

IN THE COMPETITION APPEAL COURT OF SOUTH AFRICA**Case No: 259/CAC/ Oct24**

In the matter between:

CAPITAL NEWSPAPERS (PTY) LTD	First Applicant
CAXTON & CTP PUBLISHERS & PRINTERS LIMITED	Second Applicant
and	
MEDIA24 HOLDINGS LIMITED	First Respondent
NOVUS HOLDINGS LIMITED	Second Respondent
NOVUS PRINT PROPRIETARY LIMITED	Third Respondent
FREE 4 ALL PROPRIETARY LIMITED	Fourth Respondent
INTREPID PRINTERS PROPRIETARY LIMITED	Fifth Respondent
VICTORY TICKET 376 PROPRIETARY LIMITED	Sixth Respondent
MEDIA24 PROPRIETARY LIMITED	Seventh Respondent
THE COMPETITION COMMISSION	Eighth Respondent
THE MINISTER OF TRADE, INDUSTRY AND COMPETITION	Ninth Respondent

NOTICE OF MOTION

PART A: URGENT APPLICATION

PLEASE TAKE NOTICE that the applicants intend to make application to the above Honourable Court on a date to be arranged with the Registrar for an order in the following terms:

1. This application shall be heard as an urgent application. Any non-compliance with the Competition Appeal Court Rules relating to service and time periods for the filing of documents is condoned.
2. Pending the final adjudication of the relief that will be sought in Part B of this application, including any appeal proceedings:
 - 2.1. the first to seventh respondents are interdicted from taking any steps to implement the proposed merger between Novus Print Proprietary Limited; Free 4 All Proprietary Limited; Intrepid Printers Proprietary Limited; Victory Ticket 376 Proprietary Limited and the Media Supply Chain Management Division operated and conducted by Media24 Proprietary Limited, referred to as "*On The Dot*", the local news portfolio of Media24; and the Football Publication Division of Media24 titled "*Soccer Laduma And Kick Off*" ("**the merger**"); and
 - 2.2. the decision by the Competition Commission to approve the merger is stayed and suspended.
3. The costs of Part A of this application, including the costs of three counsel, are to be paid jointly and severally by any respondents opposing it.
4. Further and/or alternate relief.

PART B: REVIEW APPLICATION

PLEASE TAKE NOTICE that the applicants intend to make application to the Competition Appeal Court on a date and at a time to be determined by the Registrar for an order as follows:

1. Declaring the Competition Commission's decision to approve the merger inconsistent with the Constitution and invalid.
2. Reviewing and setting aside the Competition Commission's decision to approve the merger.
3. Directing that the costs of Part B of this application, including the costs of three counsel, are to be paid jointly and severally by any respondents opposing it.
4. Further and/or alternate relief.

TAKE NOTICE FURTHER THAT the affidavit of **RIQUADEAU JACOBS**, filed together with this Notice of Motion, will be used in support of this application.

TAKE NOTICE FURTHER THAT the applicants have appointed the offices of **NORTONS INCORPORATED**, 54 Melville Road, Illovo, as the address at which the applicants will accept notice and service of all process in these proceedings. The applicants will also accept electronic service at the following email addresses:

anthony@nortonsinc.com / anton@nortonsinc.com / michelle@nortonsinc.com / melissa@nortonsinc.com / avias@nortonsinc.com.

TAKE NOTICE FURTHER THAT if any of the respondents intends to oppose the relief sought under Part A of this application, they are required:

1. By 10h00 on Friday 1 November 2024, to deliver a notice of intention to oppose the interim relief application; and
2. To file their answering affidavit in Part A in accordance with any directions issued by the Competition Appeal Court.

TAKE NOTICE FURTHER THAT the Registrar and Competition Appeal Court are requested to set Part A of the matter down for hearing as soon as possible.

TAKE NOTICE FURTHER THAT

- 1 Under Rule 53(1)(a) of the Uniform Rules of Court, the respondents are called upon to show cause why the Competition Commission's decision to approve the merger should not be reviewed and set aside.
- 2 The Competition Commission is required, within 15 days after receipt hereof, to dispatch to the Registrar of this Honourable Court the record of the proceedings sought to be reviewed and set aside (including all plans, correspondence, reports, memoranda, documents, electronic records, evidence and other information which were before the first respondent at the time when the decisions in question were made), together with such reasons as the Competition Commission is by law required to give or desire to make, and to notify the applicants that it has done so.
- 3 Within 10 days of receipt of the record from the Registrar, the applicants may, by delivery of a notice and accompanying affidavit, amend, add to or vary the terms of their notice of motion and supplement their founding affidavit in terms of Rule 53(4) of the Uniform Rules of Court.
- 4 If any of the respondents intend to oppose Part B the application, they are required, under Rule 53(5):

- (a) within 15 days after the receipt of this notice of motion or any amendment thereof, to deliver notice to the applicants that they intend to oppose and in such notice to appoint an address within fifteen kilometres of the office of the Registrar at which they will accept notice and service of all process in these proceedings; and
- (b) within 30 days after the expiry of the time referred to in Rule 53(4), to deliver any affidavit they may desire in answer to allegations made by the applicant.

Kindly enroll the matter accordingly.

DATED AT JOHANNESBURG ON THIS 31ST DAY OF OCTOBER 2024



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NOTICE IN TERMS OF RULE 16A

PLEASE TAKE NOTICE that the applicants raise the following constitutional issues in Part A of this application in which the applicants seek to suspend / interdict the operation of the Commission's approval of the merger between Novus Print Proprietary Limited; Free 4 All Proprietary Limited; Intrepid Printers Proprietary Limited; Victory Ticket 376 Proprietary Limited and the Media Supply Chain Management Division operated and conducted by Media24 Proprietary Limited,

referred to as “*On The Dot*”, the local news portfolio of Media24; and the Football Publication Division of Media24 titled “*Soccer Laduma And Kick Off*” (“**the merger**”):

- 1.1. Whether, pursuant to its obligations under section 7(2) of the Constitution to promote, protect, respect and fulfil the rights set out in the Bill of Rights as well as the “*added responsibility*” imposed on it to do so having regard to the preamble and purpose of the Competition Act (as confirmed by Mogoeng CJ in the ***Mediclinic*** decision), the Commission was enjoined to consider the impact of the merger on constitutional rights, including the impact of the transaction on the right to freedom of expression and plurality of media voices in South Africa, and failed to do so;
- 1.2. Whether the Commission failed to appreciate or take cognisance of the consequences of the merger for other newspaper publishers and owners as a result of the increase in distribution costs that will arise pursuant to the proposed transaction;
- 1.3. Whether the Commission failed properly to consider the impact of the merger on employment and the fact that the transaction will be likely to result in the loss of employment for up to 400 employees at Media24; a further 100 employees at On the Dot and at least 784 employees at third parties;
- 1.4. Whether, in particular, the Commission failed to consider the impact of the merger on the employment of *journalists* in South Africa – a critical source of news and information in South Africa;

- 1.5. Whether the Commission failed to act in a manner that protects media freedom, and failed to ensure that the press is not dominated by a single press company such as Media24, or by limiting the availability of media news to online-only;
- 1.6. Whether the implementation of the merger will result in irreparable harm to the media industry in South Africa, and undermine the rights in section 16 of the Constitution; and
- 1.7. Whether it would be just and equitable under section 172(1)(b) of the Constitution for the Court to suspend/interdict the operation of the Competition Commission's approval of the merger, pending the finalisation of the applicants' review of the Commission's decision.

TAKE NOTICE FURTHER THAT any interested party in a constitutional issue raised in this application may, with the written consent of all the parties to the proceedings, given before Friday, 8 November 2024, be admitted as an *amicus curiae* upon such terms and conditions as may be agreed upon in writing by the parties.

TAKE NOTICE FURTHER that the written consent referred to above shall be lodged with the Registrar of this Court before Friday, 8 November 2024 and the *amicus curia* shall, in addition to any other provision, comply with the times agreed upon for the filing of pleadings and written argument.

TAKE NOTICE FURTHER THAT that the times agreed upon may be amended by this Court.

TAKE NOTICE FURTHER THAT if the interested party is unable to obtain the written consent as contemplated herein, they may, before Friday, 8 November 2024, apply to

the Court to be admitted as an *amicus curiae* in the proceedings. Such application shall:

1. briefly describe the interest of the party in the proceedings;
2. clearly and succinctly set out the submissions which would be advanced by the party, the relevance thereof to the proceedings and their reason for believing that the submissions will assist the Court and are different from those of the parties; and
3. be served upon the parties.

TAKE FURTHER NOTICE THAT any party to the proceedings who wishes to oppose an application to be admitted as an *amicus curiae* shall file an answering affidavit before Friday, 15 November 2024 upon such party. The answering affidavit shall clearly and succinctly set out the grounds of such opposition.

KINDLY PLACE THIS NOTICE on the notice board designated for this purpose.

DATED AT JOHANNESBURG ON THIS 1 NOVEMBER 2024



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FOUNDING AFFIDAVIT



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I, the undersigned,

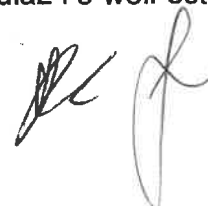
RIQUADEU JACOBS

state the following under oath:

- 1 I am the Managing Editor of the first applicant, Capital Newspapers (Pty) Ltd (**“Capital Newspapers”**). I am duly authorised to institute this application, and to depose to this affidavit, on the applicants’ behalf.
- 2 In relation to matters that concern the second applicant, Caxton & CTP Publishers & Printers Limited (**“Caxton”**), I refer to the confirmatory affidavit deposed to by Paul Jenkins. Supporting affidavits will also be filed tomorrow on behalf of a number of other media groups.
- 3 The facts contained in this affidavit are true and correct and are, save where the context indicates otherwise, within my personal knowledge. All legal submissions are made on the advice of the applicants’ legal representatives, which I believe to be correct.



OVERVIEW

- 4 Media24 Holdings Limited (**“Media24”**) has entered into an agreement to sell its **On the Dot** distribution business and its portfolio of Western Cape community newspaper titles to Novus Holdings Limited (**“Novus”**), one of the largest printers of newspapers and magazines in the country, as part of a significant restructuring of the Media24 business that also involves most of Media24’s well-established



newspapers, such as the Beeld, the Rapport, the Daily Sun, and the City Press, and iconic magazines, such as Drum and True Love, **ceasing to be printed** (“**the merger**”). The decision to terminate the printing of the relevant newspapers is inextricably linked to the sale of the On the Dot distribution business and is part and parcel of the sale and the same set of strategic actions. They are interrelated and cannot be separated from one another. Indeed, Media24’s erstwhile CEO publicly acknowledged this fact and confirmed it to me and Mr Jenkins of Caxton. It is also noteworthy that Media24’s actions align with the clear statements by its former managing director. It has not sought to close any of the newspapers pending the Commission’s decision which confirms the fact that it regards the closure of the newspapers as being integrated with, and interdependent on, the sale of On the Dot. I will also discuss its press release relating to the Commission’s conditional approval of the merger and its subsequent statements to the press below.

- 5 Despite the fact that the merger has been classified as an intermediate merger, it is in fact one of the most important transactions that the competition authorities have had to consider in recent times. The merger will have fundamental implications for the media sector in South Africa which is crucial from the perspective of providing information and opinions to the public and is a vital part of our constitutional democracy.
- 6 If the merger is allowed to proceed, it will result in a significant increase in the cost of distribution for other printed paid for newspapers, which will result either in their closure or in an increase in their pricing which will ultimately undermine their viability. This will have the likely consequence that newspaper publishers


5 

will have to close a majority of their printed paid for newspaper titles. This will reinforce and entrench the dominant position of **News24 / Netwerk24** (referred to collectively as "News24"), **the largest online newspaper publisher in the country, which is owned by Media 24.**

- 7 In other words, as a consequence of this transaction, while other competitors will go out of business and close their printed news titles, Media24 will entrench for itself an impregnable position in relation to its online news entity. In designing and seeking to implement the transaction in this way, Media 24 has deliberately sought to bring about these consequences in order to advance the competitive position of News24, the largest online newspaper publisher in the country, by eliminating its competition.
- 8 I am also led to understand that various other newspaper groups and printers have independently raised several material concerns with the Competition Commission regarding the proposed merger. These issues will be dealt with in more detail in the supporting affidavits that will be filed in due course.
- 9 Notwithstanding the applicants' extensive engagements with the Competition Commission and bringing to their attention the very significant adverse competition and public interest consequences of the proposed transaction, the Commission has failed to take these very important considerations into account and has decided to approve the merger subject I understand to certain limited conditions which do not address any of the highly concerning features of the proposed transaction.



10 In particular, the Commission has committed (inter alia) the following fundamental errors:

10.1 **First**, the Commission *failed* to recognise the fact that the closure of the Media24 printed newspaper titles and the sale of the On the Dot business were part and parcel of an integrated strategy on the part of Media24, and should have been considered as part of the merger that has been notified. Indeed, the former CEO of Media24 explicitly acknowledged that this was the case when he stated on 12 July 2024 that Media24's sale of On the Dot was a "*direct consequence*" of the group's intention to close the print editions of the newspapers, and it was for this reason that Media24 required regulatory certainty on whether it can sell the logistics business before ending the print runs of the newspapers. Mr Davidson also explicitly indicated the interconnected nature of the transactions to me when he engaged with me pursuant to the proposed sale of the On the Dot business to Capital Newspapers. Moreover, the press statement and notice to Media24 employees that was released on 31 October 2024, and the email that was sent to Media24's clients on the same date is also consistent with this fact. It confirms that "***The transaction and implementation of the closures were dependent on a ruling by the competition authorities.***" In the event that the Commission had approached this issue correctly (i.e. as interrelated and interwoven) it would have come to a different conclusion in this matter. It is also noteworthy that at no stage did the Commission engage with me to discuss this issue or for



that matter any other aspects of the proposed merger (a point I discuss further below).

10.2 **Second**, the Commission failed to appreciate or take cognisance of the consequences of the proposed transaction for the media sector as a whole (and the country more largely) and the knock-on consequences for other newspaper publishers and owners as a result of the increase in distribution costs that will arise pursuant to the proposed transaction. The increase in distribution costs will mean that many competing newspaper publishers will have no choice other than to close the majority of competing paid for print newspaper titles, that will redound to the singular benefit of Media24 and its online business in particular. The transaction will thus have the effect of undermining media diversity and press freedom in South Africa. The Constitutional Court made it plain in *Mediclinic*¹ that if a merger gives rise to price increases that will have a material impact on customers or competitors that the merger must be prohibited, unless there are overwhelming efficiency effects that would override the anti-competitive effects of the transaction. (See too the Tribunal's decision in *Draslovka*² where these principles were applied). The Commission is a creature of statute and cannot depart from binding precedents of this nature. It is required to apply this jurisprudence and had it done so in this case, the proposed transaction would have been prohibited. In other words, as soon as it is accepted

¹ Competition Commission of South Africa v Mediclinic Southern Africa (Pty) Ltd and Another (CCT 31/20) [2021] ZACC 35 (15 October 2021)

² Draslovka Holdings A.S. and Another v Competition Commission of South Africa and Others (IM139Dec21) [2024] ZACT 31 (1 February 2024)



that there will be an increase in the distribution costs of other newspapers once Novus acquires On the Dot, the Commission had to prohibit the merger. A failure by the Commission to apply binding precedents implicates the rule of law and constitutes a material error of law.

10.3 **Third**, the Commission failed to take into consideration the fact that Media24 *itself* and of its own volition approached Capital Newspapers, which is majority owned by me — a previously disadvantaged person — to acquire the On the Dot distribution business and the community newspaper titles in the Western Cape:

10.3.1 As elaborated below, I showed significant interest in the proposed transaction and further believed that Capital Newspapers could make a success of the printed titles that Media24 was wanting to close down. Despite my being advised by Media24 that Capital Newspapers was the preferred and only bidder for the business (Media24 having indicated that it had terminated its discussions with Novus), Media24 then abruptly terminated the discussions with me without providing any reasons therefor. Instead, Media24 elected to sell the various assets to Novus, a listed company which has virtually no empowerment credentials.

10.3.2 Media24's abrupt and unexplained about-turn is clearly contrary to the public interest requirement in section 12A(3)(e) of the Competition Act that a transaction should promote a



greater spread of ownership, in particular, to increase the levels of ownership by historically disadvantaged persons and workers in firms in the market. The Competition Commission's own Guidelines provide in this regard that "*the Commission considers that the Public Interest ground contemplated in 12A(3)(d) of the Act creates a positive obligation to promote a greater spread of ownership in every merger*". Accordingly, the Commission did not even follow its own Guidelines in this matter and clearly paid no regard to the statutory provisions which require it to determine whether a merger can be justified on public interest grounds, including whether it promotes a greater spread of ownership, in particular of historically disadvantaged persons. On this basis alone the proposed transaction should have been prohibited by the Commission.

- 10.3.3 So too, Media24's decision to cease printing the relevant titles is centrally linked to the proposed disposal of On the Dot and is to be viewed against Media24's *rejection* of offers by Capital Newspapers, assisted by Caxton, to propose mechanisms to a) purchase the On the Dot business, and b) **save the printed newspapers** (with the exception of the loss-making Daily Sun). Capital Newspapers is aware that models were presented by Media24 representatives to Media24's board of directors that showed that On the Dot and the printed newspapers could continue to operate profitably once Daily



Sun was no longer printed, and Capital Newspapers indicated to Media24 its willingness to explore options to maintain the printed newspapers as part of its proposed acquisition of On the Dot. However, Capital Newspapers was informed that a decision had been taken by Mr Jacobus Petrus “Koos” Bekker, the chairman of the board of directors of Naspers Limited (“Naspers”), that Media24 should cease printing the relevant titles (other than Die Burger and Die Son) by October 2024.

10.4 **Fourth**, the Commission failed to take into account the fact that the transaction would operate to the significant detriment of Media24’s competitors, many of whom are owned by historically disadvantaged persons. Given the consequences of the transaction for other printed newspapers in South Africa, at least **five** media houses owned by historically disadvantaged persons are likely to be severely prejudiced by the concomitant increase in distribution costs caused by the transaction:

10.4.1 **Arena** (publisher of the Sunday Times, Business Day, Dispatch and the Financial Mail);

10.4.2 **Independent Media** (publisher of Isolezwe, the Mercury, Daily News, Cape Times, Cape Argus, The Star, and the Sunday Tribune);

10.4.3 **Fundudzi Media** (publisher of Sunday World);



10.4.4 **The Mail & Guardian;** and

10.4.5 **Capital Newspapers** (publisher of The Witness Newspaper).

10.5 The Commission failed to take these effects into account, and failed to consider the effect of the transaction on the spread of ownership within the South African newspaper publishing industry as a whole.

10.6 **Fifth**, the Commission failed to consider that the offer which I had put on the table to Media24 was not only in relation to the On the Dot business and Western Cape community titles, but also sought to *keep the printed newspapers alive*. As a newspaper owner, my interest (and that of Capital Newspapers) is to find ways to keep distribution costs manageable, and to retain the printed titles to the benefit of employment and media diversity in South Africa. In contrast, Novus has no incentive to keep newspapers alive: it would not matter to Novus if the costs of distributing printed newspapers rose and titles were forced to close, so long as it could continue to make revenue from On the Dot in other ways (including — as it has indicated — through distributing other products such as community titles or books).

10.7 **Sixth**, despite the fact that the Commission was informed that (i) I had been invited to purchase On the Dot and the Media24 community titles, (ii) I had engaged extensively with Media24 and On the Dot in relation to this process, (iii) I had insight in this regard relating to the position of the Media24 paid for newspaper titles, (iv) I had insight into the decision making process within Media24 as a consequence of these engagements, and (v) that I had submitted offers which would have



had the effect of saving the Media24 newspaper titles, the Commission did not seek to speak to me at all during the course of its investigation of the matter.

10.8 **Seventh**, I understand that the Commission arranged a meeting with one of the newspaper entities to discuss the proposed merger on the morning of 30 October 2024 and requested documentation from that entity, which was only submitted later that afternoon on the same day that the Commission approved the merger. It would appear that the Competition Commission believed that this documentation was sufficiently material to its assessment of the merger that it should request the information. The Commission nevertheless approved the transaction shortly after receiving the information which shows that it could not have properly considered this information in finalising its investigation processes.

10.9 **Eighth**, in relation to employment, the Commission fundamentally misdirected itself in failing to take into account that the effects of the transaction on employment are threefold.

10.9.1 Step 1 of the Commission's employment-related consideration of the transaction ought to have considered the retrenchments that Media24 has *already* implemented which are linked to or in anticipation of this transaction, both within Media24 and within On the Dot. The Commission failed properly to analyse this aspect of the employment consequences of the merger at all.



10.9.2 Step 2 concerns the immediate employment losses arising from the transaction which, on the merging parties' own version are in the region of around 400 job losses. Here, while Media24 in the face of the objections by Capital Newspapers and Caxton rowed back from their initial estimate of journalist job losses, the Commission ought to have taken into account that these jobs are not likely to be saved for long, and should also have properly considered the long term prospects of the journalists keeping their jobs, in circumstances where the published titles to which they were associated have closed down, is remote.

10.9.3 Step 3 concerns the broader consequences of the transaction. When, as a result of Media24 closing its printed titles, the On the Dot distribution costs rise, it is very likely that other media houses will have to start closing their titles. As set out below, the impact of increased distribution costs threatens even more jobs within competing media organisations, with the potential for up to **784 additional** employees from publishers also at risk of losing their jobs. This would affect not only the media houses, but also all of the companies that they do business with, causing yet further job losses. It will also have significant implications for journalism in South Africa.

- 10.10 The Commission failed to properly investigate the effect of the transaction on employment, in any of the three steps, and did not consider steps 1 and 3 at all.
- 10.11 **Ninth**, the Commission has not sought to consult the employees of the other publishers who will be detrimentally affected by the implementation of the consolidated strategy of Media24 (of which the sale of On the Dot forms an integrated and indivisible part). This does not comport with the importance that the Competition Act places on ensuring that mergers do not give rise to negative employment related consequences.
- 10.12 **Tenth**, the Commission failed to take into account the fact that the transaction occurs at a critical juncture in South Africa's history, where there is a significant need for media diversity and independent journalism. It must be seen against the backdrop of the Constitution and the constitutional importance of the media, to freedom of expression, as well as the global and domestic concerns that have been raised in relation to high levels of concentration in the media sector. As the Constitutional Court has acknowledged, the manner in which the media carry out their constitutional mandate will "*have a significant effect on the development of our democratic society*".³ Yet, the Commission's decision is silent on this score.

³ *Khumalo and Others v Holomisa* (CCT53/01) [2002] ZACC 12; 2002 (5) SA 401; 2002 (8) BCLR 771 (14 June 2002) at para 24.



- 10.13 The Commission has failed to take account of its obligations in terms of section 7 of the Constitution to protect rights that are contained in the bill of rights (which include the right to freedom of expression). Pursuant to its obligations under section 7(2) of the Constitution to promote, protect, respect and fulfil the rights set out in the Bill of Rights as well as the “added responsibility” imposed on it to do so having regard to the preamble and purpose of the Competition Act (as confirmed by Mogoeng CJ in the *Mediclinic* decision), the Commission was enjoined to consider this application and the impact of the merger on constitutional rights, including the impact of the transaction on the right to freedom of expression and plurality of media voices in South Africa. It failed to do so.
- 10.14 **Eleventh**, the Commission has failed to follow the binding precedent of the Constitutional Court in *MediClinic* and *Draslovka*. This does not comply with the principle of legality and the fundamental role played by the rule of law in our Constitutional order. The Commission has also failed to take proper account of the transformational imperatives of the Competition Act as emphasised by the Constitutional Court.
- 11 In summary, the proposed transaction is overwhelmingly negative from both a competition and a public interest perspective. It will devastate the paid-for print media sector and fatally undermine competition to Media24 in the media sector more broadly from the few remaining competitors. The transaction ought never to have been approved, and there is an urgent need for this Court to suspend



the operation of the approval, pending the finalisation of the applicants' review of the Commission's decision.

- 12 Astonishingly, in a media release issued by the Commission on 31 October 2024 on LinkedIn,⁴ the Commission indicated that it was “*of the view that the proposed transaction is unlikely to substantially lessen or prevent competition in any market. The proposed transaction does not raised significant public interest concerns*”. The Commission further recorded that it had required the merged entity to offer coldest printing and distribution services separately, and that it had required that there be no retrenchments “as a result of the merger” for a period of 3 years from the merger implementation date. For the reasons set out below, the Commission's conclusions that there are no competition or public interest concerns arising from the merger are entirely irrational and divorced from the facts before it. They confirm that the Commission did not adequately investigate and consider the transaction. Moreover, the limited conditions imposed by the Commission do not in any way address the very serious deleterious consequences of the transaction: for competition; for the public interest; and for the constitutional rights in section 16. There is also no prospect that the imposition of a three year condition could address the permanent and structural changes in the industry brought about by the transaction.

⁴ Available at available at: <https://www.compcom.co.za/wp-content/uploads/2024/10/Statement-on-the-latest-decisions-taken-by-the-Commission-31-October-2024.pdf>



The backdrop against which the transaction falls to be assessed

- 13 Media24 initially failed to notify the Commission of the merger. It suggested to Capital Newspapers during negotiations that the transaction should be characterised as a small merger and could be implemented without notification with a timeline to completion that preceded the closures. Notice of the merger was only given after Capital Newspapers and Caxton called upon the Commission to investigate it and addressed a letter to this effect to the merger parties (as discussed further below).
- 14 Media24 has been a serial non-notifier of notifiable transactions (see, for example, the Novus decision of the Competition Appeal Court, the failure to notify the acquisition of a controlling interest in Mandla Matla, and the failure to notify the acquisition of the initial shareholding in The Witness).
- 15 Before giving notice of the proposed merger, Media24 already began to implement the transaction by restructuring Adspace24 as party of its strategic pivot toward digital media and advertising. Adspace24 is a business unit of Media24. It operates as the in-house national advertising unit for Media24 publications and its digital businesses. When Capital Newspapers acquired The Witness, it agreed with Media24 that Adspace24 would continue representing The Witness nationally and would market The Witness as being well-positioned to cover KZN.
- 16 On or about 24 July 2024, Adspace24 implemented a dramatic change to its internal structure. The print targets set for the sales team were significantly

lowered, allowing representatives to reach their targets more easily while simultaneously giving representatives a much higher digital commission structure. This effectively shifted the focus of the business away from print newspaper titles and prioritised the marketing of digital titles (News24 and Netwerk24). This realignment of incentives will have significant consequences for, and risks marginalising, the printed newspaper titles being represented by Adspace24, as the representatives would have a significant incentive to direct advertisers to the online or digital platforms as opposed to printed newspaper titles. This will have an impact not only on third-party newspapers but also on the relevant Media24 titles (Beeld, Rapport, City Press and Daily Sun), as it will undermine their ability to generate advertising revenue. It is also understood that Adspace24 gave verbal notice that it was terminating its service contract to certain third parties with 3 months' notice. This was withdrawn pending the outcome of the merger application.

- 17 Additionally, On the Dot has approached Caxton several times over the last couple of months saying they need to discuss price increases. This is a new approach. Previously, Caxton simply would simply announce its cover price increase and On the Dot would continue to take a standard percentage of that, without separate negotiation. The new approach indicates that On the Dot is likely to be planning an increase in their percentage they take from Caxton's sales.
- 18 The Competition Commission appears to have ignored the suggestion made by Capital Newspapers and Caxton to request the parties to provide all management directives in relation to Adspace24 over the course of the past year,



as well as any sales and marketing plans, documents prepared for management meetings and the like. The Competition Commission's failure to request and take into account these relevant considerations is irrational, particularly given the effect that this will have on an HDP owned newspaper (The Witness).

THE COMMISSION'S DECISION

19 On 30 October 2024, the Commission conditionally approved the merger. My attorneys have requested a non-confidential version of the Commission's reasons for the approval of the merger, but have not yet been provided with the reasons. Accordingly, I reserve the applicants' right to supplement the review once these have been received.

20 The Commission's limited press release issued on 31 October 2024 confirms, however, the material respects in which the Commission has failed properly to consider the implications of the merger.

THE RELIEF SOUGHT IN THESE PROCEEDINGS

21 In these proceedings, the applicants seek the following relief:

21.1 In **Part A**, the applicants seek an interdict preventing the merging parties from implementing the transaction pending the finalisation of Part B.

21.2 **Part B** is an application to review and set aside the Commission's decision of 30 October 2024.



- 22 The interdict in Part A is necessary because, as I will demonstrate below, the implementation of the transaction is irreversible. Once the printing of the newspapers ceases, the journalists and staff lose their jobs and the circulation of the newspapers stops, they cannot be revived. In addition, as soon as Media 24 closes its newspaper titles and removes those volumes from the On the Dot business, the distribution costs to the other newspaper groups will increase virtually immediately. Moreover, once the retrenchments occur within On the Dot and Media24 as a consequence of the approval, these cannot easily be undone and third parties who will be negatively affected by the merger are also likely to commence restructuring their businesses to take account of the consequences of the merger. These cannot be reversed in due course. Moreover, it is difficult to unscramble the egg (as the Tribunal has previously noted which is why South Africa has a pre-notification regime). It is thus critical that during the short period between the launching of these papers (issued just a day after the Competition Commission handed down its decision) and the finalisation of the review (which the applicants propose be expedited), no aspect of the transaction is implemented (including ceasing printing any of the newspaper titles).
- 23 The merging parties were requested on 31 October 2024 to agree not to implement the transaction pending the finalisation of Part B. The merging parties failed to respond to this request. A copy of the applicants' request for the undertaking is annexed marked "FA0".
- 24 Media24 has also announced to its staff and the press that it will implement the transaction today (31 October 2024) and that the last day of the publication of the Rapport, City Press and Daily Sun will be on 20 and 22 December 2022. It



would appear likely that this precipitous implementation of the transaction is intended to reduce the risk of the decision being reviewed and set aside.

25 Without this Court's urgent intervention, Media24 will imminently commence the process of retrenching staff and ceasing the publication of the printed newspapers. Capital Newspapers, as a customer of On the Dot, has been informed that the proposed transaction with Novus will be implemented imminently.

26 The need for interim relief is manifest: the implementation of the transaction could give rise not only to the death of paid for printed newspapers in South Africa, but could substantially undermine the ability of competing news entities to operate independent media houses in competition with Media24. Inevitably, the existence of a single large dominant press company (Media24), will reduce diversity of voice and result in a loss of representation of a plurality of views. This will undermine competition between newspapers and journalists (and for journalists), which is central to the creation of news in South Africa.

27 Given the importance of this matter not only to the parties but to the South African public and the future of journalism more broadly, I invite the merging parties again to agree not to implement the transaction pending the outcome of Part B.

28 The relief in Part B is justified because, as set out below, the merger will result in a substantial prevention and lessening of competition. It is also plain that there are no countervailing efficiencies that outweigh the significant anti-competitive



effect of the merger. In addition, the proposed merger will also have a significant negative impact on the public interest in a variety of ways. In particular, it will:

- 28.1 significantly and fundamentally undermine the newspaper publishing and printing sector in South Africa;
- 28.2 result in a direct reduction in employment as it will lead to the retrenchment of a significant number of employees of Media24, On the Dot as well as other publishers;
- 28.3 undermine the ability of small and medium businesses, or firms controlled or owned by historically disadvantaged persons, to effectively enter into, participate in or expand within the markets for newspapers or the online provision of news, as newspapers owned by historically disadvantaged persons will be marginalised as a result of the proposed merger and will no longer be able to sustain themselves as publishers in the market; and
- 28.4 be regressive as it will increase the level of concentration in the media sector (as the dominance of Media24 will simply be further enhanced through the merger), and thereby reduce the spread of ownership and decrease the levels of ownership by historically disadvantaged persons through destroying the sustainability of competing publishers including those which are owned and operated by historically disadvantaged persons. It will also reduce the opportunity for a greater spread of ownership owing to the winnowing of publishers active in South Africa.



29 For all of these reasons, the Commission's decision is irrational and unreasonable and fundamentally undermines rather than promotes the objectives of the Competition Act. It falls to be set aside on review, which is the relief which is sought in Part B of these proceedings.

PARTIES

The applicants and their standing to bring this application

30 The first applicant is **CAPITAL NEWSPAPERS**, a company registered in South Africa having its principal place of business at 7 Stranack Street, Pietermaritzburg.

31 Capital Newspapers is a majority black-owned newspaper publishing business with six publications in the Pietermaritzburg and Midlands area of KwaZulu-Natal. Capital Newspapers is one of the largest independent majority black-owned newspaper publishing businesses in South Africa. I am the majority shareholder of Capital Newspapers, with a shareholding of 55%. Caxton holds the remaining shareholding in Capital Newspapers. Capital Newspapers is a Level 1 B-BBEE Contributor.

32 In addition to being the largest publisher of community newspapers in the greater KZN Midlands, including Pietermaritzburg, Capital Newspapers currently publishes *The Witness*, which it acquired from Media24 in July 2022. Capital Newspapers purchased *The Witness* newspaper on the assurance that Media24 saw a good future for printed newspapers. The sale of *The Witness* to Capital



Newspapers has prolonged the life of The Witness, and Capital Newspapers is confident that (provided that its distribution network does not collapse or become unaffordable) that it will be able to continue publishing The Witness on a sustainable basis.

33 The second applicant is **CAXTON & CTP PUBLISHERS & PRINTERS LIMITED**, a company registered in South Africa having its principal place of business at 368 Jan Smuts Avenue, Craighall Johannesburg.

34 Caxton is a South African-based listed company, which is involved in the publishing and printing of newspapers and magazines, and in the manufacturing and distribution of packaging, stationery and labels. Caxton operates through its wholly-owned subsidiary, CTP Limited (“CTP”). CTP has a black shareholding of 29.09% and is a Level 1 B-BBEE Contributor. CTP publishes *The Citizen*, which is dependent on On the Dot’s “northern network”, which is currently also used to distribute the Beeld, Rapport and City Press newspapers.

35 The applicants bring this application in:

35.1 their own interest;

35.2 the interest of their employees and stakeholders; and

35.3 in the public interest to protect, promote and vindicate the constitutional rights to freedom of expression, and in particular the rights to:

35.3.1 freedom of the press and other media (section 16(1)(a) of the Constitution); and



35.3.2 freedom to receive or impart information or ideas (section 16(1)(b) of the Constitution).

36 I refer in this regard to the supporting affidavits of the other newspaper publishers that will be filed in due course.

The respondents

37 The first to seventh respondents are the primary acquiring and target firms in the proposed transaction concerning the merger between Novus Print Proprietary Limited; Free 4 All Proprietary Limited; Intrepid Printers Proprietary Limited; Victory Ticket 376 Proprietary Limited (collectively, the “**primary acquiring firms**”) and the Media Supply Chain Management Division operated and conducted by Media24 Proprietary Limited, referred to as “*On The Dot*”, the local news portfolio of Media24; and the Football Publication Division of Media24 titled “*Soccer Laduma And Kick Off*” (collectively, “**the primary target firms**”).

38 The first respondent is **MEDIA24**, a company registered in South Africa which has its principal place of business at 40 Heerengracht Street, Cape Town. Media24’s immediate holding company, Meda24 Holdings, is in turn controlled by Naspers Limited (“**Naspers**”), a multinational media group. The South African business operations of Naspers include subscription television, internet (e-commerce), communications, social networks, entertainment and print media (including newspapers, magazines, printing, distribution and book publishing). Media24 has a large number of subsidiaries. Naspers is the overwhelmingly dominant media company in South Africa and its operations span almost every



conceivable platform in South Africa from pay-tv to magazines and newspapers and digital news platforms, as well as ecommerce.

- 39 **ON THE DOT** — a subsidiary of Media24 — is the country's last meaningful distributor of magazines and paid for newspapers (it distributes magazines, newspapers, leaflets, books, etc.). On the Dot also collects unsold paid for newspapers and magazines and performs merchandising services. The majority of paid for newspaper and magazine publishers in South Africa are completely dependent on On the Dot for distribution services. It distributes approximately 90% of paid for newspapers and magazines in South Africa, to thousands of retail outlets (more than 10 000) as well as providing merchandising services at thousands of these retail outlets.
- 40 Paid for newspapers are time-sensitive in the sense that news ages quickly (put starkly – newspapers have a shorter shelf life than unpasteurised milk). This means that there is a short window available for the distribution of paid for newspapers, which must be on the shelf before opening time for retail outlets. This entails delivery of the newspapers before 7am (often as early as 5am). If this distribution window is missed in relation to a specific retail outlet, there is a risk that a newspaper could lose up to 40% of its normal sales through the outlet in question.
- 41 The distribution performed by On the Dot is thus a bespoke form of distribution (as it involves distributing often before business hours, on a regular basis, to a wide range of outlets such as large retailers, garage forecourts, and corner



shops, as well as collecting the returned newspapers and magazines). As such, its network cannot be integrated with other distributors.

42 On the Dot also handles returns management, which entails collecting the newspapers at the end of the day and returning them to the publisher/printer in question. Returns are an important aspect of the newspaper distribution function as returns provide newspaper publishers with a very accurate barometer of sales of their respective titles at specific retailers.

43 In addition, On the Dot provides invoicing and collections services for the publishers and provides a range of value-added services such as demand planning, debtor management, and business intelligence services.

44 Given the size of the market, the decline in demand for newspapers and magazines, and the demanding requirements of the distribution service in question, it would not be possible for any entity to replicate this form of bespoke distribution on a national scale.

45 Moreover, as explained below, distribution is one of the most significant costs of a printed newspaper or magazine and where a common distributor exists that provides distribution services for numbers of titles, it allows for distribution costs to be kept as low as possible through economies of scale. The cessation of the printing of the Media24 titles will, therefore, have the effect of **increasing the costs of distribution for other newspapers** and could lead to the cost of distribution being prohibitive and also losing access to critical shelves in retailers. This would affect all newspapers, even including venerable newspapers such as



the Sunday Times and the Sowetan, as well as newspapers with wide distribution such as The Citizen.

- 46 The second respondent is **NOVUS HOLDINGS LIMITED**, a company registered in South Africa having its principal place of business at 10 Freedom Way, Milnerton Cape Town. Novus was formerly known as the Paarl Media Group and owns a number of subsidiary printing businesses.
- 47 One such subsidiary business is the third respondent **NOVUS PRINT PROPRIETARY LIMITED**, a company registered in South Africa having its principal place of business at 10 Freedom Way, Milnerton Cape Town. Novus is one of the two largest coldset and heatset printers in South Africa.
- 48 The controlling shareholder of the acquiring firm, Novus, is **A2 Capital Partners**, which has significant shareholdings in York Timbers and Nampak.
- 49 The fourth respondent is **FREE 4 ALL PROPRIETARY LIMITED**, a company registered in South Africa having its principal place of business at 10 Freedom Way, Montague Gardens, Milnerton, Western Cape.
- 50 The fifth respondent is **INTREPID PRINTERS PROPRIETARY LIMITED**, a company registered in South Africa having its principal place of business at 110 CB Downes Road, Mkondeni..



- 51 The sixth respondent is **VICTORY TICKET 376 PROPRIETARY LIMITED**, a company registered in South Africa having its principal place of business at 10 Freedom Way, Montague Gardens, Milnerton, Western Cape.
- 52 The seventh respondent is **MEDIA24 PROPRIETARY LIMITED**, a company registered in South Africa having its principal place of business at 40 Heerengracht Street, Foreshore, Cape Town.
- 53 The first to seventh respondents are all represented by ENS Africa.
- 54 The eighth respondent is the **COMPETITION COMMISSION**, a statutory body established under the Competition Act, with its address at Block C, DTI Campus 77 Meintjies Street Sunnyside, Pretoria.
- 55 The ninth respondent is the **MINISTER OF TRADE, INDUSTRY AND COMPETITION** (“the Minister”), with his address at 77 Meintjies Street, Block A, Floor 3, Sunnyside, Pretoria.

JURISDICTION AND CONSTITUTIONAL ISSUES RAISED IN THESE PROCEEDINGS

- 56 Part B of this application concerns a review application brought under the Promotion of Administrative Justice Act 3 of 2000 (“PAJA”), alternatively the principle of legality. The application accordingly falls within this Court’s power to review the exercise of the Competition Commission’s public powers derived from the Act in terms of section 62(1)(a). Moreover, this application concerns

 30 

constitutional issues, inasmuch as it pertains to the proper exercise of public power by the Competition Commission, the compliance by the Competition Commission with the directives of Mogoeng CJ in *Mediclinic*, and of this Court in *eMedia* to view the Competition Act through a constitutional lens, and questions of lawfulness and rationality. The Court accordingly also has jurisdiction to hear this application under section 62(2)(b), which empowers it to determine any constitutional matter arising in terms of the Competition Act.

57 This merger implicates various constitutional rights, given the role played by the press in South Africa, and the importance that is attached to the press by the Constitution.

58 Section 16 of the Constitution provides that:

“16. Freedom of expression.—(1) Everyone has the right to freedom of expression, which includes—(a) freedom of the press and other media; (b) freedom to receive or impart information or ideas; (c) freedom of artistic creativity; and (d) academic freedom and freedom of scientific research”.

59 Freedom of expression is an essential ingredient of an open and democratic society. South Africa’s history of censorship under apartheid makes the protection of free speech particularly vital in nurturing our relatively young democracy. Pursuant to section 7(2) of the Constitution, the Commission was obliged to consider the effect of the transaction on constitutional rights, including the rights in section 16. It failed to do so. This Court is similarly enjoined.

- 60 It bears emphasis that freedom of the press is not consonant with the press being dominated by a single press company such as Media24, or by limiting the availability of media news to online-only. An independent press is not one which is beholden to a single controller or platform. Significant concerns have been raised globally and locally regarding the fact that the press has become significantly concentrated, and about the effects of the significant position that dominant entities have achieved.
- 61 The Constitutional Court has often emphasised the importance of freedom of expression—including the right to receive expression—as part of the constitutional project in South Africa. The Court has also held that the media plays a critical role in upholding freedom of expression. The press is vital to ensuring that citizens receive information and ideas, thus enabling responsible civic engagement. The media must act with integrity, courage, and responsibility.
- 62 A free press is also essential for good governance, transparency, and accountability. Countries with robust press freedoms tend to have greater economic growth and improved human rights.
- 63 Despite a generally free media landscape in South Africa, severe challenges persist. These include economic challenges faced by the media industry, technological shifts, and instances of harassment or threats against journalists. These obstacles threaten the vibrancy and diversity of the media.
- 64 As appears more fully below, if implemented, the proposed transaction would undermine press diversity and independence in South Africa, and accelerate the

transition from print to online through increasing distribution costs and rendering print newspapers unsustainable. Through this mechanism, and without this Court's urgent intervention, Media24 would be able to ensure and cement the dominance of its (already-dominant) online platform, which already benefits from the technological and financial backing of Naspers.

65 Section 36(1) of the Competition Act provides this Court is a court contemplated in section 166(e) of the Constitution with a status similar to that of a High Court. Section 172(1)(b) of the Constitution, therefore, confers upon this Court the jurisdiction, when deciding a constitutional matter within its power, to make any order that is just and equitable.

66 I am advised and submit that the decision of the Commission approving the intermediate merger duly accompanied by a merger certificate in terms of Rule 38(3) of the Commission's Rules is a decision as contemplated in section 64(1), which is immediately enforceable.

67 The Judge President or any other Judge of this Court designated by the Judge President is empowered by section 38(2A)(d) of the Competition Act to grant the suspensive relief sought in Part A of this application concerning the intermediate merger decision of the Commission.



BACKGROUND

Media24

- 68 Media24 is a media company with interests in digital media and services, newspapers, magazines, ecommerce, book publishing, television, logistics and distribution. It is part of a multinational group of media and ecommerce platforms. Media24 is the largest newspaper and magazine publisher in the country and publishes a range of well-established newspaper titles that individually enjoy significant readership. These titles currently include newspapers such as the Beeld, Rapport, Die Burger, City Press and Daily Sun (amongst others).
- 69 Media24 also has two online platforms – News24 and Netwerk24 – which publish news articles. These two news platforms are, on Media24’s account, the two largest subscription news platforms in South Africa. Media24 has a further significant advantage in this respect as its strong online position is supported through its parent company, Naspers, which has a range of technological offerings and vast financial resources. Naspers is one of the largest companies listed on the JSE.
- 70 In this regard, it bears emphasis that News24/Netwerk24 already claims to have nearly 200 000 active subscribers. It dominates subscription South African online news platforms. Based on page views, it has more than 52% of the market share for 2024 to date.



- 71 In contrast, in quarter 2 of 2024, there were 224 442 daily paid for newspaper sales in South Africa.
- 72 Media24's publishing rivals do not have online platforms that could pose a significant competitive threat to News24 or Netwerk24. This means that by inducing the premature death of printed newspapers by closing the titles as part of the decision to sell On the Dot, Media24 can further increase the dominance of its online news platforms, and the reliance of the South African public on those platforms.

Journalism

- 73 Journalism is under threat in several countries and there are also a limited number of potential employment opportunities for journalists in South Africa. However, the press plays a significant constitutional role in South Africa, as has been emphasised by the Constitutional Court on several occasions.
- 74 A vibrant press is critical as a source of employment for journalists. If the press comes to be dominated by a single monolith such as Media24 because of the merger, this will reduce employment opportunities for journalists, which will, in turn, reduce the number of students enrolling to study journalism and reduce the funding for journalism at universities.
- 75 Media24 employs many journalists to publish its newspapers and articles. Indeed, as the country's largest publisher, it is also the largest single employer of journalists and editorial staff.



Newspaper distribution services

76 News24's On the Dot platform is the last remaining significant distributor of magazines and paid for newspapers in South Africa. Caxton closed its RNA Distribution business during the Covid pandemic and the Allied Joint Venture has been disbanded. This means that major newspaper publishers such as Caxton, Arena, Capital Newspapers, Independent Newspapers, the Mail & Guardian, and the Daily Maverick (the other major newspaper and magazine publishers in South Africa, albeit that they are smaller than News24) are all currently largely wholly dependent on the distribution services of On the Dot in respect of their paid for newspaper titles.⁵ So too are a large number of smaller community newspapers.

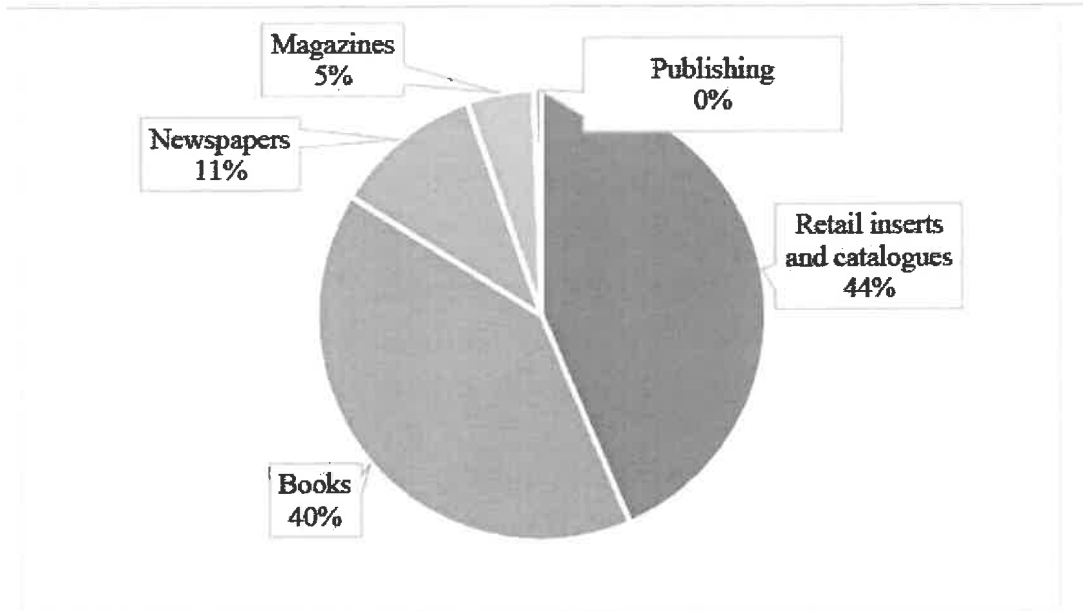
Novus

77 Novus is one of South Africa's largest print production and manufacturing operations, with a history spanning well over 100 years. Novus is made up of four separate divisions, namely Novus Education, Novus Packaging, Novus Tissue, and (of relevance in the context of this transaction) Novus Print.

78 Novus' printing division forms the core of its operations, accounting for approximately 74.4% of Novus's group revenue. The next closest contributor is the Novus Packaging division (20.6%) followed by Novus Education (4.9%) and Novus Tissue (0.1%).

⁵ It should be noted that Independent Newspapers does have a small distribution operation in KwaZulu-Natal.

- 79 Novus has also recently acquired Maskew Miller Learning in South Africa, which provides it with an incentive to use On the Dot for the purpose of its book publishing business, and further decreases any incentive that Novus may have had to keep printed newspapers in South Africa alive.
- 80 Novus Print operates a variety of different printing technologies, including gravure, heatset, coldset, sheet-fed, and digital printing. Novus has four printing facilities situated in various parts of South Africa, with two printing facilities in Cape Town, one in Gqeberha, and one in Gauteng.
- 81 Novus's printing capabilities extend across all forms of printing, from short, medium and long-run requirements of all printed materials (including magazines, retail inserts, catalogues, books, newspapers, educational materials and security products) as reflected in the following chart, which depicts the revenue contribution of the different types of products printed by Novus in South Africa.



Source: Novus AFS 2023

82 Importantly, this means that (unlike a newspaper business), Novus is able to generate revenue from a number of different media sources, and to the extent that it could make up any loss of paid printed newspaper publishing or distribution with other publishing or printing opportunities, it would be able and willing to do so.

THE PROPOSED TRANSACTION AND ITS IMPACTS

83 In order to situate the harms occasioned by the transaction, I will provide an overview of the relevant parts of the supply chain insofar as paid for newspapers and magazines are concerned.


38

84 The printing and distribution of paid for newspapers and magazines are amongst the most important aspects of a newspaper and/or magazine publisher's business.

84.1 Without access to timely printing services, a publisher is not able to print its newspaper and/or magazine in a timely manner.

84.2 Without access to efficient distribution services, a publisher is not able to ensure that its printed products find their way to street corners and newspaper and magazine stands (in the case of paid for titles) or into the homes of readers.

85 Printing and distribution are also amongst the most significant costs faced by publishers.

Publishers (Newspapers and Magazines)

86 From a publishing perspective, the Competition Commission has previously found that both the magazine publishing and the newspaper publishing markets are highly concentrated and ones in which Media24 is the largest player and one which would be deemed to be dominant in terms of Section 7 of the Competition Act.

87 In its report entitled "*Measuring Concentration and Participation in the South African Economy: Levels and Trends*", dated November 2021, the Competition Commission found the following:

87.1 The magazine sector was highly concentrated, with concentration levels increasing. The Competition Commission noted that *“in terms of readership shares, Media24 titles accounted for 49.9% of readership, more than double the share of the media house with the second-largest share, namely Caxton (20.3%).”*

87.2 In relation to newspapers, the Commission found:

*“There were ten publishers of newspapers in both 2014 and 2019. The largest four (Media24, Independent, Caxton and Arena Holdings) produced 87.6% of all newspaper titles in 2019, a share that decreased somewhat from 2014 (90.3%). They also accounted for 93.7% of total advertising revenue, which was not too different to five years prior. The advertising revenue per newspaper publication of the largest four media houses was 2.5 times higher than the average advertising revenue among the remaining six media houses. In terms of readership share, the top four publishing houses accounted for 77.1% of all print and digital newspaper readership in 2019, which was down somewhat from 80.8% in 2017. **Media24 titles accounted for the bulk of this, with a share of 44.0% of total newspaper readership in 2019, more than double that of Independent Media and Arena Holdings in second and third place.** Caxton had a readership share that was far below that of the top three publishing houses, with a share of just 2.2% in 2019. The newspaper publishing industry has also experienced setbacks during Covid-19. In July 2020, for example, Media24 announced the closure and consolidation of a number of its newspapers.”*

88 I attach copies of relevant extracts from the report as **“FA1”**.

89 The Commission's previous report on market concentration reflected Media24's share of newspaper readership as being above the rebuttable threshold of dominance (35%) in Section 7 of the Competition Act.

90 Media24 also dominates South African online subscription news platforms, having noted in its most recent press statement of 18 June 2024, a copy of which is attached as "FA2", that it owns the two largest digital news brands, News24 and Netwerk24:

"In a very competitive landscape, News24 and Netwerk24 remain the digital news destinations of choice for South Africans. News24 was named by the Reuters Institute as South Africa's most trusted news brand for the sixth consecutive year earlier today. News24 averaged 9.1m daily unique page views for the financial year to 31 March 2024, while Netwerk24 garnered 5.7m page views. During the election week, they generated close on 105m page views combined; peaking at a record-breaking 21.9m page views for News24 and 5.8m for Netwerk24 on a single day."

91 In a recent MyBroadBand article dated 3 June 2024, it was noted that "Media24 maintained its top spot with 960,000 average active daily users and 317 million page views ... Media24 is behind many of the country's top publications, including News24, SNL24, and City Press." I attach a copy of the article as "FA3".

92 The data cited in the article revealed that Media24 accounted for approximately 53% of all online monthly page views across South African online news publishers.

93 While some other publishers have online offerings, these are small by comparison. For example, Arena which has one of the iconic newspapers in

South Africa, the Sunday Times was, at best, only able to achieve a digital subscription base of approximately 10 000. The Citizen (Caxton) was only able to achieve a subscriber base of 2000. Certain of the other online sites are free at the moment and have limited content (such as Daily Maverick, Caxton, The South African, IOL and others) and are, therefore, reliant on donations and advertising. Where an online platform relies on subscriptions to drive revenue, it should be borne in mind that the number of live subscribers is the correct metric for assessing the market share of the platform. Where a platform offers free access or partially free access, the number of registered users is not the equivalent of subscribers as it is difficult to transition registered users into subscribers.

The cost and sustainability impacts of the transaction



94 As a result of the costs of distribution for other competing newspaper publishers (including those owned by historically disadvantaged South Africans) increasing as a direct consequence of the proposed transaction, their continued viability will be fundamentally compromised (through removing the printed newspapers from the distribution network and, thereby, increasing the per unit costs of distribution of all of the other newspapers). As a result, Media24 will be able to enhance the dominant position that it has in relation to online subscription newspapers, as its dominance in online platforms is entrenched.

95 The cost and sustainability implications of the proposed transaction can be illustrated as follows: On the Dot currently distributes the Sunday Times, Rapport and City Press on a Sunday through its "*northern network*" (which includes

Gauteng, Limpopo and Mpumalanga). Following the proposed transaction, it will only be distributing the Sunday Times given the fact that media 24 will be closing the print editions of City Press and Rapport. This will result in the Sunday Times bearing all the costs of distribution of the On the Dot network on a Sunday. This will, in all likelihood, make it unviable to continue publishing the Sunday Times, and the Sunday Times may then have to close. This benefits the dominant, well-established, and money-flush Naspers, which will then pick up the readers of the Sunday Times on its established (and already dominant) online platforms given the lack of appropriate printed alternatives available.

96 The closure of the Sunday Times will also then have the effect of increasing the distribution costs for The Star, The Sowetan, The Citizen and the other daily newspapers given that it currently accounts for a significant share of the distribution volumes of On the Dot, and the fixed costs of On the Dot are shared between all these papers. It should be noted that their costs of distribution would already have increased as a result of the closure of the Beeld (owned by Media 24). The additional loss of the Sunday Times' volumes will lead to further significant diseconomies of scale and thus increase the distribution costs, which will then be borne by the remaining newspaper titles. This again undermines the position of competing newspapers such as The Star, The Sowetan, and The Citizen, which will effectively be likely to be precluded from continuing to publish their newspapers.

97 Any reduction in the volume of paid newspapers being printed and published in hard copy will result in a significant increase in the per unit cost of distribution of the remaining newspapers. The closure of the Beeld and Daily Sun will result in

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a reduction of approximately 30% in the volume of paid newspapers distributed in the so-called “northern area” daily. The Beeld accounts for a circulation of approximately 18 865 sales per day, which is not significantly different to The Citizen, The Star and The Sowetan (with a circulation of approximately 20 000 each). It is, accordingly, one of the largest daily newspapers in the country. It is, therefore, surprising that Media24 could suggest that it is not profitable or could not be operated on a profitable basis.

98 With respect to Sunday newspapers, the closure of the City Press and the Rapport (owned by Media 24) will result in a reduction of approximately 67 201 newspapers being distributed each Sunday. The total number of newspapers distributed nationally on Sundays is currently approximately 162 819. Accordingly, these two titles account for approximately 40% of Sunday paid for newspapers on a national basis. However, the City Press and the Rapport constitute a far larger proportion of Sunday newspapers distributed in the northern parts of the country. Once again, it bears emphasis that the Rapport has a circulation of only 5000 less than the Sunday Times, South Africa’s largest Sunday newspaper. It is the second largest Sunday newspaper, which again calls into question the assertion by Media24 that Rapport cannot be operated on a profitable basis.

99 As appears from the merger parties’ non-confidential submissions, a copy of which is attached as “FA4”, they confirm that any paper that ceases to be distributed by On the Dot will result in “its fixed costs [being] spread over fewer publications” (page 24).


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100 I am advised and submit that an increase in cost (or price) reflects the fact that the merger in question is an anti-competitive transaction. The implementation of the merger as part of the anti-competitive strategy of Media24 will result in an increase in the distribution costs facing newspaper publishers in the context where such an increase in distribution costs is tantamount to an increase in the price which is charged for accessing the services of On the Dot. In these circumstances, the merger can only be viewed as resulting in a substantial anti-competitive effect within the meaning of section 12(1) of the Act. As discussed above, as soon as the Commission is informed of the fact that the cost of distribution will increase, it is bound by the findings of the Constitutional Court in *MediClinic* and the Tribunal in *Draslovka*. The merger could then only be approved if it gave rise to efficiencies (which it does not) or to significant public interest gains (again it does not — it will have devastatingly negative public interest consequences).

101 The proposed merger occurs in the context of newspaper publishers already being under significant commercial pressure from a margin point of view. This arises not only from increases in cost, but declining circulation and reduced revenue. Accordingly, newspaper publishers cannot afford material price increases in relation to one of the core input costs – being the cost of distribution. Distribution is one of the three major costs involved in the publication of newspapers (with printing and journalists or procuring news being the other two major cost components).

102 Capital Newspapers and Caxton believe that a minimum likely increase of approximately 15% in their current costs of distribution will result in a number of

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newspapers ceasing to be printed and distributed. The closure of further newspapers will further increase the cost of distribution of the remaining newspapers and thus create a death spiral, as this causes other newspapers, which continue to be published, printed and distributed, to cease to be viable.

103 Online platforms account for only approximately 10-15% of the advertising revenue generated by the major publishers, with approximately 85-90% of their advertising revenue being generated through their printed titles. This means that the death of the printed versions of the newspapers will also further fundamentally undermine the commercial position of the online platforms that compete with News24 and Naspers. These much smaller platforms have not been able to counter the dominant position of Media24's online platforms. However, once they are deprived of 85-90% of their advertising revenue, it will mean that they are plainly not able to offer any meaningful competition to Media24. Indeed, it is likely that they will no longer be able to operate at all.

104 This means that the strategy is one which will give rise to a significant increase in the dominant position of Media24. The closure of the printed versions of its titles (where offers have been made to keep them alive), therefore has a fundamentally exclusionary effect.

105 The reduction in the number of newspapers that On the Dot distributes could also have the effect that On the Dot will reduce the extent of its distribution footprint. Certain distribution routes may no longer be economically viable to service, given the reduction in volumes. The reduction of the footprint of On the Dot will further reduce the revenue earned by the newspapers that are distributed on these



routes. This would simply compound the negative implications of the increase in the cost of distribution that will arise from the merger. In other words, not only is there a significant increase in the cost of distribution, but the negative financial effect will be magnified by a reduction in circulation. This also means that fewer South Africans will have access to the media.

106 The net consequence is the closure of further newspapers. The newspaper titles that have less financially strong shareholders will be at greater risk. As they cease being printed, this places greater pressure on the remaining newspapers as the distribution costs of these newspapers increase commensurately as a result. Simply put – the proposed merger will give rise to a domino effect. The only beneficiaries of this strategy are Media24 and its online news platforms.

107 I also emphasise that a number of the other publishers of newspapers in South Africa are owned by historically disadvantaged South Africans. For instance, Arena is owned by the Lebashe Investment Group, a black-owned group. Independent Newspapers is owned by an HDP group as is the Mail and Guardian and Capital Newspapers. There are also a range of smaller publishers which are also owned by historically disadvantaged persons, including the members of the Association of Independent Publishers. These historically disadvantaged market participants are also likely to be negatively affected by the transaction.

Community newspapers are not substitutes to daily or weekly paid newspapers

108 It appears from a meeting held between the Competition Commission and the applicants' attorneys on 11 October 2024 that the merger parties are suggesting



that there is some form of substitutability between the distribution of community newspapers and paid for daily and weekly newspapers. It would appear that, on the basis of this incorrect assertion, the merger parties are suggesting that there may be an opportunity to off-set the diseconomies of scale that will emerge from the reduction in the volume of paid for newspapers being distributed by On the Dot through an increase in the volume of community newspapers being distributed by On the Dot. Alternatively, it may be the case that the merger parties are seeking to suggest that absent the merger, the Media24 community titles will be closed which will have an impact on the volumes of community newspapers that are distributed through On the Dot and that this will result in an increase in the cost of the distribution of paid for newspapers through On the Dot.

109 The latter argument can be dismissed quickly. There is no realistic counterfactual in which it can be assumed that the Media24 community titles (which are profitable) would be closed absent the transaction. Media24 could continue to publish these profitable titles or could sell them to a third party. In this regard, as part of its offer for On the Dot, Capital Newspapers indicated that it would purchase the Media24 community titles.

110 In addition, there is no substitutability between the majority of the logistics networks used for the distribution of community newspapers and that used for the distribution of paid for newspapers because of the specific distribution requirements of paid for newspapers.

111 The fact that there is no obvious synergy between the distribution of paid for newspapers and community newspapers is underscored by the fact that while

Caxton distributes its own community newspaper titles it does not (nor could it) distribute its paid for title, the Citizen. Capital Newspapers also uses On the Dot for the distribution of The Witness, whereas certain of its community newspapers are distributed by other entities. There is a single community title (Greytown Gazette) which is distributed by On the Dot. However, as is the case with other community newspaper titles, it is distributed on a fundamentally different basis to the distribution of The Witness newspaper.

112 Moreover, it is not clear how the reduction in volume of newspapers distributed arising from the closure of the Beeld, the City Press, the Rapport and the Daily Sun (which principally affect the northern distribution networks) could notionally be offset through increasing the volumes of community newspapers that will be distributed by Novus (On the Dot) as a result of its acquisition of the Media24 community newspapers. The Media24 community newspapers are located in the Western Cape and not in the northern areas of the country. Accordingly, the Western Cape community newspaper volumes could never replace the lost volumes of paid for newspapers that are sold and distributed in the northern parts of the country, including in Gauteng.

113 In any event, as explained to the Competition Commission by the applicants' attorneys in the 11 October 2024 meeting, the distribution function for paid for daily and weekly newspapers is completely different to that of community newspapers. Where there is a distribution network to reach certain retail outlets, the costs of operating that network would largely be fixed and not vary as a result of a reduction in the volume of newspapers being delivered. For example, if a paid for newspaper has to be delivered to the Thrupps Centre, it will require a

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vehicle to travel from the distribution warehouse to Thrupps irrespective of the number of newspapers that it carries. Unless a reduction in the number of newspapers delivered results in a reduction in the number of retailers serviced (which would undermine the ability of the remaining newspapers to reach their respective readers and, thereby, reduce their ability to generate the same amount of advertising) the same distribution costs would be incurred in relation to the delivery of the reduced number of newspapers. This means that the total distribution costs of that network will be allocated to fewer newspapers which has the effect of increasing the distribution cost per newspaper.

114 While there may be some back-office benefits or ability to share warehousing costs in relation to community titles and paid for titles, the majority of the cost of distribution is the actual cost of moving the newspapers from the warehouses to the retail outlets and collecting the returns as well as performing the ancillary merchandising services.

115 The lack of synergy in the distribution of community titles and paid-for titles arises from the differences between community titles and paid-for titles, as previously explained by the Tribunal. Community newspapers and paid for newspapers have different characteristics which extend beyond the fact that one is free while the other is paid for. As the Tribunal has noted, the distribution of community newspapers is localised when compared to the distribution of paid-for newspapers, which are often regional or national.

116 Further differences related to locations and time constraints. For example, community newspapers are distributed to the doors of readers and there is

considerably less time sensitivity relating to the distribution of these titles so distribution often takes place throughout the day. The news in community newspapers is less time sensitive than the news in paid for newspapers. This means that there is no urgency in ensuring that the newspaper is available at the outset of the day. The distribution of paid for newspapers is to different locations and is more time sensitive. The distribution of paid for newspapers takes place in the early hours of the morning with several specific drops (for example at retail stores or at specific street corners or taxi ranks) which are different points than those that would be used for community newspapers. As a result of these differences, different distribution models are used to distribute paid for newspapers and community newspapers. Indeed, for both Caxton and Capital Newspapers, their paid for newspapers are distributed on a different basis to their community newspapers. The same is true for the distribution of newspapers through On the Dot. (i.e. there are two separate networks – one for community titles and one for paid for titles). Put simply, the distribution of paid for newspapers cannot be consolidated to achieve economies of scale in the logistics value chain.

- 117 What is evident is that the merger parties' proposition does not address the existential concern arising from the increase in the cost of the distribution of paid for newspapers. In particular, community newspapers and paid for newspapers operate on fundamentally different business models which influence how they are distributed. In this regard, the closure of the paid for Media24 newspaper titles will invariably lead to increased distribution costs for the remaining paid for newspaper customers of On the Dot.

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118 It is also worth recalling that while a proportion of the costs of On the Dot are variable, a significant proportion of the distribution costs of a paid for newspaper distributor are fixed. In this regard, the closure of the Media24 paid for titles (which account for up to 62% of the volume of paid for newspapers distributed by On the Dot) is significant. The loss of such a substantial amount of newspaper volume will invariably lead to higher distribution costs for the remaining external paid for titles.

Printing

119 As noted above, printing is an important aspect of a publisher's business. Printing is often the largest input cost of publishers. In *Media24/Natal Witness*, the Competition Commission engaged in an extensive analysis of the South African printing industry and noted that "*Printing has been identified by many stakeholders involved in the newspaper publishing industry as being a major if not the largest input cost associated with the production of newspapers.*" I attach relevant extracts from the non-confidential version of the Competition Commission's expert report as "**FA5**".

120 It is well established within the publishing industry that not all printers are the same. In this regard, there are various types of printing technologies which are used to print various forms of titles. For example, the technology used in coldset printing, which is used predominantly for the printing of newspapers, cannot be used in the printing of glossy magazines or inserts.



121 In its *Nasmedia/Paarl Post* decision, the Tribunal defined the relevant market for printing as “*the printing for magazines, brochures and advertising inserts printed on litho-web presses.*”⁶

122 In the *Bidvest/Paragon* matter, the Tribunal noted the following:

*“The printing industry can be divided into four specialized areas, each fulfilling a specific printing activity which does not compete with the other, namely 1) the printing of magazines and books on commercial web presses, 2) the printing of business forms, that is, the printing of stationary for business such as invoices, statements and self-adhesive labels, 3) the newspaper industry which uses a cold-set press to print, and 4) general commercial printers, which print all types of brochures, letterheads, business cards, pamphlets and catalogues on sheet-fed printers.”*⁷

123 In *Media24/Natal Witness*, the Tribunal highlighted the fact that:

“[i]t is common cause that cold-set and heat-set printing constitute two separate relevant product markets and that cold-set printing is an essential input in the publication of community newspapers. The merging parties indicated that the printing techniques other than cold-set are not as cost effective for the printing of newspapers and of high volume commercial/retail inserts and pamphlets. They further indicated that newspaper print runs generally constitute approximately [80% -100%] of the business of cold-set print operations with the remainder being retail inserts.”

124 In order to determine the potential substitutability of the various printers and printing processes from a demand-side perspective, the product that is being

⁶ Nasmedia and Paarl Post Web Printers (Pty) Ltd, Case No.:65/LM/May00.

⁷ Bidvest Group Limited and Paragon Business Communications Limited, Case No.: 56/LM/Oct01, para12.

printed by the publisher in question must be borne in mind, as well as the existence of alternatives to that particular printing process. There are several further important features which limit the ability of publishers to turn to other printing alternatives, even when a number of other printers are present in the market. These factors relate to more nuanced time and quality factors. For example, in respect of newspapers in general, printing is very time-specific, and the quality of the printed product is also of significant importance.

125 In *Media24/Natal Witness*, the Tribunal noted that:

“printing capacity is a central issue in this case but he added the proviso that “when you go to the customers the buyers, you have got [to] look [at] what’s [on] offer for them” in terms of the community newspaper slots.”

126 The Tribunal also noted that:

“[f]rom the perspective of printing customers who publish community newspapers, it is evident that the time of printing, the quality of the printing and the service provided are all crucial competition factor.”

127 With respect to the printing of magazines, Novus notes that with a rich history spanning over 100 years, “we have cemented our position as one of South Africa’s top printers for a variety of magazine publications”. In particular, Novus highlights that it has “fully automated production processes and high-speed presses”, which provide it with unparalleled capabilities. In addition, Novus notes that its “[s]trategic geographical plant locations ensure fast and efficient distribution”.

128 In relation to the printing of newspapers, Novus also describes itself as “*one of South Africa’s leading printing companies*”. Novus notes that it has coldset printing facilities in Cape Town, Johannesburg, and Port Elizabeth, and that these facilities “*are all geared to service the daily, weekly and community newspaper sectors, as well as small, medium and large retail and commercial requirements.*”

129 Novus also records that it has an annual coldset production capacity of 205 000 tonnes per annum and that its facilities have the ability to print “[u]p to one million copies per hour – with 800 tabloid pages printed simultaneously.”

130 I attach a copy of these statements, which are published by Novus on its website as “**FA6**”.

131 At present, the dominant publisher in South Africa, Media24 has split its printing business between Caxton and Novus, with Caxton being primarily responsible for the printing of Media24’s magazine titles, while Novus has been responsible for the printing of Media24’s newspaper titles.

132 As On the Dot is the *de facto* monopoly distributor of newspapers and magazines on a national basis in South Africa, it has significant power over the publishers of newspapers and magazines, as they are dependent on it. Once Novus controls On the Dot, this will enable Novus to leverage this position in various potential ways in order to induce or coerce publishers to use its printing services.



133 Caxton and the other publishers are dependent on On the Dot to distribute their paid for publications. From an alternative supply perspective, it is simply not possible, at this stage of the evolution of the market for newspapers and magazines, for a new national distributor to be established to compete with On the Dot. This accords the owner of On the Dot significant power over other publishers.

134 At the same time, Novus (the proposed purchaser of On the Dot) is a significant printer, and the publishers are customers of Novus in this capacity.

135 Novus, therefore, has a clear incentive to use its acquisition of the On the Dot business to induce its customers to print with Novus. Novus will, as a result of the transaction, acquire both the ability and incentive to use access to On the Dot as a basis to ensure that the relevant publishers transfer their printing requirements to Novus.

136 This places Caxton at considerable risk. Not only would it be dependent on its major printing competitor for the distribution of its publications, but its major printing competitor would be able to use On the Dot as a strategic lever to move even more printing work from Caxton to Novus. As indicated above, in recent interactions between Caxton and On the Dot, On the Dot has *already* indicated its intention to change its approach in relation to the pricing of its services, whereas previously it has simply accepted a set percentage of any increase in Caxton's cover price.

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137 In addition, as further explained above, the proposed transaction and restructuring will lead to an increase in the cost of distribution for Media24's competitors, which will place them at a considerable disadvantage vis-à-vis Media24 and may lead to the closure of the newspapers. This will have a negative impact on consumers and have a negative impact insofar as advertising is concerned, as Media24 will be able to attract a larger share of advertising, further undermining the position of its competitors.

ENGAGEMENTS BETWEEN MR RIQUADEU JACOBS OF CAPITAL NEWSPAPERS AND MEDIA24 IN RELATION TO THE RESTRUCTURING AND SALE OF ON THE DOT


138 On around 8 May 2024, I was approached by Ishmet Davidson, the Chief Executive Officer of Media24, and informed that it was considering a potential sale of On the Dot as part of a broader proposed restructuring of Media24's operations. Media24's approach to me was not entirely unexpected: Capital Newspapers (together with Caxton's backing) had previously purchased The Witness newspaper from Media24 in 2022, and Capital Newspapers is a respected, experienced and empowered participant in the newspaper publishing industry in South Africa.

139 This approach resulted in several engagements between me and representatives of Media24 and On the Dot.⁸

⁸ Caxton would have been likely to have had to fund any potential purchase of On the Dot by Capital Newspapers through a loan to Capital Newspapers.



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140 During the initial engagement, Media24 (through Mr Davidson) invited Capital Newspapers to purchase the On the Dot business from Media24 and, as a sweetener/inducement recorded that the Media24 Western Cape community newspaper titles were bundled into the same proposed transaction. The sweetener/inducement was necessary because it was explained to me that numerous titles that Media24 currently distributed would be closed by Media 24 and therefore no longer require On the Dot's distribution services.

141 It was further explained to me that Media24, at its April board meeting, had been given an instruction to consider the future of the printed newspapers as well as On the Dot as part of an overall restructuring process. I was advised that the Daily Sun printed newspaper was making significant losses and that there was a concern that the closure of the Daily Sun would increase the distribution costs of the Beeld, Rapport and City Press newspapers. In other words, I was informed that any purchaser of On the Dot would need to take into consideration that as part of the broader restructuring process that was envisaged, there may be less volume through the On the Dot business which would impact the manner in which On the Dot would be operated.

142 Later, Media24's representatives informed me and the Caxton representatives that, at a board meeting in May 2024, Mr Bekker had issued an instruction that **all newspaper titles** (other than Die Burger and Die Son) **would cease to be printed.**

143 Initially, Capital Newspapers was presented with two forecasts. One was a forecast model premised on On the Dot no longer operating its northern



distribution network (on which Caxton is dependent for the distribution of The Citizen newspaper and its community titles). The other was a forecast premised on the whole of On the Dot's national network continuing to operate. Capital Newspapers was informed that On the Dot had been instructed to consider a situation where the northern network would be terminated. This would mean that the newspapers in the inland area (such as the Sunday Times, Sowetan, The Citizen, Business Day and various Independent Media publications in these areas) would be left without a distribution solution.

144 It was made plain to Capital Newspapers that the sale of the On the Dot business would be bundled with the sale of the profitable community titles, as an integral part of the subject matter of the sale, given the fact that Media24 was planning to cease to print and distribute a number of its paid for newspaper titles that are currently distributed by On the Dot, including City Press, Daily Sun, Rapport and Beeld, which would render On the Dot less profitable and potentially loss-making. If the print newspaper volumes decline considerably as a result of ceasing to print the Media24 newspaper titles, then this will have a material adverse effect on the profitability and viability of the On the Dot business. Therefore, any prospective purchaser of the On the Dot business would need to understand the implications of the closure of various of the printed newspaper titles for the On the Dot business and would need to be comfortable with that, hence the sweetener and inducement of including the community newspapers in the sale assets.



145 During the period of negotiation, which lasted approximately 4 weeks ending in early June 2024, I was informed that it was Media24's preference that Capital Newspapers should purchase the On the Dot business as previous engagements

with Novus had failed. I was further informed that if no deal could be secured with Capital Newspapers, Novus would be approached again. Given the previous engagement with Media24 in relation to The Witness, I took the Media24 representatives at their word that Capital Newspapers was the preferred purchaser and, therefore, a due diligence process commenced, which involved several engagements between the teams. Similarly to the approach when The Witness was purchased, I engaged with Caxton in relation to the potential transaction. Caxton indicated that it would be willing in principle to provide financial backing for the purchase, if terms could be reached. Caxton also supported my offers to acquire the Media24 newspaper titles and my attempts to assist Media24 to ensure the survival of these titles.

146 During the negotiations, it was explained by Media24 that up to 67% of the employees of On the Dot would be superfluous once the printing of the Media24 titles had ceased, and two deal structures were proposed by Media24:

146.1 The first proposed structure envisaged Media24 pre-emptively restructuring the On the Dot business before the transaction (i.e. that the retrenchments would occur prior to the transaction – I also understood that there had been retrenchments at On the Dot within the last year).



146.2 The second proposed structure envisaged Media24 recompensing the potential purchaser for the retrenchment costs that would be incurred in due course.

 
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147 As a counter to this proposed strategy, the Caxton representatives and I raised the potential option of improving the cost of distribution in order to allow certain printed newspaper titles to continue operating as well as further forms of assistance to reduce the cost of publishing the newspapers. The proposals or restructuring and assistance would ensure a sufficient volume of print newspaper distribution to allow for the necessary economies of scale required to manage the overall distribution costs faced by the printed newspapers such that these newspapers (and others) that rely on On the Dot could remain profitable over the long term as this would ensure the long-term viability of these printed titles. This was - in my view – critical for the survival of paid for newspapers in South Africa.

148 From engagements with the On the Dot team, I was aware that there were a range of options available to improve the costs of distribution which could ensure that the newspapers could continue to be printed. These included making available IT programmes (in the place of the expensive SAP system) to Media24, which would significantly reduce the costs of producing these titles. The management team of On the Dot and Media24 had not previously considered these options. Once considered, the model showed that the business of On the Dot, as well as the majority of newspaper titles that were earmarked for closure, could be saved. It should be noted that the offer to assist in saving the printed newspaper titles was made early in the engagements with Media24 regarding the potential purchase of On the Dot.

149 However, while Capital Newspapers was advancing the process of conducting a due diligence process for the purposes of finalising its offer to Media24, I was suddenly contacted on 7 June 2024 by Mr Raj Lalbahadur (the Chief Financial

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Officer of Media24), who informed me that Media24 had decided to end the process with Capital Newspapers, and was now going to sell the businesses to Novus. This came as a surprise to me as I had been told two days before that two significant “*hurdles*” had been crossed and “*it was looking good*”.

150 No reasons were provided at the time by Media24 for its *volte face*, and to date Media24 has not explained the basis on which it suddenly and without warning walked away from the negotiations with Capital Newspapers and Caxton and decided to conclude the sale agreement with Novus — an unempowered company with no interest in keeping the costs of newspaper distribution low and printed newspapers alive.

151 Subsequently, Capital Newspapers submitted a formal purchase proposal on 13 June 2024, but was informed that the decision to sell to Novus was final. As noted above, the initial and subsequent proposals made by Capital Newspapers could potentially avoid the cessation of printing of the newspaper titles. But Media24 rejected both proposals — the sale to Novus is far more aligned with Media24’s strategy of harming its competition in the printed newspaper industry and entrenching its dominance through its online platform.

EVENTS FOLLOWING THE AGREEMENT BETWEEN MEDIA24 AND NOVUS AND MEDIA24’S EVOLVING REASONS

152 A number of media articles were published in mid-June 2024 regarding Media24’s potential restructuring. Media24’s statements in these articles and its



own publications reflect its shifting and inconsistent explanation for the transaction.

153 On 13 June 2024, Moneyweb published an article entitled "*End of an era: Media24 to close iconic newspapers*" in which Jeremy Maggs wrote that:

"Media24 is set to close several of its mainstream print publications, including City Press, Rapport, Beeld and Daily Sun."

154 I attach a copy of the article as "FA7".

155 The article quoted Mr Ishmet Davidson, the CEO of Media24, as stating that:

"Media24 continuously reviews its operations to protect viability and long-term sustainability within the context of its transition to an increasingly digital media landscape. We will also continue to consult with staff about any potential and subsequent actions and remain committed to following due process. We do not comment on rumours or speculation, nor on the details of any internal processes."

156 However, in another article entitled "*Media24 CEO says no final decision made on closure of newspapers*", published in the Business Day later the same day, Mr Davidson was quoted as saying that no final decision had been made in relation to the closure of the newspaper titles:

156.1 "I've not made any announcements and am considering a host of options as the business goes. We are looking at the entire business";
and

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156.2 “Anxiety runs through the entire industry and there’s the human factor to consider. We are now forced to talk to staff [by] doing internal communications even though no final decision has been made ... I can’t say [yea] or nay.”

157 I attach a copy of the article as “FA8”.

158 On 18 June 2024 (following significant press concern about the failure of Media24 to engage with its employees regarding its new strategy and whether their jobs were at risk or not), a press announcement was made by Media24 in which it was stated that:

*“Media24 announced today (18 June 2024) that it is considering the closure of the print editions of five newspapers, while evolving three of them into digital-only brands. It has also accepted an offer to purchase its community newspaper portfolio and media logistics operations. The company will **start consultations with staff and the transfer of the sold businesses to its new owner this week.***

The planned interventions include the following:

- *Closing the print editions of Beeld, Rapport, City Press, Daily Sun and Soccer Laduma, as well as the digital (PDF) editions of Volksblad and Die Burger Oos-Kaap, and the digital hub SNL24.*
- *Transitioning Rapport, City Press and Daily Sun into digital-only brands.*
- *Selling On the Dot, the media logistics business, and the community newspaper portfolio to Novus Holdings, subject to regulatory approvals.*

Says Ishmet Davidson, CEO of Media24: “In South Africa, like elsewhere in the world, consumer preferences have changed. People now read more news than ever, but most prefer to do so on their cellphones or laptops and publishers have to comply with their preferences.




“Consequently, print media globally has been suffering structural declines in circulation and advertising for decades. Combined with rising fixed distribution costs, this has had a devastating impact on print operations.

*“As a result, our titles in the northern region have been on life support for a while. Combined losses are projected to mount to R200m over the next three years. After years of cut-backs, we’ve reached the end of cost reductions to try save these print operations. **We’ve simply run out of options.***

“So we have to restructure our business now. It will also allow the remaining viable brands to move fully to digital and will strengthen our two main digital news brands, News24 and Netwerk24, serving audiences and society across multiple market segments.”

As digital brands, Rapport and City Press will reside at Netwerk24 and News24 respectively. Beeld, Volksblad and Die Burger Oos readers and subscribers will be able to continue accessing their news on Netwerk24, together with the nearly 100 000 subscribers who enjoy the platform’s “All in One Place” multi-content offering.

It is this renewed focus on its two hero digital news brands that contributed to Media24’s decision to close SNL24 and sell its interests in the profitable local newspaper sector, says Ishmet.

“Our main objective is building and cementing a sustainable model for digital news journalism. Daily Sun (part of SNL24) represents an important segment of the middle market, that we will continue to serve with the relaunch of the brand as a standalone and free e-news site.”

Die Burger and Son in the Western Cape are both unaffected by these changes. They have a separate infrastructure that remain viable due to a more concentrated local footprint and are marginally profitable. “In addition, Die Burger holds great historical value as the foundation upon which Naspers was built.”

With only a small print media portfolio remaining, Media24 also decided to divest of its media logistics business, On the Dot.

*The consultation process is expected to be completed over the next three months, with **30 September earmarked as the last day of publication for the affected newspapers.** “We anticipate that the proposed restructure could result in at least 400 job losses, with 400 more positions transferring to Novus Holdings with the sale and some roles possibly needed beyond 30 September,” says Ishmet. “We also intend reducing our corporate and support services and operational costs in line with the changes made in our business.”*

“We are fully committed to managing this highly sensitive consultation with compassion while following the processes prescribed by law and intend to keep job losses – particularly amongst our journalists – to a minimum. Unfortunately, we cannot share any further details until the process has been concluded,” says Ishmet.

*In a very competitive landscape, News24 and Netwerk24 remain the digital news destinations of choice for South Africans. News24 was named by the Reuters Institute as South Africa’s most trusted news brand for the sixth consecutive year earlier today. **News24 averaged 9.1m daily unique page views for the financial year to 31 March 2024 while Netwerk24 garnered 5.7m page views.** During the election week, they generated close on 105m page views combined; peaking at a record-breaking 21.9m page views for News24 and 5.8m for Netwerk24 on a single day.*

“Over the past financial year, their combined subscribers grew by 19% yoy to more than 200 000. That’s far more than the combined circulation of all our print news titles,” says Ishmet.

“There is no doubt whatsoever that our future is digital. But our digital news services no longer face competition from only other local publishers. Our main competitors now are Facebook, Google, Instagram, and TikTok; all of which are well funded and based offshore.”

Says Prof Rachel Jafta, chairperson of the Media24 board: “As the home of trusted and independent journalism, Media24 plays a crucial role in our society – especially in giving a voice to millions of our fellow citizens. And

we remain as dedicated as ever to this moral obligation." (Emphasis added.)

159 It is plain from this statement that the intention is that the relevant titles will form part of the two "*main digital brands*". It was also the case that at this stage Soccer Laduma was earmarked for closure and the Media Logistics business comprised part of the sale to Novus. It is also plain that the closure of the titles and the sale of On the Dot are part of the same strategic decision making process and are plainly interrelated and inextricably interconnected.

160 In yet a further version, Mr Davidson in a statement to Moneyweb published on 21 June 2024, contradicted himself yet again by stating that the Media24 board only made a tentative decision subject to consultation, on 7 June 2024, and that only on this occasion did Mr Bekker learn of the proposed closure. Mr Davidson's public reaction contradicts what was told to me, presumably because it was concerned about its contravention of its consultation obligations under section 189 of the Labour Relations Act.

161 I attach a copy of the article as "**FA9**".



162 In view of the significant concerns that had been raised, Mr Bekker, the chair of Naspers, published an opinion piece supporting the decision to close the papers, a copy of which is attached as "**FA10**". This article confirms the fact that Mr Bekker had been centrally involved in the decision relating to the closure of these publications. Mr Bekker suggested that there is a global trend to the transition of newspapers from printed newspapers to online.



163 Capital Newspapers and Caxton were both quoted in the press as having stated that they had offered to assist Media24 to ensure the viability of the printed titles. However, it became apparent that Media24 had not disclosed this to employees and was suggesting that it had not received any "concrete offer" for the titles. Accordingly, Capital Newspapers made a formal offer for the newspaper titles as well as On the Dot and the community titles. A copy of this offer is annexed marked "FA11".

164 It was noted in the offer that: *"We understand that Media24 has said to employees that it would not contemplate selling the Rapport or the City Press as it intends using these brands on its existing News24 and Netwerk24 sites. This would be a deeply cynical move on the part of Media24 as it would effectively be preferring a hollow use of the brands on an existing strongly branded subscription online news platform to the detriment of employment, journalism and the continued existence of the printed media in South Africa". This is entirely correct as having the titles as brands on its News24 or Netwerk24 sites is effectively meaningless. The platform is branded as News24 and Netwerk24 and there is a single subscription charged for access. Media24's entire strategy is to maintain a "main brand". Indeed, to the best of our clients' knowledge, publications such as the Volksblad, Burger Oos and other magazines that initially formed part of the News24/Netwerk24 platforms, have been subsumed by the platform itself. This is by no means the same as having a separate newspaper title."*

165 As its bluff had been called, on 18 July 2024, Media24 published the following notification to its employees, a copy of which is attached as "FA12":

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“We undertook to keep you updated on any material developments related to the proposed restructuring of our print newspaper operations and the anticipated sale of On the Dot, the community newspaper portfolio and Soccer Laduma to Novus (pending regulatory approval).

In the latest development, Media24 received a letter from Capital Newspapers/Caxton yesterday in which they reiterated their initial offer to purchase On the Dot and the portfolio of community newspapers. This updated letter also formalised – for the first time in writing, despite their earlier claims – a definite and concrete offer to purchase the four newspapers earmarked for closure.

*We have already accepted the offer from Novus Holdings to purchase On the Dot, the community newspapers and Soccer Laduma, and have no intention to renege on this transaction (subject to regulatory approval). And as mentioned before, **it is unlikely that we would sell the four newspaper brands; they are fundamental to our digital news strategy of serving our readers in the format that the vast majority prefers.***

You’ll remember that our proposal includes for Rapport’s news offering to continue under its own masthead on Netwerk24, and that of City Press on News24 – together they would form the anchor of its Sunday news offering. Daily Sun (currently part of SNL24) represents an important segment of the middle market that we plan to continue serving with the relaunch of the brand as a standalone and free e-news site.

Selling the community newspaper portfolio to Capital Newspapers/Caxton will give them (direct and indirect) ownership of 76% of the community newspaper market in South Africa. This will have a very worrying impact on the democratic rights of millions of South Africans who depend on community newspapers for information and news based on independent editorial diversity. Not to mention leading to an uncompetitive concentration of regional advertising spend in the hands of ultimately a single publisher, albeit with many and diverse subsidiaries.

Furthermore, this would be compounded by Caxton’s then near 100% control of the media distribution industry, and it could shift their role as a

leading newspaper printer to one of dominance in the industry. In a nutshell, they would be in absolute control across the entire newspaper industry value chain.

In the interest of minimising potential job losses, however, and keeping Beeld alive as a brand that carries great sentimental value, Media24 will consider any serious offers to purchase the title, subject also to the purchaser retaining the approximately 30 employees potentially affected by Beeld's proposed closure.

Although we rejected the offer from Capital Newspapers/Caxton, we invited them to make an offer for Beeld. We welcome reasonable and properly considered offers from all interested parties. Any offers received will be subject to regulatory approval, if required, and we will also include this in the consultation process, which remains in progress."

166 It is noteworthy that the proposed transaction now is said to include Soccer Laduma and exclude the Media Logistics business. It was again emphasised that the titles (Rapport, City Press and Daily Sun) are to be included in the News24/Netwerk24 offering and that Media24 would consider a sale of the Beeld.

167 The basis for not selling to Capital Newspapers was stated by Media24 to be competition concerns. However, these alleged concerns are patently unfounded as neither Capital Newspapers nor Caxton has any overlapping titles with those of Media24. Community newspapers are local papers, and the relevant Media24 titles are in the Western Cape, where neither Caxton nor Capital Newspapers have any community titles. In any event, given the fact that Media24 initially sought to sell the community titles and On the Dot to Capital Newspapers, it would appear that Media24 itself did not believe that there were any competition

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concerns in this regard and that this is simply an *ex post facto* attempt to rationalise its position.

168 Insofar as the non-community print titles are concerned, the only newspaper which Capital Newspapers owns is the Pietermaritzburg/KZN-based daily English language newspaper, The Witness. Furthermore, Caxton currently owns only The Citizen, which is a daily English newspaper that is circulated primarily in Gauteng with a small circulation in the Free State. The Witness and The Citizen do not compete directly with the Beeld and Rapport, which are predominantly Afrikaans-read titles and, in any event, Rapport is a Sunday publication only and therefore does not compete directly with The Citizen. Insofar as City Press is concerned, it is predominantly, from a print perspective, a Sunday newspaper that does not compete directly with The Witness or The Citizen. In any event, the City Press's primary competitor from a Sunday newspaper title perspective is the Sunday Times. The City Press also faces competition from a host of other newspaper titles, including a plethora of independent media titles, such as The Star, The Sunday Independent, Sunday World, The Sunday Tribune, the Argus, and others. There are also other independent newspaper competitors such as The Daily Maverick and the Mail & Guardian. The Daily Sun is similarly not in competition with The Witness or The Citizen.

169 Furthermore, it is worth noting that even in circumstances where a merger may raise competition concerns, such a merger may still be justified on substantial public interest grounds. In this regard, even if Media24's arguments were to be seen to carry any weight, the significant public interest benefits which would flow

from a sale to Capital Newspapers (a majority black-owned entrepreneurial business) would clearly outweigh such concerns, as would the significant public interest benefits arising from preventing an increase in the cost of distribution of paid for newspapers. The *ex post facto* attempt to defend the decision not to sell to Capital Newspapers based on patently unsupportable assertions further emphasises the fact that this was not a genuine reason for refusing to sell to Capital Newspapers.

170 When Media24's unfounded argument regarding competition concerns was addressed, it again changed tack and informed its staff in a notification published on 31 July 2024, a copy of which is attached as "FA13", that:

"It gives me great pleasure to announce an important breakthrough and turning point in our consultations with staff around the proposed closures of the printed editions of Beeld, City Press, Daily Sun and Rapport. We have just received approval from the Media24 board for our proposal to retain all the journalists from these newspaper titles at their future homes within Netwerk24, News24 and at Daily Sun as a standalone website. This means that we can save 66 jobs across all the affected teams. **At the same time, Beeld is also no longer for sale. And although we anticipate that the PDF versions of Beeld and Volksblad will no longer be available, the teams are working on plans to maintain a digital presence for these historical and beloved brands on Netwerk24.** Those of you included in the 66 positions and who have been involved in the consultation process are no longer affected. However, it is important to note that consultations will continue with the rest of the staff affected by the proposed restructurings. By now, there should be an email in your mailbox confirming your status in this regard. The management team will also meet with both groups shortly to discuss the detail. From the outset, Media24 undertook to keep job losses – particularly of our journalists – to a minimum. This outcome is the result of a robust consultation process that included lengthy*




discussions and debates with our editors that went beyond the transition from ink on paper to digital, in line with irreversible consumer trends and preferences. A heartfelt thank you and much appreciation to the management, HR and editorial teams involved in this and for coming up with a solution that serves journalism at large. Retaining the newspaper journalists will give our digital newsrooms the best chance at continued success in producing journalism which holds truth to account and protects our fragile democracy. While this decision holds cost implications, we firmly believe that it is an important investment in and commitment to the future of quality journalism. I also want to reiterate that no restructuring or title closures will commence prior to approval by the Competition Commission of the proposed sale of On the Dot, the community newspaper portfolio and Soccer Laduma/Kick Off to Novus. We will be filing our application shortly and expect a decision from the Competition Commission by the end of October 2024”.

171 Media24 responded to Capital Newspapers on 1 August 2024, noting that: “*The titles earmarked for closure are not for sale. They are inextricably tied to our strategic shift from print to digital. We will also no longer be considering offers for Beeld*”. I attach a copy of this response as “FA14”.

172 It is telling that Media24 indicated in rejecting an offer for all of the closing titles that it would consider the sale of the Beeld, but when Capital Newspapers followed up on this offer, it changed its position indicating that it no longer wished to sell Beeld. Indeed, it would appear that Media24 has decided that the Beeld will have no digital presence – in other words, it is killing the Beeld.

173 Jeremy Maggs published an article on 1 August 2024, a copy of which is attached as “FA15”, noting that:

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*"In another twist in the on-again, off-again Media24 newspaper closure drama, the media giant has now announced it will retain all 66 journalists from the four print newspapers earmarked for closure. They will be incorporated into its Netwerk24, News24, and Daily Sun websites. **Media24 also announced that its Afrikaans daily newspaper, Beeld, is no longer for sale after it announced earlier this month that it was**".*

174 This is relevant as the ever-changing position of Media24 and its inconsistencies (which have been exposed when offers were made for the newspaper titles that it had indicated were to be closed), shows that Media24 is seeking to disguise its strategic position. When its narrative was confronted (which contradicted the statement made to employees that *"we have run out of options"*), Media24 changed its position repeatedly. It moved to a position where it no longer wished to sell the Beeld (which it had previously indicated it was open to selling) on the pretext that it is creating a *"digital presence"* for the Beeld.

175 This appears to be a ruse. Replacing a newspaper with a standard online platform is simply temporarily warehousing the newspaper. It has no intention in the long term of preserving the newspaper titles but is simply giving the appearance of wanting to maintain an online presence for these titles in order to secure competition approval, but it is anticipated that shortly after approval has been secured that the online presence will quickly dissipate and be subsumed within News24. This is consistent with the fact that its strategy of ceasing the publication of the newspapers is part of a tactic to enhance its dominant position and undermine its competitors.



176 Media24's inconsistency in this regard not only seeks to obscure its contravention of the Labour Relations Act, but highlights the fact that the restructuring, of which the sale of On the Dot and the predominantly Western Cape community titles forms part, will have a very significant impact on employment at Media24.

177 Any retrenchment process that results in the retrenchment of editorial staff and journalists will have very significant consequences for these individuals as there are not sufficient alternative sources of employment for journalists and editorial staff in South Africa, nor is it likely that there will be alternative forms of employment for these journalists. This also has implications for journalism in South Africa more generally. As such, not only does the merger harm employment, but it also has a negative impact on the newspaper sector generally.



178 This is clearly a fundamental alternative which employees should have been informed of before Media24's incorrect statement that they have "*simply run out of options*".

179 The inconsistent approach of Media24 is analogous to the concerns raised by the Competition Appeal Court in *eMedia* where it noted that "*Competition jurisprudence requires an approach that looks beyond the entitlement of a dominant firm to decide with whom they wish to do business and that the terms of their business dealings must be unfettered*".

- 180 Media24's approach does not involve competition on the merits of the newspaper products. It is a foreclosure strategy that is being effected through the merger, which will have devastating consequences for the media sector.
- 181 Moreover, there has already been a merger specific retrenchment process that has taken place in the last number of months within Media24.
- 182 The negative impact of the transaction and the restructuring on employment is amplified by the fact that Media24 has failed to consult its employees properly. This is so because Media24 only commenced the consultation process a considerable period after it took the decision to close the newspaper titles and dispose of On the Dot which would inevitably result in the retrenchment of employees. Media24's attempt to obfuscate the consequences of its failure to consult is a serious matter as it not only undermines Media24's credibility, but also enhances the concerns arising from the negative consequences of the proposed merger on employment.

ENGAGEMENTS BETWEEN THE APPLICANTS, THE MERGER PARTIES AND THE COMPETITION COMMISSION

- 183 The applicants have continuously sought to ensure that the merger's impacts are thoroughly considered by the Competition Commission. The submissions made by the applicants form part of the Commission's record and will be provided to the Court pursuant to Rule 53. I do not attach these submissions at this stage as they will unduly lengthen the papers.

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- 184 On 21 June 2024, the applicants' attorneys wrote to the Competition Commission raising concerns about the proposed merger. I attach a copy of the letter sent by the applicants' attorneys as "FA16".
- 185 On 24 June 2024, the applicants' attorneys sent a follow up letter to the Competition Commission, a copy of which is attached as "FA17".
- 186 On 3 July 2024, the applicants' attorneys sent a letter to the merger parties outlining concerns about the merger. They requested undertakings to notify the Competition Commission and suspend actions like printing cessation and retrenchments until the merger was approved. I attach a copy of the letter sent by the applicants' attorneys as "FA18".
- 187 On 4 July 2024, the merger parties' attorneys responded, a copy of which is attached as "FA19".
- 188 On 7 July, the applicants' attorneys wrote to the merger parties' attorneys requested formal commitments from the merger parties to notify the Competition Commission of the merger and refrain from taking further steps to implement the merger (e.g., layoffs or curtailment of printing and distribution) until approval. A copy of the letter is attached as "FA20".
- 189 On 9 July 2024, ENS responded to the applicant's attorneys (Attached as "FA21"). On 10 July 2024, the applicants' attorneys replied, highlighting the undertakings made by the merger parties, and seeking clarification on various



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points associated with the proposed merger. I attach a copy of the letter sent by the applicants' attorneys as "FA22".

190 On the same day, the merger parties' attorneys responded by representing that Media24 did not intend to cease printing the relevant newspaper titles until the end of the relevant competition process. I attach a copy of the response as "FA23".

191 On 11 July 2024, the applicants' attorneys sent a further letter confirming that the merger parties had undertaken to notify the transaction and arrangements in terms of which Media24 would sell the On the Dot business and various community newspaper titles to Novus in conjunction with the process which Media24 is undertaking to cease printing various newspaper titles and retrench staff associated with those newspaper titles. The applicants' attorneys further pointed out that Media24 had undertaken to suspend the process of ceasing printing the newspaper titles and would not retrench any staff associated with the newspaper titles or with the On the Dot distribution business or the community newspaper titles, pending notification and approval of the transaction and arrangements by the Competition Authorities. I attach a copy of the letter as "FA24". The merger parties' attorneys also refused to provide a copy of the non-confidential filing to the applicant's attorneys despite the fact that this would have been served on the trade unions and the employee representatives. I attach a copy of the email trail in this regard marked "FA25"

PART A: URGENCY OF INTERDICTIONARY AND SUSPENSIVE RELIEF***Reasons for urgency***



192 This application has been brought with the appropriate level of urgency, within a few hours of the applicants learning of the Commission's decision to approve the merger. It was launched on 31 October 2024. Following the approval of the Commission which was communicated to the merger parties on the evening of 30 October 2024, Mr Raj Lalbahadur of Media24 sent the following announcement to employees of Media24:

"Dear folks

We have just received good news from the Competition Commission and are pleased to announce that they have approved the sale of On the Dot and the community newspaper portfolio (including Soccer Laduma/Kick Off) to Novus Holdings.

In the recent companywide broadcast I undertook to inform you first of any developments related to the restructure – irrespective of the time. Hence you receiving an email at 06h00! We will now also share the news with the media and other stakeholders, and we attach the official media release for your information.

We are implementing the transaction with Novus Holdings today. And closer to home, the ruling also paves the way for Media24 to take



the next steps on our strategic journey to establish and cement a viable and sustainable model for independent digital journalism, in line with irreversible consumer trends and preferences. For this, we thank the Competition Commission for their thorough and comprehensive review and consideration of our application.

*The final phase of consultations and meetings with affected staff across the three divisions (Community News, **News** and On the Dot) will start shortly. Your respective GMs and HR departments will be in touch directly to schedule this.*

***This renewed focus on our two hero digital news brands, News24 and Netwerk24**, includes concentrating our investments in news on enhancing and improving our digital content offering to subscribers. The two respective editors-in-chief, Adriaan Basson and Henriëtte Loubser, will share more detail of the plans as they unfold. However, on a high level these range from further elevating the quality of journalism and streamlining publishing to deliver trusted news faster, to introducing personalisation and expanding enriched content.*

***The final publication date for the last of the four affected printed newspapers (Beeld, City Press, Daily Sun and Rapport), the PDF editions of Volksblad and Die Burger Oos-Kaap on Netwerk24 and for SNL24 operating as a hub will be completed by 31 December.** From January 2025, Rapport and City Press will reside at Netwerk24*

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and News24 respectively as digital-only brands at the core of the Sunday content offering, and Daily Sun will operate as a standalone, free-access news website. Beeld, Volksblad and Die Burger Oos-Kaap readers and subscribers will be able to continue accessing their news on Netwerk24, together with the nearly 100 000 subscribers who enjoy the platform's "All in One Place" multi-content offering.

The divisional management teams will share more detail during the consultations, and our publishing teams will inform subscribers, advertisers, the retail and other stakeholders.

We have the greatest respect and appreciation for the contribution that the people of Media24, as well as our loyal readers and advertisers have made over years, some over decades, in building the Media24 we know today. We also wish our colleagues at On the Dot, the community newspapers and Soccer Laduma/Kick Off all the best in their new home.

The road to a sustainable and viable future for quality journalism is undeniably digital, and these changes mark a tipping point in the transition. We have a very important role to play in safeguarding public interest and holding power to account in our fragile democracy, and remain as committed to this as ever.

All the best for the busy few weeks ahead." (Emphasis added.)



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193 This announcement confirms that the transaction will be implemented today (31 October 2024) and that the newspaper titles will close on 31 December 2024. It also confirms (again) Media24's appreciation that the approval of the merger was a requirement for its next strategic steps including the closure of the printed newspaper titles. This again underlines its understanding that the closure of the newspapers is intertwined with the sale of On the Dot.

194 Media24 also made an announcement to the press. This is reflected in a News24 article attached as "FA26".

195 The relevant portions of this media report are:

"The Competition Commission has approved Media24's sale of its distributions business, On the Dot, its community newspaper portfolio, and the Soccer Laduma and Kick Off titles to printing group Novus Holdings.

Media24 will now also proceed with its restructuring plans, which involve closing the print editions of Beeld, Rapport, City Press, and Daily Sun, and shutting its SNL24 digital hub.

"We are implementing the transaction with Novus Holdings today," interim Media24 CEO Raj Lalbahadur said in a statement on Thursday.

"The ruling also allows Media24 to continue on its strategic journey to establish and cement a viable and sustainable model for independent

digital journalism, in line with irreversible consumer trends and preferences.

In June, Media24 announced a major restructuring that, at the time, would have resulted in up to 400 job losses due to years of declining advertising and circulation. The matter at the Competition Commission did not stop the Section 189 process of retrenchments.

The initial plan involved the retrenchment of 66 journalists who create, process and package content for Beeld, Rapport, City Press and Daily Sun. However, Media24 later announced that it would no longer retrench the 66 editorial staff members.

The final publication dates for the last print editions of Beeld, City Press, Daily Sun, Rapport, the PDF editions of Volksblad and Die Burger Oos-Kaap on Netwerk24, and for SNL24 will be 31 December 2024”.

196 Also on 31 October 2024, Media24 addressed the following email to its clients (again confirming the inter-related nature of the closure of the newspapers and the Commission’s approval of the transaction), a copy of which is annexed marked “FA27”:

“When Media24 announced in June that it was contemplating the closure of four print newspapers (Beeld, City Press, Daily Sun and Rapport) and the digital hub SNL24, as well as the sale of its community newspaper portfolio (including Soccer Laduma/Kick Off) and media logistics business

(On the Dot) to Novus Holdings, we committed to keeping you informed.

The transaction and implementation of the closures were dependent on a ruling by the competition authorities.

The Competition Commission has just announced their ruling in this matter, and we thought you'd appreciate hearing about it from us firsthand.

It is with sadness that Media24 announces the closure of the print editions of four newspapers (Beeld, City Press, Daily Sun and Rapport), the digital (PDF) editions of Volksblad and Die Burger Oos-Kaap, and the digital hub SNL24. At the same time, we'll be transitioning Rapport, City Press and Daily Sun to digital-only brands.

The last date of publication for the last of these print and digital editions are as follows:

Daily Sun and Beeld: Friday, 20 December 2024

City Press and Rapport: Sunday, 22 December 2024"

(Emphasis added).

197 Without the urgent intervention of this Court, the applicants will be unable to obtain substantial redress in respect of the:

197.1 Irreversible harm to competition and the media industry that would be inflicted by the implementation of the merger. The merger will result in the closure of several well-established printed newspaper titles, which will have far-reaching consequences for the South African media landscape. If the merger proceeds, distribution costs for other publishers will significantly increase due to reduced economies of

scale. This will be likely to force other newspapers to close, leading to a death spiral in the printed media industry. The cost spiral and reduced access to distribution channels (due to the sale of On the Dot to Novus) will fundamentally undermine the viability of smaller and independent newspaper publishers, including those owned by historically disadvantaged individuals, thereby entrenching Media24's dominance. Once implemented, the anti-competitive effects of the merger—such as the closure of newspapers and the increased costs of distribution for competitors—cannot be undone, even if the impugned decision is later found by this Court to be unlawful or anti-competitive.

197.2 It is also likely that third parties may commence preparing for the negative consequences that the merger will have on their businesses and commence restructuring processes that will result in retrenchments. These cannot subsequently be undone and it should be noted that these employees (who were not consulted by the Commission) have no recourse against Media24 for their loss of employment.

197.3 The proposed merger also has profound and permanent constitutional implications because it threatens press diversity and freedom of expression. Allowing the merger to proceed will reduce the plurality of voices and public access to diverse sources of news. Media24's control of the media would also be significantly strengthened by the elimination of competing printed titles, particularly in historically



underserved and disadvantaged communities. The loss of a diversity of newspapers will diminish the public's right to access a variety of viewpoints, further threatening democratic accountability and freedom of the press.

197.4 The closure of printed newspaper titles and the sale of On the Dot will result in immediate and long-term job losses. Media24 had initially indicated that up to 800 employees may lose their jobs, with 400 job losses expected from the cessation of printed newspaper titles alone. The retrenchments will affect not only journalists and editorial staff but also those employed in the broader printing, distribution, and media logistics sectors. If the Court does not intervene urgently, many of these job losses will become irreversible, even if the impugned decision is later reviewed, thereby inflicting permanent damage on the media industry and employment in South Africa.

197.5 The merger, if implemented, will enhance the dominance of Media24, and significantly reduce the opportunity for new entrants and historically disadvantaged persons to participate meaningfully in the media market. Once the merger is implemented, the concentration of media ownership will be significantly higher, further stifling competition and discouraging the entry of small and medium enterprises into the media sector.

198 The urgent interdictory relief and just and equitable suspensive relief sought by the applicants would prohibit Novus, the primary acquiring firms, Media24 and

the primary target firms from implementing the merger, pending the final adjudication of Part B of this application.

199 The relief sought by the applicants in **Part B** would become irrelevant without the urgent intervention of this Court in **Part A**. The urgent relief sought in **Part A** of this application is required to preserve the meaningfulness of the case for the declarator and review the applicant seeks to advance in **Part B** of this application.

200 It follows that the applicant could not be afforded substantial redress at a hearing in due course.

Time periods

201 The decision by the applicants to launch **Part A** of this application was urgently prompted by the Commission's approval of the merger on the evening of 30 October 2024 and the merger parties' refusal the next morning (31 October 2024) to undertake not to implement the merger pending the review.

202 This application was launched as soon as possible after the decision came to the applicants' notice early on 31 October 2024.

203 In the circumstances, I respectfully submit that the applicants have acted with all reasonable speed in launching the application as soon as possible after having had notice of the Commission's approval of the merger.



204 I also respectfully submit that the time periods in the notice of motion are reasonable in the circumstances.

205 The time periods have also been set in order to allow this Court to decide the matter as quickly as possible because of the future hearing of the main application.

206 In all the circumstances set out above, I respectfully submit that:

206.1 the case is urgent;

206.2 the applicants have moved with all reasonable speed to launch the application as swiftly as possible; and

206.3 the applicants have provided a reasonable timetable for the conduct of the matter in the prevailing circumstances.

PART A: THE REQUIREMENTS FOR AN INTERIM INTERDICT ARE MET

207 In **Part A**, the applicants seek an interim interdict to prohibit Novus, the primary acquiring firms, Media 24 and the primary target firms from implementing the merger.

(i) *The applicants have established a prima facie right*

208 I am advised that in order to obtain the interim interdict, an applicant is required to show a *prima facie* right, though open to some doubt.



209 As explained above, the Commission's decision to approve the transaction subject to conditions is clearly unconstitutional and unlawful. But at the very least, they are *prima facie* unconstitutional and unlawful.

210 The applicants have furnished proof which, if uncontradicted in **Part B**, would entitle them to final relief.

211 The implementation of the merger would result in the closure of several major printed newspaper titles as part of Media24's shift to digital platforms, undermining the public's ability to access diverse viewpoints or news at all. This not only threatens the plurality of voices in South Africa's media landscape, which is a cornerstone of the right to freedom of expression, but will violate the right of members of the public to access information.

212 As a direct consequence of the merger, distribution costs to other competing newspaper publishers will be increased by the On the Dot distribution business, which will be likely to lead to many competing newspaper publishers terminating their paid for newspaper titles. This will irreparably damage competition in the paid for newspaper sector and in the media sector more generally. Once other paid for newspaper titles are closed the likelihood of them reopening is negligible.

213 The merger will make it more expensive and difficult for large segments of the population—particularly those without access to digital platforms due to economic constraints—to access news and information.



214 The shift from printed newspapers, which are relatively affordable and widely distributed, to online platforms (Netwerk24 and News24) creates a digital divide. Many South Africans, especially in rural areas or those from disadvantaged backgrounds, cannot afford the data costs or devices necessary to access online news. The loss of access to affordable printed news will significantly impact the public's right to information, particularly in communities where printed newspapers are the primary source of news and updates.

215 The merger will not promote the interests of historically disadvantaged persons in the media sector and in fact will retard the progress that has been made by historically disadvantaged persons acquiring ownership of media assets. The merger and strategic steps related to it are entirely contrary to the public interest and in particular to the provisions of section 12 A (3) of the Competition Act. The likely effects of the merger will be to undermine competition to Media 24 from media publishing houses that are owned by previously disadvantaged persons and ultimately may lead to the demise of a number of publishing houses owned by previously disadvantaged persons. In addition, the merger will not promote ownership in the media sector by previously disadvantaged persons, because Novus is not an empowered business in which historically disadvantaged persons own more than 50%.

216 It follows that the applicants have established the existence of clear, let alone *prima facie*, rights.



(ii) Irreparable and imminent harm

217 If the interim interdict in Part A of this application is not granted, the merger will be implemented.

218 The implementation of the merger would:

218.1 induce the permanent closure of well-established and widely read printed newspaper titles. These newspapers form a critical part of South Africa's media diversity and are significant sources of news for many communities, especially those without consistent access to digital platforms;

218.2 increase distribution costs for remaining newspapers, leading to a death spiral through which smaller newspapers and independent media close. As more newspapers close, the distribution cost per newspaper will rise further, driving even more titles out of the market. This will irreparably damage South Africa's media ecosystem, as many newspapers will permanently cease operations. Once distribution costs start rising, the financial strain on smaller publishers will be immediate and unsustainable. The harm will quickly spiral as more newspapers struggle to stay viable, leading to widespread closures that will be difficult to reverse even if this Court later sets aside the impugned decision;

218.3 lead to permanent job losses at the newspaper titles and in distribution. Once the print titles are closed and On the Dot is sold, those affected

will lose their employment, and the possibility of rehiring in the future will be slim, as the print media industry continues to contract. The closure of newspapers will also reduce the overall demand for journalism, leading to further long-term unemployment in the media sector; and

218.4 allow Media24 to strengthen its dominance, particularly in the digital news space through its platforms News24 and Netwerk24. By eliminating competition from its own print titles and raising distribution costs for others, Media24 can consolidate its power in the online media market, leaving few viable competitors. The merger's effect on competition will be immediate as distribution costs rise and competitors are forced out of the market. Once these businesses close or are marginalised, the damage to competition and media diversity will be irreversible.

218.5 There will also be an irreversible impact on employees of Media24, On the Dot as well as employees of other newspaper publishers.

219 As further explained above, without urgent interim relief, any success achieved by the applicants in Part B would also be hollow.

(iii) *The balance of convenience strongly favours the granting of interim relief*

220 I am advised that this requirement recognises that there will generally be competing interests in an application for an interim interdict.

221 However, it is unclear in this case what prejudice, if any, the granting of interim relief would cause the respondents.

222 On the other hand, the irreparably and imminent harm apprehended by the applicants amounts to a breach of one or more fundamental rights.

223 I also emphasise that allowing the merger to be implemented and acted on with deleterious consequences does not serve the public interest and is not consonant with the provisions of section 7 of the Constitution.

224 It is also noteworthy that the reviewability of the Commission's decision is clear and that the granting of the interim interdict would vindicate, rather than intrude into, the power of the proper exercise of the powers of the Competition Commission.

225 I am further advised that the Court must also consider the wider public interest and the underlying principles of our democratic society when deciding where the balance of convenience rests.

225.1 A vibrant, diverse and accessible media is essential for a well-functioning constitutional democracy. It enables public debate, holds those in power accountable, and ensures that all persons have access to information from a range of sources. The concentration of media ownership poses a direct threat to the fundamental importance of media freedom and access to information in our constitutional democracy.



225.2 Access to information is a cornerstone of democracy. Without reliable, diverse, and accessible news sources, citizens are deprived of their ability to participate meaningfully in civic life, to make informed decisions about their government, and to hold public and private institutions accountable. The closure of key printed newspapers as a result of the merger will disproportionately affect communities without reliable or affordable access to digital platforms. For many South Africans, particularly in rural and low-income areas, printed newspapers remain the most accessible form of news. The merger will create a digital divide by eliminating these newspapers, cutting off access to information for those who cannot afford digital subscriptions or data. The public interest requires that these citizens are not excluded from participating in the democratic process due to financial barriers.

225.3 The merger is also expected to result in significant job losses, particularly in the print media and distribution sectors. These job losses will have a domino effect on the livelihoods of individuals and their families, affecting the broader economy. The immediate closure of printed newspapers and the restructuring of On the Dot would also disrupt jobs in related industries. In the context of South Africa's high unemployment rate, this economic disruption poses a threat to social stability. By granting the interdict, the Court would protect hundreds of jobs in the media sector, and prevent economic displacement.



225.4 The merger threatens to create an environment where Media24 and its digital platforms, News24 and Netwerk24, dominate the media landscape. This would result in market concentration, giving Media24 undue influence over public discourse and access to news. Such monopolistic behaviour would limit the ability of smaller media houses to compete, reducing the overall diversity of voices in the public sphere.

226 As explained above, the implementation of the merger threatens a range of fundamental rights. This erodes the value and legitimacy of our Constitutional democracy.

227 It follows that the balance of convenience strongly favours the applicant.

(iv) No alternative remedy

228 The applicants have no alternative other than to approach this Court for urgent relief. Without this Court's intervention, the merger will be irreversibly implemented.

PART A: THE REQUIREMENTS FOR A SUSPENSION OF THE IMPUGNED DECISION ARE MET

229 Without the relief sought in **Part A**, the closure of several printed newspaper titles and the sale of On the Dot will cause irreversible harm to the media landscape and our constitutional democracy. Newspapers that are closed and distribution networks that are dismantled cannot be reinstated, and once Media24

consolidates its dominance, reversing the consequences will be nearly impossible.

230 The impact of the implementation of the merger would be catastrophic and undermine the fundamental rights implicated in this matter. As further set out above, it would have irreversible consequences that would prevent or lessen competition, increase prices, reduce product choices and undermine the greater spread of ownership, in particular to historically disadvantaged persons.

231 The suspensive relief sought is accordingly just and equitable as it would safeguard the right of freedom of expression. It would also mitigate the severe risks posed by the implementation of the merger to employees, the public interest, competition and the spread of ownership.

232 Suspending the merger pending judicial review will preserve the status quo, preventing irreversible harm until the court can fully assess the legality of the impugned decision.

233 The relief would be the most appropriate remedy in the circumstances to prevent the direct infringement of the fundamental right of freedom of expression in section 16(1) of the Constitution that would arise from the implementation of the merger.

PART B: THE REVIEW RELIEF

234 In **Part B**, the applicant seeks to review and set aside the decision of the Commission dated 30 October 2024.

Standard of review

235 The Competition Commission made the impugned decision as an organ of state performing public functions in terms of legislation. The Commission's decision constitutes administrative action in terms of section 1(a)(ii) of PAJA and is reviewable by this Court under PAJA. It also constitutes the exercise of public power and is reviewable by this Court under the principle of legality.

236 The applicants accordingly bring this review and raised the grounds of review below in terms of PAJA alternatively the principle of legality. The applicants rely on the grounds set out below at this stage, but reserve the right to supplement these grounds in the light of the Rule 53 record in due course.

237 The decision is reviewable on each of the following grounds (as well as those set out in the introduction to this affidavit):

The Commission failed to take into account the interrelated nature of the transaction

238 The limited reasons provided by the Commission in its press release of 31 October 2024 confirm that the Commission failed to take into account the fact



that the closure of the Media24 printed newspaper titles and the sale of the On the Dot business form part and parcel of an integrated strategy on the part of Media24, and should have been considered as part of the merger that has been notified.

239 The Commission accordingly failed properly to analyse the transaction, and to consider the significant deleterious effects brought about by the transaction in relation to competition, the public interest, and the implication of the transaction on constitutional rights.

240 On this ground alone, the decision falls to be reviewed and set aside.

Failure to follow the jurisprudence of the Constitutional Court in Mediclinic and the Tribunal's decision in Drasluka

241 The Commission further failed to appreciate or take cognisance of the consequences of the proposed transaction for the media sector as a whole (and the country more largely) and the knock-on consequences for other newspaper publishers and owners as a result of the increase in distribution costs that will arise pursuant to the proposed transaction.

242 The Constitutional Court made it plain in ***Mediclinic***⁹ that if a merger gives rise to price increases that will have a material impact on customers or competitors

⁹ Competition Commission of South Africa v Mediclinic Southern Africa (Pty) Ltd and Another (CCT 31/20) [2021] ZACC 35 (15 October 2021). See too Draslovka Holdings A.S. and Another v Competition Commission of South Africa and Others (IM139Dec21) [2024] ZACT 31 (1 February 2024)

that the merger must be prohibited, unless there are overwhelming efficiency effects that would override the anti-competitive effects of the transaction. The Commission failed to apply this jurisprudence, despite it being binding on it.

243 For this reason too, the transaction falls to be set aside.

Undermining the objective of a greater spread of ownership

244 The sale of On the Dot to Novus will not enhance a greater spread of ownership. It simply entails the move of On the Dot from one large company (Media24) to another large, listed entity (Novus), which has an even lower empowered shareholding than Media24.

245 Novus is also a large printer and is expanding within the market for printing and packaging products more generally.

246 It follows that the merger, and its effects on the viability and sustainability of competing publishers, will reduce the opportunities for a greater spread of ownership. It will also undermine the businesses of empowered publishers and result in a greater concentration in the form of News24/Netwerk24 that will dominate the press sector. The transaction thus fails to give effect to section 12A(3)(e) of the Competition Act read with the Commission's Guidelines.

247 Capital Newspapers is an empowered entity, which was removed from the sale process without warning, after having been informed that it was the preferred purchaser. It should be emphasised that not only am I the majority shareholder

of Capital Newspapers. I am a historically disadvantaged person, and I have built a successful entrepreneurial business from small beginnings and successfully ensured the survival of The Witness newspaper, which I purchased from Media24 in 2022 when Media24 was similarly looking to shut down the printed paper. A sale to Capital Newspapers would, therefore, have advanced the purposes of section 12A(3)(e) of the Competition Act.

248 The manner in which Capital Newspapers was treated also gives rise to concern from the perspective of the Competition Act and the Constitution. It is incumbent on parties to give consideration to transformation in considering disposal processes and, having decided to sell the business and invite me to participate in the process, Media24 cannot simply "*change the rules of the game*" midway through the process without warning or explanation.

249 Because of the significant negative consequences for other printed newspapers, the proposed transaction and the restructuring process will hamper the ability of small and medium-sized newspaper businesses, or firms controlled or owned by historically disadvantaged persons involved in the publication of newspapers, to effectively enter into, participate in or expand within the market. Those firms include Capital Newspapers, the Arena group, the Mail & Guardian, Independent Newspapers, and many others.

250 The enhancement of the dominance of News24/Netwerk24 is also not consonant with section 12A(3)(e), which is not intended to give rise to a greater concentration of ownership in a particular sector. In this regard, in *eMedia*, the Competition Appeal Court held in relation to Naspers' former subsidiary,

MultiChoice, that *“MultiChoice in its well-entrenched dominant position loses sight of the fact that its position will remain entrenched. It does not have to preserve this position at the expense of a black-owned, medium-sized competitor like eMedia that was just gaining traction in the basic satellite market”*. This is precisely what its former sister company, Media24, is seeking to achieve through the strategy underpinned by the merger.

251 For these reasons, the decision falls to be reviewed and set aside on the basis that it is contrary to the empowering provision; was materially influenced by an error of law; was taken for a reason not authorised by the empowering provision; failed to take into account relevant considerations and took into account irrelevant considerations; was irrational, was unreasonable and was otherwise unlawful.

The proposed transaction undermines the ability of firms owned by historically disadvantaged South Africans and medium and small firms to participate in the market

252 Because of the significant negative consequences arising directly from the proposed transaction for other printed newspapers, given the fact that many competing printed newspaper titles will likely have to close as a result of distribution costs increasing post-implementation of the proposed merger, the ability of small and medium-sized newspaper businesses, or firms controlled or owned by historically disadvantaged persons involved in the publication of newspapers, to effectively enter into, participate in or expand within the market, will be significantly compromised.



253 Stated in another way, the closure of the print editions of the newspaper titles is intimately linked to the future viability of the On the Dot business, because the profitability of On the Dot is dependent on the volume of newspapers that are distributed by the business. If the print newspaper volumes decline considerably as a result of ceasing to print the Media24 newspaper titles, then this will have a material adverse effect on the profitability and viability of the On the Dot business.

254 The new owners of the On the Dot business (Novus) will inevitably raise distribution costs to the remaining newspaper publishers because of the loss of volumes from the Media24 print publications. The knock-on effect is that the remaining paid for newspaper print titles will be severely adversely affected, because the increase in distribution costs will be likely to result in various other print newspaper titles having to close. This will result in substantial prejudice to previously disadvantaged owners of competing paid for newspaper titles.

255 As set out above, newspaper publishing entities owned and controlled by previously disadvantaged persons such as Capital Newspapers, the Arena Group and the Independent Newspaper Group amongst others, stand to be severely prejudiced by the proposed merger. The Commission failed to consider these consequences arising from the transaction properly or at all. Had the Commission done so, it would not and could not have approved the transaction.

256 For these reasons, the decision falls to be reviewed and set aside on the basis that it failed to take into account relevant considerations and took into account irrelevant considerations; was irrational, was unreasonable and was otherwise unlawful.



Impact on employment

257 There are three categories of harms that would be inflicted by the merger on employment.

257.1 First, there has already been a retrenchment process that anticipated the restructuring within Media24 and was inextricably linked to it, which has taken place in the last number of months and which has apparently not been taken into consideration by the Competition Commission.

257.2 Second, Media24 has eventually and belatedly announced (following press inquiries) that up to 400 employees at Media24 may be affected by the proposed restructuring and that a further 400 will be transferred to Novus. Moreover, there are likely to be a further 100 employees who are likely to be negatively impacted at a distribution level within On the Dot as well as a further 75 employees working for third party outsourced distributors which are used by On the Dot for the purposes of its distribution activities whose jobs are placed at risk by the merger.

257.3 Third, the proposed transaction is also likely to result in the retrenchment of a large number of employees of On the Dot and across the media sector in light of the increase in distribution costs. The applicants estimate that 200 persons are employed in the newspaper publishing business at Independent, 350 at Arena, 120 at the Citizen, 15 at the Daily Maverick, 30 at the Sunday World, 39 at the Witness and 30 at Mail & Guardian. Given the fact that none of these newspaper publishers are likely to be viable in view of the large



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increase in distribution costs associated with the merger and rely on newspaper publishing to generate the majority of their revenue, this would mean that a further approximately 784 employees are potentially at risk as a result of the adoption of the Media24 strategy.

258 This means that the proposed transaction is likely to be the direct cause of well over 1000 people losing their employment. This number is in addition to all of the employees of service providers that will likely be negatively impacted by the proposed merger. This has not been taken into account by the Competition Commission.

259 Media24 has subsequently sought to suggest that it will retain certain of the journalists who formed part of the original 400 employees who face retrenchment. It is unlikely that these employees will be retained in the long-term as the use of the News24/Netwerk24 platforms mean that there is effectively no long-term need for the number of journalists who currently work for the Beeld, Rapport, Daily Sun and City Press. In other words, it seems likely that these journalists will have no long-term job security in the new online structures.

260 It may be the case that these retrenchments will take effect after the transaction (and that Novus will be compensated for the potential retrenchments) or that Media24 will effect the retrenchments in advance of the disposal of On the Dot. In either case, this would be a collaborative exercise between Media24 and Novus.

261 These are plainly merger-specific retrenchments.



262 The negative impact of the transaction and the restructuring on employment is amplified by the fact that Media24 has failed to consult its employees properly. This is so because Media24 has only commenced the consultation process a considerable period of time after it took the decision to close the newspaper titles and dispose of On the Dot which would inevitably result in the retrenchment of employees.

263 I am advised and submit that proper consultation and engagement with employees is of profound importance, and constitutes an essential part of the public interest consideration, particularly where job losses are contemplated post-merger.

264 Moreover, as appears below, Media24's attempt to obfuscate to avoid the consequences of its failure to consult is a serious matter as it not only undermines Media24's credibility, but also enhances the concerns arising from the negative consequences of the proposed merger on employment.

265 As reflected above, the information provided to me for purposes of the proposed sale to Capital Newspapers, was that Media24 had decided to cease the printing of a number of its titles including Beeld, City Press, Rapport and the Daily Sun. Mr Lalbahadur advised me on 8 May 2024 that a decision had already been taken by Media24 to cease publishing the physical copies of various titles by October 2024. He explained that Media24 intended to shift focus to a digital-only strategy, and that this was also the reason for its decision to dispose of On the Dot and the predominantly Western Cape community titles. Given that a portion of the



business of On the Dot entails the delivery of the Media24 titles, this is relevant information to a potential purchaser.

266 It is plain that the decision to cease printing the relevant newspaper titles would result in retrenchments of employees of Media24. In terms of section 189 of the Labour Relations Act, when an employer contemplates dismissing employees based on operational requirements, it must consult the relevant employees. Media24 had not commenced such a process, despite the fact that these retrenchments had been contemplated before the engagements with me commenced, and certainly were clearly contemplated by the time that the instruction was issued by Mr Bekker in May 2024.

267 The belated consultation by Media24 undermined the very purpose of an employer's obligations to consult its employees when it contemplates the possibility of dismissals for operational requirements – a joint problem-solving exercise to address the issues affecting job security. By the time the consultation process commenced, the dismissal of employees was a foregone conclusion.

268 Similarly, given that the commercial viability of other newspaper publishers will likely be seriously undermined because of the inevitable increase in distribution costs from the On the Dot distribution business, the dismissal of various of their employees will likely be a *fait accompli*. This will have a profound impact on the substantive fairness of their dismissals. Little can be done to mitigate the impact of the transaction post-implementation.



269 Had the Commission properly considered the impact of the transaction on employment, it would not and could not have approved the transaction.

270 For these reasons, the decision falls to be reviewed and set aside on the basis that it is contrary to the empowering provision; was taken for a reason not authorised by the empowering provision; failed to take into account relevant considerations and took into account irrelevant considerations; was irrational, was unreasonable and was otherwise unlawful.

Impact on the press and other media and the freedom to receive and impart ideas

271 The restructuring of the Media 24 business allied with the merger which are inextricably linked and intertwined with one another, will undermine journalism in South Africa. It will also result in the effective demise of a large number of printed newspaper titles, at a time when the need for media scrutiny is of significant importance. The loss of diversity of views and also the fact that a large number of South African journalists and editorial staff will lose their jobs is a source of considerable public interest concern.

272 This is not an issue which can be understated. The South African media has been one of the institutions that has been heralded as having played a significant role in holding the Government and other powerful members of society to account. A significant restructuring that results in the demise of a number of newspaper titles is, therefore, a very serious matter. This is particularly the case, because the proposed transaction and the restructuring will have a negative

impact on other newspaper operations and cement the dominant position of Media24 in relation to subscription online news platforms in South Africa. This will undermine the plurality of voices that the legislature has sought to encourage, and the constitutionally important role played by the media.

273 The principal beneficiaries of the closure of the Media24 print titles and the concomitant sale of the On the Dot distribution business are Mr Koos Bekker and Media24. The parties that will suffer the consequences of the restructuring and sale of the distribution business are the competing print newspaper publishers and the journalists and employees who are employed at those publications, including the staff that will be retrenched at Media24. Broadly speaking, there will be significant negative effects across the entire media sector, while the only entity that stands to benefit is Media24 as it tightens its grip on the online news segment.

274 As such, the proposed restructuring will have a significant and negative impact on a specific industrial sector in South Africa. This effect will be compounded by the anti-competitive consequences of the proposed merger, which will undermine the position of other newspaper publishers and also the position of competing printers.

275 In addition, many South Africans cannot afford to subscribe to online news platforms. This means that the closure of printed newspaper titles will effectively deny them access to newspapers and, consequently, to critical public-interest information. It should be borne in mind that a monthly subscription to News24 is approximately R89 per month, and accessing it also requires the subscriber to



have expensive devices, such as a laptop or smartphone, to access the online platform and to obtain sufficient data, which is costly. The cost of the Daily Sun, by contrast, is approximately R7 per newspaper, which means that the average person can at least afford to buy the occasional printed newspaper from time to time.

276 Where people are able to afford subscriptions, it is also likely to be the case that less affluent people will not be able to maintain more than one subscription. This means that smaller subscription platforms are less likely to be able to compete with News24 owing to the incumbency advantages of News24.

277 It, therefore, cannot be reasonably disputed that the transaction implicates the freedom of expression as conferred by section 16 of the Bill of Rights.

278 The Commission bore a constitutional duty derived from section 8(2) read with in terms of section 7(2) of the Constitution to respect, protect, promote and fulfil the rights in the Bill of Rights, including section 16. Despite this, the Commission's analysis of the transaction failed to consider the constitutional dimension of the transaction as described above and failed to follow the Constitutional Court's direction in **Mediclinic**.

279 It is also clear that the Commission did not conduct a thorough and well considered investigation. Despite the fact that I had been invited by Media 24 to purchase the on the dot business and community newspaper titles and was intimately involved in negotiations with them to purchase these assets, the Commission did not engage with me at all in relation to any of these issues,



despite them being central to the Commission's assessment of the merger. Furthermore, I am led to understand that the Commission was still engaging with other media groups on the afternoon of the same day that it took the decision to approve the merger, which suggests that it could never have properly considered the feedback and input that it received from these other media houses and that it had closed its mind to independently and objectively considering the relevant facts.

280 For these reasons and those set out in the introduction to this affidavit, the decision falls to be reviewed and set aside on the basis that it is contrary to the empowering provision; was materially influenced by an error of law; was taken for a reason not authorised by the empowering provision; failed to take into account relevant considerations and took into account irrelevant considerations; was irrational, was unreasonable and was otherwise unlawful.

Conclusion on the grounds of review

281 Taken individually, any one of these grounds of review is sufficient to justify the setting aside of the impugned decision. Taken cumulatively, they demonstrate the wanton failure of the Commission to fulfil its constitutional and legislative obligations in relation to the guarding of competition in South Africa, and the need to replace the Commission's decision with one prohibiting the transaction.



COSTS AND CONCLUSION

282 The concomitant sale of the On the Dot distribution business, together with the closure of the various Media24 print titles, is part of a carefully orchestrated strategy by Media24 and Mr Koos Bekker to fundamentally undermine competing media entities and reinforce the dominant position of the online News24/Netwerk24 brand.

283 Without this Court's urgent intervention, if the proposed transaction were to proceed as planned, then Media24 would close various of its major print publications (Beeld, City Press and Rapport) and notionally transfer these brands to an online presence. The reality is that over time, these brands will cease to exist as independent brands and be subsumed into News24/Netwerk24.

284 The net effect of closing the major Media24 print titles is that it will raise the distribution costs for the remaining paid for newspaper titles that are dependent on On the Dot for distribution, which the majority of them cannot afford, which will then result in the probable closure of a large number of the competing newspaper brands. This will result in a domino effect across the newspaper sector and more and more newspapers will close as a result. Ultimately, the probable outcome of this strategy will be the demise of the printed newspaper sector in South Africa and one dominant entity controlling the online media in South Africa in the form of Media24 through the News24/Netwerk24 brand.

285 However, this outcome for the media sector need not necessarily be cast in stone. Capital Newspapers has offered to buy the print titles which Media24

wishes to close and has also offered to purchase the On the Dot business. If Capital Newspapers' offer had proceeded, instead of being unilaterally rejected by Media24 (as this risked undoing its strategy), then a number of the Media24 print titles could be retained. This would not only preserve jobs, keep these titles in existence, and thereby contribute to a competitive media sector, but it would also help to keep distribution costs in check. This would help to avoid a scenario where the media sector is engulfed by a tsunami, as significantly increased distribution costs arising from the merger threaten to undermine a large proportion of the media business in South Africa.


286 In other words, the potentially likely dire outcome for the media sector in South Africa and especially for printed publications could be avoided if the merger was prohibited and other competing entities such as Capital Newspapers were given the opportunity to acquire the print publications that Media24 has identified for closure and also acquire the On the Dot distribution business.

287 In the context of this merger, the Competition Commission failed to fulfil its very serious responsibility to thoroughly interrogate the proposed transaction, given the stakes for the media sector and the public as a whole and the fact that this merger could ultimately have long-term consequences for democracy in South Africa.

288 In the premises, the applicants pray for an order as set out in the notice of motion.

289 The applicants also seek costs, including the costs of three counsel, from any respondent who opposes this application.





RIQUADEU JACOBS

I hereby certify that the deponent knows and understands the contents of this affidavit and that it is to the best of the deponent's knowledge both true and correct. This affidavit was signed and sworn to before me at Pietermaritzburg on this the 1st day of November 2024, and that the Regulations contained in Government Notice R.1258 of 21 July 1972, as amended by R1648 of 19 August 1977, and as further amended by R1428 of 11 July 1989, having been complied with.



COMMISSIONER OF OATHS

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URGENT

Derushka Chetty and Wade Graaff
ENS Africa

By email

11 July 2024

Dear Derushka and Wade

RE: NOVUS HOLDINGS LIMITED's ("Novus") ACQUISITION OF ON THE DOT AND THE PORTFOLIO OF COMMUNITY NEWSPAPER TITLES OF MEDIA24 HOLDINGS LIMITED ("Media24")

1. As you are aware, we act for Capital Newspapers (Pty) Ltd ("**Capital Newspapers**") and Caxton & CTP Publishers & Printers Limited ("**Caxton**") and address this letter to you on their behalf
2. We understand that the Commission has approved the proposed transaction in terms of which Novus proposes acquiring On the Dot and various community titles from Media24. You will be aware of the fact that our clients have consistently raised significant concerns regarding the proposed transaction, and the interrelated decision to close a number of Media24 printed titles (together, the "**merger**"). Our clients raised these concerns both before the merger was notified and throughout the Commission's investigation of the merger.
3. It is our clients' view that the proposed merger is a highly consequential. It implicates the survival of a vibrant and dynamic press sector and the need to ensure the freedom of the press and diversity of voice in South Africa. This constitutional right is particularly vital at this juncture in the history of South Africa, especially given world-wide trends relating to disinformation. As the Constitutional

Competition Law Specialists | Litigation Attorneys | Regulatory Advice

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Senior Associates: Nicci van der Walt Nina Greyling Melissa Steele

Company Registration Number: 2009/006902/21 VAT Registration Number: 4510252580





Court has acknowledged, the manner in which the media carry out their constitutional mandate will “have a significant effect on the development of our democratic society”.¹

4. The implementation of the proposed transaction, together with the integrally-related closure of Media24’s printed newspaper titles (the Beeld, the Rapport, the City Press and the Daily Sun), will result in a material increase in distribution costs for printed newspaper titles. The proposed merger will thus undermine the competitive position of newspaper titles that compete with Media24’s titles. For reasons previously explained, this increase in distribution costs for printed titles will be likely to result in the closure of a number of other printed titles and also in significant reductions in employment across the sector.
5. In addition, Novus will acquire community titles from Media24 that compete with other community titles that it currently prints. This means that after the implementation of the transaction, Novus will print and distribute these titles which compete with its recently acquired community titles. This will place these competing publishers in an exceptionally invidious position.
6. It is thus clear that the proposed merger is fundamentally anti-competitive and will also have very serious negative effects on the public interest, including the specific public interest considerations set out in section 12A(3) of the Competition Act.
7. In approving the proposed merger, the Commission has acted unreasonably and irrationally, and has thus failed to comply with its obligations in terms of the merger control provisions of the Competition Act as well as section 7 of the Constitution.
8. Our clients accordingly believe that it is imperative that the Commission’s flawed decision must be reviewed as a matter of urgency. As will be set out in more detail in our clients’ intended review application, it is plain that the Commission has failed to take account of the injunctions of the Constitutional Court in *MediClinic* and the Competition Tribunal in *Draslovka* — decisions that bind it. It is also clear that the Commission has, inter alia, (i) failed to consider relevant

¹ *Khumalo and Others v Holomisa* (CCT53/01) [2002] ZACC 12; 2002 (5) SA 401; 2002 (8) BCLR 771 (14 June 2002) at para 24.

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considerations relating to the proposed merger, (ii) failed to take into account the full effect of the transaction on employment, including in relation to retrenchments that have occurred in anticipation of the implementation of the transaction; (iii) failed to consult employees of other newspaper groups who stand to lose their jobs as a result of the proposed merger; (iv) failed to conduct a proper investigation; and (v) failed properly to consider the counterfactual and the competing bid by a firm that is majority-owned by HDPs.

9. Our clients therefore have instructed us to approach the Competition Appeal Court to review the decision of the Commission on an urgent basis.
10. In the circumstances, please confirm that your clients will agree to take no (further) steps to implement the proposed transaction pending the determination of the review.
11. Should your clients refuse to provide such an undertaking, you are advised that our clients will seek urgent relief from the Competition Appeal Court, and it will be argued that any steps that are taken to implement the merger constitute an impermissible attempt to pre-empt the review and to bring about the unlawful consequences referred to above.
12. We look forward to your urgent response by no later than 12 noon today (31 October 2024).
13. Our clients' rights are fully reserved.

Kind regards,

[Unsigned due to electronic transmission]

Anthony Norton / Anton Roets / Michelle Rawlinson / Avias Ngwenya
NORTONS INC.

A handwritten signature in black ink, consisting of a stylized 'N' followed by a cursive flourish.

*MEASURING CONCENTRATION AND
PARTICIPATION IN THE SOUTH AFRICAN
ECONOMY: LEVELS AND TRENDS*

MAIN REPORT

NOVEMBER 2021



competition commission
south africa

a growing, deconcentrated and inclusive economy

- 1107.4 Primedia is also a key player in the cinema sub-segment, in which it is dominant; its subsidiary Ster-Kinekor owns approximately 59.1% of all cinemas and 62.2% of all theatre screens in the country in 2020. The next largest cinema company Nu Metro is around half the size of Ster-Kinekor in terms of its share of cinemas and theatre screens in the country (owning 23.7% and 27.8% of them respectively). The two other cinema companies the Commission is aware of with a chain of cinemas are Movies at Tsogo Sun casinos and Avalon's Cine Centre with shares of 4.8% and 3.7% of total screens respectively. The remaining cinema companies have just one cinema and are more specialist in their offerings. As a result of the Covid-19 pandemic, and consequent lockdown cinemas were required to shut down and could only open under strict conditions from August 2020. As a result, Ster-Kinekor entered business rescue on 29 January 2021. Its cinemas will remain open.
1108. The findings in relation to the South Africa publishing industry are based on both estimated advertising revenue and audience share data from Nielsen, to which the Publishing Research Council ("PRC") kindly gave the Commission access. They can be summarised as follows:
- 1108.1 There was a decline in the number of magazine publications over the 2014-2019 period. The largest 3 media owners namely Media24, Caxton and Highbury Safika (including Ramsay Media) accounted for 55.3% of total advertising revenue in 2019, which represented an 8.1 percentage point improvement from 2014. The data shows that the top 3 media owners in magazine publishing earned on average R10.3 million per publication in 2019, almost double the average across all publications. In terms of readership share, Media24 titles accounted for 49.9% of readership, more than double the share of the media house with the second-largest share, namely Caxton (20.3%). There is already evidence of the magazine industry being hard hit by the Covid-19 industry, with Caxton Publishing exiting magazine publishing and Associated Media Publishing, which closed.
- 1108.2 There were ten publishers of newspapers in both 2014 and 2019. The largest four (Media24, Independent, Caxton and Arena Holdings) produced 87.6% of all newspaper titles in 2019, a share that decreased somewhat from 2014 (90.3%). They also accounted for 93.7% of total advertising revenue, which was not too different to five years prior. The advertising revenue per newspaper publication of the largest four media houses was 2.5 times higher than the average advertising revenue among the remaining six media houses. In terms of readership share, the top four publishing houses accounted for 77.1% of all print and digital newspaper readership in 2019, which was down somewhat from 80.8% in 2017. Media24 titles accounted for the bulk of this, with a share of 44.0% of total newspaper readership in 2019, more than double that of Independent Media and Arena Holdings in second and third place. Caxton had a readership share that was far below that of the top three publishing houses, with a share of just 2.2% in 2019. The newspaper publishing industry has also experienced setbacks during Covid-19. In July 2020, for example, Media24 announced the closure and consolidation of a number of its newspapers.
1109. The Commission will better be able to assess what the impact of Covid-19 has been on publishing in future iterations of this tracker when data about 2020 and 2021 has been published.

18.1 BROADCASTING

18.1.1 Television

1110. The Commission was sent Nielsen data on advertising revenue via the BRC between 2014 and 2019. The information does not

MEDIA24

Media24 media release

18 June 2024 (Embargo: 14h45)

Media24 accelerates its transition to digital news

Media24 announced today (18 June 2024) that it is considering the closure of the print editions of five newspapers, while evolving three of them into digital-only brands. It has also accepted an offer to purchase its community newspaper portfolio and media logistics operations. The company will start consultations with staff and the transfer of the sold businesses to its new owner this week.

The planned interventions include the following:

- Closing the print editions of Beeld, Rapport, City Press, Daily Sun and Soccer Laduma, as well as the digital (PDF) editions of Volksblad and Die Burger Oos-Kaap, and the digital hub SNL24.
- Transitioning Rapport, City Press and Daily Sun into digital-only brands.
- Selling On the Dot, the media logistics business, and the community newspaper portfolio to Novus Holdings, subject to regulatory approvals.

Says Ishmet Davidson, CEO of Media24: "In South Africa, like elsewhere in the world, consumer preferences have changed. People now read more news than ever, but most prefer to do so on their cellphones or laptops and publishers have to comply with their preferences.

"Consequently, print media globally has been suffering structural declines in circulation and advertising for decades. Combined with rising fixed distribution costs, this has had a devastating impact on print operations.

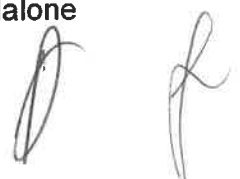
"As a result, our titles in the northern region have been on life support for a while. Combined losses are projected to mount to R200m over the next three years. After years of cut-backs, we've reached the end of cost reductions to try save these print operations. We've simply run out of options.

"So we have to restructure our business now. It will also allow the remaining viable brands to move fully to digital and will strengthen our two main digital news brands, News24 and Netwerk24, serving audiences and society across multiple market segments."

As digital brands, Rapport and City Press will reside at Netwerk24 and News24 respectively. Beeld, Volksblad and Die Burger Oos readers and subscribers will be able to continue accessing their news on Netwerk24, together with the nearly 100 000 subscribers who enjoy the platform's "All in One Place" multi-content offering.

It is this renewed focus on its two hero digital news brands that contributed to Media24's decision to close SNL24 and sell its interests in the profitable local newspaper sector, says Ishmet.

"Our main objective is building and cementing a sustainable model for digital news journalism. Daily Sun (part of SNL24) represents an important segment of the middle market, that we will continue to serve with the relaunch of the brand as a standalone and free e-news site."



Die Burger and Son in the Western Cape are both unaffected by these changes. They have a separate infrastructure that remain viable due to a more concentrated local footprint and are marginally profitable. "In addition, Die Burger holds great historical value as the foundation upon which Naspers was built."

With only a small print media portfolio remaining, Media24 also decided to divest of its media logistics business, On the Dot.

The consultation process is expected to be completed over the next three months, with 30 September earmarked as the last day of publication for the affected newspapers. "We anticipate that the proposed restructure could result in at least 400 job losses, with 400 more positions transferring to Novus Holdings with the sale and some roles possibly needed beyond 30 September," says Ishmet. "We also intend reducing our corporate and support services and operational costs in line with the changes made in our operations."

"We are fully committed to managing this highly sensitive consultation with compassion while following the processes prescribed by law and intend to keep job losses – particularly amongst our journalists – to a minimum. Unfortunately, we cannot share any further details until the process has been concluded," says Ishmet.

In a very competitive landscape, News24 and Netwerk24 remain the digital news destinations of choice for South Africans. News24 was named by the Reuters Institute as South Africa's most trusted news brand for the sixth consecutive year earlier today. News24 averaged 9.1m daily unique page views for the financial year to 31 March 2024 while Netwerk24 garnered 5.7m page views. During the election week, they generated close on 105m page views combined; peaking at a record-breaking 21.9m page views for News24 and 5.8m for Netwerk24 on a single day

"Over the past financial year, their combined subscribers grew by 19% yoy to more than 200 000. That's far more than the combined circulation of all our print news titles," says Ishmet.

"There is no doubt whatsoever that our future is digital. But our digital news services no longer face competition from only other local publishers. Our main competitors now are Facebook, Google, Instagram, and TikTok; all of which are well funded and based offshore."

Says Prof Rachel Jafta, chairperson of the Media24 board: "As the home of trusted and independent journalism, Media24 plays a crucial role in our society – especially in giving a voice to millions of our fellow citizens. And we remain as dedicated as ever to this moral obligation."

Ends

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MEDIA24

Media24 mediavrstelling

18 Junie 2024 (Embargo: 14h45)

Media24 versnel sy oorgang na digitale nuus

Media24 het aangekondig dat hy dit oorweeg om die gedrukte uitgawes van vyf koerante te sluit en drie van hulle net digitaal te laat voortleef. Die maatskappy het ook 'n aanbod aanvaar om sy portefeulje van gemeenskapskoerante en medialogistieke onderneming te verkoop. Konsultasies met personeel en die oordrag van die besighede wat verkoop is, begin vandeeweek.

Die beplande ingrypings sluit die volgende in:

- Sluit die gedrukte uitgawes van Beeld, Rapport, City Press, Daily Sun en Soccer Laduma, asook die digitale (PDF-) uitgawes van Volksblad en Die Burger Oos-Kaap, en die digitale inhoudsplatform SNL24.
- Behou Rapport, City Press en Daily Sun as slegs digitale handelsmerke.
- Verkoop On the Dot, die medialogistieke onderneming, en die portefeulje van gemeenskapskoerante aan Novus Holdings, onderhewig aan regulatoriese goedkeuring.

Ishmet Davidson, uitvoerende hoof van Media24, sê: "In Suid-Afrika, nes elders in die wêreld, het verbruikers se voorkeure verander. Mense lees nou meer nuus as ooit tevore, maar verkies om dit op hul selfone of skootrekenaars te doen en uitgewers het geen ander keuse nie as om hierby aan te pas.

"Gevolglik gaan die gedrukte media wêreldwyd al vir dekades onder strukturele dalings in sirkulasies en advertensies gebuk. Tesame met die stygende vaste koste vir die verspreiding van krimpemde rakverkope, het dit 'n verwoestende uitwerking op drukmedia bedrywighede.

"As gevolg hiervan, hang die lewensvatbaarheid van ons titels in die noordelike streke al 'n geruime tyd aan 'n dun draadje, en is die vooruitskatting dat hul gesamentlike verliese oor die volgende drie jaar tot R200m kan beloop. Ná jare se moedige pogings, is daar nie meer enige vorm van besnoeiing of besparings oor om hierdie gedrukte koerante te red nie.

"Dit is waarom ons nou ons besigheid moet herstruktureer sodat die oorblywende, haalbare titels die volle oorgang na digitaal kan maak. Dit sal ook vir News24 en Netwerk24 verstewig, die hooffokus van ons digitale nuusaanbod wat gehore en die gemeenskap oor veelvuldige marksegmente heen bedien."

As digitale handelsmerke sal Rapport en City Press deel wees van Netwerk24 en News24 onderskeidelik. Beeld, Volksblad en Die Burger Oos se lesers en intekenare sal steeds hul nuus op Netwerk24 kan lees, tesame met die bykans 100 000 intekenare wat die platform se aanbod van "Alles op een plek" geniet.

Dit is hierdie hernieude fokus op sy twee grootste digitale nuushandelsmerke wat bygedra het tot Media24 se besluit om SNL24 te sluit en sy belange in die winsgewende gemeenskapskoerante te verkoop, sê Ishmet.

“Ons hoofdoelwit is om ‘n volhoubare model vir digitale nuusjoernalistiek te bou en vestig. Daily Sun (deel van SNL24) verteenwoordig ‘n belangrike segment van die middelmark en ons sal dit steeds bedien met die omskepping van die handelsmerk in ‘n alleenstaande, gratis e-nuus webtuiste.”

Die Burger en Son in the Wes-Kaap word nie deur hierdie stappe geraak nie. Hulle het ‘n aparte infrastruktuur wat steeds haalbaar is danksy die meer gekonsentreerde plaaslike verspreiding en laer koste, en hulle is matig winsgewend. “Boonop het Die Burger groot historiese waarde as die basis waarop Naspers gebou is.”

Met hierdie verskraling van sy portefeulje van gedrukte media, het Media24 ook besluit om sy medialogistieke onderneming, On the Dot, te verkoop.

Die konsultasies sal na verwagting oor die volgende drie maande afgehandel word, met 30 September in die vooruitsig as die datum waarop die laaste uitgawes van die koerante sal verskyn wat deur die proses geraak word. “Ons voorsien dat die voorgestelde herstrukturering kan lei tot die verlies van ten minste 400 poste, met nog 400 wat na Novus Holdings oorgeplaas word met die verkoopstransaksie, en sommige poste wat dalk ná 30 September nodig kan wees,” sê Ishmet. “Ons beplan ook om ons korporatiewe en ander steundienste en operasionele koste te verskraal in lyn met die veranderinge in ons sakebedrywighede.”

“Ons is ten volle daartoe verbind om hierdie hoogs sensitiewe konsultasies met deernis te bestuur, terwyl ons ook die wetlik voorgeskrewe proses volg en sal poog om werksverliese – veral onder ons joernaliste – tot die minimum te beperk. Ons kan ongelukkig geen verdere inligting bekend maak alvorens die proses afgehandel is nie.”

In ‘n baie mededingende mark, verkies Suid-Afrikaners reeds News24 en Netwerk24 as hul bestemmings vir digitale nuus. Die Reuters Instituut het pas vir News24 vir die sesde agtereenvolgende jaar as die mees vertroude nuus handelsmerk in Suid-Afrika aangewys. In die finansiële jaar tot 31 Maart 2024, het dit daaglik ‘n gemiddelde 9.1m unieke bladlese gehandhaaf, en Netwerk24 5.7m. Meer onlangs het hulle in die loop van die verkiesingsweek net onder die 105m bladlese behaal. Die hoogtepunte was ‘n rekord 21.9m bladlese vir News24 en 5.8m vir Netwerk24.

“In die afgelope boekjaar het hul gesamentlike intekenare jaar-op-jaar met 19% tot meer as 200 000 gegroei. Dit is aansienlik meer as die gekombineerde sirkulasie van al ons gedrukte koerante,” sê Ishmet.

“Daar is geen twyfel dat ons toekoms digitaal is nie. Maar ons digitale nuusdienste se enigste mededingers is lankal nie meer net die ander plaaslike uitgewers nie. Ons grootste mededingers is nou Facebook, Google, Instagram en TikTok; almal van hulle goed befonds en in die buiteland gesetel.

Ter afsluiting sê prof Rachel Jafta, voorsitter van die Media24-direksie: “As die tuiste van onafhanklike joernalistiek waarin mense groot vertroue plaas, speel Media24 ‘n deurslaggewende rol in ons samelewing – veral om aan miljoene van ons mede landsburgers ‘n stem te gee. Ons sal so toegewyd en verbind soos altyd bly tot hierdie morele verpligting.”

Einde

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South Africa's top online news publications revealed

By Staff Writer



The latest IAB South Africa statistics showed that News24, Daily Maverick, IOL, BusinessTech, and MyBroadband had the highest readerships in May.

The IAB South Africa is an independent association representing South Africa's digital industry and large online publications.

The organisation represents over 200 members, including digital publishers and media agencies.

As part of its mandate, the IAB SA provides audited readership statistics for South Africa's largest online publications.



The May 2024 readership statistics showed that the 2024 national elections boosted general news publications.

News24 achieved 667,000 average active daily users and 184 million page views last month. On Thursday, it served 22 million page views as people tracked the election results.

Daily Maverick also enjoyed an exceptional performance during the election month, with 392,000 average active daily users and 13 million page views.

IOL, which also had extensive election coverage, was the third-largest publication, with 365 active daily users and 38 million page views.

BusinessTech, which serves South Africa's business and finance sectors, was fourth with 362,000 active daily users and 23 million page views.

MyBroadband, which serves South Africa's IT and telecommunications sectors, was fifth with 278,000 active daily users and 16 million page views.

Citizen, eNCA, Supersport, The South African, and Netwerk24 completed the top 10 online publishers.

The table below shows the top online publications ranked by average active daily users, which measures readership size.

Domain	Sector	Daily Active Users	Monthly Page Views
News24	General News	667,160	184 million
Daily Maverick	General News	391,836	13 million
IOL	General News	364,602	38 million
BusinessTech	Business	362,444	23 million
MyBroadband	Technology	277,638	16 million
Citizen	General News	252,316	17 million



The South African	General News	193,658	11 million
Netwerk24	General News	156,117	108 million
TimesLIVE	General News	144,567	10 million
SNL24	Sport	136,102	22 million
Sunday Times	General News	130,991	9 million
Maroela Media	General News	96,540	32 million
Daily Investor	Business	85,199	4 million
BusinessLIVE	Business	78,477	5 million
SowetanLIVE	General News	64,413	5 million
Business Day	Business	55,936	3 million
SABC News	General News	49,657	3 million
TopAuto	Motoring	48,925	2 million

South Africa's largest online publishers

The IAB South Africa and dY/dX also provided a ranking of the largest online publishers in the country.

Media24 maintained its top spot with 960,000 average active daily users and 317 million page views.

Media24 is behind many of the country's top publications, including News24, SNL24, and City Press.

Broad Media is South Africa's second-largest online publisher, with 774,000 average active daily users and 45 million page views.



Daily Maverick was the third-largest publisher, with 392,000 average active daily users and 13 million page views.

Publisher	Daily Active Users	Monthly Page Views
Media24	960,338	317 million
Broad Media	774,207	45 million
Daily Maverick	391,836	13 million
IOL	364,602	38 million
Arena Holdings	344,648	23 million
Caxton	261,866	15 million
Citizen	252,316	17 million
eNCA	243,501	9 million
DStv Online Sport	225,792	35 million
The South African	194,358	11 million

LATEST NEWS

Competition concerns

56. **Question 50.1: The printing and distribution of newspapers and magazines are amongst the most important aspects of a newspaper and/or magazine publisher's business. Further, printing and distribution are also amongst the most significant costs faced by publishers. Without access to timely printing services, a publisher is not able to print its newspaper and/or magazine in a timely manner.**

56.1. The Merger will not adversely affect access to printing services. While Novus, a printing business, will acquire Media24's community newspapers, OtD and Soccer Laduma (including Kick Off), it will remain in Novus' best interest to continue printing for rival publishers. Novus already prints the majority of Media24's newspapers and will be negatively affected by Media24's digital strategy, which includes ceasing the printing of Beeld, City Press, Rapport and the Daily Sun. It would be illogical for Novus to restrict rival publishers from accessing printing services, as this would further harm its revenues. Instead, Novus is likely to seek new opportunities in the market to replace the lost volumes from Media24 with other titles, especially with the decline of the broader print business in the digital age.

56.2. In any event, the Competition Assessment indicates that Novus has a market share of 27.4% across the total newspaper printing market in South Africa. Importantly, the Merger does not change this, given the lack of horizontal overlap. Moreover, there are many alternatives available to publishers, including but not limited to Caxton, Formeset Printers, Seculo-Triweb, Guardian Web, Africa Web Press, Tabloid Media, Harry's Printers, Art Printers, Rising Sun, Oranje Press, High Way Mail, Insights Publishing, and Impress. This too, suggests that the Merger will not adversely affect access to printing services.

56.3. Please refer to section 6.2 of the Competition Assessment for further details in this regard.

57. **Question 50.2: Without access to efficient distribution services, a publisher is not able to ensure that its printed products find their way to street corners and newspaper and magazine stands (in the case of paid-for titles) or into the homes of readers.**

57.1. The Merger will not adversely affect access to distribution services. Currently, Media24, as a media publisher, does not restrict rival publishers from using its distribution services via OtD, which derives █████ of its revenue (excluding the SLiMS division) from Media24 publications (see the Competition Assessment, section 6.1). This is unlikely to change post-transaction. Post-transaction, Media24 expects OtD to derive less than █████ of its revenue from its vertically integrated publisher Novus (see the Competition Assessment, section 6.1).

57.2. Moreover, Novus would have no incentive to restrict access to distribution services for rival publishers. OtD relies on economies of scale to facilitate cost-effective media distribution, and many of the titles Novus is acquiring are community newspapers that are largely distributed

free of charge. Foreclosing rival publishers would only result in greater losses for OtD, as its fixed costs would be spread over fewer publications. Such a strategy would be particularly non-sensical, since the acquired titles are projected to account for less than █ of OTD's revenues in FY2026 if the Merger is approved.

- 57.3. Additionally, there is a clear trend towards digital media, which already threatens Novus' printing business. Foreclosing rival publishers via distribution services would further reduce its potential printing customer base, jeopardising its viability.
- 57.4. If anything, the Merger is likely to improve access to distribution services compared to the scenario whereby it does not take place. Post-transaction, Novus plans to refocus the print and digital sales of the acquired newspapers (i.e. the community newspapers, Soccer Laduma and Kick Off) to keep them and the distribution business, OtD, operational. In contrast, absent the transaction, Media24 is likely to shut down Soccer Laduma and the community newspapers, which would likely lead to OtD's downsizing due to lost revenue and the need for restructuring.
58. **Question 50.3: The dominant publisher in South Africa, Media24, has split its printing business between Novus and a third-party printing company, with the latter being primarily responsible for the printing of Media24's magazine titles, while Novus has been responsible for the printing of Media24's newspaper titles. Given Media24's decision to cease printing a large number of the physical copies of its titles, this will result in Novus losing significant volumes of printing work from Media24. It is, however, understood by the competitors that there may be an agreement between Novus and Media24 that Media24 will transfer the contract for the printing of its magazines to Novus next year. In this regard, while Novus will lose the ability to print the Media24 newspapers (and the significant retail inserts and catalogues that are inserted into these newspapers) because of the restructuring, it has been assured as part of the transaction that it will be awarded the right to publish the magazines of Media24.**

- 58.1. There is no agreement between Novus and Media24 that Media24 will transfer the contract for the printing of its magazines to Novus next year. This allegation is thus completely false.
- 58.2. Media24 has, and will continue to, communicate its requirements in this regard as a request for quotes (RFQs) by interested parties. To date, these were submitted to the respective heads (General Managers) of the two major publishing divisions. Going forward, the RFQs will be submitted to an external, third party (e.g. auditors) for review and recommendation; a process which is fair to all providers of print services. As such, print volumes from Media24 can be seen moving around between suppliers in recent years.
- 58.3. The above concern is seemingly one of customer foreclosure, i.e. that the merger will result in Media24 restricting access to its magazine portfolio to rival printers of Novus. However, this

concern is not merger-specific, as the Merger does not result in the vertical integration of Media24 and Novus. Novus is acquiring certain business from Media24 but will remain independent of Media24. Media24 will have no incentive to procure printing services solely from Novus. Rather, it will have an incentive to procure services from the most cost effective supplier. Likewise, Novus will continue to compete with rivals to print Media24's publications, such as magazines, just as it did before the Merger.

59. **Question 50.4: Further, the competitors submit that OtD is the only remaining meaningful distributor of newspapers and magazines in the country that has a near monopoly position in relation to the national distribution of newspapers and magazines in South Africa. As OtD is the de facto monopoly distributor of newspapers and magazines on a national basis in South Africa, it has significant power over the publishers of newspapers and magazines, as they are dependent on it. This will enable Novus to leverage this position in various potential ways in order to induce or coerce publishers to using its printing services. From an alternative supply perspective, it is simply not possible, at this stage of the evolution of the market for newspapers and magazines, for a new national distributor to be established to compete with OtD. This accords the owner of OtD significant power over other publishers.**

59.1. The above concern seemingly suggests that post transaction, the vertically integrated Novus could leverage its market power in the distribution market (via OtD) into the adjacent printing market and "induce or coerce publishers to using its printing services". It is not, however, clear from the concern what strategy Novus would employ to do so.

59.2. Any such strategy that negatively impacts OtD's profitability would be highly detrimental to Novus post-transaction. OtD needs economies of scale to remain a going concern, which is crucial for the success of the community newspapers Novus plans to acquire, given their reliance on a dependable distribution channel. Although the strategy in which Novus might use OtD to induce publishers to use its printing business is unclear, jeopardising OtD's long-term stability for short-term print volume gains would be irrational. If anything, the proposed transaction aims to ensure the continuation of the distribution business that Media24 intends to exit, which will also benefit third-party publishers relying on it.

59.3. To the extent that the alleged strategy concerns Novus offering combined printing and distribution services, it is important to note that rivals like Caxton are able to do the same. In addition, the newspaper and magazine printing market remains competitive, with several established independent players also active in these markets. These players will continue to act as a competitive constraints on Novus, alongside other vertically integrated firms.

59.4. Novus is acutely sensitive to concerns related to tying and bundling, it itself having being a victim of such conduct in the industry. [REDACTED]

Indeed, if any market participant has any concerns going forward, they would be well within their rights to lodge a complaint to the Commission for investigation from a prohibited practice perspective.

60. **Question 50.5: At the same time, Novus (the proposed purchaser of OtD) is a significant printer, and the publishers are customers of Novus in this capacity. Novus therefore has a clear incentive to use its acquisition of the OtD business to induce its customers to print with Novus. Novus will, because of the transaction, acquire both the ability and incentive to use access to OtD as a basis to ensure that the relevant publishers transfer their printing requirements to Novus. This places other printing service providers at considerable risk.**

Please refer to the response to Question 50.4 above.

Public interest concerns

61. **Question 50.6: Effect of the merger on employment: According to the competitors, the sale of OtD and the community titles forms part of a broader restructuring within Media24, which will result in it ceasing to print a large number of its newspaper titles. This in turn will lead to the retrenchment of a number of employees (journalists and members of the editorial staff of these titles), estimated to be between 400 and 800 people. This will have obvious negative consequences for the public interest in South Africa. The competitors understand that Media24 has eventually and belatedly announced (following press inquiries) that up to 400 employees at Media24 may be affected by the proposed restructuring and that a further 400 will be transferred to Novus. The competitors submit that they are aware that (i) there has already been a retrenchment process that has taken place in the last number of months; and (ii) the proposed transaction is also likely to result in the retrenchment of a large number of employees of OtD. According to the competitors, it may be the case that these retrenchments will take effect after the transaction (and that Novus will be compensated for the potential retrenchments) or that Media24 will affect the retrenchments in advance of the disposal of OtD. In either case the competitors submit that this would appear to be collaborative exercise between Media24 and Novus. Accordingly, these are plainly merger-specific retrenchments.**

61.1. Although not mutually exclusive, it is crucial to separate the effects of Media24's "digital strategy", which will occur regardless of the transaction, from the effects of the Merger itself.

