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Filing date: **01/22/2016**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	92060428
Party	Plaintiff Quality Bicycle Products, Inc.
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Signature	/Kristine M. Boylan/
Date	01/22/2016
Attachments	REDACTED Aff. of Scott D. Patterson with Ex. A-H.pdf(1048676 bytes)

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

In the Matter of Registration Nos. 4496120 and 4414967

For the Marks  and **45NORTH**

Registered on October 8, 2013 and March 11, 2014

QUALITY BICYCLE PRODUCTS, INC.,

Petitioner,

v.

MIDDLEBROOK DESIGN LLC
dba LOVE TRAVERSE CITY,

Registrant.

Cancellation No. 92060428

DECLARATION OF SCOTT D. PATTERSON

Scott D. Patterson, being duly sworn, hereby states under oath as follows:

1. My name is Scott Patterson and I am the Brand Sales Manager of the 45NRTH mark at Quality Bicycle Products ("QBP"). I have held this position since December 9, 2013. In this role, my primary responsibilities are sales of 45NRTH Goods and retailer management. I make this Declaration based upon my knowledge, experience and review of the QBP files within my custody and control.

2. Throughout this Affidavit, I refer to QBP's goods that contain its 45NRTH marks as "45NRTH Goods."

3. QBP was founded in Saint Paul, Minnesota, in 1981. The company chose the name "45NRTH" for its 45NRTH Goods not as a reference to temperature, but instead as an homage to the 45-degree latitude line that crosses the Twin Cities (and Traverse City, Michigan).

4. QBP's 45NRTTH Goods are directed toward people who live in climates with two or more consistent months of temperatures below freezing. Attached hereto as **Exhibit A** is a true and correct copy of our 2012 Marketing Plan Overview, in which we discuss our target market.

5. One of QBP's key markets for its 45NRTTH Goods is Michigan. In fact, in 2012, Michigan sales represented 10% of 45NRTTH's entire market. Attached hereto as **Exhibit B** is a true and correct copy of our internal marketing materials from 2012. At page 15 (QBP000122), Michigan is identified as 45NRTTH's second-largest key market.

6. QBP's 45NRTTH Goods are sold online and in brick-and-mortar stores across the country.

7. QBP's 45NRTTH Goods are sold nationally and internationally by online retailers, including Backcountry.com and Treefortbikes.com. Tree Fort is located in Michigan.

8. QBP began distributing its 45NRTTH Goods to brick-and-mortar retail stores in October 2011.

9. One such brick-and-mortar store is Einstein Cycles, located in Traverse City, Michigan. Einstein Cycles is 4.8 miles from Middlebrook's store. These 45NRTTH Goods include both bicycle products, as well as clothing. QBP first sold a 45NRTTH Good to Einstein's, Polara studded tires, on December 5, 2011. Einstein first purchased a 45NRTTH clothing Good, wool socks, from QBP on November 28, 2012. Einstein still purchases and sells QBP's 45NRTTH Goods today. Attached hereto as **Exhibit C** is a true and correct copy of a sales report generated by QBP's enterprise system showing Einstein's purchases of 45NRTTH Goods from QBP.

10. When an Internet user Googles "45North," with an "O," the first results relate to QBP's 45NRTH Goods, not Registrant's products. A true and correct copy of a Google search result from January 20, 2016 showing this fact is attached hereto as **Exhibit D**.

11. In the clothing market, QBP's 45NRTH Goods include t-shirts, shoes, caps, balaclavas, and insoles. Although our clothing is high quality, it is priced at a rate that encourages "impulsive" purchasing. For example, QBP's 45NRTH t-shirts cost \$25 to \$60, while 45NRTH hats cost \$30 to \$45.

12. QBP advertises its 45NRTH Goods in its online sales catalog, on its website, on product hangtags, through Facebook, by press releases, and in magazines.

13. In addition, QBP has sponsored numerous events in North America, including Michigan. During these sponsored events, QBP typically provides products—including 45NRTH Goods—as prizes, and displays its 45NRTH mark (logo) on the event website and at the event's venue.

14. QBP expends significant time and money to promote its 45NRTH Goods. Between June of 2012 and today, QBP has spent \$302,985 in marketing expenses relating to its 45NRTH Goods. Attached hereto as **Exhibit E** is a true and correct copy of QBP's marketing expenses relating to 45NRTH Goods.

15. As a result of QBP's widespread use and expenditure of resources to promote the goods and services offered under its 45NRTH mark, as well as its dedication to high-quality goods, QBP has acquired significant goodwill in and to the mark. For example, QBP's boot designs have twice won international design awards at Eurobike. Attached hereto as **Exhibit F** is a true and correct copy of a press release detailing those awards.

16. QBP's 45NRTH marks have come to represent the highest-quality goods and consumers have come to count on QBP's 45NRTH marks to represent superior clothing, footwear, and headwear complementary to its bicycle parts and bicycling gear products.

17. Today, Michigan remains one of QBP's key markets for its 45NRTH Goods. Michigan is QBP's third-highest market for all-time sales of 45NRTH Goods, as well as sales in 2015. Attached hereto as **Exhibit G** is a true and correct copy of a sales report showing these numbers.

18. After reviewing historical sales data, I estimate that over 60,000 units of 45NRTH Goods have been sold worldwide to date. I estimate that an additional 30,000 units of 45NRTH Goods will be sold in 2016 alone.

19. Attached hereto as **Exhibit H** is a true and correct copy of the "About" section of Middlebrook's website (*i.e.*, www.45degrees-north.com/about), as accessed on January 19, 2016.

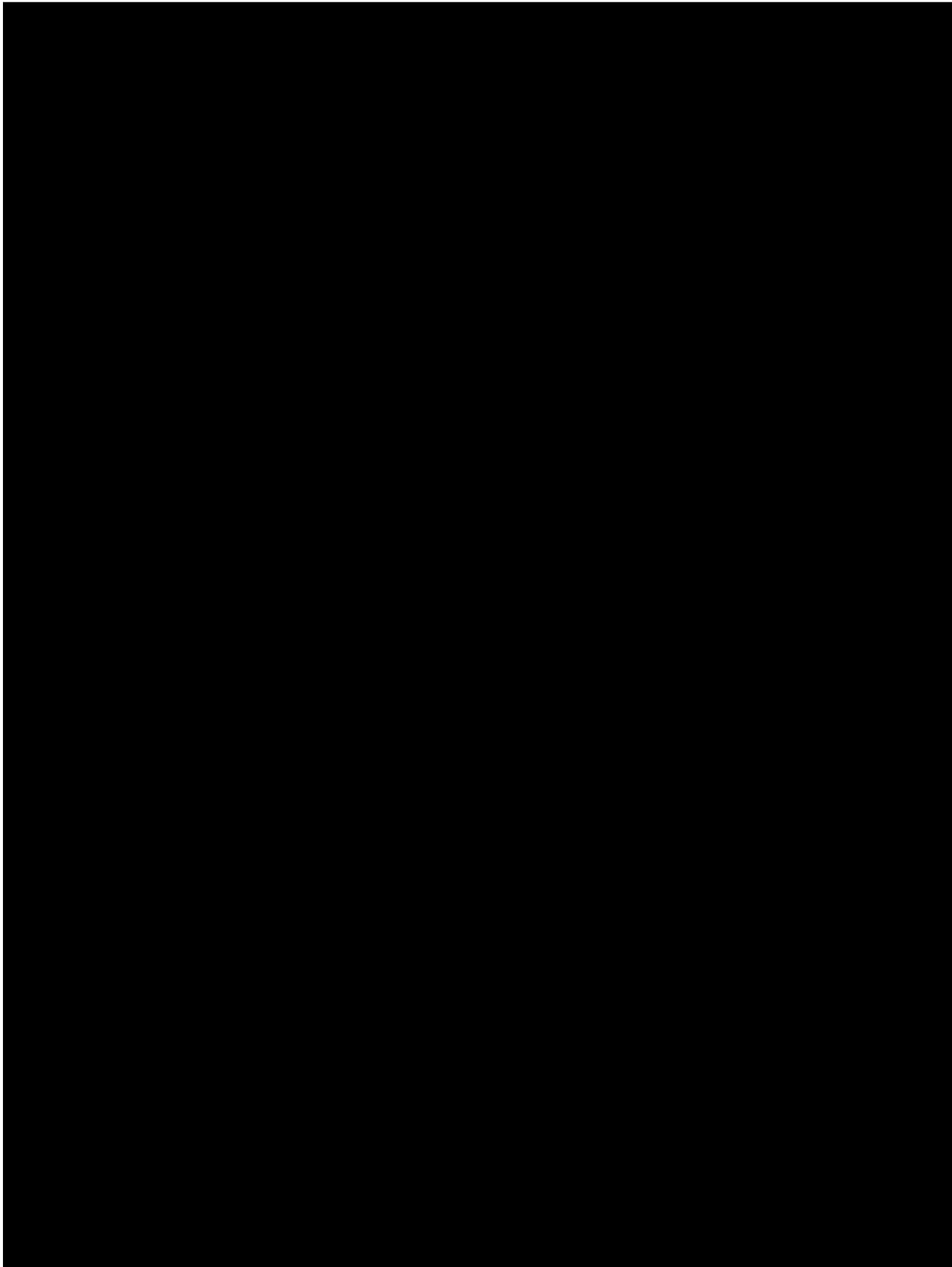
I declare under penalty of perjury that the foregoing is true and correct.

Executed on this 21st day of January, 2016.



