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

Proceeding	92067794
Party	Plaintiff Joshua S. Schoonover
Correspondence Address	JOSHUA S SCHOONOVER COASTAL PATENT LAW GROUP PC PO BOX 131299 CARLSBAD, CA 92013 UNITED STATES Primary Email: LawGroup@CoastalPatent.com 858-565-4730
Submission	Testimony For Plaintiff
Filer's Name	Joshua S. Schoonover
Filer's email	lawgroup@coastalpatent.com
Signature	/Joshua S. Schoonover/
Date	03/14/2021
Attachments	Cunningham Christopher 02-12-2021 Depo-Full_Confidential_Redacted.pdf (384500 bytes ) Cunningham Christopher 02-12-2021 Exhibit 13_Confidential_Redacted.pdf (4737897 bytes )

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

In the Matter of Reg. No. 2,207,535 issued on 12/1/98  
and Reg. No. 3,598,502 issued on 3/31/99

JOSHUA S. SCHOONOVER,	)	
	)	
Petitioner,	)	Cancellation No.
	)	92067794 (parent)
vs.	)	Cancellation No.
	)	92069499
THE BURTON CORPORATION,	)	
	)	
Registrant.	)	

Oral deposition of CHRISTOPHER CUNNINGHAM, held  
via Zoom, on Friday, February 12, 2021, commencing at 1:55  
p.m., before Lisa Bishop, a Registered Professional  
Reporter, Registered Merit Reporter, and Notary Public.

**CERTIFIED  
TRANSCRIPT**

1 APPEARANCES:

2 For the Petitioner,

3 ROBIN PHILLIPS, ESQ.  
4 Phillips Lex  
11755 Wilshire Blvd., Suite 1250  
Los Angeles, CA 90025  
5 213-340-5324  
robin.phillips@phillipslex.com  
6

7 For the Registrant,

8 EVAN J. O'BRIEN, ESQ.  
Downs Rachlin Martin, PLLC  
9 199 Main Street  
Burlington, VT 05401  
10 802-846-8602  
eobrien@drm.com  
11

12 ALSO PRESENT:

13 Joshua S. Schoonover  
14 Sonya Sibold  
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EXAMINATION INDEX

CHRISTOPHER CUNNINGHAM

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EXHIBIT INDEX

13 Declaration 6

(Exhibits included in original and copies.)

1 CHRISTOPHER CUNNINGHAM, having been duly sworn by the  
2 Notary Public, was examined and testified as follows:

3 EXAMINATION BY ATTY. PHILLIPS:

4 Q Good afternoon, Mr. Cunningham. My name is Robin  
5 Phillips and I am here appearing for the petitioner, Joshua  
6 Schoonover, who is also on the line with us and I'm going  
7 to be asking you a couple of questions. Have you ever  
8 testified before?

9 A Yes.

10 Q So you know the drill, I will ask you questions,  
11 you answer, your lawyer will object?

12 A Yes.

13 Q All right. In this case, I'm going to be asking  
14 you questions regarding the case between Joshua Schoonover  
15 and the Burton Corporation which is pending in the  
16 Trademark Trial and Appeal Court or before the Trademark  
17 Trial and Appeal Court and I will be referring to the  
18 Burton Corporation as Burton, okay?

19 A Okay.

20 Q And if you don't understand any questions, just  
21 like when you testified previously, you let me know and I  
22 will explain, okay?

23 We have a court reporter with us today, just like  
24 when you testify in court, and she's taking down everything  
25 that you say, so please speak your answers. Don't nod or

1 shake your head because the court reporter can't take down  
2 nods or shakes of the head, okay? Is that all right with  
3 you?

4 A Yes.

5 Q All right. If you don't know the answer to any of  
6 my questions, don't guess or speculate. Just let me know.  
7 And please don't speak over me. The court reporter can  
8 only take down one person speaking at a time, so I will ask  
9 a question and then you will answer and we will do our best  
10 not to speak over each other, okay?

11 A Okay.

12 Q All right. Your testimony today is under oath  
13 just the same as if you were in a court of law. Do you  
14 understand that?

15 A Yes.

16 Q Is there any reason you can't give full and  
17 complete testimony today?

18 A No.

19 Q All right. You've been employed at Burton since  
20 August of 2000; is that correct?

21 A Yes.

22 Q That's 21 years; is that right?

23 A Yes.

24 Q That's a long time. Is this the first job and  
25 only job you ever had?

1           A     After college, yes.

2           Q     Wow. You submitted a declaration in this case,  
3 right?

4           A     Yes.

5           Q     All right. I'm going to upload that into the  
6 chat.

7           (Exhibit No. 13, Declaration, marked for  
8 identification.)

9                     Can you see the chat?

10          A     Yep. You want me to download it?

11          Q     Yes, I uploaded a document that's Exhibit No. 13.  
12 Do you see it?

13          A     Yes.

14          Q     All right. Let us know when you have opened that.

15          A     Okay, I have it open.

16          Q     For the record, I'm showing the witness what's  
17 been marked as Exhibit No. 13 which is a 23-page document  
18 that is a declaration by the deponent along with  
19 the exhibits that went along with that declaration. I want  
20 to just direct you -- do you recognize Exhibit 13?

21          A     Yes.

22          Q     Is that the declaration that you provided in this  
23 case?

24          A     Yes.

25          Q     And is Exhibit 13 a true and correct copy of that

1 declaration?

2 A I believe so.

3 Q All right. Take a look at the second page,  
4 paragraph five, where you say during the spring of 2016, I  
5 was one of several members of Burton's management team who  
6 evaluated a proposal to license Forum to [REDACTED]  
7 [REDACTED]. Did I read that correctly?

8 A Yes.

9 Q So [REDACTED] is a Chinese company, correct?

10 A Correct.

11 Q And the 2016 proposal from [REDACTED] that you  
12 discussed in your declaration, that was a proposal for  
13 Burton to license the Forum mark in China, correct?

14 A Correct.

15 Q [REDACTED] was then going to produce goods in China  
16 and sell those goods in China under the Forum mark  
17 according to this 2016 proposal; is that correct?

18 A Correct.

19 Q So [REDACTED] was not going to be selling any Forum  
20 products in the United States, correct?

21 A We didn't discuss that intent.

22 Q I mean [REDACTED] was a Chinese company, they were  
23 not coming to you saying we are going to produce and sell  
24 in the United States, correct?

25 A The original intent was to sell in China.



1           Q     Did you ever discuss with [REDACTED] potentially  
2     selling in the United States?

3           A     I can't recall.

4           Q     Now the 2016 proposal from [REDACTED] that you  
5     discussed in your declaration, Burton rejected that  
6     proposal, correct?

7           A     Yes.

8                     MR. PHILLIPS:  Nothing further.  Evan, anything  
9     from you?

10                    MR. O'BRIEN:  Can I -- can I take two minutes to  
11     think about it, Robin, off the record?

12                    MR. PHILLIPS:  Sure.

13                    MR. O'BRIEN:  Thanks.

14                             (A short break was taken.)

15                    MR. O'BRIEN:  Chris, I don't have anything, so we  
16     will let you go.

17                             (Discussion off the record.)

18                    MR. O'BRIEN:  This is Evan O'Brien.  I apologize,  
19     I didn't say this earlier.  I have reserved my objections  
20     except as to form.

21                    MR. PHILLIPS:  Nothing further for Mr.  
22     Cunningham.

23                             (Time noted:  2:07 P.M.)

24

25

C E R T I F I C A T E

I, Lisa S. Bishop, RPR, RMR, a Notary Public,  
hereby certify that the within-named deponent was sworn to  
testify the truth, the whole truth, and nothing but the  
truth, in the aforementioned cause of action.

I further certify that this deposition was  
stenographically reported by me and later reduced to print  
through Computer-Aided Transcription, and the foregoing is  
a full and true record of the testimony given by the  
deponent.

