

HALEY HUDSON vs ARKANSAS DEPARTMENT OF HEALTH  
SHELTON, KRISTEN on 05/16/2023

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ARKANSAS STATE CLAIMS COMMISSION

HALEY HUDSON, INDIVIDUALLY AND AS )  
ADMINISTRATRIX OF THE ESTATE OF )  
JACQUELINE LYNN ASHCRAFT, DECEASED, )  
AND HALEY HUDSON AS PERMANENT LEGAL )  
GUARDIAN OF [REDACTED] )  
[REDACTED] )

MINOR CHILDREN,

CLAIMANT,

) CC NO. 230641

VS.

ARKANSAS DEPARTMENT OF HEALTH AND )  
HUMAN SERVICES, )

RESPONDENT. )

-----  
ORAL AND VIDEOTAPED DEPOSITION OF

KRISTEN SHELTON

May 16, 2023  
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ORAL AND VIDEOTAPED DEPOSITION OF KRISTEN SHELTON,  
produced as a witness at the instance of the CLAIMANT,  
and duly sworn, was taken in the above-styled and  
numbered cause on the 16th day of May, 2023, from 1:02  
p.m. to 1:55 p.m., before Dana Hayden, CCR in and for  
the State of Arkansas, RMR, CRR, CRC, reported by  
machine shorthand, at the Arkansas Department of Human  
Services, 900 South Rogers Avenue,  
Clarksville, Arkansas, pursuant to the Arkansas Rules  
of Civil Procedure.



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1 A. Correct. As the supervisor, there would have  
2 been staff below me that would have responded to  
3 emergency situations.

4 Q. Explain to me what -- your understanding of what  
5 Jennifer Wilkerson's job was on -- what was she hired  
6 as on June 11th?

7 A. She was hired as a program assistant.

8 Q. If I see the phrase "PA" in messages, is that  
9 what pro- -- is that what "PA" stands for?

10 A. Yes.

11 Q. And then what does a program assistant stand  
12 for -- I mean, what does a program assistant do?

13 A. They assist the family service workers in  
14 providing services to the families. So primarily  
15 supervising parent-child visits, transporting clients  
16 for services, et cetera.

17 Q. How long -- what's your understanding of how  
18 long Jennifer Wilkerson had been employed by DHS?

19 A. Ten days prior to the accident.

20 Q. What -- do you know what her background was to  
21 make her -- what would make her eligible to have that  
22 job?

23 A. The -- as far as the eligibility criteria, I  
24 don't recall what her specific background was.

25 Q. Okay. Thank you. That was going to be my



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1 second question. What is the eligibility requirement?

2 A. The only eligibility requirement is a high  
3 school diploma. We prefer work experience, certain  
4 work experiences, but it's not an eligibility  
5 requirement.

6 Q. Okay. Are there anything that -- if a person  
7 has been arrested for a felony, does that make them  
8 ineligible to be a program assistant?

9 A. A person would have to be convicted of a crime  
10 before we would know about it.

11 Q. How did you find out that there had been a wreck  
12 on June 11th with the DHS employee involved?

13 A. The Logan County supervisor contacted me.

14 Q. Who is the Logan County supervisor?

15 A. Pamela Feemster.

16 Q. At that time, would Ms. Feemster have been  
17 working in Paris?

18 A. Yes.

19 Q. Okay. How did she first contact you?

20 A. I don't recall.

21 Q. Do you recall the nature of what Ms. Feemster  
22 told you had happened?

23 A. That one of her employees had been involved in  
24 an auto accident in the state car.

25 Q. Do you recall anything else she told you at that



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1 initial call?

2 A. I don't.

3 Q. And you don't recall if it was by phone or text  
4 or --

5 A. I don't.

6 Q. Okay. What -- when you got that information,  
7 what did you do?

8 A. I honestly don't remember what I did on that  
9 day, or if I did anything on that day specifically.

10 Q. And my understanding is that this accident  
11 occurred on a Friday? Does that sound correct to you?

12 A. I don't know for sure.

13 Q. What -- based on your experience, what would be  
14 your operating procedure for you to tell the Logan  
15 County supervisor when you got that information?

16 A. I would ask if our worker was okay, if they were  
17 seeking medical treatment. I mean, that's what I  
18 would normally do.

19 Q. Okay. Do you re- -- what's the next information  
20 you recall receiving about this accident?

21 A. I honestly don't recall. It's been almost two  
22 years, so...

23 Q. Do you recall doing an investigation about  
24 Ms. Wilkerson and what happened and doing any  
25 interaction with Ms. Wilkerson?



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1 A. I did an internal fact-finding to determine if  
2 she had violated any of the behavior expectations that  
3 we have.

4 Q. And describe -- describe for me what that  
5 internal fact-finding, what that process is, please.

6 A. It's a process where we determine if any of the  
7 behavior expectations have been violated by reaching  
8 out to the person involved and any other people that  
9 might have information to gather what information we  
10 could to determine if there needed to be any  
11 discipline action.

12 Q. Do you recall who all you obtained information  
13 from about this?

14 A. I believe I obtained information from -- I know  
15 Ms. Wilkerson, Ms. Feemster, Pamela Feemster, Brandy  
16 Ezell. Those are the only ones I remember off the top  
17 of my head that I talked to.

18 Q. Did you ever talk to the -- anybody with the  
19 Arkansas State Police?

20 A. I did not.

21 Q. Okay. Who is Brandy Ezell?

22 A. She's a family service worker in Logan County.

23 Q. Is she still in Logan County?

24 A. Yes.

25 Q. And would Jennifer Wilkerson have been directly

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1 under Brandy Ezell?

2 A. No. She was directly under Pamela Feemster.

3 Q. Okay. In way of seniority, who has seniority  
4 between Pamela Feemster and Brandy Ezell?

5 A. Pam.

6 Q. Okay.

7 A. Both Jennifer and Brandy worked for Pam.

8 Q. Okay. Thank you. Who is Staci Miller?

9 A. She was our HR, our human resource manager, in  
10 central office at the time.

11 Q. Okay.

12 MR. GASPER: What was the name again,  
13 Jim?

14 MR. JACKSON: Staci Miller.

15 MR. GASPER: Okay.

16 Q. So she is the HR liaison out of the Little Rock?

17 A. She was our manager, our HR manager.

18 Q. Manager?

19 A. She was. She's no longer with us.

20 Q. Who is -- and I'm going to -- I've got some  
21 employee -- some names on here I just want to go over  
22 with you that I got from these emails. Who is Miranda  
23 Raines?

24 A. She is also part of our executive staff in  
25 Little Rock, and I can't tell you what her exact title



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1 is.

2 Q. Okay. But she's in the Little Rock --

3 A. Yes.

4 Q. -- office?

5 Tiffany Wright?

6 A. Tiffany Wright was, at the time, my supervisor's  
7 supervisor. She was our assistant director over field  
8 operations for the Division of Children and Family  
9 Services.

10 Q. Would she also be in the central office?

11 A. Yes, sir.

12 Q. Sara Snead?

13 A. There -- I don't know who Sara Snead is.

14 Q. Okay.

15 A. There is no Sara Snead.

16 Q. There may be one; you just don't know who it is?

17 A. Okay.

18 MR. GASPER: She's with HR, central  
19 office.

20 MR. JACKSON: That's fine.

21 A. I don't know who that is.

22 Q. That's fine. That's a perfectly good answer.

23 You don't know Trooper James Ray?

24 A. No.

25 Q. Okay.

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1 A. No.

2 Q. Do you know who Scott Lindstrom is?

3 A. No.

4 Q. Do you know of anyone else that would have been  
5 part of the fact-finding that you did?

6 A. I discussed it with my direct supervisor. Sarah  
7 Sharum was our area director -- or is our area  
8 director.

9 Q. How do you spell Sarah's last name?

10 A. S-h-a-r-u-m.

11 MR. GASPER: That's an M, correct?

12 THE WITNESS: M.

13 MR. GASPER: M, as in "mom"?

14 A. Sharum.

15 Q. And where does Ms. Sharum work?

16 A. Sebastian County office, Fort Smith.

17 Q. It appears to me from the documents that you  
18 ended up terminating Ms. Wilkerson from employment at  
19 DHS on Wednesday, June 16th, 2021. Does that sound  
20 correct?

21 A. Yes.

22 Q. Okay.

23 A. I don't know the exact date but, yes, I did  
24 terminate her employment.

25 Q. Have you -- I'm going to hand you what we'll



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1 mark as Exhibit 1.

2 MR. GASPER: Is this a copy of it?

3 MR. JACKSON: Yes.

4 MR. GASPER: I don't object.

5 Q. If you could --

6 MR. GASPER: I have no objection.

7 (Exhibit 1 marked for identification.)

8 MR. JACKSON: Let me make sure I got  
9 that -- yeah.

10 Q. Have you seen that document, or those documents  
11 that are part of Exhibit 1?

12 A. I have seen some of these documents. I have not  
13 seen all of these documents.

14 Q. Can you take a look at those documents? I want  
15 to ask you some questions about them and your  
16 involvement with those documents.

17 MR. GASPER: Do you have any specific  
18 ones you're asking about, or do we need to  
19 take some time for her to look over them?

20 MR. JACKSON: Yeah, let's just take a --  
21 let's just go off the record for a moment.

22 THE VIDEOGRAPHER: The time is 1:19.  
23 We're now off the record.

24 (Recess from 1:20 p.m. to 1:22 p.m.)

25 THE VIDEOGRAPHER: The time is 1:22.

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1 We're now on the record.

2 Q. Ms. Shelton, have you had a chance to look at  
3 what -- the documents attached as Exhibit 1 to your  
4 deposition?

5 A. Yes.

6 Q. I want to ask you: What are the requirements  
7 that the department has for an employee before they  
8 are able to drive a state-issued car?

9 A. I don't -- I mean, I don't know specifically  
10 what that is off the top of my head.

11 Q. Is there any --

12 A. I mean, they have to be an employee and they  
13 have to have passed our background checks and all of  
14 that, and they have to -- there is a vehicle policy  
15 that they have to sign. I mean, I don't -- I don't  
16 have that in front of me. That's not part of this  
17 documentation, so I don't know the specifics.

18 Q. Is there a vehicle policy that employees are  
19 expected to adhere to when they drive?

20 A. Yes.

21 Q. And are you familiar -- how familiar are you  
22 with that policy?

23 A. I have not read that policy in a long -- I've  
24 been employed a long time, so it's been a while since  
25 I've read that.



1 Q. And what is the gist of that policy?

2 A. I mean, I honestly can't get into the specifics  
3 about it. There are a couple of different pages that  
4 employees have to sign off on acknowledging that they  
5 understand it.

6 Q. What is your understanding about where Jennifer  
7 Wilkerson's, what the mission of her route on June  
8 11th, '21 was?

9 A. My understanding is that she was going to travel  
10 from Paris to Beebe to pick up a foster child and  
11 transport that child back to Clarksville to meet  
12 another worker.

13 Q. And when you say "Clarksville," would the  
14 transfer to the other worker have occurred here at  
15 this office?

16 A. Yes.

17 Q. Okay.

18 A. Well, no, I don't know that it would have  
19 occurred at this office. It was set to occur in this  
20 town.

21 Q. Okay.

22 A. But I don't know where.

23 Q. Okay. Thank you for clarifying.

24 As part of your internal fact-finding,  
25 tell me what steps you took to investigate

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1 Ms. Wilkerson's actions.

2 A. I notified her of the fact-finding and sent her  
3 a list of questions and then I also asked for  
4 statements from Ms. Feemster and Ms. Ezell that I know  
5 for sure.

6 Q. And the questions that you sent to Ms. Wilkerson  
7 are on an email dated June 16, 2021, at 10:47 a.m.; is  
8 that correct?

9 A. Yes.

10 Q. And whose handwriting is that?

11 A. Ms. Wilkerson's.

12 Q. And then it looks like you had a follow-up email  
13 right after that; is that -- with Ms. Wilkerson; is  
14 that correct?

15 A. Yes, I believe so.

16 Q. And did you ever -- do you recall having a  
17 telephone call with Ms. Wilkerson as part of the  
18 fact-finding?

19 A. I would not have had a telephone call with  
20 Ms. Wilkerson. We are specifically instructed to  
21 conduct our fact-findings in writing.

22 Q. You indicated you also obtained information from  
23 Randy Ezell?

24 A. Yes.

25 Q. And is that information contained in Exhibit 1?



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1 A. Yes.

2 Q. And where is the -- and it looks like that would  
3 have been the email sent to you from Brandy Ezell on  
4 June 16th of '21 at 2:03 p.m.?

5 A. Yes.

6 Q. Okay. And then the same question for Pamela  
7 Feemster. Was the information you received from her  
8 via email at 1:41 p.m.?

9 A. Yes.

10 Q. Okay. And the same would be true with getting  
11 information from Ms. Ezell and Ms. Feemster:  
12 Everything you would get from them would be in  
13 writing?

14 A. Everything that I used during the fact-finding  
15 is in writing.

16 Q. Okay.

17 A. I'm not saying I didn't have a phone  
18 conversation with Ms. Feemster. She was directly  
19 under me. I was her direct supervisor. But all of  
20 the information that I used for the fact-finding is in  
21 writing.

22 Q. Gotcha. That makes sense.

23 Do you recall anything that Ms. Feemster  
24 may have told you that's outside of what's in the  
25 email about the accident?

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1 A. I don't think so.

2 Q. So on Page 2 of the exhibit, there's an email  
3 from you to Tiffany Wright and some others -- oh, if  
4 you need to take that.

5 A. I'm sorry. No, it's -- I didn't think to  
6 silence my phone because I didn't bring it into the  
7 room, so I didn't think about my watch going off. I  
8 apologize.

9 Q. And we certainly understand if you have an  
10 emergency.

11 A. No, it's fine.

12 Q. Could you read your email that you sent to  
13 Tiffany Wright?

14 A. "New Logan County PA Jennifer Wilkerson just had  
15 an accident in a state car. We believe she was at  
16 fault but don't have all the details yet. She is  
17 being transported to the hospital but was alert. She  
18 did not have any clients in the car with her. The car  
19 is totaled.

20 "Allegedly she crossed the centerline  
21 and clipped a mobile home that was being transported,  
22 then she rear-ended the car in front of her. Her  
23 supervisor went to the scene and said her boyfriend  
24 came to the scene as well, and he appeared to be under  
25 the influence. He is a past client. We are asking



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1 state police if their investigation will involve a  
2 toxicology report; if not, is there a way we can  
3 drug-screen her."

4 Q. And where would you have obtained that  
5 information about the accident?

6 A. Probably by phone from Ms. Feemster.

7 Q. Okay. And the supervisor that went to the  
8 scene, do you know if that would have been Ms. Ezell  
9 or Ms. Feemster?

10 A. Ms. Ezell's not a supervisor.

11 Q. Okay.

12 A. Ms. Feemster is the only supervisor.

13 Q. Ms. Ezell is a co-employee, the same?

14 A. Correct.

15 Q. Okay.

16 A. Not the same level, but she's not a supervisor.

17 Q. Thank you. Okay. Were you -- do you know what  
18 happened as far as on your request for a drug screen  
19 for Ms. Wilkerson?

20 A. We -- I know that Ms. Feemster followed the  
21 ambulance to the hospital, but she was not allowed to  
22 get into the hospital because they had it on lockdown.  
23 But she did notify that we were requesting a drug  
24 screen, but I don't know if we ever -- I don't know if  
25 that happened. I never saw any results of a drug



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1 screen.

2 Q. Okay.

3 A. That we -- that we requested.

4 Q. Okay. Did you see any results of a drug screen

5 at all --

6 A. No.

7 Q. -- for Ms. Wilkerson?

8 A. No, I have not.

9 Q. What -- so walk me through how Ms. Wilkerson is

10 told that there's an internal fact-finding going to

11 occur and she's going to have to answer these

12 questions. What's the procedure for that?

13 A. It's in that email attached to the questions.

14 That's how she was notified of the fact-finding. It's

15 the one where she wrote out the answers, that page.

16 Q. Was there anything else beforehand that her

17 supervisors told, or somebody tells Ms. Shelton [sic],

18 hey, you need to look for this email; it's going to be

19 coming from --

20 A. No.

21 Q. -- from Clarksville and you need to be ready for

22 it, or it's just --

23 A. Not to my knowledge, no.

24 Q. Okay. I want to ask you. Ms. Wilkerson's

25 answers to question number 5 is -- the question is:

1 "While you were driving, what happened to cause the  
2 accident?"

3 Can you read what Ms. Wilkerson's answer  
4 is?

5 A. "I remember seeing a car up ahead but no brake  
6 lights or signal lights. That's all I remember until  
7 I came to."

8 Q. Do you know anything else about -- whether  
9 Ms. Wilkerson had said anything else about what  
10 happened to cause the wreck other than that statement?

11 A. No.

12 Q. Okay. And then the same for question number 10:  
13 "Is there anything else you would like -- that you  
14 would like for me to know about" -- let me start over.

15 Question number 10: "Is there anything  
16 else that you would like for me to know regarding this  
17 incident?"

18 What was her answer?

19 A. "I am devastated over what happened, but I  
20 really don't know what happened because I don't  
21 remember, it happened so fast."

22 Q. And then it looks like you had two emails from  
23 Pamela Feemster and one from Brandy -- I'm sorry,  
24 three emails from Pamela Feemster and one from Brandy  
25 Ezell. Did those three emails and Ms. Wilkerson's

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1 answers and Ms. Wilkerson's subsequent email, is that  
2 what made up your fact-finding?

3 A. Yes. And the fact that she had only been  
4 employed for ten days and was still in probationary  
5 status.

6 Q. And then how was Ms. Wilkerson notified that she  
7 was terminated? Is that something you do, or do you  
8 have Ms. Feemster do that?

9 A. Normally the supervisor would do that. I may  
10 have done that myself, and we normally would do that  
11 in person, but I honestly don't recall how we notified  
12 her.

13 Q. Do you recall ever meeting Ms. Wilkerson in  
14 person?

15 A. I don't recall that, no. I don't know if I did  
16 or not.

17 Q. Did you ever go to the accident site?

18 A. No.

19 Q. Do you know -- I mean, at any point have you  
20 ever driven by and said, you know, that's where the  
21 accident occurred?

22 A. I mean, I drive that road all the time.

23 Q. Highway 22?

24 A. I don't have any firsthand knowledge, though, of  
25 where that accident occurred.



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1 Q. Okay. Was -- at the time of the accident, the  
2 state trooper reports it being called in at 12:50  
3 p.m., and it's my understanding that Ms. Wilkerson was  
4 supposed to be at Beebe at 2:00 p.m. to pick up the  
5 child?

6 A. That's --

7 Q. Does that sound correct?

8 A. That's my understanding.

9 Q. So if that's correct, she would have been about  
10 an hour behind schedule when the wreck occurred; is  
11 that right?

12 A. Yes.

13 Q. And you don't have any reason to dispute that?

14 A. No.

15 Q. Okay. There is an email from Jennifer Wilkerson  
16 to Pamela Feemster in that package, and it's got the  
17 name of a client blacked out. Do you see that email?

18 A. Yes.

19 Q. And what is that Bates stamp number of that one?  
20 Is it 419?

21 A. Yes.

22 Q. Can you read what Ms. Wilkerson's email stated?

23 A. "On 6/11/21, I was going to Beebe, Arkansas to  
24 pick up," blank, "for a sibling visit in Clarksville,  
25 Arkansas. I left Paris about 12:30 p.m. and was

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1 supposed to be there around 2:00 p.m. in Midday" -- I  
2 think she meant Midway -- "Arkansas. There was a car  
3 stopped in the road. I didn't see a turn signal, and  
4 the -- I remember the air back deploying and nothing  
5 else until the car was stopped. When I was able to  
6 get out of the car, there were already several people  
7 on the scene. I was there until I went to the  
8 ambulance -- or went to in the ambulance to the  
9 emergency room in Booneville, Arkansas. I had minor  
10 cuts and bruises."

11 Q. Okay. Are -- have we gone over all of the  
12 statements that you're aware of that Jennifer  
13 Wilkerson has made to anyone at DHS regarding what  
14 happened in the accident?

15 A. I believe there might be one other follow-up  
16 email that she sent me. It's stamped 423.

17 Q. Okay.

18 A. Where she emailed me following the initial  
19 questions, and I, in possibly even my follow-up  
20 questions, she said -- she sent me an additional  
21 email.

22 Q. Can you read what that email, what she says in  
23 that email?

24 A. "I wanted to mention that it was prescribed to  
25 be for ADHD but was used for people with narcolepsy

1 but that it was something I should inform Pam about.  
2 That's why I sent the message."

3 And that -- and then I think you already  
4 asked me, but I did -- I sent her some additional  
5 follow-up questions, and she did answer those in a  
6 separate email as well.

7 Q. Looking through the exhibits, or the documents  
8 in Exhibit 1, are you aware of any other emails or  
9 statements by Jennifer Wilkerson related to this  
10 accident?

11 A. No.

12 Q. Okay. As you sit here today, are you aware of  
13 any facts that would indicate that Jennifer Wilkerson  
14 was not 100 percent responsible for this accident?

15 MR. GASPER: I'm going to object to  
16 that. That's speculation. That's way out  
17 of her wheelhouse.

18 MR. JACKSON: Objection noted.

19 Q. Go ahead and answer the question to the best of  
20 your ability.

21 A. I did not do the investigation involving the  
22 accident, so I don't have any knowledge about what the  
23 outcome of that investigation was.

24 Q. Who would have been the person doing the  
25 investigation of the accident?

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1 A. I believe the state police conducted the  
2 accident investigation.

3 Q. But as far as within the Department of Human  
4 Services, would there have been anybody else doing an  
5 investigation into the accident?

6 A. No. All we did was the fact-finding to  
7 determine if there was any violated behavior  
8 expectations that we needed to do discipline action  
9 on. We were not responsible for any investigation  
10 into the accident at all.

11 Q. Can you go through the list of actions that  
12 Ms. Wilkerson violated that would lead her to be  
13 terminated?

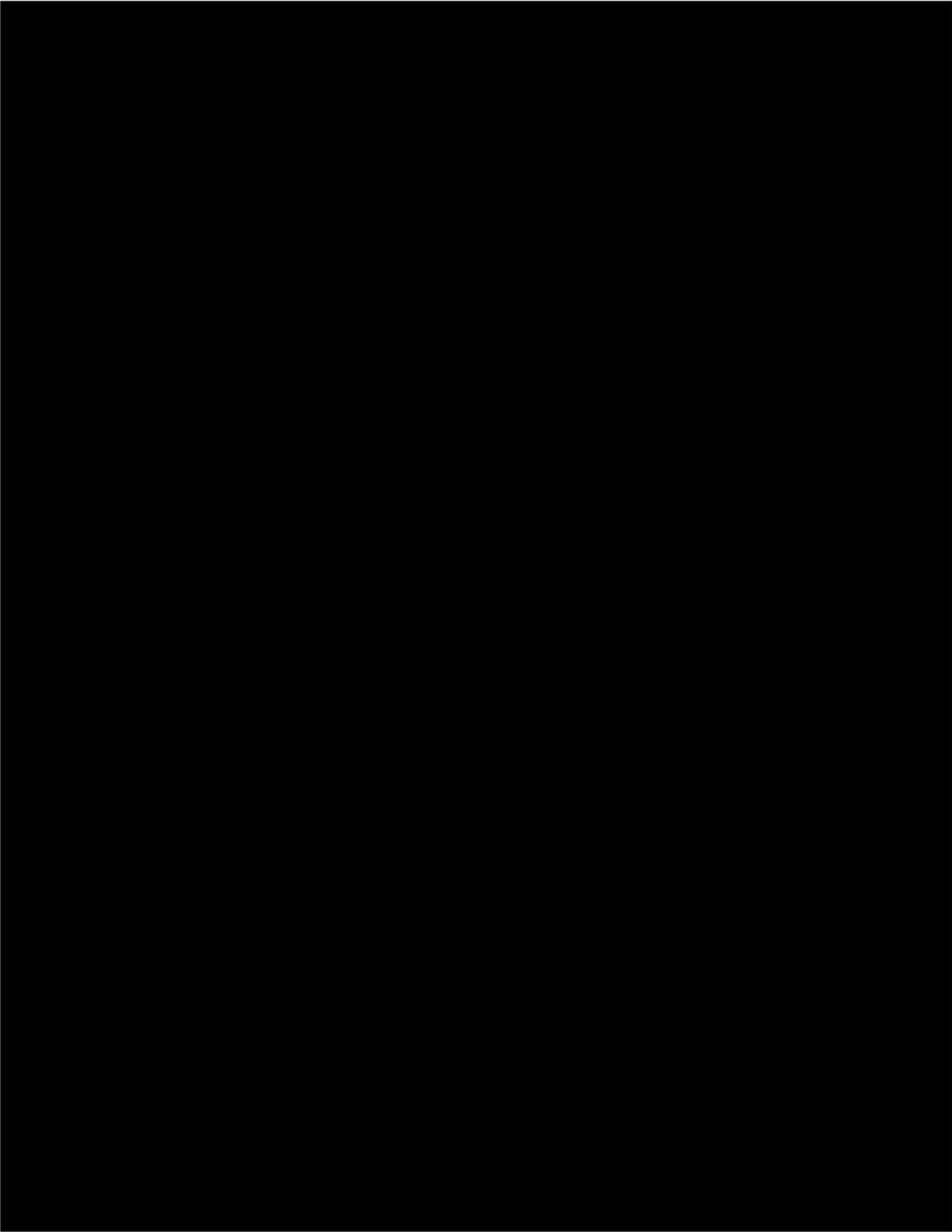
14 A. Well, because she was still on probation, it  
15 didn't take as much to terminate because technically  
16 we can terminate during that probationary period. So  
17 I was very concerned that she did not leave the office  
18 when she had been advised that she needed to leave the  
19 office. I was also concerned that she did admit  
20 during the fact-finding that she had taken a  
21 medication the day prior to the accident that she did  
22 not have a prescription for.

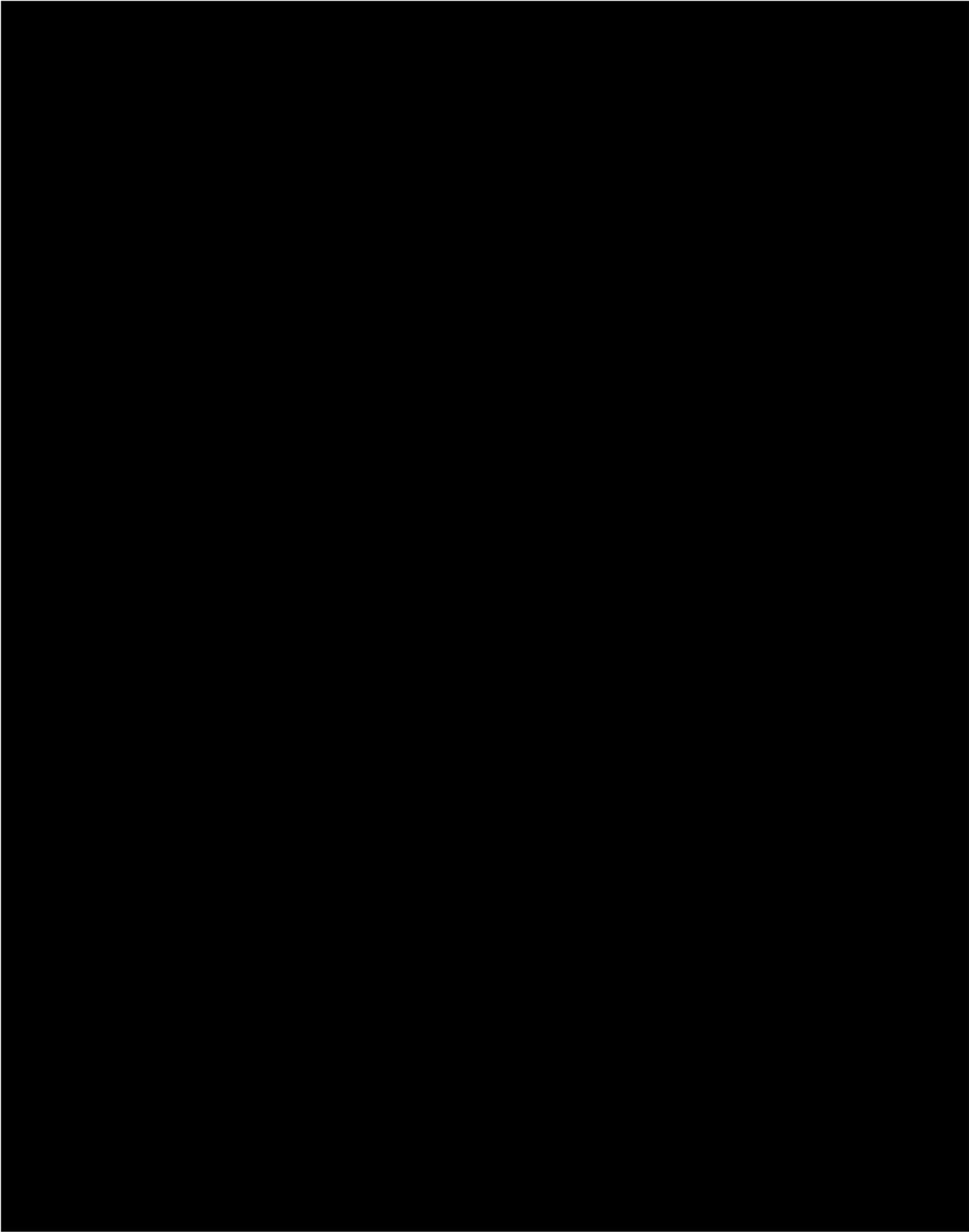
23 Q. Was there anything else that raised concerns to  
24 you?

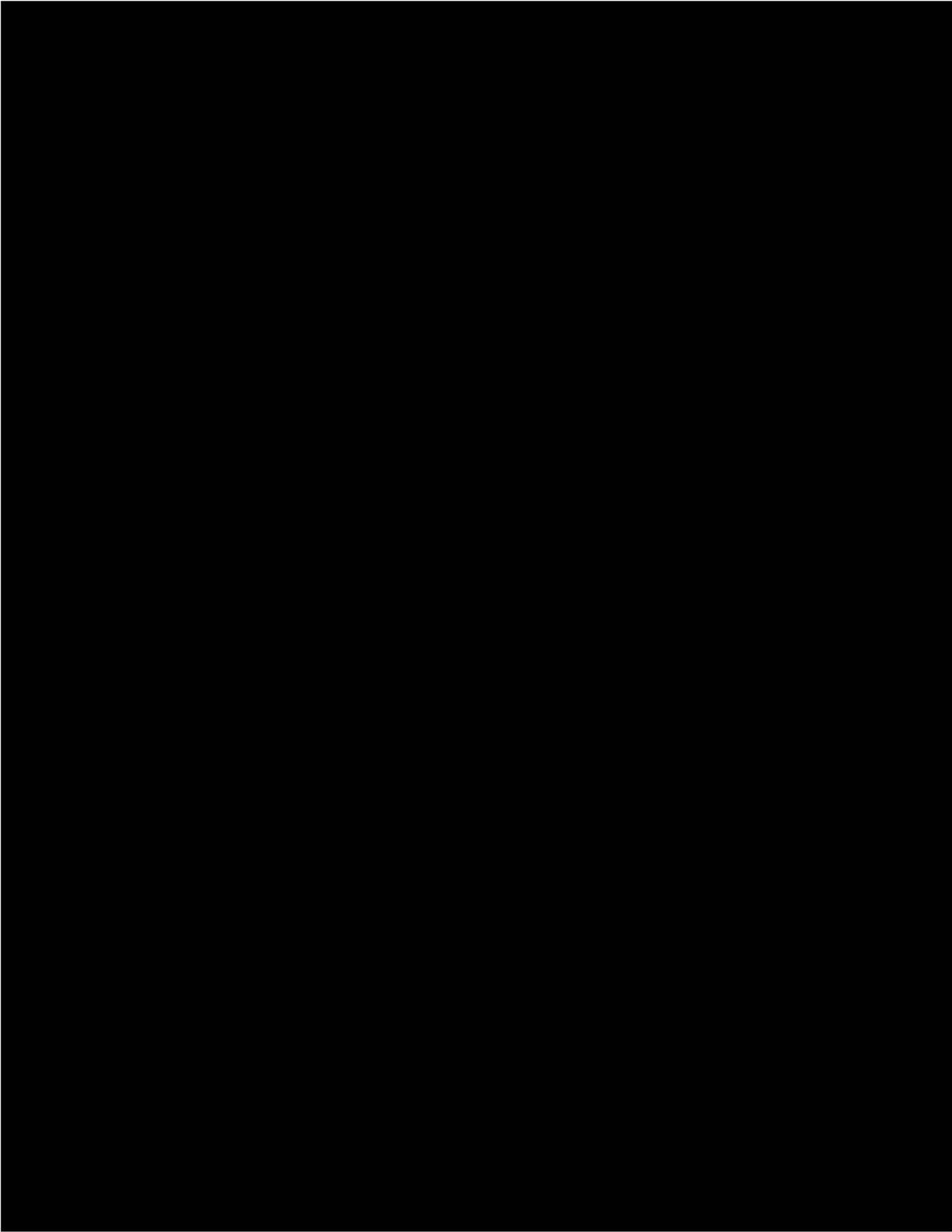
25 A. No.

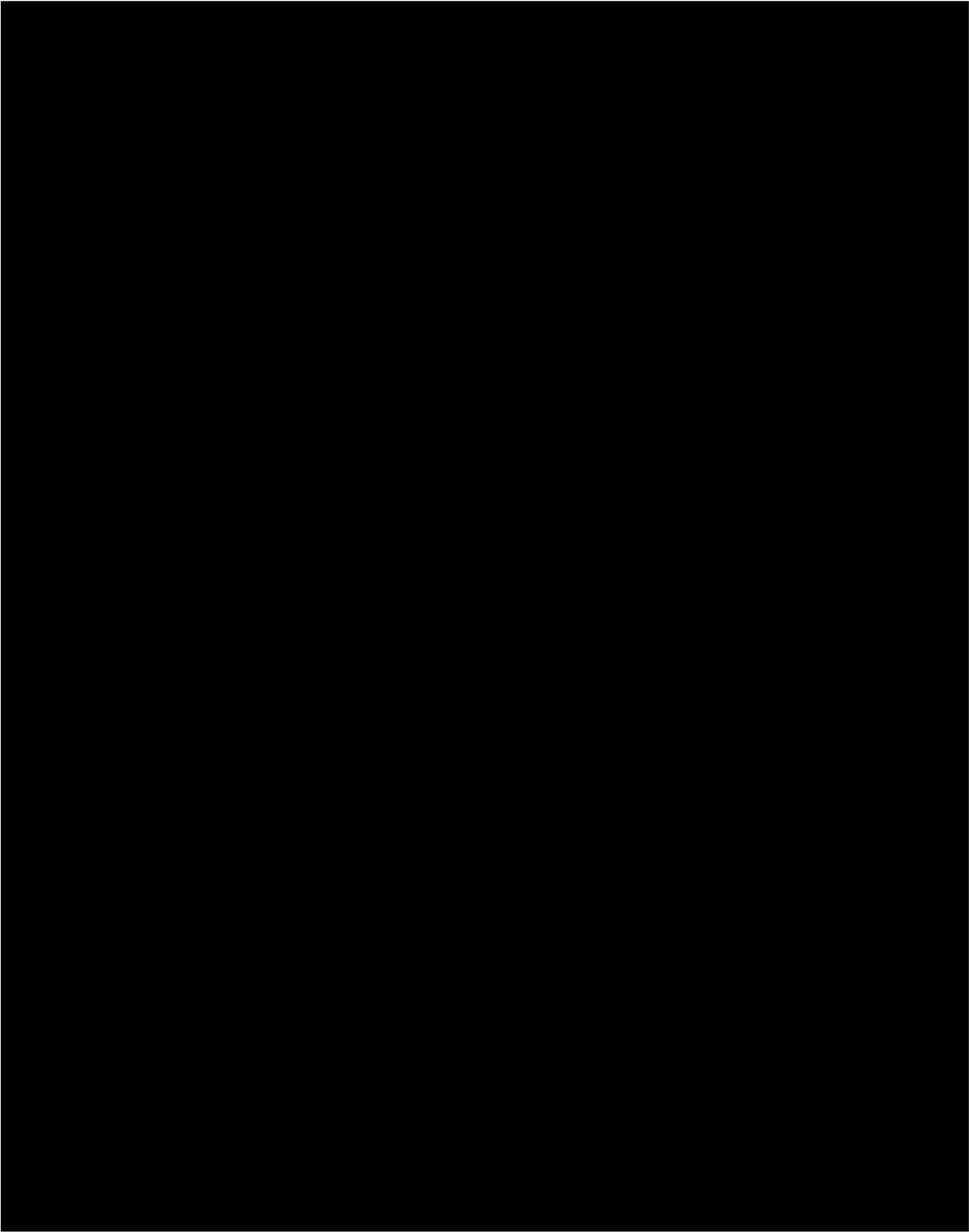


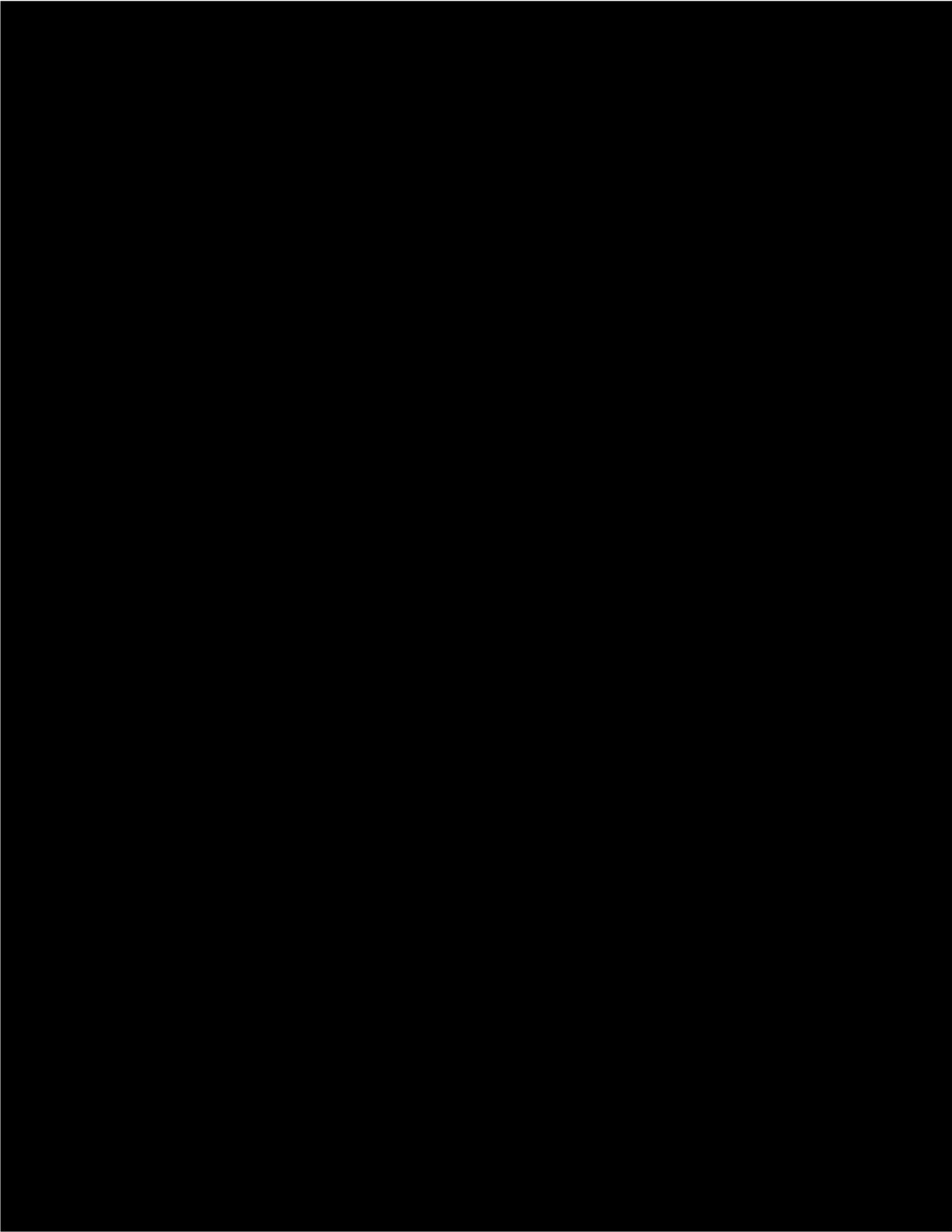
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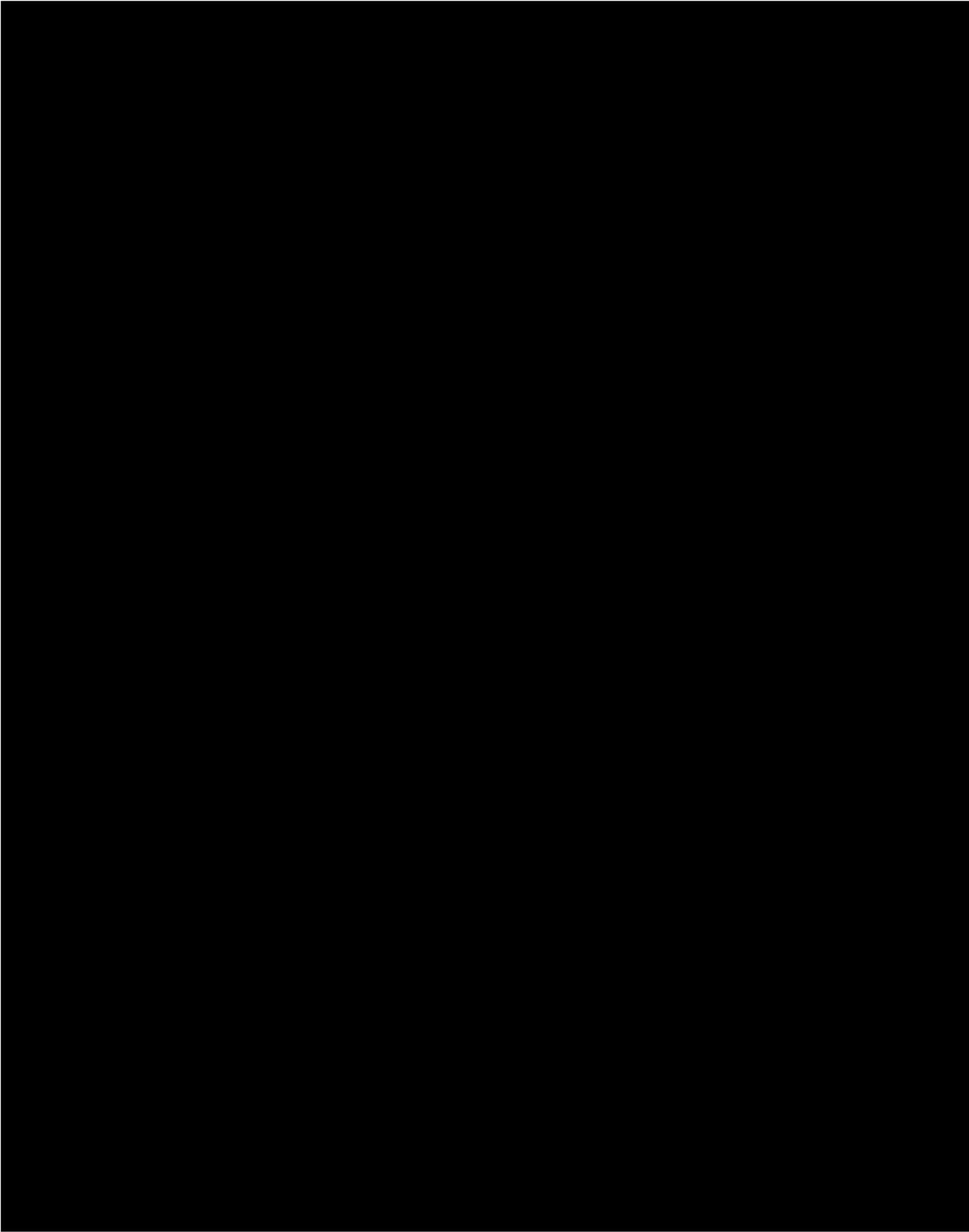


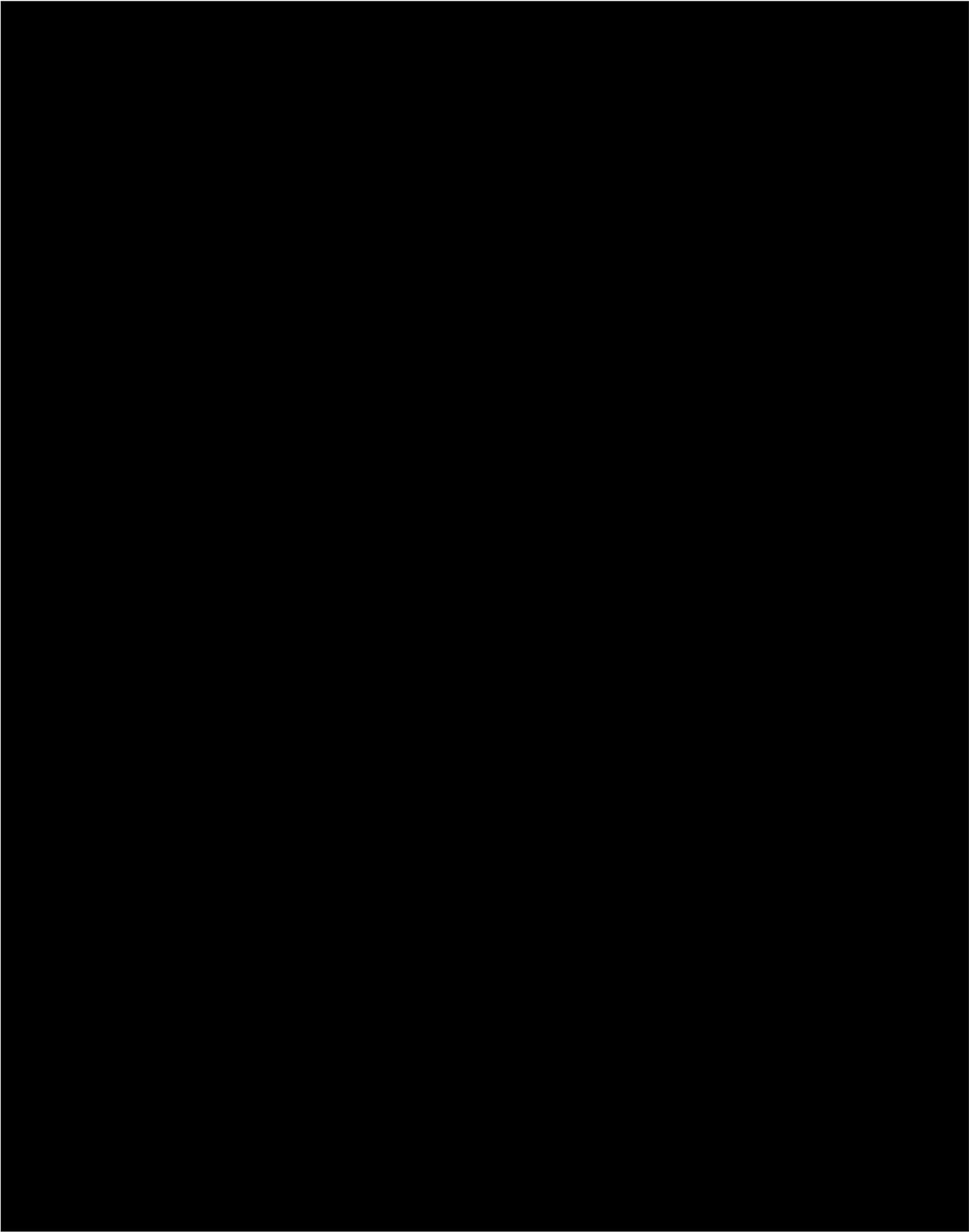


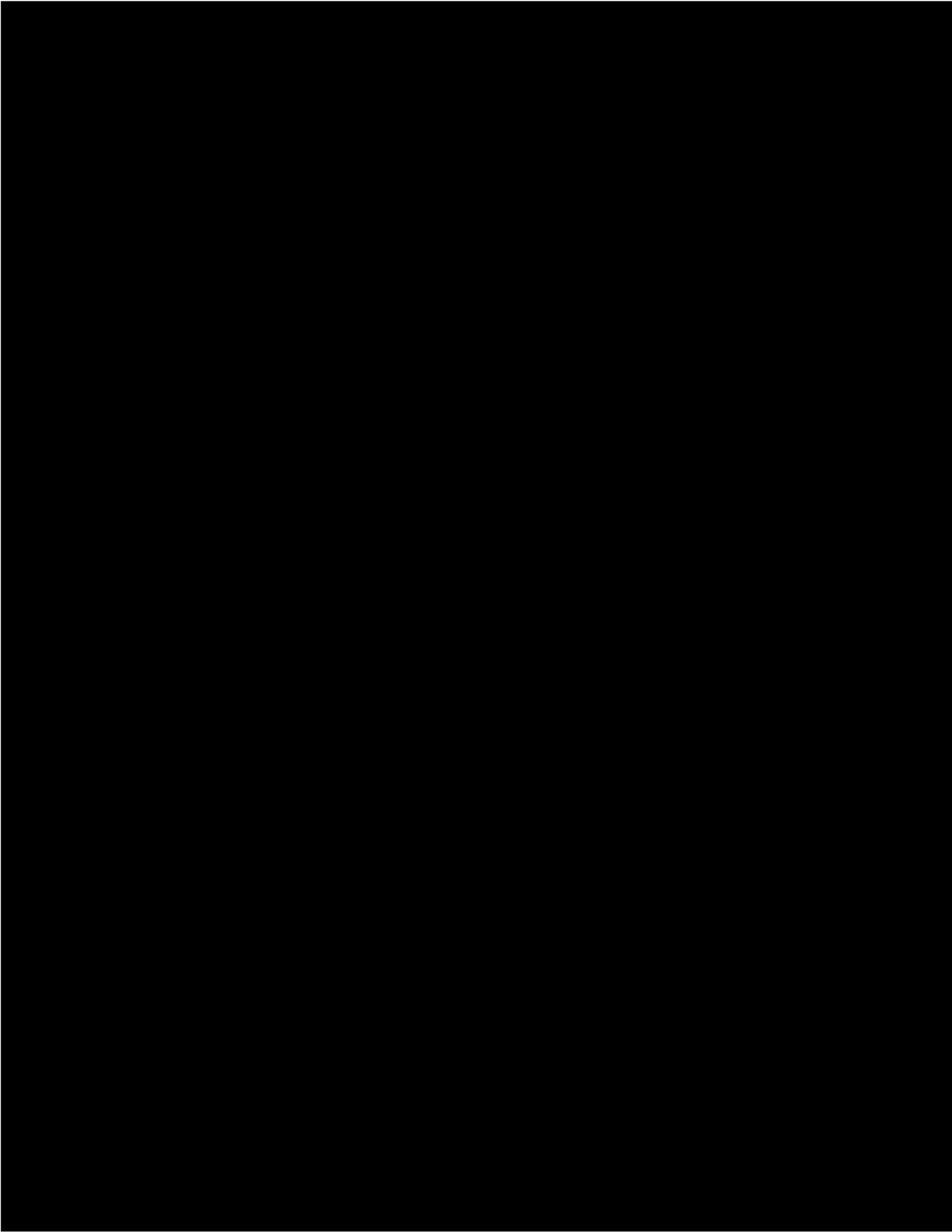


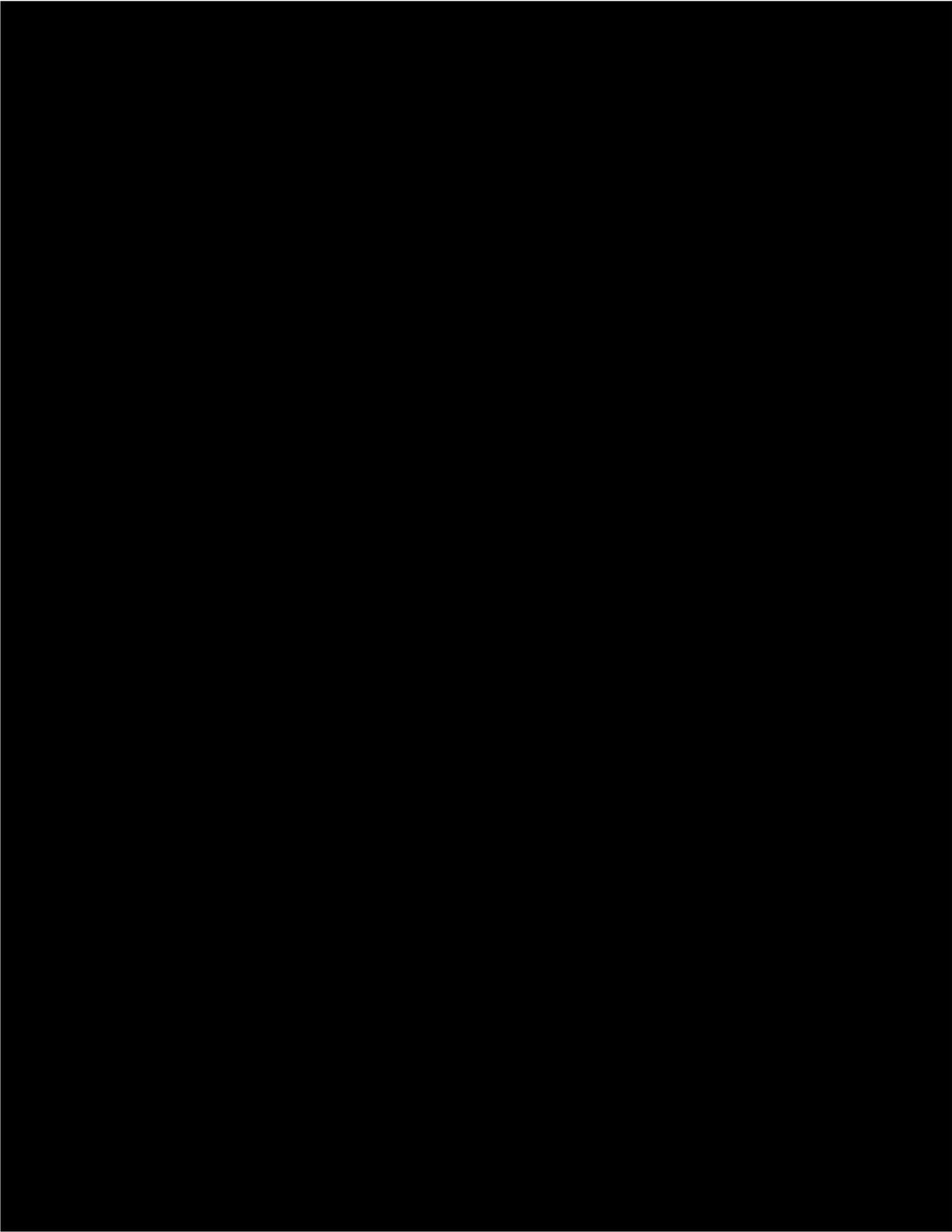


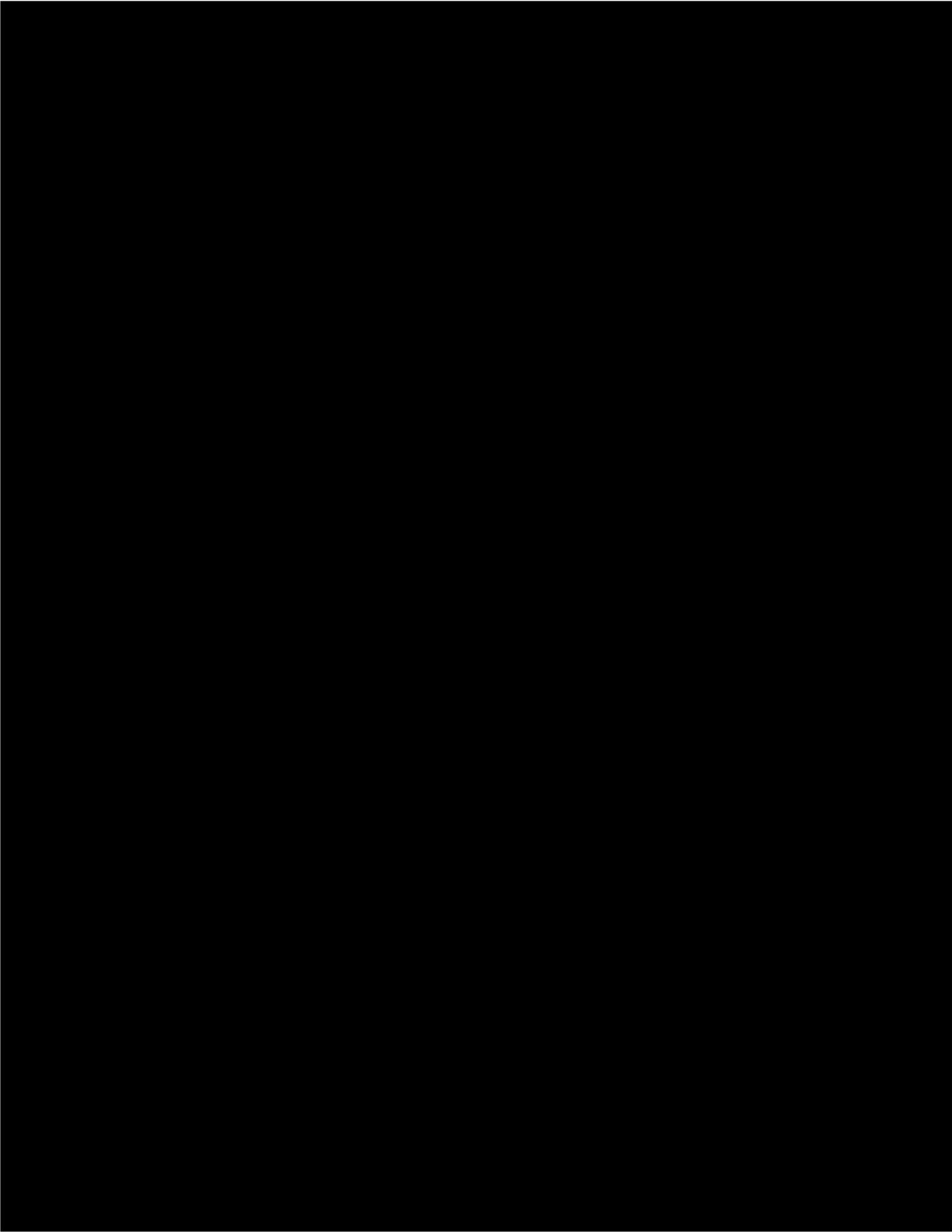


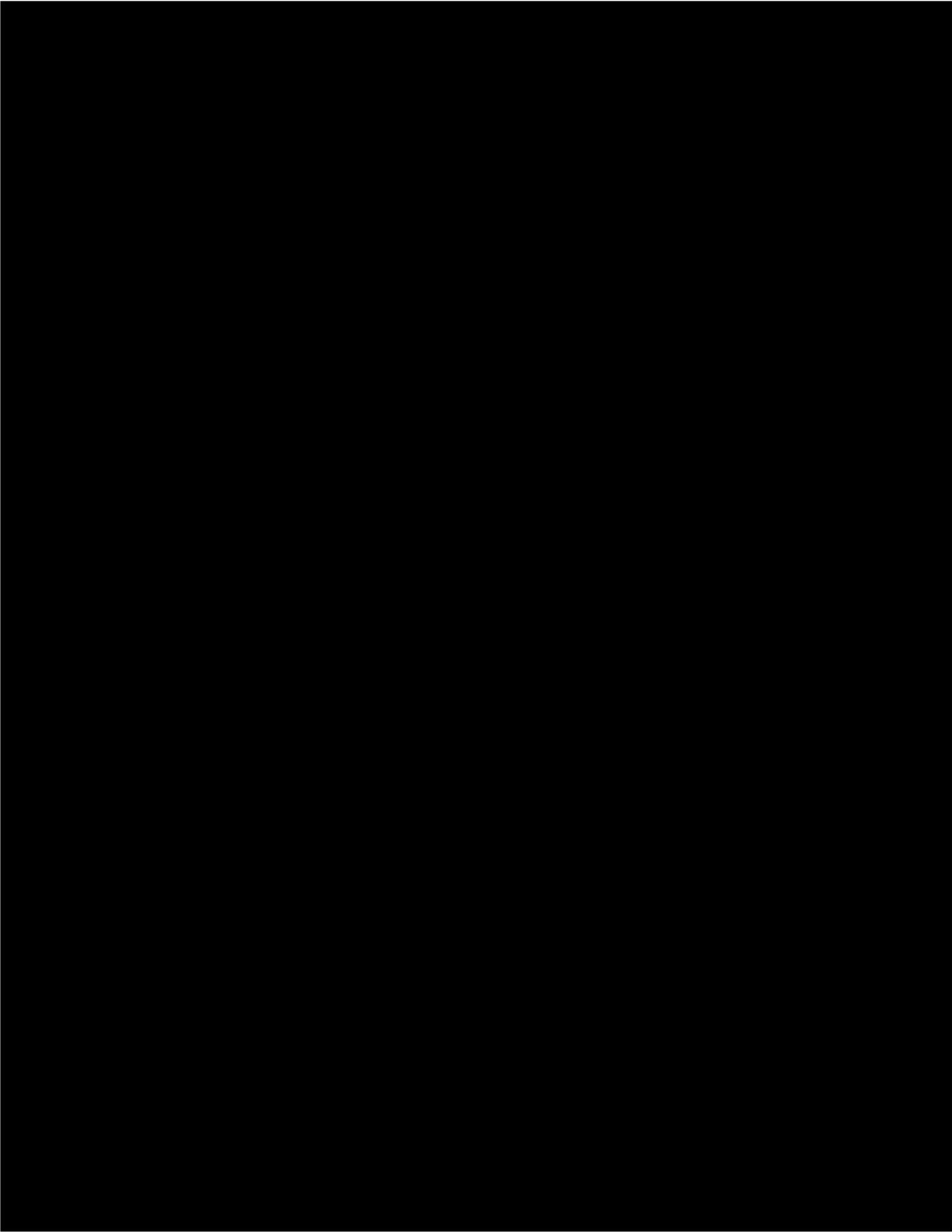


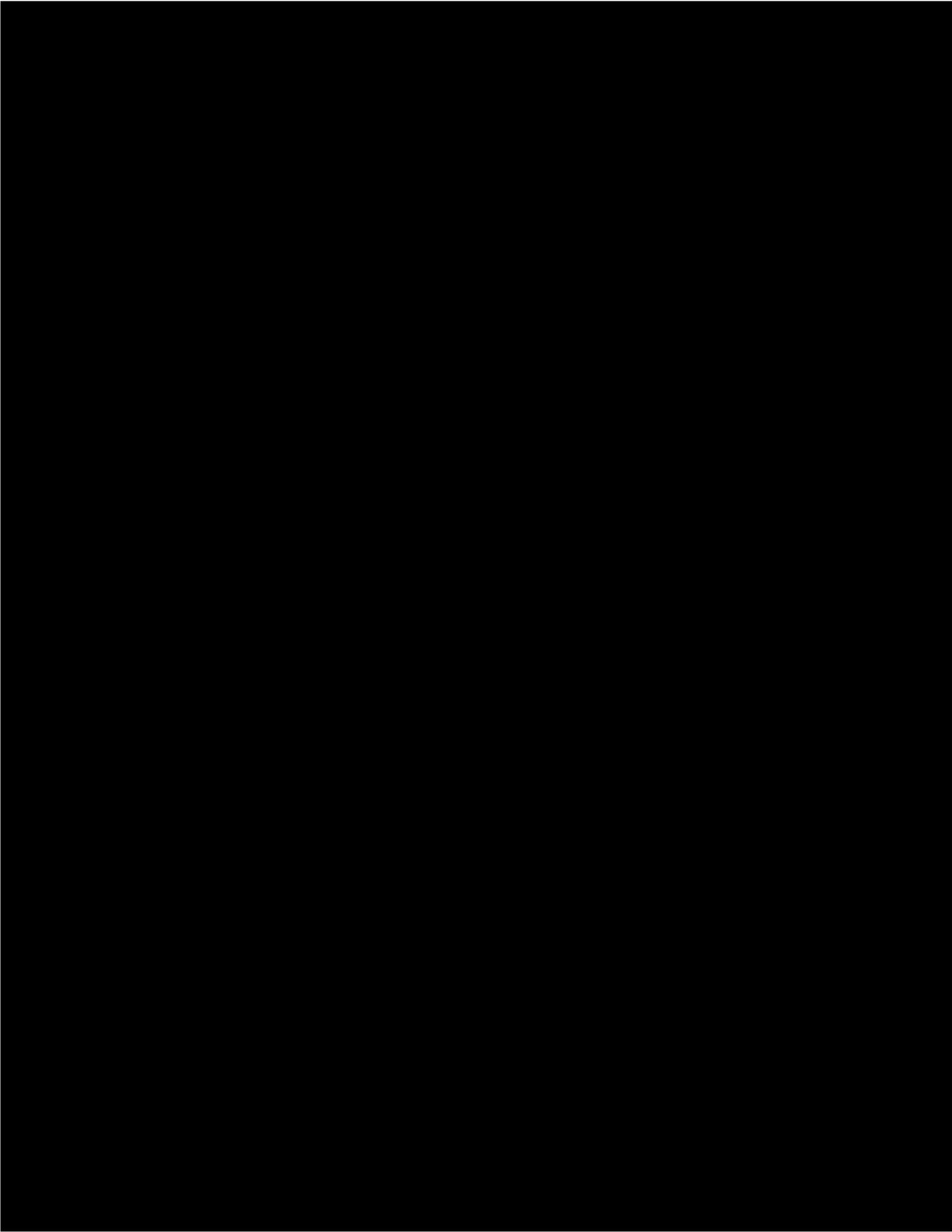


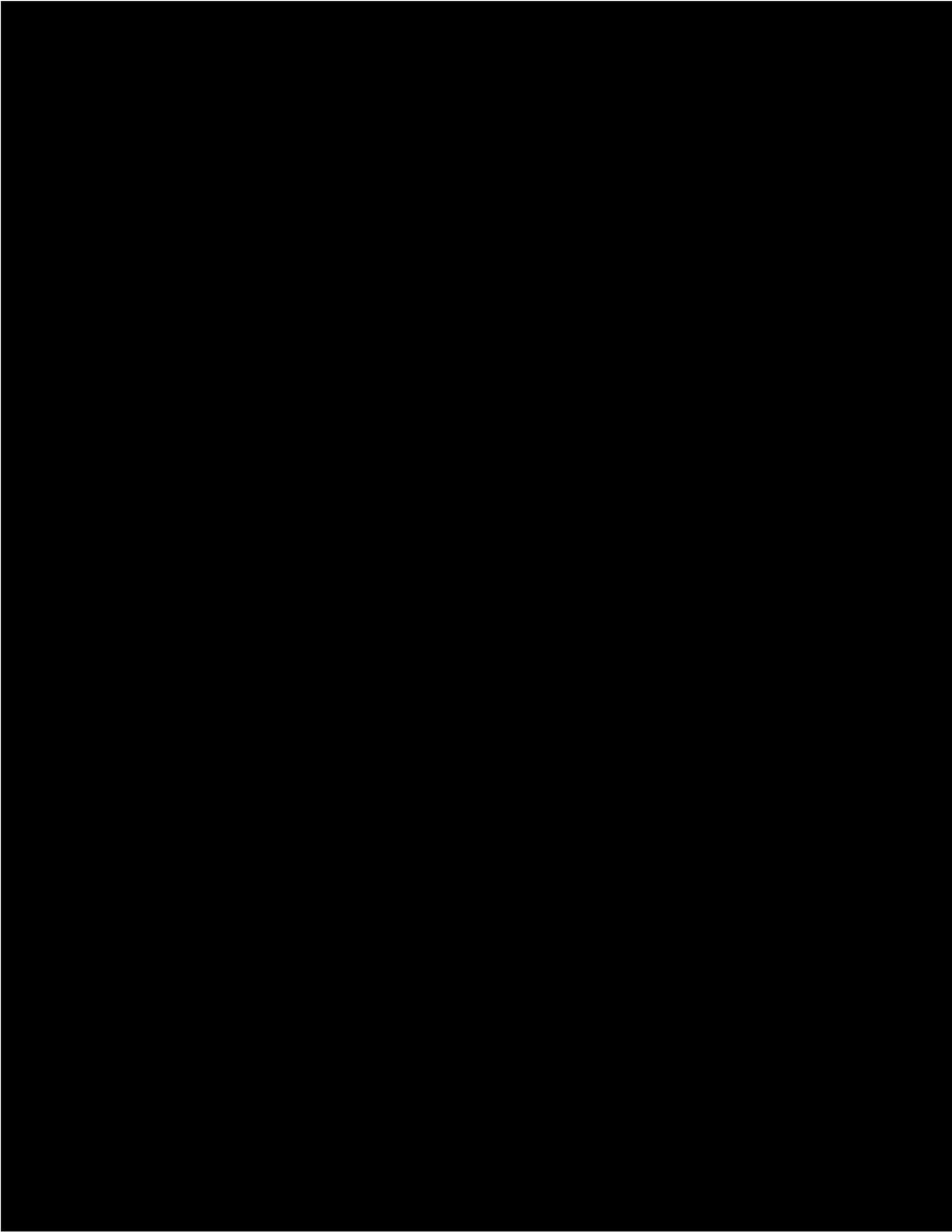


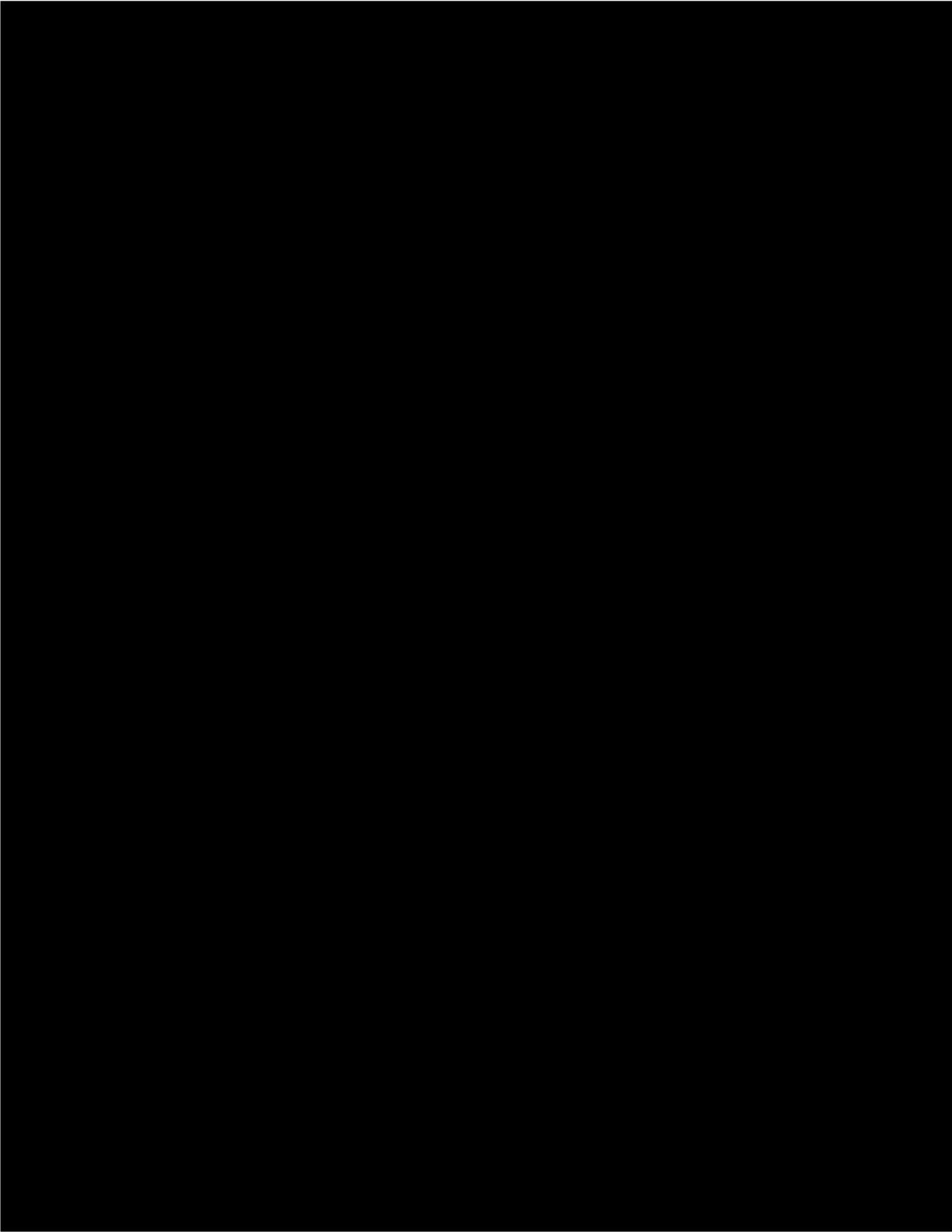


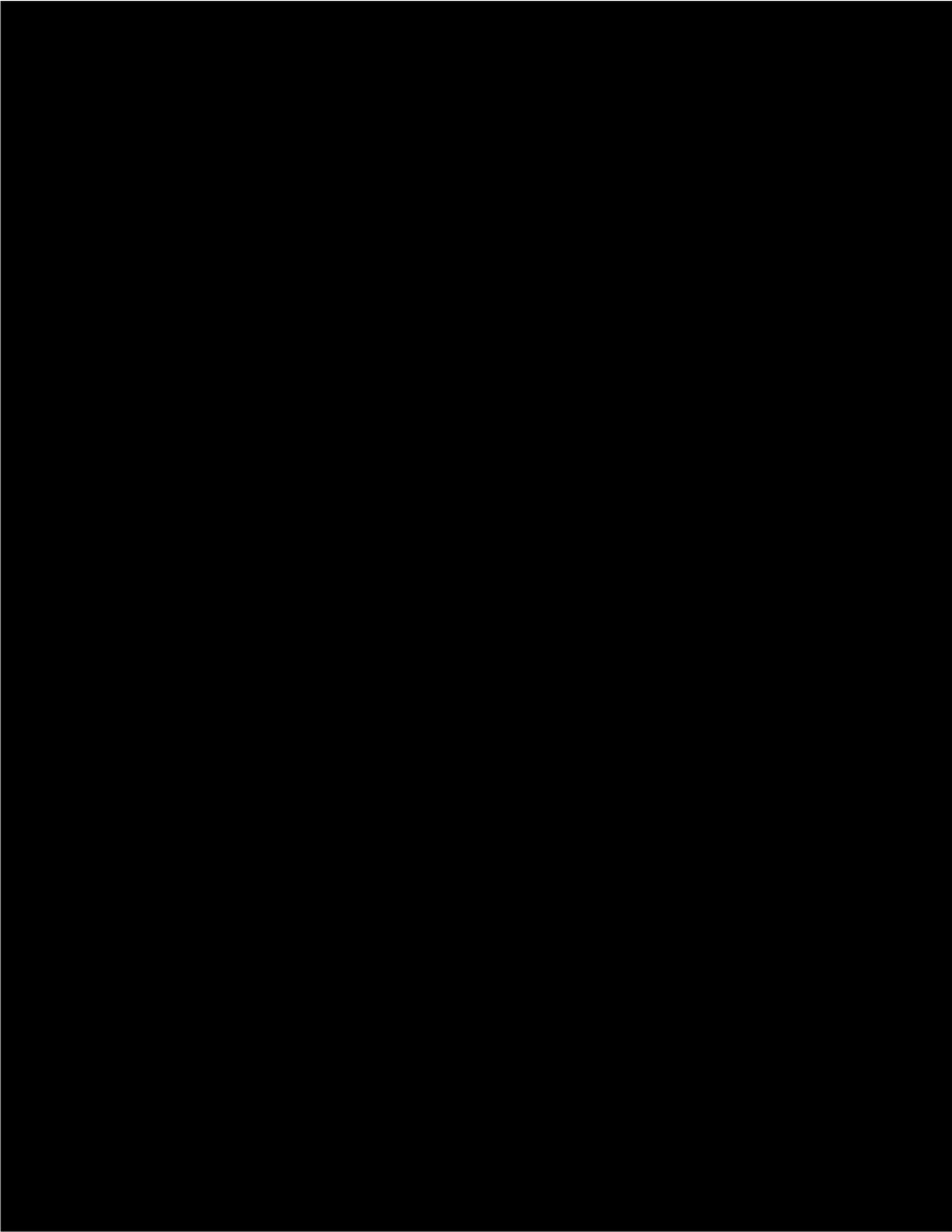


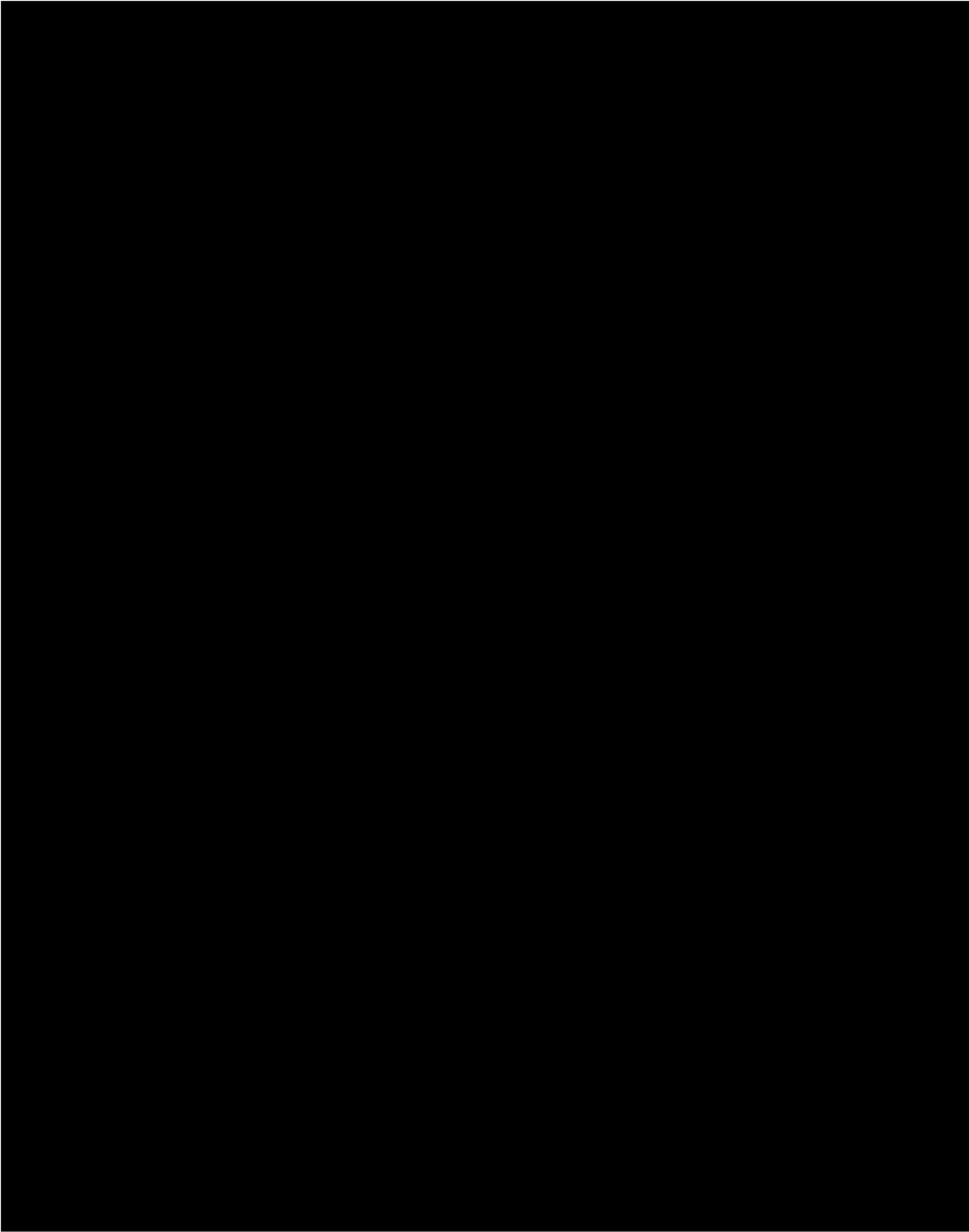


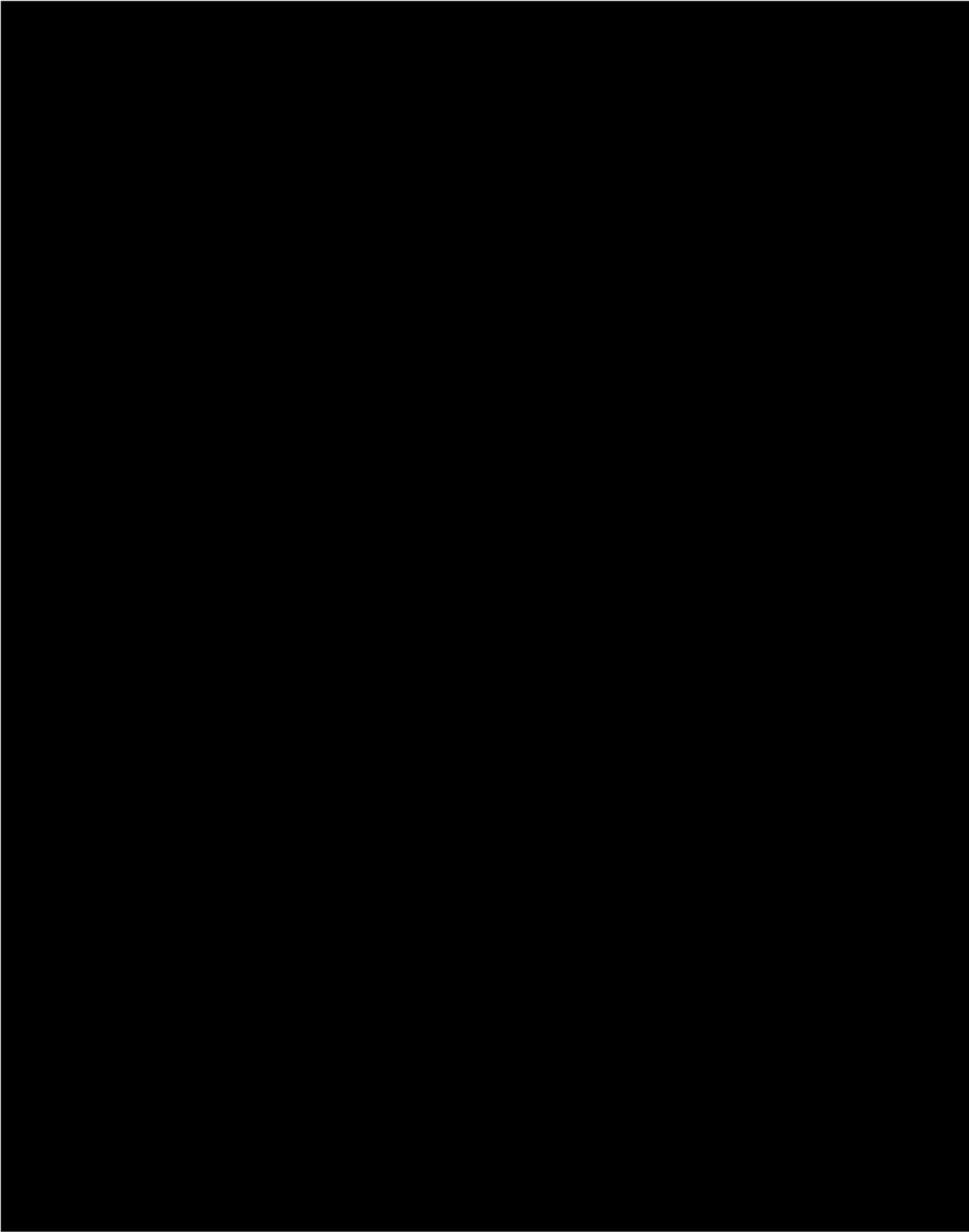


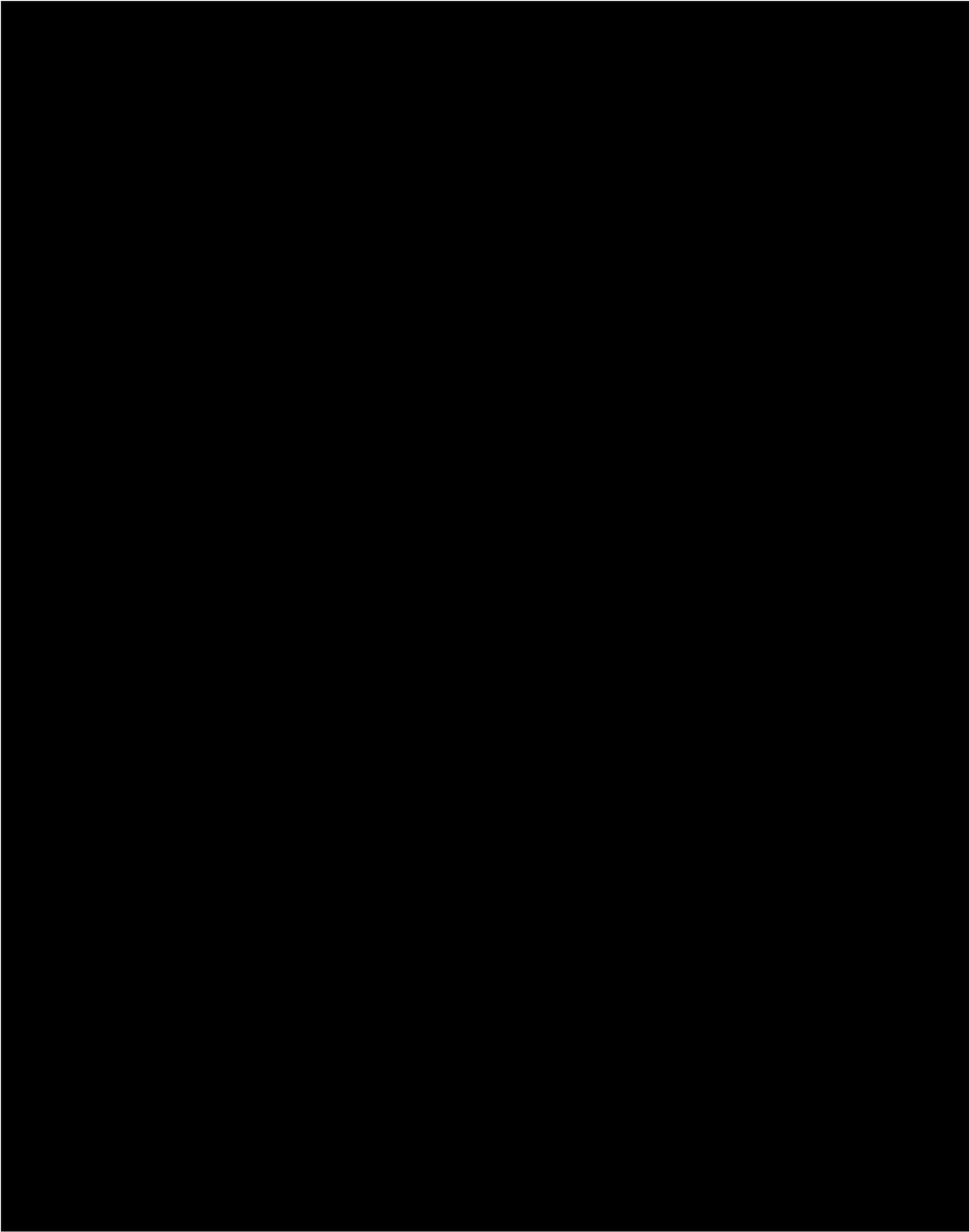


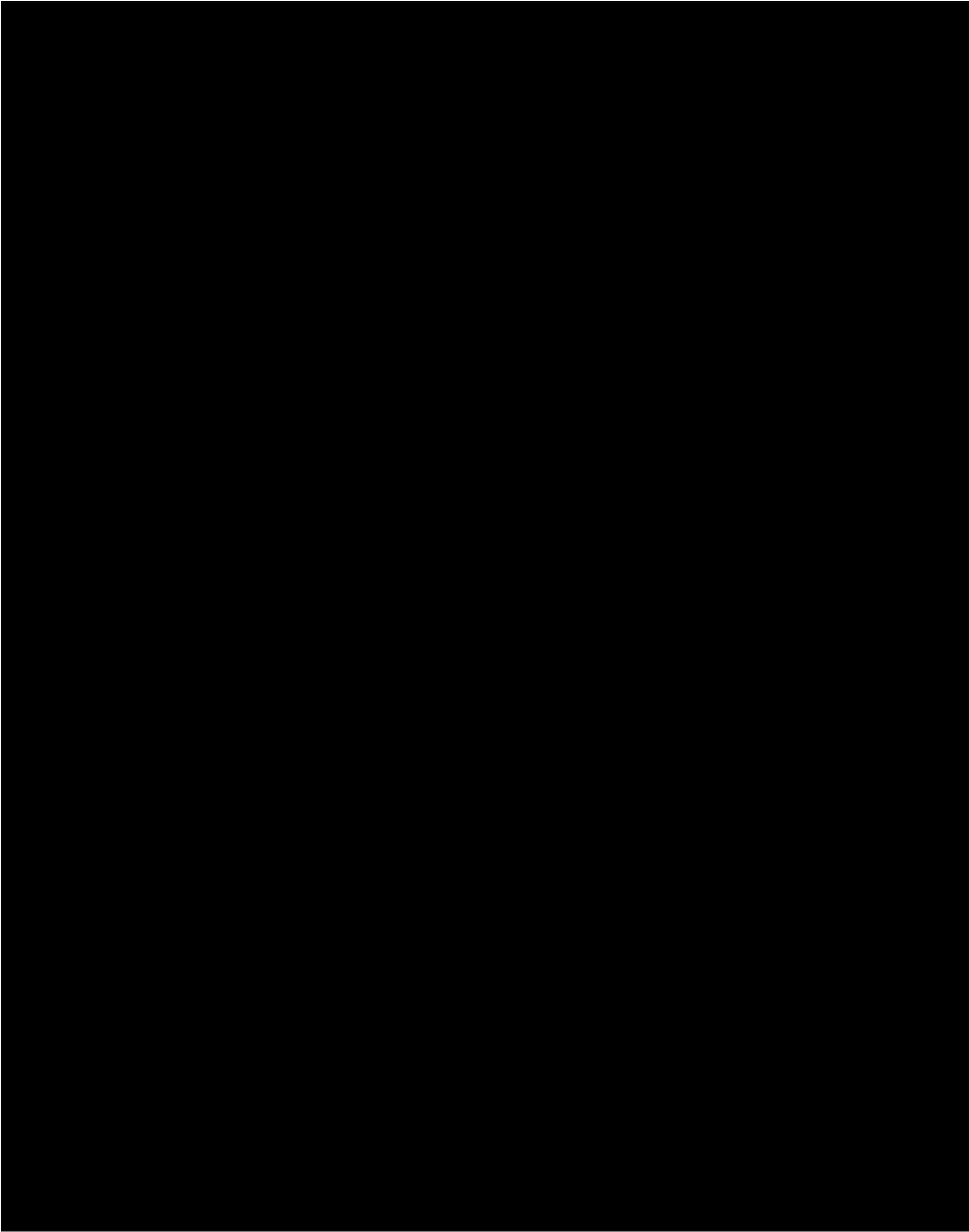


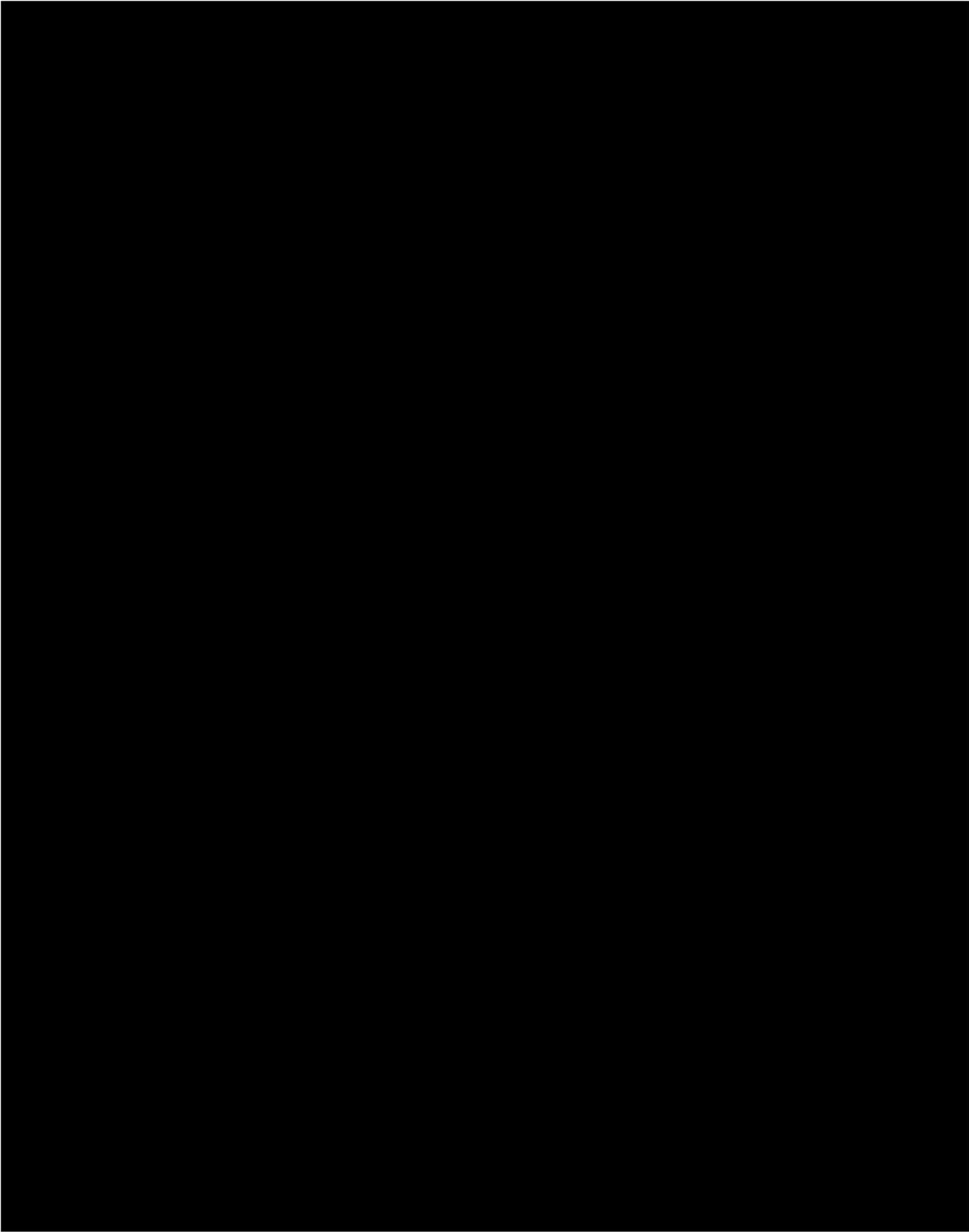


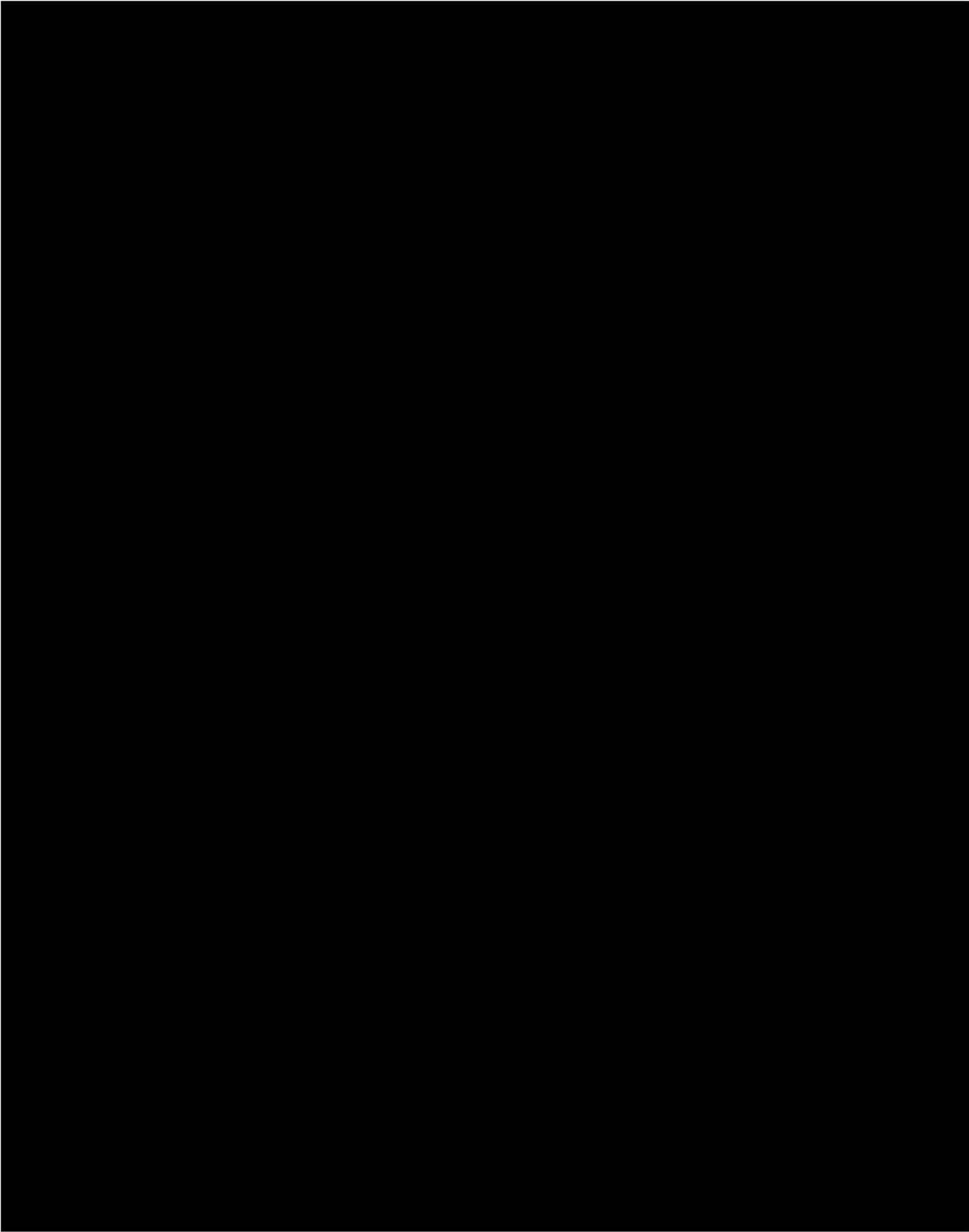












HALEY HUDSON vs AR DEPT OF HUMAN SERVICES  
EZELL, BRANDY on 08/01/2023

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ARKANSAS STATE CLAIMS COMMISSION

HALEY HUDSON, As Special )  
Administratrix of the Estate of )  
JACQUELINE LYNN ASHCRAFT, )  
Deceased, and as Permanent Legal )  
Guardian of [REDACTED], )  
A Minor, )

CC NUMBER  
230641

CLAIMANT,

VS.

ARKANSAS DEPARTMENT OF HUMAN  
SERVICES,

RESPONDENT.

-----  
ORAL AND VIDEOTAPED DEPOSITION OF

BRANDY EZELL

August 1, 2023  
-----

ORAL DEPOSITION OF BRANDY EZELL, produced as a  
witness at the instance of the CLAIMANT, and duly  
sworn, was taken in the above-styled and numbered  
cause on the 1st day of August, 2023, from 2:05 p.m.  
to 2:56 p.m., before Tammie L. Foreman, CCR in and for  
the State of Arkansas, RPR, CRR, reported by machine  
shorthand at the offices of Arkansas Department of  
Health and Human Services, 700 Main Street, Little  
Rock, Arkansas, pursuant to the Arkansas Rules of  
Civil Procedure.



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HALEY HUDSON vs AR DEPT OF HUMAN SERVICES  
EZELL, BRANDY on 08/01/2023

6

1 Q. And what is your current job title?

2 A. Family service worker specialist.

3 Q. Family service?

4 A. Worker specialist.

02:07PM 5 Q. What does that entail? Kind of give us a  
6 day-to-day what you do?

7 A. Primarily, I do foster care. I'm a foster care  
8 case worker. When a kid is removed and everything, I  
9 build a case plan with the family. We go to court.

02:08PM 10 We -- there's testimony. And we work with the family  
11 to get the child back home safely.

12 Q. In June of 2021, when this accident occurred, is  
13 that basically what you were doing at that time?

14 A. Yes.

02:08PM 15 Q. Now I'm going to shift my questions to June 2021.  
16 What was your relationship with Jennifer Wilkerson in  
17 June of 2021?

18 A. She was a coworker.

19 Q. And did you have any -- my understanding is that  
02:08PM 20 she was a new employee?

21 A. She had started the day after Memorial Day, was  
22 her first day. And she was hired on to be a program  
23 assistant, which is program assistants help us do  
24 visits, teach parenting classes, get a lot of the --

02:09PM 25 some of the services done that we can't do because

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HALEY HUDSON vs AR DEPT OF HUMAN SERVICES  
EZELL, BRANDY on 08/01/2023

7

1 we're in the field seeing children or having to get  
2 stuff keyed into CHRIS. So program assistants do a  
3 lot of -- a lot of the visits. They're usually on the  
4 road a lot more than we are.

02:09PM

5 Q. Okay. Did you have any relationship with  
6 Ms. Wilkerson outside of her employment with Logan  
7 County?

8 A. No.

02:09PM

9 Q. Okay. So on June 11th, I want to focus now on  
10 that -- earlier, we were focused on kind of the month  
11 in general. Now I want to focus on that day. Walk us  
12 through -- and I've been provided some emails and  
13 different things about that day, so I know a little  
14 bit.

02:10PM

15 But I want to hear you -- from you what  
16 you recall happening that morning, and specifically  
17 with you, your interaction with Ms. Wilkerson, and her  
18 going to Beebe.

02:10PM

19 A. Okay. That was the first day Jennifer was going  
20 to take the state car to do a visit by herself, where  
21 she would pick up a child and meet another worker by  
22 herself.

02:10PM

23 At about 11:15, me and Jennifer left to go  
24 to the Casey's General Store to get gas in the  
25 vehicle. Usually new employees, their personnel

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HALEY HUDSON vs AR DEPT OF HUMAN SERVICES  
EZELL, BRANDY on 08/01/2023

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1 number is not in the system yet. So I went with her.  
2 Her personnel number wasn't in the system, so I used  
3 mine to put gas in the vehicle.

02:11PM 4 And she asked me -- she wasn't for sure  
5 where she was meeting the other worker. So when we  
6 got back to the office, I -- well, I showed her how to  
7 do the logbook with the car, put her name, the  
8 mileage, the time she left, the time she picked up the  
9 child.

02:11PM 10 And when I got back, the worker was in  
11 Bentonville and the child that she was bringing to  
12 the -- it was a sibling visit. The child she was  
13 bringing couldn't get out of counseling till 2:00. So  
14 the plan was to meet in Clarksville McDonald's at 4:00.

02:12PM 15 The other worker was going to pick up that  
16 child in northwest Arkansas, bring her to -- bring him  
17 to Clarksville McDonald's, and Jennifer was going to  
18 Beebe and bring his brother from Beebe to Clarksville  
19 McDonald's. And it was right around the same time  
02:12PM 20 frame, they were going to meet.

21 Q. So they were trying to coordinate that meeting  
22 together at Clarksville at the McDonald's?

23 A. Yes.

02:12PM 24 Q. And if this accident -- if everything had gone  
25 as planned, would the two siblings have gone on from



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HALEY HUDSON vs AR DEPT OF HUMAN SERVICES  
EZELL, BRANDY on 08/01/2023

9

1 Clarksville to somewhere else together or were they  
2 just going to play there together and have lunch at  
3 McDonald's and go back separately, or what was  
4 ultimately the plan?

02:12PM 5 A. They would have had lunch together at McDonald's  
6 and then the case workers would have taken them back  
7 to their placements and then been done for the day.

8 Q. I saw some -- somewhere in reference to a Map  
9 Quest being done. Do you recall --

02:13PM 10 A. Yes. I had done the Map Quest to see if it  
11 was -- with the other case worker being in northwest  
12 Arkansas, would it be closer to meet in Russellville  
13 or Clarksville. And it was the same time, pretty much  
14 the same time from northwest Arkansas to Clarksville  
02:13PM 15 as it was from Beebe to Clarksville.

16 Q. All right. And then did -- and then what did  
17 you do -- what did Ms. Wilkerson do to know her route  
18 of where she was to go from Beebe?

02:13PM 19 A. It was getting closer to noon about that time,  
20 and I told her she needed to leave around 12:00, 12:15  
21 to be able to get to Beebe by 2:00. The foster  
22 parents were going to have the child ready around  
23 2:00. And I told her she needed to leave around  
24 12:00, 12:15, to get to Beebe in time to pick up the  
02:14PM 25 child and then by that time, she would get to



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HALEY HUDSON vs AR DEPT OF HUMAN SERVICES  
EZELL, BRANDY on 08/01/2023

10

1 Clarksville around 4:00.

2 And I explained to her, you know, we  
3 understand, you know, road construction, car wrecks,  
4 stuff like that. And I just told her to keep in  
02:14PM 5 contact with the other case worker she was meeting to  
6 let each other know where you're at, if you're going  
7 to be early or late.

8 Q. Okay. And did Ms. Wilkerson appear to  
9 understand --

02:14PM 10 A. Yes.

11 Q. -- her task?

12 A. Yes.

13 Q. And then when was the last time that you saw  
14 Ms. Wilkerson before the wreck?

02:14PM 15 A. Me and my boss were pulling out of the DHS  
16 office right around 12:07 to go to lunch, and I  
17 watched Jennifer walk to the state car to get in it.

18 Q. And how do you know what -- that it's 12:07? Do  
19 you have a time card?

02:14PM 20 A. I'm always watching the time.

21 Q. Okay.

22 A. I'm always -- it's a -- I'm always watching the  
23 time. I'm always looking at my phone looking at the  
24 time. Because, I mean, I'm used to putting in

02:15PM 25 contacts at the office and I have to know -- they want



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HALEY HUDSON vs AR DEPT OF HUMAN SERVICES  
EZELL, BRANDY on 08/01/2023

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1 to know exactly what time you did this, this, and  
2 this. What time did you get to this house and visit  
3 because if something happened, you know, they don't  
4 want -- you know, if you were there at 3:15 and  
02:15PM 5 something happened, they want to know what was going  
6 on, if something broke out at 4:00 and you were  
7 already gone.

8 Q. Gotcha. Okay.

9 A. So...

02:15PM 10 Q. Who was your boss that went to lunch with you  
11 that day?

12 A. Pamela Feemster.

13 Q. Do you happen to recall where y'all went to  
14 lunch?

02:15PM 15 A. The Thai restaurant there in Paris.

16 MR. GASPER: You want to spell that for  
17 the court reporter. Feemster.

18 THE WITNESS: F-E-E-M-S-T-E-R.

02:16PM 19 Q. (By Mr. Jackson:) Thank you for doing that. So  
20 you -- when you leave at 12:07, you see Ms. Wilkerson  
21 walking towards the state --

22 A. Walking to the car.

23 Q. Walking to the car. Okay. You and Ms. Feemster  
24 go to lunch?

02:16PM 25 A. Yes.



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HALEY HUDSON vs AR DEPT OF HUMAN SERVICES  
EZELL, BRANDY on 08/01/2023

12

1 Q. And then what happens next in this -- what do  
2 you recall happening next?

3 A. Me and Pam came back from lunch. We were at the  
4 office at 12:55. I got a phone call, and it was  
02:16PM 5 Jennifer stating that she had been in a wreck. And I  
6 was, like, where are you at? Where are you at? You  
7 know, me and Pam, we'll come right now. Where are you  
8 at. And she was like, I don't know. I don't know.

9 And I said, "Jennifer, I need to know  
02:17PM 10 where you're at." I was expecting her to be -- at  
11 least be in Dardanelle, Pottsville, somewhere between  
12 there by that time. And she said, "By the airport."  
13 I said, "By the airport?" I said, "In Paris?" And  
14 she said "Yes." I said, "Okay. Me and Pam will be  
02:17PM 15 right down there."

16 Q. Okay. Then what did you do next?

17 A. We got in my car. We went to the accident -- to  
18 the accident site. Jennifer was sitting next to the  
19 state car. I asked her what happened. She said she'd  
02:17PM 20 stopped by Dairy Delite to get something to drink, and  
21 the next thing she remembers is a car stopped in front  
22 of her.

23 Q. Was Ms. Feemster with you when that conversation  
24 occurred?

02:18PM 25 A. No. She was on the phone with Kristen Shelton



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1 daughter knew her daughter from school, that her  
2 daughter was the same age or something. But I didn't  
3 know her or any of her children.

02:48PM

4 Q. And not being nosy, did your daughter go to  
5 Paris at the time?

6 A. Yes.

7 Q. Do you know where Scott Lindstrom is now?

8 A. No.

9 Q. Is he incarcerated or do you know?

02:48PM

10 A. No. He was with Jennifer at the Dollar Tree  
11 when I saw them -- when I saw her, they were together.

12 Q. Did Mr. Lindstrom, did he appear intoxicated or  
13 under the influence of any controlled substances when  
14 you saw him on June 11th of 2021?

02:49PM

15 A. He didn't appear, no.

16 Q. Do you have any idea what time you would have  
17 gotten to the accident scene?

18 A. 12:58, 12:59. Where that's located is probably  
19 three miles from the DHS office, so it would only took  
20 a couple of minutes.

02:50PM

21 Q. I'm terrible with numbers, so I try to write  
22 them down when I hear them in a deposition. And I  
23 think you said you returned from lunch at 12:55?

24 A. No. I returned from lunch about 12:40.

02:50PM

25 Q. 12:40. Okay.



HALEY HUDSON vs AR DEPT OF HUMAN SERVICES  
EZELL, BRANDY on 08/01/2023

31

1 A. I got the call from Jennifer at 12:55 that she  
2 was in a wreck.

3 Q. Thank you for clarifying that. I misunderstood.  
4 Thank you.

02:50PM 5 A. You're welcome.

6 Q. The same question earlier, how you know it's  
7 12:55, that's part of what your answer was earlier.  
8 You just know those things.

9 A. Well, I remember when I was writing this that I  
02:50PM 10 had looked at my phone and it had the time when  
11 Jennifer called me.

12 Q. Okay. So when you prepared your statement that  
13 is in Exhibit 3, you looked back at your phone for the  
14 time of that telephone call?

02:51PM 15 A. Yes.

16 Q. Okay. And so that's why, in your statement,  
17 "She called me at 12:55," you know exactly --

18 A. Yes.

19 Q. -- when you got the call? And then you and  
02:51PM 20 Ms. Feemster went immediately to the accident site  
21 after you got the call?

22 A. Yes. Pam was asking me questions like, "What  
23 happened, where," and I was like, "I don't -- I don't  
24 know."

02:51PM 25 Q. Just go towards the airport and see what

HALEY HUDSON vs AR DEPT OF HUMAN SERVICES  
EZELL, BRANDY on 08/01/2023

32

1 happens?

2 A. All I don't understand is she left at -- I know  
3 she would have had to pull out of the office. If we  
4 left at 12:07, she was walking to the car. I know she  
5 pulled out of the office in plenty of time. And to  
6 this day, it still bugs me why she wasn't three miles  
7 from the office a good 45 minutes later.

8 Q. And getting a soda at the Dairy Delite is on the  
9 way, shouldn't take more than five minutes if --

10 A. Correct.

11 Q. And when you arrived, Mr. Lindstrom is present,  
12 getting Ms. Wilkerson's items out of the back of the  
13 car?

14 A. Yes.

15 Q. Okay. And you only had conversation with  
16 Ms. Wilkerson and not Mr. Lindstrom?

17 A. I don't care too much for Mr. Lindstrom.

18 Q. I'll take that as a definitive no.

19 A. I did not have a conversation with him.

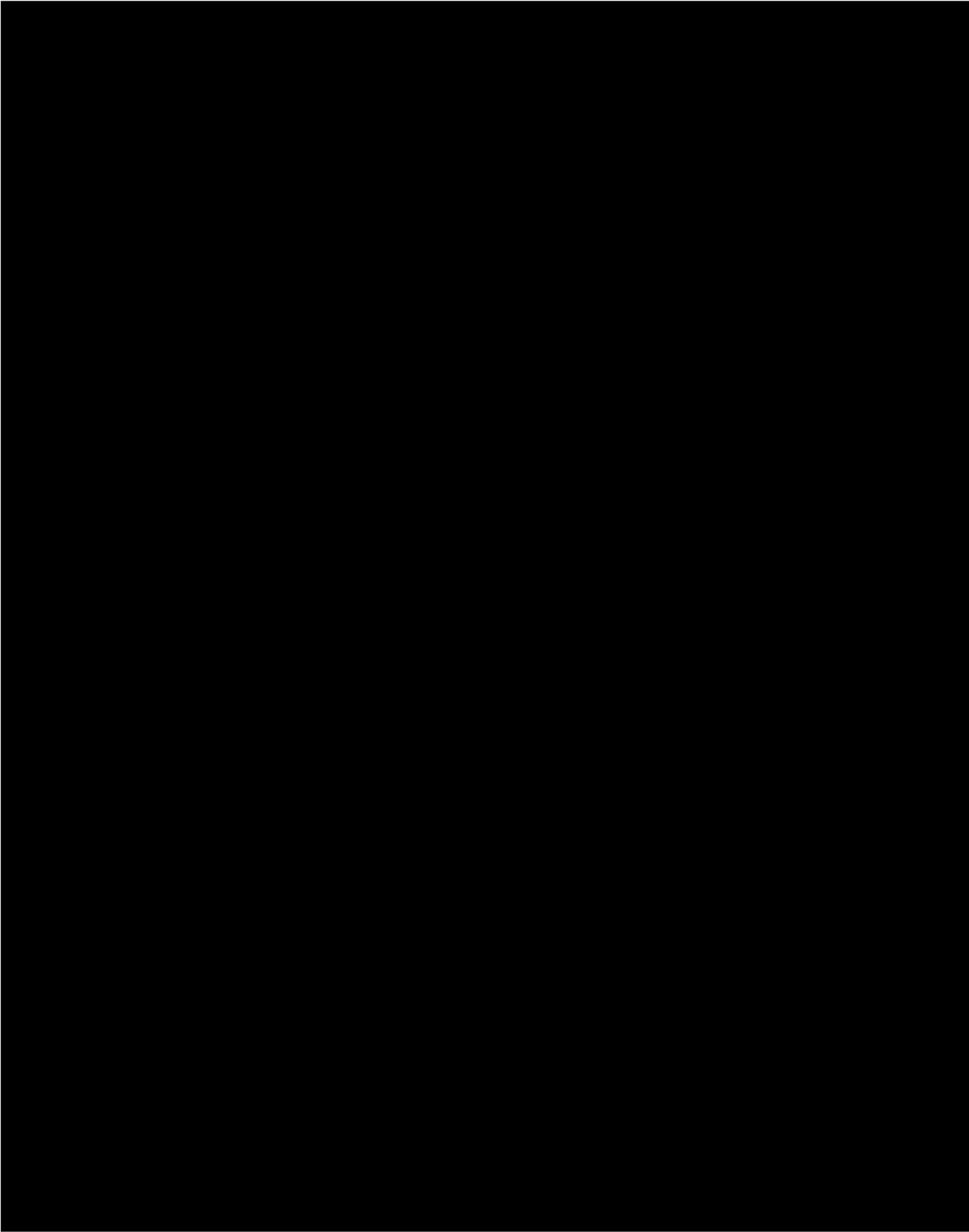
20 Q. Okay. I may have asked this earlier and I  
21 apologize. Do you recall Mr. Lindstrom saying  
22 anything about what happened or what he observed?

23 A. I didn't stick around to listen if he did.

24 Q. Okay. I understand it may have been a one-way  
25 statement, but I just wondered if you did hear



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ARKANSAS STATE CLAIMS COMMISSION

HALEY HUDSON, INDIVIDUALLY AND AS SPECIAL CLAIMANT  
ADMINISTRATRIX OF THE ESTATE OF  
JACQUELINE LYNN ASHCRAFT, DECEASED,  
AND HALEY HUDSON AS PERMANENT LEGAL  
GUARDIAN OF [REDACTED]  
[REDACTED] MINOR CHILDREN

VS. CC NO. 230641

ARKANSAS DEPARTMENT OF HEALTH AND HUMAN SERVICES RESPONDENT

---

VIDEOTAPED DEPOSITION

OF

JAMES RAY

Taken February 21st, 2023, at 1:03 P.M.

---



1 become a -- a trooper?

2 A Twenty-one weeks of -- of training at the  
3 Arkansas State Police training center where I learned  
4 anything from accident reconstruction, active shooter,  
5 enforcement duties, and how to carry out my job as an  
6 Arkansas State Trooper.

7 Q At the time -- approximately how many automobile  
8 accidents have you investigated in your career?

9 A I could not put a number on that.

10 Q More than 50?

11 A Yes.

12 Q Okay. And I represent the family of Jacqueline  
13 Ashcraft, and it is my understanding that you were the  
14 trooper in charge of the investigation, and that as a  
15 result of that you prepared and filed report number  
16 420621051F with the Arkansas State Police; is that --  
17 that correct?

18 A Correct.

19 Q And what time did you receive a call from  
20 dispatch that an accident had occurred on East Highway  
21 22 in Logan County?

22 A According to the report I was notified at 12:54  
23 p.m.

24 Q And what time did you arrive at the accident  
25 scene?

1 questioning with Ms. Ashcraft, advised who I was, that  
2 I was the investigating officer for the accident, and  
3 just -- just was trying to figure out what exactly had  
4 happened.

5 I noticed something was a little off with the way  
6 she was acting. I didn't know if it was due to  
7 injuries sustained or if there was, you know,  
8 something -- something further that was going on. It  
9 became pretty concerning to me so I went ahead and  
10 notified EMS to come back and check Ms. Ashcraft  
11 again.

12 It was at that point where she was transported  
13 and then Med flighted to Mercy Fort Smith where she  
14 succumbed to the injuries sustained.

15 Q Okay. And that's the only interaction you had  
16 with Ms. Ashcraft?

17 A Correct.

18 Q And had you had any interaction with her prior to  
19 this?

20 A I had not.

21 Q Okay. What about Ms. Wilkerson, the driver of  
22 the Respondent's vehicle?

23 A I don't -- I don't recall ever being able to talk  
24 to her. I know that she was transported to Mercy  
25 Booneville where another trooper actually met her at

1 Mercy Booneville while I was still investigating the  
2 accident scene.

3 Q Okay. And I've got a -- and you were kind enough  
4 to bring your thumb drive today.

5 A Yes.

6 Q And I've got a series of photos that I have  
7 marked as Exhibits 1-6. And I'm going to show you  
8 these on the power point, and I'm going to go through  
9 these. If you could, one at a time. This is Exhibit  
10 No. 1. What is the significance of that photo?

11 A So obviously you have a large debris field. You  
12 can see gouges and skids in the roadway. A vehicle  
13 that's got, you know, just you can't -- can't  
14 necessarily see the entire front end of the vehicle,  
15 but you can see that's there a significant amount of  
16 damage. Appears to possibly be crushed. You've got,  
17 like I said, just a -- just a large debris field.

18 You've got skids, indicating, you know, a vehicle  
19 came through here, obviously, brakes were locked up,  
20 the tires were skidding this direction or that  
21 direction. Just based off of the picture and initial  
22 observation, that's something that I would notice and  
23 see.

24 Q And this is just another -- I assume this is safe  
25 to say, this is just another view of approaching this

1 A Yes.

2 Q And I'm going to attach as Exhibit 7-13 those  
3 photos.

4 MR. GASPER: No objection.

5 (WHEREUPON, the documents were marked  
6 for identification as Exhibit No. 7-13 and  
7 are attached hereto.)

8 BY MR. JACKSON:

9 Q And what was the significance of those photos to  
10 you when you're performing your investigation and  
11 determining what happened?

12 A When you see, obviously, it's going to be a  
13 front-to-rear collision whenever you see a rear impact  
14 like that.

15 Q And it's stating the obvious, but Ms. Ashcraft's  
16 vehicle was the one being rear ended in this --

17 A Yes.

18 Q -- collision?

19 A Yes.

20 Q Okay. And I'm going to show you a series of  
21 photos from the -- of the Respondent's vehicle and  
22 this is one of the ones I pulled off of the thumb  
23 drive that you just brought to us. It's going to be a  
24 little bit clearer.

25 A Yes, sir.

1 which it is pulled off to the western shoulder of the  
2 roadway.

3 Q And then going to diagram three, which we'll mark  
4 it as Exhibit 19 to your deposition.

5 (WHEREUPON, the document was marked for  
6 identification as Exhibit No. 19 and is  
7 attached hereto.)

8 BY MR. JACKSON:

9 Q It's got a lot of measurements. Would you  
10 explain the measurements of the roadway starting from  
11 the top to the bottom with the 7 1/2 foot shoulder.

12 A Okay. So that's just -- that's just dictating  
13 your shoulder and lane lets. So your western-most  
14 shoulder is 7 1/2 feet. The west lane of State  
15 Highway 22 is, I believe, that's 12.8 feet. Eastern  
16 lane is 11.5 feet, and your eastern shoulder is 7.10  
17 feet of State Highway 22.

18 Q And when you -- the shoulder in this area, is it  
19 paved?

20 A Yes.

21 Q Okay. And based upon what you observed, did you  
22 see anything that would have prevented Ms. Wilkerson  
23 from seeing the vehicle in front of her at a stop?

24 A It is a very, very straight roadway.

25 Q Okay. And then the total distance traveled. We

1 visited a little bit about that earlier.

2 A Yes.

3 Q Can you explain to us what the -- what the total  
4 distance traveled means?

5 A So total distance traveled is essentially going  
6 to be the -- the -- the total distance of the crash,  
7 essentially.

8 So V1 your total distance traveled is going to be  
9 55 feet, 11 inches from the point of impact. After it  
10 got struck, it traveled 55 feet, 11 inches to the  
11 shoulder of the roadway.

12 V2 is skids included from where -- where V2 had  
13 locked it's brakes up prior to impact, traveled 194  
14 feet, 11 inches.

15 V3 total distance traveled after impact was 410  
16 feet, 10 inches.

17 Q Okay. And to the right of that is your  
18 measurements and your -- of showing where the  
19 different vehicles came to final rest, and -- and what  
20 the lettering indicates; is that correct?

21 A Correct.

22 Q Okay. And then the -- so I want to ask you some  
23 -- is there -- I want to ask you some more questions  
24 about the investigation. Do you recall seeing any  
25 children, small children, in the back of the Ashcraft

1 vehicle, which would be vehicle one?

2 A I do -- I do not recall.

3 Q Okay. Did anybody -- do you recall visiting with  
4 anybody who said they were an eyewitness other than  
5 the three drivers?

6 A I do not recall.

7 Q Okay. And did anybody -- one of the -- what is  
8 the speed limit in that area of Highway 22?

9 A Fifty-five miles an hour.

10 Q I'm going to show you what I'm going to mark as  
11 Exhibit No. 20, which would be the -- and I've  
12 highlighted a little bit of this to make it easier for  
13 you because it's hard to read.

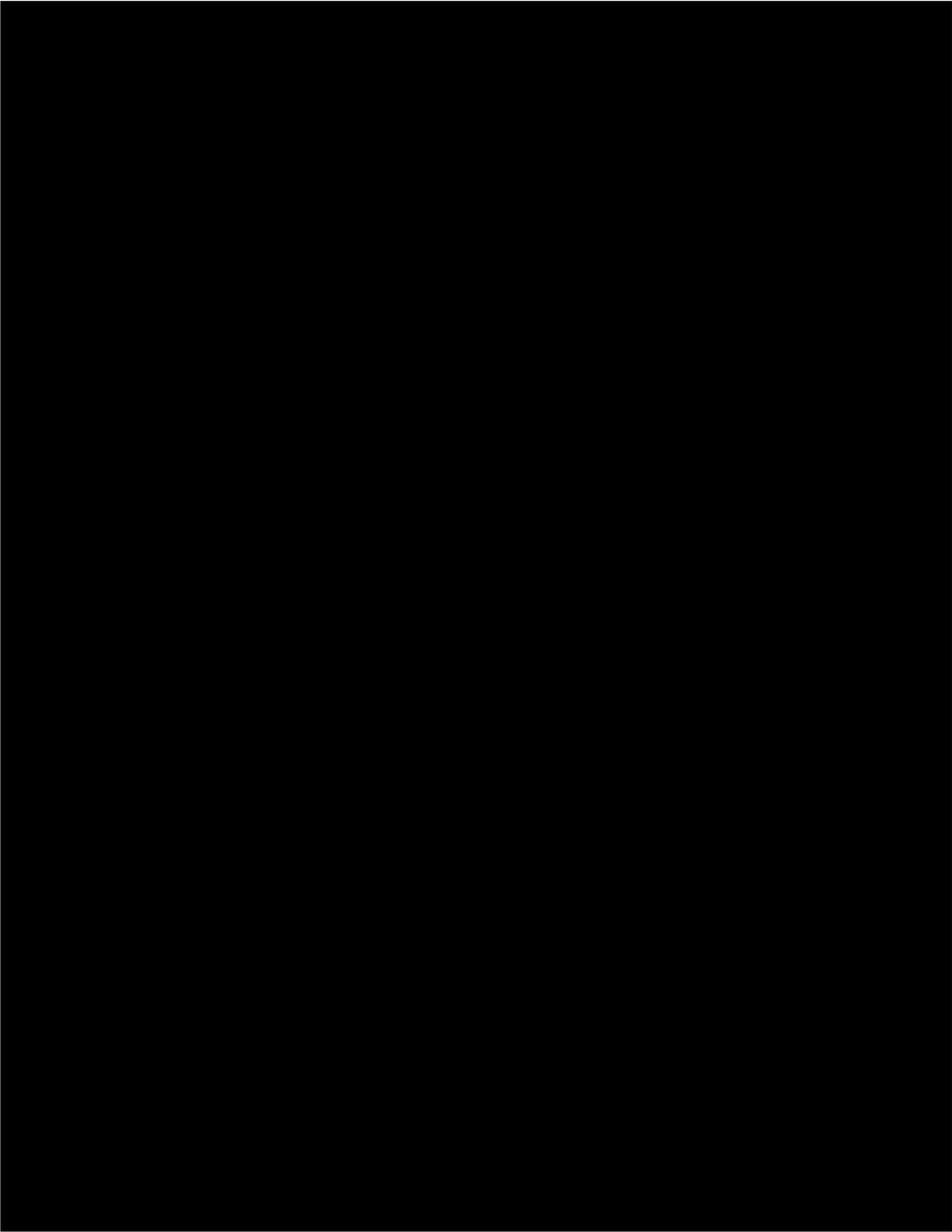
14 The paramedics report, and I'll represent to you  
15 that this the Logan County EMS medical report and if  
16 this is -- if that's correct, they were the first ones  
17 that were there at the accident scene?

18 A I assume so. Yes.

19 (WHEREUPON, the document was marked for  
20 identification as Exhibit No. 20 and is  
21 attached hereto.)

22 BY MR. JACKSON:

23 Q And the -- at the bottom there is a -- not at the  
24 bottom, on the right-hand side of the narrative, it  
25 indicates about the restraint system that the driver



1 was being used. Can you see that?

2 A You're referring to safety devices?

3 Q Yes.

4 A Yes.

5 Q And if you could, tell us what that -- that part  
6 that's highlighted says.

7 BY MR. GASPER: Same objection, please.

8 I would contend that the person who prepared  
9 that report should be the one testifying so  
10 I object to the form. You can go ahead and  
11 answer that question.

12 BY MR. JACKSON:

13 Q What does -- under airbag deployment, what does  
14 the -- what is noted?

15 A Airbags deployed. Front deployed.

16 Q And under safety devices, what does it state?

17 A Shoulder and lap belt used.

18 Q And based upon your recollection of this  
19 accident, do you have any reason to disagree with  
20 those findings by that paramedic?

21 A I'm going to look at my report. And might I add,  
22 who we are referring to here?

23 Q The vehicle one, Ms. Ashcraft.

24 A Ms. Ashcraft?

25 Q Yes.

1 Q -- I used the wrong terminology. I apologize.  
2 A Okay. I just -- I just wanted to correct that --  
3 Q Yeah, yeah.  
4 A -- and make sure I'm hearing you correctly.  
5 Q I know. Okay. Okay. I'm just about done. Just  
6 let me just do some checking real quick.  
7 In your training as a state trooper, did you do  
8 any training in regards to the effects of controlled  
9 substances on a human?  
10 A I did.  
11 Q Are you familiar with what's known as a  
12 benzodiazepine?  
13 A I do know that it is listed on these. I do not  
14 know the exact effects of a benzodiazepine.  
15 Q Okay. And also in regards to your drug training,  
16 you -- did you make -- ever make a drug arrest?  
17 A Yes. Multiple.  
18 Q Okay. Okay. And did you ever make an arrest of  
19 a person who was on -- under the influence of a  
20 controlled substance?  
21 A Yes.  
22 Q Okay. Have you ever made an arrest of a person  
23 who is under the influence of a person who is on  
24 amphetamines?  
25 A Yes.

1 Q Okay. Did Jennifer Wilkerson -- you did not talk  
2 to her directly; correct?

3 A I do not recall if I did or not.

4 Q Did you see her at all?

5 A I do not recall if I did or not.

6 Q Okay. Are you familiar with false positives in  
7 regards to controlled substance testing?

8 A These are from the Arkansas State Crime Lab so  
9 they are assumed to be correct.

10 Q Okay. Maybe false positives is the wrong word?  
11 Are you familiar with substances that can cause a  
12 positive test for amphetamines that are -- are not in  
13 fact amphetamines?

14 A I'm not aware of them, no.

15 Q Okay. I think that's all I've got.

16 BY MR. JACKSON:

17 Q I've got a couple of follow-up questions.

18 On this, and I apologize for belaboring this  
19 point, but as far as Ms. Wilkerson traveling east on  
20 Highway 22, there is nothing to prevent her from  
21 seeing an oversized tractor-trailer rig coming --  
22 traveling west or Ms. Ashcraft's vehicle stopping to  
23 make a left-hand turn --

24 A Correct.

25 Q -- is that correct?

1           And on page -- I want to ask you to turn to page  
2 six of your report. And that's on -- regarding motor  
3 vehicle number one, which was driven by Ms. Ashcraft.  
4 At the bottom, you -- there's a section that says  
5 driver actions at the time of the crash. What box did  
6 you check?

7   A       You're referring to the very bottom of the page?  
8 Driver -- driver's action at the time of the crash?

9   Q       Yes.

10   A       No contributing action.

11   Q       And I want to turn -- ask you to turn to page 11.  
12 I'm sorry, page 10. And that's the report on the  
13 driver of vehicle two, which is the Respondent's  
14 vehicle. On the driver actions at the time of the  
15 crash, what box did you check?

16   A       Page 11?

17   Q       Page 10.

18   A       10 --

19   Q       10 of 18.

20   A       Inattentive, careless, negligent, or erratic  
21 operation.

22   Q       But if you could, I know, I may have cut you off  
23 with my speaking. Can you say that -- answer that  
24 question again?

25   A       Inattentive, careless, negligent, or erratic

1 operation.

2 Q And for vehicle three, the same question is going  
3 to be on page 14. And what did you -- what was your  
4 finding on the vehicle -- on that driver's  
5 contributory actions?

6 A No contributing action.

7 Q And one bit of housekeeping matters.

8 MR. JACKSON: What's our last Exhibit  
9 number? 20? I'm going to mark as Exhibits  
10 21-27, and represent to you that those are  
11 the photos that I've shown you previously in  
12 the slide as the Respondent's vehicle.

13 (WHEREUPON, the documents were marked  
14 for identification as Exhibit No. 21-27 and  
15 are attached hereto.)

16 BY MR. JACKSON:

17 Q And if you could look through that stack and  
18 verify that those are correct, I'll ask to attach them  
19 to your deposition.

20 A Correct.

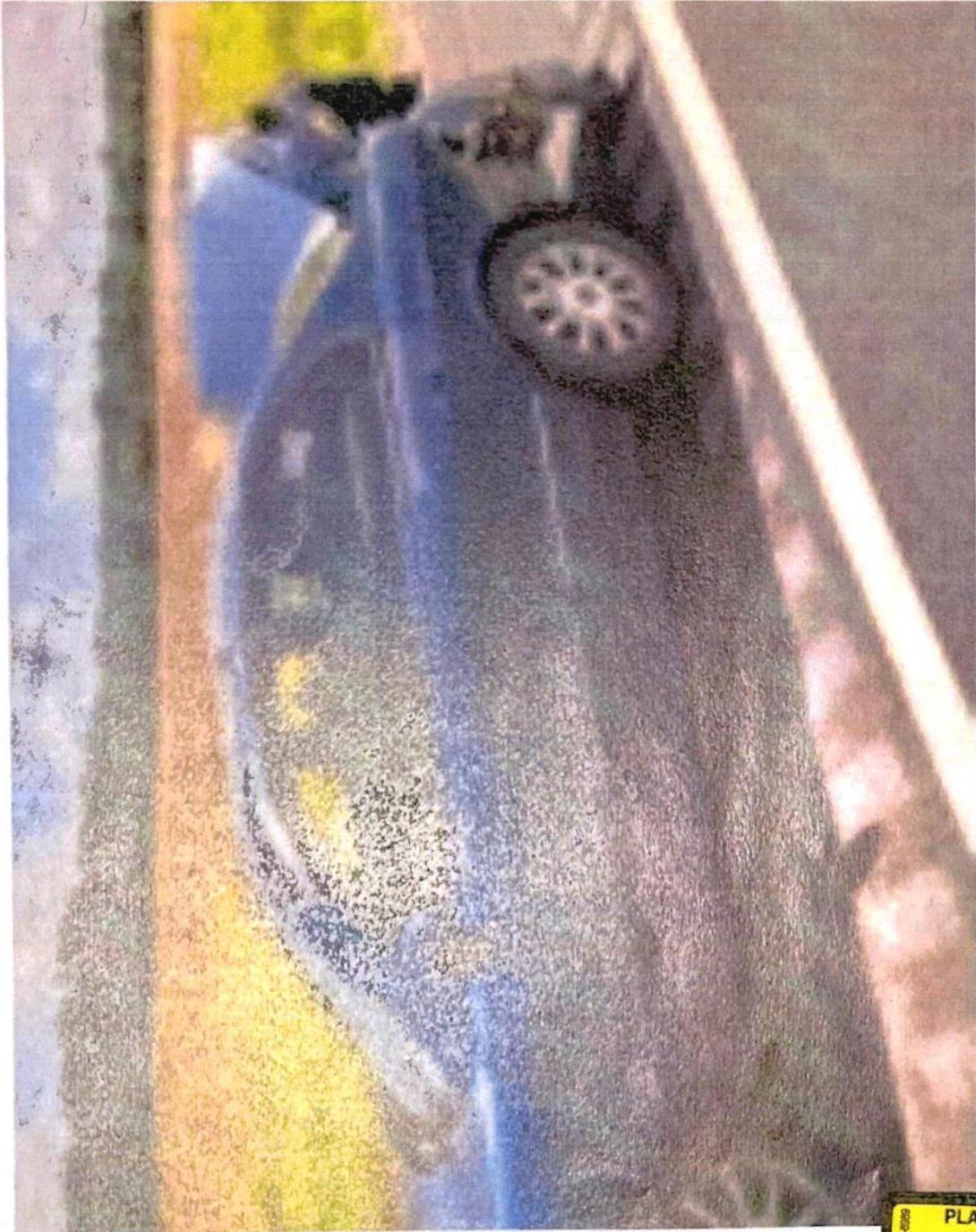
21 Q And today you've brought a thumb drive with you  
22 to the -- to the deposition and tell us what is on  
23 that thumb drive.

24 A My photographs from the accident.

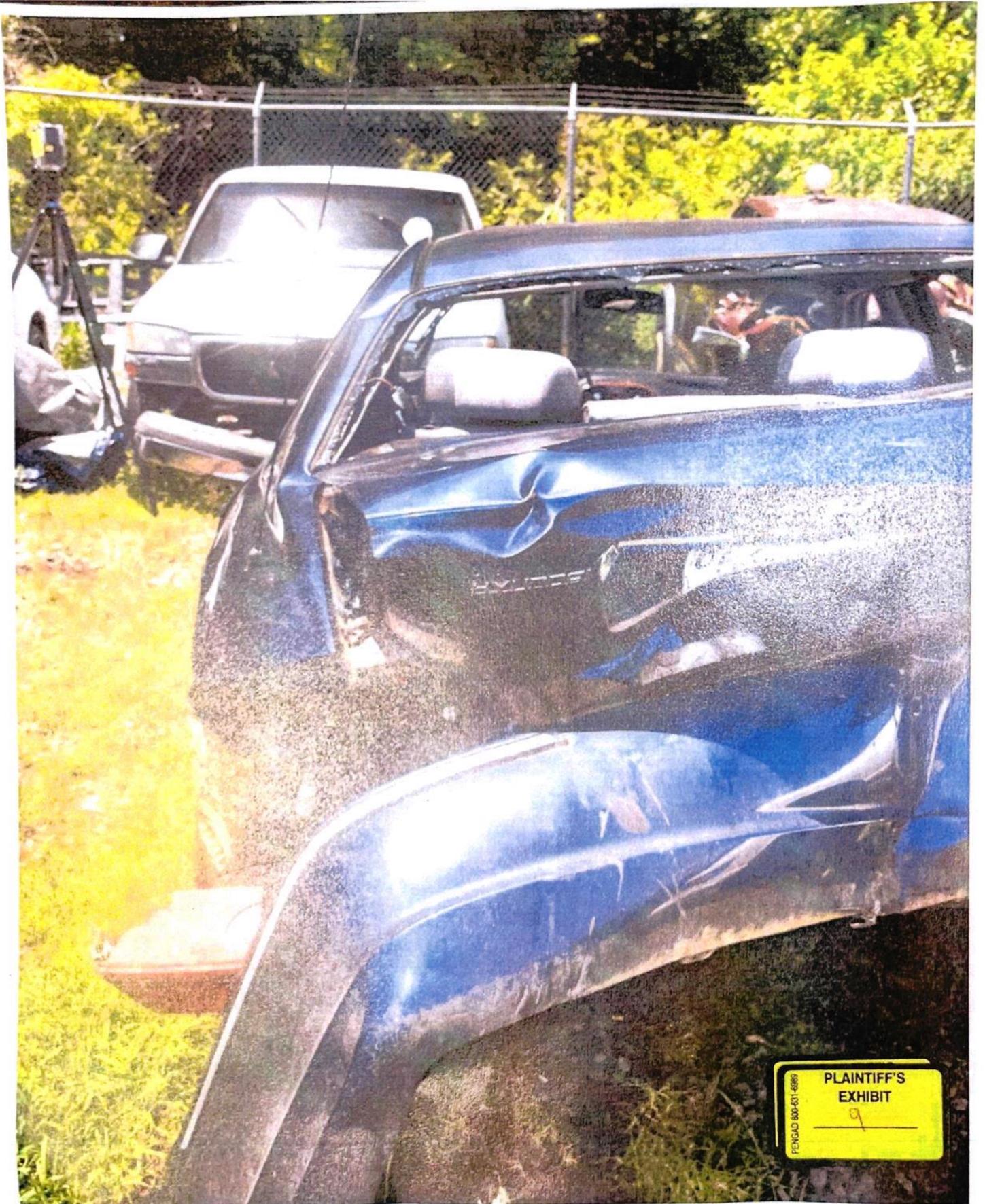
25 MR. JACKSON: And let's go off the



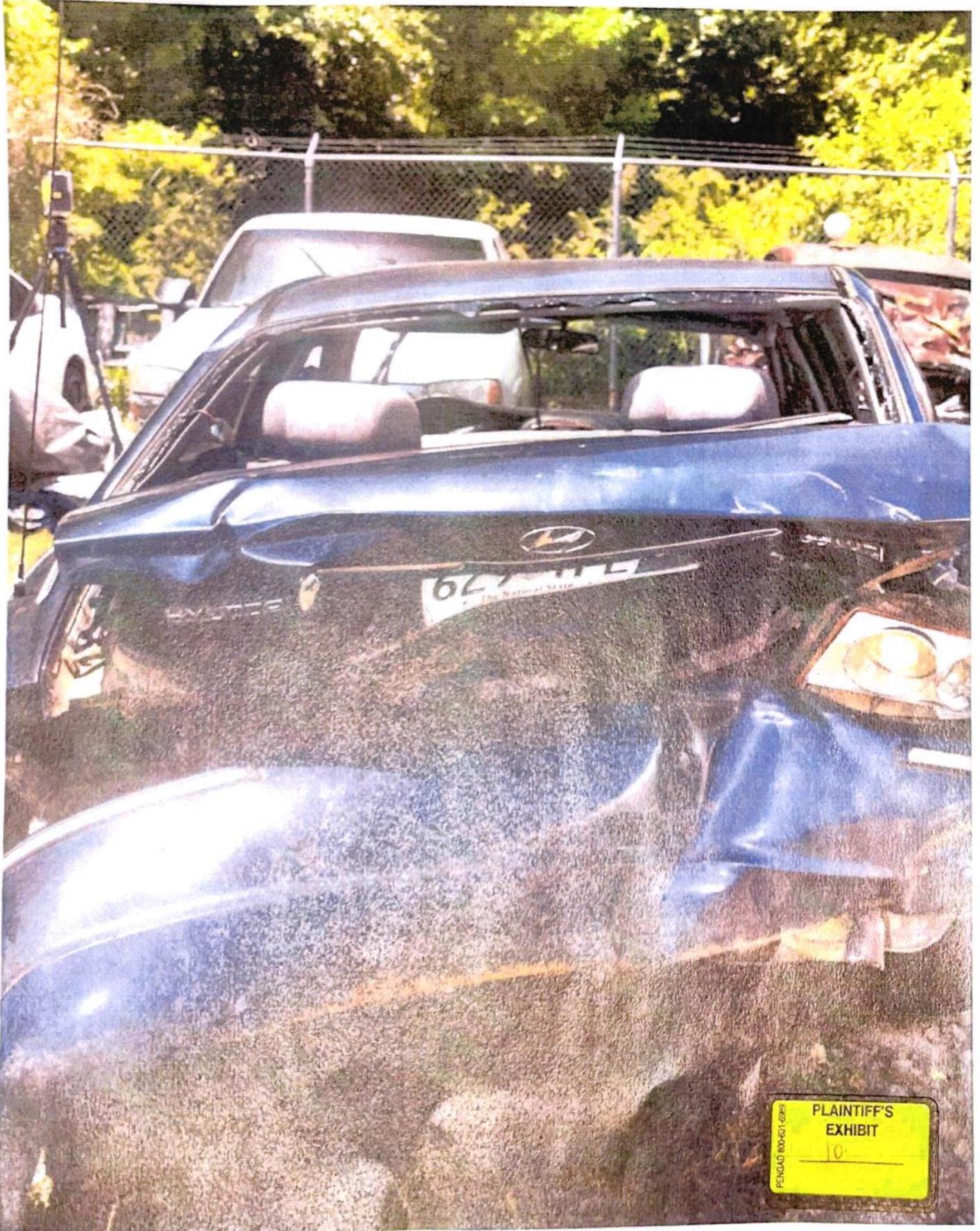
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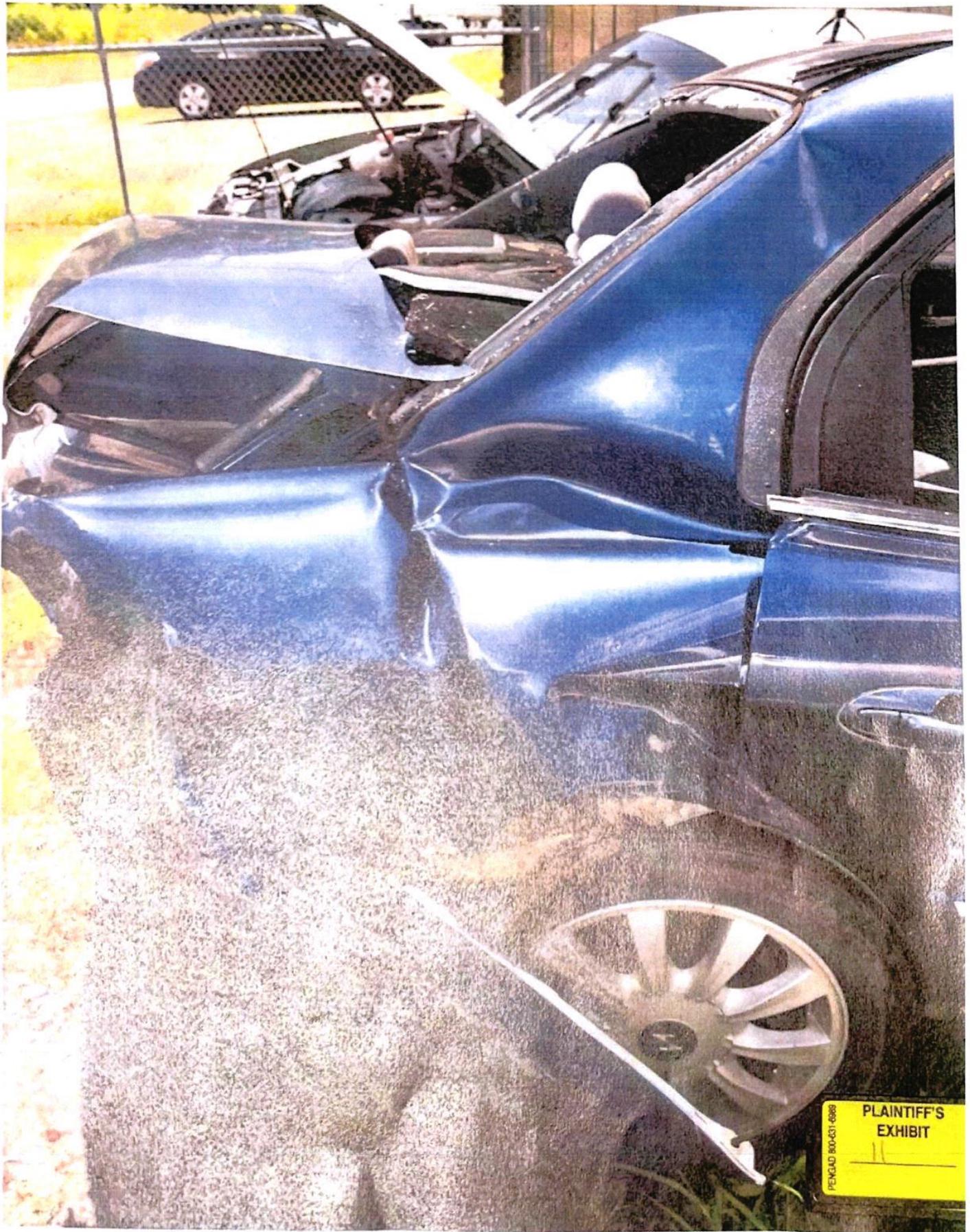


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EXHIBIT  
12



PENGAD 800-601-5889  
PLAINTIFF'S  
EXHIBIT  
13

1 Q And so I'll just go through this set of photos  
2 here. And are you able to verify that those are all  
3 the photos of the other vehicle that rear ended the  
4 Ashcraft car?

5 A The other passenger car, yes.

6 Q And that was vehicle that was being driven by  
7 Jennifer Wilkerson that you labeled as V2 in your  
8 report and diagram?

9 A Correct.

10 Q And was that a -- what type of vehicle was that?  
11 Was that a Hyundai?

12 MR. GASPER: No. It was a -- No. Oh  
13 yeah, I'm sorry, Hyundai Sonata 2005? Is  
14 that a -- is that right? No, wait, that's  
15 -- no, no. That was Ms. Ashcraft's Sonata.  
16 A Hyundai Elantra.

17 MR. JACKSON: Elantra.

18 MR. GASPER: Okay, so just to be  
19 verified, it looks like the DHS car was the  
20 Hyundai Elantra. Ms. Ashcraft's was the  
21 Hyundai Sonata.

22 MR. JACKSON: Sonata. Yes, yes.

23 MR. GASPER: 2005 Hyundai Sonata driven  
24 by Ms. Ashcraft.

25 A Yes.

1 BY MR. JACKSON:

2 Q And what is the significance of -- sorry --

3 A Yes, okay. Yeah, that is -- my apologies, yes.

4 V2 Hyundai Elantra.

5 Q In looking at the Hyundai Elantra's photos, what  
6 is the significance? What -- what information does  
7 that reveal to you as somebody who has investigated a  
8 number of accidents, and has been trained in accident  
9 reconstruction by Arkansas State Police?

10 A That is a significant front-to-rear collision.

11 Q And are you -- were you able to determine what  
12 the speed of that vehicle was at the point of impact?

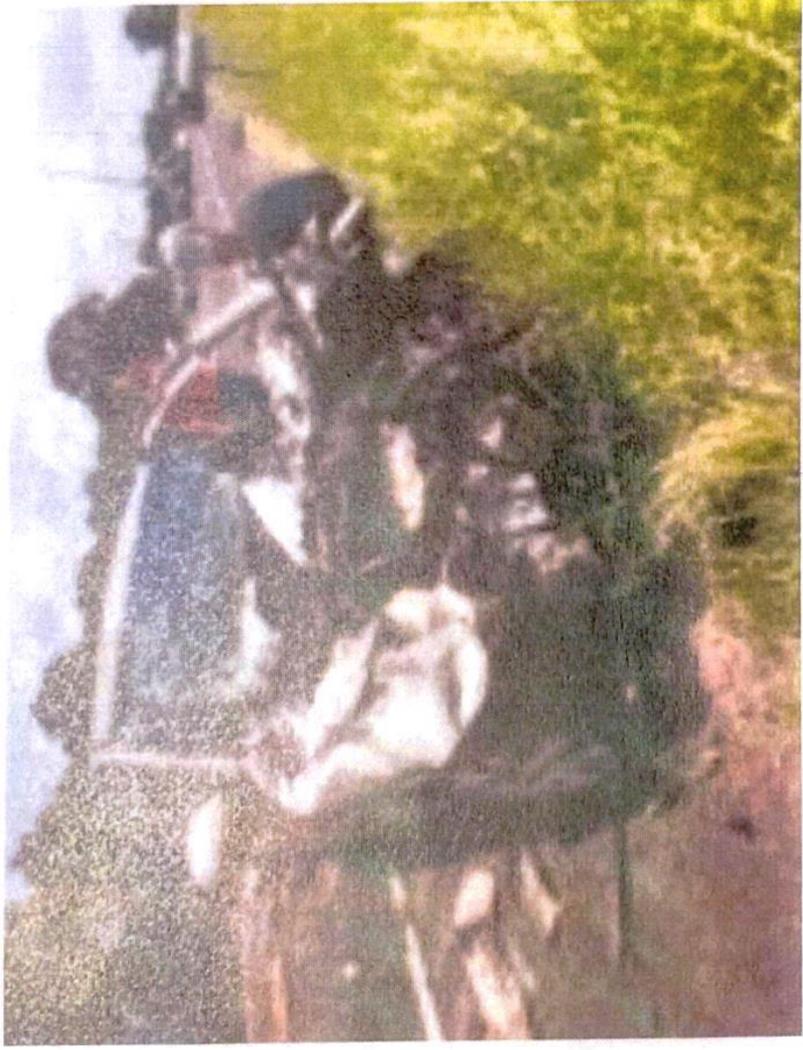
13 A I am not. We are -- we are considered advanced  
14 accident investigators. However, we have our own  
15 accident investigation team, or accident  
16 reconstruction team, that would be responsible for  
17 calculating drag factor speeds and things of that  
18 nature.

19 Q But you would agree with the assertion that it  
20 was a significant impact?

21 A Significant impact, yes.

22 Q And then I want to show you two photos of the  
23 tractor-trailer rigs. The tractor part of the  
24 tractor-trailer rig that was involved in the accident.  
25 Do those photos show -- tell us what those photos

EXHIBIT  
21  
PENGLAD Bayonne N.J

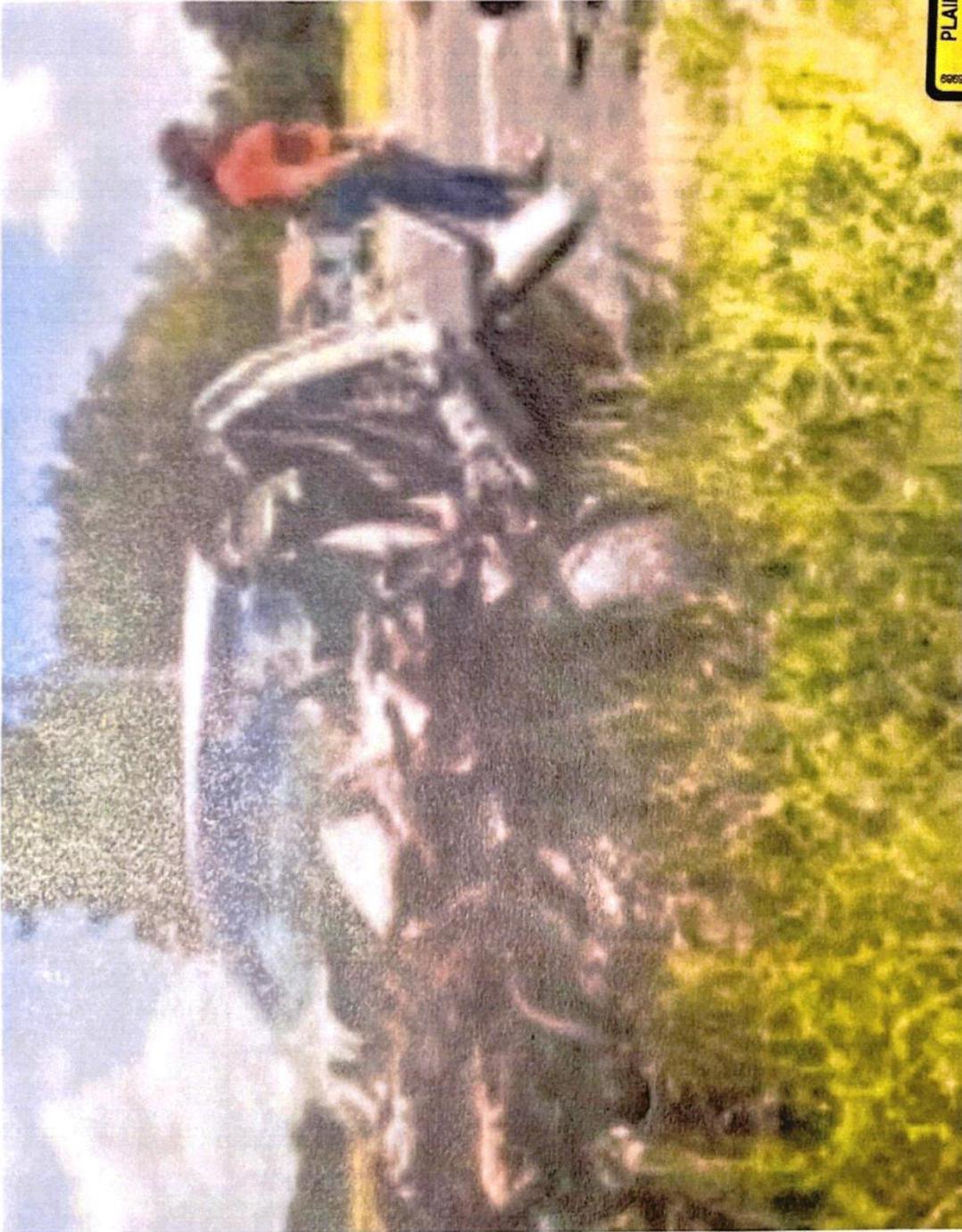




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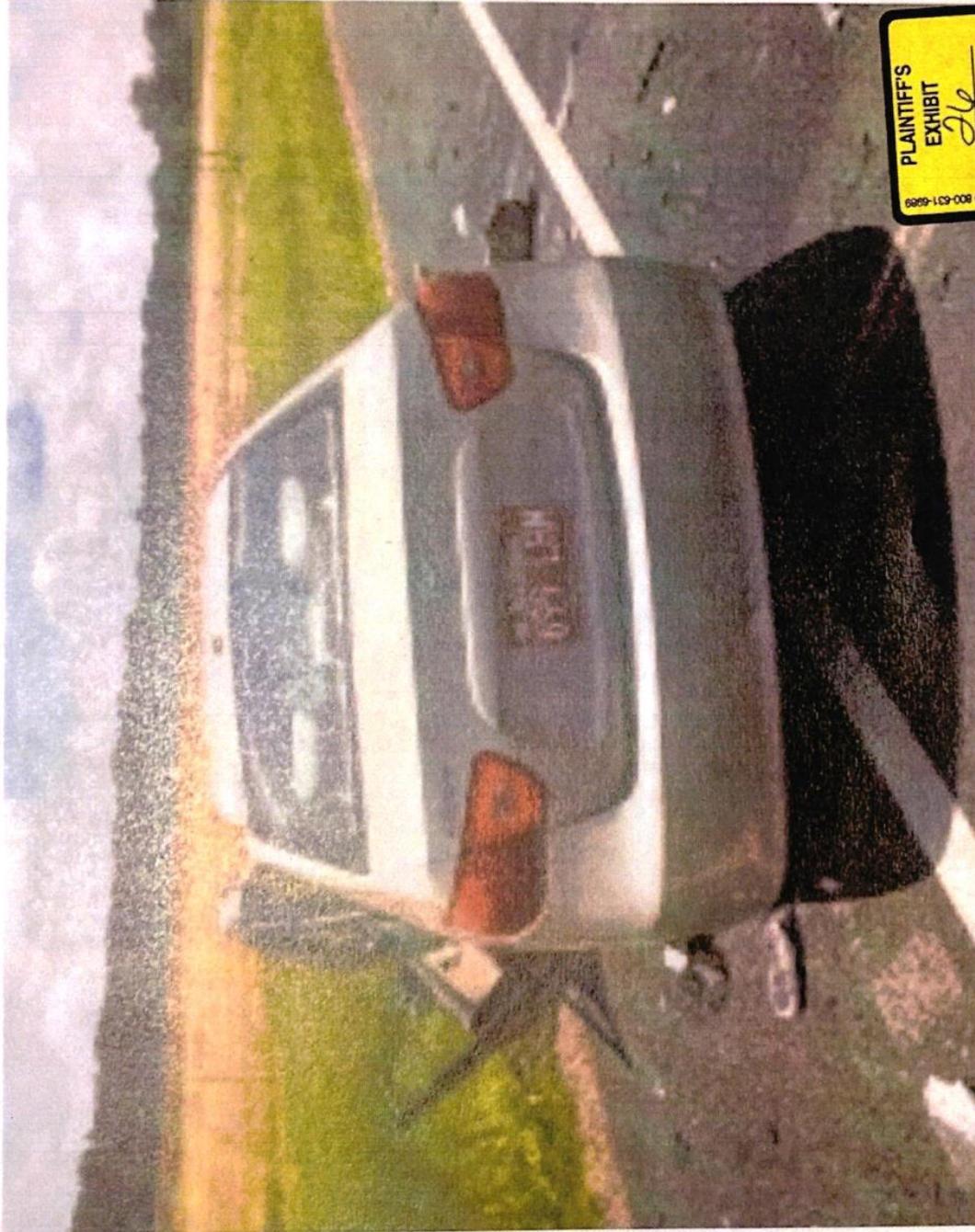


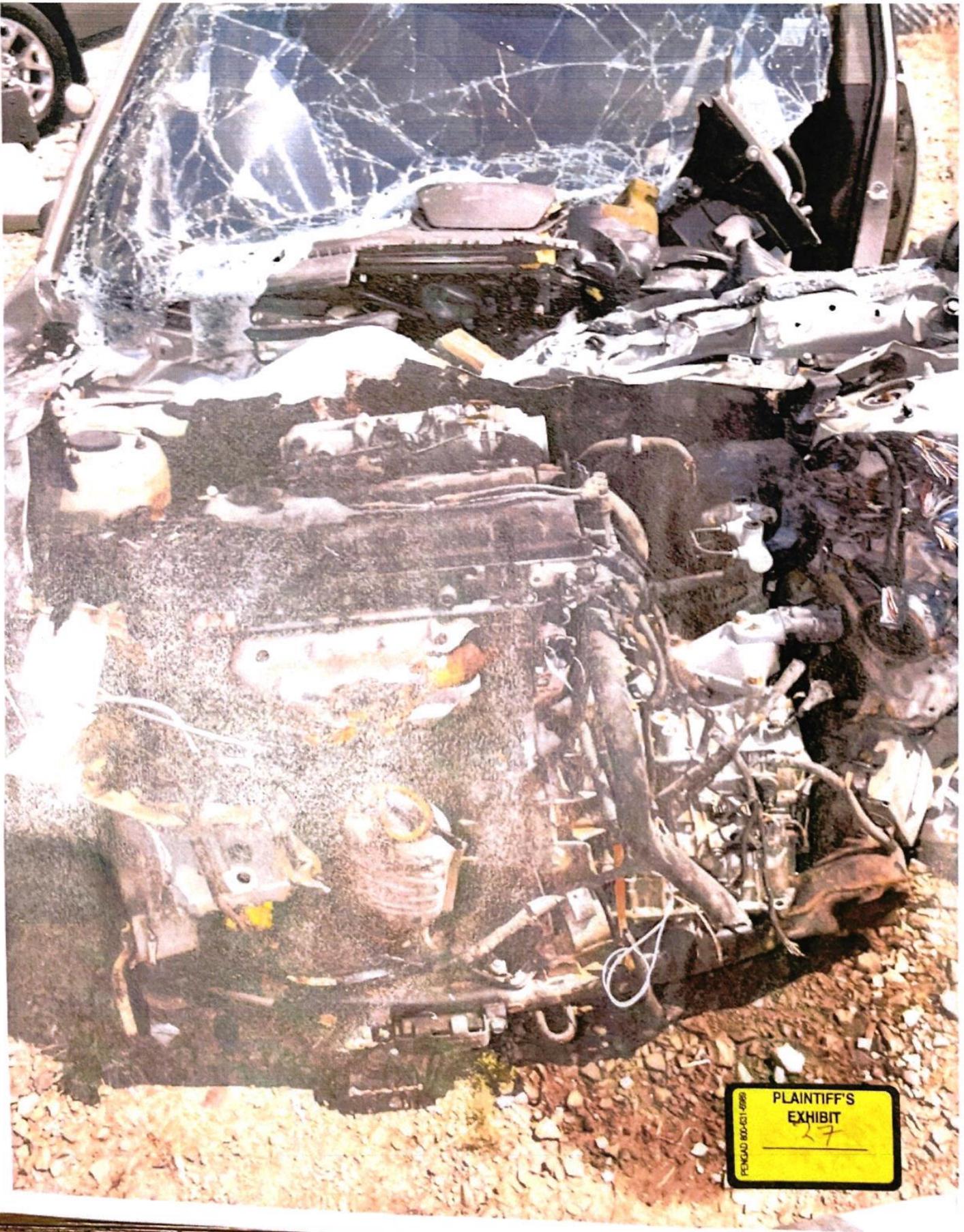


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EXHIBIT  
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PENGAD 800-631-6980









1 calculated. How fast did you say you thought Ms.  
2 Wilkerson's car was going at impact?

3 A I have ranged her speed from -- let me refer to  
4 my chart.

5 Q Sure.

6 A Based upon stationary movement by Ms. Ashcraft,  
7 I've ranged the impact speed from approximately 74  
8 miles per hour down to 66 miles per hour.

9 Q Can you go back to that photograph again, sir?

10 A Yes, sir. (Witness complies.)

11 Q Okay. I'm about to move on from the skid marks,  
12 but I just want to make sure I understand. Based  
13 upon those speeds and that damage to both cars and  
14 the injury allegedly sustained by Ms. Ashcraft, it  
15 left no skid marks by Ms. Ashcraft's car?

16 MR. JACKSON: Object to the form of the  
17 question, in that there were two different  
18 presentations given by the witness, and I  
19 think you're asking about the assumption  
20 number two.

21 MR. GASPER: Yes. I'm sorry.

22 MR. JACKSON: I just wanted to clarify.

23 BY MR. GASPER:

24 Q Under the assumption that that small rectangle  
25 does not represent any mark made by the Ashcraft car.

1 cause of this accident was?

2 A His report found Ms. Wilkerson at fault for  
3 contributing factors.

4 Q And what was your opinion as to who was at fault  
5 for causing this accident?

6 A It was Ms. Wilkerson.

7 Q And you have had a chance to visit with Bobby  
8 Wilson. And who does he -- what was his statement?

9 A His statement was that -- during his statement  
10 he told me that he noticed -- of course, he noticed  
11 Ms. Ashcraft either stopped or moving slowly as he  
12 approached, then he observed Ms. Wilkerson  
13 approaching, and he said he noticed that she was  
14 looking down into the seat or her lap or something,  
15 and he knew something -- he had a bad feeling that  
16 something bad was going to happen, because, from what  
17 he could see, when she went past him, that she was  
18 not aware of the vehicle ahead of her that was  
19 stopped.

20 Q And what is the speed limit in this area of  
21 Highway 22 where this wreck occurred?

22 A It's 55 miles per hour.

23 Q And what was the range of the speed that you  
24 found Ms. Wilkerson traveling at the point of impact  
25 with the rear-end of the Ashcraft vehicle?

1 A From my calculations, I ranged her speed  
2 anywhere from approximately 74 miles per hour maybe  
3 down to as low as 66 miles per hour.

4 Q And would that be consistent with somebody who  
5 is late for an appointment, trying to get -- trying  
6 to make up time?

7 MR. GASPER: I'm going to object to the  
8 form. I know what you are going to say.  
9 It's fine. Go ahead. I mean, he can answer  
10 it. Whatever.

11 BY MR. JACKSON:

12 Q I mean, do you --

13 A I could definitely see where if someone is late  
14 for an appointment -- because things occur. And if  
15 someone is late for an appointment, that tends to  
16 make an individual to want to drive faster and to try  
17 to make up for as much lost time as they can.

18 Q And looking at this table, would it be fair to  
19 say that you have a total speed, and then whatever  
20 speed the Ashcraft vehicle is moving, whether it's  
21 stationary or moving -- if it's moving at ten miles  
22 an hour, you reduce the Wilkerson vehicle by ten; is  
23 that correct?

24 A Correct. And as you can see from the range of  
25 speed, it doesn't flow necessarily at ten miles per

## IN THE ARKANSAS STATE CLAIMS COMMISSION

HALEY HUDSON, INDIVIDUALLY  
 HALEY HUDSON, SPECIAL ADMINISTRATRIX OF  
 THE ESTATE OF JAQUELINE LYNN ASHCRAFT,  
 DECEASED, AND HALEY HUDSON, AS PERMANENT  
 LEGAL GUARDIAN OF [REDACTED]

[REDACTED], MINOR CHILDREN

CLAIMANTS

vs.

CC No. 230641

ARKANSAS DEPARTMENT OF  
 HUMAN SERVICES

RESPONDENT

**BRIEF IN SUPPORT OF RESPONDENT'S  
 CROSS-MOTION FOR SUMMARY JUDGMENT**

**I. INTRODUCTION**

This claim involves the tragic and untimely death of Ms. Jaqueline Ashcraft. On Friday June 11, 2021, at approximately 12:50 p.m., Jennifer Wilkerson—who had only been a DHS employee for *eleven (11) days*—rear-ended the vehicle that was driven by Ms. Jacquelin Ashcraft on State Highway 22 as Ms. Ashcraft attempted to turn left into a private drive. Two of Ms. Ashcraft's minor daughters were her vehicle when the accident occurred. Ms. Wilkerson was found to be driving at an excessive and criminal rate of speed when the collision occurred. As a result of this accident, Ms. Ashcraft lost her life. The estate of Jacqueline Ashcraft and the legal guardian for Ms. Ashcraft's two minor daughters involved in the accident, bring this claim alleging that DHS is liable that under the doctrine of *respondeat superior*. DHS respectfully disagrees that it is vicariously liable for the actions of Ms. Wilkerson as will be discussed in more details below.

The undisputed evidence as presented in Respondent's Statement of Undisputed Material Facts, will show that although Ms. Wilkerson was employed by DHS at the time of the accident, DHS is not vicariously liable because Ms. Wilkerson was outside the scope of her employment when the accident occurred. Ms. Wilkerson was hired by DHS on June 1, 2021, as a program

assistant. Accordingly, DHS respectfully requests the following: (1) for its cross motion for summary judgment be granted, (2) that Claimants' motion for partial summary judgment be denied, and (3) this claim against DHS be dismissed with prejudice.

## II. STANDARD OF REVIEW

Summary judgment “shall be rendered forthwith if the pleadings, depositions, answers to interrogatories and admissions on file, together with the affidavits, if any, shows that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law on the issues specifically set forth in the motion.” Ark. R. Civ. P. 56 (c)(2). Summary judgment should be granted only when it is clear that there are no genuine issues of material fact to be litigated, and the moving party is entitled to summary judgment as a matter of law. *Wilcox v. Wooley*, 2015 Ark. App. 56, 454 S.W. 3d 792 (quoting *Harvest Rice, Inc. v. Fritz & Mertice Lehman Elevator & Dryer, Inc.*, 365 Ark. 573, 575—76, 231 S.W. 3d 720 (2006)). The purpose of summary judgment is not to try the issues, but to determine whether there are any issues to be tried. *Id.* Once the moving party has established a *prima facie* entitlement to summary judgment, the opposing party must meet proof with proof and demonstrate the existence of a material issue of fact. *Id.*

## III. ARGUMENT

### **A. DHS Is Not Liable under the Doctrine of *Respondeat Superior* Because Ms. Wilkerson Was Not Acting Within the Scope of Her Employment When the Accident Occurred.**

In this claim, the undisputed material facts show that Ms. Wilkerson was not acting within the scope of her employment with DHS when she rearended Claimants' vehicle. Thus, DHS cannot be held liable under the doctrine of *respondeat superior*. Accordingly, DHS is entitled to summary judgment in this claim.

The Arkansas Supreme Court has long held that under the doctrine of *respondeat superior* an employer may be liable for the actions of its employee if the employee was acting within the scope of his or her employment at the time of the alleged incident. *Porter v. Harshfield*, 329 Ark. 130, 137, 948 S.W.2d 83 (1997). The doctrine of *respondeat superior* is derived from the theory of master-servant liability that Arkansas has followed since 1910. *Id.* at 136. In 1910, the Arkansas Supreme Court decided the case of *Sweeden v. Atkinson Improvement Co.*, 93 Ark. 397, 125 S.W. 439 (1910), in which it ruled that “[t]he act of the servant for which the master is liable must pertain to something that is incident to the employment for which he is hired, and which it is his duty to perform, or be for the benefit of the master.” *Sweeden*, 93 Ark. at 402.

The fact that the action occurred during the employment does not automatically mean that the employer is vicariously liable; rather, the action must be proven to have been done to carry out the objective and purpose of the employer’s business. *Orkin Exterminating Co. v. Wheeling Pipeline, Inc.*, 263 Ark. 711, 716-17, 567 S.W.2d 117 (1978) (citing *Van Dalsen v. Inman*, 238 Ark. 237, 379 S.W.2d 261 (1964)). “Scope of employment” is not synonymous with “during the period covered by his employment.” *Hunter v. First State Bank*, 181 Ark. 907, 908-09, 28 S.W.2d 712 (1930). As the Arkansas Court of Appeals more succinctly stated, “employers are not always liable for any and all acts that an employee commits while on the job.” *Coombs v. J.B. Hunt Transp., Inc.*, 2012 Ark. App. 24, at 8, 388 S.W.3d 456. Accordingly, “[t]he test for whether an employee is acting within the scope of his employment is whether the individual is carrying out the ‘object and purpose of the enterprise,’ as opposed to acting exclusively in his own interest.” *Cooper Clinic, P.A. v. Barnes*, 366 Ark. 533, 541 237 S.W.3d 87 (2006) (citing *Porter v. Harshfield*, 329 Ark. 130, 137, 948 S.W.2d 83 (1997)).

As will be discussed below in more details, courts have found that an employee is outside the scope of employment: 1) when the employee deviates from the employer's business or acts in the employee's personal interest criminal acts, and 2) when the employee's actions are criminal or otherwise illegal, or not authorized or contrary to the employer's policies. For these reasons, Ms. Wilkerson was not acting within the scope of her employment with DHS at the time of the accident on June 11, 2021, in the claim-at-hand. Accordingly, DHS is entitled to summary judgment as a matter of law based upon the undisputed material facts.

1. DHS Is Not Vicariously Liable because Ms. Wilkerson Deviated from the Object and Purpose of DHS for Her Personal Interest.

The leading case on deviation of an employee from the scope of employment is *Healey v. Cockrill*, 133 Ark. 327, 202 S.W. 299 (1918). In that case, the employee was hired to drive a car for his employer. The employer had instructed the employee to bring the vehicle to the front of the property, which only required the employee to drive three-sides of a block. "The driver, instead of obeying the directions of his employer, and without her knowledge, went on a trip to a drug store to buy cigarettes before placing the car in front of appellee's residence in accordance with her instructions." *Healey*, 133 Ark. At 330. The employee was returning to his employer when the accident occurred. *Id.* Although the employee had gone less than a few blocks away, the Arkansas Supreme Court found that the employer was not vicariously liable for the actions of the employee. *Id.* at 333. The Court ruled that "the relative distance was too great to be called a slight deviation, and the departure from the line of duty was so complete that the connection with the employer's service was completely broken." *Id.*

Similarly, when an employee deviates even temporarily from the route and time elapses, the employee may no longer be within the scope of employment depending on the extent and nature relative to the time, place, and circumstances. *Davis v. Kukar*, 253 Ark. 139, 145, 357

S.W.2d 275 (1962). In finding that the employer was not liable, the Court ruled that during the deviation, the employer is not liable. *Id.* at 146. Additionally, the Court noted that “the mere fact that he is returning thereto, does not of itself reinstate the servant, agent or agency in his master’s employment and establish the engaging in the master’s business so as to subject the master to liability and for damages resulting after the departure and before the return is accomplished as of fact.” *Id.* (cleaned up).