Scott D. Patterson

EXHIBIT A



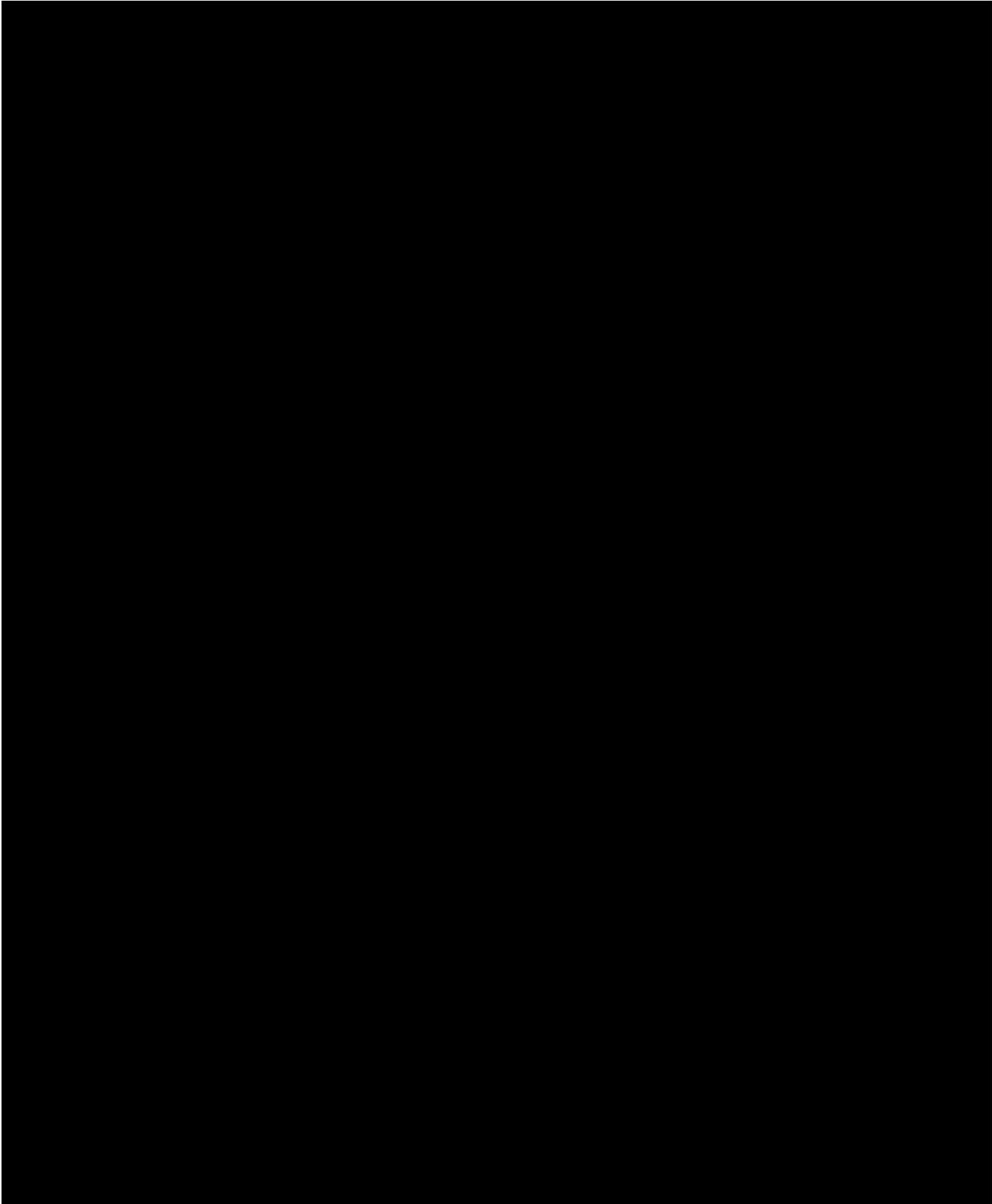
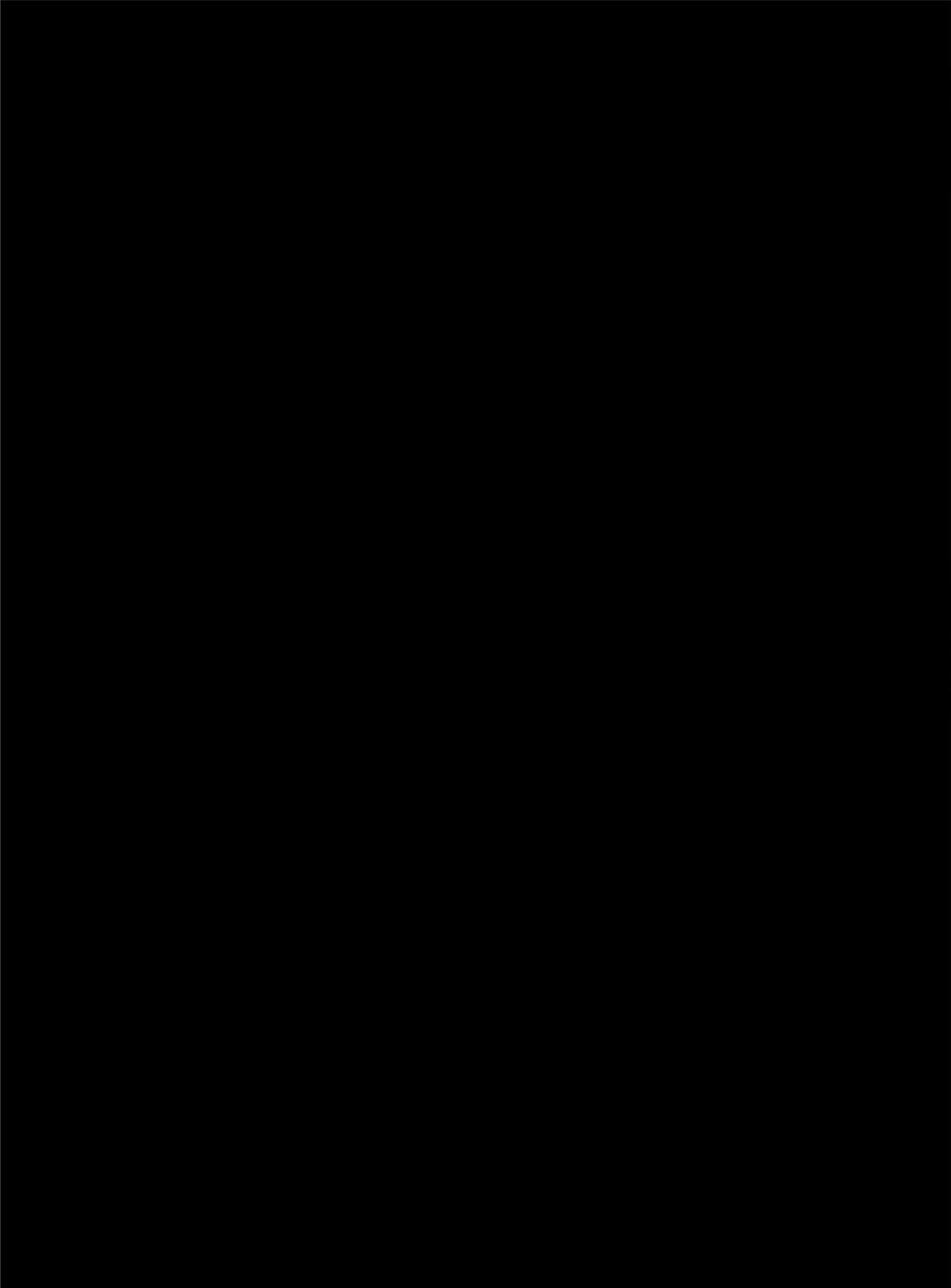
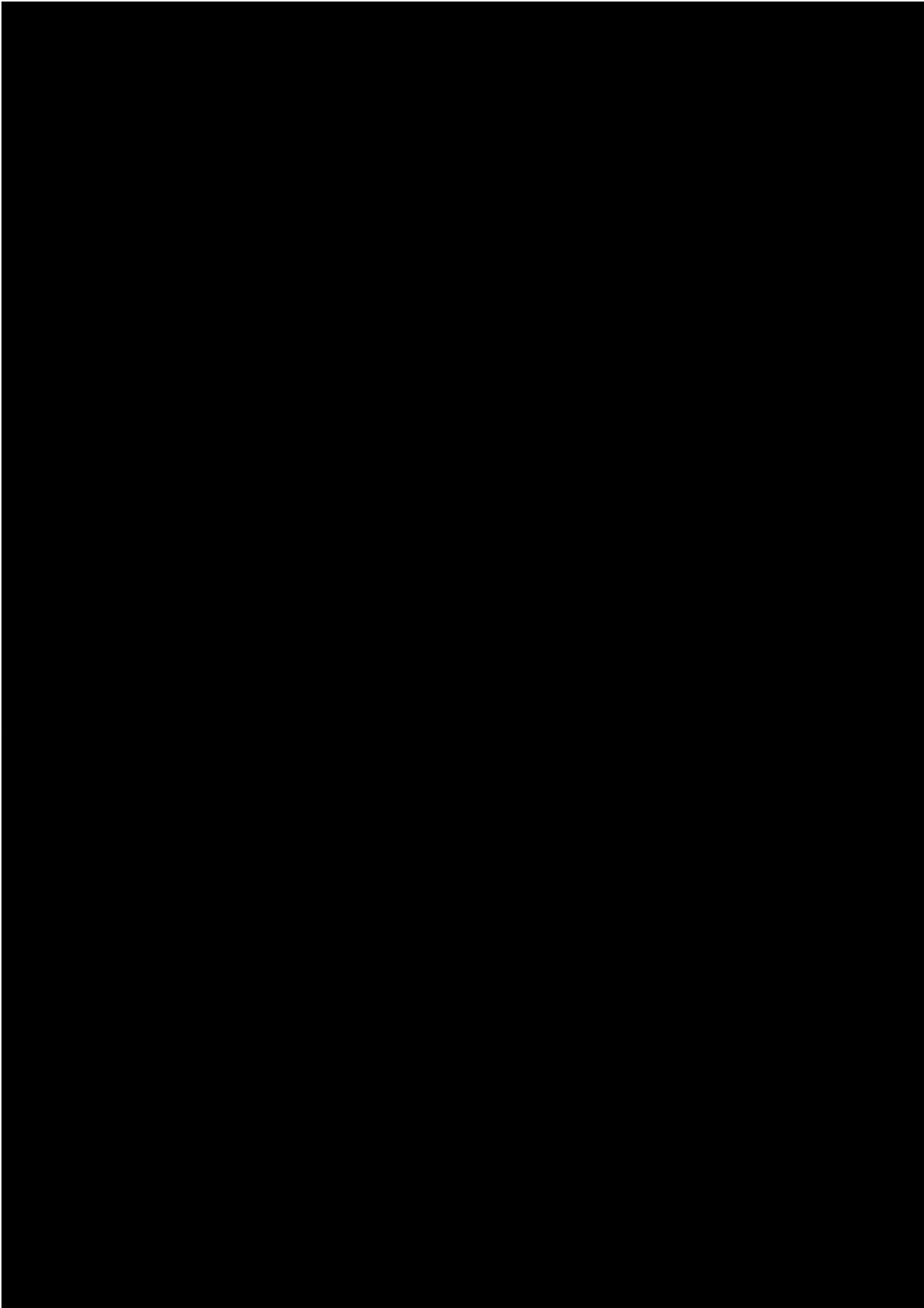