I further certify that I am a disinterested  
person in the event or outcome of the above-named cause of  
action.

IN WITNESS WHEREOF, I subscribe my hand  
this 25th day of February, 2021.



Lisa S. Bishop, RPR, RMR, Notary Public

My Commission Expires: January 27, 2023

WITNESS CERTIFICATION

I hereby certify that I have read the foregoing transcript of my deposition testimony, and that my answers to the questions propounded, with the attached corrections or changes, if any, are true and correct.

DATE: \_\_\_\_\_ CHRISTOPHER CUNNINGHAM: \_\_\_\_\_

PRINTED NAME: \_\_\_\_\_

SCHOONOVER  
vs.  
THE BURTON CORPORATION

Errata Sheet

NAME OF CASE: SCHOONOVER vs THE BURTON CORPORATION

DATE OF DEPOSITION: 02/12/2021

NAME OF WITNESS: CHRISTOPHER CUNNINGHAM

Reason Codes:

1. To clarify the record.

2. To conform to the facts.

3. To correct transcription errors.

Page \_\_\_\_\_ Line \_\_\_\_\_ Reason \_\_\_\_\_

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Page \_\_\_\_\_ Line \_\_\_\_\_ Reason \_\_\_\_\_

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

In the Matter of Reg. No. 2,207,535 issued on December 1, 1998  
and Reg. No. 3,598,502 issued on March 31, 1999

-----X	:	
Joshua S. Schoonover,	:	
	:	
Petitioner,	:	Cancellation No. 92067794 (parent)
	:	Cancellation No. 92069499
-against-	:	
	:	
The Burton Corporation	:	
	:	
Registrant.	:	
-----X	:	

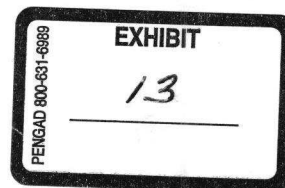
**TESTIMONY DECLARATION OF CHRISTOPHER L. CUNNINGHAM**

I, Christopher L. Cunningham, declare as follows:

1. My name is Christopher L. Cunningham. I am over the age of 18 and understand the obligations of an oath. I make this Declaration in opposition to the pending Petition to Cancel U.S. Reg. 2,207,535 for the mark FORUM. This Declaration is based upon my personal knowledge.

2. I have been employed by The Burton Corporation ("Burton") since August 2000. I am currently the Senior Vice President of Global Product, a position I have held since February 2018. Prior to holding my current position, I was Vice President of Global Product from February 2016 to February 2018, Vice President of Hardgoods from May 2015 to February 2016, and Senior Business Unit Director for Boards and Bindings from January 2011 to May 2015.

3. As Senior Vice President of Global Product and previously as Vice President of Global Product, I have been responsible for the teams that designed, produced, and developed all





of the products sold and offered for sale under the FORUM brand. I have worked closely on the FORUM brand since Burton acquired it.

4. I understand that in this proceeding, Petitioner contends that after approximately 2012, Burton intended to cease, and did cease, commercial use of FORUM. Based on my personal knowledge and involvement with the FORUM brand, I disagree with this contention. It was never my understanding that Burton intended to cease commercial use of FORUM and I know that such commercial use took place after 2012. In addition to selling FORUM products for several fiscal years after 2012, Burton also evaluated potential opportunities to license FORUM.

5. During the spring of 2016, I was one of several members of Burton's management team who evaluated a proposal to license FORUM to [REDACTED] [REDACTED] [REDACTED].

6. My colleague Eric Gaisser communicated primarily with representatives of [REDACTED] and he was provided an outline of [REDACTED]'s licensing proposal on April 29, 2016, which Mr. Gaisser forwarded to me. On May 1, 2016, I responded to Mr. Gaisser requesting that [REDACTED] provide a business plan for Burton's review. Attached hereto as **Exhibit 1** (BUR\_00013-14) is a true and correct copy of my email correspondence with Mr. Gaisser on April 29 and May 1, 2016, which we engaged in during the regular course of business using our work email accounts. Mr. Gaisser thereafter received a business plan, profit and loss statements, and other materials from [REDACTED] for Burton's evaluation.

7. On May 23, 2016, I forwarded these materials to John Lacy and Craig Smith, two members of Burton's senior management, for their evaluation and sought to gauge their interest and/or concerns on such a licensing deal. Attached hereto as **Exhibit 2** (BUR\_00023-31) is a

true and correct copy of my email correspondence to Messrs. Lacy (Burton's then-President) and Smith on May 23, 2016, which I engaged in during the regular course of business using my work email account.


8. Along with other executives at Burton, I continued to evaluate a potential licensing deal of the FORUM brand with [REDACTED] in the ordinary course of trade and gave it thoughtful consideration.

9. Ultimately, however, Burton opted not to enter into such a licensing deal. On June 21, 2016, I informed Mr. Gaisser of Burton's decision. Attached hereto as **Exhibit 3** (BUR00032-34) is a true and correct copy of my email correspondence with Mr. Gaisser on June 21, 2016, which we engaged in during the regular course of business using our work email accounts.

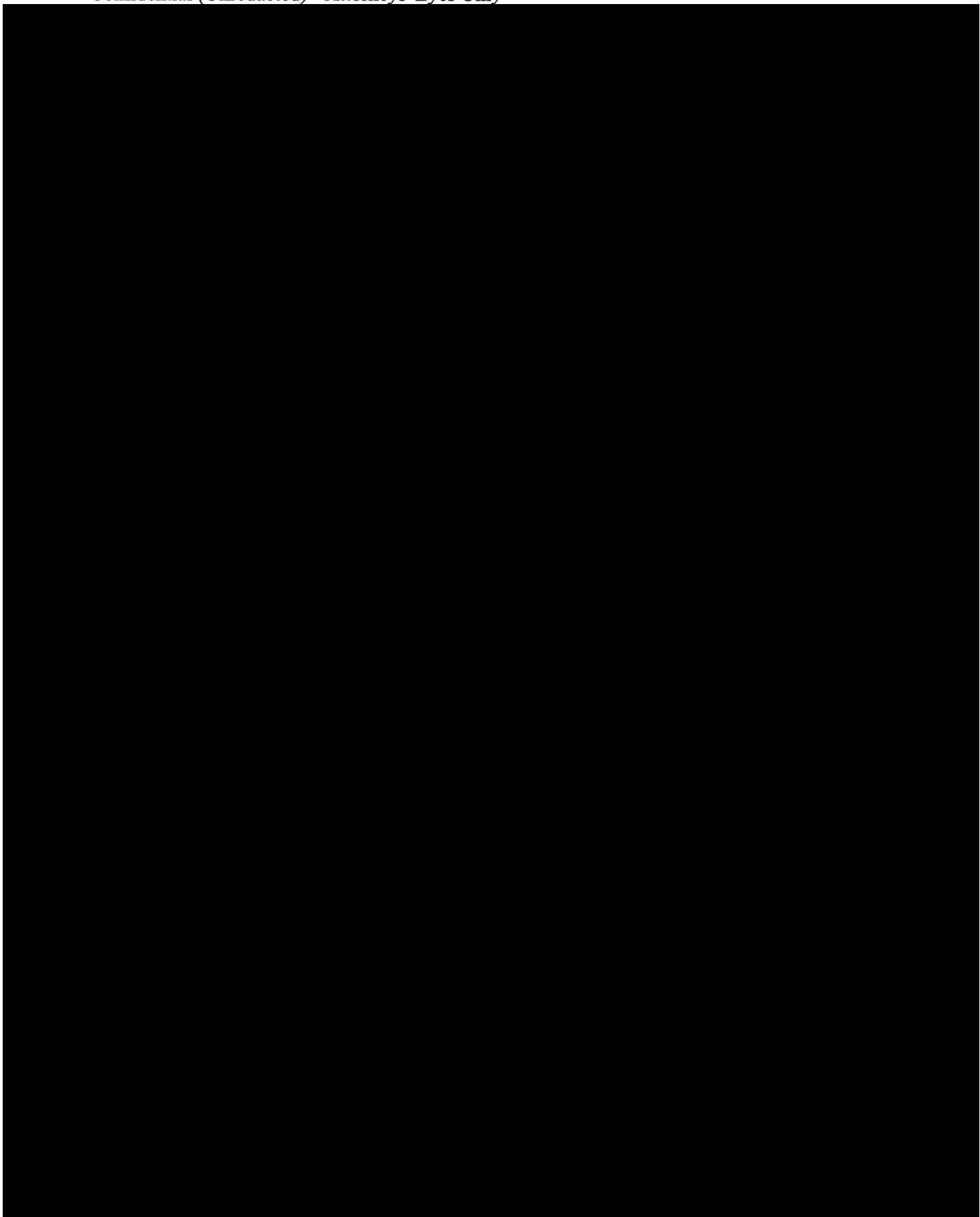
10. Furthermore, Burton entered into a deal in 2018 with [REDACTED], [REDACTED] to sell FORUM snowboards on a limited release in the winter of 2019. Attached hereto as **Exhibit 4** (BUR\_00039) is a true and correct copy of specifications dated March 1, 2019 depicting the FORUM snowboards ("Destroyer" and "Youngblood") that Burton sold to [REDACTED].