Although this accident was tragic with the untimely death of Ms. Ashcraft, DHS should not and cannot be held vicariously liable for the actions of Ms. Wilkerson. The undisputed facts show that although Ms. Wilkerson left the Logan County DHS office around 12:07 p.m., she was only about three miles away over forty minutes later when the accident occurred. *SUMF* ¶¶ 12, 16, 32. Ms. Wilkerson admitted that she stopped and met her boyfriend at a restaurant. *SUMF* ¶¶ 14-15. Moreover, Ms. Wilkerson knew that she was on a tight deadline and that she needed to be in Beebe by 2:00 p.m., which was about a two-hour drive. *SUMF* ¶¶ 9-10. Ms. Wilkerson’s stop was a significant deviation and departure from her duties as a DHS employee. *See Healey*, 133 Ark. at 333. Immediately upon learning that Ms. Wilkerson had been in a motor vehicle accident, Ms. Ezell “was expecting her to be at least be in Dardanelle, Pottsville, somewhere between there by that time.” *SUMF* ¶ 28. Dardanelle, Arkansas is approximately 34 miles from the Logan County DHS office and Pottsville is approximately 40 miles from the office. In determining whether an employee deviation placed the employee outside the scope of employment, courts can take judicial notice of a map and the distance between places. *Van Dalsen v. Inman*, 238 Ark. 237, 239 fn. 1, 379 S.W.2d 261 (1964). Thus, according to the uncontroverted testimony of Ms. Ezell, Ms. Wilkerson was not only almost an hour behind schedule, but also she was at least thirty-one (31) miles from where she should have been when the accident occurred. *SUMF* ¶¶ 28-29. When

considering the time, place, and circumstances, Ms. Wilkerson's deviation was significant and placed her beyond the scope of her employment. *See Davis*, 253 Ark. at 145. And, at the time of the accident, Ms. Wilkerson had not reinstated herself within the scope of her employment, because she was still significantly behind schedule in both time and distance. Thus, DHS cannot be vicariously liable for this accident. *See Davis*, 253 Ark. at 146. Accordingly, DHS is entitled to summary judgment as a matter of law and respectfully request that this claim be dismissed with prejudice.

2. DHS Is Not Vicariously Liable for the Illegal Criminal Actions and Policy Violations of Ms. Wilkerson.

DHS is entitled to summary judgment because Claimants cannot show as a matter of law that the doctrine of *respondeat superior* applies, because the actions of the DHS employee, Ms. Wilkerson, were outside the scope of her employment. The Arkansas Supreme Court has repeatedly found that an employer is not vicariously liable for the illegal and criminal actions of an employee, even though the employee's actions were taken while the employee was "on the clock."

In *Porter v. Harshfield*, *supra*, a patient brought suit against a doctor (employer) after a radiology technician (employee) sexually assaulted the patient during a gallbladder ultrasound. 329 Ark. at 133. The trial court granted summary judgment in favor of the doctor (employer) and the patient appealed. *Id.* at 134. The Court reaffirmed that the doctrine of *respondeat superior* is the same legal standard that has long been applied in Arkansas for master-servant liability. *Id.* The Arkansas Supreme Court upheld the decision in favor of the doctor (employer). *Id.* at 137. It found that because the employee's actions were personal and not expected; therefore, the employer was not liable. *Id.* Thus, "*Porter* does indeed stand for the proposition that an employer is not

vicariously liable for the intentional, unexpected, criminal acts of his employees.” *Sparks Reg. Medical Cent. v. Smith*, 63 Ark. App. 131, 134-35, 976 S.W.2d 396 (1998).

The Arkansas Supreme Court has found that an employer was not vicariously liable for other types of criminal and illegal actions of an employee beyond sexual assault, including an employee’s failure as a mandated reporter to report suspected child abuse and staff illegally accessing a patient’s medical records.

The case of *Cooper Clinic, P.A. v. Barnes*, 366 Ark. 533, 237 S.W.3d 87 (2006) is instructive for this claim. In that case, a medical clinic was sued for the wrongful death of a child after the child had been seen at the Cooper Clinic by a doctor. *Id.* at 535. Although the doctor, who was employed by the Cooper Clinic, suspected and noted apparent child abuse, the doctor never made a report with the child abuse hotline as required by law for a mandated reporter. *Id.* at 534-35. After the child died as a result of the child abuse, a suit was brought by the estate of the child against Cooper Clinic claiming that the clinic was liable under the theory of *respondeat superior*. *Id.* The Arkansas Supreme Court ruled that the “Cooper Clinic is not vicariously liable for Dr. Staudt’s failure to report the suspected child abuse.” *Id.* at 540. In so doing, the Court ruled that “[t]he test for whether an employee is acting within the scope of his employment is whether the individual is carrying out the ‘object and purpose of the enterprise,’ as opposed to acting exclusively in his own interest.” *Id.* at 541 (citing *Porter v. Harshfield*, 329 Ark. 130, 137, 948 S.W.2d 83 (1997)); accord *Isham v. Booneville Comm. Hospital*, 2015 U.S. Dist. Lexis 84705 (W.D. Ark. June 30, 2015)(the Court found that the hospital was not vicariously liable for the actions of a nurse, who issued prescriptions to a friend while the two were at work at the hospital). The Court reasoned that “Dr. Staudt’s decision to report or not to report suspected child abuse is not the object and purpose of Cooper Clinic, but rather such a decision is exclusively in Dr. Staudt’s

interests.” *Id.* (cleaned up). Thus, an employer is not liable for the actions of an employee who violates the law that results in the death of another.

In *Cannady v. St. Vincent Infirmary*, the administratrix of the estate of Anne Pressly<sup>1</sup> sued St. Vincent under the doctrine of *respondeat superior* after two of its employees unlawfully accessed Anne Pressly’s medical records. 2018 Ark. 35, 537 S.W.3d 529. The Arkansas Supreme Court rejected the argument that St. Vincent was vicariously liable because the actions of the employees were not unexpected and found that the employees acted outside the scope of their employment. 2018 Ark. at 9. “St. Vincent is therefore entitled to expect St. Vincent employees to obey hospital policy, to remain faithful to their agreements, and to not violate federal law. Therefore, the employees’ actions were unexpected.” *Id.* at 10. Most importantly, St. Vincent terminated the employees upon discovering their inappropriate actions; therefore, the Court found that St. Vincent “***did not ratify or endorse*** the improper actions.” *Id.* (emphasis added).

DHS cannot be vicariously liable for the illegal and criminal actions of Ms. Wilkerson. *See Porter*, 329 Ark. at 133. Ms. Wilkerson was estimated to have been going over 70 mph, when the accident occurred. *SUMF* ¶24. The posted speed limit was 55 mph. *SUMF* ¶20. Thus, Ms. Wilkerson was traveling at a criminal rate of speed when the accident occurred. *See* Ark. Code Ann. §27-50-302(7)(“speeding in excess of fifteen miles per hour over the posted limit is a Class C misdemeanor”). Consequently, given that Ms. Ashcraft died in this accident, Ms. Wilkerson could have been charged with negligent homicide. *See* Ark. Code Ann. §5-10-105; *see also Robinson v. State*, 98 Ark. App. 237, 254 S.W.3d 750 (2007).

<sup>1</sup> Anne Pressly was a famous local news anchor, who was brutally assaulted at her home and was hospitalized at St. Vincent where she died as a result of her injuries.

Moreover, Ms. Wilkerson admitted to taking Adderall—a Schedule II controlled substance<sup>2</sup>—*without a prescription*. *SUMF* ¶¶ 36-37. Prior to beginning her employment with DHS, Ms. Wilkerson had a clean drug test. *SUMF* ¶5. Thus, Ms. Wilkerson’s actions of drug abuse could not have been expected by DHS; therefore, Ms. Wilkerson was outside the scope of her employment. *See Porter*, 329 Ark. at 137. Interestingly, under the Arkansas Workers’ Compensation Act, injuries that occur to an employee who took illegal drugs or used prescription drugs in contravention of physicians’ orders are not compensable. Ark. Code Ann. §11-9-102(4)(B)(iv).

Another important consideration is that Ms. Wilkerson—by illegally using drugs—was not carrying out the “object and purpose” of DHS; therefore, she was acting outside the scope of her employment with DHS and DHS cannot be vicariously liable for her actions. *See Cooper Clinic*, 366 Ark. at 541. A primary focus of DHS is on drug and substance abuse treatment and prevention through programs like the one promote the use and distribution of Narcan for opioid overdoses and peer recovery programs to just name a few. Thus, when Ms. Wilkerson illegally took a Schedule II controlled substance without at prescription, she was not furthering the “object and purpose” of DHS. Additionally, Ms. Wilkerson’s decision to drive at an excessive rate of speed to the point that it was a criminal rate of speed in order to make up time for her decision to stop was exclusively in her own interest and not in the object and purpose of DHS. *See Porter*, 329 Ark. at 137. Accordingly, as the Arkansas Supreme Court found in *Cooper Clinic, supra*, the Arkansas State Claims Commission should also find that DHS is not vicariously liable for the actions of Ms.

<sup>2</sup> According to Arkansas Department of Health regulations, “Schedule II controlled substances are drugs that have a legitimate medical indication, but also have a high potential for abuse that may lead to severe psychological or physical dependence. Included in the list of Schedule II drugs are the stimulants: amphetamines and methamphetamines and their salts and optical isomers (e.g. Adderall, Desoxyn, Dexedrine and Vyvanse).” Rule 7, 060 01 CARR 001.

Wilkerson, because she was not furthering the objectives and purposes of DHS at the time of the accident on June 11, 2021.

Finally, as illustrated by *Cannady v. St. Vincent Infirmary*, *supra.*, DHS is not vicariously liable for Ms. Wilkerson's actions. Like St. Vincent, DHS is entitled to expect that its employees will follow policy and not violate the law. Similar to St. Vincent, DHS terminated Ms. Wilkerson shortly after the accident after conducting a fact finding investigation, which revealed that Ms. Wilkerson failed to follow instructions and policy and violated the law. *SUMF* ¶¶ 41-42. Thus, DHS did not ratify or endorse Ms. Wilkerson's actions; therefore, it cannot be held vicariously liable. *See Cannady*, 2018 Ark. at 10. Accordingly, DHS respectfully requests that its cross motion for summary judgment be granted and this claim be dismissed with prejudice.

**B. DHS Is Not Liable to Claimants for Negligent Hiring nor Negligent Supervision.**

Although the Claimants did not specifically raise a claim of negligent hiring nor of negligent supervision, but out of an abundance of caution and in an effort to provide the Claims Commission with a thorough legal analysis, Respondent will briefly address why these claims would also fail as a matter of law. Under these legal theories, an employer may be liable for the actions of an employee if the third party can show that the employer knew or should have known through ordinary care that the employee could pose an unreasonable risk of harm and that harm occurred to the third party. *Saine v. Comcast Cable*, 354 Ark. 492, 497, 126 S.W.3d 399 (2003). In order to prove a claim for negligent hiring or negligent supervision, a plaintiff must prove that the risk of harm to others was reasonably foreseeable. *Id.* Thus, "absent some form of notice that the employee posed a danger, such an act is not foreseeable." *Id.* at 498 (quoting *Regions Bank & Trust v. Stone Co. Nursing Facility, Inc.*, 345 Ark. 555, 569, 49 S.W.3d 107 (2001)). Specifically,

regarding the claim of negligent hiring, the Arkansas Supreme Court has held that a plaintiff must show the following:

(1) that an inadequate background check was done or there was the complete absence of a background check; (2) that a proper background check would have revealed that the employee was not qualified for the position for which he or she was hired; and (3) that if the claim is based on a criminal act by the employee, there was a direct causal connection between an inadequate background check and the criminal act for which the plaintiff is attempting to hold the employer liable.

*Paulino v. QHG of Springdale, Inc.*, 2012 Ark. 55, at 13, 386 S.W.3d 462.

Under either theory, the plaintiff must still show that the employer failed to exercise ordinary care in either its hiring or supervision of the employee. *Id.*

In the claim-at-hand, Claimants cannot show that DHS was negligent in its hiring of Ms. Wilkerson nor that DHS was negligent in its supervision of Ms. Wilkerson. The undisputed facts show that prior to her employment with DHS, Ms. Wilkerson passed a criminal background check, had a clean driving record, and passed a drug test. *SUMF* ¶¶ 5-6. Thus, Claimants cannot show that DHS was negligent in its hiring of Ms. Wilkerson. *See Paulino*, 2015 Ark. at 13. Additionally, there is no evidence to show that DHS could have reasonably foreseen the actions of Ms. Wilkerson, especially given that she had only been employed with DHS for eleven (11) days when the accident occurred. *See Saine*, 354 Ark. at 497. Thus, to the extent Claimants have raised or could raise that DHS was negligent in hiring or supervising Ms. Wilkerson, these claims also fail as matters of law. Accordingly, DHS is entitled to summary judgment on these potential claims as well.

#### IV. CONCLUSION

For the reasons stated above, Respondent respectfully requests that the Arkansas State Claims Commission grants their Cross-Motion for Summary Judgment and denies Claimants' motion for summary judgment and for all other just and proper relief to which it is entitled.

Respectfully submitted,

By: /s/ Vincent P. France  
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*Attorney for Respondent*

**CERTIFICATE OF SERVICE**

I, Vincent P. France, hereby certify that on January 29, 2024, I electronically filed the foregoing with the Arkansas State Claims Commission by emailing it to [ascpleadings@arkansas.gov](mailto:ascpleadings@arkansas.gov) and by sending a copy to Claimant's attorney Jim Jackson via email as indicated below.

Jim Jackson  
[Jim@JimJacksonatty.com](mailto:Jim@JimJacksonatty.com)

/s/ Vincent P. France  
Vincent P. France

## IN THE ARKANSAS STATE CLAIMS COMMISSION

**HALEY HUDSON, INDIVIDUALLY  
HALEY HUDSON, SPECIAL ADMINISTRATRIX OF  
THE ESTATE OF JAQUELINE LYNN ASHCRAFT,  
DECEASED, AND HALEY HUDSON, AS PERMANENT  
LEGAL GUARDIAN OF**

**MINOR CHILDREN**

**CLAIMANTS**

**vs.**

**CC No. 230641**

**ARKANSAS DEPARTMENT OF  
HUMAN SERVICES**

**RESPONDENT**

**RESPONDENT'S STATEMENT OF UNDISPUTED MATERIAL FACTS**

COMES NOW, Respondent, Arkansas Department of Human Services, by and through its attorney, Vincent P. France Deputy Chief Counsel for the Arkansas Department of Human Services, and for its Statement of Undisputed Material Facts states the following:

1. This claim arises from a motor vehicle accident involving three vehicles that occurred on Friday, June 11, 2021, on State Highway 22 in Logan County, Arkansas near Paris, Arkansas. *See* Exhibit 1, Documents Produced in Discovery by Claimants, Accident Report bates number 0291-0308 (“hereinafter “Exhibit 1, Documents Produced by Claimants”).

2. One of the vehicles involved in the accident was a vehicle owned by Respondent, Arkansas Department of Human Services (hereinafter “DHS”), which was being driven by Jennifer Wilkerson. *See* Exhibit 1, Documents Produced by Claimant, bates no. 0297.

3. On June 1, 2021, Jennifer Wilkerson began working for DHS. *See* Exhibit 2, Excerpts from Jennifer Wilkerson’s Deposition, 10:2-6 (hereinafter “Exhibit 2, Wilkerson Depo.”); Exhibit 3, Affidavit of Pamela Feemster, p. 2 ¶9 (hereinafter “Exhibit 3, Feemster Affidavit”).

4. Ms. Wilkerson was hired by DHS after she was interviewed by Pamela Feemster. Exhibit 3, Feemster Affidavit, p. 2 ¶ 5.

5. Prior to starting her position with DHS, Ms. Wilkerson was required to pass a pre-employment drug test, which was clean, and she agreed to obey all traffic laws and follow DHS driving policies. Exhibit 3, Feemster Affidavit, p. 2 ¶¶ 6-7; Exhibit 4, Excerpts from Kristen Shelton’s Deposition, 18:12-17 (hereinafter “Exhibit 4, Shelton Depo.”).

6. Prior to beginning her employment with DHS, Ms. Wilkerson also had to pass a criminal background check. Exhibit 4, Shelton Depo. 11:1-10, 18:6-13.

7. Jennifer Wilkerson was hired as a Program Assistant for DCFS in Logan County, which is located at 17 W. McKeen Street, Paris, Arkansas 72855. Exhibit 2, Wilkerson Depo. 9:7-10; Exhibit 3, Feemster Affidavit, p. 2 ¶¶ 8, 10; Exhibit 4, Shelton Depo. 10:4-10; Exhibit 5, Excerpts from Brandy Ezell’s Deposition, 6:19—7:4 (hereinafter “Exhibit 5, Ezell Depo.”).

8. As a Program Assistant, Ms. Wilkerson’s main responsibilities were transportation of children and to conduct supervised visitations. Exhibit 2, Wilkerson Depo. 10:10-16; Exhibit 3, Feemster Affidavit, p. 2 ¶ 11; Exhibit 4, Shelton Depo. 10:11-16; Exhibit 5, Ezell Depo. 6:19—7:4.

9. On June 11, 2021, Ms. Wilkerson was assigned to go to Beebe, Arkansas, to pick up a child at 2:00 p.m. and transport the child to Clarksville, Arkansas, for a sibling visit at 4:00 p.m. Exhibit 2, Wilkerson Depo. 10:10-22, 13:15-18; Exhibit 3, Feemster Affidavit, p. 2 ¶ 12; Exhibit 4, Shelton Depo. 19:6-12; Exhibit 5, Ezell Depo. 8:4—9:15.

10. In order for Ms. Wilkerson to arrive in Beebe by 2:00 p.m., she needed to leave Paris, Arkansas around noon because it takes approximately two (2) hours to drive from Paris to Beebe. Exhibit 2, Wilkerson Depo. 17:19-22; Exhibit 3, Feemster Affidavit, p. 2 ¶ 13; Exhibit 5, Ezell Depo. 9:16—10:1.

11. Brandy Ezell showed Ms. Wilkerson on a map where she needed to go in Beebe. Exhibit 2, Wilkerson Depo. 13:22—14:15, 17:19-22; Exhibit 5, Ezell Depo. 9:8-15.

12. At 12:07 p.m., Brandy Ezell and Pamela Feemster saw Ms. Wilkerson getting into the vehicle to head to Beebe. Exhibit 3, Feemster Affidavit, p. 3 ¶ 14; Exhibit 5, Ezell Depo. 10:13-17.

13. Wilkerson's undisputed testimony was that she needed to leave earlier. Exhibit 2, Wilkerson Depo. 17:19-22.

14. Rather than beginning her trip to Beebe, Arkansas, Ms. Wilkerson admits that she instead stopped, went inside, and ate at a restaurant called the Dari-Delite. Exhibit 2, Wilkerson Depo. 122:21—124:13.

15. Wilkerson admits that she met her boyfriend at Dari-Delite. Exhibit 2, Wilkerson Depo. 102:16-21.

### **The Accident**

16. Around 12:50 p.m., near the intersection of 5033 State Highway 22, Ms. Wilkerson rear-ended a vehicle that was driven by Ms. Jacquelin Ashcraft and three passengers including two of Ms. Ashcraft's minor daughters, [REDACTED]. Exhibit 1, Documents Produced by Claimants, bates no. 291-308; *see also* Exhibit 6, Excerpts from Trooper Ray's Deposition, 8:12-23 (hereinafter "Exhibit 6, Ray Depo.")

17. Both Ms. Wilkerson's vehicle and Ms. Ashcraft's vehicle were traveling east on Highway 22. *Id.*; Exhibit 6, Ray Depo. 17:9—19:10, 55:17-24.

18. Ms. Ashcraft was attempting to turn left into a private residence. *Id.*

19. The force of the collision caused Ms. Wilkerson's vehicle to spin into the opposite lane of travel and strike an overside load trailering a mobile home. *Id.*

20. The speed limit where the accident occurred is 55 mph. Exhibit 6, Ray Depo. 28:7-9, 39:10-12; *see also* Exhibit 7, Excerpts from Stanley Cain’s Deposition, 129:20-22 (hereinafter “Exhibit 6, Cain Depo.”)

21. The weather was clear and the roadway was dry and neither was a factor in the accident. Exhibit 1, Documents Produced by Claimants bates no. 0291; *see also* Exhibit 1, Documents Produced by Claimants, photos taken at accident scene, bates no. 262-276.

22. This portion of Highway 22 is straight and flat. *See* Exhibit 1, Documents Produced by Claimants, photos taken at accident scene, bates no. 0262-0276; Exhibit 6, Ray Depo. 26:21-24.

23. Although Trooper Ray conducted the investigation into the accident, he never actually spoke with Ms. Wilkerson. Exhibit 6, Ray Depo. 8:12-18, 12:21—13:2, 55:1-5.

24. When the impact occurred between the vehicle Ms. Wilkerson was driving and the vehicle driven by Ms. Ashcraft, it is estimated that Ms. Wilkerson could have been going at least 70 mph. *See* Exhibit 7, Cain Depo. 43:1-8, 129:23—130:3; *see also* Exhibit 1, Documents Produced by Claimants, Stanley Cain Investigation, bates no. 0571-0605, specifically 0574.

25. Based upon Trooper Ray’s investigation, he found that Ms. Wilkerson was responsible for the accident based upon her inattentive, careless, negligent, or erratic driving. Exhibit 6, Ray Depo. 56:11—57:1.

### **Post Accident**

26. Following the accident, Ms. Wilkerson called Brandy Ezell, her boyfriend at the time, Scott Lindstrom, and her mother. Exhibit 2, Wilkerson Depo. 18:25—19:16.

27. As Brandy Ezell and Pamela Feemster were returning from lunch, Brandy Ezell received the call from Ms. Wilkerson concerning the accident at 12:55 p.m. Exhibit 3, Feemster Affidavit, p. 3 ¶15; Exhibit 5, Ezell Depo. 12:1-5, 31:1-18.

28. Immediately upon learning that Ms. Wilkerson had been in a motor vehicle accident, Ms. Ezell “was expecting her to be at least be in Dardanelle, Pottsville, somewhere between there by that time.” Exhibit 5, Ezell Depo. 12:9-12.

29. Given the location of the accident and the time it occurred, Ms. Wilkerson was significantly behind schedule by approximately an hour behind. Exhibit 4, Shelton Depo. 27:1-14; *see also* Exhibit 5, Ezell Depo. 32:5-7 (In her deposition, Ms. Ezell testified to the following, “And to this day, it still bugs me why she wasn’t [more than] three miles from the office a good 45 minutes later.”)

30. Ms. Wilkerson informed Ms. Ezell that she thinks the accident occurred near the airport in Paris, Arkansas. Exhibit 5, Ezell Depo. 12:12-13.

31. Immediately, Ms. Ezell and Ms. Feemster headed to the accident. Exhibit 3, Feemster Affidavit, p. 3 ¶17; Exhibit 5, Ezell Depo. 12:14-15.

32. It only took Ms. Ezell and Ms. Feemster a few minutes to arrive at the scene, which was approximately 3 miles from the DHS office. Exhibit 3, Feemster Affidavit, p. 3 ¶18; Exhibit 5, Ezell Depo. 30:18-20.

33. Upon arriving at the scene, Ms. Ezell went over to check on Ms. Wilkerson and Ms. Feemster called her supervisor, Kristen Shelton. Exhibit 3, Feemster Affidavit, p. 4 ¶23; Exhibit 4, Shelton Depo. 13:25—14:2; Exhibit 5, Ezell Depo. 12:17-25.

34. Eventually, both Ms. Ashcraft and Ms. Wilkerson were taken by the same ambulance to the hospital in Booneville, Arkansas. Exhibit 2, Wilkerson Depo. 46:2-19, 47:7-13.

35. Although law enforcement was not going to conduct a drug screen on Ms. Wilkerson, Ms. Feemster requested that a drug screen be conducted on Ms. Wilkerson for DHS. Exhibit 3, Feemster Affidavit, p. 4 ¶¶24, 26, 31; *see also* Exhibit 4, Shelton Depo. 22:9—23:14; Exhibit 1, Documents Produced by Claimants, emails, bates no. 0408-0426.

36. On June 11, 2021, after the accident and after Ms. Wilkerson had arrived at the Booneville hospital, Ms. Feemster received a text message from Ms. Wilkerson in which Ms. Wilkerson informed her that she anticipated that the drug screen would come back positive because she had taken Adderall prior to the accident, but that she did not have a prescription for the medication. Exhibit 3, Feemster Affidavit, p. 5 ¶32; *see also* Exhibit 1, Documents Produced by Claimants, emails, bates no. 0420; Exhibit 2, Wilkerson Depo. 23:6-20.

37. The toxicology report for Ms. Wilkerson showed that she was positive for [REDACTED]. Exhibit 1, Documents Produced by Claimants, Wilkerson toxicology results, bates no. 0258-0259; *see also* Exhibit 6, Ray Depo. 54:7—55:14; Exhibit 2, Wilkerson Depo. 61:11—62:8.

### **DHS Investigation**

38. It was on June 11, 2021, that Ms. Feemster first discussed the possibility of terminating Ms. Wilkerson after she learned from Ms. Wilkerson that Ms. Wilkerson had illegally used Adderall. Exhibit 3, Feemster Affidavit, p. 5 ¶33.

39. As required by DHS policy, a fact-finding investigation to determine if any policy violations occurred to determine whether to terminate an employee. Exhibit 4, Shelton Depo. 12:23—13:3; *see also* Exhibit 3, Feemster Affidavit, p. 5 ¶ 35.

40. Kristen Shelton conducted the fact-finding investigation, in which she sent emails to Brandy Ezell, Pamela Feemster, and Ms. Wilkerson asking about the accident. Exhibit 4, Shelton Depo. 17:10—35:18.

41. Following the conclusion of the fact-finding investigation, Ms. Wilkerson was officially fired from DHS on Wednesday, June 16, 2021. Exhibit 4, Shelton Depo. 16:18-21; *see also* Exhibit 3, Feemster Affidavit, p. 5 ¶ 35.

42. Ms. Wilkerson was fired from DHS because she did not leave on time for Beebe and was behind schedule, she admitted to taking drugs without a prescription, and she was still in her probationary period as an employee. Exhibit 4, Shelton Depo. 30:11-25; Exhibit 1, Documents Produced by Claimants, emails, bates no. 0408-0426.

WHEREFORE, Respondent respectfully submits its Statement of Undisputed Material Facts and respectfully requests that its Cross-Motion for Summary Judgment be granted, and that Claimants' motion for partial summary judgment be denied and this claim be dismissed with prejudice, along with any other just and proper relief to which it is entitled.

Respectfully submitted,

By: /s/ Vincent P. France  
Vincent P. France, Ark. Bar No. 2010063  
Deputy Chief Counsel  
Arkansas DHS  
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*Attorney for Respondent*

**CERTIFICATE OF SERVICE**

I, Vincent P. France, hereby certify that on January 29, 2024, I electronically filed the foregoing with the Arkansas State Claims Commission by emailing it to [ascpleadings@arkansas.gov](mailto:ascpleadings@arkansas.gov) and by sending a copy to Claimant's attorney Jim Jackson via email as indicated below.

Jim Jackson  
[Jim@JimJacksonatty.com](mailto:Jim@JimJacksonatty.com)

*/s/ Vincent P. France*

\_\_\_\_\_  
Vincent P. France

## IN THE ARKANSAS STATE CLAIMS COMMISSION

HALEY HUDSON, INDIVIDUALLY  
 HALEY HUDSON, SPECIAL ADMINISTRATRIX OF  
 THE ESTATE OF JAQUELINE LYNN ASHCRAFT,  
 DECEASED, AND HALEY HUDSON, AS PERMANENT  
 LEGAL GUARDIAN OF [REDACTED]

[REDACTED] MINOR CHILDREN

CLAIMANTS

vs.

CC No. 230641

ARKANSAS DEPARTMENT OF  
 HUMAN SERVICES

RESPONDENT

**RESPONDENT'S RESPONSE IN OPPOSITION TO  
 CLAIMANTS' MOTION FOR PARTIAL SUMMARY JUDGMENT**

COMES NOW, Respondent, Arkansas Department of Human Services, by and through its attorney, Vincent P. France Deputy Chief Counsel for the Arkansas Department of Human Services, and for its Response in Opposition to Claimants' Motion for Partial Summary Judgment states the following:

1. In paragraph 4 of their motion for partial summary judgment, Claimants alleged that Jennifer Wilkerson and her negligence was the proximate cause of the accident, which is not disputed by Respondent.

2. Instead, DHS asserts that it is not liable under the doctrine of *respondeat superior*, because an employer is not liable for the actions of its employee if the employee was acting beyond the scope of his or her employment at the time of the alleged incident. *Porter v. Harshfield*, 329 Ark. 130, 137, 948 S.W.2d 83 (1997).

3. DHS has presented its arguments more fully in its Cross Motion for Summary Judgment, Brief in Support, and Statement of Undisputed Material Facts, which are being filed contemporaneously herewith.

4. Accordingly, pursuant to Ark. R. Civ. P. 10(c), DHS adopts its arguments contained in the aforementioned filings as if stated here verbatim.

WHEREFORE, Respondent, DHS, respectfully requests that Claimants' Claimants' motion for partial summary judgment be denied, that its Cross-Motion for Summary Judgment be granted, and that and this claim be dismissed with prejudice, along with any other just and proper relief to which it is entitled.

Respectfully submitted,

By: /s/ Vincent P. France  
 Vincent P. France, Ark. Bar No. 2010063  
 Deputy Chief Counsel  
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*Attorney for Respondent*

#### **CERTIFICATE OF SERVICE**

I, Vincent P. France, hereby certify that on January 29, 2024, I electronically filed the foregoing with the Arkansas State Claims Commission by emailing it to [ascpleadings@arkansas.gov](mailto:ascpleadings@arkansas.gov) and by sending a copy to Claimant's attorney Jim Jackson via email as indicated below.

Jim Jackson  
[Jim@JimJacksonatty.com](mailto:Jim@JimJacksonatty.com)

/s/ Vincent P. France  
 Vincent P. France

**From:** [Martha Cox](#)  
**To:** [Kathryn Irby](#); [ASCC Pleadings](#)  
**Cc:** [vincent.p.france@dha.arkansas.gov](mailto:vincent.p.france@dha.arkansas.gov); [Jim Jackson](#)  
**Subject:** Haley Hudson, Special Adm"x of the Estate of Jacqueline Ashcraft, deceased and Permanent Guardian of [REDACTED] a Minor Child v. Arkansas Department of Human Services Arkansas State Claims Commission No. 230641 Incident Date: 6/11/2021 - Logan Cou  
**Date:** Monday, February 12, 2024 4:40:15 PM  
**Attachments:** [Claimant's Brief in Support of Respondent's Cross MSJ.pdf](#)  
[Claimant's Response to Respondent's Cross MSJ.pdf](#)  
[Claimant's Table of Authorities.pdf](#)  
[Letter to Kathryn Irby with Claimant's Response to Respondent's Cross MSJ.pdf](#)

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Please find attached a letter from Attorney Jim Jackson, with its enclosures, to be filed in the above-referenced case. The original and three copies of the claimant's Response, Brief, and Table of Authorities are being mailed to the Commission pursuant to the Rules.

Thank you.

Martha Cox, PP, PLS  
Paralegal for The Jackson Law Firm  
700 West Broadway, Suite 200  
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February 12, 2024

VIA E-Mail and US Mail

Ms. Kathryn Irby  
Arkansas State Claims Commission  
101 East Capitol Avenue, Suite 410  
Little Rock, AR 72201

Re: *Haley Hudson, Special Adm'x of the Estate of Jacqueline Ashcraft, deceased and Permanent Guardian of [REDACTED] a Minor Child v. Arkansas Department of Human Services*  
*Arkansas State Claims Commission No. 230641*  
*Incident Date: 6/11/2021 - Logan County*

Dear Kathryn:

Please find enclosed an original and three copies of the following pleadings:

- Claimant's Response to Respondent's Motion for Summary Judgment;
- Brief in Support of Claimant's Response; and,
- Table of Authorities.

Please call me at (501) 823-3610 with any questions or suggestions.

Sincerely,

Jim R. Jackson

✓ JRJ/mc  
Enclosure  
cc:w/enc.

Vincent France, Esq.

**JIM JACKSON // Attorney at Law**

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## ARKANSAS STATE CLAIMS COMMISSION

HALEY HUDSON, SPECIAL ADMINISTRATRIX OF  
THE ESTATE OF JACQUELINE LYNN ASHCRAFT,  
DECEASED AND HALEY HUDSON AS PERMANENT  
LEGAL GUARDIAN OF [REDACTED] A  
MINOR CHILD

CLAIMANT

VS.

CC NO. 230641

ARKANSAS DEPARTMENT OF  
HUMAN SERVICES

RESPONDENT

**CLAIMANT'S RESPONSE TO  
CROSS MOTION FOR SUMMARY JUDGMENT**

Comes now the claimant, Haley Hudson, Special Administratrix of the Estate of Jacqueline Lynn Ashcraft, deceased, and as Permanent Legal Guardian of [REDACTED] a minor child, by and through her attorney, Jim Jackson, and for her Response to the Respondent's Cross-Motion for Summary Judgment, states:

1. *Respondere superior* is a Latin term for "let the master answer." It is the legal doctrine for vicarious liability. This doctrine holds that an employer is legally responsible for the wrongful acts of an employee that occur within the scope of employment.
2. An employee is presumed to be within the course and scope of employment when driving his employer's car. *Nipper v. Brandon Co.*, 553 S.W.2d 27, 28, 262 Ark. 17, 20 (Ark. 1977).
3. Jennifer Wilkerson was within the course and scope of employment and furthering DHS's business at the time of the collision. Wilkerson had completed her personal errand of having lunch at the Dari-Delite and was several miles along her journey to Beebe to pick up a foster child for DHS when the wreck occurred. Wilkerson was driving a DHS car at all times relevant to this action.

4. The route that Jennifer Wilkerson traveled from the DHS office to Dari-Delite is attached as Exhibit 1.

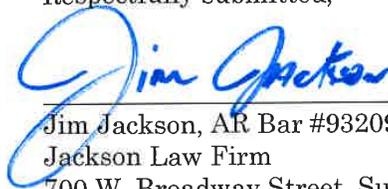
5. Wilkerson's route from DHS office to Dari-Delite to the accident site is attached as Exhibit 2.

6. Exhibit 3 is the route that Jennifer Wilkerson would have completed if she had not been involved in the wreck.

7. Attached is the claimant's Brief in Support of her Response to the Cross Motion for Summary Judgment.

WHEREFORE, the claimant prays that the Commission enter an Order denying the respondent's Cross-Motion for Summary Judgment.

Respectfully submitted,



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**CERTIFICATE OF SERVICE**

I hereby certify that on this date, I electronically transmitted the attached pleading via e-mail to the Clerk of the Arkansas State Claims Commission and to counsel for the Respondent by copy of the same e-mail transmission.

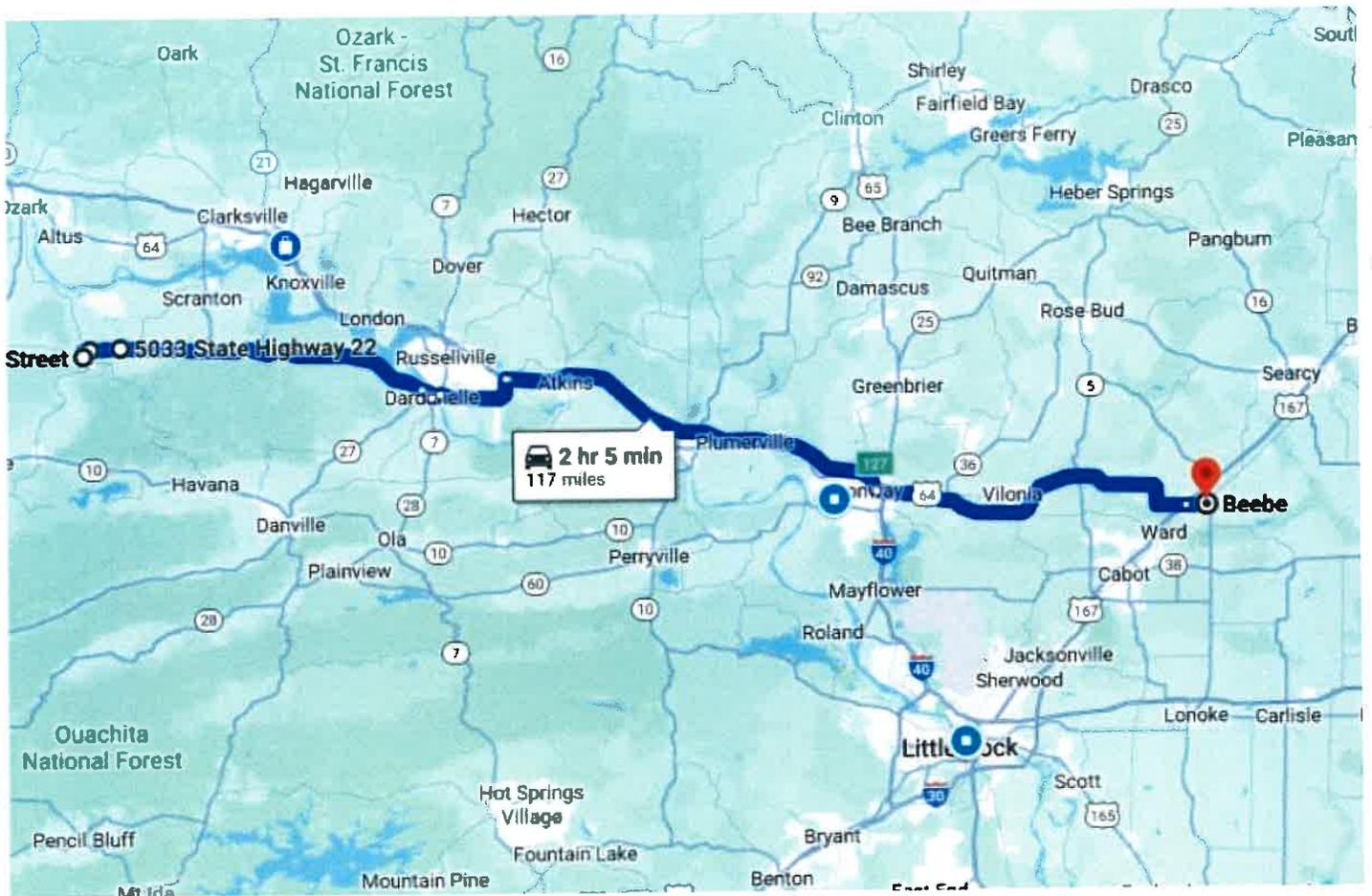


Jim Jackson





Route from DHS Office in Paris to Beebe



## ARKANSAS STATE CLAIMS COMMISSION

CLAIMANT

HALEY HUDSON, SPECIAL ADMINISTRATRIX OF  
THE ESTATE OF JACQUELINE LYNN ASHCRAFT,  
DECEASED, AND HALEY HUDSON AS  
PERMANENT LEGAL GUARDIAN OF [REDACTED]  
[REDACTED] A MINOR CHILD

VS.

CC NO. 230641

ARKANSAS DEPARTMENT OF  
HUMAN SERVICES

RESPONDENT

CLAIMANT'S BRIEF IN RESPONSE TO  
RESPONDENT'S CROSS MOTION FOR SUMMARY JUDGMENT

**I. THE LAW IMPOSES A "PRESUMPTION OF FACT" THAT AN  
EMPLOYEE IS WITHIN THE COURSE AND SCOPE OF  
EMPLOYMENT WHEN DRIVING AN EMPLOYEE'S VEHICLE  
AT THE TIME OF A WRECK**

It is presumed as a matter of fact that an employee is within the course and scope of employment when they are driving their employer's vehicle and cause a wreck. "When a regular employee is driving a vehicle owned by the employer, and an accident occurs, there is a *presumption of fact* that the employee is acting within the scope of his employment. It is a presumption of fact which imposes on the other party, against whom the presumption is directed, the burden of overcoming this presumption." *Nipper v. Brandon Co.*, 553 S.W.2d 27, 28, 262 Ark. 17, 20 (Ark. 1977). (emphasis added) *Nipper* is the Arkansas Supreme Court's leading case on determining the status of an employee who is driving an employer's vehicle. The holding in *Nipper, id.*, is the lead comment provided in Civil Jury Instructions *AMI* 702, 703 and 704.

The facts in *Nipper, supra*, also involve an employee who caused a rear-end collision while driving his employer's vehicle. Roosevelt Johnson was a delivery truck driver employed by Brandon Company. Johnson was driving on Cantrell Road to a warehouse complex when he

took a five-minute detour for a personal errand. Johnson drove back to to Cantrell Road where he rear-ended Jerry Nipper's vehicle about a half mile after he returned from his personal errand. Brandon claimed it was not vicariously liable for Johnson's negligence since he took a personal detour<sup>1</sup> prior to the collision.

The Supreme Court of Arkansas found that since Johnson had completed his personal errand at the time of the wreck, he was within the course and scope of his employment at the time of the wreck. *Nipper, id.* at 28. The Court clarified that when an employee is driving an employer's car at the time of a wreck, it is a *presumption of fact* that he is within the course and scope of employment.

Applying the legal standard set by the Supreme Court in *Nipper, id.*, the facts lead to only one reasonable conclusion about Jennifer Wilkerson's employment status at the time of the wreck. Jennifer Wilkerson was within the course and scope of her employment with DHS when the fatal wreck occurred. Furthermore, Jennifer Wilkerson was furthering the purpose of DHS at the time of the collision. Wilkerson was driving a DHS car to Beebe to pick up a foster child for a family visit.

DHS admits that Jennifer Wilkerson was a Program Assistant for the Division of Children and Family Services (DCFS) at DHS. "Her main responsibilities were transportation of children and to conduct supervised visitations. On June 11, 2021, Ms. Wilkerson was assigned to go to Beebe, Arkansas, to pick up a child at 2:00 p.m. and transport the child to Clarksville, Arkansas, for a sibling visit at 4:00 p.m." See *Feemster Affidavit*, ¶¶ 11-12. This collision occurred while Jennifer Wilkerson was driving a DHS car eastbound on State Highway 22 from Paris, Arkansas. This is the most direct route to travel from Paris

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<sup>1</sup> Johnson had not quite returned to his original route when the wreck occurred.

to Beebe. See Exhibit 3 attached to the Claimant's Response which is a Google map with directions from the DHS office to Beebe.

The respondent seeks a "get out of jail free" card because Jennifer Wilkerson stopped at the Dari-Delite in Paris to have lunch at noon while traveling to Beebe. The Dari-Delite is on Wilkerson's route to Beebe. Attached to the Claimant's Response as Exhibit 1 is a map of the 1.3-mile drive from the DHS office in Paris to the Dari-Delite. Attached as Exhibit 2 is a map of the route from the DHS office to the Dari-Delite, and then concluding at 5033 SH 22, which was the location of the wreck. Attached as Exhibit 3 is a map showing the direct route from Paris to Beebe which is also along State Highway 22.

Wilkerson's action of stopping to have a lunch break on the way to Beebe does not relieve DHS from being vicariously liable for the negligence of Wilkerson when she completed her personal lunch break and returned to her route. The logical conclusion of this argument would lead to absurd results if an employer could escape vicarious liability whenever an employee that was involved in a wreck had taken a rest stop, bathroom break, re-fueling stop, water break, etc., while driving. For example, commercial truck drivers take unscheduled breaks such as these all day long. That does not relieve their employer of vicarious liability when they are involved in a wreck *after* they have completed their personal errand.

There can be no reasonable argument asserted that Jennifer Wilkerson was not in the course and scope of her job assignment. She had completed her lunch at Dari-Delite. She had traveled nearly three miles from Dari-Delite when the wreck occurred. Wilkerson was in the course and scope of employment the moment she left the Dari-Delite parking lot. But for the wreck, Wilkerson would have completed her task of taking the child to the family visit. Wilkerson may have been running behind schedule due to her lunch break, but that does not absolve DHS of the fact that Wilkerson was carrying out her assigned duty – driving to Beebe in a DHS car to pick up a foster child – at the time of the collision.

The respondent points out that Wilkerson was on Day 11 of her employment with DHS. The length of time of employment is not relevant. DHS would be vicariously liable for Wilkerson's negligent action if this accident had occurred on her first day of employment. The number of days of employment is not a factor to consider in determining if an employee is within the scope of employment.

The Arkansas Supreme Court adopted AMI 702, 703, and 704 as jury instructions for a finder of fact to consider in scope of authority issues when an employee is driving the employer's vehicle. These three jury instructions are the guiding principle for this case.

**Scope of Authority – Scope of Employment**

I have used the term "scope of employment" in these instructions. An employee is acting within the scope of her employment if she is engaged in the transaction of business which has been assigned to her by her employer or if she is doing anything which may reasonably be said to have been contemplated as a part of her employment and is in furtherance of her employer's interests. Even though it was not expressly authorized and may have been specifically forbidden.

*AMI 702*

**Scope of Employment – Employee Driving Employer's Vehicle**

The vehicle driven by Jennifer Wilkerson was owned by DHS and Jennifer Wilkerson was a regular employee of DHS. You may consider these facts along with any other evidence in the case in deciding whether Jennifer Wilkerson was acting as an employee of DHS and within the scope of her employment at the time of the occurrence.

*AMI 703*

**Agency – Employment – Deviation from Route**

If an employee abandons the business of her employer to perform an act or engage in an activity for her own exclusive purpose and not in furtherance of her employer's interests, that act or activity is not in the scope of employment.

*AMI 704*

The facts and law on the issue overwhelmingly lead to one conclusion -- Jennifer Wilkerson was within the course and scope of her employment with DHS while she was driving a DHS car on SH22 when she negligently collided with the rear of Ashcraft's car.

Wilkerson had completed her personal errand of having lunch and was on her route to pick up a foster child in Beebe.

**B. WILKERSON'S NEGLIGENT ACTS DO NOT ALLOW DHS TO ESCAPE VICARIOUS LIABILITY**

The second argument raised by DHS is that because Jennifer Wilkerson violated the rules of the road, *i.e.*, following too closely and speeding, DHS is not vicariously liable because violating the rules of the road were not part of Wilkerson's job description. DHS' assertion would only permit vicarious liability claims for an agency or corporate defendant if a company's employee handbook contained a section advising their employees to violate the rules of the road. No injured party could ever make a claim under *respondeat superior/vicarious liability* if the requirement is that the agency or corporate defendant must expressly affirm that they are liable for an employee's negligence. The law does not require that negligent conduct be approved or ratified by an employer. No employer would ever create a policy of accepting liability for its employee's negligent conduct. The whole point of *respondeat superior/vicarious liability* is to permit an injured party to bring a claim against an employer when an employee is negligent while in the course and scope of employment. An employer cannot create its own regulations that exempt it from liability when an employee drives inattentively and causes a wreck. Again, commercial trucking companies would simply escape all responsibility for their negligent drivers' actions if they could simply write a handbook exempting them from acts of negligence by their drivers.

DHS's reliance on *Porter v. Harshfield*, 329 Ark. 130, 137, 948 S.W.2d 83 (1997), is misplaced. This case involves the sexual assault of a patient when the patient was alone in an exam room with an employee. Porter was a patient at Dr. Harshfield's radiology clinic. Porter was lying on his back on an exam table for an ultrasound when a male radiology technician began performing oral sex on him. The court found that the sexual assault was

such a deviation from the expected conduct of a radiology technician and for such personal reasons, that it could not be argued that he was carrying out any “object and purpose of the enterprise.” The radiology technician, Joseph Pearrow, “was not, by any stretch of the imagination, acting within the scope of his duties as a radiology technician when he assaulted Porter. Rather, Pearrow's actions were purely personal. Because Pearrow's actions were not expectable in view of his duties as a radiology technician, we conclude that Dr. Harshfield may not be held liable for Pearrow's actions and was thus entitled to summary judgment as a matter of law.” *Porter v. Harshfield*, 329 Ark. 130, 948 S.W.2d 83 (Ark. 1997).

Wilkerson’s negligent acts of inattentive driving and speeding are a far cry from a sexual assault. There is no evidence that Wilkerson intentionally drove into the rear of Ashcraft’s vehicle. Wilkerson’s actions were garden-variety negligence of speeding and following to close. Wilkerson has not been charged with any criminal conduct. She was not issued a citation by the Arkansas State Police.

The respondent also argues that Wilkerson’s actions may border on “criminal” conduct because she admitted to taking a non-prescribed “Adderall<sup>2</sup>” prior to the wreck. There has been no allegation or proof that Wilkerson was “impaired” or “under the influence” at the time of the wreck. State Trooper James Ray investigated the wreck where he interacted with

| DRIVER CONDITION AND CIRCUMSTANCES                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |                                                                                                                                                                                                                                                                                                                                                                                                            |                                                                                                                                                                                                                                                                                                                                                                                      |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Condition at Time of Crash</b><br><small>Check all that apply</small><br><input checked="" type="checkbox"/> 000 Apparently normal<br><input type="checkbox"/> 100 Physically impaired<br><input type="checkbox"/> 101 Emotional (depressed, angry, disturbed, etc.)<br><input type="checkbox"/> 102 Ill (sick) or fainted<br><input type="checkbox"/> 103 Asleep or fatigued<br><input type="checkbox"/> 104 Under the influence of medication or drugs<br><input type="checkbox"/> 105 Under the influence of alcohol<br><input type="checkbox"/> 198 Other<br><input type="checkbox"/> 999 Unknown | <b>Driver Distracted By</b><br>000 Not distracted<br>100 Manually operating an electronic communication device (texting, typing, dialing)<br>101 Talking on hands-free electronic device<br>102 Talking on hand-held electronic device<br>103 Other activity with an electronic device<br>104 Passenger<br>980 Other distraction inside the vehicle<br>981 Other distraction outside the vehicle<br>999 Unknown if distracted<br><small># 980 or 981, describe below</small> | <b>Driver Vision Obscured By</b><br>000 No obstruction noted<br>100 Rain, snow, fog, smoke, sand, or dust<br>101 Reflected glare, bright sunlight, or headlights<br>102 Curve, hill, or other roadway design feature<br>103 Building, billboard, or other structure<br>104 Trees, crops, or vegetation<br>105 In-transport motor vehicle (including load)<br>980 Other visual obstruction (describe below) | 000<br>106 Not in-transport motor vehicle (parked, working)<br>107 Splash or spray of passing vehicle<br>108 Inadequate defrost or defog system<br>109 Inadequate vehicle lighting system<br>110 Obstruction interior to the vehicle<br>111 External mirrors<br>112 Broken or improperly cleaned windshield<br>113 Obstructing angles on vehicle<br>199 Vision obscured - no details |

Wilkerson. The accident report contains a section where an officer can list the condition of a

<sup>2</sup> Adderall is a prescription medication that is used to treat attention deficit hyperactivity disorder (ADHD). It is also used to treat narcolepsy.

driver. Trooper Ray's report found the condition of Jennifer Wilkerson was "Apparently Normal."

The only reason a drug test was performed on Wilkerson was at the behest of Pamela Feemster. *See Feemster Affidavit*, ¶ 12. There has been no testimony or proof that Wilkerson was impaired by Adderall or that Adderall caused the wreck.

### CONCLUSION

The respondent's Cross Motion for Summary Judgment should be denied as a matter of law. The claimant's Motion for Partial Summary Judgment on the issue of liability should be granted. This matter should be set for a hearing solely on damages.

Respectfully submitted,




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### CERTIFICATE OF SERVICE

I hereby certify that on this date, February 12<sup>th</sup>, 2024, I electronically transmitted the foregoing pleading via email to the Clerk of the Arkansas Claims Commission and sent a copy to counsel for the Respondent via the same email transmission.




---

Jim Jackson

ARKANSAS STATE CLAIMS COMMISSION

HALEY HUDSON, SPECIAL ADMINISTRATRIX OF  
THE ESTATE OF JACQUELINE LYNN ASHCRAFT,  
DECEASED, AND HALEY HUDSON AS  
PERMANENT LEGAL GUARDIAN OF [REDACTED]  
[REDACTED] A MINOR CHILD

CLAIMANT

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ARKANSAS DEPARTMENT OF  
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RESPONDENT

CLAIMANT'S TABLE OF AUTHORITIES

Cases

*Nipper v. Brandon Co.*, 553 S.W.2d 27, 262 Ark. 17, (Ark. 1977) ..... Brief pg.1  
*Porter v. Harshfield*, 329 Ark. 130, 137, 948 S.W.2d 83 (1997)..... Brief pg.5

Jury Instructions

AMI 702..... Brief pg. 4  
AMI 703..... Brief pg. 4  
AMI 704..... Brief pg. 4

Respectfully submitted,

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\_\_\_\_\_  
Jim Jackson

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**553 S.W.2d 27**  
**262 Ark. 17**  
**Jerry D. NIPPER, Appellant,**  
**v.**  
**BRANDON COMPANY and Roosevelt**  
**Johnson, Appellees.**  
**No. 77-49.**  
**Supreme Court of Arkansas, Division No.**  
**2.**  
**July 5, 1977.**

[262 Ark. 18] McMath, Leatherman & Woods  
by James B. McMath, Little Rock, for appellant.

Gannaway, Darrow & Hanshaw, Little Rock,  
for appellees.

HICKMAN, Justice.

This is a case involving some finer points of the master-servant, or as we would say now, employer-employee relationship. The question presented is the legal and factual problems that arise when an employee causes an accident while driving his employer's vehicle. The finer points are: when does an employee return to the scope of his employment after deviating to perform a personal unauthorized errand; and, what is the law regarding the proof necessary to create a question of fact for the jury in such a situation.

The facts are not disputed. Roosevelt Johnson was a delivery truck driver for Brandon Company, a Little Rock wholesale company. He mostly delivered goods in the Little Rock-North Little Rock metropolitan area. His instructions were to deliver goods, taking the nearest and best route, but he had discretion in selecting the route. He had permission and did drive the company truck home after work. However, he was instructed never to use the truck for personal business. He was also told to never

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run a personal errand with the truck during his regular working hours.

On the afternoon of the 5th of January in 1973 Johnson [262 Ark. 19] left Rose City in North Little Rock after making a delivery. He had one more delivery to make and that was to Quality Floor Covering Company in southwest Little Rock. Johnson testified that the nearest and best route from Rose City to Quality would have been to proceed to Interstate 30 and go south to the exit at Geyer Springs Road. Johnson proceeded to the interstate but instead of taking the Geyer Springs exit, he turned off the interstate onto Cantrell Road to run a personal errand. After he got on Cantrell Road he turned off into a warehouse complex about a mile or so west of the interstate. He was on a personal errand for about five minutes. He returned to Cantrell Road and turned back east to proceed to deliver the goods to Quality. He stated he could have turned west on Cantrell to go to Quality but he chose the eastern route because of traffic conditions at that time of day. After he turned onto Cantrell Road and had proceeded about a half mile, his truck struck the rear of Jerry Nipper's vehicle. Nipper was injured and sued Johnson and Brandon. Negligence and damages are not issues on appeal.

The trial court gave the jury standard instructions on the liability of an employer for the acts of an employee. The instructions, all taken from Arkansas Model Jury Instructions, defined scope of employment and pointed out certain evidence the jury could consider in determining whether or not Johnson was acting within the scope of his employment at the time of the accident. AMI 702 and 703.

The court explained with an instruction that if an employee abandons the business of his employer to perform an act or engage in an activity for his own exclusive purpose and not in furtherance of his employer's interests, then that act or activity is not in the scope of the employment. AMI 704.

These instructions were correct statements of the law. The jury found for Nipper and awarded him a \$35,000.00 judgment against Brandon and Johnson. Brandon asked the trial court to set aside the judgment against it because, as a matter



of law, Johnson was on a personal errand at the time of the accident, therefore outside of his scope of employment and, consequently, Brandon was not liable for Johnson's negligent act. The trial court did set aside the verdict.

[262 Ark. 20] Nipper appeals alleging one error: the trial court erred in setting aside the judgment because the jury was properly instructed on the law and there was substantial evidence upon which a jury could find that Roosevelt Johnson at the time of the accident was acting in the scope of his employment.

We agree the trial court erroneously set aside the verdict. The question of liability was properly submitted to the jury, the court improperly determined that it was a question of law as to Johnson's status at the time of the accident and the verdict is supported by substantial evidence.

The attorneys for the parties have submitted excellent briefs. Brandon relies on one of our cases decided in 1962, *Davis v. Kukar*, Adm'x, 235 Ark. 139, 357 S.W.2d 275. In the *Davis* case an employee-tractor driver had deviated from his mission to run a private errand. The employee was returning to the place from which he left his mission when he caused an accident. The accident occurred just forty-five feet from the point of departure. We held that the jury should have been told as a matter of law that the tractor driver was at the time of the accident outside the scope of his employment.

Here Johnson had returned to his mission to deliver the goods. He was no longer on a private errand. Although Johnson could have turned east or west on Cantrell to proceed to deliver the goods, he decided to go east which, according to his testimony, would have been the best and most convenient route from where he was. Although Johnson had not reached the place of deviation, he caused the accident while enroute to deliver his employer's

goods. In the *Davis* case, the employee could not continue on his mission until he reached the point of departure.

The jury could have found Johnson was acting in furtherance of his employer's interests based on these facts. It was for the jury to decide, not the trial court, whether at the time and at the place he was acting within the scope of his employment or acting for his own exclusive purpose.

The appellant argues that when a jury is given AMI 703 [262 Ark. 21] it may draw an inference that the employee is acting within the scope of employment at the time of the accident. The appellees argue that simply because a regular employee is driving a vehicle owned by the employer, this is not sufficient evidence to support a finding that the employee was acting within the scope of employment at the time of the accident.

When a regular employee is driving a vehicle owned by the employer, and an accident occurs, there is a presumption of fact that the employee is acting within the scope of his employment. It is a presumption of fact which imposes on the other party, against whom the presumption is directed, the burden of overcoming this presumption. Ark.Stats.Ann. § 28-1001, Rule 301 (Noncum.Supp., 1976).

When a plaintiff proves that a regular employee driving an employer's vehicle is involved in an accident, there exists a presumption of fact which must be overcome by the defendant-employer. If it is not uncontroverted that the employee was acting solely for his own benefit and not in furtherance of the interests of the employer, then it is a question for the jury. The testimony of an interested party may not be taken as uncontradicted because his testimony is contradicted as a matter of law. *Cousins v. Cooper*, 232 Ark. 605, 339 S.W.2d 316 (1960). We cannot say, as a matter of law, that it is uncontroverted that Johnson was acting solely for himself at the time of the accident.

We feel it necessary to point out that some of the language in our previous cases describing this presumption of fact is not correct. It is not an "inference". *Healey v. Cockrill*, 133 Ark. 327, 202 S.W. 229 (1918). It is not an "inference or presumption of fact". *Curtis Circulation Co. v. Henderson*, 232 Ark. 1029, 342 S.W.2d 89 (1961). It is not a "temporary presumption". *Ford & Son Sanitary Co. v. Ransom*, 213 Ark. 390, 210 S.W.2d 508 (1948). It is not a "prima facie presumption". *Brooks v. Bale Chevrolet Co., Inc.*, 198 Ark. 17, 127 S.W.2d 135 (1939). In other words, we have called this presumption by different names, but the precise description is a presumption of fact as defined in Ark.Stat. Ann. § 28-1001, Rule 301 (Noncum.Supp., 1976).

[262 Ark. 22] We reverse the decision of the trial court and remand the case with directions to reinstate the judgment against Brandon.

Reversed and remanded.

We agree: HARRIS, C. J., and FOGLEMAN and BYRD, JJ.



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**948 S.W.2d 83**  
**329 Ark. 130**  
**Randy PORTER, Appellant,**  
**v.**  
**David HARSHFIELD, Jr., M.D., Appellee.**  
**No. 96-940.**  
**Supreme Court of Arkansas.**  
**June 23, 1997.**

[329 Ark. 132] James Gerard Schulze,  
William Gary Holt, Little Rock, for appellant.

Michael Angel, Little Rock, for appellee.

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ARNOLD, Chief Justice.

The appellant, Randy Porter, brought suit against appellee David L. Harshfield, Jr., [329 Ark. 133] M.D., d/b/a Riverside Radiology Group, to recover damages for injuries sustained when Dr. Harshfield's employee, Jerry Pearrow, a radiology technician, sexually assaulted Porter while conducting a gallbladder ultrasound. Porter's separate suit against Pearrow resulted in a default judgment and a subsequent award to Porter in the amounts of \$15,000 in compensatory damages and \$15,000 in punitive damages. In the present appeal, Porter challenges the trial court's granting of summary judgment in Dr. Harshfield's favor. We affirm.

The facts as set out in Porter's complaint are as follows. On October 4, 1993, Porter went to Riverside Radiology Group in North Little Rock for an ultrasound for suspected gallbladder problems. Pearrow escorted him to an examining room and requested that he partially disrobe, don a hospital gown, and lie on his back on the examining table. Pearrow put gel on Porter's stomach and proceeded to examine his side several times. He then unbuckled and unzipped Porter's pants, pulled them down, and examined around his testicles. Feeling something on his penis, Porter looked down to find Pearrow performing oral sex on him. Porter immediately

got off the table, put on his clothes, and left the clinic.

In his complaint, Porter claimed that Pearrow's actions were within the course and scope of his employment and thus should be imputed to Dr. Harshfield. In his answer, Dr. Harshfield admitted that Porter had been referred to his clinic on the date in question, but denied any knowledge of the sexual assault. He pleaded affirmatively that, if Pearrow indeed committed the actions alleged, his actions were outside the scope of his employment.

Both parties filed motions for summary judgment. Attached to Dr. Harshfield's motion was the affidavit of Dr. Joseph Calhoun, the supervising radiologist at the clinic while Dr. Harshfield was the acting Chief of Radiology at the Veterans Administration Hospital. Dr. Calhoun averred that he had been practicing radiology in Little Rock since 1950. "Eminently familiar" with the standard of care in this area, Dr. Calhoun explained that it was standard procedure to allow radiology technicians to perform [329 Ark. 134] ultrasound tests unsupervised unless the examination was of an unusual nature. A routine gallbladder exam, according to Dr. Calhoun, was not of an unusual nature.

Dr. Harshfield also presented his own affidavit in which he stated that, at the time of the incident, he had no knowledge that Pearrow had the intent to touch or physically contact Porter in an inappropriate way, nor did he possess knowledge of any facts that would have alerted him to the probability that Pearrow would engage in such behavior. He further averred that Pearrow's actions were wholly outside his employment and beyond the duties and responsibilities of a radiology technician at the clinic. According to Dr. Harshfield, Pearrow's actions did not benefit him and were unexpected.

In response to Dr. Harshfield's motion, Porter claimed that Dr. Harshfield had conducted virtually no background check on Pearrow. He



further complained that Dr. Harshfield failed to supervise Pearrow; instead, he allowed Pearrow to "be his own boss." Porter also filed a motion for summary judgment, claiming that Dr. Harshfield had knowledge of Pearrow's past misconduct. In support of this contention, Porter submitted the affidavit of Little Rock Police Officer Sam Morshedi, who averred that he interviewed Pearrow on October 6, 1993, at which time Pearrow told him that he had previously engaged in homosexual conduct and had had a prior complaint filed against him at the clinic for sexually assaulting a female during a breast examination. After considering the pleadings, affidavits, discovery, and arguments of counsel, the trial court granted summary judgment in Dr. Harshfield's favor.

We have recently summarized our standards for summary judgment review in *O'Mara v. Dykema*, 328 Ark. 310, 315-316, 942 S.W.2d 854 (1997):

The standard of review for a grant of summary judgment is familiar. Summary judgment should only be granted when it is clear that there are no disputed issues of

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material fact. *Franklin v. Osca, Inc.*, 308 Ark. 409, 825 S.W.2d 812 (1992). It is appropriate to sustain a grant of summary judgment if the evidence brought before the trial court by the moving party shows "that there is no [329 Ark. 135] genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." *Tulloch v. Eck*, 311 Ark. 564, 567, 845 S.W.2d 517, 519 (1993); Ark. R. Civ. P. 56(c).

Appellees, as movants for summary judgment, bear the burden of showing that there is no issue of material fact. *Gleghorn v. Ford Motor Credit Co.*, 293 Ark. 289, 737 S.W.2d 451 (1987). All evidence must be viewed in the light most favorable to appellants, as they are the parties resisting the motion; and they are also entitled to have all doubts and inferences resolved in their favor. *National Bank of Commerce v. Quirk*, 323

Ark. 769, 918 S.W.2d 138 (1996). However, they may not rest upon the mere allegation of their pleadings; Ark. R. Civ. P. 56 requires their response, by affidavits or other evidence, to specifically show that there is a genuinely disputed issue of material fact. *Guthrie v. Kemp*, 303 Ark. 74, 793 S.W.2d 782 (1990). Once a movant makes a prima facie case for summary judgment, the respondent must then meet proof with proof by showing that there remains a genuine issue of material fact. *Mt. Olive Water Ass'n v. City of Fayetteville*, 313 Ark. 606, 856 S.W.2d 864 (1993).

Even if there are disputed facts, if reasonable minds would not differ as to the conclusion to be reached, then a grant of summary judgment is proper. *Chalmers v. Toyota Motor Sales*, 326 Ark. 895, 935 S.W.2d 258 (1996). Further, if a respondent to a motion for summary judgment cannot present proof on an essential element of the claim, the movant is entitled to summary judgment as a matter of law. *Short v. Little Rock Dodge, Inc.*, 297 Ark. 104, 759 S.W.2d 553 (1988).

In asking us to reverse the trial court's granting of summary judgment, Porter suggests that we analyze his case under at least three different theories discussed in a recent law review article. See Jorgensen, *Transference of Liability: Employer Liability for Sexual Misconduct by Therapists*, 60 *Brook. Law Rev.* 1421 (1995). First, he asks that we apply the common-carrier theory of recovery to his case. According to Porter, as a patient, he was in a position at least as vulnerable as a passenger of a common carrier, and that, accordingly, Dr. Harshfield had a duty to protect him from willful assaults by his employee. Under this theory, which emerged from railroad passenger cases, liability is based on the exclusive control that the carrier has over the passenger. *Id.* at 1449. It calls for an extraordinary, non-delegable duty of care that imposes liability on the employer for any harm befalling the plaintiff. *Id.* at 1450. In a [329 Ark. 136] common-carrier analysis, the plaintiff is never obligated to prove that the employee was acting under the scope of his or her employment or even that the actor was the defendant's employee. *Id.*; see also *Stropes v.*

Heritage House Childrens Ctr., 547 N.E.2d 244 (Ind.1989).

Another theory of liability propounded by Porter is one of "job-created power." Under this theory, employers are held vicariously liable for an employee's intentional torts. Jorgensen, 60 Brook. L.Rev. at 1435. Porter claims that, by giving Pearrow supervisory authority, Dr. Harshfield granted job-created power to Pearrow, who in turn abused this power when he sexually assaulted Porter while performing the ultrasound. Porter further suggests that "the scope of risks attributable to an employer increases with the amount of authority and freedom of action granted to the servant in performing his assigned tasks." *Id.* at 1437; quoting *Samuels v. Southern Baptist Hospital*, 594 So.2d 571 (La.App.1992), cert. denied 599 So.2d 316 (La.1992). However, courts have been generally reluctant to extend this theory of vicarious liability too far beyond the realm of police officers or those with special duties and powers associated with their positions. *Id.* at 1439.

Porter also asks us to examine his case on the basis of what was "reasonably incidental" to Pearrow's legitimate work activities. See *Stropes v. Heritage House Childrens Ctr.*, *supra*; and *Doe v. Samaritan Counseling*

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*Ctr.*, 791 P.2d 344 (Alaska 1990). He asserts that Pearrow's actions, while not desired or authorized by Dr. Harshfield, were reasonably incidental to Pearrow's job as a radiology technician.

Rather than analyze the present case under one of the aforementioned theories from other jurisdictions, we think that the better course is to adhere to the theory of master-servant liability that we have followed since 1910. See *Sweeden v. Atkinson Imp. Co.*, 93 Ark. 397, 125 S.W. 439 (1910)(an act of an employee, in order to render the employer liable, must pertain to something that is incidental to the employee's duties and which it is his duty to perform or for the benefit of the employer). Our test [329 Ark. 137] was further

explained in *Life & Cas. Ins. Co. of Tenn. v. Padgett*, 241 Ark. 353, 355, 407 S.W.2d 728 (1966):

We think the law as it stands today is fairly summarized in the Restatement of Torts, where it is said that the master is subject to liability for his servant's intentional tort "if the act was not unexpected in view of the duties of the servant." Restatement, Torts (2d), 245 (1958).

More recently, we reviewed our test, commonly referred to as the respondeat superior doctrine, in *Gordon v. Planters & Merchants Bancshares*, 326 Ark. 1046, 935 S.W.2d 544 (1996). There, we said that an employer may be held liable for punitive damages for the acts of his employee if the employee was acting within the scope of his or her employment at the time of the incident. *Id.*; *J.B. Hunt Transp., Inc. v. Doss*, 320 Ark. 660, 899 S.W.2d 464 (1995). Whether the employee's action is within the scope of the employment depends on whether the individual is carrying out the "object and purpose of the enterprise," as opposed to acting exclusively in his own interest. *Id.*

Applying these principles to the facts before us, we must agree with the trial court that Pearrow's sexual assault of Porter was unexpected. Pearrow was not, by any stretch of the imagination, acting within the scope of his duties as a radiology technician when he assaulted Porter. Rather, Pearrow's actions were purely personal. Because Pearrow's actions were not expectable in view of his duties as a radiology technician, we conclude that Dr. Harshfield may not be held liable for Pearrow's actions and was thus entitled to summary judgment as a matter of law. See *Life & Cas. Ins. Co. of Tenn. v. Padgett*, 241 Ark. 353, 407 S.W.2d 728 (1966).

Dr. Harshfield contends that Porter's remaining claims for negligent hiring, retention, and supervision are procedurally barred because he failed to amend his complaint to include these theories of recovery. While it is true that Porter did not present these claims in his complaint, Dr. Harshfield acknowledged in his brief in support of

his motion for summary judgment that Porter had raised three theories of recovery: negligent hiring and retention; negligent supervision; and respondeat superior. Under these [329 Ark. 138] circumstances, we must conclude that the negligence claims were tried by the express or implied consent of the parties and thus should be treated in all respects as if they had been raised in Porter's complaint. See Ark. R. Civ. P. 15(b).

Turning to the merits of Porter's negligent-hiring claim, Dr. Harshfield contends that our decision in *St. Paul Fire & Marine Ins. Co. v. Knight*, 297 Ark. 555, 764 S.W.2d 601 (1989) is dispositive. We agree. In that case, a patient argued that the hospital's background check on an employee who sexually molested him was very inadequate and that a proper investigation would have shown that he was not qualified for the position of psychiatric technician. The investigation conducted by the hospital revealed that the technician had received apprentice counselor's credentials, supervised a summer playground staff, completed a work-study program, and received an honorable discharge from the Air Force. *Id.* He had no criminal record and no history of violent acts or sexual misconduct. *Id.* On appeal, we concluded that there was no evidence that the hospital gained any information that would have led them to conclude that the employee might be predisposed to commit violent acts against anyone. *Id.*, citing *Williams v. Feather Sound, Inc.*, 386 So.2d 1238 (Fla.App.1980). We further surmised that "[i]t would take a vivid imagination to glean from this evidence

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any predisposition of appellant to molest adolescent males or commit sexual assault." *Id.*; citing *Strauss v. Hotel Continental Co., Inc.*, 610 S.W.2d 109 (Mo.App.1980).

In the present case, Dr. Harshfield stated in his deposition that Pearrow had the highest ultrasound degree available. He had known Pearrow for some eight years while the two worked together at Arkansas Children's Hospital

before he hired him as a technician and described him as very dependable. Porter claims that Dr. Harshfield should have inquired as to why Pearrow left Arkansas Children's Hospital; however, he has not abstracted any evidence or testimony to show what, if anything, Dr. Harshfield would have discovered had he conducted a background check that would have led him to believe that Pearrow was predisposed to commit sexual assault. Porter further points to Dr. Harshfield's testimony in his deposition that Pearrow had described himself as "asexual." Yet Porter has stated no connection, and we know of [329 Ark. 139] none, between sexual orientation and a predisposition to commit sexual assault.

Regarding the negligent retention claim, Porter refers to Pearrow's statement to Officer Morshedi, made after the incident in question, that he had engaged in prior homosexual misconduct and had had a prior sexual-assault complaint against him stemming from a breast examination that he had conducted while employed at Dr. Harshfield's clinic. Again, the fact that Pearrow had engaged in homosexual conduct in no way indicates that he would commit a sexual assault. As to the prior complaint, Dr. Harshfield claimed that he was unaware that such a complaint existed. Officer Morshedi's affidavit did not address whether a complaint was made before the incident in question, much less whether Dr. Harshfield knew that such a complaint existed or whether the complaint had any validity. As such, Porter failed to meet proof with proof on this issue.

In support of his negligent supervision claim, Porter points to Dr. Harshfield's policy at the clinic of having a female employee in the room when a male employee examines a disrobed female patient. He claims that Dr. Harshfield should have had a similar policy in place for Pearrow since he was aware that Pearrow had described himself as asexual. However, he offers no convincing authority or argument in support of his contention. We do not consider assignments of error that are unsupported by convincing legal authority or argument. *Berry v.*



St. Paul Fire & Marine Ins. Co., 328 Ark. 553, 944 S.W.2d 838 (1997).

Finally, Porter asserts that public-policy considerations mandate reversal of the granting of summary judgment in his case. Particularly, he claims that Dr. Harshfield, who made a profit from his clinic while being employed by the VA Hospital, received an economic benefit by allowing Pearrow to be his own boss. Thus, according to Porter, Dr. Harshfield must bear the risks that go along with the economic benefit. In our view, the connection between Pearrow's authority as a radiology technician and the abuse of that authority to indulge in personal, sexual misconduct is simply too attenuated to include within those risks allocated to his [329 Ark. 140] employer. Based on the foregoing, we affirm the decision of the trial court.

Affirmed.

CORBIN, J., dissents.

CORBIN, Justice, dissenting.

The Appellant raises four possible theories that this court could utilize in order to place liability on the health-care provider--the ultimate person upon which blame should lie. I address only two of them, as the other two were not adequately developed by Appellant. I would be willing, however, to consider the remaining two theories in the future, in the event they are properly developed for appeal.

I would apply the common-carrier-liability theory to allow recovery in this case. True enough, that theory originated with companies that were in the business of transporting passengers, but I believe the reasons behind this theory could be applied to the situation presented in this case. The basis of the theory, as it relates to common carriers in Arkansas, is a recognition of an enhanced liability to passengers because they are most vulnerable due to the fact that they have

entrusted the common carrier with their lives. Under this doctrine, common carriers are responsible for the intentional torts of their employees. The policy reason that militates such a high standard of care is the vulnerability of the patron.

I would extend this high standard of care to medical-care providers. I can think of no greater responsibility than the duty owed by medical-care providers to safely exercise their skills and maintain control and supervision over their support staff upon accepting a patient into their care. A patient entrusts his body to the physician and necessarily to any of the physician's support staff. The patient subjects himself to a loss of dignity by even divulging his personal thoughts as to what ails him. Who does not feel the most vulnerable when told to disrobe and put on one of those split-tail gowns? Nakedness makes one feel the weakest, the most vulnerable. In addition to these feelings of vulnerability, we are conditioned since childhood to do what the doctor or his staff say "if we want to get well." Do we refuse to follow or question the [329 Ark. 141] control of physicians or their staffs? No. We blindly obey their orders. Upon their direction, we bend over, we make a fist, we turn this way or that, we take a deep breath, and we even cough on command. We are essentially like sheep being led to slaughter, blindly doing as we are told. The reason for this blind faith lies within the trust we have for all medical-care providers, whom we are told will help us in our time of need.

I do not think it is proper for the medical-care provider, the authoritative figurehead, to be let off the hook of accountability because his employee's assault on his patient did not pertain to something that is incident to the employee's duties--that it was not foreseeable in view of the duties of the servant pursuant to our doctrine of respondeat superior. This is where I believe the majority is wrong. Certainly, the record reflects that Dr. Harshfield is a decent and fine physician, who employed Pearrow on the basis of his skills and reputation in the health-care field. The record further reflects that Dr. Harshfield did not in any manner desire or authorize Pearrow to make the

sexual assault on his patient. But in this situation, control, trust, and vulnerability are the buzz words. This physician, acting through his radiology technician, Pearrow, to whom he had delegated the responsibility of solely caring for his patient, must and should bear the ultimate responsibility for the outrageous harm done to his patient, the Appellant herein. The majority's decision is very disturbing to me. After reading this decision, who will ever totally trust any health-care provider? If it happened once, it can do so again.

What makes the majority's decision even more disturbing is the fact that it is common practice that a male medical-care provider have a female medical-care provider present when he is examining a female patient. Although I suspect that the concern for the female patient is merely secondary to the male medical-care provider's desire to protect himself from unwarranted accusations arising from such intimate encounters, this decision has the potential of undermining such practice. Because if such acts by the employer are not foreseeable under the instant facts, then there is no need to continue this practice. It has a smack of gender bias. The bottom line is that if it is foreseeable that a one-on-one encounter between a male medical-care provider and a female [329 Ark. 142] patient could lead to improper sexual assaults being perpetrated on a female patient, then it is just as foreseeable that such assaults may be perpetrated on a male patient. The key to viewing such a situation lies not within a heterosexual-versus-homosexual attraction; rather, the situation turns on the fact that the vulnerable patient finds himself or herself alone with a stranger while the patient is in a submissive situation. In fact, I agree with the majority's observation that there is no connection between a person's sexual orientation and a predisposition to commit sexual assault. Thus, I can discern no valid reason for having a third party present in the examining room when the medical-care provider is male and the patient is female, all the while continuing to allow a male medical-care provider to be alone with a male patient.

My observations would just as easily support liability under the theory of job-created power. Under this theory, employers are

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held vicariously liable for an employee's intentional torts. Because Dr. Harshfield gave Pearrow supervisory control over his patient, he gave job-created power to Pearrow. The scope of risks attributable to a health-care provider should increase with the amount of authority and freedom of action granted to a servant in performing his assigned tasks. This is particularly true when those supervisory duties include one-on-one encounters with patients.

Based upon the foregoing reasons, I respectfully dissent.

AMI 702

AGENCY, ETC.

Ch. 7

AMI 702

**SCOPE OF AUTHORITY—SCOPE OF  
EMPLOYMENT—DEFINITION**

I have used the term "scope of [authority] [employment]" in these instructions.

An [agent] [employee] is acting within the scope of his/her [authority] [employment] if he/she is engaged in the transaction of business which has been assigned to him/her by his/her [principal] [employer] or if he/she is doing anything which may reasonably be said to have been contemplated as a part of his/her [authority] [employment] and is in furtherance of his/her [principal's] [employer's] interests, [even though it was not expressly authorized] [and may have been specifically forbidden].

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**COMMENT**

This instruction is a correct statement of the law. *Nipper v. Brandon Co.*, 262 Ark. 17, 553 S.W.2d 27 (1977).

The acts or omissions charged as negligence against the servant were not acts or omissions occurring in the scope of the servant's employment; therefore, no claim was asserted against the principal. *White v. Sims*, 211 Ark. 499, 201 S.W.2d 21 (1947). The test of a master's liability for his servant's negligence is not whether the negligent act was committed while the servant was in his employ, but whether it was committed at a time when the servant was performing an act in furtherance of the master's business or in line with the servant's duty. *Davis v. Kukar*, 235 Ark. 139, 357 S.W.2d 275 (1962). In *Kincaid v. Taylor*, 247 Ark. 205, 445 S.W.2d 67 (1969), the employee owned the truck cab, and the employer owned the trailer; and under their business arrangement, the tractor-trailer combination was a unit under the employer's control. An accident occurred when the employee was driving the unit home for the night, but he was still within the course and scope of his employment.

The rules in worker's compensation cases on "arising out of and in the course of employment" are not determinative in master-

AMI 703

AGENCY, ETC.

Ch. 7

## AMI 703

SCOPE OF EMPLOYMENT—EMPLOYEE  
DRIVING EMPLOYER'S VEHICLE

A. The vehicle driven by \_\_\_\_\_ was owned by \_\_\_\_\_ and \_\_\_\_\_ was a regular employee of \_\_\_\_\_. You may consider these facts [along with any other evidence in the case] in deciding whether \_\_\_\_\_ was acting as an employee of \_\_\_\_\_ and within the scope of his/her employment at the time of the occurrence.

B. If you find that the vehicle being driven by \_\_\_\_\_ was owned by \_\_\_\_\_ and that \_\_\_\_\_ was a regular employee of \_\_\_\_\_ you may consider these facts [along with any other evidence in the case] in deciding whether \_\_\_\_\_ was acting as an employee of \_\_\_\_\_ and within the scope of his/her employment at the time of the occurrence.

## NOTE ON USE

Use A when ownership of the vehicle and status of the employee are admitted; use B when they are in dispute.

## COMMENT

This instruction is a correct statement of the law. *Nipper v. Brandon Co.*, 262 Ark. 17, 553 S.W.2d 27 (1977). When an employee is driving a vehicle owned by the employer, and an accident occurs, there is a presumption of fact that the employee is acting within the scope of his employment. The party against whom the presumption is directed has the burden of overcoming this presumption. *Id.* See Ark.R.Evid. 301. In *Nipper*, the Supreme Court reviewed earlier cases which described this presumption by various terms and clarified that the proper description is a presumption of fact.

AMI 704

AGENCY, ETC.

Ch. 7

## AMI 704

AGENCY—EMPLOYMENT—DEVIATION FROM  
ROUTE

If an [agent] [employee] abandons the business of his/her [principal] [employer] to perform an act or engage in an activity for his/her own exclusive purpose and not in furtherance of his/her [principal's] [employer's] interests, that act or activity is not in the scope of the [agent's authority] [employment].

## NOTE ON USE

This instruction should be given with AMI 702 when deviation by the agent is an issue.

## COMMENT

This instruction is a correct statement of the law. *Nipper v. Brandon Co.*, 262 Ark. 17, 553 S.W.2d 27 (1977).

In *Davis v. Kukar*, 235 Ark. 139, 357 S.W.2d 275 (1962), the employee's deviation was so obvious that, as a matter of law, he was acting outside the scope of his employment. In *Healey v. Cockrill*, 133 Ark. 327, 202 S.W. 229 (1918), the employee was not mingling his own business with that of his employer, but he had completely departed from the employer's business.

**Research References**

*West's Key Number Digest*  
Automobiles ⇨246(15); Labor and Employment ⇨3106(3); Principal and Agent ⇨194(2)

*Legal Encyclopedias*  
C.J.S., Agency § 581; Motor Vehicles §§ 1257, 1275, 1300

**From:** [Vincent France](#)  
**To:** [ASCC Pleadings](#); [jim@jimjacksonatty.com](mailto:jim@jimjacksonatty.com)  
**Cc:** [Daiquiri Carter](#); [Kathryn Irby](#); [Martha Cox](#)  
**Subject:** Haley Hudson, et al v. DHS, Claim No. 230641  
**Date:** Friday, February 16, 2024 1:22:35 PM  
**Attachments:** [HUDSON Reply to its response to Cross MSJ.pdf](#)  
[image.png](#)  
[image.png](#)  
[image.png](#)

To all,

Please find attached DHS's Reply to Claimants' Response to Its Cross Motion for Summary Judgment.

Hope you all have a good weekend.

Sincerely,

**Vincent P. France**  
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□ □ □

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## IN THE ARKANSAS STATE CLAIMS COMMISSION

**HALEY HUDSON, INDIVIDUALLY  
HALEY HUDSON, SPECIAL ADMINISTRATRIX OF  
THE ESTATE OF JAQUELINE LYNN ASHCRAFT,  
DECEASED, AND HALEY HUDSON, AS PERMANENT  
LEGAL GUARDIAN OF**

**MINOR CHILDREN**

**CLAIMANTS**

**vs.**

**CC No. 230641**

**ARKANSAS DEPARTMENT OF  
HUMAN SERVICES**

**RESPONDENT**

**RESPONDENT'S REPLY TO CLAIMANTS' RESPONSE TO  
ITS CROSS MOTION FOR SUMMARY JUDGMENT**

COMES NOW, Respondent, Arkansas Department of Human Services, by and through its attorney, Vincent P. France Deputy Chief Counsel for the Arkansas Department of Human Services, and for its Reply to Claimants' Response to Its Cross Motion for Summary Judgment states the following:

Contrary to the argument made by Claimants in their Response, the fact that Ms. Wilkerson was driving a state vehicle is not the only fact dispositive of whether Ms. Wilkerson was acting within the scope of her employment when the accident occurred. In making this argument, Claimants rely upon *Nipper v. Brandon Co.*, 262 Ark. 17, 553 S.W.2d 27 (1977). The case is distinguishable from the claim at hand.

In *Nipper*, the employee had only been on the personal errand for about five (5) minutes and was about a half mile from the point of deviation. 262 Ark. at 19. Additionally, there is no indication in *Nipper* that the employee was on a tight deadline or that the employee was significantly behind schedule. *Id.* Moreover, in *Nipper*, the Court discusses and approvingly cites to *Davis v. Kukar*, 235 Ark. 139, 357 S.W.2d 275 (1962), which provides further insight into the proper consideration of whether an employee is within the scope of employment when the

employee deviates from their job. In *Davis*, the Court found that an employee who was just forty-five (45) feet away from the point at which the employee deviated from his route was outside the scope of his employer's business; therefore, as a matter of law the employee was outside the scope of his employment. 235 Ark. at 145. In *Nipper*, an employee who was half mile (approximately 2,640 feet) away from the point of deviation, the court determined to be a factual question for the jury to determine whether the employee was within the scope of employment. 262 Ark. at 19. Although *Davis* and *Nipper* reach opposite conclusions, the two cases must be read together and reconciled, which can be accomplished by looking at the decision in *Davis*. In *Davis*, the Court mentioned "time" approximately 19 times in the opinion. For example, in determining whether an employee was outside the scope of employment, the Court ruled that "the trier must take into account, not alone the mere fact of deviation, but its extent and nature relatively *time* and *place* and *circumstances*." 235 Ark. at 145 (emphases added). The Court also states that "[w]e think that the *time that elapsed* between the departure from employment, when Davis, on his own, turned the tractor around and went east across highway 65, and the claimed resumption is a *significant circumstance*." *Id.* (emphases added). The Court further reasoned that "it was Davis' use of that time on his own business that placed him at the scene of the accident." *Id.* at 146. Accordingly, *Davis* and *Nipper* are reconciled once time—specifically lapsed time—is considered in determining whether an employee is acting within the scope of employment.

In this claim, Ms. Wilkerson was acting beyond the scope of her employment, based not only upon the deviation, but also when considering the time, place, and circumstances of when the accident occurred. The accident occurred at 12:50 p.m. in Paris, Arkansas. *See DHS SUMF*, ¶16. On the day of the accident, Ms. Wilkerson was assigned to go to Beebe, Arkansas, to pick up a child at 2:00 p.m. and transport the child to Clarksville, Arkansas, for a sibling visit at 4:00 p.m.

*See DHS SUMF*, ¶9. To drive from Paris, Arkansas to Beebe Arkansas takes approximately two hours. *See DHS SUMF*, ¶10. Consequently, based upon the time and location of the accident, Ms. Wilkerson would not have arrived in Beebe until approximately 3:00 p.m., which means that she was an hour behind schedule. *See DHS SUMF*, ¶29. Ms. Wilkerson cannot be said to have reached the point of departure because she was behind schedule. *See Nipper*, 262 Ark. at 20 (“In the *Davis* case, the employee could not continue on his mission until he reached the point of departure”). Thus, it was Ms. Wilkerson’s use of time for her own frolic and not the performance of her duties as a DHS employee that placed her at the scene of the accident; therefore, as a matter of law, she was not acting in the scope of her employment at the time of the accident, when considering the extent and nature and relatively time place and circumstances of her departure. *See Davis*, 235 Ark. at 145-46. Simply stated, until Ms. Wilkerson was back on schedule to arrive in Beebe at 2:00 p.m., she had not returned to being within the scope of her employment. Accordingly, DHS cannot be vicariously liable for Ms. Wilkerson’s actions; therefore, DHS respectfully request that the Arkansas State Claims Commission grants its cross-motion for summary judgment, denies Claimants’ motion for partial summary judgment, and dismisses with prejudice this entire claim against DHS.

The second argument raised by Claimants in their response is misplaced for a number of reasons. Claimants misconstrue that DHS is arguing that Ms. Wilkerson was intoxicated or impaired at the time of the accident. DHS is not making such an argument. Rather, DHS is arguing that Ms. Wilkerson was not carrying out the object and purpose of DHS at the time of the accident. In their Response, Claimants simply ignore the case of *Cooper Clinic, P.A. v. Barnes*, 366 Ark. 533, 237 S.W.3d 87 (2006), which is congruent with the facts at-hand.

In *Cooper Clinic*, the only illegal wrongdoing by the employee was not calling the child abuse hotline as a mandatory reporter. 366 Ark. at 534-35. The Arkansas Supreme Court ruled that the doctor's "decision to report or not to report suspected child abuse is not the object and purpose of Cooper Clinic, but rather such a decision is exclusively in [the doctor's] interests." *Id.* at 541. Thus, the Court found that the clinic was not vicariously liable for the employee. *Id.* Similarly, in *Cannady v. St. Vincent Infirmary*, 2018 Ark. 35, 537 S.W.3d 529, the Arkansas Supreme Court found that St. Vincent could not be held liable under the doctrine of *respondeat superior* after two of its employees unlawfully accessed Anne Pressly's medical records. 2018 Ark. at 9. The takeaway from both *Cooper Clinic* and *Cannady*, is twofold. First, an employer is not vicariously liable when an employee acts contrary to the objective and purpose of the employer. Second, the illegal actions of an employee do not have to be egregious to be outside the scope of employment.

In this claim, Ms. Wilkerson was not acting in furtherance of the object and purpose of DHS when she drove the vehicle at a criminal rate of speed and her illegal drug use. It is somewhat ironic and borderline disingenuous for Claimant's counsel to say or even suggest that this accident was of "garden-variety negligence." See *Claimants' Response*, p. 6. Ms. Ashcraft died because of this accident. Any motor vehicle accident that causes the death of another is not "garden-variety." According to Claimants' own expert, Ms. Wilkerson was traveling at least 70 m.p.h. on a highway with a posted speed limit of 55 m.p.h. when the accident occurred. See *DHS SUMF*, ¶¶ 20, 24. Thus, Ms. Wilkerson was traveling at a criminal rate of speed when the accident occurred. See Ark. Code Ann. §27-50-302(7). Driving at a criminal speed is contrary to the object and purpose of DHS; therefore, Ms. Wilkerson was beyond the scope of her employment. Consequently, DHS is not vicariously liable for her actions.

Likewise, Ms. Wilkerson was not acting in furtherance of the object and purpose of DHS when she used Adderall illegally without a prescription. As discussed in more detail in its brief, one primary objective and purpose of DHS is in substance abuse treatment and prevention; therefore, Ms. Wilkerson was acting outside the scope of her employment with DHS and DHS cannot be vicariously liable for her actions. *See Cooper Clinic*, 366 Ark. at 541.

WHEREFORE, Respondent respectfully requests that its Cross Motion for Summary Judgment be granted, and that Claimants' motion for partial summary judgment be denied and this claim be dismissed with prejudice, along with any other just and proper relief to which it is entitled.

Respectfully submitted,

By: /s/ Vincent P. France  
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**CERTIFICATE OF SERVICE**

I, Vincent P. France, hereby certify that on February 16, 2024, I electronically filed the foregoing with the Arkansas State Claims Commission by emailing it to [ascpleadings@arkansas.gov](mailto:ascpleadings@arkansas.gov) and by sending a copy to Claimant's attorney Jim Jackson via email as indicated below.

Jim Jackson  
[Jim@JimJacksonatty.com](mailto:Jim@JimJacksonatty.com)

*/s/ Vincent P. France*

\_\_\_\_\_  
Vincent P. France

**From:** [Jim Jackson](#)  
**To:** [Vincent France](#); [ASCC Pleadings](#)  
**Cc:** [Daiquiri Carter](#); [Kathryn Irby](#); [Martha Cox](#)  
**Subject:** RE: Haley Hudson, et al v. DHS, Claim No. 230641  
**Date:** Friday, February 16, 2024 1:29:22 PM  
**Attachments:** [image.png](#)  
[image.png](#)  
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[image.png](#)  
[image.png](#)  
[image.png](#)  
[image.png](#)  
[image.png](#)

Thank you Vincent.  
 And you too.  
 Jim



**Jim Jackson**

Jackson Law Firm  
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700 W. Broadway  
 North Little Rock, AR 72114  
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**F** (501) 823-3611

**From:** Vincent France <Vincent.P.France@dhs.arkansas.gov>  
**Sent:** Friday, February 16, 2024 1:23 PM  
**To:** ASCC Pleadings <ASCCPleadings@arkansas.gov>; Jim Jackson <jim@jimjacksonatty.com>  
**Cc:** Daiquiri Carter <Daiquiri.Carter@dhs.arkansas.gov>; Kathryn Irby <Kathryn.Irby@arkansas.gov>; Martha Cox <mcox@jimjacksonatty.com>  
**Subject:** Haley Hudson, et al v. DHS, Claim No. 230641

To all,  
  
 Please find attached DHS's Reply to Claimants' Response to Its Cross Motion for Summary Judgment.  
  
 Hope you all have a good weekend.

Sincerely,  
  
**Vincent P. France**

Deputy Chief Counsel for Litigation  
Office of Chief Counsel  
PO Box 1437, Slot S260  
Little Rock, AR 72203-1437  
Office Phone: 501-534-4127  
[Vincent.P.France@dhs.arkansas.gov](mailto:Vincent.P.France@dhs.arkansas.gov)



□□□

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**From:** [Martha Cox](#)  
**To:** [Kathryn Irby](#); [ASCC Pleadings](#)  
**Cc:** [Vincent France](#); [Jim Jackson](#)  
**Subject:** Haley Hudson, etc. v. Arkansas DHS; Arkansas State Claims Commission No. 230641  
**Date:** Friday, February 23, 2024 10:44:44 AM  
**Attachments:** [Claimant's Sur-Response to Respondent's Cross Motion for Summary Judgment 2-23-2024.pdf](#)

---

Attached for filing in the above-referenced claim is the Claimant's Sur-Response to the Respondent's Cross Motion for Summary Judgment.

Martha Cox, PP, PLS  
Paralegal for The Jackson Law Firm  
700 West Broadway, Suite 200  
North Little Rock, AR 72114  
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## ARKANSAS STATE CLAIMS COMMISSION

CLAIMANT

HALEY HUDSON, SPECIAL ADMINISTRATRIX OF  
THE ESTATE OF JACQUELINE LYNN ASHCRAFT,  
DECEASED, AND HALEY HUDSON AS  
PERMANENT LEGAL GUARDIAN OF [REDACTED]  
[REDACTED] A MINOR CHILD

VS.

CC NO. 230641

ARKANSAS DEPARTMENT OF  
HUMAN SERVICES

RESPONDENT

**CLAIMANTS' BRIEF IN SUPPORT OF ITS SUR-RESPONSE TO  
RESPONDENT'S CROSS MOTION FOR SUMMARY JUDGMENT**

The legal analysis to determine the scope of employment where an employee is driving an employer's vehicle is very straightforward. The first step is to answer the following question:

*Was Jennifer Wilkerson driving a vehicle owned by DHS?*

If yes, there is a presumption of fact that Wilkerson was within the course and scope of employment at the time of the collision with Ashcraft which shifts the burden of proof to DHS according the Supreme Court's holding in *Nipper v. Brandon Co.*, 553 S.W.2d 27, 28, 262 Ark. 17, 20 (Ark. 1977). The evidence clearly shows that Wilkerson was not only within the course and scope of employment, but she was furthering the interest of DHS even without the burden of proof being shifted. The respondent's answer to Interrogatory No. 22 unequivocally states: "At the time of the accident Jennifer Wilkerson was authorized to drive the DHS vehicle for employment purposes."

The next step in the analysis is to ask whether Wilkerson was conducting a personal errand or furthering the responsibility of DHS at the time of the collision. The facts clearly show that Wilkerson had completed her personal errand of having lunch at the Paris Dari-Delite. Wilkerson resumed her work journey the moment she left the diner's parking lot.

There is no question Wilkerson was on her route to Beebe to pick up a foster child for a family visit.

The respondent's argument that reading *Nipper* and *Davis v. Kukar*, 357 S.W.2d 275, 235 Ark. 139 (Ark. 1962) together will lead to a different conclusion is not correct. Both cases stand for the proposition that once an employee completes a personal errand and returns to his route for his employer, he is back within the course and scope of employment. Davis was a farm hand who was instructed by his employer to take a tractor to a muddy road and pull out a car and return to the farm when his task was completed. Davis pulled the car out of the mud and instead of returning to the farm, he drove to several different areas and pastures. Davis was eventually involved in a wreck on Highway 65. Davis was never supposed to be on Highway 65. Davis had abandoned his employer's purpose and was on his own personal errand at the time of the wreck. Davis was on his own personal frolic at the time of the wreck and therefore his employer was not vicariously liable for Davis' negligent conduct.

The very basis of the rule of respondeat superior, as applied to automobile accidents as well as to other cases, is that the driver of the car is acting for the owner and not for himself personally at the time of the accident. When the servant steps outside of the master's business and enters upon the performance of some individual purpose of his own, he ceases to act as the servant of the owner, and the latter's responsibility for his acts terminates. *Davis v. Kukar*, 357 S.W.2d 275, 235 Ark. 139 (Ark. 1962) citing *Hunter v. First State Bank of Morrilton*, 181 Ark. 907, 28 S.W.2d 712.

The Wilkerson accident occurred on State Highway 22 approximately three to four miles east of Paris. This is the most direct route Wilkerson could take from Paris to Beebe. Wilkerson had completed her lunch break and resumed her work for DHS the moment she left the parking lot of Dari-Delite and began traveling east on State Highway 22. See three maps of Wilkerson's route attached to Claimant's Response marked as Exhibits 1 -3. The allegation that Wilkerson was behind schedule does not relieve DHS of being vicariously

liable for its employee's negligent action while she was driving to Beebe to pick up a foster child. Unlike Davis, Wilkerson resumed the business of her employer the moment she left Dari-Delite. She was furthering the mission of DHS by taking a foster child for a family visit.

The *Cooper Clinic* case is not applicable to our facts because the doctor's decision not to report an incident of suspected child abuse was solely in the doctor's interest. The doctor was not practicing medicine when she decided to not make a report to the hotline. In our case, Wilkerson was driving east on State Highway 22 for only one purpose – to pick up a foster child in Beebe for a family visit. Wilkerson's journey at the time of the wreck was not for a personal reason. Wilkerson's journey was solely to carry out DHS' interest in providing a family visit for the foster child.

Under the reasoning of *Nipper* and *Davis*, Wilkerson was within the course and scope of employment at the time of the wreck which makes DHS vicariously liable for her negligent action. DHS has not met its burden in proving that Wilkerson was not acting in furtherance of the job assigned by DHS to Wilkerson, to drive DHS's car to Beebe to transport a foster child to a family visit.

#### **DHS PRIOR PLEADINGS CONFIRM EMPLOYMENT STATUS**

DHS's pleadings from its initial Answer to the Complaint and answers to discovery confirm that Wilkerson was within the course and scope of employment. DHS has admitted that Wilkerson was in the course and scope of employment in multiple filings with the Commission. The status of Wilkerson was not in doubt until DHS filed an Amended Answer last month in which it changed its long-standing position that Wilkerson was within the course and scope of employment at the time of the wreck.

DHS's response to the initial written discovery admitted that Wilkerson was an employee who was authorized to drive the DHS vehicle for employment purposes. Most

importantly, DHS's response confirmed that Wilkerson was in the course of her duty at the time of the wreck.

**INTERROGATORY NO. 23:** Do you contend that Jennifer Wilkerson was not an employee or agent acting on your behalf at the time of the incident, which is the subject of this lawsuit? If your answer is anything other than an unqualified "No," please set forth the following:

- (a) Set forth precisely the reason Jennifer Wilkerson was driving a vehicle owned by the respondent on the date in question.
- (b) State the name and address of Jennifer Wilkerson's employer at the time of the incident, which is the subject of this lawsuit.
- (c) State the name, address, and name of employer of the person who authorized Jennifer Wilkerson to drive the respondent's vehicle at the time of the incident, which is the subject of this lawsuit.
- (d) State where Jennifer Wilkerson had been for one hour preceding the time of the accident, which is the subject of this lawsuit, and her intended destination.
- (e) State whether or not you possess any information, facts, writings, or evidence whatsoever that either supports or contradicts your claim that you did not authorize or ratify the conduct of your employee, Jennifer Wilkerson, on the date of the subject incident.
- (f) State whether or not you are you aware of any information, facts, writings, or evidence whatsoever relating to this litigation that either supports or contradicts your claim that you did not authorize or ratify the conduct of your employee, Jennifer Wilkerson, on the date of the subject incident. Identify and describe each such item of information, fact, writing, or evidence, and please state the name, address, and relationship to the parties of each person who possesses the information.

**ANSWER:** **Jennifer Wilkerson was at the time of the accident an employee of DHS engaging her job duties as assigned.**

(Emphasis Added)

DHS filed this response to discovery on January 10, 2023, more than a year prior to filing its Cross Motion for Summary Judgment.

In addition to its response to discovery, DHS's Answer to the Amended Complaint and Second Amended Complaint confirmed that Wilkerson was within the course and scope of employment at the time of the wreck. The claimant alleged in her Complaint, Amended Complaint and Second Amended Complaint that Jennifer Wilkerson was an employee of DHS and was operating within the course and scope of her employment at the time of the wreck. Paragraph 5 of the Amended Complaint and DHS's answer are:

5. The respondent Arkansas Department of Health (sic<sup>1</sup>) and Human Services, is an agency of the State of Arkansas. Jennifer Wilkerson was an employee of the Arkansas Department of Health and Human Services and was engaged in the course and scope of her employment at all times relevant to this cause of action.”

**DHS' ANSWER: Respondent *admits* Paragraph No. 5 of the Complaint.”**  
(Emphasis added)

A Second Amended Complaint was filed on May 18, 2023, which contained additional details of the accident and liability based upon information obtained during discovery. The allegation that Wilkerson was acting within the course and scope of her employment was also made in the Second Amended Complaint. Again, the Respondent confirmed in its Answer filed on June 7, 2023, that Wilkerson acting was within the course and scope of employment of her employment with DHS.

The Claimant prepared Requests for Admissions with four (4) specific requests to confirm that Wilkerson was within the course and scope of employment which were served on January 19, 2023. These Requests were served prior to DHS filing its Answer to Interrogatories. The date in the body of the Requests inadvertently listed the date of the wreck as June 12 instead of June 11. This led to the denial of two of the four Requests for

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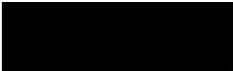
<sup>1</sup> Claimant's counsel did not realize that this agency had recently changed its name.

Admissions by the Respondent. The respondent's Admission admitted Requests Nos. 1 and 3 and denied 2 and 4 on February 9, 2023.

An E-mail exchange with DHS's counsel pointed out that the incorrect date was used in the Requests. A second set of Requests with the correct date of June 11 was filed.

During this time, a review of the Respondent's response to written discovery and Answer to the Complaint eliminated any doubt that DHS did not contend that Wilkerson was not in the course and scope of employment at the time of the collision. This led to an email exchange with DHS's counsel which led the Claimant to file a Motion to Withdraw the Second Set of Requests for Admissions since they were not necessary. *See* attached Exhibit "1" the email exchange.

#### CONCLUSION

The applicable case law, the facts and circumstances of this wreck and the course of litigation lead to only one conclusion – Jennifer Wilkerson was solely within the course and scope of employment with DHS when she was driving a DHS vehicle three to four miles east of Paris on Highway 22 and negligently rear-ended Ashcraft's car. For these reasons, the respondent's Motion for Cross Summary Judgment should be denied and this matter should be set solely for a hearing for this Commission to determine the nature and extent of damages for both the Estate of Jacqueline Lynn Ashcraft, deceased and 

Respectfully submitted,



Jim Jackson, AR Bar #93209  
Jackson Law Firm  
700 W. Broadway Street, Suite 200  
North Little Rock, AR 72114  
Phone: (501) 823-3610  
Fax: (501) 823-3611  
*Jim@JimJacksonatty.com*

**CERTIFICATE OF SERVICE**

I hereby certify that on this date, February 23, 2024, I electronically transmitted the foregoing pleading via email to the Clerk of the Arkansas Claims Commission and sent a copy to counsel for the Respondent via the same email transmission.



Jim Jackson

**Jim Jackson**

---

**From:** Brent Gasper <Brent.Gasper@dhs.arkansas.gov>  
**Sent:** Tuesday, February 14, 2023 3:18 PM  
**To:** Jim Jackson  
**Subject:** RE: Hudson discovery

Jim, did you file the 2<sup>nd</sup> request for admissions with the commission? If so, did you ever officially withdraw those? Just trying to verify whether my obligation to respond was alleviated in the official pleadings.

Thanks!

brent

---

**From:** Jim Jackson <jim@jimjacksonatty.com>  
**Sent:** Friday, February 10, 2023 1:20 PM  
**To:** Brent Gasper <Brent.Gasper@dhs.arkansas.gov>  
**Cc:** Sarah Debusk <Sarah.Debusk@dhs.arkansas.gov>; Martha Cox <mcox@jimjacksonatty.com>  
**Subject:** RE: Hudson discovery

[EXTERNAL SENDER]

Brent & Sarah,

I just reviewed your client's response to discovery.

I believe the response eliminates the necessity of the claimant's 2<sup>nd</sup> Request for Admissions that we just served which was my attempt to confirm that Ms. Wilkerson was in the course and scope and not on a lunch break or personal errand. If it would help, I would be glad to rescind the Second Set of Requests for Admissions.

I am always conscious of not trying to make duplicative work for anyone and for us to focus on the issue where we disagree.

Would it help your client if we rescinded our Second Set of Requests for Admissions?

Thank you,

Jim

**Jim Jackson**

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---

**From:** Brent Gasper <Brent.Gasper@dhs.arkansas.gov>  
**Sent:** Friday, February 10, 2023 10:46 AM



**To:** Jim Jackson <[jim@jimjacksonatty.com](mailto:jim@jimjacksonatty.com)>  
**Cc:** Sarah Debusk <[Sarah.Debusk@dhs.arkansas.gov](mailto:Sarah.Debusk@dhs.arkansas.gov)>  
**Subject:** RE: Hudson discovery

Jim, for our purposes could you submit your second requests for admission through the claims commission so we can point to a specific filing date?

Also, I am hoping to be able to file responses to your interrogatories today. I likewise hope to be able to send over the requested documentation next week sometime after we vet all the redacted information.

Thx!

Brent

Cc: Sarah

---

**From:** Jim Jackson <[jim@jimjacksonatty.com](mailto:jim@jimjacksonatty.com)>  
**Sent:** Thursday, February 9, 2023 10:42 AM  
**To:** Brent Gasper <[Brent.Gasper@dhs.arkansas.gov](mailto:Brent.Gasper@dhs.arkansas.gov)>  
**Cc:** Sarah Debusk <[Sarah.Debusk@dhs.arkansas.gov](mailto:Sarah.Debusk@dhs.arkansas.gov)>  
**Subject:** RE: Hudson discovery

[EXTERNAL SENDER]

Brent,

Sounds good.

I have reviewed the Requests and am submitting the Second Requests in Word Format.

Ralph Scott, Ph.D. is the economist that I have retained.

He has not yet rendered a report.

Haley does not have information on prior medical records as to who her mother might have seen.

I have sent a blanket medical request to medical clinics and pharmacies in Paris to see what information I discover.

Attached is a letter with a hyperlink to photos that I received from Mary Buckley, esq.

I believe these photos were probably taken by the truck driver who was involved.

Also attached is a copy of the Toxicology Report.

Thank you,

Jim



**Jim Jackson**  
 Jackson Law Firm  
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 North Little Rock, AR 72114  
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---

**From:** Brent Gasper <[Brent.Gasper@dhs.arkansas.gov](mailto:Brent.Gasper@dhs.arkansas.gov)>  
**Sent:** Thursday, February 9, 2023 10:13 AM

To: Jim Jackson <[jim@jimjacksonatty.com](mailto:jim@jimjacksonatty.com)>  
Cc: Sarah Debusk <[Sarah.Debusk@dhs.arkansas.gov](mailto:Sarah.Debusk@dhs.arkansas.gov)>  
Subject: Hudson discovery

Jim:

Thanks for being agreeable with my proposed way forward on this case. I especially appreciate the agreement to thirty (30) days for responding to the Amended Answer only. Holding up my end I'm going to try to get you your requested discovery soon, prior to our Answer.

To that end, you will soon be served with our responses to the Requests for Admission. I promise I'm not being obstinate but you used the date of June 12 instead of June 11 on the Requests so I felt obligated to respond accordingly. I have no issue with you resubmitting requests for admission with the correct date but that will necessitate resetting the clock on when they will be due.

I hope to file a response to the interrogatories tomorrow. However please note that we are still compiling information and documentation so there will be additional discovery coming your way after the interrogatories are formally filed. I just want to try to file our most current responses before any deadline hits.

I would also ask that if you have already received the drug and alcohol screen information re: Jennifer Wilkerson if you could go ahead and send it our way? I will formally request it in our interrogatories but if you would be willing to share earlier that would be great. Also, I will be inquiring as to Ms. Ashcraft's medical history and what doctors she saw up to ten years prior to her death so I wanted to give you the heads up if you wanted to go ahead and start compiling that info. Same with any doctors or therapists seen by the minor children after the accident.

Last, you mentioned in our very first conversation that you were having an accounting done by an economist regarding your damage allegations. I will be asking for that in discovery as well so as soon as you have it and are willing to share prior to my interrogatories that would be greatly appreciated.

Thanks again,

Brent

Cc: Sarah

**Brent P. Gasper**  
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Department of Human Services, Office of Chief Counsel  
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**From:** [Daiquiri Carter](#)  
**To:** [ASCC Pleadings](#); [jim@jimjacksonatty.com](mailto:jim@jimjacksonatty.com)  
**Cc:** [Martha Cox](#); [Vincent France](#); [Daiquiri Carter](#)  
**Subject:** CC # 230641  
**Date:** Tuesday, February 27, 2024 2:40:04 PM  
**Attachments:** [Hudson Sur-Reply to Plaintiff's Response to Cross-Motion.pdf](#)  
[image.png](#)  
[image.png](#)

Please find attached Respondent's Sur-Reply to Claimants' Sur-Response to its Cross Motion for Summary Judgment. I have included Claimants' attorney on this email.

Thank you,

Daiquiri D. Carter, M.Ed.  
 Legal Services Specialist  
 Office of Chief Counsel  
 PO Box 1437, Slot S260  
 Little Rock, AR 72203-1437  
 501-320-6338 phone  
 501-682-6720 fax  
[Daiquiri.carter@dhs.arkansas.gov](mailto:Daiquiri.carter@dhs.arkansas.gov)



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## IN THE ARKANSAS STATE CLAIMS COMMISSION

**HALEY HUDSON, INDIVIDUALLY  
HALEY HUDSON, SPECIAL ADMINISTRATRIX OF  
THE ESTATE OF JAQUELINE LYNN ASHCRAFT,  
DECEASED, AND HALEY HUDSON, AS PERMANENT  
LEGAL GUARDIAN OF**

**MINOR CHILDREN**

**CLAIMANTS**

**vs.**

**CC No. 230641**

**ARKANSAS DEPARTMENT OF  
HUMAN SERVICES**

**RESPONDENT**

**RESPONDENT’S SUR-REPLY TO CLAIMANTS’ SUR-RESPONSE TO  
ITS CROSS MOTION FOR SUMMARY JUDGMENT**

COMES NOW, Respondent, Arkansas Department of Human Services, by and through its attorney, Vincent P. France Deputy Chief Counsel for the Arkansas Department of Human Services, and for its Sur-Reply to Claimants’ Sur-Response to Its Cross Motion for Summary Judgment states the following:

Claimants’ sur-response is procedurally inappropriate and contrary to the rules; therefore, it should be disregarded. There are several issues with the sur-response that will be addressed. Fundamentally, the sur-response is a “Jekyll and Hyde” document, because it truly contains two legally distinct and somewhat contradictory parts, which require separate evaluations. The first part is the first two and three-quarters pages of the sur-response, which present arguments that are responsive to DHS’s reply. Regarding Claimants’ arguments therein, DHS maintains all of its previous arguments that Jennifer Wilkerson was not acting within the scope of her employment for DHS when the accident occurred; therefore, DHS cannot be liable. Accordingly, DHS is entitled to summary judgment as a matter of law based upon the undisputed material facts.

The second part of the sur-response begins with the heading “DHS Prior Pleadings Confirm Employment Status,” which must be treated separately. In this section, Claimants are really

challenging and opposing DHS's Amended Answer to Claimants' Second Amended Complaint. This section of the sur-response is procedurally and substantively deficient. First, the sur-response is not the proper way to challenge DHS's Amended Answer under Ark. R. Civ. P. 15. Second, it is not timely under Rule 15. Third, Claimants have not alleged, nor can they show any prejudice. Accordingly, the arguments contained therein should not be considered.

According to Rule 15 of the Arkansas Rules of Civil Procedure, "a party may amend his pleadings at any time without leave of the court." Ark. R. Civ. P. 15(a). Moreover, Rule 15 allows a party to file a motion, within twenty (20) days, opposing the amended pleading if the amended pleading would cause prejudice or undue delay.

In *Seth v. St. Edward Mercy Med. Ctr.*, 375 Ark. 413, 291 S.W.3d 179 (2009), the Arkansas Supreme Court decided a case that is procedurally similar to the claim-at-hand. In *Seth*, the defendant hospital filed an amended answer to include the affirmative defense of charitable immunity. 375 Ark. at 415. The hospital filed its amended answer on the same day that it filed its motion for summary judgment. *Id.* The plaintiffs filed a response to the motion for summary judgment, in which they challenged the affirmative defense; however, they never filed a separate motion to strike the amended answer. *Id.* at 415-16. Quoting Ark. R. Civ. P. 15, the Court held that "a party may amend his pleadings at any time without leave of the court," unless, "upon motion of an opposing party, the court determines prejudice would result." *Id.* at 419 (emphasis by the Court). The Court found that the plaintiffs "only filed a response to the motion for summary judgment. They did not file a motion to strike the amended answer as prejudicial." *Id.* at 419-420. Accordingly, the Arkansas Supreme Court ruled that the hospital could assert its new defense it first raised in the amended answer. Similarly, the Arkansas Court of Appeals ruled, "[i]t is incumbent upon the opposing party to timely object to an amendment and assert that prejudice

or undue delay in the disposition of the case would result. Ark. R. Civ. P. 15(a). Here, rather than moving to strike the amendment, the appellees timely filed an answer.” *Mullen v. Shockley*, 2009 Ark. App. 855, at 5. Thus, the Court held that the trial court erred in not allowing a party’s amended pleadings. *Id.*

In opposing an amendment, the party challenging the amendment must file a motion within twenty (20) days. *See* Ark. R. Civ. P. 15(a). Additionally, the party opposing the amendment has the burden of showing either prejudice or an undue burden. *See Turner v. Stewart*, 330 Ark. 134, 952 S.W.2d 156 (1997). “[The] test to determine whether an amendment is prejudicial: ‘whether the party opposing the motion will have a fair opportunity to defend after the amendment.’” *Cross v. Cross*, 2016 Ark. App. 327, at 7, 497 S.W.3d 712 (quoting *Travis v. Houk*, 307 Ark. 84, 86, 817 S.W.2d 207, 208 (1991)). Courts will consider whether the opposing party sought a continuance in determining whether the party was prejudiced by the amendment. *Turner*, 330 Ark. at 139. If the party did not seek a continuance nor show prejudice, then the amendment is allowed. *Id.*

In the claim-at-hand, Claimants’ sur-response fails to comply with the procedurally and substantively. First, in *Seth v. St. Edward Mercy Med. Ctr.*, *supra.*, the Arkansas Supreme Court dealt with an almost identical situation as raised by Claimants’ sur-response. DHS, like the hospital in *Seth*, filed an amended answer raising a new defense on the same day that it filed its cross motion for summary judgment. The only real procedural difference is that unlike the plaintiffs in *Seth*, Claimants waited until all arguments had been fully briefed to present their challenge to DHS’s Amended Answer. Thus, like in *Seth*, Claimants’ sur-response is not a proper means to challenge DHS’s Amended Answer. *See Seth*, 375 Ark. at 420.

Even under Rule 15, Claimants’ sur-response is not proper, because it was not timely filed and Claimants cannot show they were prejudiced by the filing of DHS’s Amended Answer. In

Arkansas, courts look to the substance of a document rather than blindly going by the title of the document, when determining the nature and purpose of the document. *See Cornett v. Prather*, 293 Ark. 108, 737 S.W.2d 159 (1987). Specifically, the Arkansas Court of Appeals found that although a party had filed a motion for relief from judgment pursuant to Ark. R. Civ. P. 60, the substance of the motion was for a new trial, which was governed by Ark. R. Civ. P. 59. *Stickels v. Heckel*, 2009 Ark. App. 829, at 5, 370 S.W.3d 857. Consequently, the Court found that the party failed “to file their motion within ten days means that the trial court was without jurisdiction to enter the subsequent order.” *Id.* As noted above, Claimants had twenty (20) days to file a motion opposing DHS’s Amended Answer pursuant to Ark. R. Civ. P. 15(a). DHS filed its Amended Answer on January 29, 2024; however, the sur-response was not filed by Claimants until February 23, 2024, some twenty-five (25) days later and—more importantly—after all the issues had been fully briefed. Thus, Claimants attempt to now challenge DHS’s Amended Answer is time-barred. *See Mullen*, 2009 Ark. App. at 5. Moreover, instead of timely filing, Claimants have attempted to bypass Rule 15 by calling it a sur-response. Thus, as the Court found in *Stickels*, Claimants attempt to now oppose DHS’s Amended Answer should be barred. 2009 Ark. App. at 5.

Finally, Claimants should also be barred from opposing DHS’s Amended Answer because they cannot show prejudice nor undue delay. Based upon statements contained within their sur-response, Claimants knew from the beginning that whether Jennifer Wilkerson was acting within the scope of her employment could be a potential issue. Claimants cannot honestly argue to being surprised nor can they argue that they did not have a fair opportunity regarding this issue. *See Cross*, 2016 Ark. App. at 7. Essentially, Claimants are seeking a windfall by previous slipshod work. Moreover, Claimants did not ask for a continuance to conduct any additional discovery;

rather, they proceeded by filing a response to DHS's cross-motion for summary judgment. Thus, Claimants cannot show any prejudice. *See Turner*, 330 Ark. at 139.

Accordingly, DHS is entitled to summary judgment as a matter of law based upon all of the facts and arguments presented concerning its cross-motion for summary judgment. To recap, the undisputed evidence shows that Jennifer Wilkerson had only been employed with DHS for eleven (11) days when the accident occurred. *DHS SUMF* ¶¶ 3, 9. She was driving at a high rate of speed in excess of 70 m.p.h. when she rearended the vehicle in an effort to make up time after she had gone on a personal frolic and was at least an hour behind schedule when the accident occurred. *DHS SUMF* ¶¶ 24, 29. Consequently, Jennifer Wilkerson was acting outside the scope of her employment when the accident occurred. *See Davis v. Kukar*, 235 Ark. 139, 357 S.W.2d 275 (1962). Thus, DHS cannot be vicariously liable for her actions; therefore, Claimants' *respondeat superior* claim fails as a matter of law. Accordingly, DHS respectfully requests that its cross motion for summary judgment be granted, and this claim be dismissed with prejudice.

WHEREFORE, DHS respectfully requests that its Cross Motion for Summary Judgment be granted, and that Claimants' motion for partial summary judgment be denied and this claim be dismissed with prejudice, along with any other just and proper relief to which it is entitled.

Respectfully submitted,

By: /s/ Vincent P. France  
Vincent P. France, Ark. Bar No. 2010063  
Deputy Chief Counsel  
Arkansas DHS  
P.O. Box 1437, Slot S260  
Little Rock, AR 72203  
Phone: (501) 534-4127  
Email: [Vincent.P.France@DHS.Arkansas.gov](mailto:Vincent.P.France@DHS.Arkansas.gov)  
*Attorney for Respondent*

**CERTIFICATE OF SERVICE**

I, Vincent P. France, hereby certify that on February 27, 2024, I electronically filed the foregoing with the Arkansas State Claims Commission by emailing it to [ascpleadings@arkansas.gov](mailto:ascpleadings@arkansas.gov) and by sending a copy to Claimant's attorney Jim Jackson via email as indicated below.

Jim Jackson  
[Jim@JimJacksonatty.com](mailto:Jim@JimJacksonatty.com)

*/s/ Vincent P. France*

\_\_\_\_\_  
Vincent P. France

**From:** [Martha Cox](#)  
**To:** [Kathryn Irby](#); [ASCC Pleadings](#)  
**Cc:** [Vincent France](#); [Jim Jackson](#)  
**Subject:** Haley Hudson, etc. v. AR DHS; Arkansas State Claims Commission No. 230641  
**Date:** Monday, April 22, 2024 4:18:05 PM  
**Attachments:** [Letter to Kathryn Irby](#); [Notice of Filing of Deposition of Jennifer Wilkerson](#)

---

Please find attached a letter from Attorney Jim Jackson and a Notice of Filing of Deposition of Jennifer Wilkerson for filing in the above-referenced case.

Thank you.

Martha Cox, PP, PLS  
Paralegal for The Jackson Law Firm  
700 West Broadway, Suite 200  
North Little Rock, AR 72114  
Phone: (501) 823-3610  
Fax: (501) 823-3611  
[mcox@jimjacksonatty.com](mailto:mcox@jimjacksonatty.com)



April 22, 2024

VIA Email and First-Class Mail  
ASCCPleadings@arkansas.gov

Ms. Kathryn Irby  
Arkansas State Claims Commission  
101 East Capitol Avenue, Suite 410  
Little Rock, AR 72201

Re: *Haley Hudson, Special Adm'x of the Estate of Jacqueline  
Lynn Ashcraft, deceased and Permanent Guardian of  
[REDACTED] a minor vs. The Arkansas Department of Human Services*  
Arkansas State Claims Commission No. 230641  
Incident Date: 6/11/2021 - Logan County

Dear Kathryn:

Please find enclosed the original and three copies of the claimant's Notice of Filing of Deposition of Jennifer Wilkerson for filing in the above-referenced matter.

Thank you for your attention to this matter.

Sincerely,

Jim R. Jackson

JRJ/mc  
Enclosures

cc/enc.: Vincent France, Esq. (via e-mail only)

**JIM JACKSON** // Attorney at Law

700 W. Broadway Street; Suite 200  
North Little Rock, AR 72114-5528

501.823.3610  
Fax: 501.823.3611

Jim@JimJacksonAtty.com

www.JimJacksonAtty.com

## ARKANSAS STATE CLAIMS COMMISSION

HALEY HUDSON, SPECIAL ADMINISTRATRIX OF THE  
ESTATE OF JACQUELINE LYNN ASHCRAFT,  
DECEASED AND HALEY HUDSON AS PERMANENT  
LEGAL GUARDIAN OF [REDACTED]  
[REDACTED], MINOR CHILDREN

CLAIMANT

VS.

CC NO. 230641

ARKANSAS DEPARTMENT OF HEALTH AND HUMAN  
SERVICES

RESPONDENT

**NOTICE OF FILING OF DEPOSITION OF JENNIFER WILKERSON**

To: Arkansas Department of Human Services  
c/o Vincent France

You are hereby notified that the Claimant is filing the deposition of Jennifer Leann Wilkerson taken on October 20, 2023 with the Clerk of this Commission for inclusion with the papers in this cause of action. The claimant intends to introduce excerpts from this deposition into evidence. The deposition and Reporter Certification are contained in the hyperlink below. An original and three hard copies are being transmitted to the Commission by U.S. Mail.

[WILKERSON, JENNIFER\\_fulltranscript indx \(1\).pdf](#)<sup>1</sup>

---

<sup>1</sup> Contact Claimant's Counsel if you encounter difficulty opening this hyperlink.

Respectfully submitted;

/s/ Jim R. Jackson

Jim Jackson  
Attorney for Claimant  
Jackson Law Firm  
700 W. Broadway Street, Suite 200  
North Little Rock, AR 72114

**CERTIFICATE OF SERVICE**

I hereby certify that on this date, April 22, 2024, I electronically filed the attached document with the Clerk of the Arkansas Claims Court using e-mail and sending a true copy of such filing to all attorneys of record via e-mail.

/s/ Jim R. Jackson

Jim R. Jackson

**From:** [Kathryn Irby](#)  
**To:** [Vincent France](#)  
**Cc:** [jim@jimjacksonatty.com](mailto:jim@jimjacksonatty.com); [Daiquiri Carter](#); [Martha Cox](#)  
**Subject:** RE: Haley Hudson, et al v. DHS, Claim No. 230641  
**Date:** Thursday, May 2, 2024 11:48:00 AM  
**Attachments:** [image.png](#)  
[image.png](#)

---

Vincent, the Commission will consider all pending motions at the May hearing.

Thanks,  
Kathryn

---

**From:** Vincent France <Vincent.P.France@dhs.arkansas.gov>  
**Sent:** Thursday, May 2, 2024 11:20 AM  
**To:** Kathryn Irby <Kathryn.Irby@arkansas.gov>  
**Cc:** jim@jimjacksonatty.com; Daiquiri Carter <Daiquiri.Carter@dhs.arkansas.gov>; Martha Cox <mcox@jimjacksonatty.com>  
**Subject:** Haley Hudson, et al v. DHS, Claim No. 230641

Kathryn,

In preparation for the hearing next week, I was reading the letter from the Commission dated December 12, 2023, which scheduled this hearing. For your convenience, I have attached a copy of the letter. The letter indicates that the hearing is for the Commission to consider Claimant's motion for partial summary judgment. My question is whether the Commission will also be considering DHS's cross-motion for summary judgment, which was filed on January 29, 2024. I would ask that the Commission considers both of the pending motions together. I also want to make sure that there is no confusion amongst anyone prior to the hearing next week. Will you please let me know whether the Commission is planning to consider both Claimant's motion for partial summary judgment and DHS's cross-motion for summary judgment at the hearing on May 9, 2024?

Sincerely,

**Vincent P. France**  
Deputy Chief Counsel for Litigation  
Office of Chief Counsel  
PO Box 1437, Slot S260  
Little Rock, AR 72203-1437  
Office Phone: 501-534-4127  
[Vincent.P.France@dhs.arkansas.gov](mailto:Vincent.P.France@dhs.arkansas.gov)





□□□

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**From:** [Vincent France](#)  
**To:** [Kathryn Irby](#)  
**Cc:** [jim@jimjacksonatty.com](mailto:jim@jimjacksonatty.com); [Daiquiri Carter](#); [Martha Cox](#)  
**Subject:** RE: Haley Hudson, et al v. DHS, Claim No. 230641  
**Date:** Monday, May 6, 2024 2:23:12 PM  
**Attachments:** [image.png](#)  
[image.png](#)

Kathryn,

This afternoon, Jim Jackson and I visited about this case. The parties are in agreement that the only two motions that need to be considered at the hearing on Thursday are the Claimants' Partial Motion for Summary Judgment and DHS's Motion for Summary Judgment. To the extent that there are any other pending motions by DHS, those are withdrawn. I am sure Mr. Jackson will correct me if I have misstated anything and will add anything additional. If the Commission needs anything more formal from me, please let me know.

Sincerely,

**Vincent P. France**  
Deputy Chief Counsel for Litigation  
Office of Chief Counsel  
PO Box 1437, Slot S260  
Little Rock, AR 72203-1437  
Office Phone: 501-534-4127  
[Vincent.P.France@dhs.arkansas.gov](mailto:Vincent.P.France@dhs.arkansas.gov)



□□□

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**From:** Kathryn Irby <Kathryn.Irby@arkansas.gov>  
**Sent:** Thursday, May 2, 2024 11:49 AM

**To:** Vincent France <Vincent.P.France@dhs.arkansas.gov>  
**Cc:** jim@jimjacksonatty.com; Daiquiri Carter <Daiquiri.Carter@dhs.arkansas.gov>; Martha Cox <mcox@jimjacksonatty.com>  
**Subject:** RE: Haley Hudson, et al v. DHS, Claim No. 230641

Vincent, the Commission will consider all pending motions at the May hearing.

Thanks,  
Kathryn

---

**From:** Vincent France <[Vincent.P.France@dhs.arkansas.gov](mailto:Vincent.P.France@dhs.arkansas.gov)>  
**Sent:** Thursday, May 2, 2024 11:20 AM  
**To:** Kathryn Irby <[Kathryn.Irby@arkansas.gov](mailto:Kathryn.Irby@arkansas.gov)>  
**Cc:** jim@jimjacksonatty.com; Daiquiri Carter <[Daiquiri.Carter@dhs.arkansas.gov](mailto:Daiquiri.Carter@dhs.arkansas.gov)>; Martha Cox <[mcox@jimjacksonatty.com](mailto:mcox@jimjacksonatty.com)>  
**Subject:** Haley Hudson, et al v. DHS, Claim No. 230641

Kathryn,

In preparation for the hearing next week, I was reading the letter from the Commission dated December 12, 2023, which scheduled this hearing. For your convenience, I have attached a copy of the letter. The letter indicates that the hearing is for the Commission to consider Claimant's motion for partial summary judgment. My question is whether the Commission will also be considering DHS's cross-motion for summary judgment, which was filed on January 29, 2024. I would ask that the Commission considers both of the pending motions together. I also want to make sure that there is no confusion amongst anyone prior to the hearing next week. Will you please let me know whether the Commission is planning to consider both Claimant's motion for partial summary judgment and DHS's cross-motion for summary judgment at the hearing on May 9, 2024?

Sincerely,

**Vincent P. France**  
Deputy Chief Counsel for Litigation  
Office of Chief Counsel  
PO Box 1437, Slot S260  
Little Rock, AR 72203-1437  
Office Phone: 501-534-4127  
[Vincent.P.France@dhs.arkansas.gov](mailto:Vincent.P.France@dhs.arkansas.gov)



□□□

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**From:** [Jim Jackson](#)  
**To:** [ASCC Pleadings; Vincent France](#)  
**Cc:** [Martha Cox; Daiquiri Carter](#)  
**Subject:** Haley Hudson, Special Adm"x of the Estate of Jacqueline Ashcraft, deceased and Permanent Guardian of [REDACTED] a Minor Child v. Arkansas Department of Human Services Arkansas State Claims Commission No. 230641 Incident Date: 6/11/2021  
**Date:** Thursday, May 30, 2024 2:42:33 PM  
**Attachments:** [image.png](#)  
[image.png](#)  
[image.png](#)  
[image.png](#)  
[Cover Letter to Vincent France re: \[REDACTED\] Supplemental Response to Discovery.pdf](#)  
[Claimant's 5th Supplemental Response to Interrogatories .pdf](#)

You don't often get email from jim@jimjacksonatty.com. [Learn why this is important](#)

Please find attached a cover letter and Claimant's 5<sup>th</sup> Supplemental Response to Interrogatories to be filed in the above referenced matter.

Thank you,  
 Jim



**Jim Jackson**

Jackson Law Firm  
[JimJacksonAtty.com](http://JimJacksonAtty.com)

700 W. Broadway  
 North Little Rock, AR 72114  
**P** (501) 823-3610  
**F** (501) 823-3611



May 30, 2024

VIA EMAIL

Mr. Vincent France  
Arkansas Department of Human Services  
Office of Chief Counsel  
P.O. Box 1437, Slot S-260  
Little Rock, AR 72203-1437

Re: *Haley Hudson, Special Adm'x of the Estate of Jacqueline Ashcraft, deceased and Permanent Guardian of [REDACTED], a Minor Child v. Arkansas Department of Human Services*  
Arkansas State Claims Commission No. 230641  
Incident Date: 6/11/2021 - Logan County

Dear Vincent:

Please find attached the Claimant's Fifth Supplemental Response to Discovery in the above referenced cause of action. Miss [REDACTED] received counseling services from [REDACTED] [REDACTED] this school year. Hannah Booth is the LCSW who provided these services. Please let me know if you want to take Ms. Booth's deposition.

Sincerely,

Jim R. Jackson

JRJ/mc  
Enclosure

## ARKANSAS STATE CLAIMS COMMISSION

HALEY HUDSON, SPECIAL ADMINISTRATRIX OF  
THE ESTATE OF JACQUELINE LYNN ASHCRAFT,  
DECEASED, AND HALEY HUDSON AS PERMANENT  
LEGAL GUARDIAN OF [REDACTED],  
A MINOR

CLAIMANT

v.

CC No. 230641

ARKANSAS DEPARTMENT OF  
HUMAN SERVICES

RESPONDENT

**CLAIMANT'S FIFTH SUPPLEMENTAL RESPONSES TO  
RESPONDENT'S FIRST SET OF INTERROGATORIES  
AND REQUESTS FOR PRODUCTION**

Comes the claimant, Haley Hudson, Special Administratrix of the Estate of Jacqueline Lynn Ashcraft, deceased, and Haley Hudson, as permanent legal guardian of [REDACTED], a minor, by and through her attorney, Jim R. Jackson, and for her Fifth Supplemental Responses to Respondent's First Set of Interrogatories and Requests for Production of Documents, states:

**INTERROGATORY NO. 11:** Please provide the name, address, email address, and telephone number of each expert who may be called as a witness, and for each such expert provide:

1. The subject matter concerning which the witness is expected to testify;
2. The material reviewed by each expert;
3. The facts known to the expert which relate to or form the basis of the mental impressions and opinions held by the expert;
4. The dates of all reports rendered by such experts, and the names and addresses of the persons having custody of same; and

5. The facts, opinions, and a summary of the findings upon which the expert witnesses concludes or generates.

**RESPONSE TO INTERROGATORY NO 11:** The claimant will call one of the medical doctors who provided palliative care at Mercy Hospital in Fort Smith to Ms. Ashcraft before she was pronounced dead. This witness will be deposed. A copy of Ms. Ashcraft’s medical records from Mercy Hospital in Fort Smith, containing the names and contact information for these providers are contained therein, is attached in the following hyperlink. *Ashcraft Mercy Records Bates Stamped.pdf*

These records contain the EMS records and Mercy Booneville Medical Records.

The claimant will call Ralph Scott, Ph.D., 6 [REDACTED] [REDACTED] to testify on economic loss and loss of life. A copy of Dr. Scott’s report is contained in a hyperlink which contains the facts, opinions, and a summary of his findings. Also attached is information regarding loss of life which will be presented to the Claims Commissioners with Dr. Scott’s testimony. Also attached is a copy of his billing record. Below is a summary of the economic damages: *Ashcraft Response to Discovery.pdf*

LOSS OF EARNING CAPACITY

- i. Past potential lifetime earnings: \$40,494.47
- ii. Future potential income earnings: \$103,465.39 to \$285,597.80
- iii. Past potential Fringe benefits: \$43,187

Total for projected income and & fringe benefits range: \$187,147.82 to \$423,919.95.

COST OF RAISING [REDACTED]

- iv. Present Value Cost \$161,866.43
- v. Tuition of four-year college \$113,300

COST OF RAISING [REDACTED]

- vi. Present Value Cost \$28,971.49

vii. Tuition of four-year college \$113,300

**LOSS OF LIFE CLAIM FOR ESTATE OF JACQUELINE ASHCRAFT, DEC.**

viii. Annual Value of \$278,711 x 33.6 years = \$9,364,689.60

**SUPPLEMENTAL RESPONSE TO INTERROGATORY NO. 11:**

Stanley B. Cain, P.O. Box 836, Waldron, AR 72958, [REDACTED]  
[REDACTED]

1. Mr. Cain is a certified accident reconstructionist who will testify on the subject of liability and causation.
2. Please see the seven items listed in "Items Received" which is contained on page one of Mr. Cain's Investigative Report.
3. The facts known to Mr. Cain are contained in the attached Investigative Report with calculations and photographs.
4. June 23, 2023.
5. The facts, opinions, and a summary of the findings are contained in the investigative report which is attached.

Garrett Andrews, Ph.D., Arkansas Neuroscience Institute and Research Center Building, 6020 Warden Road, Suite 210, Sherwood, AR 72120; phone: (501) 537-1388.

1. Dr. Andrews will testify about the nature and extent of [REDACTED]' Traumatic Brain Injury.
2. Medical records of [REDACTED].
3. Please see attached a copy of Dr. Andrews' report which contains his opinions.
4. Please see the above response.
5. Please see the above response.

**SECOND SUPPLEMENTAL RESPONSE TO INTERROGATORY NO. 11:**

The claimant will call Ms. Hannah Booth, Mid South Health Systems, Inc., 661 Addison Drive, Wynne, Arkansas 72396. Ms. Booth is a Licensed Clinical Social Worker “LCSW” who has treated [REDACTED] for issues related to the car wreck. Ms. Booth is a treating clinician for [REDACTED]. Ms. Booth has not produced an “expert report.” Ms. Booth’s testimony will be based upon her treatment of [REDACTED] in her clinic at [REDACTED].

**REQUEST FOR PRODUCTION NO. 11:** Please produce the following materials with respect to each expert witness Claimant may call at the trial of this case:

1. A copy of the witness’s most recent curriculum vitae;
2. A copy of all pertinent sections or excerpts of books, texts, treatises, articles, statutes, rules, regulations, guidelines, or any material which has been or may be referred to or relied upon by any expert witness in forming or explaining his or her opinions in connection with this case, together with citations to specific passages or sections relied upon (a list of the items above with specific citations to the relied-upon material will suffice as an alternative);
3. A copy of any computer programs, spreadsheets, analytical programs, statistical programs of any other computer-based tool utilized by any expert witness in any manner with regard to his/her opinions in this case (a list of the items above with specific citations to the relied-upon material will suffice as an alternative);
4. Copies of each spreadsheet, program, algorithm, statistical model, macro program, or other computer-based files created by or at the direction of any expert witness which has been utilized in any manner regarding his or her opinions in this case;
5. Copies of reports, correspondence, notes, documents, writings, diagrams, charts, records, photographs, video or audio recordings of any type, computer files, emails

or tangible items of any kind that have been supplied to any expert witness by Claimant, attorneys for Claimant, and/or any representative of the Claimant or Claimant's attorney.

6. Copies of reports, correspondence, notes, documents, writings, diagrams, charts, records, photographs, video, or audio recordings of any type, computer files, emails, or tangible items of any kind that any expert witness has provided to the Claimant, attorneys for Claimant, and/or any representative of Claimant's attorney;
7. Copies of reports, correspondence, notes, documents, writings, diagrams, charts, records, photographs, video or audio recordings of any type, computer files, emails, or tangible items of any kind made or prepared by any expert witness in connection with this case regardless of whether such materials were provided to any other person; and
8. All billing records, bills, invoices, and fee schedule an expert witness has prepared or provided in connection with this case.

**RESPONSE TO REQUEST FOR PRODUCTION NO. 11:** The claimant will provide this information as it becomes available.

**SUPPLEMENTAL RESPONSE TO REQUEST FOR PRODUCTION NO. 11:**

The report and supporting documentation from Dr. Ralph Scott has been previously provided in the claimant's original Response to Request for Production of Documents Nos. 9, 10, and 12.

**Stanley B. Cain:**

1. Please find attached a copy of Stanley Cain's C.V.
2. This information will be provided as discovery proceeds.

3. Attached to Mr. Cain's Investigative Report are 10 pages of analytical data produced by Mr. Cain's computer program.
4. Please see the attached Investigative Report prepared by Mr. Cain.
5. Please see the attached Investigative Report prepared by Mr. Cain with reference to "Items Received."
6. Please see the attached Investigative Report prepared by Mr. Cain.
7. Please see the attached Investigative Report prepared by Mr. Cain.
8. Please see the attached cover letter and copy of a retainer check.

Garrett Andrews, Ph.D.:

1. Please find attached a copy of Dr. Andrews' C.V.
2. This information will be provided as discovery proceeds.
3. Please see Dr. Andrews' report.
4. Not applicable.
5. Please find attached a cover letter and emails to Dr. Andrews.
6. Please find attached a copy of emails from Dr. Andrews and his report.
7. Please see attached a copy of Dr. Andrews' report.
8. Please see attached a copy of the retainer agreement and fee schedule from Dr. Andrews.

(The above referenced attachments can be found at the following hyperlink:

[Attachments to Clmt's 2nd Supp Answers to Discovery Bates 442-632.pdf](#)

**SECOND SUPPLEMENTAL RESPONSE TO REQUEST FOR PRODUCTION**

**NO. 11:**

Hannah Booth

1. The claimant does not have a C.V. of Ms. Booth as she is a LCSW who provides counseling treatment to students such as [REDACTED].

- 2. Not applicable.
- 3. Ms. Booth’s records have been requested and will be provided upon receipt.
- 4. Not applicable.
- 5. Not applicable.
- 6. Not applicable.
- 7. Not applicable.
- 8. Not applicable. Ms. Booth provides counseling to students at [REDACTED]  
[REDACTED].

Respectfully Submitted,

Jackson Law Firm  
 700 West Broadway Street, Suite 200  
 North Little Rock, AR 72114-5528  
 Phone: 501-823-3610  
 Fax: 501-823-3611  
 Jim@JimJacksonatty.com

BY:  /s/ Jim Jackson  
 Jim R. Jackson  
 Arkansas Bar No. 93209

**CERTIFICATE OF SERVICE**

I, Jim R. Jackson, hereby certify that I have mailed a copy of the foregoing to the respondent’s attorney, Vincent Frances, Esq. , by digital delivery via email transmission on May 30, 2024.

Mr. Vincent Frances  
 Assistant Deputy Chief Counsel  
 Arkansas Department of Human Services  
 P.O. Box 1437  
 Little Rock, AR 72203-1437  
[Vincent.P.France@DHS.Arkansas.gov](mailto:Vincent.P.France@DHS.Arkansas.gov)

/s/ Jim Jackson  
 Jim R. Jackson

**From:** [Jim Jackson](#)  
**To:** [ASCC Pleadings](#)  
**Cc:** [Vincent France](#); [Daiquiri Carter](#); [tammie@arkansasrealtimereporting.com](#); [support@arkansasrealtimereporting.com](#); [Martha Cox](#); [Arkansas Neuropsychology & Behavioral Health](#)  
**Subject:** Haley Hudson, Permanent Guardian of [REDACTED] v. Arkansas Department of Human Services, Arkansas State Claims Commission Matter 230641  
**Date:** Tuesday, June 4, 2024 1:09:35 PM  
**Attachments:** [image.png](#)  
[image.png](#)  
[image.png](#)  
[Notice of Deposition - Garrett Andrews.pdf](#)  
[Expert - \[REDACTED\] CV.pdf](#)  
[Exhibit - \[REDACTED\] Andrews.pdf](#)  
[Exhibit - \[REDACTED\].pdf](#)  
[Deposition upon Written Questions - Garrett Andrews.pdf](#)

You don't often get email from jim@jimjacksonatty.com. [Learn why this is important](#)

Please find attached a Notice of Deposition upon Written Questions for Garrett Andrews with a copy of the deposition and Exhibits for filing in the above referenced matter.

Thank you,  
 Jim

**Jim Jackson**

Jackson Law Firm  
[JimJacksonAtty.com](#)

700 W. Broadway  
 North Little Rock, AR 72114  
**P** (501) 823-3610  
**F** (501) 823-3611

**ARKANSAS STATE CLAIMS COMMISSION**

**HALEY HUDSON, SPECIAL ADMINISTRATRIX OF  
THE ESTATE OF JACQUELINE LYNN ASHCRAFT,  
DECEASED, AND HALEY HUDSON AS PERMANENT  
LEGAL GUARDIAN OF [REDACTED]  
[REDACTED], MINOR CHILDREN**

**CLAIMANT**

**VS.**

**CC NO. 230641**

**ARKANSAS DEPARTMENT OF  
HUMAN SERVICES**

**RESPONDENT**

**CLAIMANT'S NOTICE OF DEPOSITION UPON WRITTEN QUESTIONS**

TO: Arkansas Department of Human Services  
c/o Mr. Vincent France  
Assistant Deputy Chief Counsel  
Arkansas Department of Human Services  
P.O. Box 1437  
Little Rock, AR 72203-1437

NOTICE is hereby given that the plaintiff will take the Deposition Upon Written Questions pursuant to Rule 31 of the Arkansas Rules of Civil Procedure of Garrett Andrews, Arkansas Neuroscience Institute and Research Center Building, 6020 Warden Rd., Suite 210, Sherwood, AR 72120 (501) 537-1388 administered by Tammie Foreman, Certified Court Reporter, Arkansas Real-Time Reporting, 10310 W. Markham St., Little Rock, AR. All, for all purposes. Attached are the Deposition Questions submitted by the Claimant.

Respectfully submitted,

BY:  /s/ Jim Jackson

Jim R. Jackson, AR Bar #93-209  
Jackson Law Firm  
700 West Broadway Street, Suite 200  
North Little Rock, AR 72114-5528  
(501) 823-3610 phone  
(501) 823-3611 facsimile  
*Jim@JimJacksonatty.com*

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the above and foregoing Notice of Deposition Upon Written Questions was served on the following counsel of record by email on June 4, 2024, to:

Mr. Vincent France  
Assistant Deputy Chief Counsel  
Arkansas Department of Human Services  
P.O. Box 1437  
Little Rock, AR 72203-1437

/s/ Jim R. Jackson

Jim R. Jackson

**Curriculum Vitae****Garrett Andrews, PsyD, ABPP/CN  
Board Certified Neuropsychologist****General Information**

Office Address: Arkansas Neuropsychology & Behavioral Health located at the  
Arkansas Neuroscience and Research Center  
6020 Warden Rd, Suite 210  
Sherwood, AR 72120  
501.537.1388 (Office)

**Education**

- 2005: Doctorate in Psychology: Clinical Psychology, (Specialty area: Neuropsychology), APA Accredited Program
- 2001: Masters of Art: Sport/Exercise Psychology, APA Accredited Program
- 1998: Bachelors of Art: Major: Psychology, Minor: Physical Education

**Board Certification**

- 2010: Certified Forensic Examiner, Arkansas State Hospital, Division of Behavioral Health Services, (Completion of Forensic Competency and Responsibility Evaluation Training for Licensed Psychologists and Psychiatrists)
- 2009: Diplomate, American Board of Clinical Neuropsychology (American Academy of Clinical Neuropsychology)
- 2009: Certified Brain Injury Specialist Trainer (Brain Injury Association of America)

**Licensure**

- 2007: Arkansas State License (07-17P)

**Active Hospital/Medical Appointments**

St. Vincent North (Encompass Health Rehab), North Little Rock, AR  
Pinnacle Point Behavioral Healthcare, Little Rock, AR  
Bridgeway Behavioral Health, N. Little Rock, AR

**Professional Positions**

- |                            |                                                                                                                                                                    |
|----------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| June 2009-Present          | Chief of Staff, Arkansas Neuropsychology and Behavioral Health, Board Certified Neuropsychologist, Sherwood, AR                                                    |
| January 2015-Present       | Medical Program Director, Neuropsychology, Encompass Health Rehabilitation, Sherwood, AR                                                                           |
| October 2015-December 2019 | Chief of Service, Vocational Rehabilitation and Neurocognitive Rehabilitation Services, Central Arkansas Veterans Healthcare Administration, North Little Rock, AR |

Updated March 2020

|                                |
|--------------------------------|
| <b>EXHIBIT</b><br><br><b>1</b> |
|--------------------------------|

Garrett Andrews, PsyD, ABPP  
Page 2 of 5

|                                 |                                                                                                                                                    |
|---------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------|
| October 2014-December 2019      | Director of Post-Doctoral Neuropsychology Training, Central Arkansas Veterans Healthcare Administration, North Little Rock, AR                     |
| March 2011-June 2019            | Director of Psychology Doctoral Training, Central Arkansas Veterans Healthcare Administration, North Little Rock, AR                               |
| March 2008-December 2019        | Program Manager, North Little Rock VA Polytrauma Clinic, Neuropsychology, North Little Rock, AR                                                    |
| January 2012-April 2016         | Adjunct Professor, University of Arkansas at Little Rock, Little Rock, AR                                                                          |
| October 2011-October 2015       | Program Manager, Neuropsychology and Rehabilitation Psychology Service, Central Arkansas Veterans Healthcare Administration, North Little Rock, AR |
| September 2009-Sept. 2012       | Independent Consulting Neuropsychologist, Deer Oaks Behavioral Health, Little Rock, AR                                                             |
| September 2009-Jan. 2011        | Adjunct Professor, Itawamba Community College, Fulton, MS                                                                                          |
| March 2008-February 2011        | Assistant Director of Psychology Doctoral Training, Central Arkansas VA, North Little Rock, AR                                                     |
| March 2008-October 2011         | Staff Neuropsychologist, Mental Health Service Central Arkansas Veterans Administration, N. Little Rock, AR                                        |
| July 2007-March 2008            | Assistant Clinical Professor & Neuropsychologist University of Arkansas for Medical Sciences Department of Geriatrics, Little Rock, AR             |
| August 2002-August 2003         | Psychiatric Technician III Cox Hospital, North, Adult Inpatient Psychiatric Unit Springfield, MO                                                   |
| August 1998-May 1999            | Parole and Probation Officer, Arkansas Department of Community Correction, El Dorado, AR.                                                          |
| <b><u>Clinical Training</u></b> |                                                                                                                                                    |
| Sept 2005- Sept 2007            | Geisinger Medical Center (Level I Trauma Center), Post-Doctoral Neuropsychology Fellowship, Danville, PA (APPCN Match)                             |
| Sept 2004-Sept 2005             | Veterans Affairs Medical Center of the Black Hills (Intern), Neuropsychology and Geropsychology Internship Track, Fort Meade, SD (APA Accredited)  |

Updated March 2020

|                          |                                                                                                                                              |
|--------------------------|----------------------------------------------------------------------------------------------------------------------------------------------|
| January 2004-June 2004   | St. John's Regional Health Center (Practicum student), Neuropsychology and Rehabilitation, Physical Rehabilitation Services, Springfield, MO |
| July 2003-December 2003  | Neuropsychological Associates of Southwest Missouri (Practicum student), Springfield, MO                                                     |
| January 2003-June 2004   | Burrell Behavioral Health (Research student), Springfield, MO                                                                                |
| July 2003-December 2003  | United States Medical Center for Federal Prisoners (Practicum student), Springfield, MO                                                      |
| July 2003-December 2003  | Piney Ridge Center, Inc. (Practicum student), Ft. Leonard Wood, MO                                                                           |
| October 2003-Nov 2003    | Pre-Employment Evaluations for Springfield Police Department (Practicum student), Springfield, MO                                            |
| September 2002-July 2003 | Health and Rehabilitation Laboratory (Practicum student), Forest Institute, Springfield, MO                                                  |
| August 2000-June 2001    | Phoenix College Baseball Team (Sport Psychology Practicum student), Phoenix, AZ                                                              |
| Sept 1997-April 1998     | Missouri State Prison (Undergraduate Intern), Fulton Reception and Diagnostic Center, Fulton, MO                                             |

### **Publications & Presentations**

**Andrews, G.** (2019) *Neuropsychological Development in relation to the 2011 Miller v. Alabama Supreme Court Ruling*. Guest Lecture at UALR William H. Bowen School of Law.

**Andrews, G.** (2019) *How long does it take to recovery after a Traumatic Brain Injury?* American Academy of Clinical Neuropsychology, "Ask the Experts" Series.

Paulson, J., Oswald, T., Fazio, R., & **Andrews, G.** (2018) *Replication of the Embedded Performance Validity Index within the Memory Module of the Neuropsychological Assessment Battery (NAB)*. 46th Annual Meeting of the International Neuropsychological Society, Washington, DC.

**Andrews, G.** (2017). 2017 VA Mental Health Summit. The Well-Rounded Veteran (Building Communities of Support for the Whole Veteran). Panel Speaker for Vocational Rehabilitation in the VA. Little Rock, AR

Oswald, T., Fazio, R., & **Andrews, G.** (2017). *Embedded Performance Validity Index within the Memory Module of the Neuropsychological Assessment Battery (NAB): A Pilot Study*. 45th Annual Meeting of the International Neuropsychological Society, New Orleans, LA.

**Andrews, G.** (2016). *Post-Traumatic Stress Disorder and Brain Injury*. Arkansas Trauma Rehabilitation Conference. Little Rock, AR

- Andrews, G.** (2014). *2014 VA Mental Health Summit*. The Well-Rounded Veteran (Building Communities of Support for the Whole Veteran). Panel Speaker for PTSD and TBI in the VA. Little Rock, AR
- Andrews, G.** (2014). *Traumatic Brain Injury Cases: Doctor and Attorney Perspectives*. NBI: National Business Institute Presentation Series. Little Rock, AR
- Andrews, G.,** (2013). Keynote Speaker for UALR Psi Chi Annual Meeting. Little Rock, AR.
- Andrews, G.,** (2012). Panel Speaker for Association of Black Psychologists of Arkansas. Little Rock, AR.
- Andrews, G.,** Fahoum, Y., (2011). *Brain Injury and Cognitive Rehabilitation*. Presentation to the Brain Injury Association of Tennessee, Memphis Medical Center, Memphis, TN.
- Andrews, G.,** (2011). *Geriatric Assessment of Dementia Syndromes*. Presentation to the AGECC - Arkansas Geriatric Education Collaborative.
- Andrews, G.,** (2010). *Psychiatric sequelae following traumatic brain injury*. Arkansas Brain Injury Association Annual Conference, Little Rock, AR.
- Andrews, G.,** (2010). Forensic Neuropsychological Evaluation in Moderate-to-Severe Brain Injury: Failed Symptom Validity Measures in the Presence of Credible Personality and Behavioral Changes. *Archives of Clinical Neuropsychology (ABSTRACTS), Volume 25, Issue 6, 477-478.*
- Andrews, G.,** (2010), *Forensic Grand Rounds*. Forensic Neuropsychological Evaluation in Moderate-to-Severe Brain Injury: Failed Symptom Validity Measures in the Presence of Credible Personality and Behavioral Changes. Annual Conference for the National Academy of Neuropsychology, Vancouver, Canada.
- Andrews, G.,** (2010), *Mild traumatic brain injury and psychiatric sequelae*. VA Social Workers' Annual Workshop. Central Arkansas Veterans Healthcare System.
- Thaut, M.H., Gardiner, J.C., Holmberg, D., Horwitz, J.L. Kent, L., **Andrews, G.,** Donelan, B., & McIntosh, G.R. (2009). Neurologic Music Therapy Improves Executive Function and Emotional Adjustment in Traumatic Brain Injury Rehabilitation. *Annals of the New York Academy of Sciences, 1169(1)*, 406-416.
- Andrews, G.,** (2008) *Mild Traumatic Brain Injury and Post concussive symptoms*. Arkansas Affiliate of the Association on Higher Education and Disability (Ark-AHEAD) Fall Workshop. Pulaski Technical College.
- Andrews, G.,** (2008) *Neuropsychological assessment with geriatric patients*. University of Arkansas for Medical Sciences, Department of Geriatrics, multi-disciplinary training week.
- Andrews, G.,** Cassidy, S. (2007) *Neuropsychology consultation within a geriatric primary care setting*. Department of Geriatrics Grand Rounds, University of Arkansas for Medical Sciences.

**Andrews, G.,** (2007). *Differential Diagnosis of Dementia Syndromes*. Psychiatry Grand Rounds, Geisinger Medical Center.

**Andrews, G.,** Barry, D., Wilson, B. (2006). *Use of a Modified Average Impairment Rating: Substituting Symbol Search for Picture Arrangement*. North American Brain Injury Society, Conference of the Americas.

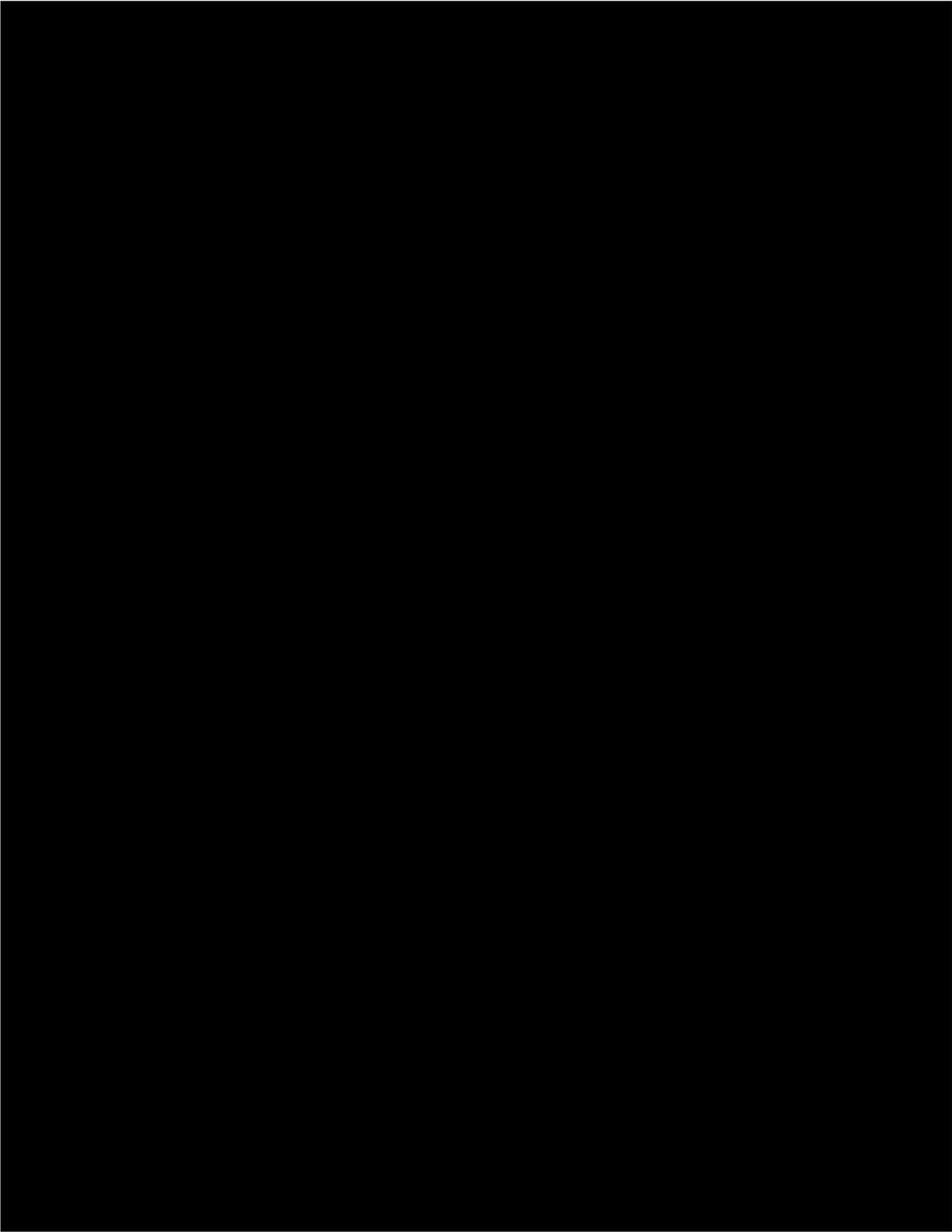
**Andrews, G.,** (2004). *Concussion in Athletes: Post Concussive Syndrome*. Black Hills State University Seminar for Injury in Sport.

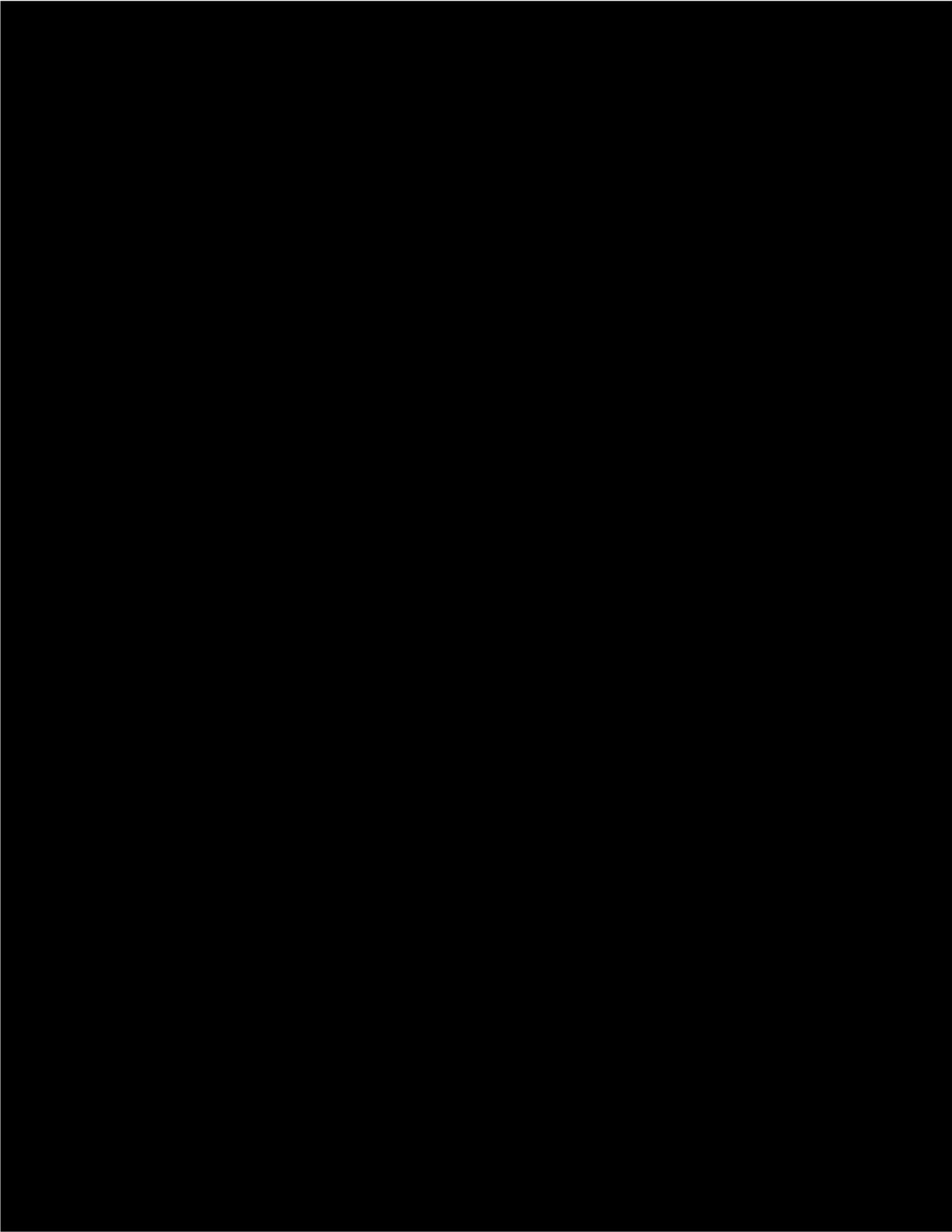
**Andrews, G.,** Boling, E., Burns, K., Jones, D., (1998). *Soccer Players Hostility Levels as a Result of Gender, Game Outcome, and Game Preparation*. 17<sup>th</sup> Annual Mid-America Undergraduate Psychology Conference.

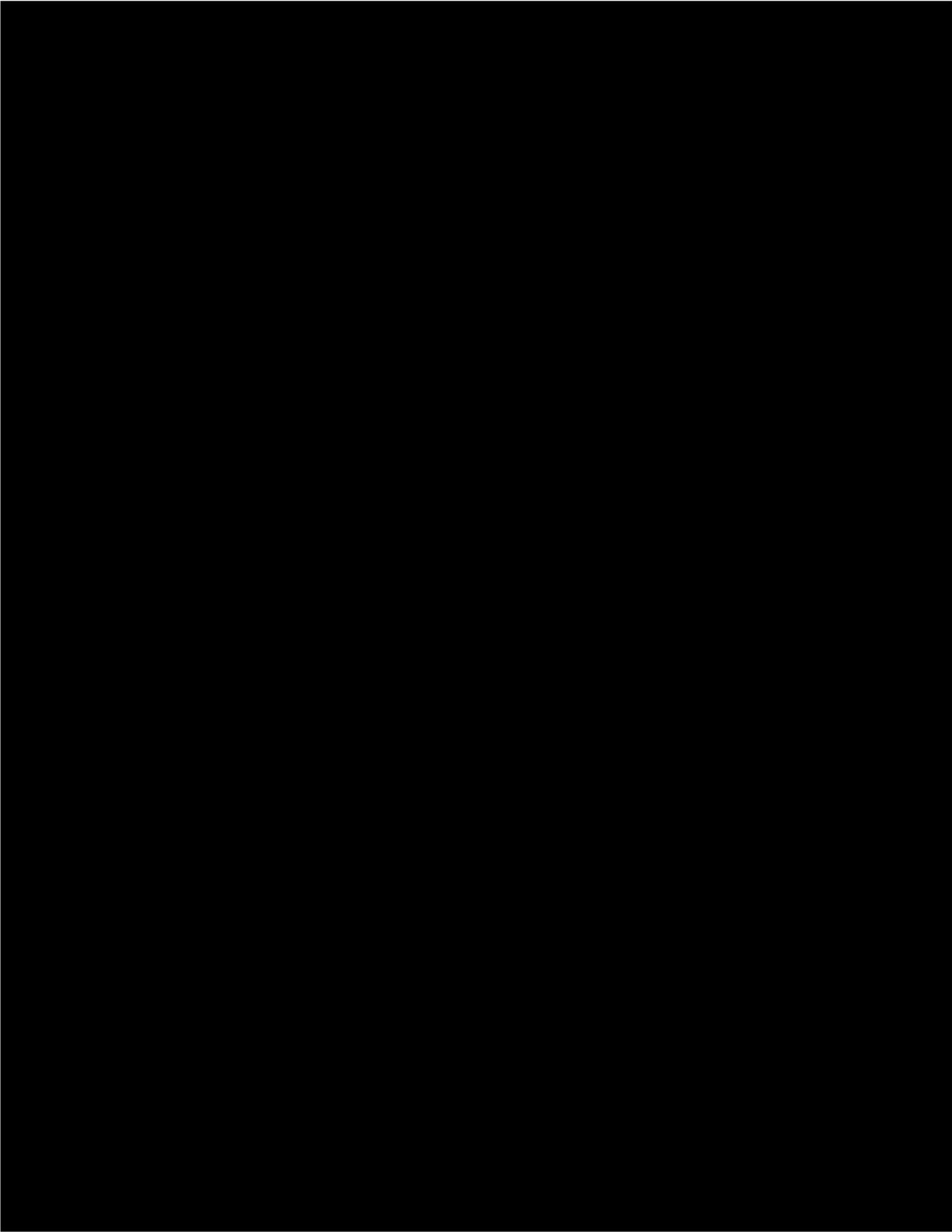
Gates, C., Drew, C., **Andrews, G.,** Jaeger, T., (1997). *Tracking and Static Acuity in Peripheral Vision*. 16<sup>th</sup> Annual Mid-America Undergraduate Psychology Conference.