EXHIBIT B



QBP000108

CONFIDENTIAL

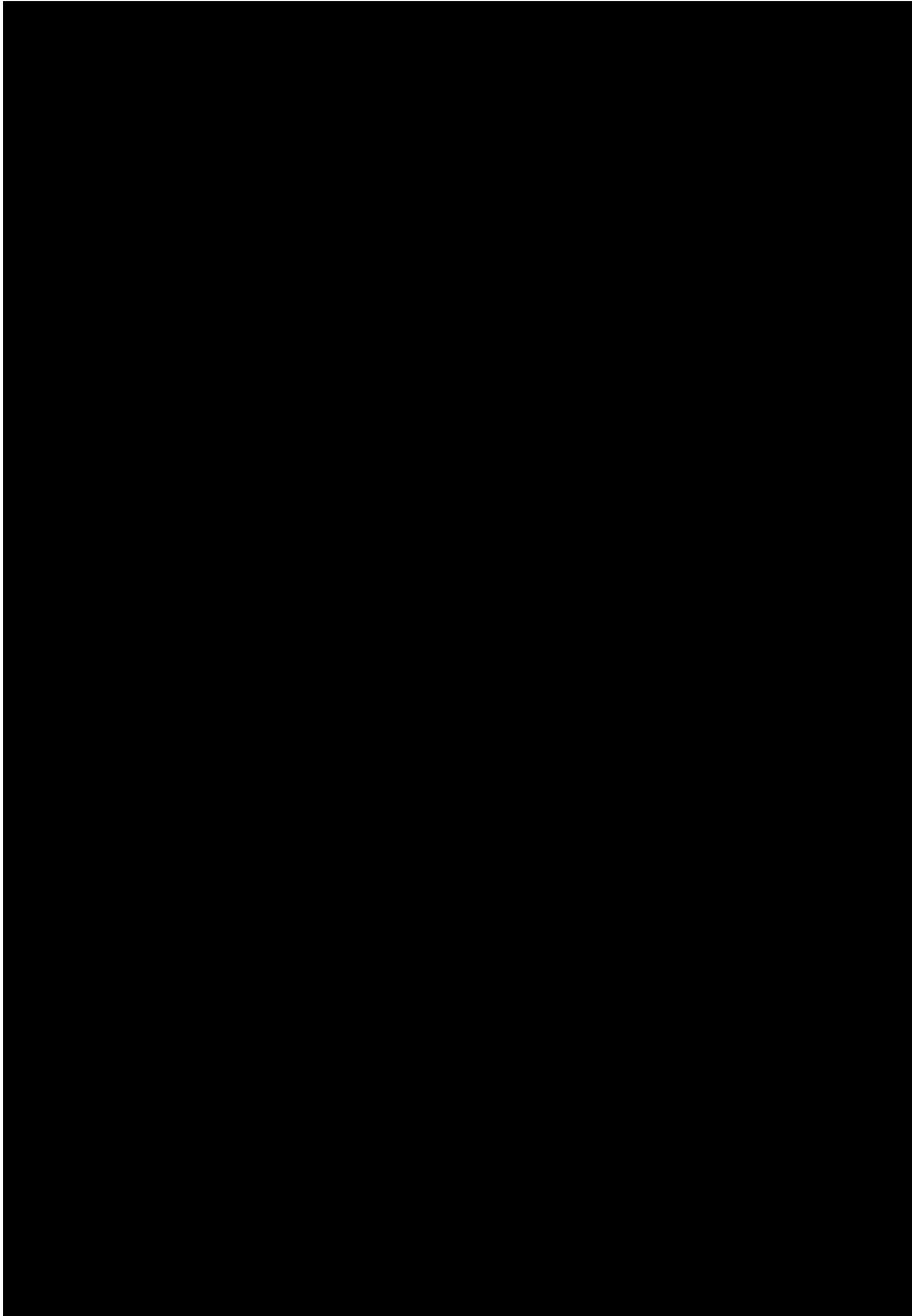


CONFIDENTIAL

QBP000109

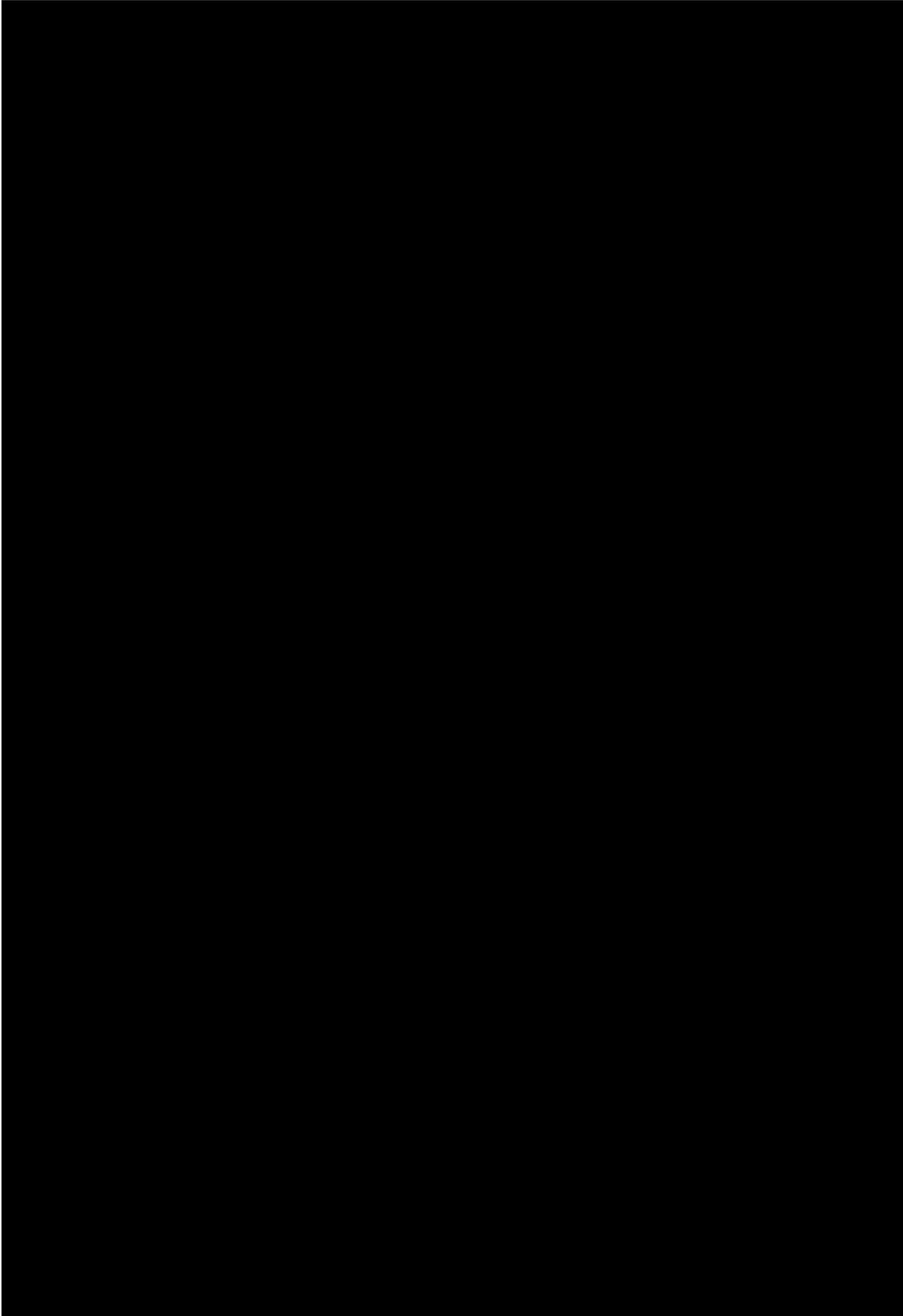
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CONFIDENTIAL



