

Appendix C

INFORMATION TO OBTAIN (Ontario Court of Justice)

CANADA
PROVINCE OF ONTARIO
TORONTO REGION



An application for two Production Orders pursuant to section 487.014 of the *Criminal Code*;

An Application for a Production Order pursuant to section 487.016 of the *Criminal Code*;

And

An application for an Order Denying Access to Information pursuant to section 487.3 of the *Criminal Code*.

TABLE OF CONTENTS

1. INTRODUCTION AND ORDERS BEING SOUGHT 5

2. BACKGROUND OF THE INVESTIGATION..... 6

3. PREVIOUSLY CONSIDERED JUDICIAL AUTHORIZATIONS 7

4. ADDITIONAL PRODUCTION ORDER RESULTS 7

 (a) [REDACTED] From Rogers Communications Canada Incorporated..... 7

5. THE TOWER DUMP PRODUCTION ORDER RESULTS..... 8

 (a) Receipt of the tower dump data 9

6. REVIEW OF PREVIOUSLY OBTAINED STATEMENTS 10

 i. [REDACTED] 11

 i. [REDACTED] 11

7. RECENT STATEMENTS 12

 (a) [REDACTED] 12

 (b) [REDACTED] 14

 (c) [REDACTED] 16

 (d) [REDACTED] 20

 (e) [REDACTED] 24

 (f) [REDACTED] 26

 (g) [REDACTED] 38

 (h) [REDACTED] 64

8. [REDACTED] 75

 (a) [REDACTED] 75

 i. [REDACTED] 75

 ii. [REDACTED] 76

 iii. [REDACTED] 77

(b)	[REDACTED]	78
9.	[REDACTED]	81
(a)	[REDACTED]	81
i.	[REDACTED]	81
ii.	[REDACTED]	82
iii.	[REDACTED]	83
I.	[REDACTED]	83
II.	[REDACTED]	
	84	
III.	[REDACTED]	85
IV.	[REDACTED]	85
iv.	[REDACTED]	86
(b)	[REDACTED]	87
i.	[REDACTED]	88
ii.	[REDACTED]	88
iii.	[REDACTED]	89
iv.	[REDACTED]	90
10.	BACKGROUNDS	91
(a)	[REDACTED]	92
(b)	[REDACTED]	93
(c)	[REDACTED]	94
11.	[REDACTED]	94
12.	[REDACTED]	94
13.	REASONABLE GROUNDS TO BELIEVE AN OFFENCE HAS BEEN COMMITTED	95
14.	REASONABLE GROUNDS TO BELIEVE THAT THE DOCUMENTS TO BE PRODUCED WILL AFFORD EVIDENCE	100
(a)	[REDACTED]	100
(b)	[REDACTED]	101

15. REASONABLE GROUNDS TO SUSPECT THAT THE TRANSMISSION DATA WILL ASSIST IN THE INVESTIGATION.....	102
(a) Avenues of Investigation, Filtering of Data and Protection of Third Party Data	102
i. Tower Dump Filtering.....	104
ii. Subsequent sealing of “tower dump” data	108
16. GROUNDS TO BELIEVE THE DOCUMENTS TO BE PRODUCED ARE IN THE POSSESSION AND CONTROL OF THE ENTITIES FROM WHICH I AM SEEKING THEM.....	109
(a) [REDACTED]	109
(b) [REDACTED]	110
17. REASONABLE GROUNDS TO SUSPECT THAT THE TRANSMISSION DATA IS IN THE POSSESSION AND CONTROL OF THE ENTITY FROM WHICH I AM SEEKING THEM	110
18. CONCLUSION	110
19. ORDER DENYING ACCESS TO INFORMATION	111
(a) Pursuant to section 487.3(2) (a) (ii), Compromise the nature and extent of an ongoing investigation	112
(b) Pursuant to section 487.3(2) (a) (iv), Prejudice the interest of an innocent person.....	113
i. Sealing of Previous Judicial Authorizations	114
ii. Toronto Star’s Applications to Unseal.....	114
iii. Toronto Star Newspapers Ltd. v. Sherman Estate, 2018 ONSC 4706.....	116

1. INTRODUCTION AND ORDERS BEING SOUGHT

On Friday, December 15th, 2017, the Toronto Police Service received a 911 call to attend at 50 Old Colony Road, in the City of Toronto. Responding officers discovered the bodies of Bernard and Honey SHERMAN in the basement of their home, next to their swimming pool. They were facing the wall in a semi-seated position. Their arms were behind them, and their bodies were being held up by black belts wrapped around their necks and tied to a railing approximately [REDACTED]. As detailed in Appendix D of this application and in the information provided below, I have reasonable grounds to believe that Honey SHERMAN and Bernard SHERMAN were murdered. At this point in the investigation, investigators are trying to determine who is responsible for their deaths.

On April 17th, 2019, I had attended the Toronto North Courts in the City of Toronto to testify at the unsealing application by the Toronto Star Newspapers Ltd. I testified that the Toronto Police Service had a working theory as to what had happened in this case. The theory (which was not revealed in testimony) being that investigators believe that both Bernard and Honey SHERMAN were murdered and that the perpetrator, believed to be a male (hereinafter referred to as the “walking man”) that is seen on video surveillance, walking in the area of 50 Old Colony Road [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

In this application, I seek the following orders:

- (a) A production order compelling [REDACTED]
[REDACTED]
[REDACTED]
- (b) A production order compelling [REDACTED]
[REDACTED]
- (c) By s. 487.015 production orders dated January 29th, 2019, Bell Canada Incorporated, Rogers Communications Canada Incorporated, Freedom Mobile Incorporated and Telus Communications Incorporated provided transmission data to the TPS Intelligence Unit. The Production Orders authorized the TPS Intelligence Unit to compare telephone numbers identified throughout the investigation up to that point to the transmission data provided by the telecommunications companies. In this application, I seek a further production order (pursuant to s. 487.016) authorizing Det. Christopher SLOAN (or his designate) of the TPS Intelligence Unit to compare the results of two production orders obtained¹ after the January 29th, 2019, production orders, to the transmission data provided by the telecommunications companies for the purpose of identifying common phone numbers.

2. BACKGROUND OF THE INVESTIGATION

In support of this application, I have appended portions of three judicial authorization applications I have made. Each of these prior applications outlines relevant background or context to my present application.

Attached as Appendix D is a prior appendix for a judicial authorization package, submitted on November 5th, 2018 for the production of the phone records of [REDACTED]
[REDACTED]

[REDACTED]
[REDACTED]

[REDACTED] This appendix details the general background to this investigation.

Attached as Appendix E is a prior appendix for a judicial authorization package, submitted on December 14th, 2018 for the production of tracking and transmission data of the phone records [REDACTED]

Attached as Appendix F is a prior appendix for a judicial authorization package, submitted on January 27th, 2019 for the production of transmission data from the cellular towers proximate to the locations that Bernard and Honey SHERMAN attended on December 13th, 2017. This information provides background regarding the gathering of the transmission data that I now seek authorization, pursuant to s. 487.016 to compare two additional sets of Production Order results to this application.

Currently all of the appendices D, E and F are subject to their respective sealing orders and are sealed.

3. PREVIOUSLY CONSIDERED JUDICIAL AUTHORIZATIONS

For this application I have included the previously considered judicial authorizations in its own appendix, Appendix G.

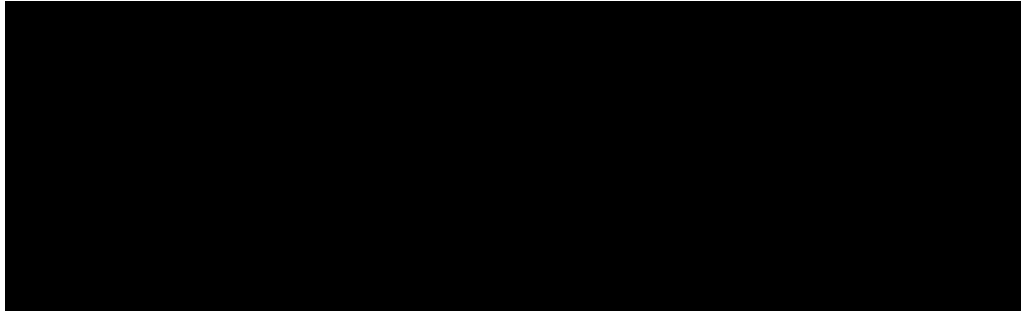
4. ADDITIONAL PRODUCTION ORDER RESULTS

Since my last application for any judicial authorization in relation to this investigation in January 2019, I have received and reviewed the results from the following prior judicial authorizations:

- (a) **Phone Numbers Associated to [REDACTED] From Rogers Communications Canada Incorporated**

- i. On December 20th, 2018, Justice PRINGLE issued a production order for transmission and tracking data regarding certain Rogers Communications Canada Incorporated records. On January 22nd, 2019 I received records for the transmission and tracking data from November 15th, 2017 to December 19th, 2017 inclusive and from January 24th, 2018 to February 4th, 2018 inclusive from Rogers Communications Canada Incorporated for the following phone numbers:

- I.
- II.
- III.
- IV.
- V.
- VI.



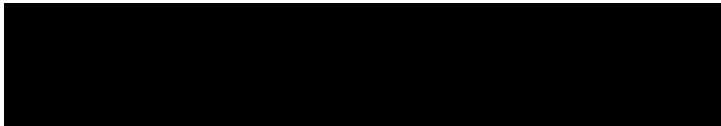
And on January 28th, 2019 I received records for the transmission and tracking data for the following number:

- I.



- ii. On December 20th, 2018, Justice PRINGLE issued a production order for transmission and tracking data regarding certain Bell Canada Incorporated records. On January 30th, 2019 I received records for the transmission and tracking data from November 15th, 2017 to December 19th, 2017 inclusive and from January 24th, 2018 to February 4th, 2018 inclusive from Bell Canada Incorporated for the following phone numbers:

- I.
- II.



5. THE TOWER DUMP PRODUCTION ORDER RESULTS

On January 29th, 2019, Justice PRINGLE issued s. 487.015 production orders or transmission data from Bell Canada Incorporated, Rogers Communications Canada Incorporated, Freedom Mobile Incorporated and Telus Communications Incorporated (the “tower dump” production orders). Each order was subject to the following terms and conditions:

- 1) Rogers Communications Canada Incorporated, Bell Canada Incorporated, Telus Communications Incorporated and Freedom Mobile Incorporated are ordered to produce the required transmission data in a sealed or password-protected format.
- 2) The data may only be accessed by members of the Toronto Police Service – Intelligence Unit, Technical Crime Unit with no involvement in this investigation (the “members”).
- 3) Upon accessing the data, the members may only analyse the data by comparing it, using electronic means, against the phone numbers in attached Appendices G through K, and generating a sub-set of data consisting of data pertaining to communications involving one or more of the phone numbers in attached Appendices G through K.
- 4) Members conducting the analysis described above must take reasonable steps to only view the sub-set of data generated by this analysis.
- 5) The sub-set of data generated by this analysis may be provided to investigators who may use it for investigative purposes.
- 6) Once this analysis is complete, the members must seal and keep stored in a sealed manner the data produced pursuant to this order, ensuring that it is inaccessible to the investigators and any other persons, and not further accessed or analysed, without a court order.
- 7) Appendices G through K are not to be produced to the persons upon whom this order is served.

(a) Receipt of the tower dump data

Through communications with Det. Christopher SLOAN #7844, of the Toronto Police Service, Intelligence Unit, I have learned the following:

- i. On February 4th, 2019, the tower dump data from Telus Communications Incorporated was received by Det. SLOAN.
- ii. On February 27th, 2019, the tower dump data from Rogers Communications Canada Incorporated was received by Det. SLOAN.

- iii. On March 1st, 2019, the tower dump data from Freedom Mobile Incorporated was received by Det. SLOAN.
- iv. On May 6th, 2019, the tower dump data from Bell Canada Incorporated was received by Det. SLOAN.

The comparisons as outlined in the terms and conditions for the production orders to trace a communications dated January 29th, 2019, have not yet been executed. There are two principal reasons why these comparisons have not yet been done.

First, the final results of the tower dump orders were only received on May 6th, 2019. Investigators believed that it would be more appropriate to run the comparisons to produce subset of common numbers using the tower dump data sets, from all the telecommunication companies, once all the tower dump data sets had been produced. The accumulation of all the tower dump data prior to starting any comparisons prevents, Det. SLOAN or his designate, from having to access different tower dump data sets at different times to do comparisons which may result in investigators receiving subsets of data at different points in the investigation. Investigators would have had to try to do a full analysis of the subsets of data with the knowledge that there could be additional subsets yet to be produced.

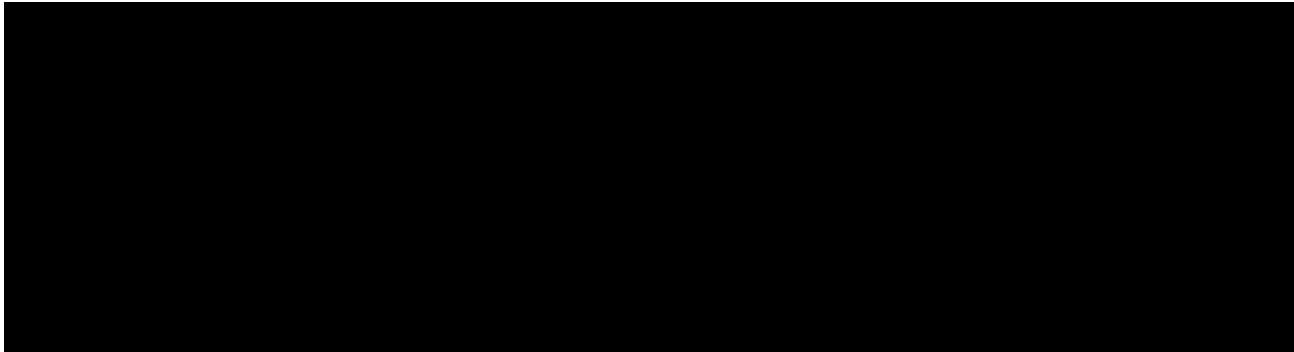
Second, since May 2019 when the last of the tower dump results were received, this present application has been in the process of being drafted (to permit two additional sets of production order results to be compared to the tower dump results). It is the intention of the investigators to run all the comparisons at the same time thereby requiring Det. SLOAN or his designate to access the "tower dump" data set only once to do the comparisons and any results from the comparisons would be received and subsequently analysed at the same time. It was decided that for the purpose of simplicity, that it would be prudent to wait for the results of this application for the production of transmission data in order that the comparison for common numbers can be done all at once and that the subset of common numbers would be produced to investigators at the same time.

6. [REDACTED]

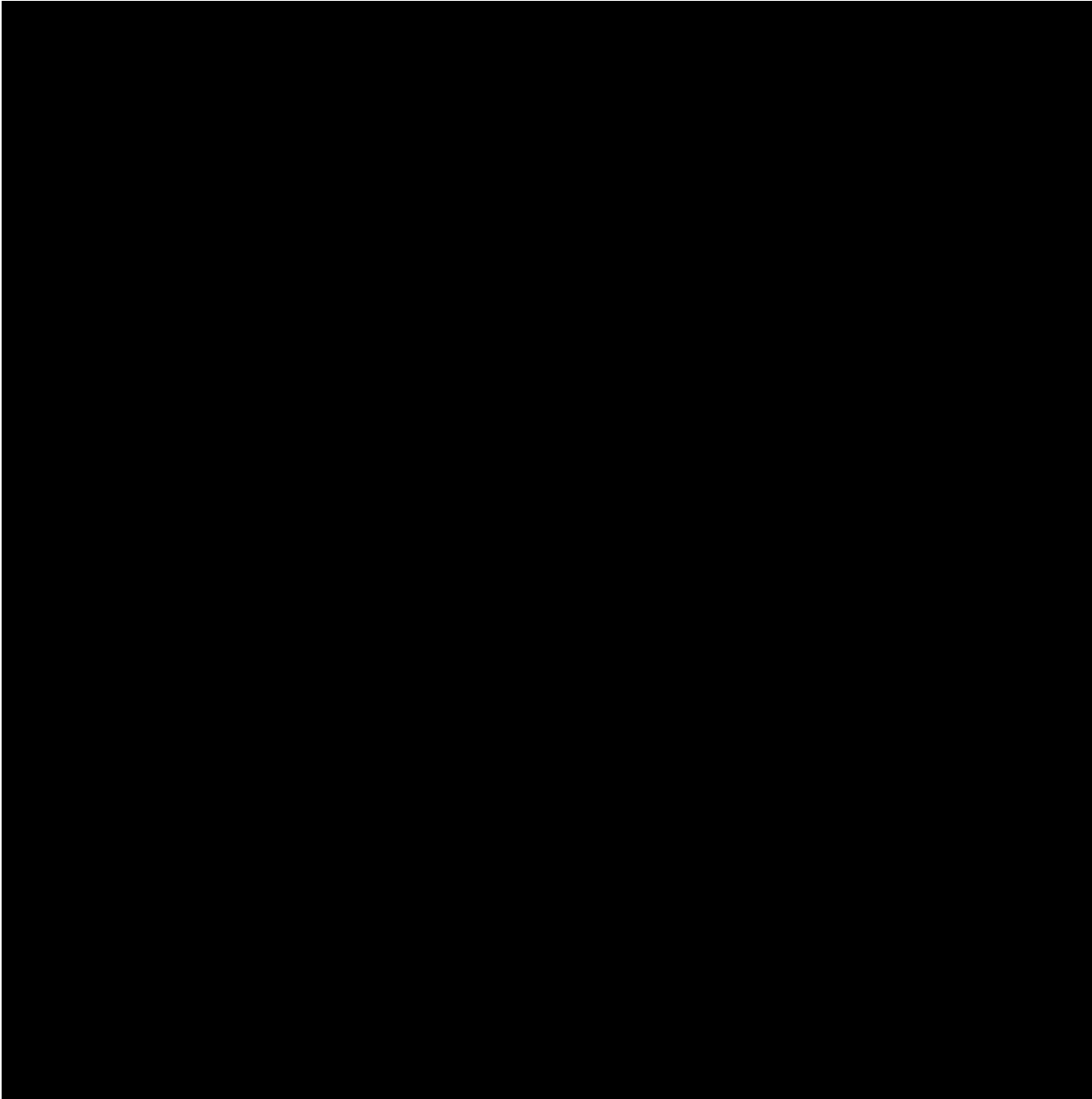
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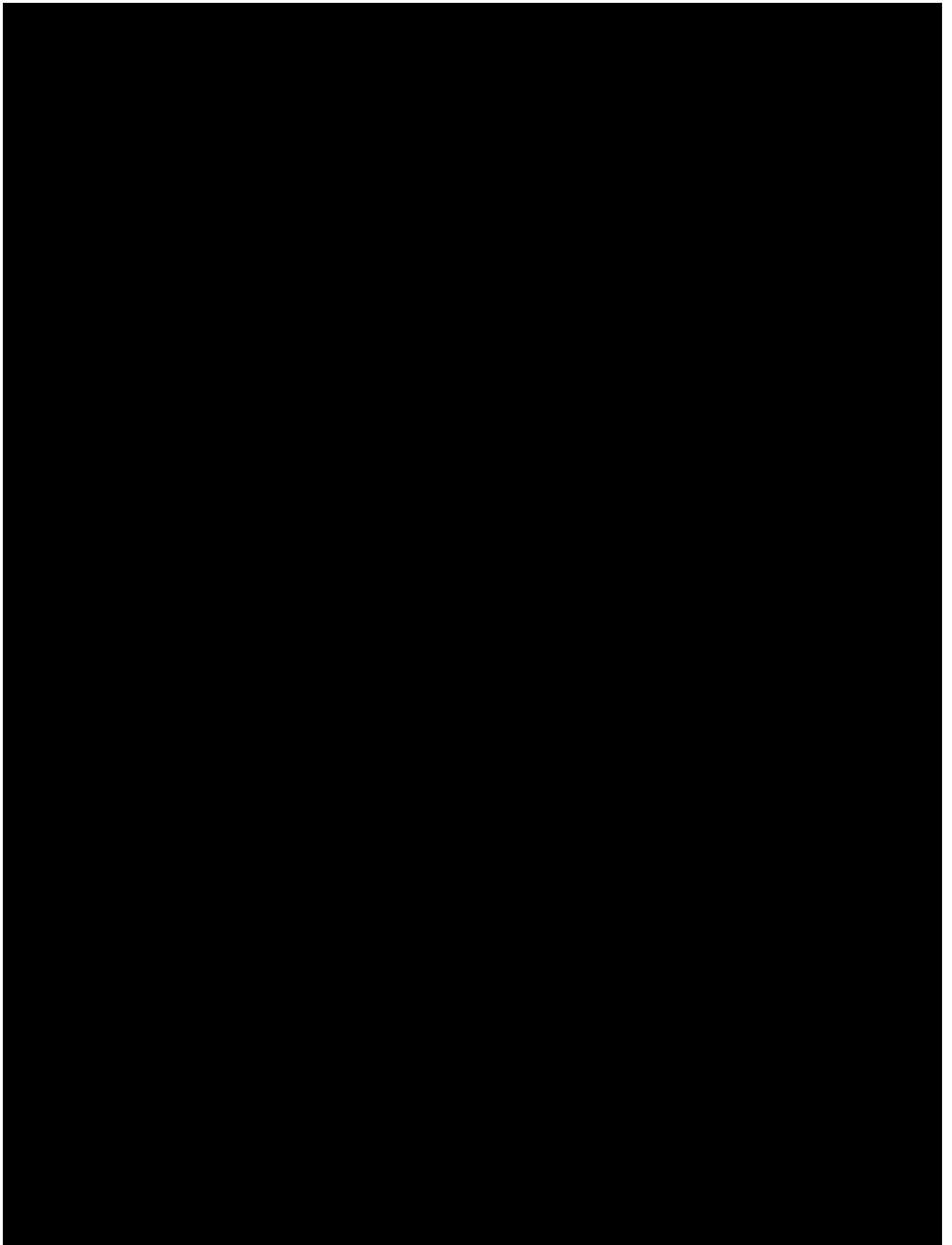
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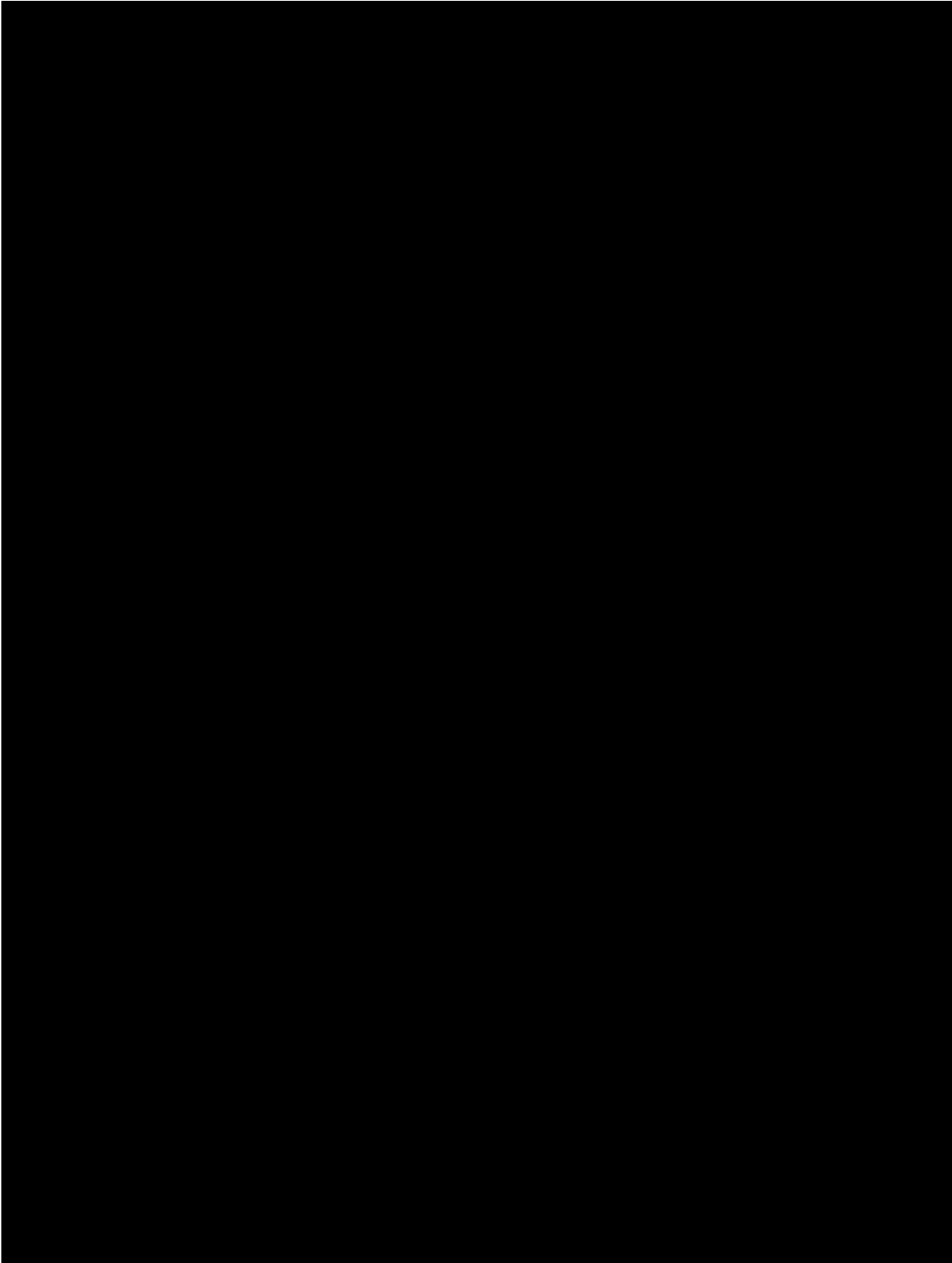
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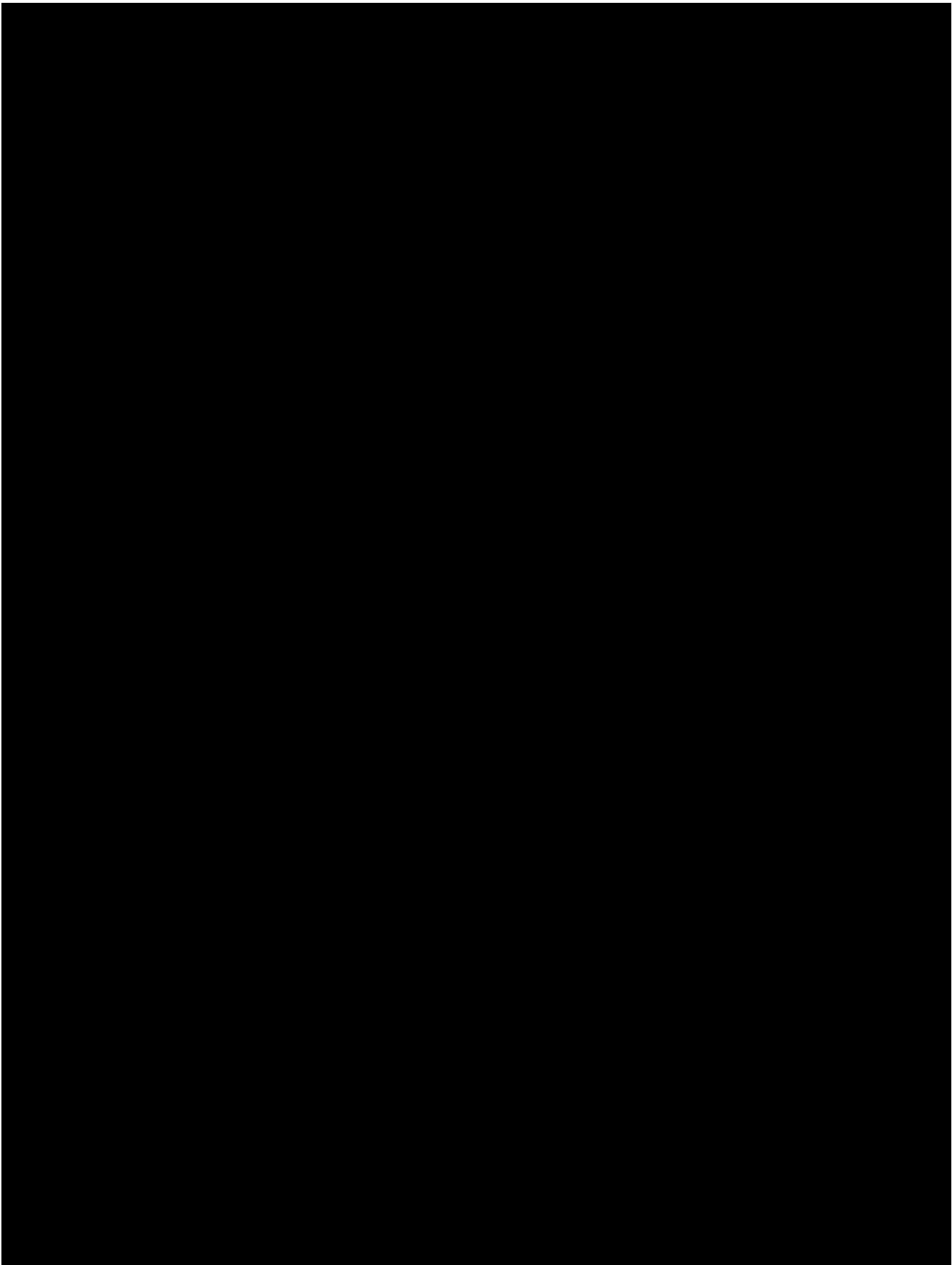


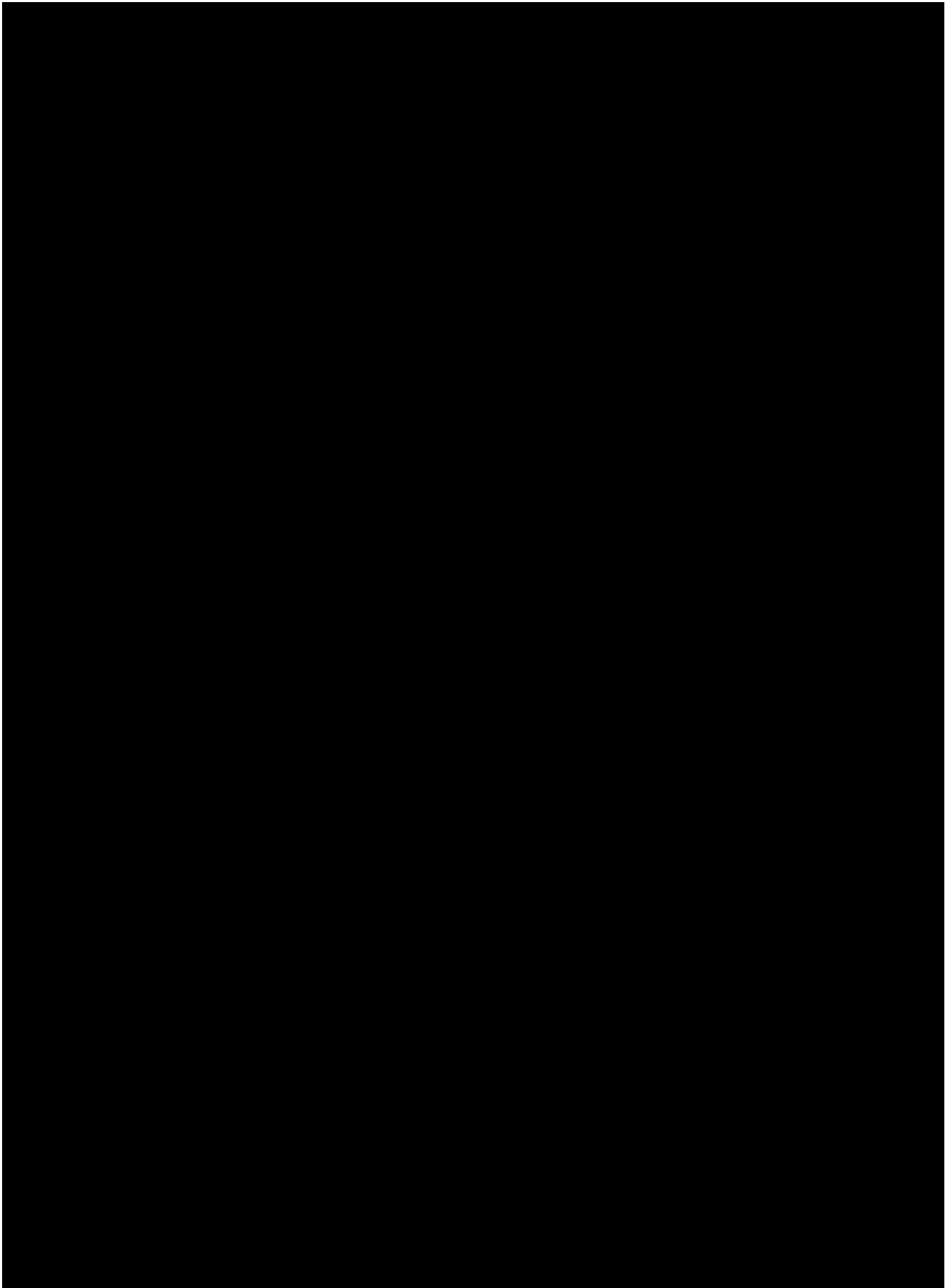
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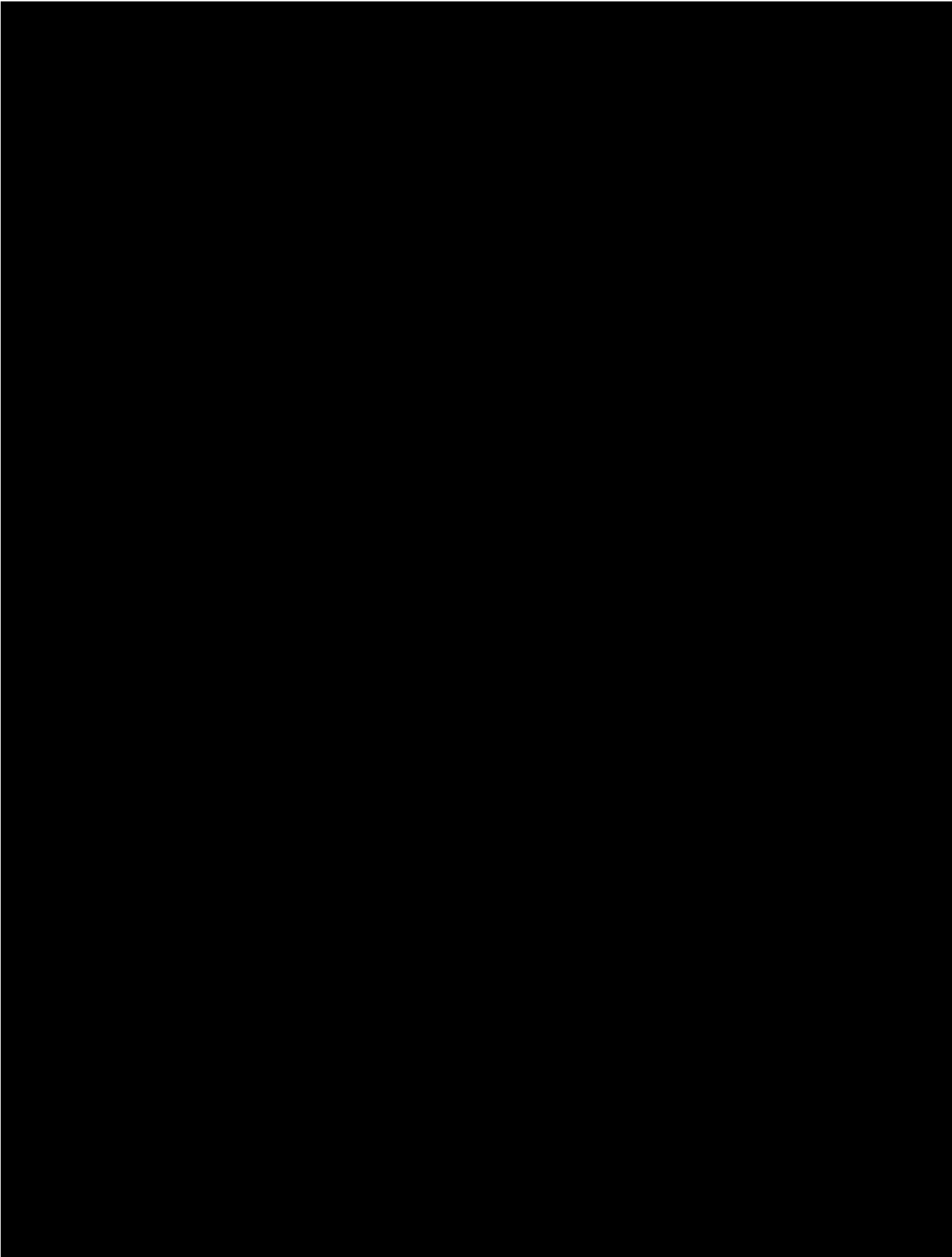