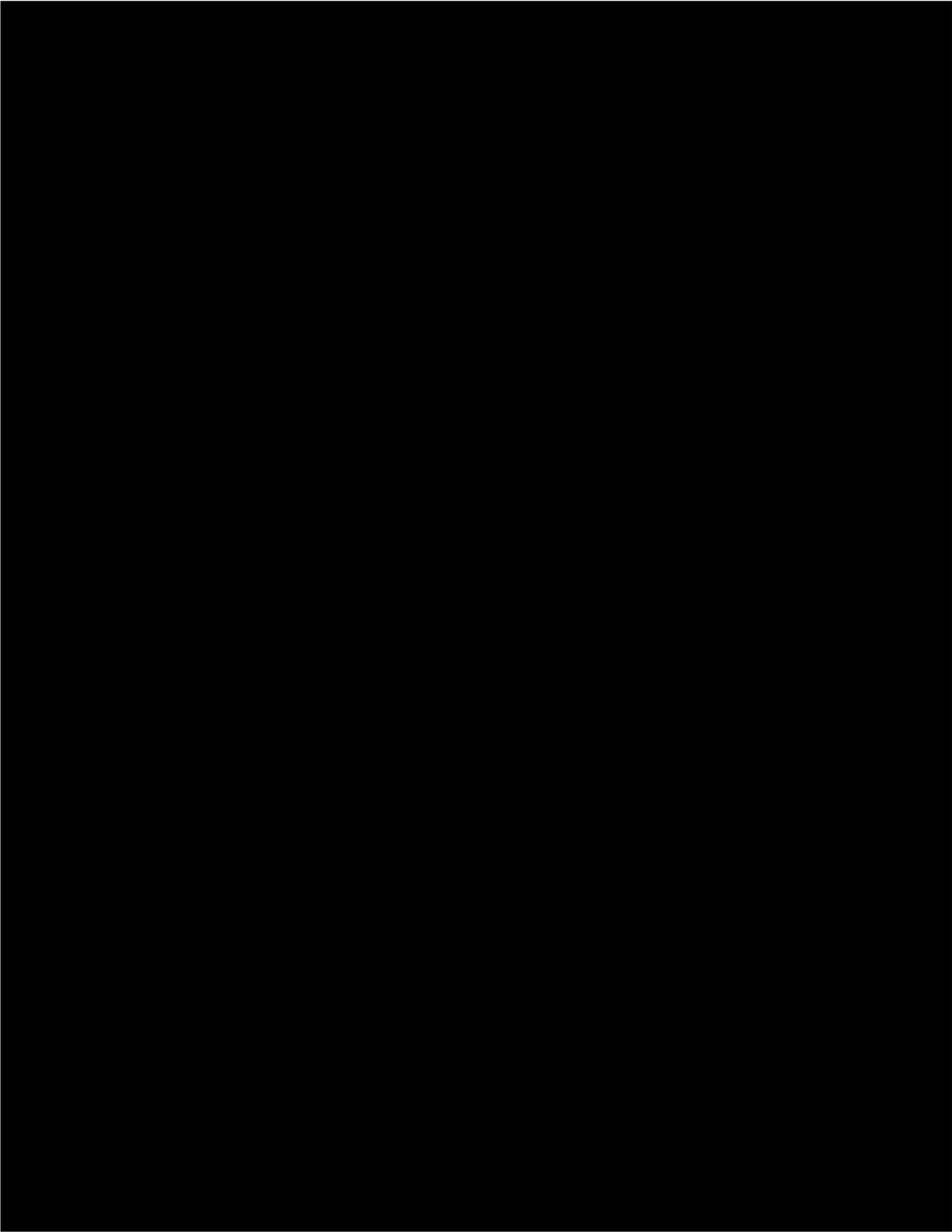
#### **Professional Committees, Organizations & Awards**

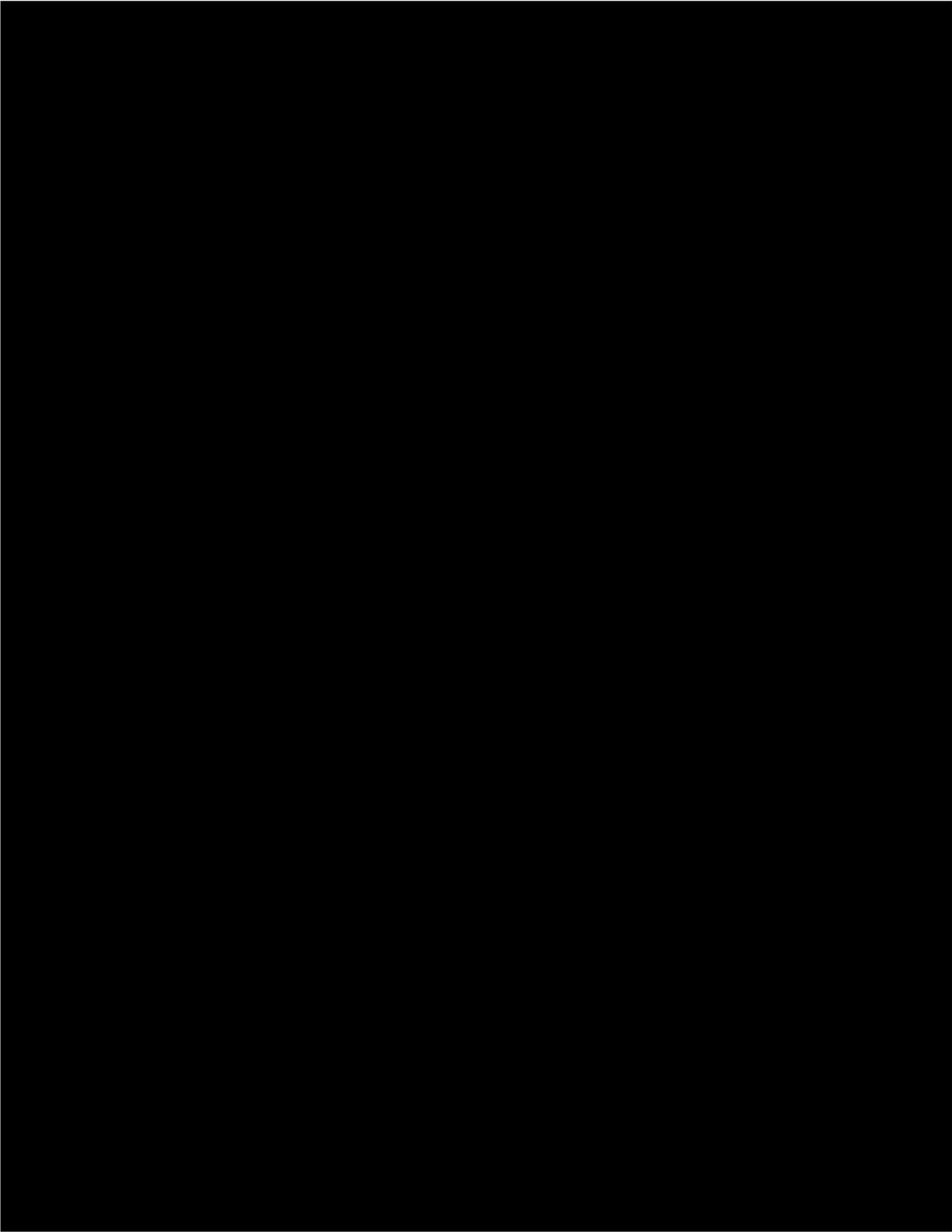
Arkansas Psychological Association (ArPA) Member  
Green Belt (Lean Healthcare Training) (completed 2013)  
American Board of Professional Psychology (Oct 2009-present)  
Diplomate, American Board of Clinical Neuropsychology (Oct 2009-present)  
National Association of Neuropsychology (2005)  
Brain Injury Association of Arkansas (Board Member, March 2009-March 2011)  
Brain Injury Association of Arkansas (Vice President, Jan 2010- Jan 2011)  
Certified Brain Injury Specialist Trainer (Oct 2009), Brain Injury Association of America  
CAVHS Evidence Based Assessment Lead  
CAVHS Vocational Rehabilitation Resource Committee (Committee Member)  
CAVHS Vocational Rehabilitation System Redesign Team (Committee Member)  
CAVHS Early Career Psychologist Committee (Chair 2010)  
CAVHS Awards Committee (Committee Member)  
2008 CAVHS Community Service Award

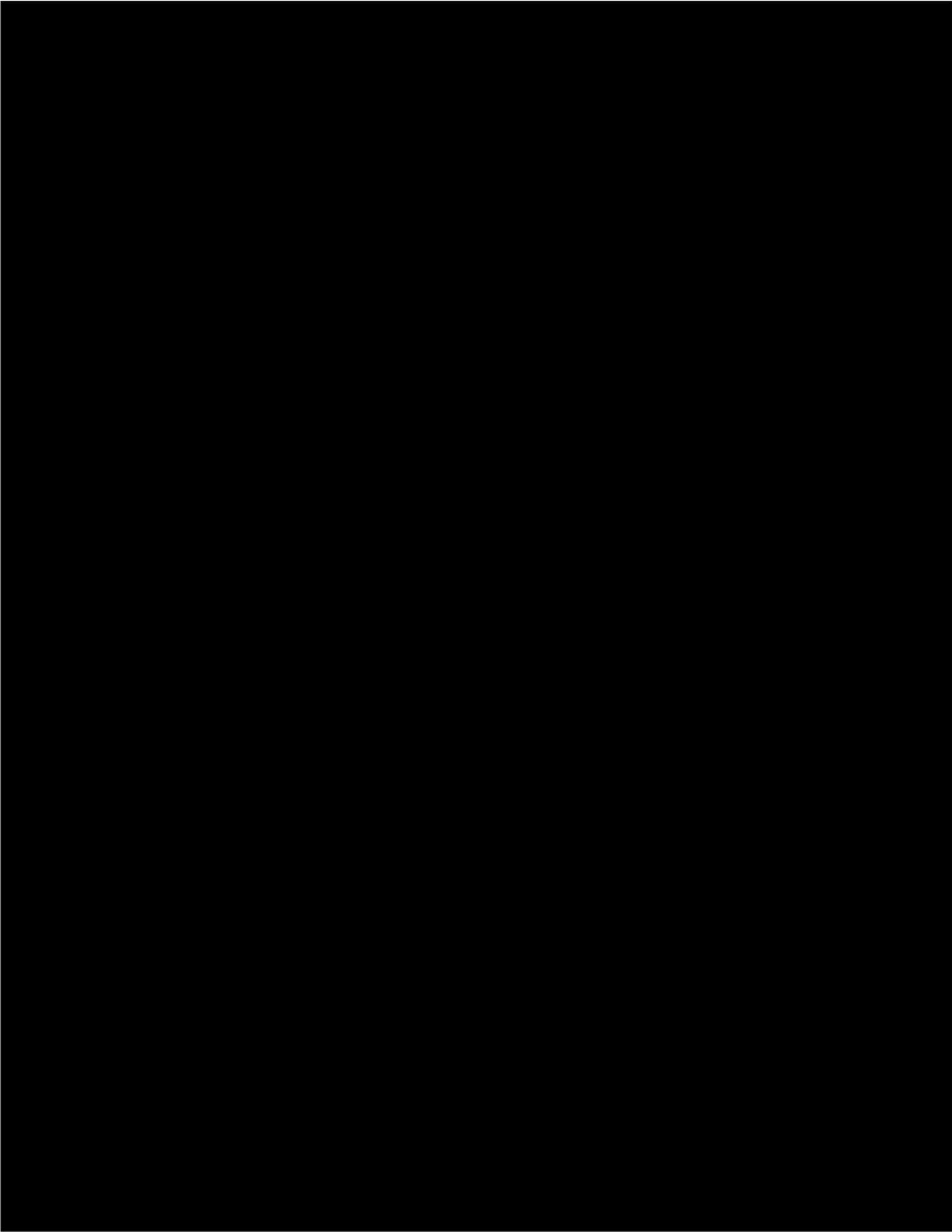


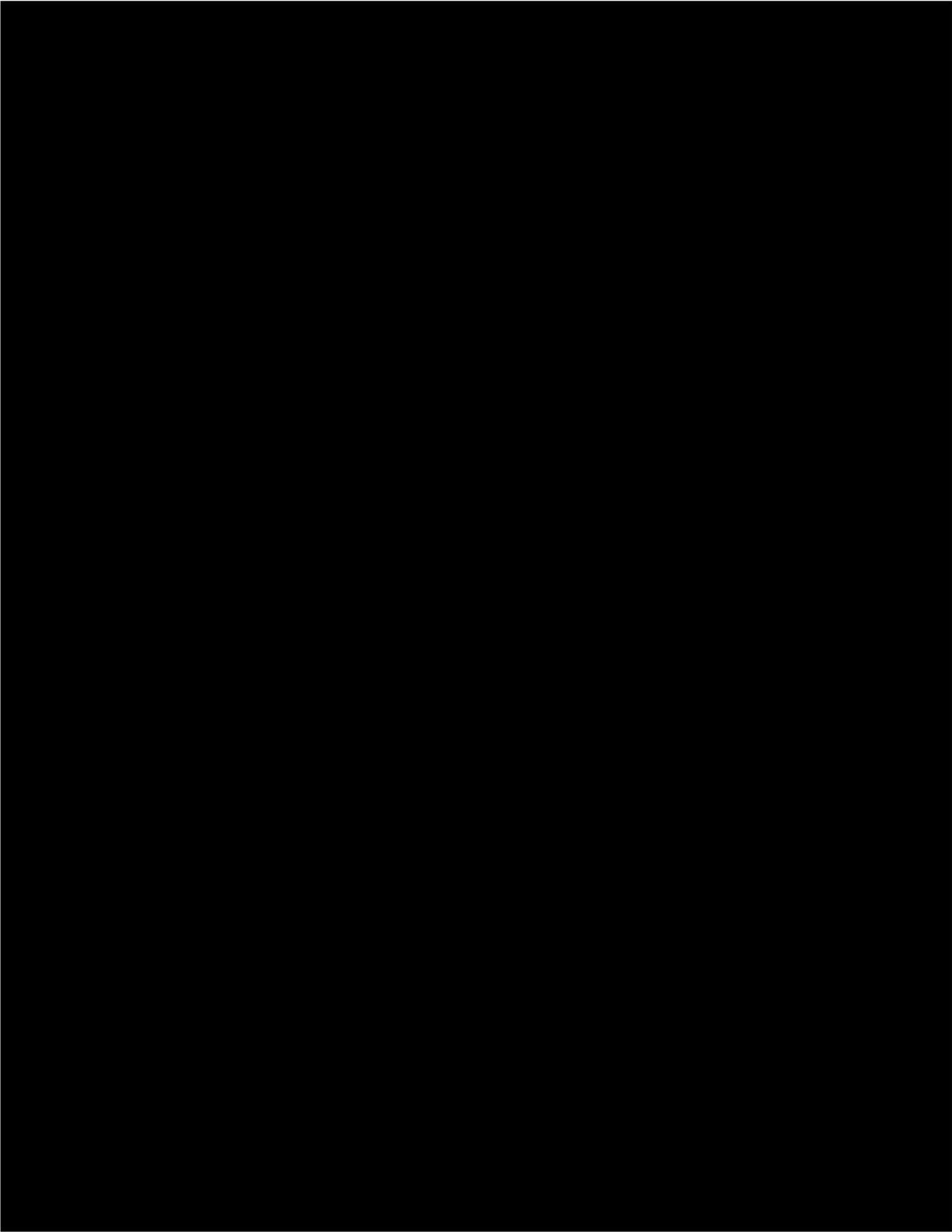


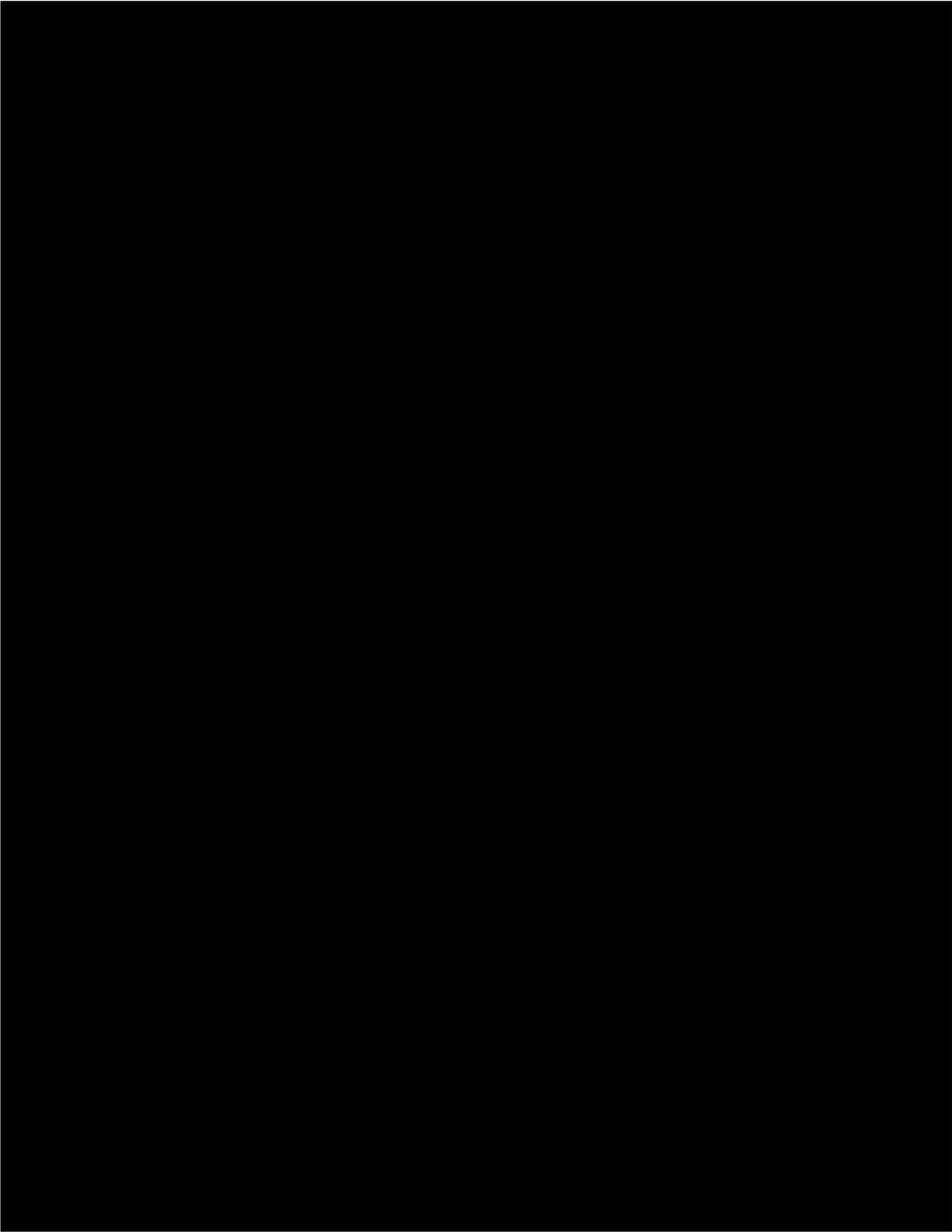


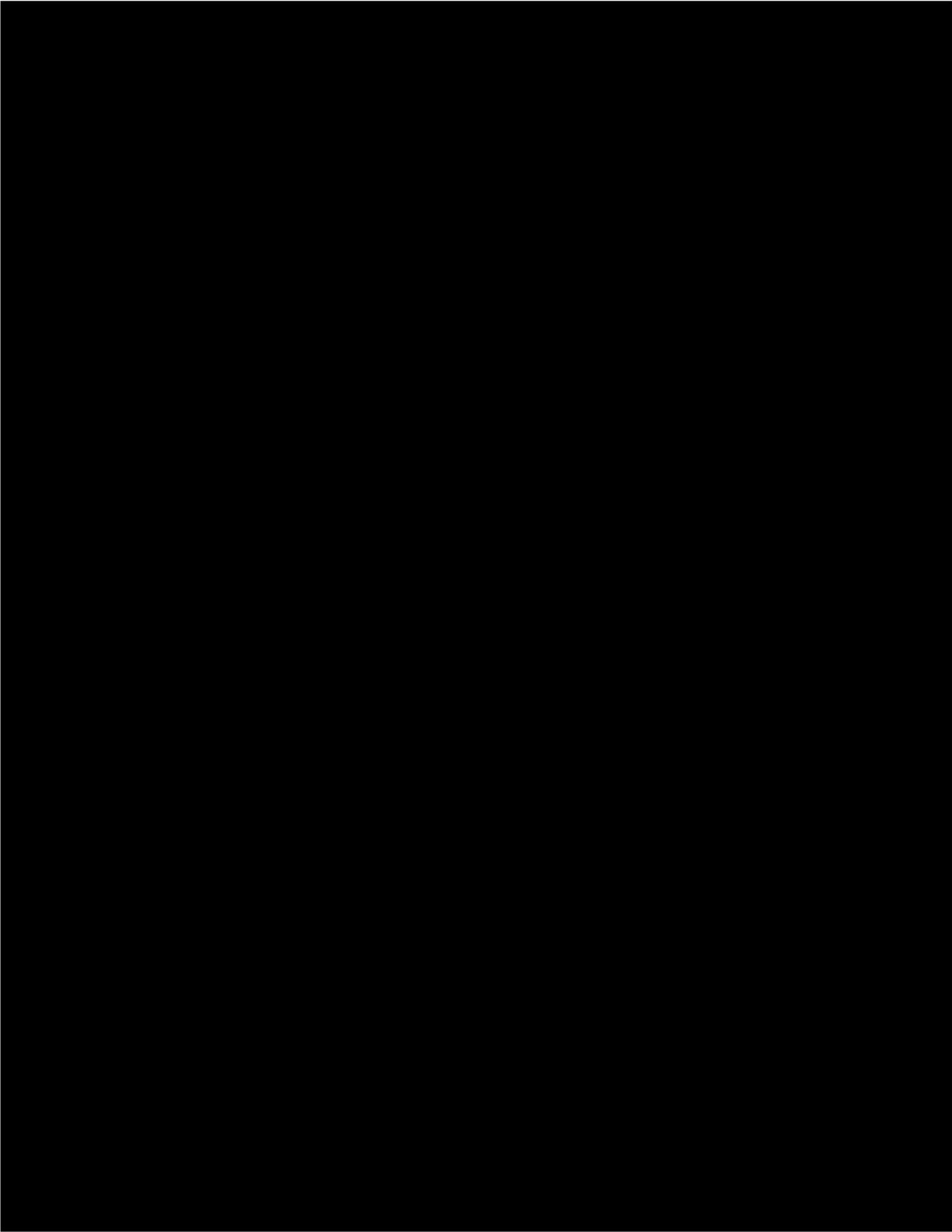


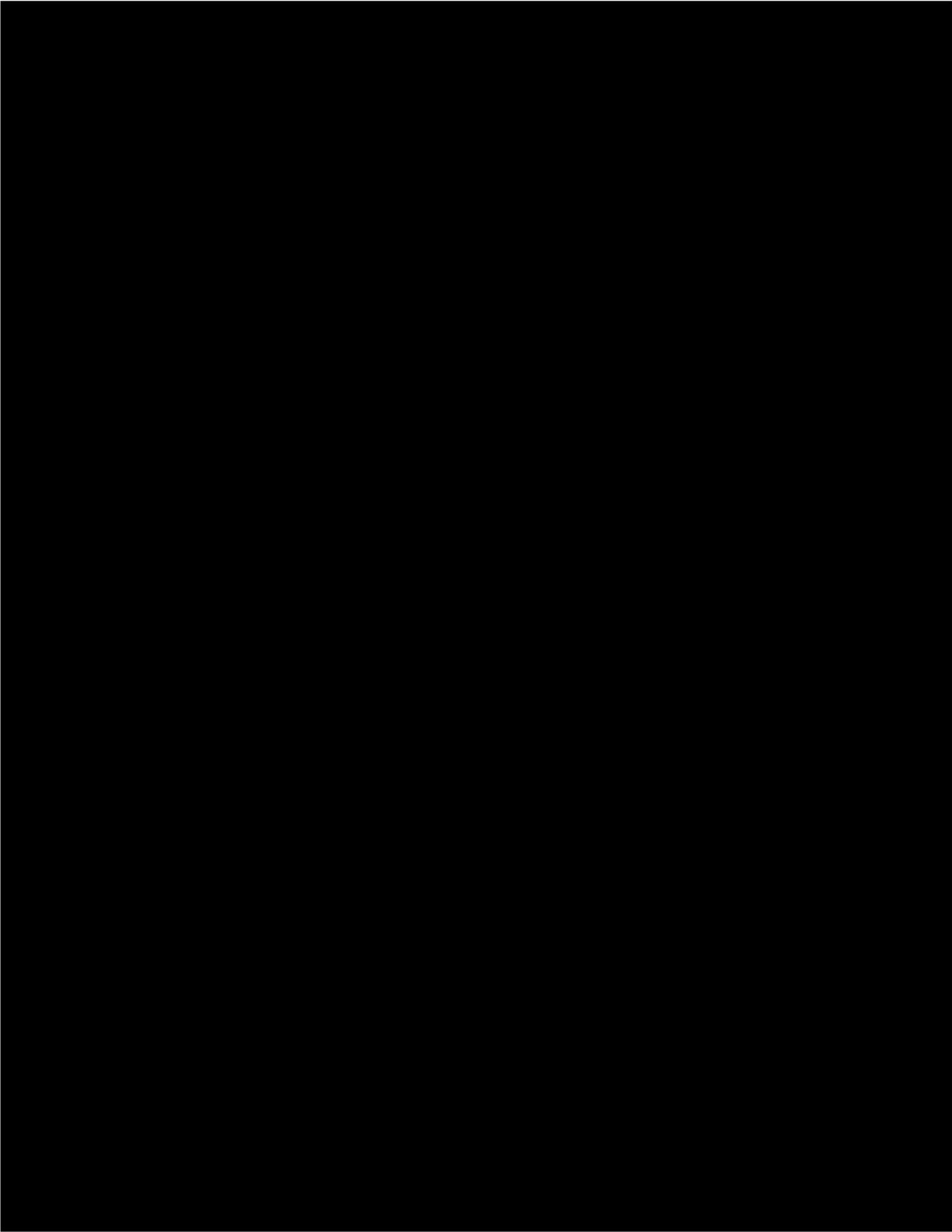


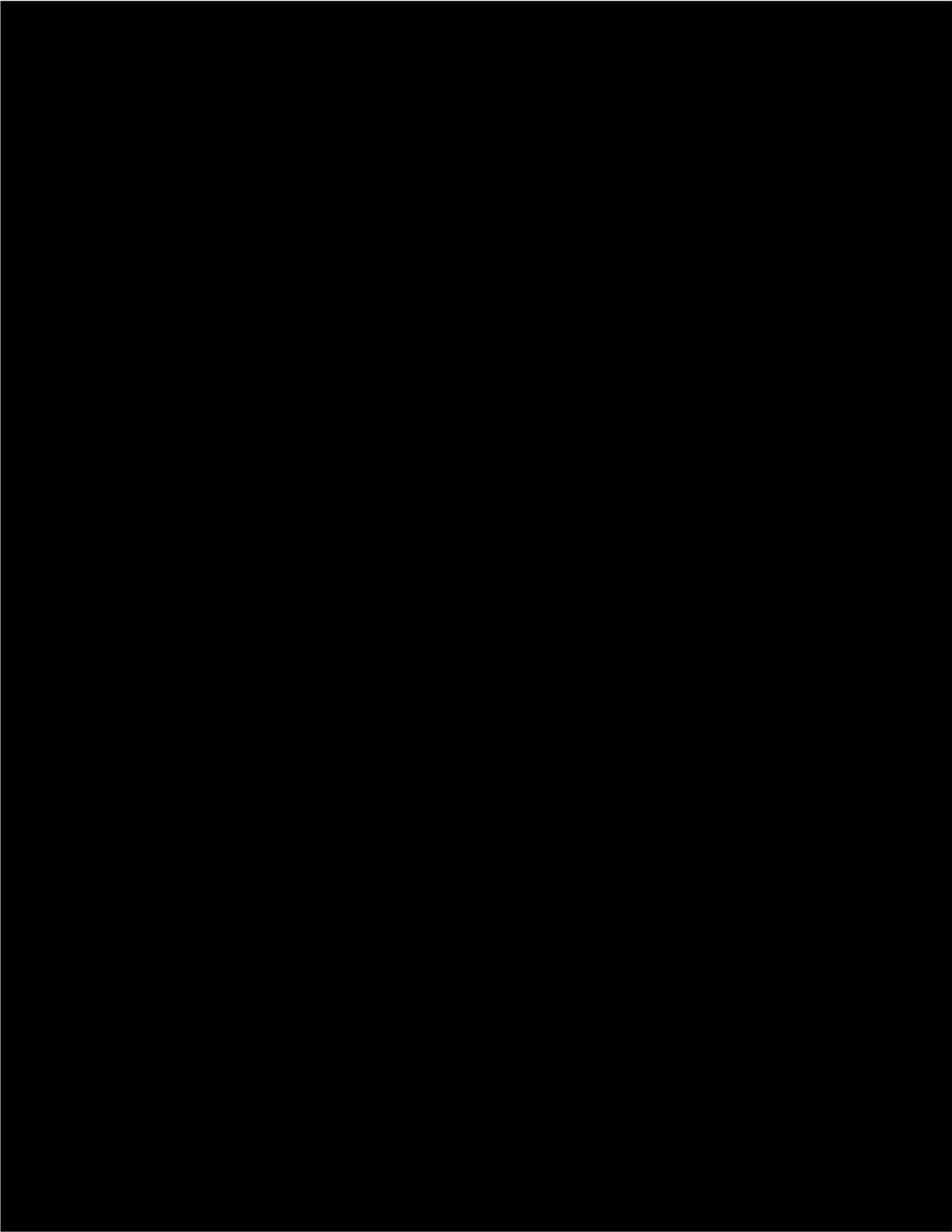


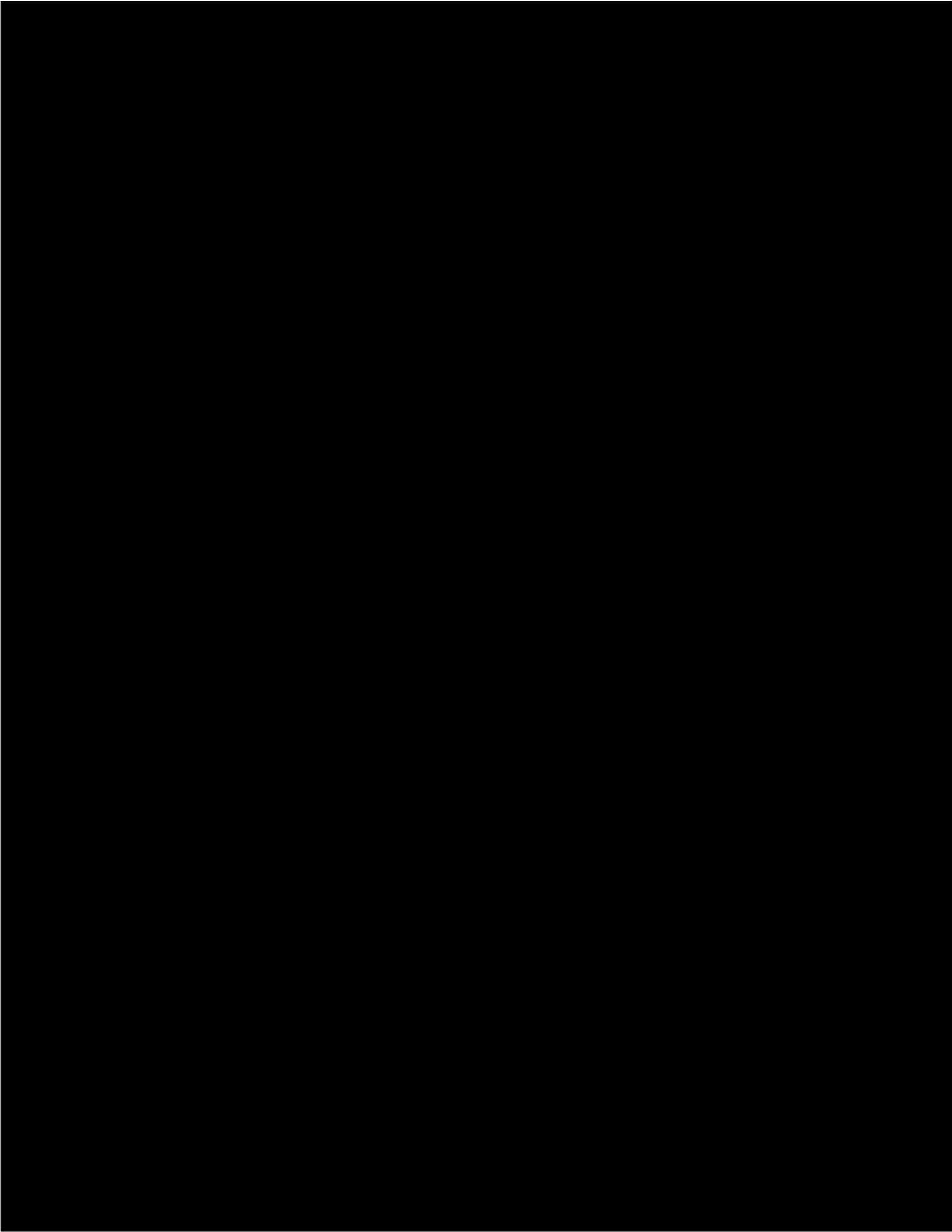


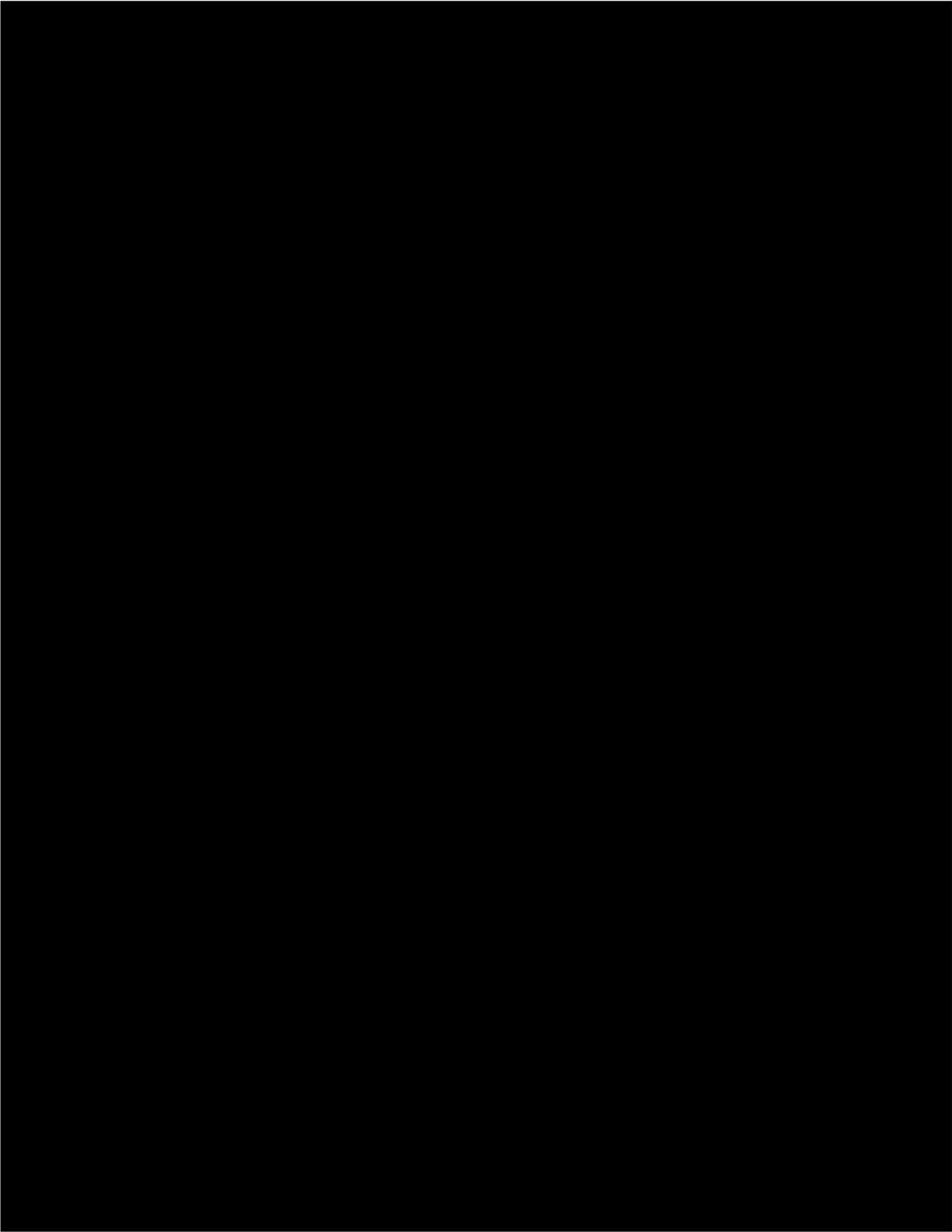












ARKANSAS STATE CLAIMS COMMISSION

CLAIMANT

HALEY HUDSON, SPECIAL ADMINISTRATRIX OF THE ESTATE OF JACQUELINE LYNN ASHCRAFT, DECEASED, AND HALEY HUDSON AS PERMANENT LEGAL GUARDIAN OF [REDACTED] A MINOR CHILD

VS.

CC NO. 230641

ARKANSAS DEPARTMENT OF HUMAN SERVICES

RESPONDENT

DEPOSITION OF GARRETT ANDREWS UPON WRITTEN QUESTIONS BY CLAIMANT

Comes now Garrett Andrews, and after being duly sworn upon oath according to law, hereby states the following:

Q: Will you state your name and your place of employment?

A:

Q: Can you provide us with a copy of your CV which we will have marked as Exhibit 1 to your deposition?

A:

Q: Did attorney Jim Jackson refer [REDACTED] to your clinic for a Forensic Neuropsychological Examination that was performed on April 4, 2023?

A:

Q: Is \$5,500.00 your standard retainer agreement for performing a Forensic Neuropsychological Examination?

A.

Q. I will represent to you that attached as Exhibit 2 is a 3- page cover letter from my law firm, an executed Retainer Agreement and a retainer check in the amount of \$5,500.00. Did you receive the items listed in Exhibit 2 as part of your engagement to perform a Forensic Neuropsychological Examination on [REDACTED]?

A.

Q: Are the results of the Forensic Neuropsychological Examination that you performed on [REDACTED] contained in the document attached to this deposition as Exhibit 3?

A:

Q. Did you identify the name of the medical reports you relied upon for obtaining a history for [REDACTED] in your report?

A.

Q. Are the results of the testing you performed contained in the Forensic Neuropsychological Examination attached as Exhibit 2?

A.

Q. Are your findings, conclusions and recommendations in the Forensic Neuropsychological Examination report attached as Exhibit 2?

A.

Q. Based upon your education, medical training, history of treating patients who have experienced a [REDACTED]

[REDACTED]

[REDACTED]

A.

Q. What is your opinion?

A.

Q. Based upon your education, medical training, history of treating patients who have experienced [REDACTED]

[REDACTED]

[REDACTED]

A.

Q. What is your opinion?

A.

Q. Are all of your opinions given in this deposition given within a reasonable degree of medical probability?

A.

Thank you.

This concludes the deposition of Garrett Andrews, PsyD, ABPP.

COURT REPORTER CERTIFICATION

(TO BE COMPLETED BY COURT REPORTER)

**From:** [Jim Jackson](#)  
**To:** [ASCC Pleadings](#)  
**Cc:** [Vincent France](#); [Daiquiri Carter](#); [Martha Cox](#); [Kirk Dougherty](#)  
**Subject:** Ark. Claims Comm No. 230641 -  
**Date:** Tuesday, June 11, 2024 3:01:42 PM  
**Attachments:** [image.png](#)  
[image.png](#)  
[image.png](#)  
[image.png](#)  
[Deposition upon written questions of Chris Bell, MD.pdf](#)  
[Notice of Deposition of Christopher Bell MD.pdf](#)

You don't often get email from jim@jimjacksonatty.com. [Learn why this is important](#)

Please find attached a Notice of Deposition Upon Written Questions to be filed in the above referenced matter.

Thank you,  
Jim



**Jim Jackson**

Jackson Law Firm  
[JimJacksonAtty.com](http://JimJacksonAtty.com)

700 W. Broadway  
North Little Rock, AR 72114  
P (501) 823-3610  
F (501) 823-3611  
□ □ □

## ARKANSAS STATE CLAIMS COMMISSION

HALEY HUDSON, SPECIAL ADMINISTRATRIX OF  
THE ESTATE OF JACQUELINE LYNN ASHCRAFT,  
DECEASED, AND HALEY HUDSON AS PERMANENT  
LEGAL GUARDIAN OF [REDACTED]  
[REDACTED], MINOR CHILDREN

CLAIMANT

VS.

CC NO. 230641

ARKANSAS DEPARTMENT OF  
HUMAN SERVICES

RESPONDENT

CLAIMANT'S NOTICE OF DEPOSITION UPON WRITTEN QUESTIONS

TO: Arkansas Department of Human Services  
c/o Mr. Vincent France  
Assistant Deputy Chief Counsel  
Arkansas Department of Human Services  
P.O. Box 1437  
Little Rock, AR 72203-1437

NOTICE is hereby given that the plaintiff will take the Deposition Upon Written Questions pursuant to Rule 31 of the Arkansas Rules of Civil Procedure of Dr. Christopher Bell, care of Attorney Kirkman T. Dougherty, Hardin, Jesson & Terry, PLC, 5000 Rogers Avenue, Suite 500, Fort Smith, Arkansas 72917 (479) 452-2200. Said deposition to be administered by Arkansas Real Time Reporting, Certified Court Reporter. The deposition may be used for all purposes. Attached are the Deposition Questions submitted by the Claimant.

Respectfully submitted,

BY:  /s/ Jim Jackson

Jim R. Jackson, AR Bar #93-209  
Jackson Law Firm  
700 West Broadway Street, Suite 200  
North Little Rock, AR 72114-5528  
(501) 823-3610 phone  
(501) 823-3611 facsimile  
*Jim@JimJacksonatty.com*

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the above and foregoing Notice of Deposition Upon Written Questions was served on the following counsel of record by email on June 10, 2024, to:

Mr. Vincent France  
Assistant Deputy Chief Counsel  
Arkansas Department of Human Services  
P.O. Box 1437  
Little Rock, AR 72203-1437

/s/ Jim R. Jackson

Jim R. Jackson

ARKANSAS STATE CLAIMS COMMISSION

HALEY HUDSON, SPECIAL ADMINISTRATRIX OF THE ESTATE OF JACQUELINE LYNN ASHCRAFT, DECEASED, AND HALEY HUDSON AS PERMANENT LEGAL GUARDIAN OF [REDACTED], A MINOR CHILD

CLAIMANT

VS.

CC NO. 230641

ARKANSAS DEPARTMENT OF HUMAN SERVICES

RESPONDENT

DEPOSITION UPON WRITTEN QUESTIONS BY CLAIMANT

Comes now Christopher Bell, M.D., and after being duly sworn upon oath according to law, hereby states the following:

Q: Will you state your name and your place of employment?

A:

Q: Can you provide us with a copy of your CV which we will have marked as Exhibit 1 to your deposition?

A:

Q: Was Jacqueline Ashcraft a patient of yours on June 11 and 12, 2021?

A:

Q: Attached as Exhibit 2 is Page 1 of Jacqueliens Ashcraft's medical records from Mercy Hospital. I want to turn your attention to the section at the top of the page that states:

[REDACTED]

[REDACTED]

- [REDACTED]

My question to you after you review Exhibit 2 is: Do you have any reason to disagree with the description contained in the Chief Complaint?

A:

Q: Do you have any reason to disagree with the diagnosis of Jacqueline Ashcraft of having sustained [REDACTED]

A:

Q: Attached as Exhibit 3 to your deposition are pages 33, 34 & 35 of Jacqueline Ashcraft's medical records from Mercy Hospital. Do you have any reason to disagree with page 33 of the medical records where the notes state:

[REDACTED]

A:

Q: I want to turn your attention to the medical decision-making and plan of care beginning on page 34 of Ms. Ashcraft's medical records. The record states:

[REDACTED]

Is this your understanding of the course of the medical decision making and plan of care for Ms. Ashcraft when she was turned over to you as a patient?

A:

Q: I want to turn your attention to page 35. The final diagnoses states:

[REDACTED] Do you have any reason to disagree with this final diagnosis in Mercy's records?

A:

Q: Did you order the endotracheal tube to be removed from Jacqueline Ashcraft shortly after midnight on June 12, 2021?

A:

Q: Did Ms. Ashcraft die shortly after she was extubated from the mechanical ventilator?

A:

Q: Are you familiar with the contrecoup brain injury mechanism when a person is involved in a rear end motor vehicle accident?

A:

Q: I want to ask you to review a series of four (4) photographs which will be marked as Exhibit 4 to your deposition. I will represent to you that Ms. Ashcraft was the driver of the blue vehicle which was rear ended while slowing or stopping to make a left hand turn by the brown car. Testimony from experts indicate that the speed of the brown car ranged from 50-70 mph.

My question is this: Is the impact depicted in the four photographs of Exhibit 4 the type of impact that you would expect a person to sustain a Coup-Contrecoup brain injury?

A:

Q. Is a Coup-Contrecoup brain injury initially difficult to diagnose due to a lack of outward sign of trauma to the head?

A.

Q. Would it surprise you that a person involved in the collision depicted in the photographs marked as Exhibit 4 would sustain an [REDACTED]

A:

Q. I would like to turn your attention to Exhibit 5 which is the CT Scan Results from Mercy Hospital Booneville. Is a patient who was involved in a rear end car wreck at 12:50 p.m. and has a CT Scan at 2:21 pm, approximately 90 minutes after the wreck, which reveals a [REDACTED] consistent with a patient who experienced a brain trauma caused from the impact of a wreck?

A.

Q. I would like to ask you to review what has been marked as Exhibit 6 to your deposition which is the Death Certificate for Jacqueline Ashcraft issued by the Arkansas Department of Health. I want to turn your attention to the middle of Ms. Ashcraft's Death Certificate which has a section titled: "Cause of Death." The immediate cause states

[REDACTED]  
[REDACTED]."

My question to you is: Do you have any reason to disagree with the cause of death and underlying cause as stated in the Death Certificate for Jacqueline Ashcraft?

A.

Q. Has all of your testimony in this matter been based upon your medical education, medical training and treatment of patients presenting to the emergency room with medical conditions similar to Jacqueline Ashcraft's condition?

A.

Q. Have your opinions given in this deposition been given within a reasonable degree of medical probability?

A.

Thank you.

This concludes the deposition of Dr. Bell.

COURT REPORTER CERTIFICATION

(TO BE COMPLETED BY COURT REPORTER)

**From:** [Jim Jackson](#)  
**To:** [ASCC Pleadings](#)  
**Cc:** [Vincent France](#); [Daiquiri Carter](#); [Martha Cox](#); [Kirk Dougherty](#)  
**Subject:** RE: Ark. Claims Comm No. 230641 -  
**Date:** Tuesday, June 11, 2024 3:19:35 PM  
**Attachments:** [image.png](#)  
[image.png](#)  
[image.png](#)  
[image.png](#)  
[Exhibit List for Christopher Bell MD.pdf](#)

Please add the attached Exhibit List for Christopher Bell, MD to the filing in this matter.

Thank you,  
Jim



**Jim Jackson**

Jackson Law Firm  
[JimJacksonAtty.com](http://JimJacksonAtty.com)

700 W. Broadway  
North Little Rock, AR 72114  
P (501) 823-3610  
F (501) 823-3611

**From:** Jim Jackson  
**Sent:** Tuesday, June 11, 2024 3:01 PM  
**To:** [ASCC Pleadings <ascpleadings@arkansas.gov>](mailto:ascpleadings@arkansas.gov)  
**Cc:** [Vincent France <Vincent.P.France@dhs.arkansas.gov>](mailto:Vincent.P.France@dhs.arkansas.gov); [Daiquiri.carter@dhs.arkansas.gov](mailto:Daiquiri.carter@dhs.arkansas.gov); [Martha Cox <mcox@jimjacksonatty.com>](mailto:mcox@jimjacksonatty.com); [Kirk Dougherty <KDougherty@hardinlaw.com>](mailto:KDougherty@hardinlaw.com)  
**Subject:** Ark. Claims Comm No. 230641 -

Please find attached a Notice of Deposition Upon Written Questions to be filed in the above referenced matter.

Thank you,  
Jim



**Jim Jackson**

Jackson Law Firm  
[JimJacksonAtty.com](http://JimJacksonAtty.com)

700 W. Broadway  
North Little Rock, AR 72114  
**P** (501) 823-3610  
**F** (501) 823-3611  
□□□

## ARKANSAS STATE CLAIMS COMMISSION

HALEY HUDSON, SPECIAL ADMINISTRATRIX OF  
THE ESTATE OF JACQUELINE LYNN ASHCRAFT,  
DECEASED, AND HALEY HUDSON AS PERMANENT  
LEGAL GUARDIAN OF [REDACTED]  
[REDACTED], MINOR CHILDREN

CLAIMANT

VS.

CC NO. 230641

ARKANSAS DEPARTMENT OF  
HUMAN SERVICES

RESPONDENT

EXHIBIT LIST FOR DR. CHRIS BELL

TO: Dr. Chris Bell

Below is a Hyperlink contating Exhibits 2 – 6 to your deposition. Please contact the undersigned if you have any difficulties opening this hyperlink.

[Bell, Chris MD](#)

Respectfully submitted,

BY:  /s/ Jim Jackson

Jim R. Jackson, AR Bar #93-209  
Jackson Law Firm  
700 West Broadway Street, Suite 200  
North Little Rock, AR 72114-5528  
(501) 823-3610 phone  
(501) 823-3611 facsimile  
*Jim@JimJacksonatty.com*

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the above and foregoing Exhibit List for Dr. Chris Bell was served on the following counsel of record by email on June 11, 2024, to:

Mr. Vincent France  
Assistant Deputy Chief Counsel  
Arkansas Department of Human Services  
P.O. Box 1437  
Little Rock, AR 72203-1437

*/s/ Jim R. Jackson*  
Jim R. Jackson

**From:** [Vincent France](#)  
**To:** [ASCC Pleadings](#)  
**Cc:** [Daiquiri Carter](#); [jim@jimjacksonatty.com](mailto:jim@jimjacksonatty.com); [Martha Cox](#)  
**Subject:** Hudson, et al v. DHS, Ark. Claims Comm No. 230641  
**Date:** Wednesday, June 12, 2024 3:47:39 PM  
**Attachments:** [Hudson Motion to Stay Discovery.pdf](#)  
[image.png](#)  
[image.png](#)

---

Please find attached DHS’s Motion to Stay Discovery for filing in the above-referenced case.

Sincerely,

**Vincent P. France**  
Deputy Chief Counsel for Litigation  
Office of Chief Counsel  
PO Box 1437, Slot S260  
Little Rock, AR 72203-1437  
Office Phone: 501-534-4127  
[Vincent.P.France@dhs.arkansas.gov](mailto:Vincent.P.France@dhs.arkansas.gov)



□ □ □

**NOTE - This email may contain sensitive or confidential information.**

**CONFIDENTIALITY NOTICE:** The information contained in this email message and any attachment(s) is the property of the State of Arkansas and may be protected by state and federal laws governing disclosure of private information. It is intended solely for the use of the entity to which this email is addressed. If you are not the intended recipient, you are hereby notified that reading, copying or distribution this transmission is **STRICTLY PROHIBITED**. The sender has not waived any applicable privilege by sending the accompanying transmission. If you have received this transmission in error, please notify the sender by return and delete the message and attachment(s) from your system.

## IN THE ARKANSAS STATE CLAIMS COMMISSION

**HALEY HUDSON, INDIVIDUALLY  
HALEY HUDSON, SPECIAL ADMINISTRATRIX OF  
THE ESTATE OF JAQUELINE LYNN ASHCRAFT,  
DECEASED, AND HALEY HUDSON, AS PERMANENT  
LEGAL GUARDIAN OF**

**MINOR CHILDREN**

**CLAIMANTS**

**vs.**

**CC No. 230641**

**ARKANSAS DEPARTMENT OF  
HUMAN SERVICES**

**RESPONDENT**

**RESPONDENT'S MOTION TO STAY DISCOVERY**

COMES NOW, Respondent, Arkansas Department of Human Services, by and through its attorney, Vincent P. France, Deputy Chief Counsel for the Arkansas Department of Human Services, and for its Motion to Stay Discovery states the following:

1. This claim arises from a motor vehicle accident that occurred on Friday, June 11, 2021, on State Highway 22 in Logan County, Arkansas near Paris, Arkansas.
2. On January 29, 2024, Respondent DHS filed a cross-motion for summary judgment and a brief in support of its motion. In its motion and brief, DHS argued that the doctrine of *respondeat superior* does not apply to the facts of this claim and that it cannot be vicariously liable to Claimants for the accident at issue in this claim.
3. After both sides fully briefed the issues raised by DHS, the Arkansas State Claims Commission held a hearing on May 9, 2024.
4. As of the filing of this motion, no decision has been made regarding DHS's motion for summary judgment, which if successful would be fully dispositive of this entire claim.
5. Since the hearing, counsel for Claimants has filed a Notice of Deposition Upon Written Questions to Dr. Garrett Andrews on June 4, 2024, and filed a Notice of Deposition Upon

Written Questions to Dr. Christopher Bell on June 11, 2024. These discovery requests are regarding causation of the injuries to the Claimants. These issues are secondary to the one raised by DHS in its motion for summary judgment that it is not vicariously liable.

6. Accordingly, discovery should be stayed until the threshold issues raised in Respondent's Cross-Motion for Summary Judgment regarding vicarious liability and *respondeat superior* are finally resolved.

7. Courts have broad discretion and inherent power to stay discovery until preliminary questions that may dispose of a case on the merits are determined. *See Bennett v. Lonoke Bancshares, Inc.*, 356 Ark. 371, 155 S.W.3d 15 (2004) ("A trial court has broad discretion in matters pertaining to discovery and the exercise of that discretion will not be reversed by this court absent an abuse of discretion that is prejudicial to the appeal party").

8. Imposing a stay would fulfill the goals of judicial economy and clearly falls within the discretionary power of this Commission. At this stage of the proceedings, a stay of discovery prevents unnecessary expenses for the State and undue burdens on Respondent.

9. This motion is being filed in good faith and not for any improper purposes.

WHEREFORE, Respondent respectfully requests that the Arkansas State Claims Commission stays discovery in this matter pending a ruling on Respondent's Cross Motion for Summary Judgment, and for any other just and proper relief to which it is entitled.

Respectfully submitted,

By: /s/ Vincent P. France  
Vincent P. France, Ark. Bar No. 2010063  
Deputy Chief Counsel  
Arkansas DHS  
P.O. Box 1437, Slot S260  
Little Rock, AR 72203  
Phone: (501) 534-4127  
Email: [Vincent.P.France@DHS.Arkansas.gov](mailto:Vincent.P.France@DHS.Arkansas.gov)

*Attorney for Respondent*

**CERTIFICATE OF SERVICE**

I, Vincent P. France, hereby certify that on June 12, 2024, I electronically filed the foregoing with the Arkansas State Claims Commission by emailing it to [ascpleadings@arkansas.gov](mailto:ascpleadings@arkansas.gov) and by sending a copy to Claimant's attorney Jim Jackson via email as indicated below.

Jim Jackson  
[Jim@JimJacksonatty.com](mailto:Jim@JimJacksonatty.com)

*/s/ Vincent P. France* \_\_\_\_\_

Vincent P. France

**From:** [Martha Cox](#)  
**To:** [ASCC Pleadings](#); [Kathryn Irby](#)  
**Cc:** [Vincent France](#); [Daiquiri Carter](#); [Jim Jackson](#)  
**Subject:** Haley Hudson, Special Adm"x of the Estate of Jacqueline Ashcraft, dec"d and Permanent Guardian of [REDACTED]  
[REDACTED] a Minor Child v. Arkansas Department of Human Services; Arkansas State Claims Commission No. 230641;  
Incident Date: 6/11/2021  
**Date:** Monday, June 17, 2024 4:09:20 PM  
**Attachments:** [Claimant's Response to Respondent's Motion to Stay Discovery 6-17-2024.pdf](#)

---

Please find attached the Claimant's Response to the Respondent's Motion to Stay Discovery for filing in the above-referenced case.

Thank you.

Martha Cox, PP, PLS  
Paralegal for The Jackson Law Firm  
700 West Broadway, Suite 200  
North Little Rock, AR 72114  
Phone: (501) 823-3610  
Fax: (501) 823-3611  
[mcox@jimjacksonatty.com](mailto:mcox@jimjacksonatty.com)

## ARKANSAS STATE CLAIMS COMMISSION

**HALEY HUDSON, SPECIAL ADMINISTRATRIX OF  
THE ESTATE OF JACQUELINE LYNN ASHCRAFT,  
DECEASED AND HALEY HUDSON AS PERMANENT  
LEGAL GUARDIAN OF [REDACTED] A  
MINOR CHILD**

CLAIMANT

VS.

CC NO. 230641

**ARKANSAS DEPARTMENT OF  
HUMAN SERVICES**

RESPONDENT

CLAIMANT'S RESPONSE TO MOTION TO STAY DISCOVERY

Comes now the claimant, Haley Hudson, Special Administratrix of the Estate of Jacqueline Lynn Ashcraft, deceased, and Guardian of [REDACTED] a minor child, by and through her attorney, Jim Jackson, and for her Response to the Motion to Stay Discovery, states:

1. This Commission issued a Scheduling Order which states that all discovery must be completed by July 1, 2024, and scheduled this matter for a one-day hearing on the merits on Thursday, September 19, 2024. (Attached as Exhibit 1 is the Commission's Scheduling Letter).

2. The claimant served a Notice of Deposition Upon Written Questions, with a copy of the questions attached to the Notice, to two medical providers to preserve their testimony prior to the July 1 cutoff.

3. The Respondent will not be prejudiced by following the Scheduling Order which was issued on October 11, 2023.

4. The Respondent must anticipate that its argument for Summary Judgment, in which it advocates that the Commission not follow the well-established doctrine of *respondeat*

*superior* for the negligent conduct of its employee will not be successful and that the damages portion of this matter will be heard on September 19, 2024.

WHEREFORE, the claimant, Haley Hudson, Special Administratrix of the Estate of Jacqueline Lynn Ashcraft, deceased, and Haley Hudson, as Permanent Guardian of [REDACTED] [REDACTED] minor child, prays that the Respondent's Motion be denied.

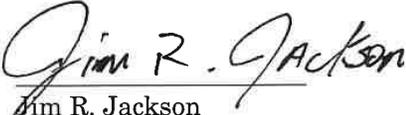
Respectfully Submitted,

Jackson Law Firm  
700 West Broadway Street, Suite 200  
North Little Rock, AR 72114-5528  
Phone: 501-823-3610  
Fax: 501-823-3611  
[Jim@JimJacksonatty.com](mailto:Jim@JimJacksonatty.com)

By:   
\_\_\_\_\_  
Jim R. Jackson  
Arkansas Bar No. 93209

**CERTIFICATE OF SERVICE**

I, Jim Jackson, certify that on this date, consistent with the requirements of Ark. R. Civ. Pro. 5, and Arkansas Claims Commission Rule 1.5(b) a complete copy of the foregoing was electronically submitted with the Clerk of the Arkansas Claims Commission and electronically served on counsel for the Arkansas Department of Human Services via the same email transmission.

  
\_\_\_\_\_  
Jim R. Jackson

## ARKANSAS STATE CLAIMS COMMISSION

(501) 682-1619  
FAX (501) 682-2823



KATHRYN IRBY  
DIRECTOR

101 EAST CAPITOL AVENUE  
SUITE 410  
LITTLE ROCK, ARKANSAS  
72201-3823

October 11, 2023

Mr. Jim Jackson  
Jackson Law Firm  
700 W. Broadway Street, Suite 200  
North Little Rock, Arkansas 72114

(via email)

Mr. Brent P. Gasper  
Arkansas Department of Human Services  
Post Office Box 1437  
Little Rock, Arkansas 72203

(via email)

RE: ***Haley Hudson, individually and as Special Administratrix of the Estate of Jacqueline Lynn Ashcraft, deceased, and as Permanent Guardian of [REDACTED] v. Arkansas Department of Human Services***  
Claim No. 230641

---

Dear Mr. Jackson and Mr. Gasper,

The Commission has scheduled this claim for a one-day hearing on **Thursday, September 19, 2024**, beginning at 9:00 a.m. All parties will attend via Zoom. If either party objects to the Zoom format, a written objection must be submitted via email ([kathryn.irby@arkansas.gov](mailto:kathryn.irby@arkansas.gov)) or mail no later than October 16, 2023. The Zoom invitation is enclosed.

The Commission's October 6, 2023, Order "instructed the parties to complete discovery as to lay witnesses related to the issue of liability and as to Respondent's accident reconstruction expert witness" by December 4, 2023. The Commission herein instructs the parties that all other discovery must be completed on or before **July 1, 2024**.

The following prehearing materials are due on or before **July 1, 2024**:

- Each party's list of witnesses who will testify live at the hearing or via deposition;
- Each party's list of exhibits that may be introduced at the hearing;



The following prehearing materials are due on or before **August 22, 2024**:

- Deposition transcripts if any deposition testimony will be submitted in lieu of live testimony;
- Prehearing briefs if either party would like to submit for Commission review; and
- Subpoena requests (absent a showing of good cause, the Commission will not issue subpoenas for requests received after this deadline).

To the extent that either party intends to file a motion of any kind, absent a showing of good cause, the motion must be submitted in sufficient time to allow the motion to be fully briefed pursuant to the Arkansas Rules of Civil Procedure by **August 22, 2024**.

Please note that a copy of any filing must be served upon the opposing party in accordance with the Arkansas Rules of Civil Procedure.

If you have any questions, please do not hesitate to contact my office.

Sincerely,

Kathryn Irby

ES: kmirby

The Claims Commission is inviting you to a scheduled Zoom meeting.

Topic: Claims Commission -- hearings

Time: Sep 19, 2024 09:00 AM Central Time (US and Canada)

Join Zoom Meeting

<https://us06web.zoom.us/j/89325174710?pwd=4OGhHVweZgNpCnPU5N3NfpH8gsgrns.1>

Meeting ID: 893 2517 4710

Passcode: riH9Sn

Dial by your location

• +1 646 931 3860 US

• +1 312 626 6799 US (Chicago)

Meeting ID: 893 2517 4710

Passcode: 048773

Find your local number: <https://us06web.zoom.us/j/kvRXLHStu>

**From:** [Jim Jackson](#)  
**To:** [ASCC Pleadings; Vincent France](#)  
**Cc:** [Martha Cox; Daiquiri Carter](#)  
**Subject:** Haley Hudson, Special Adm"x of the Estate of Jacqueline Ashcraft, deceased and Permanent Guardian of [REDACTED], a Minor Child v. Arkansas Department of Human Services Arkansas State Claims Commission No. 230641 Incident Date: 6/11/2021 - Logan Cou  
**Date:** Tuesday, June 25, 2024 4:27:35 PM  
**Attachments:** [image.png](#)  
[image.png](#)  
[image.png](#)  
[image.png](#)  
[image.png](#)  
[Notice of Filing of Deposition of Christopher Bell MD.pdf](#)

---

Please find attached for filing the Notice of Filing of Deposition of Dr Christopher Bell.

Please let me know if you have any issues with opening the hyperlink.

Thank you,

Jim



**Jim Jackson**

Jackson Law Firm

[JimJacksonAtty.com](http://JimJacksonAtty.com)

700 W. Broadway

North Little Rock, AR 72114

**P** (501) 823-3610

**F** (501) 823-3611



## ARKANSAS STATE CLAIMS COMMISSION

HALEY HUDSON, SPECIAL ADMINISTRATRIX OF  
THE ESTATE OF JACQUELINE LYNN ASHCRAFT,  
DECEASED, AND HALEY HUDSON AS PERMANENT  
LEGAL GUARDIAN OF [REDACTED]  
[REDACTED], MINOR CHILDREN

CLAIMANT

VS.

CC NO. 230641

ARKANSAS DEPARTMENT OF  
HUMAN SERVICES

RESPONDENT

**CLAIMANT'S NOTICE OF FILING OF  
DEPOSITION OF CHRISTOPHER BELL UPON WRITTEN QUESTIONS**

TO: Arkansas Department of Human Services  
c/o Mr. Vincent France  
Assistant Deputy Chief Counsel  
Arkansas Department of Human Services  
P.O. Box 1437  
Little Rock, AR 72203-1437

NOTICE is hereby given that the Deposition Upon Written Questions of Dr. Christopher Bell is being filed pursuant to Rule 31(c) of the Arkansas Rules of Civil Procedure. Dr. Bell's deposition and exhibits can be found at this hyperlink: [Bell, Chris MD](#)

Respectfully submitted,

BY:     /s/ Jim Jackson    

Jim R. Jackson, AR Bar #93-209  
Jackson Law Firm  
700 West Broadway Street, Suite 200  
North Little Rock, AR 72114-5528  
(501) 823-3610 phone  
(501) 823-3611 facsimile  
*Jim@JimJacksonatty.com*

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the above and foregoing Notice of Deposition Upon Written Questions was served on the following counsel of record by email on June 25, 2024, to:

Mr. Vincent France  
Assistant Deputy Chief Counsel  
Arkansas Department of Human Services  
P.O. Box 1437  
Little Rock, AR 72203-1437

    /s/ Jim R. Jackson      
Jim R. Jackson

## ARKANSAS STATE CLAIMS COMMISSION

HALEY HUDSON, SPECIAL ADMINISTRATRIX OF  
THE ESTATE OF JACQUELINE LYNN ASHCRAFT,  
DECEASED, AND HALEY HUDSON AS PERMANENT  
LEGAL GUARDIAN OF [REDACTED]  
[REDACTED] MINOR CHILDREN

CLAIMANT

VS.

CC NO. 230641

ARKANSAS DEPARTMENT OF  
HUMAN SERVICES

RESPONDENT

**CLAIMANT'S NOTICE OF FILING OF  
DEPOSITION OF DR. GARRETT ANDREWS**

TO: Arkansas Department of Human Services  
c/o Mr. Vincent France  
Assistant Deputy Chief Counsel  
Arkansas Department of Human Services  
P.O. Box 1437  
Little Rock, AR 72203-1437

NOTICE is hereby given that the Deposition Upon Written Questions of  
Neuropsychologist Garrett Andrews is being filed pursuant to Rule 31(c) of the Arkansas  
Rules of Civil Procedure. The deposition and exhibits can be accessed at this hyperlink:  
[Dr Garrett Andrews deposition with exhibits.pdf](#)

Respectfully submitted,

BY:  /s/ Jim Jackson

Jim R. Jackson, AR Bar #93-209  
Jackson Law Firm  
700 West Broadway Street, Suite 200  
North Little Rock, AR 72114-5528  
(501) 823-3610 phone  
(501) 823-3611 facsimile  
*Jim@JimJacksonatty.com*

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the above and foregoing Notice of Deposition Upon Written Questions was served on the following counsel of record by email on July 1, 2024, to:

Mr. Vincent France  
Assistant Deputy Chief Counsel  
Arkansas Department of Human Services  
P.O. Box 1437  
Little Rock, AR 72203-1437

/s/ Jim R. Jackson  
Jim R. Jackson

**From:** [Martha Cox](#)  
**To:** [Kathryn Irby](#); [ASCC Pleadings](#)  
**Cc:** [Vincent France](#); [Daiquiri Carter](#); [Jim Jackson](#)  
**Subject:** Haley Hudson, etc. v. Arkansas Department of Human Services; Arkansas State Claims Commission No. 230641  
**Date:** Monday, July 1, 2024 3:53:58 PM  
**Attachments:** [Claimant's Witness & Exhibit List.pdf](#)

---

Please find attached for filing in the above-referenced claim the Claimant's Witness & Exhibit List.

Thank you.

Martha Cox, PP, PLS  
Paralegal for The Jackson Law Firm  
700 West Broadway, Suite 200  
North Little Rock, AR 72114  
Phone: (501) 823-3610  
Fax: (501) 823-3611  
[mcox@jimjacksonatty.com](mailto:mcox@jimjacksonatty.com)

**ARKANSAS STATE CLAIMS COMMISSION**

**HALEY HUDSON, SPECIAL ADMINISTRATRIX OF  
THE ESTATE OF JACQUELINE LYNN ASHCRAFT,  
DECEASED, AND HALEY HUDSON AS  
PERMANENT LEGAL GUARDIAN OF [REDACTED]  
[REDACTED] A MINOR CHILD**

**CLAIMANT**

**VS.**

**CC NO. 230641**

**ARKANSAS DEPARTMENT OF  
HUMAN SERVICES**

**RESPONDENT**

**CLAIMANT'S WITNESS & EXHIBIT LIST**

Comes now the claimant, Haley Hudson, Special Administratrix of the Estate of Jacqueline Lynn Ashcraft, deceased, and Guardian of [REDACTED] a minor child, by and through her attorney, Jim Jackson, and submits the following Witness and Exhibit List for the trial on September 19, 2024.

The Commission has not ruled on the outstanding Motion for Summary Judgment as of this date. The claimant anticipates that this matter will be heard on damages only and liability will not be contested. In an abundance of caution, the claimant is including liability witnesses and liability exhibits in addition to the damage exhibits.

**Live Witnesses**

Haley Hudson - Daughter  
[REDACTED] - Daughter  
[REDACTED] - Daughter  
Dylan Ashcraft – Son  
Cody Ashcraft – Son  
Dr. Garrett Andrews  
Ralph Scott, Ph.D. (Economist)  
Stanley Cain

**Witnesses by Deposition**

Dr. Garrett Andrews  
Christopher Bell, M.D.  
Holly Newman (Paramedic)  
Jennifer Wilkerson – Driver  
Stanley Cain – Expert Witness  
Michael Kerley – Expert Witness  
Bobby D. Wilson – Truck Driver

**EXHIBITS**

1. Medical Records of Jacqueline Ashcraft from Mercy Medical Center
2. Arkansas Department of Health – Vital Records - Certificate of Death
3. Funeral Program/Obituary
4. Invoice from Brotherton Funeral Home for \$1,195.95

5. Family photos and Facebook posting
6. Arkansas State Trooper James Ray's Diagram of accident scene
7. Photos of Crash Scene
8. Stanley Cain's Expert Report
9. [REDACTED] medical records
  - a. Logan County EMS
  - b. Mercy Clinic – Paris
  - c. Scarbrough Clinic
  - d. Belinga Clinic
  - e. Wynne Medical Clinic
10. Dr. Ralph Scott's report on economic damages
11. Estimated Cost to Attend the University of Arkansas
12. Dr. Garrett Andrews' neuropsychology report
13. Michael Kerley's Expert Report – Liability
14. Mosaic/aerial photograph from Michael Kerley's deposition
15. Photos from Michael Kerley's file
16. Any exhibit contained in the Respondent's Exhibit List
17. Any exhibit attached to any deposition in this cause of action.

Respectfully submitted,

BY:   /s/ Jim Jackson  

Jim R. Jackson, AR Bar #93-209  
 Jackson Law Firm  
 700 West Broadway Street, Suite 200  
 North Little Rock, AR 72114-5528  
 (501) 823-3610 phone  
 (501) 823-3611 facsimile  
 Jim@JimJacksonatty.com

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the above and foregoing Exhibit & Witness List was served on the following counsel of record by email on July 1, 2024:

Mr. Vincent France  
 Assistant Deputy Chief Counsel  
 Arkansas Department of Human Services  
 P.O. Box 1437  
 Little Rock, AR 72203-1437

  /s/ Jim R. Jackson    
 Jim R. Jackson

**From:** [Martha Cox](#)  
**To:** [Kathryn Irby](#); [ASCC Pleadings](#)  
**Cc:** [Vincent France](#); [Daiquiri Carter](#); [Jim Jackson](#)  
**Subject:** Haley Hudson, etc. v. Arkansas Department of Human Services; Arkansas State Claims Commission No. 230641  
**Date:** Monday, July 1, 2024 2:21:42 PM  
**Attachments:** [Claimant's Sixth Supplemental Answers to the Respondent's Interrogatories & Requests for Production of Documents - July 1, 2024.pdf](#)

---

Please find attached for filing in the above-referenced claim the Claimant's Sixth Supplemental Answers to the Respondent's Interrogatories & Requests for Production of Documents.

Thank you.

Martha Cox, PP, PLS  
Paralegal for The Jackson Law Firm  
700 West Broadway, Suite 200  
North Little Rock, AR 72114  
Phone: (501) 823-3610  
Fax: (501) 823-3611  
[mcox@jimjacksonatty.com](mailto:mcox@jimjacksonatty.com)

## ARKANSAS STATE CLAIMS COMMISSION

HALEY HUDSON, SPECIAL ADMINISTRATRIX OF  
THE ESTATE OF JACQUELINE LYNN ASHCRAFT,  
DECEASED; AND HALEY HUDSON, PERMANENT  
LEGAL GUARDIAN OF [REDACTED] A  
MINOR CHILD

CLAIMANT

v.

CC No. 230641

ARKANSAS DEPARTMENT OF  
HUMAN SERVICES

RESPONDENT

**CLAIMANT'S SIXTH SUPPLEMENTAL ANSWERS TO  
RESPONDENT'S FIRST SET OF INTERROGATORIES  
AND REQUESTS FOR PRODUCTION OF DOCUMENTS**

Comes now the Claimant, Haley Hudson, and for her Sixth Supplemental Answers to the respondent's First Set of Interrogatories and Requests for Production of Documents, states:

**REQUEST FOR PRODUCTION NO. 12:** Please produce all documents or exhibits which Claimant plans to use at the trial of this case, including without limitation documents or exhibits which Claimant plans on introducing into evidence and documents or exhibits which Claimant plans to or will use in the direct examination and cross-examination of witnesses at the trial of this case.

**RESPONSE:** Please see the exhibits attached to Trooper James Ray's deposition taken on February 21, 2023. The claimant has previously provided a copy of the medical records of Jacqueline Ashcraft and [REDACTED]. The report of Dr. Scott will also be introduced as an exhibit. These items can be found in the following four hyperlinks:

[Ashcraft Response to Discovery.pdf](#)

[Crash Scene Photos by Trooper James Ray.pdf](#)

[Ashcraft Mercy Records Bates Stamped.pdf](#)

[REDACTED] [Medical Records.pdf](#)

**SUPPLEMENTAL ANSWER TO REQUEST FOR PRODUCTION NO. 12:** See attached medical records upon [REDACTED] from Logan County EMS. The claimant reserves the right to introduce or utilize at trial any exhibit attached to a deposition taken in this matter. The Investigative Report prepared by Stanley Cain will be introduced, along with the exhibits attached to his report. The report of Dr. Garrett Andrews and any exhibits thereto will also be utilized at trial. The reports of Stanley Cain and Dr. Garrett Andrews have been previously provided to the respondent. The claimant reserves the right to introduce or utilize at trial any document produced by either party during discovery or attached as an exhibit to any deposition taken by either party in this case.

See attached income tax information provided by the Arkansas Department of Finance and Administration upon Jacqueline Ashcraft for 2018, 2019, and 2020.

**SECOND SUPPLEMENTAL ANSWER TO REQUEST FOR PRODUCTION NO. 12:** The claimant will introduce the attached family photos and Facebook posting. The claimant reserves the right to introduce any exhibit on the Exhibit List that is submitted by either the claimant or the respondent.

Respectfully submitted,

Jackson Law Firm  
700 West Broadway Street, Suite 200  
North Little Rock, AR 72114-5528  
Phone: 501-823-3610  
Fax: 501-823-3611  
*Jim@JimJacksonatty.com*

By: */s/ Jim Jackson*

---

Jim R. Jackson  
Arkansas Bar No. 93209

**CERTIFICATE OF SERVICE**

I, Jim R. Jackson, hereby certify that I have filed a copy of the foregoing Claimant's Sixth Supplemental Answers to Respondent's Interrogatories and Requests for Production of Documents with the Arkansas Claims Commission and served a copy upon the respondent's attorney, Vincent France, via email.

/s/ Jim Jackson

Jim R. Jackson







# Memories



On this day

## 1 year ago



**Jackie Ashcraft**

Dec 30, 2020 · 👥



Shouting a VERY happy birthday to my oldest daughter [Haley Nicole Hudson](#). I am really struggling to think you are 29..but honestly you are my bff..my side kick..my compadre..my ride or die ❤️❤️❤️❤️ ALWAYS!!! I really wish I could be there with you...and not only cause I'm jealous that Ray is there😂😂😂

You are always there for me and the girls..and everyone else and truthfully you have pulled me through stuff that I'd didn't want to deal with..but you always did and for that I am grateful ❤️❤️ I hope you have had the best birthday EVER...cause no more 20's😂😂. I'm so happy you have an amazing family life job kids...I thank God...but you deserve it and more!! Thank you for letting me be your mama...I couldn't have made it without you ❤️ I love you with everything inside my heart and soul💋💋



Ladonna Jackson and 17 others

6 Comments

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**BEFORE THE ARKANSAS STATE CLAIMS COMMISSION**

**HALEY HUDSON, SPECIAL  
ADMINISTRATRIX OF THE ESTATE OF  
JACQUELINE LYNN ASHCRAFT,  
DECEASED, AND HALEY HUDSON,  
PERMANENT LEGAL GUARDIAN OF  
[REDACTED], A MINOR CHILD**

**CLAIMANT**

V.

**CLAIM NO. 230641**

**ARKANSAS DEPARTMENT OF HUMAN  
SERVICES**

**RESPONDENT****ORDER**

Now before the Arkansas State Claims Commission (the “Commission”) are various motions filed by both parties. This claim was filed by Haley Hudson, Special Administratrix of the Estate of Jacqueline Lynn Ashcraft, deceased, and Haley Hudson, Permanent Legal Guardian of [REDACTED], a Minor Child (collectively referred to as the “Claimant”) against the Arkansas Department of Human Services (the “Respondent”). The pending motions include: (1) a motion to dismiss filed (and later withdrawn) by Respondent; (2) a motion to quash filed (and later withdrawn) by Respondent; (3) a motion for partial summary judgment filed by Claimant; (4) a motion to strike filed by Respondent; (5) a motion to compel filed by Respondent; (6) a motion to substitute counsel filed by Respondent; and (7) a cross-motion for summary judgment filed by Respondent. At the motions hearing held on May 9, 2024, Jim Jackson appeared on Claimant’s behalf, and Vincent France appeared on behalf of Respondent. Based upon a review of the claim file, the argument of the parties, and the law of the State of Arkansas, the Commission finds as follows:

1. Claimant filed the instant claim seeking damages after Jacqueline Lynn Ashcraft (the “Decedent”) died following a motor vehicle accident with a vehicle owned by Respondent and operated by its (now former) employee, Jennifer Wilkerson.

2. Claimant subsequently amended her claim to address the issues raised in Respondent’s motion to cure a defective complaint and for a more definite statement.

3. The Commission entered an order on February 13, 2023, following a hearing, in which the Commission denied Respondent’s motion as moot and directed Respondent to answer the amended complaint.

4. Respondent thereafter filed an answer denying liability.

5. Respondent then filed a motion to dismiss, which was later withdrawn by Respondent.

6. Claimant filed a motion to nonsuit any individual claim by Ms. Hudson for bodily injury, and the Commission granted Claimant’s motion in a July 21, 2023, order.

7. Respondent then filed a motion to compel related to Claimant’s discovery responses, which the Commission denied on August 14, 2023, following a hearing.

8. Respondent also filed a motion to sever and motion to hold the claim in abeyance, both of which were denied by the Commission in the August 14, 2023, order.

9. Claimant filed a motion to withdraw its requests for admission, which the Commission granted in the August 14, 2023, order.

10. Respondent filed a motion to quash, which was later withdrawn by Respondent.

11. Claimant filed a motion for partial summary judgment on the issue of liability, arguing that Ms. Wilkerson was solely responsible for causing the accident. In response, Respondent argued that Ms. Wilkerson was acting beyond the course and scope of her employment.

12. Respondent filed a motion to strike Claimant's motion for partial summary judgment or, alternatively, motion for extension of time to respond to Claimant's motion, as well as a motion for expedited ruling. A July 21, 2023, order by the Commission memorialized the parties' decision to reschedule the hearing on Claimant's motion for partial summary judgment and to extend the parties' briefing schedule on the motion. In that order, the Commission found that the motion for extension and motion for expedited ruling were mooted by the parties' agreement. The Commission declined to rule on Respondent's motion to strike at that time.

13. Respondent filed another motion for extension to respond to Claimant's motion for partial summary judgment, which was granted by the Commission on October 6, 2023, following a hearing.

14. Respondent has also filed a motion to compel regarding Claimant's discovery responses and a motion to substitute counsel.

15. Claimant filed a second amended complaint, and Respondent filed an answer denying liability.

16. Respondent then filed its cross-motion for summary judgment, arguing that Ms. Wilkerson was acting outside the course and scope of her employment when the accident occurred. In response, Claimant argued that Ms. Wilkerson had finished her lunch and was driving to Beebe to pick up a foster child for Respondent when the accident occurred. This motion was fully briefed by the parties.

17. Prior to the May 9, 2024, hearing, counsel for Respondent notified the Commission of the parties' agreement that only Claimant's motion for partial summary judgment and Respondent's cross-motion for summary judgment need to be considered. In that correspondence, Respondent withdrew any other pending motions.

18. At the outset of the hearing, the Commission unanimously granted Respondent's motion to substitute counsel. The Commission also unanimously voted to dismiss the following motions as moot: (a) Respondent's withdrawn motion to dismiss, (b) Respondent's withdrawn motion to quash, (c) Respondent's withdrawn motion to strike, and (d) Respondent's withdrawn motion to compel.

19. Regarding the two remaining motions (Claimant's motion for partial summary judgment and Respondent's cross-motion for summary judgment), the Commission noted that the motions are somewhat interrelated.

20. Upon a question from Chairman Morris, Respondent confirmed its agreement that Ms. Wilkerson's negligence caused the accident. This agreement obviated any need for arguing Claimant's motion for partial summary judgment.

21. Regarding Respondent's cross-motion for summary judgment, Respondent argued that it is not liable for the accident under the doctrine of *respondeat superior*, given that Ms. Wilkerson was hired eleven days before the accident, that Ms. Wilkerson did not drive directly to Beebe but instead stopped for lunch with her boyfriend for at least 30 minutes, that Ms. Wilkerson was speeding approximately fifteen miles above the speed limit and should have been charged with negligent homicide, and that Ms. Wilkerson had taken some amphetamine medication. Respondent argued that its policies prohibit speeding and taking drugs. Respondent also noted that Ms. Wilkerson's employment was terminated after the accident.

22. Upon a question from Chairman Morris as to whether Respondent knew of a reported decision in Arkansas where an employer was found not responsible for an employee's actions in a company-owned vehicle due to speeding or drug usage, Respondent stated that there are Workers' Compensation claims finding that employees are not entitled to Workers'

Compensation benefits under these circumstances. Respondent noted that Ms. Wilkerson's speeding was not routine but instead should have resulted in a criminal citation.

23. Upon a question from Chairman Morris as to whether Ms. Wilkerson had resumed her drive on the road to Beebe when the accident occurred, Respondent stated that she was. Respondent conceded that this is one of the worst facts for Respondent, although Respondent takes issue with the fact that, had Ms. Wilkerson not stopped for lunch, she would have been much closer to Beebe and not at the accident site when the accident occurred.

24. Upon a question from Chairman Morris as to Respondent's lunch policy, given that Ms. Wilkerson got into the vehicle around lunchtime, Respondent stated that lunchtimes are flexible depending on what is scheduled on a particular day. Respondent said that it was incorrect that Ms. Wilkerson was simply on a lunch break.

25. Upon a question from Chairman Morris as to whether Respondent has a policy that prohibits an employee from driving and eating at the same time, Respondent did not know. When asked whether Ms. Wilkerson's options included stopping to eat, eating while driving (and possibly violating Respondent's policy, if it had one), or eating later in the afternoon following the trip, Respondent stated that Ms. Wilkerson should have eaten before leaving. Respondent noted that there is no requirement that lunch be taken between noon and 1:00 p.m.

26. Upon a question from Commissioner Graves, Respondent estimated that it has over 7,000 employees. When asked about the process for an employee to use one of Respondent's vehicles, Respondent stated that an employee must have a valid driver's license, acknowledge that the employee has read the policy manual, and agree to follow all traffic rules. Because Ms. Wilkerson was new to her employment, another employee of Respondent had to go with Ms. Wilkerson to add gasoline to the vehicle. Respondent stated that Ms. Wilkerson was told by her

supervisor that she could take a vehicle. Respondent also did a background check on Ms. Wilkerson.

27. Upon a question from Commissioner Holcomb, Respondent confirmed that the Arkansas State Police did not conduct a drug test on Ms. Wilkerson. Respondent did its own drug test on Ms. Wilkerson and investigation of the accident. Respondent noted that the trooper did not speak to Ms. Wilkerson. There was no alcohol in Ms. Wilkerson's system. The amphetamines in Ms. Wilkerson's system go to Respondent's argument that Ms. Wilkerson was acting outside the scope of her employment because Respondent provides education on the issue of drug abuse.

28. Upon a question from Commissioner Holcomb, Respondent confirmed that Ms. Wilkerson was taken to the hospital following the accident but was not significantly injured.

29. Upon a question from Commissioner Holcomb, Respondent argued that whether its insurance carrier paid out does not affect Respondent's liability.

30. Upon a question from Commissioner Graves, Respondent stated that, once it had the basic facts of the accident (and even before Respondent knew of the drugs in Ms. Wilkerson's system), Respondent first considered terminating Ms. Wilkerson.

31. Claimant responded to the cross-motion for summary judgment, arguing that Respondent cannot overcome the presumption that Ms. Wilkerson was acting in the course and scope of her employment. Claimant argued that *Nipper v. Brandon Co.*, 262 Ark. 17, 553 S.W.2d 27 (1977), was directly on point. In *Nipper*, a truck driver deviated from his delivery route for a personal errand and, before the truck driver reached the place of deviation, he had an accident. 262 Ark. at 19–20, 553 S.W.2d at 28–29. The Arkansas Supreme Court found that the truck driver in *Nipper* was acting in the scope of his employment. *Id.* at 21–22, 553 S.W.2d at 29. In the instant claim, Ms. Wilkerson was within the course of scope of her employment because (a) she was in a vehicle owned by Respondent, (b) she was driving along the route provided to her by an

employee of Respondent, and (c) she resumed driving toward Beebe after stopping for lunch. Claimant's counsel utilized a map to show that Ms. Wilkerson's lunch stop was on the road toward Beebe. At the time that the accident occurred, Ms. Wilkerson was driving to Beebe for the purpose of picking up the foster child. Claimant took issue with the caselaw presented by Respondent regarding the question of liability when an employee is on a "frolic" outside the course of scope of the employee's employment. Regarding Respondent's argument that Ms. Wilkerson had not proceeded in such a way to be in Beebe by 2:00 p.m., Claimant argued that the timing of the sibling visit had changed numerous times that day, that the 2:00 p.m. timing of this sibling visit was a rough estimate (per Ms. Ezell's deposition), and that Ms. Wilkerson was told to leave at noon or 12:15 p.m., although the drive to Beebe was at least two hours and five minutes. Claimant noted that Ms. Wilkerson was told to keep in touch with the caseworker that was picking up the other sibling to coordinate the meeting times. Claimant also pointed to Respondent's discovery response to the question about whether Ms. Wilkerson was in the course and scope of her employment: "Jennifer Wilkerson was at the time of the accident an employee of DHS engaging her job duties as assigned." In Respondent's initial answer, Respondent admitted that Ms. Wilkerson was acting in the course and scope of her employment, although Respondent later amended its answer to remove this admission. Given that Ms. Wilkerson's day was scheduled to involve a two-hour drive to Beebe to pick up the foster child, a two-hour drive to Clarksville for the sibling visit, a two-hour drive back to Beebe to return the foster child, then a two-hour drive back to Paris, Claimant argued that, at some point, it was expected that Ms. Wilkerson was going to stop for food. Claimant also argued that Respondent's emphasis on the fact that Ms. Wilkerson was a new hire is irrelevant because Ms. Wilkerson was an employee.

32. Respondent disagreed that *Nipper* is on point because the personal errand in *Nipper* was five minutes, as opposed to Ms. Wilkerson's lengthy stop for lunch. Respondent

emphasized that Ms. Wilkerson was at least forty minutes behind schedule at the time of the accident. Respondent argued that Ms. Wilkerson was acting in her own interest, i.e. catching up on time spent at lunch with her boyfriend, when the accident occurred. Respondent also cited to *Healey v. Cockrill*, 133 Ark. 327, 202 S.W. 229 (1918), and *Cannady v. St. Vincent Infirmary*, 2018 Ark. 35, 537 S.W.3d 529.

33. Pursuant to Rule 56(c)(2), summary judgment is appropriate when there are no genuine issues as to any material fact, and the moving party is entitled to judgment as a matter of law. *See Hisaw v. State Farm Mut. Auto Ins. Co.*, 353 Ark. 668, 122 S.W.3d 1 (2003). Summary judgment motions are subject to a shifting burden, in that once the moving party has made a *prima facie* showing of entitlement to summary judgment, “the burden then shifts to the nonmoving party to show that material questions of fact remain.” *Flentje v. First Nat’l Bank of Wynne*, 340 Ark. 563, 569, 11 S.W.3d 531, 536 (2000). Summary judgment is useful “when there is no real issue of fact to be decided.” *Hughes W. World, Inc. v. Westmoor Mfg Co.*, 269 Ark. 300, 301, 601 S.W.2d 826, 826 (1980).

34. In keeping with Respondent’s agreement that Ms. Wilkerson was acting in a negligent manner at the time of the accident, the Commission grants Claimant’s motion for partial summary judgment and finds that Ms. Wilkerson was driving negligently at the time of the accident.

35. Regarding Respondent’s cross-motion for summary judgment, the Commission finds that there is a presumption under Arkansas law that Ms. Wilkerson was acting within the scope of her employment when she was driving a vehicle owed by Respondent at the time of the accident. *Nipper*, 262 Ark. at 21, 553 S.W.2d at 29. The Commission further finds that fact questions remain about whether Respondent has rebutted that presumption, including that Respondent provided a vehicle for Ms. Wilkerson’s use, that Ms. Wilkerson was on the road to

Beebe when the accident occurred, and that Respondent conducted its own drug test of Ms. Wilkerson following the accident. In light of these facts, which seem to reinforce the presumption that Ms. Wilkerson was acting in the course and scope of her employment, the Commission finds that Respondent's cross-motion for summary judgment must be denied.

36. Following the hearing, Respondent filed a motion to stay discovery, which was opposed by Claimant. The Commission finds that this motion is mooted by the Commission's denial of Respondent's cross-motion for summary judgment.

IT IS SO ORDERED.




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ARKANSAS STATE CLAIMS COMMISSION  
Solomon Graves




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ARKANSAS STATE CLAIMS COMMISSION  
Dee Holcomb




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ARKANSAS STATE CLAIMS COMMISSION  
Paul Morris, Chair

DATE: July 25, 2024

**Notice(s) which may apply to your claim**

- (1) A party has forty (40) days from transmission of this Order to file a Motion for Reconsideration or a Notice of Appeal with the Claims Commission. Ark. Code Ann. § 19-10-211(a)(1). If a Motion for Reconsideration is denied, that party then has twenty (20) days from transmission of the denial of the Motion for Reconsideration to file a Notice of Appeal with the Claims Commission. Ark. Code Ann. § 19-10-211(a)(1)(B)(ii). A decision of the Claims Commission may only be appealed to the General Assembly. Ark. Code Ann. § 19-10-211(a)(3).
- (2) If a Claimant is awarded less than \$15,000.00 by the Claims Commission at hearing, that claim is held forty (40) days from the date of disposition before payment will be processed. *See* Ark. Code Ann. § 19-10-211(a). Note: This does not apply to agency admissions of liability and negotiated settlement agreements.
- (3) Awards or negotiated settlement agreements of \$15,000.00 or more are referred to the General Assembly for approval and authorization to pay. Ark. Code Ann. § 19-10-215(b).

**From:** [Kathryn Irby](#)  
**To:** [Jim Jackson](#); [Vincent France](#)  
**Cc:** [Daiquiri Carter](#); [Martha Cox](#); [OCC Claims Commission Cases](#)  
**Subject:** ORDER: Hudson, et al v. DHS, Claim No. 230641  
**Date:** Thursday, July 25, 2024 3:20:00 PM  
**Attachments:** [Hudson - 230641 - order.pdf](#)

---

Mr. Jackson and Mr. France, please see attached order entered by the Commission.

Thanks,  
Kathryn Irby

**Kathryn Irby**  
**Arkansas State Claims Commission**  
101 East Capitol Avenue, Suite 410  
Little Rock, Arkansas 72201  
(501) 682-2822

**From:** [Jim Jackson](#)  
**To:** [Kathryn Irby](#)  
**Cc:** [Vincent France](#); [Daiquiri Carter](#); [Martha Cox](#); [OCC Claims Commission Cases](#)  
**Subject:** Re: ORDER: Hudson, et al v. DHS, Claim No. 230641  
**Date:** Thursday, July 25, 2024 4:31:38 PM

---

Kathryn,

Thank you for sending.

Jim

Jim Jackson

Attorney at Law

700 West Broadway St: Suite 2

North Little Rock, AR 72114

(501) 823-3610

On Jul 25, 2024, at 3:20 PM, Kathryn Irby <[Kathryn.Irby@arkansas.gov](mailto:Kathryn.Irby@arkansas.gov)> wrote:

Mr. Jackson and Mr. France, please see attached order entered by the Commission.

Thanks,  
Kathryn Irby

**Kathryn Irby**  
**Arkansas State Claims Commission**  
101 East Capitol Avenue, Suite 410  
Little Rock, Arkansas 72201  
(501) 682-2822

<Hudson -- 230641 -- order.pdf>

**From:** [Kathryn Irby](#)  
**To:** [Jim Jackson](#); [Vincent France](#)  
**Cc:** [Martha Cox](#); [Daiquiri Carter](#)  
**Subject:** ZOOM INVITATION AND EXHIBIT BINDERS: Hudson v. DHS, Claim No. 230641  
**Date:** Friday, July 26, 2024 9:49:00 AM

---

Jim and Vincent, below is the hyperlink for the Zoom invitation. The same Zoom invite is on the second page of the hearing letter, but the below link may be easier to send to you witnesses.

Also, if the parties anticipate having a lot of exhibits, please submit four exhibit binders to the Commission for the commissioners to use during the hearing. I will have to ship the binders to the commissioners, so I need those by the prehearing material deadline. I also need the exhibits submitted electronically so that we can upload them to our database.

Thanks,  
Kathryn

**Kathryn Irby**  
**Arkansas State Claims Commission**  
101 East Capitol Avenue, Suite 410  
Little Rock, Arkansas 72201  
(501) 682-2822

Kathryn Irby -- Claims Commission is inviting you to a scheduled Zoom meeting.

Topic: Claims Commission -- hearings  
Time: Sep 19, 2024 09:00 AM Central Time (US and Canada)

Join Zoom Meeting

<https://us06web.zoom.us/j/89325174710?pwd=4OGhHVweZgNpCnPUsN3NfpH8gsggrns.1>

Meeting ID: 893 2517 4710

Passcode: riH9Sn

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One tap mobile

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+19294362866,,89325174710#,,,,\*048773# US (New York)

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Dial by your location

- +1 646 931 3860 US
- +1 929 436 2866 US (New York)
- +1 301 715 8592 US (Washington DC)
- +1 305 224 1968 US
- +1 309 205 3325 US
- +1 312 626 6799 US (Chicago)
- +1 689 278 1000 US
- +1 719 359 4580 US
- +1 253 205 0468 US
- +1 253 215 8782 US (Tacoma)
- +1 346 248 7799 US (Houston)
- +1 360 209 5623 US
- +1 386 347 5053 US
- +1 507 473 4847 US
- +1 564 217 2000 US
- +1 669 444 9171 US
- +1 669 900 6833 US (San Jose)

Meeting ID: 893 2517 4710

Passcode: 048773

Find your local number: <https://us06web.zoom.us/j/89325174710>

---

**From:** Brent Gasper <Brent.Gasper@dhs.arkansas.gov>

**Sent:** Wednesday, October 11, 2023 1:47 PM

**To:** Kathryn Irby <Kathryn.Irby@arkansas.gov>

**Subject:** RE: CLAIM HEARING SCHEDULED: Hudson v. DHS, Claim No. 230641

Received, thanks.

brent

---

**From:** Kathryn Irby <[Kathryn.Irby@arkansas.gov](mailto:Kathryn.Irby@arkansas.gov)>

**Sent:** Wednesday, October 11, 2023 12:48 PM

**To:** Jim Jackson <[jim@jimjacksonatty.com](mailto:jim@jimjacksonatty.com)>; Martha Cox <[mcox@jimjacksonatty.com](mailto:mcox@jimjacksonatty.com)>; Brent Gasper <[Brent.Gasper@dhs.arkansas.gov](mailto:Brent.Gasper@dhs.arkansas.gov)>; Daiquiri Carter <[Daiquiri.Carter@dhs.arkansas.gov](mailto:Daiquiri.Carter@dhs.arkansas.gov)>

**Subject:** CLAIM HEARING SCHEDULED: Hudson v. DHS, Claim No. 230641

Jim and Brent, please see attached hearing letter for the claim.

Thanks,

Kathryn

**Kathryn Irby**  
**Arkansas State Claims Commission**  
101 East Capitol Avenue, Suite 410  
Little Rock, Arkansas 72201  
(501) 682-2822

**From:** [Jim Jackson](#)  
**To:** [Kathryn Irby](#); [Vincent France](#)  
**Cc:** [Martha Cox](#); [Daiquiri Carter](#)  
**Subject:** RE: ZOOM INVITATION AND EXHIBIT BINDERS: Hudson v. DHS, Claim No. 230641  
**Date:** Friday, July 26, 2024 11:07:53 AM  
**Attachments:** [image.png](#)  
[image.png](#)  
[image.png](#)  
[image.png](#)

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Thank you,  
Jim



### Jim Jackson

Jackson Law Firm

[JimJacksonAtty.com](http://JimJacksonAtty.com)

700 W. Broadway

North Little Rock, AR 72114

P (501) 823-3610

F (501) 823-3611




---

**From:** Kathryn Irby <Kathryn.Irby@arkansas.gov>  
**Sent:** Friday, July 26, 2024 9:50 AM  
**To:** Jim Jackson <jim@jimjacksonatty.com>; Vincent France <Vincent.P.France@dhs.arkansas.gov>  
**Cc:** Martha Cox <mcox@jimjacksonatty.com>; Daiquiri Carter <Daiquiri.Carter@dhs.arkansas.gov>  
**Subject:** ZOOM INVITATION AND EXHIBIT BINDERS: Hudson v. DHS, Claim No. 230641

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Kathryn

**Kathryn Irby**

**Arkansas State Claims Commission**

101 East Capitol Avenue, Suite 410  
Little Rock, Arkansas 72201  
(501) 682-2822

Kathryn Irby -- Claims Commission is inviting you to a scheduled Zoom meeting.

Topic: Claims Commission -- hearings

Time: Sep 19, 2024 09:00 AM Central Time (US and Canada)

Join Zoom Meeting

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Passcode: riH9Sn

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+19294362866,,89325174710#,,,,\*048773# US (New York)

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Dial by your location

- +1 646 931 3860 US
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- +1 305 224 1968 US
- +1 309 205 3325 US
- +1 312 626 6799 US (Chicago)
- +1 689 278 1000 US
- +1 719 359 4580 US
- +1 253 205 0468 US
- +1 253 215 8782 US (Tacoma)
- +1 346 248 7799 US (Houston)
- +1 360 209 5623 US
- +1 386 347 5053 US
- +1 507 473 4847 US
- +1 564 217 2000 US
- +1 669 444 9171 US
- +1 669 900 6833 US (San Jose)

Meeting ID: 893 2517 4710

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Find your local number: <https://us06web.zoom.us/j/kvRXLHStu>

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**From:** Brent Gasper <[Brent.Gasper@dhs.arkansas.gov](mailto:Brent.Gasper@dhs.arkansas.gov)>

**Sent:** Wednesday, October 11, 2023 1:47 PM

**To:** Kathryn Irby <[Kathryn.Irby@arkansas.gov](mailto:Kathryn.Irby@arkansas.gov)>

**Subject:** RE: CLAIM HEARING SCHEDULED: Hudson v. DHS, Claim No. 230641

Received, thanks.

brent

---

**From:** Kathryn Irby <[Kathryn.Irby@arkansas.gov](mailto:Kathryn.Irby@arkansas.gov)>

**Sent:** Wednesday, October 11, 2023 12:48 PM

**To:** Jim Jackson <[jim@jimjacksonatty.com](mailto:jim@jimjacksonatty.com)>; Martha Cox <[mcox@jimjacksonatty.com](mailto:mcox@jimjacksonatty.com)>; Brent Gasper <[Brent.Gasper@dhs.arkansas.gov](mailto:Brent.Gasper@dhs.arkansas.gov)>; Daiquiri Carter <[Daiquiri.Carter@dhs.arkansas.gov](mailto:Daiquiri.Carter@dhs.arkansas.gov)>

**Subject:** CLAIM HEARING SCHEDULED: Hudson v. DHS, Claim No. 230641

Jim and Brent, please see attached hearing letter for the claim.

Thanks,  
Kathryn

**Kathryn Irby**  
**Arkansas State Claims Commission**  
101 East Capitol Avenue, Suite 410  
Little Rock, Arkansas 72201  
(501) 682-2822

**From:** [Martha Cox](#)  
**To:** [Kathryn Irby](#); [ASCC Pleadings](#)  
**Cc:** [Vincent France](#); [Daiquiri Carter](#); [Jim Jackson](#)  
**Subject:** Haley Hudson, Special Adm"x of the Estate of Jacqueline Ashcraft, deceased and Permanent Guardian of [REDACTED], a Minor Child v. Arkansas Department of Human Services Arkansas State Claims Commission No. 230641 Incident Date: 6/11/2021 - Logan Cou  
**Date:** Thursday, August 22, 2024 3:57:30 PM  
**Attachments:** [Pre-Hearing Brief.pdf](#)  
[Letter to Arkansas State Claims Commission from Exhibits 8-22-2024.pdf](#)

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Please find attached the claimant's Pre-Hearing Brief and a letter from Attorney Jim Jackson containing a hyperlink for the claimant's Trial Exhibits in the above-referenced claim. The hyperlink is also included in this email.

[REDACTED]

If you have any problem opening any of the documents or the hyperlink, please let us know.

Thanks.

Martha Cox, PP, PLS  
Paralegal for The Jackson Law Firm  
700 West Broadway, Suite 200  
North Little Rock, AR 72114  
Phone: (501) 823-3610  
Fax: (501) 823-3611  
[mcox@jimjacksonatty.com](mailto:mcox@jimjacksonatty.com)



August 22, 2024

VIA EMAIL & FIRST CLASS MAIL

Ms. Kathryn Irby  
 Arkansas State Claims Commission  
 101 East Capitol Avenue, Suite 410  
 Little Rock, AR 72201

Re: Haley Hudson, Special Adm'x of the Estate of Jacqueline Ashcraft,  
 deceased and Permanent Guardian of [REDACTED], a Minor Child  
 v. Arkansas Department of Human Services  
 Arkansas State Claims Commission No. 230641

Dear Kathryn:

Please find attached, in the hyperlink below, the claimant's Trial Exhibits in the above-referenced claim. The Trial Exhibits are divided into two sections: Trial Exhibits for Jacqueline Ashcraft, deceased, and Trial Exhibits for [REDACTED], a minor.

[REDACTED]

If you have any difficulty opening the link, please let us know. Also enclosed is the claimant's Pre-Hearing Brief. Four copies of the Trial Exhibits (in 3-ring binders) and four copies of the claimant's Pre-Hearing Brief will be delivered to the Claims Commission.

Please call me at (501) 823-3610 with any questions or suggestions. My e-mail address is [Jim@JimJacksonatty.com](mailto:Jim@JimJacksonatty.com).

Sincerely,

Jim R. Jackson

JRJ/mc  
 Enclosures

cc/enc.: Mr. Vincent France (via email only)

**JIM JACKSON** // Attorney at Law

700 W. Broadway Street; Suite 2  
 North Little Rock, AR 72114-5528

501.823.3610  
 F 501.823.3611

[Jim@JimJacksonAtty.com](mailto:Jim@JimJacksonAtty.com)

[www.JimJacksonAtty.com](http://www.JimJacksonAtty.com)

Ms. Kathryn Irby  
Arkansas State Claims Commission  
101 East Capitol Avenue, Suite 410  
Little Rock, AR 72201

**ARKANSAS STATE CLAIMS COMMISSION**

**HALEY HUDSON, SPECIAL ADMINISTRATRIX  
OF THE ESTATE OF JACQUELINE LYNN  
ASHCRAFT, DECEASED; AND HALEY HUDSON  
AS PERMANENT LEGAL GUARDIAN OF [REDACTED]  
[REDACTED] A MINOR CHILD**

**CLAIMANT**

**VS.**

**CC NO. 230641**

**ARKANSAS DEPARTMENT OF  
HUMAN SERVICES**

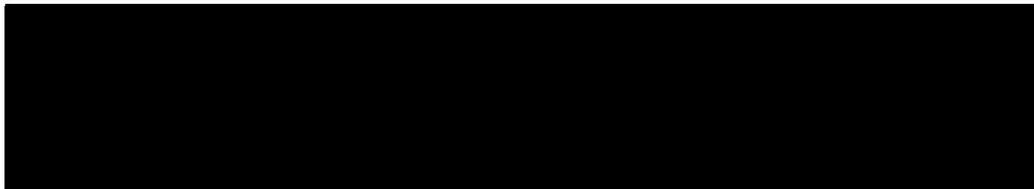
**RESPONDENT**

**PRE-HEARING BRIEF**

The sole issue at this trial is to determine the amount of damages to be awarded in a wrongful death claim and a bodily injury claim arising from a car wreck caused by a DHS employee. The respondent's liability for causing the death and injury has already been determined.

Jacqueline Ashcraft, was a 50-year-old mother of five children. Ashcraft was driving her [REDACTED] to the nephew's home on a Friday afternoon in June 2021 when her car was rear-ended at a high rate of speed by a DHS employee. The impact caused Jacqueline Ashcraft to sustain a traumatic hemorrhage of the right cerebrum. This brain bleed resulted in slurred speech and ultimately her death despite emergency medical intervention.

Paramedics rushed her to the hospital in Booneville where a CT Scan was immediately performed. The CT scan revealed a massive brain hemorrhage.



<sup>1</sup> Uncus is the innermost part of the temporal lobe.

See Ashcraft Exhibits Bates #36-37.

There was nothing that could be done to reverse the eventual outcome. By the time Jacqueline Ashcraft was admitted to Mercy Hospital in Fort Smith later that afternoon, she was on a ventilator and appeared to be “sleeping.” The family was frantically called in for one last visit. The medical professionals did everything possible to keep her “alive” until all five children and her siblings and mother could arrive to say “goodbye.” Dr. Christopher Bell removed Jacqueline Ashcraft from life support approximately 12 hours after the collision, and she was pronounced dead shortly thereafter. See Dr. Bell’s deposition in Ashcraft Exhibits Bates 17-38. The coroner listed the cause of death as an [REDACTED] secondary to an automobile accident. See Ashcraft Bates 15.

The second claim is the bodily injury claim of [REDACTED] who was Ashcraft’s [REDACTED] riding in the back seat of the car. [REDACTED] sustained a Traumatic Brain Injury in the collision. [REDACTED] was knocked unconscious in the wreck. She has no recollection of any events that occurred on June 11, 2021. [REDACTED]

[REDACTED]

Haley Hudson is the 29-year-old sister of [REDACTED]. She lives in [REDACTED] with her two children and fiancé. Haley Hudson took [REDACTED] into her home immediately after the wreck. She was appointed Permanent Guardian of [REDACTED] by Logan County Probate Judge Christopher Morledge in an Order dated July 20, 2021.

DHS had liability insurance with Cincinnati Insurance Company for this collision. Haley Hudson, in her capacity as Special Administratrix and Permanent Guardian, received \$150,000 from this insurance coverage.

Haley Hudson is seeking full compensation from the Arkansas Claims Commission for the wrongful death of Jacqueline Ashcraft and the bodily injury claim of [REDACTED]

The amount of damages for these two claims is the sole issue before this Commission. The issue of vicarious liability/*respondeat superior* has been previously determined. The respondent admitted that the negligence of its employee was the sole cause of the collision. The respondent contended that the employee was outside the scope of her employment at the time of the collision. The Commission was fully briefed on this issue and heard oral arguments on the respondent's Motion for Summary Judgment. The Commission found that the DHS employee, Jennifer Wilkerson, was working within the scope of her employment at the time of the collision in a decision handed down in an Oder dated July 25, 2024.

### **I. Wrongful Death of Jacqueline Ashcraft**

Jacqueline Ashcraft was living in an apartment in Paris, Arkansas, with her minor daughters [REDACTED]. Her other three children, Dalton Ashcraft, Mark Hudson, and Haley Hudson, were all adults living with their own families. Jacqueline Ashcraft was extremely close to her children. Jacqueline and Haley Hudson had lengthy telephone calls every day. Jacqueline was solely responsible for clothing, feeding, and taking care of [REDACTED]. [REDACTED] enjoyed being in school and participating in sports in Paris, Arkansas. [REDACTED] father was not involved in their life. Everything in this household was running smoothly until the wreck occurred.

The family had a big family reunion the weekend prior to the wreck. Jacqueline had a wonderful time being with her children, grandchildren, and siblings. The family will testify

that it was a blessing that they were able to spend a long family weekend with Jacqueline before she was killed in this wreck.

#### **Life Expectancy**

Jacqueline Ashcraft was born on [REDACTED]. She was fifty years old at the time of her death. Ashcraft had a life expectancy of an additional 33.60 years at the time of her death according to the United States Life Tables, 2019 published by the Center for Disease Control. *See* Ashcraft Exhibits Bates 068-069.

#### **Loss of Earning Capacity**

Jacqueline Ashcraft was not employed at the time of the wreck. She had a work history of working for convenience stores. Dr. Ralph Scott is an economist, who will testify that Jacqueline had an earning capacity equal to the minimum wage of earnings, which are \$22,880 per year. Jacqueline would also be able to earn fringe benefits, which are 30% of this income. The total valuation for income and fringe benefits is in the range of **\$187,147.82 to \$423,919.95**. This is the measure of Jacqueline Ashcraft's earning capacity from the time of her death until she would have retired. *See* Ashcraft Exhibits Bates 068.

#### **Loss of Life Claim**

The value of life, also known as Loss of Life, is independent of earning capacity. We generally consider life to be "priceless." However, the law requires that the fact finder place a dollar value on an estate's Loss of Life claim. Dr. Scott will testify that economists at the U.S. Department of Transportation and the Environmental Protection Agency have studied the value of a statistical life and applying that methodology to assess the economic benefits of preventing a fatality. The prevention of injury and Loss of Life is a significant focus for both the DOT and EPA. The average annual evaluation is \$278,711 and \$255,769 for the DOT and EPA, respectively. Applying this methodology to Ms. Ashcraft's life expectancy of

33.60 years would result in a Loss of Life valuation of **\$9,364,690** or **\$8,593,838**, respectively.  
 [33.6 x \$278,711 = \$9,364,690] [33.6 x \$255,769 = \$8,593,838].

The above is just one methodology that the Commission can use to put a dollar amount on the value of life.

Dr. Scott is also familiar with other Loss of Life verdicts in wrongful death cases in which he has testified. For example, a verdict of **\$2,500,000** for the Loss of Life element was given in *Brown v. ARDOT*, Claim # 200809. Judge Mackie Pierce returned a Loss of Life verdict of **\$10,311,479** in *Daniels v. Discount Zone, et al.*, Pulaski County Circuit No. 60CV-18-6611. Judge Dennis Sutterfield returned a Loss of Life verdict of **\$9,700,000** in *Murdoch v. Cowger*, Pope County Circuit No. 58CV-18-638. Dr. Scott prepared an expert report in each of these cases.

The claimant will submit to this Commission that the annual value of Jacqueline Ashcraft's life is more than **\$100,000**. Ultimately, it will be this Commission's decision to determine what annual amount to place on the value of Jacqueline Ashcraft's Loss of Life and to multiply that number by her life expectancy of 33.6 years.

#### **Loss of Household Services**

Dr. Scott will testify regarding the value of the loss of household services that Jacqueline Ashcraft provided for her two minor daughters, [REDACTED]. The total amount of household services is **\$89,725.28**. This would be projected over 5.47 years which is when the minor girls would reach the age of majority. See Ashcraft Exhibits Bates 069.

#### **Cost of Raising Surviving Minor Children**

Dr. Scott has researched the cost of raising children. This is an annual figure prepared by the United States Department of Agriculture. The present value of the total expenses to

raise a child is \$61,866.23 and \$28,971.49 for [REDACTED] respectively.

See Ashcraft Exhibits Bates 070.

**Cost of College**

The claimant will request that the undergraduate college costs for the minor children be paid for by the respondent. The annual total cost to attend the University of Arkansas at Fayetteville is \$28,300 per annum. This is a cost of \$226,400 for both girls to attend four years of college. See Ashcraft Exhibits Bates 144.

**Elements of Damage for Wrongful Death**

The elements of damages for the wrongful death of Jacqueline Ashcraft include:

- (a) Compensatory damages for the severe pain, suffering, and mental anguish sustained by Jacqueline Lynn Ashcraft after the impact until her death;
- (b) Pecuniary injuries sustained by [REDACTED]
- (c) Pecuniary injuries sustained by [REDACTED]
- (d) Compensatory damages for Jacqueline Lynn Ashcraft's Loss of Life;
- (e) Reimbursement of reasonable funeral expenses of \$1,195.96; and
- (f) Compensatory damages for the mental anguish sustained, and reasonably probable to be suffered in the future, by the statutory beneficiaries who are listed below:

| <u>Name</u>          | <u>Relationship</u> | <u>Address</u> |
|----------------------|---------------------|----------------|
| [REDACTED]           | Minor Daughter      | [REDACTED]     |
| [REDACTED]           | Minor Daughter      | [REDACTED]     |
| Dalton Cody Ashcraft | Adult Son           | [REDACTED]     |
| Mark Hudson          | Adult Son           | [REDACTED]     |

Haley Nicole Hudson      Adult Daughter

LaDonna Jackson<sup>2</sup>      Mother

Jeffrey Ashcraft<sup>3</sup>      Brother

Bobby Ashcraft      Brother

Jennifer Howard      Half-Sister

Joshua Jackson      Half-Brother



**II. Bodily Injury and Mental Anguish Claim of**



 The fact that she is unable to recall any event about the day of the wreck haunts her daily.

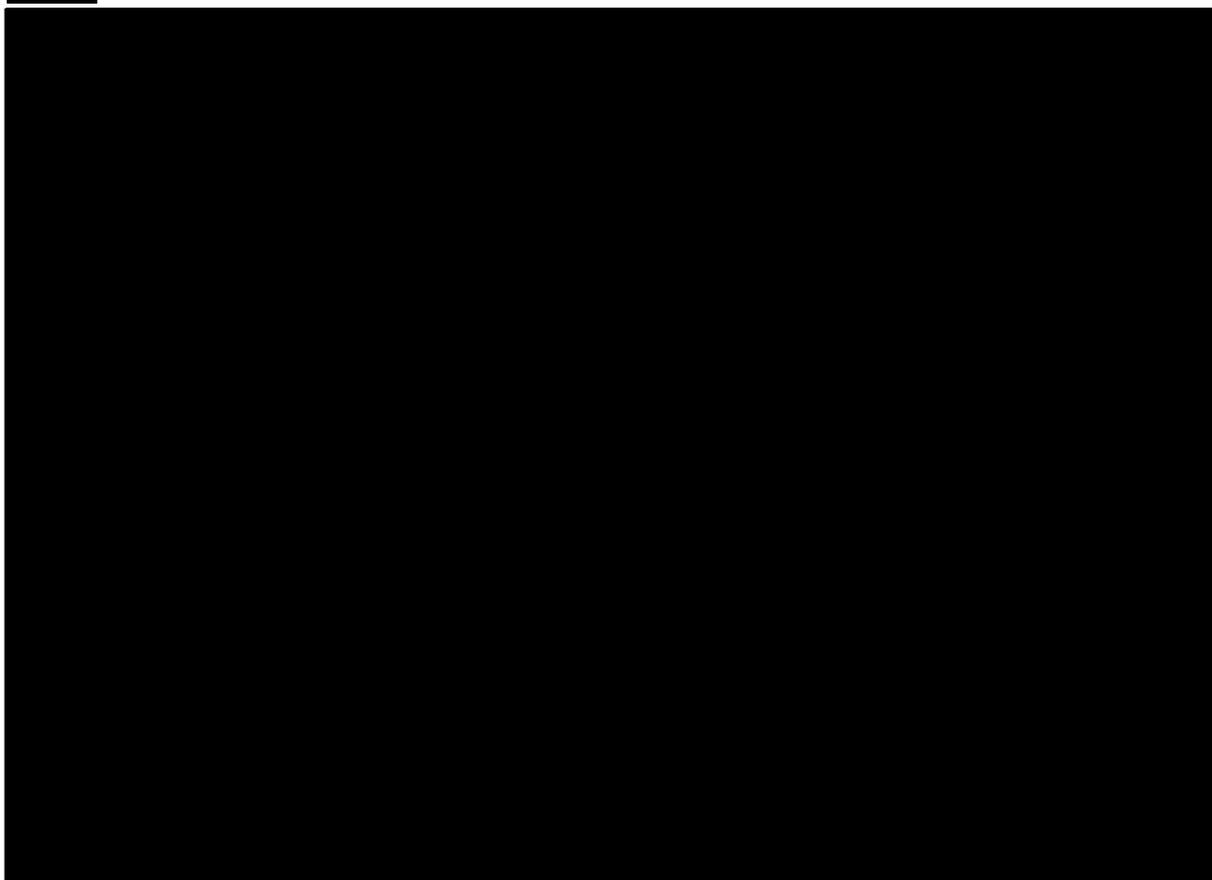
It is difficult to separate  pain and suffering from the mental anguish she experiences with the loss of her mother. For example,  was named to the Homecoming Court last year. The announcer should have called out her mother's name as her escort to the 50-yard line. Instead, her sister, Haley Hudson, was her escort.  and Haley Hudson talked at length about how proud  mom would have been to walk  onto the football field at homecoming.

<sup>2</sup> LaDonna Jackson passed away last summer. Her mental anguish claim was extinguished when she died.

<sup>3</sup> Jacqueline Ashcraft's siblings have waived any right of recovery for a mental anguish claim. Their focus is on the children.

Everything in [REDACTED] life changed on June 11, 2021. A 14-year-old girl losing her mother is a tragedy under any circumstance [REDACTED] relationship with her older sister was transformed from being a fun relationship into her sister being her supervisor and the one telling her when to go to bed, what chores to do, and when to complete homework. [REDACTED]

[REDACTED] had to switch schools after she had already established herself at Paris High School.



[REDACTED] bodily injury claim and mental anguish claims have a value of more than \$1,500,000.00.

### III. Mental Anguish Claim of [REDACTED]

[REDACTED] was also a passenger in the back seat of her mother's car. Fortunately, [REDACTED] did not sustain a major injury like [REDACTED]. However, she remembers every single event of that day, which includes watching her mother's medical condition rapidly deteriorate right

in front of her eyes. Imagine the horror of a 10-year-old child witnessing her mother go from being able to fully communicate with first responders to being unable to talk and having to be physically carried to the ambulance, all within 30 minutes. On top of that, her sister, [REDACTED] was knocked unconscious and had no idea what was going on. [REDACTED] grandfather arrived at the scene a few minutes after the wreck occurred. He took [REDACTED] to the emergency room in Paris, Arkansas, after the ambulance left with Jacqueline Ashcraft. [REDACTED] and her grandfather were in an absolute panic as to what to do after [REDACTED] was released from the hospital in Paris. [REDACTED] thought their mom was in the hospital in Booneville, Arkansas, but then found out she had been airlifted to a hospital in Fort Smith.

[REDACTED] mother, Jacqueline Ashcraft, was unresponsive and on life support when she arrived at Mercy Hospital in Fort Smith. [REDACTED] had to wait in the hospital waiting room for the rest of her family to arrive, knowing the wailing of tears that would occur as various family members hastily arrived from across the state.

[REDACTED] whispered her last "Goodbye Mom" and "I Love You" to her momma while holding hands with her sisters and brothers in the emergency room. This heart-breaking scene will stay with [REDACTED] for the rest of her life.

[REDACTED] was just 10 years old when she lost her mom. A child losing their mother at such a tender age is beyond words. This is the loss that no one ever speaks about in public. It is the second deepest fear of every parent. [REDACTED] loss of the guidance of her mom is another "priceless" element of damages to which this Commission must assign a dollar amount. [REDACTED] will each testify separately and independently about how the loss of their mother has affected them. You will be placed in the difficult position of trying to determine how to place a value on the mental anguish these two teenagers are

experiencing and will continue to experience as the result of the negligence of the respondent's employee.

██████████ Mental Anguish claim for the loss of her mother has a value of more than **\$1,000,000.**

### **CONCLUSION**

The Second Amended Complaint seeks a total recovery of Five Million Dollars (\$5,000,000.00) for all claims. A judgment for this amount would be conservative based on the various elements of damage that the law entitles this family to recover. There is no reason that the children should not be fully compensated for each and every element of damages being sought. The respondent has a budget of more than \$11 Billion. The claimant will introduce overwhelming evidence to justify being fully compensated for this terrible tragedy.

*/s/ Jim Jackson*

Jim R. Jackson, AR Bar #: 93-209  
 Jackson Law Firm  
 700 West Broadway Street, Suite 200, North  
 Little Rock, AR 72114-5528  
 (501) 823-3610 phone  
 (501) 823-3611 facsimile  
*Jim@JimJacksonAtty.com* email

### **CERTIFICATE OF SERVICE**

A copy of the above and foregoing Pre-Hearing Brief has this 22nd day of August, 2024, been served on the following attorney of record via email:

Vincent P. France, *Esq.*  
 Arkansas Department of Human Services  
 P.O. Box 1437, Slot W-296  
 Little Rock, AR 72203-1437

*/s/ Jim Jackson*

Jim R. Jackson

ARKANSAS STATE CLAIMS COMMISSION

HALEY HUDSON, SPECIAL ADMINISTRATRIX OF  
 THE ESTATE OF JACQUELINE LYNN ASHCRAFT,  
 DECEASED, AND HALEY HUDSON AS  
 PERMANENT LEGAL GUARDIAN OF ██████████  
 ██████████ A MINOR CHILD

CLAIMANT

VS.

CC NO. 230641

ARKANSAS DEPARTMENT OF HUMAN SERVICES

RESPONDENT

**TRIAL EXHIBITS FOR PERSONAL INJURY CLAIM  
 OF ██████████, A MINOR CHILD**

| Exhibit #<br>Bates # | Description                                                                                                                                                                                                                         | Kadey Jones Exhibits |
|----------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------|
| 1                    | Deposition of Dr. Garrett Andrews .....                                                                                                                                                                                             | 001 – 010            |
|                      | Deposition Exhibits:                                                                                                                                                                                                                |                      |
| 1A                   | Curriculum Vitae for Dr. Garrett Andrews .....                                                                                                                                                                                      | 011 – 015            |
| 1B                   | Engagement letter with retainer check .....                                                                                                                                                                                         | 016 – 019            |
| 1B                   | Forensic Retainer Agreement for Andrew Neuropsychology .....                                                                                                                                                                        | 020                  |
| 1B                   | Color photos of a blue Hyundai Sonata driven by Jacqueline<br>Ashcraft. ██████████ was one of the three rear-seat<br>passengers in this blue car .....                                                                              | 022 – 025            |
| 1B                   | Color photos of the front of the car that struck the rear of the<br>Sonata at a high rate of speed. This car was driven by<br>Jennifer Wilkerson.....                                                                               | 026 – 027            |
| 1B                   | ██████████ medical records – Mercy Hospital at Paris .....                                                                                                                                                                          | 029 – 073            |
| 1B                   | ██████████ medical records – Mercy Clinic at Paris.....                                                                                                                                                                             | 074 – 093            |
| 1B                   | ██████████ medical records – Scarbrough Clinic.....                                                                                                                                                                                 | 094 – 102            |
| 1B                   | ██████████ medical records – Steve-Felix Belinga, M.D. ....                                                                                                                                                                         | 103 – 107            |
| 1B                   | ██████████ medical records – Wynne Medical Clinic –<br>Jeremiah Nugent, M.D. ....                                                                                                                                                   | 108 – 116            |
| 1C                   | Dr. Garrett Andrews medical report dated 5/31/2023.....                                                                                                                                                                             | 117 – 124            |
| 2                    | Expert Fee Schedule 2023 for Andrews Neuropsychology;<br>Invoice from Dr. Garrett Andrews for testing and report<br>dated June 7, 2024; and Invoice from Dr. Garrett<br>Andrews for written deposition fee dated July 29, 2024..... | 125 - 128            |

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BEFORE THE ARKANSAS STATE CLAIMS COMMISSION

HALEY HUDSON, As Special )  
Administratrix of the )  
Estate of JACQUELINE LYNN )  
ASHCRAFT, Deceased, and )  
as Permanent Legal ) CC NUMBER  
Guardian of [REDACTED] ) 230641  
[REDACTED], )  
A Minor, )  
CLAIMANT, )  
VS. )  
ARKANSAS DEPARTMENT OF  
HUMAN SERVICES,

RESPONDENT.

-----  
DEPOSITION UPON WRITTEN QUESTIONS OF  
GARRETT ANDREWS, PsyD, ABPP/CN  
June 28, 2024  
-----

DEPOSITION UPON WRITTEN QUESTIONS OF GARRETT  
ANDREWS, produced as a witness at the instance of the  
CLAIMANT, and duly sworn, was taken in the  
above-styled and numbered cause on the 28th day of  
June, 2024, before Tammie L. Foreman, CCR in and for  
the State of Arkansas, RPR, CRR, reported by machine  
shorthand, at the office of Arkansas Neuropsychology &  
Behavioral Health, 6020 Warden Road, Suite 210,  
Sherwood, Arkansas, pursuant to the Arkansas Rules of  
Civil Procedure.



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I N D E X

June 28, 2024

PAGE:

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|------------------------|---|
| Stipulations           | 1 |
| Reporter Certification | 7 |

WITNESS: GARRETT ANDREWS

PAGE:

EXHIBITS

| NO.       | DESCRIPTION                                                                                         | MARKED |
|-----------|-----------------------------------------------------------------------------------------------------|--------|
| Exhibit 1 | Curriculum Vitae                                                                                    | 3      |
| Exhibit 2 | Cover Letter, Retainer Agreement, check for \$5,500, photographs, and medical records of [REDACTED] | 3      |
| Exhibit 3 | Report of Neuropsychological Examination of [REDACTED]                                              | 4      |



1 GARRETT ANDREWS,

2 having been first duly sworn, testified as follows:

3 Q. Will you state your name and place of  
4 employment?

10:58AM 5 A. Dr. Garrett Andrews, the Arkansas  
6 Neuropsychology Behavioral Health.

7 (Exhibit 1 marked for identification.)

8 Q. Can you provide us with a copy of your CV, which  
9 we will have marked as Exhibit 1 to your deposition?

11:01AM 10 A. Okay. Yes.

11 Q. Did Attorney Jim Jackson refer [REDACTED] [REDACTED] to  
12 your clinic for a Forensic Neuropsychological  
13 Examination that was performed on April 4, 2023?

14 A. Yes.

11:02AM 15 Q. Is \$5,500.00 your standard retainer agreement  
16 for performing a Forensic Neuropsychological  
17 Examination?

18 A. Yes.

19 (Exhibit 2 marked for identification.)

11:02AM 20 Q. I will represent to you that attached as  
21 Exhibit 2 is a three-page cover letter from my law  
22 firm dated March 20, 2023, an executed Retainer  
23 Agreement and a retainer check in the amount of  
24 \$5,500, along with six photographs and [REDACTED]  
25 medical records from Mercy Hospital in Paris, Mercy



1 Clinic in Paris, Scarbrough Clinic in Wynne, the  
2 Belinga Clinic in Fort Smith, and Wynne Medical  
3 Clinic. Did you receive the items listed in Exhibit 2  
4 as part of your engagement to perform a Forensic  
5 Neuropsychological Examination on [REDACTED]

6 A. Yes.

7 Q. Did you review and utilize the photographs and  
8 medical records attached in Exhibit 2 as part of your  
9 examination of [REDACTED]?

11:03AM 10 A. Yes, I did.

11 (Exhibit 3 marked for identification.)

12 Q. Are the results of the Forensic  
13 Neuropsychological Examination that you performed on  
14 [REDACTED] contained in the document attached to this  
15 deposition as Exhibit 3?

16 A. Yes.

17 Q. Did you identify the name of the medical reports  
18 you relied upon for obtaining a history for [REDACTED]  
19 in your report?

11:03AM 20 A. Yes. They are listed in -- by paragraph in  
21 "Review of Available Records" section.

22 Q. Are the results of the testing you performed  
23 contained in the Forensic Neuropsychological  
24 Examination attached as Exhibit 3?

11:03AM 25 A. Yes.





[REDACTED]

[REDACTED]

[REDACTED]

4 Q. Are all of your opinions given in this  
11:04AM 5 deposition given within a reasonable degree of medical  
6 probability?

7 A. Yes.

8 THE COURT REPORTER: Thank you. This  
9 concludes the deposition of Garrett Andrews,  
10 PsyD, ABPP.

11 (The deposition was concluded at 11:04 a.m.)

12 \* \* \* \* \*

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[REDACTED]

## 1 REPORTER CERTIFICATION

2 I, TAMMIE L. FOREMAN, Certified Court Reporter  
3 for the State of Arkansas, do hereby certify to the  
4 following:

5 1) that on 06/28/2024, the witness,  
6 GARRETT ANDREWS, was duly sworn by me prior to the  
7 taking of testimony as to the truth of the matters  
8 attested to and contained therein;

9 2) that the foregoing pages contain and are a  
10 true and correct transcription of the proceedings as  
11 reported verbatim by me via realtime stenography to  
12 the best of my ability and transcribed at or under my  
13 direction and supervision;

14 3) that I am neither counsel for, related to,  
15 nor employed by any of the parties to the action in  
16 which this proceeding was taken; and that I am not a  
17 relative or employee of any attorney employed by the  
18 parties hereto;

19 4) that I am not financially interested or  
20 otherwise interested in the outcome of this action  
21 that affects or has substantial tendency to affect  
22 impartiality or requires me to relinquish control of  
23 an original or copies of a deposition transcript  
24 before it is certified, or that requires me to provide  
25 any service not made available to all parties to the



1 action; and

2 5) that I have no contract with the parties,  
3 attorneys, or persons with an interest in the action;  
4 and that I am not knowingly identified on a preferred  
5 provider list, whether written or oral, for any  
6 litigant, insurance company, or third-party  
7 administrator involved in this matter;

8 6) that signature of the witness is waived.

9 This transcript is prepared at request of  
10 counsel for CLAIMANT, and all fees are billed directly  
11 to them in compliance with Arkansas Board of Court  
12 Reporter Examiners Regulations Section 19.

13 Witness my hand and seal this 1st of  
14 July, 2024.



*Tammie L. Foreman*

TAMMIE L. FOREMAN, CCR, CRE, RPR  
LS Certificate #305, State of Arkansas  
Arkansas Realtime Reporting  
10310 West Markham, Suite 10  
Little Rock, Arkansas 72205  
501-725-7963  
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Garrett Andrews, PsyD, ABPP  
Page 1 of 5

**Curriculum Vitae**

**Garrett Andrews, PsyD, ABPP/CN  
Board Certified Neuropsychologist**

**General Information**

Office Address: Arkansas Neuropsychology & Behavioral Health located at the  
Arkansas Neuroscience and Research Center  
6020 Warden Rd, Suite 210  
Sherwood, AR 72120  
501.527.1288 (Office)

**Education**

- 2005: Doctorate in Psychology: Clinical Psychology, (Specialty area: Neuropsychology), APA Accredited Program
- 2001: Masters of Art: Sport/Exercise Psychology, APA Accredited Program
- 1998: Bachelor of Art: Major: Psychology, Minor: Physical Education

**Board Certification**

- 2010: Certified Forensic Examiner, Arkansas State Hospital, Division of Behavioral Health Services, (Completion of Forensic Competency and Responsibility Evaluation Training for Licensed Psychologists and Psychiatrists)
- 2009: Diplomate, American Board of Clinical Neuropsychology (American Academy of Clinical Neuropsychology)
- 2009: Certified Brain Injury Specialist Trainer (Brain Injury Association of America)

**Licensure**

- 2007: Arkansas State License (07-17P)

**Active Hospital/Medical Appointments**

St. Vincent North (Encompass Health Rehab), North Little Rock, AR  
Pinnacle Point Behavioral Healthcare, Little Rock, AR  
Bridgeway Behavioral Health, N. Little Rock, AR  
Springwoods Behavioral Health, Fayetteville, AR

**Professional Positions**

- June 2009-Present Chief of Staff, Arkansas Neuropsychology and Behavioral Health, Board Certified Neuropsychologist, Sherwood, AR
- January 2015-Present Medical Program Director, Neuropsychology, Encompass Health Rehabilitation, Sherwood, AR
- October 2015-December 2019 Chief of Service, Vocational Rehabilitation and Neurocognitive Rehabilitation Services, Central Arkansas Veterans Healthcare Administration, North Little Rock, AR

Updated June 2024

Garrett Andrews, PsyD, ABPP  
Page 2 of 5

|                                 |                                                                                                                                                    |
|---------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------|
| October 2014-December 2019      | Director of Post-Doctoral Neuropsychology Training, Central Arkansas Veterans Healthcare Administration, North Little Rock, AR                     |
| March 2011-June 2019            | Director of Psychology Doctoral Training, Central Arkansas Veterans Healthcare Administration, North Little Rock, AR                               |
| March 2008-December 2019        | Program Manager, North Little Rock VA Polytrauma Clinic, Neuropsychology, North Little Rock, AR                                                    |
| January 2012-April 2016         | Adjunct Professor, University of Arkansas at Little Rock, Little Rock, AR                                                                          |
| October 2011-October 2015       | Program Manager, Neuropsychology and Rehabilitation Psychology Service, Central Arkansas Veterans Healthcare Administration, North Little Rock, AR |
| September 2009-Sept. 2012       | Independent Consulting Neuropsychologist, Deer Oaks Behavioral Health, Little Rock, AR                                                             |
| September 2009-Jan. 2011        | Adjunct Professor, Itawamba Community College, Fulton, MS                                                                                          |
| March 2008-February 2011        | Assistant Director of Psychology Doctoral Training, Central Arkansas VA, North Little Rock, AR                                                     |
| March 2008-October 2011         | Staff Neuropsychologist, Mental Health Service Central Arkansas Veterans Administration, N. Little Rock, AR                                        |
| July 2007-March 2008            | Assistant Clinical Professor & Neuropsychologist University of Arkansas for Medical Sciences Department of Geriatrics, Little Rock, AR             |
| August 2002-August 2003         | Psychiatric Technician III Cox Hospital, North, Adult Inpatient Psychiatric Unit Springfield, MO                                                   |
| August 1998-May 1999            | Parole and Probation Officer, Arkansas Department of Community Correction, El Dorado, AR.                                                          |
| <b><u>Clinical Training</u></b> |                                                                                                                                                    |
| Sept 2005- Sept 2007            | Geisinger Medical Center (Level I Trauma Center), Post-Doctoral Neuropsychology Fellowship, Danville, PA (APPCN Match)                             |
| Sept 2004-Sept 2005             | Veterans Affairs Medical Center of the Black Hills (Intern), Neuropsychology and Geropsychology Internship Track, Fort Meade, SD (APA Accredited)  |

Updated June 2024

Garrett Andrews, PsyD, ABPP  
Page 3 of 5

|                          |                                                                                                                                              |
|--------------------------|----------------------------------------------------------------------------------------------------------------------------------------------|
| January 2004-June 2004   | St. John's Regional Health Center (Practicum student), Neuropsychology and Rehabilitation, Physical Rehabilitation Services, Springfield, MO |
| July 2003-December 2003  | Neuropsychological Associates of Southwest Missouri (Practicum student), Springfield, MO                                                     |
| January 2003-June 2004   | Burrell Behavioral Health (Research student), Springfield, MO                                                                                |
| July 2003-December 2003  | United States Medical Center for Federal Prisoners (Practicum student), Springfield, MO                                                      |
| July 2003-December 2003  | Piney Ridge Center, Inc. (Practicum student), Ft. Leonard Wood, MO                                                                           |
| October 2003-Nov 2003    | Pre-Employment Evaluations for Springfield Police Department (Practicum student), Springfield, MO                                            |
| September 2002-July 2003 | Health and Rehabilitation Laboratory (Practicum student), Forest Institute, Springfield, MO                                                  |
| August 2000-June 2001    | Phoenix College Baseball Team (Sport Psychology Practicum student), Phoenix, AZ                                                              |
| Sept 1997-April 1998     | Missouri State Prison (Undergraduate Intern), Fulton Reception and Diagnostic Center, Fulton, MO                                             |

### **Publications & Presentations**

**Andrews, G.** (2023) *Intro to neuropsychology & concussion*. Lecture at the University of Central Arkansas. Doctoral student roundtable series.

**Andrews, G.** (2019) *Neuropsychological development in relation to the 2011 Miller v. Alabama Supreme Court Ruling*. Guest Lecture at UALR William H. Bowen School of Law.

**Andrews, G.** (2019) *Are cognitive deficits common in multiple sclerosis?* American Academy of Clinical Neuropsychology, "Ask the Experts" Series.

**Andrews, G.** (2019) *How do neuropsychologists distinguish between PTSD and TBI?* American Academy of Clinical Neuropsychology, "Ask the Experts" Series.

**Andrews, G.** (2019) *How long does it take to recovery after a Traumatic Brain Injury?* American Academy of Clinical Neuropsychology, "Ask the Experts" Series.

Paulson, J., Oswald, T., Fazio, R., & **Andrews, G.** (2018) *Replication of the Embedded Performance Validity Index within the Memory Module of the Neuropsychological Assessment Battery (NAB)*. 46th Annual Meeting of the International Neuropsychological Society, Washington, DC.

Updated June 2024

**Andrews, G.** (2017). 2017 VA Mental Health Summit. The Well-Rounded Veteran (Building Communities of Support for the Whole Veteran). Panel Speaker for Vocational Rehabilitation in the VA. Little Rock, AR

Oswald, T., Fazio, R., & **Andrews, G.** (2017). *Embedded Performance Validity Index within the Memory Module of the Neuropsychological Assessment Battery (NAB): A Pilot Study*. 45th Annual Meeting of the International Neuropsychological Society, New Orleans, LA.

**Andrews, G.** (2016). *Post-Traumatic Stress Disorder and Brain Injury*. Arkansas Trauma Rehabilitation Conference. Little Rock, AR

**Andrews, G.** (2014). 2014 VA Mental Health Summit. The Well-Rounded Veteran (Building Communities of Support for the Whole Veteran). Panel Speaker for PTSD and TBI in the VA. Little Rock, AR

**Andrews, G.** (2014). *Traumatic Brain Injury Cases: Doctor and Attorney Perspectives*. NBI: National Business Institute Presentation Series. Little Rock, AR

**Andrews, G.,** (2013). Keynote Speaker for UALR Psi Chi Annual Meeting. Little Rock, AR.

**Andrews, G.,** (2012). Panel Speaker for Association of Black Psychologists of Arkansas. Little Rock, AR.

**Andrews, G.,** Fahoum, Y., (2011). *Brain Injury and Cognitive Rehabilitation*. Presentation to the Brain Injury Association of Tennessee, Memphis Medical Center, Memphis, TN.

**Andrews, G.,** (2011). *Geriatric Assessment of Dementia Syndromes*. Presentation to the AGECC - Arkansas Geriatric Education Collaborative.

**Andrews, G.,** (2010). *Psychiatric sequelae following traumatic brain injury*. Arkansas Brain Injury Association Annual Conference, Little Rock, AR.

**Andrews, G.,** (2010). Forensic Neuropsychological Evaluation in Moderate-to-Severe Brain Injury: Failed Symptom Validity Measures in the Presence of Credible Personality and Behavioral Changes. *Archives of Clinical Neuropsychology (ABSTRACTS), Volume 25, Issue 6, 477-478.*

**Andrews, G.,** (2010), *Forensic Grand Rounds*. Forensic Neuropsychological Evaluation in Moderate-to-Severe Brain Injury: Failed Symptom Validity Measures in the Presence of Credible Personality and Behavioral Changes. Annual Conference for the National Academy of Neuropsychology, Vancouver, Canada.

**Andrews, G.,** (2010), *Mild traumatic brain injury and psychiatric sequelae*. VA Social Workers' Annual Workshop. Central Arkansas Veterans Healthcare System.

Thaut, M.H., Gardiner, J.C., Holmberg, D., Horwitz, J.L. Kent, L., **Andrews, G.,** Donelan, B., & McIntosh, G.R. (2009). Neurologic Music Therapy Improves Executive Function and Emotional Adjustment in Traumatic Brain Injury Rehabilitation. *Annals of the New York Academy of Sciences, 1169(1), 406-416.*

**Andrews, G.,** (2008) *Mild Traumatic Brain Injury and Post concussive symptoms*. Arkansas Affiliate of the Association on Higher Education and Disability (Ark-AHEAD) Fall Workshop. Pulaski Technical College.

**Andrews, G.,** (2008) *Neuropsychological assessment with geriatric patients*. University of Arkansas for Medical Sciences, Department of Geriatrics, multi-disciplinary training week.

**Andrews, G.,** Cassidy, S. (2007) *Neuropsychology consultation within a geriatric primary care setting*. Department of Geriatrics Grand Rounds, University of Arkansas for Medical Sciences.

**Andrews, G.,** (2007). *Differential Diagnosis of Dementia Syndromes*. Psychiatry Grand Rounds, Geisinger Medical Center.

**Andrews, G.,** Barry, D., Wilson, B. (2006). *Use of a Modified Average Impairment Rating: Substituting Symbol Search for Picture Arrangement*. North American Brain Injury Society, Conference of the Americas.

**Andrews, G.,** (2004). *Concussion in Athletes: Post Concussive Syndrome*. Black Hills State University Seminar for Injury in Sport.

**Andrews, G.,** Boling, E., Burns, K., Jones, D., (1998). *Soccer Players Hostility Levels as a Result of Gender, Game Outcome, and Game Preparation*. 17<sup>th</sup> Annual Mid-America Undergraduate Psychology Conference.

Gates, C., Drew, C., **Andrews, G.,** Jaeger, T., (1997). *Tracking and Static Acuity in Peripheral Vision*. 16<sup>th</sup> Annual Mid-America Undergraduate Psychology Conference.

#### **Professional Committees, Organizations & Awards**

Green Belt (Lean Healthcare Training) (completed 2013)

American Board of Professional Psychology (Oct 2009-present)

Diplomate, American Board of Clinical Neuropsychology (Oct 2009-present)

National Association of Neuropsychology (2005)

Brain Injury Association of Arkansas (Board Member, March 2009-March 2011)

Brain Injury Association of Arkansas (Vice President, Jan 2010- Jan 2011)

Certified Brain Injury Specialist Trainer (Oct 2009), Brain Injury Association of America

CAVHS Evidence Based Assessment Lead

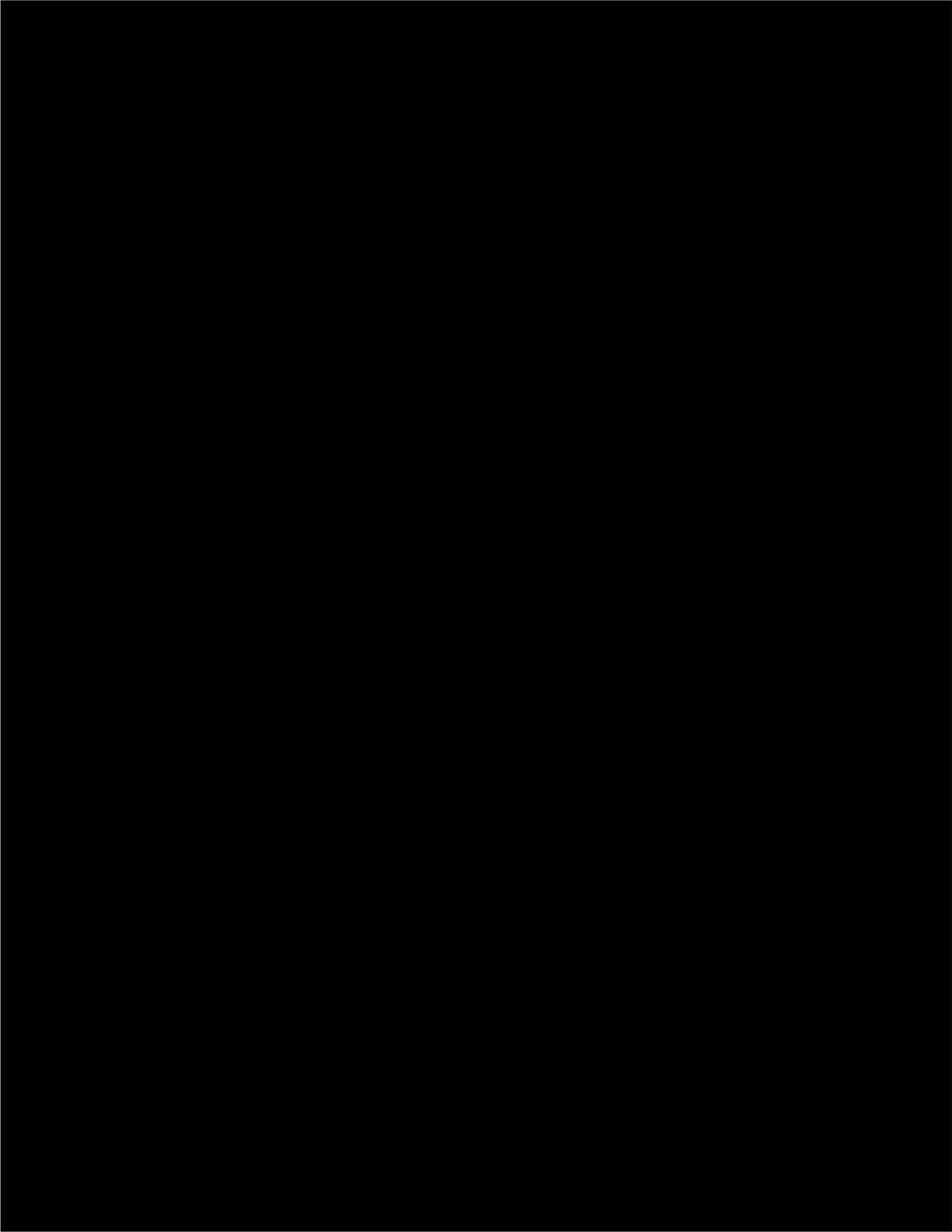
CAVHS Vocational Rehabilitation Resource Committee (Committee Member)

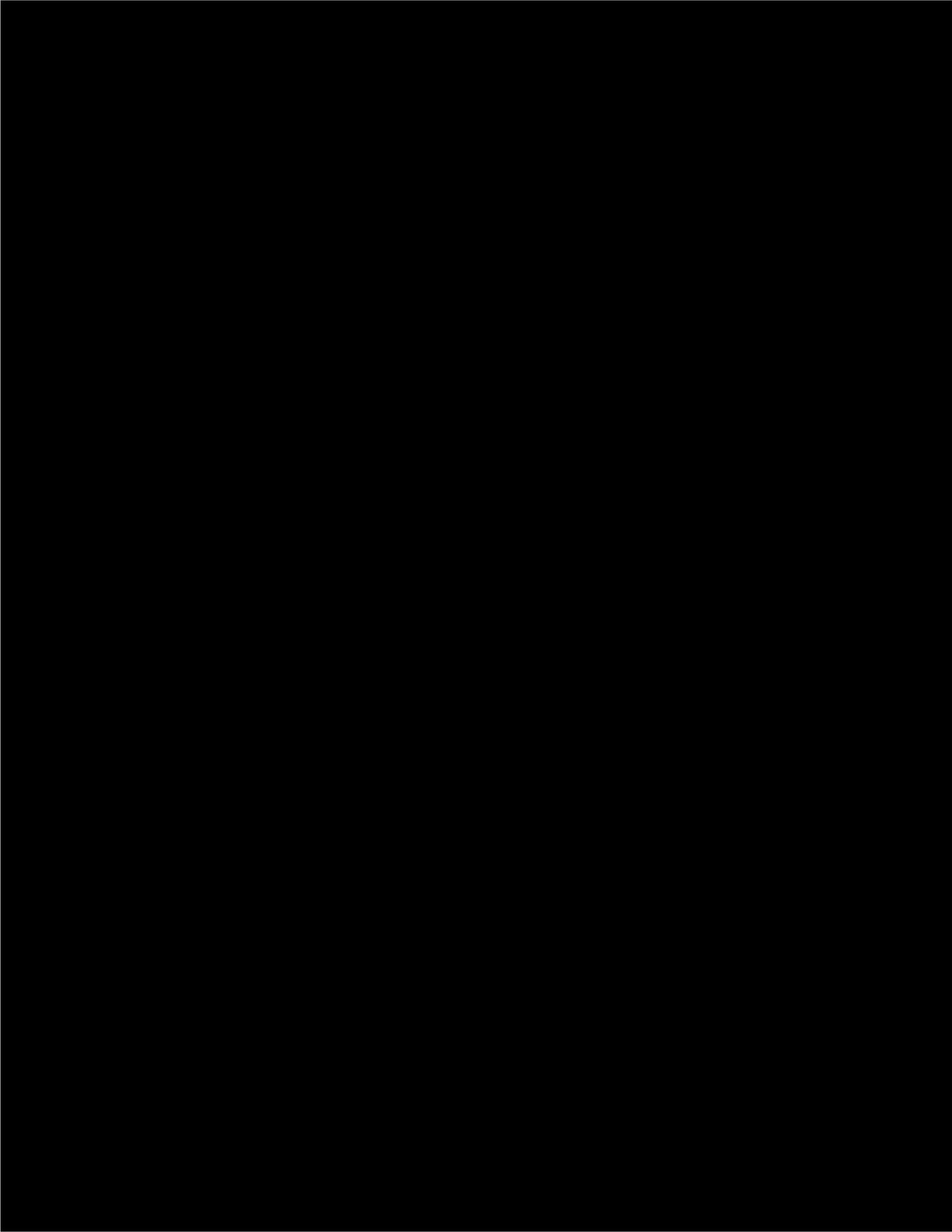
CAVHS Vocational Rehabilitation System Redesign Team (Committee Member)

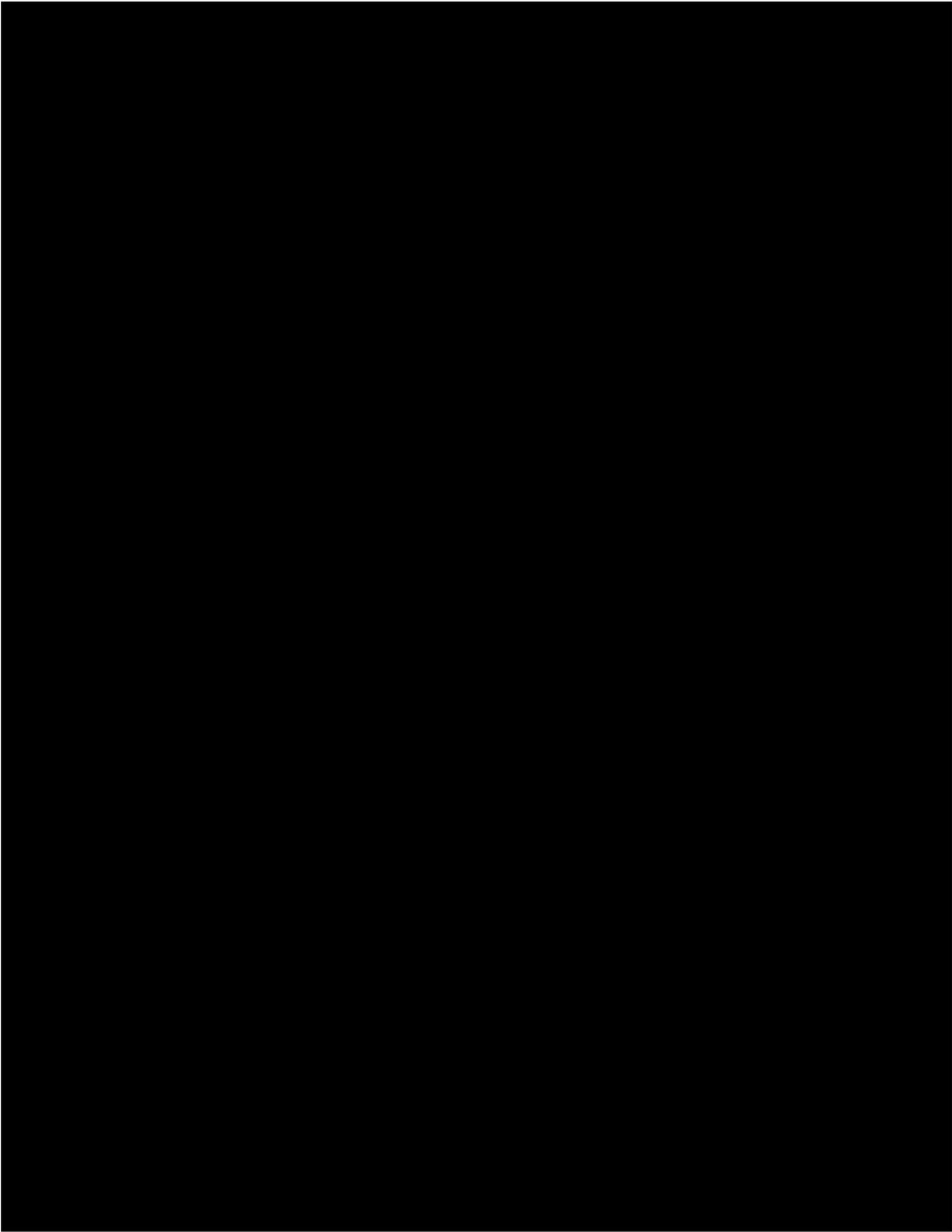
CAVHS Early Career Psychologist Committee (Chair 2010)

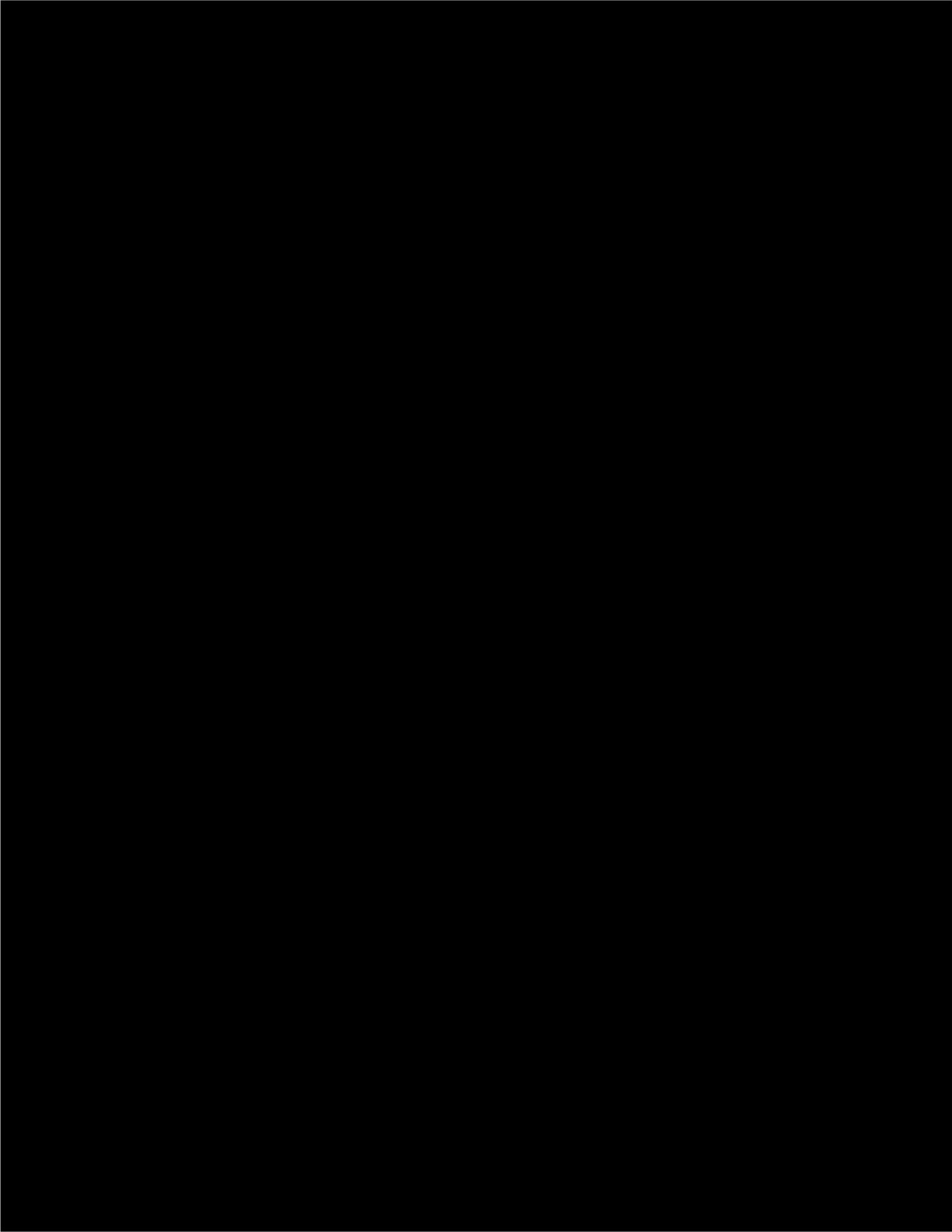
CAVHS Awards Committee (Committee Member)

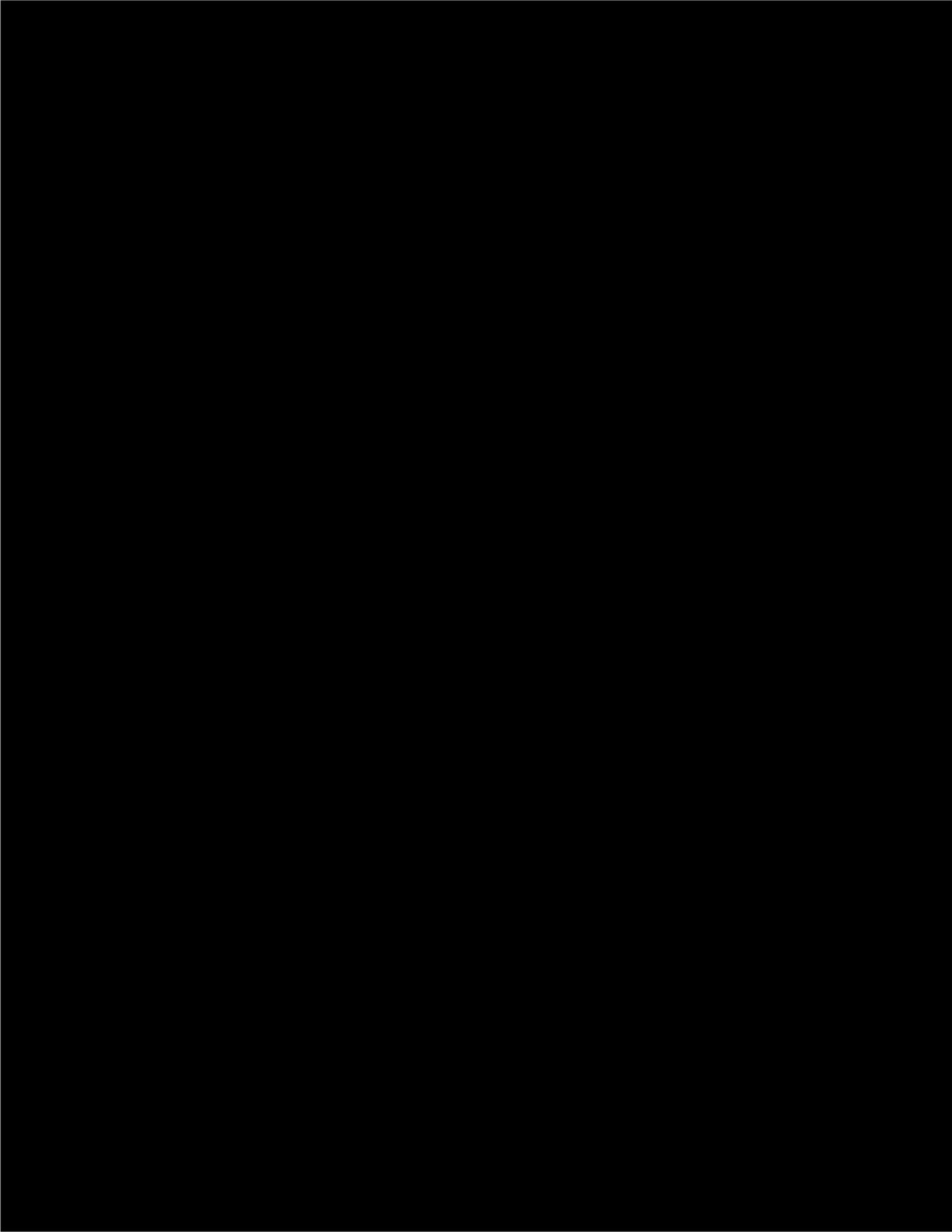
2008 CAVHS Community Service Award











## ARKANSAS STATE CLAIMS COMMISSION

HALEY HUDSON, PERMANENT GUARDIAN  
OF [REDACTED], A MINOR CHILD, ET AL

CLAIMANT

v.

CC No. 230641

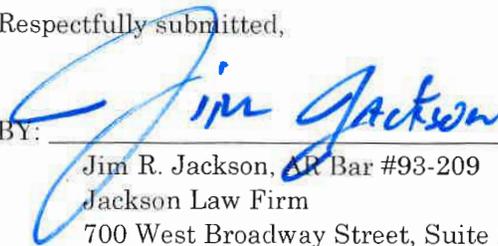
ARKANSAS DEPARTMENT OF  
HUMAN SERVICES

RESPONDENT

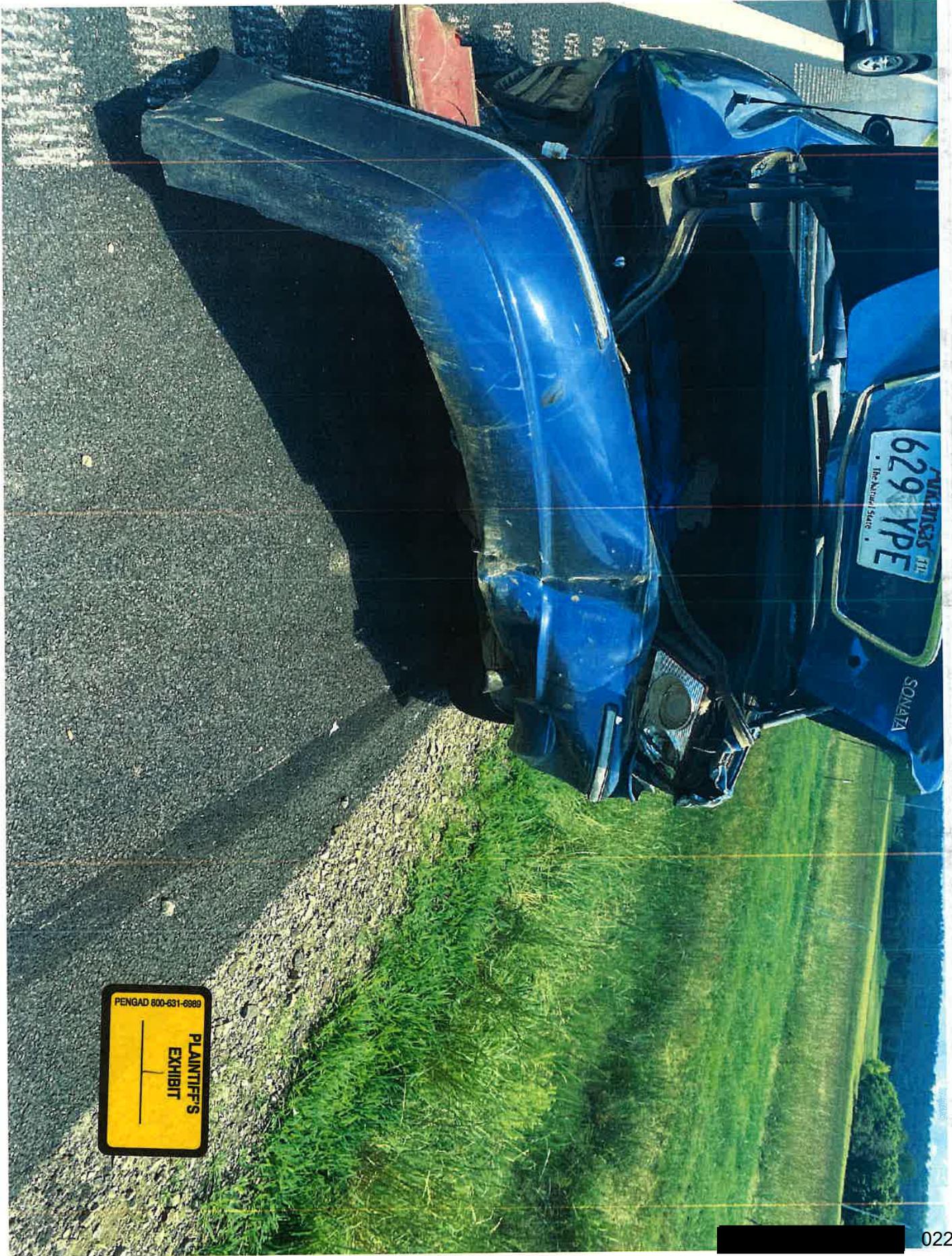
EXHIBITS FOR DR. GARRETT ANDREWS

- EXHIBITS 1-4 Color photographs of a blue Hyundai Sonata driven by Jacqueline Ashcraft. [REDACTED] is one of three rear seat passengers in this blue car.
- EXHIBITS 5-6 Color Photographs of the front of the car that struck the Rear of the Sonata at a high rate of speed. This car was driven by Jennifer Wilkerson
- EXHIBIT 7 Medical Records Index with four sets of records from Mercy Hospital in Paris; Mercy Clinic in Paris, Scarbrough Clinic in Wynne, and The Belinga Clinic in Fort Smith.