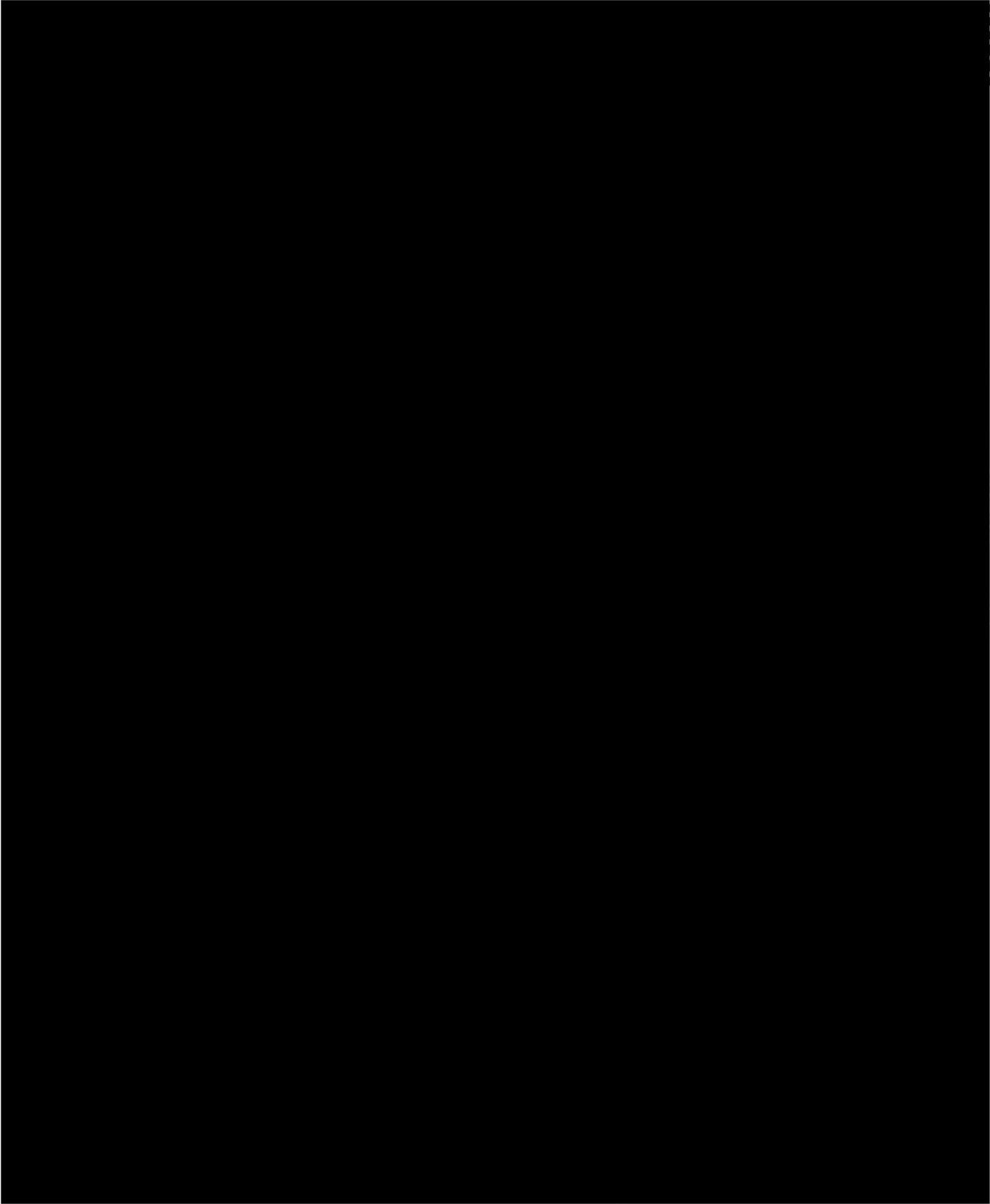
CONFIDENTIAL

QBP000111



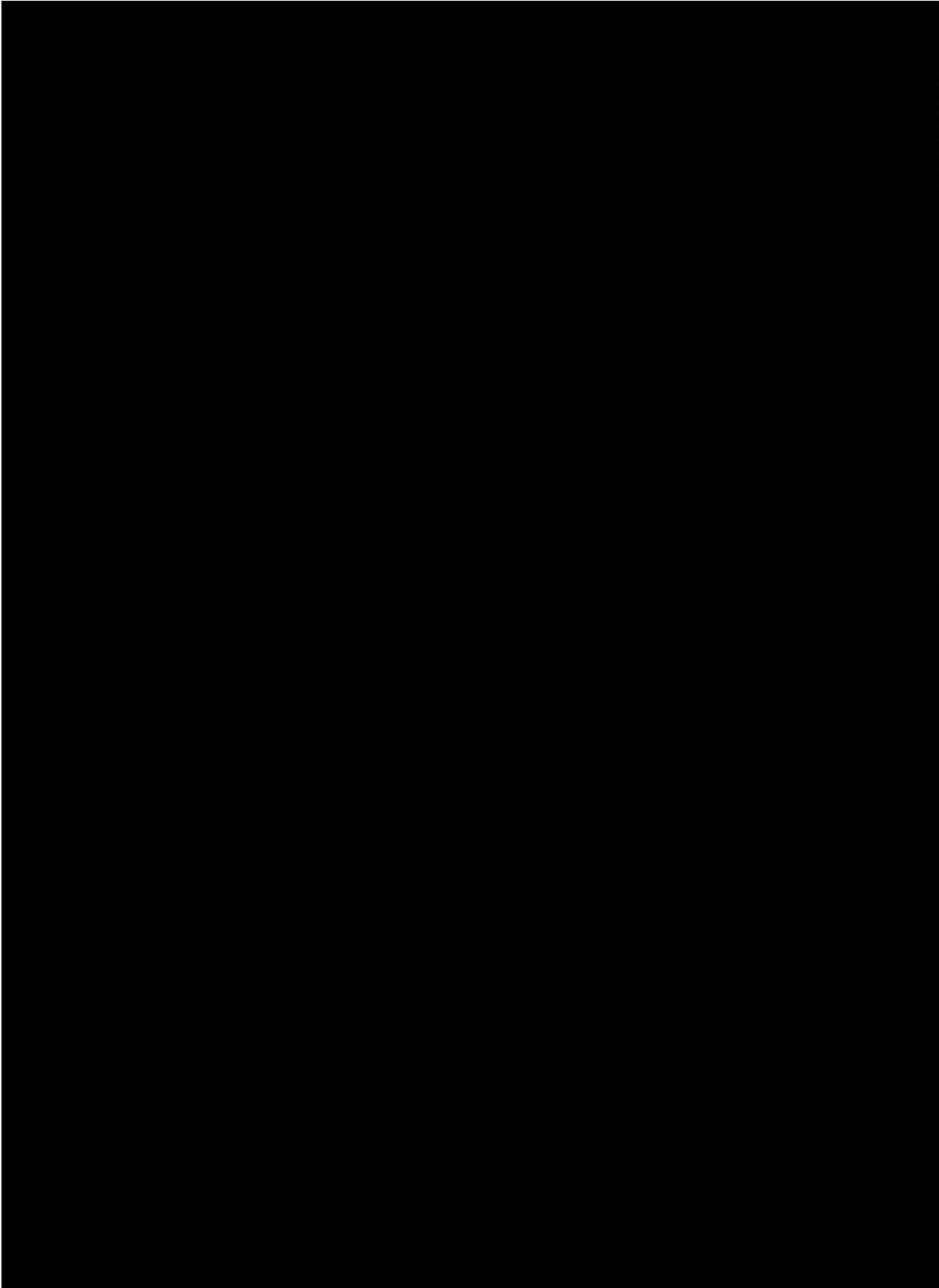
CONFIDENTIAL

QBP000112



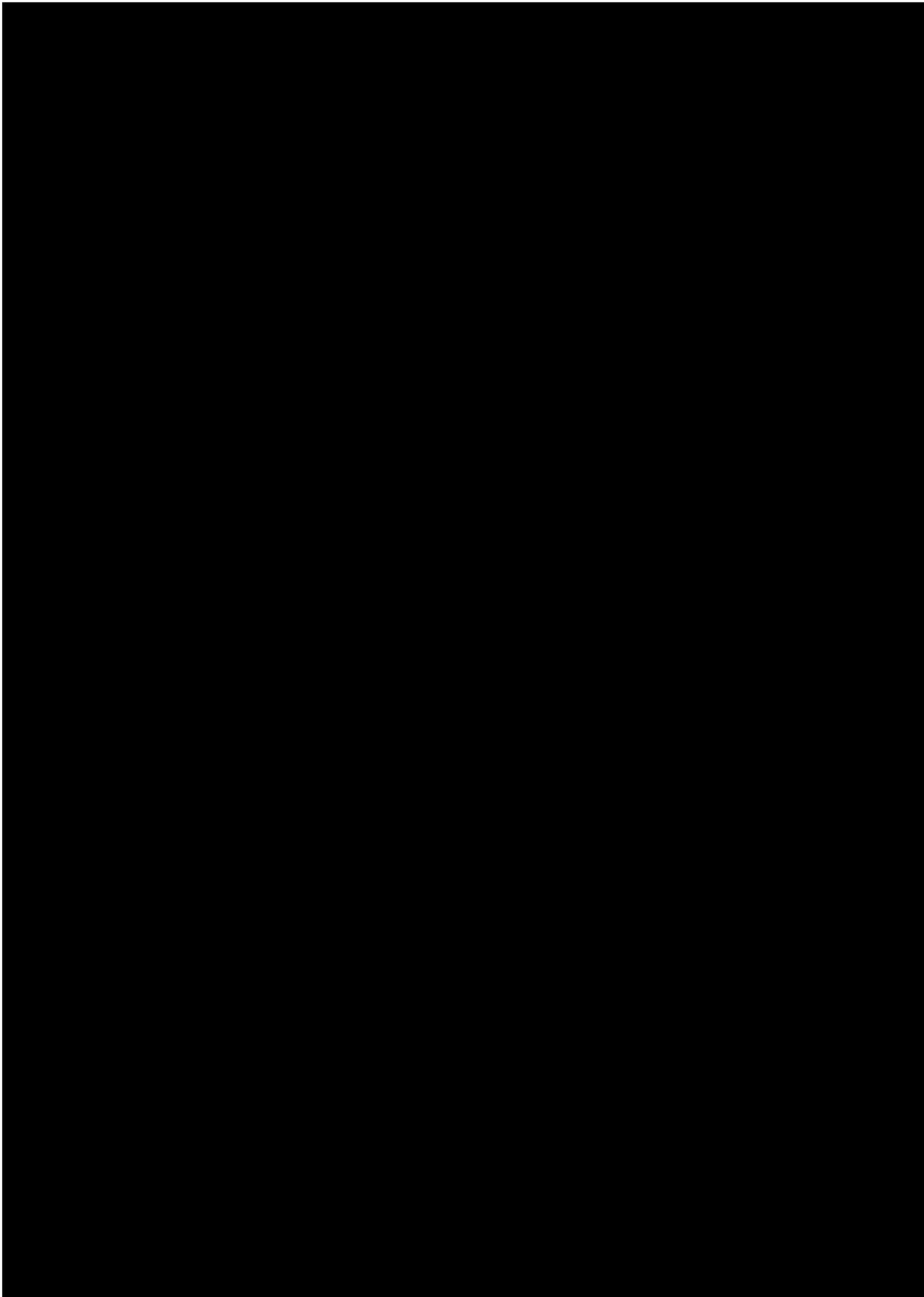
QBP000113

CONFIDENTIAL



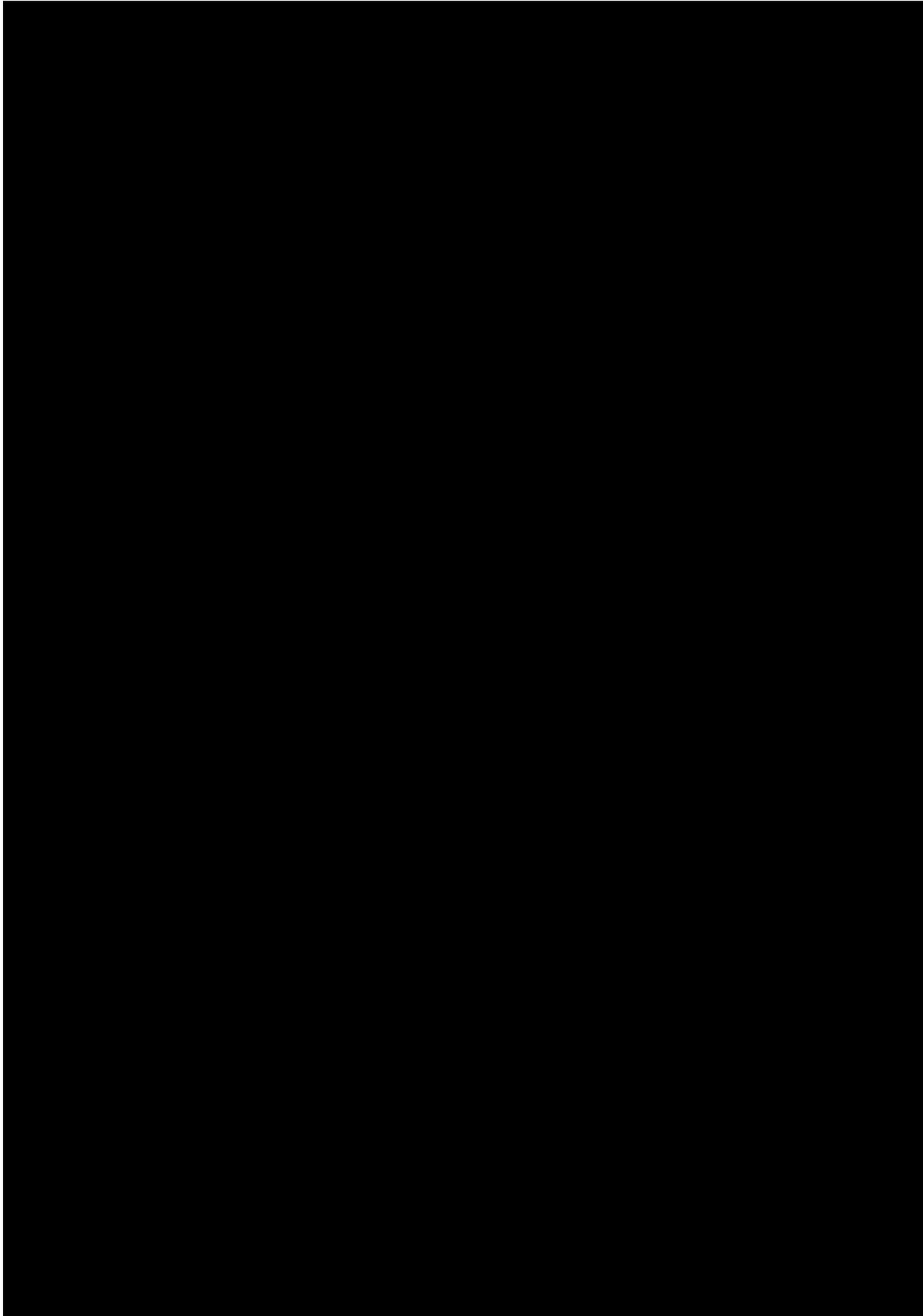
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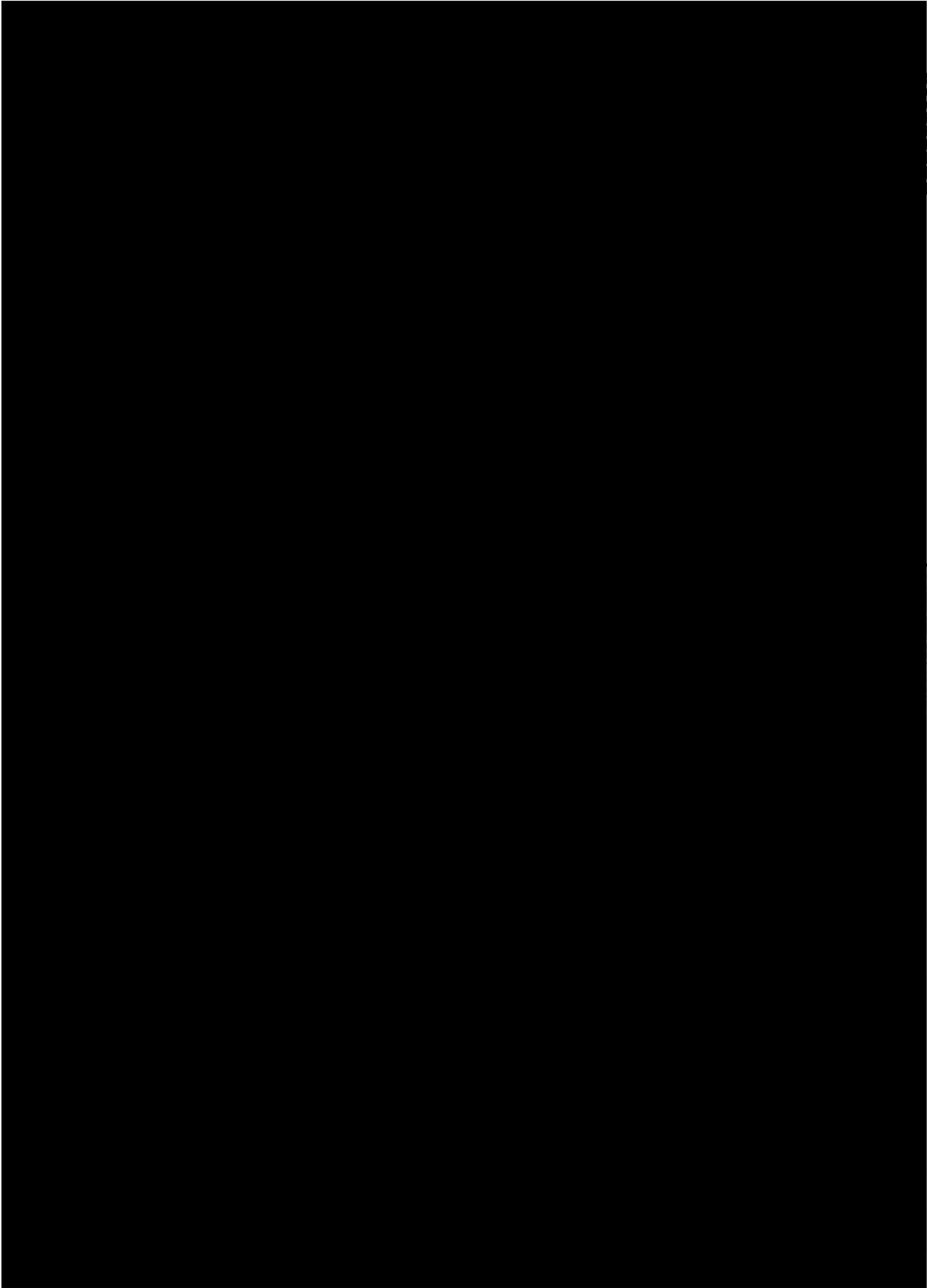
CONFIDENTIAL

