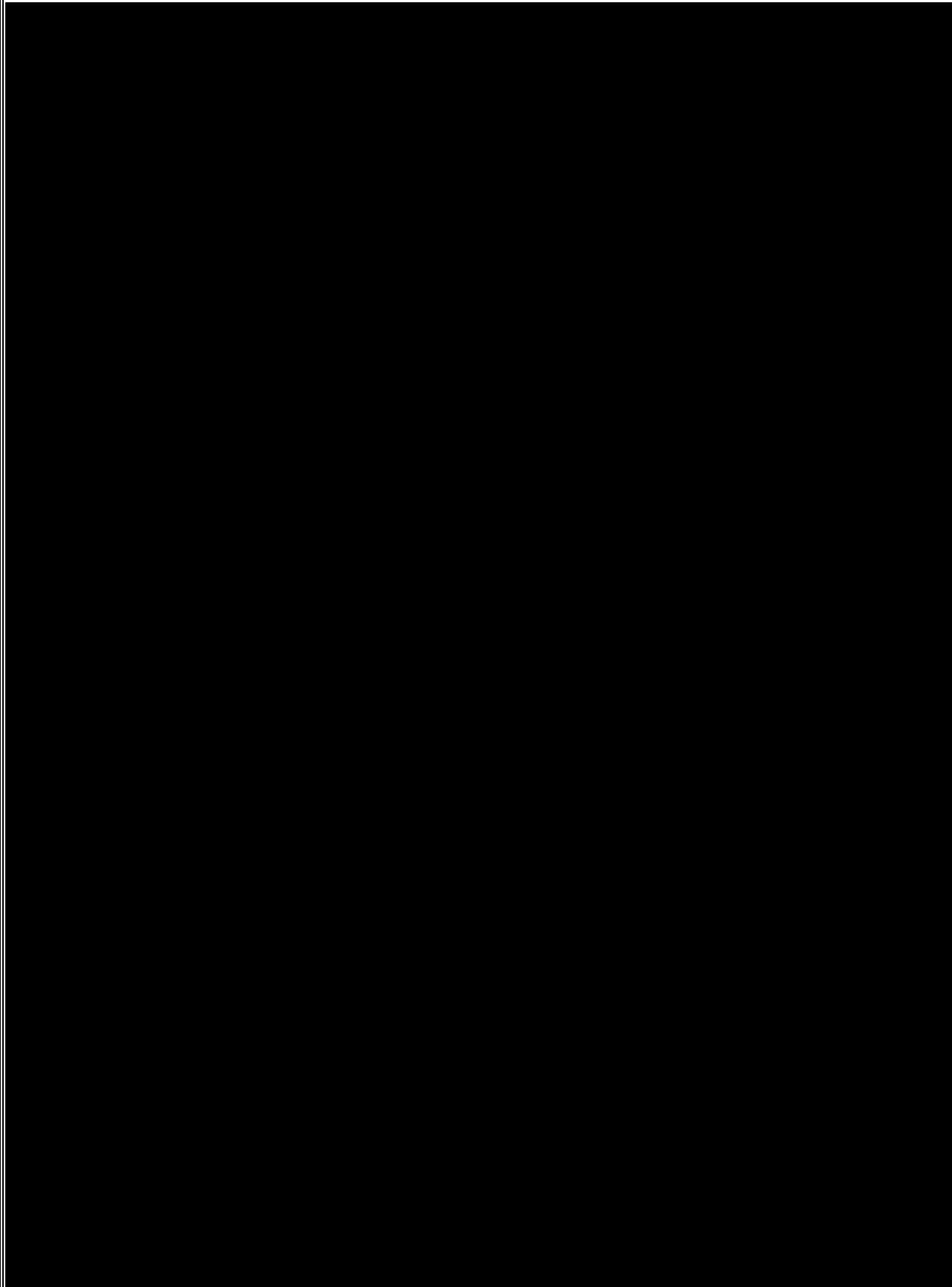
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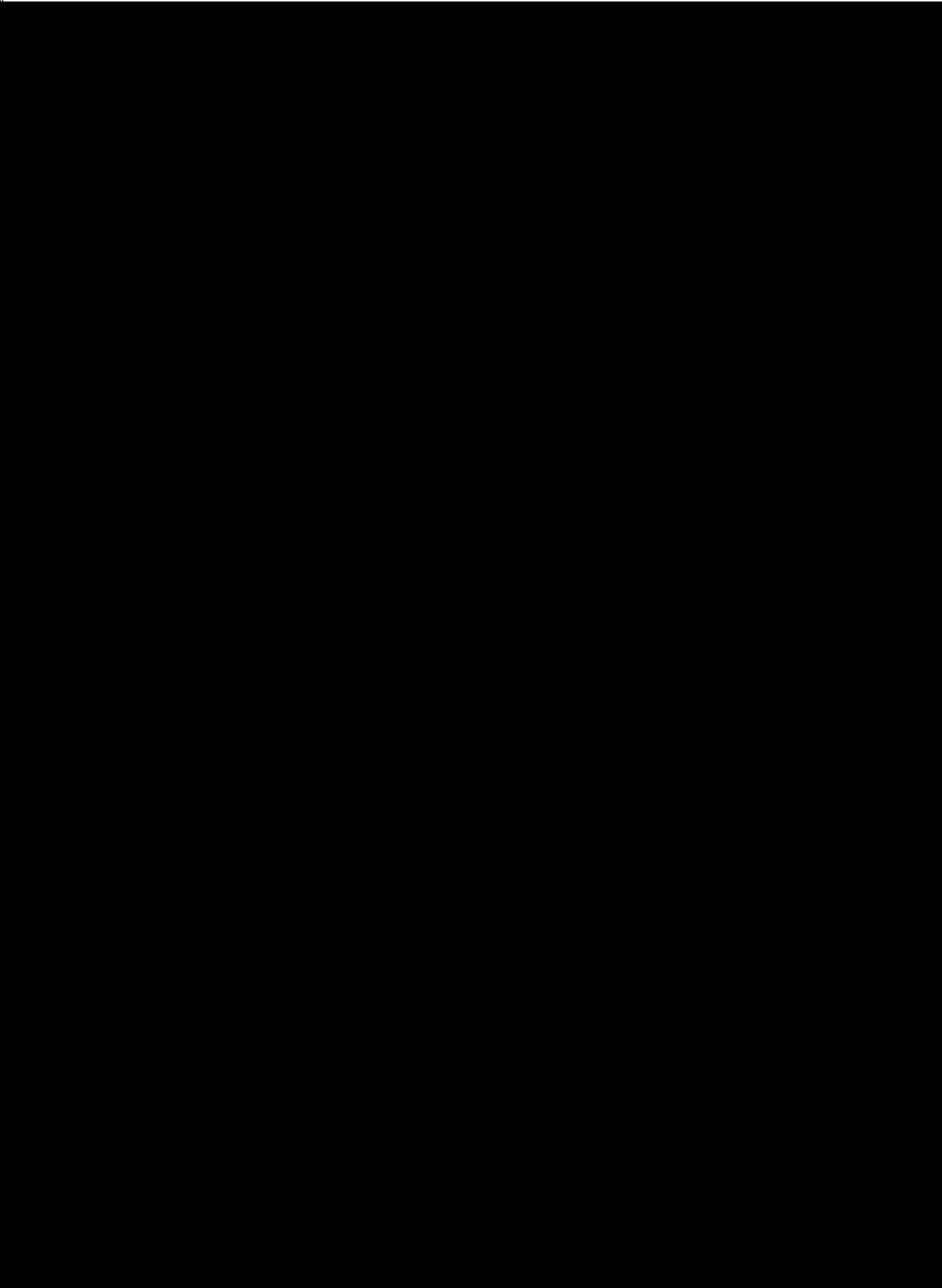