Respectfully submitted,

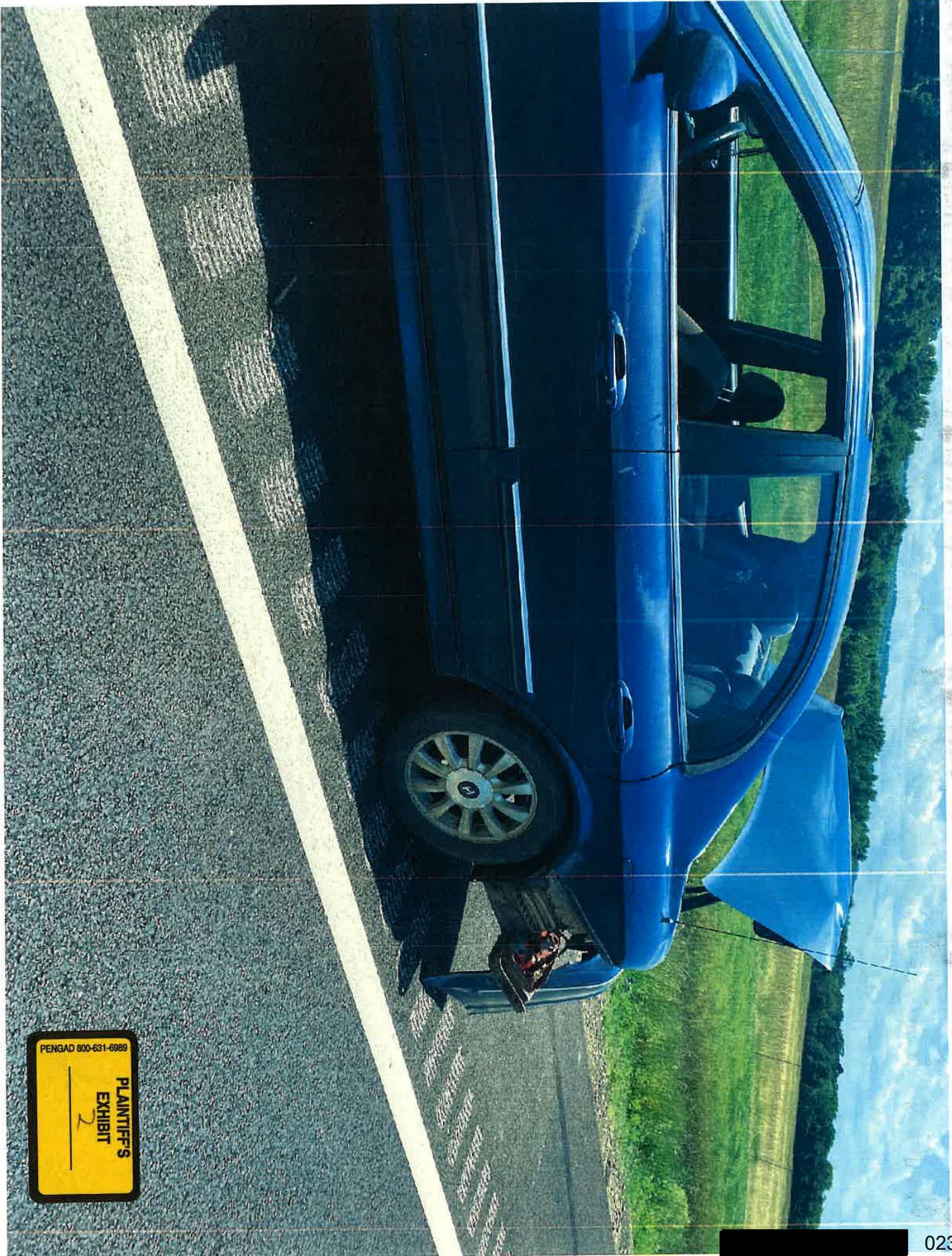
BY: 

Jim R. Jackson, AR Bar #93-209  
Jackson Law Firm  
700 West Broadway Street, Suite 200  
North Little Rock, AR 72114-5528  
(501) 823-3610 phone  
(501) 823-3611 facsimile  
*Jim@JimJacksonatty.com*



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PLAINTIFF'S  
EXHIBIT

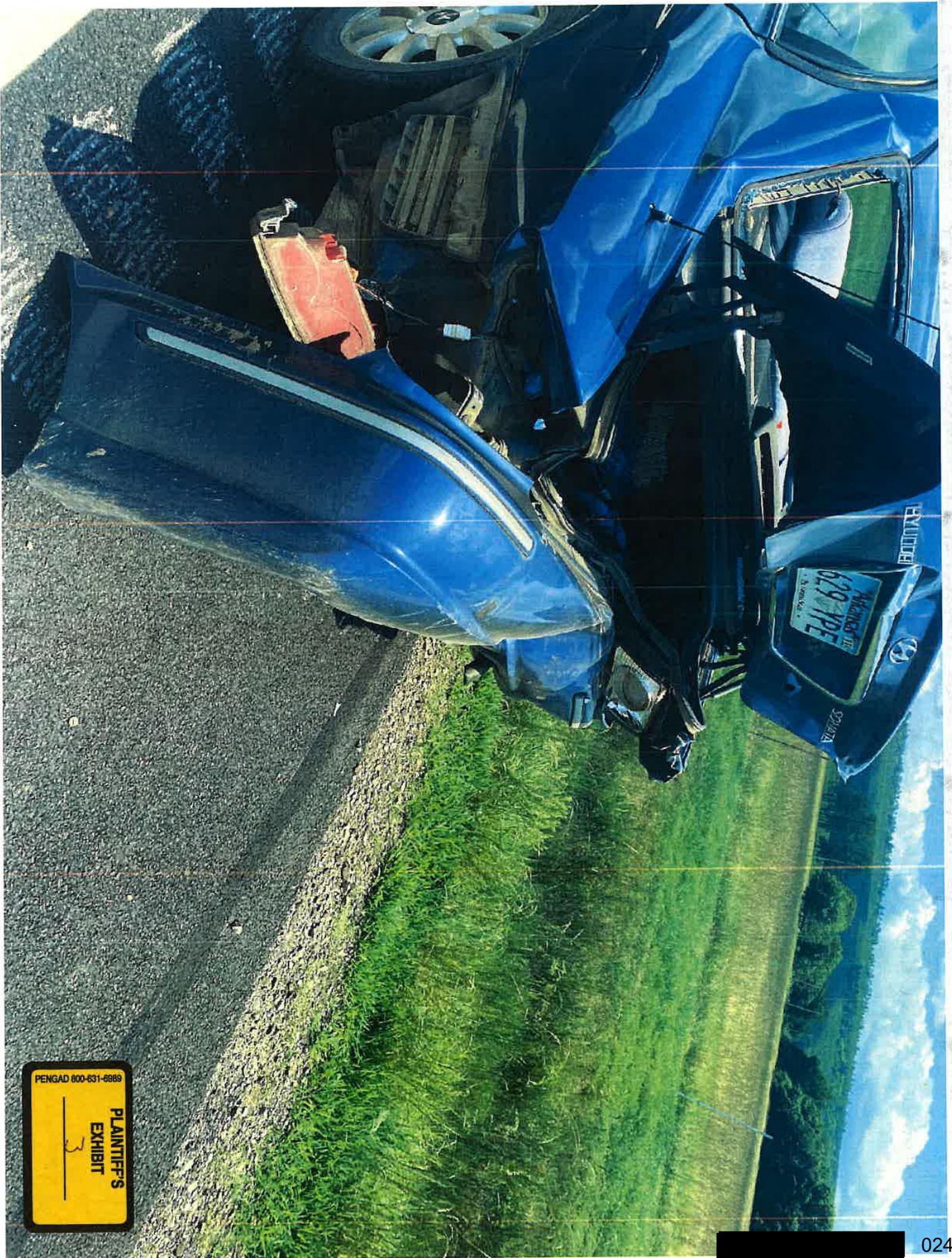
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**PLAINTIFF'S**  
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 2

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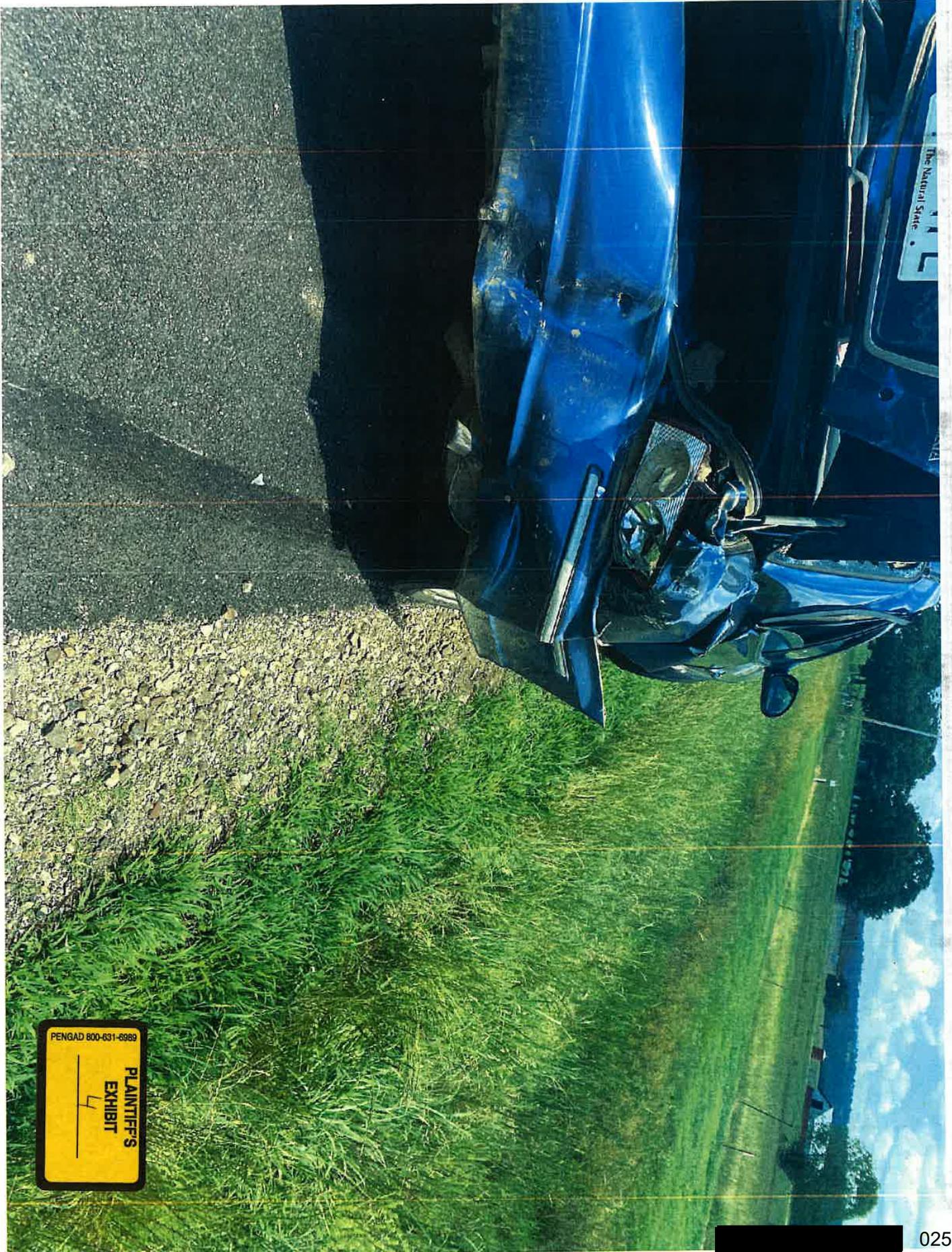


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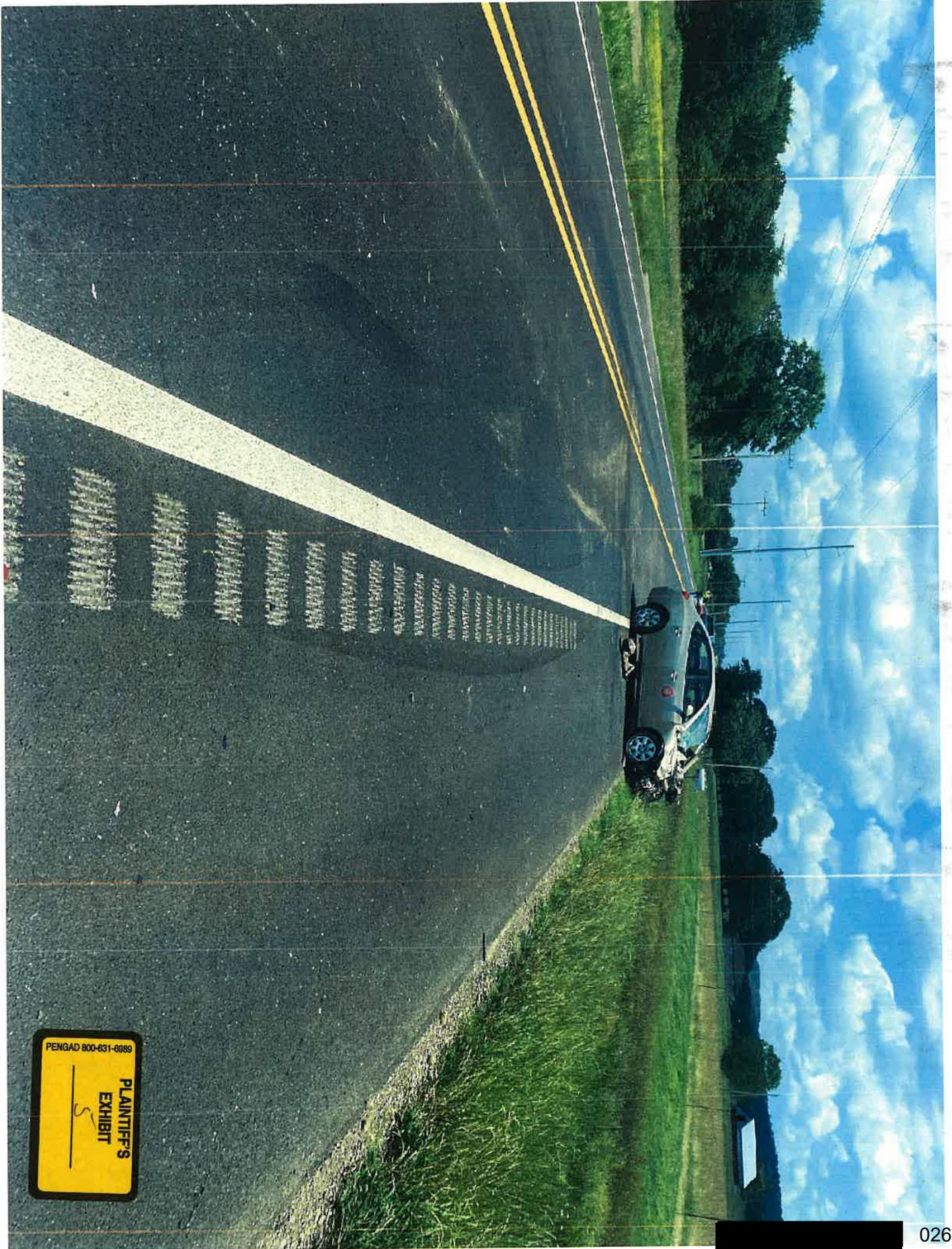
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[REDACTED]



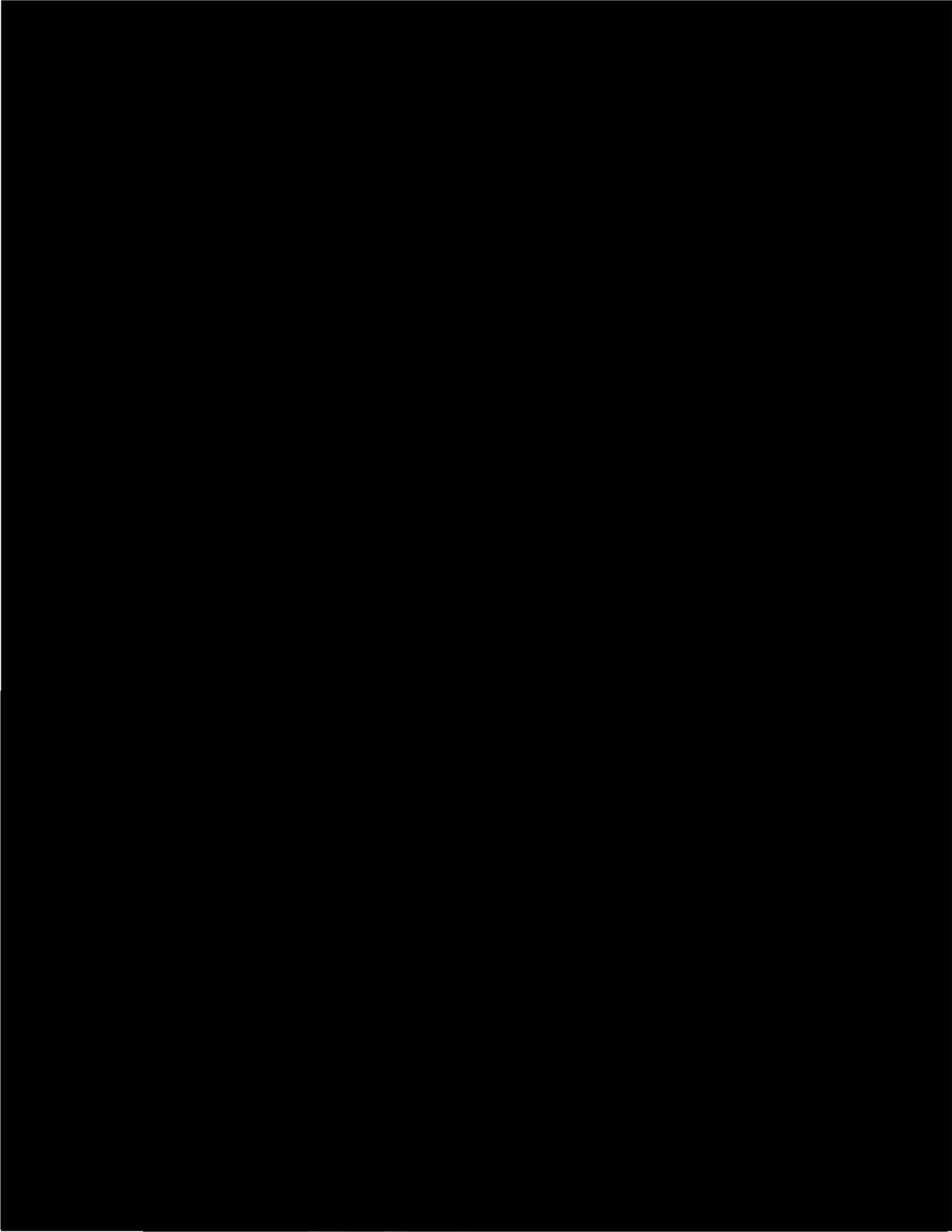
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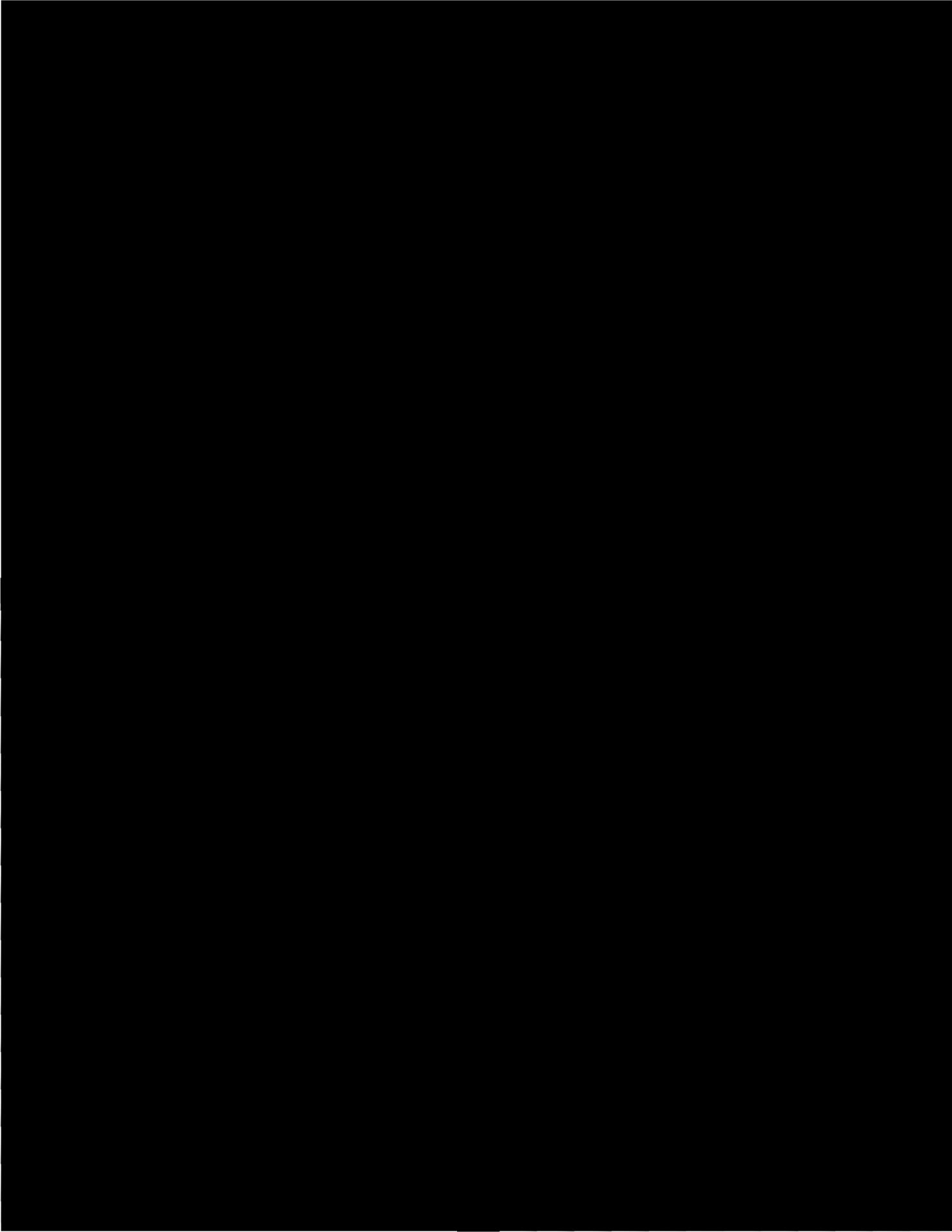
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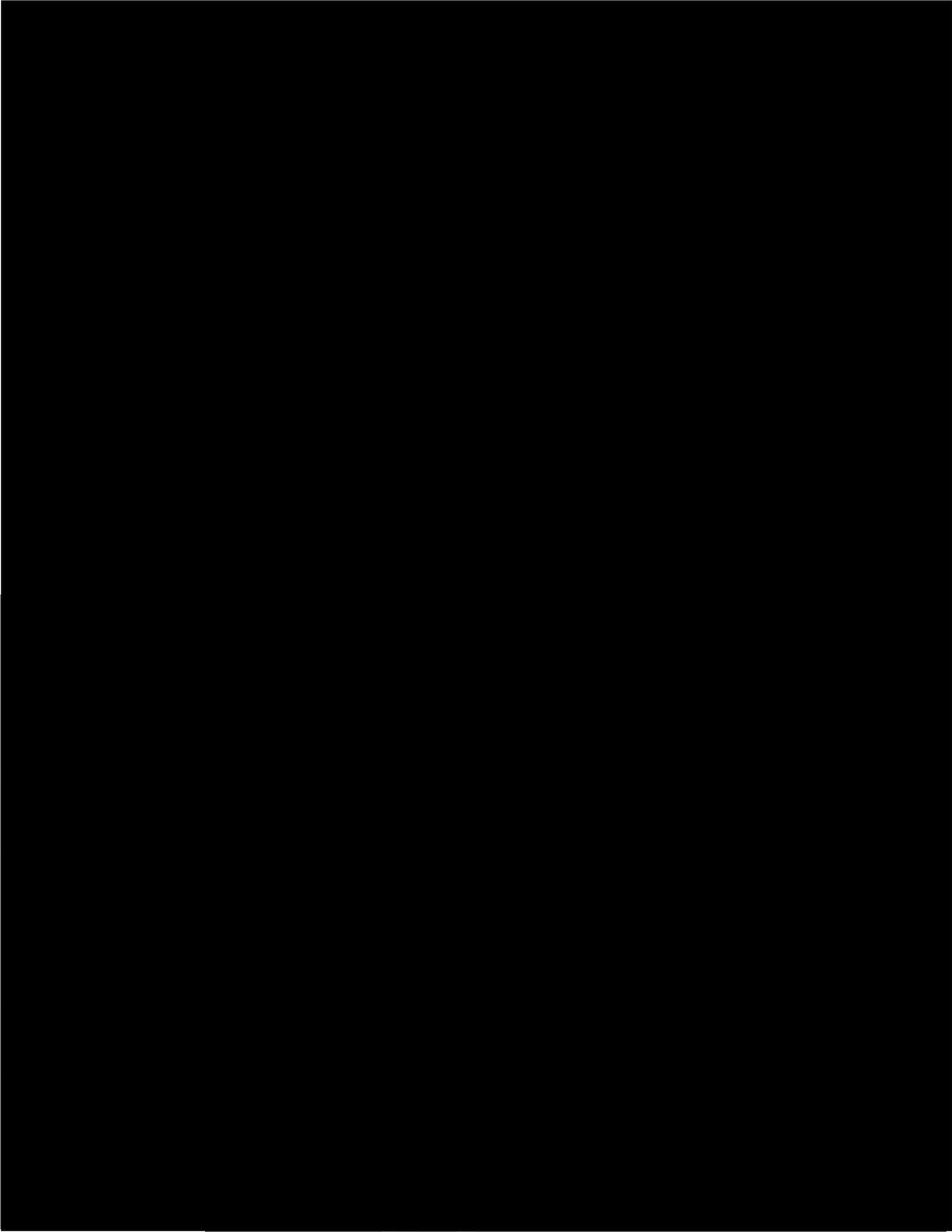


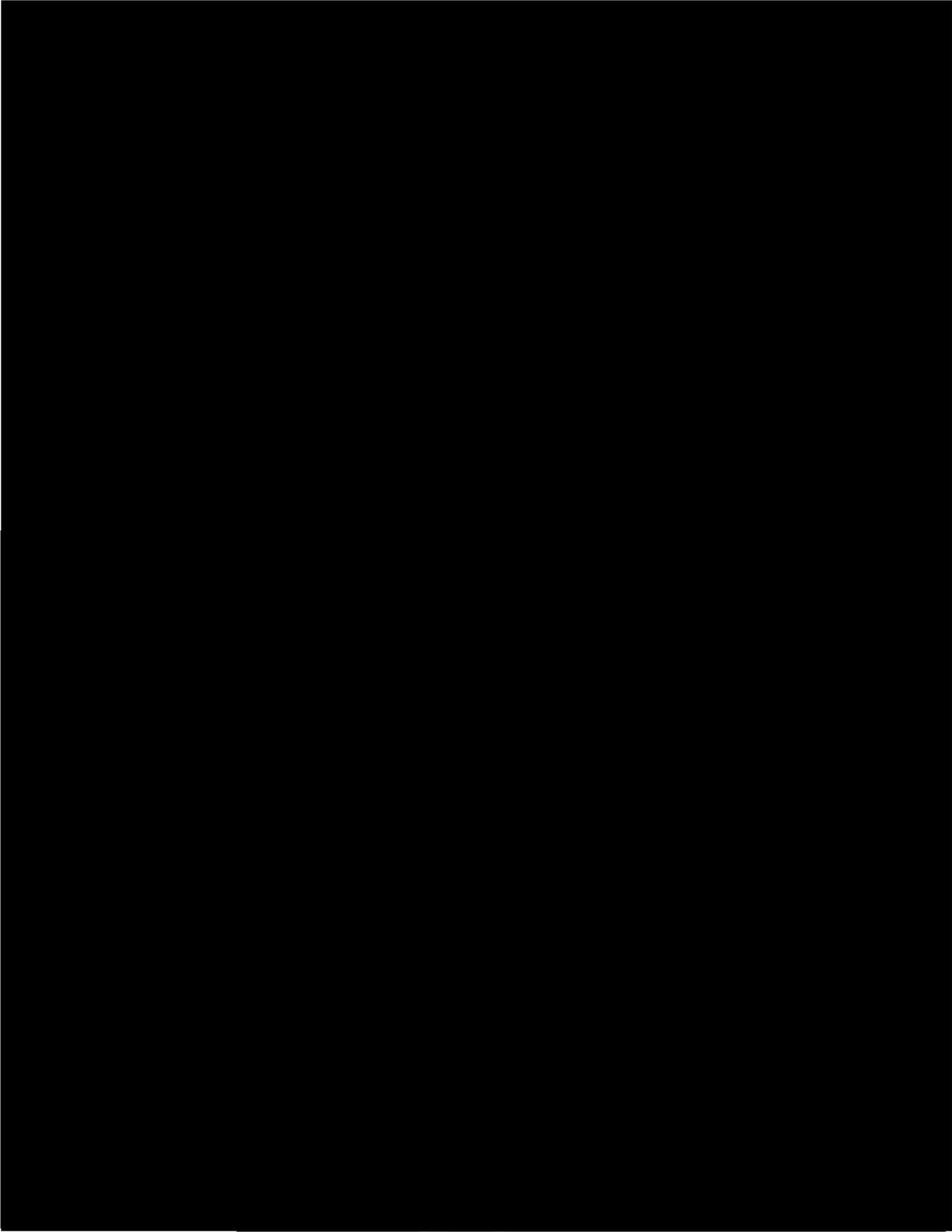
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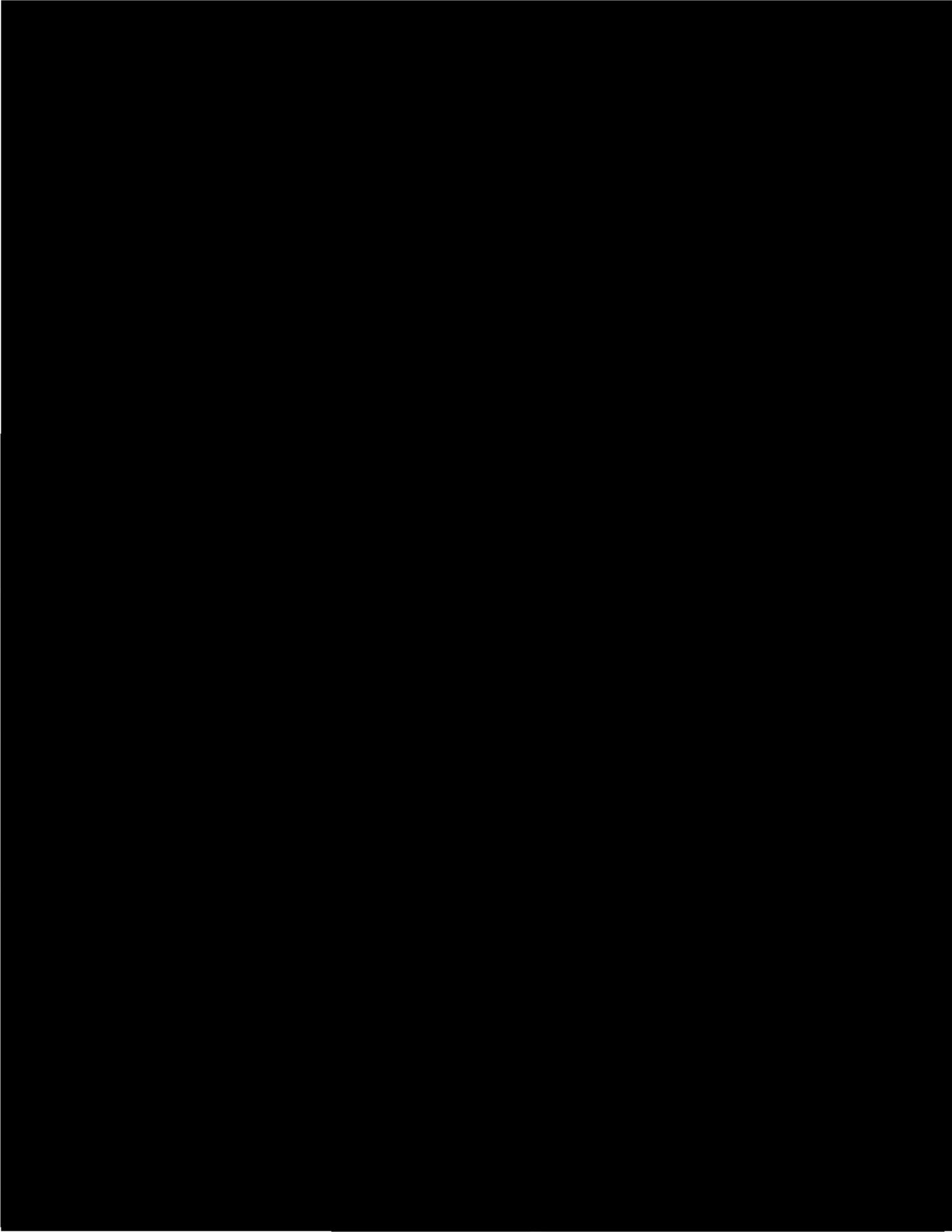
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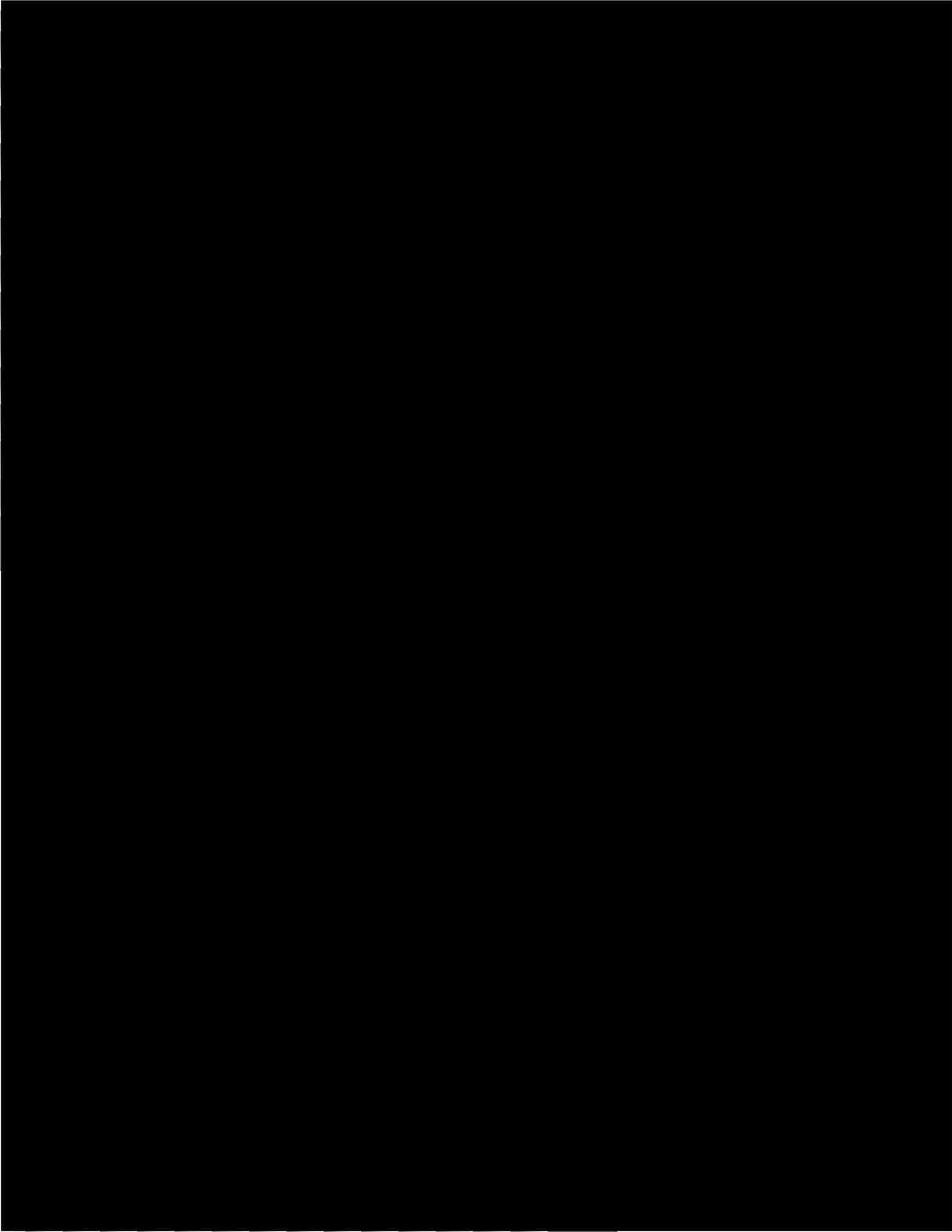