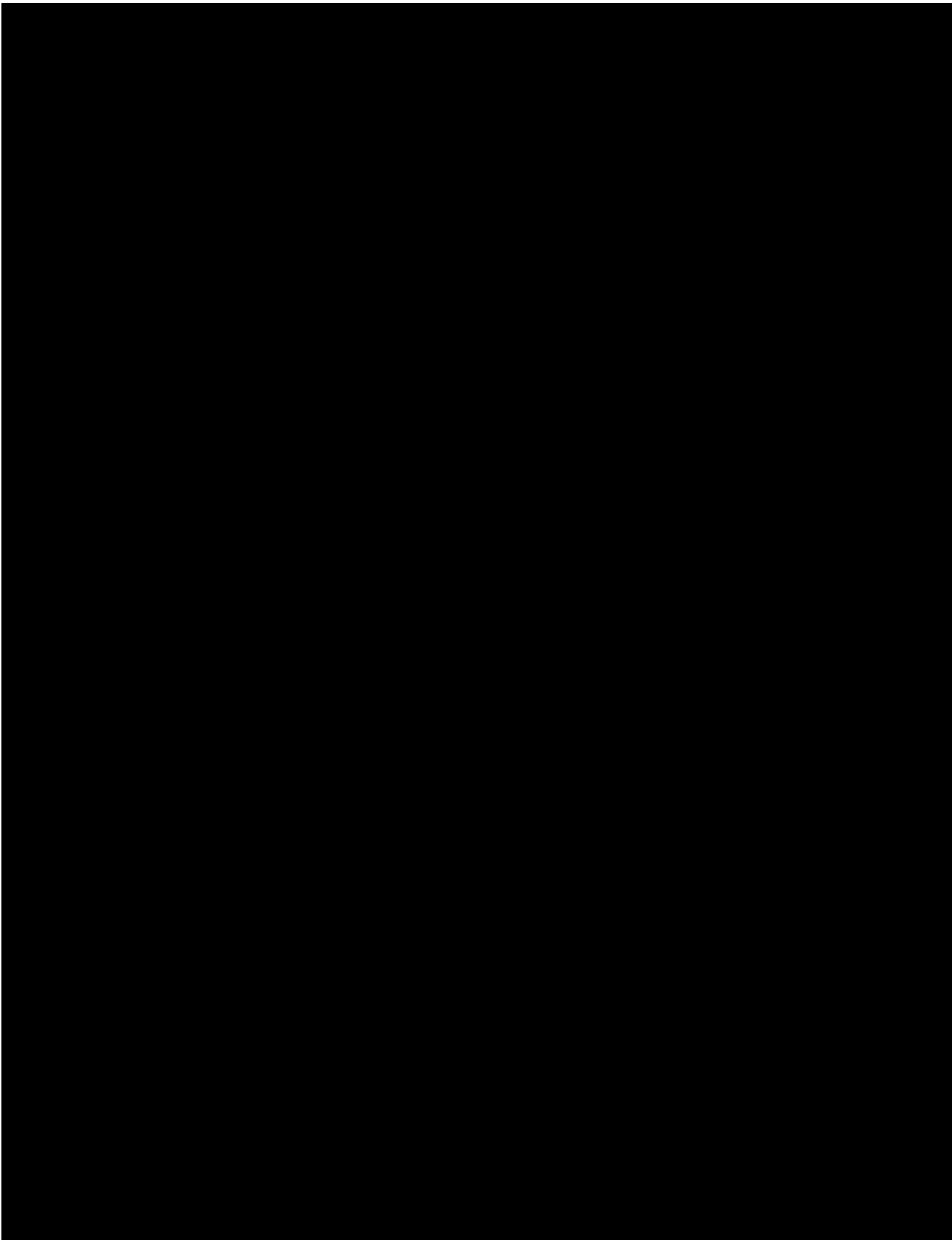


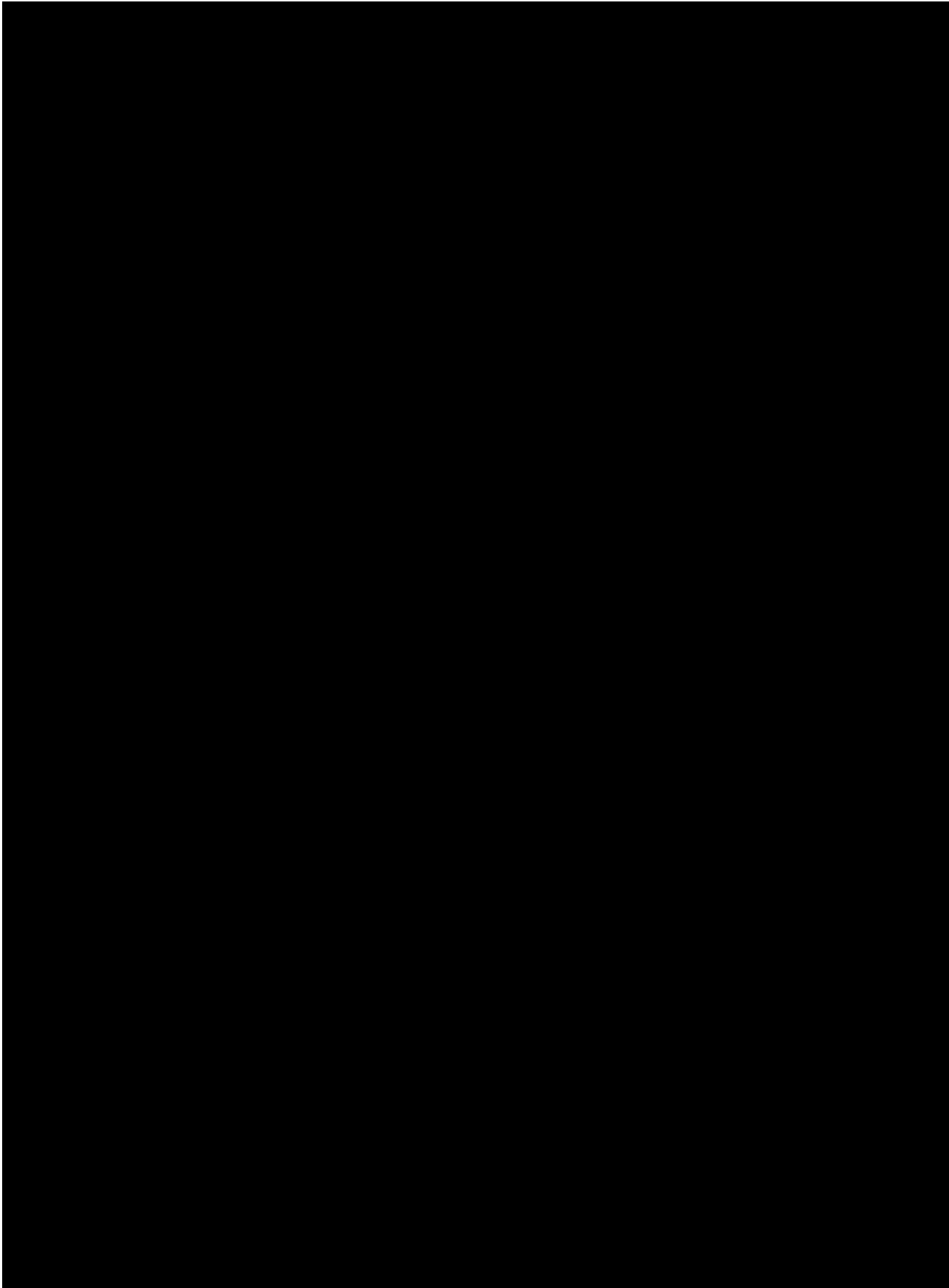


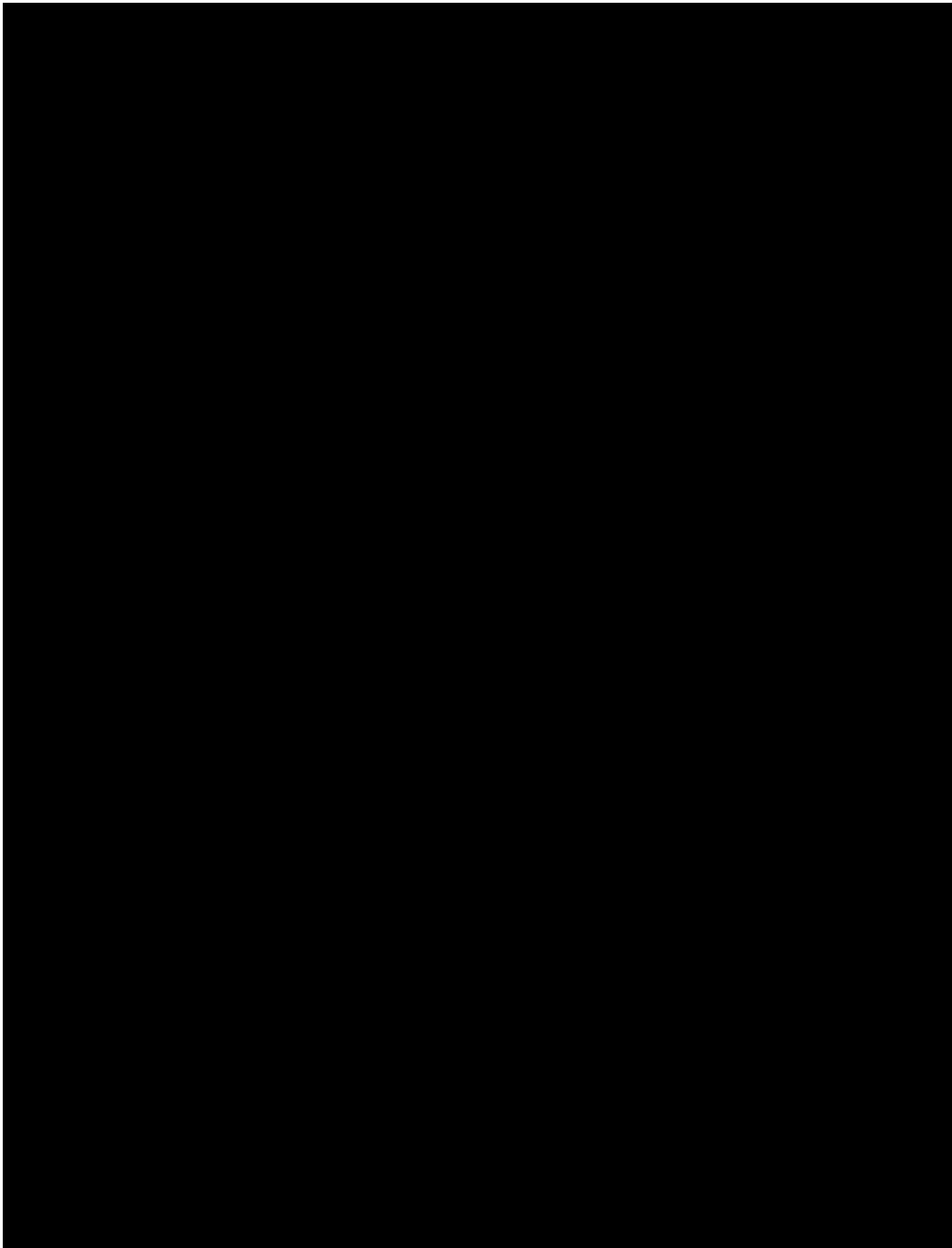


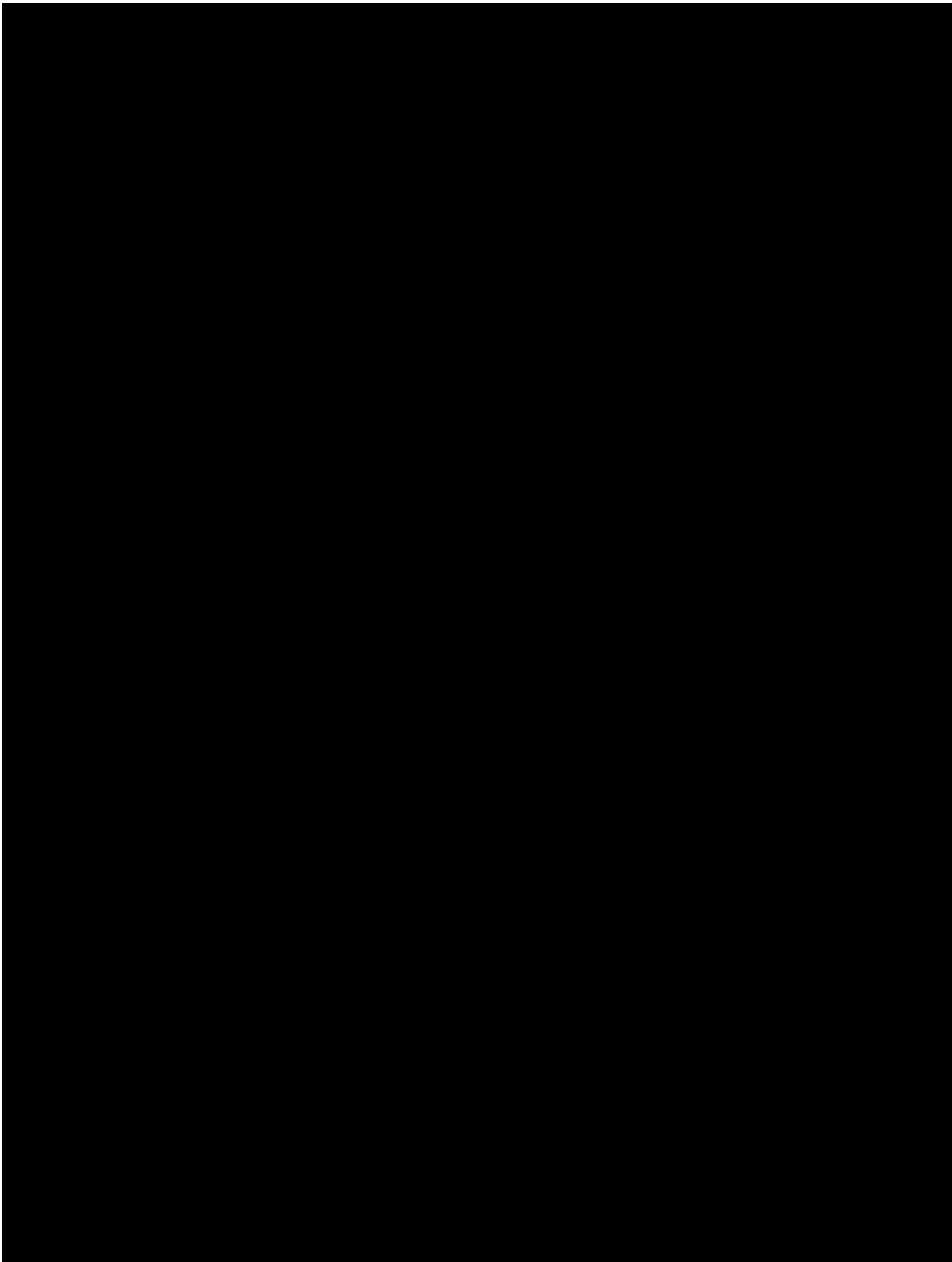


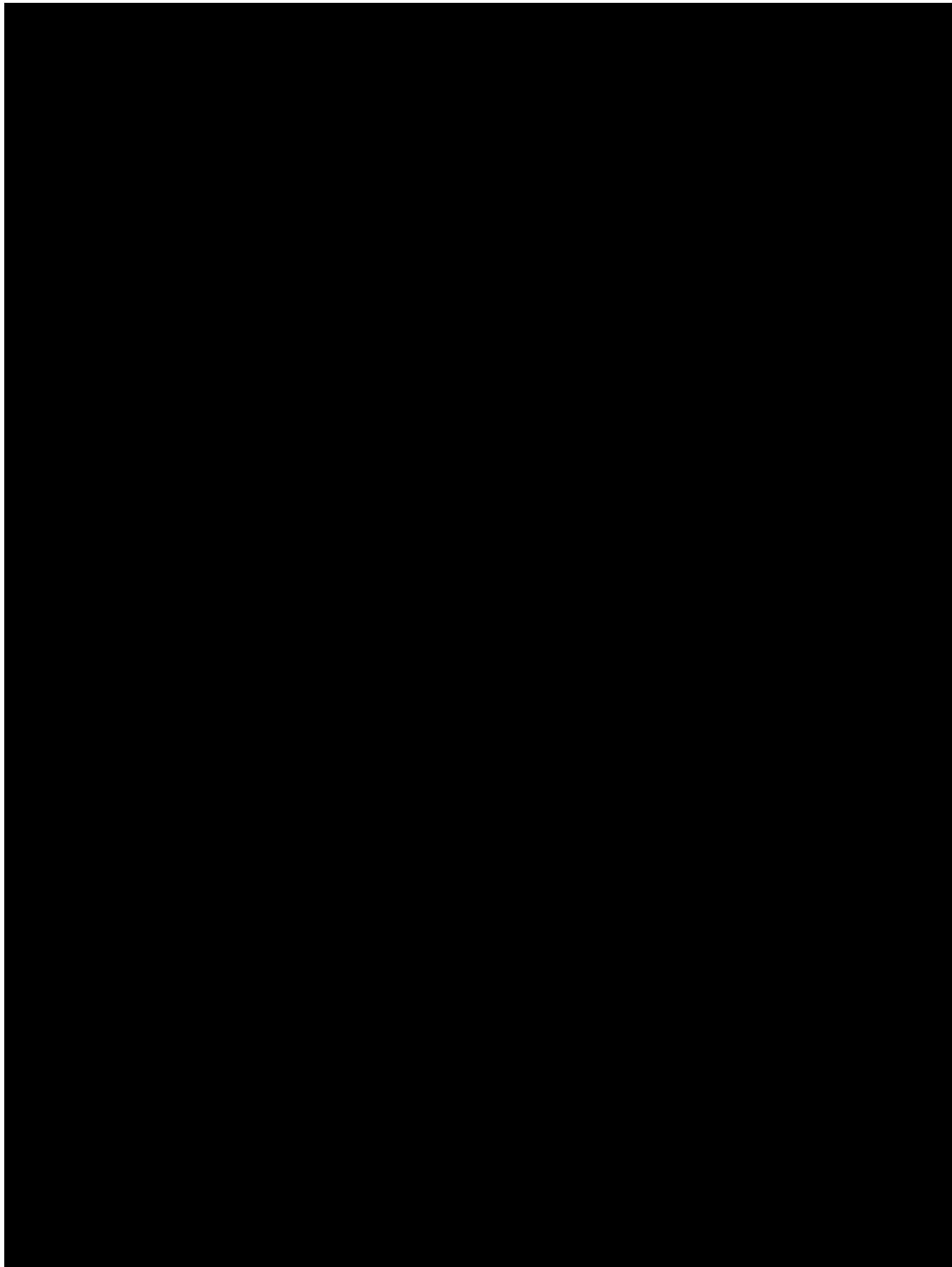


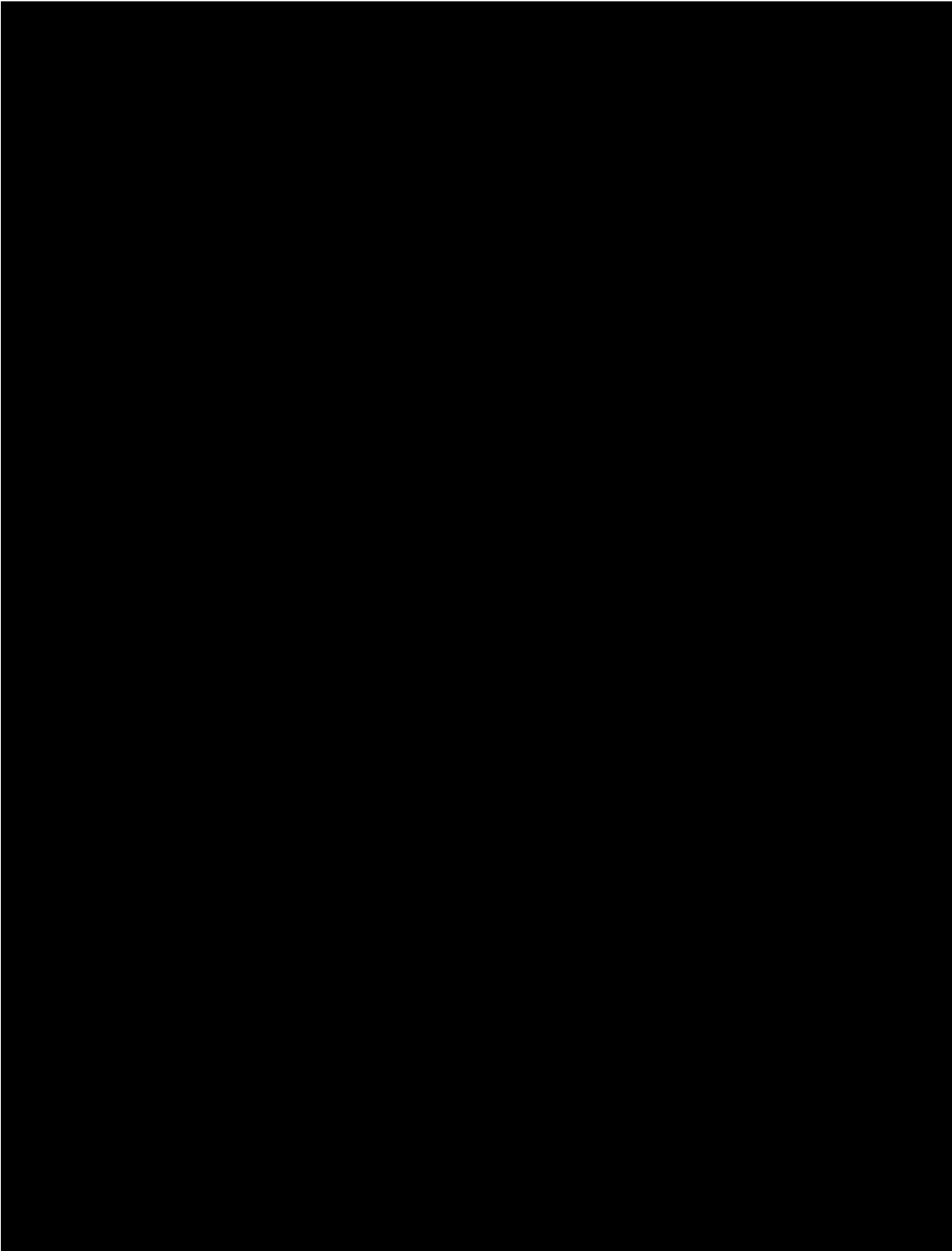


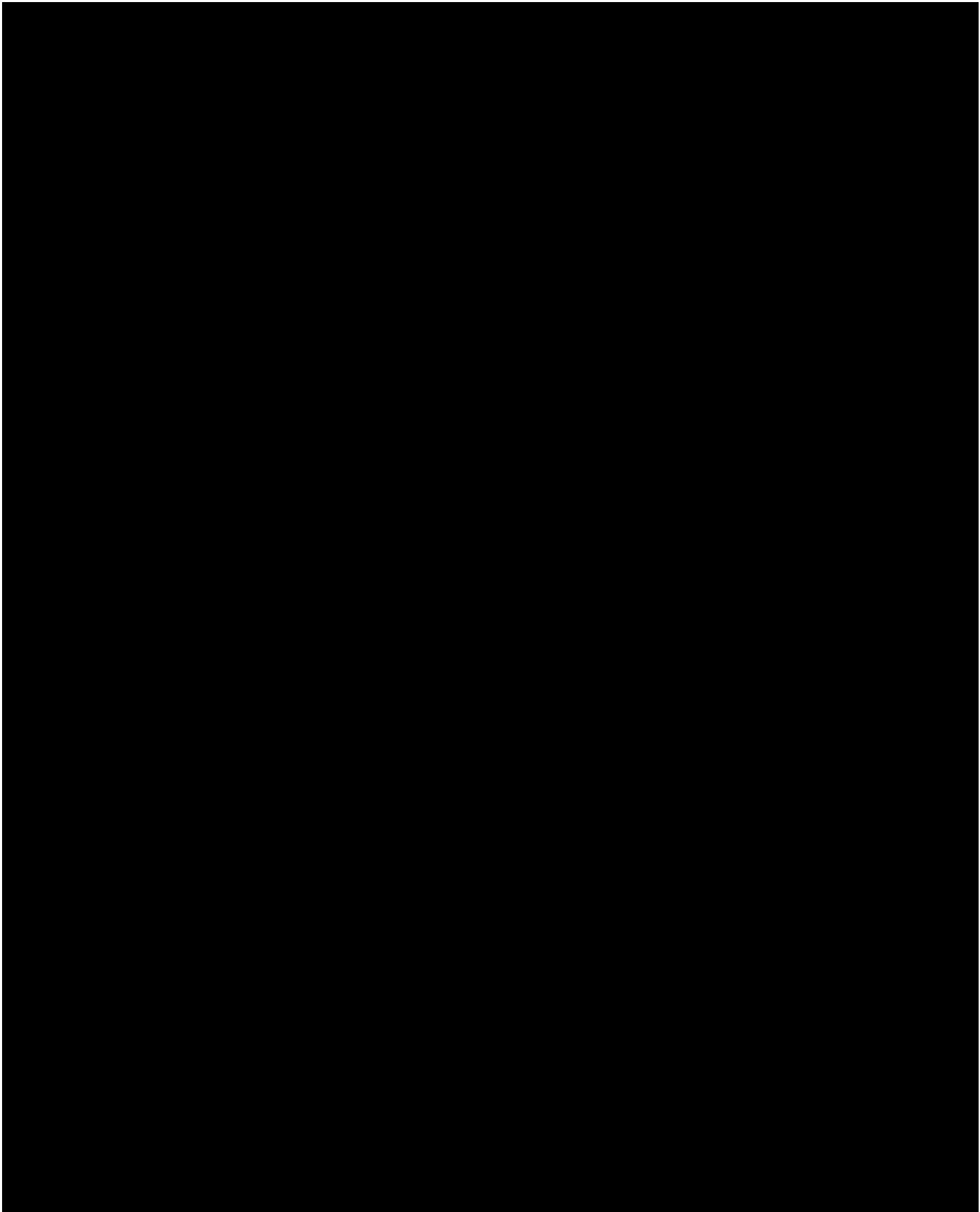


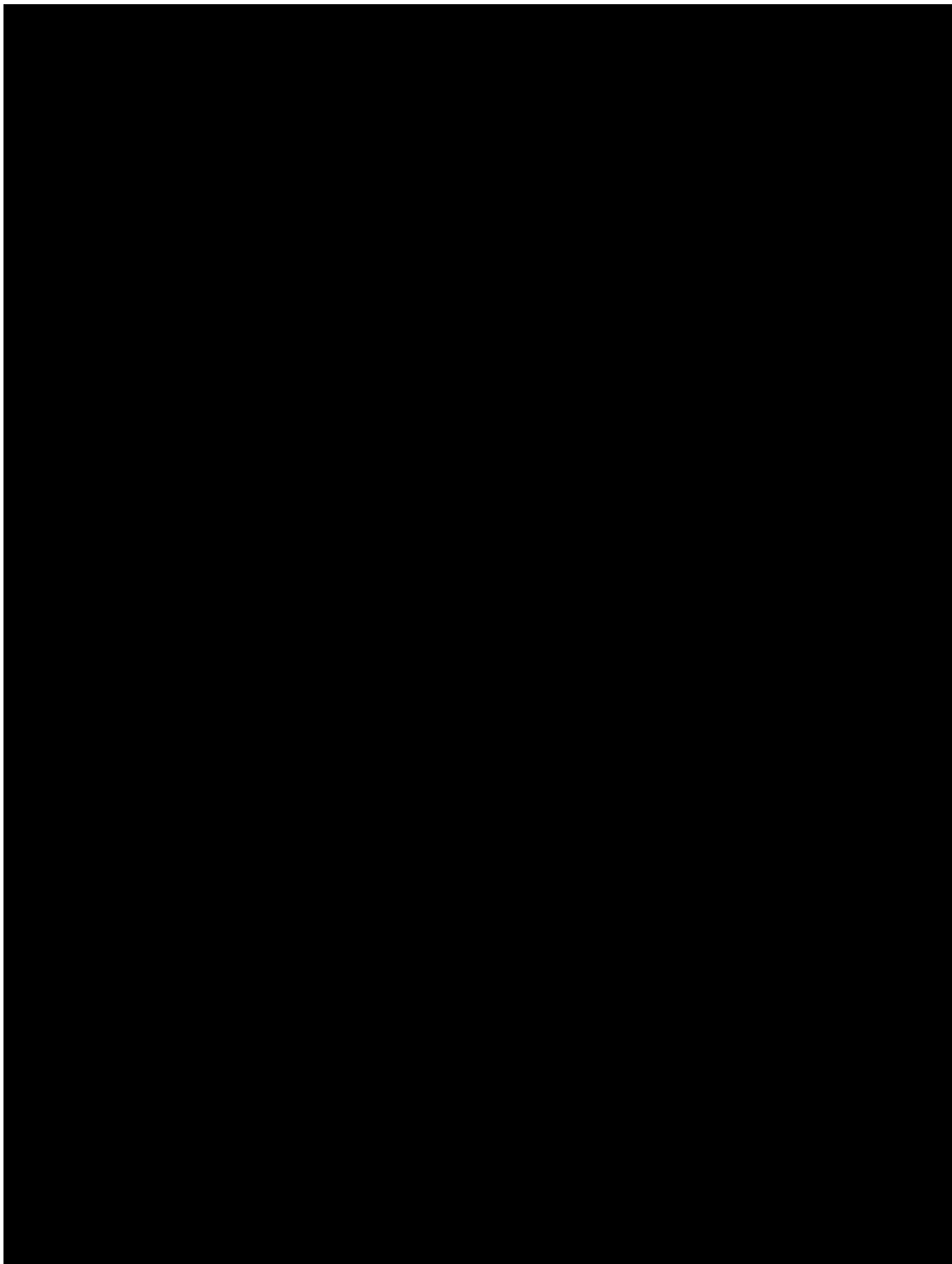


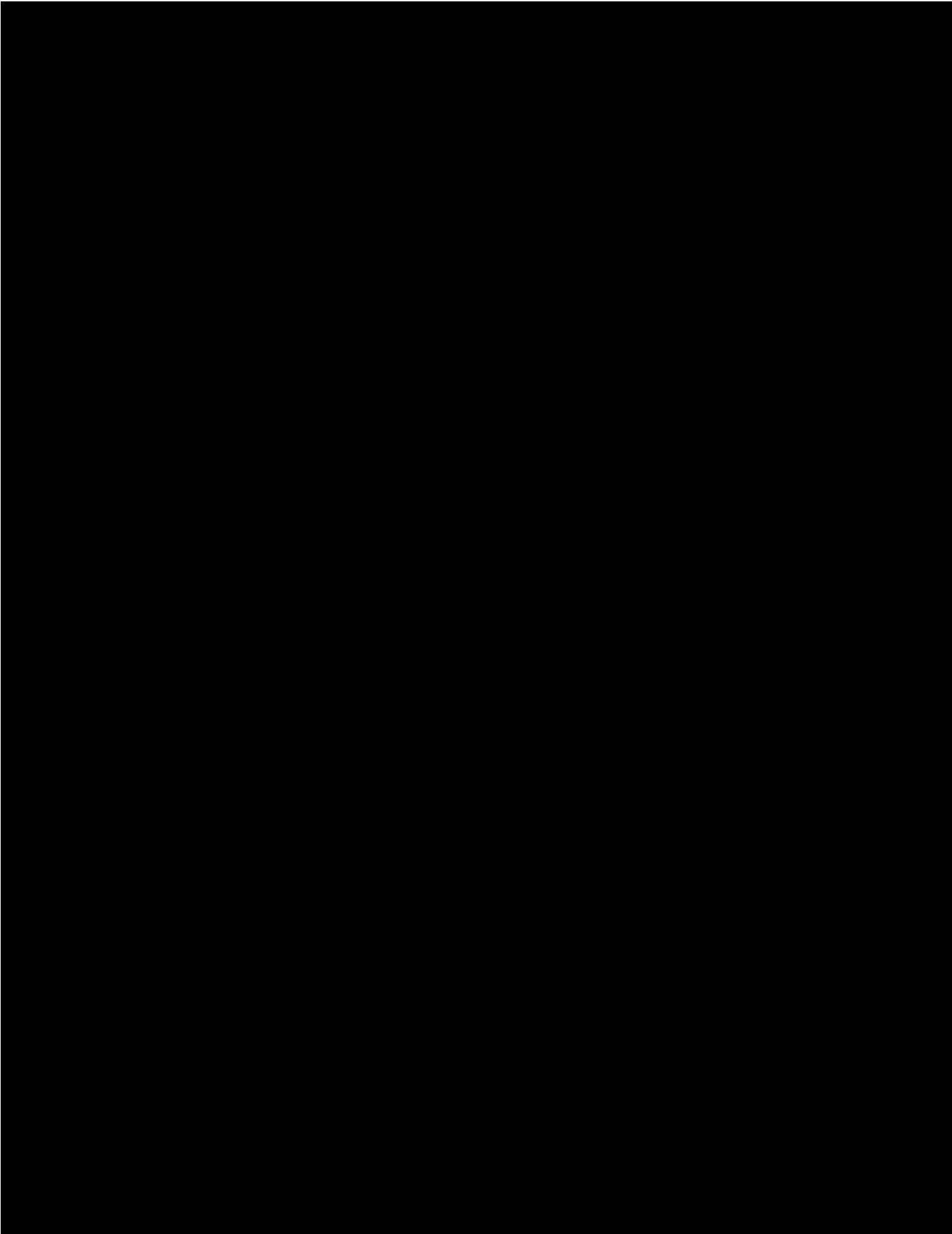


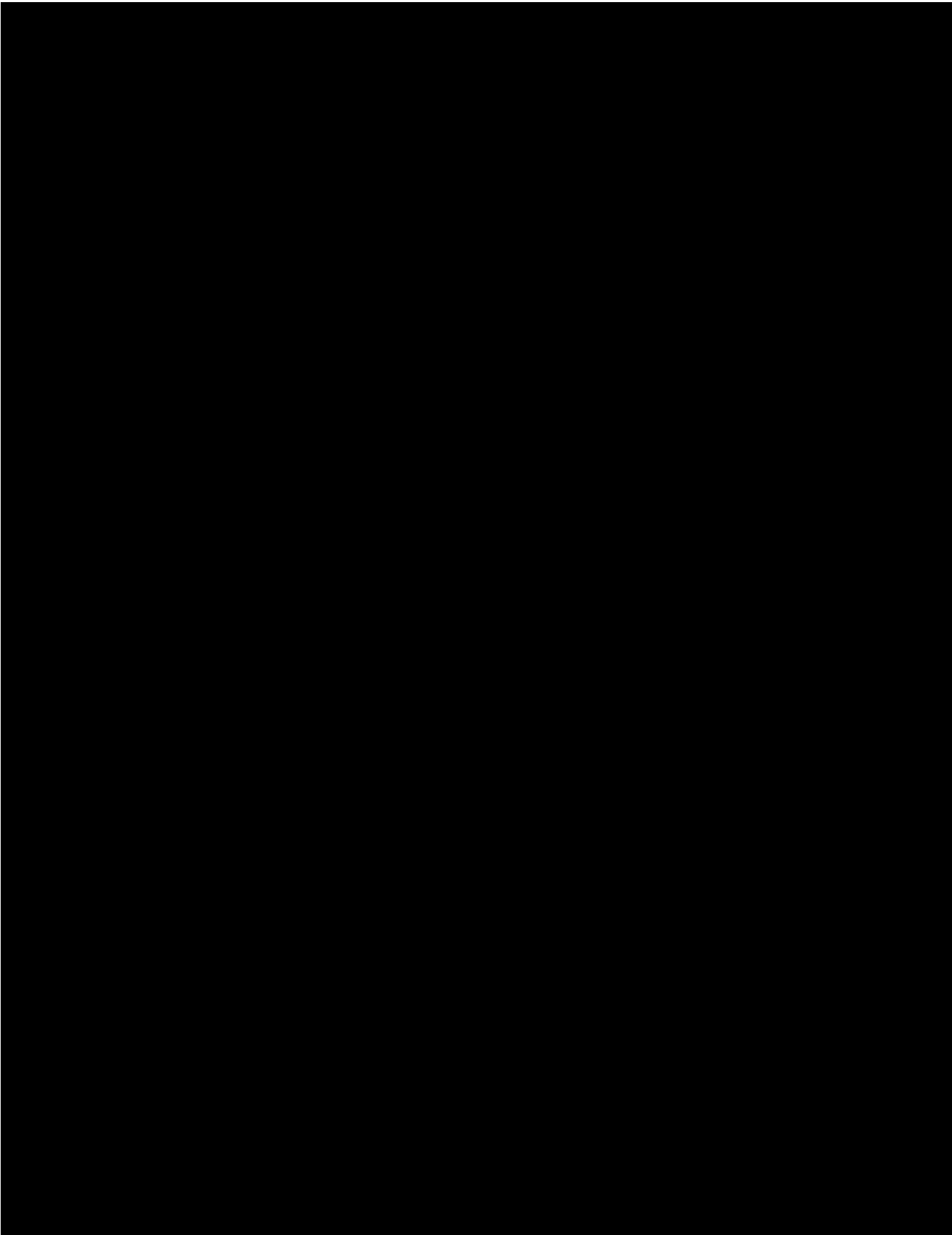


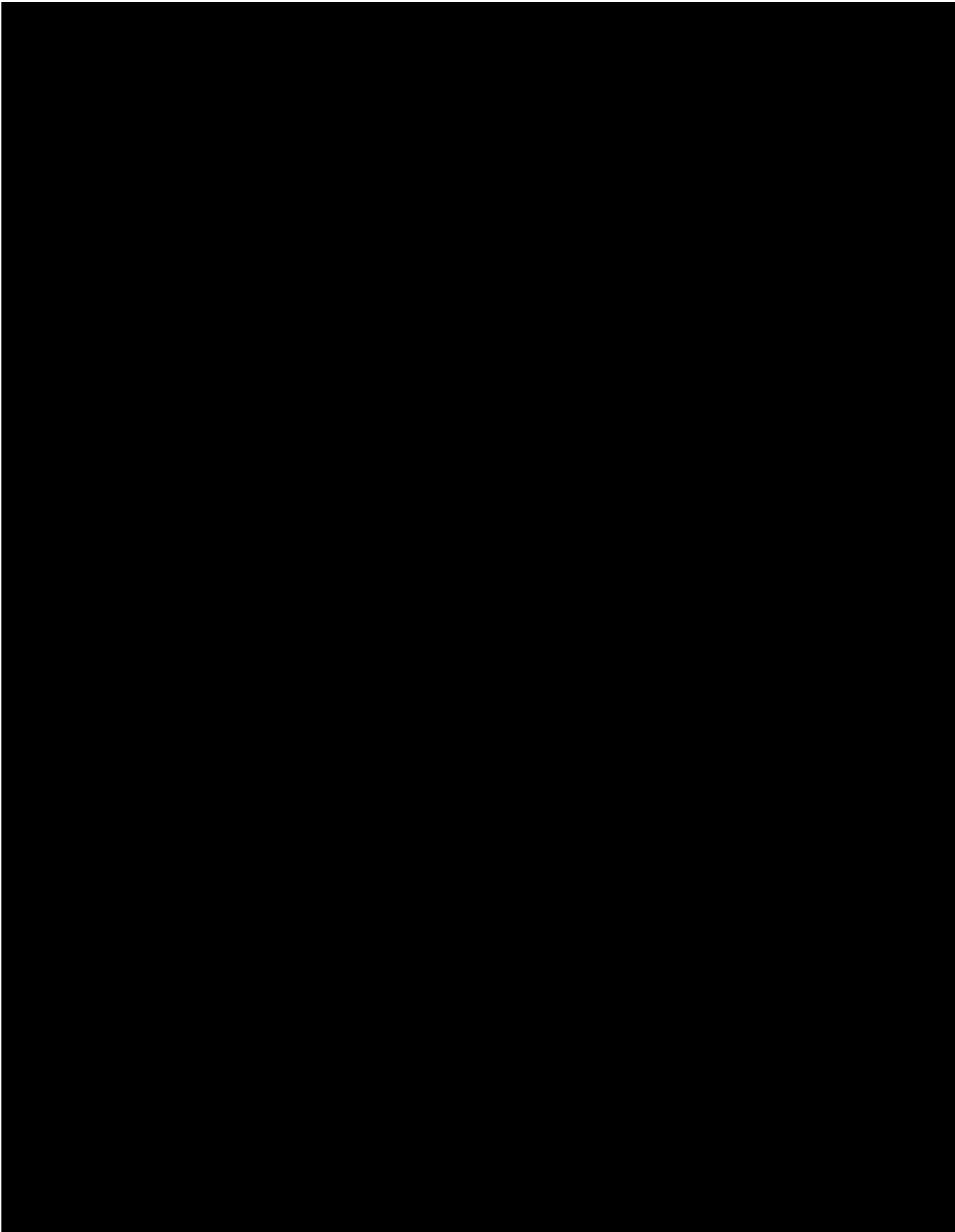


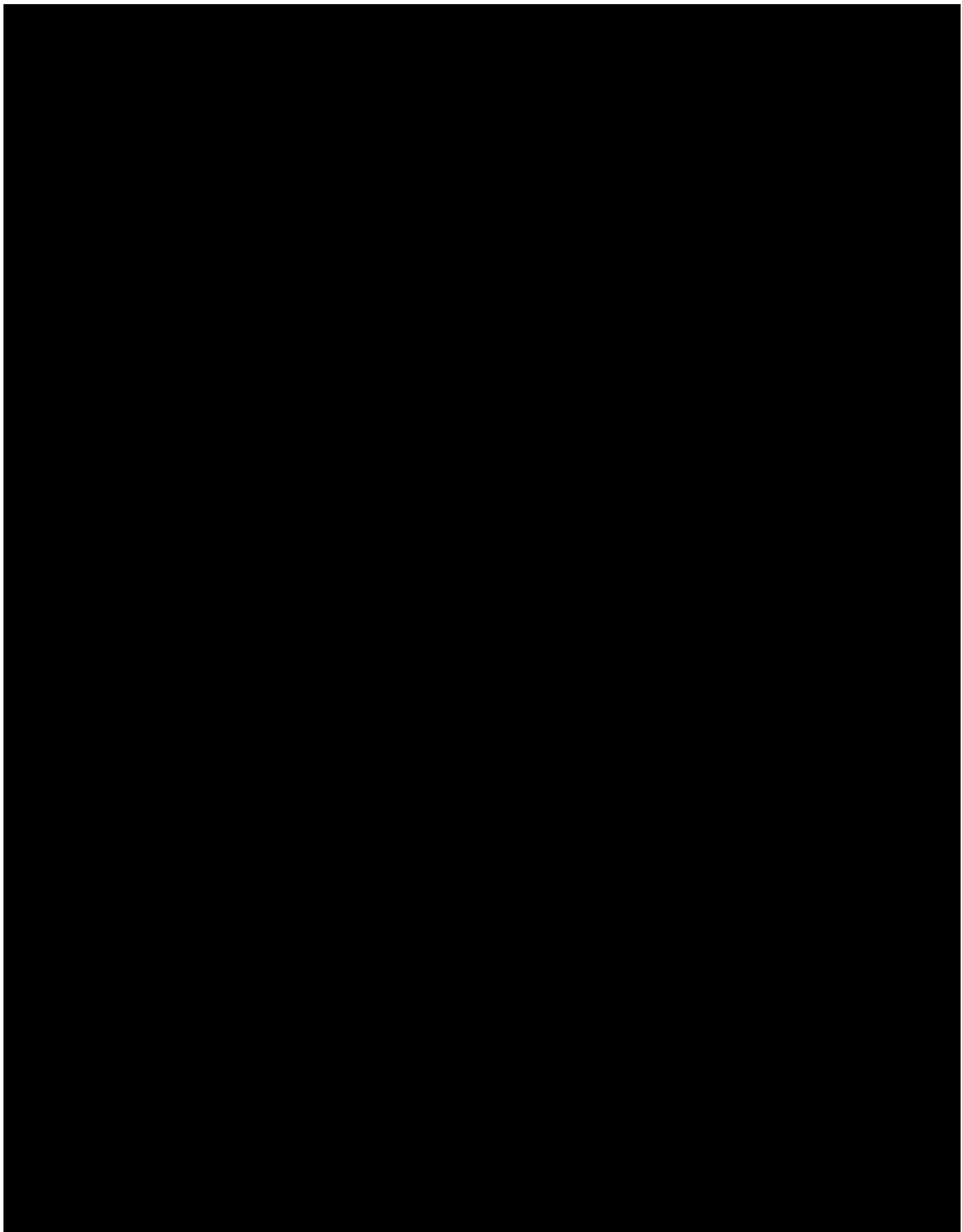


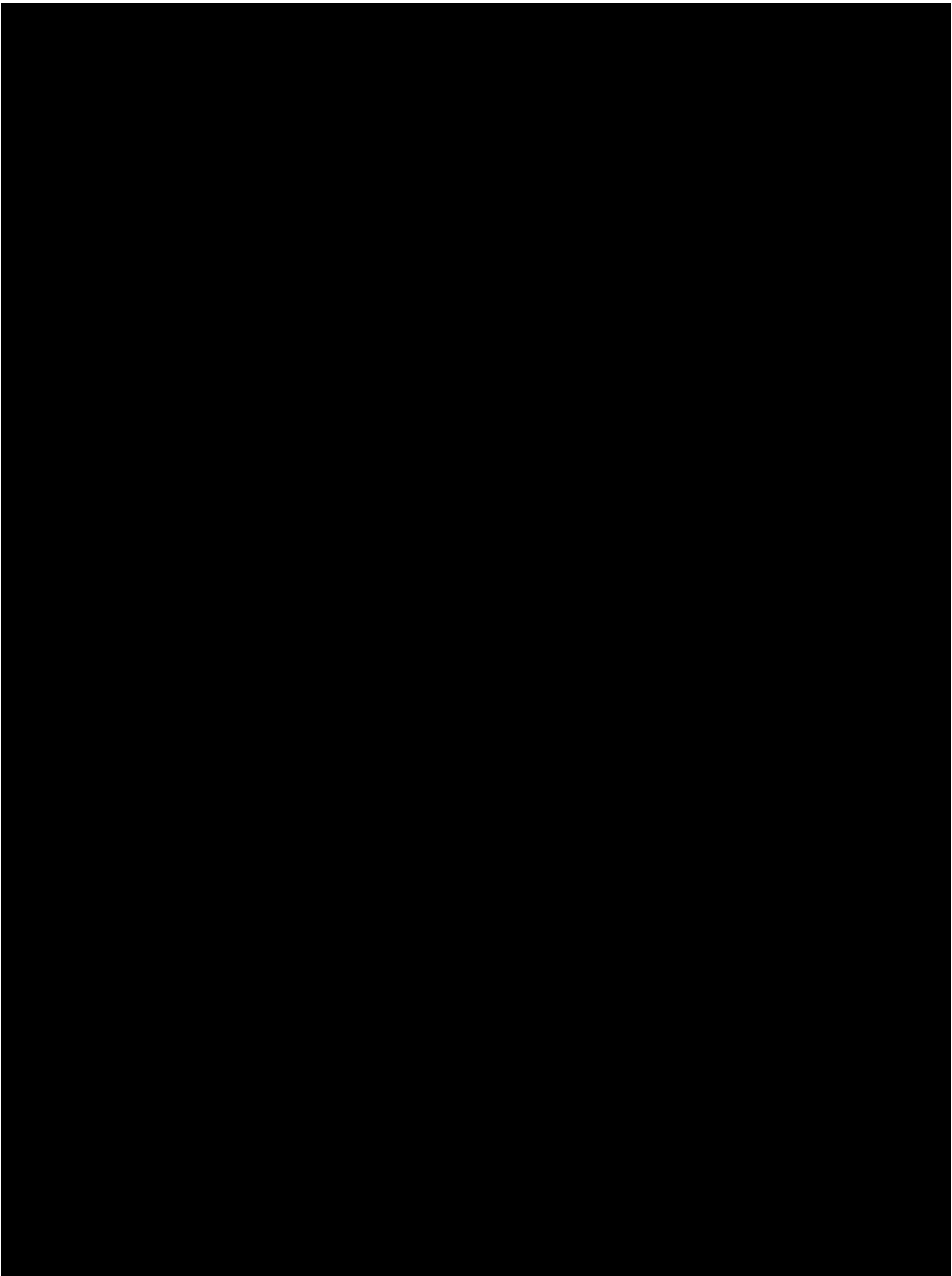


