

INTERNATIONAL CENTRE FOR THE SETTLEMENT OF
INVESTMENT DISPUTES

-----x
 In the Matter of Arbitration :
 Between: :
 :
 GABRIEL RESOURCES LTD. and GABRIEL :
 RESOURCES (JERSEY) LTD., :
 : Case No.
 Claimants, : ARB/15/31
 :
 and :
 :
 ROMANIA, :
 :
 Respondent. :
 -----x Volume 7

HEARING ON THE MERITS

Monday, December 9, 2019

The World Bank Group
1225 Connecticut Avenue, N.W.
C Building
Conference Room C3-150
Washington, D.C.

The hearing in the above-entitled matter came on
at 9:00 a.m. before:

PROF. PIERRE TERCIER, President of the Tribunal

DR. HORACIO A. GRIGERA NAÓN, Co-Arbitrator

PROF. ZACHARY DOUGLAS, Co-Arbitrator

ALSO PRESENT:

MS. SARA MARZAL YETANO
Secretary to the Tribunal

MS. MARIA ATHANASIOU
Tribunal Assistant

Court Reporters:

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Interpreters:

MS. MARLIENA FILIP

MS. ALEXANDRA IULIANA MLADEN

MS. ALEXANDRA DOBRIN

ALSO PRESENT:

Attending on behalf of the Claimants:

MS. ABBY COHEN SMUTNY
MR. DARRYL LEW
MR. BRODY GREENWALD
MR. PETR POLÁŠEK
MR. HANSEL PHAM
MR. FRANCIS VASQUEZ JR.
MR. ANDREI POPOVICI
MS. GABRIELA LOPEZ
MR. FRANCIS LEVESQUE
MR. WILLIAM STROUPE
MS. NATALIA TCHOUKLEVA
MR. JACOB TRUMM
MS. DARA BROWN
MS. ALYSSA HOWARD
White & Case, LLP
701 13th Street, N.W.
Washington, D.C. 20005
United States of America

MR. FLORENTIN TUCA
MS. IDA-LEVANA ZIGMUND
MS. ANCA DIANA PUSCASU
MS. OANA-MIRUNA URECHE
MS. RUXANDRA NIȚĂ
MS. ANGELICA-IULIANA HOGAȘ-PINTILIE
MR. CORNEL POPA (via video for Prof. Birsan)
Țuca Zbârcea & Asociații
Sos. Nicolae Titulescu nr. 4-8
America House, Aripa de Vest, et. 8
Sector 1, 011141, Bucuresti
Romania

APPEARANCES:

Represent Gabriel Resources Ltd.:

MR. SIMON LUSTY

MR. RICHARD BROWN

MR. DANIEL KOCHAV

MS. RUTH TEITELBAUM

Representing Roşia Montană Gold Corporation:

MR. MIHAI BOTEA

APPEARANCES: (Continued)

Attending on behalf of the Respondent:

DR. VEIJO HEISKANEN
MR. MATTHIAS SCHERER
MS. NORADÈLE RADJAI
MS. LORRAINE de GERMINY
MR. CHRISTOPHE GUIBERT de BRUET
MR. DAVID BONIFACIO
MR. BAPTISTE RIGAUDEAU
MS. EMILIE McCONAUGHEY
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MS. ANDREEA SIMULESCU
MS. MIHAELA MARAVELA
MS. LILIANA DEACONESCU
MS. ANDREEA PIȚURCĂ
MS. ANDRA SOARE FILATOV
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P R O C E E D I N G S

1
2 PRESIDENT TERCIER: In that case, ladies and
3 gentlemen, I suggest to start.

4 Good morning, ladies and gentlemen. I hope
5 you had a good weekend. We have the honor to open the
6 seventh day in the ICSID case 15/31 between Gabriel
7 Resources Limited and Gabriel Resources (Jersey)
8 Limited versus Romania.

9 A few points before we start with the
10 examination of Mr. Ariton. First point again, thank
11 you very much to our Court Reporters for their
12 Transcripts.

13 Second point, you have received from the
14 Secretary the Report on the time; and, of course,
15 linked to that, we have looked a bit at the program
16 for this week. It could be a bit tight.

17 Can you make a comment on your side?

18 SECRETARY MARZAL YETANO: Yes, just you
19 probably have noticed, but so far in total the Parties
20 and the Tribunal have used a little bit over half of
21 the time assigned to the Hearing in total, so taking
22 into account that we used the Saturday, so an extra

1 day, either we do longer--if things continue the same,
2 either we do longer sessions or--yep. I mean, we're
3 just a little bit worried about how we're going to
4 manage.

5 PRESIDENT TERCIER: Okay. Indeed. Could be
6 a problem. It would be good if the counsel could look
7 whether you can agree on the program as it is, and
8 look at the time in order to make sure that we finish.
9 We have not so many on reserve. We have evenings,
10 nights, and Saturday morning, I don't know. Normally
11 not, but I think we should look at it in order to make
12 sure that everybody can be properly examined.

13 Comment on your side? Claimants, a comment
14 on your side?

15 MR. LEW: No.

16 PRESIDENT TERCIER: Okay. On your side?

17 DR. HEISKANEN: It might be useful if the
18 Tribunal Secretary circulates a revised timetable for
19 this week, based on the estimates for
20 cross-examination and direct examination made by the
21 Parties, and we see whether there is a need to sit a
22 bit longer on any day.

1 PRESIDENT TERCIER: You have it?

2 SECRETARY MARZAL YETANO: The estimates that
3 I got, though, were on the basis--I assumed that since
4 the Parties both have spent more time than they
5 initially envisioned in certain witnesses that you
6 might decide to shorten some of the others, so I can
7 send it as a draft and then you can tell me--

8 PRESIDENT TERCIER: Yeah.

9 DR. HEISKANEN: That would be useful.

10 PRESIDENT TERCIER: That's what I had in
11 mind.

12 Okay. The next point is sometime
13 today--probably we'll do it tomorrow--again, we should
14 also spend a bit time to see when we can organize the
15 next session. We have to be all here to see what is
16 possible.

17 Okay. Good. Do you have another point you
18 would like to raise on your side? No other point on
19 Claimants?

20 MS. COHEN SMUTNY: No.

21 PRESIDENT TERCIER: No other point on
22 Respondent's side. In that case we may proceed with

1 the examination of Mr. Ariton.

2 ION ARITON, RESPONDENT'S WITNESS, CALLED

3 PRESIDENT TERCIER: Good morning, Mr. Ariton.

4 Welcome in this Hearing. I'm glad to have you with

5 us. You had to be very patient. I would like to

6 thank you also for that.

7 Can you hear me?

8 THE WITNESS: It's okay. Yes.

9 PRESIDENT TERCIER: Good. Before I start, I

10 just would like to clarify the question of the

11 language. In your Witness Statement, you stated if

12 called upon to respond to questions based on your

13 written statement orally, I will do so in Romanian.

14 You would like to prefer to answer in

15 Romanian?

16 You say yes? You push on the button the

17 mike, yeah? That's fine.

18 THE WITNESS: Yes, I prefer Romanian.

19 PRESIDENT TERCIER: Do you understand English

20 a bit?

21 THE WITNESS: More or less.

22 PRESIDENT TERCIER: Okay. Mr. Ariton, you

1 will be heard in this Hearing as a witness. I would
2 like first to introduce you to the members of the
3 Tribunal: On my left-hand side, Professor Horatio
4 Grigera Naón; on my right-hand side, Professor Zachary
5 Douglas; and we have then the Secretary to the
6 Tribunal and the Assistant to the Tribunal.

7 You will be heard as a witness. I would like
8 to invite you to read the Declaration that you have on
9 your desk. It is in English. You want it to be
10 translated?

11 THE WITNESS: Yes.

12 PRESIDENT TERCIER: Okay. Who could
13 translate it--who could translate it for him?

14 DR. LEAUA: I solemnly declare on my honor
15 and consciousness that I will tell the truth, all the
16 truth, and nothing but the truth.

17 THE WITNESS: Yes. I do.

18 PRESIDENT TERCIER: Thank you very much.

19 You prepared for this proceeding a witness
20 statement dated the 13th of May 2019. Have you this
21 document before you?

22 THE WITNESS: Yes, I do.

1 PRESIDENT TERCIER: You know that, according
2 to the procedure, this is your testimony. I would
3 like to ask you whether you can confirm the content of
4 this statement or whether you wish to make amendments.

5 THE WITNESS: I confirm, and there is no
6 amendment to be made.

7 PRESIDENT TERCIER: Okay. Thank you.

8 You know the procedure. I will just ask you
9 one or two questions; then it will be for the counsel
10 for Respondent to make a direct. Then you will be
11 cross-examined by counsel for Claimants, and then
12 there will be a redirect by counsel for Respondent.
13 And I recall that the Arbitral Tribunal has the right
14 to ask questions whenever it feels it's necessary.

15 It's clear for you?

16 THE WITNESS: Yes.

17 PRESIDENT TERCIER: Okay. Another point just
18 for the organization. It's in order to have a very
19 clear Transcript, it is important to avoid any
20 overlapping with the speaker that speaks before you.
21 That's Point Number 1.

22 And Point Number 2, because we have

1 interpretation/translation, you should wait just a few
2 seconds before answering so that the Interpreters can
3 finish their sentence.

4 It's clear?

5 THE WITNESS: Yes.

6 PRESIDENT TERCIER: You have to say "yes" in
7 order to have it in the Transcript.

8 THE WITNESS: Yes.

9 PRESIDENT TERCIER: Fine.

10 My first question to you is, we have it in
11 your statement, but nevertheless it would be good just
12 to set the scene. Can you, in a few words, tell us
13 what has been your involvement in the case that we
14 have before us, just in general--the chronology and
15 the role of that you have.

16 THE WITNESS: In 2010--from 2010 until
17 February 2012, I was the Minister of Economy. I was
18 directly involved in the negotiations of this project.
19 Back then, Romania was going through a severe economic
20 crisis after 2008 and 2009, when we had major economic
21 problems.

22 So, from the point of view of the Ministry

1 and the Government, the Romanian State was highly
2 interested in finding solutions and advancing projects
3 that would deliver benefits to the Romanian State.

4 PRESIDENT TERCIER: Okay. And then had you
5 still other opportunity to be involved in the relation
6 with Gabriel and with the Project?

7 THE WITNESS: Besides this project, in the
8 Ministry of the Economy and the Government, we had 10
9 projects that were being re-discussed and renegotiated
10 in order to find economic opportunities for the
11 Romanian Government. Among the most important that I
12 recall, Bechtel Highway that was renegotiated; with
13 privatization of CupruMin.

14 We also wanted to privatize Arpechim. There
15 were several projects that we intended to renegotiate
16 and find economic and financial solutions for the
17 crisis that we went through.

18 PRESIDENT TERCIER: Okay. In your Witness
19 Statement at Paragraph 8, you wrote: "I then acted as
20 personal advisor to the Minister of Business,
21 Environment, Commerce and Entrepreneurship regarding
22 legislation matters before the Parliament in the

1 period '17-'18." And you had also opportunity to deal
2 with questions concerning the Project?

3 THE WITNESS: No.

4 PRESIDENT TERCIER: Good.

5 My second set of questions concerns your
6 Witness Statement and the process that has been
7 followed for the preparation of this document. Can
8 you in a few words tell us how you prepared it and
9 what were the steps before submission of this
10 document.

11 THE WITNESS: I prepared the statement with
12 the counsels in this case. I met the counsels several
13 times in order to review the process chronologically,
14 based on the events. Together, we wrote the statement
15 that I said from the very beginning that I fully
16 sustain and that I can answer about knowingly.

17 PRESIDENT TERCIER: Okay. It has been
18 written in English. You have opportunity to check the
19 English version?

20 THE WITNESS: It is also in English, but
21 together with the colleagues, I checked to see whether
22 it was correctly translated from Romanian. The

1 colleagues from the law firm checked whether there
2 were any inconsistencies in the translation, and none
3 were identified.

4 PRESIDENT TERCIER: Good. Thank you very
5 much.

6 My co-Arbitrators have no questions.

7 In that case, who will start?

8 MS. RADJAI: Thank you, Mr. President.

9 There was one question that the President
10 asked the Witness whether he understands English, and
11 the Transcript recorded more or less. I understand
12 from our Romanian colleagues that what Mr. Ariton said
13 was, "a little bit." I don't know if the President
14 would like to ask the question again.

15 PRESIDENT TERCIER: You understood that there
16 was a discussion about your knowledge of English. You
17 know English more or less or you know English a
18 little?

19 THE WITNESS: A little.

20 PRESIDENT TERCIER: Okay. Good. So, we have
21 the answer.

22 MR. GREENWALD: I think we also noted a

1 translation issue that we could come back to later.

2 It's not a material one.

3 PRESIDENT TERCIER: Which sort of translation
4 issue? You mean with the--

5 MR. GREENWALD: A note was passed saying that
6 there was a translation that CupruMin was privatized,
7 and I understood that the Minister said that they
8 initiated the privatization of the CupruMin, not that
9 it was privatized.

10 PRESIDENT TERCIER: Can you confirm?

11 THE WITNESS: I said there were several
12 projects under discussion, including CupruMin that was
13 ready to be privatized. I didn't say it was
14 privatized.

15 PRESIDENT TERCIER: Okay. So, fine.

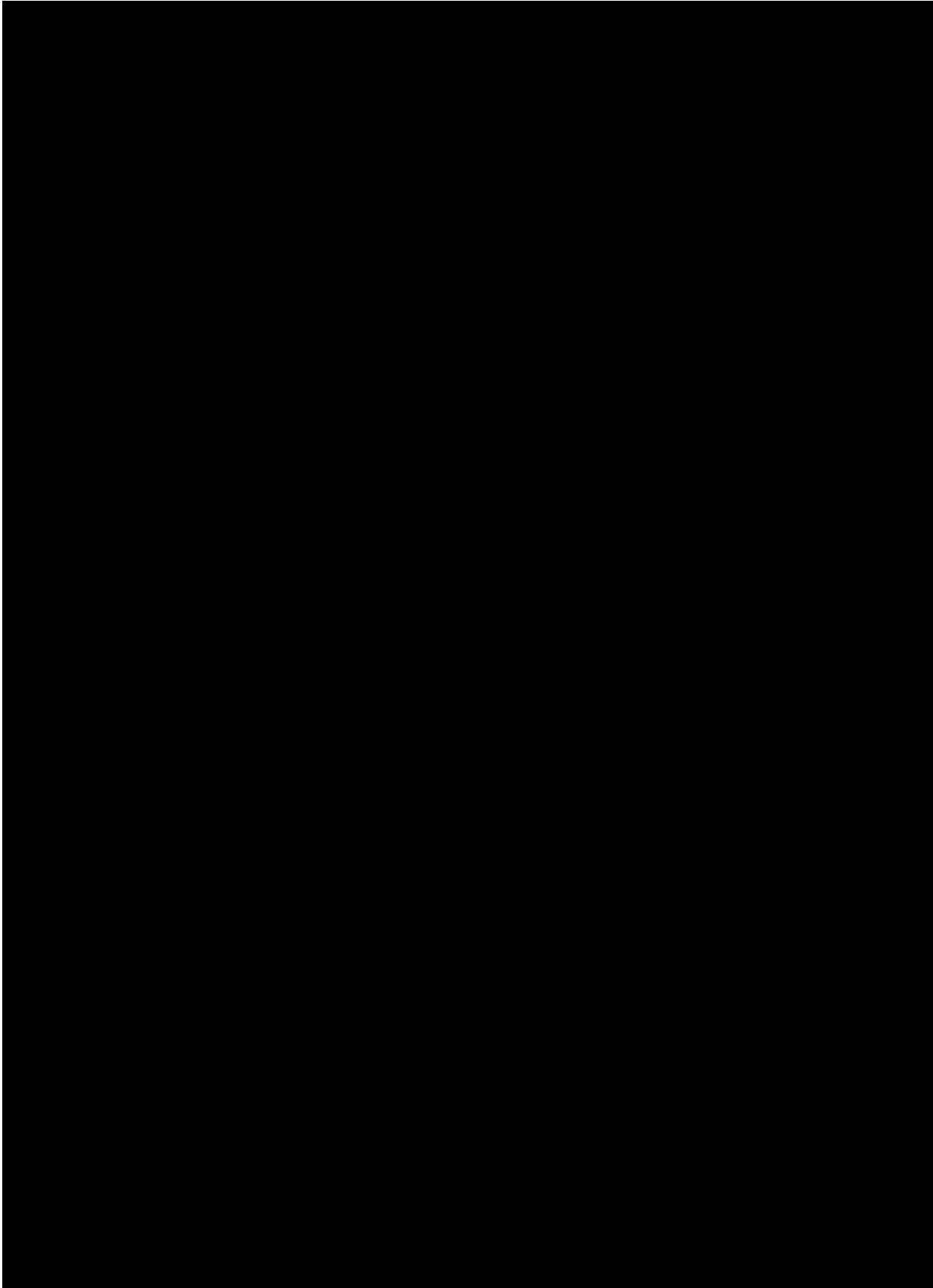
16 (Overlapping interpretation with speaker.)

17 MS. RADJAI: For the direct examination, we
18 will be using the same binders. We've recirculated
19 the indexes to the Members of the Tribunal and
20 Claimants' counsel.