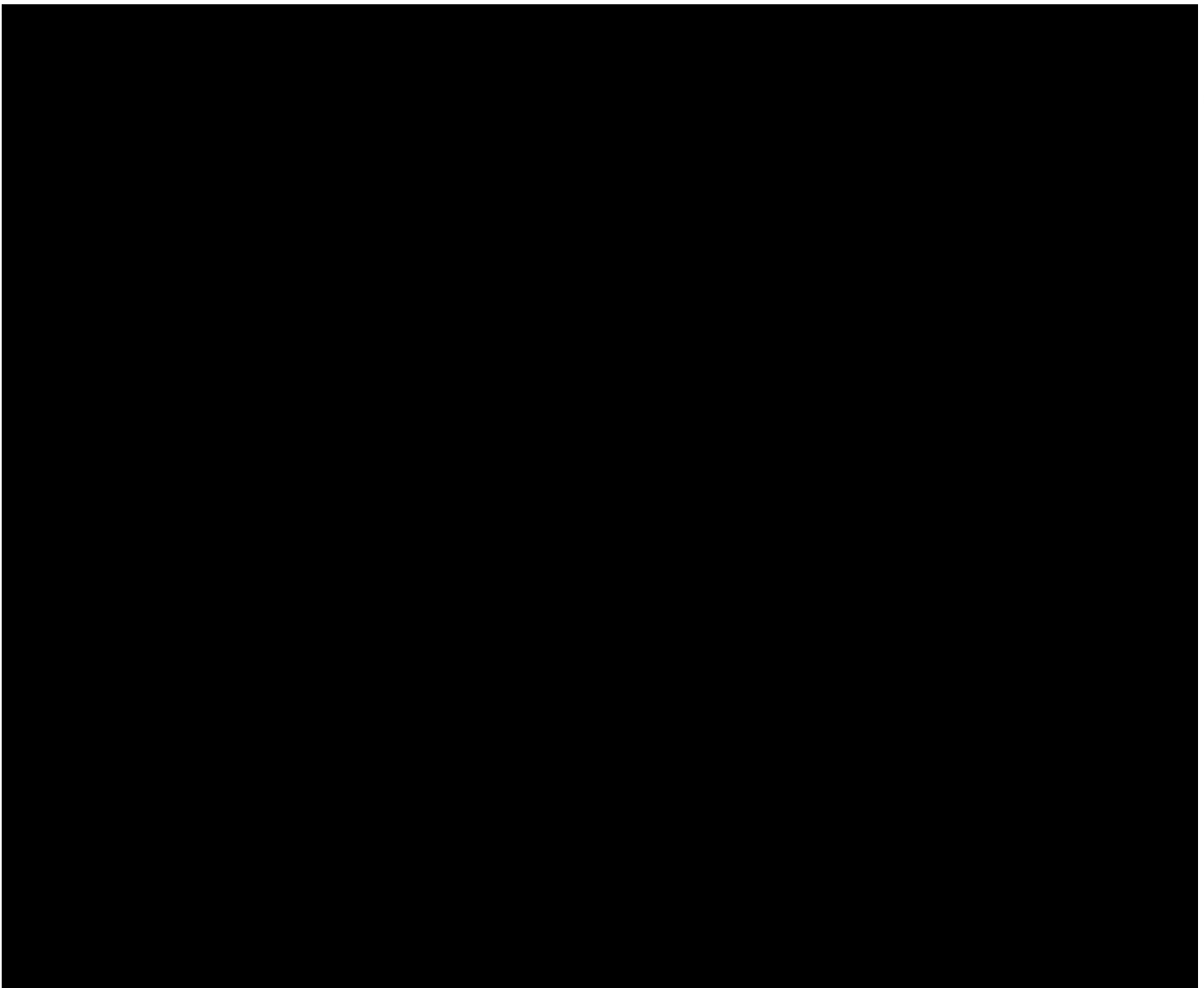
Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

Executed this 17th day of December, 2020.