QBP000115



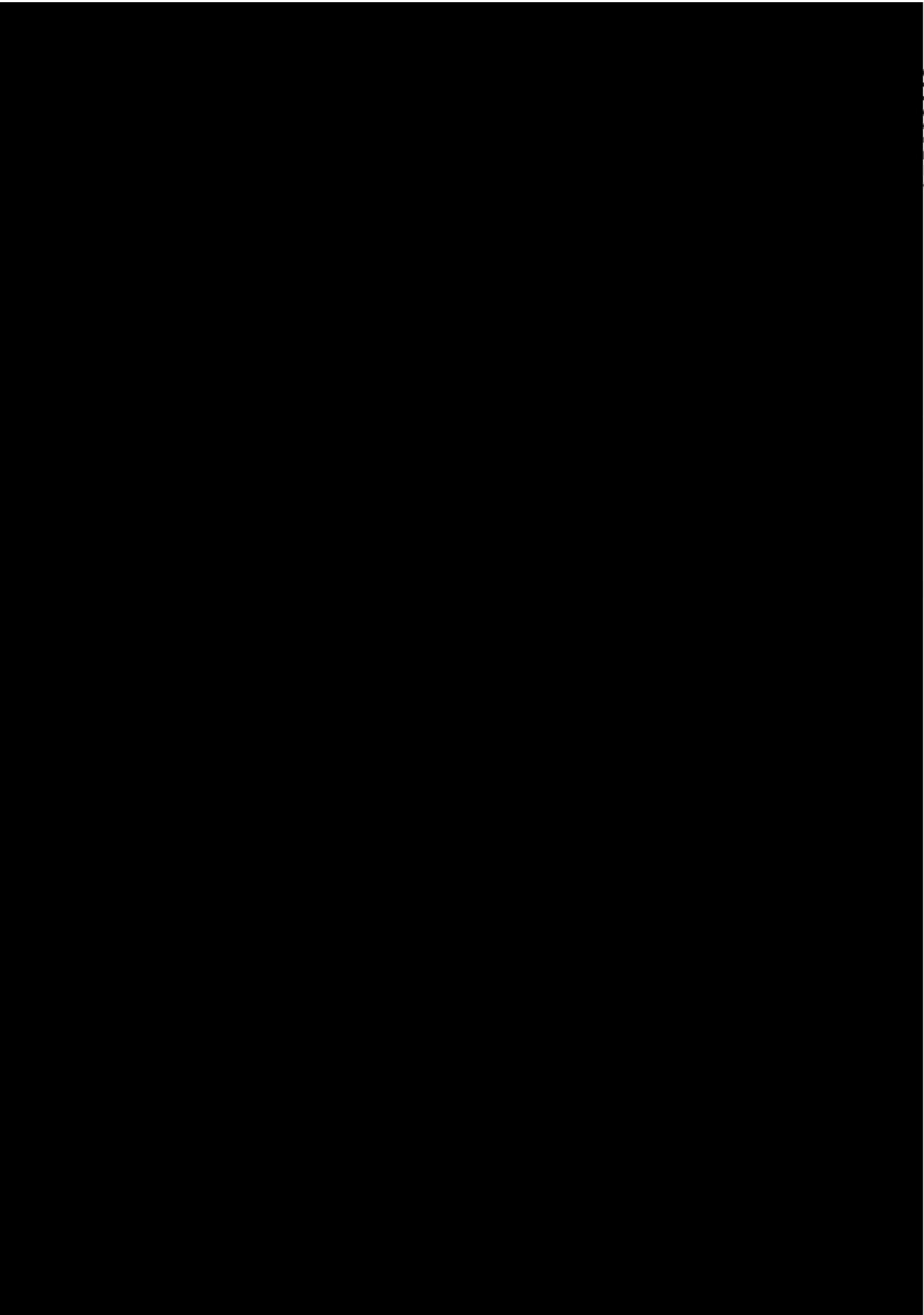
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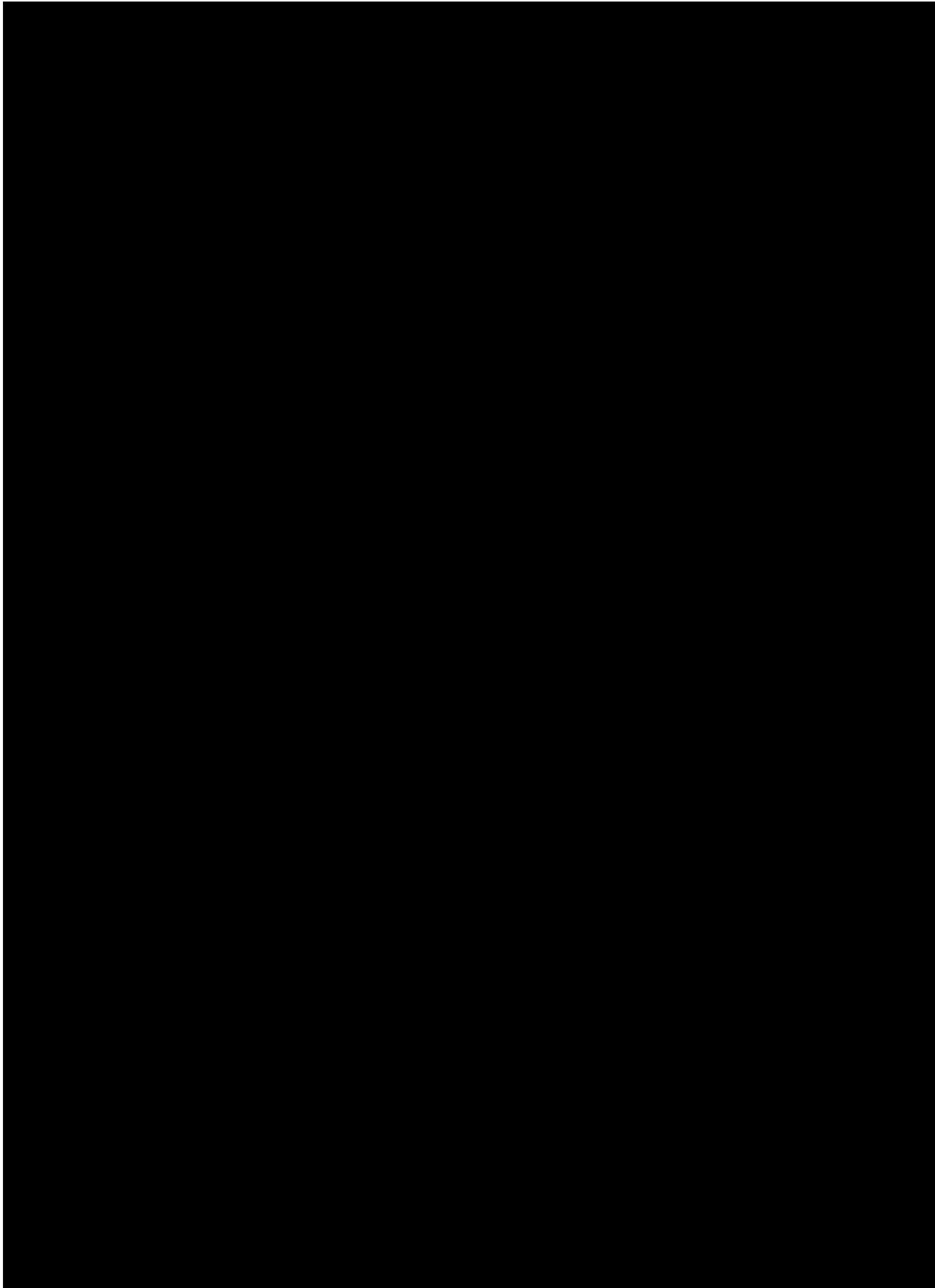
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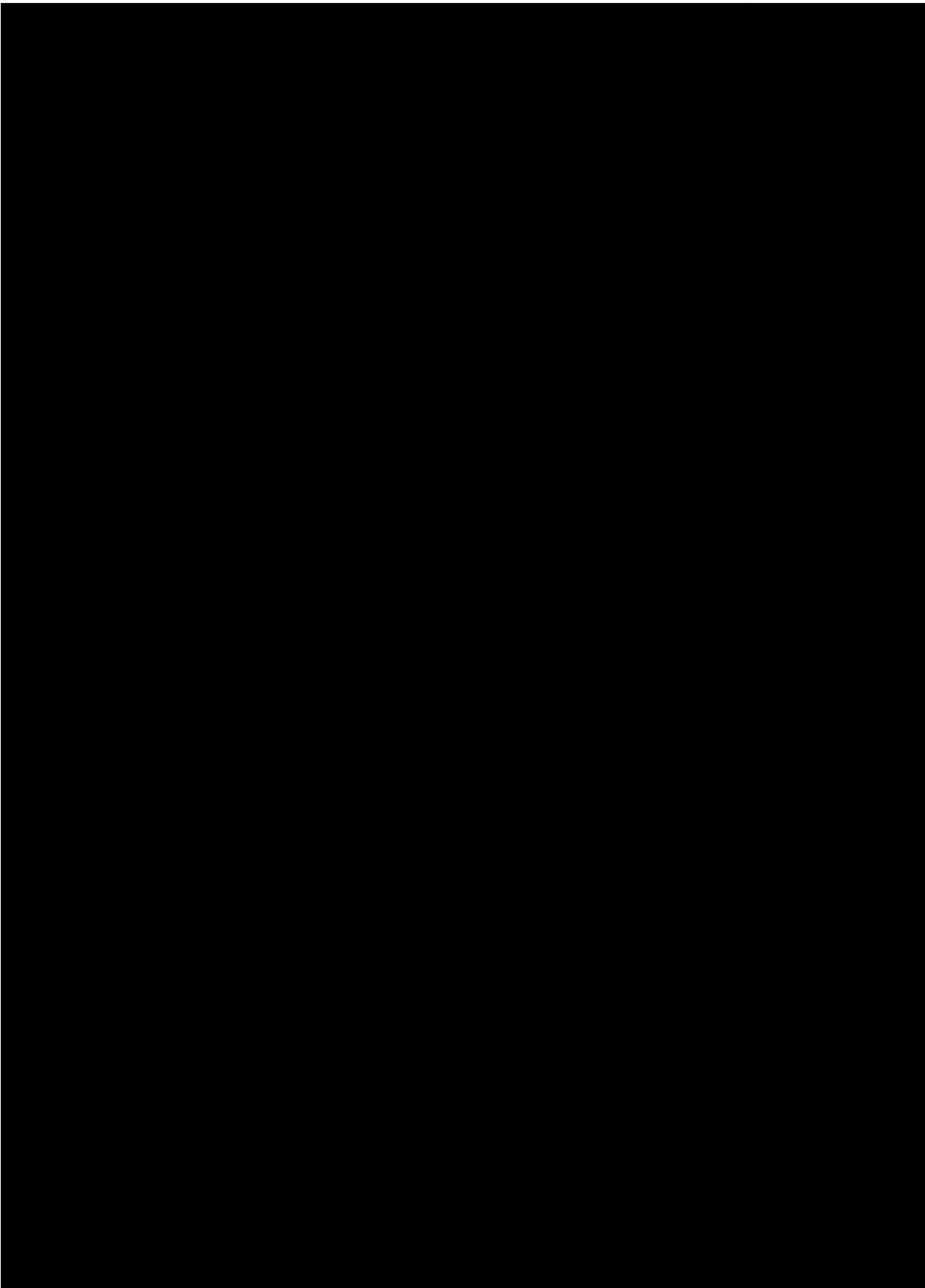
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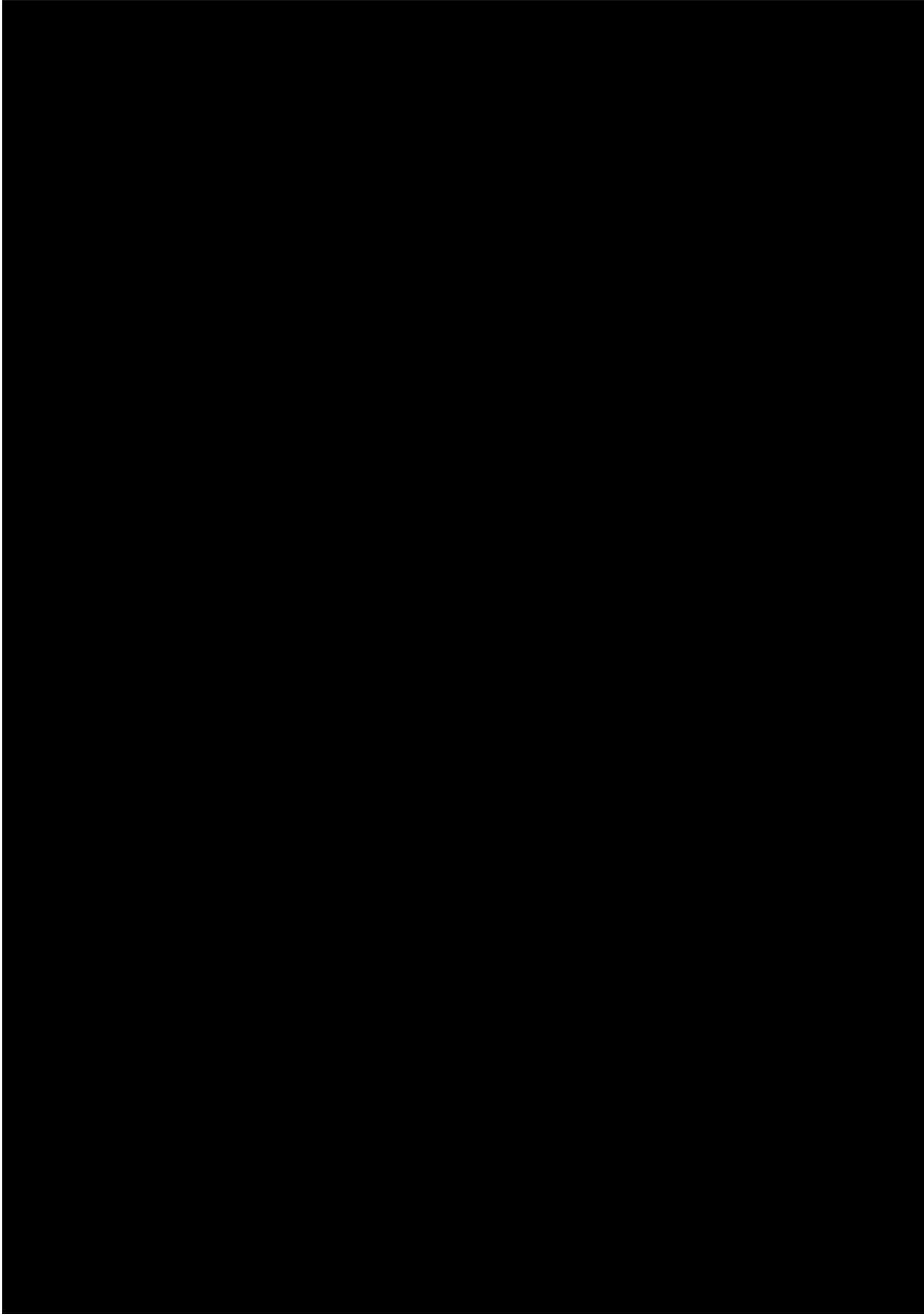
CONFIDENTIAL