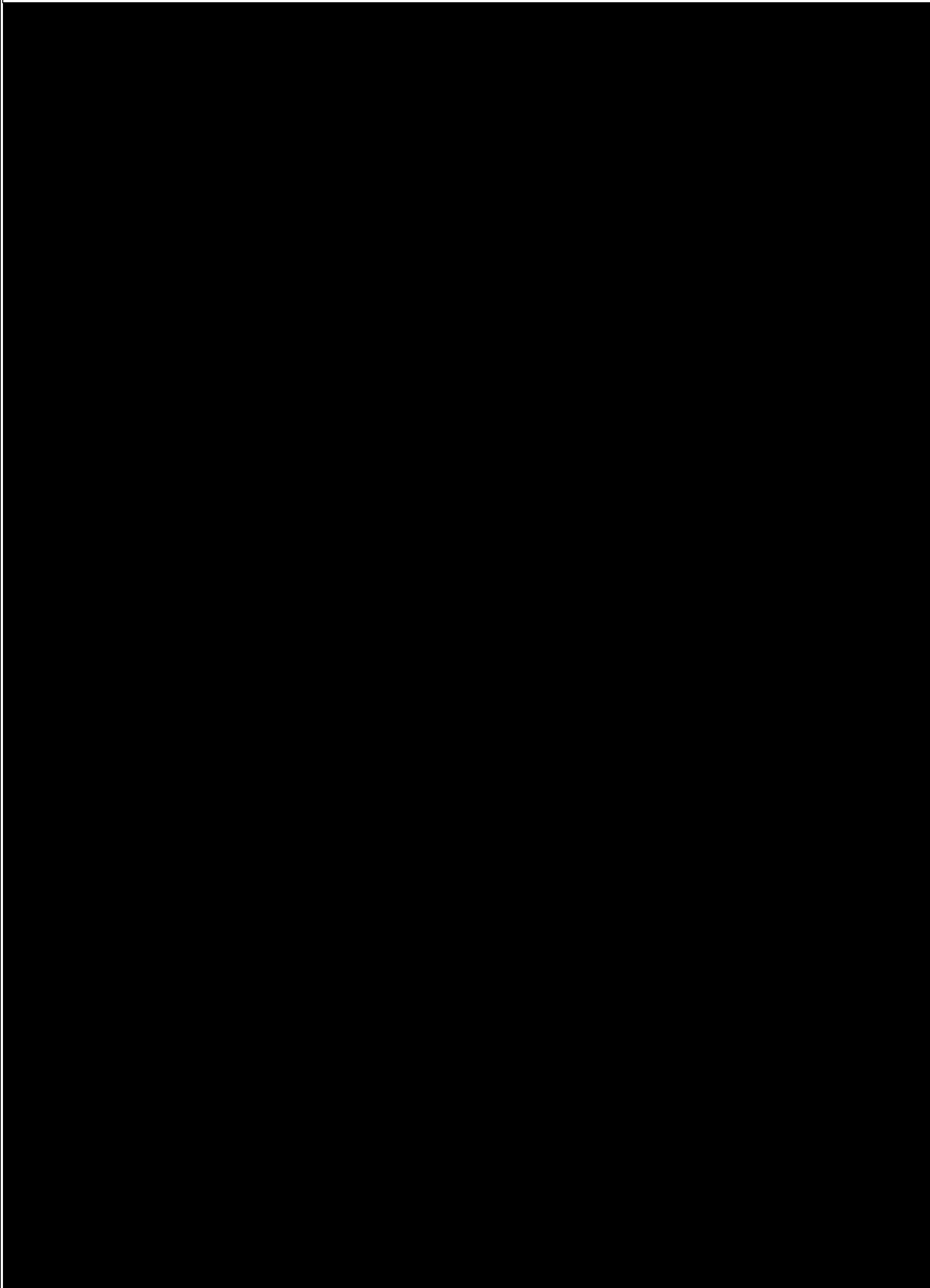
21 DIRECT EXAMINATION

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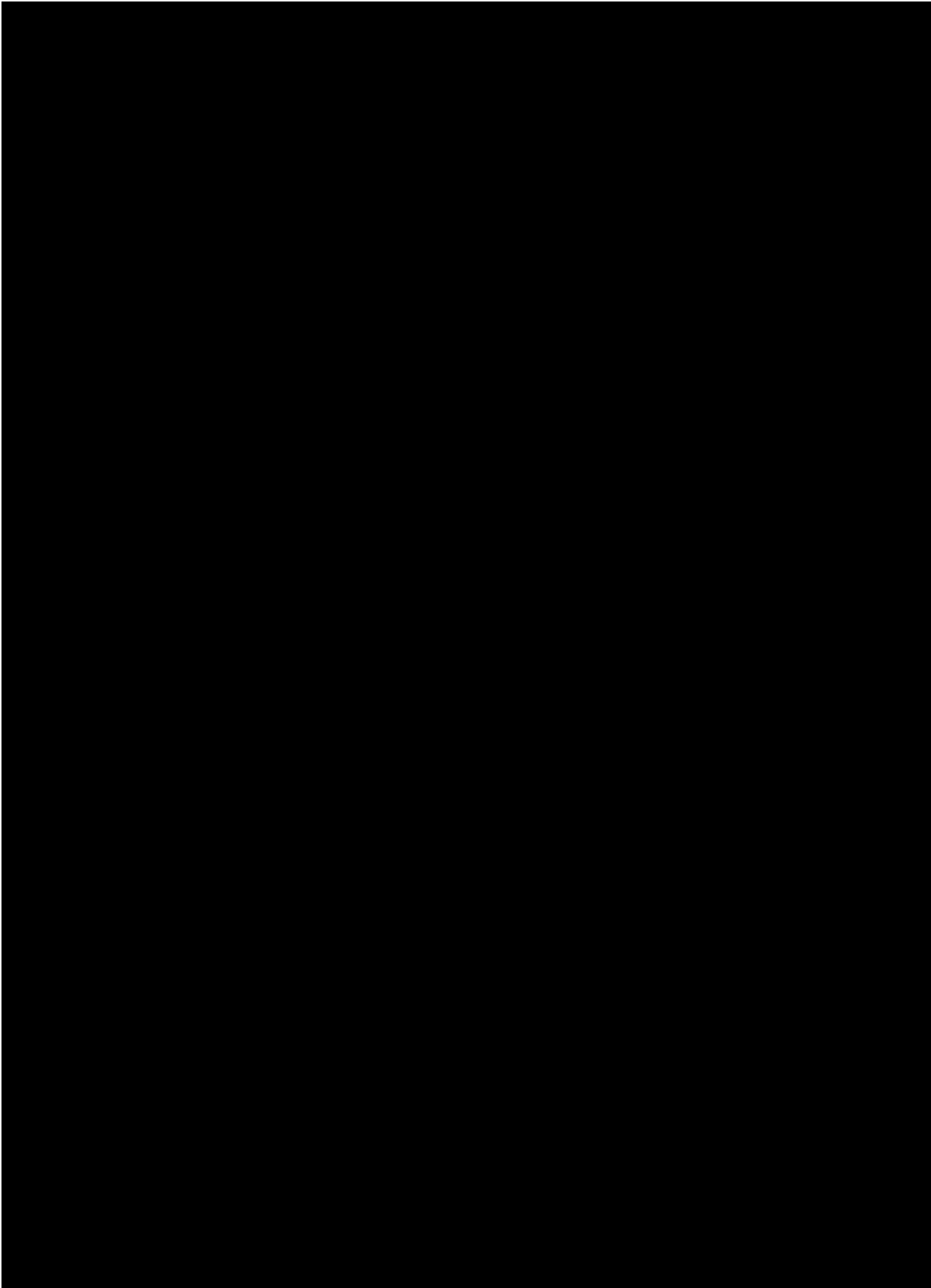
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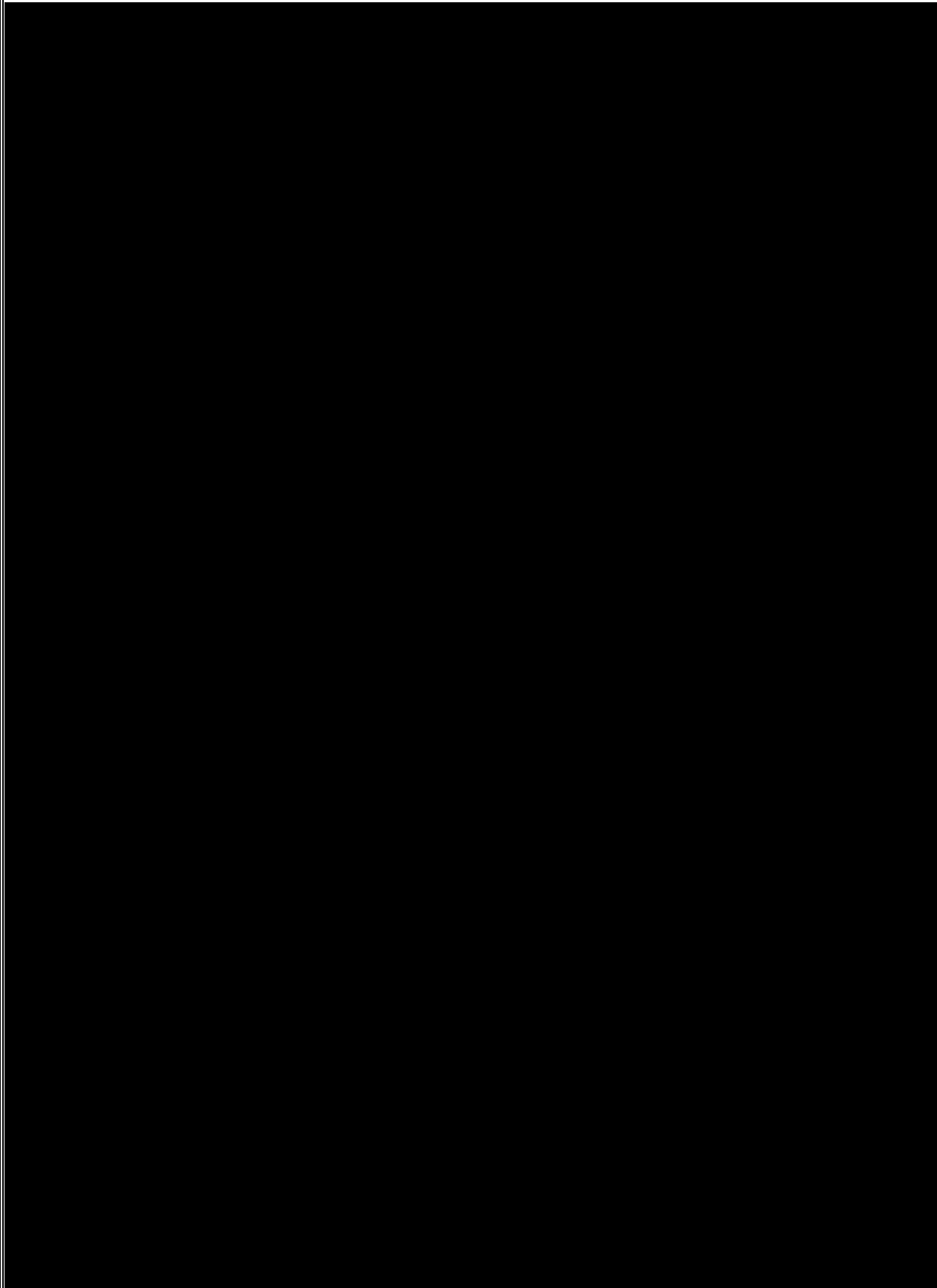
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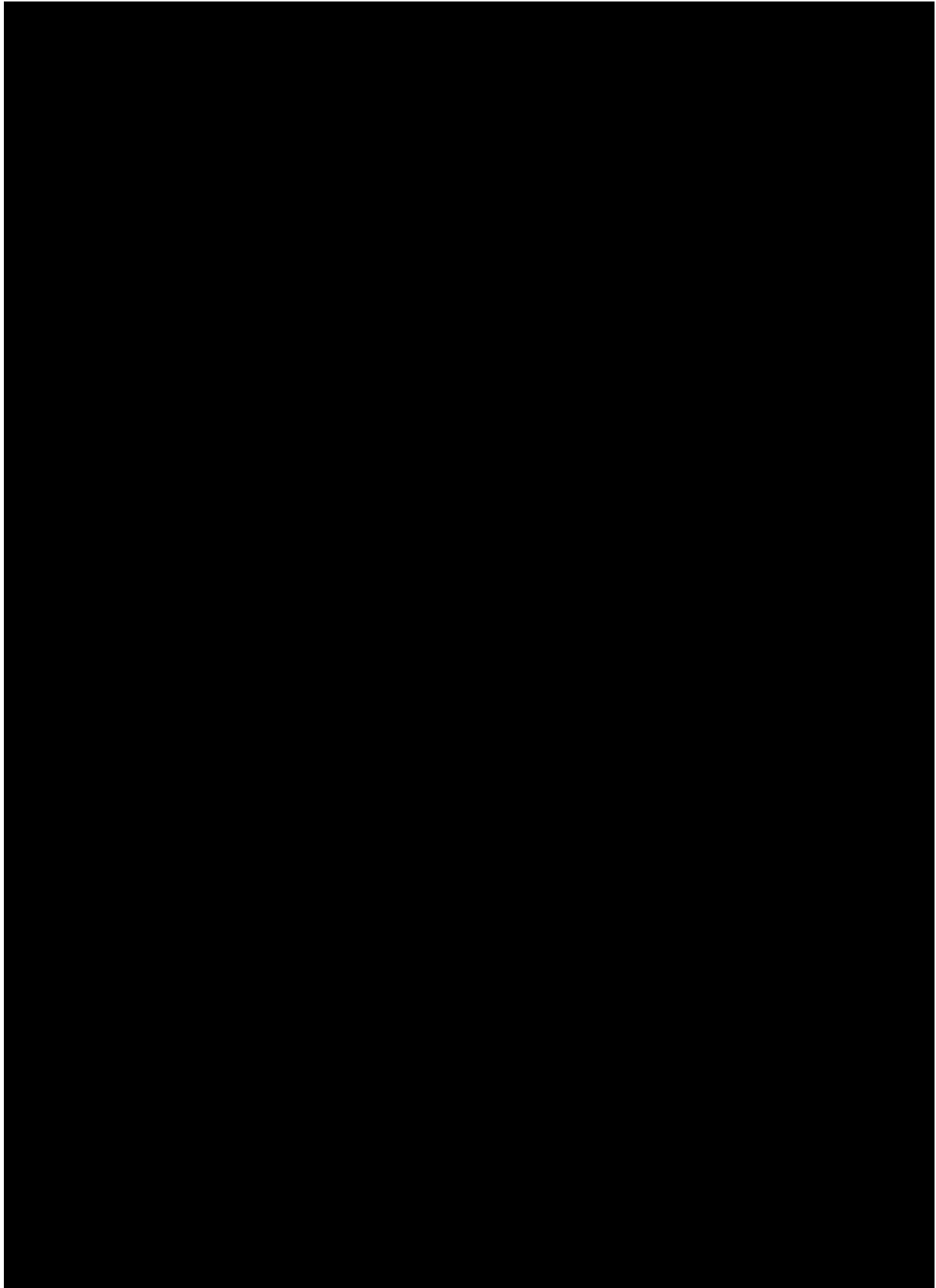
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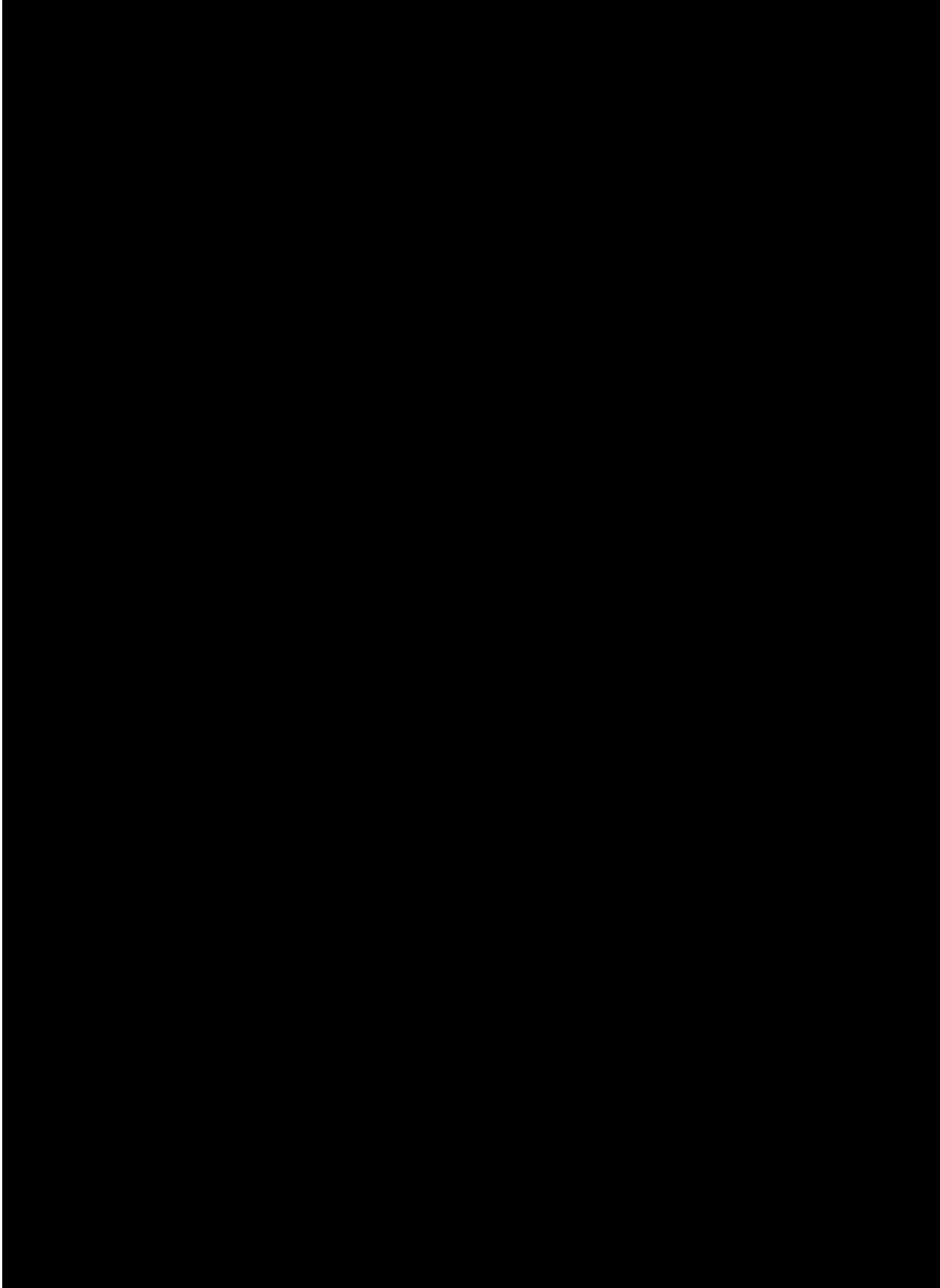
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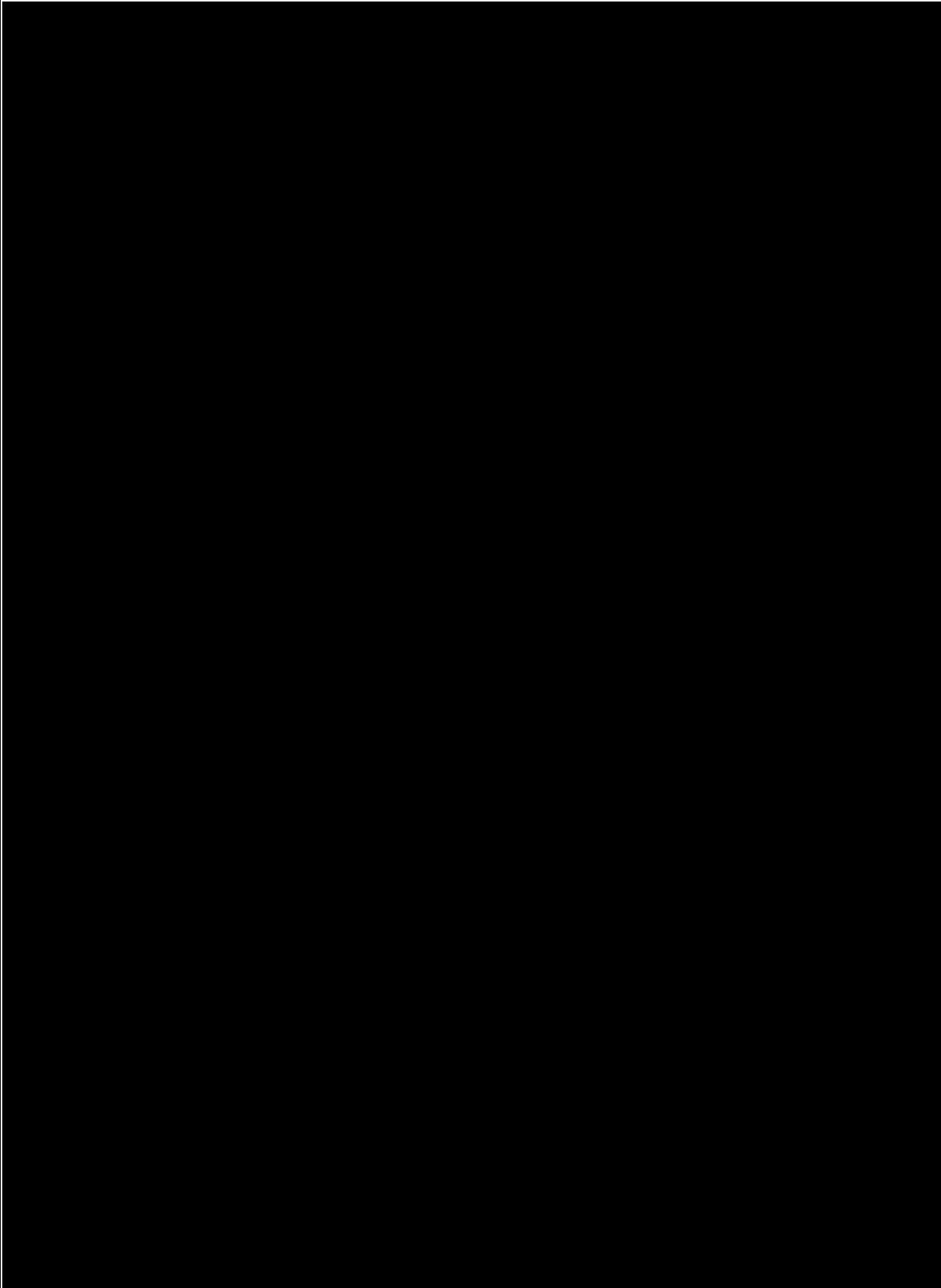