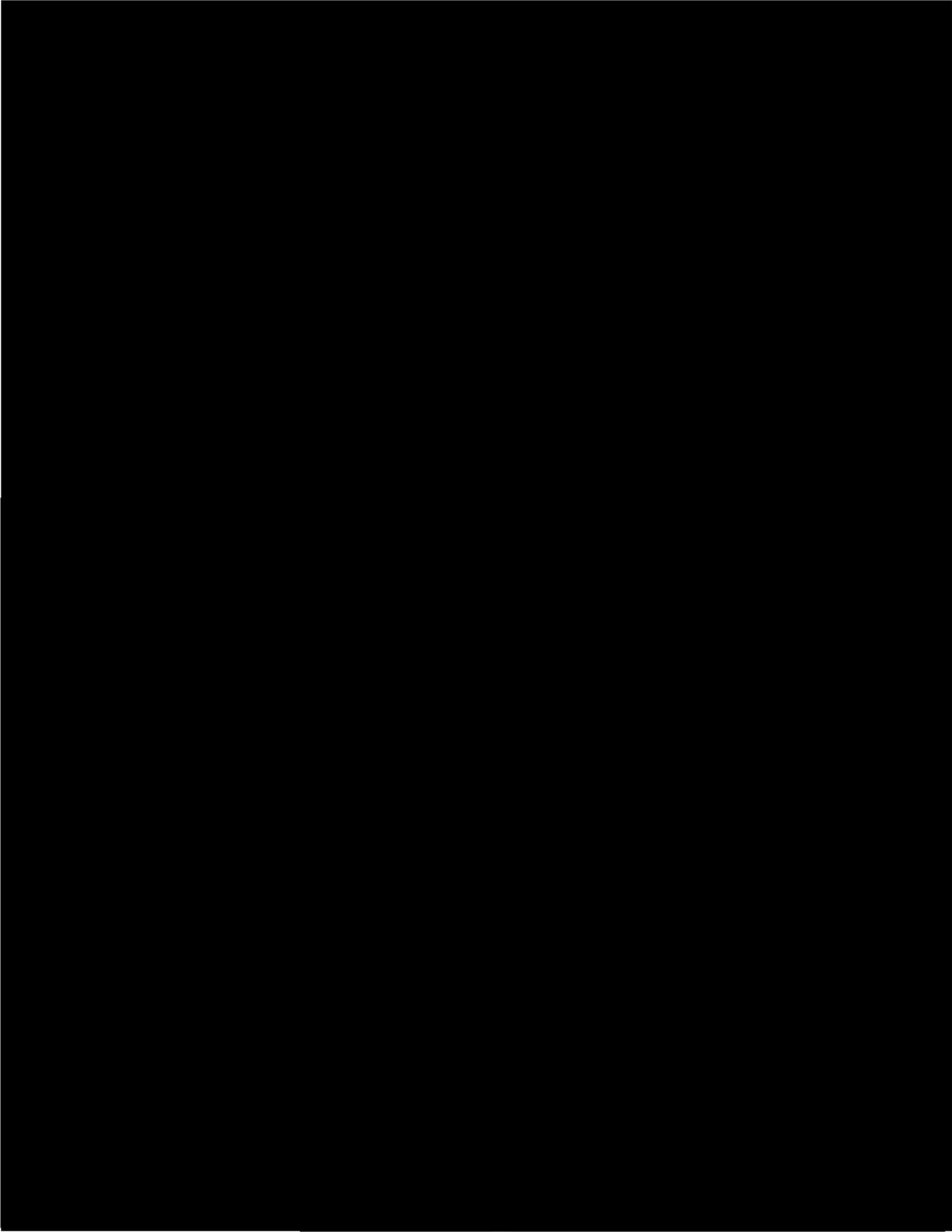


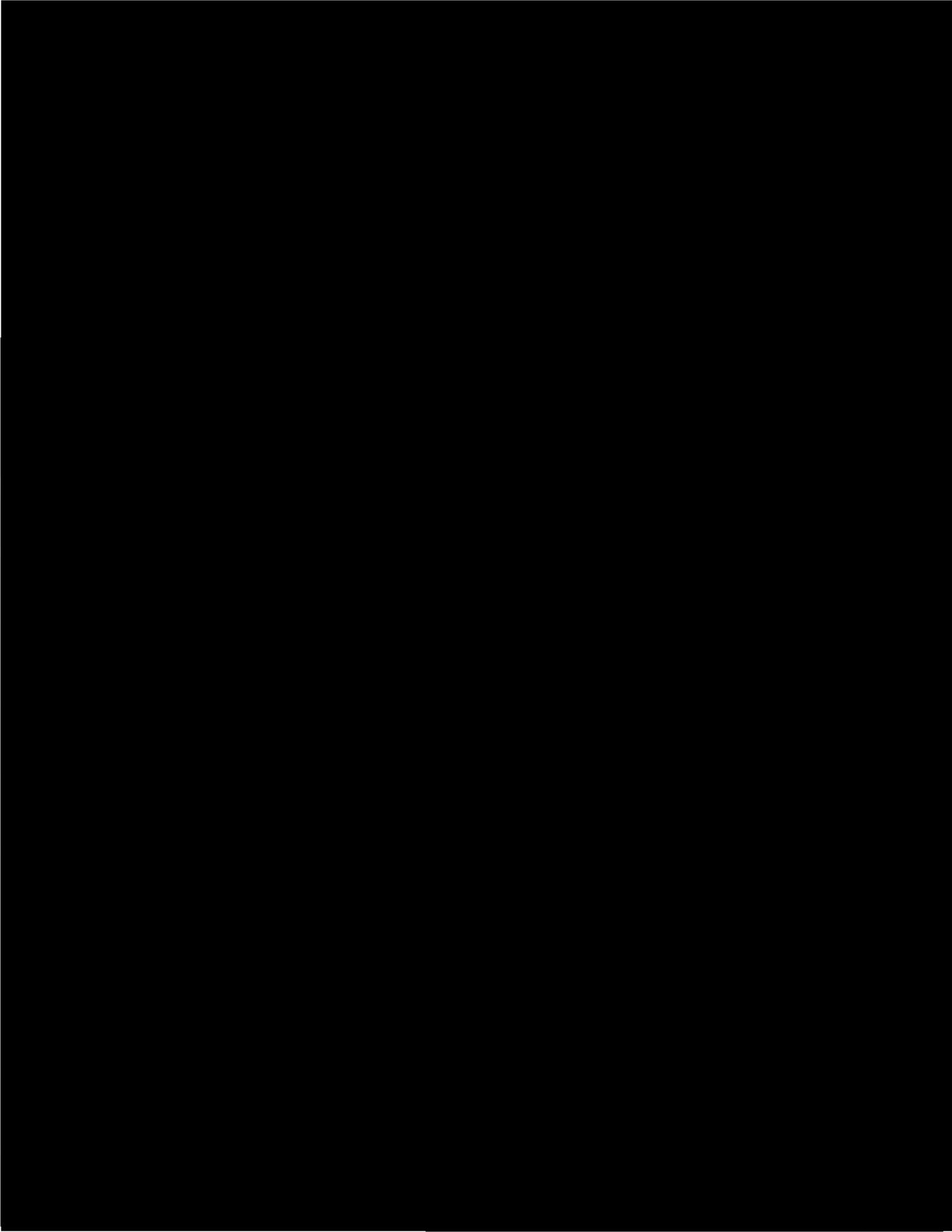


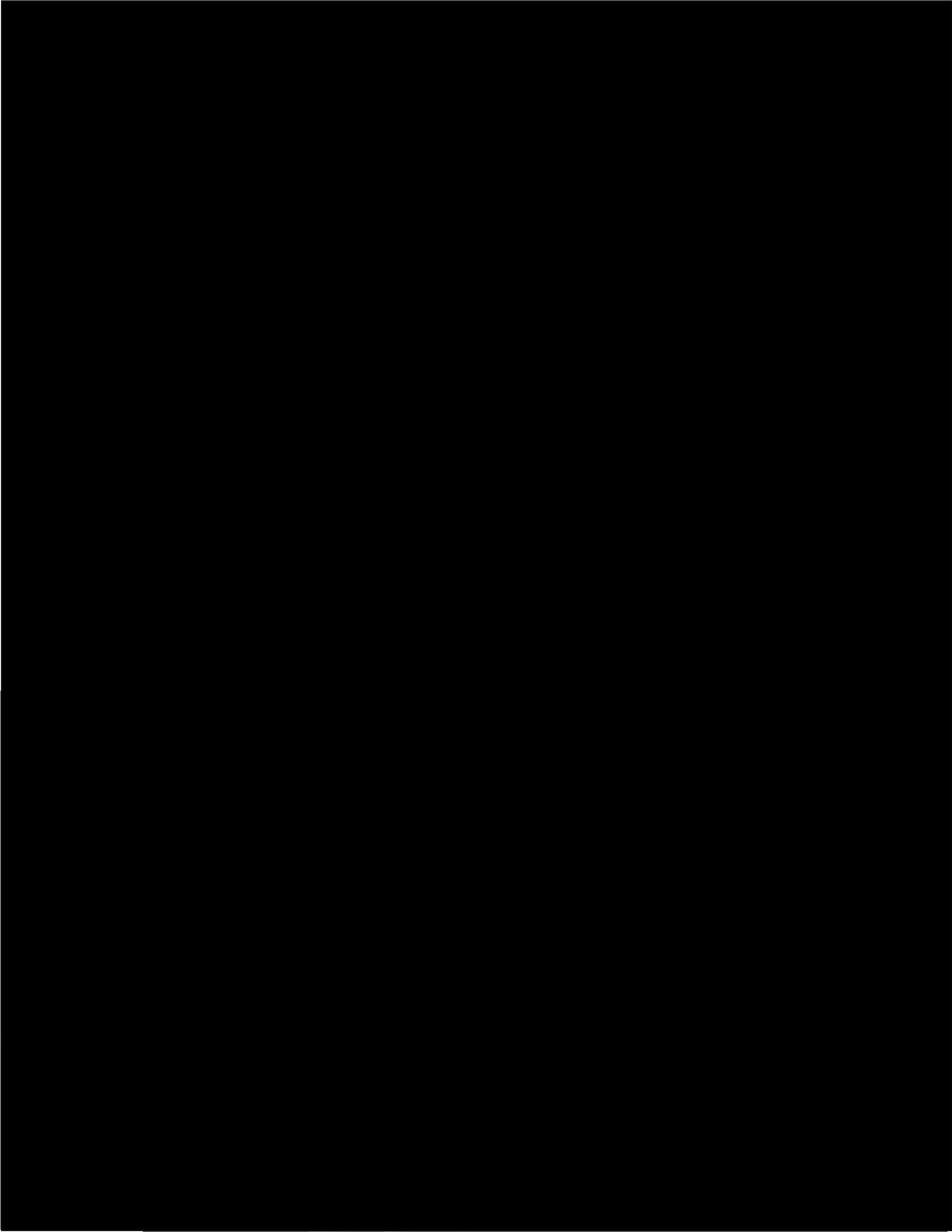


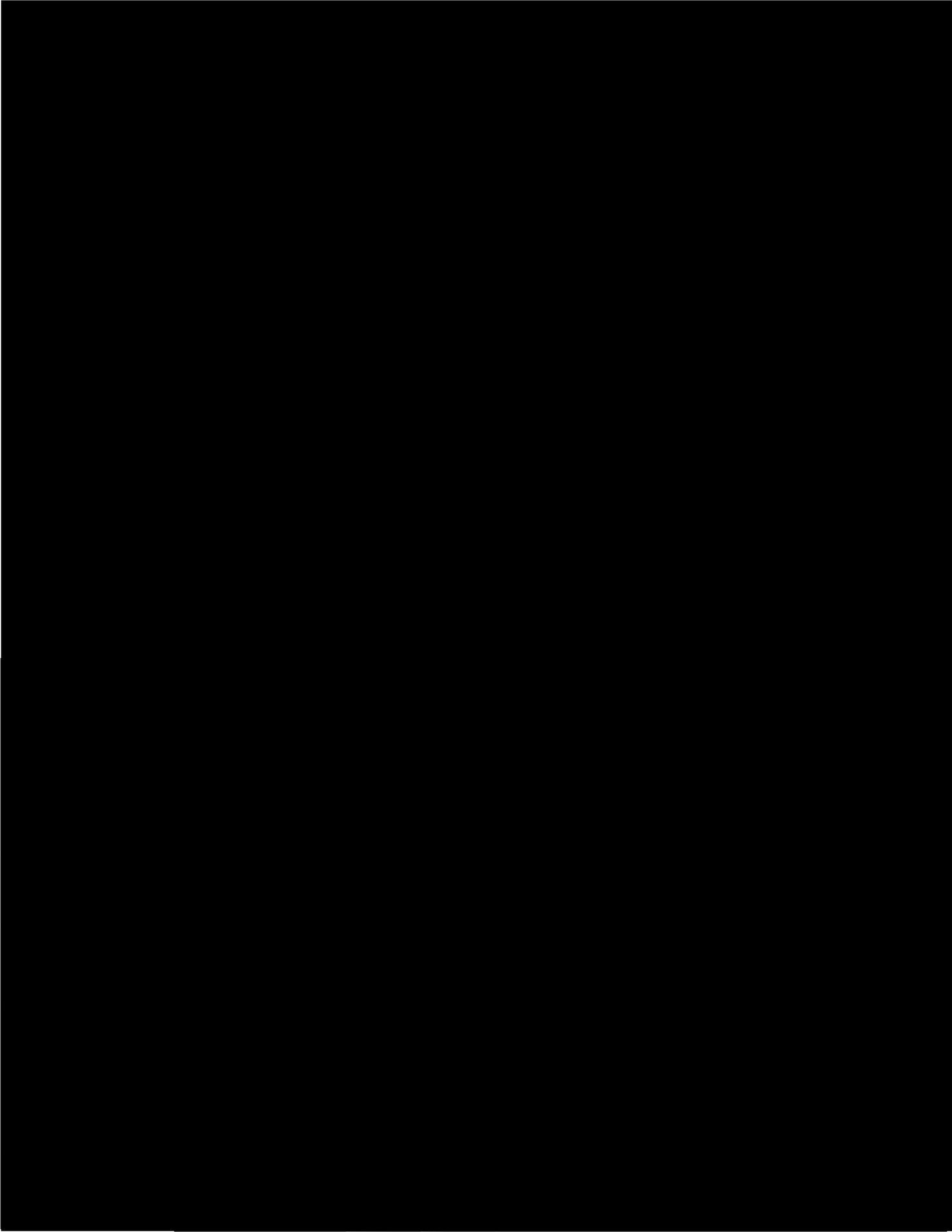


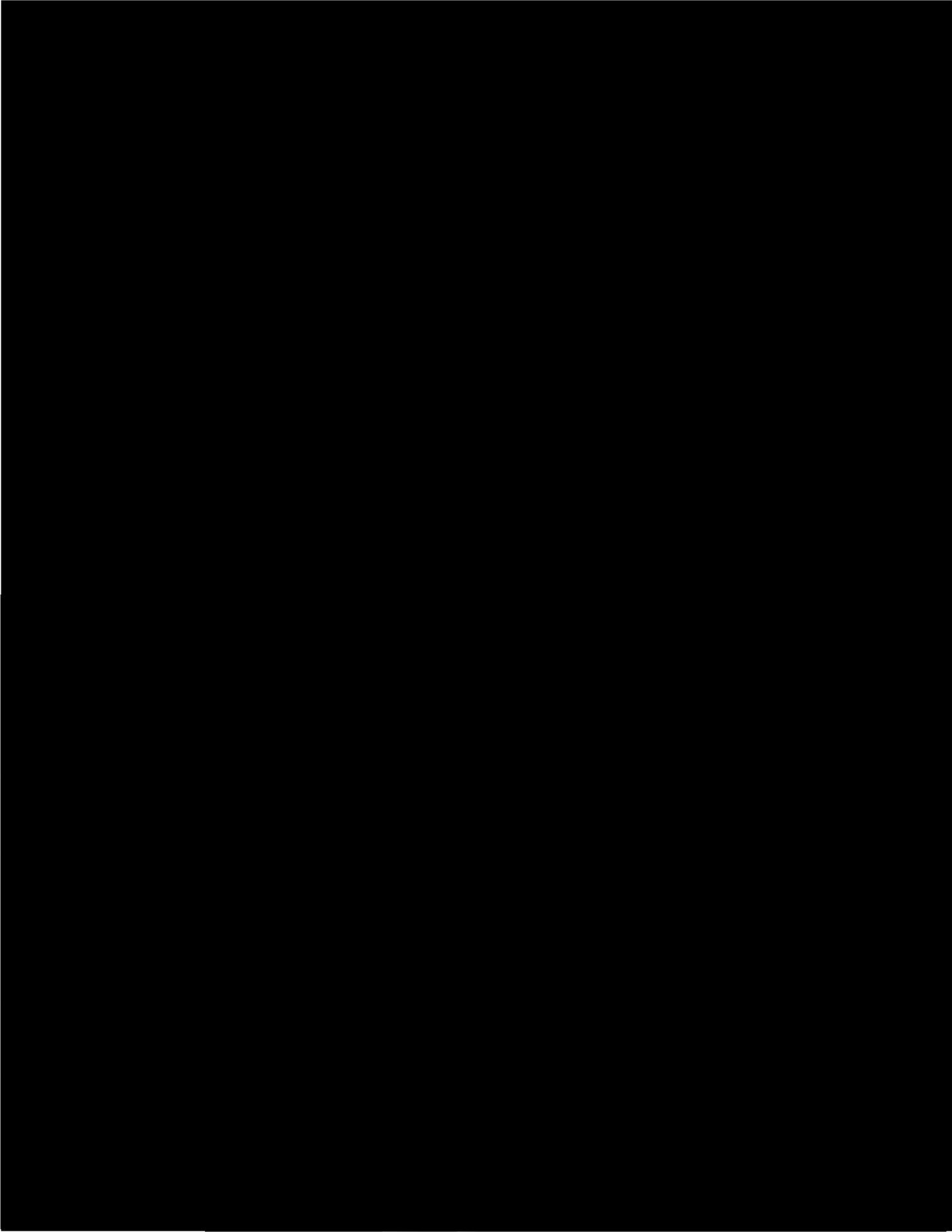


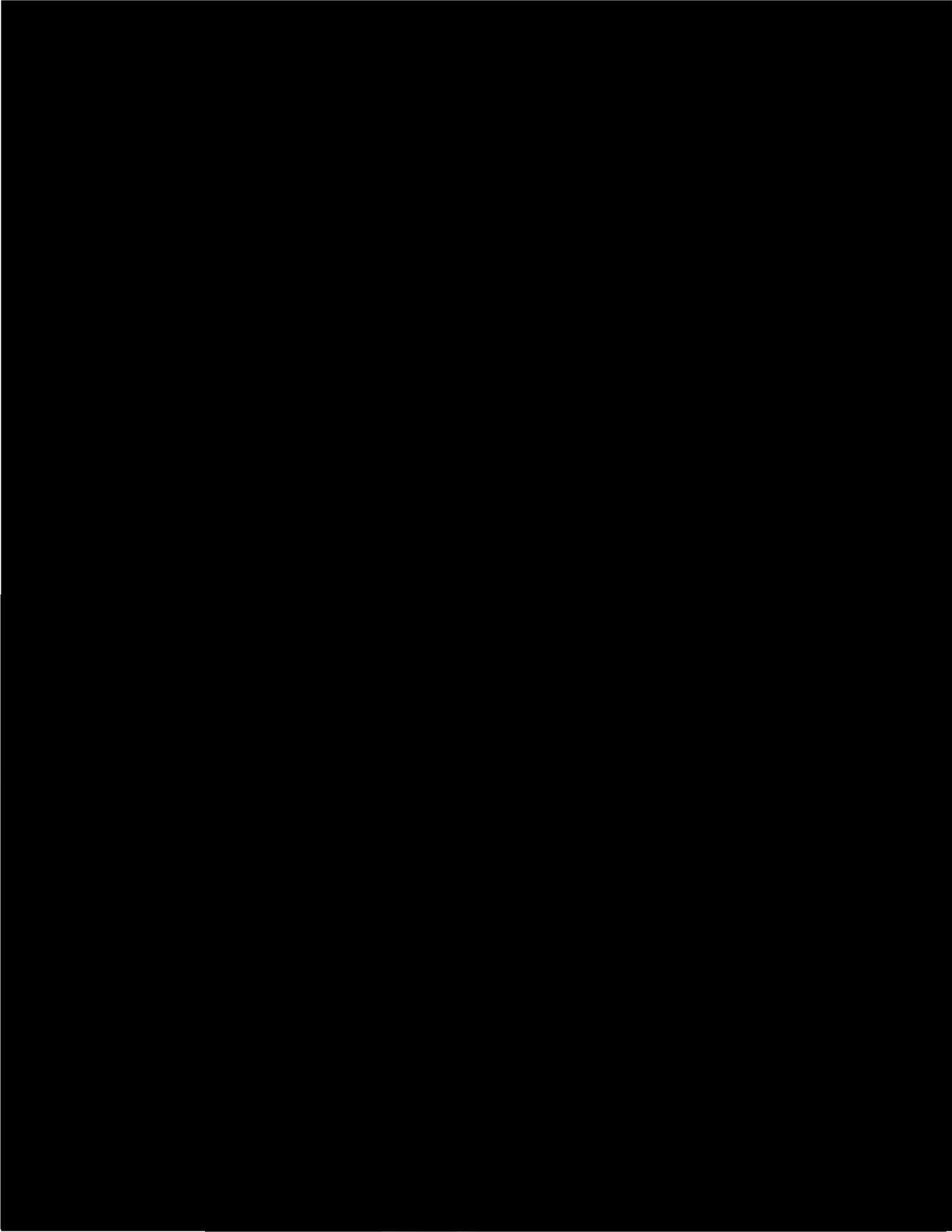


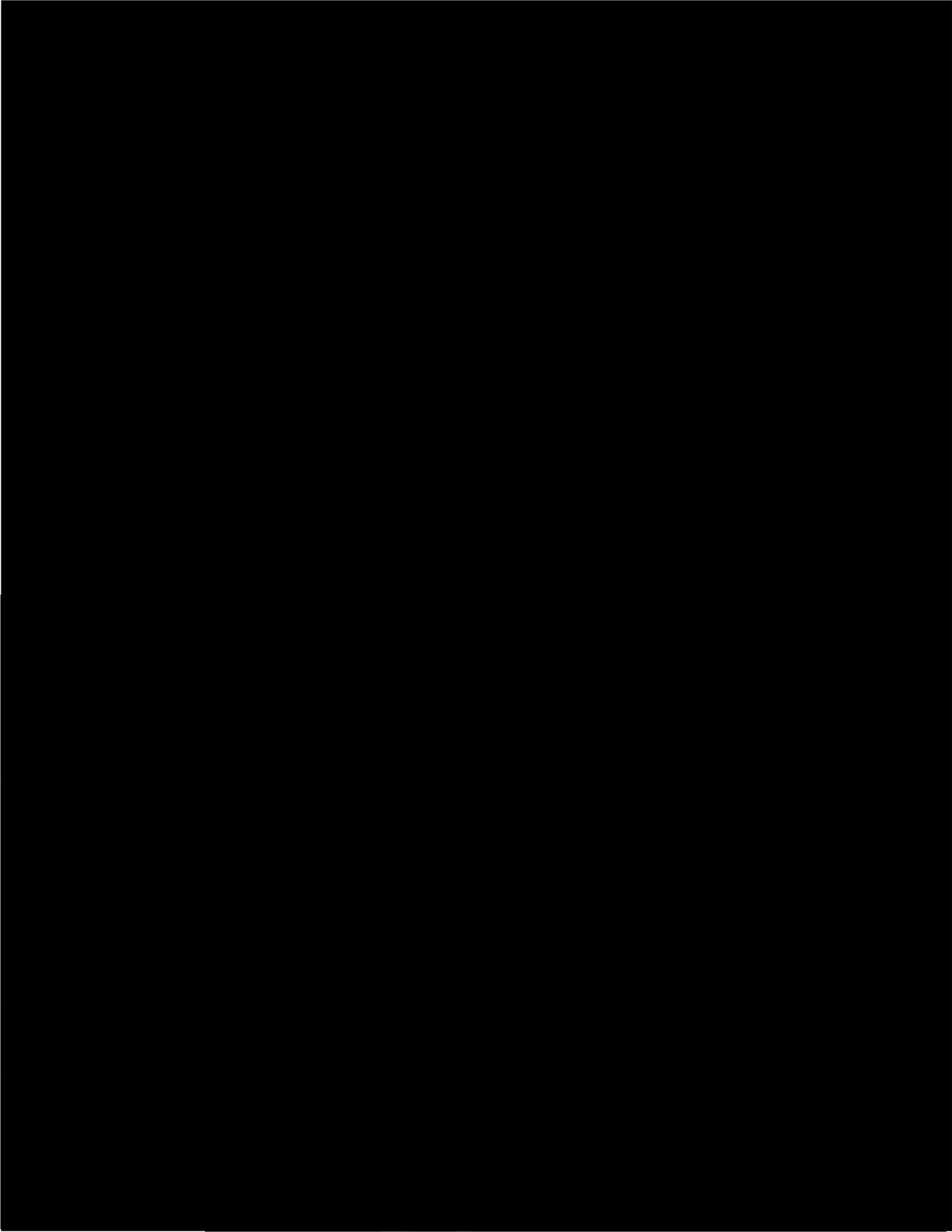


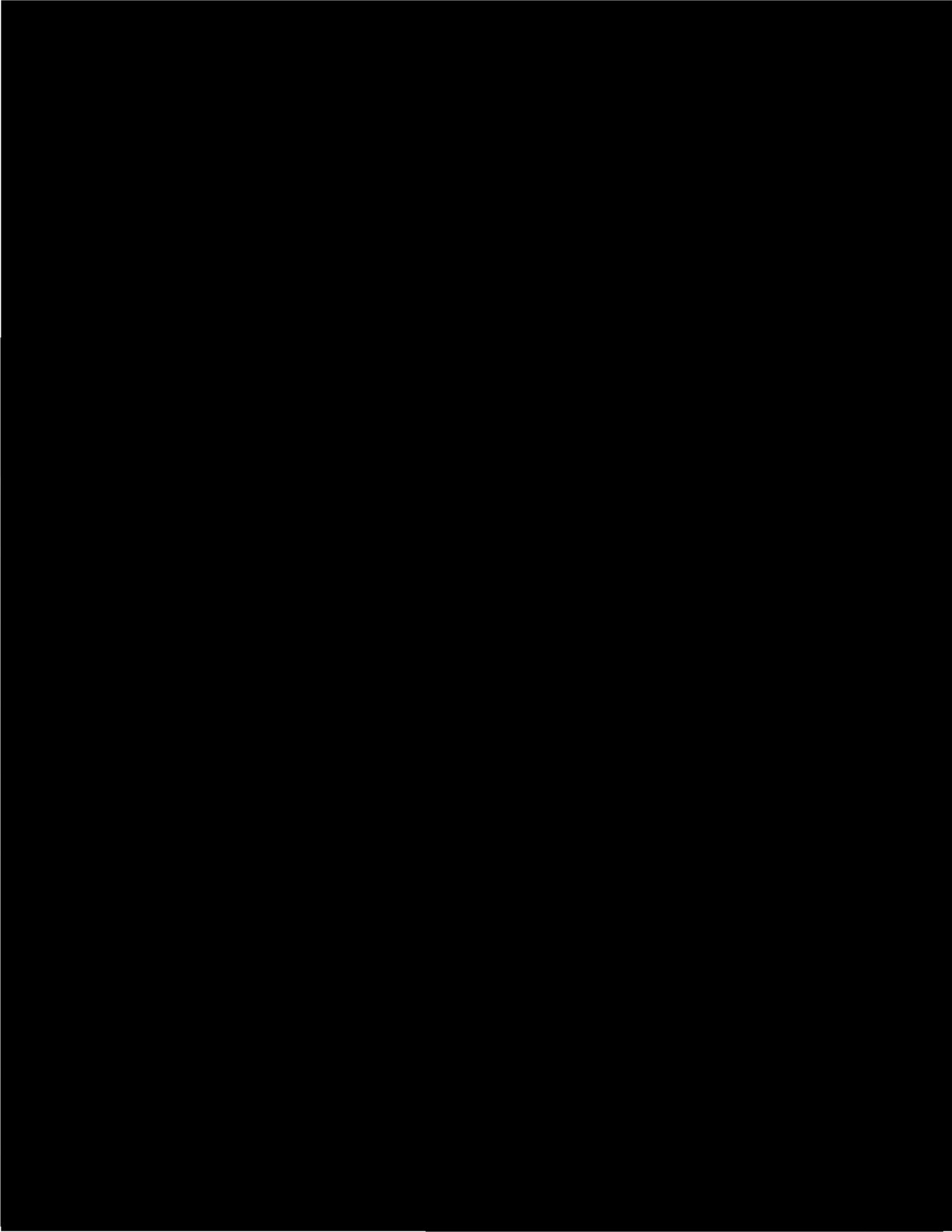


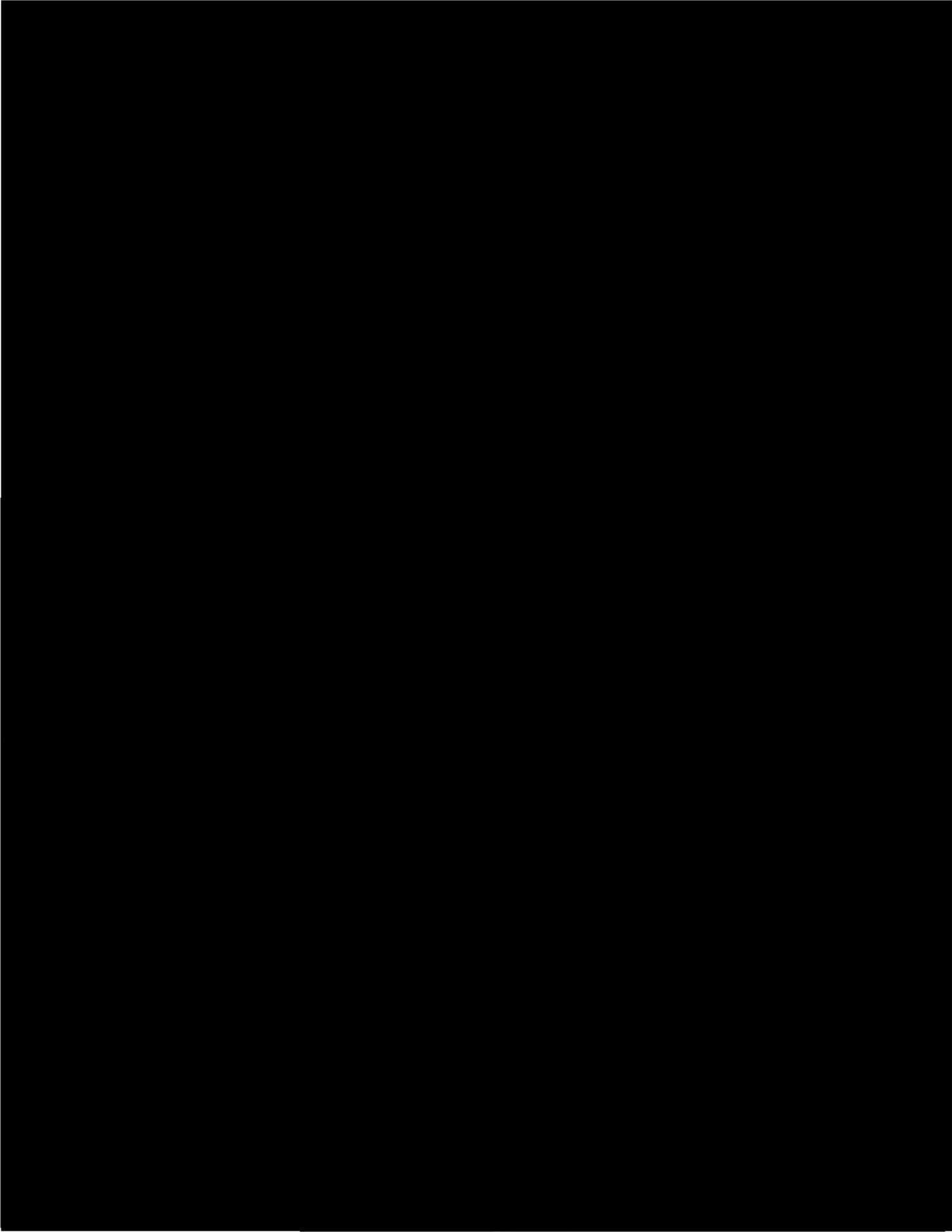


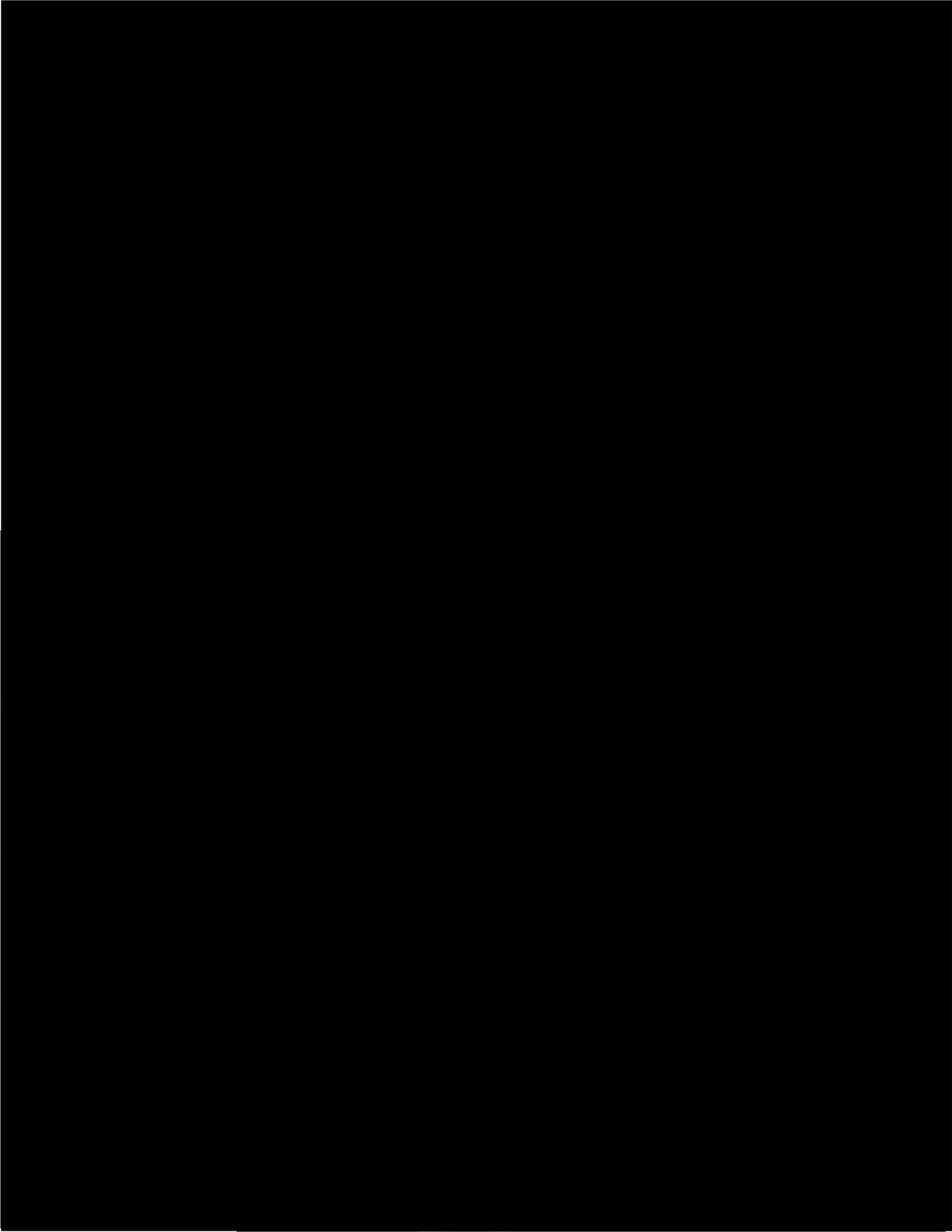


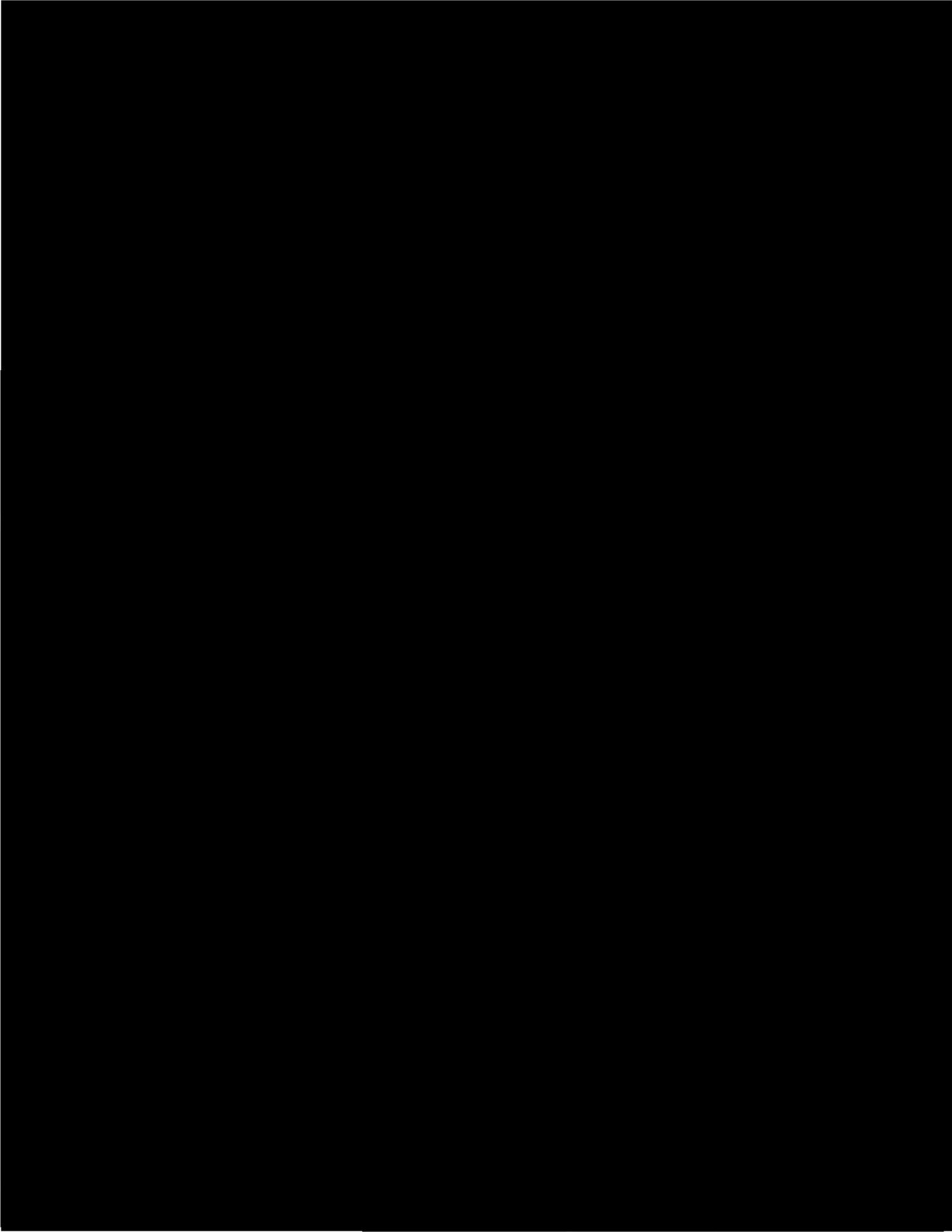


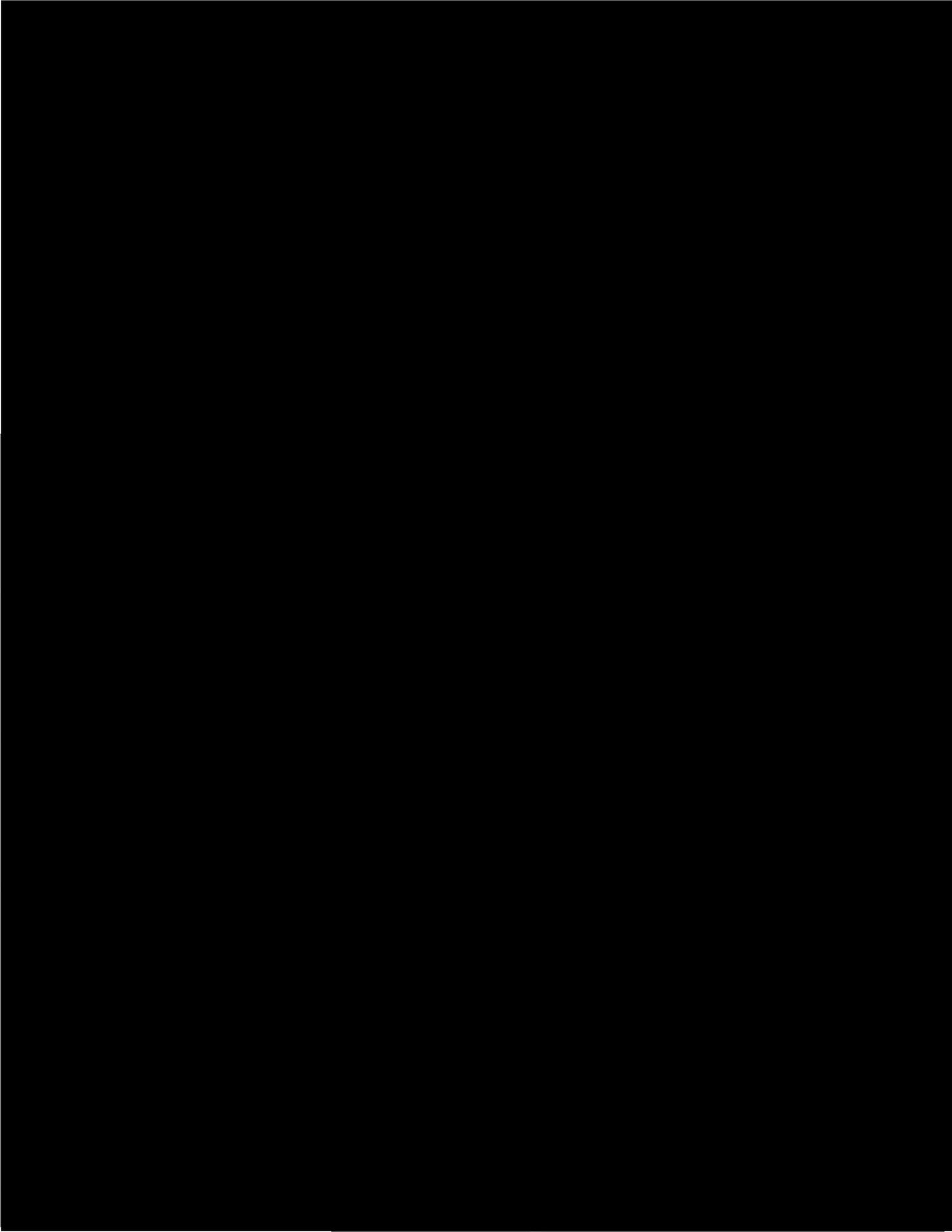


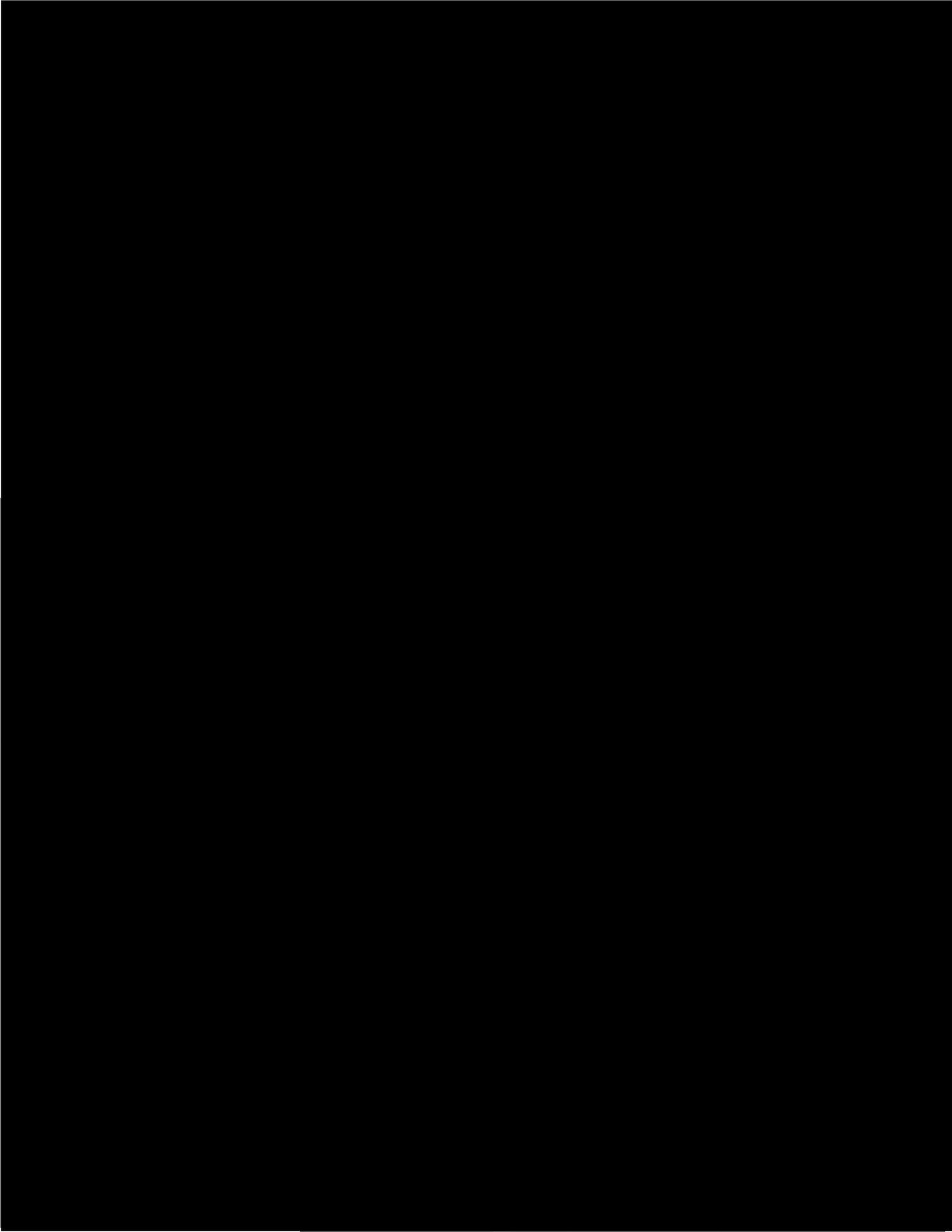


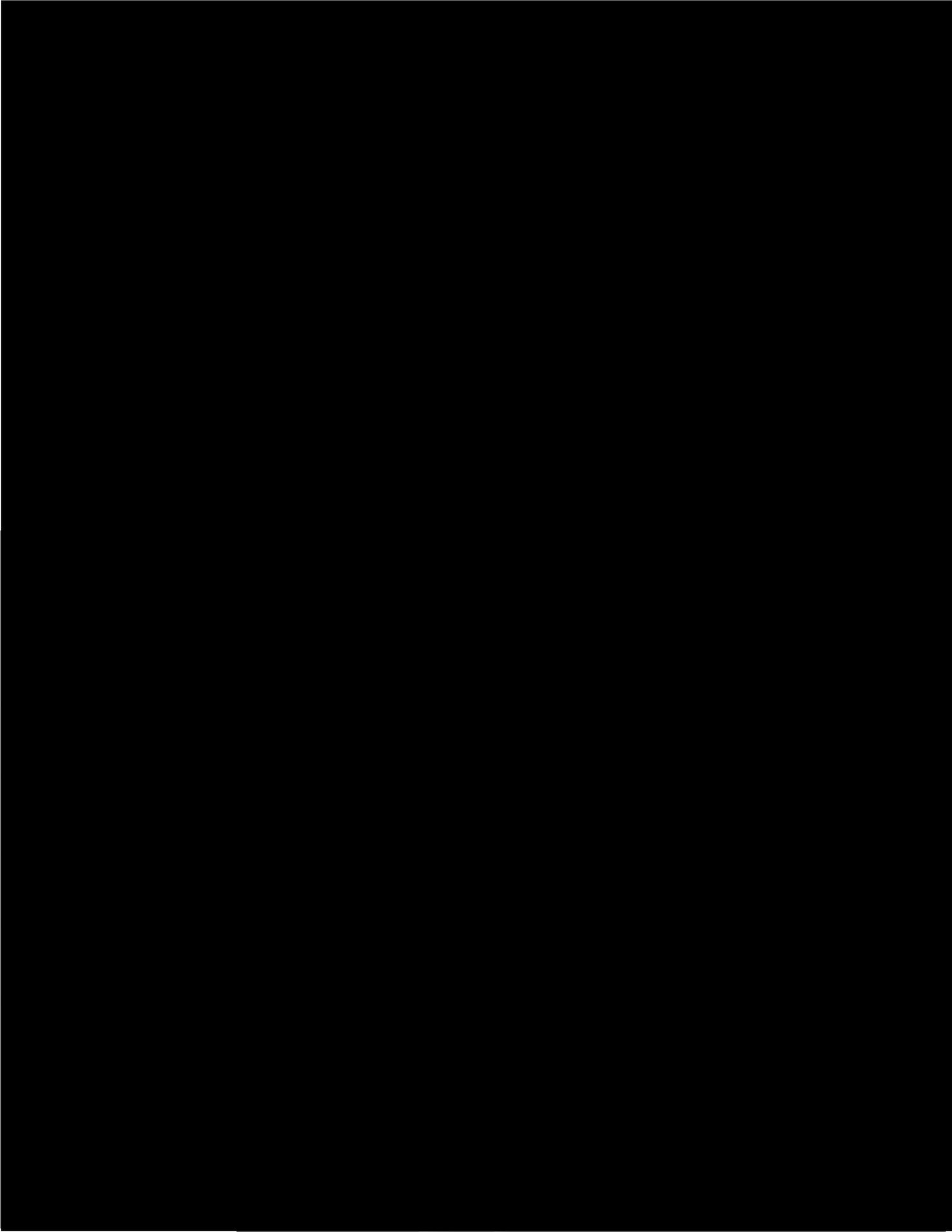


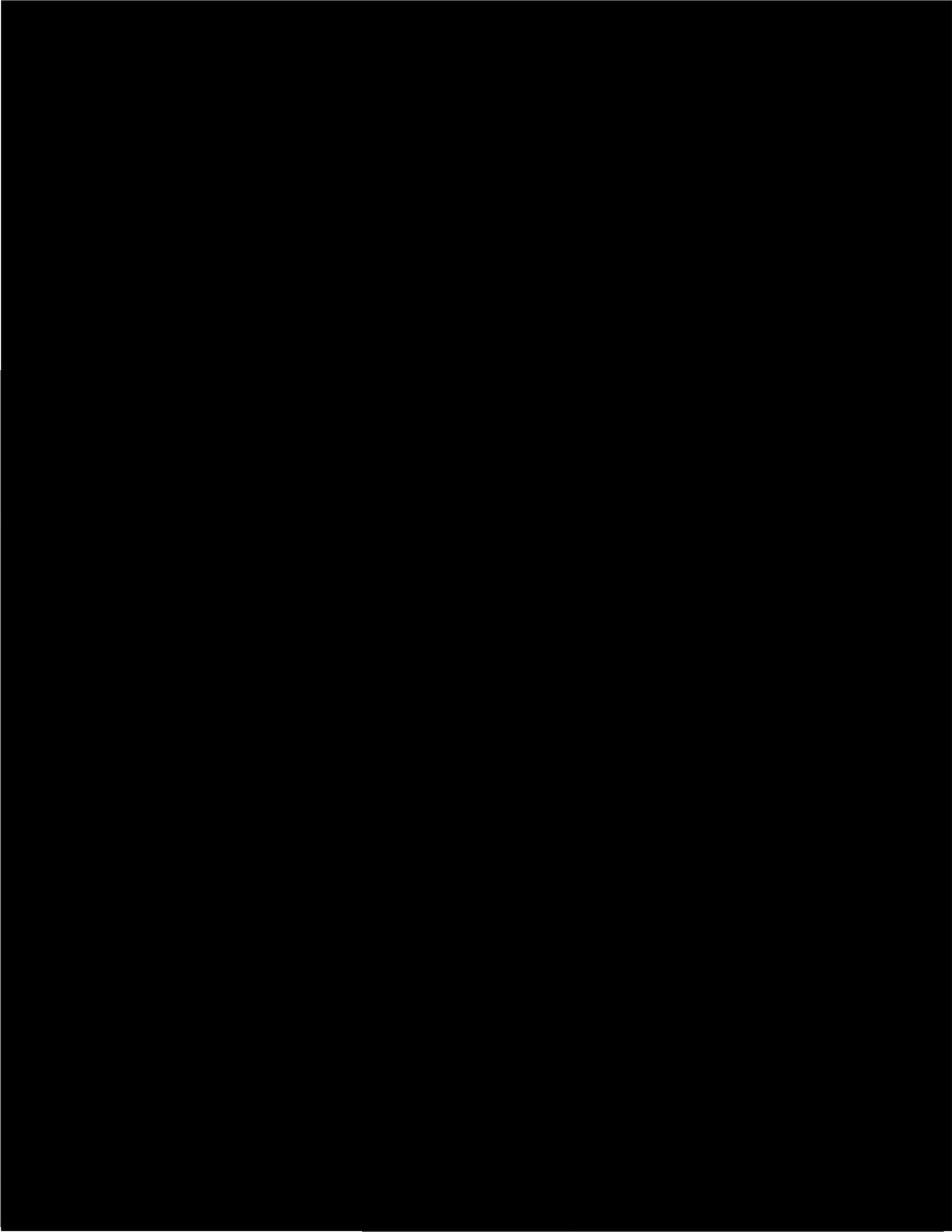


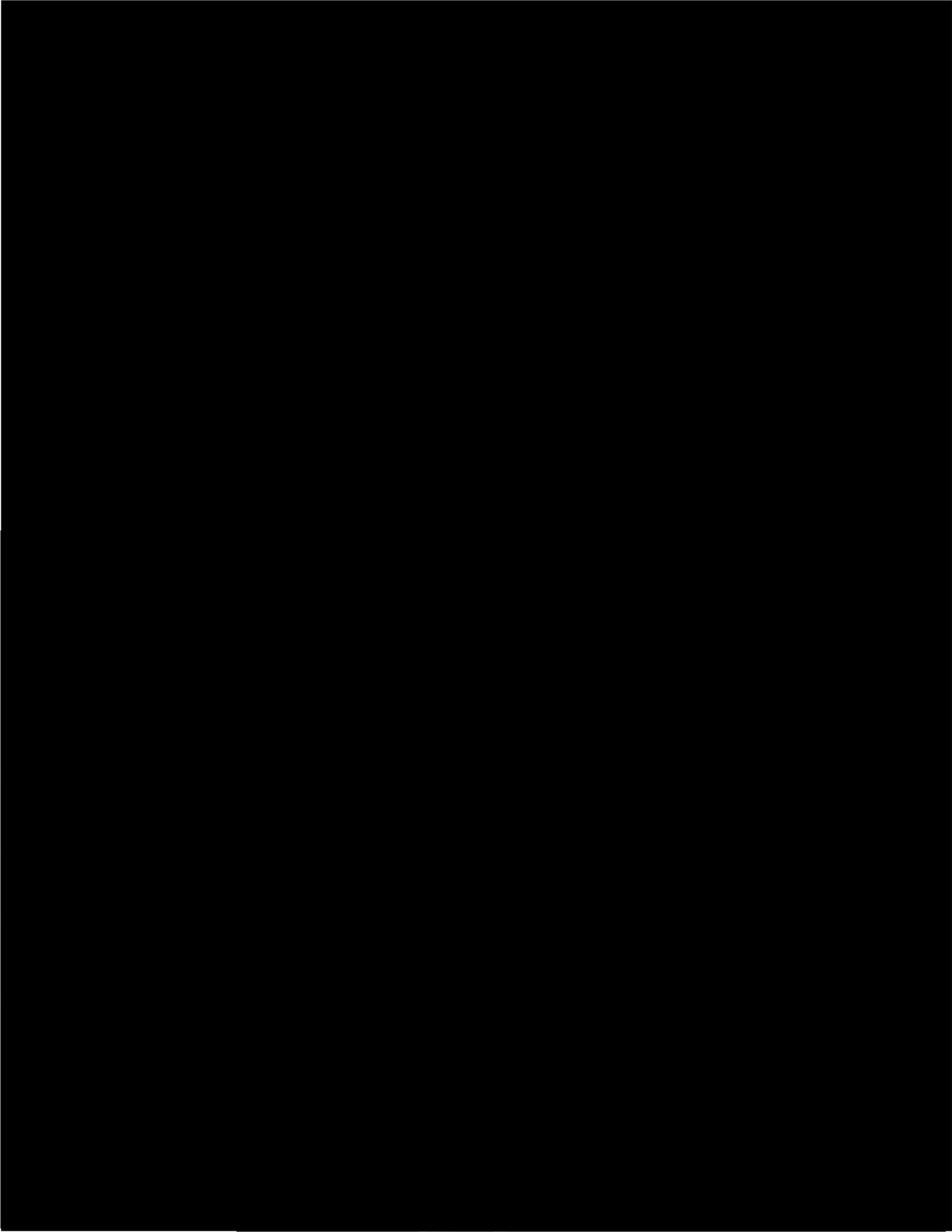


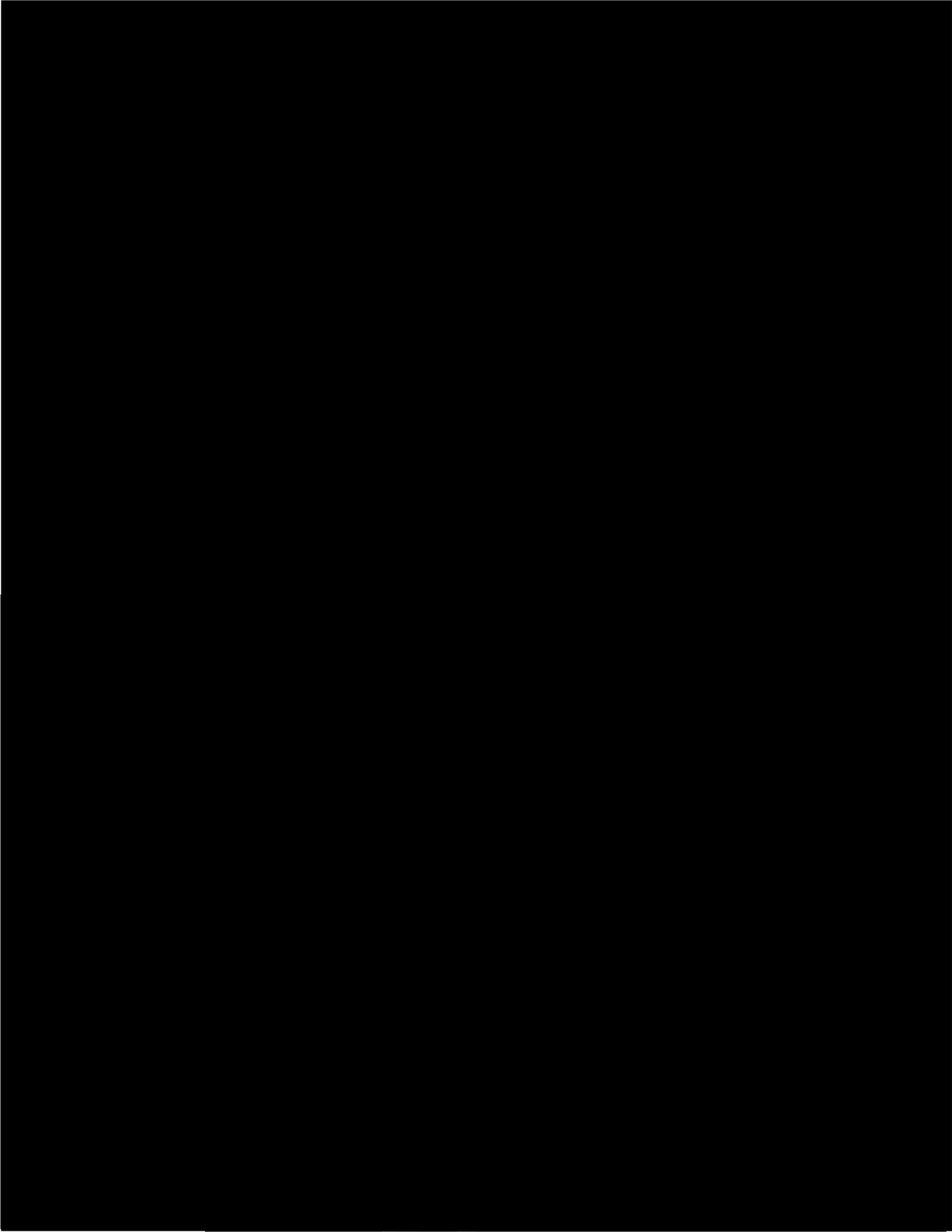


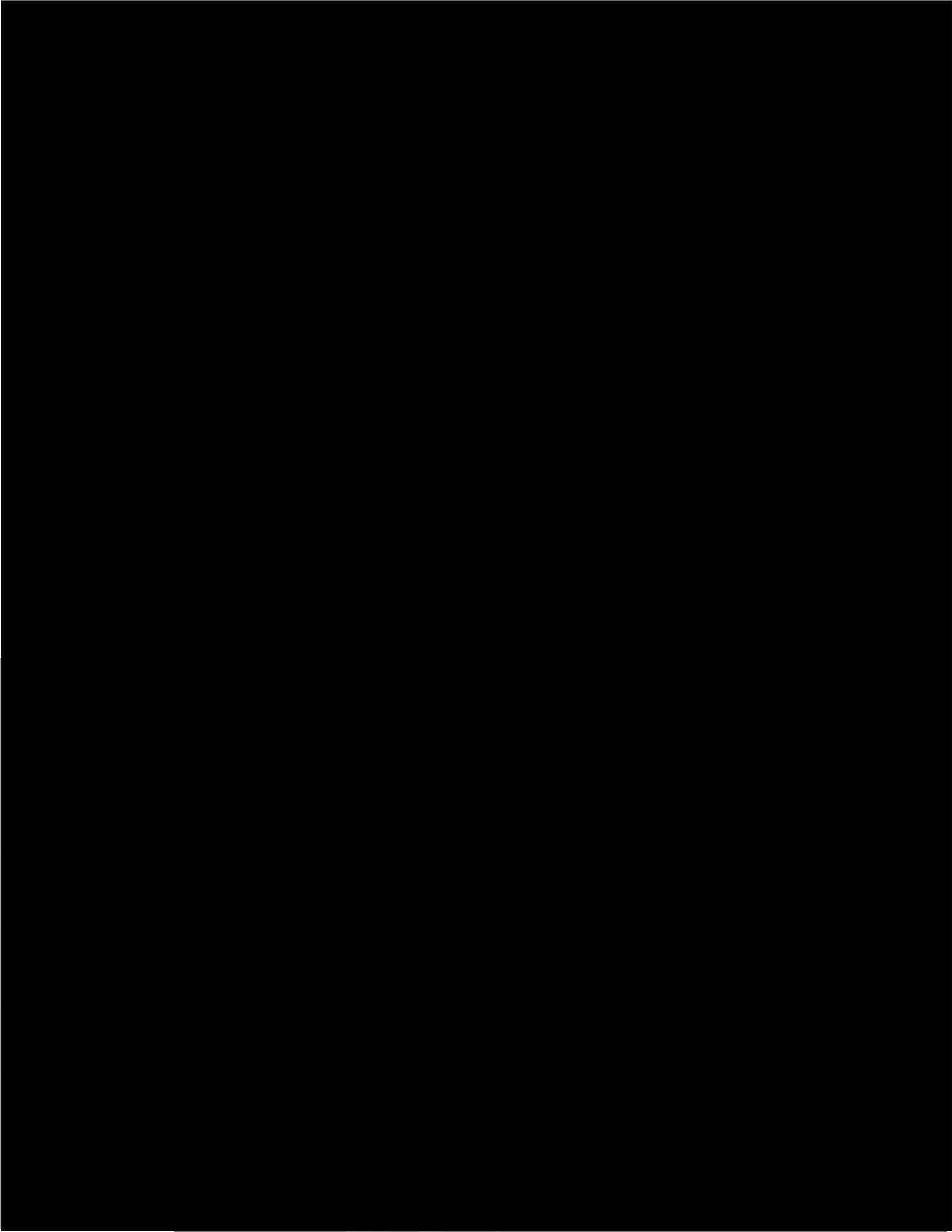


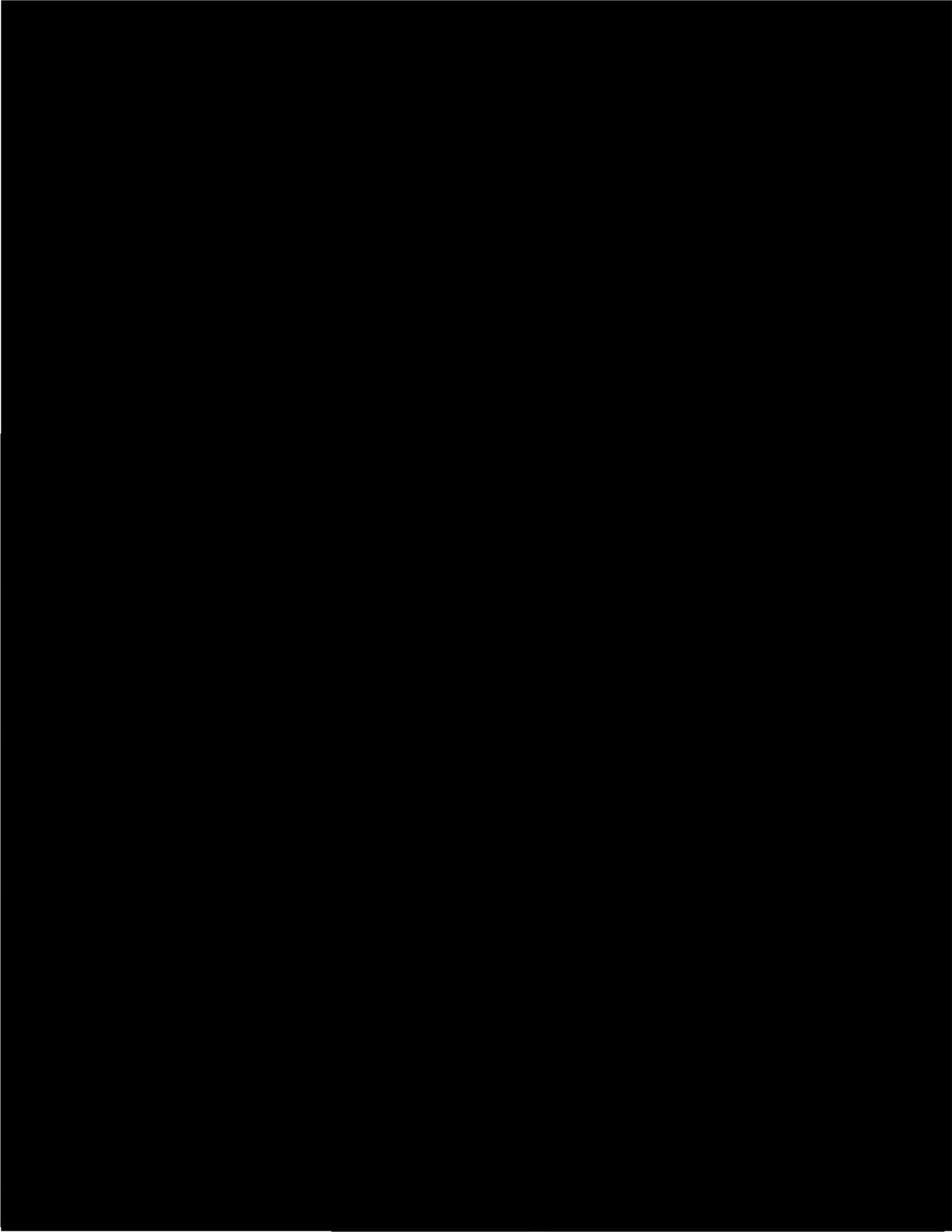


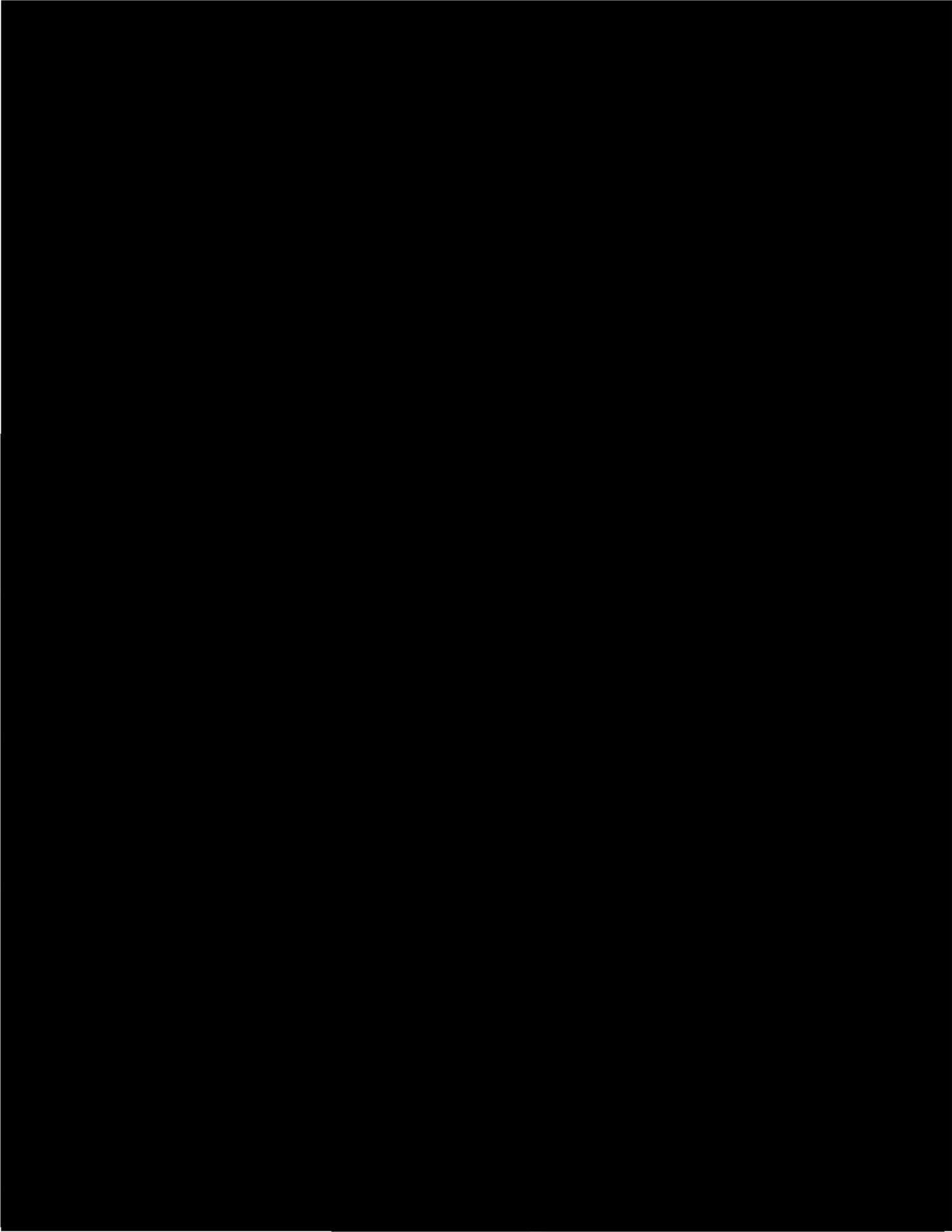


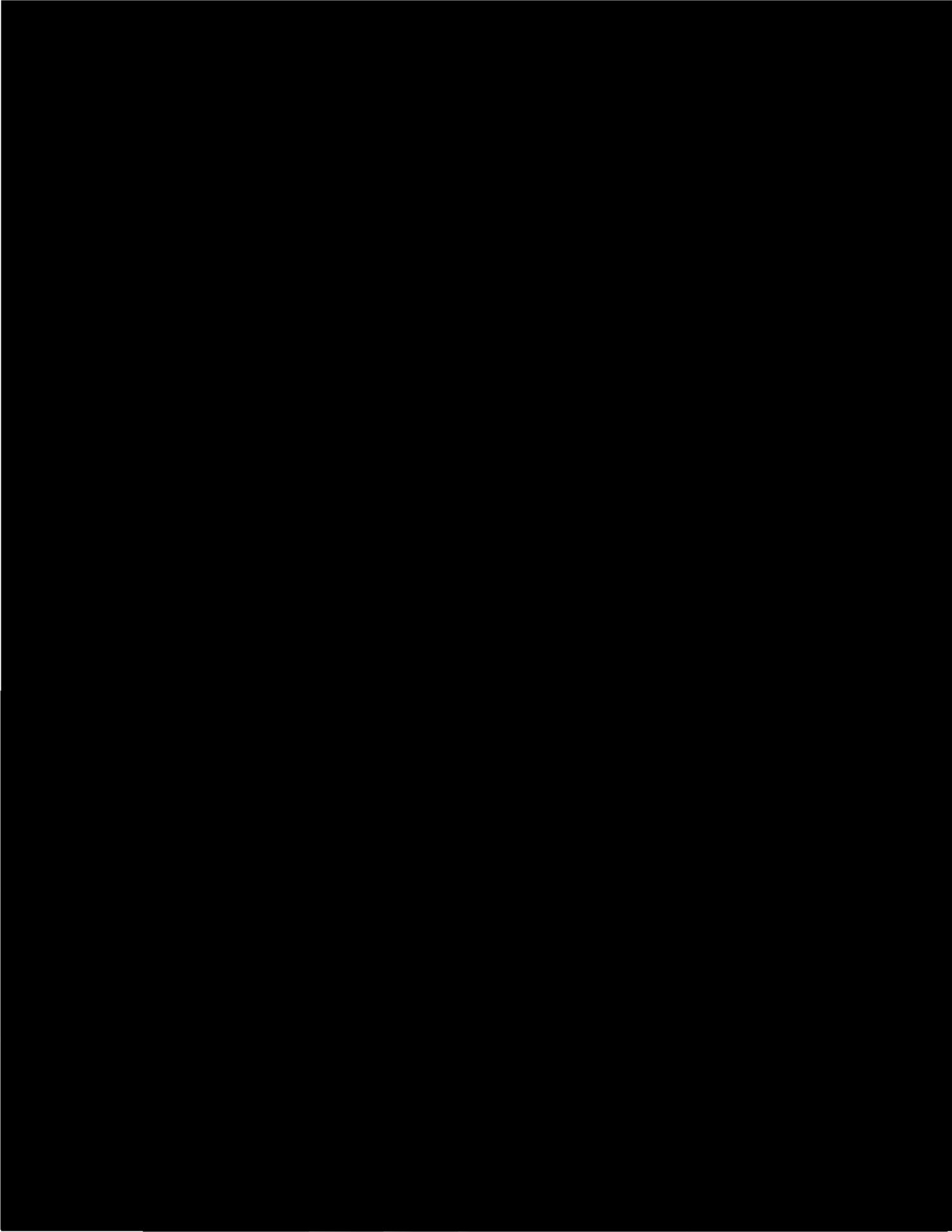


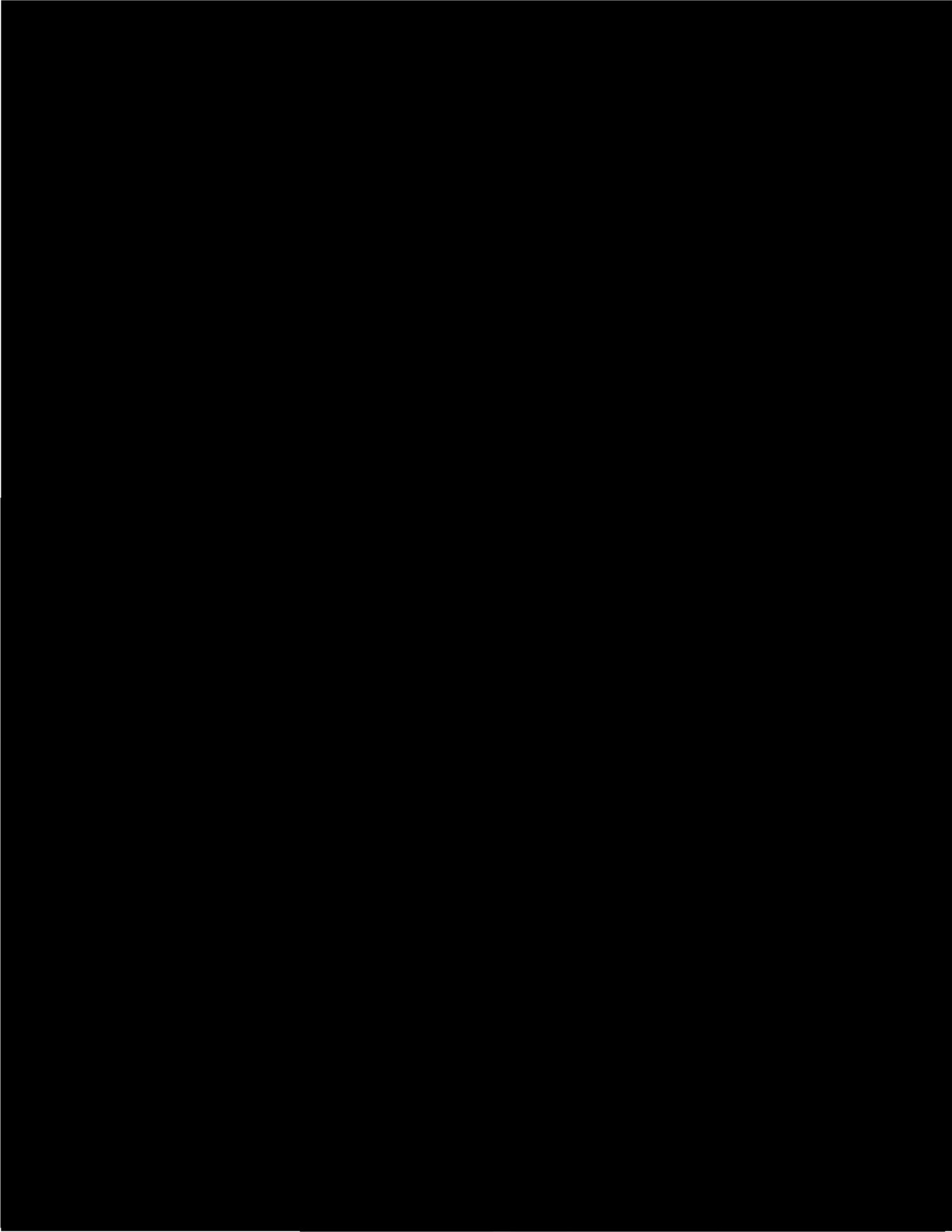


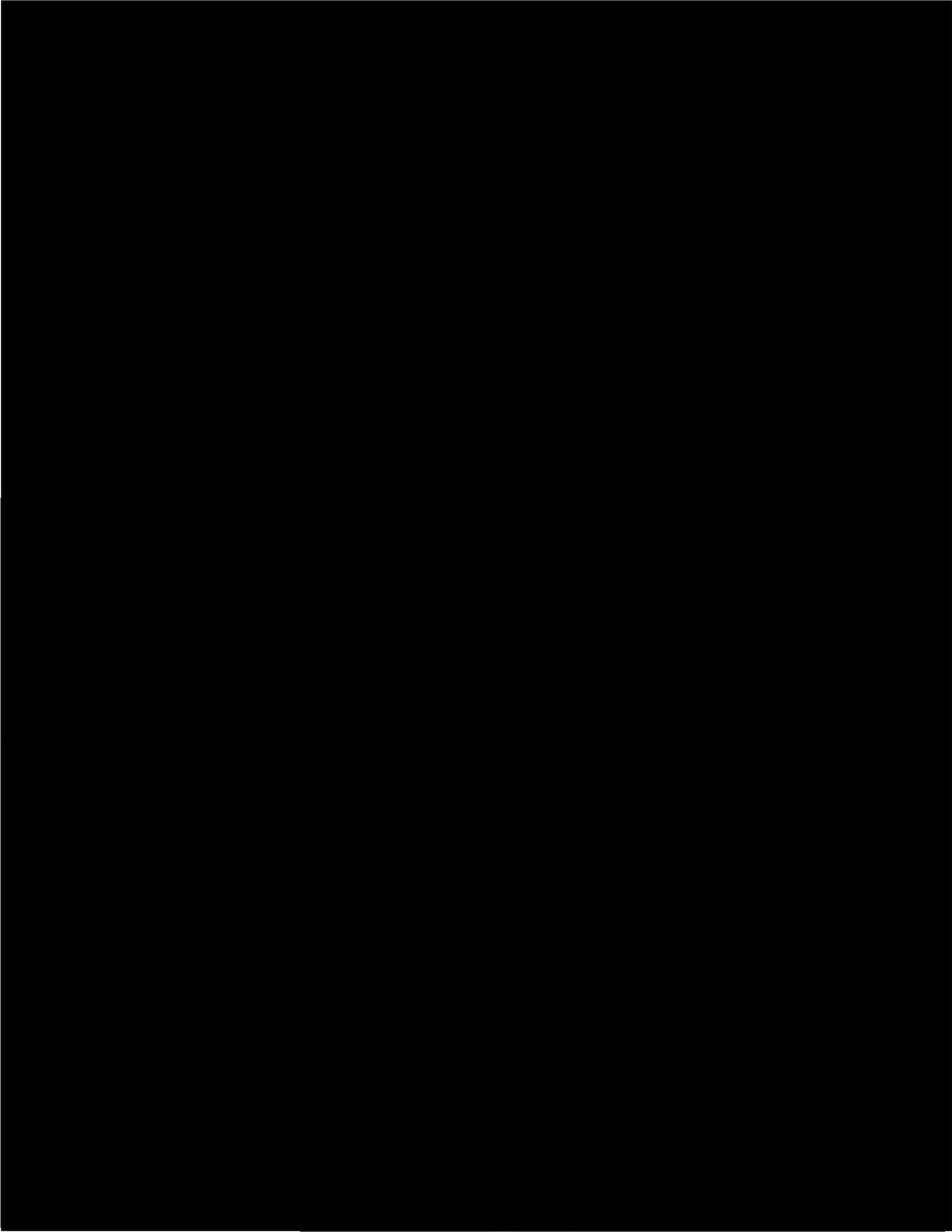


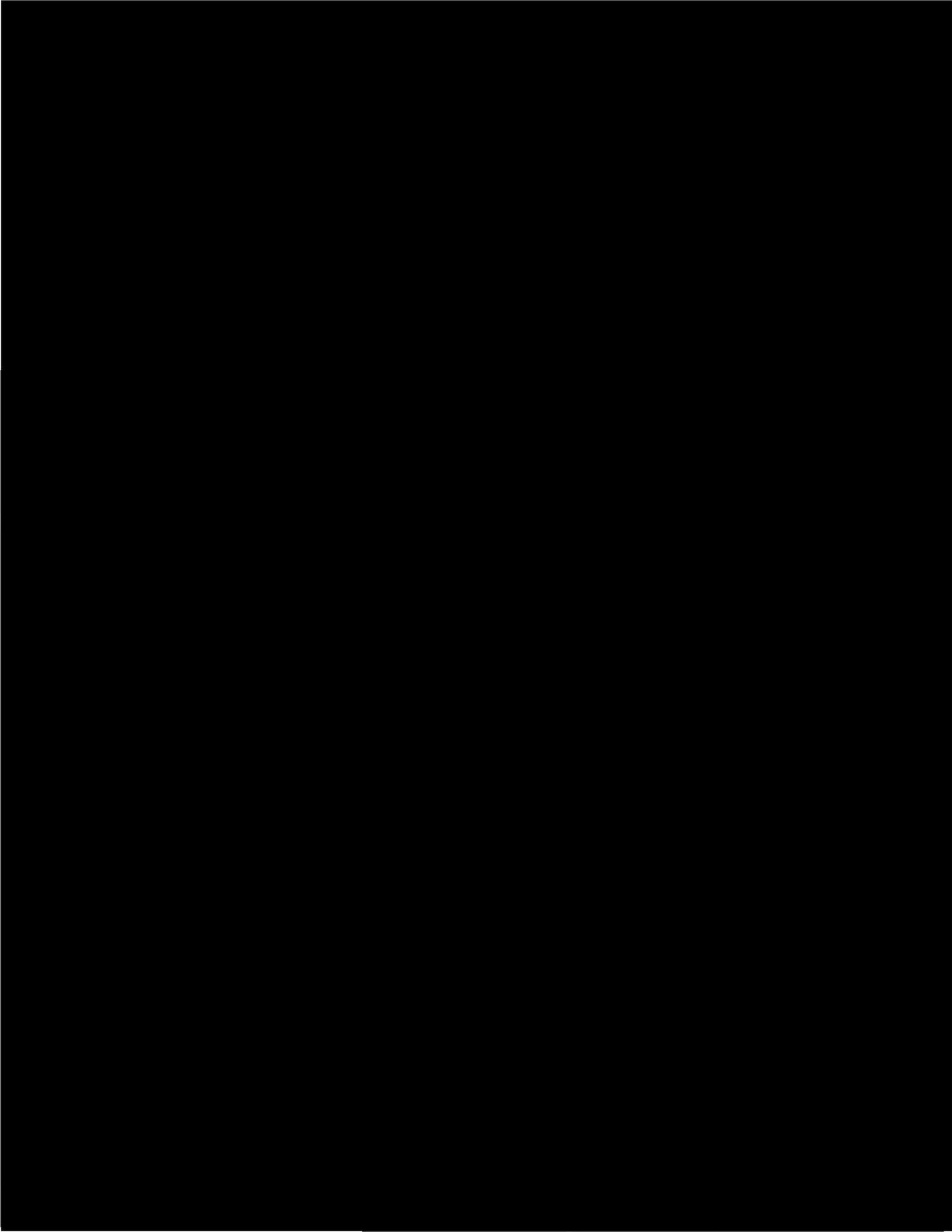


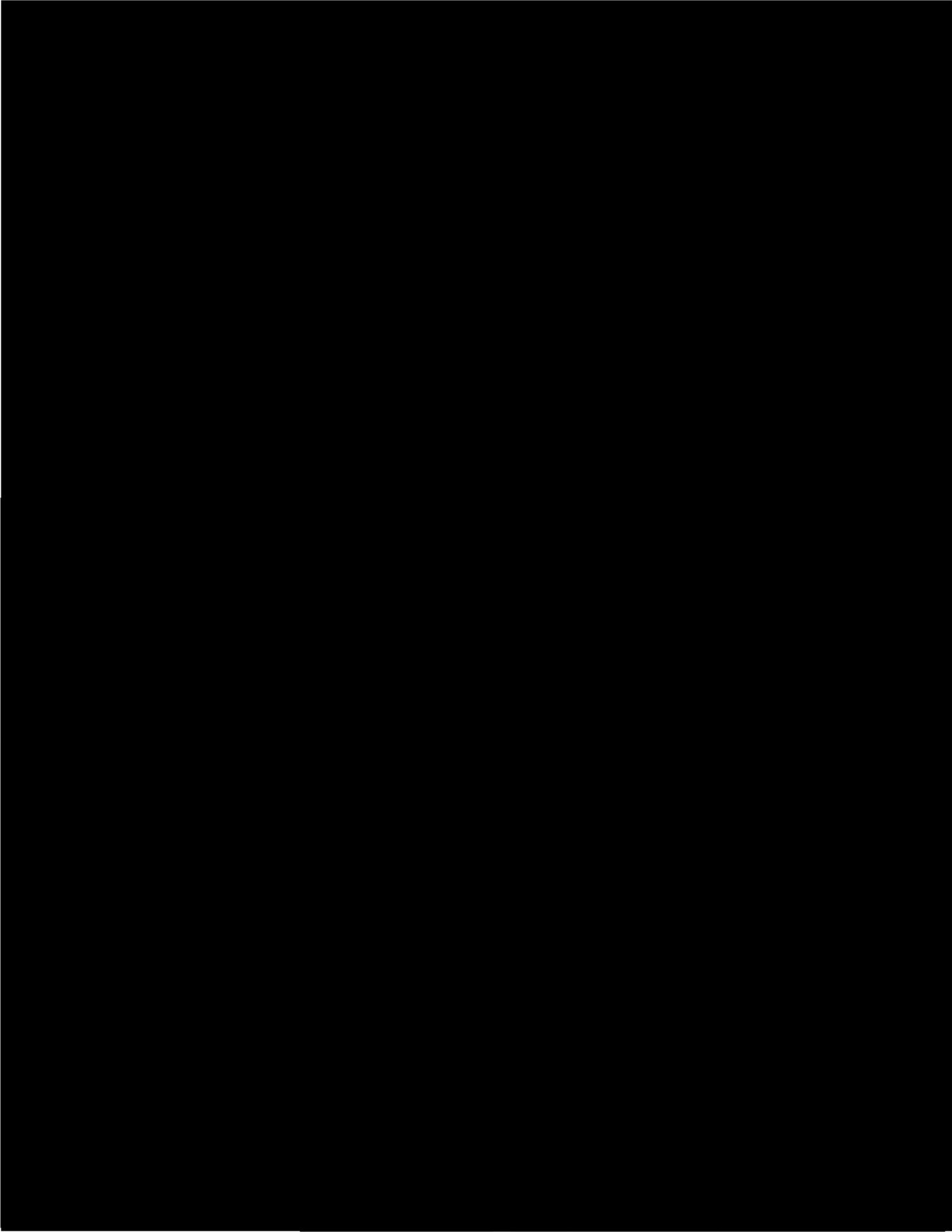


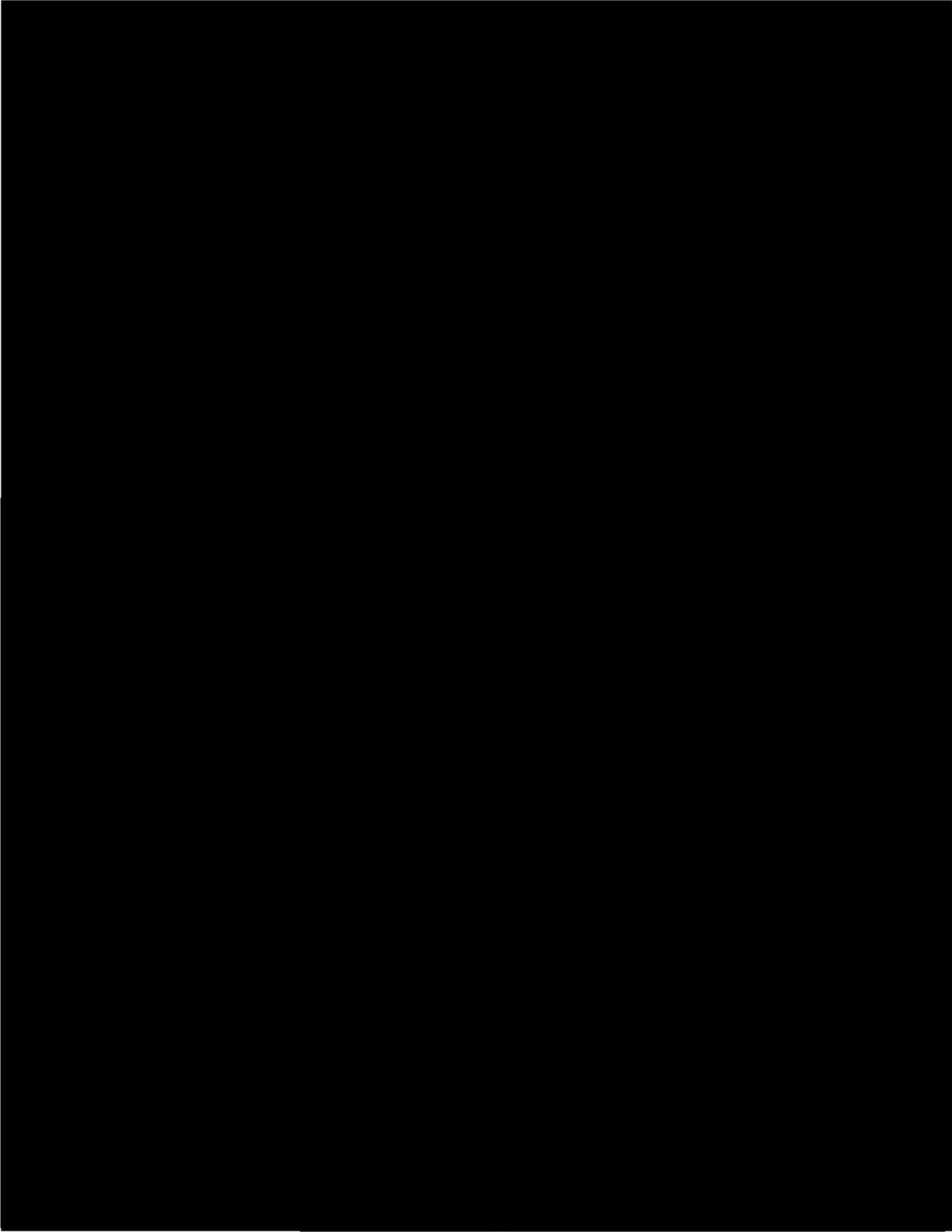


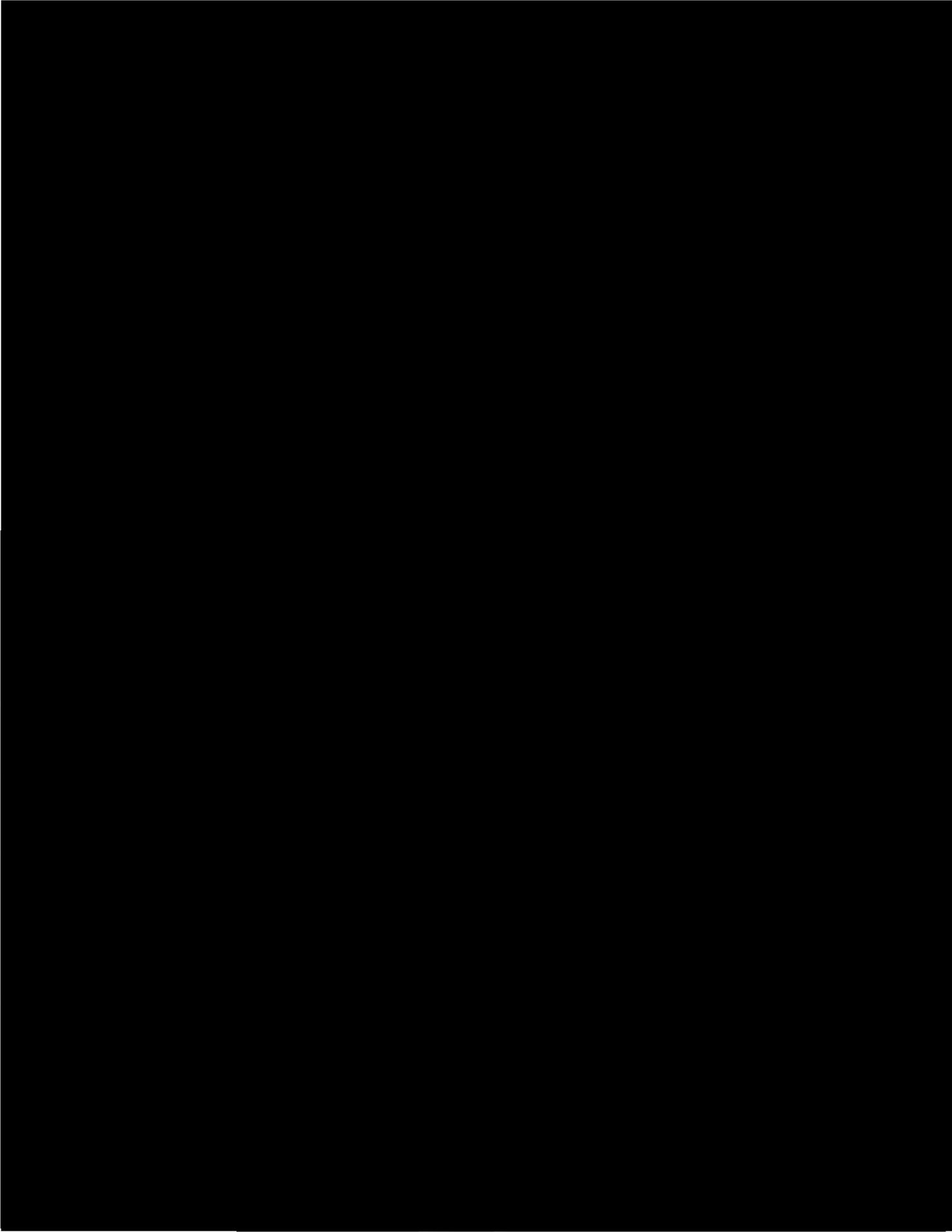


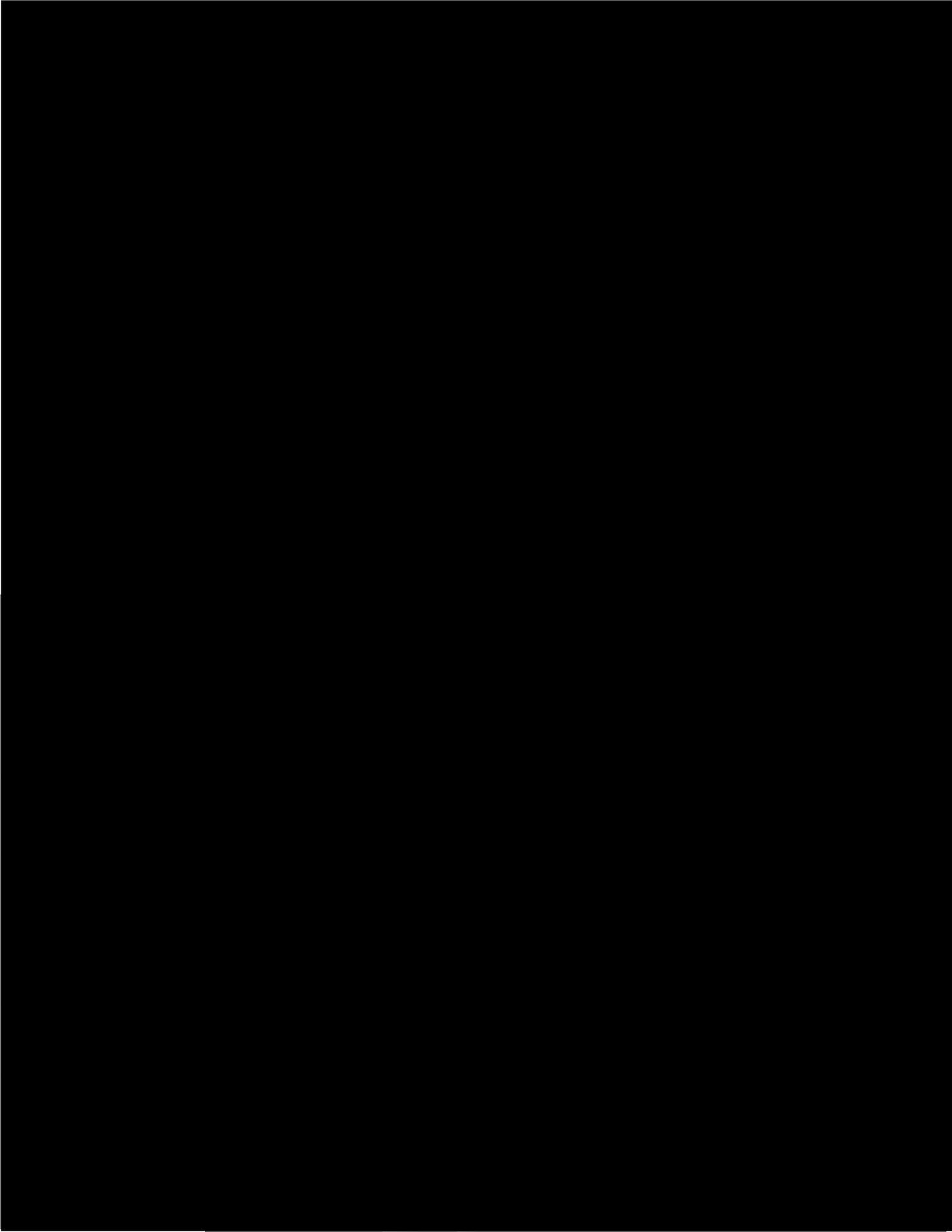


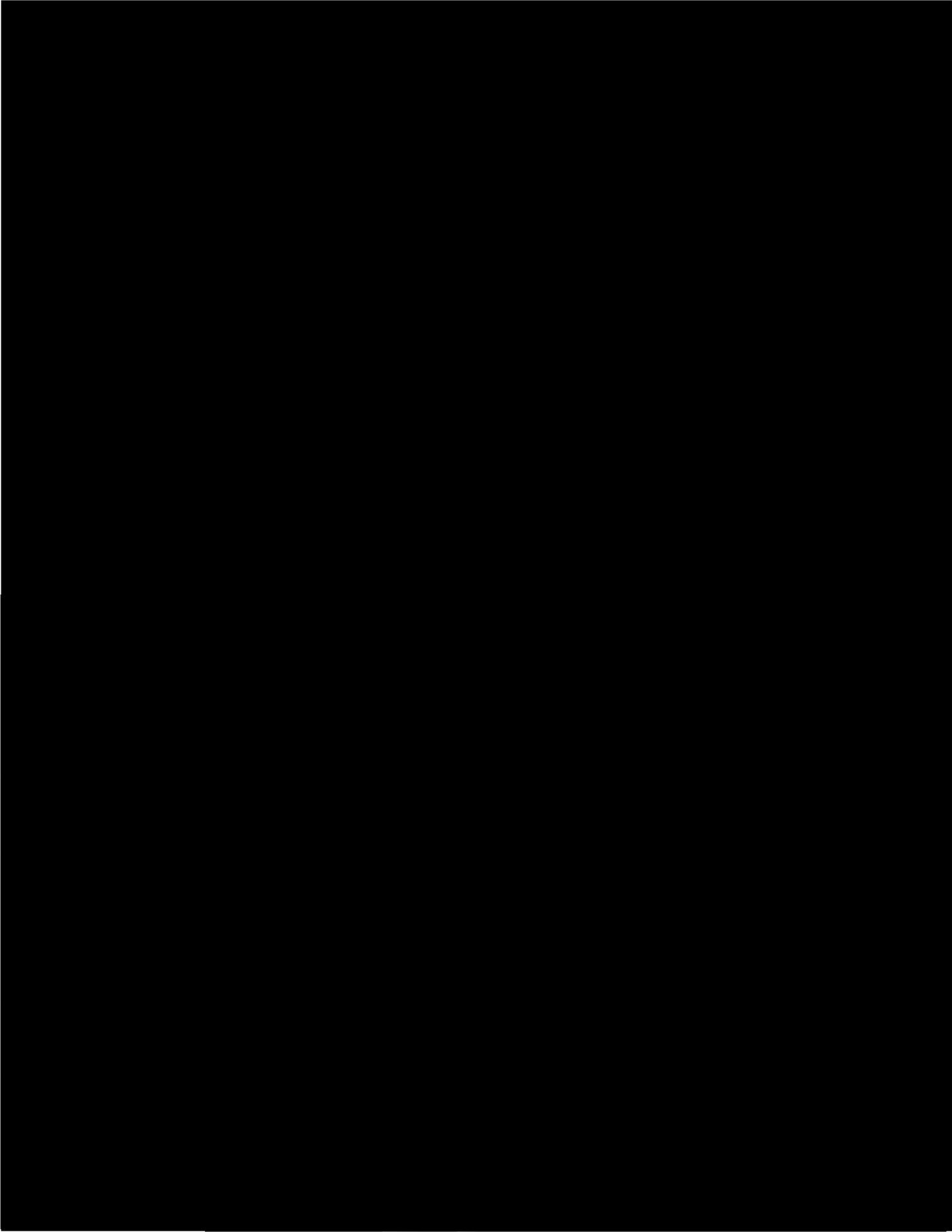


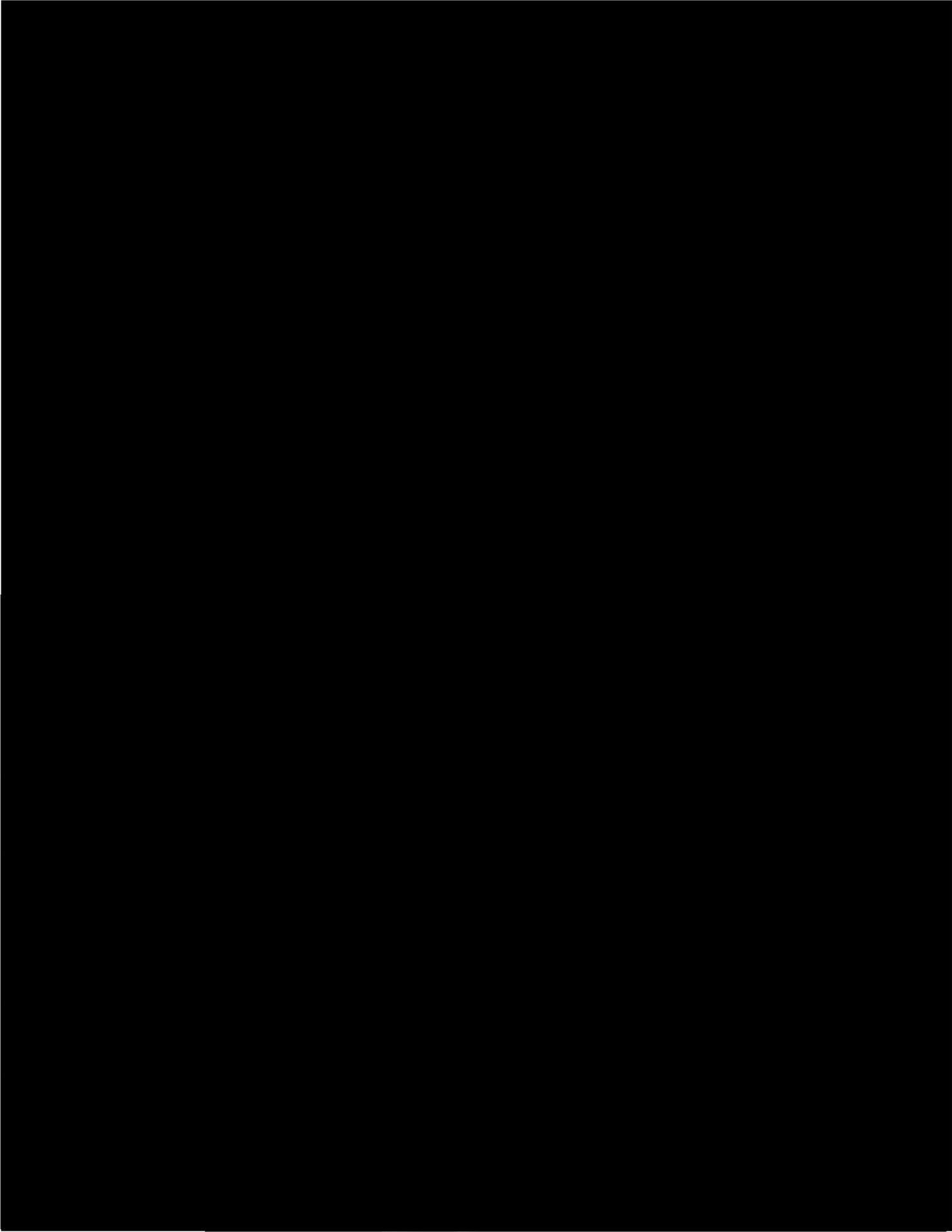


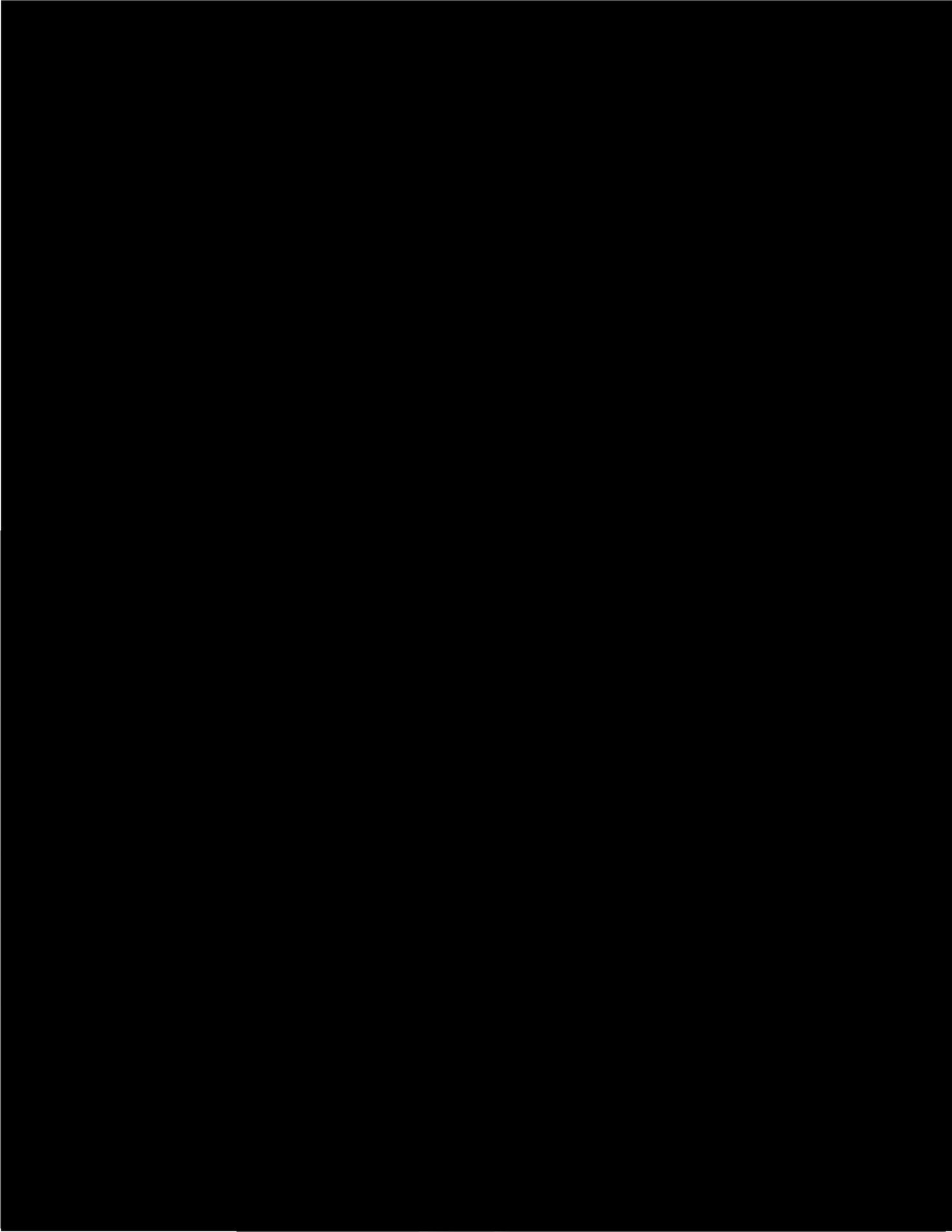


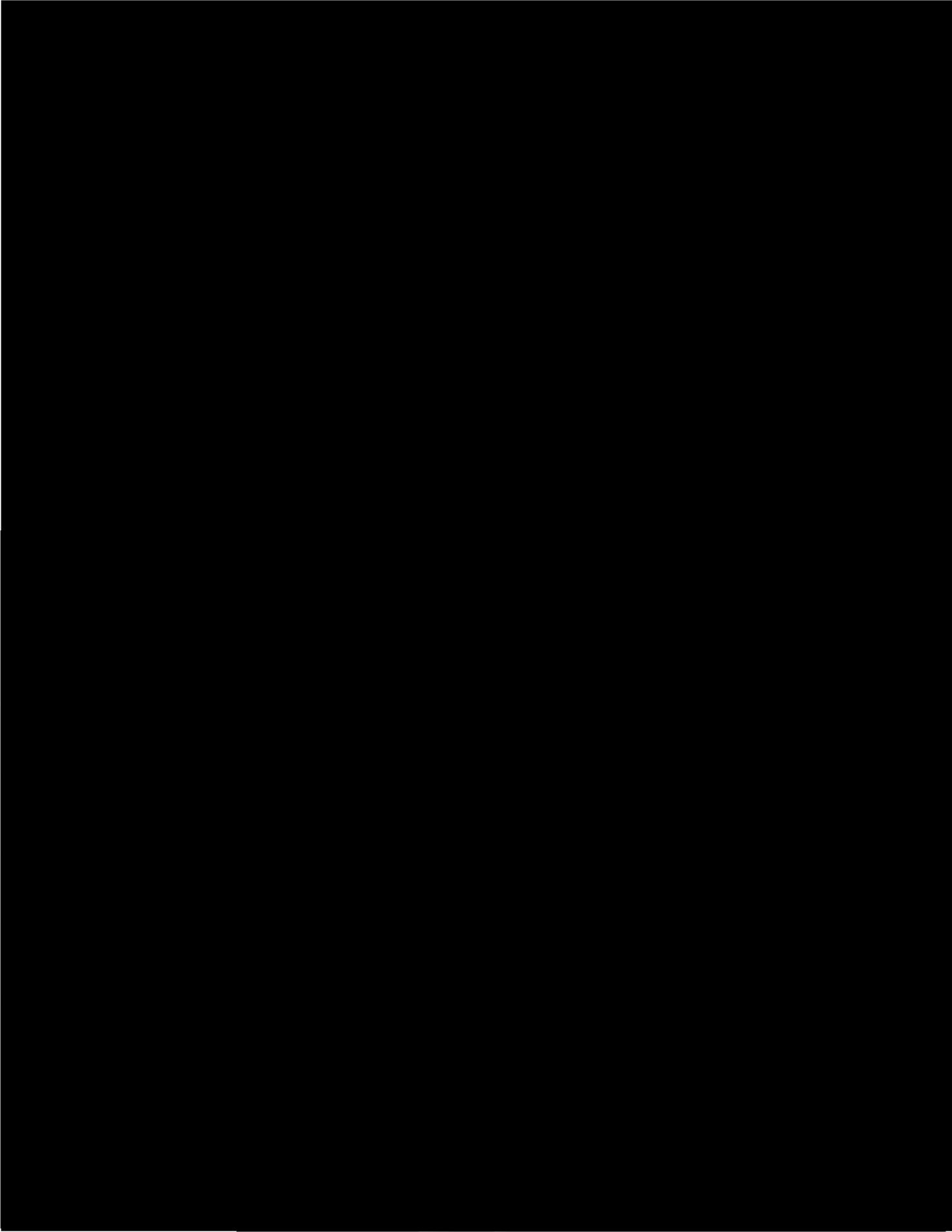


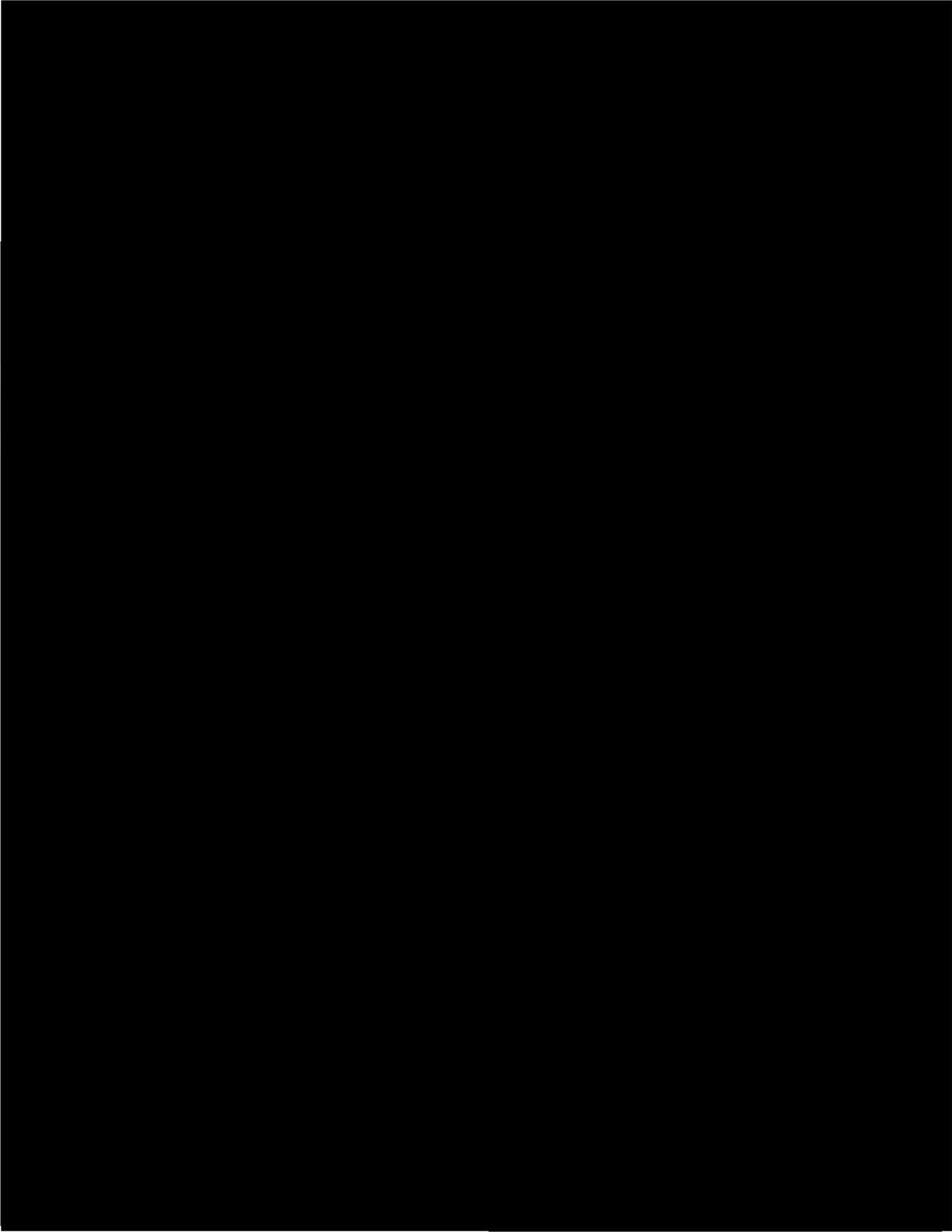


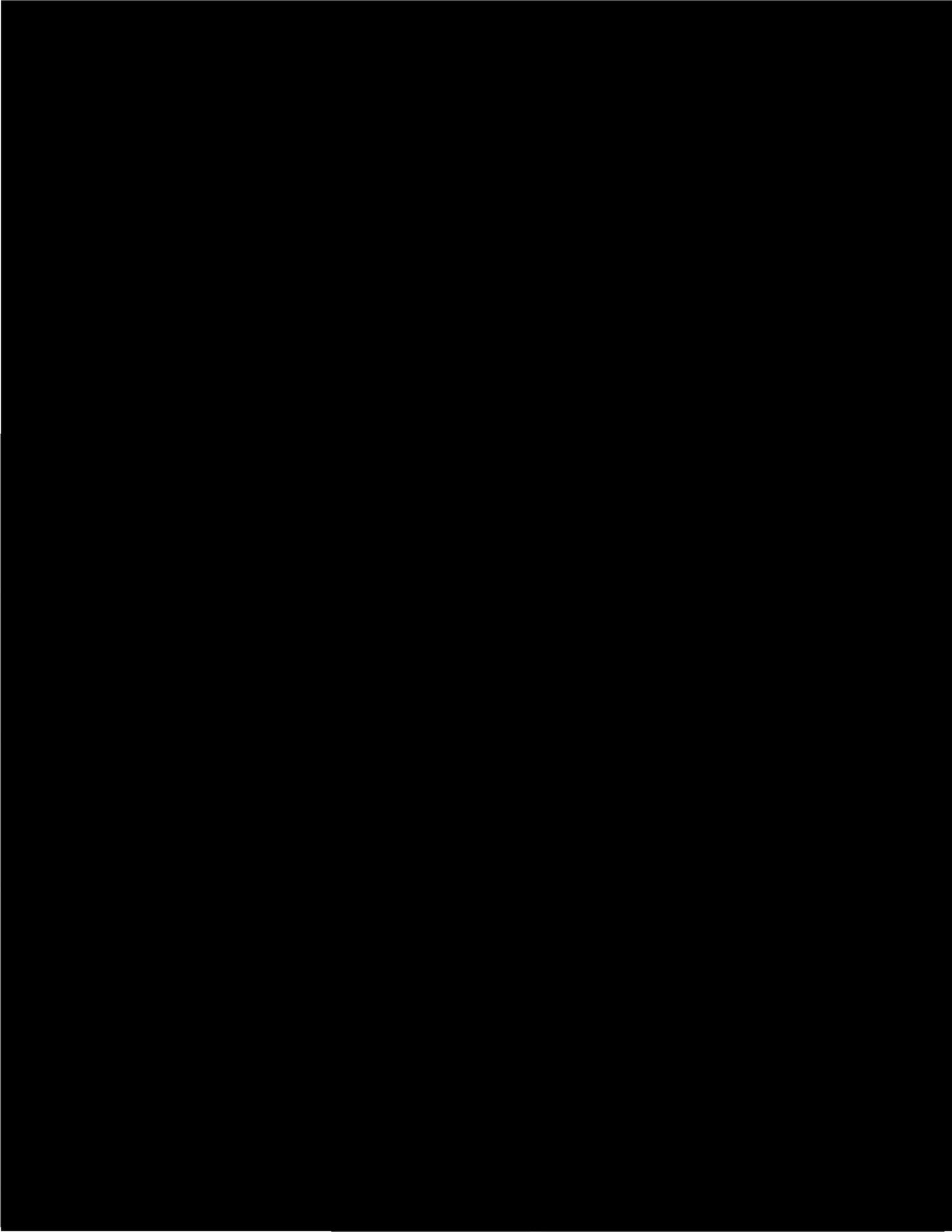


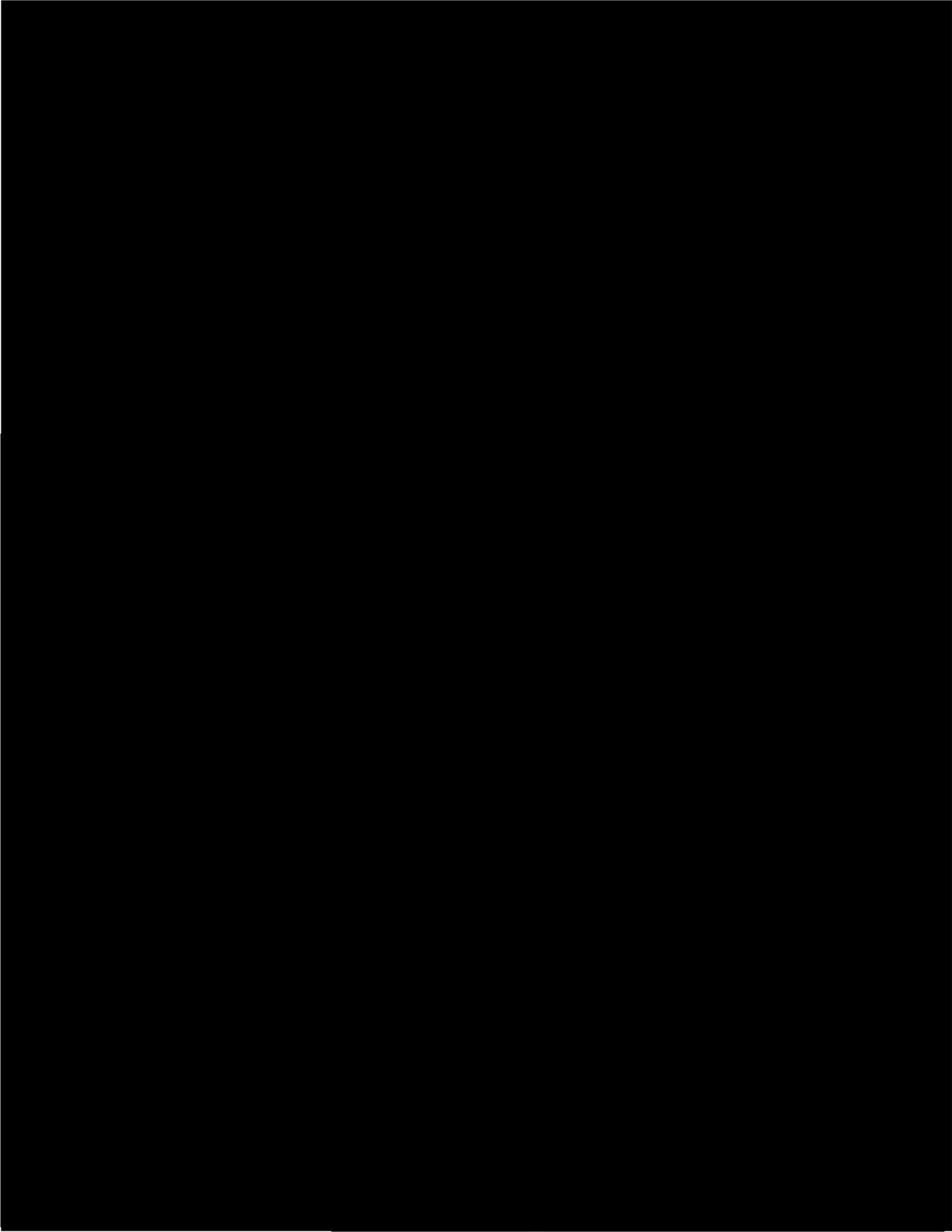


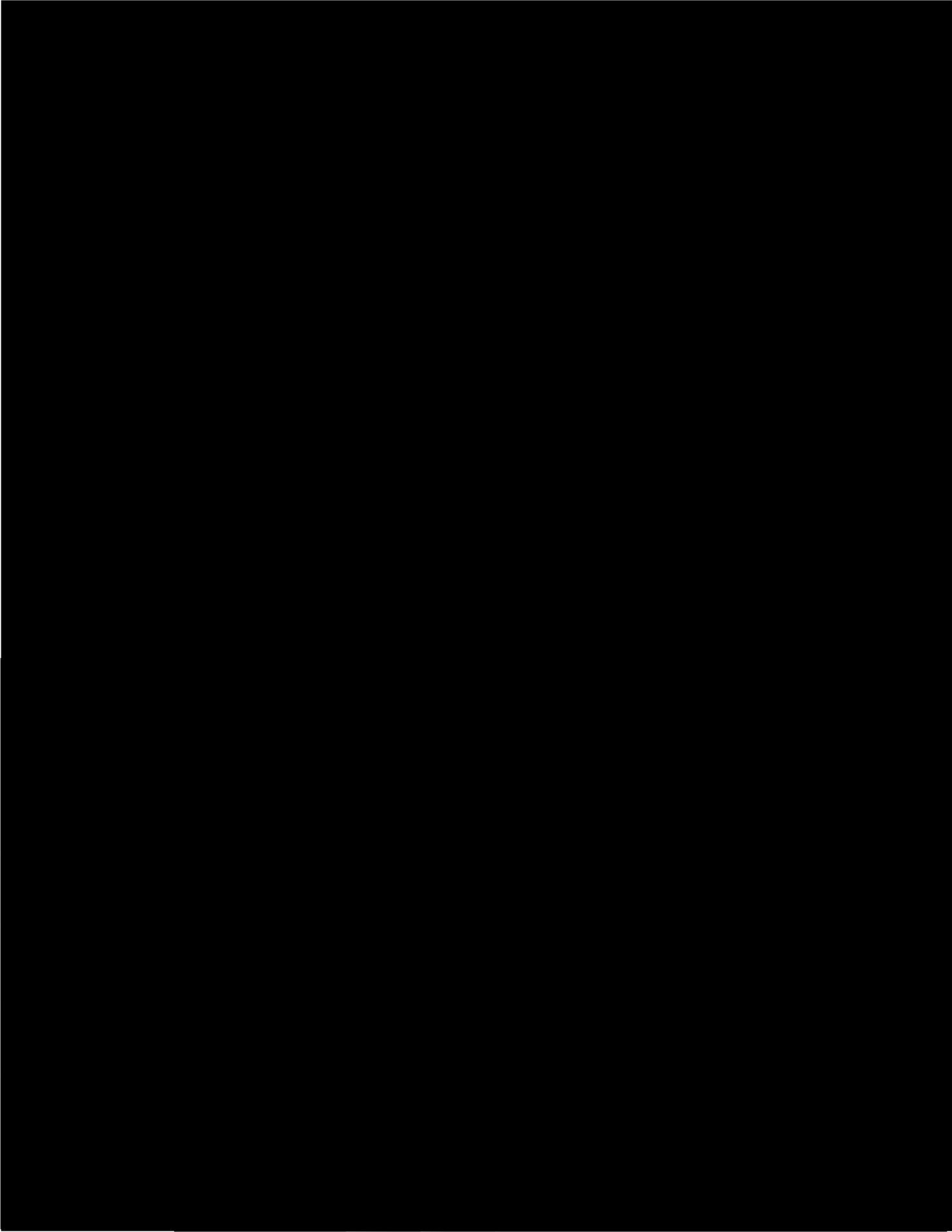


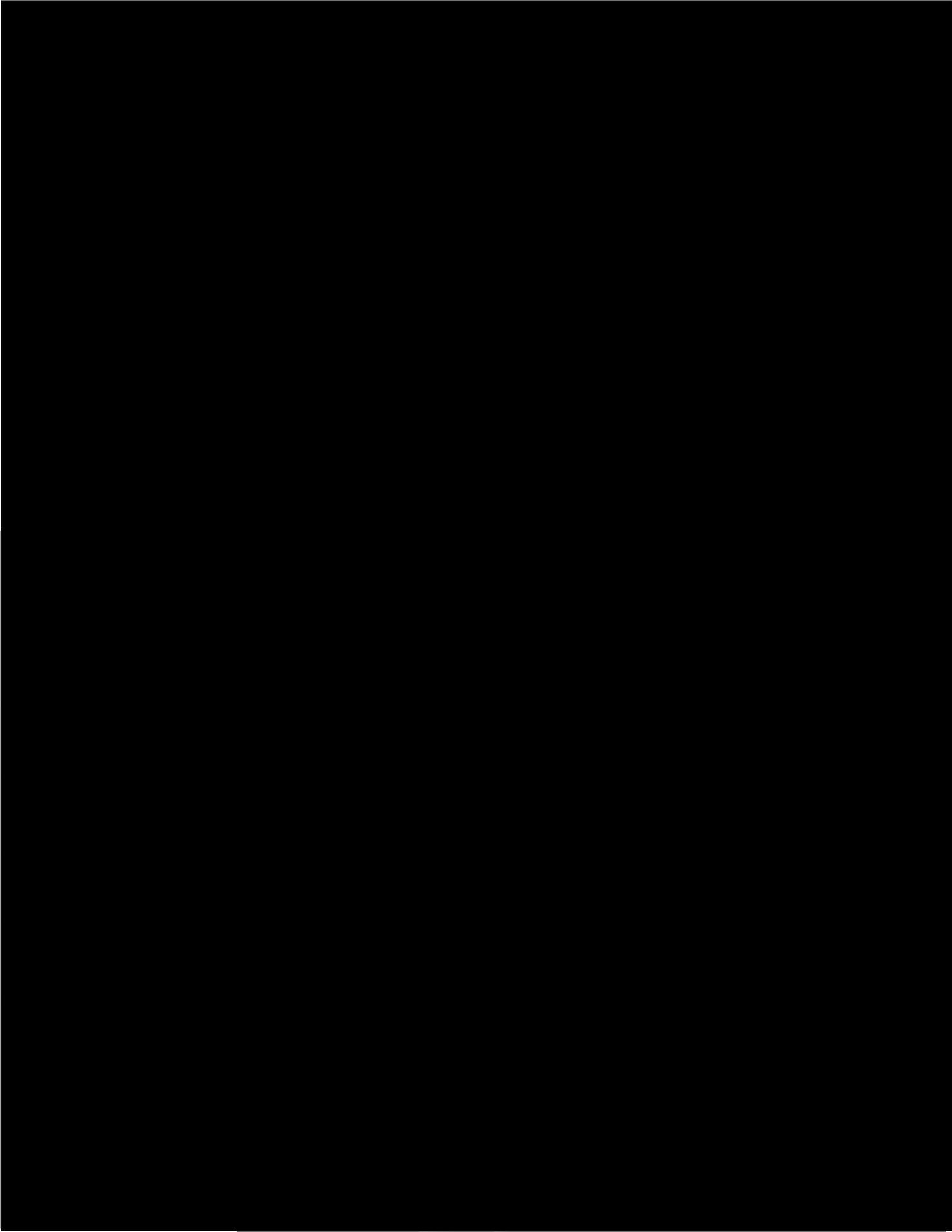


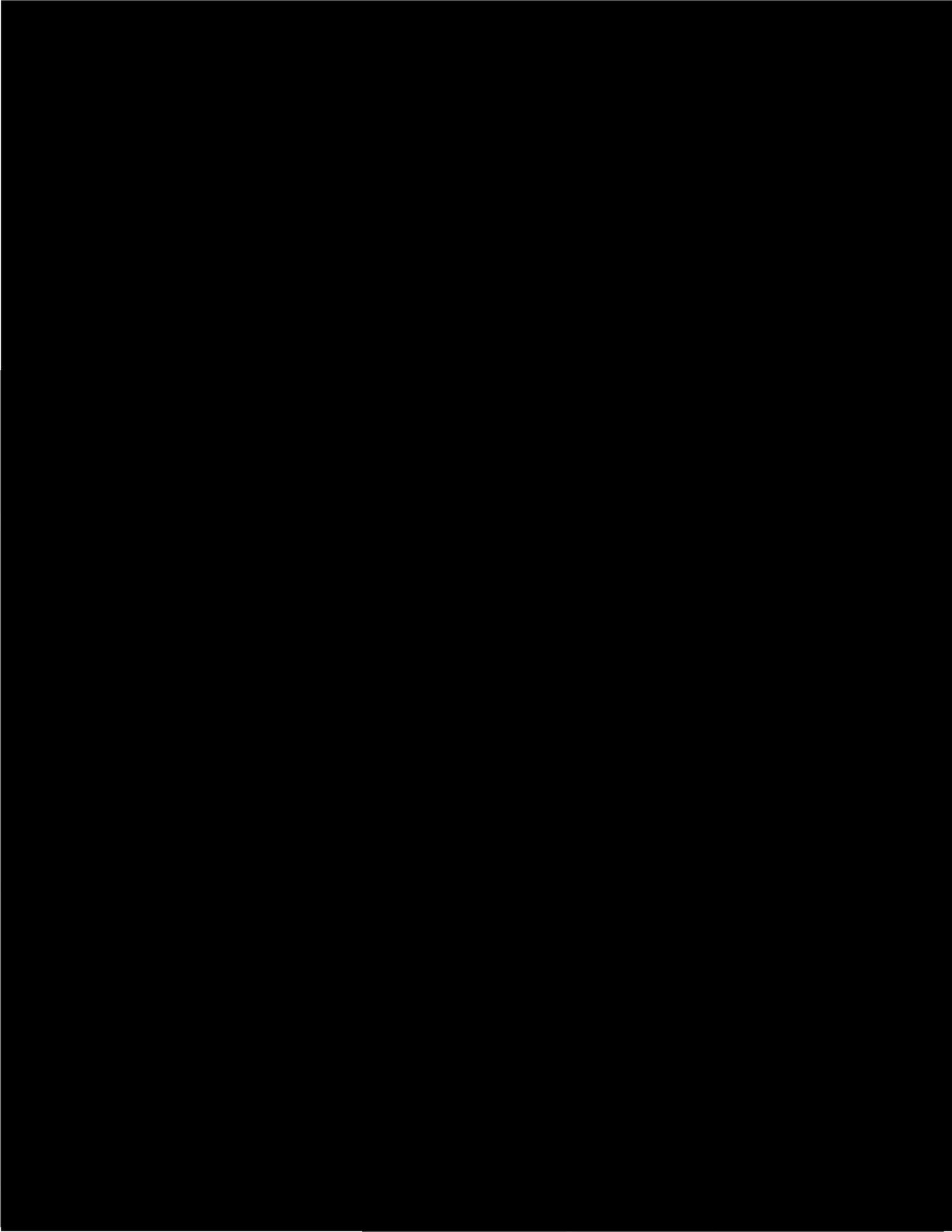


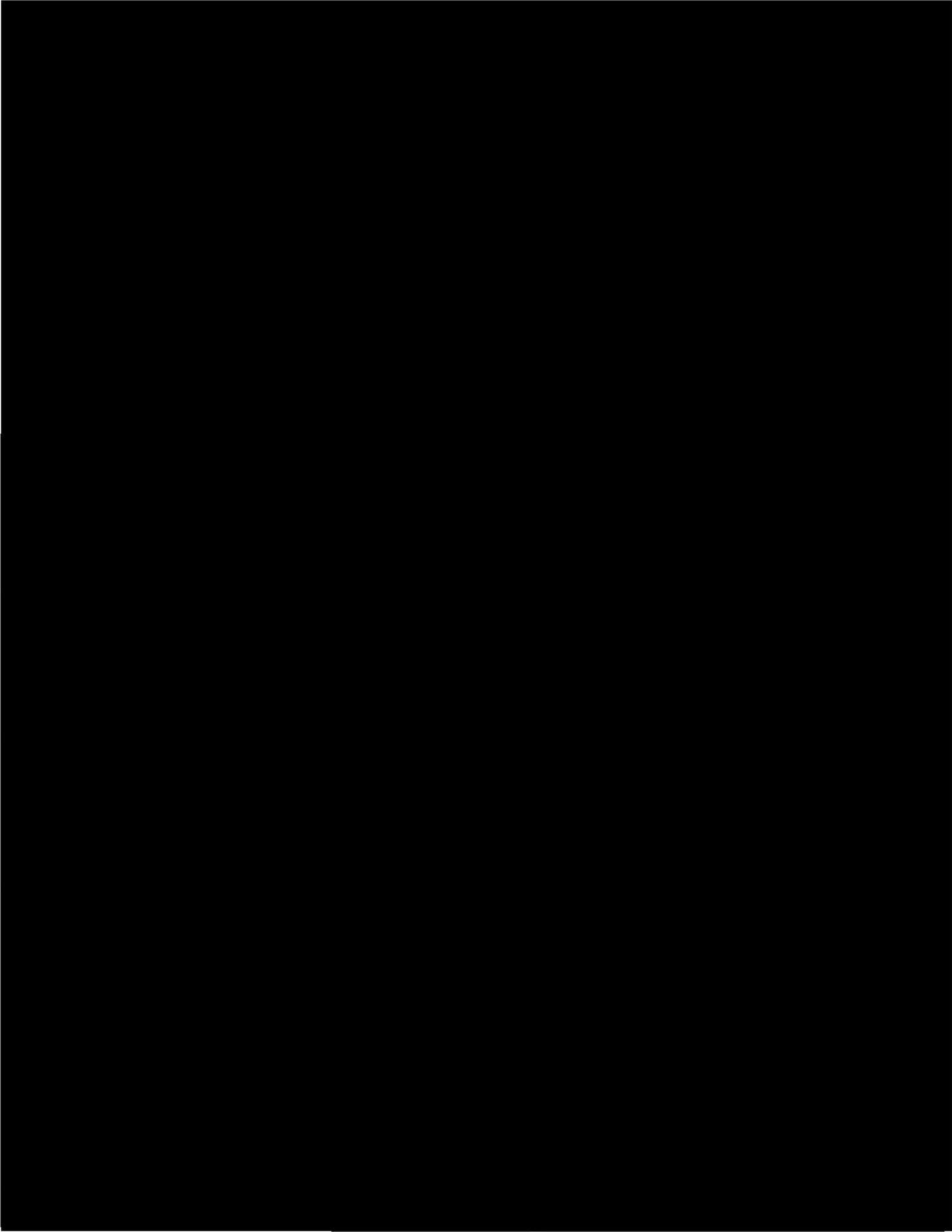


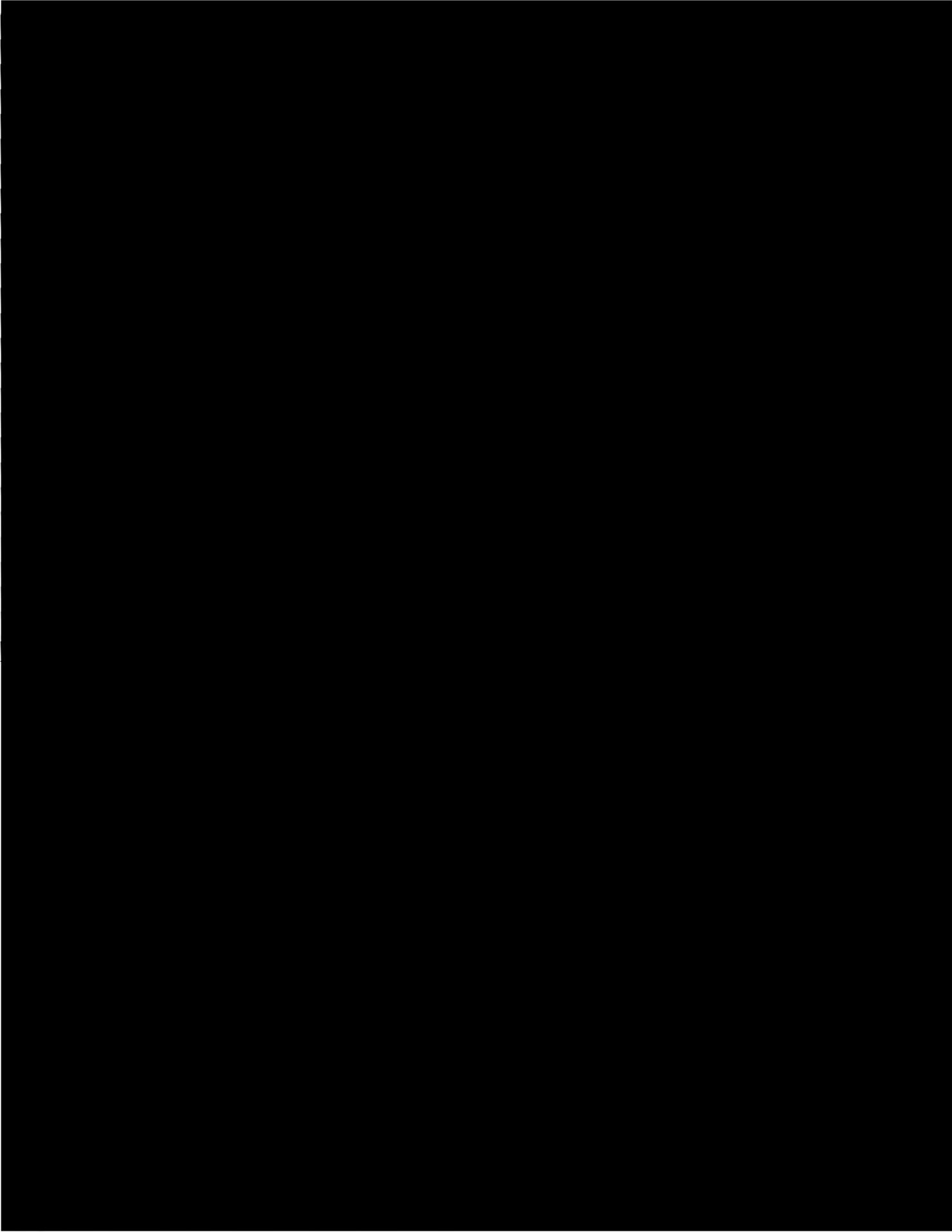


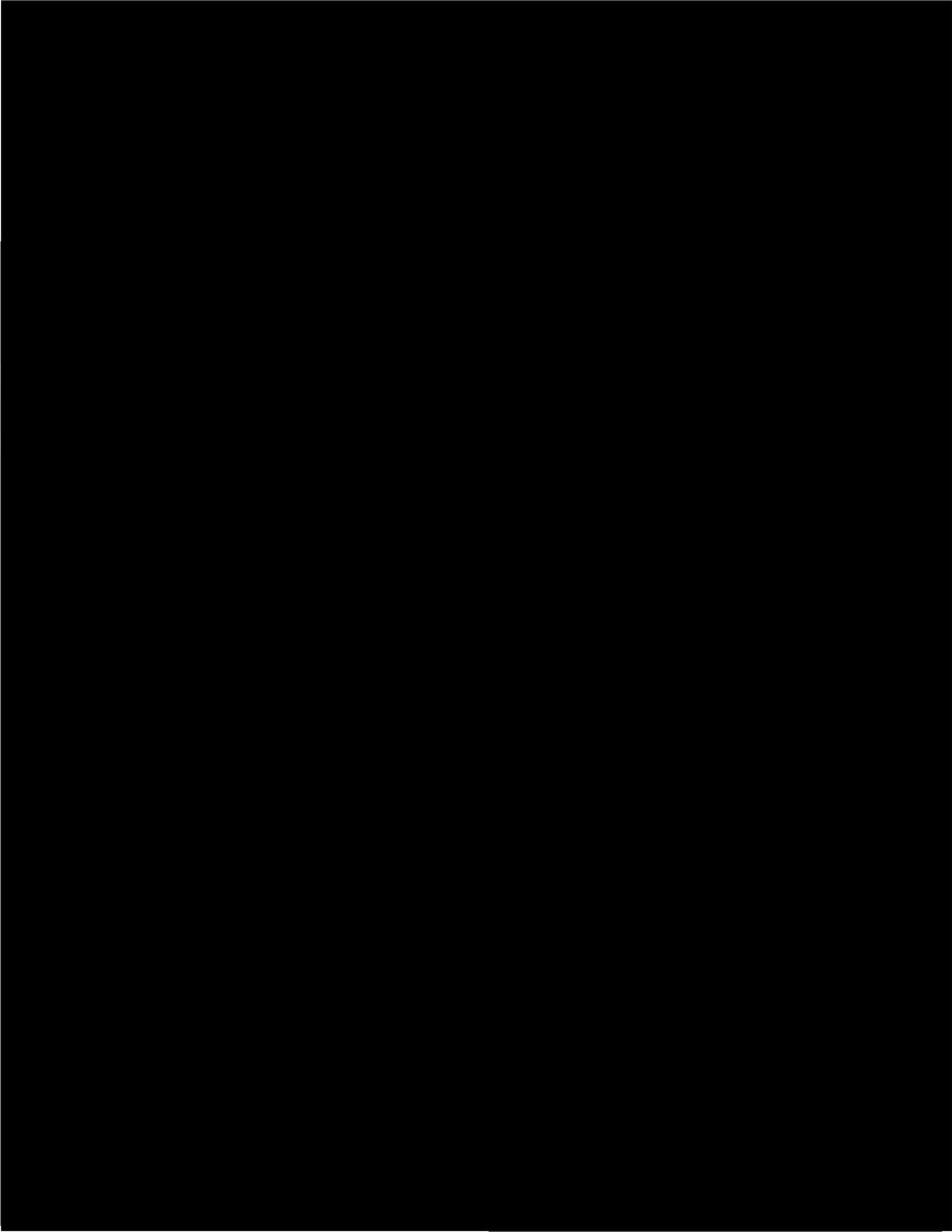


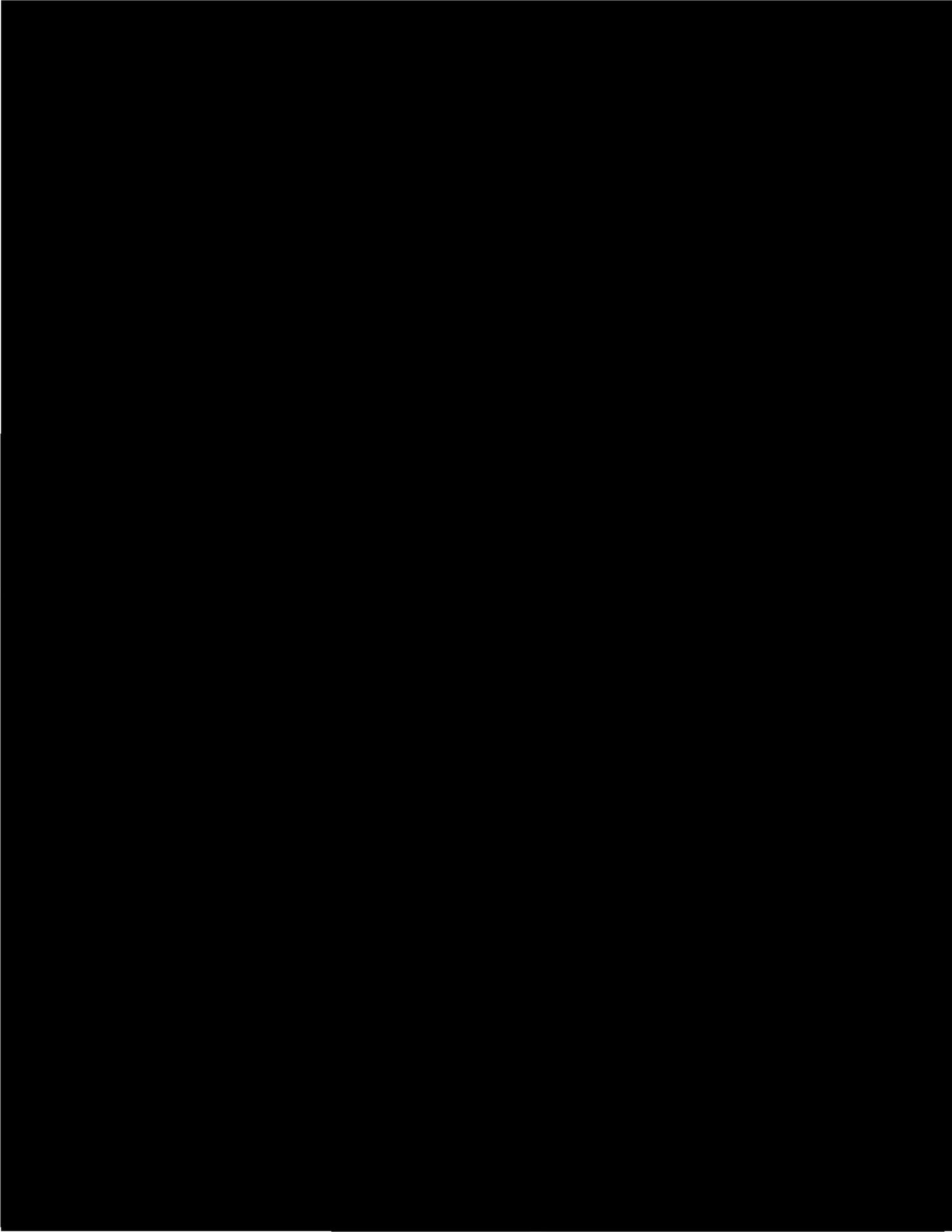


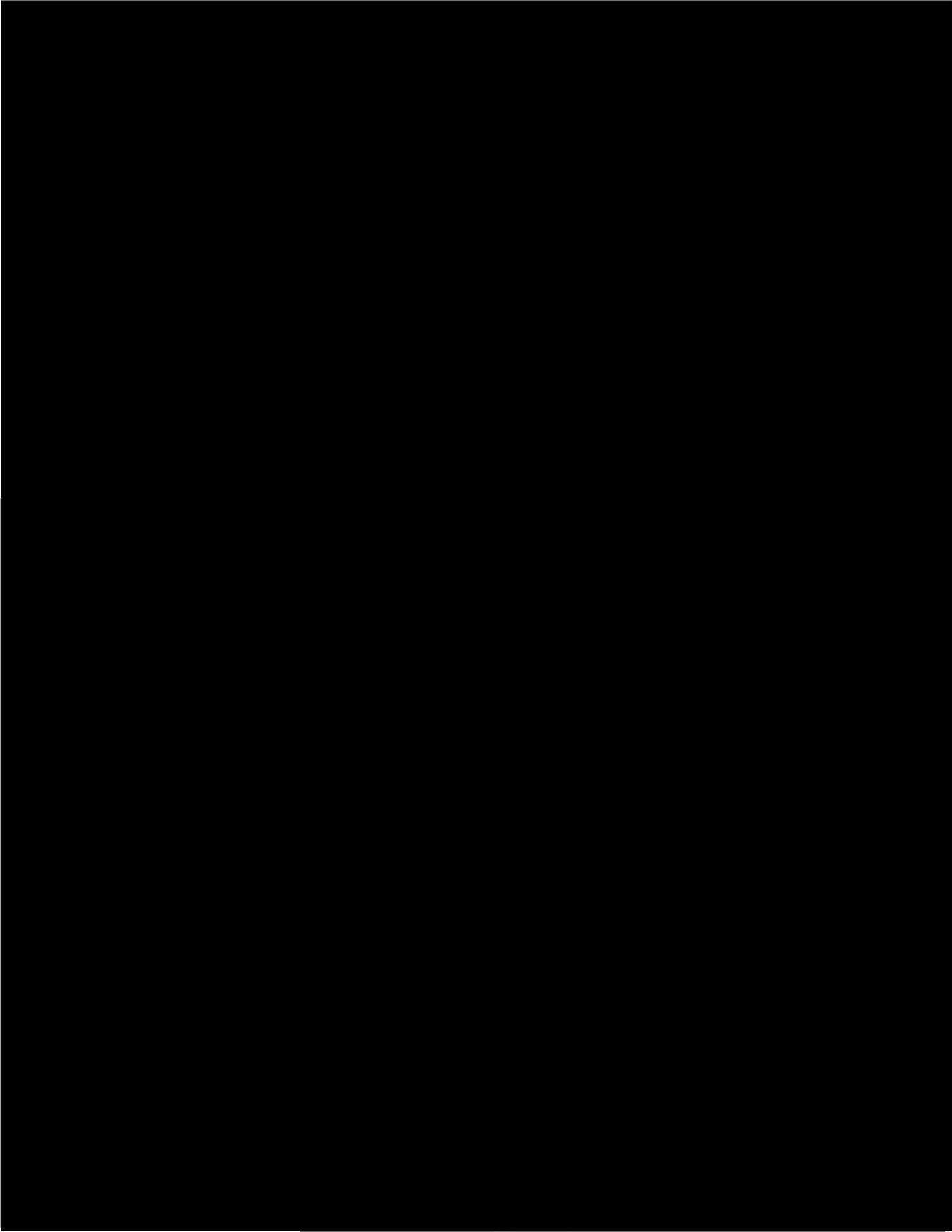


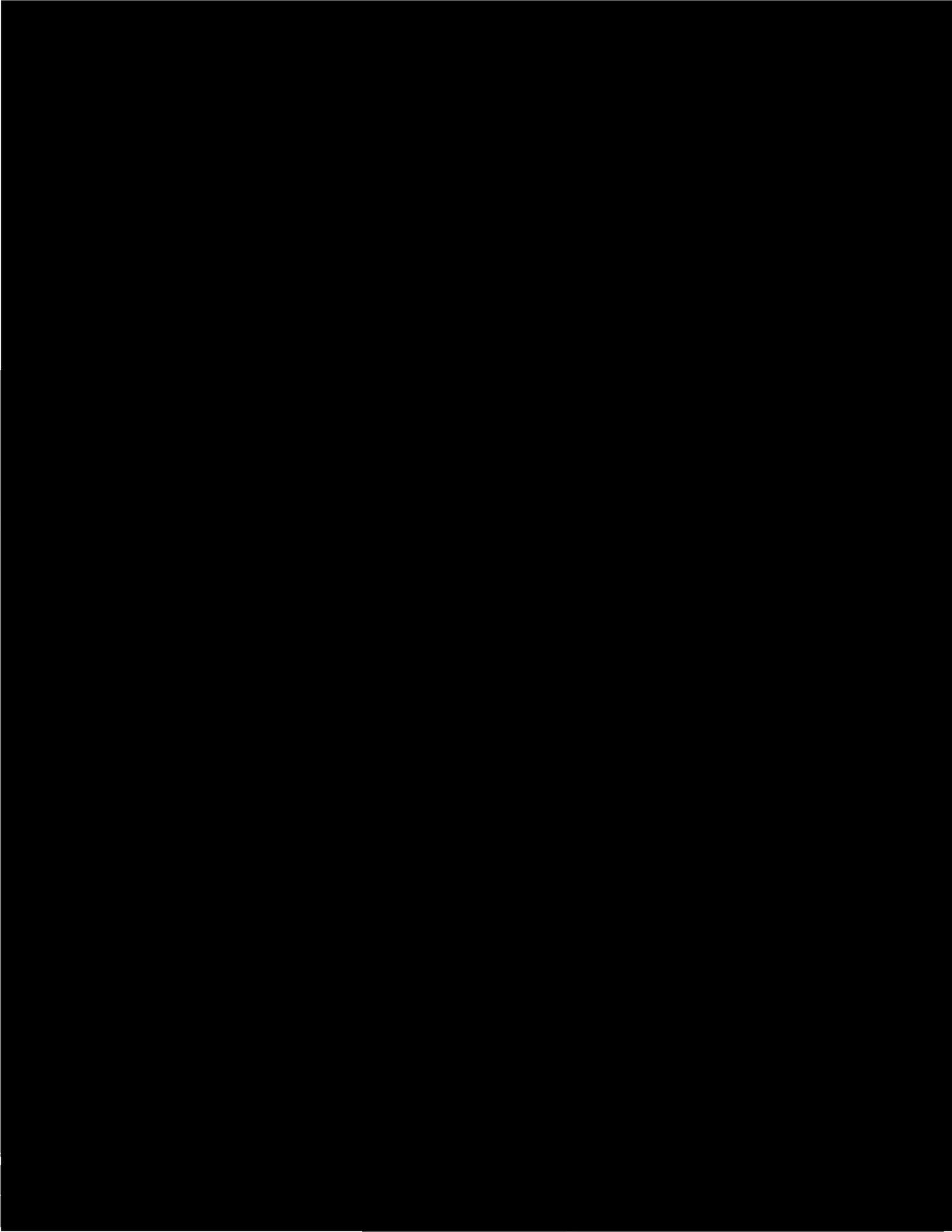


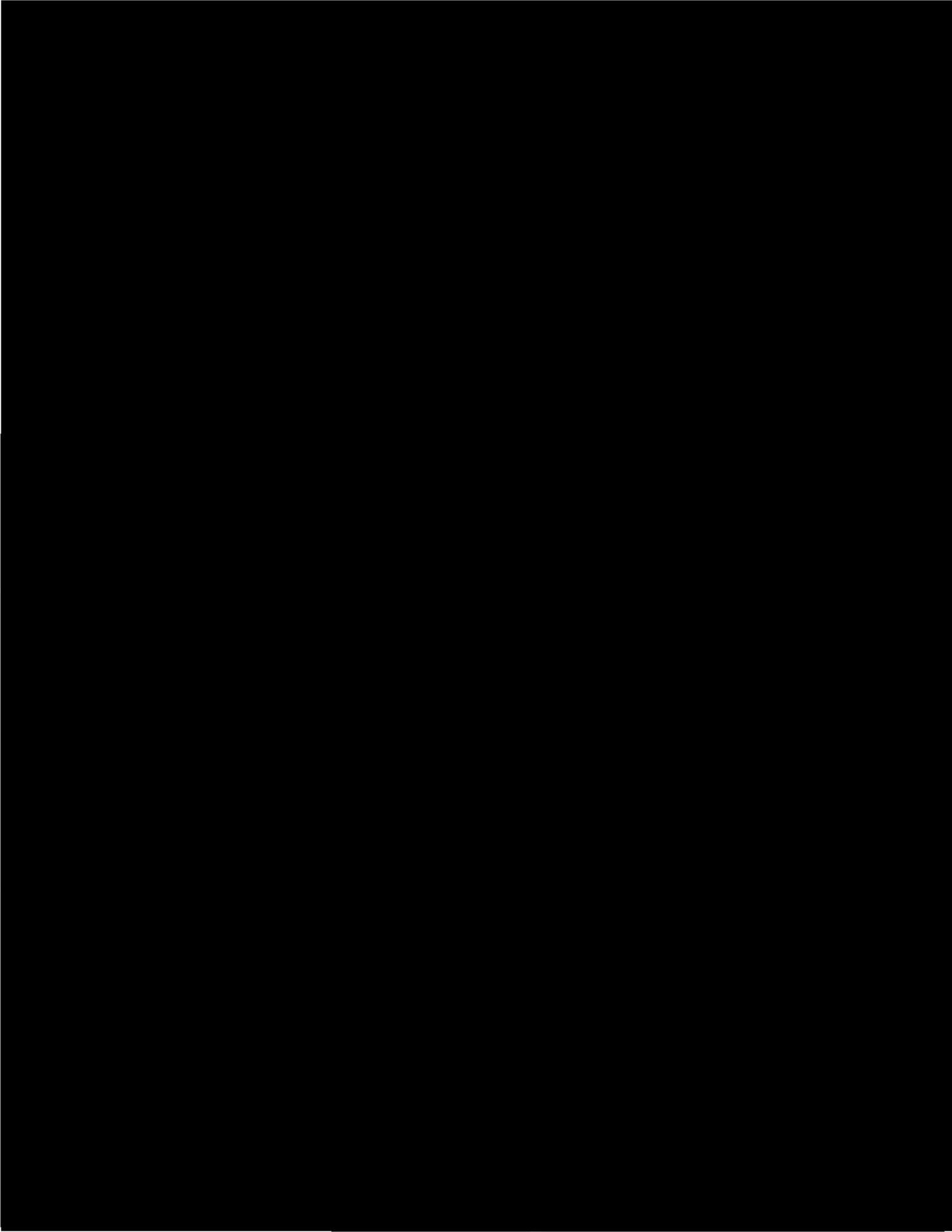


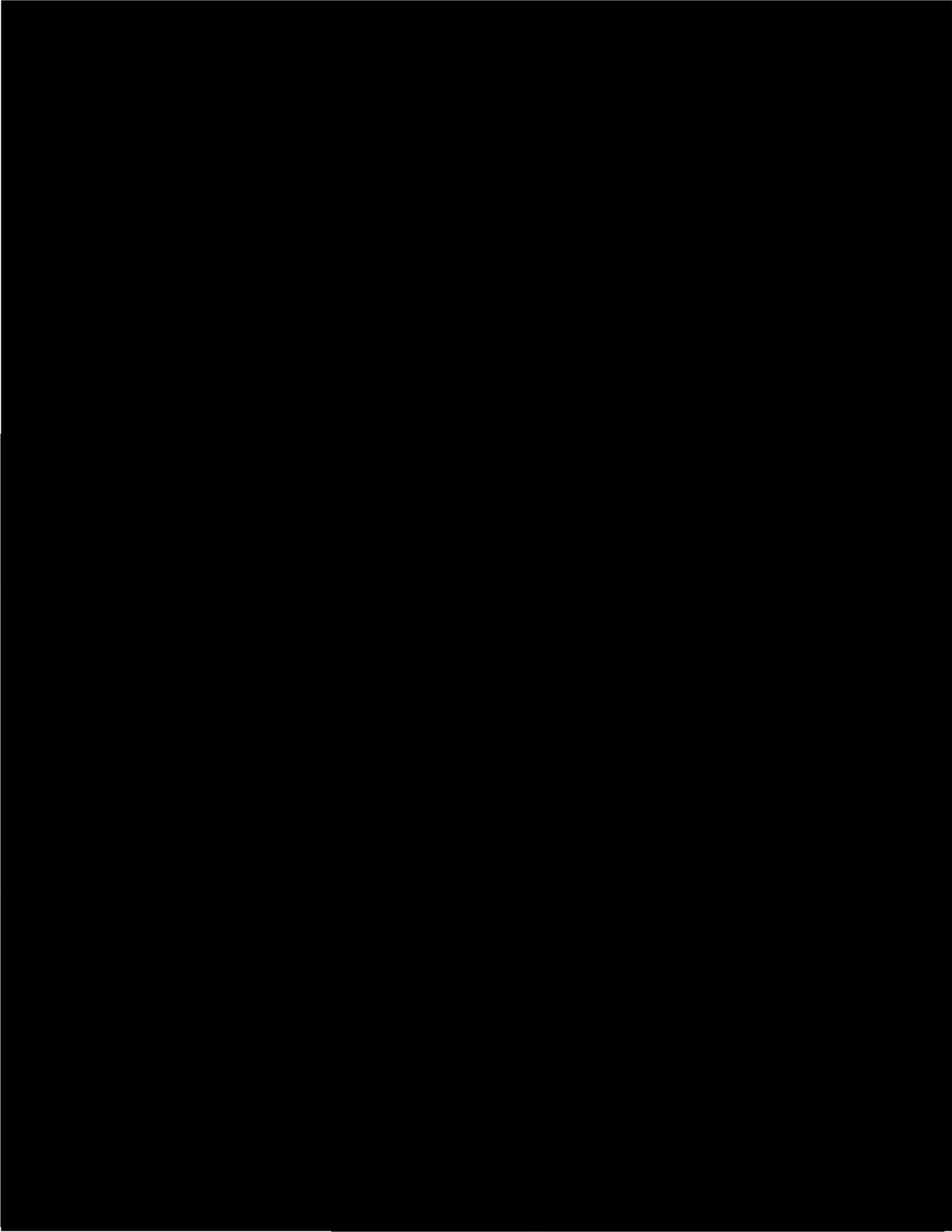


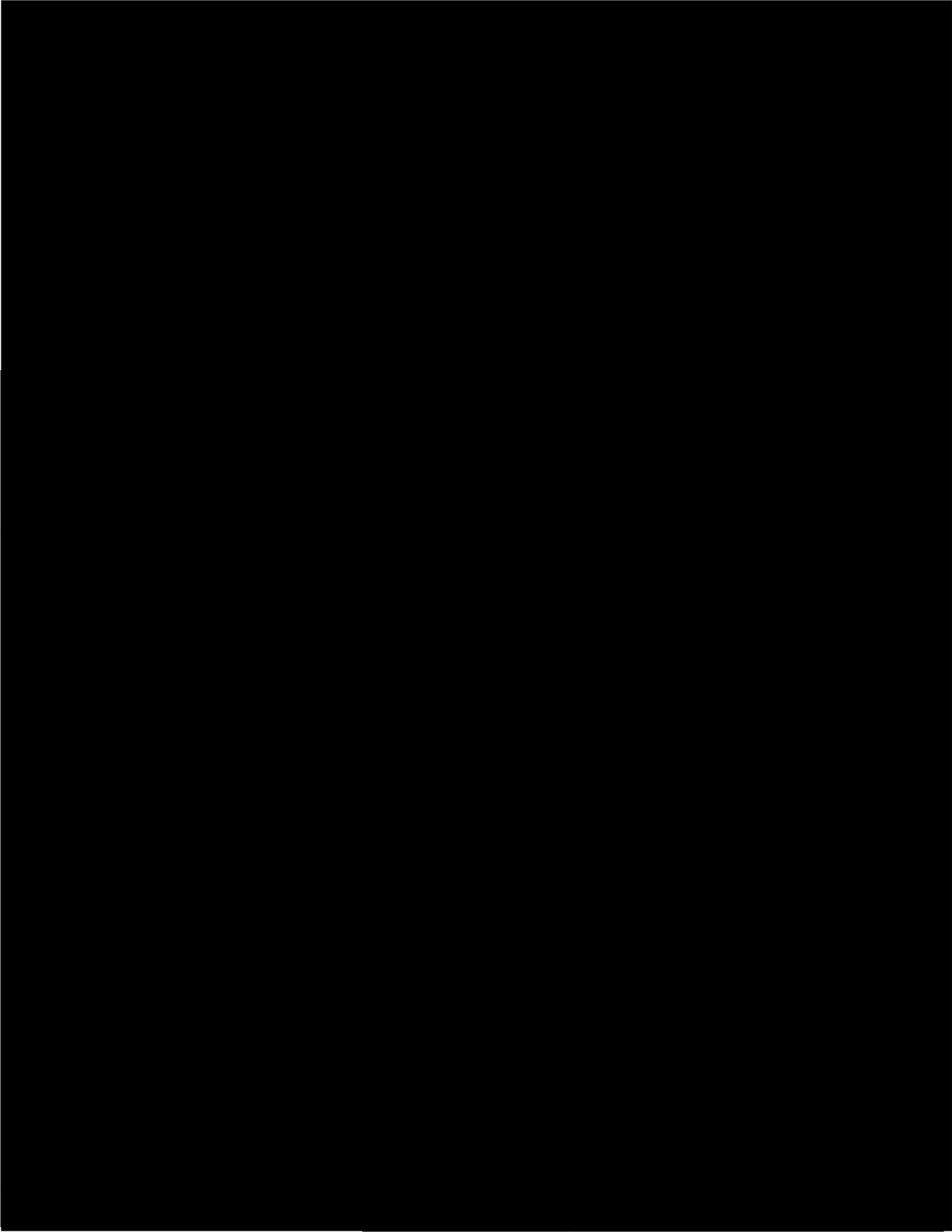


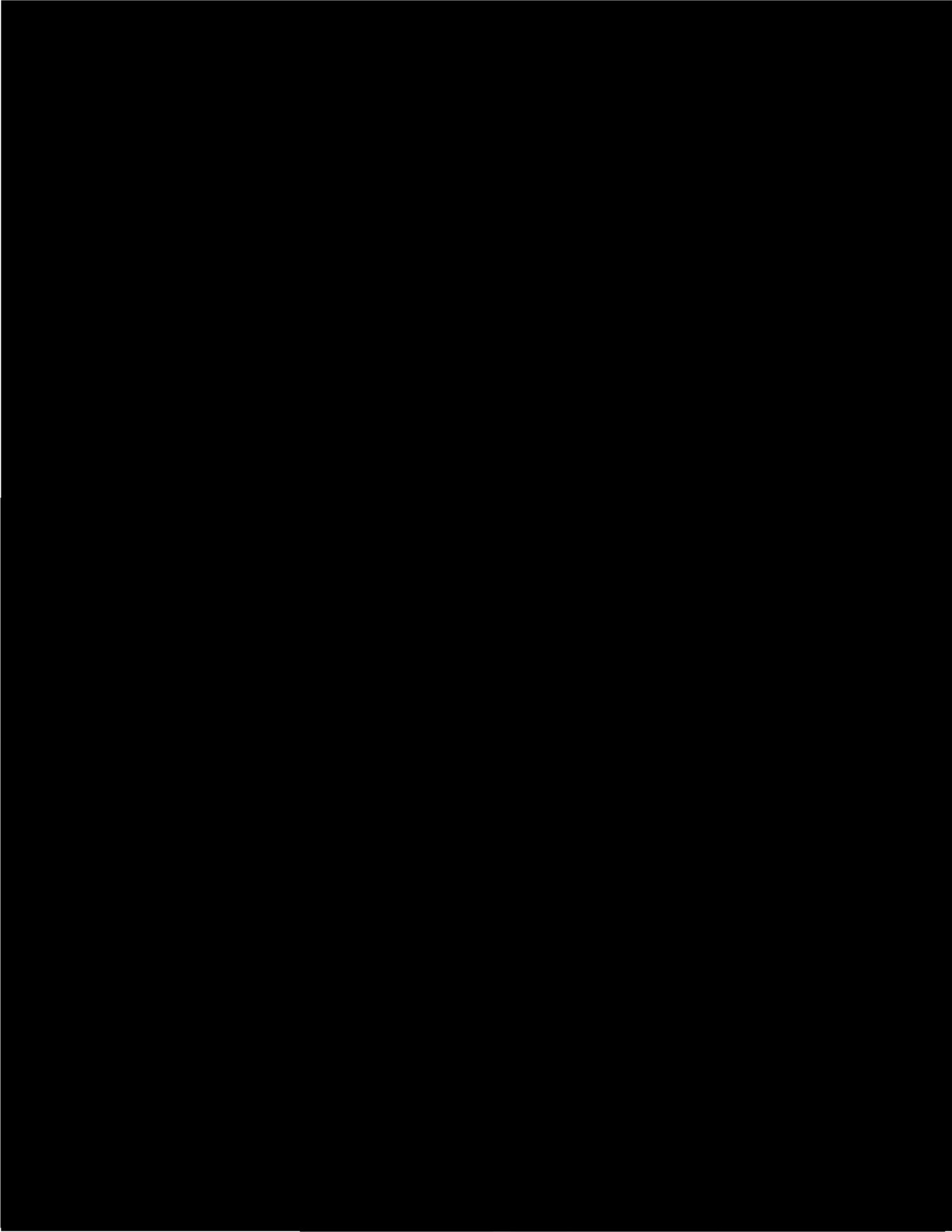


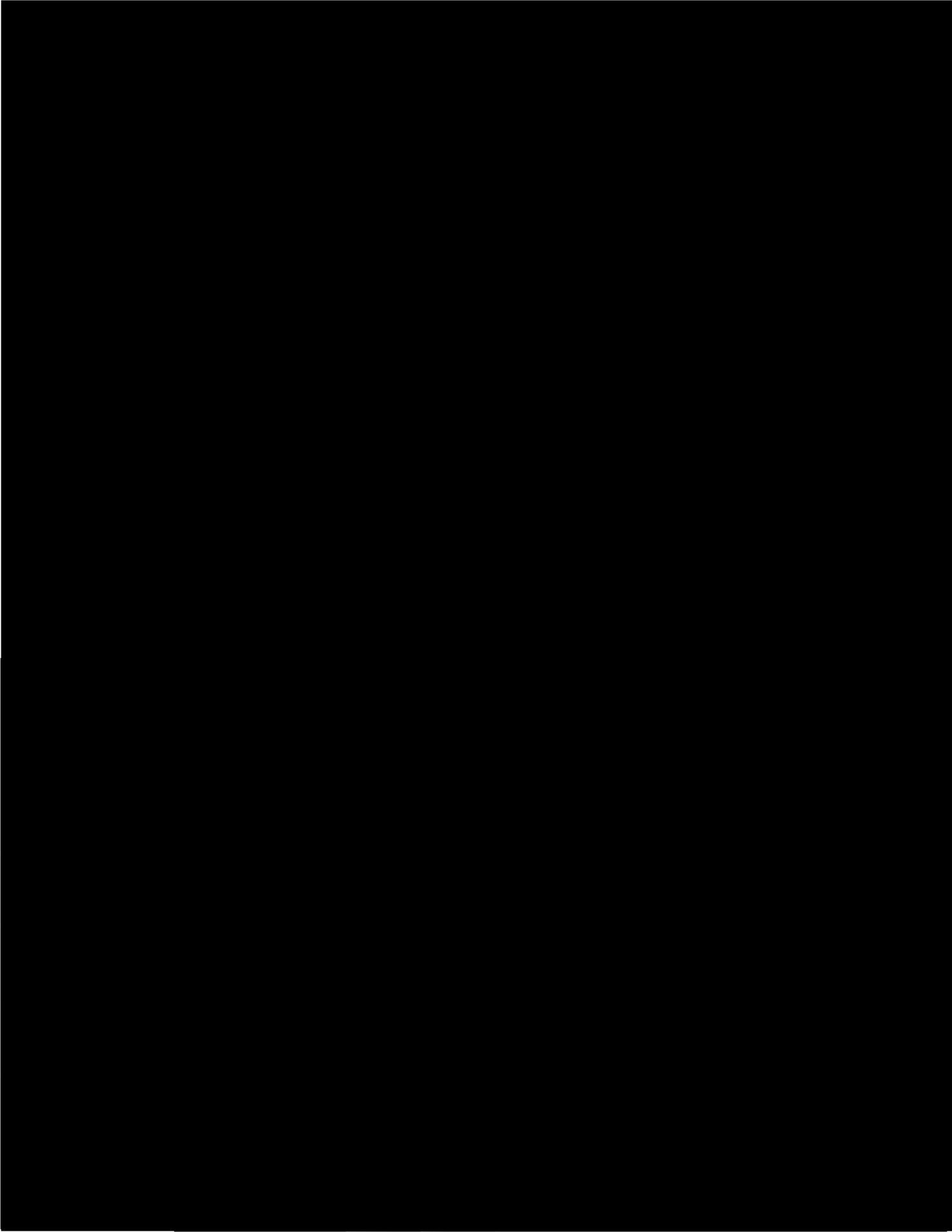


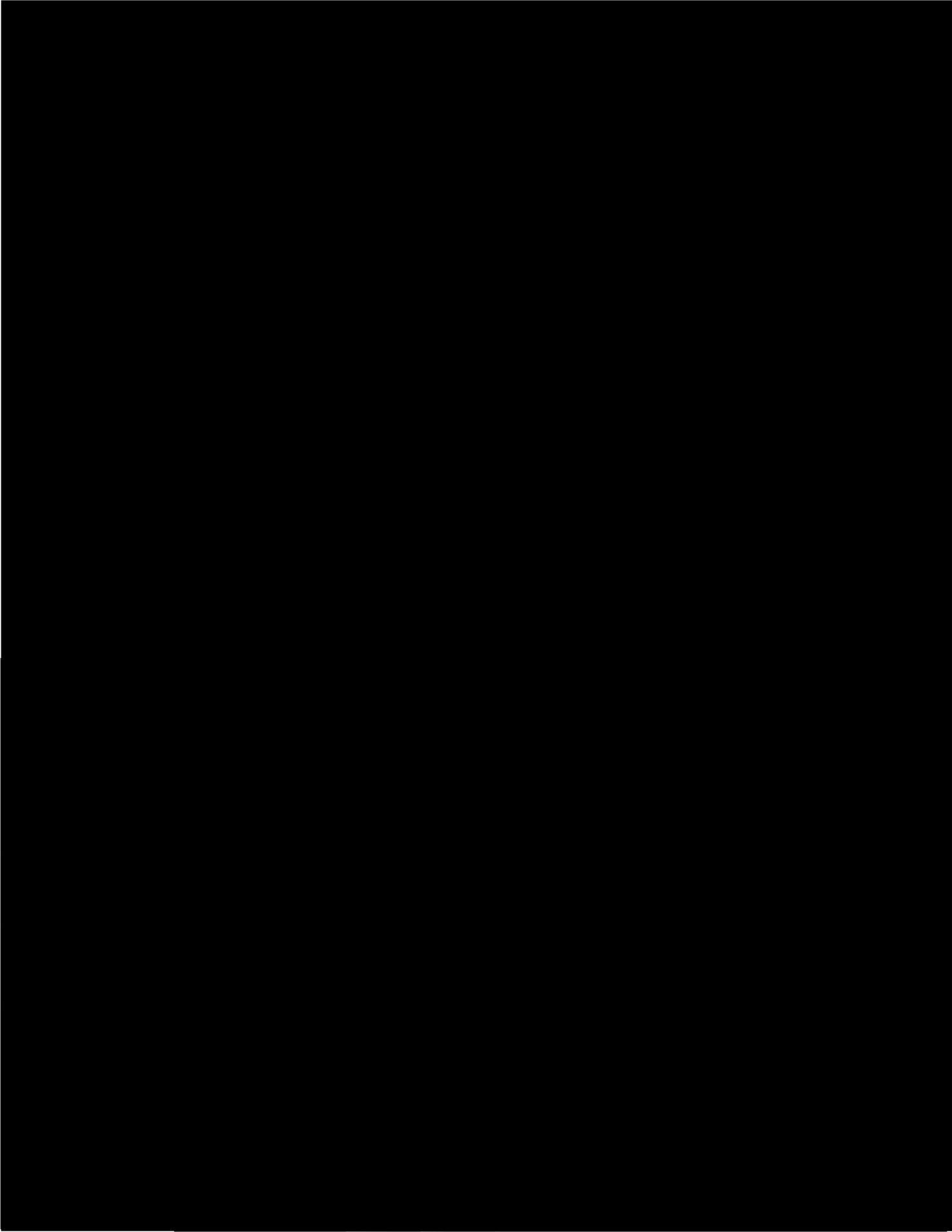


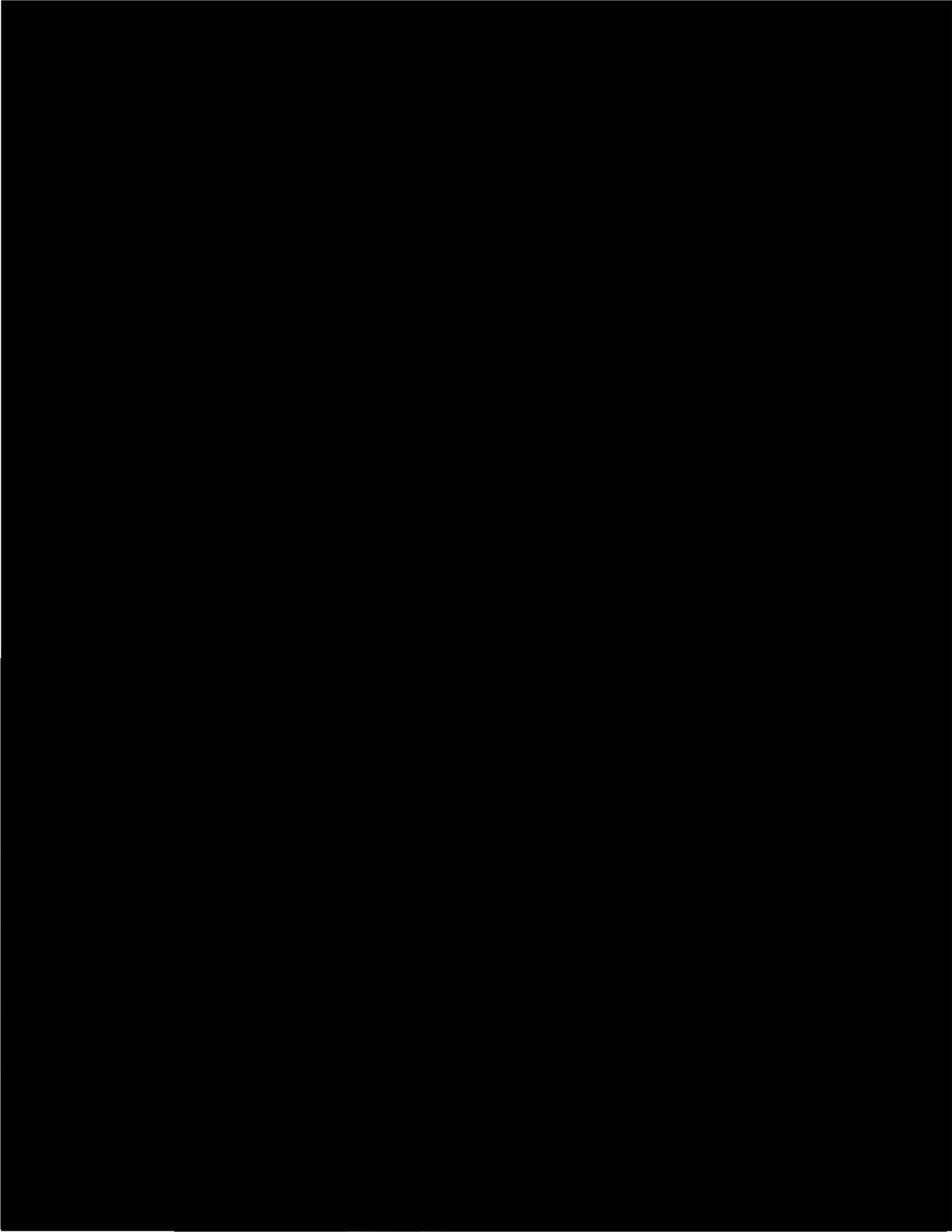


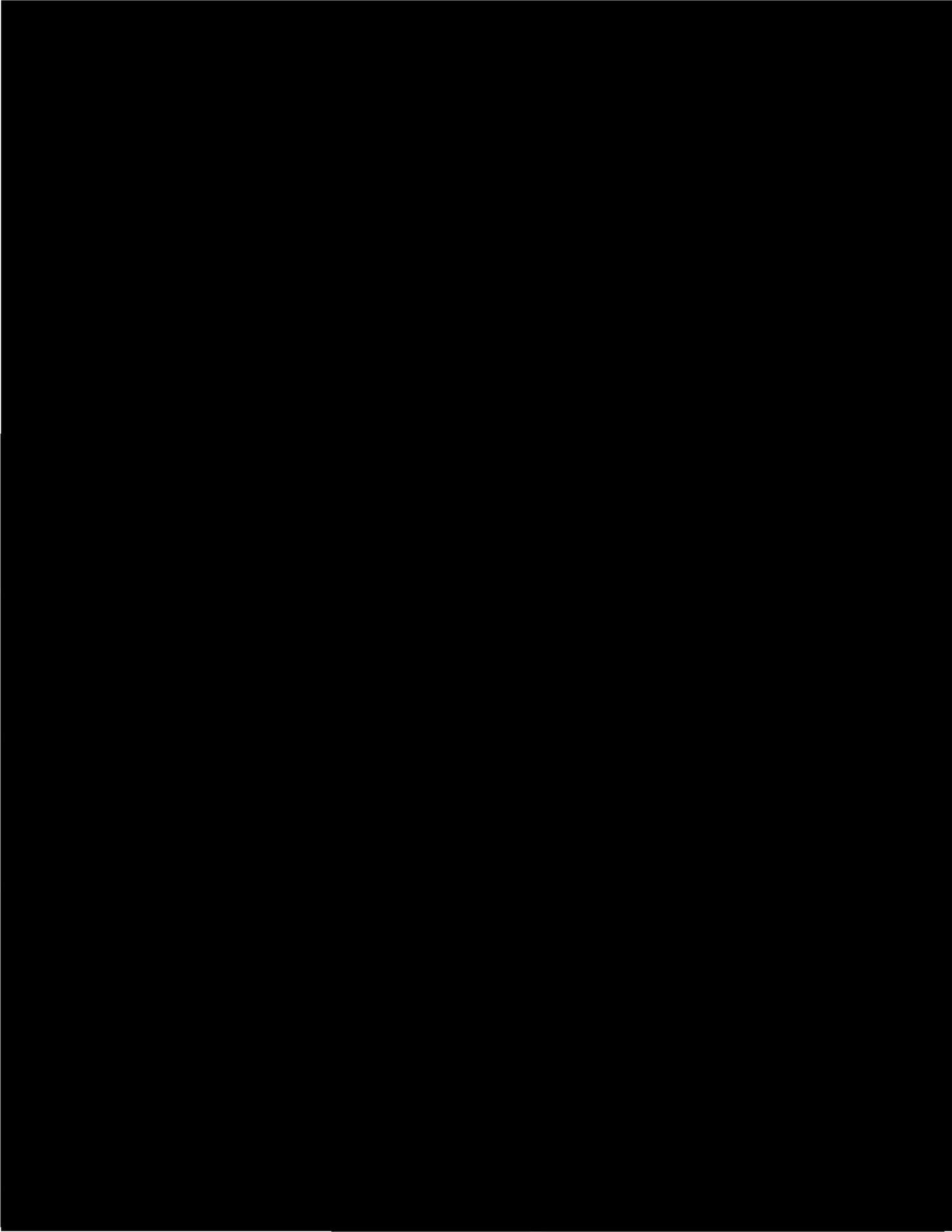


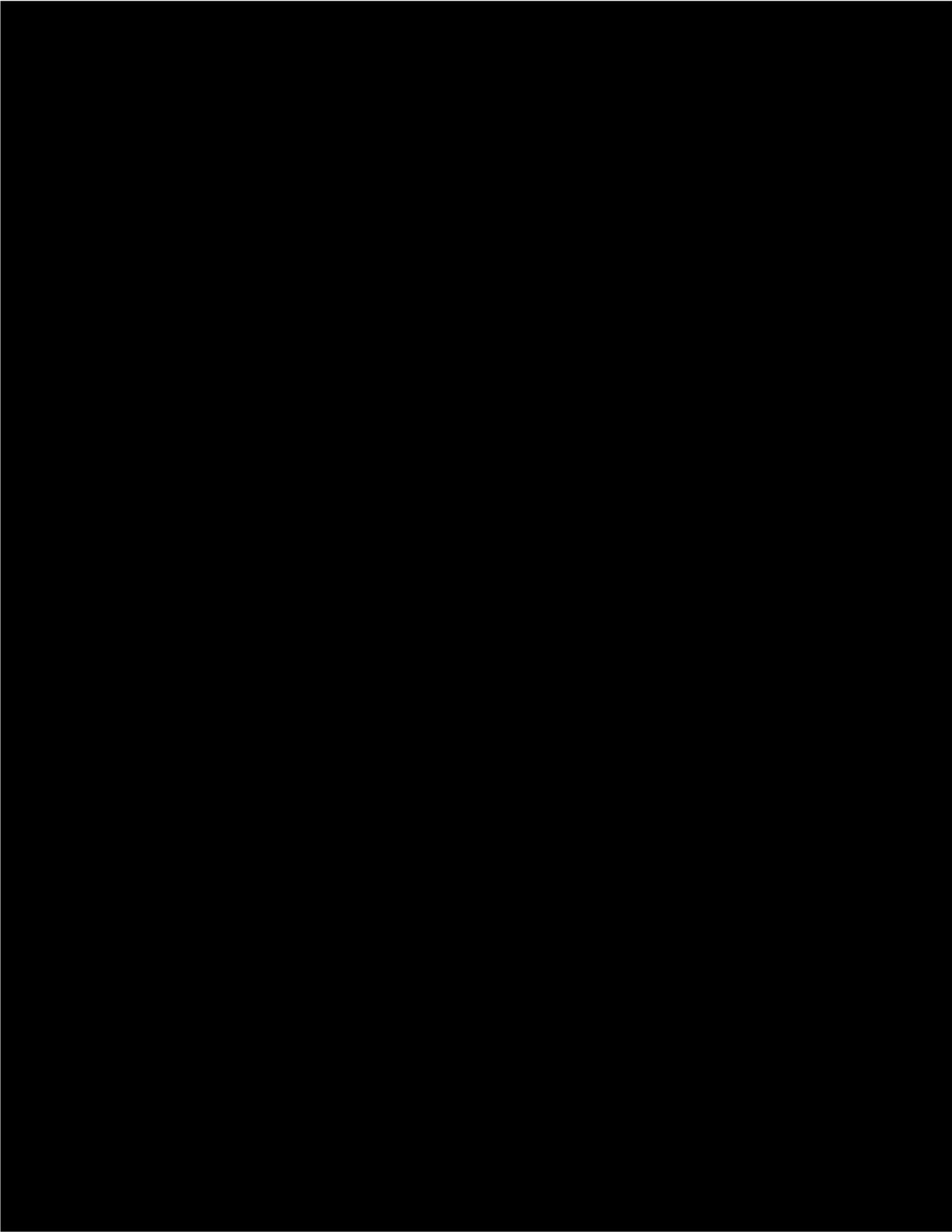


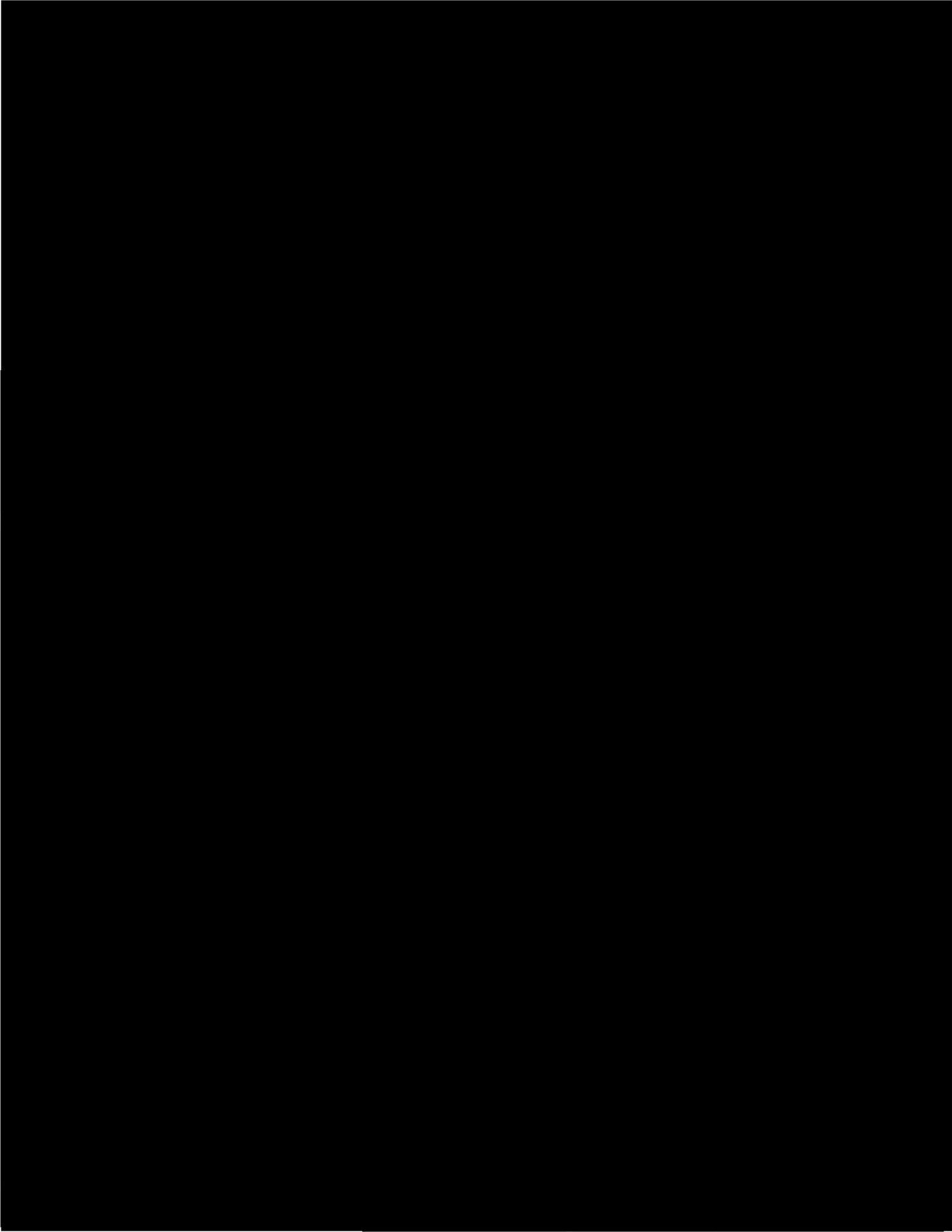


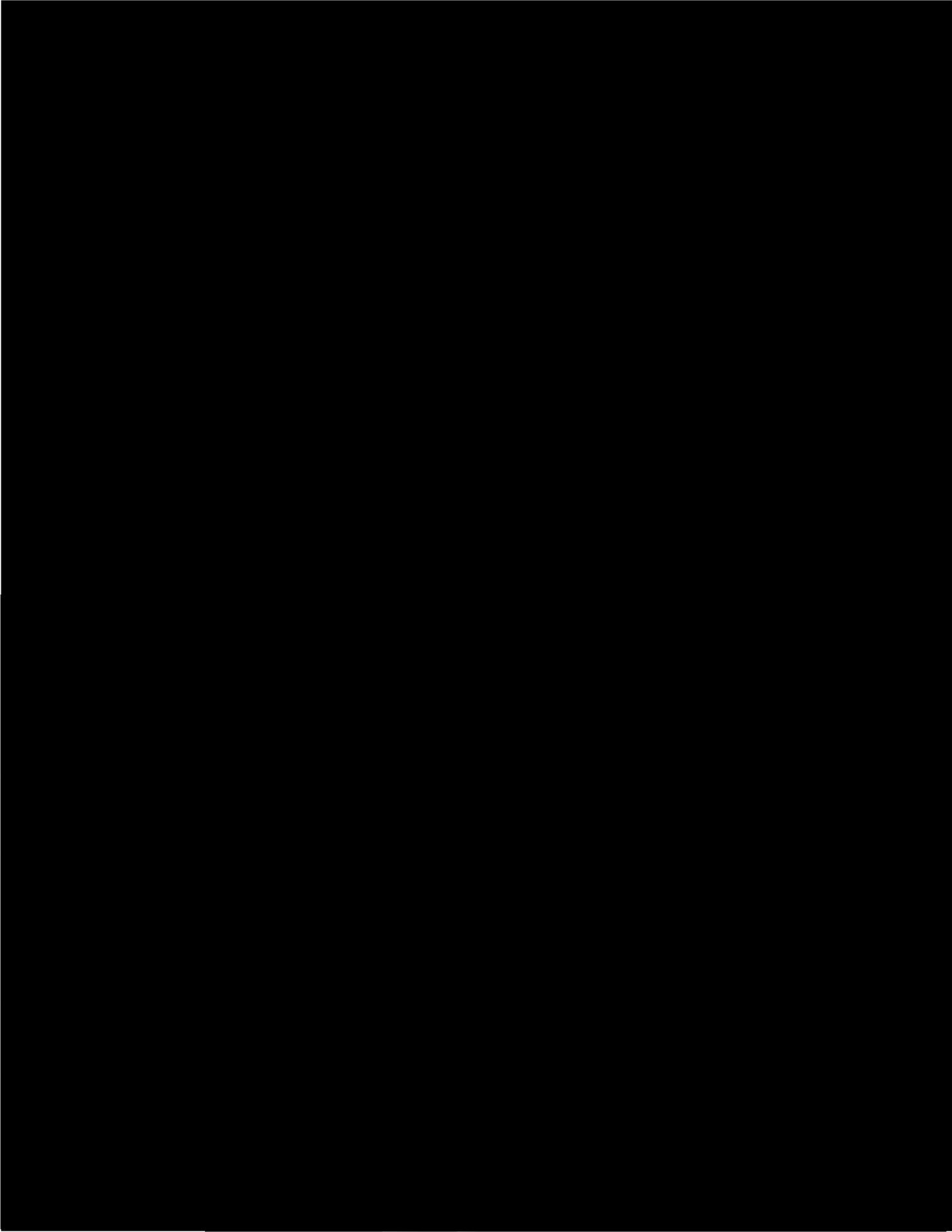


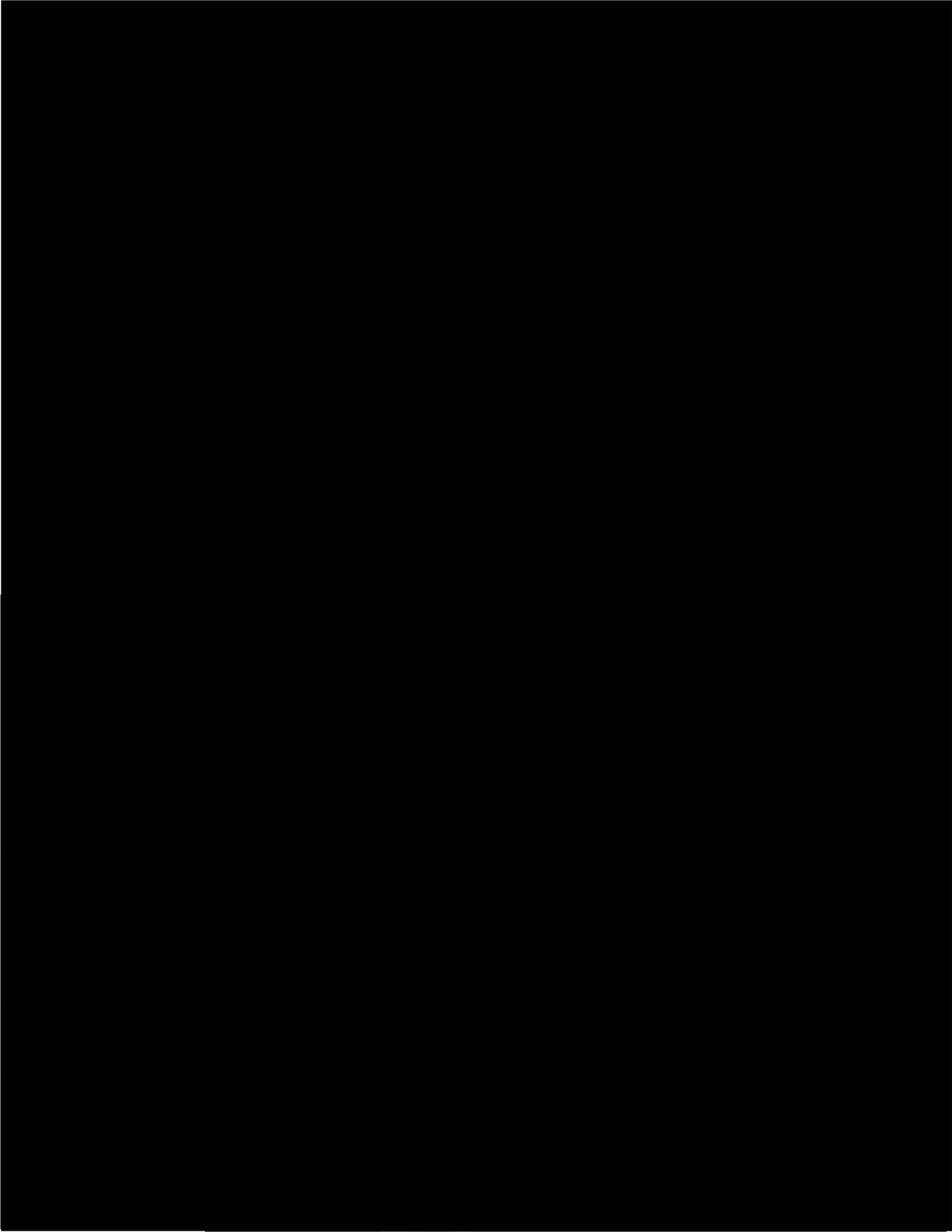


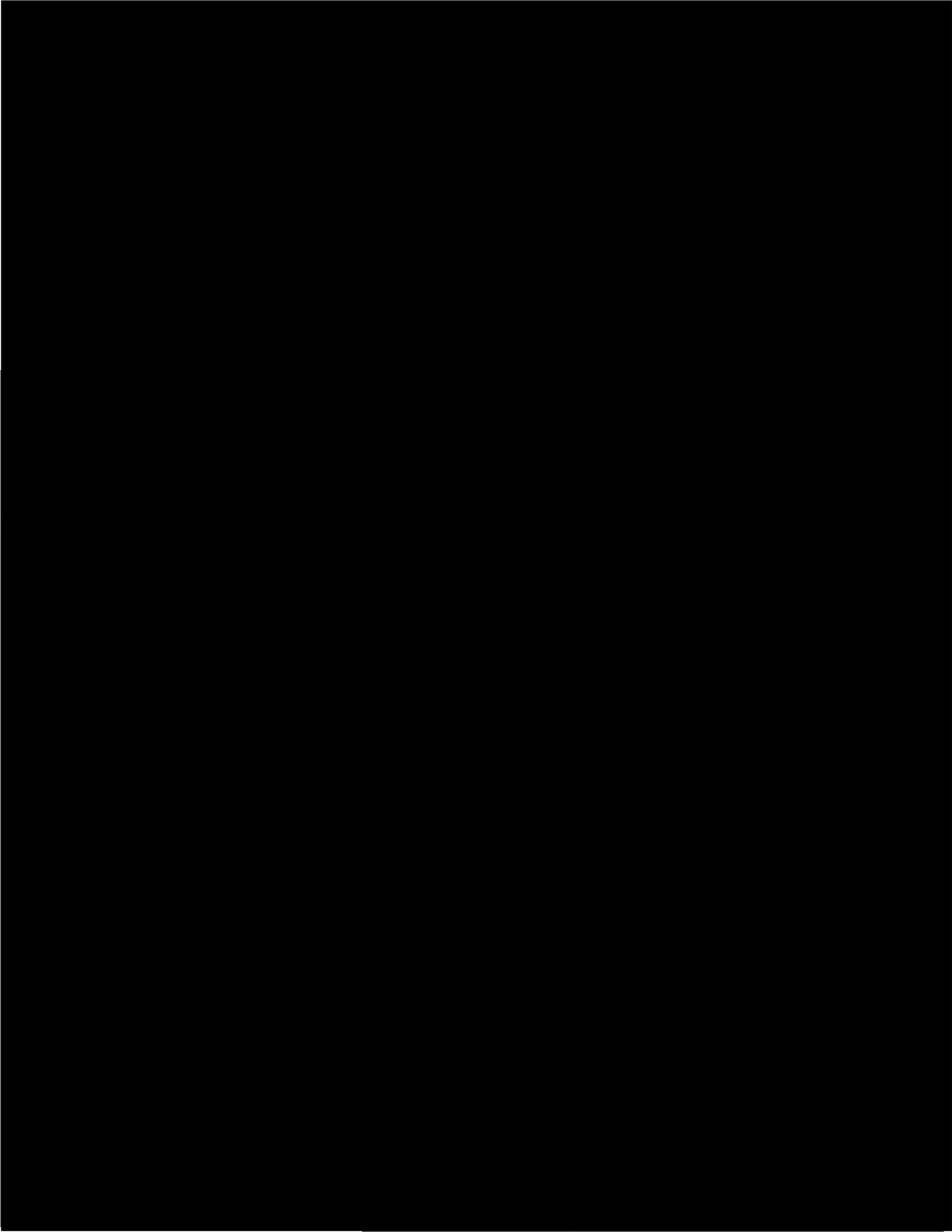


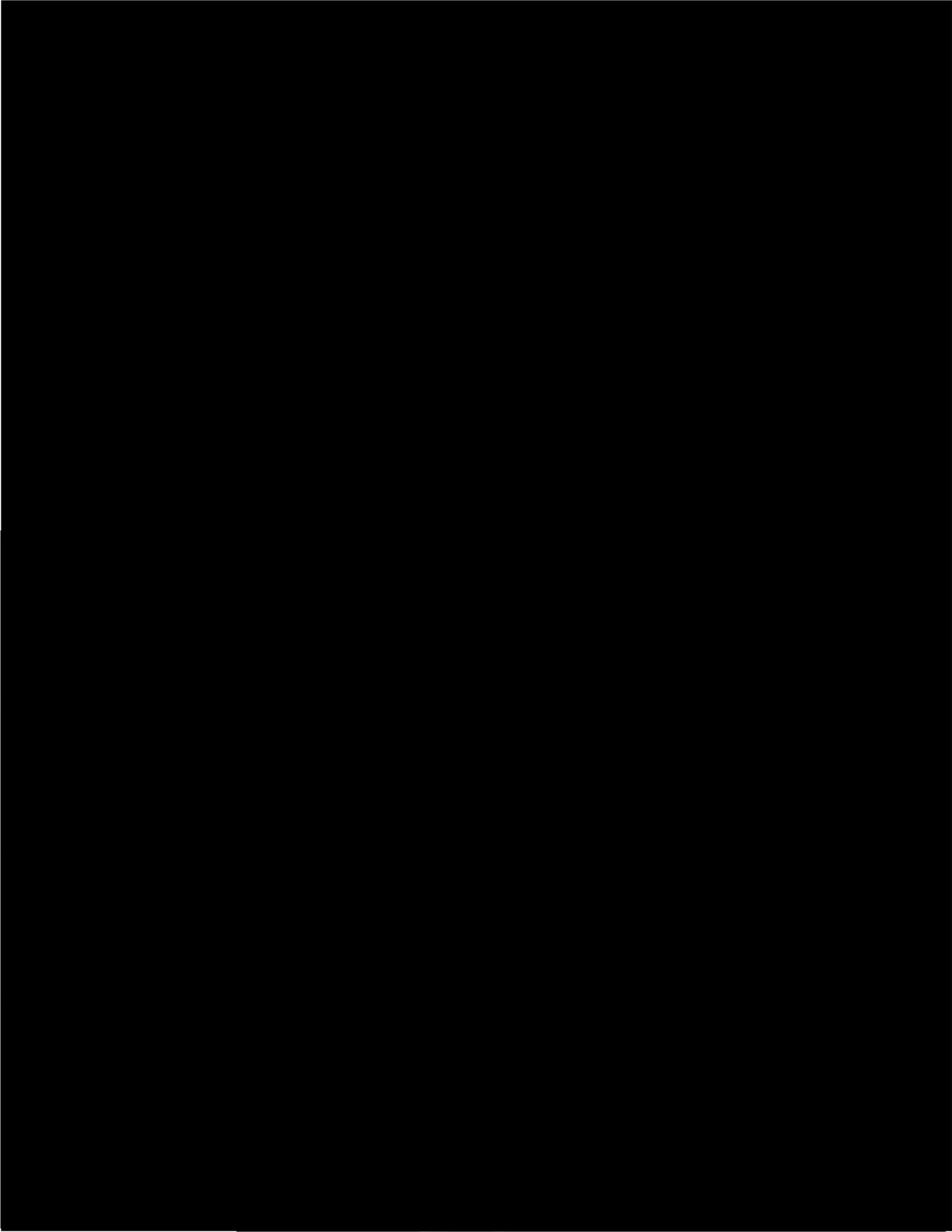


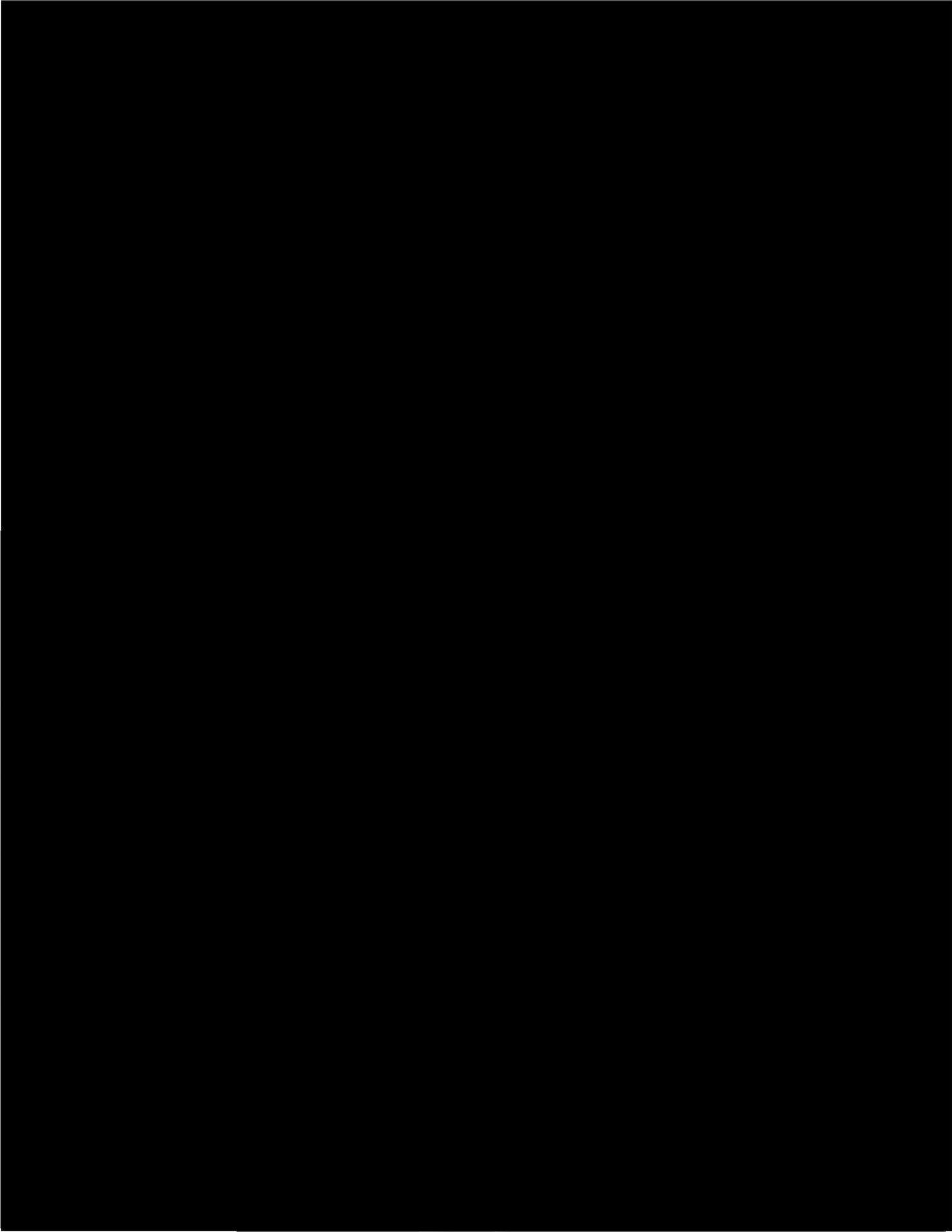


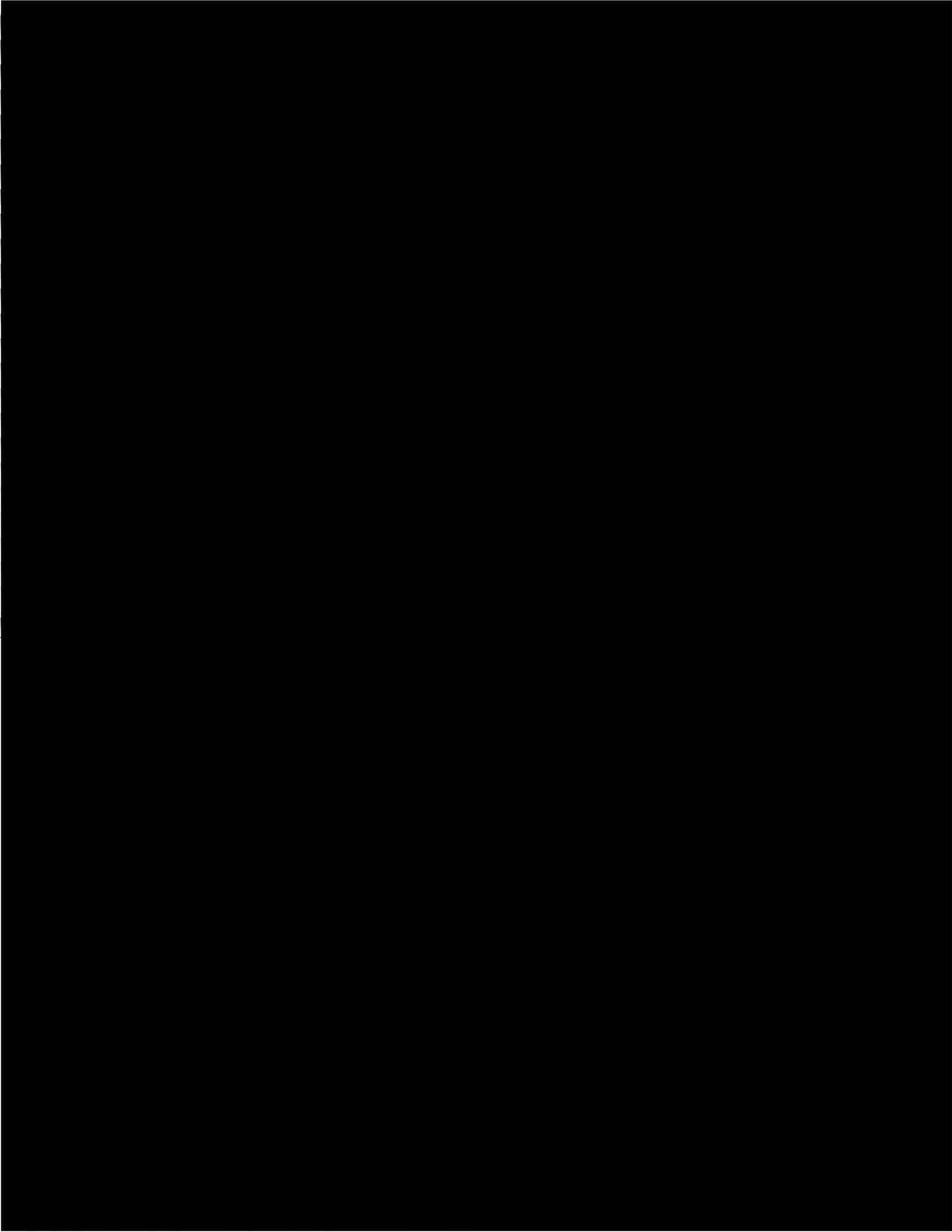


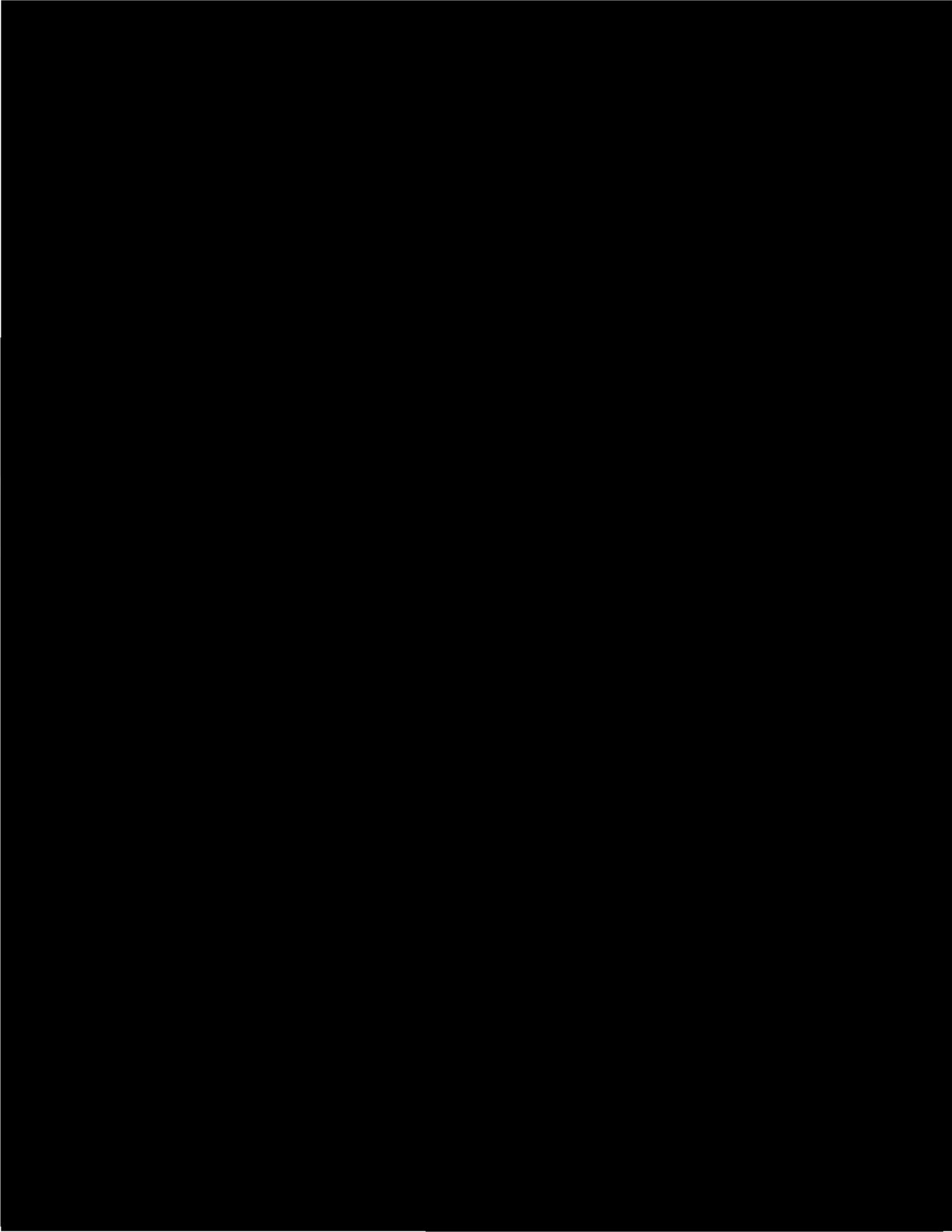


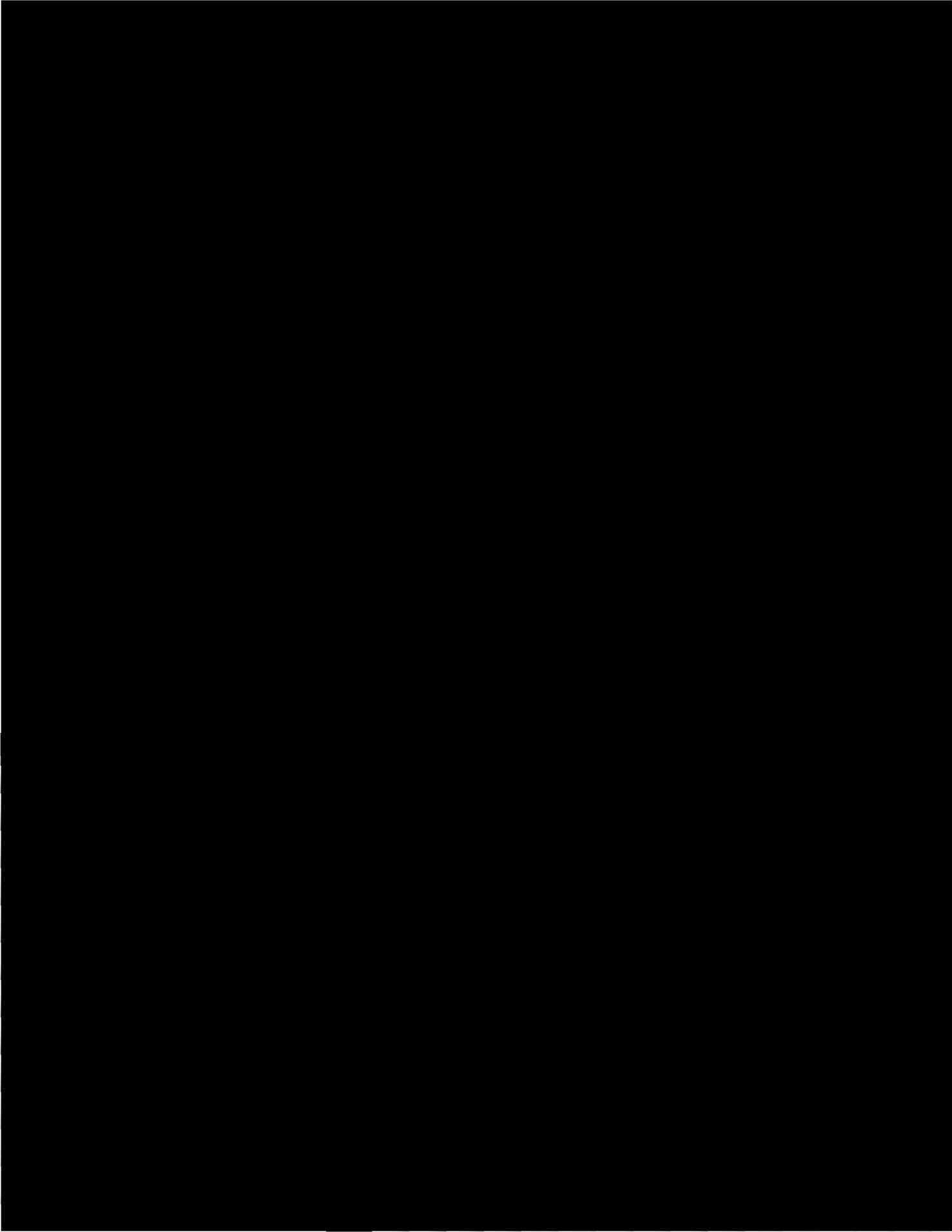


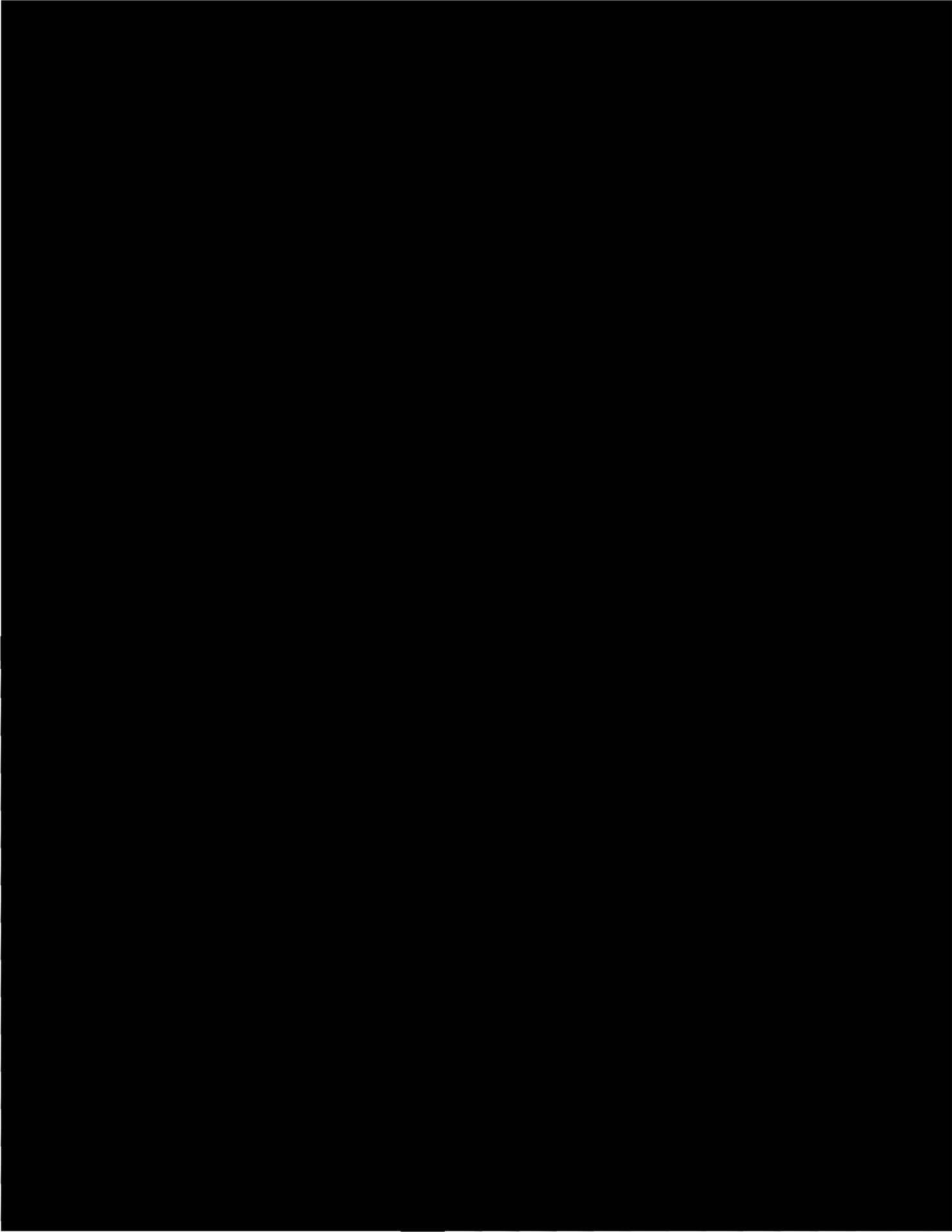


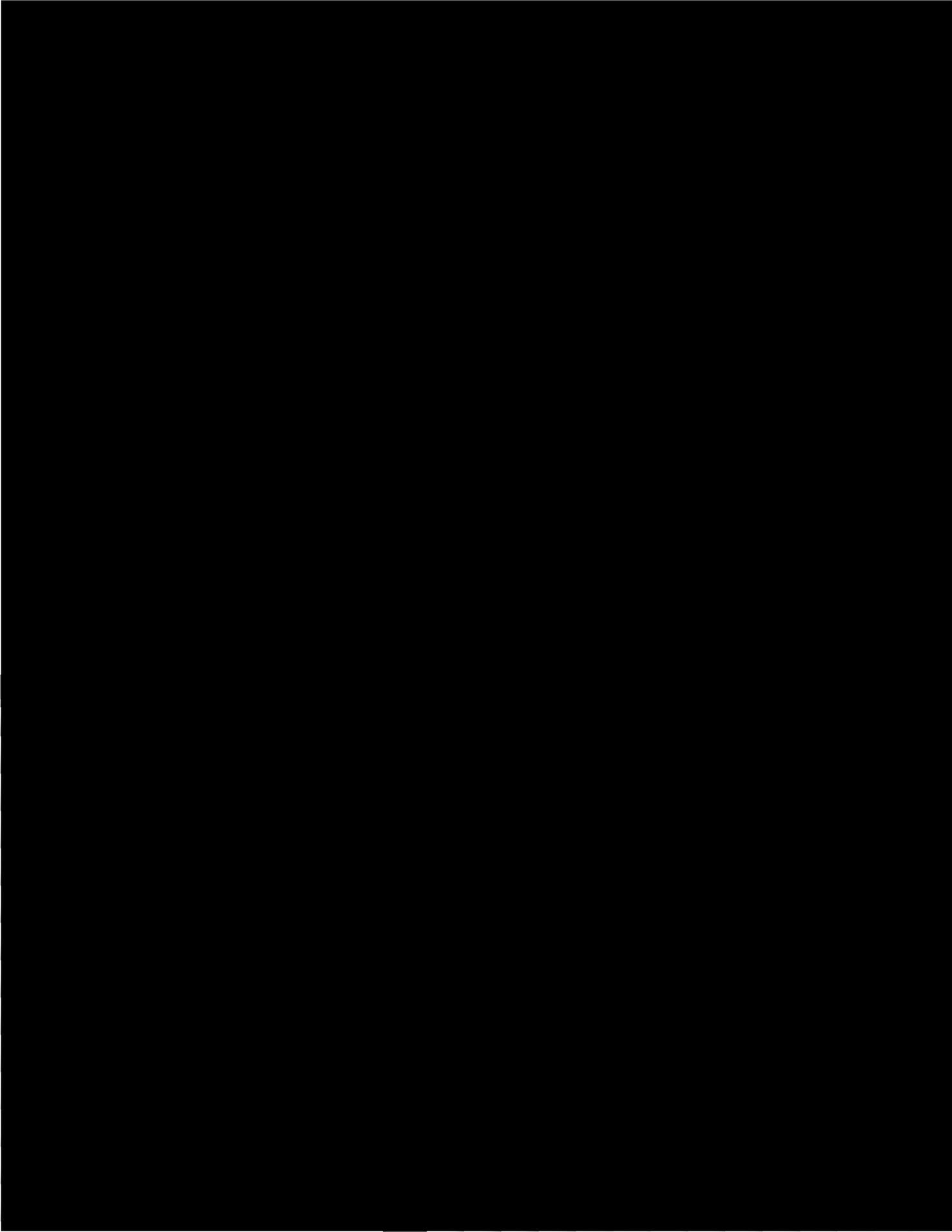


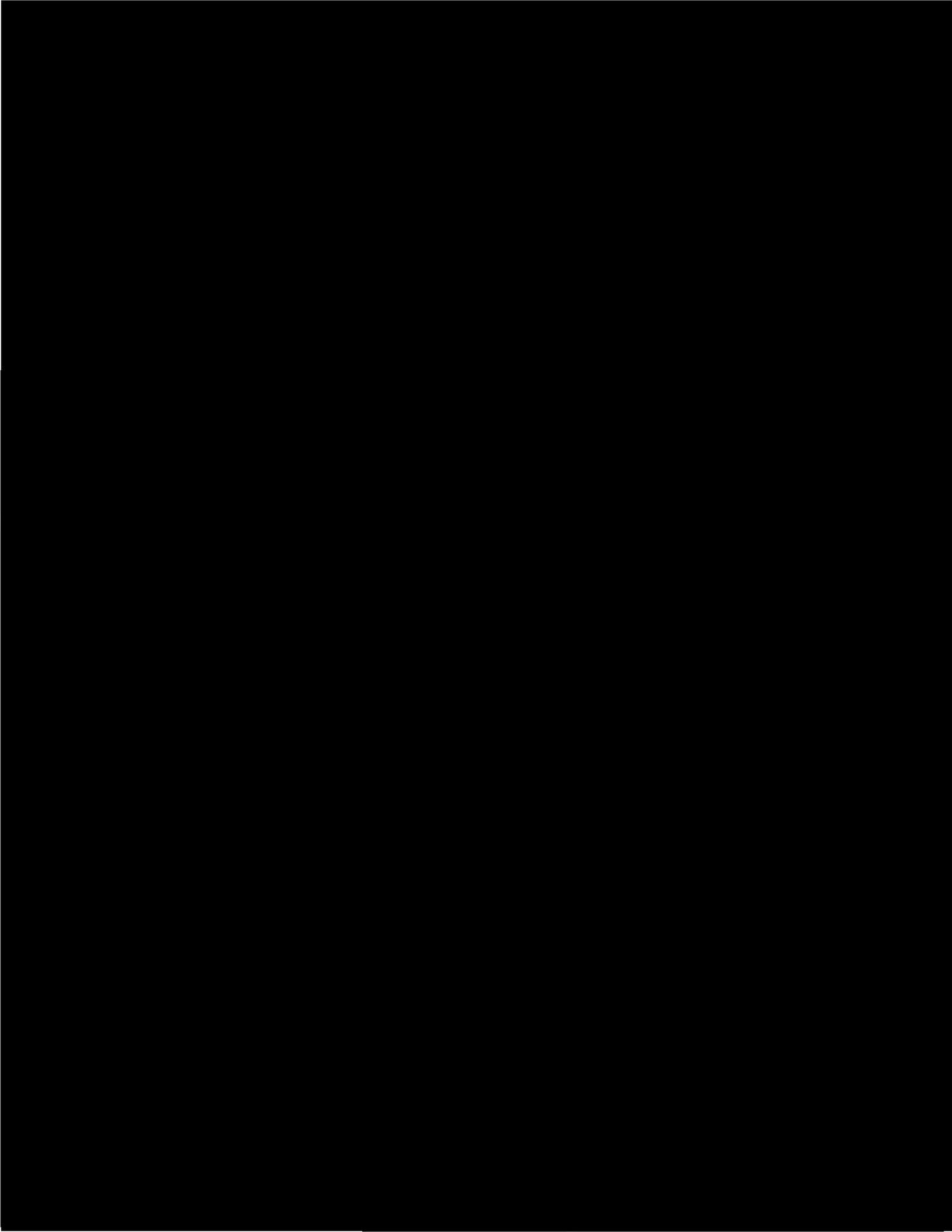


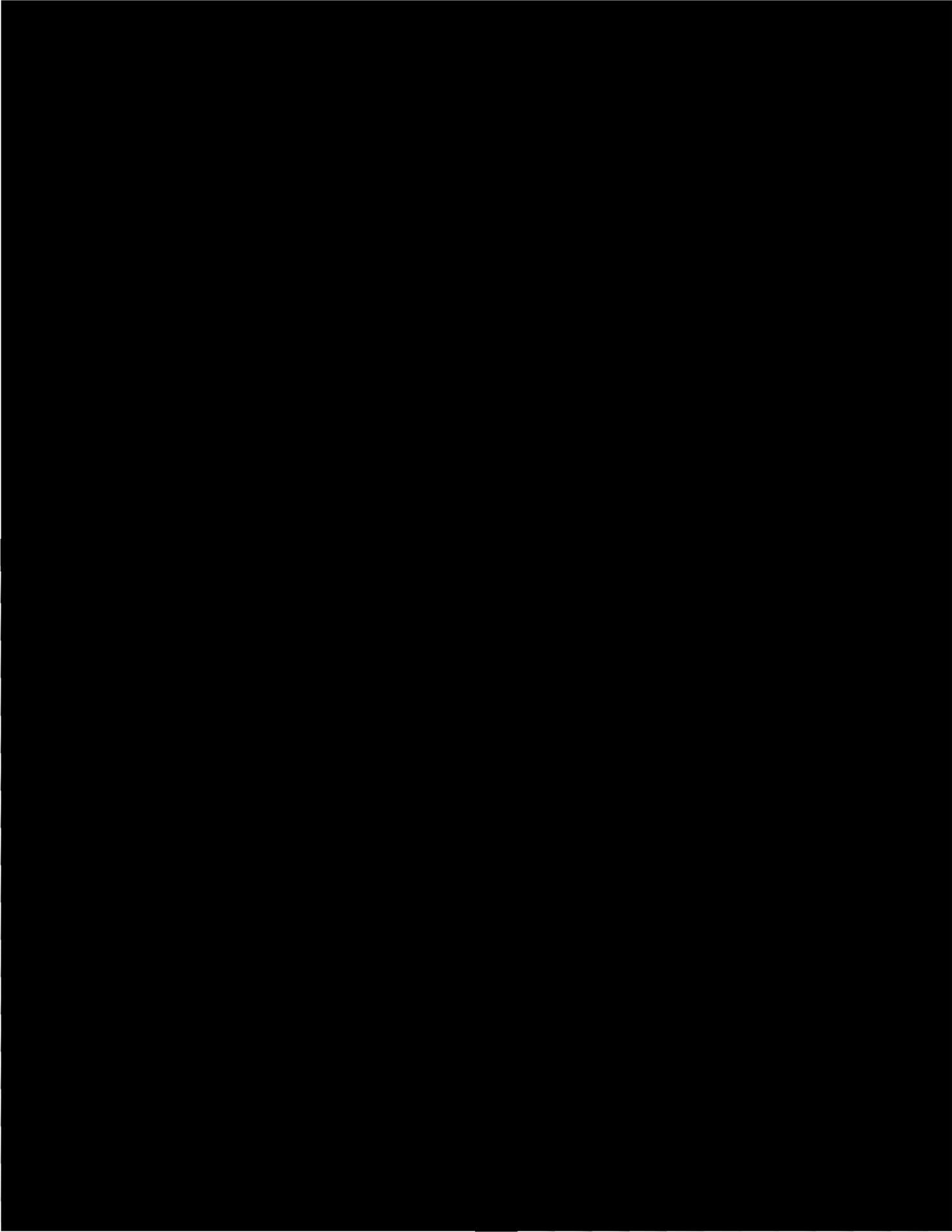


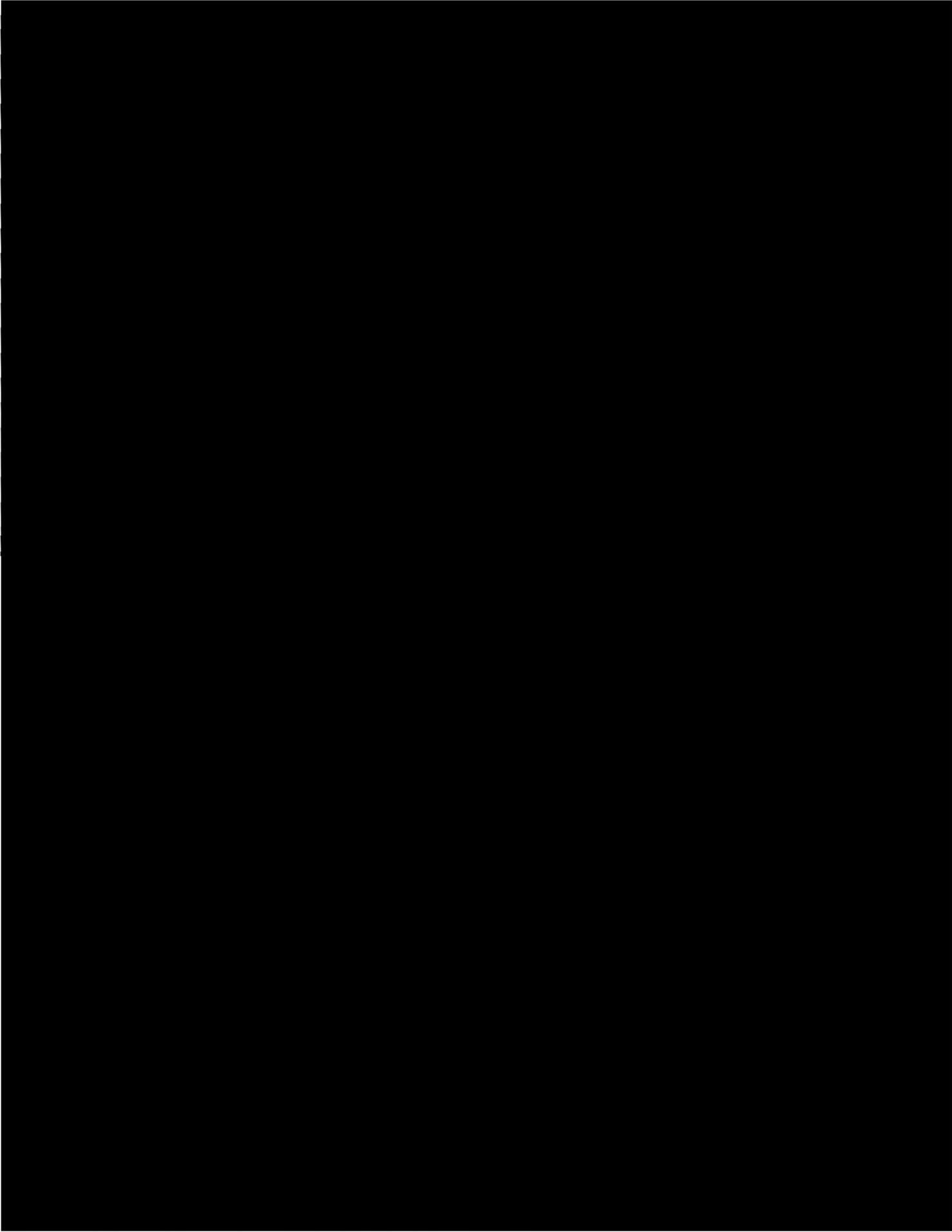


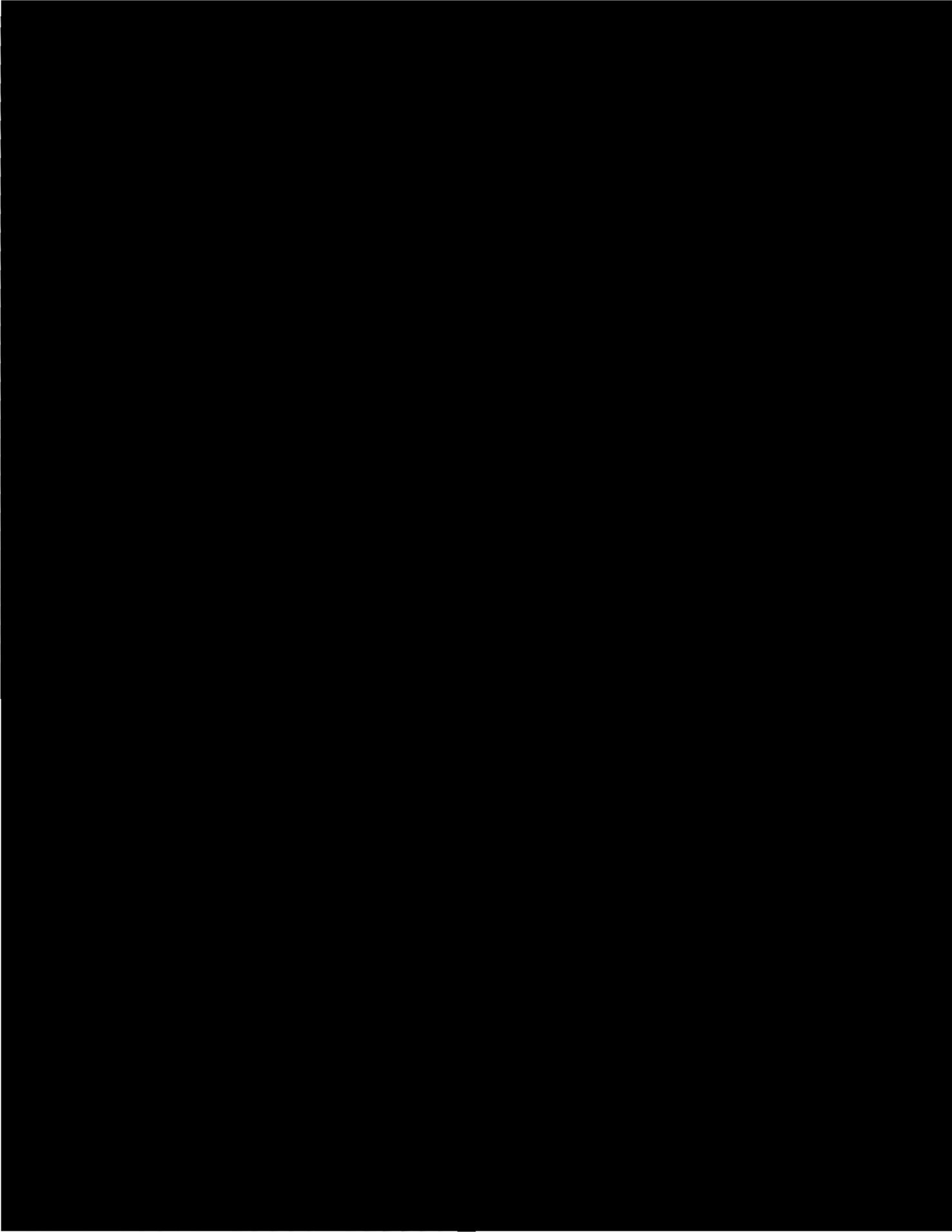


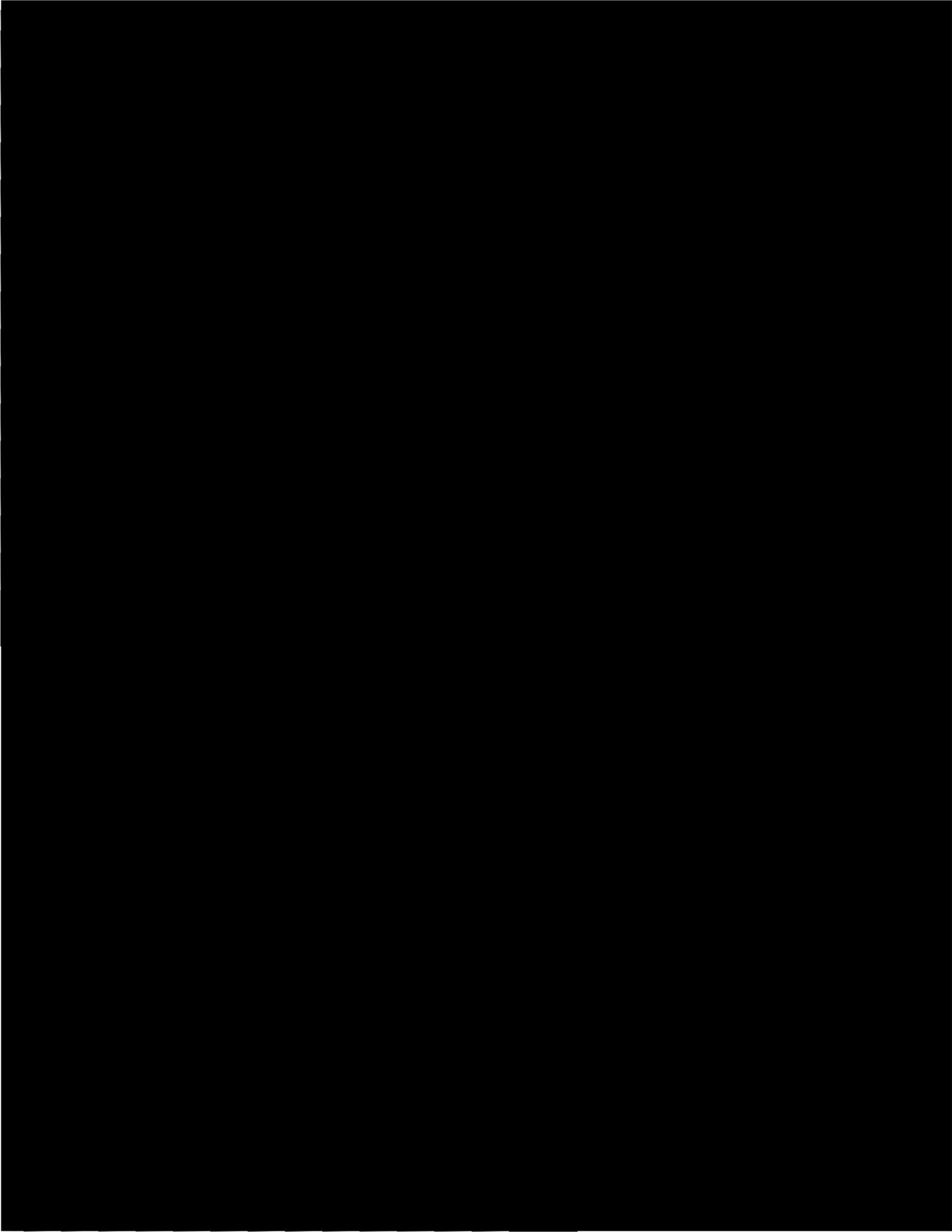


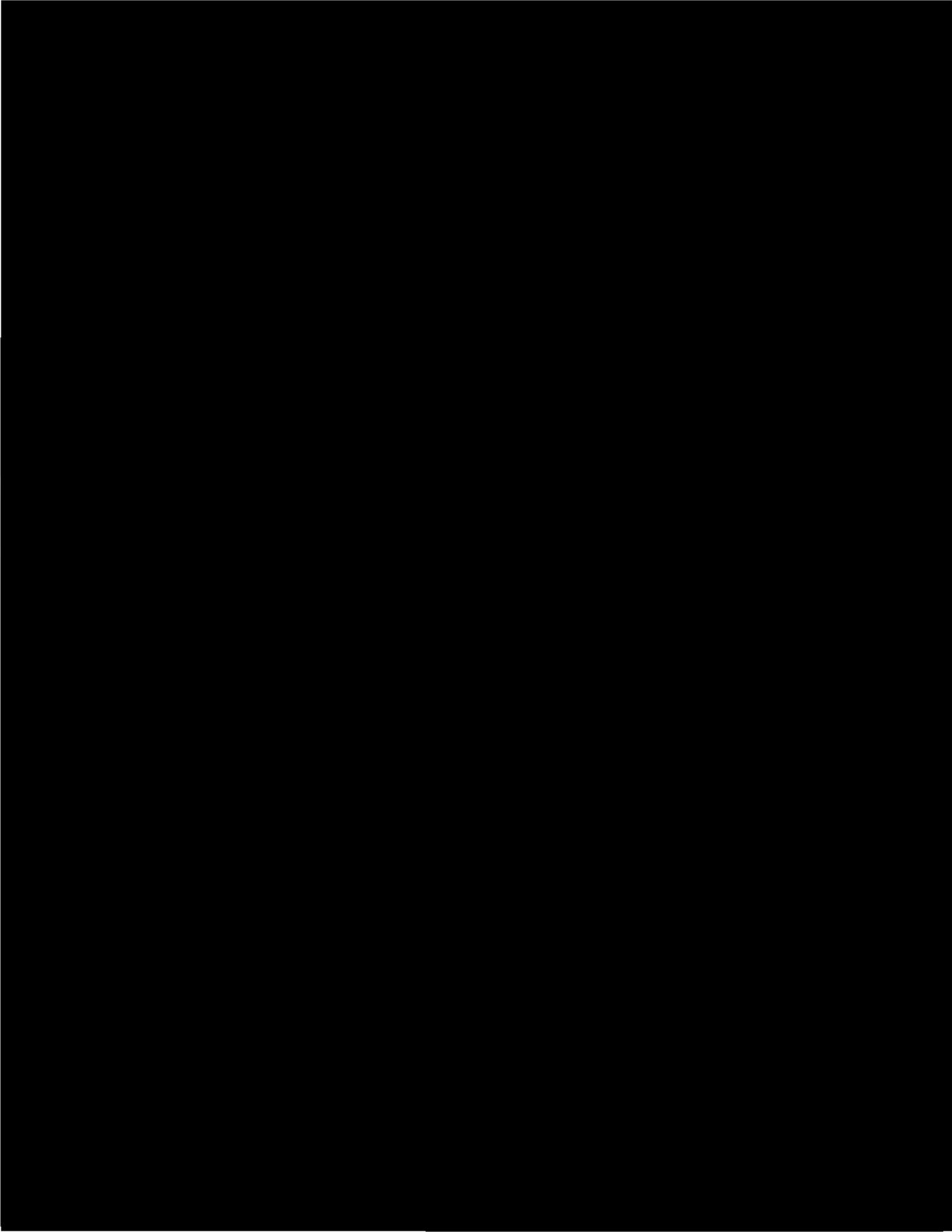


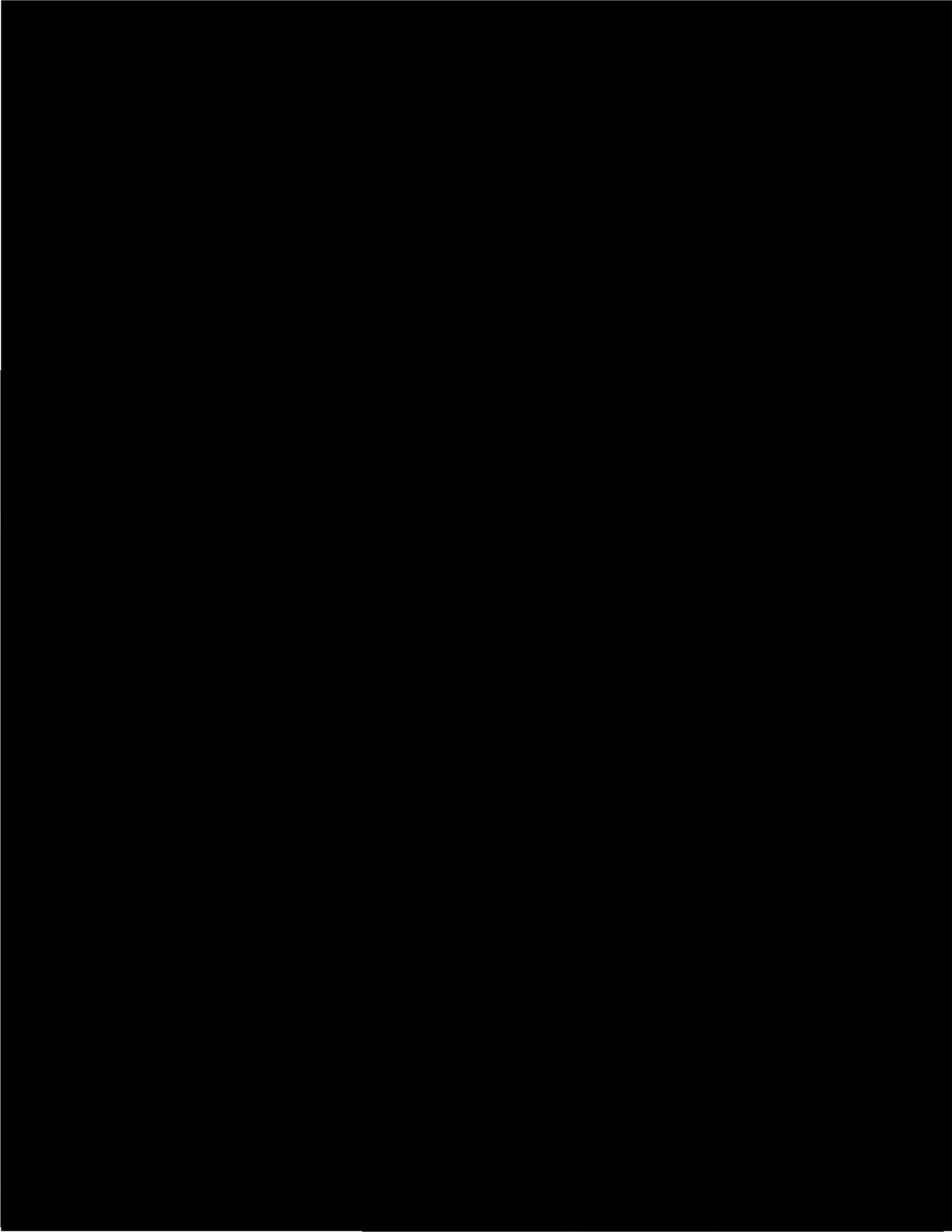


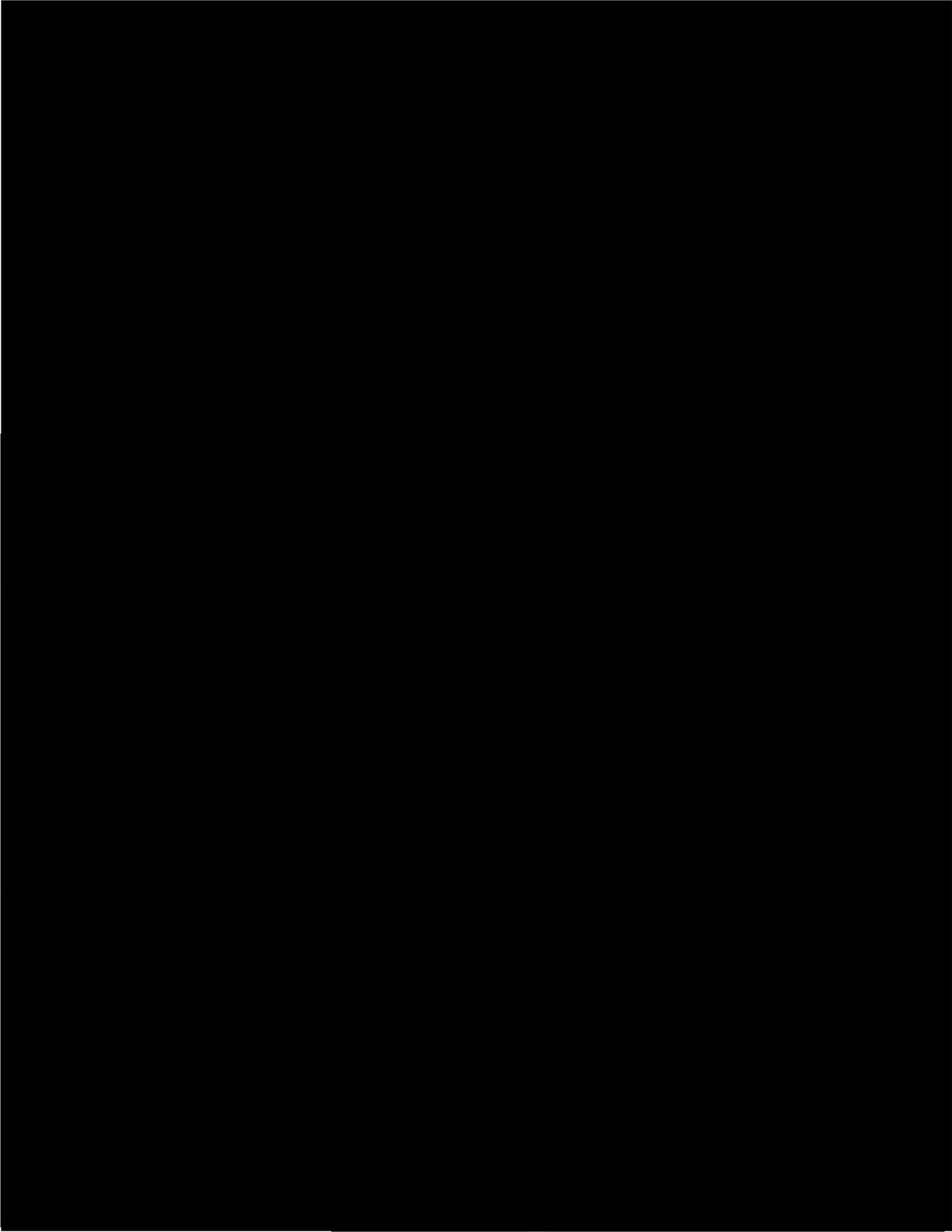


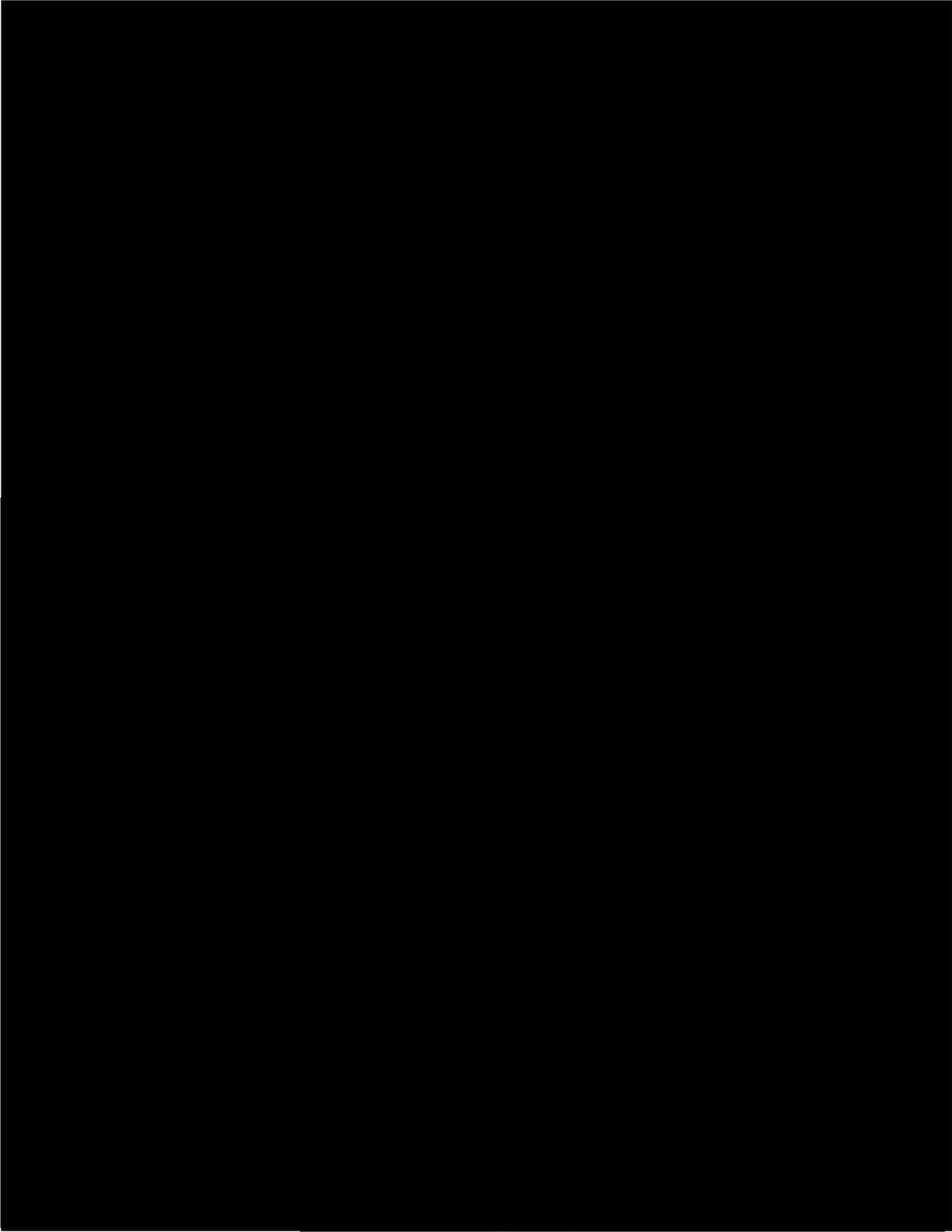


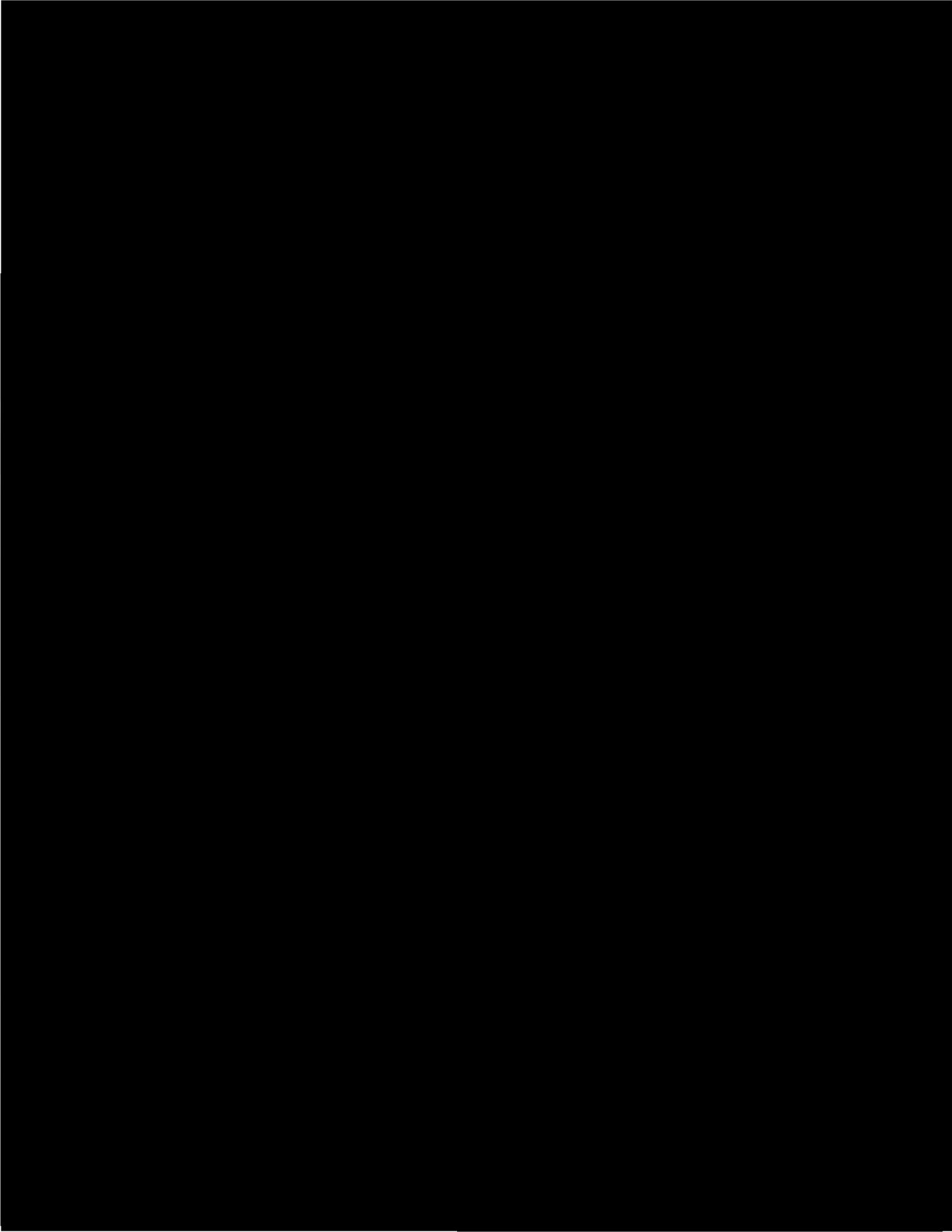


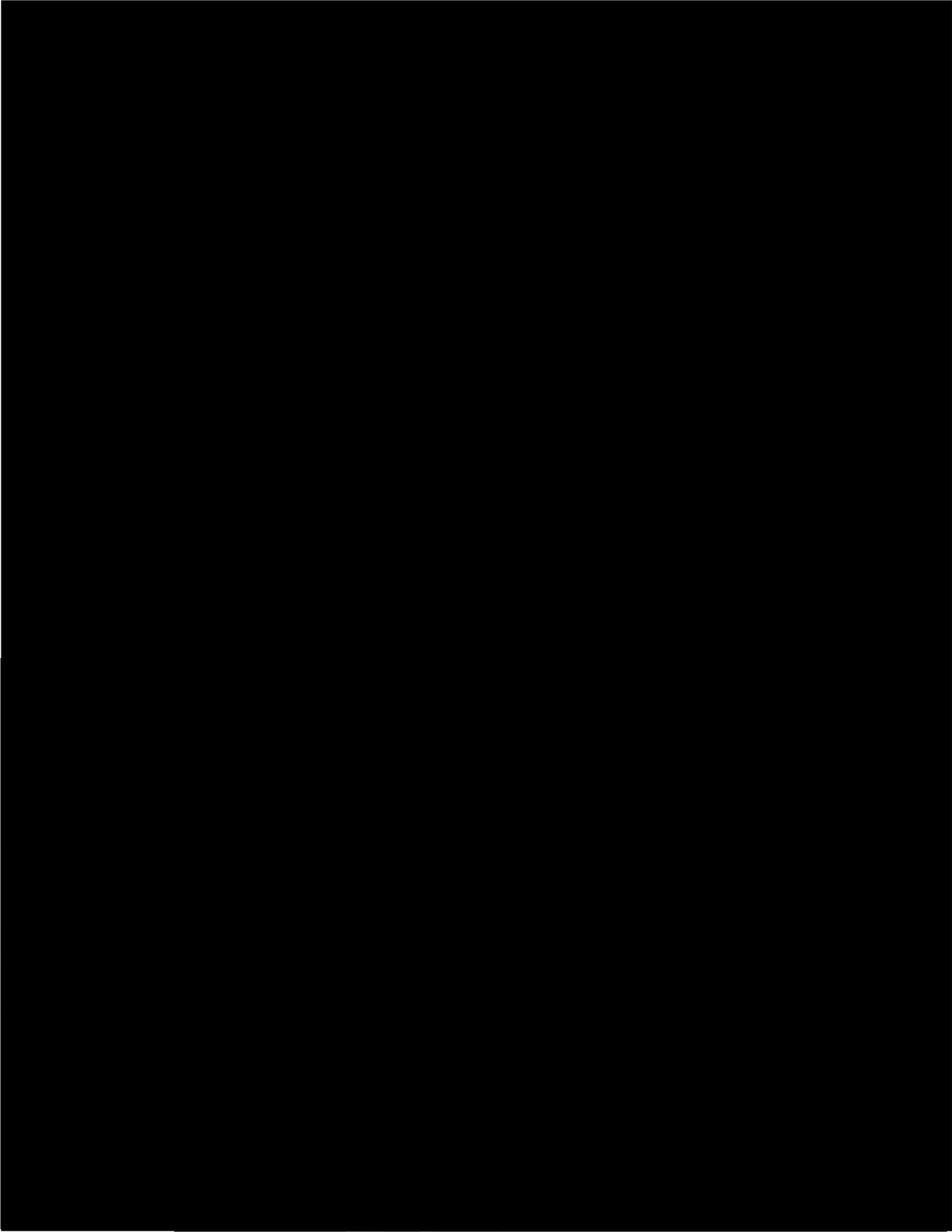


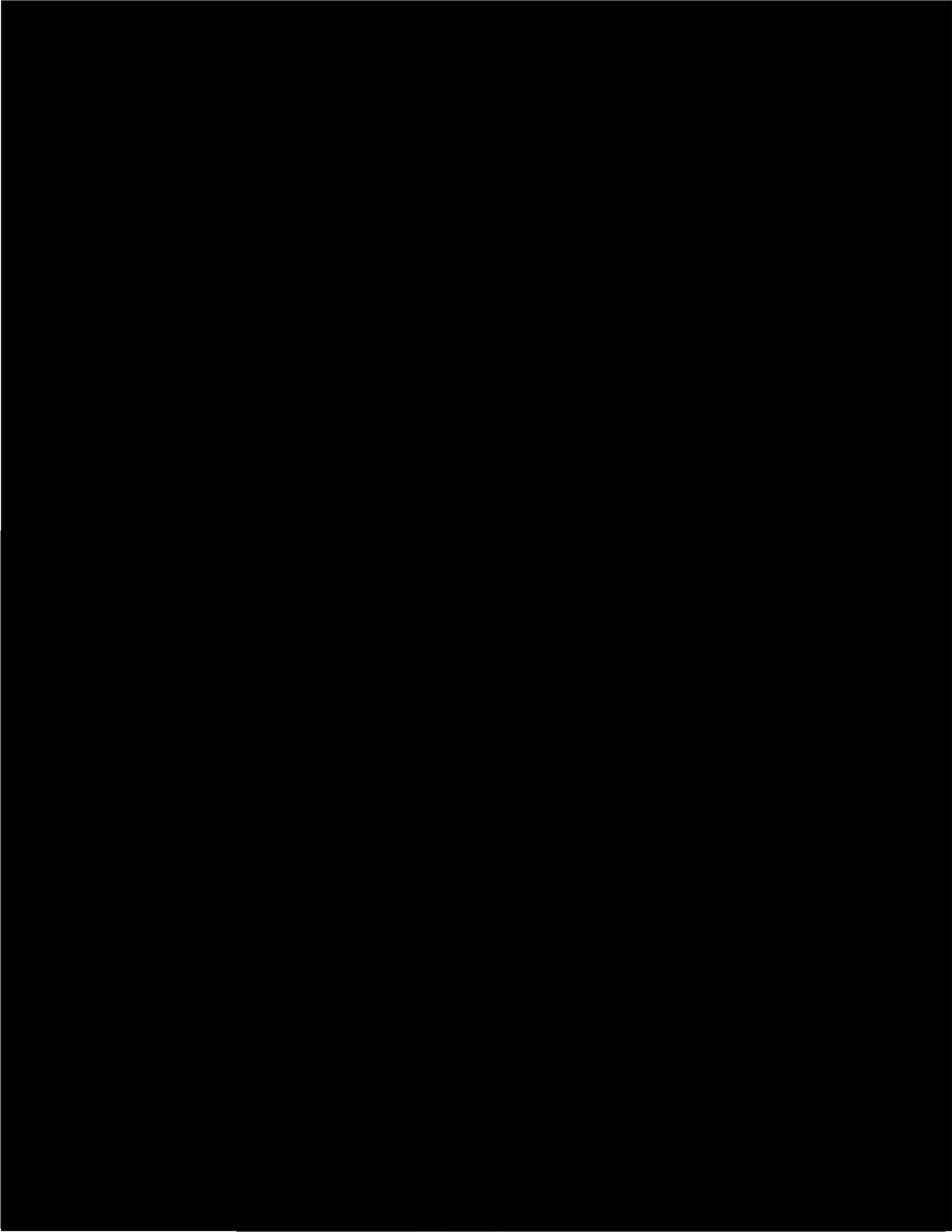


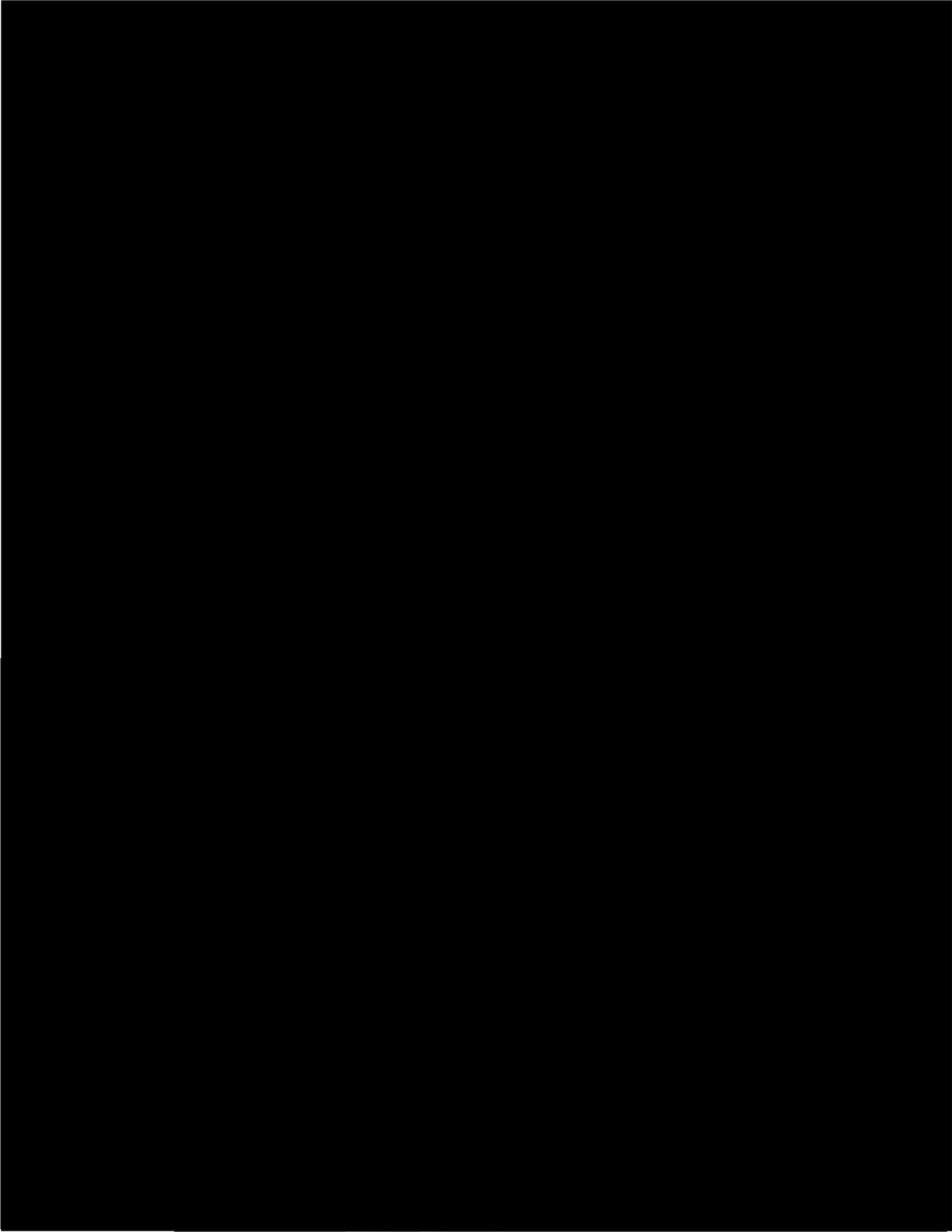


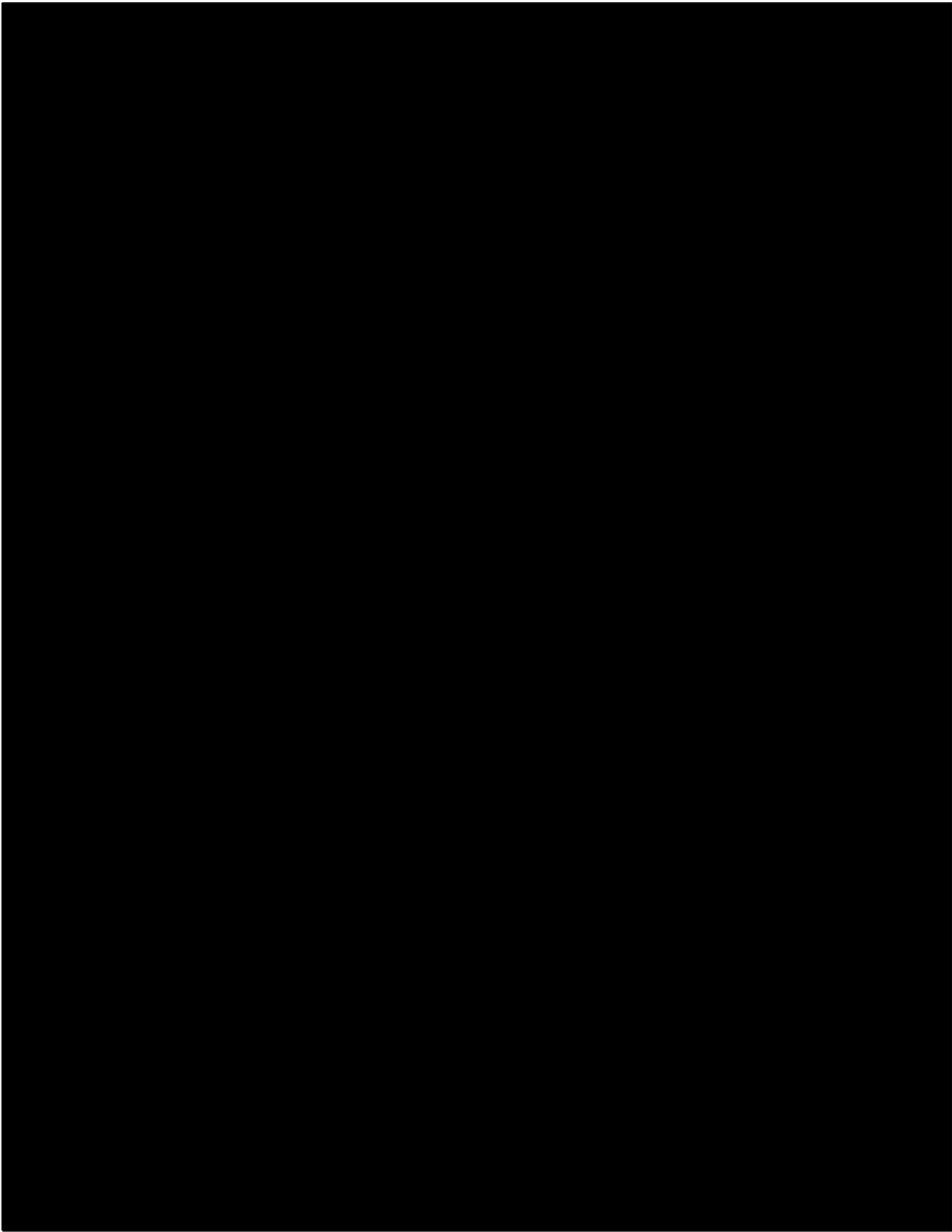


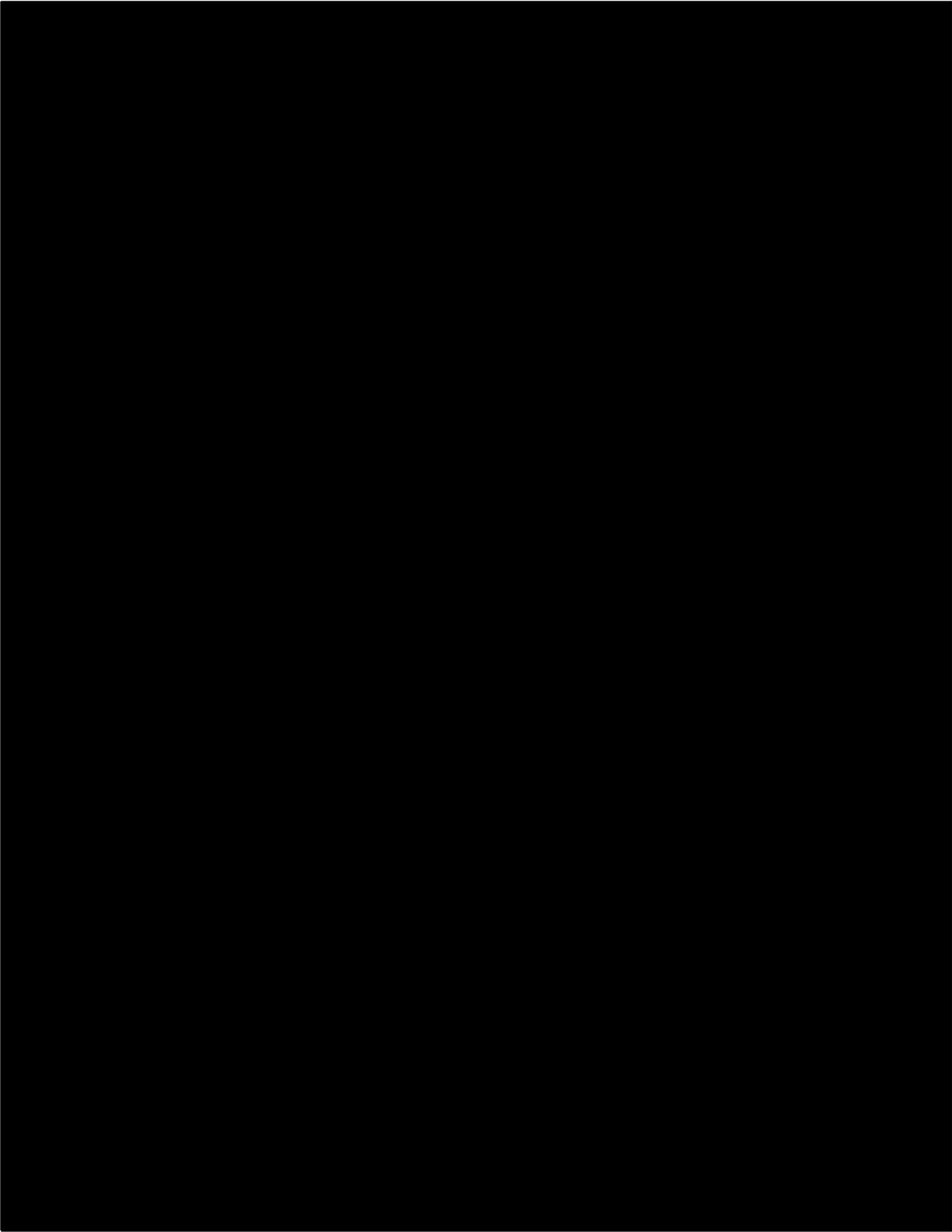


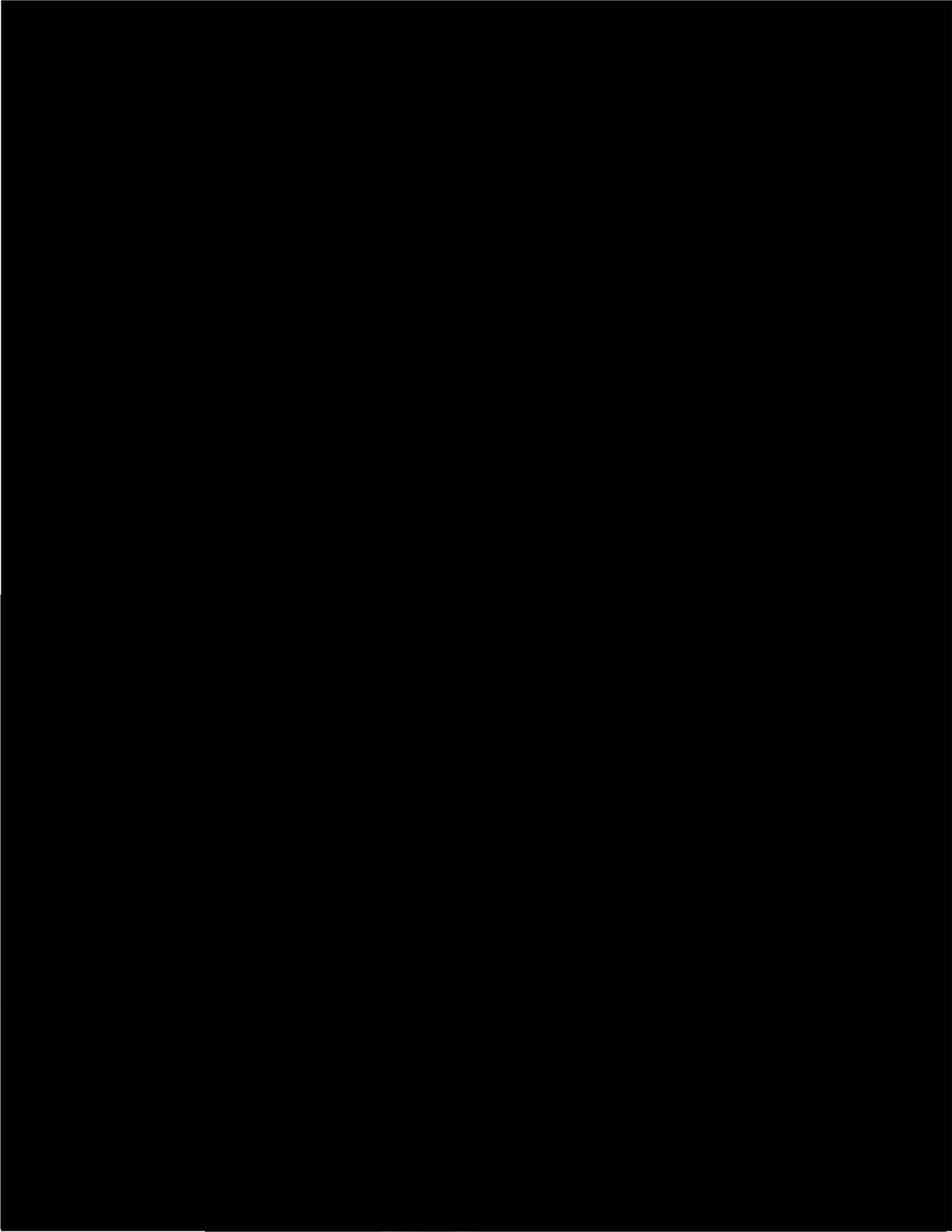


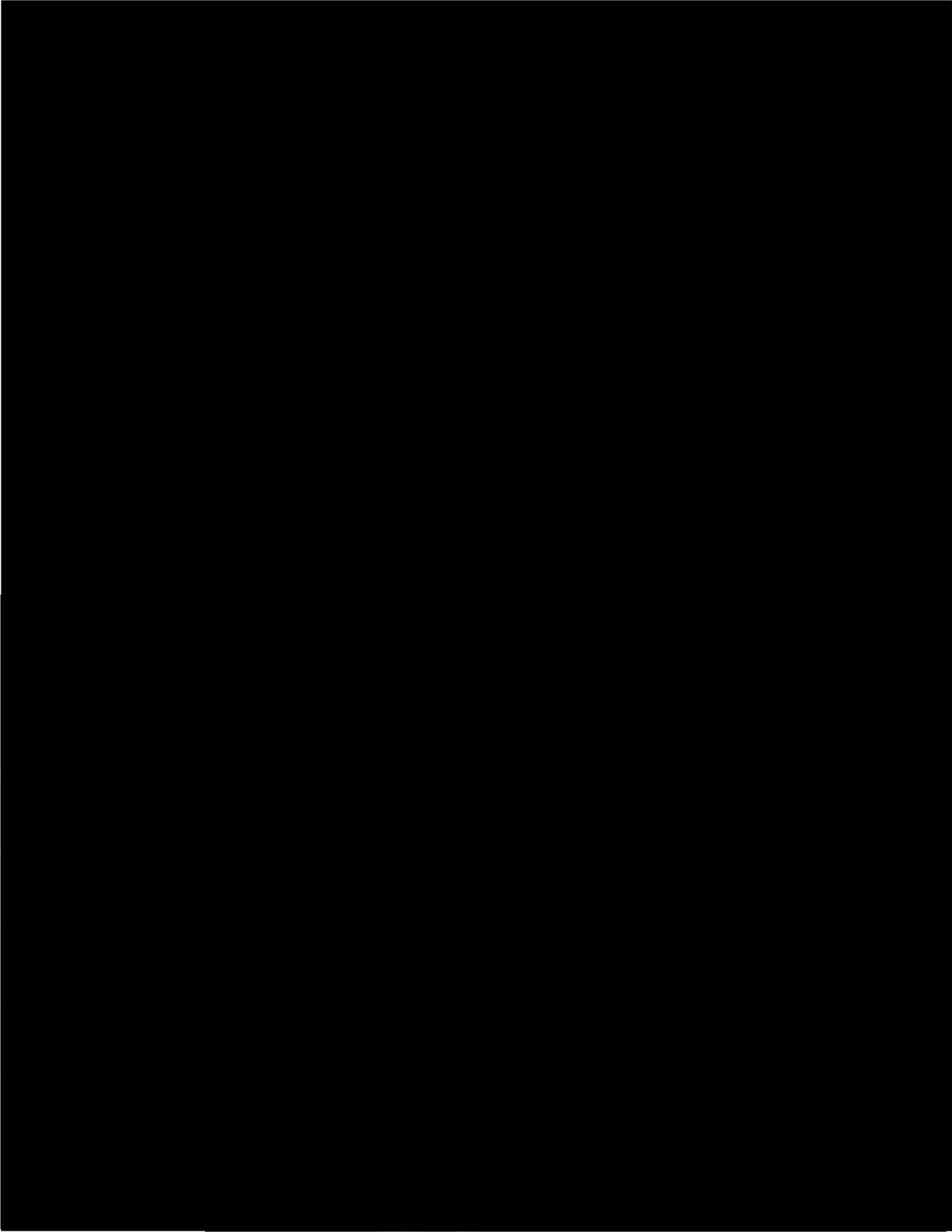


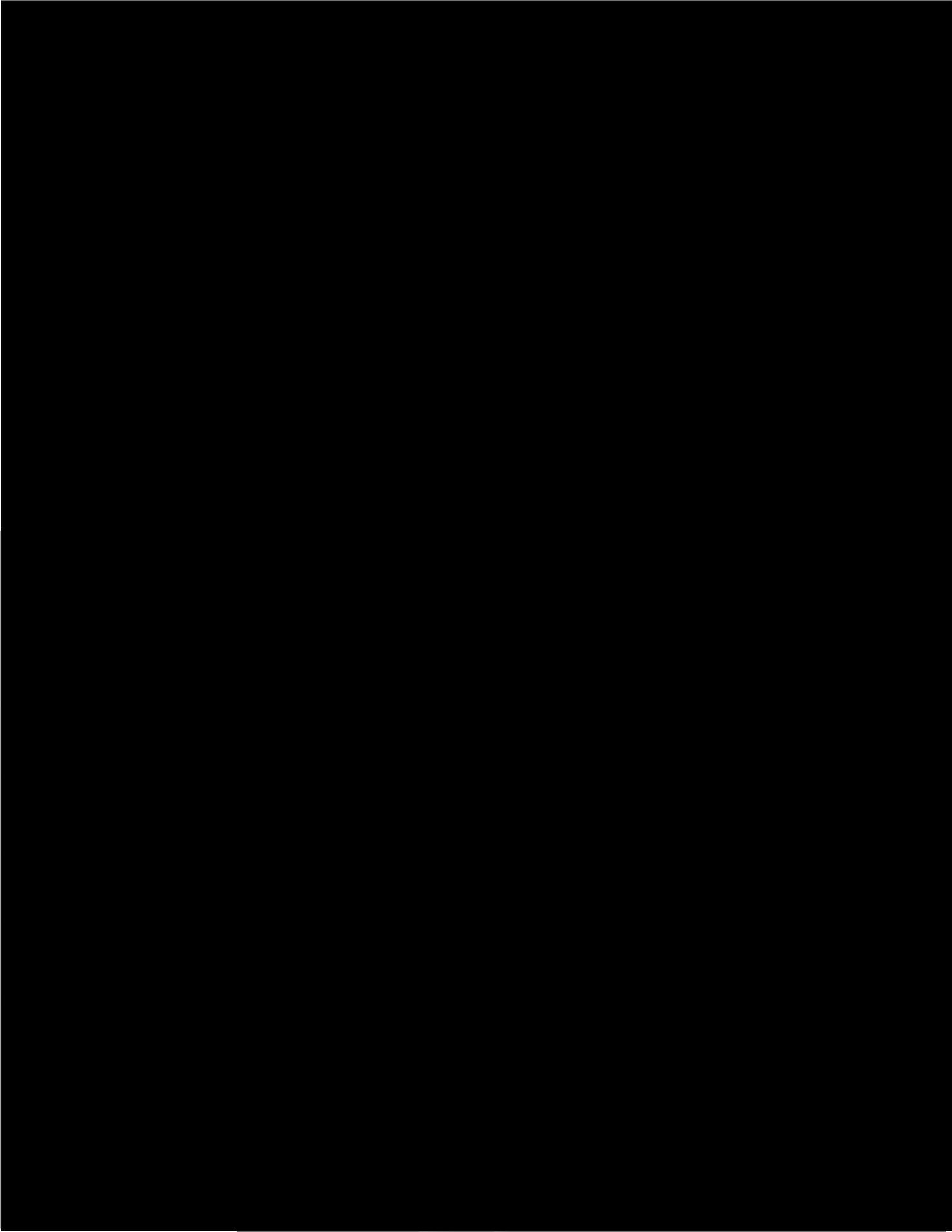


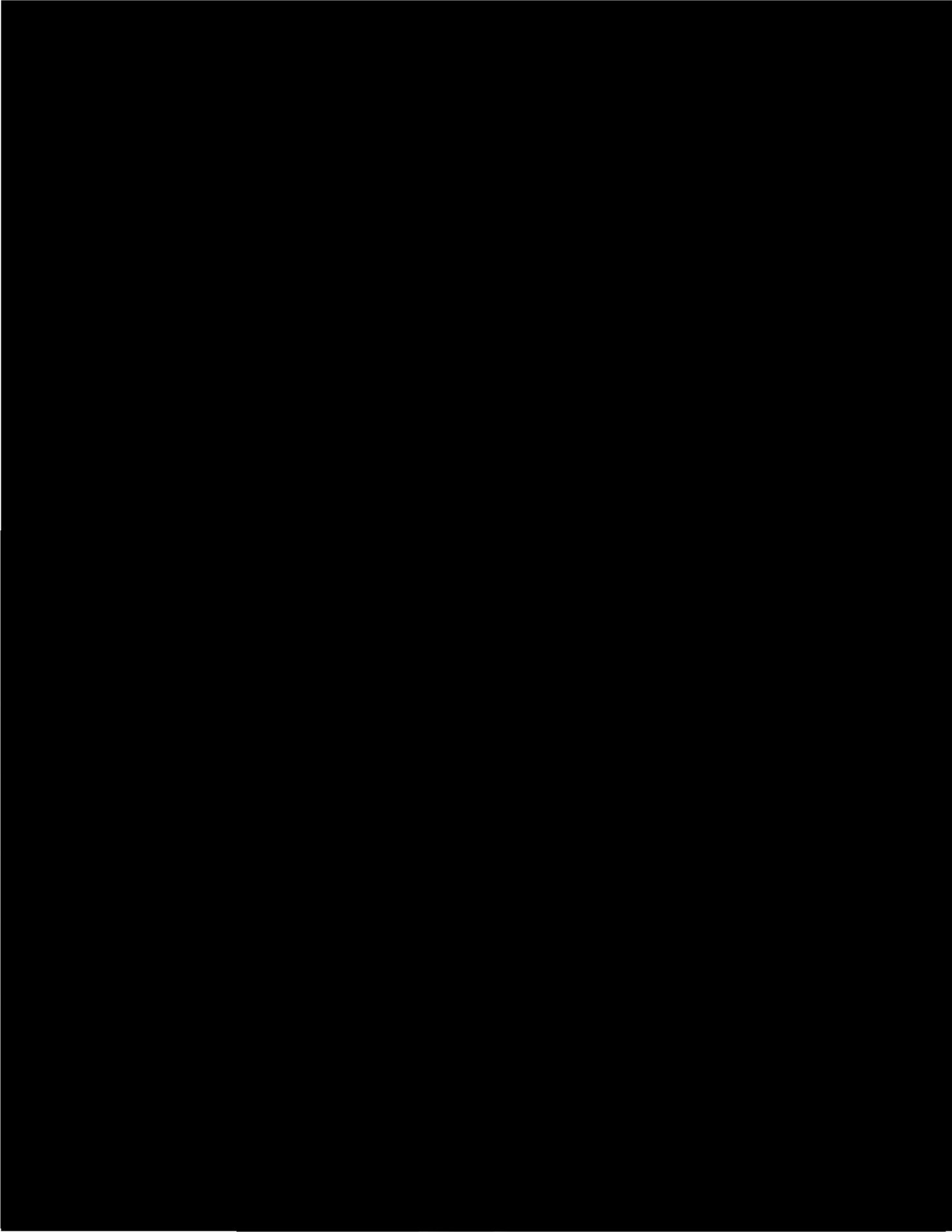


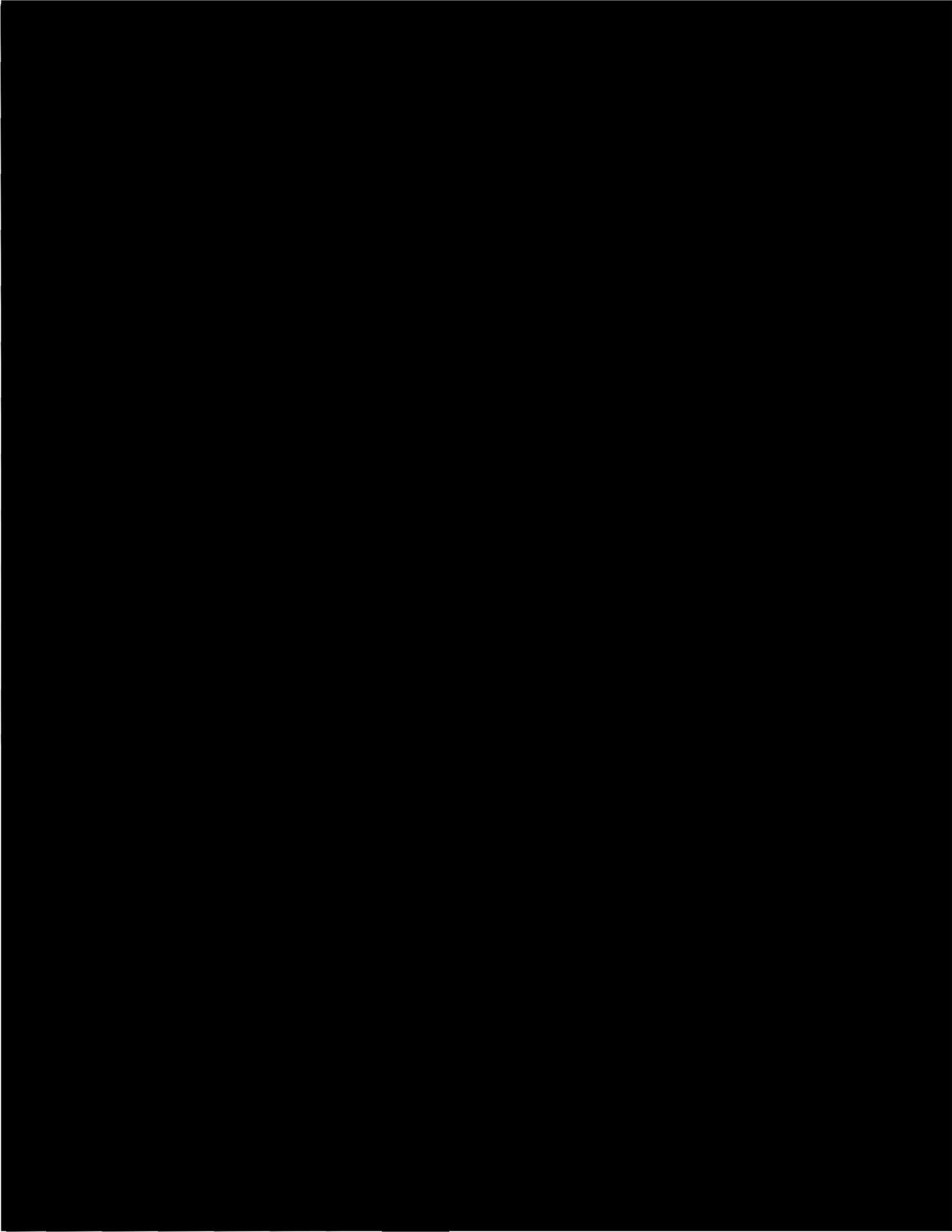


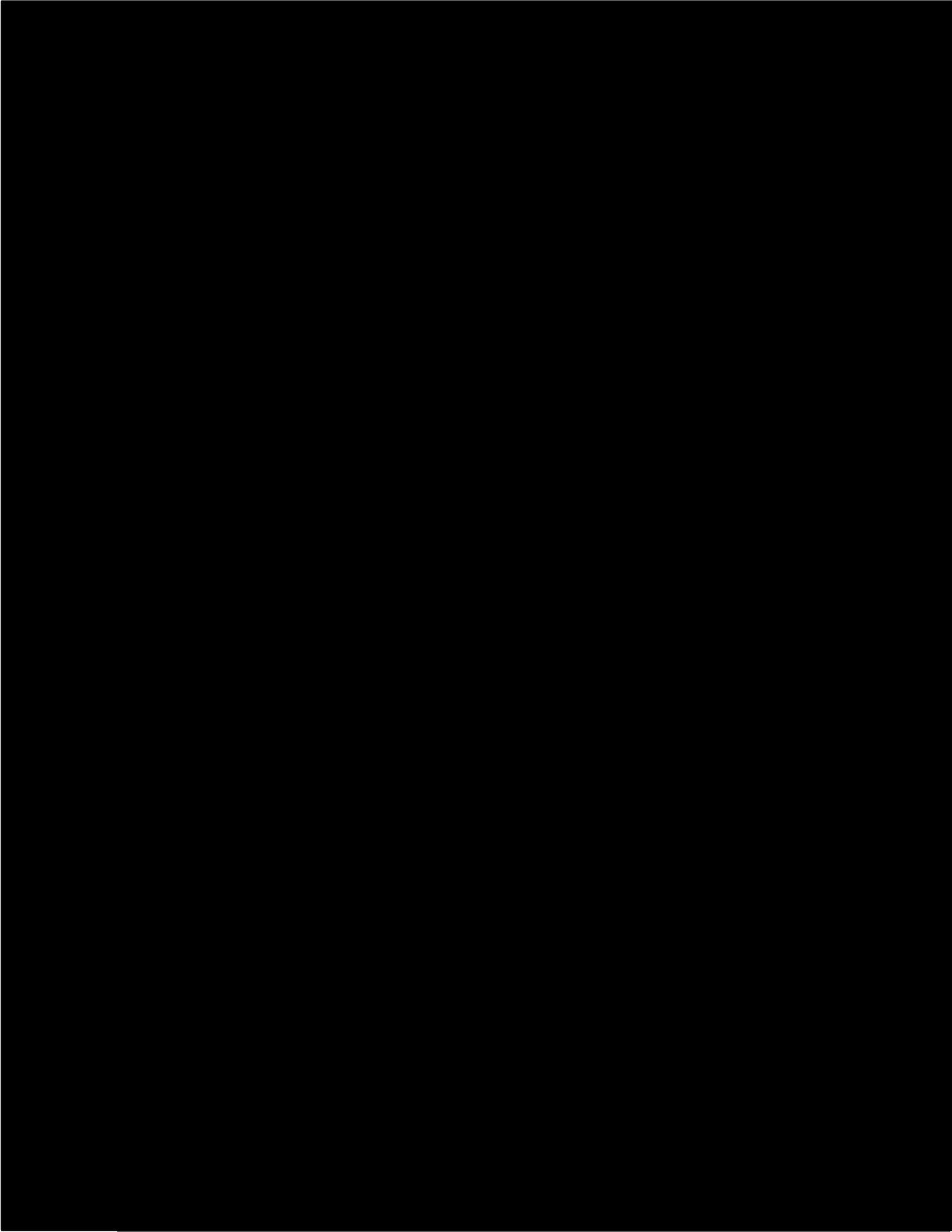


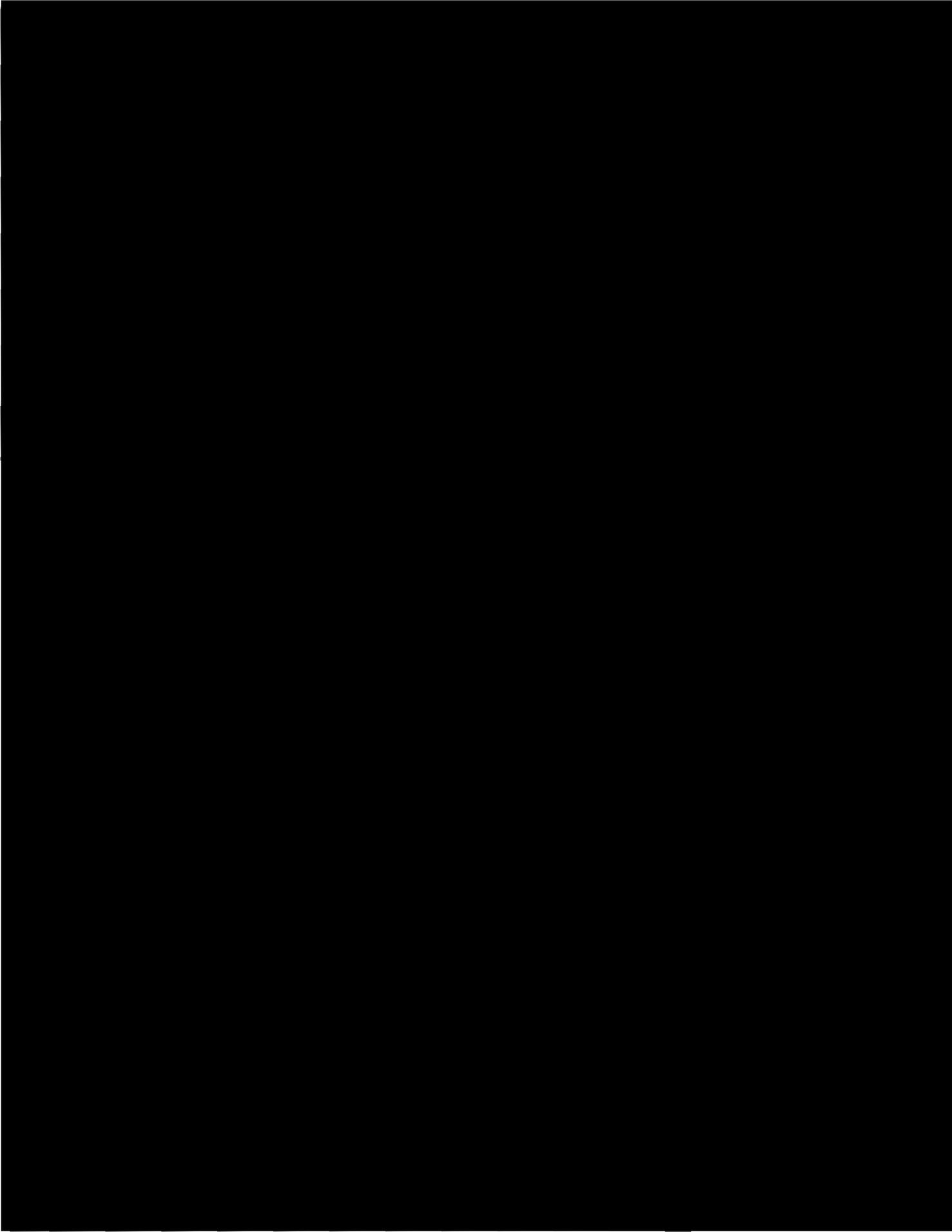


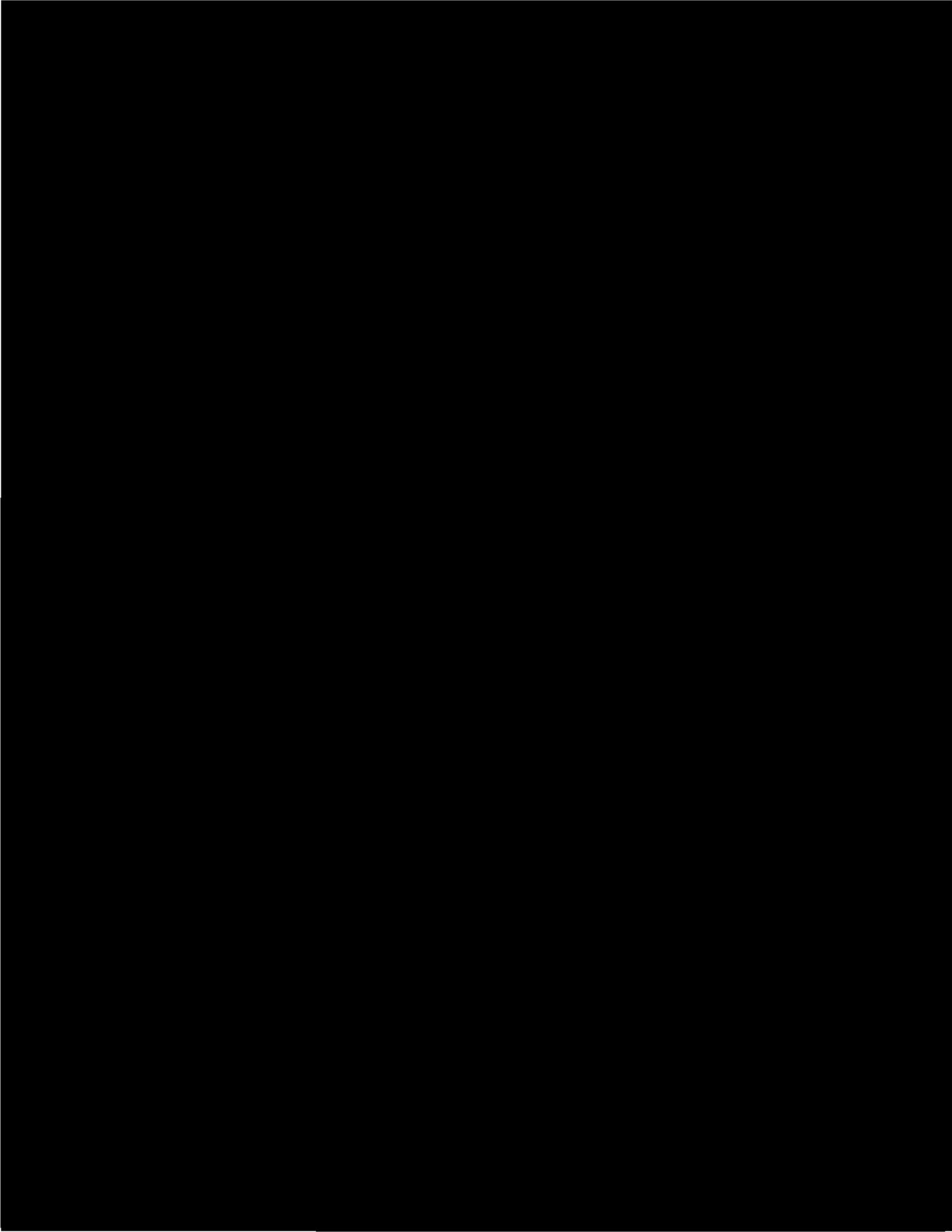


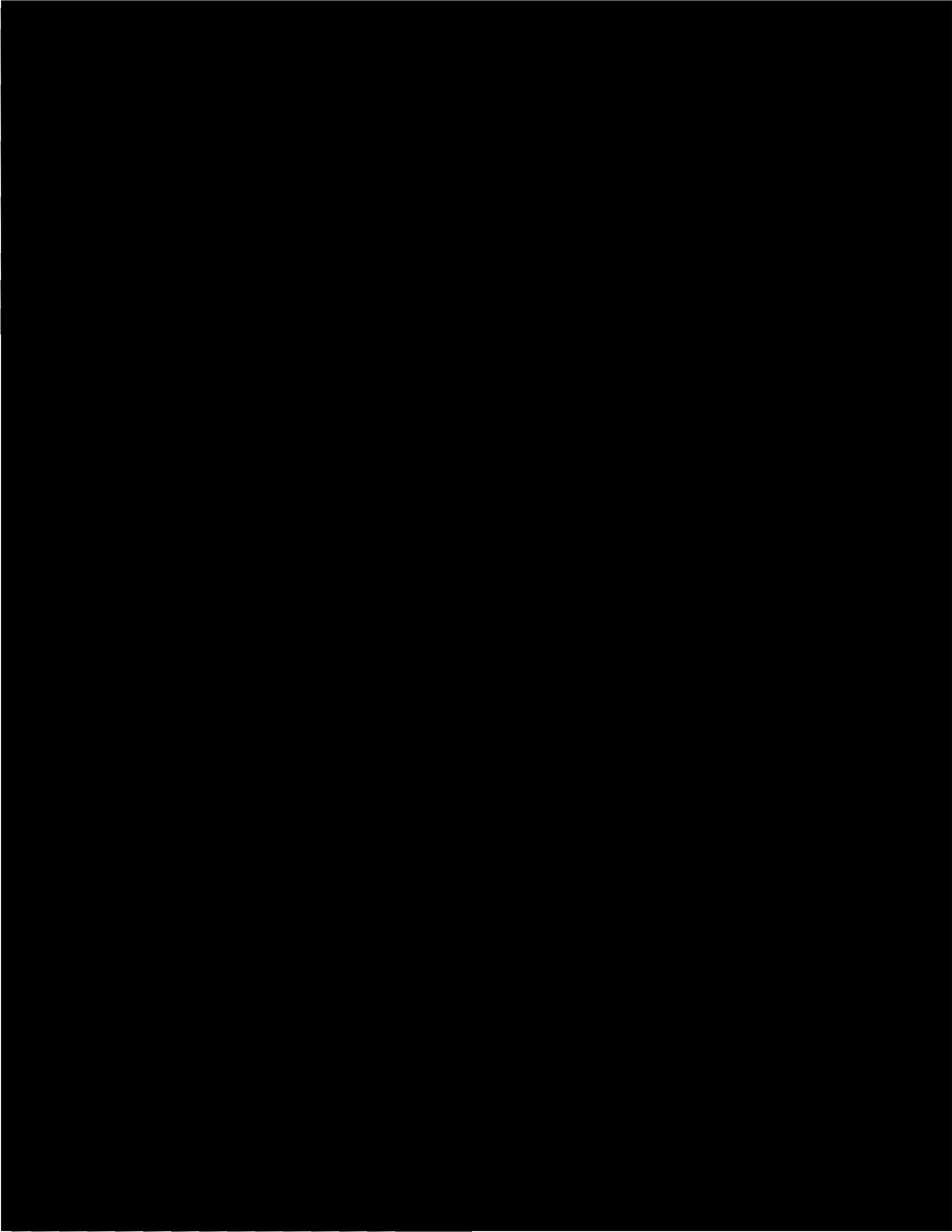


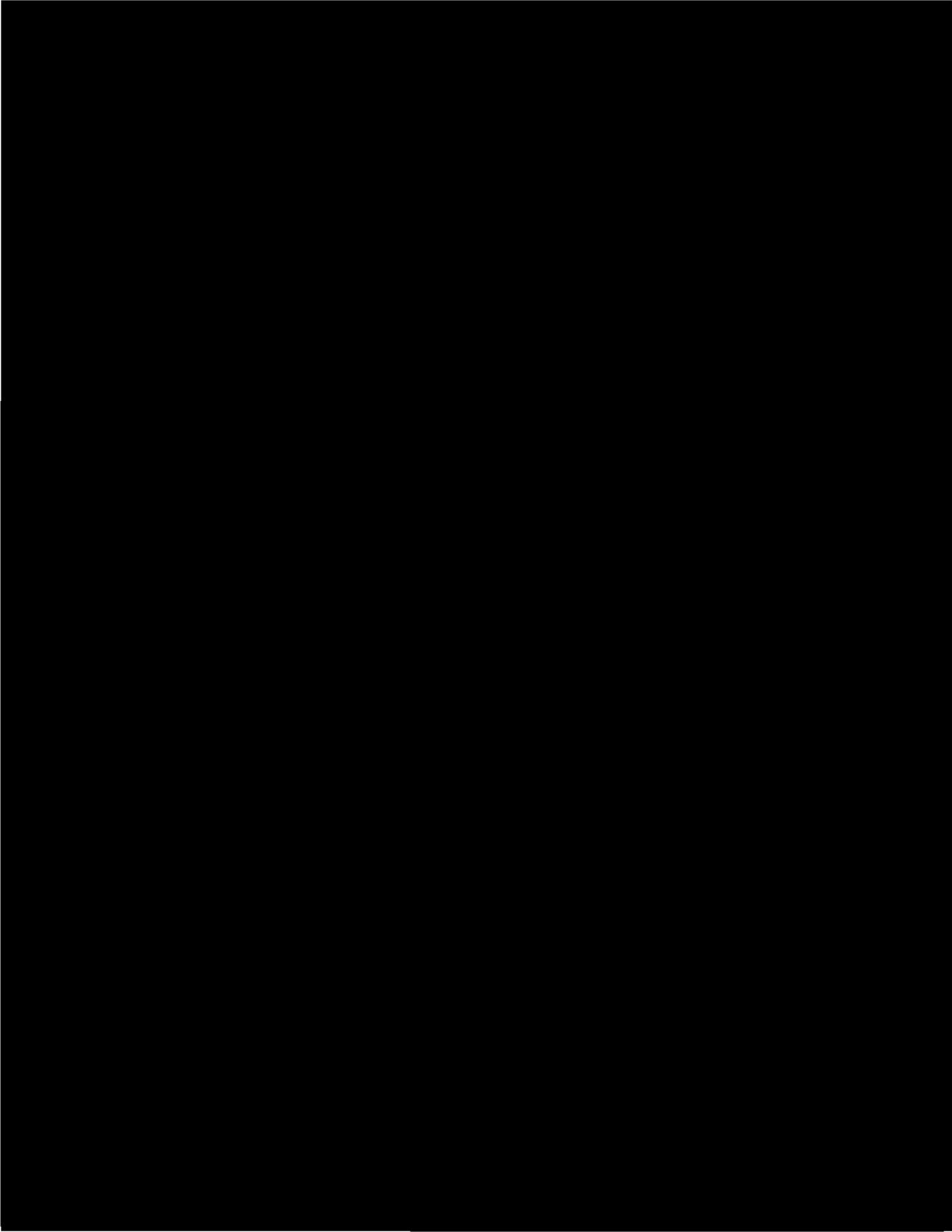


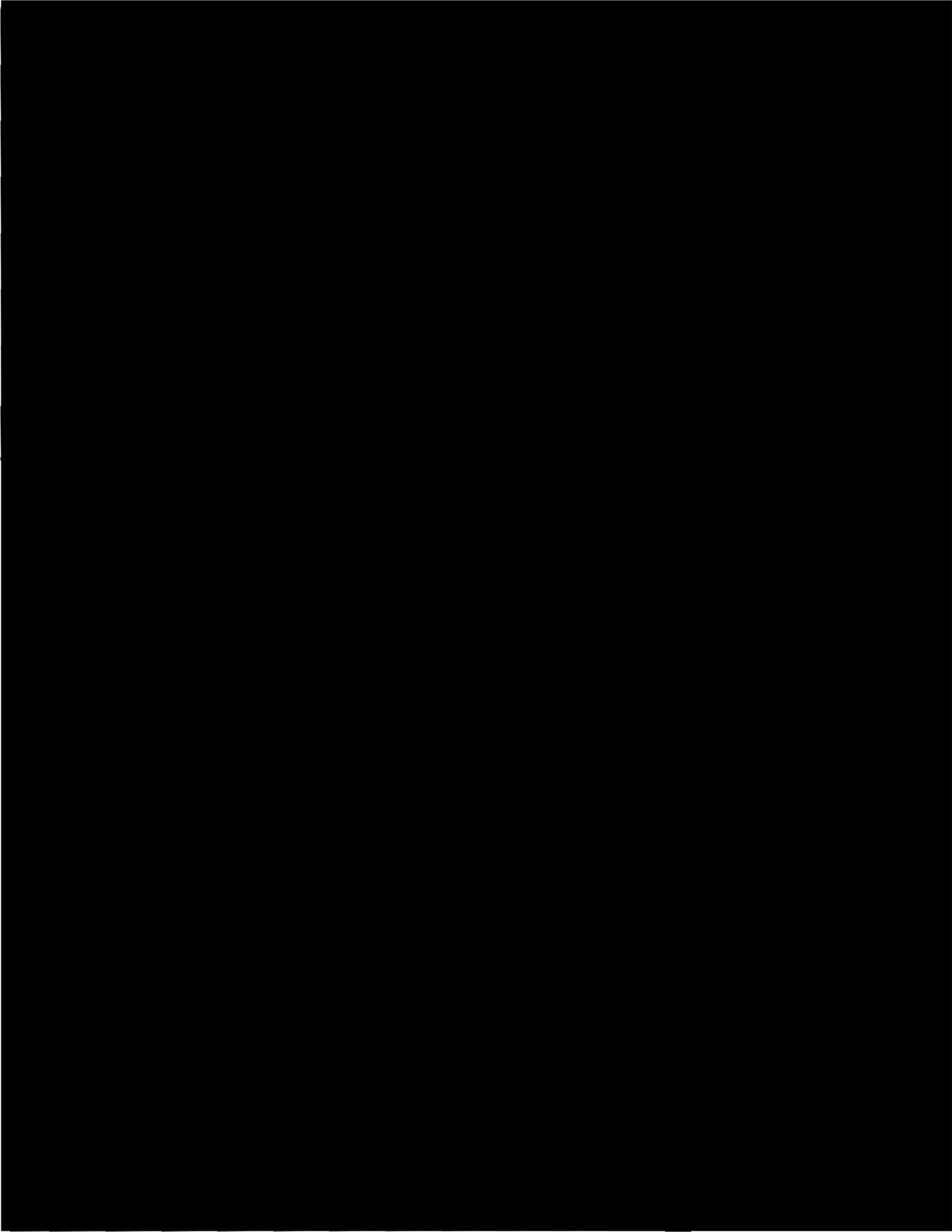


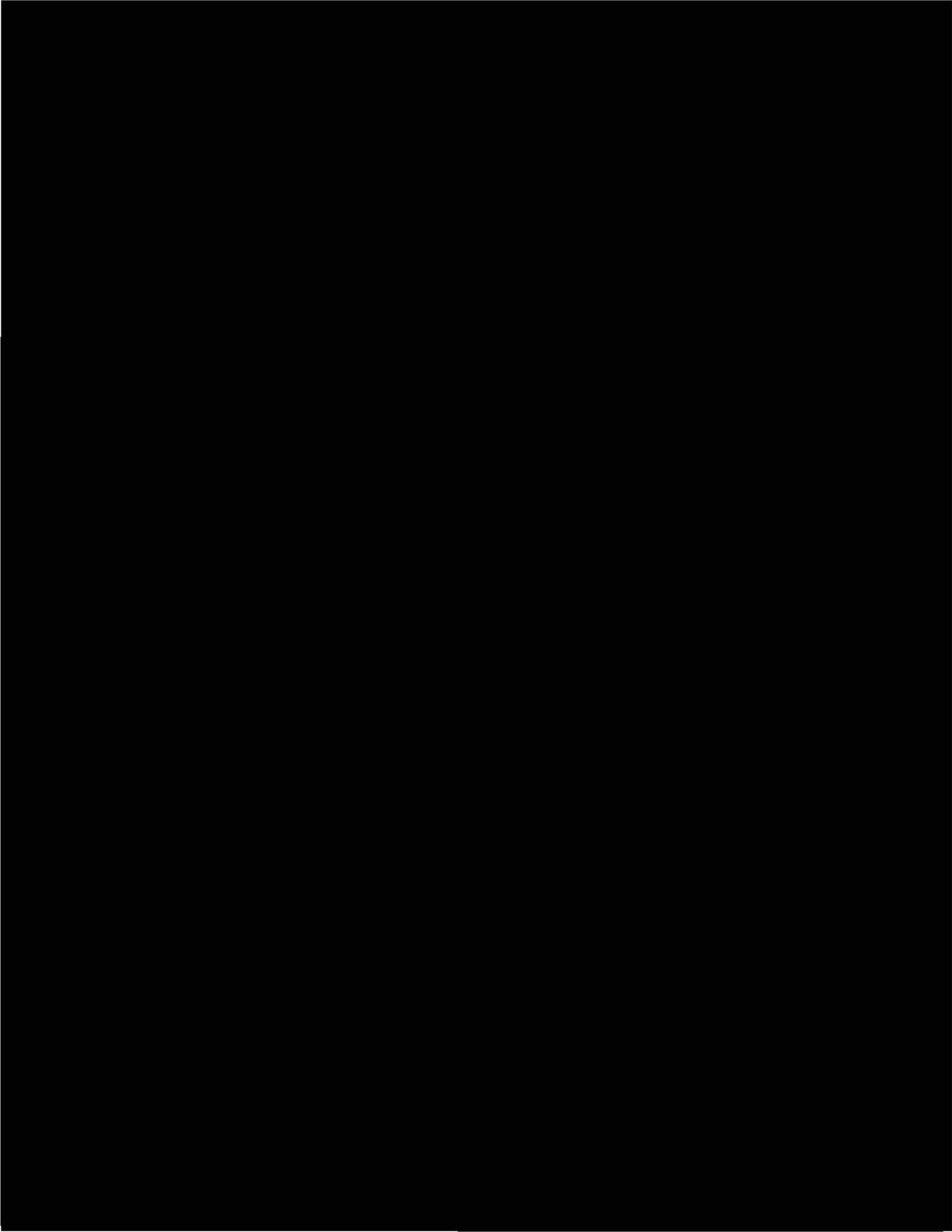


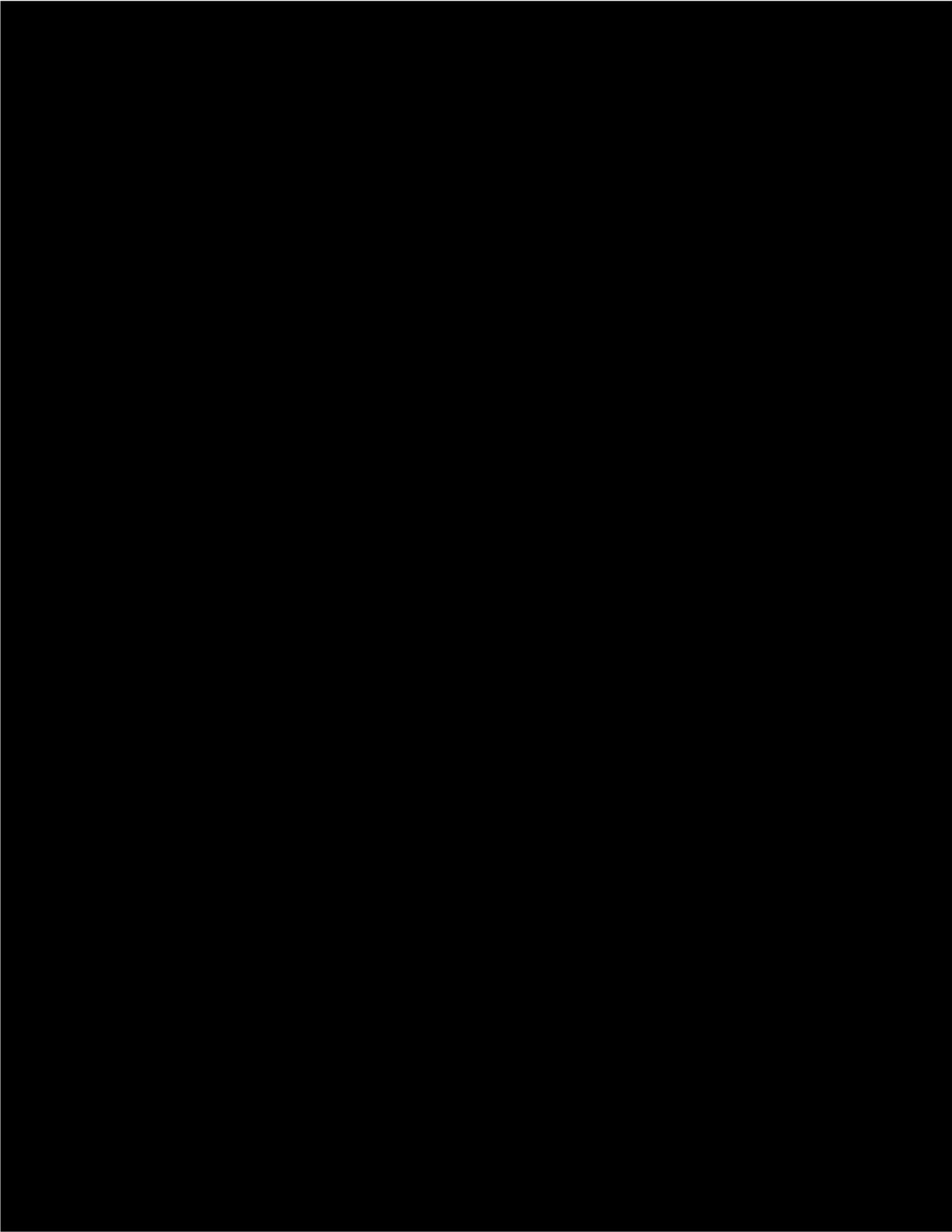


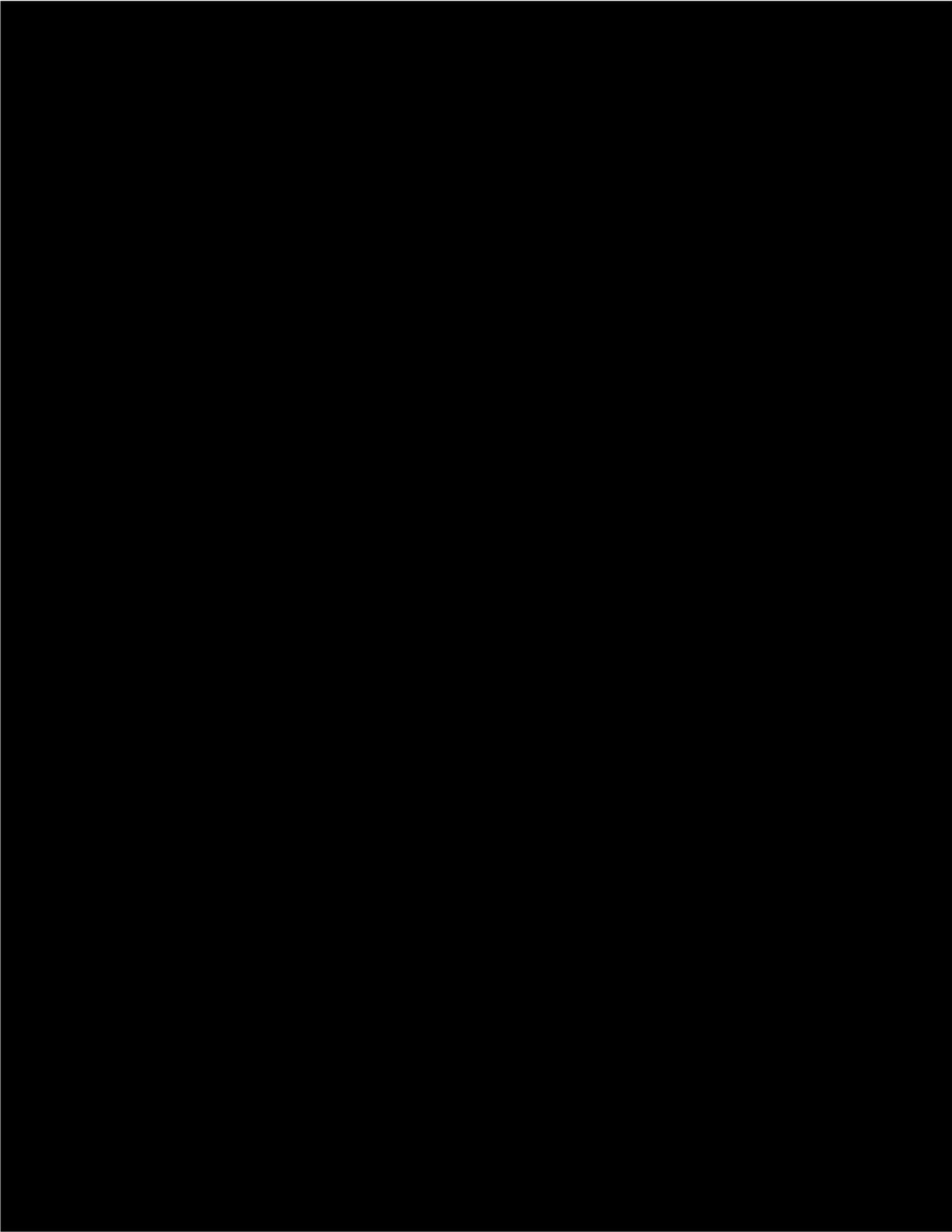


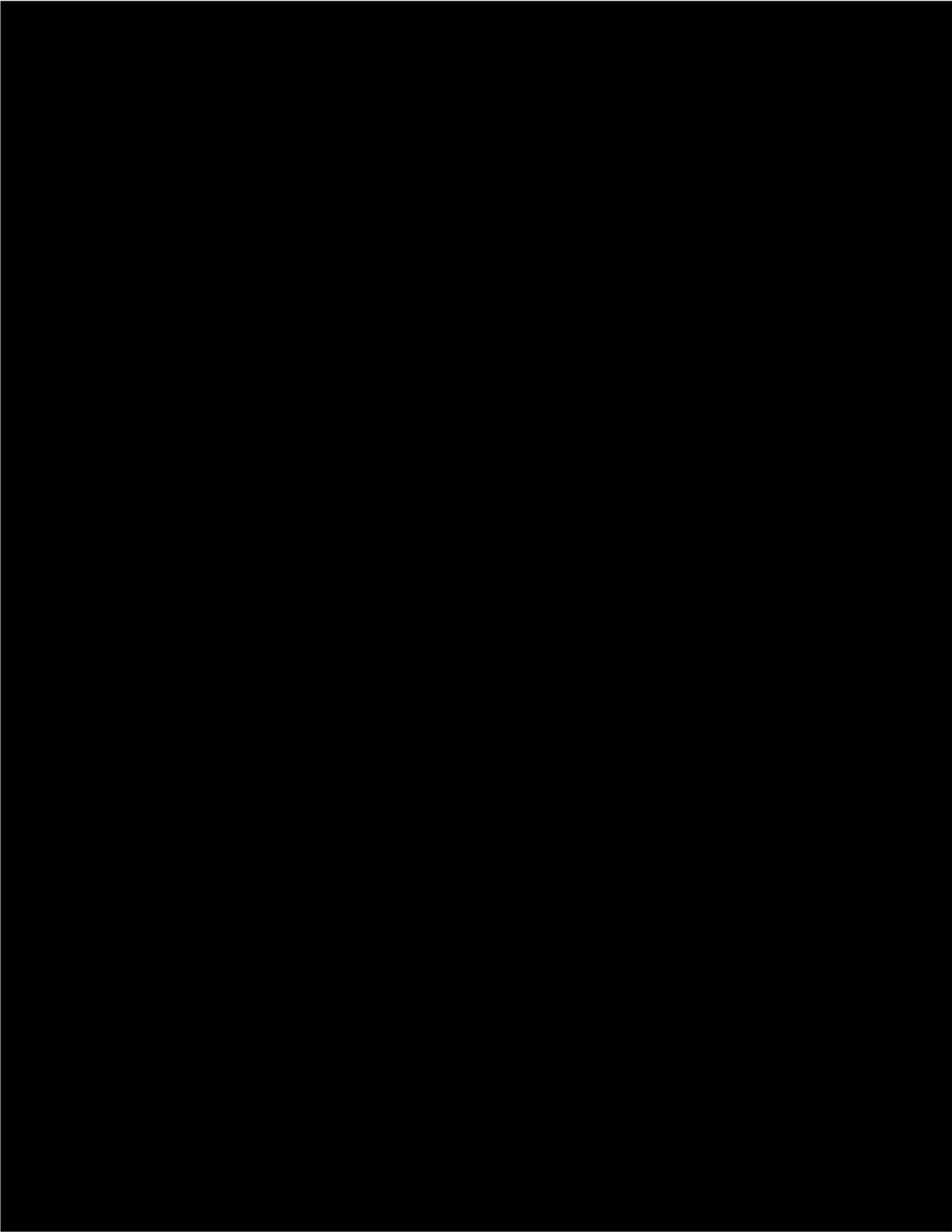


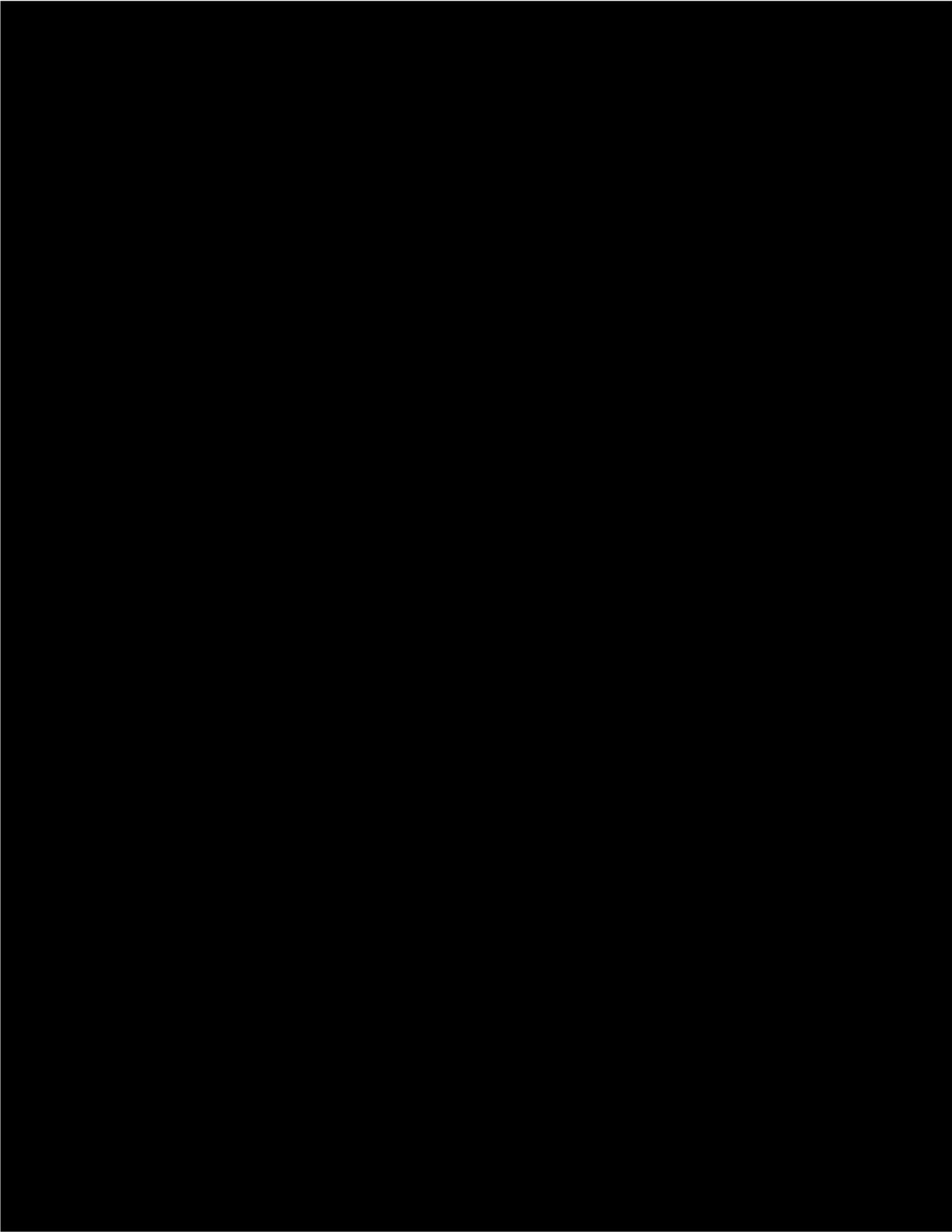












ARKANSAS STATE CLAIMS COMMISSION

HALEY HUDSON, SPECIAL ADMINISTRATRIX  
 OF THE ESTATE OF JACQUELINE LYNN  
 ASHCRAFT, DECEASED, AND HALEY HUDSON  
 AS PERMANENT LEGAL GUARDIAN OF  
 ██████████, A MINOR CHILD

CLAIMANT

VS.