61.2. Given the trend of newspaper audiences (and therefore advertisers) shifting from print media to digital publications and online platforms, Media24, through its digital strategy, has decided to cease printing four of its main newspaper titles, namely Beeld, Rapport, City Press and the Daily Sun. This will occur irrespective of the Merger.

61.3. This decision will necessitate a restructuring of OtD's operations to align with the resulting revenue shortfall, as these titles contributed ██████████ to OtD's revenues in FY2024.

Media24 estimates that approximately 137 jobs will be lost at OtD, and 87 additional jobs among the labour broker employees, as a result of ceasing to print these titles. Additionally, the decision will also result in possible retrenchments in the SNL24, Afrikaans news and AdSpace24 divisions, due to shared resources among the divisions as well as in various shared services operations. Overall, the decision is expected to result in 318 job losses, independent of the Merger. Media24 has however confirmed that it will be retaining all 66 journalists initially identified for retrenchment, from the four print newspapers earmarked for closure, incorporating them into Netwerk24, News24 and at the Daily Sun website respectively.

61.4. The Merger arises from the knock-on effects of Media24's digital strategy. Specifically, Media24 no longer wishes to publish community newspapers, and we understand that digital-only versions of these titles are not attractive to readers or advertisers. It also does not wish to continue distributing print newspapers via OtD.

61.4.1. Should the Merger be approved, we understand that Novus does not anticipate job losses resulting directly from the Merger (e.g. personnel duplication, or further restructuring), beyond those c.318 originally stemming from the Closure of Media24's four main titles, which will occur regardless of the Merger.

61.4.2. If the Merger does not proceed or is prohibited, we understand that, in line with its digital strategy, Media24 will likely shut down Soccer Laduma and the community newspapers but continue to operate OtD. Media24 estimates that this will likely result in an additional 185 job losses (in addition to the 318 stemming from the Closure of the four main titles).

61.5. Given the above, it is clear that the merger itself will not adversely affect employment. If anything, the merger results in public interest benefits. It is clear to the merging parties that its competitors, who are raising these concerns, are not altruistic about their interest in the employment considerations of the Merger. The intentions behind the statements are very clearly driven by a competitor and its affiliates who wish to scupper the Merger and prevent a pro-competitive transaction from taking place.

62. **Question 50.7: The negative impact of the transaction and the restructuring on employment is amplified by the fact that Media24 has failed to consult its employees properly. This is so because Media24 has only commenced the consultation process a considerable period of time after it took the decision to close the newspaper titles and dispose of OtD which would inevitably result in the retrenchment of employees. Moreover, Media24's attempt to obfuscate to avoid the consequences of its failure to consult is a serious matter as it not only undermines**

Media24's credibility, but also enhances the concerns arising from the negative consequences of the proposed merger on employment.

That is not correct. Consultations with the employees commenced following board approval as no decisions or further steps could be taken without board approval. Nevertheless, all steps taken by Media24 have been in line with the LRA. Furthermore, consultations with the relevant trade union and employees affected by the title closures have been largely concluded (subject to approval of the transaction by the Commission). This further demonstrates that the intentions behind the statements are very clearly driven by a competitor and its affiliates who wish to scupper the Merger and prevent a pro-competitive transaction from taking place.

63. **Question 50.8: The decision to cease printing the relevant newspaper titles would result in potential retrenchments of employees of Media24. In terms of section 189 of the Labour Relations Act ("LRA"), when an employer contemplates dismissing employees for operational reasons, it must consult the relevant employees. Media24 had not commenced such a process, even though these retrenchments had been contemplated before the engagements with potential buyers of the target firms. Media24's inconsistency in this regard not only seeks to obscure its contravention of the LRA but highlights the fact that the restructuring of which the sale of OtD and the predominantly Western Cape community titles forms part, will have a very significant impact on employment at Media24.**

63.1. That is not correct. Consultations with the employees commenced following board approval as no decisions or further steps could be taken without the board approval. Nevertheless, all steps taken by Media24 have been in line with the LRA.

63.2. The relevant timelines are as follows:

- 63.2.1. 7 June 2024: Approval by the board;
- 63.2.2. 10 June 2024: News of approval shared with the Exco (senior management team);
- 63.2.3. 13 June 2024: News leaked via request for comment from Jeremy Maggs at Moneyweb (in which Caxton is the majority shareholder);
- 63.2.4. 13 June 2024: First official offer from Caxton (in email) received from Riquadeu Jacobs – mid-morning, a few hours prior to the publication of the leaked news on Moneyweb; and
- 63.2.5. 18 June 2024: CEO announce proposed restructure to all staff (live broadcast and mailer) at 14h00; and
- 63.2.6. 19 June 2024: First meetings with affected staff.

64. **Question 50.9: Any retrenchment process that results in the retrenchment of editorial staff and journalists will have very significant consequences for these individuals as there are not sufficient alternative sources of employment for journalists and editorial staff in South Africa, nor is it likely that there will be alternative forms of employment for these journalists. This also has implications for journalism in South Africa more generally. As such, not only does the merger have a negative impact on employment, but it also has a negative impact on the newspaper sector generally.**

64.1. As highlighted in the response to Question 50.6 above, the transaction itself will not have a negative impact on employment. Even Media24's transaction-independent decision to cease printing four of its major newspapers will not adversely affect journalism or the state of independent media, since Media24 plans to maintain a digital presence for these titles (with the exception of Beeld).

64.2. In fact, the Merger offers a more favourable outcome than the likely counterfactual. Without the Merger, Media24 may shut down Soccer Laduma and the community newspapers, resulting in job losses for several journalists. In contrast, Novus plans to grow these titles both in print and digitally.

64.3. In line with its desire to keep job losses to a minimum, on 31 July 2024 Media24 announced that it will be retaining all 66 journalists from the four print newspapers earmarked for closure, incorporating them into Netwerk24, News24 and at the Daily Sun website respectively. While this decision holds significant cost implications, Media24 firmly believes that it is an important investment in and commitment to the future of quality journalism.

65. **Question 50.10: It is not apparent whether Media24 has to date informed the affected employees at the newspapers which it intends to shut down that there was an alternative option involving the sale of OtD to someone other than Novus, which was unilaterally abandoned by Media24, and which may significantly mitigate the potential 400 jobs that may be lost by virtue of the closure of the titles. This is clearly a fundamental alternative which employees should have been informed of.**

65.1. The 400 mentioned job losses (actually 318) stem from Media24's decision to close four major newspaper titles: Beeld, Rapport, City Press, and the Daily Sun. Importantly, these titles do not form part of the Merger, and their closure will occur irrespective of the Merger. The concern raised appears to be a bid to purchase these titles (which were never for sale) along with OtD, which is a completely different transaction from the one under consideration. Competitors cannot dictate which assets their rivals should sell or influence their strategic decisions.

65.2. Accordingly, there was no viable alternative to communicate to employees since, as indicated above, the printed newspapers earmarked for the Closures never were, and still are not, for sale.

65.3. The issue that needs be considered by competition authorities in the case at hand is not the commercial rationale for Media24's digital strategy, but rather whether the Merger – the sale of OtD, the community newspaper portfolio, Soccer Laduma and Kick Off, to Novus – raises competition or public interest concerns.

65.4. As noted in the response to Question 50.6 above, the Merger will not negatively impact employment. A different buyer of the assets, aside from Novus, is unlikely to have a more positive impact on employment. Specifically, given that Novus does not expect any merger-specific job losses beyond those already resulting from the Closure of the four independent titles, which will happen regardless of the Merger.

66. **Question 50.11: Impact of the merger on the media sector: The competitors allege that the restructuring and the proposed transaction will have a significant impact on the media sector, undermining journalism in South Africa. It will also result in the effective demise of large numbers of printed newspaper titles, at a time when the need for media scrutiny is important.**

66.1. The Closures will be implemented regardless of whether the Merger takes place. In other words, the plans for the newspapers described above, and the impact of the cessation of their print editions, are not contingent on the Merger. However, digital versions of these newspapers will remain available (except Beeld), and Media24 plans to retain all 66 journalists from these newspapers by integrating them into Netwerk24, News24, and the Daily Sun website.

66.2. If anything, the Merger offers a more favourable outcome than if it does not occur. Without the transaction, Media24 may shut down Soccer Laduma, Kick Off and the community newspapers. In contrast, if approved, Novus plans to grow these titles both in print and digital format. Thus the Merger will not adversely affect South African journalists or editorial staff, nor will it impact journalism or the state of independent media.

66.3. [REDACTED]

67. **Question 50.12: The loss of diversity of views and also the fact that a large number of South African journalists and editorial staff will lose their jobs is a source of considerable public interest concern.**

Please refer to the response to Question 50.11 above.

68. **Question 50.13: The South African media has been one of the institutions that has been heralded as having played a significant role in holding the government and other powerful members of society to account. A significant restructuring that results in the demise of a number of newspaper titles is, therefore, a very serious matter. This is particularly the case, because the proposed transaction and the restructuring will have a negative impact on other newspaper operations and cement the dominant position of Media24 in relation to subscription online news platforms in South Africa. This will undermine the plurality of voices that the legislature has sought to encourage, and the constitutionally important role played by the media.**

68.1. As indicated above, the Closures will be implemented regardless of whether the Merger takes place. These will still be available digitally (except Beeld).

68.2. As a result of Media24's digital strategy, it is also no longer interested in continuing its community newspaper titles, in either print or digital formats. We understand from Media24 that, unlike its main newspapers, the digital versions of the community newspapers are unattractive to advertisers. Media24 is therefore selling the OtD business, and its community newspaper portfolio, to Novus.

68.3. In contrast, Novus believes that print advertising remains the most cost-effective way for the retail market to reach South African customers. Novus also sees potential in growing the readership of the community newspaper portfolio, both in print and online. Therefore, the Merger will ensure the continuation of these community newspapers under Novus as the new publisher.

68.4. Furthermore, Media24's position in online subscription news platforms in South Africa is not relevant for the current Merger. What is relevant, is the fact that the sale of publications to Novus reduces Media24's presence in the newspaper publishing market. Rather than reducing competition, the transaction actually introduces an additional newspaper publisher to the market (namely Novus), while Media24 retains its other publications, thus increasing the plurality of voices.

69. **Question 50.14: As such, the proposed restructuring will have a significant and negative impact on a specific industrial sector in South Africa. This effect will be compounded by the anti-**

competitive consequences of the proposed merger, which will undermine the position of other newspaper publishers and also the position of competing printers.

Throughout this response, we have demonstrated that the transaction does not raise public interest or competition concerns. In this regard, the merging parties respectfully submit that above allegation is unfounded.

- 70. **Question 50.15: No enhancement of a greater spread of ownership: The competitors submit that the sale of OtD to Novus will not enhance a greater spread of ownership. It simply entails the move of OtD from one large company (Media24) to another large, listed entity (Novus), which has a lower empowered shareholding than Media24.**

Please refer to the response to Question 48 above.

- 71. **Question 50.16: The proposed transaction undermines the ability of firms owned by historically disadvantaged South Africans and medium and small firms to participate in the market: Because of the significant negative consequences for other printed newspapers, the proposed transaction and the restructuring process will hamper the ability of small and medium-sized newspaper businesses, or firms controlled or owned by HDPs involved in the publication of newspapers, to effectively enter into, participate in or expand within the market.**

71.1. It is unclear to the merging parties why the transaction would undermine the ability of firms owned by historically disadvantaged South Africans or medium and small businesses to participate in the market, or which market is being referenced.

71.2. Currently, OtD relies on various independent HDP distributors. Absent the Merger, Media24 is considering shutting down its community newspaper portfolio, which would negatively impact OtD and its HDP suppliers. In contrast, if the Merger is approved, Novus plans to expand the community newspapers, potentially benefiting both OtD and its HDP suppliers.

71.3. Furthermore, both pre and post transaction, Novus will be incentivised to print for HDP-owned publications in the interests of growing revenues.

72. [Redacted]

72.1. [Redacted]

72.1.1. [Redacted]

72.2. [Redacted]

72.2.1. [Redacted]

CONFIDENTIAL

**ECONOMIC ANALYSIS OF THE MERGER
BETWEEN MEDIA24, PAARL COLDSET AND
NATAL WITNESS**

CT CASE NO: 15/LM/Jun11

15 February 2012

Prepared by: Avias Ngwenya
Genna Robb
Simon Roberts
Ayanda Sikakane



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(b) Geographic market

- 99 The investigation into community newspapers in the KwaZulu-Natal region has revealed that they are targeted at small localised geographic areas. There exist smaller independent community newspaper publications that compete directly with the merging parties' own community publications in certain parts of KwaZulu-Natal. For example Mr Mkhwanazi of Umlazi Weekly informed the Commission that he only circulates his community newspaper in Umlazi and its surrounding areas⁴⁷. We found the geographic market for these small commercial (independent) newspapers to be relatively narrow based on the specific distribution areas of particular publications.
- 100 A further point to note is that provincial boundaries do not restrict competition amongst small community newspapers. This is illustrated by the Pondo News publication that competes with Mthatha Fever where both are Xhosa publications and are circulated in Mthatha region in the Eastern Cape and in some areas of southern KwaZulu-Natal.
- 101 Thus we conclude that the geographic market for readers and advertisers in community newspapers is confined to the local areas where they are distributed. The specific areas where there are overlaps between the merging parties' community newspaper publications and third party community newspaper publications are discussed in more detail in the sections which follow.

3.5.2 Printing

- 102 Printing has been identified by many stakeholders⁴⁸ involved in the newspaper publishing industry as being a major if not the largest input cost associated with the production of newspapers.
- 103 In defining the product market for the printing of newspapers, the Commission concluded that there exists a difference between the different printing methods such as heatset printing and coldset printing. Furthermore, there are particular requirements associated with the process of printing newspapers that have the effect of creating sub-markets within coldset printing.

⁴⁷ Teleconference with Mr Mkhwanazi of Umlazi Weekly on 14 June 2011.

⁴⁸ These include the merging parties, Caxton and small community newspaper publishers such as Pondo News and Maputaland mirror.



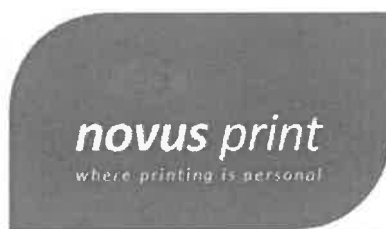
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<https://novus.holdings/novus-print/print-products-services/newspaper-printing/>



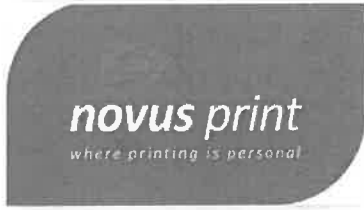
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FA7

<https://www.moneyweb.co.za/news/end-of-an-era-media24-to-close-iconic-newspapers/>

565
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News

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End of an era: Media24 to close iconic newspapers

October marks the end for the print versions of City Press, Daily Sun, Rapport and Beeld.

By Jeremy Maggs 13 Jun 2024 09:48

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In 2000, Rapport's circulation was around 335 000. Twenty-four years later, the figure hovers around 60 000. Image: Moneyweb

In a development that will shock readers and the South African media establishment, Media24 is set to close several of its mainstream print publications, including City Press, Rapport, Beeld, and Daily Sun.

It is understood that the axe could fall in October.

Four sources at the media company have independently confirmed that a decision has been taken to close them.

It's further understood that the only print publication in the stable remaining in circulation is the Cape Town-headquartered Die Burger.

Ishmet Davidson, CEO of Media24, responded that "Media24 continuously reviews its operations to protect viability and long-term sustainability within the context of its transition to an increasingly digital media landscape. We will also continue to consult with staff about any potential and subsequent actions and remain committed to following due process. We do not comment on rumours or speculation, nor on the details of any internal processes."

The decision comes as Media24 and other companies in the print space grapple with financial losses, primarily driven by escalating distribution costs, diminishing advertising revenue and a readership migration to online platforms.

It is unknown whether Media24 will create individual online brands for the newspapers, as their content is aggregated as sub-sections of its News24 and Netwerk24 portals.

One source tells Moneyweb that while the announcement is not common knowledge within newsrooms and advertising departments, there has been "general anxiety" in the company for a long time.

Falling circulation figures for the titles would seem to bear this out. In 2000, Rapport's circulation was around 335 000. Twenty-four years later, the figure hovers around 60 000. In the past two decades, its Sunday stablemate, City Press, has seen its circulation dive from 233 000 to around 14 000.

At the same time, the highly respected daily paper Beeld has seen its circulation drop from just over 100 000 to 20 000.

These figures are representative of a worldwide decline in print titles as the move to digital news consumption is now fully entrenched.

Rival titles in other media groups, including the Arena-owned Sunday Times and Business Day, are also experiencing pressure.



While declining circulation is one issue, Moneyweb has also been told that increasing printing and distribution costs have led to the closure of discussions.

One explanation for Die Burger's continued publication could be its more robust financial performance or lower distribution costs compared to the northern titles.

Rapport was established in 1970. Previously, it was called Die Beeld, an Afrikaans Sunday newspaper established in the 1960s. The publication later merged with Dagbreek to become Rapport, and the Beeld brand was re-established in 1974 as a daily publication.

City Press also has a rich history. It was established in 1982 as the Golden City Press by Jim Bailey and the South African Associated Newspapers (SAAN) group. The following year, "Golden" was dropped from the newspaper's name. SAAN later withdrew from its partnership with Bailey, and the newspaper ran into financial difficulties.

Nasionale Pers, as Media24's owner Naspers was called then, took over the publication of the newspaper as well as its sister publications, Drum and True Love & Family, in 1984.

The mass market Daily Sun was launched in 2002. It was the brainchild of the late veteran journalist Deon du Plessis, who targeted black readers in and around the major urban centres.

A leading media strategist tells Moneyweb that from a broad advertising perspective, the decision would be "neither here nor there", as print now accounts for just over 6% of overall ad spend, with digital accounting for between 30% and 40%.

Print media, he says, has sadly become an 'also ran', even though it is sad when titles go dark.



■ NATIONAL / MEDIA

Media24 CEO says no final decision made on closure of newspapers

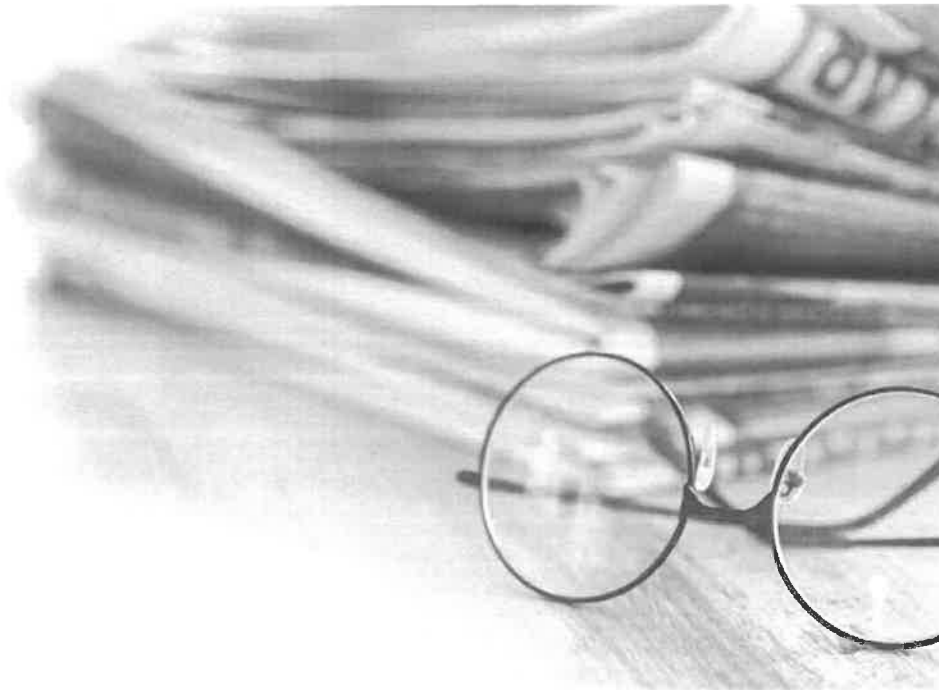
Ishmet Davidson referred to a Moneyweb report as 'half-baked', saying it had caused anxiety among staff

🔒 BL PREMIUM

13 JUNE 2024 - 12:50

UPDATED 13 JUNE 2024 - 14:42

by SASHNI PATHER



Picture: 123RFsebra

Media 24 CEO Ishmet Davidson said while the group constantly reviews business operations, it has at yet made no decision regarding the closure of its print brands.

This followed the publication of an article by online business publication Moneyweb on Thursday claiming that City Press, Rapport, Beeld and Daily Sun would cease to be published in October.

Davidson told Business Day: "I've not made any announcements and am considering a host of options as the business goes. We are looking at the entire business."

Handwritten signature or initials, possibly 'S.P.' or similar, in black ink.

Moneyweb quoted a source as saying that while the decision to shut down the publications was not common knowledge within Media24 newsrooms and advertising departments, there had been “general anxiety” in the company for a long time.

Davidson referred to the report as “half-baked”, adding it had caused unnecessary “anxiety” among staff.

“Anxiety runs through the entire industry and there’s the human factor to consider. We are now forced to talk to staff [by] doing internal communications even though no final decision has been made ... I can’t say yay or nay.”

Moneyweb flagged dwindling circulation among the print titles for the decision, and the only print publication in the stable remaining in circulation is the Cape Town-headquartered Die Burger. The report said one explanation for Die Burger’s continued publication could be its more robust financial performance or lower distribution costs compared to the northern titles.

Davidson reiterated his comment to the online publication, saying: “Media24 continuously reviews its operations to protect viability and long-term sustainability within the context of its transition to an increasingly digital media landscape. We will also continue to consult with staff about any potential and subsequent actions and remain committed to following due process. We do not comment on rumours or speculation, nor on the details of any internal processes.”

Business Day understands Media24 staff were notified after the Moneyweb story broke and told there had been no communication from management with regard to their future.

Davidson would not be drawn on the future of its magazine division, which includes FairLady, You and Huisgenoot. The iconic Drum magazine has become digital-only along with True Love.

Testimony from the media industry at the Competition Commission in March showed that the Mail and Guardian had an online audience 200 times larger than its print circulation, yet the majority of revenue was made from print.

The same inquiry also found that Arena Holdings – publishers of Business Day, Sunday Times and Financial Mail – had more than 10-



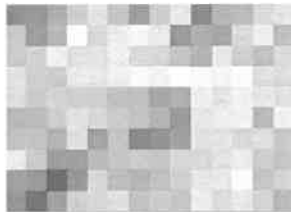
million visits to its online properties each month. More than half of those earnings still came from print.

In the six months to September 2024, Media24's revenue declined 22% to \$83m (R1.53bn) from \$106m previously, mostly blamed on foreign-exchange weakness. The business swung to a loss of \$1m, down from a profit of \$2m in the prior comparable period. The business did get some reprieve as readers paying for content behind News24's paywall rose by a healthy 35% to 85,185.

Update: June 12 2024

This story has been updated with Competition Commission information.

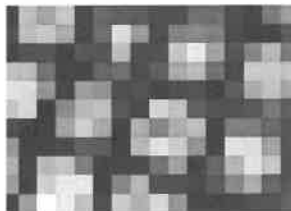
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COMPETITION WATCHDOG TO PROBE EFFECT OF DIGITAL CHANNELS ON TRADITIONAL MEDIA

Market features may impede competition and have adverse effects on the SA news sector, commission says

NATIONAL 8 months ago



COMPETITION COMMISSION LAUNCHES PROBE INTO ONLINE NEWS DISTRIBUTION

Inquiry will investigate the effect of digital platforms such as Google and Facebook on traditional media in country

NATIONAL 1 year ago

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Caxton to oppose Media24's sale of its distribution business to Novus

Says closure of print newspapers is 'not the only viable alternative', transaction is 'anti-competitive' and 'a blow to democracy'.

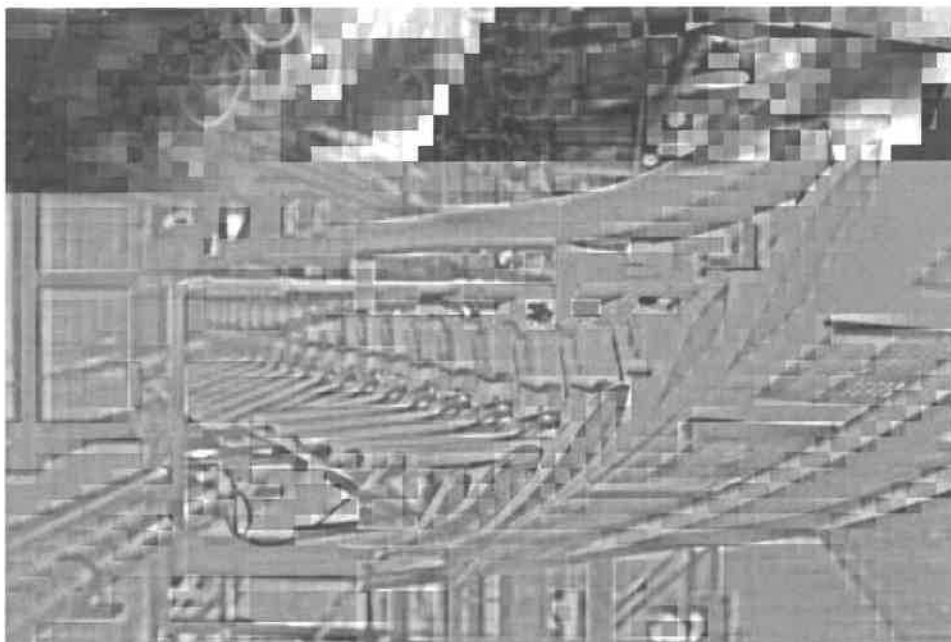
By Jeremy Maggs 21 Jun 2024 04:01

CAXTON

NASPERS-N

NOVUS





The move by Media24 is 'definitely not in the public interest' and will have a 'devastating effect' on news reporting in SA, says Caxton chair Paul Jenkins. Image: Moneyweb

Publishing group Caxton will oppose Media24's sale of its distribution business, On the Dot, to Novus Holdings at the Competition Commission.

Novus is one of southern Africa's most prominent print, publishing and packaging groups. It has a longstanding relationship with Media24 and prints all of Media24's newspapers.

Media24 announced the transaction, which is dependent on approval from the commission, when it revealed that it is "considering" closing the print editions of several of its established titles – including Beeld, Rapport, City Press and the Daily Sun. The restructuring is likely to lead to 400 job cuts.

Moneyweb earlier reported that Media24 had taken a firm decision to close the newspapers.

Read:

[End of an era: Media24 to close iconic newspapers](#)

[Media24 to cut up to 400 jobs](#)

On the Dot distributes Media24's newspapers and magazines to sales outlets and homes nationwide, and would be severely affected by the closure of the print editions.

Core issue

“The spin of Media24’s press release seeks to disguise the devastating effect that the Media24 newspaper closures will have on news reporting in South Africa,” says Paul Jenkins, chair of Caxton and a non-executive director of Moneyweb.

Read:

[There’s a crisis in South African newsrooms](#)

[Jeremy’s weekly wrap: Politics, power supply and SA media woes](#)

[Publishers and Google heading to war](#)

“The decision to close the titles is a fait accompli, and Media24’s claim that it is merely considering closure belies the truth.”

Jenkins says Media24 has been touting the sale of On the Dot for a number of months, and represented to one potential buyer that the newspaper closures were on the direct instruction of Naspers chair Koos Bekker.

Media24 CEO Ishmet Davidson denied this and said Media24’s board, of which Bekker is a non-executive director, approved the proposed restructuring.

He said the restructuring – which includes “the possible closure of the print editions of five newspapers, the transition of three of them to digital-only brands and divesting of both On the Dot and the community newspaper portfolio” – was compiled by the senior management team at Media24.

“This was presented to and approved in principle by the senior management team at Naspers/Prosus, subject to approval by also the Media24 board. The proposal was subsequently presented to and approved in principle (subject to consultation with staff and of regulatory approval in the case of the divestiture) by the Media24 board at its recent meeting on 7 June. Koos Bekker is a non-executive director of Media24.”

‘Pre-determined’ and ‘anti-competitive’

Jenkins says the deal with Novus to take over On the Dot – with a “sweetener” of the Western Cape community titles thrown in – is part of Media24’s pre-determined exit from print.

“In Caxton’s view, closure is not the only viable alternative, and numerous parties would be in a position to acquire these titles and save them, as well as the hundreds of jobs that will now inevitably be lost.

“Caxton considers that the closure of the newspaper titles and transition to digital-only is premature and a sad way for Naspers to end nearly a century of newspaper publishing.

“The transaction with Novus is anti-competitive, a blow to democracy at this pivotal time in South Africa’s history and definitely not in the public interest.

“Caxton will oppose it at the Competition Commission.”

Print titles ‘not for sale’

Regarding selling the print titles, Davidson says Media24 would not consider any offers for the mainstream newspaper titles that already reside in some digital format on either of what he terms “our two hero digital news platforms” – News24 and Netwerk24.

Media24’s statement earlier this week said it would start with consultations with affected staff and expects the process to be completed within three months.

The last day of publication of the printed newspapers is set for 30 September.

“We anticipate that the proposed restructure could result in at least 400 job losses, with 400 more positions transferring to Novus Holdings with the sale and some roles possibly needed beyond 30 September,” it said.

“We also intend reducing our corporate and support services and operational costs in line with the changes made in our business.”

The statement said Rapport, City Press and the Daily Sun will become digital-only brands.

“In South Africa, like elsewhere in the world, consumer preferences have changed. People now read more news than ever, but most prefer to do so on their cell phones or laptops, and publishers have to comply with their preferences.”

Listen to this Moneyweb@Midday podcast with Jeremy Maggs (or read the transcript [here](#)):

You can also listen to this podcast on iono.fm [here](#).

Disclosure: Caxton’s majority shareholders are also majority shareholders in African Media Entertainment (AME), the owner of Moneyweb.

TAGS: [beeld](#) | [caxton](#) | [Caxton group](#) | [city press](#) | [Competition Commission](#) | [Ishmet Davidson](#) | [Koos Bekker](#) | [Media24](#) | [Media24 restructuring](#) | [Moneyweb](#)

AUTHOR PROFILE



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Jeremy is a media specialist with a career spanning 40 years in television, radio, and print. He is also the host of Moneyweb's weekly FixSA podcast.

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30 Oct 2024 / Abrie Grobler



28 Jul Share   

Koos Bekker | The evolution of news: Embracing the shift to online readership

City Press

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13:21



As a consumer, you will enjoy faster news with the hope of tailor-made personalisation reflecting your tastes in the future, writes Koos Bekker

Getty images

VOICES

At present, there is a rather lively debate about Media24 not being able to print certain newspapers any longer. In the future, news will increasingly be delivered electronically. Some readers, especially older ones – I being one of them – feel that this may leave a void in their lives.

To grasp this development, a useful vantage point may be in Mainz on the Rhine in Germany. In the year 1450, a masterpiece appeared here, one we call the Gutenberg Bible, when a lad called Johannes Gensfleisch zur Laden zum Gutenberg made mass communication possible through a process of printing with mobile, reusable letters.

Dear reader, may I ask for your brief attention for this trick. Because it actually heralded the era that we modern people experience as "our time".

But first, let's peek back in history:

Four millennia ago, Sumerians stabbed the shaped tips of reeds into wet clay tablets. The Egyptians replaced this technology with papyrus rolls, which could hold more data. It was also lighter to cart around.

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to yield enough parchment for one medieval Bible.)

Over time, an alternative emerged: paper. It's a messy process: old rags were soaked in urine so that ammonia could loosen the fibers. (Back then, a paper mill smelt like the toilet of a modern soccer stadium at half time.) Water wheels fed by mountain streams powered drop hammers to beat this pulp to shreds.

For ages, a manuscript – both in the West and the East – was read as a scroll. From the third century CE, however, people started slicing it into pages and stitching it together. (A codex, the precursor of our own paper formats.)

But the process of duplication was still a pain. Imagine if you lived in the late Middle Ages and wanted a book. Then you had better recruit a monk. From somewhere he needs to borrow a physical manuscript and transcribe it letter by letter with a goose quill. A brisk hand could pen 3 000 words a day (without illustrations); a Bible took half a year.

Then, because your manuscript was already expensive (in for a penny, in for a...), it made sense to inlay the cover with jewels. To illuminate drawings inside with aquamarine from the Hindu Kush or saffron from the stigmas of crocuses. Or with gold rolled so thin that the guy doing the glueing had to hold his breath so the film would not wrinkle up. Knowledge was thus frightfully dear: limited to nobility in castles, monks in monasteries and legal eagles.

READ: From typewriters to fully digital publications | How the world of news keeps changing

All this would change with Gutenberg.

He was no comic book egghead who invented a gadget and then ran down the pavement screaming "Eureka!" Rather more like the CEO of a tech start-up that strung together existing technologies to hone a process. In China and Korea, "printing" of a sort was already practised with logograms of wood or clay. But once Gutenberg cast Roman letters into punched matrices, he sped up the process and made it cheap. For centuries, those insights would drive every printing enterprise.

This German led where Henry Ford would follow. The latter, of course, did not "invent cars" any more than Gutenberg was the first to print. But, in 1905, automobiles were still affordable only to the rich.

Over the next two decades, Ford refined a process of mass production via assembly line. This dropped the price of a Model T to within reach of your average Joe. From widespread ownership of cars flowed suburbs and malls and holidays by the sea – the rhythm of our modern city.

After Gutenberg, the price of duplication tumbled. Soon a pamphlet cost the same as a roasted chicken. Peddlers hawked from town to town. If a title sold well, pirates would copy it shamelessly. Cheap reading material motivated everyone to become literate – the larger the market, the lower your unit costs.

For these ravenous printing presses, artists such as German painter Albrecht Dürer created woodcuts and watercolours. Some strike us as naturalistic, others as Gothic or romantic. Then writers emerged.

German priest Martin Luther translated the Bible into the vernacular and the printing presses sang. Dutch theologian Desiderius Erasmus (perhaps our first modern hack) skewered fools. Knowledge exploded. Copernicus wrote On the Revolutions of the

...ment on celebrating 50 years in music and making...



15 Apr

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The rise in deadly mass shootings and the tragic loss of young lives due to food poisoning allegedly from spaza shops have sparked public concern. What do you think government's immediate response to these growing challenges be?

- Enforce stricter gun laws
- Food safety regulations and inspections
- Implement harsher penalties for non-compliance and negligence
- Improve policing and community safety measures

Vote

Results

Previous Results



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then? Estimates vary from 8 million to 20 million.

Now every pastry chef or candlestick maker could populate a small bookshelf at home. The result: waves of new data flooded cities and began to influence the beliefs of millions of ordinary folk. Right in the heart of this astonishing 15th century stands Gutenberg. His tinkering kicked off our modern era. And in 2000, Time magazine quite rightly named him "Man of the Millennium".

During the 19th century, however, electricity was tamed for daily use. Electrically powered media followed: the telegraph, telephone, radio, TV and the internet.

Even the process of creating a printed newspaper was being transformed by electronics. The journalist no longer only heard or saw first-hand, then typed on a Remington machine before tossing the sheet of paper over his shoulder to his sub. Today, your top journalist still dashes around to news scenes and does original thinking.

But they also harvest from electronic sources. They hear impulses over an electric phone, see flickering on TV, or get a feed over the internet. Your journo verifies data and then electronically composes the article on a laptop, sending it electronically to the subeditor. This is then electronically composed on a page and beamed by electrical impulse to the printing plant.

Over time, almost the entire process has thus become electronic, except for the very final act, when a huge machine of steel still smears the output in ink on flattened tree trunks (more or less like Gutenberg, with a few tweaks).

Today, however, media groups worldwide are reaching an inflection point where that final step is also becoming electronic. The reader receives the final news output on a laptop or cellphone. Not because the company wants to, but because the reader prefers it.

Within a few years, no economy the size of South Africa's will have any daily newspaper being sold on the street. Longer term, not even the US.

Figures within Media24 illustrate this shift.

At its peak, City Press sold 350 000 copies every Sunday. That has now tumbled to 11 718 (barely 4%). We have enjoyed superb editors such as Percy Qoboza, Khulu Sibiyi, Mathatha Tsedu, Ferial Haffajee and Mondli Makhanya – with excellent staff.

Point to note: despite such excellent reporting, 24 out of every 25 readers of City Press have already stopped buying the printed newspaper and now prefer their news electronically.

Such paltry paper sales mean that printing presses now run only briefly at night but still require a full crew; delivery trucks drive around half-empty, burning diesel; many a café or supermarket will no longer reserve display space for a newspaper if only five copies sell each day. Currently, an annual loss of R12 million is forecast for City Press, with R18 million coming next year.

Or take our Daily Sun – once the largest newspaper in Africa, with more than 500 000 buyers every day. Now its circulation is down to 11 696 and shrinking further every month. It moves one to tears!

The projected loss for this year stands at R45 million, which will grow to

At its peak, the northern daily, Beeld, hit sales of 116 000. This has tumbled to a bare 10 102 paper copies. The reason is, of course, not that people consume less news today. They read more than ever – but do so electronically.

And journalism is more vital than ever. It's still how a community keeps itself informed, assesses what's true and what is fake, weighs up options, fights corruption and decides on the best path forward.

While the print versions of City Press and Daily Sun declined, most of their readers have moved to electronic sites, including our News24, which has grown to the top local news website in South Africa. With 5.9 million (yes, 5.9 million!) page views every single day.

That sounds pretty good, except that, unfortunately, our future competition will not come from local media groups – rather from the global king kongs – X, Google, Facebook, Instagram and TikTok. And lurking in the near future, AI is an opportunity, but also a hideous demon, which may yet devour us alive. To survive, our journalists will have to work intimately with engineers.

On a rational level, one can see the advantages in this transition from print to electronic. Fewer trees will be chopped down, and there will be less pollution from paper mills or newspaper waste on rubbish heaps. As a consumer, you will enjoy faster news with the hope of tailor-made personalisation reflecting your tastes in the future. That's some sort of consolation.

READ: Sanef calls for urgent regulation to protect struggling news media from AI threats

Yet, older readers, such as me, who grew up with print, miss the smell and the tactile sense of paper under your fingertips. I love to rip out articles and file them in blue A4 ring binders. Just like our grandfathers were nostalgically pining for the familiar smell of horses and oxen when they reluctantly had to trade in their faithful friends for pieces of iron with internal combustion engines.

But technological evolution is always unstoppable. Even the practice of ploughing with oxen – so venerable that even the Mesopotamians used it – had to give up the ghost after millennia. Imagine someone trying to drive an ox cart on the N1 today. It would be a life-threatening escapade.

And with a wry smile of schadenfreude, one can muse that today's electronic media will, in turn, one day be replaced by something more useful or faster.

As the old folk loved to say (loosely based on Ovid): "The times, they are a-changin' – and so are we."

- Bekker is chairperson of Naspers and Prosus. He writes in his personal capacity

You have invested in the future

News24 has been there for South Africa's defining moments over the last 25 years, and you've been right beside us. Your support of trusted journalism has sustained us, and now it will propel us to continue to strive to inform, inspire and empower as we try to build a better future for us all.

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FA11



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CK:2010/004313/07
Directors: RD Jacobs, K Watts

Mr Ishmet Davidson
CEO
Media 24
Cape Town

Dear Mr Davidson,

Offer to Purchase Businesses

1. You will recall that in May 2024, you approached me in relation to the sale by Media 24 of its OTD division, which was inextricably linked to Media 24's decision to close various print newspaper titles including City Press, Beeld, Rapport and Daily Sun amongst others ("**the Terminating Newspapers**").
2. I was informed that Capital Newspapers was the preferred purchaser of On the Dot. The deal proposed by Media 24 also incorporated, as a 'sweetener', the linked sale of the Media24 Community titles predominantly in the Western Cape ("**the Community Titles**"). What you did not disclose was that before approaching me, Media24 had been in lengthy discussions about the same transaction with Novus Holdings, with whom you have ultimately now done a deal.
3. At the time, I informed you that my attention was directed at On the Dot and the Terminating Newspapers. The Community Titles were of secondary interest. You will also recall that there were discussions as to how Capital Newspapers (and its minority shareholder Caxton) could potentially assist to reduce the publishing and distribution costs of the Terminating Newspapers, as this could ensure their ongoing survival in printed format.
4. However, Media24 indicated at that stage that any 'saving' of the Terminating Newspapers was 'off the table' as the Naspers chairman, Mr Koos Bekker, had decreed that the newspaper titles must be closed. Accordingly, you stated that Media24 was not willing to engage further in this regard or to discuss the potential sale of the newspaper titles to Capital Newspapers.
5. This was a surprising stance given that, just two years ago, Capital Newspapers purchased the 178-year-old iconic title of The Witness from Media 24, on the basis that Media24 wished to exit KZN and had identified Capital Newspapers as the most appropriate owner to whom it could pass the newspaper baton, so to speak. The newspaper continues to be printed and sold in KwaZulu-Natal.

A handwritten signature in black ink, appearing to be "M. J.", located at the bottom right of the page.

6. After being summarily informed in early June 2024 that despite the clear commitment to regard Capital Newspapers as a preferred purchaser, Media24 had taken the decision to sell On the Dot as well as the Community Titles to Novus, I wrote to you on 13 June 2024 and reiterated the fact that Capital Newspapers remained interested in purchasing On the Dot and the Community Titles and made an offer of R50m in this regard.
7. Your response was that our offer was too late, but even if it had been made earlier, the decision to sell to Novus had already been previously decided. We conclude that we were simply used as 'a stalking horse' to elicit an offer from Novus.
8. I now understand that you have recently informed employees that there was no "concrete offer" received for the Terminating Newspapers. However, that is only because Media24 shut down any further discussions with Capital in this regard. It appears that you have not informed your employees of the proposals that had been made by Capital to reduce the distribution costs of the relevant newspaper titles to ensure that they could continue to be printed.
9. However, to remove any doubt in this regard, Capital Newspapers (with the backing of Caxton) hereby formally repeats its earlier 13 June 2024 offer, and adds to that offer, a further "concrete offer" to buy the Terminating Newspapers, as part of the composite transaction for an additional nominal sum of R1m for the Terminating Titles, subject to any counter proposal by Media24.
10. Capital Newspapers and Caxton are of the view that all or most of these newspapers can continue to be printed and distributed on a viable basis.
11. This will enable these long-established titles to continue being published in South Africa, which is critical from a diversity of voice perspective and critical to South Africa's democracy, given the role played by newspapers in South Africa. However, it is also important as the transaction will create the opportunity to save a significant number of jobs.
12. We understand that Media24 has said to employees that it would not contemplate selling the Rapport or the City Press as it intends using these brands on its existing News24 and Netwerk24 sites. This would be a deeply cynical move on the part of Media24 as it would effectively be preferring a hollow use of the brands on an existing strongly branded subscription online news platform to the detriment of employment, journalism and the continued existence of the printed media in South Africa.
13. In the circumstances, we hereby make a formal offer to Media24 to acquire the Terminating Newspapers together with the On the Dot business and the Community Titles for a purchase consideration of R51 million (subject to terms to be agreed).



14. Given the self-evident urgency of the matter, we request a response to our offer by no later than Friday, 19 July 2024.

15. We look forward to hearing from you.

Kind regards

Riquadeu Jacobs

Riquadeu Jacobs
Managing Director, Capital Newspapers (Pty) Ltd





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CK:2010/004313/07
Directors: RD Jacobs, K Watts

24 July 2024

Mr Ishmet Davidson
CEO
Media 24
Cape Town

Dear Mr Davidson

OFFER TO PURCHASE BUSINESSES

1. We refer to your letter dated 18 July 2024 sent to Mr Jacobs at 16h31 ("**the letter**"), in response to our offer of 17 July 2024, to purchase Media24's terminating print titles. We also refer to your press release of the same date, which was clearly already released to your journalists before you sent your letter ("**the press release**").
2. Both the letter and the press release deal with the same subject matter. The press release refers to the rejection of our offer, before this had even been formally communicated to us in the letter. In the circumstances, it is unclear why you did not provide us with the press release, which was already in the public domain when you wrote to us. The only conclusion to be drawn is that Media24 was more concerned about its public relations image, than in genuinely responding to our offer, and orchestrated its approach to us with this in mind.
3. In the circumstances, the press release and the letter may be regarded as a single communication and we do not distinguish between the two.
4. In your letter and press release ("**the combined communication**"), you seek to misrepresent the factual position and to suggest that any offer by Capital Newspapers to purchase the terminating print titles together with On The Dot and the Western Cape community newspapers, would be anti-competitive. Indeed, you go even further to make the bold statement about the alleged negative effects of such an acquisition, that

A handwritten signature in black ink, consisting of a stylized 'K' followed by a cursive 'f'.

“Selling the community newspaper portfolio to Capital Newspapers/Caxton will give them (direct and indirect) ownership of 76% of the community newspaper market in South Africa. This will have a very worrying impact on the democratic right of millions of South Africans who depend on community newspapers for information and news based on independent editorial diversity. Not to mention leading to an uncompetitive concentration of regional advertising spend in the hands of ultimately a single publisher, albeit with many and diverse subsidiaries”; and

“In a nutshell, they would be in absolute control across the entire newspaper industry value chain.”

5. It is necessary to formally refute these baseless, disingenuous and self-serving statements in the combined communication, which are designed to sensationalise your rejection of a *bona fide* offer, and attempt to shore up Media24’s precarious position in proposing to close numerous print titles at the expense of many journalists’ and employees’ jobs, and with the concomitant knock-on effects on the print industry as a whole.
6. There are a number of reasons why Media24’s articulated position is sensationalist, incorrect, disingenuous and self-serving:
 - 6.1 First, you will recall that Media24 at your instance, expressly invited Capital Newspapers to submit an offer for the On The Dot business and offered the Western Cape community newspapers as a sweetener as part and parcel of the transaction. In other words, at the time that you invited us to bid for the assets, you clearly did not contemplate that there were any competition and/or public interest concerns associated with us purchasing the assets.
 - 6.2 Second, as you are perfectly well aware, the Western Cape community newspapers operate in distinct local markets, which are completely separate from local markets associated with community newspapers in other parts of the country. Capital Newspapers does not currently have any community newspapers in the Western Cape (nor does Caxton for that matter), and, accordingly, there is no overlap whatsoever between any of our (or even Caxton’s) existing community newspapers in Gauteng and Media24’s existing community newspapers in the Western Cape.
 - 6.3 Third, if the transaction were to proceed, Capital Newspapers would be responsible for the editorial content and oversight of the relevant newspapers. Accordingly, there would clearly be editorial independence of these titles. We note that no such concerns of editorial independence were expressed by Media24 when it sold the flagship Witness newspaper to us some two years ago.
 - 6.4 Fourth, insofar as the non-community print titles are concerned, the only newspaper which Capital Newspaper owns is the Pietermaritzburg / KZN-



based daily English language newspaper, The Witness. Furthermore, Caxton currently owns only The Citizen, which is a daily English newspaper that is circulated primarily in Gauteng with a small circulation in the Free State. The Witness and The Citizen do not compete directly with the Beeld and Rapport, which are predominantly Afrikaans-read titles and, in any event, Rapport is a Sunday publication only and therefore does not compete directly with The Citizen. Insofar as City Press is concerned, it is predominantly, from a print perspective, a Sunday newspaper that does not compete directly with The Witness or The Citizen. In any event, the City Press's primary competitor from a Sunday newspaper title perspective is the Sunday Times. The City Press also faces competition from a host of other newspaper titles, including a plethora of independent media titles, such as The Star, The Sunday Independent, Sunday World, The Sunday Tribune, the Argus, and others. There are also other independent newspaper competitors such as The Daily Maverick and the Mail and Guardian. The Daily Sun is similarly not in competition with The Witness or The Citizen.

- 6.5 Fifth, the suggestion that Media 24 intends to retain Rapport and City Press as self-standing and independent online titles is simply misleading. The fact of the matter is that these brands will be completely subsumed within News24 and Netwerk24, and maintaining the brands on Media24's champion news websites will be for window-dressing purposes only.
7. In summary, all of the reasons you have advanced for not wanting to sell the relevant print titles, Western Cape community titles and On The Dot business to Capital Newspapers (supported by Caxton), have no merit whatsoever and are purely a fig leaf to attempt to preserve the indefensible stance that Media24 has taken. Media24 is under an obligation in terms of section 189 of the Labour Relations Act to provide employees with accurate information. It is plain that Media24 has not – for the reasons explained above – done so.
8. Capital Newspapers (with the financial backing of Caxton) reiterates its proposal to acquire the On The Dot business together with the terminating titles. In this regard, the Western Cape community newspapers are not essential or integral to our offer, and were offered by you for sale to sweeten the package. If you have any legitimate commercial reason for wishing to now exclude them from the sale, we would be amenable to discussing and resolving these concerns, including possibly agreeing to them being excluded subject to an agreed reduction in the offered purchase price which is commensurate with their value.
9. We accordingly request that you, in the interests of the print media and the retention of jobs in respect of the terminating titles and the industry more broadly, apply your mind to our offer and revert with a properly motivated answer.



Kind regards

Riquadeu Jacobs

Riquadeu Jacobs
Managing Director, Capital Newspapers (Pty) Ltd

A handwritten signature in black ink, appearing to be 'Riquadeu Jacobs', located in the bottom right corner of the page.

Dear colleagues

We undertook to keep you updated on any material developments related to the proposed restructuring of our print newspaper operations and the anticipated sale of On the Dot, the community newspaper portfolio and Soccer Laduma to Novus (pending regulatory approval).

In the latest development, Media24 received a letter from Capital Newspapers/Caxton yesterday in which they reiterated their initial offer to purchase On the Dot and the portfolio of community newspapers. This updated letter also formalised – for the first time in writing, despite their earlier claims – a definite and concrete offer to purchase the four newspapers earmarked for closure.

We have already accepted the offer from Novus Holdings to purchase On the Dot, the community newspapers and Soccer Laduma, and have no intention to renege on this transaction (subject to regulatory approval). And as mentioned before, it is unlikely that we would sell the four newspaper brands; they are fundamental to our digital news strategy of serving our readers in the format that the vast majority prefers.

You'll remember that our proposal includes for Rapport's news offering to continue under its own masthead on Netwerk24, and that of City Press on News24 – together they would form the anchor of its Sunday news offering. Daily Sun (currently part of SNL24) represents an important segment of the middle market that we plans to continue serving with the relaunch of the brand as a standalone and free e-news site.

Selling the community newspaper portfolio to Capital Newspapers/Caxton will give them (direct and indirect) ownership of 76% of the community newspaper market in South Africa. This will have a very worrying impact on the democratic right of millions of South Africans who depend on community newspapers for information and news based on independent editorial diversity. Not to mention leading to an uncompetitive concentration of regional advertising spend in the hands of ultimately a single publisher, albeit with many and diverse subsidiaries.

Furthermore, this would be compounded by Caxton's then near 100% control of the media distribution industry, and it could shift their role as a leading newspaper printer to one of dominance in the industry. In a nutshell, they would be in absolute control across the entire newspaper industry value chain.

In the interest of minimising potential job losses, however, and keeping Beeld alive as a brand that carries great sentimental value, Media24 will consider any serious offers to purchase the title, subject also to the purchaser retaining the approximately 30 employees* potentially affected by Beeld's proposed closure.

Although we rejected the offer from Capital Newspapers/Caxton, we invited them to make an offer for Beeld. We welcome reasonable and properly considered offers from all interested parties. Any offers received will be subject to regulatory approval, if required, and we will also include this in the consultation process, which remains in progress.

Wishing you all the best!

Kind regards

Ishmet



*Note: These employees fill various roles at Beeld, ranging from editorial production and sales, to administration and other support services. The Afrikaans news for the northern region is already integrated in Netwerk24 with all the journalists employed by Netwerk24. News content for the print edition of Beeld is sourced from Netwerk24 and packaged by core production teams.

//

Beste kollegas

Ons het onderneem om julle op hoogte te hou van enige verwickelinge rondom die voorgestelde herstrukturering van ons gedrukte koerantbedrywighede en die voorgenome verkoop van On the Dot, die gemeenskapskoerante en Soccer Laduma aan Novus (onderhewig aan regulatoriese goedkeuring).

In die jongste verwikkeling, het Media24 gister 'n brief vanaf Capital Newspapers/Caxton ontvang waarin hulle hul aanvanklike aanbod herhaal om On the Dot (die uitgewer se medialogistiek-afdeling) en die portefeulje gemeenskapskoerante te koop. Hierdie nuwe brief sluit ook 'n formele en konkrete aanbod in – vir die eerste keer op skrif, ondanks vorige beweringe – om die vier koerante te koop wat geormerk is vir sluiting.

Ons het reeds die aanbod vanaf Novus Holdings aanvaar om On the Dot, die gemeenskapskoerante en Soccer Laduma te koop, en dit is nie eens 'n oorweging om nie ons woord gestand te doen wat hierdie transaksie (onderworpe aan regulatoriese goedkeuring) betref nie. En soos voorheen genoem, is dit hoogs onwaarskynlik dat ons die vier koerante sal verkoop; hulle is 'n integrale deel van ons digitale nuusstrategie om ons lesers in die formaat te bedien wat die oorgrote meerderheid verkies.

Media24 se voorstel is dat Rapport se nuusaanbod onder sy eie mashoof voorleef op Netwerk24, en so ook City Press op News24. Tesame sal hulle dan die ankeraanbod van die Sondagnuus uitmaak op die twee platforms. Daily Sun (tans deel van SNL24) verteenwoordig 'n belangrike segment van die middelmark, wat die uitgewer steeds wil bedien met die omskepping van die handelsmerk in 'n alleenstaande, gratis e-nuus webtuiste.

Sou ons die gemeenskapskoerante aan Capital Newspapers/Caxton verkoop, sal dit aan hulle (regstreekste en onregstreekste) eienaarskap besorg van 76% van die gemeenskapskoerantmark in Suid-Afrika. Dit sal 'n kommerwekkende impak hê op die demokratiese reg van miljoene Suid-Afrikaners wat op gemeenskapskoerante staatmaak vir inligting en nuus wat op onafhanklike redaksionele diversiteit geskoei is. Om dan nie eens te praat van die nie-mededingende situasie waar besteding aan streeksadvertensies in die hande van tegniese 'n enkele uitgewer beland nie – ongeag hoeveel en hoe uiteenlopend sy filiale.

Boonop sal Caxton se beheer dan oor nagenoeg 100% van die plaaslike mediaverspreidingsbedryf die saak vererger, en kan dit hul rol in die plaaslike koerantdrukbedryf laat skuif van 'n markleiers- na 'n dominante posisie. Kortom, hulle sal dan ten volle in beheer wees reg oor die hele waardeketting van die koerantbedryf.

Maar, in 'n poging om moontlike werksverliese te beperk en Beeld aan die gang te hou as 'n handelsmerk wat groot sentimentele waarde inhou, sal Media24 enige ernstige aanbiedinge oorweeg om die titel te koop. Dit sal egter daaraan onderhewig wees dat die koper die nagenoeg 30 personeellede* wat moontlik deur Beeld se voorgestelde sluiting geraak word, in diens neem.

Hoewel ons Capital Newspapers/Caxton se aanbod verwerp het, het ons hulle genooi om 'n aanbod vir Beeld te maak. Ons verwelkom enige ander partye wat belangstel om vir ons 'n redelike, weldeurdagte aanbod te maak. Dit sal onderhewig wees aan regulatoriese goedkeuring, indien vereis, en sal ook ingesluit word by die konsultasieproses met personeel, wat voortgaan.

Alles van die beste!

Vriendelike groete

Ishmet

*Nota: Hierdie personeel vervul verskeie rolle by Beeld, wisselend van redaksionele produksie en verkope tot administratief en ander steundienste. Die Afrikaanse nuus vir die noordelike streke is reeds by Netwerk24 geïntegreer en al die joernaliste is in diens van Netwerk24. Nuusinhoud vir die gedrukte weergawe van Beeld word deur Netwerk24 geskep en deur kern-produksiespanne verpak.



FA13

Dear colleagues

It gives me great pleasure to announce an important breakthrough and turning point in our consultations with staff around the proposed closures of the printed editions of Beeld, City Press, Daily Sun and Rapport.

We have just received approval from the Media24 board for our proposal to retain all the journalists* from these newspaper titles at their future homes within Netwerk24, News24 and at Daily Sun as a standalone website. This means that we can save 66 jobs across all the affected teams.

At the same time, Beeld is also no longer for sale. And although we anticipate that the PDF versions of Beeld and Volksblad will no longer be available, the teams are working on plans to maintain a digital presence for these historical and beloved brands on Netwerk24.

Those of you included in the 66 positions and who have been involved in the consultation process are no longer affected. However, it is important to note that consultations will continue with the rest of the staff affected by the proposed restructurings. By now, there should be an email in your mailbox confirming your status in this regard. The management team will also meet with both groups shortly to discuss the detail.

From the outset, Media24 undertook to keep job losses – particularly of our journalists – to a minimum. This outcome is the result of a robust consultation process that included lengthy discussions and debates with our editors that went beyond the transition from ink on paper to digital, in line with irreversible consumer trends and preferences. A heartfelt thank you and much appreciation to the management, HR and editorial teams involved in this and for coming up with a solution that serves journalism at large.

Retaining the newspaper journalists will give our digital newsrooms the best chance at continued success in producing journalism which holds truth to account and protects our fragile democracy. While this decision holds cost implications, we firmly believe that it is an important investment in and commitment to the future of quality journalism.

I also want to reiterate that no restructuring or title closures will commence prior to approval by the Competition Commission of the proposed sale of On the Dot, the community newspaper portfolio and Soccer Laduma/Kick Off to Novus. We will be filing our application shortly and expect a decision from the Commission by the end of October 2024.

Please do not hesitate to contact your GM, manager or HR manager if you have any questions.

I wish you all the best for these difficult times.



Kind regards,

Ishmet

[*A newspaper journalist is any editorial member who works with pure journalistic content – whether they create it (in words or with photos or multimedia), or process and package it.]

//

Beste kollegas

Dis is met groot vreugde dat ek 'n belangrike deurbraak en keerpunt in ons konsultasies met personeel rondom die voorgestelde sluitings van die gedrukte uitgawes van Beeld, City Press, Daily Sun en Rapport aankondig.

Die Media24-direksie het pas ons voorstel goedgekeur om al die joernaliste van hierdie koerante te behou en dat hul tuiste vorentoe by onderskeidelik Netwerk24, News24 en Daily Sun se nuuswebtuiste sal wees. Dit beteken dat ons 'n gesamentlike 66 poste kan red tussen die onderskeie spanne wat geraak word.

Terselfdertyd is Beeld ook nie meer te koop nie. En hoewel die PDF-weergawes van Beeld en Volksblad na verwagting nie meer beskikbaar gaan wees nie, werk die spanne aan planne om 'n digitale teenwoordigheid vir hierdie geskiedkundige en geliefde handelsmerke op Netwerk24 te bly gee.

Diegene van julle wat by hierdie groep van 66 ingesluit is en deel was van die konsultasieproses, word nie langer geraak nie. 'n Belangrike punt egter, is dat die konsultasies met die ander personeel wat deur die voorgestelde herstrukturering geraak word, voortgaan. Teen hierdie tyd behoort jy reeds 'n e-pos te ontvang het wat verduidelik waar jy inpas. Die bestuursplan sal ook binnekort met albei groepe vergader om die besonderhede te bespreek.

Reg van die begin af het Media24 onderneem om werkverliese – veral onder ons joernaliste – tot die minimum te beperk. Hierdie uitkoms is danksy 'n kragtige konsultasieproses wat lang besprekings en debatte met ons redakteurs ingesluit het. Dit het ook oor meer as net die oorgang van ink op papier na digitaal, in pas met die onomkeerbare verbruikersvoorkeure en -tendense, gehandel. 'n Hartlike dankie en groot waardering aan die bestuur-, MH- en redaksionele spanne wat hierby betrokke was en dat julle met 'n oplossing vorendag gekom het wat uiteindelik in diens van die breër joernalistiek staan.

Die behoud van die koerantjoernaliste is 'n stewige hupstoot vir ons digitale nuuskantore en hul volgehoue sukses om joernalistiek te lewer wat die waarheid voorop stel en ons weerbare demokrasie beskerm. Hoewel daar koste aan hierdie verbonde is, reken ons dat dit onomwonde 'n belangrike belegging in en toewyding aan die toekoms van gehaltejoernalistiek weerspieël.

Ek wil net weer bevestig dat geen herstrukturering of sluitings sal gebeur alvorens die Mededingingskommissie die voorgenome verkope van On the Dot, die gemeenskapskoerante en Soccer Laduma/Kick Off aan Novus goedgekeur het nie. Ons gaan eersdaags ons aansoek hiervoor indien en verwag dat die kommissie teen die einde van Oktober 2024 uitspraak sal lewer.

Moet asb nie huiwer om met jou hoofbestuurder, bestuurder of MH-bestuurder te gesels indien jy enige vrae het nie.

Ek wens julle alles van die beste toe in hierdie moeilike tye.

Vriendelike groete,

Ishmet

[*’n Koerantjoernalis is enige lid van die redaksionele span wat met suiwer joernalistieke inhoud werk – ongeang of hulle dit skep (in woorde, of met fotos of multimedia), of dit verwerk en verpak.]

A handwritten signature in black ink, consisting of a stylized first letter and a surname, located in the bottom right corner of the page.

MEDIA24 EIENDOMS BEPERK // MEDIA24 PROPRIETARY LIMITED
Reg. Nr 1950/038385/07

Media24-sentrum, Heerengracht 40, Kaapstad 8001 // Media24 Centre, 40 Heerengracht, Cape Town 8001
Posbus 2271, Kaapstad 8000 Suid-Afrika // PO Box 2271, Cape Town 8000 South Africa

T +27 21 406 2121 www.media24.com

1 August 2024

Mr Riquadeu Jacobs
Managing Director
Capital Newspapers (Pty) Ltd

Dear Mr Jacobs,

We refer to your letter of 24 July 2024.

We note the contents of your letter and do not intend to respond to the various allegations set out therein, save to indicate that we vehemently disagree with your continuing negative and incorrect portrayal of your part and scope of participation in the proposed transaction, as well as the rest of our proposed restructure.

The titles earmarked for closure are not for sale. They are inextricably tied to our strategic shift from print to digital. We will also no longer be considering offers for Beeld.

Likewise, your reiterated offer to purchase On the Dot and the community newspapers is rejected since we have already accepted an offer from Novus.

Kind regards,




ISHMET DAVIDSON
CEO: Media24

DIREKTEURE // DIRECTORS:


RCC Jafza (Voorsitter // Chair), **MI Davidson** (Uitvoerende hoof // Chief executive), **JP Bekker**, **TD Petersen**, **KR Mithimanye**, **O Lalbahadur**
Sekretaris // Secretary: **LJ Jacquet**



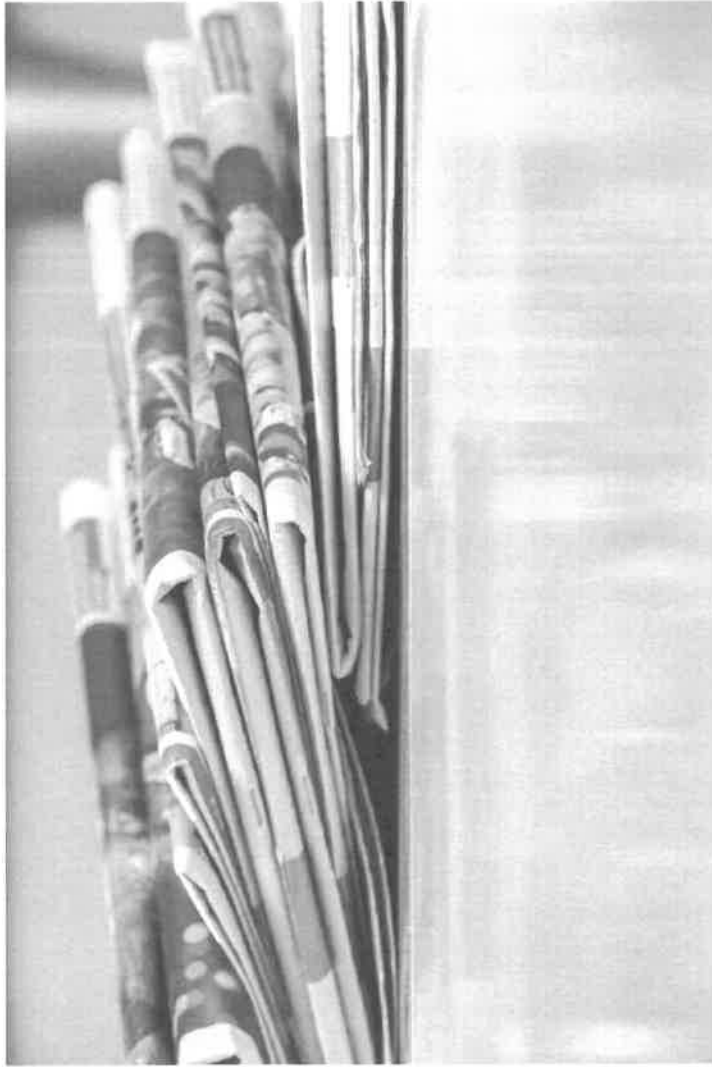
Companies and Deals  INSIDER GOLD

Media24 to retain all journalists of to-be-closed newspapers

And Beeld is no longer for sale.

By **Jeremy Maggs** 1 Aug 2024  04:03





The group is working to 'provide a digital presence' for the 'historical and beloved' Beeld and Volksblad brands on its Network24 platform. Image: Shutterstock

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28 Oct 2024 / Jean van Biljon



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In another twist in the on-again, off-again Media24 newspaper closure drama, the media giant has now announced it will retain all 66 journalists from the four print newspapers earmarked for closure. They will be incorporated into its Network24, News24, and Daily Sun websites.

Media24 also announced that its Afrikaans daily newspaper, Beeld, is no longer for sale

after it announced earlier this month that it was.



Read:

- [End of an era: Media24 to close iconic newspapers](#)
- [Media24 to cut up to 400 jobs](#)
- [Media24 halts job cuts and newspaper closures](#)
- [Media24's decision is 'disingenuous and self-serving'](#)

In a press release, the company defined a journalist as "any editorial member who works with pure journalistic content – whether they create it (in words or with photos or multimedia), or process and package it".

This means other retrenchments will still go ahead, as the original estimate before the latest announcement was that up to 400 jobs could be at stake.

Novus deal ... or not?

The journalist-jobs backtracking comes as Media24 is in the process of selling its media logistics business On the Dot, along with its community newspaper portfolio, to Novus Holdings.

The transaction still needs to be approved by competition authorities, which the company expects to be granted by October.

Read:

- [Caxton to oppose Media24's sale of its distribution business to Novus](#)
- [Caxton sounds alarm over Media24](#)



However, the process may be delayed as Caxton and Capital Newspapers, which have already made a competing offer for the assets, have announced their intention to oppose the transaction.

'Important breakthrough'



<https://www.moneyweb.co.za/news/companies-and-deals/media24-to-retain-all-journalists-of-to-be-closed-newspapers/>

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In the latest statement, Ishmet Davidson, CEO of Media24, says: "From the outset, Media24 undertook to keep job losses – particularly of our journalists – to a minimum, and this is an important breakthrough in our consultations with staff around the proposed closures of the print editions of Beeld, City Press, Daily Sun, and Rapport.

"The decision, approved by the Media24 board, follows robust discussions and debates with our editors that went beyond the transition from ink on paper to digital in line with irreversible consumer trends and preferences. I firmly believe this is a solution that serves journalism at large."

Davidson's statement also announced that Beeld is no longer for sale. "Although we anticipate that the PDF versions of Beeld and Volksblad will no longer be available, the teams are working on plans to provide a digital presence for these historical and beloved brands on Netwerk24."

"Retaining the newspaper journalists will give our digital newsrooms the best chance at continued success in producing journalism which holds truth to account and protects our fragile democracy," he adds.

"While this decision holds cost implications, we firmly believe it is an important investment in and commitment to the future of quality journalism."

'Ill-conceived' plan and 'convoluted defence'

Capital Newspapers MD Riquadeu Jacobs says the latest announcement by Media24 illustrates the point that the closure of the newspapers was ill-conceived from the start.

"While we welcome the fact that 66 editorial jobs have been saved, hundreds of other media jobs are on the line. I believe the job impact is far more than the 400 originally



touted by Media24.

“Beeld, Rapport, and City Press and their particular brands of journalism are integral to the diversity of the media spectrum in SA,” he adds.

“We remain committed to opposing the merger if and when Media24 files its application with the Competition Commission.”

Says Caxton chair Paul Jenkins: “The latest Media24 press release proclaiming a victory for the media by the retention of journalist jobs is a grotesque distortion of the facts.”

“It is clear that Naspers and its chairman are resolute in closing Media24’s newspapers, no matter how convoluted their defence of the indefensible becomes.”

Read:

[South Africa’s journalism bloodbath](#)

[The terrifying collapse of newspapers is here](#)

[There’s a crisis in South African newsrooms](#)

Davidson says no restructuring or title closures will commence prior to Competition Commission approval of the proposed sale of On the Dot, its media logistics operation, the community newspaper portfolio, and Soccer Laduma/Kick Off to Novus Holdings. “We will be filing our application shortly and expect a decision from the Commission by the end of October 2024.”



Koos Bekker acknowledges the ‘nostalgia’ factor

This past weekend, Koos Bekker, chair of Naspers and a board member of Media24,



and who Moneyweb earlier reported was instrumental in pushing for the closure of the

titles, formally entered the debate, penning a lengthy opinion piece on the future of newspapers.

He said Media24's decision to transition from print to electronic news delivery sparked lively debate, especially among older readers who fear the loss of printed newspapers will leave a void in their lives.

The shift to digital, he said, aligns with historical advancements in mass communication, beginning with the Gutenberg Bible in 1450 and the invention of printing with movable type, revolutionising the dissemination of information making books and pamphlets affordable and widely accessible.

Bekker added that the current digital transition represents a similar paradigm shift, driven by consumer preferences and economic realities, and Media24's decision underscores the importance of adapting to these changes to continue providing quality journalism.

Bekker said despite the advantages of digital news delivery, such as faster access to information and reduced environmental impact, many older readers feel nostalgic for the tactile experience of printed newspapers.

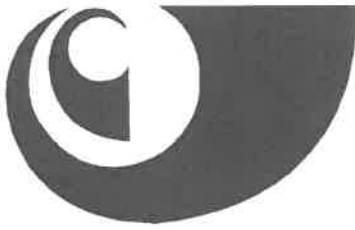
However, he said the decline in print circulation has led to significant financial losses for Media24's newspapers, including City Press and Daily Sun, which now primarily attract readers to their electronic platforms.

Bekker said this shift highlights the ongoing transformation of the media landscape, where future competition will come from global tech giants and emerging technologies like AI.

Disclosure: Caxton's majority shareholders are also material shareholders in African Media Entertainment (AME), the owner of Moneyweb.

TAGS: [BEELD](#) | [CAPITAL NEWSPAPERS](#) | [CAXTON](#) | [ISHMET DAVIDSON](#) | [KOOS BEKKER](#) | [MEDIA24](#) | [NASPERS](#) | [NOVUS HOLDINGS](#) | [ON THE DOT](#) | [RETRENCHMENTS](#)





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Form CC 7

About this Form

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Contacting the Commission

The Competition Commission
Private Bag X23
Lynnwood Ridge
Pretoria 0040
Republic of South Africa
tel: 27 012 394 3226
fax: 27 012 394 0166
e-mail: ccsa@compcom.co.za

Confidentiality Claim

To: The Competition Commission and the Competition Tribunal

Concerning:

(Name and file number:)

Capital Newspapers (Pty) Ltd
225 Hoosen Haffejee St,
Pietermaritzburg,
3201

On a separate sheet of paper, list the following information, and set out the facts and contentions supporting your claim that the identified information is confidential.

- Column 1 - name of the document that contains the confidential information.
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I, Avias Ngwenya compiled, or supervised the persons who compiled, the attached list. I believe that the information identified in that list is confidential information as defined in section 1(1) of the Competition Act.

Name and Title of Person authorised to sign:

Avias Ngwenya

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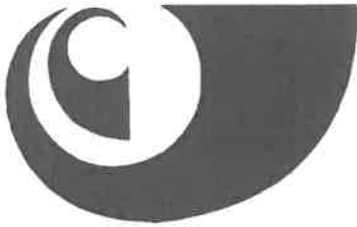
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Contacting the Commission

The Competition Commission
Private Bag X23
Lynnwood Ridge
Pretoria 0040
Republic of South Africa
tel: 27 012 394 3226
fax: 27 012 394 0166
e-mail: ccsa@compcom.co.za

Confidentiality Claim

To: The Competition Commission and the Competition Tribunal

Concerning:

(Name and file number:)

CTP Publishers & Printers Limited
Caxton House
368 Jan Smuts Ave,
Craighall Johannesburg, 2196.

On a separate sheet of paper, list the following information, and set out the facts and contentions supporting your claim that the identified information is confidential.

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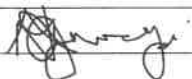
Statement of Confidentiality:

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Name and Title of Person authorised to sign:

Avias Ngwenya

Authorised Signature:



Date:

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Capital Newspapers (Pty) Ltd (“Capital Newspapers”) and Caxton & CTP Publishers & Printers Limited (“Caxton”)

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Nortons letter dated 21 June 2024	The entire letter.	Capital Newspapers and Caxton	The information is commercially sensitive information relating to Capital Newspapers and Caxton. The information contained in the document is not within the public domain and could cause irreparable harm if it were made available to third parties, given that it contains confidential, business-sensitive information which is not publicly available. As such is has economic value to Capital Newspapers and Caxton.	Legal advisors and senior management of Capital Newspapers and Caxton.




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Tamara Paramoer
Mergers Division
The Competition Commission
By email: TamaraP@compcom.co.za

21 June 2024

Dear Tamara

RE: NOVUS HOLDINGS LIMITED’s (“Novus”) ACQUISITION OF ON THE DOT AND THE PORTFOLIO OF COMMUNITY NEWSPAPER TITLES OF MEDIA24 HOLDINGS LIMITED (“Media24”).

Introduction

1. We represent Capital Newspapers (Pty) Ltd (“**Capital Newspapers**”) and Caxton & CTP Publishers & Printers Limited (“**Caxton**”) and address this letter to you on their behalf.
2. Media24 has announced that it intends selling its On the Dot distribution business and its portfolio of community newspaper titles to Novus, one of the largest printers of newspapers and magazines in the country as part of a significant restructuring of the Media24 business. As discussed below, the restructuring will result in most of Media24’s well established newspapers ceasing to be printed and could negatively affect between 400 and 800 employees of Media24. The decision to terminate the printing of the relevant newspapers and attendant job losses is inextricably linked to the sale of the On the Dot distribution business and is part and parcel of the sale.
3. These decisions on the part of Media24 will have significant broader ramifications for the South African media sector as a whole, as they will be likely to result in a significant increase in the cost of distribution for other printed newspapers, which will result either in their closure or in an increase in their pricing which will ultimately undermine their viability. This anti-competitive

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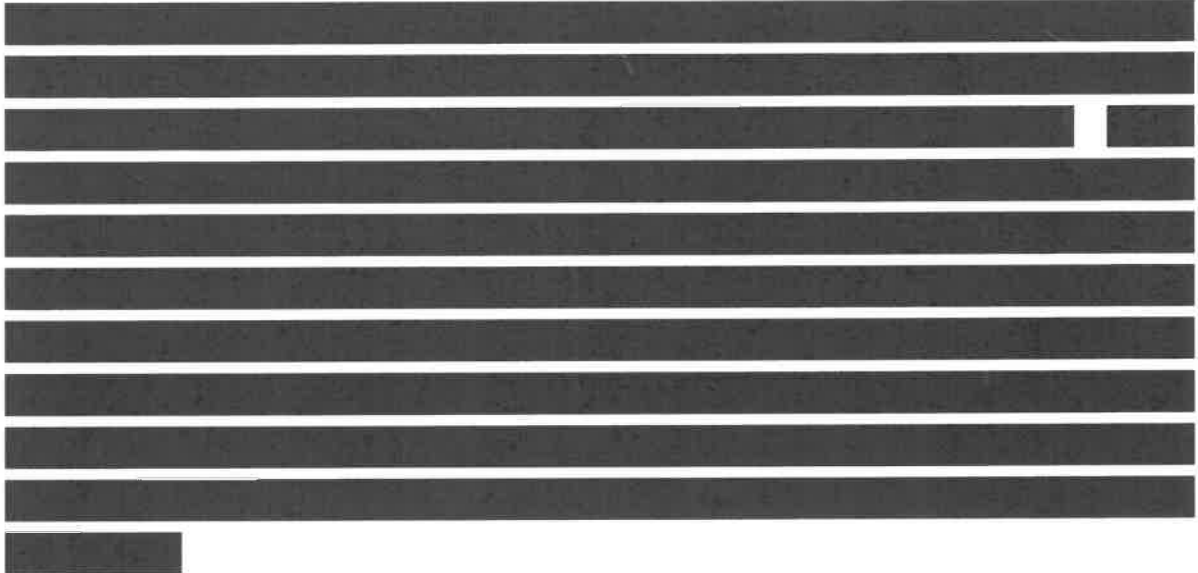




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transaction and restructuring occurs at a critical juncture in South Africa’s history where there is a significant need for independent journalism.

4.



5. On the Dot is the last meaningful distributor of magazines and newspapers in the country (it distributes magazines, newspapers, leaflets, books, etc). On the Dot also collects unsold newspapers and magazines, as well as performing merchandising services. The majority of newspaper and magazine publishers in South Africa are dependent on On the Dot for distribution services. This is a bespoke form of distribution (as it involves distributing often before business hours, on a regular basis, to a wide range of outlets such as large retailers, garage forecourts, and corner shops, as well as collecting the returned newspapers and magazines¹). As such, its network cannot be integrated with other distributors. On the Dot also handles invoicing and collections for the publishers and provides a range of value-added services such as demand planning, debtor management, and business intelligence services. It would not be possible for any entity to replicate this form of bespoke distribution on a national scale given the decline in demand for newspapers and magazines.

¹ Newspapers are delivered on a daily basis and magazines and weekly newspapers are usually delivered on a weekly basis. Leaflets are also delivered on a daily basis as and when required.

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6. Moreover, as explained below, distribution is one of the most significant costs of a printed newspaper or magazine and where a common distributor exists, it allows for distribution costs to be kept as low as possible through economies of scale. The cessation of the printing of the Media24 titles will, therefore, also have the effect of increasing the costs of distribution for other newspapers and could lead to the cost of distribution being prohibitive and also losing access to critical shelves in retailers. This could affect all newspapers even including venerable newspapers such as the Sunday Times and the Sowetan, as well as newspapers with wide distribution such as The Citizen. As Media24 already dominates the South African online news through News24 and Netwerk24, it will, through this mechanism, be able to enhance its dominance as other printed newspapers battle to maintain their financial viability in the face of significant increases in the cost of distribution.
7. It should be noted that on a global basis the development of online versions of newspapers tends to occur in parallel with the continued distribution of printed versions of the titles. This means that Naspers' decision pre-emptively to kill off printed newspaper titles is not in line with global developments. It should also be noted that Media24 is, by and large, discontinuing the titles entirely as it is not going to create online versions of the titles, but simply continue with its publication of the online Netwerk24 news platform. Media24 is also discontinuing the online versions of the Die Volksblad and Die Burger Oos Kaap.
8. The transaction is likely to be classified as an intermediate merger. It is a transaction that will give rise to significant public interest concerns as well as competition concerns and should, therefore, be investigated by the Commission. Even if the proposed transaction should be classified as a small merger, we submit that the Commission that the Commission should call for its notification in terms of section 13 of the Competition Act for the reasons explained in this letter.
9. It should also be noted that Media24 has been a serial non-notifier of notifiable transactions (see, for example, the *Novus* decision of the Competition Appeal Court², the failure to notify the

² See Competition Appeal Court Case No: 136/CAC/March 2015





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acquisition of a controlling interest in Mandla Matla³, and the failure to notify the acquisition of the initial shareholding in The Witness⁴).

10. It is also likely that Media24 will very shortly commence the process of retrenching staff and ceasing the publication of the printed newspapers as it was a directive from Mr Bekker at a Media24 or related board meeting earlier this year that the printed versions of the relevant newspapers must have ceased by October 2024. Capital Newspapers, as a customer of On the Dot, has been informed that the proposed transaction with Novus will be implemented by October 2024. A subsequent media release by Media24 dated 18 June 2024 has stated that “30 September [is] earmarked as the last day of publication for the affected newspapers”.
11. It is, accordingly, of central importance that the Commission calls for an urgent notification of the merger and obtains written undertakings from Media24 that no effect will be given to the proposed retrenchment or cessation of the printed versions of the relevant titles, pending the finalisation of the merger investigation.

Background

Media24 and On the Dot

12. Media24 is a media company with interests in digital media and services, newspapers, magazines, ecommerce, book publishing, television, logistics and distribution. It is part of a multinational group of media and ecommerce platforms. Media24 is the largest newspaper and magazine publisher in the country and publishes a range of well-established newspaper titles that individually enjoy significant readership. These titles currently include newspapers such as the Beeld, Rapport, Die Burger, City Press and Daily Sun (amongst others). Media24 also has two online platforms – News24 and Netwerk24 – which publish news articles. These two news platforms are, on Media24’s account, the two largest subscription news platforms in South Africa. As explained below, the decision of Media24 referred to above will undermine the distribution,

³ See Tribunal Case No: FTN190Dec15/OTH135Sep16.

⁴ See Tribunal Case No: 123/FN/Nov07

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and viability, of its printed rivals and, thereby, entrench the dominant positions of News24 and Netwerk24.

13. To publish its newspapers and articles, Media24 employs a large number of journalists. Indeed, as the largest publisher in the country, it is also likely to be the largest single employer of journalists and of editorial staff in the country. Journalism is under threat in a number of countries and there are also a limited number of potential employment opportunities for journalists in South Africa. However, the press plays a significant constitutional role in South Africa, as has been emphasised by the Constitutional Court on a number of occasions. For example, in *Khumalo v Holomisa* 2002 (5) SA 401 (CC) at paras 22-24, the Constitutional Court held: *“The print, broadcast and electronic media have a particular role in the protection of freedom of expression in our society. Every citizen has the right to freedom of the press and the media and the right to receive information and ideas. The media are key agents in ensuring that these aspects of the right to freedom of information are respected. The ability of each citizen to be a responsible and effective member of our society depends upon the manner in which the media carry out their constitutional mandate. Furthermore, the media are important agents in ensuring that government is open, responsive and accountable to the people as the founding values of our Constitution require ... In a democratic society, then, the mass media play a role of undeniable importance. They bear an obligation to provide citizens both with information and with a platform for the exchange of ideas which is crucial to the development of a democratic culture. As primary agents of the dissemination of information and ideas, they are, inevitably, extremely powerful institutions in a democracy and they have a constitutional duty to act with vigour, courage, integrity and responsibility.”* (Emphasis added.)
14. As reflected above, On the Dot is the last remaining significant distributor of magazines and newspapers in South Africa. Caxton has closed its RNA Distribution business during the Covid pandemic and the Allied Joint Venture has also been disbanded. This means that major newspaper publishers such as Caxton, Arena, Capital Newspapers and Independent Newspapers (the other major newspaper and magazine publishers in South Africa, albeit that they are smaller than

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News24) are all currently largely dependent on the distribution services of On the Dot⁵. So too are a large number of smaller community newspapers.

Novus

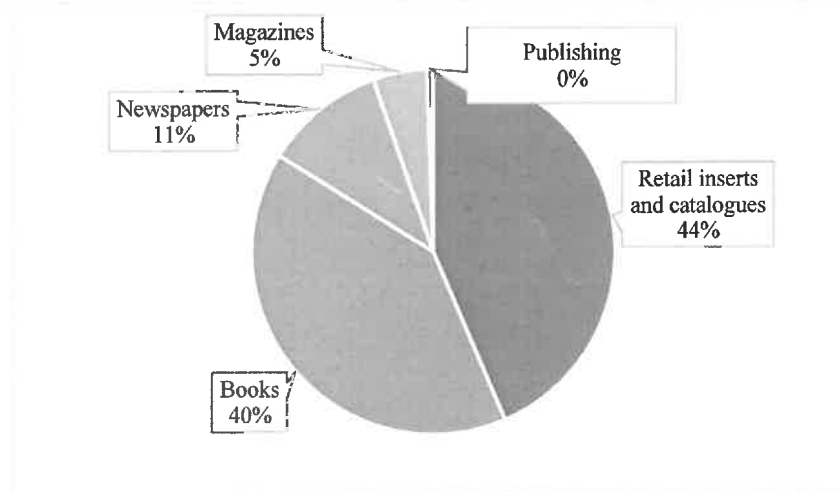
15. Novus is one of South Africa's largest print production and manufacturing operations, with a history spanning well over 100 years. Novus is made up of four separate divisions, namely Novus Education, Novus Packaging, Novus Tissue, and (of relevance in the context of this transaction) Novus Print. Novus' printing division forms the core of its operations, accounting for approximately 74.4% of Novus's group revenue. The next closest contributor is the Novus Packaging division (20.6%) followed by Novus Education (4.9%) and Novus Tissue (0.1%). Novus has also recently acquired Maskew Miller Learning in South Africa.
16. Novus Print operates a variety of different printing technologies, including gravure, heatset, coldset, sheet-fed and digital printing. Novus has four printing facilities situated in various parts of South Africa with two printing facilities in Cape Town, one in Gqeberha and one in Gauteng.
17. Novus's printing capabilities extend across all forms of printing, from short, medium and long-run requirements of all printed materials (including magazines, retail inserts, catalogues, books, newspapers, educational materials and security products) as reflected in the following chart which depicts the revenue contribution of the different types of products printed by Novus in South Africa.

⁵ It should be noted that Independent Newspapers does have a small distribution operation in KwaZulu-Natal.





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Source: Novus AFS 2023

Capital Newspapers

18. Capital Newspapers is a majority black-owned newspaper publishing business with six publications in the Pietermaritzburg and Midlands area of KwaZulu-Natal. Capital Newspapers is considered to be one of the largest independent majority black-owned newspaper publishing businesses in South Africa. [REDACTED]

19. As noted above, Capital Newspapers currently publishes The Witness, which it acquired from Media24 in July 2022. Capital Newspapers purchased the newspaper on the assurance that Media24 saw a good future for printed newspapers. This transaction has prolonged the life of The Witness, and Capital Newspapers is confident that (provided that its distribution network does not collapse or become unaffordable) that it will be able to continue publishing The Witness on a sustainable basis.

Caxton

20. Caxton is a South African-based listed company, which is involved in the publishing and printing of newspapers and magazines, and in the manufacturing and distribution of packaging, stationery



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and labels. Caxton operates through its wholly owned subsidiary CTP Limited (“CTP”). CTP has a black shareholding of 29.09% and is a Level 1 B-BBEE Contributor. CTP publishes The Citizen which is dependent on On the Dot’s “northern network” which is currently also used to distribute the Beeld, Rapport and City Press newspapers.

[Redacted]

21.

[Redacted]

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[REDACTED]

29.

[REDACTED]

Concerns arising from the Proposed Transaction

30. The sale of On the Dot and the predominantly Western Cape community titles forms part of a broader restructuring within Media24, which will result in it ceasing to print a large number of its newspaper titles. This in turn will lead to the retrenchment of a number of employees (journalists and members of the editorial staff of these titles), estimated to be between 400 and 800 people. This will have obvious negative consequences for the public interest in South Africa, which warrant that the transaction should be the subject of investigation by the competition authorities.
31. Moreover, because the disposal of the predominantly Western Cape community titles and On the Dot forms part of this restructuring exercise, the Commission has jurisdiction to consider (i) the significant public interest concerns that arise from the restructuring process; and (ii) the very significant employment consequences of the restructuring process, as well as the competition and public interest concerns arising from the proposed sale of On the Dot to Novus.

PUBLIC INTEREST CONCERNS

Impact on employment

32. Media24 has eventually and belatedly announced (following press inquiries) that up to 400 employees at Media24 may be affected by the proposed restructuring and that a further 400 will be transferred to Novus. However, Capital Newspapers is aware that (i) there has already been a retrenchment process that has taken place in the last number of months; and (ii) the proposed

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transaction is also likely to result in the retrenchment of a large number of employees of On the Dot. It may be the case that these retrenchments will take effect after the transaction (and that Novus will be compensated for the potential retrenchments) or that Media24 will effect the retrenchments in advance of the disposal of On the Dot. In either case this would appear to be collaborative exercise between Media24 and Novus.

33. These are plainly merger-specific retrenchments.
34. The negative impact of the transaction and the restructuring on employment is amplified by the fact that Media24 has failed to consult its employees properly. This is so because Media24 has only commenced the consultation process a considerable period of time after it took the decision to close the newspaper titles and dispose of On the Dot which would inevitably result in the retrenchment of employees. The Tribunal has previously highlighted the importance of proper consultation and engagement with employees. In *Wispeco/ Sheerline*⁷, the Tribunal noted that “*We have previously held that proper consultation is an essential part of the public interest consideration particularly where job losses are contemplated post merger*”. Moreover, as appears below, Media24’s attempt to obfuscate to avoid the consequences of its failure to consult is a serious matter as it not only undermines Media24’s credibility, but also enhances the concerns arising from the negative consequences of the proposed merger on employment.

35. [REDACTED]

⁷ Case No: 69/LM/Oct09, Wispeco (Pty) Ltd Acquiring Firm And The Sheerline Business of AGI Solutions (Pty) Ltd.



36. It is plain that the decision to cease printing the relevant newspaper titles would result in potential retrenchments of employees of Media24. In terms of section 189 of the Labour Relations Act, when an employer contemplates dismissing employees for operational reasons, it must consult the relevant employees. Media24 had not commenced such a process, despite the fact that these retrenchments had been contemplated before [REDACTED], and certainly were clearly contemplated by the time that the instruction was issued by Mr Bekker in May 2024.
37. During the course of the past week a number of media articles were published regarding the potential restructuring of Media24. The reporting commenced with a Moneyweb article dated 13 June 2024 entitled “*End of an era: Media24 to close iconic newspapers*” in which Jeremy Maggs wrote that:

“Media24 is set to close several of its mainstream print publications, including City press, Rapport, Beeld and Daily Sun”

38. The article quoted Mr Ishmet Davidson the CEO of Media24 as stating that “*Media24 continuously reviews its operations to protect viability and long-term sustainability within the context of its transition to an increasingly digital media landscape. We will also continue to consult with staff about any potential and subsequent actions and remain committed to following due process. We do not comment on rumours or speculation, nor on the details of any internal processes.*” (Emphasis added.)
39. However, in another article entitled “*Media24 CEO says no final decision made on closure of newspapers*” published in the Business Day on 14 June 2024, Mr Davidson was quoted as saying that no final decision had been made in relation to the closure of the newspaper titles:

“I’ve not made any announcements and am considering a host of options as the business goes. We are looking at the entire business.”



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“Anxiety runs through the entire industry and there’s the human factor to consider. We are now forced to talk to staff [by] doing internal communications even though no final decision has been made ... I can’t say [yea] or nay.” (Emphasis added.)

40. In yet a further version Mr Davidson in a statement to Moneyweb published on 21 June 2024 contradicted himself yet again by now stating that the Media24 board only made a tentative decision subject to consultation, on 7 June 2024. And that only on this occasion did Mr Bekker learn of the proposed closure. Mr Davidson’s public reaction contradicts what was told to Mr Jacobs, presumably because it was concerned about its contravention of its consultation obligations under section 189 of the Labour Relations Act.

41. Finally, Media24 announced on 18 June 2024 that:

“...it is considering the closure of the print editions of five newspapers, while evolving three of them into digital-only brands. It has also accepted an offer to purchase its community newspaper portfolio and media logistics operations. The company will start consultations with staff and the transfer of the sold businesses to its new owner this week.

The planned interventions include the following:

- *Closing the print editions of Beeld, Rapport, City Press, Daily Sun and Soccer Laduma, as well as the digital (PDF) editions of Volksblad and Die Burger Oos-Kaap, and the digital hub SNL24.*
- *Transitioning Rapport, City Press and Daily Sun into digital-only brands.*
- *Selling On the Dot, the media logistics business, and the community newspaper portfolio to Novus Holdings, subject to regulatory approvals.*

...

The consultation process is expected to be completed over the next three months, with 30 September earmarked as the last day of publication for the affected newspapers. “We

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anticipate that the proposed restructure could result in at least 400 job losses, with 400 more positions transferring to Novus Holdings with the sale and some roles possibly needed beyond 30 September,” says Ishmet. “We also intend reducing our corporate and support services and operational costs in line with the changes made in our business.”

42. Media24’s inconsistency in this regard not only seeks to obscure its contravention of the Labour Relations Act, but highlights the fact that the restructuring of which the sale of On the Dot and the predominantly Western Cape community titles forms part, will have a very significant impact on employment at Media24. Any retrenchment process that results in the retrenchment of editorial staff and journalists will have very significant consequences for these individuals as there are not sufficient alternative sources of employment for journalists and editorial staff in South Africa, nor is it likely that there will be alternative forms of employment for these journalists. This also has implications for journalism in South Africa more generally. As such, not only does the merger have a negative impact on employment, but it also has a negative impact on the newspaper sector generally.
43. Indeed, it is not apparent whether Media24 has to date even informed the affected employees at the newspapers which it intends to shut down that there is was an alternative option involving the sale of On the Dot to someone other than Novus, which was unilaterally abandoned by Media24, and which may significantly mitigate the potential 400 jobs that may be lost by virtue of the closure of the titles. This is clearly a fundamental alternative which employees should have been informed of prior to Media24’s incorrect statement that they have “simply run out of options”.

Impact on the media sector

44. As discussed above, the restructuring and the proposed transaction will undermine journalism in South Africa.
45. It will also result in the effective demise of a large number of printed newspaper titles, at a time when the need for media scrutiny is of significant importance. The loss of diversity of views and also the fact that a large number of South African journalists and editorial staff will lose their jobs is a source of considerable public interest concern.




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46. This is not an issue which can be understated. The South African media has been one of the institutions that has been heralded as having played a significant role in holding the Government and other powerful members of society to account. A significant restructuring that results in the demise of a number of newspaper titles is, therefore, a very serious matter. This is particularly the case, because the proposed transaction and the restructuring will have a negative impact on other newspaper operations and cement the dominant position of Media24 in relation to subscription online news platforms in South Africa. This will undermine the plurality of voices that the legislature has sought to encourage, and the constitutionally important role played by the media.
47. As such, the proposed restructuring will have a significant and negative impact on a specific industrial sector in South Africa. This effect will be compounded by the anti-competitive consequences of the proposed merger, which will undermine the position of other newspaper publishers and also the position of competing printers.

No enhancement of a greater spread of ownership

48. The sale of On the Dot to Novus will not enhance a greater spread of ownership. It simply entails the move of On the Dot from one large company (Media24) to another large, listed entity (Novus), which has a lower empowered shareholding than Media24.
49. Novus is also a large printer and is expanding within the market for printing and packaging products more generally.
50. Capital Newspapers is an empowered entity, who was removed from the sale process without warning, after having been informed that it was the preferred purchaser. It should be emphasised that not only is Mr Jacobs, the majority shareholder of Capital Newspapers, an historically disadvantaged person, but he has built a successful entrepreneurial business from small beginnings and successfully ensured the survival of The Witness. A sale to Capital Newspapers would, therefore, have advanced the purposes of section 12A(3)(e).
51. The manner in which Capital Newspapers was treated also gives rise to concern from the perspective of the Competition Act and the Constitution. It is incumbent on parties to give



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consideration to transformation in considering disposal processes and, having decided to sell the business and invite Mr Jacobs to participate in the process, Medai24 cannot simply “*change the rules of the game*” midway through the process without warning or explanation.

52. The proposed transaction does not enhance a greater spread of ownership. To the contrary, it resulted from a flawed disposal process where the empowered potential bidder who would advance the objectives of the Competition Act was treated in an unfair manner (both from a procedural and substantive perspective) and effectively ejected from the sale process.

The proposed transaction undermines the ability of firms owned by historically disadvantaged South Africans and medium and small firms to participate in the market

53. Because of the significant negative consequences for other printed newspapers, the proposed transaction and the restructuring process will hamper the ability of small and medium-sized newspaper businesses, or firms controlled or owned by historically disadvantaged persons involved in the publication of newspapers, to effectively enter into, participate in or expand within the market.
54. On the other hand, a potential sale to Capital Newspapers would have enhanced the ability of historically disadvantaged South African owned firms and medium-sized firms such as Capital Newspapers to participate in the market.

Competition concerns arising from the proposed transaction

55. From a competition perspective, the proposed transaction raises a number of important concerns. In order to situate these concerns, we will briefly provide an overview of the relevant parts of the supply chain insofar as newspapers and magazines are concerned.
56. The printing and distribution of newspapers and magazines are amongst the most important aspects of a newspaper and/or magazine publisher’s business. Without access to timely printing services, a publisher is not able to print its newspaper and/or magazine in a timely manner. Secondly, without access to efficient distribution services, a publisher is not able to ensure that its printed



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products find their way to street corners and newspaper and magazine stands (in the case of paid-for titles) or into the homes of readers.

57. Printing and distribution are also amongst the most significant costs faced by publishers.

Publishers (Newspapers and Magazines)

58. From a publishing perspective, the Commission has previously found that both the magazine publishing and the newspaper publishing markets are highly concentrated and ones in which Media24 is the largest player and one which would be deemed to be dominant in terms of Section 7 of the Competition Act. For example, in its report entitled “*Measuring Concentration and Participation in the South African Economy: Levels and Trends*” dated November 2021 the Commission found the following:

58.1. The magazine sector was highly concentrated, with concentration levels increasing. The Commission noted that “*the largest three media owners (Media24, Caxton and Highbury Safika) accounted for 55.3% of total advertising revenue in 2019, an 8.1 percentage point improvement from 2014*”. In addition, the Commission noted that, when based on readership shares Media24 was significantly dominant.

“Based on estimated readership shares (not shown), Media24 titles accounted for 49.9% of readership, more than double the share of Caxton, with the second largest share (20.3%).” (Emphasis added)

58.2. In this regard, based on the Commission’s previous report on market concentration Media24’s share of readership would breach the irrebuttable dominance threshold of 45% set out in Section 7 of the Competition Act.

58.3. It should be noted that Caxton has ceased publishing most of its magazines since this report was written.

58.4. The Commission also found the newspaper sector to be highly concentrated with Media24 accounting for the largest share.




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“The largest 4 newspaper publishers (Media24, Independent, Caxton and Arena Holdings) produced 87.6% of all newspaper titles in 2019, a share that decreased slightly from 2014 (90.3%). Together, they accounted for 93.7% of total advertising revenue, a share similar to five years prior.”

and

“The top 4 publishing houses accounted for 77.1% of all print and digital newspaper readership in 2019 (not shown), down somewhat from 80.8% in 2017. Media24 titles accounted for 44.0% in 2019, more than double that of Independent Media and Arena Holdings in second and third place respectively. Caxton’s share of newspaper readership (mostly community newspapers) was far below that of the top 3 publishing houses, with a share of just 2.2% in 2019.” (Emphasis added.)

59. The Commission’s previous report on market concentration reflected Media24’s share of newspaper readership as being above the rebuttable threshold of dominance (35%) in Section 7 of the Competition Act.
60. Media24 also dominates subscription South African online news platforms, having noted in its most recent press statement of 18 June 2024 that it owns the two largest digital news brands, News24 and Netwerk24.

“In a very competitive landscape, News24 and Netwerk24 remain the digital news destinations of choice for South Africans. News24 was named by the Reuters Institute as South Africa’s most trusted news brand for the sixth consecutive year earlier today. News24 averaged 9.1m daily unique page views for the financial year to 31 March 2024 while Netwerk24 garnered 5.7m page views. During the election week, they generated close on 105m page views combined; peaking at a record-breaking 21.9m page views for News24 and 5.8m for Netwerk24 on a single day”

61. In a recent MyBroadBand article dated 3 June 2024 it was noted that *“Media24 maintained its top spot with 960,000 average active daily users and 317 million page views. ... Media24 is behind*

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many of the country's top publications, including News24, SNL24, and City Press."⁸ The data cited in the article revealed that Media24 accounted for approximately 53% of all online monthly page views across South African online news publishers.

62. Through increasing the costs of distribution for other competing newspaper publishers and thereby jeopardising their continued viability (through removing the printed newspapers from the distribution network and, thereby, increasing the per unit costs of distribution of all of the other newspapers), Media24 will be able to enhance the dominant position that it has in relation to online subscription newspapers and as its dominance in online platforms is entrenched.
63. This can be illustrated as follows. On the Dot currently distributes the Sunday Times, Rapport and City Press on a Sunday through its "northern network". Following the proposed transaction, it will only be distributing the Sunday Times. This will result in the Sunday Times bearing all the costs of distribution of the On the Dot network on a Sunday. This will in all likelihood make it unviable to continue publishing the Sunday Times and the Sunday Times may then have to close. This benefits the dominant well-established and money-flush Naspers, which will then pick up the readers of the Sunday Times on its established (and already dominant) online platforms. The closure of the Sunday Times will also then have the effect of increasing the distribution costs for The Star, The Sowetan, The Citizen and the other daily newspapers given that it accounts for a significant share of the distribution volumes of On the Dot. It should be noted that their costs of distribution would already have increased as a result of the closure of the Beeld. The additional loss of the Sunday Times' volumes will lead to further significant diseconomies of scale and thus increase the distribution costs which will then be borne by the remaining newspaper titles. This again undermines the position of competing newspapers such as The Star, The Sowetan, and The Citizen which are effectively precluded from continuing to publish their newspapers.

⁸ <https://mybroadband.co.za/news/internet/539385-south-africas-top-online-news-publications-revealed.html>





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Printing

64. As noted above, printing is an important aspect of a publisher's business. Printing is often the largest input cost of publishers. In *Media24/Natal Witness*, the Commission engaged in an extensive analysis of the South African printing industry and noted that *"Printing has been identified by many stakeholders involved in the newspaper publishing industry as being a major if not the largest input cost associated with the production of newspapers."*⁹ (Emphasis added.)
65. It is well established within the publishing industry that not all printers are the same. In this regard, there are various types of printing technologies which are used to print various forms of titles. For example, the technology used in coldset printing, which is used predominantly for the printing of newspapers, cannot be used in the printing of glossy magazines or inserts. In its *Nasmedia/Paarl Post* decision, the Tribunal defined the relevant market for printing as *"the printing for magazines, brochures and advertising inserts printed on litho-web presses."*¹⁰
66. In the *Bidvest/Paragon* matter, the Tribunal noted the following:
- "The printing industry can be divided into four specialized areas, each fulfilling a specific printing activity which does not compete with the other, namely 1) the printing of magazines and books on commercial web presses, 2) the printing of business forms, that is, the printing of stationary for business such as invoices, statements and self-adhesive labels, 3) the newspaper industry which uses a cold-set press to print, and 4) general commercial printers, which print all types of brochures, letterheads, business cards, pamphlets and catalogues on sheet-fed printers."*¹¹ (Emphasis added.)
67. In *Media24/Natal Witness*, the Tribunal highlighted the fact that *"[i]t is common cause that cold-set and heat-set printing constitute two separate relevant product markets and that cold-set printing is an essential input in the publication of community newspapers. The merging parties indicated that the printing techniques other than cold-set are not as cost effective for the printing*

⁹ Media24/Natal Witness, Competition Commission Expert Report.

¹⁰ Nasmedia and Paarl Post Web Printers (Pty) Ltd, Case No.:65/LM/May00.

¹¹ Bidvest Group Limited and Paragon Business Communications Limited, Case No.: 56/LM/Oct01, para12.

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of newspapers and of high volume commercial/retail inserts and pamphlets. They further indicated that newspaper print runs generally constitute approximately [80% -100%] of the business of cold-set print operations with the remainder being retail inserts.”¹²

68. In order to determine the potential suitability of the various printers and printing processes from a demand-side perspective, the product that is being printed by the publisher in question must be borne in mind as well as the existence of alternatives to that particular printing process. There are a number of further important features which limit the ability of publishers to turn to other printing alternatives, even when a number of other printers are present in the market. These factors relate to more nuanced time and quality factors. For example, in respect of newspapers in general, printing is very time-specific, and the quality of the printed product is also of significant importance. In *Media24/Natal Witness*, the Tribunal noted that *“printing capacity is a central issue in this case but he added the proviso that “when you go to the customers the buyers, you have got [to] look [at] what’s [on] offer for them” in terms of the community newspaper slots.”¹³* The Tribunal also noted that *“[[f]rom the perspective of printing customers who publish community newspapers, it is evident that the time of printing, the quality of the printing and the service provided are all crucial competition factor.”¹⁴*(Emphasis added.)
69. With respect to the printing of magazines, Novus notes that with a rich history spanning over 100 years *“we have cemented our position as one of South Africa’s top printers for a variety of magazine publications”¹⁵* In particular, Novus highlights that it has *“fully automated production processes and high-speed presses”¹⁶* which provide it with unparalleled capabilities. In addition, Novus notes that its *“[s]trategic geographical plant locations ensure fast and efficient distribution”¹⁷*.

¹² *Media24/Natal Witness.*

¹³ *Media24/Natal Witness.*

¹⁴ *Media24/Natal Witness.*

¹⁵ <https://novus.holdings/novus-print/print-products-services/magazines/>

¹⁶ <https://novus.holdings/novus-print/print-products-services/retail-printing/>

¹⁷ <https://novus.holdings/novus-print/print-products-services/magazines/>



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70. In relation to the printing of newspapers, Novus describes itself as “*one of South Africa’s leading printing companies*”.¹⁸ Novus notes that it has coldset printing facilities in Cape Town, Johannesburg, and Port Elizabeth, and that these facilities “*are all geared to service the daily, weekly and community newspaper sectors, as well as small, medium and large retail and commercial requirements.*”¹⁹ Novus also records that it has an annual coldset production capacity of 205 000 tonnes per annum and that its facilities have the ability to print “[u]p to one million copies per hour – with 800 tabloid pages printed simultaneously.”²⁰

Distribution

71. On the Dot is the only remaining meaningful distributor of newspapers and magazines in the country. On the Dot has a near monopoly position in relation to the national distribution of newspapers and magazines in South Africa.

Competition concerns

72. The dominant publisher in South Africa, Media24 has split its printing business between Caxton and Novus, with Caxton being primarily responsible for the printing of Media24’s magazine titles, while Novus has been responsible for the printing of Media24’s newspaper titles. Given Media24’s decision to cease printing a large number of the physical copies of its titles, this will result in Novus losing significant volumes of printing work from Media24.
73. It is, however, understood that there may be an agreement between Novus and Media24 that Media24 will transfer the contract for the printing of its magazines from Caxton to Novus next year. In this regard, while Novus will lose the ability to print the Media24 newspapers (and the significant retail inserts and catalogues that are inserted into these newspapers) as a result of the restructuring, it has been assured as part of the transaction that it will be awarded the right to publish the magazines of Media24.

¹⁸ <https://novus.holdings/novus-print/print-products-services/newspaper-printing/>

¹⁹ <https://novus.holdings/novus-print/print-products-services/newspaper-printing/>

²⁰ <https://novus.holdings/novus-print/print-products-services/newspaper-printing/>

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74. As On the Dot is the *de facto* monopoly distributor of newspapers and magazines on a national basis in South Africa, it has significant power over the publishers of newspapers and magazines, as they are dependent on it. This will enable Novus to leverage this position in various potential ways in order to induce or coerce publishers to using its printing services.
75. Caxton and the other publishers are dependent on On the Dot to distribute their publications. From an alternative supply perspective, it is simply not possible, at this stage of the evolution of the market for newspapers and magazines, for a new national distributor to be established to compete with On the Dot. This accords the owner of On the Dot significant power over other publishers. At the same time, Novus (the proposed purchaser of On the Dot) is a significant printer, and the publishers are customers of Novus in this capacity.
76. Novus therefore has a clear incentive to use its acquisition of the On the Dot business to induce its customers to print with Novus. Novus will, as a result of the transaction, acquire both the ability and incentive to use access to On the Dot as a basis to ensure that the relevant publishers transfer their printing requirements to Novus.
77. This places Caxton at considerable risk. Not only would it be dependent on its major printing competitor for the distribution of its publications, but its major printing competitor would be able to use On the Dot as a strategic lever to move even more printing work from Caxton to Novus.
78. In addition, as explained above, the proposed transaction and restructuring will lead to an increase in the cost of distribution for Media24's competitors which will place them at a considerable disadvantage vis-à-vis Media24 and may lead to the closure of the newspapers. This will have a negative impact on consumers and have a negative impact insofar as advertising is concerned as Media24 will be able to attract a larger share of advertising further undermining the position of its competitors.

Conclusion

79. The proposed transaction and the Media24 restructuring gives rise to significant concern and it is, therefore, critical that the Commission calls for it to be notified urgently (given the fact that it has





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been announced that the closure of the titles and the retrenchment process will be completed prior to October 2024.

80. We look forward to hearing from you in this regard.

Sincerely,

[Unsigned due to electronic transmission]

Anthony Norton / Anton Roets / Michelle Rawlinson / Avias Ngwenya
NORTONS INC.

Two handwritten signatures in black ink, one larger and more stylized, and one smaller and simpler, located in the bottom right corner of the page.



competition commission ^{FA17} south africa

Form CC 7

About this Form

- This form is issued in terms of section 44 (1) of the Competition Act.
- The Commission must treat confidentially any information identified by you in this form, but may refer it to the Competition Tribunal to determine whether the information is confidential in terms of the Act. You will be notified if your claim is referred to the Tribunal.
- Until the Tribunal makes a decision about your information, it will be treated as confidential by the Commission, subject to any public notice requirements set out in the Act or Rules. Please see sections 44, 45 and 45A of the Act.
- Confidential information means trade, business or industrial information that belongs to a firm, has a particular economic value, and is not generally available to or known by others.

Contacting the Commission

The Competition Commission
Private Bag X23
Lynnwood Ridge
Pretoria 0040
Republic of South Africa
tel: 27 012 394 3226
fax: 27 012 394 0166
e-mail: ccsa@compcom.co.za

Confidentiality Claim

To: The Competition Commission and the Competition Tribunal

Concerning:

(Name and file number:)

Capital Newspapers (Pty) Ltd
225 Hoosen Haffjee St,
Pietermaritzburg,
3201

On a separate sheet of paper, list the following information, and set out the facts and contentions supporting your claim that the identified information is confidential.

- Column 1 - name of the document that contains the confidential information.
- Column 2 - the page and line number at which the confidential information begins and ends.
- Column 3 - the name of the firm that owns the particular information.
- Column 4 - the nature of the economic value of the information.
- Column 5 - the existing restrictions on access to the information.

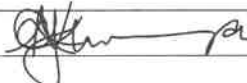
Statement of Confidentiality:

I, Avias Ngwenya compiled, or supervised the persons who compiled, the attached list. I believe that the information identified in that list is confidential information as defined in section 1(1) of the Competition Act.

Name and Title of Person authorised to sign:

Avias Ngwenya

Authorised Signature:



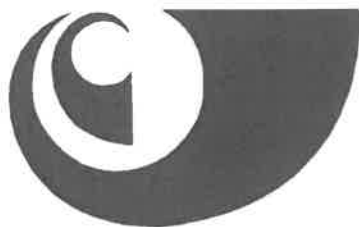
Date:

24 June 2024

For Office
Use Only:

Commission file number:

Date filed:



competition commission south africa

Form CC 7

About this Form

- This form is issued in terms of section 44 (1) of the Competition Act.
- The Commission must treat confidentially any information identified by you in this form, but may refer it to the Competition Tribunal to determine whether the information is confidential in terms of the Act. You will be notified if your claim is referred to the Tribunal.
- Until the Tribunal makes a decision about your information, it will be treated as confidential by the Commission, subject to any public notice requirements set out in the Act or Rules. Please see sections 44, 45 and 45A of the Act.
- Confidential information means trade, business or industrial information that belongs to a firm, has a particular economic value, and is not generally available to or known by others.

Contacting the Commission

The Competition Commission
Private Bag X23
Lynnwood Ridge
Pretoria 0040
Republic of South Africa
tel: 27 012 394 3226
fax: 27 012 394 0166
e-mail: ccsa@compcom.co.za

Confidentiality Claim

To: The Competition Commission and the Competition Tribunal

Concerning:

(Name and file number:)

CTP Publishers & Printers Limited
Caxton House
368 Jan Smuts Ave,
Craighall Johannesburg, 2196.

On a separate sheet of paper, list the following information, and set out the facts and contentions supporting your claim that the identified information is confidential.

- Column 1 - name of the document that contains the confidential information.
- Column 2 - the page and line number at which the confidential information begins and ends.
- Column 3 - the name of the firm that owns the particular information.
- Column 4 - the nature of the economic value of the information.
- Column 5 - the existing restrictions on access to the information.

Statement of Confidentiality:

I, Avias Ngwenya compiled, or supervised the persons who compiled, the attached list. I believe that the information identified in that list is confidential information as defined in section 1(1) of the Competition Act.

Name and Title of Person authorised to sign:

Avias Ngwenya

Authorised Signature:

Date:

24 June 2024

For Office
Use Only:

Commission file number:

Date filed:

**CLAIM THAT INFORMATION IS CONFIDENTIAL: FORM CC7
Capital Newspapers (Pty) Ltd (“Capital Newspapers”) and Caxton & CTP Publishers & Printers Limited (“Caxton”)**

Name of the document that contains confidential information	Page and line number at which the confidential information begins and ends	Name of firm that owns the particular information	Nature of the economic value of the information	Existing restrictions on access to the information
Nortons letter dated 24 June 2024	The entire letter.	Capital Newspapers and Caxton	The information is commercially sensitive information relating to Capital Newspapers and Caxton. The information contained in the document is not within the public domain and could cause irreparable harm if it were made available to third parties, given that it contains confidential, business-sensitive information which is not publicly available. As such is has economic value to Capital Newspapers and Caxton.	Legal advisors and senior management of Capital Newspapers and Caxton.



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Tamara Mokoka
Mergers Division
The Competition Commission
By email: TamaraP@compcom.co.za

24 June 2024

Dear Tamara

RE: NOVUS HOLDINGS LIMITED's ("Novus") ACQUISITION OF ON THE DOT AND THE PORTFOLIO OF COMMUNITY NEWSPAPER TITLES OF MEDIA24 HOLDINGS LIMITED ("Media24").

1. As you are aware from our previous letter dated 21 June 2024, our client, Capital Newspapers (Pty) Ltd ("**Capital Newspapers**"), was invited by Media24 to purchase the On the Dot business from Media24 and, as a sweetener/inducement to agreeing to buying On the Dot (as numerous titles it distributed would be closed by Media 24), the Media24 community newspaper titles were bundled into the same proposed transaction.
2. We understand that Media24 suggested to our client that the transaction could be characterised as a small merger and could be implemented without notification with a timeline to completion that preceded the closures.
3. During the course of the engagements with representatives of Media24, relating to the disposal of On the Dot, it was made plain to our client that the sale of the sub-optimal On the Dot business would be bundled with the sale of the profitable community titles, as an integral part of the subject matter of the sale, given the fact that Media24 was planning to cease to print and distribute a number of its newspaper titles that are currently distributed by On the Dot, including City Press, Daily Sun, Rapport and Beeld ("**the newspaper titles**"), which would render On the Dot less profitable and ultimately loss-making.

Competition Law Specialists | Litigation Attorneys | Regulatory Advice

Directors: Anthony Norton Anton Roets Paul Russell Michelle Rawlinson Warwick Radford Nicola Ilgner
Vice President Economics: Avias Ngwenya
Senior Associates: Nicci van der Walt Nina Greyling Melissa Steele
Company Registration Number: 2009/006902/21 VAT Registration Number: 4510252580



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4. Stated in another way, the closure of the print editions of the newspaper titles is intimately linked to the future viability of the On the Dot business, because the profitability of On the Dot is dependent on the volume of newspapers that are distributed by the business. If the print newspaper volumes decline considerably as a result of ceasing to print the Media24 newspaper titles, then this will have a material adverse effect on the profitability and viability of the On the Dot business. Therefore, any prospective purchaser of the On the Dot business would need to agree to the cessation of printing the newspaper titles as part of the sale process, hence the sweetener and inducement of including the community newspapers in the sale assets.
5. At the time that the negotiations and discussions took place between our client and Media24, our client made proposals of assistance and restructuring, supported by Caxton (also our client in this matter) that, if implemented, could potentially result in the print editions of the newspaper titles continuing, albeit on a restructured basis. However, for reasons unknown to Capital Newspapers and Caxton, before they could formulate their final proposals to purchase the On the Dot business, and even before the Media24 board meeting of 7 June 2024, Novus was apparently chosen as the purchaser. The input of Capital Newspapers and Caxton was rejected and this was verbally conveyed on 7 June 2024. Subsequently Capital Newspapers submitted a formal purchase proposal on 13 June 2024, but was informed the decision to sell to Novus was final. As noted above, the initial and subsequent proposals made by Capital Newspapers could potentially avoid the cessation of printing of the newspaper titles.
6. As outlined in our previous letter and as explained above, it has now become apparent that Media24 intends to dispose of the On the Dot business to Novus (together with certain other community titles currently owned by Media24) on the understanding that this disposal will take place in tandem with ceasing to print the newspaper titles (“**the disposal process**”). Some of the newspaper titles will effectively cease to exist. It appears from various media reports that the process of retrenching employees associated with the print newspaper titles has already commenced and that employees have been notified in terms of section 189 of the Labour Relations Act. Our clients believe that, given the damage that will be suffered by the On the Dot business as a result of the cessation of printing of the newspaper titles, Media24 has agreed to “*sweeten the deal*” for Novus by including the sale of the community newspapers and by holding the prospect of certain additional benefits in

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- due course (which may include the printing of the Media24 magazine titles that are currently printed by Caxton).
7. Accordingly, it is clear to our clients that Media24 is intent on implementing certain aspects of the disposal process prior to receiving the approval of the Competition Authorities. Once they have closed the print editions of the newspapers and retrenched staff, this will be presented to the Competition Authorities as a *fait accompli*.
 8. It will be very difficult, after the fact, to reverse this process, even if the Commission were to find that there was an alternative purchaser for the On the Dot business such as Capital Newspapers; and a consortium of journalists, supported by Caxton, who are willing to continue printing all or some of the newspaper titles and thereby retain the majority of the jobs that will otherwise shortly be lost. In other words, even if the merger were to be prohibited by the competition authorities in due course – which our clients believe is the correct outcome in the circumstances – irreparable damage will have been done to the media sector and to the employees who will have lost their jobs.
 9. Accordingly, we urge the Commission to intervene in this matter as soon as possible in order, *inter alia*, to preserve some or all of the jobs that are currently under threat and avoid further unnecessary job losses, and also to seek undertakings from Media24 that it will not continue with any other aspect of the proposed disposal process until such time as competition approval has been sought and obtained for the entire disposal process.
 10. Our clients have asked us to stress that they remain willing to seek to preserve the print editions of certain of the newspaper titles (and many of the journalism and essential function related jobs at those newspapers) and will make themselves available for a meeting with the Commission at short notice should that be of assistance to you and your team.
 11. We look forward to your urgent response hereto.

Sincerely,

[Unsigned due to electronic transmission]

Anthony Norton / Anton Roets / Michelle Rawlinson / Avias Ngwenya
NORTONS INC.



**FA18**

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Illovo, Johannesburg

PO Box 41162, Craighall, 2024, South Africa

Mr Ishmet Davidson
Media24

And

Mr Andre van der Veen
Novus Holdings Limited

By email:

3 July 2024

Dear Mr Davidson and Mr van der Veen

RE: NOVUS HOLDINGS LIMITED's ("Novus") ACQUISITION OF ON THE DOT AND THE PORTFOLIO OF COMMUNITY NEWSPAPER TITLES OF MEDIA24 HOLDINGS LIMITED ("Media24")

1. We represent Capital Newspapers (Pty) Ltd ("**Capital Newspapers**") and Caxton & CTP Publishers & Printers Limited ("**Caxton**") and address this letter to you on their behalf.
2. Our clients have very significant concerns about the recently announced sale of On The Dot and various community newspapers to Novus which forms a composite part of and is inextricably linked to Media24's announced restructuring of its newspaper publishing business (which also entails the discontinuation of a number of titles and it ceasing to print certain other titles) ("**the composite transaction**").
3. Our clients have publicly explained that they believe that there are significant concerns relating to the composite transaction, both of a competition nature and from a public interest perspective. Certain aspects of these concerns have been echoed by a large number of former editors of the Media24 publications including Mr Ton Vosloo, the former chair of Naspers.
4. It appears that Media24 is intent on implementing certain aspects of the composite transaction prior to 1 October 2024 which includes completing the retrenchment of potentially more than 400

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Vice President Economics: Avias Ngwenya

Senior Associates: Nicci van der Walt Nina Greyling Melissa Steele

Company Registration Number: 2009/006902/21 VAT Registration Number: 4510252580



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people as well as ceasing to print the various titles (such as The Daily Sun, Soccer Laduma, The City Press, Rapport and Die Beeld). The potential harm to the newspaper publishing sector arising from these steps is very significant.

5. In the circumstances, our clients require the following undertakings to be provided by Media24 and Novus:
 - 5.1. That the composite transaction (including all interrelated actions and steps) will be notified to the Commission as a merger; and
 - 5.2. That no further steps will be taken to implement any aspect of the composite transaction (including the termination of printing any of Media24 titles or the retrenchment of any Media24 employees arising from the announced restructuring process, including any employees providing services to the On the Dot or in relation to any of the titles) unless and until the composite transaction is approved by the Competition Authorities.
6. We look forward to hearing from you in this regard prior to close of business on Thursday 4 July 2024 failing which our client will take the appropriate action in this regard.

Sincerely,

[Unsigned due to electronic transmission]

Anthony Norton / Anton Roets / Michelle Rawlinson / Avias Ngwenya
NORTONS INC.

ENS

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Nortons Inc.

**Attention: Anthony Norton / Anton Roets / Michelle Rawlinson /
Avias Ngwenya**

Per email: anthony@nortonsinc.com / anton@nortonsinc.com /
michelle@nortonsinc.com / avias@nortonsinc.com

D Chetty / W Graaff our ref
2024Mar0044 your ref
04 July 2024 date

Dear All

RE: PROPOSED TRANSACTION INVOLVING MEDIA24 (PTY) LTD AND NOVUS

1. We have been appointed as the legal representatives to act on behalf of Media24 (Pty) Ltd ("Media24"), Novus Holdings Limited ("Novus") and their respective groups (collectively referred to as "our Clients") regarding a proposed transaction.
2. We refer to your letter of 3 July 2024 addressed to our Clients and would be grateful if all future correspondence in relation to this matter could be directed to us.
3. We note the contents of your letter and do not intend to respond to the various allegations set out therein at this time.
4. We are instructed to inform you that your clients may rest assured that our Clients are taking legal advice on the proposed transaction and their full compliance with all applicable regulatory and labour law requirements, including by submitting the requisite merger notification to the competition authorities in due course. This is in accordance with numerous public statements already made by Media24.
5. Our Clients' rights remain fully reserved.

Yours sincerely

ENS

Derushka Chetty / Wade Graaff

[Transmitted electronically without signature]


Derushka Chetty and Wade Graaff
ENS Africa

By email

7 July 2024

Dear Derushka and Wade

RE: NOVUS HOLDINGS LIMITED's ("Novus") ACQUISITION OF ON THE DOT AND THE PORTFOLIO OF COMMUNITY NEWSPAPER TITLES OF MEDIA24 HOLDINGS LIMITED ("Media24")

1. We refer to your letter of 4 July 2024 in which you indicate that you represent Novus and Media24 and their respective groups, and that you have been requested by your clients to respond to our letter of 3 July 2024.
2. The proposed transaction relates to the sale of On the Dot and the community newspapers to Novus which forms a composite part of and is inextricably linked to Media24's announced restructuring of its newspaper publishing business (which also entails the discontinuation of a number of newspaper titles and it ceasing to print and or publish certain other newspaper titles) ("**the composite transaction**"). The composite transaction will have a very significant and detrimental impact on the public interest generally, as well as on competition and the specific public interest factors set out in section 12A(3) of the Competition Act. It will also entail, as your client, Media24 has made plain, the retrenchment of a large number of employees (including journalists) of Media24 (potentially well in excess of 400). Your client's intended conduct will have a devastating effect on the newspaper publishing sector in South Africa, as many of the publishers are reliant on On the Dot for distribution of their newspapers.
3. It is clear to our clients, and confirmed by representatives of your client's affected employees, that your client, Media24, did not comply with its obligations in terms of section 189 of the Labour Relations Act to commence consulting its employees once it contemplated retrenchments. In addition, your client has on several occasions in the past failed to notify mergers to the competition

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Vice President Economics: Avias Ngwenya

Senior Associates: Nicci van der Walt Nina Greyling Melissa Steele

Company Registration Number: 2009/006902/21 VAT Registration Number: 4510252580




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authorities. It is also plain from your client, Media24's announcements that it intends ceasing the printing and publishing of the relevant newspaper titles and concluding the retrenchment of its employees by 1 October 2024, if not before.

4. It is clear that doing so prior to the receipt of the approval of the competition authorities is a contravention of section 13A(3) of the Competition Act.
5. In these circumstances, given the significant impact that these steps would have on the newspaper publishing sector more generally, the customers of On the Dot as well as our clients specifically, and your client, Media24's employees, our clients required the following undertakings to be provided by Media24 and Novus:
 - 5.1. That the composite transaction (including all interrelated actions and steps as described below) will be notified to the Commission as a merger; and
 - 5.2. That no further steps will be taken to implement any aspect of the composite transaction (which for the sake of clarity should be understood to include the termination or curtailment of printing and/or publishing and/ or distribution of any of Media24 newspapers or the retrenchment of any Media24 employees or the termination of service provider contracts and retail newspaper vendors contracts arising from the announced restructuring process, including any employees / service providers/ independent contractors providing services to On the Dot or in relation to any of the newspaper titles) unless and until the composite transaction is approved by the competition authorities.
6. The response we received was, to put it politely, a non-response.
7. Your letter states that "*We are instructed to inform you that your clients may rest assured that our Clients are taking legal advice on the proposed transaction and their full compliance with all applicable regulatory and labour law requirements, including by submitting the requisite merger notification to the competition authorities in due course. This is in accordance with numerous public statements already made by Media24*". This provides no assurance to our clients whatsoever. To the contrary, the fact that your clients have refused to provide the straight-forward





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and unequivocal commitments sought in our letter is a clear indication that your clients intend proceeding with implementing aspects of the composite transaction prior to the receipt of the approval of the competition authorities.

8. In view of the above, will you confirm the following:
- 8.1. That, in the event that your clients do not provide the undertakings sought in our letter of 4 July 2024, as further clarified in this letter before the close of business on Tuesday, 9 July 2024, you are authorised on behalf of Novus and Media24 to accept service of an application to be launched by our clients;
- 8.2. Whether you are also authorised to accept service of the application on behalf of Mr Koos Bekker and Naspers (and if not which firm is so authorised);
- 8.3. When your client(s) intend(s) completing the process that has commenced in terms of section 189 of the Labour Relations Act in relation to the retrenchment of relevant employees as announced by your client; and
- 8.4. The precise date on which your client, Media24, will curtail or cease printing and/ or publishing and/or distributing the relevant newspaper titles.
9. Our clients' rights are fully reserved.

Kind regards,

[Unsigned due to electronic transmission]

Anthony Norton / Anton Roets / Michelle Rawlinson / Avias Ngwenya
NORTONS INC.

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Nortons Inc.

Attention: Anthony Norton / Anton Roets / Michelle Rawlinson /
Avias Ngwenya

Per email: anthonyv@nortonsinc.com / anton@nortonsinc.com /
michelle@nortonsinc.com / avias@nortonsinc.com

D Chetty / W Graaff our ref
09 July 2024 your ref
date

Dear All

RE: PROPOSED TRANSACTION INVOLVING MEDIA24 (PTY) LTD AND THE NOVUS GROUP OF COMPANIES ("OUR CLIENTS")

1. We refer to your letter of 7 July 2024.
2. Our Clients note the contents of your letter and do not intend to respond to the various allegations set out therein, save to indicate that they vehemently disagree with your client's continuing negative and incorrect characterisation of the proposed transaction.
3. We are instructed to inform you as follows:
 - 3.1. As indicated in our previous letter, our Clients are seeking legal advice on the proposed transaction and their full compliance with all applicable regulatory and labour law requirements;
 - 3.2. In this regard, and as also indicated in our previous letter, a merger notification will be submitted to the Competition Commission in due course;
 - 3.3. Your clients will thus have an opportunity to make any relevant submissions during the competition process at the relevant stage, if permitted by the competition authorities;




- 3.4. At no point has there been any indication to your clients or the industry that existing distribution arrangements for publishers will cease; and
- 3.5. Media 24 will not implement any retrenchments until such time as competition approval is received.
4. Notwithstanding the foregoing, the contents of this letter should not be misconstrued as a concession of any nature.
5. Given that your clients are also competitors of our Clients, it is highly irregular for the merging parties to be asked to disclose details of a proposed transaction in a manner that is not in accordance with competition law principles. With respect, given the status of the proposed transaction, our Clients consider that should you wish to pursue any legal application, it would be both premature and an abuse of any legal process. We nevertheless hold instructions to confirm that the writers of this letter are authorised to accept service of any legal applications for the parties named in your letter dated 7 July 2024.
6. Our Clients' rights remain reserved.

Yours sincerely

ENS

Derushka Chetty / Wade Graaff

[Transmitted electronically without signature]



Derushka Chetty and Wade Graaff
ENS Africa

By email

10 July 2024

Dear Derushka and Wade

RE: NOVUS HOLDINGS LIMITED's ("Novus") ACQUISITION OF ON THE DOT AND THE PORTFOLIO OF COMMUNITY NEWSPAPER TITLES OF MEDIA24 HOLDINGS LIMITED ("Media24")

1. Thank you for your letter of 9 July 2024.
2. We note the undertaking from your client that "*Media24 will not implement any retrenchments until such time as competition approval is received*".
3. Given the fact that the undertaking was we assume in response to paragraph 5.2 of our previous correspondence which referred to the "*retrenchment of any Media24 employees*", it appears to us that the undertaking means that no Media24 employees, irrespective of whether they are employed at any of the newspapers, On The Dot or in any other capacity will be retrenched.
4. However, your clients have not provided an unequivocal undertaking not to cease printing the relevant newspaper titles pending competition approval. In the event that they are not prepared to provide this undertaking, then the retrenchments of the employees of the newspaper titles is a foregone conclusion and would amount to anticipating the approval of the competition authorities (which is a contravention of the Competition Act). The cessation of printing the newspaper titles will also affect the distribution costs of distributing third-party newspaper titles, including those belonging to our clients. In this regard please urgently confirm by close of business today that your clients will take no further steps to cease printing the newspaper titles pending competition approval.

Competition Law Specialists | Litigation Attorneys | Regulatory Advice

Directors: Anthony Norton Anton Roets Paul Russell Michelle Rawlinson Warwick Radford Nicola Ilgner

Vice President Economics: Avias Ngwenya

Senior Associates: Nicci van der Walt Nina Greyling Melissa Steele

Company Registration Number: 2009/006902/21 VAT Registration Number: 4510252580



5. We look forward to your urgent response hereto.
6. Our clients' rights are fully reserved.

Kind regards,

[Unsigned due to electronic transmission]

Anthony Norton / Anton Roets / Michelle Rawlinson / Avias Ngwenya
NORTONS INC.



FA23

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Nortons Inc.

D Chetty / W Graaff our ref
10 July 2024 your ref
date

Attention: Anthony Norton / Anton Roets / Michelle Rawlinson /
Avias Ngwenya

Per email: anthony@nortonsinc.com / anton@nortonsinc.com /
michelle@nortonsinc.com / avias@nortonsinc.com

Dear All

**RE: PROPOSED TRANSACTION INVOLVING MEDIA24 (PTY) LTD ("MEDIA24) AND THE NOVUS
GROUP OF COMPANIES ("NOVUS")**

1. We refer to your letter of 10 July 2024.
2. We wish to reiterate the point made in our previous letter that the contents of all previous correspondence, including this letter should not be misconstrued as a concession of any nature.
3. In this regard, and for the avoidance of doubt that, we note that the statements (with reference to paragraphs 2 and 3 of your letter of 10 July) made by Media 24 in paragraph 3.5 of our letter of 9 July do not apply to its broader business but are limited to the businesses to be sold as part of the proposed transaction with Novus as well as the separate proposed closures by Media24 of the relevant newspaper print titles.
4. In addition, our instruction is to inform you that Media24 does not intend to cease printing the relevant newspaper titles until the end of the relevant competition process.
5. Our clients' rights remain fully reserved.

Yours sincerely

ENS

Derushka Chetty / Wade Graaff

[Transmitted electronically without signature]


Derushka Chetty and Wade Graaff
ENS Africa

By email

11 July 2024

Dear Derushka and Wade

RE: NOVUS HOLDINGS LIMITED's ("Novus") ACQUISITION OF ON THE DOT AND THE PORTFOLIO OF COMMUNITY NEWSPAPER TITLES OF MEDIA24 HOLDINGS LIMITED ("Media24")

1. Thank you for your letters of 9 July 2024 and 10 July 2024.
2. In light of the undertakings provided in the letters by your clients, we confirm the following:
 - 2.1. first, that your clients will notify the transaction and arrangements in terms of which Media24 will sell the On the Dot business and various community newspaper titles to Novus in conjunction with the process which Media24 is undertaking to cease printing various newspaper titles and retrench staff associated with those newspaper titles; and
 - 2.2. second, that Media24 will suspend the process of ceasing printing the newspaper titles and will not retrench any staff associated with the newspaper titles or with the On the Dot distribution business or the community newspaper titles, pending notification and approval of the transaction and arrangements by the Competition Authorities.
3. Our clients' rights are fully reserved.

Kind regards,

[Unsigned due to electronic transmission]

Anthony Norton / Anton Roets / Michelle Rawlinson / Avias Ngwenya
NORTONS INC.

Competition Law Specialists | Litigation Attorneys | Regulatory Advice

Directors: Anthony Norton Anton Roets Paul Russell Michelle Rawlinson Warwick Radford Nicola Ilgner

Vice President Economics: Avias Ngwenya

Senior Associates: Nicci van der Walt Nina Greyling Melissa Steele

Company Registration Number: 2009/006902/21 VAT Registration Number: 4510252580



From: [Wiri Gumbie](#)
To: [Derushka Chetty](#)
Cc: [Anton Roets](#); [Anthony Norton](#); [Avias Ngwenya](#); [Wade Graaff](#); [Sphiwe Dlamini](#); [Khalirendwe Ranenyeni](#); [Baneng Naape](#); [Candice Slump](#); [Reabetswe Molotsi](#)
Subject: RE: Merger filing query: On the Dot and Novus
Date: Thursday, 29 August 2024 14:13:58
Attachments: [image001.png](#)
[image002.png](#)
[image003.png](#)
[image004.png](#)
[image005.png](#)
[image006.png](#)
[image007.png](#)
[image008.png](#)
[newsig1_f5bb8384-1cc0-443c-9cc1-41af84e8b6aa.png](#)
[newsignature1_92b72fd2-2bb6-4e9f-acf4-b9391485e8b2.png](#)

Dear Derushka

It is for the parties to determine whether they are prepared to grant the parties represented by Nortons Inc access to the nonconfidential version of the merger filing during the investigation period. We are not aware of any provision which provides that the Commission must determine, during the investigation period, that the merger parties must provide a non-confidential version of the merger filing to interested parties.

Regards

Wiri Gumbie

Principal

T: +27 12 394 3200

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77 Meintjies Street, Sunnyside, Pretoria

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From: Derushka Chetty <dchetty@ensafrica.com>

Sent: Wednesday, August 28, 2024 5:55 PM

To: Wiri Gumbie <WiriG@compcom.co.za>

Cc: Anton Roets <anton@nortonsinc.com>; anthony <anthony@nortonsinc.com>; Avias Ngwenya <avias@nortonsinc.com>; Wade Graaff <wgraaff@ensafrica.com>; Sphiwe Dlamini <sdlamini@ensafrica.com>; Khalirendwe Ranenyeni <Khalirendwer@compcom.co.za>; Baneng Naape <BanengNa@compcom.co.za>; Candice Slump <CandiceS@compcom.co.za>; Reabetswe Molotsi <ReabetsweM@compcom.co.za>

Subject: RE: Merger filing query: On the Dot and Novus

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Dear Wiri

Thank you for your email below.

In our earlier email, we sought an indication from the Commission whether its ability to investigate the notified merger would, in any way, be compromised if the non-confidential merger filing is not made available to Caxton / Capital Newspapers. Your response below confirms that the Commission intends to engage with all relevant market participants (including Caxton and Capital Newspapers as represented by Nortons) during the ordinary course of its investigation and there is no indication that the Commission requires our clients to make the non-confidential filing available to Caxton / Capital Newspapers in order to assist the Commission's investigation.

Our clients' position is therefore as follows: if, at any point during the merger investigation, the Commission determines that it is necessary for a non-confidential version of the merger filing to be made available to Caxton / Capital Newspapers in order properly to carry out the investigation, you can inform us that the Commission has made this determination and our clients will consent to its disclosure.

Best wishes
Derushka

Derushka Chetty

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From: Wiri Gumbie <WiriG@compcom.co.za>

Sent: 23 August 2024 05:13 PM

To: Derushka Chetty <dchetty@ensafrica.com>

Cc: Anton Roets <anton@nortonsinc.com>; anthony <anthony@nortonsinc.com>; Avias Ngwenya <avias@nortonsinc.com>; Wade Graaff <wgraaff@ensafrica.com>; Sphiwe Dlamini <ssdlamini@ensafrica.com>; Khalirendwe Ranenyeni <Khalirendwer@compcom.co.za>; Baneng Naape <BanengNa@compcom.co.za>; Candice Slump <CandiceS@compcom.co.za>; Reabetswe Molotsi <ReabetsweM@compcom.co.za>

Subject: Merger filing query: On the Dot and Novus

Dear Derushka

The issue is simply whether the parties are amenable or not, to granting the request for access to a non-confidential version of the merger filing. The parties must determine whether they are willing to provide such access. The Commission is precluded by the Act from sharing any restricted information during a merger investigation, without the merging parties' consent.

We will engage with the merging parties and all relevant market participants (including those represented by Nortons Inc.) during the ordinary course of our investigation.

Best regards

Wiri Gumbie

Principal

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77 Meintjies Street, Sunnyside, Pretoria

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From: Derushka Chetty <dchetty@ensafrica.com>

Sent: Friday, August 23, 2024 4:12 PM

To: Wiri Gumbie <WiriG@compcom.co.za>; Reabetswe Molotsi <ReabetsweM@compcom.co.za>

Cc: Anton Roets <anton@nortonsinc.com>; anthony <anthony@nortonsinc.com>; Avias Ngwenya <avias@nortonsinc.com>; Wade Graaff <wgraaff@ensafrica.com>; Sphiwe Dlamini <ssdlamini@ensafrica.com>

Subject: Merger filing query: On the Dot and Novus

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Dear Wiri and Reabetswe

We have received correspondence from Nortons Inc requesting access to the non-confidential version of the merger filing submitted to the Commission and which is being investigated under case number 2024AUG0015.

We understand Nortons to be acting on behalf of Capital Newspapers (Pty) Ltd ("Capital Newspapers") and Caxton & CTP Publishers & Printers Limited ("Caxton").

Nortons has indicated to us that it made a request to the Commission on 15 August 2024 for access to the non-confidential version of the merger filing and you directed them to seek our clients' consent to its provision. We have asked Nortons to explain why its clients need access to the non-confidential merger filing given the Commission's usual approach in these matters of providing a summary of the proposed transaction to those third parties from whom the Commission requests submissions.

We have now received the below response from Nortons which appears to state that its clients require access to the non-confidential version of the merger filing, notwithstanding that the Commission will provide them with a summary of the transaction, in order to "meaningfully assist the Commission in its truth-seeking function". Our clients, the merging parties, have also been accused, *inter alia*, of "game playing" in order to avoid the proposed transaction being scrutinised by the Commission. This is simply not the case and is denied.

We, therefore, seek an indication from the Commission as to whether, in its view, any submissions it may wish to seek from Capital Newspapers and Caxton will be compromised unless the non-confidential merger filing is made available to them.

In our previous experience, the Commission's summary and engagement with third parties is more than adequate for this purpose and so we would like to understand from the Commission whether it believes that its truth-seeking function will in any way be undermined if Capital Newspapers and Caxton do not receive the non-confidential filing.

We look forward to hearing from you.

Kind regards
Derushka

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From: Anton Roets <anton@nortonsinc.com>
Sent: 22 August 2024 12:08 PM
To: Derushka Chetty <dchetty@ensafrica.com>; anthony <anthony@nortonsinc.com>
Cc: Wade Graaff <swgraaff@ensafrica.com>; Avias Ngwenya <avias@nortonsinc.com>; Wiri Gumbie <WiriG@compcom.co.za>; Reabetswe Molotsi <ReabetsweM@compcom.co.za>; Sphiwe Dlamini <sdlamini@ensafrica.com>
Subject: RE: Merger filing query: On the Dot and Novus

Dear Derushka

We have explained clearly why our client seeks access to the non-confidential version of the filing (which is a public document as it is served on unions and the employee representatives and is, therefore, not subject to any claim of confidentiality nor can there be any expectation that it will be kept confidential). Moreover, it is self-evident why a party which seeks to make submissions to the Commission regarding an anti-competitive merger would need access to the non-confidential filing. Our client requires access to the non-confidential version of the filing to ensure that the submissions that it makes to the Commission are to the point and are meaningful to assist the Commission

in its truth-seeking function. In this regard, it is important for our client, given its involvement in the industry and in the process leading up to the transaction, to understand the scope of the transaction that has been notified to the Commission, as this will enable our client to make submissions to the Commission in this regard (if required).

It bears emphasis that our client was only asked for the reasons why it wanted access to the non-confidential version of the filing 12 days after our original request for access to the non-confidential version of the filing. We are interested to understand on what basis it is suggested that there is a mandatory “statutorily prescribed process” that needs to be followed to request access to the non-confidential version of a filing. This is the first time that we have heard the suggestion that there is such a statutorily prescribed process. There is plainly no restriction on a merger party agreeing to provide access to a non-confidential version of its filing to a party that requests access and there is simply no prescribed statutory process that needs to be followed in this regard. The attempt to conjure up a “prescribed statutory process” is nothing more than an attempt to disguise the game playing on the part of your client. In this regard, the facts speak for themselves (res ipsa loquitur) and the Commission is able to draw the obvious conclusions from the manner in which your client has conducted itself.

Kind regards

Anton



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From: Derushka Chetty <dchetty@ensafrica.com>

Sent: Wednesday, August 21, 2024 7:20 AM

To: Anton Roets <anton@nortonsinc.com>; Anthony Norton <anthony@nortonsinc.com>

Cc: Wade Graaff <wgraaff@ensafrica.com>; Avias Ngwenya <avias@nortonsinc.com>; Wiri Gumbie <WiriG@compcom.co.za>; Reabetswe Molotsi <ReabetsweM@compcom.co.za>; Sphiwe Dlamini <sdlamini@ensafrica.com>

Subject: RE: Merger filing query: On the Dot and Novus

Dear Anton

There are numerous errors in your email under reply.

First, the non-confidential filing is not a public document. It is statutorily restricted.

Second, the reasons your client wants access to the non-confidential filing are not “self-evident” as you claim. That is precisely why we asked for reasons.

Third, our clients are not “playing games” nor engaging in a “farical process”. We have merely directed you to the statutorily prescribed process. We have also highlighted that that process, as is well known to you, usually involves the Commission providing a summary of the proposed transaction to third parties from which it seeks submissions. And it was against that backdrop that we asked your client to explain why, notwithstanding the provision of that summary, it still needed access to the non-confidential filing.

Fourth, our clients did not refuse to consent to the provision of the non-confidential filing. All they requested was an explanation of why your client needed access when it would ordinarily be provided with a summary of the transaction by the Commission.

Your client has steadfastly refused to provide those reasons.

Our clients remain ready to consider giving consent to the filing if you provide reasons for why your client requires access notwithstanding the summary that the Commission customarily provides during its investigations.

As a result, our clients resist, in the strongest terms, your claims that they are seeking to shield the merger from proper interrogation or investigation. We invite your client, again, to explain why it needs access to the non-confidential filing.

Kind regards
Derushka

Derushka Chetty
Executive
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From: Anton Roets <anton@nortonsinc.com>
Sent: 20 August 2024 07:52 AM
To: Derushka Chetty <dchetty@ensafrica.com>; anthony <anthony@nortonsinc.com>
Cc: Wade Graaff <wgraaff@ensafrica.com>; Avias Ngwenya <avias@nortonsinc.com>; Wiri Gumbie <WiriG@compcom.co.za>; Reabetswe Molotsi <ReabetsweM@compcom.co.za>
Subject: RE: Merger filing query: On the Dot and Novus

Dear Derushka

Your client is fully aware of the reasons why our client has requested access to the non-confidential filing – they are self-evident.

This is a deeply problematic merger and our client seeks to make meaningful submissions in relation to the merger. Having access to the non-confidential filing (which is in any event a public document) allows our clients to ensure that their submissions to the Commission are direct and to the point. This assists the Commission in its investigation of the merger and facilitates its truth-seeking function.

The approach that your client adopted to our request for access to the non-confidential filing can only be described as “playing games”. The Competition Authorities have previously stressed the fact that the Act is designed to encourage participation in the decision-making of the Competition Authorities. This is particularly important in intermediate mergers where the Commission is under time pressures and where it is served through submissions made by market participants. A situation where a merger party clearly adopts a strategy to undermine participation reflects (i) the fact that it is seeking to shield the merger from effective scrutiny and (ii) reflects disdain for the intention of the Competition Act to encourage participation.

On 7 August 2024, we asked for access to the non-confidential version of the filing. Your client has delayed providing its response to a simple and direct question by more than 12 days through engaging in what can only be described as a farcical process. Being fully aware of the fact that the Commission’s practice is that it will not release a non-confidential version of the filing to a third party without the consent of the merger parties, your client adopted the approach of insisting that our client should first ask the Commission for a copy of the non-confidential version of the filing. We repeatedly pointed out that this serves no purpose as the Commission would request us to approach you for consent. Yet your client persisted in its position – which is plainly intended to cause delay and hamper our client’s ability to make submissions.

Given the obdurate position adopted by your client, we approached the Commission to request a copy of the non-confidential version of the filing and the response from the Commission was exactly what it is in every matter – the Commission requested that we should obtain your client's consent.

When we informed you of this fact, your client then finally communicated its pre-determined position being that it would not consent to the non-confidential version being provided to us.

If this was the approach that your client wished to adopt, it should have communicated this at the first opportunity as opposed to seeking to waste time in the manner that it has done. This unfortunate series of events simply underscores the extent to which your client will go to undermine the Commission's investigation and shield the merger from scrutiny.

Kind regards

Anton



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From: Derushka Chetty <dchetty@ensafrica.com>

Sent: Monday, August 19, 2024 3:56 PM

To: Anthony Norton <anthony@nortonsinc.com>

Cc: Wade Graaff <wgraaff@ensafrica.com>; Anton Roets <anton@nortonsinc.com>; Avias Ngwenya <avias@nortonsinc.com>

Subject: RE: Merger filing query: On the Dot and Novus

Dear Anthony

Thank you for your email.

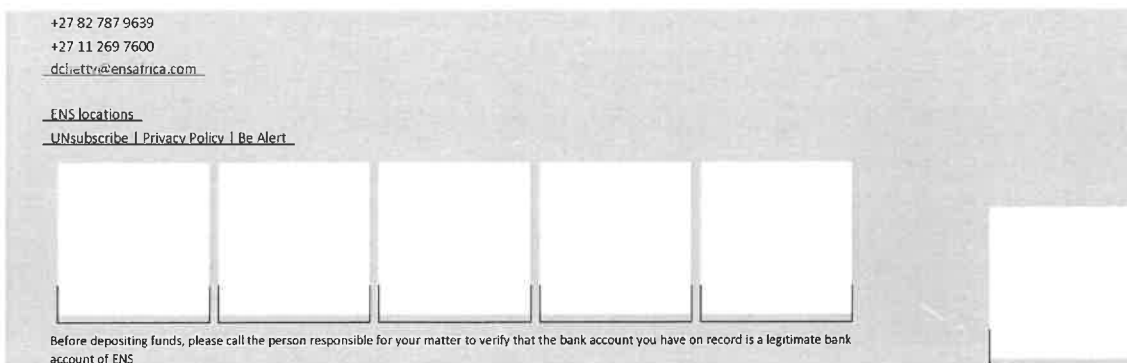
As you are aware, during the course of a merger investigation, the Commission typically provides a summary of the salient facts of transactions and provides this to third parties in order to obtain their views and submissions.

As a result of this practice, it is not clear to us on what basis your client seeks access to the non-confidential version of the merger filing while it remains restricted information.

In order for us to therefore take instructions from our clients, please can you explain on what basis you seek access to the non-confidential version of the merger filing while it remains restricted information.

Kind regards
Derushka

Derushka Chetty
Executive
Competition



Edward Nathan Sonnenbergs Incorporated registration number 2006/018200/21
level 1 B-BBEE rating

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From: Anthony Norton <anthony@nortonsinc.com>
Sent: 15 August 2024 01:25 PM
To: Derushka Chetty <dchetty@ensafrica.com>
Cc: Wade Graaff <wgraaff@ensafrica.com>; Anton Roets <anton@nortonsinc.com>; Avias Ngwenya <avias@nortonsinc.com>
Subject: Merger filing query: On the Dot and Novus

Dear Derushka,

Please see the email below from the Commission.



Please can you provide us with a copy of the non confidential version of the merger filing as soon as possible.

Kind Regards
Anthony



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From: Wiri Gumbie <WiriG@compcom.co.za>
Sent: Thursday, August 15, 2024 1:15 PM
To: Avias Ngwenya <avias@nortonsinc.com>
Cc: Anton Roets <anton@nortonsinc.com>; Anthony Norton <anthony@nortonsinc.com>; Reabetswe Molotsi <ReabetsweM@compcom.co.za>
Subject: RE: Merger filing query: On the Dot and Novus

Dear Avias

We are not at liberty to share the non-confidential version of the merger filing during the merger investigation period as same constitutes restricted information. We suggest you contact the filing attorneys, ENSAfrica, care of Derushka Chetty (dchetty@ensafrica.com) and Wade Graaf (wgraaff@ensafrica.com) to obtain their concern for same to be shared with you.

Best regards

Wiri Gumbie
Principal

T: +27 12 394 3200
E: WiriG@compcom.co.za
A: The DTI Campus, Mulayo (Block C),
77 Meintjies Street, Sunnyside, Pretoria

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The logo for the Competition Commission of South Africa celebrating its 25th anniversary. It features the commission's name, the year '25', and social media icons for Facebook, X, LinkedIn, YouTube, Instagram, and Twitter.

From: Avias Ngwenya <avias@nortonsinc.com>

Sent: Thursday, August 15, 2024 12:59 PM

To: Reabetswe Molotsi <ReabetsweM@compcom.co.za>; Wiri Gumbie <WiriG@compcom.co.za>

Cc: Antoni Roets <anton@nortonsinc.com>; Anthony Norton <anthony@nortonsinc.com>

Subject: RE: Merger filing query: On the Dot and Novus

CAUTION: This is an external email and may be malicious. Please take care when replying, clicking links or opening attachments. Always check the email address of the sender.

Dear Rea and Wiri,

I hope you are both keeping well.

Please can you assist by providing us with a copy of the non-confidential filing in the On the Dot and Novus transaction on an urgent basis.

Kind regards,
Avias Ngwenya

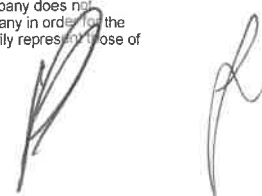


NORTONS INC

AVIAS NGWENYA
VICE PRESIDENT - ECONOMICS

AVIAS@NORTONSINC.COM
WWW.NORTONSINC.COM
+27 79 474 0339

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A handwritten signature in black ink, consisting of several overlapping loops and a long horizontal stroke at the bottom.A handwritten signature in black ink, consisting of a single, elegant, cursive stroke that loops back at the end.

From: [Derushka Chetty](#)
To: [Anton Roets](#)
Cc: [Avias Ngwenya](#); [Nina Christina Greyling](#); [Anthony Norton](#); [Wade Graaff](#)
Subject: RE: On the Dot
Date: Thursday, 15 August 2024 08:31:18
Attachments: [image002.png](#)
[image003.png](#)
[image004.png](#)
[image005.png](#)
[image006.png](#)
[image007.png](#)
[0.png](#)
[1.png](#)
[2.png](#)
[3.png](#)
[4.png](#)
[5.png](#)

Dear Anton

As previously indicated, we remain of the view that any requests should be made to the Commission.

Should any consents be required from our clients, for whatever reason, the Commission will no doubt reach out to us in order to procure these. Our clients will, therefore, consider any requests for information presented to us by the Commission together with the requisite motivations as to why such information is required and will respond through the Commission accordingly.

Kind regards
Derushka

dchetty@ensafrica.com
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From: Anton Roets <anton@nortonsinc.com>
Sent: 13 August 2024 06:38 PM
To: Derushka Chetty <dchetty@ensafrica.com>
Cc: Avias Ngwenya <avias@nortonsinc.com>; Nina Christina Greyling <nina@nortonsinc.com>; anthony <anthony@nortonsinc.com>; Wade Graaff <>wgraaff@ensafrica.com>
Subject: RE: On the Dot

Dear Derushka

Has your client consented to the Commission releasing the documents to us?

Kind regards

Anton

NORTONS INC

ANTON ROETS
 DIRECTOR
 ANTON@NORTONSINC.COM
 WWW.NORTONSINC.COM
 +27 82 777 0694

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From: Derushka Chetty <dchetty@ensafrica.com>

Sent: Tuesday, August 13, 2024 6:33 PM

To: Anton Roets <anton@nortonsinc.com>

Cc: Avias Ngwenya <avias@nortonsinc.com>; Nina Christina Greyling <nina@nortonsinc.com>; Anthony Norton <anthony@nortonsinc.com>; Wade Graaff <wgraaff@ensafrica.com>

Subject: Re: On the Dot

Dear Anton

As indicated in my previous email, please do make any requests to the Commission.

Kind regards

Derushka

Derushka Chetty
Executive
Competition
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+27 11 269 7600
dchetty@ensafrica.com

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From: Anton Roets <anton@nortonsinc.com>

Sent: Monday, August 12, 2024 17:33

To: Derushka Chetty <dchetty@ensafrica.com>

Cc: Avias Ngwenya <avias@nortonsinc.com>; Nina Christina Greyling <nina@nortonsinc.com>; anthony <anthony@nortonsinc.com>; Wade Graaff <wgraaff@ensafrica.com>

Subject: Re: On the Dot

Dear Derushka

The Commission will not consent to providing us with the application – they require your client to consent.

Kind regards

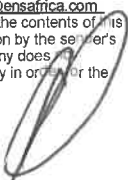

Anton



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DIRECTOR

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From: Derushka Chetty <dchetty@ensafrica.com>

Date: Monday, 12 August 2024 at 5:05 PM

To: Anton Roets <anton@nortonsinc.com>

Cc: Avias Ngwenya <avias@nortonsinc.com>, Nina Christina Greyling <nina@nortonsinc.com>, Anthony Norton <anthony@nortonsinc.com>, Wade Graaff <wgraaff@ensafrica.com>

Subject: RE: On the Dot

Dear Anton

We refer to your email below.

As the matter has been filed with the Commission, we think that it is appropriate for any requests to made to the Commission.


Kind regards
Derushka

Executive
Derushka Chetty
Competition

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+27 11 269 7600
dchetty@ensafrica.com

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From: Anton Roets <anton@nortonsinc.com>

Sent: 07 August 2024 07:56 AM

To: Derushka Chetty <dchetty@ensafrica.com>

Cc: Avias Ngwenya <avias@nortonsinc.com>; Nina Christina Greyling <nina@nortonsinc.com>; anthony <anthony@nortonsinc.com>

Subject: On the Dot

Dear Derushka

Please could you send us a non-confidential version of the filing?



Kind regards

Anton



ANTON ROETS
DIRECTOR

ANTON@NORTONSINC.COM
WWW.NORTONSINC.COM
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Media24 to continue with newspaper closures after green light from Competition Commission

news24

Compiled by Ahmed Areff

 Comments 

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Media24 headquarters in Cape Town. (Graeme Williams/Bloomberg via Getty Images)

For more financial news, go to the News24 Business front page.

The Competition Commission has approved Media24's sale of its distributions business, On the Dot, its community newspaper portfolio, and the Soccer Laduma and Kick Off titles to printing group Novus Holdings.

Media24 will now also proceed with its restructuring plans, which involve closing the print editions of Beeld, Rapport, City Press, and Daily Sun, and shutting its SNL24 digital hub.

"We are implementing the transaction with Novus Holdings today," interim Media24 CEO Raj Lalbahadur said in a statement on Thursday.

"The ruling also allows Media24 to continue on its strategic journey to establish and cement a viable and sustainable model for independent digital journalism, in line with irreversible consumer trends and preferences.

"For this, we thank the Competition Commission for their thorough and comprehensive review and consideration of our application."

In June, Media24 announced a major restructuring that at the time, would have resulted in

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CURRENCIES	COMMODITIES	JSE INDEXES
Rand - Dollar	17.68	-0.2%
Rand - Pound	22.96	-0.4%
Rand - Euro	19.21	-0.3%
Rand - Aus dollar	11.61	-0.0%

announced that it would no longer retrench the 66 editorial staff members.

The final publication dates for the last print editions of Beeld, City Press, Daily Sun, Rapport, the PDF editions of Volksblad and Die Burger Oos-Kaap on Netwerk24, and for SNL24 will be 31 December 2024.

In January, Daily Sun will operate as a free, standalone website, while Rapport will live on the Netwerk24 site, and City Press on News24 as digital-only brands. Beeld, Volksblad, and Die Burger Oos-Kaap will also be available through the Netwerk24 site.

**News24 is part of Media24*

You have invested in the future

News24 has been there for South Africa's defining moments over the last 25 years, and you've been right beside us. Your support of trusted journalism has sustained us, and now it will propel us to continue to strive to inform, inspire and empower as we try to build a better future for us all.

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Subject: FW: Announcement from Media24

From: Tasmia Ismail <tasmia.ismail@media24.com>

Sent: Thursday, 31 October 2024 09:21

Subject: Announcement from Media24

Dear Valued Client

Trust that this email finds you well.

When Media24 announced in June that it was contemplating the closure of four print newspapers (Beeld, City Press, Daily Sun and Rapport) and the digital hub SNL24, as well as the sale of its community newspaper portfolio (including Soccer Laduma/Kick Off) and media logistics business (On the Dot) to Novus Holdings, we committed to keeping you informed. The transaction and implementation of the closures were dependent on a ruling by the competition authorities.

The Competition Commission has just announced their ruling in this matter, and we thought you'd appreciate hearing about it from us firsthand.

It is with sadness that Media24 announces the closure of the print editions of four newspapers (Beeld, City Press, Daily Sun and Rapport), the digital (PDF) editions of Volksblad and Die Burger Oos-Kaap, and the digital hub SNL24. At the same time, we'll be transitioning Rapport, City Press and Daily Sun to digital-only brands.

The last date of publication for the last of these print and digital editions are as follows:

Daily Sun and Beeld: Friday, 20 December 2024

City Press and Rapport: Sunday, 22 December 2024

From January 2025, the news coverage published by Beeld in print, and in the PDF editions of Volksblad and Die Burger Oos-Kaap, will continue to be featured on Netwerk24. As digital only brands, Rapport and City Press will reside on Netwerk24 and News24 respectively, and Daily Sun will be a standalone, free-access website.

Die Burger and SON newspapers will continue publishing in printed format.

It is never an easy decision to close a newspaper, particularly titles with such dedicated editorial teams and a loyal supporter base built up over years.

We would like to assure you of our very best service, even in times like these. Our teams are committed to a smooth transfer and to find you the best alternatives to ensure the minimum impact on your planning. The team will be in touch shortly to discuss your existing bookings and the way forward.

Thank you for your longstanding and loyal support in our print publications and we sincerely hope that you remain part of the exciting journey as we cement a viable and sustainable model for quality and independent journalism in an overwhelmingly digital media landscape.

Please see attached media release and letter from the editor.

Thank you for your continued support.

Kind regards

TASMIA ISMAIL | GM: MEDIA24 ADVERTISING SALES

E tasmia.ismail@media24.com

M +27 84 703 1627



IN THE COMPETITION APPEAL COURT OF SOUTH AFRICA

Case No:

In the matter between:

CAPITAL NEWSPAPERS (PTY) LTD	First Applicant
CAXTON & CTP PUBLISHERS & PRINTERS LIMITED	Second Applicant
and	
MEDIA24 HOLDINGS LIMITED	First Respondent
NOVUS HOLDINGS LIMITED	Second Respondent
NOVUS PRINT PROPRIETARY LIMITED	Third Respondent
FREE 4 ALL PROPRIETARY LIMITED	Fourth Respondent
INTREPID PRINTERS PROPRIETARY LIMITED	Fifth Respondent
VICTORY TICKET 376 PROPRIETARY LIMITED	Sixth Respondent
MEDIA24 PROPRIETARY LIMITED	Seventh Respondent
THE COMPETITION COMMISSION	Eighth Respondent
THE MINISTER OF TRADE, INDUSTRY AND COMPETITION	Ninth Respondent

SUPPORTING AFFIDAVIT

I, the undersigned,

PAUL MICHAEL JENKINS,

do hereby make oath and state that:

- 1 I am the non-executive Chairperson of **CAXTON & CTP PUBLISHERS & PRINTERS LIMITED**, the second applicant in this application. I am duly authorised to depose to this supporting affidavit on its behalf.
- 2 Save where is otherwise stated or where the contrary appears from the context, the facts contained herein fall within my personal knowledge and are true and correct.
- 3 Caxton and CTP Publishers and Printers Limited is a publicly traded company whose shares are listed on the JSE Limited. Caxton and CTP Publishers and Printers Limited is the ultimate holding company of a group of controlled subsidiary companies through which the business of the **Caxton Group** is conducted.
- 4 The Caxton Group is one of the largest publishers and printers of books, newspaper and commercial print in South Africa. It is involved in the publishing of a number of regional community newspapers, The Citizen daily newspaper and a major magazine (Farmers Weekly), as well as the manufacture of stationery, and book printing.



5 The Caxton Group employs approximately 5,500 people, 120 of whom are employed in relation to the publishing of The Citizen newspaper. The Caxton Group has a black shareholding of 29.09% and is a Level 1 B-BBEE Contributor.

6 The Caxton Group has a number of divisions, covering almost all aspects of the printing and publishing business in South Africa:

6.1 Caxton's flagship daily newspaper is **The Citizen**, which carries quality content across its various editorial pillars and reaches niche audiences with its dedicated soccer and parenting columns.

6.2 Since 1980, Caxton has published free and paid for local newspapers, delivering relevant, local news to neighbourhoods across South Africa. These papers are a part of the social fabric of the community they serve.

6.3 In addition, Caxton publishes **Farmers Weekly**, the oldest agricultural magazine in South Africa keeping its readers informed of the latest developments in the agricultural sector. It is a weekly staple for farmers across the country.

6.4 **Spark Media** is an advertising and media-solutions business representing the local Caxton newspapers, whilst **Hive Digital Media** is a digital agency, representing all the local newspapers' websites and providing a solution for partner platforms.

6.5 **CTP Stationery** produces stationery products of outstanding quality across South Africa.



6.6 **CTP Packaging** specializes in label printing, carton packaging, corrugated packaging, flexible packaging and point of sale printing.

CONFIRMATION OF THE CONTENTS OF MR JACOBS' AFFIDAVIT

- 7 I have read the founding affidavit deposed to by Riquadeu Jacobs and confirm the contents insofar as they relate to me and the position of the Caxton Group.
- 8 I confirm that I was present during certain of the engagements between Media24 and Capital Newspapers in relation to the sale of On the Dot. In particular, I was present at the engagement on Thursday, 16 May 2024 when Mr Davidson of Media24 explained to Mr Jacobs and me the interconnected nature of Media24's decisions to sell the On the Dot business and to cease printing the Media24 titles (other than Die Burger and Die Son). I was also present in the same meeting when Mr Davidson recorded that the decision to cease the printing of the titles had been taken by Mr Jacobus Petrus "Koos" Bekker, the chairman of the board of directors of Naspers Limited, and that he had directed that the titles should cease printing by the end of October 2024.
- 9 I furthermore confirm that Caxton shares all of the concerns about the proposed merger which are comprehensively and thoroughly set out in Mr Jacobs's affidavit. Caxton considers that this transaction, should it be implemented, will have significant deleterious effects on Caxton's ability to continue its newspaper publishing business, since Caxton is dependent on On the Dot for the distribution of **The Citizen**.