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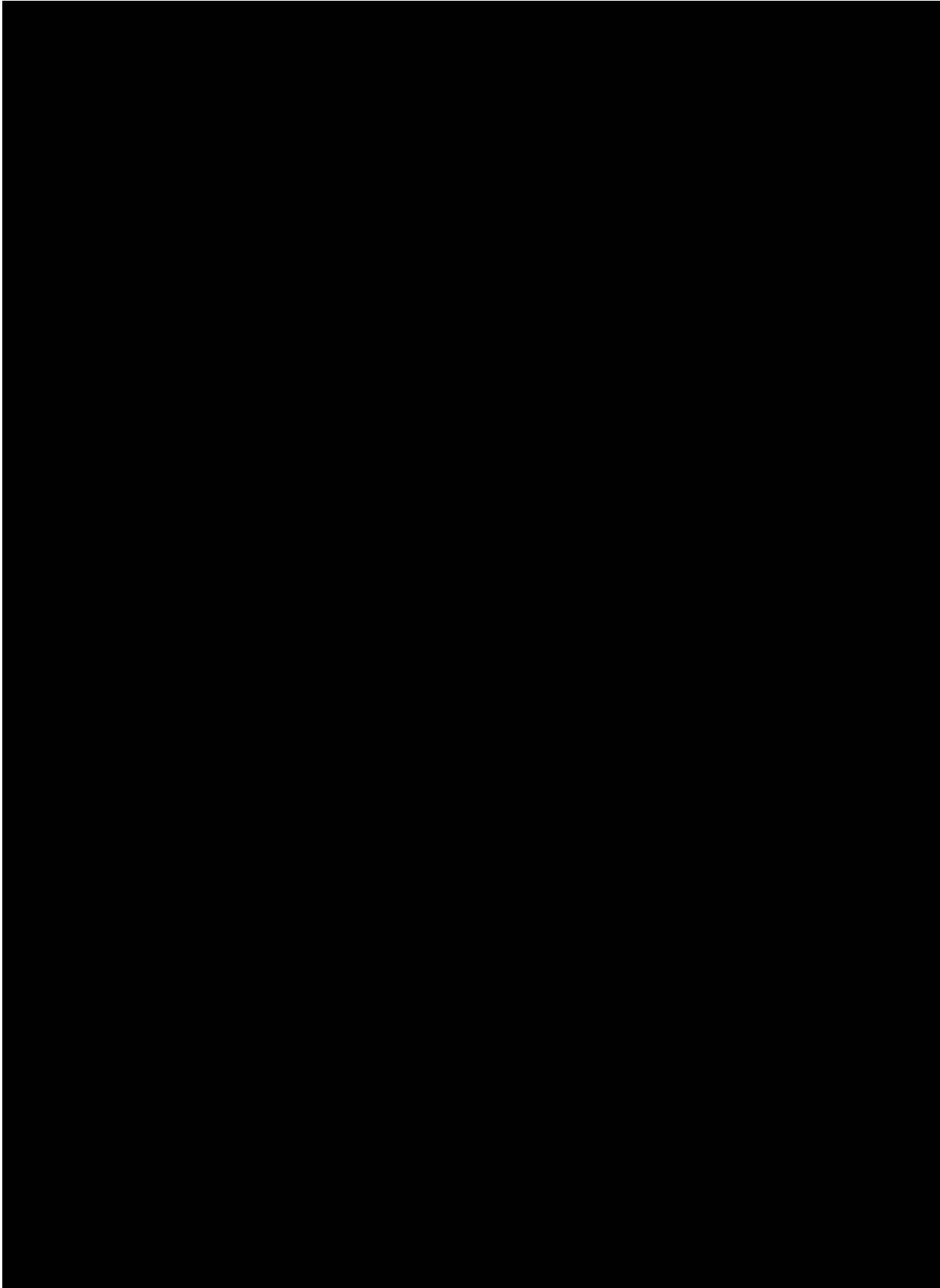
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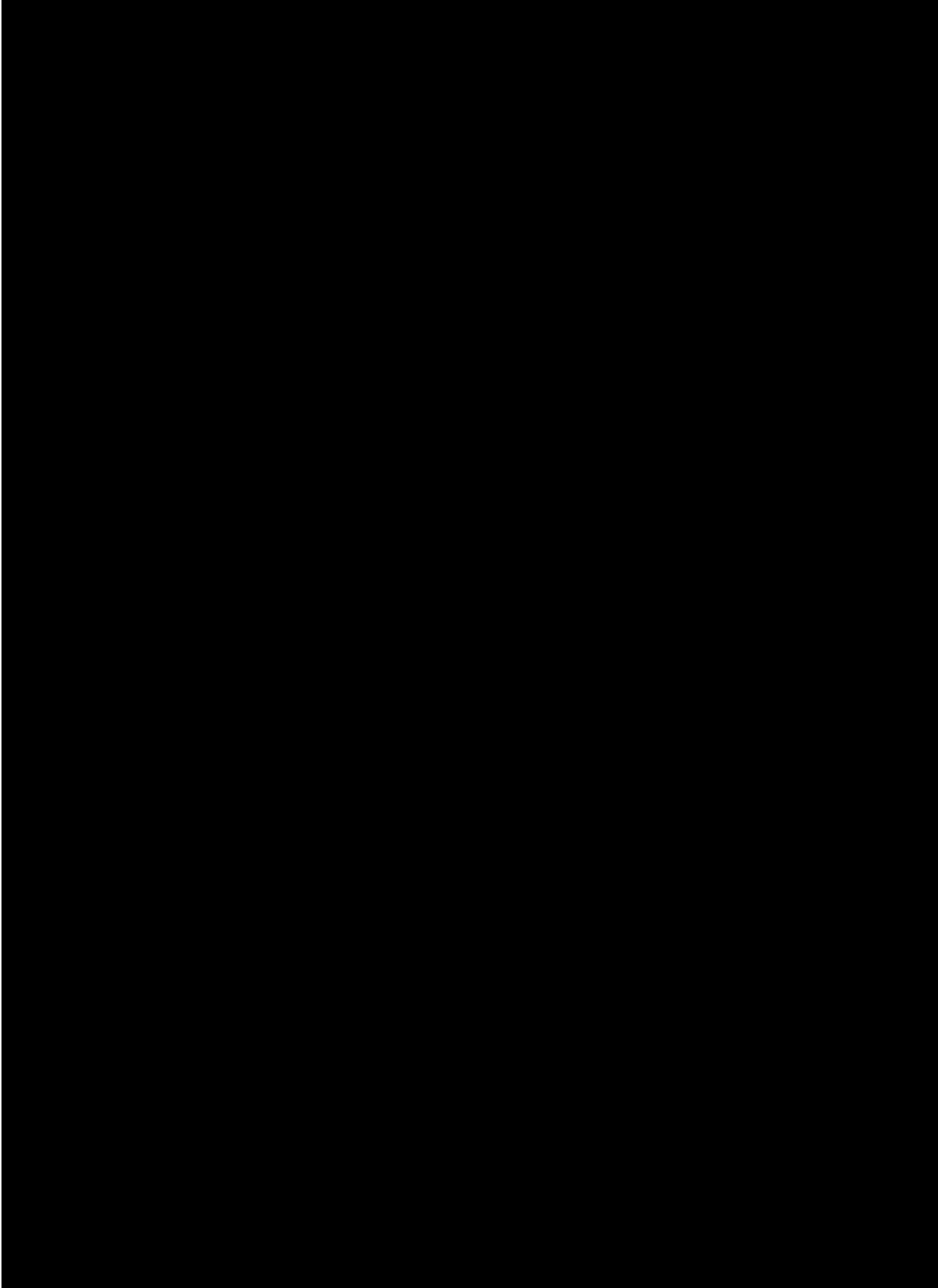
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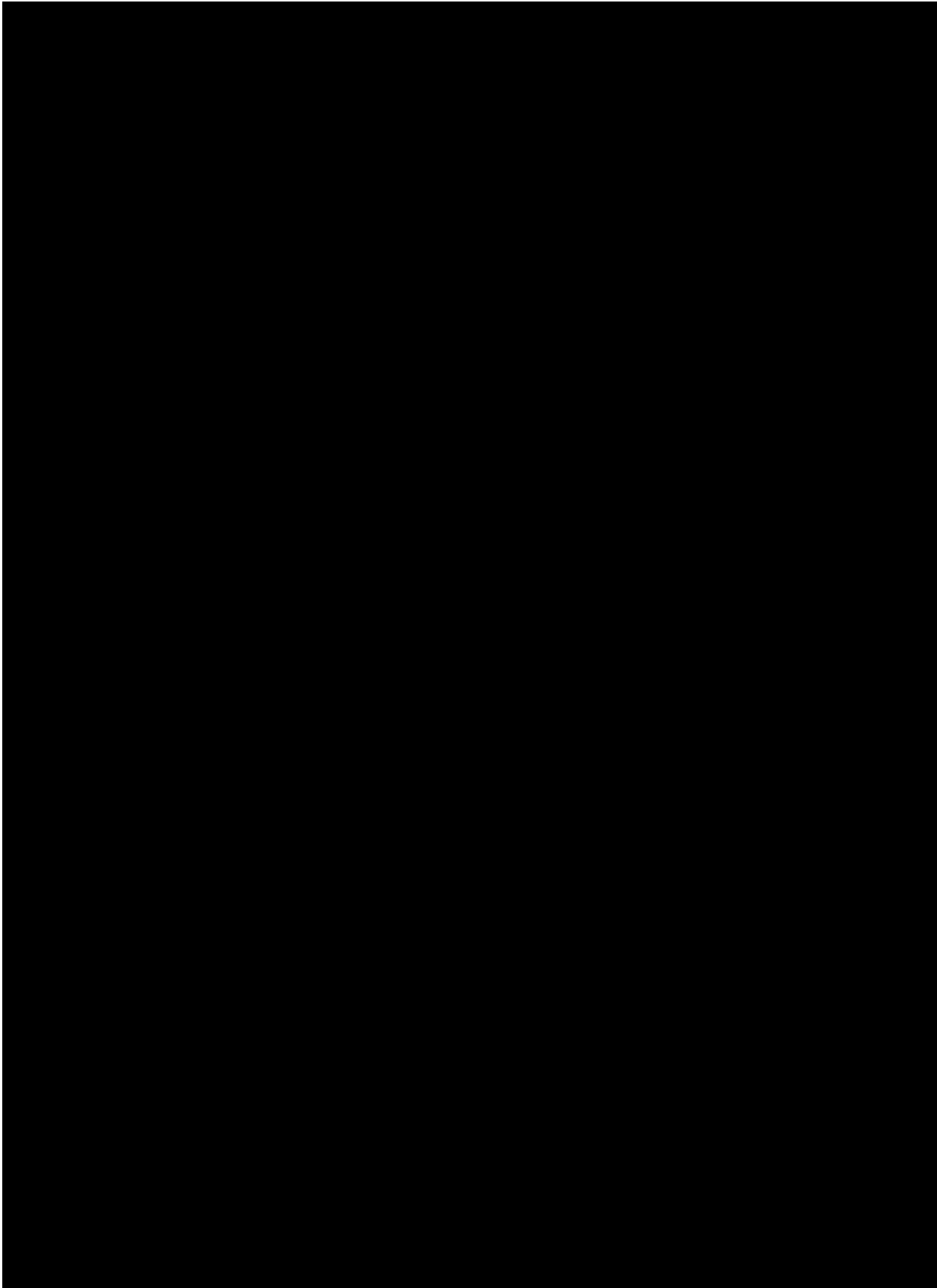
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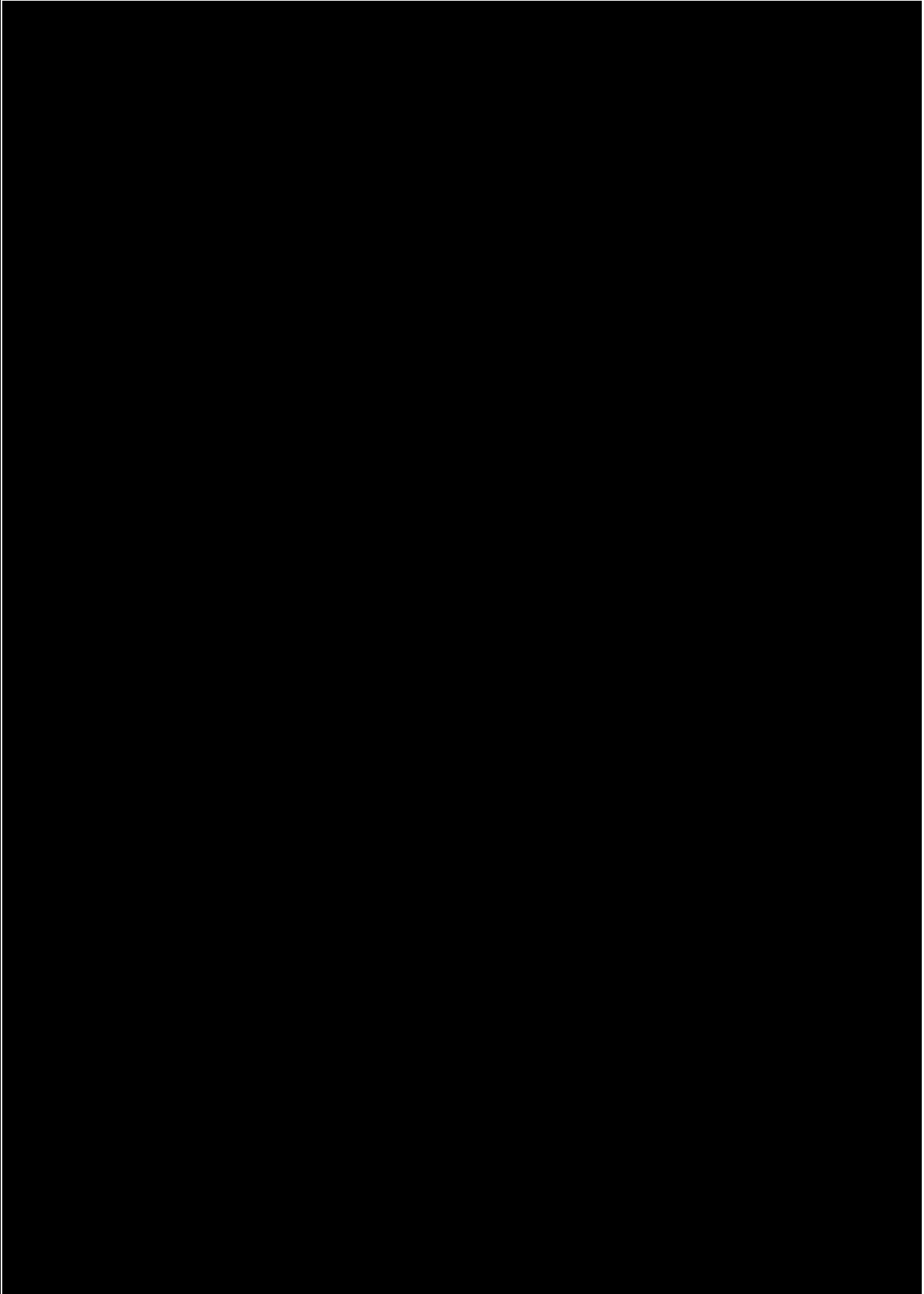
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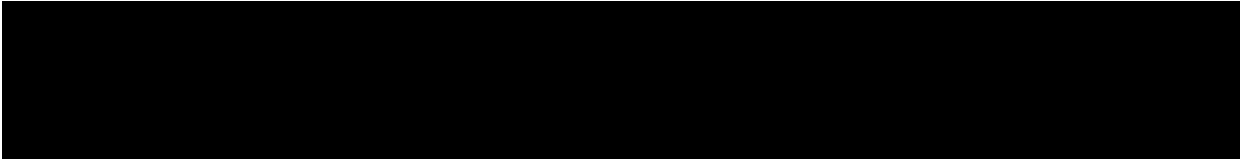
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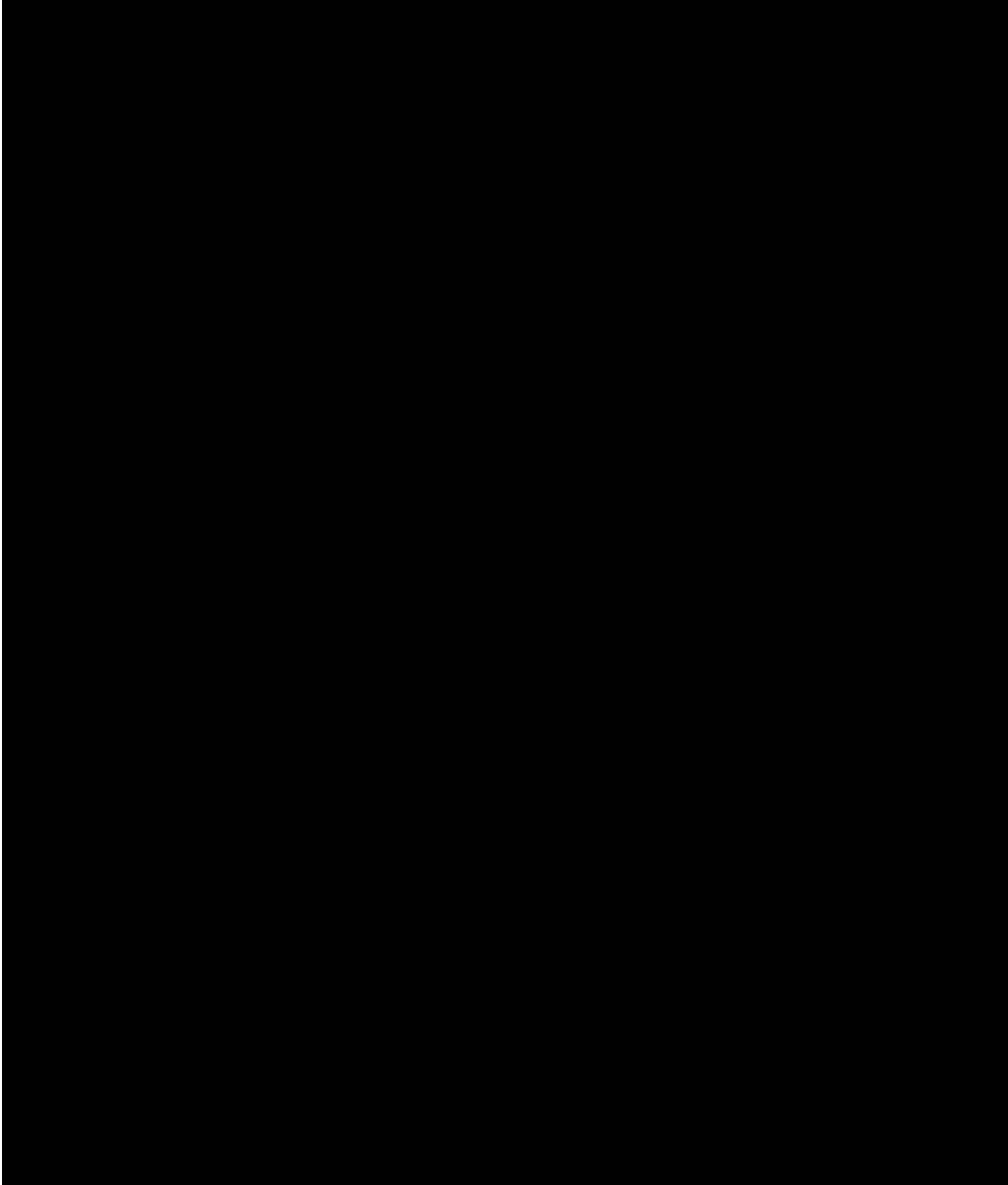