CC NO. 230641

ARKANSAS DEPARTMENT OF HUMAN SERVICES

RESPONDENT

**TRIAL EXHIBITS FOR WRONGFUL DEATH CLAIM  
 OF JACQUELINE LYNN ASHCRAFT, DECEASED**

| Exhibit # | Description                                                     | Bates #   |
|-----------|-----------------------------------------------------------------|-----------|
| 1         | Trooper James Ray Deposition Excerpt for Photographs .....      | 001-006   |
| 2         | Photos of Ashcraft car after wreck .....                        | 007       |
| 3         | Photos of DHS car after wreck.....                              | 008       |
| 4         | Jacqueline Ashcraft Family Photographs .....                    | 009-013   |
| 5         | Funeral program for Jacqueline Ashcraft .....                   | 014       |
| 6         | Death Certificate for Jacqueline Ashcraft.....                  | 015       |
| 7         | Brotherton Funeral Home invoice .....                           | 016       |
| 8         | Deposition of Christopher Bell, M.D. with six exhibits.....     | 017 - 038 |
| 9         | Deposition of Holly Newman (condensed transcript).....          | 039 - 063 |
| 10        | Dr. Ralph Scott's expert report with supporting documents ..... | 064 - 143 |
| 11        | Cost of Tuition – University of Arkansas .....                  | 144       |
| 12        | Jacqueline Ashcraft's Medical Records with affidavit .....      | 145 - 184 |



**EXHIBIT**  
**1**

## APPEARANCES

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sarah.debusk@dhs.arkansas.gov

## ALSO PRESENT:

RICHARD HAYDEN, VIDEOGRAPHER

INDEX

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CAPTION.....5

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        Introduction of Deposition Exhibits 7-13...17

        Introduction of Deposition Exh. 14 & 15...20

        Introduction of Deposition Exhibit 16.....22

        Introduction of Deposition Exhibit 17.....23

        Introduction of Deposition Exhibit 18.....25

        Introduction of Deposition Exhibit 19.....26

        Introduction of Deposition Exhibit 20.....28

        Introduction of Deposition Exh. 21-27.....57

        Introduction of Deposition Exhibit 28.....58

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- |                 |                          |
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| 1. Photograph.  | 15. Photograph.          |
| 2. Photograph.  | 16. Wilson Statement.    |
| 3. Photograph.  | 17. Wilkerson Statement. |
| 4. Photograph.  | 18. Diagram Pg. 16 of 18 |
| 5. Photograph.  | 18. Diagram Pg. 17 of 18 |
| 6. Photograph.  | 19. Diagram Pg. 18 of 18 |
| 7. Photograph.  | 20. Paramedic report.    |
| 8. Photograph.  | 21. Photograph.          |
| 9. Photograph.  | 22. Photograph.          |
| 10. Photograph. | 23. Photograph.          |
| 11. Photograph. | 24. Photograph.          |
| 12. Photograph. | 25. Photograph.          |
| 13. Photograph. | 26. Photograph.          |
| 14. Photograph. | 27. Photograph.          |
|                 | 28. Thumb Drive          |

(Court Reporter Note: Physical Copy of  
thumb drive Exhibit No. 28 mailed to each  
attorney.)

1 operation.

2 Q And for vehicle three, the same question is going  
3 to be on page 14. And what did you -- what was your  
4 finding on the vehicle -- on that driver's  
5 contributory actions?

6 A No contributing action.

7 Q And one bit of housekeeping matters.

8 MR. JACKSON: What's our last Exhibit  
9 number? 20? I'm going to mark as Exhibits  
10 21-27, and represent to you that those are  
11 the photos that I've shown you previously in  
12 the slide as the Respondent's vehicle.

13 (WHEREUPON, the documents were marked  
14 for identification as Exhibit No. 21-27 and  
15 are attached hereto.)

16 BY MR. JACKSON:

17 Q And if you could look through that stack and  
18 verify that those are correct, I'll ask to attach them  
19 to your deposition.

20 A Correct.

21 Q And today you've brought a thumb drive with you  
22 to the -- to the deposition and tell us what is on  
23 that thumb drive.

24 A My photographs from the accident.

25 MR. JACKSON: And let's go off the

1 record for just a moment.

2 THE VIDEOGRAPHER: Sure. Off the  
3 record at 2:02.

4 (Break taken at 2:02 p.m.)

5 (Resume at 2:03 p.m.)

6 THE VIDEOGRAPHER: On the record at  
7 2:03.

8 BY MR. JACKSON:

9 Q And you brought, we're going to attach as Exhibit  
10 No. 28, the thumb drive containing the images, and  
11 these are jpegs that you took as part of your  
12 investigation of the accident?

13 A Correct.

14 (WHEREUPON, the document was marked for  
15 identification as Exhibit No. 28 and is  
16 attached hereto.)

17 BY MR. JACKSON:

18 Q Thank you. And then how did you find out that Ms.  
19 Ashcraft passed away later that night?

20 A After being in contact with the hospital.

21 Q Okay. All right. And that's all the questions I  
22 have.

23 BY MR. GASPER:

24 Q Just a real-quick follow-up. You mentioned on --  
25 on your report that there was a box that you've marked



Photos of Jacqueline Ashcraft's car taken by Arkansas State Trooper James Ray

**EXHIBIT**  
**2**



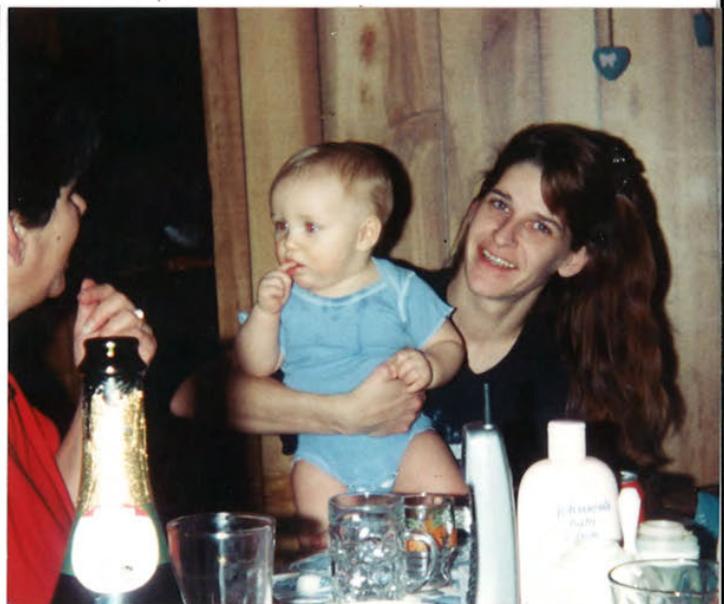
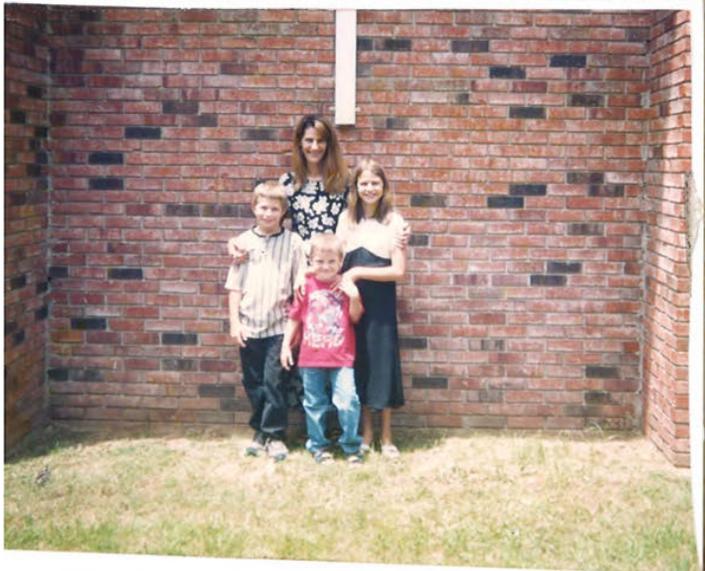
Photos of Arkansas Department of Human Services car driven by employee Jennifer Wilkerson. These photos were taken by Arkansas State Trooper James Ray

**EXHIBIT**

**3**



**EXHIBIT**  
**4**









# In Loving Memory

## Jacqueline "Jackie" Lynn Ashcraft,

Jacqueline "Jackie" Lynn Ashcraft, who resided in Paris, Arkansas, passed away Saturday, June 12, 2021 in Fort Smith. She was born in Pine Bluff, Arkansas to the late Bobby Wayne Ashcraft and Ladonna Grice Jackson. She was 50 years old. She was preceded in death by her father and a sister, Kimberly Nicole Jackson.

Jackie was a homemaker, she was a great friend, a loving and caring soul, and was always there if you needed her. She was loved dearly by her friends and family.

Jackie is survived by her mother, Ladonna Jackson of Benton; stepmother Joanie Ashcraft of Pine Bluff; three daughters, Haley Hudson and Tyler Moore of Wynne [REDACTED] both of Paris; two sons, Dylan Huason and wife Sunny of Ozark and Cody Ashcraft of Paris; two sisters, Jennifer Howard and husband Chad of Benton, Libby Handy and husband Jeff of Pine Bluff; four brothers, Jeff Ashcraft and wife Saundria of Batesville, Josh Jackson and wife Lisa of Paris, Bobby Ashcraft of Pine Bluff, and Jason May and wife Dray of Grapevine, Arkansas; and seven grandchildren [REDACTED]

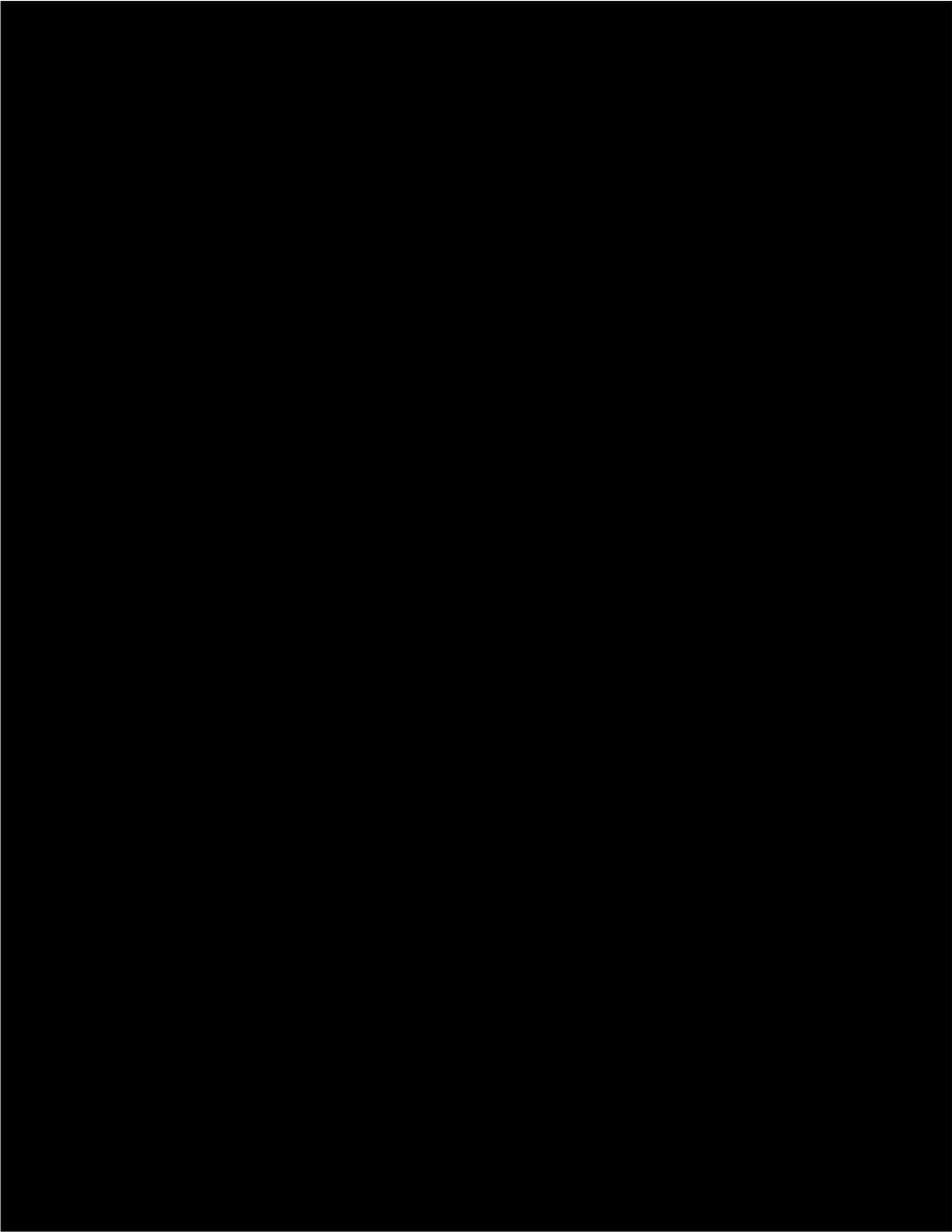
Jackie was a beloved Daughter; Sister; Mother; Aunt and Gammie. She was also a bonus mom to many kids in Cross County. Her house wasn't only the "Hang Out Spot", it was also a safe place where the kids could go and talk about things without any judgement. Her kindness and heart of gold is something we will forever cherish.

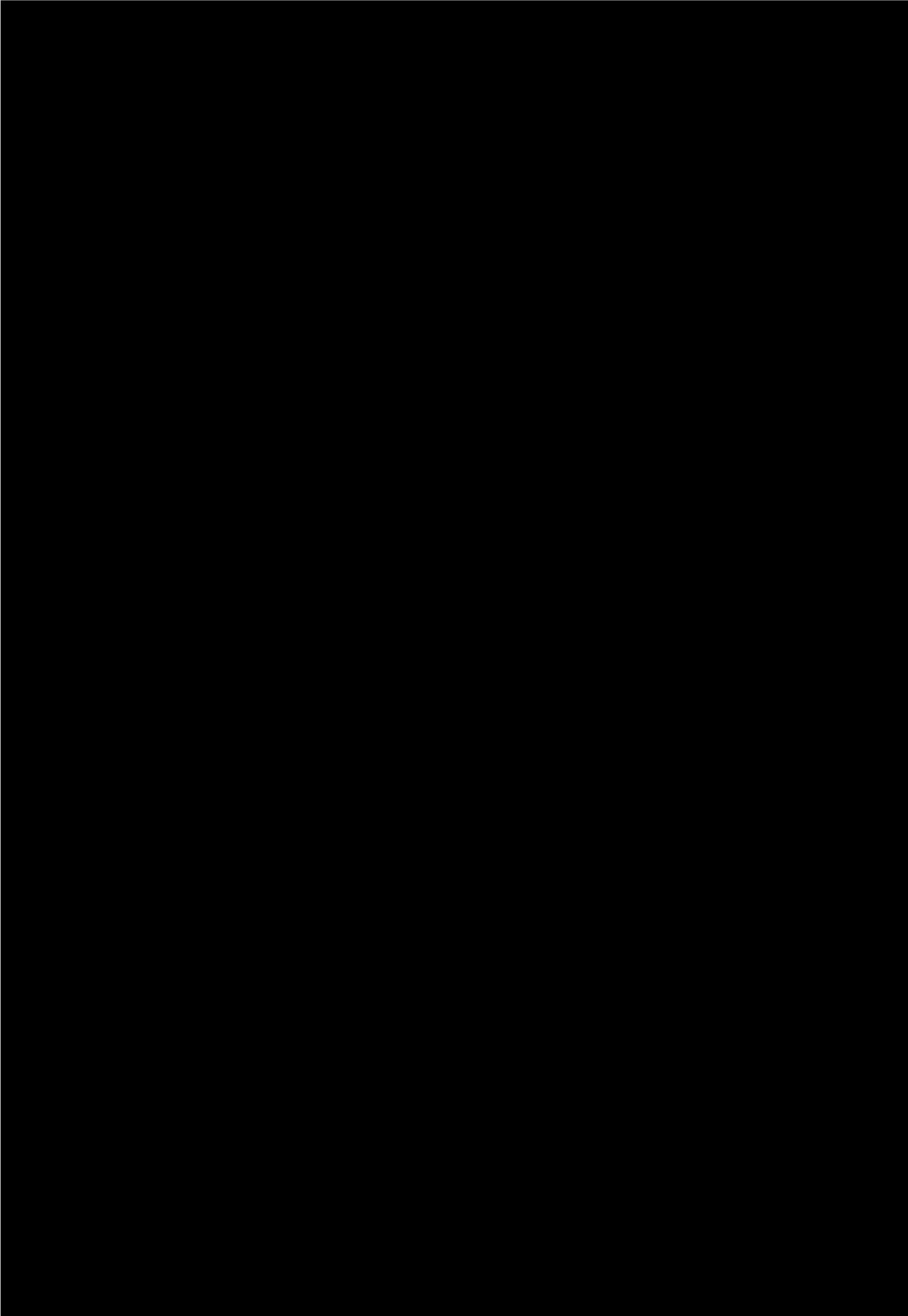


## Jackie Lynn Ashcraft

May 27, 1971 - June 12, 2021

EXHIBIT  
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ARKANSAS STATE CLAIMS COMMISSION

HALEY HUDSON, INDIVIDUALLY AND AS )  
ADMINISTRATRIX OF THE ESTATE OF )  
JACQUELINE LYNN ASHCRAFT, DECEASED, )  
AND HALEY HUDSON AS PERMANENT LEGAL )  
GUARDIAN OF [REDACTED]

[REDACTED] MINOR CHILDREN, )

CLAIMANT, )

CC NO. 230641

VS. )

ARKANSAS DEPARTMENT OF HEALTH AND )  
HUMAN SERVICES, )

RESPONDENT. )

-----  
DEPOSITION UPON WRITTEN QUESTIONS OF

CHRISTOPHER BELL, M.D.

June 19, 2024  
-----

ORAL DEPOSITION OF CHRISTOPHER BELL, M.D., produced  
as a witness at the instance of the CLAIMANT, and duly  
sworn, was taken in the above-styled and numbered  
cause on the 19th day of June 2024, from 1:35 p.m. to  
1:43 p.m., before Dana Hayden, CCR in and for the  
State of Arkansas, RMR, CRR, CRC, reported by machine  
shorthand, at Hardin, Jesson & Terry, PLC, 5000 Rogers  
Avenue, Suite 500, Fort Smith, Arkansas, pursuant to  
the Arkansas Rules of Civil Procedure.

**EXHIBIT**  
**8**



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APPEARANCES

FOR THE WITNESS:

Mr. Kirkman T. Dougherty

Hardin, Hudson & Sorra, PLLC  
BELL, M.D., CHRISTOPHER on 06/19/2024

5000 Rogers Avenue, Suite 500

Fort Smith, Arkansas 72901

(479) 452-2200

Kdougherty@hardinlaw.com



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I N D E X

June 19, 2024

|                                                                                                                                           |    |
|-------------------------------------------------------------------------------------------------------------------------------------------|----|
| Appearances                                                                                                                               | 2  |
| Reporter Certification<br><small>HALEY HUDSON vs ARKANSAS DEPARTMENT OF HEALTH<br/>         BELL, M.D., CHRISTOPHER on 06/19/2024</small> | 10 |

WITNESS: CHRISTOPHER BELL, M.D.

|                         |   |
|-------------------------|---|
| Examination By Claimant | 4 |
|-------------------------|---|

EXHIBITS

| NO.       | DESCRIPTION                                                                           | MARKED |
|-----------|---------------------------------------------------------------------------------------|--------|
| Exhibit 1 | (Not Marked)                                                                          |        |
| Exhibit 2 | Page 1 of Jacqueline Ashcraft's medical records from Mercy Hospital                   | 4      |
| Exhibit 3 | Pages 33, 34 & 35 of Jacqueline Ashcraft's medical records from Mercy Hospital        | 5      |
| Exhibit 4 | Four photographs                                                                      | 7      |
| Exhibit 5 | CT scan results from Mercy Hospital Booneville                                        | 8      |
| Exhibit 6 | Death certificate for Jacqueline Ashcraft issued by the Arkansas Department of Health | 8      |



1 CHRISTOPHER BELL, M.D.,  
2 having been first duly sworn, testified as follows:

3 EXAMINATION

4 BY CLAIMANT:

5 Q. Will you state your name and your place of  
6 employment?

7 A. Chris Bell, Mercy, Fort Smith, Arkansas,  
8 emergency room.

9 Q. Okay. Can you provide us with a copy of your CV  
10 which we will have marked as Exhibit 1 to your  
11 deposition?

12 A. No.

13 MR. DOUGHERTY: "No, I don't have a CV."

14 A. I don't have a CV.

15 Q. Was Jacqueline Ashcraft a patient of yours on  
16 June 11 and 12, 2021?

17 A. According to the chart, Dr. Woolley was the  
18 attendee and then it was transferred to me.

19 (Exhibit 2 marked for identification.)

20 Q. Attached as Exhibit 2, which is right here, is  
21 Page 1 of Jacqueline Ashcraft's medical records from  
22 Mercy Hospital. I want to turn your attention to the  
23 section at the top of the page that states: "Reason  
24 for Visit. Chief Complaint: [REDACTED]"  
[REDACTED]



1

[REDACTED]

[REDACTED]

[REDACTED]

4

My question to you after you review

5

Exhibit 2 is: Do you have any reason to disagree with

6

the description contained in the Chief Complaint?

7

A. No.

8

Q. Do you have any reason to disagree with the

9

diagnosis of Jacqueline Ashcraft of having sustained

10

[REDACTED]

11

A. No.

12

Q. All right. Moving right along, Exhibit 3.

13

(Exhibit 3 marked for identification.)

14

Q. Attached as Exhibit 3 to your deposition are

15

pages 33, 34 & 35 of Jacqueline Ashcraft's medical

16

records from Mercy Hospital. Do you have any reason

17

to disagree with page 33 of the medical records where

18

the notes state: [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

24

A. No.

25

Q. Next I want to turn your attention to the



1 medical decision-making and plan of care beginning on  
2 page 34 of Ms. Ashcraft's medical records. The record  
3 states: [REDACTED]

[REDACTED]

14 Is this your understanding of the course  
15 of the medical decision making and plan of care for  
16 Ms. Ashcraft when she was turned over to you as a  
17 patient?

18 A. According to Woolley's chart, yes.

19 Q. All right. The next question: I want to turn  
20 your attention to page 35. The final diagnoses states

21 [REDACTED]

22 Do you have any reason to disagree with  
23 this final diagnosis in Mercy's records?

24 A. No.

25 Q. Did you order the endotracheal tube to be



1 removed from Jacqueline Ashcraft shortly after  
2 midnight on June 12, 2021?

3 A. Is there a place in the records that's going to  
4 state that I don't recall.

01:39PM

5 Q. Okay. Did Ms. Ashcraft die shortly after she  
6 was extubated from the mechanical ventilator?

7 A. I don't recall.

01:40PM

8 Q. Are you familiar with the contrecoup brain  
9 injury mechanism when a person is involved in a  
10 rear-end motor vehicle accident?

11 A. Yes.

12 Q. I want to ask you to review a series of four  
13 photographs which will be marked as Exhibit 4 to your  
14 deposition.

15 (Exhibit 4 marked for identification.)

16 Q. I will represent to you that Ms. Ashcraft was  
17 the driver of the blue vehicle which was rear-ended  
18 while slowing or stopping to make a left hand turn by  
19 the brown car. Testimony from experts indicate that  
20 the speed of the brown car ranged from 50 to 70 miles  
21 per hour.

01:41PM

22 My question is this: Is the impact  
23 depicted in the four photographs of Exhibit 4 the type  
24 of impact that you would expect a person to sustain a  
25 coup-contrecoup brain injury?



1 A. I don't have an opinion.

2 Q. Is a coup-contrecoup brain injury initially  
3 difficult to diagnose due to a lack of outward sign of  
4 trauma to the head?

5 A. I don't have an opinion.

6 Q. Would it surprise you that a person involved in  
7 the collision depicted in the photographs marked as  
8 Exhibit 4 would sustain an [REDACTED]

[REDACTED]?

10 A. I don't have an opinion.

11 (Exhibit 5 marked for identification.)

12 Q. I would like to turn your attention to Exhibit 5  
13 which is the CT scan results from Mercy Hospital  
14 Booneville. Is a patient who was involved in a rear  
15 end car wreck at 12:50 p.m. and has a CT scan at  
16 2:21 p.m., approximately 90 minutes after the wreck,  
17 which reveals [REDACTED]

[REDACTED], consistent with a patient who experienced  
19 a brain trauma caused from the impact of a wreck?

20 A. I don't have an opinion.

21 (Exhibit 6 marked for identification.)

22 Q. I would like to ask you to review what has been  
23 marked as Exhibit 6 to your deposition which is the  
24 death certificate for Jacqueline Ashcraft issued by  
25 the Arkansas Department of Health. I want to turn



1 your attention to the middle of Ms. Ashcraft's death  
2 certificate which has a section titled [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

6 My question to you is: Do you have any  
7 reason to disagree with the cause of death and  
8 underlying cause as stated in the Death Certificate  
9 for Jacqueline Ashcraft?

10 A. No.

11 Q. Has all of your testimony in this matter been  
12 based upon your medical education, medical training  
13 and treatment of patients presenting to the emergency  
14 room with medical conditions similar to Jacqueline  
15 Ashcraft's condition?

16 A. My answers were based on the chart that I read.

17 Q. Have your opinions given in this deposition been  
18 given within a reasonable degree of medical  
19 probability?

20 A. I didn't provide any opinions.

21 Thank you. This concludes the deposition  
22 of Dr. Bell.

23

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REPORTER CERTIFICATION

I, DANA HAYDEN, Certified Court Reporter for the State of Arkansas, do hereby certify to the following:  
HALEY HUDSON vs ARKANSAS DEPARTMENT OF HEALTH  
BELL, M.D., CHRISTOPHER on 06/19/2024

1) that on 06/19/2024, the witness, CHRISTOPHER BELL, M.D., was duly sworn by me prior to the taking of testimony as to the truth of the matters attested to and contained therein;

2) that the foregoing pages contain and are a true and correct transcription of the proceedings as reported verbatim by me via realtime stenography to the best of my ability and transcribed at or under my direction and supervision, and subject to appropriate changes submitted by witness, if any, during his/her requested reading and signing of this deposition according to the Arkansas Rules of Civil Procedure;

3) that I am neither counsel for, related to, nor employed by any of the parties to the action in which this proceeding was taken; and that I am not a relative or employee of any attorney employed by the parties hereto;

4) that I am not financially interested or otherwise interested in the outcome of this action that affects or has substantial tendency to affect impartiality or requires me to relinquish control of



HALEY HUDSON vs ARKANSAS DEPARTMENT OF HEALTH  
BELL, M.D., CHRISTOPHER on 06/19/2024

1 an original or copies of a deposition transcript  
 2 before it is certified, or that requires me to provide  
 3 any service not made available to all parties to the  
 4 action. **HALEY HUDSON vs ARKANSAS DEPARTMENT OF HEALTH**  
**BELL, M.D., CHRISTOPHER on 06/19/2024**  
 5 5) that I have no contract with the parties,  
 6 attorneys, or persons with an interest in the action;  
 7 and that I am not knowingly identified on a preferred  
 8 provider list, whether written or oral, for any  
 9 litigant, insurance company, or third-party  
 10 administrator involved in this matter;

11 6) that signature of the witness is waived.  
 12 This transcript is prepared at request of counsel for  
 13 CLAIMANT, and all fees are billed directly to them in  
 14 compliance with Arkansas Board of Court Reporter  
 15 Examiners Regulations Section 19.

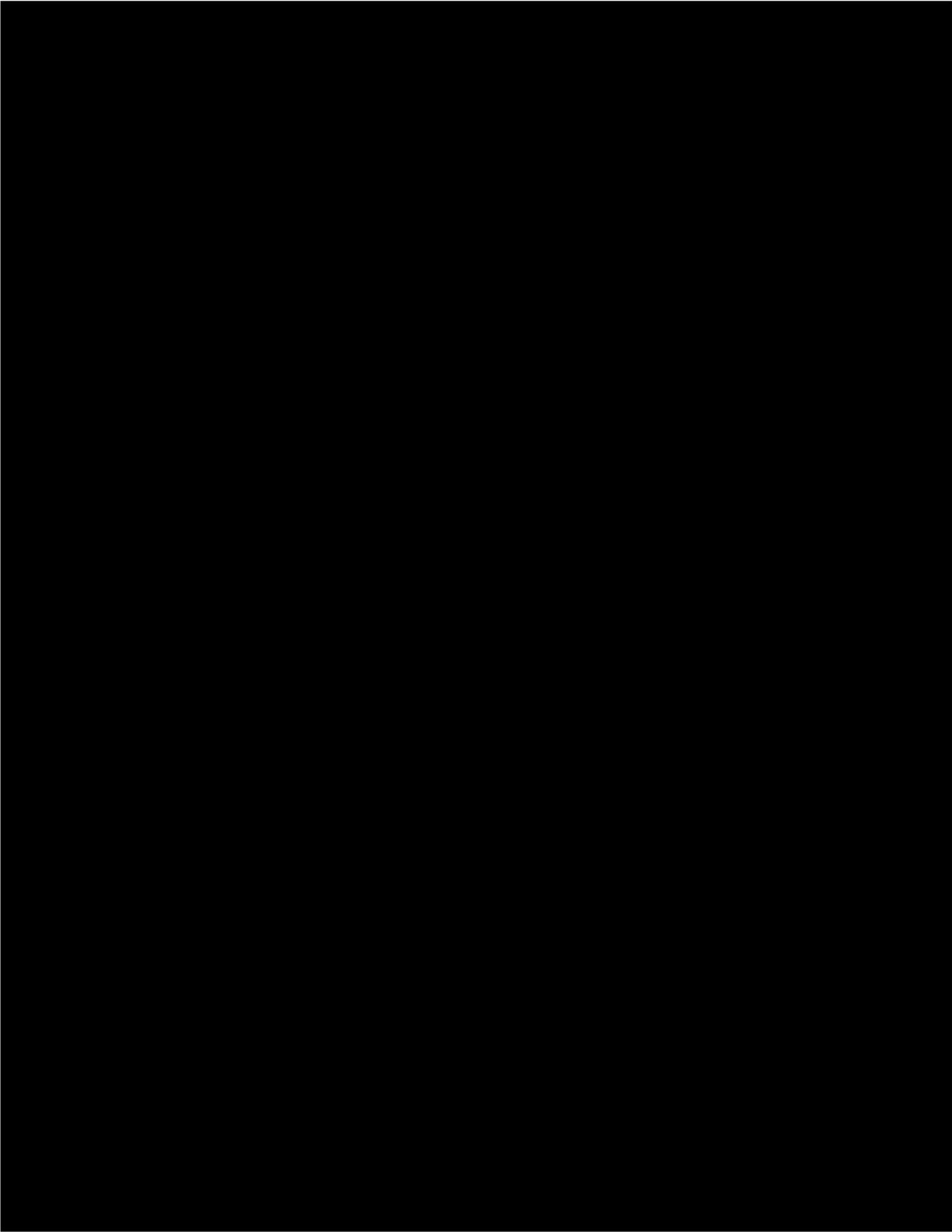
16 Witness my hand and seal this 21st of  
 17 June, 2024.

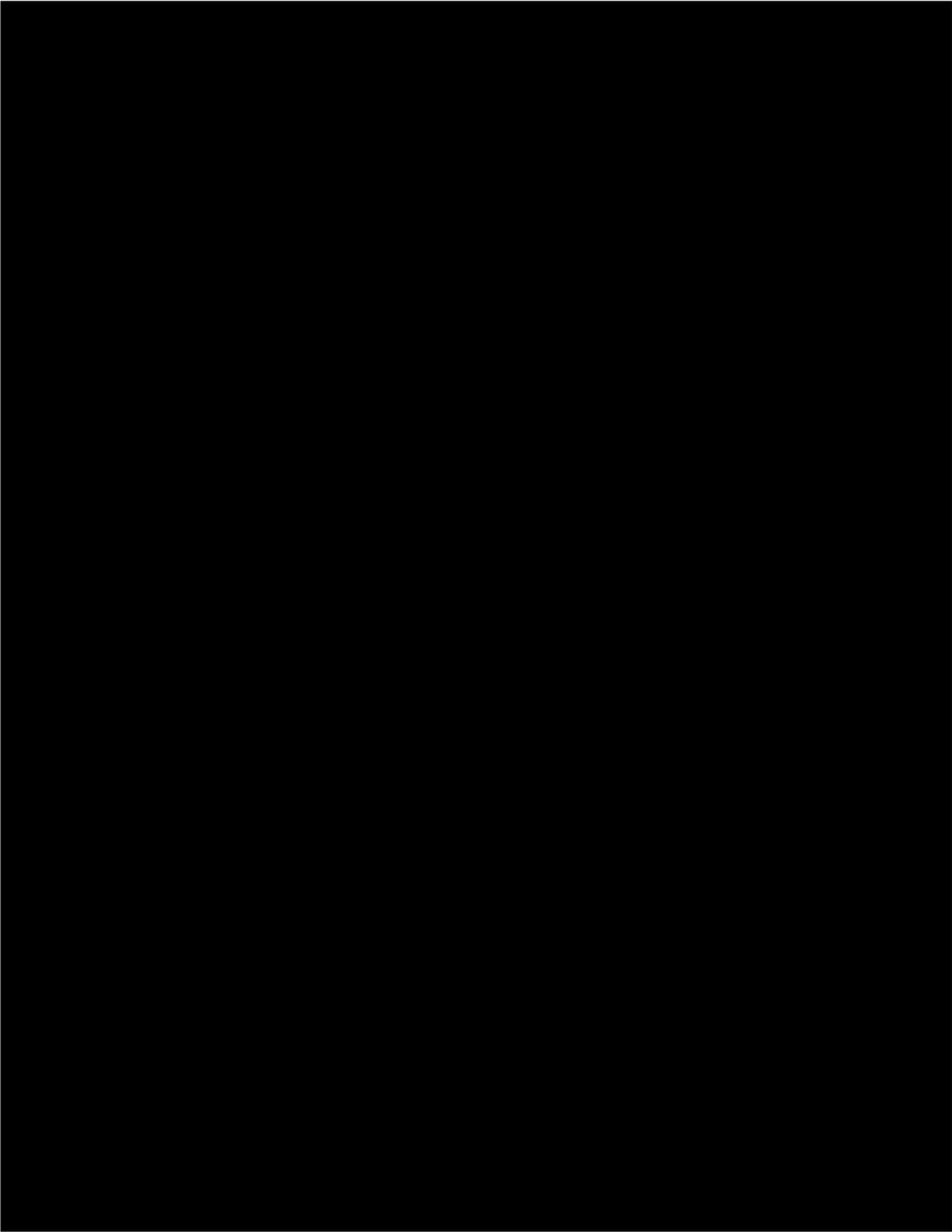
18 **DANA HAYDEN**  
 19 **CERTIFIED COURT REPORTER**  
**ARKANSAS SUPREME COURT**  
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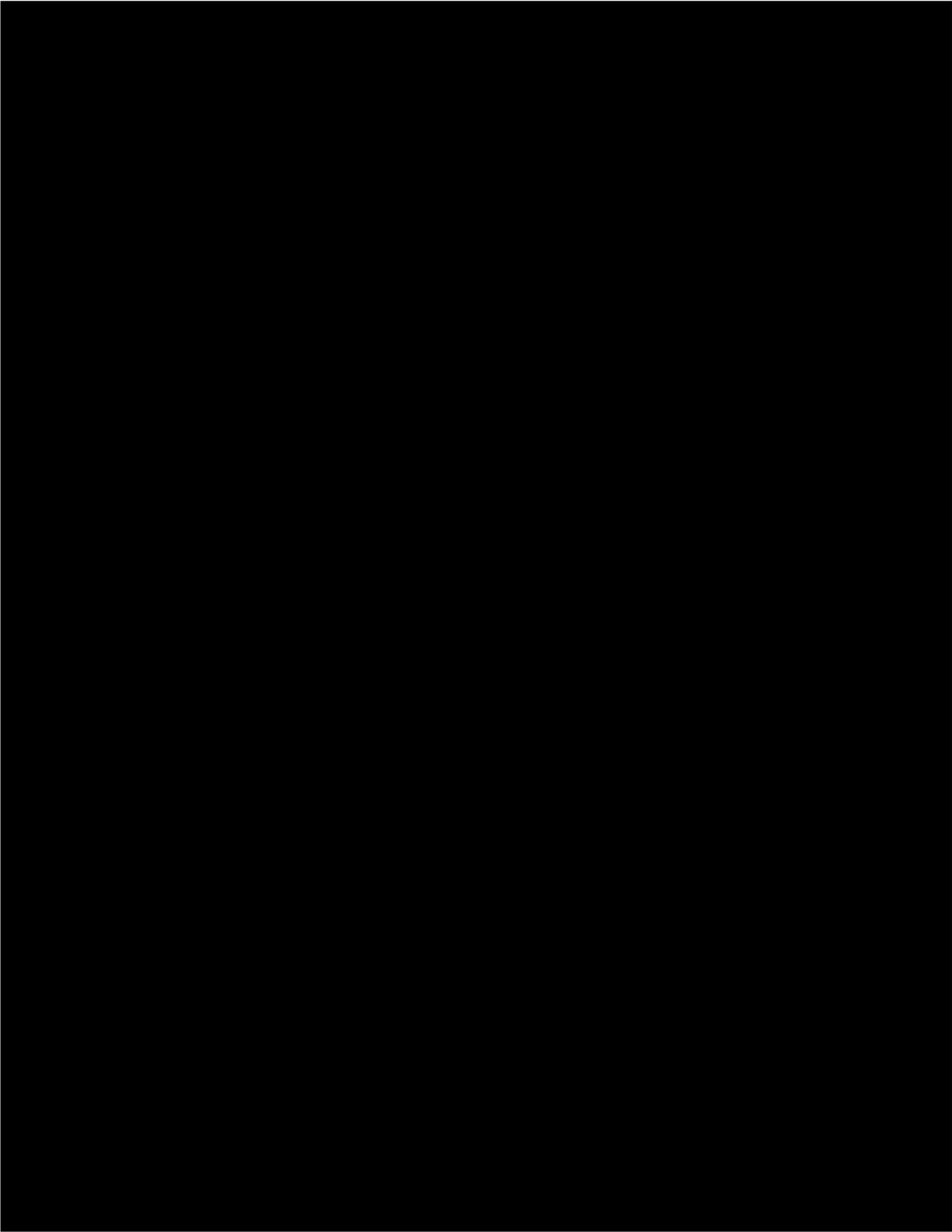
*Dana Hayden*

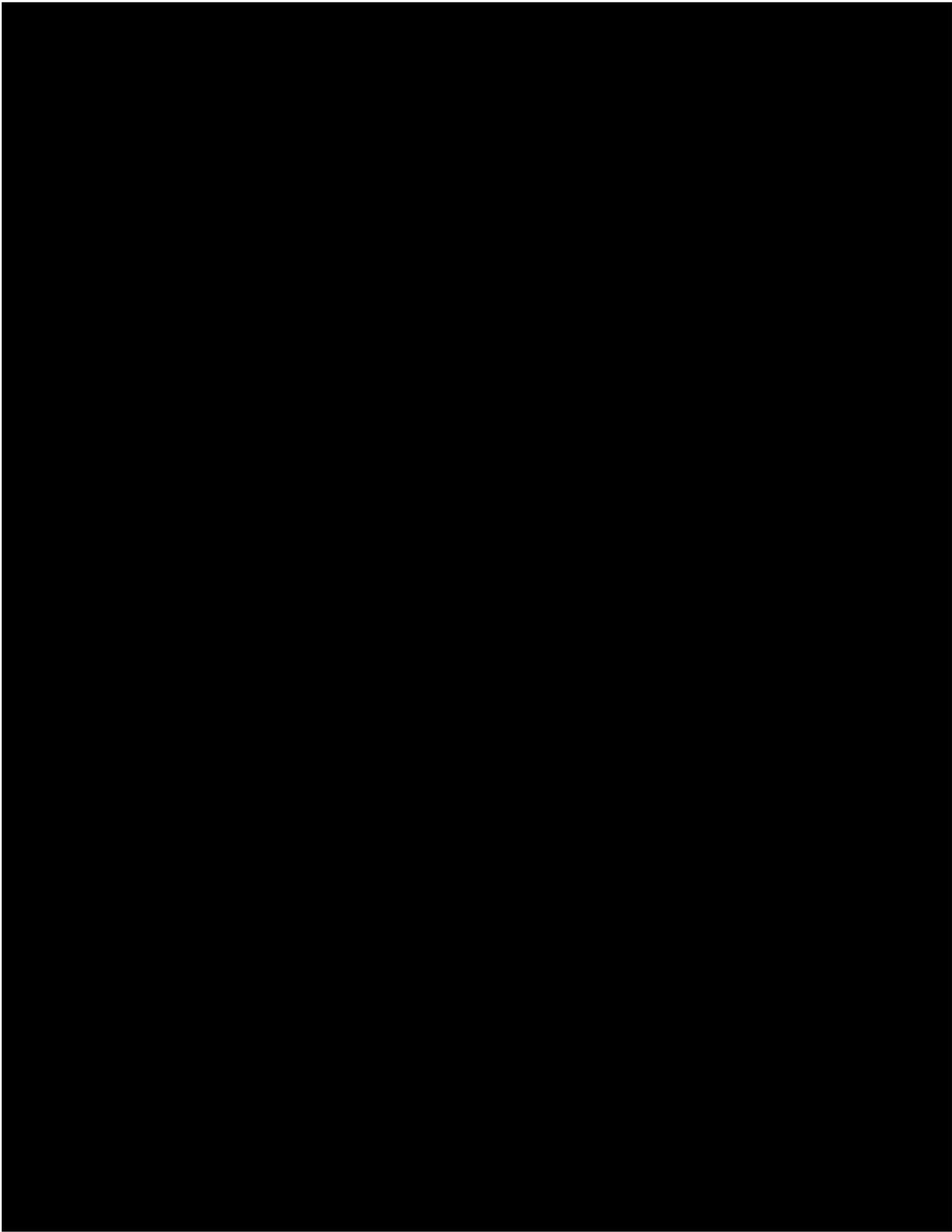
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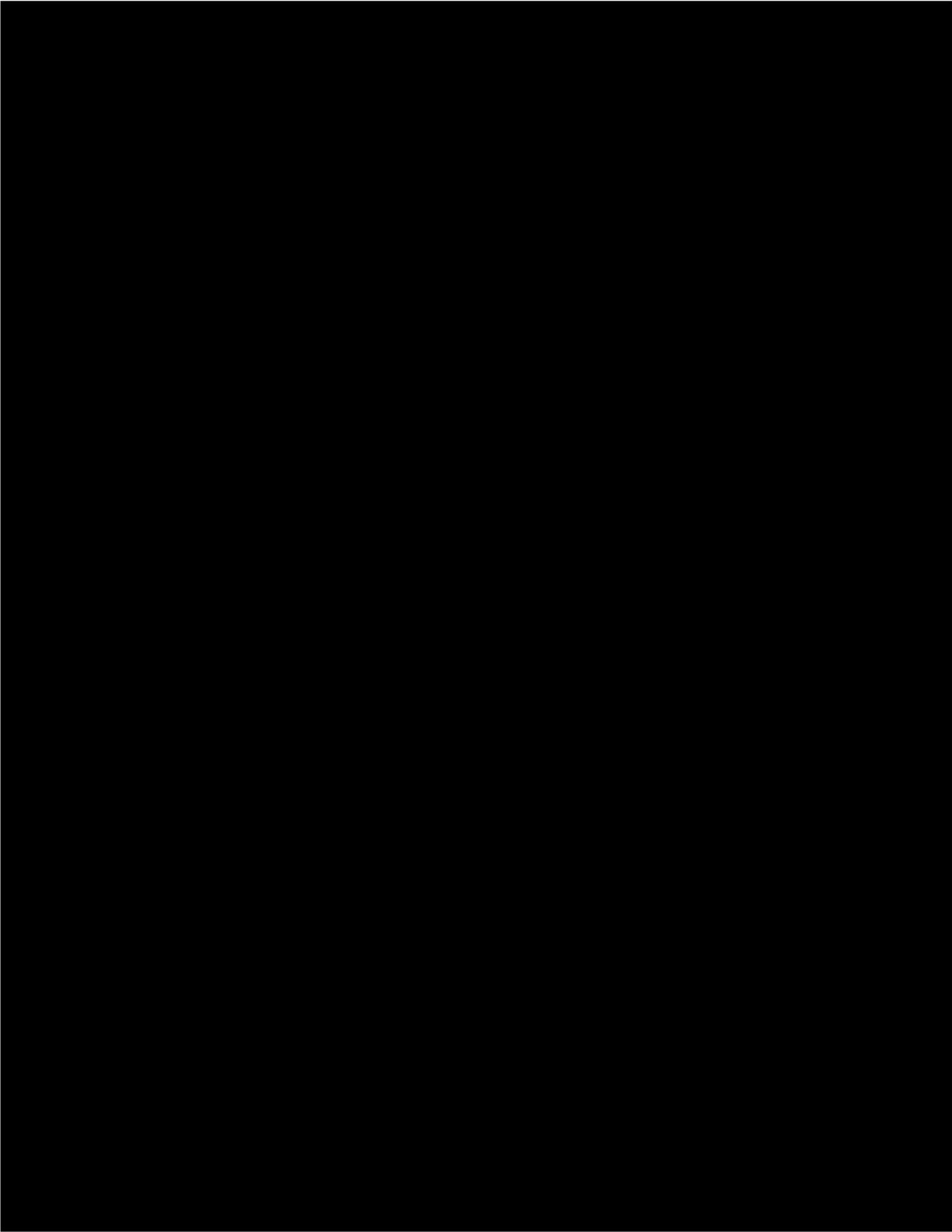


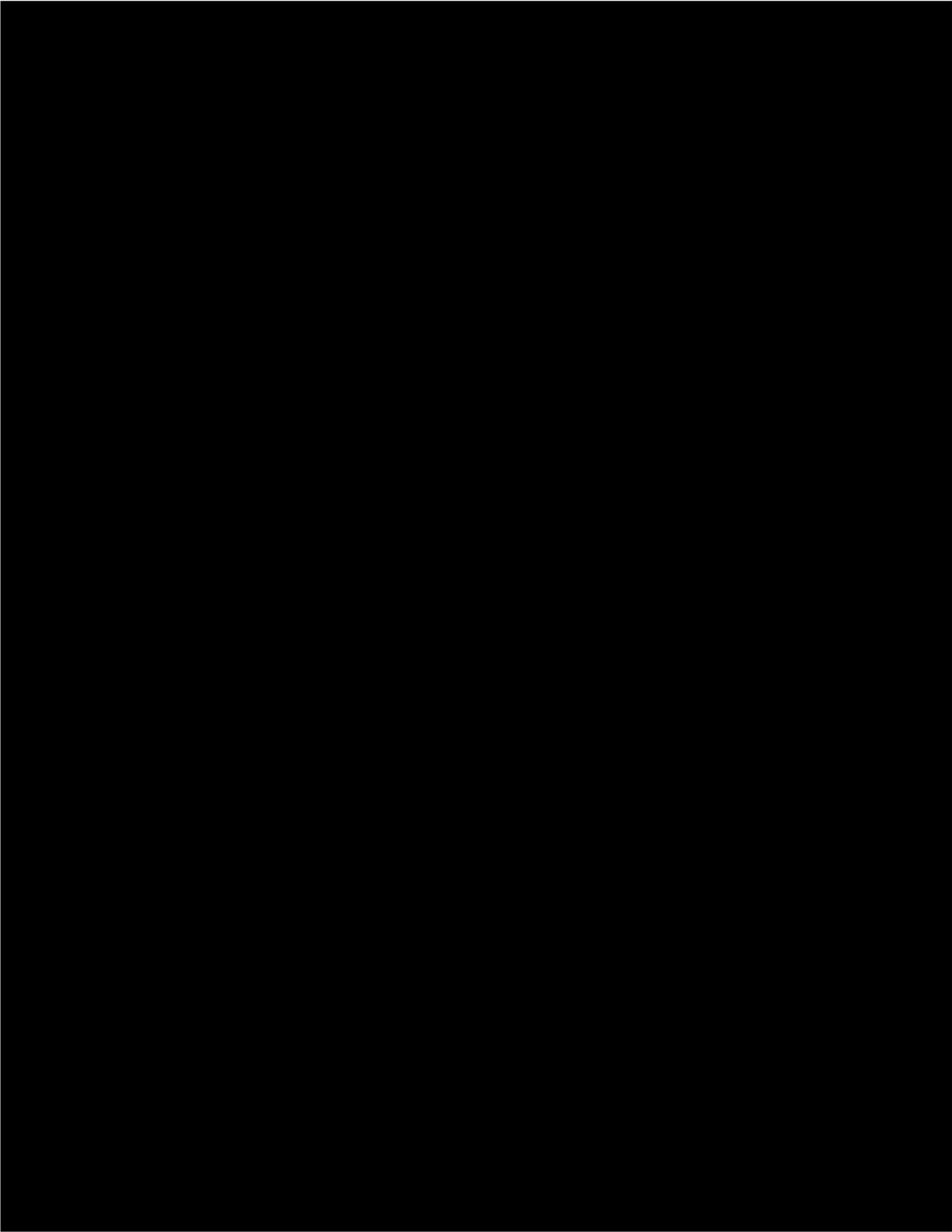


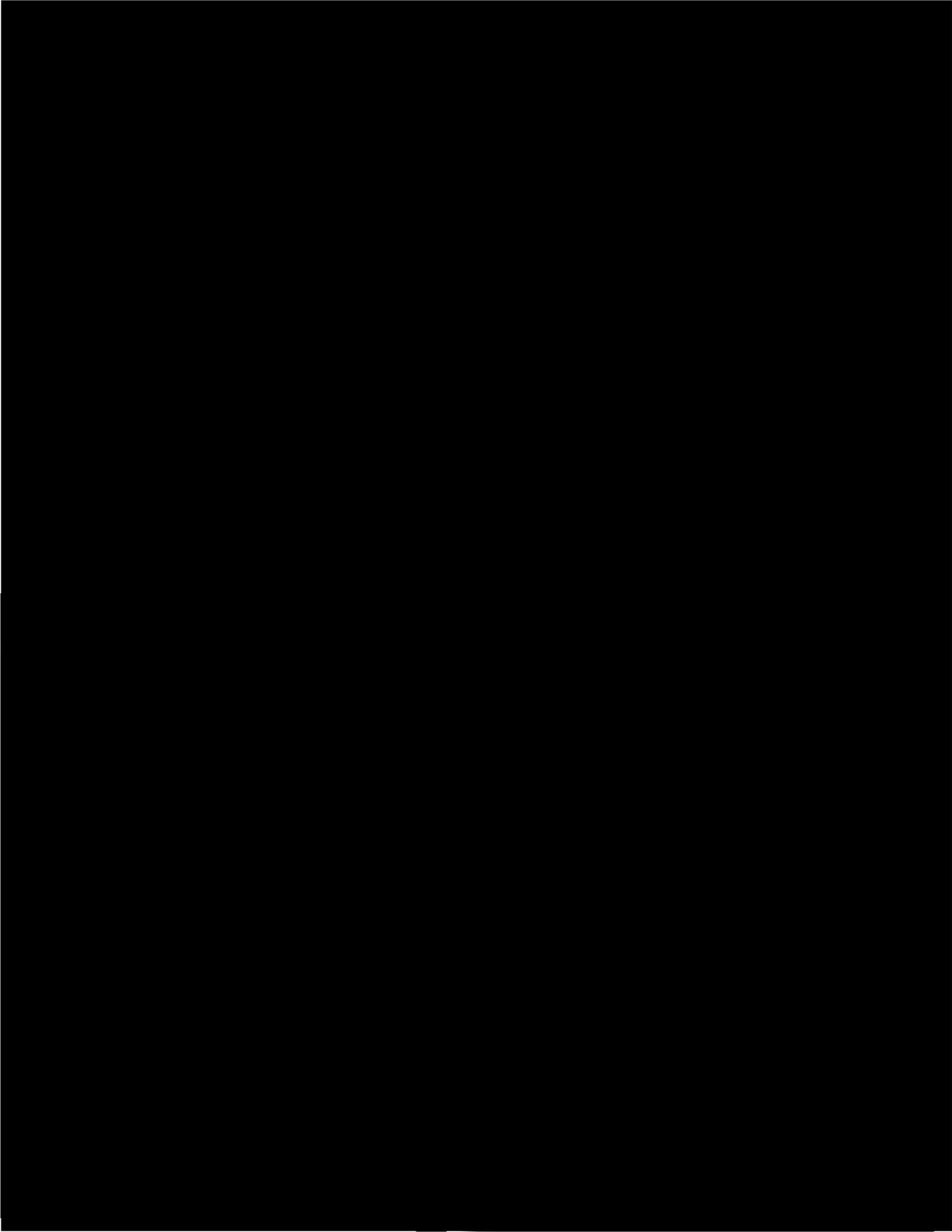












ARKANSAS STATE CLAIMS COMMISSION

|                                  |   |           |
|----------------------------------|---|-----------|
| HALEY HUDSON, As Special         | ) |           |
| Administratrix of the Estate of  | ) |           |
| JACQUELINE LYNN ASHCRAFT,        | ) |           |
| Deceased, and as Permanent Legal | ) |           |
| Guardian of [REDACTED],          | ) |           |
| A Minor,                         | ) | CC NUMBER |
|                                  | ) | 230641    |
| CLAIMANT,                        | ) |           |
|                                  | ) |           |
| VS.                              | ) |           |
|                                  | ) |           |
| ARKANSAS DEPARTMENT OF HUMAN     | ) |           |
| SERVICES,                        | ) |           |

RESPONDENT.

-----

ORAL AND VIDEOTAPED DEPOSITION OF

HOLLY NEWMAN

July 31, 2023

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ORAL AND VIDEOTAPED DEPOSITION OF HOLLY NEWMAN,  
produced as a witness at the instance of the CLAIMANT,  
and duly sworn, was taken in the above-styled and  
numbered cause on the 31st day of July, 2023, from  
9:58 a.m. to 12:07 p.m., before Tammie L. Foreman, CCR  
in and for the State of Arkansas, RPR, CRR, reported  
by machine shorthand via audio-videoconference,  
pursuant to the Arkansas Rules of Civil Procedure.

**EXHIBIT**  
**9**

Page 2

1 APPEARANCES  
 2 FOR THE CLAIMANT:  
 3 JIM JACKSON  
 4 Jackson Law Firm  
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 7 501-823-3610  
 8 jim@jimjacksonatty.com  
 9  
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 11 BRENT GASPER  
 12 Arkansas Department of Human Services  
 13 Post Office Box 1437  
 14 Little Rock, Arkansas 72203-1437  
 15 501-320-8950  
 16 brent.gasper@dhs.arkansas.gov  
 17  
 18 ALSO PRESENT:  
 19 Richard Hayden, Videographer  
 20  
 21  
 22  
 23  
 24  
 25

Page 3

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 10 PAGE:  
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 12 By Mr. Jackson  
 13 Examination 36  
 14 By Mr. Gasper  
 15 Further Examination 90  
 16 By Mr. Jackson  
 17 Further Examination 93  
 18 By Mr. Gasper  
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 20 NO. DESCRIPTION MARKED  
 21 Exhibit 1 Medical Records for 13  
 22 Jacqueline Ashcraft  
 23 Exhibit 2 30  
 24 Medical Records for Kadey  
 25 Jones

Page 4

1 THE VIDEOGRAPHER: Good morning. I'm  
 2 Richard Hayden. I will be your videographer  
 3 this morning. The date is July 31st, 2023.  
 4 The time is 9:58 a.m.  
 5 This deposition is taking place via  
 6 Zoom. This is case number CC 230641 in the  
 7 matter of Ashcraft versus Arkansas  
 8 Department of Human Services. The deponent  
 9 is Holly Newman. Our court reporter is  
 10 Tammie Foreman. If counsel will introduce  
 11 themselves, the witness will be sworn.  
 12 MR. JACKSON: Jim Jackson representing  
 13 the claimant.  
 14 MR. GASPER: Brent Gasper representing  
 15 the Department of Human Services.  
 16 HOLLY NEWMAN,  
 17 having been first duly sworn, testified as follows:  
 18 EXAMINATION  
 19 BY MR. JACKSON:  
 20 Q. Good morning, Ms. Newman. Would you introduce  
 21 yourself to the members of the Claims Commission?  
 22 A. I'm Holly Newman. I was a paramedic and  
 23 actually taking care of Ms. Ashcraft during her wreck.  
 24 Q. And Ms. Newman, if I call you Holly during the  
 25 deposition, will that be okay?

Page 5

1 A. Yes, sir.  
 2 Q. Okay. And what is your date of birth?  
 3 A. [REDACTED]  
 4 Q. And what is your current address?  
 5 A. I currently reside at [REDACTED]  
 6 [REDACTED]  
 7 Q. And what is your vocation, your profession?  
 8 A. Paramedic.  
 9 Q. Explain to us how one becomes a licensed  
 10 paramedic and what those steps are.  
 11 A. Initially, you become an EMT, which is  
 12 approximately a six-month course depending on what  
 13 time the school starts. And then you test for  
 14 National Registry.  
 15 Once you become an EMT, depending on the  
 16 program that you go to, you can go straight through or  
 17 you have to wait eight to nine years, which is set by  
 18 the program itself. I happen just to wait three years  
 19 due to family and my kids and the ages that they were  
 20 when I became an EMT.  
 21 So during paramedic school, the program  
 22 that I went to, we were allotted to -- we had to do  
 23 300 hours of clinical, which is all hospital-based.  
 24 And then we did 300 hours on the ambulance, which was  
 25 from August to December. We graduated in December and

Page 6

1 then we kept our National Registry.  
 2 Q. And that's a National Registry to become a  
 3 paramedic?  
 4 A. Yes, sir. The NREMT, which is the National  
 5 Registry Emergency Medical Technician, the program  
 6 itself that every paramedic has to go to. Like, it's  
 7 one nationally-set test that we all have to pass.  
 8 Q. And what year did you pass that test?  
 9 A. 2016.  
 10 Q. And where were you living and working in 2016  
 11 when you passed the test?  
 12 A. At Medtech in Conway County.  
 13 Q. And what does -- does that mean that you are  
 14 able to do what is called Advanced Life Support work  
 15 for an ambulance company?  
 16 A. Yes, sir.  
 17 Q. And how many ambulance runs do you think you've  
 18 made since you got into the field, either as a EMT or  
 19 as a paramedic?  
 20 A. At the end of next month, I'll be 10 years in.  
 21 So I couldn't even a lot begin the amount of numbers.  
 22 I can tell you all of last year here in New Orleans, I  
 23 worked 2,265 hours alone just that year.  
 24 Q. That obviously is a large number.  
 25 A. Yes.

Page 7

1 Q. So Holly, I want to take you to the date of June  
 2 11th, 2021, which is the date of the accident that  
 3 this claim is regarding. Where were you stationed  
 4 physically when you -- when your ambulance received  
 5 the call that you needed to be dispatched?  
 6 A. I believe we were at our station in Paris.  
 7 Q. Okay. And who was your employer on that date?  
 8 A. Logan County EMS.  
 9 Q. Okay. And you were employed as a paramedic on  
 10 that date?  
 11 A. Yes, sir.  
 12 Q. Okay. And who was with you?  
 13 A. Zach Marry.  
 14 Q. Okay. And tell us, when you get a call -- I  
 15 know you're not going to remember everything. But  
 16 just typically, when you get a call, you're at the  
 17 station, what do you -- what do you do and how do you  
 18 respond?  
 19 A. Can you clarify a little more? Like, what you  
 20 mean, like --  
 21 Q. Do you turn on your lights? Do you -- what --  
 22 what -- what information are you trying to get from  
 23 dispatch and how do you know where to go, those type  
 24 of things.  
 25 A. Okay. So once we're in the truck?

Page 8

1 Q. Yes.  
 2 A. Okay. So it is a legal obligation that we run  
 3 lights and sirens together once we go on a 911 call.  
 4 During the call, dispatch will, like, give us an  
 5 update on how many vehicles or, for this particular  
 6 instance, how many patients there were, and this and  
 7 that.  
 8 Zach Marry is also s a paramedic, so we  
 9 were running a double paramedic truck. I don't -- I  
 10 didn't actually recall the events of the dispatch. I  
 11 just knew we were going to a vehicle accident. And go  
 12 ahead.  
 13 Q. And who was the driver to the accident, if you  
 14 recall?  
 15 A. I believe I was driving.  
 16 Q. Okay.  
 17 A. I'm pretty sure I was driving because I remember  
 18 pulling up.  
 19 Q. Go ahead. I didn't mean to cut you off. You  
 20 remember driving, and I think you said pulled in or  
 21 pulled up?  
 22 A. Yes, sir. Because I remember Zach being in the  
 23 passenger's side and initially seeing the car, the DHS  
 24 car.  
 25 Q. Okay. And you're coming from Paris towards

Page 9

1 Subiaco, which would be coming from the west traveling  
 2 east on Highway 22; is that correct?  
 3 A. Sure. I'm not good with directions. I know I  
 4 was headed to Subiaco area. Whether that's west or  
 5 east...  
 6 Q. And where did you park your ambulance?  
 7 A. If I remember correctly, we pulled up slightly  
 8 passed the DHS car because as Zach was looking at it,  
 9 he went to her. And then I looked up and seen  
 10 Ms. Ashcraft and the two kids above us. So we were  
 11 parked in between them two still facing towards  
 12 Subiaco.  
 13 Q. And then tell me -- tell us what you did when  
 14 you arrived on the scene and you get out. Walk us  
 15 through what -- your interaction with Ms. Ashcraft and  
 16 her children.  
 17 A. So I walked up to Ms. Ashcraft and her children  
 18 once Zach went to the other patient. I noticed that  
 19 the two children were sitting on the ground and  
 20 Ms. Ashcraft was standing up. She was smoking a  
 21 cigarette at that time.  
 22 So initially, as I do every parent, I look  
 23 at her, I make sure she's okay because all of them are  
 24 breathing. So neither one of them needed my attention  
 25 more than the other at that time.

Page 10

1           So I talked to Ms. Ashcraft and said, hey,  
2 you know, can I check out your children, get  
3 permission from her because they are minors. She said  
4 yes, that's fine. So I turn my attention to the  
5 children.  
6           One was completely, utterly fine. She was  
7 talking and everything, answering all questions. And  
8 the other one had some slight repetitive questioning,  
9 which showed signs of possible concussion. So I  
10 talked to Ms. Ashcraft and her both back and forth.  
11           Initially, she didn't want the children to  
12 go to the hospital, despite the efforts that I very  
13 much wanted them to. In our line of work, we can't  
14 physically take a child from a parent unless it's a  
15 true life threat. At that time, a concussion, it  
16 could be borderline, but it was not -- she was not  
17 considered a life threat because she had her own  
18 airway. She was able to talk. She was not showing  
19 signs of lack of oxygen. You know, she wasn't  
20 obviously bleeding everywhere. That would have turned  
21 into something else.  
22 Q. Did you -- were you able to physically examine  
23 her head and her skull to see if she had any  
24 contusions or abrasions?  
25 A. And she had none that I seen.

Page 11

1 Q. And if I represent to you that that child's name  
2 is ██████████, would that be consistent with your  
3 recollection?  
4 A. I'm pretty sure, and I think her sister was  
5 named Haley?  
6 Q. ██████████  
7 A. ██████████ Okay.  
8 Q. And ██████████ was the sister -- I'll represent to  
9 you ██████████ was the sister that did not have any  
10 issues. And so what -- what did you do next -- what  
11 did you find on -- when you did the physical  
12 examination of ██████████  
13 A. To my recollection, I didn't find anything.  
14 There was no what we call depressed skull fracture,  
15 which would be, like, an indentation in the back of her  
16 head. There was no tenderness, nothing. She just had  
17 the repetitive questioning. As we sat there with her,  
18 she started regaining her memory more and more as  
19 well.  
20 Q. And that's a good sign, correct?  
21 A. Yes. That's a very good sign.  
22 Q. And then what did you turn your -- who did you  
23 turn your attention to next?  
24 A. Ms. Ashcraft. She told us that they were  
25 actually trying to go to the house, that they

Page 12

1 happened -- that happened to be across the road. And  
2 it was a very hot day. And so between the  
3 conversation and her not -- adamantly not wanting the  
4 kids to go to the hospital, she signed a refusal form  
5 for them both. If I remember correctly, there was one  
6 done on ██████████ There should also be one done on Haley  
7 as well.  
8           So she told me that she wanted to go  
9 across the road. So at that time, Zach didn't need my  
10 help with the other patient. He had all of that under  
11 control. So since they weren't going to go with us, I  
12 walked them across the road and into that house.  
13           She walked just fine. Ms. Ashcraft, all  
14 of them had a steady gait. She sat herself on the  
15 couch along with the kids. And then the lady in  
16 there, I distinctly told the lady, I said, "If  
17 anything changes, come and get me" because at this  
18 point, nobody, to my recollection, had even checked on  
19 the -- the 18-wheeler.  
20 Q. The tractor trailer driver?  
21 A. Yes. So then that was in the back of my mind  
22 was, like, well, at least somebody needs to go lay  
23 eyes on him. And so that's -- after I took them to  
24 the house, that's where I went.  
25           (Exhibit 1 marked for identification.)

Page 13

1 Q. Okay. And then I notice on what we've marked as  
2 Exhibit 1 to your deposition, there is an initial  
3 assessment for Jacqueline Ashcraft. And I assume  
4 that's something that you -- or is that something you  
5 create for every patient that you interact with?  
6 A. Yes.  
7           MR. GASPER: Jim, real quick, I had a  
8 pause on my video. Are you guys froze?  
9 I've got an unstable -- can you maybe go  
10 back and repeat the question that you asked  
11 15 seconds ago?  
12           MR. JACKSON: Is it the question where I  
13 asked about the initial assessment?  
14           MR. GASPER: Maybe so. Yeah. I'm in my  
15 office. It's just my connection is bouncing  
16 in and out. So...  
17           MR. JACKSON: Tammie, can you -- do you  
18 want to read it? Can you read it to us to?  
19           THE COURT REPORTER: I can find it very  
20 quickly. The question at 10:09 was, "And  
21 then I notice on what we've marked as  
22 Exhibit 1 to your deposition, there is an  
23 initial assessment for Jacqueline Ashcraft.  
24 And I assume that's something that you -- or  
25 is that something you create for every

Page 14

1 patient that you interact with?"

2 MR. GASPER: In regards to the refusal,

3 again, you're bouncing in and out, so

4 refusal form, Jim?

5 MR. JACKSON: I can't hear you.

6 MR. GASPER: Hold on. My connection

7 is -- again, it is intermittent. If you

8 were asking her about a document, was that

9 the refusal form?

10 MR. JACKSON: No. It's Exhibit 1 to

11 her -- that we'll be attaching as Exhibit 1

12 to her deposition.

13 MR. GASPER: Oh, that's the medical

14 records here?

15 MR. JACKSON: Yes.

16 MR. GASPER: Okay. I didn't know if you

17 were referring to a specific document within

18 that or the entire thing. Okay. I'll do

19 the best I can to follow along. Go ahead.

20 Q. (By Mr. Jackson:) And Ms. Newman, are you able

21 to see, on your Exhibit 1, which is the

22 Jacqueline Ashcraft record from Logan County EMS what

23 your initial assessment states about her mental --

24 about Ms. Ashcraft's mental status?

25 A. Is that something you can put on the screen? We

Page 15

1 haven't been in our house all weekend. Our AC went

2 out. So I don't have those papers. I'm sorry.

3 Q. Oh, my gosh.

4 A. It's been a weekend, I'll just say that.

5 MR. JACKSON: Richard, it will be page 1

6 of the Exhibit 1. And when I say "page 1,"

7 the first page is that -- yes. That is page

8 1 of 9.

9 And Richard, can you enlarge the bottom

10 third, please? Richard, can you enlarge the

11 bottom third of that page?

12 THE VIDEOGRAPHER: Just a second. I'm

13 working on it.

14 MR. JACKSON: Thank you.

15 Q. (By Mr. Jackson:) And Ms. Newman, can you see

16 under the "mental status" the initial assessment?

17 A. I see the initial -- okay. This L, is that what

18 you are talking about?

19 Q. Right above "skin" is the category of mental

20 status.

21 A. Event oriented, person oriented, place oriented,

22 time oriented.

23 Q. And is that something that you, as a paramedic,

24 obtain from every initial encounter you have with a

25 patient?

Page 16

1 A. Yes, sir.

2 Q. And do you do that multiple times when you

3 interact with a patient?

4 A. Yes, sir.

5 Q. And how many times are you getting that event

6 oriented, person oriented, place oriented, time

7 oriented, what's your normal protocol that you do as a

8 paramedic?

9 A. We assess all the time mental status. That just

10 means she's alert to where she's at, who she is, what

11 time it is, and certain events that are happening

12 either past or current. We do it all the time.

13 And if there's any change. It's just like

14 carrying on a conversation with somebody, you can tell

15 when they're starting to not be normal or not normal

16 as they were when you initially got to them. So --

17 Q. And we'll look and we'll see that in the ongoing

18 assessment where those changes are noted; is that

19 correct?

20 A. Yes, sir.

21 Q. And it looks like your records show that -- and

22 then on your ALS assessment immediately above, tell us

23 what the time is and what your initial assessment, and

24 tell us what -- first, tell us what ALS means.

25 A. It's Advanced Life Support.

Page 17

1 Q. And that's something you're trained to do and

2 that's your job as a paramedic, correct?

3 A. Yes, sir.

4 Q. And so my question is, tell us what the time --

5 at the time and what your description is on that flow

6 chart prepared by you for Jacqueline Ashcraft.

7 A. That 1304 ALS assessment, patient is alert and

8 oriented times four, which means down at the bottom,

9 the initial assessment, oriented to person, place,

10 time, event. She was walking around the car. She --

11 patient's response unchanged, successful;

12 complication, none.

13 Q. And then I want to go on again, following on

14 your initial assessment on the -- there at the bottom

15 of the skin and what was the significance of the

16 temperature and her skin?

17 A. It was hot outside. If I remember correctly, I

18 don't think Ms. Ashcraft was every bit of 100 pounds.

19 It was hot outside. Diaphoresis means sweating.

20 MR. JACKSON: And then I want to go,

21 Richard, to the next page, which will be

22 page 2 of 9. Where your initial assessment

23 continues.

24 Q. Are you able to see that, Ms. Newman, or do you

25 need for us to enlarge it?

Page 18

1 A. Just a tad. I can see it a little bit. Just  
 2 maybe one or two clicks.  
 3 MR. JACKSON: Richard, can you enlarge  
 4 it a little bit, that first bit? Yes.  
 5 A. That's good.  
 6 Q. All right. Under the category HEENT, tell us --  
 7 explain to us what that means.  
 8 A. Head, eyes, ears, nose, and throat.  
 9 Q. Thank you. And explain to us what you observed  
 10 about her head and face.  
 11 A. There was no abnormalities. Her pupils were  
 12 equal. The neck --  
 13 Q. Let me stop you right there. Her pupils being  
 14 equal, what does that mean to you as a paramedic?  
 15 A. That means that there's nothing going on in her  
 16 head at that time that I can tell. Again, I don't  
 17 have x-ray. I don't have CT. But on the physical  
 18 outside findings, that's something we look for. If  
 19 they're unequal, that means something is going on.  
 20 Q. And I notice you have a measurement next to the  
 21 eyes of the size of the pupils.  
 22 A. Yes.  
 23 Q. And what is that measurement?  
 24 A. That's two millimeters. That means they're on  
 25 the smaller side.

Page 19

1 Q. And that's what you would expect for somebody  
 2 who is out in the sun?  
 3 A. Yes, sir.  
 4 Q. And that's normal or -- of someone -- that's  
 5 what you would expect for them to have or what you  
 6 would hope to have is the same size pupils and for  
 7 them to be small or constricted; is that right?  
 8 A. Well, I wouldn't say constricted. Constricted  
 9 are really a lot smaller, kind of almost pinpoint.  
 10 That would suggest other things. But you do want them  
 11 on the smaller side out in the sun in that they're  
 12 not --  
 13 Q. Oh, sorry. Go ahead.  
 14 A. No. Go ahead.  
 15 Q. Is two to four millimeters normal for a patient?  
 16 A. Yes, sir.  
 17 Q. Nothing there gave you any pause for concern  
 18 when you observed her eyes?  
 19 A. Not at that time, no.  
 20 Q. During that initial assessment?  
 21 A. Correct.  
 22 Q. And then did you -- the chest and abdomen, were  
 23 those things you checked for physically during that  
 24 initial assessment, or was that just --  
 25 A. Yes.

Page 20

1 Q. Okay. Tell us what you would have done to check  
 2 for her chest and abdomen there.  
 3 A. I would have done this to make sure there was no  
 4 tenderness and slightly palpate her belly, which,  
 5 again, Ms. Ashcraft was very thin. So if she had any  
 6 kind of distention, you would have been able to see it  
 7 without even touching.  
 8 Q. And when you say "I do this," just so if we look  
 9 at it later on the record, it looks like you're  
 10 pressing across your chest; is that -- is that  
 11 correct?  
 12 A. No. I'm sorry. It's palpating, like, you  
 13 touch.  
 14 Q. Okay.  
 15 A. Kind of like you would touch somebody's skin.  
 16 Like, you touch here.  
 17 Q. Okay. And that's what I meant to say was,  
 18 you're pressing against the skin of her upper chest to  
 19 see if there's anything going on in that area; is that  
 20 right?  
 21 A. Yes.  
 22 Q. And that was all normal?  
 23 A. Yes.  
 24 Q. What is the -- did you take a pulse of  
 25 Ms. Ashcraft?

Page 21

1 A. Physically on her wrist, yes.  
 2 Q. Okay. And what is -- explain to us what your  
 3 notes say about the pulse and what that means.  
 4 A. We're still under the initial, right?  
 5 Q. Yes. Yes. We're still at the initial on all  
 6 these questions.  
 7 A. So it says plus two, plus, which is normal. So  
 8 depending on your type of, like, the blood pressure or  
 9 anything that's going on, you could feel a radial  
 10 pulse. And if you have significant bleeding or  
 11 something like that going on internally, it sometimes  
 12 will be lower, which means your blood pressure is  
 13 lowering. It becomes weaker. So with hers being two  
 14 plus in a normal status, that she had a normal pulse.  
 15 Q. Explain to us the capillary refill section and  
 16 what that means.  
 17 A. So it is less than two seconds, which is good.  
 18 Again, if you're internally bleeding, you're going to  
 19 start to shunt, which means everything is coming away  
 20 from your peripheral, which is your hands, your feet,  
 21 your toes, and it's going to push everything to the  
 22 core, in trying to keep basically the lungs and the  
 23 heart and the brain alive as long as it can. So the  
 24 shorter amount of seconds for her capillary means  
 25 good. If it was five or six, then that would mean

Page 22

1 it's delayed.  
 2 Q. And these are all items of this initial  
 3 assessment that you made around that 1:04 time period,  
 4 I assume, before you walked her over into the --  
 5 before she walked over across the street into the  
 6 house?  
 7 A. I'm sorry. It froze at, like, the very first of  
 8 your sentence.  
 9 Q. Sure. These were all the diagnostic assessments  
 10 that you made initially and everything came back  
 11 normal; is that correct?  
 12 A. Prior to walking her over, yes.  
 13 Q. Yes. All right. And then you were explaining  
 14 to us that you -- when Ms. Ashcraft is seated in the  
 15 house, do you do anything like does she get any ice,  
 16 drink some water? Do you recall anything like that?  
 17 A. I want to say there may have been put a wet  
 18 towel back on her neck. But other than that, I don't  
 19 recall her drinking any water.  
 20 Q. And then what -- tell us, you were starting to  
 21 tell us about you leave because there's a third driver  
 22 in this accident?  
 23 A. Yes, sir.  
 24 Q. And go back and tell us what you were doing to  
 25 assist that driver?

Page 23

1 A. So after I walked Ms. Ashcraft to the house,  
 2 again, I turned around, walked out. And then I walked  
 3 to the right and walked down the road a ways.  
 4 He was standing outside his 18-wheeler.  
 5 And then I talked to him, and he presented to be fine  
 6 and didn't want to go to the hospital. So after I got  
 7 the information from him, I turned around and I walked  
 8 back to my partner.  
 9 Q. And where was he, your partner, at that time?  
 10 A. In the ambulance.  
 11 Q. Okay.  
 12 A. With the other victim.  
 13 Q. Did he have the DHS driver, was she on a cot in  
 14 the ambulance at that time?  
 15 A. I believe so, yes.  
 16 Q. Okay. And then what happens next?  
 17 A. So I climbed in the back of the ambulance to  
 18 make sure he needed -- if he needed any assistance.  
 19 And about that time, a state trooper knocked on the  
 20 door, knocked on the back of the ambulance and said,  
 21 hey, y'all are needed inside the house.  
 22 And I looked at Zach and I said, "Well,  
 23 I'll go," since I had initial contact and he was with  
 24 his patient. So I walked back in the house to go  
 25 reassess Ms. Ashcraft.

Page 24

1 Q. And what did you find when you walked back into  
 2 the house to reassess Ms. Ashcraft?  
 3 A. I found that she was laying her head on -- I  
 4 cannot recall the person who she was laying or sitting  
 5 next to. But she was not responding the way she was  
 6 initially when I had left her. She was still able to  
 7 respond to me, but it was not like she was.  
 8 Q. And what -- so what did -- as a paramedic, what  
 9 do you do?  
 10 A. Well, initially, I thought she may have been  
 11 dehydrated because it wasn't necessarily the coldest  
 12 in that house either. So I started a IV on her,  
 13 called for another unit.  
 14 And then that's when I was informed that  
 15 we didn't have another unit. My partner come back in  
 16 there and said, "Hey, we're it. We're going to have  
 17 to take her as well." So there's nobody else.  
 18 Everybody else was on calls. And I said okay. So my  
 19 partner, he just picked her up and started carrying  
 20 her.  
 21 Q. And where does Paramedic Marry take her to?  
 22 A. To the ambulance, the back of the ambulance, and  
 23 laid her on the bench seat.  
 24 Q. And then what happens next on the transport?  
 25 A. I get in the driver's seat and we drive to the

Page 25

1 hospital. On the way there, Paris told us that their  
 2 CT scanner was down, so our closest to divert to  
 3 unfortunately was Booneville, which was clear across  
 4 to the other side of the county.  
 5 Q. And what is -- are you -- what is Ms. Ashcraft's  
 6 condition while you're in transport? Are you  
 7 communicating with Medic Marry, or do you know?  
 8 A. We are a little bit back and forth. We're  
 9 talking about the possibilities and what was going on.  
 10 He had restarted an IV because mine got pulled out.  
 11 So other than that, I don't know what kind of  
 12 treatment. I'd have to look back at the report to see  
 13 if he did any kind of treatment.  
 14 Q. One question I want to ask you about is -- that  
 15 I forgot to ask you about earlier is did Ms. Ashcraft  
 16 tell you what -- anything about the accident itself?  
 17 Did she give you a history of what occurred?  
 18 A. From what I understand is my understanding is  
 19 that she was sitting waiting to turn into the house  
 20 when she got rear-ended.  
 21 Q. And where would you have gotten that information  
 22 from?  
 23 A. Her.  
 24 Q. Okay. And that's information she would have  
 25 told you there at the scene during that initial

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1 assessment?  
 2 A. Yes. And then her trunk being dented in kind of  
 3 confirmed it.  
 4 Q. I want to ask you about page -- what is page 3  
 5 of 9 on Exhibit Number 1. And at the bottom, it's got  
 6 a section called specialty patient motor vehicle  
 7 collision. And I was going to ask Richard if he can  
 8 enlarge that.  
 9 THE VIDEOGRAPHER: What page is that?  
 10 MR. JACKSON: It's going to be page 4.  
 11 Yes. That page there. And at the bottom  
 12 where it's black, yes. If you could  
 13 highlight and enlarge all of that.  
 14 Q. (By Mr. Jackson:) Is this a normal section you  
 15 fill out every time you respond to a motor vehicle  
 16 collision with a patient?  
 17 A. For a motor vehicle, yes.  
 18 Q. And what is the collision indicators? Can you  
 19 read that and tell us what those symbols mean and what  
 20 the significance of the collision indicators are for a  
 21 licensed paramedic?  
 22 A. So collision indicators and the motor, that is a  
 23 trauma related. That's not necessarily set by  
 24 paramedics itself. That is the Arkansas Trauma Comm.  
 25 They set X amount of standards for different levels of

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1 trauma. So this particular one shows an intrusion  
 2 greater than 12 inches, crash vehicle telemetry data  
 3 consistent with high risk of injury in EMS provider  
 4 judgment.  
 5 Q. And that's information you get from your  
 6 observation of the vehicles that are involved in this  
 7 collision, correct?  
 8 A. Correct.  
 9 Q. Okay. And then the passenger seating on seat  
 10 row one meaning she's sitting in the front seat?  
 11 A. As she's the driver, yes.  
 12 Q. And she's the driver. Airbag deployment, does  
 13 it tell us what you found on the airbags?  
 14 A. Front deployment.  
 15 Q. Okay. And then safety devices, what did you  
 16 find on the safety devices?  
 17 A. She had shoulder and lap belt, which means the  
 18 normal seatbelt.  
 19 Q. And then the initial vital signs -- well, tell  
 20 us below what the specialty patient trauma criteria,  
 21 what is that?  
 22 A. This is some of the stuff that would classify  
 23 those different levels of trauma that I was explaining  
 24 earlier. Her initial GCS would not have been below 13  
 25 either. Her second round, when I remade contact, then

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1 her GCS would be below that. The anatomy of the  
 2 injury says none. Mechanism injury consistent with  
 3 greater than 12 inches, which would have been the  
 4 trunk part of hers. And then EMS provider judgment.  
 5 Q. And what was Ms. Ashcraft's condition when you  
 6 got to the emergency room at Booneville?  
 7 A. When I opened up the back doors, she was still  
 8 responding to that command. I'm pretty sure she still  
 9 had motor function. I don't think she was talking  
 10 clearly, but I did see her nod her head into a  
 11 question we had asked her. So I knew she was still  
 12 responding to him.  
 13 Q. And what did you -- I saw somewhere in the notes  
 14 where it looks like you and Paramedic Marry stayed and  
 15 helped the emergency room with the treatment or while  
 16 she's being assessed?  
 17 A. You're breaking up. I heard me and Mr. Marry  
 18 stayed.  
 19 Q. Let me rephrase that. Did you stay and assist  
 20 the emergency room department with the assessment and  
 21 treatment of Ms. Ms. Ashcraft?  
 22 A. We stayed, but I did not stay in the room with  
 23 the hospital staff.  
 24 Q. Okay. So is it fair to say at that point, when  
 25 you get to the emergency room at Booneville, you, as

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1 part of Logan County EMS, then transfer her care to  
 2 the Booneville -- to the emergency room at Booneville?  
 3 A. Yes.  
 4 Q. Okay. Then do you go back to your vehicle and  
 5 finish out writing out your report for the patient?  
 6 A. Either that or I stay in the lobby to obtain the  
 7 face sheet from the clerical staff.  
 8 Q. And then while you were with -- and in part of  
 9 medical record Exhibit 1, there's a refusal form that  
 10 is on page 11 of Exhibit 1. And that's, I assume --  
 11 or tell me, is that a standard form that you ask  
 12 parents to sign who deny -- who say we don't need to  
 13 be taken to the emergency room?  
 14 A. That is Logan County's official form. And yes,  
 15 Logan County unfortunately does everything by paper,  
 16 or did while I was still there.  
 17 Q. And that is down at the bottom, the printed name  
 18 and signature, that was done by Ms. Ashcraft, correct?  
 19 A. Correct.  
 20 Q. And then where -- and then you also had her do  
 21 one for [REDACTED] as well?  
 22 A. Yes, sir.  
 23 Q. Okay.  
 24 MR. GASPER: Jim, real quick, I'm not  
 25 sure if we got a verbal response to that

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1 question about whether or not Jackie signed  
2 and dated. All I saw was a head nod. Could  
3 you ask that question again?  
4 MR. JACKSON: Sure.  
5 Q. (By Mr. Jackson:) Ms. Newman, did Ms. Ashcraft  
6 herself sign the Logan County EMS patient refusal  
7 form?  
8 A. Yes.  
9 MR. GASPER: Thank you.  
10 Q. (By Mr. Jackson:) And did she also sign one for  
11 her daughter Kadey as her mother?  
12 A. Yes.  
13 (Exhibit 2 marked for identification.)  
14 Q. I want to turn your attention now to [REDACTED]  
15 which is the daughter, and that's going to be Exhibit  
16 Number 2.  
17 MR. JACKSON: Richard, could you pull us  
18 Exhibit 2, please? And turn to the next  
19 page, please.  
20 Q. And you went through on your initial assessment  
21 of [REDACTED] you talked about it earlier. One of  
22 the things you mentioned is that she had, I believe  
23 you called it, repetitive questioning. What is -- do  
24 you remember what her questions were or what they  
25 were?

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1 A. I know she kept asking what happened. She  
2 didn't remember -- I think the last thing she  
3 remembered, I think they had went to McDonald's and  
4 she had a McDonald's cup. She just kept asking what  
5 happened and that she didn't remember anything.  
6 Q. And then as far as looking at her head, I  
7 know -- and the HEENT, it states there was a hematoma  
8 to the back of her head, no deformity noted. Is that,  
9 like, a hematoma I think of as a -- tell us what a  
10 hematoma is.  
11 A. It's swelling. It's a swelling in the head --  
12 on the outside of the head.  
13 Q. And then her eyes, were they normal?  
14 A. Yes. They were three millimeters.  
15 Q. Okay. And then based on what you saw for her  
16 initial assessment, it looks like on the next page, on  
17 page 3 of 8 is your narrative. Have you had a chance  
18 to look at that narrative?  
19 A. No, sir. Can you flip it over, please?  
20 MR. JACKSON: Oh, Richard, the next  
21 page, which would be page 4 of the PDF, or  
22 page 3 of 8 of the records. Yes. At the  
23 top is the narrative.  
24 Q. Take a moment and let you look over that  
25 narrative.

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1 A. Okay.  
2 Q. The -- you've gone over some of this with us.  
3 What's -- but in the narrative of your assessment, it  
4 states that "Mom holds up finger for her to see." And  
5 is that the mother holding up two fingers or three  
6 fingers and saying how many fingers are you seeing?  
7 A. Yes, sir. So with head trauma, that's the  
8 unequal pupils and blurred investigation and vomiting  
9 are signs of progressive head injuries. So I had  
10 mom -- not like right here, but in the peripheral  
11 part, hold up two fingers and she was able to identify  
12 both correctly on each side.  
13 Q. And was Jacqueline Ashcraft able to assist you  
14 in holding up the fingers and doing what you were  
15 asking her to do?  
16 A. Yes, sir.  
17 Q. And so both Jacqueline Ashcraft and [REDACTED]  
18 were able to follow your commands and appeared normal  
19 after this accident; is that correct?  
20 A. After my initial assessment.  
21 Q. After your assessment. Yes. Okay. And then  
22 you were able to consult with Ms. Ashcraft to tell her  
23 what to look for and what to do if [REDACTED] had  
24 experienced any of these issues such as vomiting,  
25 nausea, blurred vision; is that correct?

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1 A. Severe headache. Yes.  
2 Q. Okay. And Ms. Ashcraft seemed to understand and  
3 be able to appreciate and respond to you appropriately?  
4 A. Yes, sir.  
5 Q. Okay. And have you had a chance previously to  
6 look at Exhibit 2? I know you weren't able to bring  
7 it with you because of the air conditioning. But we  
8 mailed or emailed, I think, a copy of this to you.  
9 Have you had a chance to look at Exhibit 2?  
10 A. I looked at it a little bit, but if you could  
11 put it up, I'll relook at it.  
12 Q. It is a nine-page -- or it's an eight-page  
13 document. Does this all appear -- and I want to ask  
14 if it appears to be your records from -- well, let me  
15 just -- I'll let Richard go through slowly all eight  
16 pages.  
17 A. So you're referencing her EMS report from Logan  
18 County? Is that what you are asking me?  
19 Q. Yes. Yes.  
20 A. That is from Logan County.  
21 Q. Okay. All right. All right. So we are going  
22 to attach what's been marked as Exhibits 1 and 2 to  
23 your deposition. I've got one housekeeping -- a  
24 couple of housekeeping questions. Going back on  
25 Jacqueline Ashcraft, there was a mention of one of the

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1 children said that her mother had been nauseous for  
 2 two X, which I assume is two days; do you recall that?  
 3 A. Yes. I want to make sure it was Haley.  
 4 Q. Haley is not there. So it's going to be either  
 5 [REDACTED] or [REDACTED]. And I'll represent to you [REDACTED] is  
 6 the older.  
 7 A. I'm sorry.  
 8 Q. That's okay. It's very confusing. There's a  
 9 lot of women names here. [REDACTED] is the oldest; [REDACTED]  
 10 is the youngest, I believe.  
 11 A. I believe it was [REDACTED] that stated she had been  
 12 vomiting for two days and has had a headache for two  
 13 days.  
 14 Q. Okay. And was that something that you got  
 15 during your initial assessment or during the ongoing  
 16 assessment when you went back and she was having some  
 17 issues.  
 18 A. The initial.  
 19 Q. The initial. Okay. And did Ms. Ashcraft  
 20 comment on that, or do you recall her saying anything  
 21 about being -- having headache or nausea?  
 22 A. I do not recall.  
 23 Q. And what does coup-contrecoup mean to somebody  
 24 that is a paramedic, somebody who responds to motor  
 25 vehicle accidents?

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1 A. That means that the patient's brain -- so our  
 2 brain doesn't touch the skull at all times. It is  
 3 slightly smaller than our skull. So it happens in  
 4 rear-end collisions.  
 5 So when we get hit in the back of the  
 6 head, the brain comes up, hits the front of the skull,  
 7 and then hits the back of the skull and it kind of  
 8 just plays bouncy ball.  
 9 Q. And do you have any criticism of Ms. Ashcraft or  
 10 any of her medical decisions that she made during that  
 11 initial assessment?  
 12 A. What do you mean criticisms?  
 13 Q. In that she was belligerent, refusing to take  
 14 your advice, anything like that?  
 15 A. No. She was very nice, very understanding, very  
 16 "Okay. I will. I understand."  
 17 Q. Did she appear to be a normal mother of two  
 18 teenage daughters who are out going to see somebody on  
 19 a -- on an afternoon?  
 20 A. To me, yes.  
 21 MR. JACKSON: Okay. That's all the  
 22 questions I have. Pass the witness.  
 23 MR. GASPER: Jim, before we get started,  
 24 can maybe we take a five-minute break, just  
 25 so I can use the restroom and kind of

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1 stretch a little bit.  
 2 MR. JACKSON: Sure. Go off the record  
 3 for a moment.  
 4 THE VIDEOGRAPHER: So off the record at  
 5 10:45.  
 6 (Recess from 10:45 a.m. to 10:50 a.m.)  
 7 THE VIDEOGRAPHER: On the record at  
 8 10:50.  
 9 EXAMINATION  
 10 BY MR. GASPER:  
 11 Q. Good morning, Holly.  
 12 A. Good morning.  
 13 Q. My name is Brent Gasper. Again, I represent the  
 14 Department of Human Services. The estate of  
 15 Jacqueline Ashcraft, I guess, has brought against the  
 16 agency alleging that our employee, Jennifer Wilkerson,  
 17 caused a wreck that, in turn, caused a head injury to  
 18 Ms. Ashcraft, which ultimately led to her being  
 19 deceased because of that wreck. You understand that  
 20 your treatments, your medical -- the way you --- the  
 21 treatment you provided is not being called into  
 22 question; you understand that?  
 23 A. Yes, sir.  
 24 Q. We are trying to ascertain exactly what happened  
 25 to her and kind of an understanding, fleshing out what

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1 your notes mean, what the records mean because you  
 2 were there. We weren't there. So I am going to go  
 3 over several topics with you. Some of these things  
 4 Jim has touched on already.  
 5 Let's go back to your work history. You  
 6 said you had been an EMT since -- did you say -- when  
 7 were you first licensed as an EMT?  
 8 A. As an EMT in 2013.  
 9 Q. But before that, what was your vocation?  
 10 A. Before I become an EMT?  
 11 Q. Yes, ma'am.  
 12 A. Before I was an EMT, I was a ER clerk and  
 13 technician at St. Mary's from 2011 to 2013.  
 14 Q. So when you were in school and in training to  
 15 become an EMT, I'm assuming you took classes that were  
 16 geared toward the types of calls you would see out in  
 17 the field; is that correct?  
 18 A. You're really muffled. I'm having a real hard  
 19 time understanding what you're saying.  
 20 Q. Okay. I'll maybe talk louder. Does that help  
 21 at all?  
 22 A. A little bit.  
 23 Q. Okay. I don't know how to fix that. If I talk  
 24 right here, does that help?  
 25 A. That's a lot better.

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1 Q. I'll pull my phone over here. Maybe that's what  
2 it was. Okay. Yes? Much better?  
3 A. A lot clearer. It's not as muffled.  
4 Q. Okay. Okay. Well, let me back up. Whenever  
5 you were training to become an EMT, taking classes and  
6 whatnot, you were -- I'm assuming you were given  
7 training instruction on the types of calls you would  
8 expect to see out in the field, correct? Like motor  
9 vehicle accidents, head injuries, gunshot wounds, that  
10 sort of thing?  
11 A. Yes.  
12 Q. Okay. So when it comes to -- so you know to  
13 expect generally when you arrive at a motor vehicle  
14 accident? You know, is there, like, a protocol that  
15 you -- that you go through when you arrive to a wreck  
16 such as this one?  
17 A. Any -- we have the same protocol. It's a trauma  
18 assessment we go through.  
19 Q. Okay. Okay. And were you ever given any  
20 training specific to head trauma?  
21 A. Define specific.  
22 Q. Well, like, I mean, today, class, we're going to  
23 look at head trauma, head wounds, and how they are  
24 caused and, you know, what to look for, symptoms to  
25 look for and that sort of thing, treatments like

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1 specific to --  
2 A. Yes.  
3 Q. Okay.  
4 A. In the general area.  
5 Q. Yeah. Right. Right. Okay. What about  
6 training in regards to when a person is under the  
7 influence of a controlled substance?  
8 A. Such as narcotics?  
9 Q. Yeah. Like when -- you know, if a person is in  
10 crisis or whatnot and you see them out in the field,  
11 you'd know how to treat them and what to look for,  
12 that sort of thing?  
13 A. Yes.  
14 Q. Okay. And in regards to -- are there standards  
15 that you're aware of or that you go by in regards to  
16 assessments you make to whether a person should be  
17 transported to the hospital or not? I understand they  
18 can refuse to go to the hospital. But is there some  
19 sort of this person displays X, Y, or Z, we need to  
20 advise them to go to the hospital? Are there  
21 standards that -- that you would go by?  
22 A. Well, we always advise everybody to go to the  
23 hospital. But if you're asking me if they present  
24 with, like, altered mental status or alcohol or things  
25 like that, is it a guarantee that they have to go? Is

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1 that what you are asking me, if there's a final where  
2 they have on to or where we --  
3 Q. No. Not a compulsory you have to go but a --  
4 maybe you might have answered my question. You said  
5 that you advise everyone to go to the hospital who you  
6 see when you go out to a call?  
7 A. Yes. Because we're not doctors. We aren't  
8 technically allowed to diagnose in the field. We have  
9 a general idea of what's happened and what is wrong  
10 with them. But that is for a doctor to completely  
11 utterly say, hey, this is what you have.  
12 Q. Okay. So you would have advised Ms. Ashcraft to  
13 go to the hospital?  
14 A. For that wreck, yes.  
15 Q. Just due to the severity of the wreck?  
16 A. Correct.  
17 Q. So would you have advised the children, the  
18 girls, to have gone to a hospital?  
19 A. Yes.  
20 Q. And you, in fact, did do those things, correct?  
21 You said you guys should go to the hospital?  
22 A. Right.  
23 Q. Okay. Was a -- not to get too fine-toothed-comb  
24 here, but did you say you need to go or would you like  
25 to go to the hospital?

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1 A. I always ask for want first, do you want to go.  
2 And if they say no, then I'm like, well, this is  
3 what's happened, this is what I see. In this  
4 instance, I advise you do need to go, especially in  
5 [REDACTED] position at that time.  
6 Q. Okay. So it was your -- as an EMT, at least,  
7 you made the determination that these three persons  
8 that were in the car wreck should have gone to the  
9 hospital?  
10 A. Paramedic.  
11 Q. Okay. I'm sorry.  
12 A. EMT and paramedic are two different things.  
13 Q. I'm sorry. I'm sorry. Yes. As a paramedic,  
14 you told them you should go to the hospital and  
15 they --  
16 A. I told them --  
17 Q. I'm sorry. Go ahead. What did you say?  
18 A. I told Ms. Ashcraft [REDACTED] needed to go.  
19 Q. What about Ms. Ashcraft herself?  
20 A. She needed to get checked out. But at the time,  
21 she wasn't exhibiting any signs or symptoms of any  
22 kind of headache, trauma, nothing that would concern  
23 me more.  
24 Q. Okay. Okay. Now, when you advised her that you  
25 thought she should go to the hospital or that [REDACTED]

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1 should go to the hospital, what was her reaction?  
 2 A. She said that they were -- that she knew what to  
 3 look for and that if anything changed, she would call.  
 4 Q. Would you have characterized your -- let me back  
 5 up. Was she adamant about not going or was it, "I got  
 6 this"?  
 7 A. I asked her several times, so I would say  
 8 adamant 'cause she had the same answer every time.  
 9 Q. Okay. Okay. Thank you. I'd like to go back to  
 10 just to make sure that I have the timeline correct  
 11 here. Under -- let's see. Exhibit 1.  
 12 MR. GASPER: Richard, can you pull up  
 13 page 4?  
 14 THE VIDEOGRAPHER: Which was that?  
 15 MR. GASPER: Page 4 of Exhibit 1,  
 16 please. Okay. Can you zoom in on the top  
 17 half of that? Make sure you get that  
 18 timeline in there on the right-hand side.  
 19 Right there. That's great.  
 20 Q. (By Mr. Gasper:) Can you see that, Holly?  
 21 A. Yes, sir.  
 22 Q. Now, on the right-hand side, there's a column,  
 23 incident times; do you see that?  
 24 A. Okay.  
 25 Q. PSAP call at 12:57. PSAP, what does that mean?

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1 What does that stand for?  
 2 A. The way this reads, I'm assuming that's when  
 3 they called 911. That's the initial call that came in  
 4 to dispatch.  
 5 Q. That is approximately or shortly thereafter,  
 6 call received, 1257, dispatched 1257. So next after  
 7 that is en route, 1258. Is that when you guys, you  
 8 and Zach, got in the truck and headed that direction?  
 9 A. Yes, sir.  
 10 Q. Okay. And you arrived on the scene at 1303,  
 11 which is 1:03 nonmilitary time; is that accurate? I  
 12 couldn't hear you. Could you say that -- affirm that  
 13 again?  
 14 A. Yes. Yes.  
 15 Q. Okay. And it says at patient at 1304. I'm  
 16 assuming that patient is Ms. Ashcraft, correct?  
 17 A. If this is her report, yes.  
 18 Q. Okay. And then we've got care transferred is  
 19 blank. 1344, it says depart scene. Now, when it says  
 20 depart scene, what occurred at the accident scene had  
 21 already occurred and she had gone downhill and you had  
 22 gotten her in the truck. And at 1344, at 1:44, you or  
 23 Zach hit the gas and you were on your way to the  
 24 hospital; is that correct?  
 25 A. I was driving. Yes. That is the time we left

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1 for the hospital.  
 2 Q. Okay. So you were there approximately 41  
 3 minutes, from 1:03 to 1:44, correct?  
 4 A. Yes, sir.  
 5 Q. Okay. Great. Thank you. Let's see.  
 6 MR. GASPER: What page am I going to?  
 7 Okay. Can we pull up page -- we'll start  
 8 with page 1. Page 1 of Exhibit 1, Richard?  
 9 The bottom half preferably. Great.  
 10 Q. Holly, can you see that? Holly, can you see  
 11 that? I think maybe we've got some lag here on my  
 12 Zoom because the video is not showing you guys' faces  
 13 moving at all. Can you hear me? Okay. Maybe there?  
 14 Okay. Yeah, Jim is swaying back and forth.  
 15 Okay. Can you hear me now, Holly?  
 16 A. Can anyone hear me?  
 17 THE VIDEOGRAPHER: I am hearing you.  
 18 She has a lag. I think it's her connection.  
 19 Q. (By Mr. Gasper:) On her end. Okay. Holly, can  
 20 you hear?  
 21 A. I can hear him. Yeah, I can hear you.  
 22 Q. You can hear me? Okay. Okay. So we're looking  
 23 at page 1 of your report or, I guess, the incident  
 24 report. And you see that the flow chart. We went  
 25 over that earlier, or at least you and Jim went over

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1 it earlier where it says 1304 ALS assessment?  
 2 A. Yes.  
 3 Q. Okay. So that 1304 corresponds with the 1304 in  
 4 the previous timeline that you arrived at the patient,  
 5 correct?  
 6 A. Correct.  
 7 Q. Okay. So that was your initial assessment.  
 8 Then at 1330, at 1:30, six minutes later, you've got a  
 9 notation there that you talked about previously where  
 10 the Ms. Ashcraft, her speech was slurred at that  
 11 particular point; did you see that?  
 12 A. Correct. That was my second assessment.  
 13 Q. Okay. And that assessment was taken after she  
 14 was in the house; is that correct?  
 15 A. Correct.  
 16 Q. Okay. And then at IV, IV. And then at 1348,  
 17 you've got trauma alert, patient response unchanged,  
 18 complication none. What does the -- go ahead.  
 19 A. If you look at the provider, that is Zach. That  
 20 is when he took over patient care for her in the back  
 21 of the truck.  
 22 Q. Okay. So you departed the scene at 1344, and  
 23 then it looks like you ran an IV right after that,  
 24 Zach did, at 1345. So you were on the road at that  
 25 particular point, correct?

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1 A. Correct. I was driving at that point.  
 2 Q. Okay. 1350, it says Narcan. Can you tell us  
 3 what Narcan is?  
 4 A. Narcan is an agent that reverse opiates.  
 5 Q. Okay. Why was it -- was it given here?  
 6 A. It says Zach did it. I wasn't the one who gave  
 7 it.  
 8 Q. Why would it have been given?  
 9 A. Initially, it's given for altered mental status  
 10 in case they're on any kind of opiates.  
 11 Q. Okay. Is it a normal protocol to give Narcan?  
 12 Do you give Narcan at -- whenever there is any change  
 13 in mental status?  
 14 A. Not every time. But again, I wasn't the one who  
 15 gave it, so I don't know his reasoning behind it.  
 16 Q. Okay. Okay. That's fair.  
 17 MR. GASPER: Can we go to page --  
 18 Richard, can we go to page 2 of the  
 19 Exhibit 1, please? And if you go down to  
 20 from the very top, down to, like, where it  
 21 says ongoing assessment mental status. And  
 22 then underneath there, you can cut it off.  
 23 That's fine. We can do that.  
 24 Q. Okay. Holly, I want to ask you about at the  
 25 very top of the HEENT. Initial assessment, it says

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1 head/face, no abnormalities?  
 2 A. Correct.  
 3 Q. What would be -- what would you have considered  
 4 an abnormal?  
 5 A. Swelling to the face. Any kind of lacerations.  
 6 Any deformity.  
 7 Q. Okay. You said earlier that you noted the  
 8 airbag had gone off?  
 9 A. That's what the report says, yes.  
 10 Q. Okay. Would an airbag have left any injury --  
 11 or let me rephrase that. In your experience, when you  
 12 see an airbag deployed, does it usually leave an  
 13 injury?  
 14 A. Not all the time.  
 15 Q. What would we have -- what would you look for or  
 16 what would you expect to see if an airbag had been  
 17 deployed?  
 18 A. Burns.  
 19 Q. Burns?  
 20 A. Yes, sir.  
 21 Q. Okay. Just from, like, I guess, heat from the  
 22 air being inflated so quickly?  
 23 A. It's the particles that's inside the airbag.  
 24 Q. Okay. So it didn't -- did she have evidence  
 25 that -- of burns on her face?

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1 A. Not to my recollection.  
 2 Q. Okay. Do you -- did you -- but that's not an  
 3 everyday, every-time occurrence? Sometimes they don't  
 4 have burns?  
 5 A. The airbags don't always cause deformity.  
 6 Q. And also, you've got eyes. We talked -- you  
 7 talked about the eyes. Initially, they were, I guess,  
 8 fine. Okay. Two millimeters. You suggested that  
 9 that was a normal, within-range reaction or  
 10 measurement of the eyes?  
 11 A. In light, they constrict. They get smaller in  
 12 light.  
 13 Q. Okay. Okay. What -- in your experience of  
 14 seeing people under the influence of a controlled  
 15 substance, does that affect their eyes at all?  
 16 A. Under narcotics. Not every drug.  
 17 Q. Okay. Like, what type narcotics?  
 18 A. Opiates.  
 19 Q. Opiates? What do opiates do to a person's eyes?  
 20 A. They constrict them, make them smaller,  
 21 nonreactive.  
 22 Q. Okay. Would her measurements have been  
 23 consistent -- not saying that she was under the  
 24 influence of opioids. But if she had been, would her  
 25 eyes have been consistent with that finding?

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1 A. They would typically be smaller than the two.  
 2 Q. So, like, a one or something like that?  
 3 A. Correct. Or what we call pinpoint.  
 4 Q. Okay. Very good. I'd like to go down to where  
 5 it says "abdomen" here. It says "general no  
 6 abnormalities"; is that -- is that correct?  
 7 A. Correct.  
 8 Q. What -- did you find any evidence that she  
 9 was -- of seatbelt marks on her body?  
 10 A. Not to my recollection, no.  
 11 Q. Okay. What --  
 12 A. Go ahead.  
 13 Q. Were you going to add something?  
 14 A. No. Go ahead.  
 15 Q. What type of injuries do seatbelts leave on a --  
 16 on a person in a motor vehicle accident?  
 17 A. Usually red marks.  
 18 Q. Red marks, like, across the torso, from the  
 19 shoulder down to approximately where?  
 20 A. So if you're the driver, then it's going to come  
 21 from this left shoulder, the patient's left shoulder.  
 22 Q. Okay.  
 23 A. So when you look at it, it looks like your  
 24 right. So the patient's left shoulder down, then  
 25 across the abdomen.

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1 Q. Okay. In a wreck of this magnitude or this  
 2 size, would you have expected to see seatbelt marks?  
 3 A. Usually, yes.  
 4 Q. Okay. Was she wearing -- what was she wearing  
 5 at the time; do you recall?  
 6 A. I think it was some kind of -- it wasn't jean  
 7 shorts. I'm pretty sure it was just, like, what I  
 8 call basketball shorts kind of fabric and a T-shirt,  
 9 if I remember correctly.  
 10 Q. It was, like, extremely hot out there, so she  
 11 wasn't wear a sweatshirt or anything along that line,  
 12 correct?  
 13 A. Not that I remember.  
 14 Q. So there's no piece of clothing on her top that  
 15 would have, I guess, absorbed the seatbelt so it  
 16 wouldn't leave a mark. It was only one thin sheet of  
 17 cloth across her shoulders, her shirt?  
 18 A. If I remember correctly. This was also very  
 19 long ago.  
 20 Q. Okay. Okay. But she did not show any marks  
 21 that you saw? Did you, like -- well, let me back up.  
 22 Did you inspect her, like, skin at that area or did  
 23 you see her bare skin around her shoulder?  
 24 A. I did not lift her shirt up, no.  
 25 Q. Okay. Did she complain about any pain

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1 associated with the, you know, seatbelt from being  
 2 deployed, constricted in the wreck?  
 3 A. Not that I remember. And when I palpated her  
 4 chest, she didn't complain of any pain.  
 5 Q. Okay. 'Cause seatbelts can cause injuries that  
 6 would cause pain, correct?  
 7 A. They can cause pain, yes.  
 8 MR. GASPER: Okay. Richard, can we go  
 9 down to the second half of that page,  
 10 please?  
 11 Q. On this particular page, I want to -- this is  
 12 the ongoing assessment, which we'll look at this page.  
 13 A. This is where --  
 14 Q. Go ahead.  
 15 A. This is where Zach would have taken over  
 16 possibly.  
 17 Q. Okay. So at the assessment time were 1350,  
 18 which we'll show on the next page, those would have  
 19 been Zach's notes because you were driving at that  
 20 point?  
 21 A. Correct.  
 22 Q. Okay. Let me just ask you a question about  
 23 this, because you and I have spoken previously to this  
 24 deposition, correct?  
 25 A. Correct.

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1 Q. And you mentioned at the time that she was  
 2 scratching her head. Now, I see that there -- under  
 3 mental status, Zach apparently put that the patient  
 4 stopped scratching her head and relaxed her arm for  
 5 me. Can you describe what the head scratching -- what  
 6 you observed about the head scratching?  
 7 A. I don't know that I remember her scratching her  
 8 head, honestly. But if she was to doing like this,  
 9 then -- and he asked her to relax, that would mean  
 10 that she was actually still able to follow commands.  
 11 Q. Okay.  
 12 A. The only thing I can think of is the reason she  
 13 was scratching her his is that that was the side of  
 14 the bleed.  
 15 Q. Okay. Okay.  
 16 A. Possibly. That's the only thing I could think  
 17 of.  
 18 Q. Okay. So you didn't -- didn't remember her  
 19 scratching her head at the time?  
 20 A. I don't think so 'cause at this -- so basically,  
 21 when he put her in the back of the truck, like, I  
 22 basically got back around and then drove off and  
 23 turned around -- turned around and headed back the  
 24 other way.  
 25 MR. GASPER: Okay. Richard, can we go

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1 to page 3? And then can you go from the top  
 2 of the page down through that narrative,  
 3 stop at the bottom of the narrative? Great.  
 4 Q. Okay. Yeah. There at the top, as you can see,  
 5 it says assessment, 1350. So would that say to you  
 6 that Zach took those notes?  
 7 A. Yes. Because we transported at 1344.  
 8 Q. Okay. One thing I wanted to ask you about is  
 9 also, as you can see under extremities, it says, pulse  
 10 radial two plus normal. I know that -- I understand  
 11 that Zach may have been the person that took that  
 12 note.  
 13 But you testified earlier that the pulse  
 14 was indicative of blood being redirected, I guess, if  
 15 there was an injury. Can you explain that a little  
 16 bit further?  
 17 A. So anytime -- and it's not necessarily pertinent  
 18 to a head injury. But anytime -- anytime you have an  
 19 amount of blood loss, your body will start shunting.  
 20 So basically, it automatically starts pushing all the  
 21 blood to the core, the core meaning your heart, your  
 22 lungs, your kidneys, and your brain to try to keep  
 23 those main organs alive as long as possible.  
 24 And so the more that you are shunting, the  
 25 less what we call peripheral, which is your hands,

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1 your fingers, you know, your pulses in the peripheral  
 2 extremities, they will become weaker.  
 3 Q. Okay. But that did not -- at least according to  
 4 this note, it does not appear that that was -- you or  
 5 Zach observed that at the time, correct? At this  
 6 point.  
 7 A. At this point, no.  
 8 Q. Okay. At this point, you would not have? What  
 9 was that? Sorry?  
 10 A. I said it looks like they're still normal.  
 11 Q. Okay. Okay. But also, there is other  
 12 neurological. It says facial droop, slurred speech,  
 13 weakness left-sided. Would that be consistent with  
 14 what you observed as well?  
 15 A. I did not show -- it did not show any kind of  
 16 facial droop, slurred speech, or weakness with me.  
 17 This was after she had been in the back of the truck.  
 18 Q. But she had only been in the back of the truck  
 19 for six minutes by this point?  
 20 A. Six minutes.  
 21 Q. Okay. So in the space of that six minutes, she  
 22 could have developed those -- developed those  
 23 symptoms?  
 24 A. Possibly. And it could change -- so she could  
 25 have possibly had it inside the house as well. When I

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1 called for the back-up unit, Zach overheard 'cause he  
 2 had it -- we both carry a radio.  
 3 Q. Okay.  
 4 A. And so he knew -- he knew that there was no  
 5 other unit. So when he come in the back of the house,  
 6 he said, "We're just going to have to take her." We  
 7 didn't give her the option to get up and walk.  
 8 Q. Okay.  
 9 A. With her being not very big and Zach is -- he's  
 10 adamant heavy -- like, he works out adamantly. So  
 11 yeah, he's a very strong man. So he just picked her  
 12 up. Like, he didn't even give her a choice. He just  
 13 picked her up and carried her.  
 14 Q. Okay. And at this point, her refusal to go to  
 15 the hospital that she signed just went out the window?  
 16 Like, your decision overrode that decision?  
 17 A. Yes. Because -- and the reason why is  
 18 initially, she had a mental status that was alert,  
 19 oriented times four, as you see, person, place, time,  
 20 event. So she knew everything. Like, she's able to  
 21 carry on a conversation with you and I right now.  
 22 Now, she has had a mental status change  
 23 and it has not been for the better. So she had  
 24 declined, so now she no longer can make those own  
 25 decisions.

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1 Q. Okay. So reiterating what you just said, if  
 2 someone had told you, Holly, she has a brain bleed  
 3 going on right when you first encountered her, would  
 4 anything have led you to believe that?  
 5 A. Not at that time. Not when I initially had  
 6 contact with her. No.  
 7 Q. Okay. So she seemed fine. What about when she  
 8 entered the house and she -- I guess you said maybe  
 9 she was dehydrated or got tired or something?  
 10 A. No. It was really hot outside and she's, again,  
 11 not a very big lady.  
 12 Q. Okay.  
 13 A. So with her sweating, you know, and if she  
 14 really had been vomiting for the last two days, then  
 15 yeah. She would have been dehydrated.  
 16 Q. Right. Right. But nothing at that point would  
 17 have shown you, Holly, she's got a brain bleed? She  
 18 just wasn't --  
 19 A. No.  
 20 Q. Okay. Great.  
 21 A. Correct.  
 22 Q. Now, if you had known she had a brain bleed,  
 23 what would you have done?  
 24 A. We would have took her right then and there.  
 25 Q. Even if she had full mental status and was "I

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1 don't want to go," you know?  
 2 A. It would have been hard if she was alert and  
 3 oriented as initially when I encountered her. It  
 4 would have been a lot of begging and pleading on my  
 5 knees.  
 6 Q. Yeah. Sure. Sure.  
 7 A. But unfortunately, once she had that turn of  
 8 mental status, then she can no longer -- she no longer  
 9 had -- medically no longer had control.  
 10 Q. Okay. That's fair. I don't -- and this is more  
 11 out of curiosity than anything. But is there any way  
 12 to treat a brain bleed out in the field?  
 13 A. No, sir.  
 14 Q. You've got to go to the hospital?  
 15 A. You have to have a head CT.  
 16 Q. Okay. Okay. And again, I know that you're not  
 17 a doctor. But when you have a call that involves head  
 18 injury, are you required or advised or suggested to  
 19 take a patient to a place with a CT scan?  
 20 A. It's protocol.  
 21 Q. It is protocol? Okay. So from what I  
 22 understand, the Paris hospital CT scan was not  
 23 functioning at the time, correct?  
 24 A. Correct. And we didn't know that until we were  
 25 on the way to Paris because they have a radio where

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1 they can listen to our traffic as well.  
 2 Q. Okay.  
 3 A. So they overheard us, you know, coming into them  
 4 and then that's when they got on the radio and said,  
 5 no, we don't have CT capability.  
 6 Q. Okay. Okay. So at that point, you had to  
 7 divert to Booneville?  
 8 A. Correct. Because unfortunately, it was either  
 9 Dardanelle or Mercy Fort Smith or Booneville. Those  
 10 were our three closest, and Booneville is the closest.  
 11 Q. Right. If there had not been a CT scan  
 12 available anywhere, what would -- what would you have  
 13 done? What would -- what would your next best option  
 14 have been?  
 15 A. On a helicopter or take her to Mercy Fort Smith.  
 16 Q. Okay. So the option to go to a hospital that  
 17 did not have a CT scan was just not -- you just  
 18 couldn't do that? I mean, there wasn't anything you  
 19 could do without a CT scan?  
 20 A. Correct. There is no diagnosis without a CT.  
 21 Q. Okay. Okay. Okay.  
 22 A. We can suspect all day long.  
 23 Q. Sure.  
 24 A. But without -- without a head CT, without the  
 25 imaging, it's like you can suspect a broken arm all

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1 day long. But until you have that x-ray, you can't  
 2 get diagnose it.  
 3 Q. That's fair. I gotcha. So I want to go back  
 4 and cover some points that maybe I overlooked. Let's  
 5 see. We've got a timeline. When you arrived at the  
 6 scene, I would imagine it was probably a pretty  
 7 chaotic scene. But do you remember who was there?  
 8 A. The police officers or --  
 9 Q. Anybody. Yeah. Just -- I assume did you beat  
 10 the state troopers there?  
 11 A. I think we did.  
 12 Q. And then?  
 13 A. Which is not --  
 14 Q. Which is not uncommon?  
 15 A. No.  
 16 Q. Okay. So you oftentimes are quicker to the  
 17 scene than law enforcement?  
 18 A. I wouldn't say -- state troopers, yes.  
 19 Sometimes county or city will cover an accident until  
 20 troopers can get there.  
 21 Q. Okay. Okay. Aside from law enforcement and you  
 22 and Zach and the parties to the wreck, I know that's a  
 23 lot of people, could you identify any other people  
 24 that were at the scene?  
 25 A. First responders may have been there. They

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1 typically get dispatched as well with us. The  
 2 volunteer fire department --  
 3 Q. Okay.  
 4 A. -- they may have been there. But more than  
 5 that, there was nobody initially on scene other than  
 6 us.  
 7 Q. Were there any, like, civilians out helping --  
 8 helping people clear out the car or helping with --  
 9 that might have happened upon the scene? Do you  
 10 recall seeing anybody like that?  
 11 A. Not that I recollect. But when we get on the  
 12 scene, I know I focus in on the patient.  
 13 Q. Okay. Now, can we go back and maybe -- can you  
 14 again describe the condition of Jackie Ashcraft when  
 15 you first saw her?  
 16 A. When I first initially had encounter with her,  
 17 she was alert, standing outside behind the car, alert  
 18 and oriented. She was smoking her cigarette, and her  
 19 two kids were sitting on the side.  
 20 Q. Okay. Any trouble with balance that you could  
 21 tell?  
 22 A. No. She had a normal gait. Her speech wasn't  
 23 slurred. She was able to carry on a full conversation.  
 24 Q. Okay. Did she tell you if any parts of her body  
 25 were hurt or injured or achy due to the wreck?

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1 A. No. She was more worried about her kid and  
 2 making sure she was okay first.  
 3 Q. Okay. Okay. And you said that [REDACTED] the  
 4 youngest of the girls, was fine. And [REDACTED] the older  
 5 of the girls, had a hematoma on the back of her head?  
 6 A. That's what the report says, yes.  
 7 Q. Okay. And that's a bump or -- I don't want to  
 8 be too --  
 9 A. Yes. It's -- hematoma is a common name for  
 10 swelling or a bump. And if you -- you know kind of  
 11 how you bruise on your leg if you hit something. And  
 12 your head, it kind of swells out.  
 13 Q. Okay.  
 14 A. If it swells in, then it's more a medical  
 15 problem.  
 16 Q. Okay. So she would have gotten that injury  
 17 presumably from hitting her head back on the headrest  
 18 or the seats?  
 19 A. That's what I would assume.  
 20 Q. Okay. Did she complain about seatbelt injuries  
 21 or being constricted by a seatbelt?  
 22 A. Not to my recollection.  
 23 Q. Okay. Did you examine [REDACTED] head to notice  
 24 the hematoma?  
 25 A. I would have had to have touched it, yes.

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1 Q. Did you do something similar to Jackie Ashcraft?  
 2 Did you examine her head at all?  
 3 A. I examined her neck, head -- yes, and her head.  
 4 I didn't see anything.  
 5 Q. Okay. Okay. I'm just looking at my notes here.  
 6 I'm sorry. You've had experience on the job with  
 7 people that have had head trauma, correct?  
 8 A. Yes, I have.  
 9 Q. Have you been called out to scenes of traffic  
 10 accidents such as this one where there was a rear-end  
 11 collision?  
 12 A. Yes, sir.  
 13 Q. Is it -- did Ms. Ashcraft display any symptom  
 14 that would have been inconsistent with what you  
 15 normally see in these types of injuries or these types  
 16 of accidents?  
 17 A. No, sir.  
 18 Q. So nothing struck you as unusual at this point?  
 19 A. No, sir.  
 20 Q. Okay. So at some point as we discussed, Jackie  
 21 said she wanted to go into the house, correct?  
 22 A. Correct.  
 23 Q. Do you remember how many people were in the  
 24 house?  
 25 A. I want to say it was a female, maybe two kids

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1 'cause when I walked in, the female was sitting, like,  
 2 right at the kitchen area, standing. And then I want  
 3 to say there was one or two people on the couch. But  
 4 other than that, I didn't notice anything else.  
 5 Q. People as in children or as adults?  
 6 A. As adults, children. Maybe -- there may have  
 7 been two kids there. But there again, it may have  
 8 been [REDACTED] and [REDACTED] with me.  
 9 Q. Okay. I'm just trying to -- so there was one  
 10 female adult and were there any other adults in there?  
 11 A. I honestly cannot be 100 percent sure.  
 12 Q. Okay. Okay. Do you know the identity of those  
 13 people that were in there?  
 14 A. I do not.  
 15 Q. Do you know how they would have been, if at all,  
 16 related to Ms. Ashcraft?  
 17 A. I do not. I just know that was the house they  
 18 were going to visit.  
 19 Q. Okay. So once you left her on the couch, you  
 20 exited the house yourself, correct?  
 21 A. Correct.  
 22 Q. Were there any medical professionals or anybody  
 23 else that were in the house once you left?  
 24 A. No, sir.  
 25 Q. Any law enforcement in the house after you left?

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1 A. No, sir. The only thing -- only person I seen  
 2 as I was coming out of the house was the red truck  
 3 that had pulled in which ended up being her dad.  
 4 Q. Okay. Actually, I think her father -- okay.  
 5 Never mind. So the red truck and there was a male in  
 6 the red truck, correct?  
 7 A. (Witness nodding head.)  
 8 Q. Okay. I'm not sure if you can answer this or  
 9 not, but I'm going to go ahead and answer it -- ask  
 10 it. Considering her condition the next time you saw  
 11 her 26 minutes later, do you have any estimate as to  
 12 what time the onset of the serious reaction started?  
 13 A. No, sir.  
 14 Q. Like, she was X number of minutes along already  
 15 when they came and got you when she started -- do you  
 16 have any way of knowing that?  
 17 A. No.  
 18 Q. Okay. And Jim asked you if you spoke to her and  
 19 she could communicate with you initially, correct?  
 20 A. Correct. Initially, and when I went back into  
 21 the house, she was still able to nod her head.  
 22 Q. Did she say any words to you at that point?  
 23 A. Not that I remember.  
 24 Q. Okay. Did anyone else say anything to you in  
 25 there?

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1 A. Not that I remember. I think her dad was in  
 2 there by that point, after I got back in.  
 3 Q. Okay. But no one said she said she wasn't  
 4 feeling good and then she did this? Or there was no  
 5 statement that you can recall?  
 6 A. Not that I remember because I honed in on her  
 7 because me being the original provider to be with her,  
 8 this was not how I left her.  
 9 Q. Okay.  
 10 A. So I knew something was going on.  
 11 Q. Okay. And then you -- Zach and his muscles  
 12 picked her up and took her to the ambulance, right?  
 13 A. Yeah.  
 14 Q. Was -- you said was she alone on the ambulance?  
 15 Was there another patient or another person in there  
 16 with her?  
 17 A. The DHS worker was in there.  
 18 Q. Jennifer Wilkerson? Okay. At some point,  
 19 Jennifer got out of the ambulance, correct?  
 20 A. After we took Ms. Ashcraft in.  
 21 Q. Okay. So you were hitting the road and so  
 22 Jennifer had -- you were just going to leave her at  
 23 the scene, correct?  
 24 A. No. We took her to the hospital as well.  
 25 Q. In a different ambulance?

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1 A. No. In the same ambulance.  
 2 Q. Oh, okay. I was confused there. So  
 3 Ms. Wilkerson and Ms. Ashcraft were both in the  
 4 ambulance?  
 5 A. Yes, sir.  
 6 Q. When you went to Paris -- or tried to go to  
 7 Paris and then went to Booneville?  
 8 A. Yes, sir.  
 9 Q. Okay. So Ms. Wilkerson, when you got to  
 10 Booneville, she presumably was checked into the  
 11 hospital as well, or the ER?  
 12 A. Correct. Yes. We checked them both in.  
 13 Q. Okay. Did you have any conversations or  
 14 discussions with Ms. Wilkerson while you were --  
 15 A. I did not.  
 16 Q. Okay. Zach was in the back with her; you were  
 17 driving, correct?  
 18 A. Right.  
 19 Q. Okay. Now, how was Jackie positioned in the  
 20 ambulance? Was she laying down?  
 21 A. She was laying supine on the bench seat.  
 22 Q. Supine meaning vertical?  
 23 A. On her back. On her back.  
 24 Q. Okay. Okay.  
 25 A. Sorry.

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1 Q. And she had an IV in and all that at that point,  
 2 correct?  
 3 A. It looked like Zach redid it, so yes.  
 4 Q. Okay. Okay. Now, do you know approximately how  
 5 long you were in the ambulance, how long it took you  
 6 to get to Booneville?  
 7 A. You would have to pull up the times again.  
 8 Q. Okay. I'm sure it's probably written down in  
 9 these records. I'm sure it's written down in these  
 10 records. We'll reference those later. So once you  
 11 got to Booneville, the ER took over and you basically  
 12 transferred the -- transferred the patients, correct?  
 13 A. Yes, sir.  
 14 Q. Okay.  
 15 A. Because there's a doctor in the ER, so we have  
 16 to transfer care to them.  
 17 MR. GASPHER: Jim, can you pull up --  
 18 Jim. Richard, can you pull up page 6 of  
 19 Exhibit 1, please? Next one, I think.  
 20 There you go.  
 21 Q. Holly, do you recognize this page?  
 22 A. Yeah. That's our signature page.  
 23 Q. Okay. What am I looking at here? Like,  
 24 specifically section 3, where the signatures are,  
 25 what -- what does this mean?

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1 A. That part? So that means I'm the -- like, I  
 2 signed her patient care report so -- because I was the  
 3 one who initially had contact with Jennifer -- I mean,  
 4 with Ms. Ashcraft. Then I was the one who originally  
 5 started her CPR. Sorry. I went blank for a second.  
 6 The signature below is the nurse's signature who we  
 7 give report to.  
 8 Q. Dustin Keeter, verbal consent to sign. So  
 9 Dustin would have been the nurse?  
 10 A. Dustin is the nurse.  
 11 Q. Okay. This under your signature, it says signed  
 12 on 6/11, 1633. That would be 4:33, which would be  
 13 some time later, several hours later than when you  
 14 arrived?  
 15 A. Correct.  
 16 Q. When you eventually signed it, you signed it at  
 17 4:33?  
 18 A. That's when we submitted it and signed it and it  
 19 was done.  
 20 Q. But Ms. Ashcraft was already in the ER by that  
 21 4:33?  
 22 A. Oh, yes, sir.  
 23 Q. You weren't treating her by then?  
 24 A. No. We were gone.  
 25 Q. Okay. But 1444, which would be 1:44 --

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1 A. Be 2:44.  
 2 Q. That's when they took over? The nurse took over  
 3 at that point?  
 4 A. At 2:44, yes.  
 5 Q. So you arrived at the hospital and she -- it was  
 6 assumed treatment in the hospital at 1:44 -- 2:44?  
 7 Sorry. Military time just throws me just a little  
 8 bit. 2:44.  
 9 So as we referenced earlier, on page 4,  
 10 you depart scene at 1344 and arrive, I guess, at 1434.  
 11 So it took about an hour in the ambulance?  
 12 A. I guess so.  
 13 Q. Is that fair?  
 14 A. If that is what the dispatch time says 'cause  
 15 when we call on the radio, we call en route to the  
 16 hospital, dispatch keeps the times. We don't keep the  
 17 times.  
 18 Q. Okay. But does that sound like it would be  
 19 accurate or close to accurate, about an hour in the  
 20 ambulance?  
 21 A. Give or take, 'cause we had to go over the  
 22 mountain.  
 23 Q. Okay. It wasn't, like, freeway the whole way  
 24 there?  
 25 A. No. No.

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1 Q. No?  
 2 A. No.  
 3 Q. Rural Arkansas, right?  
 4 A. Yes. There's a -- it's either a lake or river  
 5 that splits the county in half. So you have a north  
 6 side and south side. Paris is the north side, which  
 7 is where we were at and where this took place at, and  
 8 then the south side is Booneville.  
 9 MR. GASPER: Okay. Let's see, Richard,  
 10 I'm not sure which page this is. It's page  
 11 10 maybe, or 11 of Exhibit 1. It says  
 12 "Logan County EMS 911 dispatch form" at the  
 13 top. That one. That's the one I'm looking  
 14 for.  
 15 Q. Did you fill this out or is this someone else?  
 16 A. No. That is dispatch.  
 17 Q. Okay. So you didn't record any of this  
 18 information?  
 19 A. No. That is all the 911 taker. So when you  
 20 call 911, our dispatcher takes all of this. I can  
 21 explain it to you if you need me to.  
 22 Q. Sure. I'd like for you to do that.  
 23 Specifically, let's start at the top. It says 911,  
 24 and then what do I see there?  
 25 A. So we'll just go from my left where it says

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1 6/11. Then we'll go to the right.  
 2 Q. Okay. Great.  
 3 A. 6/11 is the date that it happened. The source  
 4 of the call is the 911 call. The dispatcher is Hyatt.  
 5 Unit 1, which we were squad 1. The top right-hand  
 6 corner, I believe that would be our run number. The  
 7 1470. So that's run number for the month. So by the  
 8 11th of June, we had already run 1,470 calls that month.  
 9 Q. Oh, wow.  
 10 A. It's a busy service. It is.  
 11 Q. Okay.  
 12 A. So squad 1, so we got the call at 1257. She  
 13 called us at 1257. And we were en route at 1258. We  
 14 got on scene at 1303. The patient on board, which  
 15 means we were transporting to the hospital, was 1344.  
 16 Q. You would have -- like, that's when you would  
 17 have, like, left the scene, 1344, right?  
 18 A. Correct. Yes. We left the scene at 1344. We  
 19 got to the hospital at 2:12.  
 20 Q. Let me stop you real quick. I just want to make  
 21 sure, 'cause that Dustin's note says that he took  
 22 over -- the ER took over at 2:24 as opposed to 2:12.  
 23 Do you know why there would have been, like, a  
 24 different of time there?  
 25 A. So I know I can tell you what happened when we

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1 got to the hospital.  
 2 Q. Okay.  
 3 A. It may clear a lot this time frame. So when we  
 4 get there, Zach and I take -- so we made Ms. Jennifer  
 5 get off the stretcher because that's how she rode in  
 6 on the ambulance. So once she got off the stretcher,  
 7 she got into the captain's chair and she hung out in  
 8 the back of the ambulance while we picked Ms. Ashcraft  
 9 up, put her on the stretcher, and took her into the  
 10 hospital.  
 11 Q. Okay.  
 12 A. We did that, Dustin and the ER doc both met us,  
 13 like, right inside the door.  
 14 Q. Okay.  
 15 A. And then they allotted to intubate her and then  
 16 take her to head CT. In the meantime, I don't know if  
 17 Zach stayed there with them and went back to CT with  
 18 them, but I went up front to the medical clerk.  
 19 Q. Okay.  
 20 A. And in the meantime, while they're back there, I  
 21 was getting my face sheet for Ms. Ashcraft, getting  
 22 her checked in, you know, giving them the information.  
 23 And in the meantime, the father called,  
 24 and I ended up talking to him because initially, he  
 25 thought we were going to Paris. He had no idea we

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1 diverted to Booneville.  
 2 Q. Okay.  
 3 A. And the hospitals weren't being very cooperative  
 4 with him.  
 5 Q. Okay.  
 6 A. So I made him identify who he was by the red  
 7 truck.  
 8 Q. Okay.  
 9 A. By the events prior, you know, while we were on  
 10 scene. So I knew -- personally, I knew who he was.  
 11 Q. Okay.  
 12 A. I'm pretty sure the hospital got kind of mad at  
 13 me. But -- and then I'm there for the family and I'm  
 14 there for the patient. You know, that's --  
 15 Q. Sure. Okay.  
 16 A. That's what I'm for. So that's where I was. I  
 17 don't know what Zach did. I don't know what happened  
 18 in the back. So it's very possible that once they  
 19 intubated her, Zach went to CT with them and then come  
 20 back 'cause if I'm not mistaken, CT takes about 20  
 21 minutes.  
 22 Q. Okay.  
 23 A. And then he could put his signature then.  
 24 Q. Okay. So he would have -- okay. So you signed  
 25 it over at a much later time. But you believe that

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1 Zach did not fully turn the patient over until 1444?  
 2 A. So it's kind of a -- I don't know legally how  
 3 you guys would portray it. But once we hit those  
 4 hospital doors and that patient gets on that hospital  
 5 bed, regardless of the signatures, that is their  
 6 patient.  
 7 Q. Okay. Okay. So --  
 8 A. So once the doctor intubated her, that's all on  
 9 them.  
 10 Q. Okay.  
 11 A. That is the hospital's patient.  
 12 Q. Okay. So it may just be kind of an  
 13 administrative delay to get the signature from Dustin?  
 14 A. Correct. Because I know when I have critical  
 15 patients like that, I don't make the nurse stop to  
 16 interrupt care to sign my paper.  
 17 Q. Okay.  
 18 A. Especially if they're going straight to CT, I  
 19 would wait until after CT. And then Booneville is  
 20 such a small hospital that we had an agreement with  
 21 them, and Paris as well, that if they needed an extra  
 22 set of hands, paramedics would go start IVs, you know,  
 23 do things to help them.  
 24 Q. Okay. Okay. Great. I'm sorry to interrupt you  
 25 there. So we've got 1412, so maybe that's a more

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1 accurate range of time when the hospital took over as  
 2 opposed to 1440. What does the 1507 mean there?  
 3 A. That is the time we got back to in service.  
 4 Q. Okay. You had completed your business and you  
 5 were ready to be redirected to another call?  
 6 A. Correct.  
 7 Q. Okay. What's these other numbers mean  
 8 underneath -- a little further down that chart?  
 9 A. Where? Under squad 1 where it says 5:17?  
 10 Q. Yes.  
 11 A. That could be a first responder. That could  
 12 be -- that's an additional resource that's dispatched  
 13 sooner.  
 14 Q. Okay.  
 15 A. I do not know what the one under it, where it  
 16 says NS re -- I don't know what that stands for. But  
 17 LC9 is county officers. Logan County officer 9 and  
 18 who responded.  
 19 Q. Like a sheriff's deputy or something like that?  
 20 A. Correct.  
 21 Q. Okay. Moving on down to the mutual aid, air or  
 22 ground. What's -- I'm assuming this has to do with  
 23 the helicopter?  
 24 A. Okay. So there's, like, a gray box cutting off  
 25 half of that. But yes, the helicopter was at 1359, if

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1 they're available. And they got a 25-minute ETA. So  
 2 that means while we were en route to the hospital,  
 3 probably right as Paris diverted us, we called to see  
 4 if the helicopter was available.  
 5 Q. Helicopter to go to Booneville or to go to --  
 6 A. No, sir. To a higher level of care.  
 7 Q. Like Fort Smith?  
 8 A. Or Washington Regional.  
 9 Q. Okay.  
 10 A. Because by that time frame, she would have  
 11 been -- she could have been flown to Washington  
 12 Regional, where there is actually neurosurgery.  
 13 Q. But that wasn't necessarily your call, was it?  
 14 A. No, sir. No, sir. We -- so how we work  
 15 ground-wise is -- 'cause we know Booneville and Paris  
 16 are the lowest level of hospitals there are.  
 17 Q. Okay.  
 18 A. But by protocol, we had to take her to the  
 19 closest head CT, which after Paris diverted would have  
 20 been Booneville.  
 21 Q. Okay.  
 22 A. In the meantime, we always like to call for the  
 23 helicopter because being a rural area, sometimes it's  
 24 better and faster. Sometimes. Not all the time.  
 25 Q. Okay.

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1 A. So this initial definitive, she needed a head CT  
 2 as quick as possible. So by putting her on that  
 3 helicopter, it would have delayed the head CT.  
 4 Q. Okay.  
 5 A. Does that make sense?  
 6 Q. Yeah. No, it does. Thank you. Okay. Next to  
 7 that 25, it says Subiaco. What does that mean?  
 8 A. Fire department, first responders? Is that  
 9 where you are looking at?  
 10 Q. Yes. Yes, ma'am.  
 11 A. That would be that area. That's the area that  
 12 it happened in.  
 13 Q. Okay. The mileage, what, is that your mileage  
 14 in the truck?  
 15 A. Yes. That is the beginning mileage for us.  
 16 Q. So beginning mileage for when you were called to  
 17 the scene or when you left the scene?  
 18 A. I want to say that they do it as we were  
 19 leaving. So when I call dispatch, I'm like, you know,  
 20 I'm headed en route to the hospital, beginning mileage  
 21 is this.  
 22 Q. Okay. Okay.  
 23 A. And when I get to the hospital, my ending  
 24 mileage is this.  
 25 Q. Okay. So the beginning mileage is when you've

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1 got the patient in the truck and you are leaving?  
 2 A. Correct.  
 3 Q. So the ending mileage would be when you got to  
 4 Booneville?  
 5 A. Correct.  
 6 Q. So that's 25.4 miles? Is that -- does that  
 7 sound about right?  
 8 A. Sure. I'd have to get my phone to get a  
 9 calculator out.  
 10 Q. That's fine. Then it says patient's name  
 11 unknown. I guess you knew who the patient was but  
 12 unknown at the time to dispatch?  
 13 A. Correct.  
 14 Q. Okay.  
 15 A. And this is at the time of the call too. So a  
 16 lot of this is taken so it may -- she may not have  
 17 known at that time either.  
 18 Q. Okay. Caller's name. What does that mean?  
 19 A. That's whoever called it in.  
 20 Q. Tray, I guess, Low? Is that is -- that is  
 21 that --  
 22 A. I don't know. I have no idea.  
 23 Q. Okay.  
 24 A. No idea.  
 25 Q. But whoever called it, the time next to it would

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1 presumably be that person's contact number?  
 2 A. Presumably.  
 3 Q. Okay. October. Over there to the right-hand  
 4 side, it says destination/transport code. Can you  
 5 tell us what that means?  
 6 A. That is -- and forgive me. I'm not -- it's been  
 7 two years since I worked there.  
 8 Q. Sure. Sure.  
 9 A. And every ambulance service is different, how  
 10 they run their code 1s and code 2, 3, which is how  
 11 emergent is it. Hers, we would have ran this with  
 12 lights and sirens to the hospital.  
 13 Q. Okay.  
 14 A. And then it says changed/diverted to, changed to  
 15 706, which means we were going to Booneville.  
 16 Q. Okay. Gotcha.  
 17 A. 706 is Paris.  
 18 Q. Okay. Going down to notes, do you know what  
 19 the -- it looks like kind of shorthand of  
 20 abbreviations. Can you decipher any of that for us?  
 21 A. It looks like Troop H was en route at 1300. I  
 22 don't know what 10-96 means. We don't use 10 codes.  
 23 So I don't know what this "2-Code 11 needed per lc9"  
 24 that would be a dispatch question. That would be  
 25 their -- their thing.

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1 Q. All right.  
 2 A. I don't know who was 10-22 at 14 -- oh, I do  
 3 know. That would be Mercy Life Flight. So we  
 4 requested them at 1359. They had a 25-minute ETA, and  
 5 we canceled them at 1406.  
 6 Q. Okay. Okay. Gotcha.  
 7 A. Yeah. So between -- so as requesting at 1359 to  
 8 1406, we went back and forth with dispatch, you know,  
 9 seeing what their ETA was, if they're available, that  
 10 kind of thing. So at 1406, we would have been six  
 11 minutes outside of the hospital at Booneville.  
 12 MR. GASPER: Okay. Richard, can you  
 13 pull up -- I think it might be the next  
 14 page. It's got "ADH" at the top. There.  
 15 A. Okay. That's --  
 16 Q. Yes. Go ahead, please.  
 17 A. Oh, that is a paper PCR report that we fill out  
 18 on the patient.  
 19 Q. Okay.  
 20 A. We are required to give it to them -- to the  
 21 hospital upon our arrival. This particular form was  
 22 filled out by Zach and I both. I'm pretty sure I was  
 23 the one who signed it though.  
 24 Q. Okay.  
 25 A. The gray box at the bottom is kind of covering

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1 it.  
 2 Q. Okay. Can you just kind of take a quick look at  
 3 this and see if there's anything on this particular  
 4 piece of paper that we haven't already covered?  
 5 A. Not really -- there we go. No. I mean, other  
 6 than the trauma band, which is how Arkansas tracks all  
 7 of their traumas. Even if you just stumped your toe  
 8 and went to the hospital by ambulance, you would get a  
 9 trauma band.  
 10 Q. Okay.  
 11 A. So -- so that particular number is how they  
 12 identify patients. They don't use name, date of  
 13 birth, nothing like that.  
 14 Q. Go ahead.  
 15 A. I'm sorry.  
 16 Q. I don't want to interrupt you. I'm sorry. Go  
 17 ahead.  
 18 A. Oh, the ATCC, which is Arkansas Trauma Comm,  
 19 they were contacted because of the trauma alert. And  
 20 she was obviously in the wreck, so she is a trauma  
 21 alert. That's what that means in that bottom box.  
 22 Q. What time -- is this noted, like, 1447 what time  
 23 you signed this; is that right?  
 24 A. That -- yeah. That would be the time that  
 25 everything --

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1 Q. That you filled out the form?  
 2 A. Right. Well, yeah. That we got it all  
 3 completed, because this is not a priority that we do  
 4 when we have a critical patient.  
 5 Q. Okay. Gotcha.  
 6 A. Yeah. We treat them first and fill out the form  
 7 later.  
 8 Q. I am approaching the end here, but let me just  
 9 make sure I've got everything. I'm going to bounce  
 10 around a little bit here.  
 11 So whenever the youngest girl said that  
 12 her mom, Jackie, had been vomiting and -- for two  
 13 days, did she elaborate on that at all?  
 14 A. No, sir.  
 15 Q. She has the flu or something along that line?  
 16 A. She didn't elaborate.  
 17 Q. Okay. A couple more questions. So you --  
 18 Jackie was in the house for about 26 minutes without  
 19 you or any law enforcement being there that you know  
 20 of; is that correct?  
 21 A. I didn't see law enforcement pull up, so I don't  
 22 know what time they got --  
 23 Q. Okay. Then you. You didn't see her for about  
 24 26 minutes?  
 25 A. Correct.

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1 Q. Do you have any idea what occurred during that  
 2 particular time period?  
 3 A. No, sir.  
 4 Q. Okay. Is it possible that something could have  
 5 happened in the house that caused her head injury?  
 6 A. I mean, anything is possible. I can't  
 7 contest --  
 8 Q. If she had got up to go use the bathroom and  
 9 slipped on the floor and hit her head on the sink or  
 10 on the toilet, would that have --  
 11 MR. JACKSON: Let me make an objection.  
 12 Let me know when you're finished. I am  
 13 going to make an objection and then you'll  
 14 answer the question. Okay, Holly?  
 15 I didn't mean to cut you off just  
 16 because of the Zoom and everything. So go  
 17 ahead and finish your question, Brent.  
 18 Q. (By Mr. Gasper:) Could something have happened  
 19 in the house or -- resulting from a slip and fall that  
 20 would have caused a head injury at this time?  
 21 MR. JACKSON: Object to the form of the  
 22 question in that it calls for speculation by  
 23 the witness. Ms. Newman, you can answer as  
 24 best as you can.  
 25 A. Well, I just want to clarify, you're asking me

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1 if, theoretically, she slipped and fell in the  
 2 bathroom and hit her head, would it cause her to  
 3 bleed?  
 4 Q. (By Mr. Gasper:) Yeah. Or could it have caused  
 5 her to bleed?  
 6 A. It could have, but --  
 7 Q. Okay.  
 8 A. If she would have hit her head on the sink or  
 9 something, she would have had some kind of swelling,  
 10 laceration, or something to the back of wherever she  
 11 would have hit, there would have been some kind of  
 12 trauma.  
 13 Q. Okay.  
 14 A. If she had hit hard to make her bleed.  
 15 Q. Okay. But she was in a car wreck that caused it  
 16 to bleed, correct, but there wasn't any mark?  
 17 A. I didn't say that it caused her to bleed because  
 18 that is a million dollar question.  
 19 Q. Oh, okay.  
 20 A. I cannot answer.  
 21 Q. Okay. That's fair. But nothing you saw was  
 22 inconsistent -- like if I said Holly, we actually had  
 23 a video camera in there and here's what happened. She  
 24 slipped and fell hit her head on a table. Was there  
 25 anything that would be inconsistent with that

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1 statement that you saw or that you know of?  
 2 A. Like, repeat in a different --  
 3 Q. Okay. I'm sorry. Knowing what you know or what  
 4 you saw and observed that day, if proof had later come  
 5 out that she did, in fact, slip, you know, hit her  
 6 head in a manner that caused the bleed, would you say  
 7 that couldn't have happened? Was there anything  
 8 inconsistent? That couldn't have happened because of  
 9 X, Y, or Z, or I saw X, Y, or Z first? Is there  
 10 anything inconsistent with that statement?  
 11 A. No, because I didn't see her -- I didn't see  
 12 her.  
 13 Q. Right. There was a 26-minute gap and you don't  
 14 really know what happened?  
 15 A. Right. No. I do not.  
 16 Q. If someone had slapped her very hard on the back  
 17 of the head, could that have caused something of  
 18 injury of this sort?  
 19 A. I don't feel like a slap would. I think it had  
 20 to be more force than just a slap.  
 21 Q. Like a closed fist?  
 22 A. Again, you're asking questions that I --  
 23 Q. No. No. I understand you're not a doctor.  
 24 Just based upon your --  
 25 A. No, I'm not.

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1 Q. Based upon your experience out in the field,  
 2 responding to calls of MVAs or domestic situations,  
 3 could, you know, injuries of this sort, could they be  
 4 caused by, you know, a slap or a hit or another -- a  
 5 book being hit in the back of the head?  
 6 A. Medically, there's always a possibility it could  
 7 cause. Is it likely? No.  
 8 Q. Okay.  
 9 A. If she was -- and I would be -- I would feel  
 10 comfortable saying if she was hit at the time that I  
 11 was not there, then she would have some kind of  
 12 swelling, some kind of deformity that Zach would have  
 13 seen when he reassessed her when he got in the back of  
 14 that ambulance.  
 15 Q. Okay. So you think that any injury that -- if  
 16 she had sustained an injury in the house, it would  
 17 have left marks or evidence of some sort?  
 18 A. I would feel comfortable saying yes.  
 19 Q. Okay. But the same amount of force that  
 20 caused -- or that may have caused a brain bleed, that  
 21 they're alleging caused the brain bleed, in a car did  
 22 not leave a mark, correct?  
 23 A. Well, no. Because it was the contre -- the  
 24 coup-contrecoup inside her brain that would have  
 25 caused -- if the force -- the amount of force that the

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1 car hit her in the back --  
 2 Q. Right. Okay.  
 3 A. -- is different. So if you take a baseball bat,  
 4 a book, you know, something of that sort and hit  
 5 somebody in the back of the head, that's a more direct  
 6 to the skull.  
 7 Q. Okay.  
 8 A. There is not -- there's force in a MVA when  
 9 you're rear-ended, there's more force that causes the  
 10 inside of the brain to do the coup-contrecoup. Does  
 11 that make sense?  
 12 Q. No. I follow you. Sure. Sure. But you  
 13 still -- something that would have occurred inside the  
 14 house you don't believe could have caused that type of  
 15 an injury?  
 16 A. I don't believe, no. Not without having another  
 17 physical evidence.  
 18 Q. Okay. But if there were evidence, nothing is  
 19 inconsistent with the fact that maybe that occurred  
 20 if, like, other evidence had showed up or was there?  
 21 A. What -- if you're saying -- if, theoretically,  
 22 you're saying there's other evidence to say, hey,  
 23 maybe possibly she got hit inside the house, then I  
 24 would -- I would not argue with that.  
 25 Q. Okay.

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1 A. Okay.  
 2 Q. Okay. Are you familiar with shaken baby  
 3 syndrome?  
 4 A. I mean, it's -- yeah. It's where you shake --  
 5 Q. You cause a head injury in a child, correct?  
 6 A. You can.  
 7 Q. Yeah. Okay. So could she have been shaken  
 8 really hard to have her head bob back and forth? Is  
 9 that -- is there anything inconsistent with that that  
 10 you would have seen?  
 11 A. There' nothing inconsistent, no.  
 12 Q. Okay.  
 13 A. Because that doesn't leave marks.  
 14 Q. Okay. Last questions I want to ask, you are  
 15 just -- based on your own perception. Like, did this  
 16 incident, your whole response to it, what you observed  
 17 and your involvement in this, does this leave you with  
 18 any questions? Like, that's curious or something like  
 19 that, did it leave you with any kind of lingering  
 20 question or issue?  
 21 A. What do you mean by that? Like --  
 22 Q. You certainly responded as a professional, as a  
 23 professional medical provider?  
 24 A. Correct.  
 25 Q. And you've been on these calls for hundreds and

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1 thousands of times, correct?  
 2 A. Correct.  
 3 Q. And you've probably seen stuff that Jim or I  
 4 couldn't even imagine.  
 5 A. Some of it, yes.  
 6 Q. Yeah. Does this incident stand out at all? Is  
 7 there something that when you think about this, you  
 8 think I have to say that doesn't seem right, that  
 9 doesn't sit right, or that just doesn't make sense?  
 10 Is there anything that is evident here to you?  
 11 A. No.  
 12 Q. So it seems just pretty -- like a routine call?  
 13 A. Pretty much. Unfortunately, she ended up having  
 14 a head bleed that costed her her life.  
 15 Q. Okay. So it did not leave any question to you  
 16 that you felt you -- that went unanswered in your  
 17 brain to you?  
 18 A. No.  
 19 MR. GASPER: Okay. Well, Holly, I  
 20 really appreciate you taking the time to  
 21 meet with us today. I know Jim probably has  
 22 some follow-up questions. And I apologize  
 23 also if I went longer than maybe I  
 24 suspected, but I wanted to make sure I was  
 25 thorough. I am going to pass the witness.

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1 I believe Jim has some questions for you.  
 2 Thanks.  
 3 FURTHER EXAMINATION  
 4 BY MR. JACKSON:  
 5 Q. Holly, I know we've been going for a little bit.  
 6 I've just got a couple of follow-up questions. Okay?  
 7 A. We just need to get it done real quick, though.  
 8 Kids called an hour ago, so they're outside waiting on  
 9 me.  
 10 Q. I am going to be real quick.  
 11 A. My kids and my husband.  
 12 Q. Okay. So my records are showing that your --  
 13 some of these things on the timing. My records show  
 14 that you left at 1:44 and arrived at Booneville at  
 15 2:12. And that would be 28 minutes. Do you have any  
 16 reason to disagree with that, if that's what's shown  
 17 on page 4 of 9 of your Logan County EMS records?  
 18 A. No, sir. Because it takes us about 30 minutes  
 19 or so to get over that mountain, 'cause it's not a  
 20 straight shot.  
 21 Q. Right. And then when you talk about 1304, you  
 22 went through -- that's when you do your initial -- is  
 23 that when your -- that's when you start your initial  
 24 assessment of Ms. Ashcraft and her children?  
 25 A. Yes.

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1 Q. And that takes -- I would assume that takes  
 2 several minutes to do, and then you walk with her  
 3 across the street into the house. You see her and  
 4 then you advise her one more time if there's any more  
 5 issues with [REDACTED] please let somebody know. So  
 6 really, 1304 is when you started. You don't know for  
 7 sure the time that you left the house; is that  
 8 correct?  
 9 A. That's correct.  
 10 Q. And just 'cause of the cutout, I think you said  
 11 that is correct, yes?  
 12 A. Yes. That is correct.  
 13 Q. Okay. And you don't know what time Trooper Ray,  
 14 who came to the van and notified you that there's an  
 15 issue, you don't know what time he arrived into the  
 16 house and interacted with Ms. Ashcraft and realized  
 17 that she needed a paramedic's care immediately; is  
 18 that correct?  
 19 A. That is correct. You would be able to get that  
 20 time, should be able to get that time from his report.  
 21 Q. And then he would have -- okay. You just know  
 22 what time the second assessment began of when you were  
 23 able to get out of the ambulance and go inside and see  
 24 her, that's your -- that's when you start that second  
 25 assessment at -- of Ms. Ashcraft, correct?

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1 A. Correct.  
 2 Q. Okay. And then one little thing. Earlier, when  
 3 you were -- when Mr. Gasper was asking you about  
 4 Ms. Ashcraft's refusal for [REDACTED] there was -- there  
 5 was a phrase adamant or I've got this.  
 6 And when I tell my teenagers to take out  
 7 the trash and I may have to do it a couple of times, I  
 8 may be adamant in that perhaps my voice drops. I stop  
 9 what I'm doing. I'm staring at them to know that  
 10 there's some punishment coming if they don't finally  
 11 respond to their father, or was it more of repeated,  
 12 hey, it's okay, I've got this?  
 13 I just want to make sure we understand or  
 14 the record shows Ms. Ashcraft's demeanor to you during  
 15 your initial assessment interaction regarding [REDACTED]  
 16 and Ms. Ashcraft.  
 17 A. Her demeanor never changed. I used the word  
 18 "adamant" because she consistently said the same thing  
 19 over and over. She was never -- she never got  
 20 aggressive. She never got frustrated. She just kept  
 21 the same demeanor. She was like, "No. I understand."  
 22 Q. I just want -- that's what I thought. I just  
 23 wanted to make sure. Okay.  
 24 A. Yes.  
 25 MR. JACKSON: I think we'll let you

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1 get -- I'm finished. I think Mr. Gasper May  
 2 have one more follow-up question.  
 3 FURTHER EXAMINATION  
 4 BY MR. GASPER:  
 5 Q. Just that you were about to say something at the  
 6 very end there, Holly. You wanted to add -- it  
 7 sounded like you were not quite finished with your  
 8 answer to that question, or not?  
 9 A. No. Her demeanor never changed.  
 10 Q. Pardon me?  
 11 A. Her demeanor never changed.  
 12 Q. I was making sure that we didn't get you cut off  
 13 and you wanted to add something.  
 14 MR. GASPER: No, I do not have anything  
 15 further. Again, thank you so much for  
 16 taking your time today.  
 17 THE WITNESS: You're welcome.  
 18 MR. JACKSON: Thank you, Ms. Newman. I  
 19 know it took a lot longer than what we  
 20 thought, so thank you very much.  
 21 THE WITNESS: Thank you.  
 22 THE VIDEOGRAPHER: This concludes the  
 23 video deposition of Holly Newman. The time  
 24 is 12:07 p.m. We are now off the record.  
 25 (The deposition was concluded at 12:07 p.m.)



ARKANSAS STATE CLAIMS COMMISSION

HALEY HUDSON, SPECIAL ADMINISTRATRIX OF  
THE ESTATE OF JACQUELINE LYNN ASHCRAFT,  
DECEASED, AND HALEY HUDSON AS  
PERMANENT LEGAL GUARDIAN OF [REDACTED]  
[REDACTED] A MINOR CHILD

CLAIMANT

VS.

CC NO. 230641

ARKANSAS DEPARTMENT OF  
HUMAN SERVICES

RESPONDENT

DR. RALPH SCOTT'S TRIAL EXHIBITS

Respectfully submitted,

BY:  /s/ Jim Jackson

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the above and foregoing Dr Ralph Scott's Trial Binder was served on the following counsel of record by email on August 22, 2024:

Mr. Vincent France  
Assistant Deputy Chief Counsel  
Arkansas Department of Human Services  
P.O. Box 1437  
Little Rock, AR 72203-1437

/s/ Jim R. Jackson  
Jim R. Jackson

**EXHIBIT**  
**10**

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# ECONOMIC AND FINANCIAL CONSULTING GROUP, INC.

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March 20, 2023

Mr. Jim Jackson  
Attorney at Law  
Jackson Law Firm  
700 West Broadway Street, Suite 2  
North Little Rock, AR 72114-5528

RE: **Estate of Jacqueline Lynn Ashcraft**

Dear Mr. Jackson:

At your request, I have performed calculations concerning the value of the loss of life of Jacqueline Lynn Ashcraft (Ashcraft) in connection with the wrongful death lawsuit resulting from her death on June 12, 2021. I am also providing data concerning the statistical value of life utilized by government agencies in cost/benefit studies. In addition to loss of life damages, I have also calculated the value of the household services that Ashcraft would have provided for her surviving children and the cost of raising her surviving children that will now be incurred by her surviving sister and brother-in-law. My computations are discussed in detail below.

## LOSS OF LIFE

Running through the history of economic thought, there has been a general consensus that the monetary value of life can, *at a minimum*, be determined by the present value of projected lifetime compensation. Present value represents the amount of money that would be needed at a point in time so that with appropriate financial investments a flow of lifetime compensation could be duplicated. The present value of projected lifetime compensation is commonly called "human capital" in economic literature. Conceptually, human capital is identically equal to the concept of "earning capacity" that appears in tort litigation. The present value of projected lifetime compensation can be simultaneously interpreted as a measure of the loss of life suffered by the decedent because it represents the loss of human capital or earning capacity that would

have provided the basis for lifetime personal expenditures and also a societal loss because of the elimination of the decedent's productive efforts from which society would have derived benefit. It should be stressed that the valuation of human capital is identical to computations of lost earning capacity which arise in personal injury litigation and can be calculated with equal precision. As stated above, this approach should be construed as yielding a *minimum* measure of the value of life because it focuses exclusively on lifetime earnings and ignores many other aspects of the value of life. Given these comments, a starting point for my analysis of loss of life would entail a consideration of the present value of the income flows that could have been potentially generated by Ashcraft had she remained alive. This component of loss of life as well as the residual value of life in excess of earning capacity is discussed below.