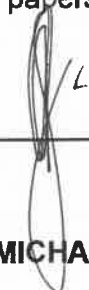


- 10 At present, Media24 has split its printing business between Caxton and Novus, with Caxton being primarily responsible for the printing of Media24's magazine titles, while Novus has been responsible for the printing of Media24's newspaper titles. Given Media24's decision to cease printing a large number of the physical copies of its newspaper titles, this will result in Novus losing significant volumes of printing work from Media24. Caxton understands, however, that there may be an understanding between Novus and Media24 that Media24 will transfer the contract for the printing of its magazines from Caxton to Novus next year. This will cause significant harm to Caxton's printing business.
- 11 However, the implications of the transaction are far broader than just harm to Caxton. The increase in distribution costs that will be charged by the On the Dot distribution business post transaction, caused by the closure of the Media 24 paid for printed titles will mean that many competing newspaper publishers may have no choice other than to close the majority of competing paid for print newspaper titles. These closures will operate to the singular benefit of Media24 and its online business in particular(News 24 and Network 24), entrenching Media24's dominant position in the online sphere, and fundamentally undermining press freedom and diversity of voice in the country.
- 12 The Caxton Group also concurs with Mr Jacobs's assessment that the Competition Commission has not performed a thorough investigation of the proposed merger and that its decision should be reconsidered. The Commission did not engage with me in relation to the merger, despite the fact that I was intricately involved in the discussions with Mr Jacobs to assist Capital



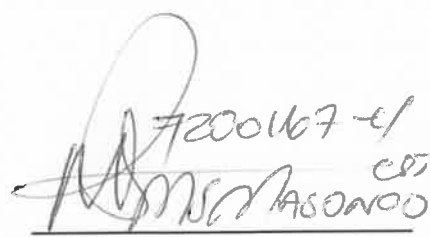
Newspapers in purchasing the On the Dot distribution business and related assets.

13 In the circumstances, the Caxton group supports the relief sought in these proceedings (Part A and Part B) as reflected in Mr Jacobs's papers.



PAUL MICHAEL JENKINS

I hereby certify that the deponent knows and understands the contents of this affidavit and that it is to the best of the deponent's knowledge both true and correct. This affidavit was signed and sworn to before me at Parkview on this the 1st day of November 2024, and that the Regulations contained in Government Notice R.1258 of 21 July 1972, as amended by R1648 of 19 August 1977, and as further amended by R1428 of 11 July 1989, having been complied with.


7200167-1
CP

COMMISSIONER OF OATHS



Full names: Ms Masondo
Address: 71 Oun Dany
Atense, Parkview
Capacity: 600000

IN THE COMPETITION APPEAL COURT OF SOUTH AFRICA

Case No:

In the matter between:

CAPITAL NEWSPAPERS (PTY) LTD	First Applicant
CAXTON & CTP PUBLISHERS & PRINTERS LIMITED	Second Applicant
and	
MEDIA24 HOLDINGS LIMITED	First Respondent
NOVUS HOLDINGS LIMITED	Second Respondent
NOVUS PRINT PROPRIETARY LIMITED	Third Respondent
FREE 4 ALL PROPRIETARY LIMITED	Fourth Respondent
INTREPID PRINTERS PROPRIETARY LIMITED	Fifth Respondent
VICTORY TICKET 376 PROPRIETARY LIMITED	Sixth Respondent
MEDIA24 PROPRIETARY LIMITED	Seventh Respondent
THE COMPETITION COMMISSION	Eighth Respondent
THE MINISTER OF TRADE, INDUSTRY AND COMPETITION	Ninth Respondent

SUPPORTING AFFIDAVIT

I, the undersigned,

Susie White

do hereby make oath and state that:

SW

1. I am a **Publisher** at the Daily Maverick (Pty) Ltd ("**Daily Maverick**"). I am duly authorised to depose to this affidavit on behalf of the Daily Maverick.
2. The facts set out in this affidavit are within my personal knowledge, save where the context indicates otherwise, and are, to the best of my knowledge and belief, true and correct.
3. I have read the founding affidavit deposed to by Mr Riquadeu Jacobs and confirm that the Daily Maverick shares the concerns about the proposed merger, which are comprehensively and thoroughly set out in Mr Jacobs's affidavit.
4. We also concur with Mr Jacobs's assessment that the Competition Commission has not performed a thorough investigation of the proposed merger and that its decision should be reconsidered.
5. In the circumstances, we support the relief sought by Capital Newspapers and the Caxton group, as reflected in Mr Jacobs's papers.

Signed at Cape Town on this 31st day of October 2024.



Susan J White

I hereby certify that the deponent knows and understands the contents of this affidavit and that it is to the best of the deponent's knowledge both true and correct. This affidavit was signed and sworn to before me at SEA POINT on 1 NOV 2024 and that the Regulations contained in Government Notice R.1258 of 21 July 1972, as amended by R1648 of 19 August 1977, and as further amended by R1428 of 11 July 1989, having been complied with.

[Handwritten signature] 1/11/24

COMMISSIONER OF OATHS

Full names:

Address:

Capacity:

COMMISSIONER OF OATHS (RSA)
Pratt Jones – Owner 3@1 Sea Point
Reference Number: 9/1/8/2
Place: Sea Point
100 Main Rd., Sea Point, Cape Town

[Handwritten initials]

IN THE COMPETITION APPEAL COURT OF SOUTH AFRICA

Case No: 259/CAC/Oct24

In the matter between:

CAPITAL NEWSPAPERS (PTY) LTD	First Applicant
CAXTON & CTP PUBLISHERS & PRINTERS LIMITED	Second Applicant
and	
MEDIA24 HOLDINGS LIMITED	First Respondent
NOVUS HOLDINGS LIMITED	Second Respondent
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FREE 4 ALL PROPRIETARY LIMITED	Fourth Respondent
INTREPID PRINTERS PROPRIETARY LIMITED	Fifth Respondent
VICTORY TICKET 376 PROPRIETARY LIMITED	Sixth Respondent
MEDIA24 PROPRIETARY LIMITED	Seventh Respondent
THE COMPETITION COMMISSION	Eighth Respondent
THE MINISTER OF TRADE, INDUSTRY AND COMPETITION	Ninth Respondent

SUPPORTING AFFIDAVIT

I, the undersigned,

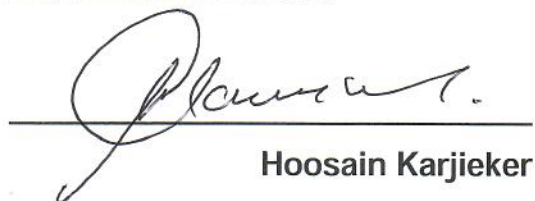
Hoosain Karjieker

do hereby make oath and state that:



1. I am the Chief Executive Officer of the Mail & Guardian Ltd ("**Mail & Guardian**").
I am duly authorised to depose to this affidavit on behalf of the Mail & Guardian.
2. The facts set out in this affidavit are within my personal knowledge, save where the context indicates otherwise, and are, to the best of my knowledge and belief, true and correct.
3. The Mail & Guardian is one of the largest media companies in South Africa and owns the Mail & Guardian Publications, which publishes a newspaper of the same name.
4. The Mail & Guardian is also an empowered company.
5. I have read the founding affidavit deposed to by Mr Riquadeu Jacobs and confirm that the Mail & Guardian shares the concerns about the proposed merger, which are **comprehensively and thoroughly set out in Mr Jacobs's affidavit.**
6. **We also concur with Mr Jacobs's assessment that the Competition Commission** has not performed a thorough investigation of the proposed merger and that its decision should be reconsidered.
7. In the circumstances, we support the relief sought by Capital Newspapers and **the Caxton group, as reflected in Mr Jacobs's papers.**


Signed at Rosebank on this 31 day of OCTOBER 2024.


 Hoosain Karjieker

v. u



I hereby certify that the deponent knows and understands the contents of this affidavit and that it is to the best of the deponent's knowledge both true and correct. This affidavit was signed and sworn to before me at Rosebank on 2024-10-31, and that the Regulations contained in Government Notice R.1258 of 21 July 1972, as amended by R1648 of 19 August 1977, and as further amended by R1428 of 11 July 1989, having been complied with.


7231933-5
COMMISSIONER OF OATHS

Full names: MEMARHOLOU

Address: 15 STURACE AVENUE

Capacity: CS T



IN THE COMPETITION APPEAL COURT OF SOUTH AFRICA

Case No: 259/CAC/Oct24

In the matter between:

CAPITAL NEWSPAPERS (PTY) LTD	First Applicant
CAXTON & CTP PUBLISHERS & PRINTERS LIMITED	Second Applicant
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MEDIA24 PROPRIETARY LIMITED	Seventh Respondent
THE COMPETITION COMMISSION	Eighth Respondent
THE MINISTER OF TRADE, INDUSTRY AND COMPETITION	Ninth Respondent

SUPPORTING AFFIDAVIT


I, the undersigned,

LETLHOGONOLO ALLOYSIAS MOLEBELEDI

do hereby make oath and state that:


1 AN
WA

1. I am the Chief Executive Officer at Arena Holdings (Pty) Ltd ("**Arena**"). I am duly authorised to depose to this affidavit on behalf of Arena.
2. The facts set out in this affidavit are within my personal knowledge, save where the context indicates otherwise, and are, to the best of my knowledge and belief, true and correct.
3. Arena is one of the largest media companies in South Africa and owns the following titles:
 - 3.1. The Business Day;
 - 3.2. The Daily Dispatch;
 - 3.3. The Sunday Times;
 - 3.4. The Herald;
 - 3.5. The Sowetan;
 - 3.6. Go! & Express;
 - 3.7. The Rep;
 - 3.8. Talk of the Town;
 - 3.9. Financial Mail; and
 - 3.10. SA Homeowner
4. Arena is also an empowered company and 100% black owned.

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A. N.

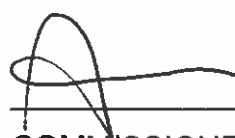
5. I have read the founding affidavit deposed to by Mr Riquadeu Jacobs and confirm that Arena shares the concerns about the proposed merger, which are comprehensively and thoroughly set out in Mr Jacobs's affidavit.
6. We also concur with Mr Jacobs's assessment that the Competition Commission has not performed a thorough investigation of the proposed merger and that its decision should be reconsidered.
7. In the circumstances, we support the relief sought by Capital Newspapers and the Caxton group, as reflected in Mr Jacobs's papers.

Signed at Johannesburg on this 1 day of November 2024.



LETLHOGONOLO ALLOYSIAS MOLEBELEDI

I hereby certify that the deponent knows and understands the contents of this affidavit and that it is to the best of the deponent's knowledge both true and correct. This affidavit was signed and sworn to before me at Johannesburg on 1 November 2024 and that the Regulations contained in Government Notice R.1258 of 21 July 1972, as amended by R1648 of 19 August 1977, and as further amended by R1428 of 11 July 1989, having been complied with.



COMMISSIONER OF OATHS

Full names: Awarde Nxasana

Address: MacRobert Attorneys, 16 Empire Rd, Hill
on Empire, Parktown.
Capacity: Prachung Attorney

Tel: 010 0119699

✓ A
4 A 2

IN THE COMPETITION APPEAL COURT OF SOUTH AFRICA**Case No:**

In the matter between:

CAPITAL NEWSPAPERS (PTY) LTD	First Applicant
CAXTON & CTP PUBLISHERS & PRINTERS LIMITED	Second Applicant
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THE COMPETITION COMMISSION	Eighth Respondent
THE MINISTER OF TRADE, INDUSTRY AND COMPETITION	Ninth Respondent

NOTICE OF MOTION

PART A: URGENT APPLICATION

PLEASE TAKE NOTICE that the applicants intend to make application to the above honourable Court at the hearing of Part A of this application on Thursday, 5 December 2024 for an order in the following terms:

1. The applicants are granted leave to file the supplementary affidavit of Riquadeu Jacobs dated 7 November 2024 (“**the supplementary affidavit**”).

TAKE NOTICE FURTHER THAT the supplementary affidavit of **RIQUADEU JACOBS**, filed together with this Notice of Motion, will be used in support of this application.

TAKE NOTICE FURTHER THAT if any of the respondents intends to oppose the relief sought under prayer 1 above, they are required:

1. By 17h00 on Friday, 8 November 2024, to deliver a notice of intention to oppose this application; and
2. By 17h00 on Monday, 18 November 2024, to deliver their answering affidavit in this application, if any.

Kindly enroll the matter accordingly.

DATED AT JOHANNESBURG ON THIS 7 NOVEMBER 2024



NORTONS INC.

Attorneys for the applicants
The Reserve
First Floor
54 Melville Road
Illovo, Johannesburg
011 666 7560

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anton@nortonsinc.com
michelle@nortonsinc.com
melissa@nortonsinc.com
avias@nortonsinc.com

- TO: THE COMPETITION APPEAL COURT**
ATTENTION: THE REGISTRAR
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77 Meintjies Street
Sunnyside
Pretoria
Tel: 012-394 3468
Fax: 012-394 4468
Email: registry@comptrib.co.za / sibongilem@comptrib.co.za /
tebogom@comptrib.co.za
- AND TO: EDWARD NATHAN SONNENBERGS INC**
Attorneys for the first to seventh respondents
Ref: Derushka Chetty and Wade Graaff
The MARC Tower 1
129 Rivonia Road Sandton
Johannesburg South Africa 2196
Email: dchetty@ensafrica.com; wgraaf@ensafrica.com;
sdhlamini@ensafrica.com
- AND TO: THE COMPETITION COMMISSION**
Eighth respondent
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77 Meintjies Street
Sunnyside, Pretoria
Tel: 012-394 3200
Attention: B Majenge
Email: bakhem@compcom.co.za; wirig@compcom.co.za,
tamarap@compcom.co.za / luker@compcom.co.za
- AND TO: THE MINISTER OF TRADE, INDUSTRY AND COMPETITION**
Ninth respondent
77 Meintjies Street, Block A, Floor 3, Sunnyside
PRETORIA
Email: ministry@thedtic.gov.za
Care of: State Attorney
Email: ichowe@justice.gov.za; StateAttorneyPretoria@justice.gov.za

IN THE COMPETITION APPEAL COURT OF SOUTH AFRICA

Case No: 259/CAC/Oct24

In the matter between:

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THE MINISTER OF TRADE, INDUSTRY AND COMPETITION	Ninth Respondent

SUPPLEMENTARY AFFIDAVIT



I, the undersigned,


RIQUADEU JACOBS

state the following under oath:


- 1 I am the Managing Editor of the first applicant ("**Capital Newspapers**"). I deposed to the founding affidavit and remain duly authorised to depose to this affidavit on the applicants' behalf.
- 2 The facts contained in this supplementary affidavit are true and correct and are, save where the context indicates otherwise, within my personal knowledge. All legal submissions are made on the advice of the applicants' legal representatives, which I believe to be correct.

PURPOSE OF THIS SUPPLEMENTARY AFFIDAVIT

- 3 As set out below, since the lodging of this application and filing of the founding affidavit, additional facts have emerged that are relevant to the issues before this Court, and underscore what is set out in the founding affidavit about the consequences of the merger (comprising the closure of the print titles; the sale of the On the Dot Business; the sale of the community newspapers; and the retrenchments related to the restructuring), which the Commission either failed to take into account at all, or failed adequately to take into account, and irrationally failed to investigate properly. These facts are particularly relevant to this Court's assessment of the irreparable harm that will eventuate should the interim relief sought in this application not be granted, and why such relief would be just and equitable. These facts reveal the unfolding, before our eyes, of



2



precisely the competition and public interest harm that the applicants' objections to the merger portended.

Media24's notice to employees

- 4 On 31 October 2024, the applicants learnt for the first time that Media24 issued the following communication to their employees when they were informed electronically that the Commission had issued its merger approval:

"Dear folks

We have just received good news from the Competition Commission and are pleased to announce that they have approved the sale of On the Dot and the community newspaper portfolio (including Soccer Laduma/Kick Off) to Novus Holdings.

*In the recent companywide broadcast I undertook to inform you first of **any developments related to the restructure** – irrespective of the time. Hence you receiving an email at 06h00! We will now also share the news with the media and other stakeholders, and we attach the official media release for your information.*

*We are implementing the transaction with Novus Holdings today. And closer to home, **the ruling also paves the way for Media24 to take the next steps on our strategic journey to establish and cement a viable and sustainable model for independent digital journalism**, in line with irreversible consumer trends and preferences. For this, we thank*



the Competition Commission for their thorough and comprehensive review and consideration of our application.

The final phase of consultations and meetings with affected staff across the three divisions (Community News, News and On the Dot) will start shortly. Your respective GMs and HR departments will be in touch directly to schedule this.

This renewed focus on our two hero digital news brands, News24 and Netwerk24, includes concentrating our investments in news on enhancing and improving our digital content offering to subscribers. The two respective editors-in-chief, Adriaan Basson and Henriëtte Loubser, will share more detail of the plans as they unfold. However, on a high level these range from further elevating the quality of journalism and streamlining publishing to deliver trusted news faster, to introducing personalisation and expanding enriched content.

The final publication date for the last of the four affected printed newspapers (Beeld, City Press, Daily Sun and Rapport), the PDF editions of Volksblad and Die Burger Oos-Kaap on Netwerk24 and for SNL24 operating as a hub will be completed by 31 December. From January 2025, Rapport and City Press will reside at Netwerk24 and News24 respectively as digital-only brands at the core of the Sunday content offering, and Daily Sun will operate as a standalone, free-access news website. Beeld, Volksblad and Die Burger Oos-Kaap readers and subscribers will be able to continue accessing their news on Netwerk24,



together with the nearly 100 000 subscribers who enjoy the platform's "All in One Place" multi-content offering.

The divisional management teams will share more detail during the consultations, and our publishing teams will inform subscribers, advertisers, the retail and other stakeholders.

We have the greatest respect and appreciation for the contribution that the people of Media24, as well as our loyal readers and advertisers have made over years, some over decades, in building the Media24 we know today. We also wish our colleagues at On the Dot, the community newspapers and Soccer Laduma/Kick Off all the best in their new home.

The road to a sustainable and viable future for quality journalism is undeniably digital, and these changes mark a tipping point in the transition. We have a very important role to play in safeguarding public interest and holding power to account in our fragile democracy, and remain as committed to this as ever.

All the best for the busy few weeks ahead.

Raj

- 5 On the same day, it was reported in a News24 article that, pursuant to the Commission's merger approval, Media24 would "**proceed with its restructuring**



plans, which involve closing the print editions of *Beeld*, *Rapport*, *City Press*, and *Daily Sun*, and shutting its SNL24 digital hub". The article also stated that the:

"final publication dates for the last print editions of Beeld, City Press, Daily Sun, Rapport, the PDF editions of Volksblad and Die Burger Oos-Kaap on Netwerk24, and for SNL24 will be 31 December 2024.

In January, Daily Sun will operate as a free, standalone website, while Rapport will live on the Netwerk24 site, and City Press on News24 as digital-only brands. Beeld, Volkblad, and Die Burger Oos-Kaap will also be available through the Netwerk24 site."

6 Media24's CEO, Mr Raj Lalbahadur, was quoted in the article as saying that the Commission's merger approval "**allows Media24 to continue on its strategic journey to establish and cement a viable and sustainable model for independent digital journalism, in line with irreversible consumer trends and preferences.**" I attach a copy of the article as "**SA1**".

7 It is clear from the article referred to above that Media24 understood that the Commission's merger approval pertained to the overall restructuring of Media24's business, including the closure of the relevant print titles, the sale of the On the Dot distribution business and the sale of the relevant Western Cape community newspapers as well as the employment consequences that will flow therefrom. It is plain that all these restructuring steps are interconnected and form part of a composite set of corporate actions that could not take place absent the Commission's merger approval.

Novus's notification to employees

- 8 On Monday, 4 November 2024, the applicants learnt for the first time that Novus Print Proprietary Limited ("**Novus**") had issued a notification to its employees dated 1 November 2024, a copy of which is attached as "**SA2**". The notice is directed to the employees of Novus Print Gauteng and informs them of the proposed restructuring of that business unit. It also indicates that "*management foresees the possibility that, should the proposed restructure be implemented, it will lead to potential job losses and thus retrenchment of employees.*" (emphasis added).
- 9 Under the heading "*[t]he background and rationale for the proposed restructuring*", the notice states that "*[t]he performance of the Novus Print Gauteng business will be negatively impacted by the closure of Media24 titles (Rapport, Beeld, City Press and Daily Sun) and we are already seeing the negative impact on sales and profitability with the price pressure on Cashbuild. The closure of Media24 titles will reduce Novus Print Gauteng print volumes by 16%, mainly on the Coldset side of the business. Media24 predicts that they will suffer losses of R200m over the next 3 years and for this reason they need to close the print production of these titles, which in turn impacts on Novus Print Gauteng.*"
- 10 In addition, the notice records that "*[t]he loss of the associated revenue due to closures of these titles and price pressures will result in the cost structures of our business becoming too expensive for the business to remain sustainable and profitable*", and goes on to state that:



“Considering the above realities and the current cost structure, of which staff cost is a significant percentage, the business unit is no longer optimal to achieve financially viable and sustainable performance targets. Management is therefore proposing a restructuring and scaling of the business to align the capacity requirement necessitated by economic and structural challenges to improve the financial performance. In order to create a sustainable business, the overheads of which people cost is a significant portion, must be reduced commensurate with the turnover. Should these restructuring proposals be unavoidable it may impact, but not be limited to a reduction in headcount, changes in reporting structures, as well as terms and conditions of employment as they relate to remuneration, shift allowance, overtime, working hours and other allowances.”

- 11 Novus’s notice confirms that the approved transaction and its associated arrangements will result in retrenchments not only at Media24 and On the Dot, but also at Novus as the acquiring firm. These retrenchments — announced just days after the Commission’s merger approval, and following Media24’s announcement that it will immediately implement the transaction — are clearly a direct consequence of the Commission’s approval decision.
- 12 The Commission irrationally and unreasonably failed to take these knock-on employment effects into account in deciding conditionally to approve the proposed merger. The Commission failed to consider the impact of the merger on employment not only at Media24 and On the Dot, but also in the broader



media sector in South Africa which stands to be affected through the knock-on effects of the corporate action concerned.

- 13 In addition, Novus confirmed to its employees in the notice that its current cost structure is no longer financially viable as a result of the merger. This confirms that, as a direct result of the approved transaction and the closure of the relevant print titles, the cost of printing as well as distribution of the remaining newspapers will be likely to increase and thus create a death spiral in which other print newspapers, which rely on On the Dot for their distribution, will cease to be viable.
- 14 On Tuesday, 5 November 2024, the applicants' attorneys sent a letter to the Commission requesting confirmation as to whether the plans set out in the above notice were drawn to the attention of the Commission by the merger parties during the Commission's merger investigation. The applicants' attorneys requested a response by the Commission by 13h00 on 6 November 2024. I attach a copy of the letter sent to the Competition Commission as "SA3".
- 15 To date, the applicants' attorneys have not received a substantive answer to their request. The Commission's only response has been that the request is being considered, and that the Commission will revert as soon as possible. I attach a copy of the email sent by the Commission as "SA4".

APPLICATION FOR LEAVE TO FILE THIS AFFIDAVIT

- 16 The applicants seek leave to file this supplementary affidavit.



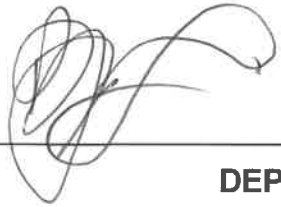
9

- 17 I am advised and submit that this Court has the discretion to permit the filing of this supplementary affidavit. I submit that it would be in the interests of justice for the new facts set out in this supplementary affidavit, which are directly relevant to the core issues which arise for adjudication in this matter, to be placed before the Court for its consideration. The new facts will assist the Court to make a just and equitable decision in the circumstances of this matter and will conduce to better justice.
- 18 It was not possible for the applicants to place any of the facts contained in this supplementary affidavit before this Court in their founding affidavit as they only learnt about the facts *after* the founding affidavit was filed.
- 19 I am further advised and submit that the fundamental principle of fairness requires that the applicants should be afforded a fair opportunity to deal with new facts that are relevant to their cause of action, provided that the respondents have a fair opportunity to respond to those facts.
- 20 The opposing respondents' answering affidavits in this matter are due on 18 November 2024. They will accordingly have a fair opportunity to deal with the new facts set out in this brief supplementary affidavit if they so wish. It follows that the filing of this supplementary affidavit will cause no prejudice to the opposing respondents.



CONCLUSION

21 In the premises, the applicants pray for leave to file this supplementary affidavit and an order as set out in the notice of motion.



DEPONENT

I hereby certify that the deponent knows and understands the contents of this affidavit and that it is to the best of the deponent's knowledge both true and correct. This affidavit was signed and sworn to before me at Pietermaritzburg on this 7th day of November 2024, and that the Regulations contained in Government Notice R.1258 of 21 July 1972, as amended by R1648 of 19 August 1977, and as further amended by R1428 of 11 July 1989, having been complied with.



COMMISSIONER OF OATHS

Full names:

Address:

Capacity:

COMMISSIONER OF OATHS:
SHANICE LEIGH ANTHOO
LLB (UKZN)
PRACTISING LEGAL PRACTITIONER
13 STRANACK STREET
PIETERMARITZBURG
CELL: 083 226 4676



Thursday, 07 November
Actual location

31 Oct Share   

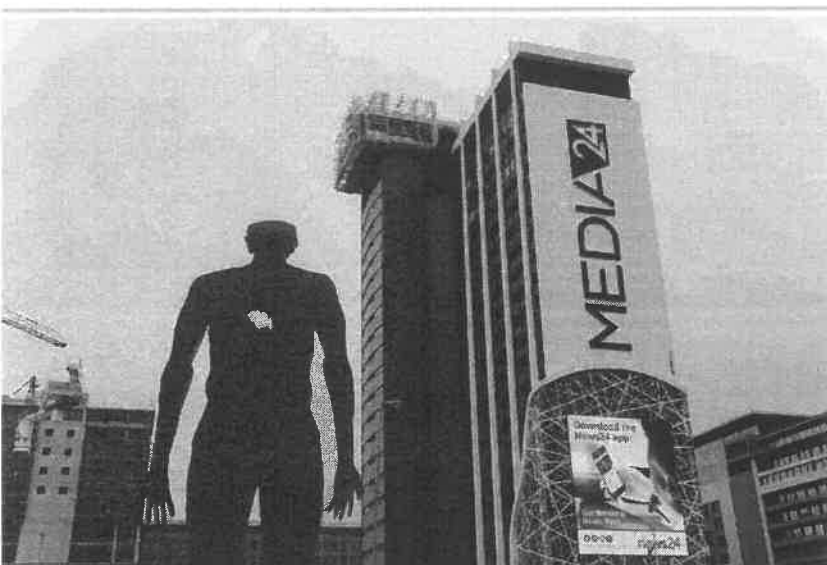
Media24 to continue with newspaper closures after green light from Competition Commission

news24

Compiled by Ahmed Areff

 Comments 

Listen to this article
 02:34



Media24 headquarters in Cape Town. (Graeme Williams/Bloomberg via Getty Images)

For more financial news, go to the News24 Business front page.

The Competition Commission has approved Media24's sale of its distributions business, On the Dot, its community newspaper portfolio, and the Soccer Laduma and Kick Off titles to printing group Novus Holdings.

Media24 will now also proceed with its restructuring plans, which involve closing the print editions of Beeld, Rapport, City Press, and Daily Sun, and shutting its SNL24 digital hub.

"We are implementing the transaction with Novus Holdings today," interim Media24 CEO Raj Lalbahadur said in a statement on Thursday.

"The ruling also allows Media24 to continue on its strategic journey to establish and cement a viable and sustainable model for independent digital journalism, in line with irreversible consumer trends and preferences.

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CURRENCIES	COMMODITIES	JSE INDEXES
Rand - Dollar	17.51	+0.7%
Rand - Pound	22.66	+0.2%
Rand - Euro	18.86	+0.3%
Rand - Aus dollar	11.62	-0.3%

"For this, we thank the Competition Commission for their thorough and comprehensive review and consideration of our application."

In June, Media24 announced a major restructuring that, at the time, would have resulted in up to 400 job losses due to years of declining advertising and circulation. The matter at the Competition Commission did not stop the Section 189 process of retrenchments.

The initial plan involved the retrenchment of 66 journalists who create, process and package content for Beeld, Rapport, City Press and Daily Sun. However, Media24 later announced that it would no longer retrench the 66 editorial staff members.

The final publication dates for the last print editions of Beeld, City Press, Daily Sun, Rapport, the PDF editions of Volksblad and Die Burger Oos-Kaap on Netwerk24, and for SNL24 will be 31 December 2024.

In January, Daily Sun will operate as a free, standalone website, while Rapport will live on the Netwerk24 site, and City Press on News24 as digital-only brands. Beeld, Volkblad, and Die Burger Oos-Kaap will also be available through the Netwerk24 site.

**News24 is part of Media24*

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News24 has been there for South Africa's defining moments over the last 25 years, and you've been right beside us. Your support of trusted journalism has sustained us, and now it will propel us to continue to strive to inform, inspire and empower as we try to build a better future for us all.

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Annexure SA2

Novus Print Gauteng
 83 Heidelberg Road, Production Park, City Deep, Johannesburg 2001
 PO Box 83594, South Hills, Johannesburg 2136
 South Africa
 t +27 11 703 2600

1 November 2024

ATTENTION: NOVUS PRINT GAUTENG EMPLOYEES

Dear All,

NOTICE TO CONSULT: PROPOSED RESTRUCTURING OF NOVUS PRINT GAUTENG

In terms of the requirements of the Labour Relations Act, 66 of 1995 as amended, the Management of Novus Print Gauteng hereby wishes to notify all the employees, as well as their labour representatives of the proposed restructure of the business unit situated at the afore-mentioned address.

Management foresees the possibility that, should the proposed restructure be implemented, it will lead to potential job losses and thus retrenchment of employees working in the affected areas. It is within this context that Management wants to commence a process of consultation as provided for in Section 189 of the Labour Relations Act, 66 of 1995 (as amended).

To facilitate the consultation process and considering our obligation to disclose in writing all the relevant information, we provide you the following information.

1. The background and rationale for the proposed restructuring

The performance of the Novus Print Gauteng business will be negatively impacted by the closure of Media24 titles (Rapport, Beeld, City Press and Daily Sun) and we are already seeing the negative impact on sales and profitability with the price pressure on Cashbuild. The closure of Media24 titles will reduce Novus Print Gauteng print volumes by 16%, mainly on the Coldset side of the business. Media24 predicts that they will suffer losses of R200m over the next 3 years and for this reason they need to close the print production of these titles, which in turn impacts on Novus Print Gauteng.

The loss of the associated revenue due to closures of these titles and price pressures will result in the cost structures of our business becoming too expensive for the business to remain sustainable and profitable.

Media24 is currently busy with their consultation process, and it is envisaged that the last publication date of the affected titles will be 31 December 2024.

Considering the above realities and the current cost structure, of which staff cost is a significant percentage, the business unit is no longer optimal to achieve financially viable and sustainable performance targets. Management is therefore proposing a restructuring and scaling of the business to align the capacity requirement necessitated by economic and structural challenges to improve the financial performance. In order to create a sustainable business, the overheads, of which people cost is a significant portion, must be reduced commensurate with the turnover. Should these restructuring proposals be unavoidable it may impact, but not be limited to a reduction in headcount, changes in reporting structures, as well as terms and conditions of employment as they relate to remuneration, shift allowance, overtime, working hours and other allowances.

Given the changes in the printing landscape and operational requirements, it is of the utmost importance that there must be a leaner structure with lower fixed costs, while at the same time more flexibility in employee utilisation.

2. Alternatives considered before restructuring and therefore potential dismissal

Management envisages a reduced size in the business and staff complement to align capacity with the operational need and a revised business model as per the above rationale. All affected employees will be provided with ample opportunity to consult and make representations on possible alternatives to avoid dismissal.

3. Job numbers and job categories are likely to be affected

Should the proposed restructuring be unavoidable, initial indications are that it will affect positions in the following departments and operational levels of the business unit: press, pre-press, mailroom, technical, stores, administration as well as Insert receiving.

Currently, the number of employees working at the affected business unit is 108 (based on October 2024 headcount). It is estimated at this stage that approximately 28 positions may be affected bringing the headcount total to 80. Due to the adverse effect of current market conditions on the printing industry, this number will be confirmed during the consultation process. The current and proposed organograms will be provided during consultation.

4. The proposed method of selecting which employees to dismiss

Management proposes the retention of employees that have the most suitable skills or the required flexibility to be utilised across multiple disciplines of skills and to cover a range of duties. Where this is not a factor as no distinction can be made, the principle of last in first out ("LIFO") will apply. Where LIFO or skills apply equally to persons that may be identified as a candidate for retrenchment, then the company will take into consideration its employment equity targets.

5. The timing when and the period during which dismissals will be affected

It is proposed that the consultation process will be completed in accordance with the time periods required in terms of section 189A (8) of the Labour Relations Act 66 of 1995 (this is a period of 60

days from the date of issue of this letter). Should retrenchments be unavoidable then we anticipate that notice of termination of employment will be given 31 December 2024. In this instance the affected employees' last working day will be 31 January 2025 taking into account the completion of the consultation process.

6. Severance pay proposed

The Company presently proposes paying severance equal to one week's remuneration for each completed year of service per section 41 of the Basic Conditions of Employment Act, 75 of 1997 as amended (BCEA).

7. Assistance the employer proposes to offer the employees likely to be dismissed

The Company will offer reasonable assistance with, inter alia, the preparation of curriculum vitae. Affected employees will be granted reasonable time off during their notice month to go for interviews and to attend to job seeking activities to secure alternative employment. Prior permission, however, must be obtained from respective line management. Employees are reminded that they may apply for vacant positions as advertised across the Novus Holdings Group, considering their specific qualifications, skills, training and experience and the requirements of the position advertised. Vacancies will be advertised on the notice boards and via the online recruitment platform.

8. The possibility of securing re-employment with the company

Given the current economic climate and the industry in which it operates, the company is unlikely to offer any re-employment soon.

9. The number of employees that the employer has dismissed for reasons based on its operational requirements in the preceding 12 months

For the period in question, 25 employees from the Novus Publishing division/department were dismissed due to operational requirements.

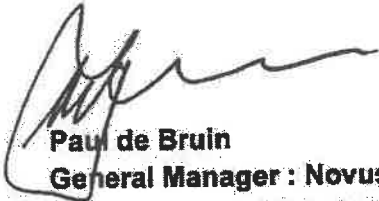
Whilst management knows the proposed restructuring will be traumatic in its revelation and implementation, it would however stress the necessity of the initiative. Management expects that the process of consultation be conducted in as amicable a spirit as is possible under the circumstances.

Although we intend to apply to the CCMA for the commencement of the facilitation process you are encouraged to raise any suggestion or concerns with Ralph Ruthford, Group Human Resources Executive on 021 5506251 or e-mail: ralph.ruthford@novusprint.co.za.



In terms of Section 189(3)(a), the company will request facilitation by a facilitator appointed by the Commission for Conciliation, Mediation and Arbitration (CCMA) to assist the parties with consultation. To this effect, all concerned parties will be duly notified of dates and times of the facilitation meetings.

Yours faithfully,



Paul de Bruin

General Manager : Novus Print Gauteng

Cc: Ceppwawu, SATU, ICTU Shop Steward Committee





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 Fax: +27 (0) 86 600 5529
 info@nortonsinc.com
 1st Floor, The Reserve, 54 Melville Road,
 Illovo, Johannesburg
 PO Box 41162, Craighall, 2024, South Africa

Urgent

Wiri Gumbie, Reabetswe Molotsi, Charl van Rooyen, and Luke Rennie

By email:

wirig@compcom.co.za / reabetswem@compcom.co.za / charlv@compcom.co.za /
luker@compcom.co.za

5 November 2024

Dear Wiri and Reabetswe,

Re: Novus Holdings Limited's acquisition of On The Dot and the portfolio of community newspaper titles of Media24 Holdings Limited

1. We refer to a recent notification from Novus Holdings Limited ("Novus") to its employees, dated 1 November 2024, a copy of which is attached. This notification came to the attention of our clients yesterday.
2. The notice is directed to the employees of Novus Print Gauteng and notifies them of a proposed restructuring of the business unit. It also indicates that the proposed restructuring could lead to "*potential job losses and thus retrenchment of employees*".
3. Under the heading "*The background and rationale for the proposed restructuring*" the notice states that "*[t]he performance of the Novus Print Gauteng business will be negatively impacted by the closure of Media24 titles (Rapport, Beeld, City Press and Daily Sun) and we are already seeing the negative impact on sales and profitability with the price pressure on Cashbuild. The closure of Media24 titles will reduce Novus Print Gauteng print volumes by 16%, mainly on the Coldset side of the business. Media24 predicts that they will suffer losses of R200m over the next 3 years and for this reason they need to close the print production of these titles, which in turn impacts on Novus Print Gauteng.*" (Emphasis added)

Competition Law Specialists | Litigation Attorneys | Regulatory Advice

Directors: Anthony Norton Anton Roets Paul Russell Michelle Rawlinson Warwick Radford Nicola Ilgner

Vice President Economics: Avias Ngwenya

Senior Associates: Nicci van der Walt Nina Greyling Melissa Steele

Company Registration Number: 2009/006902/21 VAT Registration Number: 4510252580

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Urgent

4. In addition, the notice records that “[t]he loss of the associated revenue due to closures of these titles and price pressures will result in the cost structures of our business becoming too expensive for the business to remain sustainable and profitable” and goes on to state that:

“Considering the above realities and the current cost structure, of which staff cost is a significant percentage, the business unit is no longer optimal to achieve financially viable and sustainable performance targets. Management is therefore proposing a restructuring and scaling of the business to align the capacity requirement necessitated by economic and structural challenges to improve the financial performance. In order to create a sustainable business, the overheads of which people cost is a significant portion, must be reduced commensurate with the turnover. Should these restructuring proposals be unavoidable it may impact, but not be limited to a reduction in headcount, changes in reporting structures, as well as terms and conditions of employment as they relate to remuneration, shift allowance, overtime, working hours and other allowances.”

5. Having regard to the above, it appears that the proposed merger and its associated arrangements will result in retrenchments not only at Media 24 and On the Dot, but also at Novus (the acquiring firm). In addition, given that Novus is notifying its employees that its current cost structure is no longer financially viable, it seems likely that that this could result in price increases to 3rd party customers in respect of printing costs.
6. Please could you advise whether these facts (i.e., the proposed retrenchments and likely potential price increases in printing costs at Novus) were drawn to the attention of the Commission by the merger parties during the Commission’s investigation?
7. Given the significant urgency of this matter, we request that the Commission respond to us by 1pm on 6 November 2024.

Kind regards

[UNSIGNED DUE TO ELECTRONIC TRANSMISSION]

Anthony Norton / Anton Roets / Michelle Rawlinson / Avias Ngwenya / Melissa Steele



N

³
Urgent

Nortons Incorporated

Handwritten signature or initials in the bottom right corner of the page.

From: Charl Van Rooyen
To: Avias Ngwenya; Wiri Gumbie; Reabetswe Molotsi; Luke Rennie; Bukhosibakhe Majenge
Cc: Melissa Steele; Anthony Norton; Anton Roets; Michelle Rawlinson
Subject: Re: 2024Aug0015 the proposed merger between Novus Print Proprietary Limited and the media supply chain management division, the local news portfolio and the football publication of Media24
Date: Wednesday, 06 November 2024 17:43:11
Attachments: Outlook-xmmlara.png
 Outlook-hsmizbus.png
 Outlook-df4vtyw.png
 Outlook-2jt4bbc.png
 Outlook-ptmay05o.png
 Outlook-f2eudmne.png
 Outlook-dym15dkw.png
 newsig1_f5bb8384-1cc0-443c-9cc1-41af84e8b6aa.png
 newsignature1_92b72fd2-2bb6-4e9f-acf4-b9391485e8b2.png

Afternoon Avias

1.

We refer to your letter dated 5 November 2024 and its attached notice of consultation: Proposed restructuring of Novus Print Gauteng.

2.

We were not in a position to revert by your set deadline, but your request is being considered and we will revert as soon as possible.

Regards,

-



Adv Charl van Rooyen

Principal Legal Counsel
 Legal Services Division

Direct/Cellphone: +27 83 225 2662

Switchboard: +27 12 394 3200

Email: CharlV@compcom.co.za

Address: The DTI Campus, Mulayo (Block C), 77 Meintjies Street, Sunnyside, Pretoria

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A: The DTI Campus, Mulayo (Block C),

77 Meintjies Street, Sunnyside, Pretoria

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www.compcom.co.za



From: Avias Ngwenya <avias@nortonsinc.com>

Sent: Tuesday, November 5, 2024 7:58 AM

To: Wiri Gumbie <WiriG@compcom.co.za>; Reabetswe Molotsi <ReabetsweM@compcom.co.za>; Luke Rennie <LukeR@compcom.co.za>

Cc: Melissa Steele <melissa@nortonsinc.com>; Anthony Norton <anthony@nortonsinc.com>; Charl Van Rooyen <CharlV@compcom.co.za>; Anton Roets <anton@nortonsinc.com>; Michelle Rawlinson <michelle@nortonsinc.com>

Subject: RE: 2024Aug0015 the proposed merger between Novus Print Proprietary Limited and the media supply

IN THE COMPETITION APPEAL COURT OF SOUTH AFRICA**Case No: 259/CAC/Oct24**

In the matter between:

CAPITAL NEWSPAPERS (PTY) LTD	First Applicant
CAXTON & CTP PUBLISHERS & PRINTERS LIMITED	Second Applicant
and	
MEDIA24 HOLDINGS LIMITED	First Respondent
NOVUS HOLDINGS LIMITED	Second Respondent
NOVUS PRINT PROPRIETARY LIMITED	Third Respondent
FREE 4 ALL PROPRIETARY LIMITED	Fourth Respondent
INTREPID PRINTERS PROPRIETARY LIMITED	Fifth Respondent
VICTORY TICKET 376 PROPRIETARY LIMITED	Sixth Respondent
MEDIA24 PROPRIETARY LIMITED	Seventh Respondent
THE COMPETITION COMMISSION	Eighth Respondent
THE MINISTER OF TRADE, INDUSTRY AND COMPETITION	Ninth Respondent

NOTICE OF MOTION

PART A: URGENT APPLICATION

PLEASE TAKE NOTICE that the applicants intend to make application to the above honourable Court at the hearing of Part A of this application on Thursday, 5 December 2024 for an order in the following terms:

1. The applicants are granted leave to file the supplementary affidavit of Anton Jacques Roets dated 13 November 2024 (“**the supplementary affidavit**”).

TAKE NOTICE FURTHER THAT the supplementary affidavit of Anton Jacques Roets, filed together with this Notice of Motion, will be used in support of this application.

TAKE NOTICE FURTHER THAT if any of the respondents intends to oppose the relief sought under prayer 1 above, they are required:

1. By 17h00 on Friday, 15 November 2024, to deliver a notice of intention to oppose this application; and
2. By 17h00 on Monday, 18 November 2024, to deliver their answering affidavit in this application, if any.

Kindly enroll the matter accordingly.

DATED AT JOHANNESBURG ON 13 NOVEMBER 2024

Melissa Steele

NORTONS INC.

Attorneys for the applicants
The Reserve
First Floor
54 Melville Road
Illovo, Johannesburg
011 666 7560

Ref: Anthony Norton / Anton Roets / Michelle Rawlinson / Avias Ngwenya

anthony@nortonsinc.com
anton@nortonsinc.com
michelle@nortonsinc.com
melissa@nortonsinc.com
avias@nortonsinc.com

**TO: THE COMPETITION APPEAL COURT
ATTENTION: THE REGISTRAR**

Block C, DTI Campus
77 Meintjies Street
Sunnyside
Pretoria
Tel: 012-394 3468
Fax: 012-394 4468
Email: registry@comptrib.co.za / sibongilem@comptrib.co.za /
tebogom@comptrib.co.za

AND TO: EDWARD NATHAN SONNENBERGS INC
Attorneys for the first to seventh respondents
Ref: Derushka Chetty and Wade Graaff
The MARC Tower 1
129 Rivonia Road Sandton
Johannesburg South Africa 2196
Email: dchetty@ensafrica.com; wgraaff@ensafrica.com;
sdhlamini@ensafrica.com

AND TO: THE COMPETITION COMMISSION
Eighth respondent
Block C, DTI Campus
77 Meintjies Street
Sunnyside, Pretoria
Tel: 012-394 3200
Attention: B Majenge
Email: bakhem@compcom.co.za; wirig@compcom.co.za,
tamarap@compcom.co.za / luker@compcom.co.za

AND TO: THE MINISTER OF TRADE, INDUSTRY AND COMPETITION
Ninth respondent
77 Meintjies Street, Block A, Floor 3, Sunnyside
PRETORIA
Email: ministry@thedtic.gov.za
Care of: State Attorney
Email: ichowe@justice.gov.za; StateAttorneyPretoria@justice.gov.za

IN THE COMPETITION APPEAL COURT OF SOUTH AFRICA

Case No: 259/CAC/Oct24

In the matter between:

CAPITAL NEWSPAPERS (PTY) LTD	First Applicant
CAXTON & CTP PUBLISHERS & PRINTERS LIMITED	Second Applicant
and	
MEDIA24 HOLDINGS LIMITED	First Respondent
NOVUS HOLDINGS LIMITED	Second Respondent
NOVUS PRINT PROPRIETARY LIMITED	Third Respondent
FREE 4 ALL PROPRIETARY LIMITED	Fourth Respondent
INTREPID PRINTERS PROPRIETARY LIMITED	Fifth Respondent
VICTORY TICKET 376 PROPRIETARY LIMITED	Sixth Respondent
MEDIA24 PROPRIETARY LIMITED	Seventh Respondent
THE COMPETITION COMMISSION	Eighth Respondent
THE MINISTER OF TRADE, INDUSTRY AND COMPETITION	Ninth Respondent

SUPPLEMENTARY AFFIDAVIT

I, the undersigned,

ANTON JACQUES ROETS

state the following under oath:

- 1 I am a partner at Nortons Inc, the attorney of record of the applicants. I am duly authorised to depose to this affidavit on the applicants' behalf to deal with the

confidential reasons provided to the applicants by the Commission on the afternoon of 7 November 2024, as well as an (impermissible) request by the Commission to the applicants to provide further information to the Commission for the purpose of inclusion *ex post facto* in the record of its decision.

- 2 The facts contained in this supplementary affidavit are true and correct and are, save where the context indicates otherwise, within my personal knowledge. I use the same abbreviations below as those used in the applicants' previous affidavits.

The applicants' requests to the Commission for the reasons and investigation record

- 3 Following the notification on 31 October 2024 that the merger between Media24 and Novus had been approved, the applicants urgently sought production by the Commission of the reasons for its approval decision as well as the investigation record. The applicants followed up with the Commission on a number of occasions.
- 4 To date the Commission has not provided the investigation record to the applicants — not even on a non-confidential or redacted basis, and in correspondence on 12 November 2024, it stated that “*at this stage [the non-confidential version of the record, including its investigative report] is not ready*”. The applicants reserve their rights to deal with the investigative report and investigation record when it is provided to them.



- 5 The Commission has, however, provided its reasons for the decision. On 7 November 2024, the Commission sent an email to Nortons Inc stating: *“Kindly find attached the **non-confidential version of the Commission’s reasons**. Kindly take note that attached reasons contain a **broad summary of the reasons** for the Competition Commission’s (“Commission”) conditional approval of the transaction described more fully in the document. The full reasons for the Commission’s decision will be provided in the form of its investigative report in due course, when the Commission files the non-confidential version of the Rule 53 record.”*
- 6 A copy of this email together with the *“non-confidential version of the Commission’s reasons”* and the confidential conditions imposed by the Commission on the merger parties is annexed marked **“AR1”**. I dispute that these reasons are merely a “summary” of the Commission’s reasons for its approval decision, and also dispute that the Commission can rely on an investigative report prepared by the Commission’s merger investigation team for the Commission’s Executive Committee to supplement these reasons, as it is attempting to do. Further argument will be made in this regard at the hearing of this application.

THE REASONS

- 7 The reasons provided by the Commission confirm what is set out in the applicants’ founding affidavits in these proceedings, namely that the Commission failed entirely to conduct a rational and constitutional analysis of the merger, and failed to take into account or to consider the material significant deleterious

competition and public interest consequences that arose from it. The reasons do not reflect any consideration of the fact, repeatedly emphasised by the applicants, that the sale of On the Dot and the community titles forms an integral part of a strategy by Media24 that poses an existential threat to the survival of a free, competitive and diverse press industry in South Africa. This implicates the objects and transformational nature of the Competition Act, and the Constitutional obligations borne by the Commission as an organ of state.

- 8 The reasons also confirm the need for urgent interim relief to be granted in order to ensure that the horse has not bolted in relation to the implementation of the transaction before the merger is subjected to a legitimate assessment from a competition and public interest perspective. Again, this is peculiarly so given the threat that the merger poses to the survival of the free press in South Africa. The Commission's reasons confirm that it did not apply to mind to the material issues in this matter in at least the following six ways.

First, the Commission adopted a blinkered approach and failed to analyse the merger in terms of section 12A(2) and (3)

- 9 Section 12A(2) of the Competition Act requires that, when the Commission assesses the competitive effects of a merger, it must "*assess the strength of competition in the relevant market, and the probability that the firms in the market after the merger will behave competitively or co-operatively*". In so doing, it must take into account "*any factor that is relevant to competition in that market*", including the factors listed in 12A(2).



- 10 In addition, when the Commission considers the effect of a merger on the public interest, the Commission must consider the factors set out in section 12A(3).
- 11 The Commission's reasons reflect no analysis as required by section 12A(2) or 12A(3). In fact, the reasons put up by the Commission are bereft of any consideration whatsoever of the factors it was required to assess under sections 12A(2) and (3) in reaching its approval decision. On this basis alone, the Commission's decision falls to be set aside.
- 12 In particular, the Commission's reasons do not reflect any consideration of the fact that Media24's strategic decision to vertically de-integrate by exiting the print newspaper business and dispose of the relevant assets to Novus would result in a **permanent structural change** in the market. As explained in the applicants' founding affidavit, the sale of On the Dot and the community titles together with the closure of the print newspaper titles forms an indivisible and intertwined part of Media24's strategy flowing from the decisions taken by its management in May – June 2024. The Commission failed to consider the permanent, direct and significant structural impact that the closure of the relevant print titles and sale of the On the Dot distribution business — the only paid-for newspaper distribution business in the country — would have on the per unit costs of distribution of the remaining newspapers which are reliant on that business.
- 13 Media24 realised that this would be the case and informed the prospective purchasers of On the Dot that the closure of the newspaper titles would impact on the distribution business. It also expressly acknowledged that it could not close the newspaper titles or retrench employees relating to the newspapers until

it had received the approval of the Commission. In essence, Media24's strategic decision to exit the print newspaper business to benefit its digital subscription news platform meant that there was no need to retain a newspaper distribution business, whose sole purpose was to distribute paid for newspapers. Each step that formed part of the strategic decision to exit the print newspaper business had a knock-on effect on all aspects of the newspaper business (including the distribution business) and will also give rise to a permanent and irreversible effect on the newspaper sector in South Africa, giving rise to an existential threat to the press in South Africa as well as the freedom of the press and diversity of voice. This is a threat to democracy itself. Media24 itself expressly acknowledged that the Commission's approval of the merger paved the way for it to continue with the various interrelated steps, including retrenchments of staff and closure of the newspaper titles.

- 14 Yet the Commission's reasons confirm that the Commission did not consider these critical competition and public interest factors at all. Rather, it adopted a blinkered approach, closing its eyes to the strategic decision of Media24 to exit the print newspaper business and divest of assets associated with that business of which the distribution business is one key indivisible part. It found that the merger is "*unlikely to result in a substantial lessening or prevention of competition in any relevant market*" (para 16), and that "*the merger does not raise any other public interest concerns that require further intervention*" (para 18). Had the Commission properly considered the merger before it in the light of the requirements in 12A(2) and (3) of the Act, it could not rationally have come to these conclusions. The Commission's decision is thus irrational and



demonstrates a failure to take into account relevant factors pertaining to the merger. It also demonstrates the urgent need for the intervention of this Court and the granting of interim relief to maintain the *status quo* pending the hearing and determination of the applicants' review application.

Second, the Commission's conditions are not fit-for-purpose

- 15 As a result of the Commission's blinkered approach, it identified only one potential competitive concern: namely that the merged entity may require its customers to either (i) exclusively procure coldset printing services and distribution services from the merged entity or (ii) procure printing/distribution on condition that the customer also procures distribution/printing services (para 14). The Commission accordingly imposed a condition related to "*Tying/Bundling*" which provides that "*For a period of 3 (three) years post the Implementation Date, the Merged Entity shall offer customers coldset printing services and On the Dot's distribution services separately. For the avoidance of doubt, the Merged Entity will not require that customers of the Merged Entity procure coldset printing on condition that they also procure distribution services from the Merged Entity (or vice versa)*" (para 3.1 of the Conditions).
- 16 This condition plainly does not recognise or in any way mitigate the significantly broader and more fundamental competitive harm that arises from Media24's decision to exit and dispose of assets related to its printed newspaper business. The Commission appears to have failed to appreciate a fact that should have been central to its analysis in this case: There was one strategic decision by Media24 and that was to exit printed newspapers. This strategic decision

informed a number of interrelated and composite steps which included, Media24 taking a decision to sell its distribution service (On the Dot), utilised to distribute its newspapers, as part of a strategic decision to close down its paid for newspapers. This decision will have significant anti-competitive knock-on effects, because the removal of the Media24 newspapers from the On the Dot distribution business will result in **lower** volumes of newspapers being distributed, and **increased** costs to be borne by competing third-party newspaper publishers which are reliant on On the Dot's services. These increased costs may well spell the end of certain newspapers entirely, and will certainly result in significant competitive harm and a structural change to the market. The tying/bundling condition does not ameliorate these anti-competitive consequences at all.

- 17 The tying/bundling condition imposed by the Commission is also irrational for the further reason that it is limited to a short term frame of only three years whereas the harm that would be brought about by the merger would amount to a permanent structural change in the market. It is entirely irrational in the face of a permanent structural change to the market to impose a short term remedy, as this could not even notionally restore the competitive *status quo ante*. The Commission's reasons do not provide any explanation of why the anti-competitive concerns raised by the merger are sufficiently addressed by conditions that would only endure for a period of three years.

- 18 In relation to public interest, the Commission states: "*In order to address employment concerns, the merging parties have tendered the commitments set out in Annexure A. The merger does not raise any other public interest concerns that require further intervention*" (paras 17 and 18).

19 The employment conditions tendered by the merging parties and set out at para 2 read with para 1.3 of the Conditions essentially:

19.1 allow the merging parties to retrench up to “approximately 233 employees” within the target firms “*for operational reasons unrelated to the [merger]*”; and

19.2 provide a 3 year period for no further retrenchments at the merging parties.

20 The conditions once again reflect the Commission’s blinkered approach, and its failure to take into account that the “operational reasons” referred to in paragraph 1.3 of the conditions are in fact directly related to the merger because they form part of the broader strategic decision of Media24 set out above, which includes the decision to vertically de-integrate and close its printed newspaper business. Thus, far from being “*unrelated to the merger*” as set out in paragraph 1.3, these 233 retrenchments are directly relevant to the Commission’s assessment of the merger before it.

21 Moreover, the conditions fail entirely to account for the broader effects of the merger on employment, which are already unfolding. In the Supplementary Founding Affidavit, the applicants have placed before the Court a notice of retrenchments at Novus as a result of the lower printing volumes arising from Media 24’s strategic decision to close the print titles and offload its distribution assets. A copy of this notice was forwarded to the Commission on 5 November 2024, together with an enquiry as to whether these facts were investigated by the Commission. On 6 November 2024, the Commission indicated that it would

revert “*as soon as possible*” but to date (more than a week later) it has failed to do so.

- 22 Additionally, the decline in volumes at On the Dot as a result of the closure of the print newspapers will increase distribution costs, be likely to cause retrenchments not only at On the Dot, but also at third parties which are reliant on On the Dot’s services. The condition imposed by the Commission does not take account of any of these employment effects, which are a direct consequence of the implementation of Media24’s abovementioned strategy.
- 23 The Commission is not permitted under the Competition Act to adopt a myopic approach to merger assessment which ignores the broader anti-competitive and public interest effects of a strategic decision by a seller which forms a composite part of the merger notified to the Commission.
- 24 The Commission’s reasons and employment condition also confirm what the applicants have explained previously: namely that the Commission either failed entirely to consider, or failed to take into account in its determination, the effects of the merger on *other* aspects of the public interest, including the newspaper sector; the ability of small and medium businesses, or firms controlled or owned by historically disadvantaged persons, to effectively enter into, participate in or expand within the market, and the promotion of a greater spread of ownership, in particular to increase the levels of ownership by historically disadvantaged persons and workers in firms in the market.
- 25 These further public interest requirements were of particular relevance in relation

to the Commission's assessment in this case given the interactions between the merging parties and Capital Newspapers set out in the applicants' founding affidavit, and the fact that Capital Newspapers is a 100% B-BBEE entity, which had a realistic plan to take over the distribution services of On the Dot *and* to save the majority of the printed titles, and preserve employment. As explained in the applicants' founding affidavit, Media24 has not provided any cogent explanation for choosing rather to sell its business to an *unempowered* entity, and to close down its titles with the concomitant loss of jobs and devastation of the industry. The Commission's reasons, and the conditions it has imposed, do not reflect any consideration by the Commission of any of these factors at all.

Third, the Commission failed to conduct or reference any economic analysis or even to define the market

- 26 The Commission's reasons are devoid of any substantive merger analysis in relation to the proposed transaction.
- 27 In order to come to any reasoned decision, the Commission at the least would have been required to assess and give reasons for its identification of the relevant markets; the market shares and the impact of the merger on competitors and customers. The Commission would then need to provide reasons as to why, on the facts of this particular case, there are or are not unilateral or coordinated effects arising from the transaction. The Commission's reasons do no such thing: they are nothing more than conclusory statements, without any underlying reasoning. They do not address the relevant markets, market shares or the impact of the merger on competitors and customers. They do not reflect any

analysis of potential unilateral or coordinated effects taking into account all of the necessary factors. Not do they address the impact on related parties, such as servicers and suppliers of the merging parties. The Commission states that the merger is *unlikely* to result in a substantial lessening of competition “in any relevant market” but does not even explain which markets it considered.

- 28 This is clearly inconsistent with the Commission’s statutory duties and obligations as required in terms of the Competition Act.

Fourth, the Commission failed to take into account the extensive submissions made by Capital Newspapers and Caxton and the other objectors to the merger

- 29 The Commission’s reasons confirm that it either did not consider, or it did not meaningfully take into account, the extensive submissions made by Capital Newspapers and Caxton during the objection process, and the other objections to the merger raised by other third parties that stand to be negatively affected by the consequences of merger. Nowhere are the concerns and objections by third parties dealt with or even mentioned in the Commission’s reasons for decision: they were clearly not considered important enough to feature in the reasons for the Commission’s decision. It is extraordinary in a matter of this nature that there is not one reference in the reasons to the views of customers and competitors and the basis upon which the Commission rejected their concerns.

- 30 As but one example: the Commission’s reasons do not deal at all with the engagements between Media24 and Mr Jacobs of Capital Newspapers, and the offer put forward by Mr Jacobs to acquire the print newspaper titles that are

destined for closure pursuant to the proposed merger. As explained in the applicant's founding affidavit, Mr Jacobs' proposals were rejected (without any proper explanation) by Media24 in favour of the sale to Novus and the shutting down of the relevant print titles, but none of these pertinent facts are given any consideration in the Commission's reasons. Indeed, at no point during the investigation process did the Commission even seek to engage with Mr Jacobs in relation to these engagements and his offer, despite the fact that they are clearly material to establishing the relevant counterfactual in this matter.

- 31 That the Commission failed to have any regard to these critical submissions by Mr Jacobs and other third parties (competitors and customers) in its reasons further demonstrates the irrationality and unsustainability of the Commission's decision.

Fifth, no consideration of the effect of the transaction on constitutional rights

- 32 The Commission's reasons confirm that as set out the founding affidavit, there was no consideration of the effect of the transaction on constitutional rights, and the Commission failed to comply with its obligation under section 7 of the Constitution to consider the impact of the merger on section 16, and to promote, protect, respect and fulfil the rights set out in the Bill of Rights.
- 33 Despite the constitutional implications being raised by the applicants in their submissions to the Commission, they are not considered at all in the Commission's reasons. It is therefore clear that either the Commission failed entirely to take these constitutional implications into account in making its

decision, or it failed to accord any weight to them. In either event, the Commission failed to take into account relevant considerations in its approval decision.

- 34 In so doing, the Commission ignored the injunction of the Constitutional Court in **Mediclinic:**

“[3] It ought never to be acceptable for any of us, including the corporate citizens of this land, to indulge, talk less of over-indulge, in the unconscionable practice of seeking to record the highest profit margin possible by any means necessary, in wanton disregard for what that would do to the rest of humanity. Neither should the historic exclusion of some from meaningful participation, particularly in the mainstream economy, be normalised. For, this seems to be one of the most stubborn injustices of our past that require a more deliberate, intentional and systematic confrontation appropriately enabled by independent, incorruptible, efficient and effective law enforcement and justice-dispensing institutions.”

- 35 So too in **eMedia**, Victor JA explained, with reference to the purposes of the Competition Act:

*“It follows therefore that these are the guidelines this Court and indeed the Tribunal must follow when applying the provisions of the Competition Act. **The approach calls for a transformative constitutional approach and must be consistent with the scheme of the***




***Competition and apply a context-sensitive approach.** This is a striking feature that must be considered in this application. Unless this transformative approach is applied even at an interim stage of proceedings, then the historical and insidious unequal distribution of wealth in South Africa will continue. Guidance can be gleaned on the proper jurisprudential application of the Competition Act by following the dictum by Jafta J in *Matatiele* where he explained the principles of constitutional interpretation which involves a combination of a textual approach and a structural approach. “Any construction of a provision in a constitution must be consistent with the structure or scheme of the Constitution. This provides the context within which a provision in the Constitution must be construed.”.*

- 36 The Commission’s reasons reflect precisely what Mogoeng CJ and Victor JA warned against. They confirm that the Commission failed to adopt a **deliberate, intentional and systematic** approach to historic exclusion, and to honour the commitment to ensuring that the constitutional imperatives set out in the Preamble of the Competition Act and the Constitution are given meaning. It failed to take into account the effect of Media24’s strategic decision, of which the On the Dot transaction formed an indivisible part, on constitutional rights, including the right to freedom of expression. As set out in the founding affidavit the merger has fundamentally negative implications for other newspaper owners, including newspaper owners that are previously disadvantaged persons/entities and will likely result in a substantial reduction in future competition by third-party media




owners. None of these issues are even vaguely addressed or considered in the Commission's reasons.

Sixth, the Commission failed to apply the binding jurisprudence in Mediclinic and Draslovka

37 The Commission's reasons confirm that the Commission failed to apply the binding jurisprudence in **Mediclinic** and **Draslovka** given the likely increase in the prices of the distribution services at On the Dot that will be brought about by the merger. As set out in the founding affidavit, the Constitutional Court made it plain in **Mediclinic** that if a merger gives rise to price increases that will have a material impact on customers or competitors that the merger must be prohibited, unless there are overwhelming efficiency effects that would override the anti-competitive effects of the transaction. The Tribunal applied these principles in its decision in **Draslovka**.

38 The Commission's reasons in this case make it plain that it failed to apply this jurisprudence — it does not mention either of these decisions — and it approved the merger notwithstanding that the price increases pursuant thereto will have a material impact on customers *and* competitors, contrary to the jurisprudence of the Constitutional Court and the Tribunal.

THE COMMISSION'S *EX POST FACTO* ATTEMPTS TO BOLSTER THE RECORD AND FAILURE TO APPLY ITS MIND

39 For the reasons set out above, it is clear that the Commission did not address

any of the requirements that it was obliged to consider under section 12A(2) and (3) of the Competition Act. The Commission's reasons demonstrate that its determination was a rushed job, and that the Commission, in seeking to meet the deadline for approval or prohibition, failed properly to apply its mind to the serious concerns that were raised in relation to the implications of the transaction.

40 As further evidence for this, I understand that the Commission was engaging with third parties and seeking information from them as late as the day on which the Commission's decision was made. There is no possibility that the Commission could meaningfully have applied its mind to the information that was provided to it by third parties on the afternoon of the same day that it made a decision.

41 To compound matters further, even **after** the Commission's decision was taken, the Commission has been seeking to obtain additional information from interested parties, in order to bolster its record of decision. I refer in this regard to an email annexed marked "**AR2**" received by Caxton on 7 November 2024 (more than a week *after* the Commission's decision was taken, where the Commission stated: "*Kindly provide the printing capacity information requested by the Commission on 25 October 2024. In addition to the above, kindly provide minutes for the MS Teams meeting between Commission and your clients (i.e., Caxton and Capital Newspapers), held on 11 October 2024. The Commission requires the minutes for the record. The Commission requires the above by close of business tomorrow.*")

42 It is therefore plain that the Commission is impermissibly trying to bolster its



record of decision *ex post facto* even after it has taken the decision, and to include information that it did not have before it when it took the decision. This further demonstrates that the Commission did not properly investigate the merger at the time and accordingly did not have all the relevant facts before it when it made its approval decision.

- 43 Given the very serious harm that will be brought about by this merger should it be allowed to proceed, and in the light of the fact that the Commission clearly failed to apply its mind to all relevant considerations, and adopted a blinkered approach to the investigation, this aspect of the Commission's conduct on its own justifies the granting of the interim relief sought by the applicants, and the maintenance of the *status quo* for the short period until the review application can be determined.

APPLICATION FOR LEAVE TO FILE THIS AFFIDAVIT

- 44 The applicants seek leave to file this supplementary affidavit.

- 45 I submit that it would be in the interests of justice for the reasons provided by the Commission to the applicants, and the deficiencies thereof, to serve before this Court. The Commission's reasons (and the irrationality and unlawfulness of the Commission's decision as evidenced by those reasons) is directly relevant to the core issues which arise for adjudication in this matter. The reasons, and the applicants' submissions thereon, will assist the Court to make a just and equitable decision in the circumstances of this matter and will conduce to better justice.



46 So too, it is relevant to this Court's determination of the interim relief application that the Commission is still — a week after its decision was taken — seeking to bolster its record of decision with additional new evidence that did not serve before it during its investigation.

47 It was not possible for the applicants to place the reasons and the Commission's correspondence before the Court in the founding affidavit as both documents were only sent to the applicants *after* the founding affidavit was filed — on 7 November 2024.

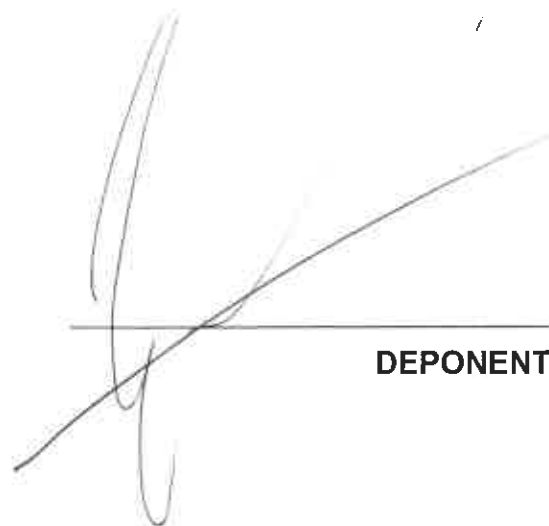
48 I am further advised and submit that the fundamental principle of fairness demands that the applicants should be afforded a fair opportunity to deal with new facts that are relevant to its cause of action, provided that the respondents have a fair opportunity to respond to those facts.

49 The opposing respondents' answering affidavits in this matter are due on 18 November 2024. They will accordingly have a fair opportunity to deal with the new facts and case set out in this brief supplementary affidavit. It follows that the filing of this supplementary affidavit will cause no prejudice to the opposing respondents.

CONCLUSION

50 In the premises, the applicants pray for leave to file this supplementary affidavit and an order as set out in the notice of motion attached hereto.





DEPONENT

I hereby certify that the deponent knows and understands the contents of this affidavit and that it is to the best of the deponent's knowledge both true and correct. This affidavit was signed and sworn to before me at Johannesburg on this the 13th day of November 2024, and that the Regulations contained in Government Notice R.1258 of 21 July 1972, as amended by R1648 of 19 August 1977, and as further amended by R1428 of 11 July 1989, having been complied with.



COMMISSIONER OF OATHS

Full names:

Address:

Capacity:

THEODORE K. JOHN
Kommissaris Van Ede / Commissioner Of Oaths
Praktiserende Prokureur / Practising Attorney
2nd Floor, The Reserve
54 Melville Road, Illovo
Johannesburg

Melissa Steele

Subject: RE: 2024Aug0015 the proposed merger between Novus Print Proprietary Limited and the media supply chain management division, the local news portfolio and the football publication of Media24

Attachments: 2024Aug0015 - Reasons_Novus Print and Media24 businesses (Non-confidential).pdf

From: Luke Rennie <LukeR@compcom.co.za>
Sent: Thursday, 07 November 2024 15:56
To: Melissa Steele <melissa@nortonsinc.com>
Cc: Anton Roets <anton@nortonsinc.com>; Michelle Rawlinson <michelle@nortonsinc.com>; Avias Ngwenya <avias@nortonsinc.com>; Anthony Norton <anthony@nortonsinc.com>; Reabetswe Molotsi <ReabetsweM@compcom.co.za>; Bukhosibakhe Majenge <BakheM@compcom.co.za>; Charl Van Rooyen <CharlV@compcom.co.za>; Wiri Gumbie <WiriG@compcom.co.za>
Subject: RE: RE: 2024Aug0015 the proposed merger between Novus Print Proprietary Limited and the media supply chain management division, the local news portfolio and the football publication of Media24

Dear Melissa,

We refer to the afore-mentioned matter, as well as your correspondence, culminating in your letter of 6 November 2024.

Kindly find attached the non-confidential version of the Commission's reasons. Kindly take note that attached reasons contain a broad summary of the reasons for the Competition Commission's ("Commission") conditional approval of the transaction described more fully in the document. The full reasons for the Commission's decision will be provided in the form of its investigative report in due course, when the Commission files the non-confidential version of the Rule 53 record.

It should be noted that, notwithstanding your demand contained in your letter dated 6 November 2024 to provide the reasons today, the Commission provides the reasons on an expedited basis in an attempt to assist, and not delay the process. It should not be seen as a concession that the timelines contained in your letter are reasonable or agreed to, nor a waiver of any of the Commission's rights. The Commission notes for completeness sake that it has 15 days, in terms of your client's own notice of motion in this matter, in which to file the Rule 53 record. The Commission is in the process of attending to this, along with managing, and respecting the confidentiality claims which attach to portions of the information contained in the record.

Kind regards,

Luke Rennie

Senior Legal Counsel

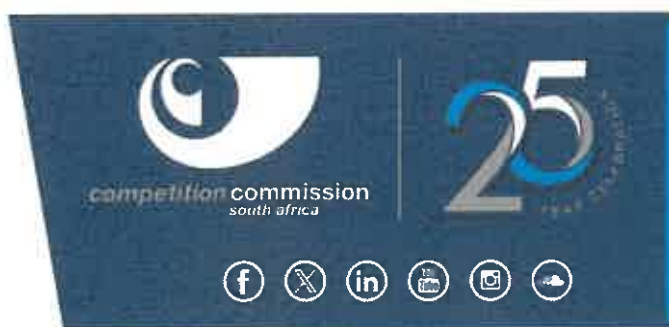
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competition commission

south africa

REASONS FOR DECISION

**NOVUS PRINT PROPRIETARY LIMITED; FREE 4 ALL PROPRIETARY LIMITED;
INTREPID PRINTERS PROPRIETARY LIMITED; AND VICTORY TICKET 376
PROPRIETARY LIMITED**

AND

**THE MEDIA SUPPLY CHAIN MANAGEMENT DIVISION OPERATED AND CONDUCTED
BY MEDIA24 PROPRIETARY LIMITED ("MEDIA24") REFERRED TO AS "ON THE DOT";
THE LOCAL NEWS PORTFOLIO OF MEDIA24 AS MORE FULLY DESCRIBED IN THE
MERGER FILING; AND THE FOOTBALL PUBLICATION DIVISION OF MEDIA24 TITLED
"SOCCER LADUMA AND KICK OFF"**

CASE NUMBER: 2024AUG0015

CONFIDENTIAL

Background

1. On 06 August 2024, the Competition Commission (the "Commission") received a notification of an intermediate merger whereby Novus Print Proprietary Limited, through its wholly owned subsidiaries Free 4 All Proprietary Limited, Intrepid Printers Proprietary Limited and Victory Ticket 376 Proprietary Limited (collectively "Novus"), intends to acquire the following businesses from Media24 Proprietary Limited ("Media24"):
 - 1.1. the media distribution and supply chain management business known as "On the Dot" ("OtD");
 - 1.2. a portfolio of 20 community newspapers circulated in specific geographic areas within the Eastern Cape, Free State, Northern Cape and Western Cape (the "Community Newspapers");
 - 1.3. the national soccer newspaper titles known as "Soccer Laduma" and "Kick-Off", a national newspaper covering local and international soccer news.
(collectively the "Target Firms").

2. Following implementation of the merger, Novus will control the Target Firms in their entirety.

Parties and activities

3. Novus is controlled by Paarl Media Holdings Proprietary Limited ("Paarl Media") (99%), a company registered in accordance with the laws of South Africa. Paarl Media is controlled by Novus Holdings Limited ("Novus Holdings") (100%), a public company registered in accordance with the laws of South Africa, and which is listed on the Johannesburg Stock Exchange. Novus Holdings is controlled by A2 Investment Partners Proprietary Limited ("A2") (61.2%), a company registered in accordance with the laws of South Africa.
4. A2 is, in turn, controlled by Marble Head Investments Proprietary Limited (75%) ("Marble Head Investments") and Zariv Investments Proprietary Limited (25%) ("Zariv Investments"). **[CONFIDENTIAL]**.
5. Apart from Novus Holdings, A2 does not control any firms. Apart from A2, Marble Head Investments controls the following firms: MHG Gaming Proprietary Limited ("MHG Gaming") (100%); Wiltron Projects Proprietary Limited ("Wiltron Projects") (50%); Marblewave Proprietary Limited ("Marblewave") (55%); and A2 Private Equity Partners Limited ("A2 Private Equity Partners") (82%).
6. **[CONFIDENTIAL]**.
7. Novus and its controlling firms are collectively referred to as the "Novus Group".
8. The merging parties submit that Novus Holdings (the ultimate controller of the Primary Acquiring Firms) has 36.33% shareholding held by historically disadvantaged persons ("HDPs").
9. The Novus Group is active in the provision of printing services to customers across multiple sectors, including education, retail, government and media. In addition, it is also active in the publishing and sale of educational materials.
10. The Target Firms are controlled by Media24, a company registered in accordance with the laws of South Africa. Media24 is, in turn, wholly controlled by Naspers Limited, a public company listed on the Johannesburg Stock Exchange.

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11. The Target Firms do not control any firms.
12. The merging parties submit that Media24 has an HDP ownership of 45.02%, as reflected in its latest B-BBEE certificate.
13. The activities of the Target Firms are outlined in turn below:
 - 13.1. Soccer Laduma and Kick Off: Soccer Laduma and Kick Off provide news, interviews, opinion and analysis of local and international soccer. Soccer Laduma has both a print and a digital media presence, while Kick Off is only available online through snl24.com.
 - 13.2. Community Newspapers: is comprised of 20 community newspapers titles (with a total of 37 editions) each focused on very specific geographic areas or communities, covering neighbourhood events, local businesses, community meetings, school activities and other topics that directly impact residents' daily lives. The Media24 community newspapers are all free publications, with the exception of Paarl Post and Weslander, and are published weekly. The Media24 community newspapers include:
 - 13.2.1. Boland Media: District Mail & Helderberg Gazette, Eikestadnuus, Hermanus Times, Paarl Post, Standard & Breederivier Gazette, Swartland Gazette, Weskusnuus, and Weslander;
 - 13.2.2. WP Media: TygerBurger (various editions), People's Post (various editions), and City Vision;
 - 13.2.3. EP Media: Kouga Express, Mthatha Express, PE Express, and UD Express; and
 - 13.2.4. Central24: Bloemnuus, Express, Vista, Vrystaat Kroon, and Noordkaap Bulletin.
 - 13.3. On the Dot "OtD": OtD is a division of Media24 that distributes print media. It offers comprehensive, integrated logistics solutions for media products, such as magazines, newspapers (community and paid for daily and regional newspapers), leaflets, books, bookazines, partworks, and collectibles. It also provides forecasting and demand planning services for publishers nationally, as well as in-store merchandising solutions, promotions, online sales and management of debtors.

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Competition Assessment

14. The Commission found that competition concerns may arise if the merged entity requires its customers to either (i) exclusively procure coldset printing services and distribution services from the merged entity or (ii) procure printing/distribution on condition that the customer also procures distribution/printing services. That is because the merged entity's competitors are not able to offer a similar bundle.
15. To address this concern, the Commission and the parties have agreed that for 3 years after the implementation of the merger, the merged entity will offer coldset printing and distribution services separately. These conditions are set out in **Annexure A** hereto.
16. Given the conditions, the Commission concluded that the merger is unlikely to result in a substantial lessening or prevention of competition in any relevant market.

Public interest considerations

17. In order to address employment concerns, the merging parties have tendered the commitments set out in **Annexure A**.
18. The merger does not raise any other public interest concerns that require further intervention.

Conclusion

19. The Commission therefore approves the proposed transaction on the conditions set out in **Annexure A** hereto.

TAMARA MOKOKA

DIVISIONAL MANAGER: MERGERS AND ACQUISITIONS
COMPETITION COMMISSION, SOUTH AFRICA



ANNEXURE A

**IN THE INTERMEDIATE MERGER INVOLVING
NOVUS PRINT PROPRIETARY LIMITED, FREE 4 ALL PROPRIETARY LIMITED,
INTREPID PRINTERS PROPRIETARY LIMITED AND VICTORY TICKET 376
PROPRIETARY LIMITED**

AND

**THE MEDIA SUPPLY CHAIN MANAGEMENT DIVISION OPERATED AND CONDUCTED
BY MEDIA24 PROPRIETARY LIMITED, THE LOCAL NEWS PORTFOLIO OF MEDIA24,
AND THE FOOTBALL PUBLICATION DIVISION OF MEDIA24**

CC CASE NUMBER: 2024AUG0015

CONDITIONS

1. DEFINITIONS

The following expressions shall bear the meanings assigned to them below and cognate expressions bear corresponding meanings –

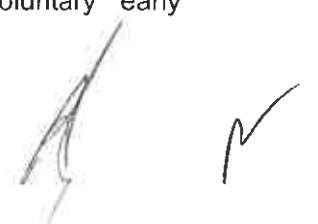
- 1.1 “**Acquiring Firms**” means Novus Print Proprietary Limited, Free 4 All Proprietary Limited, Intrepid Printers Proprietary Limited and Victory Ticket 376 Proprietary Limited (collectively referred to as “**Novus**”);
- 1.2 “**Act**” means the Competition Act 89 of 1998, as amended;
- 1.3 “**Affected employees**” means not more than approximately 233 employees within the Target Firms that may be retrenched post-merger as a worst-case scenario for operational reasons unrelated to the Merger;
- 1.4 “**Approval Date**” means the date the Commission issues a Clearance Certificate (Notice CC15) in terms of the Act;
- 1.5 “**Commission**” means the Competition Commission of South Africa;
- 1.6 “**Commission Rules**” mean the Rules for the Conduct of Proceedings in the Commission;

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- 1.7 **"Conditions"** mean, collectively, the conditions referred to in this document;
- 1.8 **"Days"** mean business days, being any day other than a Saturday, Sunday, or official public holiday in South Africa;
- 1.9 **"Implementation Date"** means the date, occurring after the Approval Date on which the Merger is implemented by the Merger Parties;
- 1.10 **"Media24"** means Media24 Proprietary Limited;
- 1.11 **"Merger"** means the Acquiring Firms' acquisition of control over the Target Firms;
- 1.12 **"Merged Entity"** means the Target Firms subject to the control of the Acquiring Firms, following the Implementation Date;
- 1.13 **"Merger Parties"** means the Acquiring Firms and the Target Firms;
- 1.14 **"Moratorium Period"** means a period of 3 (three) years from the Implementation Date, and includes a period between the Approval Date and the Implementation Date;
- 1.15 **"On the Dot"** means the Media Supply Chain Management Division Operated and conducted By Media24, and is one of the Target Firms;
- 1.16 **"South Africa"** means the Republic of South Africa;
- 1.17 **"Target Firms"** means the Media Supply Chain Management Division Operated and conducted By Media24 referred to as "On The Dot"; The Local News Portfolio Of Media24; and the Football Publication Division Of Media24 Titled "Soccer Laduma And Kick Off";
- 1.18 **"Tribunal"** means the Competition Tribunal of South Africa, a statutory body established in terms of section 26 of the Act; and
- 1.19 **"Tribunal Rules"** means the Rules for the Conduct of Proceedings in the Tribunal.

2. EMPLOYMENT CONDITIONS

- 2.1 Save for the Affected Employees, the Merging Parties shall not retrench any employees as a result of the Merger for a period of 3 (three) years from the Implementation Date.
- 2.2 For the avoidance of doubt, Merger specific retrenchments do not include (i) voluntary retrenchment and/or voluntary separation arrangements; (ii) voluntary early



retirement packages; (iii) unreasonable refusals to be redeployed in accordance with the provisions of the Labour Relations Act, 66 of 1995; (iv) resignations or retirements in the ordinary course of business; (v) retrenchments lawfully effected for operational requirements unrelated to the Merger; and (vi) terminations in the ordinary course of business, including but not limited to, dismissals as a result of misconduct or poor performance.

2.3 Novus will seek to redeploy as many of the Target Firms' potentially Affected Employees as possible should vacant positions become available at Novus and its subsidiaries, provided the employees are sufficiently qualified and experienced for such roles.

2.4 Media24 will offer the Affected Employees preferential employment as and when opportunities arise at its operations, for a period of 3 (three) years, and provided the employees are sufficiently qualified and experienced for such roles.

3. TYING / BUNDLING

3.1 For a period of 3 (three) years post the Implementation Date, the Merged Entity shall offer customers coldset printing services and On the Dot's distribution services separately. For the avoidance of doubt, the Merged Entity will not require that customers of the Merged Entity procure coldset printing on condition that they also procure distribution services from the Merged Entity (or vice versa).

4. MONITORING OF COMPLIANCE WITH THE CONDITIONS

4.1 Novus shall within 5 (five) Days of the Implementation Date notify the Commission of the Implementation Date.

4.2 The Acquiring Firms and the Target Firms shall circulate a copy of the Conditions to all employees, relevant trade unions and employee representatives within 10 (ten) Days of the Implementation Date.

4.3 As proof of compliance with clause 4.1, the Acquiring Firms and the Target Firms will within 10 (ten) Days of circulating the Conditions, inform the Commission of the circulation of the Conditions and provide a copy of the notices that were circulated to the employees and trade unions.

4.4 As proof of compliance with clause 2 and clause 3, the Acquiring Firms shall submit a report on an annual basis to the Commission within 3 months after the anniversary

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of the Implementation Date detailing compliance with these Conditions, for a period of 3 (three) years following the Implementation Date.

5. APPARENT BREACH

- 5.1 In the event that the Commission receives any complaint in relation to non-compliance with the Conditions, or otherwise determines that there has been a breach by the Merger Parties of the Conditions, the breach will be dealt with in terms of Rule 37 of the Tribunal Rules read together with Rule 39 of the Commission Rules.

6. VARIATION

- 6.1 The Merging Parties may at any time, on good cause shown, apply to the Commission for the Conditions to be waived, relaxed, modified and/or substituted. Should a dispute arise in relation to the variation of the Conditions, the Merging Parties shall apply to the Tribunal, on good cause shown and on notice to the Commission, for the Conditions to be waived, relaxed, modified and/or substituted.

7. GENERAL

- 7.1 All correspondence in relation these Conditions must be submitted to the following email addresses: mergerconditions@compcom.co.za

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Melissa Steele

Subject: Confidential: On the Dot // Novus

From: Reabetswe Molotsi <ReabetsweM@compcom.co.za>
Date: November 7, 2024 at 15:26:58 GMT+2
To: Wiri Gumbie <WiriG@compcom.co.za>, Avias Ngwenya <avias@nortonsinc.com>
Cc: Michelle Rawlinson <Michelle@nortonsinc.com>, Anthony Norton <anthony@nortonsinc.com>, Anton Roets <anton@nortonsinc.com>, Khalirendwe Ranenyeni <Khalirendwer@compcom.co.za>, Hlumani Mandla <HlumaniM@compcom.co.za>, Baneng Naape <BanengNa@compcom.co.za>
Subject: RE: Confidential: On the Dot // Novus

Dear Avias

Previous correspondence refers.

Kindly provide the printing capacity information requested by the Commission on 25 October 2024.

In addition to the above, kindly provide minutes for the MS Teams meeting between Commission and your clients (i.e., Caxton and Capital Newspapers), held on 11 October 2024. The Commission requires the minutes for the record.

The Commission requires the above by close of business tomorrow.

Regards
Reabetswe




**Reabetswe
Molotsi**
Analyst

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E:
[ReabetsweM@comp
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Sunnyside, Pretoria.

*a growing,
deconcentrated and
inclusive economy*
[www.compcom
.co.za](http://www.compcom.co.za)



From: Wiri Gumbie <WiriG@compcom.co.za>
Sent: Friday, 25 October 2024 14:10
To: Avias Ngwenya <avias@nortonsinc.com>
Cc: Reabetswe Molotsi <ReabetsweM@compcom.co.za>; Michelle Rawlinson <michelle@nortonsinc.com>; Anthony Norton <anthony@nortonsinc.com>; Anton Roets <anton@nortonsinc.com>; Khalirendwe Ranenyeni <Khalirendwer@compcom.co.za>; Hlumani Mandla <HlumaniM@compcom.co.za>; Baneng Naape <BanengNa@compcom.co.za>
Subject: RE: Confidential: On the Dot // Novus

Dear Avias

Having reviewed the parties responses, could we request clarity on what Caxton's coldest printing capacity utilization is? In other words, what percentage of installed capacity is currently being utilized by Caxton as regards coldset printing over the years 2023; 2022 and 2021.

Best

IN THE COMPETITION APPEAL COURT OF SOUTH AFRICA

CASE NO: 259/CAC/Oct24

In the matter between:

CAPITAL NEWSPAPERS (PTY) LTD	First Applicant
CAXTON & CTP PUBLISHERS & PRINTERS LTD	Second Applicant
and	
MEDIA24 HOLDINGS LTD	First Respondent
NOVUS HOLDINGS LTD	Second Respondent
NOVUS PRINT (PTY) LTD	Third Respondent
FREE 4 ALL (PTY) LTD	Fourth Respondent
INTREPID PRINTERS (PTY) LTD	Fifth Respondent
VICTORY TICKET 376 (PTY) LTD	Sixth Respondent
MEDIA24 (PTY) LTD	Seventh Respondent
THE COMPETITION COMMISSION	Eighth Respondent
THE MINISTER OF TRADE, INDUSTRY AND COMPETITION	Ninth Respondent

FIRST TO SEVENTH RESPONDENTS' ANSWERING AFFIDAVIT

IN PART A

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I, the undersigned

OMICHAND (“RAJ”) LALBAHADUR

do hereby make oath and state as follows:

- 1 I am the interim Chief Executive Officer of the seventh respondent (“**Media24**”). I am duly authorised to depose to this affidavit on behalf of the first to seventh respondents.
- 2 The facts contained in this affidavit are, save where the context indicates to the contrary, within my knowledge. Those facts are true and correct.
- 3 It is in the nature of applications such as these that I am required to make legal and economic submissions in this affidavit. Where I do so, it is on the advice of the first to seventh respondents’ legal representatives and economic advisers. A confirmatory affidavit from the respondents’ economic adviser, Ms Nicola Marielise Theron, an affiliate of FTI Consulting, will accompany this affidavit.
- 4 I have read the founding affidavit of Mr Riquadeau Jacobs, and its accompanying affidavits, filed in support of the applicants’ application to (i) interdict the implementation of the merger, and (ii) stay and suspend the decision by the eighth respondent (the “**Commission**”) to approve the merger. Despite only being given two weeks to answer a dense and complex application as set out in the founding papers, the respondents have also been presented with two further

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supplementary affidavits that were filed by the applicants on 7 and 13 November 2024 respectively.

- 5 Despite knowing the pressure that the respondents have been placed under to answer the application by 18 November 2024, the applicants filed these two further affidavits without making any allowance for extra time for the respondents to answer them. Instead, they have just unilaterally supplemented their case and then imposed a deadline (in their further notices of motion) of 18 November 2024 for us to answer what is now three sets of affidavits.
- 6 This type of conduct is prejudicial and has caused the respondents great hardship in putting together this answering affidavit. Nonetheless, we have done our best to address the main issues in all three of those affidavits. However, the limited time we have been given has necessarily meant that we have not been able to answer all of the case as fully and comprehensively as we would have preferred. We therefore reserve the right to supplement this affidavit if it becomes necessary to do so before the hearing of the matter.
- 7 I do not deal in sequence with all of the allegations in the founding, supporting and supplementary affidavits, but instead engage thematically with the main issues that this Court will need to consider in determining whether to grant the relief. To the extent that any allegations in the founding, supporting or supplementary affidavits are inconsistent with what is stated here, they should be taken to be denied.

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INTRODUCTION AND OVERVIEW

8 The applicants' founding papers in this matter are littered with superlatives. They speak of "death spirals", "tsunamis" and of "a threat to democracy itself".

9 But this case is actually about the sale of a simple distribution business and some community and soccer publications.

10 Before the respondents had even notified the Commission about this sale, the applicants had already embarked on a strategy to make this case about more than it is. The strategy involved focusing on a different decision, taken by Media24 in April 2024, to migrate some of its print titles to its digital platform and then contending that that separate decision should have formed part of the merger notification in this case.

11 The applicants want the migration decision to be part of the merger notification for two reasons.

11.1 They are dissatisfied with the fact that Media24 would not sell those print titles to them. They presented an offer for the titles, which was rejected by Media24, because it has brand equity in the titles and so had decided to move them over from print (where they were losing money hand over fist) to the much more popular digital news platform.

11.2 They want to stop an inevitable increase in the distribution costs for printed titles once the migration to digital takes place. But this impact is in line with

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the irreversible and continued shift in consumer preferences and behaviour from print to digital for news consumption.

- 12 The applicants' solution to their dissatisfaction described above is to postulate a counterfactual in which, if Media24 could not have sold the sale assets to Novus, then it would have sold them to the first applicant ("**Capital**"). In fact, not only would Media24 have sold the sale assets to Capital,¹ claim the applicants, but Media24 would *also* have sold the migrating titles to Capital. And finally, once the migrating titles were under Capital's control, Capital would somehow have miraculously reversed the global consumer trend away from print, thereby returning the print titles to profitability (see paragraph 10.6 of the founding affidavit). But this is not only unrealistic, it is not an outcome that the law can achieve.
- 13 After Media24 had taken this digital migration decision, it was clear that its distribution business (On the Dot) would become redundant and so a sale of it, the community newspaper portfolio, as well as two soccer publications, was to be pursued.
- 14 Media24 chose to sell those assets to the second and third respondents ("**Novus**"). After the sale was concluded, the parties notified the Commission about the transaction as an intermediate merger because it involved Novus acquiring part of the business of Media24, and the asset and turnover values of the target firms were within the relevant thresholds.

¹ Being On the Dot, the community newspapers and Soccer Laduma and Kick Off.



- 15 Subsequent to the notification, the applicants endeavoured to convince the Commission that the merger was not, actually, about this sale but was “inextricably linked”, and “part and parcel of”, Media24’s earlier separate decision to embark on a digital migration strategy.
- 16 The Commission rejected this construct of the merger, and for good reason. As I shall set out in detail below, no part of the transaction involves anyone acquiring anything in relation to the migration decision. All that is happening with the print titles is that they are being moved from one mode of publication (print) to another (digital) all *within* Media24. Furthermore, the digital migration of these brands is not even part of the merger because it was not caused by the sale to Novus. On the contrary, the sale to Novus is *a result of* the migration decision because once Media24 had decided to migrate these brands to digital, there was no longer a need to retain its print distribution arm, in the form of On the Dot, nor its community newspaper portfolio.
- 17 So the applicants’ entire case inverts that causal relationship between these two decisions. The merger was the result of the migration strategy, not the other way round. The merger did not *cause* the migration and the migration is therefore not part of the merger. It is a separate decision that Media24 repeatedly explained to the Commission will be implemented regardless of whether or not the sale to Novus was approved.
- 18 And that is, in fact, the end of the applicants’ case. As I shall show in the developing sections of this affidavit, the applicants’ whole case depends on this Court accepting their construction of the merger. But their construct is both

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factually and legally flawed. So their case for an interdict cannot get out of the starting blocks.

19 The structure of this affidavit is as follows:

19.1 First, I make some preliminary points about the proper approach to the review and explain why the application for an interdict is moot.

19.2 Second, I deal with the proper characterisation of this application as one for final interdictory relief.

19.3 Third, I deal with the requirements for an interdict. In this section, I set out the facts against which the merger decision should be approached and show that not one of the grounds of review advanced by the applicants has any merit. I then deal with harm and balance of convenience.

19.4 Finally, I deal with the remaining averments that require a factual response in the *seriatim* section of the affidavit.

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THE PROPER APPROACH TO THIS APPLICATION

- 20 In Part B of the application, the applicants seek to review and set aside the Commission's merger approval decision in terms of the Promotion of Administrative Justice Act 3 of 2000 ("**PAJA**"), alternatively the principle of legality.
- 21 The urgent relief in Part A is sought pending the final determination of the review relief in Part B. The application for urgent relief is thus dependent upon the merits of the review in Part B. If the Part B review is fatally flawed, then, so too, is this application for urgent interim relief.
- 22 In the section on the absence of a clear or *prima facie* right, which I address later in this affidavit, I demonstrate that the applicants have failed to make out any case that the Commission committed a reviewable irregularity in its assessment of the effects of the merger.
- 23 However, at the outset, I address a more fundamental issue. It is that the applicants' entire attack on the Commission's decision is misconceived. The attack is misconceived for essentially two reasons.
- 23.1 First, the applicants' challenge to the Commission's merger approval decision is nothing short of an attempt to ask this Court to overturn the Commission's decision on its merits. The applicants thus impermissibly conflate the well-established distinction between an appeal and a review, and seek, in truth, to challenge the correctness of the Commission's findings rather than the lawfulness or rationality of its decision.

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23.2 Second, and relatedly, while each of the applicants' grounds of review boil down ultimately to an allegation that the Commission erred on the facts, the applicants do not come close to satisfying the stringent test that our courts have set for a review based on errors of fact.

24 I deal with each of these points in turn below because they frame how this Court should, I respectfully submit, approach the adjudication of this matter.

The applicants' conflation of appeal and review

25 The applicants employ the common refrain, in relation to each of the alleged flaws in the Commission's decision, that the decision falls to be reviewed and set aside because *"it is contrary to the empowering provision; was taken for a reason not authorised by the empowering provision; failed to take into account relevant considerations and took into account irrelevant considerations; was irrational, was unreasonable and was otherwise unlawful."* (See, for example, paragraphs 251, 270 and 280 of the founding affidavit).

26 But the applicants do not explain in what way each of the findings or failings they seek to impugn were the product of irrational, unlawful or unreasonable decision-making. Instead, the applicants deploy the language of review grounds as a placeholder for what is actually an attempt to contest the correctness of the Commission's decision.

27 This is evident, for example, from the following:

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- 27.1 When the applicants say that the Commission “*failed to take into account the interrelated nature of the transaction*” (paragraphs 238 to 240 of the founding affidavit), what they are in reality saying is that, on the facts, the transaction included the “*closure of the Media24 printed newspaper titles*”, and that the Commission erred by regarding the merger as being limited to the sale of On the Dot, the Community Newspapers and Media24's football publications titled Soccer Laduma and Kick Off.
- 27.2 When the applicants say that the Commission “*failed to appreciate or take cognisance of the consequences of the proposed transaction for the media sector as a whole (and the country more largely) and the knock-on consequences for other newspaper publishers and owners as a result of the increase in distribution costs*” (paragraphs 241 to 243 of the founding affidavit), what they are in reality saying is that, on the facts, the transaction will result in an increase in distribution costs which will have a negative impact on other newspaper publishers and the media sector as a whole, and the Commission erred in not reaching this conclusion.
- 27.3 On the question of allegedly undermining the objective of a greater spread of ownership, the applicants do not even hide the fact that they challenge the Commission on the correctness of the facts underlying its decision. They allege that, as a matter of fact, the sale of On the Dot “*will not enhance a greater spread of ownership*” (paragraph 244 of the founding affidavit) because it entails a move to an entity with a lower empowerment shareholding than Media24, and that “*the merger, and its effects on the viability and sustainability of competing publishers, will reduce the*

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opportunities for a greater spread of ownership" (paragraph 246 of the founding affidavit). This is nothing other than an allegation that the Commission got it wrong on the facts.

27.4 Similarly, in relation to the impact on firms owned by historically disadvantaged South Africans and small and medium firms, the applicants allege, on the facts, that "*the ability of small and medium-sized newspaper businesses, or firms controlled or owned by historically disadvantaged persons invested in the publication of newspapers, to effectively enter into, participate in or expand within the market, will be significantly compromised*" (paragraph 252 of the founding affidavit). The applicants reach this conclusion on the basis of a series of factual premises: if newspaper volumes decline considerably as a result of ceasing to print the Media24 newspaper titles, then this will have a material adverse effect on the profitability and viability of On the Dot (paragraph 253); the new owners of On the Dot will inevitably raise distribution costs to the remaining publishers because of the loss of volumes from Media24 publications (paragraph 254); and the result will be prejudice to previously disadvantaged owners of competing paid-for print titles (paragraphs 254 and 255). On each of these factual issues, the applicants' case depends on a finding that the Commission erred.

27.5 In relation to the impact on employment, the applicants identify three categories of harm which, they say, on the facts, "*would be inflicted by the merger on employment*" (paragraph 257), with the result that the transaction "*is likely to be the direct cause of well over 1000 people losing*

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their employment" (paragraph 258). The essence of the applicants' complaint is that the Commission erred in failing to reach this conclusion.

27.6 The applicants also allege that the transaction will, on the facts, undermine journalism in South Africa, result in the effective demise of a large number of print newspaper titles, and cause a loss of diversity of views. Again, their complaint in this regard is that the Commission erred on the facts.

28 These are just some of the examples of the applicants' criticisms, which amount to nothing more than saying that the Commission reached a conclusion which is, in the applicants' view, incorrect. That is not the proper subject matter of a review application.

29 When the applicants launched their application, they did not even have the Commission's reasons. They relied on the Commission's media release, published on LinkedIn.

30 After the application was launched, the Commission provided the applicants with a non-confidential version of the summary of its reasons on 7 November 2024. The Commission made clear, when doing so, that it was providing merely a "*broad summary*" of the reasons for its conditional approval of the transaction, and that "*the full reasons for the Commission's decision will be provided in the form of its investigative report in due course, when the Commission files its non-confidential version of the Rule 53 record.*" (see annexure AR1 to the second supplementary affidavit).

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- 31 The applicants filed a second supplementary affidavit in this matter in the late afternoon of 13 November 2024 endeavouring to advance their case for interdictory relief on certain further alleged gaps in the Commission's "summary". But, as with the applicants' attack premised on the Commission's media statement, it is equally misconceived for the applicants to draw conclusions as to what the Commission did or did not take into account, merely on the strength of what is not expressly stated in a broad summary of its reasons. But that is precisely what they seek to do in their second supplementary affidavit (which, inexplicably, given the alleged urgency of the matter, the applicants have sought to file a full week after receipt of the Commission's short summary of its reasons).
- 32 The bottom line is that the applicants' entire review is no review at all. It is an attack on the correctness of the Commission's decision to approve the merger. Our courts have repeatedly emphasised the important distinction between appeals and reviews. It is not permissible for a review applicant to use the language of review to challenge the *correctness* of the findings sought to be impugned. Judicial review does not permit a court to set aside findings with which it does not agree. It may only do so if the findings are shown to be the product of unlawfulness, irrationality, unreasonableness or a procedurally unfair process.
- 33 The applicants' case in Part B is fatally flawed on this basis alone.

The test for error of fact

- 34 To the extent that the applicants' attacks on the Commission's decision are review grounds at all, they are grounds based on alleged errors of fact. That is

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evident from each of the examples set out above, which depend on this Court finding that the Commission erred in its factual assessment of the merger and its impacts.

- 35 Mistake of fact is a review ground about which our courts have expressed grave caution. That is because reviewing a decision on the grounds of mistake of fact risks straying from the terrain of review (which is concerned ultimately with the lawfulness of the process), and into the terrain of appeal (which is concerned with the correctness of the result).
- 36 It is for this reason well-established that a court considering a review based on material mistake of fact is not entitled to consider the matter afresh, or substitute its own view as to what the findings should have been. Instead, the question is whether the decision taken by the Commission is one which it was legally permitted to take in the way that it did. And when a court is assessing the decision-making of a specialist body like the Commission, it will also accord a measure of deference to its processes and outcome.
- 37 Thus, for the Commission's decision in this case to be reviewable, the error of fact must be (i) uncontentious and objectively verifiable; and (ii) material. Our law on judicial review makes it plain that the courts will only interfere within "a very narrow band" of facts that are incontestable. And, as the Supreme Court of Appeal has explained, a fact is *material* only if it was the direct cause of the decision.

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- 38 None of the alleged errors of fact upon which the applicants rely to review the Commission's decision satisfies this stringent test. Certainly, they do not come close to the standard of being uncontentious and objectively verifiable. On the contrary, they are hotly contested, and asserted by the applicants without any evidence to speak of, let alone objective verification.
- 39 For this reason, too, the applicants' case in Part B is fatally flawed.

Mootness

- 40 In Part A of the application, the applicants seek an order interdicting the first to seventh respondents from "*taking any steps to implement the proposed merger*", and staying the Commission's decision to approve the merger.
- 41 The underlying premise of the interdictory relief is that the merger has not yet been implemented. The applicants seek to preserve the *status quo* prior to the implementation of the merger.
- 42 But the premise is mistaken. The merger *has* been implemented. As the merging parties explained in the merger filing, and as the Commission held in its decision, the merger comprises the sale by Media24, of:
- 42.1 Media24's print distribution business, referred to as On the Dot, to Free 4 All Proprietary Limited;

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- 42.2 The Media24 community newspapers to Intrepid Printers Proprietary Limited (which, following the merger approval, has changed its name to Novus Media Proprietary Limited); and
- 42.3 The football publication division of Media24 titled “*Soccer Laduma and Kick Off*” to Victory Ticket 376 Proprietary Limited (which, following the merger approval, has changed its name to Novus Sport Proprietary Limited).
- 43 Following the Commission’s merger approval decision, the merging parties were lawfully entitled to implement the merger.
- 44 The applicants have sought to suggest, in their founding affidavit, and in subsequent correspondence, that the merging parties ought not to have implemented the merger in the face of the threat, and then the institution, of these proceedings. But the applicants are mistaken. I am advised that the mere threat of interdictory proceedings, and the launching of such proceedings, does not give rise to any obligation on a respondent to desist from conduct in which it would otherwise have engaged. The Constitutional Court confirmed this in the strongest and most unequivocal terms in *City of Tshwane Metropolitan Municipality v Afriforum and Another* 2016 (6) SA 279 (CC) para 74:

“It needs to be stated categorically, that no aspect of our law requires of any entity or person to desist from implementing an apparently lawful decision simply because an application, that might even be dismissed, has been launched to hopefully stall that implementation. Any decision

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to that effect lacks a sound jurisprudential basis and is not part of our law. It is a restraining order itself, as opposed to the sheer hope or fear of one being granted, that can in law restrain. To suggest otherwise, reduces the actual grant of an interdict to a superfluity."

- 45 Since receiving the merger approval on 30 October 2024, the merging parties have acted in terms of their contractual commitments to implement the merger. I explain these in more detail below.
- 46 On 5 August 2024, Media24 concluded three Sale of Business Agreements with each of the three acquiring firms, in respect of the sale and purchase of each of the three target businesses. I attach the agreements marked "RL1", "RL2" and "RL3", respectively. These agreements are commercially very sensitive and therefore confidential. They cannot be provided to the applicants themselves, and shall only be made available to the applicants' lawyers and independent experts. Below, I disclose some of the provisions that deal with the timing of the agreements but that does not detract from the important confidentiality of the remainder of the provisions.
- 47 In terms of clause 1.2.30, read with clause 3.1, each agreement had a long-stop date – that is, a date by which the suspensive conditions were required to be fulfilled or waived – of 31 October 2024.
- 48 The Commission approved the merger on 30 October 2024. That evening, I had a number of telephone engagements with André van der Veen, the Chief

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Executive Officer of Novus, to prepare for the steps that would take place the following day. The steps that have taken place since then are as follows:

48.1 The suspensive conditions were all fulfilled, and each Sale Agreement became unconditional, on 30 October 2024;

48.2 The acquiring firms paid the purchase price on 31 October 2024, in accordance with clause 7 of the respective Sale Agreements.

48.3 On 31 October 2024, notices in terms of section 197 of the Labour Relations Act were issued to the relevant employees.

48.4 On the Effective Date under each agreement:

48.4.1 in accordance with clause 6 of the Sale Agreements, full risk, reward and ownership of the acquired businesses transferred to the acquiring firms;

48.4.2 in terms of clause 8 of the Sale Agreements, the acquiring firms assumed the liabilities of the target businesses;

48.4.3 in terms of clause 9 of the Sale Agreements, the target businesses were transferred and delivered by Media24 to the acquiring firms;

48.4.4 in terms of clause 12 of the Sale Agreements, the acquiring firms were substituted as the "*new employer*" of the employees of the target businesses, and such employees were transferred to the acquiring firms in terms of section 197 of the Labour Relations Act.

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- 49 The merger has, in other words, been fully implemented. It is not competent in law to “*interdict*” the “*implementation*” of a merger in circumstances where the merger has already been implemented.
- 50 In what follows, I set out the chronology of correspondence between the applicants’ attorneys, Nortons Inc. (“**Nortons**”), and the merging parties’ attorneys, Edward Nathan Sonnenbergs Inc. (“**ENS**”), immediately prior to and following the launch of the application for interdictory relief.
- 51 As the correspondence bears out, the mootness of the application for urgent interdictory relief is entirely of the applicants’ own making. They were always aware that a failure to obtain an interdict prior to the implementation of the merger would render Part A of the application moot. And it was always open to them to tailor their application to meet the urgency of the circumstances. It was open to them to prepare a short and simple application for interim relief, which the respondents could answer within a short period, in order to have the matter heard on short notice. But the applicants elected not to do that. Instead, they launched an application of significant complexity running to more than 260 pages.
- 52 They then proceeded to hector and badger the respondents in the days after the merger approval – accusing them of bad faith and even constructive contempt – and constantly distracting them from the task of responding to the application.
- 53 On 30 October 2024, the Commission notified the merging parties that the merger had been approved, subject to conditions.

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- 54 On the morning of 31 October 2024, I sent an email to Media24's employees informing them that the Commission had approved the merger, and that we would be implementing the merger that day, including by consulting with staff across the three target firms. I also provided an update on Media24's overall strategy of migrating to digital news. This email is reproduced at paragraph 192 of the founding affidavit.
- 55 Media24 also issued a press release on 31 October 2024, which is attached to the founding affidavit as "FA26", as well as an email to its clients, which is attached to the founding affidavit as "FA27".
- 56 At approximately 08h30 on 31 October 2024, Nortons addressed correspondence (erroneously dated 11 July 2024) to ENS, which is attached to the founding affidavit as "FA0". Nortons set out its clients' concerns regarding the merger and indicated that its clients intended to bring urgent review proceedings. It sought the respondents' agreement "*to take no (further) steps to implement the proposed transaction pending the determination of the review*", failing which its clients would seek urgent relief. It also warned that its clients would argue that any steps to implement the merger "*constitute an impermissible attempt to preempt the review*". Nortons afforded the respondents until 12h00 the same day within which to respond.
- 57 Evidently, the applicants and their lawyers were under the impression that the mere indication of an intention to institute proceedings imposed an obligation on the merging parties not to implement the transaction. I am advised that this is mistaken as a matter of law. As I have set out above, our highest court has

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- emphasised that the mere institution of proceedings – let alone the threat of doing so – does not oblige a party to desist from the conduct sought to be interdicted.
- 58 Upon receipt of this letter, the merging parties scheduled a meeting with their attorneys and counsel for their first available time at 14h00 that day to discuss the letter.
- 59 At 12h23, before the merging parties had even had an opportunity to discuss the correspondence with their lawyers, Nortons addressed correspondence to the Judge President of this Court, which I attach marked “**RL4**”. It referred to and attached my correspondence to staff explaining that Media24 would be implementing the transaction that day. It said that the merging parties had failed to provide the undertaking sought earlier that day, and that its instructions were to bring an urgent application by 14h00 that day.
- 60 Astonishingly, the letter requested the Court “*to convene an urgent hearing during the course of this afternoon*”, and asked the Court to indicate urgently whether it would be able to do so. By this stage, the applicants had not yet even issued the threatened application or served it on the respondents.
- 61 ENS responded the same day. I attach its response marked “**RL5**”. It noted that the applicants’ demand for a same-day hearing, on two hours’ notice, without even having served the application, was grossly abusive and deeply prejudicial. It proposed that, once the respondents had received the application, they would communicate again with the Court in order to schedule a case management



meeting to agree and determine a fair timetable for the exchange of papers and a hearing.

- 62 Nortons electronically served an incomplete version of the application (the founding affidavit had not been deposed to and the supporting affidavits were missing) at 15h20 on 31 October 2024. It is extensive. The founding affidavit alone runs to 113 pages. Together with annexures, the application runs to more than 260 pages. The application also raises issues of some complexity: it relies on various review grounds under PAJA regarding the Commission's competition and public interest assessment of the merger, and it alleges violations of the Constitution and is accompanied by a Rule 16A notice (inviting prospective *amici* to apply to be admitted).
- 63 The notion that the respondents could have been expected to respond meaningfully and be ready to *argue* such an application, on *40 minutes notice*, is absurd in the extreme.
- 64 Simply put, if the applicants wanted an application heard and determined within a matter of hours, or even a matter of days, then they ought to have brought a substantially shorter application, which the merging parties could have meaningfully answered within a short period of time. Instead, the applicants' approach was palpably unfair and prejudicial, not only to the respondents, but also to the Court, which is required to hear and determine the matter.
- 65 The Judge President scheduled a pre-hearing meeting for the following morning, Friday, 1 November 2024.

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- 66 At the pre-hearing, the applicants' counsel sought an undertaking from the merging parties that they would not take steps to close print titles or retrench employees pending the hearing, and indicated that if no such undertaking were given, a very urgent hearing would need to be convened. The merging parties' counsel explained that she had no instructions to give any such undertaking, made clear that since receipt of the merger approval, the merging parties had implemented the transaction, and emphasised that if the applicants had wanted a more urgent hearing, they ought to have prepared a shorter and simpler application for urgent interim relief.
- 67 After receiving these submissions from the parties' counsel, the Judge President directed that the Court would seek to convene a hearing of a full bench in early December to hear the application and directed a timetable for the exchange of papers that would give the respondents two weeks to answer the application.
- 68 Following the prehearing meeting on the morning of 1 November 2024, Nortons addressed correspondence to ENS, which I attach marked "RL6", reiterating that if the applicants took steps before the determination of the urgent application, *"that would plainly undermine the ability of the Court to hear and determine our clients' urgent application timeously"* and would *"amount to an exercise of bad faith"*. Nortons reserved the applicants' rights, in the event that the merging parties sought to implement the merger, to once again approach the Court on an urgent basis to seek an expedited hearing.
- 69 The applicants evidently appreciated at this stage that the implementation of the merger would render any application for interim relief moot.



70 ENS responded the next day, Saturday, 2 November 2024, reiterating that in the light of what had transpired at the pre-hearing, and given the scheduling by the Court of a timetable that would provide the merging parties with a fair opportunity to answer the lengthy and dense founding papers, there was no basis for allegations of bad faith or for the threat of further urgent proceedings. I attach this letter marked "RL7".

71 Nortons responded on the same day, demanding an undertaking by 18h00 on Sunday, 3 November that:

71.1 No notice of termination would be given to any employees of On the Dot, Media24 or any other company that forms part of the merger notification, prior to the hearing and determination of the matter in early December 2024;

71.2 The closure of the relevant print titles would not occur before 31 December 2024, being the date set out Media24's notice to its employees.

72 Nortons also required the merging parties to provide it with dates on which any further material steps in relation to the implementation of the merger would take place which may have the effect of frustrating the hearing of the application. It said that, failing receipt of such confirmation, its instructions were "*to urgently approach the Judge President to request that the date and time for the hearing of the matter is brought forward in order to avoid a situation where our clients' application is a brutum fulmen*". I attach this letter marked "RL8".

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- 73 On 3 November 2024, ENS responded and reiterated that the merging parties had in no way undermined the Judge President's directive, and that there was no legal basis for Nortons' persistent demands that the merging parties provide undertakings. It explained that the merging parties had received merger approval, and were lawfully entitled to implement the merger unless interdicted. That the applicants were unhappy with the result of the pre-hearing meeting was no reason to continue badgering the merging parties with correspondence, and to continually threaten to engage the Court. The letter concluded by respectfully requesting Nortons to allow the merging parties to focus their attention on answering the 260-page application rather than having to be distracted by the applicants' repeated and precipitous letters. I attach this letter marked "RL9"
- 74 Undeterred, Nortons addressed yet further correspondence to the Judge President on Monday, 4 November 2024, which I attach marked "RL10". It referred to and attached the correspondence with ENS following the pre-hearing meeting. It also made clear that the applicants were by this stage aware of the fact that Media24 staff had been given until close of business on 5 November 2024 to accept voluntary severance packages, and to reapply for positions within the restructured business, and that Media24 would thereafter announce on 6 November 2024 which staff members would be retrenched. Nortons alleged that the merging parties were "*seeking to expedite the implementation of the merger in all material respects... so as to pre-empt the Court's ability to hear and determine our clients' urgent application*".
- 75 Nortons accordingly requested the Judge President:



- 75.1 either to make the existing timetable contingent upon receipt of an undertaking by the merging parties not to close the relevant print titles or to retrench / terminate any employees related to the proposed merger prior to the hearing of the urgent application; or
- 75.2 to set the matter down more urgently.
- 76 ENS responded the same day, Monday, 4 November 2024. It explained that the request to the Judge President effectively asked the Court either to compromise the merging parties' right to properly answer the application (i.e. by setting the matter down more urgently), or to grant the applicants the very interdictory relief that they had sought in their application, which the merging parties had not yet had an opportunity to answer. It reiterated the merging parties' position that they had given no undertakings, and that there was no basis to depart from the timetable. I attach this letter marked "RL11".
- 77 Nortons addressed further correspondence to ENS on 4 November 2024, which I attach marked "RL12". This time it went so far as to accuse the merging parties of "*constructive contempt*", and reserved its clients' rights to take further legal steps.
- 78 ENS responded the same day, denying that the merging parties were in constructive contempt, and highlighting the fundamentally flawed assumption that underpinned Nortons' letter: that the mere launching of the application imposed an obligation on the merging parties to halt any steps associated with implementing the merger. The letter explained that any delay in the resolution of

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the application was a direct result of the manner in which the applicants had elected to bring the application.

79 In sum, I am advised that Nortons' conduct since the merger approval – of badgering and harassing the respondents and the Courts – is not only abusive but is based on a fundamental legal misunderstanding.

80 The correct legal position is as follows:

80.1 It is for an applicant, when instituting urgent proceedings, to bring an application that is appropriately tailored to the circumstances. Where it is necessary to very substantially truncate the period within which a respondent is required to answer the application, then it is incumbent on an applicant to bring an application that the respondent can fairly answer in the time allowed.

80.2 The mere institution of legal proceedings does not require parties to cease conduct in which they would otherwise have engaged. The applicants' persistent allegations of bad faith and subverting the Court's process are therefore entirely misplaced. It is, in fact, the conduct of the applicants that has been abusive. As I explain later in this affidavit, and as will be argued at the hearing of this application, this abusive conduct is a factor that the Court should consider in its discretion whether to grant any interdictory relief.

80.3 If, having brought an application for interim relief, it appears to an applicant that it requires even more urgent relief than initially anticipated, then it may



bring what our courts have referred to as an application for “*interim-interim relief*” – that is, an application for interim relief pending the determination of the pre-existing application for interim relief.

80.4 But our courts have also made clear that the requirements for interim-interim relief are no different from the ordinary requirements for interim relief. In other words, in order to interdict the implementation of the merger pending the hearing of Part A of this application, the applicants would have been required to establish all the ordinary requirements for interim relief and they would have had to present founding papers for this interim-interim relief that were much shorter and therefore capable of being fairly answered by the respondents in a more limited period of time.

80.5 Certainly, what an applicant cannot do, is treat the mere application for interim relief as equivalent to an interdict. As the Constitutional Court has explained, that is to conflate the launching of an interdict with the grant of an interdict.

81 In the present case, the applicants ignored every one of these principles. They brought an application that was 260 pages long and highly complex. They purported to give the respondents 40 minutes within which to answer and argue it. All the while, they appeared to be under the misapprehension that the merging parties were under some legal obligation, merely as a result of the *institution* of legal proceedings, not to implement the transaction.

82 The applicants were rightly concerned that the implementation of the merger would render their application moot. Their remedy was, of course, to bring a

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short, crisp application for interim relief, which could be heard and determined before the merger was implemented. They failed to do so. The mootness of Part A is, accordingly, a consequence entirely of the applicants' own making.

Summation on approach and mootness

83 In this first section of the affidavit, I have dealt with the approach that the Court should adopt to this application. I have done so because it is important to approach the application on its proper terms, cognisant of the proper remit of the Court's powers when it is confronted with an interim interdict application to stop the implementation of an intermediate merger that is sought to be reviewed and set aside in subsequent proceedings.

84 The sections above demonstrate that:

84.1 To the extent that the applicants' interdict depends on their challenge to the *correctness* of the Commission's merger decision, the interdict should be dismissed. This is because the applicants have no legal right to challenge the merger decision on grounds of correctness.

84.2 Because the applicants seek an interdict pending a review of the Commission's merger decision, they can only secure their interdict if the factual errors that they allege the Commission made relate to *uncontentious and objectively verifiable* facts. But not one of the facts on which the applicants' case is based meets this stringent standard. On the contrary, as I set out in more detail in the next section, the factual basis for their attack on the merger decision is highly contested and by no means

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objectively verifiable. The applicants cannot, therefore, obtain an interdict pending a review that is premised on contentious and disputed facts.

84.3 And even if the applicants were able to get over all of these problems with their case, the application for an interdict is, in any event, moot because the merger has been implemented.

85 If, notwithstanding these obvious flaws in the application, the Court proceeds to engage its merits, then I deal in the remaining sections of this affidavit with the requirements for interdictory relief.

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REQUIREMENTS FOR INTERDICTIONARY RELIEF**Interim or final interdict?**

86 I have explained above that the relief sought by the applicants in Part A is moot, in that it seeks to interdict the implementation of the merger in circumstances where the merger has already been implemented. The reason that Part A is moot is that it seeks to interdict that which has already occurred. The applicants do not seek any relief in Part A to unwind or reverse the implementation of the merger.

87 If, however, the Court were to conclude that the matter is somehow not moot, because, despite the absence of any prayer to that effect, the Court may for some reason order the unwinding of the implementation of the merger, then I respectfully submit that any interdict granted would be final in effect and not interim in nature. That is because of the final and irreversible impact that granting relief that prevents the merger from proceeding or unwinds it would have. Quite simply, relief of that nature would kill the transaction because of its time sensitive nature. It cannot be held in limbo for months. But that will be the effect of the interdict that the applicants seek if it is granted.

88 Prayer 2 of Part A of the notice of motion seeks interim relief "*[p]ending the final adjudication of the relief that will be sought in Part B of this application, including any appeal proceedings*".

89 Part B of the notice of motion sets out the applicants' declaratory and review relief. It calls on the Commission to deliver a record in terms of Uniform Rule 53

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within 15 days, allows the applicants to supplement their founding papers or amend their notice of motion within 10 days, and then calls upon the respondents to deliver their answering affidavits within 30 days thereafter. Assuming that all the parties comply with all the time periods stipulated in Part B, it is reasonable to assume that Part B will not be heard, and judgment delivered, before mid-2025. That does not take into account delays caused by the late filing of any affidavits, or those arising from interlocutory disputes (for example, in relation to the provision and/or completeness of the record).

90 But that is not when the interim relief would lapse. The applicants seek their interim relief pending any appeal proceedings in respect of Part B. An appeal against a decision of this Court lies to the Constitutional Court, with the leave of that Court. I am advised that it generally takes a number of months for the Constitutional Court to decide even whether to set a matter down for hearing. If it is set down, it can take many more months before it is heard, and even longer before judgment is handed down.

91 The upshot is that if this Court were to grant the applicants' relief in Part A, it would be granting an interdict that would persist for at least a year, and, in all likelihood, for between 18 months and two years.

92 In the context of the present merger, an interdict of more than a year in duration would be indistinguishable from a final interdict. It would kill the transaction once and for all. I say this for the following three reasons.

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93 First, from Media24's perspective, the target businesses are, quite simply, not viable within the Media24 structure. They will likely be closed down if the transaction is stalled.

93.1 Media24 does not have opportunities for economies of scale in relation to the business of printing. That is because its core business is not in printing; it is in publishing.

93.2 Media24 has been operating the On the Dot business as a cost centre aiming to do little more than break even. [REDACTED]

93.3 In fact, On the Dot had been established as a cost centre within Media24 with the sole purpose of supporting the publication and sale of Media24's titles. [REDACTED]

93.4 With the migration of its print titles to digital, Media24 has even less incentive to keep On the Dot operating. The business would become increasingly costly for Media24.

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- 93.5 As for the community newspapers, Media24 simply has no interest in continuing to operate these as it continues to focus its news operations on mainly the two hero digital newsbrands - News24 and Netwerk24 - and Daily Sun as a standalone, free-access news website for the middle market. The community newspapers have had declining advertising revenues from FY2022 to FY2024. Unlike its main newspapers, which it can migrate successfully to digital, digital versions of community newspapers are unattractive to advertisers. The alternative to selling the community newspapers to Novus within the next year is therefore not for Media24 to continue to operate them. It is either to close them or sell them to another third party (which would have the same effect as selling them to Novus).
- 93.6 The same is true of Soccer Laduma and Kick Off. Soccer Laduma has suffered a decline in revenue from FY2022 to FY2024. Media24 initially intended to migrate Soccer Laduma to digital along with its other print titles, but it ultimately accepted Novus' offer to include the title in the purchase. However, if Novus does not acquire Soccer Laduma and Kick Off, Media24 will no longer publish them in print and will not migrate them to digital.
- 93.7 In short, in the event that Media24 is prevented from disposing of the target businesses for a period of a year or more, it would not be viable to keep them operating. The unfortunate consequence would be the retrenchment of all print-connected employees together with direct employees who

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provide a support service to the On the Dot operations and the print products.

94 Second, as Mr André van der Veen of Novus confirms in his confirmatory affidavit, whilst Novus sees positive potential for the target firms within its own operations (because of its broader focus on printing and distribution), it is critical that the target businesses embark on a refreshed strategy urgently if they are to recover from a downward spiral.

94.1 Novus' motivation to acquire the target businesses has always been driven by the belief that a more directed, entrepreneurial and growth-focussed management approach could improve the relevance, sustainability, and profitability of these businesses.

94.2 The target firms were in financial difficulty when the transaction terms were negotiated. In pricing negotiations, Novus assumed that the regulatory risk was low, particularly given the absence of an overlap in activities between Media24 and Novus. Novus regarded the pricing as acceptable, but only if a short implementation period was possible. If Novus is unable to proceed with the transaction immediately, it would, at a minimum, need to reconsider the pricing of the transaction if the sale assets were again available for sale after the interdict was lifted.

94.3 Novus is particularly concerned about the impact that a delay in the transaction would have on employees of the target businesses, as well as advertisers.

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- 94.4 Novus has a vested interest in sustaining printed publications. It is imperative that the employees of the target firms are immediately inculcated into this mind-set and culture.
- 94.5 It is also imperative that employee morale is improved, and the negative atmosphere of job insecurity corrected. In the midst of Media24's much-publicised digital migration strategy, talk of retrenchments has been prolific and public. This has created substantial uncertainty for staff, as well as for advertisers, and has impacted the business.
- 94.6 Indeed, during the filing period – over the period August to October 2024 – a significant decline in advertising sales in the community newspaper portfolio occurred. The decline is likely attributable to the advertising market waiting to hear the outcome of the transaction approval process, as well as to a general lack of focus and morale on the part of operational staff in sales and production.
- 94.7 November and December are critical months for the selling of advertising, as January and February tend to be much slower. It is therefore imperative that Novus is able to take over and operate the target businesses without delay, in order to provide much needed clarity to staff and to advertisers. Staff need to be given comfort that their immediate future is at least more secure and that they have viable career prospects under a new enthusiastic shareholder. Novus also intends to appoint a dedicated sales team very soon after implementation, in order to ensure continuity in advertising sales at maximum levels during the last two months of the calendar year, and to commence planning for the 2025 sales cycle.

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94.8 In short, an inability to implement the transaction for another year or more would require Novus seriously to reconsider whether to proceed with the transaction at all.

95 Third, it is precisely because of the time-sensitive nature of the transaction that the parties included clauses in the sale agreement that would ensure speedy implementation. For example:

95.1 As I have already explained, the Sale Agreements provide for a long-stop date of 31 October 2024, and an Effective Date – being the date on which the transfer of the target businesses, including employees, takes place – of the first business day of the month immediately following the date on which the suspensive conditions are fulfilled..

95.2 Novus specifically secured a right to terminate the Sale Agreements, in clause 17.1.3, *“in the event that... any interdict, judgment or other order or action of any court or governmental body restraining, prohibiting or rendering illegal the implementation of the transactions contemplated in this Agreement is in effect, or any legal proceeding has been instituted by any person (including any governmental body) seeking to prohibit, restrict or delay, declare illegal or to enjoin the implementation of the transactions contemplated herein.”*

95.3 As explained, if an interdict is granted in this matter pending the final determination of Part B, including all appeals, Novus’s turnaround strategy for the target businesses will be significantly undermined, and it will give

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serious consideration to exercising its rights to terminate the Sale Agreements.

- 96 In short, granting interdictory relief pending the final determination of Part B, including all appeals, while interim in form, is final in effect. The transaction is too time-sensitive to be placed on ice for more than a year. The effect of doing so would, in effect, be to grant the applicants their final relief.

The requirements for a final interdict

- 97 Recognising that this application is, in effect, an application for final relief impacts on the requirements that the applicants must meet to obtain their interdict.

- 98 Because the interdict that the applicants seek in this application would likely kill the proposed transaction once and for all, it is an application for final relief. Therefore, in Part A of the application, the applicants are required to satisfy the requirements for a final interdict, namely:

98.1 a clear right;

98.2 an injury actually committed or reasonably apprehended; and

98.3 the absence of an alternative remedy.

The requirements for an interim interdict

- 99 In the event that this Court were to find, despite the fact that an interdict will be the death-knell for the proposed transaction, that the Part A relief is interim in

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nature, then the applicants are required to satisfy the requirements for an interim interdict.

99.1 *First:* there must be (at a minimum) a *prima facie* right on the part of the applicants.

99.2 *Second:* there must be a well-grounded apprehension of irreparable harm if interim relief is not granted and final relief is ultimately granted.

99.3 *Third:* the balance of convenience must favour the granting of interim relief.

99.4 *Fourth:* there must be no other ordinary remedy that is available to give adequate redress to the applicant.

100 I am advised that even if *all* the requirements for interdictory relief are satisfied, the Court is still vested with an overriding discretion to refuse an application. In the present case, I respectfully submit that the applicants' abusive conduct, and their persistent badgering of the merging parties and the Court – without any legal basis to do so – is a factor that this Court should take into account in its discretion whether to grant interdictory relief.

101 In the next section, I deal with each of the requirements for interdictory relief.

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NO CLEAR OR PRIMA FACIE RIGHT

102 In order to place the merger decision in its proper context, it is necessary to understand two separate decisions. The first is Media24's strategic decision to migrate some of its print titles to its digital platform. The second is its decision to sell its distribution business and its community and soccer publications.

Consumers shift from print to digital

103 Between approximately 2014 and 2023, Media24 experienced a drastic and irreversible decline in the revenue that it generates from the sale of its print newspapers. The Commission acknowledged this trend in the Media and Digital Platforms Market Inquiry (the **MDPMI**), where it remarked:

"In the South African landscape, based on a recent survey done by Reuters Institute Digital News Report 2023, physical print media continues to decline as a source of news ..."

104 This continual decline in print readership is not as a result of fewer people accessing the news. In fact, more people than ever access news. But they choose to do so digitally. As the Commission noted in the MDPMI, consumers have shifted from print to digital for a number of reasons, including convenience and cost-effectiveness. As to cost-effectiveness, for instance, the print version of Daily Sun costs a reader R140 per month whereas the digital version is available free of charge. A print version of Beeld costs R425 per month, whereas an online subscription to News24 costs R89 per month and an online subscription to Netwerk24 costs R125 per month.

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105 In respect of Media24's print media newspapers, the decline in readership over the last 10 years has been staggering. I attach as "RL13" a document reflecting the average circulation of each of the titles to be migrated to digital, specifically City Press, Beeld, Rapport and Daily Sun as at August 2024. As that document demonstrates:

105.1 In 2014, the average print circulation of City Press was slightly less than 120,000. That figure is now less than 12,000. That represents a decline of 90%.

105.2 In 2014, the average print circulation of Beeld was almost 62,000. That figure is now approximately 10,000. That represents a decline of approximately 83%.

105.3 In 2014, the average print circulation of Daily Sun was more than 283,000 whereas that figure is now about 96% less, at less than 12,000.

105.4 In 2014, the average print circulation of Rapport was more than 176,000, and that figure is now less than 37,000. That is a decline of 79%.

106 Importantly, a decline in circulation – and by implication readership – reduces not only the revenue generated from readers themselves; it also reduces advertising revenue, a major source of a publisher's total revenue. This is because there is a direct correlation between readership numbers and advertising revenue: the greater the readership, the more a publisher can charge for advertising space, and *vice versa*. As more and more readers have swapped print for digital, so too have advertisers. In 2014, City Press, Beeld, Rapport and



Daily Sun generated a combined advertising revenue of R883m. By 2024, that figure had slumped to R256m.

107 In 2014, the four print titles listed above generated total revenue (from both readers and advertising) of [REDACTED]. By 2024, that figure had reduced to [REDACTED]. That is a decline in revenue of more than [REDACTED] in circumstances where the costs associated with producing those publications have *increased* year on year.

[REDACTED]

108 An analysis conducted by Media24 in late 2023 revealed that continuing to produce the four titles in print format would result in the following losses: a loss of approximately [REDACTED]; a loss of approximately [REDACTED]; a loss of approximately [REDACTED]; a loss of approximately [REDACTED]; and a loss of approximately [REDACTED].

109 It was against that backdrop that Media24, in late 2023, began considering no longer printing certain print newspapers. As I have highlighted above, the print newspapers were haemorrhaging sales. This resulted in drastic and irreversible declines in print revenue. Ultimately, Media24 had no choice but to acknowledge (and adapt to) the fact that the vast majority of readers now elect to source their news digitally as opposed to via print media.

110 The dire state of affairs of print media was noted at a Media24 board meeting of 12 April 2024. There it was explained that:

“Given the catastrophic FY24 performance of newspapers, closure has

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become inevitable and urgent action is needed. Management should present a definite plan for the closure of these publications by no later than June 2024."

111 I attach that board minute as "RL14".

112 Although ceasing to print the four newspaper titles was inevitable – given the severe losses they were forecast to incur – Media24 had two options available to it.

112.1 It could discontinue the titles altogether. This would have resulted in the titles themselves being lost and the journalists employed by those businesses being retrenched.

112.2 Alternatively, Media24 could seek to migrate the titles from print to digital.

113 Media24 decided to go with the second option because opting for migration rather than discontinuation would allow the titles to be saved and journalists at those titles to retain their positions. There also remained brand equity in the titles. So their migration to the more preferred platform of digital would enable the titles to be retained and their losses abated.

114 It was in those circumstances that Media24 took a unilateral, commercial decision to migrate some of its print titles to its digital platform.

115 In particular, Media24 decided that Rapport and City Press be incorporated as branded content streams on Netwerk24 and News24 respectively – the core of these platforms' content offering being on Sundays, and Daily Sun as a

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standalone free-access news website for the middle market. Beeld would have a landing page on Netwerk24, but its content would be incorporated in the platform's existing content offering available to Netwerk24 subscribers, as has been the case since 2016.

116 Beeld was treated differently to the other three titles because Beeld operates on a different publishing model. Whereas the three other titles – Rapport , City Press and Daily Sun – have their own editorial teams producing content for the print titles, that is not so in the case of Beeld. Beeld has no separate editorial team: Netwerk24 is home to the editorial production of content for the mainstream daily Afrikaans newspapers (Beeld, Die Burger and the e-edition of Volksblad), which is then "*lifted*" by Beeld, curated for print, and published as Beeld. As such, Beeld is already fully integrated with Netwerk24 and relies heavily on the Netwerk24 editorial team. It is for that reason that Beeld will, in future, be offered not as a standalone title but as part of a subscription to Netwerk24.

117 Once Media24 had taken the unilateral commercial decision to migrate the titles away from print, On the Dot – a primarily print distribution business – was no longer aligned with Media24's business strategy. Because Media24 had taken a commercial decision to focus on digital instead of on print, it no longer had a need for a sizeable print distribution business.

118 In fact, as I highlighted above, On the Dot had been established as a cost centre within Media24 with the sole purpose of supporting the publication and sale of Media24's titles. [REDACTED]

[REDACTED]

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- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- 119 Media24 soon found a potential purchaser in the form of Novus and commenced negotiations. In parallel with the negotiations between Media24 and Novus, Media24 was also in negotiations with the first applicant in this matter.
- 120 It is important to note, at this juncture, that Capital and the second applicant ("**Caxton**") are closely related entities. I understand that Caxton holds a 45% shareholding in Capital. Furthermore, Caxton representatives were present during negotiation meetings and Capital clearly references Caxton in certain of the offers noting that it has the financial backing of Caxton. Accordingly, I shall refer to Capital/Caxton below, where appropriate because it is very difficult for me to differentiate between the two entities given how closely they operate in practice.
- 121 Although the negotiations with Capital/Caxton showed promise, it soon became clear that Capital/Caxton was only interested in acquiring On the Dot *if* Media24 retained the titles in print or if Capital/Caxton could *also* acquire the titles that Media24 had already decided to migrate, namely Beeld, Rapport, Daily Sun and City Press. As the applicants confirm in paragraph 10.6 of their founding affidavit, the offer by Capital to Media24 related not only to the sale assets, but also to the

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migrating titles. These titles were *not*, however, for sale. Media24 had decided to keep the titles and to migrate them from print to digital.

122 This is a point of some significance in this case. And it is entirely lost on the applicants. The applicants continually assert that the merger ought not to have been approved because there was another potential buyer for the assets that would have been a better buyer from a HDP point of view. But what the applicants miss is that the titles that they were so keen on acquiring were not for sale *because they were being migrated*. There was sufficient brand recognition in Rapport, Daily Sun and City Press to transform their existence from the printed page to the digital platform. Media24 was therefore not interested in an offer for these titles.

123 It thus became clear that Media24's plans and those of Capital/Caxton were divergent in material respects. Media24 was looking for a buyer of On the Dot, whereas Capital was only interested in acquiring On the Dot if it came as a package deal, including several of Media24's newspaper titles, which were not for sale. Media24 thus accepted Novus' offer before receiving Capital's first offer because, apart from Media24 considering that a proposed transaction with Caxton could be anti-competitive (insofar as it would increase Caxton's portfolio of community newspapers), there was strategic misalignment between Media24 and Capital/Caxton.

124 These negotiations culminated in a deal to sell Novus (i) On the Dot, (ii) 20 of Media24's community newspapers, and (iii) Soccer Laduma and Kick Off. The board of Media24 ratified the decision to sell the assets to Novus by round robin

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on 10 July 2024. A copy of that resolution is attached as “RL15” and a copy of the minutes of the preceding meeting of 7 June 2024 at which the in-principle decision to approve the sale to Novus was taken, is attached as “RL16”. The transaction constituted an intermediate merger under the Competition Act 89 of 1998, (as amended) (the “**Competition Act**”). The merging parties therefore notified the merger to the Commission on 6 August 2024, and it was conditionally approved on 30 October 2024.

125 At the heart of this case lies a disagreement between the parties about the proper scope of the merger that was notified. In order to properly explain this disagreement, I begin by providing some background to what I am advised the Competition Act recognises as constituting “*a merger*”. I then adopt that understanding in describing what constituted “*the merger*” in this case.

What is “*a merger*”?

126 Sections 12A(1) and 12A(1A) of the Competition Act establish the following framework for the assessment of mergers.

127 When required to consider a merger, the Commission or the Tribunal, as the case may be, must determine:

127.1 Whether the merger is likely to substantially harm competition, and if so whether that harm is outweighed by any benefits likely to arise as a result of the merger; and

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127.2 Whether the merger can or cannot be justified on substantial public interest grounds.

128 Whether a merger is likely to substantially harm competition is to be answered with reference to the factors set out in section 12A(2). And whether a merger is likely to substantially harm the public interest is to be answered with reference to the factors set out in section 12A(3).

129 However, prior to conducting that effects analysis, it is necessary to determine whether the matter under consideration constitutes a "merger". This preliminary step is obligatory and unavoidable because, as the competition authorities have repeatedly held, if the matter is not a merger, then they have no jurisdiction over it. Therefore, before asking what *effect* a matter is likely to have (whether from a competition or a public interest perspective), it must first be determined whether the matter *is* a merger.

130 The answer to that question lies in section 12 of the Competition Act. The section is headed "*Merger Defined*" and is in three parts, as follows:

130.1 Section 12(1)(a) provides that "*For purposes of this Act, a merger occurs when one or more firms directly or indirectly acquire or establish direct or indirect control over the whole or part of the business of another firm.*"

130.2 Section 12(1)(b) then provides some guidance as to how a merger may be achieved. It "*may be achieved in any manner*" including through acquiring shares, an interest or assets, or by way of amalgamation or combination with the other firm.

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130.3 Section 12(2) then amplifies what is meant by the term “*control*” as it appears in section 12(1)(a), and lists a range of ways in which control may be acquired.

131 The definition of a merger can be summarised as follows: a merger may be achieved in any number of ways, but it always necessarily involves one firm acquiring control over a part of the business of another firm. If there is no acquisition of control, there is no merger. And if there is no merger, then (i) no duty to notify the competition authorities arises, and (ii) there is no jurisdiction on the part of the competition authorities to consider the matter.

What is “*the merger*”?

132 On 6 August 2024, Media24 and Novus notified the Commission of an intermediate merger. The notified transaction involved the following parts of Media24’s business being sold to Novus (or to one of Novus’ wholly-owned subsidiaries):

132.1 The media distribution and supply chain management business known as “On the Dot”;

132.2 A portfolio of 20 community newspapers in specific geographic areas within the Eastern Cape, Free State, the Northern Cape and Western Cape; and

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- 132.3 The national soccer newspaper titles known as “Soccer Laduma” and “Kick Off”, a national newspaper covering local and international soccer news.
- 133 This is precisely how the transaction is described in the summary of the Commission’s broad reasons that has been attached as annexure “AR1” to the applicants’ further supplementary affidavit of 7 November 2024.
- 134 There is no dispute between the parties that the notified transaction resulted in Novus acquiring control over part of Media24’s business; that it was therefore a merger as contemplated in section 12; and that it accordingly had to be notified and approved before it could be implemented. There is also no dispute that the transaction was duly notified to the Commission, and that the Commission understood the transaction in this way and approved it.
- 135 The applicants submit, however, that in addition to notifying the Commission of this sale by Media24 to Novus, Media24 also had a duty to notify and seek approval for its earlier commercial decision to migrate certain of its print newspaper titles to digital format. The applicants argue, in essence, that Media24’s unilateral migration decision had to be notified to and approved by the Commission because:

“The decision to terminate the printing of the relevant newspapers is inextricably linked to the sale of the On the Dot distribution business and its part and parcel of the sale and the same set of strategic actions.”

(paragraph 4 of the founding affidavit)

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136 Elsewhere in the founding affidavit the applicants frame the submission as follows:

“Media24’s sale of On the Dot was a direct consequence of the [Media24] group’s intention to close the print editions of the newspapers...”

(paragraph 4 of founding affidavit)

137 Put simply, the applicants argue that because there is a *link* between the migration strategy and the sale to Novus (of the On the Dot business, 20 community newspaper titles and two soccer publications), the merger notification, properly characterised, should have included Media24’s migration decision. This is despite the fact that *no one* was acquiring *anything* as a result of the migration decision. Notwithstanding this brute fact, the applicants’ entire case is that the sale to Novus cannot be separated from the migration strategy because the sale arose as “*a direct consequence*” of Media24’s earlier migration decision (paragraph 10.1 of the founding affidavit). That argument is hopeless for several reasons.

138 First, the decision by Media24 to migrate certain titles from print to digital does not result in any change in control. In the absence of a change in control, there is no merger. Therefore, Media24’s decision to migrate its print titles to digital is self-evidently not a merger. This much, at least, appears to be common cause between the parties because nowhere in the founding papers do the applicants allege that the key defining characteristic of a merger (being a change in control) is actually met in relation to the migration decision. The founding papers do not contain the averment that Media24’s migration strategy resulted in the acquisition

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or establishment of control by any firm/s other than Media24 over the titles earmarked for migration. But if that is so, then the migration is not a merger.

139 Second, if the migration itself is not a merger, then the only way the applicants could argue that Media24 was obliged to notify the migration strategy is by claiming that it *formed part of the merger*. The applicants indeed attempt to advance this argument. They say that the migration strategy is "*inextricably linked*" to, and therefore cannot be separated from, the sale to Novus (see paragraphs 4, 159 and 271). They contend at paragraphs 10.1 and 238 of their founding affidavit that the Commission erred in failing to investigate the migration strategy "*as part of the merger*".

140 However, in order to show that the migration strategy is "*part of the merger*" – or, in competition parlance, is merger-specific – it is insufficient to demonstrate that there is a mere "*link*" between the migration and the sale. In order for something to be said to be part of the merger (or merger specific), it needs to be shown that the merger *caused* it. In other words, it must be shown that it arose *as a result of the merger*. It is therefore insufficient, in this case, for the applicants merely to demonstrate a link between the migration and the sale. In order to say that the migration of titles *formed part of the merger*, they would need to establish that the migration strategy arose *as a result of the sale to Novus*.

141 But Media24 has always maintained that the migration decision stood separately from the sale to Novus. And it made it clear to the Commission on numerous occasions during the investigation that it would implement its digital strategy (including the migration decision) even in the absence of the sale to Novus.

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142 That fact is fatal to the applicants' case that the migration is somehow part of the merger. Media24 has made it clear that the migration is going to occur whether there is merger approval or not. Once that is so, then the sale to Novus is not the *cause* of the migration.

143 The applicants' own founding papers reveal how precarious their facts are on this aspect of their case.

144 Paragraph 10.1 of the applicants' founding affidavit reads as follows:

"Media24's sale of On the Dot was a "direct consequence" of the [Media24] group's intention to close the print editions of the newspapers..."

145 This paragraph contains a critical concession by the applicants. It is an acknowledgement that the sale to Novus was caused by the migration strategy; not the other way around.

146 In order to have any basis to attack the Commission's merger approval on the ground that it failed to take into account the migration decision, the applicants would have to establish that the migration strategy arose as a result of the sale to Novus. But far from doing this, their own articulation of the facts confirms the opposite: that the sale to Novus arose as a result of the migration strategy. In those circumstances, the applicants cannot argue that the decision to migrate from print to digital arose as a result of the decision to sell On the Dot. The fact that there is some relationship between Media24's separate decision to adopt

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the migration strategy, on the one hand, and its decision to sell On the Dot to Novus, on the other, does not make the latter a cause of the former.

147 I have already attached as “RL14” a copy of the Media24 board minutes dated 12 April 2024. Those minutes spell out, in terms, what caused the adoption by Media24 of the migration strategy. As the minutes confirm, the migration strategy was caused not by the disposal of On the Dot but by “*the catastrophic FY24 performance of newspapers*” which meant that “*closure has become inevitable.*” Those minutes are also important because they confirm what the applicants say in paragraph 10.1 of their founding affidavit, namely that it was the strategy to migrate away from print that would render On the Dot surplus to Media24’s requirements. As the minutes confirm:

“Action as contemplated above completely changes the presented FY25 business plan as noted. Operating in the logistics field becomes superfluous/redundant.”

148 The reference to “[a]ction as contemplated above” is a reference to the decision by Media24 to no longer offer the migrating titles in print format. In simple terms, the minutes reflect two important facts. First, the migration strategy was caused not by the sale to Novus but by the catastrophic decline in print circulation/readerships and revenues. Media24 simply responded to market changes, as any responsible entity would have done. That unilateral commercial conduct was not a merger. Second, the adoption of the migration strategy resulted in On the Dot falling outside of Media24’s core strategic focus.

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149 It is thus self-evident that the applicants are unable to show that the migration of the print titles to digital arose as a result of the merger, i.e., as a result of the sale by Media24 to Novus of On the Dot and the community and soccer publications. That is because the facts are the opposite: Media24 adopted the migration strategy unilaterally and not as a result of the sale to Novus, and always made clear to the Commission that it would implement its digital strategy regardless of whether the sale to Novus took place.

150 The applicants spend pages and pages of their founding affidavit, and a further affidavit filed after launching the application, trying to drive home their point about the interconnectedness of the migration decision and the sale. They do so, however, on the basis of certain statements that Media24 has made, over the period of this merger approval, in which it has linked the *timing* of the migration to the merger approval.

151 Thus, when I sent the email to Media24's staff on the morning of 31 October 2024 notifying them of the merger approval, and I said that the approval "paved the way" for Media24 to take the next steps on implementing the digital migration decision, I was updating the business about the timing of the decision and the migration of the print titles.

152 The need to update the business about this timing arose because of the manner in which the applicants had been dealing with Media24 even before our notification of the merger in this case. It is necessary for me to describe some of these dealings in order to place my communication in its proper context.

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152.1 On 18 June 2024, the former CEO of Media24 stated publicly that the migration to digital was being considered by the Media24 board. A copy of a media article at the time is attached as “**RL17**”.

152.2 After this news became public, Media24 faced a barrage of demands from the applicants.

152.2.1 On 3 July 2024, Nortons wrote to Media24. In this correspondence, they first launched their theory about the inextricable link between the migration decision and the sale to Novus. They even defined these two separate events as “the composite transaction” in their letter and demanded an undertaking from Media24 that it would “notify” this “composite transaction” to the competition authorities “as a merger”.

152.2.2 The letter also demanded undertakings that no further steps would be taken in relation to either the migration decision or the sale until “the composite transaction” was approved by the Commission.

152.2.3 As has become increasingly their custom, they demanded this undertaking *within a day*. A copy of this letter is attached as “**RL18**”.

152.3 On 4 July 2024, Media24’s attorneys, ENS, responded and did not provide the required undertakings. Instead, they assured the applicants that the necessary notifications that were required to be made to the Commission, would be made. A copy of this letter is attached as “**RL19**”.

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152.4 The absence of undertakings was not acceptable to the applicants. So on 7 July 2024, Nortons again wrote and demanded that undertakings be given not to proceed with any of the migration steps unless and until “the composite transaction” had been approved by the Commission. This time, Nortons gave Media24 and Novus *two days* to provide the undertakings or face an urgent application that would be launched by the applicants and would involve, remarkably, service of the application on Mr Koos Bekker personally and Naspers. A copy of this letter is attached as “**RL20**”.

152.5 At this stage, the merging parties wished to be able to focus their attention on notifying the Commission and being available to engage the Commission as and when required during its investigation process. They did not want to be embroiled in precipitous urgent litigation that would be a serious distraction while the competition investigation was underway.

152.6 As a result, we decided to give an undertaking not to implement any retrenchments nor to migrate the print titles until after the competition approval process was completed. These commitments were given in letters dated 9 and 10 July 2024, which are attached as annexures “**RL21**” and “**RL22**”. The letters made it perfectly clear that in giving these undertaking we did not accept the applicants’ “continuing negative and incorrect characterisation of the proposed transaction”.

152.7 So the undertakings were given without any concession that the applicants’ construct of the “composite transaction” was correct. The applicants are therefore wrong when they claim that Media24 “expressly acknowledged that it *could not* close the newspaper titles or retrench

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employees relating to the newspapers until it had received the approval of the Commission" (paragraph 13 of the second supplementary affidavit – emphasis added). This is just false. We gave the undertaking that we *would not* close the titles until after the merger process was completed. We did not say that we "could not" do so. At the same time, we also stated clearly that we would continue with the s189 consultation process related to the closures. The difference between being *unable* to close the papers and retrench staff, on the one hand, and *electing* not to do so while the competition approval process was underway, on the other, cannot be lost on the applicants because we repeatedly made it plain, in our correspondence with them, that we did not accept their characterisation of the merger. And yet, they continue to trot out plainly false accounts of what we did and said.

152.8 We gave the undertakings that we did, not because we accepted their characterisation of the transaction, but to avoid having to fight urgent proceedings about a notification that had not yet even been placed before the Commission. We therefore decided to give an undertaking not to proceed with the implementation of the migration or associated retrenchments until the competition investigation process was completed.

153 Once the Commission had approved the merger on 30 October 2024, it then became necessary for me to update the business on the fact that the sale had been approved and the migration steps would now be implemented. This was not a concession that the migration was a part of the merger. On the contrary, the migration was a distinct aspect of Media24's digital strategy. But because of

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the applicants' repeated threats to run to court to interdict the implementation of that process, we had decided to hold back on its implementation until the Commission had, at least, had an opportunity to assess the merger and decide whether to approve it.

154 Once that approval was given, I then informed the business that the two processes – implementing the merger and rolling out the migration – were now occurring in tandem.

155 The applicants have also tried to take the communication that Novus Print (Pty) Ltd ("**Novus Print**") sent to its employees on 1 November 2024 and turn it into some sort of concession that the migration decision formed part of the merger. The applicants claim that the letter reveals that, because the migration decision would affect the Novus Print Gauteng's print volumes, and hence have an impact on employment at Novus Print, these employee effects are "a direct consequence of the Commission's approval decision" (paragraph 11 of the first supplementary affidavit). But, once again, the applicants get the causation wrong.

156 The sale to Novus was *the result of* the migration decision because once Media24 had decided to migrate its print titles to its digital platform, it no longer had a need for a distribution business for print publications. But that is not the same thing as saying that the migration decision would not have been implemented unless approval for the sale had been obtained.

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157 Media24 has consistently maintained, and continues to maintain, that even without competition approval for the sale it was going to migrate the print titles. That decision, to migrate the print titles, does have an impact on Novus Print Gauteng's print volumes because the migrated titles will now no longer require distribution in Gauteng. They will be distributed online.

158 But the impact of Media24's migration decision was going to negatively impact Novus Print's Gauteng business, regardless of whether the merger was approved or not. This is the point that the applicants' keep missing in their application. They are fixated with trying to find any association between the merger and the migration decision, so that they can bind them together with a tortured argument that the migration decision should have been notified as part of the merger. And they are driving at this result because they have a commercial interest in acquiring the print titles or ensuring that they have a continued existence in print. But Media24 had no obligation to sell its print titles to anyone or to maintain them in print. It has goodwill in those titles and it is fully entitled to, and will, exploit that goodwill on its digital platform.

159 The impact that was identified in the Novus letter of 1 November 2024, is an impact occasioned by Media24's migration decision. And that decision was going to be implemented whether or not the merger had been approved. The applicants are therefore incorrect when they endeavour to use these communications to support their thesis that the migration "could not take place absent the Commission's merger approval" (see first supplementary affidavit para 7).

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160 To reiterate: the migration decision was taken for its own strategic reasons and is reflective of Media24's experience of a readership that is heavily tilted towards digital publications. The migration would have continued whether or not the merger approval was obtained.

161 The applicants' case for their interdict depends on them showing on a preponderance of probabilities (if the Court accepts that this is a case for final relief) or *prima facie* (if the Court takes the view that this is a case for interim relief) that the migration decision was *a result of* the sale to Novus. In other words, they must show that the sale to Novus *caused* the migration decision. But Media24 has consistently explained that that is factually not so.

162 The impact of the migration decision on the business of Novus Print Gauteng is what gave rise to the 1 November 2024 letter to Novus Print employees. And that impact would have been felt whether or not the sale to Novus went through. A confirmatory affidavit of Mr André van der Veen who gave instructions to the author of the 1 November 2024 letter will be filed with this affidavit.

Summation on the merger

163 The merger in this case was the acquisition by Novus of Media24's On the Dot business, 20 community newspapers and 2 soccer titles. That merger was notified and approved by the Commission.

164 *Before* Media24 even decided to sell On the Dot and the newspapers to Novus, it had taken a separate and independent decision to migrate some of its print

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titles to its digital platform. That migration decision meant it no longer had a need for a sizeable print distribution business and it was then that it decided to sell On the Dot.

165 I am aware that Caxton took a similar decision during the Covid-19 pandemic in 2020 to close both its magazine publishing operations and, in the light of the considerably reduced print volumes, also its distribution business (RNA).

166 Media24 made it clear throughout the Commission's investigation that the migration decision was separate from the merger transaction and that the migration would continue whether or not the merger was approved.

167 As a result, the applicants' repeated efforts to widen the net of the merger to include the migration decision is simply wrong. They were so hell-bent on achieving this warped characterisation that they even began badgering us with their construct of "the composite transaction" before the competition authorities were even notified of the transaction.

168 Given that this is the main point on which the applicants' review hinges, they have failed to establish even a prima facie right to the interdict they seek. Once it becomes clear that the merger does not include the migration to digital then most of what the applicants complain about, from the point of view of alleged competition impact to the public interest results, simply has no purchase.

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The counterfactual

169 Even the applicants' case for the relevant counterfactual is deeply flawed.

170 I am advised that when assessing the likely effects of a merger, one compares the competitive landscape absent the merger (the counterfactual position) with what it is likely to look like after the merger (the factual position). It is by comparing and contrasting those two hypotheticals (the factual and the counterfactual) that the competition authorities engage in the section 12A analysis, which is whether the merger (i) is likely to substantially harm competition, and (ii) can or cannot be justified on substantial public interest grounds.

171 Applied to the facts of this case, the counterfactual is answered by asking what Media24 would do with the sale assets if the merger had been prohibited. The answer is a simple one: If the merger had been prohibited, Media24 would have done one of two things.

171.1 It would have closed down On the Dot if it became too costly to operate, the community newspapers and Soccer Laduma. Importantly, this could have been done absent competition approval; firms do not require merger approval when they respond to market forces by closing down parts of their business.

171.2 It would have sold On the Dot, the community and soccer titles to another purchaser.

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172 The applicants contend for a very different counterfactual. The applicants postulate a counterfactual in which, if Media24 could not have sold the sale assets to Novus, then it would have sold them to Capital. In fact, not only would Media24 have sold the sale assets to Capital, claim the applicants, Media24 would *a/so* have sold the migrating titles to Capital. And finally, once the migrating titles were under Capital's control, Capital would somehow have miraculously reversed the global consumer trend away from print, thereby returning the print titles to profitability (see paragraph 10.6 of the founding affidavit).

173 Not only does the counterfactual contended for by the applicants run contrary to the facts, but it also presupposes that the Commission has the power to order firms to sell assets, and to direct the parties to whom they must sell.

174 The applicants' counterfactual is undermined by the facts because at no point were the migrating titles ever for sale. They have always been earmarked for migration from print to digital. It is therefore irrelevant that Capital may have harboured ambitions of acquiring those titles. They were never for sale. That fact alone disposes of the applicants' counterfactual.

175 In addition, the Commission has no power to order firms to sell parts of their business, nor to direct a (non)seller to sell to a specific purchaser. As section 14(b) of the Competition Act makes plain, following an investigation of an intermediate merger, the Commission may do one of three things: It may prohibit the merger; it may approve the merger unconditionally; or it may approve the merger subject to conditions. The Commission has no power to order Media24 to sell its migrating titles. Even if the Commission had that power, it could still not

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order Media24 to sell the migrating titles to Capital. The applicants' counterfactual is thus both factually and legally unsustainable.

176 It is also highly implausible because it rests upon the applicants' conclusory assertion that Capital would turn the print titles from a position of severe distress to one of profitability. This, in circumstances where the global trend is that readers are constantly switching away from print in favour of digital. Although the applicants boast that they could profitably operate the print titles, nowhere have they provided any detail as to how they would stem the to-date-irreversible global flow of readers from print to digital.

The effects of the merger

177 According to the applicants, the merger will result in decreased volumes of print media being carried by On the Dot, resulting in an increase in the average per-unit cost of distribution. That price increase, so argue the applicants, means that the Commission was required to prohibit the merger because of the binding precedent of the Constitutional Court in *Mediclinic* and the Tribunal in *Draslovka*. I am advised and submit that the applicants have misconstrued *Mediclinic* and *Draslovka* in material respects. Further argument in this regard will be advanced during the hearing of the matter.

178 In addition, although it is correct that the transition of the migrating titles from print to digital is likely to result in a decrease in the volumes distributed by On the Dot, this is not a consequence of the merger. It is, instead, a result of Media24's

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unilateral decision to migrate the titles from print to digital, which was always going to proceed, irrespective of whether the merger was approved or not.

179 Put differently, whether or not Media24 sells the sale assets to Novus, and even if On the Dot were to remain in Media24's hands, the transition from print to digital would result in a decrease in volumes distributed by On the Dot. The sale of assets to Novus (which is what constitutes the merger) therefore has no effect whatsoever on the average per-unit cost of distribution. Properly defined, the merger does not result in any decreased volumes being distributed by On the Dot. Neither *Mediclinic* nor *Draslovka* serve as authority for the proposition that a non-merger-specific price increase obliges the Commission to prohibit a merger.

180 For all those reasons, the applicants' reliance on *Mediclinic* and *Draslovka* is misplaced.

181 It also appears that the applicants advance an input foreclosure case (see, for instance, the reference in paragraph 180 of the founding affidavit to the applicants' theory of harm being one of foreclosure). However, as I demonstrate below, the applicants' input foreclosure theory runs contrary to the basic economics of input foreclosure.

182 In the merger context, input foreclosure arises when, following a merger, Firm A has the ability and the incentive to disrupt its competitors' access to an important input, thereby undermining their ability to fairly compete with Firm A.

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183 According to the applicants, the critical input in question is access to cost-effective distribution services. A valid input-foreclosure theory ought to proceed as follows: Post-merger, Media24 will have the ability and the incentive to restrict access to cost-effective distribution services. But the merger does precisely the opposite. It results in Media24 losing control over the (allegedly) important input, namely distribution services. The merger thus involves Media24 giving up control over (as opposed to acquiring control over) the (allegedly) important input. Pre-merger, Media24 has control over On the Dot. Post-merger, Media24 loses that control, because On the Dot is being sold to Novus.

184 The applicants therefore have the entire input foreclosure analysis back-to-front. One might ask rhetorically, if Media24 was genuinely interested in harming its rivals' competitive position by driving up their distribution costs, why would it be selling the means by which to engage in that foreclosure strategy? If Media24 had the anti-competitive intent it is accused of having, it would simply have kept control of On the Dot and increased the prices to the likes of Caxton. Alternatively, it would have closed down On the Dot, thereby removing from the market the (allegedly) critical input.

185 I also highlight that Media24 sold On the Dot to Novus for a nominal fee of R1. It is thus clear that Media24 never sold it for any commercial gain.

186 Given that the merger results in Media24 losing control over the allegedly important input, which is transferred to Novus, the correct question to ask is whether the merger results in Novus acquiring the ability and incentive to foreclose customers from distribution services in the form of On the Dot. The

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short answer to this is that Novus has no incentive to foreclose rivals from accessing distribution services in the form of On the Dot.

187 In order for a foreclosure theory to withstand scrutiny, it must be shown that the lost revenue at the upstream level is outweighed by increased sales at the downstream level. Applied to this case, the applicants must show that Novus is able to drive up its rivals' distribution costs such that their customers stop buying their newspapers and start buying Novus' newspapers instead.

188 This strategy is highly unlikely because the community newspapers (currently being acquired by Novus from Media24) only account for approximately 6% of On the Dot's revenues. Novus would have no incentive to foreclose 94% of its client base, in the hope that its community newspapers suddenly increase their readership to such an extent that they could outweigh those losses suffered by foreclosing 94% of its client base. A foreclosure strategy by Novus foreclosing its rivals' access to On the Dot's distribution services would be highly unprofitable. Novus thus lacks the incentive to foreclose rivals' access to On the Dot.

189 In fact, if anything, as compared to Media24's incentives, Novus will have a far greater incentive to supply third-party titles with distribution services. That is because Novus' newspaper and magazine portfolio is much smaller than that of Media24. Pre-merger, On the Dot derived more than 50% of its revenue from Media24 titles. Post-merger, On the Dot will only derive 6% of its revenues from Novus titles. In those circumstances, the merger likely *weakens* (as opposed to strengthens) any incentive for On the Dot's distribution services to be foreclosed to rivals.

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190 Finally, even if Novus were to foreclose access to On the Dot, which I deny is a realistic possibility, Novus could take no comfort that this would result in significant sales being diverted to it. Given the trend from print to digital, an increase in rivals' costs may well cause customers simply to move from print to digital instead of moving to Novus' print titles.

191 Once one appreciates that the merger in this case is the sale by Media24 to Novus, and that the counterfactual is the closure of the sale assets, then all of the applicants' strident criticisms of the Commission fall away.

192 In the sections that follow, I show how these basic facts undermine every one of the applicants' review grounds.

Analysis of review grounds

193 The first ground of review commences at paragraph 238 of the founding affidavit and is that the Commission erred in failing to appreciate that the migration strategy formed part of the merger. I have already shown why that criticism is factually and legally unsustainable. The Commission was correct to confine its assessment to the effects of the sale to Novus. That is the merger. Had the Commission expanded its investigation to investigate something that did not arise as a result of the merger, the Commission would have acted *ultra vires*.

194 The second ground of review commences at paragraph 241 of the founding affidavit and is that the Commission erred in failing to take account of the merger raising the average per-unit cost of distribution, leading ultimately to harm to the

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media sector as a whole. But the merger (which is the sale to Novus) has no adverse impact whatsoever on the average per-unit cost of distribution. Even the applicants appear to accept this. This ground of review rests upon a mischaracterisation of the merger and a flawed counterfactual. It is only if the merger somehow includes Media24's earlier, unilateral migration decision, and if the counterfactual is the sale of the migrated titles to the applicants, that this ground of review arises.

195 I note the submission in paragraph 243 of the founding affidavit that "*for this reason too, the transaction falls to be set aside.*" It is not clear what is meant by that because nowhere in their notice of motion do the applicants ask that any transaction be set aside.

196 The third ground of review commences at paragraph 244 of the founding affidavit. It is premised on the Commission having allegedly erred in not requiring that the migrated titles and On the Dot be sold to Capital. As I have explained above, the Commission lacks the power to order firms to sell parts of their business to specific purchasers.

197 In addition, it is only if a merger is shown to harm the public interest (or competition for that matter) that the competition authorities are empowered to do anything. Even if it could be shown that Media24's migration strategy might increase the per-unit cost of print distribution, that would not be as a result of the merger. If something is not as a result of the merger, then it falls outside of the competition authorities' jurisdiction. As the Tribunal has previously remarked:

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“... A further consideration is that the public interest consideration must be merger specific. Expressed in less technical language, unless the merger is the cause of the public interest concerns, we have no remit to do anything about them...”

198 The fourth ground of review commences at paragraph 252 of the founding affidavit and is that the Commission erred in failing to appreciate the effect of the merger on HDP firms and SMEs to participate. This ground of review suffers from the same unsound analysis as the second ground of review; it rests upon a mischaracterisation of the merger and an unfounded counterfactual.

199 This ground of review is also framed in the most vague and conclusory terms, rendering a proper response impossible. For instance, this ground simply asserts, in the abstract, that the merger will harm HDP firms and/or SMEs. But this is not adequate, the applicants were required to set out, in specific terms:

199.1 The likely increase, as a result of the merger, in the average per-unit cost of distribution.

199.2 How that increase would affect each of the HDP firms or SMEs allegedly impacted, including (i) what proportion of their total costs consist of distribution costs, (ii) their profit margins, and (iii) how the increased distribution costs would erode their profit margins such that the merger will *“likely result in various other print newspaper titles having to close.”*

200 All of that detail was necessary and yet none of it has been pleaded. This Court has often cautioned that one must distinguish *“inferences and probabilities”* from

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"*conjecture and speculation*". The applicants' conclusory assertions fall into the latter category.

201 The fifth ground of review commences at paragraph 257 of the founding affidavit and is that the Commission erred in failing to appreciate the effect of the merger on employment.

202 As the Court will note from paragraph 257.2, this part of the applicants' case is framed with reference not to "*the merger*" but with reference to "*the proposed restructuring*". That is the wrong starting point. The Constitutional Court has recently held that it is important to distinguish between retrenchments effected in response to adverse market conditions and retrenchments that are merger specific. The applicants seek to conflate the two.

203 The applicants then refer to potential retrenchment at On the Dot. But nowhere do the applicants explain how those could be said to be merger specific or as a result of the merger. Print readerships are declining. That is simply the position in which this market finds itself. The fact that a decline in print readership may ultimately necessitate adjustments to the workforce at On the Dot does not make any such retrenchments a result of the merger.

204 In respect of paragraph 259, I confirm that Media24 has undertaken to retain all of the journalists employed at the migrating titles. I deny that the migration strategy reduces the need for journalists. Journalists remain as important as ever; and it is incorrect to assume, as the applicants do, that the shift to digital somehow reduces the need for, or the importance of, journalism.

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205 The sixth ground of review commences at paragraph 271 of the founding affidavit and is merely a repackaging of one or other earlier ground of review. In essence, the complaint is that Media24's migration strategy will raise distribution costs, resulting in the demise of the media sector. The merger is alleged to have implications for the constitutional right to freedom of expression (see paragraphs 272 and 278 of the founding affidavit). It is even described as being "a threat to democracy itself" in our country (paragraph 13 of the second supplementary affidavit). However, I have already demonstrated why the foundational premise of this ground of review – increased distribution costs – is not merger specific. I have also demonstrated how the applicants' claims of the demise of the media sector are unfounded and alarmist.