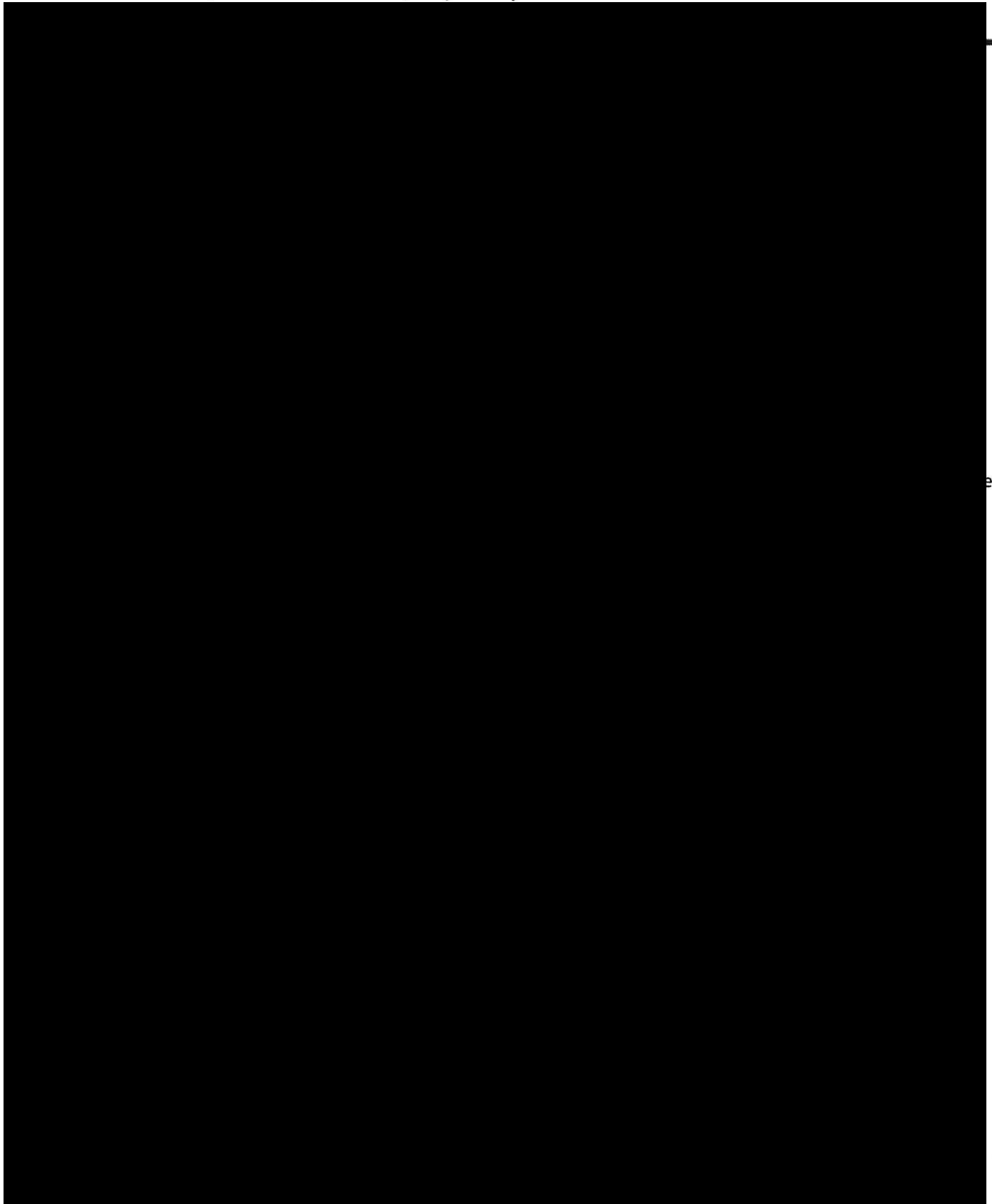
  
\_\_\_\_\_  
Christopher L. Cunningham

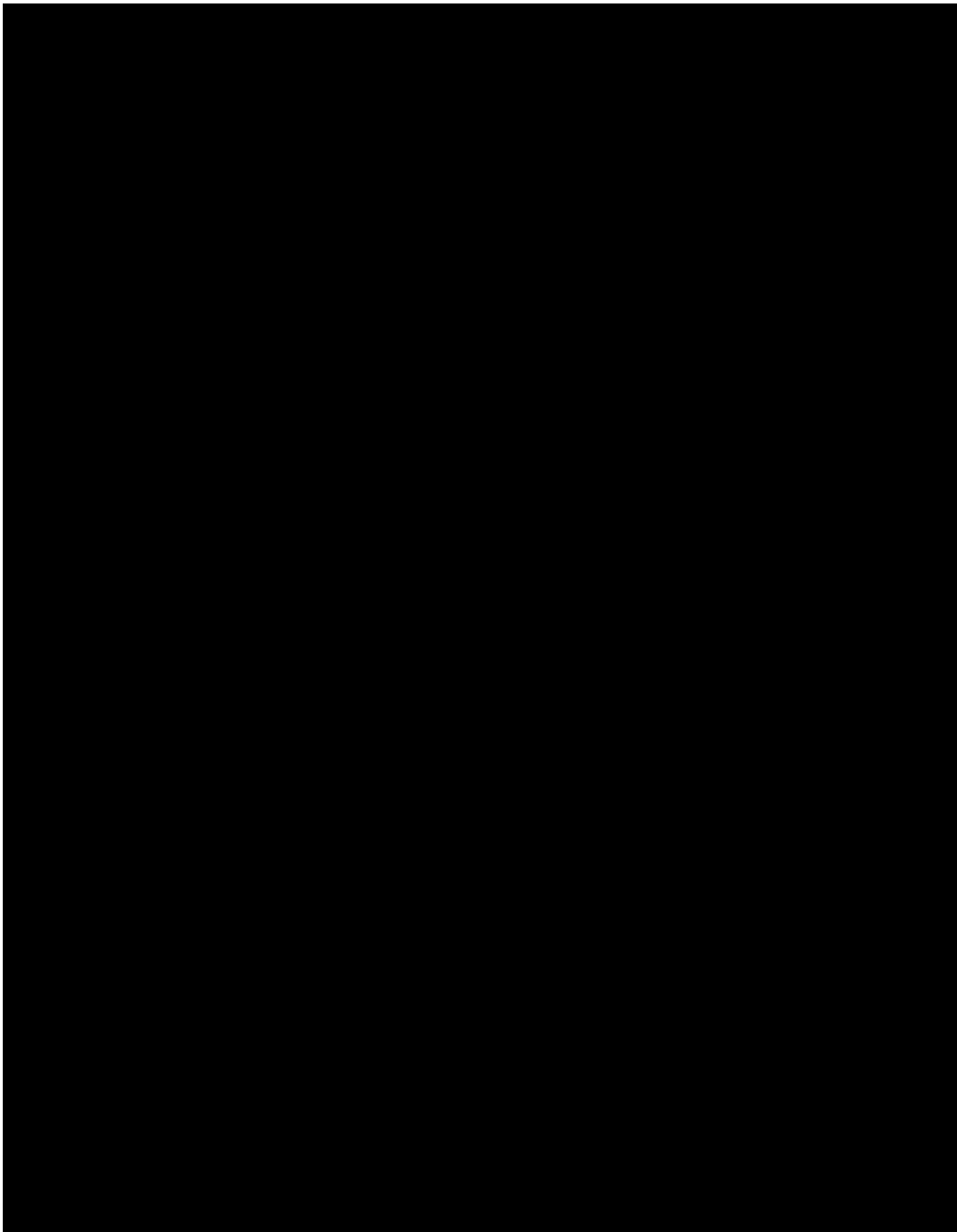
## EXHIBIT 1





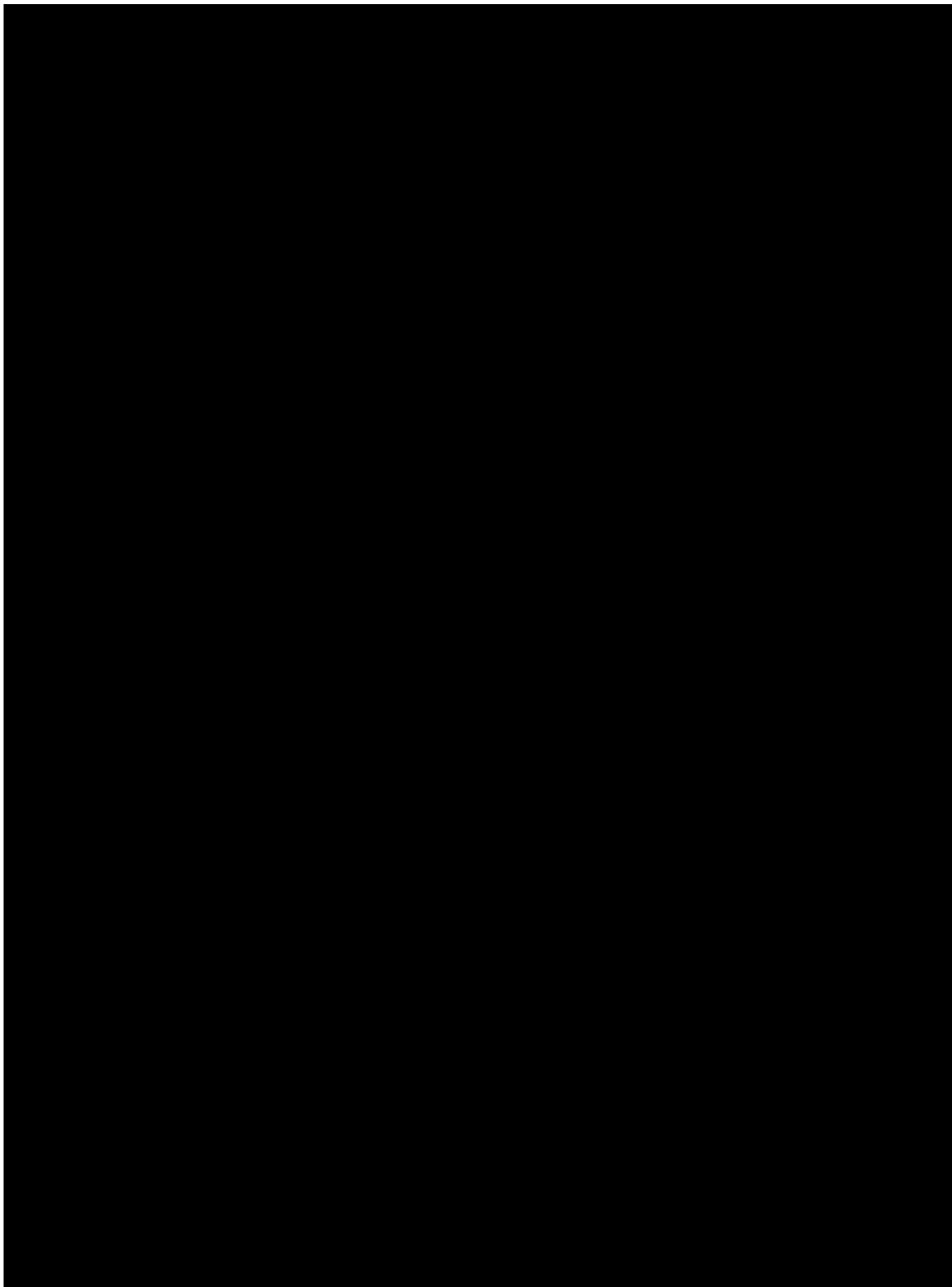
## EXHIBIT 2

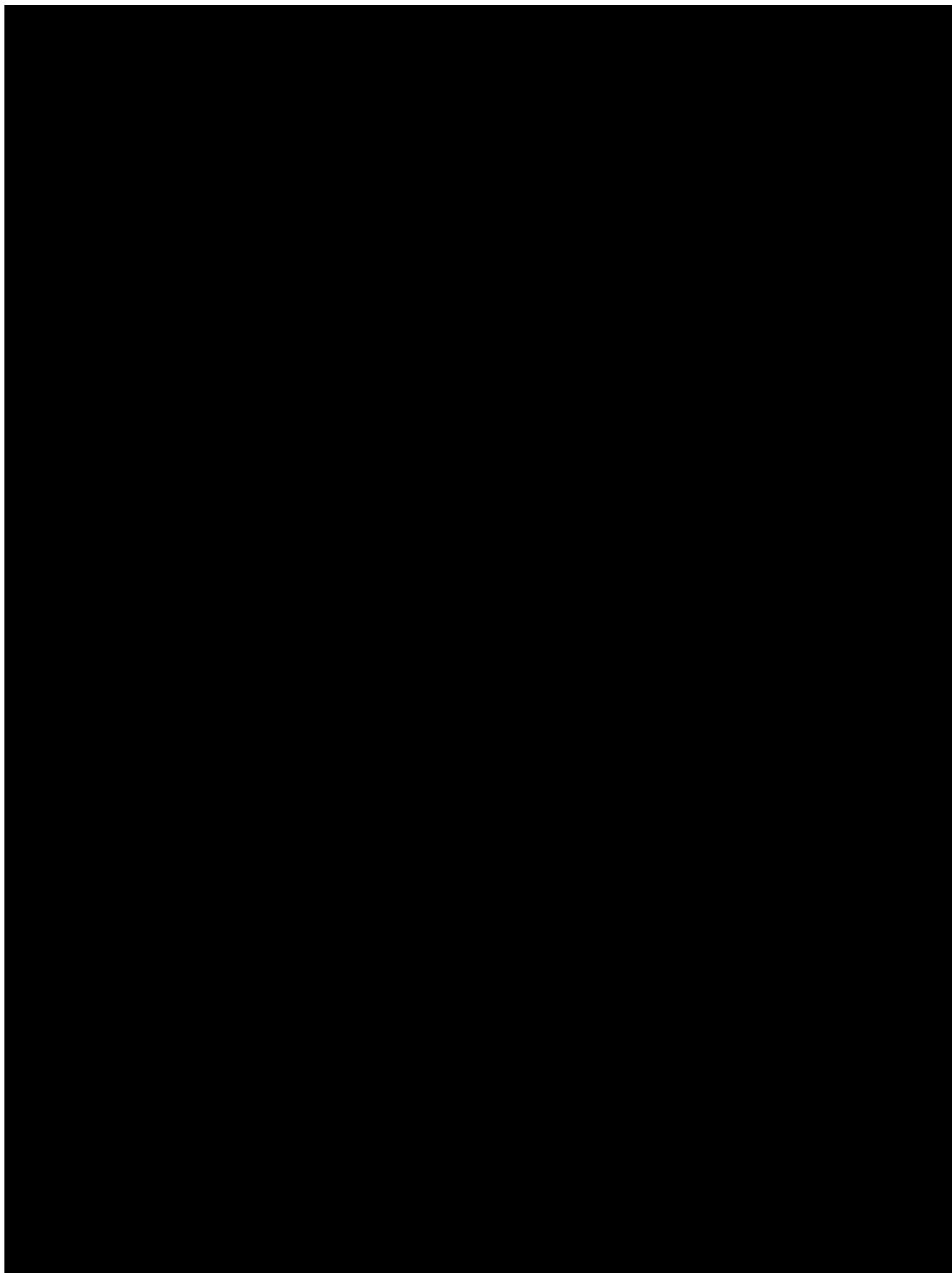


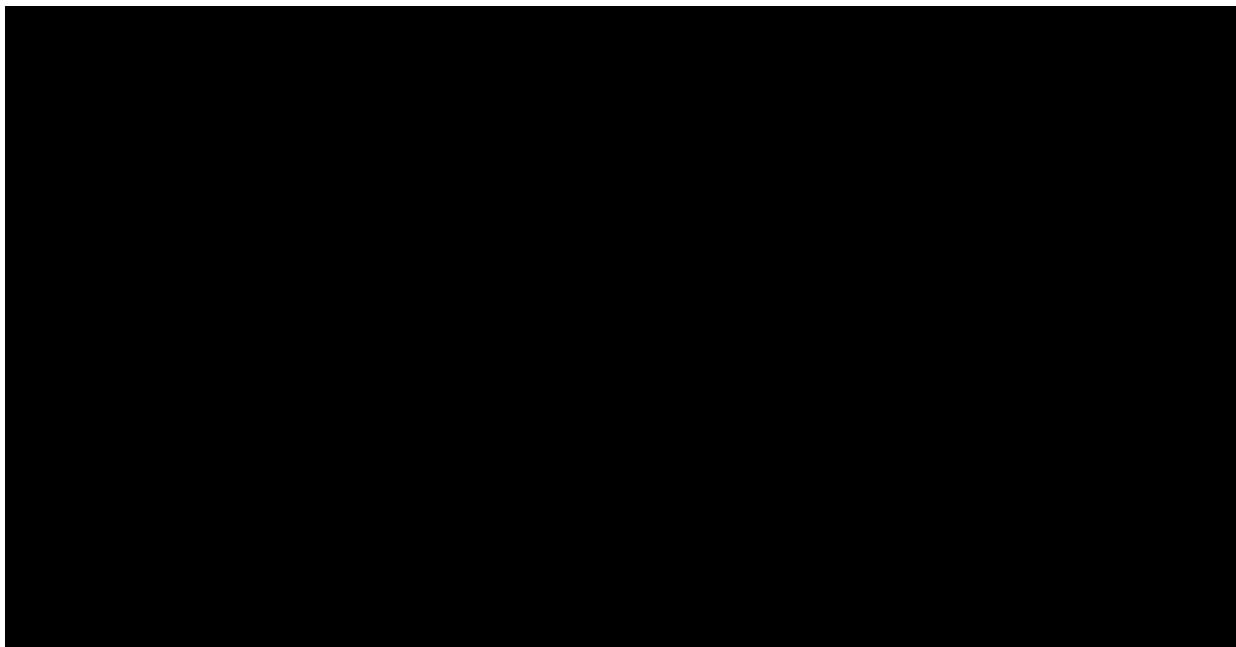