QBP000120



CONFIDENTIAL

QBP000121

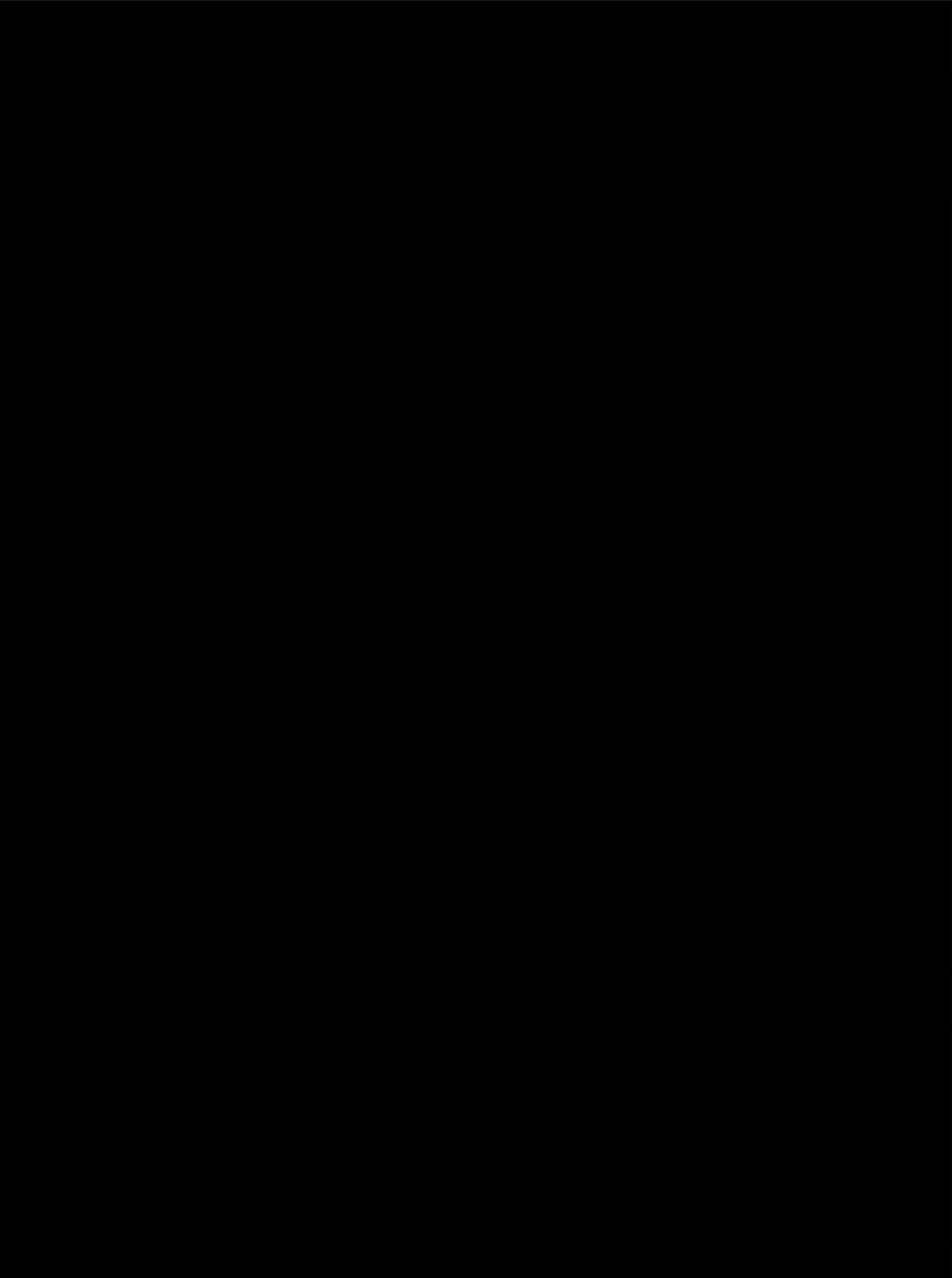


QBP000122

CONFIDENTIAL

CONFIDENTIAL

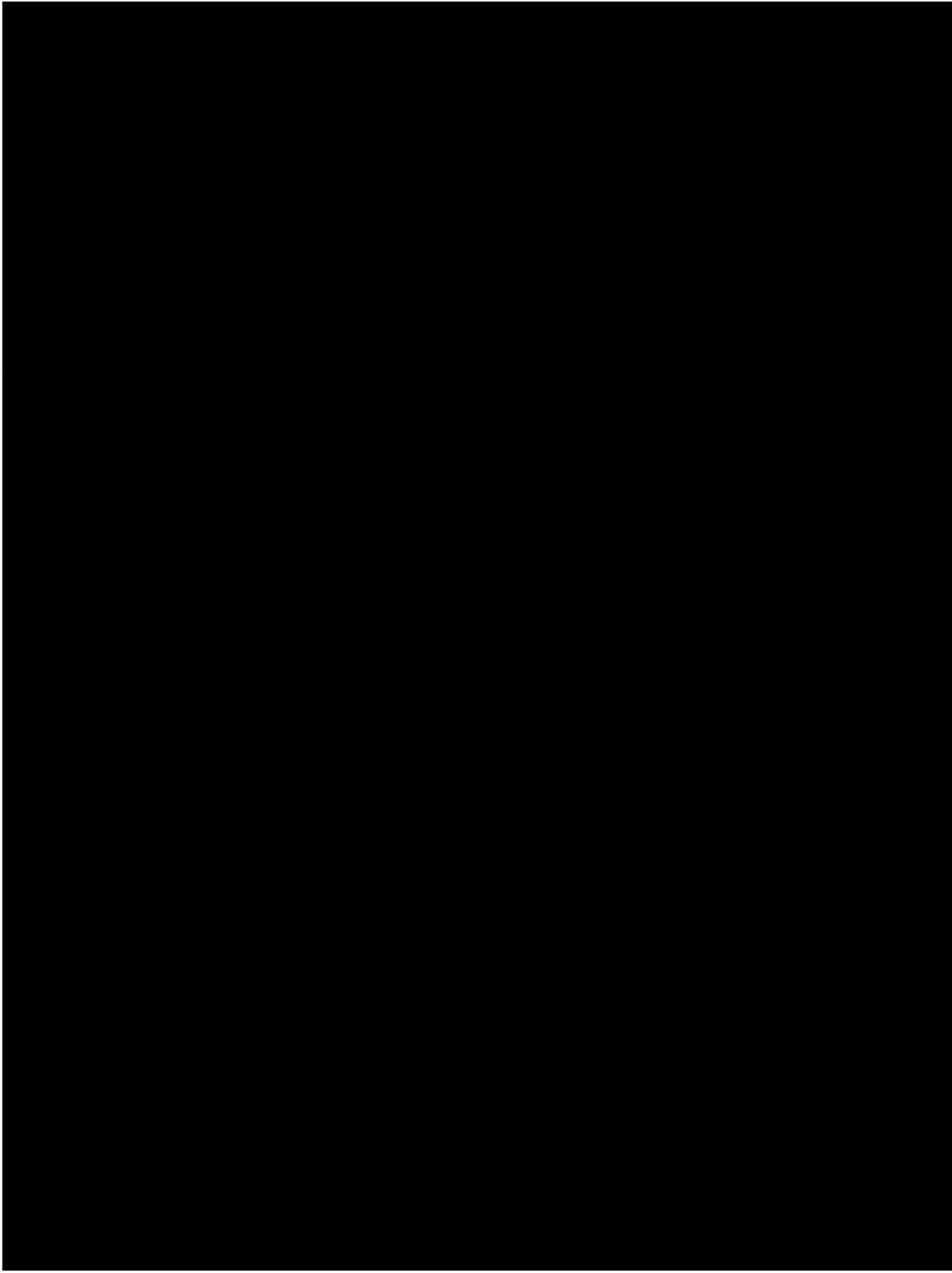
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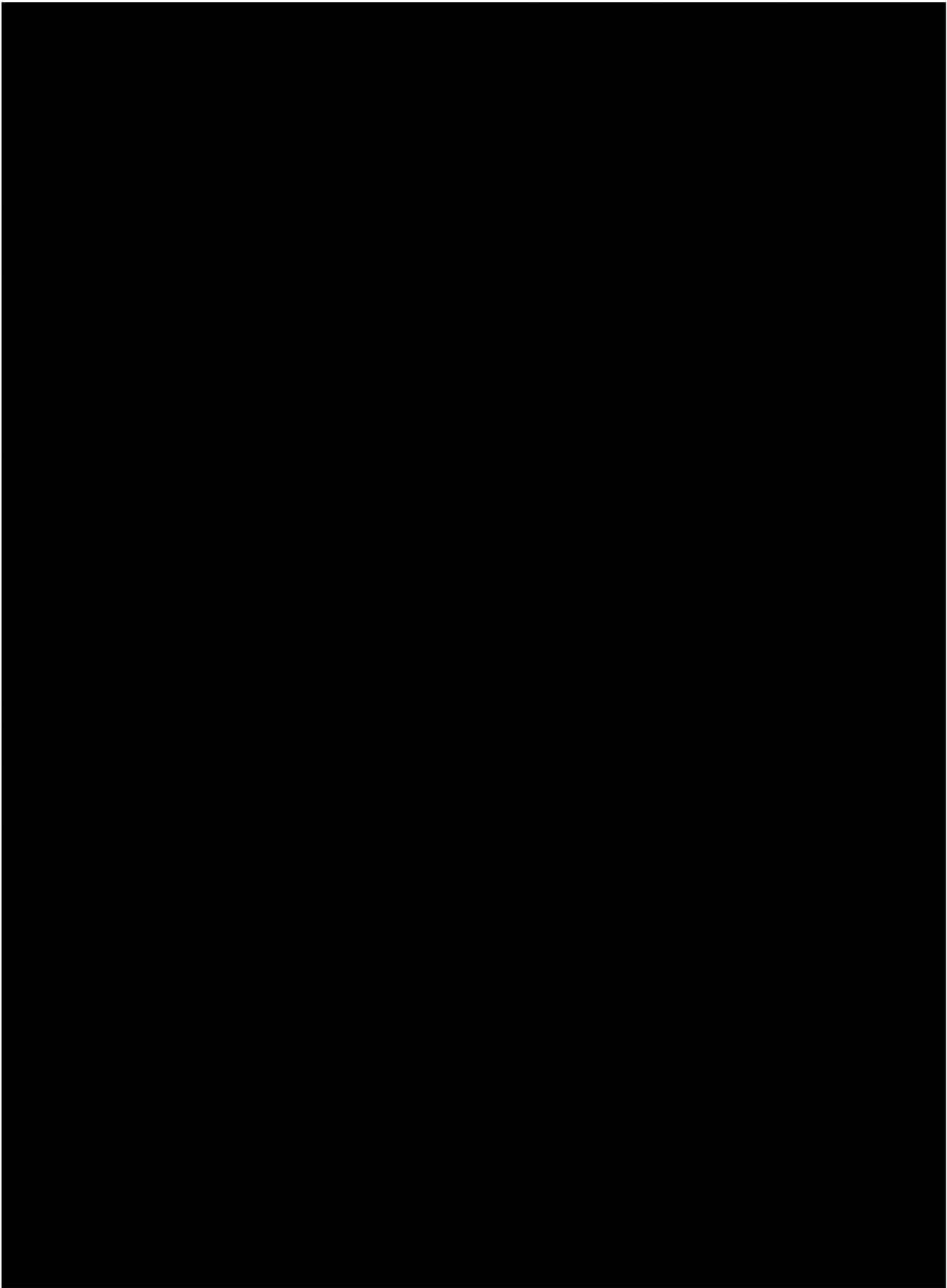