206 The seventh ground of review - the Commission's reasons. In the second further supplementary affidavit, the applicants endeavour to make much of what is not contained in the broad summary of the Commission's reasons that were provided to the applicants on 7 November 2024. The second supplementary affidavit reads as an attack on the Commission's decision based on what the summary *does not contain* (see, for example, paragraphs 11, 12, 14, 26 to 28, 29 to 31, 32 to 36, 37 to 38, 39 of the second supplementary affidavit).

207 But the summary is just that – a summary. And the Commission was very clear when it provided the summary to the applicants. that "the full reasons for the Commission's decisions will be provided in the form of its investigation report in due course, when the Commission files the non-confidential version of the Rule 53 record" (see annexure AR1 to the second supplementary affidavit).

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- 208 This means that the applicants may not use the summary to derive review grounds based on what the Commission did not consider. They do not yet have the full reasons from the Commission and they have been told they are still coming.
- 209 The eighth ground of review - conditions are not fit for purpose. In paragraphs 15 to 25 of the applicants' second supplementary affidavit they contend that the conditions imposed by the Commission are "*not fit-for-purpose*". Under this heading, the applicants raise four concerns with the Commission's reasons.
- 210 Three of the four complaints flow not from the merger but rather from Media24's unilateral commercial decision to migrate the titles from print to digital. The fourth complaint appears to be that the Commission ought to have ordered Media24 to sell the migrating titles to Capital. I address the last of those first. I then address the three complaints that flow from Media24's migration strategy.
- 211 In paragraph 25, the applicants argue that the Commission ought to have imposed conditions that take account of the fact that Capital was a prospective purchaser of the migrating titles. That submission is misguided in that it assumes the Commission has a power that it does not have.
- 212 As section 14(b) of the Competition Act makes plain, following an investigation of an intermediate merger, the Commission may do one of three things: it may prohibit the merger; it may approve the merger unconditionally; or it may approve the merger subject to conditions. But what it cannot do is to order Media24 to sell

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its migrating titles. Nor does it have the power to instruct Media24 to sell to the Commission's preferred purchaser.

- 213 In paragraph 16, the applicants criticise the Commission for failing to include a condition to address the fact that the sale by Media24 to Novus of On the Dot:

*“... will have significant anti-competitive knock-on effects, because the removal of the Media24 newspapers from the On the Dot distribution business will result in **lower** volumes of newspapers being distributed, and **increased** costs to be borne by competing third-party newspaper publishers which are reliant on On the Dot's services.”*

- 214 That is wrong as a matter of fact. The sale of On the Dot will have no impact whatsoever on the volumes distributed by On the Dot. What is likely to have an impact on On the Dot's volumes is Media24's unilateral commercial decision to migrate from print to digital. But that decision did not arise as a result of the merger.

- 215 The applicants thus continue to perpetuate the error of conflating Media24's migration strategy and its sale to Novus of On the Dot. In those circumstances, the Commission was correct to not include a condition to address the non-merger-specific decision by Media24 to migrate the titles away from print.

- 216 In paragraph 17 of the second supplementary affidavit, the applicants criticise the Commission for failing to impose a condition to cater for the structural change brought about as a result of the merger. But the sale to Novus did not alter the

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market structure at all. In fact, the applicants do not even set out what aspect of the sale to Novus is said to have caused "*permanent structural change*" to the market. Neither the sale of the soccer publications nor the community newspapers can be said to have caused a change in market structure. The same is true of the sale of On the Dot. The only structural change that the applicants could potentially be referring to is Media24's migration strategy. I deny that that constitutes a permanent structural change but even if it did, as explained elsewhere, that decision is not merger specific.

217 In paragraphs 18 to 22 of the second supplementary affidavit, the applicants argue that the Commission ought to have treated as merger specific any retrenchments that were "*related to*" Media24's decision "*to close the print titles*". First, to establish merger specificity, it is insufficient to argue that a retrenchment is "*related to*" the merger. A retrenchment is only merger specific if it arose as a result of the merger. Second, for all the reasons explained elsewhere, Media24's migration strategy (which the applicants refer to as Media24's decision to close the print titles) is not merger specific because it did not arise as a result of the merger. The Commission thus had no power to impose conditions to cater for the effect of Media24's migration strategy.

218 The ninth ground of review - alleged ex post facto bolstering. In the second supplementary affidavit, the applicants have also advanced a truly remarkable new review ground. They say that they "understand" that the Commission engaged with unnamed "third parties" and sought unidentified "information" from them on the day of the merger decision. They try to introduce this as evidence that the merger decision was a rush job (paragraphs 40 of the second

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supplementary affidavit). I cannot meaningfully respond to such vague allegations as this.

219 And without a record yet provided by the Commission, I respectfully submit that this Court is not even in a position properly to assess what was and was not taken into account by the Commission.

220 The same goes for the applicants' allegations that the Commission is trying illegitimately to bolster the review record (paragraph 41 of the second supplementary affidavit). None of this can be properly interrogated at this stage because the record has not yet been produced. As a result, I respectfully submit that the applicants' effort at conjuring up a review ground, on which to leverage an interdict, should not be entertained.

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NO IRREPARABLE HARM

221 The applicants are required, for purposes of interim relief, to establish a well-grounded apprehension of irreparable harm if interim relief is not granted and final relief is ultimately granted. For purposes of a final interdict, they must establish an injury actually committed or reasonably apprehended.

222 The applicants claim that the implementation of the merger would:

222.1 induce the permanent closure of well-established and widely read print newspaper titles and thereby negatively affect media diversity;

222.2 increase distribution costs for remaining newspapers, leading to a "death spiral" through which smaller newspapers and independent media close;

222.3 lead to permanent job losses at the newspaper titles and in distribution;

222.4 allow Media24 to strengthen its dominance, particularly in the digital news space;

222.5 irreversibly impact employees of Media24, On the Dot and other newspaper publishers.

223 Each of these alleged consequences are premised on the applicants' misconception as to the nature of the merger.

224 It is simply false that the merger – the sale of On the Dot, the community newspapers, and Soccer Laduma / Kick Off – will induce the permanent closure of any print titles or negatively affect media diversity. The merger has not induced

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Media24's digital migration strategy. Quite the opposite. Media24 has unilaterally decided to migrate its major print titles to digital. I deny that that decision negatively impacts media diversity at all; the same titles continue to exist, but merely in digital form. But more importantly, any consequences that might arise from the migration to digital are not consequences *of the merger*.

225 It is similarly false that the merger will result in an increase in distribution costs for remaining newspapers. It is the transition of the migrating titles from print to digital that is likely to result in a decrease in the volumes distributed by On the Dot.

226 For the same reason, it is entirely false that the merger will result in job losses at newspaper titles and in distribution, or that it will impact employees at Media24, On the Dot or elsewhere. The merger, properly defined, will result in no job losses or negative impact on employees at all.

227 There is similarly no merit in the claim that the merger will enhance Media24's dominance.

227.1 As a start, Media24 is not dominant in digital news. While Media24 is a leading South African online news publisher, it faces stiff competition from local online publications such as the Daily Maverick, Mail & Guardian, IOL, Caxton's Citizen, eNCA, and the SABC, as well as international publications like BBC News, CNN and the New York Times. It also faces competitive constraints from online platforms, such as search engines and social media platforms. This landscape is also scoped and investigated in

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detail by the Commission in the MDPMI, as set out in further detail below in the seriatim section.

227.2 Moreover, as explained, the merger results in Media24 *losing* (as opposed to acquiring) control over On the Dot.

227.3 And the merger does not enhance Media24's online position. If anything, it weakens Media24's online presence, as it entails Media24 divesting of titles with a sizeable online presence, such as Soccer Laduma (which is hosted on the online platform SNL24, which had close to 27 million average monthly views in FY2024).

228 The applicants' claims of irreparable harm resulting from the merger are thus unfounded. The merger has none of the impacts for which the applicants contend.

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BALANCE OF CONVENIENCE

229 Balance of convenience would only be a relevant consideration if the relief sought by the applicants were to be characterised as interim in nature.

230 I have explained above that the applicants' claims of irreparable harm resulting from the merger are entirely unfounded, and that the merger – properly understood – has none of the impacts for which the applicants contend. Against this non-existent harm must be weighed the harm to the merging parties if interdictory relief is granted.

231 However, before discussing that harm, it is important to first be clear about what the applicants' interdict covers and what it does not.

The interdict does not affect the digital migration strategy

232 In prayer 2.1 of Part A of their notice of motion, the applicants seek to interdict the first to seventh respondents from "taking any steps to implement the proposed merger". The merger is, as I have explained, the sale by Media24 to Novus of On the Dot, the community newspapers and the two soccer publications. As I have explained above, the merger, properly understood, has already been implemented.

233 The merger does not include Media24's separate, unilateral decision to migrate its print titles to digital. This means, first, that even if the interdict was to be granted, the migration to digital and the retrenchments that may result from the lower distribution of print titles as a result of the migration decision are not "steps

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to implement the proposed merger". The parties would therefore not be prevented from continuing with those steps even in the face of an interdict because they are not part of the merger.

234 It is therefore only if the merger is understood in the loose terms that the applicants' advance, as somehow including the migration to digital decision, that the interdict could have any practical effect. But on that construction of the merger, an interdict to stop the migration strategy would cause Media24 substantial harm.

Harm to Media24

235 The impact of an interdict to stop Media24 implementing its migration strategy would be nothing short of catastrophic for the business.

236 As I have explained above:

236.1 Between 2014 and 2024 the total revenue attributable to the four print titles shrunk from [REDACTED] to [REDACTED] or by more than [REDACTED] while the costs of production increased. [REDACTED]

236.2 Given the accelerated decline in revenue – led by deepening advertising shortfalls – since our original forecast (referred to above in paragraph 108), we amended the financial outlook for the four titles accordingly in July 2024. Based on this, continuing to produce the four titles in print format is forecasted to result in losses of [REDACTED] of [REDACTED]

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[REDACTED] of [REDACTED] and of [REDACTED]
[REDACTED]

236.3 That is an outlook of losses of [REDACTED] over three years between FY2025 and FY2027. [REDACTED]

237 The consequence of Media24 having to incur losses of this kind for a sustained period would be the inevitable restructuring of the business which is likely to include the full closures of the relevant print newspapers, and subsequently, retrenchments.

238 I respectfully submit that, when weighed against harm of this kind, the speculative and misconceived harm about which the applicants complain pale in comparison.

No tender to compensate

239 For the reasons set out above, if the applicants were to obtain interim relief but were to fail in their review relief, Media24 would by then have suffered significant harm:

239.1 If the implementation of the merger, properly considered (i.e. the sale of the sale assets to Novus) is unwound, then Media24 would be required to incur the costs of retaining and then likely closing down the target businesses.

239.2 If Media24 is interdicted from migrating its print titles to digital, then, as explained, it is likely to suffer year-on-year losses in the tens of millions of rands in the coming years.

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240 I am advised that this Court has held that an application for interim relief should usually be accompanied by a tender to compensate the respondent for the damages it would suffer if the applicant were to obtain an interim interdict but fail in its final relief.

241 The applicants have made no such tender. This is a further reason why the balance of convenience favours Media24.

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242 In this section of the affidavit, I deal with the remaining averments in the founding and supplementary affidavits that have not already been addressed in my thematic response above. I therefore do not deal with every averment in the founding affidavit in sequence. Any averment that is inconsistent with what is set out above, or in what follows, is denied.

Founding affidavitAd paragraph 6

243 I have already explained that any increase in distribution costs is not as a result of the merger. The applicants are aware of that, and are therefore constrained to define the merger not only as the sale to Novus but as including Media24's unilateral commercial decision to migrate the titles from print to digital.

244 I have already explained that the applicants' input foreclosure theory is non-sensical. Media24 is *losing* (as opposed to acquiring) control over On the Dot. If Media24 was genuinely seeking to use On the Dot to leverage its online market power, which is the applicants' claim, then Media24 would simply close down On the Dot or would increase the prices that On the Dot charges Media24's rivals. It has elected instead to hand control of On the Dot to an independent third party, Novus. It has done so for a nominal fee of R1. In those circumstances, the claims that Media24 has an anti-competitive motive are demonstrably unfounded.

Ad paragraph 7

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245 I deny the insinuation that the merger has been designed and implemented in a way that enhances Media24's competitive position. As explained, the merger results in Media24 losing (as opposed to acquiring) control over On the Dot, which is said to be a critical component of Media24's foreclosure strategy.

Ad paragraph 8

246 I deny that the merger (i.e., the sale by Media24 to Novus of On the Dot and the community newspapers) has any adverse effect on competition or the public interest. In fact, the merger is beneficial from both a competition and a public interest perspective, because the correct counterfactual is the closure of the sale assets. As compared to the closure of the sale assets, the merger is pro-competitive and enhances the public interest.

Ad paragraph 10.1

247 The applicants acknowledge in this paragraph that the sequence of events was that: (i) Media24 took a decision to migrate the titles from print to digital; and (ii) thereafter, and in pursuance of its broader migration strategy, Media24 took the decision to sell the sale assets.

248 Therefore, whereas the applicants are required to show (in order to make the migration strategy merger-specific) that the migration strategy arose as a result of the sale to Novus, they have in fact confirmed the opposite, namely that the sale to Novus arose as a result of the migration strategy.

Ad paragraph 10.2

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249 Having correctly identified "*the merger*", the Commission correctly identified its likely effects.

250 I admit that the Commission is a creature of statute. What that means in the context of a merger is that the Commission may only take cognisance of something if it arises as a result of the merger. If the Commission identifies a concern but that concern exists independently of the merger, the Commission lacks jurisdiction to do anything about it.

251 For instance, even if the applicants could demonstrate that Media24's migration strategy may result in increased distribution costs, the Commission has no jurisdiction to do anything about that because it does not arise as a result of the merger; it arises as a result of the migration strategy, for which no competition approval was required.

Ad paragraphs 10.3.1 – 10.3.2

252 As I have stated above, the migrating titles were never for sale. They have always been earmarked for migration from print to digital. It is therefore irrelevant that Capital may have harboured an interest in acquiring those titles. They were never for sale.

253 I admit that Media24 and Capital were, at some stage, engaged in negotiations regarding a potential sale of On the Dot and the community newspapers to Capital. But the significance of that is unclear. The applicants appear to suggest that the Commission erred in not ordering Media24 to sell to Capital instead of to

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Novus. It would not have been competent for the Commission to make such an order.

Ad paragraph 10.6

254 I admit that the applicants were only interested in acquiring the sale assets if the deal included the sale to the applicants of the migrating titles. As I have said, these were not for sale.

Ad paragraph 10.7

255 I reiterate that the Commission lacks the power to instruct a firm to dispose of any part of its business or to instruct a firm to sell to a particular buyer.

Ad paragraphs 10.9.3 and 45

256 I note the applicants' apparent admission that it is not the merger that is said to increase distribution costs, but rather Media24's unilateral commercial strategy to migrate certain titles from print to digital.

Ad paragraph 13

257 I deny that there was ever any suggestion that the merger would not be notified. I also deny that the merger was notified because of threats by the applicants. The merger was notified because it constitutes a notifiable merger.

Ad paragraphs 19 to 20

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258 I admit that the Commission conditionally approved the merger on 30 October 2024. I deny that it is permissible or appropriate to rely on a "limited press release" to identify material respects in which the Commission allegedly failed properly to consider the implications of the merger.

Ad paragraph 22

259 This paragraph, as with much of the founding papers, misconceives the nature of the "*transaction*" at issue. All the apparently deleterious consequences of which the applicants warn arise, on the applicants' version, "*[o]nce the printing of the newspapers ceases*" and "*as soon as Media24 closes its newspaper titles*". They do not arise from the transaction, which is the sale to Novus.

260 The migration of Media24's print titles to digital does not form part of the merger notified to the Commission, and the applicants' interdict is in any event not directed at the migration.

Ad paragraphs 23 – 24

261 I admit that the applicants requested the merging parties not to implement the transaction. I deny that the merging parties failed to respond. The merging parties responded later the same day. The correspondence is described and attached earlier in this affidavit. I admit that Media24 announced that it would implement the notified transaction on 31 October 2024.

Ad paragraphs 25 - 26

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262 On the relief prayed for, this Court's intervention cannot prevent Media24 from implementing the migration strategy.

263 I admit that the transaction with Novus has been fully implemented. The relief sought in Part A is for that reason moot.

264 I deny that the implementation of the transaction will give rise to any of the consequences contended for.

Ad paragraph 27

265 The merging parties decline to agree not to implement the transaction pending the outcome of Part B. The transaction has already been fully implemented.

Ad paragraph 28

266 I deny that the merger will have any of the anti-competitive or public interest effects contended for. I also deny that the Commission's decision is irrational, unreasonable or contrary to the purposes of the Competition Act.

Ad paragraphs 38, 39, 46, 47, 48, 49, 50, 51 and 52

267 Save to deny that Media24 is dominant, whether as alleged or at all, I admit the citations of the first to seventh respondents.

Ad paragraphs 56 – 64

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268 I admit that this application invokes the jurisdiction of this Court, by virtue of being a review under PAJA, alternatively the principle of legality.

269 I deny that the application implicates the right to freedom of expression at all. First, the merger as properly defined – being the sale to Novus – has no impact on freedom of expression, and the applicants do not suggest otherwise. Second, even the decision by Media24 to migrate its print titles to digital has no impact on freedom of expression. Expression and freedom of the media is protected in digital media just as it is in print.

Ad paragraphs 68 – 72

270 I deny that the merger enhances Media24's online position. If anything, it weakens Media24's online presence. The merger includes Media24 divesting of titles with a sizeable online presence, such as Soccer Laduma, which has a significant online following with SNL24, the online platform that hosts Soccer Laduma, garnering close to 27 million average monthly views.

271 The merger also involves Media24 giving up control of On the Dot. This is entirely inconsistent with the applicants' theory that Media24's anti-competitive strategy is to use On the Dot to drive up rivals' costs, ultimately resulting in readers migrating from rival print titles to News24 and Netwerk24. If that were the case, Media24 would certainly not give up control of On the Dot.

272 In addition, Media24 is not dominant in digital news, as the applicants claim. While Media24 is a leading South African online news publisher, it faces stiff

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competition from local online publications such as the Daily Maverick, Mail & Guardian, IOL, Caxton's Citizen, eNCA, and the SABC, as well as international publications like BBC News, CNN and the New York Times.

273 The ability of Media24, as well as rival online publications, to exercise market power is further materially constrained by online platforms, such as search engines and social media platforms. While these platforms do not produce their own news, they aggregate and highlight snippets, allowing consumers to read news without ever visiting the original sources.

274 The Commission flagged similar issues in the MDPMI. For instance, the Commission remarked that local news organisations had raised concerns that:

“Google and Meta (formerly known as Facebook), through their digital platforms, are dominant gateways to consumers and news publishers are, in part, dependent on referral traffic from these platforms. However, these platforms use their dominance to effectively extract copyright news snippet content for free by demoting news articles that lack a snippet on the search engine results page or exclude them from the social media feed. This effectively, denies the publishers referral traffic that would allow them to earn display advertising revenue. The practice of offering news snippets also denies the publishers referral traffic as news consumption has shifted to many consumers simply browsing news snippets. This change in news consumption adds value to the search and social media platforms, allowing them to monetise data or advertising, and in so doing extract the benefits of copyright content from the publishers”.

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275 These search engines and social media platforms thus extract editorial content from the likes of News24 and make it available to their readers, without ever incurring the cost of producing that content. The likes of News24 carry the cost of producing the content, but that content is effectively monetised by the likes of Google and Facebook.

276 The Commission continued:

“Digital platforms are critical channels through which news businesses reach consumers and provide them with vital referral traffic. A substantial amount of online news publishers’ referral traffic emanates from digital platforms in South Africa. Several market studies have found that this direct access that digital platforms have to consumers makes the use of these platforms by businesses, such as those in news media, critical and unavoidable. As such, there are several potential competition and public interest implications that may stifle the business activities of news media organisations due to their dependency on digital platforms”.

277 It is thus incorrect to argue, as the applicants do, that Media24 faces no real competitive constraints online. Media24 is in a constant battle with global tech giants such as Google and Facebook, who constantly seek new ways to monetise and sell the content produced by Media24. As the Commission found, the likes of News24 and Netwerk24 are highly dependent on these digital platforms with whom they also compete.

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278 Likewise, the Commission's latest research (October 2024) shows that many consumers access news through social media platforms and search engines, rather than directly from news websites (such as News24). For instance, the Commission found that the majority of respondents (77%) indicated that the main platform (excluding direct website access and traditional media) through which they accessed their news was social media (e.g. Facebook, X, TikTok, YouTube, etc).

279 It is thus incorrect to claim, as the applicants, do that Media24 faces insignificant competition online. Media24 faces significant competition from other local online publications as well as from social media giants such as Facebook and TikTok.

Ad paragraphs 73 – 75

280 Although not part of the merger, Media24 has undertaken to retain all journalists employed at the migrating titles. The claims that the merger threatens journalism are unfounded and simply designed to cause alarm.

Ad paragraph 76

281 If Media24 had anti-competitive ambitions to drive up its rivals' distribution costs, it would not give up control of On the Dot, which the applicants claim to be the means of giving effect to that anti-competitive strategy.

Ad paragraph 84

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282 I admit that printing and distribution services are important inputs in a successful publishing business. I deny however that the merger has any adverse impact on any print or distribution services.

Ad paragraph 86 – 92

283 I deny that Media24, News24 or Netwerk24 is dominant. I also highlight that nowhere have the applicants provided a credible theory of how the sale of the sale assets from Media24 to Novus could result in Media24, News24 or Netwerk24 enhancing their market share or their market power.

Ad paragraphs 94 – 95

284 I deny that the sale to Novus drives up distribution costs.

285 Even if the applicants had demonstrated that the merger will increase distribution costs, they have failed to provide any of the granularity that such a theory of harm requires. They would have had to set out, in detail:

285.1 What proportion of each publication's total costs consists of distribution costs;

285.2 What each publication's profit margins are; and

285.3 How the increased distribution costs would erode each publication's profit margins such that the merger will cause them to become unsustainable and ultimately to exit.

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Ad paragraph 97

286 This paragraph highlights the conclusory and alarmist nature of the applicants' case. The applicants allege that:

"Any reduction in the volume of paid newspapers being printed and published in hard copy will result in a significant increase in the per unit cost of distribution of the remaining newspapers."

287 That is a *non sequitur*. It does not follow that any reduction in volumes leads axiomatically to a significant increase in distribution costs.

Ad paragraph 104

288 I note the applicants' acknowledgement that according to their theory of harm it is the migration strategy as opposed to the sale to Novus that is said to cause harm.

Ad paragraphs 138 – 142

289 I admit that Media24 met with Capital to discuss the proposed sale of On the Dot. I was present at the meeting on behalf of Media24, together with Mr Ismet Davidson. From our perspective, the purpose of the meeting was to gauge Capital's interest. I deny that we ever "invited" Capital to purchase On the Dot or the community newspapers. Exploratory discussions of this nature are common business practice.

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290 I deny that there was an *“instruction”* at the April 2024 board meeting. Instead, the then-CEO presented a proposal to the board regarding the migration to digital, the board discussed and deliberated the proposal. As the minutes confirm, the board decided that migration strategy was caused by *“the catastrophic FY24 performance of newspapers”* which meant that *“closure has become inevitable.”*

291 I do not know the “representatives” referred to in paragraph 142, but I deny that Mr Bekker gave any instructions to cease printing newspaper titles. The decision to migrate print titles to digital was one recommended by the Media24 management and approved by the board.

Ad paragraph 145

292 I deny that it was ever Media24’s “preference” that Capital should acquire the On the Dot business. Media24 was open to all options.

Ad paragraphs 146 – 151

293 In his description of the engagements between Capital/Caxton and Media24, Mr Jacobs expresses surprise at the breakdown in negotiations but fails to identify the central reason for the misalignment between the parties: Capital/Caxton was originally only interested in acquiring On the Dot if Media24 were to retain the newspapers in print. Thereafter, it made a pitch to acquire the titles that Media24 had already decided to migrate, namely Beeld, Rapport, Daily Sun and City Press. But these titles were not for sale because Media24 had decided to retain the titles and to migrate them from print to digital.

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294 It thus became clear that Media24's plans, and those of Capital/Caxton, were divergent in material respects. Media24 was looking for a buyer of On the Dot, whereas Capital/Caxton were only interested in acquiring On the Dot if it came as a package deal, including the several newspaper titles, which were not for sale. Media24 thus accepted Novus' offer before receiving Capital/Caxton's first offer.

Ad paragraphs 183 – 207

295 I admit that the correspondence described in these paragraphs and attached was exchanged between the parties' legal representatives.

Ad paragraph 208

296 I have already explained how the relief sought in Part A, in effect, constitutes a final interdict. The applicants must accordingly demonstrate a clear right as opposed to a *prima facie* right. I deny however that they have even established a *prima facie* right.

Ad paragraphs 209 – 216

297 All of the applicants' criticisms of the Commission (which are, in truth, appeal grounds and not review grounds) suffer from one or more of the following fundamental flaws:

297.1 They define the merger as including Media24's earlier, unilateral commercial decision to migrate certain titles from print to digital. This

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decision was not a merger; did not require competition approval; and will be implemented irrespective of whether the merger is ultimately approved or prohibited.

297.2 They assume that the counterfactual is the sale of the migrated titles to the applicants. There is simply no scenario in which this is the correct counterfactual. The titles were not for sale and nor could the Commission instruct Media24 to sell them to the applicants. The correct counterfactual is the closure of the sale assets.

297.3 They assume that Novus has an incentive to foreclose its rivals from access to On the Dot. That is undermined by the vertical arithmetic set out above in paragraphs 188-190.

Ad paragraphs 217 – 219

298 I deny, for the reasons set out above in paragraphs 221-228, that the applicants have demonstrated that they will suffer irreparable harm if the interdict is not granted.

Ad paragraphs 220 – 227

299 I deny, for the reasons set out above in paragraphs 229 to 241, that the balance of convenience favours the applicants. None of the alleged harms identified by the applicants will arise as a result of the transaction. On the other hand, the applicants do not engage with the potential harm to Media24 if interdictory relief is granted.

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First supplementary affidavit

300 I have already dealt above with the first supplementary affidavit in paragraphs 153 – 162.

Second supplementary affidavit

301 I have dealt above with the aspects of the second supplementary affidavit that bear on the applicants' grounds of review. However, it is necessary here to dispute, in the strongest terms, the applicants' claim at the end of the supplementary affidavit that the filing of the second supplementary affidavit "will cause no prejudice to the opposing respondents". That is not correct.

302 The applicants keep overlooking how much prejudice it causes the respondents when they take as long as they want to produce affidavits in this matter and then call on the respondents to answer them in no time. The supplementary affidavit is a case in point. The applicants took more time to produce it than they have demanded the respondents take in answering it.

303 This is part and parcel of their entire approach in this matter of threatening urgent proceedings if undertakings are not given in a matter of days, and sometimes, hours. And then flooding the respondents with endless letters and further affidavits, demanding responses within days, and sometimes, hours.

304 This type of conduct should, I respectfully submit, be deprecated and should weigh heavily in the Court's discretion whether to grant an interdict in this matter.

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CONCLUSION

305 I respectfully submit that the applicants have presented no case for an interdict for three main reasons.

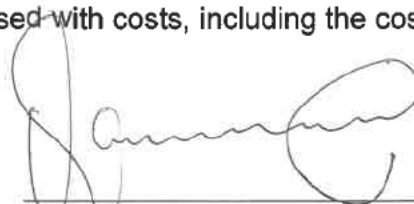
305.1 Any interdict of the merger now would be moot and the applicants have only themselves to blame for that predicament because of the way in which they elected to litigate this matter.

305.2 Even if the interdict is not moot, it cannot be granted because there is no *prima facie* (let alone, clear) right to the interdict. The applicants' entire case for an interdict is premised on a false construct of the merger. Once that mirage is exposed, there is nothing of substance left to the applicants' contentions.


305.3 And even if the applicants were somehow to convince this Court to see the merger in the way that they do, the harm to Media24 of having to halt the digital migration of its news titles would cause losses running into the hundreds of millions of Rands. There is no tender from the applicants to make good those losses.

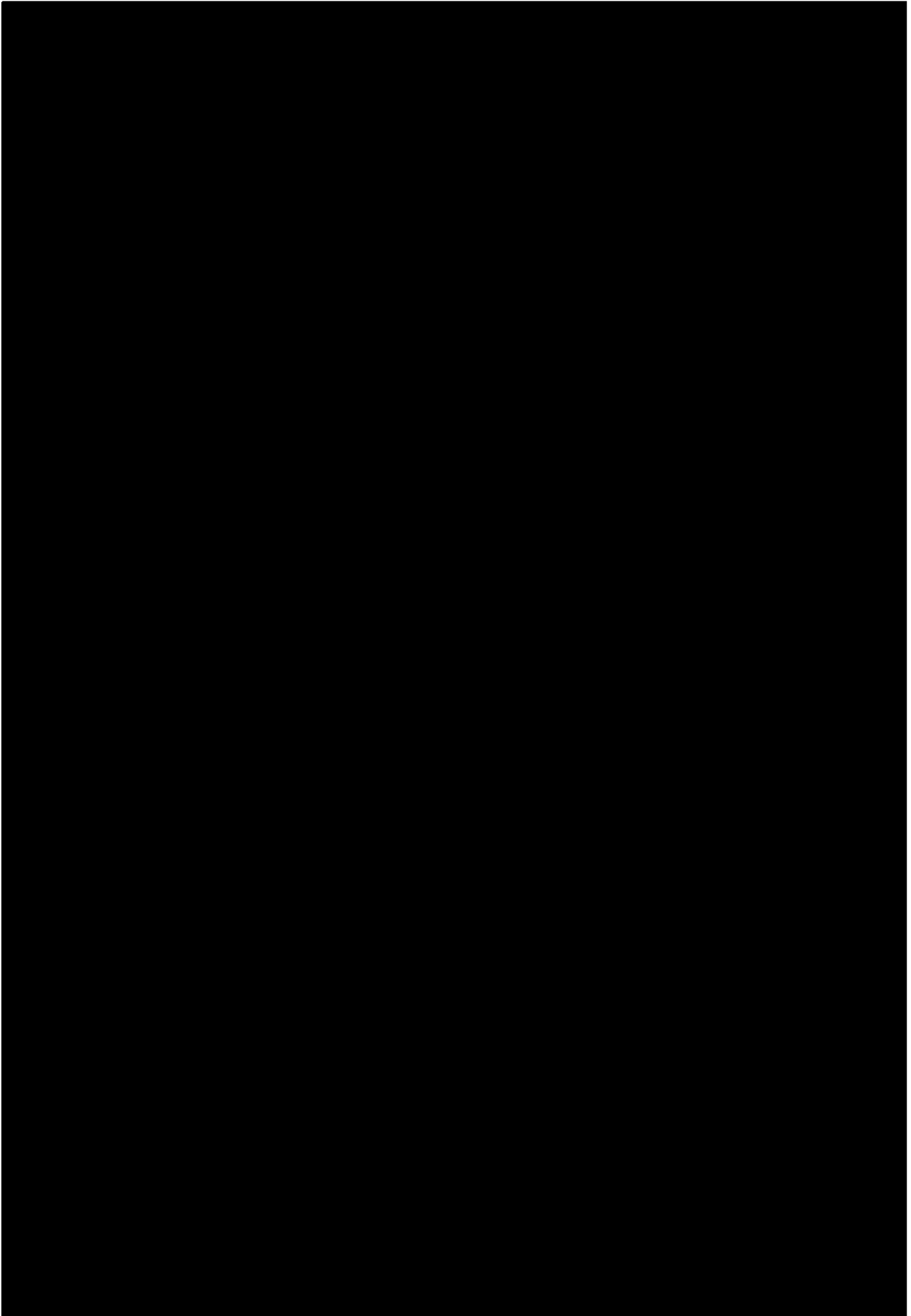
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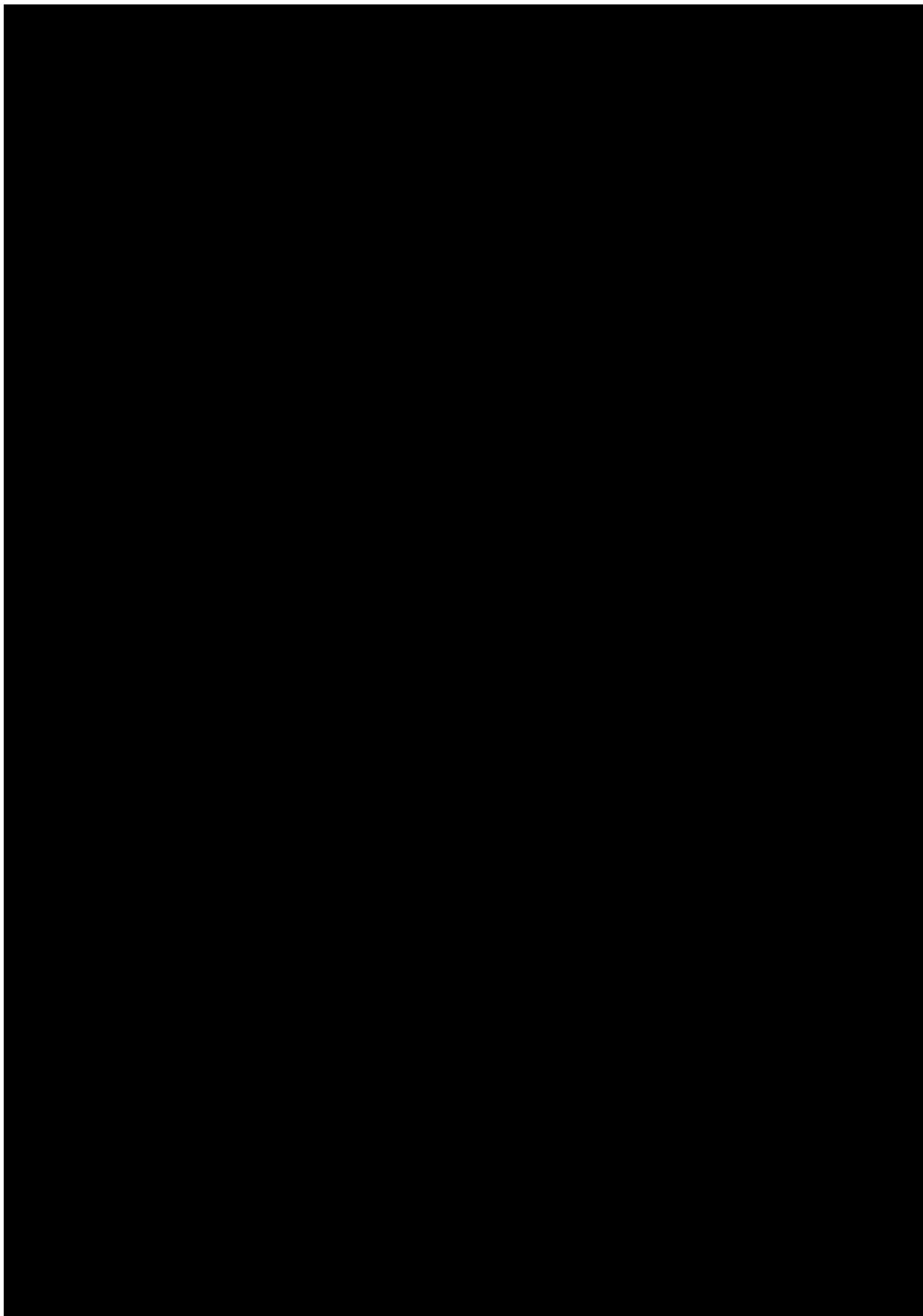
306 For all the reasons these reasons, the first to seventh respondents ask that the application for interim relief be dismissed with costs, including the costs of three counsel.

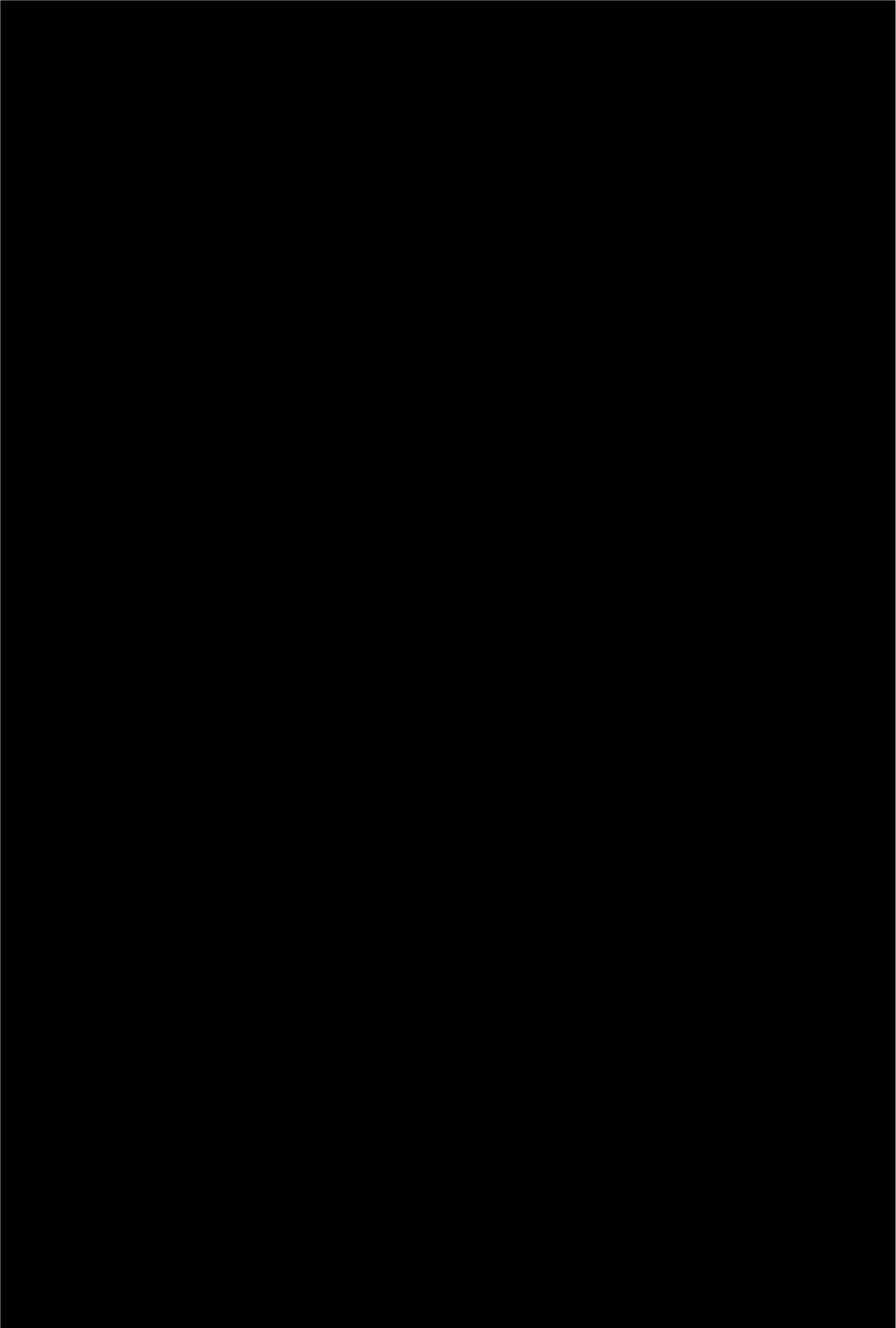

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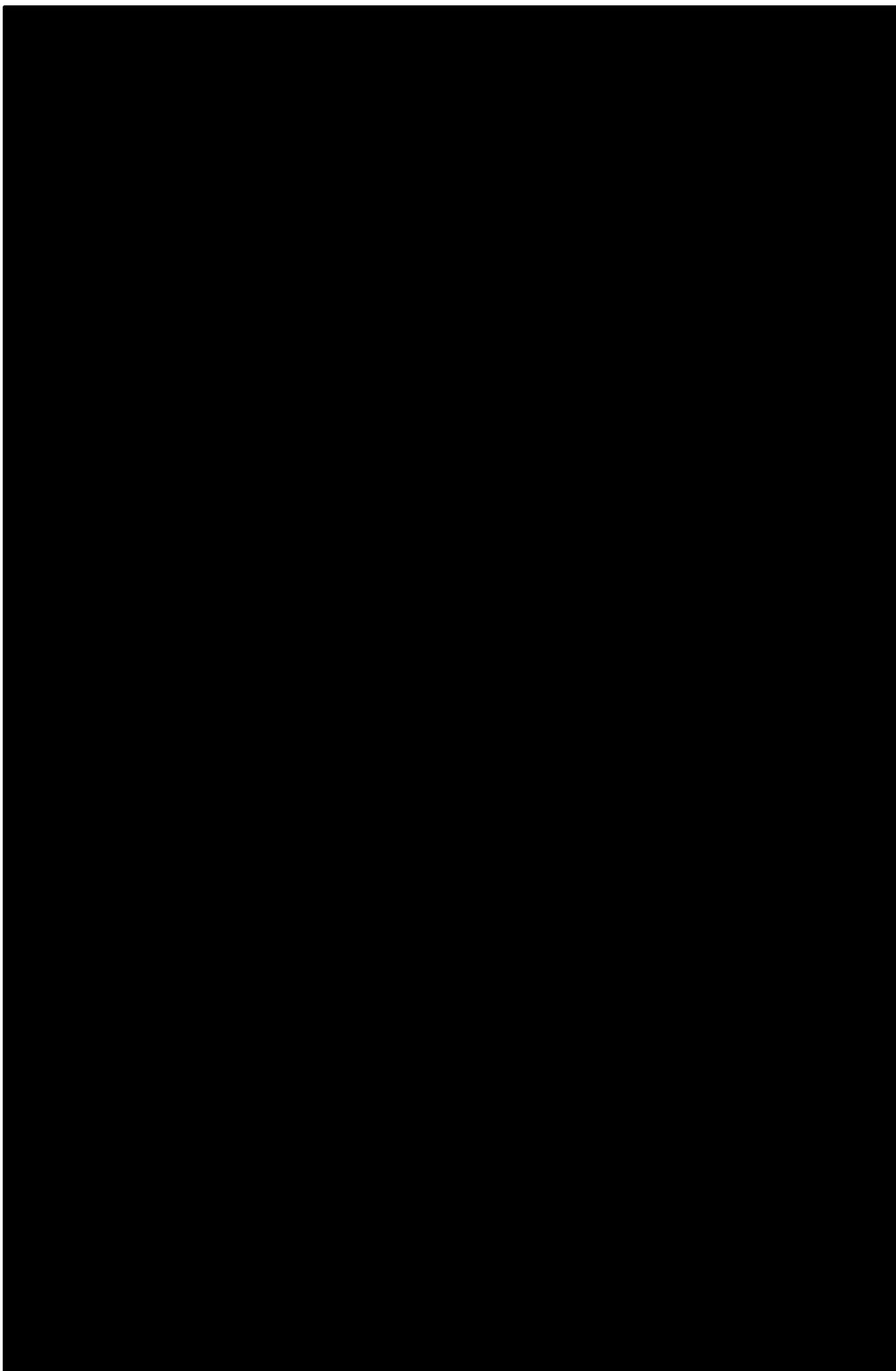
I hereby certify that the deponent knows and understands the contents of this affidavit and that it is to the best of his knowledge both true and correct. This affidavit was signed and sworn to before me at Cape Town on this the 18 day of November, and that the Regulations contained in Government Notice R.1258 of 21 July 1972, as amended, have been complied with.

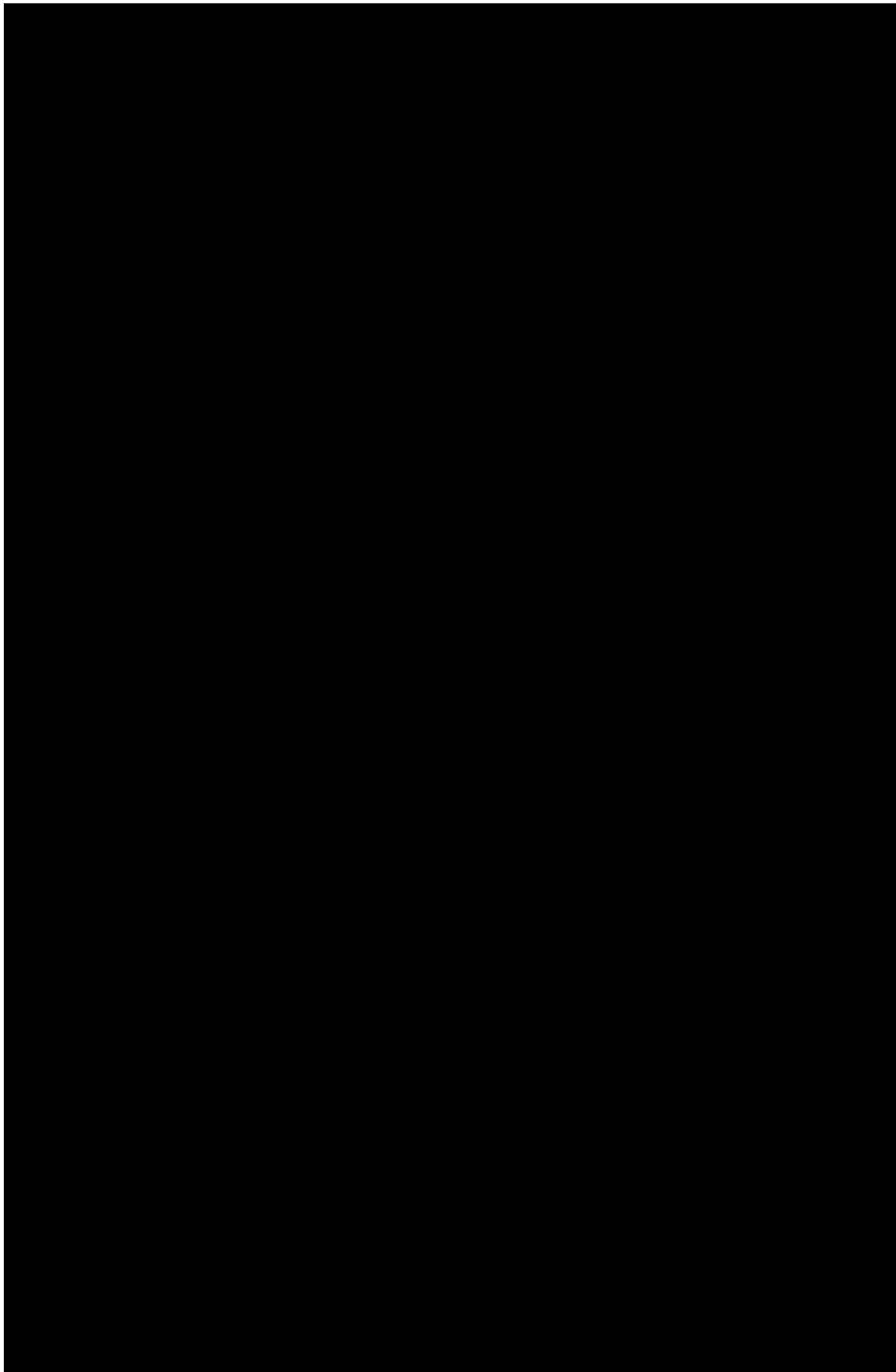

COMMISSIONER OF OATHS
Full names: Clare-Alicia Verhe
Address: Constitution Towers, Cape Town
Capacity: Practising Attorney RSA

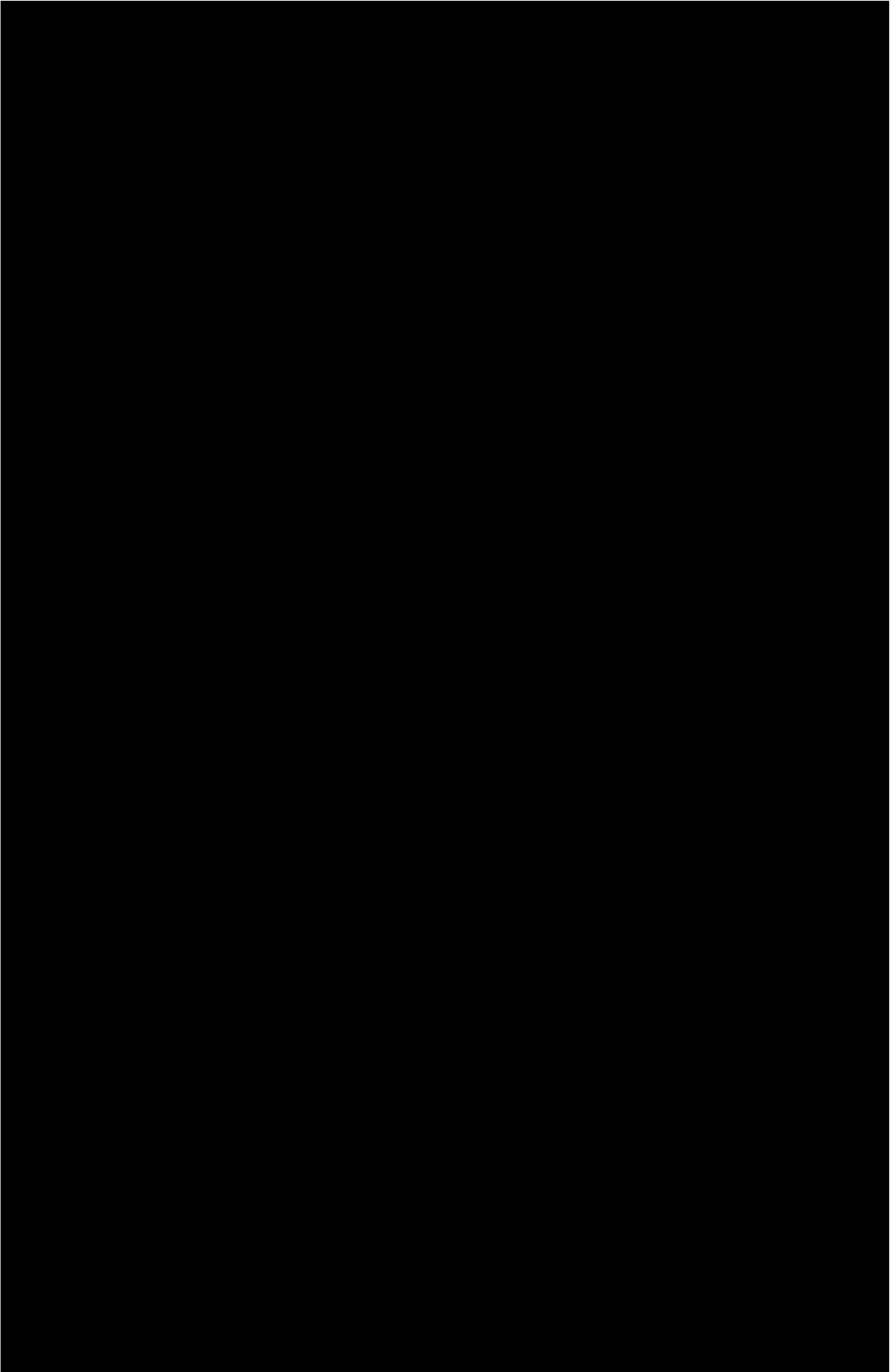


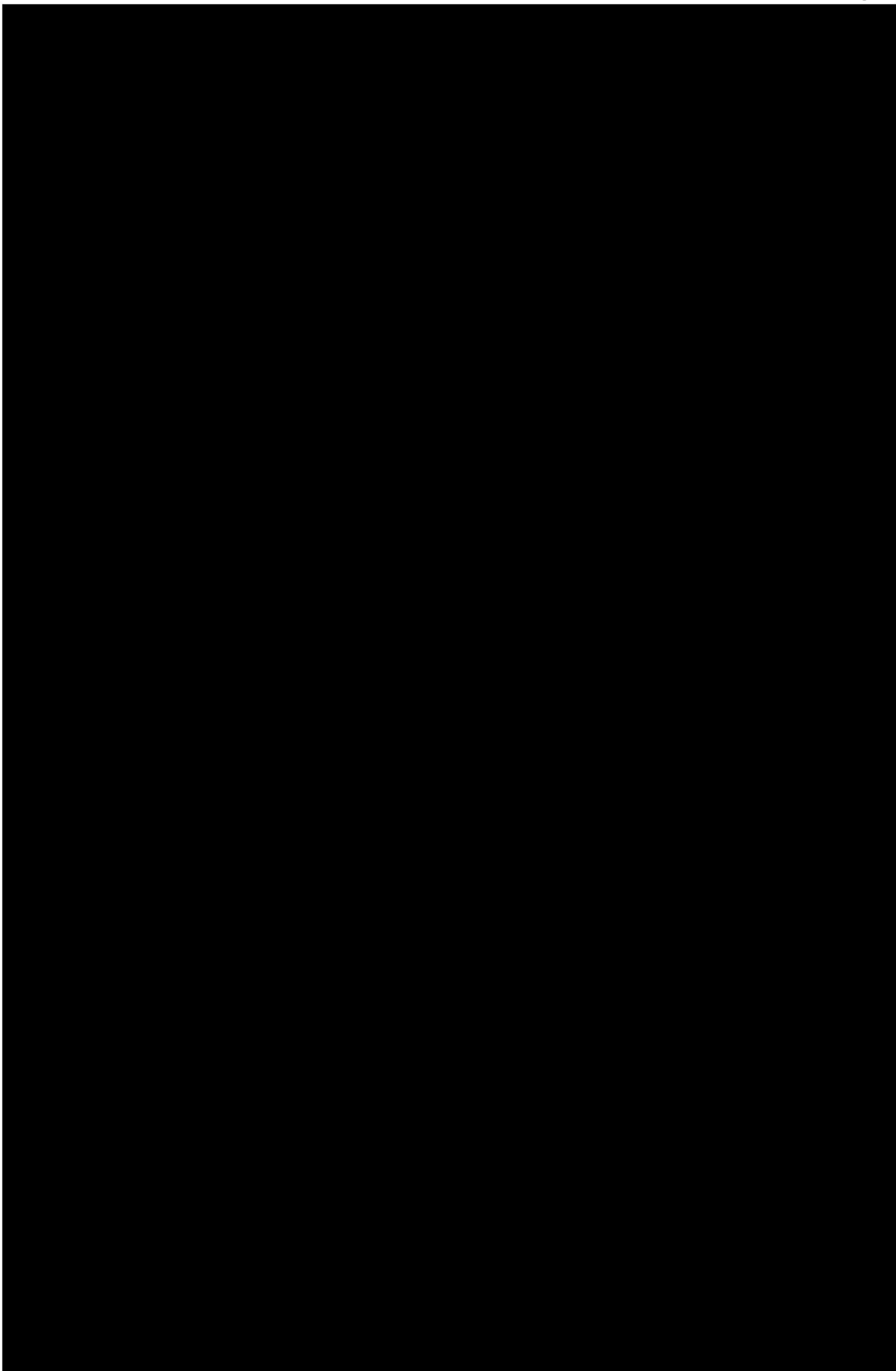


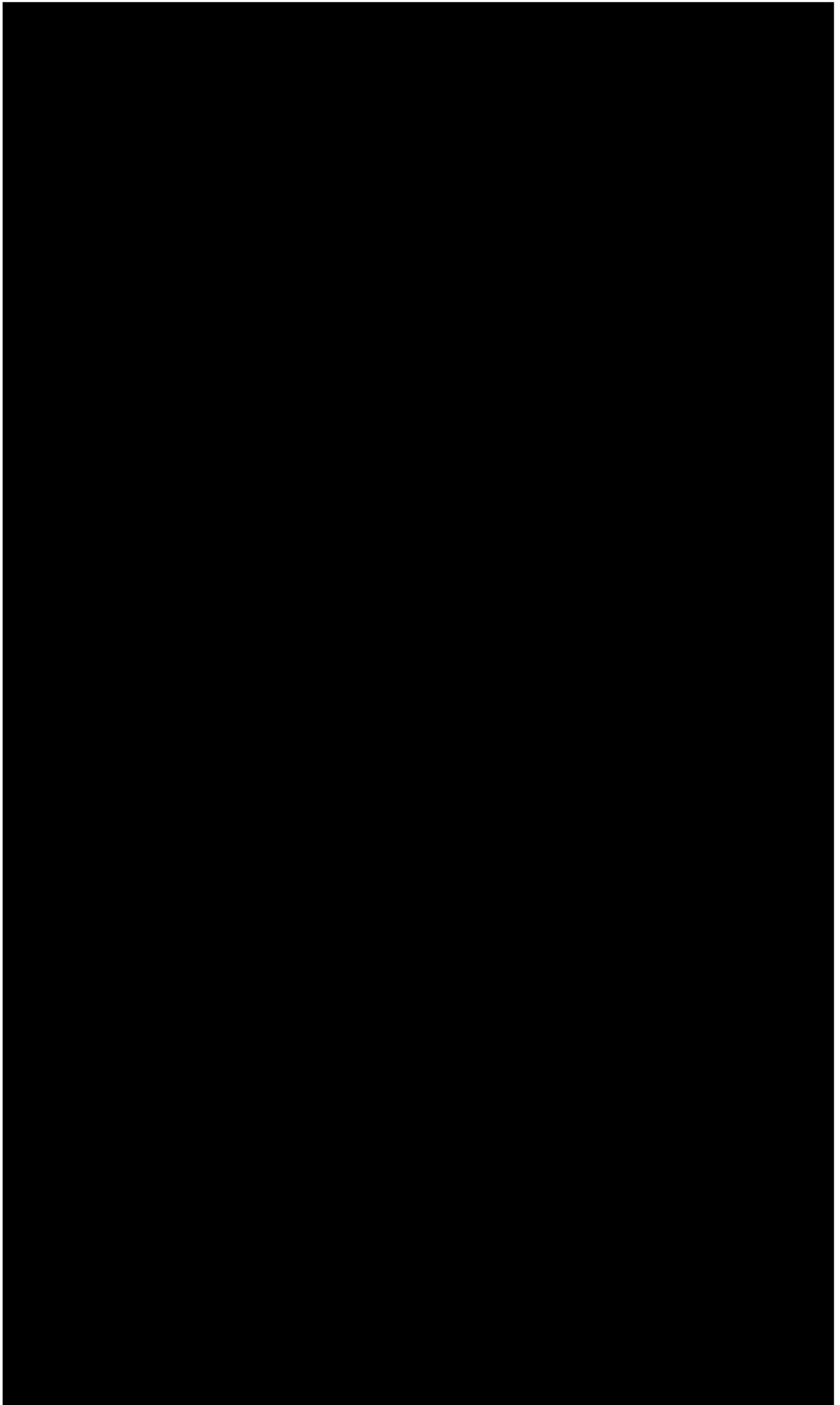


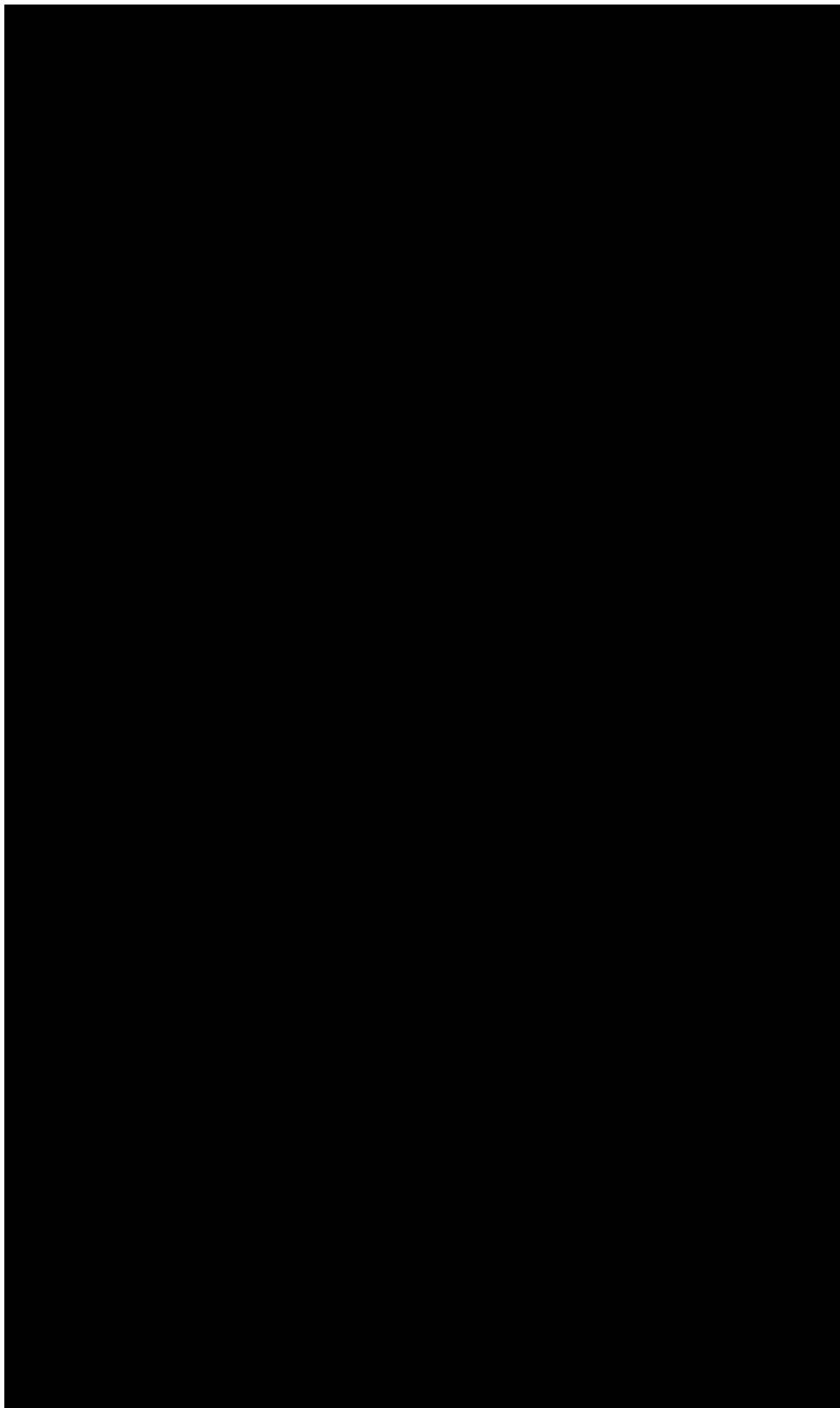


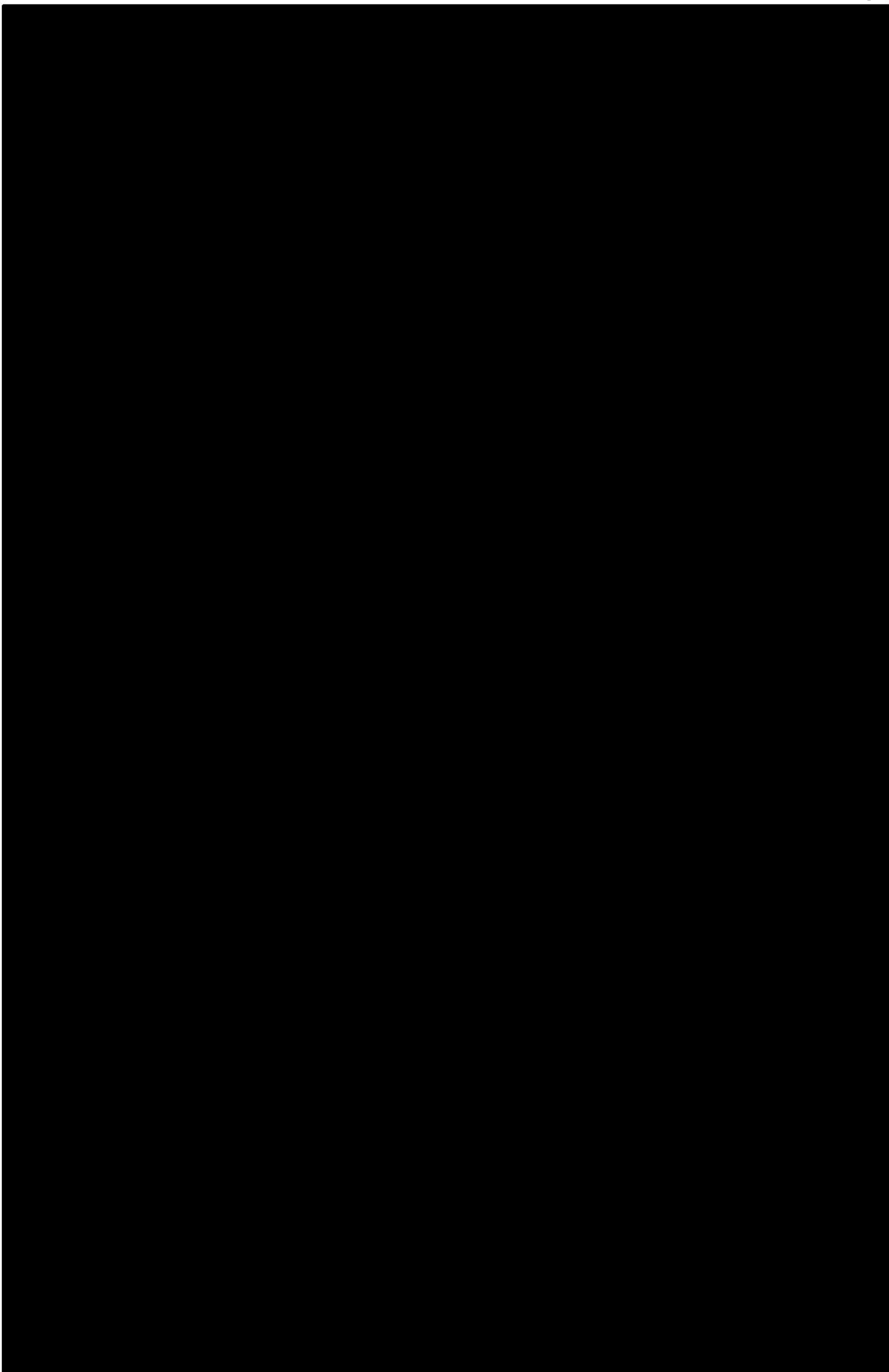


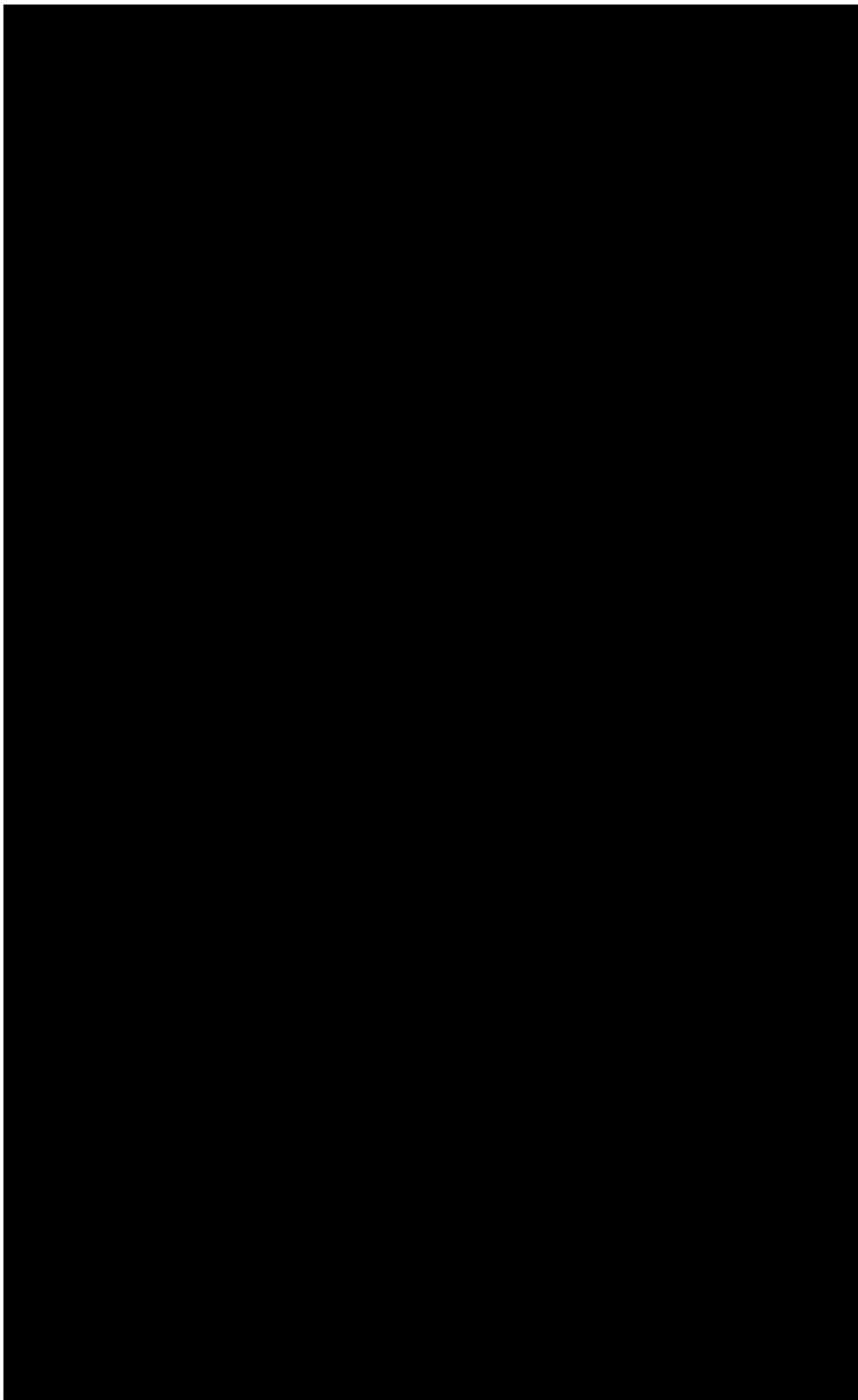


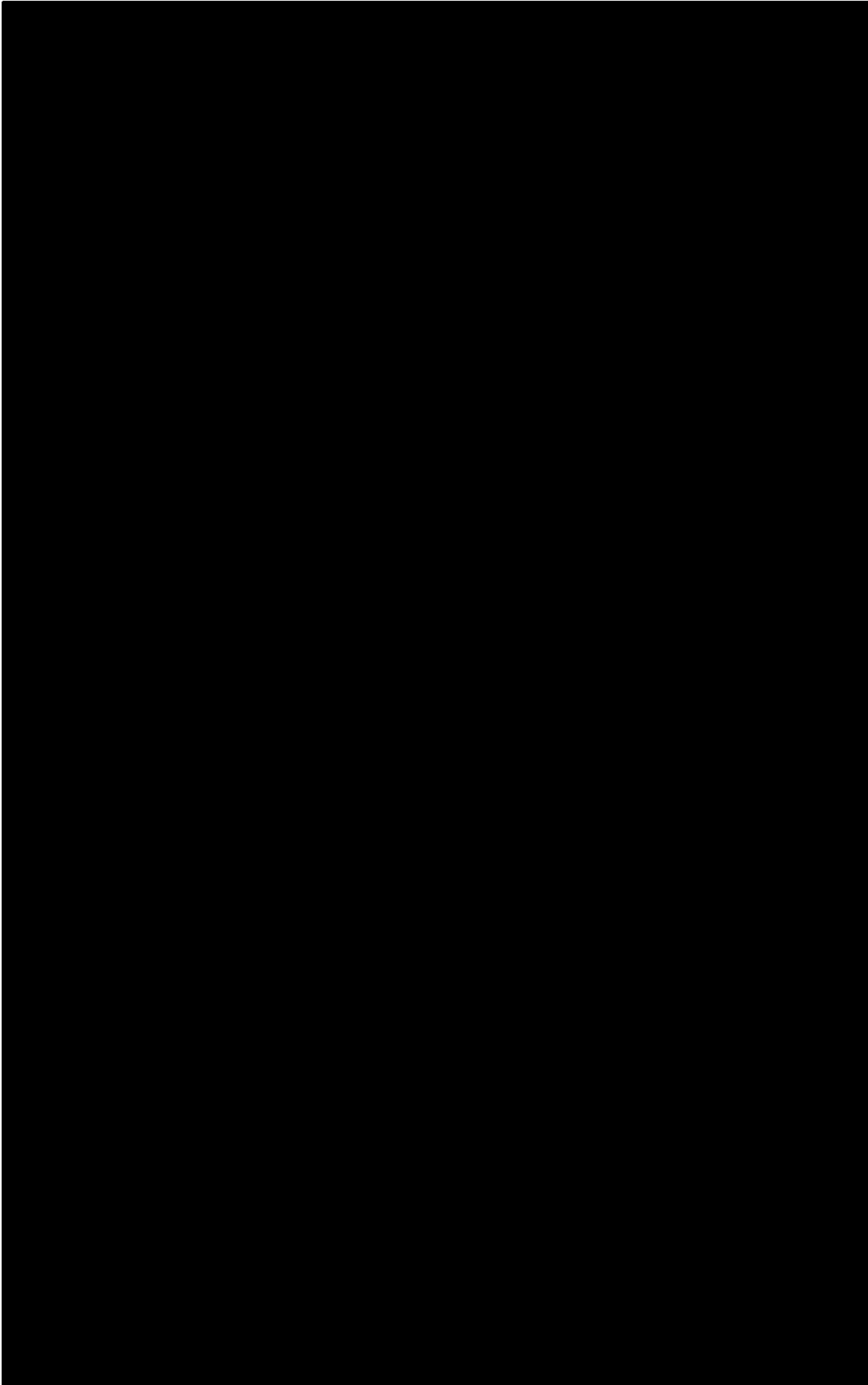


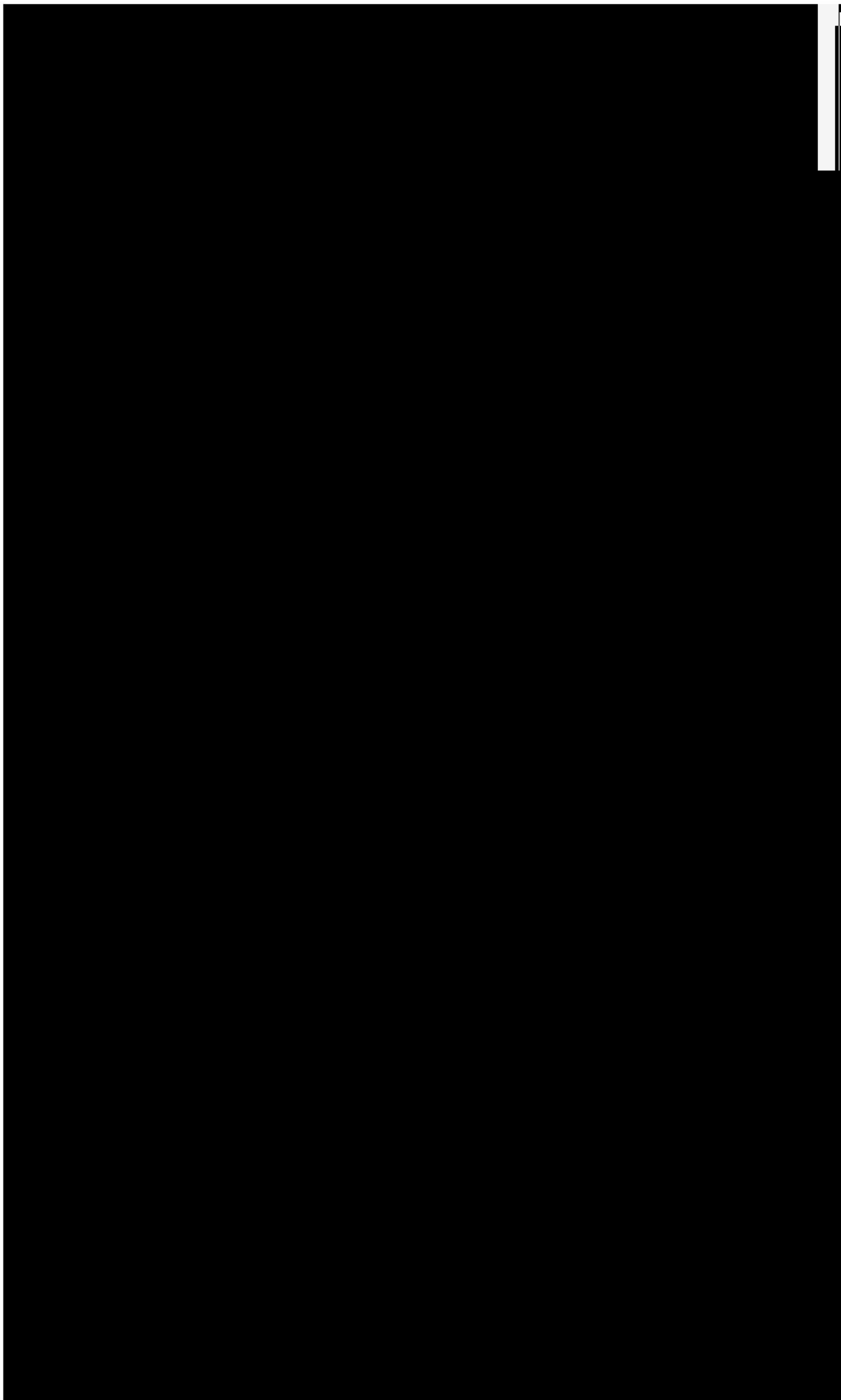


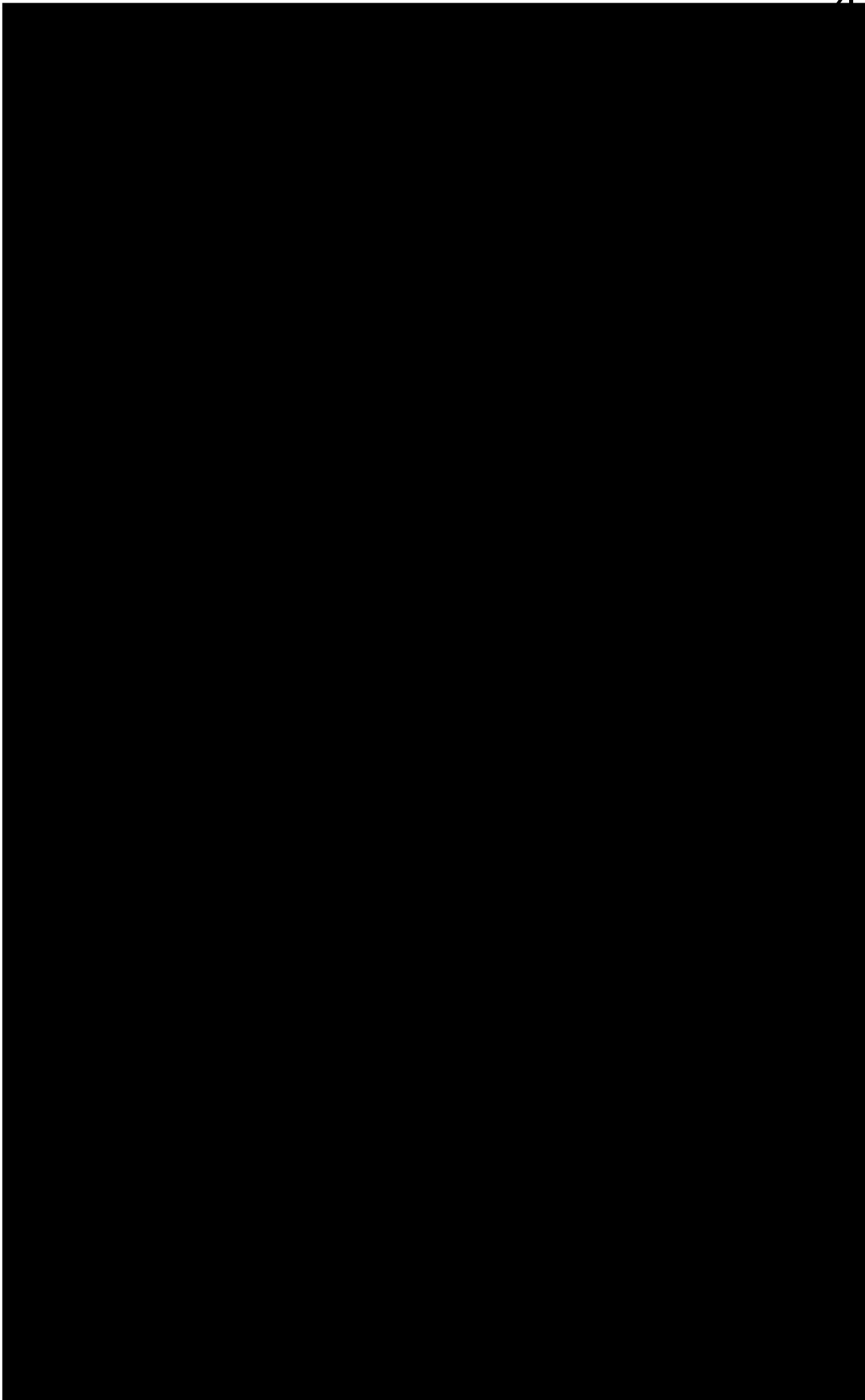


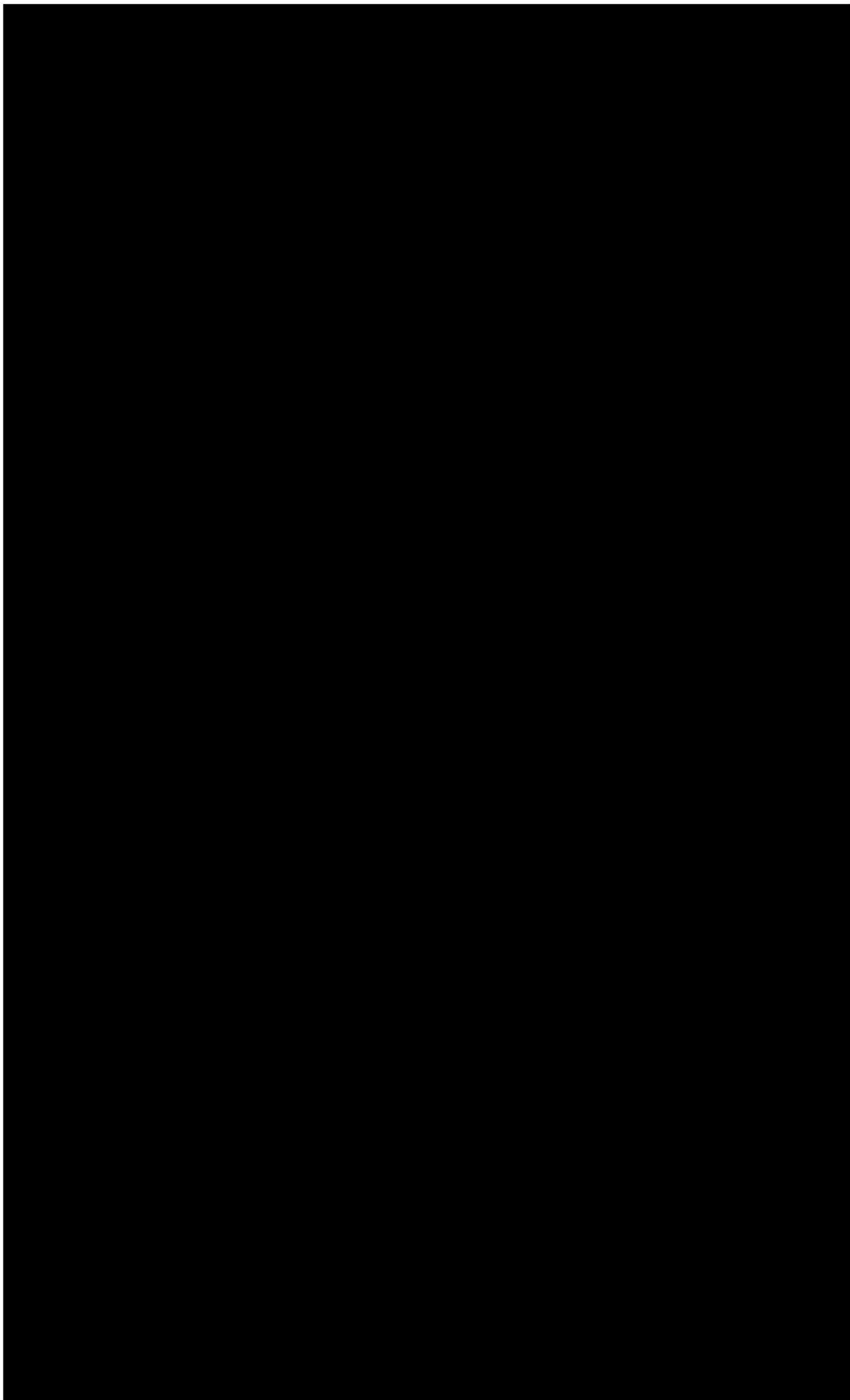


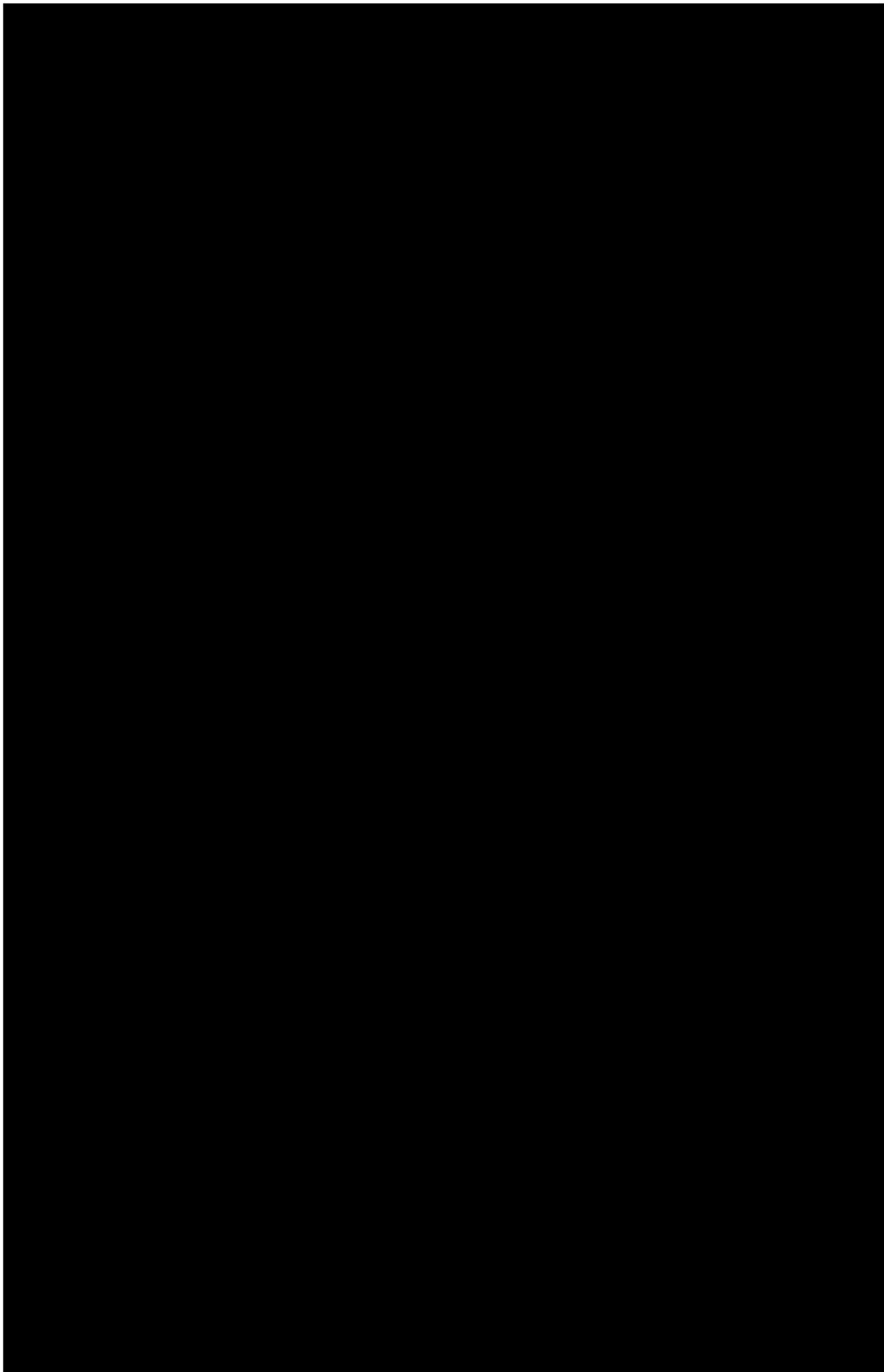


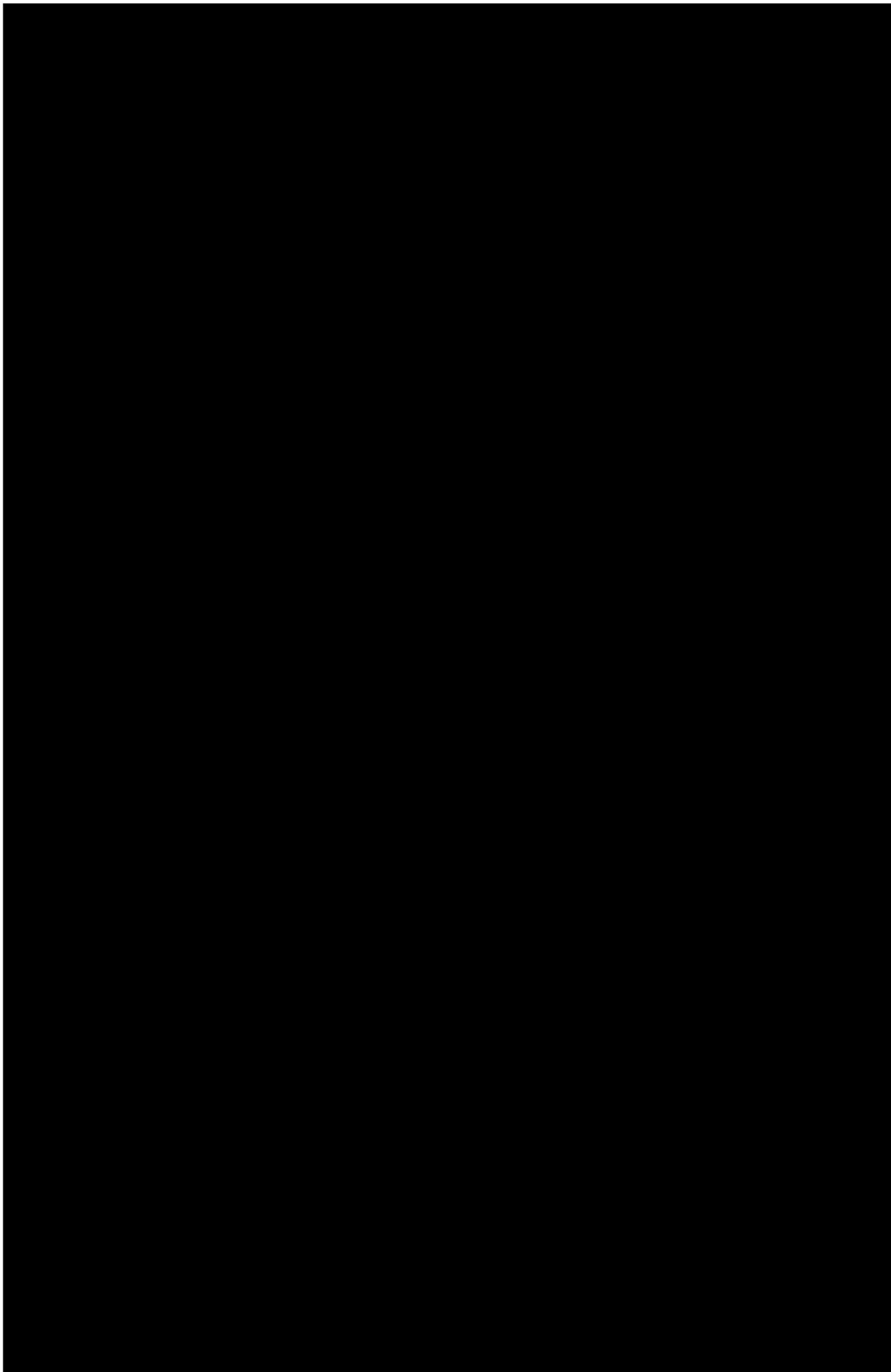






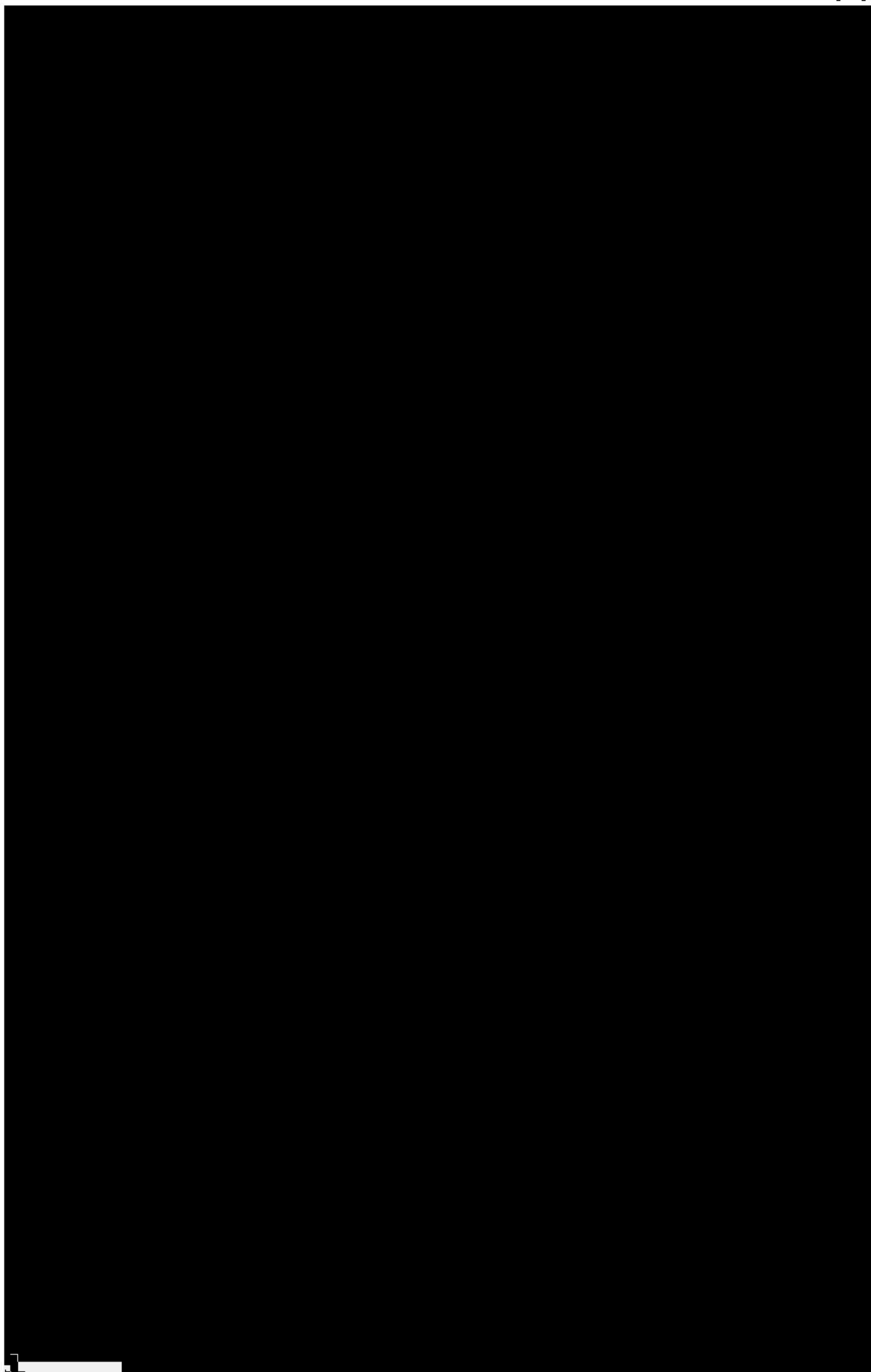


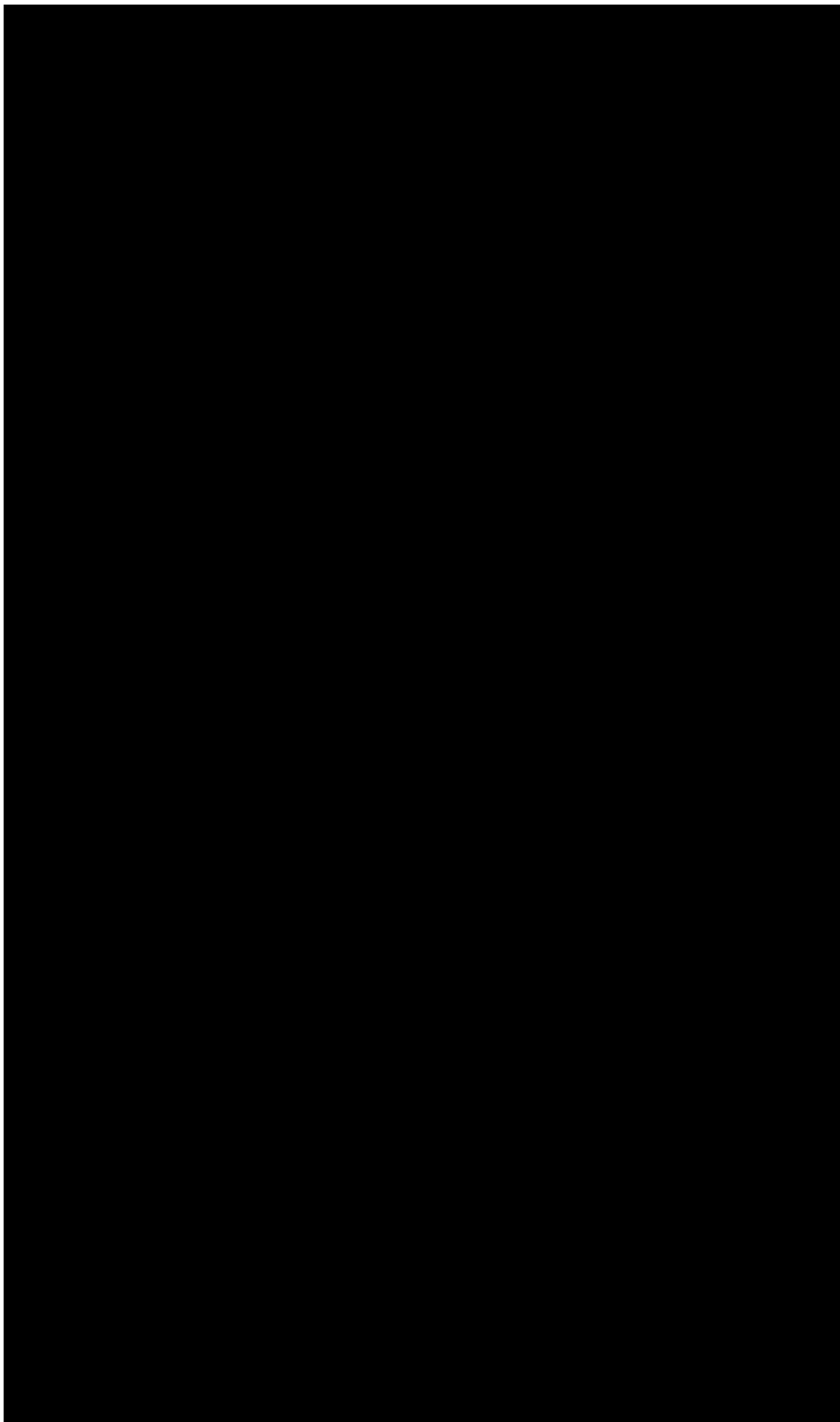




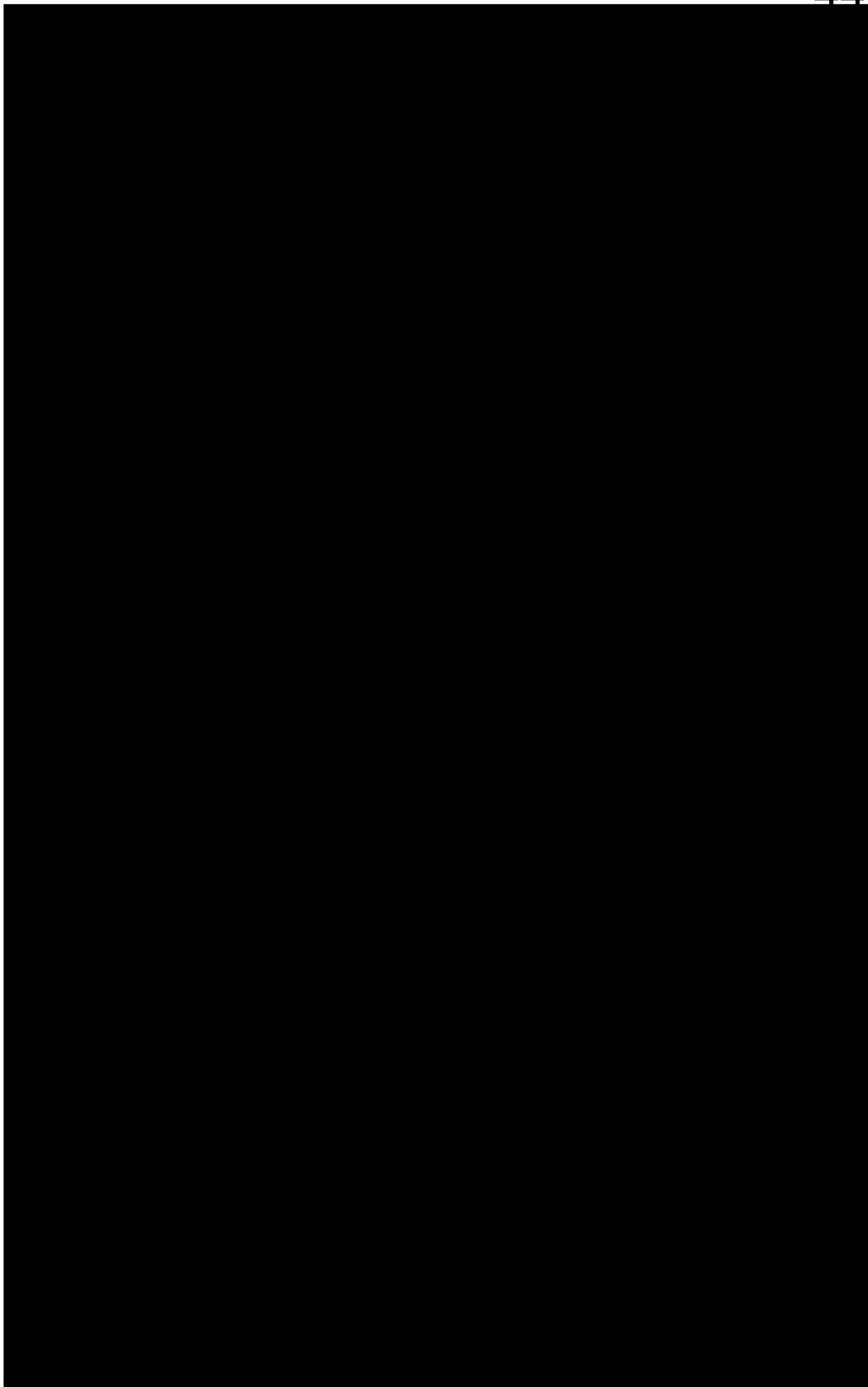
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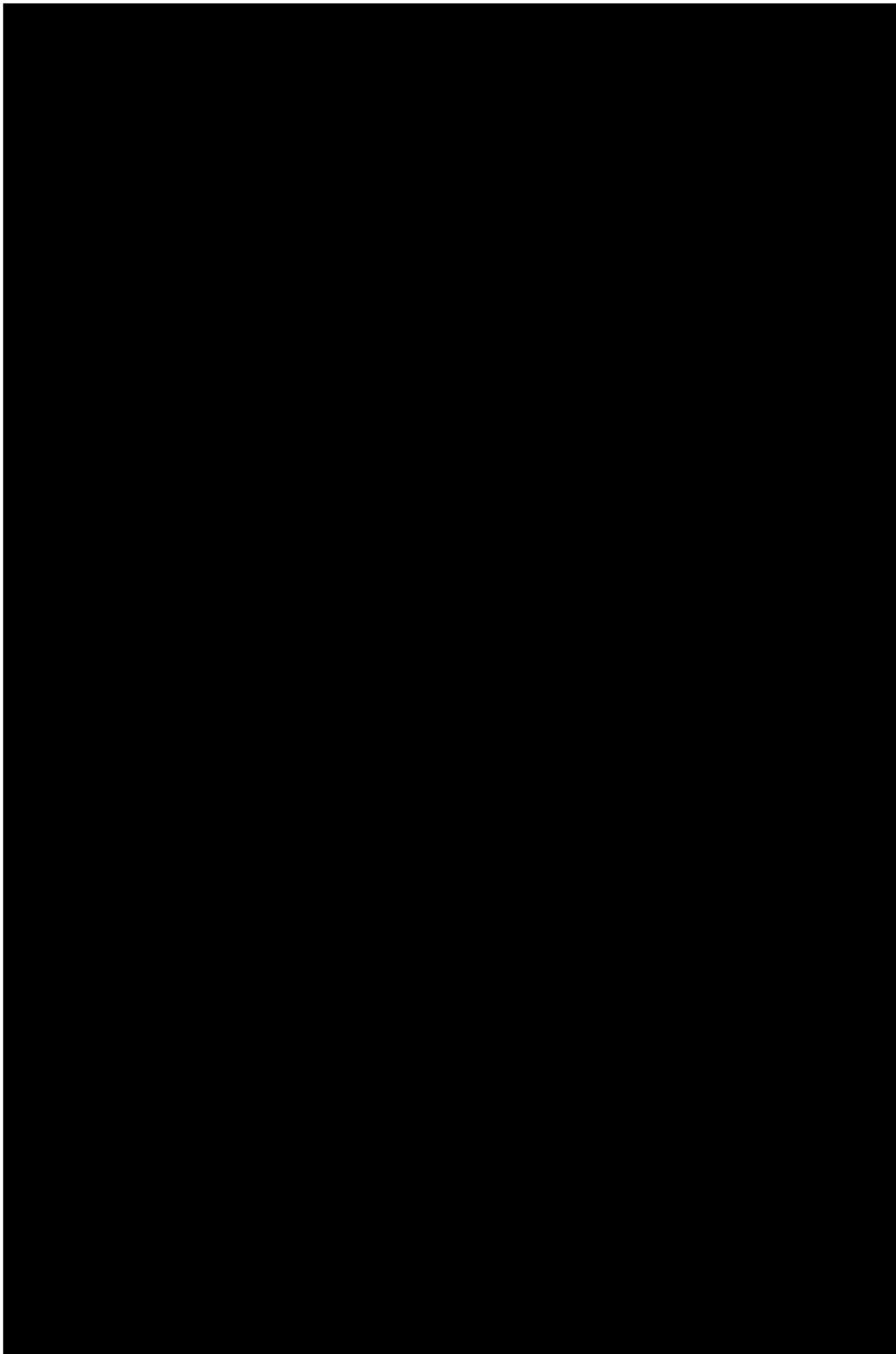
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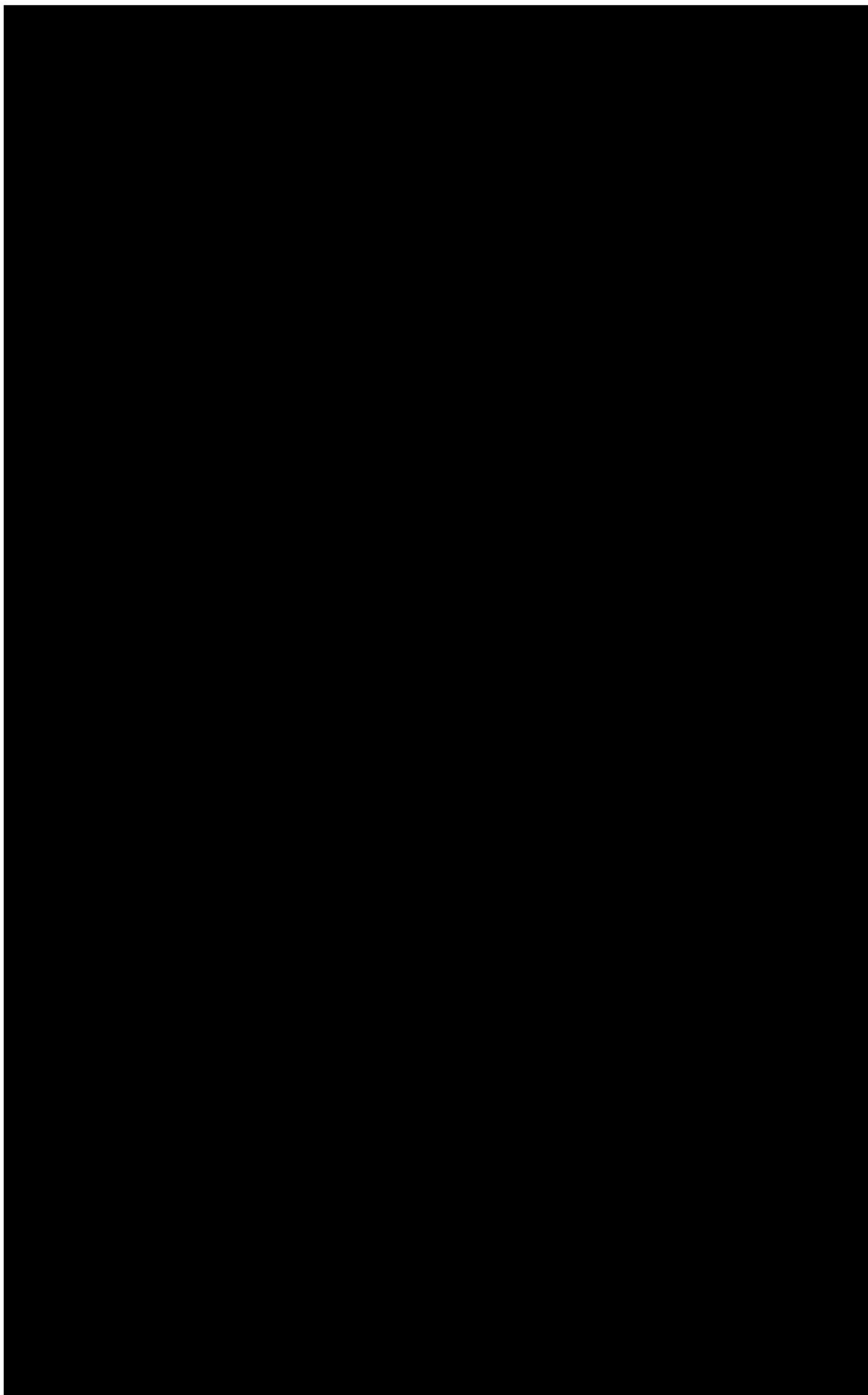


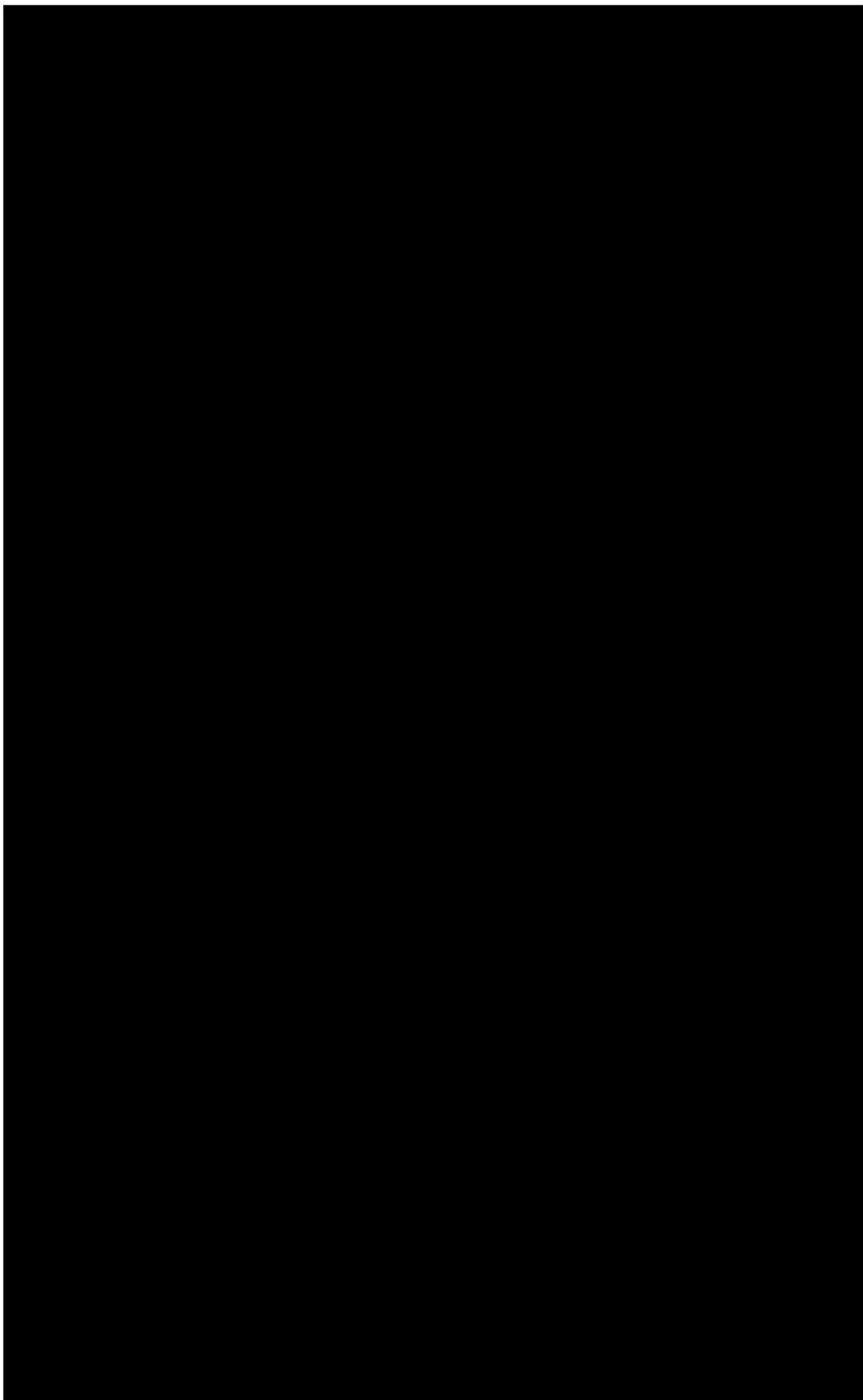


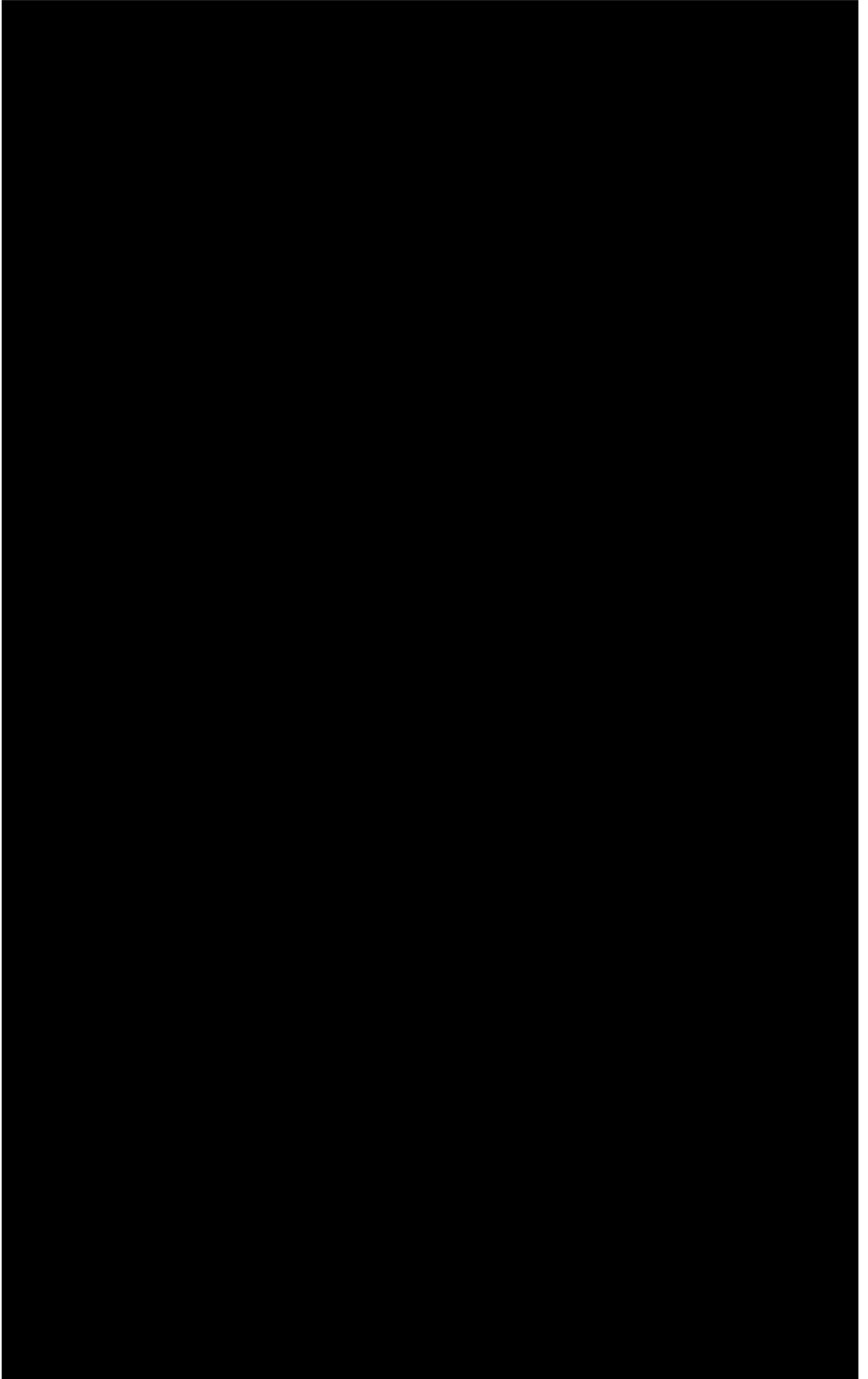


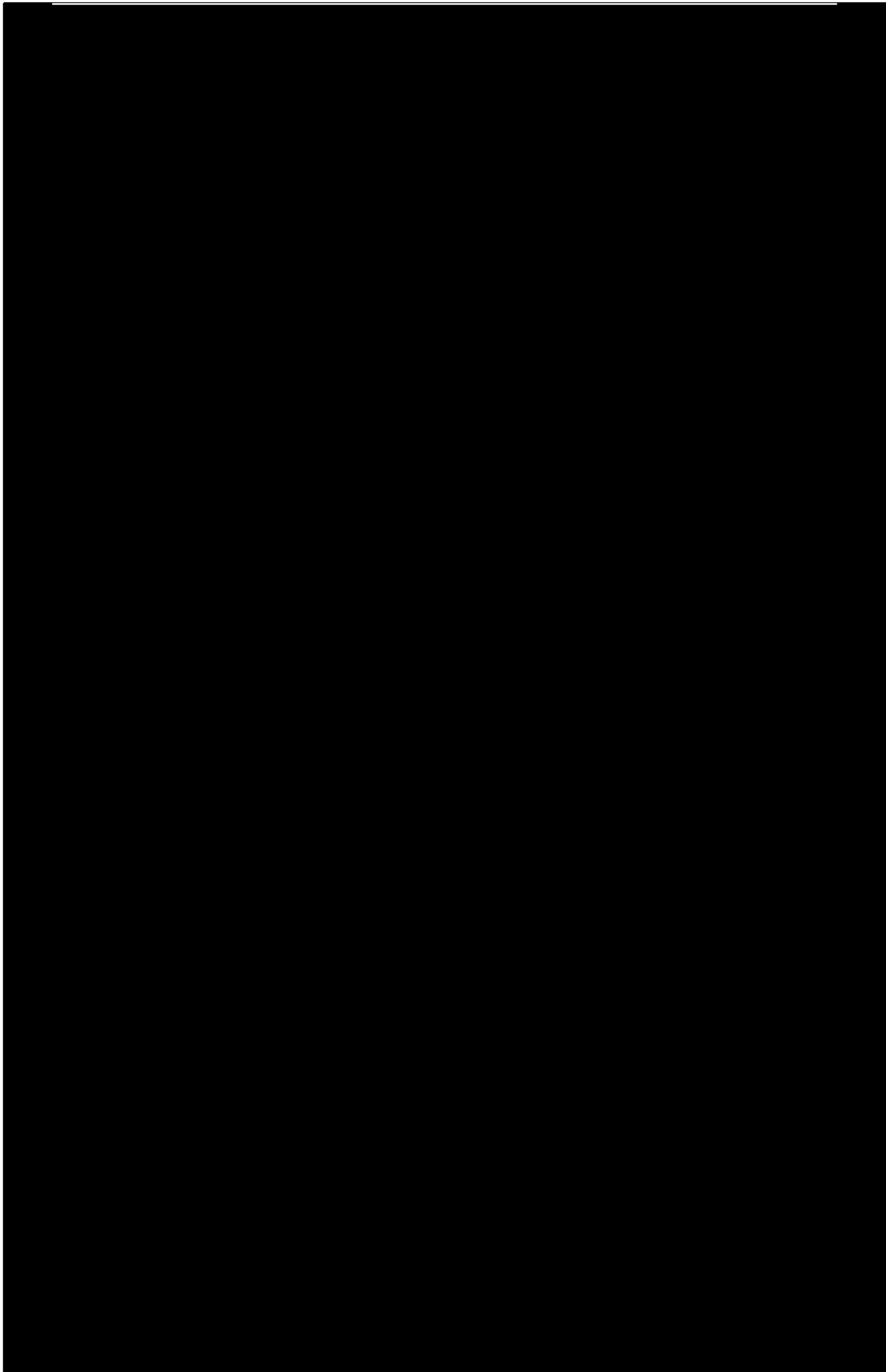


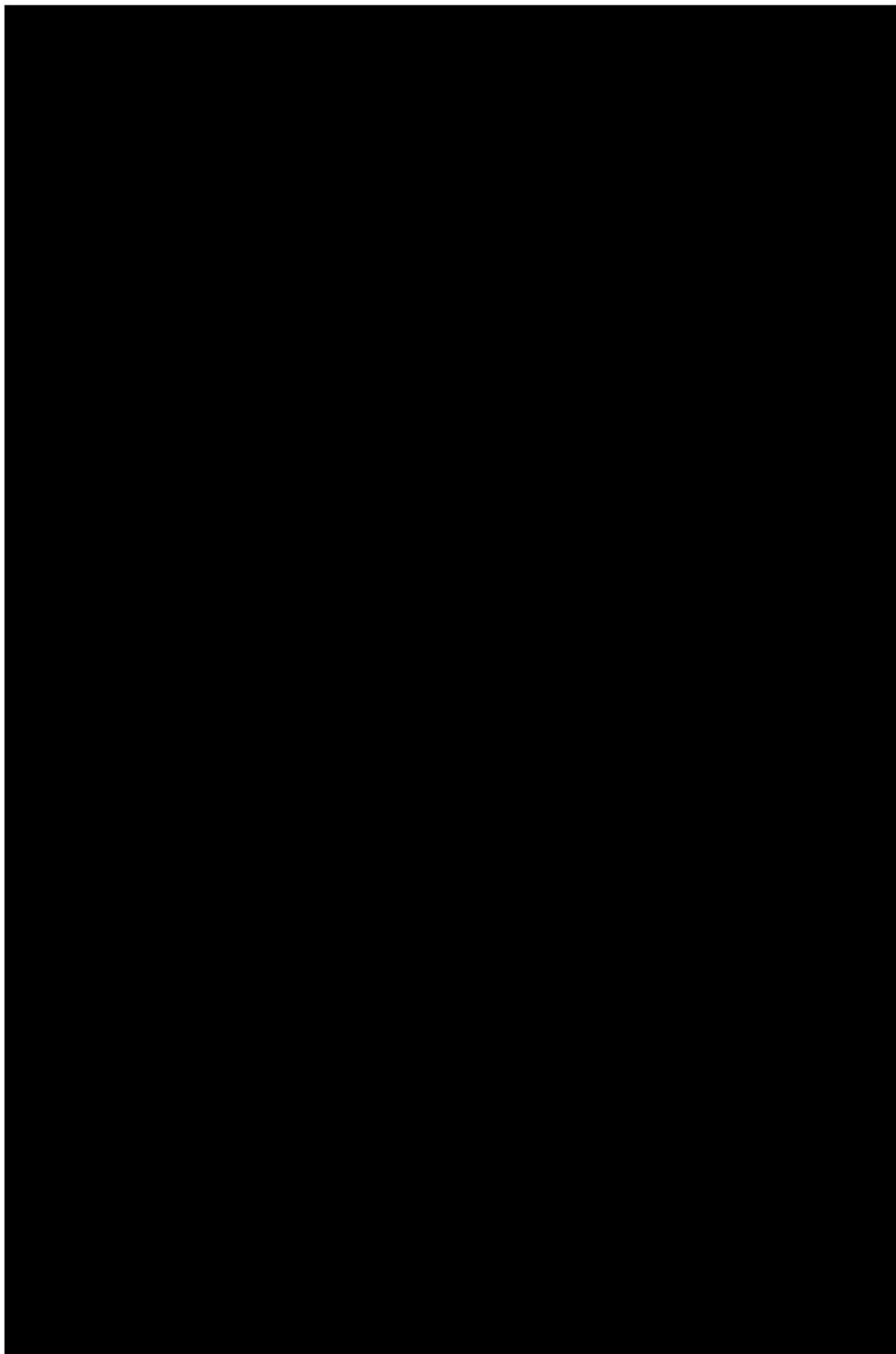


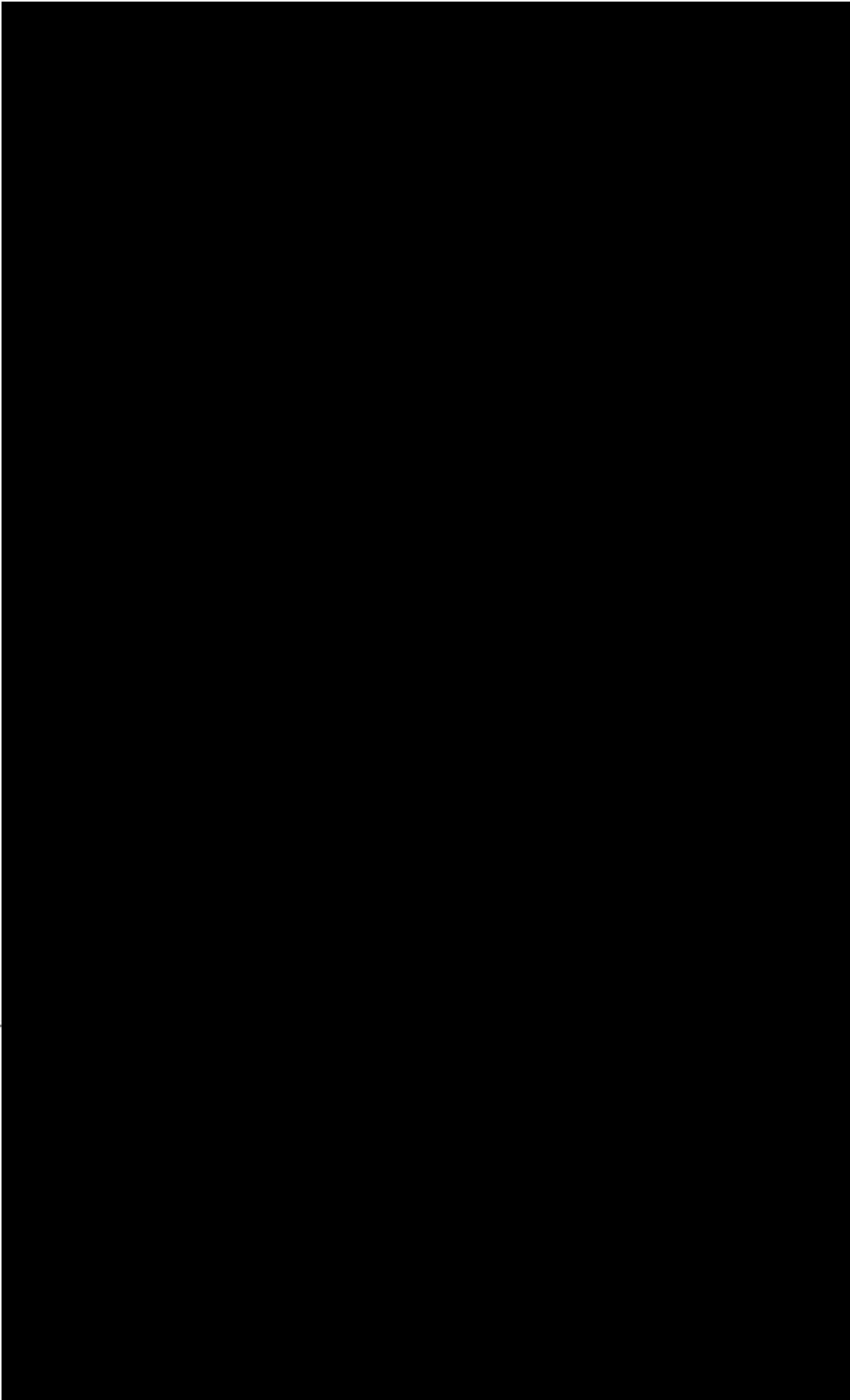




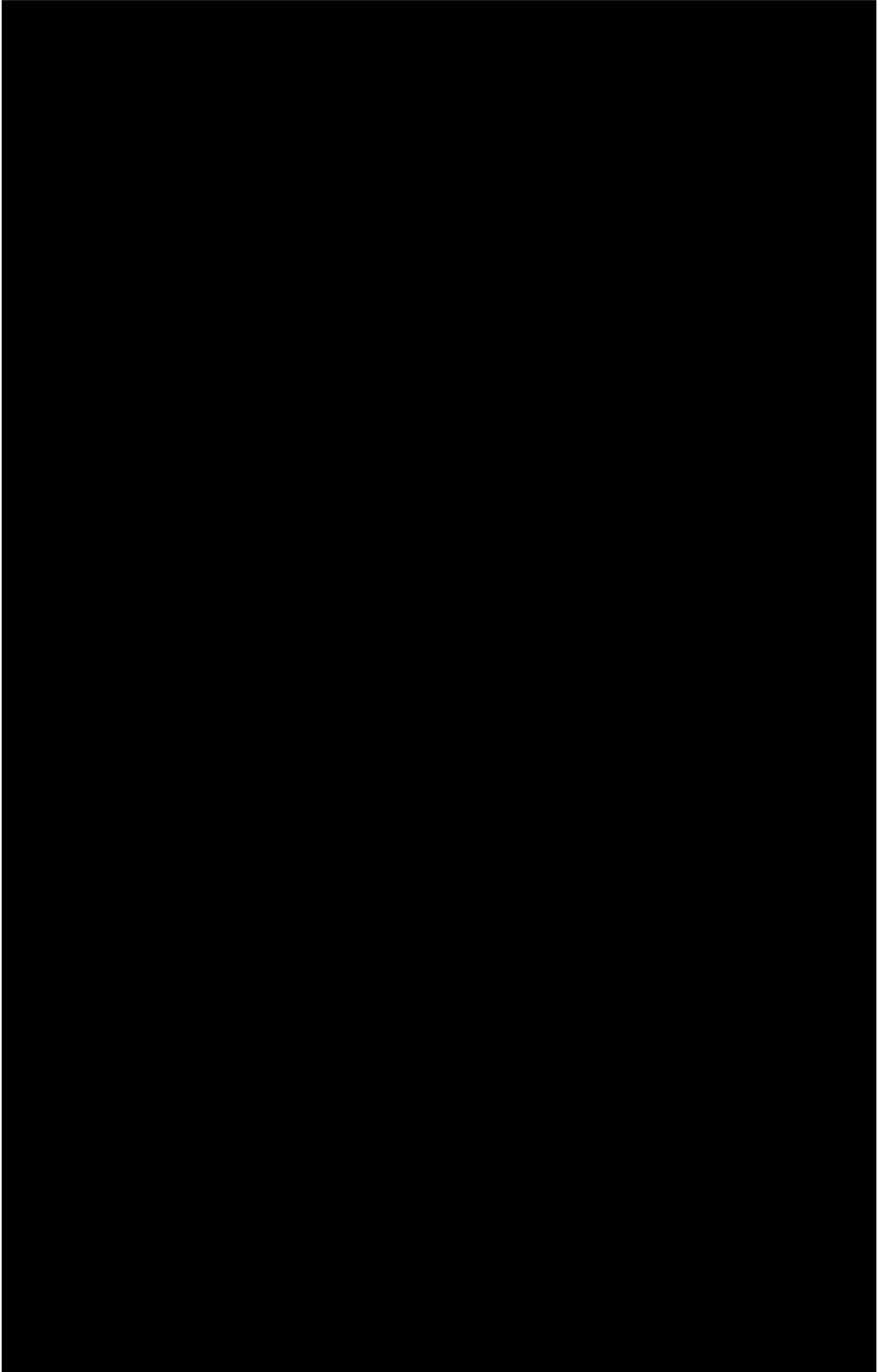


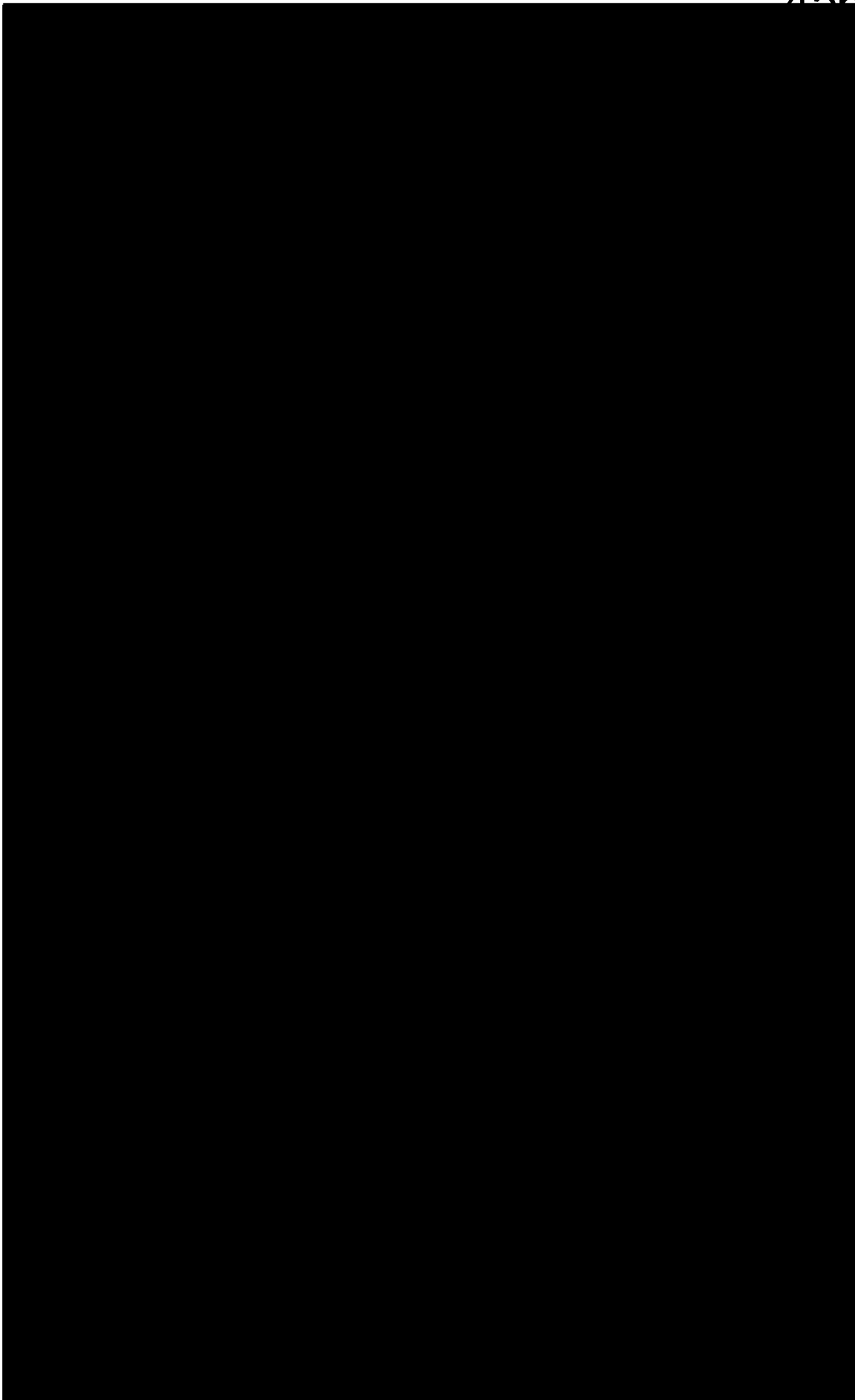


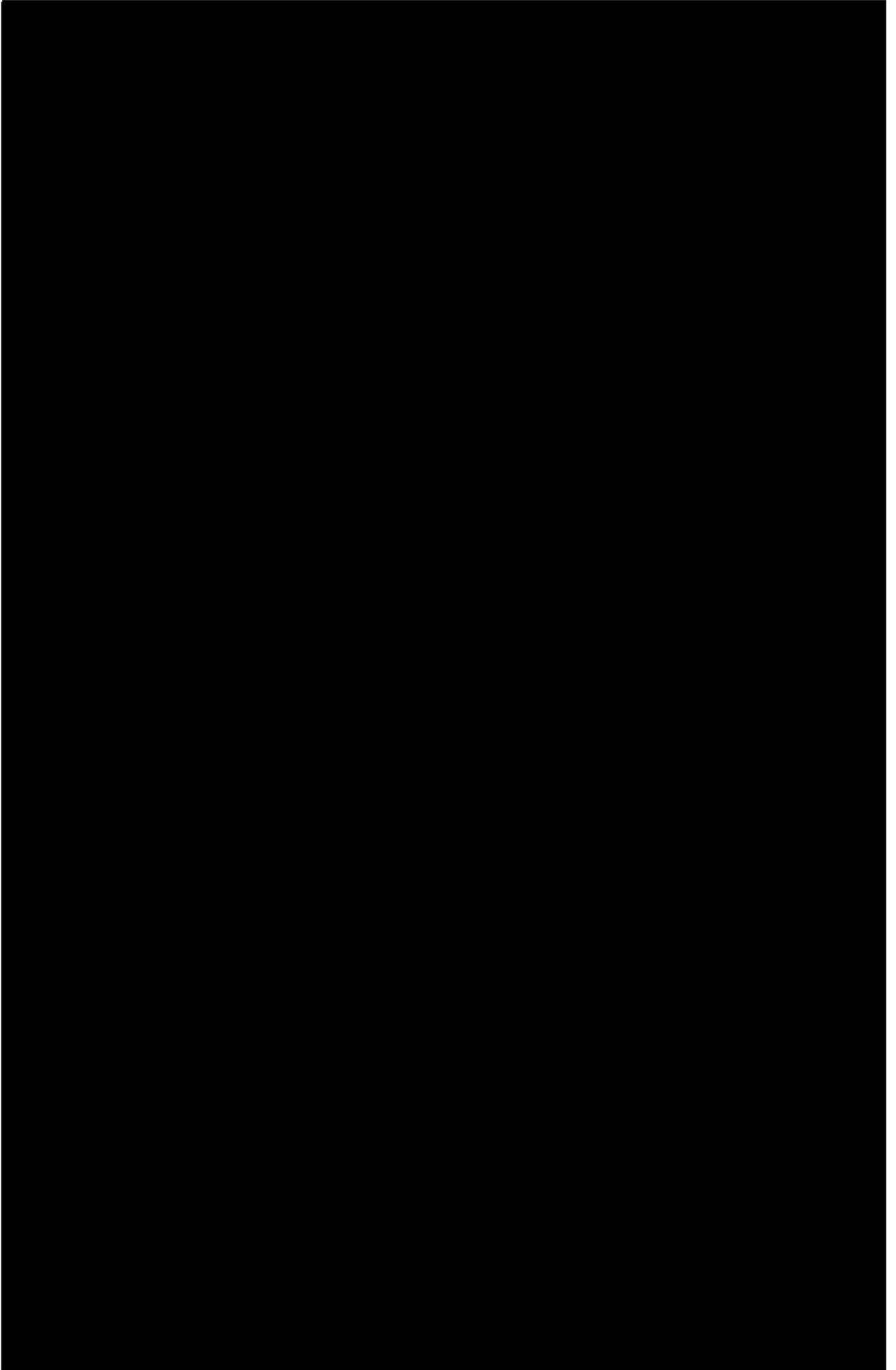


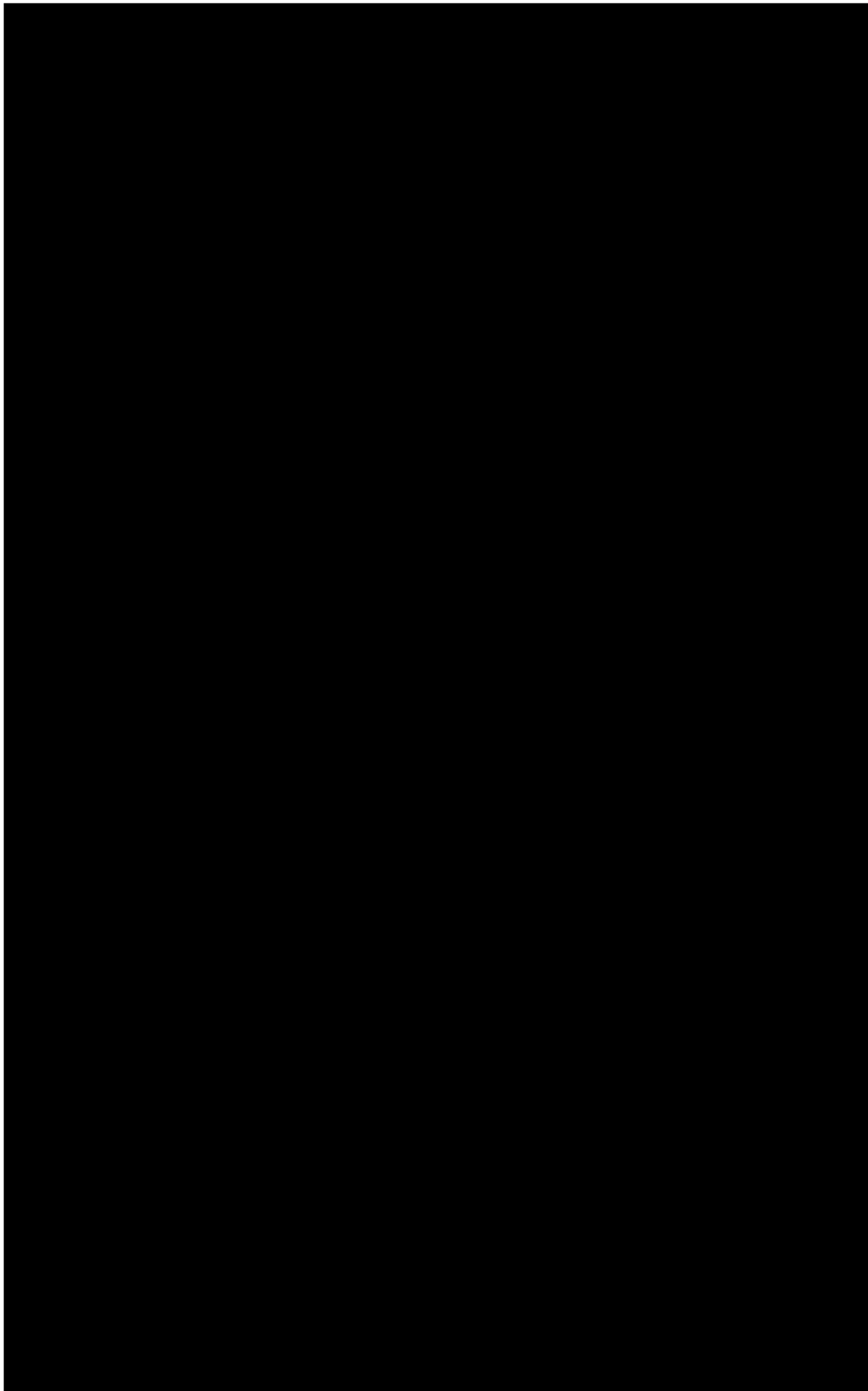


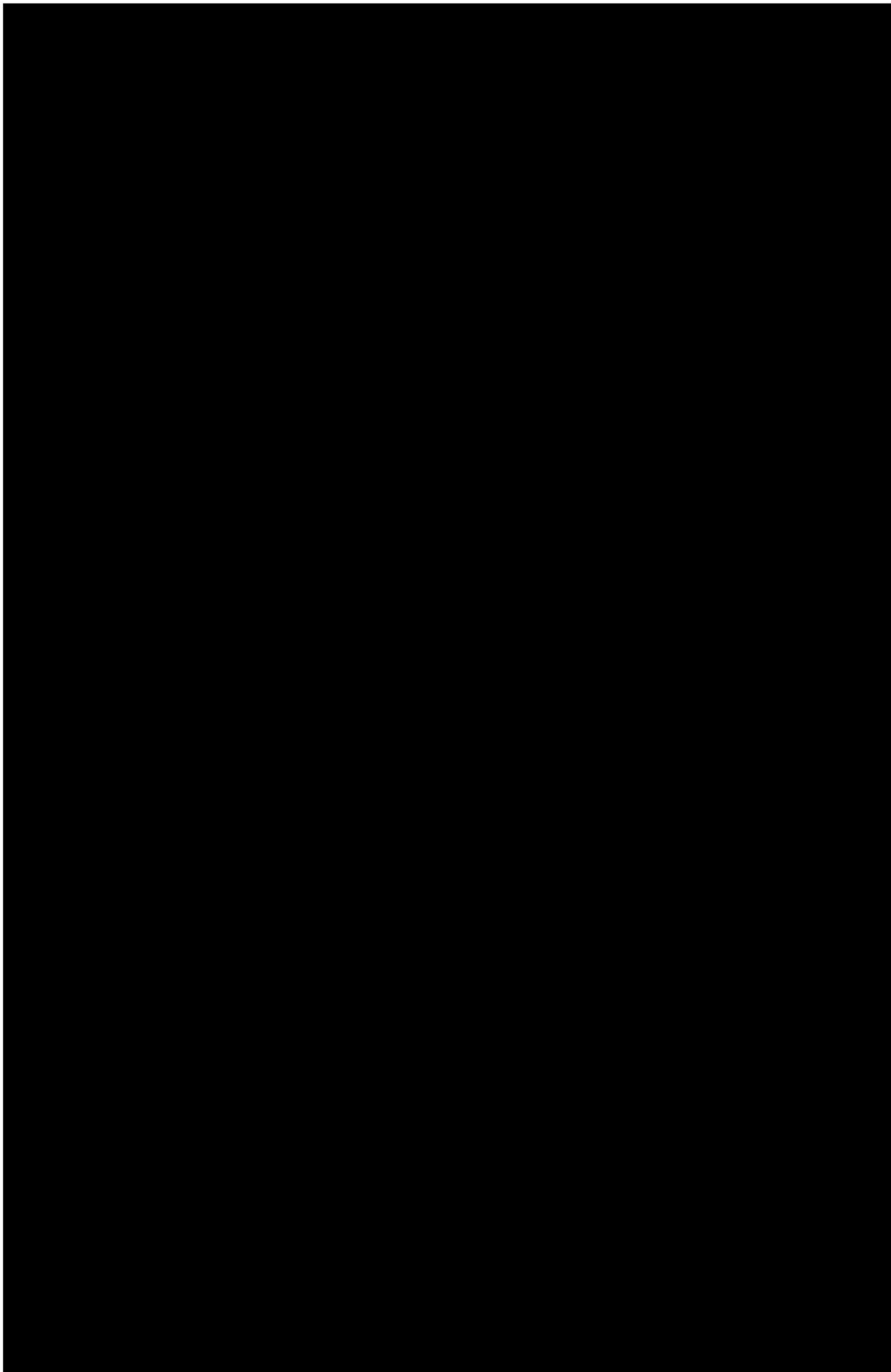
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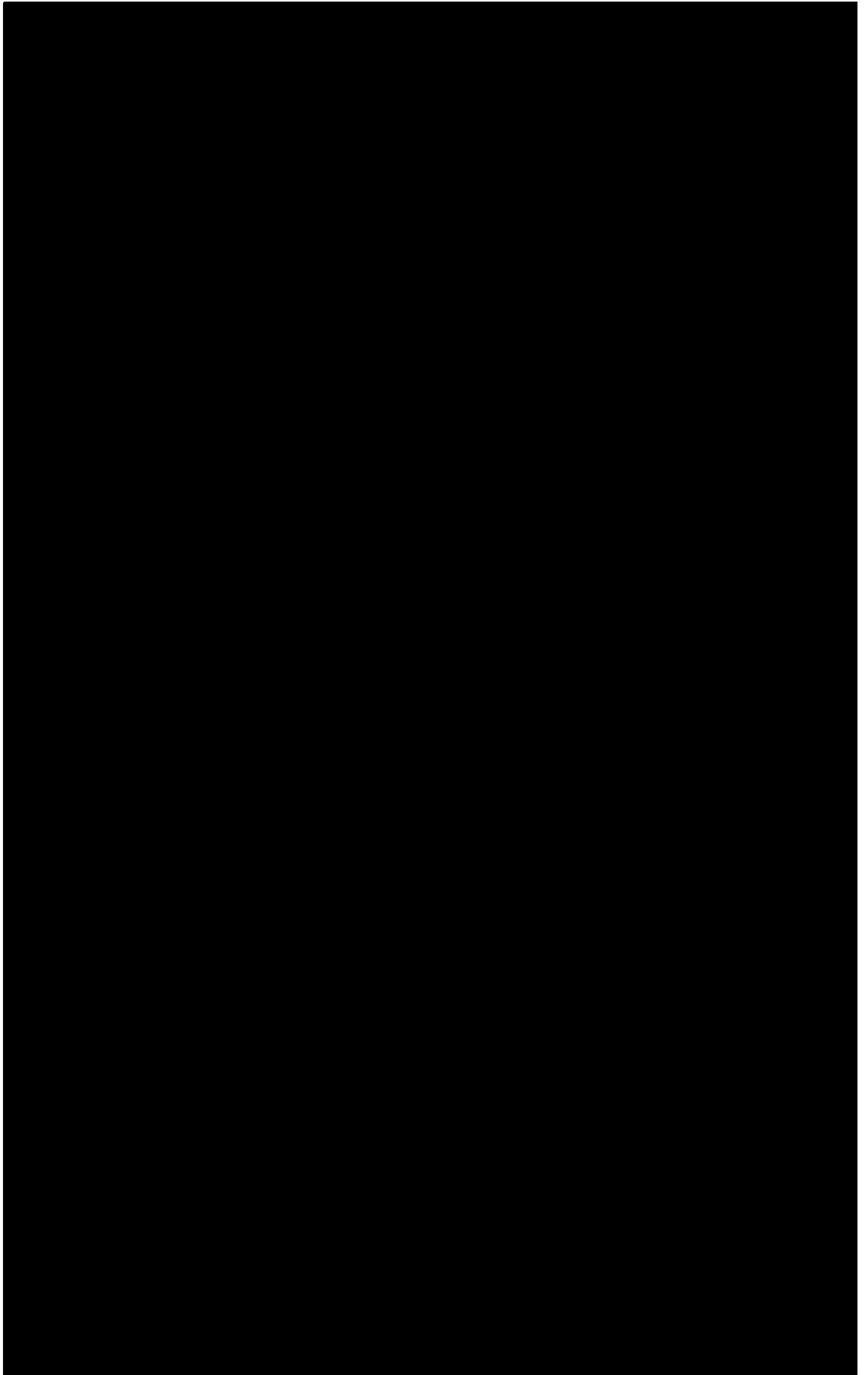