#### Present Value of Potential Lifetime Earnings

The evaluation of the present value of Ashcraft's potential lifetime earnings, which represents her human capital, entails a consideration of the income flows that she could have generated had she remained alive. Although Ashcraft was not working at the time of her death, I have conservatively assumed that she had an earning capacity at least equal to annualized minimum wage earnings, \$22,880.00 per year. In assigning a value to these income flows, a distinction should be made between past and projected future magnitudes. Past potential earnings are not discounted; however future potential earnings should be discounted and converted into present value terms. Past earnings are calculated in accordance with equation (1), below:

$$(1) \text{ Past Earnings} = (\text{Base Income})(\text{Time Interval Between Date of Death and Current Date})$$

In the present instance base income is assumed to be \$22,880.00 per year based on annualized minimum wage earnings. As discussed above, this figure is a minimal measure of Ashcraft's earning capacity at the time of her death. The time interval amounts to 1.77 years. Performing the computation indicated by equation (1), based on the assumptions above, yields a past value of income amounting to **\$40,494.47**.

The present value of future income, which represents Ashcraft's human capital or earning capacity, is calculated by projecting her base income over her remaining work life expectancy and discounting in accordance with equation (2), below:

$$(2) \text{ Present Value of Future Income} = \sum_{t=1}^T \text{Base income}/(1+r)^t$$

where T = work life expectancy, which is alternatively assumed to be 4.86 additional years, Scenario (1), or 15.15 additional years, Scenario (2). Scenario (1) is based on Ashcraft's statistical work life expectancy based on Gary R. Skoog, James E. Ciecka, and Kurt V. Krueger: "The Markov Process Model of Years to Final Separation From the Labor Force 2012-2017: Extended Tables of Central

Tendency, Shape, Percentile Points, and Bootstrap Standard Errors”, *Journal of Forensic Economics* 28(1-2), 2019 (based on her inactive status at the time of her death). Scenario (2) is based on an assumed retirement at age 67.

Base Income = \$22,880.00 per year as discussed above.

r = discount factor used to convert future magnitudes into present value terms. For computational purposes, I have assumed r to be equal to 2.5% to reflect the real rate of return (interest minus inflation) on inflation indexed government bonds. These bonds would be a financial instrument almost perfectly suited to protecting against the effects of future inflation.

Performing the calculation indicated by equation (2), based on the assumptions above, yields a present value of projected future income in the range **\$103,465.39** to **\$285,597.80**. Adding the values of past and projected future income yields an earning capacity in the range **\$143,959.86** to **\$326,092.27**. This range should be interpreted as a measure Ashcraft’s human capital or earning capacity. My computations are presented on a year-by-year basis in the attached Table (1).

#### Fringe Benefits

For computational purposes, fringe benefits are assumed to amount to 30.0% of income. This figure is based on data contained in the United States Department of Labor publication: *Employer Costs for Employee Compensation – September 2022* which indicates that fringe benefits, net of paid vacation and time off, on average amount to 30.0% of income for civilian employees in the United States. Applying this percentage to the present value of potential lifetime earnings, calculated above, yields fringe benefit valuations in the range **\$43,187.96** to **\$97,827.68**. Fringe benefit losses can be computed on a year-by-year basis by multiplying the figures in Table (1) by the assumed fringe benefit percentage.

Adding the values of projected income and fringe benefits yields a total valuation in the range **\$187,147.82** to **\$423,919.95**. This range should be interpreted as a measure Ashcraft’s human capital or earning capacity.

#### Residual Value of Life in Excess of Earning Capacity

As discussed above, the present value of lifetime earnings would represent a minimum valuation of the loss of life because it focuses exclusively on productivity and ignores other aspects of the value of life. Many of life’s joys, pleasures and services, which are independent of earning capacity and are generally considered to be “priceless”, have been lost as a result of Ashcraft’s death. Consequently, my figures should not be interpreted as capturing the total value of loss of life but rather those aspects of loss of life that are readily quantifiable. In the attached Table (5), I have noted that additional figures for the residual value of life are to be determined by the jury. I have provided information on Ashcraft’s statistical life expectancy, 33.60 additional years at the

time of her death based on the Center for Disease Control publication: *United States Life Tables, 2019*, to assist the jury in this determination. I have also provided computations, summarized in the attached Table (6), in which future residual value of life figures can be reduced to present value. Reducing future amounts to present value is consistent with the methodology advocated by the United States Government, Office of Management and Budget (OMB) in *Circular A-4*, September 17, 2003, in which guidelines for incorporating statistical value of life into cost/benefit analysis are established. This approach provides a more fairly determined measure of damages for defendants determined to be liable. The methodology encompassed in my computations could be utilized for any annual value determined by the jury.

Since the jury will be instructed and charged to arrive at a figure for loss of life damages, I have researched this issue and can assist the jury by providing for their consideration the value that government agencies place on the statistical value of life. The attached documents, published by the United States Department of Transportation (DOT) and the Environmental Protection Agency (EPA), suggest statistical values of life amounting to \$11,705,859.00 and \$10,742,297.00, respectively. The DOT and EPA valuations have been adjusted to the current price level. United States Census Bureau data documents a median age across the United States population amounting to 37.2 years. Life expectancy, based on this age, amounts to 43.3 additional years. Dividing the statistical values of life identified above by remaining life expectancy, yields average annual evaluations of \$278,711.00 and \$255,769.00 for DOT and EPA statistical values of life, respectively. The OMB, as well as other government agencies, have suggested guidelines and endorsed statistical values of life for various cost/benefit analyses that have been performed. Total and implicit annual statistical values of life for these government studies, adjusted to current price levels, are presented in the attached Table (4). I additionally attach recent *Wall Street Journal* and *New York Times* articles on this topic.

In summary, Ashcraft's loss of life would be worth at least **\$187,147.82** to **\$423,919.95**, the present value of her expected lifetime earnings or human capital. Losses associated with the residual value of life should be considered in addition to this amount in order to arrive at a more accurate valuation of the loss of life suffered by Ashcraft.

#### Lost Household Services

Because of her death, Ashcraft is no longer able to provide for her family the services she previously performed. I have assumed a value for these services amounting to \$13,154.33 per year based on Expectancy Data, *The Dollar Value of the Day: 2020 Dollar Valuation* (Table 333). Calculating past and projected future losses in accordance with the methodology explained above yields loss amounts of **\$23,281.36** and **\$66,443.92**, respectively. Future losses are projected over the next 5.47 additional years based on the remaining time interval until Ashcraft's youngest child will reach age 18. Adding past and projected future losses yields a total loss of household services amounting to **\$89,725.28**. My computations are presented on a year-by-year basis in the attached Table (2).

Cost of Raising Surviving Children

The attached Tables (3) and (4) present the annual costs, present value, and cumulative present value of the costs associated with raising Ashcraft's surviving children, [REDACTED] and [REDACTED] respectively, to age 18. Annual cost figures are based on the United States Department of Agriculture Study: *Expenditures on Children by Families, 2015*. The figures presented in that study are adjusted to 2021 price levels in accordance with historical inflation rates over the period since 2015. Present values are calculated in accordance with the methodology explained above. The present values of total expenses amount to **\$61,866.43** and **\$28,971.49** for [REDACTED] respectively. My computations are presented on a year-by-year basis in the attached Tables (3) and (4), respectively.

Please be advised that my calculations do not address the costs of college or vocational education for Ashcraft's children.

My computations of economic loss are summarized in the attached tables.

This report reflects information and opinions as of the date of the report and may be amended if additional data or information becomes available. If I can be of further service in this matter, please do not hesitate to contact me.

Yours very truly,



RALPH D. SCOTT, JR., Ph.D.

TABLE 1

**ESTATE OF JACQUELINE LYNN ASHCRAFT  
CALCULATION OF HUMAN CAPITAL / EARNING CAPACITY**

| <u>Year</u>                                                | <u>Base<br/>Income</u> | <u>Year<br/>Fraction</u> | <u>Lost<br/>Earnings</u> | <u>Present<br/>Value<br/>Factor</u> | <u>Economic<br/>Loss</u> | <u>Cumulative<br/>Economic<br/>Loss</u> |
|------------------------------------------------------------|------------------------|--------------------------|--------------------------|-------------------------------------|--------------------------|-----------------------------------------|
| <b>PAST:</b>                                               |                        |                          |                          |                                     |                          |                                         |
| 2021                                                       | 22,880.00              | 0.5562                   | 12,725.04                | 1.0000                              | 12,725.04                | 12,725.04                               |
| 2022                                                       | 22,880.00              | 1.0000                   | 22,880.00                | 1.0000                              | 22,880.00                | 35,605.04                               |
| 2023                                                       | 22,880.00              | 0.2137                   | 4,889.42                 | 1.0000                              | 4,889.42                 | 40,494.47                               |
| <b>Total</b>                                               |                        | <b>1.7699</b>            | <b>40,494.47</b>         |                                     | <b>40,494.47</b>         | <b>40,494.47</b>                        |
| <b>FUTURE:</b>                                             |                        |                          |                          |                                     |                          |                                         |
| 2023/24                                                    | 22,880.00              | 1.0000                   | 22,880.00                | 0.9756                              | 22,321.95                | 22,321.95                               |
| 2024/25                                                    | 22,880.00              | 1.0000                   | 22,880.00                | 0.9518                              | 21,777.51                | 44,099.46                               |
| 2025/26                                                    | 22,880.00              | 1.0000                   | 22,880.00                | 0.9286                              | 21,246.35                | 65,345.82                               |
| 2026/27                                                    | 22,880.00              | 1.0000                   | 22,880.00                | 0.9060                              | 20,728.15                | 86,073.97                               |
| 2027/28                                                    | 22,880.00              | 0.8600                   | 19,676.80                | 0.8839                              | 17,391.42                | 103,465.39                              |
| <b>Total (Scenario 1)</b>                                  |                        | <b>4.8600</b>            | <b>111,196.80</b>        |                                     | <b>103,465.39</b>        | <b>103,465.39</b>                       |
| 2027/28                                                    | 22,880.00              | 1.0000                   | 22,880.00                | 0.8839                              | 20,222.59                | 106,296.56                              |
| 2028/29                                                    | 22,880.00              | 1.0000                   | 22,880.00                | 0.8623                              | 19,729.35                | 126,025.91                              |
| 2029/30                                                    | 22,880.00              | 1.0000                   | 22,880.00                | 0.8413                              | 19,248.15                | 145,274.06                              |
| 2030/31                                                    | 22,880.00              | 1.0000                   | 22,880.00                | 0.8207                              | 18,778.68                | 164,052.74                              |
| 2031/32                                                    | 22,880.00              | 1.0000                   | 22,880.00                | 0.8007                              | 18,320.66                | 182,373.40                              |
| 2032/33                                                    | 22,880.00              | 1.0000                   | 22,880.00                | 0.7812                              | 17,873.82                | 200,247.22                              |
| 2023/24                                                    | 22,880.00              | 1.0000                   | 22,880.00                | 0.7621                              | 17,437.87                | 217,685.10                              |
| 2024/25                                                    | 22,880.00              | 1.0000                   | 22,880.00                | 0.7436                              | 17,012.56                | 234,697.65                              |
| 2025/26                                                    | 22,880.00              | 1.0000                   | 22,880.00                | 0.7254                              | 16,597.62                | 251,295.27                              |
| 2026/27                                                    | 22,880.00              | 1.0000                   | 22,880.00                | 0.7077                              | 16,192.80                | 267,488.07                              |
| 2027/28                                                    | 22,880.00              | 1.0000                   | 22,880.00                | 0.6905                              | 15,797.85                | 283,285.92                              |
| 2028/29                                                    | 22,880.00              | 0.1500                   | 3,432.00                 | 0.6736                              | 2,311.88                 | 285,597.80                              |
| <b>Total (Scenario 2)</b>                                  |                        | <b>15.1500</b>           | <b>\$ 346,632.00</b>     |                                     | <b>\$ 285,597.80</b>     | <b>285,597.80</b>                       |
| <b>TOTAL HUMAN CAPITAL / EARNING CAPACITY (SCENARIO 1)</b> |                        |                          |                          |                                     |                          | <b><u>\$ 143,959.86</u></b>             |
| <b>TOTAL HUMAN CAPITAL / EARNING CAPACITY (SCENARIO 2)</b> |                        |                          |                          |                                     |                          | <b><u>\$ 326,092.27</u></b>             |

TABLE 2

**ESTATE OF JACQUELINE LYNN ASHCRAFT  
CALCULATION OF LOST HOUSEHOLD SERVICES**

| <u>Year</u>                          | <u>Base<br/>Annual<br/>Value</u> | <u>Year<br/>Fraction</u> | <u>Annual<br/>Loss</u> | <u>Present<br/>Value<br/>Factor</u> | <u>Economic<br/>Loss</u> | <u>Cumulative<br/>Economic<br/>Loss</u> |
|--------------------------------------|----------------------------------|--------------------------|------------------------|-------------------------------------|--------------------------|-----------------------------------------|
| <b>PAST:</b>                         |                                  |                          |                        |                                     |                          |                                         |
| 2021                                 | \$ 13,154.33                     | 0.5562                   | \$ 7,315.97            | 1.0000                              | \$ 7,315.97              | \$ 7,315.97                             |
| 2022                                 | 13,154.33                        | 1.0000                   | 13,154.33              | 1.0000                              | 13,154.33                | 20,470.29                               |
| 2023                                 | 13,154.33                        | 0.2137                   | 2,811.06               | 1.0000                              | 2,811.06                 | 23,281.36                               |
| <b>Total</b>                         |                                  | <u>1.7699</u>            | <u>23,281.36</u>       |                                     | <u>23,281.36</u>         | <u>23,281.36</u>                        |
| <b>FUTURE:</b>                       |                                  |                          |                        |                                     |                          |                                         |
| 2023/24                              | 13,154.33                        | 1.0000                   | 13,154.33              | 0.9756                              | 12,833.49                | 12,833.49                               |
| 2024/25                              | 13,154.33                        | 1.0000                   | 13,154.33              | 0.9518                              | 12,520.48                | 25,353.97                               |
| 2025/26                              | 13,154.33                        | 1.0000                   | 13,154.33              | 0.9286                              | 12,215.10                | 37,569.07                               |
| 2026/27                              | 13,154.33                        | 1.0000                   | 13,154.33              | 0.9060                              | 11,917.17                | 49,486.24                               |
| 2027/28                              | 13,154.33                        | 1.0000                   | 13,154.33              | 0.8839                              | 11,626.51                | 61,112.74                               |
| 2028/29                              | 13,154.33                        | 0.4700                   | 6,182.53               | 0.8623                              | 5,331.18                 | 66,443.92                               |
| <b>Total</b>                         |                                  | <u>5.4700</u>            | <u>71,954.16</u>       |                                     | <u>66,443.92</u>         | <u>66,443.92</u>                        |
| <b>TOTAL LOST HOUSEHOLD SERVICES</b> |                                  |                          |                        |                                     |                          | <u><u>\$ 89,725.28</u></u>              |

TABLE 3

ESTATE OF JACQUELINE LYNN ASHCRAFT  
COST TO RAISE [REDACTED]

| <u>Age</u>                           | <u>Base Annual Expense</u> | <u>Year Fraction</u> | <u>Projected Expense</u> | <u>Present Value Factor</u> | <u>Present Value</u> | <u>Cumulative Present Value</u> |
|--------------------------------------|----------------------------|----------------------|--------------------------|-----------------------------|----------------------|---------------------------------|
| <b>PAST:</b>                         |                            |                      |                          |                             |                      |                                 |
| 10                                   | \$ 8,516.08                | 0.2466               | \$ 2,099.86              | 1.0000                      | \$ 2,099.86          | \$ 2,099.86                     |
| 11                                   | 8,516.08                   | 1.0000               | 8,516.08                 | 1.0000                      | 8,516.08             | 10,615.93                       |
| 12                                   | 9,015.45                   | 0.5233               | 4,717.67                 | 1.0000                      | 4,717.67             | 15,333.61                       |
| <b>Total</b>                         |                            | <u>1.7699</u>        | <u>15,333.61</u>         |                             | <u>15,333.61</u>     | <u>15,333.61</u>                |
| <b>FUTURE:</b>                       |                            |                      |                          |                             |                      |                                 |
| 12                                   | 9,015.45                   | 1.0000               | 9,015.45                 | 0.9756                      | 8,795.56             | 8,795.56                        |
| 13                                   | 9,015.45                   | 1.0000               | 9,015.45                 | 0.9518                      | 8,581.04             | 17,376.60                       |
| 14                                   | 9,180.33                   | 1.0000               | 9,180.33                 | 0.9286                      | 8,524.85             | 25,901.45                       |
| 15                                   | 9,398.90                   | 1.0000               | 9,398.90                 | 0.9060                      | 8,514.94             | 34,416.39                       |
| 16                                   | 9,398.90                   | 1.0000               | 9,398.90                 | 0.8839                      | 8,307.26             | 42,723.64                       |
| 17                                   | 9,398.90                   | 0.4700               | 4,417.48                 | 0.8623                      | 3,809.18             | 46,532.83                       |
| <b>Total</b>                         |                            | <u>5.4700</u>        | <u>\$ 50,426.51</u>      |                             | <u>\$ 46,532.83</u>  | <u>\$ 46,532.83</u>             |
| <b>TOTAL EXPENSE (PRESENT VALUE)</b> |                            |                      |                          |                             |                      | <u><u>\$ 61,866.43</u></u>      |

TABLE 4

ESTATE OF JACQUELINE LYNN ASHCRAFT  
COST TO RAISE [REDACTED]

| <u>Age</u>                           | <u>Base Annual Expense</u> | <u>Year Fraction</u> | <u>Projected Expense</u> | <u>Present Value Factor</u> | <u>Present Value</u> | <u>Cumulative Present Value</u>   |
|--------------------------------------|----------------------------|----------------------|--------------------------|-----------------------------|----------------------|-----------------------------------|
| <b>PAST:</b>                         |                            |                      |                          |                             |                      |                                   |
| 14                                   | \$ 8,654.83                | 0.2767               | \$ 2,394.90              | 1.0000                      | \$ 2,394.90          | \$ 2,394.90                       |
| 15                                   | 9,034.93                   | 1.0000               | 9,034.93                 | 1.0000                      | 9,034.93             | 11,429.83                         |
| 16                                   | 9,034.93                   | 0.4932               | 4,455.58                 | 1.0000                      | 4,455.58             | 15,885.41                         |
| <b>Total</b>                         |                            | <u>1.7699</u>        | <u>15,885.41</u>         |                             | <u>15,885.41</u>     | <u>15,885.41</u>                  |
| <b>FUTURE:</b>                       |                            |                      |                          |                             |                      |                                   |
| 16                                   | 9,015.45                   | 1.0000               | 9,015.45                 | 0.9756                      | 8,795.56             | 8,795.56                          |
| 17                                   | 9,015.45                   | 0.5000               | 4,507.73                 | 0.9518                      | 4,290.52             | 13,086.08                         |
| <b>Total</b>                         |                            | <u>1.5000</u>        | <u>\$ 13,523.18</u>      |                             | <u>\$ 13,086.08</u>  | <u>\$ 13,086.08</u>               |
| <b>TOTAL EXPENSE (PRESENT VALUE)</b> |                            |                      |                          |                             |                      | <b><u><u>\$ 28,971.49</u></u></b> |

TABLE 5

ESTATE OF JACQUELINE LYNN ASHCRAFT  
SUMMARY OF ECONOMIC LOSS

LOSS OF LIFE

| HUMAN CAPITAL                                               | Scenario               |                        |
|-------------------------------------------------------------|------------------------|------------------------|
|                                                             | <u>1</u>               | <u>2</u>               |
| <b>Earning Capacity</b>                                     |                        |                        |
| Past                                                        | \$ 40,494.47           | \$ 40,494.47           |
| Projected Future                                            | 103,465.39             | 285,597.80             |
| <b>Total</b>                                                | <u>143,959.86</u>      | <u>326,092.27</u>      |
| <b>Fringe Benefits</b>                                      |                        |                        |
| Past                                                        | 12,148.34              | 12,148.34              |
| Projected Future                                            | 31,039.62              | 85,679.34              |
| <b>Total</b>                                                | <u>43,187.96</u>       | <u>97,827.68</u>       |
| <b>Total Human Capital</b>                                  | 187,147.82             | 423,919.95             |
| <b>RESIDUAL VALUE OF LIFE IN EXCESS OF EARNING CAPACITY</b> | To Be Determined       |                        |
|                                                             | X                      | 33.6                   |
| _____                                                       | =                      | _____                  |
| Annual                                                      |                        | Life                   |
| Value                                                       |                        | Expectancy             |
| <b>TOTAL LOSS OF LIFE</b>                                   | <u>\$ 187,147.82</u> + | <u>\$ 423,919.95</u> + |
| <b>LOST HOUSEHOLD SERVICES</b>                              |                        |                        |
| Past                                                        | 23,281.36              | 23,281.36              |
| Projected Future                                            | 66,443.92              | 66,443.92              |
| <b>Total</b>                                                | <u>89,725.28</u>       | <u>89,725.28</u>       |
| <b>COSTS OF RAISING SURVIVING CHILDREN</b>                  |                        |                        |
| [REDACTED]                                                  | 61,866.43              | 61,866.43              |
| [REDACTED]                                                  | 28,971.49              | 28,971.49              |
| <b>Total</b>                                                | <u>90,837.92</u>       | <u>90,837.92</u>       |
| <b>TOTAL ECONOMIC LOSS</b>                                  | <u>\$ 367,711.02</u> + | <u>\$ 604,483.16</u> + |

TABLE 6

ESTATE OF JACQUELINE LYNN ASHCRAFT  
SUMMARY OF ECONOMIC LOSS

LOSS OF LIFE

|                                                             |   | Scenario                      |                               |
|-------------------------------------------------------------|---|-------------------------------|-------------------------------|
|                                                             |   | 1                             | 2                             |
| <b>HUMAN CAPITAL</b>                                        |   |                               |                               |
| <b>Lost Earning Capacity</b>                                |   |                               |                               |
| Past                                                        |   | \$ 40,494.47                  | \$ 40,494.47                  |
| Projected Future                                            |   | <u>103,465.39</u>             | <u>285,597.80</u>             |
| Total                                                       |   | <u>143,959.86</u>             | <u>326,092.27</u>             |
| <b>Fringe Benefits</b>                                      |   |                               |                               |
| Past                                                        |   | 12,148.34                     | 12,148.34                     |
| Projected Future                                            |   | <u>31,039.62</u>              | <u>85,679.34</u>              |
| Total                                                       |   | <u>43,187.96</u>              | <u>97,827.68</u>              |
| <b>Total Human Capital</b>                                  |   | <b>187,147.82</b>             | <b>423,919.95</b>             |
| <b>RESIDUAL VALUE OF LIFE IN EXCESS OF EARNING CAPACITY</b> |   | To Be Determined              |                               |
| <u>        </u>                                             | X | <u>  33.6</u>                 | X                             |
| Annual                                                      |   | Life                          | 0.7006                        |
| Value                                                       |   | Expectancy                    | Factor                        |
|                                                             |   |                               | =                             |
|                                                             |   |                               | <u>        </u>               |
| <b>TOTAL LOSS OF LIFE</b>                                   |   | <u><u>187,147.82</u></u> +    | <u><u>423,919.95</u></u> +    |
| <b>LOST HOUSEHOLD SERVICES</b>                              |   |                               |                               |
| Past                                                        |   | 23,281.36                     | 23,281.36                     |
| Projected Future                                            |   | <u>66,443.92</u>              | <u>66,443.92</u>              |
| Total                                                       |   | <u>89,725.28</u>              | <u>89,725.28</u>              |
| <b>COSTS OF RAISING SURVIVING CHILDRTEN</b>                 |   |                               |                               |
|                                                             |   | 61,866.43                     | 61,866.43                     |
|                                                             |   | <u>28,971.49</u>              | <u>28,971.49</u>              |
| Total                                                       |   | <u>90,837.92</u>              | <u>90,837.92</u>              |
| <b>TOTAL ECONOMIC LOSS</b>                                  |   | <u><u>\$ 187,147.82</u></u> + | <u><u>\$ 423,919.95</u></u> + |

**Departmental Guidance**  
**Treatment of the Value of Preventing Fatalities and Injuries**  
**in Preparing Economic Analyses**  
**March 2021**

This guidance describes the Department of Transportation's recommended methodology for calculating the value of a statistical life (VSL) and applying it in analyses that assess the economic benefits of preventing fatalities. It also establishes policies for assigning comparable values to the prevention of injuries.

**Background**

Prevention of injury, illness, and loss of life is a significant factor in many private economic decisions, including job choices and consumer product purchases. When government makes direct investments or controls external market impacts by regulation, it also pursues these benefits, often while also imposing costs on society. The Office of the Secretary of Transportation and other DOT administrations are required by Executive Order 13563, Executive Order 12866, Executive Order 12893, OMB Circular A-4, and DOT Order 2100.5 to evaluate in monetary terms the costs and benefits of their regulations, investments, and administrative actions, in order to demonstrate the faithful execution of their responsibilities to the public. Since 1993, the Office of the Secretary of Transportation has periodically reviewed the published research on the value of safety and updated guidance for all administrations. The benefit of preventing a fatality is measured by what is conventionally called the Value of a Statistical Life, defined as the additional cost that individuals would be willing to bear for improvements in safety (that is, reductions in risks) that, in the aggregate, reduce the expected number of fatalities by one. This conventional terminology has often provoked misunderstanding on the part of both the public and decision-makers. What is involved is not the valuation of life as such, but the valuation of reductions in risks. While new terms have been proposed to avoid misunderstanding, we will maintain the common usage of the research literature and OMB Circular A-4 in referring to VSL.

Most regulatory actions involve the reduction of risks of low probability (as in, for example, a one-in-10,000 annual chance of dying in an automobile crash). For these low-probability risks, we shall assume that the willingness to pay to avoid the risk of a fatal injury increases proportionately with growing risk. That is, when an individual is willing to pay \$1,000 to reduce the annual risk of death by one in 10,000, she is said to have a VSL of \$10 million. The assumption of a linear relationship between risk and willingness to pay therefore implies that she would be willing to pay \$2,000 to reduce risk by two in 10,000 or \$5,000 to reduce risk by five in 10,000. The assumption of a linear relationship between risk and willingness to pay (WTP) breaks down when the annual WTP becomes a substantial portion of annual income, so the assumption of a constant VSL is not appropriate for substantially larger risks.

When first applied to benefit-cost analysis in the 1960s and 1970s, the value of saving a life was measured by the potential victim's expected earnings, measuring the additional product society might have lost. These lost earnings were widely believed to understate the real costs of loss of

life, because the value that we place on the continued life of our family and friends is not based entirely, or even principally, on their earning capacity. In recent decades, studies based on estimates of individuals' willingness to pay for improved safety have become widespread, and offer a way of measuring the value of reduced risk in a more comprehensive way. These estimates of the individual's value of safety are then treated as the ratio of the individual marginal utility of safety to the marginal utility of wealth. These estimates of the individual values of changes in safety can then be aggregated to produce estimates of social benefits of changes in safety, which can then be compared with the costs of these changes.

Studies estimating the willingness to pay for safety fall into two categories. Some analyze subjects' responses in real markets, and are referred to as revealed preference (RP) studies, while others analyze subjects' responses in hypothetical markets, and are described as stated preference (SP) studies. Revealed preference studies in turn can be divided into studies based on consumer purchase decisions and studies based on employment decisions (usually referred to as hedonic wage studies). Even in revealed preference studies, safety is not purchased directly, so the value that consumers place upon it cannot be measured directly. Instead, the value of safety can be inferred from market decisions that people make in which safety is one factor in their decisions. In the case of consumer purchase decisions, since goods and services usually display multiple attributes, and are purchased for a variety of reasons, there is no guarantee that safety will be the conclusive factor in any purchasing decision (note that even products like bicycle helmets, which are purchased primarily for safety, also vary in style, comfort, and durability). Similarly, in employment decisions, safety is one of many considerations in the decision of which job offer to accept. Statistical techniques must therefore be used to identify the relative influence of price (or wage), safety, and other qualitative characteristics of the product or job on the consumer's or worker's decision on which product to buy or which job to accept.

An additional complication in RP studies is that, even if the real risks confronted by individuals can be estimated accurately by the analyst, the consumer or employee may not estimate these risks accurately. It is possible for individuals, through lack of relevant information or limited ability to analyze risks, to assign an excessively low or high probability to fatal risks. Alternatively, detailed familiarity with the hazards they face and their own skills may allow individuals to form more accurate estimates of risk at, for example, a particular job-site than those derived by researchers, which inevitably are based on more aggregate data.

In the SP approach, market alternatives incorporating hypothetical risks are presented to test subjects, who respond with what they believe would be their choices. Answers to hypothetical questions may provide helpful information, but they remain hypothetical. Although great pains are usually taken to communicate probabilities and measure the subjects' understanding, there is no assurance that individuals' predictions of their own behavior would be observed in practice. Against this weakness, the SP method can evaluate many more alternatives than those for which market data are available, and it can guarantee that risks are described objectively to subjects. With indefinitely large potential variations in cost and risk and no uncontrolled variation in any other dimension, some of the objections to RP models are obviated. Despite procedural safeguards, however, SP studies have not proven consistently successful in estimating measures of WTP that increase proportionally with greater risks.

RP studies involving decisions to buy and/or use various consumer products have focused on decisions such as buying cars with better safety equipment, wearing seat belts or helmets, or buying and installing smoke detectors. These studies often lack a continuum of price-risk opportunities, so that the price paid for a safety feature (such as a bicycle helmet) does not necessarily represent the value that the consumer places on the improvement in safety that the helmet provides. In the case of decisions to use a product (like a seatbelt) rather than to buy the product, the “price” paid by the consumer must be inferred from the amount of time and degree of inconvenience involved in using the product, rather than the directly observable price of buying the product. The necessity of making these inferences introduces possible sources of error. Studies of purchases of automobiles probably are less subject to these problems than studies of other consumer decisions, because the price of the safety equipment is directly observable, and there are usually a variety of more or less expensive safety features that provide more of a range of price-risk trade-offs for consumers to make.

While there are many examples of SP studies and RP studies involving consumer product purchases, the most widely cited body of research comprises hedonic wage studies, which estimate the wage differential that employers must pay workers to accept riskier jobs, taking other factors into account. Besides the problem of identifying and quantifying these factors, researchers must have a reliable source of data on fatality and injury risks and also assume that workers’ psychological risk assessment conforms to the objective data. The accuracy of hedonic wage studies has improved over the last decade with the availability of more complete data from the Bureau of Labor Statistics’ (BLS) Census of Fatal Occupational Injuries (CFOI), supported by advances in econometric modeling, including the use of panel data from the Panel Study of Income Dynamics (PSID). The CFOI data are, first of all, a complete census of occupational fatalities, rather than a sample, so they allow more robust statistical estimation. Second, they classify occupational fatalities by both industry and occupation, allowing variations in fatalities across both dimensions to be compared with corresponding variations in wage rates. Some of the new studies use panel data to analyze the behavior of workers who switch from one job to another, where the analysis can safely assume that any trade-off between wage levels and risk reflects the preferences of a single individual, and not differences in preferences among individuals.

VSL estimates are based on studies of groups of individuals that are covered by the study, but those VSL estimates are then applied to other groups of individuals who were not the subjects of the original studies. This process is called benefit transfer. One issue that has arisen in studies of VSL is whether this benefit transfer process should be applied broadly over the general population of people that are affected by a rulemaking, or whether VSL should be estimated for particular subgroups, such as workers in particular industries, and people of particular ages, races, and genders. Advances in data and econometric techniques have allowed specialized estimates of VSL for these population subgroups. Safety regulations issued by the Department of Transportation typically affect a broad cross-section of people, rather than more narrowly defined subgroups. For that, and other policy reasons, we do not consider variations in VSL among different population groups in this guidance.

### **Principles and policies of this guidance**

This guidance for the conduct of Department of Transportation analyses is a synthesis of empirical estimates, practical adaptations, and social policies. We continue to explore new empirical literature as it appears and to give further consideration to the policy resolutions embodied in this guidance. Although our current approach is unchanged from previous guidance, the numbers and their sources are new, consistent with OMB guidance in Circular A-4 and with the use of the best available evidence. The methods we adopt are:

1. Prevention of an expected fatality is assigned a single, nationwide value in each year, regardless of the age, income, or other distinct characteristics of the affected population, the mode of travel, or the nature of the risk. When Departmental actions have distinct impacts on infants, disabled passengers, or the elderly, no adjustment to VSL should be made, but analysts should call the attention of decision-makers to the special character of the beneficiaries.
2. Analyses conducted by DOT operating administrations should adjust the VSL to the base year used in the analysis by applying the methodology described in this guidance to account for changes in prices and real income levels.
3. Sensitivity analyses applying alternative high and low safety benefit estimates should use a range of VSLs, as described in the section below on recognizing uncertainty.

### **2008 VSL Guidance Update**

In Circular A-4 (2003), the Office of Management and Budget endorsed VSL values between \$1 million and \$10 million, drawing on two then recently completed VSL meta-analyses.<sup>1</sup> The basis for our 2008 guidance comprised five studies, four of which were meta-analyses that synthesized many primary studies, identifying their sources of variation and estimating the most likely common parameters. These studies were written by Ted R. Miller;<sup>2</sup> Ikuho Kochi, Bryan Hubbell, and Randall Kramer;<sup>3</sup> W. Kip Viscusi;<sup>4</sup> Janusz R. Mrozek and Laura O. Taylor;<sup>5</sup> and W. Kip Viscusi and Joseph Aldy.<sup>6</sup> They narrowed VSL estimates to the \$2 million to \$7 million range in dollar values of the original data, between 1995 and 2000 (about \$3 million to \$9 million at current prices). Miller and Viscusi and Aldy also estimated income elasticities for VSL (the percent increase in VSL per one percent increase in income). Miller's estimates were close to 1.0, while Viscusi and Aldy estimated the elasticity to be between 0.5 and 0.6. DOT

<sup>1</sup> Viscusi, W. K. and J.E. Aldy (2003). "The Value of a Statistical Life: A Critical Review of Market Estimates Throughout the World." *Journal of Risk and Uncertainty*, 27(1): 5-76; and Mrozek, J.R. and L. O. Taylor (2002). "What Determines the Value of a Life? A Meta-Analysis." *Journal of Policy Analysis and Management*. 21(2).

<sup>2</sup> Miller, T. R. (2000). "Variations between Countries in Values of Statistical Life." *Journal of Transport Economics and Policy*. 34(2): 169-188. [http://www.bath.ac.uk/e-journals/jtep/pdf/Volume\\_34\\_Part\\_2\\_169-188.pdf](http://www.bath.ac.uk/e-journals/jtep/pdf/Volume_34_Part_2_169-188.pdf)

<sup>3</sup> Kochi, I., B. Hubbell, and R. Kramer (2006). "An Empirical Bayes Approach to Combining and Comparing Estimates of the Value of a Statistical Life for Environmental Policy Analysis." *Environmental and Resource Economics*. 34(3): 385-406.

<sup>4</sup> Viscusi, W. K. (2004). "The Value of Life: Estimates with Risks by Occupation and Industry." *Economic Inquiry*. 42(1): 29-48.

<sup>5</sup> Mrozek, J. R., and L. O. Taylor (2002). "What Determines the Value of Life? A Meta-Analysis." *Journal of Policy Analysis and Management*. 21(2).

<sup>6</sup> Viscusi, W. K. and J. E. Aldy (2003). "The Value of a Statistical Life: A Critical Review of Market Estimates Throughout the World." *Journal of Risk and Uncertainty*. 27(1): 5-76.

used the Viscusi and Aldy elasticity estimate (averaged to 0.55), along with the Wages and Salaries component of the Employer Cost for Employee Compensation, as well as price levels represented by the Consumer Price Index, to project these estimates to a 2007 VSL estimate of \$5.8 million.

### **2013 VSL Guidance Update**

Since these studies were published, the credibility of these meta-analyses has been qualified by recognition of weaknesses in the data used by the earlier primary studies whose results are synthesized in the meta-analyses. We now believe that the most recent primary research, using improved data (particularly the CFOI data discussed above) and specifications, provides more reliable results. This conclusion is based in part on the advice of a panel of expert economists that we convened to advise us on this issue. The panel consisted of Maureen Cropper (University of Maryland), Alan Krupnick (Resources for the Future), Al McGartland (Environmental Protection Agency), Lisa Robinson (independent consultant), and W. Kip Viscusi (Vanderbilt University). The Panel unanimously concluded that we should base our guidance only on hedonic wage studies completed within the past 10 years that made use of the CFOI database and used appropriate econometric techniques.

A white paper prepared for the U.S. Environmental Protection Agency (EPA) in 2010 identified eight hedonic wage studies using the CFOI data;<sup>7</sup> we also identified seven additional studies, including five published since the EPA White Paper was issued (see Table 1). Some of these studies focus on estimating VSL values for narrowly defined economic, demographic, or occupational categories, or use inappropriate econometric techniques, resulting in implausibly high VSL estimates. We therefore focused on nine studies that we think are useful for informing an appropriate estimate of VSL. There is broad agreement among researchers that these newer hedonic wage studies provide an improved basis for policy-making.<sup>8</sup>

The 15 hedonic wage studies we have identified that make use of the CFOI database to estimate VSL are listed in Table 1. Some of these studies do not estimate an overall “full-sample” VSL, instead estimating VSL values only for specific categories of people. Some of the studies, as the authors themselves sometimes acknowledge, arrive at implausibly high values of VSL, because of econometric specifications which appear to bias the results, or because of a focus on a narrowly-defined occupational group. Moreover, these papers generally offer multiple model specifications, and it is often not clear (even to the authors) which specification most accurately represents the actual VSL. We have generally chosen the specification that the author seems to believe is best. In cases where the author does not express a clear preference, we have had to average estimates based on alternative models within the paper to get a representative estimate for the paper as a whole.

<sup>7</sup> U.S. Environmental Protection Agency (2010), *Valuing Mortality Risk Reductions for Environmental Policy: A White Paper (Review Draft)*. Prepared by the National Center for Environmental Economics for consultation with the Science Advisory Board – Environmental Economics Advisory Committee.

<sup>8</sup> A current survey of theoretical and empirical research on VSL may be found in: Cropper, M., J.K. Hammitt, and L.A. Robinson (2011). “Valuing Mortality Risk Reductions: Progress and Challenges.” *Annual Review of Resource Economics*. 3: 313-336.

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**Table 1: VSL Studies Using CFOI Database**

(VSLs in millions of dollars)

|     | <u>Study</u>                    | <u>Year of Study</u><br>\$ | <u>VSL in Study-<br/>Year \$</u> | <u>VSL in<br/>2012\$</u> | <u>Comments</u>                                                                                         |
|-----|---------------------------------|----------------------------|----------------------------------|--------------------------|---------------------------------------------------------------------------------------------------------|
| 1.  | Viscusi (2003) *                | 1997                       | \$14.185M                        | \$21.65M                 | Implausibly high;<br>industry-only risk<br>measure                                                      |
| 2.  | Leeth and Ruser (2003)<br>*     | 2002                       | \$7.04M                          | \$8.90M                  | Occupation-only risk<br>measure                                                                         |
| 3.  | Viscusi (2004)                  | 1997                       | \$4.7M                           | \$7.17M                  | Industry/occupation risk<br>measure                                                                     |
| 4.  | Kniesner and Viscusi<br>(2005)  | 1997                       | \$4.74M                          | \$7.23M                  | Industry/occupation risk<br>measure                                                                     |
| 5.  | Kniesner <i>et al.</i> (2006) * | 1997                       | \$23.70M                         | \$36.17M                 | Implausibly high;<br>industry/occupation risk<br>measure                                                |
| 6.  | Viscusi and Aldy (2007)<br>*    | 2000                       |                                  |                          | Industry-only risk<br>measure; no full-sample<br>VSL estimate                                           |
| 7.  | Aldy and Viscusi (2008)<br>*    | 2000                       |                                  |                          | Industry-only risk<br>measure, no full-sample<br>VSL estimate                                           |
| 8.  | Evans and Smith (2008)          | 2000                       | \$9.6M                           | \$12.84M                 | Industry-only risk<br>measure                                                                           |
| 9.  | Viscusi and Hersch<br>(2008)    | 2000                       | \$7.37M                          | \$9.86M                  | Industry-only risk<br>measure                                                                           |
| 10. | Evans and Schaur<br>(2010)      | 1998                       | \$6.7M                           | \$9.85M                  | Industry-only risk<br>measure                                                                           |
| 11. | Hersch and Viscusi<br>(2010)    | 2003                       | \$6.8M                           | \$8.43M                  | Industry/occupation risk<br>measure                                                                     |
| 12. | Kniesner <i>et al.</i> (2010)   | 2001                       | \$7.55M                          | \$9.76M                  | Industry/occupation risk<br>measure                                                                     |
| 13. | Kochi and Taylor<br>(2011)*     | 2004                       |                                  |                          | VSL estimated only for<br>occupational drivers                                                          |
| 14. | Scotton and Taylor<br>(2011)    | 1997                       | \$5.27M                          | \$8.04M                  | Industry/occupation risk<br>measure; VSL is mean of<br>estimates from three<br>preferred specifications |
| 15. | Kniesner <i>et al.</i> (2012)   | 2001                       | \$4M - \$10M                     | \$5.17M -<br>\$12.93M    | Industry/occupation risk<br>measure; mean VSL<br>estimate is \$9.05M                                    |

\* Studies shown in grayed-out rows were not used in determining the VSL Guidance value.

We found that nine of these studies provided usable estimates of VSL for a broad cross-section of the population.<sup>9</sup> We excluded Viscusi (2003) and Kniesner *et al.* (2006) on the grounds that their estimates of VSL were implausibly high (Viscusi acknowledges that the estimated VSLs in his study are very high). We excluded Leeth and Ruser (2003) because it used only variations in occupation for estimating variation in risk (the occupational classifications are generally regarded as less accurate than the industry classifications). We excluded Viscusi and Aldy (2007) and Aldy and Viscusi (2008) because they did not estimate overall “full-sample” VSLs (they focused instead on estimating VSLs for various subgroups). We excluded Kochi and Taylor (2011) because it estimated VSL only for a narrow occupational group (occupational drivers). For Scotton and Taylor (2011) and Kniesner *et al.* (2012) we calculated average values for VSL from what appeared to be the preferred model specifications. For our 2013 guidance update, we adopted the average of the VSLs estimated in the remaining nine studies, updated to 2012 dollars (based both on changes in the price level and changes in real incomes from the year for which the VSL was originally estimated), which yielded a recommended value of \$9.1 million.

### **Adjustments for Inflation and Real Income Growth**

In order to apply the VSL in analyses using a base year beyond the original base year of 2012, the value should be adjusted for inflation and real incomes over the intervening years. Specifically, the formula to be used is:

$$VSL_T = VSL_0 * (P_T / P_0) * (I_T / I_0)^\varepsilon$$

where

- 0 = Original Base Year
- T = Current Base Year
- P<sub>t</sub> = Price Index in Year t
- I<sub>t</sub> = Real Incomes in Year t
- ε = Income Elasticity of VSL

<sup>9</sup> These include Viscusi (2004) [cited in footnote 4]; Viscusi, W.K. and J. Hersch (2008). “The Mortality Cost to Smokers.” *Journal of Health Economics*. 27: 943-958; Evans, M.F. and G. Schaur (2010). “A Quantile Estimation Approach to Identify Income and Age Variation in the Value of a Statistical Life.” *Journal of Environmental Economics and Management*. 59: 260-270; Hersch, J. and W.K. Viscusi (2010). “Immigrant Status and the Value of Statistical Life.” *Journal of Human Resources*. 45(3): 749-77; Scotton, C.R. and L.O. Taylor. “Valuing Risk Reductions: Incorporating Risk Heterogeneity into a Revealed Preference Framework.” *Resource and Energy Economics*. 33 and Kochi, I and L.O. Taylor (2011). “Risk Heterogeneity and the Value of Reducing Fatal Risks: Further Market-Based Evidence.” *Journal of Benefit-Cost Analysis*. 2(3): 381-397; Kniesner, T.J. and W.K. Viscusi (2005). “Value of a Statistical Life: Relative Position vs. Relative Age.” *AEA Papers and Proceedings*. 95(2): 142-146; Evans, M.F. and V.K. Smith (2008). “Complementarity and the Measurement of Individual Risk Tradeoffs: Accounting for Quantity and Quality of Life Effects.” National Bureau of Economic Research Working Paper 13722; Kniesner, T.J., W.K. Viscusi, and J.P. Ziliak (2010). “Policy Relevant Heterogeneity in the Value of Statistical Life: New Evidence from Panel Data Quantile Regressions.” *Journal of Risk and Uncertainty*. 40: 15-31; and Kniesner, T.J., W.K. Viscusi, C. Woock, and J.P. Ziliak (2012). “The Value of a Statistical Life: Evidence from Panel Data.” *Review of Economics and Statistics*. 94(1): 74-87.

Inflation. The Consumer Price Index for All Urban Consumers (CPI-U)<sup>10</sup> should be used to adjust for inflation over time, as this price index is deemed to be representative of changes in the value of money that would be considered by a typical worker making decisions corresponding to his income level.

Real Incomes. The index recommended for use to measure real income growth as it affects VSL is the Median Usual Weekly Earnings (MUWE), in constant (1982-84) dollars, derived by BLS from the Current Population Survey.<sup>11</sup> This series is more appropriate than the Wages and Salaries component of the Employment Cost Index (ECI), which was used prior to the 2013 guidance revision, because the ECI applies fixed weights to employment categories, while the weekly earnings series uses a median employment cost for wage and salary workers over the age of 16. A median value is preferred because it should better reflect the factors influencing a typical traveler affected by DOT actions (very high incomes would cause an increase in the mean, but not affect the median). In contrast to a median, an average value over all income levels might be unduly sensitive to factors that are less prevalent among actual travelers. Similarly, we do not take into account changes in non-wage income, on the grounds that this non-wage income is not likely to be significant for the average person affected by our rules.

Income Elasticity. The VSL literature is generally in agreement that VSL increases with real incomes, but the exact rate at which it does so is subject to some debate. In our 2011 guidance, we cited research by Viscusi and Aldy (2003) that estimated the elasticity of VSL with respect to increases in real income as being between 0.5 and 0.6 (i.e., a one-percent increase in real income results in an increase in VSL of 0.5 to 0.6 percent). We accordingly increased VSL by 0.55 percent for every one-percent increase in real income. More recent research by Kniesner, Viscusi, and Ziliak (2010) has derived more refined income elasticity estimates ranging from 2.24 at low incomes to 1.23 at high incomes, with an overall figure of 1.44.<sup>12</sup> An alternative specification yielded an overall elasticity of 1.32. Similarly, Costa and Kahn (2004) estimated the income-elasticity of VSL to be between 1.5 and 1.6.<sup>13</sup> These empirical results are consistent with theoretical arguments suggesting that the income-elasticity of VSL should be greater than 1.0.<sup>14</sup>

In view of the large increase in the income elasticity of VSL that would be suggested by these empirical results, and because the literature seems somewhat unsettled, we decided in our 2013 guidance update to increase our suggested income-elasticity figure only to 1.0. While this figure is lower than the elasticity estimates of Kniesner *et al.* and Costa and Kahn, it is higher

<sup>10</sup> BLS Series CUUR0000SA0. Available at <https://data.bls.gov/timeseries/CUUR0000SA0>

<sup>11</sup> BLS Series LEU0252881600. Available at <https://data.bls.gov/timeseries/LEU0252881600>

<sup>12</sup> Kniesner, T.J., W.K. Viscusi, and J.P. Ziliak (2010). "Policy Relevant Heterogeneity in the Value of Statistical Life: New Evidence from Panel Data Quantile Regressions." *Journal of Risk and Uncertainty*. 40(1):15-31.

<sup>13</sup> Costa, D.L. and M.E. Kahn (2004). "Changes in the Value of Life, 1940-1980." *Journal of Risk and Uncertainty*. 29(2): 159-180.

<sup>14</sup> Eeckhoudt, L.R. and J.K. Hammitt (2001). "Background Risks and the Value of a Statistical Life." *Journal of Risk and Uncertainty*. 23(3): 261-279; Kaplow, L. (2005). "The Value of a Statistical Life and the Coefficient of Relative Risk Aversion." *Journal of Risk and Uncertainty*, 31(1); Murphy, K.M. and R.H. Topel (2006). "The Value of Health and Longevity." *Journal of Political Economy*. 114(5): 871-904; and Hammitt, J.K. and L.A. Robinson (2011). "The Income Elasticity of the Value per Statistical Life: Transferring Estimates between High and Low Income Populations." *Journal of Benefit-Cost Analysis*. 2(1): 1-27.

than that of Viscusi and Aldy, the basis for our previous guidance. It is difficult to state with confidence whether a cross-sectional income elasticity (such as those estimated in these empirical analyses), representing the difference in sensitivity to fatality risks between low-income and high-income workers in a given population, corresponds to a longitudinal elasticity, representing the way in which VSL is affected by growth in income over time for an overall population. Consequently, this guidance adopts this more moderate figure, pending more comprehensive documentation.

### **Value of Preventing Injuries**

Nonfatal injuries are far more common than fatalities and vary widely in severity, as well as probability. In principle, the resulting losses in quality of life, including both pain and suffering and reduced income, should be estimated by potential victims' WTP for personal safety. While estimates of WTP to avoid injury are available, often as part of a broader analysis of factors influencing VSL, these estimates are generally only available for an average injury resulting in a lost workday, and not for a range of injuries varying in severity. Because detailed WTP estimates covering the entire range of potential disabilities are unobtainable, we use an alternative standardized method to interpolate values of expected outcomes, scaled in proportion to VSL. Each type of accidental injury is rated (in terms of severity and duration) on a scale of quality-adjusted life years (QALYs), in comparison with the alternative of perfect health. These scores are grouped, according to the Maximum Abbreviated Injury Scale (MAIS), yielding coefficients that can be applied to VSL to assign each injury class a value corresponding to a fraction of a fatality.

In our 2011 guidance, the values of preventing injuries were updated by new estimates from a study by Spicer and Miller.<sup>15</sup> The measure adopted was the quality-adjusted percentage of remaining life lost for median utility weights, based on QALY research considered "best," as presented in Table 9 of the cited study. The rate at which disability is discounted over a victim's lifespan causes these percentages to vary slightly, and the study shows estimates for 0, 3, 4, 7, and 10 percent discount rates. These differences are minor in comparison with other sources of variation and uncertainty, which we recognize by sensitivity analysis. Since OMB recommends the use of alternative discount rates of 3 and 7 percent, we present the scale corresponding to an intermediate rate of 4 percent for use in all analyses. The fractions shown should be multiplied by the current VSL to obtain the values of preventing injuries of the types affected by the government action being analyzed.

Note that these factors represent an average disutility of all injuries sustained by persons with a given MAIS. Although injured persons normally have multiple injuries, only one disutility factor should be applied to each injured person. For example, if the analyst were seeking to estimate the value for an injured person whose highest-level injury was rated "Serious" (MAIS 3), he or she would multiply the Fraction of VSL for a serious injury (0.105) by the VSL to calculate the value of the serious injury.

<sup>15</sup> Rebecca S. Spicer and Ted R. Miller. "Final Report to the National Highway Traffic Safety Administration: Uncertainty Analysis of Quality Adjusted Life Years Lost." Pacific Institute for Research and Evaluation. February 5, 2010. <https://www.transportation.gov/office-policy/transportation-policy/uncertainty-analysis-quality-adjusted-life-years-lost>.

**Table 2: Relative Disutility Factors by Injury Severity Level (MAIS)**

| MAIS Level | Severity     | Fraction of VSL |
|------------|--------------|-----------------|
| MAIS 1     | Minor        | 0.003           |
| MAIS 2     | Moderate     | 0.047           |
| MAIS 3     | Serious      | 0.105           |
| MAIS 4     | Severe       | 0.266           |
| MAIS 5     | Critical     | 0.593           |
| MAIS 6     | Unsurvivable | 1.000           |

These factors have two direct applications in analyses. The first application is as a basis for establishing the value of preventing nonfatal injuries in benefit-cost analysis. The total value of preventing injuries and fatalities can be combined with the value of other economic benefits not measured by VSLs, and then compared to costs to determine either a benefit/cost ratio or an estimate of net benefits.

The second application stems from the requirement in OMB Circular A-4 that evaluations of major regulations for which safety is the primary outcome include cost-effectiveness analysis, in which the cost of a government action is compared with a non-monetary measure of benefit. The values in the above table may be used to translate nonfatal injuries into fatality equivalents which, when added to fatalities, can be divided into costs to determine the cost per equivalent fatality. This ratio may also be seen as a “break-even” VSL, the value that would have to be assumed if benefits of a proposed action were to equal its costs. It would illustrate whether the costs of the action can be justified by a VSL that is well within the accepted range or, instead, would require a VSL approaching the upper limit of plausibility. Because the values assigned to prevention of injuries and fatalities are derived in part by using different methodologies, it is useful to understand their relative importance in drawing conclusions. Consequently, in analyses where benefits from reducing both injuries and fatalities are present, the estimated values of injuries and fatalities prevented should be stated separately, as well as in the aggregate.

### **Recognizing Uncertainty**

Regulatory and investment decisions must be made by officials informed of the limitations of their information. The values we adopt here do not establish a threshold dividing justifiable from unjustifiable actions; they only suggest a region where officials making these decisions can have relatively greater or lesser confidence that their decisions will generate positive net benefits. To convey the sensitivity of this confidence to changes in assumptions, OMB Circular A-4 and Departmental policy require analysts to prepare estimates using alternative values. We have previously encouraged the use of probabilistic methods such as Monte Carlo analysis to synthesize the many uncertain quantities determining net benefits.

While the individual estimates of VSL reported in the studies cited above are often accompanied by estimates of confidence intervals, we do not, at this time, have any reliable method for estimating the overall probability distribution of the average VSL that we have calculated from these various studies. Consequently, alternative VSL values can only illustrate the conclusions that would result if the true VSL actually equaled the higher or lower alternative values. Analysts should not imply a known probability that the true VSL would exceed or fall short of either the primary VSL figure or the alternative values used for sensitivity analysis. Kniesner *et al.* (2012) suggest that a reasonable range of values for VSL is between \$4 million and \$10 million (in 2001 dollars), or about \$5.2 million to \$12.9 million when escalated to 2012 dollars. This range of values includes all the estimates from the eight other studies on which this guidance is based, and are approximately 40 percent higher and lower than the recommended 2012 base year VSL of \$9.1 million. Thus, for illustrative purposes, analysts may wish to calculate high and low alternative estimates of the values of fatalities and injuries prevented by using alternative VSLs that are 40 percent above or below the base value used in the analysis.

This guidance and other relevant documents will be posted on the Office of Transportation Policy website, <https://www.transportation.gov/policy/transportation-policy/economy>. Questions should be addressed to Darren Timothy, Chief Economist, at (202) 366-4051, or [darren.timothy@dot.gov](mailto:darren.timothy@dot.gov).

MEMORANDUM TO: SECRETARIAL OFFICERS  
MODAL ADMINISTRATORS

From: John Putnam  
Acting General Counsel

Christopher Coes  
Acting Assistant Secretary for Transportation Policy

Subject: Guidance on the Treatment of the Economic Value of a Statistical Life (VSL) in U.S. Department of Transportation Analyses – 2021 Update

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Departmental guidance on valuing the reduction of fatalities and injuries by regulations or investments has been published periodically by the Office of the Secretary since 1993. We issued a comprehensive update to our guidance in 2013, and indicated at that time that we planned to issue annual updates to adjust for changes in prices and real incomes in the intervening years.

With this update of the Department's VSL guidance (attached as a separate document to this memorandum), we have removed references to specific monetary values beyond the 2012 values used in the 2013 comprehensive update. Instead, going forward, analysts should apply the methodology described in the guidance to calculate the VSL, including by applying values for inflation and changes in real income using the data series specified in the guidance. The Office of the Secretary will also continue to provide the corresponding adjusted values to the DOT Modal Administrations as the relevant price and income data for the previous year become available. The VSL guidance document will only be updated when more significant changes are made to the methodology used to calculate the value of reducing fatalities and injuries.

Based on the methodology adopted in the 2013 guidance, price and real income changes since 2012 yield a current **VSL estimate of \$11.6 million for analyses using a base year of 2020**. Values for years prior to 2020 are also shown in the table below:

**Current and Prior Year VSL**

| Value (million \$) | Base year |
|--------------------|-----------|
| 11.6               | 2020      |
| 10.9               | 2019      |
| 10.5               | 2018      |
| 10.2               | 2017      |
| 9.9                | 2016      |
| 9.6                | 2015      |
| 9.4                | 2014      |
| 9.2                | 2013      |
| 9.1                | 2012      |

This memorandum, as well as the updated VSL guidance and other relevant documents, will be posted on the Office of Transportation Policy website, <http://www.dot.gov/policy/transportation-policy/economy> , and on the General Counsel's regulatory information website, <http://www.transportation.gov/regulations>. Questions should be addressed to Darren Timothy, Chief Economist, at (202) 366-4051 or [darren.timothy@dot.gov](mailto:darren.timothy@dot.gov).

cc: Regulations officers and liaison officers

**BEFORE THE ARKANSAS STATE CLAIMS COMMISSION**

**DEBBIE BROWN, AS ADMINISTRATRIX OF  
THE ESTATE OF CHRIS BROWN, AND  
JOE BROWN**

**CLAIMANT**

**V.**

**CLAIM NO. 200809**

**ARKANSAS DEPARTMENT OF  
TRANSPORTATION**

**RESPONDENT**

**ORDER**

Now before the Arkansas State Claims Commission (the “Claims Commission”) is the claim of Debbie Brown, as Administratrix of the Estate of Chris Brown, and Joe Brown (collectively referred to herein as the “Claimant”) against the Arkansas Department of Transportation (the “Respondent”). At the hearing held August 19, 2022, Claimant was represented by Brandon Lacy and Megan Henry. Trella Sparks and Amanda Andrews appeared on behalf of Respondent.

**Procedural History, Prehearing Matters, and Witness Testimony**

1. Claimant filed this claim against Respondent on February 10, 2020, seeking \$2,000,000.00 in damages related to the March 13, 2019, death of Chris Brown (the “Decedent”). The Decedent passed away following a single-vehicle rollover accident on State Highway 316 North (“Highway 316”). Claimant alleged in the complaint that the accident occurred because Highway 316 was flooded due to issues with the ditch next to the roadway.
2. Respondent filed an Answer denying liability.
3. The Claims Commission previously entered two orders in this claim: (1) a March 25, 2022, order granting Respondent’s motion to substitute counsel; and (2) a May 13, 2022, order granting Respondent’s motion to continue the hearing until August 19, 2022; denying Claimant’s

motion to exclude expert testimony of Stan Andrews and Dr. Chandra Thorbole; and providing a scheduling order for the parties.

4. At the beginning of the hearing, the Claims Commission considered Claimant's prehearing motion to exclude Respondent's Exhibit No. 4. However, Claimant's counsel confirmed that he was withdrawing the motion. As such, the motion was dismissed as moot.

5. At the beginning of the hearing, the Claims Commission considered Claimant's prehearing motion to exclude the expert opinion by Dr. Chandra Thorbole, which was disclosed outside of the time frame permitted in the scheduling order. Dr. Thorbole's opinion related to whether the Decedent would have survived the crash had he been wearing his seatbelt. Claimant argued that Dr. Thorbole is not a medical doctor and that his opinion is based on statistics, not specific facts in this claim. Respondent argued that, in March 2022, Respondent was still trying to get an unredacted copy of the coroner's report and that Dr. Thorbole supplemented his findings following receipt of the unredacted report. Respondent also argued that, as a biomechanical engineer with significant medical training, Dr. Thorbole can determine to a degree of biomechanical certainty whether the roof intrusion would have injured the Decedent or would have contributed to his death. The Claims Commission found that, while the attorneys representing Respondent at the hearing were not involved prior to March 2022, Respondent had already been given significant latitude with regard to Respondent's untimely expert witness disclosures. The Claims Commission also found that Dr. Thorbole's new opinion was disclosed after the extended time set for Claimant to identify any rebuttal witnesses, such that it would have been highly prejudicial to Claimant to allow Dr. Thorbole to testify regarding this untimely disclosed opinion. As such, the Claims Commission unanimously voted to GRANT Claimant's motion to exclude

testimony related to Dr. Thorbole's opinion regarding whether the Decedent would have survived the accident if he had been wearing his seatbelt.

6. At the beginning of the hearing, Respondent orally moved to exclude photos of the Decedent following the accident. Claimant's counsel agreed that he did not plan to introduce the photos (which were listed as Claimant's Exhibit No. 20). As such, the Claims Commission dismissed the motion as moot.

7. At the beginning of the hearing, the Claims Commission considered Claimant's motion to exclude certain opinion testimony of Stan Andrews and advised the parties that Mr. Andrews' testimony will be given the weight deemed appropriate by the Claims Commission, if not outright rejected.

8. At the beginning of the hearing, the Claims Commission considered Respondent's motion to exclude the affidavit of Tina Morrow. The Claims Commission found that Respondent's motion was mooted by Ms. Morrow's appearance at the hearing.

9. At the beginning of the hearing, the Claims Commission considered Respondent's motion to exclude Dr. Ralph Scott's use of VSL data. Claimant's counsel stated that the VSL tables would be removed from Dr. Scott's report and that a revised report would be circulated to Respondent and the Claims Commission, which Respondent agreed mooted its motion.

10. The Claims Commission admitted Respondent's Exhibit Nos. 1-5 (without Dr. Thorbole's supplemental report in Respondent's Exhibit No. 3) without objection, aside from Claimant's standing objection to Mr. Andrews' report. The Claims Commission admitted Claimant's Exhibit Nos. 1-19 and 21 without objection.<sup>1</sup>

11. The parties agreed to rely upon the pretrial briefs in lieu of opening statements.

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<sup>1</sup> Claimant's Exhibit No. 20 was not introduced by Claimant, as explained further in Paragraph 6.

12. The witnesses were sworn in by the chair commissioner.

Testimony of Debbie Brown

13. Claimant called Debbie Brown to testify.

14. Mrs. Brown testified that she has lived in Marvell, Arkansas, for 30 years. She is a medical staff coordinator for Helena Regional Medical Center. Mrs. Brown has three children. The Decedent was her youngest child. Mrs. Brown described the Decedent as very studious, a leader in his class, and a volunteer firefighter. He loved to hunt and fish. He had a 4.0 grade point average and was attending Phillips Community College with a plan to become a nurse anesthetist. Claimant's Exhibit No. 6 includes Claimant's transcripts and information about the induction ceremony for his collegiate honor society.

15. Mrs. Brown and her husband have a family farm. The Decedent helped with the farm.

16. Claimant's Exhibit No. 5 is a drone image of the roads involved in the accident. Mrs. Brown pointed out where the accident occurred near the intersection of Highway 316 and County Road 261 (the "Intersection"). Highway 316 runs north-to-south in the image. County Road 261 ("CR 261") runs west-to-east. On March 13, 2019, Mrs. Brown was at home not feeling well. The Decedent had attended classes that day. Mrs. Brown last saw the Decedent before he went to town to the firefighter gathering. After Mr. Brown came home with food from the firefighter gathering, he got a phone call to go to the accident scene.

17. When Mr. and Mrs. Brown got to the accident scene, there were other vehicles there. Water was running down the road. Mrs. Brown was stopped by a firefighter who told her that the Decedent had passed away. Someone took Mrs. Brown back to her vehicle.

18. Claimant's Exhibit No. 1 at 263–264 has photographs that Mrs. Brown took.

19. Claimant's Exhibit No. 14 is a video that Mrs. Brown took, which shows water running down the highway on the night of the accident.

20. The following day, Mrs. Brown went back to the accident scene because it was where the Decedent was last alive. She looked at the accident scene and the debris of what had come out of the Decedent's truck. Mrs. Brown picked up a soda can, fishing lures, a tackle box, a debit card, and a piece of the windshield. Mrs. Brown went back to the accident scene every day afterwards. Someone put a cross up. After the accident, and before Respondent widened the ditch, Mrs. Brown saw the road flood many times. It just took a little bit of rain to cause the road to flood. Claimant's Exhibit No. 2 includes photographs of the road flooded.

21. Mrs. Brown learned that Respondent made repairs to the ditch when she heard an employee of Respondent talking in a restaurant. Claimant's Exhibit No. 4 is a photograph of the ditch being widened. Mrs. Brown has not seen the road flooded as much since the ditch was widened.

22. The Decedent's funeral was held in a gym because the original planned location was not large enough to accommodate all of people attending the funeral.

23. The Decedent was well liked, and he valued his life. Losing the Decedent has changed Mrs. Brown's world. Claimant's Exhibit No. 21 shows the amount of work that Mrs. Brown has missed since the Decedent passed away. She took FMLA leave and used all of her sick leave. Mrs. Brown has gone to grief counseling in Jonesboro and had three days of in-patient treatment in Little Rock. Currently, Mrs. Brown battles depression and noted that it is a "roller coaster."

24. The Decedent was a careful driver. He knew that Mrs. Brown worried, so he would call to let her know when he arrived somewhere. As an example, Mrs. Brown recalled a time where the Decedent called her to say that he was okay after getting caught in a rainstorm.

25. Mrs. Brown noted that it is hard to go to church without the Decedent there.

26. On cross-examination, Mrs. Brown confirmed that she has received \$100,000.00 in insurance payouts related to the Decedent's death: (1) \$50,000.00 from a fire department policy; (2) \$10,000.00 policy from Mrs. Brown's employer; and (3) \$40,000.00 accidental death insurance policy from Mrs. Brown's employer. Mrs. Brown said that she is seeking to be reimbursed for the lost wages listed in Claimant's Exhibit No. 21, as well as her medical bills from Bridgeway. In reviewing Claimant's Exhibit No. 5 showing the aerial drone footage of the accident location, Mrs. Brown said that the dark line showed David Carruth's field (the "Carruth Property") draining into the ditch. She stated that the Decedent would have been able to help with the farm for awhile after he started his nurse anesthetist training but acknowledged that, in her deposition, she testified that the nursing program would be very strenuous. On the day of the accident, the Decedent left the house between 7:00–7:30 p.m. It was not raining when he left. The Decedent went to the location where Mr. Brown was cooking, then left to go to a friend's house.

27. Respondent then orally moved to exclude Mrs. Brown's claims for reimbursement of lost wages or medical bills. Claimant's counsel confirmed that Claimant is not seeking those damages. As such, the Claims Commission found that the motion was dismissed as moot.

#### Testimony of Joe Brown

28. Claimant called Joe Brown to testify.

29. Mr. Brown testified that he has lived in a ten-mile area for his entire life. He has a 700-acre farm. He farms beans and corn and does it pretty much by himself. The Decedent helped

a lot when he had time. His older son, Nathan, has come back from Jonesboro to help with the farm since the Decedent's death.

30. Mr. Brown explained that Claimant's Exhibit No. 7 is a picture of the Decedent with Governor Asa Hutchinson taken after the Decedent sold Governor Hutchinson a t-shirt while the Decedent was volunteering at a festival.

31. On March 13, 2019, Mr. Brown was grilling for three volunteer fire departments. As everyone was heading home, the Decedent drove up to see if there was any food left for Mrs. Brown. Mr. Brown said that he was going home and would take some food to her. The Decedent ate and then said he was going out to the derby car shop. Mr. Brown told him to be careful, and that was the last thing Mr. Brown said to the Decedent.

32. When Mr. Brown arrived at home, he carried some food inside, then he got a phone call from someone telling him that the Decedent had been involved in an accident. Mr. Brown knew at that time that the Decedent had not survived the accident and regrets not telling Mrs. Brown then.

33. When Mr. and Mrs. Brown arrived at the accident scene, he recalls seeing an overturned vehicle, different colored lights, and rescue vehicles. Mr. Brown went to take pictures, but when he realized that his phone was dead, he asked Mrs. Brown to take pictures. Another firefighter saw Mr. Brown running toward the Decedent's vehicle, told him that the Decedent had passed away, and asked Mr. Brown to let the emergency workers do their jobs. Mr. Brown could not do anything to help, so he prayed.

34. Claimant's Exhibit No. 14 shows the water in the roadway. Mr. Brown said that it was over his feet. He was wearing boots, but if he had been wearing dress shoes, the shoes would

have been full of water. The video shows flowing water, not standing water. The water was flowing south.

35. Claimant's Exhibit No. 1 at 302 shows the headlight from the Decedent's vehicle in the water. Mr. Brown noted that you can see the white line of the roadway under the water.

36. Claimant's Exhibit No. 1 at 303 shows the bumper from the Decedent's vehicle near the white line of the roadway. Claimant's Exhibit No. 1 at 298–299 shows the same bumper near the Carruth Property.

37. The following day, Mr. Brown went back to the accident scene with Mrs. Brown to look for anything that belonged to the Decedent, including the Decedent's Apple watch. They found the Decedent's debit card. Items had been carried down the road by the flowing water. There was still standing water the following day.

38. Claimant's Exhibit No. 2 at 372 shows part of the headlight from the Decedent's vehicle. Rocky Ford took the picture. Mr. Brown and others had picked up pieces of the headlight and piled them up in this location. He did not know that those pieces would be used to say that the Decedent was speeding at the time of the accident. Mr. Brown has been back to the accident scene many times.

39. Claimant's Exhibit No. 2 at 238 is a photograph Mr. Brown took of water on the roadway at the accident scene. This photograph shows a truck coming in the same area where the Decedent's accident occurred. He is not sure how much rain had fallen when the photograph was taken, but he stated that one-half inch of rain would bring the water over the highway.

40. Claimant's Exhibit No. 2 at 192 is another photograph taken by Mr. Brown. He noted the sunny skies and the ditch still full of water. Mr. Brown stated that this photograph shows the grass blocking the flow of water and that the water goes across the highway near the sign.

41. Losing the Decedent has been a struggle. It is difficult seeing a truck the same color as the Decedent's vehicle and not having the Decedent available to help on the farm. Before the accident, the Decedent helped a lot on the farm. But in 2019, the farm lost money, which Mr. Brown approximated at \$50,000.00. Nathan Brown helped when he could, and Mr. Brown had to hire a couple of guys but could not find good tractor drivers like the Decedent because the good tractor drivers all already had employment. In 2020, the farm did a little better, but 2022 was a "catastrophe."

42. Mr. Brown takes medicine to help with the pain of losing the Decedent. He has been to his family doctor several times, and the family doctor has increased Mr. Brown's dosage. Mr. Brown has not been able to afford counseling.

43. Claimant's Exhibit No. 6 at 1059 is the funeral home invoice for \$7,287.47. Mr. Brown testified that he also had a \$600.00 gravedigging expense.

44. Claimant's Exhibit No. 16 is the estimate for the Decedent's headstone, although Mr. Brown clarified that the estimate for \$11,864.48 has since expired.

45. Mr. Brown stated that the loss of the Decedent is not something you get over. Mr. Brown only has his wife, two of his children, and a sister left. He got to say goodbye to his parents and one of his brothers. The last words that the Decedent heard Mr. Brown say were "be careful." The Decedent would help anyone, and Mr. Brown called him "little man."

46. On cross-examination, Mr. Brown clarified that it was not raining when the Decedent left the cookout because they were sitting on the tailgate. It may have been drizzling. The Decedent was headed to the derby car shop, which is a place that he went three times per week or whenever he had time. The Decedent and others were working on derby cars there. Mr. Brown would help prep the packed dirt for the area, and the Decedent would mow the grass. The Decedent

wanted to build his own derby car. Regarding Claimant's Exhibit No. 5, Mr. Brown is not sure whether CR 261 is at a higher elevation, but CR 261 must drain into the ditch alongside Highway 316. The resting point of the Decedent's vehicle was near the road sign, and the pile of headlight pieces was south of the accident scene. Referring to Claimant's Exhibit No. 1 at 372, Mr. Brown cannot identify which pieces of the headlight were moved to that spot. He noted that other people were there before Mr. Brown arrived. Mr. Brown does not think he would have picked up the pieces of the headlight that were very small. Mr. Brown confirmed that he is not making a claim for damages based upon his farm losses. Mr. Brown does not know if NEA Counseling would have been free or low cost, but he stated that there was always a co-pay. He was focusing on his wife's counseling. Mr. Brown preferred to sit on a tailgate in a field to grieve the Decedent. Regarding Claimant's Exhibit No. 2 at 238, Mr. Brown stated that this photograph was taken after the Decedent's accident, but he does not know exactly when. He noted that the blue truck in the photograph made it through the water without rolling over, but he clarified that this photograph was taken during the day and that the water in the roadway is not visible at night.

47. On redirect, Mr. Brown testified that the Decedent was a careful driver. Mr. Brown took the Decedent to accident scenes with the fire department to show him the consequences of driving recklessly.

48. Upon a question from a commissioner, Mr. Brown confirmed that the Decedent was living at home prior to the accident.

#### Testimony of Tina Morrow

49. Claimant called Tina Morrow to testify.

50. Ms. Morrow lives in Lexa, Arkansas, and she used to be a bus driver for the school district. She knows who the Decedent was. Ms. Morrow was a bus driver when the accident

occurred. She saw the area of the Intersection flooded prior to the Decedent's accident. Ms. Morrow called Respondent to report the flooding before the accident, but no one did anything to address the flooding until after the Decedent's accident.

51. On cross-examination, Ms. Morrow stated that she does not know who she spoke with when she called Respondent. She told Respondent that there is a ditch beside the road that needs to be dug out because water would stand on the road when the ditch filled up. Ms. Morrow clarified that the flooding occurred near the Intersection. Ms. Morrow lives on CR 261, so she goes through the Intersection daily. She has never had an accident due to the flooding in the roadway. Ms. Morrow only called Respondent once to report the flooding. She does not know anyone who works for Respondent. The flooding happened by the Carruth Property. Ms. Morrow did not send any documentation to Respondent regarding her concerns.

#### Testimony of Clay Young

52. Claimant called Clay Young to testify.

53. Mr. Young lives in Lexa, Arkansas, on Highway 316. He is familiar with the area of the Decedent's accident. His land (the "Young Property") is northeast of the Intersection. He has owned the Young Property for 31 years and has observed the flooding. Respondent performed repairs on the ditch near the Young Property by digging it out in 2014, but the digging stopped at the end of his property line. Respondent came back to dig out the ditch after the Decedent's accident. After 2014, Mr. Young saw flooding along the Carruth Property. Mr. Young has never talked to anyone at Respondent about the flooding but said that everyone knew it was a problem.

54. On cross-examination, Mr. Young stated that his house sits in the middle of the Young Property. His house is a quarter mile from the Intersection. Respondent has worked on ditch issues around Mr. Young's house and put in a culvert when Mr. Young built his house. CR

261 is the southern border of Mr. Young's farm. He has seen CR 261 drain onto Highway 316. Mr. Young knows James Wallace, who used to work for Respondent, as well as another employee named Tony. Mr. Young had general conversations with Respondent's workers about the flooding, but it has flooded so many years that everyone knew it was a problem. He talked with Respondent about an issue one quarter mile north of the Intersection, and Respondent fixed that issue. He did not talk to Respondent about that Intersection.

Testimony of Lauren Reeves

55. Claimant called Lauren Reeves to testify.

56. Ms. Reeves lives on Highway 316 in Poplar Grove, Arkansas. She has lived there since 2014 and is familiar with the area of the Decedent's accident. Looking at Claimant's Exhibit No. 5, Ms. Reeves lives one mile north of the Intersection. She drives that road all the time and observed flooding before the Decedent's accident.

57. Claimant's Exhibit No. 8 is a video taken by Ms. Reeves on June 1, 2018. She took the video showing the flooded Intersection to show her frustration in trying to get home. Ms. Reeves complained to Respondent about the flooding. She called Respondent in 2016 and later wrote a letter about the continued flooding. Ms. Reeves mailed that letter to Respondent's address on I-49. She never received a follow up call from Respondent, and nothing was done to address the flooding until after the Decedent's accident. Ms. Reeves does not have a copy of the letter that she sent to Respondent.

58. On cross-examination, Ms. Reeves stated that she did not send the video to Respondent. She used the video to show her family and friends the condition of the road. She does not recall the name of the person she spoke with at Respondent's office. Ms. Reeves said that her letter was addressed to Respondent, not to a specific person. She did not follow up on her letter

with another phone call. Ms. Reeves does not know anyone who works for Respondent. CR 261 spills water onto Highway 316. There are a lot of farms on this road, and farms will drain into roadside ditches sometimes.

59. On redirect, Ms. Reeves noted that at the eight-second mark in the video found at Claimant's Exhibit No. 8, the water is flowing from the ditch onto Highway 316. Ms. Reeves called Respondent prior to the Decedent's accident and sent the letter to Respondent after the Decedent's accident.

60. On re-cross, Ms. Reeves confirmed that after the eight-second mark of the video, the water seen at the bottom of the screen is in the ditch.

#### Testimony of Bernie Auld

61. Claimant called Bernie Auld to testify.

62. Mr. Auld is an expert witness on hydrology issues. Claimant's Exhibit No. 10 is Mr. Auld's curriculum vitae. He has 30–40 years of experience in water safety. He has helped with roadway design for states, including Arkansas, as well as the federal government. Mr. Auld is a professional engineer in Arkansas.

63. In connection with this claim, Mr. Auld reviewed photographs, depositions, and videos. He is familiar with the guidelines for roadways.

64. Mr. Auld stated that Respondent deviated from the applicable standards and guidelines with respect to the Intersection.

65. Claimant's Exhibit No. 11 is a copy of Mr. Auld's presentation. The first slides show the cross-section of the road and ditch. The standard for highway ditches is a minimum of two feet. Respondent is responsible for the maintenance. The minimum culvert size is eighteen inches. One of the slides shows a buildup of grass and other materials preventing drainage from

the roadway. The inset photograph shows water in the roadway even after a rain event because the water is not able to overcome the buildup of grass. Mr. Auld stated that the right-of-way goes up to the power poles in the photographs.

66. The next slide shows how the height of soil and grass built up on the side of the roadway affects how much rain is required for the roadway to be inundated with water. Where the buildup of soil and grass is one inch tall, water will inundate four feet of the roadway. Where the buildup is two and one-half inches tall, water will cover the roadway. Where the buildup is three inches, the roadway will be overtopped by three-eighths of an inch of water. The buildup of material evident from the photographs in the slide forces water into the roadway.

67. In discussing a slide showing the “proper standard of care conditions,” Mr. Auld explained the importance of maintaining the ditch to ensure positive run-off.

68. Mr. Auld set out one of Respondent’s maintenance standards titled “Inspect, Clean and Repair Minor Drainage Structures” (referred to as Function 441) in a slide, noting the following language:

Emphasis to be placed on regular inspection and cleaning of all minor drainage facilities with repairs and replacement as necessary to prevent catastrophes and emergencies as much as possible. Work may be accomplished more efficiently and skillfully before it is under water, plugged up, or partially washed out.

...

Inspection and cleaning will be performed by proceeding along the roadway checking each drainage feature in sequence.

...

Inspections should be made during rains to locate trouble spots and insure [sic] that trash doesn’t block necessary drainage facilities.

Mr. Auld stated that Respondent did not follow the Function 441 maintenance standard.

69. Mr. Auld set out another of Respondent’s maintenance standards titled “Clean and Reshape Ditches” (referred to as Function 442) in a slide, noting the following language:

Definition[:] Machine Cleaning and reshaping of roadside ditches and other side ditches with excess material loaded, hauled and disposed of.

Guide[:] When normal drainage flow in ditches is obstructed or impeded because of erosion of back slopes, inslopes, ditches or natural channels deposit silt, sand, vegetation and other materials therein, cleaning is required to restore proper drainage pattern.

Mr. Auld stated that Respondent did not follow the Function 442 maintenance standard. When normal drainage flow is obstructed, ditches should be cleaned to restore proper drainage pattern. You should not see standing water in a ditch or water being forced onto the pavement. Mr. Auld stated that whether these maintenance standards were met is easily observable.

70. Another slide shows the ditch filled in, and water forced across the roadway. Without a continuous ditch, there is nowhere for the water to go except the roadway. Once water is in the roadway, Mr. Auld asserted that it is Respondent's job to convey the water in a safe manner. Any water that enters the right-of-way is Respondent's job to handle. The root cause of the drainage issues in this photograph is the obstruction south of the Intersection.

71. Another slide shows the ditch holding water. This demonstrates a lack of maintenance.

72. 'Overtopping' refers to water going over the crest of the road. From the previous slide calculating the amount of roadside buildup necessary to inundate the roadway with water, it is known that the water on the side of the roadway is at least two and one-half inches deep. That is known to a mathematical certainty. In this photograph, there is a significant amount of roadway inundation.

73. Mr. Auld pointed out that the lanes did not have retroreflective lighting. Respondent objected to this testimony but conceded that Mr. Auld discussed this at his deposition. The chair commissioner instructed Claimant's counsel to move on from this point.

74. Another slide shows water “unravelling” the shoulder, which could create a drop-off and cause a driver to lose control of his or her vehicle. Mr. Auld noted that this photograph also shows water present after a rain event.

75. Another slide compares the rainfall recorded by three nearby National Oceanic and Atmospheric Administration (NOAA) rain gauges in Marianna, Helena, and west of Marvell. The average rainfall for those three gauges on March 13, 2019, was 0.02 inches.

76. In another slide, the average of the three NOAA rain gauges would suggest that the roadway at the accident scene would have been overtopped by water twice in February 2019, twice in January 2019, and four times in December 2018.

77. Mr. Auld provided excerpts from Respondent’s drainage manual. Section 1-200 states that the gutter should limit the ponding of water so that at least one lane of traffic can travel safely. When this standard cannot be met, Respondent should notify law enforcement and have barricades and signage placed to warn motorists.

78. Mr. Auld included slides on Arkansas’s storm water law and the glossary from the drainage manual.

79. Mr. Auld also included the federal Geometric Design Criteria for Non-Freeway Resurfacing, Restoration, and Rehabilitation Projects, which were adopted by Respondent. These guidelines are sometimes referred to as “RRR” or the “Three Rs.” The purpose of these guidelines is to “preserve and extend the surface life of existing highways and to enhance safety.” Mr. Auld stated that the accident scene does not meet Sections 4.2 (regarding the cross-section of the roadway) or 5.1 (regarding the pavement drop off) of the RRR.

80. Mr. Auld included a photograph from the accident scene, which shows a portion of the Decedent’s vehicle in the ditch. He stated that this photograph shows the buildup on the side

of the roadway and water in the roadway from a lack of proper maintenance. Even if Respondent did not have the funding to fix the problem, Respondent had a duty to notify the motoring public with barriers. Had Respondent properly maintained the road, Claimant would not have had to file this claim.

81. Mr. Auld concluded that Respondent failed to comply with the applicable guidelines and standards for the maintenance and drainage of Highway 316 by not maintaining at least one lane of travel and failing to notify the public.

82. On cross-examination, Mr. Auld confirmed that he has not scheduled maintenance for highways. He also confirmed that the Marvell and Helena rain gauges did not register any rain on March 13, 2019. He has not been to the accident site to measure the buildup on the edge of the roadway. He acknowledged that some of the recent work by Respondent was completed by the time he became involved in this matter. Mr. Auld stated that, because of the inundation of the road, he can determine the height of the ridge. It is possible that CR 261 also has drainage issues, and he does not know who maintains that road. Functions 441–442 are maintenance standards, not requirements or directives. There is no maintenance schedule provided. Mr. Auld created the cross-section of the roadway and the ditch. That information was not part of the roadway design plan. Mr. Auld does not know the original design of the road. He is not offering an opinion as the cause of the accident or the cause of the Decedent's death. It is up to the state to determine what road projects are to be designated as RRR projects. Highway 316 has not been approved for such funding to Mr. Auld's knowledge.

83. On redirect, Mr. Auld stated that Respondent took over Highway 316 in the 1970s. There is no dispute that the Decedent's accident was caused by hydroplaning. Mr. Auld's testimony is that there was at least two and one-half inches of water in the roadway because

Respondent failed to maintain the right-of-way or to notify the public of the hazardous condition. If there was a drainage problem with CR 261, Respondent would have to take care of any water that came onto Highway 316 under state guidelines. Respondent objected to Mr. Auld offering a legal opinion, and the Claims Commission sustained Respondent's objection.

84. On re-cross, Mr. Auld confirmed that he did not have the reference for the county road drainage issue with him.

Testimony of Nathan Brown

85. Claimant called Nathan Brown to testify.

86. Mr. Brown has lived in Jonesboro, Arkansas, since 2011. He is married with one child. Mr. Brown was ten years old when the Decedent was born. Mr. Brown and the Decedent became close as the Decedent got older. They talked multiple times each week.

87. On March 13, 2019, Mr. Brown received a phone call from a friend while he was at work telling him to go to the accident scene. As he was coming into Wynne, Arkansas, he received another phone call from his father telling him to slow down because the Decedent had passed away.

88. Mr. Brown has days when he does not want to get out of bed. He said that his work ethic has plummeted and that he cannot take his mind off the loss of the Decedent.

89. Mr. Brown said that his sister is not present at the hearing because she is a school counselor and had to be at work. She was a mother hen to him and to the Decedent. Mr. Brown has observed his sister's grief and stated that she was in counseling for a period of time but prefers dark silence to grieve.

90. Mr. Brown noted that the Decedent was not an average teenager. This accident could have been prevented. The Decedent was an extraordinary kid and honor student. He woke up ready to help people.

91. Respondent declined to cross-examine Mr. Brown.

Testimony of Dr. Ralph Scott

92. Claimant's counsel proffered a revised report by Dr. Ralph Scott to replace Claimant's Exhibit No. 13. Claimant's counsel confirmed that the revised report is restricted to lost earnings and that only Tables 1-2 need to be considered. Respondent stipulated to the admission of the revised report but not to the validity of the revised report.

Testimony of Montae Hernandez

93. Respondent called Trooper Montae Hernandez to testify.

94. Trooper Hernandez works for the Arkansas State Police. As a state trooper, he patrols state highways. In 2019, he was assigned to Troop D covering several counties including Phillips County. He is familiar with the Decedent's accident.

95. When Trooper Hernandez was dispatched to the accident scene, that was the first time he had been on Highway 316. Upon arrival at the scene, he saw a Toyota Tundra in the eastbound ditch. Referring to the accident report, the vehicle was 59 feet south of the Intersection on its side facing the western side of the road. It was raining when he arrived and throughout his investigation.

96. Trooper Hernandez looked at the damage to the vehicle and walked down the south portion of Highway 316, where he saw two separate locations where the vehicle had impacted the ditch.

97. Trooper Hernandez stated that the roadway was covered in water.

98. He saw the Decedent facedown in the water with the vehicle on top of him. The Decedent was not wearing a seatbelt because there was no slack in the seatbelt.

99. In the accident report, Trooper Hernandez provided measurements to show how far the vehicle was off the roadway. He took photographs of the accident scene.

100. On cross-examination, Trooper Hernandez stated that his boots were submerged in the water at some spots. He was on the scene for at least one hour. He saw water flowing in the roadway but cannot recall which direction the water was flowing. Claimant's Exhibit No. 1 at 298 is a photograph taken by Trooper Hernandez. There is a beer bottle visible in the picture, but there is no evidence that the Decedent was drinking, and the toxicology report came back negative. Claimant's Exhibit No. 1 at 299–314 are additional photographs taken by Trooper Hernandez.

#### Testimony of Robert Gray

101. In Claimant's case-in-chief, Claimant proffered the deposition of Robert Gray, which was received without objection.

102. Respondent called Mr. Gray to testify.

103. Mr. Gray is Respondent's area maintenance supervisor in Phillips County and has served in that role since 2017. He has worked for Respondent in maintenance for 24 years. He is familiar with the accident scene. The topography of CR 261 slopes down toward Highway 316.

104. Mr. Gray stated that farmers can clean out the ditches adjacent to their property, but there is a process involving the farmer putting up a bond. Farmers cannot change the slope of the ditch. To the best of his knowledge, neither David Carruth nor Clay Young ever went through this process.

105. He noted that Respondent is not responsible for water coming from the farms. Highway 316 was not designed by Respondent. It was a county road that Respondent took over at some point.

106. Mr. Gray said that, to his knowledge, no one at his office ever received a call about flooding on Highway 316 prior to the Decedent's accident. His office keeps a record of people that call with complaints.

107. Respondent digs out ditches as needed. There is no set policy. If a landowner complains, or if one of Respondent's employees sees a blockage, the maintenance crew brings out equipment. Mr. Gray is familiar with Functions 441 and 442. There is no time frame for that maintenance.

108. Mr. Gray tries to go down every road in Phillips County at least once per week. He never saw too much grass in the ditches and never saw water overtopping the roadway south of the Intersection.

109. On cross-examination, Mr. Gray said that he is not aware of any standard for measuring the ditches. If water is flowing, the ditch must be deep enough. Mr. Gray acknowledged that Claimant's Exhibit No. 2 at 192 shows standing water and that the ditch is out of compliance. Mr. Gray interprets Functions 441 and 442 as standards that he follows and that are applicable to his job. He does not document when he inspects a roadway, but he does document when he finds a concern. He could look at the GPS to confirm whether he went by this stretch of highway, but he has not done that. Mr. Gray acknowledged that it is his responsibility to fix a problem before it results in a catastrophe whenever possible. Mr. Gray went to the Intersection the day after the accident and did not see any water on the road. "Mopping out" a ditch falls under Function 441, and machining the ditch to reestablish flow falls under Function 442. Respondent reshaped the

ditch ten months after the Decedent's accident. This reshaping was done because of a complaint by Clay Young, not because of the Decedent's accident. When Mr. Gray finds a problem, he talks to the maintenance crew supervisor to schedule a trackhoe. Mr. Gray has never seen flooding in the area of the accident. He has never seen an issue with water coming off of CR 261 onto Highway 316.

110. On redirect, Mr. Gray looked at Claimant's Exhibit No. 2 at 192 and said that the work done on the ditch was done to reshape the entire ditch from CR 261 to the next cross-drain.

Testimony of Matthew Emberton

111. In Claimant's case-in-chief, Claimant proffered the deposition of Matthew Emberton, which was received without objection.

112. Respondent called Mr. Emberton to testify.

113. Mr. Emberton is Respondent's district maintenance engineer for District 1. He has worked for Respondent since 2008 and in maintenance since 2015. District 1 covers multiple counties, including Phillips County. He oversees area maintenance supervisors.

114. Mr. Emberton tries to get over every part of the highway system in his district every two months. Other folks do, as well.

115. Functions 441 and 442 are functions that Respondent performs. There is a maintenance manual, as well. A chart in the back sets out the schedule for Function 441 and 442. Those functions are expected to be performed in March, April, or May. The chart allows crews to build a workplan.

116. Mr. Emberton is familiar with the Intersection. The topography of the highway is relatively straight. There is good visibility.

117. He is not aware of any complaints of water in the roadway near the Intersection. Those complaints are typically fielded at the local level by the area maintenance supervisor. If Mr. Gray had scheduled work to be done, Mr. Emberton would know about it.

118. Mr. Emberton is aware of two phone calls from Ms. Morrow, one of which was regarding the Barton school.

119. CR 261 and adjacent farmland flow into Highway 316.

120. It is quite a process if a farmer wants to clean out the ditches adjacent to his or her land. A formal letter must be issued by Respondent. Depending on circumstances, a farmer may have to have traffic control in place.

121. On cross-examination, Mr. Gray confirmed that for a farmer to clean out the ditches, the farmer must put up a bond, meaning that money is spent upfront. The approval can be as quick as a week, but if it involves a lane closure, it can take longer. Mr. Gray stated that the accident site was on Respondent's right-of-way. Mr. Gray saw videos of water overtopping the road and agreed that Respondent should proactively try to fix problems. He did not personally know about the flooding issue but agreed that if ditches cannot flow, they need to be fixed. Referring to Claimant's Exhibit No. 2 at 192, Mr. Emberton stated that he cannot tell if there is a ditch from the photograph but confirmed that there should be a ditch. He has been unable to find any engineering plans for this section of roadway and could not find any measurements to see if the ditch fits the standards. The buildup seen in Claimant's Exhibit No. 2 at 192 happens over time and prevents proper drainage.

122. On redirect, Mr. Emberton testified that he does not know the design flood stage for Highway 316. If a design flood stage is exceeded, there will be water in the road. Depending on the intensity of the rainfall, it can happen. The design flood stage refers to the maximum that

the ditches, culverts, cross-drains, and side drains are designed to handle. It is not the responsibility of Respondent to keep all water off the road at all times.

123. Upon a question from a commissioner, Mr. Emberton confirmed that efforts are made by Respondent to see the roadways in various weather conditions.

Testimony of Cannon Callicott

124. In Claimant's case-in-chief, Claimant proffered the deposition of Cannon Callicott, which was received without objection.

125. Respondent called Mr. Callicott to testify.

126. Mr. Callicott is Respondent's district engineer for District 1. He has been employed by Respondent for 26 years and has held a variety of engineering positions. His role is largely administrative.

127. Highway 316 has been a state highway since 1974. In the 1960s and 1970s, there were a lot of unimproved county roads that were made part of the state highway system because the state had more money for road improvements. There is a difference between an 'inherited' county road and a road built by Respondent. Inherited county roads are not brought up to current standards using maintenance funds because bringing a road up to current standards is considered a rebuild.

128. When Respondent designs a ditch on a highway, the side drains and ditches are designed for a 'two-year-storm.' If the road is inherited, the ditch is just shaped and fit to what is there.

129. If the ditch is not sufficient, Mr. Callicott stated that water could overtop the road.

130. Counties maintain county roads. Respondent has no responsibility or maintenance rights for county roads. If the county road is a gravel road, the county will grade the road.

131. There are a variety of ways for Respondent to receive complaints, including telephone calls to one of Respondent's offices, notification by law enforcement, and the reporting option through Respondent's website. There may also be options through social media. As much as possible, the local offices handle maintenance issues. Mr. Gray could handle pothole repairs or tree issues. If a ditch needed to be regraded, though, a trackhoe would be scheduled through the district.

132. Each office handles complaints with its own system. The records available might depend on the way the complaint comes into the office. If there is a flooding complaint, Respondent sends folks out to verify and to put up signs and barricades.

133. The district did not receive any road issue reports the night of the Decedent's accident. That same night, however, Lee County had two reports.

134. Mr. Callicott has seen water running into the right-of-way from farms. Grading and crop choice can all affect water coming into the ditches, although not typically to the extent seen in this situation.

135. There was some ditch work completed on Highway 316 before Mr. Callicott started in his position. Some additional work was done recently.

136. 'Mopping out' means cleaning out the drain. This is usually minimal. Usually, a 'mop out' is triggered by complaints by the public. A mop out is done by a district maintenance crew. Minor work with a backhoe can be done by a county crew.

137. RRR projects came about in the late 1980s and 1990s. When Respondent constructs a roadway, it must meet those standards in order to get the funding.

138. Mr. Callicott is not aware of any complaint from flooding on Highway 316.

139. In the videos showing the accident scene, the water is moving, so that indicates drainage because the water is going somewhere. The water is not leaving the roadway as quickly as everyone would like. There is more flow than there is capacity to drain.

140. Respondent must use maintenance funds to maintain the capacity of a highway when it was built, meaning a two-year storm.

141. On cross-examination, Mr. Callicott stated that the flowing water makes sense given the topography of the Intersection. Highway 316 is not an RRR project because acquisition of the highway happened prior to the start of the RRR program in the 1980s. Highway 316 cannot become an RRR project until Respondent reconstructs the highway. Mr. Callicott is not testifying that Respondent has no responsibility for an inherited highway until the highway is rebuilt. He does not know the particular design for Highway 316. The intensity of the rainfall matters more than the amount of rain. The ditch at issue here met the two-year storm requirement. This requirement means that, on average, a two-year storm will exceed the capacity of the ditch. Referring to Claimant's Exhibit No. 2 at 192, this ditch would meet a two-year design storm, although it does show water ponding south of the Intersection. Claimant's Exhibit No. 2 at 106 is another two-year rain event, as is Claimant's Exhibit No. 2 at 116. However, Claimant's Exhibit No. 2 at 116 has water pooling south of the Intersection that must be from CR 261. Claimant's Exhibit No. 2 at 112 shows water going over the road where the deeper part of the ditch ends. Claimant's Exhibit No. 3 is dated June 2014 and shows work being performed north of the Intersection on the Young Property. If someone reported an issue to one of the people working for Mr. Gray, it would not necessarily get back to Mr. Gray. People are prone to hyperbole, such as saying that a certain road is the worst in the state. If Mr. Young told workers about the flooding, those workers do not have to report every complaint to their supervisor. That is not a requirement

in the personnel manual. Mr. Callicott has no evidence regarding whether Ms. Morrow or Mr. Young were or were not telling the truth.

142. On redirect, Mr. Callicott stated that CR 261 goes uphill from Highway 316. On the aerial picture, you can see drainage coming from the Carruth Property. The mop out of the ditch adjacent to the Young Property was not continued south of the Intersection because it was beyond the scope of the complaint received by Respondent, and Respondent did not want to disturb the vegetation (a ditch with no vegetation will wash out).

143. On re-cross, Mr. Callicott testified that he is not sure of the date of the work done on the Carruth Property. He knows that it was regraded based on the Google Earth images.

#### Testimony of Stan Andrews

144. Respondent called Stan Andrews to testify.

145. Mr. Andrews is an accident reconstructionist. He has a bachelor's degree in biological and agricultural engineering and a master's degree in engineering. He has worked mostly in the field of mechanical engineering. Mr. Andrews worked at Tyson for seven years designing and building equipment. He has been working in the field of accident reconstruction for 22 years.

146. Mr. Andrews did a reconstruction of the Decedent's accident. He visited the accident scene, did a laser scan of the scene and the Decedent's vehicle, inspected the vehicle, and documented the condition and impact marks. An investigation done four weeks after the accident resulted in photographs, drone imagery, and a scan of the area that Mr. Andrews was able to view. He also reviewed the police report, the accident scene photographs, and the aerial photo taken by Rocky Ford.

147. Referring to his reconstruction report, found at Respondent's Exhibit No. 2, Mr. Andrews testified that the Decedent was traveling 53–60 miles per hour when he left the roadway and 49-54 miles per hour during the rollover. The Decedent's vehicle rolled over three and three-quarter times. The tires on the Decedent's vehicle were inadequate for the existing conditions. The Decedent was traveling too fast for the existing conditions. The Decedent was trapped underneath the vehicle when it came to rest. The Decedent drove through the water-covered roadway for some time before losing control, so he had warning about the water and, if he had slowed down, could have avoided the accident.

148. It is common for an accident reconstructionist to rely on photographs taken by other people because it is rare for an accident reconstructionist to get to the accident scene right after the accident occurs.

149. Referring to Respondent's Exhibit No. 2 at p. 11, Mr. Andrews testified that he worked backwards based on where the vehicle came to rest. He personally looked at the scratch marks on the vehicle. Mr. Ford had highlighted the headlight debris in his photographs, so Mr. Andrews could calculate based on that point. The headlights are important for the calculation. At 50 feet per rollover and three and three-quarter rolls, the vehicle traveled roughly 180 feet. With or without the headlight debris, the rollover distance is within nine feet of error. Looking at the photographs found in Respondent's Exhibit No. 2 at p. 7, Mr. Andrews is comfortable relying on the pile of headlight debris as a point of impact because of the tiny pieces embedded in the ground, which are typical of what he would expect to see.

150. 'Yaw' refers to a vehicle rotating but the direction of travel staying the same. You see 'yaw marks' when this happened. The yaw marks, in addition to the rollover distance, allow Mr. Andrews to calculate the speed of the vehicle.

151. The speed limit for this stretch of road was 55 miles per hour. The Decedent was traveling 53–60 miles per hour.

152. Looking at the tires on the Decedent's vehicle, the lack of tread depth was a contributing factor to the accident. The minimum tread depth means that hydroplaning and a loss of control is more likely. The tires on the front of the vehicle were better than the tires on the back.

153. On cross-examination, Mr. Andrews confirmed that he is not a professional engineer. He is not licensed in Arkansas or other states. He is being paid by Respondent to be here (\$31,659.00 had been billed prior to Mr. Andrews' attendance at the hearing). The crash data recorder was not required to be accessible to the public for a 2004 Toyota Tundra. Mr. Ford tried to download that information but could not get it. Toyota does not make that information available voluntarily. Mr. Andrews looked at the vehicle's resting point, headlights, and scratch marks. Without the headlight location, the speed range would be slightly faster. The headlight location adds accuracy to his calculation. The scratch marks show the number of rolls. In this case, the Decedent's vehicle had four types of scratches. There were lots of people at the accident scene, and, by walking around, those people could have compressed debris into the ground. Water was flowing north to south, but the headlight debris pile is consistent with where Mr. Andrews would expect it to be. Mr. Andrews conceded that people moved the bumper, but he does not think that people moved the tiny pieces of the headlight. Any scratches on the vehicle from the recovery process would be squiggly and would not run from front to back. When the road surface is wet, you do not get yaw marks as distinct as when the road surface is dry. If the Decedent went through the water for 300 feet and was still going 53–60 miles per hour when he left the roadway, his initial speed would have been astronomical. If there was no water on the roadway, the Decedent would

not have hydroplaned, and if he did not hydroplane, then he would not have lost control of his vehicle.

154. On redirect, Mr. Andrews testified that if the Decedent was traveling below 45 miles per hour, it is a lot less likely that he would have hydroplaned, especially if he had good tread on his tires.

Testimony of Dr. Chandra Thorbole

155. Respondent called Dr. Chandra Thorbole to testify.

156. Dr. Thorbole has a doctorate degree in engineering with an emphasis in crash dynamics and biomechanics. He analyzes accidents and how people are injured. Most of his work is directed at helping manufacturers prevent certain types of injuries.

157. Dr. Thorbole was hired by Respondent to do a biomechanical analysis of the accident and to determine whether the Decedent was wearing his seatbelt at the time of the accident. He inspected the vehicle, including the seatbelt hardware.

158. The Decedent's ejection kinematics caused him to be thrown in front of the rolling vehicle, such that the vehicle landed on the Decedent. The ejection portal was the driver's side window. The Decedent was ejected with a lot of energy. The ejection is the cause of his death.

159. The roof intrusion into the passenger space of the vehicle likely occurred after the Decedent was ejected.

160. The Decedent's vehicle did not have rollover-activated belt pretensioner or a curtain airbag.

161. All of Dr. Thorbole's opinions were given to a reasonable degree of biomechanical certainty.

162. On cross-examination, Dr. Thorbole confirmed that he relied upon Mr. Andrews' conclusions for the vehicle motion. If there was no rollover, there would be no roof intrusion. If there was no rollover, there would be no ejection.

Testimony of David Carruth

163. Claimant called David Carruth as a rebuttal witness.

164. Mr. Carruth is a lawyer in Clarendon, Arkansas. He manages his family's farm, which is owned by the Carruth Family Trust.

165. He has observed flooding on Highway 316 in the area of the Intersection.

166. Respondent took over Highway 316 in the early 1970s. Mr. Carruth remembers Respondent doing some work on the ditches next to the Young Property, which caused flooding by the Intersection. There was a lot of complaining. Mr. Carruth stated that his father said he was going to tell Respondent about the flooding in the early 1990s. Mr. Carruth went to the local office in 2015 or 2016 to complain about the flooding. The water was bad because the ditch had not been cleaned out.

167. Following this accident, Respondent did a lot of work on this highway.

168. Regarding the issue of runoff from the Carruth Property, Mr. Carruth stated that every highway in Arkansas has property adjoining that highway. When the Carruth Property was converted into tillable land in the late 1970s, Mr. Carruth's family allowed trees to grow up along the border and put hay bales there to stop the erosion and the water running off the property. However, Respondent took out that vegetation.

169. Mr. Carruth's tenant has done a lot of work to stop the runoff since Respondent removed that vegetation five or six years ago.

170. On cross-examination, Mr. Carruth stated that he has not seen water flowing down CR 261 because the ditches on the county road are very deep. He does not recall who he spoke with at the Respondent's local office when he complained about the flooding. He described the person as a white male approximately 50 years old. Mr. Carruth clarified that Respondent cleared the vegetation on the Carruth Property's side of the ditch embankment in probably 2013 or 2014.

#### Closing Arguments

171. Claimant argued that pursuant to Ark. Code Ann. § 27-67-207, Respondent has a duty to keep the state highways in good repair. There is no exception to this statute for inherited roads. Under the negligence standard, the evidence shows that Respondent knew or should have known about the flooding on Highway 316. Witnesses who have no interest in this claim testified that they notified Respondent of the flooding. Mr. Young and Mr. Carruth testified that Respondent's own actions caused the problem or made it worse. Respondent's employees provided explanations but not legal excuses why Respondent did not satisfy its statutory duty with respect to Highway 316. Even if Respondent's employees did not see the flooded road, they could have seen the standing water in the ditch on the sunny days. Respondent did not provide an expert to rebut Claimant's hydrology expert, Mr. Auld. Regarding the issue of comparative fault, Respondent's accident reconstruction testified that the Decedent was going 53–60 miles per hour, which is not speeding when the speed limit is 55 miles per hour. Mr. Andrews' analysis is not believable because of the astronomical speed the Decedent would have had to be traveling if the Decedent was going 53–60 miles per hour after traveling through 300 feet of water. The damages in this claim are twofold, as the Decedent's estate can recoup damage for loss of life and lost wages and the beneficiaries can recover for mental anguish. Dr. Scott's report gives a framework and

guidelines for evaluating lost wages. Claimant's damage claim is very conservative considering Dr. Scott's report.

172. Respondent argued that the question is whether it knew or should have known of the flooding near the Intersection. The specific location matters because of the topography. Respondent's employees testified that they did not violate any specific written standards. Per Mr. Callicott, Respondent's responsibility is to keep the ditches where they can handle a two-year storm. Respondent inherited Highway 316, and the maintenance funds do not include road improvements. The work done in 2014 by Respondent did not and could not have caused flooding. There was a lot of other testimony about other sources of water not in Respondent's control. Mr. Andrews talked about the issue of causation, including the fact that the Decedent's tires were in poor repair and that the Decedent should have been going ten miles per hour under the speed limit due to the rain. Dr. Thorbole testified that the cause of death was the Decedent's ejection from the vehicle. The Decedent knew this road and should have been on the lookout. The stretch of Highway 316 is a straight road, so the water should have been visible. The Claims Commission is charged with apportioning fault and damages. If the Decedent was 51 percent at fault, then Claimant cannot recover. If the Decedent was less than 51 percent at fault, then the damages must be weighed. Insurance payments received by Claimant should be put on Respondent's side of the apportionment of damages.

173. In rebuttal, Claimant argued that while Mr. Callicott said that the ditch met the design requirements, he also said that each picture of water on the road must be showing a two-year storm. Claimant also argued that the Decedent was not speeding.

**Relevant Statutes and Caselaw**

174. The elements of a negligence claim are duty, breach of duty, and damages proximately caused by the breach. *See Union Pac. R. Co. v. Sharp*, 330 Ark. 174, 180, 952 S.W.2d 658, 661 (1997).

175. Ark. Code Ann. § 27-67-101 provides that the “the policy of the state [is] to . . . repair, maintain, and control all the public roads in this state comprising state highways. . . .” (emphasis added).

176. Ark. Code Ann. § 27-67-207 provides, in pertinent part:

- (a) As used in this chapter, unless the context otherwise requires, “maintenance” means the constant making of all repairs necessary to preserve a smooth surface on the roads and to keep the bridges and culverts in a safe condition and shall include drainage work, the building of bridges and culverts, and the making of cuts and fills as the commission deems necessary to accomplish these purposes.
- (b) It shall be the duty of the State Highway Commission to begin as soon as practicable and continue the maintenance of all roads that are properly designated as state highways, to the end that every part of the state highways shall be properly, fairly, and equitably maintained and kept in repair.
- (c) So far as practicable, maintenance and repair shall be according to what is known as the patrol system. Laborers as are deemed necessary may be employed and kept continually on the roads, with the force, equipment, and materials that are necessary to perform the work.

(emphasis added).

**Findings of Fact and Conclusions of Law**

Based upon a review of the pleadings, testimony, evidence, and the law of the State of Arkansas, the Claims Commission unanimously finds as follows:

177. The Claims Commission has jurisdiction to hear this claim pursuant to Ark. Code Ann. § 19-10-204.

178. The Claims Commission finds that Claimant's claim is based upon Respondent's alleged negligent maintenance of Highway 316 and its drainage system.

179. The Claims Commission finds that, pursuant to Ark. Code Ann. §§ 27-67-101 and 27-67-207(b), Respondent had a duty to maintain Highway 316 and its drainage system.

180. The Claims Commission finds that Respondent knew or should have known of the flooding problem on Highway 316. Based on the evidence presented by Claimant, including the testimony of Ms. Morrow, Mr. Young, Ms. Reeves, and Mr. Carruth, complaints had been made to Respondent about flooding in the very location that this incident occurred.<sup>2</sup> The Claims Commission notes that Ms. Morrow, Mr. Young, Ms. Reeves, and Mr. Carruth have nothing to gain from the outcome of this claim, and there was otherwise no evidence of bias on their part. Moreover, the Claims Commission finds the numerous photographs and videos presented by Claimant showing Highway 316 flooded or the ditch overgrown and/or the ditch full of water to be significant in light of Respondent's witnesses' testimony regarding the frequency that Highway 316 was traveled looking for road issues. The Claims Commission finds that the standard that Respondent consistently argues should apply to Respondent in claims for potholes or other hazardous road conditions should apply to the instant claim as well. *See, e.g., Nwanonyiri v. Ark. Dept. of Transportation*, Claim No. 220326. As such, where Respondent had prior knowledge of a hazardous road condition and failed to remedy it within a reasonable amount of time, Respondent is liable for the damages that occur from that condition.

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<sup>2</sup> The Claims Commission notes its concern with Respondent's practice of allowing each local office to determine its own system of cataloguing reported complaints, given Respondent's position in this claim regarding notice despite the testimony of multiple witnesses.

181. The Claims Commission notes an incompatibility with Respondent's simultaneous arguments that the Decedent had traveled that road previously, such that he should have known to travel cautiously, and that Respondent's employees were unaware of the problem on Highway 316 despite checking that road every week (as Mr. Gray stated) and every two months (as Mr. Emberton stated that he and others did, as well).

182. However, pursuant to Ark. Code Ann. § 16-64-122, the Claims Commission must also consider the fault of the Decedent. The plain language of Ark. Code Ann. § 16-64-122 states that it applies to "... all actions for damages for ... wrongful death ... in which recovery is predicated upon fault." (emphasis added). The Arkansas Court of Appeals discussed the applicability of the "broad language" in this statute in *Bishop v. Tariq*, 2011 Ark. App. 445, 384 S.W.3d 659. In the instant claim, while there was no evidence presented that the Decedent was speeding,<sup>3</sup> it is undisputed that the Decedent was not wearing his seatbelt at the time of the accident. The Claims Commission also finds that the condition of Decedent's rear tires was a factor in the accident. Additionally, based on Mr. Brown's testimony regarding the number of times that the Decedent traveled in this area, the Claims Commission finds that the Decedent was familiar with this roadway.

183. As such, the Claims Commission assigns fault as follows:

- (a) Decedent: 35%
- (b) Respondent: 65%

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<sup>3</sup> While the Claims Commission notes some concerns with Mr. Andrews' calculations and conclusions, the Claims Commission finds it significant that Respondent's own expert witness calculated the Decedent's speed at 53–60 miles per hour in a 55 mile per hour zone.

184. As for damages, the Claims Commission must consider the damages for the Decedent's estate as well as the mental anguish damages for the Decedent's wrongful death beneficiaries (his parents and siblings).

185. Regarding the Decedent's estate, the Claims Commission finds that the estate is entitled to recover the funeral expenses for the Decedent (\$7,287.47), as well as the burial costs (\$600.00) and headstone (\$11,864.48), for a total of \$19,751.95. Additionally, considering the persuasive testimony of the Decedent's family members regarding how the Decedent valued his life, the Claims Commission finds that the damages associated with the Decedent's loss of life are \$2,500,000.00. The Claims Commission finds that this number is consistent with the conclusions of Dr. Scott regarding the Decedent's lost earning capacity (which ranged from \$1.52 million to over \$3 million given various scenarios), which were admitted in revised form without objection. As such, the Claims Commission finds that the Decedent's estate's total damages are \$2,519,751.95, of which Respondent is liable for 65 percent, equaling \$1,637,838.77. The Claims Commission further finds that the \$100,000 in insurance proceeds recovered by Claimant should be subtracted from the award, for a total award to the Decedent's estate of \$1,537,838.77.

186. The Claims Commission finds that the testimony about the help the Decedent would have been able to provide on the family farm to be too speculative and declines to make an award for such damages.

187. Regarding the Decedent's parents, the Claims Commission finds the testimony presented by Debbie Brown and Joe Brown regarding the mental anguish experienced following the Decedent's death to be moving and persuasive. As such, the Claims Commission finds that Debbie Brown and Joe Brown should be each awarded mental anguish damages of \$300,000.00, of which Respondent is liable for 65%, equaling \$195,000.00 to each.

188. Regarding the Decedent's siblings, the Claims Commission finds the testimony presented by Nathan Brown regarding the mental anguish experienced by him and his sister, Samantha Brown, to be moving and persuasive. As such, the Claims Commission finds that Nathan Brown and Samantha Brown should be each awarded mental anguish damages of \$50,000.00, of which Respondent is liable for 65%, equaling \$32,500 to each.

### **Conclusion**

189. The Claims Commission AWARDS the Estate of Chris Brown a total of \$1,537,838.77. The Claims Commission further AWARDS Debbie Brown and Joe Brown \$195,000.00 each and Nathan Brown and Samantha Brown \$32,500.00 each. Pursuant to Ark. Code Ann. § 19-10-215(b), the Claims Commission refers this total award of \$1,992,838.77 to the General Assembly for review, approval, and, if approved, placement on an appropriations bill.

IT IS SO ORDERED.



\_\_\_\_\_  
 ARKANSAS STATE CLAIMS COMMISSION  
 Courtney Baird



\_\_\_\_\_  
 ARKANSAS STATE CLAIMS COMMISSION  
 Henry Kinslow



\_\_\_\_\_  
 ARKANSAS STATE CLAIMS COMMISSION  
 Paul Morris, Chair

DATE: November 10, 2022

**Notice(s) which may apply to your claim**

- (1) A party has forty (40) days from the date of this Order to file a Motion for Reconsideration or a Notice of Appeal with the Claims Commission. Ark. Code Ann. § 19-10-211(a)(1). If a Motion for Reconsideration is denied, that party then has twenty (20) days from the date of the denial of the Motion for Reconsideration to file a Notice of Appeal with the Claims Commission. Ark. Code Ann. § 19-10-211(a)(1)(B)(ii). A decision of the Claims Commission may only be appealed to the General Assembly. Ark. Code Ann. § 19-10-211(a)(3).
- (2) If a Claimant is awarded less than \$15,000.00 by the Claims Commission at hearing, that claim is held forty (40) days from the date of disposition before payment will be processed. *See* Ark. Code Ann. § 19-10-211(a). Note: This does not apply to agency admissions of liability and negotiated settlement agreements.
- (3) Awards or negotiated settlement agreements of \$15,000.00 or more are referred to the General Assembly for approval and authorization to pay. Ark. Code Ann. § 19-10-215(b).

IN THE CIRCUIT COURT OF )  
POPE COUNTY, ARKANSAS )

TIMOTHY MURDOCH, in his capacity as )  
Special Administrator to the Estate of )  
Julie LeFevre, deceased )

PLAINTIFF )

v. CASE NO. 58CV-18-638 )

PHILLIP COWGER, and SHARON )  
BARNETT, in her capacity as Special )  
Administrator of the ESTATE OF PHILLIP )  
COWGER, Deceased )

DEFENDANT )

FILED  
2019 JUL 10 AM 10:36  
KASHEE L. GENTLING  
POPE COUNTY CIRCUIT CLERK  
BY: [Signature]

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JUDGMENT

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On this 8<sup>th</sup> day of JULY, 2019, came on the Plaintiff, Timothy Murdoch, in his capacity as Special Administrator to the Estate of Julie LeFevre, deceased, by counsel, Hall and Taylor Law Partners, PLLC, upon the Complaint, and the Court, upon consideration of the evidence presented, FINDS, ORDERS, ADJUDGES, AND DECREES THE FOLLOWING:

1. Timothy Murdoch is the duly appointed Special Administrator to the Estate of Julie LeFevre, deceased.

2. Sharon Barnett is the duly appointed Special Administrator of the Estate of Phillip Cowger, deceased.
3. The Defendants were duly served with process in this matter, notice of this hearing and have otherwise failed and refused to appear and defend this matter.
4. Plaintiff made an oral motion for default judgment. A judgment of default on all issues of liability is proper in this action. Plaintiff is hereby granted a judgment of the issue of liability on each basis requested in the Complaint.
5. A hearing was conducted on the issue of damages.
6. The decedent, Julie LeFevre, died leaving three minor children, a surviving spouse and both her parents. The Court finds that these persons are the statutory beneficiaries of the decedent.
7. The decedent's parents were provided with notice of this hearing and have declined to appear herein. The decedent's parents filed for record an Assignment of Interest of any rights herein to the decedent's children.
8. The minor children and the surviving spouse appeared herein by and through counsel to wit: James Dunham (attorney for Scott Greathouse, court appointed guardian of the [REDACTED])

██████████, Allen Laws (counsel for ██████████) and John Peel (counsel for court appointed guardian Ron Campbell and his minor child, ██████████). Counsel for the statutory beneficiaries announced that they reached an agreement as to the division of any future proceeds received by and between the statutory beneficiaries of Decedent.

9. According to the agreement announced by counsel, any proceeds from this judgment are to be allocated as follows:

|                                     |       |
|-------------------------------------|-------|
| Minor children of Scott Greathouse: | 56%   |
| Minor child of Ron Campbell:        | 28%   |
| Kile LeFevre:                       | 16%   |
|                                     | ===== |
| Total:                              | 100%. |

6. After a hearing, upon consideration of the evidence before the Court, Plaintiff is hereby awarded the following compensatory damages:

|                                     |                |
|-------------------------------------|----------------|
| Funeral Expenses:                   | \$11,557.00    |
| Lost Earnings:                      | \$991,705.00   |
| Lost of Life and Enjoyment of Life: | \$9,700,000.00 |
| Conscious Pain and Suffering:       | \$2,000,000.00 |
| Mental Anguish of Survivors:        | \$4,000,000.00 |

=====  
Total: \$16,703,262.00

7. Upon consideration of the evidence, the Court awards punitive damages in the amount of \$3,000,000.00. The clear and convincing evidence in support of this finding includes, but is not limited to, the following:

- a) The pilot, Phillip Cowger, was a commercially rated pilot who departed from Russellville, Arkansas, having last checked the weather forecast at 5:18 a.m. prior to a 7:54 a.m. departure. Testimony from another commercial pilot indicated that a safe and aware pilot should constantly check the weather up to the point of departure. The evidence indicated that visibility on the day of the crash was decreasing. The weather was an obvious and dangerous factor for flying on the day of the fatal crash.
- b) The pilot, Phillip Cowger, previously failed a simulator course whereby the instructor concluded that he had "instrument saturation issues". The NTSB found the cause of this crash was "pilot error" caused by "workload management" and "aircraft control." The prior simulator issues which the pilot, Phillip

Cowger, encountered were very similar to the cause of the crash in this instance. Therefore, it was a reckless disregard for the safety of the decedent when the pilot ignored his own limitation under the circumstances of the case.

- c) A commercial pilot with similar experience to the pilot, Phillip Cowger, was scheduled to depart the same morning in a similar aircraft (also with passengers) but declined to depart due to the danger involved caused by the weather and the type of aircraft he was piloting.
- d) On the date of the accident, winds were calm and the pilot, Phillip Cowger, could have chosen to take off to the southwest, where terrain was low for several miles, instead of taking off towards the northeast, where there was elevated terrain one mile away that the aircraft ultimately struck. The far safer alternative was to take off to the southwest instead of the northeast. Had Phillip Cowger done so, it is extremely unlikely the crash would have occurred.
- e) The pilot, Phillip Cowger, had been prescribed drugs that cause fatigue, muscle weakness, dizziness, blurred vision and

other side effects which impact his ability to safely fly the aircraft. A pilot has a duty to always be aware of the drugs he takes and the side effects of those drugs as they may impact his ability to safely fly an aircraft; as well as a duty not to undertake risks to his passengers while so medicated.

- f) Every pilot has a duty and is charged with control of his aircraft, and the ultimate responsibility for the decision to depart is with the pilot.
- g) Each pilot must enter into a risk assessment prior to departure considering the weather, his own past experiences, his health, the side effects of any medications, the type and abilities of the aircraft and other factors.
- h) Every pilot must take every action necessary to decrease or minimize, or eliminate the risk to his or her passengers.
- i) The pilot, Phillip Cowger, was a commercial pilot that was being compensated for his flight time.
- j) The aircraft being piloted during the crash was a “cadillac” aircraft, and the avionics equipment in the aircraft were above average.

- k) the NTSB report indicated that the aircraft was in good mechanical condition and there were no defects in the aircraft which contributed to the cause of the crash.

Based upon the testimony and other evidence before the Court, the Court finds that the pilot in command of the aircraft, Phillip Cowger, knew or should have known, in light of the surrounding circumstances, that the dangers posed to his passengers from his decision to depart would naturally and probably result in injuries to his passengers, but in reckless disregard of those risks and the likely consequences he continued to depart, which resulted in the damages to the decedent.

8. The Court hereby awards judgment in the total amount of \$19,703,262.09.
9. Pursuant to Ark. Code Ann. Section 16-66-221, the judgment debtor is hereby ordered, within 45 days of the entry of this judgment, to prepare a schedule, verified by affidavit, of all of his other property both real and personal, including moneys, bank accounts, rights, credits, and choses in action held by himself or herself or others for him or her and specify the particular property which he or she claims as exempt under the provisions of the Arkansas law. The judgment debtor shall file the schedule with the Clerk of this Court within 45 days of the entry of this Judgment.

IT IS SO ORDERED.

*Dennis C. Sutterfield*  
JUDGE DENNIS SUTTERFIELD  
POPE COUNTY CIRCUIT JUDGE  
*July 8, 2019*  
DATE

Prepared by:  
Randy Hall ABA # 89093  
415 North McKinley Suite 1000  
Little Rock AR 72205

RC

ELECTRONICALLY  
FILED

MAY 10 2021

TIME: \_\_\_\_\_  
CASE #: \_\_\_\_\_

IN THE CIRCUIT COURT OF PULASKI COUNTY, ARKANSAS  
17<sup>TH</sup> DIVISION

**JENNIFER DANIELS,  
Individually and as  
Administratrix of the  
ESTATE OF JALEN  
FAULKNER, deceased**

**PLAINTIFFS**

**VS.**

**NO. 60CV-18-6611**

**DISCOUNT ZONE, INC.  
d/b/a WOODROW  
DISCOUNT STORE;  
SHAREEF NAJI  
QUATTOM; CALVIN C.  
STEPHENS; JOHN  
DOES 1-3; and JOHN  
DOE ENTITIES 1-3**

**DEFENDANT**

**ORDER**

On this 10<sup>th</sup> day of May, 2021, came on the Plaintiff, Jennifer Daniels, in her capacity as Special Administratrix to the Estate of Jalen Faulkner, deceased, by counsel, Denise Reid Hoggard, of RAINWATER, HOLT & SEXTON, P.A., upon the Complaint, and the Court, upon consideration of the evidence presented, FINDS, ORDERS, ADJUDGES, AND DECREES THE FOLLOWING:

1. The Defendants were duly served with process in this matter, and failed and refused to appear and defend this matter.
2. A default judgment granting Plaintiff judgment on the issue of liability on each basis requested in the Complaint was entered on April 13, 2021 by this Court.

3. The Defendants were duly served with notice of this hearing.

4. A hearing was conducted on the issue of damages.

5. The decedent, Jalen Faulkner, died at the age of 18, leaving no surviving children, both his parents and three half-brothers and one half-sister. The Court finds that these persons are statutory beneficiaries of the decedent.

6. After a hearing, upon consideration of the evidence before the Court, Plaintiff is hereby awarded the following compensatory damages:

a) Funeral Expenses: \$5,000

b) Lost earnings: \$3,353,880.43

c) Loss of Life and Enjoyment of Life: \$10,311,579

d) Conscious Pain and Suffering: \$1,000,000

e) Medical Expenses: \$15,269.08

f) Mental Anguish of Survivors: \$4,000,000

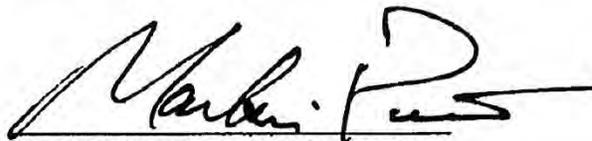
TOTAL: \$18,685,728.51

7. The Court hereby awards judgment in the total amount of \$18,685,728.51.

8. Pursuant to Ark. Code Ann. Section 16-66-221, the judgment debtor is hereby ordered, within 45 days of the entry of this judgment, to prepare a scheduled, verified by Affidavit of all property both real and personal, including moneys, bank accounts, rights, credits, and choses in action held by or for Defendants and specify the particular property which they claim as exempt under the provisions of Arkansas law. The judgment debtor shall file the

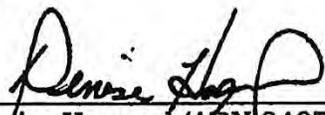
schedule with the Clerk of this Court within 45 days of the entry of this judgment.

IT IS SO ORDERED.

  
HONORABLE MACKIE PIERCE

*May 10, 2021*

Prepared by:

  
Denise Hoggard (ABN 84072)  
RAINWATER, HOLT & SEXTON, P.A.  
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Telefax (501) 868-2505  
Email: hoggard@rainfirm.com

**RALPH D. SCOTT, JR., Ph.D.**

Professor of Economics  
Department of Economics and Business  
Hendrix College  
Conway, Arkansas 72032  
(501) 450-1306 (voice and fax)

President  
Economic and Financial  
Consulting Group, Inc.  
Conway, Arkansas 72034

**EDUCATION**

Ph.D., Tulane University School of Economics, New Orleans, Louisiana  
(1983)

B.A., Hendrix College, Conway, Arkansas (1973)  
Major in Economics and Business

**ECONOMIC BACKGROUND**

Primary Area of Interest: Macroeconomics, Monetary Theory

Field Examinations: Taken and passed in Microeconomics,  
Macroeconomics, Mathematical Economics, Statistics, International  
Economics, Monetary Theory and Econometrics

Dissertation Title: *Rational Expectations, Aggregate Supply and Fiscal  
Policy*

In my dissertation, I integrated fiscal parameters into the Lucas-Rapping theory of labor supply to obtain a theory of aggregate supply in which the effectiveness of fiscal policy could be analyzed. In addition I developed and estimated an empirical model for the aggregate economy incorporating developments in expectational theory into supply and demand side relationships to analyze the effectiveness of fiscal policy within a broader context.

## TEACHING EXPERIENCE

Professor of Economics (tenured), Hendrix College, Conway, Arkansas  
1979 to present

Instructor, Tulane University, New Orleans, Louisiana, Summer 1978-  
Spring 1979

Instructor, St. Mary's Dominican College, New Orleans, Louisiana, Fall  
1977-Summer 1978

Current Teaching Responsibilities: I teach several sections of introductory level Microeconomics and Macroeconomics as well as upper level theory courses in Microeconomics, Macroeconomics, Money Banking and Credit and International Economics. I have also taught courses and directed independent study projects in Mathematical Economics, Finance, Monetary Theory, and Investment Analysis.

## CONSULTING EXPERIENCE

Consultation in economic and financial matters is conducted through the Economic and Financial Consulting Group, Inc., of which I am a principal. Over the past 37 years, I have developed extensive experience in personal injury and wrongful death lawsuits. I have been called on by defense as well as plaintiff attorneys in this regard and have been qualified as an expert witness in Federal, State and Local Courts in Arkansas and adjacent states.

Additional consulting expertise entails business and franchise evaluations. My qualifications also extend to statistical and econometric analysis, as well as financial analysis.

List of deposition and courtroom testimony, client list and professional references available upon request.

## SEMINARS AND PUBLICATIONS

*Evaluation of Damages in Personal Injury Lawsuits*, presented in conjunction with the Professional Education Systems, Inc.'s seminar and subsequent publication: *How to Evaluate and Settle Personal Injury Claims in Arkansas*, November 1989.

*The Role of the Economist in Personal Injury Lawsuits*, seminar presented to the Pulaski County Bar Association, Little Rock, Arkansas, October 1989.

Presentation to CLE seminar on recent developments in the evaluation of economic loss in personal injury lawsuits. Little Rock, Arkansas, April 1999.

SJR8 Some Economic Implications (*Arkansas Lawyer* – Summer 2017)

## **PERSONAL**

Married to Robin M. Scott and father of Ralph D. Scott, III and Kathryn Elise Scott.

# ECONOMIC AND FINANCIAL CONSULTING GROUP, INC.

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February 20, 2023

Mr. Jim Jackson  
Attorney at Law  
Jackson Law Firm  
700 West Broadway Street, Suite 2  
North Little Rock, AR 72114-5528

RE: **Estate of Jacqueline Lynn Ashraft**

## STATEMENT

|                                          |            |
|------------------------------------------|------------|
| Economic Consultation: 3.5 hours @ \$300 | \$1,050.00 |
|------------------------------------------|------------|

Federal ID# [REDACTED]

# Estimated Expenses

Hunt Hall, University of Arkansas, Fayetteville, AR 72701. In Arkansas call 1-800-377-8632; from outside of Arkansas call 479-575-5346.

## Estimated Necessary Expenses for an Academic Year

Estimates of necessary expenses listed below are for the 2022-23 academic year for a typical undergraduate student taking 30 credit hours per academic year at the University of Arkansas.

| Name              | Undergraduate Resident | Undergraduate Non-Resident |
|-------------------|------------------------|----------------------------|
| Tuition*          | \$7,666.00             | \$25,420.00                |
| University Fees** | \$1,990.00             | \$1,990.00                 |
| Books             | \$1,100.00             | \$1,100.00                 |
| Personal Expenses | \$2,938.00             | \$2,938.00                 |
| Transportation    | \$2,238.00             | \$2,238.00                 |
| Room***           | \$7,968.00             | \$7,968.00                 |
| Board***          | \$4,400.00             | \$4,400.00                 |
| TOTAL ****        | \$28,300.00            | \$46,054.00                |

\* The standard undergraduate in-state tuition rate is \$255.51 per credit hour. Students enrolled in College of Business courses are charged \$339.83 per credit hour in-state tuition. Students in the School of Architecture and Design are charged \$287.45 per credit hour in-state tuition. Students enrolled in College of Engineering courses are charged \$302.40 per credit hour in-state tuition. Nursing students are charged \$302.04 per credit hour in-state tuition.

\*\* University fees per year include the following student-initiated and student-approved fees:

- Student Activity fee calculated at \$2.78/credit hour — \$83.40
- Student Health fee, calculated at \$7.47/credit hour — \$230.70
- Media fee, calculated at \$0.90/credit hour — \$27.00
- Transit fee, calculated at \$3.15/credit hour — \$101.40
- Network Infrastructure and Data Systems fee at \$11.10/credit hour — \$333.00
- Facilities Fee, calculated at \$20.35/credit hour — \$655.50
- College of Arts and Sciences Fee at \$14.41/credit hour — \$432.30
- Library Fee, calculated at \$3.41/credit hour — \$124.80

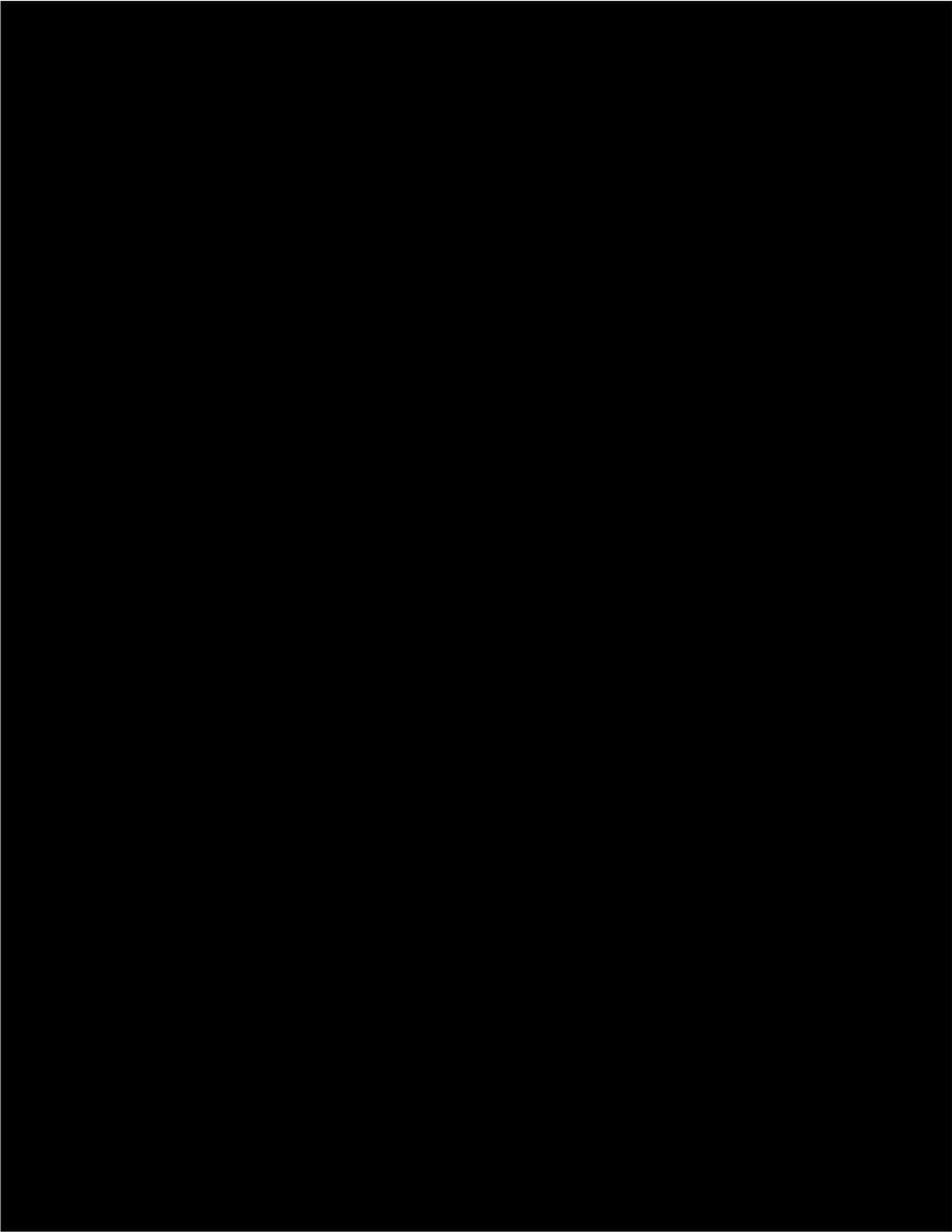
\*\*\* Weighted average expenses for living in a residence hall, double occupancy, with an unlimited meal plan. Actual room and board fees vary.

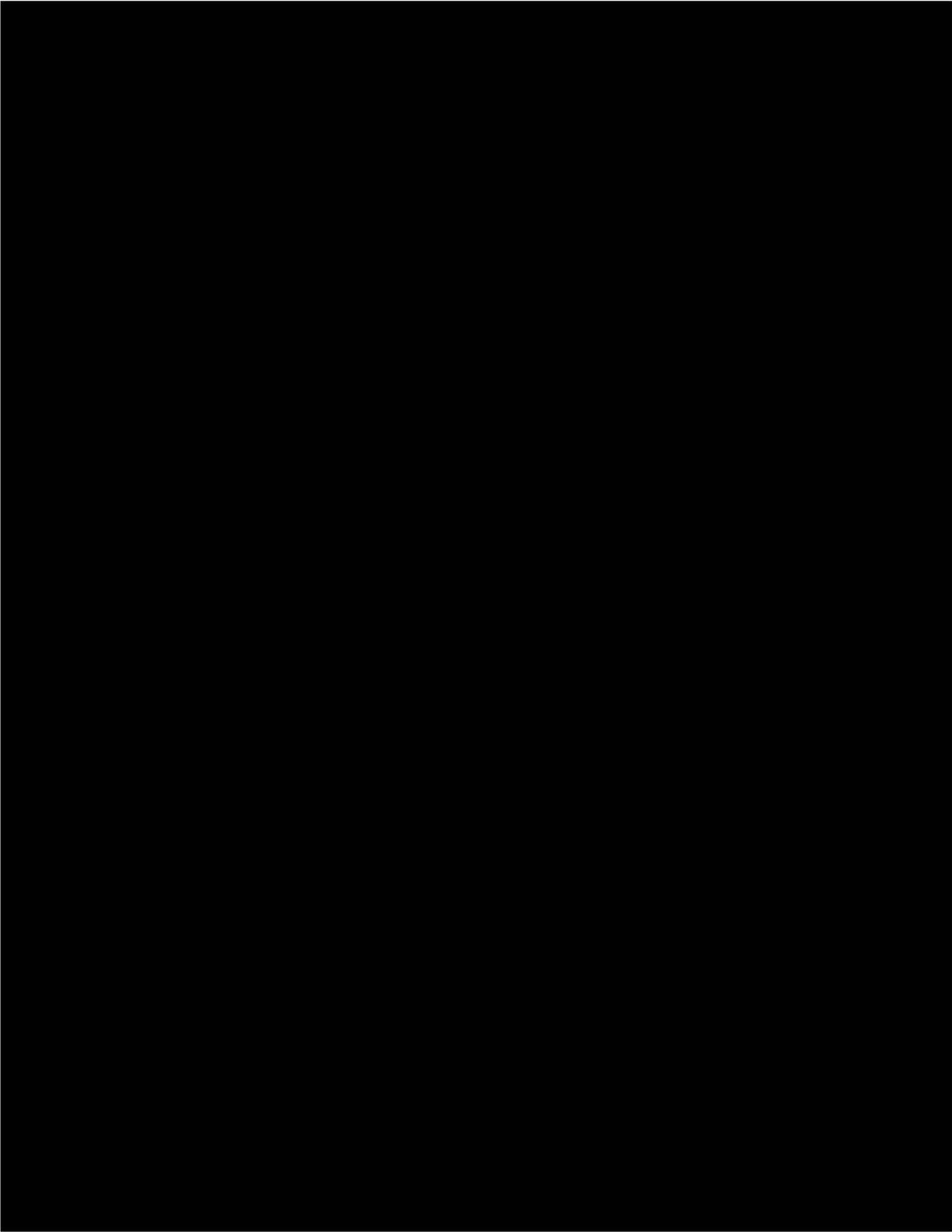
\*\*\*\* Budget amounts were adjusted for rounding to accommodate UACConnect budgetary rules.

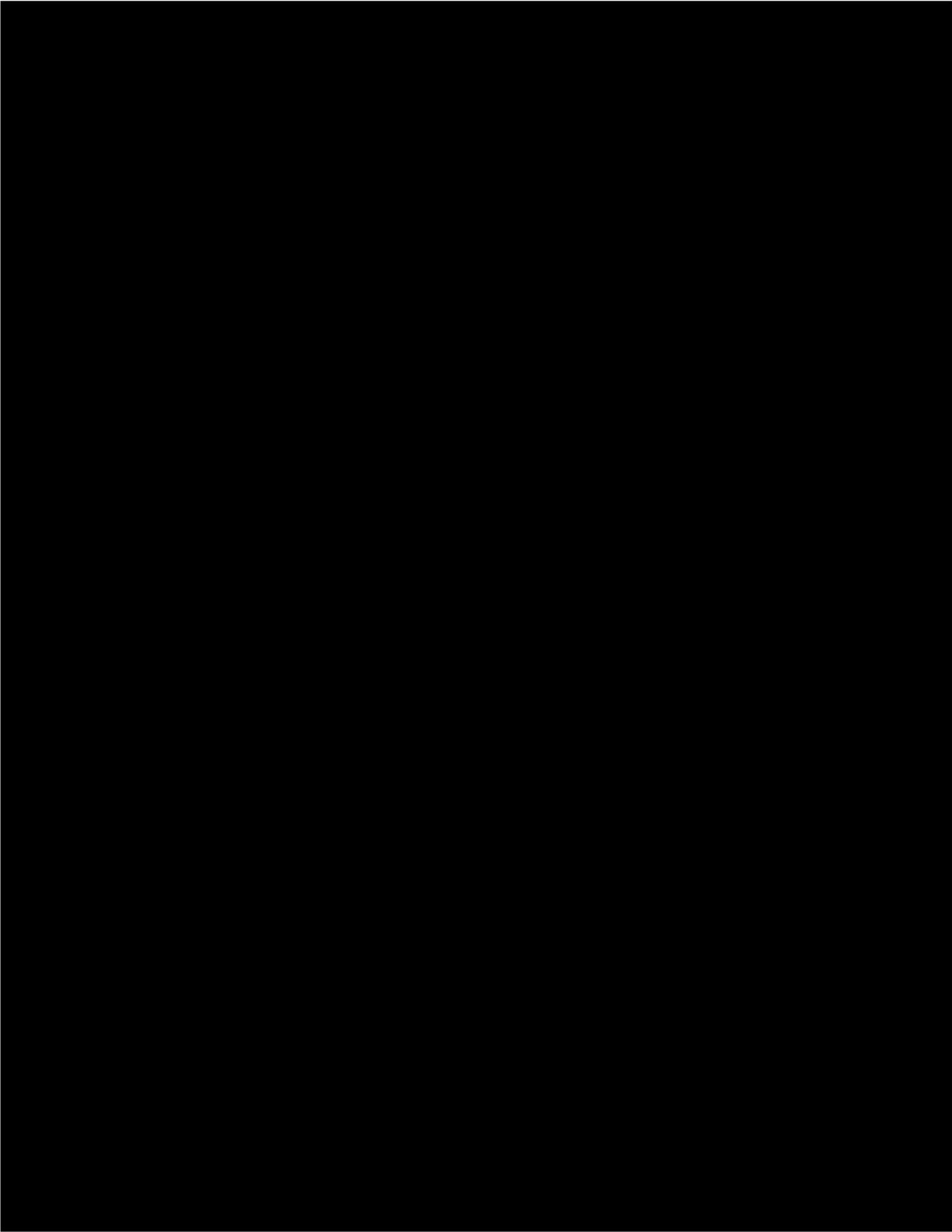
When paying tuition, room and board, and associated fees, anticipated financial aid for a current semester may be deducted when it is listed as anticipated aid on the student's account. Students receiving financial aid are strongly encouraged to have sufficient personal funds available to purchase books and to meet necessary expenses for at least one month at the start of school as some aid funds may not be available for disbursement.

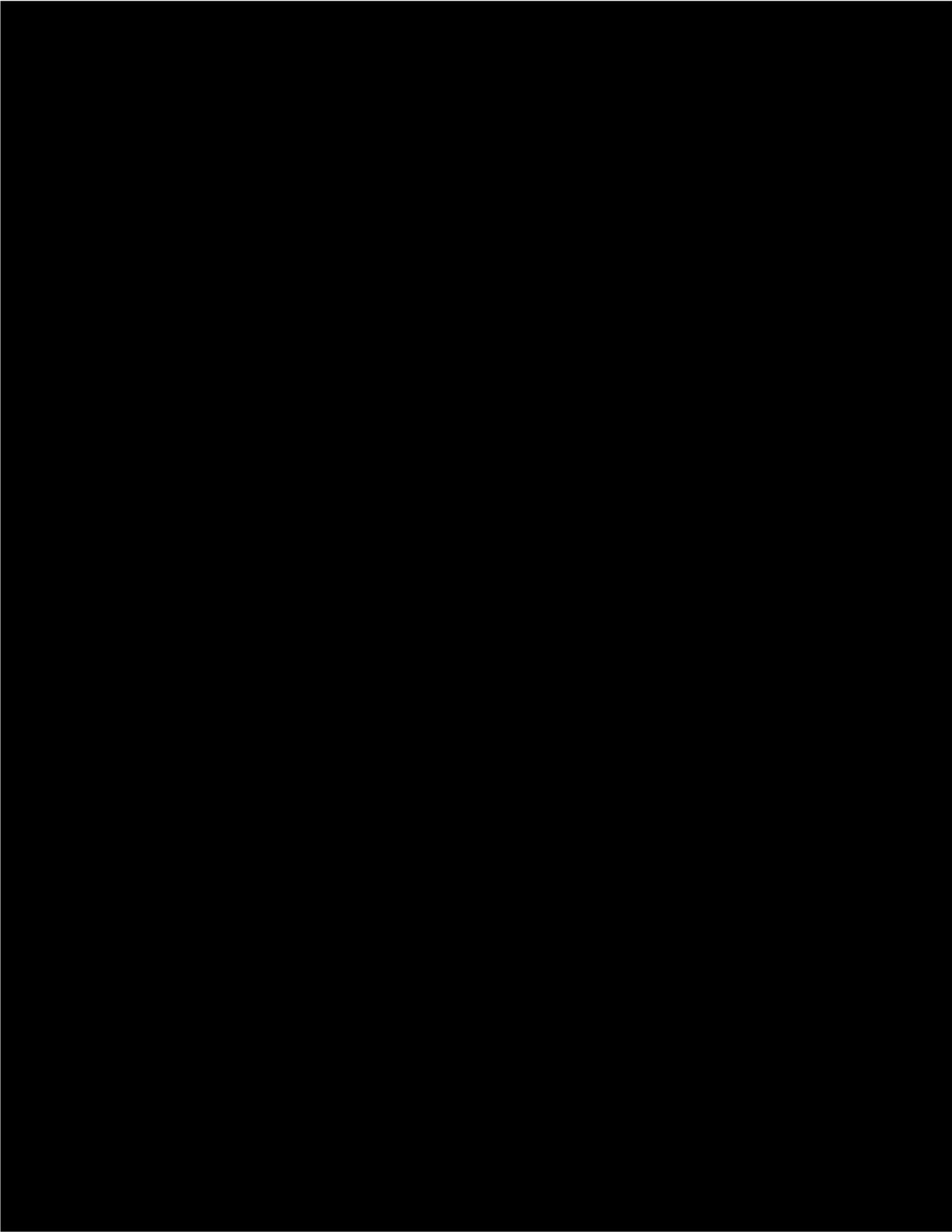
The latest information regarding costs and other aspects of university life may be obtained by calling or writing the Office of Admissions, 200