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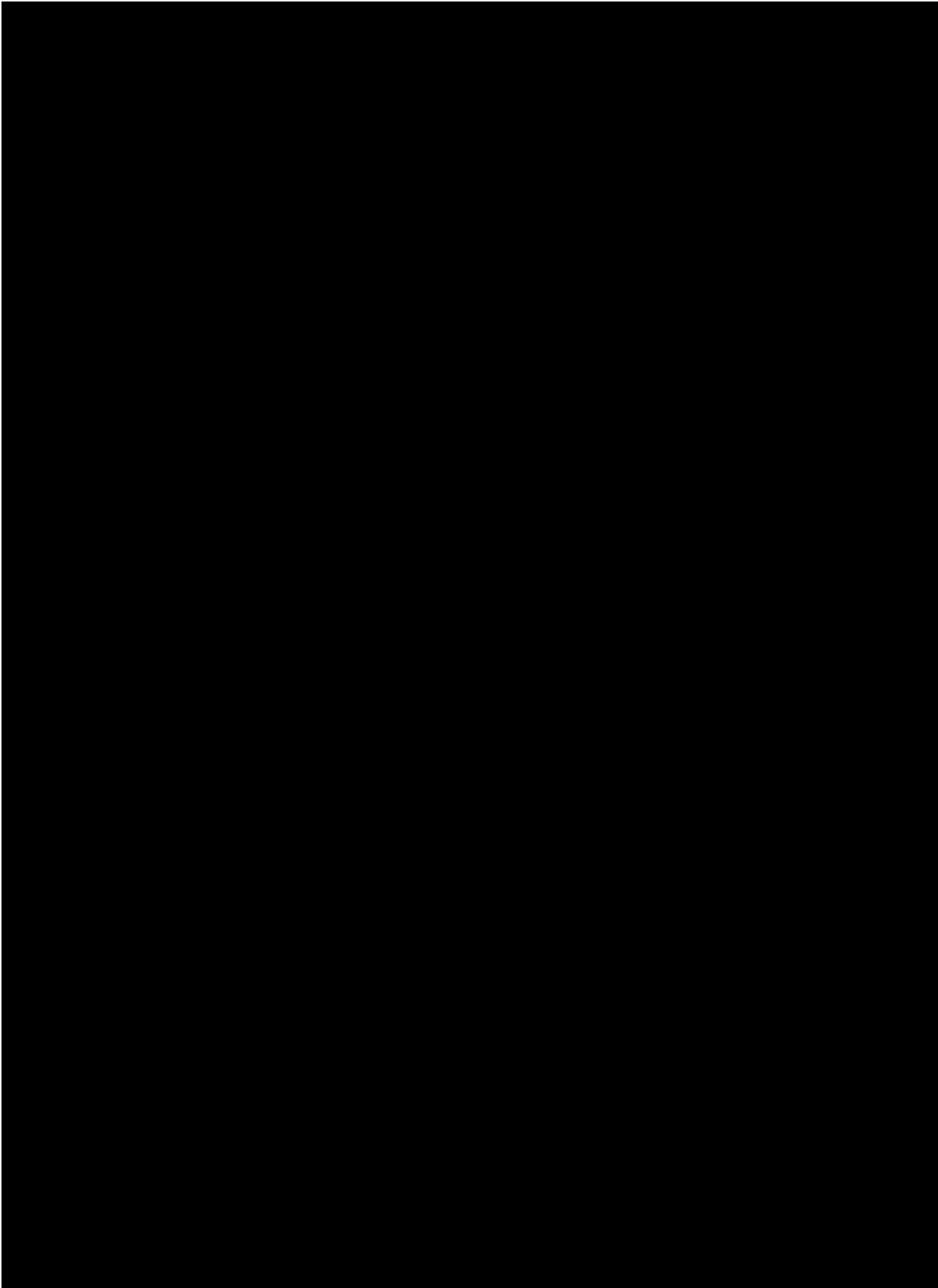
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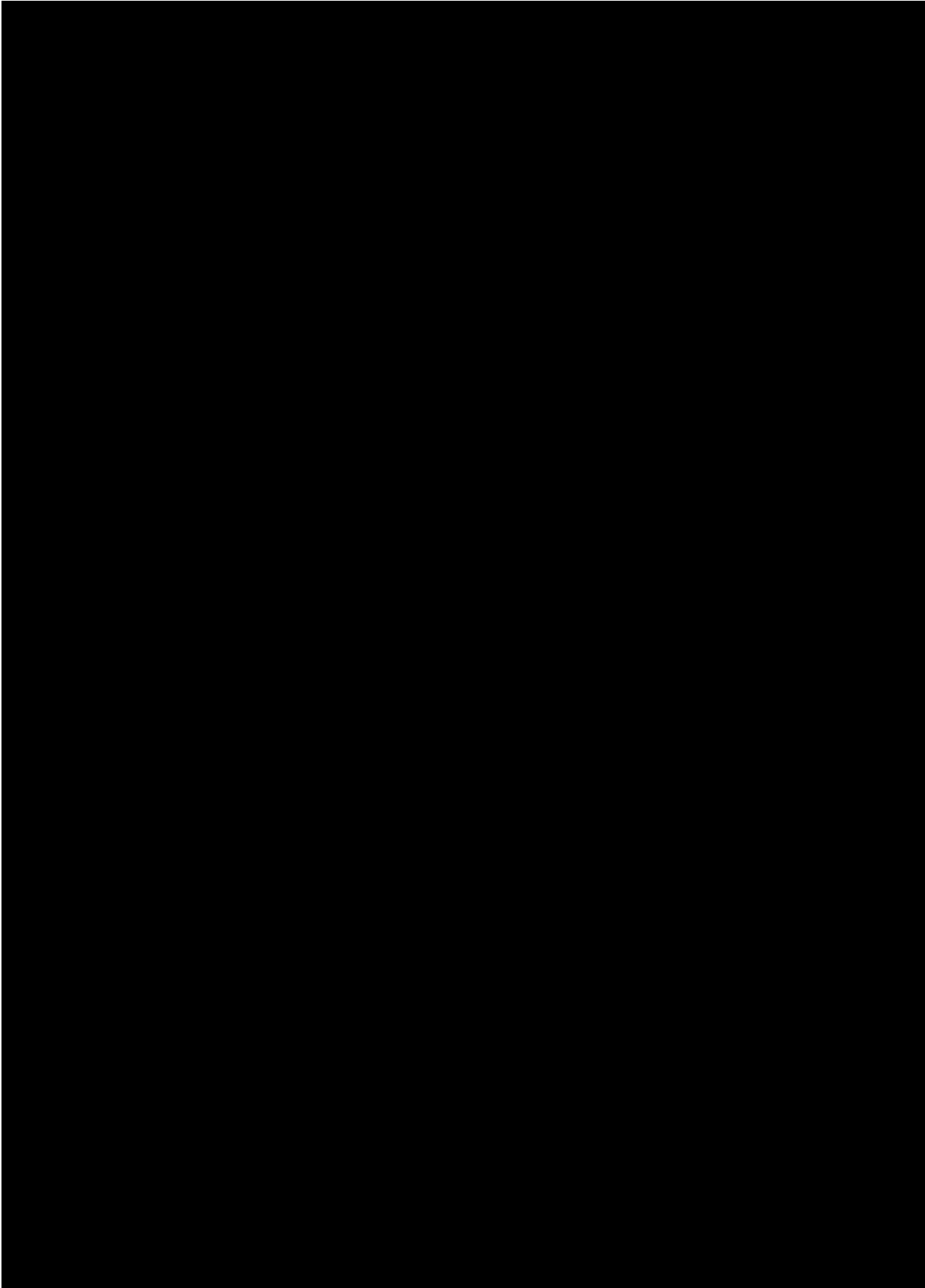
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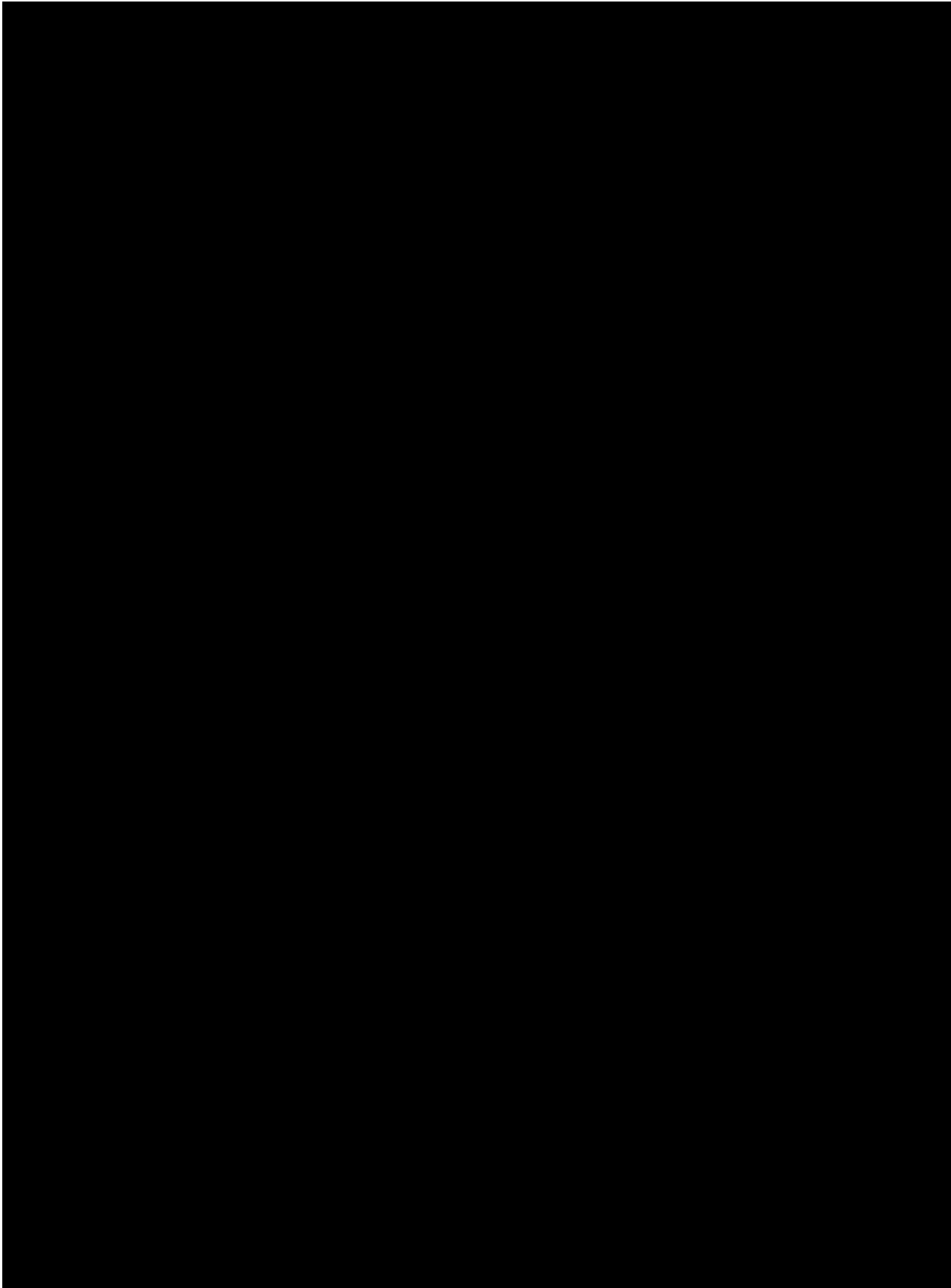
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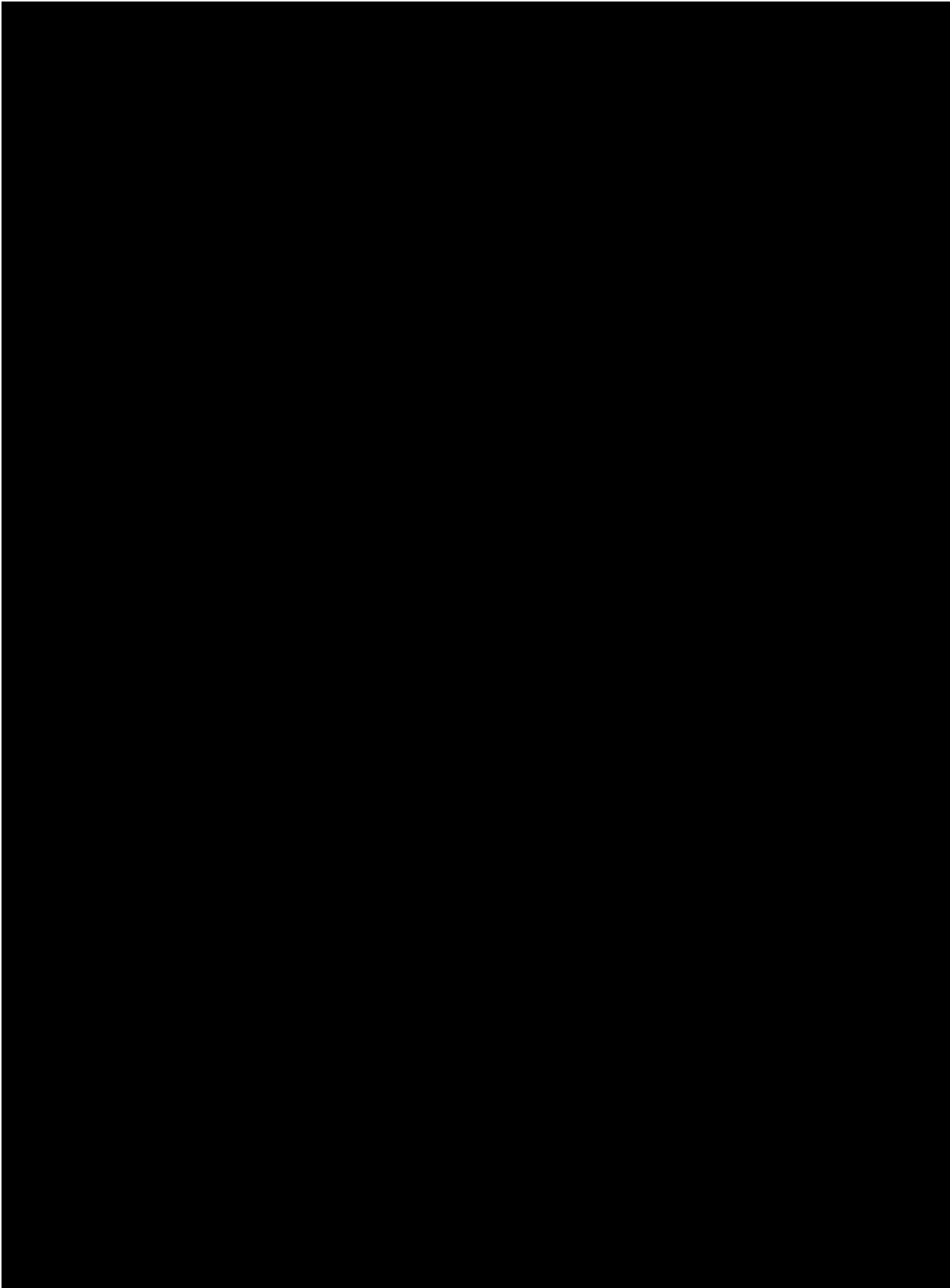
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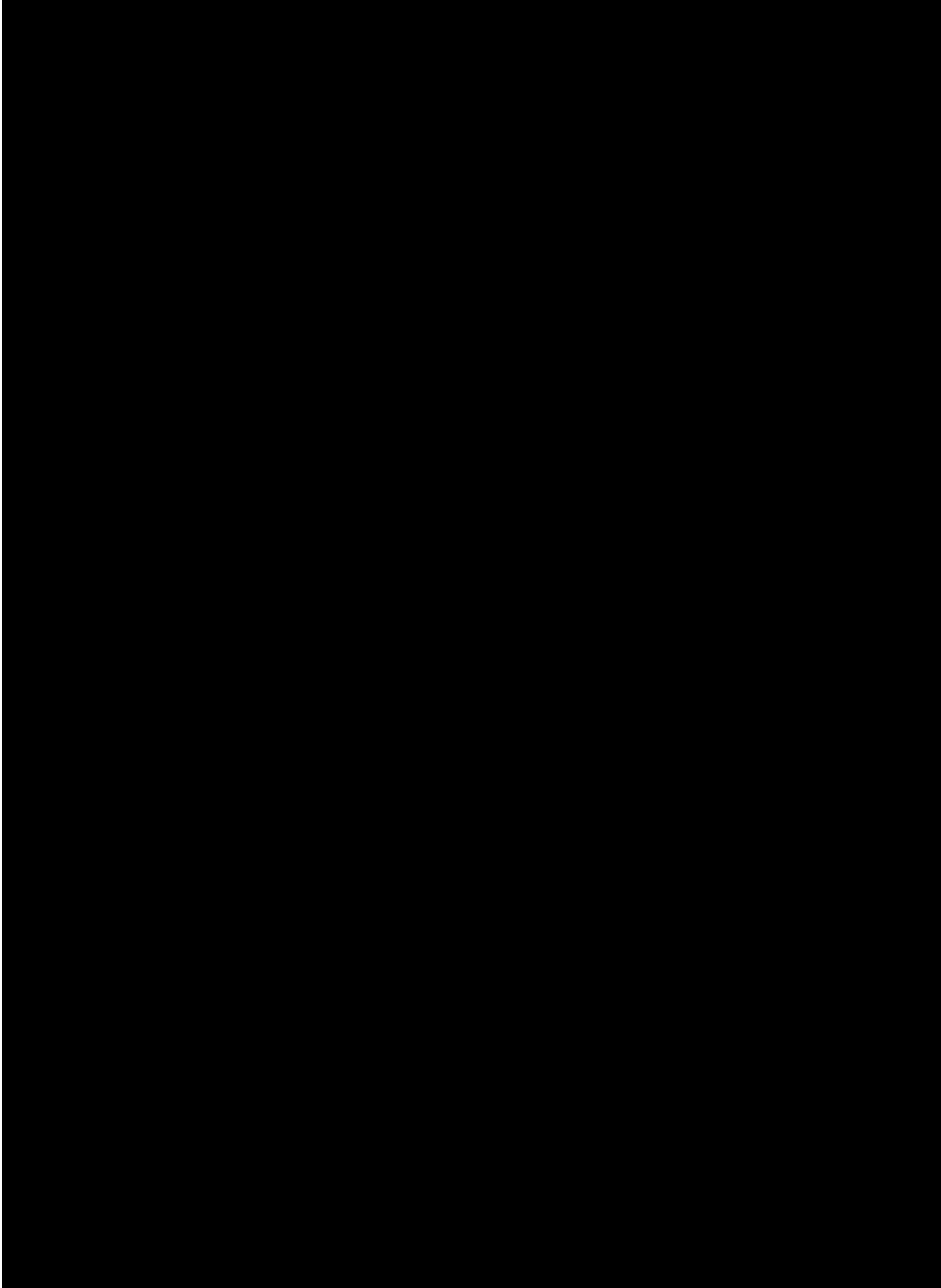
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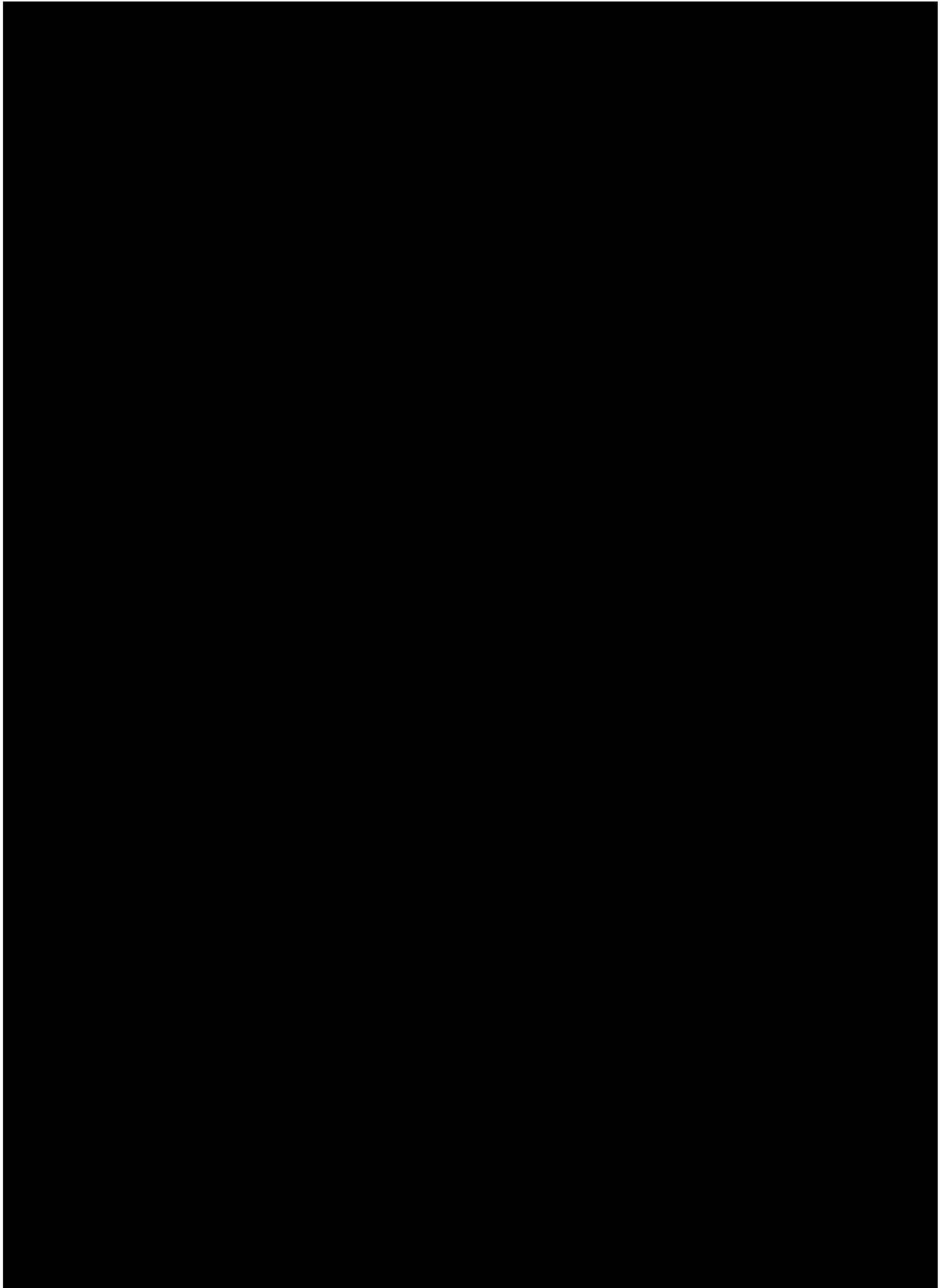