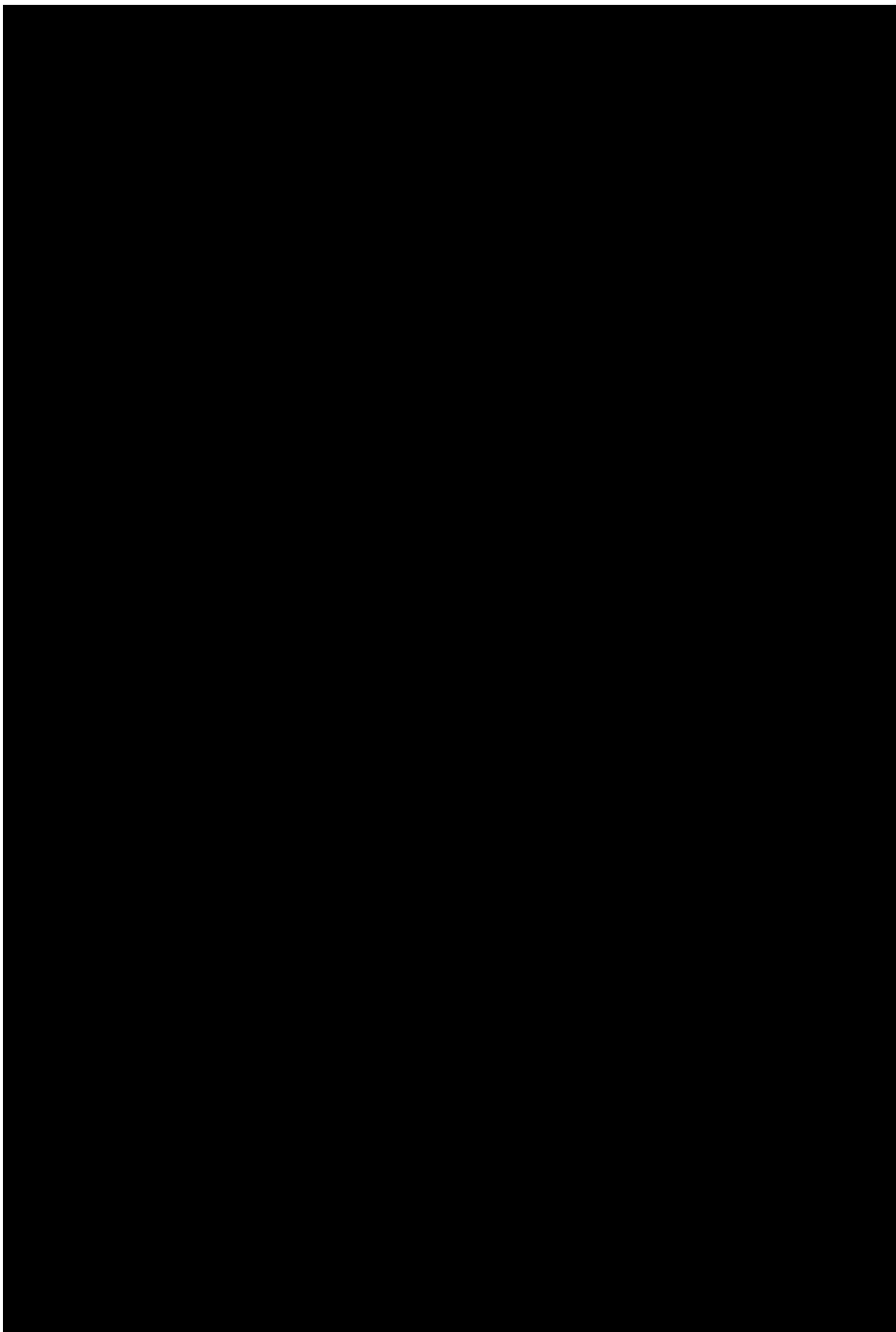


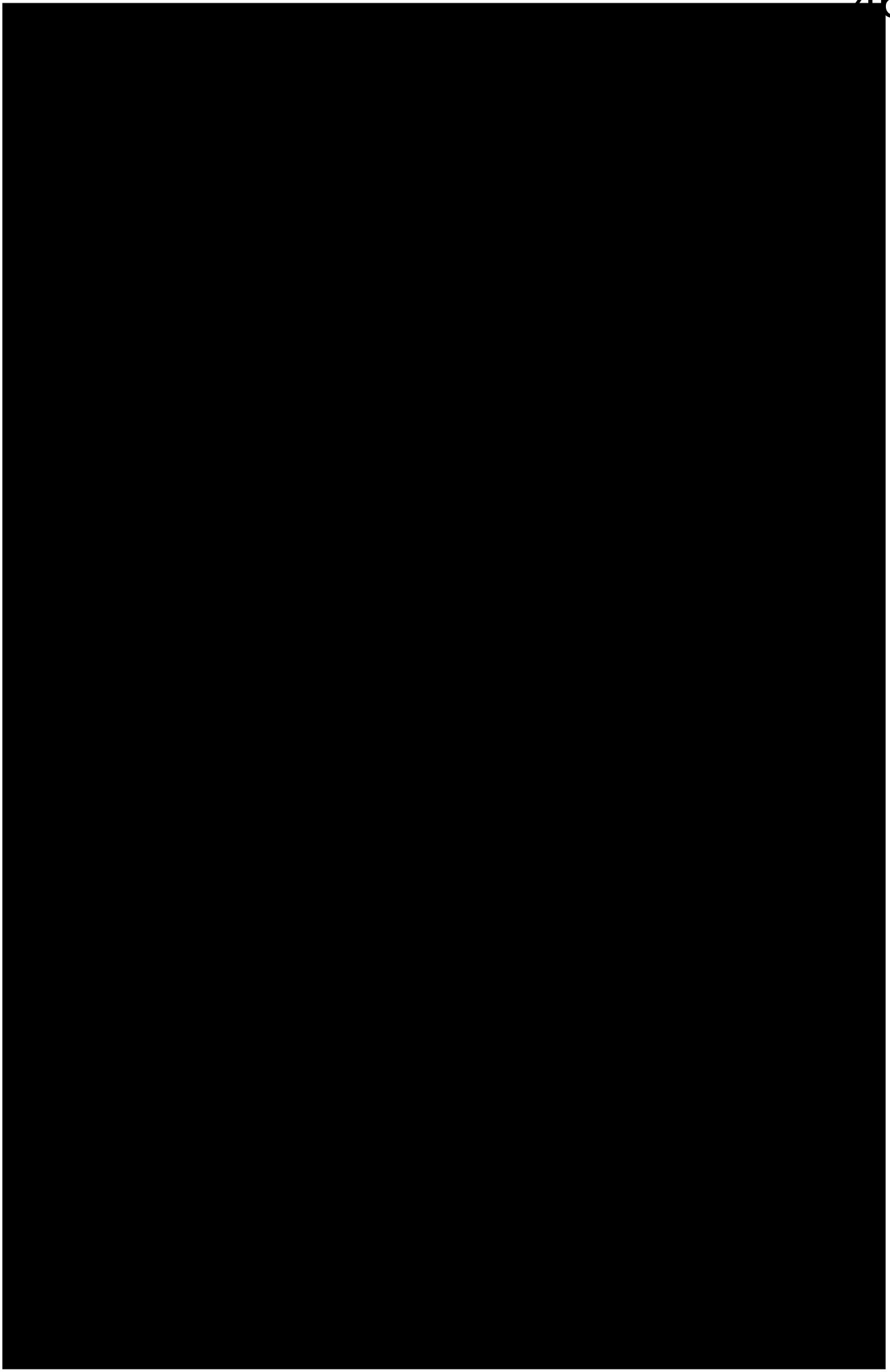


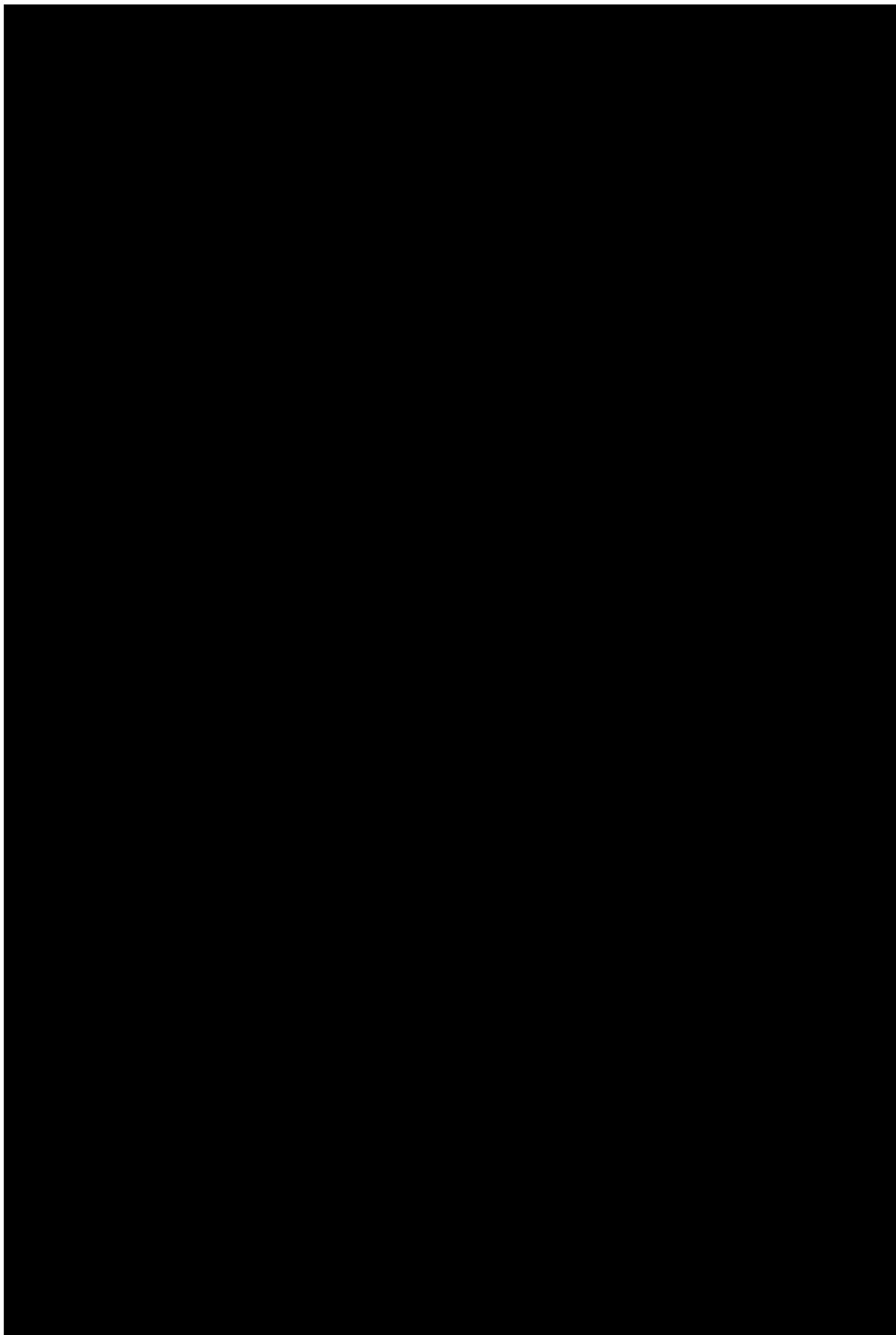


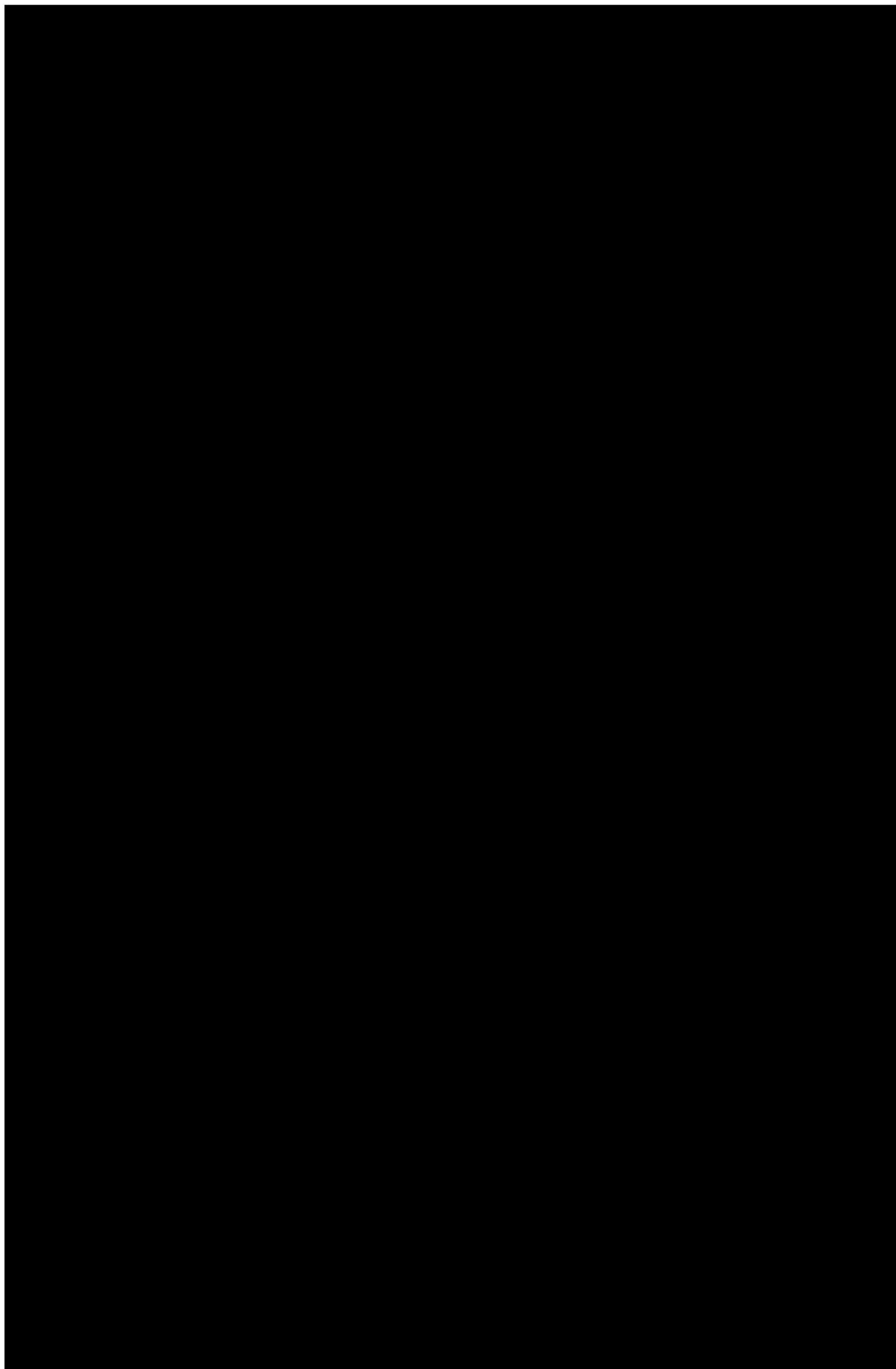


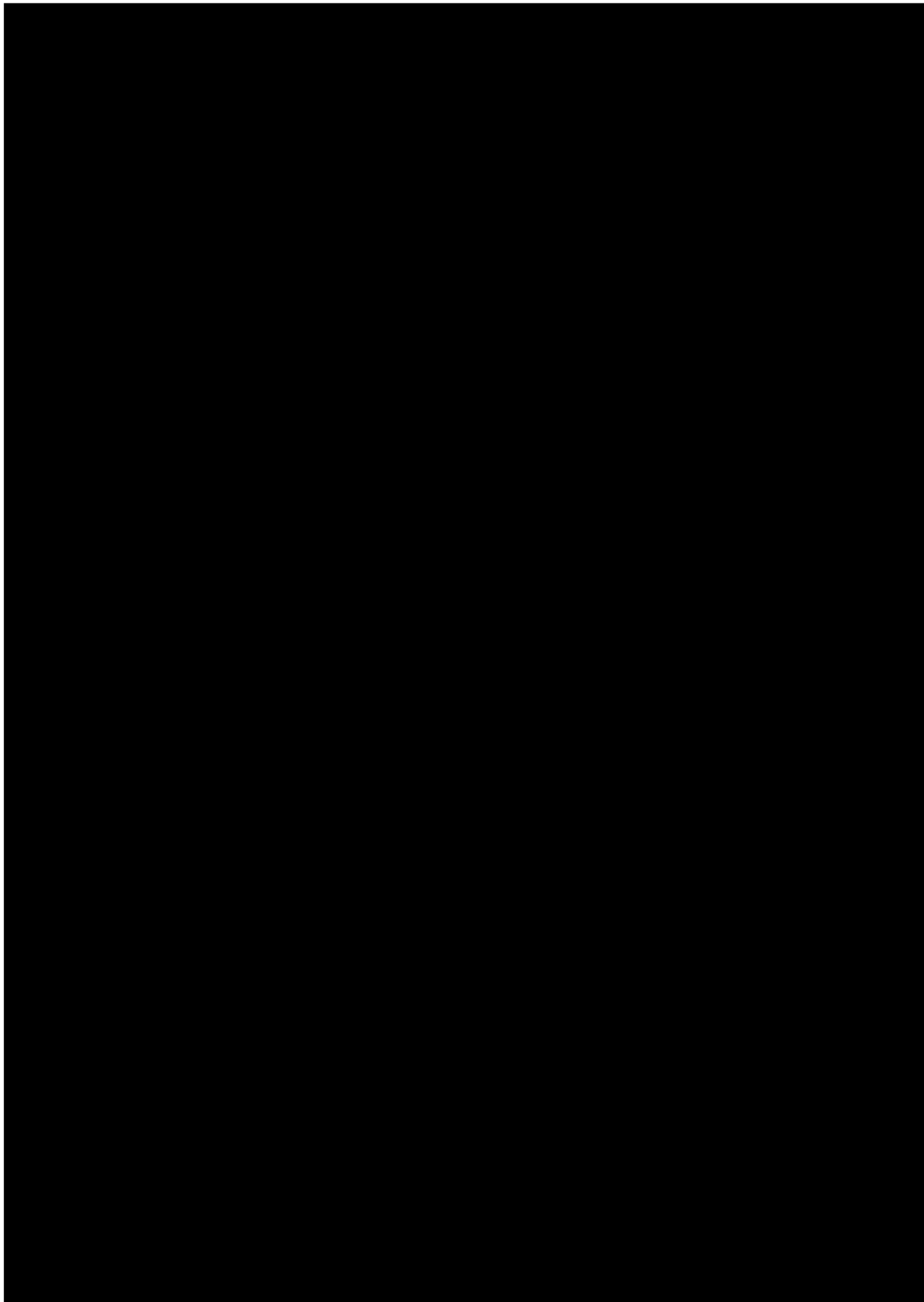


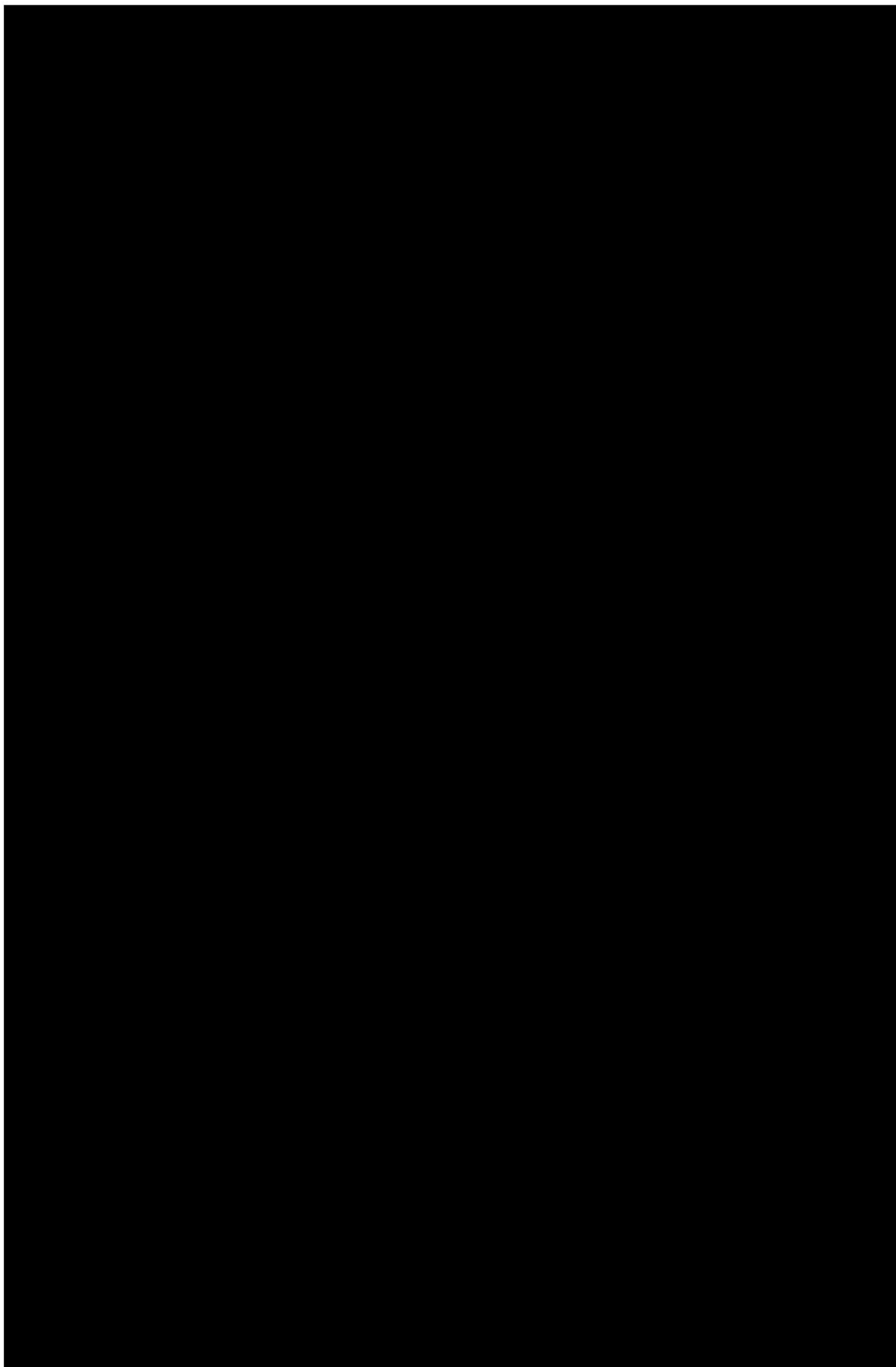


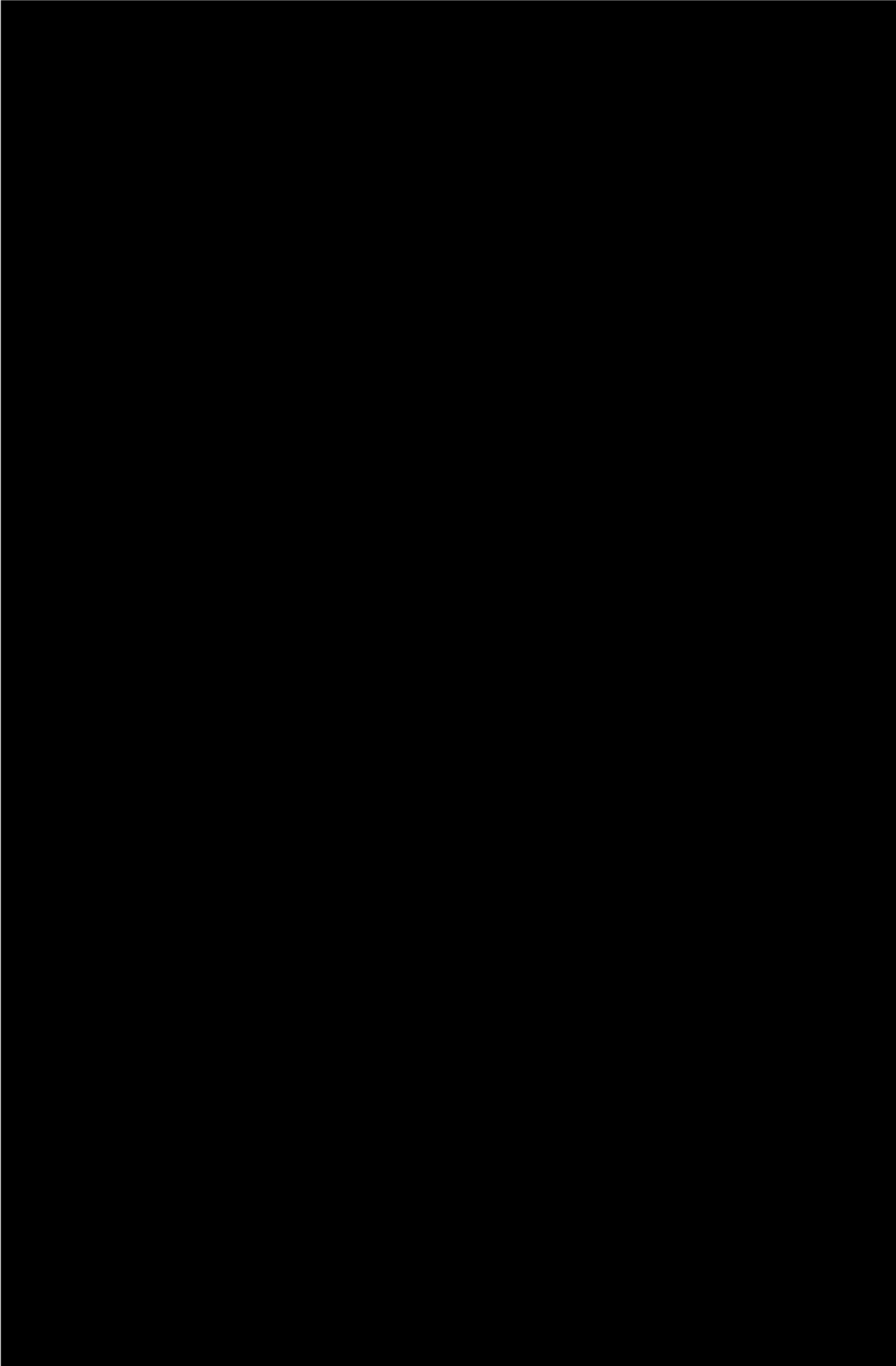


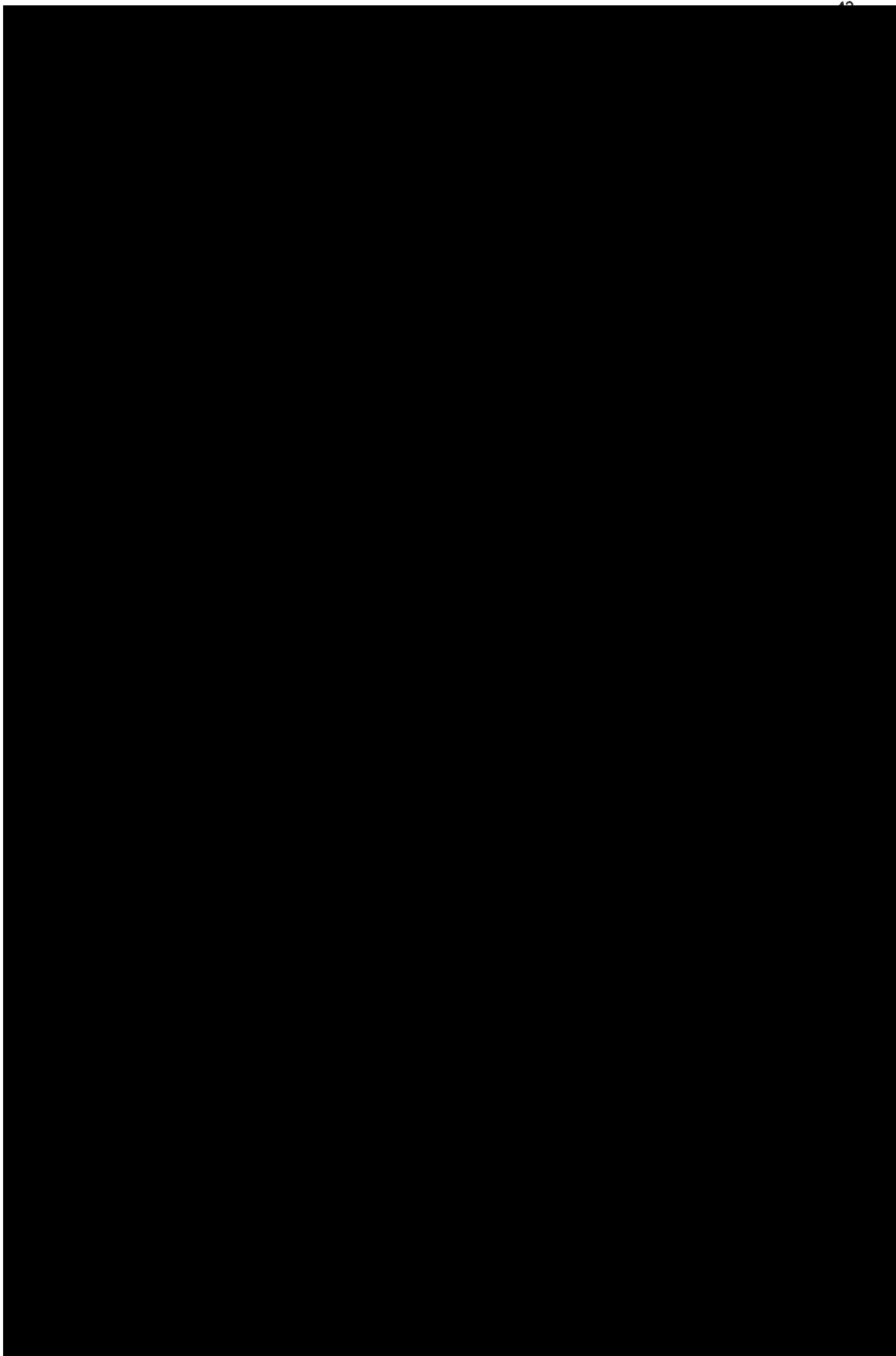


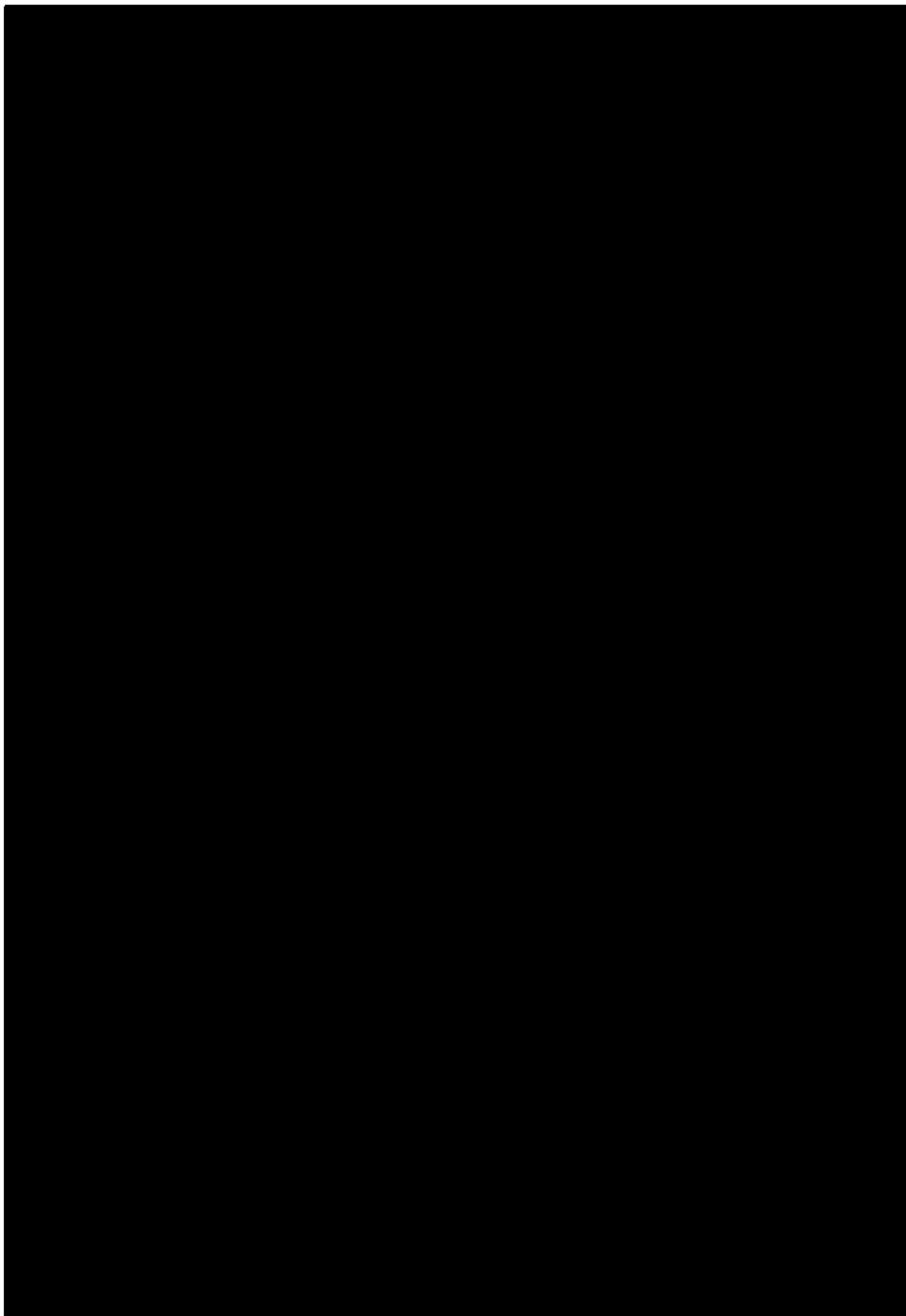


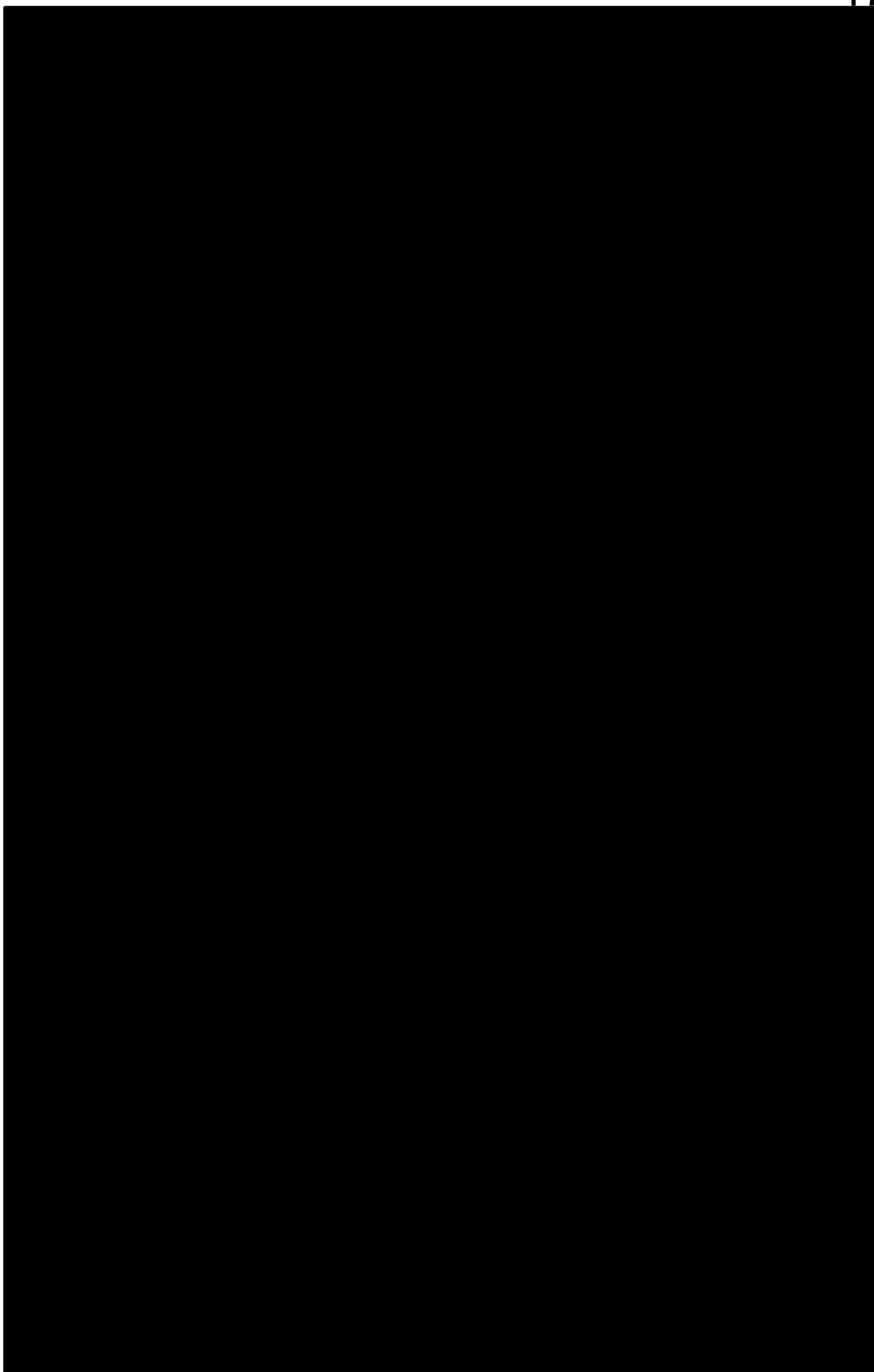


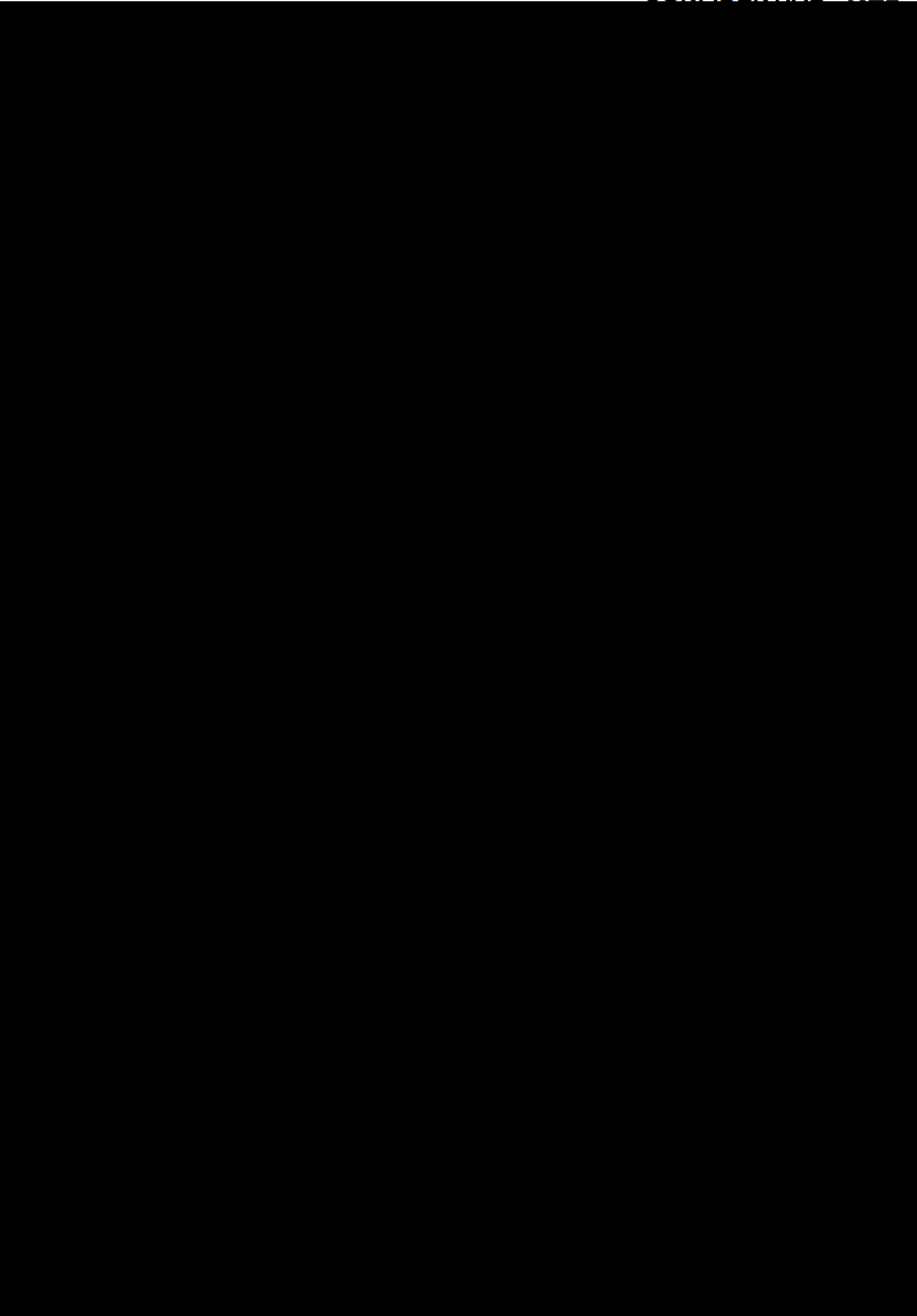


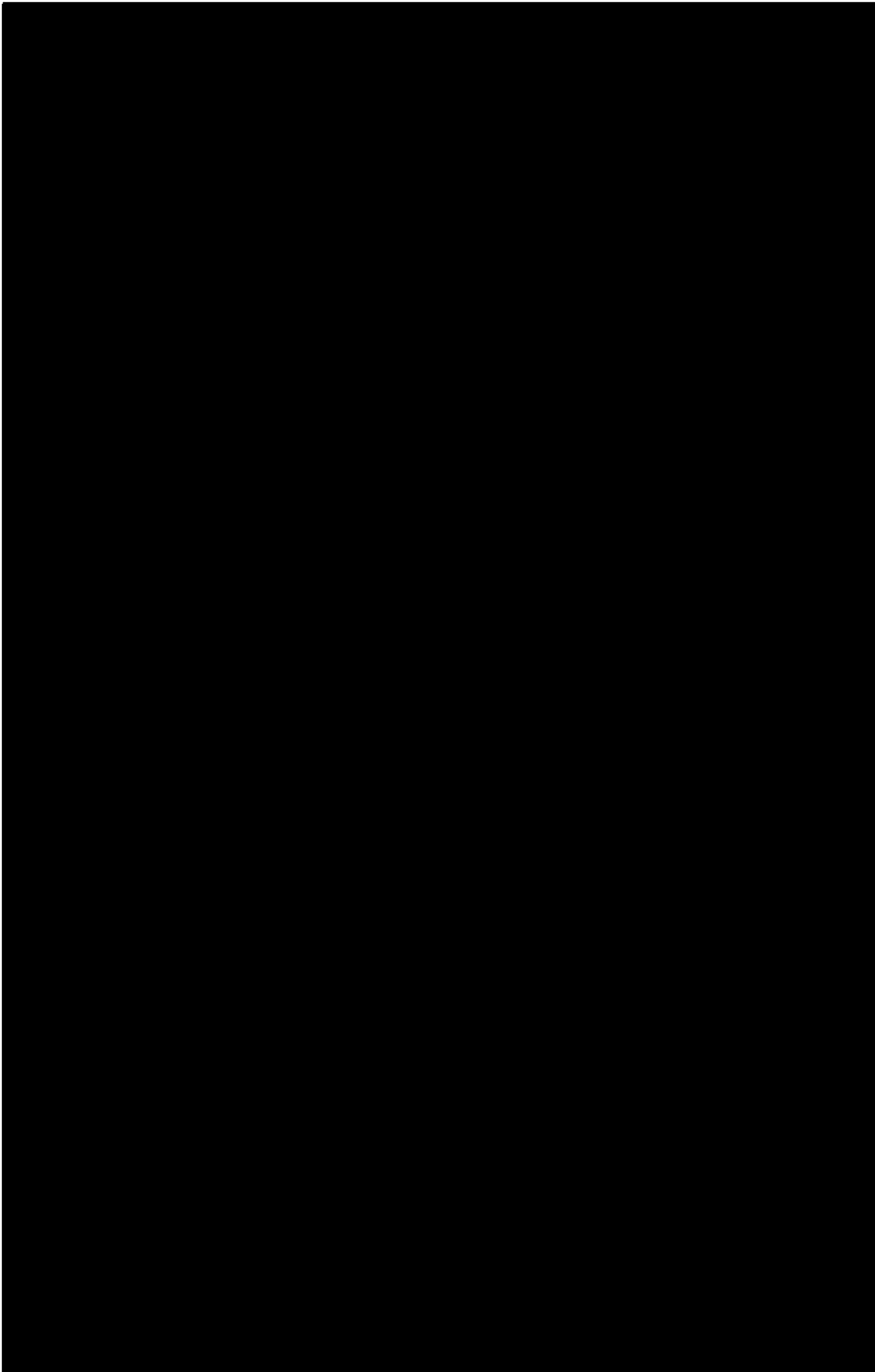


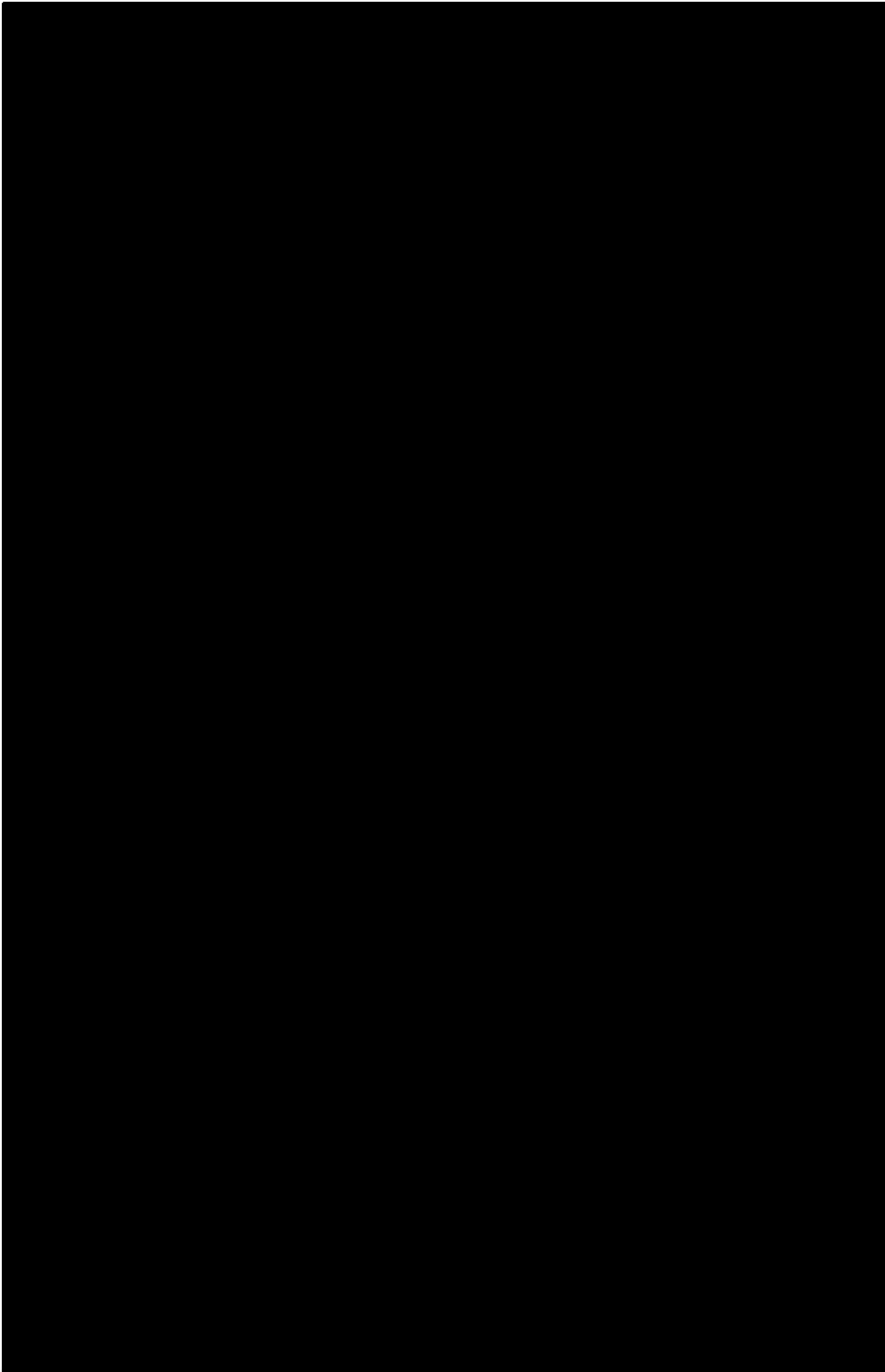


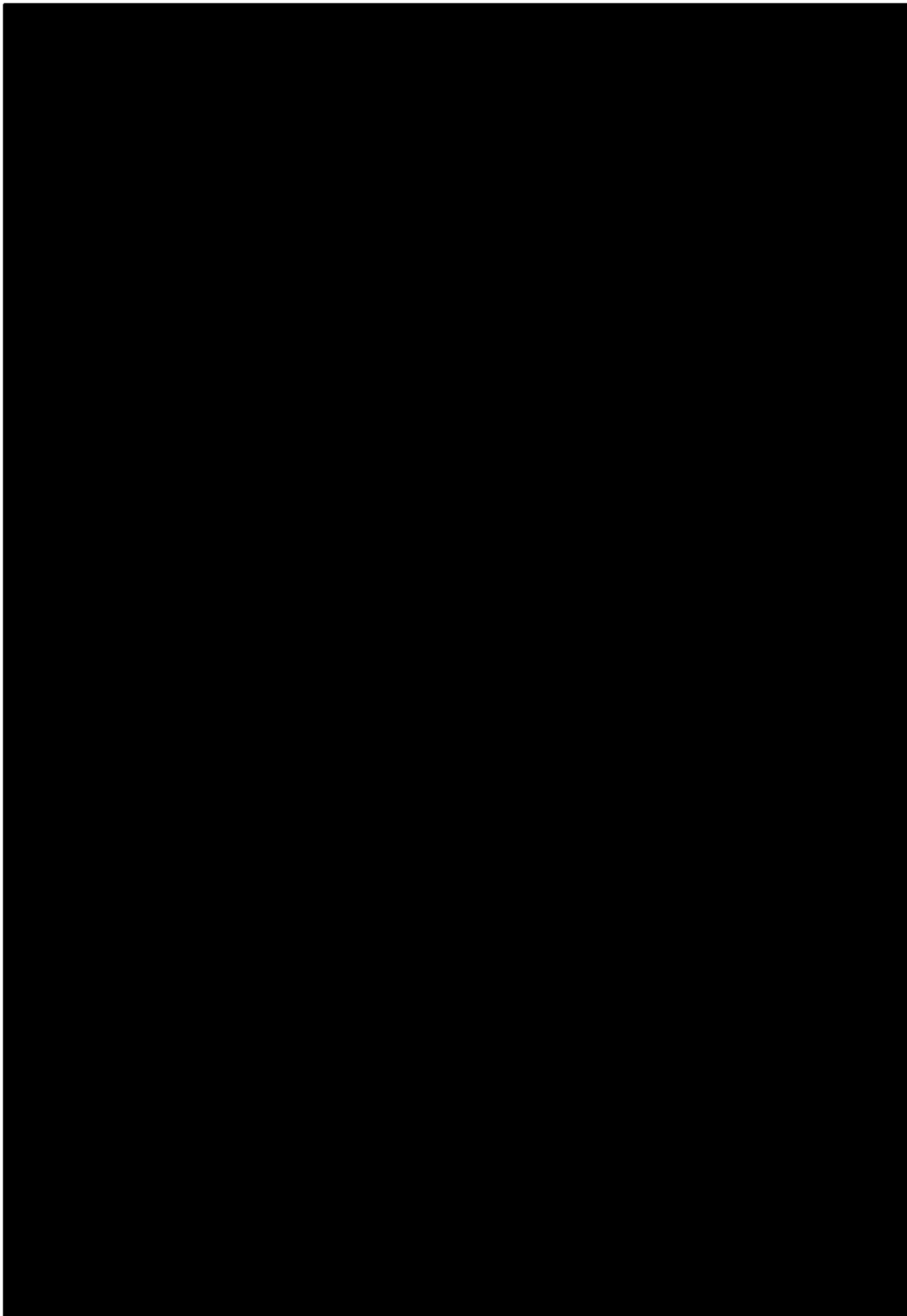


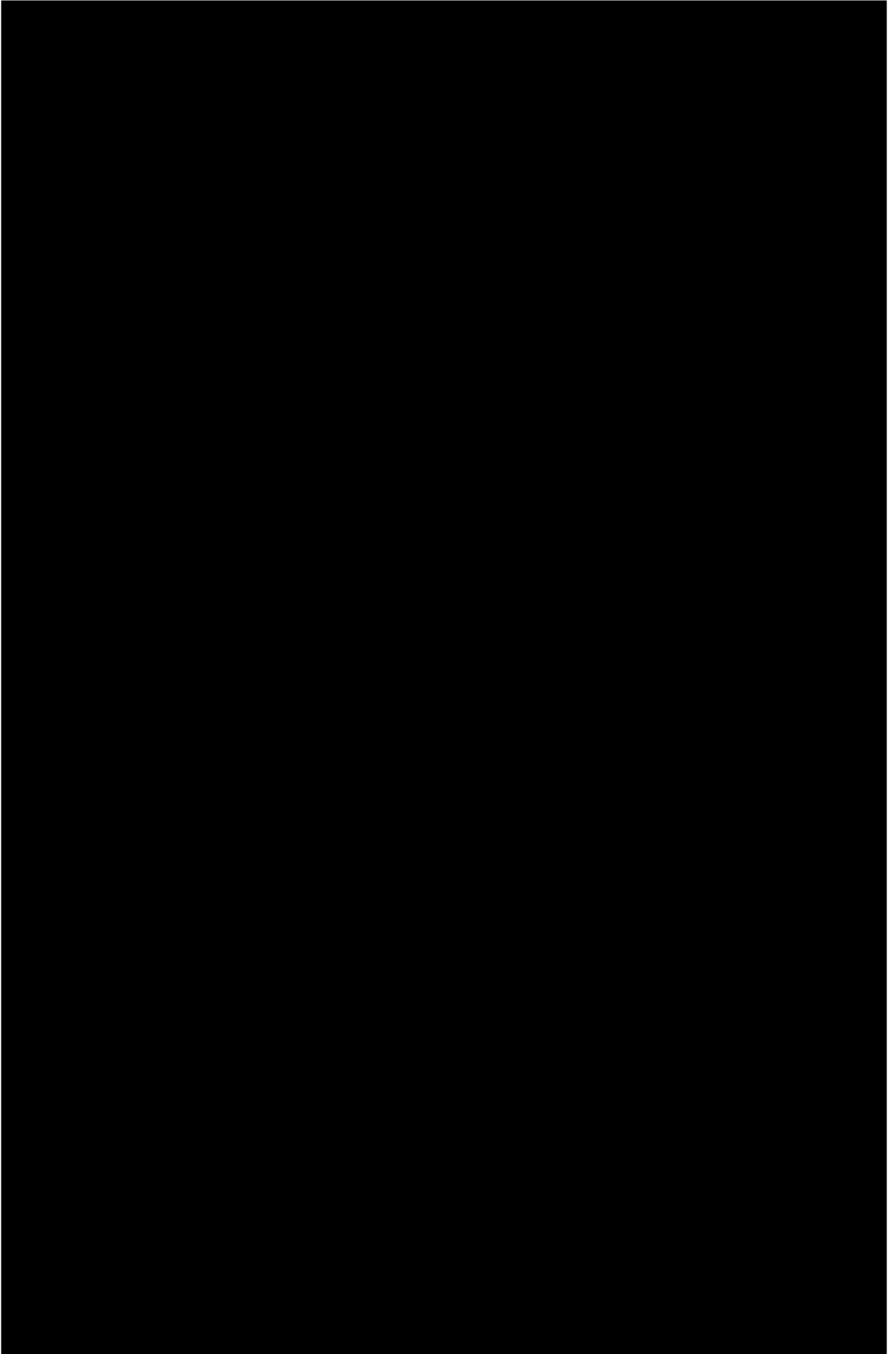


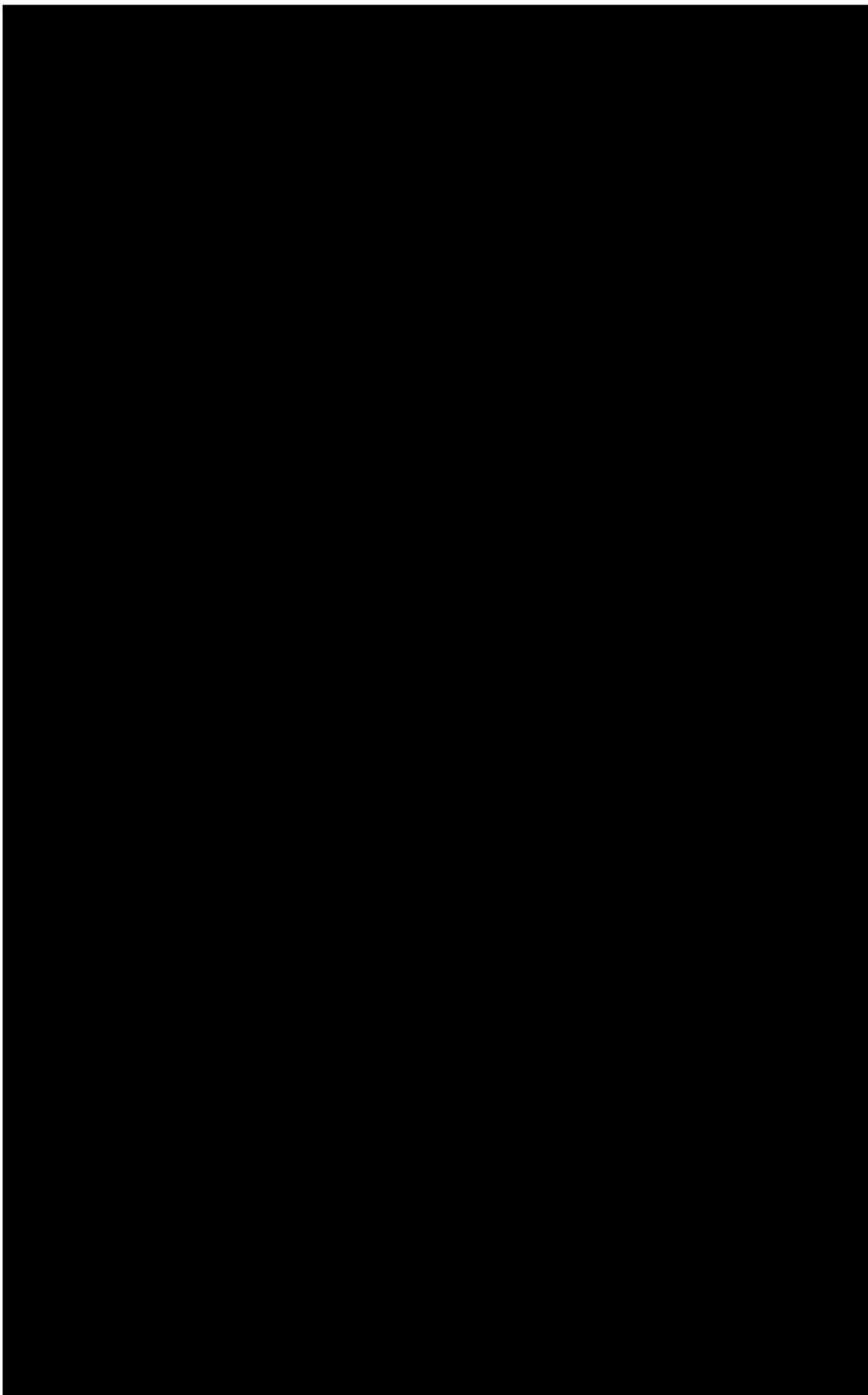


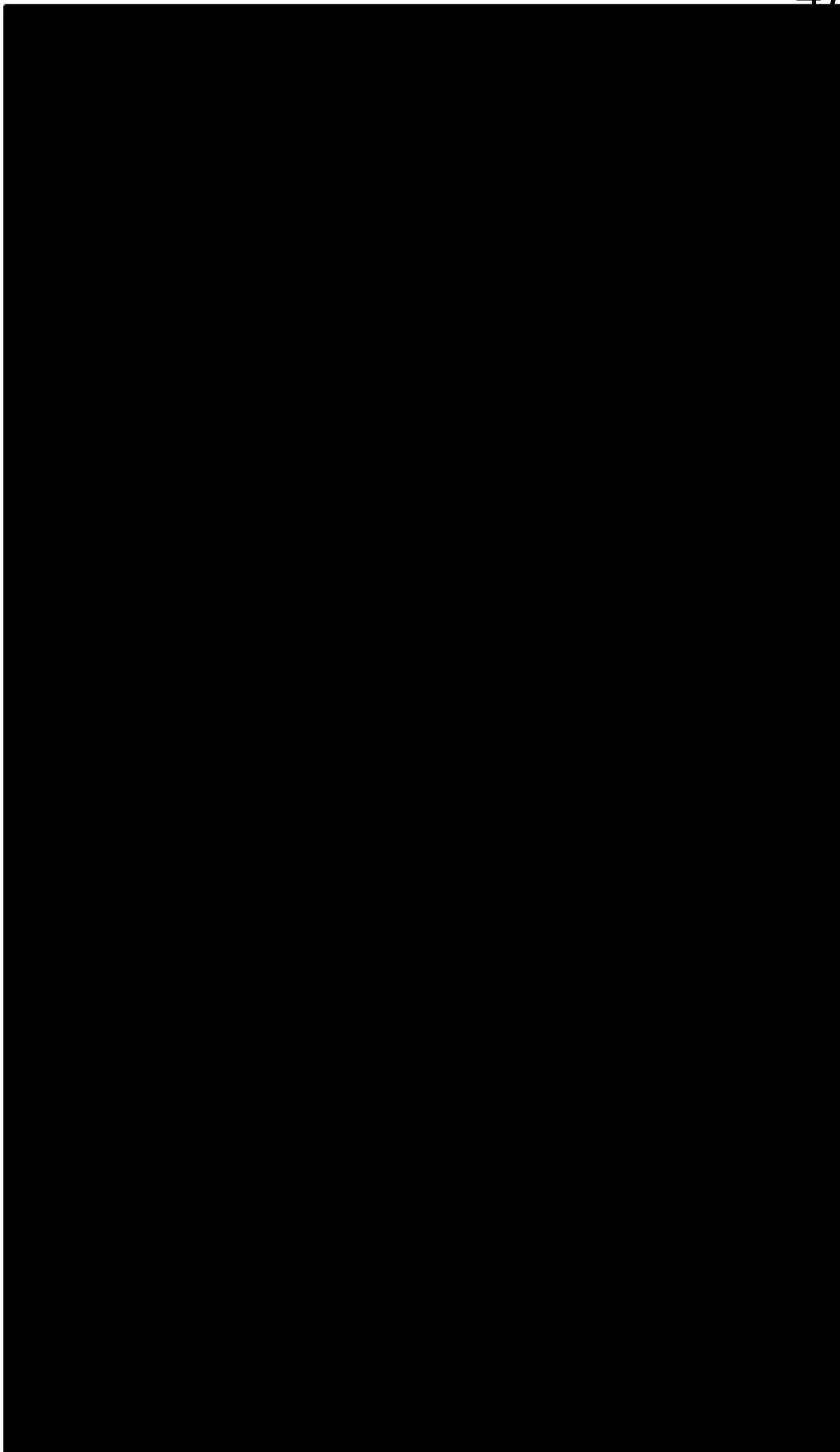


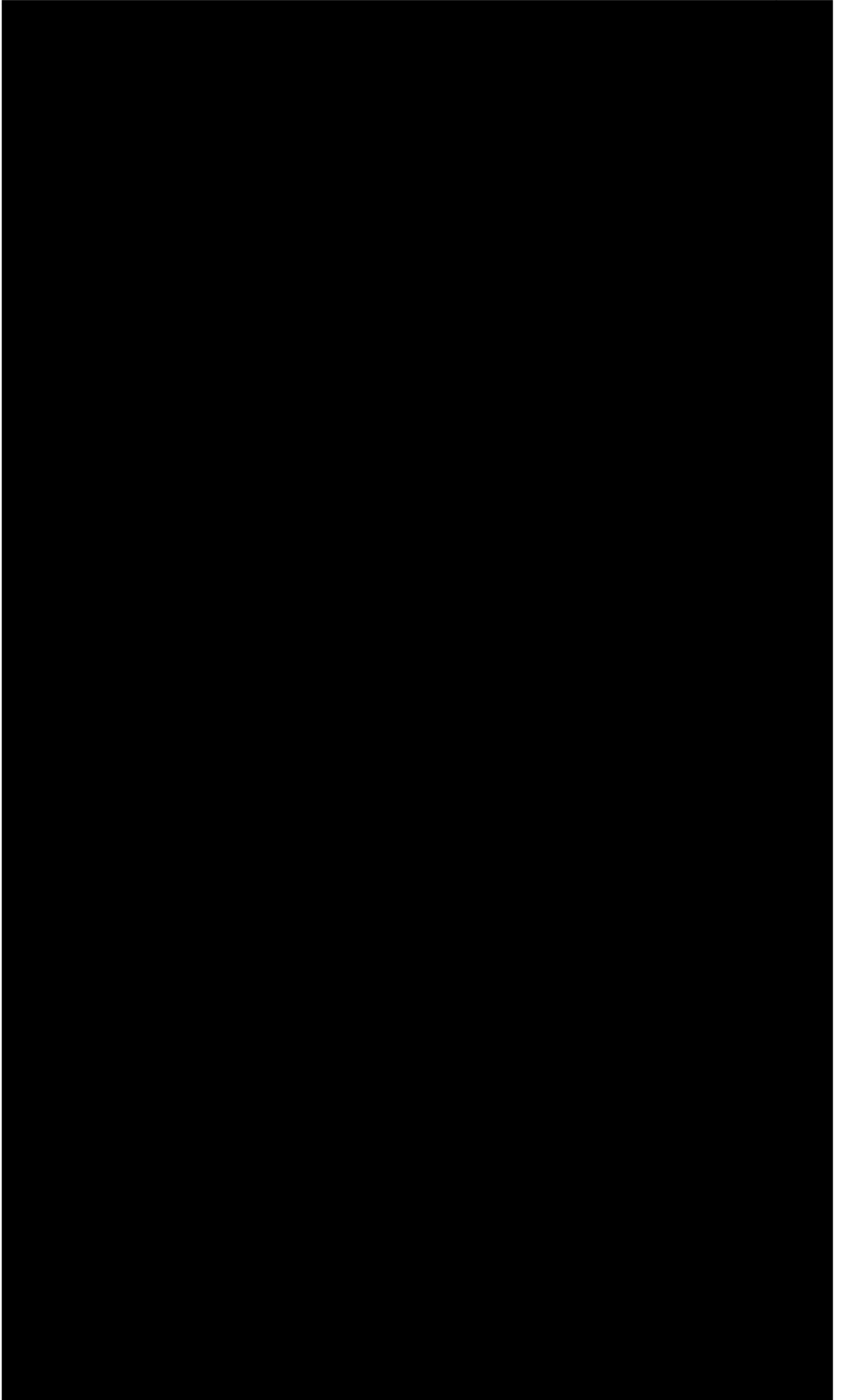


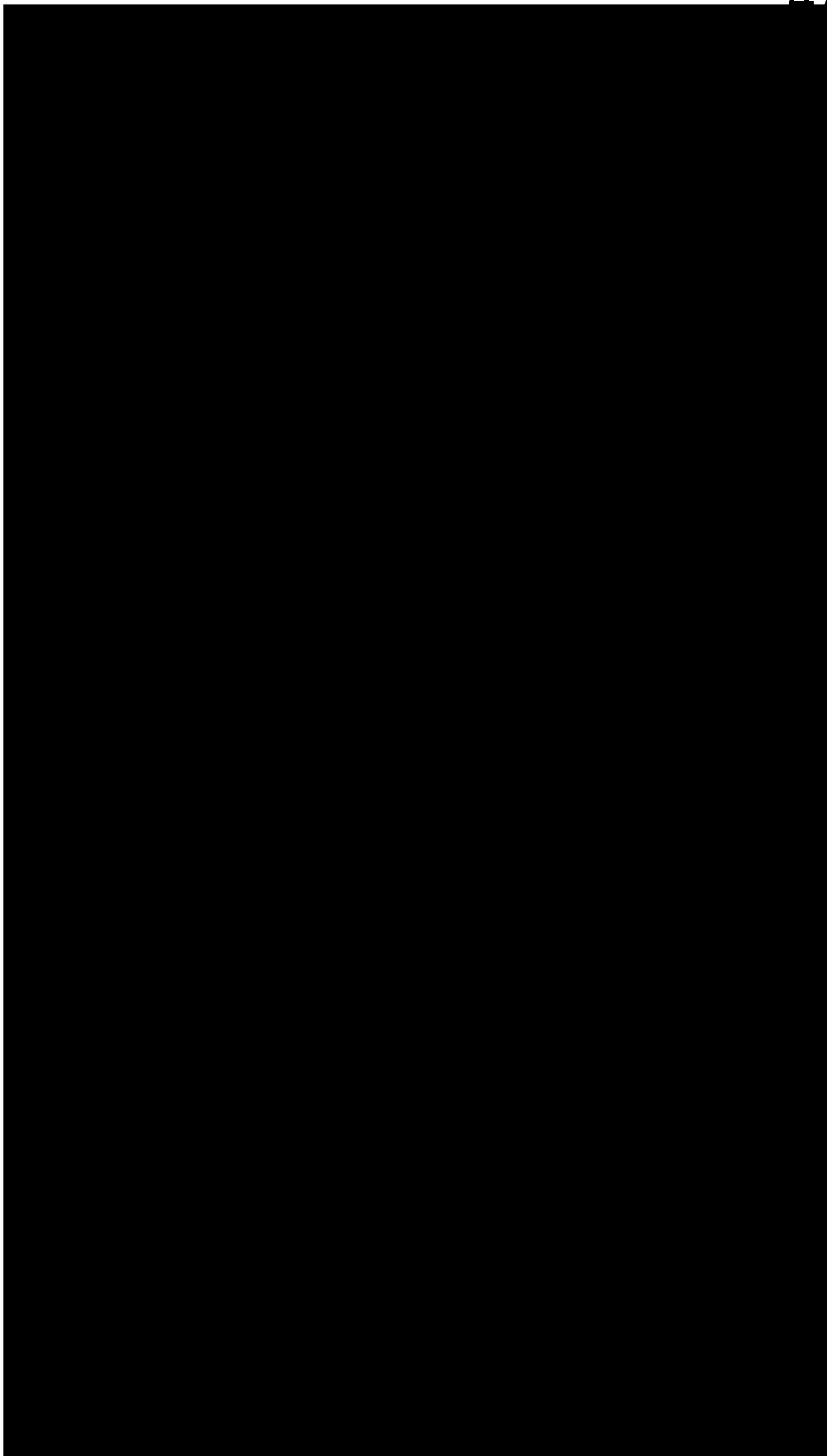


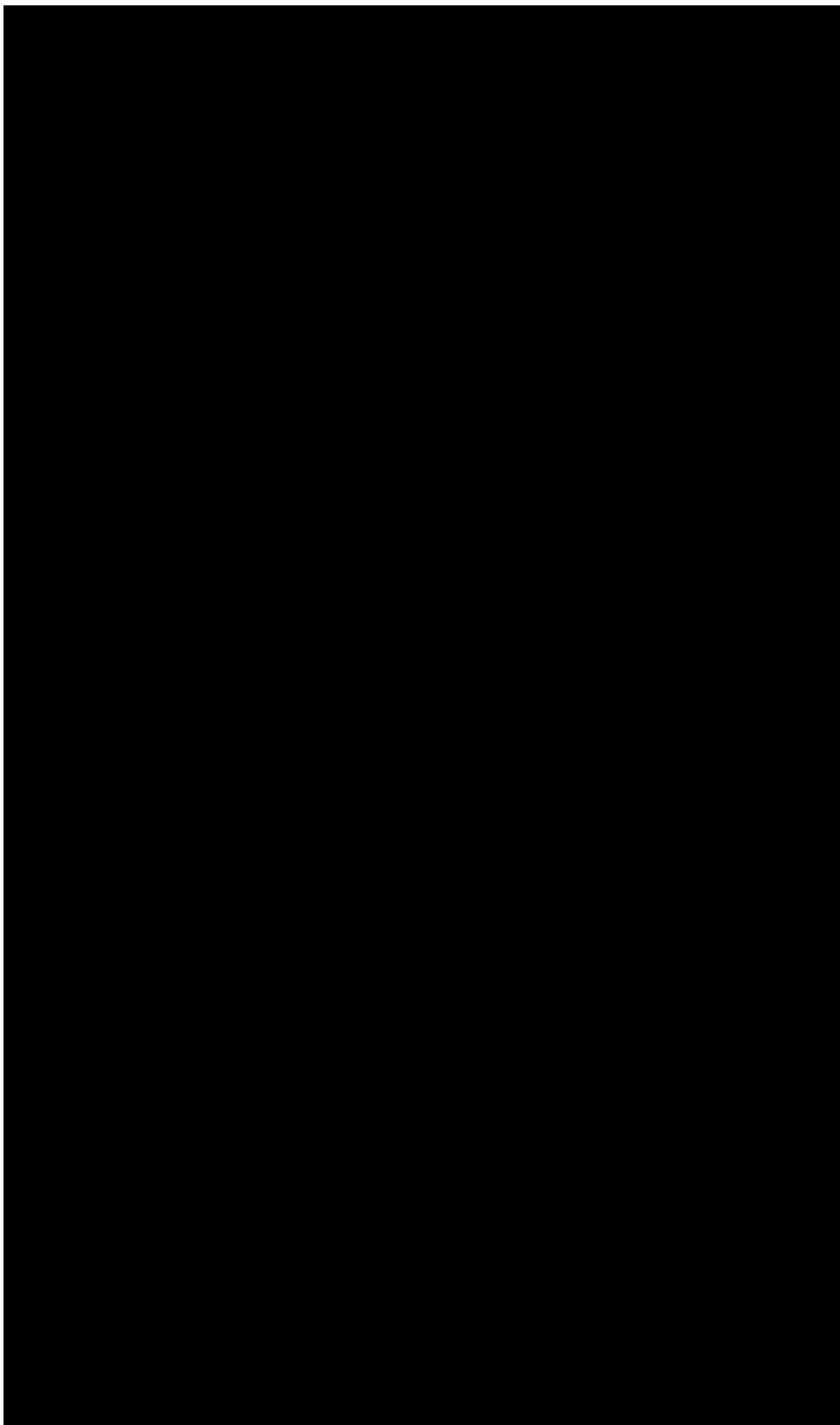


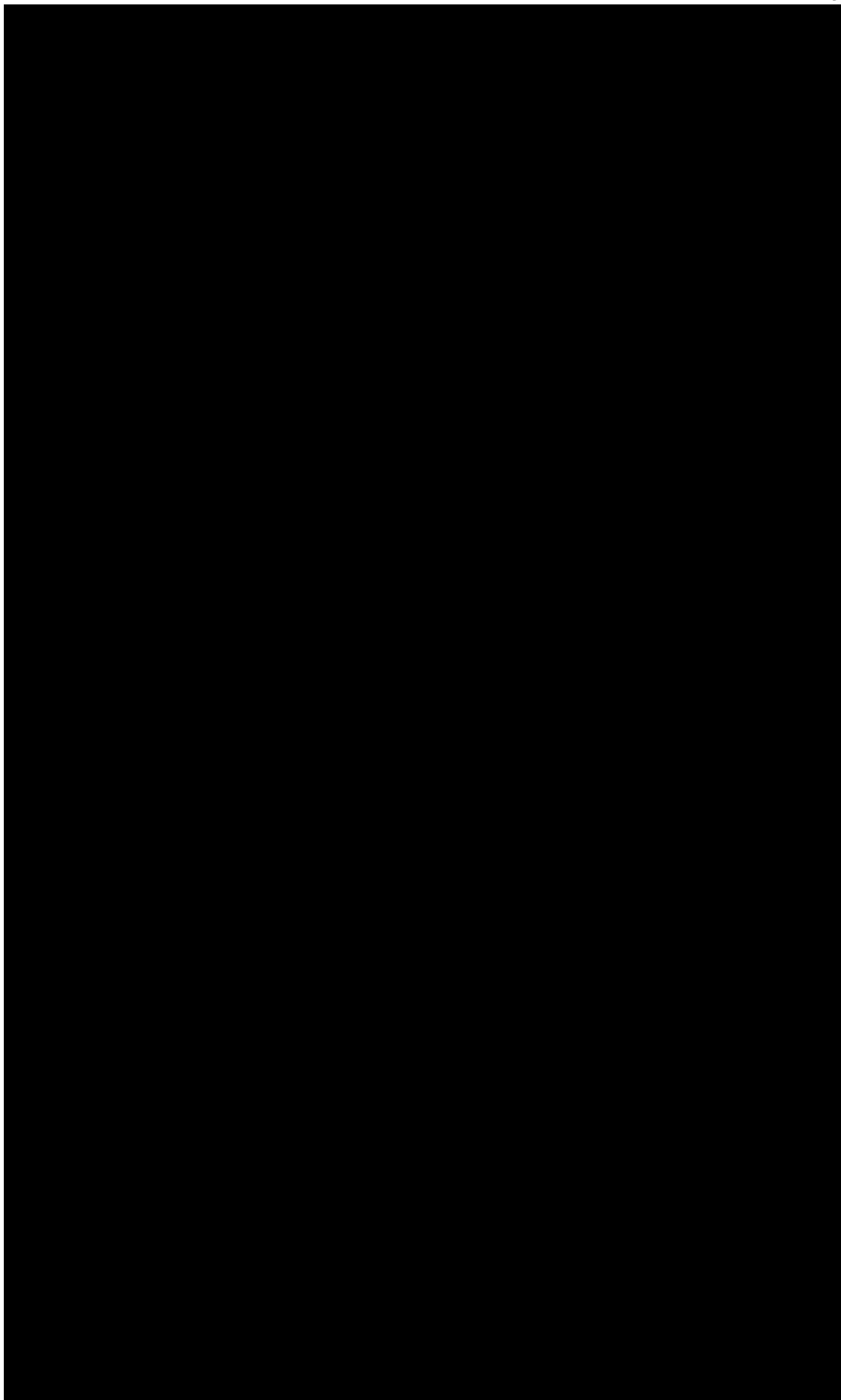


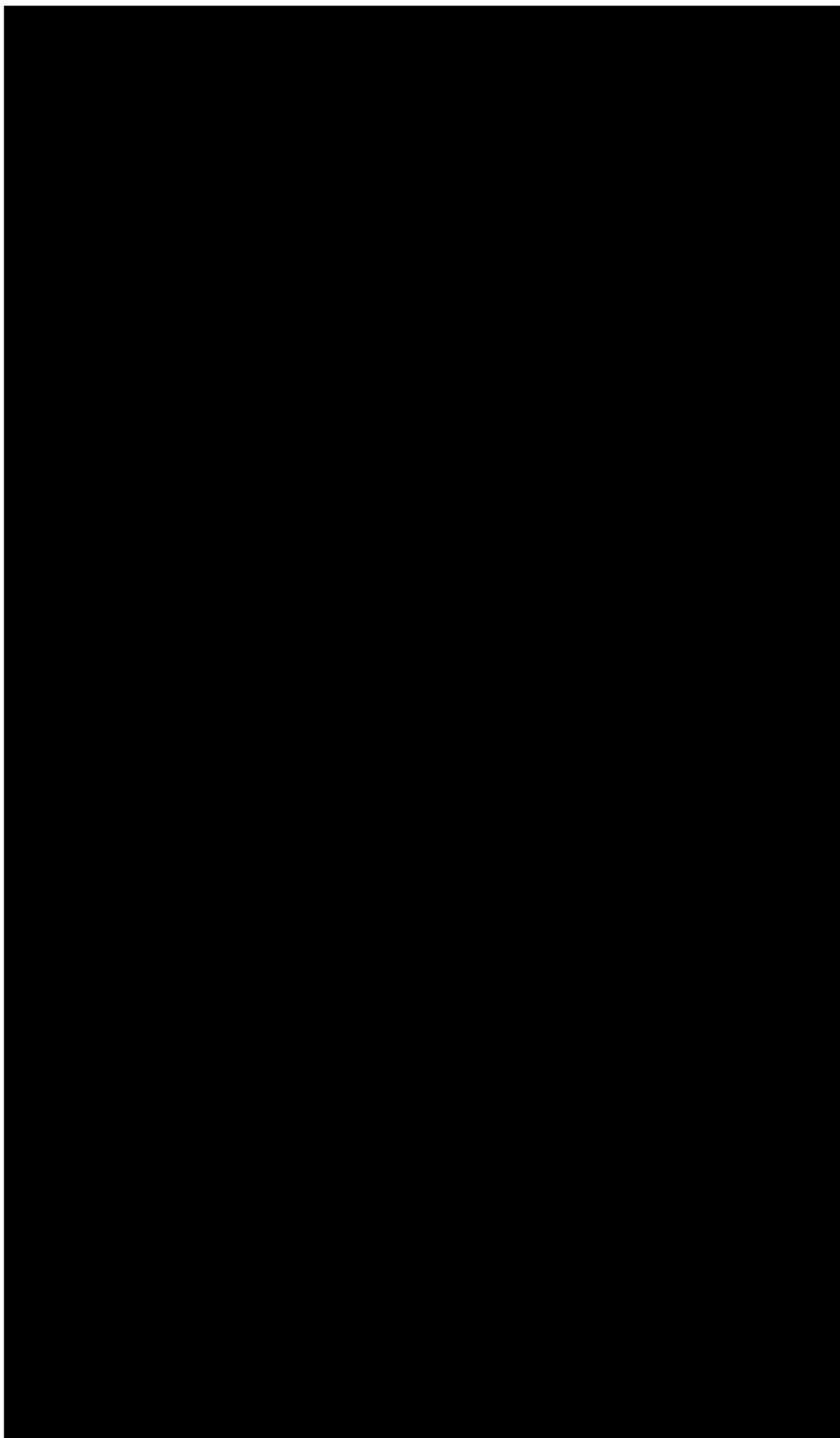


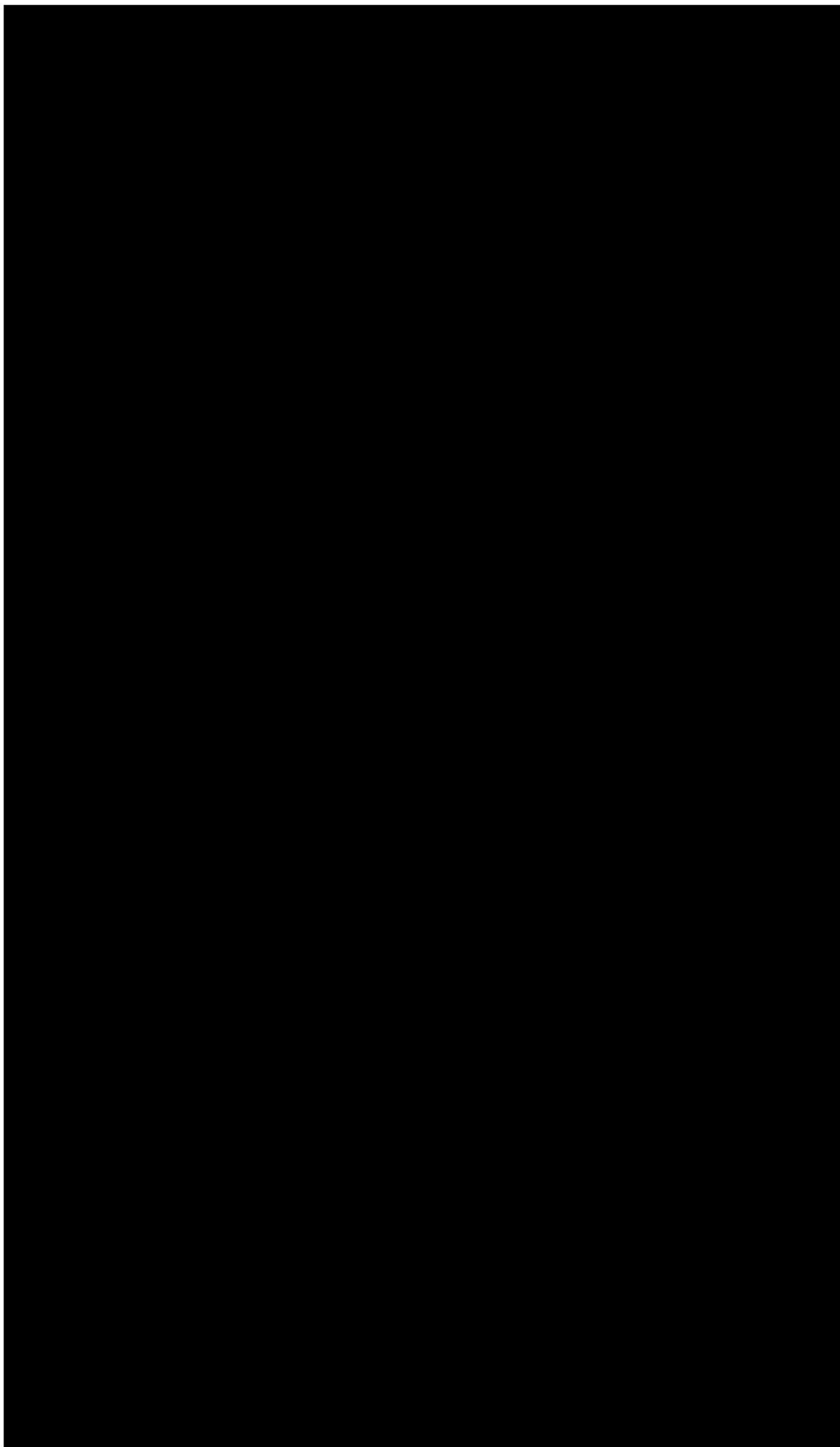


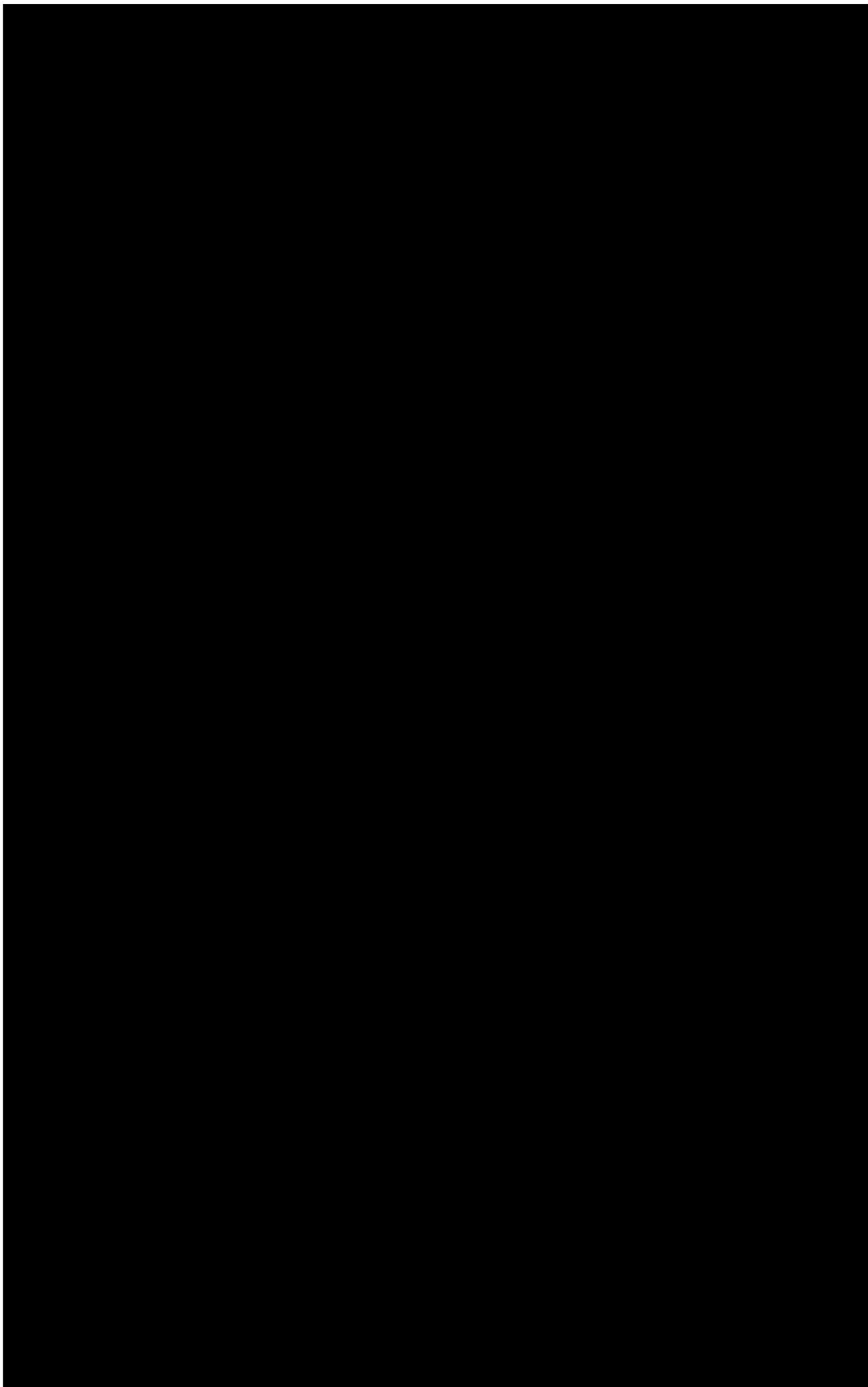


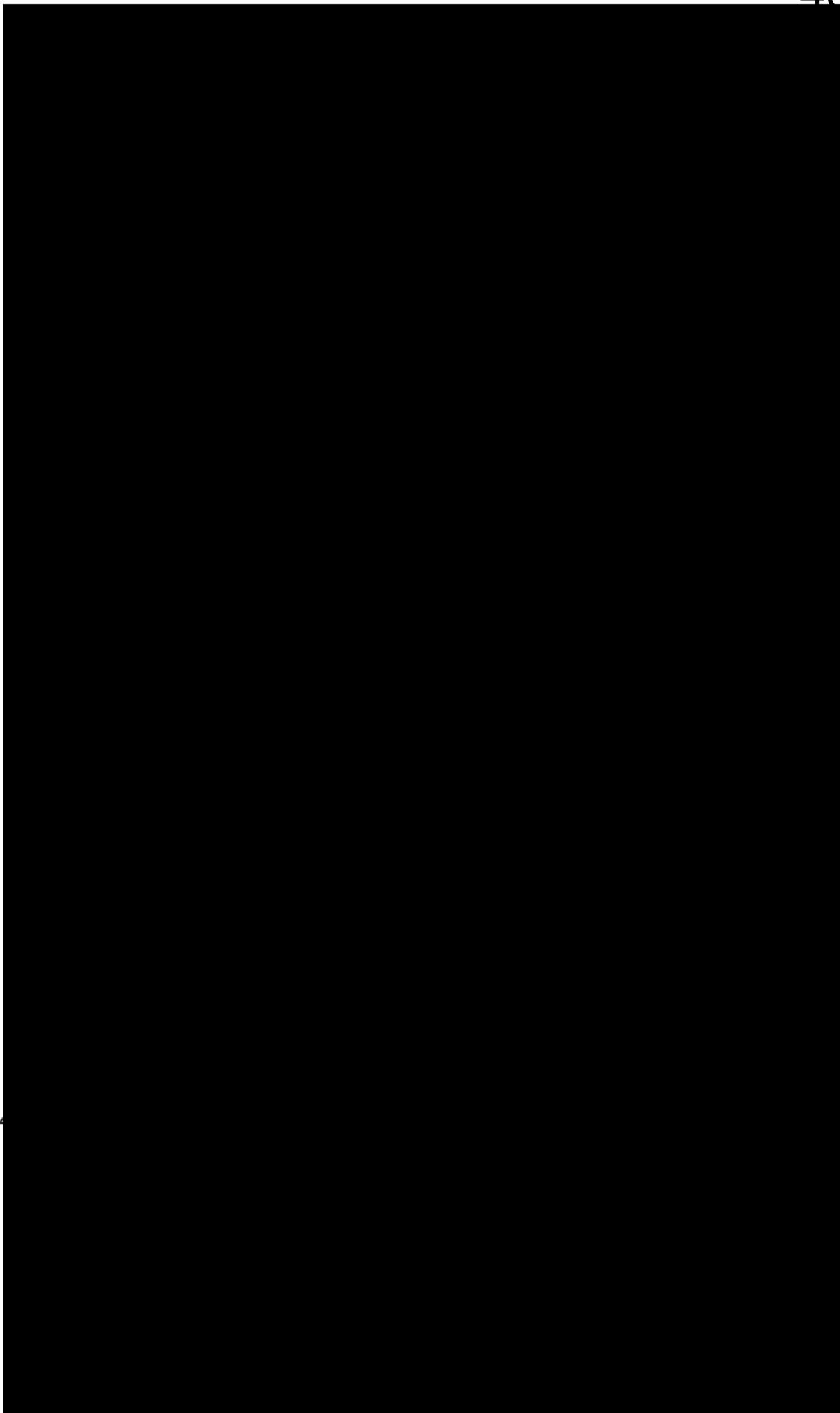


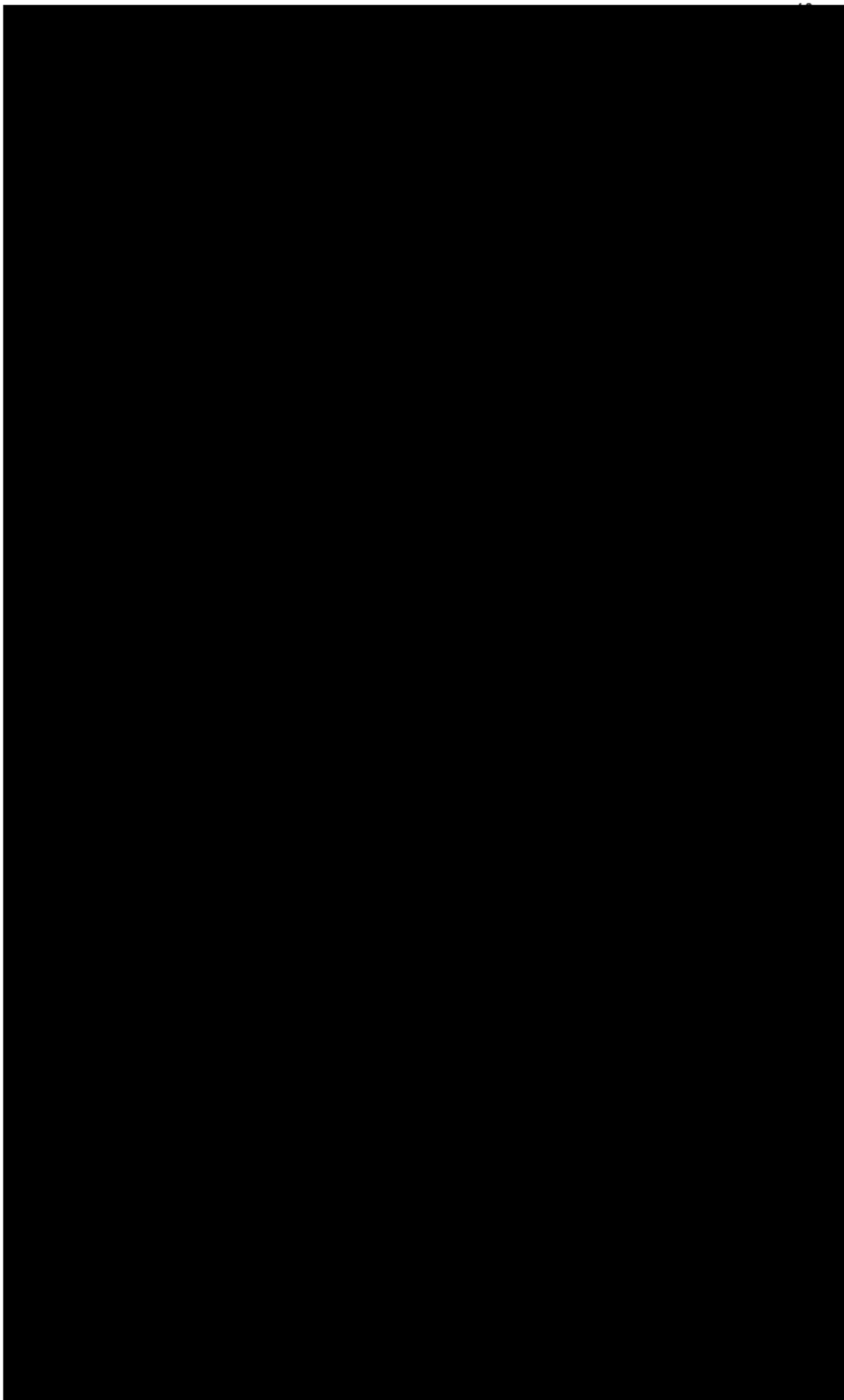


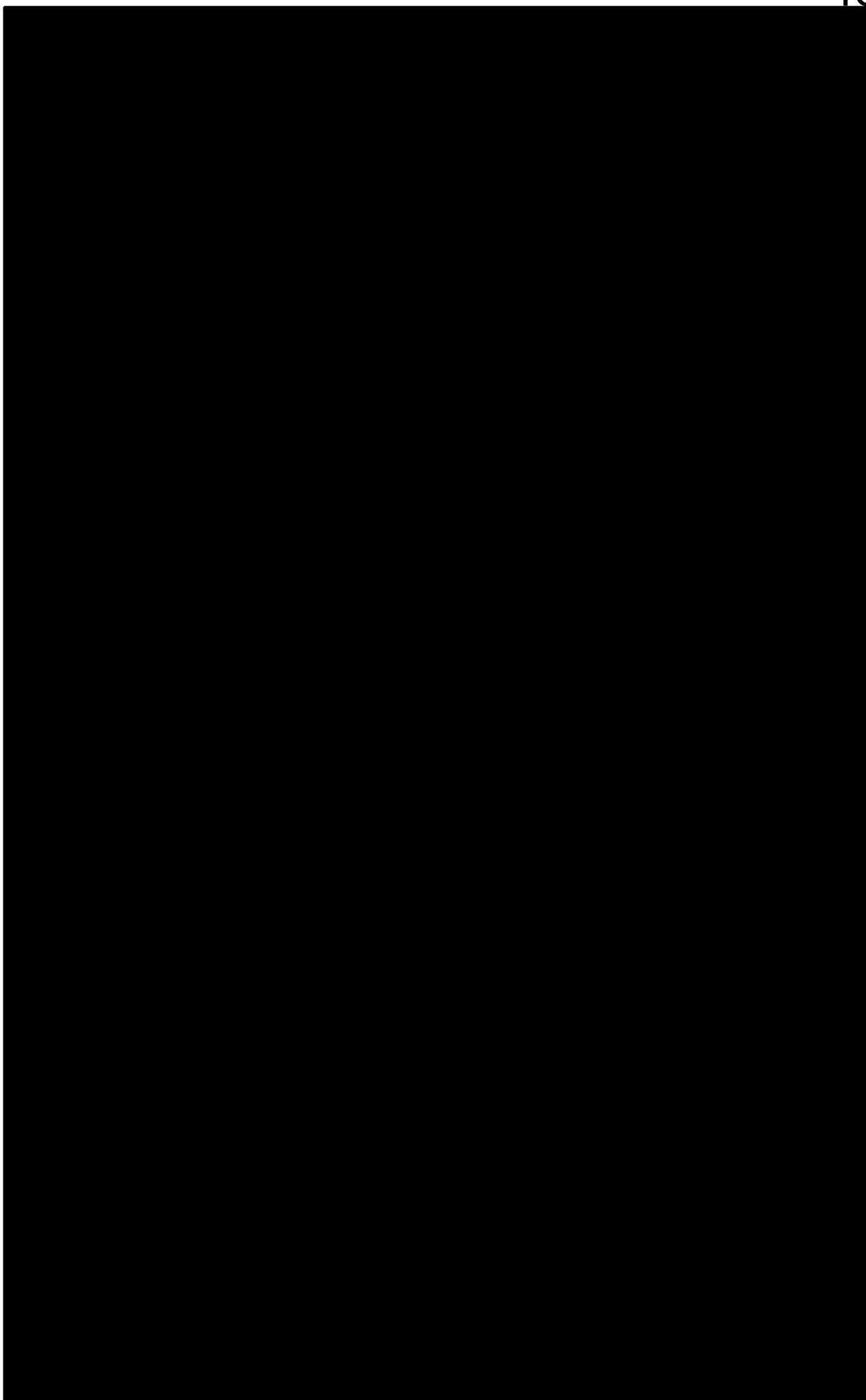


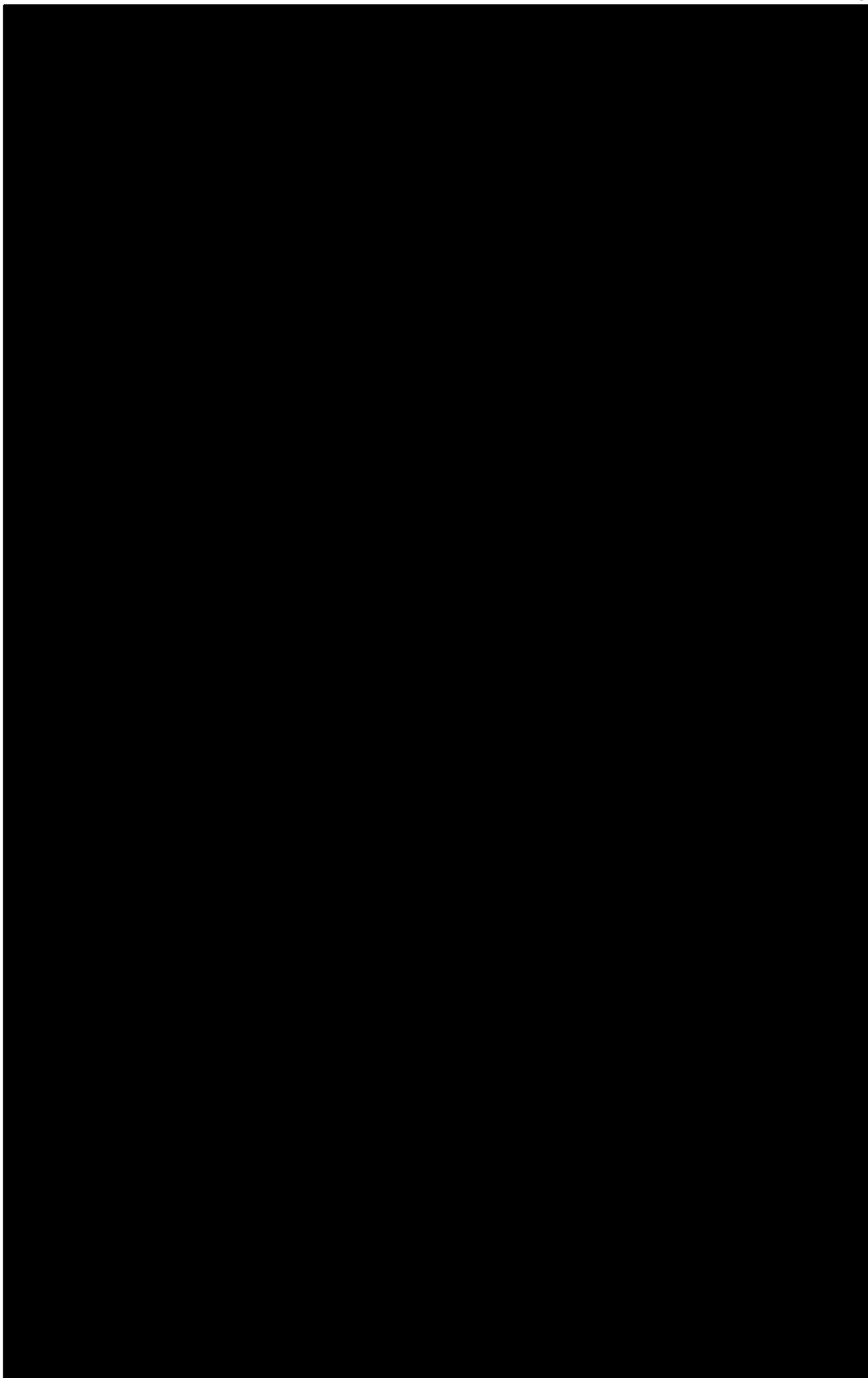


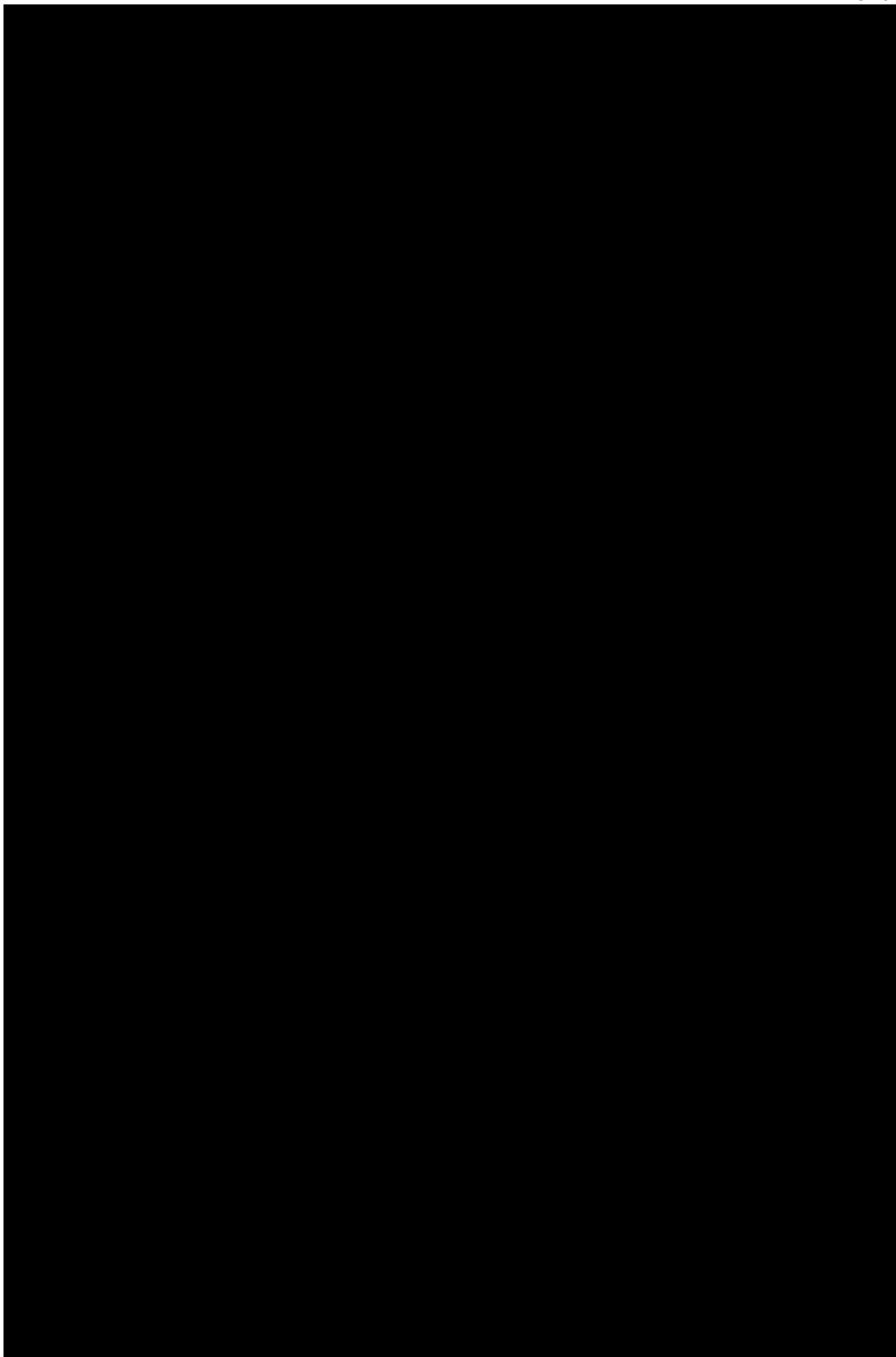


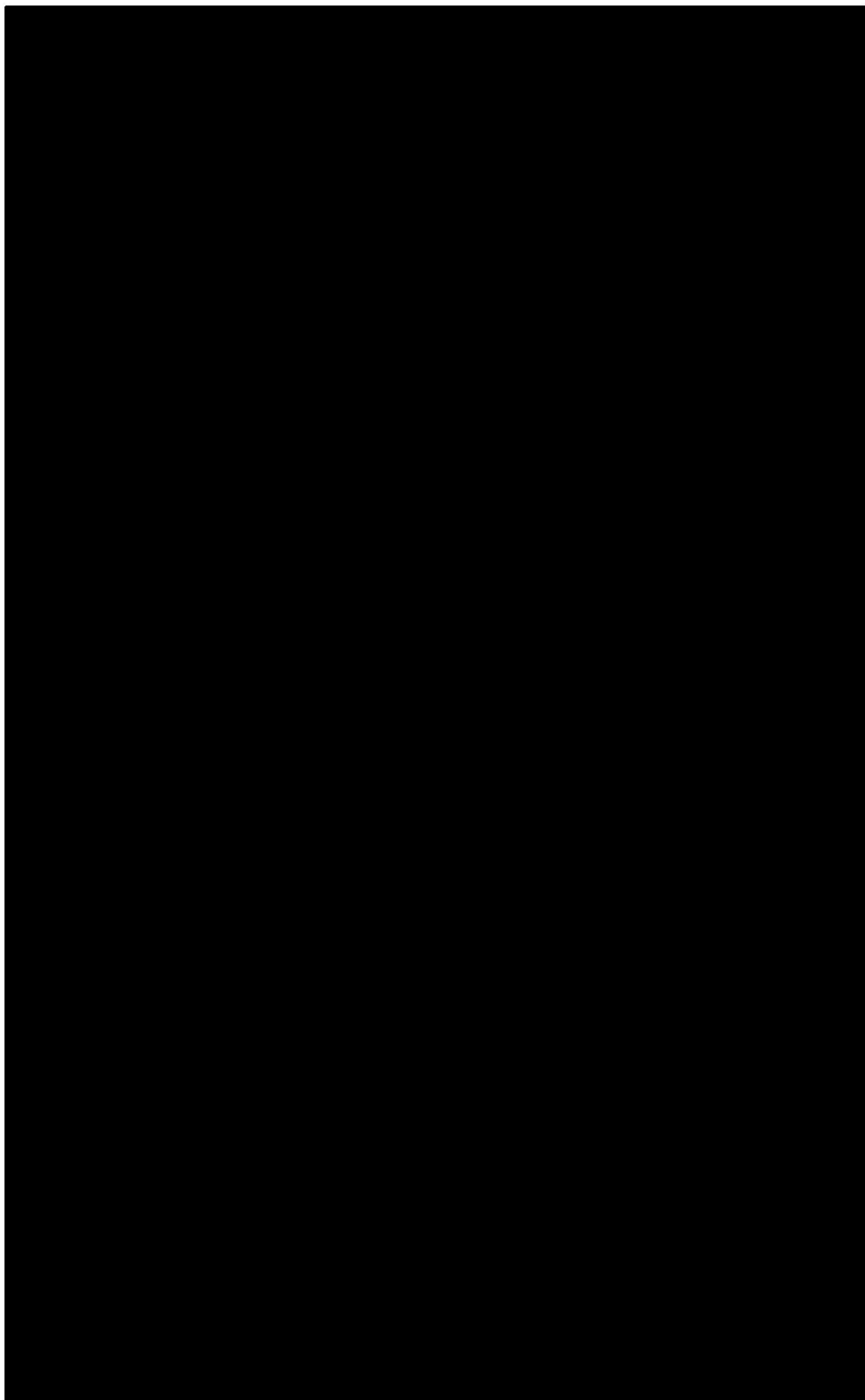


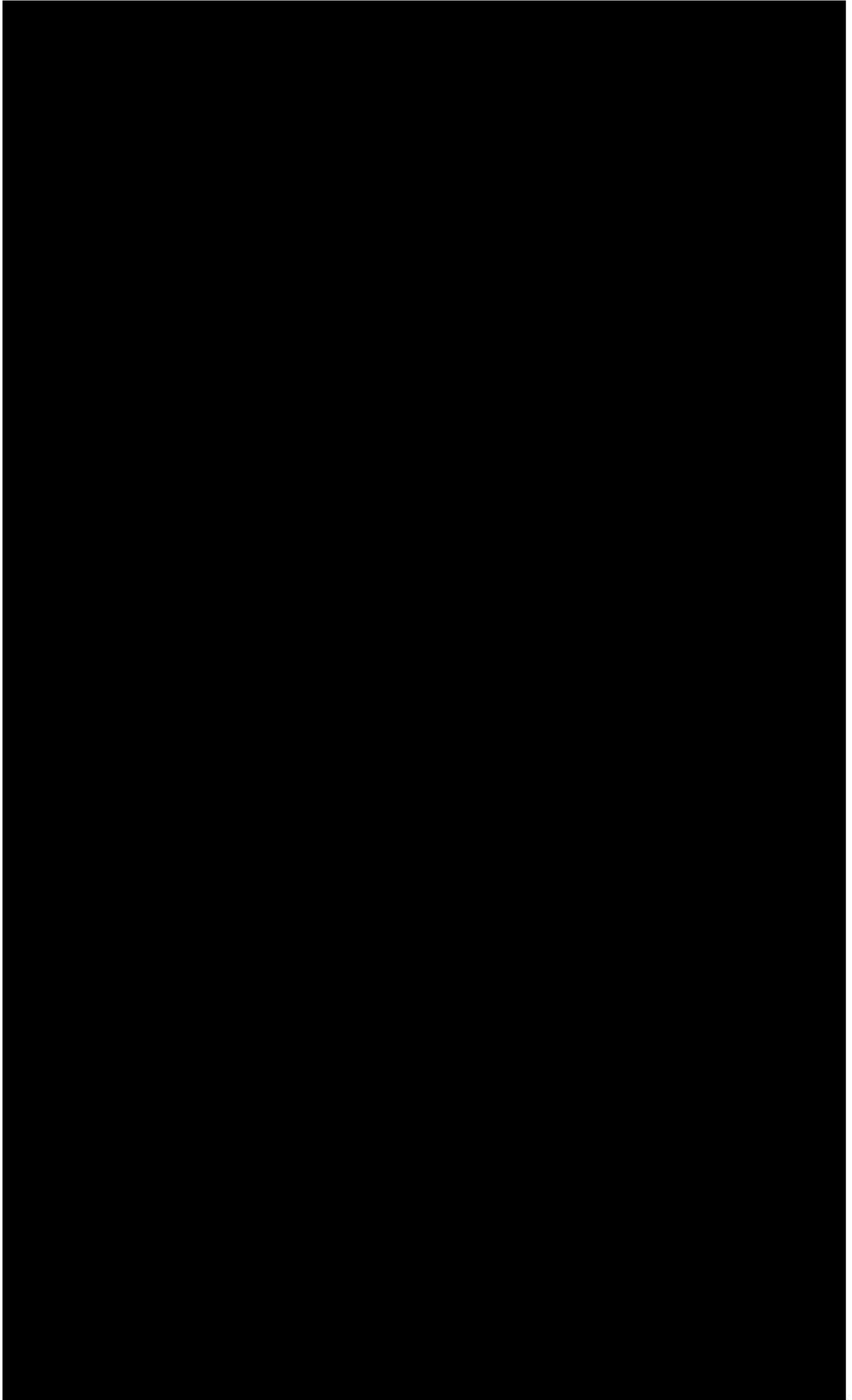


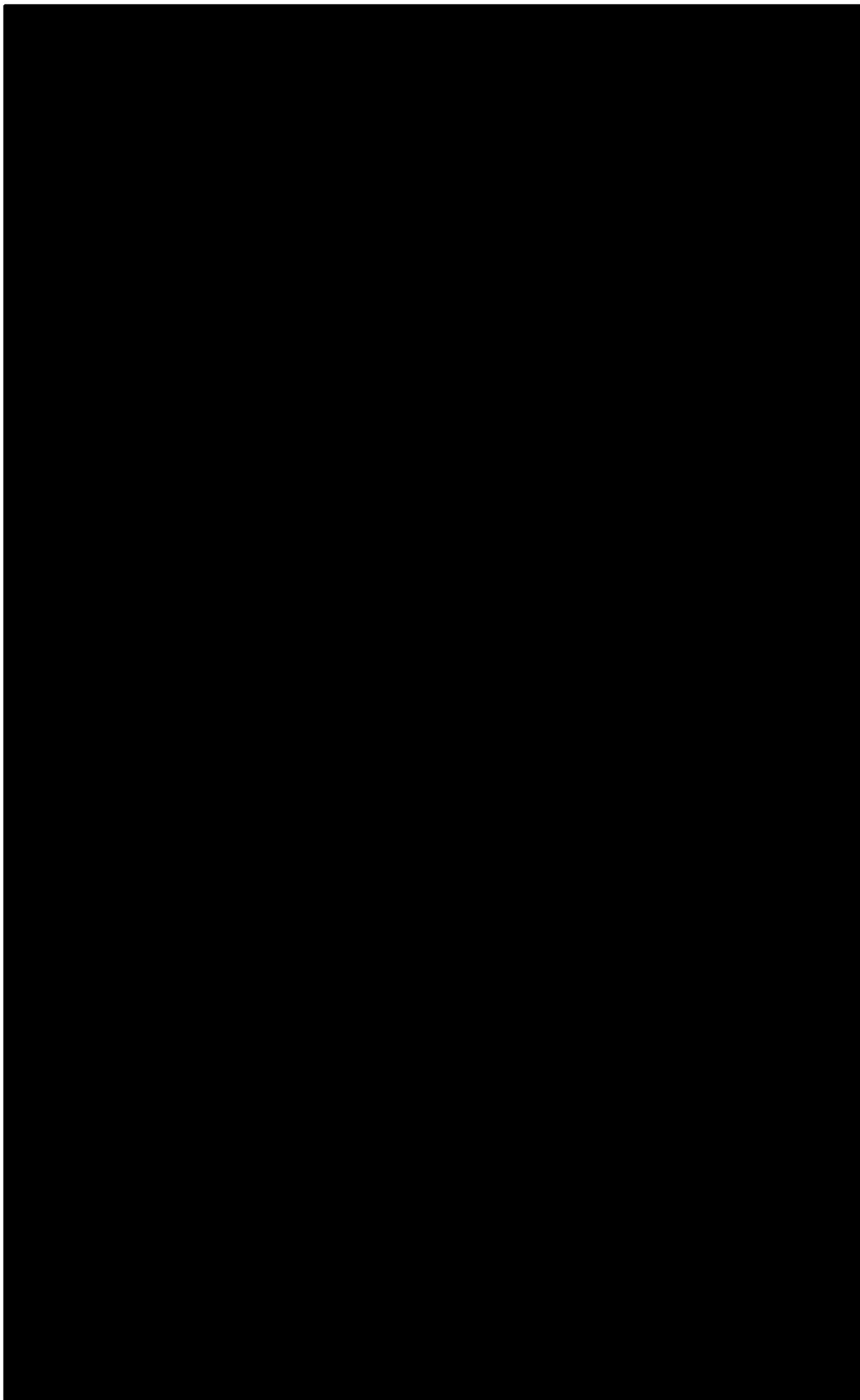


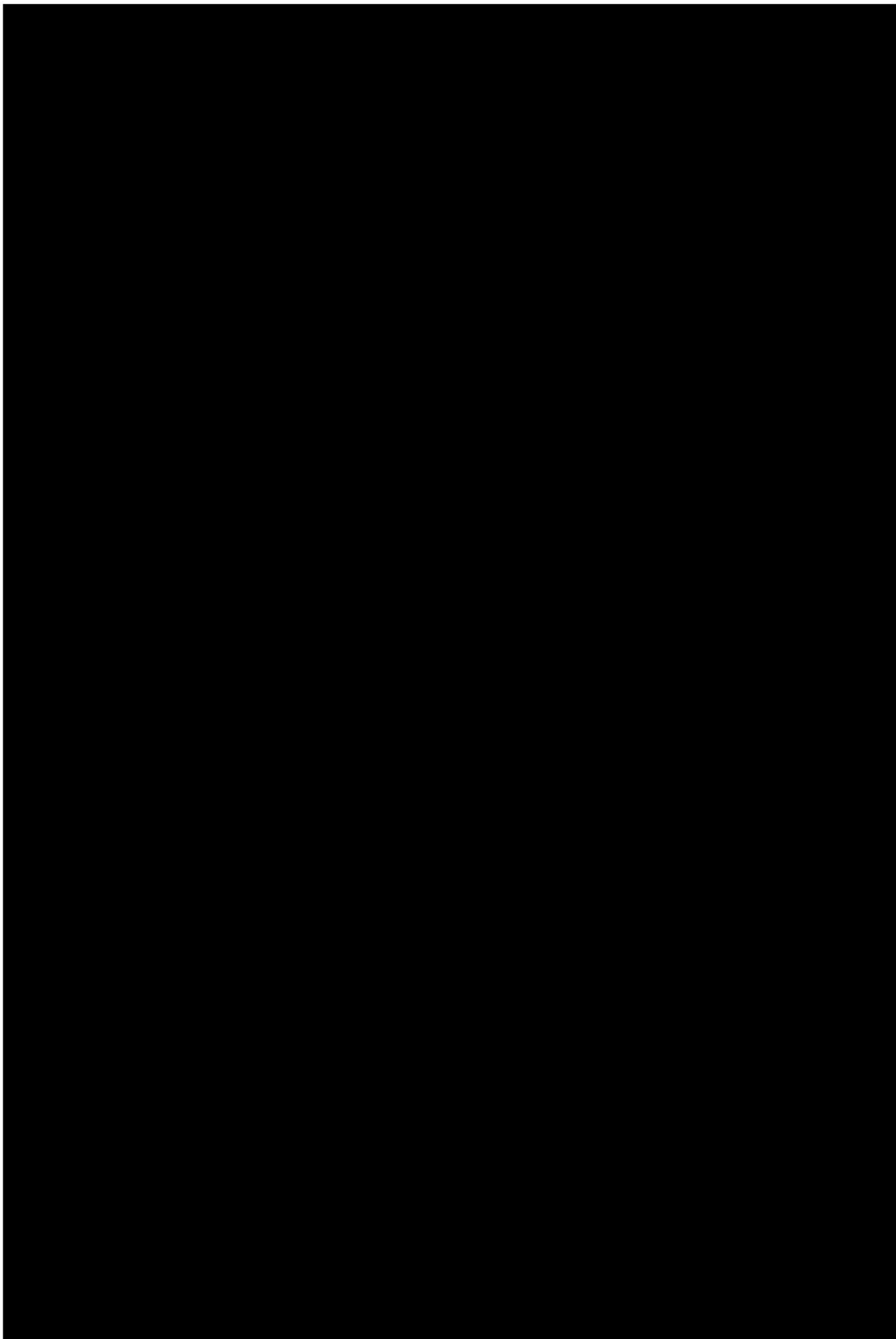


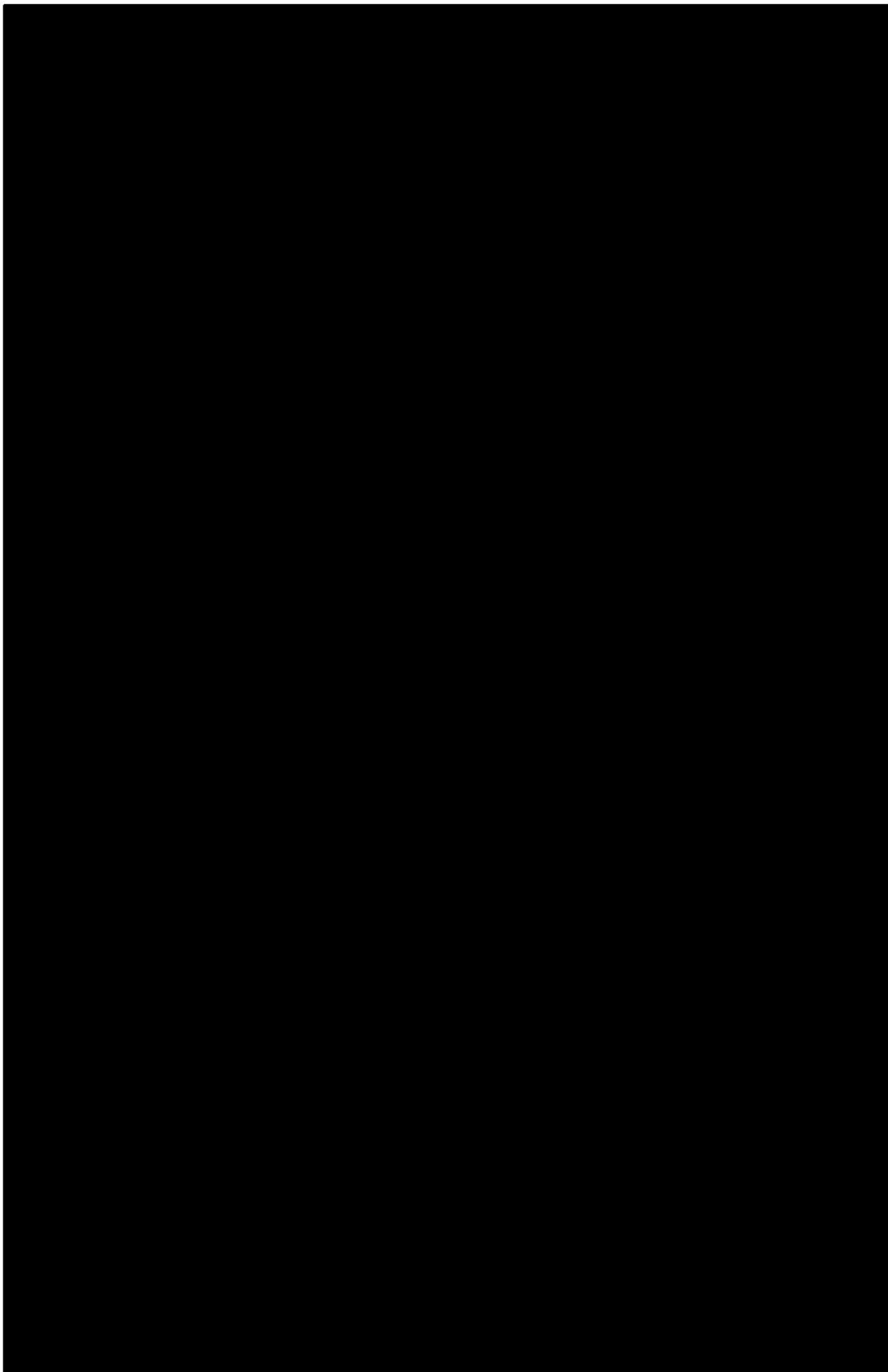


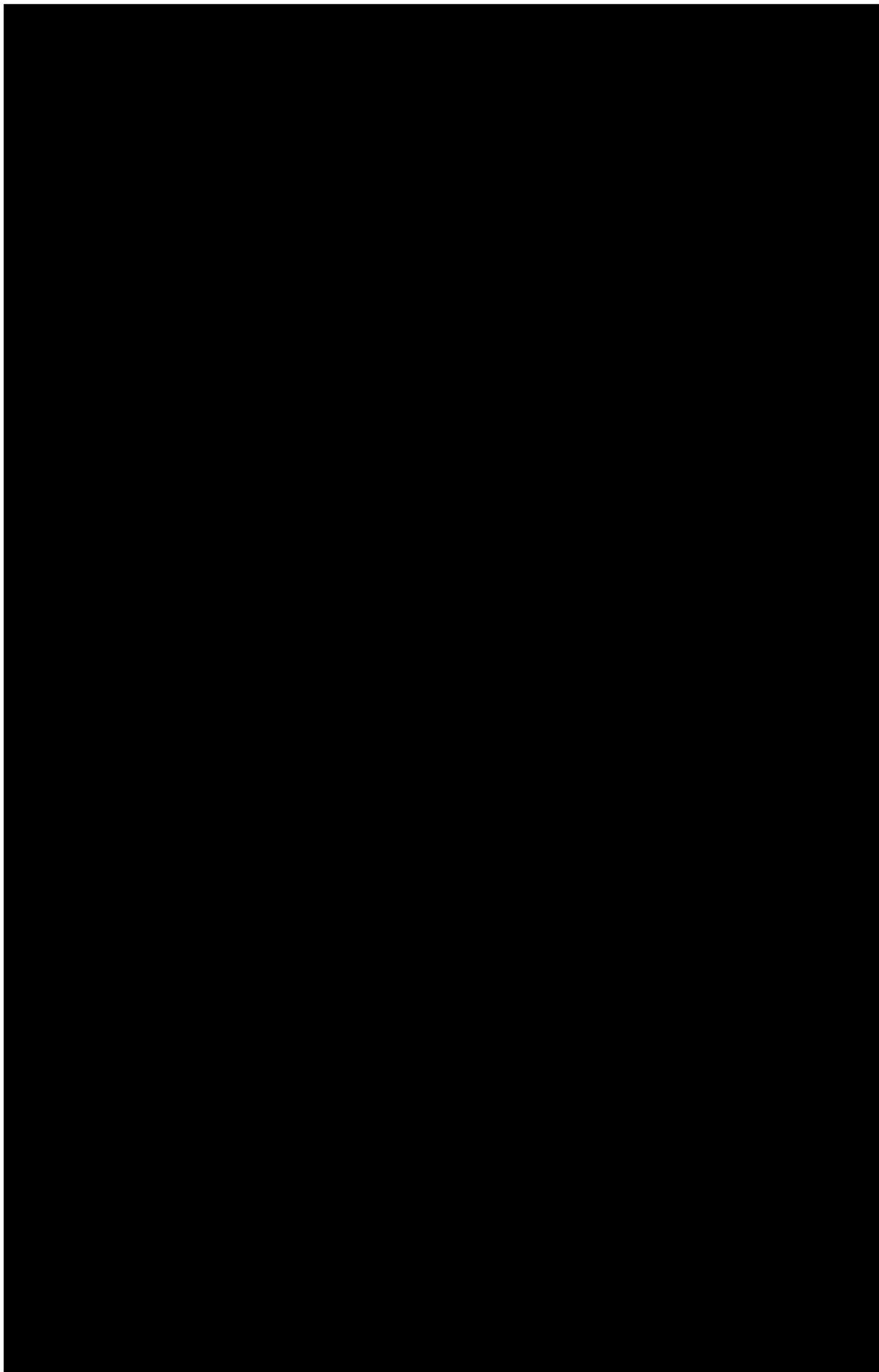


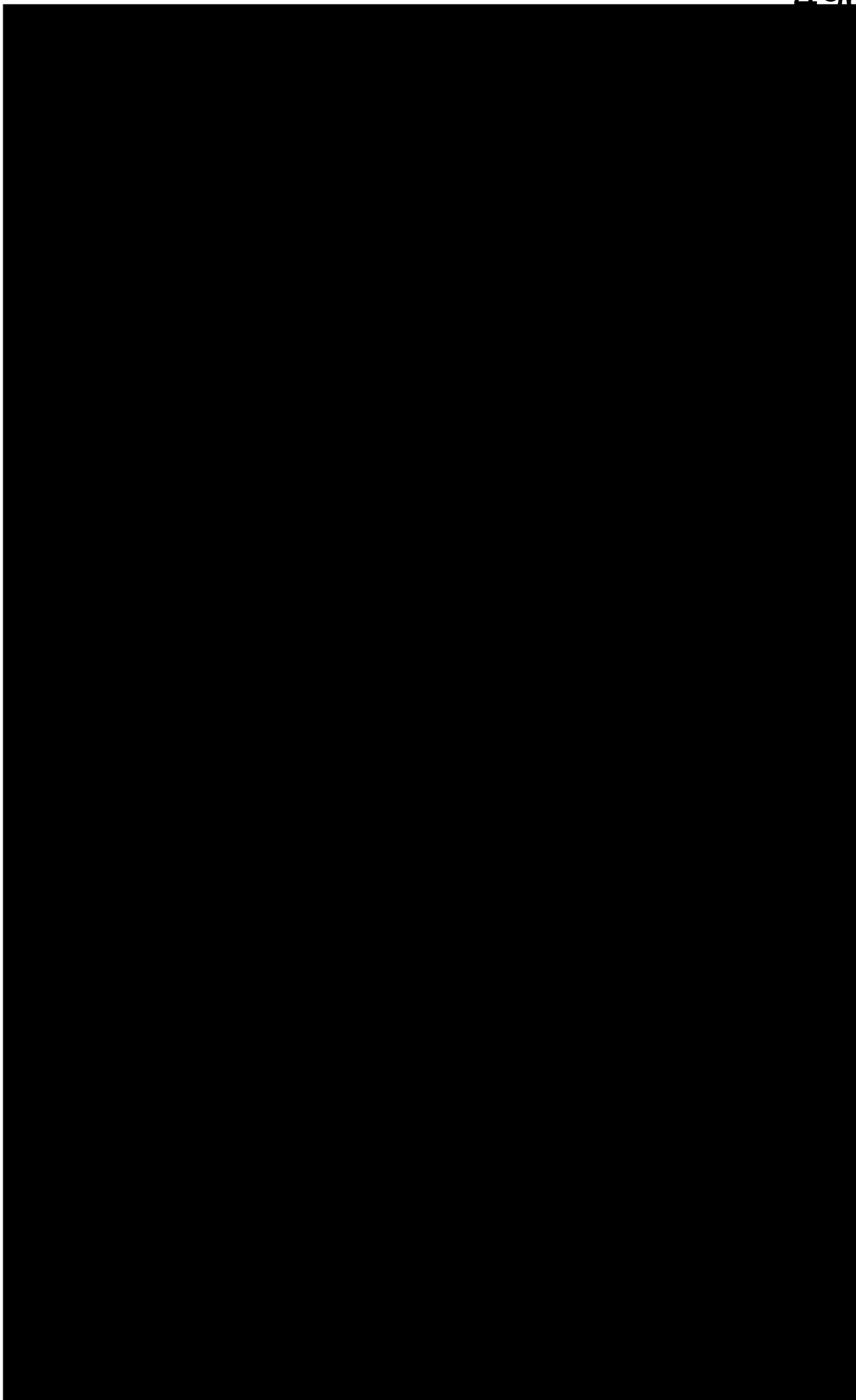


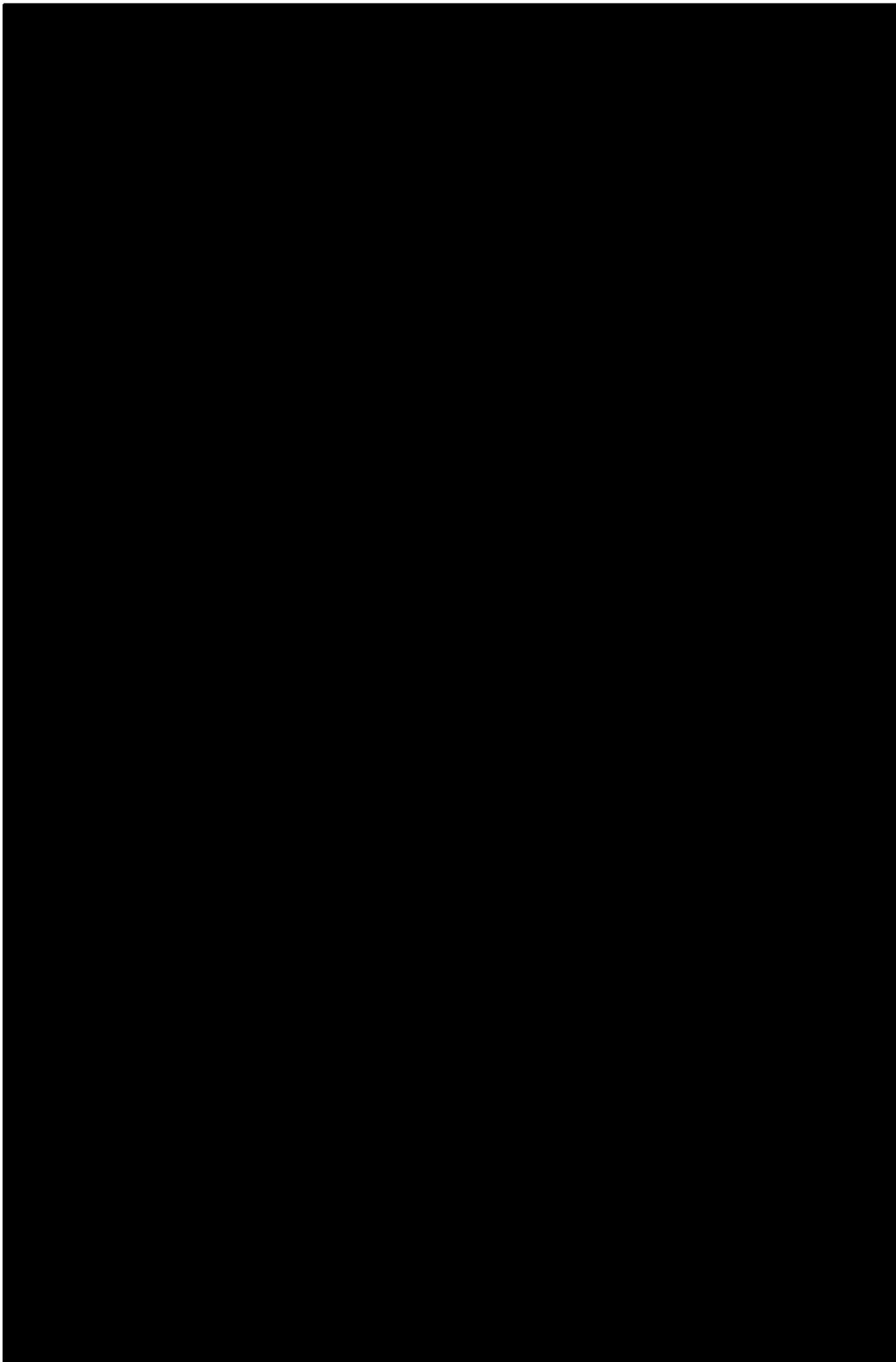


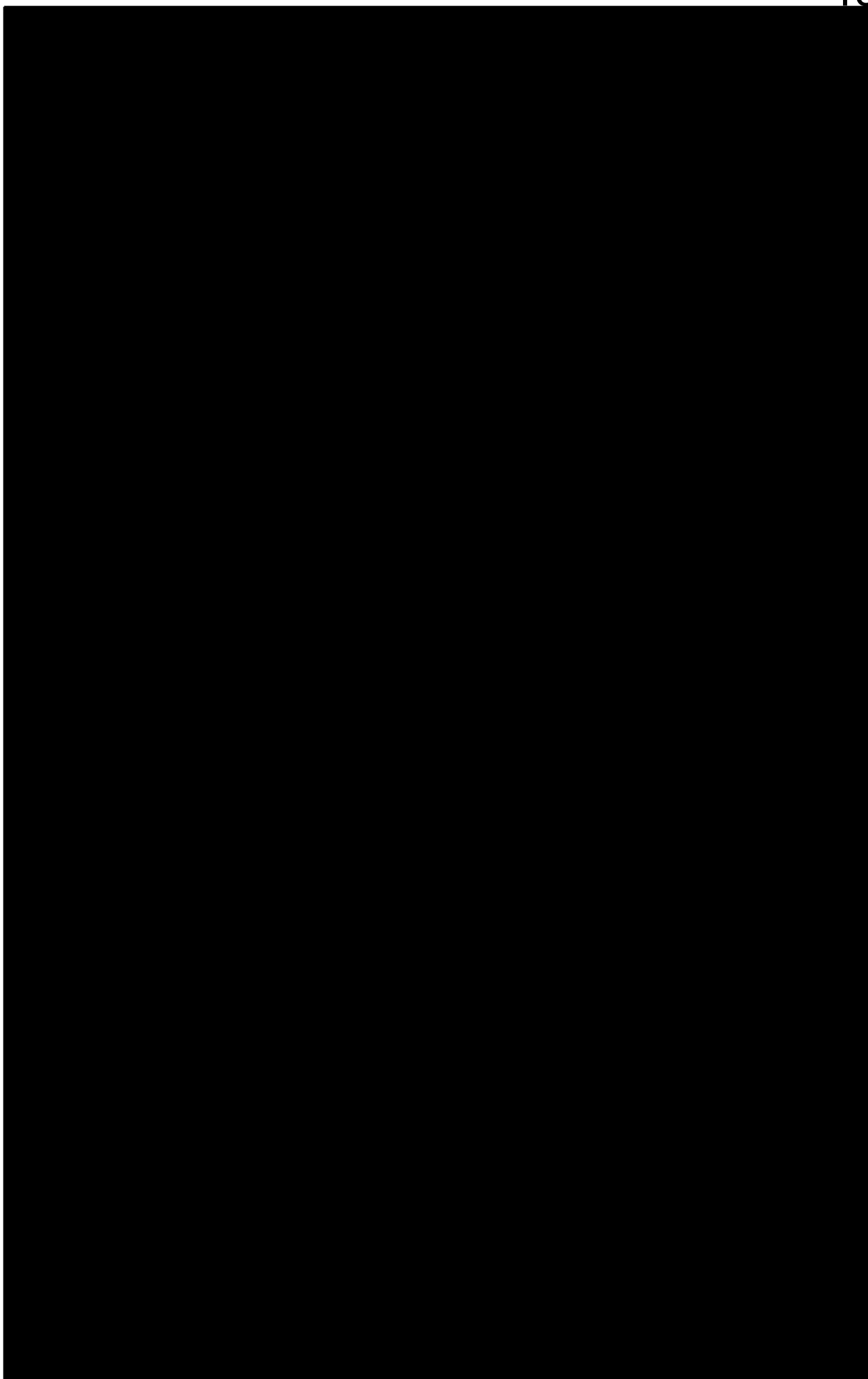


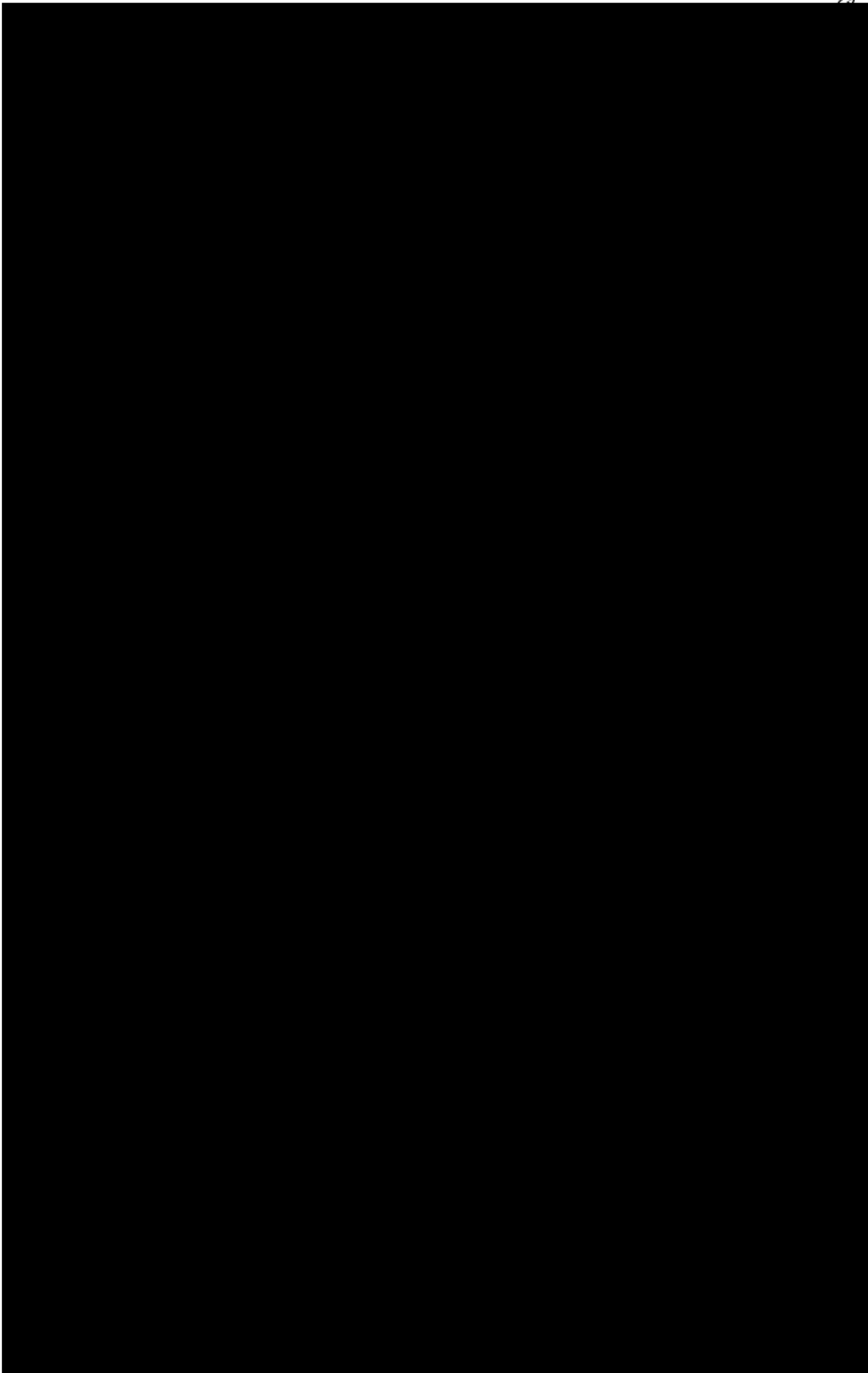


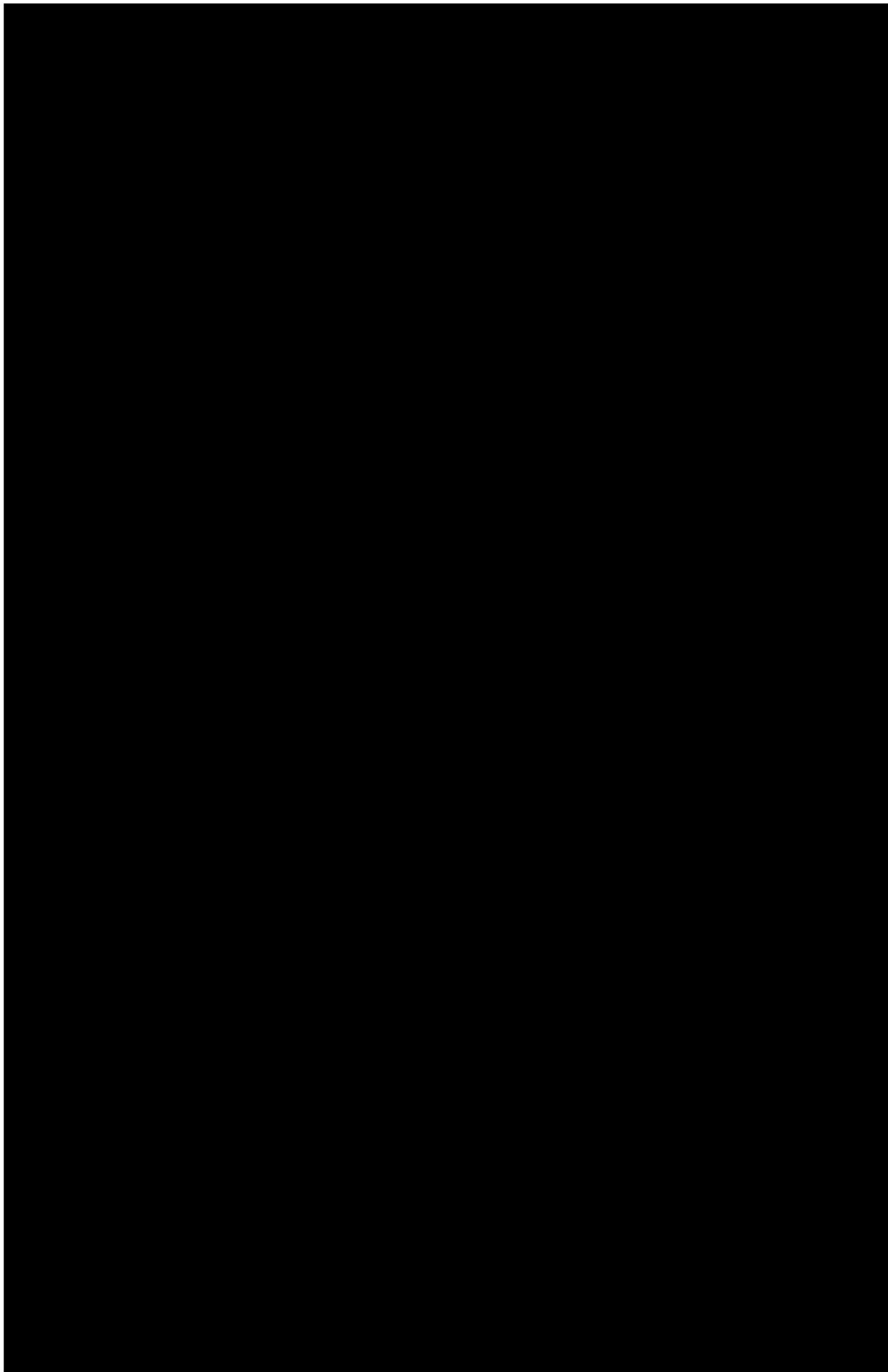


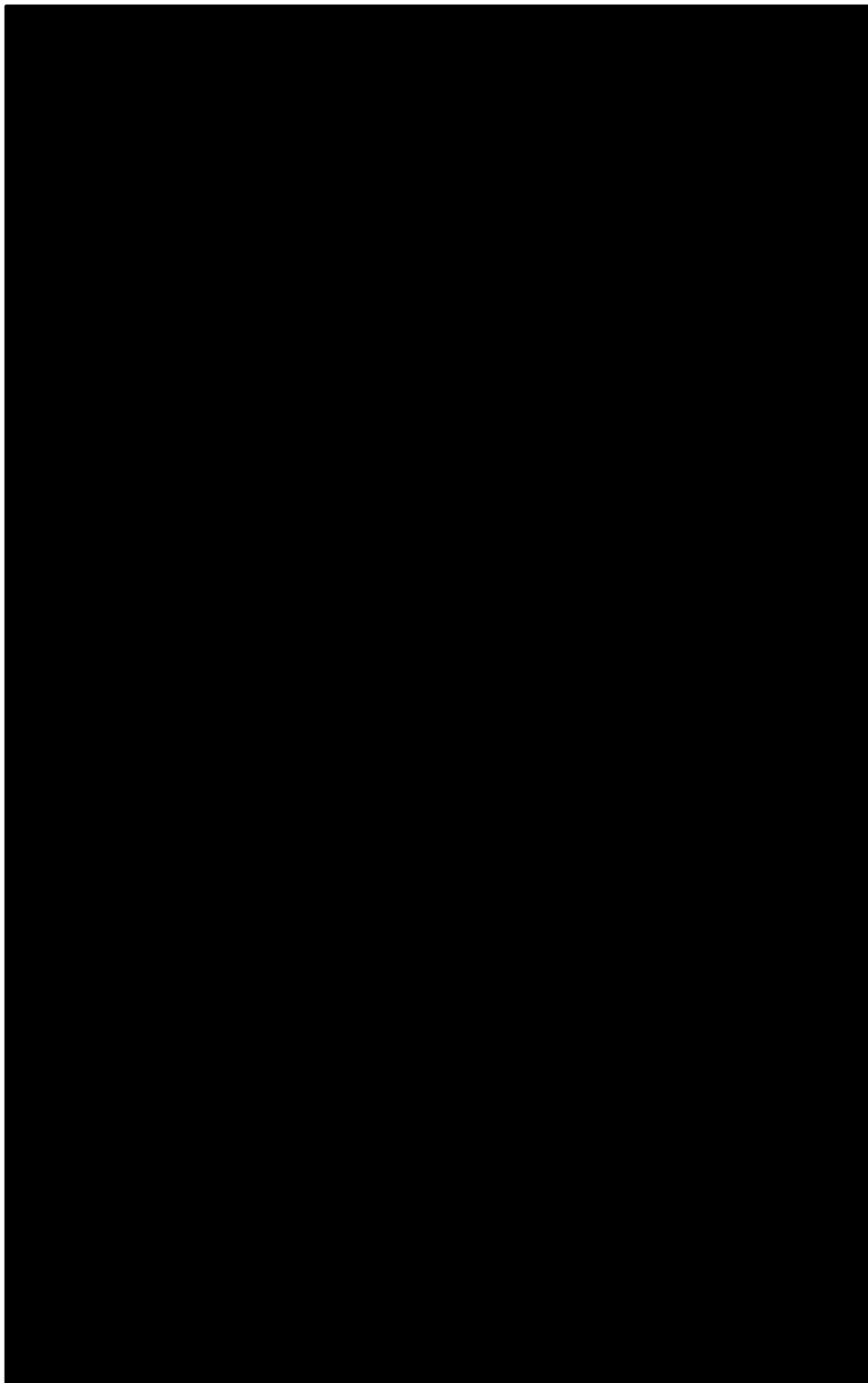


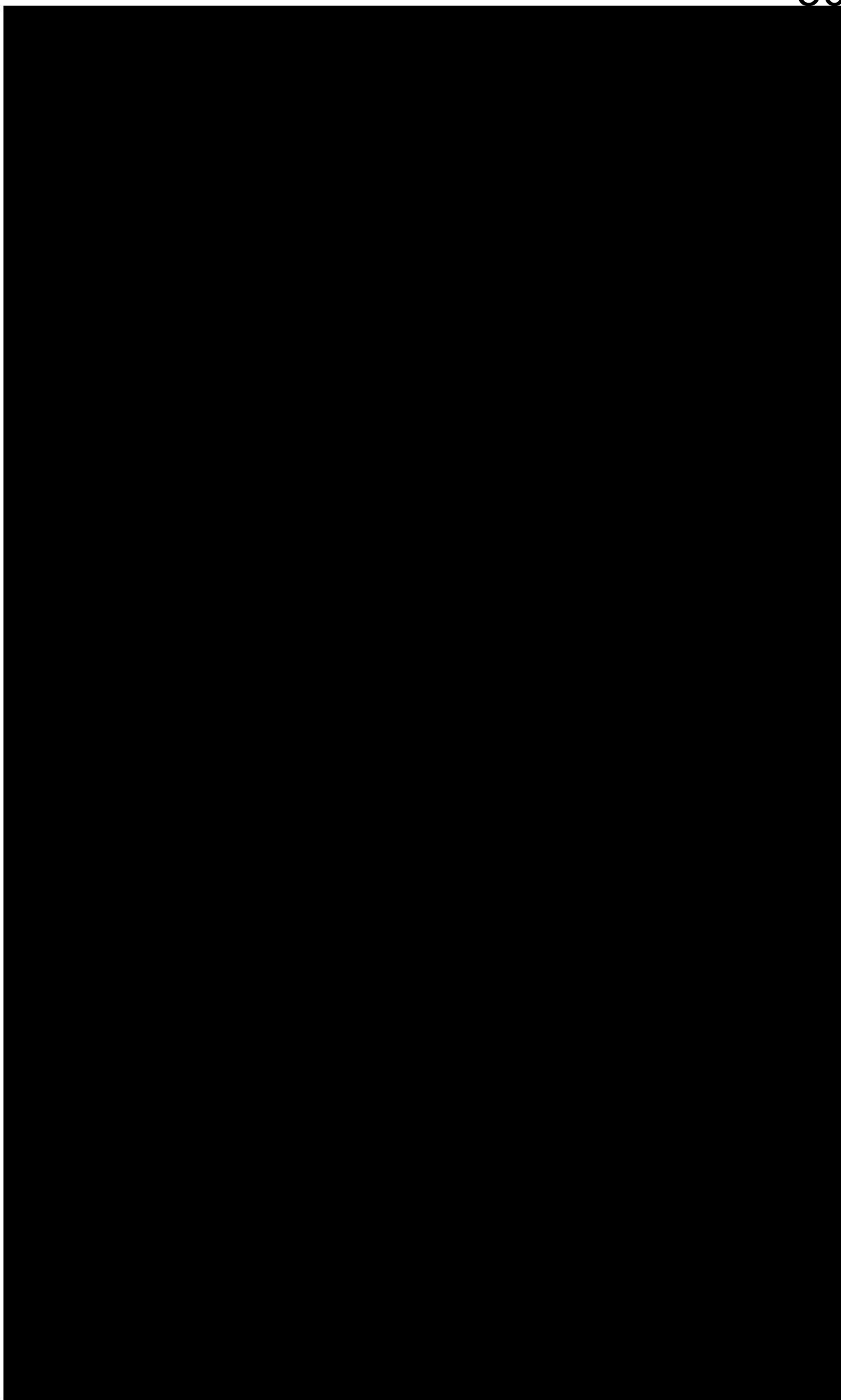


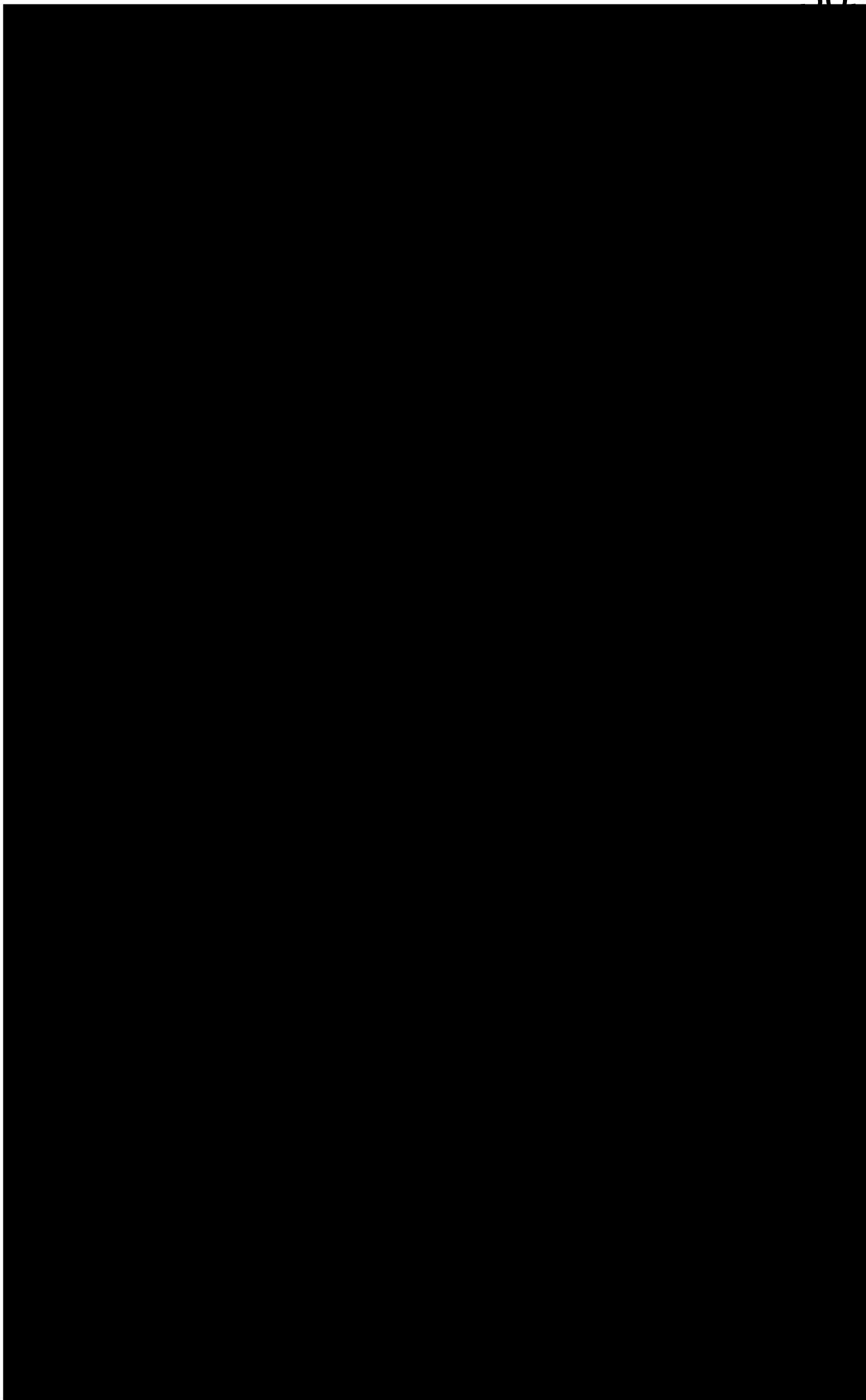


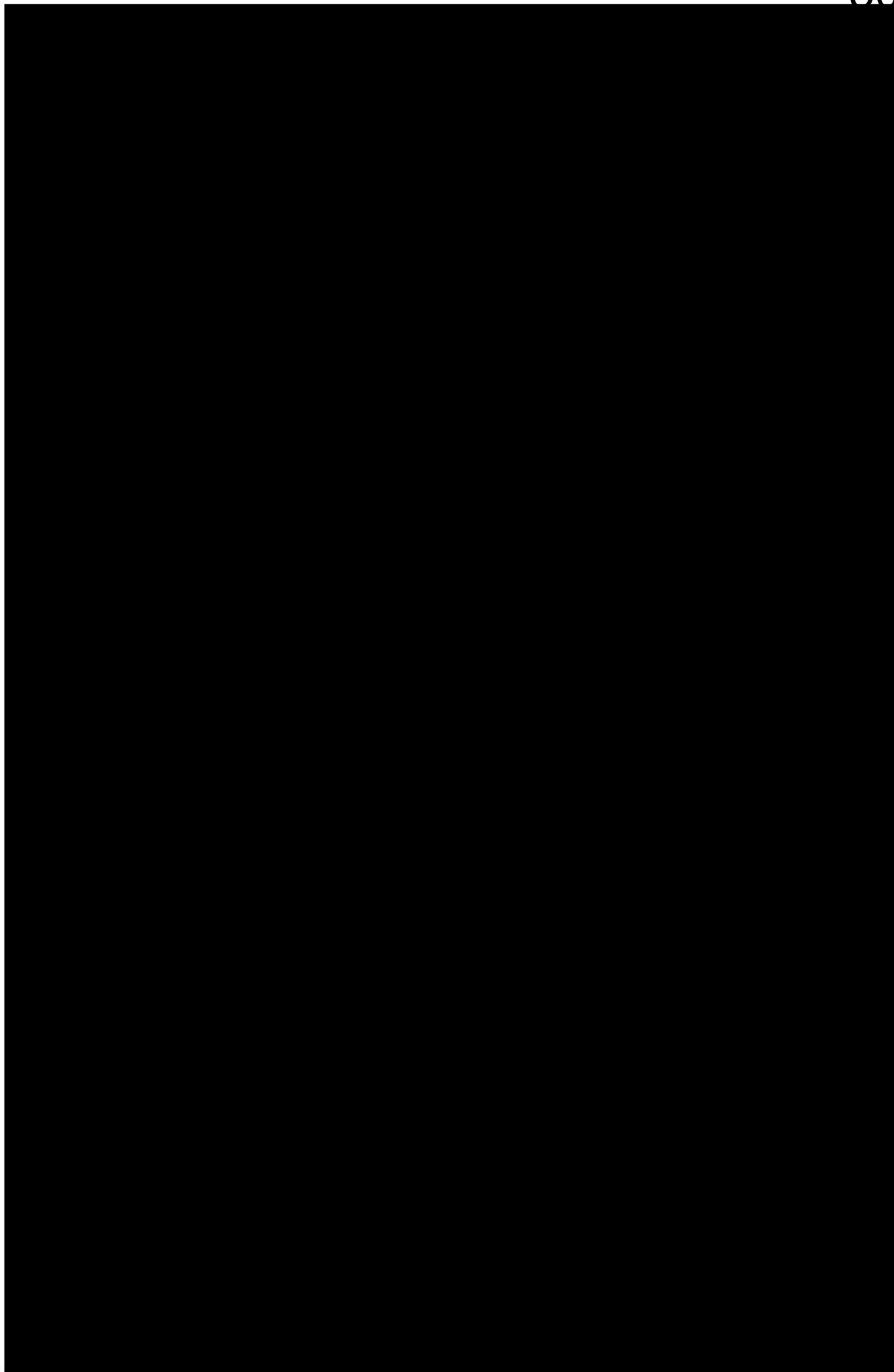


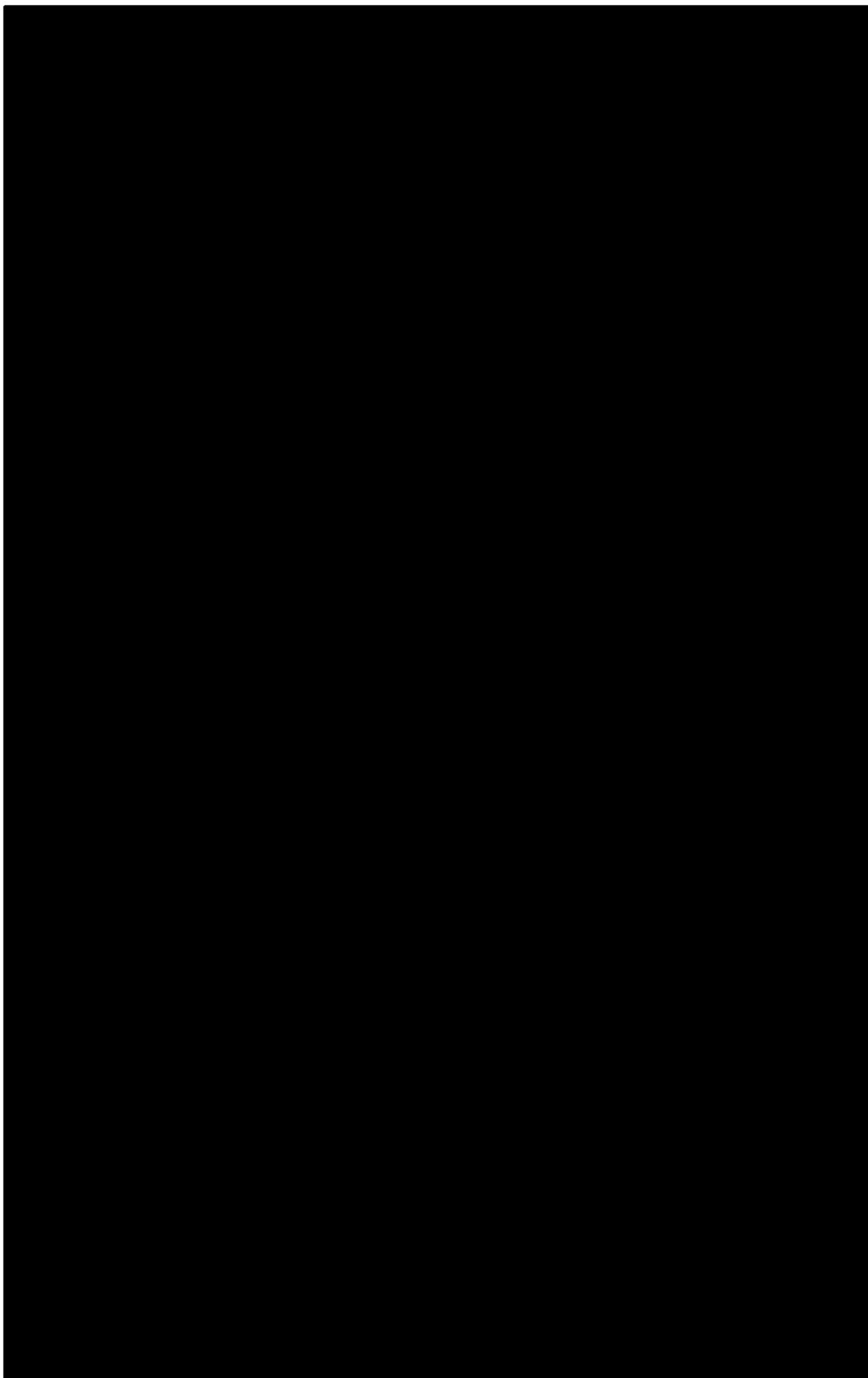


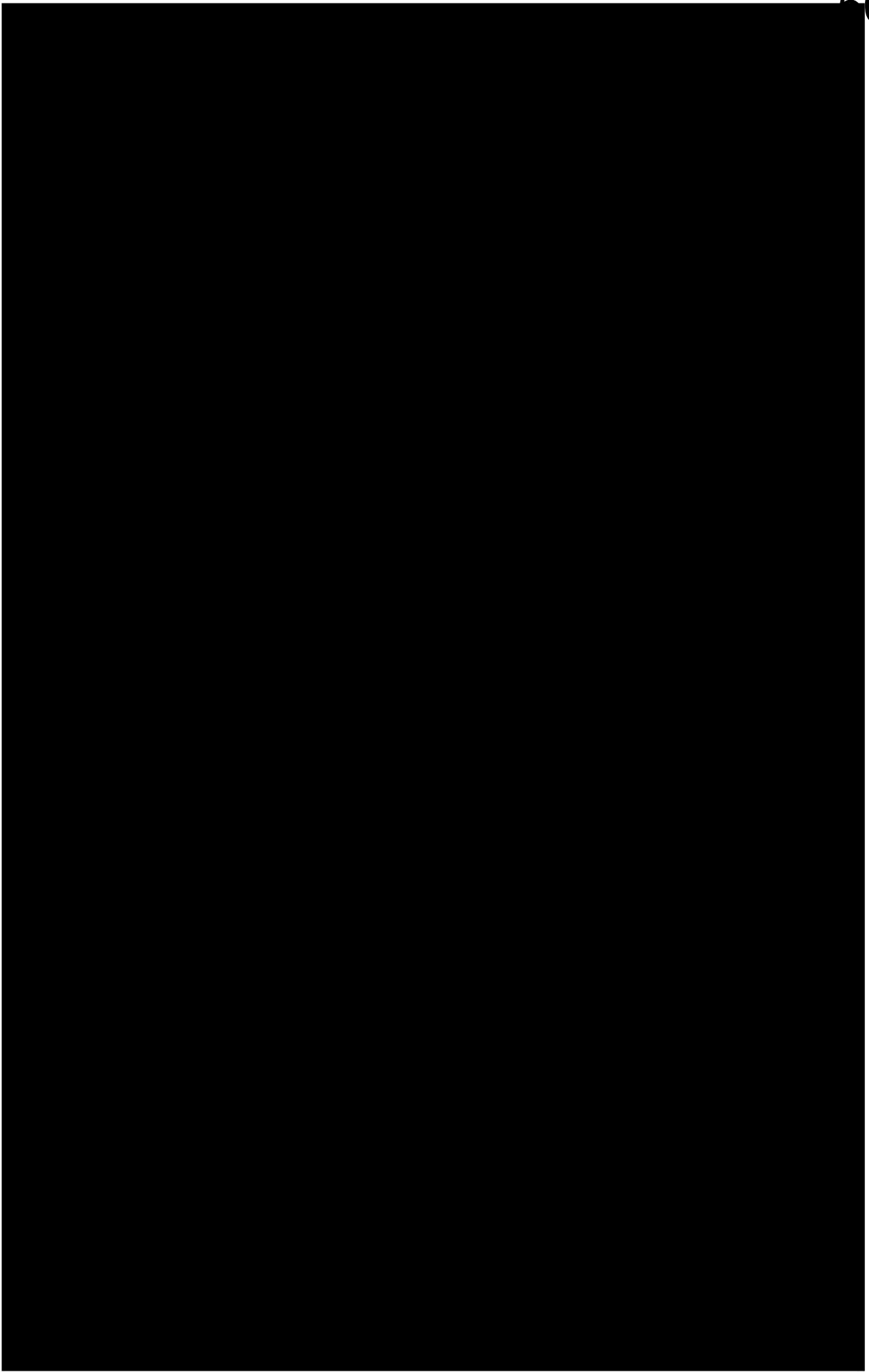


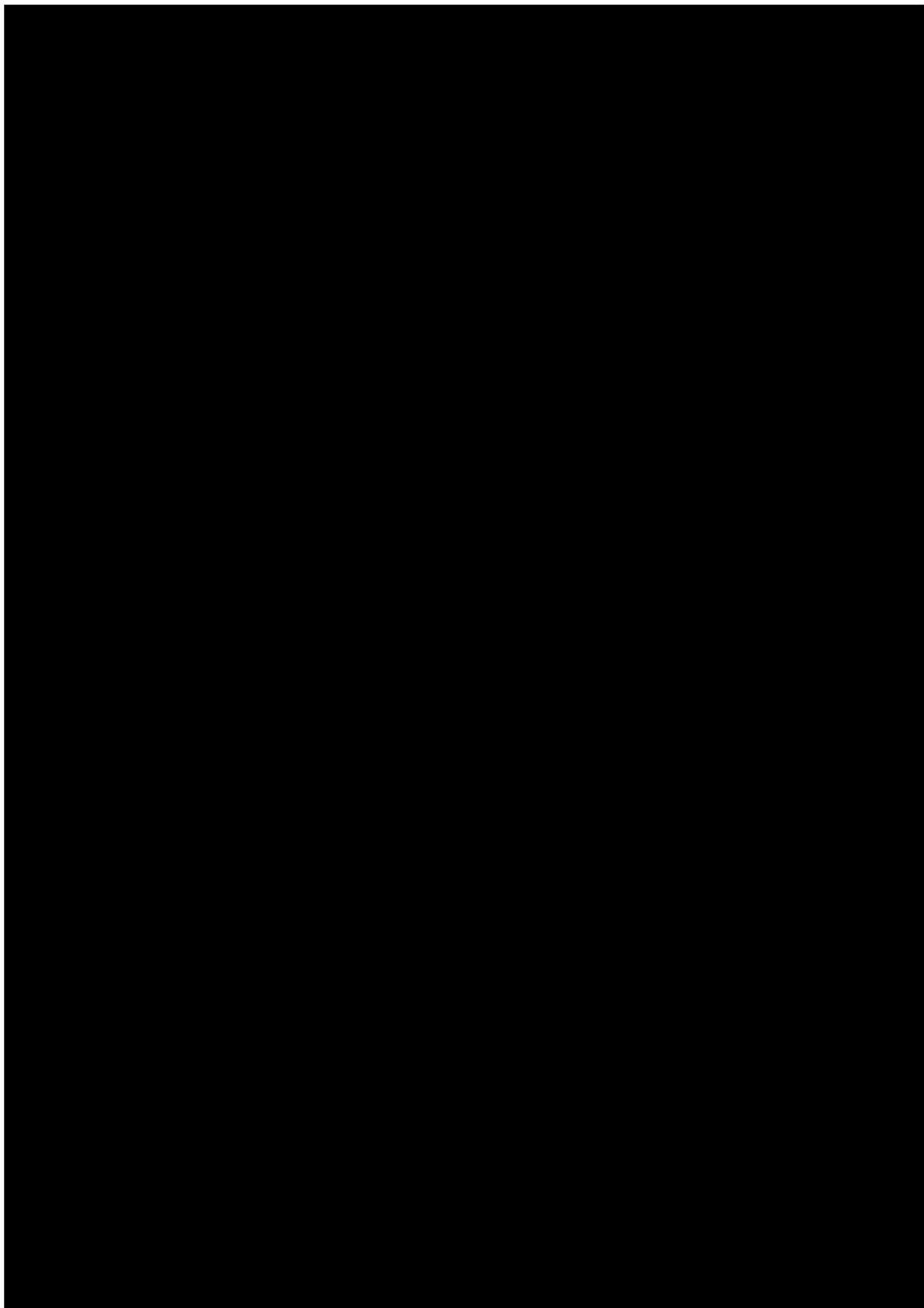


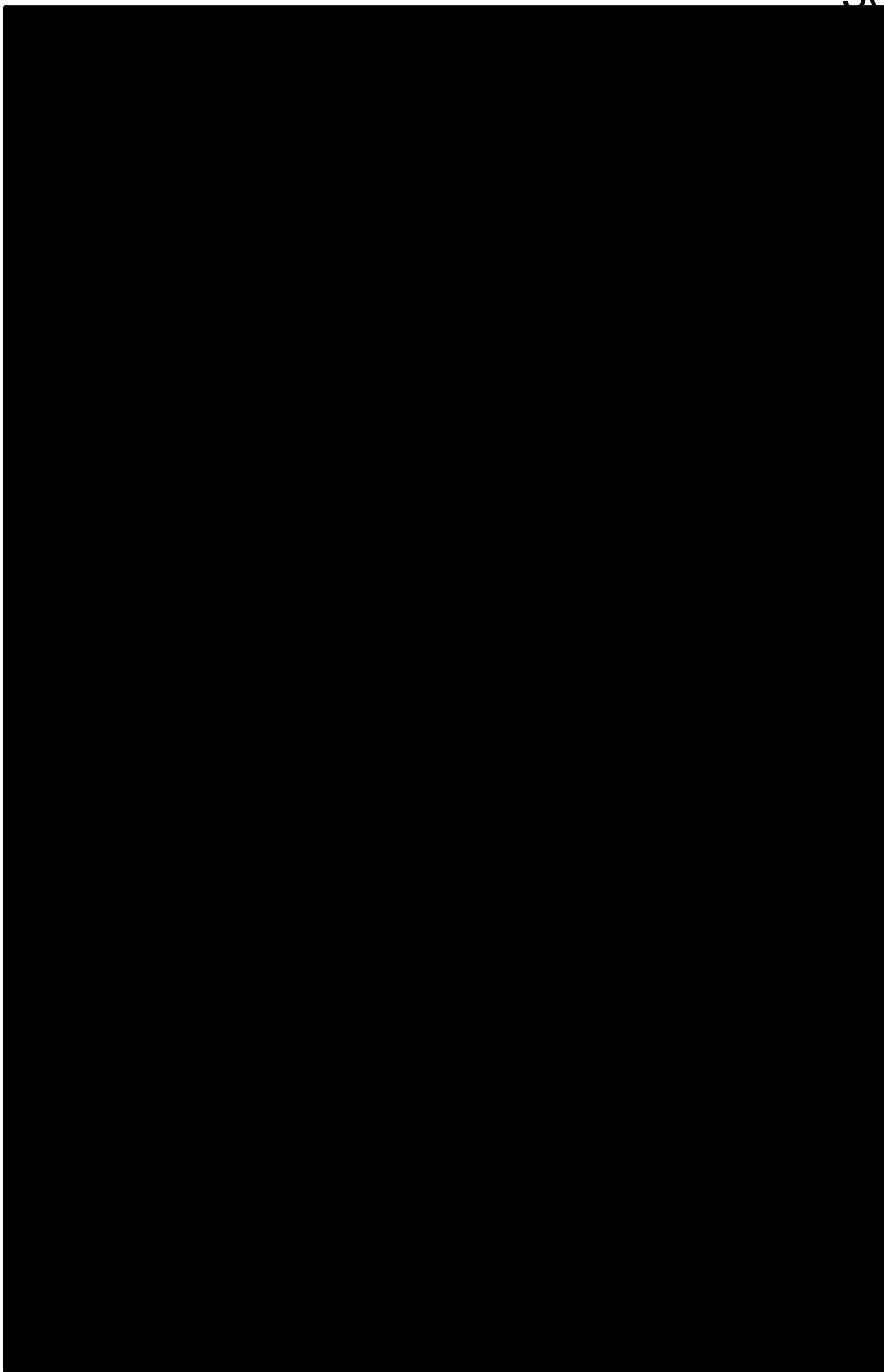


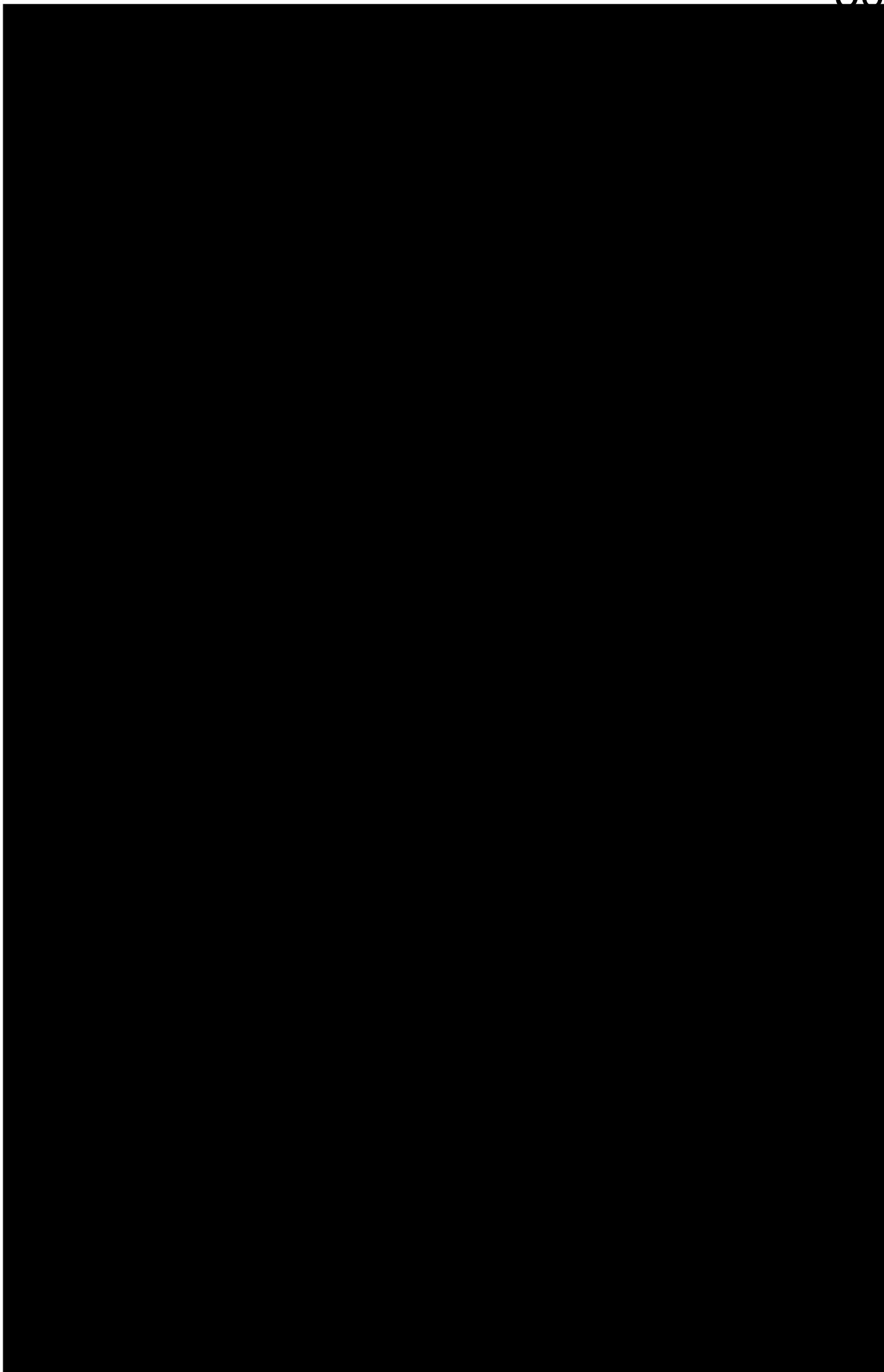


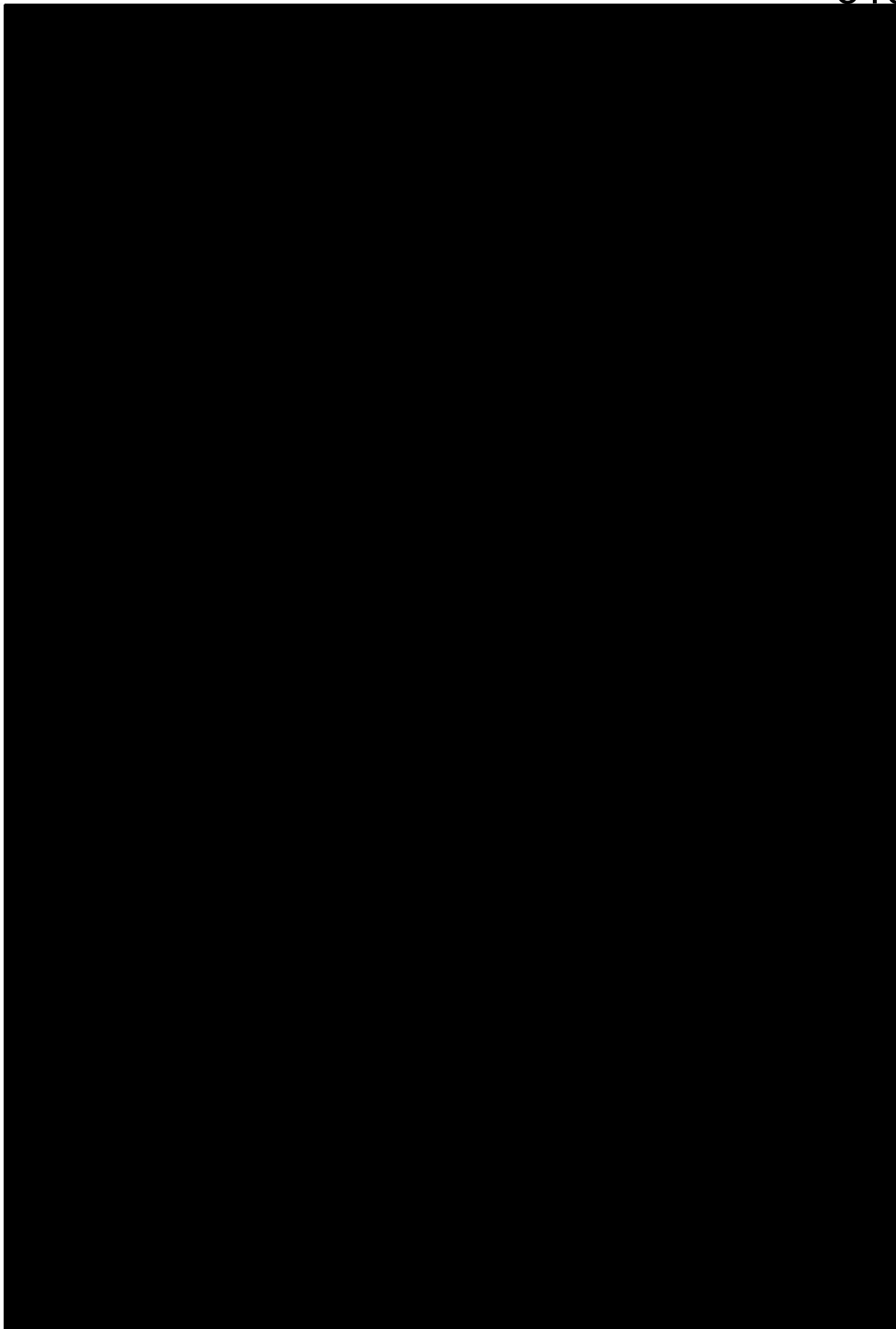


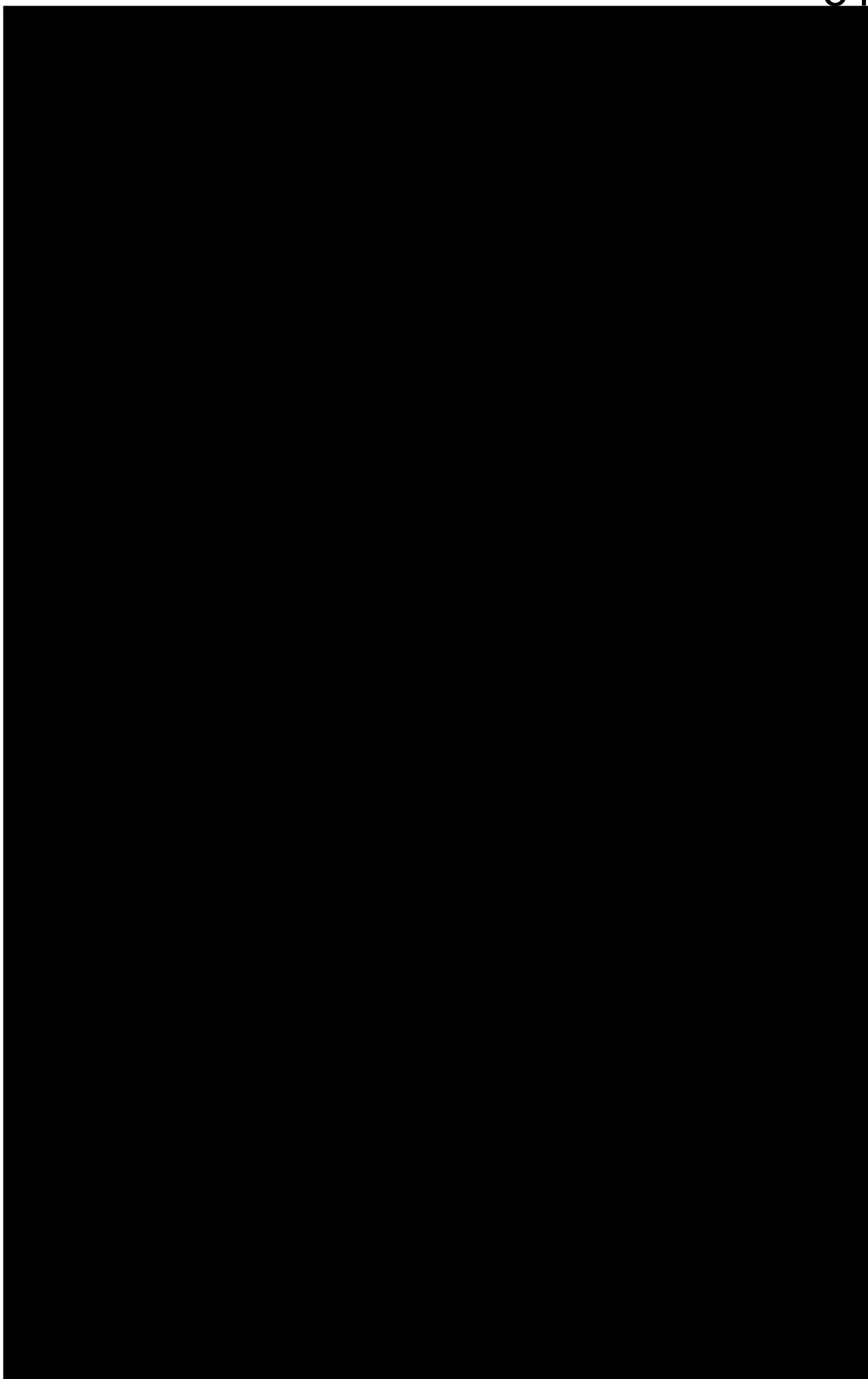


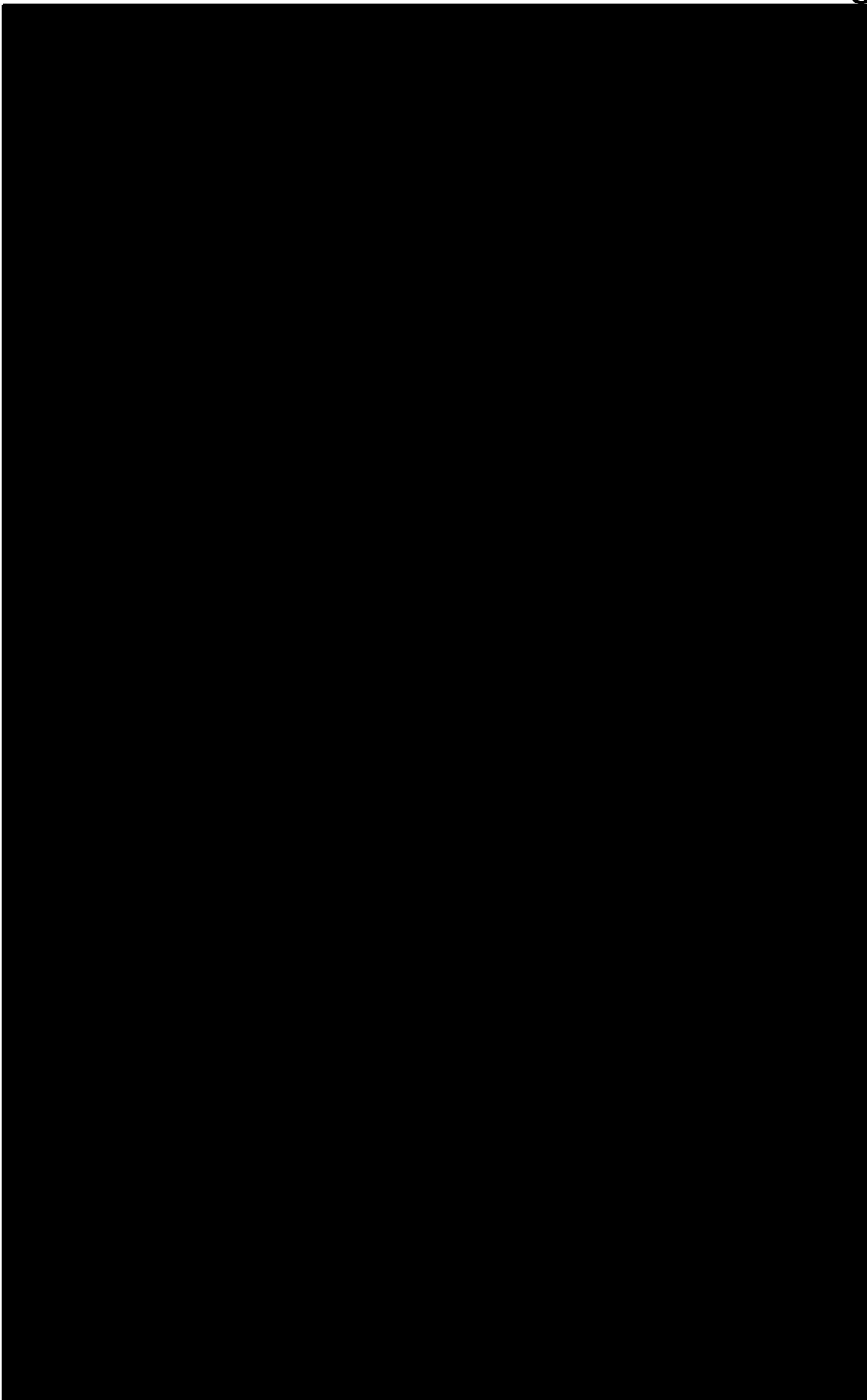


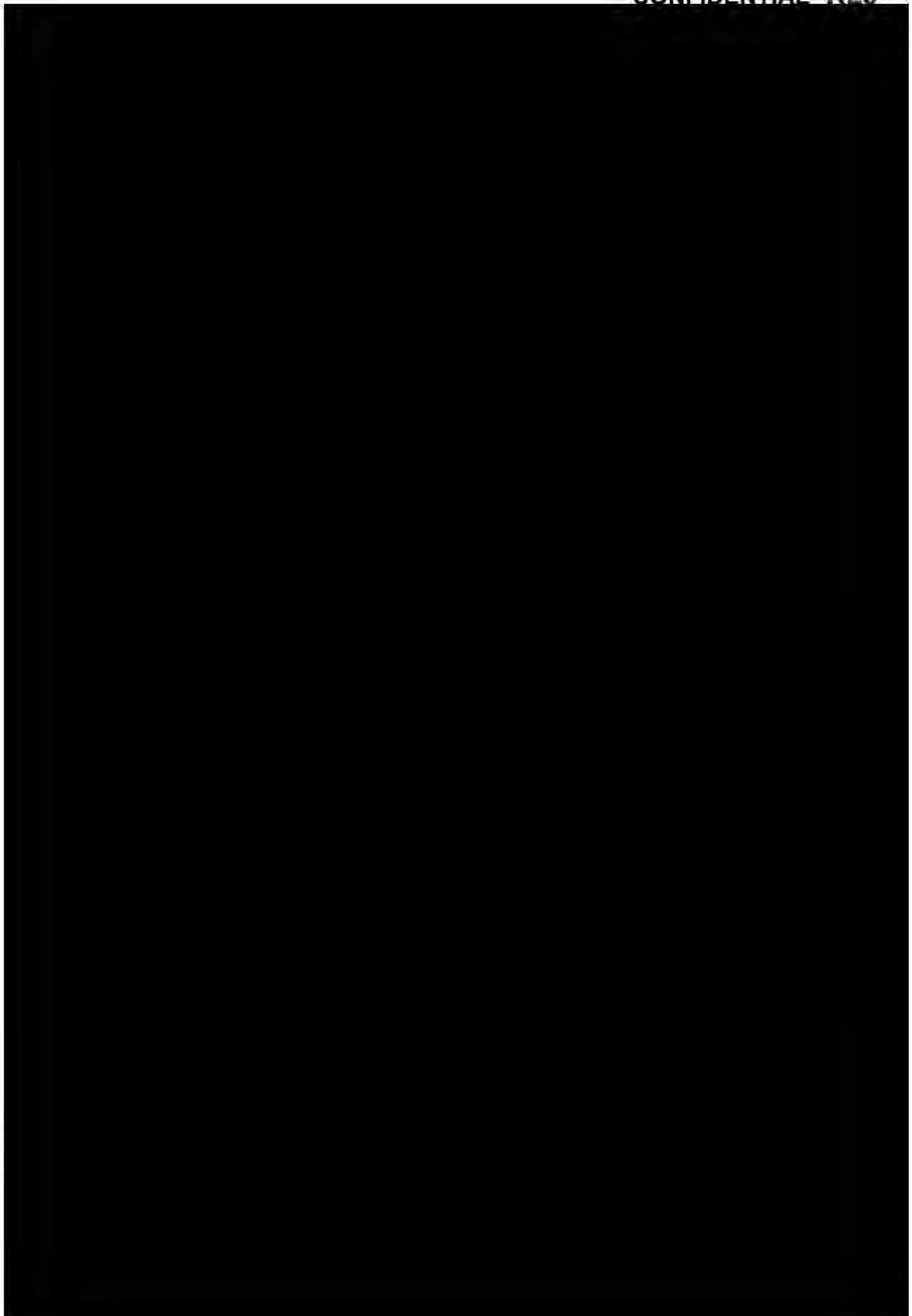


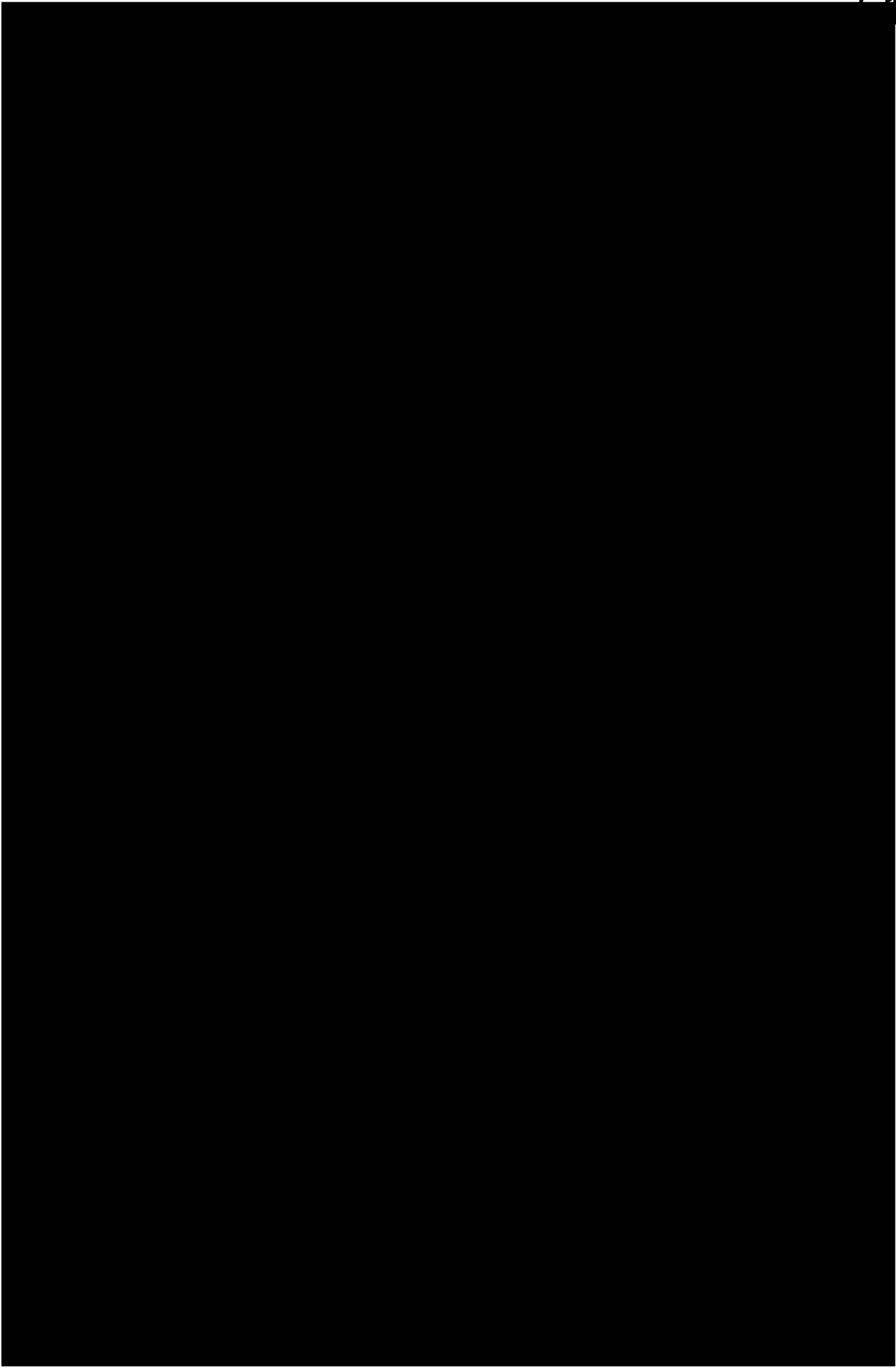


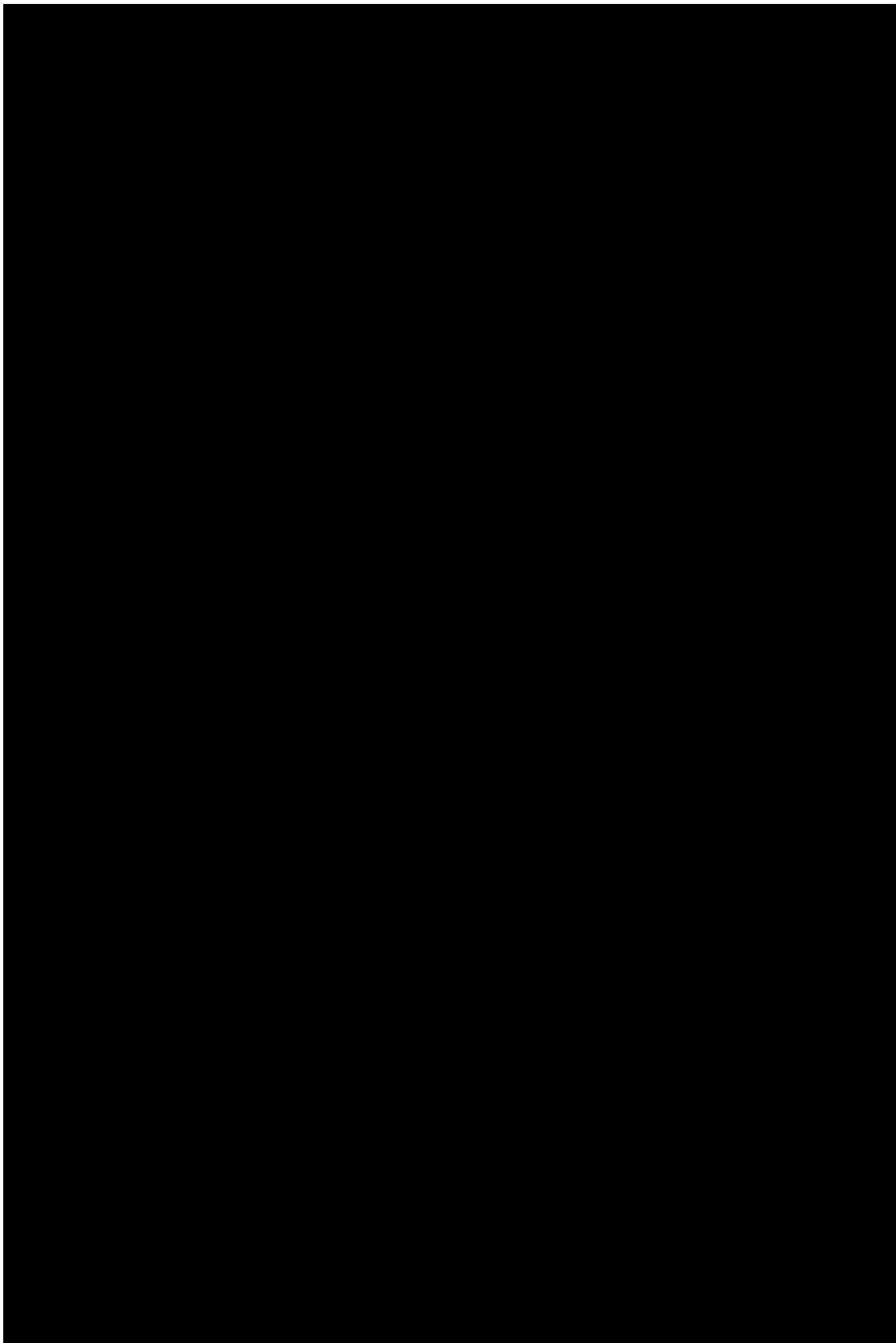


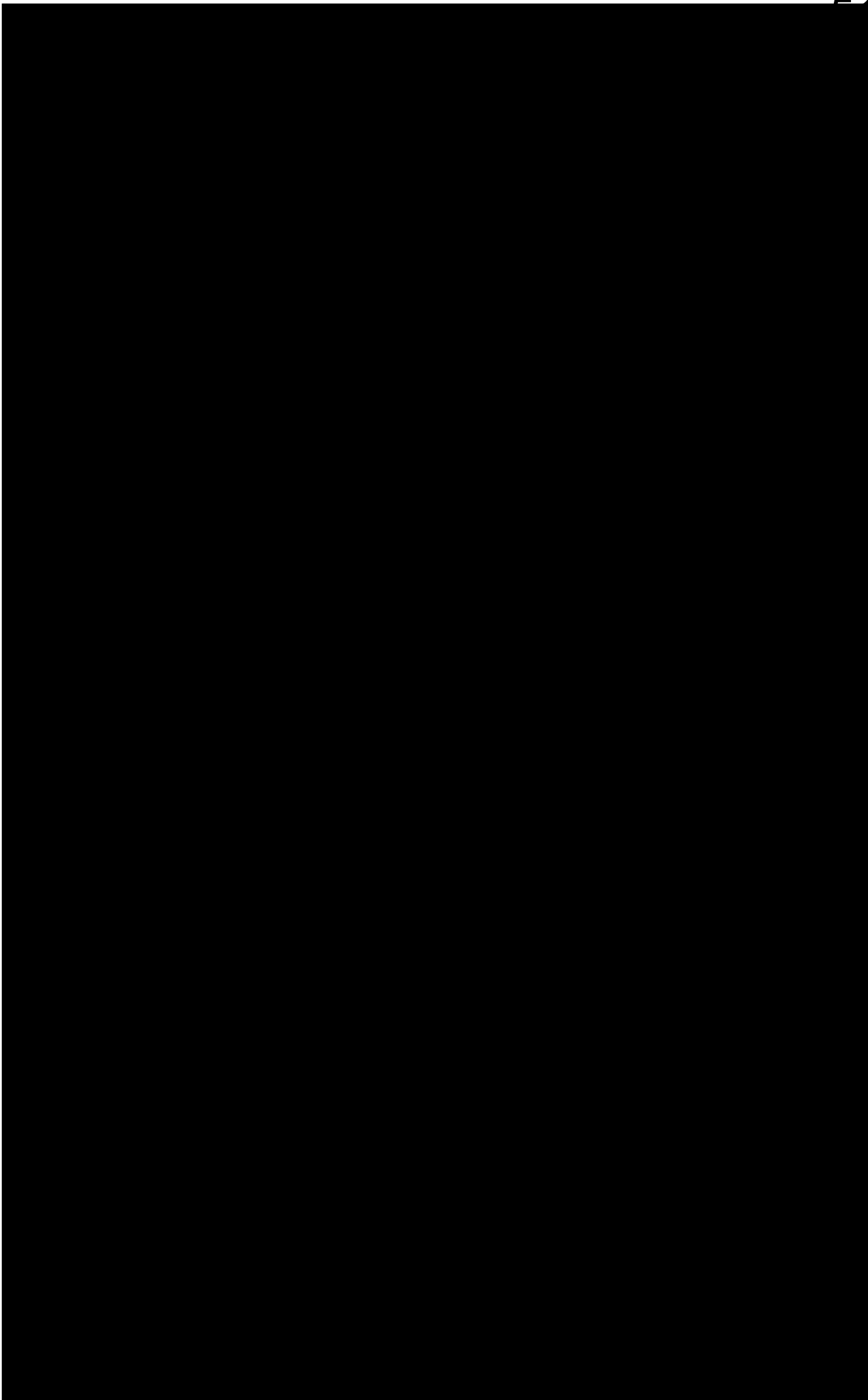


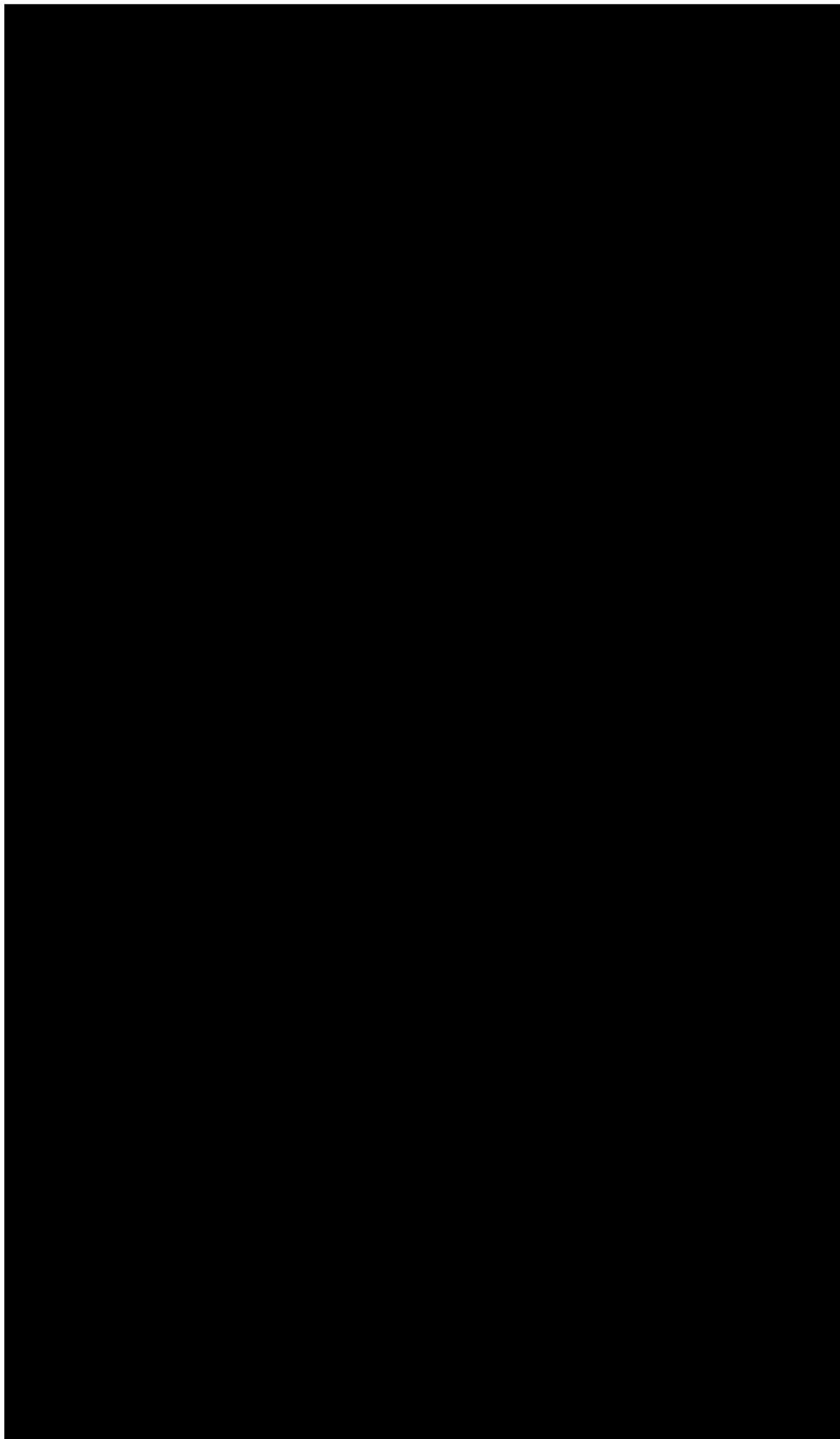


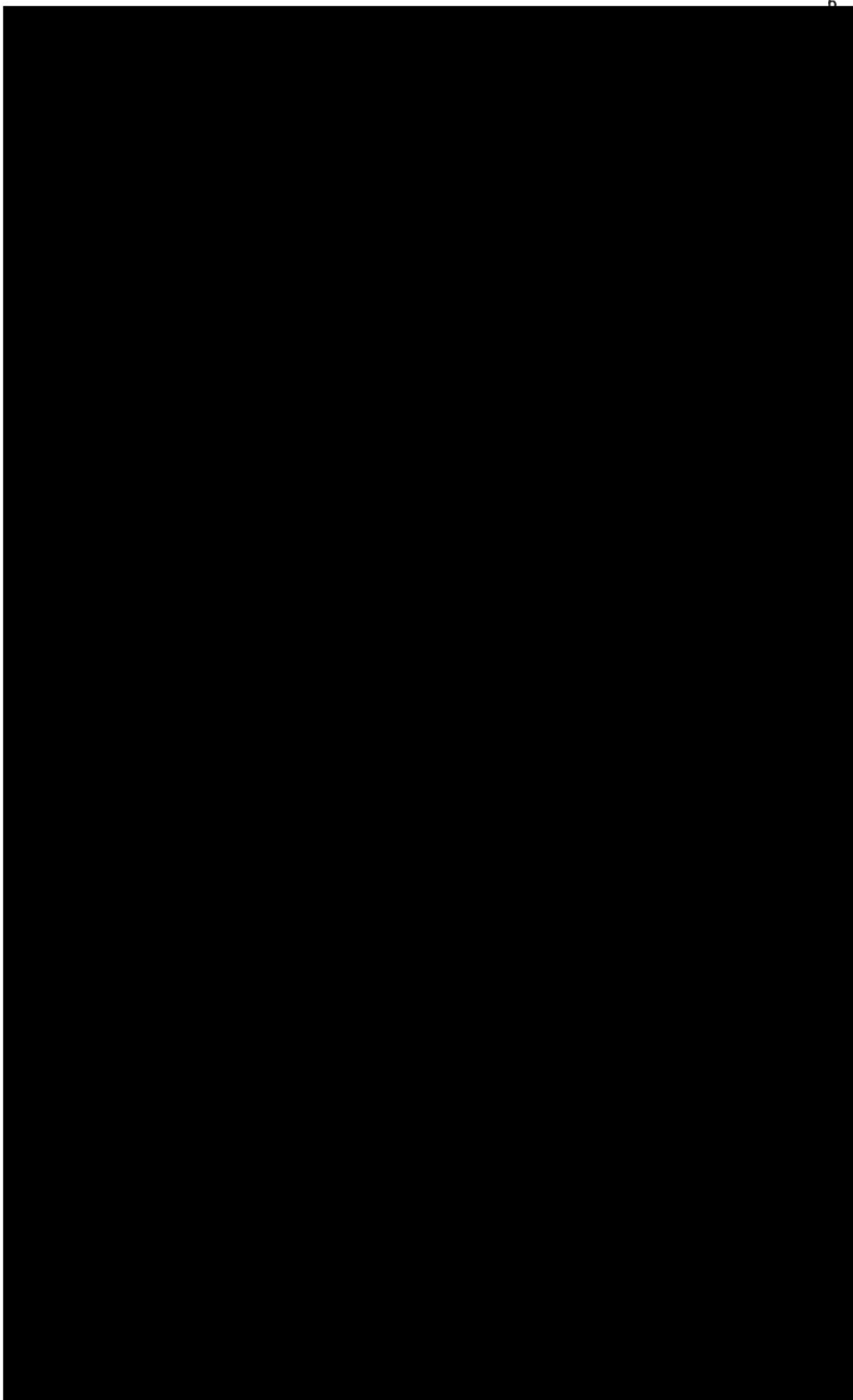


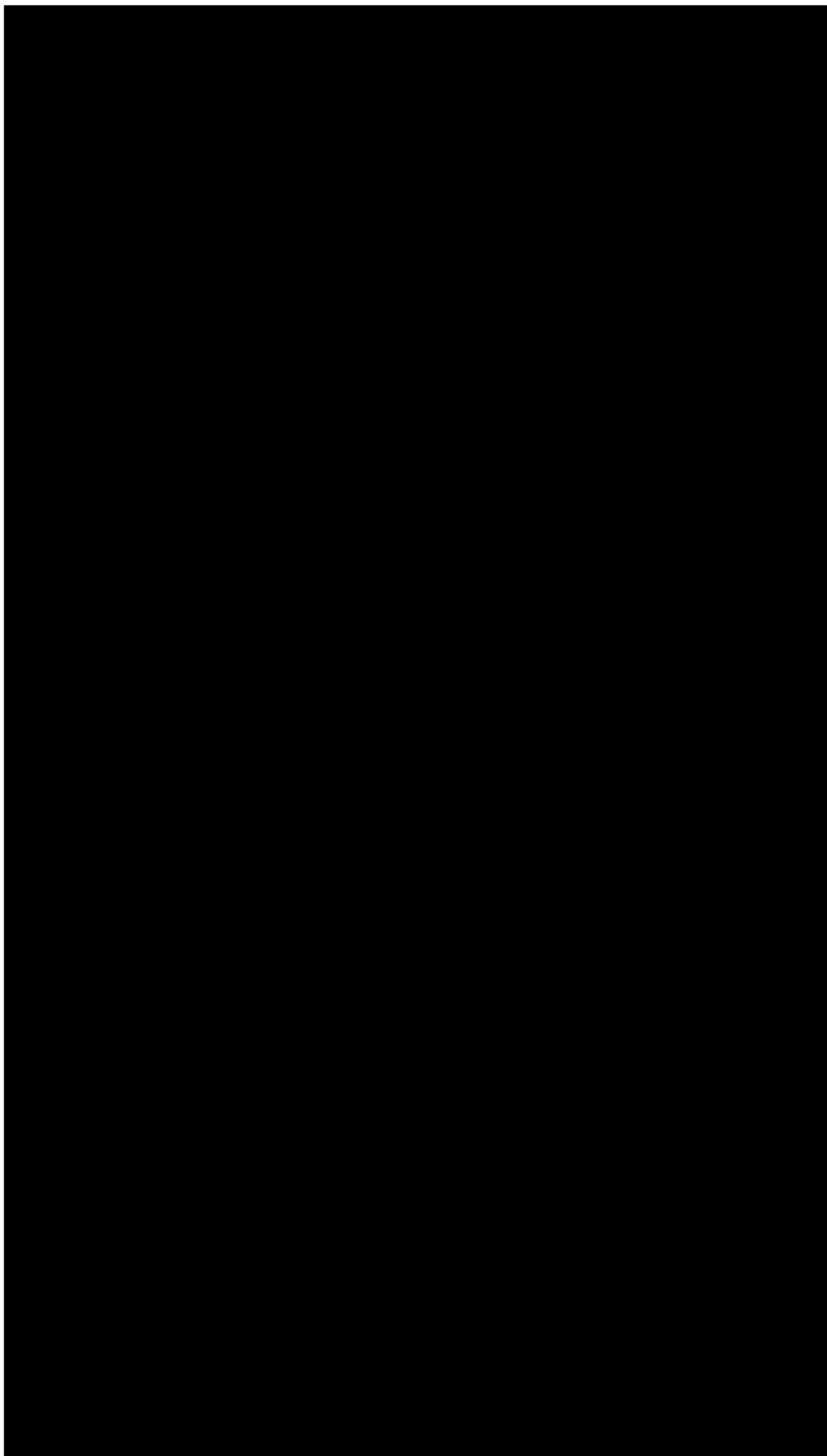


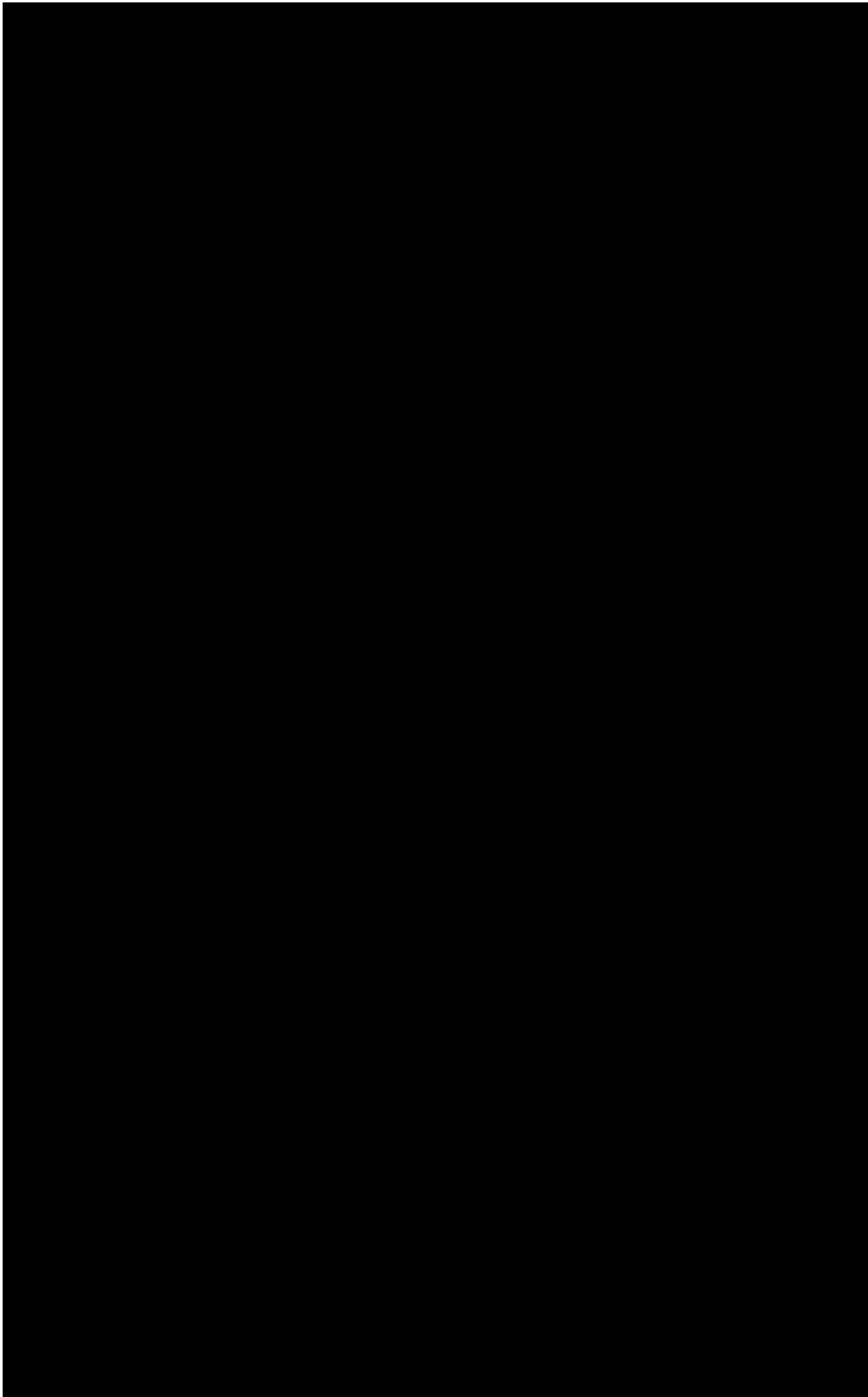




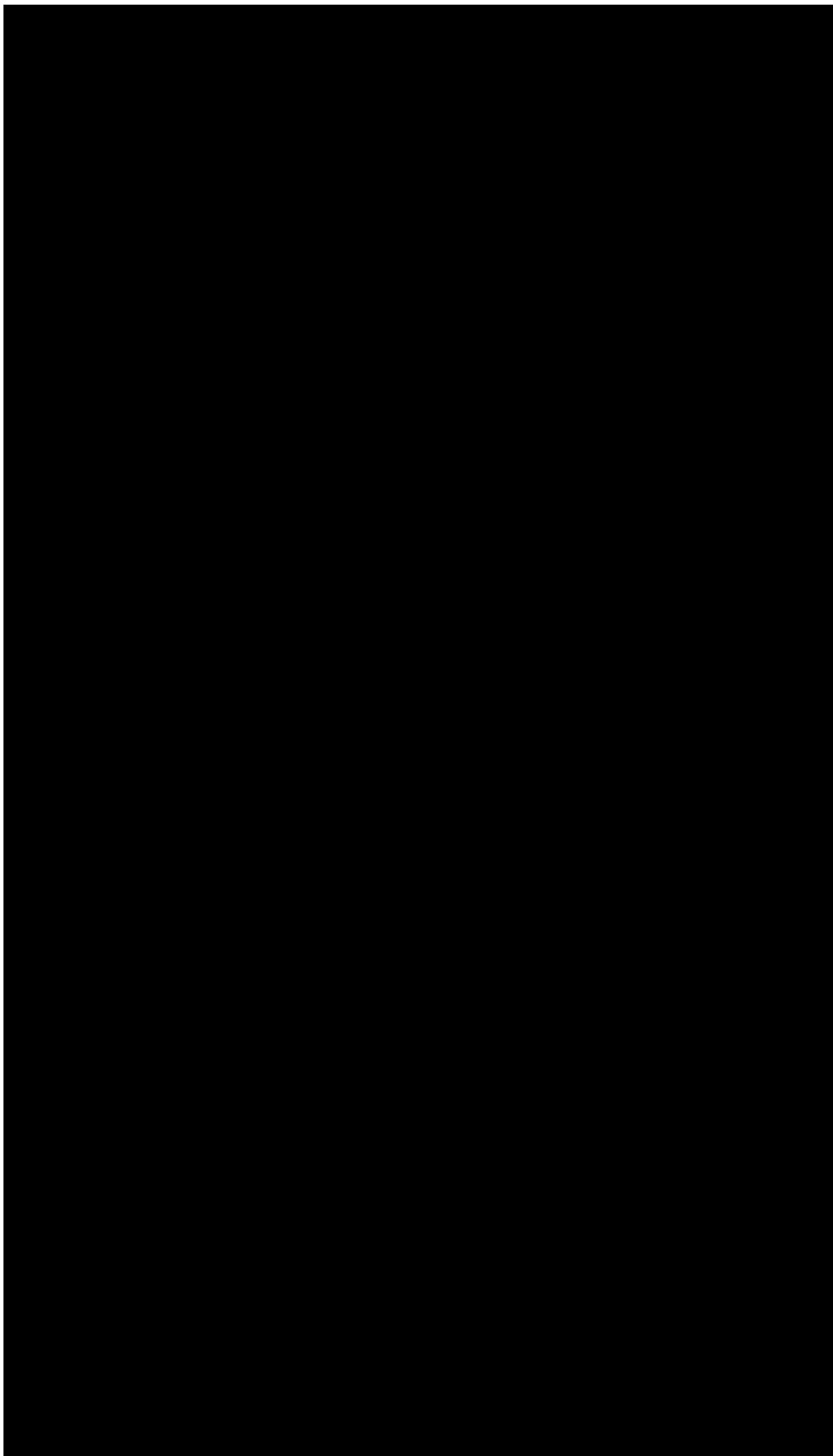


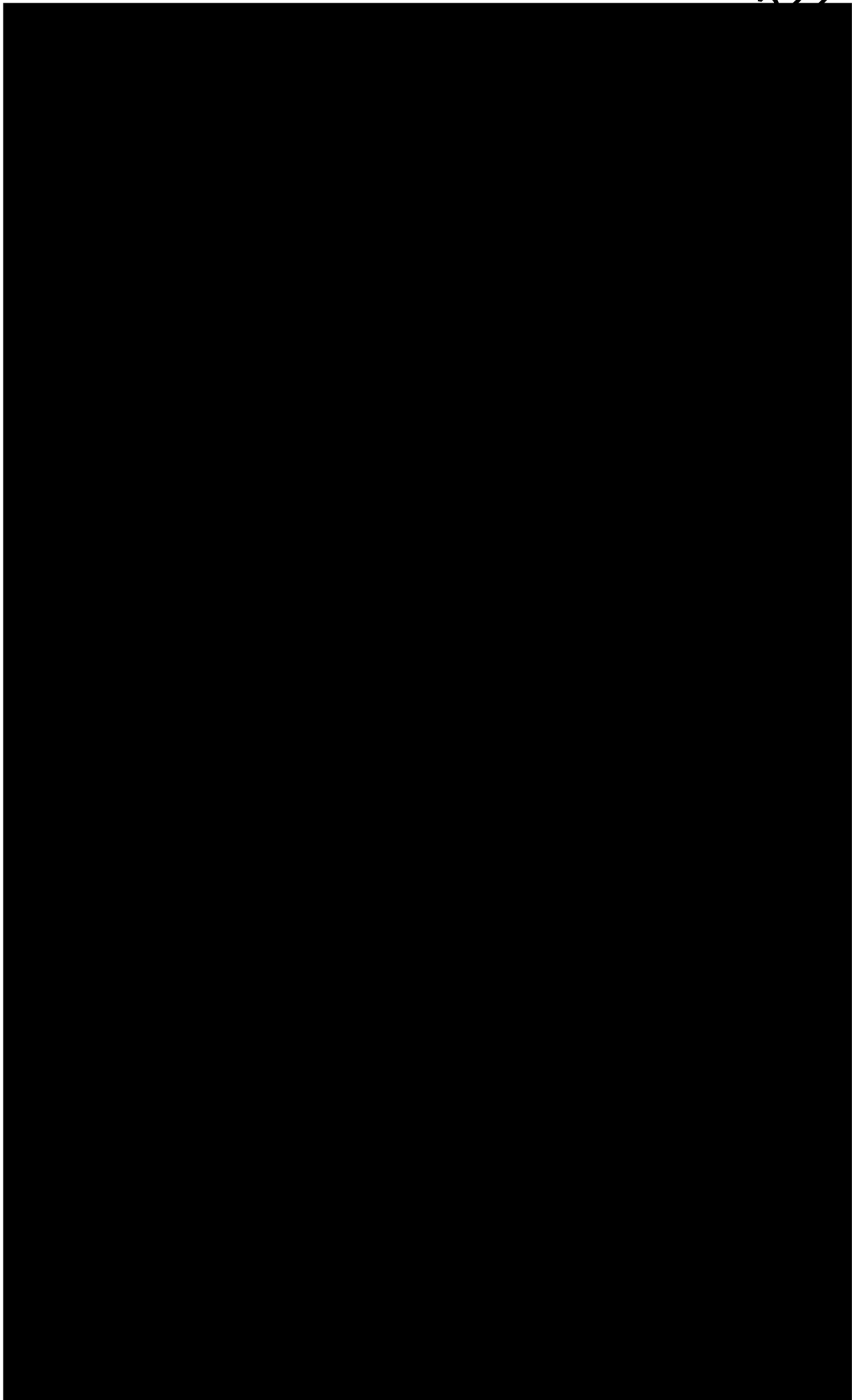


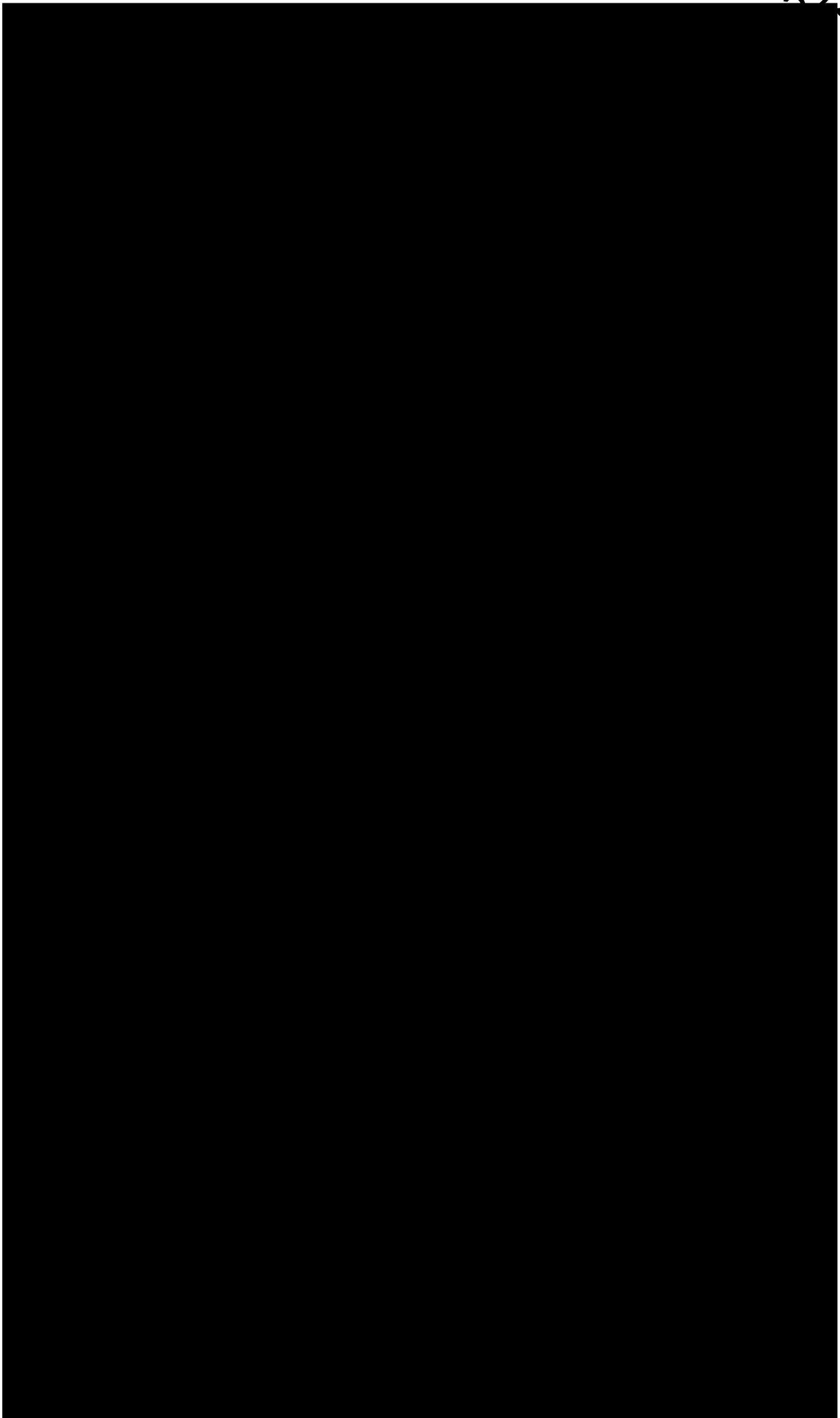


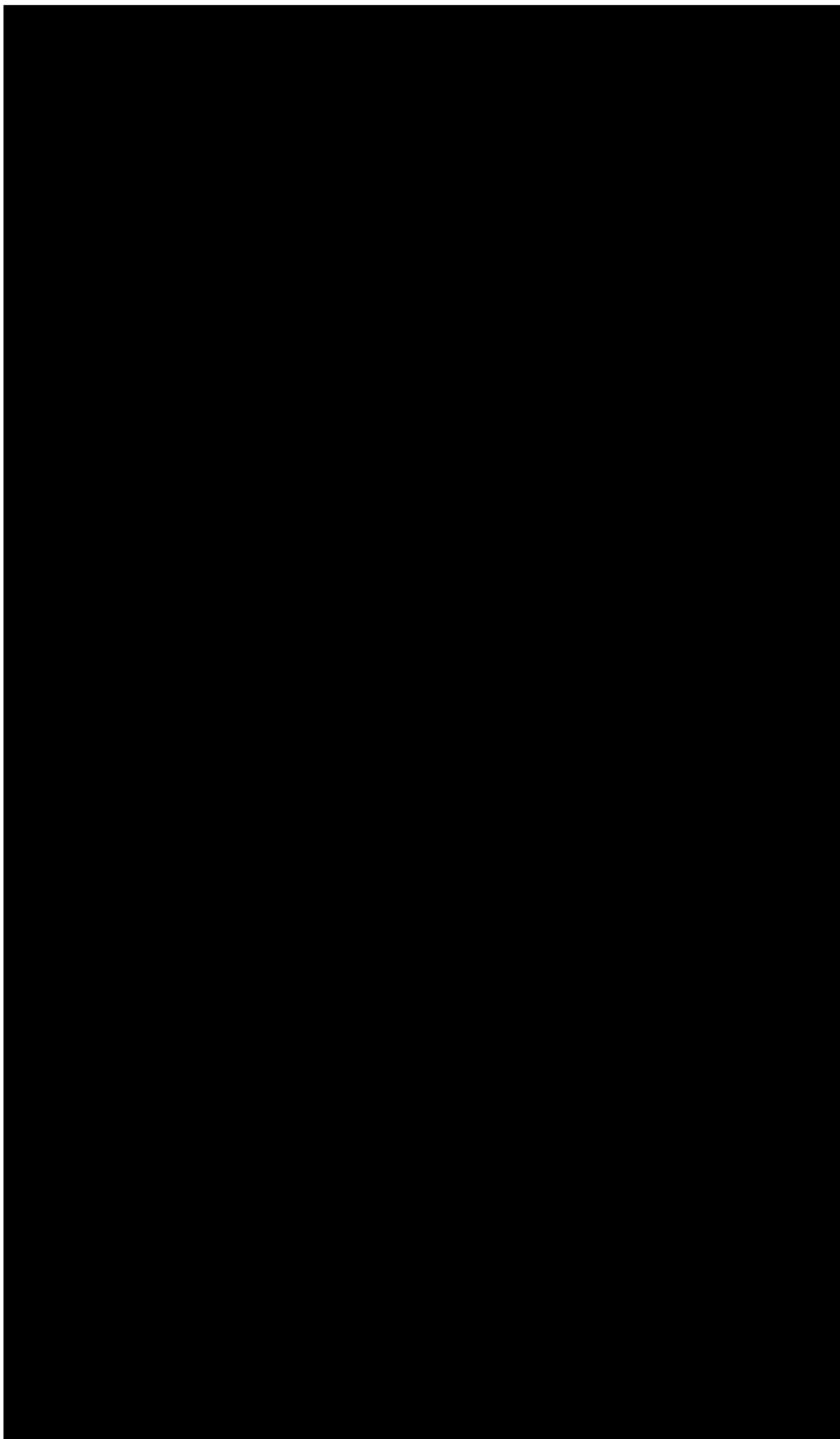


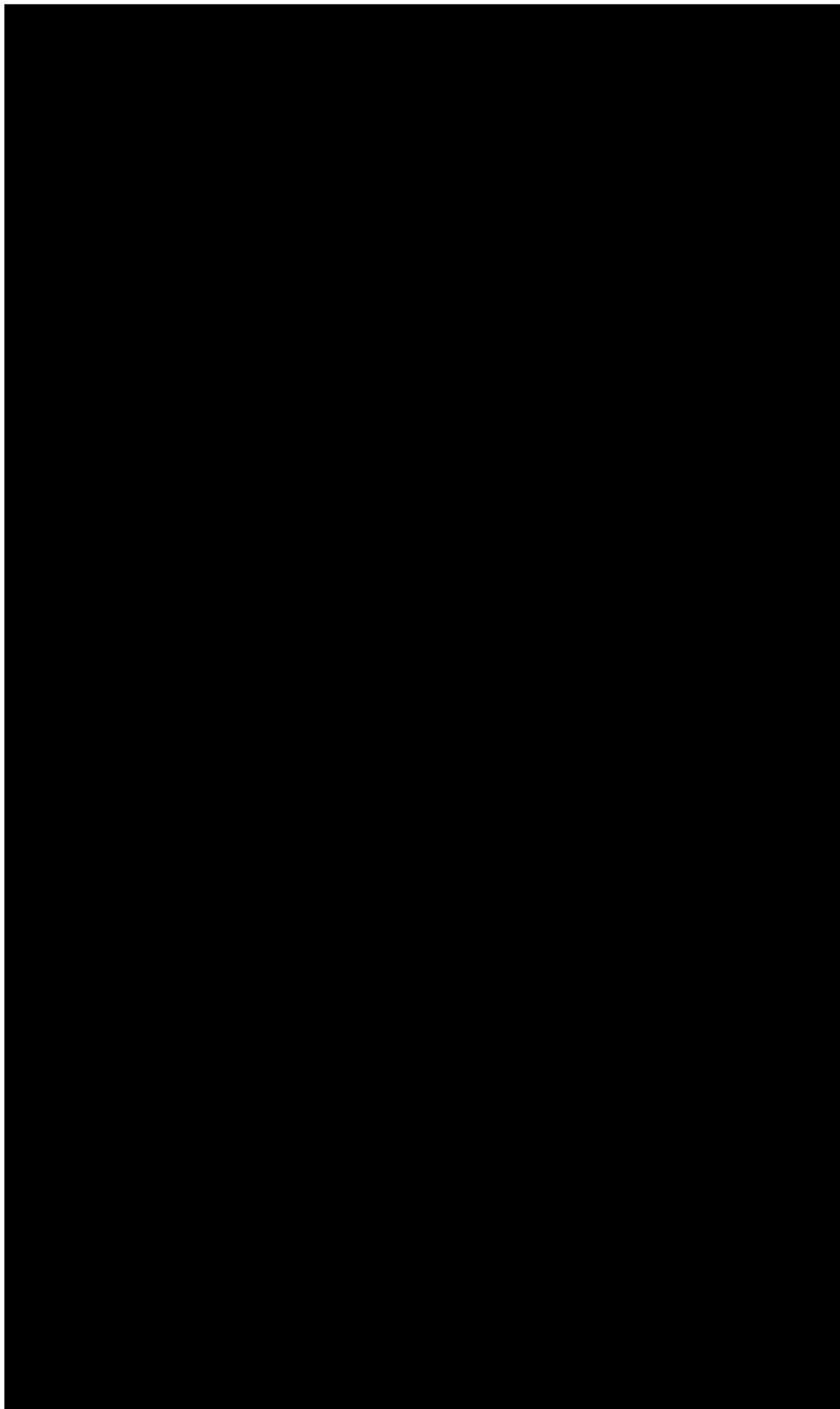
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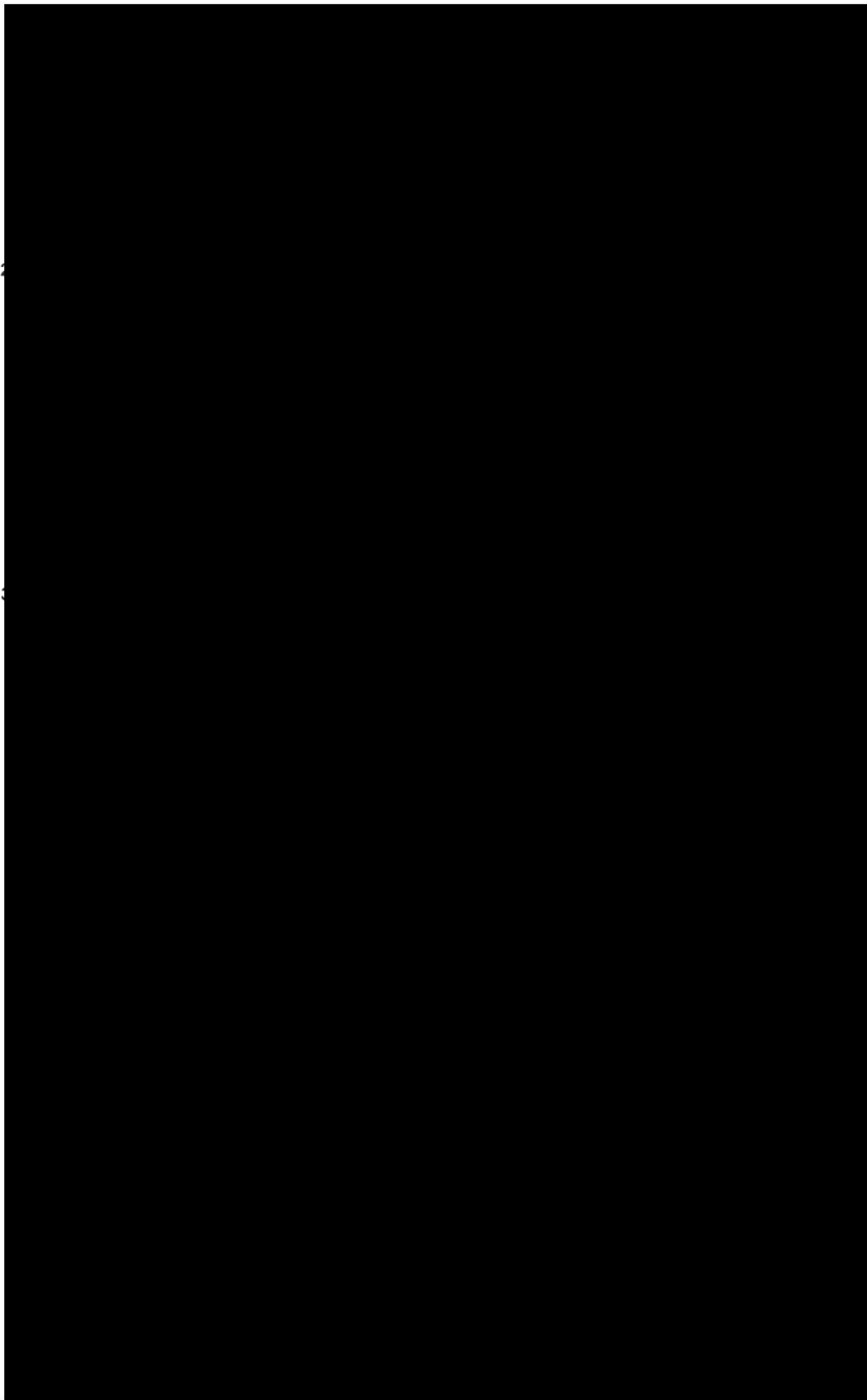


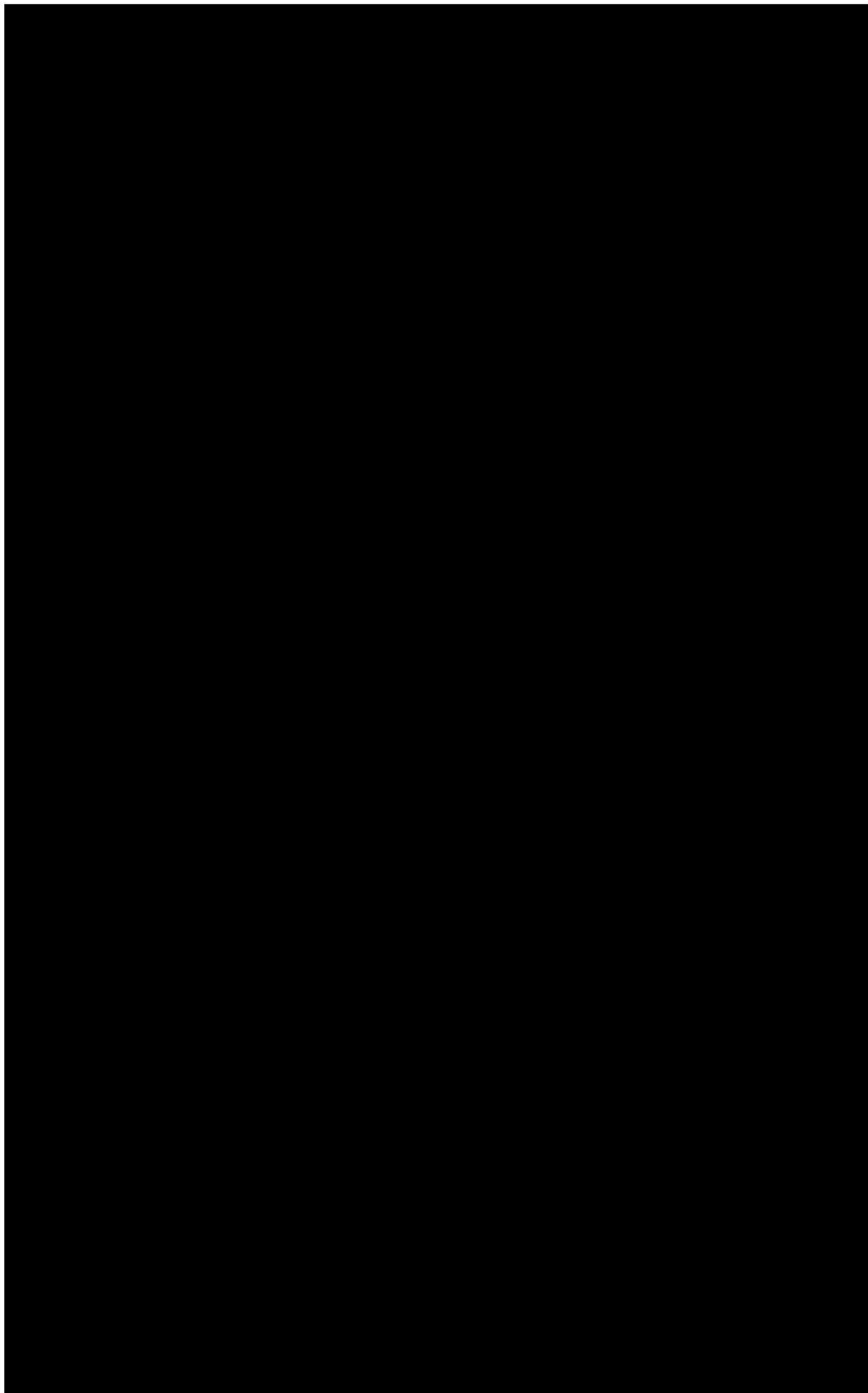


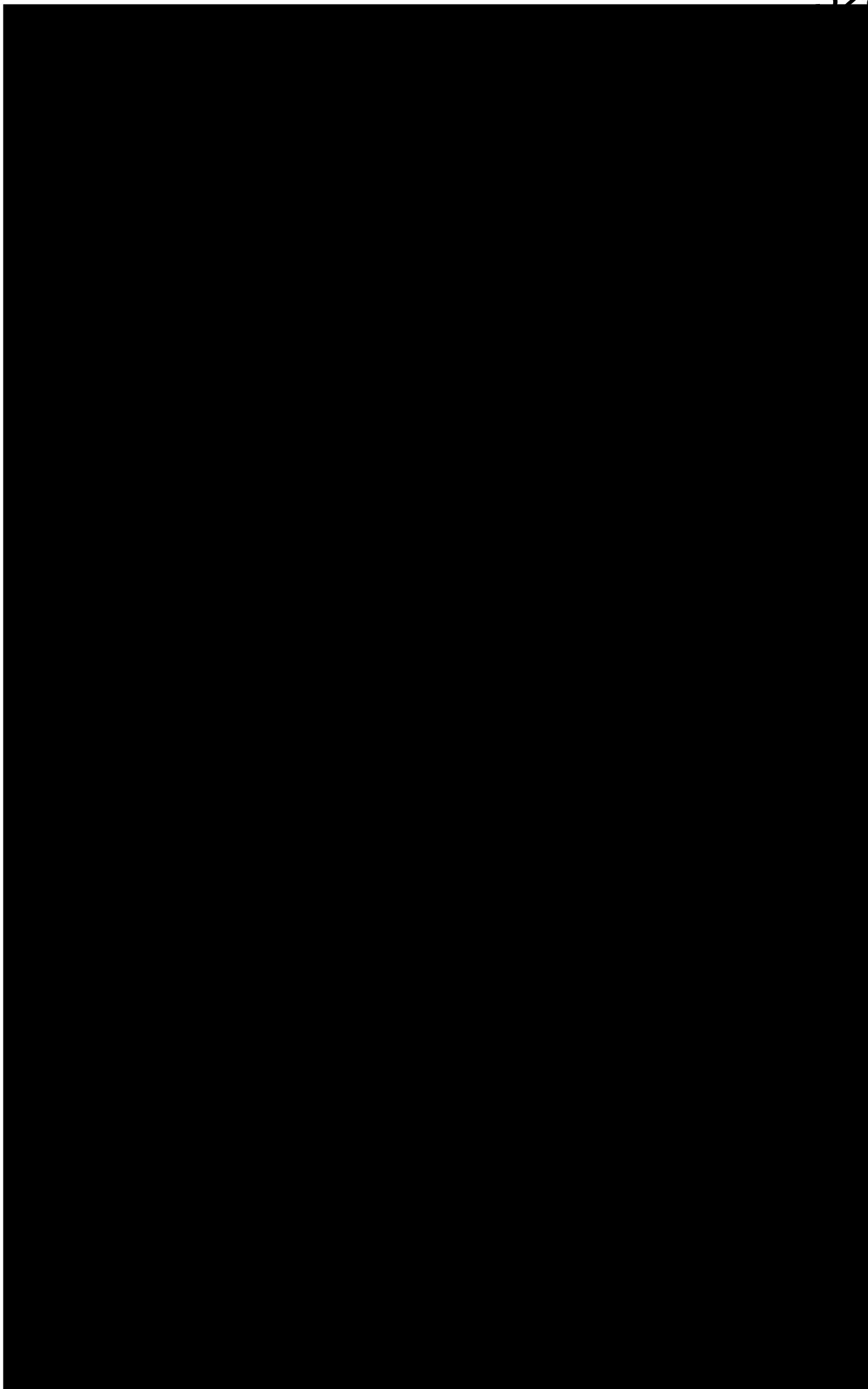


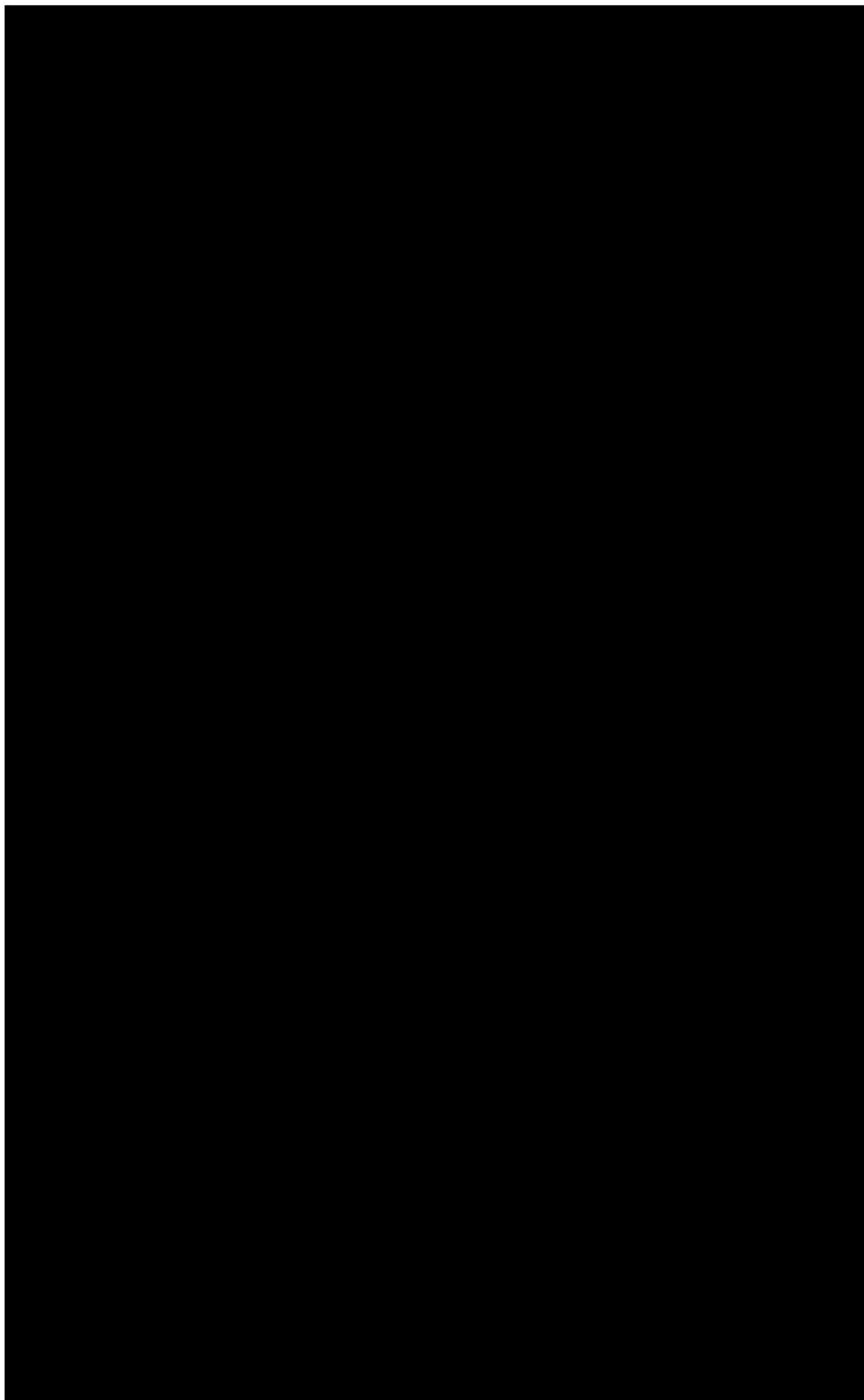












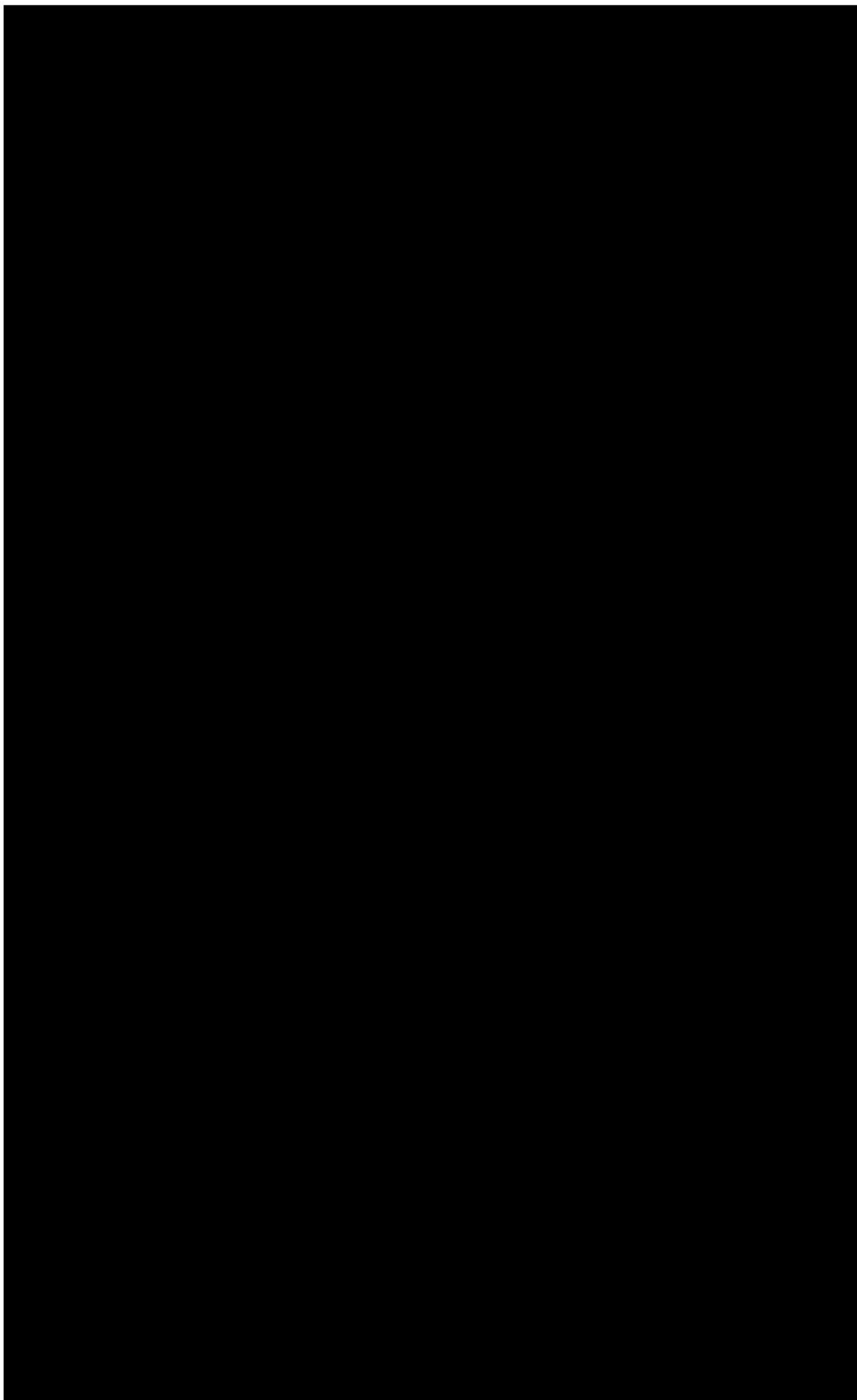
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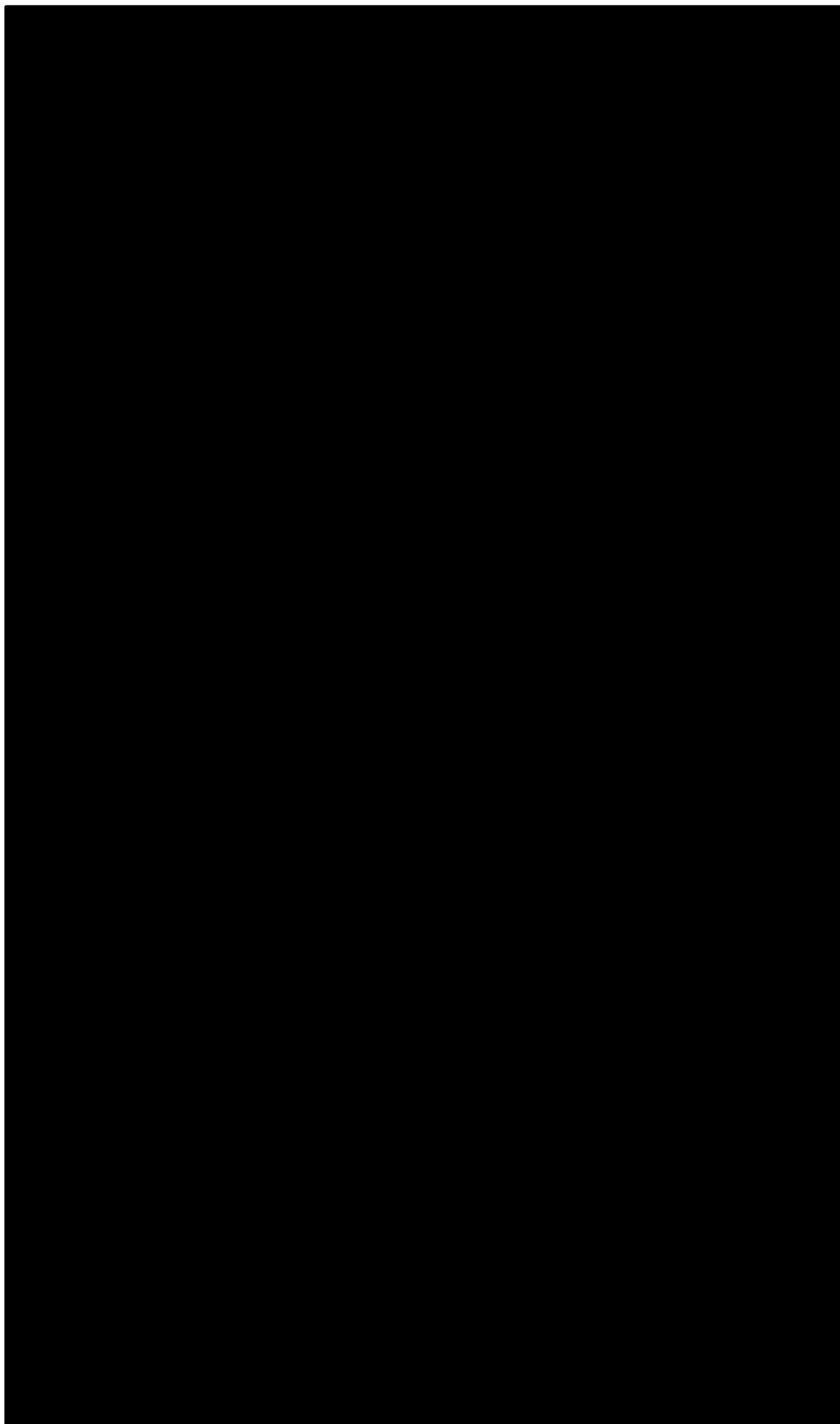
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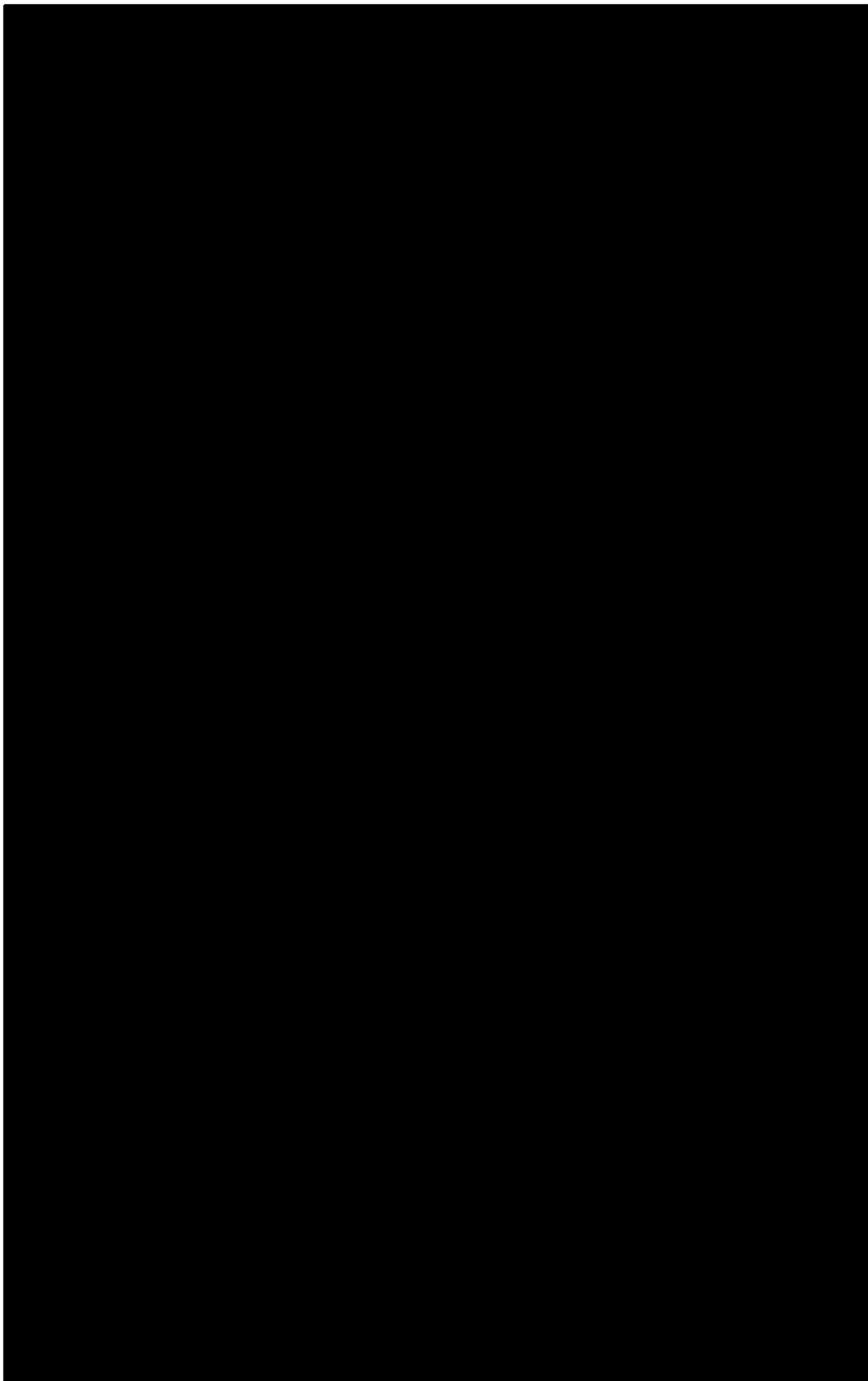
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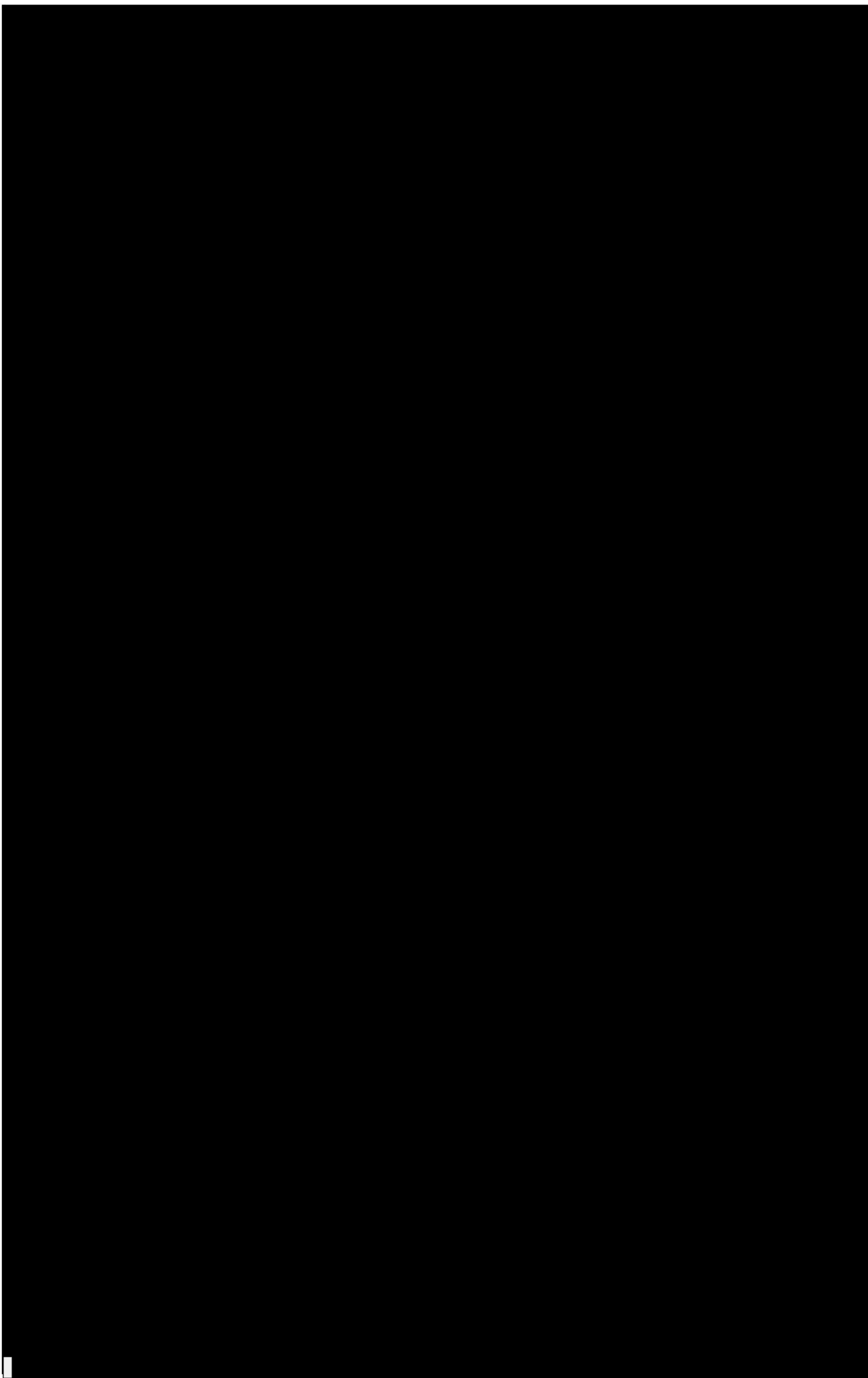
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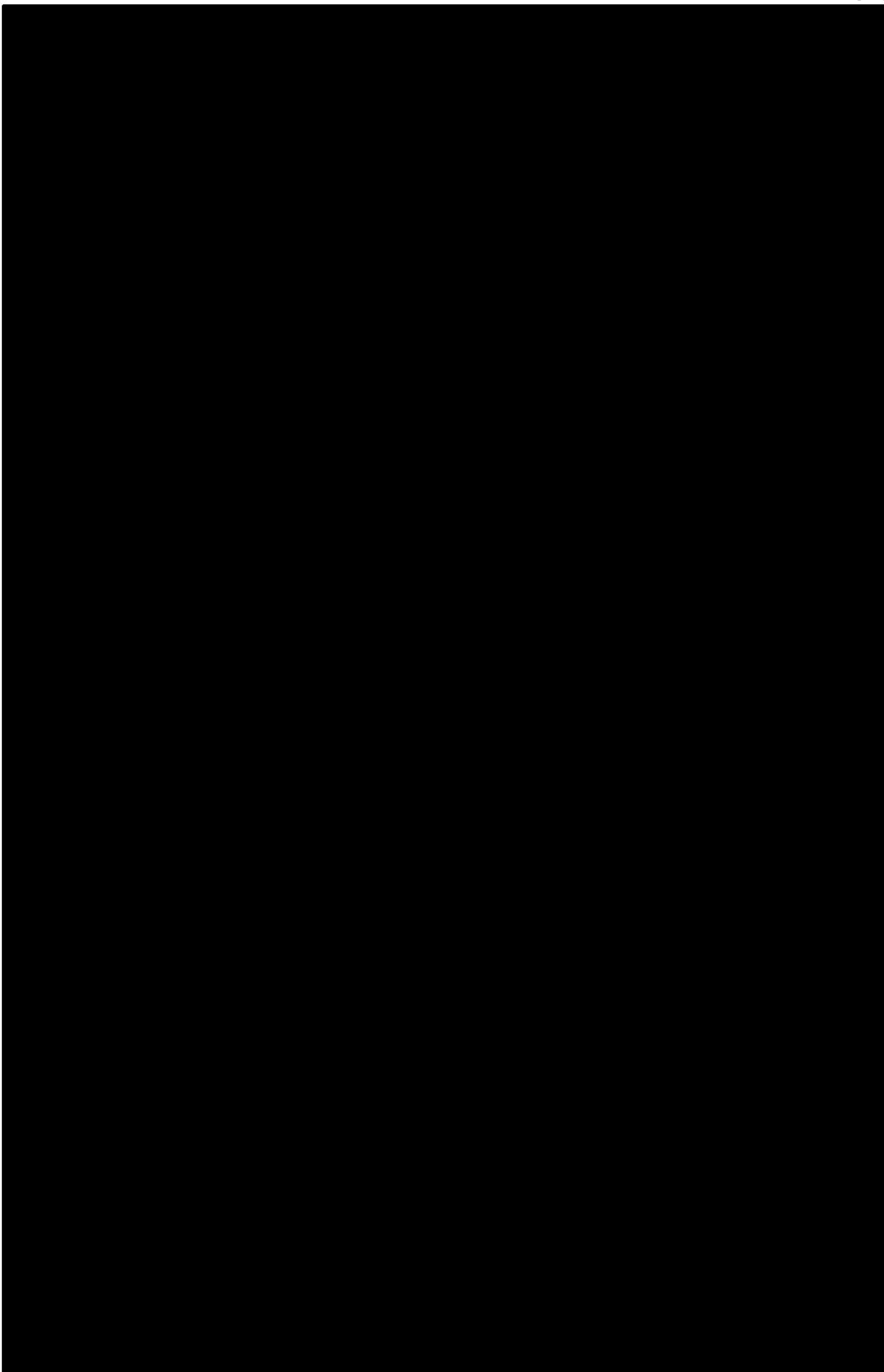


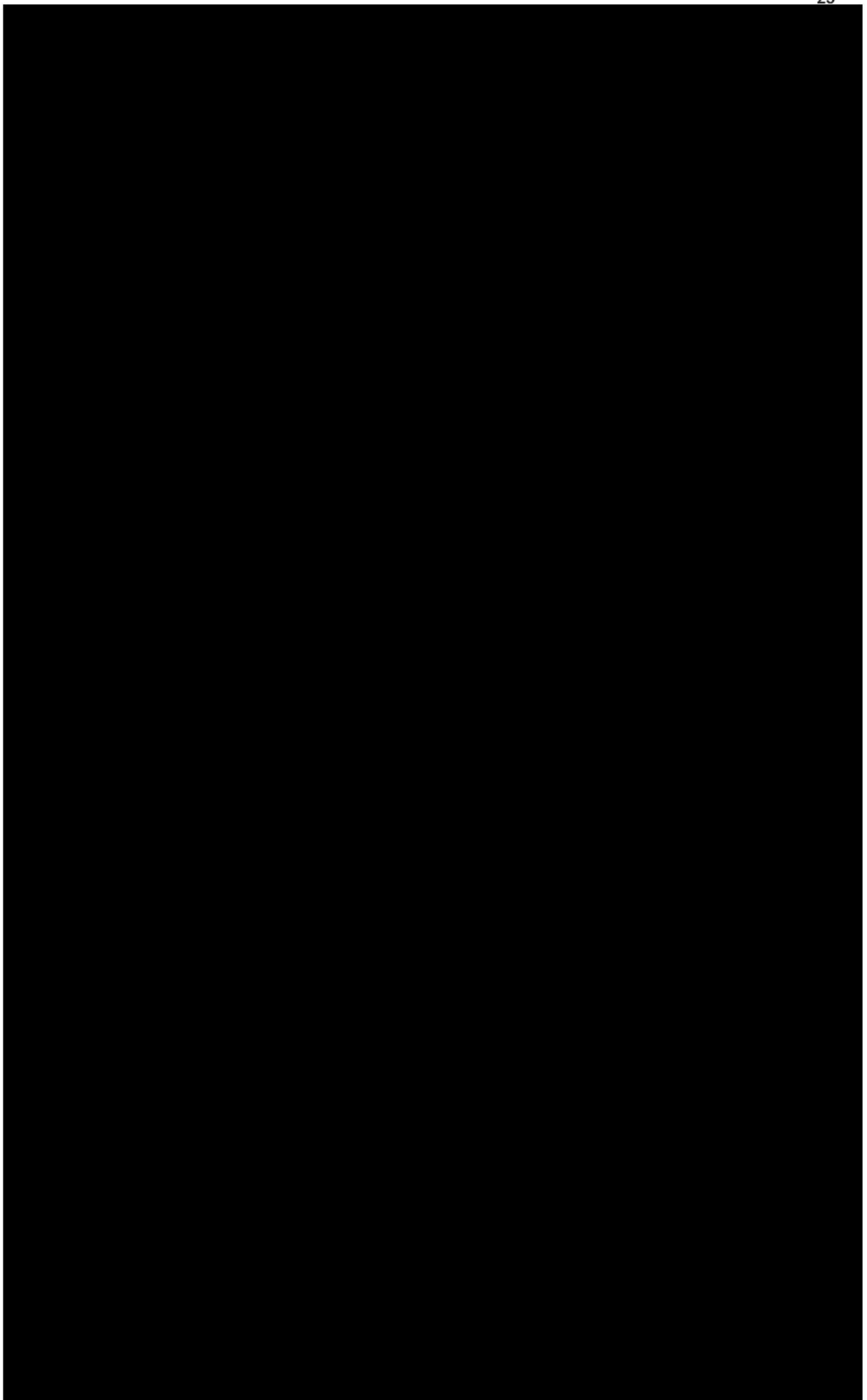


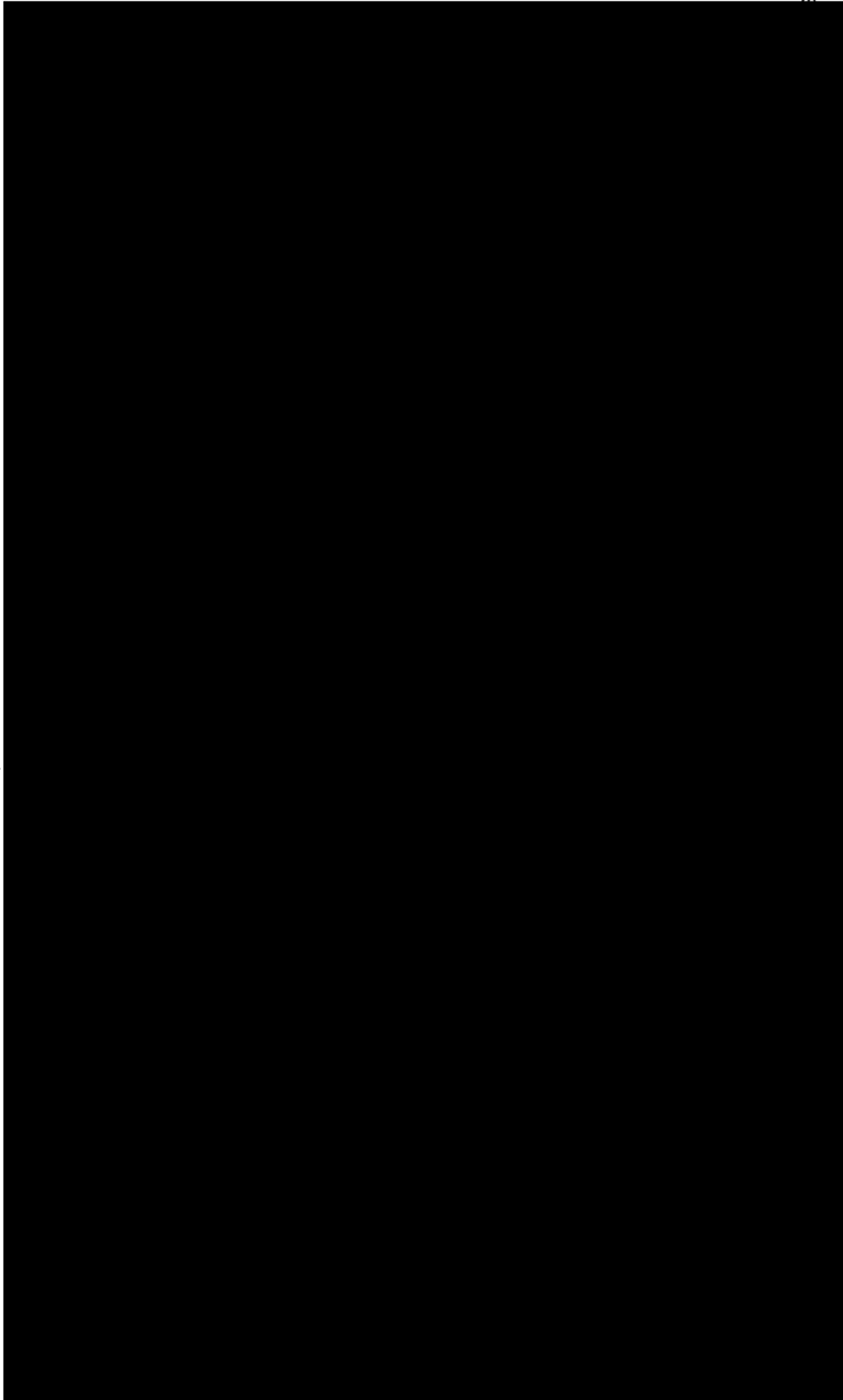




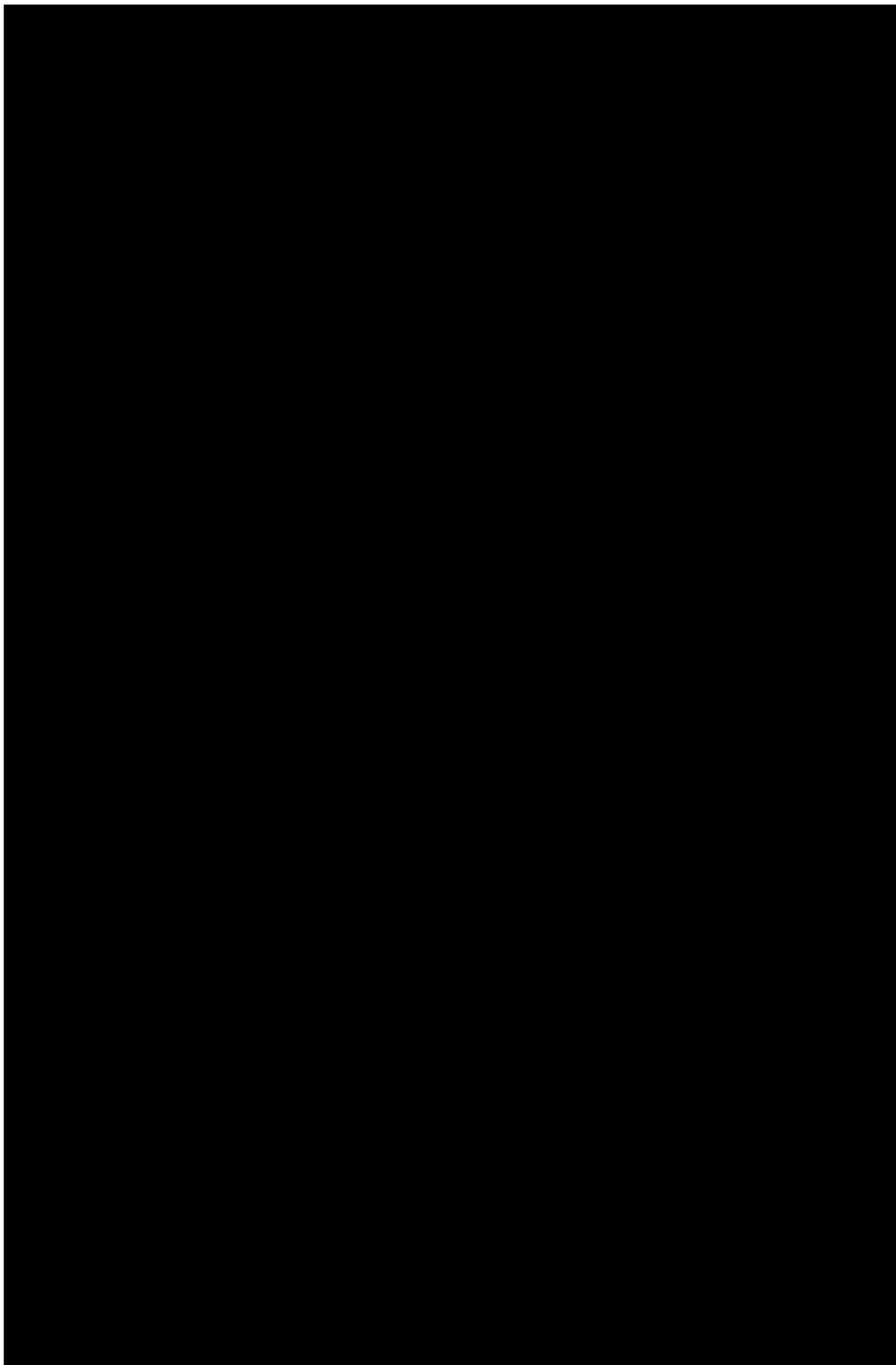


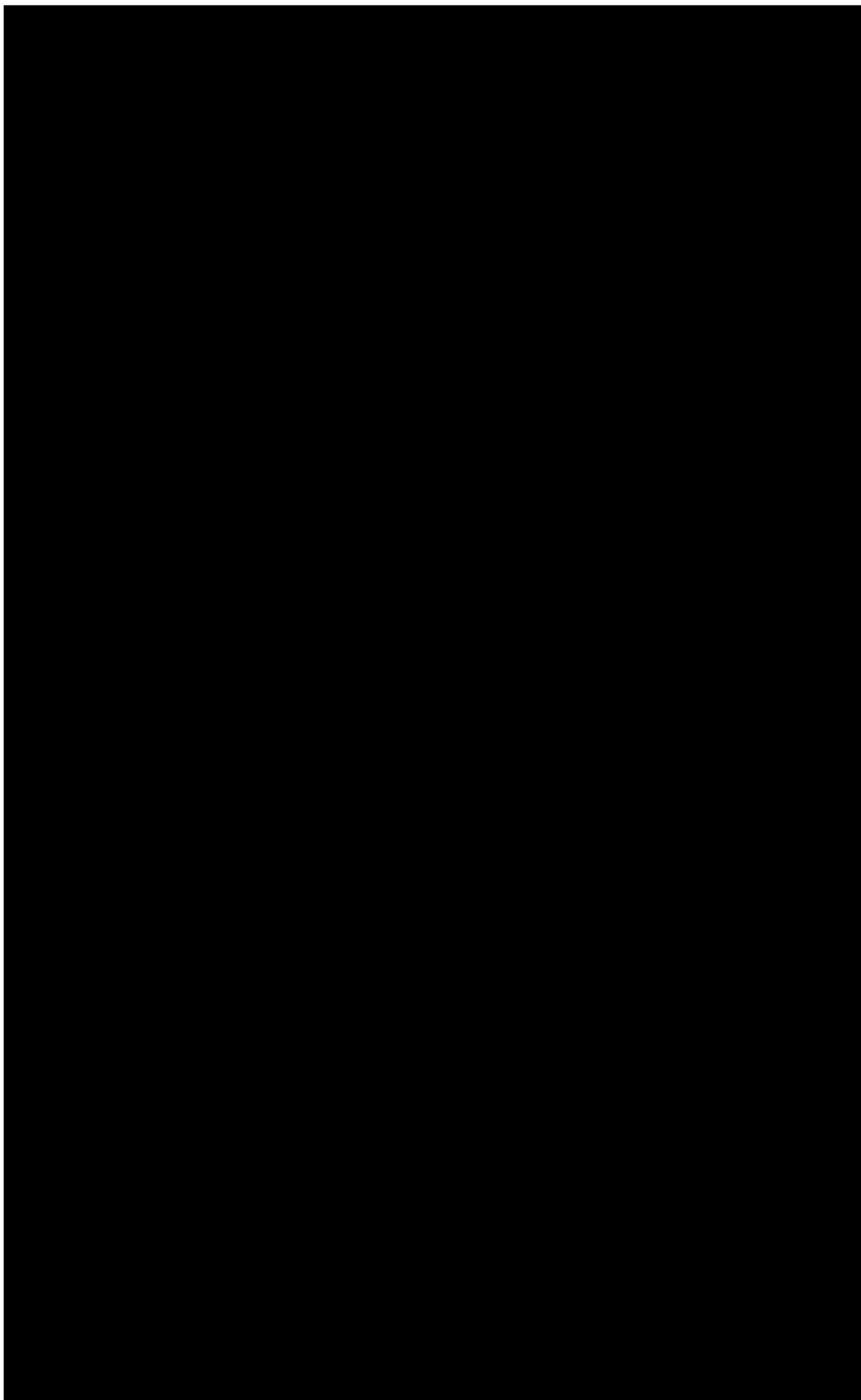


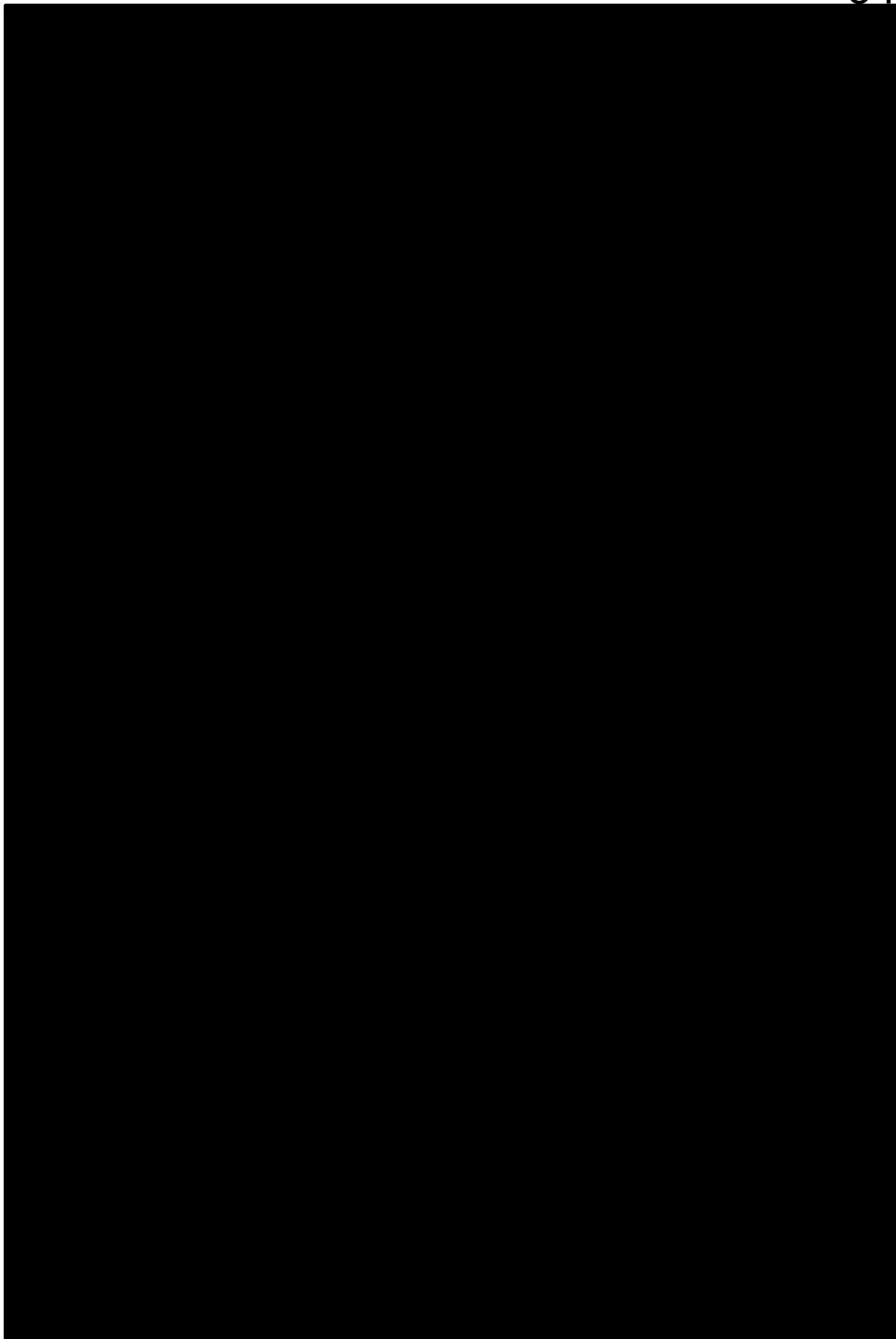


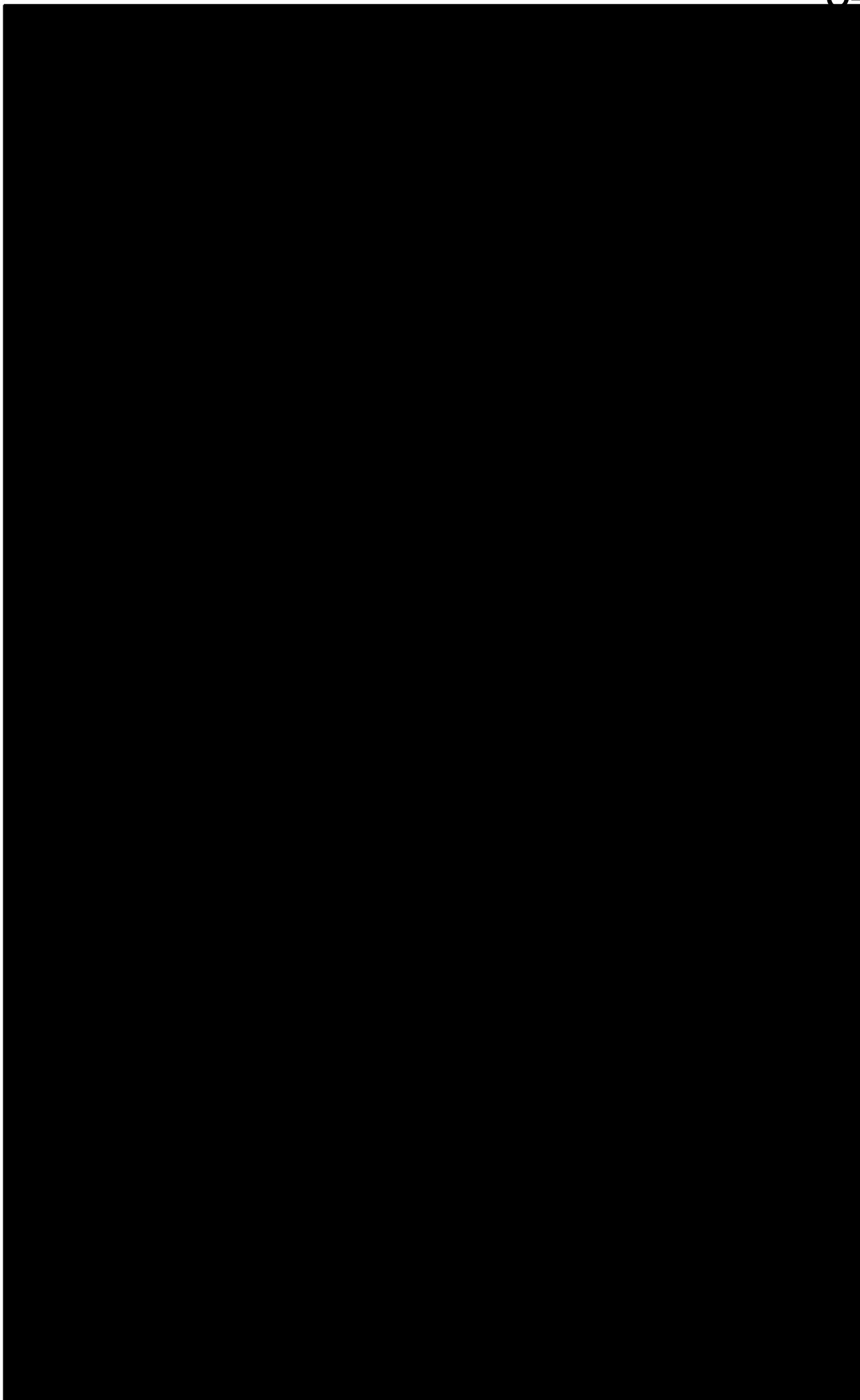


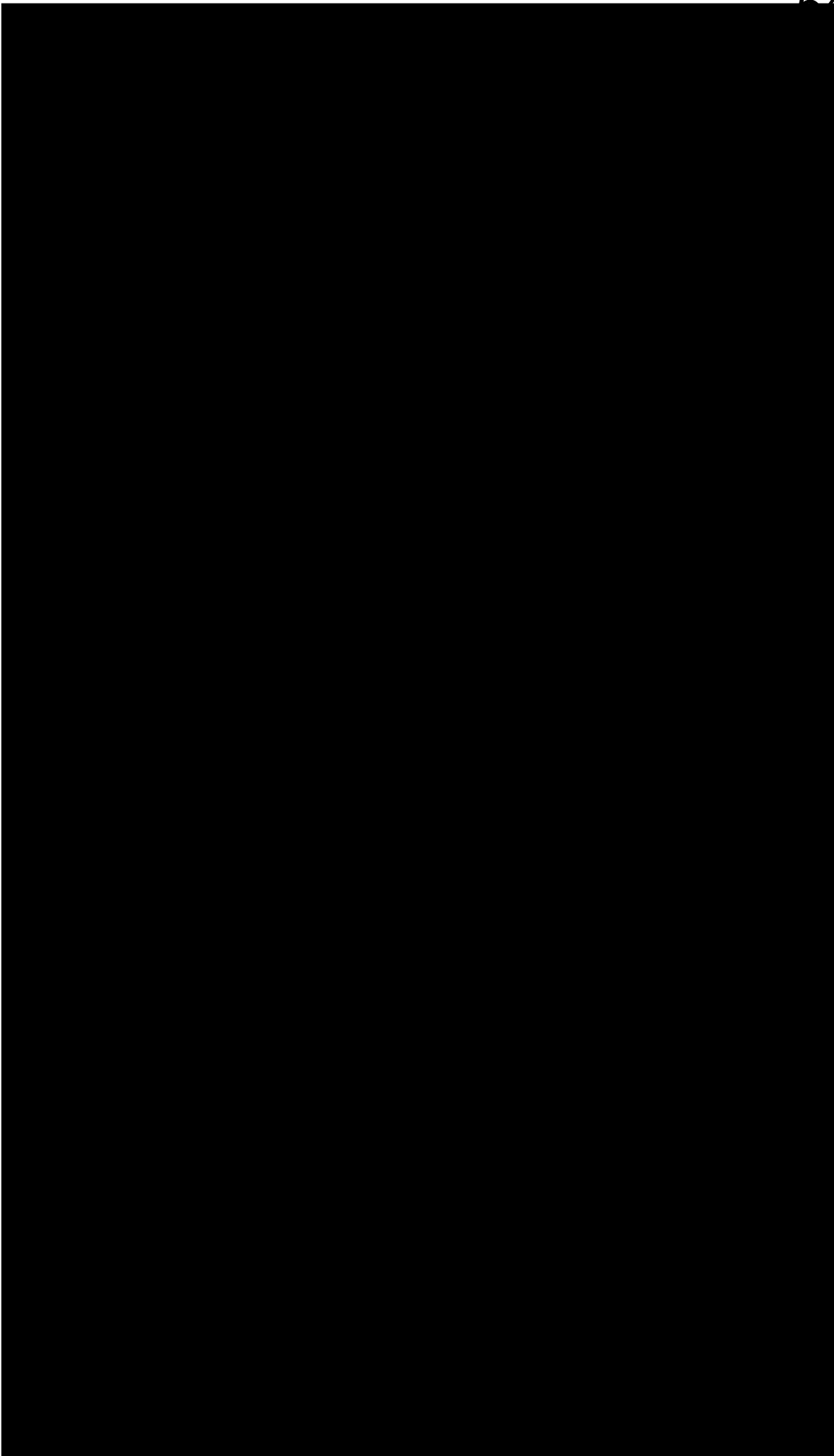
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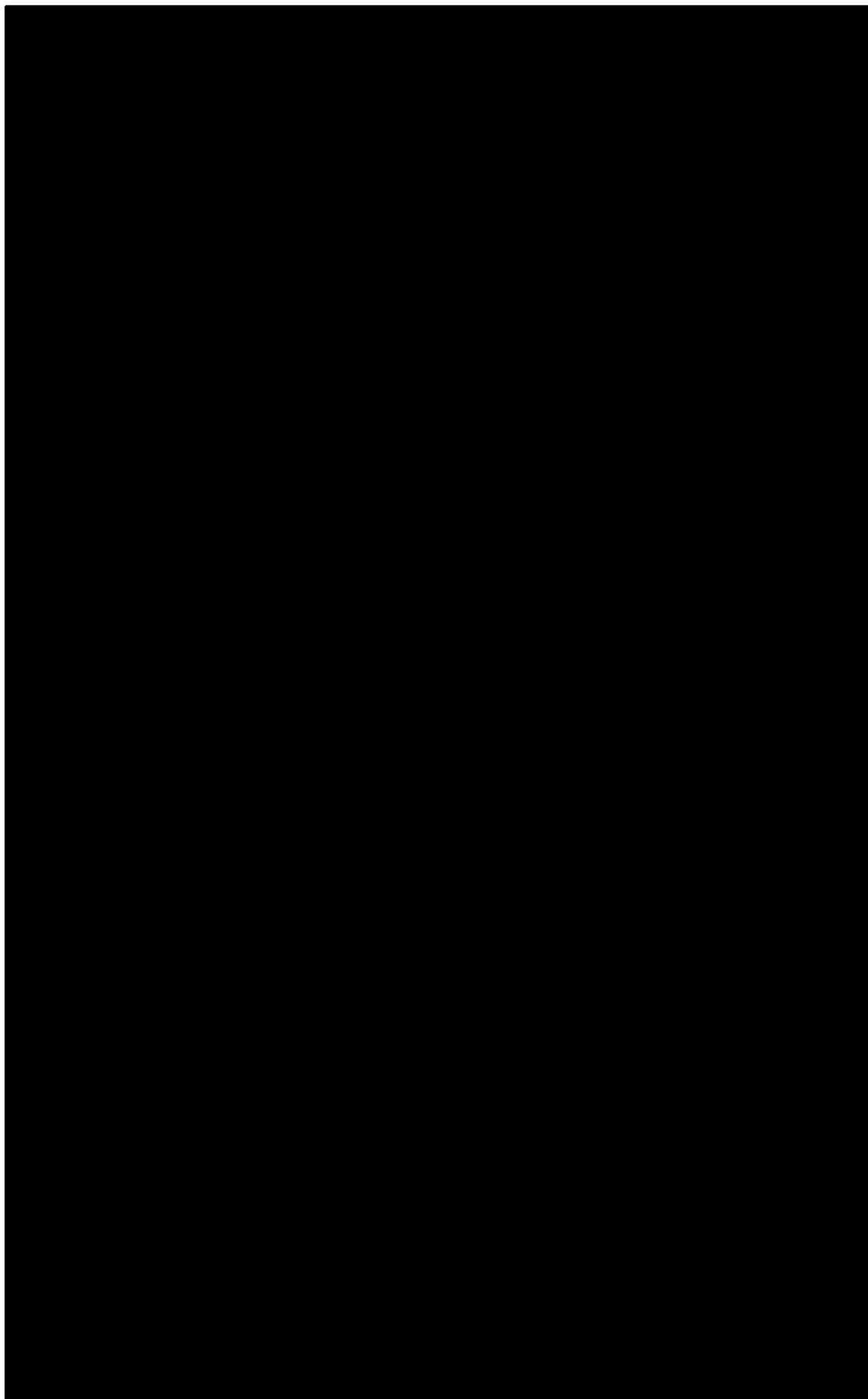


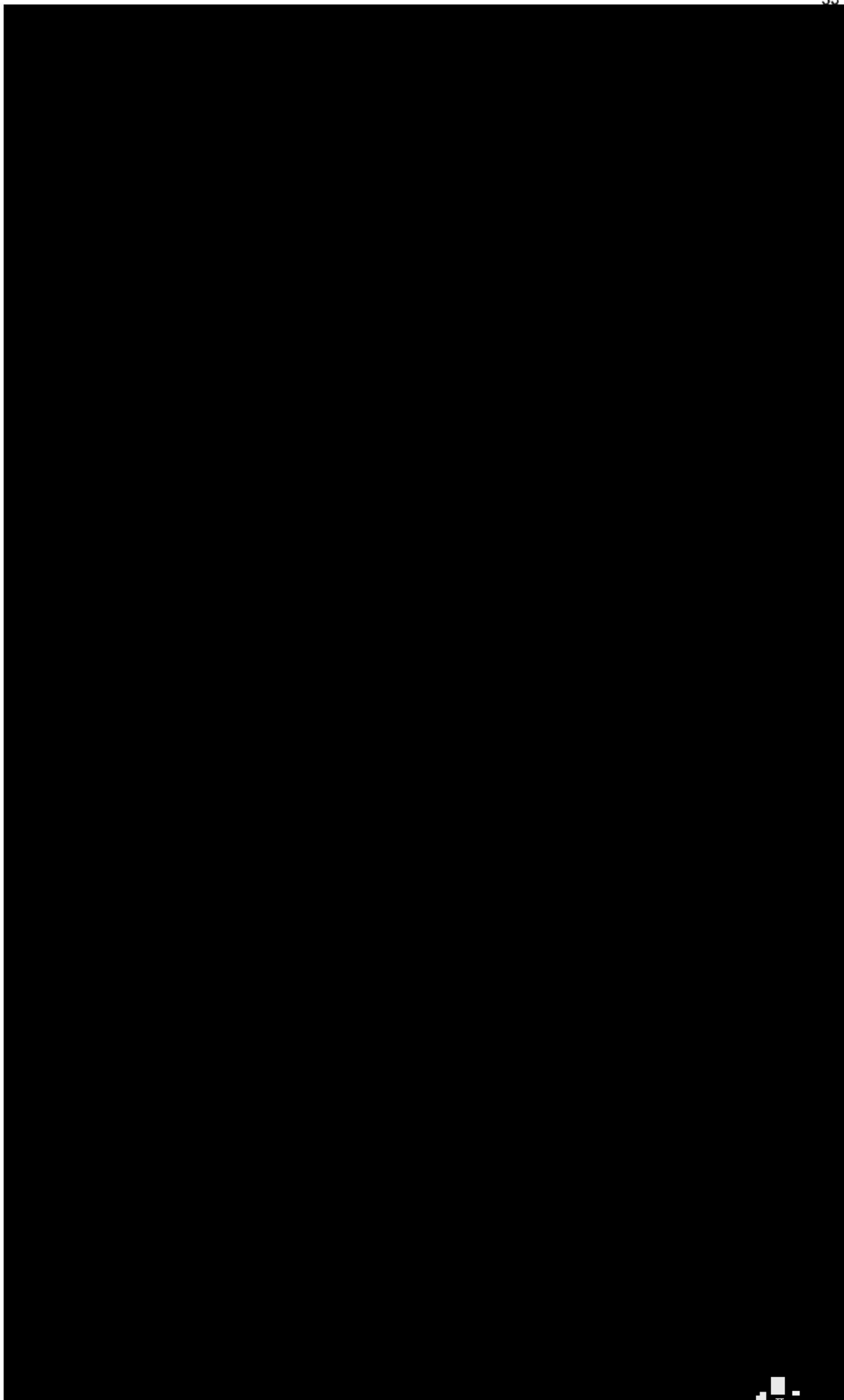




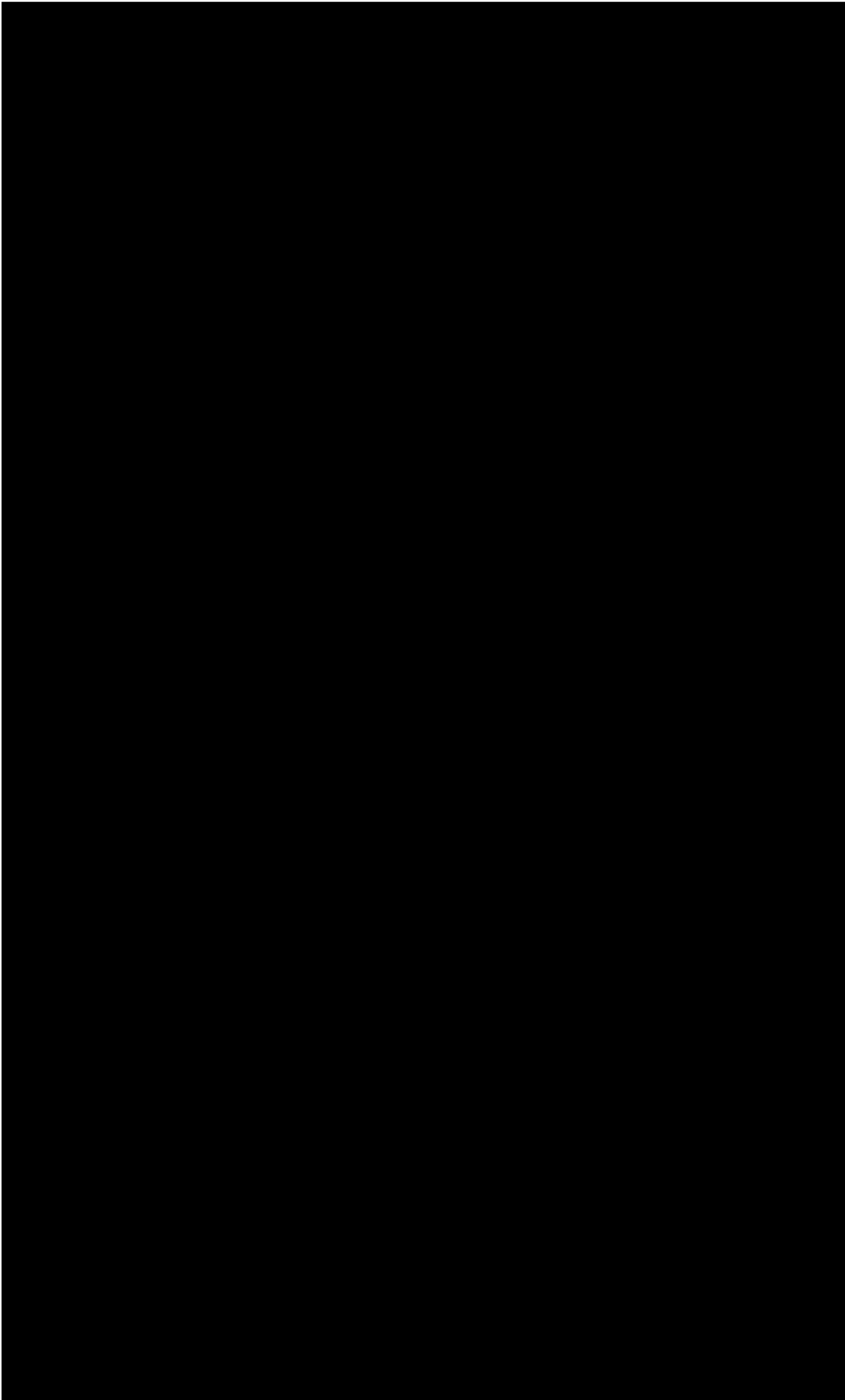




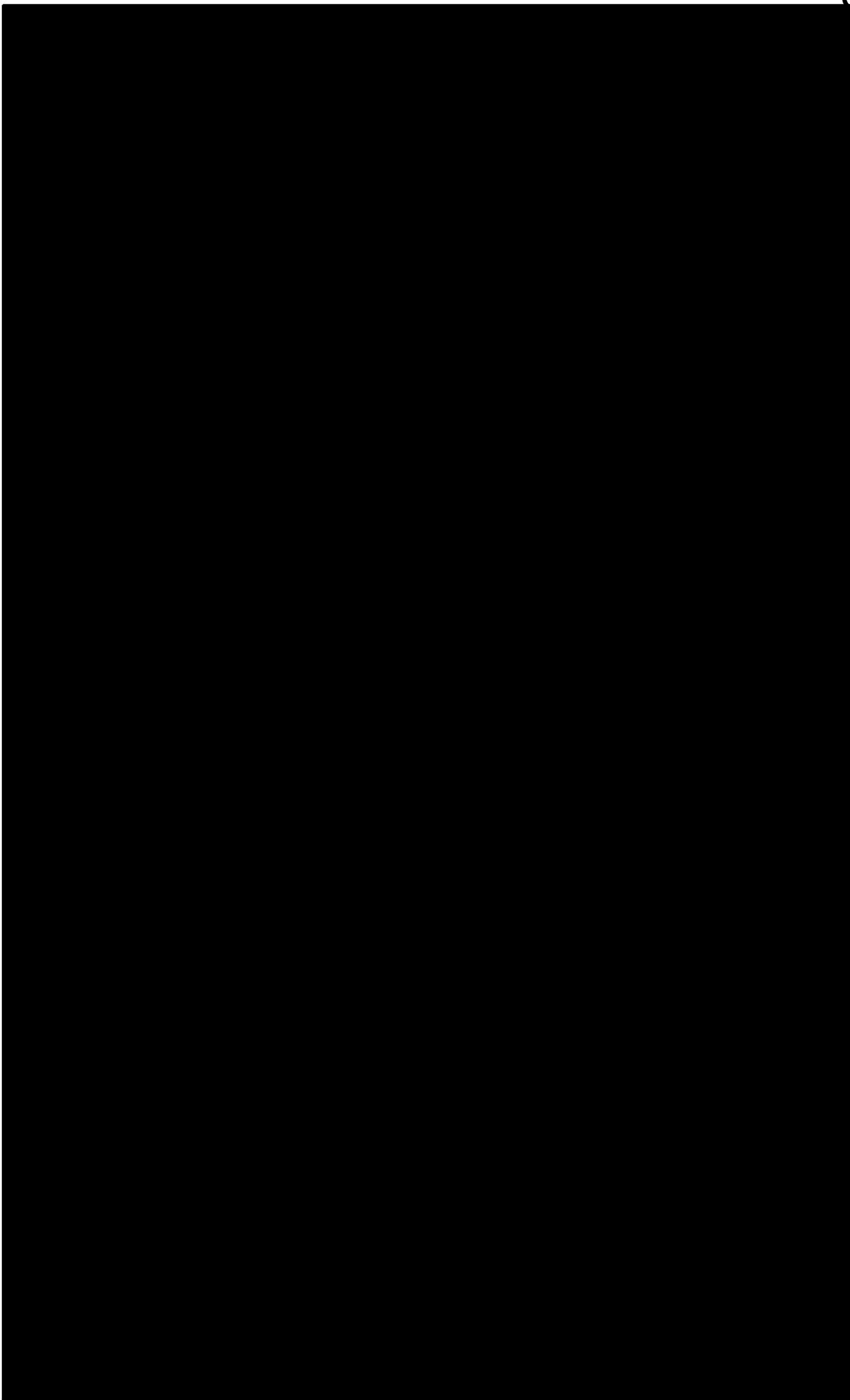


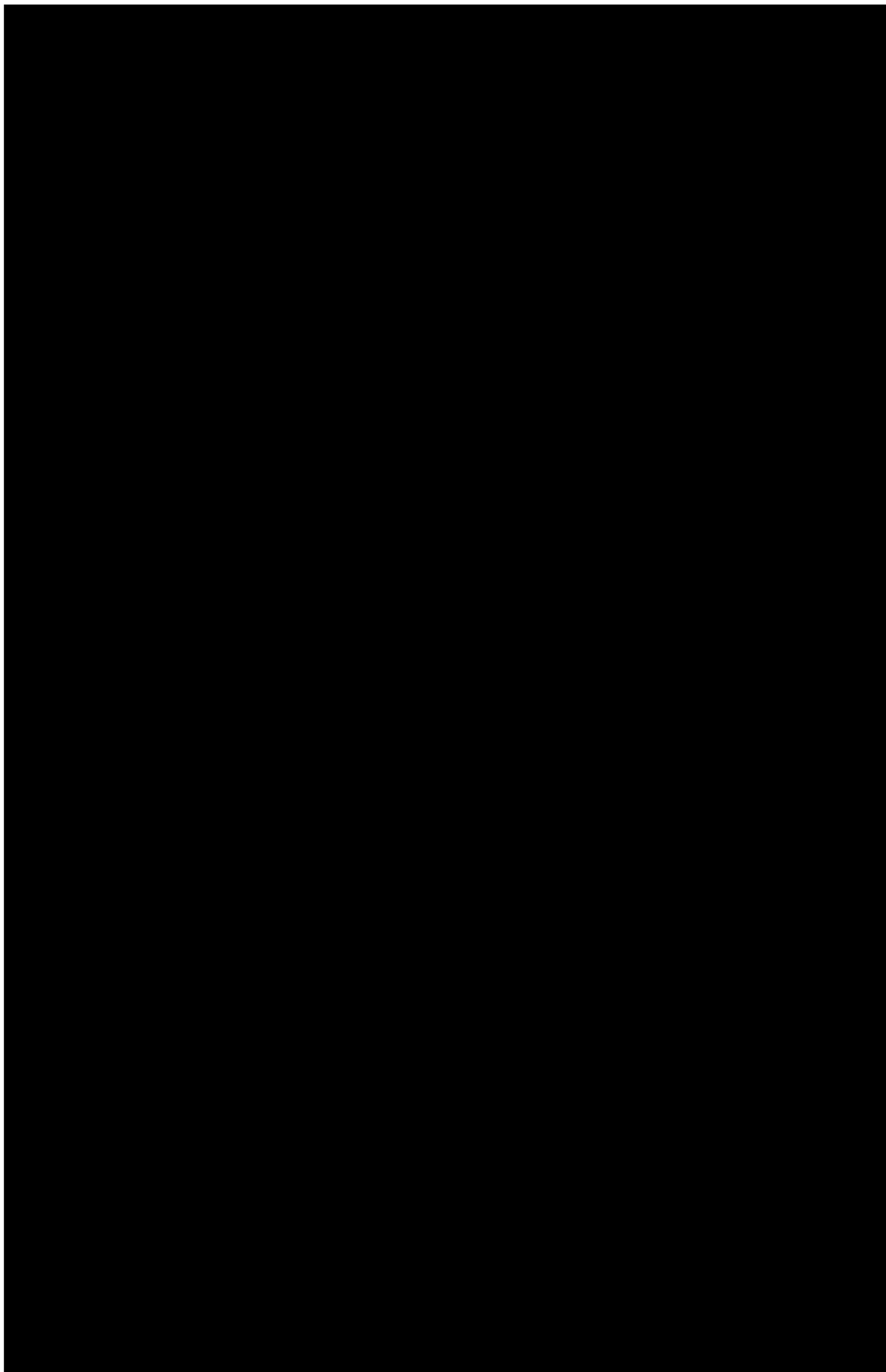


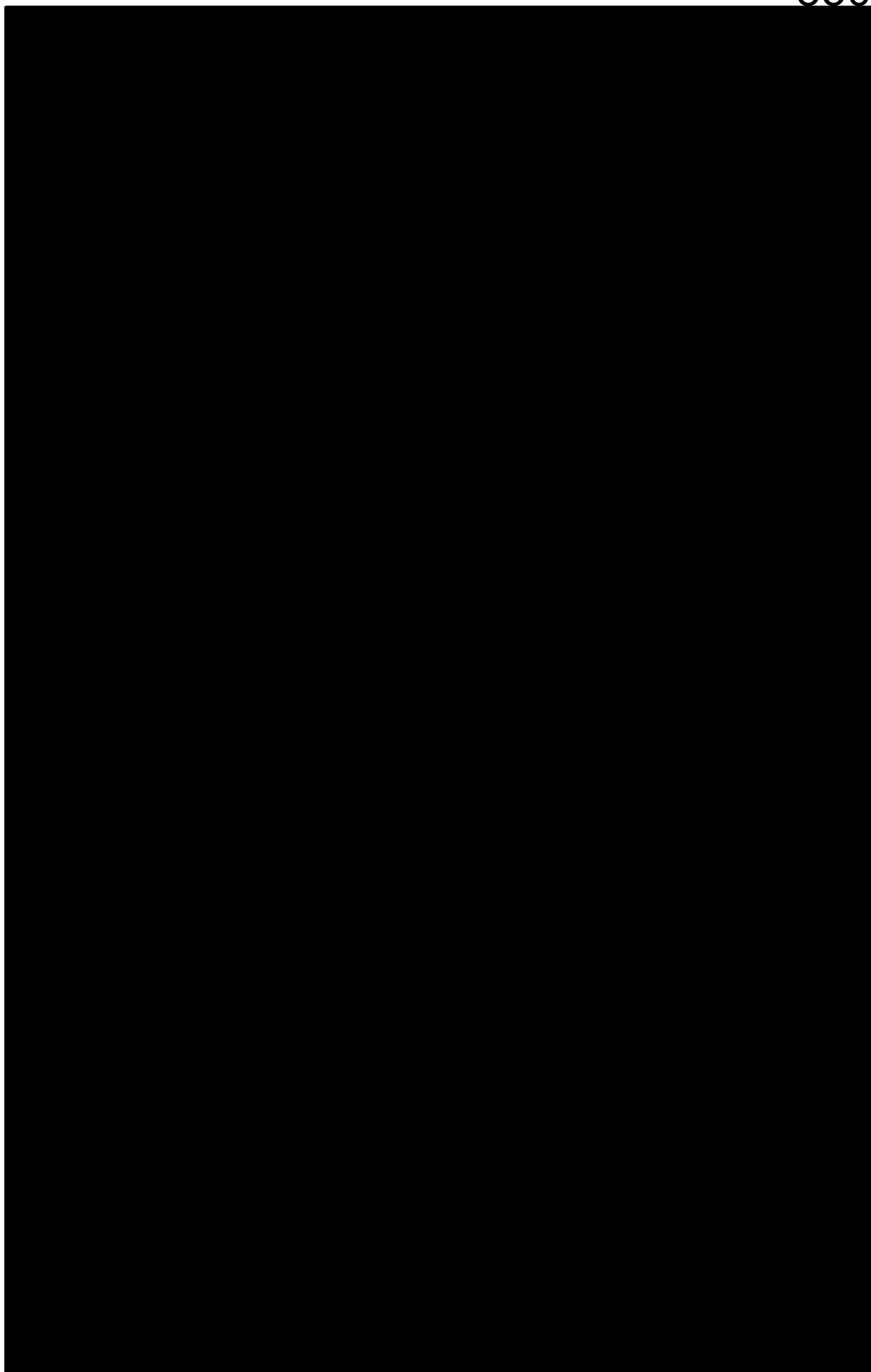
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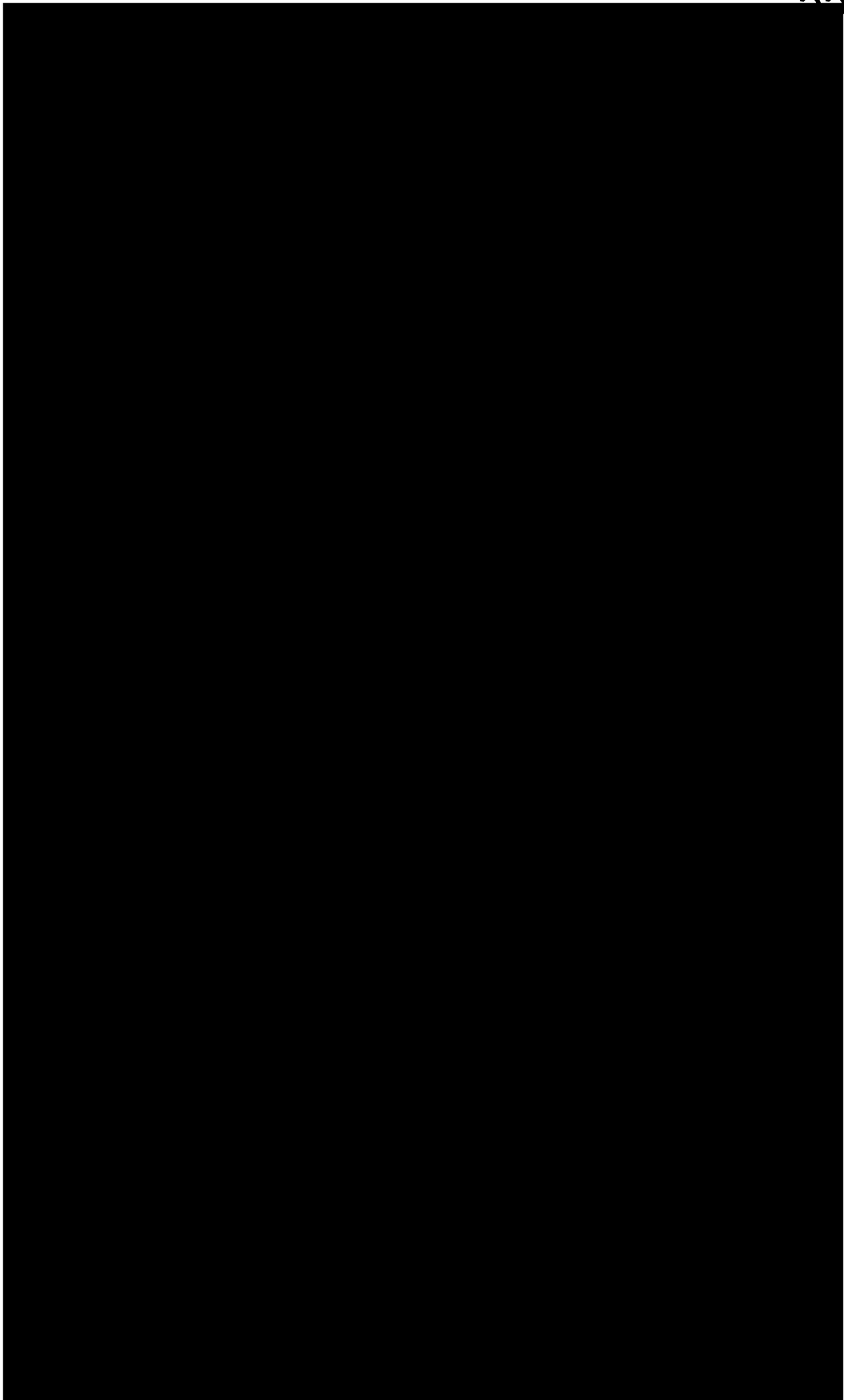


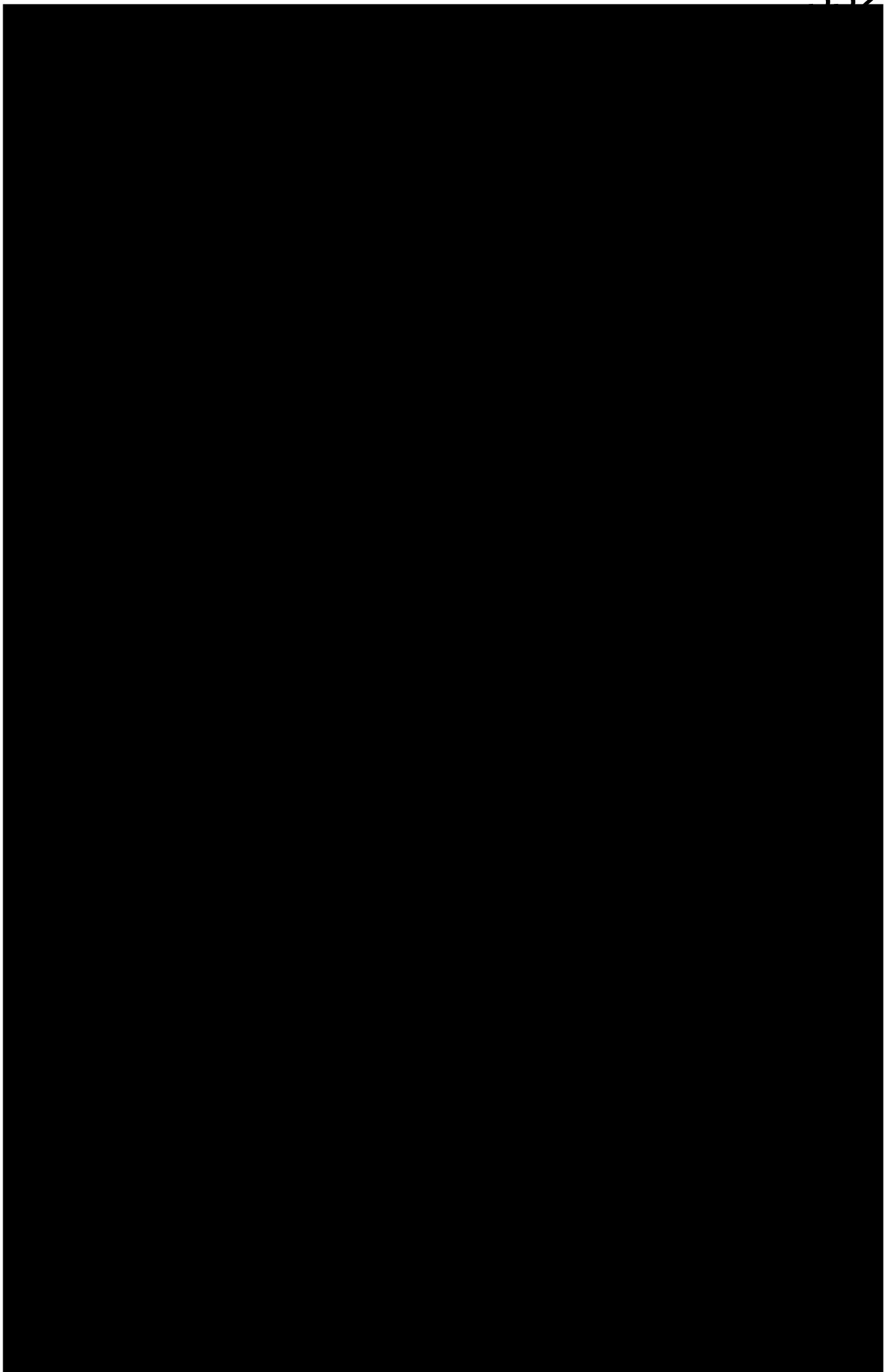


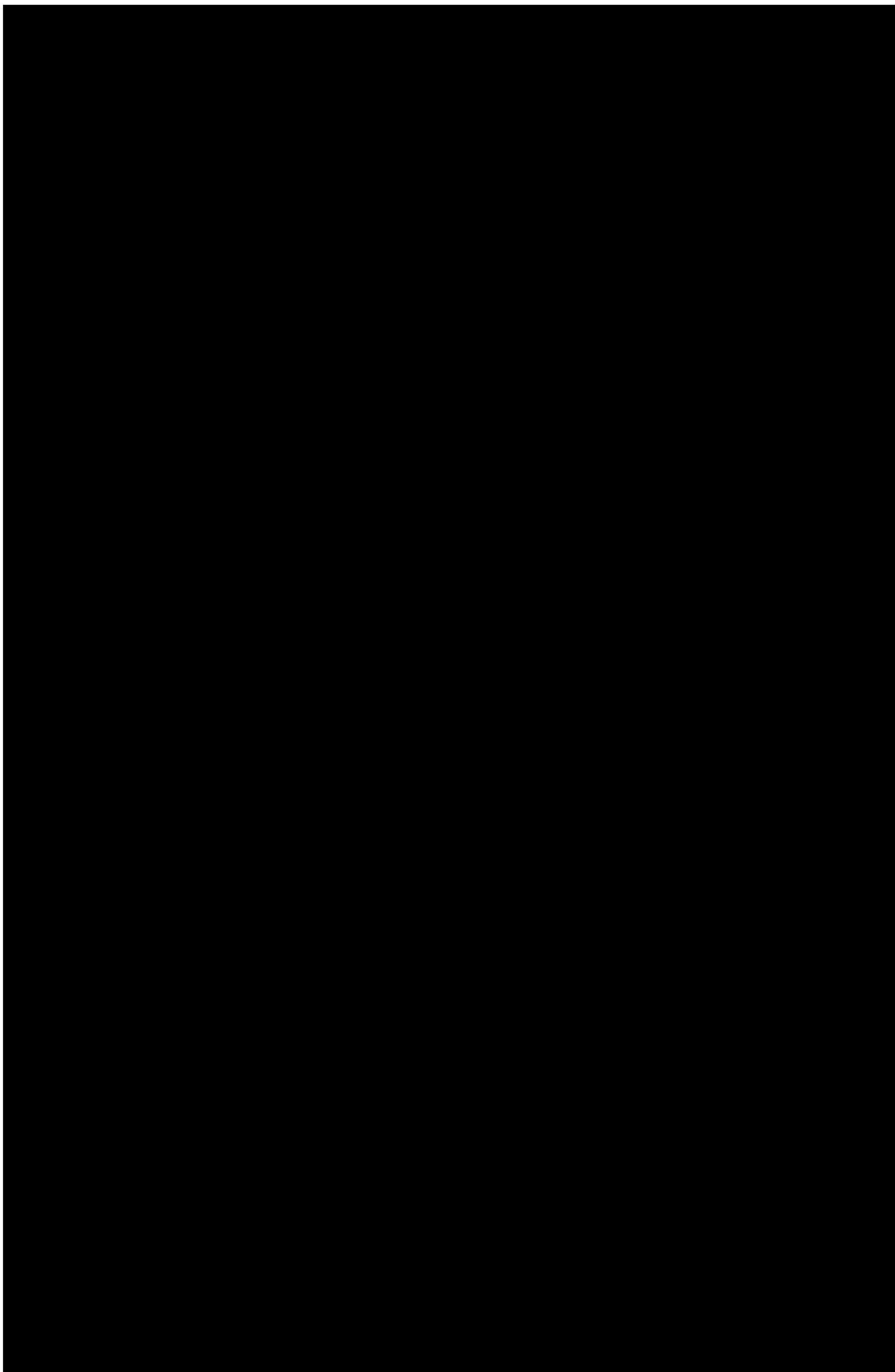


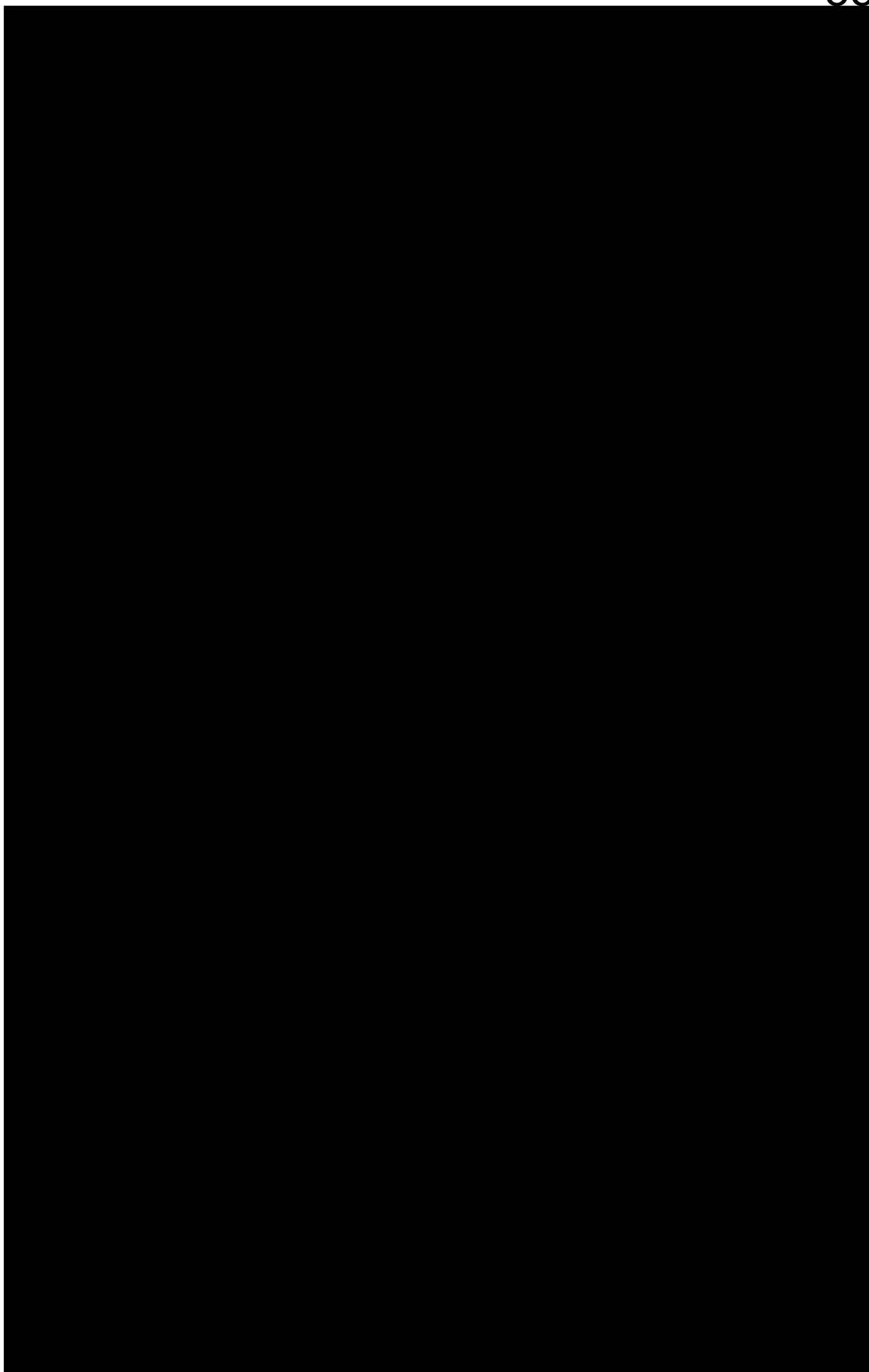














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Urgent

The Judge President of the Competition Appeal Court
Judge Norman Manoim
 C/o Sibongile Moshoeshoe
 By email: sibongilem@comptrib.co.za

31 October 2024

Dear Judge President Manoim

RE: NOVUS HOLDINGS LIMITED'S ("Novus") ACQUISITION OF ON THE DOT AND THE PORTFOLIO OF COMMUNITY NEWSPAPER TITLES OF MEDIA24 HOLDINGS LIMITED ("Media24")

1. We act on behalf of Capital Newspapers Pty Ltd and Caxton and CTP publishers and Printers Ltd ("**Caxton**") and address this letter to you on their behalf ("**our clients**").
2. On Wednesday evening 30 October 2024 the Competition Commission approved an intermediate merger involving the sale by Media 24 of the On the Dot business and various community newspapers to Novus. The transaction was inextricably linked to and is an integral part of the strategic restructuring of the Media 24 group which includes the closure of various newspaper titles owned by Media 24.