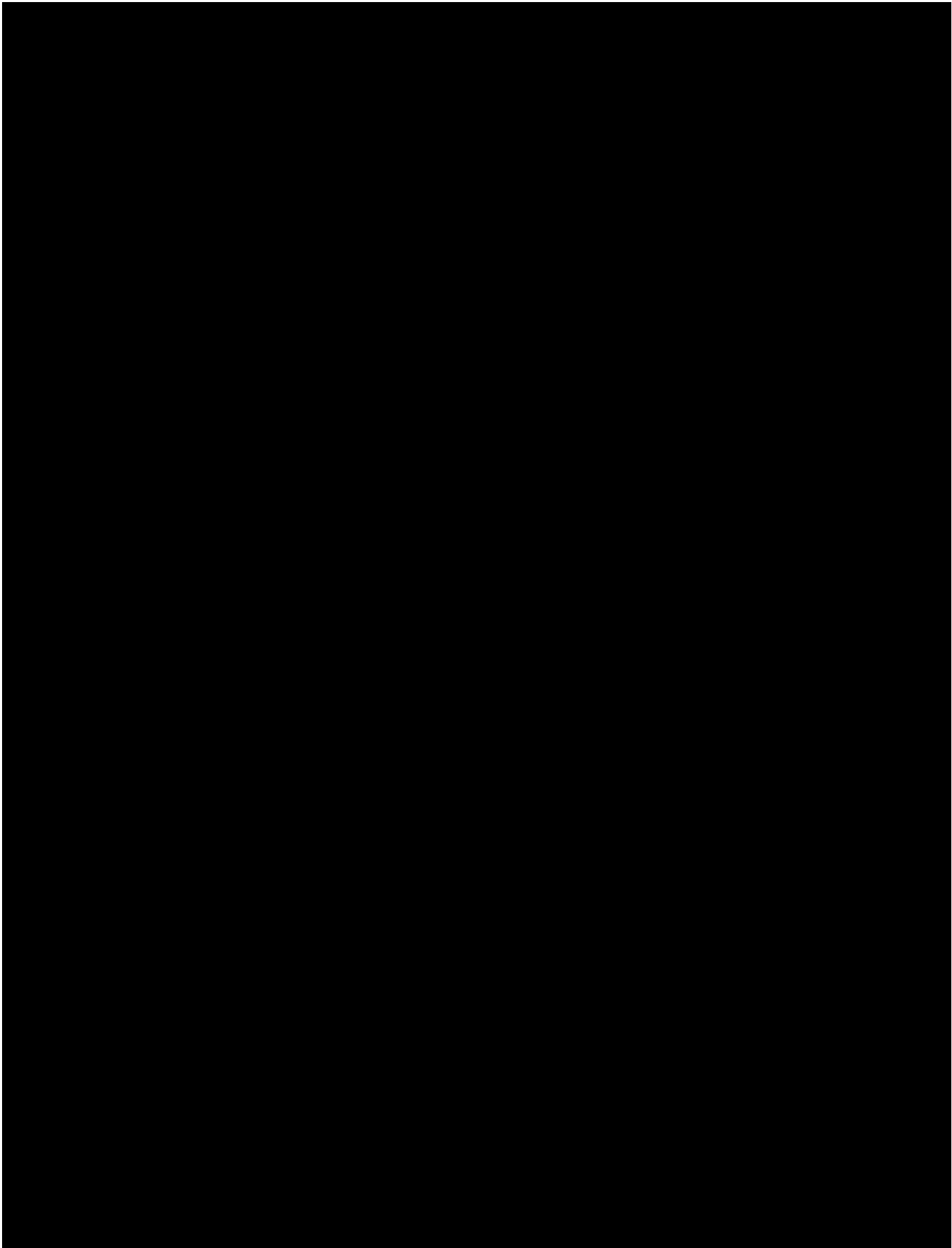


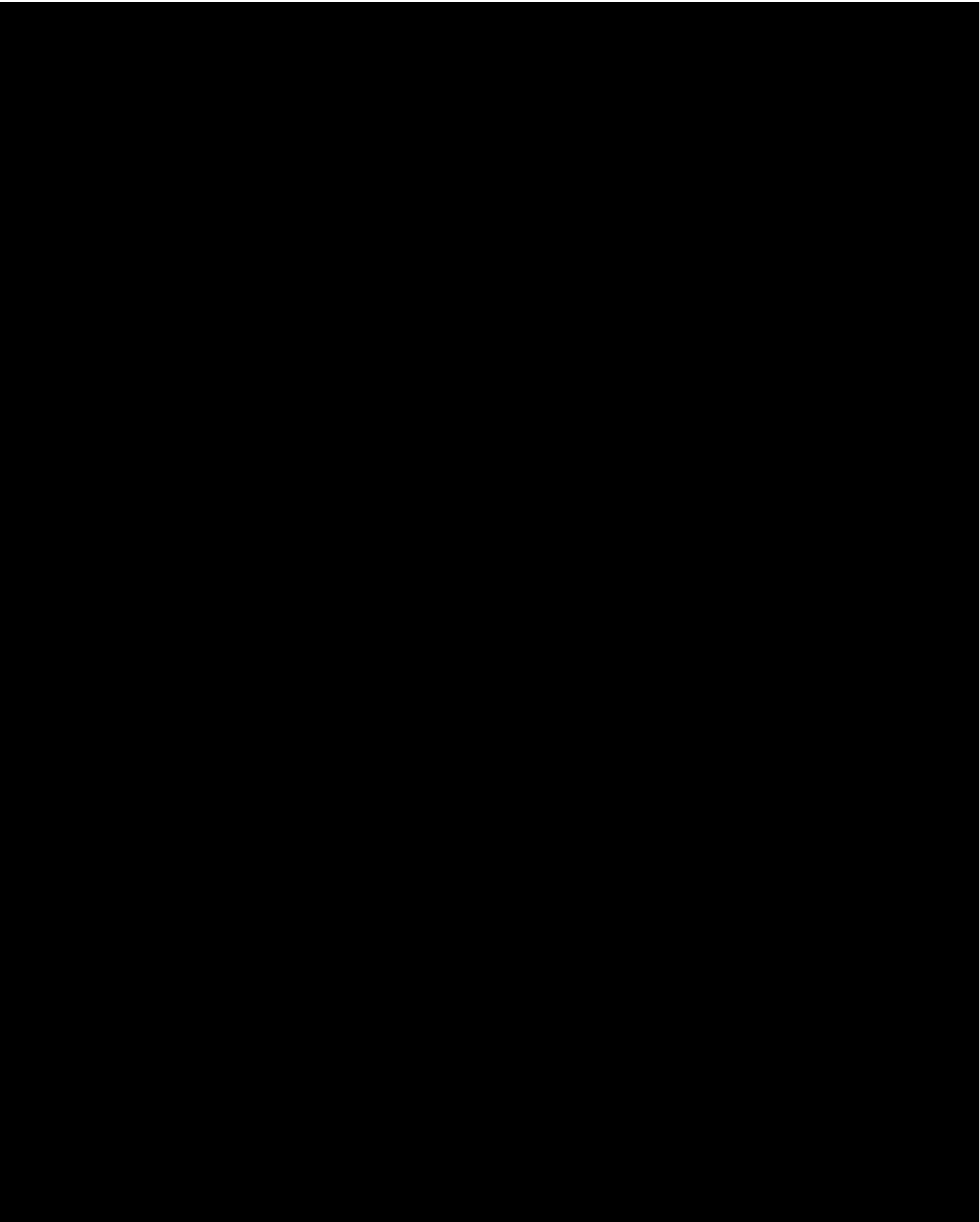


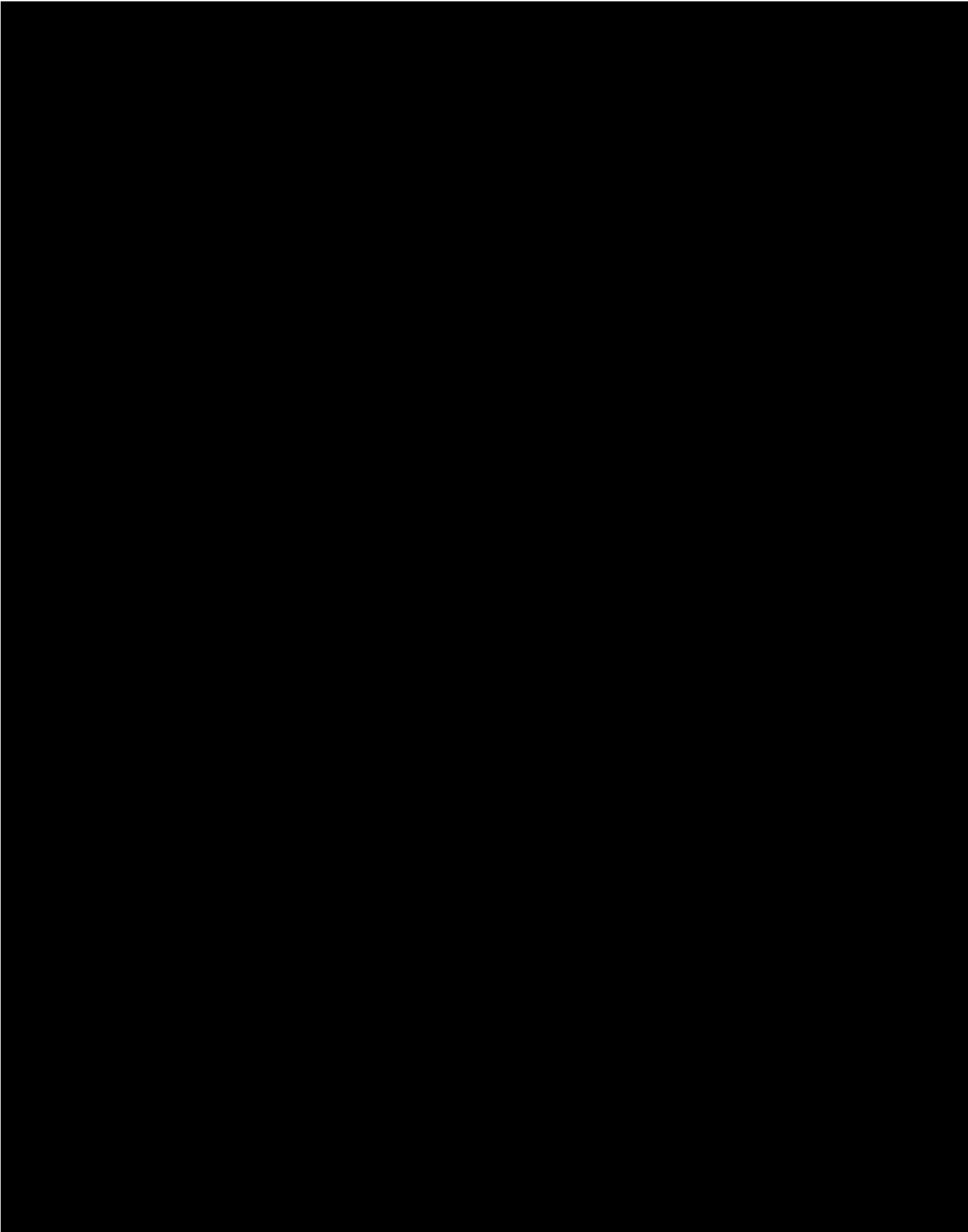


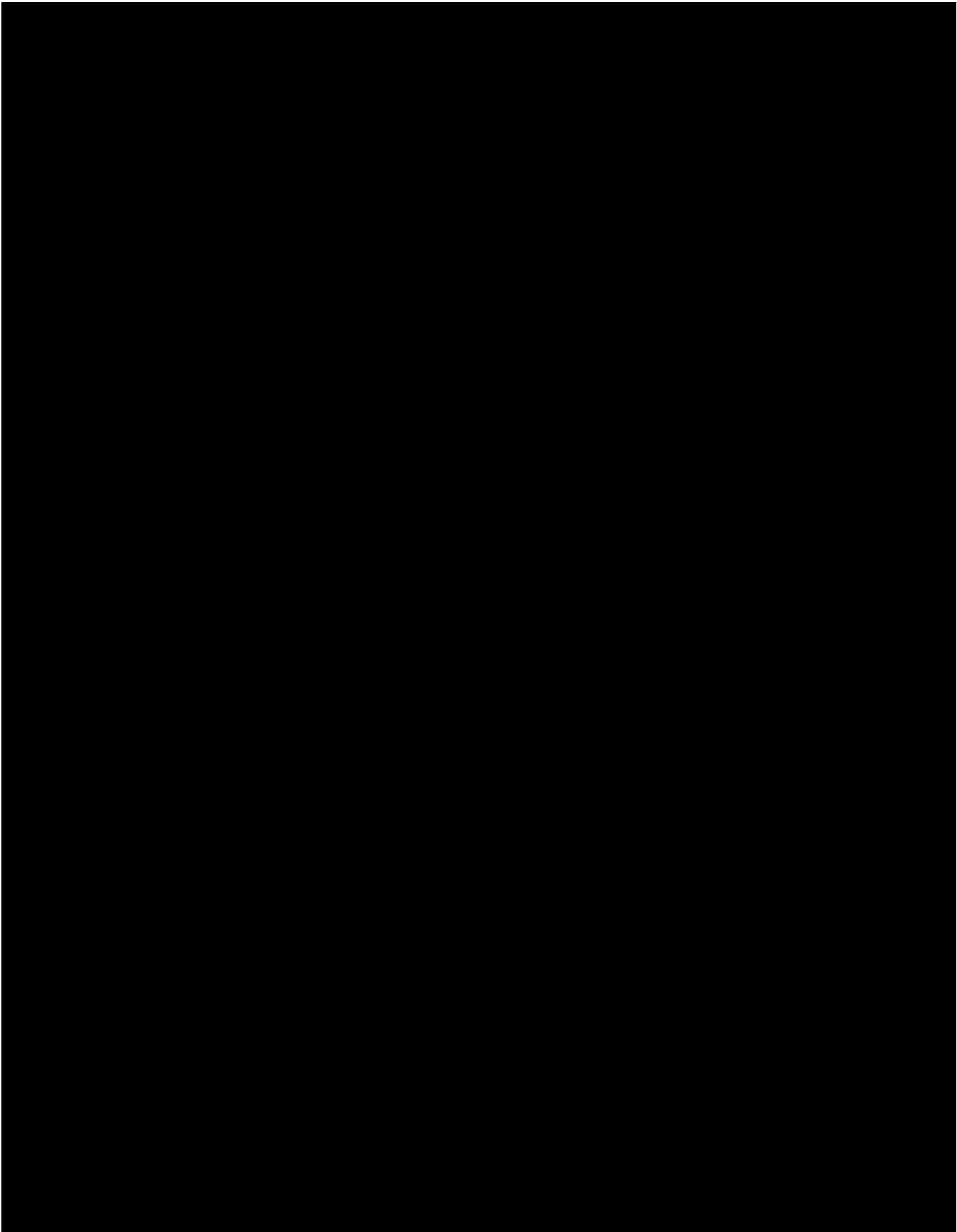


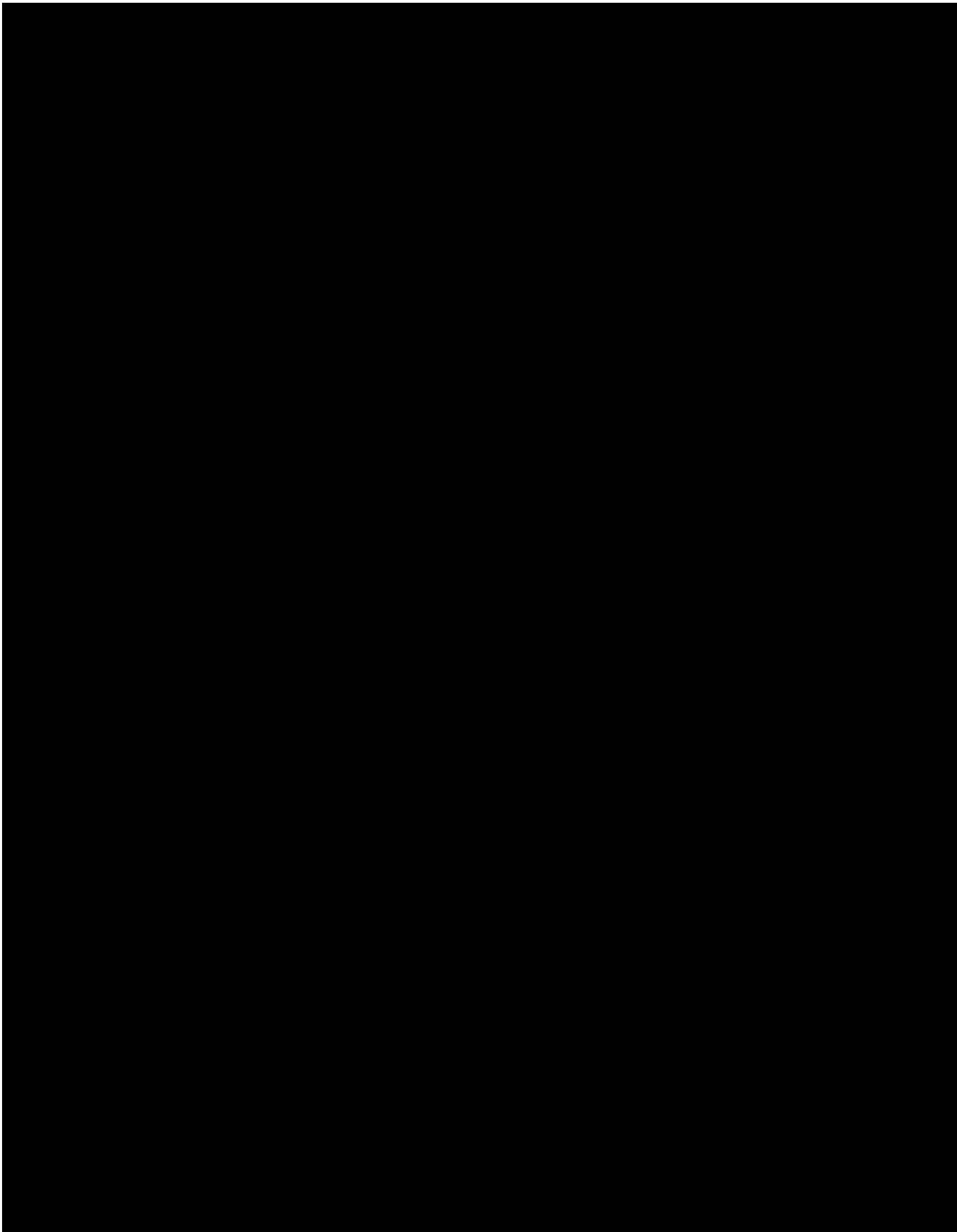


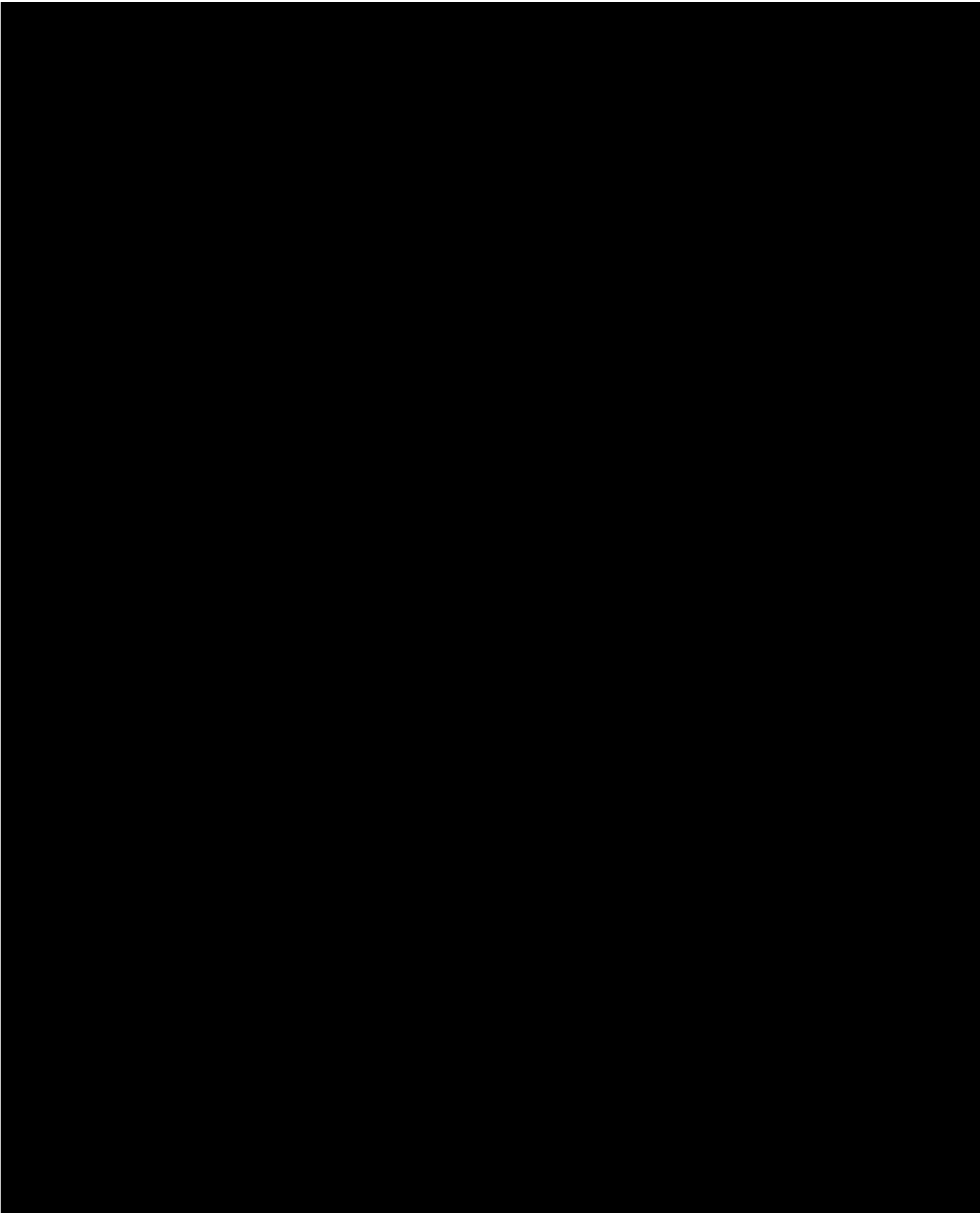


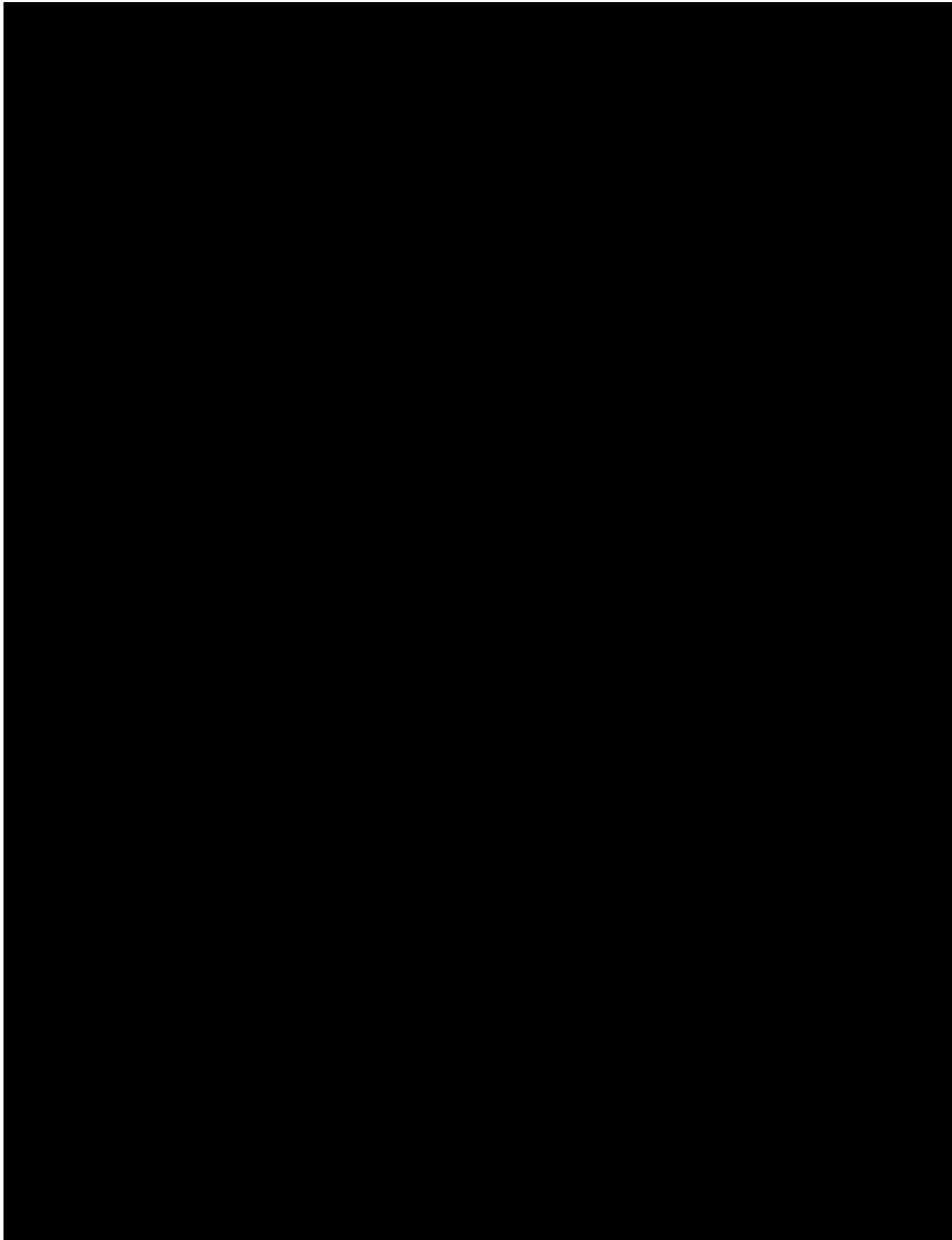


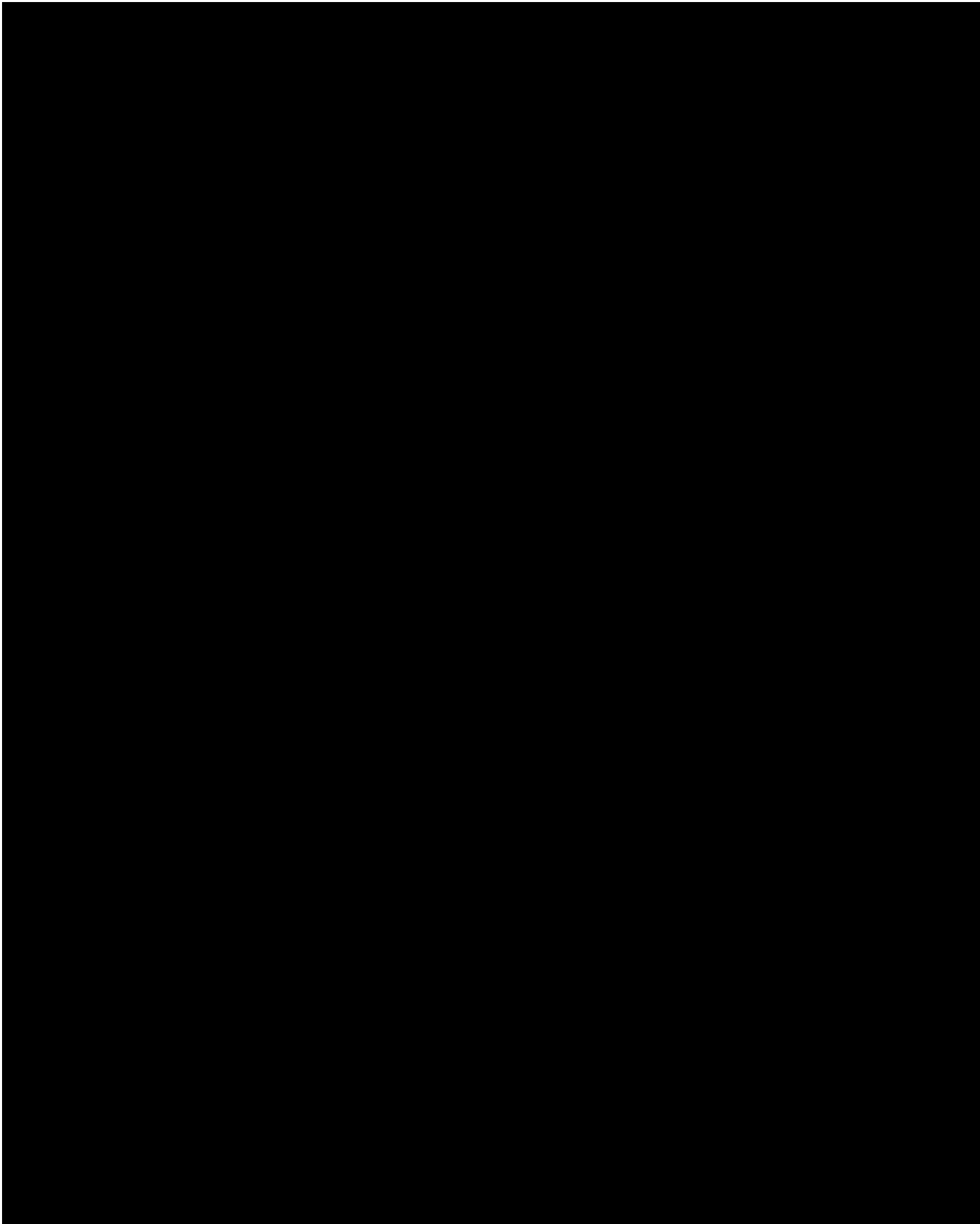


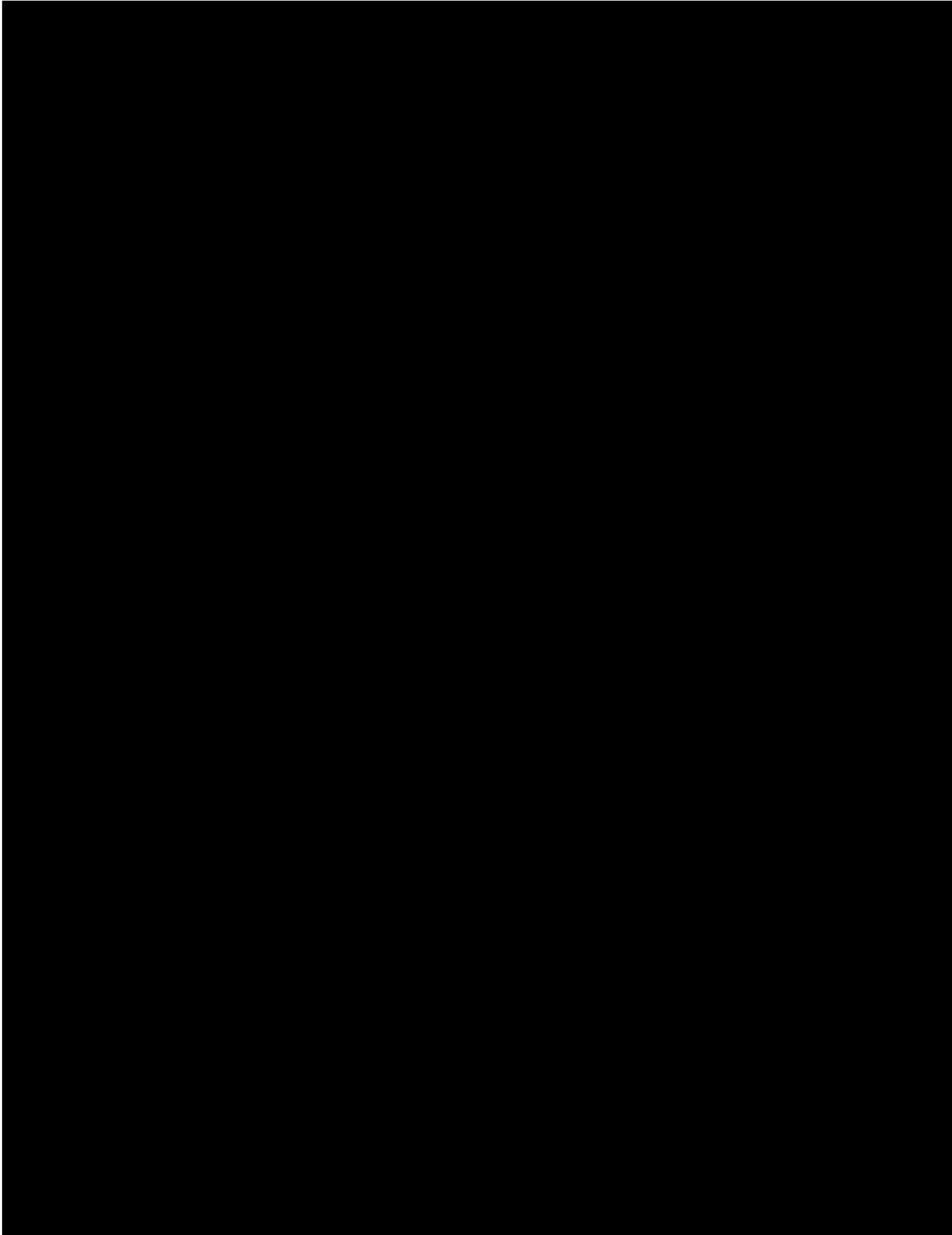


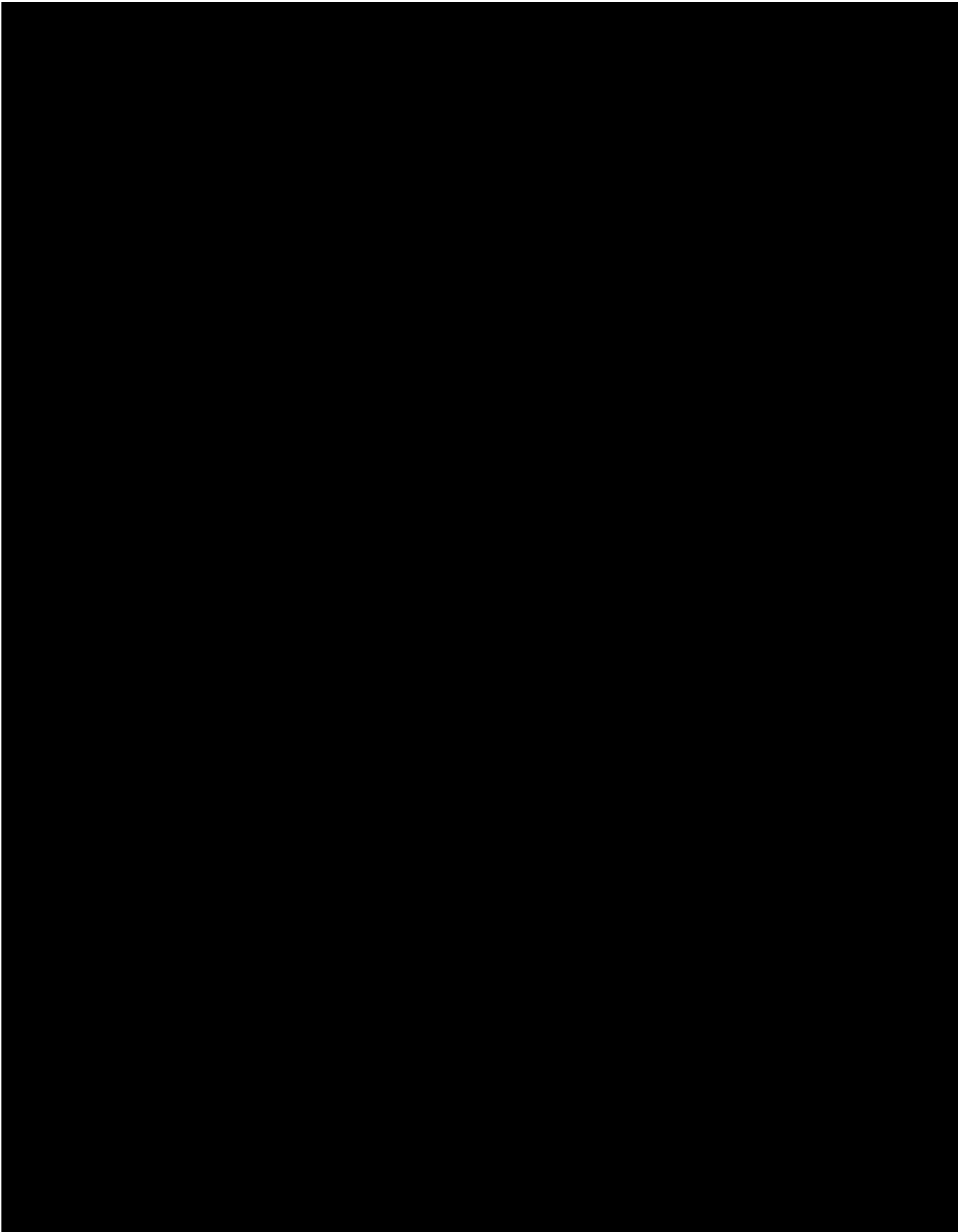


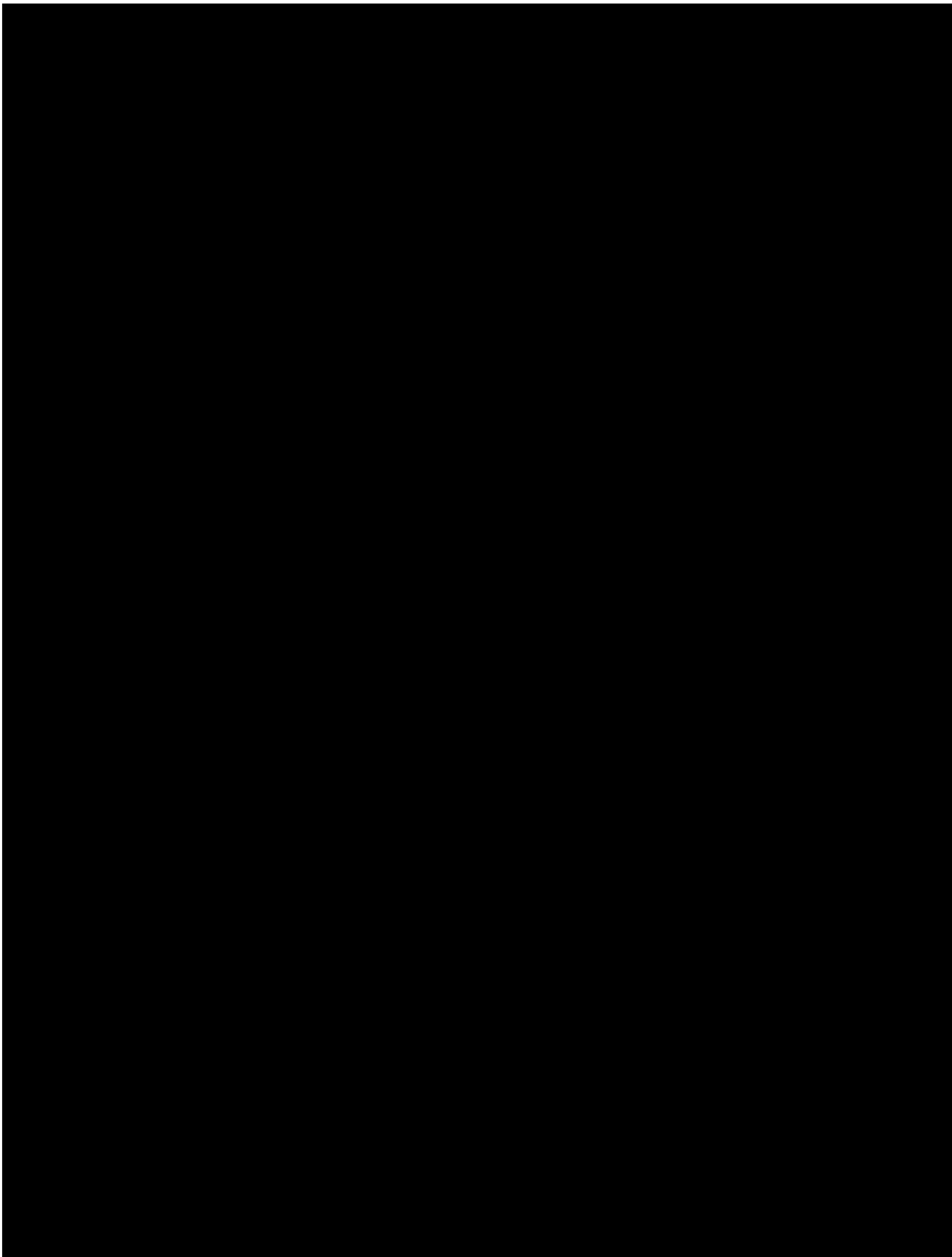


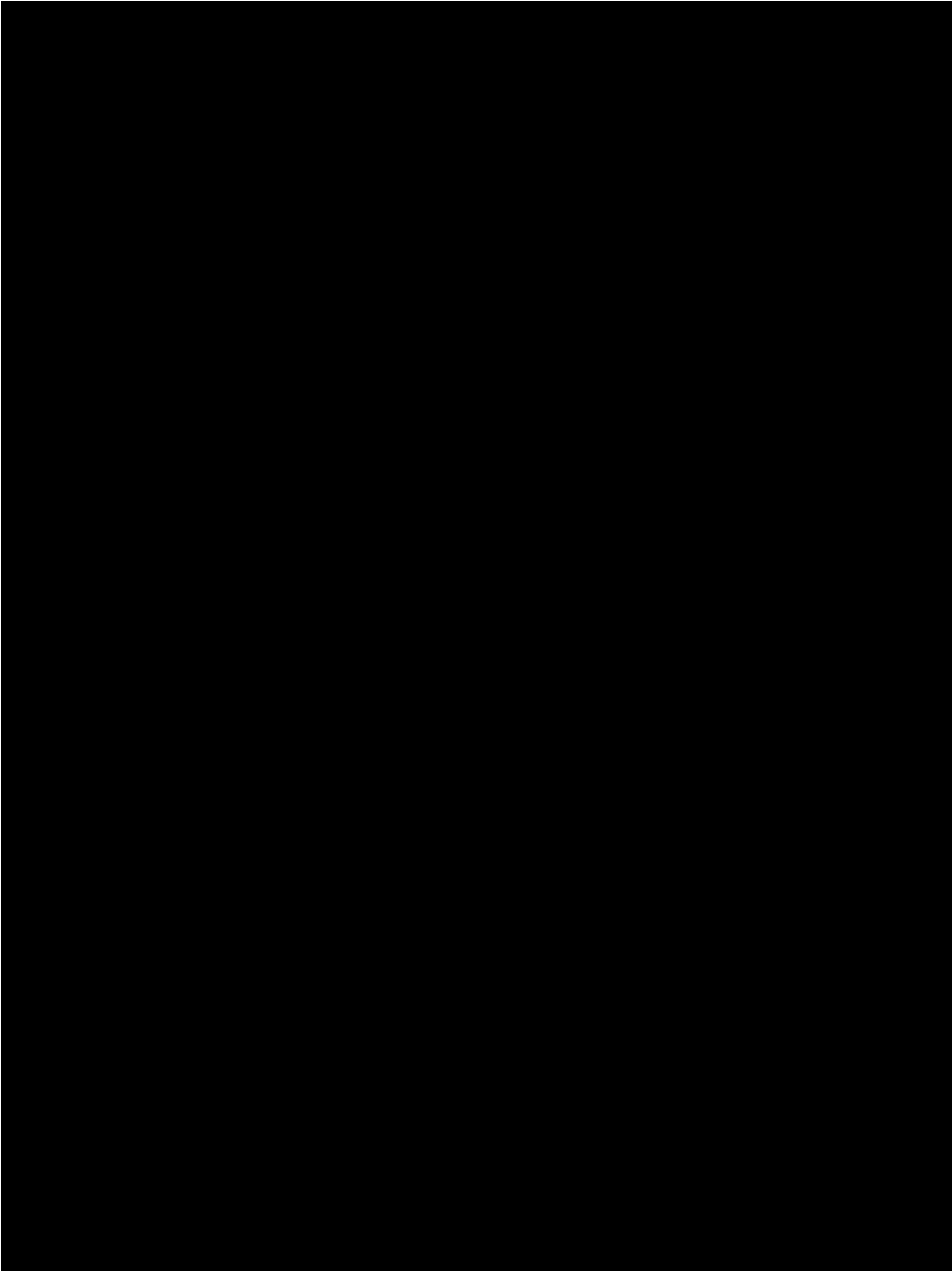