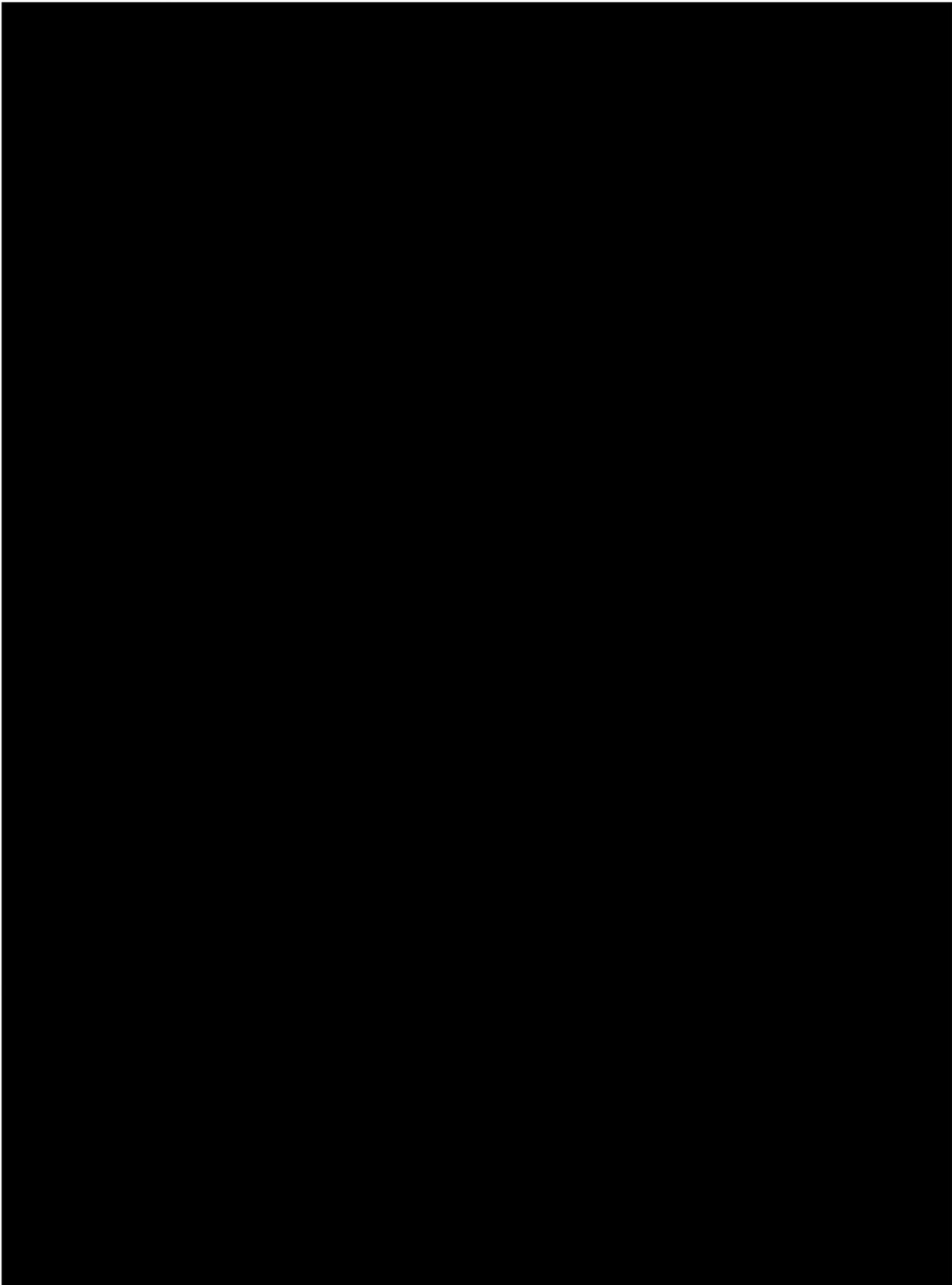
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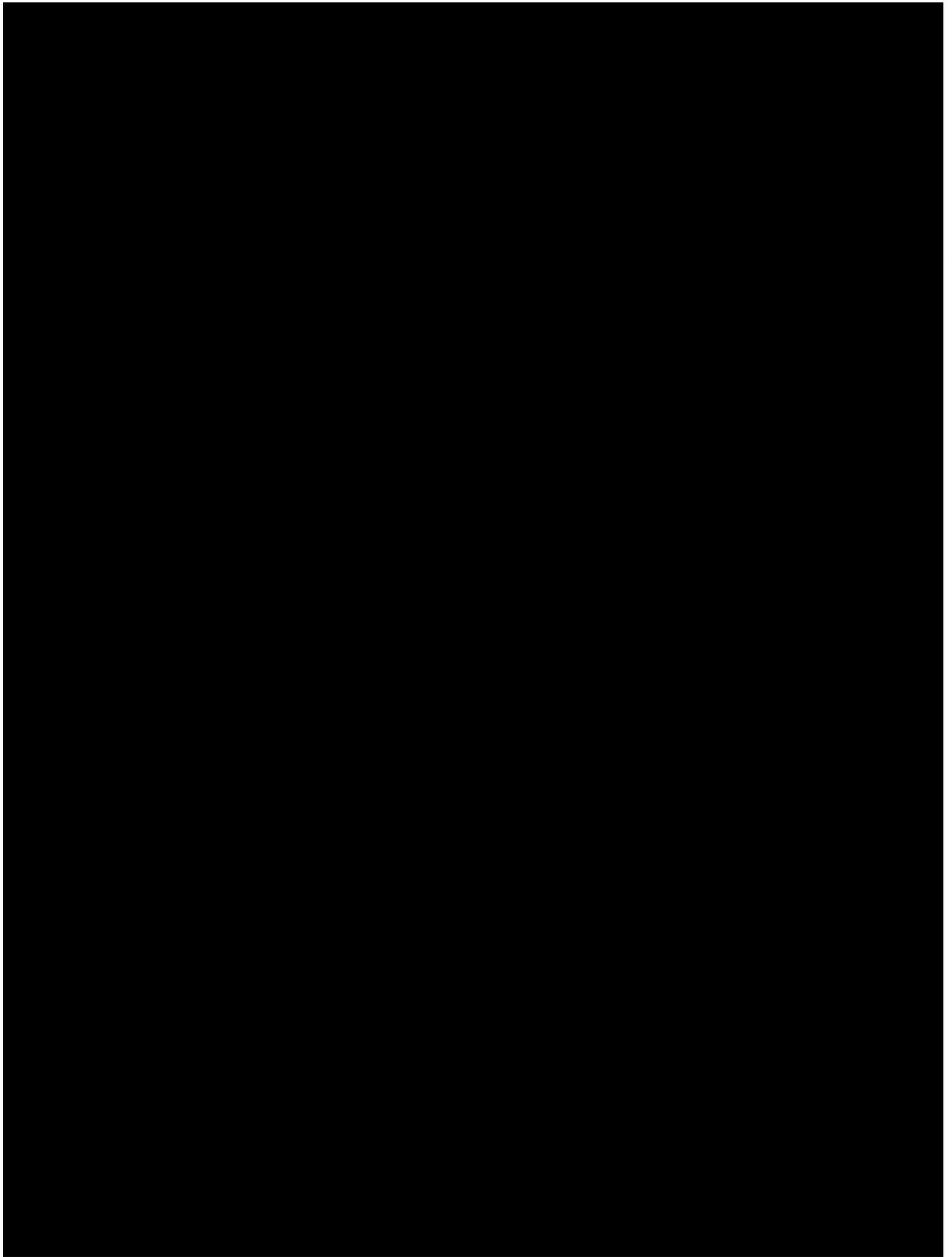
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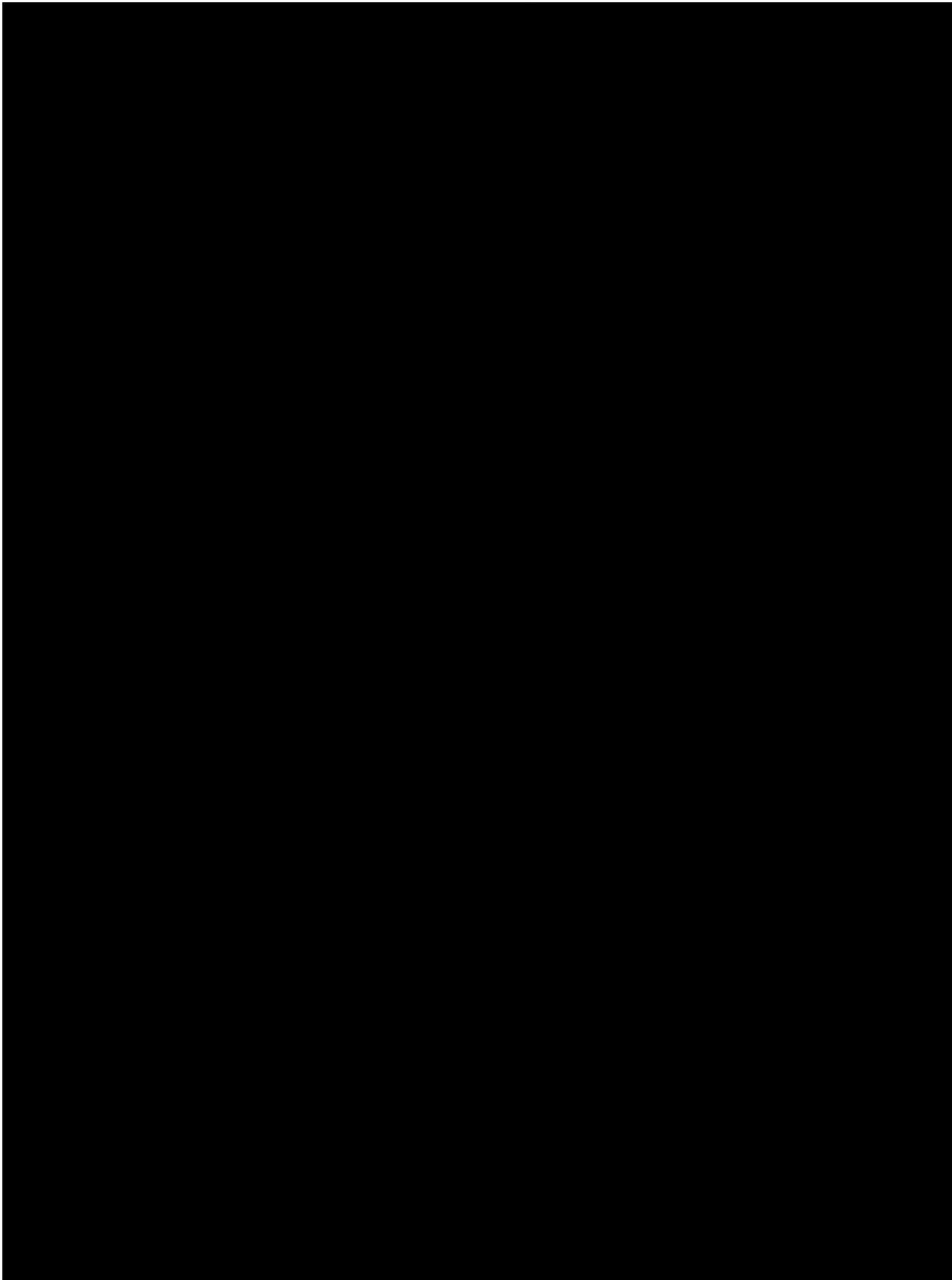
EXHIBIT C