3. In a communication sent this morning (Thursday, 31 October 2024) to staff at Media 24, the staff were advised by the company that, "*we are implementing the transaction with Novus Holdings today.*" A copy of the announcement is attached hereto and marked Annexure A. It is clear, therefore, that the parties are intent on seeking to implement the transaction during the course of today.
4. The parties to the merger are acutely aware of the fact that the merger has been heavily opposed by our clients, but in addition we are led to understand that significant concerns have been raised with the Competition Commission by multiple other entities in the media and printing sector in

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Vice President Economics: Avias Ngwenya
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relation to the proposed merger given the significant ramifications of the transaction for the media industry in South Africa. Accordingly, the merging parties are in no doubt that the Commission's approval of the proposed transaction is likely to be challenged.

5. We informed the merging parties' attorneys at approximately 08:30 this morning that our clients will be seeking to review and set aside the Commission's decision to approve the intermediate merger and sought an undertaking from their clients that they will not seek to implement the merger in the interim, such undertaking to be provided by 12:00 noon today. The merging parties failed to provide the undertaking sought. In the premises, it appears that they are intent on proceeding with implementation as quickly as possible.
6. We are instructed by our clients to bring an urgent application before the Competition Appeal Court to suspend the operation of the Commission's decision to approve the merger pending a review of the Commission's decision. The review application and the suspension application will be filed with the Competition Appeal Court this afternoon by approximately 2pm.
7. However, given the fact that the merging parties have indicated that they intend to implement the transaction **today** and have failed to provide the necessary undertakings, we respectfully request the Competition Appeal Court to convene an **urgent hearing during the course of this afternoon** before a single judge for purposes of granting an interim suspension in terms of section 38(2A)(d) of the Competition Act.
8. Please could you urgently advise whether the Competition Appeal Court will be in a position to hear the application for an urgent interim interdict this afternoon, given the extreme urgency of the matter.
9. We look forward to your urgent response.

Kind regards

[UNSIGNED DUE TO ELECTRONIC TRANSMISSION]

Anthony Norton / Anton Roets / Michelle Rawlinson / Avias Ngwenya / Melissa Steele
Nortons Incorporated

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Annexure A

Dear folks

We have just received good news from the Competition Commission and are pleased to announce that they have approved the sale of On the Dot and the community newspaper portfolio (including Soccer Laduma/Kick Off) to Novus Holdings.

In the recent companywide broadcast I undertook to inform you first of any developments related to the restructure – irrespective of the time. Hence you receiving an email at 06h00! We will now also share the news with the media and other stakeholders, and we attach the official media release for your information.

We are implementing the transaction with Novus Holdings today. And closer to home, the ruling also paves the way for Media24 to take the next steps on our strategic journey to establish and cement a viable and sustainable model for independent digital journalism, in line with irreversible consumer trends and preferences. For this, we thank the Competition Commission for their thorough and comprehensive review and consideration of our application.

The final phase of consultations and meetings with affected staff across the three divisions (Community News, News and On the Dot) will start shortly. Your respective GMs and HR departments will be in touch directly to schedule this.

This renewed focus on our two hero digital news brands, News24 and Netwerk24, includes concentrating our investments in news on enhancing and improving our digital content offering to subscribers. The two respective editors-in-chief, Adriaan Basson and Henriëtte Loubser, will share more detail of the plans as they unfold. However, on a high level these range from further elevating the quality of journalism and streamlining publishing to deliver trusted news faster, to introducing personalisation and expanding enriched content.

The final publication date for the last of the four affected printed newspapers (Beeld, City Press, Daily Sun and Rapport), the PDF editions of Volksblad and Die Burger Oos-Kaap on Netwerk24 and for SNL24 operating as a hub will be completed by 31 December. From January 2025, Rapport and City Press will reside at Netwerk24 and News24 respectively as digital-only brands at the core of the Sunday content offering, and Daily Sun will operate as a standalone, free-access news website. Beeld, Volksblad and Die Burger Oos-Kaap readers and subscribers will be able to continue accessing their news on Netwerk24, together with the nearly 100 000 subscribers who enjoy the platform's "All in One Place" multi-content offering.