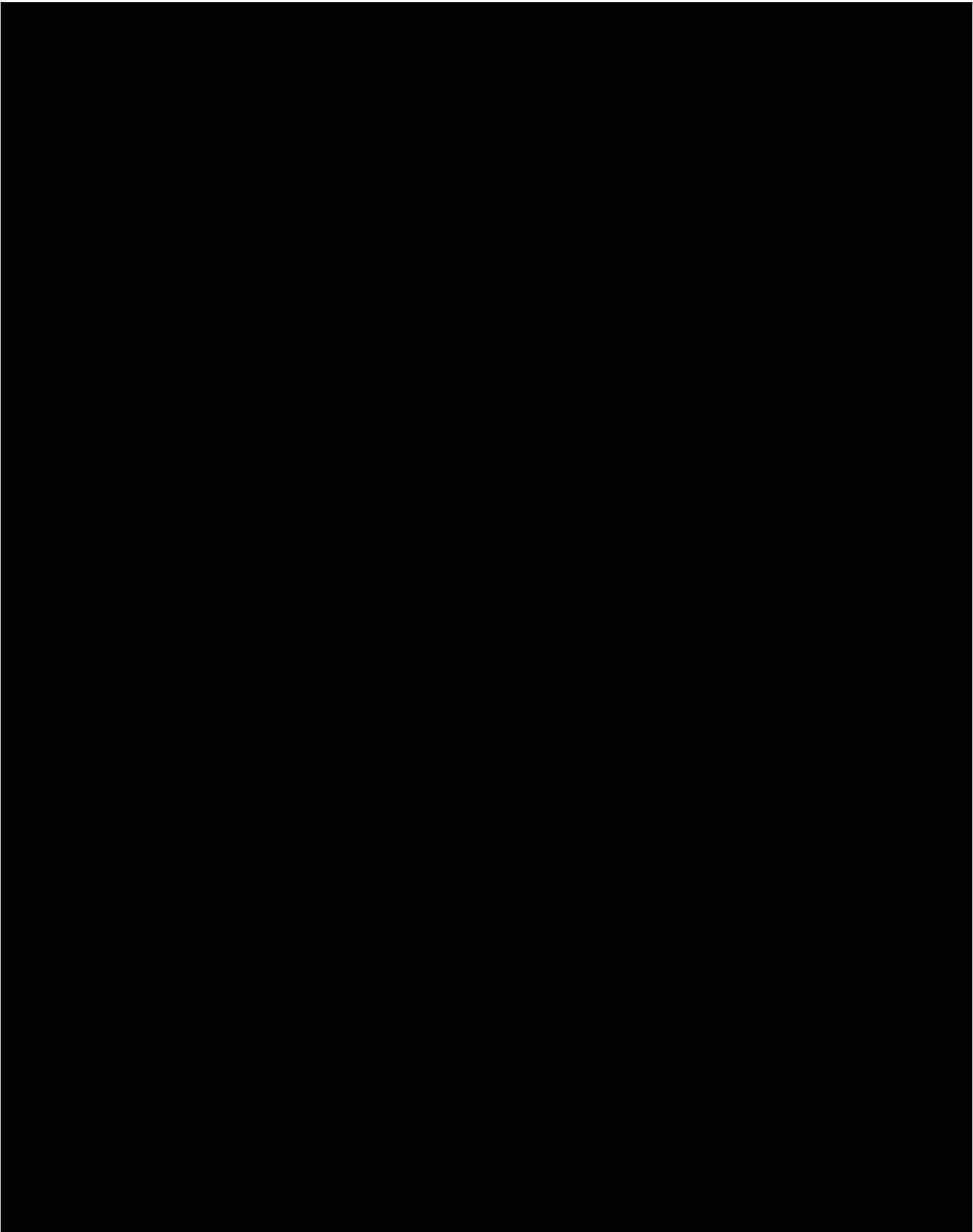


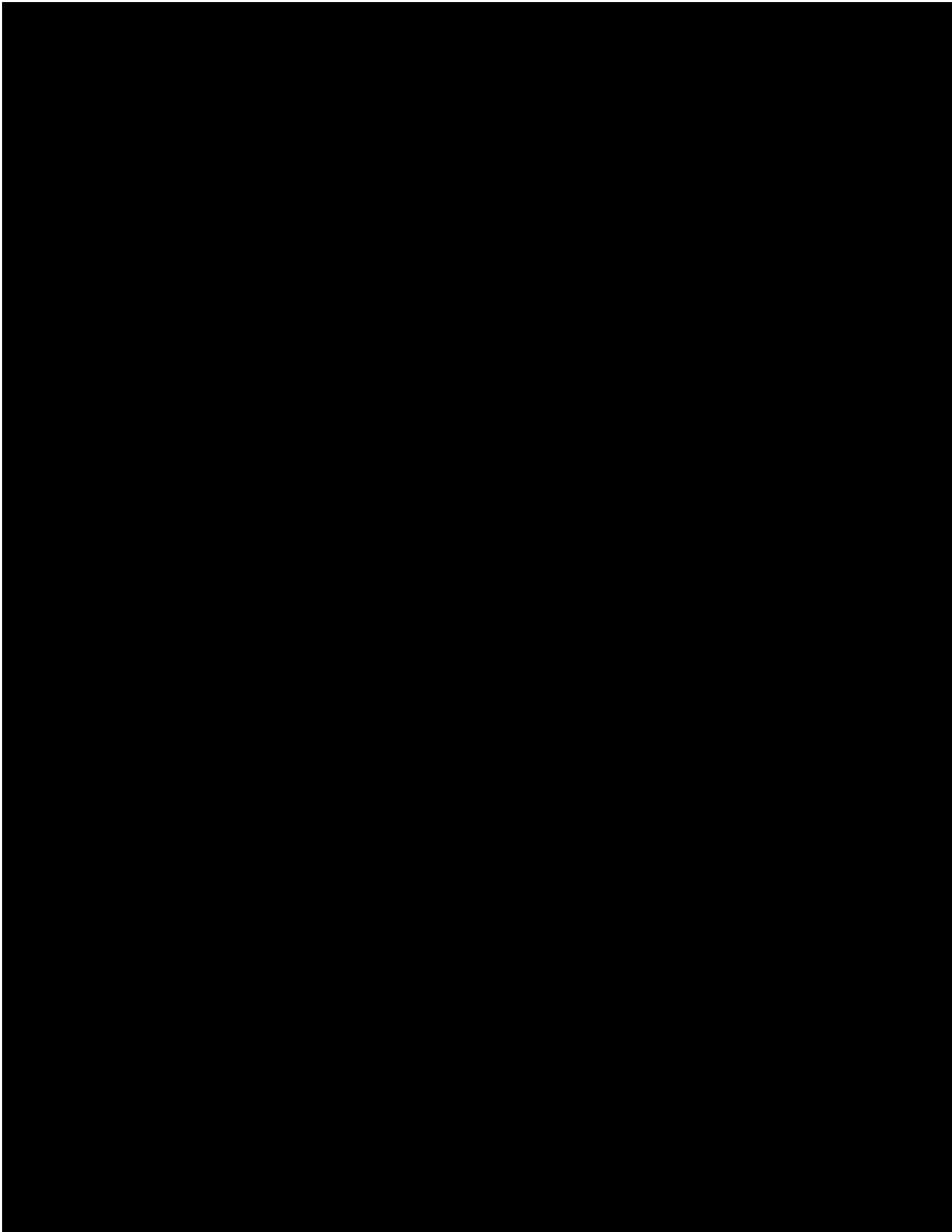


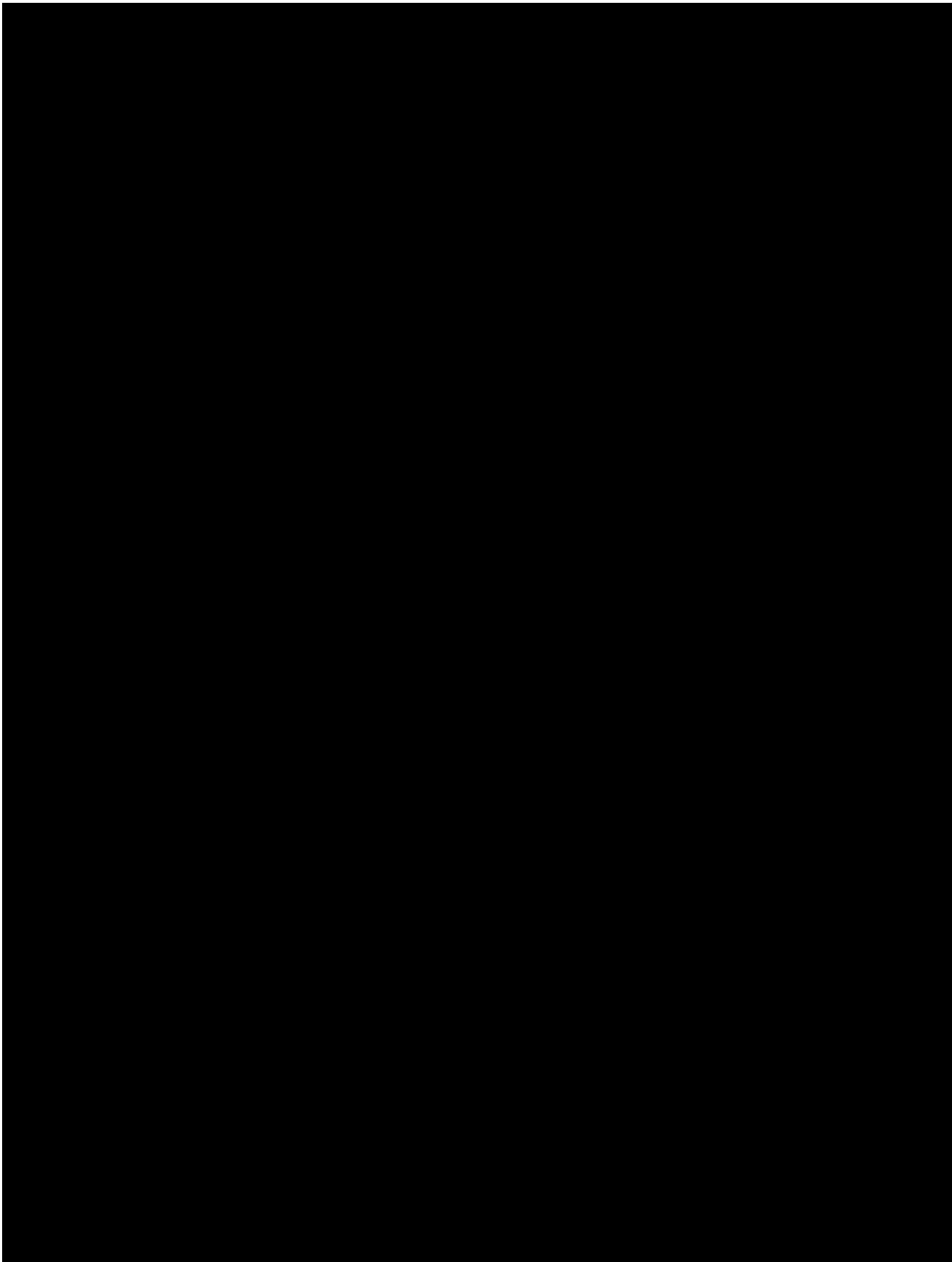


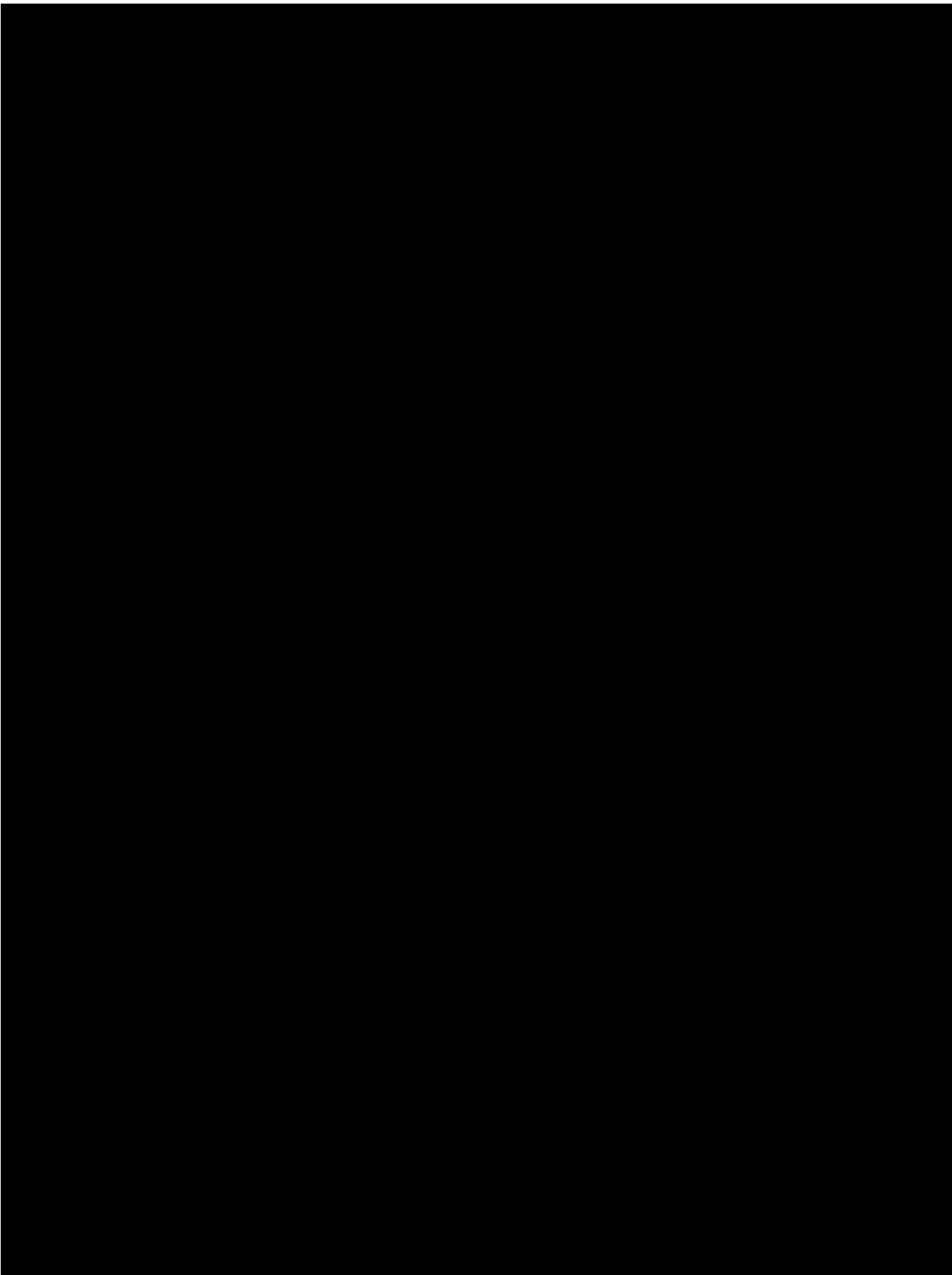


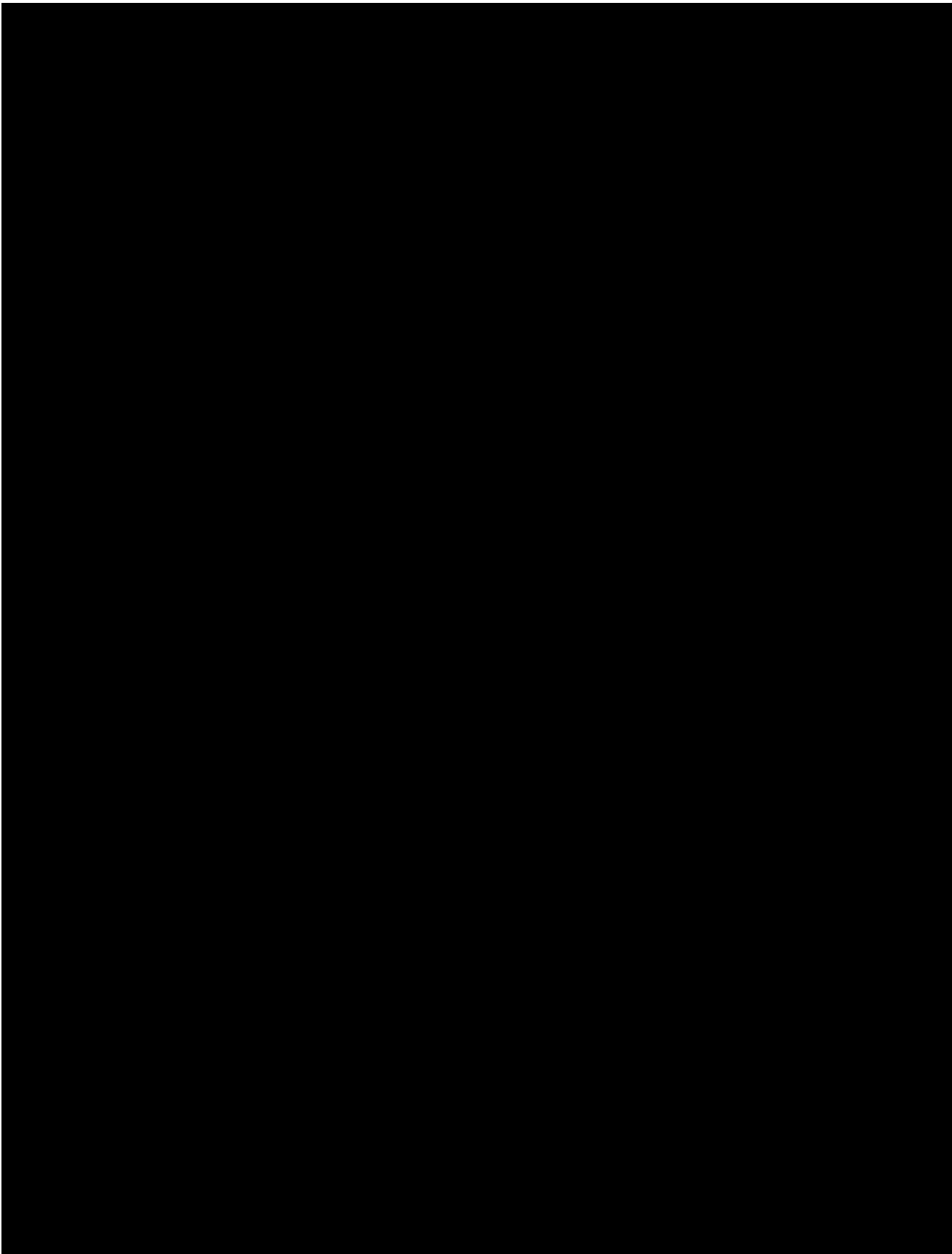


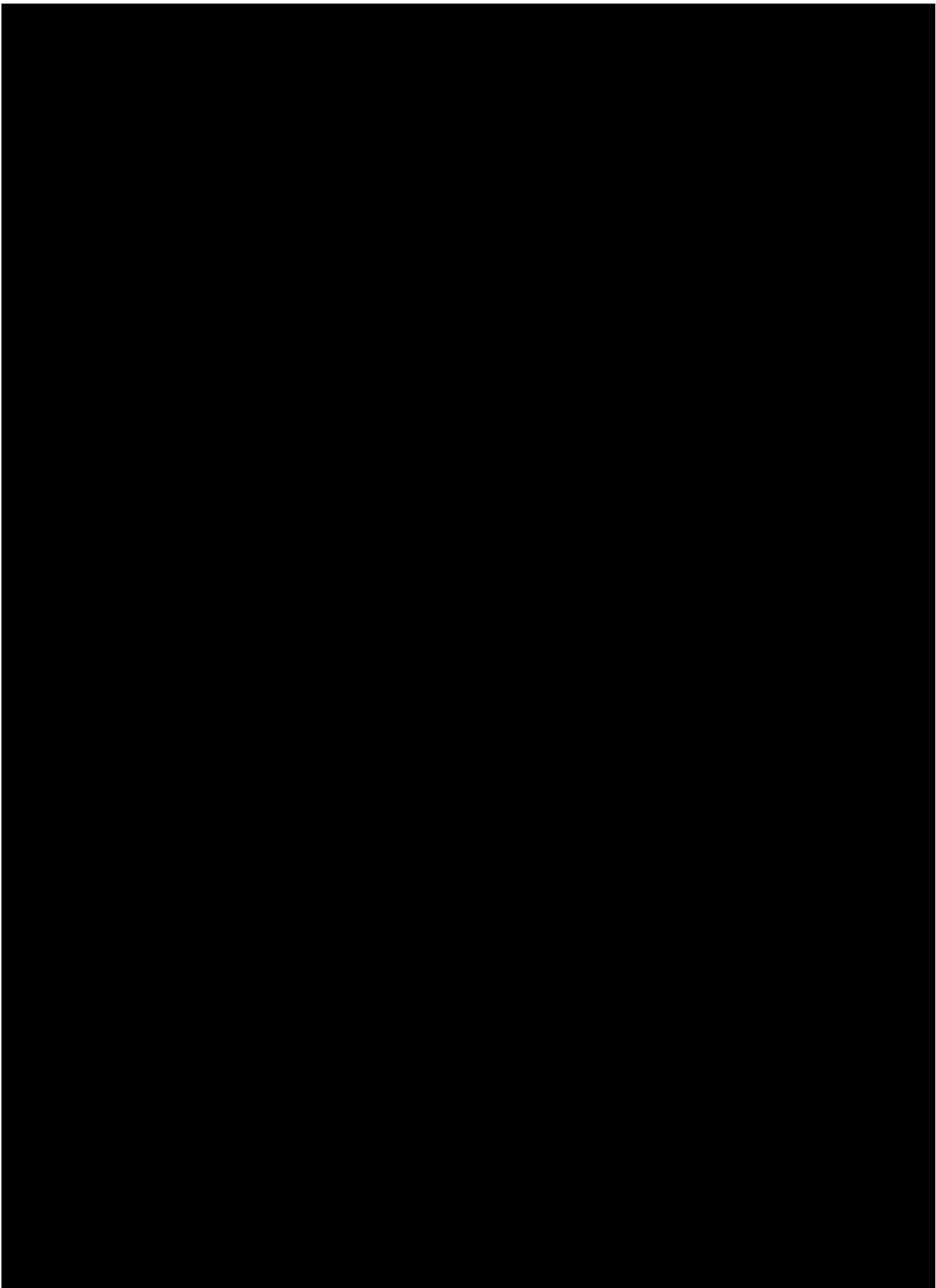


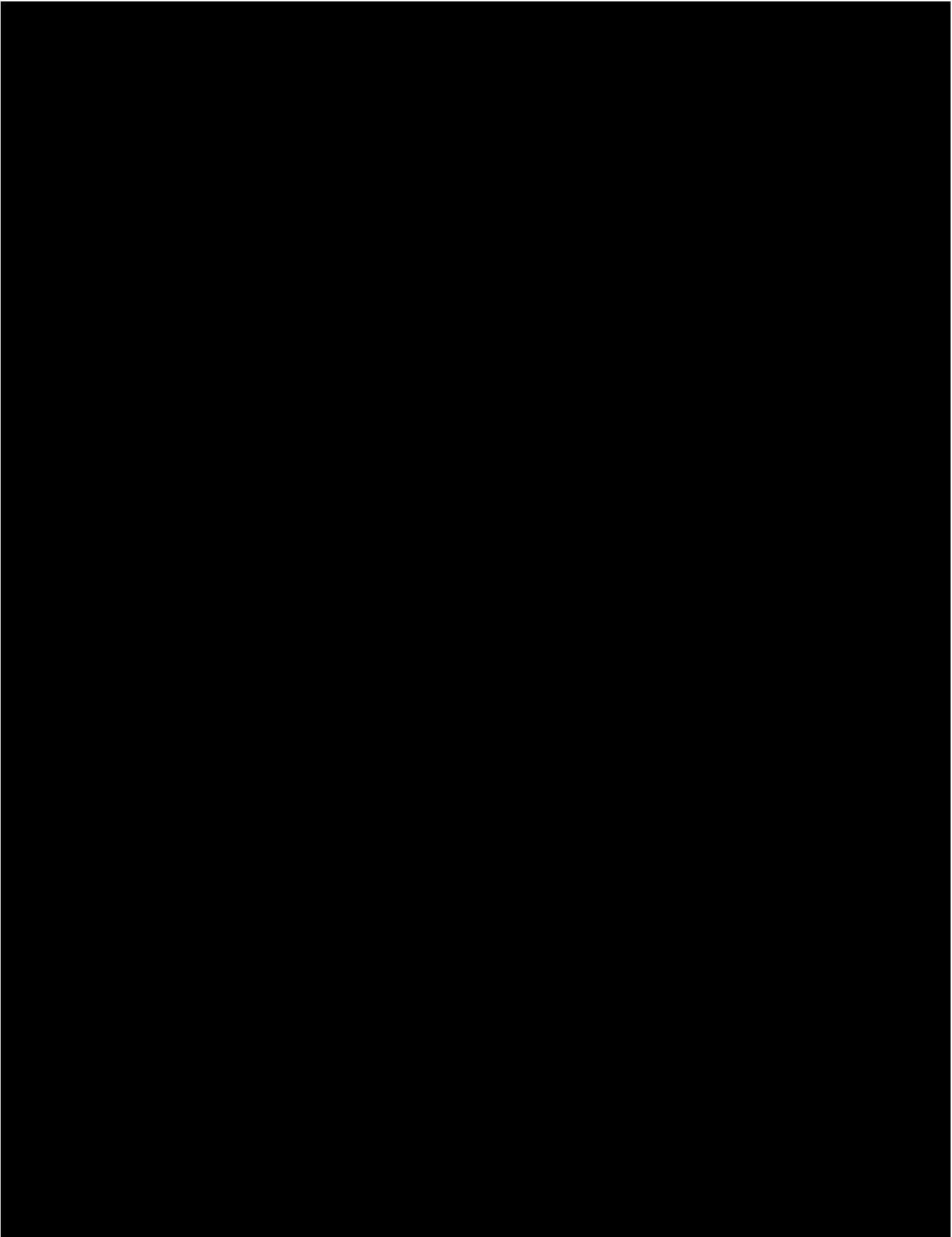


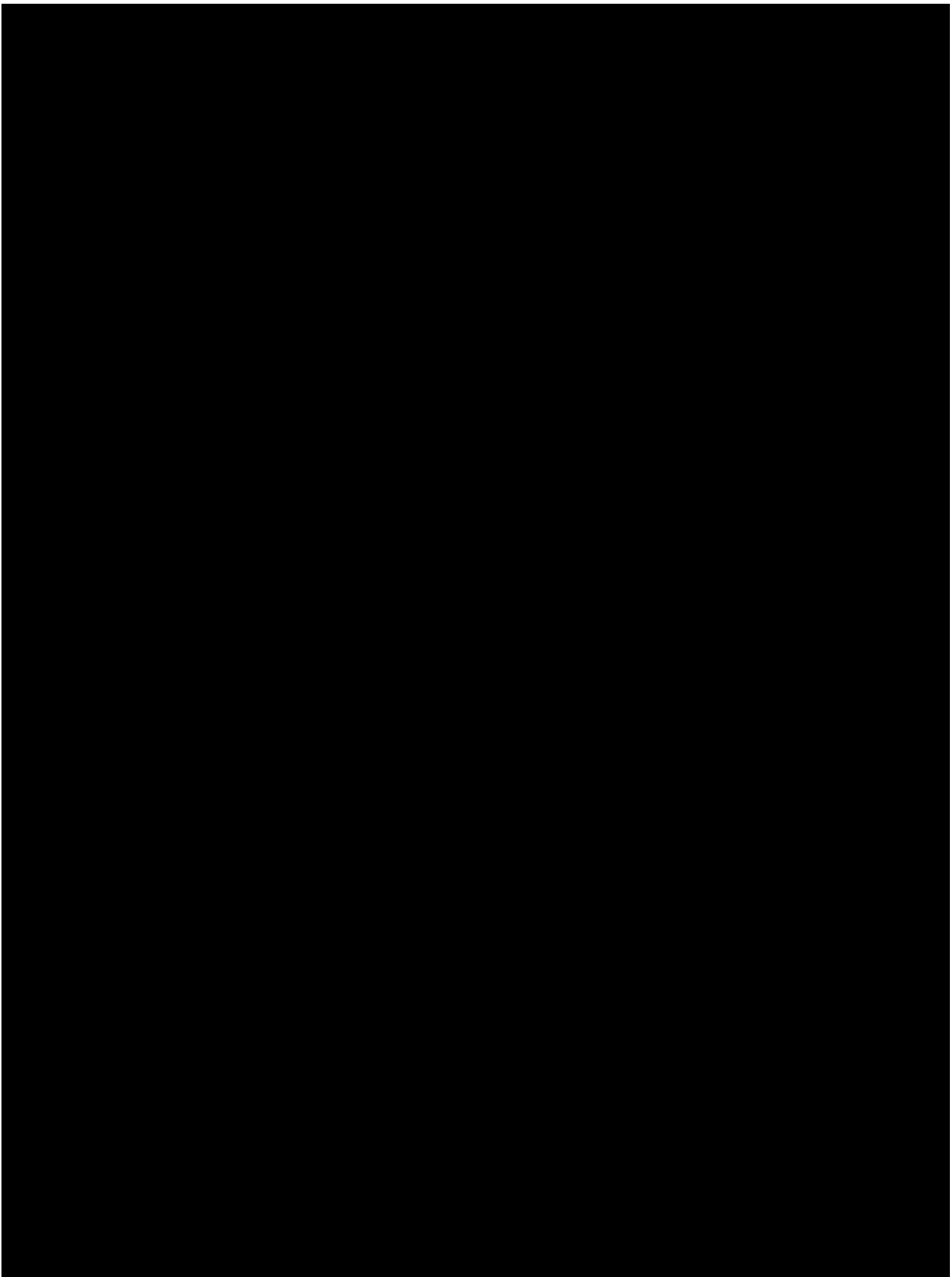


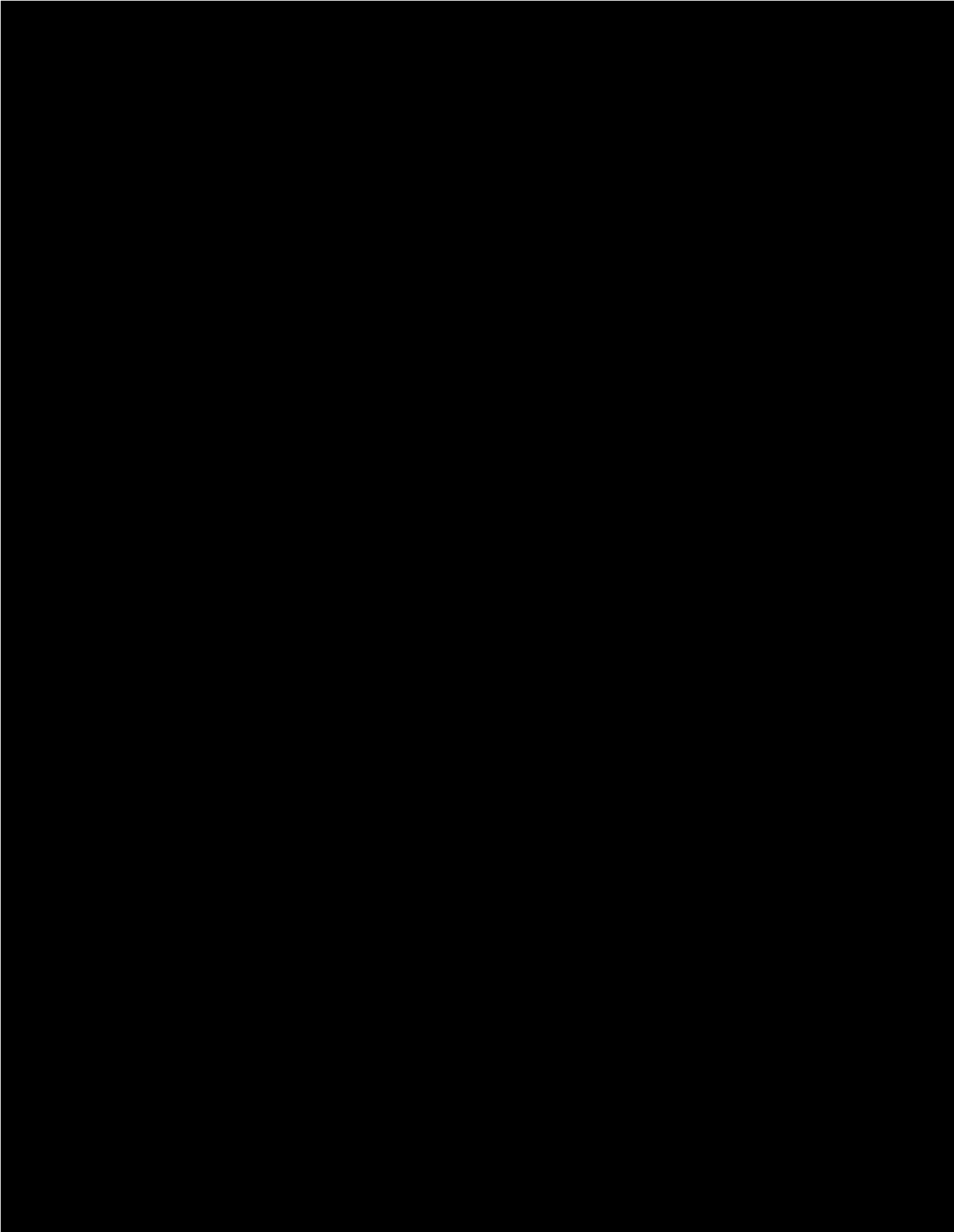


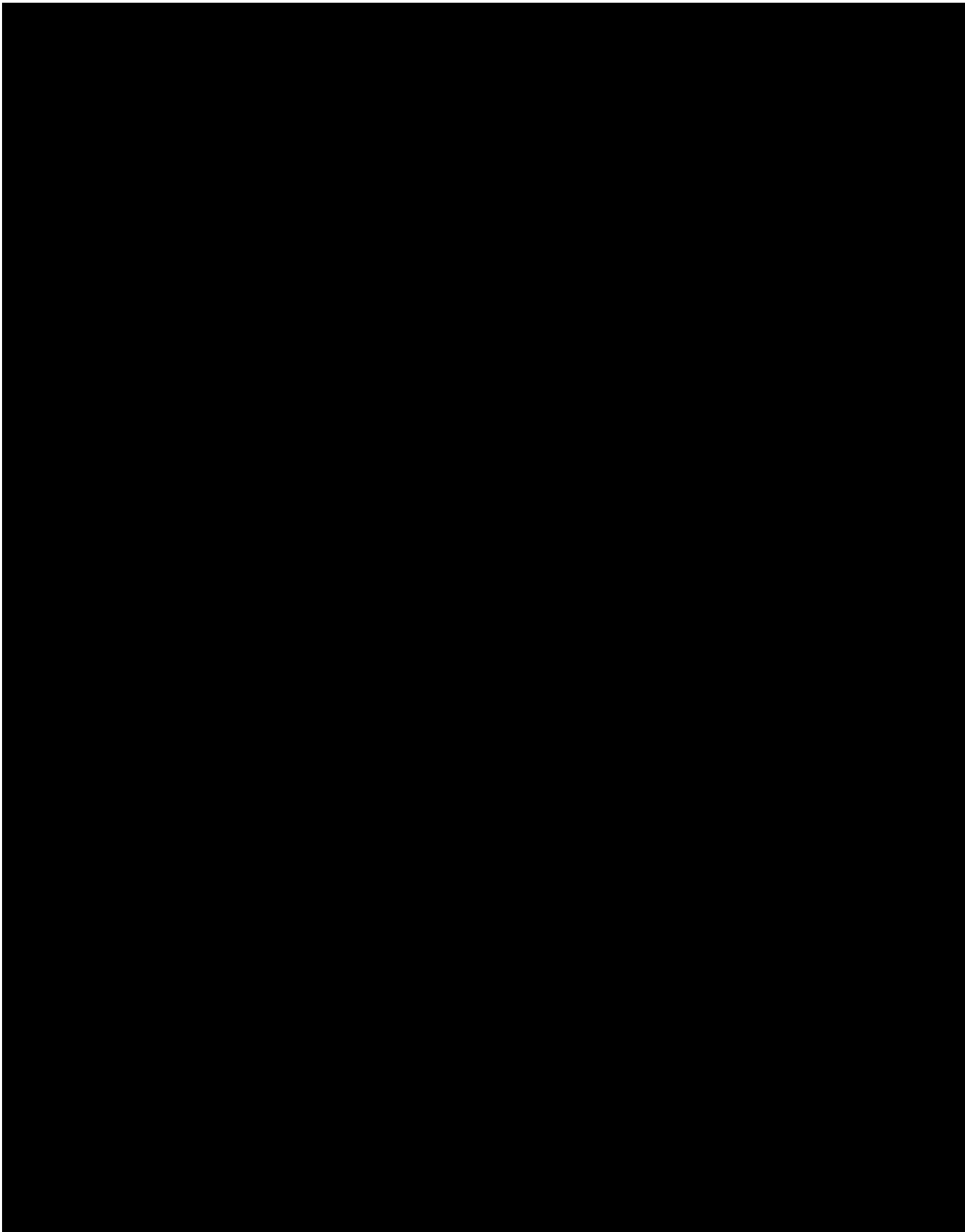


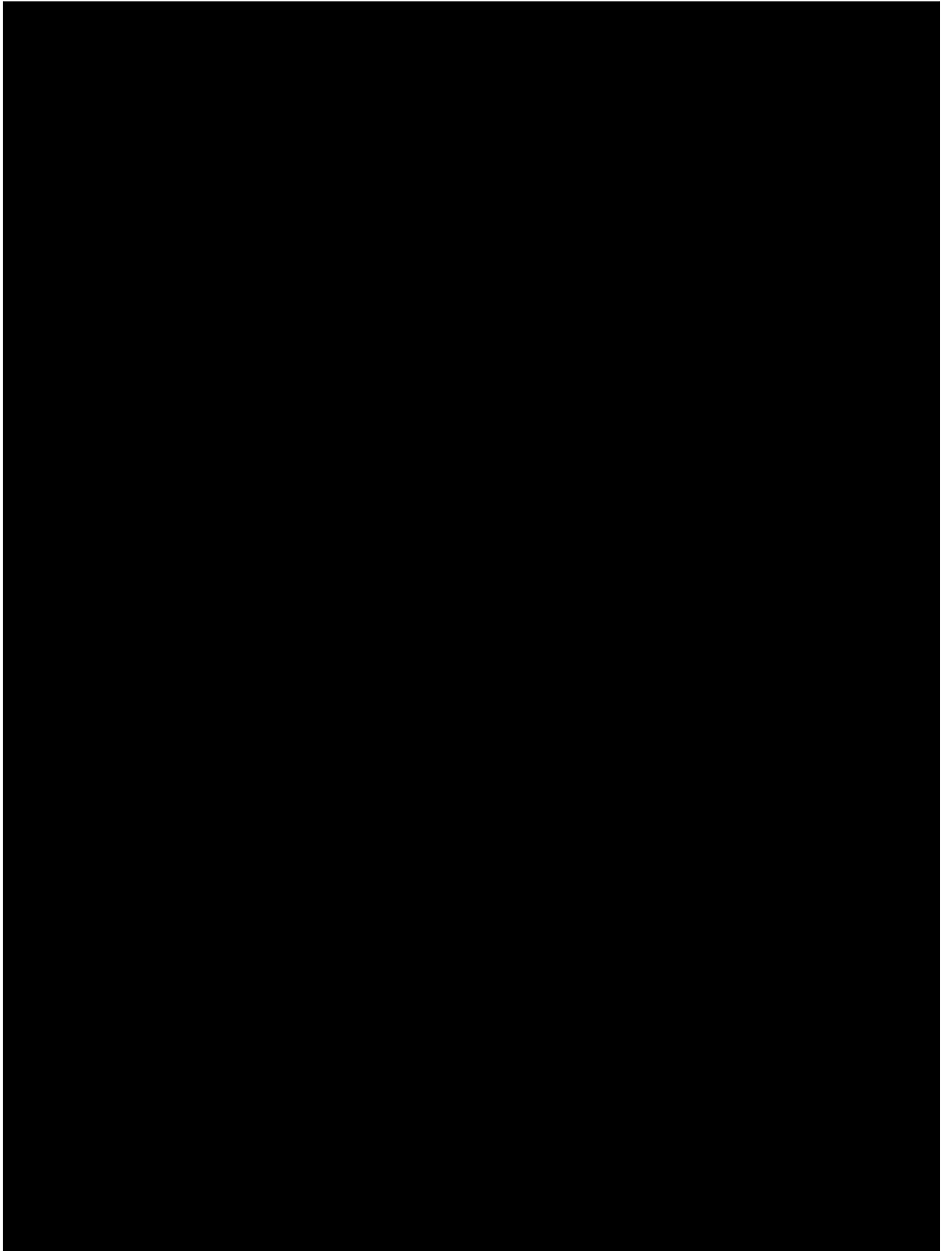


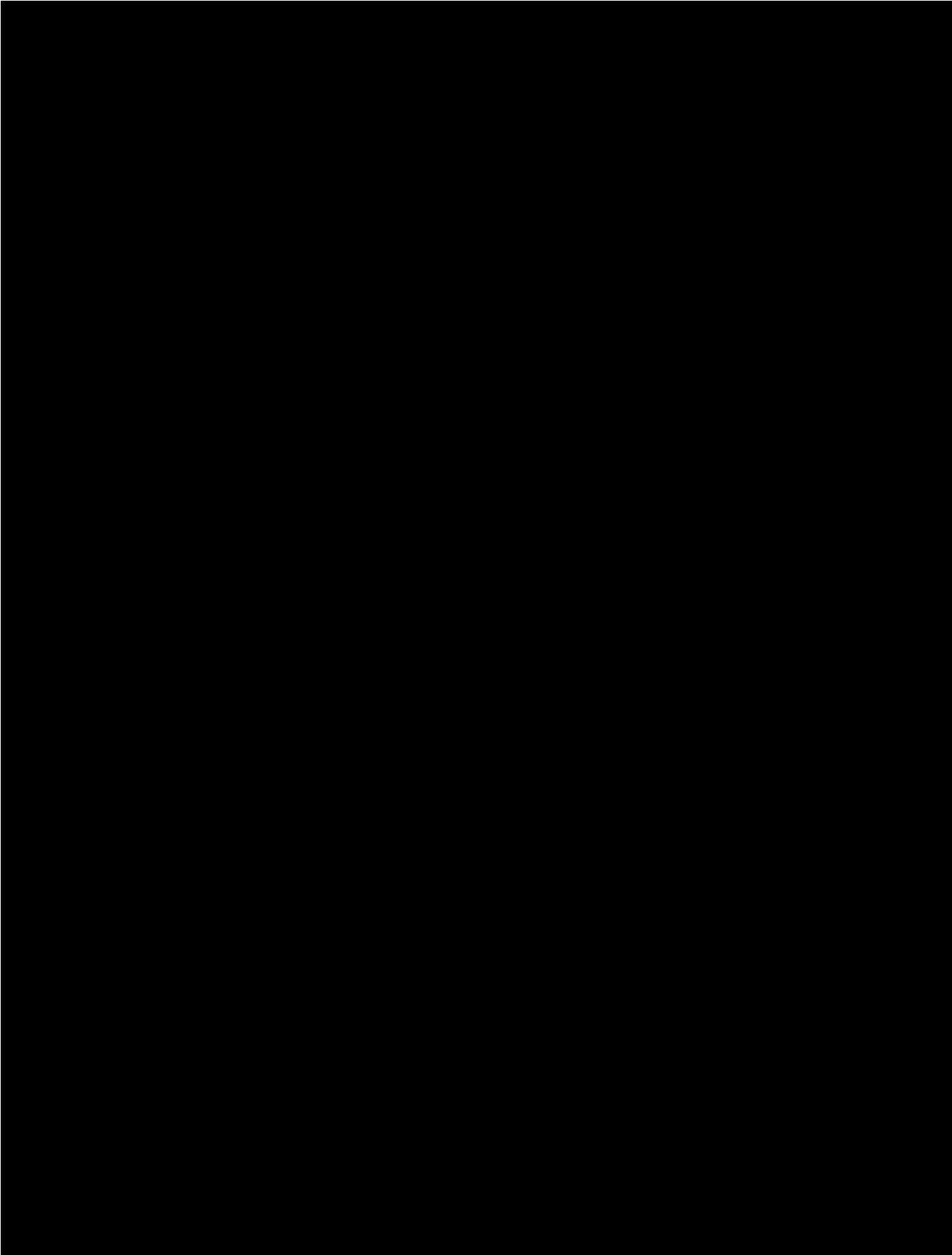


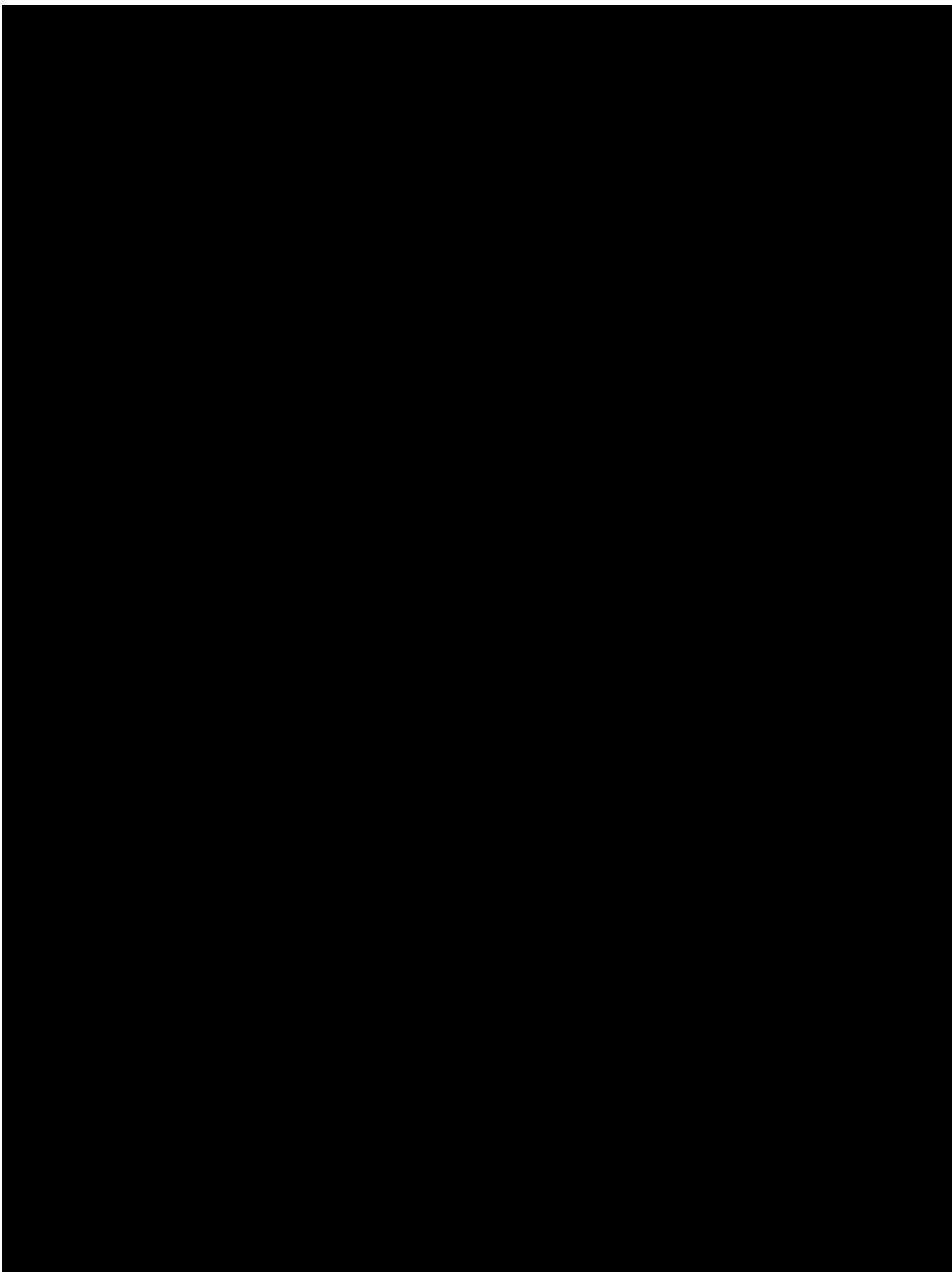