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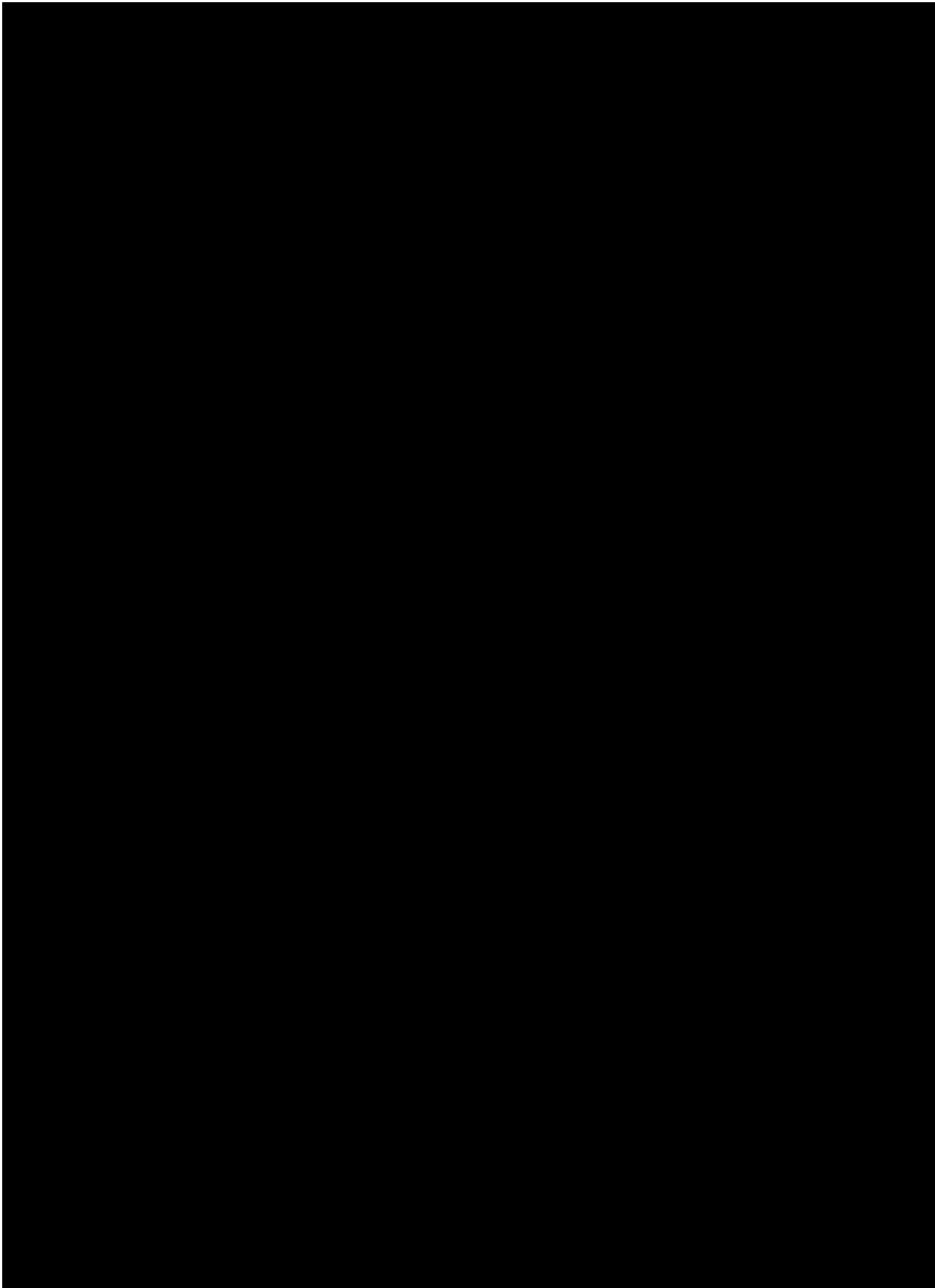
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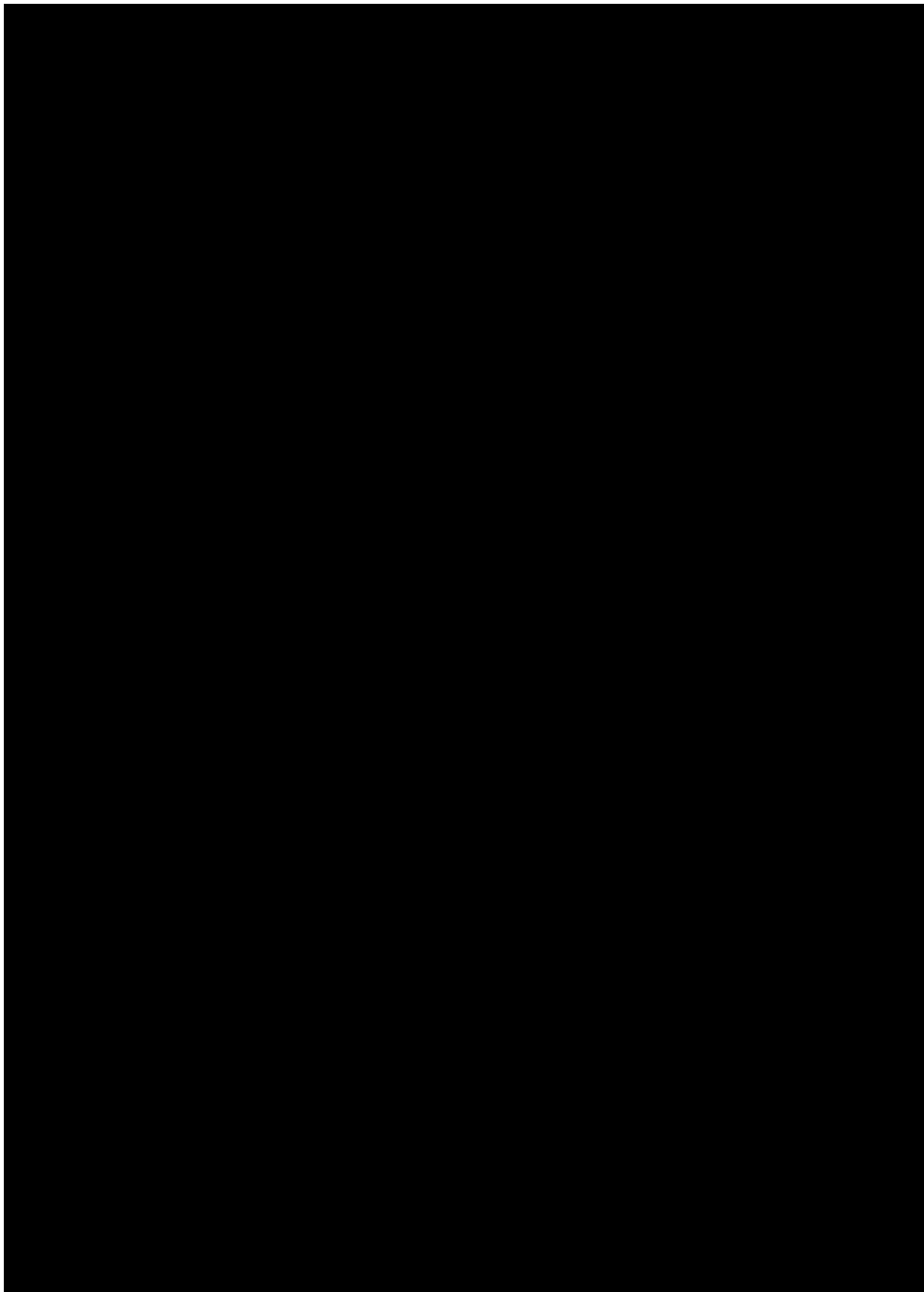
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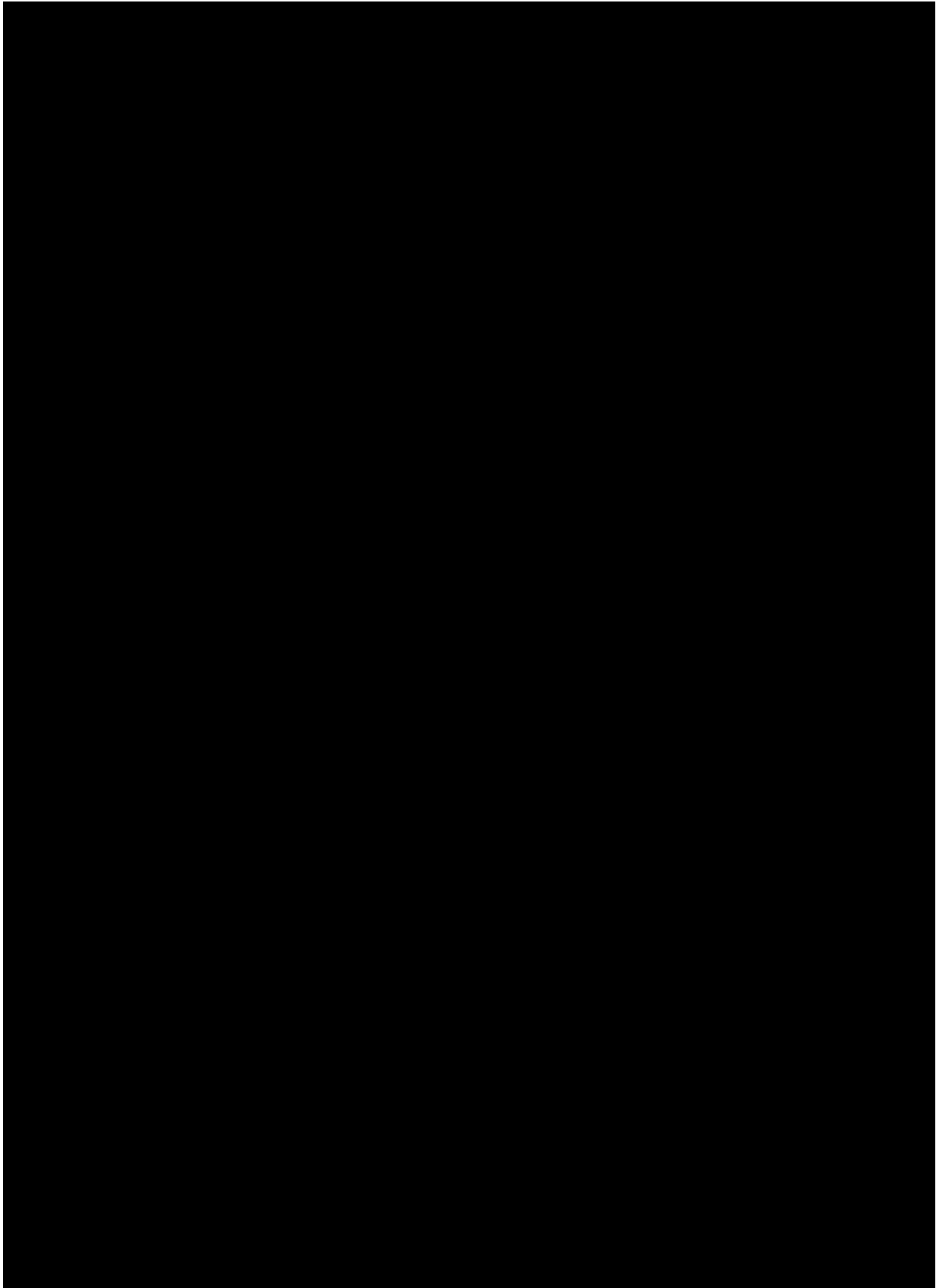
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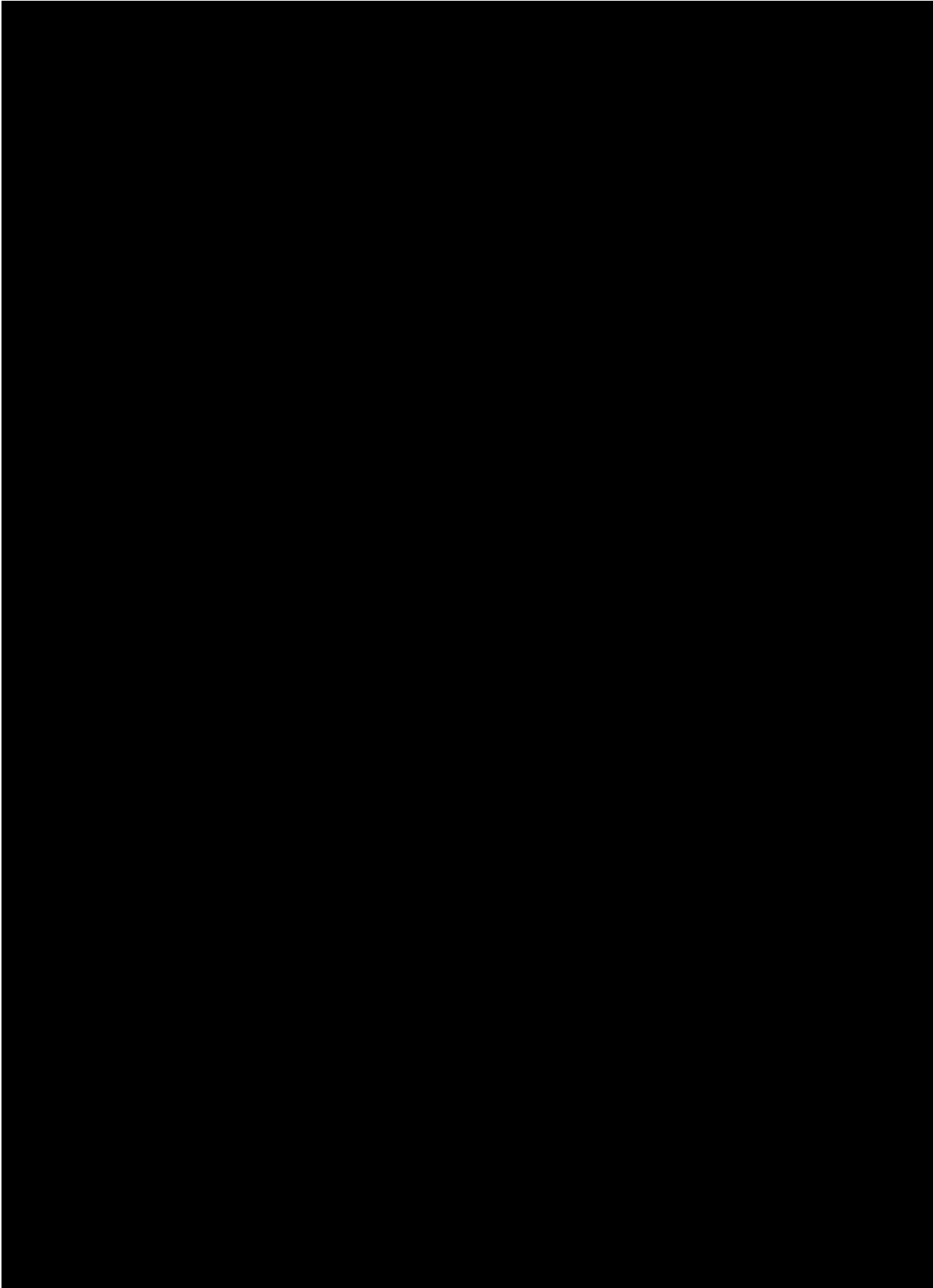
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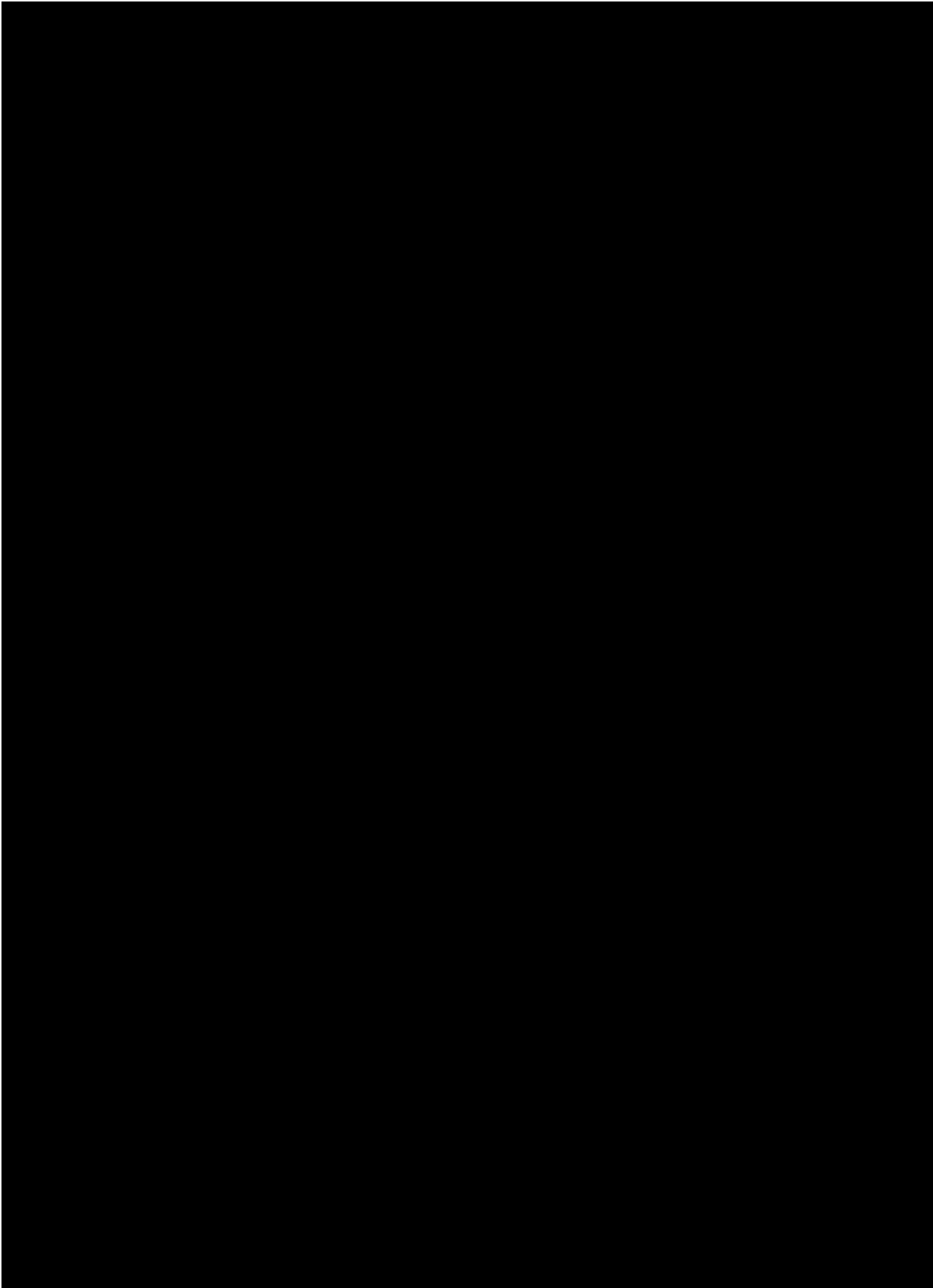
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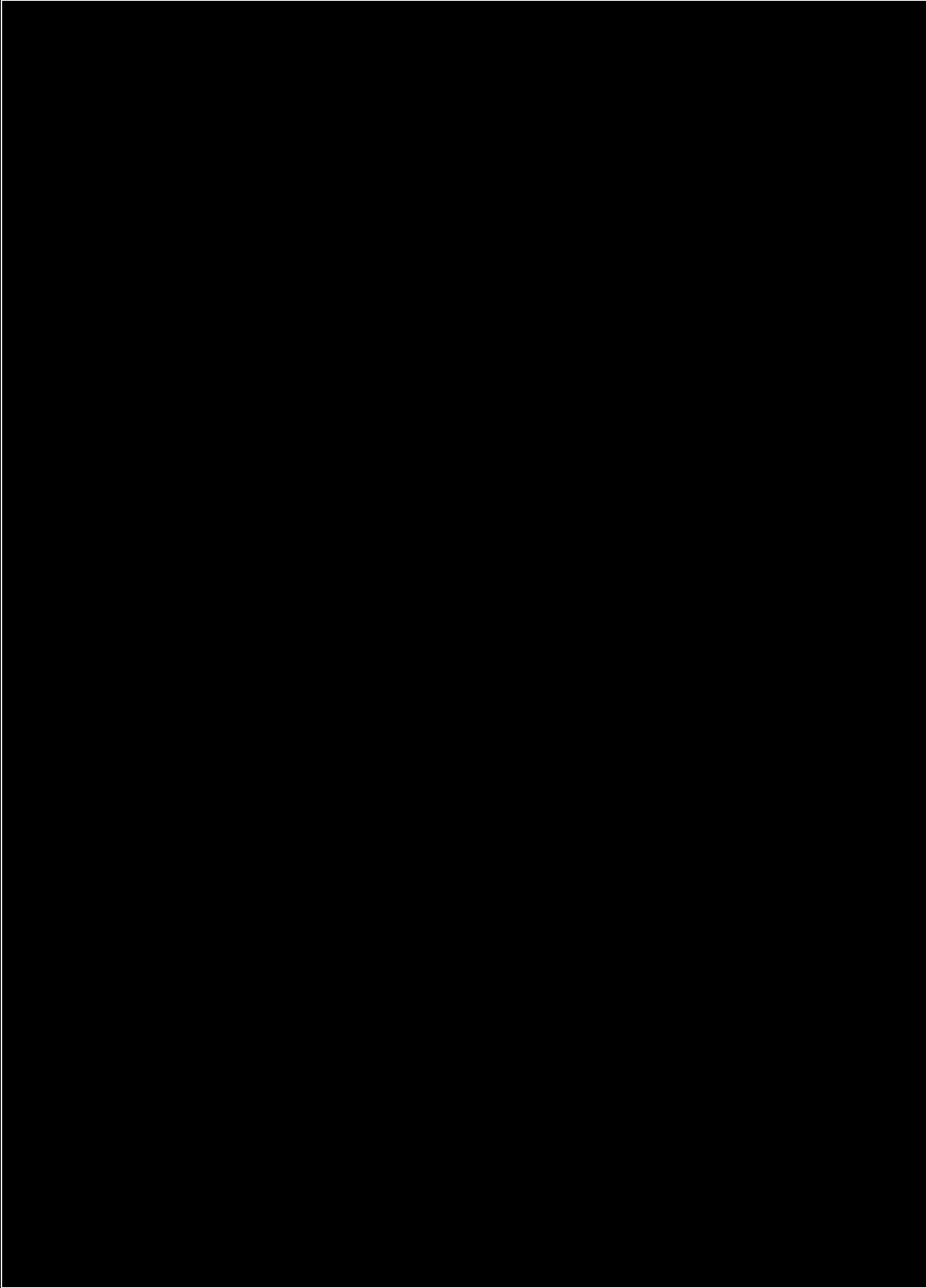