The divisional management teams will share more detail during the consultations, and our publishing teams will inform subscribers, advertisers, the retail and other stakeholders.

We have the greatest respect and appreciation for the contribution that the people of Media24, as well as our loyal readers and advertisers have made over years, some over decades, in building the Media24 we know today. We also wish our colleagues at On the Dot, the community newspapers and Soccer Laduma/Kick Off all the best in their new home.

The road to a sustainable and viable future for quality journalism is undeniably digital, and these changes mark a tipping point in the transition. We have a very important role to play in safeguarding public interest and holding power to account in our fragile democracy, and remain as committed to this as ever.

All the best for the busy few weeks ahead.

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The Judge President of the Competition Appeal Court
Judge Norman Manoir
c/o Sibongile Moshoeshoe
By email: sibongilem@comptrib.co.za

D Chetty / W Graaff / S Dlamini our ref
31 October 2024 your ref
date

Dear Sibongile

RE: NOVUS PRINT PROPRIETARY LIMITED, FREE 4 ALL PROPRIETARY LIMITED, INTREPID PRINTERS PROPRIETARY LIMITED, VICTORY TICKET 376 PROPRIETARY LIMITED AND ON THE DOT, COMMUNITY NEWSPAPERS AND SOCCER LADUMA, AS MORE FULLY DESCRIBED IN THE MERGER FILING

1. We represent Novus Print Proprietary Limited and its wholly owned subsidiaries Free 4 All Proprietary Limited, Intrepid Printers Proprietary Limited and Victory Ticket 376 Proprietary Limited (collectively referred to as "**Novus**" of the "**Primary Acquiring Firms**"), Media 24 Proprietary Limited ("**Media24**") and the following businesses previously controlled by Media24:
 - 1.1. The media supply chain management division operated and conducted by Media24 referred to as "*On the Dot*" ("**OtD**");
 - 1.2. The local news portfolio of Media24 in the Western Cape, Eastern Cape, Northern Cape and Free State, as more fully described in the merger filing documents (the "**Community Newspapers**"); and
 - 1.3. The football publication division of Media24 titled "*Soccer Laduma and Kick Off*" ("**Soccer Laduma**"),

(OtD, the Community Newspapers and Soccer Laduma are collectively referred to as the "**Primary Target Firms**").
2. We refer to the letter from Nortons Inc. to the Judge President of the Competition Appeal Court dated 31 October 2024 (the "**Nortons Letter**").



3. The Nortons Letter was preceded by another letter to us at 8.30am this morning. Since receiving the letter of 8.30am this morning, we have scheduled for our clients to meet with our counsel at 2pm today. 2pm today was the first time that counsel was available for such a meeting today.
4. We have now been told in the Norton's Letter to the Judge President that, because we have not yet responded to their letter of 8.30am this morning, they will be launching an application at 2pm and demand a hearing be convened for 4pm this afternoon.
5. We have not yet received the threatened application nor had an opportunity to discuss the letter of 8.30am this morning with our clients and counsel.
6. The demand for a hearing at 4pm today is grossly abusive and deeply prejudicial to our clients. They will not, by that stage, have even had an opportunity to answer, let alone properly consider any such application.
7. In the circumstances, we propose that once we have received the application, we will communicate again with the Court in order to seek the scheduling of a case management meeting so that a fair timetable for an exchange of papers and a hearing to determine the application can be arranged with the Court.
8. Our clients' rights remain reserved.
9. Kindly acknowledge receipt.

Yours sincerely

Derushka Chetty / Wade Graaff / Sphiwe Dlamini

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[Transmitted electronically without signature]

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URGENT

Derushka Chetty and Wade Graaf
ENS Africa
By email: dchetty@ensafrica.com / wgraaff@ensafrica.com

1 November 2024

Dear Derushka and Wade

Re: Capital Newspapers (Pty) Ltd / Caxton & CTP Publishers & Printers Limited // Media 24 Holdings Limited and Eight Others: 259/CAC/Oct24

1. We refer to the prehearing meeting that took place before the Competition Appeal Court this morning.
2. As you are aware, the Court indicated that it will seek to convene a hearing of the full bench of the Court in early December to hear our clients' urgent application.
3. Whilst your clients declined to provide an undertaking not to take any steps to implement the merger pending the hearing and determination of our clients' urgent application, the Court expressed its understanding, based on your clients' press statement, that Media24 does not intend to close the relevant print titles before the end of December, or to effect any retrenchments before the completion of consultations, such that the timetable directed by the Court will enable it to hear and determine our clients' urgent application before those events take place.
4. In the circumstances, should your clients take any steps to expedite the timing of these two items (or to implement the merger in any other material respects) before the Court's hearing and determination of our client's urgent application, that would plainly undermine the ability of the Court to hear and determine our clients' urgent application timeously, and would amount to an exercise of bad faith.

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Vice President Economics: Avias Ngwenya
Senior Associates: Nicci van der Walt Nina Greyling Melissa Steele
Company Registration Number: 2009/006902/21 VAT Registration Number: 4510252580



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5. Accordingly, your clients are hereby notified that, should your clients attempt to pre-empt the Court's hearing and determination of our clients' urgent application by retrenching staff or closing down any of the relevant print titles on an expedited basis (or by materially implementing the merger in any other respects), we expressly reserve our clients' rights to approach the Court on an urgent basis to seek an expedited hearing of their application.

Kind regards

[UNSIGNED DUE TO ELECTRONIC TRANSMISSION]

**Anthony Norton / Anton Roets / Michelle Rawlinson / Avias Ngwenya / Melissa Steele
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Nortons Inc.

D Chetty / W Graaff / S Dlamini our ref
 2 November 2024 your ref
 date

**Attention: Anthony Norton / Anton Roets / Michelle Rawlinson /
 Avias Ngwenya / Melissa Steele**

Dear All

1. We refer to your letter of 1 November 2024 sent after the case management meeting with Judge President Manoim.
2. Your letter is, unfortunately, incorrect in its description of what transpired at the case management meeting.
3. After the Judge President had referred to the closure of the print titles and the retrenchment consultation processes for employees, your client's counsel insisted that, unless the merging parties gave an undertaking not to proceed with those implementation steps prior to the hearing of the matter in early December, a more urgent hearing would need to be convened.
4. Despite this being your clients' position, our clients' counsel indicated that she had no instructions to give any undertakings and emphasised that if your clients were insistent on a hearing being determined within a matter of days, they could have prepared a short application which our clients could meaningfully have answered in a short period of time. Instead, your clients elected to bring a 113 page founding affidavit (accompanied by extensive annexures).
5. After hearing the parties on this issue and in the face of no such undertakings being given by our clients, the Judge President directed a timetable for the resolution of the application that would provide our clients with a fair opportunity to answer your clients' lengthy and dense application.
6. In the circumstances, there is no basis for your allegations of bad faith on the part of our clients (at paragraph 4 of your letter) nor is there any basis for you to threaten further urgent proceedings (at



paragraph 5 of your letter). In the event that your clients elect to take such precipitous steps, they will be opposed and this correspondence will be shared with the Court.

7. Our clients' rights remain reserved.

Yours sincerely

ENS

Derushka Chetty / Wade Graaff / Sphiwe Dlamini

[Transmitted electronically without signature]

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URGENT**ENS Africa****Attention: Derushka Chetty/Wade Graaf/Sphiwe Dlamini**By email: dchetty@ensafrica.com / wgraaff@ensafrica.com / sdlamini@ensafrica.com

2 November 2024

Dear Derushka and Wade

Re: Capital Newspapers (Pty) Ltd / Caxton & CTP Publishers & Printers Limited // Media 24 Holdings Limited ("Media 24") and Eight Others: 259/CAC/Oct24

1. We refer to our previous correspondence and your letter of 2 November 2024.
2. The chronology of relevant events is briefly as follows:
 - 2.1. It would appear that your clients were notified on the evening of Wednesday, 30 October 2024, by the Competition Commission that the merger between the parties had been approved. Our clients did not receive any notification from the Commission that it had approved the merger, notwithstanding the fact that the Commission was well aware of the fact that our clients had vigorously opposed the merger and had requested to be notified if the Commission decided to approve the merger.
 - 2.2. Our clients became aware on the morning of Thursday, 31 October 2024, that Media24 had released an internal notification to its staff informing them that the merger had been approved and that it intended implementing the merger during the course of the day.
 - 2.3. We immediately wrote to you at approximately 8:30am on 31 October 2024 and indicated that our clients intended urgently reviewing the Commission's decision to approve the merger, and requested confirmation from your clients that they would take no further steps to implement the proposed transaction pending the determination of the review. We also noted that, if your

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clients did not provide the requested undertakings, our clients would seek urgent interim relief from the Competition Appeal Court. We did not receive any response to our letter.

- 2.4. Given the fact that we received no response from you to our letter, we wrote to the Judge President of the Competition Appeal Court at 12:23 on the same day and indicated that we had been instructed to bring urgent proceedings before the Competition Appeal Court to suspend the operation of the Commission's decision to approve the merger pending a review of the Commission's decision.
- 2.5. We launched our clients' urgent application to suspend the operation of the Commission's decision to approve the merger, and to review the Commission's decision, later that afternoon at approximately 3:20pm.
- 2.6. The Judge President convened a case management meeting the next day, Friday, 1 November 2024, at 10am in order to determine time periods for the hearing of our clients' urgent application. Based on the papers before him, the Judge President indicated that he would seek to convene a hearing of the full bench of the Court in early December to hear our clients' urgent application. In doing so, he sought to strike a balance between your clients' right to answer our clients' case and preserving the meaningfulness of the relief sought by our client from the Competition Appeal Court.
- 2.7. In particular, during the course of the deliberations in relation to timing, the Judge President referred to a notice to employees that was attached to our letter in which it was stated that:
 - 2.7.1. *"The final publication date for the last of the four affected printed newspapers (Beeld, City Press, Daily Sun and Rapport), the PDF editions of Volksblad and Die Burger Oos-Kaap on Netwerk24 and for SNL24 operating as a hub will be completed by 31 December";*
and
 - 2.7.2. *"The final phase of consultations and meetings with affected staff across the three divisions (Community News, News and On the Dot) will start shortly. Your respective GMs and HR departments will be in touch directly to schedule this".*

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- 2.8. Based on these facts, the Judge President expressed the view that, if the urgent application were to be set down for hearing in early December 2024, it could be determined before the closure of the newspapers and the completion of the processes in terms of section 189 of the Labour Relations Act. There was no indication to the Judge President by the merging parties' representatives that his understanding of the factual position, based on your clients' internal communications, was not correct. Were it otherwise, this would have been a material fact that the merging parties' legal representatives would clearly have been obliged to draw to his attention.
- 2.9. Following the case management meeting, we sent you a further letter dated 1 November 2024 in which we indicated that, if your clients were to seek to expedite the timing of material issues relating to the further implementation of the merger, this would undermine the ability of the Court to hear and determine our clients' urgent application and would amount to an exercise of bad faith. We also indicated that, should your clients attempt to pre-empt the Court's hearing and determination of our client's urgent application by retrenching staff or closing down any of the relevant print titles on an expedited basis (or by materially implementing the merger in any other respects), we reserved our clients' rights to approach the Court on an urgent basis to seek an expedited hearing of the matter.
3. On Saturday, 2 November 2024, you responded to our letter, in which you refused to confirm that your clients would not seek to pre-empt the Court's decision and denied that taking any such steps would be an act of bad faith. In the circumstances, this creates the obvious inference that your clients may seek to expedite these two critical steps in order to undermine the Judge President's directive. Accordingly, we require you to confirm the following by no later than 6pm tomorrow evening:
- 3.1. no notice of termination will be given to any employees of On the Dot, Media24 or any other company that forms part of the merger notification, prior to the hearing and determination of the matter in early December 2024; and

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Urgent

- 3.2. the closure of the relevant print titles will not occur before 31 December 2024 being the date set out in the notice to employees to which the Judge President referred in the case management meeting.
4. We also require you to provide us with the dates on which any further material steps in relation to the further implementation of the merger will take place, which may have the effect of frustrating the hearing of our client's application before the Competition Appeal Court .
5. Failing receipt of the above confirmation by the time indicated, we are instructed to urgently approach the Judge President to request that the date for the hearing of the matter is brought forward in order to avoid a situation where our clients' application is a *brutum fulmen*.
6. In addition, our clients' rights to take any necessary further legal steps in relation to this matter are fully reserved in the event that it becomes clear that your clients are seeking to pre-empt the decision of the Competition Appeal Court.

Kind regards,

[UNSIGNED DUE TO ELECTRONIC TRANSMISSION]

**Anthony Norton / Anton Roets / Michelle Rawlinson / Avias Ngwenya / Melissa Steele
Nortons Incorporated**

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Nortons Inc.

D Chetty / W Graaff / S Dlamini

our ref
 your ref
 date

**Attention: Anthony Norton / Anton Roets / Michelle Rawlinson /
 Avias Ngwenya / Melissa Steele**

3 November 2024

Dear All

Re: Capital Newspapers (Pty) Ltd / Caxton & CTP Publishers & Printers Limited // Media 24 Holdings Limited ("Media 24") and Eight Others: 259/CAC/Oct24

1. We refer to our previous correspondence and your letter of 2 November 2024 received yesterday evening.
2. We do not intend to respond to all of the statements in your letter at this time and this should not be taken as any concession that we agree with such statements. Our clients' rights to respond in due course are fully reserved.
3. It is necessary to state, at the outset, that our clients have in no way undermined the directive given by the Judge President during the case management meeting on Friday, 1 November 2024. During that meeting, our counsel made it clear that:
 - 3.1. since receipt of the merger approval on Wednesday, 30 October 2024, the transaction had been implemented; and
 - 3.2. she had no instructions to give any undertakings.
4. Despite this, your correspondence since the meeting keeps demanding that our clients provide undertakings. You have no legal basis on which to demand that such undertakings be given.
5. Our clients received a merger approval and are lawfully entitled to implement that merger unless interdicted. Your clients clearly recognise that this is the legal position because they have brought proceedings to interdict the implementation of the merger. But, when they did so, they decided to



launch an application of more than 260 pages. Instead of preparing a short application that could have been meaningfully dealt with by our clients and the Court on shorter timelines, your clients decided to enlist an armada of lawyers to prepare a lengthy application over some weeks. That was your clients' election. Our clients must be given a fair opportunity to answer that application so that the Court can properly determine the issues. Both our clients and the Court will be materially prejudiced if our clients' ability properly to respond to the application is undermined and the Court, as a result, does not have the full facts before it.

6. Those considerations of fairness were taken into account when the timetable was set at the case management meeting on Friday.
7. In the light of this, it is unclear what basis your clients have to re-approach the Judge President. The issues you claim to want to raise with the Judge President were already raised by your counsel (unsuccessfully) at the Friday meeting. More specifically, your counsel sought undertakings and our counsel made it clear she had no instructions to give any undertakings. In the absence of undertakings, your counsel then argued for an unreasonably expedited hearing. That request was rejected by the Judge President who, alive to our clients' rights of procedural fairness, directed that the matter is to proceed in accordance with the timetable. That your clients were unhappy with the result of the meeting is no reason to keep badgering us with correspondence and continually threatening to engage the Court with these antics when none of the facts that applied when the timetable was set on Friday has changed.
8. The matter is now regulated by the timetable directed by the Judge President on Friday. We ask that you allow our clients to focus their attention on answering the 260 page application rather than having to be distracted with responding to your repeated and precipitous letters.
9. Further distractions of this nature will force our clients to request further time to be able to answer the application.
10. Our clients' rights remain fully reserved.

Yours sincerely

ENS

Derushka Chetty / Wade Graaff / Sphiwe Dlamini

[Transmitted electronically without signature]

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Urgent

The Judge President of the Competition Appeal Court

C/o Sibongile Moshoeshoe

By email: sibongilem@comptrib.co.za

Cc: Derushka Chetty, Wade Graaff, Sphiwe Dlamini

ENS Africa

By email: dchetty@ensafrica.com; wgraaff@ensafrica.com /

sdlamini@ensafrica.com

4 November 2024

Dear Judge President Manoim

RE: NOVUS HOLDINGS LIMITED'S ("Novus") ACQUISITION OF ON THE DOT AND THE PORTFOLIO OF COMMUNITY NEWSPAPER TITLES OF MEDIA24 HOLDINGS LIMITED ("Media24")

1. We refer to the case management meeting that was convened by the Competition Appeal Court on Friday, 1 November 2024.
2. As you will recall, during the case management meeting you indicated that you would seek to convene a hearing of the full bench of the Court in early December to determine our clients' urgent application, and directed the respondents to file their answering affidavit by 18 November 2024. Our understanding is that this timetable was premised on the fact that the press release of the merger parties referred to in our clients' founding affidavit indicated that the relevant newspaper titles would be closed in late December 2024, and that consultations would be held with employees in terms of section 189 of the Labour Relations Act and only finalised after the hearing. During the case management meeting, there was no suggestion by the merger parties that either of these critical events would take place before the hearing.

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Directors: Anthony Norton Anton Koets Paul Russell Michelle Rawlinson Warwick Radford Nicola Ilgner

Vice President Economics: Avias Ngwenya

Senior Associates: Nicci van der Walt Nina Greyling Melissa Steele

Company Registration Number: 2009/006902/21 VAT Registration Number: 4510252580

A handwritten signature in black ink, consisting of a stylized 'C' followed by a vertical line and a loop at the bottom.



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3. Therefore, following the case management meeting, we sent a letter to the respondents' attorneys indicating that, should their clients seek to expedite the timing of implementing material steps relating to the merger (including, in particular, the closure of the relevant print titles and the retrenchment/termination of employees), this would preempt the ability of the Court to hear and determine our clients' urgent application and would amount to an exercise of bad faith.
4. On 2 November 2024, we received a response from the respondents' attorneys in which they reiterated that their clients had declined to provide any undertakings to our clients not to continue to implement the merger, and disputed that their clients would be acting in bad faith should they take steps to expedite the implementation of the merger. A copy of the relevant correspondence is attached hereto marked Annexure A.
5. In response to the letter from the respondents' attorneys, we sent a further letter later that day in which we set out the chronology of events since our clients became aware that the Commission had approved the merger, and sought specific confirmation from the merging parties that they would not give notices of termination to employees of On the Dot, Media 24 or any other company that forms part of the merger notification prior to the Court's hearing and determination of the matter in early December, and that no closure of the relevant print titles would occur before 31 December 2024 (being the date set out in the notice to employees, which was referred to in the case management meeting). We indicated that, if the merging parties did not provide the necessary confirmation, we were instructed to urgently approach the Judge President to request that the date for the hearing of the urgent application be brought forward in order to avoid the relief sought by our clients being preempted by the merger parties.
6. On 3 November 2024, the respondents' attorneys sent a response to our letter in which they refused to provide the confirmations we had requested. Instead, they simply recorded that, at the case management meeting on Friday, 1 November 2024, their counsel had stated that "*since receipt of the merger approval on Wednesday, 30 October 2024, the transaction had been implemented and that she had no instructions to give any undertakings.*" They also stated that, because their clients had received a merger approval from the Commission, they were "*lawfully entitled to implement*

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that merger unless interdicted." A copy of this further correspondence is attached hereto marked Annexure B.

7. Apart from the fact that the merger parties, on their own version, commenced implementing the merger immediately after they received merger approval from the Commission, their refusal to provide an undertaking that they will not expedite the closure of the relevant print titles and the retrenchment/termination of employees so as to preempt the Court's hearing and determination of our clients' urgent application suggests that they intend to do precisely that.
8. In furtherance of this concern, our clients have advised us that they have become aware that, since receipt of the merger approval, Media24 have given their staff until close of business on Tuesday 5 November 2024 to accept voluntary severance packages, and have notified their staff that the previous retrenchment process that had been suspended has now been reactivated and will be continuing. In addition, our clients understand that Media24 intends to restructure the newspaper titles in light of its digital strategy and that staff have to apply for positions within the restructured business by tomorrow (Tuesday 5 November 2024). Thereafter, Media24 will announce on Wednesday, 6 November 2024, which staff members have been successful and will be retained, and which staff members will be retrenched. These material facts were not disclosed by the merger parties during the case management meeting, and they put a very different complexion on the timing of the restructuring of employment at Media24 that was reflected in the papers before the Court at the time of the prehearing conference. Our clients suspect that similar considerations may apply to the restructuring of employment at the On the Dot distribution business.
9. It therefore appears to our clients from the merger parties' conduct to date, and their persistent refusal to provide the undertakings sought by our clients since the case management conference took place and the current timetable was directed by the Court, that the merger parties are seeking to expedite the implementation of the merger in all material respects (including restructuring that involves both voluntary severance packages and retrenchment/termination processes) so as to preempt the Court's ability to hear and determine our clients' urgent application.



10. In the circumstances, our clients very unfortunately have no option other than to respectfully request the intervention of the Judge President either through (i) making the current timetable contingent upon receipt of an undertaking by the merger parties not to close the relevant print titles or to retrench/terminate any employees related to the proposed merger prior to the Court's hearing and determination of our clients' urgent application, or (ii) to set the matter down more urgently. Our clients will cooperate with any expedited timeline for the hearing of the matter that the Court believes is appropriate in the circumstances.

Kind regards

[UNSIGNED DUE TO ELECTRONIC TRANSMISSION]

**Anthony Norton / Anton Roets / Michelle Rawlinson / Avias Ngwenya / Melissa Steele
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URGENT

Derushka Chetty and Wade Graaf
ENS Africa

By email: dchetty@ensafrica.com / wgraaff@ensafrica.com

1 November 2024

Dear Derushka and Wade

Re: Capital Newspapers (Pty) Ltd / Caxton & CTP Publishers & Printers Limited // Media 24 Holdings Limited and Eight Others: 259/CAC/Oct24

1. We refer to the prehearing meeting that took place before the Competition Appeal Court this morning.
2. As you are aware, the Court indicated that it will seek to convene a hearing of the full bench of the Court in early December to hear our clients' urgent application.
3. Whilst your clients declined to provide an undertaking not to take any steps to implement the merger pending the hearing and determination of our clients' urgent application, the Court expressed its understanding, based on your clients' press statement, that Media24 does not intend to close the relevant print titles before the end of December, or to effect any retrenchments before the completion of consultations, such that the timetable directed by the Court will enable it to hear and determine our clients' urgent application before those events take place.
4. In the circumstances, should your clients take any steps to expedite the timing of these two items (or to implement the merger in any other material respects) before the Court's hearing and determination of our client's urgent application, that would plainly undermine the ability of the Court to hear and determine our clients' urgent application timeously, and would amount to an exercise of bad faith.

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Vice President Economics: Avias Ngwenya

Senior Associates: Nicci van der Walt Nina Greyling Melissa Steele

Company Registration Number: 2009/006902/21 VAT Registration Number: 4510252580

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5. Accordingly, your clients are hereby notified that, should your clients attempt to pre-empt the Court's hearing and determination of our clients' urgent application by retrenching staff or closing down any of the relevant print titles on an expedited basis (or by materially implementing the merger in any other respects), we expressly reserve our clients' rights to approach the Court on an urgent basis to seek an expedited hearing of their application.

Kind regards

[UNSIGNED DUE TO ELECTRONIC TRANSMISSION]

**Anthony Norton / Anton Roets / Michelle Rawlinson / Avias Ngwenya / Melissa Steele
Nortons Incorporated**

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Nortons Inc.

D Chetty / W Graaff / S Dlamini our ref
 your ref
 2 November 2024 date

**Attention: Anthony Norton / Anton Roets / Michelle Rawlinson /
 Avias Ngwenya / Melissa Steele**

Dear All

1. We refer to your letter of 1 November 2024 sent after the case management meeting with Judge President Manoim.
2. Your letter is, unfortunately, incorrect in its description of what transpired at the case management meeting.
3. After the Judge President had referred to the closure of the print titles and the retrenchment consultation processes for employees, your client's counsel insisted that, unless the merging parties gave an undertaking not to proceed with those implementation steps prior to the hearing of the matter in early December, a more urgent hearing would need to be convened.
4. Despite this being your clients' position, our clients' counsel indicated that she had no instructions to give any undertakings and emphasised that if your clients were insistent on a hearing being determined within a matter of days, they could have prepared a short application which our clients could meaningfully have answered in a short period of time. Instead, your clients elected to bring a 113 page founding affidavit (accompanied by extensive annexures).
5. After hearing the parties on this issue and in the face of no such undertakings being given by our clients, the Judge President directed a timetable for the resolution of the application that would provide our clients with a fair opportunity to answer your clients' lengthy and dense application.
6. In the circumstances, there is no basis for your allegations of bad faith on the part of our clients (at paragraph 4 of your letter) nor is there any basis for you to threaten further urgent proceedings (at

paragraph 5 of your letter). In the event that your clients elect to take such precipitous steps, they will be opposed and this correspondence will be shared with the Court.

7. Our clients' rights remain reserved.

Yours sincerely

ENS

Derushka Chetty / Wade Graaff / Sphiwe Dlamini

[Transmitted electronically without signature]

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URGENT

ENS Africa

Attention: Derushka Chetty/Wade Graaf/Sphiwe Dlamini

By email: dchetty@ensafrica.com / wgraaff@ensafrica.com / sdlamini@ensafrica.com

2 November 2024

Dear Derushka and Wade

Re: Capital Newspapers (Pty) Ltd / Caxton & CTP Publishers & Printers Limited // Media 24 Holdings Limited (“Media 24”) and Eight Others: 259/CAC/Oct24

1. We refer to our previous correspondence and your letter of 2 November 2024.
2. The chronology of relevant events is briefly as follows:
 - 2.1. It would appear that your clients were notified on the evening of Wednesday, 30 October 2024, by the Competition Commission that the merger between the parties had been approved. Our clients did not receive any notification from the Commission that it had approved the merger, notwithstanding the fact that the Commission was well aware of the fact that our clients had vigorously opposed the merger and had requested to be notified if the Commission decided to approve the merger.
 - 2.2. Our clients became aware on the morning of Thursday, 31 October 2024, that Media24 had released an internal notification to its staff informing them that the merger had been approved and that it intended implementing the merger during the course of the day.
 - 2.3. We immediately wrote to you at approximately 8:30am on 31 October 2024 and indicated that our clients intended urgently reviewing the Commission’s decision to approve the merger, and requested confirmation from your clients that they would take no further steps to implement the proposed transaction pending the determination of the review. We also noted that, if your

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Directors: Anthony Norton Anton Roets Paul Russell Michelle Rawlinson Warwick Radford Nicola Ilgner

Vice President Economics: Avias Ngwenya

Senior Associates: Nicei van der Walt Nina Greyling Melissa Steele

Company Registration Number: 2009/006902/21 VAT Registration Number: 4510252580



Urgent

- clients did not provide the requested undertakings, our clients would seek urgent interim relief from the Competition Appeal Court. We did not receive any response to our letter.
- 2.4. Given the fact that we received no response from you to our letter, we wrote to the Judge President of the Competition Appeal Court at 12:23 on the same day and indicated that we had been instructed to bring urgent proceedings before the Competition Appeal Court to suspend the operation of the Commission's decision to approve the merger pending a review of the Commission's decision.
- 2.5. We launched our clients' urgent application to suspend the operation of the Commission's decision to approve the merger, and to review the Commission's decision, later that afternoon at approximately 3:20pm.
- 2.6. The Judge President convened a case management meeting the next day, Friday, 1 November 2024, at 10am in order to determine time periods for the hearing of our clients' urgent application. Based on the papers before him, the Judge President indicated that he would seek to convene a hearing of the full bench of the Court in early December to hear our clients' urgent application. In doing so, he sought to strike a balance between your clients' right to answer our clients' case and preserving the meaningfulness of the relief sought by our client from the Competition Appeal Court.
- 2.7. In particular, during the course of the deliberations in relation to timing, the Judge President referred to a notice to employees that was attached to our letter in which it was stated that:
- 2.7.1. *"The final publication date for the last of the four affected printed newspapers (Beeld, City Press, Daily Sun and Rapport), the PDF editions of Volksblad and Die Burger Oos-Kaap on Netwerk24 and for SNL24 operating as a hub will be completed by 31 December";*
and
- 2.7.2. *"The final phase of consultations and meetings with affected staff across the three divisions (Community News, News and On the Dot) will start shortly. Your respective GMs and HR departments will be in touch directly to schedule this".*



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- 2.8. Based on these facts, the Judge President expressed the view that, if the urgent application were to be set down for hearing in early December 2024, it could be determined before the closure of the newspapers and the completion of the processes in terms of section 189 of the Labour Relations Act. There was no indication to the Judge President by the merging parties' representatives that his understanding of the factual position, based on your clients' internal communications, was not correct. Were it otherwise, this would have been a material fact that the merging parties' legal representatives would clearly have been obliged to draw to his attention.
- 2.9. Following the case management meeting, we sent you a further letter dated 1 November 2024 in which we indicated that, if your clients were to seek to expedite the timing of material issues relating to the further implementation of the merger, this would undermine the ability of the Court to hear and determine our clients' urgent application and would amount to an exercise of bad faith. We also indicated that, should your clients attempt to pre-empt the Court's hearing and determination of our client's urgent application by retrenching staff or closing down any of the relevant print titles on an expedited basis (or by materially implementing the merger in any other respects), we reserved our clients' rights to approach the Court on an urgent basis to seek an expedited hearing of the matter.
3. On Saturday, 2 November 2024, you responded to our letter, in which you refused to confirm that your clients would not seek to pre-empt the Court's decision and denied that taking any such steps would be an act of bad faith. In the circumstances, this creates the obvious inference that your clients may seek to expedite these two critical steps in order to undermine the Judge President's directive. Accordingly, we require you to confirm the following by no later than 6pm tomorrow evening:
 - 3.1. no notice of termination will be given to any employees of On the Dot, Media24 or any other company that forms part of the merger notification, prior to the hearing and determination of the matter in early December 2024; and

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Urgent

- 3.2. the closure of the relevant print titles will not occur before 31 December 2024 being the date set out in the notice to employees to which the Judge President referred in the case management meeting.
4. We also require you to provide us with the dates on which any further material steps in relation to the further implementation of the merger will take place, which may have the effect of frustrating the hearing of our client's application before the Competition Appeal Court .
5. Failing receipt of the above confirmation by the time indicated, we are instructed to urgently approach the Judge President to request that the date for the hearing of the matter is brought forward in order to avoid a situation where our clients' application is a *brutum fulmen*.
6. In addition, our clients' rights to take any necessary further legal steps in relation to this matter are fully reserved in the event that it becomes clear that your clients are seeking to pre-empt the decision of the Competition Appeal Court.

Kind regards,

[UNSIGNED DUE TO ELECTRONIC TRANSMISSION]

**Anthony Norton / Anton Roets / Michelle Rawlinson / Avias Ngwenya / Melissa Steele
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Nortons Inc.

D Chetty / W Graaff / S Dlamini our ref
3 November 2024 your ref
date

**Attention: Anthony Norton / Anton Roets / Michelle Rawlinson /
Avias Ngwenya / Melissa Steele**

Dear All

**Re: Capital Newspapers (Pty) Ltd / Caxton & CTP Publishers & Printers Limited // Media 24 Holdings
Limited ("Media 24") and Eight Others: 259/CAC/Oct24**

1. We refer to our previous correspondence and your letter of 2 November 2024 received yesterday evening.
2. We do not intend to respond to all of the statements in your letter at this time and this should not be taken as any concession that we agree with such statements. Our clients' rights to respond in due course are fully reserved.
3. It is necessary to state, at the outset, that our clients have in no way undermined the directive given by the Judge President during the case management meeting on Friday, 1 November 2024. During that meeting, our counsel made it clear that:
 - 3.1. since receipt of the merger approval on Wednesday, 30 October 2024, the transaction had been implemented; and
 - 3.2. she had no instructions to give any undertakings.
4. Despite this, your correspondence since the meeting keeps demanding that our clients provide undertakings. You have no legal basis on which to demand that such undertakings be given.
5. Our clients received a merger approval and are lawfully entitled to implement that merger unless interdicted. Your clients clearly recognise that this is the legal position because they have brought proceedings to interdict the implementation of the merger. But, when they did so, they decided to



launch an application of more than 260 pages. Instead of preparing a short application that could have been meaningfully dealt with by our clients and the Court on shorter timelines, your clients decided to enlist an armada of lawyers to prepare a lengthy application over some weeks. That was your clients' election. Our clients must be given a fair opportunity to answer that application so that the Court can properly determine the issues. Both our clients and the Court will be materially prejudiced if our clients' ability properly to respond to the application is undermined and the Court, as a result, does not have the full facts before it.

6. Those considerations of fairness were taken into account when the timetable was set at the case management meeting on Friday.
7. In the light of this, it is unclear what basis your clients have to re-approach the Judge President. The issues you claim to want to raise with the Judge President were already raised by your counsel (unsuccessfully) at the Friday meeting. More specifically, your counsel sought undertakings and our counsel made it clear she had no instructions to give any undertakings. In the absence of undertakings, your counsel then argued for an unreasonably expedited hearing. That request was rejected by the Judge President who, alive to our clients' rights of procedural fairness, directed that the matter is to proceed in accordance with the timetable. That your clients were unhappy with the result of the meeting is no reason to keep badgering us with correspondence and continually threatening to engage the Court with these antics when none of the facts that applied when the timetable was set on Friday has changed.
8. The matter is now regulated by the timetable directed by the Judge President on Friday. We ask that you allow our clients to focus their attention on answering the 260 page application rather than having to be distracted with responding to your repeated and precipitous letters.
9. Further distractions of this nature will force our clients to request further time to be able to answer the application.
10. Our clients' rights remain fully reserved.

Yours sincerely

ENS

Derushka Chetty / Wade Graaff / Sphiwe Dlamini

[Transmitted electronically without signature]





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The Judge President of the Competition Appeal Court
C/o Sibongile Moshoeshe
By email: sibongilem@combfrib.co.za

D Chetty / W Graaff / S Dlamini our ref
4 November 2024 your ref
date

CC: Anthony Norton, Anton Roets, Michelle Rawlinson, Avias Ngwenya, Melissa Steele
Nortons Inc.
By email: anthony@nortonsinc.com; anton@nortonsinc.com; michelle@nortonsinc.com;
avias@nortonsinc.com; melissa@nortonsinc.com

Dear Judge President Manoim

Re: NOVUS HOLDINGS LIMITED'S ("NOVUS") ACQUISITION OF ON THE DOT AND THE PORTFOLIO OF COMMUNITY NEWSPAPER TITLES OF MEDIA24 HOLDINGS LIMITED ("MEDIA24")

1. We refer to Nortons' letter of this morning addressed to the Judge President. As the Court will be aware, we act for the merging parties in this matter.
2. Nortons' letter attaches the correspondence between the parties over the weekend, since the case management meeting on Friday. The merging parties' position is clearly set out in those letters.
3. Although paragraph 7 of the Nortons' letter is framed in the language of undertakings, in effect, they are asking for the Court either to compromise our clients' rights to properly answer this application or to direct our clients not to implement the merger. But preventing our clients from implementing the merger is the relief they seek in their 260 page application, which our clients have not yet answered.
4. The single point that Nortons continues to fail to address in all its correspondence, but which has been pointed out repeatedly to them in our clients' letters, is that their clients *elected* to prepare a dense and complex application for an interim interdict over many weeks, rather than a concise application that could have meaningfully been dealt with by our clients and the Court on short notice.
5. Instead of this, they have filed a 260 page application, which our clients are fully entitled to answer. On the directed timetable, our clients now have only 9 court days left to answer the application. Our

CV


clients intend to do so properly so that the Court is adequately equipped to decide the application on the full set of facts.

6. Nothing has changed since Friday. No undertakings were given by the merging parties on Friday. And notwithstanding the absence of undertakings, the timetable was, with respect, designed correctly to afford our clients' procedural fairness in the process.
7. In the circumstances, we respectfully submit that there is no basis to depart from the timetable.
8. Our clients' rights remain reserved.
9. Kindly acknowledge receipt.

Yours sincerely

ENS

Derushka Chetty / Wade Graaff / Sphiwe Dlamini

[Transmitted electronically without signature]



URGENT**Derushka Chetty/Wade Graaff/Sphiwe Dlamini**
ENS AfricaBy email: dchetty@ensafrica.com / wgraaff@ensafrica.com / sdlamini@ensafrica.com

4 November 2024

Dear Derushka, Wade and Sphiwe

Re: Capital Newspapers (Pty) Ltd / Caxton & CTP Publishers & Printers Limited // Media 24 Holdings Limited ("Media 24") and Eight Others: 259/CAC/Oct24

1. We refer to our previous correspondence and your letters of 2 and 3 November 2024.
2. We record the fact that your clients have repeatedly declined to provide the requested undertakings and confirmations that they will not continue to implement material steps associated with the proposed merger pending the outcome of our clients' urgent application.
3. In the circumstances, your clients have elected at their own risk to continue with this stratagem.
4. Our clients believe that your clients' actions amount, *inter alia*, to constructive contempt and accordingly all of our clients' rights to take any necessary further legal steps in relation to this matter are fully and expressly reserved. These include, without limitation, to seek contempt relief against the merging parties and to seek appropriate just and equitable relief to reverse the steps taken by the merging parties to implement the merger in the face of our clients' pending urgent application.

Kind regards

*[UNSIGNED DUE TO ELECTRONIC TRANSMISSION]***Anthony Norton / Anton Roets / Michelle Rawlinson / Avias Ngwenya / Melissa Steele**
Nortons Incorporated**Competition Law Specialists | Litigation Attorneys | Regulatory Advice**

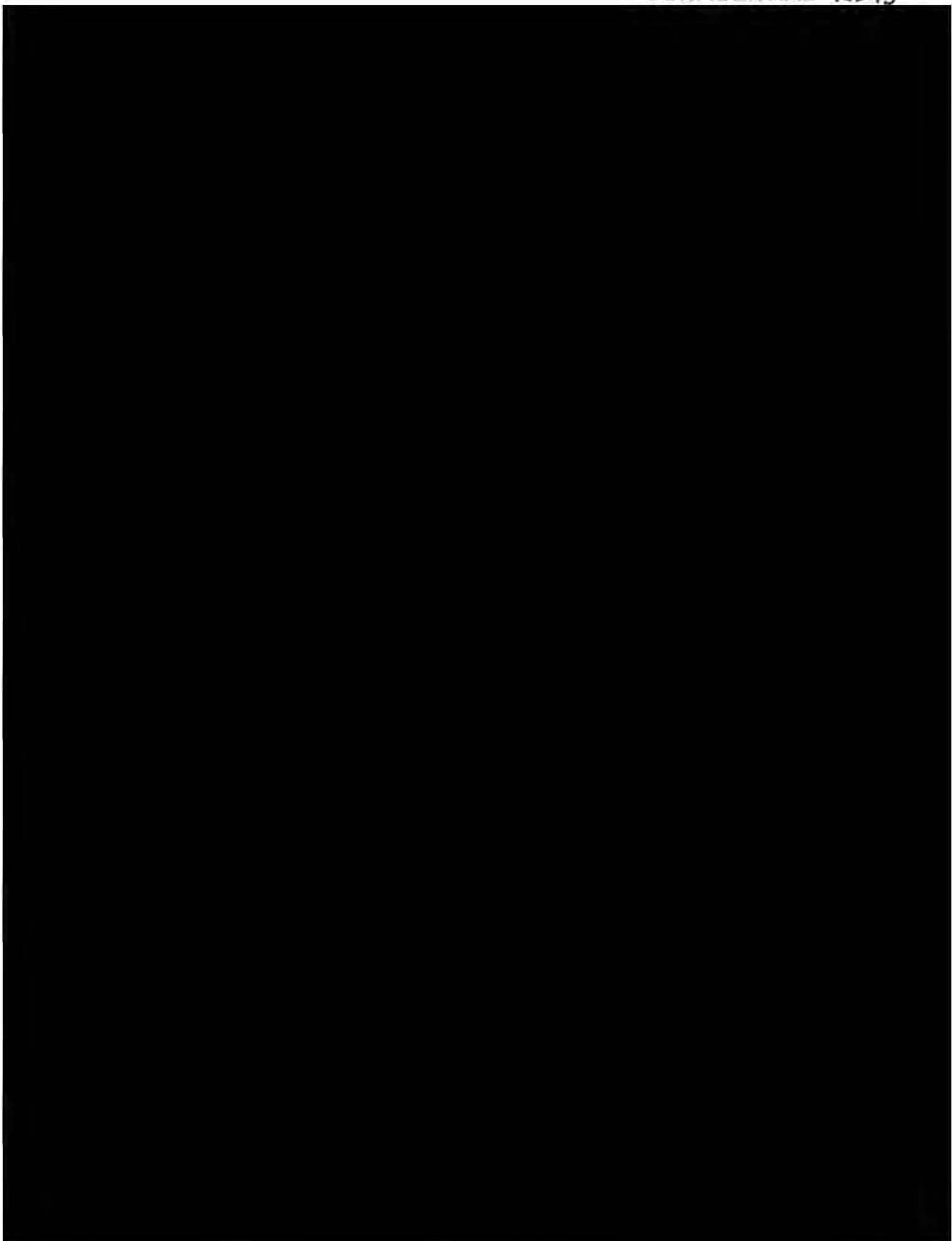
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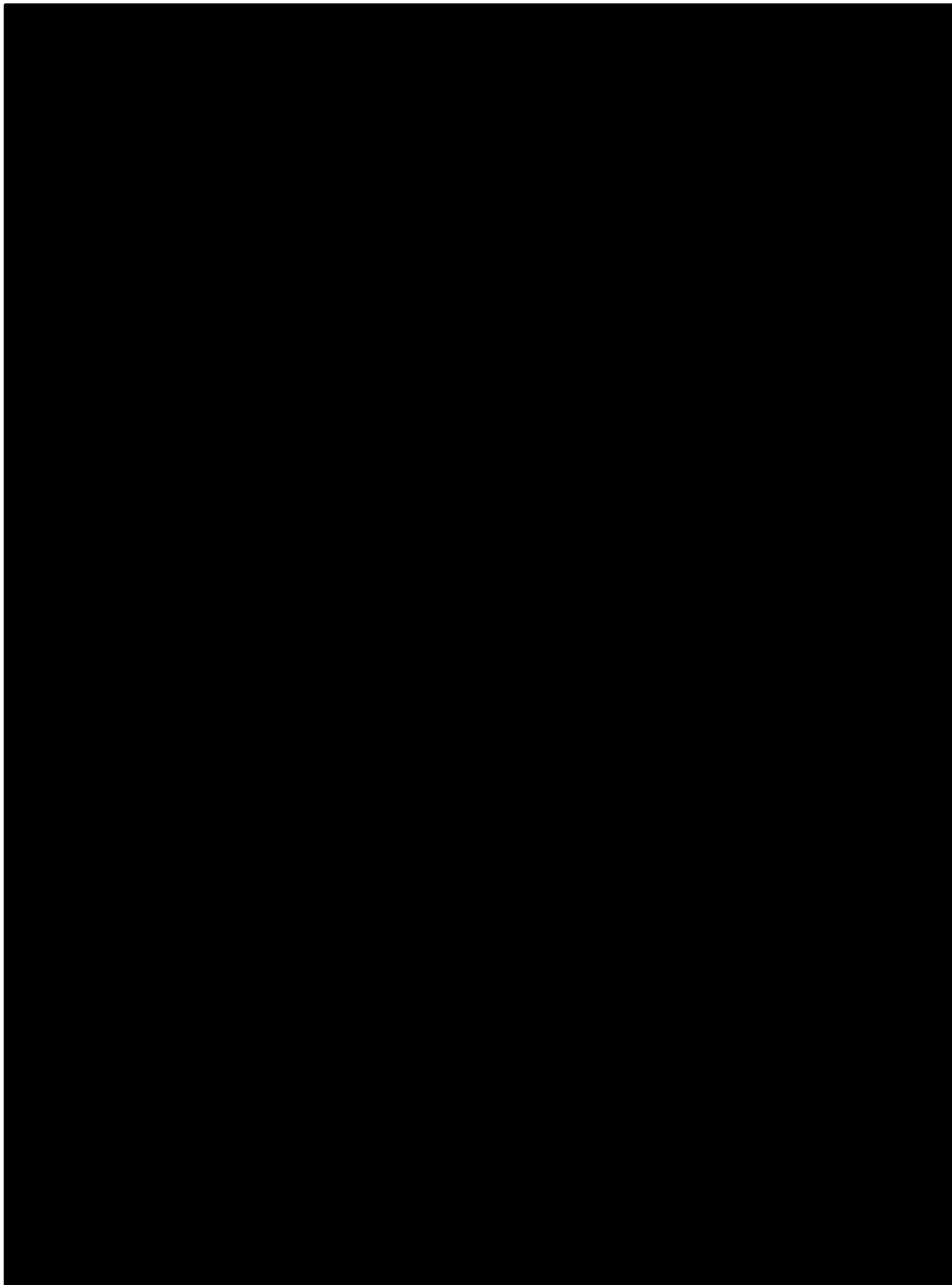
Vice President Economics: Avias Ngwenya

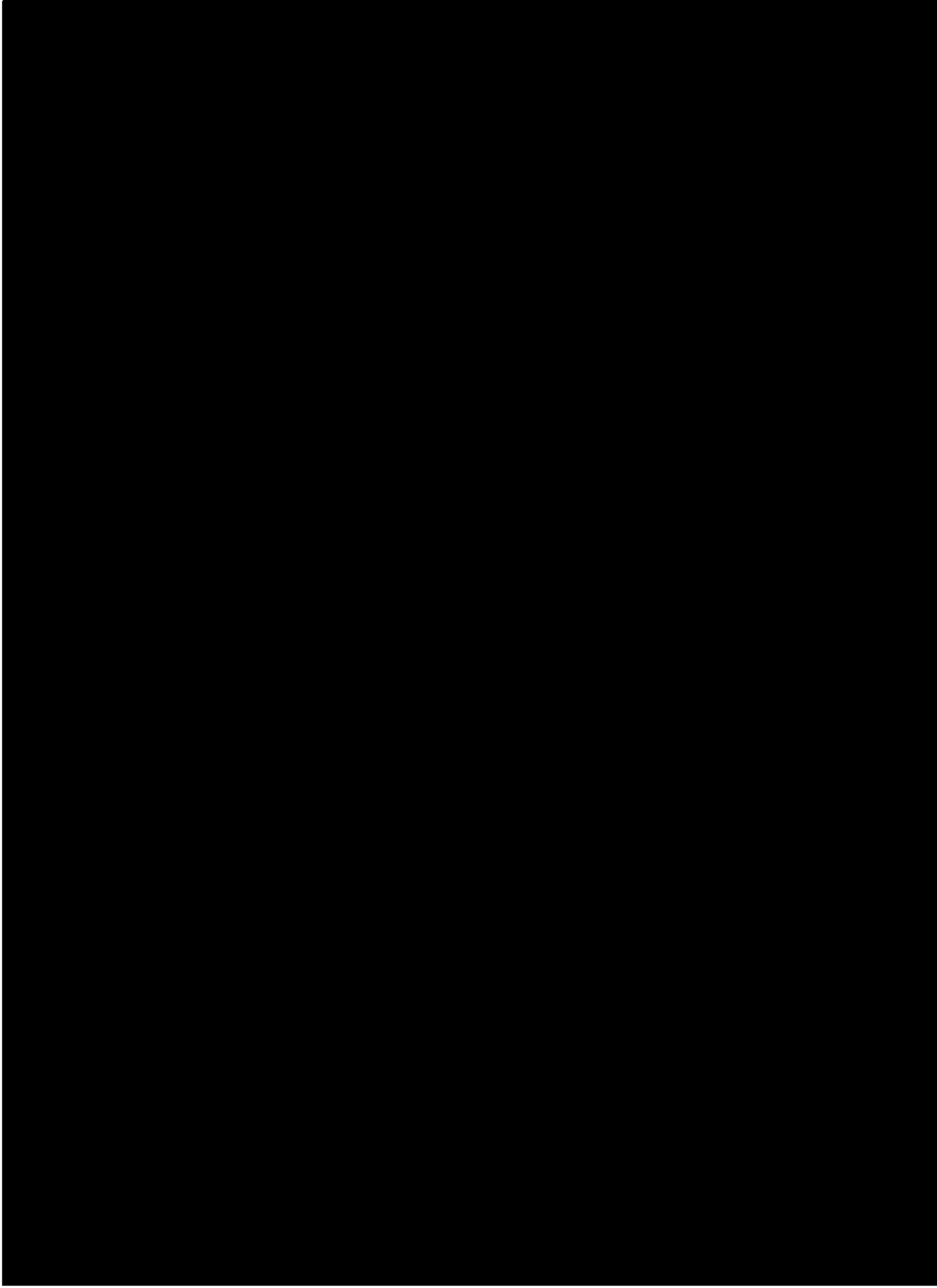
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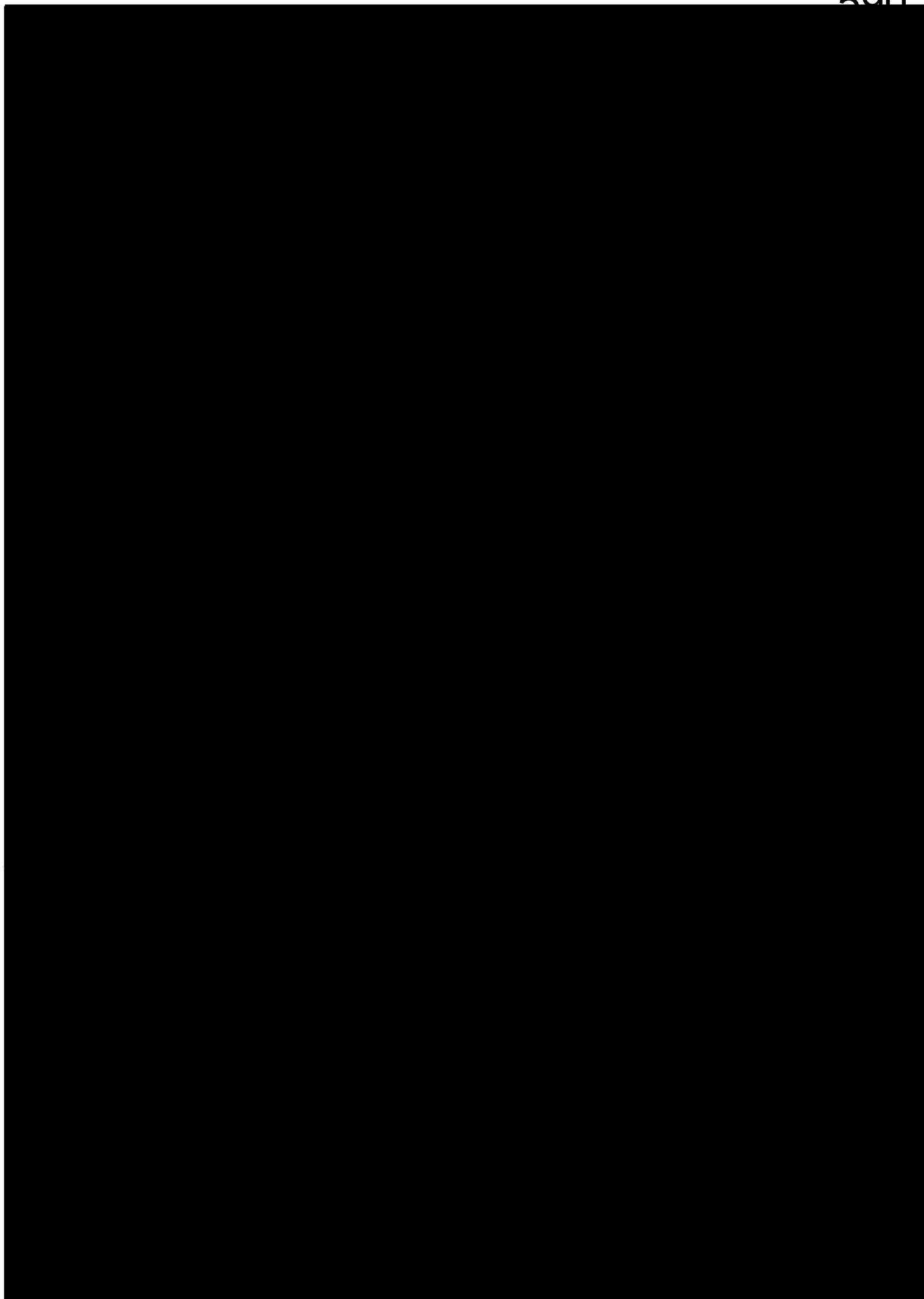
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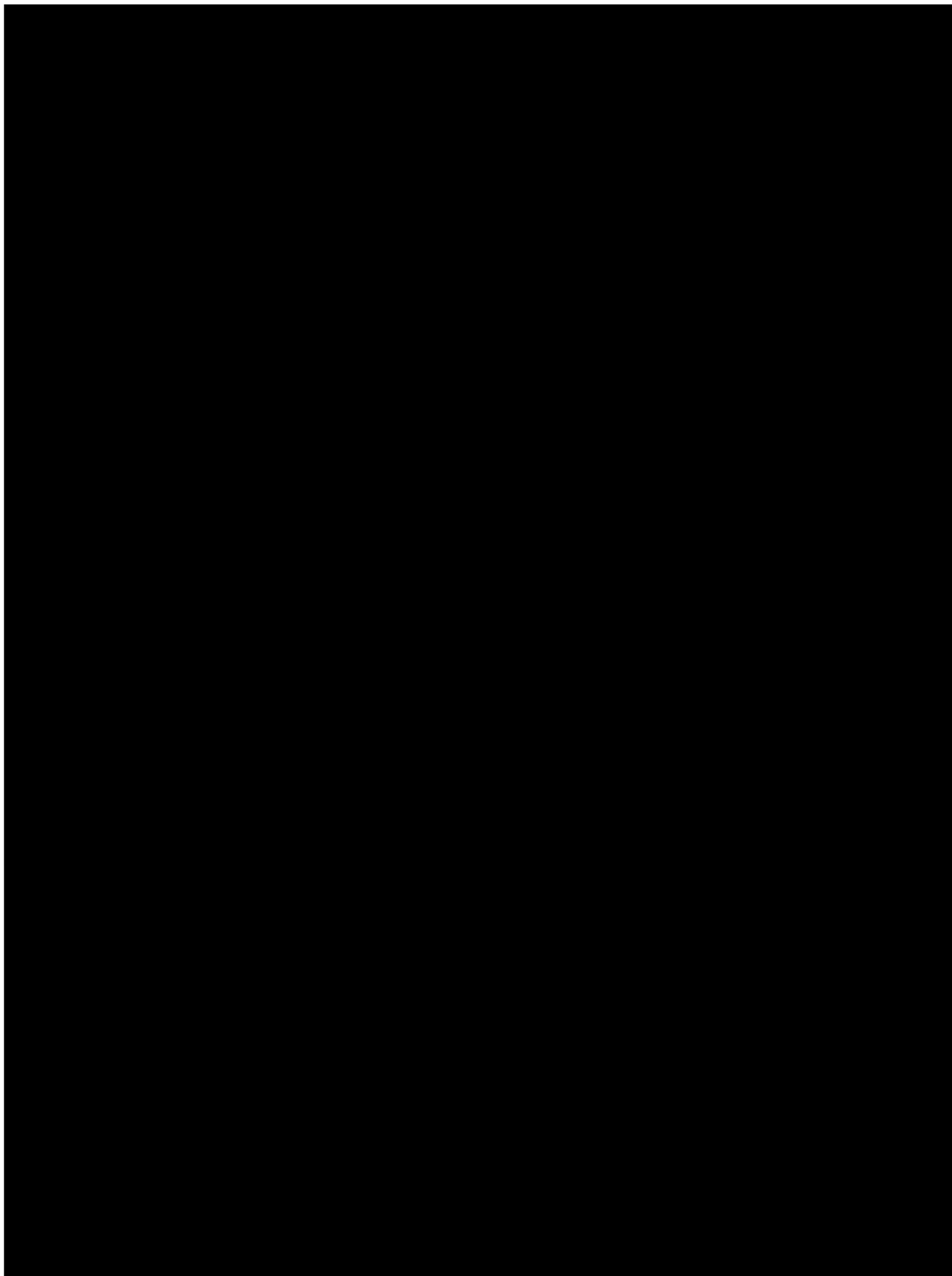


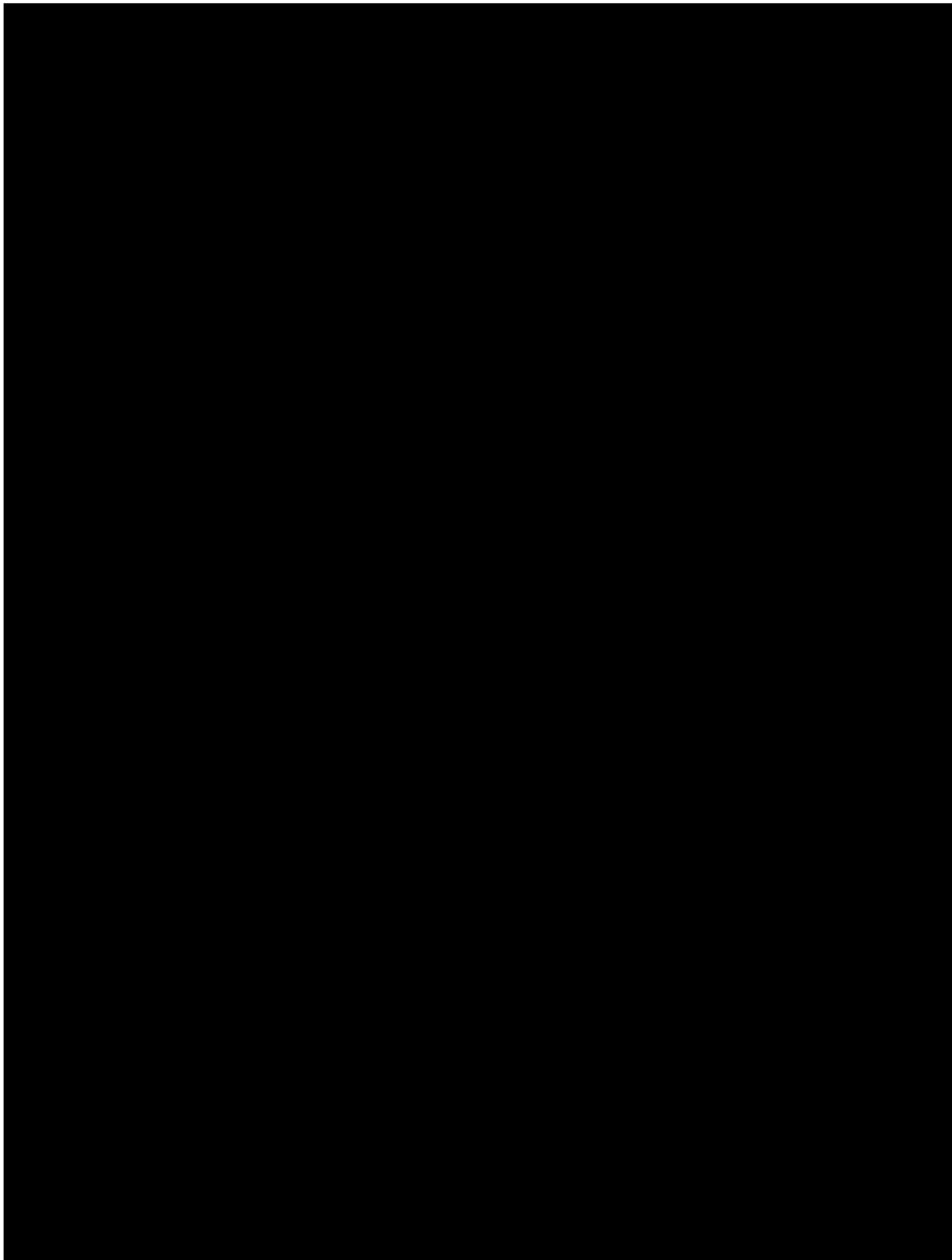



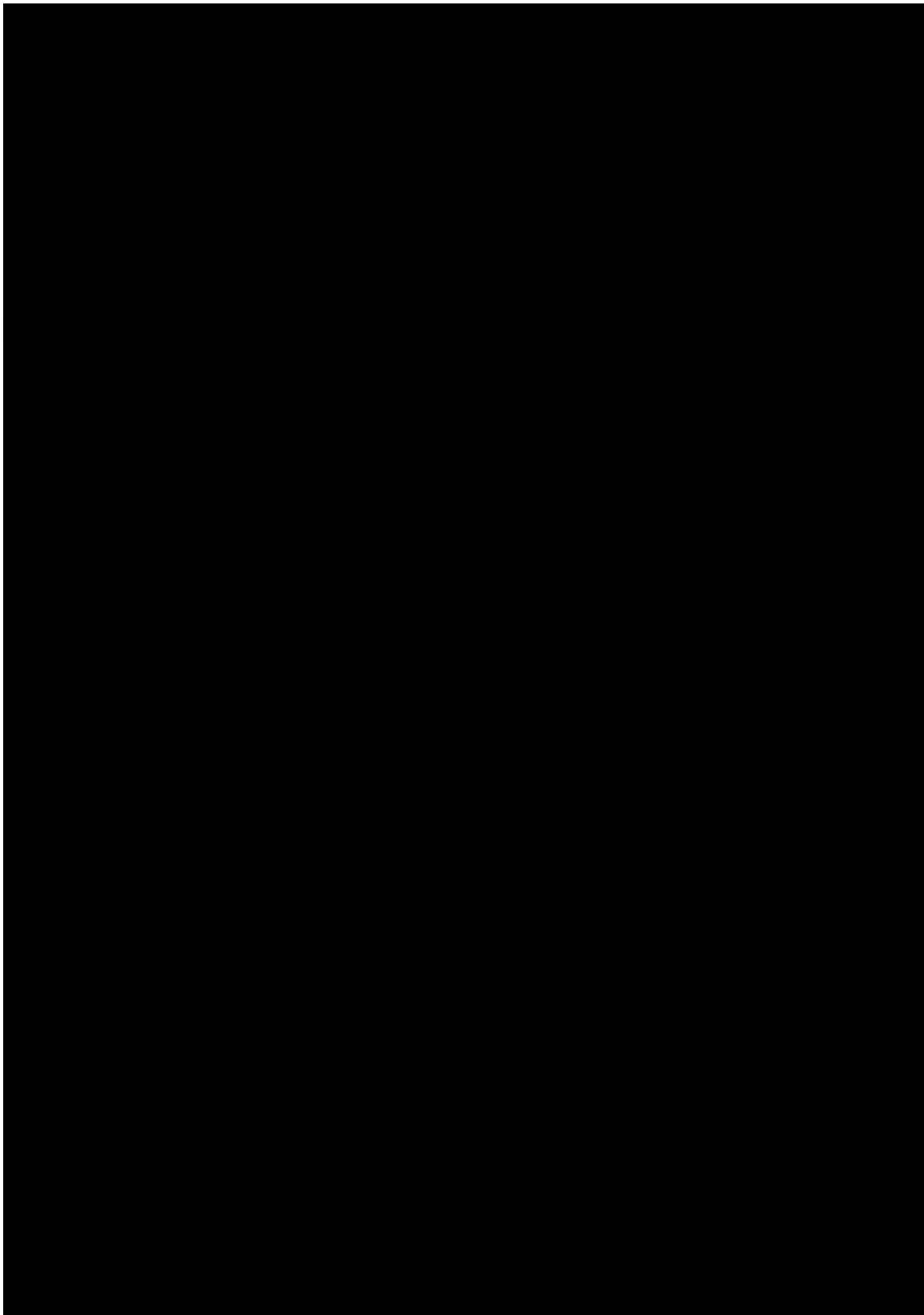




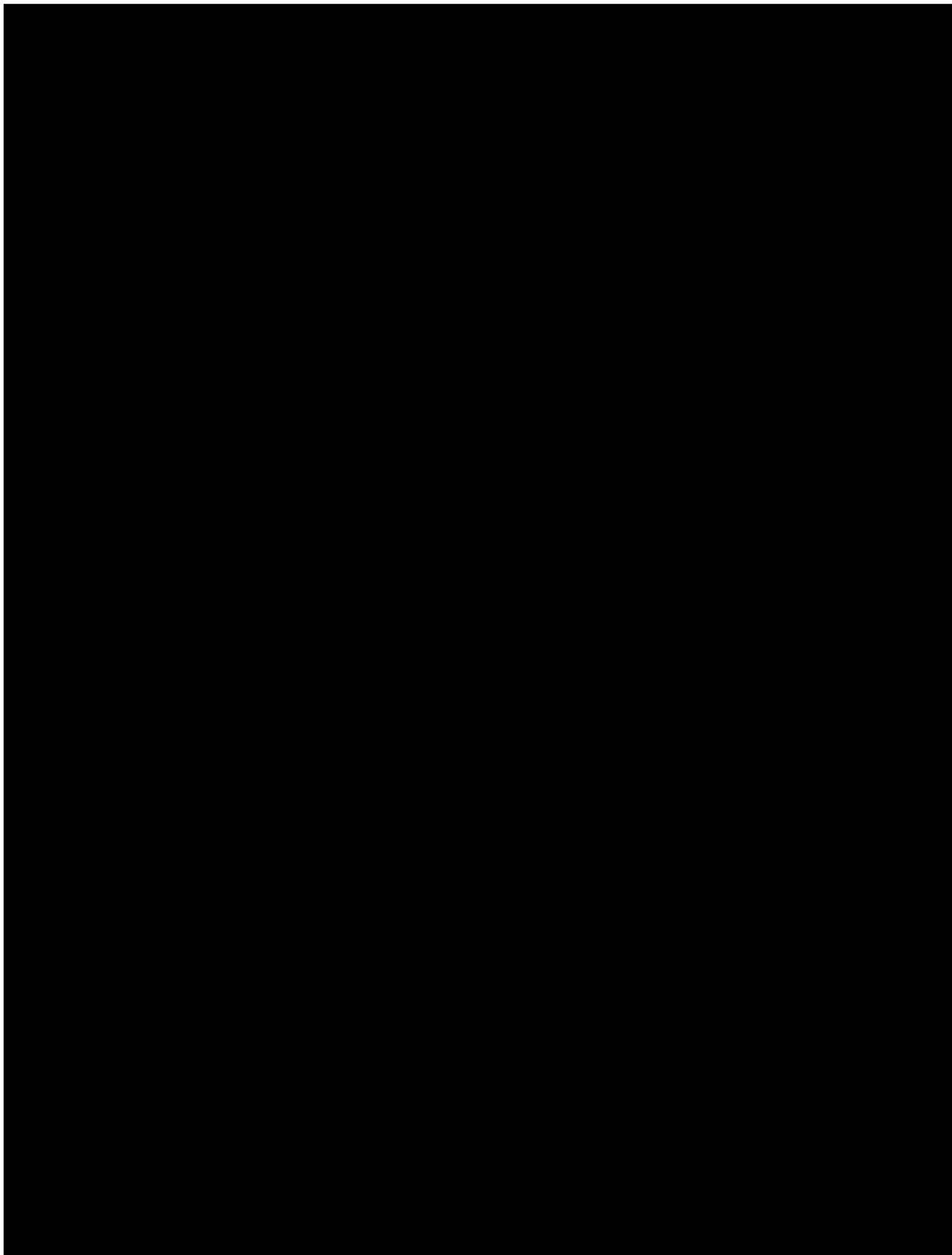


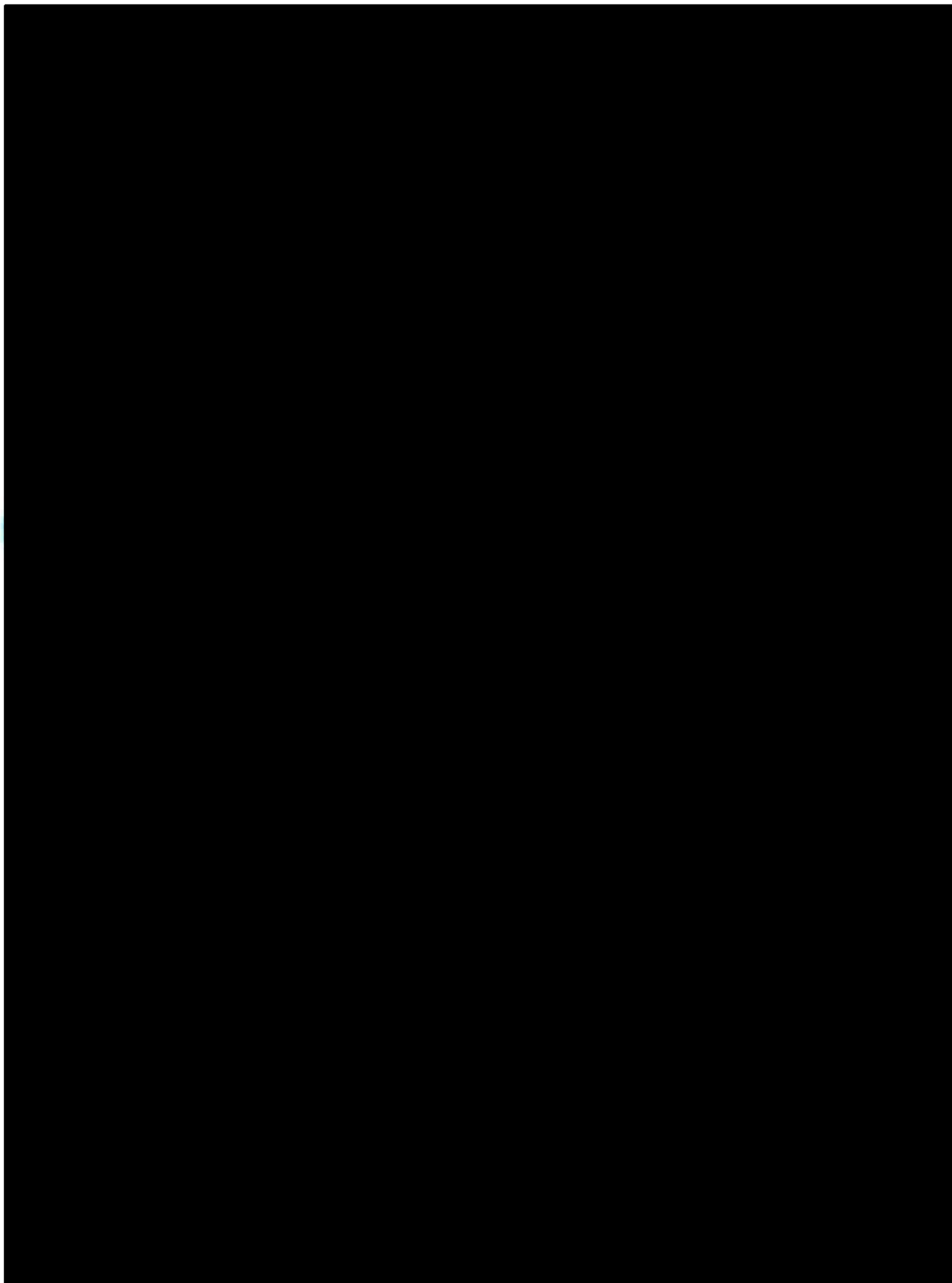


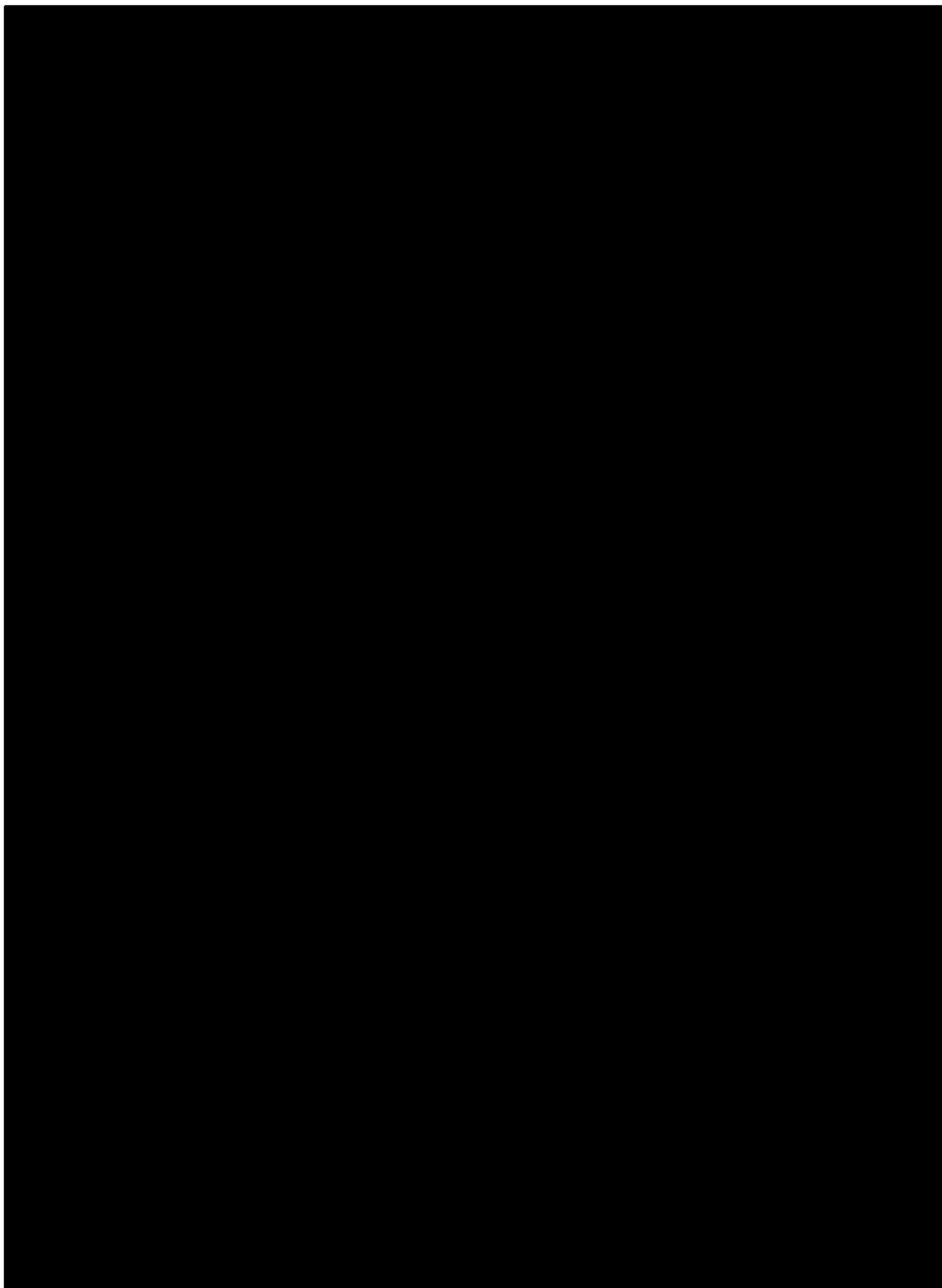


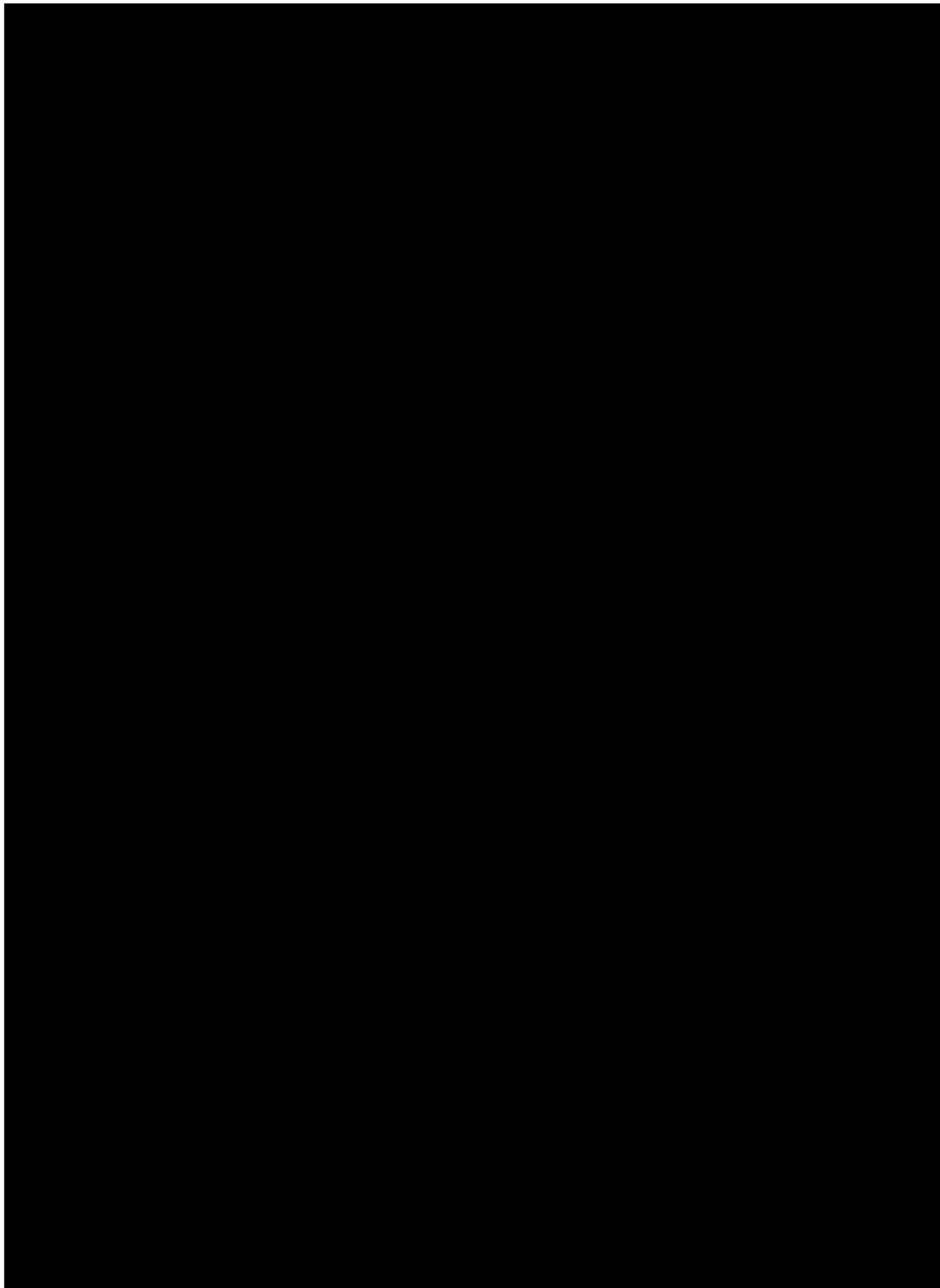


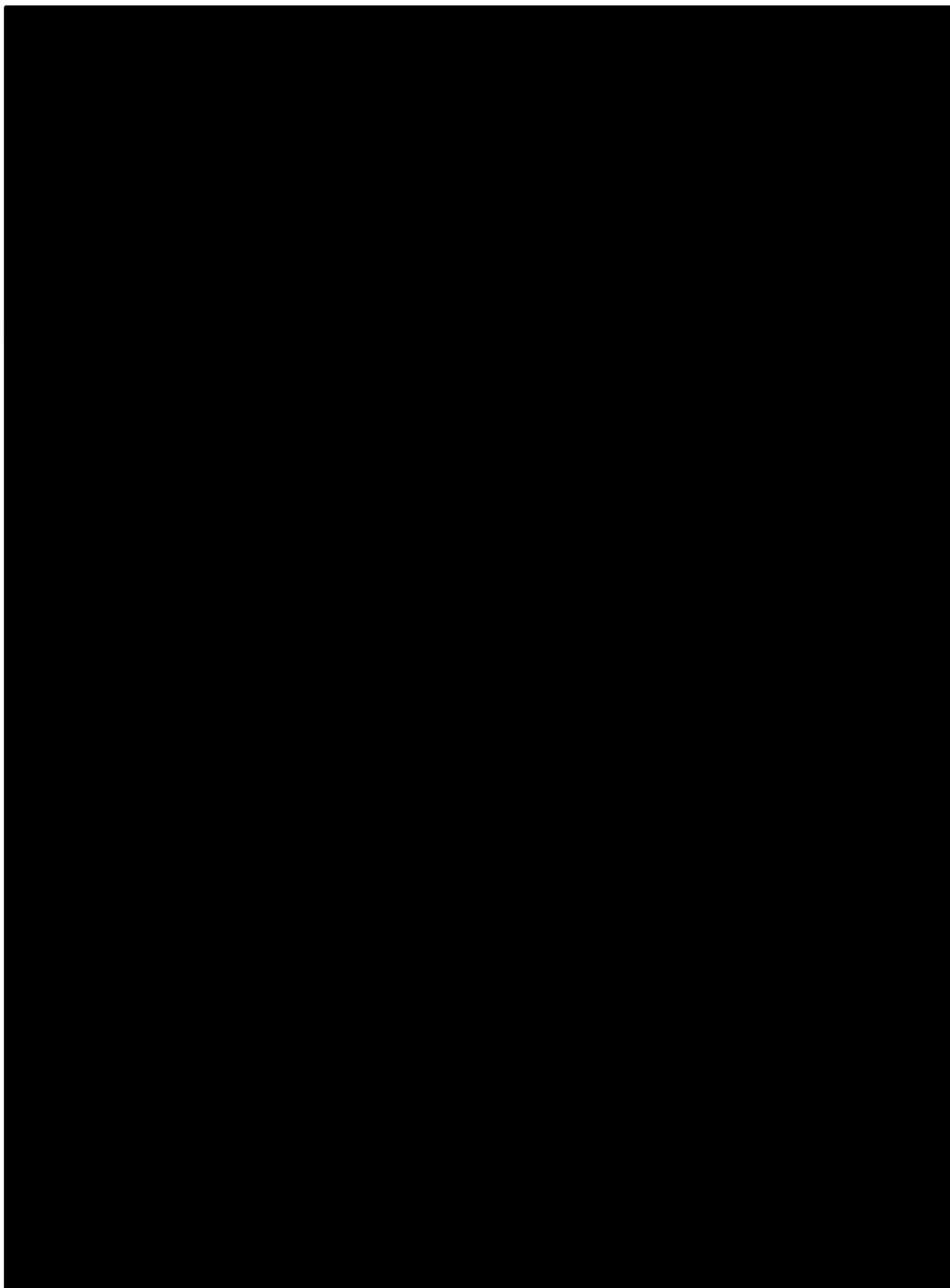
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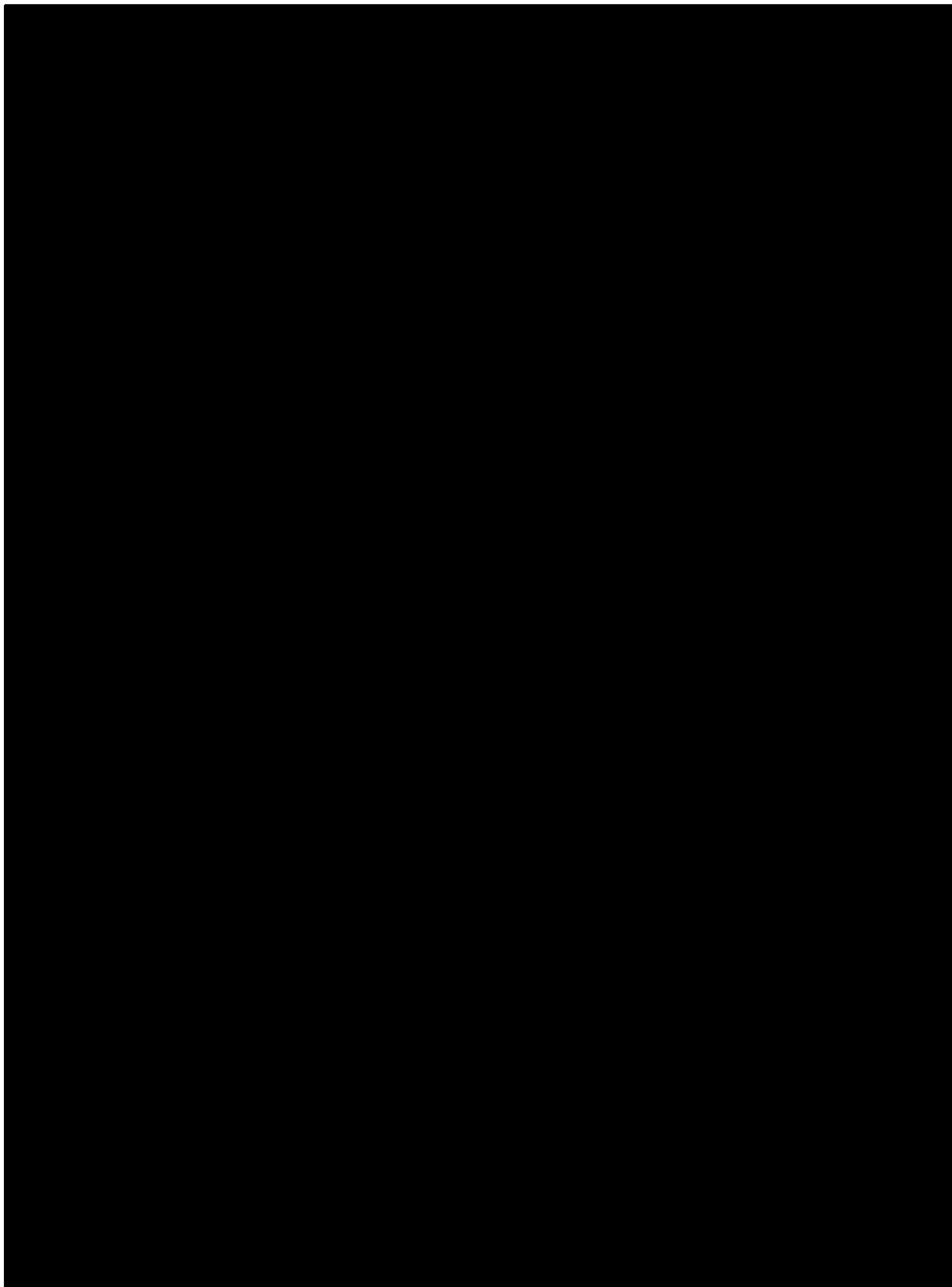


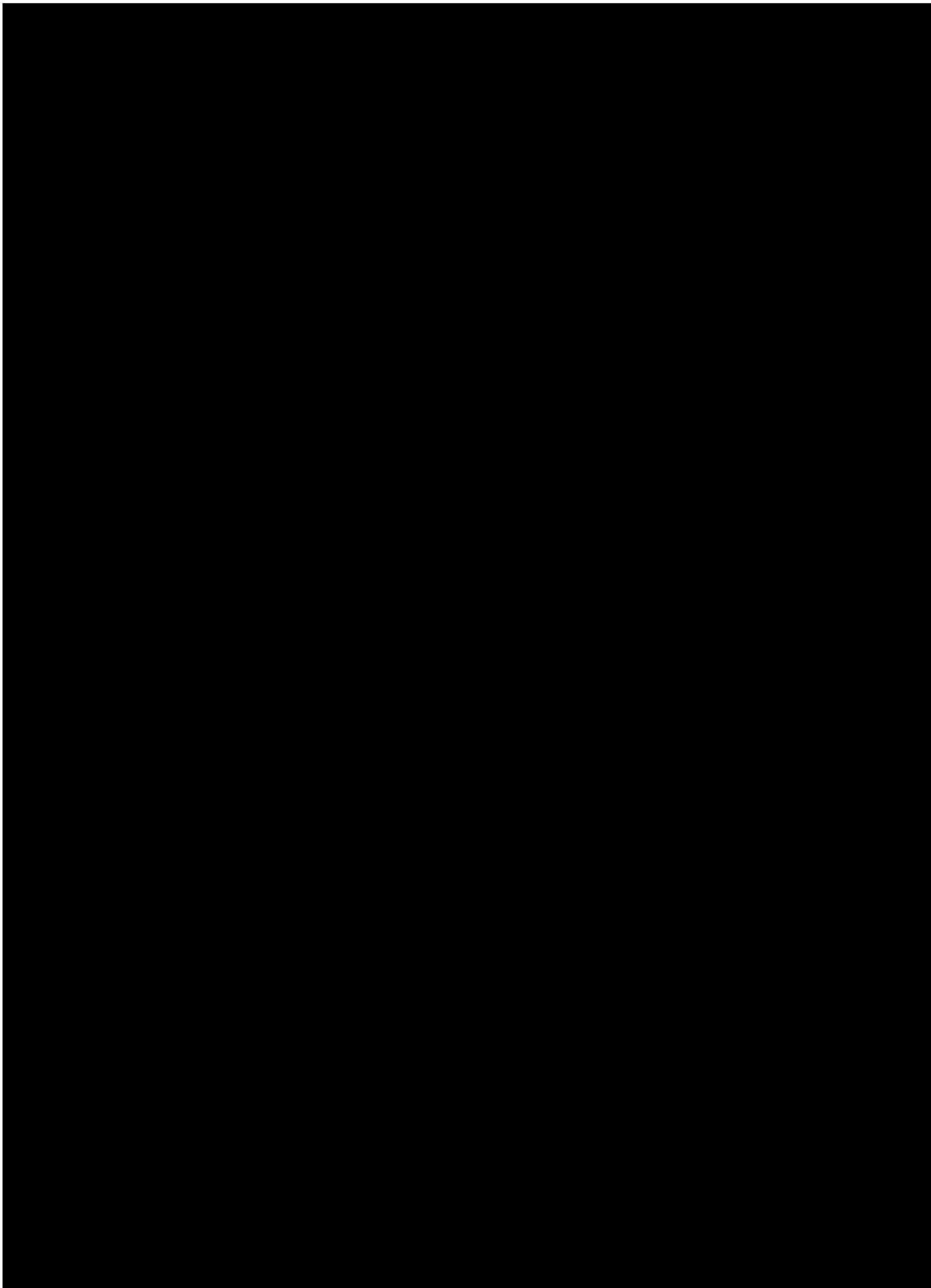


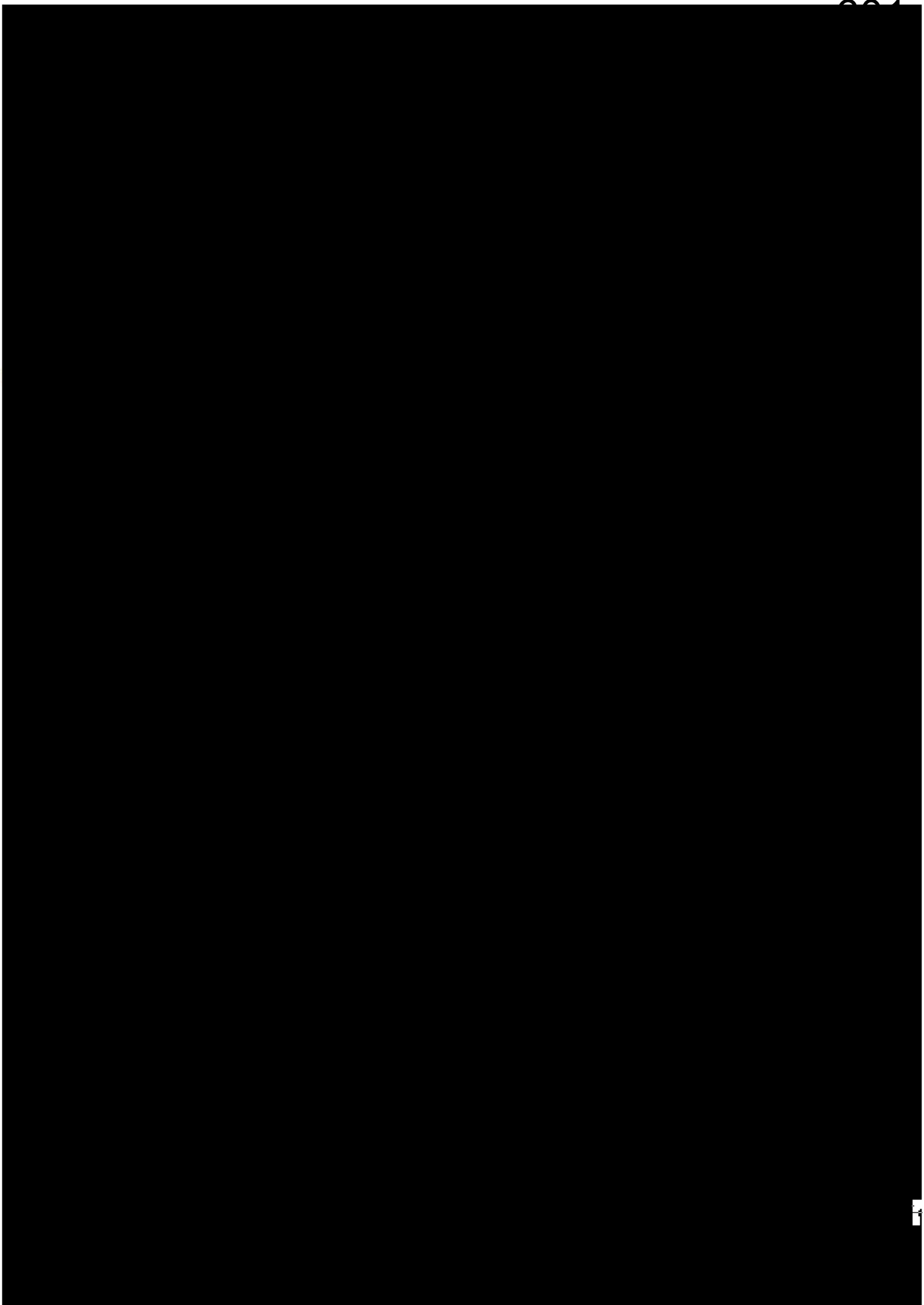


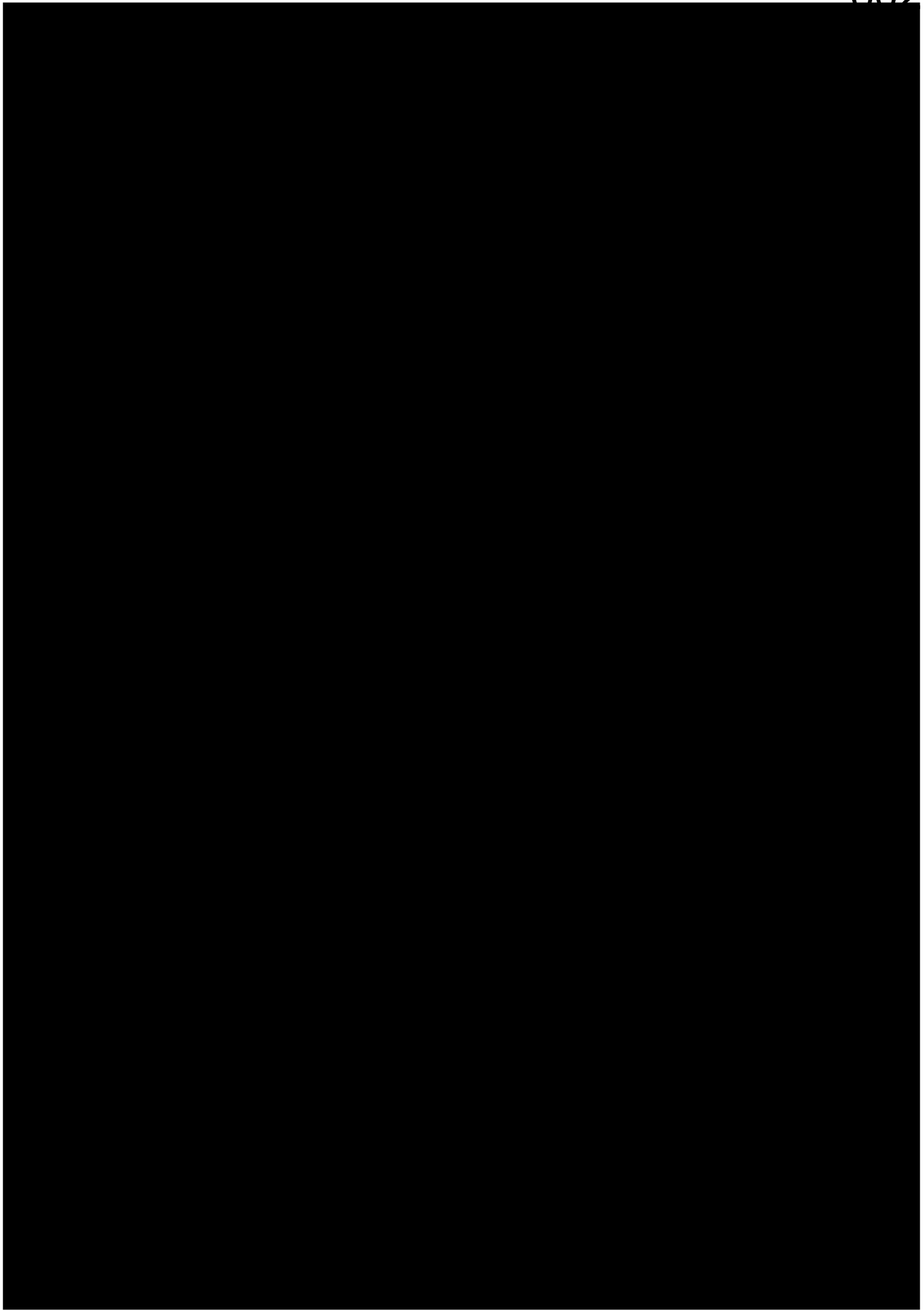


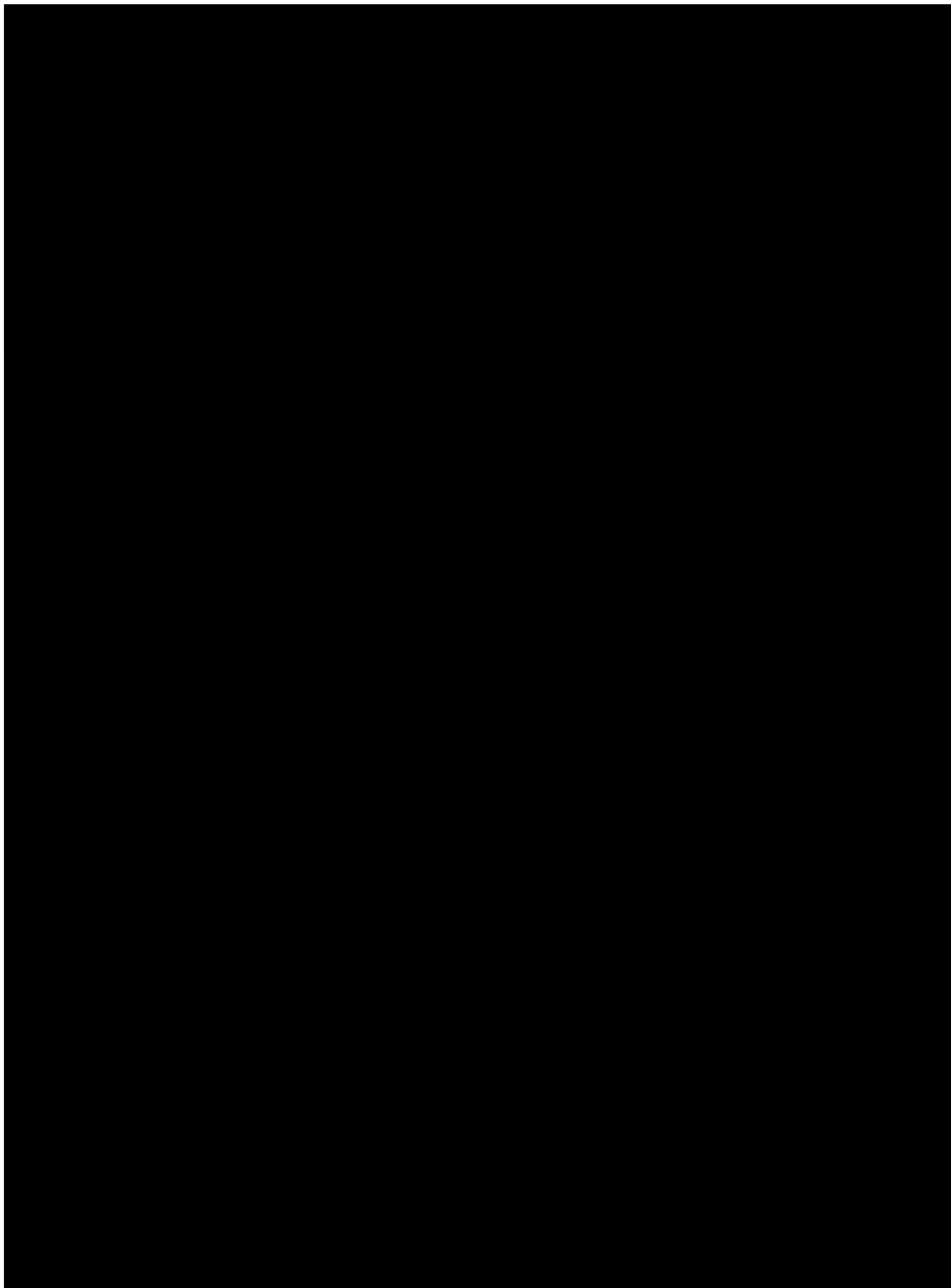


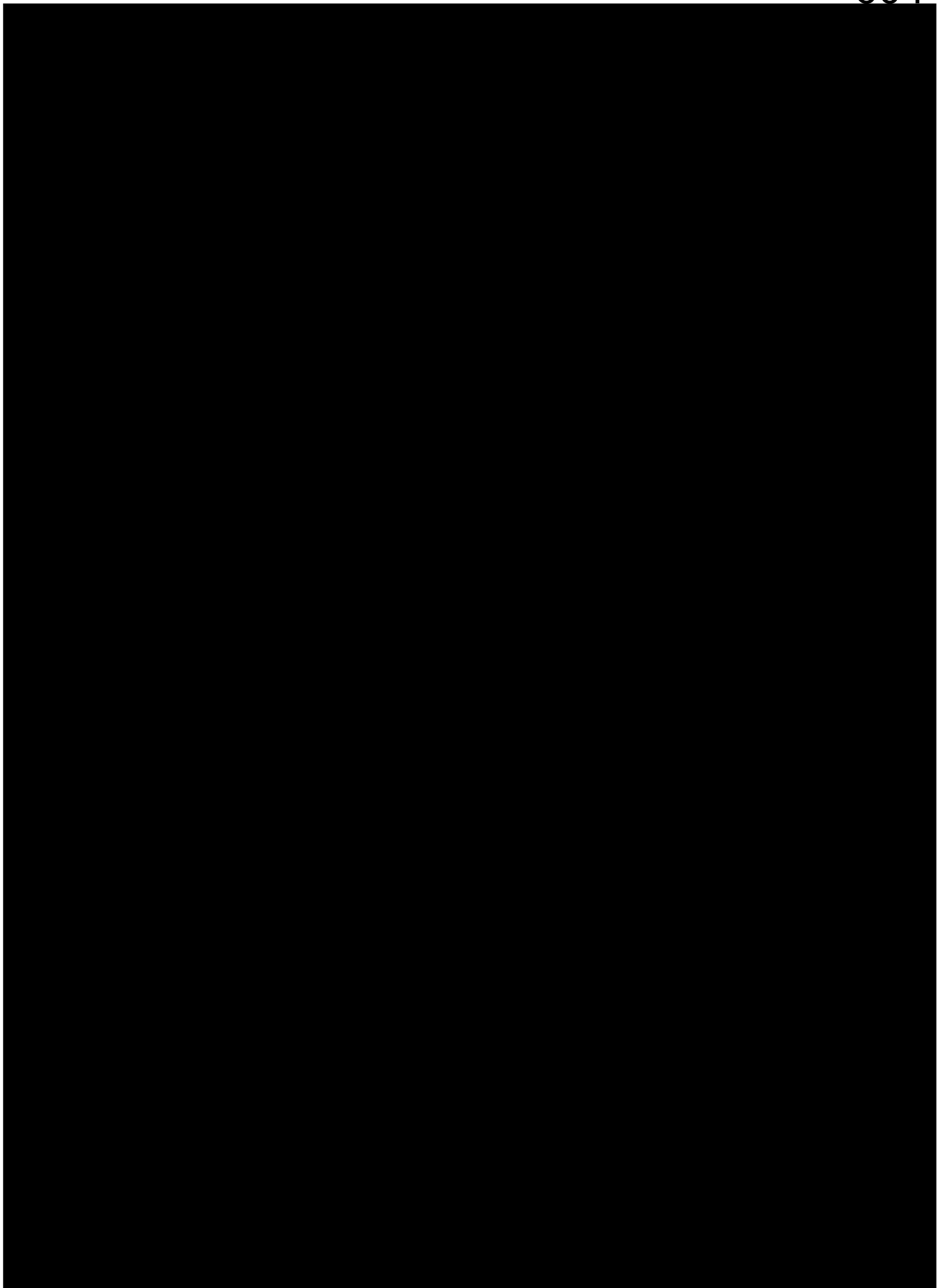


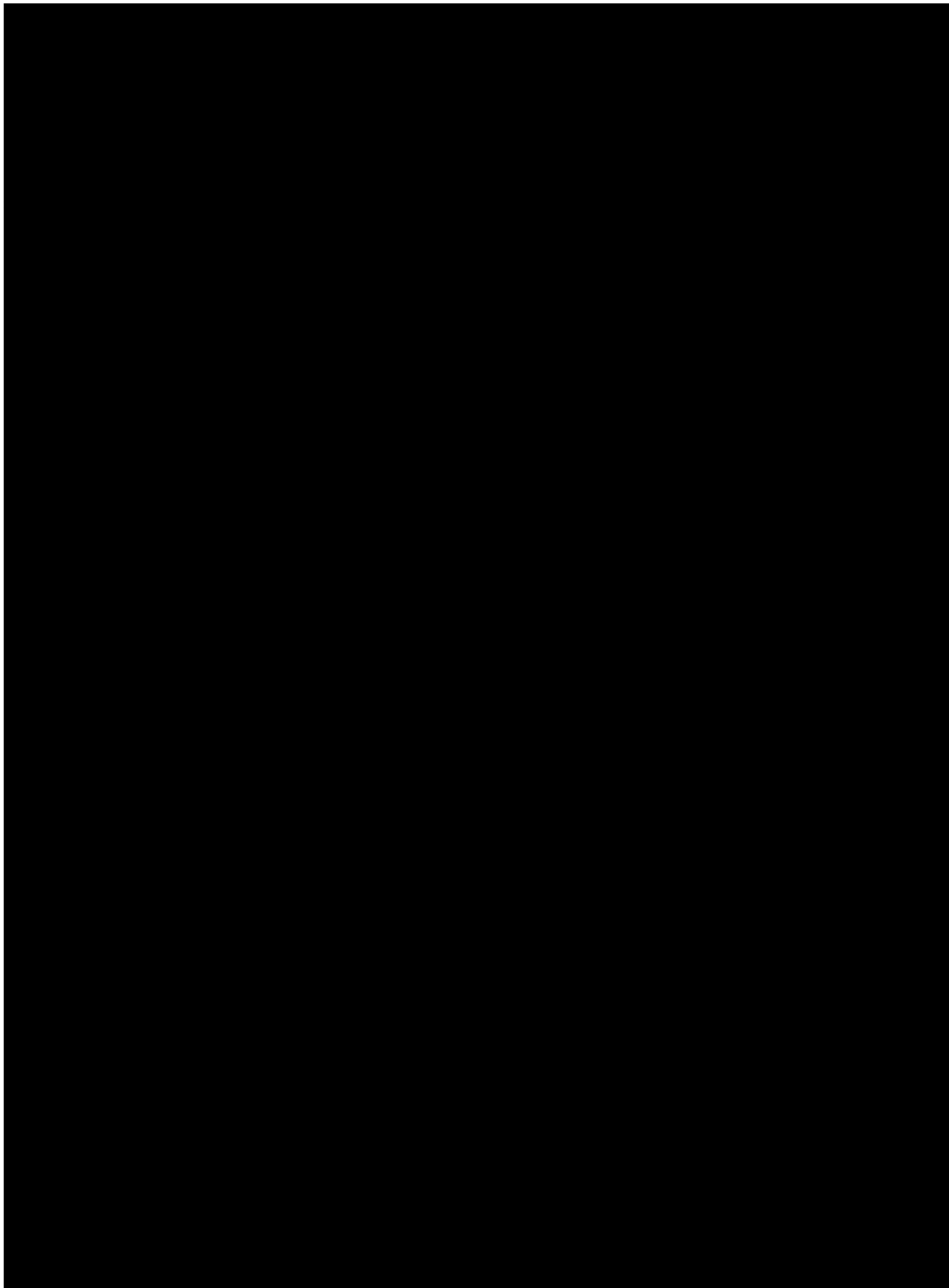


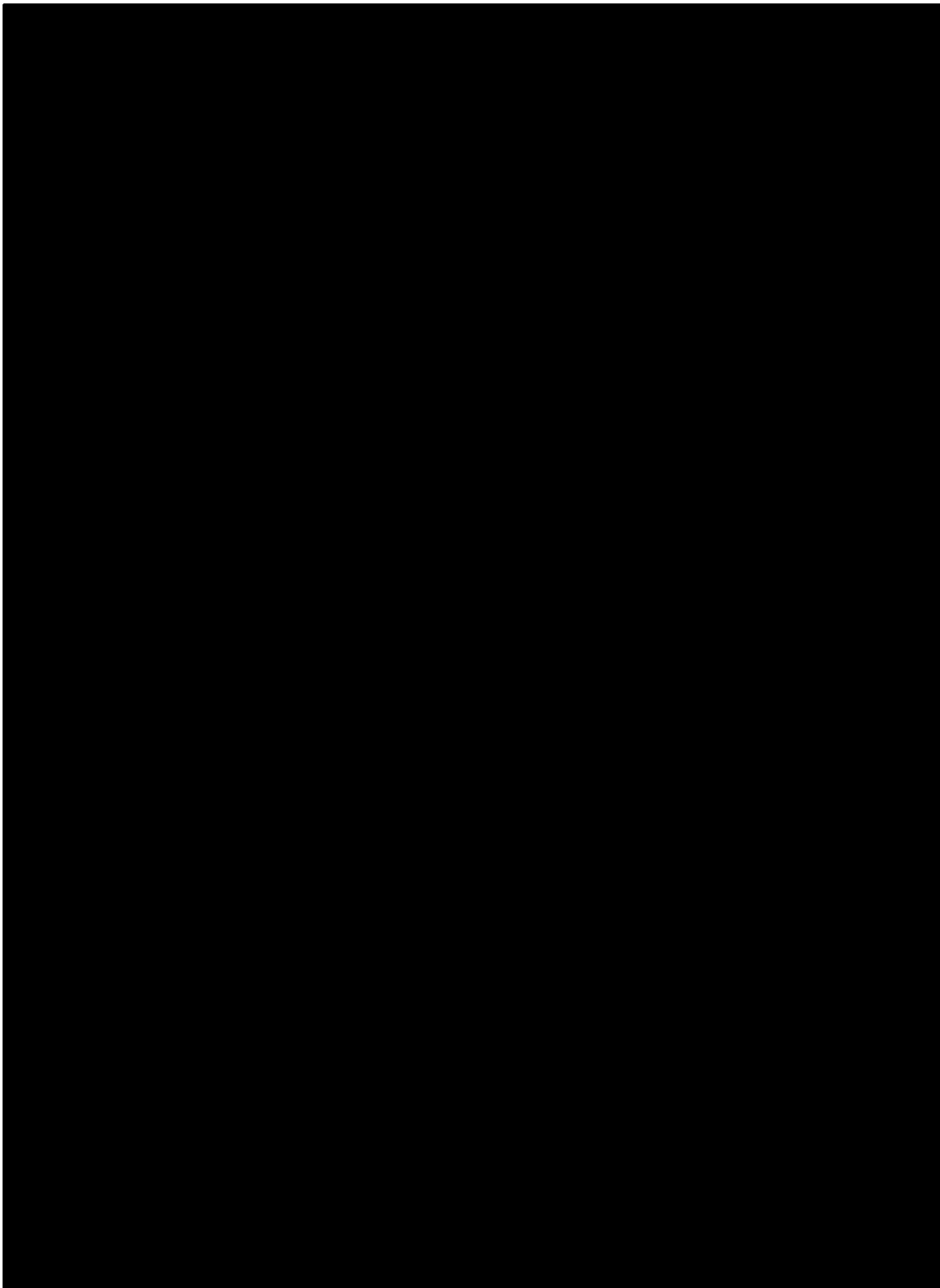


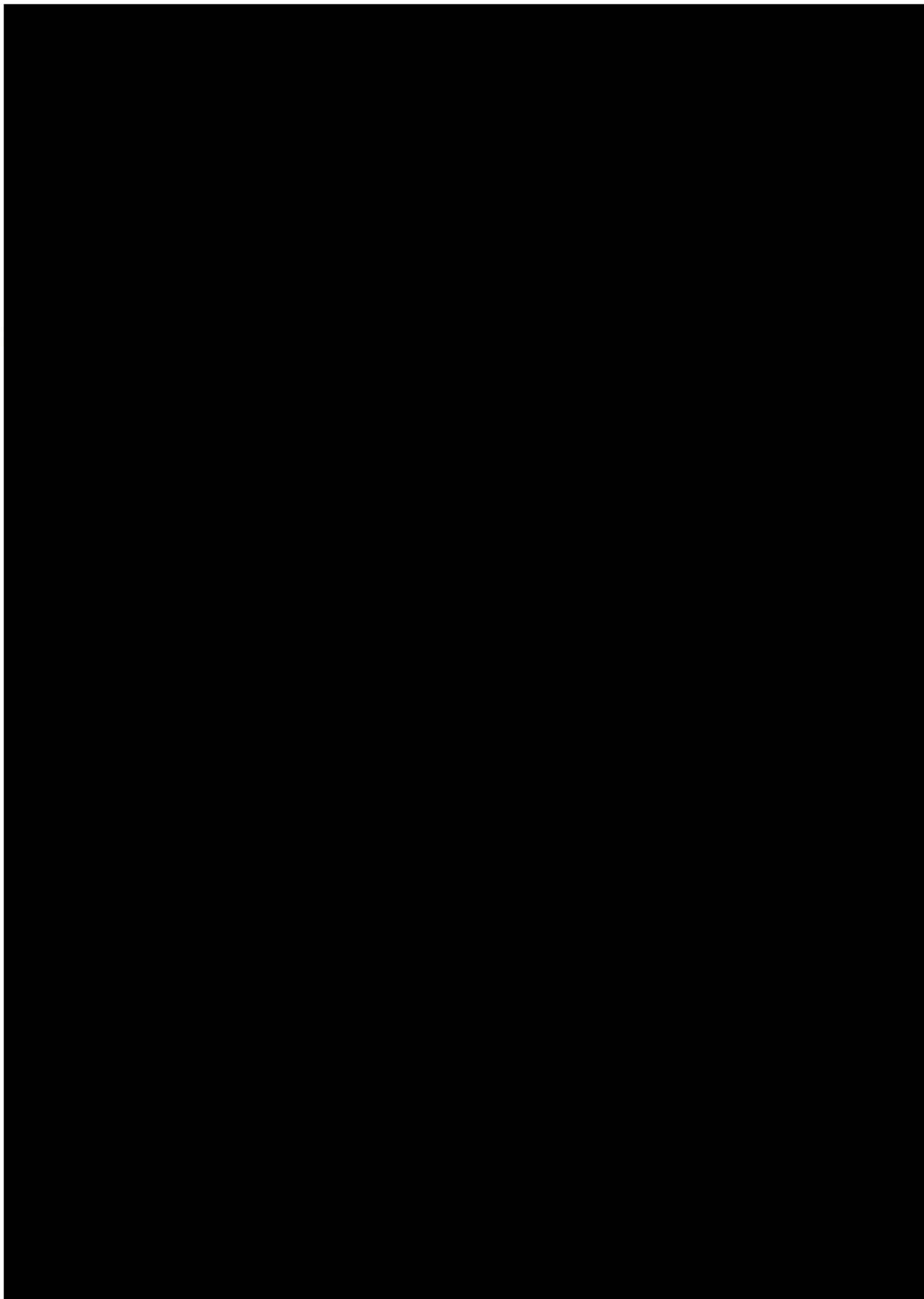


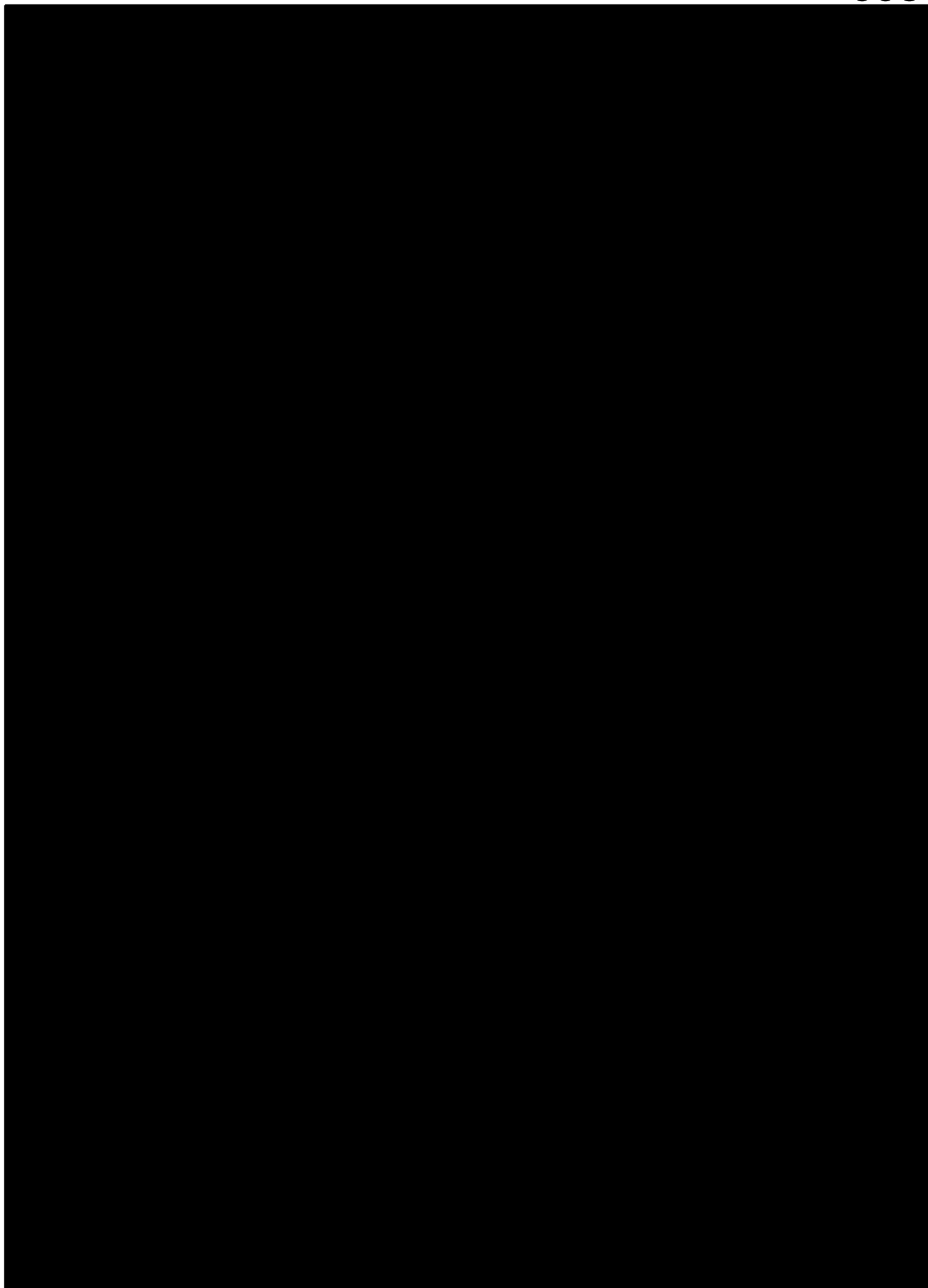


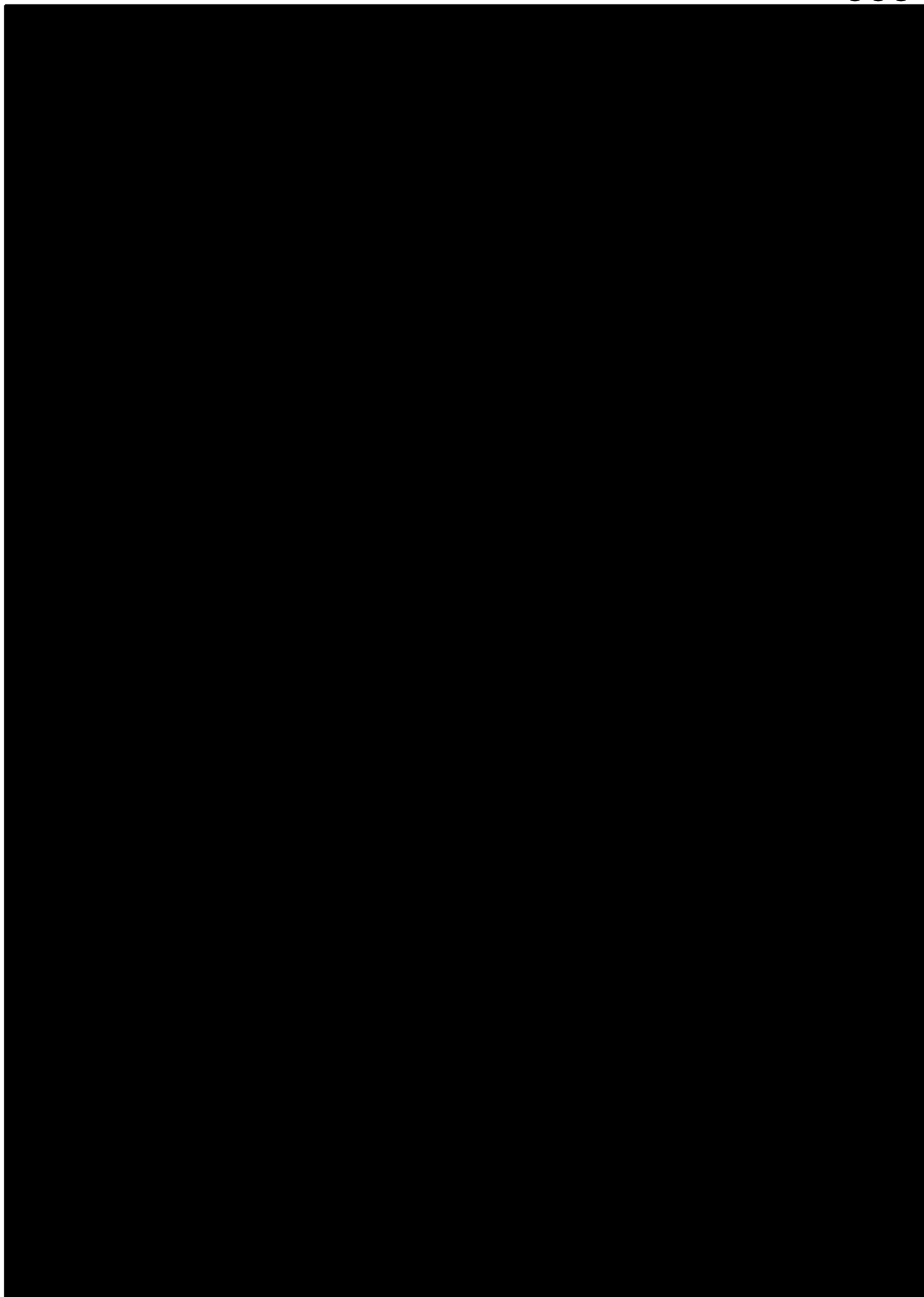


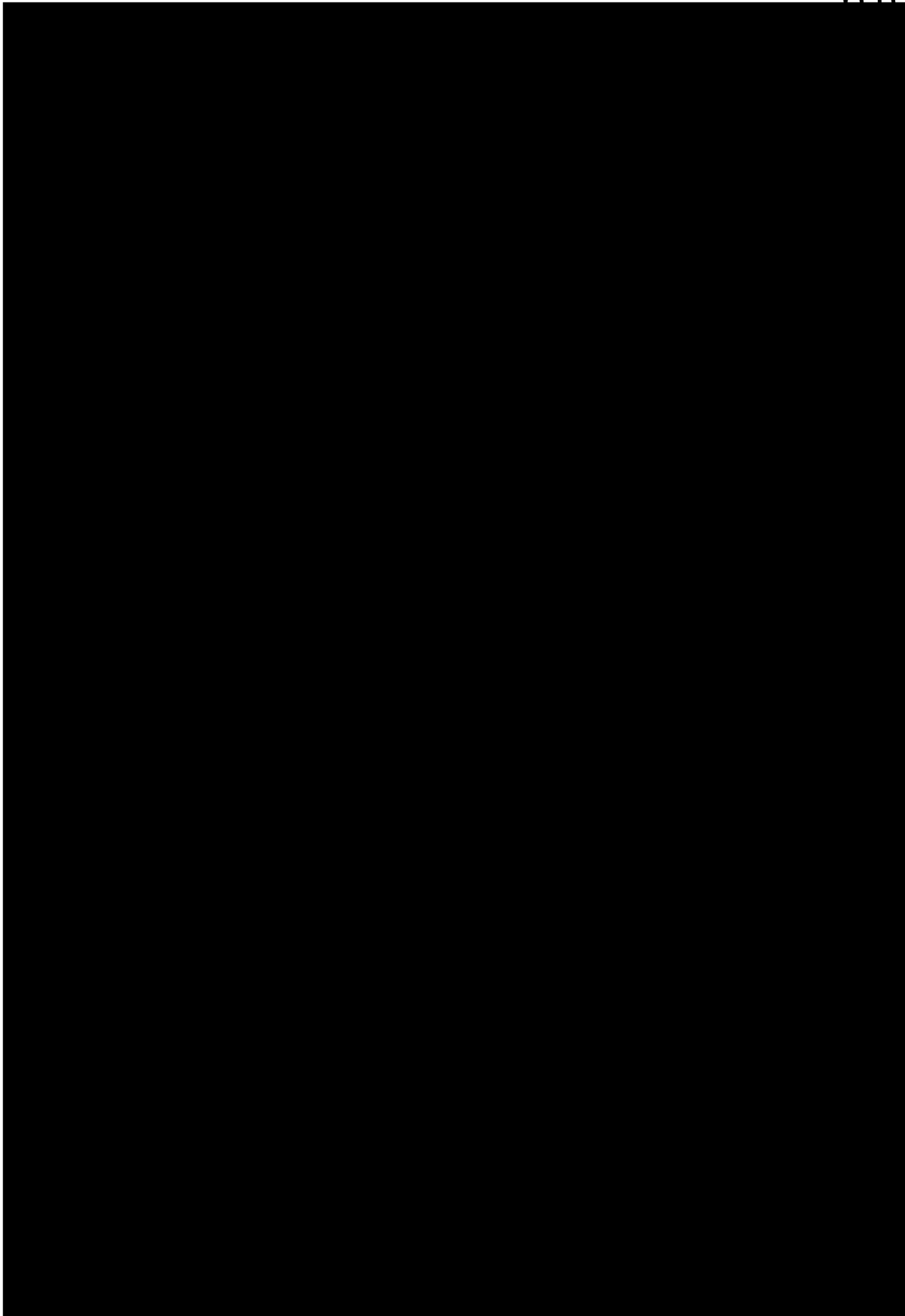


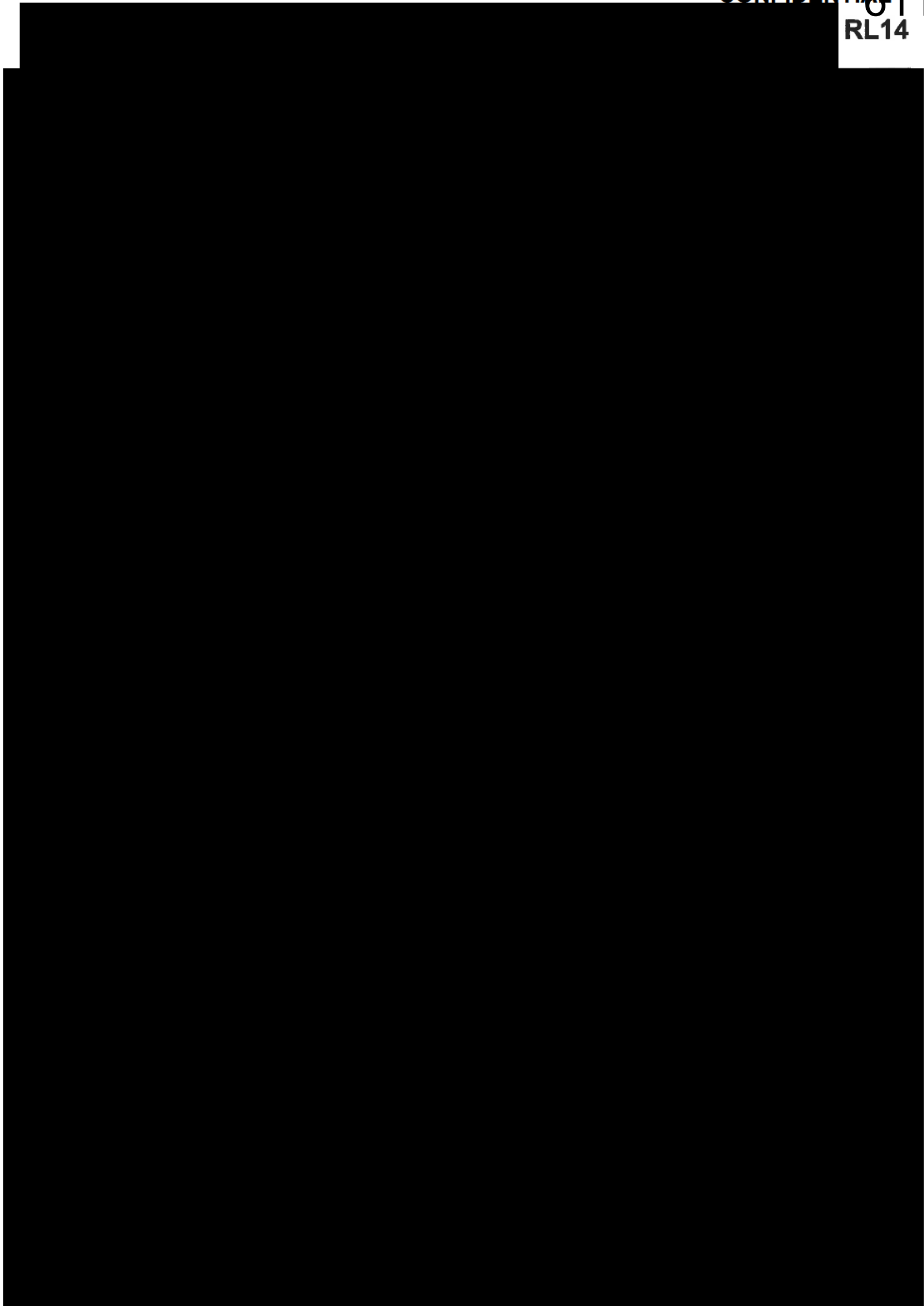


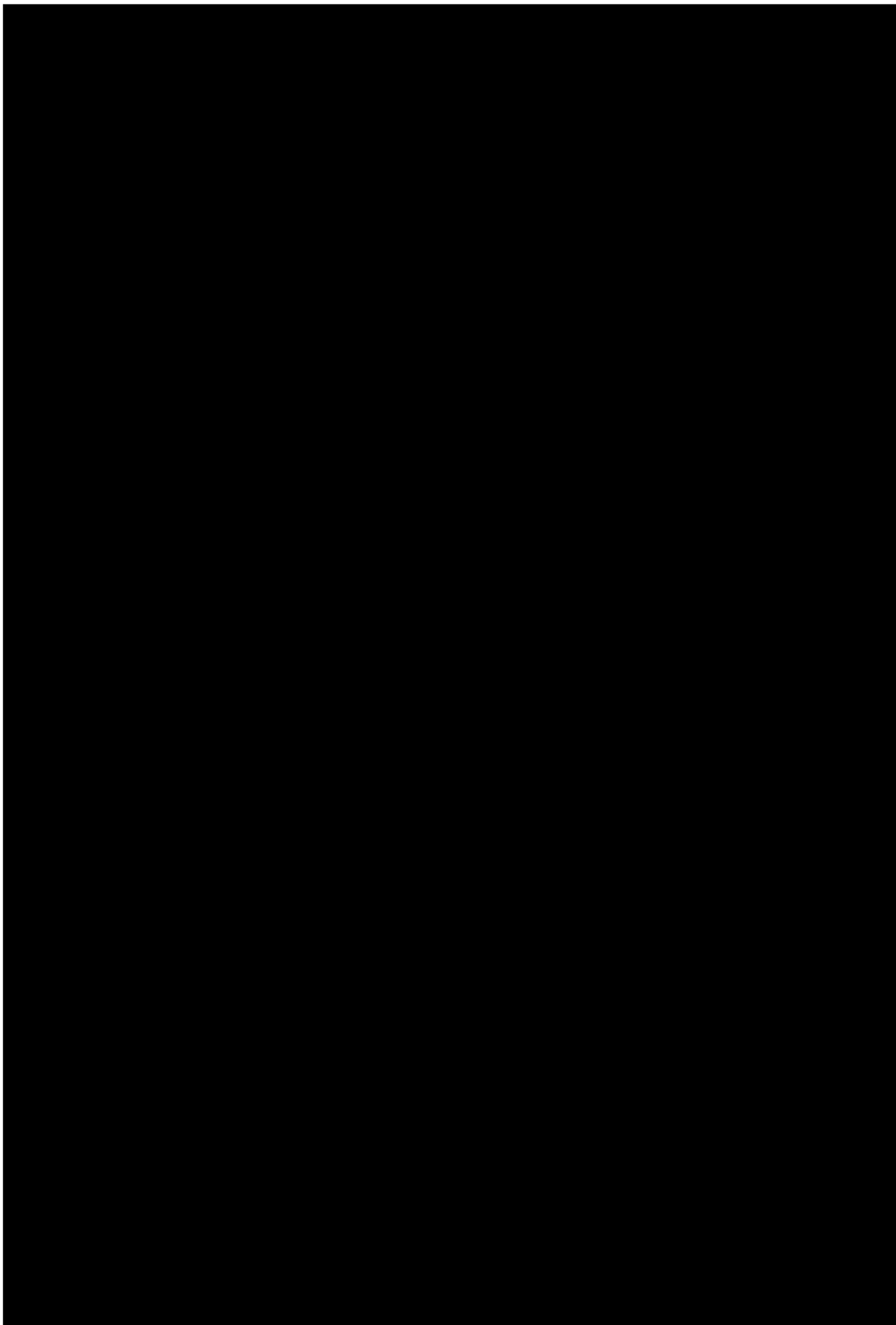


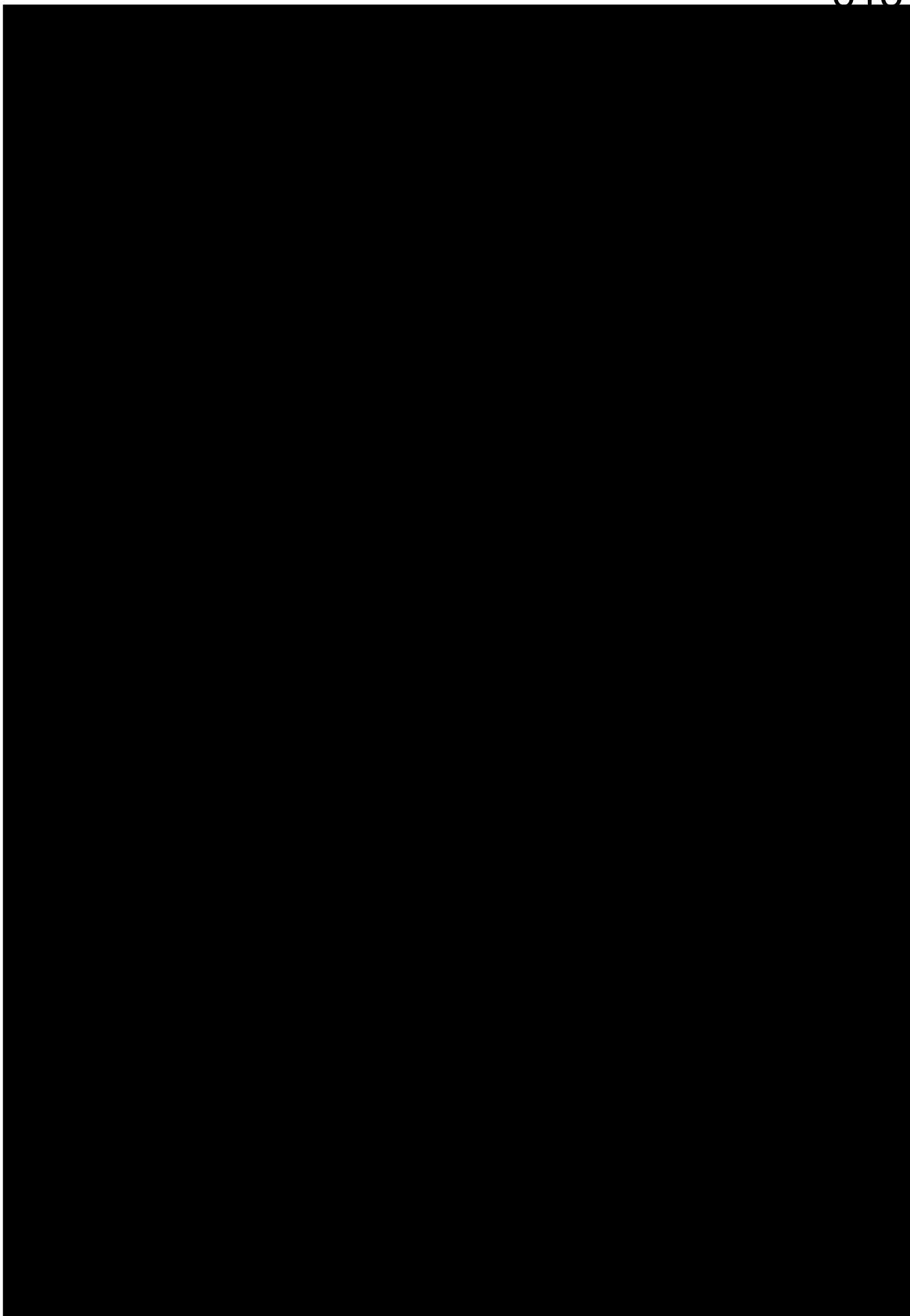


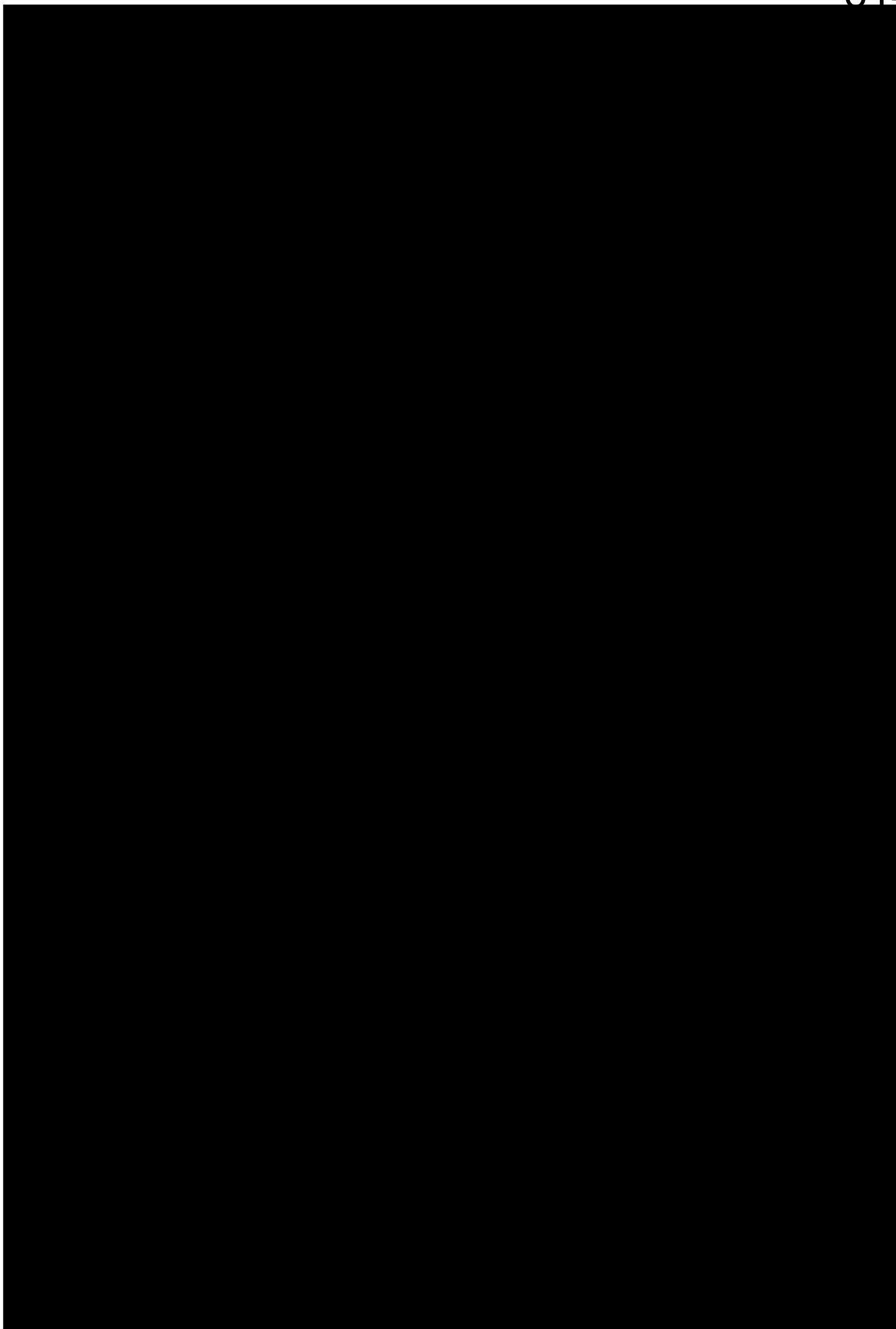


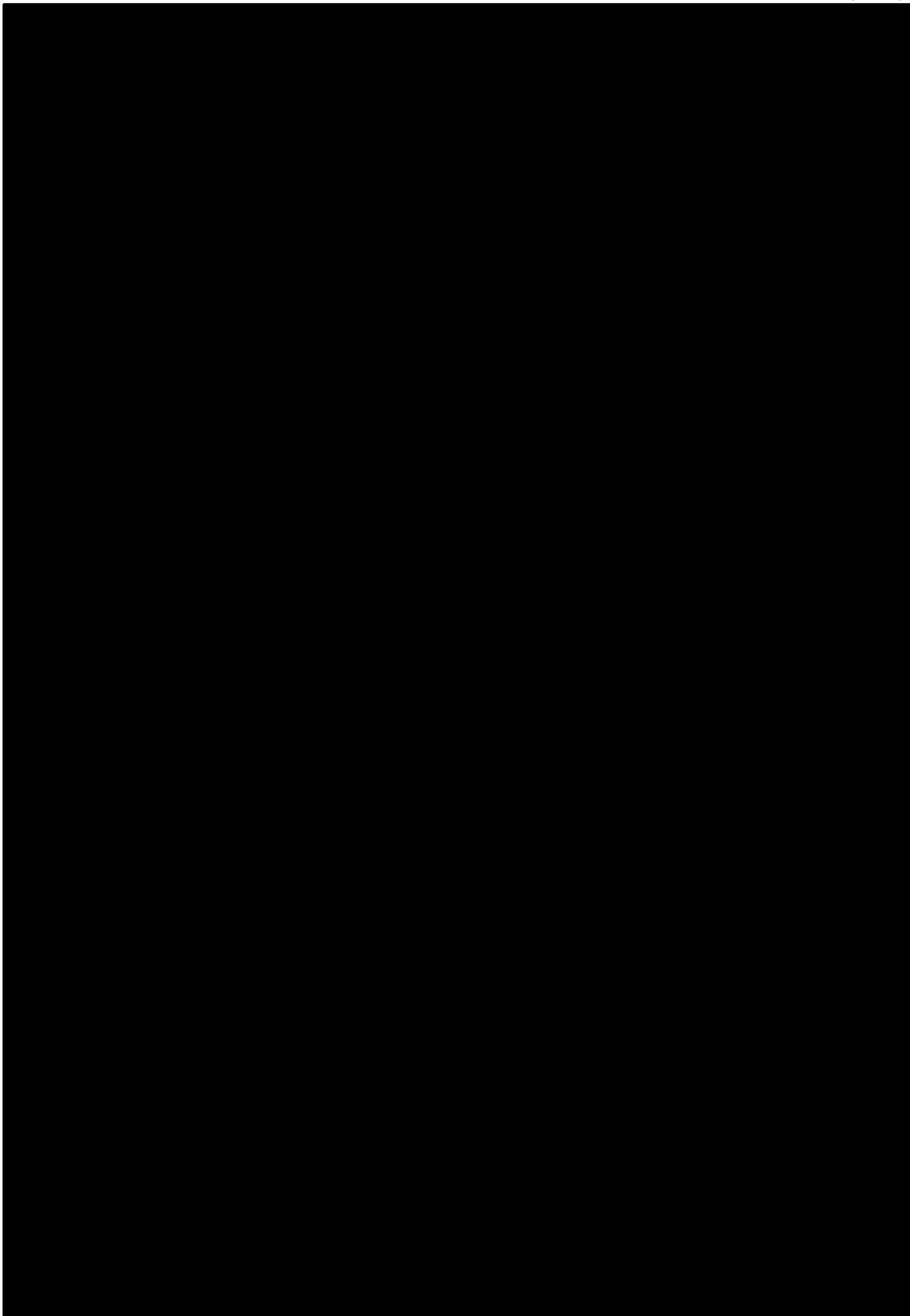


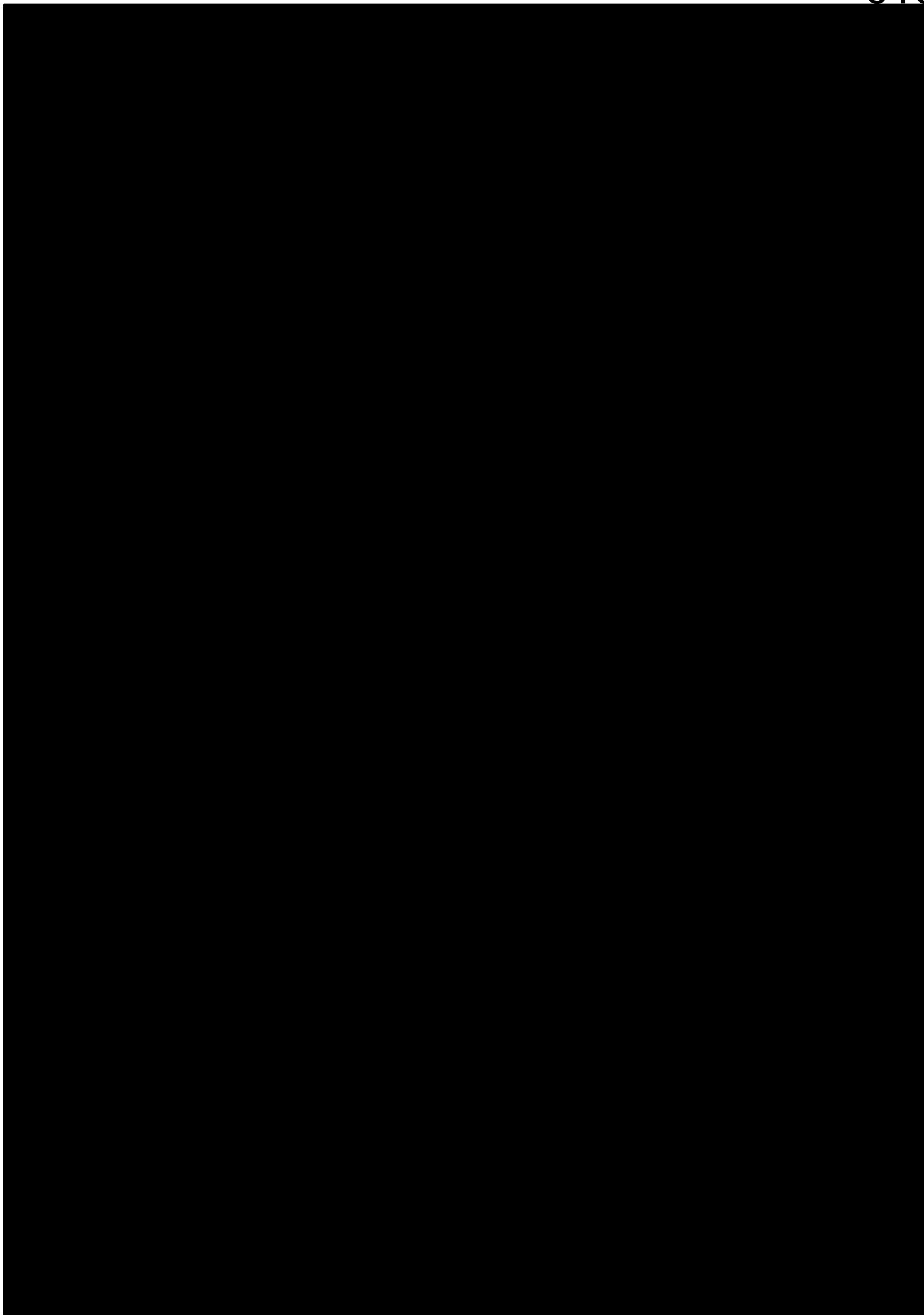


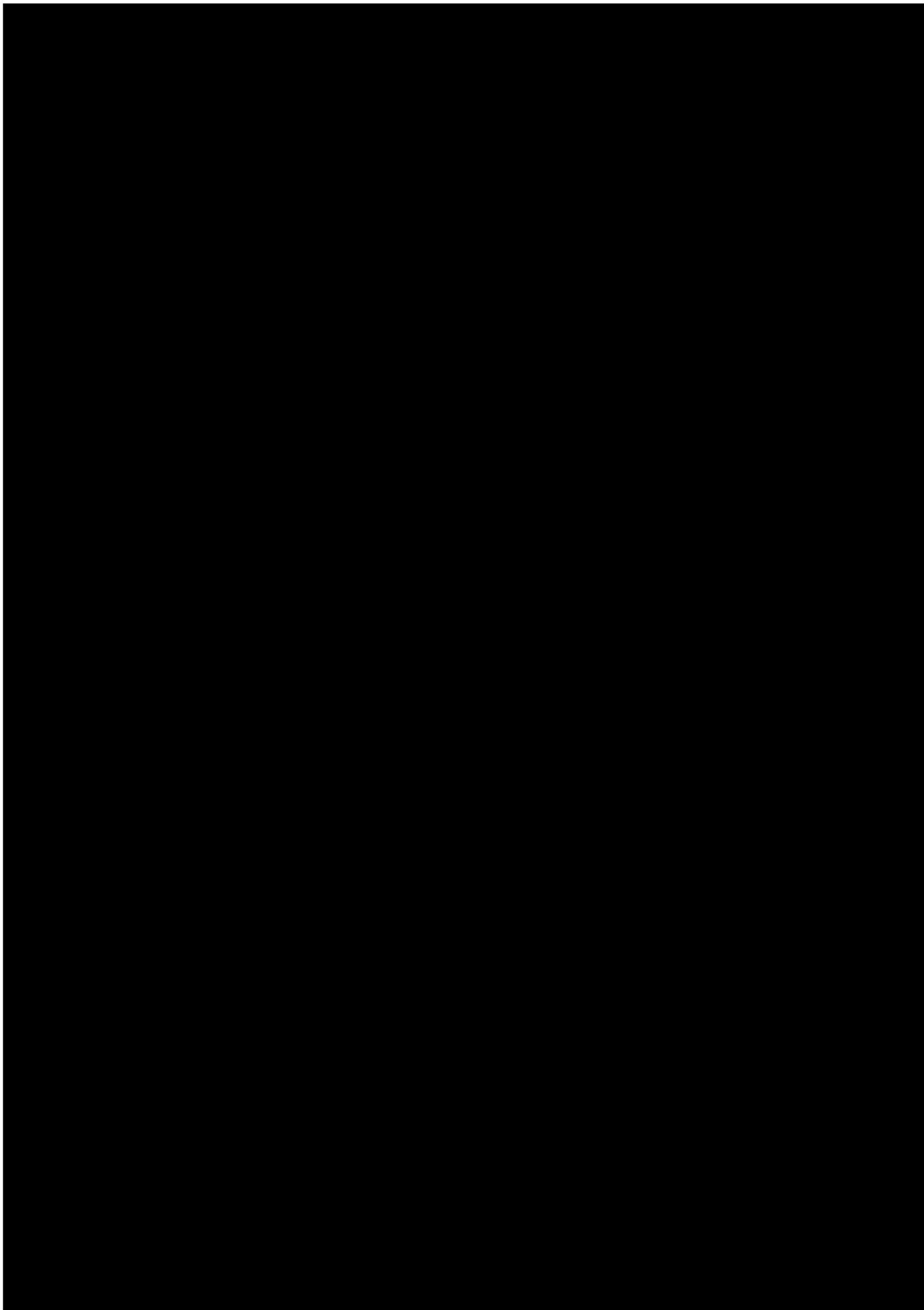


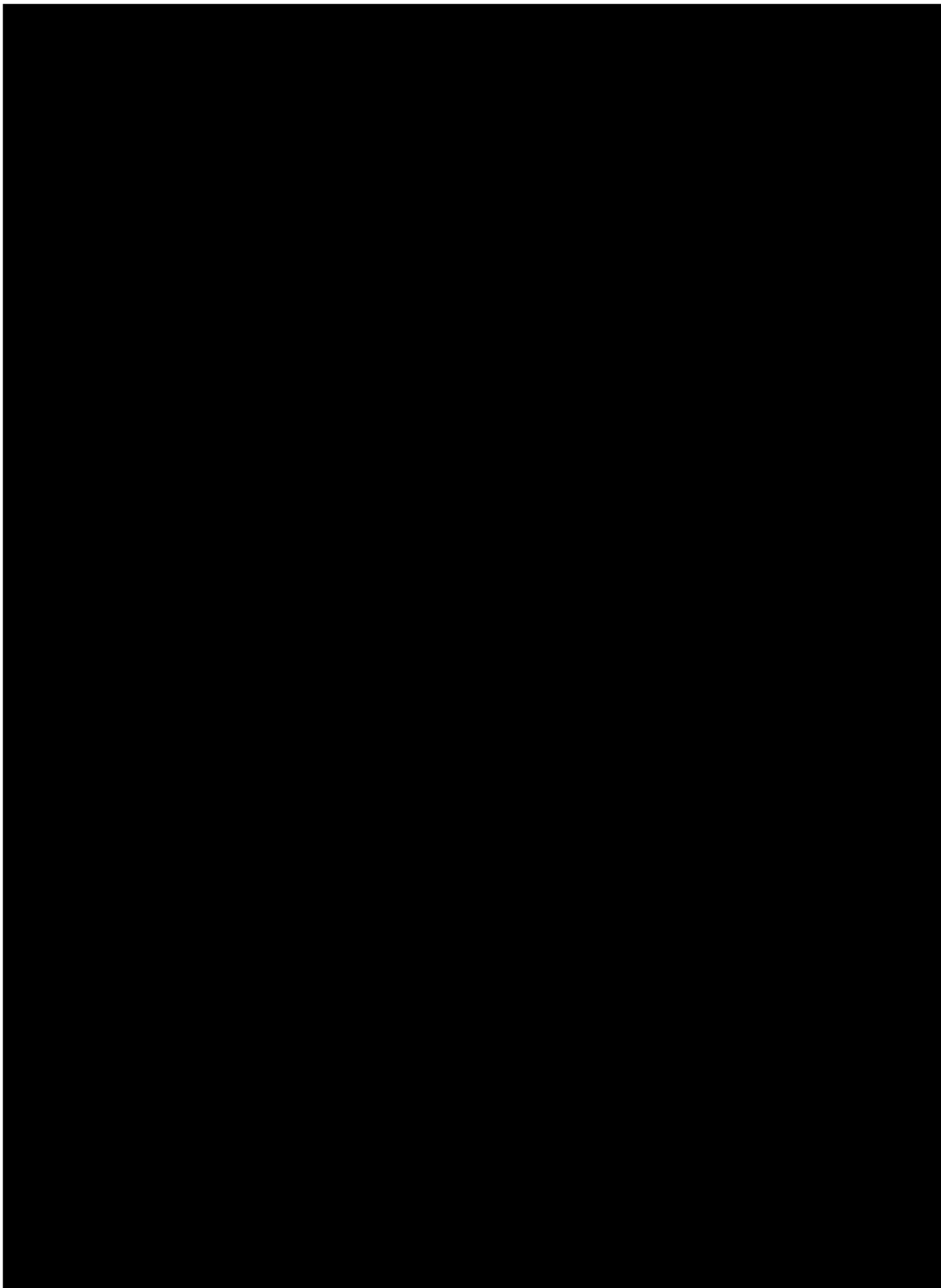


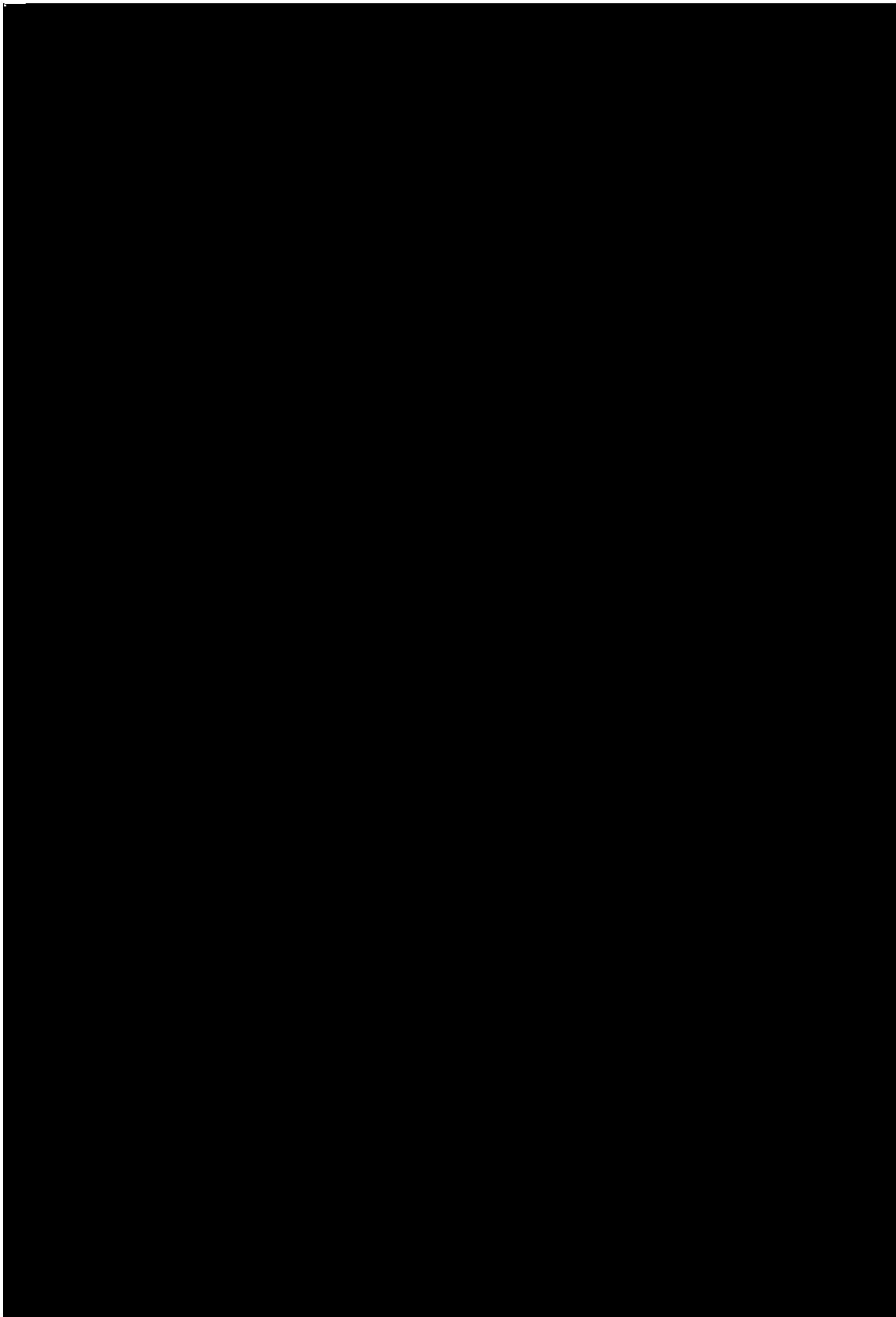


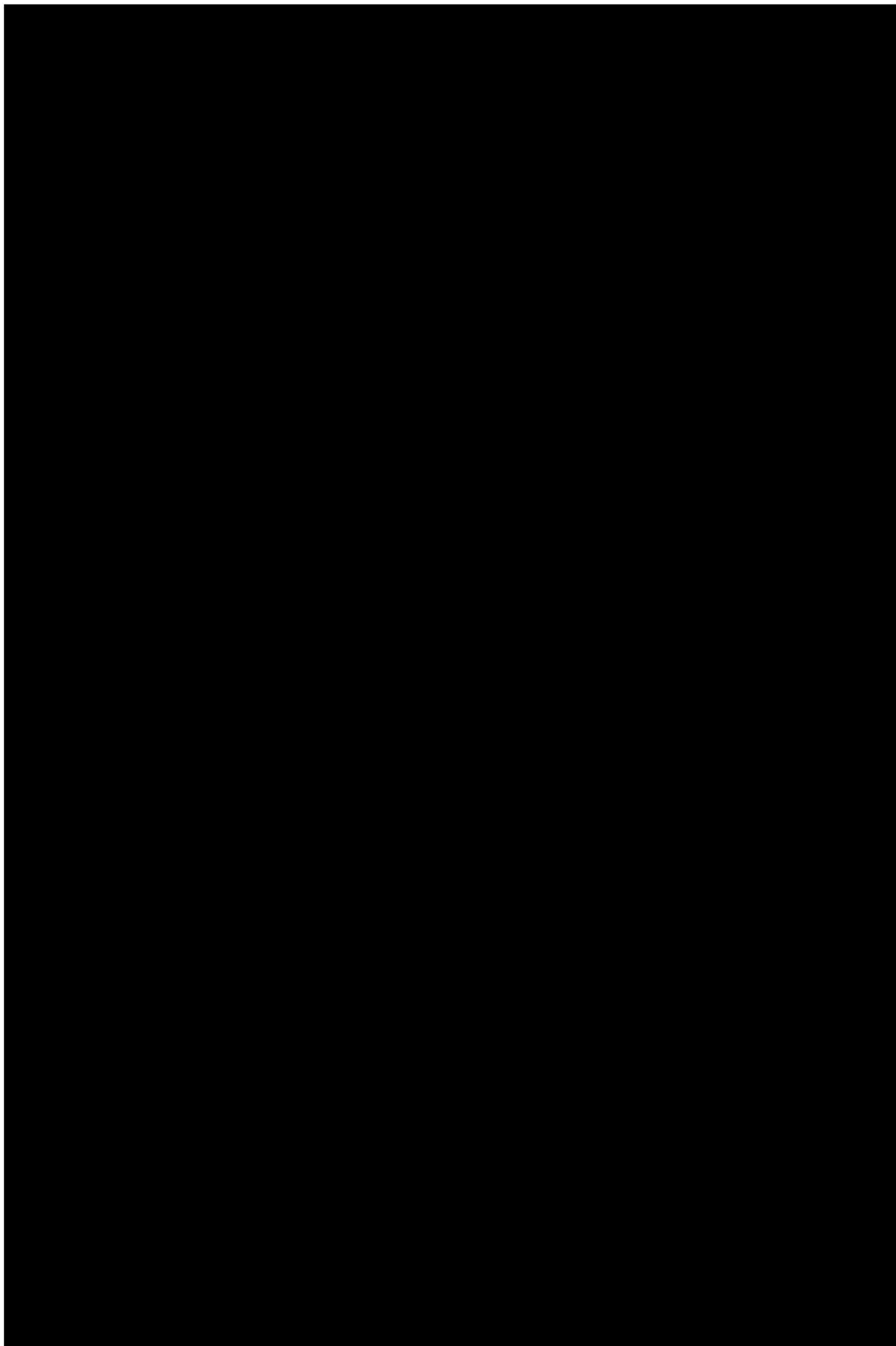


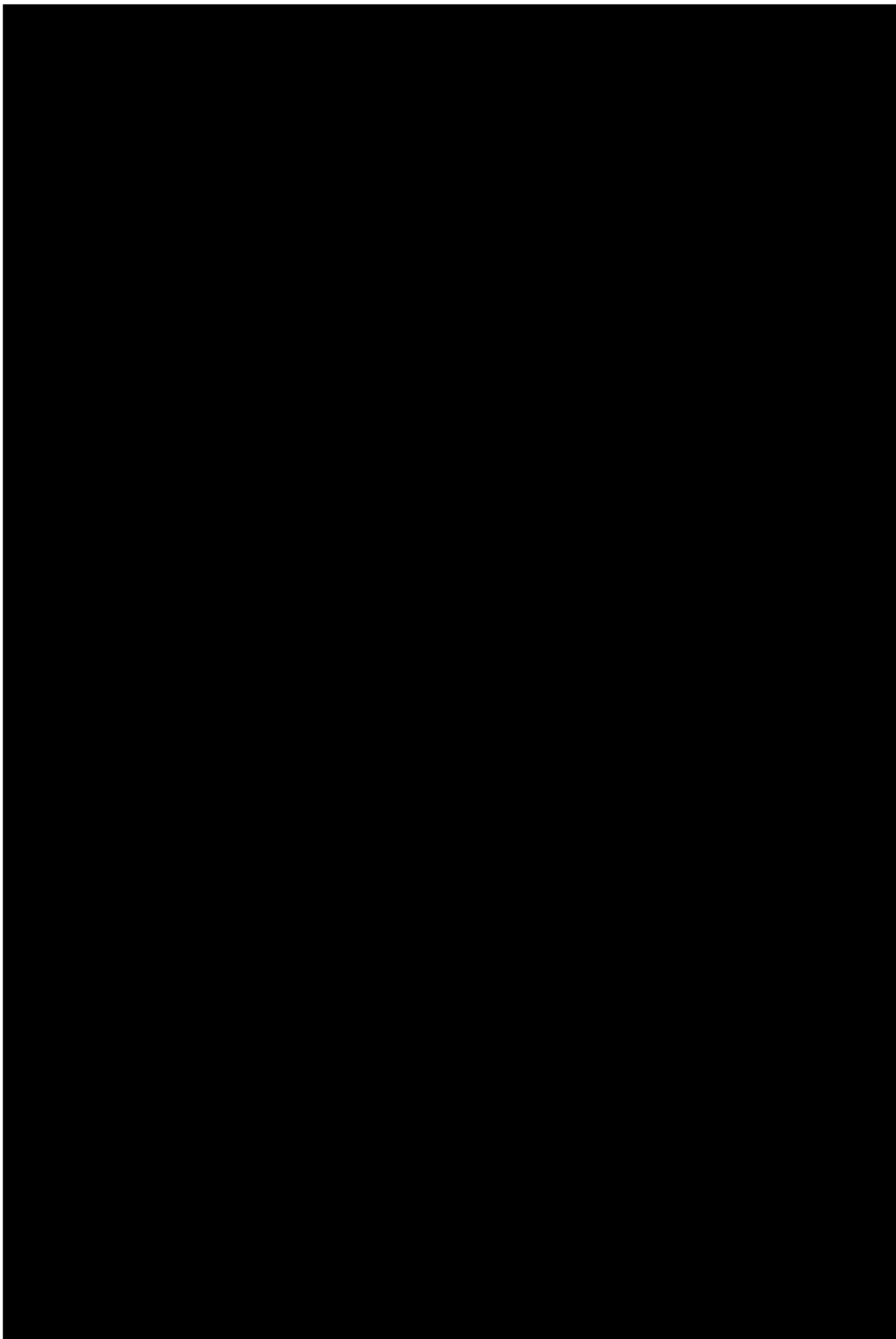


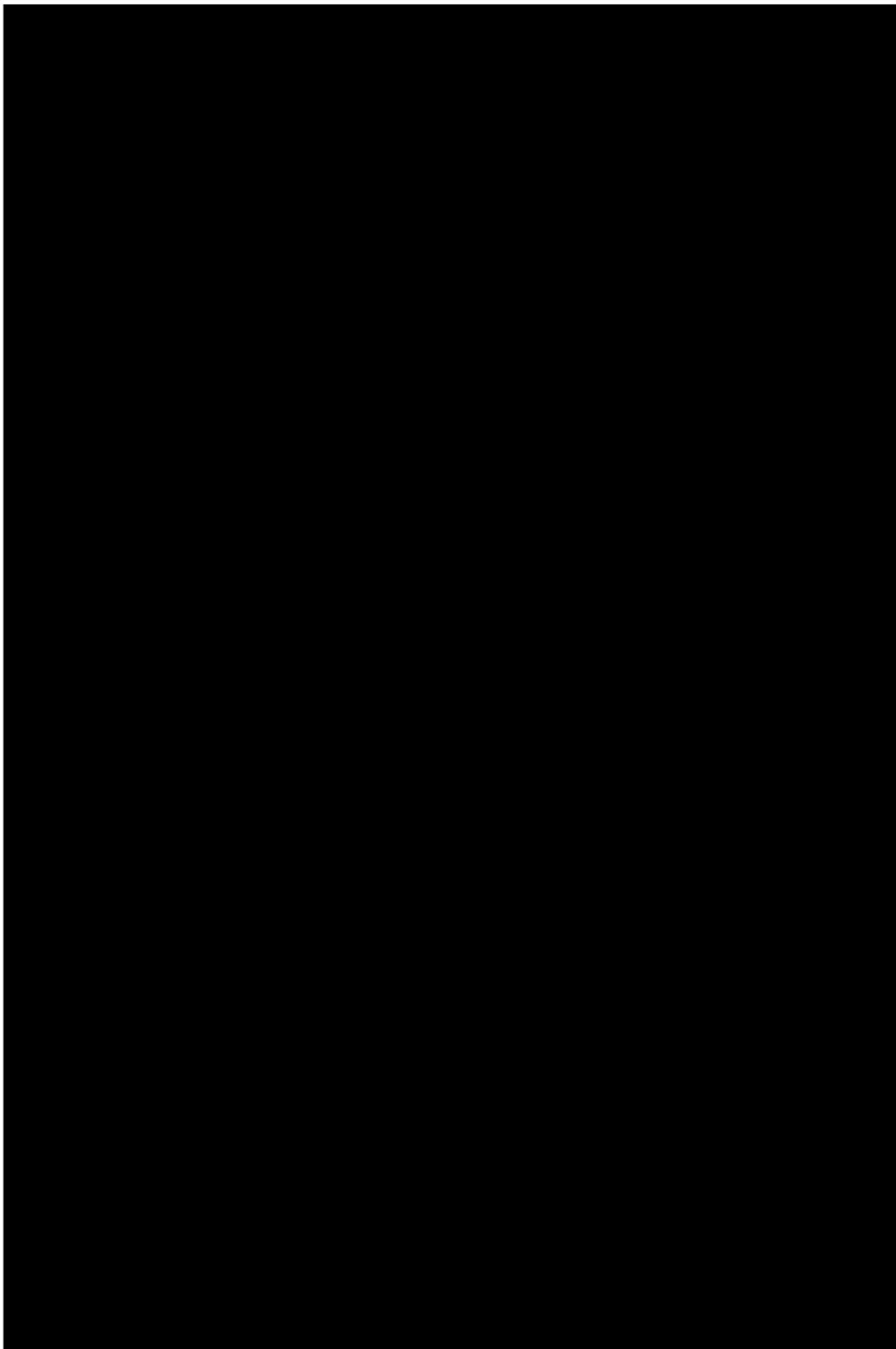


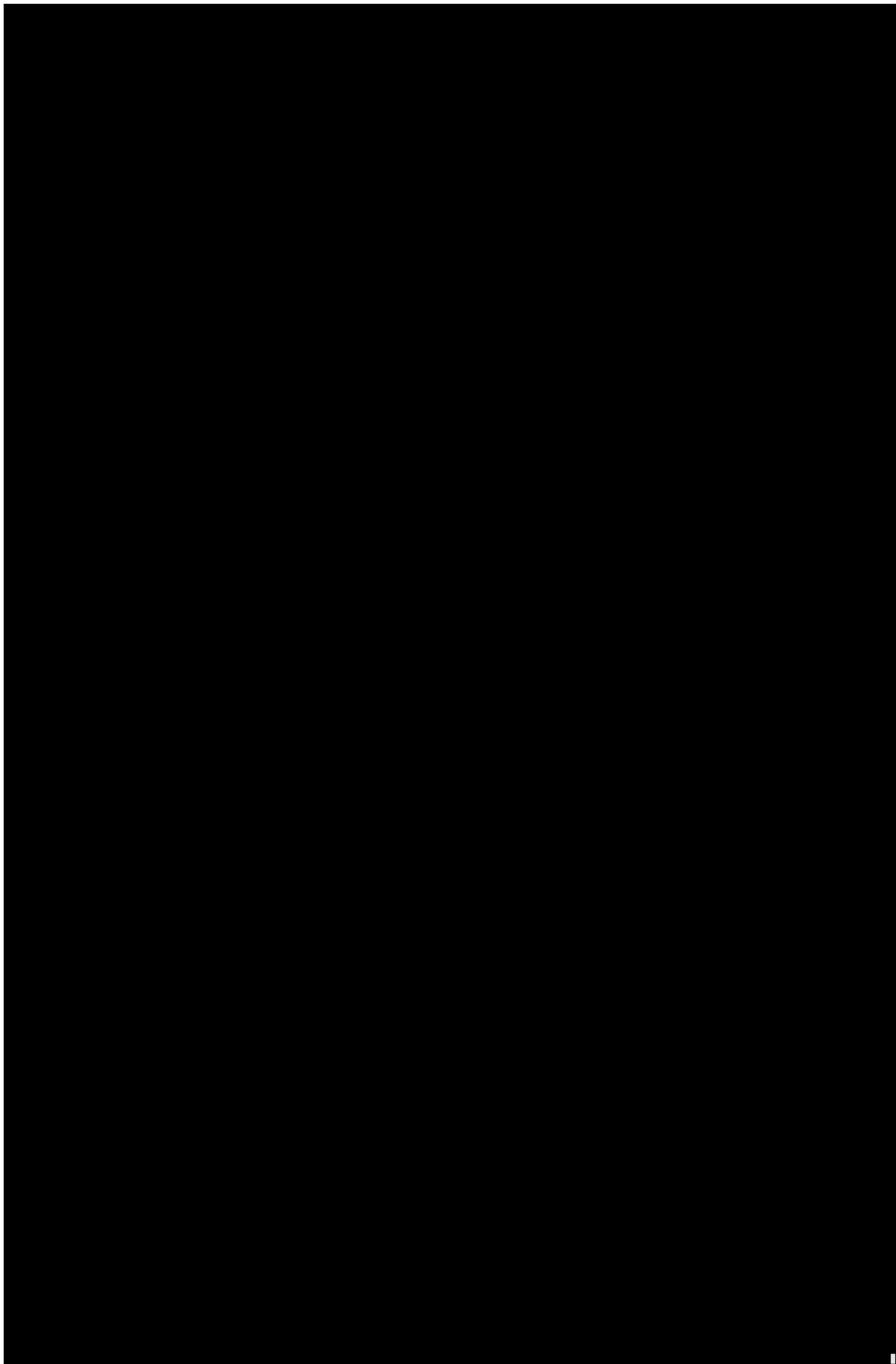


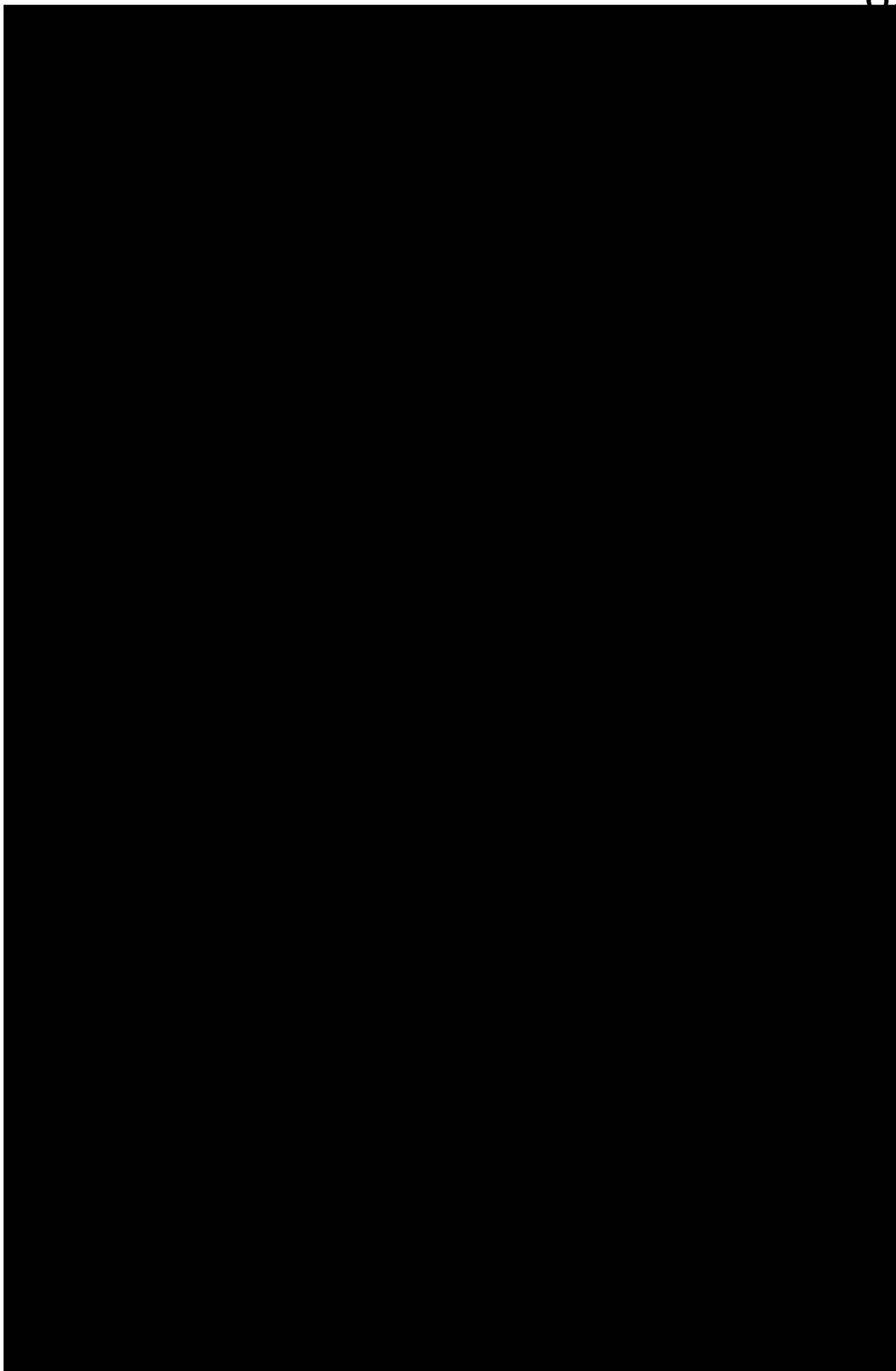


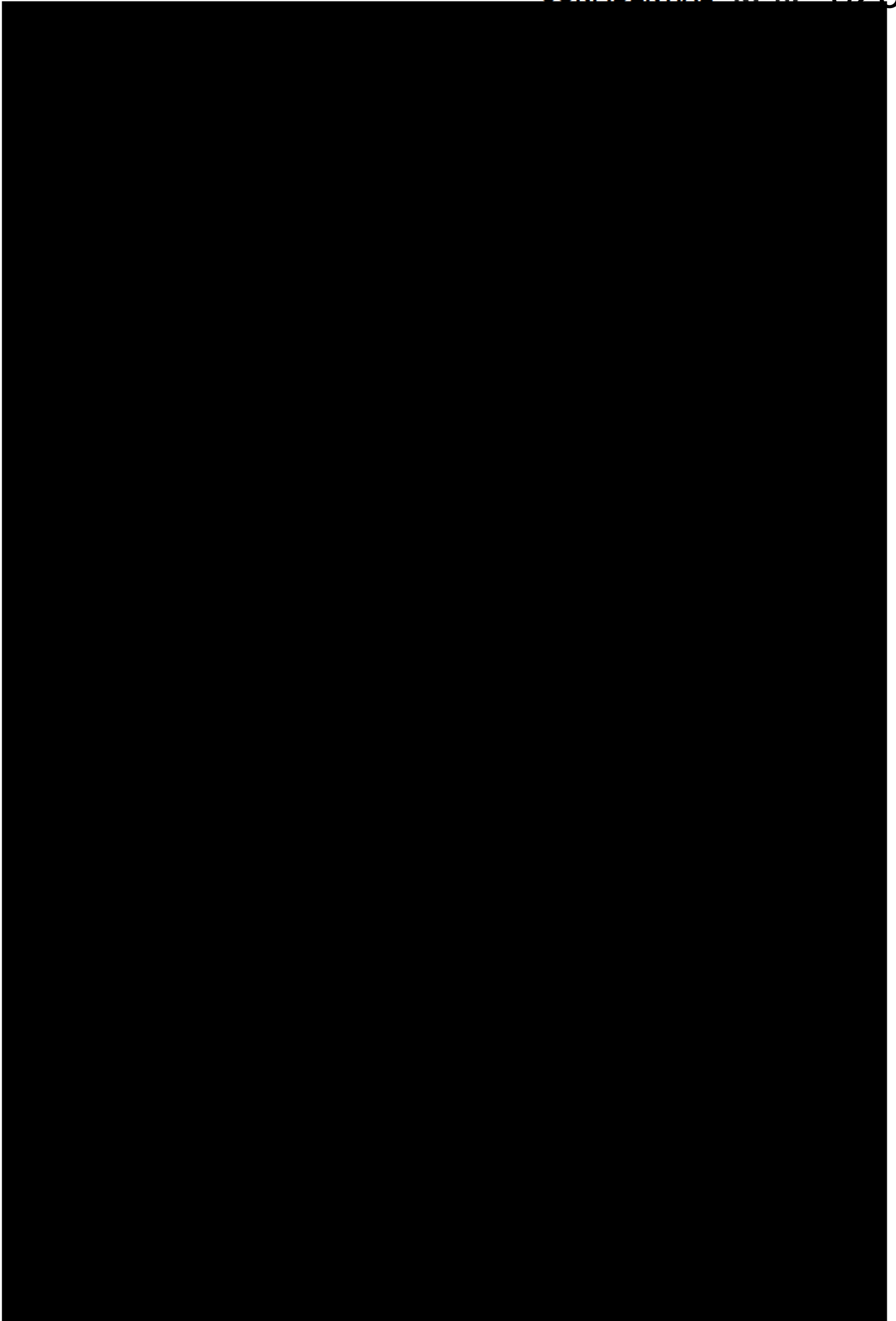














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Media24 says 400 jobs at risk as it mulls closing print editions of 5 newspapers

news24

Jan Cronje

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Receive News24 Business writer-at-large Carol Paton's articles about the political economy, state-owned enterprises and energy sector.