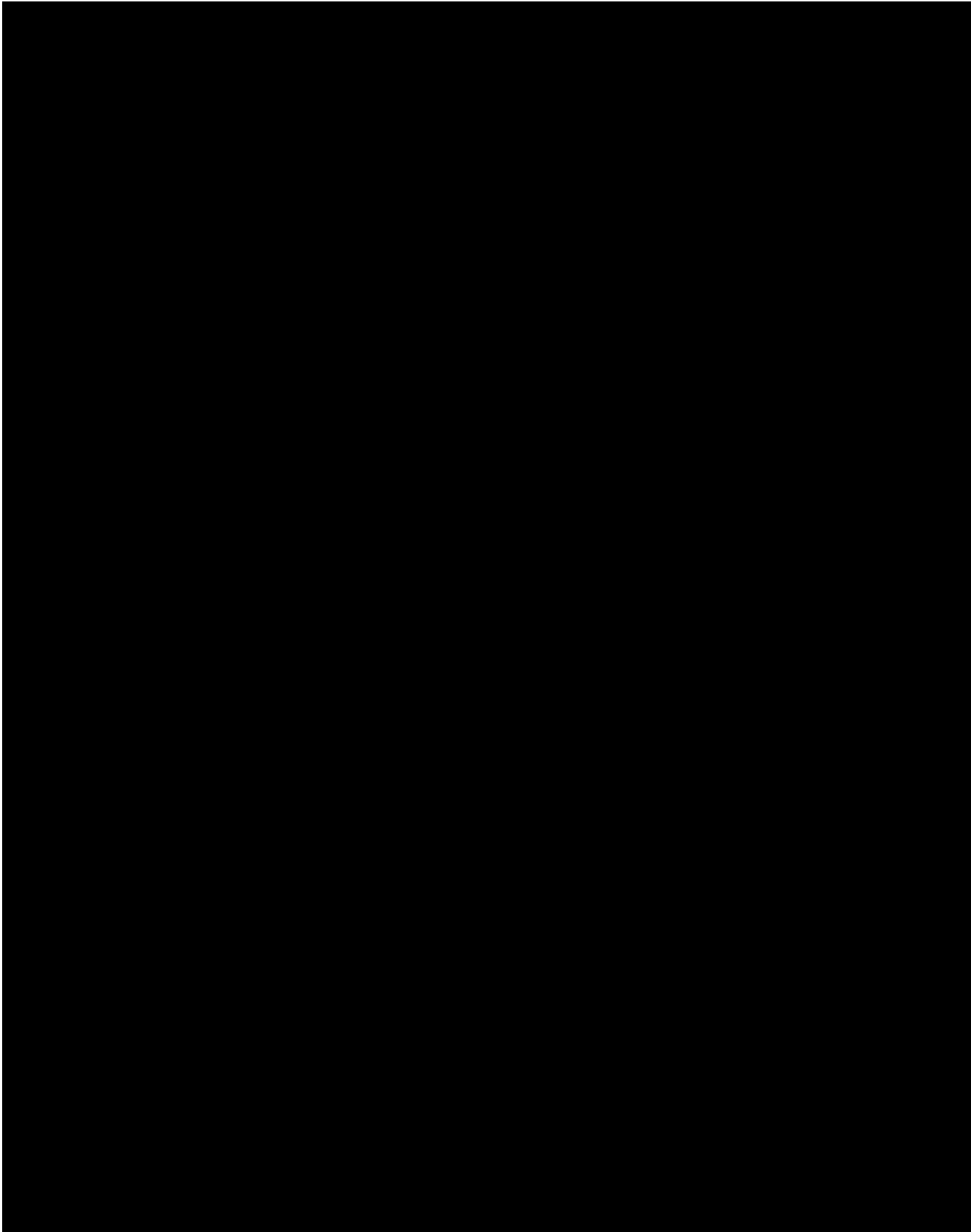


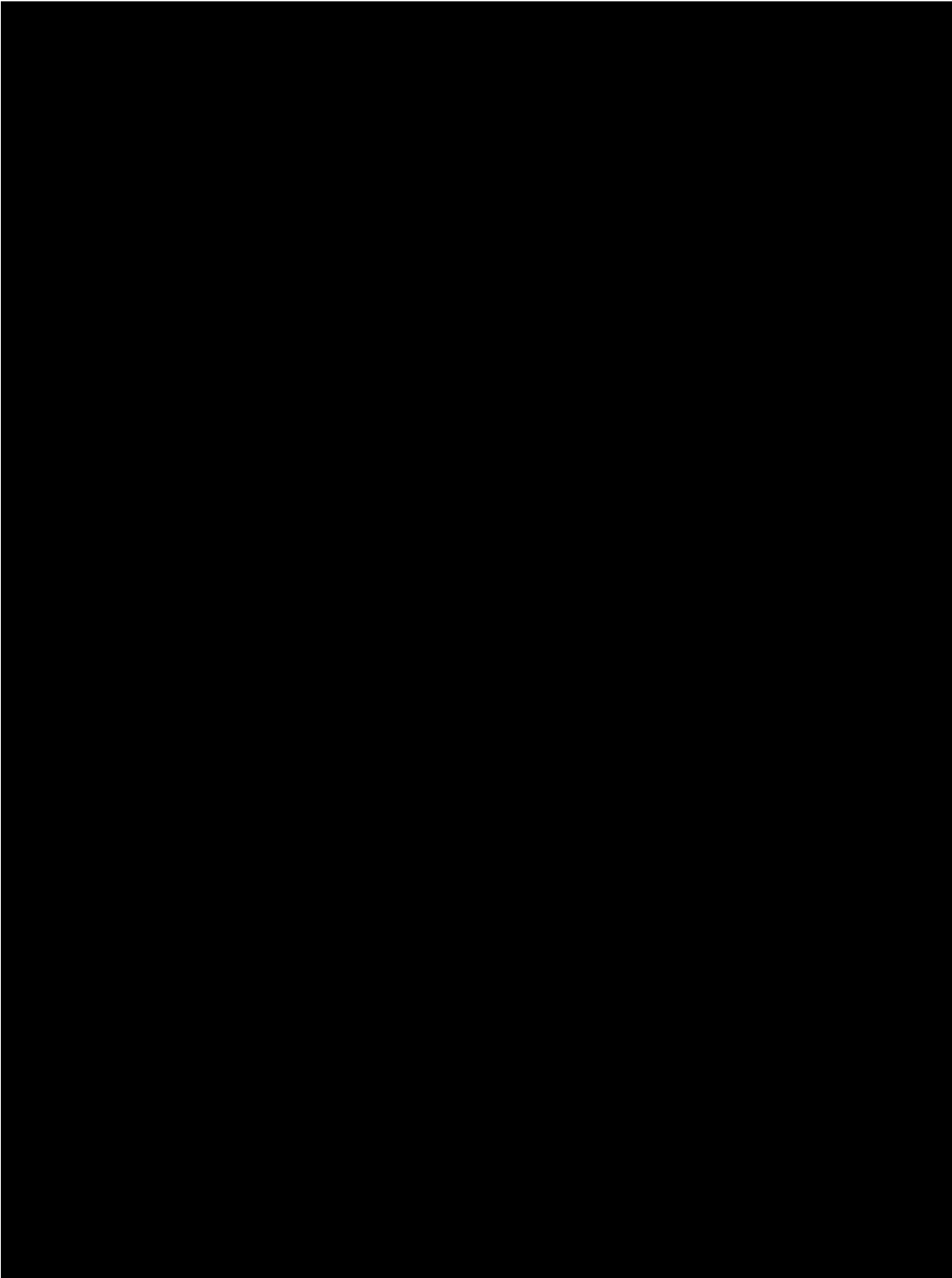


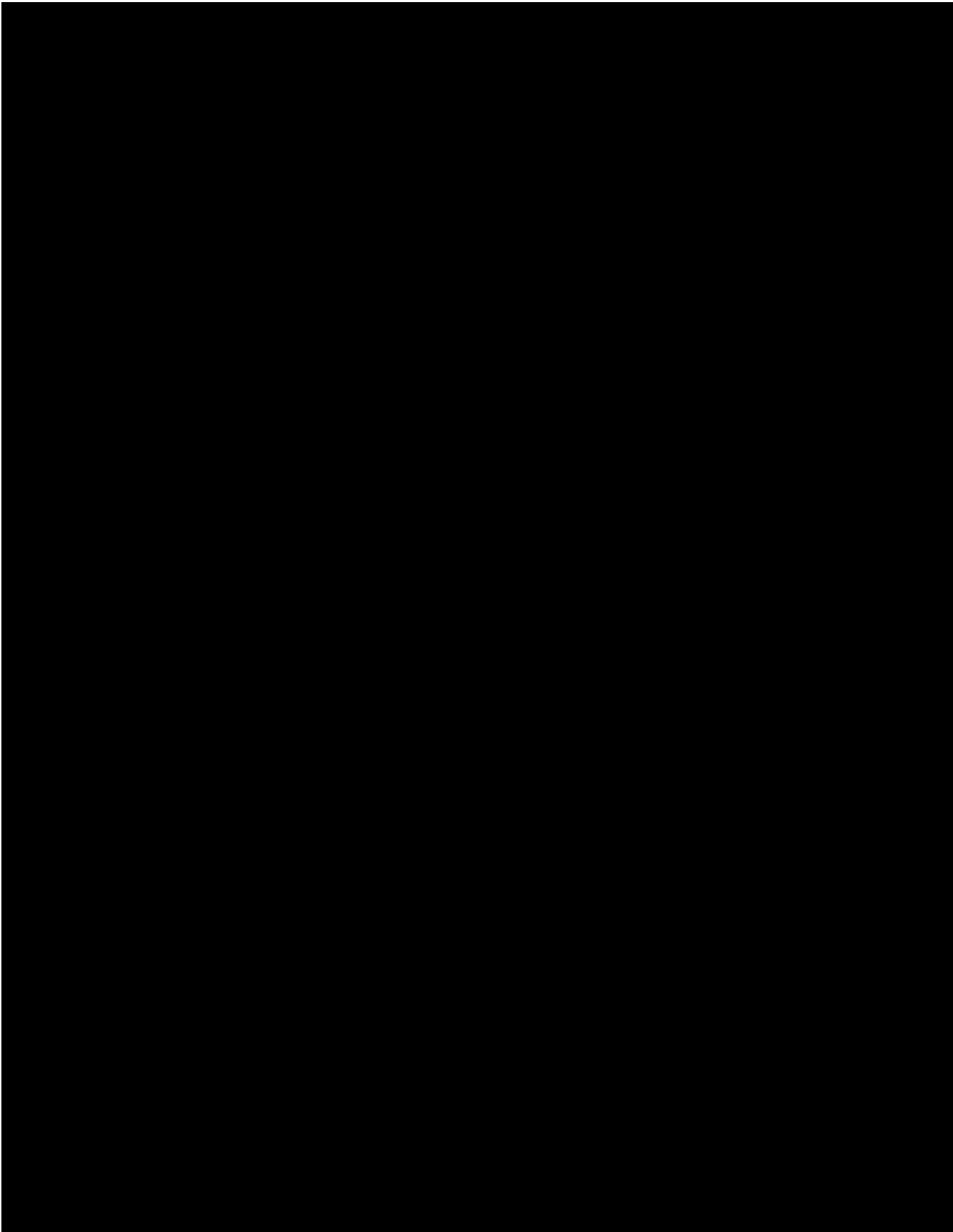


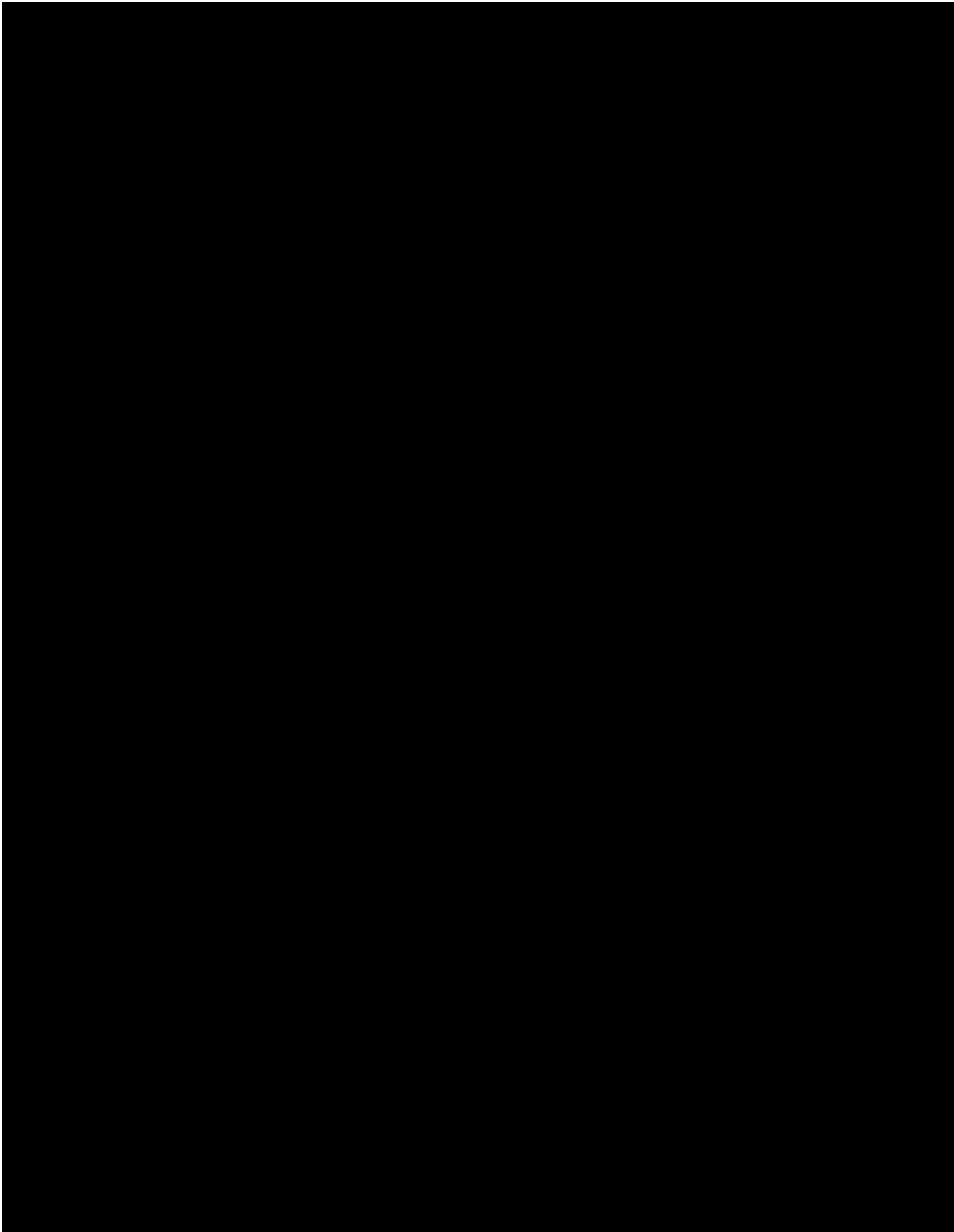


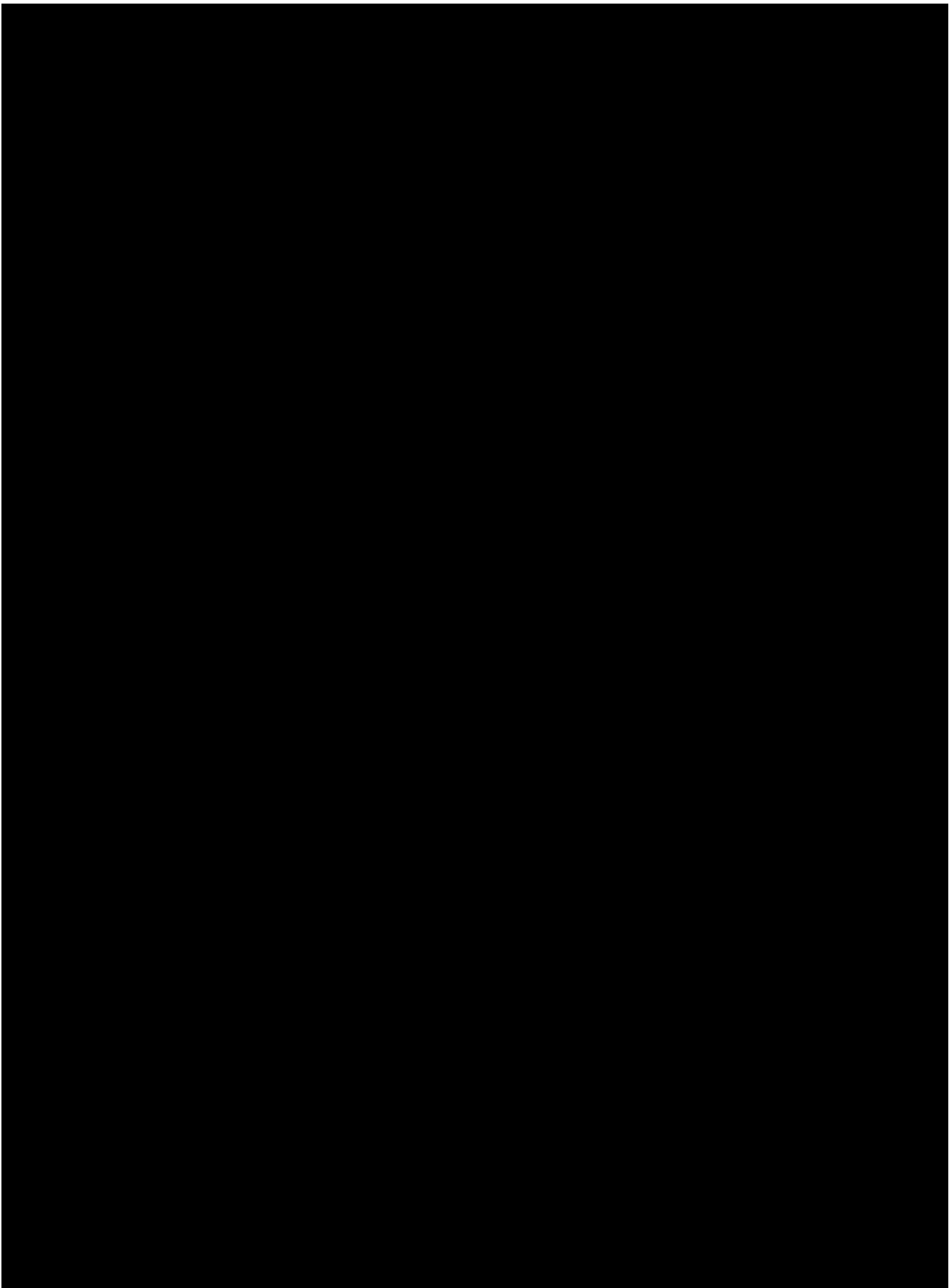


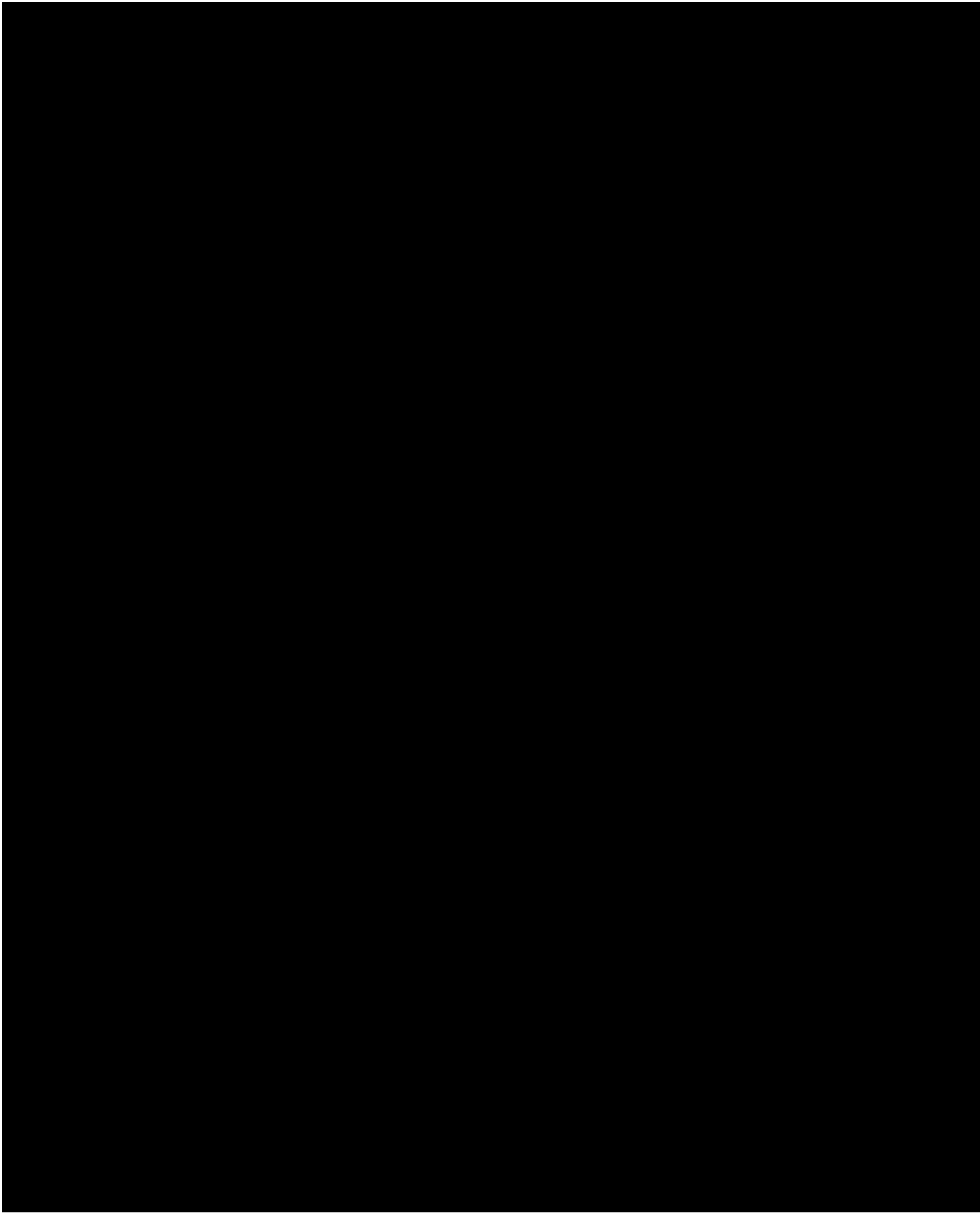


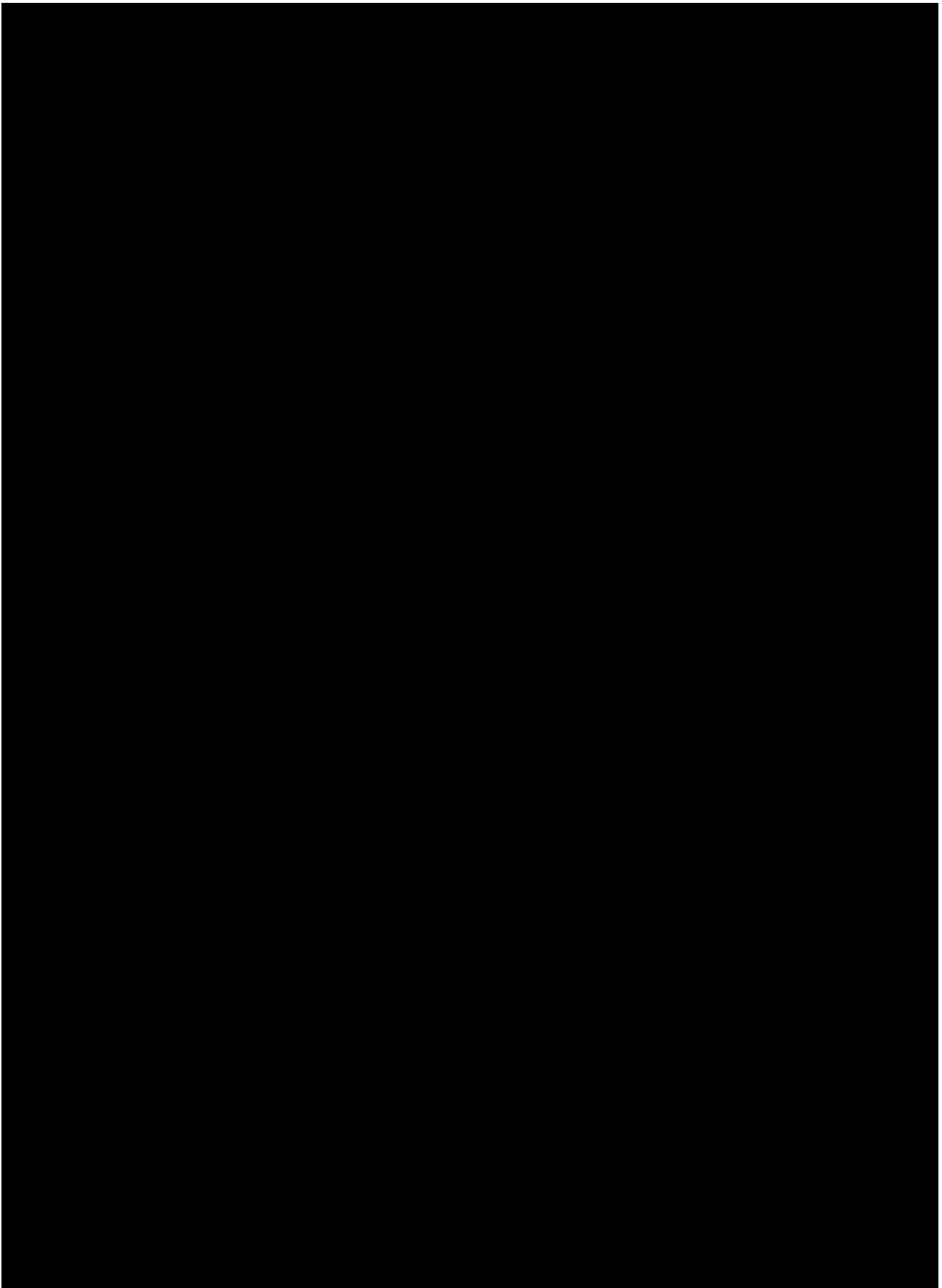


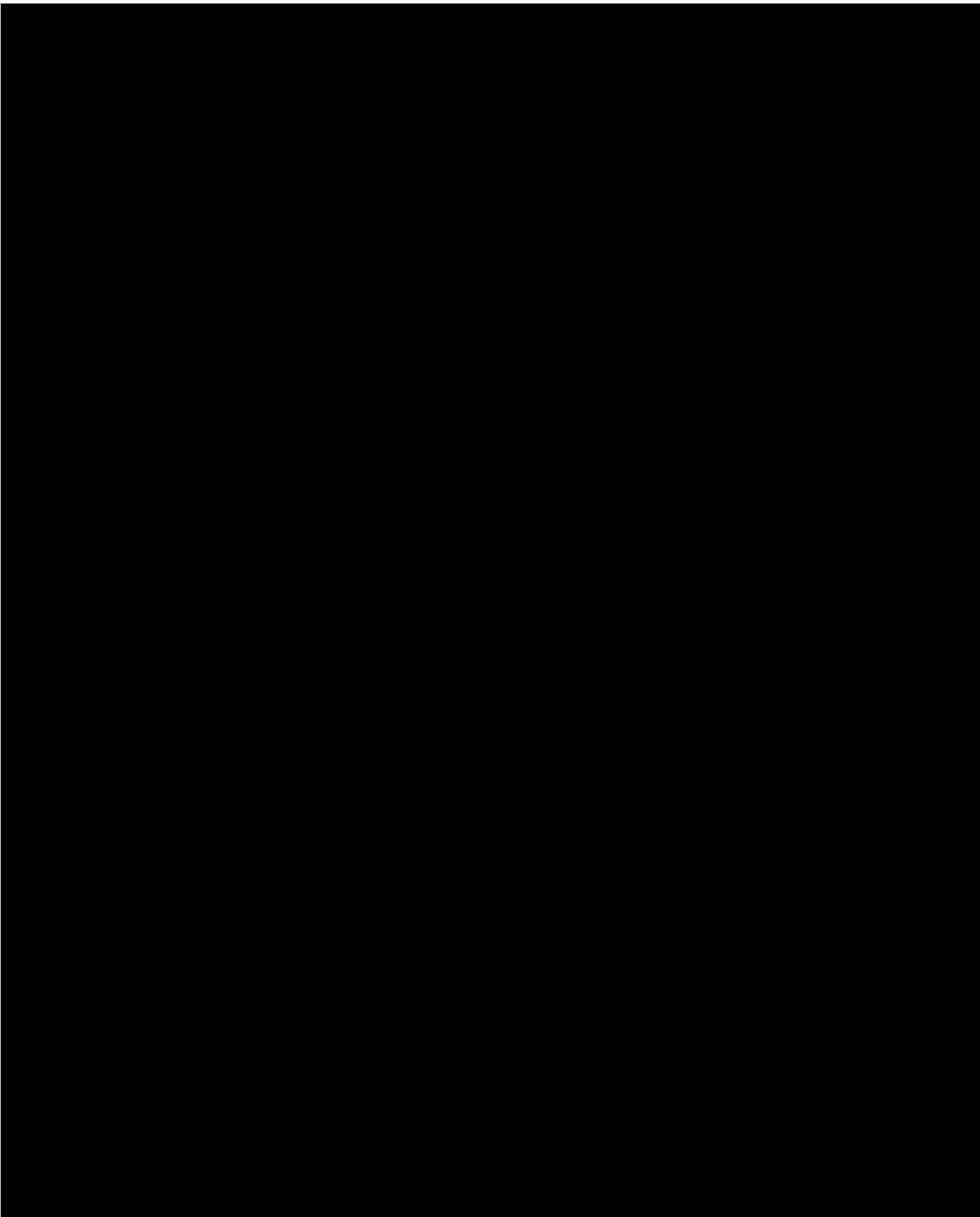


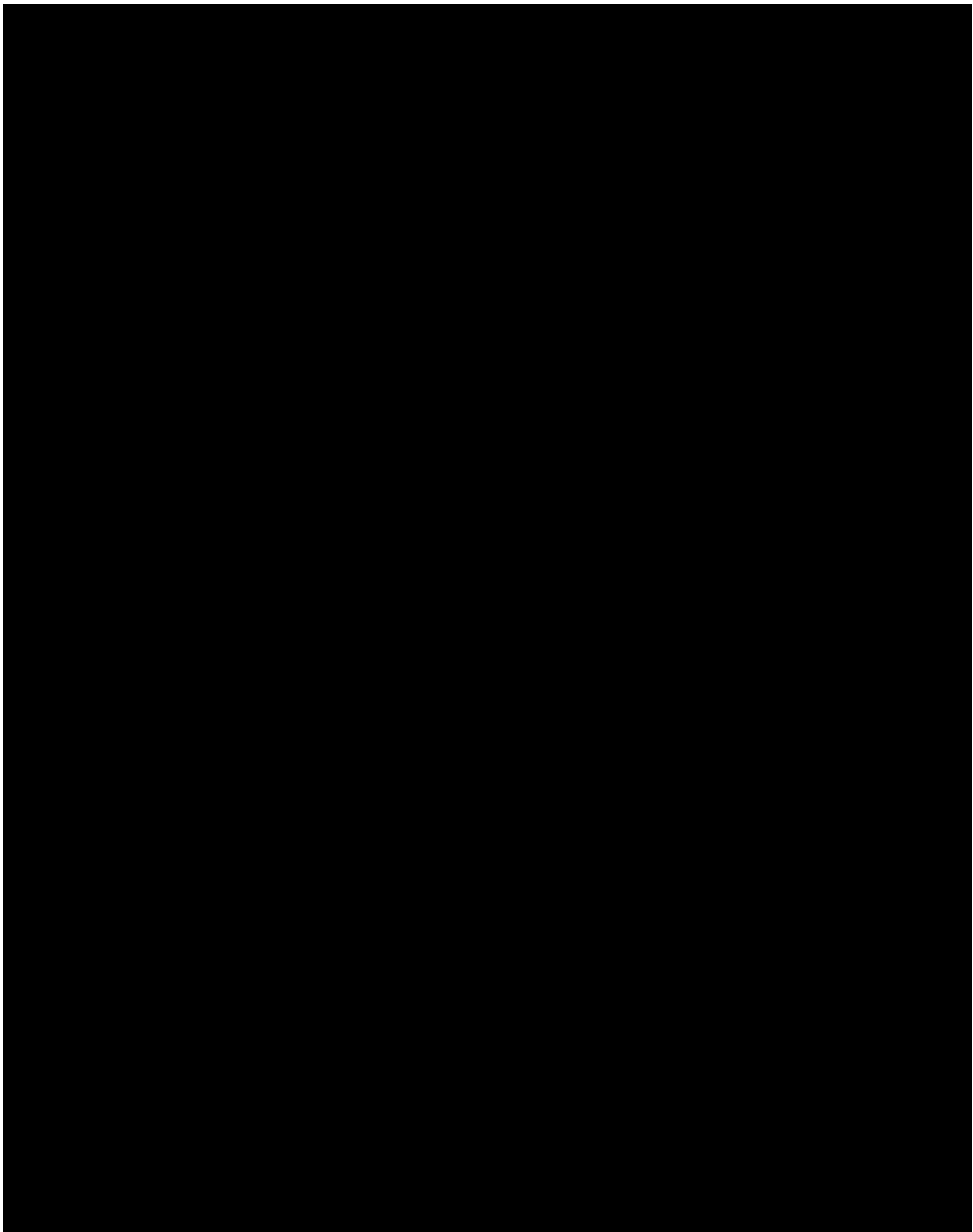


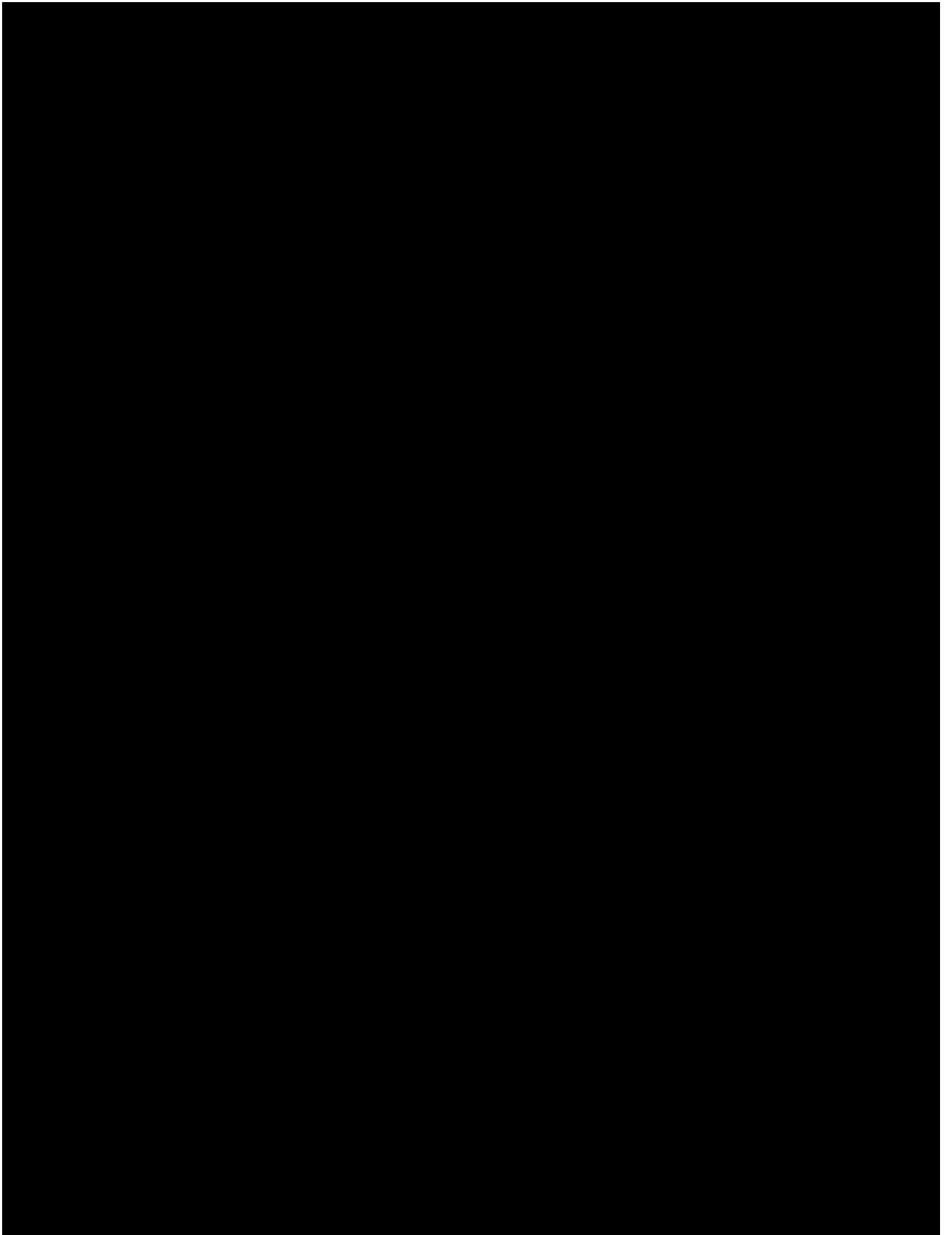


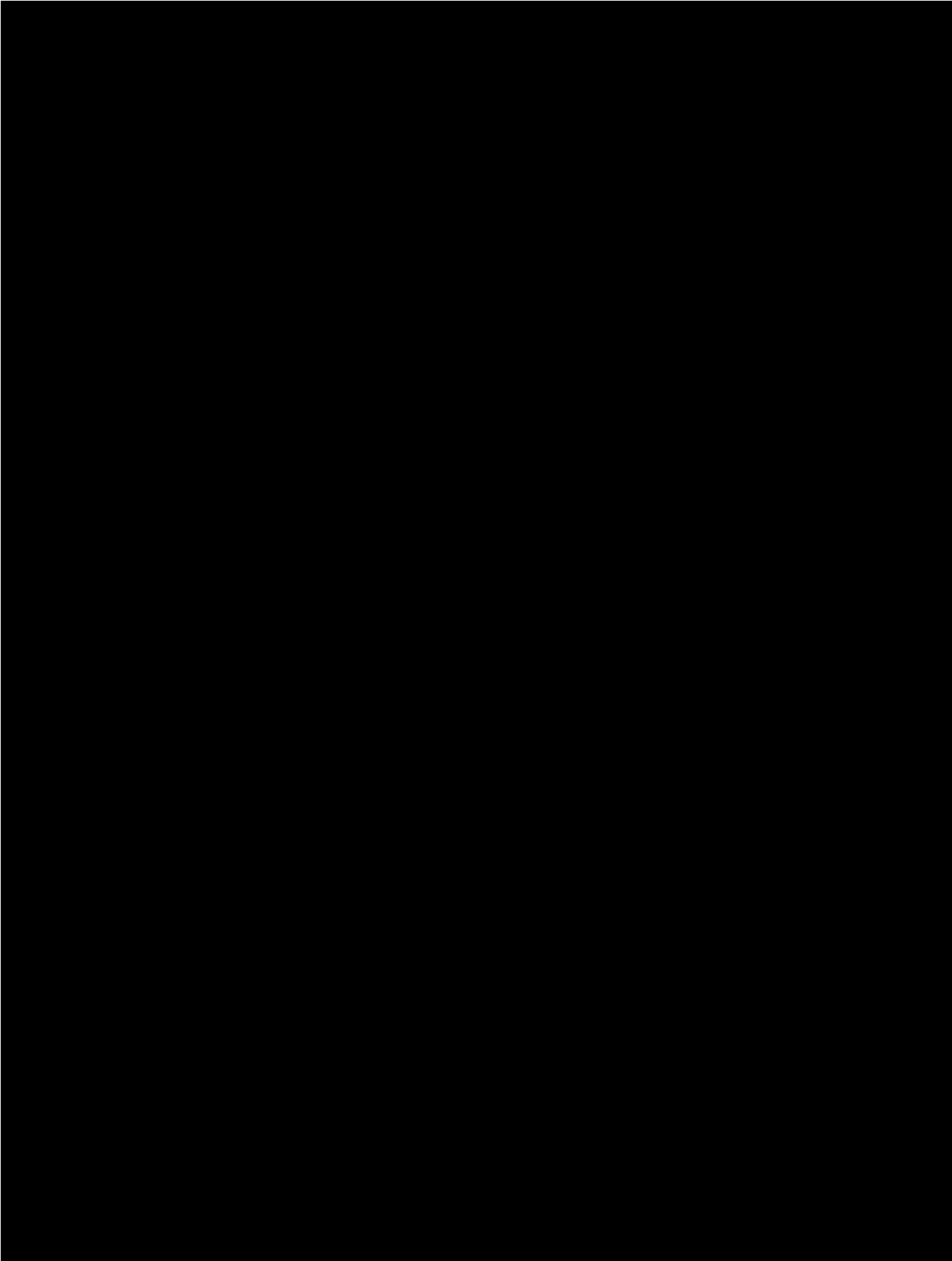


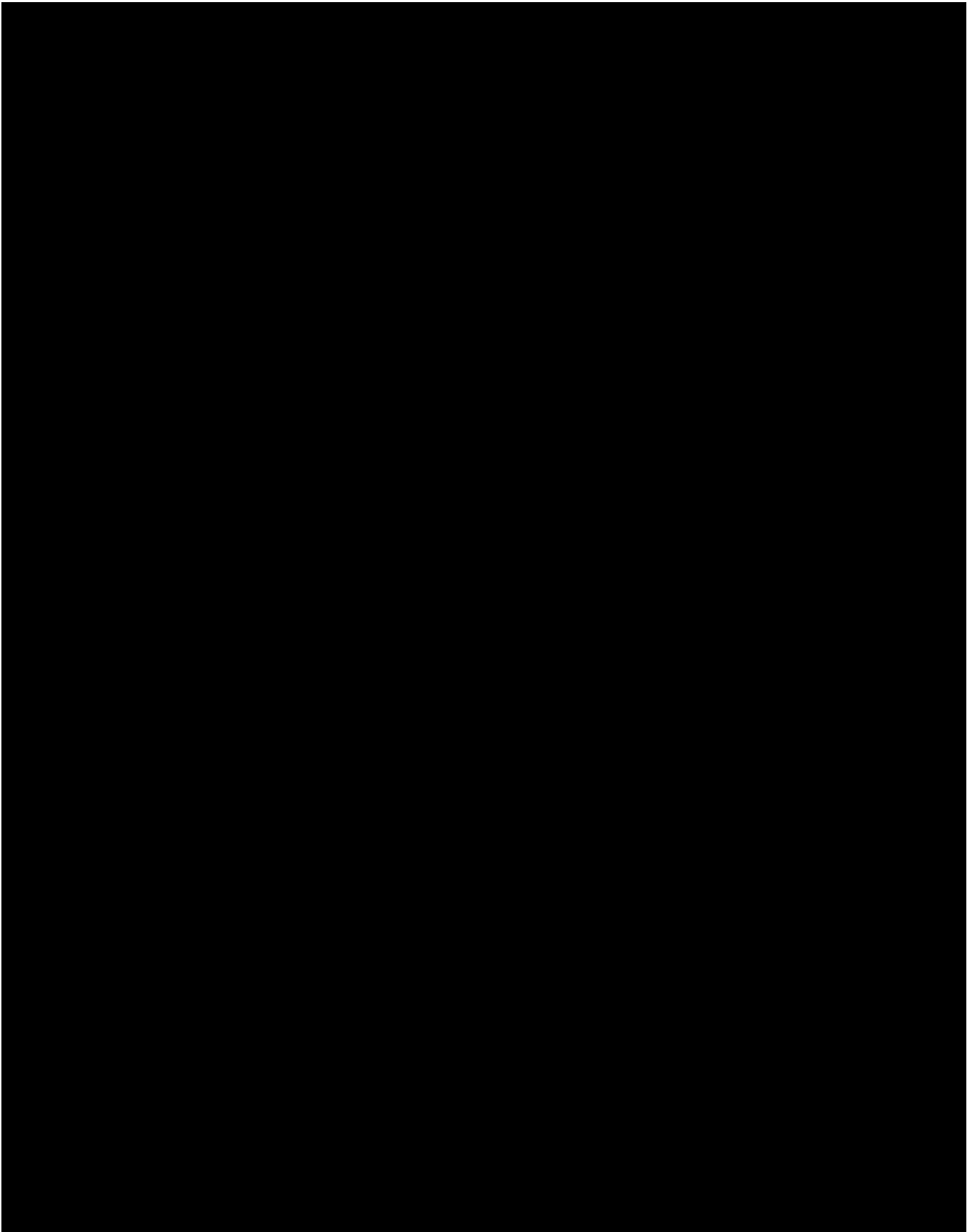


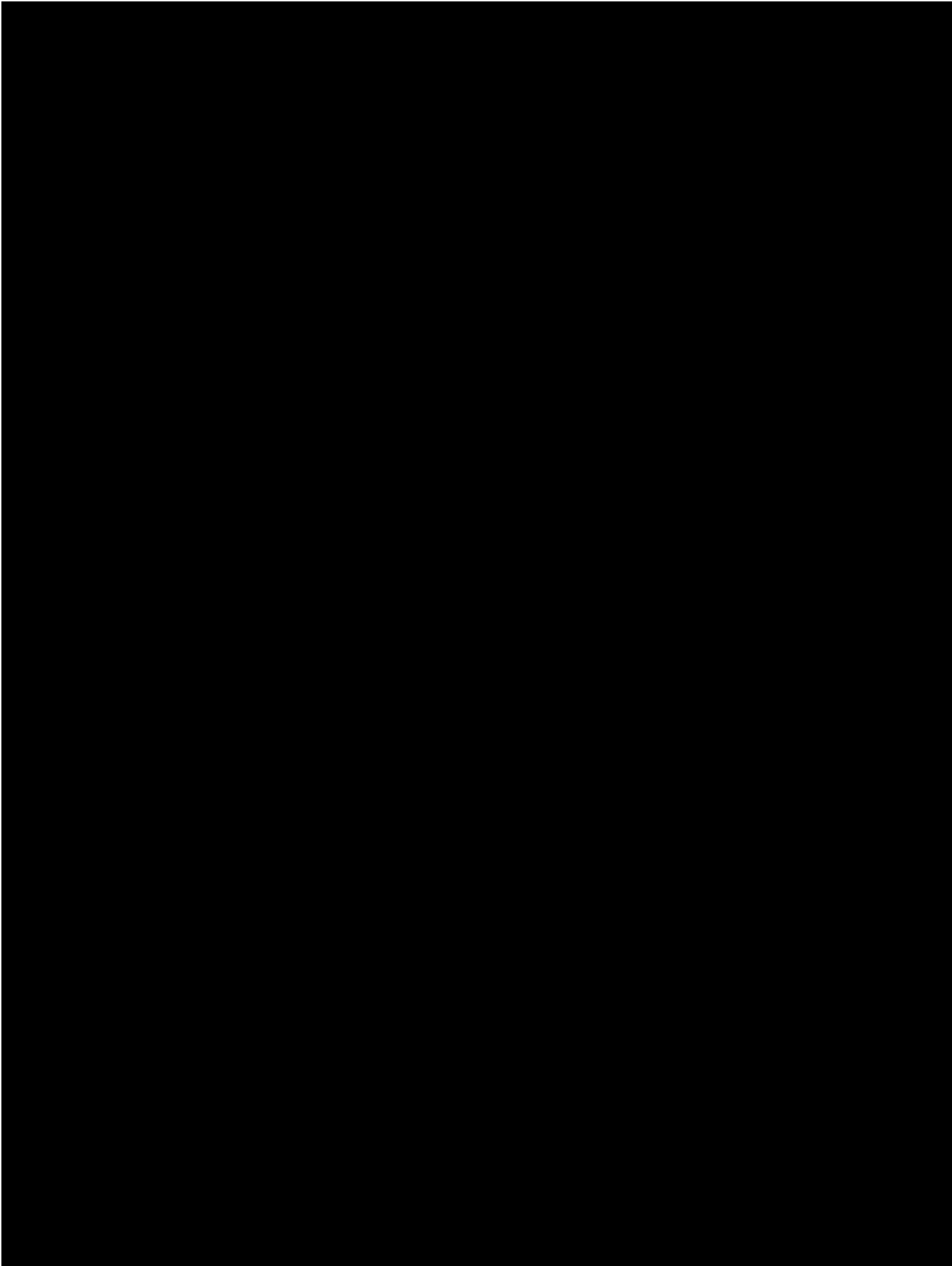