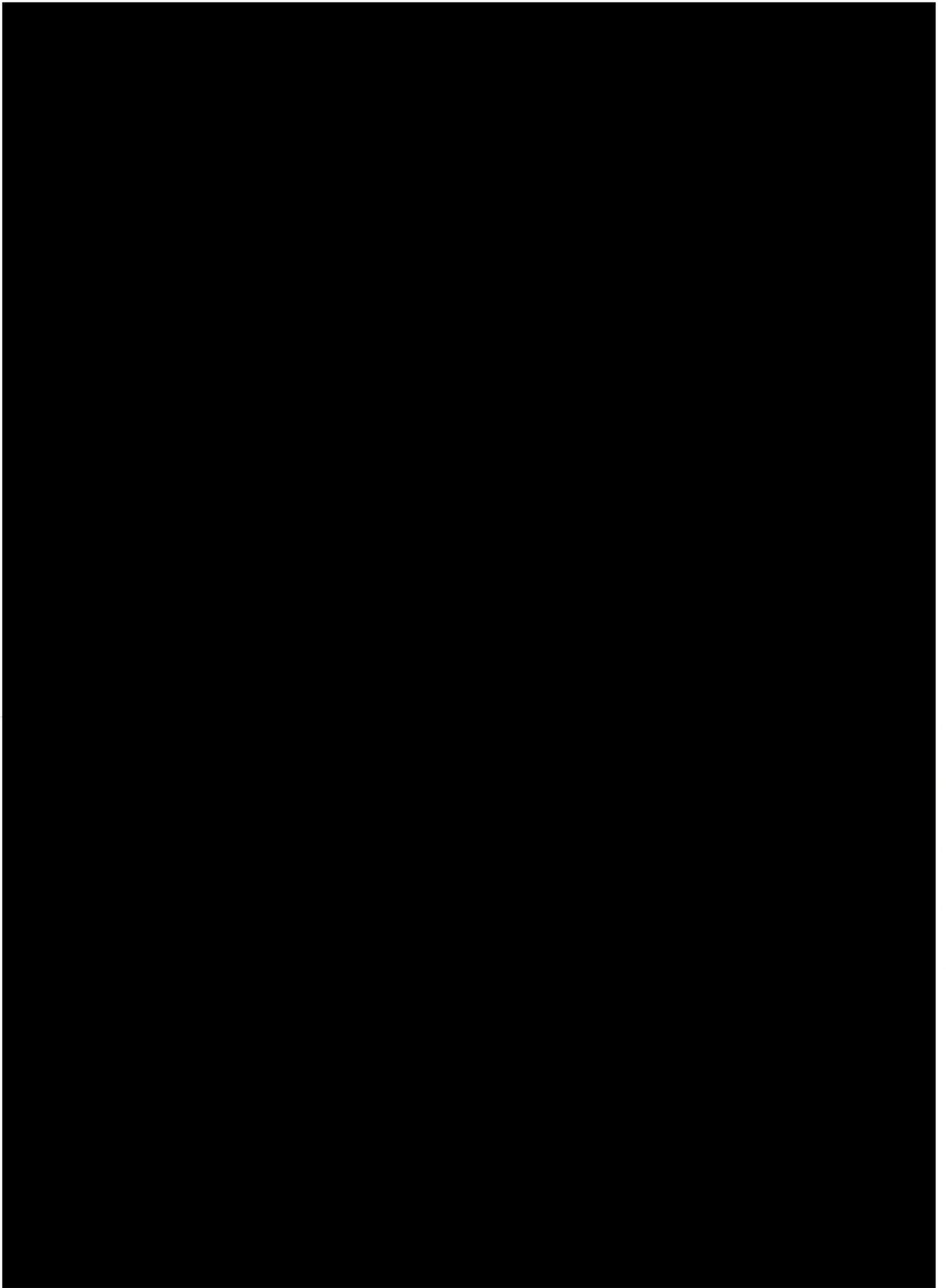












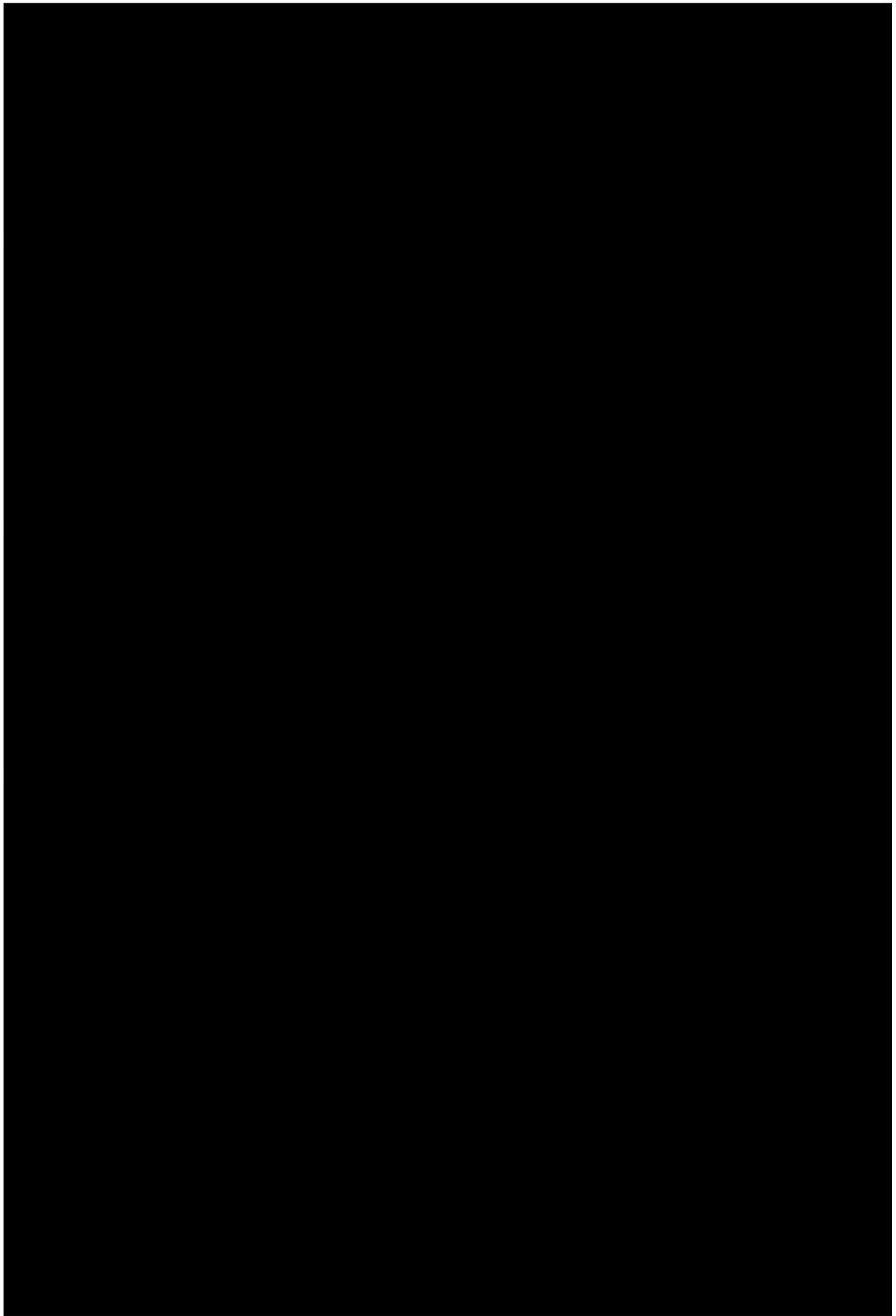


EXHIBIT D



45North

Scott

27

S

All Shopping Videos Images News More Search tools

About 320,000 results (0.62 seconds)

Showing results for 45nrth
Search instead for 45north

Shop for 45nrth on Google

Sponsored



45North
Wolvhammer
\$324.99
Erik's Bike an...



45Nrth
Fasterkatt Win...
\$149.95
Bikeshoes
Special offer



45North Wolfgar
Winte...
\$449.99
Erik's Bike an...



45North
Japanther Col...
\$224.99
Erik's Bike an...



45North
Cobrafist Pogie
\$130.00
Jenson U...

45NRTH | Unparalleled Cold Weather Performance

45nrth.com/ ... of the functional elements of our flagship boot while improving design and style. Learn. Ride. Experience. Safety & Support • Technology • Contact • © 45NRTH. Tires - Footwear - Softgoods - Pedals

Tires - 45Nrth

45nrth.com/products/tires ... Wool • Pedals • Chronicles • Dealers • Safety • Technology • Contact. Tires ...

Footwear - 45Nrth

45nrth.com/products/footwear ... Pedals • Chronicles • Dealers • Safety • Technology • Contact. Footwear ...

45NRTH on Vimeo

https://vimeo.com/45nrth Vimeo 45North is built on real-world needs and knowledge. Our collection delivers unrivaled comfort and control through advanced technical design and effective use ... You've visited this page 2 times. Last visit: 12/2/15

45NRTH - Facebook

https://www.facebook.com/45NRTH/ 45NRTH, Minneapolis, Minnesota. 7682 likes · 208 talking about this. UNPARALLELED COLD WEATHER PERFORMANCE.

45nrth at Erik's Bike Shop

www.eriks bikeshop.com/45nrth/search Erik's Bike Shop FreeShipping • 45North Wolvhammer Winter Cycling Shoe 2016 ... 45Nrth Sturmfi 5 Gloves 2015 ... 45North Husker Du Ultra Light 120 tpi 26 x 4.0 Fat Bike Tire ...

45nrth | FAT-BIKE.COM

https://fat-bike.com/tag/45nrth/ Mar 30, 2015 - Our amigos at 45nrth sent us a set of these beauties just in time for a big old fat snow storm that dumped a foot of snow on the gnome-lands ...

Review: 45NRTH Wolvhammer boots | Dirt Rag

dirtmag.com/review-45nrth-wolvhammer-boots/ Feb 6, 2013 - The inner boot is lined with 45NRTH's Monster Fur, a super soft and warm layer that makes me think of some masochistic plush doll hugging ...

First Look: 45Nrth Fasterkatt Winter Cycling Boot - Gear Junkie

EXHIBIT E

EXHIBIT F

45NORTH WINS SECOND EUROBIKE AWARD WITH FASTERKATT SHOE

POSTED BY DAVID ON 08/28/13

45NORTH WINS SECOND EUROBIKE AWARD WITH FASTERKATT SHOE

FRIEDRICHSHAFEN, Germany – 45North’s recently-released [Fasterkatt](http://45nrth.com/products/softgoods/fasterkatt) (<http://45nrth.com/products/softgoods/fasterkatt>) shoe has been awarded a Eurobike Award for innovative design, making it two years in a row for the young brand that specializes in high-end winter cycling gear. In 2012 their Wölvhammer boot took the same prize, gaining immediate favor among experienced winter cyclists. This award for the new Fasterkatt shoe reflects 45North’s relentless commitment to deliver innovative products that provide an entirely new level of comfort and control when temperatures drop and winter sets in.

“Last year we covered the 0 – 25°F degree range with the Wölvhammer. With the Fasterkatt we created a shoe that excels in the 25-45°F degree range, when moisture control is just as important as temperature control,” said 45North Brand Manager David Gabrys. The Fasterkatt is constructed with a rubberized outer shell, a waterproof-breathable membrane and a water resistant zipper to accomplish this. “We expect this shoe to be attractive to the cyclocross crowd so we designed it to have a performance fit with insoles that provide arch support as well. It will feel much different on the users foot than the roomy Wölvhammer”, explained Gabrys.

The award will be presented August 28th at the Eurobike show in Friedrichshafen, Germany. The Fasterkatt shoe will displayed in the awards foyer at the main entrance of Eurobike, as well as the Cosmic Sports booth in hall B-1.





CHRONICLE CATEGORIES

Aerogel (4) (<http://45nrth.com/chronicles/archives/category/aerogel>)

Arrowhead 135 (1) (<http://45nrth.com/chronicles/archives/category/arrowhead-135>)

Bergraven Gaiters (3) (<http://45nrth.com/chronicles/archives/category/bergraven-gaiters>)

Cobrafist (1) (<http://45nrth.com/chronicles/archives/category/cobrafist>)

Cyclocross (2) (<http://45nrth.com/chronicles/archives/category/cyclocross>)

Dillinger (9) (<http://45nrth.com/chronicles/archives/category/dillinger>)

Dunderbeist (1) (<http://45nrth.com/chronicles/archives/category/dunderbeist>)

Events (7) (<http://45nrth.com/chronicles/archives/category/events>)

Fasterkatt (4) (<http://45nrth.com/chronicles/archives/category/fasterkatt>)

Fatbike Tires (7) (<http://45nrth.com/chronicles/archives/category/fatbike-tires>)

Fatbikes (12) (<http://45nrth.com/chronicles/archives/category/fatbikes>)

Finland (4) (<http://45nrth.com/chronicles/archives/category/finland>)

Flowbeist (1) (<http://45nrth.com/chronicles/archives/category/flowbeist>)

Gaiters (3) (<http://45nrth.com/chronicles/archives/category/gaiters>)

Great Lakes Fatbike Series (3) (<http://45nrth.com/chronicles/archives/category/great-lakes-fatbike-series>)

Groomed Singletrack (3) (<http://45nrth.com/chronicles/archives/category/groomed-singletrack>)

Hüsker Dü (7) (<http://45nrth.com/chronicles/archives/category/huesker-due>)

Jay Petervary (5) (<http://45nrth.com/chronicles/archives/category/jay-petervary>)

Jaztronauts (2) (<http://45nrth.com/chronicles/archives/category/jaztronauts>)

News (7) (<http://45nrth.com/chronicles/archives/category/news>)

Photography (1) (<http://45nrth.com/chronicles/archives/category/photography>)

Pogies (2) (<http://45nrth.com/chronicles/archives/category/pogies>)

Studded Bicycle Tires (4) (<http://45nrth.com/chronicles/archives/category/studded-bicycle-tires>)

Sturmfiist (2) (<http://45nrth.com/chronicles/archives/category/sturmfiist>)

Technology (5) (<http://45nrth.com/chronicles/archives/category/technology>)

Toni Lund (4) (<http://45nrth.com/chronicles/archives/category/toni-lund>)

Vanhelga (4) (<http://45nrth.com/chronicles/archives/category/vanhelga>)

Winter Bicycle Commuting (5) (<http://45nrth.com/chronicles/archives/category/winter-bicycle-commuting>)

Winter Cycling Footwear (12) (<http://45nrth.com/chronicles/archives/category/winter-cycling-footwear>)

Wölvhammer (24) (<http://45nrth.com/chronicles/archives/category/woelvhammer>)

Women's Team (1) (<http://45nrth.com/chronicles/archives/category/womens-team>)

Xerxes (2) (<http://45nrth.com/chronicles/archives/category/xerxes>)

Safety & Support (<http://45nrth.com/safety>) • **Technology** (<http://45nrth.com/technology>) • **Contact** (<http://45nrth.com/contact>) • © 45NRTH

EXHIBIT G

EXHIBIT H



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About

45° NORTH® | Live Life Unparalleled

45° North is an apparel company all about showing love for where you live. Naturally, the company was born in our home town of Traverse City, Michigan. Traverse City happens to be located on the 45th parallel, hence our name, 45° North.

We wanted a fresh and unique way to show our love for Traverse City and Michigan, rather than having to resort to wearing low quality, boring and mass produced touristy t-shirts. So, we decided to create original, locally inspired designs and print them on the highest quality and most comfortable garments we could find. We are also proud to say that a large percentage of the products we carry are USA made.



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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and accurate copy of the foregoing was served via regular U.S. Mail this 22nd day of January, 2016 upon the following:

Christopher Civil
LegalForce RAPC Worldwide
451 N. Shoreline Blvd.
Mountain View, CA 95043

Dated: January 22, 2016

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