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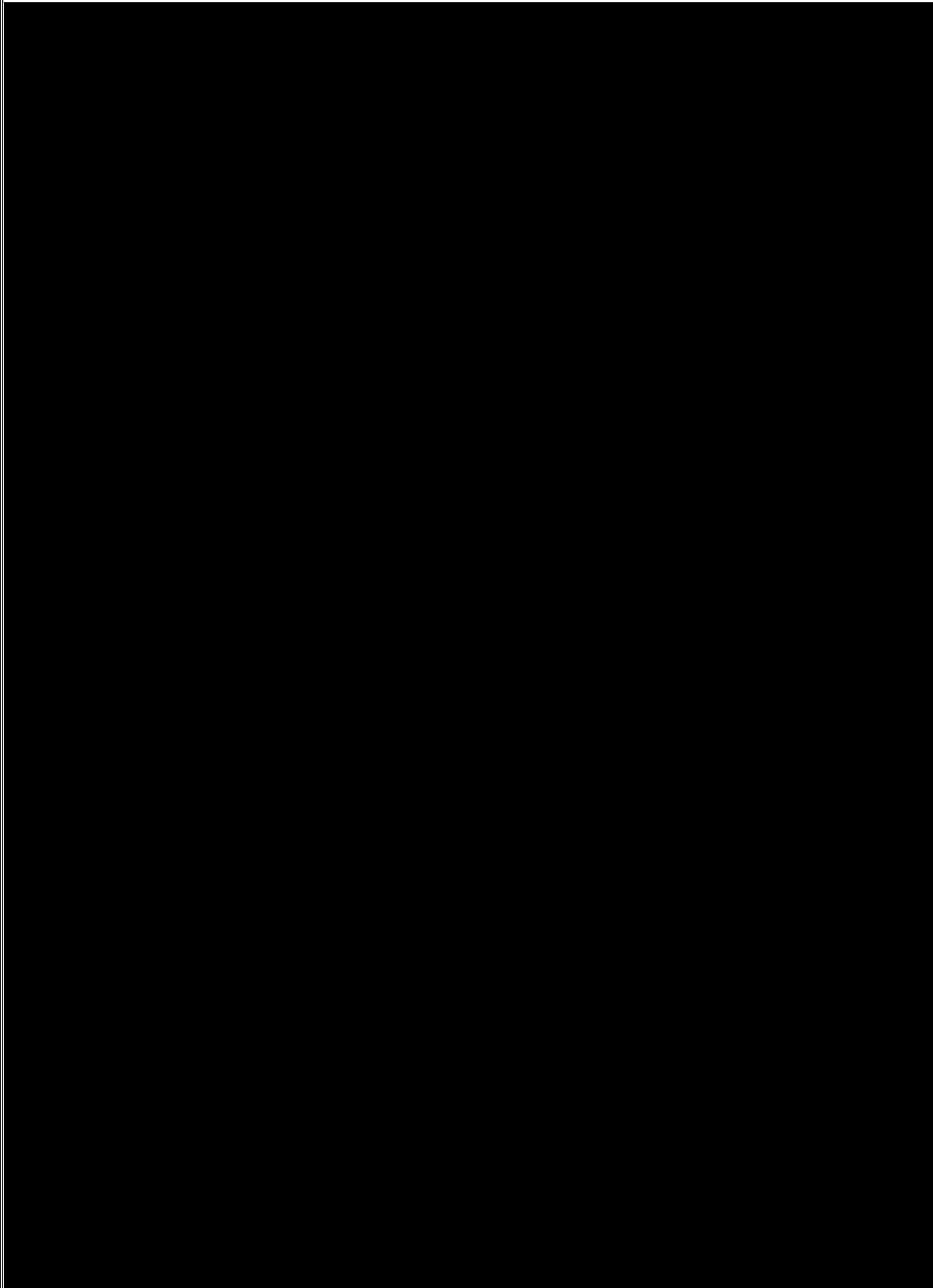
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MR. POLÁŠEK: Okay. Mr. President, I think we can pause here and resume tomorrow.