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Media24's head office in Cape Town (left) with William's Kloof (right) as seen from the city.

Media24 has announced that up to 400 employees may lose their jobs in a massive restructuring.

The media group said it is considering stopping print publications of five newspapers, and selling its community media portfolio and media logistics business.

Media24 CEO Ishmet Davidson said decades of declines in advertising and circulation have had a "devastating" impact on print publications.

For more financial news, go to the News24 Business front page.

Media24 has announced it is considering closing the print editions of five newspapers, selling its media logistics business, and offloading its community newspaper portfolio as it seeks to build a "fully digital" future.

The media group said the grand restructuring could result in 400 job losses, with another 400 positions transferring to other companies.

Media24 CEO Ishmet Davidson made the announcements at a town hall meeting with staff on Tuesday.

The last day of publication for the newspapers is expected to be 30 September

Handwritten scribbles

devastating impact on print operations."

Some of the main interventions announced by Davidson include:

Ending the print editions of Beeld, Rapport, City Press, Daily Sun, and Soccer Laduma;

Stopping publishing the digital editions of Volksblad and Die Burger Oos-Kaap;

Shutting the digital hub SNL24;

Transitioning Rapport, City Press and Daily Sun into "digital-only brands"; and

Selling media logistics business On the Dot and Media24's community newspaper portfolio to Novus Holdings.

Davidson said that Media24 titles in the north of South Africa had been on "life support for a while".

"Combined losses are projected to amount to R200 million over the next three years. After years of cut-backs, we've reached the end of cost reductions to try to save these print operations. We've simply run out of options," he said.

He said the time to restore Media24's business was "now".

The group's remaining viable brands will go "fully digital", which will strengthen the media group's main digital news brands, News24 and Netwerk24, he said.

He added:

Over the past financial year, their combined subscribers grew by 19% year-on-year to more than 200 000. That's far more than the combined circulation of all our print news titles.

Davidson said that Die Burger and Son in the Western Cape would not be impacted by the changes. Both are "marginally profitable".

"In addition, Die Burger holds great historical value as the foundation upon which Naspers was built," he said.

Davidson said the group plans to relaunch Daily Sun, currently part of SNL24, as a "standalone and free e-news site".

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 PO Box 41162, Craighall, 2024, South Africa

Mr Ishmet Davidson
Media24

And

Mr Andre van der Veen
Novus Holdings Limited

By email:

3 July 2024

Dear Mr Davidson and Mr van der Veen

RE: NOVUS HOLDINGS LIMITED's ("Novus") ACQUISITION OF ON THE DOT AND THE PORTFOLIO OF COMMUNITY NEWSPAPER TITLES OF MEDIA24 HOLDINGS LIMITED ("Media24")

1. We represent Capital Newspapers (Pty) Ltd ("**Capital Newspapers**") and Caxton & CTP Publishers & Printers Limited ("**Caxton**") and address this letter to you on their behalf.
2. Our clients have very significant concerns about the recently announced sale of On The Dot and various community newspapers to Novus which forms a composite part of and is inextricably linked to Media24's announced restructuring of its newspaper publishing business (which also entails the discontinuation of a number of titles and it ceasing to print certain other titles) ("**the composite transaction**").
3. Our clients have publicly explained that they believe that there are significant concerns relating to the composite transaction, both of a competition nature and from a public interest perspective. Certain aspects of these concerns have been echoed by a large number of former editors of the Media24 publications including Mr Ton Vosloo, the former chair of Naspers.
4. It appears that Media24 is intent on implementing certain aspects of the composite transaction prior to 1 October 2024 which includes completing the retrenchment of potentially more than 400

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Directors: Anthony Norton Anton Roets Paul Russell Michelle Rawlson Warwick Radford Nicola Ilgner

Vice President Economics: Avias Ngwenya

Senior Associates: Nicci van der Walt Nina Greyling Melissa Steele

Company Registration Number: 2009/006902/21 VAT Registration Number: 4510252580

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people as well as ceasing to print the various titles (such as The Daily Sun, Soccer Laduma, The City Press, Rapport and Die Beeld). The potential harm to the newspaper publishing sector arising from these steps is very significant.

5. In the circumstances, our clients require the following undertakings to be provided by Media24 and Novus:
 - 5.1. That the composite transaction (including all interrelated actions and steps) will be notified to the Commission as a merger; and
 - 5.2. That no further steps will be taken to implement any aspect of the composite transaction (including the termination of printing any of Media24 titles or the retrenchment of any Media24 employees arising from the announced restructuring process, including any employees providing services to the On the Dot or in relation to any of the titles) unless and until the composite transaction is approved by the Competition Authorities.
6. We look forward to hearing from you in this regard prior to close of business on Thursday 4 July 2024 failing which our client will take the appropriate action in this regard.

Sincerely,

[Unsigned due to electronic transmission]

Anthony Norton / Anton Roets / Michelle Rawlinson / Avias Ngwenya
NORTONS INC.

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Nortons Inc.

D Chetty / W Graaff our ref
2024Mar0044 your ref
04 July 2024 date

**Attention: Anthony Norton / Anton Roets / Michelle Rawlinson /
Avias Ngwenya**

Per email: anthony@nortonsinc.com / anton@nortonsinc.com /
michelle@nortonsinc.com / avias@nortonsinc.com

Dear All

RE: PROPOSED TRANSACTION INVOLVING MEDIA24 (PTY) LTD AND NOVUS

1. We have been appointed as the legal representatives to act on behalf of Media24 (Pty) Ltd ("Media24"), Novus Holdings Limited ("Novus") and their respective groups (collectively referred to as "our Clients") regarding a proposed transaction.
2. We refer to your letter of 3 July 2024 addressed to our Clients and would be grateful if all future correspondence in relation to this matter could be directed to us.
3. We note the contents of your letter and do not intend to respond to the various allegations set out therein at this time.
4. We are instructed to inform you that your clients may rest assured that our Clients are taking legal advice on the proposed transaction and their full compliance with all applicable regulatory and labour law requirements, including by submitting the requisite merger notification to the competition authorities in due course. This is in accordance with numerous public statements already made by Media24.
5. Our Clients' rights remain fully reserved.

Yours sincerely

ENS

Derushka Chetty / Wade Graaff

[Transmitted electronically without signature]

Handwritten signature and initials in black ink, including a large signature and the initials 'CV' and 'D'.



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Derushka Chetty and Wade Graaff
ENS Africa

By email

7 July 2024

Dear Derushka and Wade

RE: NOVUS HOLDINGS LIMITED's ("Novus") ACQUISITION OF ON THE DOT AND THE PORTFOLIO OF COMMUNITY NEWSPAPER TITLES OF MEDIA24 HOLDINGS LIMITED ("Media24")

1. We refer to your letter of 4 July 2024 in which you indicate that you represent Novus and Media24 and their respective groups, and that you have been requested by your clients to respond to our letter of 3 July 2024.
2. The proposed transaction relates to the sale of On the Dot and the community newspapers to Novus which forms a composite part of and is inextricably linked to Media24's announced restructuring of its newspaper publishing business (which also entails the discontinuation of a number of newspaper titles and it ceasing to print and or publish certain other newspaper titles) ("**the composite transaction**"). The composite transaction will have a very significant and detrimental impact on the public interest generally, as well as on competition and the specific public interest factors set out in section 12A(3) of the Competition Act. It will also entail, as your client, Media24 has made plain, the retrenchment of a large number of employees (including journalists) of Media24 (potentially well in excess of 400). Your client's intended conduct will have a devastating effect on the newspaper publishing sector in South Africa, as many of the publishers are reliant on On the Dot for distribution of their newspapers.
3. It is clear to our clients, and confirmed by representatives of your client's affected employees, that your client, Media24, did not comply with its obligations in terms of section 189 of the Labour Relations Act to commence consulting its employees once it contemplated retrenchments. In addition, your client has on several occasions in the past failed to notify mergers to the competition

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Directors: Anthony Norton Anton Roets Paul Russell Michelle Rawlinson Warwick Radford Nicola Ilgner

Vice President Economics: Avias Ngwenya

Senior Associates: Nicci van der Walt Nina Greyling Melissa Steele

Company Registration Number: 2009/006902/21 VAT Registration Number: 4510252580

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authorities. It is also plain from your client, Media24's announcements that it intends ceasing the printing and publishing of the relevant newspaper titles and concluding the retrenchment of its employees by 1 October 2024, if not before.

4. It is clear that doing so prior to the receipt of the approval of the competition authorities is a contravention of section 13A(3) of the Competition Act.
5. In these circumstances, given the significant impact that these steps would have on the newspaper publishing sector more generally, the customers of On the Dot as well as our clients specifically, and your client, Media24's employees, our clients required the following undertakings to be provided by Media24 and Novus:
 - 5.1. That the composite transaction (including all interrelated actions and steps as described below) will be notified to the Commission as a merger; and
 - 5.2. That no further steps will be taken to implement any aspect of the composite transaction (which for the sake of clarity should be understood to include the termination or curtailment of printing and/or publishing and/ or distribution of any of Media24 newspapers or the retrenchment of any Media24 employees or the termination of service provider contracts and retail newspaper vendors contracts arising from the announced restructuring process, including any employees / service providers/ independent contractors providing services to On the Dot or in relation to any of the newspaper titles) unless and until the composite transaction is approved by the competition authorities.
6. The response we received was, to put it politely, a non-response.
7. Your letter states that *"We are instructed to inform you that your clients may rest assured that our Clients are taking legal advice on the proposed transaction and their full compliance with all applicable regulatory and labour law requirements, including by submitting the requisite merger notification to the competition authorities in due course. This is in accordance with numerous public statements already made by Media24"*. This provides no assurance to our clients whatsoever. To the contrary, the fact that your clients have refused to provide the straight-forward

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and unequivocal commitments sought in our letter is a clear indication that your clients intend proceeding with implementing aspects of the composite transaction prior to the receipt of the approval of the competition authorities.

8. In view of the above, will you confirm the following:
- 8.1. That, in the event that your clients do not provide the undertakings sought in our letter of 4 July 2024, as further clarified in this letter before the close of business on Tuesday, 9 July 2024, you are authorised on behalf of Novus and Media24 to accept service of an application to be launched by our clients;
- 8.2. Whether you are also authorised to accept service of the application on behalf of Mr Koos Bekker and Naspers (and if not which firm is so authorised);
- 8.3. When your client(s) intend(s) completing the process that has commenced in terms of section 189 of the Labour Relations Act in relation to the retrenchment of relevant employees as announced by your client; and
- 8.4. The precise date on which your client, Media24, will curtail or cease printing and/ or publishing and/or distributing the relevant newspaper titles.
9. Our clients' rights are fully reserved.

Kind regards,

[Unsigned due to electronic transmission]

Anthony Norton / Anton Roets / Michelle Rawlinson / Avias Ngwenya
NORTONS INC.

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Nortons Inc.**Attention: Anthony Norton / Anton Roets / Michelle Rawlinson /
Avias Ngwenya**Per email: anthonyv@nortonsinc.com / anton@nortonsinc.com /
michelle@nortonsinc.com / avias@nortonsinc.com

D Chetty / W Graaff our ref
09 July 2024 your ref
date

Dear All

**RE: PROPOSED TRANSACTION INVOLVING MEDIA24 (PTY) LTD AND THE NOVUS GROUP OF
COMPANIES ("OUR CLIENTS")**

1. We refer to your letter of 7 July 2024.
2. Our Clients note the contents of your letter and do not intend to respond to the various allegations set out therein, save to indicate that they vehemently disagree with your client's continuing negative and incorrect characterisation of the proposed transaction.
3. We are instructed to inform you as follows:
 - 3.1. As indicated in our previous letter, our Clients are seeking legal advice on the proposed transaction and their full compliance with all applicable regulatory and labour law requirements;
 - 3.2. In this regard, and as also indicated in our previous letter, a merger notification will be submitted to the Competition Commission in due course;
 - 3.3. Your clients will thus have an opportunity to make any relevant submissions during the competition process at the relevant stage, if permitted by the competition authorities;

law | tax | forensics | IP

Edward Nathan Sonnenbergs Incorporated registration number 2005/018200/21

M.M. Katz (chairman) M. Mgudlwa (chief executive) M.W. Matlou (chief operating officer) Y.A. Mendelsohn (chief operating officer)

a list of directors is available on our website ENSafrica.com/letterheadSA

level 1 BBBEE rating



- 3.4. At no point has there been any indication to your clients or the industry that existing distribution arrangements for publishers will cease; and
- 3.5. Media 24 will not implement any retrenchments until such time as competition approval is received.
4. Notwithstanding the foregoing, the contents of this letter should not be misconstrued as a concession of any nature.
5. Given that your clients are also competitors of our Clients, it is highly irregular for the merging parties to be asked to disclose details of a proposed transaction in a manner that is not in accordance with competition law principles. With respect, given the status of the proposed transaction, our Clients consider that should you wish to pursue any legal application, it would be both premature and an abuse of any legal process. We nevertheless hold instructions to confirm that the writers of this letter are authorised to accept service of any legal applications for the parties named in your letter dated 7 July 2024.
6. Our Clients' rights remain reserved.

Yours sincerely

ENS

Derushka Chetty / Wade Graaff

[Transmitted electronically without signature]

Handwritten signature and initials in the bottom right corner of the page.

ENS
The MARC Tower 1
129 Rivonia Road Sandton
Johannesburg South Africa 2196
P O Box 783347 Sandton South Africa 2146
Docex 152 Randburg
tel +2711 269 7600
info@ENSafrica.com
ENSafrica.com

Nortons Inc.

Attention: Anthony Norton / Anton Roets / Michelle Rawlinson /
Avias Ngwenya

Per email: anthony@nortonsinc.com / anton@nortonsinc.com /
michelle@nortonsinc.com / avias@nortonsinc.com

Dear All

D Chetty / W Graaff our ref
10 July 2024 your ref
date

RE: PROPOSED TRANSACTION INVOLVING MEDIA24 (PTY) LTD ("MEDIA24") AND THE NOVUS
GROUP OF COMPANIES ("NOVUS")

1. We refer to your letter of 10 July 2024.
2. We wish to reiterate the point made in our previous letter that the contents of all previous correspondence, including this letter should not be misconstrued as a concession of any nature.
3. In this regard, and for the avoidance of doubt that, we note that the statements (with reference to paragraphs 2 and 3 of your letter of 10 July) made by Media 24 in paragraph 3.5 of our letter of 9 July do not apply to its broader business but are limited to the businesses to be sold as part of the proposed transaction with Novus as well as the separate proposed closures by Media24 of the relevant newspaper print titles.
4. In addition, our instruction is to inform you that Media24 does not intend to cease printing the relevant newspaper titles until the end of the relevant competition process.
5. Our clients' rights remain fully reserved.

Yours sincerely

ENS

Derushka Chetty / Wade Graaff

[Transmitted electronically without signature]

law | tax | forensics | IP

Edward Nathan Sonnenbergs Incorporated registration number 2006/018200/21

M.M. Katz (chairman) M. Mgudlwa (chief executive) M.W. Matlou (chief operating officer) Y.A. Mendelsohn (chief operating officer)

a list of directors is available on our website ENSafrica.com/letterheadSA

level 1 BBBEE rating



IN THE COMPETITION APPEAL COURT OF SOUTH AFRICA

CASE NO: 259/CAC/OCT24

In the matter between:

CAPITAL NEWSPAPERS (PTY) LTD	First Applicant
CAXTON & CTP PUBLISHERS & PRINTERS LIMITED	Second Applicant
and	
MEDIA24 HOLDINGS LIMITED	First Respondent
NOVUS HOLDINGS LIMITED	Second Respondent
NOVUS PRINT PROPRIETARY LIMITED	Third Respondent
FREE 4 ALL PROPRIETARY LIMITED	Fourth Respondent
INTREPID PRINTERS PROPRIETARY LIMITED	Fifth Respondent
VICTORY TICKET 376 PROPRIETARY LIMITED	Sixth Respondent
MEDIA24 PROPRIETARY LIMITED	Seventh Respondent
THE COMPETITION COMMISSION	Eighth Respondent
THE MINISTER OF TRADE, INDUSTRY AND COMPETITION	Ninth Respondent

CONFIRMATORY AFFIDAVIT

I, the undersigned,

ANDRÉ VAN DER VEEN

do hereby make oath and state:

1. I am an adult male and the Chief Executive Officer of Novus Holdings Limited, the second respondent in these proceedings. I am duly authorised to depose to this affidavit on behalf of the second to sixth respondents.

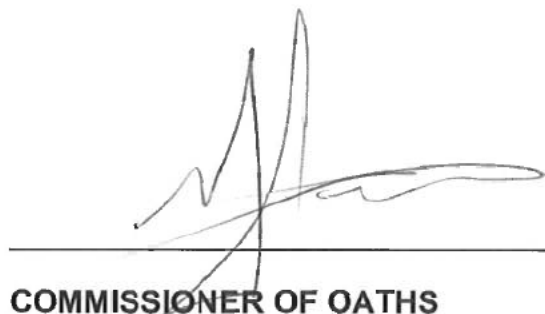


2. The content of this affidavit is, save where the context indicates to the contrary, within my personal knowledge and is to the best of my belief both true and correct.
3. I have read the answering affidavit of Omichand "Raj" Lalbahadur to which this confirmatory affidavit is annexed and I confirm the contents thereof insofar as they relate to the second to sixth respondents.



ANDRÉ VAN DER VEEN

I hereby certify that the deponent knows and understands the contents of this affidavit and that it is to the best of his knowledge both true and correct. This affidavit was signed and sworn to before me at Stellenbosch on this the 18th day of November, and that the Regulations contained in Government Notice R.1258 of 21 July 1972, as amended, have been complied with.



COMMISSIONER OF OATHS

Full names:

Address:

Capacity:

COMMISSIONER OF OATHS
TAARIQ AHMED
Ex Officio: Chartered Accountant (S.A.)
3 Meson Street, Technopark
Stellenbosch 7600, South Africa

IN THE COMPETITION APPEAL COURT OF SOUTH AFRICA

CASE NO: 259/CAC/OCT24

In the matter between:

CAPITAL NEWSPAPERS (PTY) LTD	First Applicant
CAXTON & CTP PUBLISHERS & PRINTERS LIMITED	Second Applicant
and	
MEDIA24 HOLDINGS LIMITED	First Respondent
NOVUS HOLDINGS LIMITED	Second Respondent
NOVUS PRINT PROPRIETARY LIMITED	Third Respondent
FREE 4 ALL PROPRIETARY LIMITED	Fourth Respondent
INTREPID PRINTERS PROPRIETARY LIMITED	Fifth Respondent
VICTORY TICKET 376 PROPRIETARY LIMITED	Sixth Respondent
MEDIA24 PROPRIETARY LIMITED	Seventh Respondent
THE COMPETITION COMMISSION	Eighth Respondent
THE MINISTER OF TRADE, INDUSTRY AND COMPETITION	Ninth Respondent

CONFIRMATORY AFFIDAVIT

I, the undersigned,

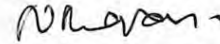
NICOLA MARIELISE THERON

do hereby make oath and state:

1. I am an adult female and an affiliate at FTI Consulting. I am an expert in the field of competition economics and attach my *curriculum vitae* as Annexure "NT1" hereto.

NT
LH

2. The content of this affidavit is, save where the context indicates to the contrary, within my personal knowledge and is to the best of my belief both true and correct.
3. I have read the answering affidavit of Omichand "Raj" Lalbahadur to which this confirmatory affidavit is annexed. I confirm the correctness of all of the economic theory that underpins that affidavit. More specifically, I confirm the economics referred to or relied upon (whether directly, indirectly and/or impliedly) in each of paragraphs 182, 183, 184, 185, 186, 187, 188, 189, 190 and 199 (including sub-paragraphs) of the answering affidavit.



NICOLA MARIELISE THERON

I hereby certify that the deponent knows and understands the contents of this affidavit and that it is to the best of her knowledge both true and correct. This affidavit was signed and sworn to before me at November on this the 18th day of November, and that the Regulations contained in Government Notice R.1258 of 21 July 1972, as amended, have been complied with.



COMMISSIONER OF OATHS

Full names:

LUKE AIDEN MAGERMAN

Address:

**2nd Floor, Block B, De Wagenweg
Office Park, Stellantia Street, Stellenbosch**

Capacity:

**COMMISSIONER OF OATHS
PRACTISING ATTORNEY R.S.A**



Nicola Marielise Theron

Curriculum Vitae

Contact Details:
 12 Faber Street, Brandwacht, Stellenbosch, 7600
 Mobile: 083 635 6318
Nicola.Theron@fticonsulting.com

ACADEMIC AFFILIATIONS:

Extraordinary Professor, Department of Economics, Stellenbosch University.
 Affiliated Faculty at the Centre for Competition Law and Economics (CCLE), Stellenbosch University.

QUALIFICATIONS:

Masters Economics, Pretoria University (*cum laude*);
 PhD Economics, Stellenbosch University.

CAREER DETAILS:

November 2021 – present: **Affiliate FTI Consulting.**

March 2019 – October 2021: **Senior Managing Director, FTI Consulting.**

January 2005 – February 2019: **Managing Director, Econex.**

October 2012 – present: **Extraordinary Professor of Economics, Stellenbosch University.**

April 2008 – February 2010: Part-time member of the **Competition Tribunal of SA.**

January 1997 – December 2004: **Lecturer and Senior Lecturer of Economics, Stellenbosch University.**

Introduction and Overview:

My professional career to date has straddled the world of consulting and academia. As a professional economist I have been involved in the practical application and policy aspects of Competition Economics in South Africa since the introduction of the new Competition Act in 1998. I started my career as a full time academic in 1997, and then moved to full time consulting during the early 2000's, but has maintained a part-time position as Extraordinary Professor of Economics, at Stellenbosch University. At Stellenbosch University, I developed a new graduate course in Industrial Economics, aimed at preparing economic students for a career in competition economics. I currently present this course annually, as well as an undergraduate course in Competition Policy.

In addition to Competition Economics, my work has focussed on economic analyses in the sectors of the economy in which regulation plays a central role, e.g. telecommunications, energy, health, etc. I have analysed many important policy changes in these sectors, from an economic point of view.

In the **healthcare sector**, I have been involved with research on e.g. pharmacy price regulations, hospital licencing, tariff determination, and doctor training and employment, and also as expert economist for one of the large hospital groups in the Competition Commission's Health Market Inquiry.

In the **energy sector**, I have looked at issues such as petroleum pipeline tariff methodologies, vertical integration and pricing, clean fuels levies, impact assessment of new petroleum storage facilities, etc. In the **telecoms sector**, my work has been instrumental in the introduction of asymmetric mobile termination rates for smaller mobile network operators. I have also provided detailed analyses of the consolidation and ongoing convergence in this sector, for many of the main players. I have presented oral evidence to the Department of Telecommunications and Postal Services and Parliamentary Portfolio Committee on Telecommunications on the proposed amendments to the Electronic Communications Act, to the Competition Commission's Data Services Market Inquiry, as well as the ICASA Broadband Inquiry.

In the **trade field**, I have conducted economic impact analyses of the effects of anti-dumping duties, import tariffs and export restrictions.

Nicola Marielise Theron

I have consulted for private companies as well as, on occasion for the relevant regulator. I have provided **expert economic evidence** on many occasions before various regulators, including the **Competition Tribunal** (various matters), the National Energy Regulator of SA (NERSA) on petroleum pipeline tariffs, the Independent Communications Authority of SA (ICASA), the International Trade Administration Commission (ITAC) and the Department of Health. I also served as a **part-time member** of the **Competition Tribunal** during 2008-2009.

Most notable competition cases in which I have provided expert economic testimony before the Competition Tribunal includes: a) Abuse of Dominance case against **Senwes** (for the Commission), b) the Large merger between **Primedia and Kaya FM** (for the parties), c) Abuse of dominance case against **Batsa** (for Batsa), d) the large merger between **Mediclinic and Protector Health** (for the parties), e) Abuse of dominance case against **Computicket** (for Computicket), f) the large merger between **Mediclinic and Matlosana Health** (for the parties), g) the acquisition of Cambridge and Rhino stores by **Shoprite** (for the parties), h) the acquisition of **BCX by Telkom**, etc.

My work in competition policy has been recognised internationally and I have been identified as a leading expert economist by the Global Competition Review International Who's Who of Competition Lawyers & Economists for more than a decade.

In addition to my work in the private sector, I continue my academic work at the University of Stellenbosch, Economics Department. My academic duties include lecturing both undergraduate and graduate courses, supervising graduate students and publishing articles in academic journals. I also regularly speak at conferences.

Select Conferences, Seminars and Courses

"Excessive Pricing in Health". UCWG webinar. Presented the SA experience. 26 January 2021

"Price regulation and excessive pricing in time of crisis". CCRED webinar. 6 May 2020.

"Evidence based policy making – Health Market Inquiry Provisional Report". Paper presented at the annual conference of the Hospital Association of SA (HASA), Johannesburg, 2018.

"Impact of competition enforcement in the cement industry in South Africa". (with (and presented by) A van Niekerk). Paper prepared for the 10th annual conference on competition law, economics and policy, Cape Town, 2016.

"The Interface between Competition and Sector-Specific Regulation in the Telecommunications Industry: The Case of Mobile Termination Rates (MTRs)". Paper delivered at the Eighth Annual Competition Commission, Competition Tribunal Conference on Competition Law, Economics and Policy in South Africa. GIBS, 2014.

"The Interface between Regulation and Competition Law". Seventh Annual Conference on Competition Law, Economics and Policy, Sandton, 2013.

"Two sided markets: An application to Mobile Termination Markets. Paper delivered at the Fourth Annual Competition Commission, Competition Tribunal and Mandela Institute Conference on Competition Law, Economics and Policy in South Africa. Johannesburg, 2010.

"The effects-based approach to abuse of dominance competition enquiries: the recent BATSA/JTI case". Paper delivered at the Third Annual Competition Commission, Competition Tribunal and Mandela Institute Conference on Competition Law, Economics and Policy in South Africa. Pretoria, 2009.

"Economic lessons from the recent BATSA/JTI case". Paper delivered at the annual conference of the Economic Society of SA, Port Elizabeth, 2009.

"The Sasol/Engen (Uhambo) merger-what value did the economists add?" Paper delivered at the First Annual Competition Commission, Competition Tribunal and Mandela Institute Conference on Competition Law, Economics and Policy in South Africa. Wits-Johannesburg, 2007.

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Nicola Marielise Theron

"Market definition in hospital mergers – the interplay between regulatory and other barriers to entry in the SA private health care market". (with Petra Krusche). Paper delivered at the First Annual Competition Commission, Competition Tribunal and Mandela Institute Conference on Competition Law, Economics and Policy in South Africa. Wits-Johannesburg, 2007.

"Two-Sided Market Theory and Implication for Market Definition: SAA/Nationwide and Primedia Cases". (with Boshoff, W & Du Plessis, S.). Paper delivered at the First Annual Competition Commission, Competition Tribunal and Mandela Institute Conference on Competition Law, Economics and Policy in South Africa. Wits-Johannesburg, 2007

"Competition issues in vertically integrated telecommunications markets in SA" Paper delivered at the Nelson Mandela Institute Point of Convergence Workshop. Wits-Johannesburg, 2006.

"Demand for fuel products in SA" Presentation to SHELL, with L Ellis. Cape Town, 2006.

"Economic analysis in the UHAMBO merger". Presentation at the Investec/ Economic Society of SA forum, Cape Town, 2006.

"The macro-economic implications of the micro-economic role of telecommunications – the case of SA". Paper delivered at the Biennial Conference of the Economic Society of South Africa, Durban. 2005

"Telecommunication prices in SA". Paper delivered at the Women's Mutingati on the Information Society in Cape Town, 2005.

"Merger analysis in South Africa". Paper delivered at the European Association for Research in Industrial Economics annual conference in Madrid, Spain. September 2002

"Competition Policy: An application to South Africa". Paper delivered at the NIEP, Johannesburg. May 2001

"Money Supply Endogeneity in the SADC countries." Paper delivered at the sixth Post Keynesian Workshop, Knoxville, Tennessee. July 2000

"Anti-Dumping Procedures: What has South Africa learnt since the Uruguay Round?" Paper delivered at the EBM research conference, Cape Town. November 1998

"Anti-Dumping Procedures: Lessons for Developing Countries with special emphasis on the South African experience" Paper delivered at the ABAS international conference, Budapest, Hungary. July 1998

"Methodology for Evaluating Trade Policy" (with Marius Verwoerd). Paper delivered at the Trade and Industrial Policy Secretariat (TIPS) Workshop, Johannesburg. March 1998

"Public Works Programmes as an Employment Strategy". Paper delivered at the EBM Research Conference. Pretoria. November 1997

"Exchange Controls in Developing Countries, a comparative analysis". Paper delivered at the Biennial Conference of the Economic Society of South Africa, Potchefstroom. September 1997

UNIVERSITY SEMINARS: "Competition Policy in SA". Department of Economics, University of Stellenbosch. March 2001

"The nature of the money supply in the SADC countries". Department of Financial Economics, University of Gent, Belgium. September 2000

"Merger analysis in SA". Department of Mercantile Law, University of Stellenbosch. April 2000.

COURSES:

Attended a summer school in Italy (hosted by the University of Verona) on Competition Policy in Network Industries. July 2007.

PUBLICATIONS

CHAPTERS IN A BOOK:

"Chapters 1 – 3 An Introduction to trade theory, institutions for the promotion of trade and recent changes in the structure of trade protection in South Africa". TIPS & Board of Tariffs and Trade (BTT) Manual, 1999.

"Chapter 3: Anti-Dumping Procedures: Lessons for Developing Countries with Special Emphasis on the South African Experience", in Anti-Dumping: Global abuse of a trade policy instrument. Debroy, B & Chakraborty, D. (2007). Academic Foundation, Liberty Institute, Delhi.

LMH AT

Nicola Marielise Theron

"Chapter 25: Competition Policy in South Africa". Liberty Mncube and Nicola Theron. Oxford Handbook of the South African Economy, 2021.

JOURNAL ARTICLES:

"Can South Africa afford full liberalisation of exchange controls?" The South African Journal of Economics. 1998; 66(1).

"The Economics of Competition Policy: Merger Analysis in South Africa". The South African Journal of Economics. 2001:69(4).

"Vertical integration in South African telecommunications:

A competition analysis" (with WH Boshoff). The South African Journal of Economics. 2006:74(3).

"The Sasol/Engen (UHAMBO) merger-foreclosure and white fuel demand growth rates". South African Journal of Economic and Management Sciences. 2008; 11(3).

"When do vertical restraints harm competition? The economics-based approach and its application in the BATSA case" (with WH Boshoff). The South African Journal of Economics. 2011:79(3), pp. 330-345.

"Two-sided markets: an application to mobile termination in South Africa". (with J van Eeden). Journal of Economic and Financial Sciences. 2011: vol 4, pp. 183-201.

"Market concentration trends in South Africa's private healthcare sector" (with Marine Erasmus). South African Journal of Economic and Management Sciences, NS 19 (2016) No. 1:53-63.

"Regulatory ambiguity and policy uncertainty in the South African Telecommunications Sector" (with H Fourie & L Granville). Ersa Working paper 729 (2018).

CORPORATE PUBLICATIONS:

Theron, N.M. and Boshoff, W.H. 2006. "The Uhambo merger what value did the economists add?" Econex Research Note 1 (March 2006).

Theron, N.M. 2006. "The Competitiveness of the SA Mobile Market – will the entry of Virgin Mobile increase competition?" Econex Research Note 4 (June 2006).

Theron, N.M., Ntlha, M., and Boshoff, W.H. 2007. "Market definition, substitutability and consumer harm in telecommunications: ex ante regulations under the Electronic Communications Act". Econex Research Note 7 (June 2007).

Theron, N.M. and Boshoff, W.H. 2007. "Potential competition issues in vertically integrated sectors of the telecommunication sector of SA". Econex Research Note 6 (February 2007).

Theron, N.M. and Boshoff, W.H. 2009. "Use of Alternative Concentration Measures in Merger Analysis– The Partial Acquisition of Kaya FM by Primedia". Econex Research Note 12 (June 2009).

Theron, N.M. and Van Eeden, J. 2009. "The Extent of Current Cross-Subsidisation in the SA Health System". Econex Research Note 13 (July 2009).

Theron, N.M. 2010. "Market definition in merger enquiries – lessons to be learnt from the acquisition of Kaya FM by Primedia". Econex Research Note 17 (February 2010)

Theron, N.M. and Van Eeden, J. 2011. "Asymmetric Mobile Termination Rates in South Africa". Econex Research Note 21 (February 2011).

Theron, N.M. and Fitschen, E. 2012. "Economic Valuation of Intellectual Property: The Case of Music Royalties". Econex Research Note 26 (February 2012).

Theron, N.M. "Market enquiry into private healthcare in SA". Econex Occasional Note (November 2013).

BOOK REVIEWS:

"Aspirations of South African Women" (Review Note). The South African Journal of Economics 1997; 65(2).

SELECT EXAMPLES OF COMMISSIONED RESEARCH:

Economic implications of the proposed National Health Insurance plan. Research commissioned by the Hospital Association of SA.

Economic assessment of the effect of anti-dumping duties on the economy between 1996-2008. Research commissioned by the International Trade Administration Commission (ITAC).

Economic report on the role of agro-processing in economic growth and development. Research commissioned by the

LAM NT

Nicola Marielise Theron

United Nations Industrial Development Corporation (UNIDO).

Testifying before NERSA on the economic effects on an increase in the fuel levy to finance the Transnet fuel pipeline. Research commissioned by BP.

Economic report on the merger between MTN and iTalk, commissioned by MTN.

Economic report on the ease of doing business in Mozambique. Research commissioned by the CTA, Maputo.

Economic analysis of complaint against Sasol Wax.
Economic report for Cell C on the pricing of community service cellphones.

Economic report on the implications of an export tax on scrap metal. Research commissioned by the National Recyclers Organisation.

Economic expert for the Competition Commission in competition complaint against Senwes.

Economic expert for the Competition Commission in competition complaint against Consol and Nampak.
Competition analysis for the Department of Public Enterprises on the disposal of SAFCOL.

Economic report for Sentech in response to new ICASA regulations.

Economic report for British American Tobacco (competition Complaint by JTI)

Economic report and industry analysis for Parmalat.

Economic report and industry analysis for Pioneer.

Economic report and giving evidence in the Primedia merger before the Competition Tribunal.

Economic report and giving evidence in the Protector/Phodclinics merger before the Competition Tribunal.

Economic report for New Clicks on pharmacy regulation.

Economic report for Pick 'n Pay in their proposed merger with Fruit & Veg City.

Economic report for Barloworld in their merger with Midas Paints.

Industry study for Dimension Data on the SA ICT sector.

Economic report for the Printing Association of SA (PIFSA), on the impact of a reduction in tariffs on the printing industry. Attending hearing before ITAC.

Economic report and analysis for Cell C (complaint against MTN).

Economic report for BP/ Masana in merger proceedings before the Competition Commission and Competition Tribunal.

Research report for the DTI on Competition in the Food Industry.

Economic report for Kaap Agri in the Kaap Agri/ Boland Agri/ WPK merger.

Economic opinion for trade union in the Iscor/LNM merger.

Preparing an economic report for New Clicks, on the economic effects of the new proposed pharmaceutical regulations.
Preparing affidavits for the purposes of litigation.

Expert economic witness for SAA in the complaint lodged by Nationwide. Writing economic report and attending tribunal proceedings.

Research for New Clicks group on the pharmaceutical sector and the impact of deregulation.

Preparing an economic report for Telkom, dealing with allegations of exclusionary behaviour and predatory pricing, as alleged by Orion Cellular in a complaint against Telkom.

Analysing the effects of the Protector Group merger in the pharmaceutical sector.

Economic report for Barloworld on selected competition issues.

Report for Astral Operations on the merger between Meadow Feeds and Bulkop.

NT
LHM

Nicola Marielise Theron

Economic analysis for Anglo American, evaluating and analysing the proposed AVMIN and KUMBA mergers. Writing economic reports on various sectors in the mining industry, affected by the proposed transaction. Evaluating the post merger effects of the various transactions on the mining industry as a whole.

Economic consultant for Santam in their acquisition of Allianz Alternative Risk Transfer. Preparation of economic report on the impact of the merger for the Competition Commission.

Economic consultant for Pick 'n Pay in their merger with Boxer Superstores. Consulting and writing the economic report for submission to the Competition Commission. Industry analysis to evaluate the effects of the merger on the retail industry in SA.

Economic consultant for Caltex, BP and Shell in their proposed merger (TRIDENT). Analysis of the oil and diesel industries.

Economic consultant in the merger between Santam and Guardian National Insurance. Researched and wrote the economic report for this large merger and testified before the Competition Tribunal about the economic effects of this merger on the short-term insurance sector.

Economic consultant for Naspers in their acquisition of several community newspapers. Responsible for research on the impact of these acquisitions on the media sector.

Economic consultant for Bulmer SA in their opposition of the Distell merger.

LAM NT

IN THE COMPETITION APPEAL COURT OF SOUTH AFRICA

CASE NO: 259/CAC/OCT24

In the matter between:

CAPITAL NEWSPAPERS (PTY) LTD	First Applicant
CAXTON & CTP PUBLISHERS & PRINTERS LIMITED	Second Applicant
and	
MEDIA24 HOLDINGS LIMITED	First Respondent
NOVUS HOLDINGS LIMITED	Second Respondent
NOVUS PRINT PROPRIETARY LIMITED	Third Respondent
FREE 4 ALL PROPRIETARY LIMITED	Fourth Respondent
INTREPID PRINTERS PROPRIETARY LIMITED	Fifth Respondent
VICTORY TICKET 376 PROPRIETARY LIMITED	Sixth Respondent
MEDIA24 PROPRIETARY LIMITED	Seventh Respondent
THE COMPETITION COMMISSION	Eighth Respondent
THE MINISTER OF TRADE, INDUSTRY AND COMPETITION	Ninth Respondent

CONFIRMATORY AFFIDAVIT

I, the undersigned,


MOHAMED ISMET DAVIDSON

do hereby make oath and state:

1. I am an adult male and the former Chief Executive Officer of Media24 Proprietary Limited ("**Media24**"), the seventh respondent in these proceedings.



2. The content of this affidavit is, save where the context indicates to the contrary, within my personal knowledge and is to the best of my belief both true and correct.
3. I have read the answering affidavit of Omichand "Raj" Lalbahadur to which this confirmatory affidavit is annexed and I confirm the contents thereof insofar as they relate to the period of my tenure as Chief Executive Officer of Media24, which period came to an end on 9 September 2024.



MOHAMED ISMET DAVIDSON

I hereby certify that the deponent knows and understands the contents of this affidavit and that it is to the best of his knowledge both true and correct. This affidavit was signed and sworn to before me at Cape Town on this the 18 day of November, and that the Regulations contained in Government Notice R.1258 of 21 July 1972, as amended, have been complied with.



COMMISSIONER OF OATHS

Full names: Clare Alina Verhe

Address: Conventia Towers, Cape Town 8001

Capacity: Practising Attorney RSA

IN THE COMPETITION APPEAL COURT OF SOUTH AFRICA**Case No: 259/CAC/ Oct24**

In the matter between:

CAPITAL NEWSPAPERS (PTY) LTD	First Applicant
CAXTON & CTP PUBLISHERS & PRINTERS LIMITED	Second Applicant
and	
MEDIA24 HOLDINGS LIMITED	First Respondent
NOVUS HOLDINGS LIMITED	Second Respondent
NOVUS PRINT PROPRIETARY LIMITED	Third Respondent
FREE 4 ALL PROPRIETARY LIMITED	Fourth Respondent
INTREPID PRINTERS PROPRIETARY LIMITED	Fifth Respondent
VICTORY TICKET 376 PROPRIETARY LIMITED	Sixth Respondent
MEDIA24 PROPRIETARY LIMITED	Seventh Respondent
THE COMPETITION COMMISSION	Eighth Respondent
THE MINISTER OF TRADE, INDUSTRY AND COMPETITION	Ninth Respondent

**COMPETITION COMMISSION'S CONFIDENTIAL EXPLANATORY AFFIDAVIT IN
RE: PART A**

I, the undersigned

LUKE KIERAN MARQUES RENNIE

Do hereby make oath and state that:

1. I am a duly admitted attorney of the High Court of South Africa and currently in the employ of the eighth respondent (the "Commission") as a Senior Legal Counsel. I am duly authorised to depose to this affidavit on the Commission's behalf.
2. The facts contained in this affidavit are based on documents and information in the Commission's possession which have been made available to me, and are to the best of my knowledge and belief true and correct. Where I made legal submissions, I do so on the advice of the Commission's legal representatives, which advice I believe to be correct.

THE NATURE AND PURPOSE OF THIS AFFIDAVIT

3. The Commission will abide by the Court's decision in respect of the relief sought in Part A of the applicant's application. The purpose of this explanatory affidavit is to make a very limited and narrow submission on the relief sought by the applicants in paragraph 2.2. of Part A of the notice of motion seeking an order, pending the final adjudication of the review relief in Part B, including any appeal proceedings,

to “stay and suspend” the decision of the Commission to conditionally approve the merger transaction (“the merger transaction”) in terms of which Novus Print Proprietary Limited (“Novus”) through its wholly owned subsidiaries¹ intends to acquire certain media businesses, more fully described below, from Media 24 Proprietary Limited (“Media 24”).

4. The Commission hopes that this narrow submission will assist the Court in its determination of the appropriateness of the relief sought by the applicants in paragraph 2.2. of the notice of motion. However, before I set out the Commission’s limited submission in respect of paragraph 2.2. of the notice of motion, I provide a brief synopsis of the Commission’s analysis of the merger transaction.

A BRIEF SYNOPSIS OF THE COMMISSION’S ANALYSIS OF THE MERGER

5. On 06 August 2024, the Commission received a notification of an intermediate merger in terms of which Novus intended to acquire the following media businesses from Media24 Proprietary Limited (“Media24”):
 - 5.1. the media distribution and supply chain management business known as “On the Dot” (“OtD”);
 - 5.2. a portfolio of 20 community newspapers circulated in specific geographic areas within the Eastern Cape, Free State, Northern Cape and Western Cape (the “Community Newspapers”);

¹ Free 4 All Proprietary Limited, Intrepid Proprietary Limited and Victory Ticket 376 Proprietary Limited.

- 5.3. the national soccer newspaper titles known as “Soccer Laduma” and “Kick-Off”, covering local and international soccer news (“soccer newspaper titles”). (collectively the “target assets” or “target firms”).
6. The merger transaction notified to the Commission is limited to a transfer of the target assets from Media24 to Novus and does not involve the acquisition of any other assets or interest by Novus in Media24. Following the implementation of the merger transaction, the target assets will be under the sole control of Novus. Although Media 24 has put in train a digital strategy to terminate the physical printing or the printed versions of its paid-for newspaper titles– *Beeld*, *City Press*, *Rapport* and *Daily Sun* – and to migrate these titles into a digital format, these titles are not being transferred to Novus in the merger transaction and will post-merger remain under the control of Media 24. The available evidence indicates that Media 24’s digital strategy was already conceived by 2019 and that the march to digitisation was inevitable.
7. Novus is controlled by Paarl Media Holdings Proprietary Limited. Novus is part of a group that is active in the provision of printing services to customers across multiple sectors and is also active in the publication and sale of educational material.
8. The activities of the target firms are as follows:
 - 8.1. Soccer Laduma and Kick Off: Soccer Laduma and Kick Off provide news, interviews, opinion and analysis of local and international soccer. Soccer Laduma has both a print and a digital media presence, while Kick Off is only available online through snl24.com.

8.2. Community Newspapers: comprised of 20 community newspapers titles (with a total of 37 editions) each focused on very specific geographic areas or communities, covering neighbourhood events, local businesses, community meetings, school activities and other topics that directly impact residents' daily lives. The Media24 community newspapers are all free publications, with the exception of Paarl Post and Weslander, and are published weekly. The Media24 community newspapers include:

8.2.1. Boland Media: District Mail & Helderberg Gazette, Eikestadnuus, Hermanus Times, Paarl Post, Standard & Breederivier Gazette, Swartland Gazette, Weskusnuus, and Weslander;

8.2.2. WP Media: TygerBurger (various editions), People's Post (various editions), and City Vision;

8.2.3. EP Media: Kouga Express, Mthatha Express, PE Express, and UD Express; and

8.2.4. Central24: Bloemnuus, Express, Vista, Vrystaat Kroon, and Noordkaap Bulletin.

8.3. On the Dot "OtD" is a division of Media24 that distributes print media. It offers comprehensive, integrated logistics solutions for media products, such as magazines, newspapers (community and paid for daily and regional newspapers), leaflets, books, bookazines, partworks, and collectibles. It also provides forecasting and demand planning services

for publishers nationally, as well as in-store merchandising solutions, promotions, online sales and management of debtors.

9. The Commission found that the proposed transaction:

9.1. does not result in any horizontal overlaps – the Novus group publishes educational books and the target firms publish community newspapers; and

9.2. results in a vertical overlap as the Novus group provides printing services to newspaper publishers, community newspapers and Soccer Laduma. As pointed out above, Kick Off is an online publication.

10. The Commission considered two critical vertical overlaps:

10.1. the vertical relationship in respect of the printing of coldest printing services to third party publishers of national newspapers. In this regard, the Commission found, *inter alia*, that the Novus group competes with numerous other cold coldest printing firms that provide printing services to third party publishers of national newspapers including Formeset Printers, Caxton & CTP Publishers & Printers Limited, Insights Publishing, Highwall Mail, Seculo-Triweb Printers, Rising Sun, Africa Web Press, Tabloid Media and Art Printers; and

10.2. the vertical relationship in respect of the provision of coldest printing services to third party publishers of community newspapers in the Western Cape, Eastern Cape, Northern Cape and Free State. Similarly, the Commission found, *inter alia*, that the Novus group competes with several firms that provide coldest printing for community newspapers to

third parties at national level including Caxton (which is the largest firm in this market), Rising Sun, Tabloid Group and Independent. In fact, the Commission found that Caxton has the largest footprint of coldest printing facilities located in Gauteng, KwaZulu-Natal, Northwest, Limpopo, Mpumalanga and the Western Cape.

11. In view of the fact that the merged entity will be integrated across the publishing, printing and distribution value chains, the Commission also assessed the conglomerate effects that may arise from the merger transaction. To this end, the Commission found, *inter alia*, that:
 - 11.1. the merged entity will have market power in the distribution of community and paid-for newspapers; and
 - 11.2. Although Novus may have an incentive to bundle distribution and printing services in the light of the decline in the circulation of paid- for newspaper titles and low-capacity utilisation at its printing facilities, publishers are cost sensitive and any below-cost bundle for printing and distribution is not likely to be recouped by increasing OtD prices or printing services prices. An increase of OtD prices is not commercially rational as it would increase distribution costs for newspaper publishers and result in the reduction of OtD's volumes, thus impacting OtD's financial sustainability.
12. Over and above, the Commission found that the available evidence indicates that absent the merger transaction, the target firms are likely to be closed.
13. Following a detailed investigation, the Commission decided to approve the merger transaction, subject to conditions to address:

- 13.1. competition concerns in respect of either requiring (i) exclusive procurement of cold-set printing services and distribution services from the merged entity or (ii) procurement of printing/distribution on condition that the customer also procures distribution/printing services; and
 - 13.2. public interest considerations in the form of protection against merger specific retrenchments.
14. This decision, ie. the Commission's conditional approval, forms the basis of the review under **PART B**. The Commission will file its non-confidential record, including its investigation report, which sets out the detailed findings of the Commission's merger investigation, within the timelines required by the rules for the production of the review record. The attempt by the applicants in their supplementary affidavit to present the truncated reasons as a representation of the totality of the Commission's investigation and analysis of the merger transaction is unhelpful.
15. The merger transaction in this case therefore involved a garden-variety competition and public interest analysis which did not animate any lofty constitutional principles.

THE DELETERIOUS IMPACT OF A STAY AND SUSPENSION OF A STATUTORY DECISION

16. The Commission's decision to conditionally approve the merger transaction was made in terms of section 14(1)(b)(ii) of the Competition Act No. 89 of 1998, as amended ("the Act"). Consequently, the order sought in paragraph 2.2. of part A of the notice of motion is directed at freezing a statutory decision i.e. the

Commission’s decision to conditionally approve the merger transaction. In *Sasol Gas Proprietary Limited v Competition Commission Of South Africa and Others*², this Court, in the context of an application to stay the execution of a summons issued by the Commission pending a review, said:

“[13] *Let me be clear: applying the approach the EFF v Gordan,*³ *the question is not to make a definitive decision as to whether the Commission has jurisdiction to deal with an excessive pricing complaint where Nersa determine[s] the maximum price. It is rather whether there is a justifiable case that will have to be definitively determined under Part “B” of the application brought by Sasol. If there is an arguable case this would be sufficient to justify the interim relief [a stay of the execution of the Commission’s summons] subject to caveats that I shall deal with presently...”*

17. In *Sasol*, this Court granted a stay of the execution of a summons issued by the Commission pending a review. However, this Court subsequently dismissed the review application. The upshot is that on 22 July 2024, more than a year after the stay had been granted by this Court, the Constitutional Court finally dismissed an application for leave to appeal against this Court’s dismissal of the review application. This meant that for a period more than a year, the Commission’s summons could not be executed and a complaint lodged by downstream industrial gas users could not be investigated. In respect of mergers, which require expeditious determination to ensure certainty to investors, inordinate delays,

² (245/CAC/May23) [2023] ZACAC 6 [6 June 2023]

³ *Economic Freedom Fighters v Gordhan and Others; Public Protector and Another v Gordhan and Others* (CCT 232/19; CCT 233/19) [2020] ZACC 10; 2020 (8) BCLR 916 (CC); 2020 (6) SA 325 (CC) (29 May 2020)

including delays that may occasioned by stay orders pending reviews, will frustrate the purpose of the merger control regime.

18. The Commission is therefore concerned about the adverse implications of stay orders directed at the exercise of its statutory functions pending review applications. Stay orders directed at the exercise of the Commission's statutory powers in terms of the Act do not only impact on the functioning and effectiveness of the Commission (and by extension the complaint investigation and merger regulation system), they invariably also affect the rights of complainants and merging parties.
19. In *National Treasury and Others v Opposition to Urban Tolling Alliance and Others*⁴, the Constitutional Court said:

“[90] *In my view then, when a court is confronted with an application for a temporary interdict that has the potential of impinging on the legitimate preserve of another national arm of government it needs to determine that question first. It must ask: is this a case where national legislative or executive power will be transgressed by a temporary interdict? If the answer is yes, **the court will grant the remedy only in the clearest of cases**. It is not possible to define what will constitute the clearest of cases, but one of the important considerations will be to what extent the*

⁴ CCT 38/12) [2012] ZACC 18; 2012 (6) SA 223 (CC); 2012 (11) BCLR 1148 (CC) (20 September 2012) (“OUTA”) CCT 38/12) [2012] ZACC 18; 2012 (6) SA 223 (CC); 2012 (11) BCLR 1148 (CC) (20 September 2012) (“OUTA”).

fundamental constitutional rights of persons may be affected by the grant of a temporary interdict.” (Emphasis added.)

20. The Commission submits the considerations set out by the Constitutional Court in *Outa* are also helpful in the evaluation of an order to stay a statutory decision of an organ of state in view of the fact that in substance the effect of interdictory relief and a stay order on statutory decisions may, for all intents and purposes, be the same.
21. It must be also be borne in mind that the Act imposes strict statutory timelines for the investigation of merger transaction. In terms of section 14(1) of the Act, the Commission has a maximum of 60 business days to investigate an intermediate merger. In accordance with section 14(2) of the Act, if the Commission has not made a decision to approve or prohibit an intermediate merger within the maximum statutory period of 60 days, the merger is deemed to have been approved unconditionally.
22. In *Monsanto South Africa (Pty) Ltd and Another v Bowman Gillfillan and Others*,⁵ this Court said that merger proceedings “*inherently require an expeditious decision.*” The strict statutory timelines for an intermediate merger require the Commission to conduct a fairly detailed but focused investigation of the merger transaction within the limits of the strict statutory timelines. An intermediate merger

⁵ *Monsanto South Africa (Pty) Ltd and Another v Bowman Gillfillan and Others* (109/CAC/JUN11) [2011] ZACAC 5 (18 August 2011)

investigation cannot be a fishing expedition. Consistent with the need for expedition in merger decisions, the strict timelines required by the Act for the investigation of an intermediate merger do not allow the pursuit of fanciful or far-fetched theories of harm. An intermediate merger investigation must focus on credible theories of harm that are supported by the evidence gathered in the investigation. Indeed, in *Imerys South Africa (Pty) Ltd and Another v Competition Commission*,⁶ this Court said that in many cases there will be no obvious right or wrong answer to the question whether a merger should be prohibited or permitted with conditions.

CONCLUSION

23. The Commission therefore requests the Court to take into account the deleterious impact of stay orders directed at statutory decisions of the Commission in its examination of the relief sought by the applications in paragraph 2.2. of part A of the notice of motion.

Luke Kieran Marques Rennie

I hereby certify that the deponent declares that the deponent knows and understands the context of this affidavit and that it is to the best of his knowledge both true and

⁶ *Imerys South Africa (Pty) Ltd and Another v Competition Commission* (147/CAC/Oct16, IM013May15) [2017] ZACAC 1; [2017] 1 CPLR 33 (CAC) (2 March 2017)

correct, that this affidavit was signed and sworn to before me at _____ on
this _____ day of _____ 2024 and that the Regulations
contained in Government Notice R1258 of 21 July 1972, as amended, have been
complied with.

COMMISSIONER OF OATHS

Full Names:

Capacity:

Address:

IN THE COMPETITION APPEAL COURT OF SOUTH AFRICA

CASE NO: 259/CAC/OCT24

In the matter between:

CAPITAL NEWSPAPERS (PTY) LTD	First Applicant
CAXTON & CTP PUBLISHERS & PRINTERS LIMITED	Second Applicant
and	
MEDIA 24 HOLDINGS LIMITED	First Respondent
NOVUS HOLDINGS LIMITED	Second Respondent
NOVUS PRINT PROPRIETARY LIMITED	Third Respondent
FREE 4 ALL PROPRIETARY LIMITED	Fourth Respondent
INTREPID PRINTERS PROPRIETARY LIMITED	Fifth Respondent
VICTORY TICKET 376 PROPRIETARY LIMITED	Sixth Respondent
MEDIA 24 PROPRIETARY LIMITED	Seventh Respondent
THE COMPETITION COMMISSION	Eighth Respondent
THE MINISTER OF TRADE, INDUSTRY AND COMPETITION	Ninth Respondent

NOTICE OF INTENTION TO OPPOSE

BE PLEASED TO TAKE NOTICE that the First to Seventh Respondents intend to oppose Part B of the First and Second Applicants' Application.

DATED at **SANDTON** on this the **22nd** day of **November 2024**.

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IN THE COMPETITION APPEAL COURT OF SOUTH AFRICA

Case No: 259/CAC/Oct24

In the matter between:

CAPITAL NEWSPAPERS (PTY) LTD First Applicant

CAXTON & CTP PUBLISHERS & PRINTERS LIMITED Second Applicant

and

MEDIA24 HOLDINGS LIMITED First Respondent

NOVUS HOLDINGS LIMITED Second Respondent

NOVUS PRINT PROPRIETARY LIMITED Third Respondent

FREE 4 ALL PROPRIETARY LIMITED Fourth Respondent

INTREPID PRINTERS PROPRIETARY LIMITED Fifth Respondent

VICTORY TICKET 376 PROPRIETARY LIMITED Sixth Respondent

MEDIA24 PROPRIETARY LIMITED Seventh Respondent

THE COMPETITION COMMISSION Eighth Respondent

**THE MINISTER OF TRADE, INDUSTRY
AND COMPETITION** Ninth Respondent

REPLYING AFFIDAVIT

I, the undersigned,

ANTON JACQUES ROETS

state the following under oath:

- 1 I am the attorney of record of the applicants and am duly authorised to depose to this confidential affidavit on the applicants' behalf. The facts contained in this affidavit are true and correct and are, save where the context indicates otherwise, within my personal knowledge. I depose to this affidavit given the fact that the answering affidavit contains confidential information so as to ensure that there is a single replying affidavit to the answering affidavits that have been filed by the respondents. Confirmatory affidavits from Mr Jacobs, Mr Jenkins and Mr Gill are attached.

- 2 I have read the answering affidavit deposed to by Omchand ("Raj") Lalbahadur on behalf of the first to seventh respondents (the "**Answering Affidavit**"), as well as the explanatory affidavit filed by the eighth respondent ("**the Commission**"), which has stated that it intends to abide the decision of the Court in relation to Part A.¹ Any allegation in those affidavits that is not specifically dealt with below should be taken to be denied to the extent that it is inconsistent with what has been set out in the Founding Affidavits filed by the applicants, and what is set out herein. As I set out below, the Answering Affidavit supports rather than in any way undermines the urgent need for this Court's intervention, and confirms the applicants' entitlement to the interim relief sought.

¹ Commission's Answering Affidavit, para 3.

3 I have also read the Commission’s reasons for its decision to approve the merger as well as its redacted Merger Report (“**Merger Report**”)² provided by the Commission to the Applicants on 20 November 2024. For reasons expanded upon below, the redacted Merger Report is consistent with the fact that the Commission entirely failed to conduct a proper and lawful investigation into the transaction before it as required under sections 12A(2), (3) and 13 of the Competition Act, 89 of 1998 (the “**Act**”); and adopted an impermissible, blinkered approach.

A. SUMMARY OF THE ISSUES BEFORE THIS COURT

4 The affidavits filed by the Commission and the merger parties, together with the Commission’s reasons and Merger Report, confirm that, absent the intervention of this Court, one of the most important transactions that the competition authorities have had to consider, with fundamental implications for the future of the print media in South Africa, and freedom of expression more broadly, will slip through the net. The underlying reason for this is that the merger parties appear to have persuaded the Commission that it could not consider the implications and effects of the overarching strategic decision-making process of which the notified transaction forms part, and in which it culminated, including the interrelated decision to close the relevant Media24 titles.

5 It was for this reason that the Commission was induced to believe that the merger assessment in this case required no more than “*a garden-variety competition and*

² This is understood to be a version that is non-confidential to the applicants in the sense that it contains their submissions to the Commission.

public interest analysis which did not animate any lofty constitutional principles".³

In approaching its merger analysis on this basis, the Commission fatally and fundamentally erred in failing to identify, first, the nature of the investigation that it was required to undertake; and, second, the far-reaching competition, public interest and constitutional implications of the transaction that was notified to it.

6 In the circumstances, the "*garden-variety*" nature of the investigation that the Commission has acknowledged it undertook was fatally deficient having regard to the nature and consequence of the transaction before it. Where, as here, the transaction before the Commission has implications for constitutional rights, and transformation and future competitive dynamics in the crucial media sector in South Africa, much more was required of the Commission.

7 Indeed, the Commission's investigation was so deficient in fairness; so closed to the consideration of relevant considerations; and so irrational in the circumstances, that it would not pass muster even in a "*garden-variety*" merger assessment.

The primary issue and the proper approach to merger analysis

8 There is no debate between the parties that the jurisdictional fact for the Commission having the power to examine a transaction is the existence of a merger. There is also no debate that the transaction notified to the Commission involved a merger, which the Commission was required to assess in accordance

³ Commission's Answering Affidavit, para 15.

with sections 12A(2), (3) and 13 of the Act, read through the constitutional lens prescribed by the Constitutional Court in **Mediclinic** and by this Court in **eMedia**.

- 9 The divergence between the parties — and the primary issue at stake in these proceedings — is whether the Commission, in analysing the notified transaction before it, was required (as it evidently believed it was) to close its eyes to the circumstances in which the transaction arose, and the context and effects of the overall strategic decision of which it formed an integral part, under sections 12A(2), (3) and 13 of the Act.
- 10 Put differently: was the closure of Media24's various print newspapers (which formed an integral and necessary element of the strategic decision that culminated in the transaction notified to the Commission) part of the necessary conspectus of facts that the Commission was required to take into account in considering the effects of the notified transaction?
- 11 In addition, was the Commission also required, as part of a counterfactual analysis, to compare (i) the pre-merger position where On the Dot distributed the Media24 print titles that made up the majority of On the Dot's revenue and the volume of newspapers it distributed, against (i) the post-merger position where On the Dot will be deprived of the Media24 newspapers and, as a result, its volumes will be reduced by approximately 60% and its revenues by [Confidential: █████]⁴. This will in turn lead to an inexorable increase in costs to

4 █████.

competing print publishers in South Africa which will put their rival newspaper publishing businesses at substantial risk of closure.

- 12 This is not a theoretical risk or an abstract hypothesis. Attached as **AJR1** are very recent letters addressed to the Citizen, The Witness and the Mail & Guardian dated 22 November 2024, but sent to the various media houses on 25 November 2024. In these letters On the Dot confirms the interlinked nature of the closure of the Media24 titles and the sale of On the Dot to Novus and demonstrates in luminous terms the impact that the implementation of Media24's strategy will have on distribution costs and on the distribution footprint of rival newspaper publishers. It is stated that:

*“The recent change to circulation strategies for certain major newspaper titles as widely communicated in the media, has negatively impacted volumes on the physical newspaper distribution network. As a result, OnThe Dot will **have no alternative** but to revisit the footprint and charge out rates associated with newspaper distribution in the northern regions, and to will attempt to minimize the impact on our clients. We are working in the background to devise alternative solutions and will reach out to you shortly to discuss our proposals and your specific requirements. Our goal is to finalise the resultant footprint and pricing structure by the end of December with implementation by 01 February 2025. Andre van Tonder and his team will be in contact with you to arrange meetings in early December, with the aim of completing discussions before the year-end holiday break”. (My emphasis.)*

online platforms given the fact that more than 85% of their revenues are derived from their printed publications and 15% of their revenues could not sustain the cost of maintaining a viable online news platform (given the costs of journalists and the infrastructure required to operate a viable online platform). The result will be the death of the press as we know it, and the creation of a hegemonic news ecosystem in South Africa, dominated by Media24's online subscription news market, News24 and Netwerk24.

- 15 The applicants submit that the Commission was required to have regard to all of these facts in terms of its duties and obligations of the Act, and it is common cause that it did not do so. There is no debate that the Commission did *not* look at any of these facts, because (it appears) the Commission believed it was not required to do so. The Commission did not have any regard to the strategic decision of which the sale of On the Dot forms an integral part and merely a final step. The Commission also did not consider the market-altering competitive, public interest and constitutional harm that result from Media24's strategic decision.
- 16 Rather, the Commission adopted a narrow and blinkered approach to its powers under the Act, limiting its consideration only to the specific transaction that was notified to it, without any regard to the context of that transaction as simply the final step of a broader strategic decision that will have fundamental competition, public interest and constitutional effects in the South African media sector. In doing so, the applicants submit that the Commission fundamentally misconstrued its duties and obligations under the Act.

17 This Court and the Constitutional Court have repeatedly emphasised that, once the threshold jurisdictional requirement of a merger is present, the Commission has wide powers to consider the transaction before it. The strategic circumstances in which the transaction is concluded are highly relevant to the transaction. This Court has previously explained in **Walmart**⁵ that, in terms of these powers, the Commission is required to question whether events that take place even **before** the notified merger is consummated (including retrenchments and price rises) form part of the broad merger decision-making process and would accordingly be sufficiently closely related to the merger to demand that the merger parties must justify their actions.⁶ This approach is fundamentally contrary to the blinkered approach contended for by the merger parties, and adopted by the Commission in this case.

18 Standard analysis by a competition authority in respect of investigating a particular merger is to assess the position pre-transaction and compare it with the position post transaction. This is merger analysis “101”. In the circumstances of the current case, this would mean comparing the position of On the Dot prior to its divestiture from Media24 with the position that will pertain after its divestiture.

18.1 **Premerger** the position is that On the Dot distributes the various newspapers belonging to Media24 as well as the various paid-for

⁵ *Minister of Economic Development and Others v Competition Tribunal and Others, South African Commercial, Catering and Allied Workers Union (SACCAWU) v Wal-Mart Stores Inc and Another* (110/CAC/Jul11, 111/CAC/Jun11) [2012] ZACAC 2; [2012] 1 CPLR 6 (CAC) (9 March 2012).

⁶ *Walmart* at para. 140

terminate their print publications and exit the print newspaper publishing business. This will have a dramatic negative effect on the newspaper publishing business and industry in South Africa and fundamentally undermine the press in South Africa. It will also mean that their online offerings will cease to be viable.

19 In other words, if one performs the task of comparing the pre merger position with the post merger position, it is self-evident that post transaction On the Dot will be forced to increase costs to customers as a direct consequence of the steps taken by the seller in the process of divesting of its downstream business. This points to the fact that the Commission in assessing the merger should have performed this straightforward analysis, which would have led it to the conclusion that the merger would be highly prejudicial to third-party competitors/customers and immensely damaging to the media industry in South Africa. However, it failed to perform this elementary analysis and, accordingly, acted entirely irrationally and unreasonably in conducting its investigation and in approving the merger. Despite being warned of the consequences of the increase in distribution costs on competing publishers, it felt it was precluded from considering the strategy of which the disposal forms a part or considering the position of On the Dot post-divestiture (i.e. how the parties will conduct themselves after the merger).

20 Moreover, the “*merger*” notified by the parties is stated to entail the acquisition of control over *‘the media supply chain management division operated and conducted by Media24 Proprietary Limited (“Media24) referred to as “On the Dot”’; the local news portfolio of Media24 as more fully described in the merger*

filling; and the football publication division of Media24 titled “Soccer Laduma and Kick Off”. Each of these businesses are **divisions** of Media24 (as opposed to being separate companies). This means that Media24 is a “*target firm*” as defined in the Act (“*target firm*” means “*a firm— (a) the whole or part of whose business would be directly or indirectly controlled by an acquiring firm as a result of a transaction in any circumstances set out in section 12...*”). Indeed, it is the primary target firm (“*primary target firm*” means “*any firm contemplated in paragraph (a) or (b) of the definition of “target firm”*”). Media24 is also a party to the merger (“**party to a merger**” means “*an acquiring firm or a target firm*”). This means that Media24 is one of the parties required to submit a merger notification to the Commission and is a party to that notification for the purposes of the Commission’s investigation of the merger. This strongly indicates that the strategic decision making process of Media24 which relates to the merger is what has to be considered by the Commission in its consideration of the notification.

- 21 This Court warned in **Distillers**⁷ that the competition authorities should not be taken in by formalistic arguments that preclude the objects of the Act from being achieved, and that they should ensure loyalty to the preamble of the Act. This accords with the approach mandated by the Constitutional Court in **MediClinic**,⁸ which the applicants referred to in their Founding Affidavit, and with which the merger parties and the Commission have failed meaningfully to engage.

⁷ **Distillers Corporation (South Africa) Limited and Another v Bulmer (SA)(Pty) Ltd and Another**, 2002 (2) SA 346 (CAC) at 358.

⁸ **Competition Commission of South Africa v Mediclinic Southern Africa (Pty) Ltd and Another** (CCT 31/20) [2021] ZACC 35; 2022 (5) BCLR 532 (CC); 2022 (4) SA 323 (CC); [2023] 1 CPLR 2 (CC); (15 October 2021).

- 22 The Commission’s approach would furthermore undermine the “*transformative public interest goals*”⁹ which were introduced into the Act in the Amendments of 2017. In the Explanatory Memorandum, the legislature explained that these Amendments were passed in order to ensure: “***Enhanced scrutiny of the causes of concentration and the need for tailored measures to deconcentrate markets are facilitated by the proposed amendments contained in the draft Bill. These amendments seek to ensure evidence-based inquiry into and explicit scrutiny of concentration when mergers are considered, abuses of dominance are prosecuted, and market inquiries are undertaken by the competition authorities. The amendments permit the competition authorities to undertake far-reaching and targeted interventions to address concentration.***”¹⁰
- 23 This is particularly so given the constitutional implications that are at stake in these proceedings under section 16 of the Constitution, which protects the right to freedom of expression. Without the interdictory relief sought by the applicants, the closure of Media24’s newspapers is likely to spell the end of the printed press in South Africa, at least in its current form and the online offerings of the other South African newspaper publishers. In its answering affidavit, Media24 has simply ignored the consequences of its strategic decision for freedom of expression and access to information in South Africa. Moreover, this is not a speculative risk – On the Dot has announced that it has “*no alternative*” but to revisit its charge out rates (see **AJR1**).

⁹ Explanatory Memorandum 1 December 2017, p. 6.

¹⁰ Explanatory Memorandum 1 December 2017, p. 7.

- 24 A vibrant and free press is *“the unsleeping guardian of every other right that free men and women prize”*.¹¹ It is a critical source of information, empowering the public to monitor the exercise of public power and other institutions that hold power in society. Absent access to reliable and diverse sources of information, the public’s ability to act as watchdogs against abuses of power or conduct that undermine their freedoms and rights. The importance of freedom of expression is closely linked to democracy itself – a fact which has been recognised in various other countries too.
- 25 Despite the growing popularity of digital news, printed news remains a critical source of original news for many South Africans. The closure of Media24’s print titles and the divestiture of its distribution business will fundamentally threaten the survival of rival print newspapers and online offerings, impacting the ability of the public to access information and to have access to diverse views and opinions on matters of public interest. The ending of the printed versions of most newspapers will also spell the end of the digital online platforms of the competing newspaper publishers as they are dependent on 85% to 90% of their advertising revenue being earned from the printed versions.
- 26 As illustrated further below, online news outlets such as Media24’s News24 and Netwerk24 create poor incentives for producing journalism for smaller audiences such as coverage of local news issues and news of interest to a particular market segment or demographic. Digital platforms also choose what news content amplify and prioritise based on viral content over quality of journalism. This in

¹¹ President Cyril Ramaphosa referenced the role of the free press in this manner in his message of 14 September 2020, available at <https://www.gov.za/blog/desk-president-37>

bidding process that led to the transaction and the fact that Capital Newspapers was an alternative bidder for the sale assets (being On the Dot and the community newspaper titles). This is not because the Commission had the power to “force” Media24 to sell the assets to Capital Newspapers (as Media24 repeatedly mischaracterises the point in its Answering Affidavit), but because that fact is directly relevant to the determination of the counterfactual against which the Commission was required to assess the effects of the merger and the assessment it is required to perform in terms of section 12A(3)(e).

30 However, premised on the documents provided to the applicants, the Commission did not have any regard at all to this fact, or even to the possibility that the relevant counterfactual might have been the sale of the assets to another purchaser.

31 The fact of Capital’s alternative bid for the sale assets was therefore critical to the Commission’s assessment of the merger, not only from a competition perspective but also from a public interest perspective. Of particular relevance in this regard is section 12A(3)(e) of the Act, in terms of which the Commission was required to consider the effect of the merger on “*the promotion of a greater spread of ownership, in particular to increase the levels of ownership by historically disadvantaged persons and workers in firms in the market*”. This factor was all the more important for the Commission to consider in this case given its acknowledgement that the notified transaction resulted in a reduction in HDP ownership in On the Dot and the community newspaper titles.

- 34 On this ground alone, the applicants have strong prospects of success in relation to the review, and have established a *prima facie* (if not a clear) right to the interim relief sought.

The tone of the answering affidavit

- 35 Before moving on to discuss the key considerations in support of the grant of interim relief, it is necessary to say something about the tone of the Answering Affidavit and the approach taken by the merger parties. The merger parties' answering affidavit is an example of precisely the kind of "legal sophistry" warned about by the former Chief Justice in **Mediclinic**, which must be "*vigilantly guarded against*" and "*deliberately flushed out of our justice and economic system*".¹³
- 36 Given the serious public interest and constitutional issues raised in these proceedings, one would have expected the merger parties to adopt a measured response to serious concerns raised by one of their customers. Instead, they have disparaged the applicants and their legal advisors; accused them of acting as a jilted bride; and of "*litter[ing] the founding affidavits with superlatives*".¹⁴ They have furthermore sought to obfuscate and indeed mislead the Court in material respects which are covered below, all with the aim of saying to the Court that there is "*nothing to see here*". In fact, as the applicants have set out and not seriously denied by the merger parties, this application concerns the future of the entire print media industry in South Africa. It is not a matter to be taken lightly,

¹³ **Mediclinic** at para 7.

¹⁴ Answering Affidavit, para 8.

and the dismissive and misleading approach of the merger parties is to be deprecated.

Scheme of the remainder of the affidavit

37 In Part B of this affidavit, I set out the key considerations arising from the Answering Affidavit which support the granting of the interim relief. Part C analyses the Merger Report. In Parts D, E and F, I deal with the points *in limine* raised by the merger parties – the appeal/review point; mootness and the question of interim relief. In Part G and H, I deal *ad seriatim* to the extent necessary with the Answering Affidavits. Part I concludes.

B. KEY CONSIDERATIONS IN SUPPORT OF THE GRANT OF INTERIM RELIEF

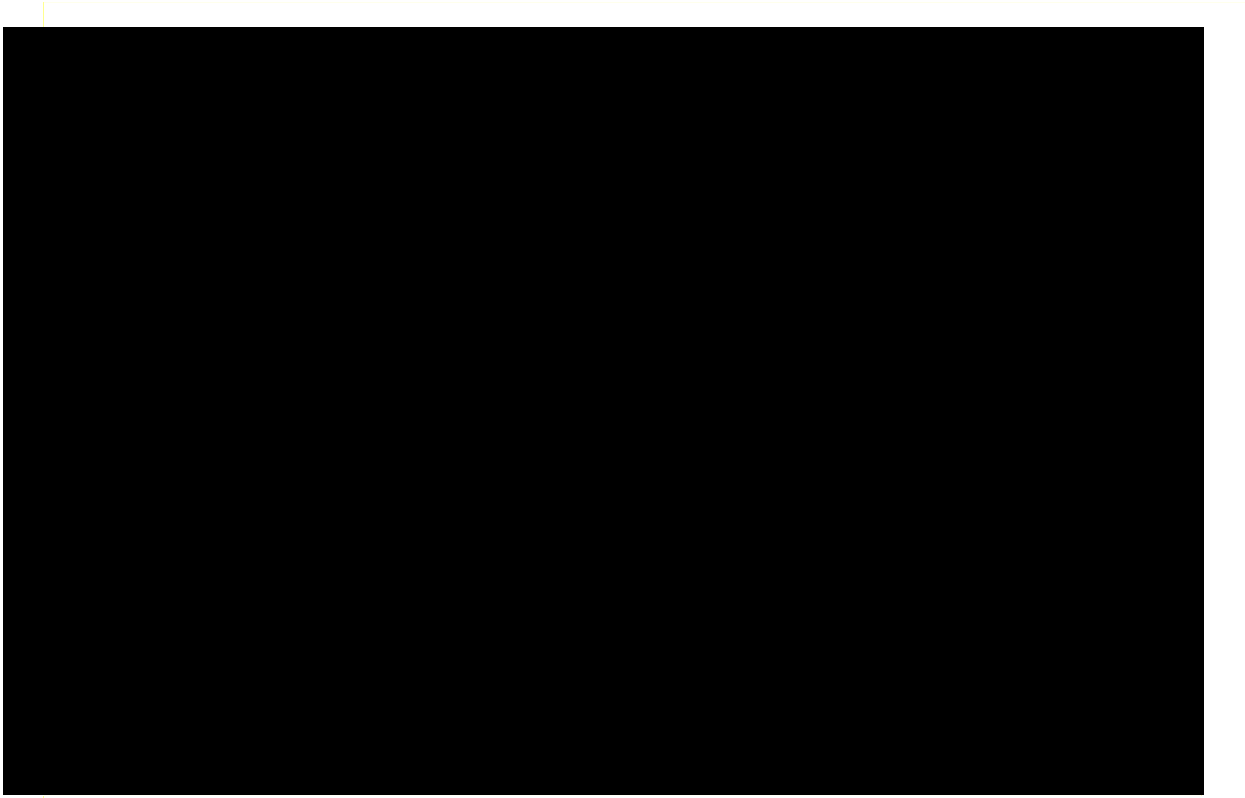
38 The Answering Affidavit and the internal documents put up by the merger parties confirm six critical facts which support the applicants' application:

38.1 First, Media24's "migration" decision and the sale of On the Dot are part of the same contemporaneous strategy decision by Media24,

[Confidential: [REDACTED]]

38.2 Second, the merger parties have misrepresented the facts relating to the bidding process relating to the sale.

38.3 Third, it is common cause that there is no substitute for On the Dot in relation to the distribution of paid for newspapers.



42 [Confidential: [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

43 [Confidential: [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED].

44 The inter-relatedness of these steps as part of a broader strategy is also exposed by the fact that after the applicants had raised concerns regarding the matter, Media24 did not proceed with the closure of the Terminating Newspapers and

retrenchment of employees at Media24 or On the Dot until after merger approval for the sale of On the Dot and other titles had been approved.

45 Media24 attempts to downplay this conditionality as being motivated simply by a desire to avoid the risk of urgent litigation.¹⁶ It contends that there a *“difference between being unable to close the papers and retrench staff, on the one hand, and electing not to do so”*.¹⁷

46 However, whatever the reasons Media24 now attempts to give for its decision, the fact of the matter is that Media24 demonstrated by its own conduct that it was unwilling to proceed with the closure of the Terminating Newspapers and retrenchments at Media24 and On the Dot until such time as the sale of On the Dot to Novus had been approved by the competition authorities. This is also clear from Media24’s subsequent statement to its employees that the merger approval *“paves the way for Media24 to take the next steps in our strategic journey”*¹⁸ — Media24 plainly considered merger approval as a necessary pre-requisite to the implementation of this strategy.

47 Significantly, neither Media24 nor Mr Davidson deny in the Answering Affidavit that Mr Davidson indicated the interconnected nature of the transactions to Mr Jacobs when he engaged Capital Newspapers about the proposed sale of On the Dot.¹⁹ Nor do they deny that on 12 July 2024, Mr Davidson stated in a

¹⁶ Para 152.4 of the Answering Affidavit.

¹⁷ Para 152.7 of the Answering Affidavit.

¹⁸ See Annexure RL4 to the Answering Affidavit.

¹⁹ Para 18 of the Founding Affidavit, read with paras 247-248 of the Answering Affidavit.

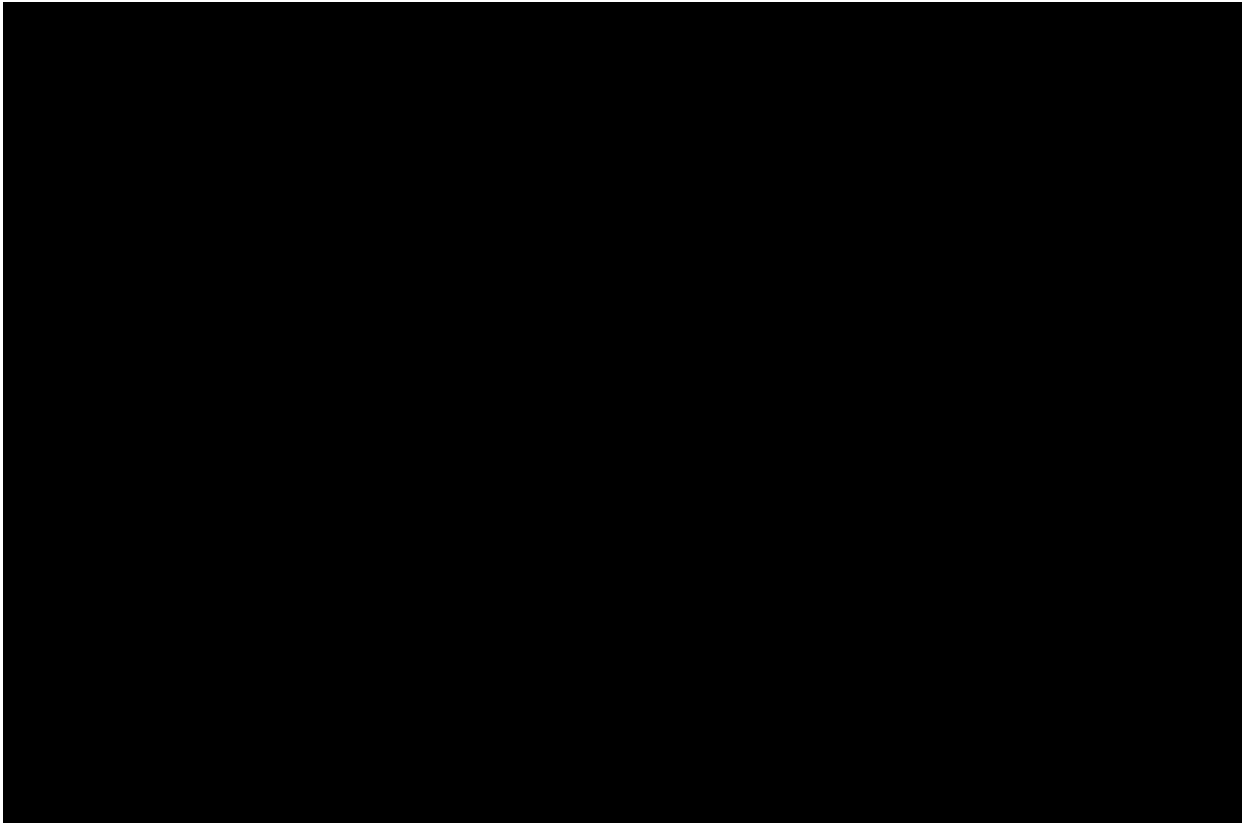
newspaper article published on the News24 website²⁰ that Media24's sale of On the Dot was a "*direct consequence*" of the group's intention to close the print editions of the newspapers, and it was for this reason that "*Media24 required regulatory certainty on whether it can sell the logistics business before ending the print runs of the newspapers.*"²¹

48 All of the above statements by Media24 plainly demonstrate the interconnectedness of the different steps of [Confidential: ██████████] and their merger-specificity – simply put, on Media24's own version, it would not have proceeded with the closure of the Terminating Newspapers and retrenchments at Media24 and On the Dot absent merger approval of the sale transaction with Novus.

49 In other words it is crystal clear from Media 24's [Confidential: ██████████ ██████████], together with the statements made by its most senior executives to its employees and to the public more generally, that there is an unassailable causal link between the closure of the newspaper brands and the sale of the On the Dot business. Furthermore, the sale of the community newspapers together with the divestment of the distribution business (On the Dot) [Confidential: ██████████] and was designed not only to sweeten the sale of the distribution business and make it more appealing to the purchaser (Novus), but was also pursuant to the integrated strategy of divesting from printed newspapers.

²⁰ <https://www.news24.com/fin24/companies/media24-presses-on-with-s189-process-as-it-awaits-competition-commission-ruling-20240712>.

²¹ Founding Affidavit, para 10.1.



54 [Confidential: [REDACTED]]:

54.1 [Confidential: [REDACTED]]
[REDACTED]
[REDACTED].

54.2 [Confidential: [REDACTED]]
[REDACTED]
[REDACTED]

55 [Confidential: [REDACTED]]
[REDACTED]

56 In the circumstances, Media24's attempt to downplay the transaction as the "*sale of a simple distribution business and some community and soccer publications*"²² is contrived and does not reflect the commercial reality that the sale transaction forms an integral part of a broader strategy which has grave competition, public interest and constitutional implications as explained above and in the applicants' Founding Affidavit. The Commission's blind acceptance of this mischaracterisation, its consequent treatment of the matter before it as a "*garden-variety*" transaction without any significant effects, and its failure to have any regard to the broader context and consequences of the transaction notified to it, constituted a reviewable irregularity on its part. [Confidential: ██████████ ██████████] and the express undenied statements of Mr Davidson, it is clear that the closure of the print newspapers and the sale of On the Dot were part and parcel of an integrated strategy that the Commission was required, but failed, to consider.

Second key consideration: Misrepresentation of facts concerning the bidding process for the sale assets

57 In an attempt to explain why it suddenly and without explanation walked away from negotiations with Capital Newspapers, Media24 alleges that Capital Newspapers was only interested in acquiring On the Dot if Media24 retained the Terminating Newspapers in print or if Capital Newspapers was permitted to

²² Para 9 of the Answering Affidavit.

particularly given the fact that Media24 had informed Capital Newspapers that it was its preferred purchaser and that the negotiations with Novus had failed.²⁴

62 The fact that the initial offer from Capital Newspaper was limited to On the Dot and the community newspaper titles is also borne out by the second offer to purchase attached as FA11 to the founding affidavit. This offer records that on 13 June 2024, Mr Jacobs wrote to Mr Davidson and reiterated that Capital Newspapers remained interested in purchasing On the Dot and the community newspaper titles. It is not in dispute that this initial offer was rejected.

63 It was only later, in its second offer, that Capital Newspapers added to its initial offer and offered to purchase the Terminating Newspapers for an additional sum of R1 million. This was to dispel the impression given to Media24 employees that there was no “*concrete offer*” for the Terminating Newspapers and that their closure was inevitable. However, it was never the case that this was a precondition for a purchase of On the Dot and the community newspaper titles, and Media24 could not honestly have understood that to be the case.

64 Accordingly, the version put up by Media24 as part of the justification for its decision to conclude the transaction with Novus is simply false.

65 **[Confidential:** [REDACTED]
[REDACTED]
[REDACTED]

²⁴ See Founding Affidavit, para 145.

67 [Confidential: 




68 As set out in the Founding Affidavit, and as now confirmed by the Commission's merger report, the Commission did not consider Capital Newspaper's alternative bid for the sale assets at all. It did not examine the bidding process that led to merger parties' decision to sell On the Dot to Novus; it did not consider the likelihood of alternative transactions in the absence of the proposed merger (especially having regard to the higher price contained in Capital Newspapers' offer; and it did not consider the HDP implications of the Capital Newspapers offer relative to those of the notified transaction, as required by section 12A(3)(e) of the Act. The Commission did not even approach or speak to Mr Jacobs at all during its merger investigation. The Commission's failure to do so has resulted in a decision which is irrational, unconstitutional and which fails to meet the Commission's statutory obligations.

Third key consideration: Acknowledgement that there is no substitute for On the Dot in relation to the distribution of paid for newspapers

69 In the Founding Affidavit, the Applicants explained that there is no substitute for On the Dot for the distribution of paid for newspapers in South Africa²⁵ and that On the Dot operated as a *de facto* monopolist.²⁶ The applicants also explained

²⁵ Answering Affidavit, para 109 to 118.

²⁶ Founding Affidavit, para 132.

- 72.1 Distribution services are an important input in a successful publishing business.
- 72.2 There is no substitute for On the Dot in the distribution of paid for newspapers in South Africa, and other publishers are accordingly dependent on On the Dot to distribute their newspapers.
- 72.3 Ceasing to print the Terminating Newspapers will result in a significant decrease in the volumes distributed by On the Dot.³³
- 72.4 Media24's closure of the Terminating Newspapers will, therefore, significantly increase distribution costs for rival publishers in South Africa.³⁴ Media24 acknowledges that an increase in the distribution costs of On the Dot will be inevitable once it implements the closure of the Terminating Newspapers.³⁵ This accords with the letters attached as **AJR1**.
- 72.5 As regards the effect of the increase in distribution costs, the merger parties do not deny (for example) that the Sunday Times will have in all likelihood have to close as a result of the increase in distribution costs.³⁶ Nor do they (or could they) deny that the closure of the Sunday

³³ Answering Affidavit, para 178.

³⁴ This is acknowledged in the presentation RL13.

³⁵ Answering Affidavit para 11.2.

³⁶ Founding Affidavit, para 95. In response, the merger parties deny only that the sale to *Novus* drives up distribution costs, Answering Affidavit, para 284.

Times would in turn result in (further) increases in the cost of distribution of the daily paid for newspapers,³⁷ which will render them unviable.

73 There can accordingly be no meaningful dispute that the implementation of Media24's digital strategy, of which the notified transaction forms an integral part, will raise the average per-unit cost of distribution, resulting in significant harm to the South African media sector as a whole. In these circumstances, the Commission was obliged to find that this price rise was an anti-competitive effect that would follow the approval of the notified merger, but it failed to do so.

Fourth key consideration: the significant increase in distribution costs and the consequences for third party print newspapers is not denied

74 Linked to the third key consideration, although Media24 contends that increased distribution costs are not a consequence of the merger, it does not (and cannot) deny that On the Dot's distribution costs will in fact rise significantly post-merger and that this will negatively impact other paid for publications as a result of Media24's implementation of [Confidential: ██████████ ██████████] which I have dealt with above. This is demonstrated unequivocally through the content of the letters attached as **AJR1**.

75 Media24 also does not deny that distribution is one of the most significant costs faced by newspaper publishers,³⁸ or that the closure of the Media24 print titles will lead to (potentially prohibitive) increases in distribution costs for rival

³⁷ Founding Affidavit, para 96.

³⁸ Founding Affidavit, para 45.

publications, including the Sunday Times, Sowetan and Citizen, as set out in the applicants' Founding Affidavit.

76 Crucially, Media24 does not dispute the applicants' estimated increase in distribution costs of 15%³⁹ or the validity of the applicants' belief that such an increase in cost will result in "*a number of newspapers ceasing to be printed and distributed*". Nor does it dispute the domino effect on distribution cost arising from the closure of additional newspapers.⁴⁰

77 The high-water mark of the merger parties' response to these facts is a criticism⁴¹ that the applicants have not provided the precise percentage of each rival publication's total costs that consist of distribution costs, what each rival publication's profit margins are, and how the increase in distribution costs would lead to them becoming unviable. This criticism is baseless. The "*granularity*" of detail demanded by Media24 is unrealistic and unnecessary in the context of the present application. Indeed, it is the merger parties themselves that have precise knowledge of the likely increase in On the Dot's distribution costs post-merger, but they have conspicuously failed to provide this information to the Court. Moreover, the hypocrisy of the merger parties is underscored by the content of the letters attached as **AJR1**.

³⁹ Founding Affidavit, para 102. Para 102 of the Founding Affidavit is not addressed in the *ad seriatim* portion of the Answering Affidavit, and the figure of 15% is not disputed.

⁴⁰ Founding Affidavit, para 102.

⁴¹ Answering Affidavit, para 285.

- 78 Moreover, I note that the merger parties have also not denied that Rapport is the second largest Sunday newspaper in South Africa, and that this calls into question Media24's assertion that it cannot be operated on a profitable basis.⁴²
- 79 Indeed, the contention in the Answering Affidavit that the Media24 print titles are unsustainable given the planned closure of the Daily Sun and the decline in circulation of the other three titles does not ring true given the applicants' experience in publishing newspapers in South Africa over many years. As confirmed by Mr Jacobs and Mr Gill in their confirmatory affidavits, it became clear in their discussions with On the Dot that Media 24 had not even examined the effect on distribution costs on Rapport, Beeld and City Press if the Daily Sun were closed. Media24 only did so *after* Capital Newspapers requested this exercise to be done when conducting its due diligence. The results of this exercise revealed that all three titles (Rapport, Beeld and City Press) would remain profitable after a restructuring of On the Dot which operates under a heavy cost base inside Media24.
- 80 Based on their extensive experience in newspaper publishing, Capital Newspaper and Caxton believe it is highly probable that the Media24 print titles (other than Daily Sun) could be run profitably and sustainably under tight management principles — especially Rapport and Beeld, which occupy significant ownership of the Afrikaans readership market as well as City Press which also has a solid advertising base. All three were continuing to receive solid advertising support prior to the announcement of the planned closures.

⁴² Founding Affidavit, para 98.

News24 and Netwerk24 have 200 000 active subscribers (not denied) and that, on page views, its market share for 2004 is more than **52%** (not denied). This points to the fact that even of free news, Media24 accounts for more than 50% and as reflected below, the current figures suggest an even higher share.

84 Media24 also does not deny Mr Jacobs' further allegations that (i) even currently, Media24's publishing rivals do not have online platforms that can compete with News24 and Netwerk24; (ii) 85% to 90% of the revenue of publishers is derived from printed advertising;⁴⁴ and (iii) as a result of the loss of advertising revenue associated with printed newspapers, "*the smaller platforms*" (being those operated by the competing newspaper groups) will not "*be able to offer any meaningful competition to Media24*".

85 Media24's suggestion that the online platforms of rival print publications such as Daily Maverick, Mail & Guardian, IOL and the Citizen⁴⁵ will be become effective online competitors in the long term is accordingly not sustainable. On the contrary, the foreclosure of Media24's print rivals will ensure that they will never be able to catch up with Media24's online presence, thereby ensuring its dominance. If the competing publishers are only able to earn 10% to 15% of their current advertising revenue, they will also not be able to operate on a viable basis.

⁴⁴ Founding Affidavit, para 103.

⁴⁵ Answering Affidavit, para 272.

86 Media24's denial of dominance in subscription South African digital news sites is also undermined by its own publication entitled "*The Future of Afrikaans Journalism*" dated 18 June 2024 (attached as **AJR3**). Media24 stated in relation to Netwerk24: "*Our subscribers have grown from 15 000 in 2016 to more than 98 000. Very few subscription news services **worldwide** manage to come close to 100 000 subscribers*" (emphasis added). It also states that Netwerk24 is "*the second-largest subscription news service in South Africa after News24*". In other words, News24 and Netwerk 24 are the two largest online subscription news services in South Africa, and have more subscribers than most other subscription news services globally are able to achieve.

87 The latest figures published by the Interactive Advertising Bureau (the industry body that provides measurement statistics) record that Media24 achieved 291,478,476 page views on its subscription news websites in October 2024 – the equivalent of each member of South Africa's adult population visiting Media24's subscription services around 14 times during the course of the month. The next highest number of page views achieved was by Broad Media (which owns MyBroadband, BusinessTech, TopAuto and Daily Investor) which achieved 40,295,120 pages views (just one *sixth* of Media24's reach). Media24's denial of dominance is, therefore, baseless even in respect of free news sites.

88 [Confidential: 









[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Sixth key consideration: the effect of the merger on employment

89 In response to the applicants' allegation that the Commission failed to appreciate the effect of the merger on employment, Media24 seeks to draw a distinction between merger-specific retrenchments and retrenchments effected in response to adverse market conditions. It contends that the intended retrenchment at On the Dot falls into the latter category.⁴⁶

90 However, this purported distinction ignores the fact that the proposed retrenchments flow directly from the loss of revenue On the Dot will suffer as a result of the closure of the Terminating Newspapers. As explained above, that closure form parts of the very same strategy as the sale of On the Dot to Novus and, on Media24's own version, was subject to the merger approval of the latter transaction. In the circumstances, there is no basis for the distinction sought to be drawn by Media24.

91 The Answering Affidavit also confirms the applicants' assertion in the Founding Affidavit that Media24 failed to consult its employees properly because it only

⁴⁶ Answering Affidavit, para 203.

commenced the consultation process a considerable time after it took the decision to close the Terminating Newspapers.⁴⁷ In this regard –

91.1 Media24 explains that what it terms the “*migration decision*” – which, in fact, is the closure of the printed newspapers – was taken in April 2024 (para 10 of the answering affidavit).

91.2 **[Confidential:** [REDACTED]
[REDACTED]
[REDACTED]

92 Media24 must therefore have contemplated the possibility of dismissals flowing from its decision to close the Terminating Newspapers and the consequential impact this would have on On the Dot, and it does not suggest otherwise. Media24’s obligation to commence consultations with employees was therefore triggered in April 2024.

93 However, Media24 failed to commence consultations at that stage. As detailed in the founding affidavit, Mr Davidson stated publicly that no decision in this regard had been taken even after the board meeting of 7 June 2024.

94 Instead, Media24 only commenced consultations with employees likely to be affected by the transaction and the “*migration decision*” almost two months later and after commencing negotiations with Novus on the sale of On the Dot, the community newspapers and the soccer titles. This thwarted the very purpose of

⁴⁷ Founding Affidavit, para 182.

a retrenchment consultation – to engage in a meaningful exercise to address the issues affecting job security. By the time consultations commenced with employees, Media24’s strategy was a *fait accompli*.

95 The delayed consultation process was therefore a sham, as it deprived the affected employees of a chance to present any meaningful alternatives to the restructure and disposal of On the Dot. In fact, as set out in the Founding Affidavit, the merger parties falsely informed the merger parties that there were no alternative options available, notwithstanding that Capital Newspapers had indicated that it would be prepared to purchase and to continue running the printed newspapers.

96 This is a serious matter given that the Tribunal has previously found that a failure to comply with the consultation requirements of the Labour Relations Act is a negative public interest consideration. This was again ignored by the Commission in its decision to approve the notified transaction.

97 It is also plain from the Commission’s reasons that the Commission did not consult any of the employees of the other newspaper publications that stand to be affected negatively by the implementation of Media24’s strategy following the approval of the notified transaction. This is a material further failing on the part of the Commission.

Conclusion on the key facts and principles guiding this Court’s determination

98 It is plain that the overarching strategic decision of Media24, of which the notified transaction forms the final part, is going to lead to a significant change to the

structure of the media sector in South Africa, and consequences that are in conflict with the objectives of the Competition Act. It will lead to devastating and enduring structural changes to the market for paid for newspapers and online news services in South Africa and undermine the constitutional imperative of a free press. The process has already commenced as evidenced by the letters attached as **AJR1**.

- 99 The only real defence proffered by the merger parties is that, in considering the notified transaction, the Commission was required to ignore the consequences of the strategy of which the transaction forms part, and instead adopt a myopic and blinkered approach to the context and consequences of the notified transaction. This approach is constitutionally and legally unsustainable for the reasons explained in the applicants' Founding Affidavit.
- 100 In the circumstances, Media24's Answering Affidavit supports rather than in any way undermines the applicants' case for interim relief.

C. THE COMMISSION'S MERGERS AND ACQUISITIONS REPORT

- 101 At 19h23 on 20 November 2024, the Commission furnished the applicants with a highly redacted version of its mergers and acquisitions report ("**the merger report**") dated 25 October 2024, a copy of which is attached as [**Confidential: [REDACTED]**]. The Commission has provided no explanation for its delay of almost a month in providing the report to the applicants in the urgent circumstances of this case, especially given that the applicants requested a copy of the merger report as early as 31 October 2024.

102 It is important to make two initial observations regarding the merger report. The first is that, given its highly redacted nature (presumably to protect information claimed as confidential by the merger parties), neither the applicants nor even their external legal representatives have been afforded proper access to the contents of the document.

103 The second observation is that it is entirely unclear what the legal status of the merger report is. On the one hand, it appears to be a recommendation by the Commission's investigation team to the Executive Committee of the Commission for the latter's consideration (given the fact that it was dated 25 October 2024 and the Commission approved the merger on 30 October 2024, this appears to be the correct position). On the other hand, it appears from the contents of the document that it purports to reflect the approval of the notified transaction by the investigation team itself. On either version, I submit that the document is irrelevant to the Court's consideration of this matter:

103.1 If the document reflects no more than a recommendation by the Commission's investigation team to the Commission's Executive Committee for consideration, then it is irrelevant because it does not reflect the reasons of **the Commission** for approving the notified transaction, which are reflected in the reasons document attached to the applicants' Supplementary Founding Affidavit.

103.2 If, on the other hand, the document reflects the reasons for the approval of the notified transaction by the Commission's investigation team, then it is *ultra vires*, because the investigation team does not have the statutory power under the Act to approve mergers on behalf of the

Commission. This would be a further reason why the Commission's approval of the notified transaction is unlawful and falls to be reviewed and set aside.

104 However, for the sake of completeness, I deal below with the contents of the merger report. As I explain, even if the Court is minded to have regard to the merger report in considering the Commission's reasons for approving the notified transaction, the document simply confirms the reviewable errors identified by the applicants in the Commission's decision-making process. In particular, it confirms that the Commission failed entirely to conduct a rational and constitutional analysis of the notified transaction, and to consider the material significant deleterious competition and public interest consequences to which it will give rise.

The nature of the Commission's investigation

105 The merger report confirms that the Commission did not, as part of its merger assessment, consider the effects of Media24's decision to close the Terminating Newspapers (page 17, paragraph 44) or the concerns raised by the applicants regarding the effect this will have on employment and raising the costs of rivals who are dependent on On the Dot for the distribution of their paid for newspapers (page 94, paragraph 232).

106 It appears from the merger report that the Commission disregarded these factors on the basis that they were "*neither the merger nor part of the merger*" (see paragraph 246).

107 For the reasons explained above and in the applicants' Founding Affidavit, this approach reflected a misdirection or error on the part of the Commission. As explained above, the Commission was required to consider whether the closure by Media24 of the Terminating Newspapers, and the effects thereof on the distribution costs of On the Dot, formed part of the broader merger decision making process and were closely related to the merger. Had the Commission followed this correct legal approach, it would not have assessed the effects of the transaction before it on the myopic and blinkered basis it did; rather it would have done so having regard to the context of that transaction, and the broader strategy of Media24 of which it forms an integral and necessary part.

108 As explained above, the closure of the Terminating Newspapers and the effects thereof formed part of a strategic plan that was inter-related with the notified transaction, and the implementation of which was dependent on the approval of the notified transaction. In those circumstances, the Commission was legally obliged to have regard to the consequences of the entire decision-making process in its merger assessment, including the serious competition and public interest effects explained above and in the applicants' Founding Affidavit.

109 The Commission's approach to the merger analysis in this case was therefore based on a fundamental error of law. It was also contrary to the objects and transformational nature of the Act, and the constitutional obligations borne by the Commission as an organ of state.


The relevant counterfactual

110 Second, the merger report confirms that the Commission did not properly apply its mind to the relevant counterfactual in this case, which is a necessary step in any merger analysis under the Act. As explained above, this requires the Commission to compare the position before and after the merger in order to assess the competition and public interest effects of the merger.

111 There are two different elements to the counterfactual analysis in this case, both of which the Commission entirely failed to consider.

112 The Commission's first failure was not to perform the simple and straightforward exercise of comparing On the Dot's position before and after its divestiture from Media24:

112.1 As explained above, the pre-merger position was that On the Dot distributed all the Terminating Newspapers, as well as the various paid-for publications belonging to third-party competitors and customers, including the Arena group, Independent Newspapers, Daily Maverick, Mail and Guardian, Caxton and Capital Newspapers as well as other parties.

112.2 Post-merger, the situation is fundamentally different. **[Confidential:**
 Media24 is vertically de-integrating from its downstream On the Dot division and selling that to a third party, Novus, and in parallel closing down various paid for newspaper titles (the Terminating Newspapers) that were distributed by On the Dot pre-

merger. The net effect of [Confidential: ██████████] is therefore that the downstream distribution business will lose more than half of the volume of newspapers that it previously distributed, with the devastating knock-on consequences for distribution costs and the survival of competing publishers that the applicants have explained. As recognised by the Commission in the merger report, the services provided by On the Dot “cannot be mimicked by other market players” (page 83, para 191).

113 In assessing the merger, the Commission should rationally and reasonably have performed this straightforward analysis, which would have led it to conclude that the merger will be highly prejudicial to third-party competitors and customers, and immensely damaging to the South African media industry.

114 However, the merger report confirms that the Commission failed to do so. Indeed, the Commission appears to have assumed that, even absent the proposed merger, the print media industry will inevitably decline due to the transition to digital news and that Media24’s competitors which remain in the market will, therefore, face increased publishing costs anyway (page 41, paragraph 52). However, there was no factual basis whatsoever for this assumption or any consideration of the time period over which this, and it is also fails to have any regard to the alternative bid submitted by Capital Newspapers discussed below, which would have resulted in the Terminating Newspapers being retained in the market.

115 The Commission’s second failure – even if it was entitled to ignore Media24’s broader decision-making process (and, in particular, the closure of the

Terminating Newspapers pursuant thereto) in its counterfactual analysis – was not to assess (i) the likelihood that, absent the merger before it, the target firms would be acquired by the applicants, and (ii) the competition and public interest effects of the proposed merger relative to that counterfactual, especially insofar as HDP ownership of the sale assets is concerned (as required by section 12A(3)(e) of the Act).

116 For the reasons explained above and in the applicants' Founding Affidavit, if the Commission had performed this analysis (as it was required to do under the Act), it would have concluded that (i) absent the notified transaction, the sale assets would have been likely to have been acquired by Capital Newspapers, and (ii) relative to that counterfactual, the notified transaction would give rise to significant public interest effects from an HDP ownership perspective. This is a particularly significant factor in this case, given the Commission's finding that the notified transaction will give rise to a decrease in the HDP ownership of the sale assets.

117 The merger report thus confirms that the Commission's approach to the counterfactual analysis was flawed in two fundamental respects, as a result of which it did not have regard to facts that were critical to the counterfactual analysis and its approval decision was arbitrary, unreasonable and irrational.

Conclusion on the Commission's Merger Report

118 The Commission's merger report accordingly confirms the Commission's failures as set out in the Founding Affidavit, as well as each of the grounds of review.

119 I turn now to address the points *in limine* raised by the merger parties before dealing, to the extent necessary, with the remainder of the affidavits *ad seriatim*.

D. THE APPEAL / REVIEW POINT (Paras 25 to 33) AND ERROR OF FACT (34-39)

120 The merger parties argue that the applicants' application is "*fatally flawed*"⁴⁸ because the grounds of review raised by the applicants are in fact "*a placeholder for what is actually an attempt to contest the correctness of the Commission's decision*".⁴⁹ This is primarily a legal argument and will be dealt with as such.

121 For present purposes, it suffices to emphasise that the applicants' case is not (as Media24 tries to suggest) that the Commission had all of the relevant information before it and simply came to the wrong decision. On the contrary, the applicants' case is that the Commission's process of decision-making was fundamentally flawed in that the Commission failed to apply its mind rationally to the information before it, failed to take into account relevant considerations, and took into account irrelevant considerations, took an *unreasonable* decision, and acted in a manner which was not authorised by the empowering provision.⁵⁰ The facts set out by the applicants support these grounds of review. Each of these grounds is an established ground of review, both under the principle of legality and under PAJA.

⁴⁸ Para 33 of the Answering Affidavit.

⁴⁹ Para 26 of the Answering Affidavit.

⁵⁰ See paras 251, 270 and 280 of the Founding Affidavit.

E. MOOTNESS (paras 40-85)

124 As articulated in their founding papers in Part A of this application, the applicants seek a suspension of the operation of the Commission's merger approval, as well as an interdict to prevent the merger parties from taking any further steps to implement the transaction pending the finalisation of Part B. The applicants do not aim in Part A of this application to undo aspects of the merger that have already been implemented. Rather, they seek to prevent further consequential harm stemming from the merger's continued implementation, including the closure of print titles, the merger's anti-competitive effects and the erosion of the constitutional right to freedom of expression and a free press. These important issues remain "live".

125 The merger parties claim that the relief sought by the applicants in Part A is moot because, following receipt of the Commission's merger approval, they have implemented the merger by finalising the unconditional sale of On the Dot and the community newspaper and soccer titles to Novus, and issued notices under section 197 of the LRA to employees of On the Dot, Novus and Media24.

126 The merger parties contend that they were contractually bound to take these steps to implement the merger by the sale of business agreements. This statement is not correct: **[Confidential:** [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

127 [Confidential: [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

128 [Confidential: [REDACTED]
[REDACTED]
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[REDACTED]
[REDACTED]

129 As explained in the applicants' Founding Affidavit, the applicants did everything they could to have this application heard before any those steps were taken,

despite the merger parties' attempts to shut the door on the application. The Commission's decision to approve the merger late on 30 October 2024 left no opportunity for the applicants to secure an interdict before implementation steps the merger parties rely on were taken the next day.

130 However, even if certain aspects of the merger have been implemented in the face of the present application (despite the fact that the applicants did everything they could to have this application heard before any those steps were taken), there remain further critical actions to be undertaken, and consequences to be suffered, if the relief sought by the applicants in Part A of this application is not granted. These include, critically, the closure of the print newspapers (scheduled to take place at the end of December 2024), and the retrenchment of employees, which has not yet taken place but which will be implemented imminently absent the urgent relief sought in Part A.

131 It follows that, far from being moot, the suspensive and interdictory relief sought in Part A is essential to prevent those further steps in the implementation of the merger that will give rise to the drastic competition, public interest and constitutional consequences that form the basis of the present application.

F. THE APPLICATION IS CLEARLY ONE FOR INTERIM RELIEF (Paras 86-96)

132 The merger parties incorrectly argue that the interdict sought in Part A would be final in effect if "*despite the absence of any prayer to that effect, the Court may for some reason order the unwinding of the implementation of the merger*". The

merger parties argue that such an order would have a “*final and irreversible*” impact that would “*kill the transaction because of its time sensitive nature*”.⁵²

133 There is no merit to this assertion. First, and most obviously, it is premised on the incorrect assumption that the Court would order an unwinding of the merger as part of the Part A relief sought by the applicants. However, as the merger parties themselves acknowledge, the applicants have not sought any such relief in Part A. The merger parties’ arguments in this regard are accordingly unfounded. The question as to appropriate relief if the Commission’s approval decision is reviewed and set aside pursuant to the relief sought in Part B of the present application will only be determined at the hearing of Part B; it is wholly premature to raise that question in the context of the present Part A proceedings.

134 Second, there is no basis for the merger parties’ suggestion that even the suspensive and interdictory relief sought in Part A would amount to a final interdict because it might endure for up to two years and this would “*kill the transaction once and for all*” (paragraph 92). This is entirely speculative scare-mongering on the part of the merger parties.

135 The conduct of the applicants so far demonstrates that they have wasted no time at all in bringing this application, which was launched the day after the Commission’s decision was handed down. This application has been set down for hearing little more than a month later. The reason for this delay is because the merger parties stated that they required more than two weeks to answer the

⁵² Answering Affidavit, para 87.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

139 Equally without basis is the threat contained in para 93.7 of the Answering Affidavit that, *“in the event that Media24 is prevented from disposing of the target businesses for a period of a year or more, it would not be viable to keep them operating”* and that this would result in *“the retrenchment of all print-connected employees together with direct employees who provide a support service to the On the Dot operations and the print products”*.

140 First, as indicated below, there is no reason why there would be a delay *“of a year or more”*, and secondly, as I have set out above, the merger parties on their own version contemplated that it will take a year to implement the transaction (as reflected in the time provided for the payment of the purchase price).

141 Despite filing an affidavit in these proceedings, Novus significantly stops short of saying that it would terminate the Sale Agreements if the interim relief sought in Part A was granted.⁵⁶

54 [REDACTED]

55 [REDACTED]

⁵⁶ Answering Affidavit, para 95.3.

142 In any event, it could never be the case that interim relief to prevent the implementation of a merger could be resisted on the basis of a threat by the merger parties that they might terminate the transaction if such relief were granted. If that were the case, it would never be possible to obtain interim relief in proceedings such as these, which would defeat the very purpose of the merger control regime in the Competition Act.

143 Media24 also refers to employee morale and culture and the need for staff “*to be given comfort that their immediate future is at least more secure*”.⁵⁷ This statement is cynical in the mouth of Media24 given that it is the author of the strategy to increase its bottom line market power in the subscription online news sector at the expense of over 1000 job losses — a fact not seriously denied in the answering affidavits. Employees are more likely to welcome a suspension of the retrenchment process upon which Media24 and Novus are presently embarked, and any notional employee uncertainty would hardly convert the interim relief sought in Part A into final relief.

G. SERIATIM RESPONSES TO THE ANSWERING AFFIDAVIT OF THE MERGER PARTIES

144 I now respond to those paragraphs of the merger parties’ answering affidavit that require a response.

145 Since the applicants have already addressed many of the allegations contained

⁵⁷ Answering Affidavit, para 94.7.

in the merger parties' answering affidavit, I will not respond to each and every allegation made. Everything already stated above must be regarded as part of the responses to the individual paragraphs in the merger parties' answering affidavit.

146 To the extent that I may fail to deal with any specific allegation in the merger parties' answering affidavit, this is not to be taken as an admission. Any allegation made in the merger parties' answering affidavit which is not in accordance with the applicants' version as set out above and in the founding affidavit, must be taken to be denied.

Ad paragraphs 27.1 to 27.6

147 In these paragraphs, the merger parties attempt to reframe certain allegations made in the applicants' founding affidavit, and to allege that, properly construed (or construed as the merger parties suggest) these are grounds of appeal not review. There is no merit to this argument, and each of the attempts at reframing and re-characterising the applicants' case is denied.

Ad paragraphs 30-31

148 The merger parties in these paragraphs criticise the applicants for drawing conclusions "*as to what the Commission did or did not take into account, merely on the strength of what is not expressly stated in a broad summary of its reasons*". This criticism is unavailing: the Commission provided its reasons document as purportedly justifying its decision, when in fact the reasons did no

such thing. The Commission is bound by those reasons. In any event, the Merger Report which the Commission has subsequently filed confirms all of the deficiencies that the applicants had previously identified.

Ad para 38

149 The applicants deny that there are any facts that are relied upon by the applicants that are not objective and which are “*hotly contested*”: the applicants’ make out their case based on the evidence and documents put up by the merger parties in their *own* affidavit, and on the basis of legal errors and other reviewable irregularities committed by the Commission.⁵⁸ The merger parties do not point to any such “*hotly contested*” facts despite devoting almost two pages of their answering affidavit to dealing with “*errors of fact*”: simply put there are none.

Ad paragraph 41

150 Contrary to the merger parties’ bald allegations, the relief sought by the applicants does not entail the preservation of the status quo prior to the approval, given that the merger parties have taken steps to implement the merger. Instead, the relief sought by the applicants would inhibit the merger parties from taking any further steps to implement the merger, pending the adjudication of Part B.

⁵⁸ Answering Affidavit, paras 34-39.

Ad paragraph 44

151 It is contemptuous to take an action which is bound to prevent the Court granting a remedy with the intent to defeat the course of justice. As set out above and in the founding affidavit, the merger parties took steps to implement the merger as quickly as possible after the approval in order to frustrate the enforcement of the anticipated order from this Court and thereby defeat the course of justice.

Ad paragraph 51

152 As set out above, the applicants could not have launched any application that the Court could have adjudicated before the implementation steps invoked by the merger parties took place on 31 October 2024. The Commission only made the approval decision on the evening of 30 October 2024.

Ad paragraphs 68 and 69

153 Contrary to the merger parties' bald allegation, the applicants did not appreciate that the steps the merger parties took to implement the transaction would render Part A moot. Instead, the applicants sought to caution the merger parties against engaging in contemptuous and bad-faith conduct. As set out above, the relief sought by the applicants in Part A remains live.

Ad paragraph 82

154 Even if the applicants had brought a "*short, crisp application*", the application could never, on the merger parties' version, have been fairly adjudicated by the

Court before the implementation steps invoked by the merger parties took place on 31 October 2024.

Ad paragraph 105

155 In paragraph 105 of the Answering Affidavit, it is stated that the “*average print circulation of Beeld*” is “*now approximately 10,000*”. The Audit Bureau of Circulation’s (“**ABC**”) recently published figures reflect a completely different picture. They reflect the average circulation of the Beeld in the most recent quarter as being 18,743 and the average circulation for the prior quarter as being 18,865 (total circulation). It is also stated in the Answering Affidavit that the Rapport now has an average circulation of 37 000. The ABC figures reflect a total circulation of 54 210 for the most recent quarter and 55 670 for the prior quarter.

Ad paragraph 117

156 The interrelation and interdependence of the decisions is evident in this paragraph: “*Because Media24 had taken a commercial decision to focus on digital instead of on print, it no longer had a need for a sizeable print distribution business*”. Media24 did not simply shut down On the Dot. It elected to pursue a merger transaction, thereby opening the consequences of its strategy and the underlying “*commercial decision*” to scrutiny by the competition authorities — scrutiny, from which it now seeks to hide.

Founding Affidavit and despite the fact that the critical question in these proceedings is whether the Competition Commission was obliged to take into account the effects of [Confidential: ██████████] when assessing the notified transaction before it.

Ad para 135

160 The applicants dispute the characterisation of the applicants' case in this paragraph. The applicants do not assert that "*in addition to notifying the Commission of this sale by Media24 to Novus, Media24 also had a duty to notify and seek approval for its earlier commercial decision to migrate certain of its print newspaper titles to digital format*". Rather, the applicants assert that given that the closure of the printed newspaper titles and the sale of On the Dot formed part of the same strategic decision — taken at the same time and implemented at the same time — when the Commission assessed the competition and public interest implications of the notified transaction, it was required to examine those consequences in relation to the strategy as a whole, of which the sale of On the Dot formed an inextricable part.

Ad paras 140-146

161 The applicants deny the contents of these paragraphs and that it is necessary to show that the merger "*caused*" the closure of the newspaper businesses in order for the closure of the newspaper businesses to be the subject of legitimate scrutiny by the Commission. I refer to what I have stated above in relation to the obligations of the Commission during a merger investigation. The admission by

the applicants that the “*sale to Novus was caused by the migration strategy*” is sufficient to open that strategy to scrutiny by the Commission under section 12A(2) and 13 of the Competition Act. The Commission’s failure even to *consider* the strategy of which the sale of On the Dot formed an integral part renders the Commission’s decision unsustainable.

Ad para 153

162 I refer to what has been said above. Here, Media24 acknowledges that as of 30 October 2024, it became necessary for the deponent to “*update the business on the fact that the same had been approved and the migration steps would now be implemented*”. It is further acknowledged that, because of the applicants’ “*repeated threats*”, Media24 “*had decided to hold back on [the implementation of the digital strategy] until the Commission had, at least, had an opportunity to assess the merger and decide whether to approve it*”.

Ad para 161

163 I dispute the characterisation of the legal test: again, there is no requirement for causation. **Walmart** makes it clear that the competition authorities in assessing a merger are permitted to look even at events which occur *before* the merger decision in the assessment of the notified merger. Indeed, they are required to do so.

Ad para 167

164 The language in this paragraph is unfortunate.

165 The applicants furthermore deny that the applicants were “*badgering*” the merger parties. The applicants are, quite legitimately, concerned about the implications of Media24’s conduct both on their own businesses, and on the future of the print media in South Africa more broadly. And yet, as set out in the Founding Affidavit, the merger parties refused to give legitimate answers.

Ad para 176

166 At no point in relation to the counterfactual analysis does Media24 give any explanation for the fact that *they* were the ones who approached Mr Jacobs in relation to the potential sale of On the Dot, and that they negotiated with him, and he with them, telling him that he was the only bidder, before sweeping the rug out from under the negotiations by recording that Media24 had signed a deal with Novus. These circumstances are highly relevant to the Commission’s analysis of the counter-factual; yet the Commission’s merger record confirms that it failed to take them into account, and it failed even to speak with Mr Jacobs in relation to the transaction and his interactions with Media24. On this ground alone, the decision cannot withstand judicial review.

Ad paras 183 and 190

167 The merger parties miss the point. Through the implementation of the Media24 strategy of which the transaction forms part, it will be raising rivals costs (this is an undisputed fact). It is also not disputed that a consideration of the pre- and post-merger position will show that the cost of distribution in On the Dot will raise the costs of distribution of Media24’s rivals and do so by a significant amount.

This will have the effect of foreclosing these rivals as well as eliminating the limited threat that their online platforms pose to Media24's dominant subscription online news service.

Ad para 193

168 Media24 acknowledges here that the Commission confined its assessment to the effects of the sale of the On the Dot business to Novus and did not consider [Confidential: ██████████] of which that sale formed part.

Ad para 194

169 The merger parties do not deny the catastrophic effects of the Media24 strategy of which the transaction forms part on the media sector in South Africa — their argument is purely that the Commission was precluded from considering this because the Commission was obliged to adopt a blinkered approach and not to consider the strategy of which the notified transaction formed part.

Ad para 197

170 In this paragraph, the merger parties quote the decision of the Tribunal in **Walmart**. That decision went on appeal to the CAC where this Court partially upheld the appeal by the Ministers and held that when assessing a merger, the Commission is required to ask questions as to whether a particular event that occurred *before* the merger is consummated “*forms part of the broad merger decision making process and would, accordingly, be sufficiently closely related*

to the merger in order to demand that the merging parties must justify their [conduct]”.

Ad para 199

171 I deny that the applicants have failed to plead the necessary detail regarding the likely increase of the average per-unit cost of distribution, and how that would affect relevant HDP firms and SMEs. The applicants have:

171.1 pleaded that the costs in question are the second largest cost contribution after printing costs in relation to the publication of printed newspapers;

171.2 annexed supporting affidavits of other newspaper groups; and

171.3 alleged that there is likely to be a 15% increase in distribution costs.

172 The merger parties do not deny these facts which can therefore be accepted by the Court as being uncontested.

173 Moreover, any alternative facts fall within the exclusive knowledge of Media24, yet Media24 has failed to take this Court into its confidence in relation to the anticipated increase in distribution costs. Instead, it has obfuscated and accused the applicants (falsely) of “*conjecture and speculation*”.

Ad para 205

174 It is notable that Media24 does not seriously deny that the outcome of [Confidential: ██████████] will have implications for the constitutional right to freedom of expression and “*a threat to democracy itself*” in our country. It claims simply that the harm is overblown. It is not for the reasons set out in the Founding Affidavit.

175 Media24’s only real argument, repeated throughout its affidavit, is that the Competition Commission was not permitted to take that into account in its assessment of the notified transaction.

Ad para 207

176 Whereas the merger parties attempt here to defend the Commission’s wholly inadequate reasons by stating that they are simply “a summary”, this attempt fails on two counts:

176.1 First, the reasons were provided to the applicants and presented as the Commission’s reasons for its decision. They were contemporaneously drafted when the Commission took the decision, and the Commission remains bound by them.

176.2 Secondly, the Commission has now produced its redacted merger report, dealt with above, which confirms all of the deficiencies that the applicants identified in relation to the reason. The Commission quite

simply failed to conduct even the most *basic* investigation as it was required to do under the Act.

Ad para 218

177 Attached is a confidential affidavit confirming the facts in paragraph 40 of my supplementary affidavit.

Ad para 227

178 I have dealt above with the fact that the applicants did not allege that Media24 is dominant in *digital news*. The applicants' case – supported by the facts – is that Media24 dominates *subscription South African online news platforms*. These facts have not been placed in dispute by Media24.

Ad para 237

179 The applicants do not understand the contents of this paragraph: the harm which Media24 threatens will eventuate if the interdict is granted — “*the inevitable restructuring of the business which is likely to include the full closures of the relevant print newspapers, and subsequently retrenchments*” — is exactly what it is proposing to do in any event. Why then is there any harm to Media24 in delaying the implementation for a few months and ensuring that the egregious harm that the applicants seek to eventuate does is not irreversibly manufactured? This is circumstances where the merger parties have in their affidavits conceded that they can maintain the print titles for a year. Media24 does not point to any.

Ad para 247

180 The allegations in this paragraph are belied by [Confidential: [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Ad para 250-251

181 The merger parties' characterisation of the Commission's powers here is unduly narrow and contrary to the wording of the Act (in particular sections 12A(2) and 13); this Court's decision in **Walmart** (quoted by the Constitutional Court in **Coca-Cola**) and the constitutional injunction to interpret statutes in a manner which promotes constitutional rights. Further legal argument will be addressed on this aspect at the hearing.

Ad para 252

182 In paragraph 252, it was stated "*the migrating titles were never for sale*". However, in the letter addressed to Mr Jacobs dated 18 July 2024 in response to the second offer submitted to acquire the titles as well as On the Dot and the community newspaper titles, Mr Davidson stated that "*That said, in the interest of minimising potential job losses and keeping Beeld alive as a brand that carries sentimental value, we will consider a serious offer to purchase the title. This will be subject to retaining the approximately 30* employees potentially affected by the proposed closure of Beeld. We are extending this consideration*

to all interested parties, and any reasonable offers will be incorporated into the S189 consultation process that is currently in progress". (my emphasis)

183 This is a direct contradiction of the statement in paragraph 252 of the Answering Affidavit.

Ad para 253

184 The significance of the negotiations between Media24 and Capital Newspapers is very clear: it is a relevant factor that the Commission was obliged to take into account in its investigation, and which it failed even to consider. It did not so much as interview Mr Jacobs. The Commission would have been under an obligation to do so in any event, but this obligation was heightened in this instance given that:

184.1 The transaction that Media24 ultimately entered into resulted in a net 8% loss in B-BBEE score;

184.2 Mr Jacobs is an HDP; and

184.3 Capital Newspapers is a medium sized enterprise.

Ad para 255

185 I deny this statement (which is repeated a number of times in the merger parties' affidavit). The Commission has broad powers to prohibit transactions as well as to include conditions relating to divestiture.

Ad para 269

186 The merger parties suggest that the decision by Media24 to migrate its print titles to digital “*has no impact on freedom of expression*” because, “*expression and freedom of the media is protected in digital media just as it is in print*”. This is primarily a matter for legal argument. For present purposes, it suffices to note that the implications of Media24’s [Confidential: ██████] will be not only the closure of the Media24 print newspapers (only one of which will be available online), but the loss of several other printed newspapers, including the Sowetan, the Sunday Times, the Citizen, the Witness, the Daily Maverick and the Mail and Guardian. It is also likely that it will lead to the closure of the Star and the other Independent News titles in the northern region. The result is undoubtedly a poorer offering of news sources; and a diminution of diversity of voices.

187 The contraction of the print media resulting from the closure of the Terminating Newspapers will have a profound effect on the news ecosystem and will undoubtedly harm freedom of expression in South Africa. It will dilute the diversity of voices available, and readers of defunct titles will not all follow the news online.

188 Furthermore, the digital format of news is entirely different to the printed media—with online focusing on snippets and short form news articles, whilst print allows for opinion, analysis and more in-depth reportage. The closures will relegate news to a “*one size fits all*” approach.

189 As to diversity of voice, when one purchases a newspaper, one purchases a news media which is aimed at a particular demographic and target audience, either nationally or within a particular geographic area. Thus, the Beeld is available only in the northern provinces (Gauteng, Mpumalanga, Limpopo and the North West). Its focus is on news that affects its readers in those provinces. Capital Newspaper's paid newspaper, The Witness, is distributed only in parts KwaZulu-Natal (Pietermaritzburg, Durban and inland) and similarly focuses on news which is of particular interest to readers in that area. The different newspaper publishers have different target markets and different focuses, and the newspapers are tailored to their readers. There are currently around 20 printed national and regional daily, weekly and weekend paid-for newspapers in South Africa each serving these geographically- and demographically-focused markets. Of course there is a further market segment of free local and community newspapers which serve local markets

190 Online news is entirely different. First, as set out above, South African online subscription news is entirely dominated by News24 and Netwerk24, which have six times more page views per month than the next largest competitor. Secondly, online news is not tailored in any way: any person who accesses the News24 homepage will see the same stories. The news is accordingly less local, less tailored, and more generic. It is necessarily focused on stories that will appeal to the masses and usually national market, and loses the quality and public interest that comes from a newspaper aimed at a particular readership. The news format is also different, as explained above.

191 Thirdly, online news is not available to everyone in the way that any person walking past a corner shop can pick up a once-off. There is the issue that bandwidth is not universally available or affordable.

192 So for example, a single copy of the Beeld newspaper sells for R12.50, so if a reader wishes to read the news, or sees a headline of interest, he or she can access the news and the newspaper is then passed from reader to reader, with sometimes more than ten readers to a single newspaper. Lack of data and broadband internet excludes people from access. Furthermore, News24, for example offers three subscription options: there is an R89 per month package; a R450 for 6 month package; and a R850 for a year package (for the first six months or year respectively). In order to subscribe through the website, one must have either a Visa or a Mastercard credit card. Given that only some 39% of people aged 15 to 64 in South Africa are employed, and the median salary of those who are employed is around R5200 per month,⁵⁹ the cost of online subscription to news services (not to mention the availability of a credit card with which to purchase it) is for much of the population, unattainable.

193 In summary, the loss of diversity of voice, and access to news have a material and direct effect on the constitutional democracy enshrined in the Constitution, and the closures renders news ever increasingly the exclusive preserve of the rich, whilst the poor who require news more than anyone, are precluded from participation in democracy.

⁵⁹ <https://www.statssa.gov.za/publications/02-11-20/02-11 A -202022.pdf>.

Ad paras 273 to 277

194 The figures I have quoted above speak for themselves. Media24 is by far the dominant news subscription service in South Africa.

195 Facebook and Google and other online platforms do not produce news: they simply provide access to other information. Nor do they employ journalists.

Ad paras 280

196 Media24 does not deal with the fact that the retention of the journalists is likely to be a short term phenomenon, and will not address a structural change in the market.

Ad paras 285

197 The applicants have alleged that distribution costs will increase by 15% which is undisputed. That fact was not taken into account by the Commission in its approval at all. This on its own renders the Commission's decision subject to review.

Ad para 289

198 In paragraph 289, it is stated that "*I deny that we ever 'invited' Capital to purchase On the Dot or the community newspapers*". However, this is a denial without any substance.

199 Media24 does not deny that it invited Mr Jacobs to consider a potential purchase of On the Dot and the community newspaper titles. It also does not deny the fact that there were ongoing engagements with Capital Newspapers and Caxton or that Mr Jacobs was conducting a due diligence and provided with access to numerous presentations and detailed financial information. Nor is the four week negotiation period denied. These were not “*exploratory discussions*”.

200 It is also entirely incorrect (and false) to suggest that the reason that Media24 did not conclude an agreement with Capital Newspapers – a majority owned HDP firm was because Mr Jacobs had insisted that he would only purchase On the Dot if he was able to purchase the newspaper titles themselves. As explained in his founding affidavit, Mr Jacobs was informed early in the engagements with Media24 that an instruction had been given that the newspapers were to be closed and that Media24 would not engage with the proposals made to save the newspapers at that stage. The engagements thereafter related solely to the potential purchase of On the Dot and the community newspaper titles. This is evidenced by an email dated 13 May 2024 that Mr Jacobs sent to Mr Davidson in which he noted:

“Can we have high level details in advance or at the meeting, of-

- *Financial / management accounts of each business for last year and budgets for next two years*
- *Ebitda margins on both businesses*
- *Printing and distribution costs of community newspapers*
- *Third party printing volumes of newspapers and magazines*
- *Third party distribution clients and turnover*
- *IT and SAP costs.*

- *Management fees payable*
- *Rental and head office costs*
- *Salaries/payroll and retrenchment costs if businesses closed now.*
- ***Timing of closure of newspapers and revenue attributable to these titles in OTD***
- ***OTD rightsizing costs on newspaper closures***". (Emphasis added.)

201 Moreover, the offer that was sent by Mr Jacobs to Media24 on 13 June 2024 also expressly relates solely to On the Dot and the community newspaper titles.

202 The fact that Media24 advances a false narrative in relation to the reason why it decided not to conclude an agreement with Capital Newspapers is concerning.

H. RESPONSE TO THE COMMISSION'S AFFIDAVIT

203 The Commission makes reference to an order granted by this Court in **Sasol** in relation to the execution of a summons pending a review, which delayed the Commission's investigation into the downstream pipe industry. It submits further that any stay in a merger "*will frustrate the purpose of the merger control regime*".

204 I have dealt above with the fact that this application can be expeditiously determined; and the very fears that the Commission speaks about would be true in each and every case concerning a merger. But that is no excuse for the Commission not to do its job properly, or for an investigation to be permitted to stand notwithstanding that it did not take into account all relevant considerations.

205 Quite equally the very purpose of the merger control regime would be undermined if the Court did *not* grant stays when it was appropriate to do so, in order to maintain the *status quo* and prevent the horse from bolting, and irreparable harm from occurring where the Commission's merger decisions are challenged on legitimate grounds (as in this instance).

I. CONCLUSION

206 In the premises, the Applicants persist with the prayers set out in the Notice of Motion.

DEPONENT

I hereby certify that the deponent knows and understands the contents of this affidavit and that it is to the best of the deponent's knowledge both true and correct. This affidavit was signed and sworn to before me at _____ on this the _____ day of November 2024, and that the Regulations contained in Government Notice R.1258 of 21 July 1972, as amended by R1648 of 19 August 1977, and as further amended by R1428 of 11 July 1989, having been complied with.

COMMISSIONER OF OATHS

Full names:

Address:

Capacity:



22 November 2024

CITIZEN

**9 Wright Street
Industria West
Johannesburg**


Dear Andy Gill

The recent change to circulation strategies for certain major newspaper titles as widely communicated in the media, has negatively impacted volumes on the physical newspaper distribution network. As a result, OnThe Dot will have no alternative but to revisit the footprint and charge out rates associated with newspaper distribution in the northern regions, and to will attempt to minimize the impact on our clients.

We are working in the background to devise alternative solutions and will reach out to you shortly to discuss our proposals and your specific requirements. Our goal is to finalise the resultant footprint and pricing structure by the end of December with implementation by 01 February 2025.

Andre van Tonder and his team will be in contact with you to arrange meetings in early December, with the aim of completing discussions before the year-end holiday break.

Regards


Alexis Tobias
General Manager

On the Dot Supply Chain Management Pty Ltd
Registration Number: 1996/005340/07
VAT Number: 4090160070
Unit 2A, Montague Business Park, Milnerton, Cape Town



22 November 2024

THE WITNESS

**225 Hoosen Haffejee St
Pietermaritzburg
3201**

Dear Riquadue Jacobs

The recent change to circulation strategies for certain major newspaper titles as widely communicated in the media, has negatively impacted volumes on the physical newspaper distribution network. As a result, OnThe Dot will have no alternative but to revisit the footprint and charge out rates associated with newspaper distribution in the northern regions, and to will attempt to minimize the impact on our clients.

We are working in the background to devise alternative solutions and will reach out to you shortly to discuss our proposals and your specific requirements. Our goal is to finalise the resultant footprint and pricing structure by the end of December with implementation by 01 February 2025.

Andre van Tonder and his team will be in contact with you to arrange meetings in early December, with the aim of completing discussions before the year-end holiday break.

Regards

A handwritten signature in black ink, appearing to read 'Alexis Tobias', is written over the typed name.

Alexis Tobias
General Manager

On the Dot Supply Chain Management Pty Ltd
Registration Number: 1996/005340/07
VAT Number: 4090160070
Unit 2A, Montague Business Park, Milnerton, Cape Town



22 November 2024

MAIL & GUARDIAN

**The Metal Box
25 Owl Street,
Braamfontein Werf
Johannesburg, 2001**

Dear Hoosain Karjieker

The recent change to circulation strategies for certain major newspaper titles as widely communicated in the media, has negatively impacted volumes on the physical newspaper distribution network. As a result, OnThe Dot will have no alternative but to revisit the footprint and charge out rates associated with newspaper distribution in the northern regions, and to will attempt to minimize the impact on our clients.

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Regards

A handwritten signature in black ink, appearing to read 'Alexis Tobias', is written over the printed name.

**Alexis Tobias
General Manager**

Melissa Steele

Subject: Offer for On the Dot and Western Cape Community titles

From: rdjacobs@capitalmedia.co.za <rdjacobs@capitalmedia.co.za>
Sent: Thursday, June 13, 2024 8:46 AM
To: 'Ishmet.Davidson@media24.com' <Ishmet.Davidson@media24.com>
Cc: 'Raj Lalbahadur' <raj@media24.com>
Subject: Offer for On the Dot and Western Cape Community titles

13 June 2024

Ishmet Davidson
CEO: Media 24
Cape Town

Dear Ishmet.

Offer for On the Dot and Western Cape Community titles

When in mid- May 2024, Capital Newspapers Pty Limited, of which I am the majority controlling shareholder (and Caxton a minority), was approached by you with the dramatic news of the closure of your titles- and we agreed to engage with Media 24 about the possible sale by Media 24 of its OTD division, I took the proposal very seriously.

You advised right up front that a decision had been made to close your major newspaper titles (Rapport, Beeld, City Press, Daily Sun, Soccer Laduma) by October 2024 and reduce the frequency and footprint of your magazines. Media24 was going to focus on a digital only strategy, and you would simultaneously sell your Cape Community newspapers as a sweetener.

On Friday 7 June 2024, Raj Lalbahadur called me to say the deal we had worked so hard on in the preceding weeks, with the assistance of Caxton, was off the table. This summary ejection from the process was deeply shocking and upsetting.

Indeed, in anticipation of the Media24 meeting, our negotiating team believed they had had found a way to solve the Northern (Gauteng) distribution concerns and an IT solution had been identified to replace SAP. So, on Friday before your board meeting- the deal was very much on the table from our perspective, largely as a solution for the newspaper industry. Our good faith was manifest from the fact that we had hardly focused on the sweetener, as we needed to solve the distribution model in an environment where you exited newspapers.

Although we had not discussed a final price, we understood your pricing parameters to be R40m to R60m. We also learned during our engagements (less than a month of discussions and due diligence) that you had in fact engaged with Novus for a lengthy period.

I now understand that Novus is back at the table and a deal has been concluded- and it is all too apparent that Capital Newspapers has been caught up in a game of brinkmanship.

From the onset we were entirely interested in finding a solution that would support the newspaper industry during these difficult times as Media 24 rolled out its plan strategic shift exiting newspapers. You would recall not only did we offer our group systems at no cost to support the titles, but we also showed interest in acquiring and sustaining some of the titles you intend closing - the very least providing a lifeline to the already fragile newspaper industry, not least of which is *The Witness* which Media 24 sold me 24 months ago.

I never indicated that we were not interested in your package deal, and my only request was that we needed to consult with other titles in Gauteng as a final step in the assessment and due diligence. We simply never got there.

So that there can be no misunderstanding- we offer up to R50m for both OTD and your community titles- with a final amount and terms to be agreed upon in good faith.

We reject your reversion to Novus- whose only interest is clearly foreclosing on existing newspaper publishers, who will in turn try to keep the torch of journalism and democracy alive after Media 24 closes its titles.

Kind Regards

Riquadeu Jacobs

The Future of Afrikaans Journalism

18 June 2024

Not all children have the same first names and surnames as their parents. Yet, they carry their parents' DNA – and pass it on to the next generation.

Similarly, printed newspapers and Netwerk24 have evolved. Ten years ago, in August 2014, Netwerk24 was born from the websites of Beeld, Volksblad, Die Burger, and Rapport.

The goal was simple: To create a sustainable future for quality journalism in Afrikaans.

Media24, our parent company, had the vision to realise that people would increasingly read news digitally rather than on paper. And so it has unfolded: Our subscribers have grown from 15 000 in 2016 to more than 98 000. Very few subscription news services worldwide manage to come close to 100 000 subscribers.

We are the second-largest subscription news service in South Africa after News24. Our stories average 3.4 million page reads per day, also the second most after News24*.

This success is, of course, thanks to strong journalists who report on everything from politics to sports; from business to the arts; from scoops to video journalism.

We have newsrooms in Johannesburg, Pretoria, Cape Town, Bloemfontein, and Gqeberha and journalists in Potchefstroom, Polokwane, George, the Northern Cape, and KwaZulu-Natal. Nothing stirs without us knowing! We have seasoned reporters with decades of experience and also young, dynamic journalists.

I wish I could name each of Netwerk24's more than 100 editorial staff members by name -- reporters and the news, sub-, and homepage editors, videographers and graphic artists, social media team, and other colleagues who support them.

We are all dedicated to Afrikaans journalism. This is the language and the profession that makes our hearts beat.

But to understand how we got here, you must understand where we came from. So, quickly back to the early years of newspapers, when words were laboriously put on paper. It had to be set line by line in the factory, Urgent reports were phoned in from news scenes with coin-operated phones to a

DIREKTEURE // DIRECTORS:

RCC Jafta (Voorsitter // Chair), MI Davidson (Uitvoerende hoof // Chief executive), JP Bekker, TD Petersen, KR Mthimunya, M Patel

Sekretaris // Secretary: LJ Jacquet

colleague in the office who clamped the landline phone between shoulder and ear to type the story on a typewriter so it could be in the newspaper the next day.

Later, we could at least write reports on computers, but there was no sign yet of the internet and smartphones, or Whatsapp with which you could send an urgent story that would appear on the website within minutes. In the 1990s, the World Wide Web arrived, shortly followed by the smartphone and in the 2000s, social media – a trio that would forever change the media landscape.

Our company early on realised that the best chance for the future success of Afrikaans journalism was to join forces in one digital home. In 2016, they took a further bold step by moving all the journalists from Beeld, Volksblad, and Die Burger to Netwerk24, where they have since worked as an integrated editorial team with a digital-first approach, with the news unfolding moment by moment on Netwerk24.

The copy then flows downstream to the daily newspapers, where the editors and production teams decide which Netwerk24 stories they will package for the next day's newspaper.

Rapport has its own editorial staff whose copy for their printed newspaper flows to Netwerk24 on Sundays. The same with Media24's leading Afrikaans magazines, including Huisgenoot, Sarie, Kuier, Tuis, and Weg!, which have been part of Netwerk24's "Everything in one place" offering since 2017.

As people increasingly read news on their phones, they move away from paper. Our newspapers sell fewer and fewer print copies, while it also becomes more expensive to distribute them all over the country. Since 2020, Volksblad and Die Burger Eastern Cape are no longer on paper, just as e-publications on Netwerk24 (which looks just like the paper newspaper). Now we are again at a crossroads. It is no longer sustainable to publish Beeld and Rapport on paper. Nor to bear the cost of e-publications. Media24 is considering ceasing this newspaper production. Beeld, Volksblad, and Die Burger Eastern Cape's content will then live exclusively within Netwerk24. The DNA and all the regional news will continue as currently, in the digital format that most people prefer, now just fully under the Netwerk24 name.

In this new dispensation, subscribers will get strong Rapport news stories with the distinctive red Rapport logo on Netwerk24 on Sundays to strengthen our offering of in-depth news.

Die Burger, which was Naspers and Media24's very first newspaper in 1915, can still be sustainably printed and distributed. The PDF version will still appear as an e-publication on Netwerk24 for readers who want to read major national and international news this way.

With these moves, **we are reinvesting in the future of Afrikaans journalism.**

DIREKTEURE // DIRECTORS:

RCC Jafta (Voorsitter // Chair), MI Davidson (Uitvoerende hoof // Chief executive), JP Bekker, TD Petersen, KR Mthimunya, M Patel

Sekretaris // Secretary: LJ Jacquet

These days, we are more concerned about the influence of TikTok and Artificial Intelligence on professional journalism! **Our task now is to ensure that proper reporting also survives in the digital sphere by presenting it world-class.**

Fortunately, there are no limits to ways to give our subscribers value for money.

The possibilities are endless – also for advertisers who want to reach an extremely loyal quality Afrikaans audience. Once subscribers have signed up, they stay.

Our churn rate is incredibly low compared to international standards. The time subscribers spend daily on Netwerk24 is also more than on any of Media24's other websites.

Netwerk24 pays homage to our newspapers. We will forever be grateful for the DNA they gave us; for decades in which they refined Afrikaans journalism in their newsrooms. We undertake to build digitally on this legacy.

We want to continue working, creating, and living in Afrikaans.

**Henriëtte Loubser
Editor-in-Chief
Netwerk24 & Afrikaanse Nuus**

* *IAB South Africa*

DIREKTEURE // DIRECTORS:

RCC Jafta (Voorsitter // Chair), MI Davidson (Uitvoerende hoof // Chief executive), JP Bekker, TD Petersen, KR Mthimunye, M Patel

Sekretaris // Secretary: LJ Jacquet

IN THE COMPETITION APPEAL COURT OF SOUTH AFRICA

Case No: 259/CAC/Oct24

In the matter between:

CAPITAL NEWSPAPERS (PTY) LTD	First Applicant
CAXTON & CTP PUBLISHERS & PRINTERS LIMITED	Second Applicant
and	
MEDIA24 HOLDINGS LIMITED	First Respondent
NOVUS HOLDINGS LIMITED	Second Respondent
NOVUS PRINT PROPRIETARY LIMITED	Third Respondent
FREE 4 ALL PROPRIETARY LIMITED	Fourth Respondent
INTREPID PRINTERS PROPRIETARY LIMITED	Fifth Respondent
VICTORY TICKET 376 PROPRIETARY LIMITED	Sixth Respondent
MEDIA24 PROPRIETARY LIMITED	Seventh Respondent
THE COMPETITION COMMISSION	Eighth Respondent
THE MINISTER OF TRADE, INDUSTRY AND COMPETITION	Ninth Respondent

CONFIRMATORY AFFIDAVIT

I, the undersigned,

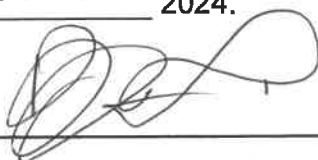
RIQUADEU JACOBS

do hereby make oath and state that:



- 1 I am the Managing Editor of the first applicant, **CAPITAL NEWSPAPERS (PTY) LTD.**
- 2 The facts contained in this affidavit are true and, unless the context indicates otherwise, within my personal knowledge.
- 3 I have read the non-confidential version of the replying affidavit deposed to by Anton Jacques Roets and confirm the contents insofar as they relate to me and/or Capital Newspapers.

Signed at Pietermaritzburg on this 26 day of November 2024.



RIQUADEU JACOBS

I hereby certify that the deponent knows and understands the contents of this affidavit and that it is to the best of the deponent's knowledge both true and correct. This affidavit was signed and sworn to before me at Pietermaritzburg on 26 November 2024, and that the Regulations contained in Government Notice R.1258 of 21 July 1972, as amended by R1648 of 19 August 1977, and as further amended by R1428 of 11 July 1989, having been complied with.



COMMISSIONER OF OATHS

Full names:

Address:

Capacity:

**COMMISSIONER OF OATHS
 JENNIFER MARY ANTHOO
 BA.LLB (NATAL) LLM (UKZN)
 13 STRANACK STREET,
 PIETERMARITZBURG, 3201
 TEL: 033 3469 123/4 | CELL: 083 232 5402**

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MEDIA24 PROPRIETARY LIMITED	Seventh Respondent
THE COMPETITION COMMISSION	Eighth Respondent
THE MINISTER OF TRADE, INDUSTRY AND COMPETITION	Ninth Respondent

CONFIRMATORY AFFIDAVIT

I, the undersigned,

PAUL JENKINS

do hereby make oath and state that:


m.s

1 I am the non-executive Chairperson of **CAXTON & CTP PUBLISHERS & PRINTERS LIMITED.**

2 The facts contained in this affidavit are true and, unless the context indicates otherwise, within my personal knowledge.

3 I have read the non-confidential version of the replying affidavit deposed to by Anton Jacques Roets and confirm the contents insofar as they relate to me and/or **CAXTON & CTP PUBLISHERS & PRINTERS LIMITED.**


Signed at Johannesburg on this 26th day of November 2024.



PAUL JENKINS


M.S

I hereby certify that the deponent knows and understands the contents of this affidavit and that it is to the best of the deponent's knowledge both true and correct. This affidavit was signed and sworn to before me at PRETORIA on 2024/11/26, and that the Regulations contained in Government Notice R.1258 of 21 July 1972, as amended by R1648 of 19 August 1977, and as further amended by R1428 of 11 July 1989, having been complied with.



COMMISSIONER OF OATHS



Full names: M.S. EKANA

Address: 71 DUNDALK AVE

Capacity: CONSTABLE

IN THE COMPETITION APPEAL COURT OF SOUTH AFRICA

Case No: 259/CAC/Oct24

In the matter between:

CAPITAL NEWSPAPERS (PTY) LTD	First Applicant
CAXTON & CTP PUBLISHERS & PRINTERS LIMITED	Second Applicant
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VICTORY TICKET 376 PROPRIETARY LIMITED	Sixth Respondent
MEDIA24 PROPRIETARY LIMITED	Seventh Respondent
THE COMPETITION COMMISSION	Eighth Respondent
THE MINISTER OF TRADE, INDUSTRY AND COMPETITION	Ninth Respondent

CONFIRMATORY AFFIDAVIT

I, the undersigned,

ANDREW GORDON COPELAND GILL

do hereby make oath and state that:

1 I am the Managing Director of The Citizen.

- 2 The facts contained in this affidavit are true and, unless the context indicates otherwise, within my personal knowledge.
- 3 I have read the non-confidential version of the replying affidavit deposed to by Anton Jacques Roets and confirm the contents insofar as they relate to me and/or The Citizen.

Signed at Rosebank on this 27 day of November 2024.



ANDREW GORDON COPELAND GILL

I hereby certify that the deponent knows and understands the contents of this affidavit and that it is to the best of the deponent's knowledge both true and correct. This affidavit was signed and sworn to before me at Parkview on 2024-11-27 and that the Regulations contained in Government Notice R.1258 of 21 July 1972, as amended by R1648 of 19 August 1977, and as further amended by R1428 of 11 July 1989, having been complied with.



COMMISSIONER OF OATHS

Full names: Kayes Rhulani Mopimeli
 Address: 71 Dundee Avenue
 Capacity: Sergeant