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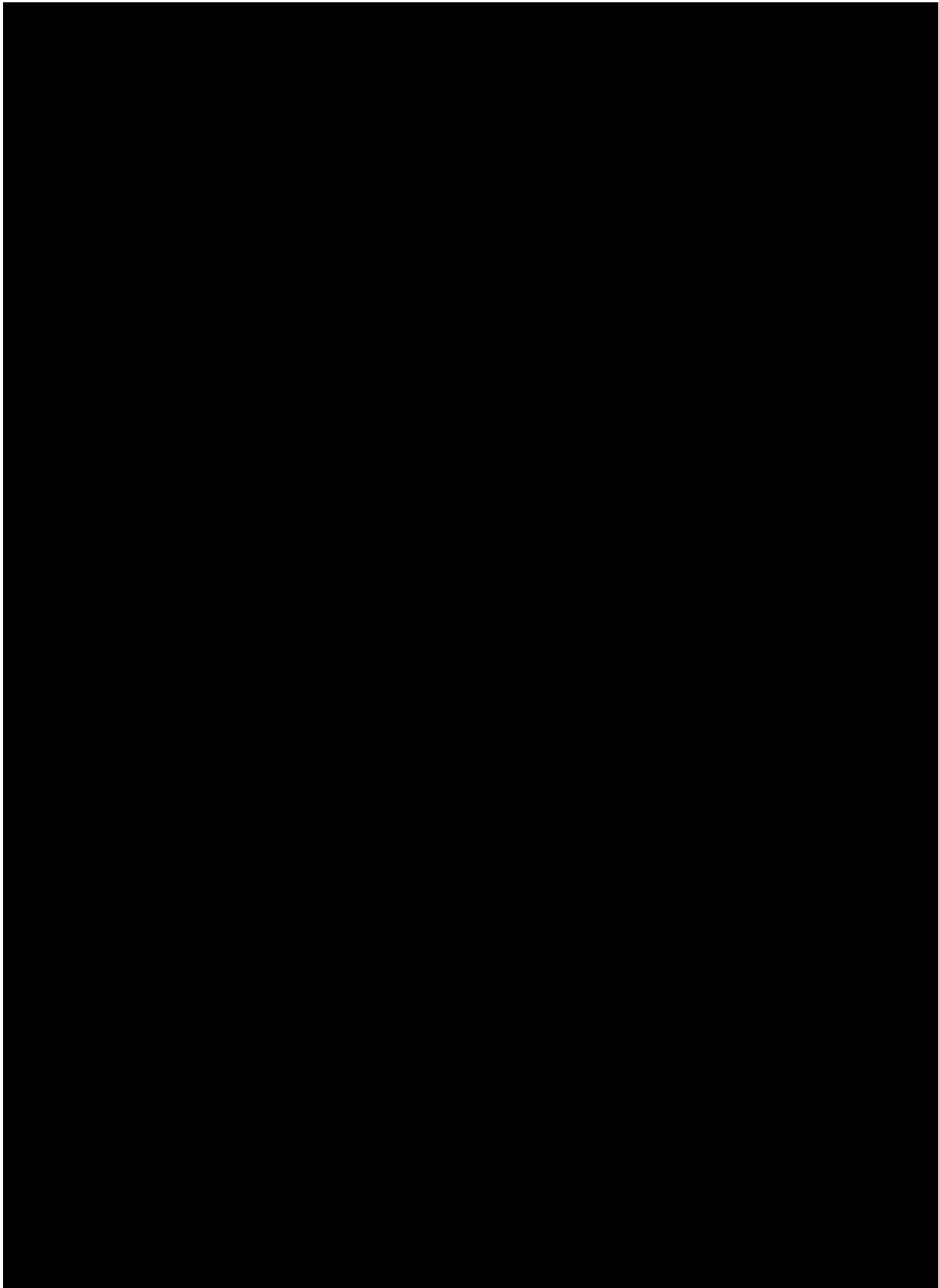
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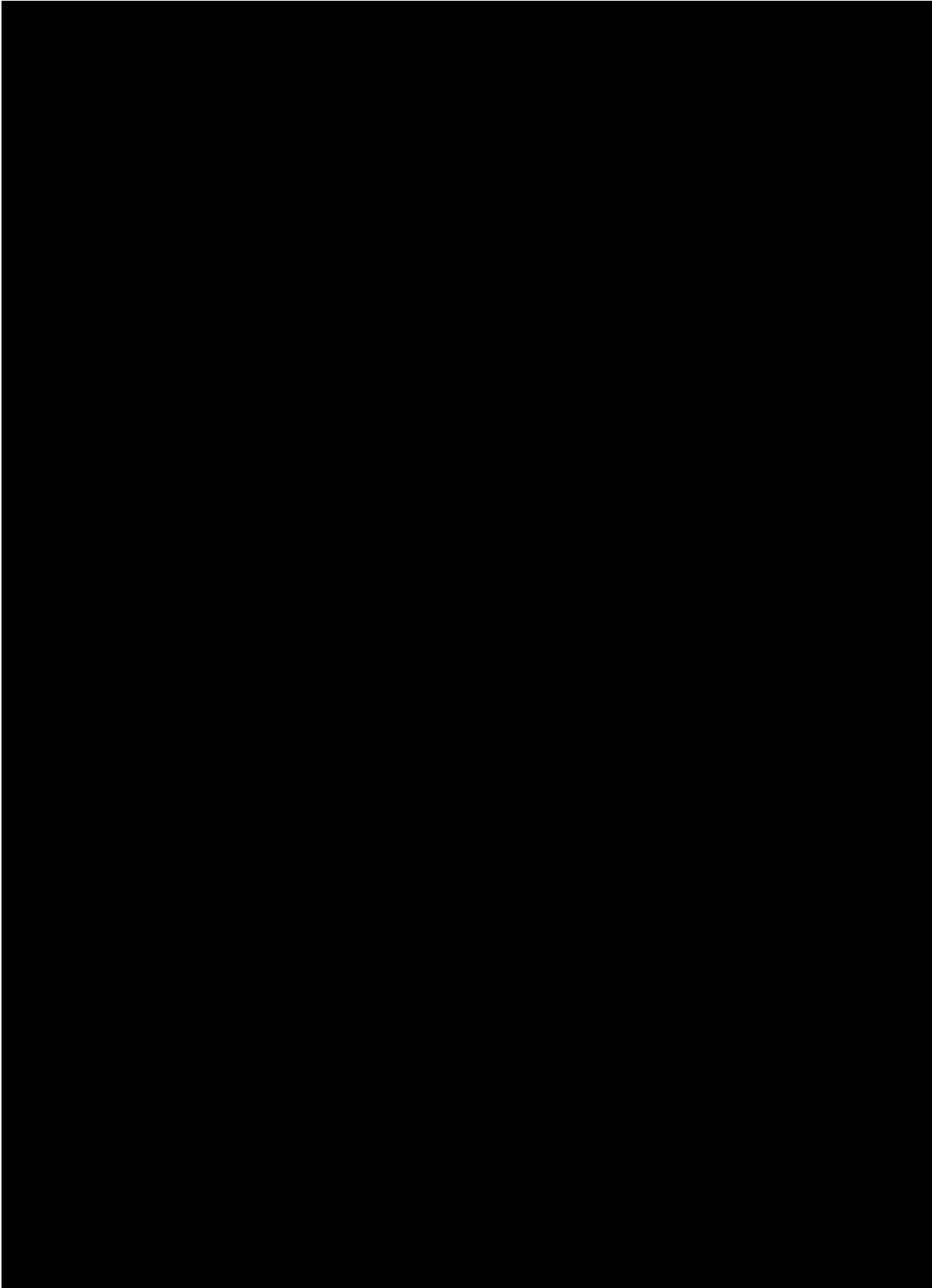
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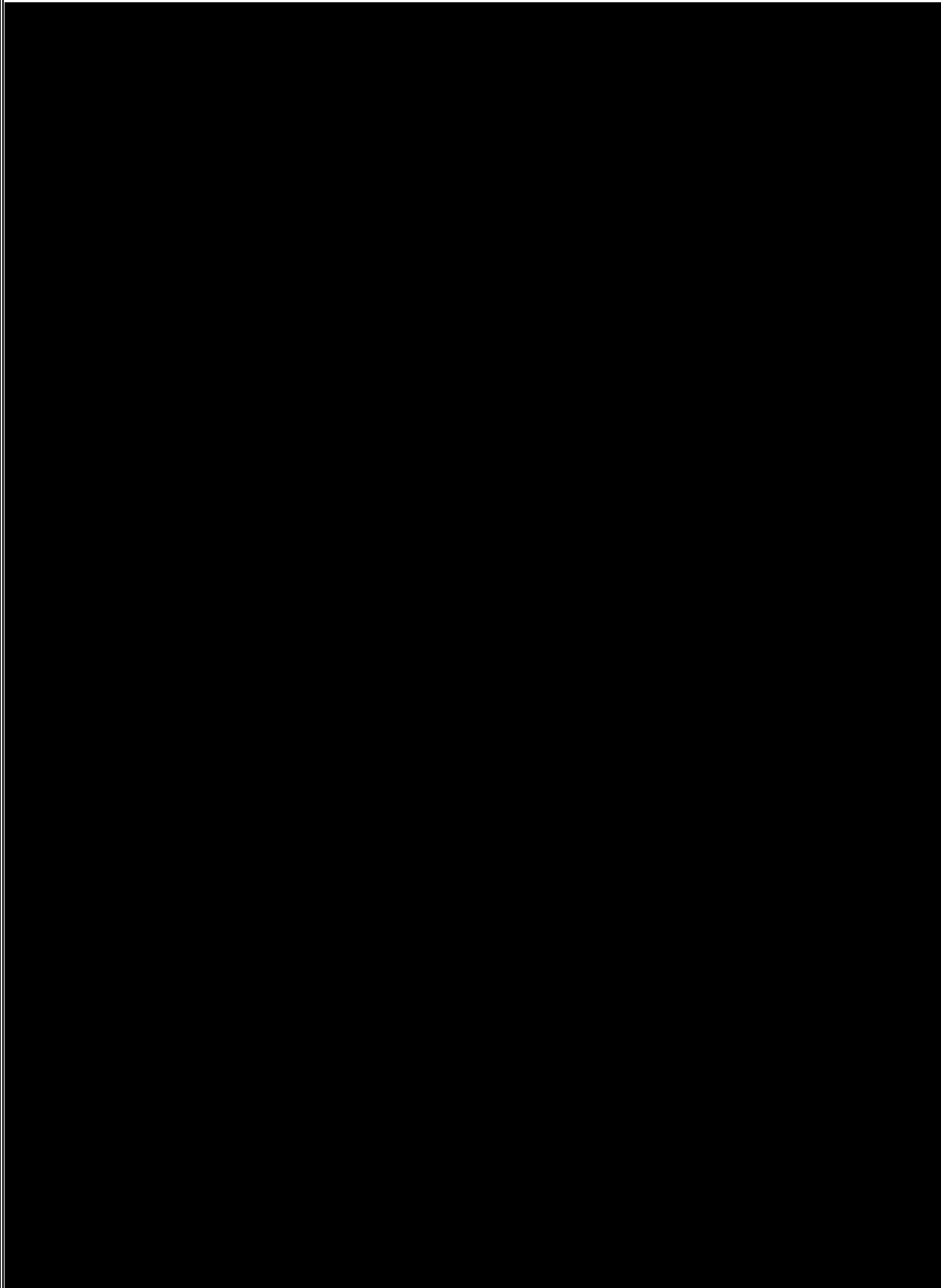
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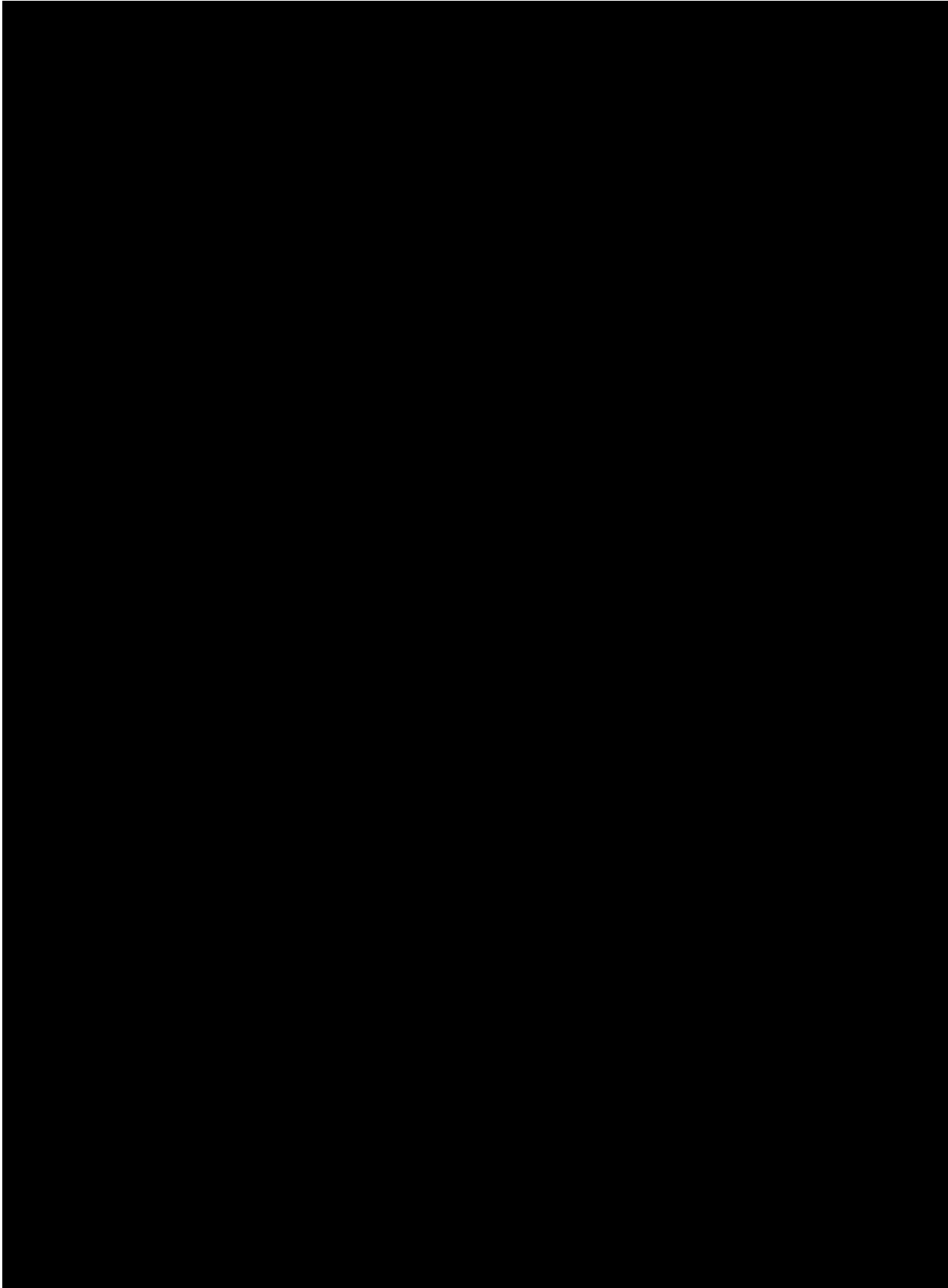
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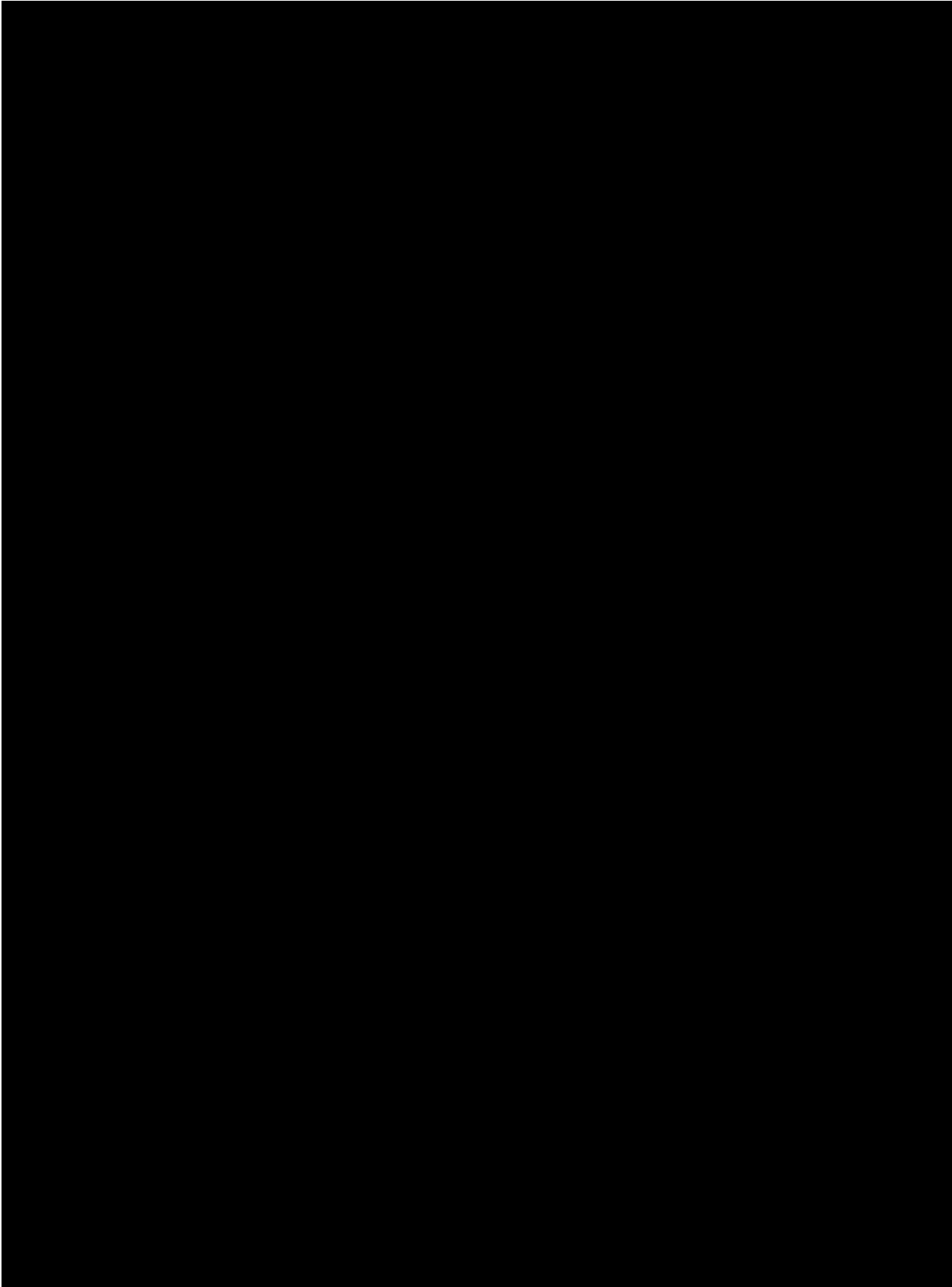
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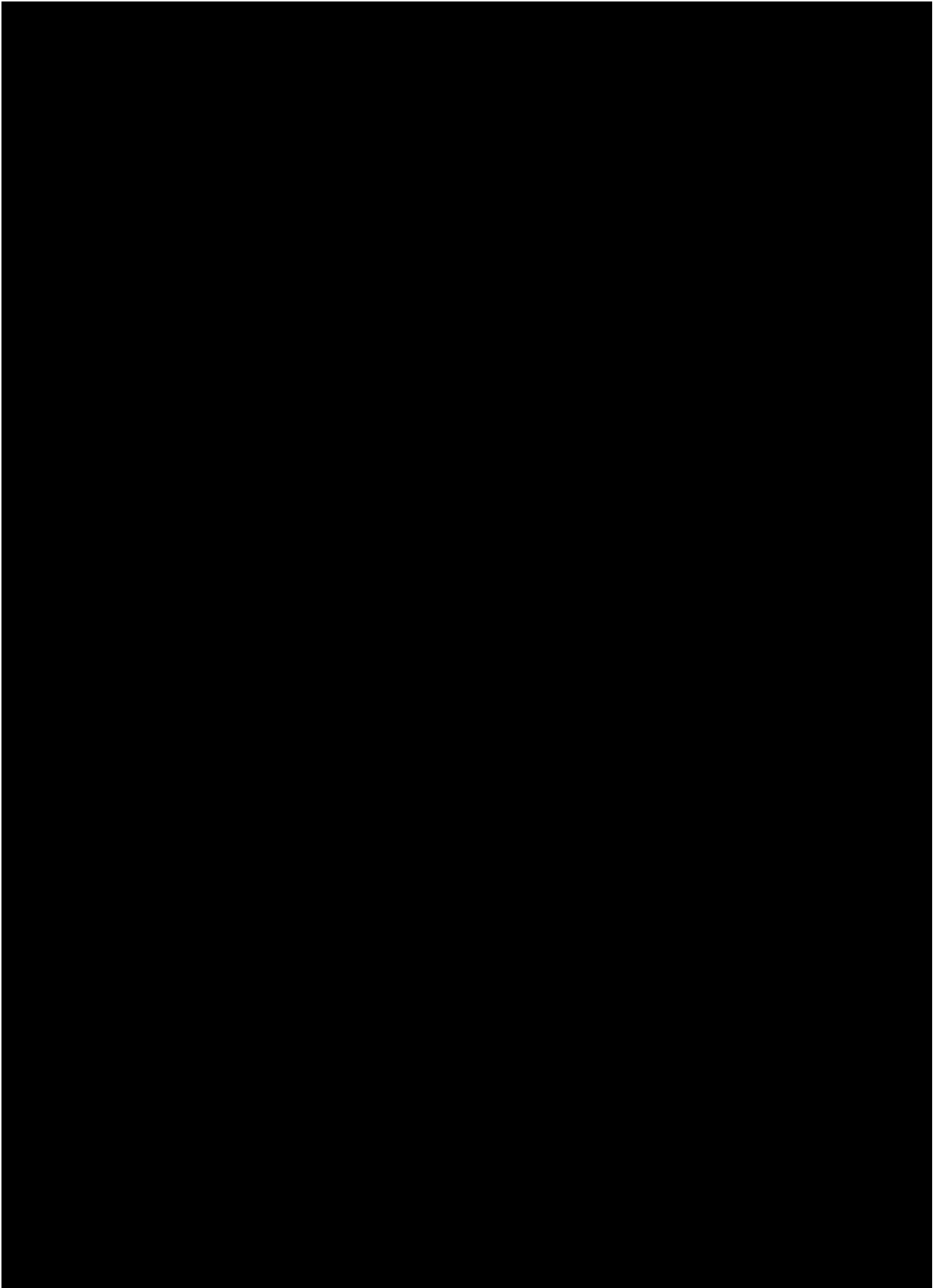