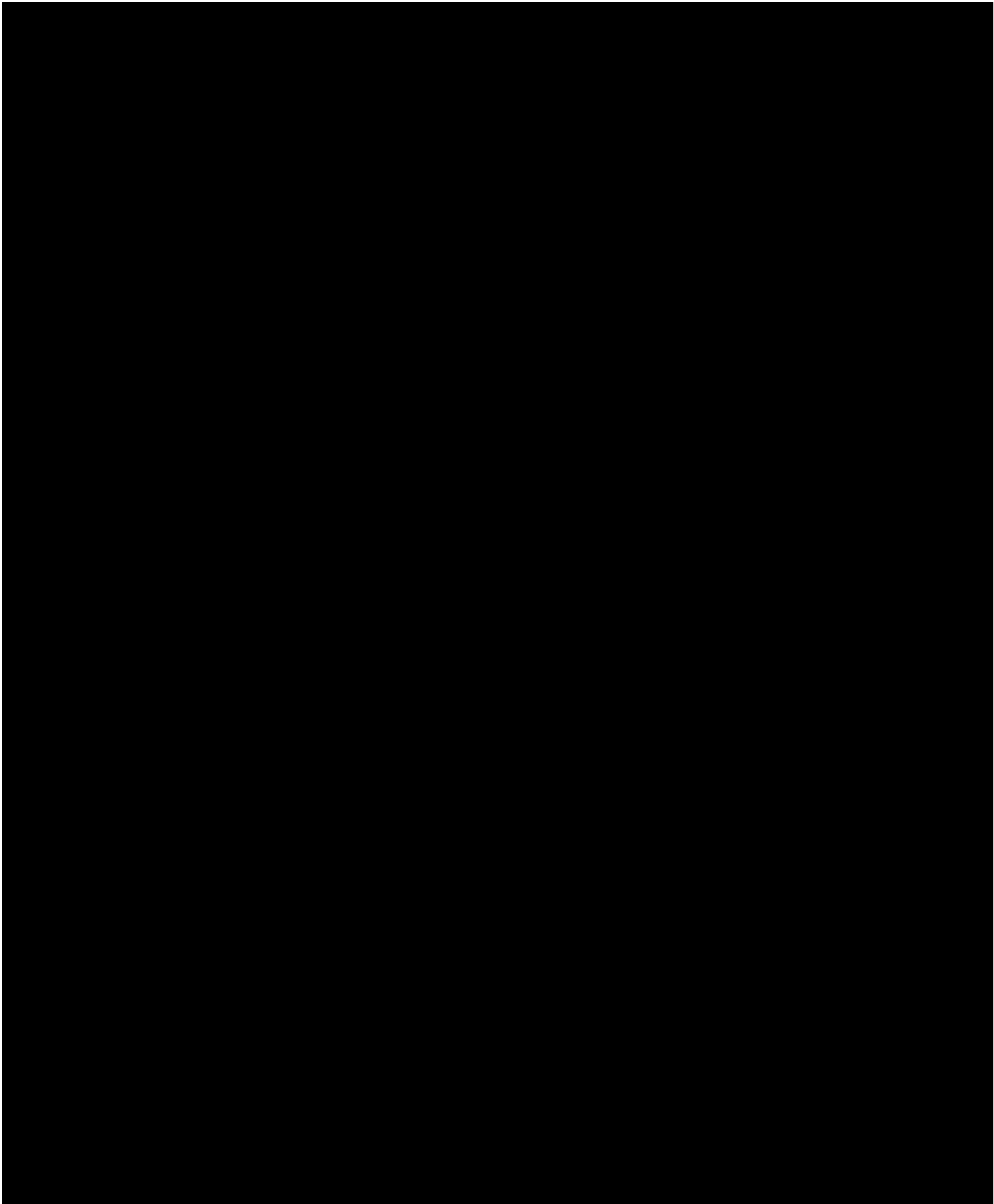


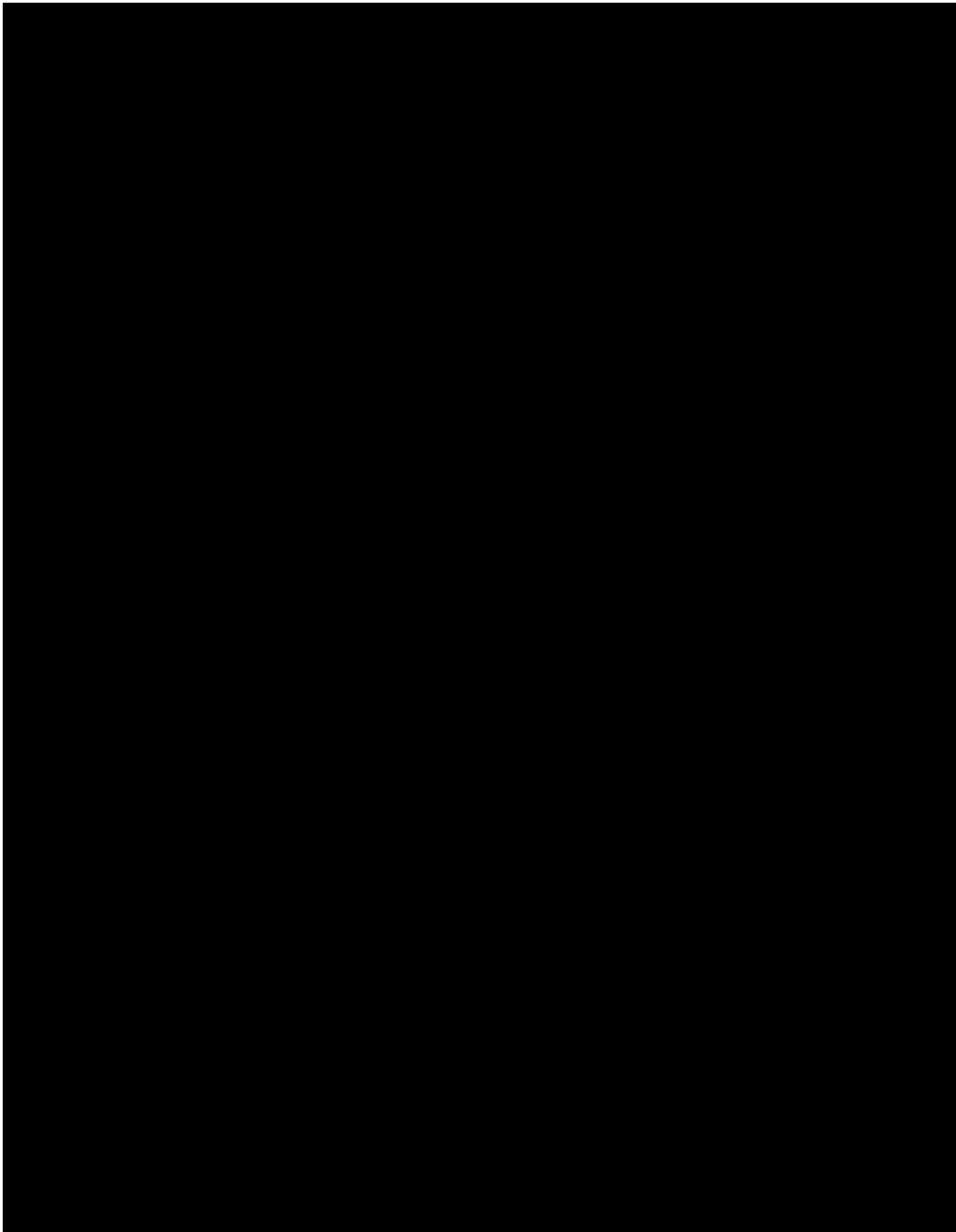


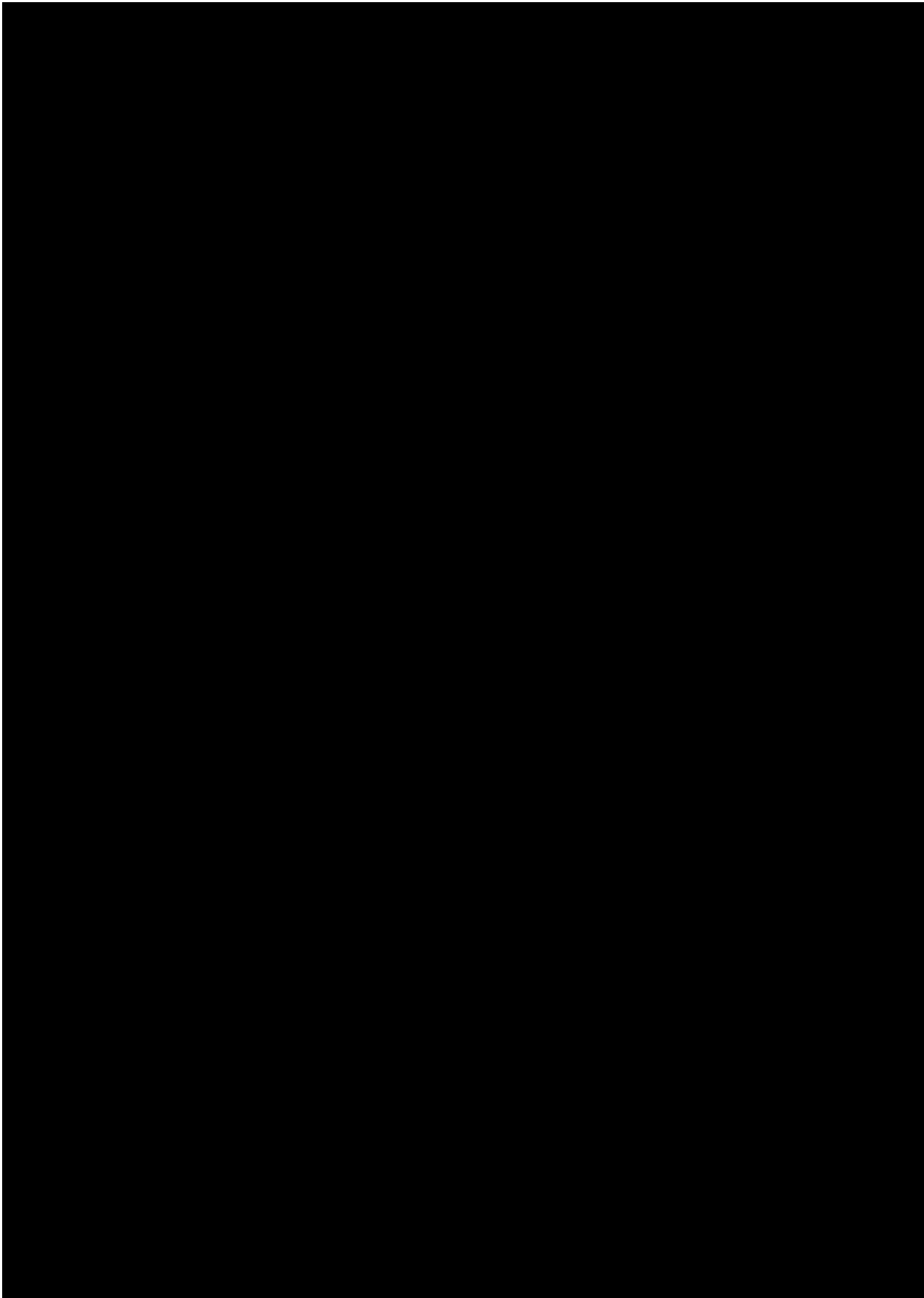


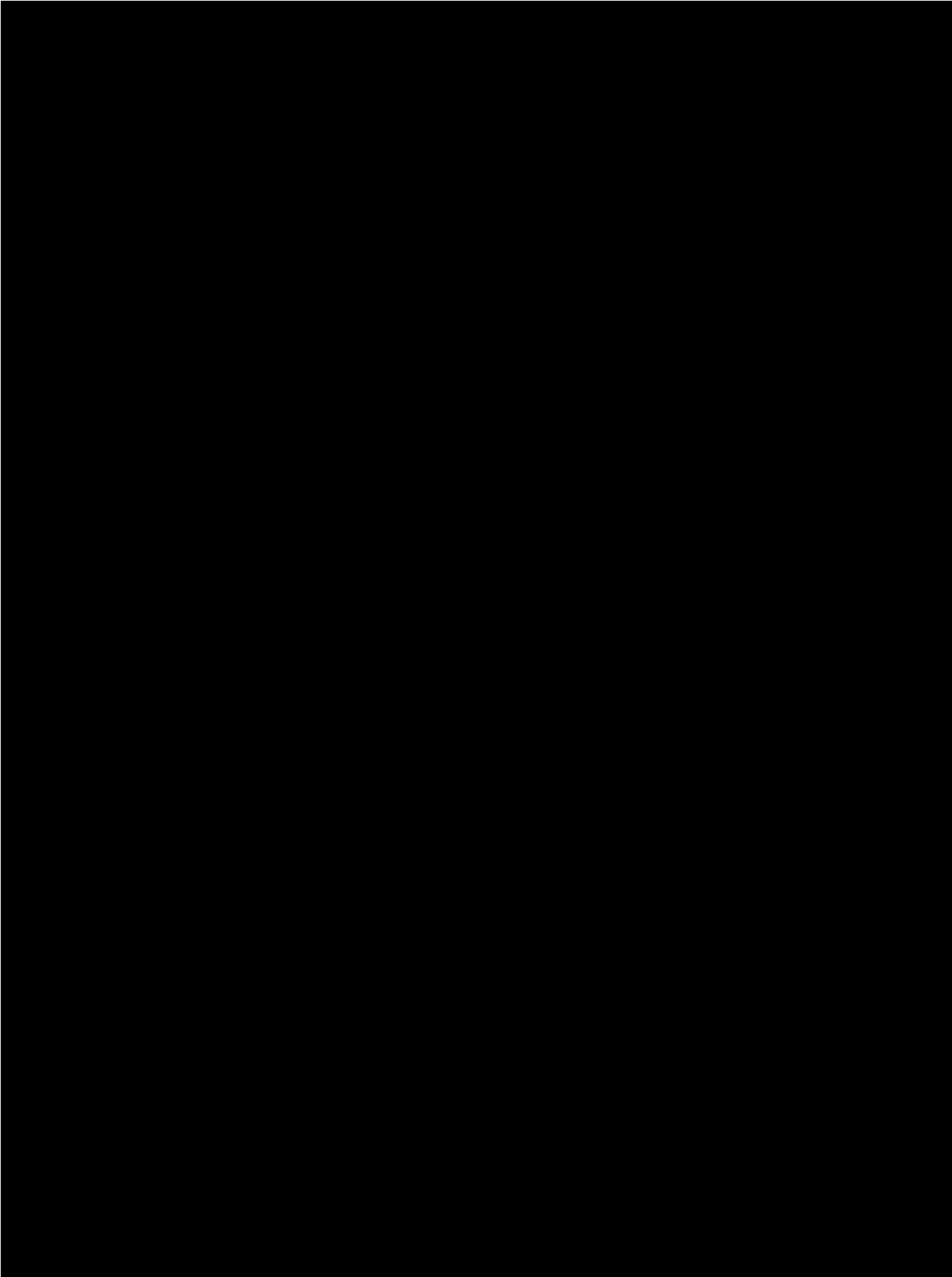


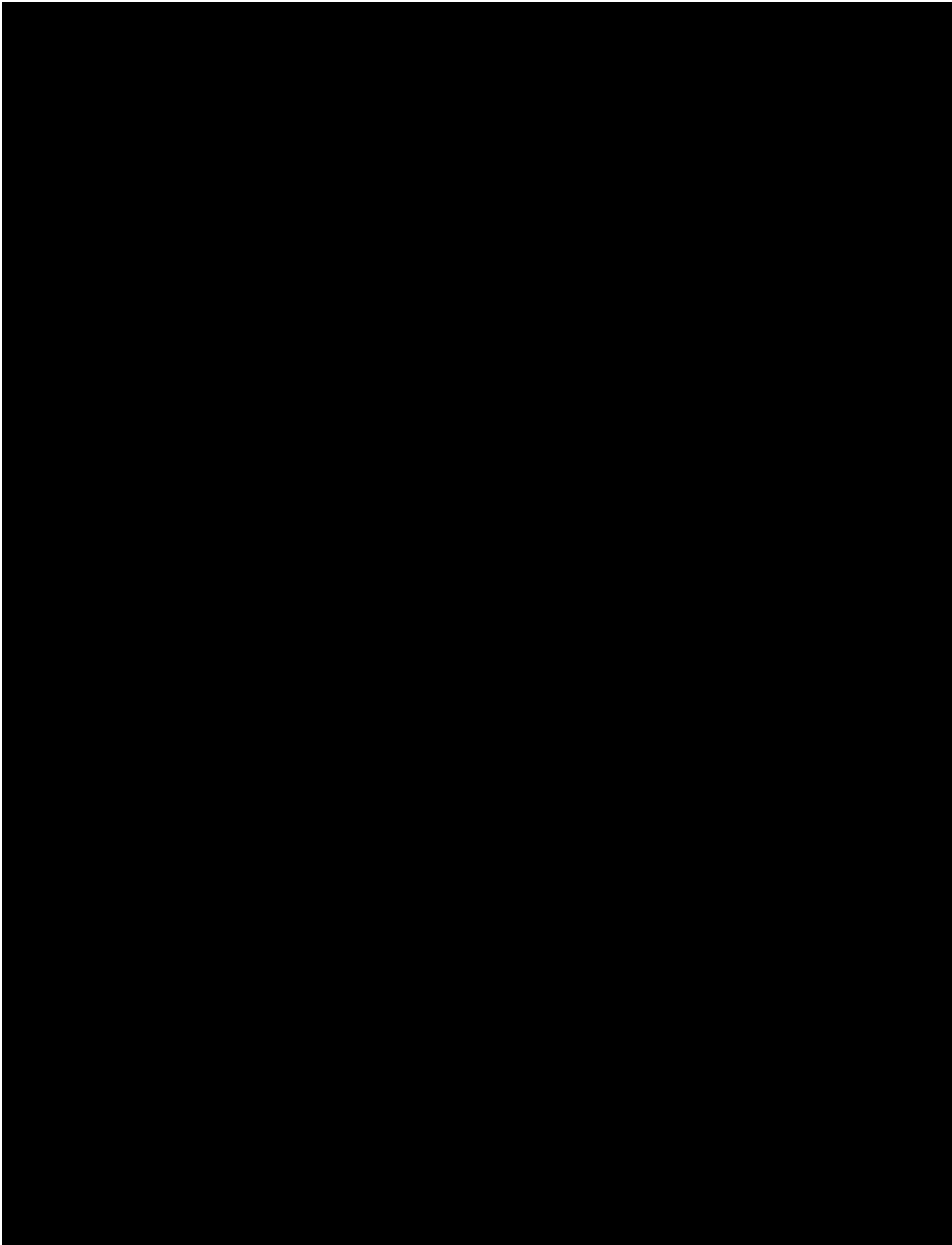






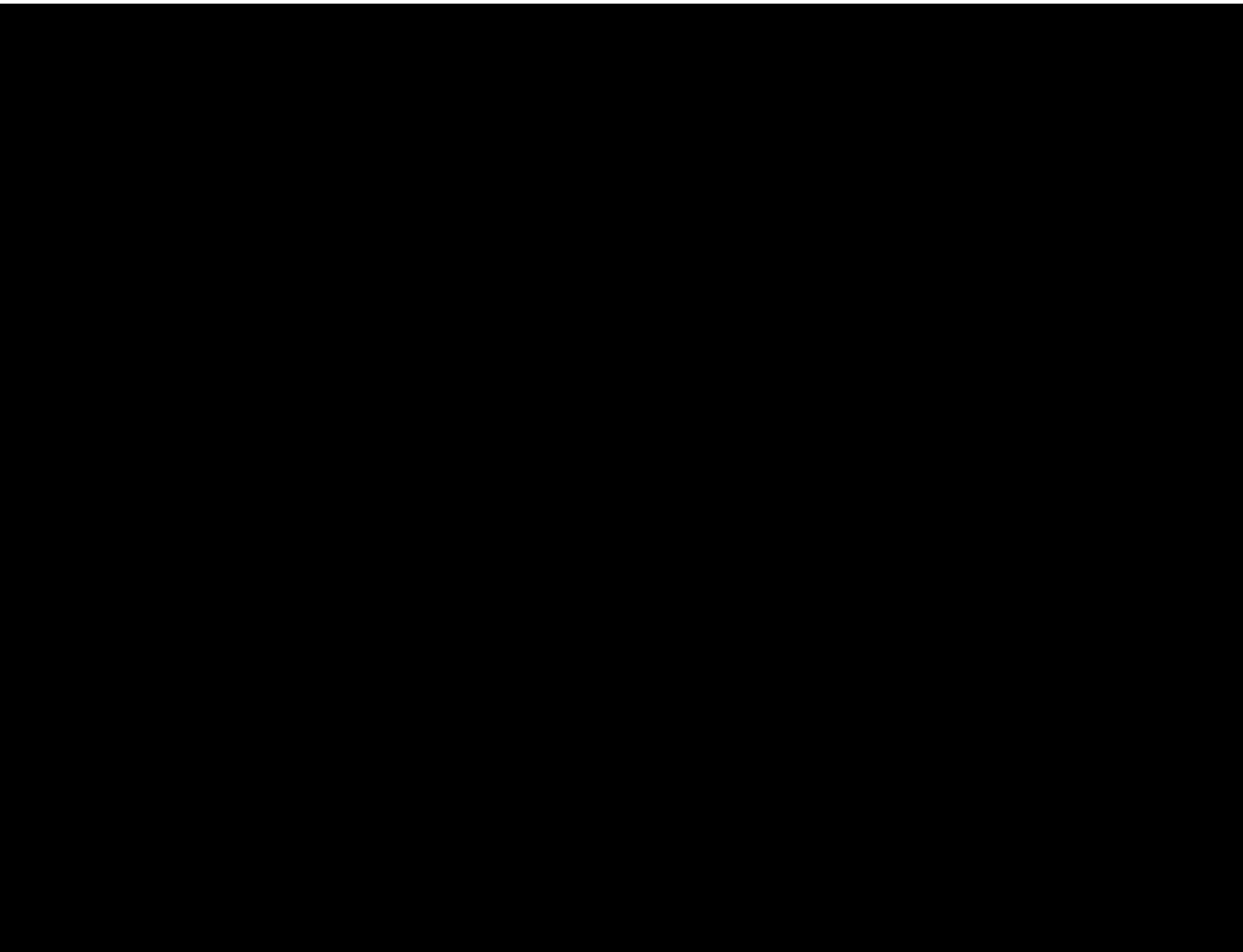


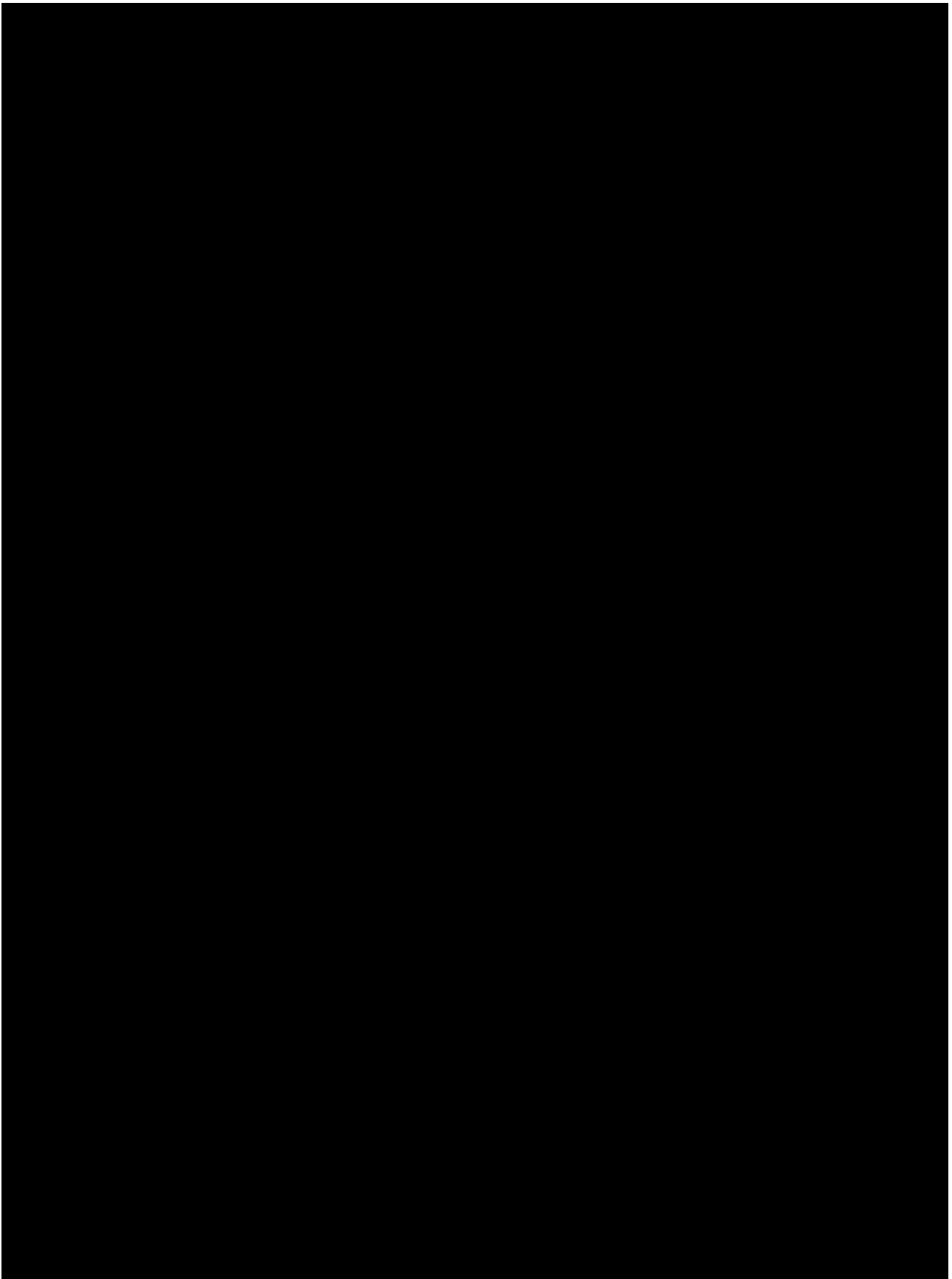


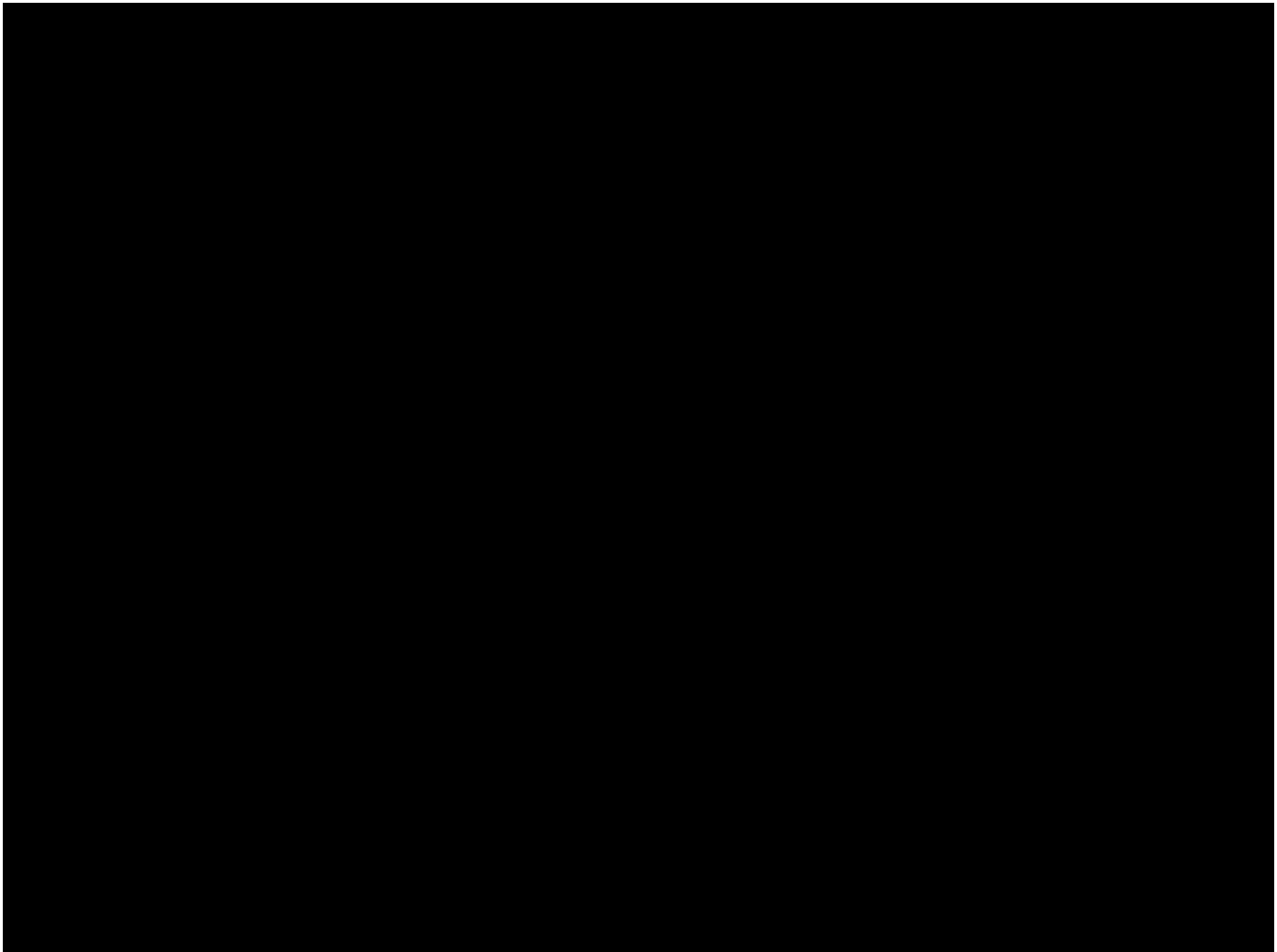


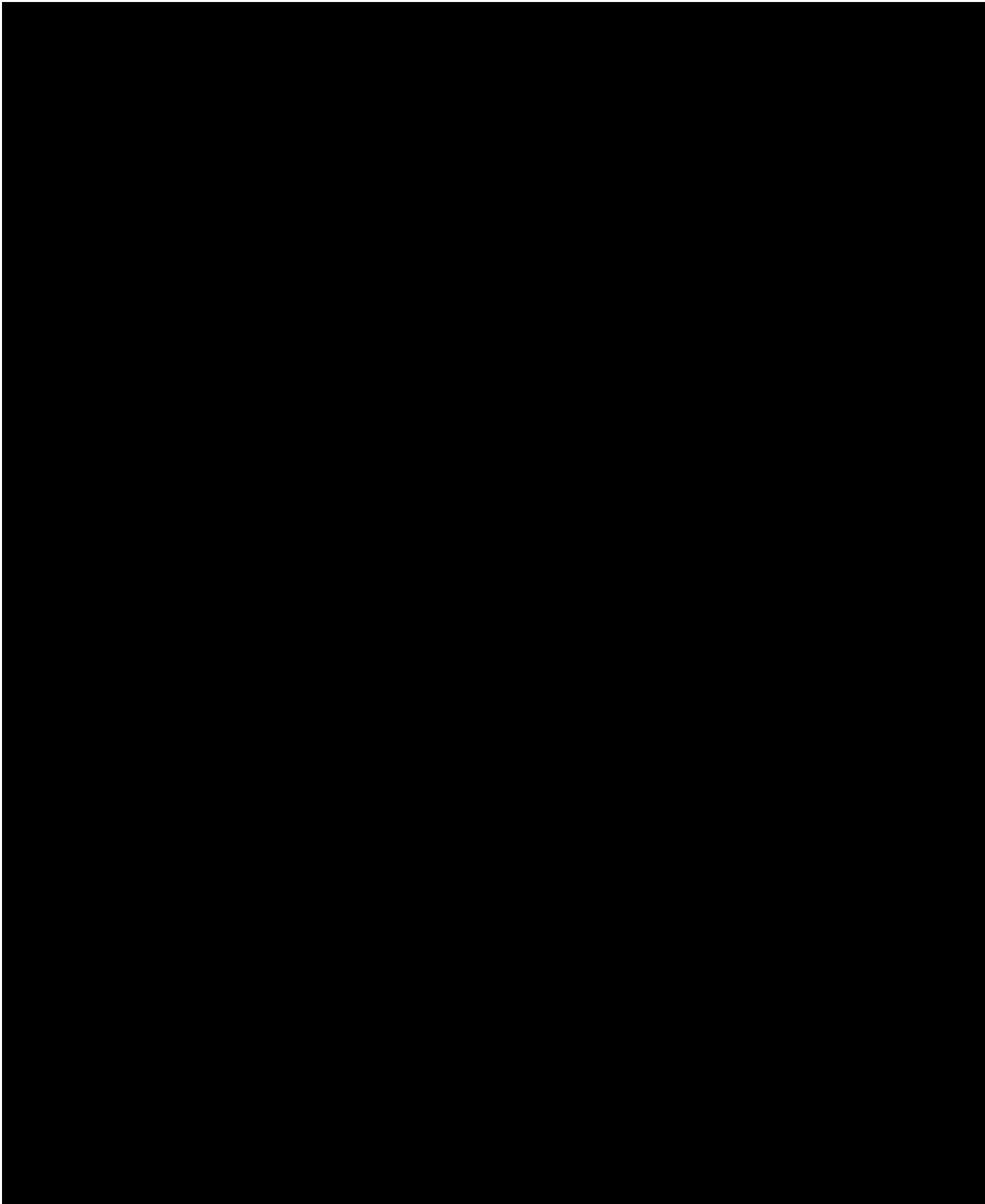


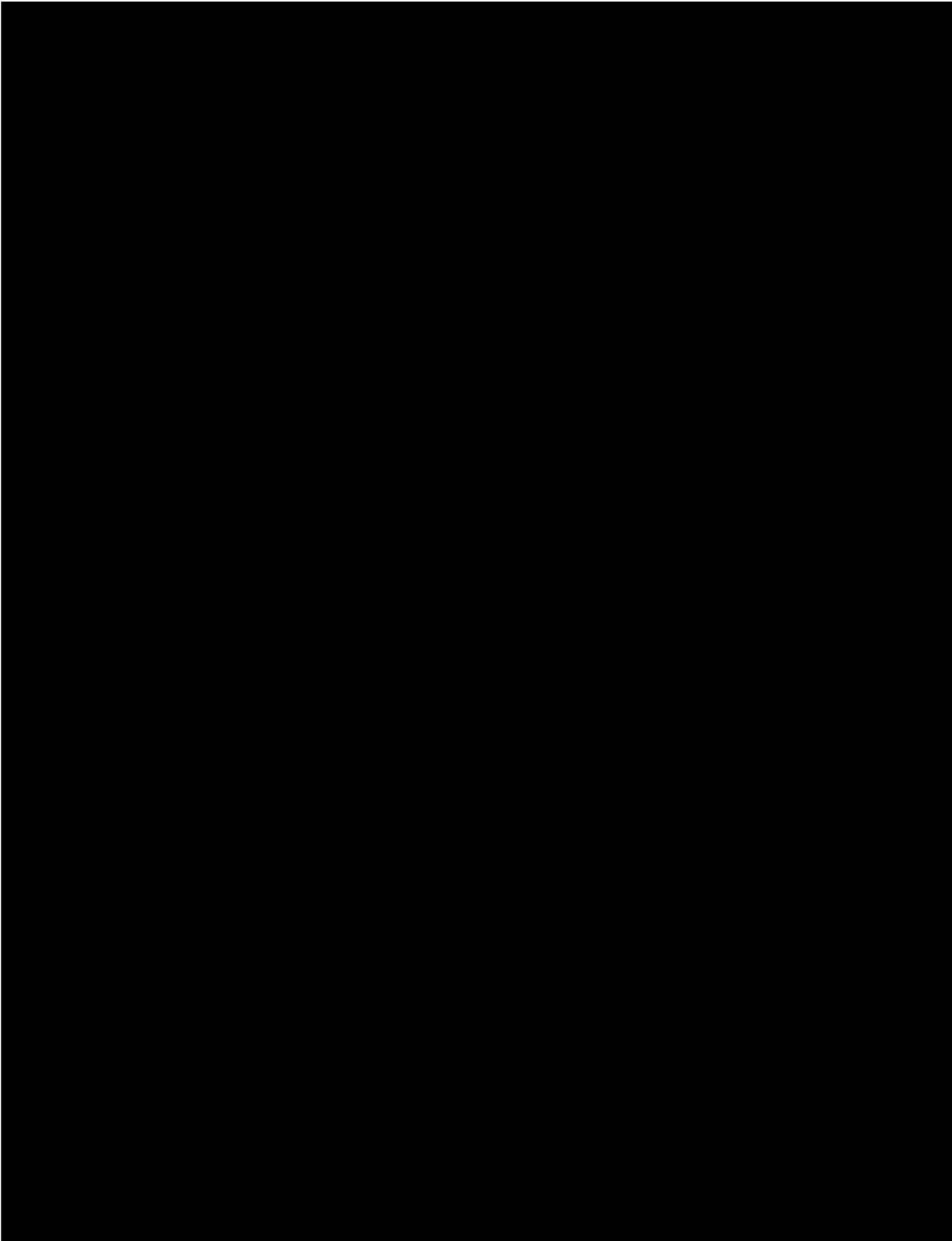
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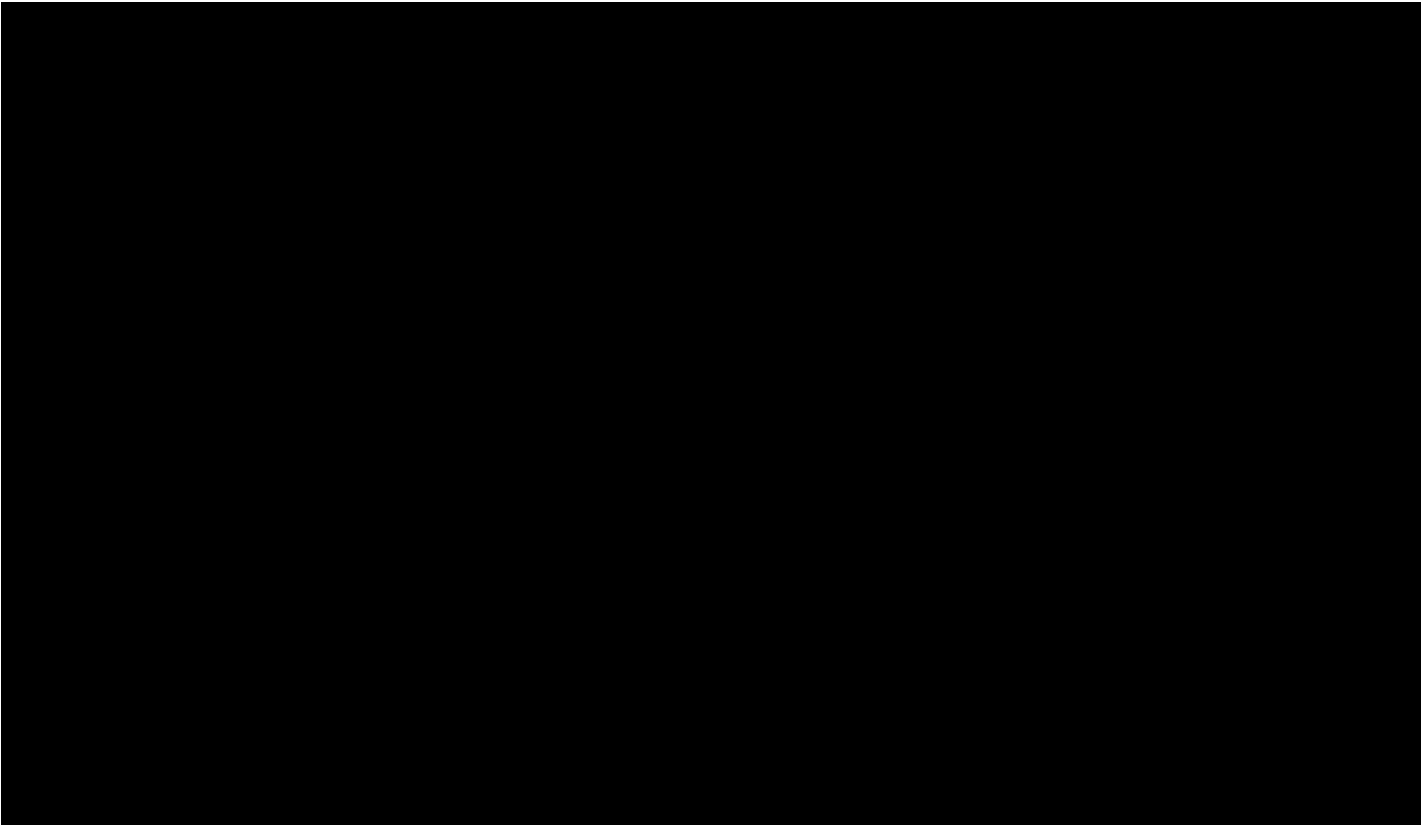