2

PRESIDENT TERCIER: Okay. But before that, I think it's important for you to know the time that will be at your disposal tomorrow to avoid any lengthy discussion tomorrow. So, I would like to discuss it shortly with my co-arbitrators.

3

Sorry. I wanted to do that. So, you are--you have not to stay here. You are--but you know that you are under testimony and that you have not the right to have any conduct with representatives. Okay.

4

(Tribunal conferring.)

5

PRESIDENT TERCIER: Each party had allocated 34 hours and 45 minutes. That is what was in PO 26, and 5 hours for the Tribunal.

6

Starting with the Tribunal, the Tribunal has used over the 5 hours, 5 hours and 25 minutes. But I consider it's a good sign.

7

Secondly, we cannot--if we have decided and agreed that we should finish tomorrow, we cannot allocate you the full time we had in mind. So, we

8

1 have to reduce it. And assuming we can work tomorrow
2 during eight hours, what is already quite a long day,
3 keeping half an hour for not only the Tribunal but
4 also some other things, we have 7 hours and 30
5 minutes.

6 That means that we would reduce the time at
7 your disposal for each of you, total time allocated,
8 theoretically, at the very beginning, by 1 hour and 45
9 minutes.

10 That concretely means that Claimant will have
11 33 hours. You have used 28 hours and half an hour.
12 It means that Claimant still has 4 hours and half an
13 hour.

14 On the other side, Respondent, 33 hours,
15 minus around 30 hours that you have used. It means
16 that you have left 3 hours.

17 So, I recall for tomorrow, you would have
18 4 hours and half an hour--and 30 minutes, and
19 Respondent would have 3 hours at disposal.

20 We are aware that there will be a
21 presentation on Respondent's side. And here we have
22 the time, 20 minutes and 20 minutes. Then we will

1 have the cross, and by--both done by Claimants. And
2 then the redirect, that could be--written 10 minutes
3 and 5 minutes.

4 But that is the calculation that we have
5 discussed.

6 Comments on your side?

7 MS. COHEN SMUTNY: We'll make it work.

8 PRESIDENT TERCIER: Thank you very much. On
9 your side?

10 DR. HEISKANEN: Yes. Likewise, we agree with
11 the allocation.

12 Just to flag. We were going to raise this
13 tomorrow morning, but we can do it now. Dr. Stoica
14 would need 30 minutes instead of 20 minutes for his
15 presentation. So, that is one comment.

16 And given that the Respondent has 3 hours
17 left, we reserve the right to extend the redirect a
18 bit more than the 10 and 5 minutes that are envisaged.

19 We may not need it, but we will certainly be
20 within the time allocated to the Respondent.

21 MS. COHEN SMUTNY: We certainly have no
22 objection to the Respondent using its time.

1 PRESIDENT TERCIER: Okay.

2 MS. COHEN SMUTNY: As long as we can use our
3 time.

4 PRESIDENT TERCIER: You see, at the end we
5 manage to find time. Just be patient and everything
6 will be solved.

7 ARBITRATOR DOUGLAS: We have no time.

8 PRESIDENT TERCIER: We have a half hour that
9 we keep, but we will share it with the Parties in
10 order to discuss the next step of the procedure.
11 Okay?

12 Good. I wish you all a very pleasant
13 evening.

14 (Whereupon, at 6:18 p.m., the Hearing was
15 adjourned until 8:30 a.m. the following day.)

CERTIFICATE OF REPORTER

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

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

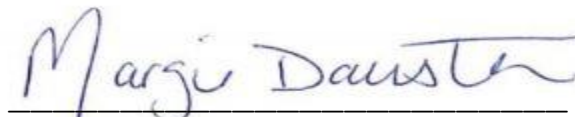


DAVID A. KASDAN

CERTIFICATE OF REPORTER

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

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


MARGIE DAUSTER