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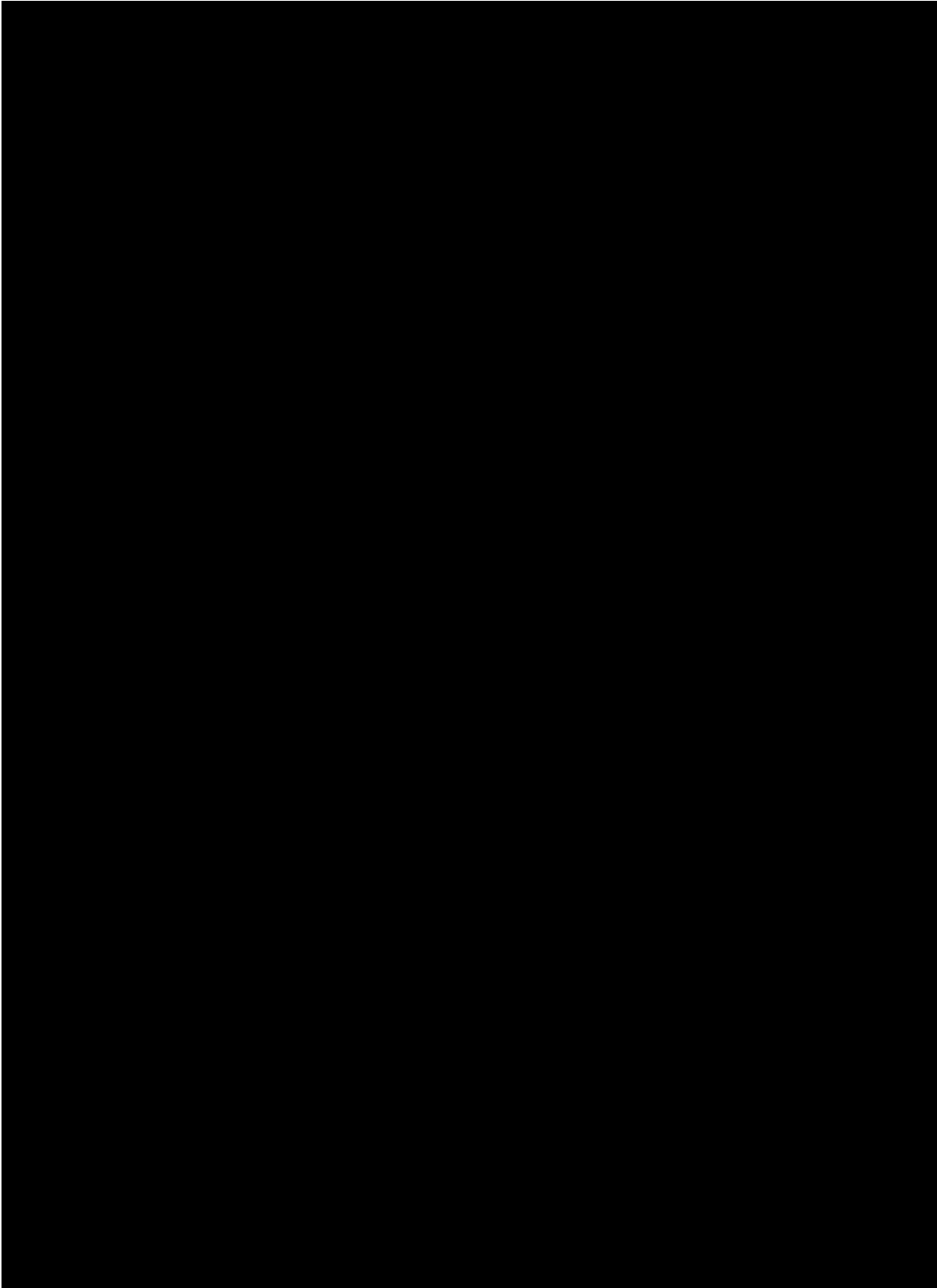
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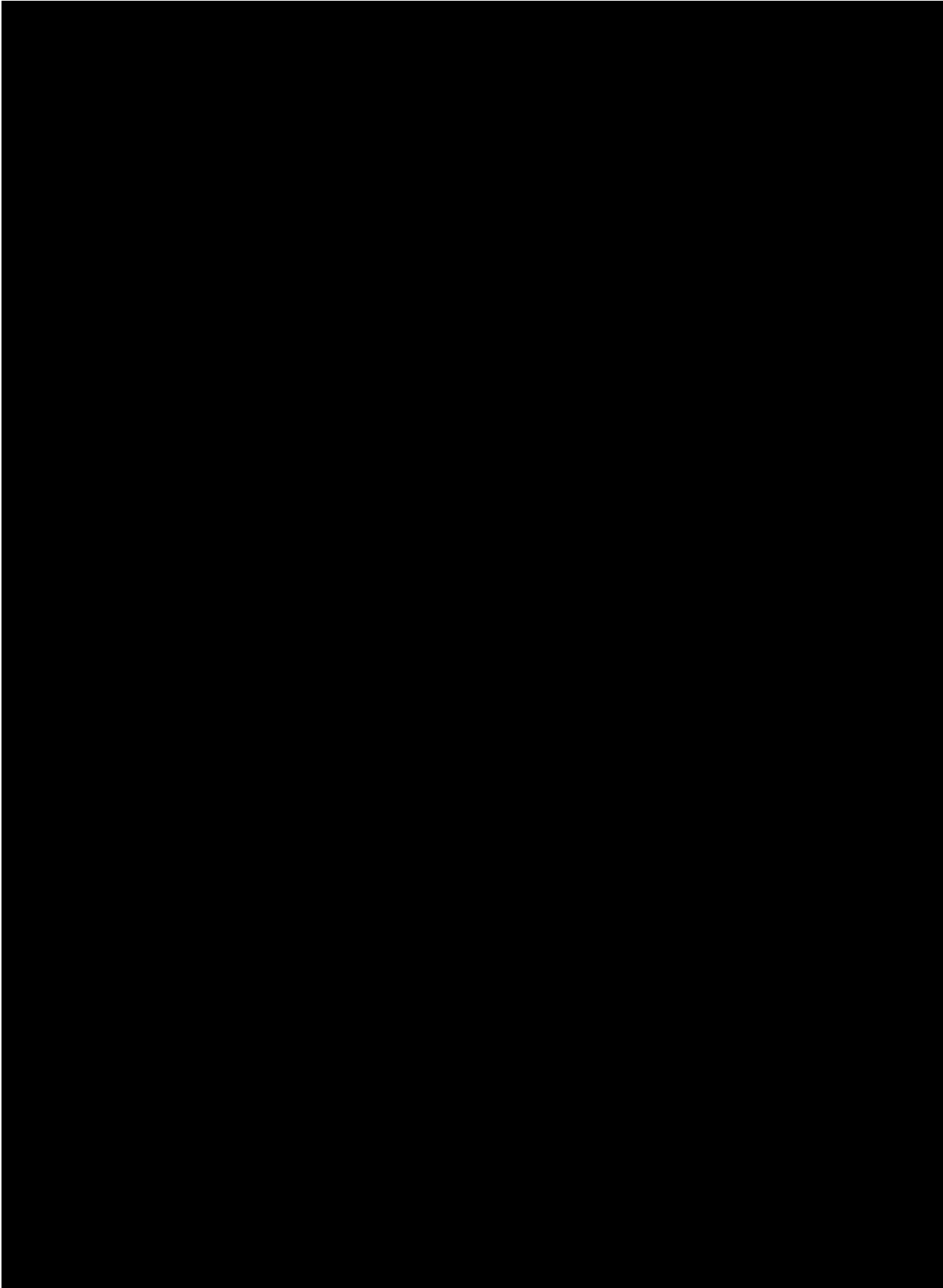
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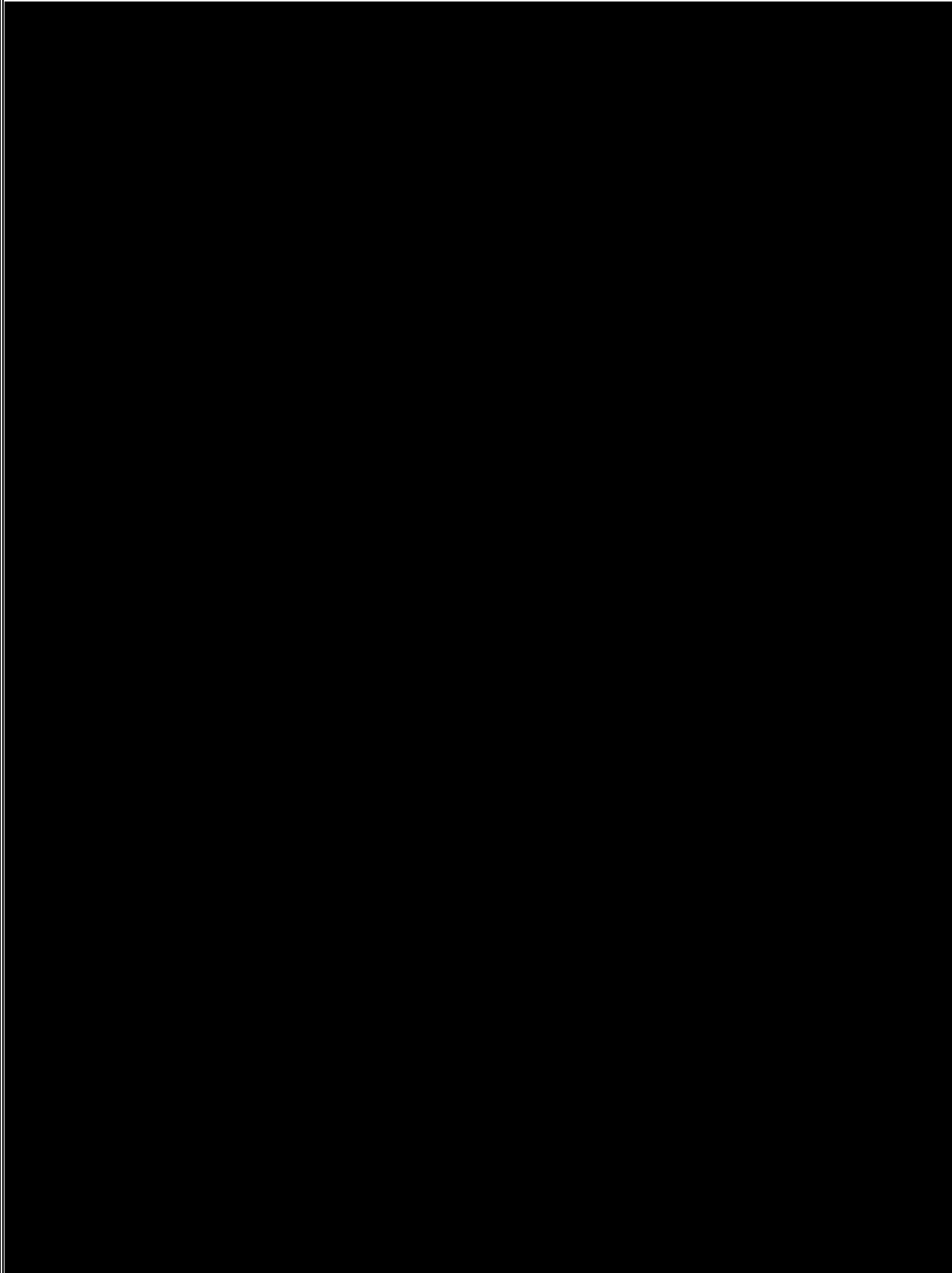
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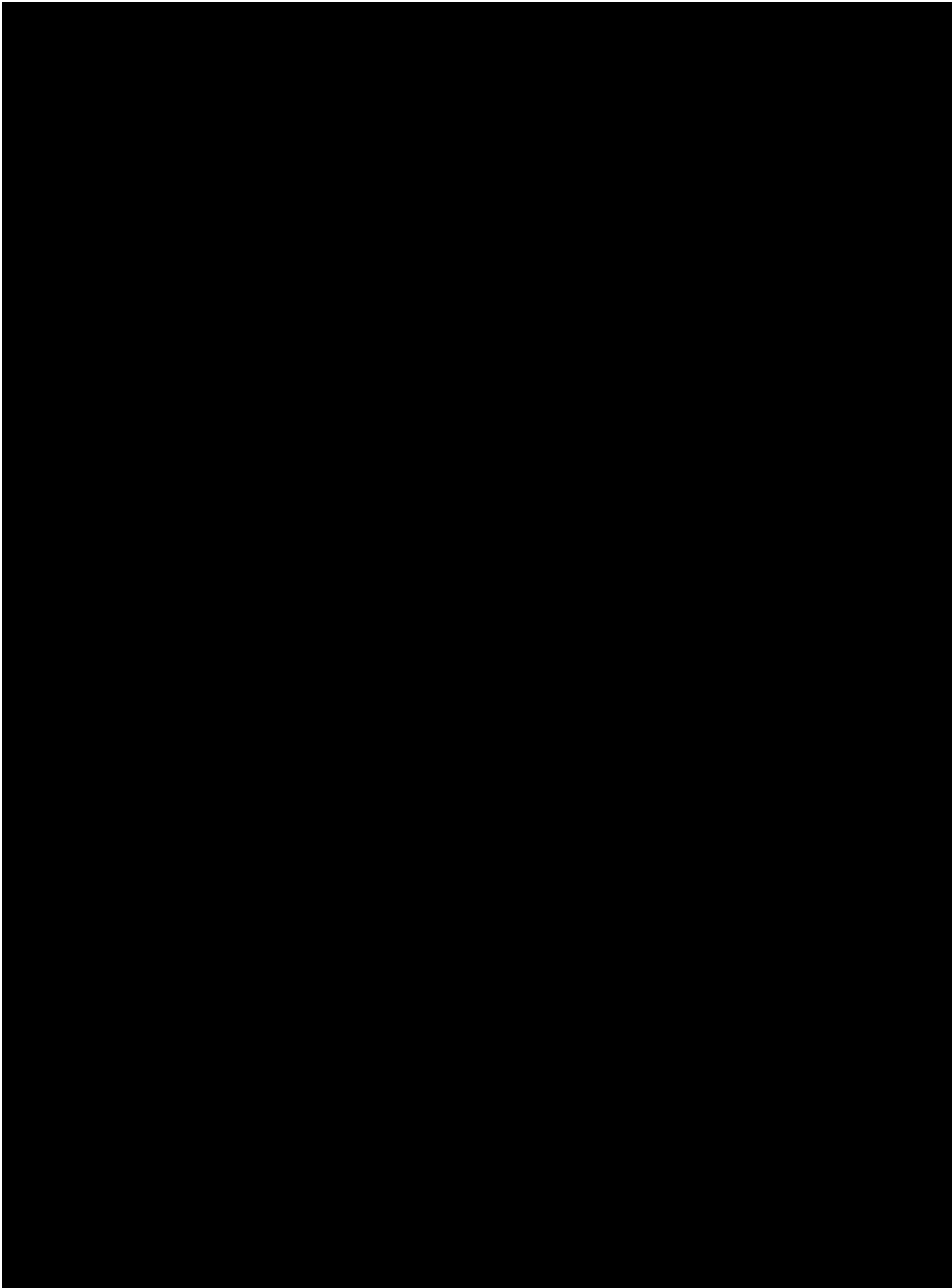
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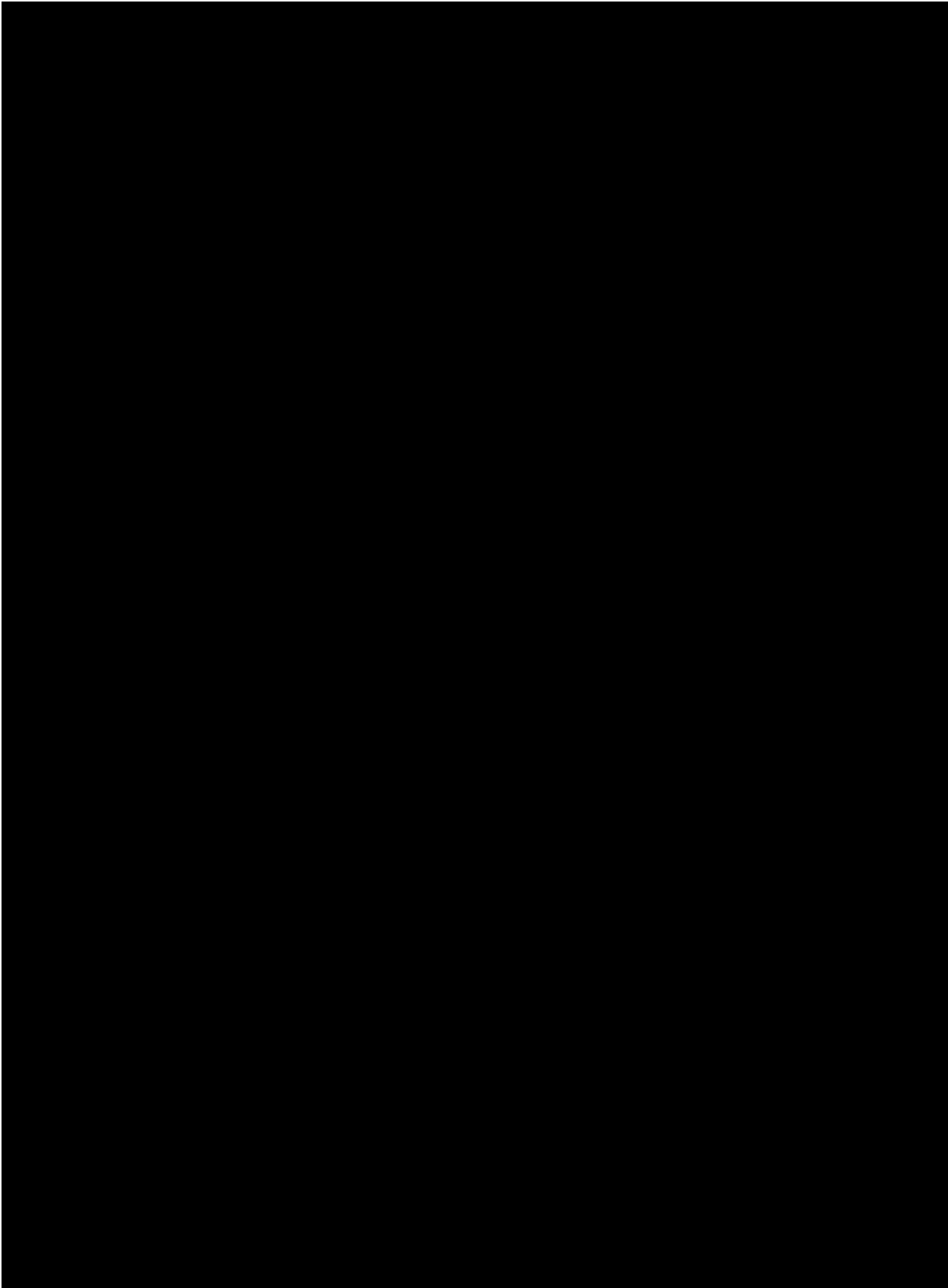
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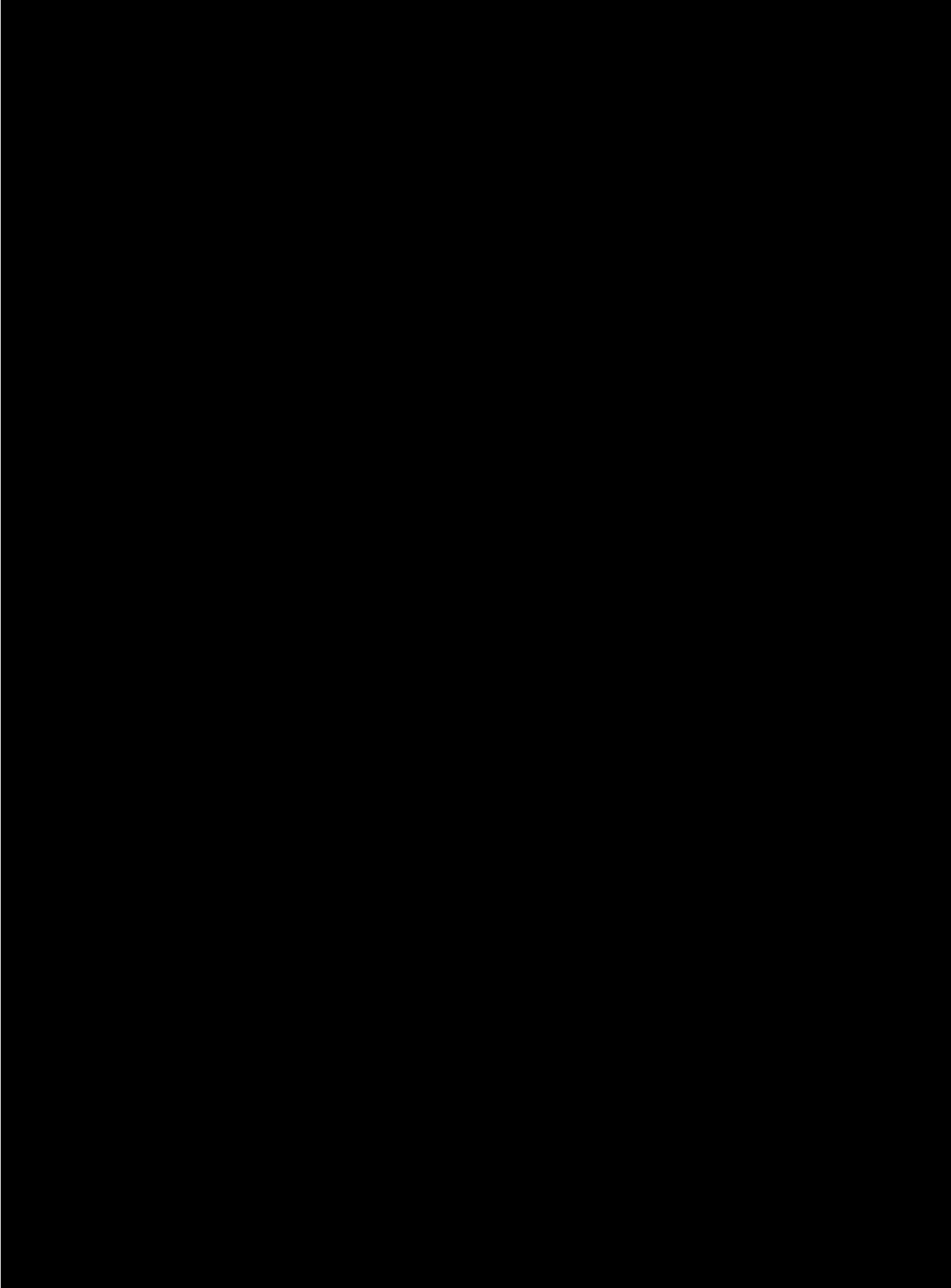