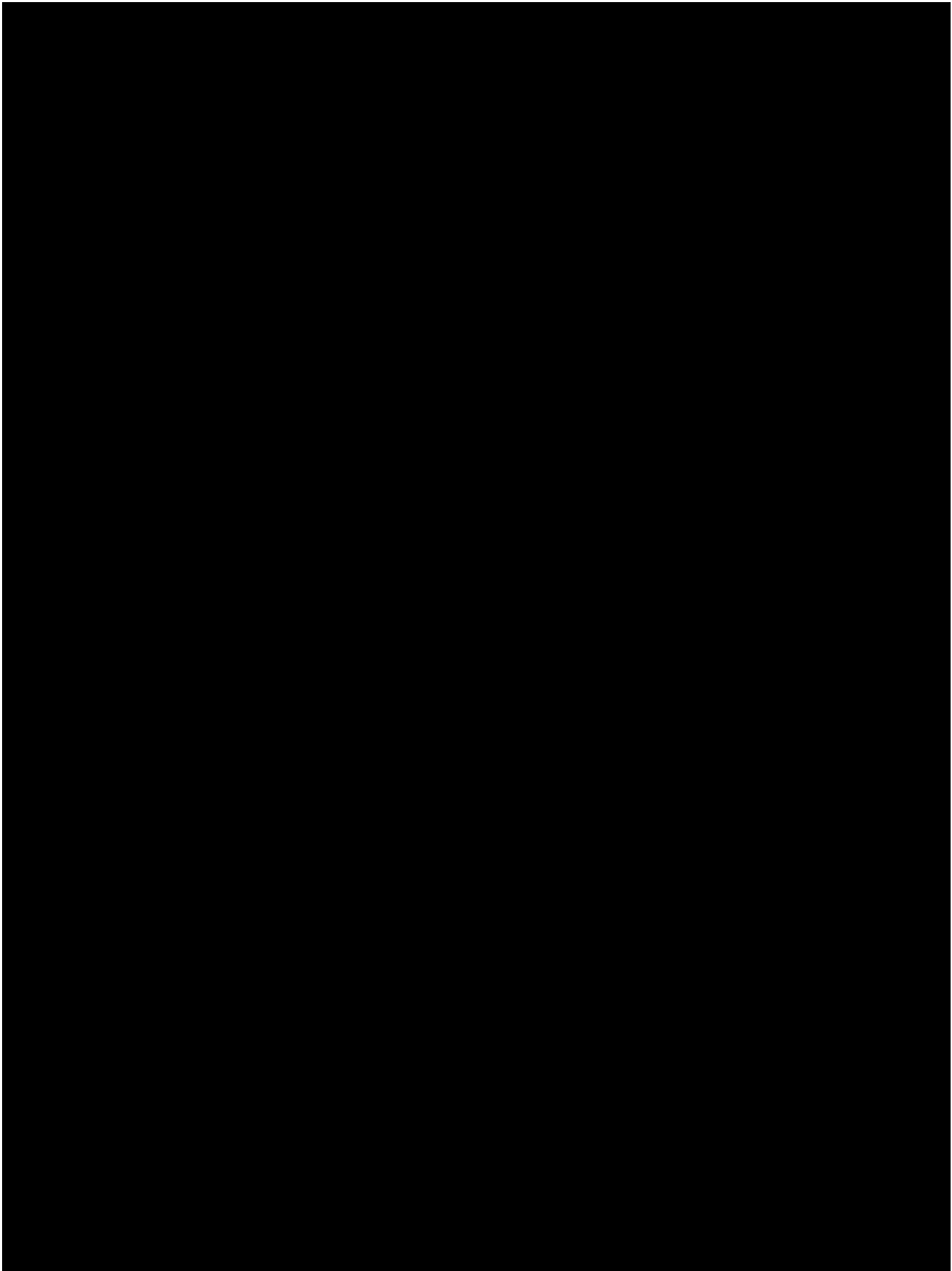


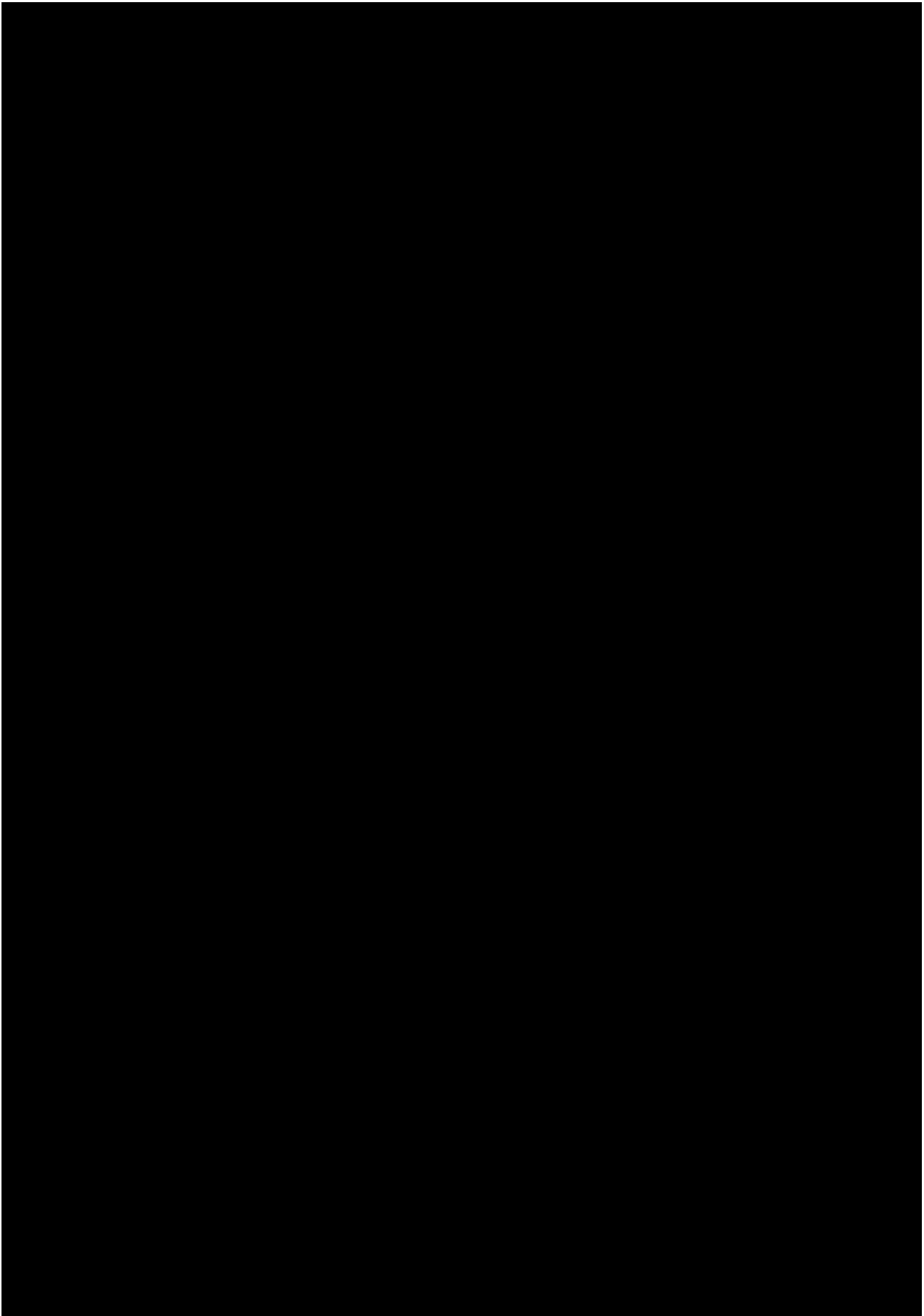


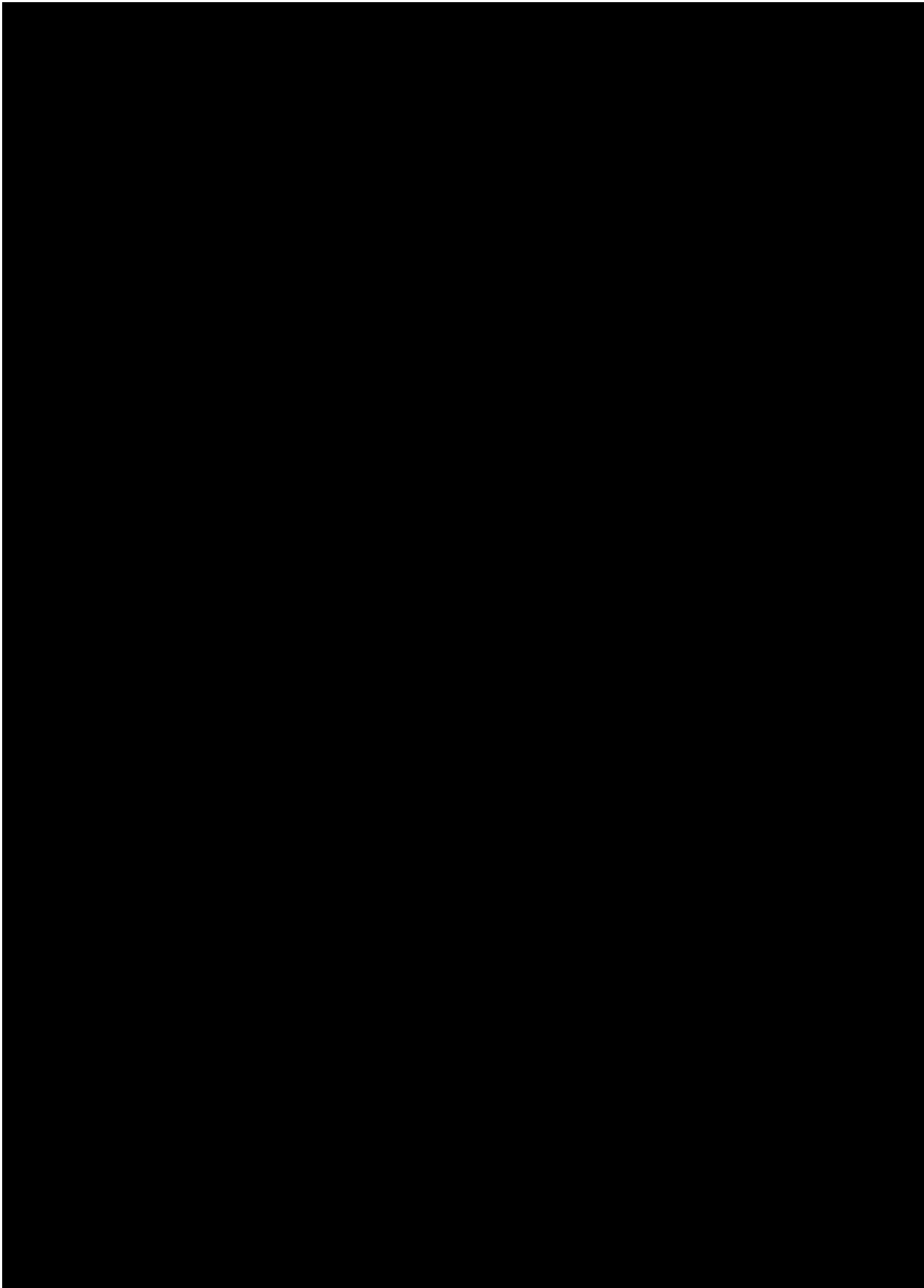


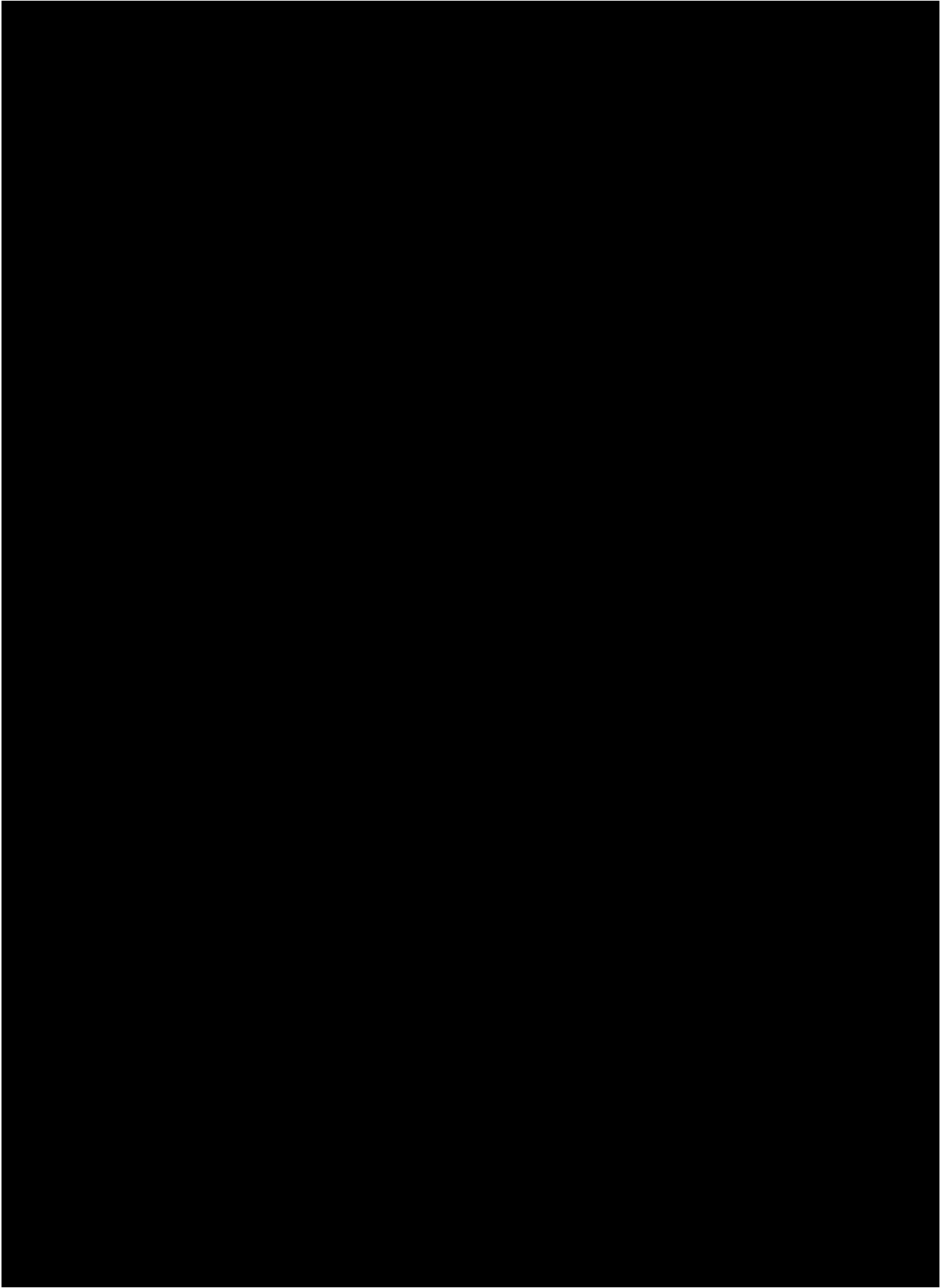
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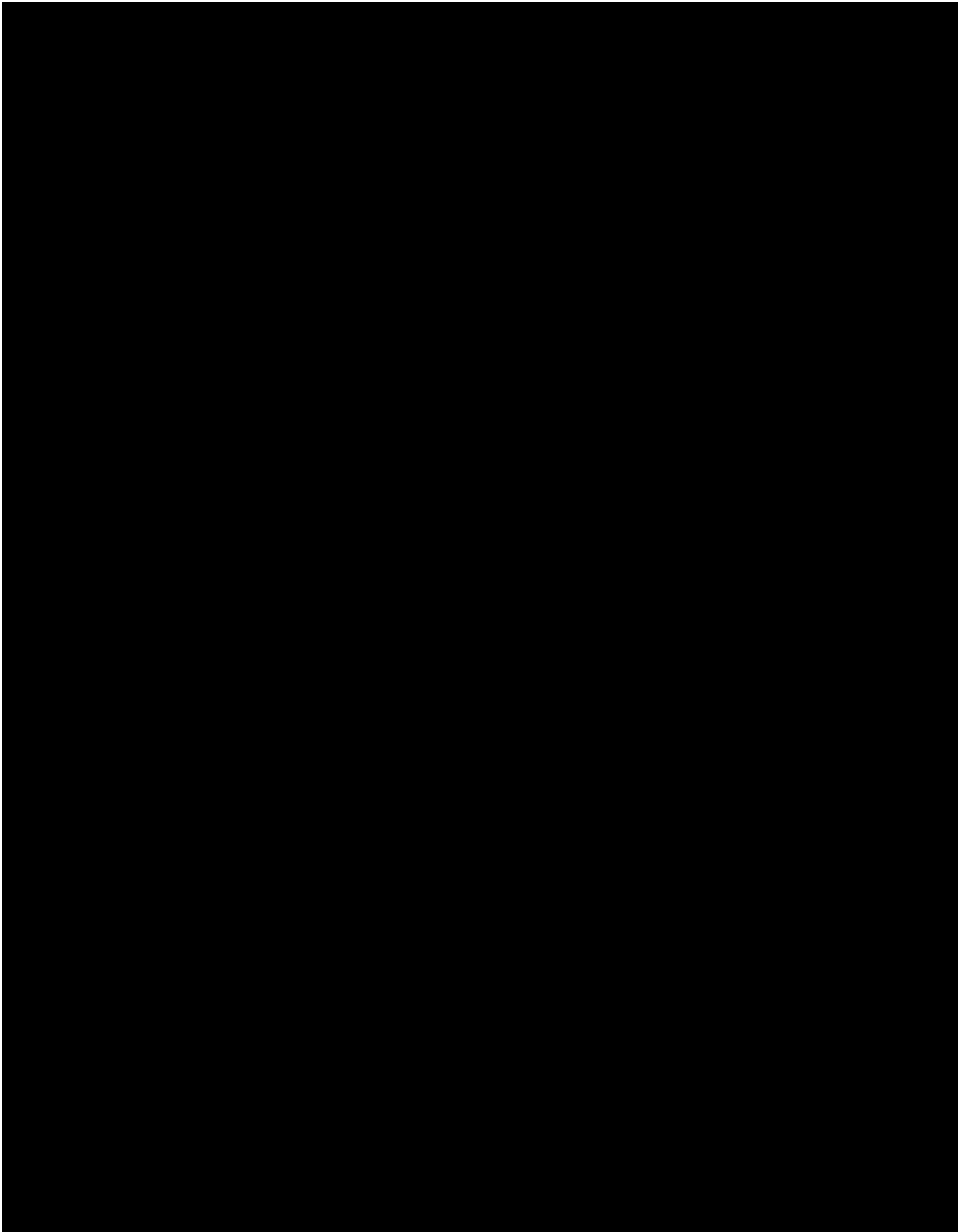


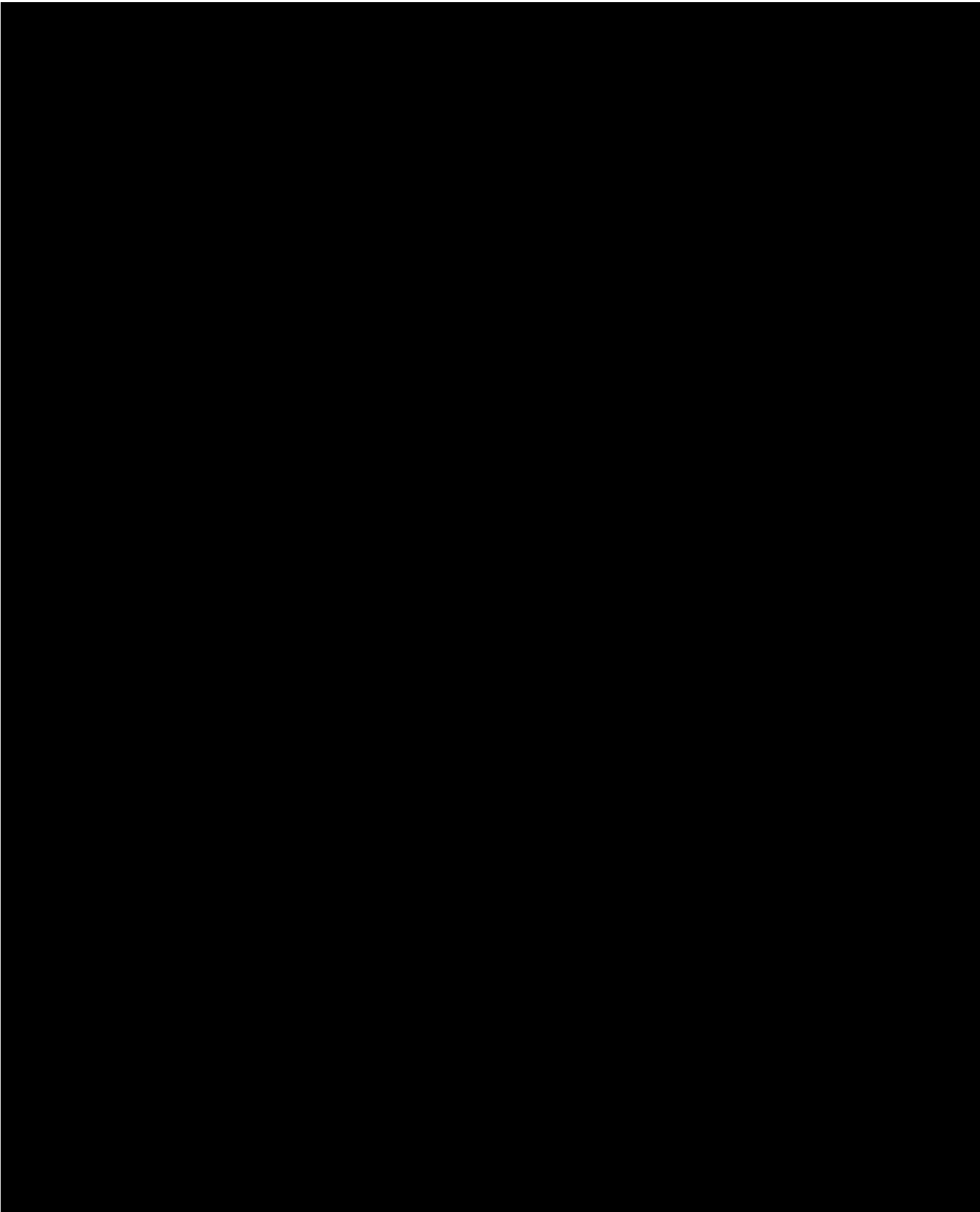


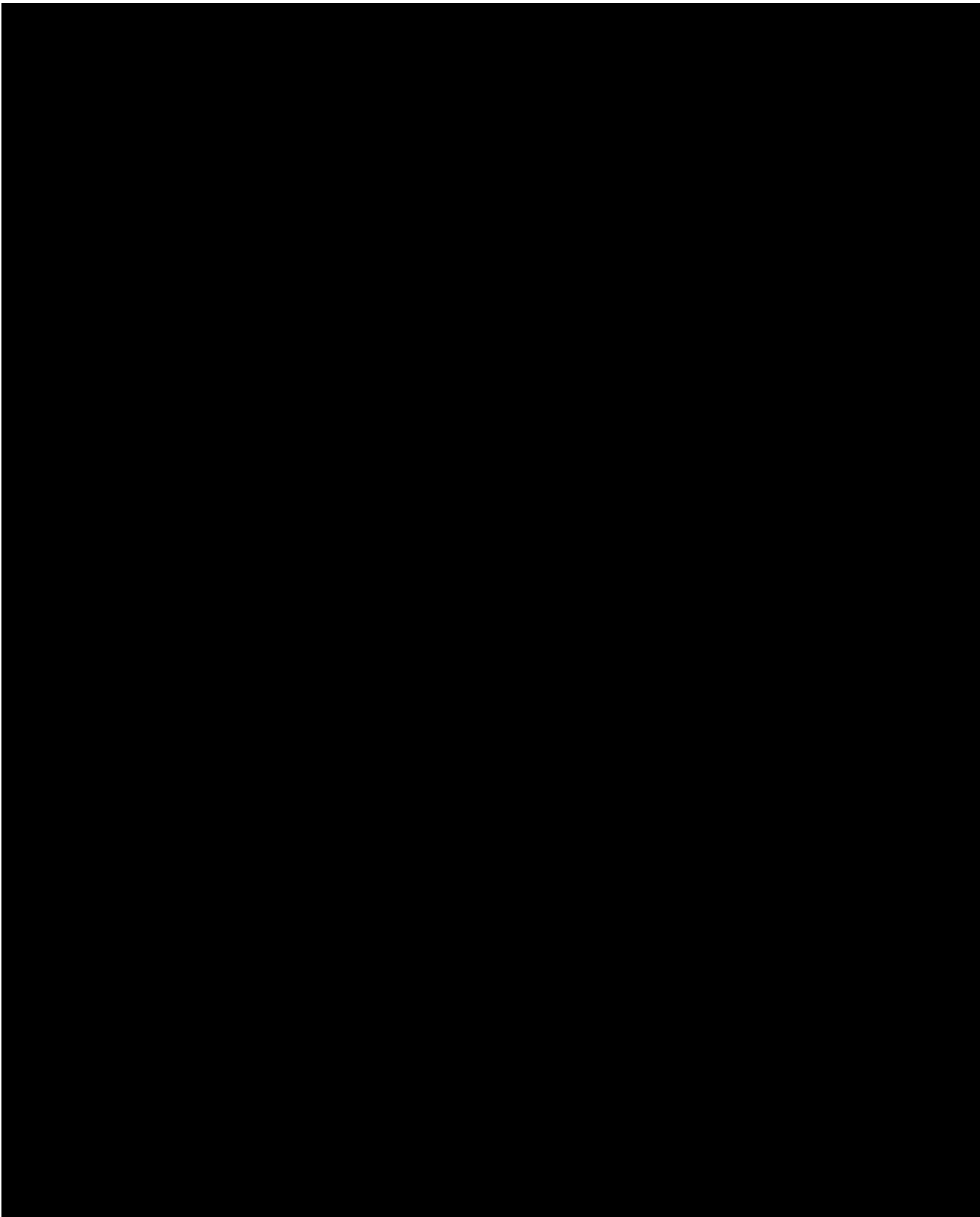


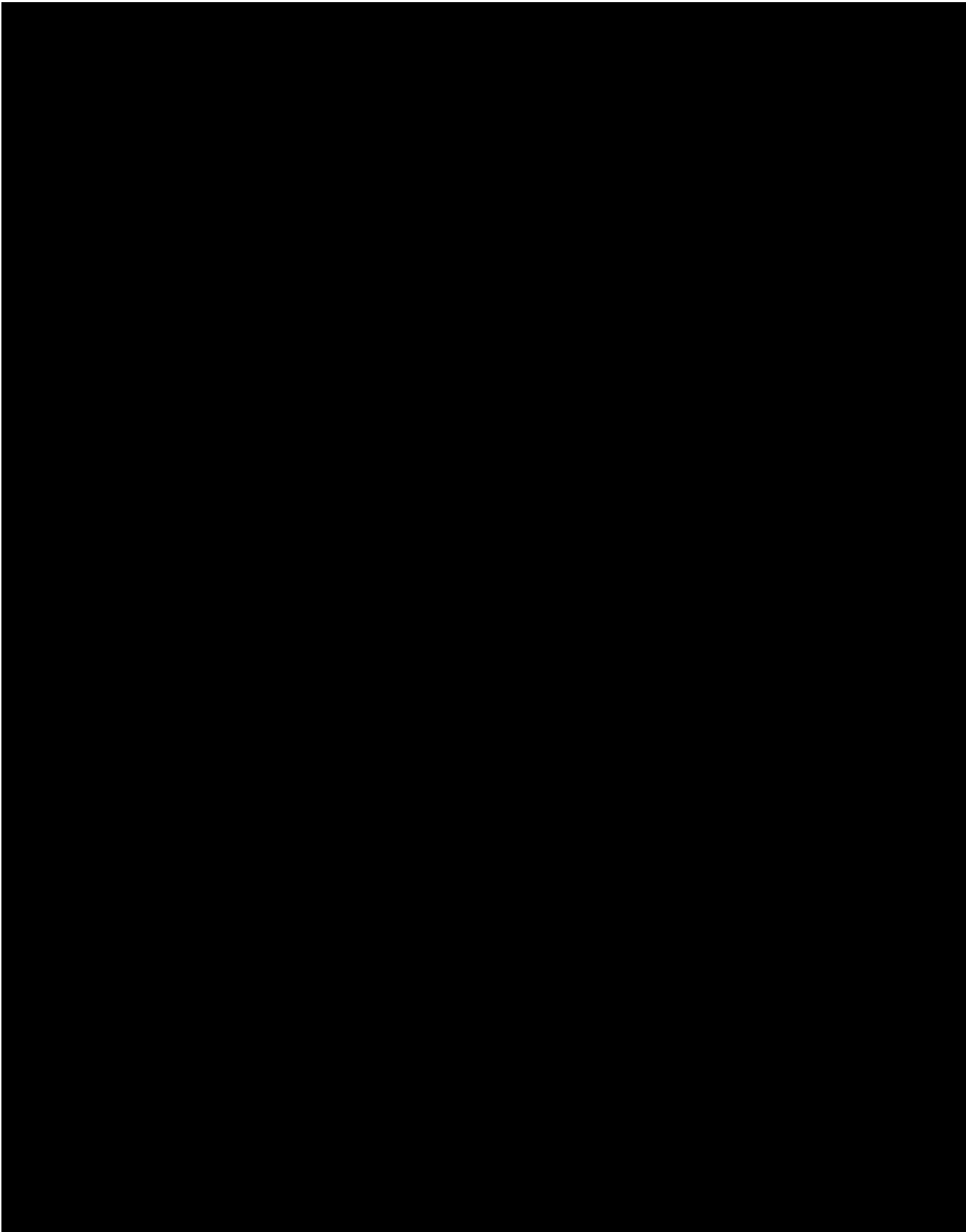


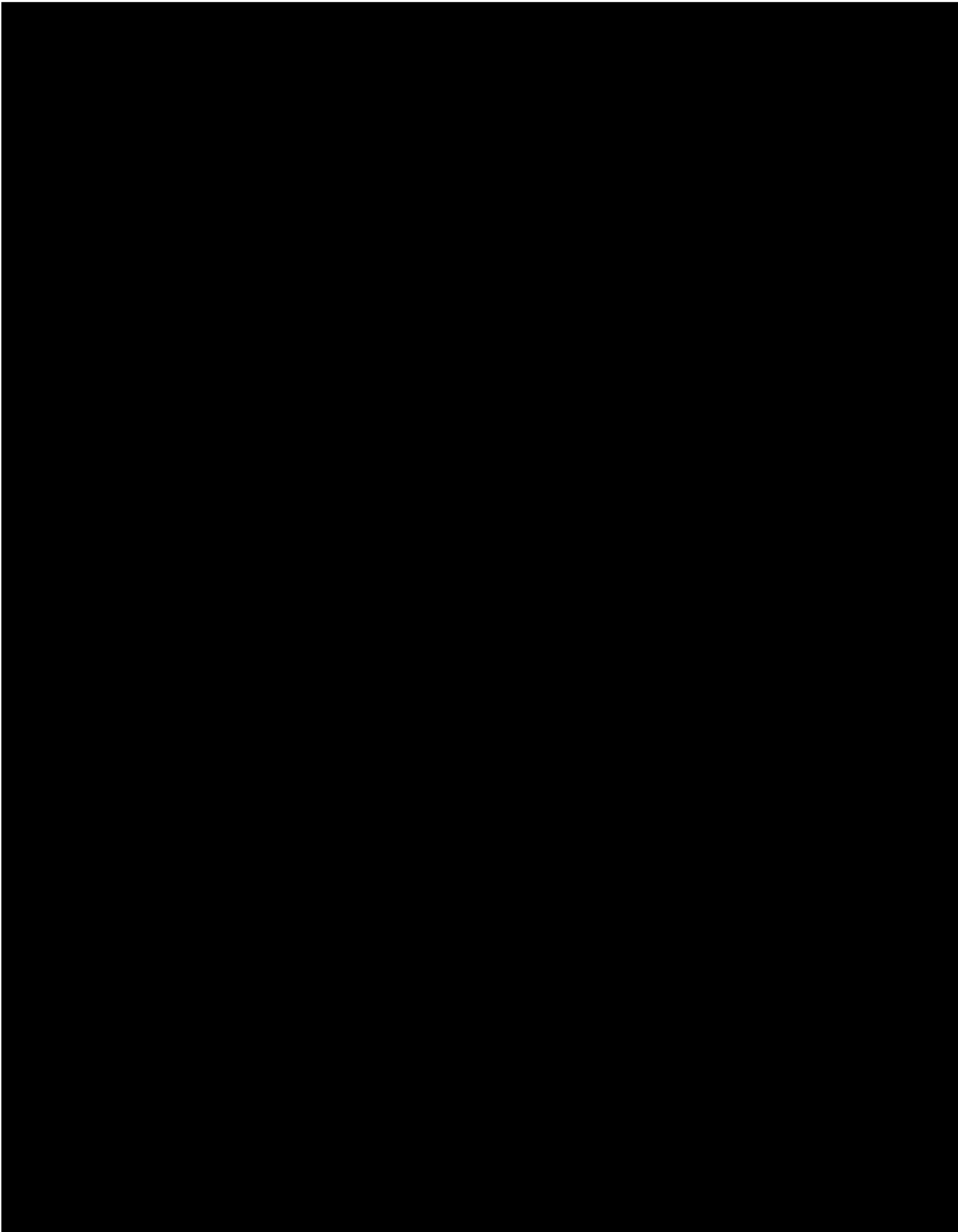


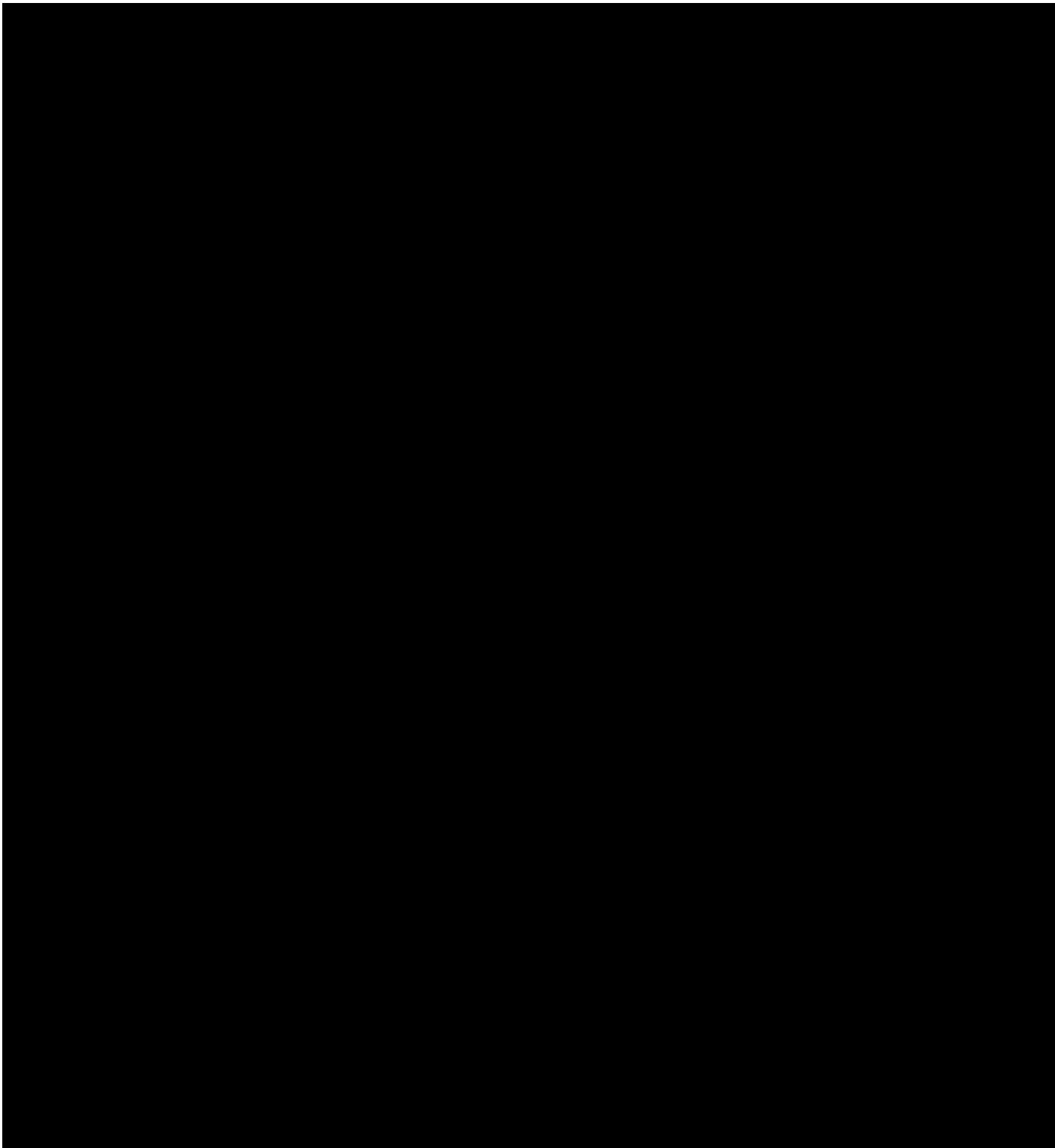




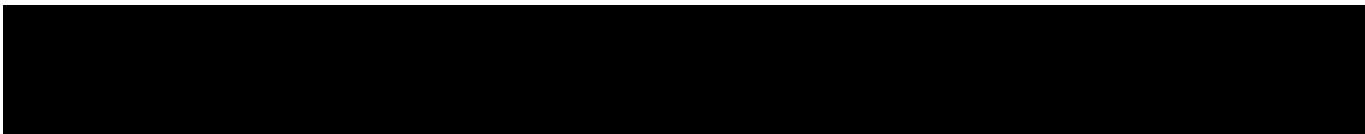


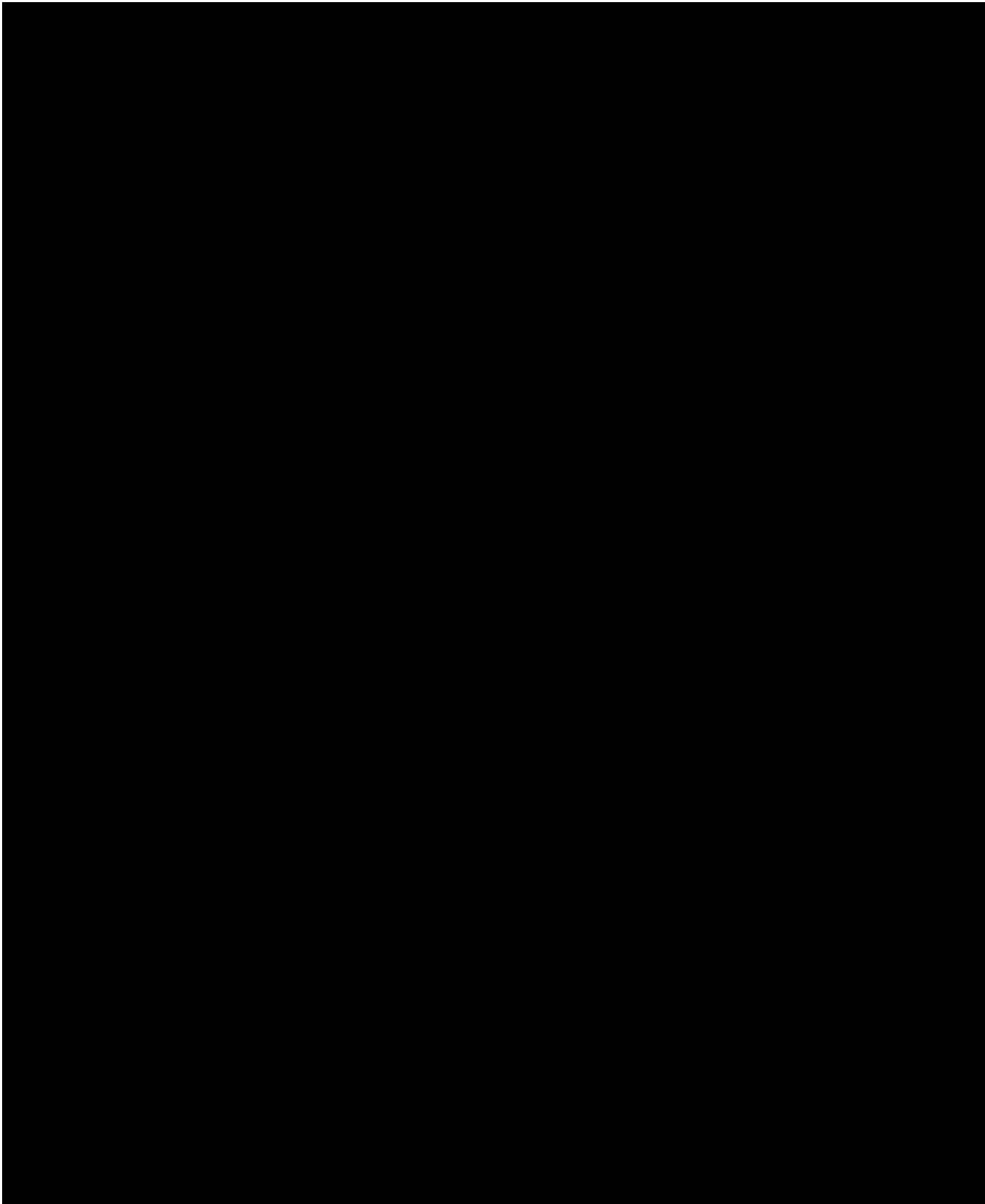


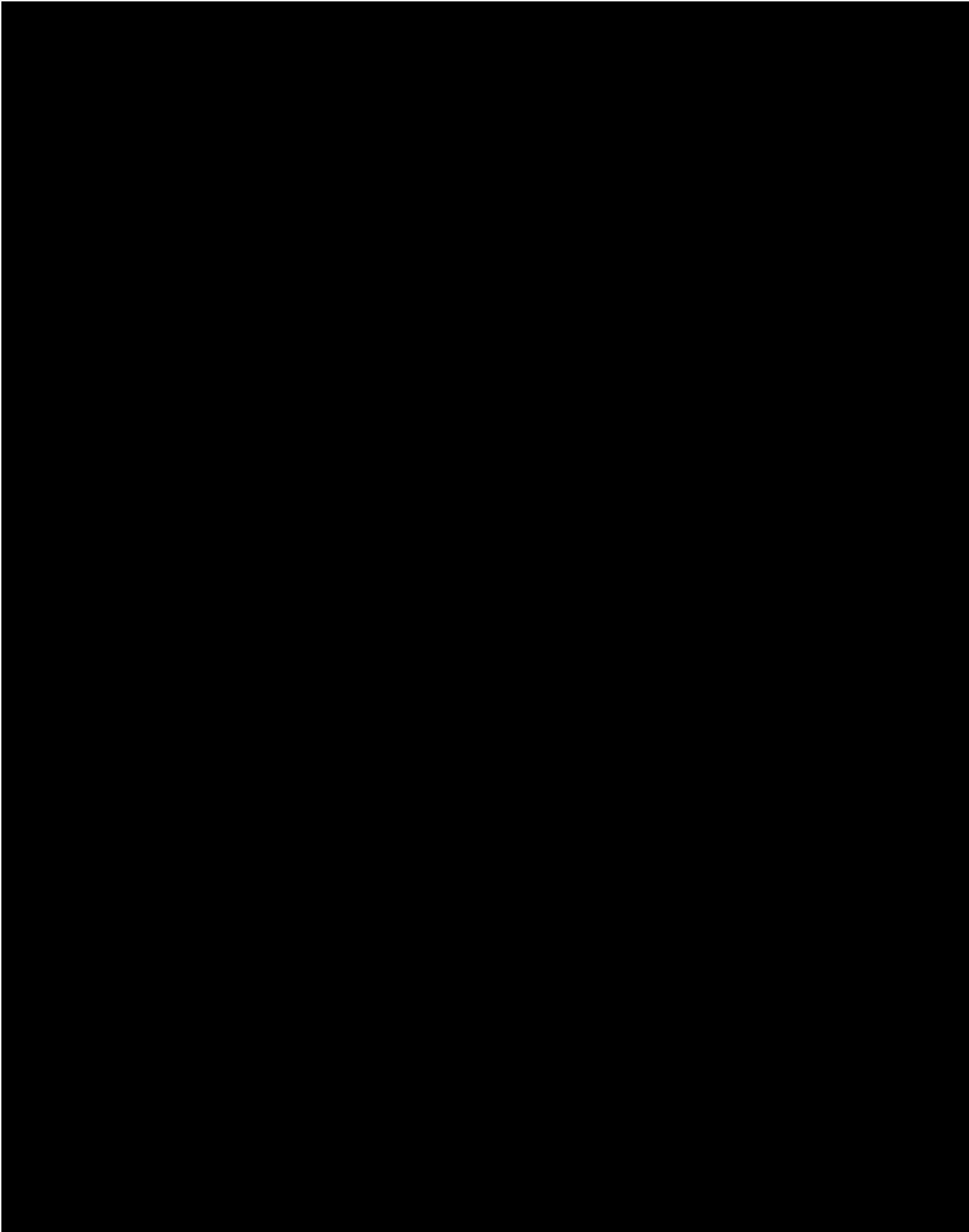


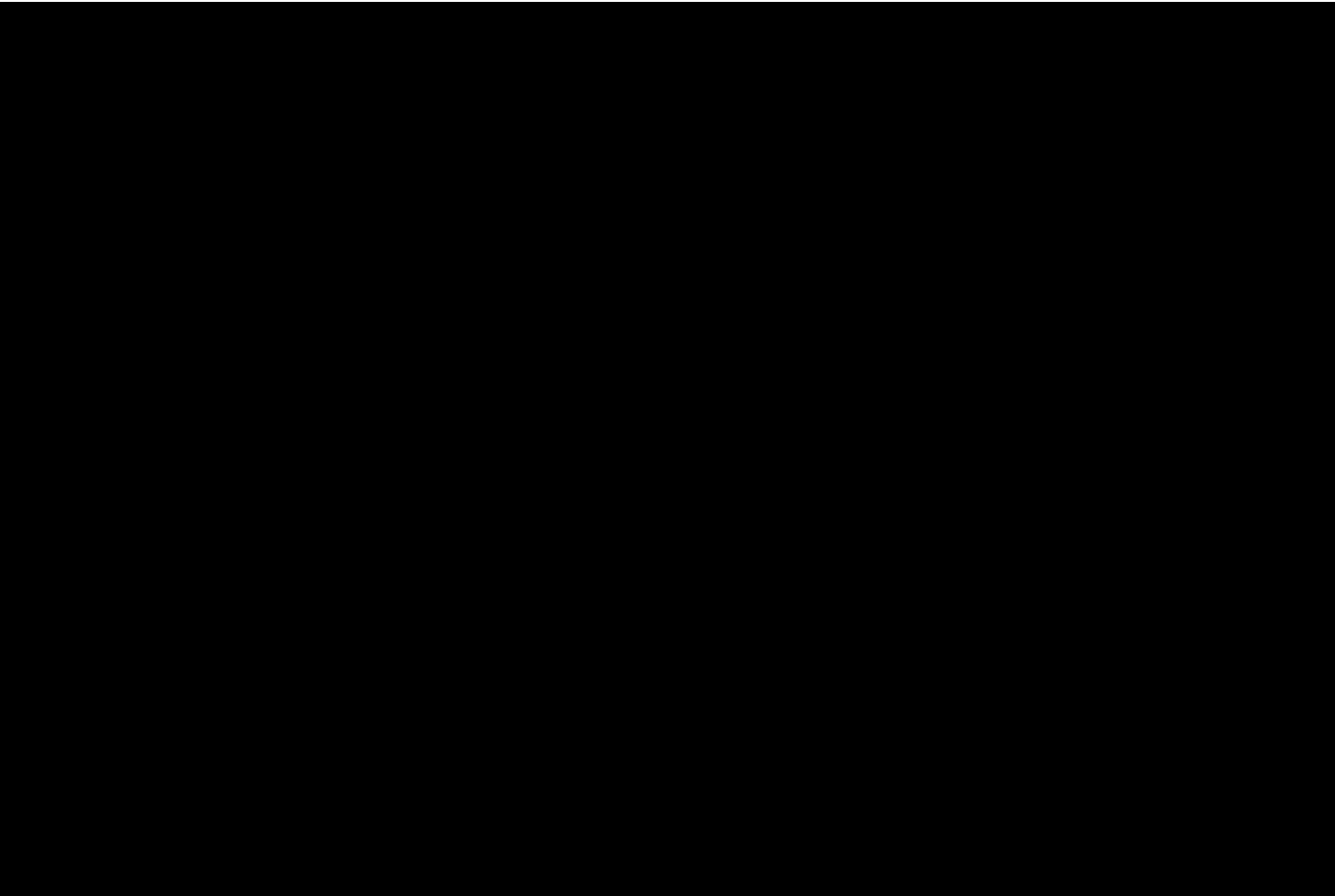


10. BACKGROUNDS





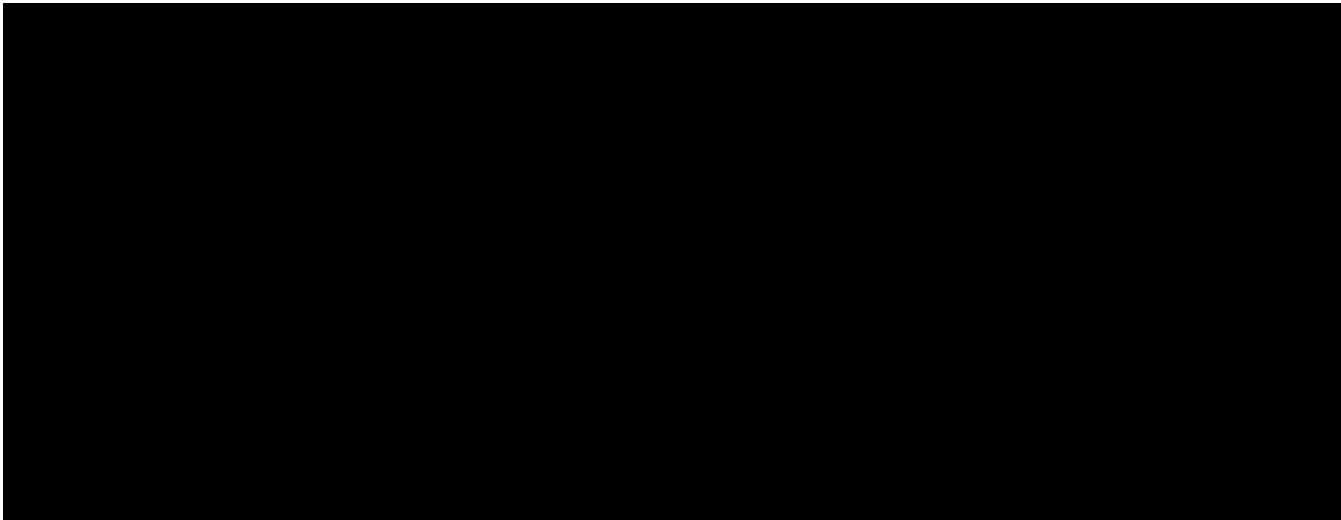




11. [Redacted]