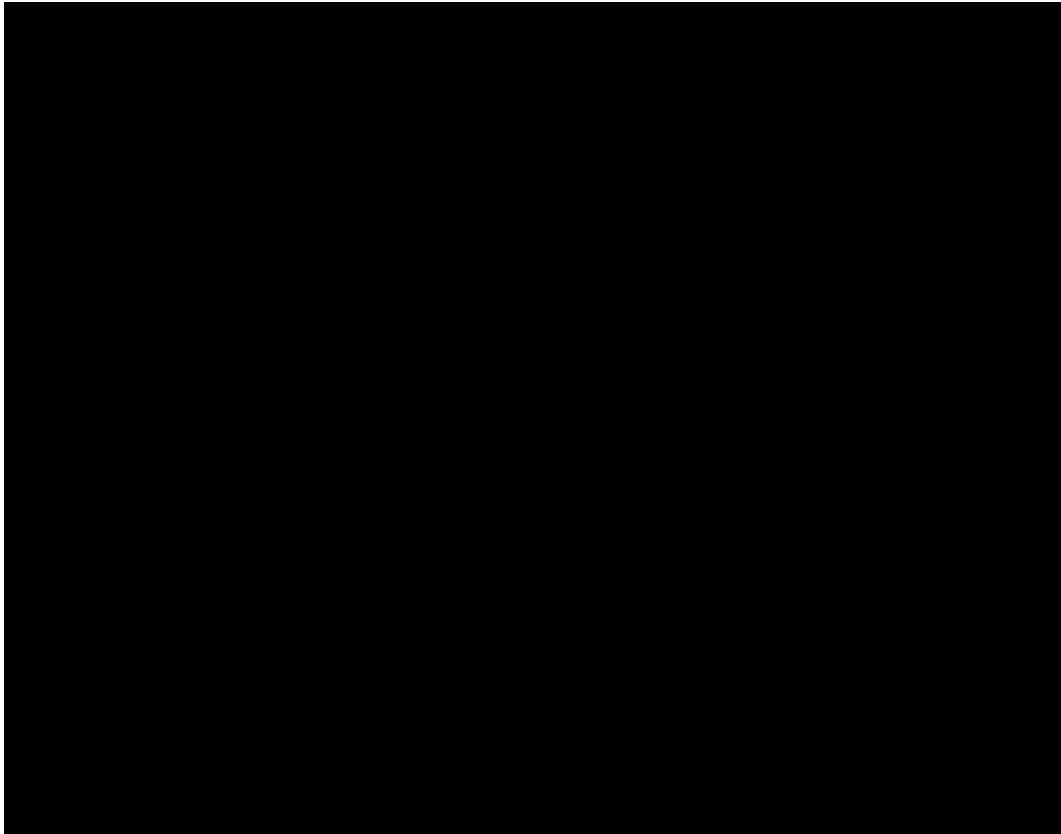


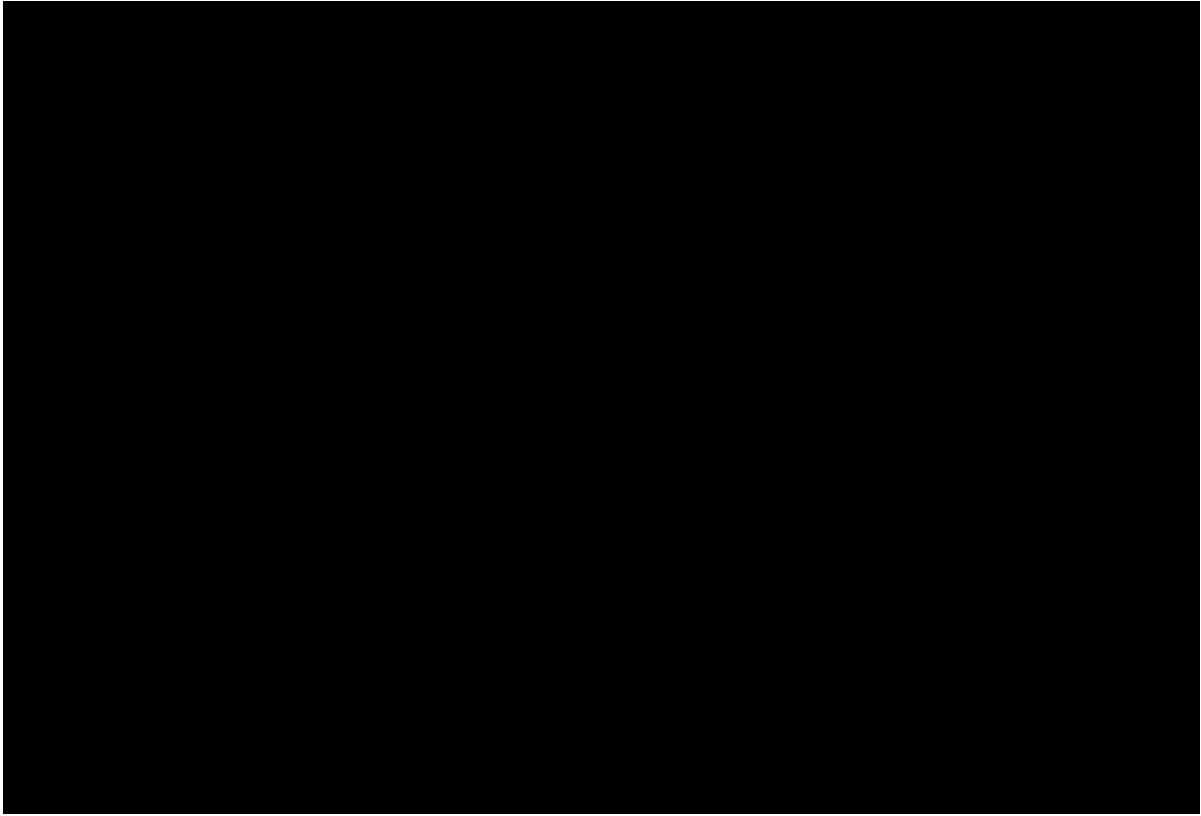


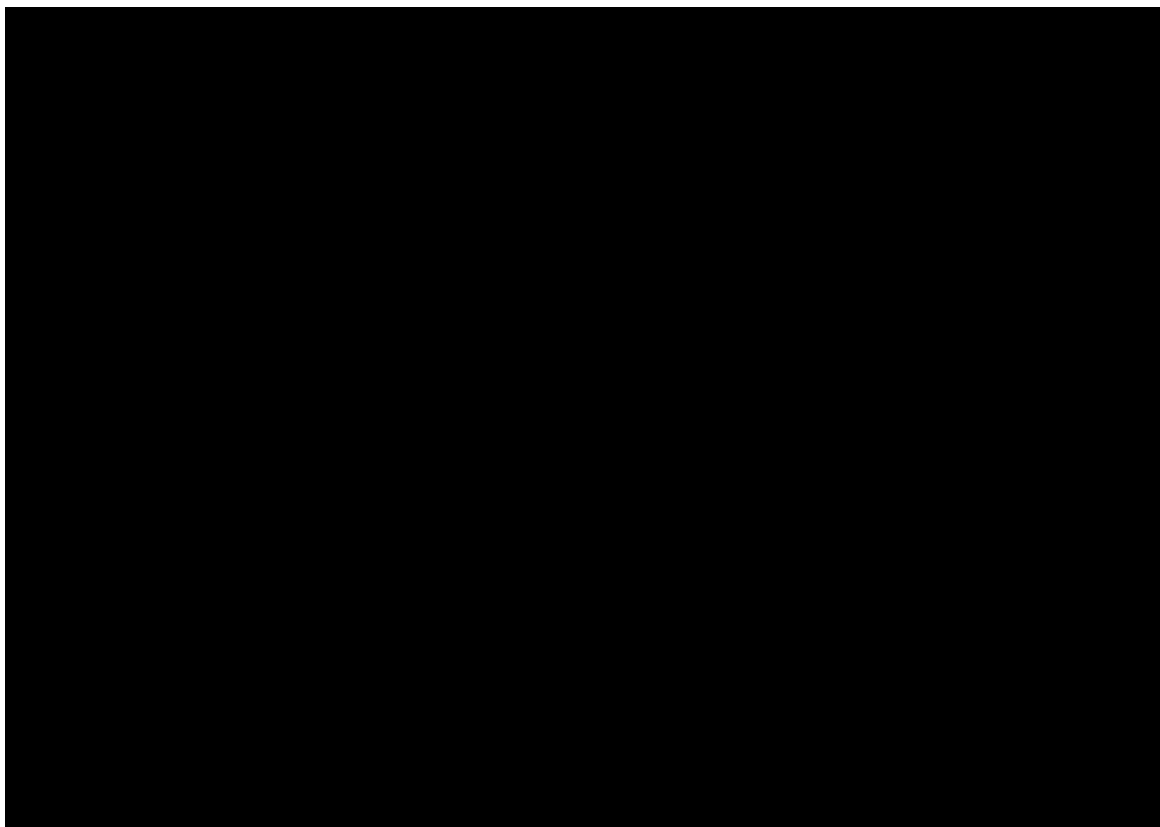






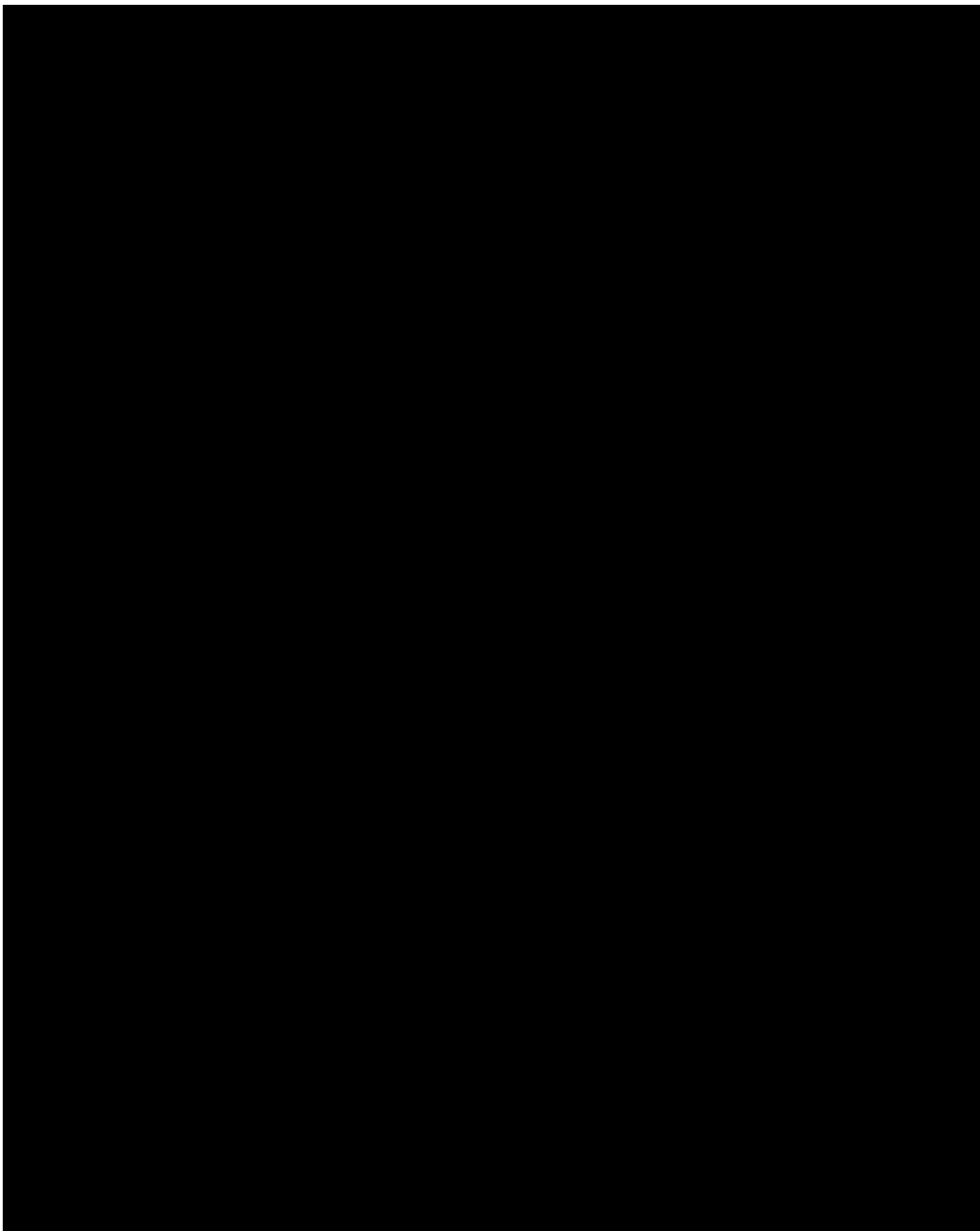


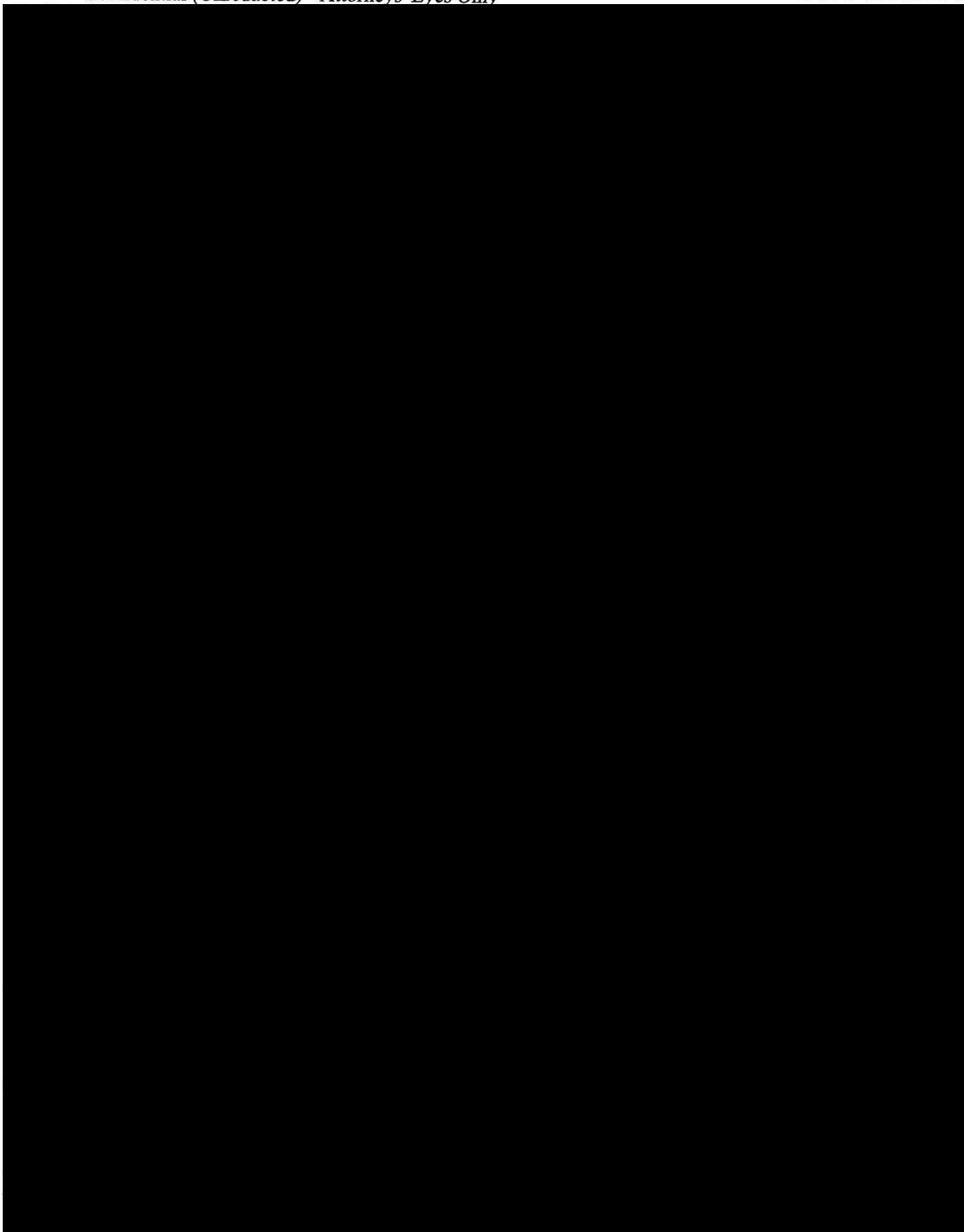


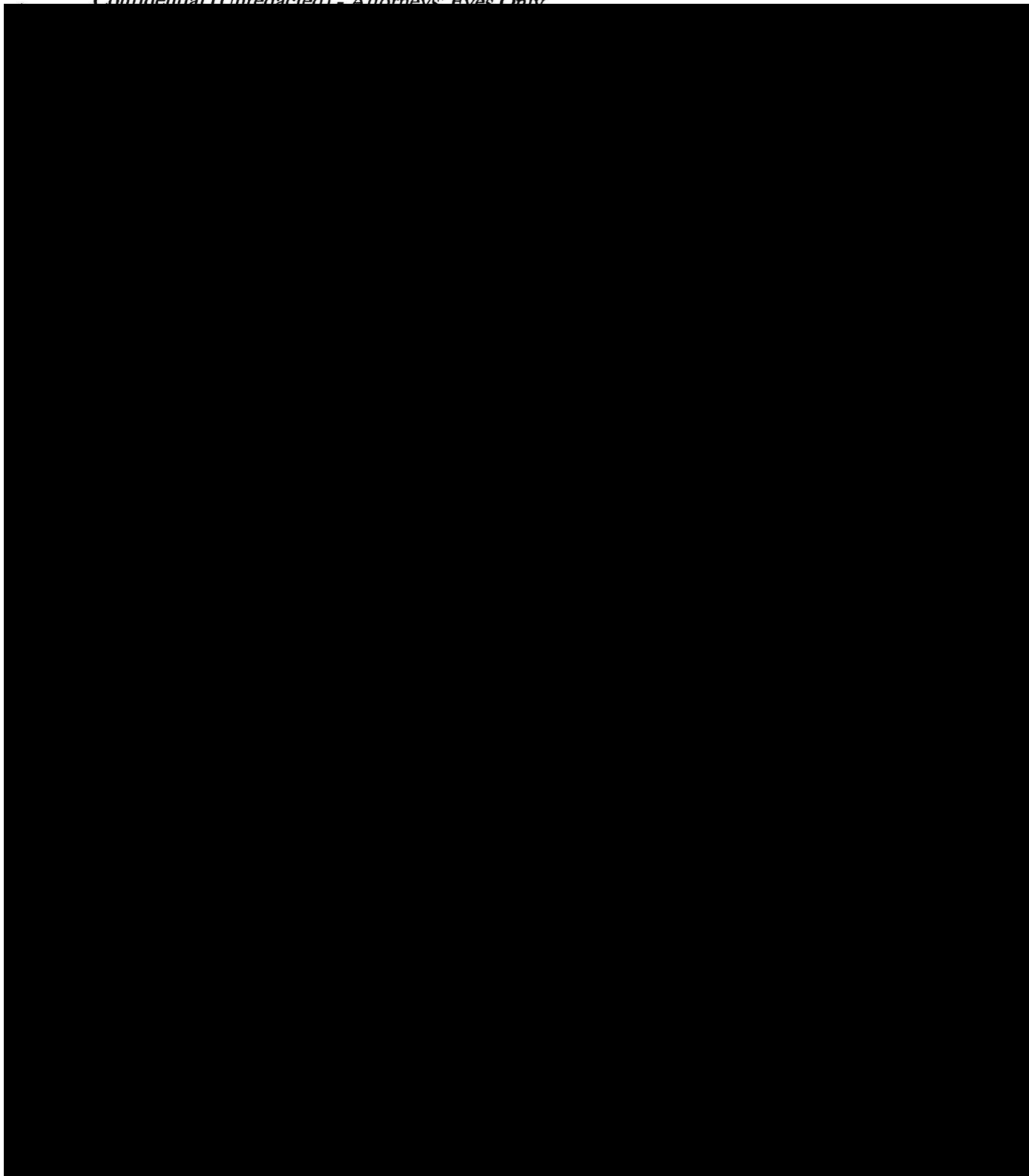


## EXHIBIT 3







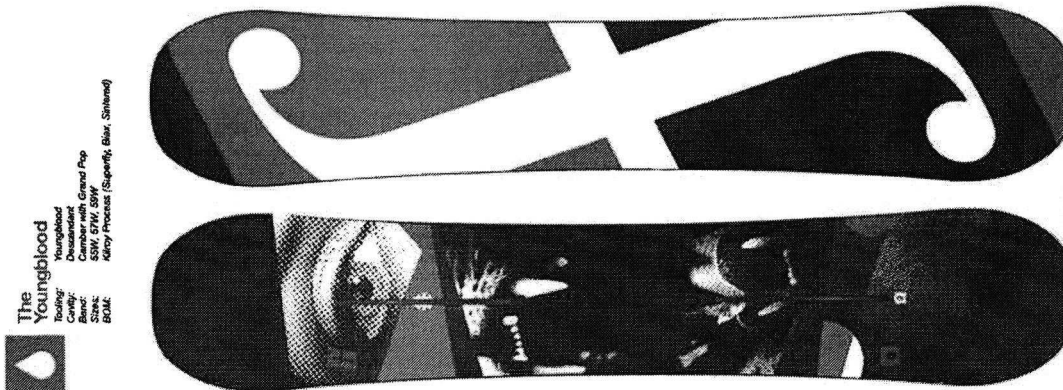


## EXHIBIT 4



**The Record**  
 Top: Record  
 Bottom: Record  
 Binding: Record  
 Size: 54, 56, 58  
 Shape: Record (Fly, Star, Extended)

\$240 Whsl  
 \$449 Retail



**The Youngblood**  
 Top: Youngblood  
 Bottom: Youngblood  
 Binding: Youngblood  
 Size: 54, 56, 58  
 Shape: Youngblood (Super Fly, Star, Extended)

\$270 Whsl  
 \$449 Retail



**The Destroyer**  
 Top: Destroyer  
 Bottom: Destroyer  
 Binding: Destroyer  
 Size: 54, 56, 58  
 Shape: Destroyer (Super Fly, Star, Extended)

**Forum Snowboards**  
 Winter 2019  
 3.1.2019

**CERTIFICATE OF SERVICE**

I hereby certify that on December 18, 2020, a true and correct copy of the foregoing document entitled **TESTIMONY DECLARATION OF CHRISTOPHER L. CUNNINGHAM**, was served on Petitioner Joshua S. Schoonover, by emailing said copy to: lawgroup@coastalpatent.com.

/s/ Jennifer Parent  
Jennifer Parent