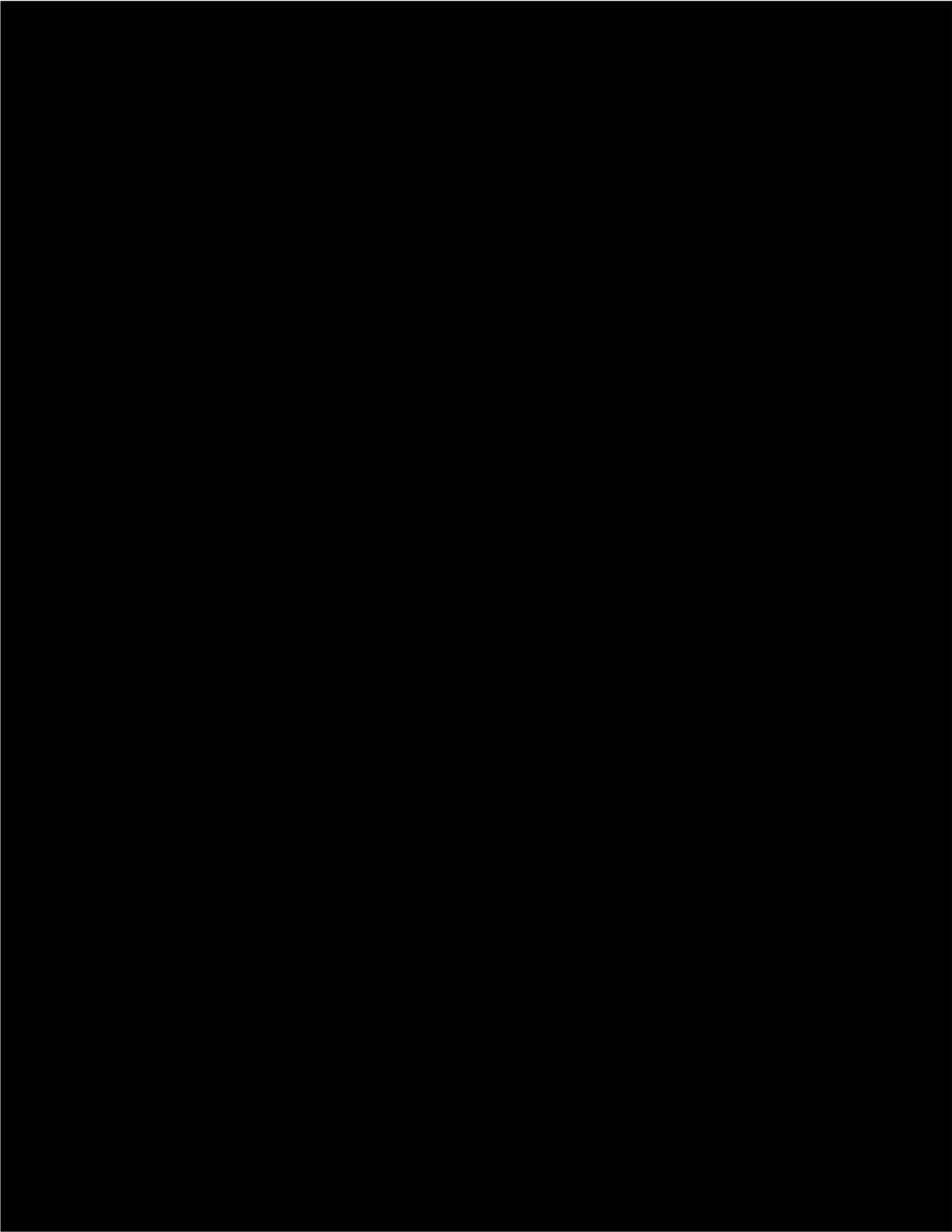
**EXHIBIT**  
**11**

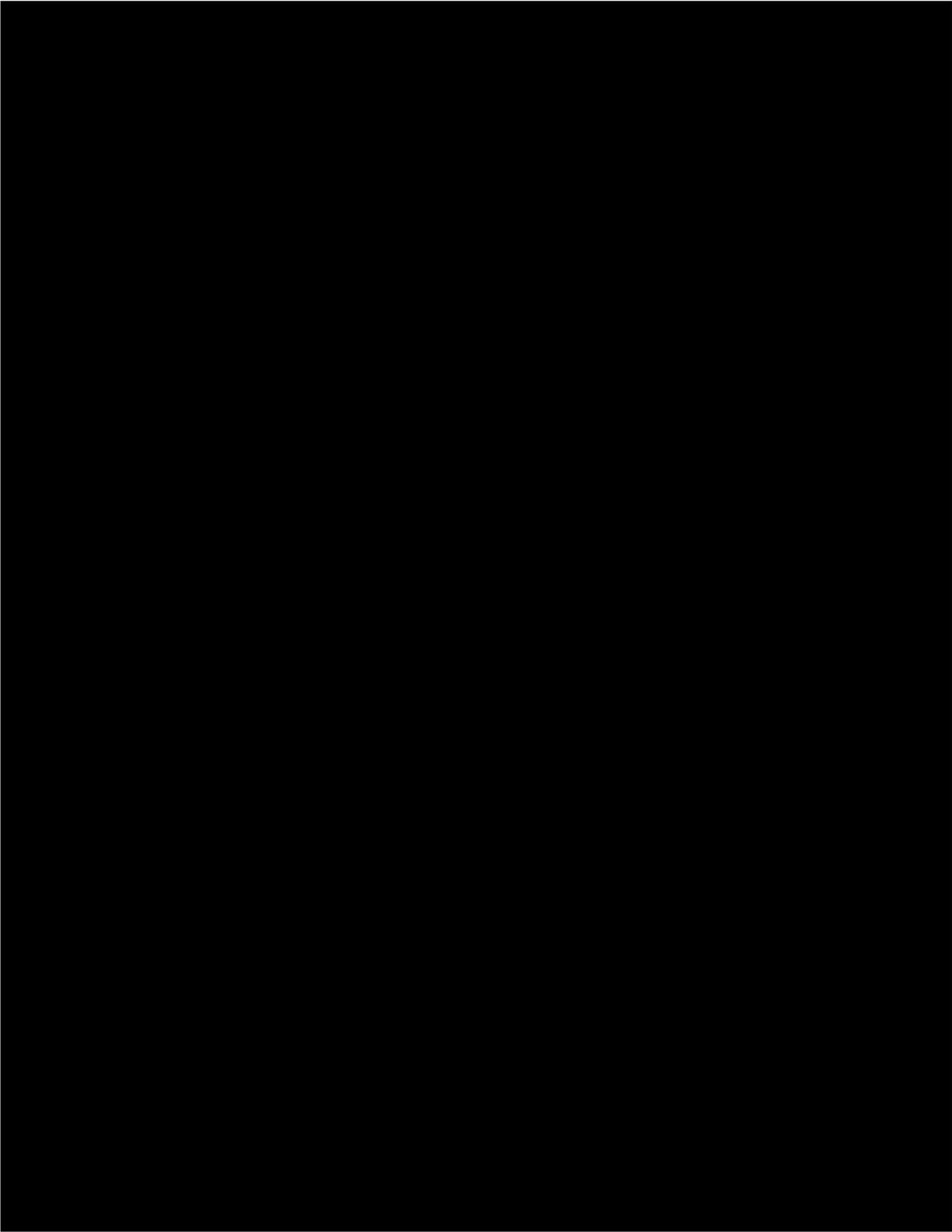


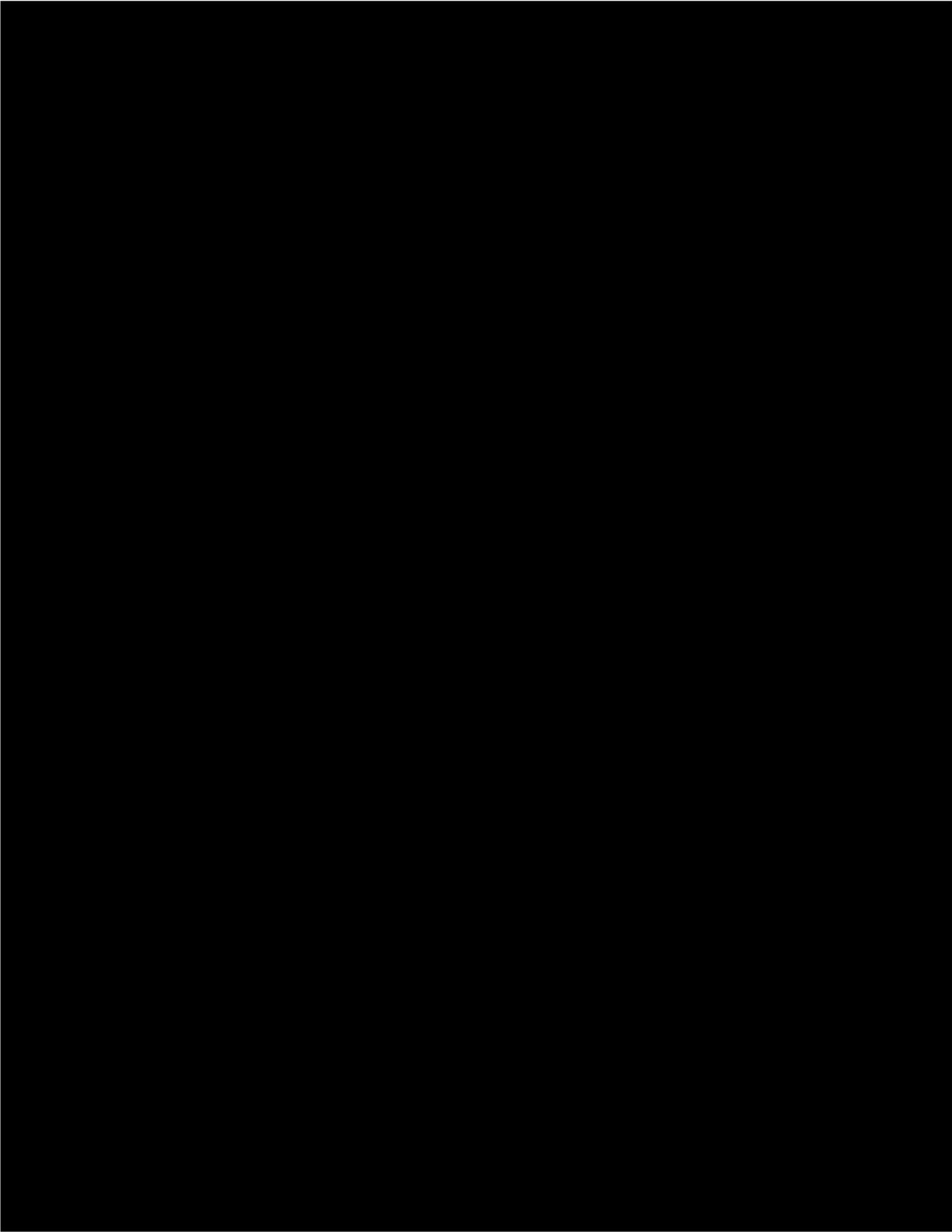


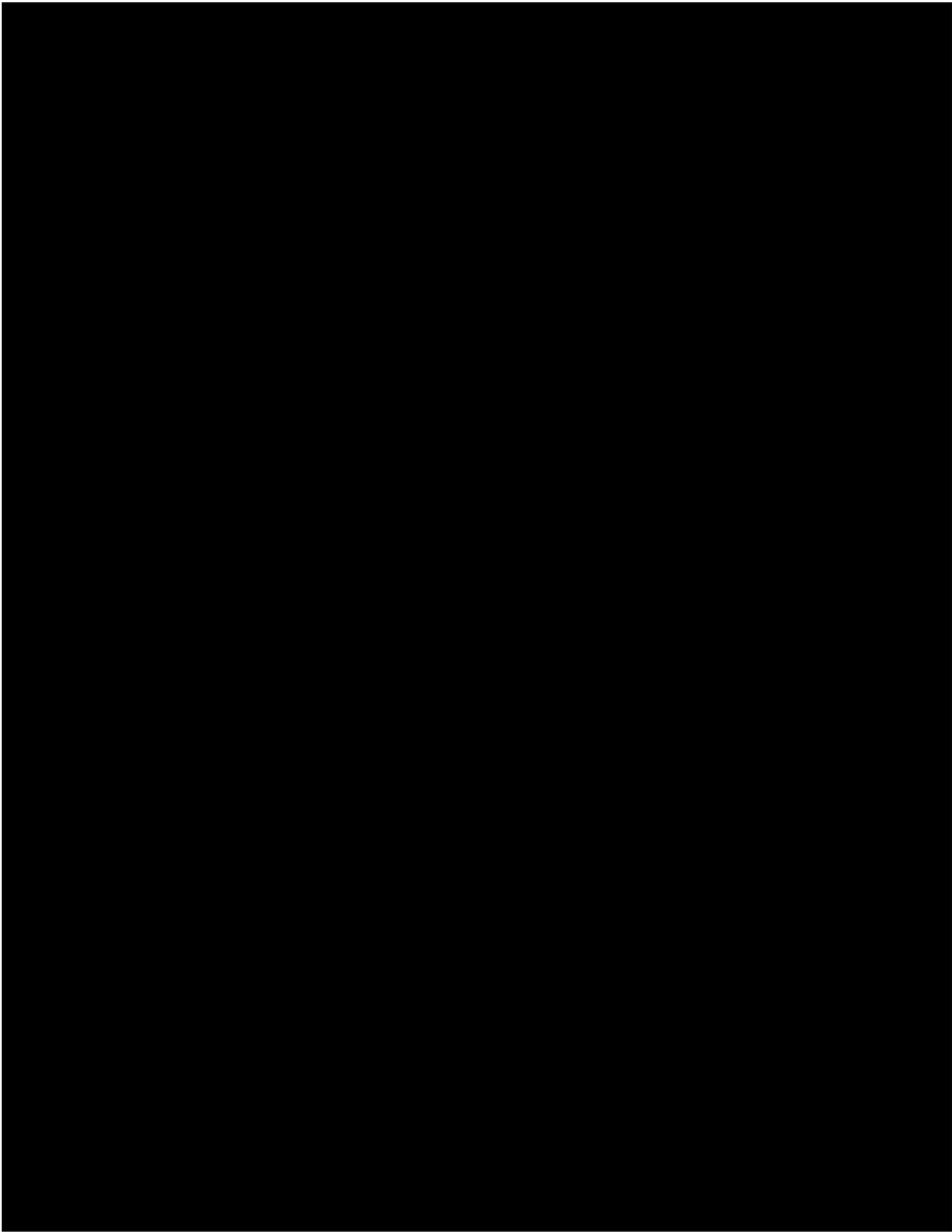


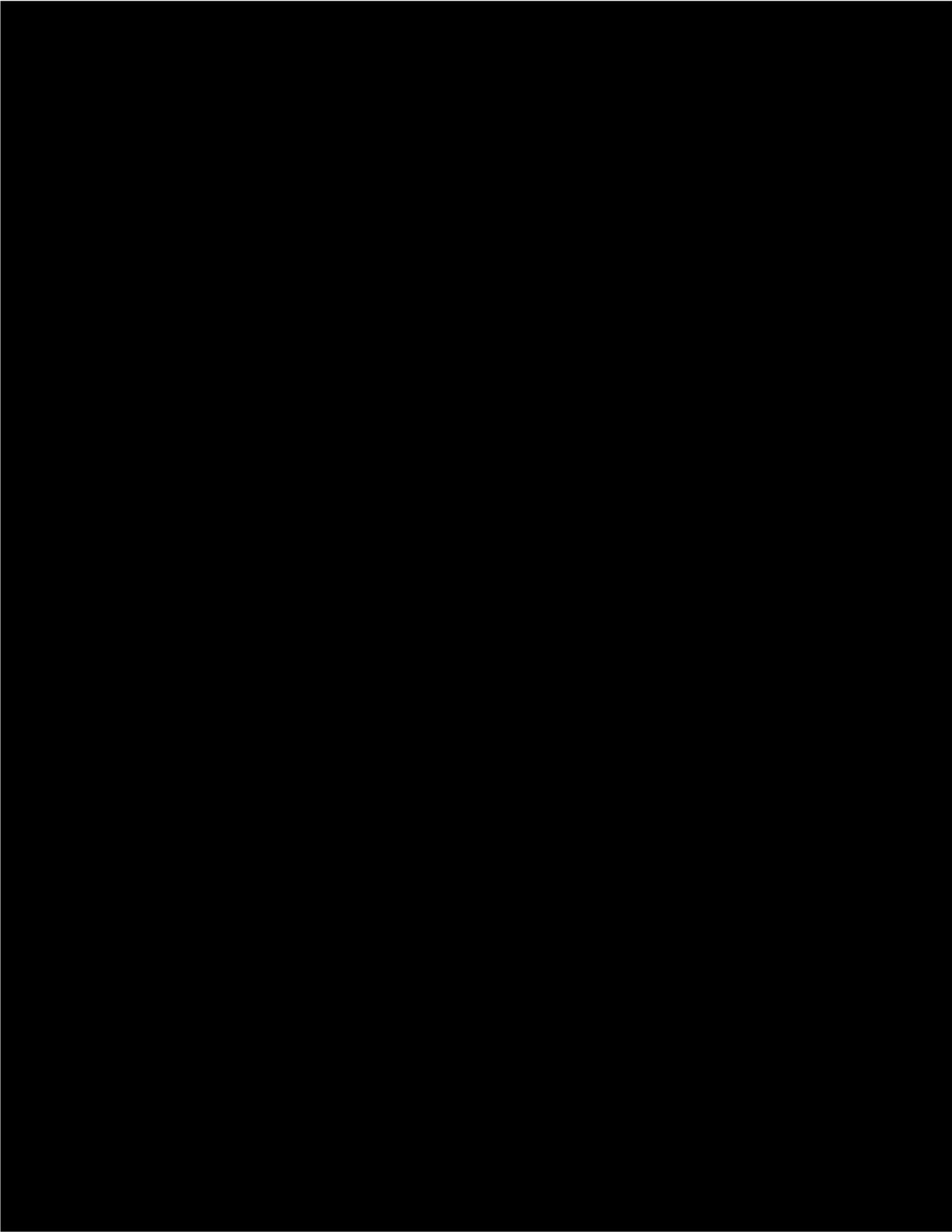


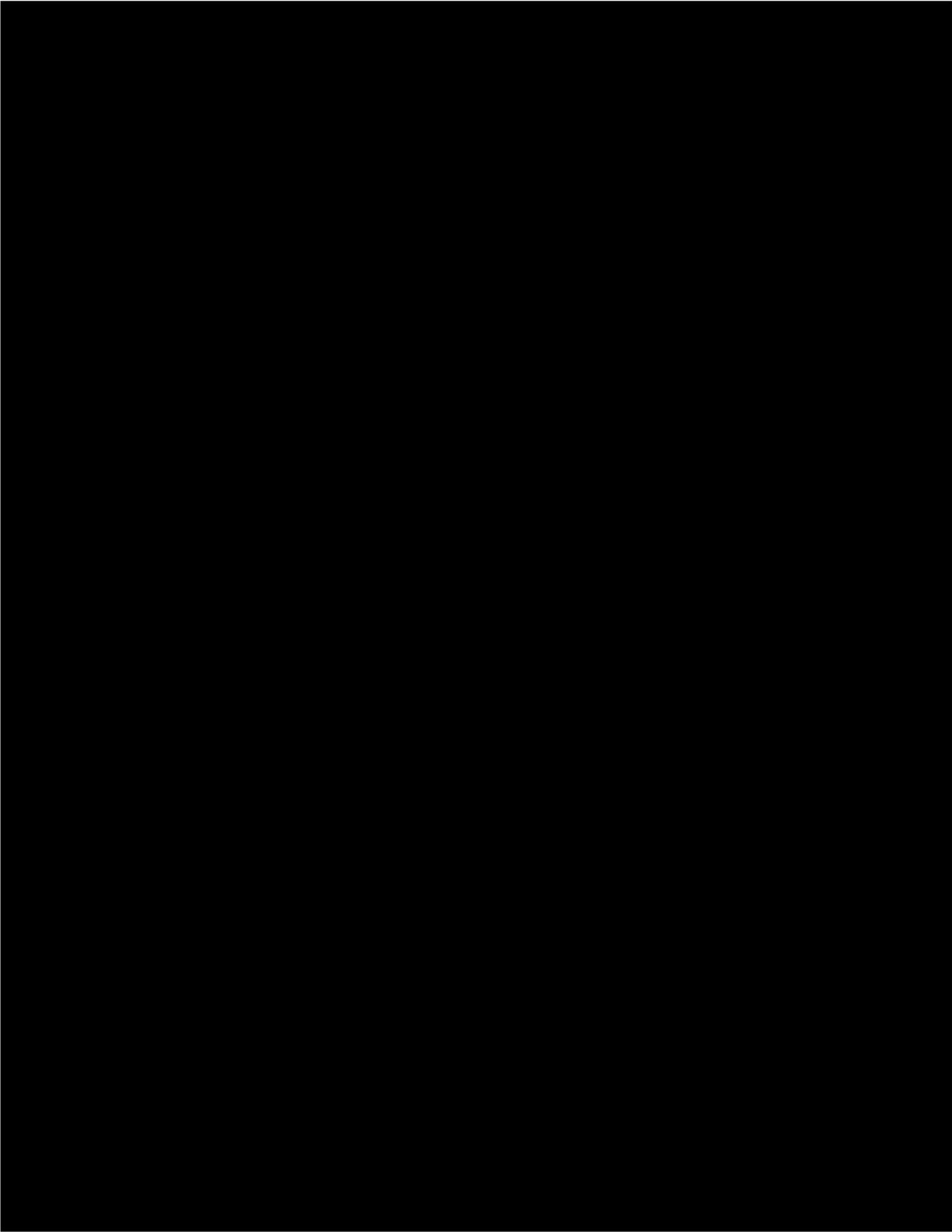


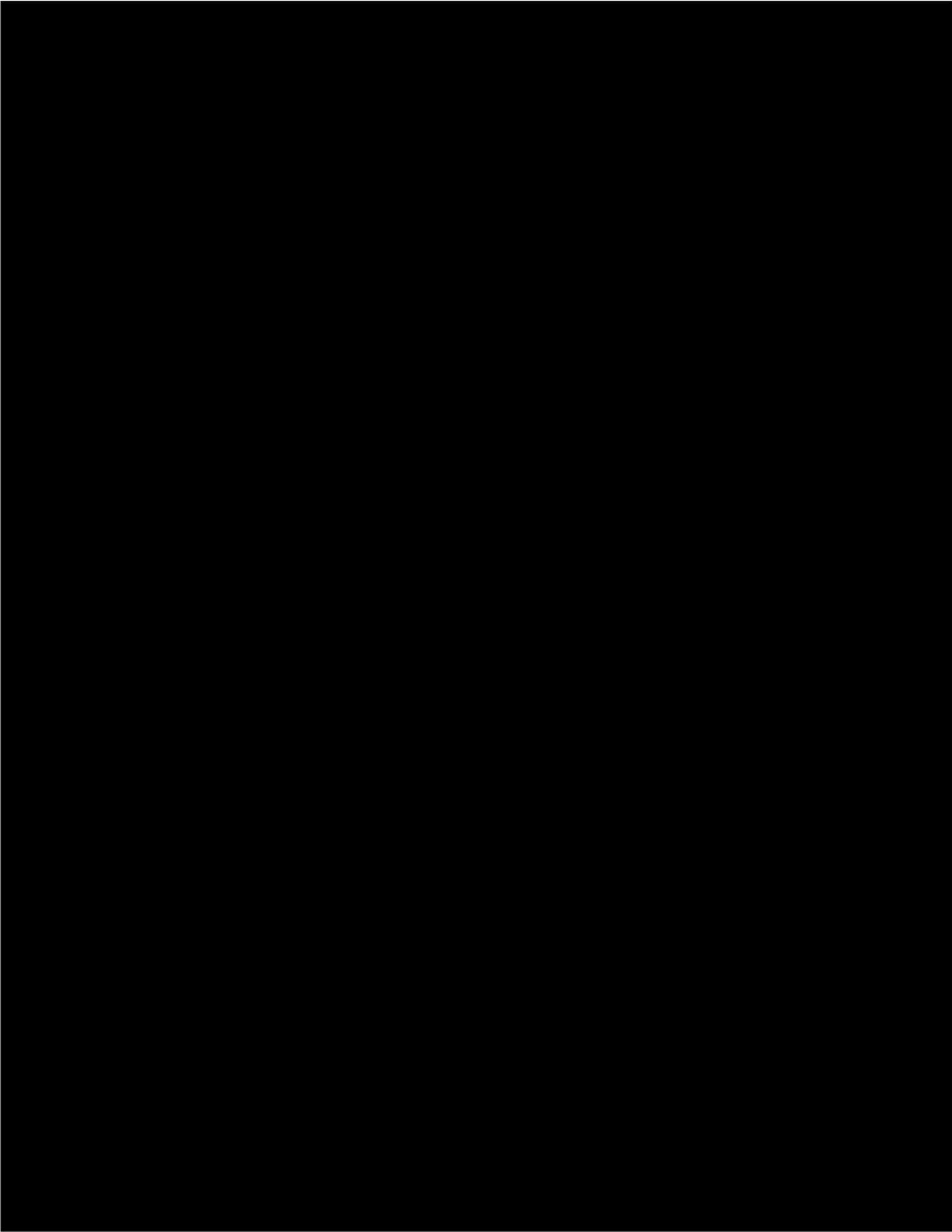


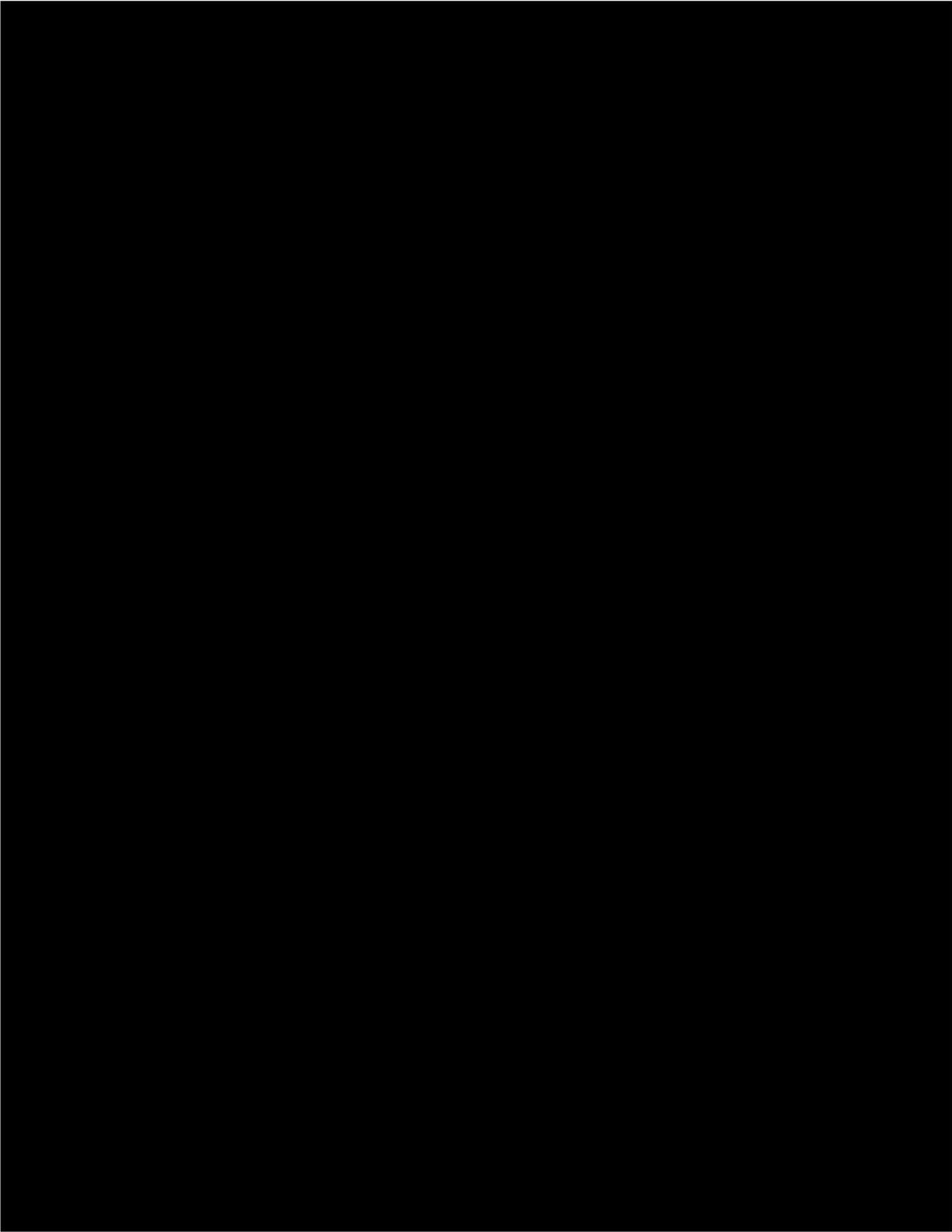


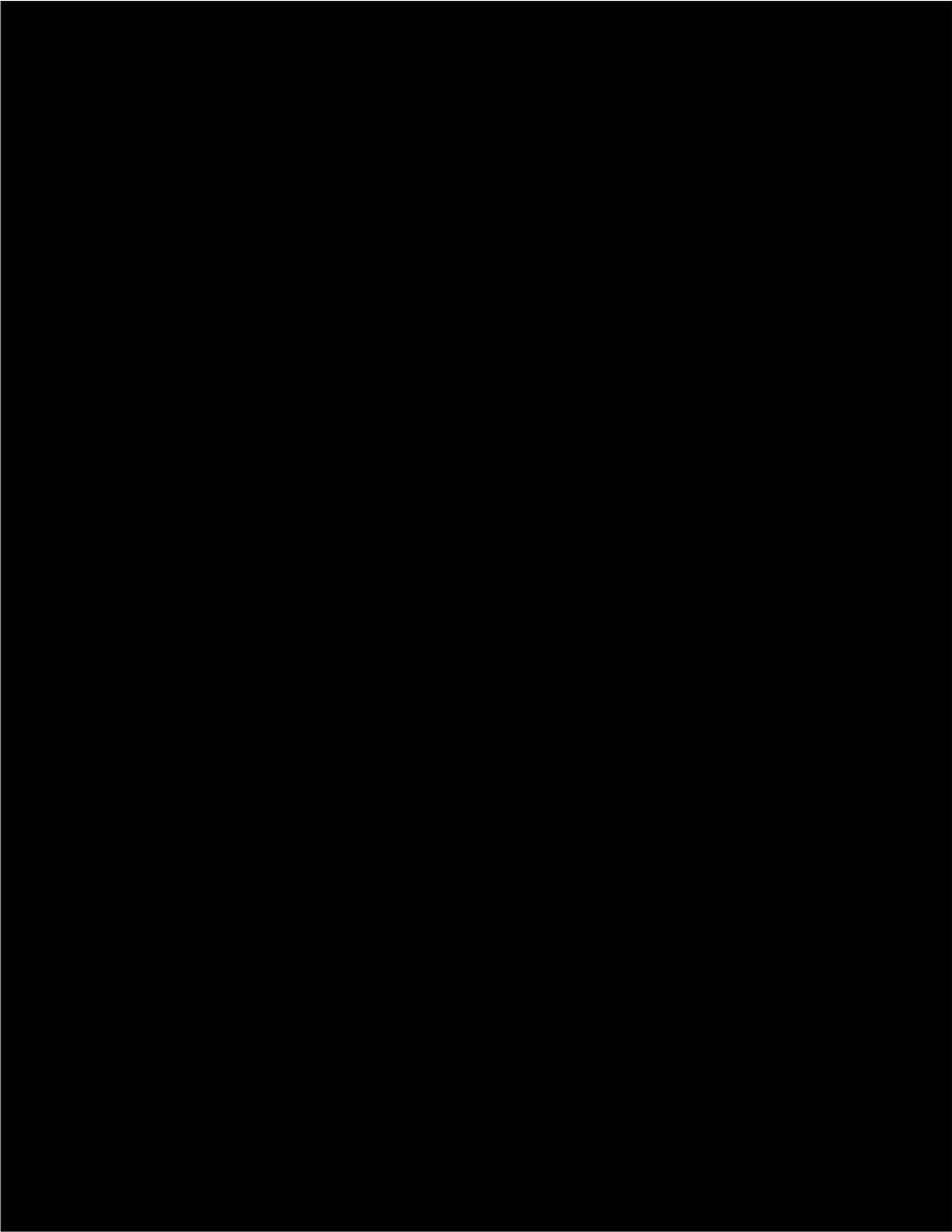


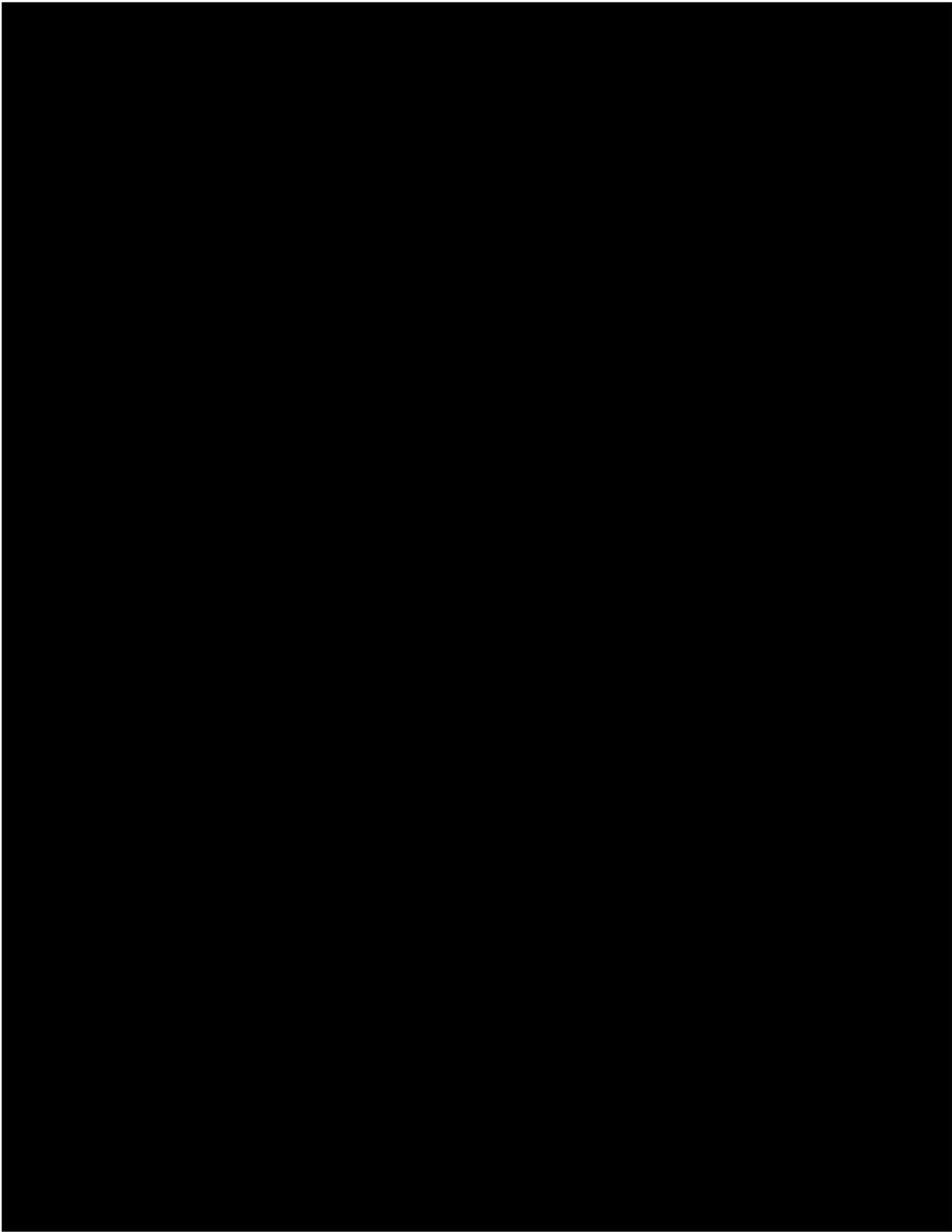


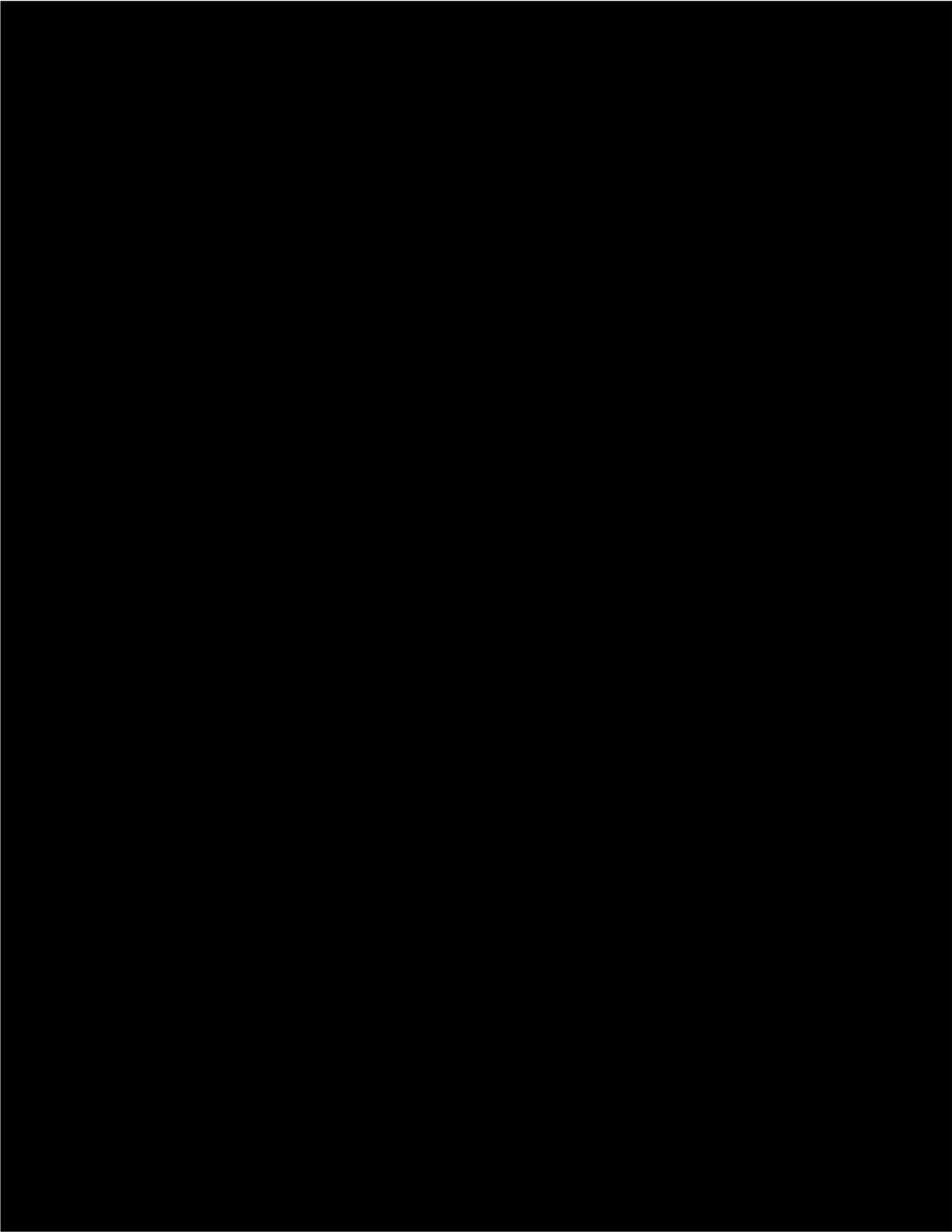


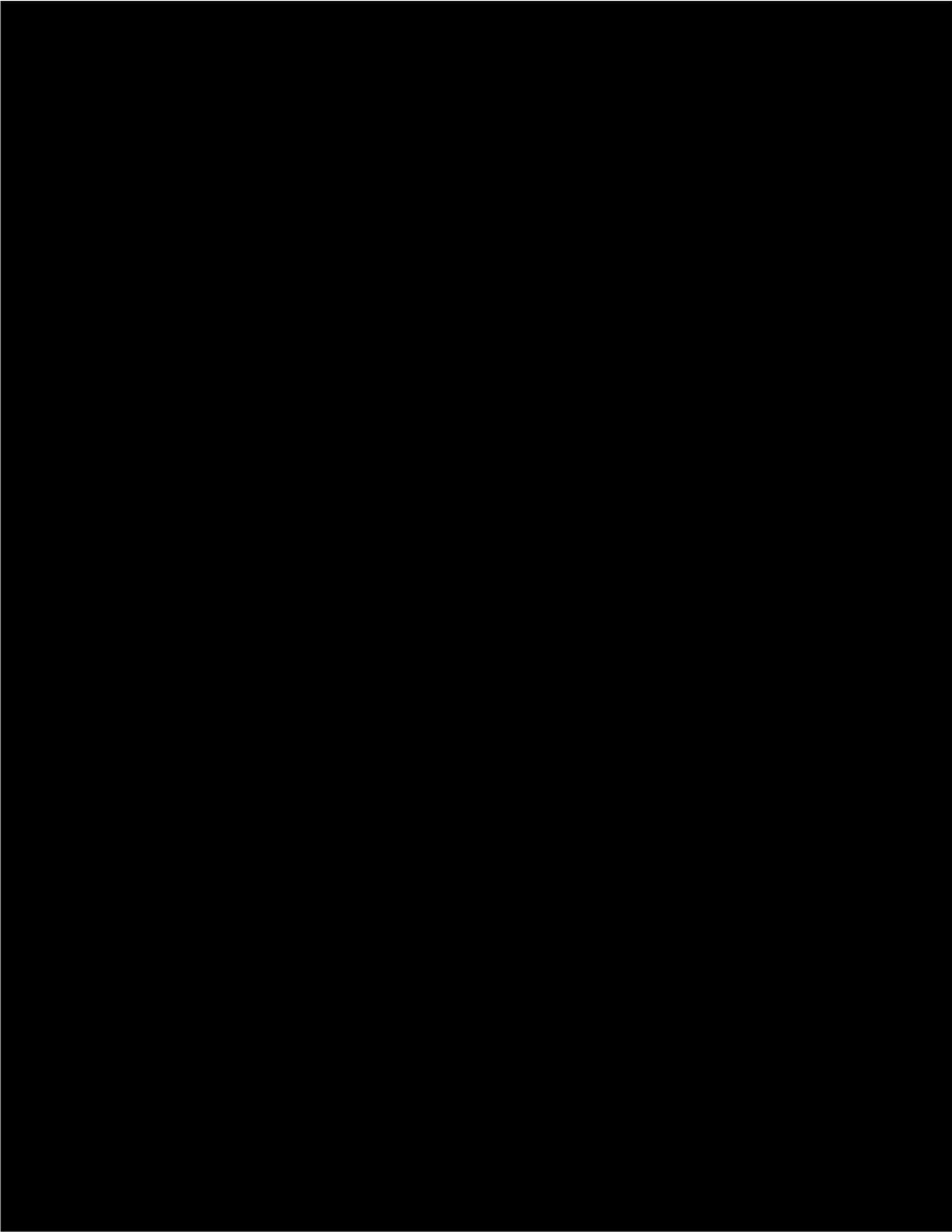


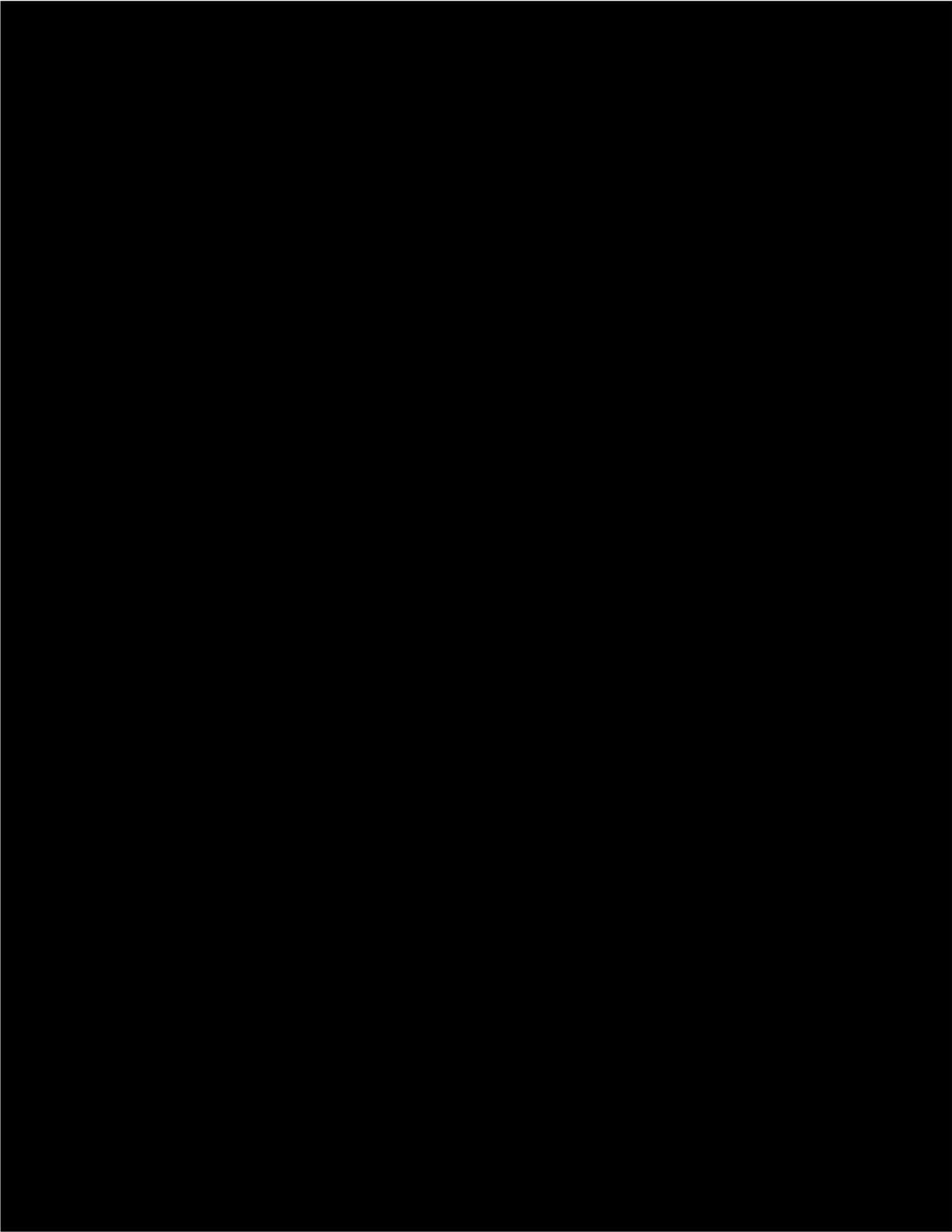


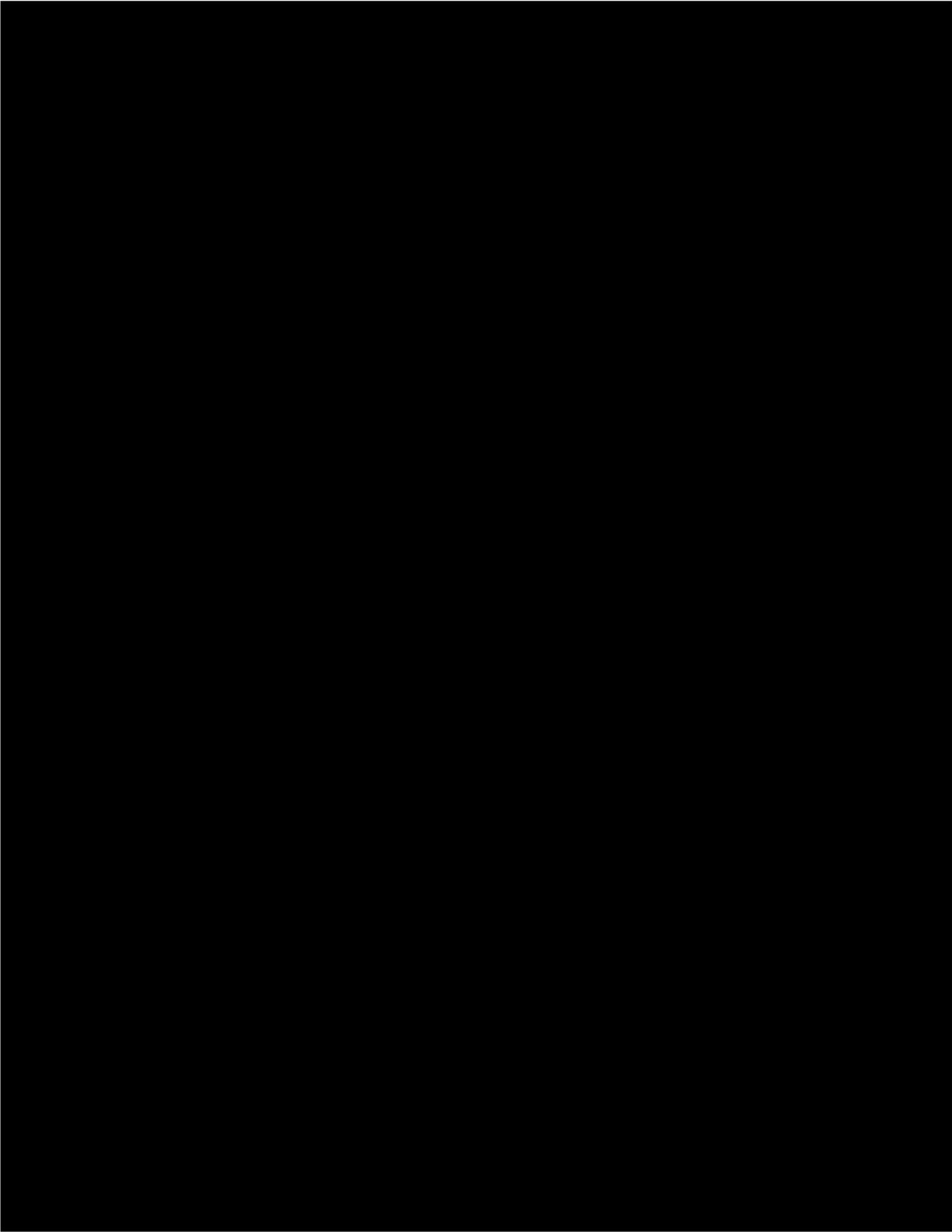


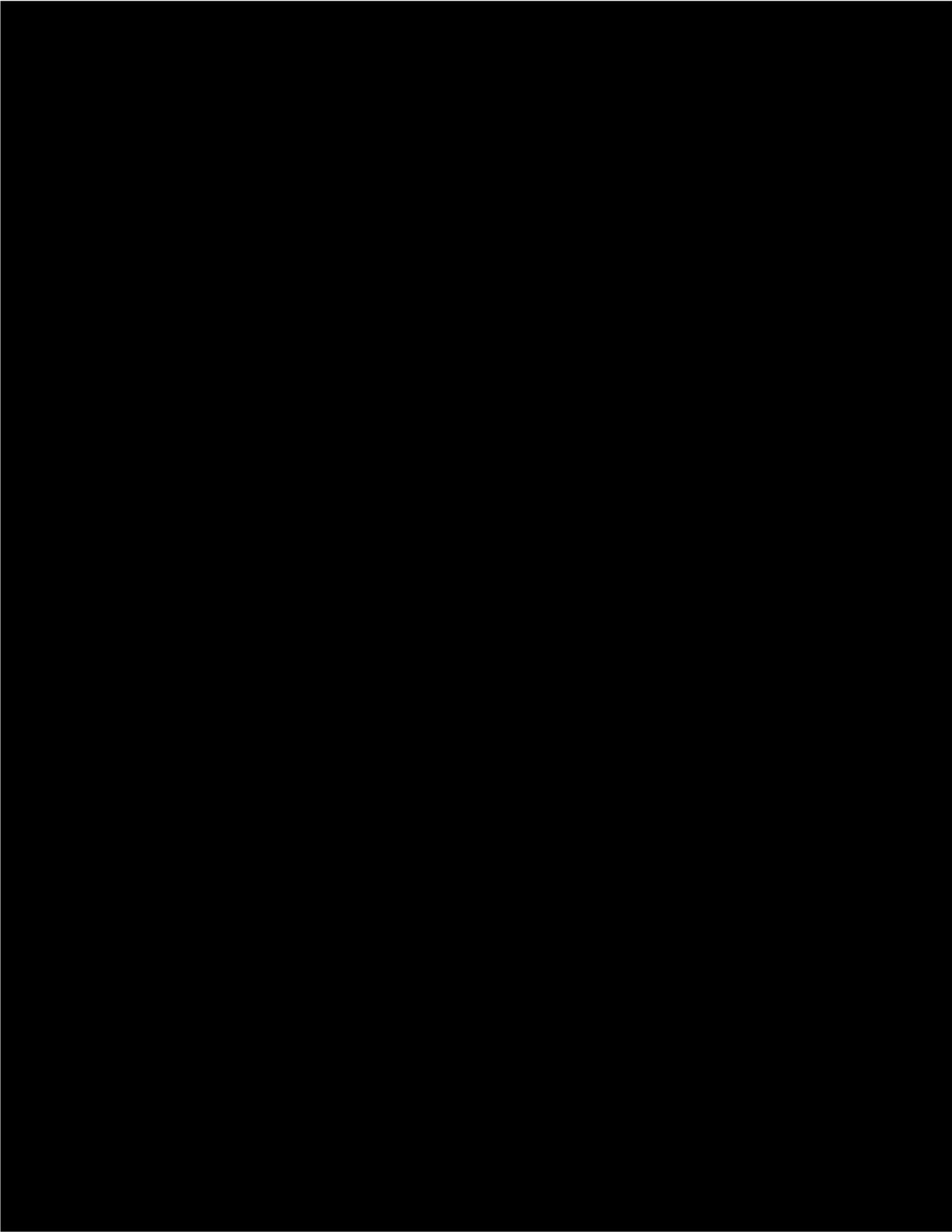


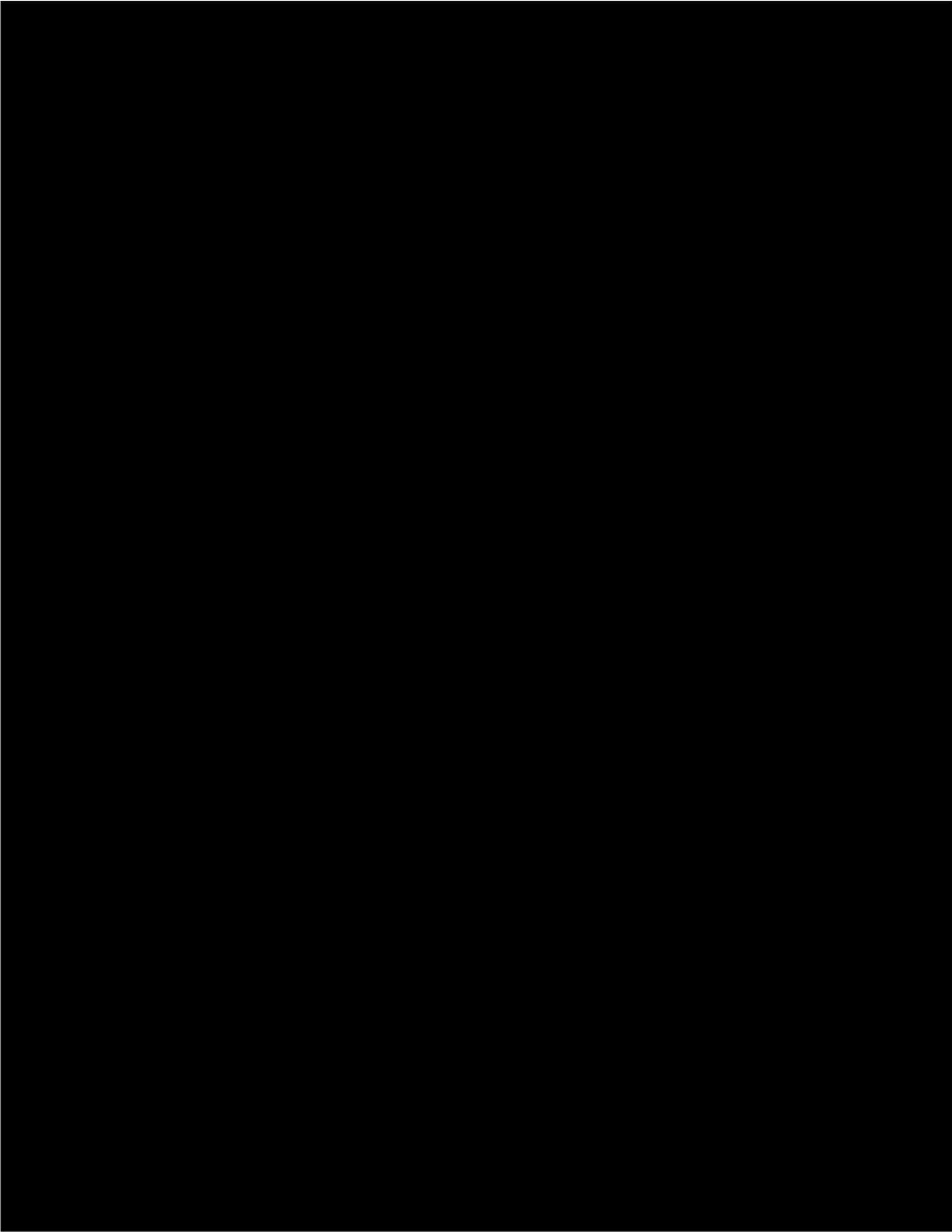


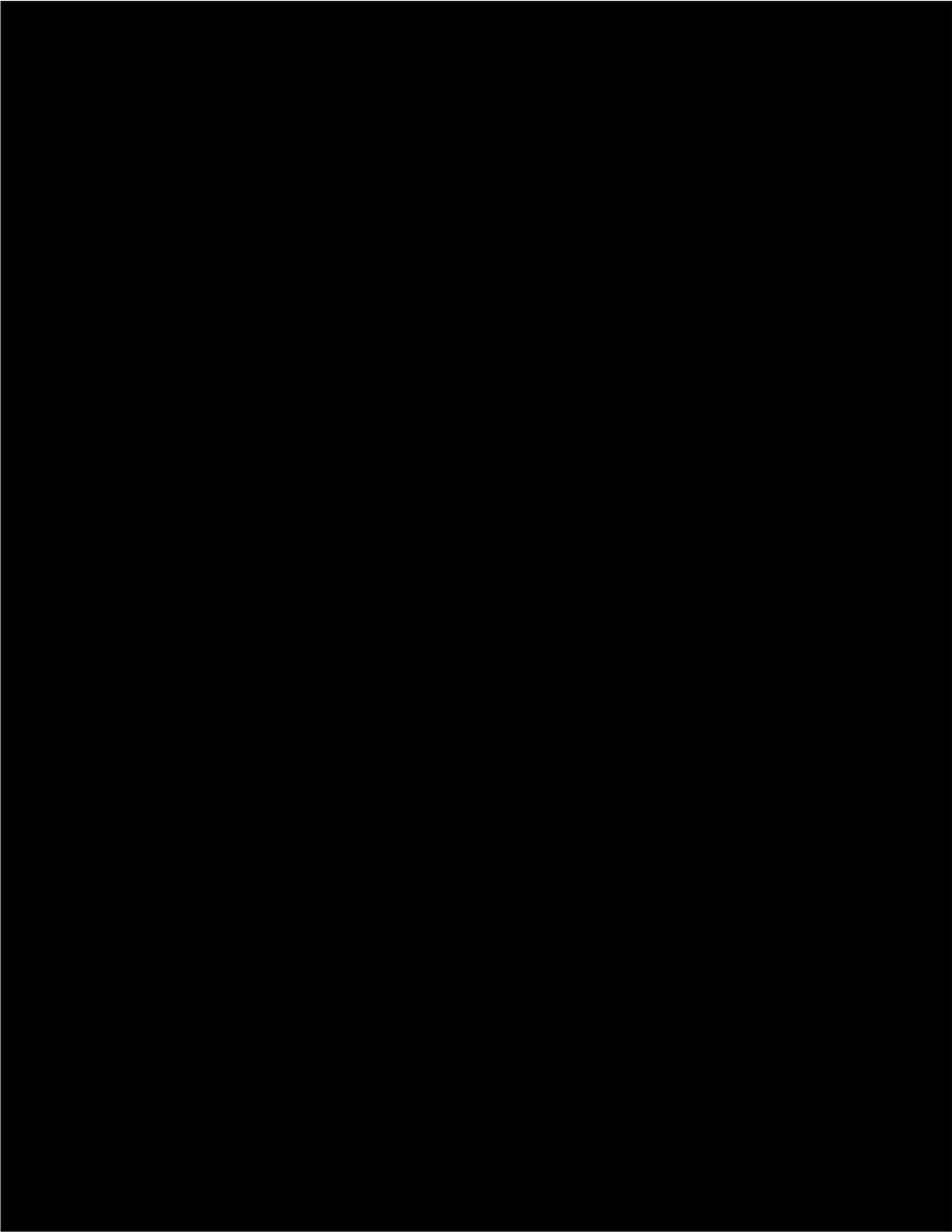


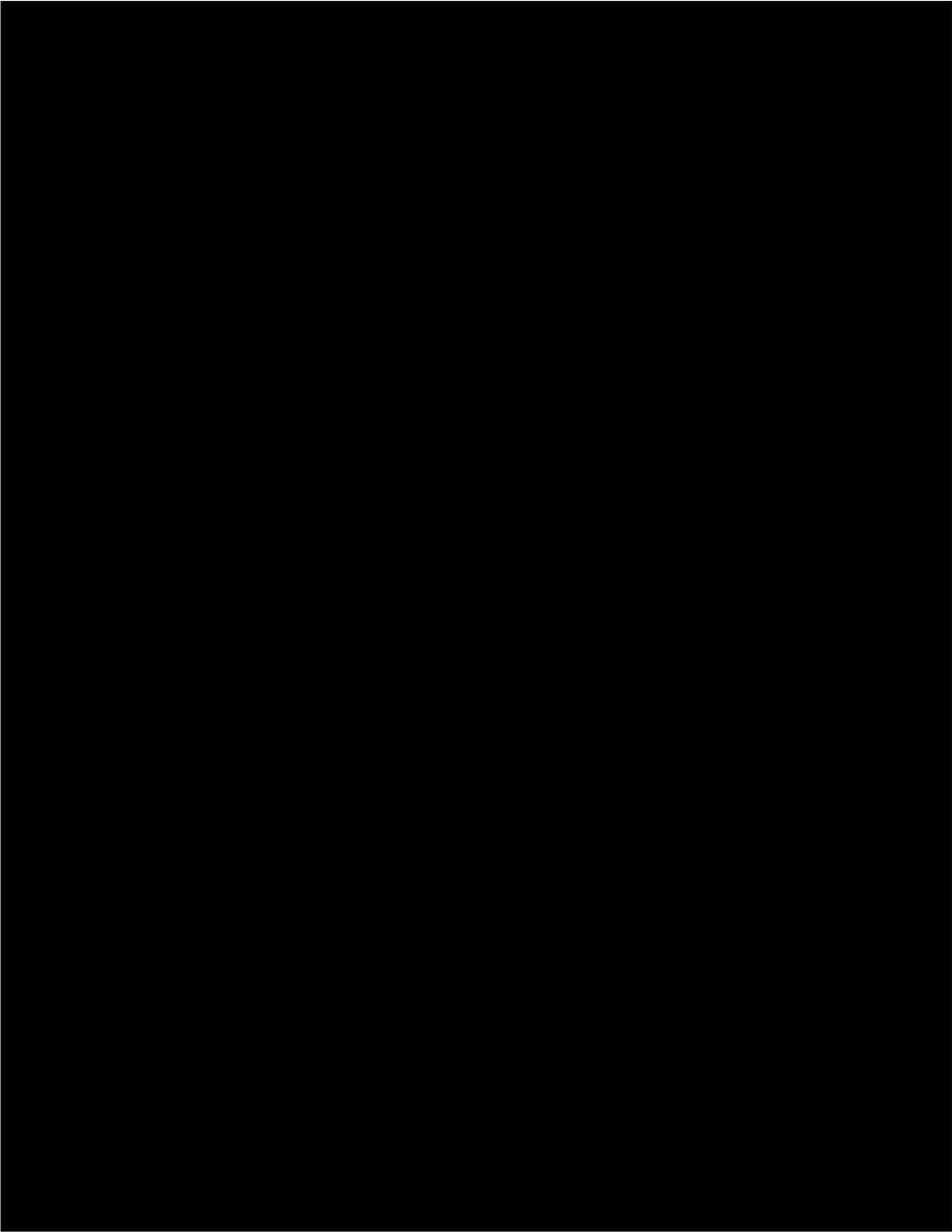


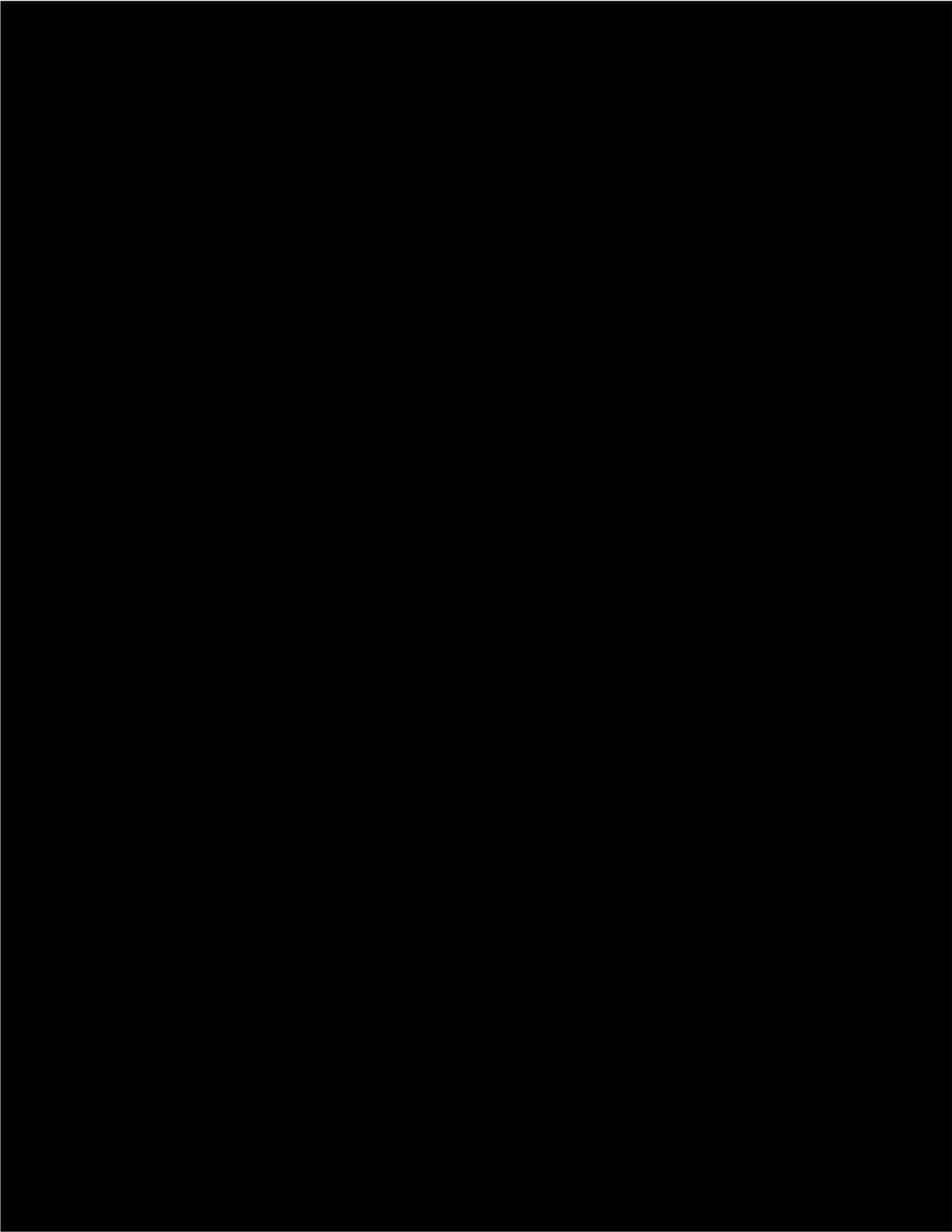


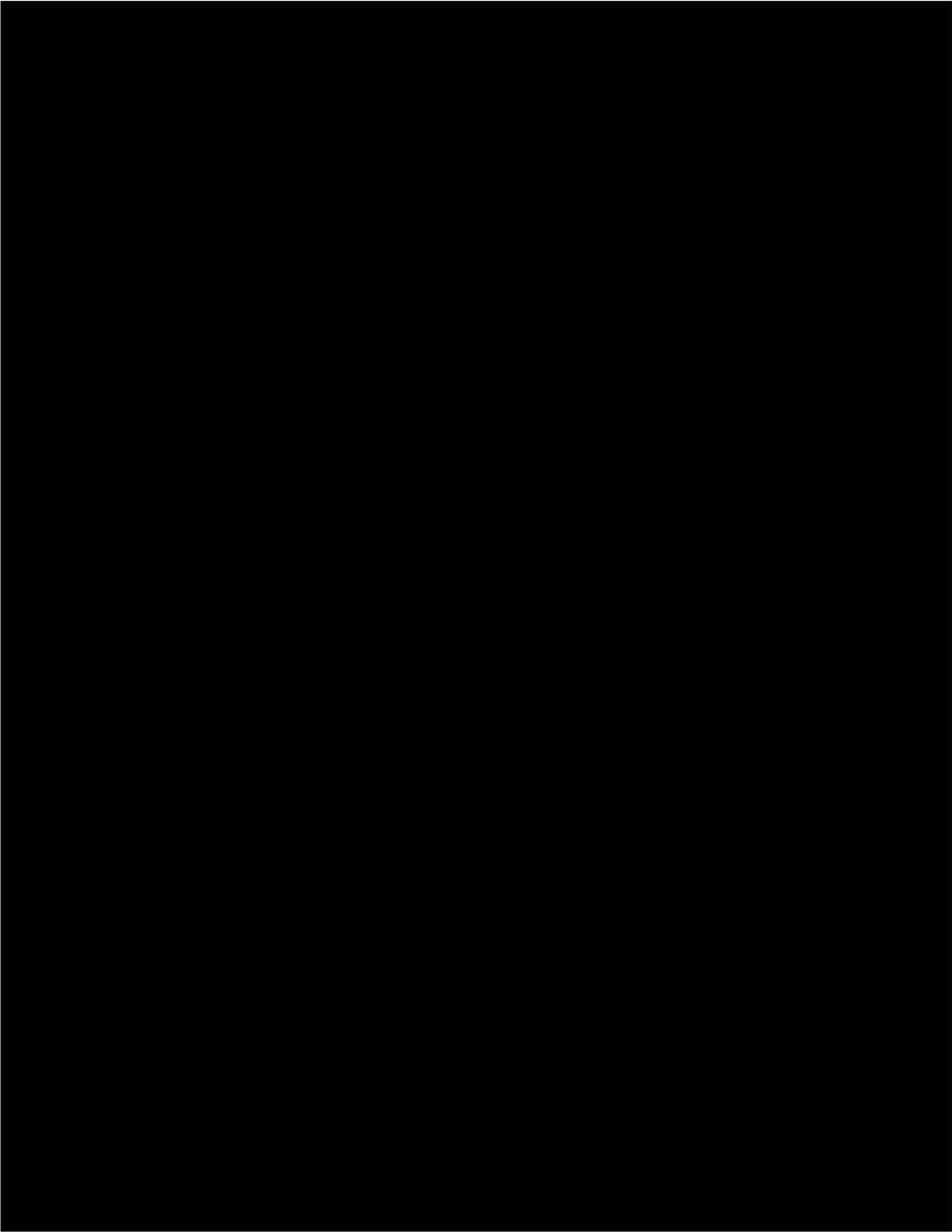


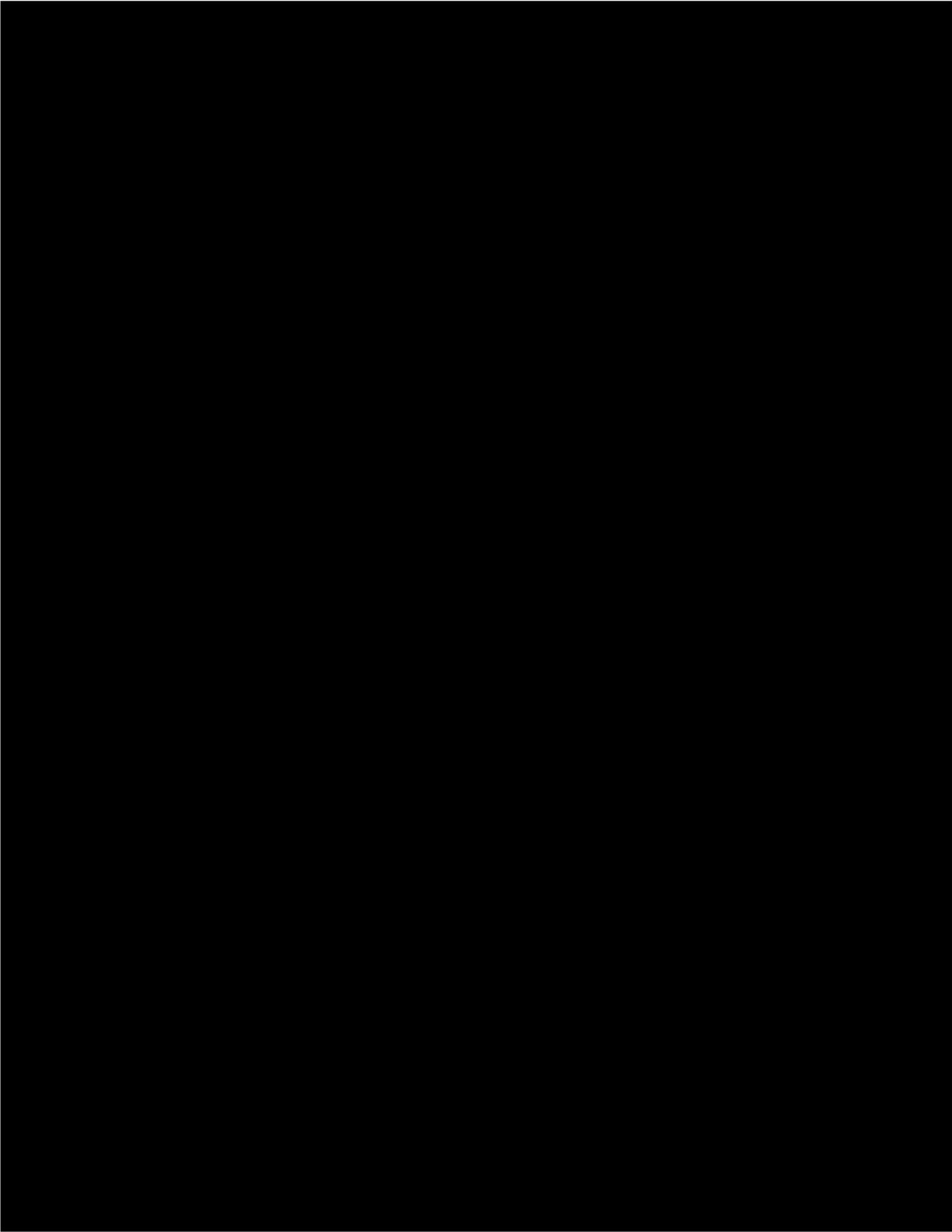


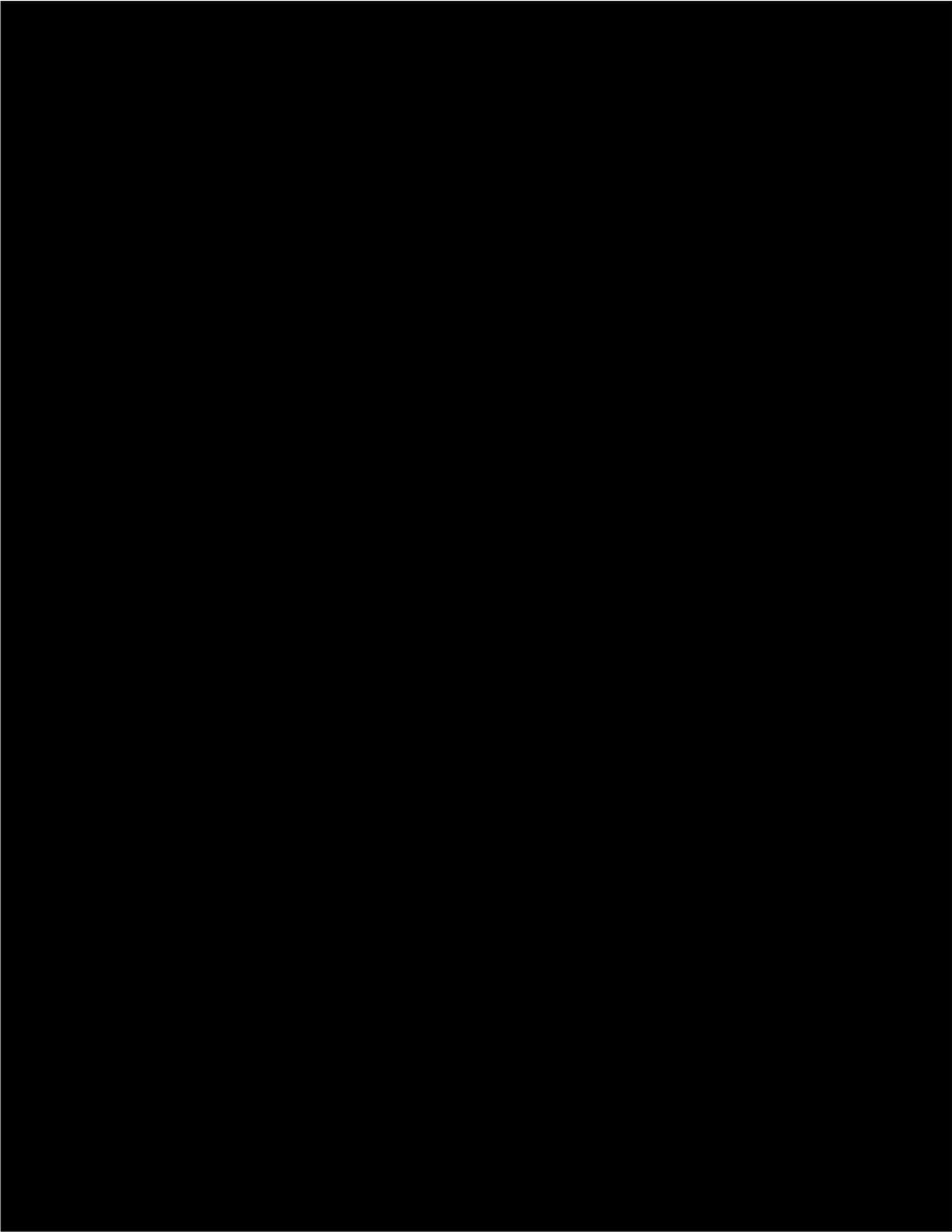


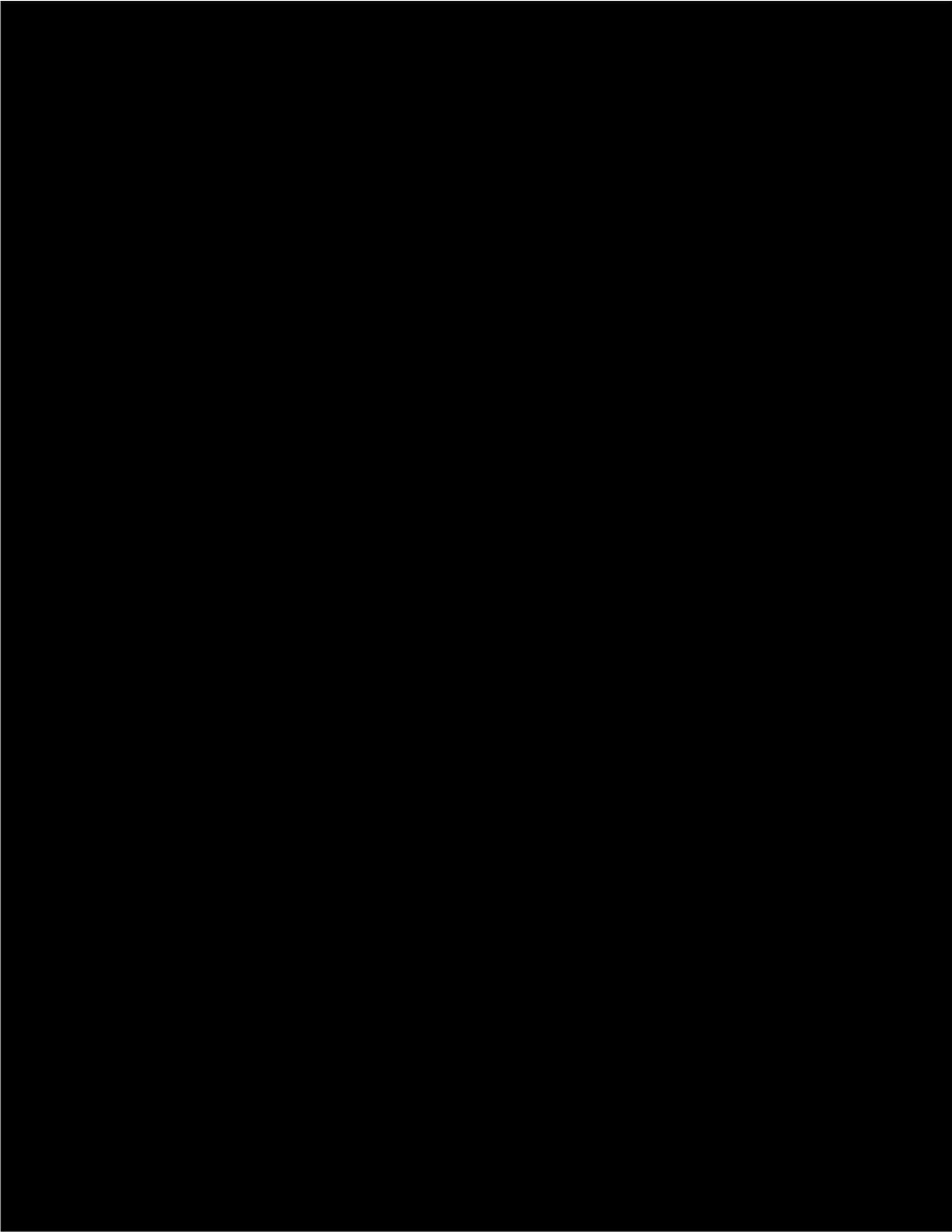


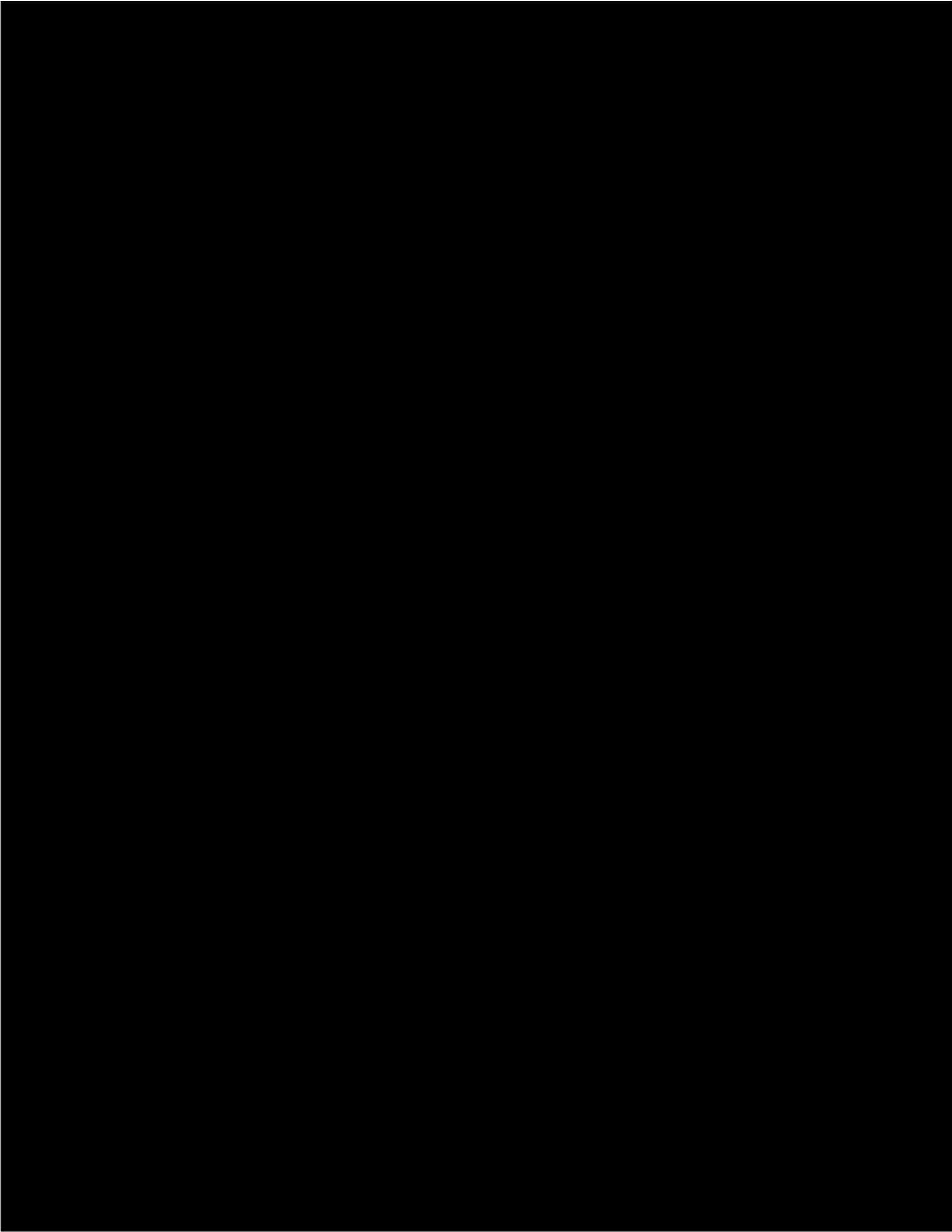


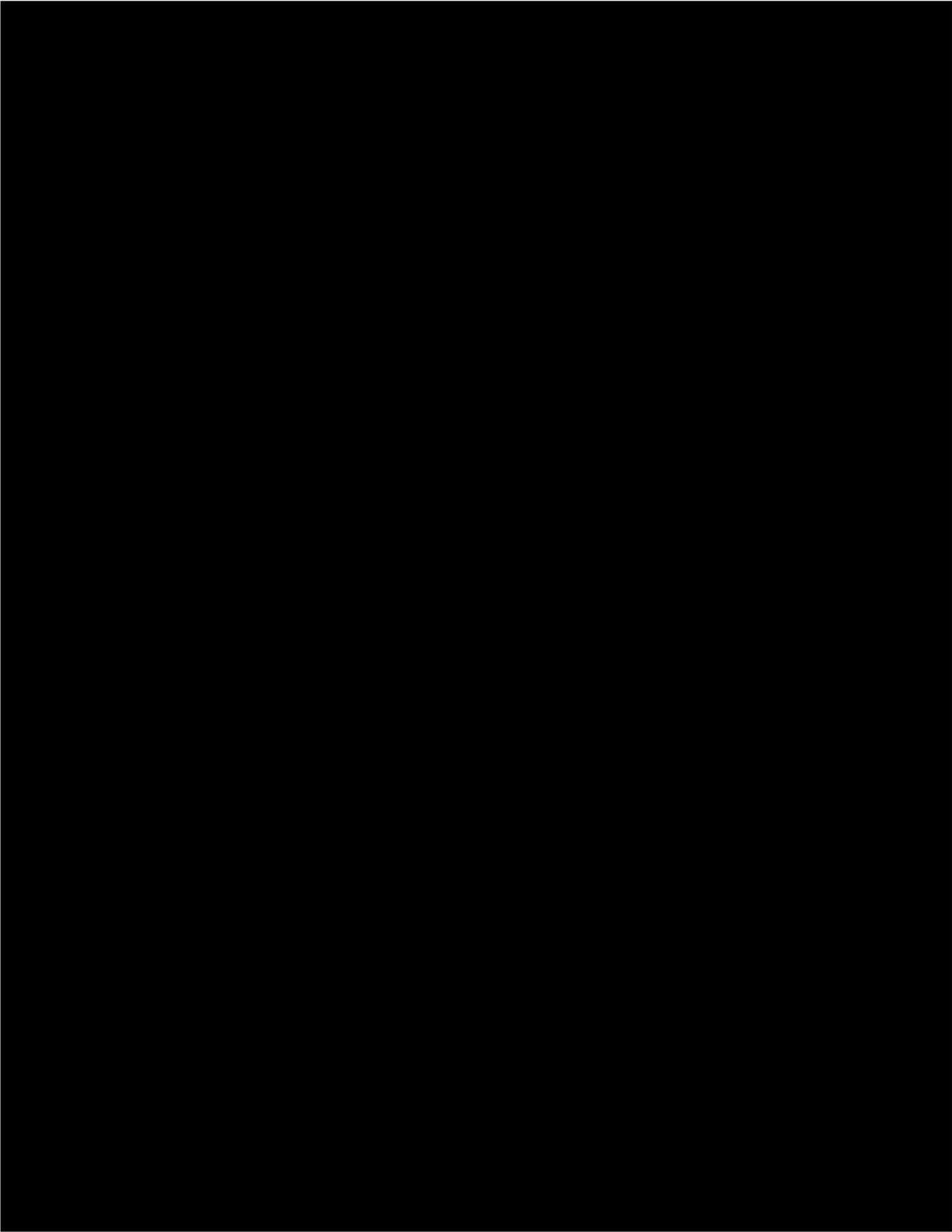


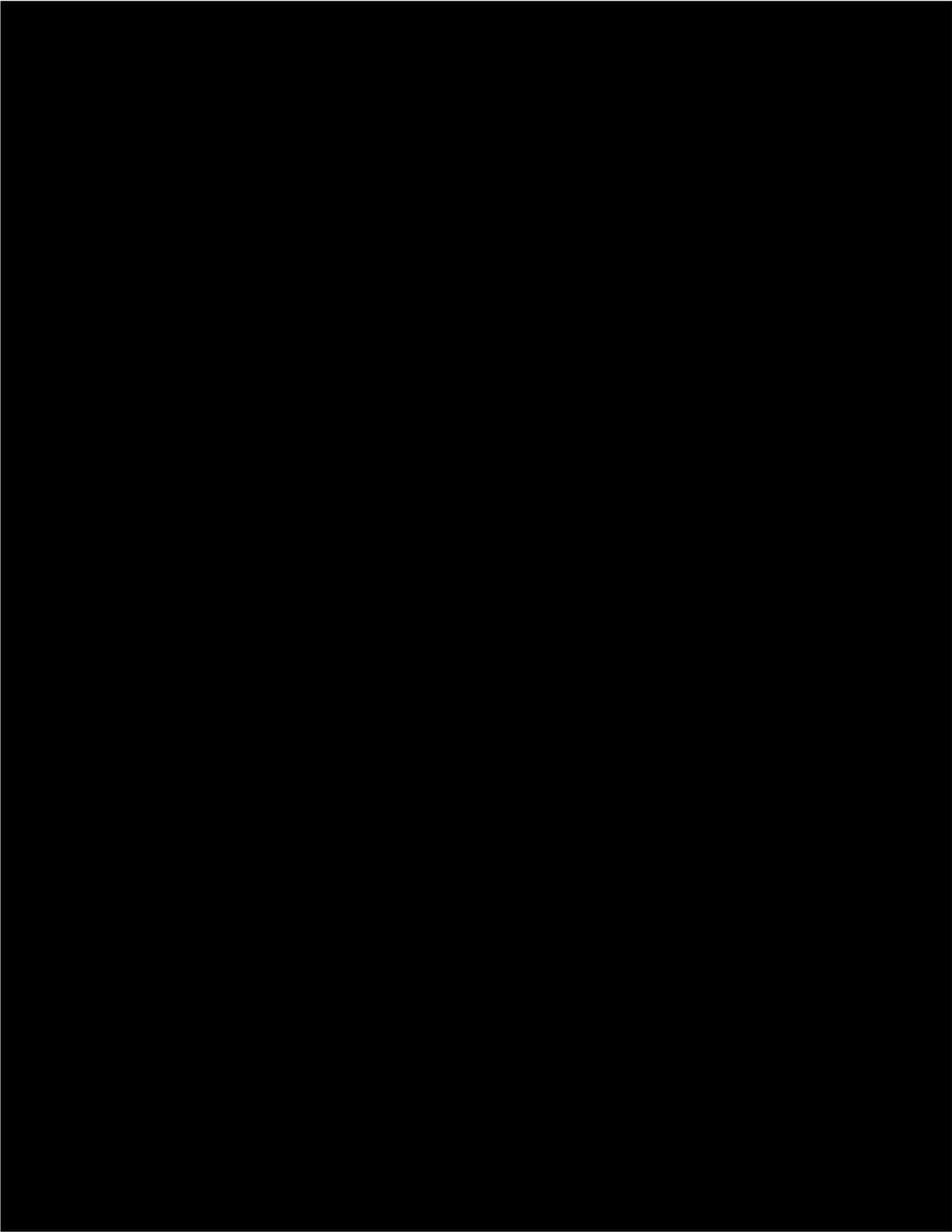


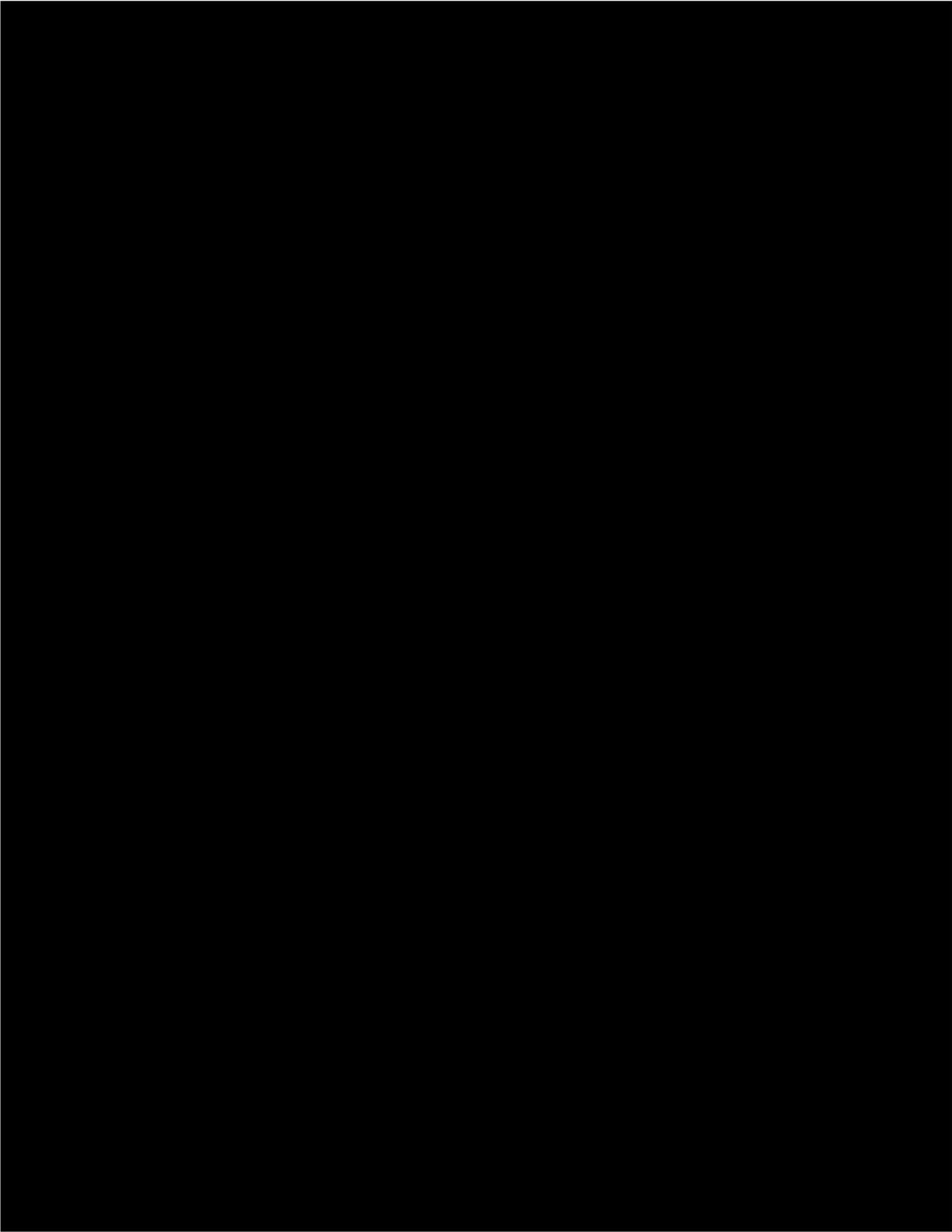


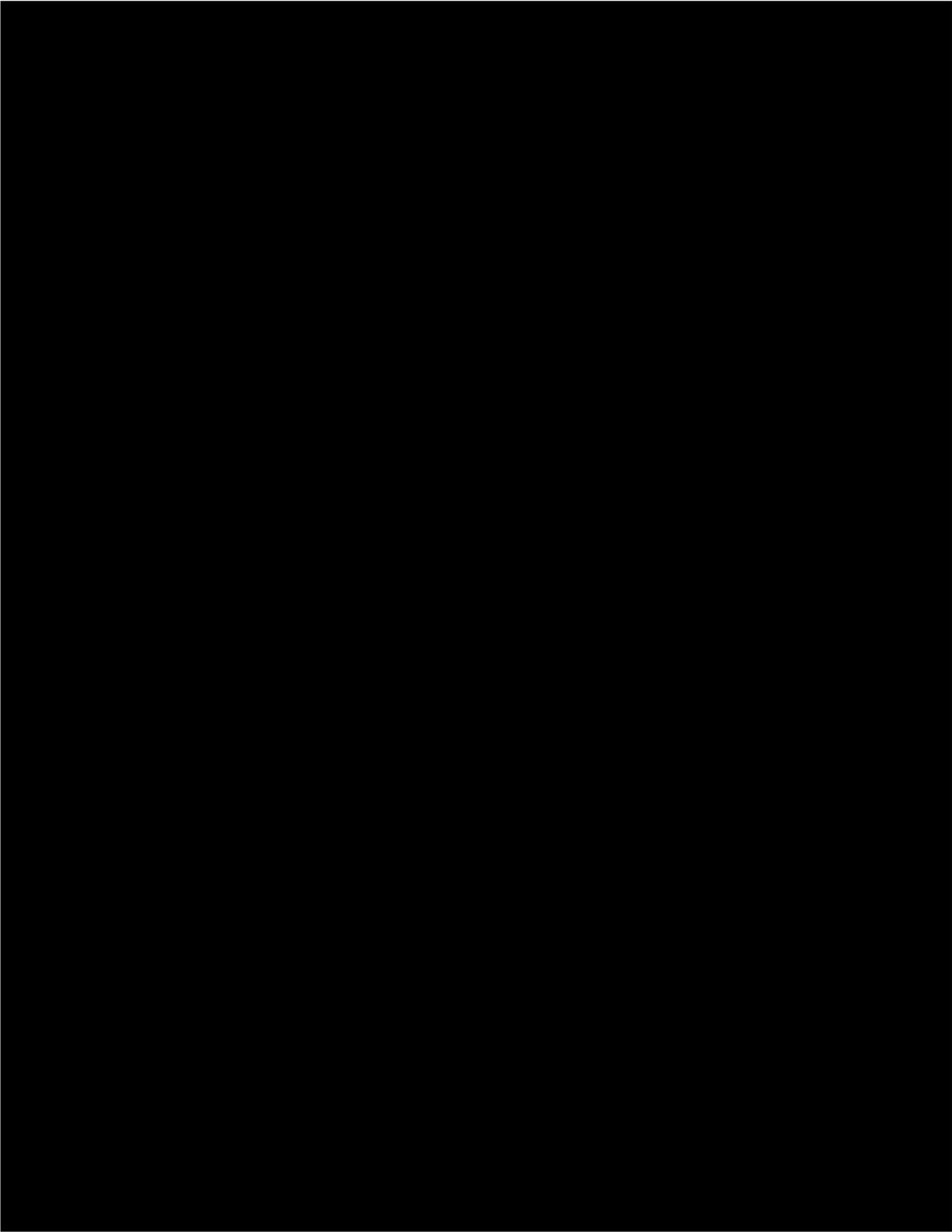


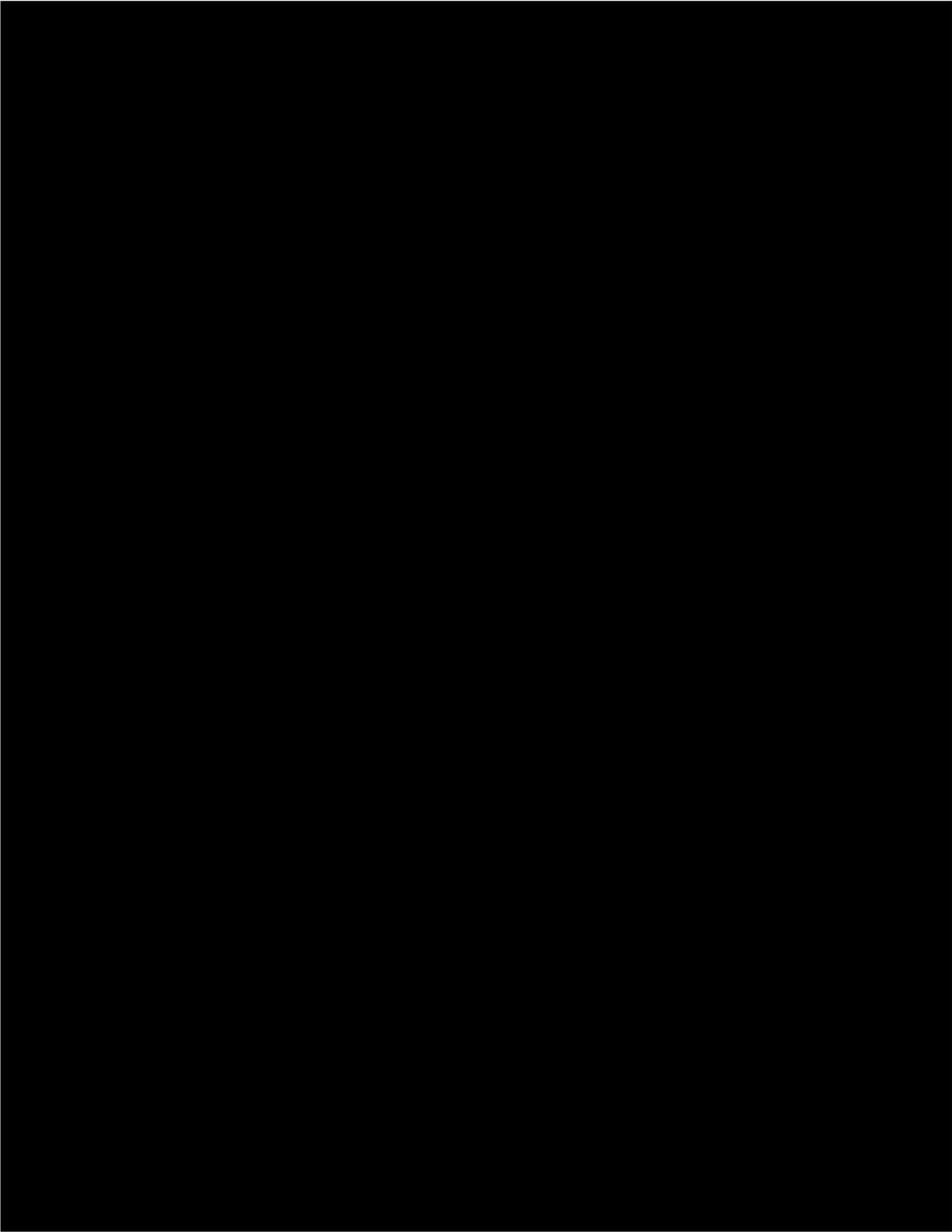


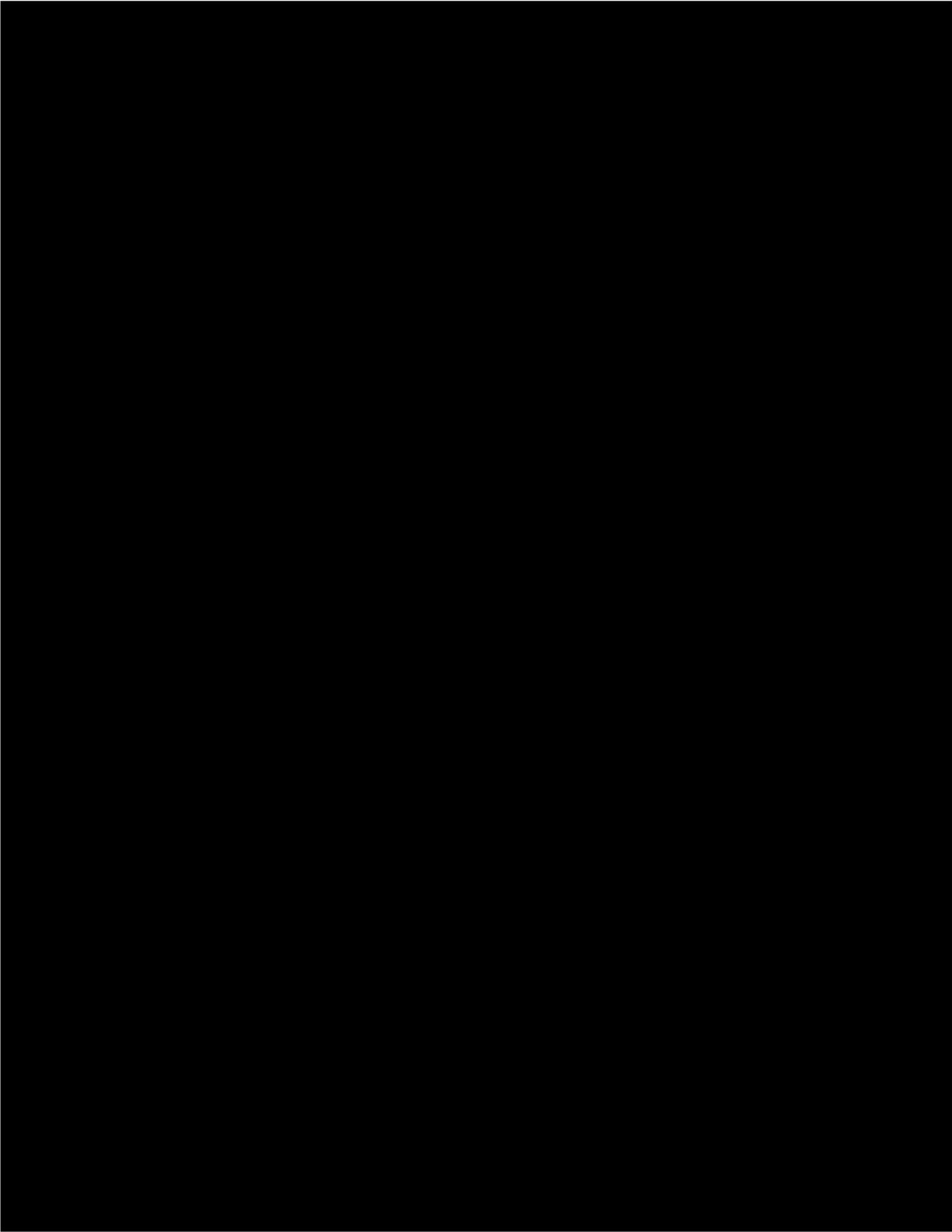


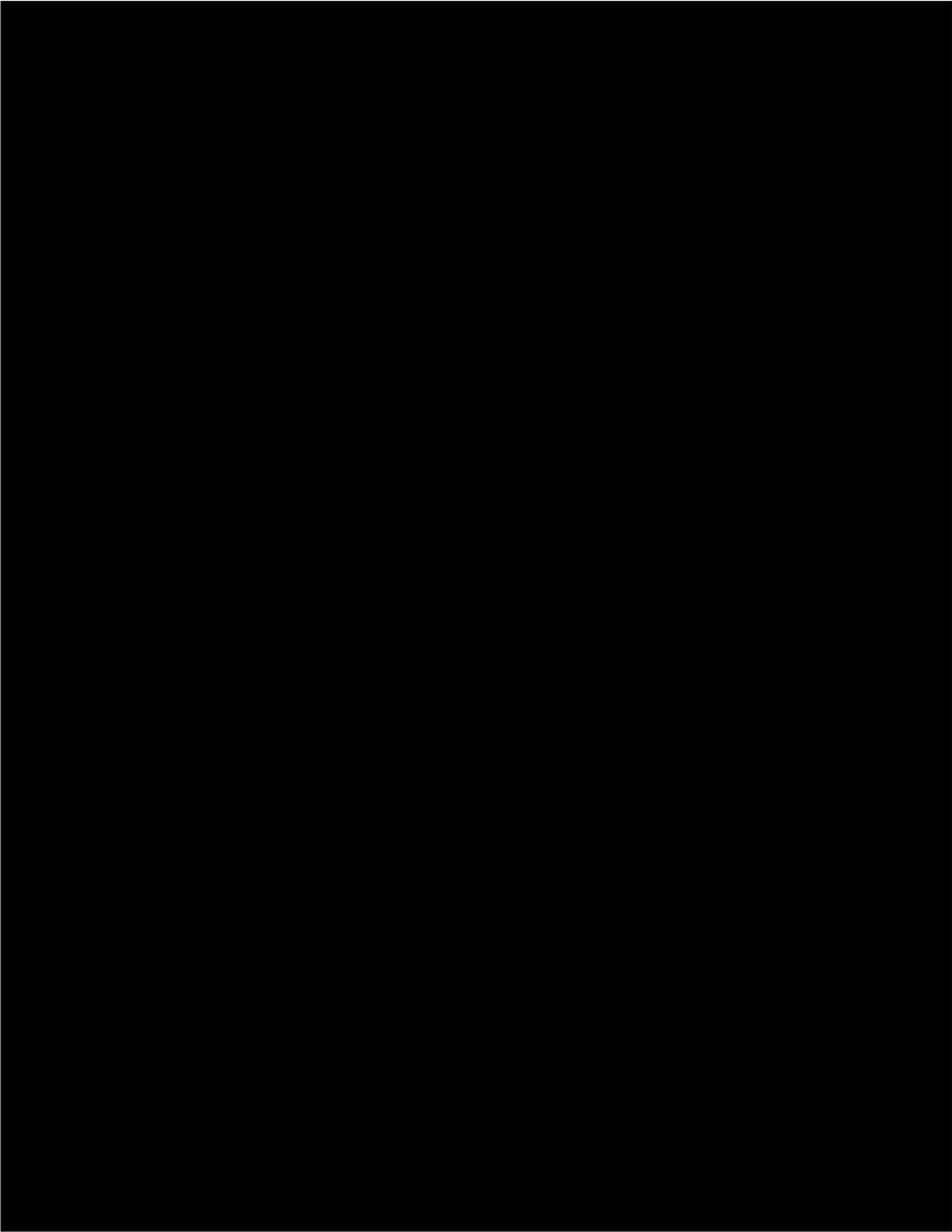


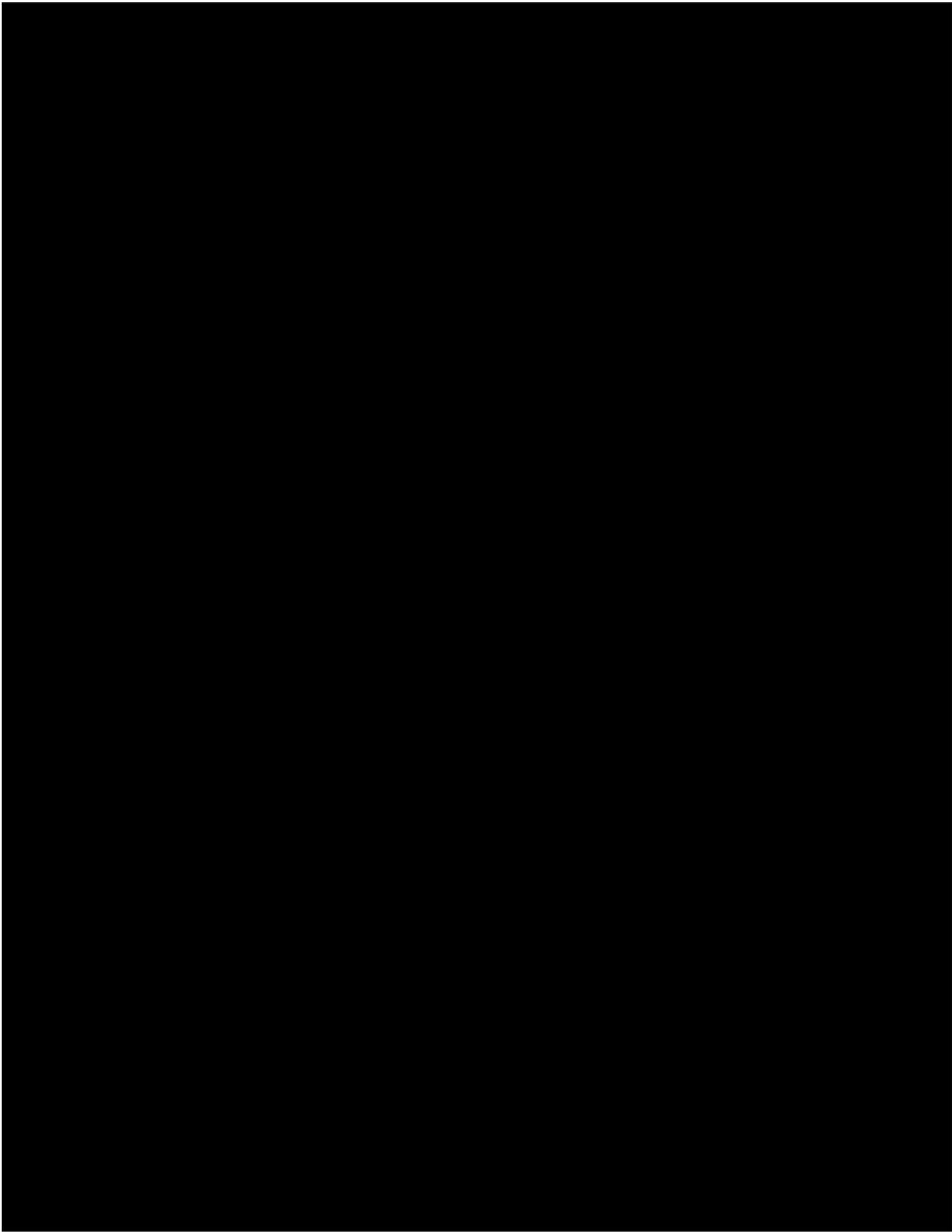


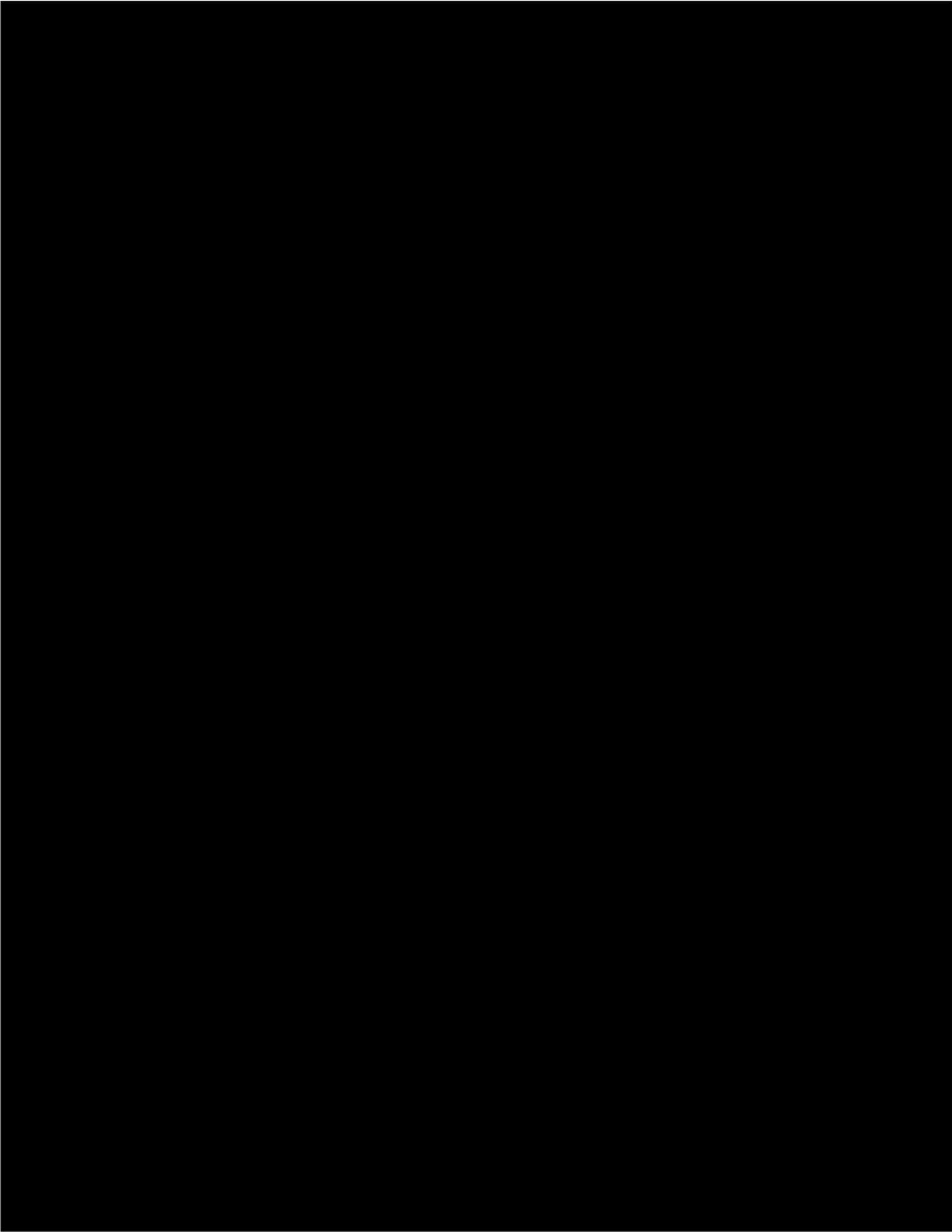


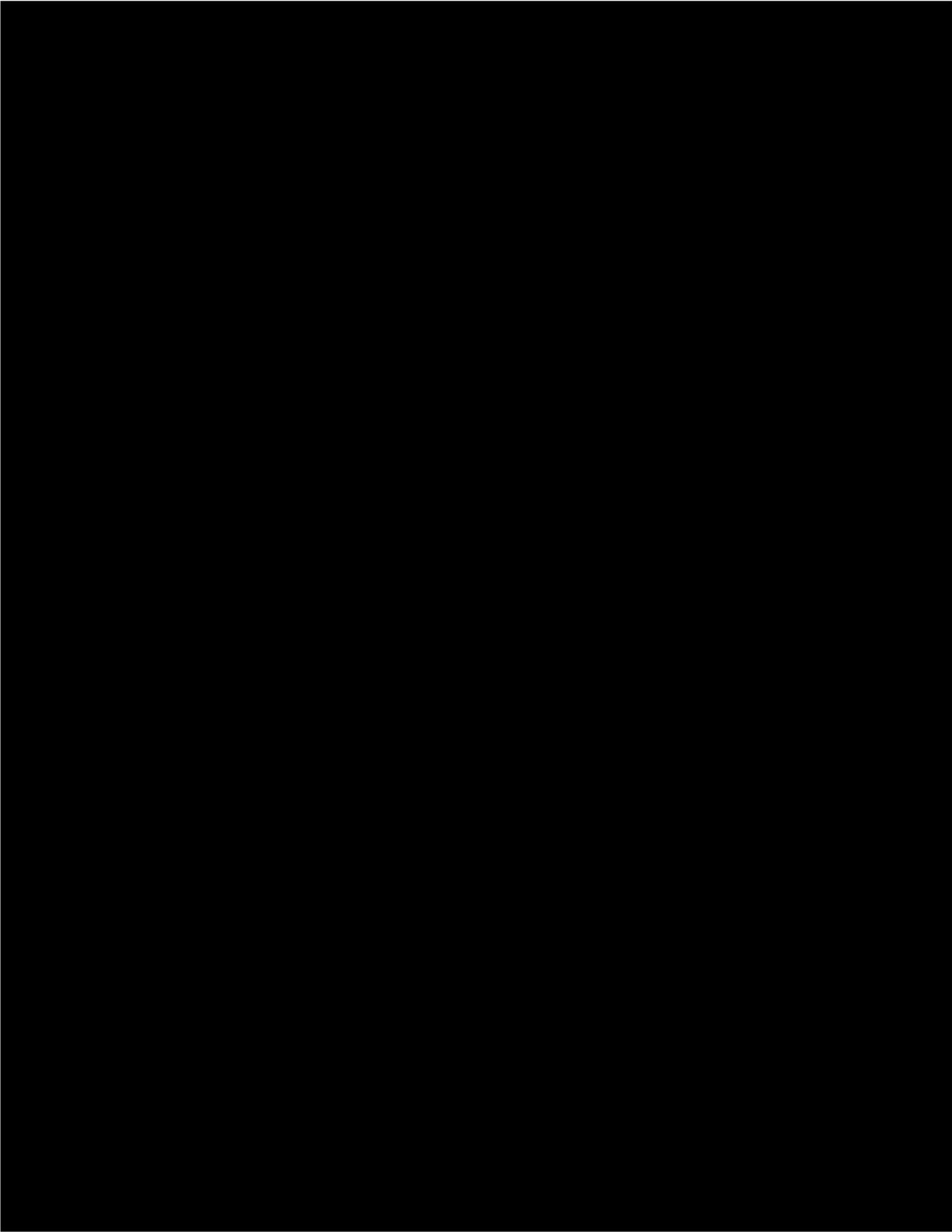


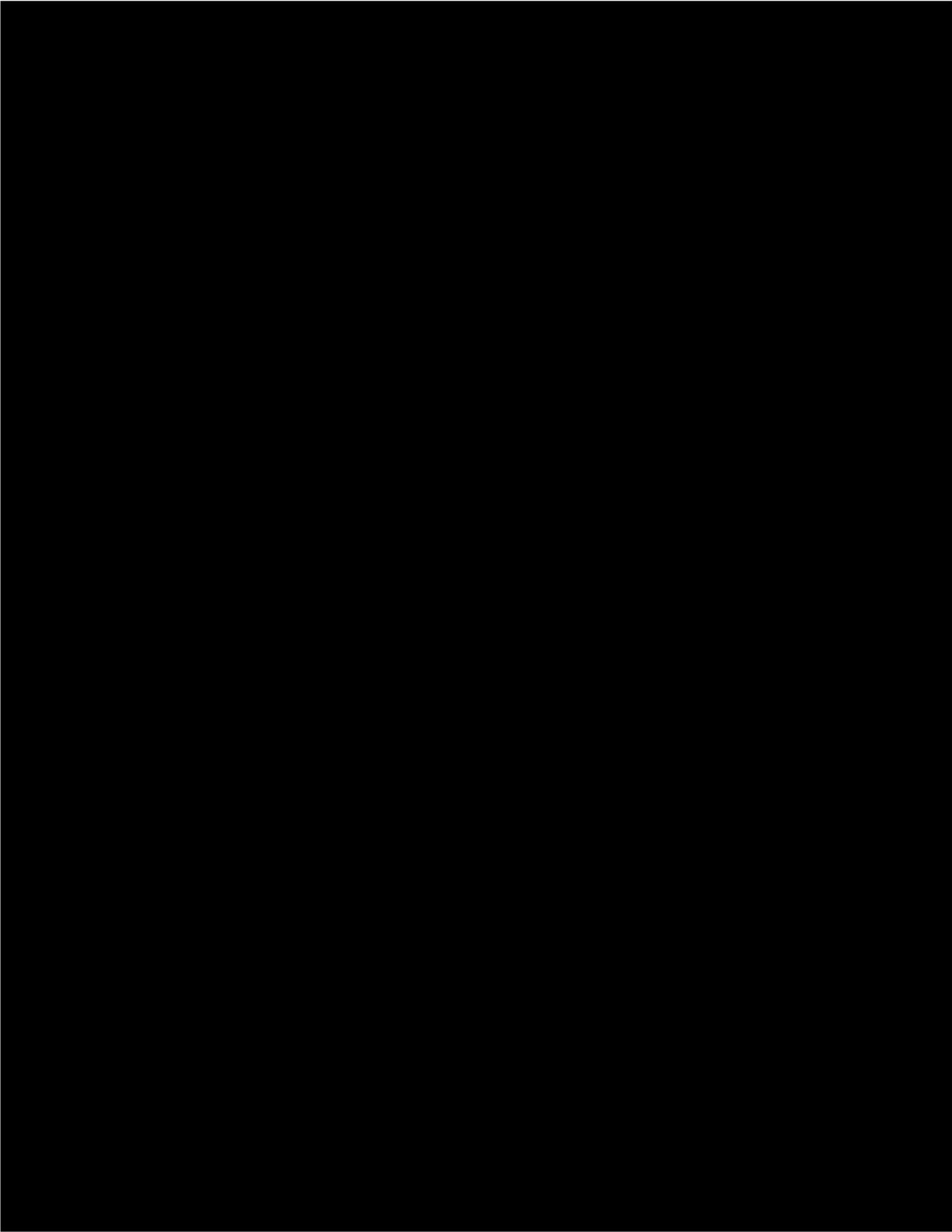


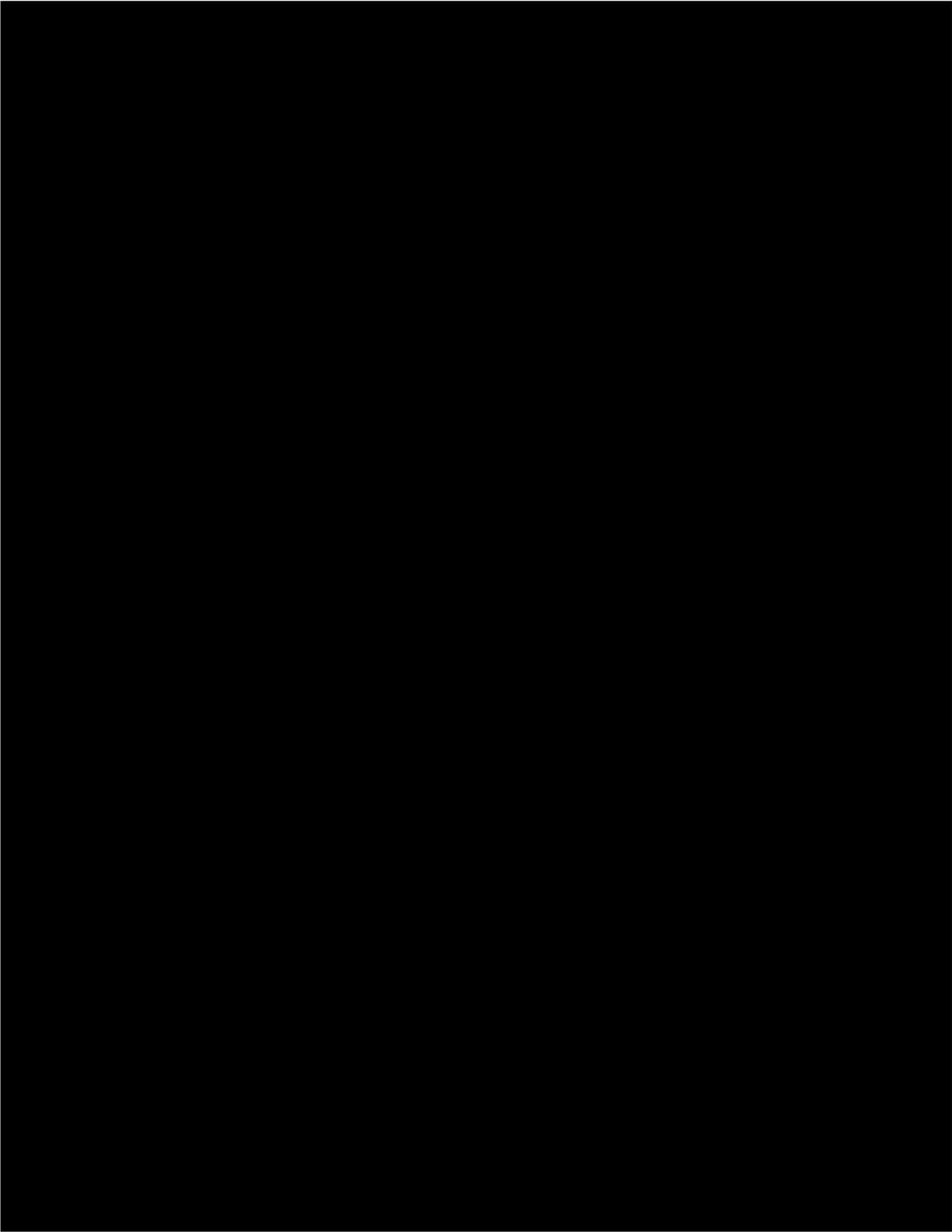












**From:** [Vincent France](#)  
**To:** [Kathryn Irby](#)  
**Cc:** [Daiquiri Carter](#); [jim@jimjacksonatty.com](mailto:jim@jimjacksonatty.com); [Martha Cox](#)  
**Subject:** Haley Hudson, et al v. Arkansas DHS CC230641  
**Date:** Monday, August 26, 2024 10:23:42 AM  
**Attachments:** [8-26-24 Letter Re Arkansas Consumer Hearing.pdf](#)  
[image001.png](#)  
[image002.png](#)  
[image003.png](#)

---

Kathryn,

Please see the attached letter for the Arkansas State Claims Commission regarding the matter of *Haley Hudson, et al v. Arkansas DHS*, CC230641.

Sincerely,

**Vincent P. France**  
 Deputy Chief Counsel for Litigation  
 Office of Chief Counsel  
 PO Box 1437, Slot S260  
 Little Rock, AR 72203-1437  
 Office Phone: 501-534-4127  
[Vincent.P.France@dhs.arkansas.gov](mailto:Vincent.P.France@dhs.arkansas.gov)



□ □ □

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**Office of Chief Counsel**  
**Vincent France**  
vincent.p.france@dhs.arkansas.gov  
P.O. Box 1437, Slot S260 · Little Rock, AR 72203-1437  
501-534-4127



August 26, 2024

Via Email: [kathryn.irby@arkansas.gov](mailto:kathryn.irby@arkansas.gov)  
[jim@jimjacksonatty.com](mailto:jim@jimjacksonatty.com)

Arkansas State Claims Commission  
101 East Capitol Avenue, Suite 410  
Little Rock, AR 72201

Jim Jackson  
700 West Broadway, Suite 200  
North Little Rock, AR 72114  
Attorney for Claimants

RE: *Haley Hudson, et. al v. Arkansas DHS,*  
Claim No. 230641

To the Arkansas State Claims Commission,

The final hearing in *Haley Hudson, et. al v. Arkansas DHS* is set for Thursday, September 19, 2024. It is my understanding that this hearing is currently scheduled to be conducted via Zoom. Following the Commission's decision dated July 25, 2024, and given the magnitude of this claim, I am respectfully requesting that the final hearing for this claim be held in person. If the hearing needs to be continued to accommodate this request, then please consider this letter as a motion for a continuance so that the hearing can be conducted in person.

Sincerely,

A handwritten signature in blue ink that reads "Vincent P. France".

Vincent P. France  
Deputy Chief Counsel  
Arkansas DHS

**From:** [Kathryn Irby](#)  
**To:** [Vincent France](#)  
**Cc:** [Daiquiri Carter](#); [jim@jimjacksonatty.com](mailto:jim@jimjacksonatty.com); [Martha Cox](#)  
**Subject:** RE: INFO NEEDED: Haley Hudson, et al v. Arkansas DHS CC230641  
**Date:** Wednesday, August 28, 2024 12:21:00 PM  
**Attachments:** [ZOOM INVITATION AND Exhibit List - Hudson v. DHS, Claim No. 230641.pdf](#)  
[image.png](#)  
[image.png](#)

---

**Vincent**, the witness and exhibit lists were due July 1, and the remainder of the prehearing materials were due August 22. As I emphasized in my July 26 email to the parties (one day after transmitting the July 25 order to the parties), the exhibits (and exhibit binders, if the parties anticipated using a lot of exhibits) were due to the Commission by August 22. I have Jim's submissions.

Please submit your witness list and exhibit list ASAP, with the rest of your prehearing materials to follow by Friday.

Kathryn

---

**From:** Vincent France <[Vincent.P.France@dhs.arkansas.gov](mailto:Vincent.P.France@dhs.arkansas.gov)>  
**Sent:** Wednesday, August 28, 2024 9:19 AM  
**To:** Kathryn Irby <[Kathryn.Irby@arkansas.gov](mailto:Kathryn.Irby@arkansas.gov)>  
**Cc:** Daiquiri Carter <[Daiquiri.Carter@dhs.arkansas.gov](mailto:Daiquiri.Carter@dhs.arkansas.gov)>; [jim@jimjacksonatty.com](mailto:jim@jimjacksonatty.com); Martha Cox <[mcox@jimjacksonatty.com](mailto:mcox@jimjacksonatty.com)>  
**Subject:** RE: INFO NEEDED: Haley Hudson, et al v. Arkansas DHS CC230641

Kathryn,

I was under the impression that the Claims Commission was going to issue a new letter regarding the September hearing following its decision on July 25, 2024. I will provide a witness list, exhibit lists, and a pretrial brief by the close of business on Friday.

Sincerely,

**Vincent P. France**  
 Deputy Chief Counsel for Litigation  
 Office of Chief Counsel  
 PO Box 1437, Slot S260  
 Little Rock, AR 72203-1437  
 Office Phone: 501-534-4127  
[Vincent.P.France@dhs.arkansas.gov](mailto:Vincent.P.France@dhs.arkansas.gov)





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---

**From:** Kathryn Irby <[Kathryn.Irby@arkansas.gov](mailto:Kathryn.Irby@arkansas.gov)>  
**Sent:** Tuesday, August 27, 2024 4:13 PM  
**To:** Vincent France <[Vincent.P.France@dhs.arkansas.gov](mailto:Vincent.P.France@dhs.arkansas.gov)>  
**Cc:** Daiquiri Carter <[Daiquiri.Carter@dhs.arkansas.gov](mailto:Daiquiri.Carter@dhs.arkansas.gov)>; [jim@jimjacksonatty.com](mailto:jim@jimjacksonatty.com); Martha Cox <[mcox@jimjacksonatty.com](mailto:mcox@jimjacksonatty.com)>  
**Subject:** INFO NEEDED: Haley Hudson, et al v. Arkansas DHS CC230641

**Jim**, do you object to Vincent's request for an in-person hearing? I have confirmed with the panel that a continuance will not be needed to change the hearing format on September 19.

**Vincent**, in reviewing the database, I do not see that DHS submitted a witness/exhibit list (due on or before July 1) or any prehearing materials (due on or before Aug 22) as instructed in the Commission's hearing letter. If these items have already been submitted, please forward those emails to me, so I can determine why they are not in the database.

Kathryn

---

**From:** Vincent France <[Vincent.P.France@dhs.arkansas.gov](mailto:Vincent.P.France@dhs.arkansas.gov)>  
**Sent:** Monday, August 26, 2024 10:24 AM  
**To:** Kathryn Irby <[Kathryn.Irby@arkansas.gov](mailto:Kathryn.Irby@arkansas.gov)>  
**Cc:** Daiquiri Carter <[Daiquiri.Carter@dhs.arkansas.gov](mailto:Daiquiri.Carter@dhs.arkansas.gov)>; [jim@jimjacksonatty.com](mailto:jim@jimjacksonatty.com); Martha Cox <[mcox@jimjacksonatty.com](mailto:mcox@jimjacksonatty.com)>  
**Subject:** Haley Hudson, et al v. Arkansas DHS CC230641

Kathryn,

Please see the attached letter for the Arkansas State Claims Commission regarding the matter of *Haley Hudson, et al v. Arkansas DHS*, CC230641.

Sincerely,

**Vincent P. France**

Deputy Chief Counsel for Litigation

Office of Chief Counsel

PO Box 1437, Slot S260

Little Rock, AR 72203-1437

Office Phone: 501-534-4127

[Vincent.P.France@dhs.arkansas.gov](mailto:Vincent.P.France@dhs.arkansas.gov)



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**From:** [Jim Jackson](#)  
**To:** [Kathryn Irby](#)  
**Cc:** [Vincent France](#); [Daiquiri Carter](#); [Martha Cox](#)  
**Subject:** Re: INFO NEEDED: Haley Hudson, et al v. Arkansas DHS CC230641  
**Date:** Wednesday, August 28, 2024 8:30:08 AM

---

Kathryn

I have no objection to this being conducted in person. I would prefer it to be in person on September 19 due to the magnitude of the damages and the age of the children who will be testifying.

Jim

Jim Jackson  
Attorney at Law  
700 West Broadway St: Suite 2  
North Little Rock, AR 72114  
(501) 823-3610

On Aug 27, 2024, at 4:13 PM, Kathryn Irby <[Kathryn.Irby@arkansas.gov](mailto:Kathryn.Irby@arkansas.gov)> wrote:

**Jim**, do you object to Vincent's request for an in-person hearing? I have confirmed with the panel that a continuance will not be needed to change the hearing format on September 19.

**Vincent**, in reviewing the database, I do not see that DHS submitted a witness/exhibit list (due on or before July 1) or any prehearing materials (due on or before Aug 22) as instructed in the Commission's hearing letter. If these items have already been submitted, please forward those emails to me, so I can determine why they are not in the database.

Kathryn

---

**From:** Vincent France <[Vincent.P.France@dhs.arkansas.gov](mailto:Vincent.P.France@dhs.arkansas.gov)>  
**Sent:** Monday, August 26, 2024 10:24 AM  
**To:** Kathryn Irby <[Kathryn.Irby@arkansas.gov](mailto:Kathryn.Irby@arkansas.gov)>  
**Cc:** Daiquiri Carter <[Daiquiri.Carter@dhs.arkansas.gov](mailto:Daiquiri.Carter@dhs.arkansas.gov)>; [jim@jimjacksonatty.com](mailto:jim@jimjacksonatty.com);  
Martha Cox <[mcox@jimjacksonatty.com](mailto:mcox@jimjacksonatty.com)>  
**Subject:** Haley Hudson, et al v. Arkansas DHS CC230641

Kathryn,

Please see the attached letter for the Arkansas State Claims Commission regarding the matter of *Haley Hudson, et al v. Arkansas DHS, CC230641*.

Sincerely,

**Vincent P. France**  
Deputy Chief Counsel for Litigation  
Office of Chief Counsel  
PO Box 1437, Slot S260  
Little Rock, AR 72203-1437  
Office Phone: 501-534-4127  
[Vincent.P.France@dhs.arkansas.gov](mailto:Vincent.P.France@dhs.arkansas.gov)

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<image002.png>

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**From:** [Vincent France](#)  
**To:** [ASCC Pleadings](#); [Kathryn Irby](#); [jim@jimjacksonatty.com](mailto:jim@jimjacksonatty.com)  
**Cc:** [Daiquiri Carter](#); [Martha Cox](#)  
**Subject:** Haley Hudson et al v. DHS CC 230641  
**Date:** Friday, August 30, 2024 1:27:43 PM  
**Attachments:** [DHS Witness and Exhibit Lists.pdf](#)  
[DHC Pre-hearing Brief.pdf](#)  
[image.png](#)  
[image.png](#)

---

To all,

Please find attached two documents (1) DHS’s Witness and Exhibit Lists and (2) DHS’s Pre-Hearing Brief. In a separate email, I will provide everyone with actual copies of DHS’s exhibits.

Sincerely,

**Vincent P. France**  
 Deputy Chief Counsel for Litigation  
 Office of Chief Counsel  
 PO Box 1437, Slot S260  
 Little Rock, AR 72203-1437  
 Office Phone: 501-534-4127  
[Vincent.P.France@dhs.arkansas.gov](mailto:Vincent.P.France@dhs.arkansas.gov)



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**IN THE ARKANSAS STATE CLAIMS COMMISSION**

**HALEY HUDSON, INDIVIDUALLY  
HALEY HUDSON, SPECIAL ADMINISTRATRIX OF  
THE ESTATE OF JAQUELINE LYNN ASHCRAFT,  
DECEASED, AND HALEY HUDSON, AS PERMANENT  
LEGAL GUARDIAN OF**

**[REDACTED], MINOR CHILDREN**

**CLAIMANTS**

**vs.**

**CC No. 230641**

**ARKANSAS DEPARTMENT OF  
HUMAN SERVICES**

**RESPONDENT**

**RESPONDENT'S WITNESS & EXHIBIT LISTS**

COMES NOW, Respondent, Arkansas Department of Human Services, by and through its attorney, Vincent P. France Deputy Chief Counsel for the Arkansas Department of Human Services, submits the following Witness and Exhibit Lists:

**Witness List**

1. Pamela Feemster;
2. Kristen Shelton;
3. Brandy Ezell, *via deposition*; and
4. Jennifer Wilkerson, *via deposition*.

**Exhibit List**

1. Pamela Feemster Affidavit & Exhibits attached thereto;
2. Aerial Photographs produced by DHS (bates number 85-91);
3. Accident Scene Photographs produced by DHS (bates number 19-37);
4. Wilkerson Toxicology Report (Ashcraft bates number 258-259);
5. DHS Emails RE Wilkerson's termination (Ashcraft bates number 408-428);
6. Wilkerson's termination document;

7. Kristen Shelton's Deposition and exhibits attached thereto;
8. Brandy Ezell's Deposition and exhibits attached thereto;
9. Jennifer Wilkerson's Deposition and exhibits attached thereto;
10. DHS Vehicle Policy;
11. ASP Accident Report (Ashcraft bates number 291-308) *if necessary*;
12. Ashcraft Insurance policy;
13. Ashcraft toxicology report.

Respectfully submitted,

By: /s/ Vincent P. France  
Vincent P. France, Ark. Bar No. 2010063  
Deputy Chief Counsel  
Arkansas DHS  
P.O. Box 1437, Slot S260  
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*Attorney for Respondent*

### **CERTIFICATE OF SERVICE**

I, Vincent P. France, hereby certify that on August 30, 2024, I electronically filed the foregoing with the Arkansas State Claims Commission by emailing it to [ascpleadings@arkansas.gov](mailto:ascpleadings@arkansas.gov) and by sending a copy to Claimant's attorney Jim Jackson via email as indicated below.

Jim Jackson  
[Jim@JimJacksonatty.com](mailto:Jim@JimJacksonatty.com)

/s/ Vincent P. France  
Vincent P. France

## IN THE ARKANSAS STATE CLAIMS COMMISSION

**HALEY HUDSON, INDIVIDUALLY  
HALEY HUDSON, SPECIAL ADMINISTRATRIX OF  
THE ESTATE OF JAQUELINE LYNN ASHCRAFT,  
DECEASED, AND HALEY HUDSON, AS PERMANENT  
LEGAL GUARDIAN OF**

**MINOR CHILDREN**

**CLAIMANTS**

**vs.**

**CC No. 230641**

**ARKANSAS DEPARTMENT OF  
HUMAN SERVICES**

**RESPONDENT**

**RESPONDENT'S PRE-HEARING BRIEF**

COMES NOW, Respondent, Arkansas Department of Human Services, by and through its attorney, Vincent P. France Deputy Chief Counsel for the Arkansas Department of Human Services, for its Pre-Hearing Brief states the following:

In its Order dated July 25, 2024, the Arkansas State Claims Commission expressed concerns about whether DHS could rebut the presumption that Ms. Wilkerson was acting beyond the scope of her employment when the accident occurred. DHS will focus on presenting evidence and testimony to show that indeed Ms. Wilkerson was acting beyond the scope of her employment. Specifically, DHS anticipates that it will present evidence and testimony that easily distinguishes the facts at-hand from those presented in the case of *Nipper v. Brandon Co.*, 262 Ark. 17, 553 S.W.2d 27 (1977). More importantly, DHS will present evidence that shows that the facts at-hand are more align with the facts contained in *Davis v. Kukar*, 235 Ark. 139, 357 S.W.2d 275 (1962), in which the Arkansas Supreme Court found that an employee who was just forty-five (45) feet away from the point at which the employee deviated from his route was outside the scope of his employer's business; therefore, as a matter of law the employee was outside the scope of his

employment. 235 Ark. at 145. DHS will present evidence that Ms. Wilkerson had sufficiently deviated from her route because she was 34 miles to 40 miles behind where she should have been when the accident occurred. *See Healey v. Cockrill*, 133 Ark. 327, 202 S.W. 299 (1918) (“the relative distance was too great to be called a slight deviation, and the departure from the line of duty was so complete that the connection with the employer’s service was completely broken”).

DHS will also present evidence and testimony to show that the path of terminating Ms. Wilkerson began the day of the accident. Thus, DHS began the process of terminating Ms. Wilkerson almost immediately. DHS will show that Ms. Wilkerson was not carrying out the object and purpose of DHS at the time of the accident; therefore, she was outside the scope of her employment and DHS cannot be liable. *See* 366 Ark. 533, 237 S.W.3d 87 (2006). DHS will show that Ms. Wilkerson had illegal drugs in her system at the time of the accident, which violated DHS policy. Additionally, the evidence will show that Ms. Wilkerson was traveling at least 70 m.p.h. on a highway with a posted speed limit of 55 m.p.h. when the accident occurred. Thus, Ms. Wilkerson was traveling at a criminal rate of speed when the accident occurred. *See* Ark. Code Ann. §27-50-302(7). Driving at a criminal speed is contrary to the object and purpose of DHS; therefore, Ms. Wilkerson was beyond the scope of her employment. Consequently, DHS is not vicariously liable for her actions.

As to the issue of whether Claimants are entitled to damages, DHS respectfully requests that the Arkansas State Claims Commission finds that it is not vicariously liable for the actions of Ms. Wilkerson; therefore, the Claimants are not entitled to any damages from DHS. Assuming *arguendo* that the Claims Commission decides to award damages to Claimants, then the amount awarded must be significantly reduced from the \$5,000,000.00 sought by Claimants. The Arkansas Legislature’s Joint Budget Committee Claims Review Committee, which oversees the Arkansas

State Claims Commission, has provide guidance on the amount of damages that should be awarded in the claim of *Dayong Yang v. State*, Claim No. 16-0496-CC. In the *Yang* case, the legislature awarded Mr. Yang \$100,000.00 following the death of his son and wife in a tragic accident. Thus, to the extent that Claimants are entitled to any damages from DHS, then they should be awarded no more than \$100,000.00, which is consistent with the precedents set by the legislature in *Dayong Yang v. State*. Frankly, the government should be very cautious of awarding value of one life more than another life. Every life should be valued the same by the government. Accordingly, if the Claims Commission decides to award any damages, then at most it should only award \$100,000.00 as authorized by the legislature in the *Yang* case.

WHEREFORE, DHS respectfully requests that the Arkansas State Claims Commission finds that DHS has rebutted the presumption and finds that Ms. Wilkerson was acting outside the course and scope of her employment when the accident occurred; therefore, DHS is not vicariously liable for the actions of Ms. Wilkerson. Thus, DHS respectfully requests a favorable finding on its behalf by the Claims Commission and dismisses this claim with prejudice, along with any other just and proper relief to which it is entitled.

Respectfully submitted,

By: /s/ Vincent P. France  
Vincent P. France, Ark. Bar No. 2010063  
Deputy Chief Counsel  
Arkansas DHS  
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Little Rock, AR 72203  
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*Attorney for Respondent*

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Jim Jackson  
[Jim@JimJacksonatty.com](mailto:Jim@JimJacksonatty.com)

*/s/ Vincent P. France*

\_\_\_\_\_  
Vincent P. France

**IN THE ARKANSAS STATE CLAIMS COMMISSION**

**HALEY HUDSON, INDIVIDUALLY  
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DECEASED, AND HALEY HUDSON, AS PERMANENT  
LEGAL GUARDIAN OF [REDACTED]  
AND [REDACTED] MINOR CHILDREN**

**CLAIMANT**

vs.

CC No. 230641

**ARKANSAS DEPARTMENT OF  
HUMAN SERVICES**

**RESPONDENT**

**AFFIDAVIT OF PAMELA FEEMSTER**

I, Pamela Feemster, am competent to testify and have personal knowledge regarding the statements contained in this affidavit, do hereby declare, under the penalty of perjury to the following:

1. I am currently employed with the Arkansas Department of Humans Services (DHS), Division of Children and Family Services (DCFS) as a Family Service Supervisor in Logan County, Arkansas, a position that I have held since December 2, 2019.

2. I have worked for DHS for over 11 years.

3. In June 2021, I was working as a Family Service Supervisor in Logan County, Arkansas.

4. As a Family Service Supervisor, my duties include: assigning work to staff including program assistants, conducting consults, preparing monthly reports, participate in the hiring process by conducting interviews and submitting hiring packets for individuals that I recommend should be hired, I can also recommend that a employee be terminated from DHS.

5. In 2021, I interviewed Jennifer Wilkerson and submitted a hiring packet for her to human resources and Central Office in Little Rock for approval. *See attached hereto* Exhibit A, Selected Records from Wilkerson's Personnel File (redacted) (hereinafter "Exhibit A").

6. After receiving approval to hire Ms. Wilkerson, I informed her that she would need to submit to a pre-employment drug test that is required for all new hires at DHS. Exhibit A, p. 9-10. Ms. Wilkerson passed her drug screen. Exhibit A, p. 11.

7. Ms. Wilkerson was also required to agree to all traffic laws and the driving policies for DHS. *See* Exhibit A, p. 5-6, 21-24.

8. Jennifer Wilkerson was hired as a Program Assistant for DCFS in Logan County. *See* Exhibit A, 17-19.

9. On June 1, 2021, Ms. Wilkerson began working as a Program Assistant and I was her direct supervisor.

10. Ms. Wilkerson and I both worked at the Logan County DHS office, which is located at 17 W. McKeen Street, Paris, Arkansas 72855.

11. As a Program Assistant, Ms. Wilkerson's main responsibilities were transportation of children and to conduct supervised visitations.

12. On June 11, 2021, Ms. Wilkerson was assigned to go to Beebe, Arkansas to pick up a child at 2:00 p.m. and transport the child to Clarksville, Arkansas for a sibling visit at 4:00 p.m.

13. In order for Ms. Wilkerson to arrive in Beebe by 2:00 p.m., she needed to leave Paris, Arkansas around noon because it takes approximately two (2) hours to drive from Paris to Beebe.

14. Prior to the accident on June 11, 2021, the last time that I saw Ms. Wilkerson was when Brandy Ezell and I were leaving to go to lunch a few minutes after noon and I saw Ms. Wilkerson heading to the state vehicle to head Beebe, Arkansas.

**Wilkerson Calls Ezell to Report the Accident**

15. As Brandy and I were returning from lunch and pulling into the parking lot at the Logan County DHS office, Brandy received a call from Ms. Wilkerson that she had been in a motor vehicle accident.

16. Brandy and I were still in Brandy's personal vehicle when Ms. Wilkerson called Brandy and told her about the accident.

17. As Brandy and I drove to the accident, Brandy expressed concern to me that Ms. Wilkerson was still near the office when the accident occurred.

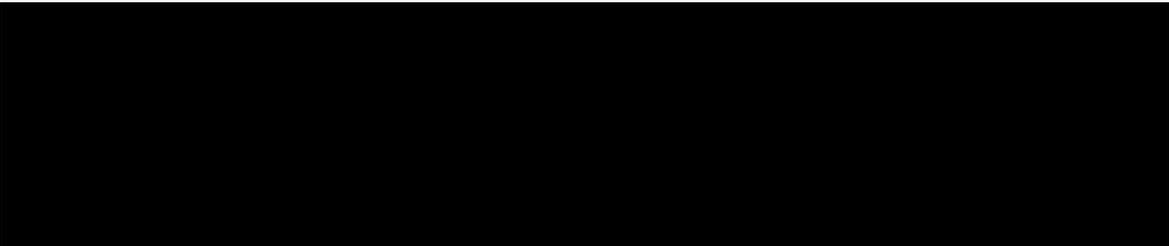
18. It only took about 5 to 10 minutes for us to arrive at the accident scene.

**Actions at the Scene**

19. When we arrived, we had to park some distance from the actual accident.

20. When we got close to the ambulance, I observed Ms. Wilkerson was being loaded into the ambulance.

21. At the scene, I observed a male individual, whom I learned later was Ms. Wilkerson's boyfriend, Scott Lindstrom, get into the state vehicle and remove some bags from the vehicle.



23. While at the scene of the accident, I also called Kristen Shelton, who was my supervisor, to inform her about the accident.

24. At the scene, I did ask one of the state troopers about whether they would be drug testing Ms. Wilkerson, but I was informed at that point that there was no plan to conduct a drug test of Ms. Wilkerson.

25. Brandy and I were at the accident scene for approximately thirty (30) minutes before we left to go to the hospital to ask that Ms. Wilkerson be given a drug test.

26. After learning that the state police were not planning on performing a drug test on Ms. Wilkerson, Brandy and I decided to go to the hospital and ask the hospital staff to drug test Ms. Wilkerson.

#### **After Leaving Accident Scene**

27. At some point, Brandy and I were informed that Ms. Wilkerson had been taken to the hospital in Booneville, Arkansas.

28. Upon arriving at the hospital in Booneville, we were informed that the hospital was on lockdown because of an incident involving Scott Lindstrom, Ms. Wilkerson's boyfriend.

29. Brandy saw Jennifer Wilkerson's mother standing by the door of the hospital and the two of us went over to speak with her.

30. Jennifer's mother informed Brandy and I that prior to the accident, Jennifer had met up with her boyfriend at Dairy-Delite for lunch.

31. Given my work as a DCFS worker, I was familiar with the staff at the hospital in Booneville; therefore, while at the hospital, I asked the staff to conduct a drug test on Ms. Wilkerson.

32. After I had left the hospital, I received a text message from Ms. Wilkerson in which she informed me that although she did not have a prescription for Adderall, she had taken Adderall prior to the accident.

**Termination of Ms. Wilkerson**

33. I first discussed terminating Ms. Wilkerson on June 11, 2021, after I received the text message from Ms. Wilkerson regarding her using Adderall without a prescription, combined with her inconsistent statements, and the fact Ms. Wilkerson was a new hire.

34. Beyond the text message I received from Ms. Wilkerson, any communications I had with her regarding the accident was done through email.

35. Kristen Shelton conducted a fact-finding investigation as required by DHS policy.

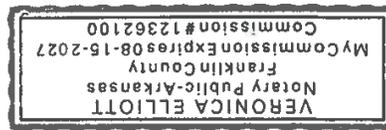
36. Following the investigation, Ms. Wilkerson was fired from DHS on Wednesday, June 16, 2021, by Kristen Shelton.

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

  
Pamela Feemster

01/26/2024  
DATE

STATE OF Arkansas )  
COUNTY OF Logan )

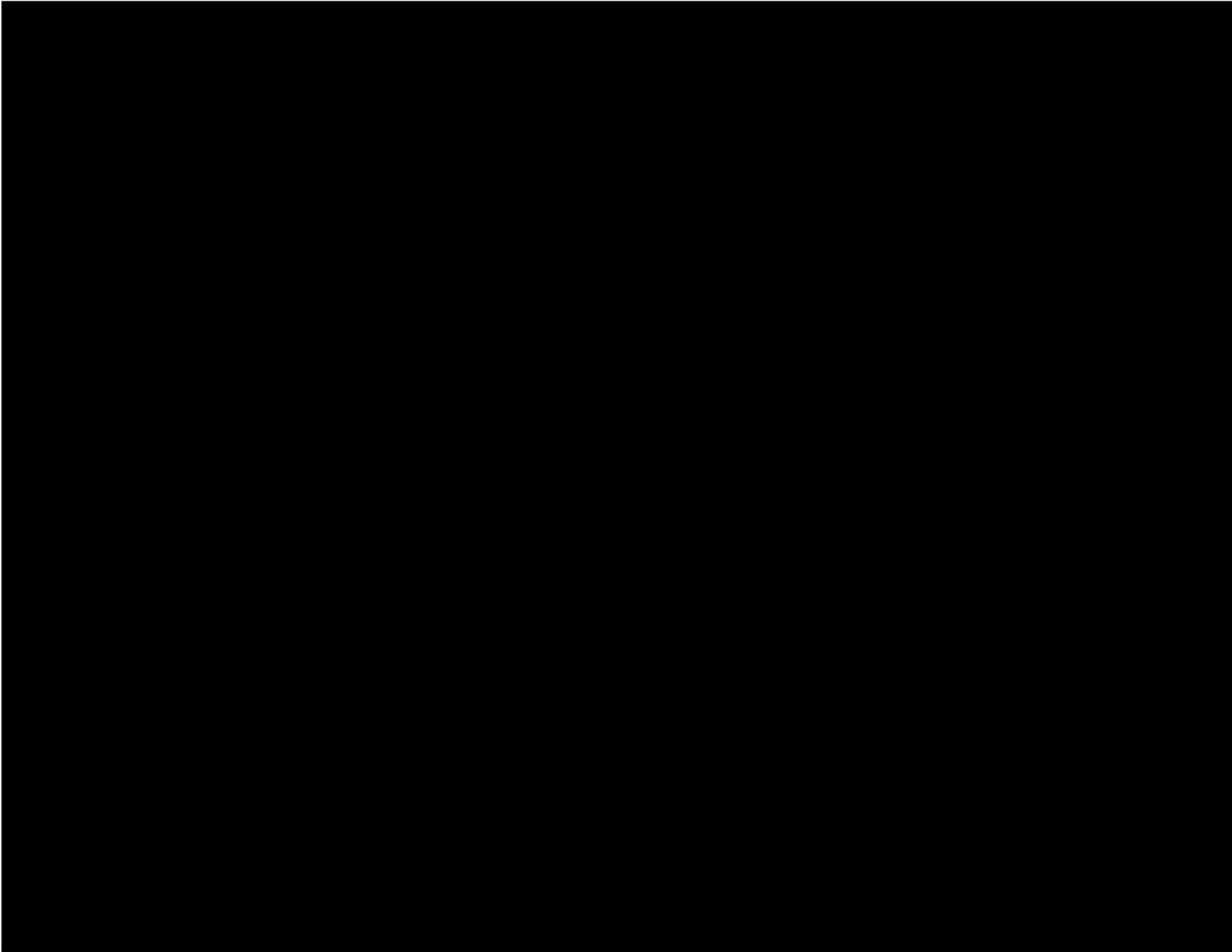


Subscribed and sworn to me, a Notary Public, on this 26 day of January, 2024.

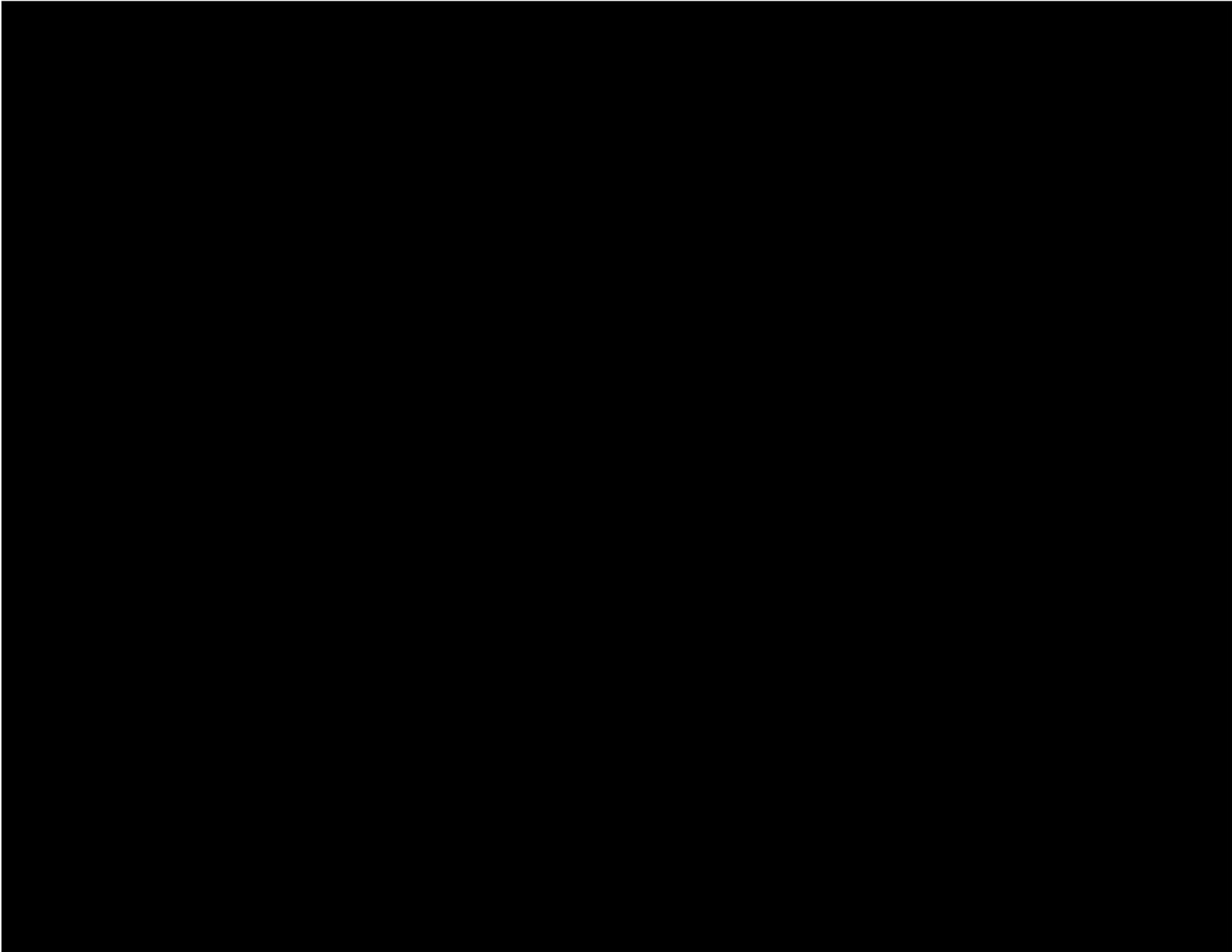
  
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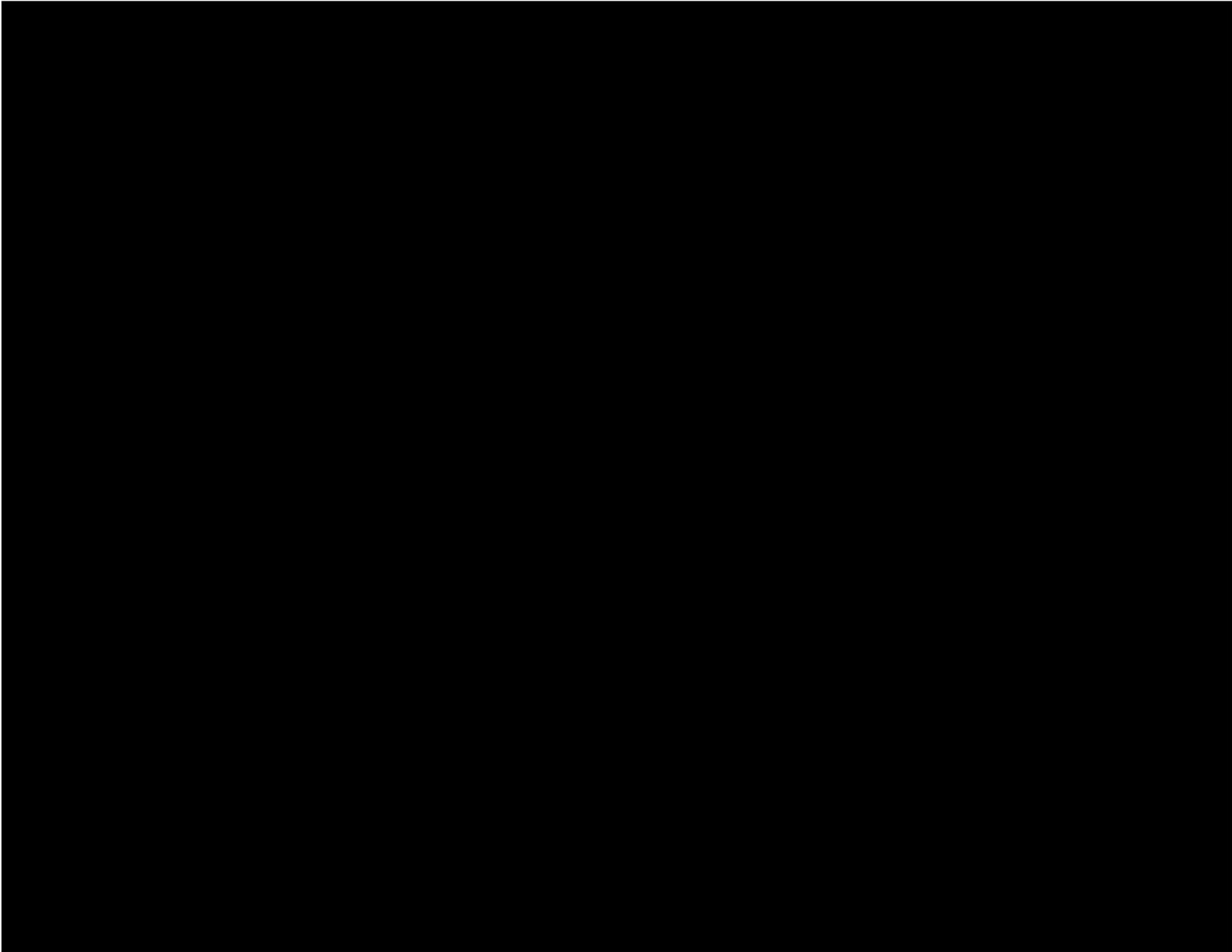
My Commission Expires:  
8-15-2027

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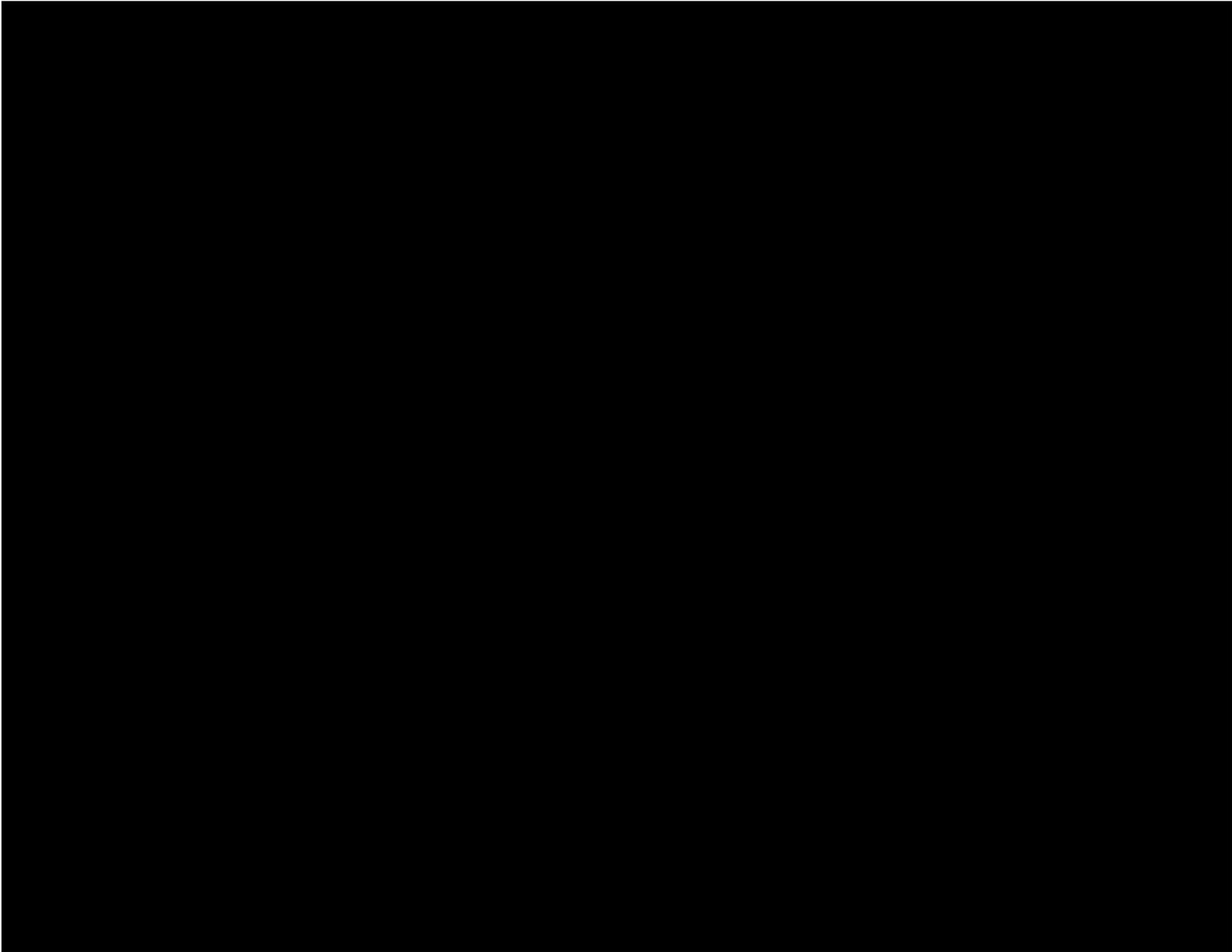




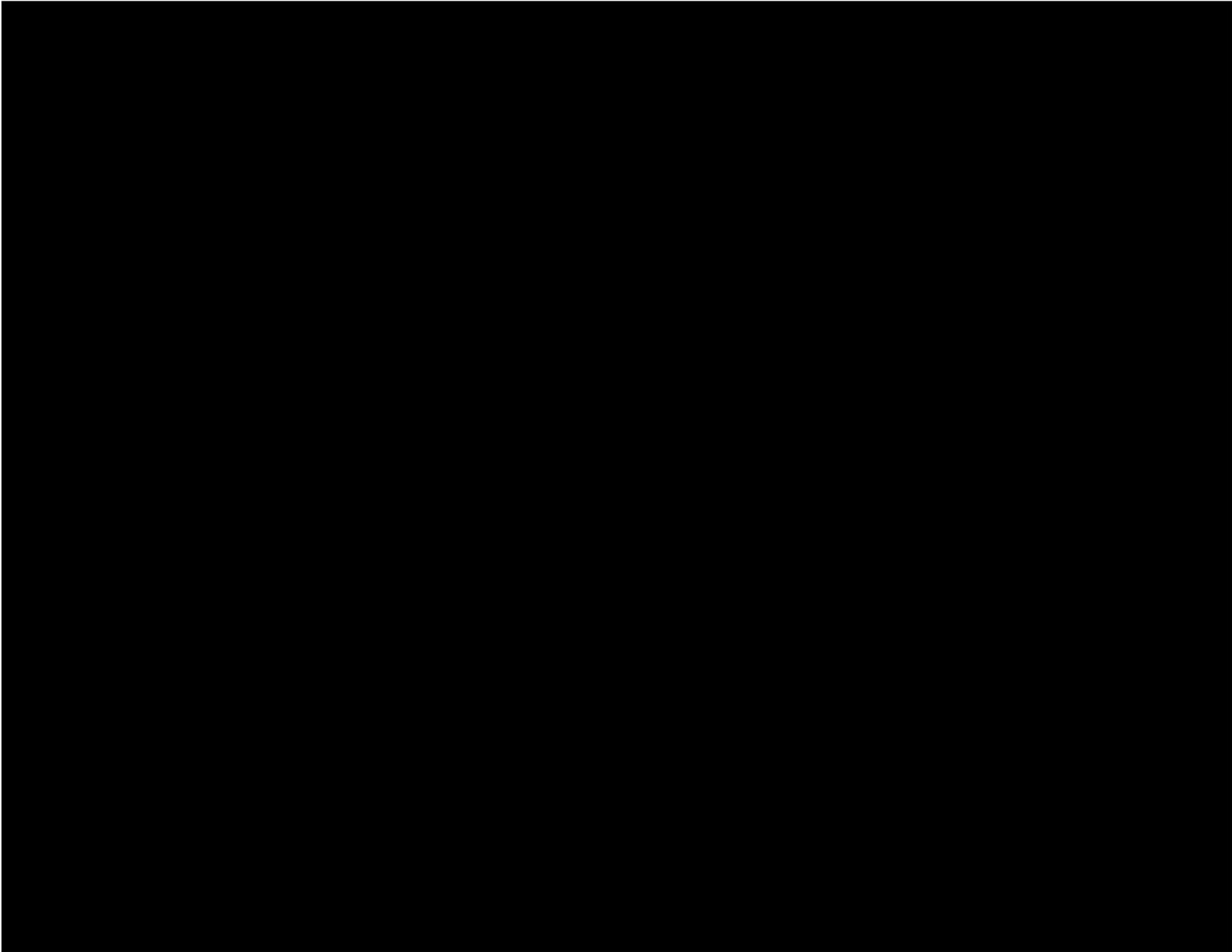


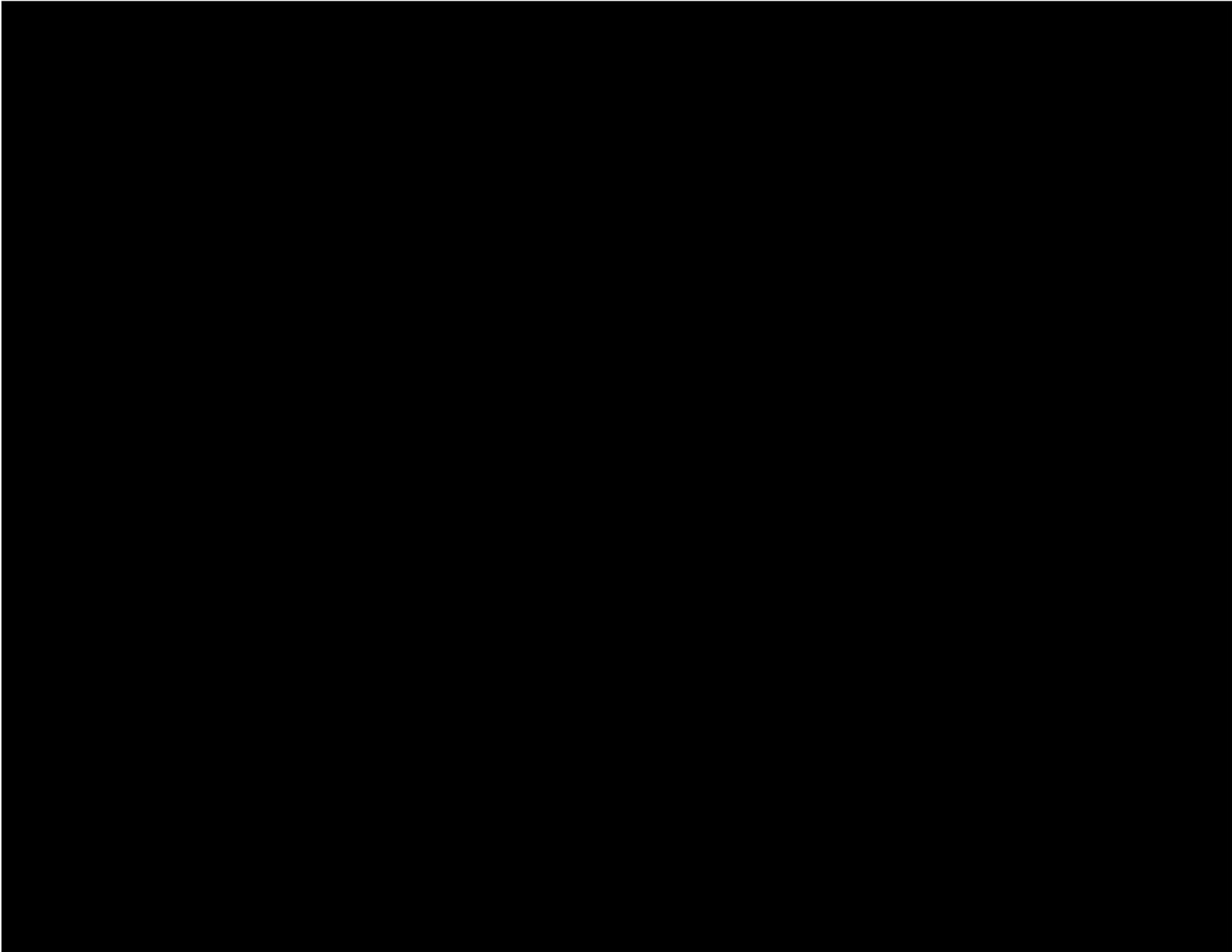










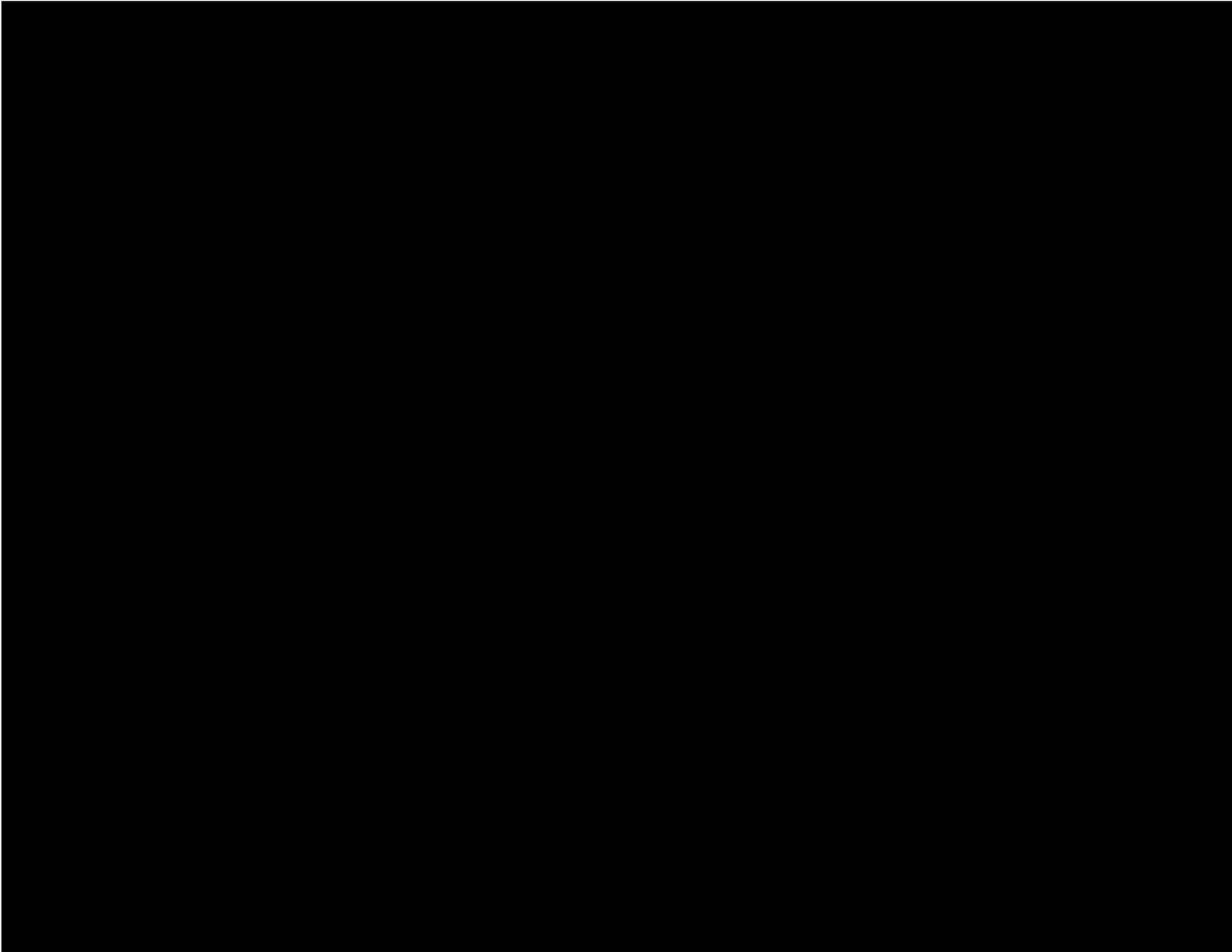




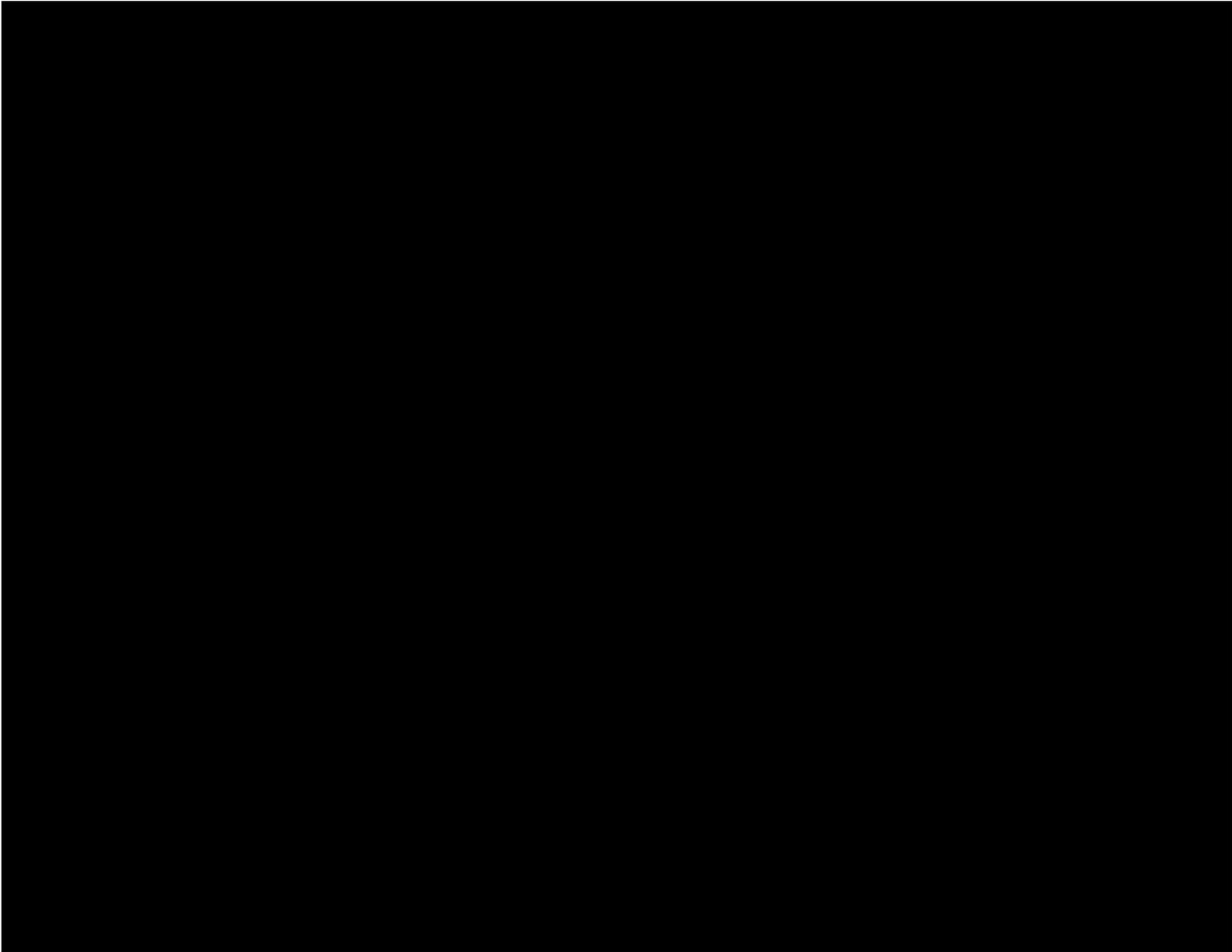


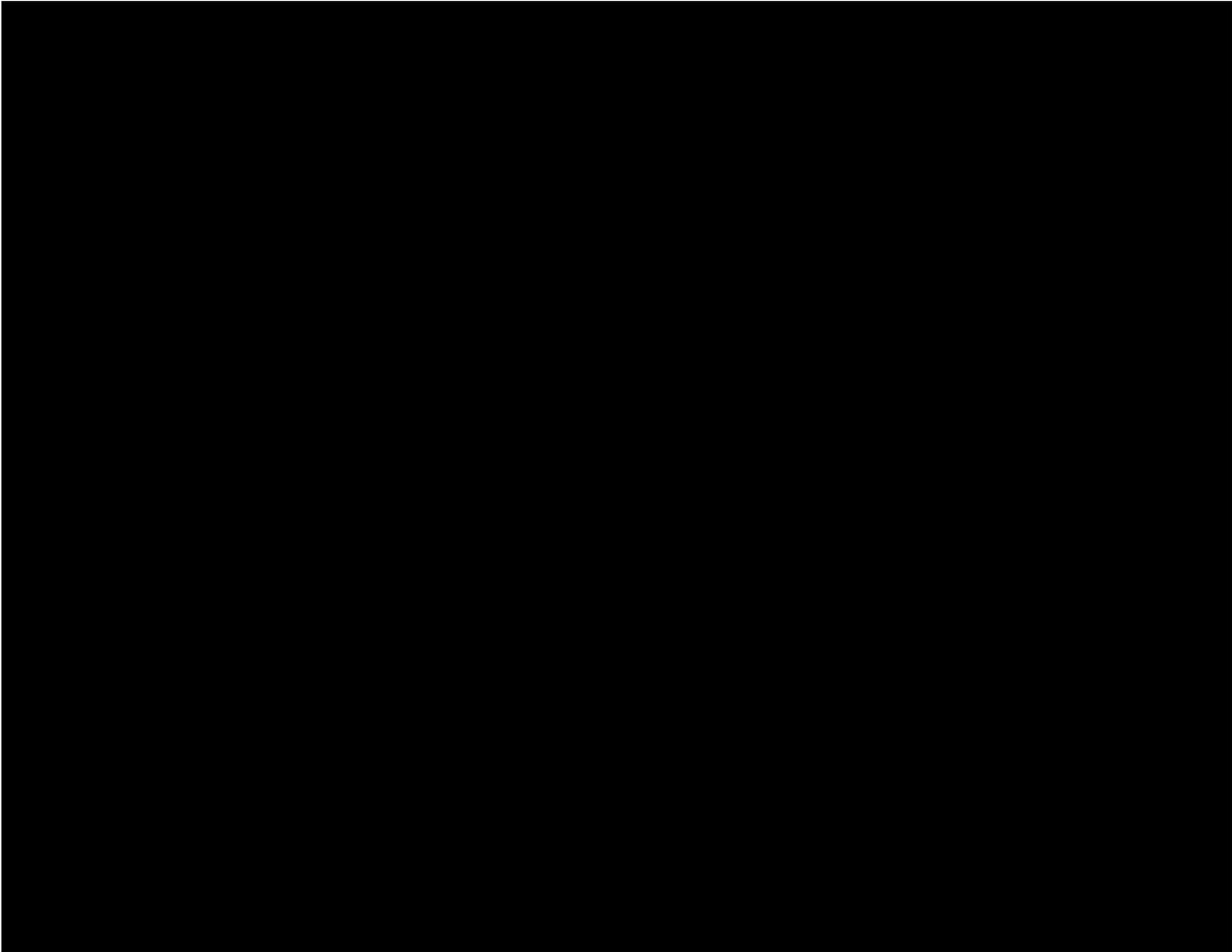










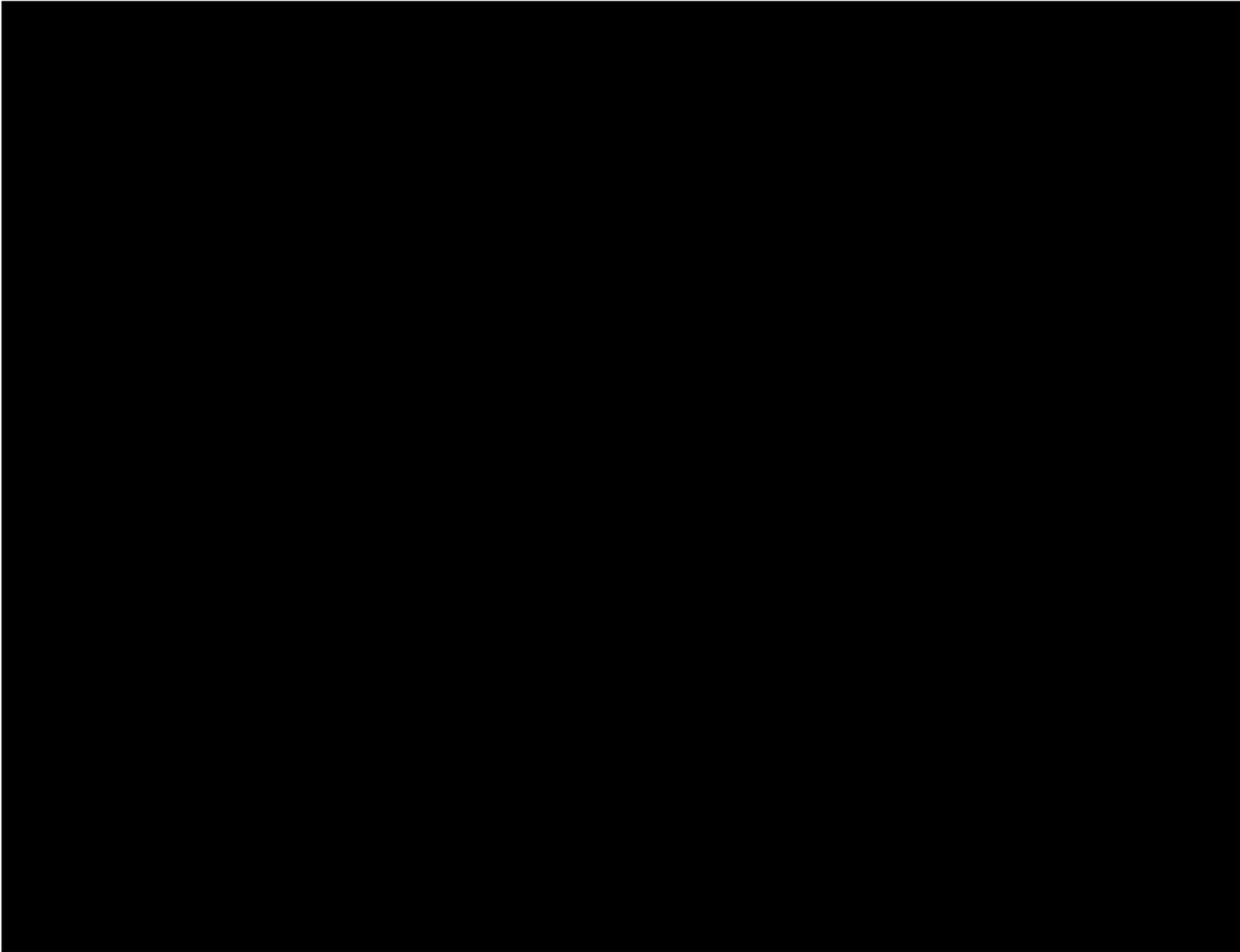






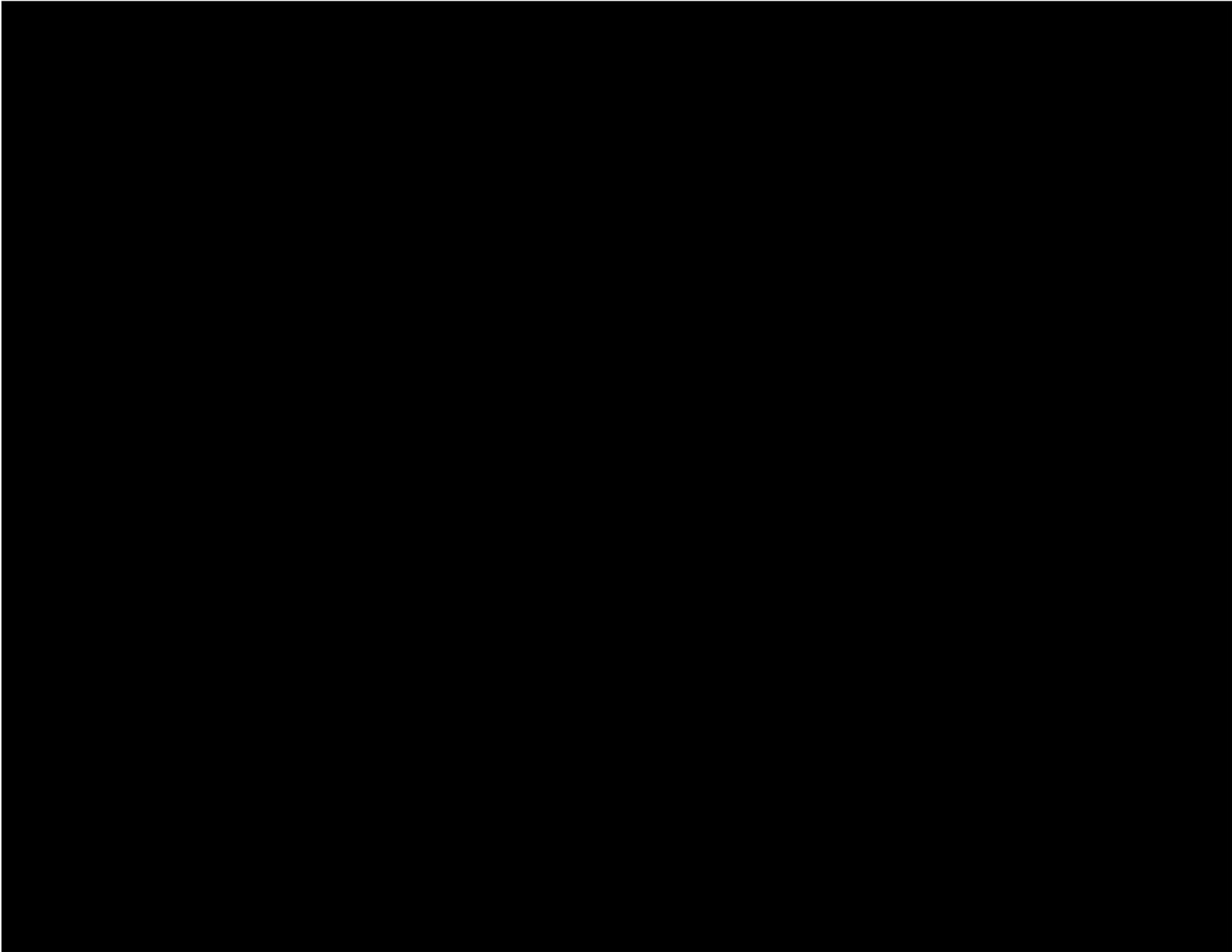


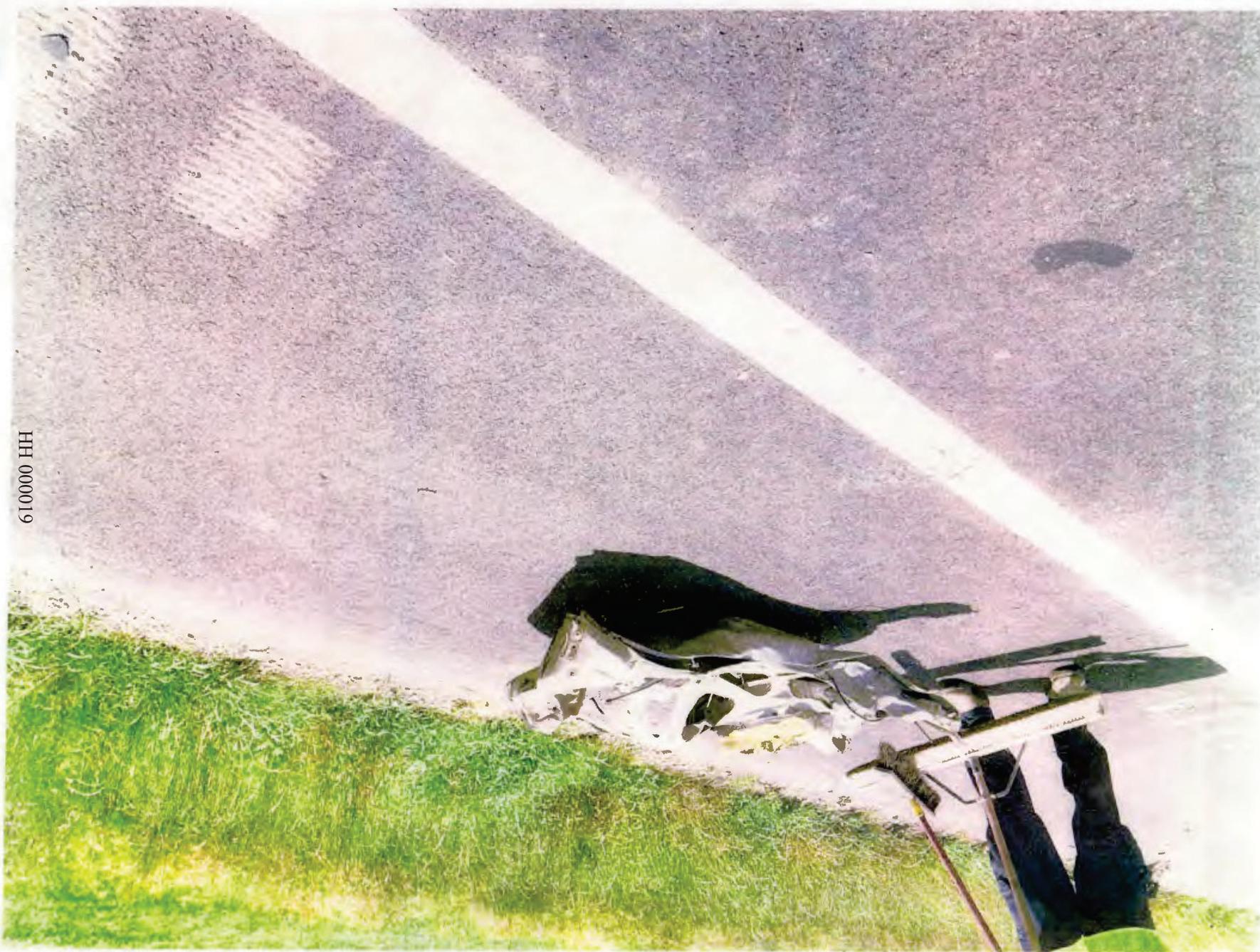












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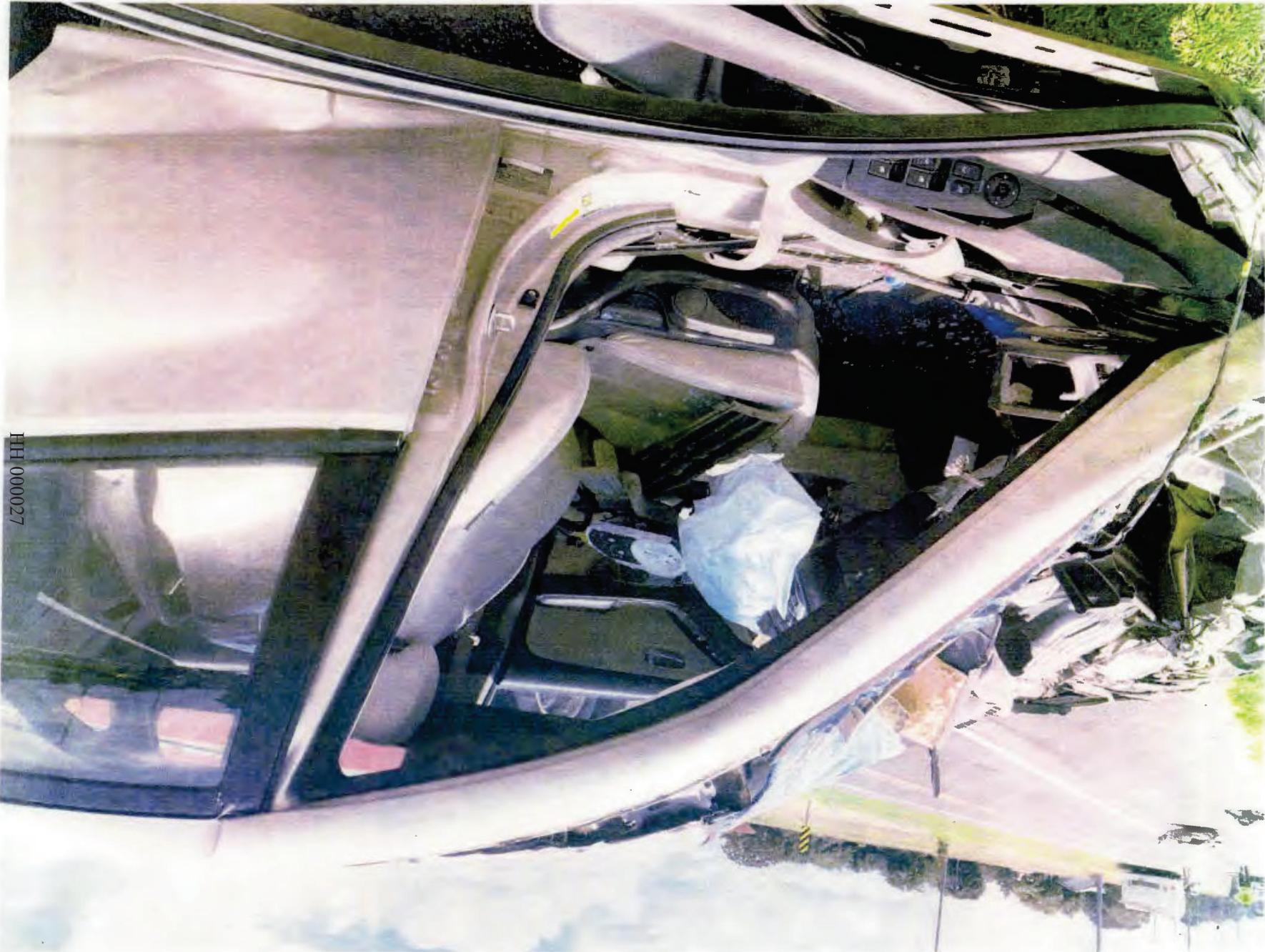
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