[Redacted]

12. [Redacted]



13. REASONABLE GROUNDS TO BELIEVE AN OFFENCE HAS BEEN COMMITTED

Under Section 487.014 of the Criminal Code, I must have **reasonable grounds to believe** that an offence has been committed and under Section 487.016, I must have **reasonable grounds to suspect** that an offence has been committed. I believe that the evidence meets and exceeds this test. I have **reasonable grounds to believe** that:

Unknown person(s), between December 13th, 2017 and December 15th, 2017, inclusive, at the City of Toronto, did Murder Bernard SHERMAN and Honey SHERMAN, contrary section 235(1) of the *Criminal Code*.

The reasons for my belief are as follows:

- i. On December 15th, 2017 at approximately 11:45 AM, police were called to 50 Old Colony Road, in the City of Toronto for an “Echo Tiered Response”.
- ii. The bodies of Bernard SHERMAN and Honey SHERMAN, were first located and identified by the witness Elise STERN.
- iii. On December 16th, 2017 at 2:55 PM the coroner, Dr. GIDDENS pronounced Bernard SHERMAN and Honey SHERMAN deceased.

- iv. Both Bernard and Honey SHERMAN were [REDACTED]
[REDACTED]
[REDACTED]
- v. [REDACTED]
- vi. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] leads me to believe, that Honey SHERMAN's death is a murder.
- vii. Post-mortem examinations conducted by forensic pathologist, Dr. PICKUP, determined that the cause of death for both Bernard SHERMAN and Honey SHERMAN was ligature neck compression. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
- viii. Dr. PICKUP advised investigators that there are three possible outcomes in regards to this investigation. They were:
- I. A double suicide
 - II. A homicide suicide
 - III. A double homicide.
- ix. If investigators can form reason to believe that double suicide and homicide suicide are not likely scenarios then, by deduction, investigators can have reason to believe that the double homicide scenario is likely. Evidence that suggests double homicide would further strengthen this belief.
- x. I do not believe that the deaths of both Honey and Bernard SHERMAN can be attributed to a double suicide as it appeared that they were both living a happy

life with no financial difficulties and no known mental illnesses. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

xi. So far, in the investigation, there has been no indication that either Bernard SHERMAN or Honey SHERMAN harboured any hostility towards each other and there is no documented history, with police, of any domestic violence. They were making plans for the future together as they had a trip to Florida scheduled and were in the process of having a new home built. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

xii. [REDACTED]

xiii. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] makes their deaths suspicious and leads me to believe that the deaths of Bernard SHERMAN and Honey SHERMAN were murders.

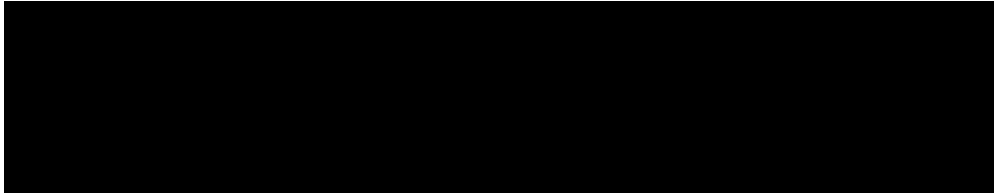
xiv. In a previous application, I had stated that I believed that Honey SHERMAN was murdered and Bernard SHERMAN was either murdered or committed suicide. In

this application I state that I have reasonable grounds to believe that Bernard SHERMAN was murdered as well and my grounds to believe are as follows:

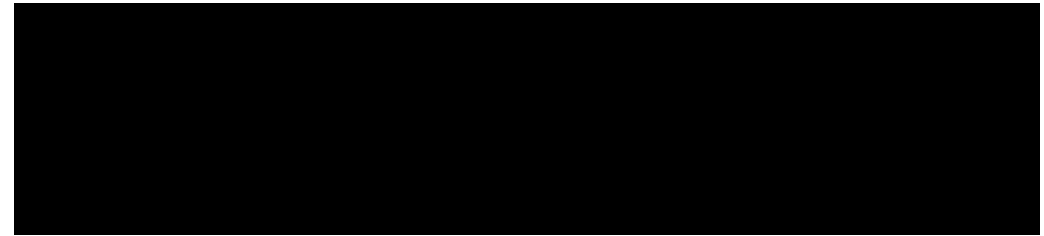
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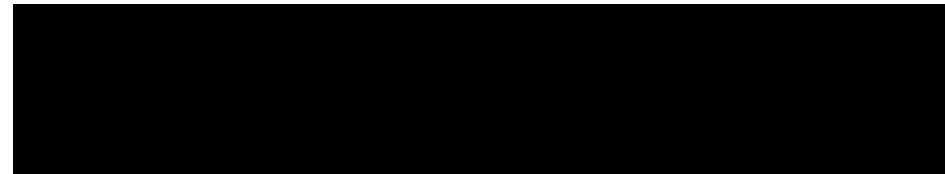
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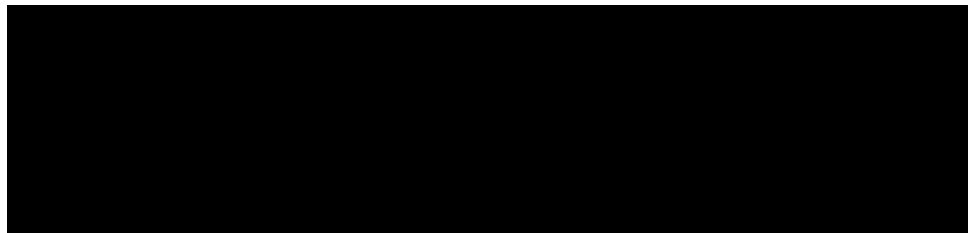
III.



IV.

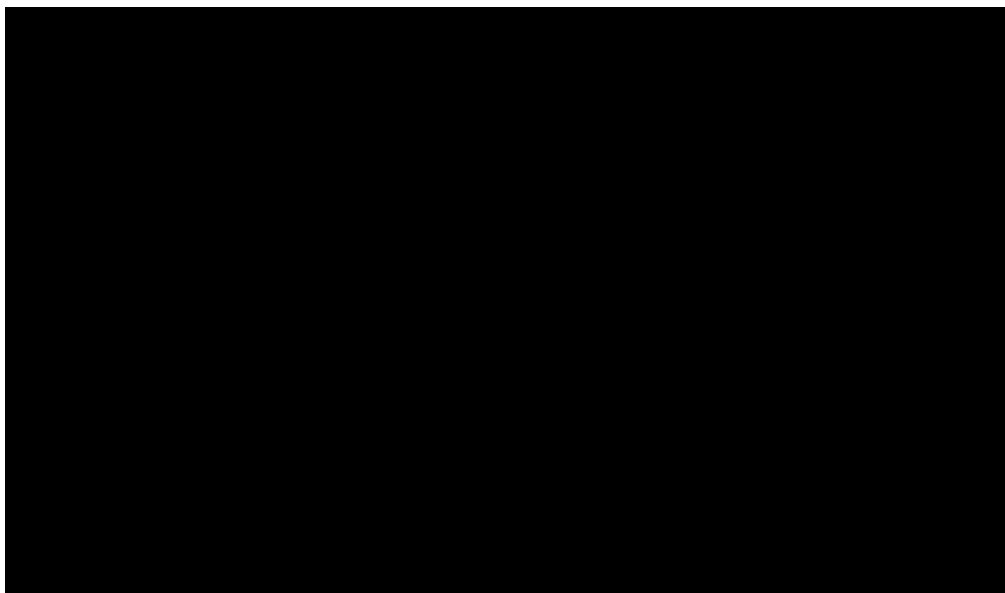


V.



VI. On January 22nd, 2018, forensic pathologist Dr. PICKUP spoke with D/S GOMES and advised that he believed that the manner of death for both Bernard SHERMAN and Honey SHERMAN was that of homicide. Also on January 24th, 2018, forensic pathologist Dr. CHIASSON, who was hired by Bernard SHERMAN's and Honey SHERMAN's family, spoke with D/S GOMES and advised that he believes that the manner of death for both Bernard SHERMAN and Honey SHERMAN is that of homicide. Both Dr. PICKUP and Dr. CHIASSON conducted separate post mortem examinations on Bernard SHERMAN and Honey SHERMAN.

VII.



VIII. On August 30th, 2018, D/S GOMES provided me with the final reports of the post-mortem examinations of Bernard SHERMAN and Honey SHERMAN. Both reports were signed by Dr. PICKUP and dated June 21st, 2018.

For the death of Bernard SHERMAN, Dr. PICKUP concluded, based on the scene, circumstances and autopsy findings, the most reasonable conclusion was that Bernard was restrained at the wrist and had died from ligature strangulation. [REDACTED]



The cause of death for Bernard SHERMAN was listed as "Ligature strangulation in an elderly man with [REDACTED]



For the death of Honey SHERMAN, Dr. PICKUP concluded, based on the scene, circumstances and autopsy findings, the most reasonable conclusion is that Honey SHERMAN [REDACTED] and had died from ligature strangulation. [REDACTED]



The cause of death for Honey SHERMAN was listed as, "Ligature strangulation in an elderly woman with [REDACTED]

When addressing the manner of death for both, Bernard SHERMAN and Honey SHERMAN, Dr. PICKUP found that [REDACTED]

Plainly speaking Dr. PICKUP concludes that Bernard SHERMAN and Honey SHERMAN [REDACTED] Therefore, this strongly indicates that neither Bernard SHERMAN and/or Honey SHERMAN were responsible for their own deaths.

Therefore, for all the aforementioned reasons, I believe that Bernard SHERMAN and Honey SHERMAN were murdered.

14. REASONABLE GROUNDS TO BELIEVE THAT THE DOCUMENTS TO BE PRODUCED WILL AFFORD EVIDENCE

(a) [REDACTED]

i. [REDACTED]

ii. [REDACTED]

iii.



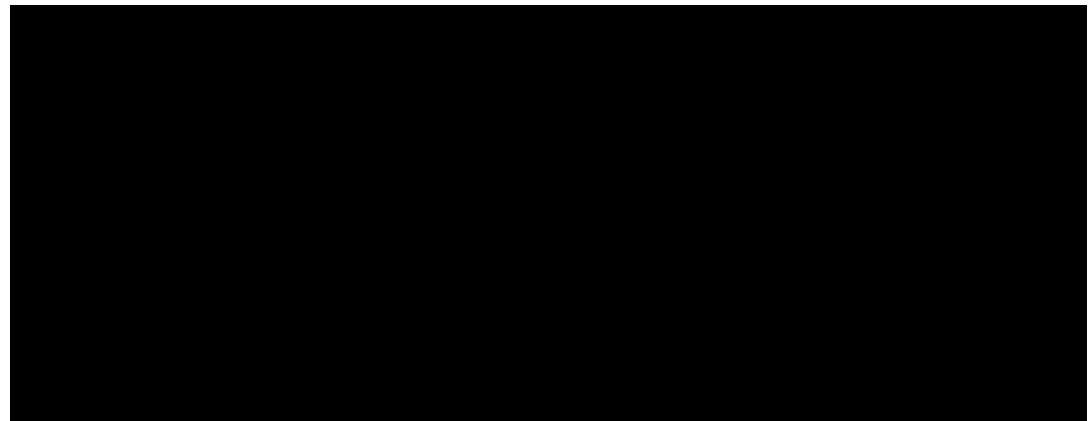
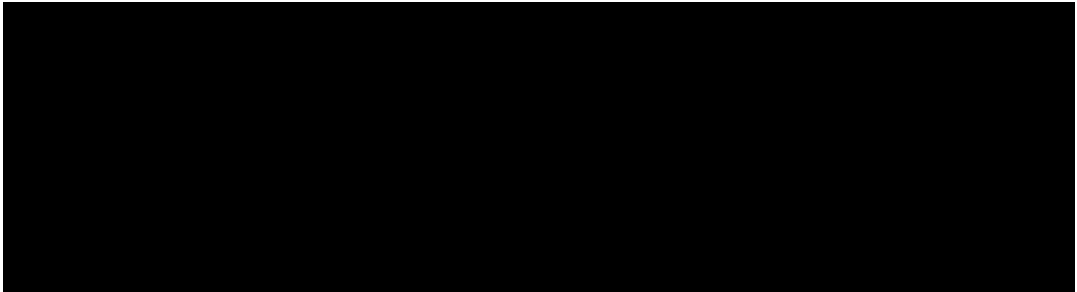
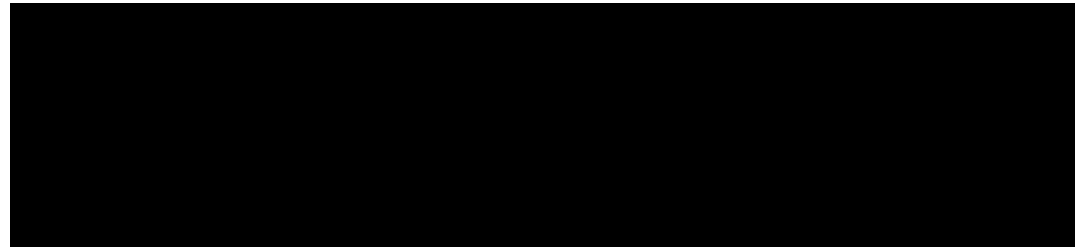
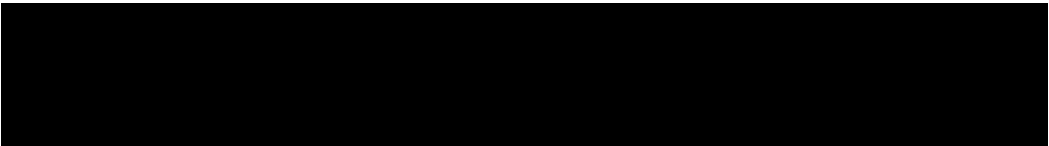
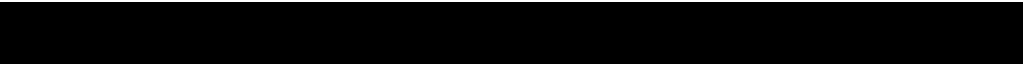
(b)

i.

ii.

iii.

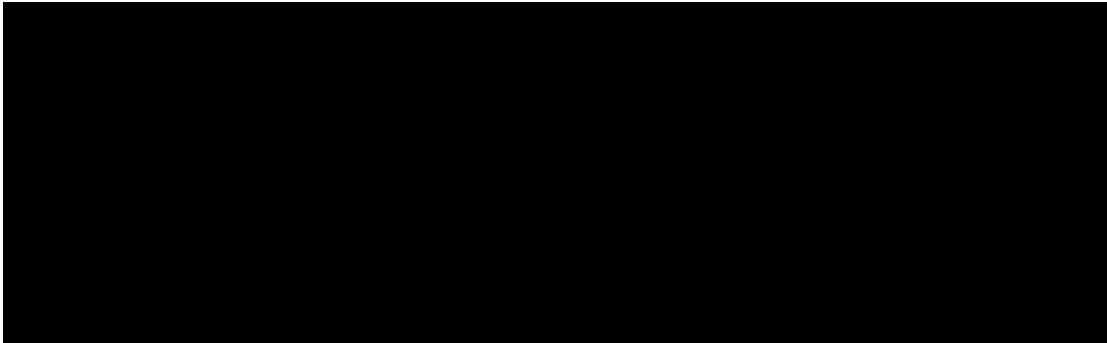
iv.



v.



vi.



15. REASONABLE GROUNDS TO SUSPECT THAT THE TRANSMISSION DATA WILL ASSIST IN THE INVESTIGATION

(a) Avenues of Investigation, Filtering of Data and Protection of Third Party Data

As a result of the January 29th, 2019, production orders, Det. SLOAN of the Toronto Police Service, Intelligence Unit has received transmission data from various telecommunications companies regarding cell tower activity in the locations proximate to where Honey and Bernard SHERMAN on the date of the murders. The January 29th, 2019, production orders allow Det. SLOAN or his designate of the intelligence Unit to compare phone numbers identified throughout the investigation (identified in Appendices G to Appendix K attached to the January 29th, 2019 Information to Obtain) against the transmission data provided by the telecommunications companies to see what, if any, common numbers there were between the two datasets.

In my application for the January 29th, 2019, production orders, I advised that investigators may seek judicial authorization to compare additional phone numbers to the transmission data gathered from the telecommunications companies. At the time of the January 29th, 2019, production orders, investigators had not yet received the phone record results from the December 20th, 2018, production orders regarding the phone records for phone numbers, [REDACTED]

In this application, I seek judicial authorization, pursuant to s. 487.016 to authorize Det. SLOAN of the Toronto Police Service, Intelligence Unit to provide a subset of the data that he has received from the telecommunications companies. In particular, any telephone numbers within the data received from the telecommunications companies that match telephone numbers contained in the results from the January 29th, 2019, production orders regarding [REDACTED]

Currently, the tower dump transmission data, that had been received, is in the possession of Det. SLOAN of the Toronto Police Service, Intelligence Unit. In this application, I will be requesting that the Toronto Police Service, Intelligence Unit be authorized to access to all the tower dump data relating to this investigation in order that it can be compared with all the phone numbers identified in the phone records for phone numbers [REDACTED]

[REDACTED] The comparisons will be made under similar Terms and Conditions of the prior judicial authorizations that were granted on January 29th, 2019 (see Appendix F for further details regarding the January 29th, 2019 Order terms).

I propose that if this application is granted, that the s. 487.016 production order be subject to the following terms and conditions:

Terms and Conditions:

- 1) The person accessing the data, must be Det. Christopher SLOAN or his designate, from the Toronto Police Service – Intelligence Unit, Technical Crime Unit, who has no involvement in this investigation.**

- 2) Upon accessing the transmission data provided by the telecommunications companies in response to the January 29th, 2019, s. 487.015 Production Orders(hereinafter “the data”). In response to this production order, Det. SLOAN or his designate may only analyse the data by comparing it, using electronic means, against the phone numbers in the attached Appendices J and K and generating a sub-set of data consisting of data pertaining to communications involving one or more of the phone numbers in the attached Appendices J and K.**

- 3) **Det. SLOAN or the designate conducting the analysis described above must take reasonable steps to only view the sub-set of the data generated by this analysis.**
- 4) **The sub-set of the data generated by this analysis may be provided to investigators who may use it for investigative purposes.**
- 5) **Once this analysis is complete, Det. SLOAN or his designate must seal and keep stored in a sealed manner the data accessed pursuant to this order, ensuring that it is inaccessible to the investigators and any other persons, and not further accessed or analysed, without a court order.**

Note: On the Production Order to Produce Transmission Data, Appendix J and Appendix K are referred to as Appendix C and Appendix D respectively.

The comparison of the common numbers will assist in the investigation in the following ways:

The investigative strategy, will be identical to the comparison strategy that was outlined in a prior Information to Obtain for the production orders that were granted on January 29th, 2019 (refer to Appendix F). The strategy will be to compare the phone numbers from the “tower dumps” to all the phone numbers, listed in the phone records of the phone numbers associated to [REDACTED]. I have reasonable grounds to suspect that the subset of transmission data generated from the comparison and identification of the common numbers between the transmission data obtained from the January 29th, 2019 production orders to trace a communications and the numbers listed in Appendix J and Appendix K of this Information to Obtain, will potentially assist in identifying witnesses and/or the person or persons responsible for the murders.

i. Tower Dump Filtering

Thus far, investigators are still unable to determine who is responsible for the deaths of Honey SHERMAN and Bernard SHERMAN and how many perpetrators were involved.

Transmission data from the “tower dump” will consist of the phone numbers associated to devices that were in communication with a relevant cellular tower and devices communicating with those devices.

The data from the “tower dumps” will be utilized in two steps.

I. Filtering of Phone Numbers From Production Order Results

First, the “tower dump” phone numbers will be compared or “filtered” against the pre-existing phone numbers relating to this investigation, that have already been compiled, namely, in this application, the phone numbers from [REDACTED] [REDACTED] phone records (**Appendices I and J**). This comparison or filtering will identify all the common numbers between the “tower dump” phone numbers and the other pre-existing investigative phone numbers. These common numbers will be available to investigators for follow-up investigation.

The second step will be the sealing of all the “tower dump” phone numbers that “pass through the filters” – that is, those that do not match any of the pre-existing investigative phone numbers. These numbers are likely uninvolved third party data which investigators have no reason to view or investigate, at present. The numbers that pass through the filters, will be sealed and will not be examined or analysed further without judicial authorization.

These two processes will allow investigators to obtain the information required to advance the investigation, while protecting the data of uninvolved third parties. These processes will also preserve the data for future investigation should there be the need to access it in the future with further judicial authorization, or also for purposes of disclosure, if charges are ultimately laid.

The filtering will be done, electronically with spreadsheet programs such as Microsoft Excel²⁸ in which members of the Toronto Police Service – Intelligence Unit, Technical Crime Unit will instruct the program to sift through the data to

²⁸ Microsoft Excel - is a software program produced by Microsoft that allows users to organize, format and calculate data with formulas using a spreadsheet system. This software is part of the Microsoft Office suite and is compatible with other applications in the Office suite.

identify common numbers from the various data sets and the “tower dump” data sets. This digital filtering will be done, because it allows investigators to identify the common numbers without having to do this process manually, which would be time consuming. Digital filtering will also limit members from viewing individual phone numbers of uninvolved third parties. During this filtering process, members will take reasonable steps to only view data pertaining to the identified phone numbers, and investigators will, thereafter, only be provided those identified phone numbers for further investigation.

Investigators have already received the tracking data from the phone records of previously identified persons of interest and [REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] have suggested an alibi for all the aforementioned

persons. But if phone numbers that had been in contact with these persons of interest also appear in the “tower dump” data, this could indicate that even though the persons of interest may not have been around Bernard SHERMAN or Honey SHERMAN on December 13th, 2017, they are associated to people who were. Any common numbers from the filtering of this data set would be a starting point where investigators can work to identify such persons and further investigate their involvement in the murders, if any, of Bernard SHERMAN and Honey SHERMAN.

To date judicial authorization has been granted to utilize the phone records of the phone numbers associated to the aforementioned persons of interest and

[REDACTED]
[REDACTED] This application seeks to have the identified phone numbers in those phone records included in the filtering.

The phone records for [REDACTED] from Bell Canada Incorporated were received on January 30th, 2019 and the production orders for the “tower dump” transmission data were granted on January 29th, 2019. Had the phone numbers from these records been available, during the drafting of the tower dump transmission data tower dump, they would have been included in the associated appendices for comparison that were attached to the tower dump production orders.

II. Revelation that there are no common numbers

Upon receipt of the “tower dump” data and the filtering for common numbers using the data sets, identified above, it is conceivable that that there may be no results. The determination of negative results would also be useful information to investigators. Negative results could be indicative of one or more of the following scenarios:

- a. [Redacted]
- b. [Redacted]
- c. [Redacted]
- d. [Redacted]

[Redacted]

III. Anticipated Phone Number Data Sets to Be Used As Filter In the Future

It is anticipated, as the investigation continues to develop and new phone numbers are discovered by investigators, further judicial authorization will be sought to compare these numbers against the “tower dump” results.

ii. Subsequent sealing of “tower dump” data

I. Reasons for Sealing

Any phone numbers that are not identified by the filtering described above will be sealed and held in an electronic data base at the Toronto Police Service, Intelligence Unit indefinitely and will not be used, viewed or investigated by anyone for any reason unless another judicial authorization is obtained that permits further access to the data.

The purpose of sealing the data is to ensure that the data of uninvolved third parties is protected and that the data will not be used for any other purposes other than the purposes outlined in this judicial authorization.

Another reason for the sealing is to protect any potential, unidentified, evidence within the “tower dump” data that investigators are currently unaware of. If, in the future, investigators were to receive information, that a perpetrator had been using a phone number on December 13th, 2017, investigators could apply for judicial authorization to unseal the “tower dump” data again, to determine if the perpetrator’s phone number is contained in the “tower dump” data sets, which would indicate that the perpetrator was in one of the areas of interest at a relevant time.

I believe that the sealing of the data allows investigators to preserve data to investigate various theories and search for evidence to support the theories while at the same time protecting the data of uninvolved parties.

II. Acknowledgement that filtering and securing of data can be facilitated by the Toronto Police Service, Intelligence Unit

On January 17th, 2019, I spoke with Jonathan RETCHFORD who is a Senior Intelligence Analyst with the Toronto Police Service, Intelligence Unit, who advised that they would be able to facilitate the analysis, comparisons, filtering

and the subsequent sealing of the data at the Intelligence Unit. Jonathan also advised that the analysis, comparisons and filtering would be done by a member with no involvement in this investigation.

On January 22nd, 2019, I received an email, from DC DEVINE outlining her communications with Det. SLOAN of the Toronto Police Service, Intelligence Unit, Technical Crime Unit in regards to the subsequent sealing of the transmission data that has no commonality with any of the phone numbers in the data sets identified in the appendices. DC DEVINE was advised of the following:

- a. The digital report containing transmission data will be securely stored at the Technical Crime Unit (TCU) on a forensic network that is maintained on a closed computer system. This system is only available to the Technical Crime Unit members and is not connected to either the public internet or the Toronto Police Service intranet. The data itself will remain encrypted on the system and no one outside the TCU has access to this system. The password to access this data will be stored with Detective SLOAN (or a designate who is not involved in the investigation into the deaths of Bernard SHERMAN and/or Honey SHERMAN. The secured data will not be accessed without further judicial authorization.

16. GROUNDS TO BELIEVE THE DOCUMENTS TO BE PRODUCED ARE IN THE POSSESSION AND CONTROL OF THE ENTITIES FROM WHICH I AM SEEKING THEM

(a)

[REDACTED]

[REDACTED]

[REDACTED]

(b)

[REDACTED]

[REDACTED]

17. REASONABLE GROUNDS TO SUSPECT THAT THE TRANSMISSION DATA IS IN THE POSSESSION AND CONTROL OF THE ENTITY FROM WHICH I AM SEEKING THEM

On February 4th, 2019, I was advised that the tower dump data, from Telus Communications Incorporated were received and confirmed by Det. SLOAN.

On February 27th, 2019, I was advised that the tower dump data, from Rogers Communications Canada Incorporated were received and confirmed by Det. SLOAN.

On March 1st, 2019, I was advised that the tower dump data, from Freedom Mobile Incorporated were received and confirmed by Det. SLOAN.

On May 6th, 2019, I was advised that the tower dump data, from Bell Canada Incorporated were received and confirmed by Det. SLOAN.

18. CONCLUSION

At this point in the investigation, investigators are trying to determine who is responsible for the deaths of Bernard SHERMAN and Honey SHERMAN. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] To date, there is no evidence to elevate any of the aforementioned parties to the status of a suspect.

In addition to these persons of interest, there is an unidentified person, the “walking man” that is seen on several surveillance videos in and around the area of 50 Old Colony Road on the evening of December 13th, 2017. The investigative theory being, that this individual is involved in the murders. The evidence sought in this judicial authorization application will seek determine if [REDACTED]
[REDACTED]

[REDACTED]

[REDACTED]

The comparisons of the common numbers between the tower dump data and the phone records of [REDACTED] will assist investigators in identifying potential suspects, persons of interest and/or witnesses that were in the area of 50 Old Colony Road and any other areas that Bernard and Honey SHERMAN had attended on December 13th, 2017.

19. ORDER DENYING ACCESS TO INFORMATION

I am requesting that an order be made pursuant to section 487.3 of the Criminal Code, denying access to and disclosure of this Information to Obtain and its attached appendices, as well as the requested Production Orders.

I am requesting that this order be made for an indefinite period and until an application is brought, to a court with competent jurisdiction, to have the order terminated or conditions of the order varied pursuant to section 487.3(4) of the Criminal Code.

I am also requesting that a term/condition of the sealing order be added allowing the Crown to access the sealing materials for the purpose of making disclosure. This

term/condition will allow the Crown to fulfil its disclosure obligation, if charges are laid, without first obtaining an order varying this sealing order.

I am requesting that this order be made, on the following grounds:

(a) Pursuant to section 487.3(2) (a) (ii), Compromise the nature and extent of an ongoing investigation

Currently, investigators believe that the individual seen on video surveillance in the area of 50 old Colony Road on the evening of December 13th, 2017, the “walking man” is involved in the murders. As outlined in this Information to Obtain, the information sought from this production order application, seeks to determine if [REDACTED]

[REDACTED] I believe that the reasons outlined below, in regards to compromising of the investigation, apply to this specific theory as well as to this investigation in general.

The Information to Obtain of the proposed judicial authorization applications details the facts of an ongoing investigation and if this information were to be made public it would jeopardize the investigation. Currently the investigation is still ongoing, with substantial and continued media coverage of the investigation. Information about the investigation has been already inadvertently or purposely disclosed to the public and further disclosure about the details of this case will render any potentially new hold back information to be of no value to police.

Disclosure of this Information to Obtain would allow the perpetrator(s) to know how far the investigation has advanced, the identity of witnesses police have spoken to and what evidence police have seized. Knowing the aforementioned information, the perpetrators can then take steps to thwart and hinder the investigation by locating witnesses that police have spoken to as well as witnesses police have not spoken to with the intent to influence them to not participate in the investigation. Also, the perpetrators, by knowing what evidence police have already seized and obtained can also take steps to destroy or conceal evidence that they know exist and police have not already seized.

Also, by disclosing this affidavit the perpetrator(s) would know if police have identified any potential suspects or persons of interest, which could precipitate the perpetrator(s)' flight.

Disclosure of this affidavit would also allow the perpetrator(s) to determine which witnesses that investigators have or have not spoken to. The perpetrator(s) can then attempt to locate or contact witnesses to influence their participation in this investigation.

Currently the investigation is still underway with witnesses still to be identified and spoken to. If the details contained in the Information to Obtain were to be made public it could contaminate any subsequent witness statements thereby hindering investigators' ability to assess the credibility of the information provided by any future witnesses that may wish to come forward.

(b) Pursuant to section 487.3(2) (a) (iv), Prejudice the interest of an innocent person

The disclosure of the information relating to the Production Orders would prejudice the interest of an innocent person, due to the fact that many witnesses have already been interviewed by police and the contents of this affidavit would reveal the identity of witnesses who have provided information and statements to police.

I believe that, if the names and information provided were to be made public, that it would be detrimental to the progress of the investigation, the safety of witnesses and the safety of any potential witnesses. At this point in time investigators believe that this incident is a double murder and that the SHERMAN's were targeted, the perpetrator(s) are still unidentified and unaccounted for and could seek out the witnesses in this incident to cause them harm. Currently, it is unknown if other family members of the SHERMAN's are in danger. Disclosure of this affidavit would reveal the names and information of the family members and associates of the SHERMAN's thereby assisting any perpetrators in locating them.

The family and associates of the deceased along with witnesses have already been subjected to heavy media coverage. If their identities were to be revealed through this application the media coverage would only get worse prejudicing their right as innocent persons to be left alone.

Portions of the sealed materials contain information over which claims of privacy attach; portions contain references to financial and legal information that would otherwise be confidential and un-accessible to members of the public or the media; large portions of the material describe the personal and private information of many different people

and entities, any of whom could reasonably assert an interest in not having this information publicly disclosed.

In addition, many of the witnesses, who have been interviewed, have expressed opinions about whether other persons have the motive and/or character to commit these murders. If these opinions were to be released to the public, both those expressing them and those, who are the subject of the opinions, would be prejudiced. Disclosure of this information at this point would have a chilling effect on other witnesses who are asked to provide information and opinions about this investigation or other investigations. In addition, given that some of these opinions may be unfounded, those who are the subject of them would be prejudiced if the opinions were published or otherwise made available to the public.

Any and all of the aforementioned considerations could “prejudice the interest of an innocent person”, as contemplated by s. 487.3(2)(a)(iv) of the *Criminal Code*.

i. Sealing of Previous Judicial Authorizations

On the following dates, judicial authorizations were granted, by her Honour L. PRINGLE, in relation to this case:

- I. December 20th, 2017;
- II. January 10th, 2018;
- III. January 15th, 2018;
- IV. February 15th, 2018;
- V. April 16th, 2018;
- VI. June 28th, 2018;
- VII. September 23rd, 2018;
- VIII. November 16th, 2018;
- IX. December 20th, 2018;
- X. January 29th, 2019;

The judicial authorization applications outlined above were sealed. I am requesting that this application and any orders be sealed as well because if this application or orders were to be left sealed, it would circumvent the sealing of the previous applications.

ii. Toronto Star’s Applications to Unseal

On March 16th, 2018, I attended the Toronto North Courts located at 1000 Finch Avenue West in the City of Toronto where Toronto Star investigative reporter, Kevin DONOVAN had made an application to unseal several judicial authorization applications relating to this case, before her Honour L. PRINGLE. The application to unseal the judicial authorizations was challenged by the Crown Attorney. I had filed an affidavit outlining the reasons why, I believed, that the judicial authorization applications should all remain sealed. Ultimately, all the face pages, Appendix Bs and two Appendix As relating to medical records, from the judicial authorizations, were disclosed to the Toronto Star. Her Honour L. PRINGLE was to provide judgement on the unsealing of the remaining appendices at a later date.

On March 19th, 2018, her Honour L. PRINGLE ruled that the application to unseal was dismissed, without prejudice to renew should charges be laid, should the investigation conclude or should some other material change in circumstance arise.

On September 24th, 2018, I attended the Toronto North Courts in the City of Toronto where Toronto Star investigative reporter, Kevin DONOVAN, for the second time, made an application to unseal judicial authorization applications relating to this case. The application was again, challenged by the Crown Attorney and I filed an affidavit outlining the reasons why I believed that all the judicial authorization applications relating to this case should continue to remain sealed. The application to unseal was heard before her Honour L. PRINGLE. I was cross examined by Kevin DONOVAN in regards to my filed affidavit. Her honour L. PRINGLE reserved her judgement for a later date.

On September 25th, 2018, her Honour released the judgement ruling that the application to unseal was dismissed without prejudice to renew it, should charges be laid or should the investigation conclude or should some other material change in circumstances arise.

On April 17th, 2019, I attended the Toronto North Courts in the City of Toronto where the Toronto Star investigative reporter, Kevin DONOVAN, for the third time, had made an application to unseal judicial authorization applications relating to this case. The application was again, challenged by the Crown Attorney and I filed an affidavit outlining the reasons why I believed that all the judicial authorization applications relating to this case should continue to remain sealed. The application to unseal was heard before her Honour L. PRINGLE. I was cross examined by Kevin

DONOVAN in regards to my filed affidavit. Her honour L. PRINGLE reserved her judgement for a later date.

On April 30th, 2019, her Honour L. PRINGLE released the judgement, ruling that the application to unseal, was dismissed. Her Honour was satisfied that the sealing orders are necessary, “...to protect the integrity of the ongoing police investigation” and that, “...the reasons for sealing continue to outweigh the deleterious effects on the rights of the press to freedom of expression.”

Since April 30th, 2019, there have been no charges laid in this investigation, the investigation is currently ongoing, has not concluded and there has been no other material change in circumstance that would warrant unsealing. The investigation is ongoing, with additional witnesses to be spoken to, additional evidence to be obtained and analysed and additional tips to be investigated. Therefore, I believe that this judicial authorization application, like the others before it, should be sealed.

iii. Toronto Star Newspapers Ltd. v. Sherman Estate, 2018 ONSC 4706

On January 4th, 2019, I reviewed the case, Toronto Star Newspapers Ltd. v. Sherman Estate, 2018.²⁹ Upon reviewing the case I learned the following:

- I. The court decision is dated August 2nd, 2018 and the file number is CV-18-00012564-00ES. The case was heard on July 31st, 2018.
- II. The applicant is Toronto Star Newspapers Ltd. and Kevin DONOVAN and the respondents are the Estate of Bernard SHERMAN and the trustees of the estate and the Estate of Honey SHERMAN and the trustees of the estate.
- III. Kevin DONOVAN was seeking access to the estate files for the estates of Bernard SHERMAN and Honey SHERMAN. While the estates and trustees of the estates of Bernard SHERMAN and Honey SHERMAN were arguing for the estate files to be sealed.
- IV. Justice S.F. DUNPHY stated in his decisions that, “...this case requires me to balance the very strong public policy in favour of open courts against the interest of protecting the dignity and privacy of the victims of crime and

29

<https://www.canlii.org/en/on/onsc/doc/2018/2018onsc4706/2018onsc4706.html?searchUrlHash=AAAAAQANSg9uZXkgU2hlcm1hbgAAAAAB&resultIndex=3>

ensuring the safety of their survivors.” Justice DUNPHY went on to concluded that the , “...deleterious effects of applying confidentiality protection to these two estates files is substantially outweighed by the salutary effects on the rights and interests of the victim, their beneficiaries and the trustees of their estates.”

- V. Justice S.F. DUNPHY ordered that the two files to remain sealed for a period of two years subject to further court orders.

On April 24th, 2019, during the third application to unseal the judicial authorizations, I was made aware, by Kevin DONOVAN, that he would be making an application to have the estate files of Bernard and Honey SHERMAN, unsealed and the application would be heard in Appeals court on April 29th, 2019.

On May 28th, 2019 I reviewed an Ontario Court of Appeal decision, Toronto Star Newspapers Ltd. v. Sherman Estate, 2019 ONCA 376 dated May 8th, 2019. In that decision Justices DOHERTY, PAUL ROULEAU and C.W. HOURIGAN set aside Justice J. DUNPHY’s decision dated August 2nd, 2018 to have the SHERMAN estate files sealed. The order would take effect in 10 days after the release of their reasons.

On May 28th, 2019, I reviewed a news article written by Kevin DONOVAN from the Toronto Star. The article was published on May 15th, 2019 and the headline was, “Sherman family to ask Supreme Court to seal files detailing slain billionaires’ estate”.

In the article, it was revealed, that the SHERMAN estate trustees are seeking leave to appeal to the Supreme Court of Canada to have the estate files sealed. The process would likely take six months.

If this application were not to be sealed the information from this application would circumvent the order for sealing imposed by Justice S.F. DUNPHY as well as the leave to appeal to the Supreme Court because, like previous judicial applications, this current application provides details of the SHERMAN wills and trust.

If this Sealing Order is granted, I request that the Information to Obtain as well as a copy of the requested Production Orders, be sealed in a packet, delivered to and kept in the custody of the Local Registrar of the Ontario Court of Justice, in the Toronto Region, or their Agent, at Old City Hall, at 60 Queen Street West, City of Toronto, Ontario, or until otherwise ordered.