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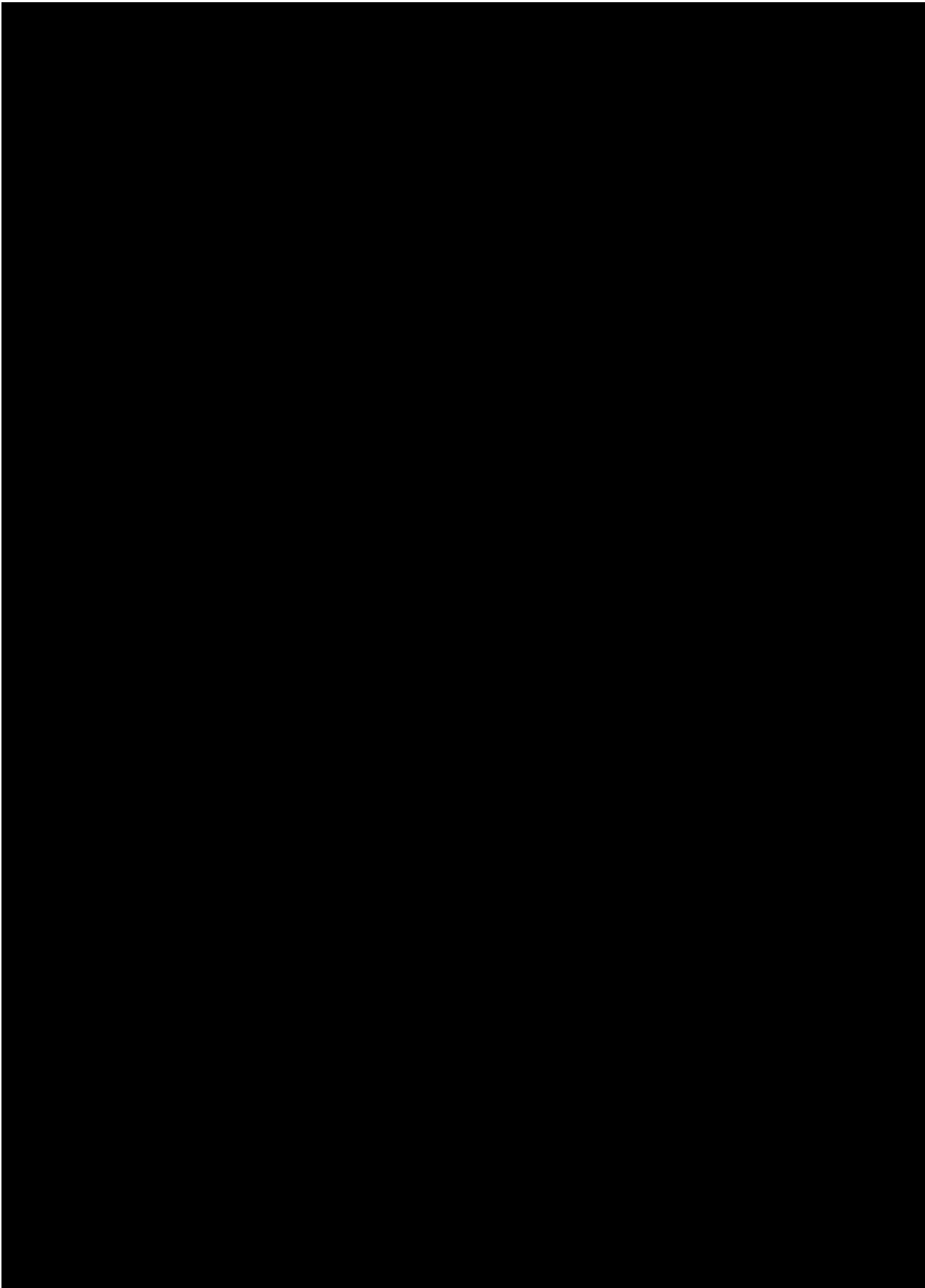
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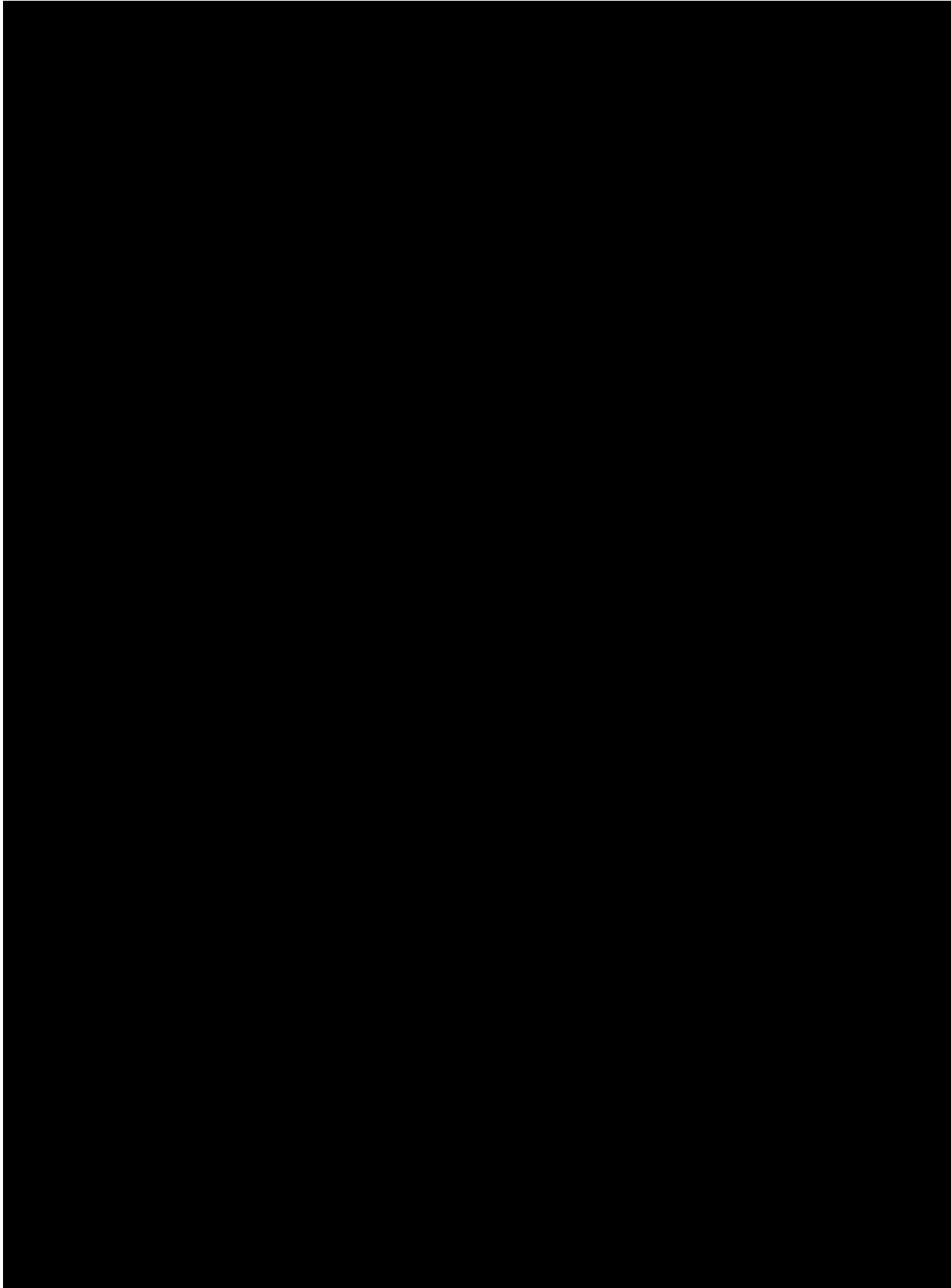
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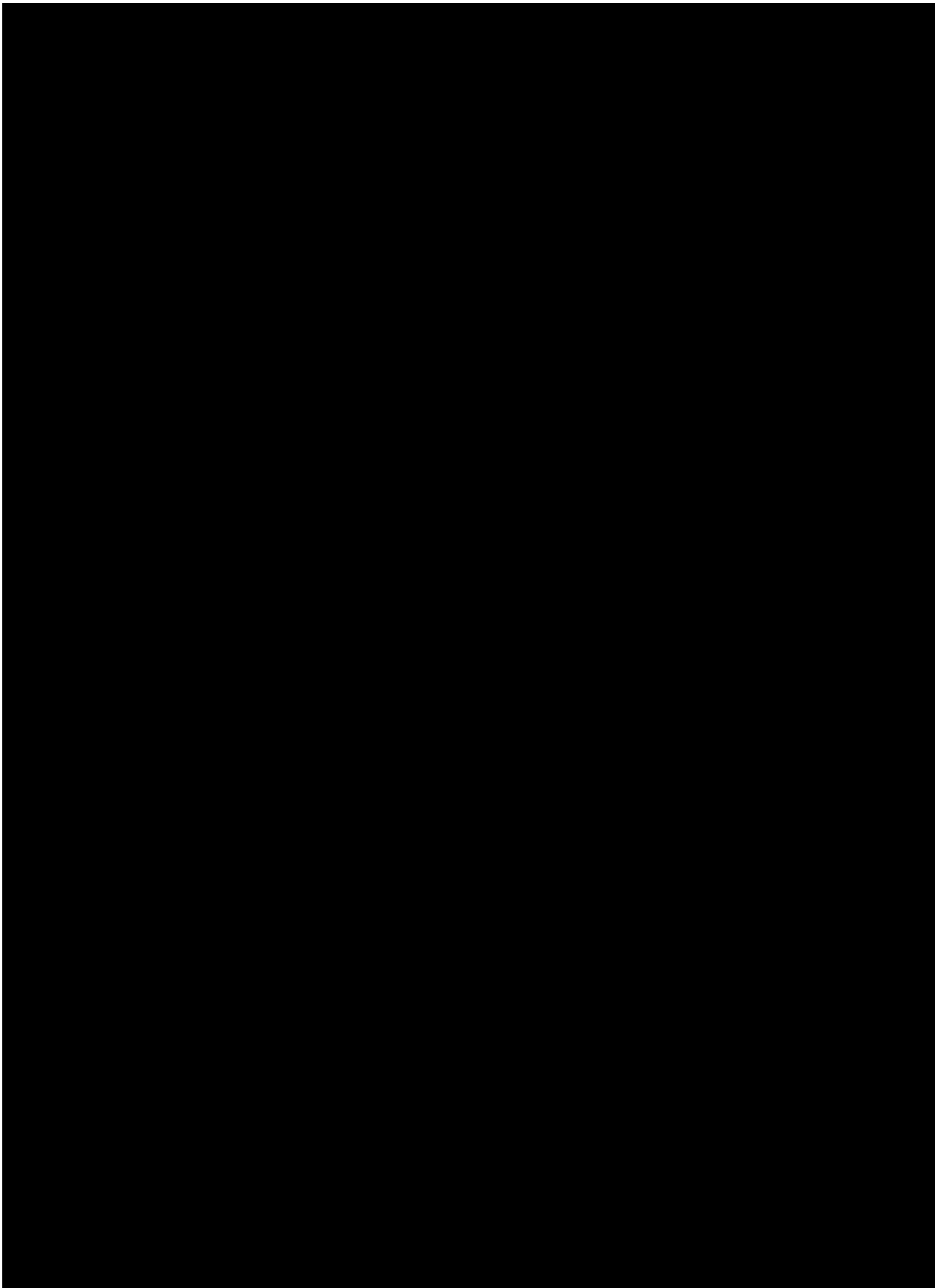
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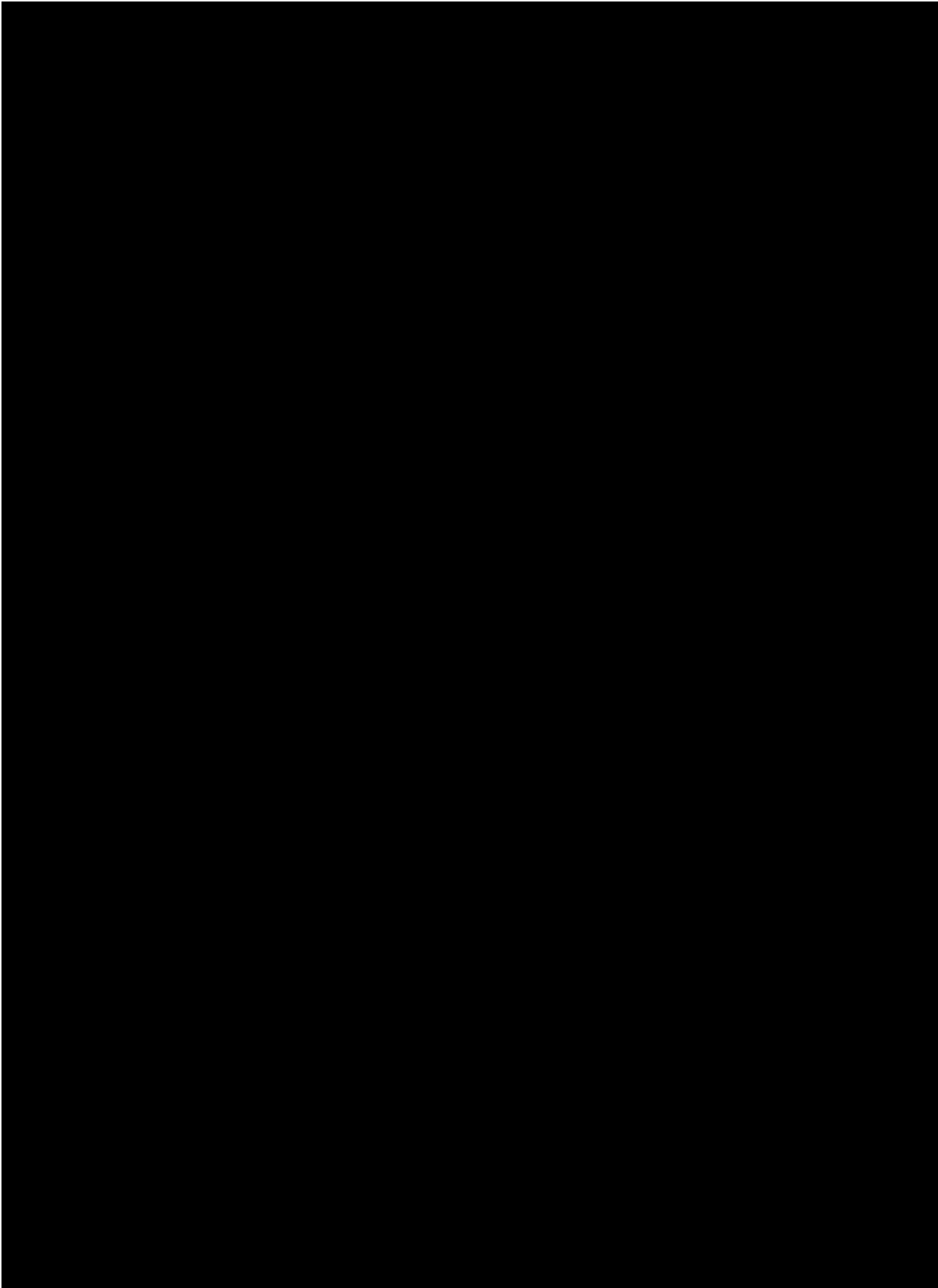
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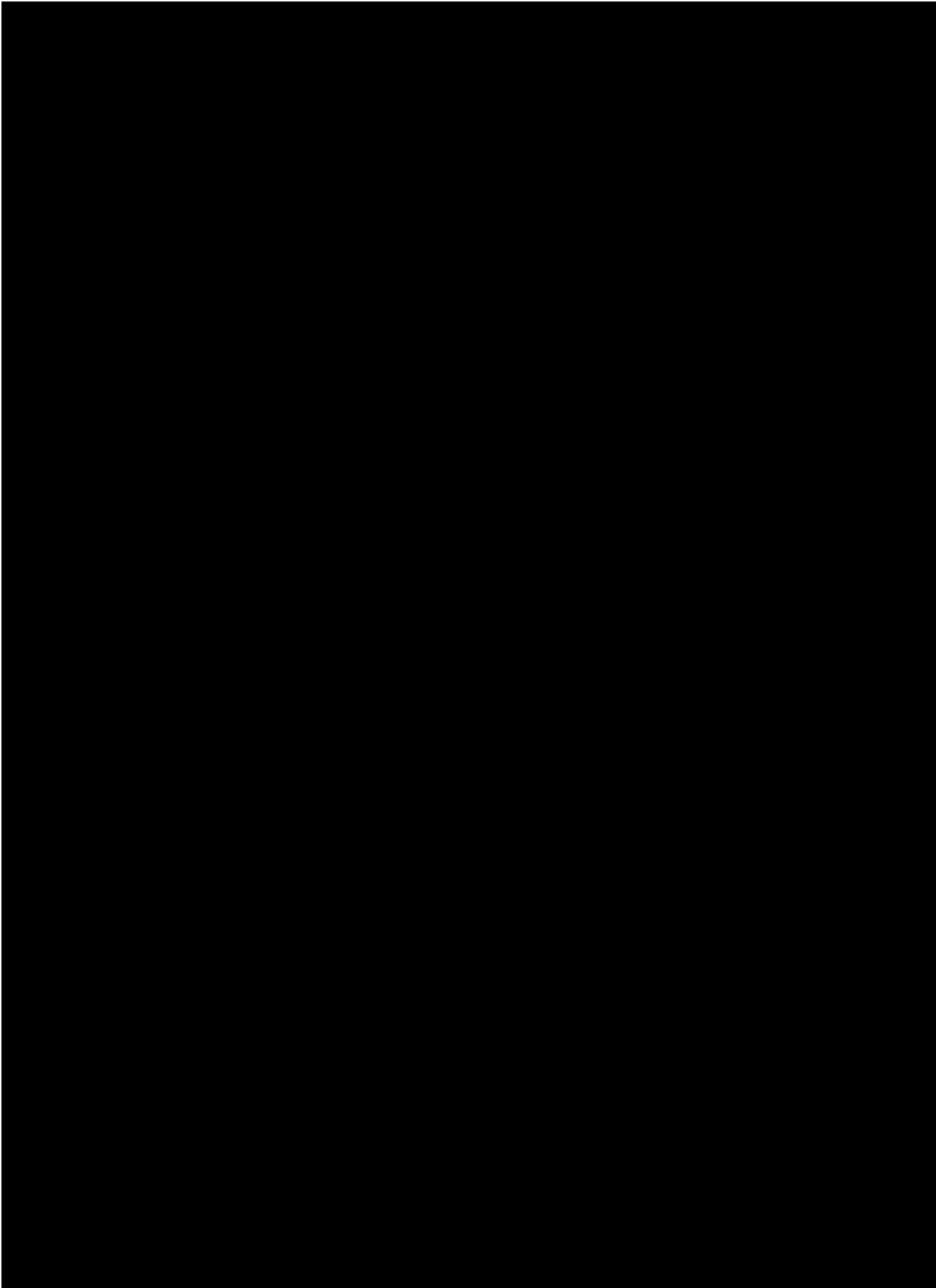
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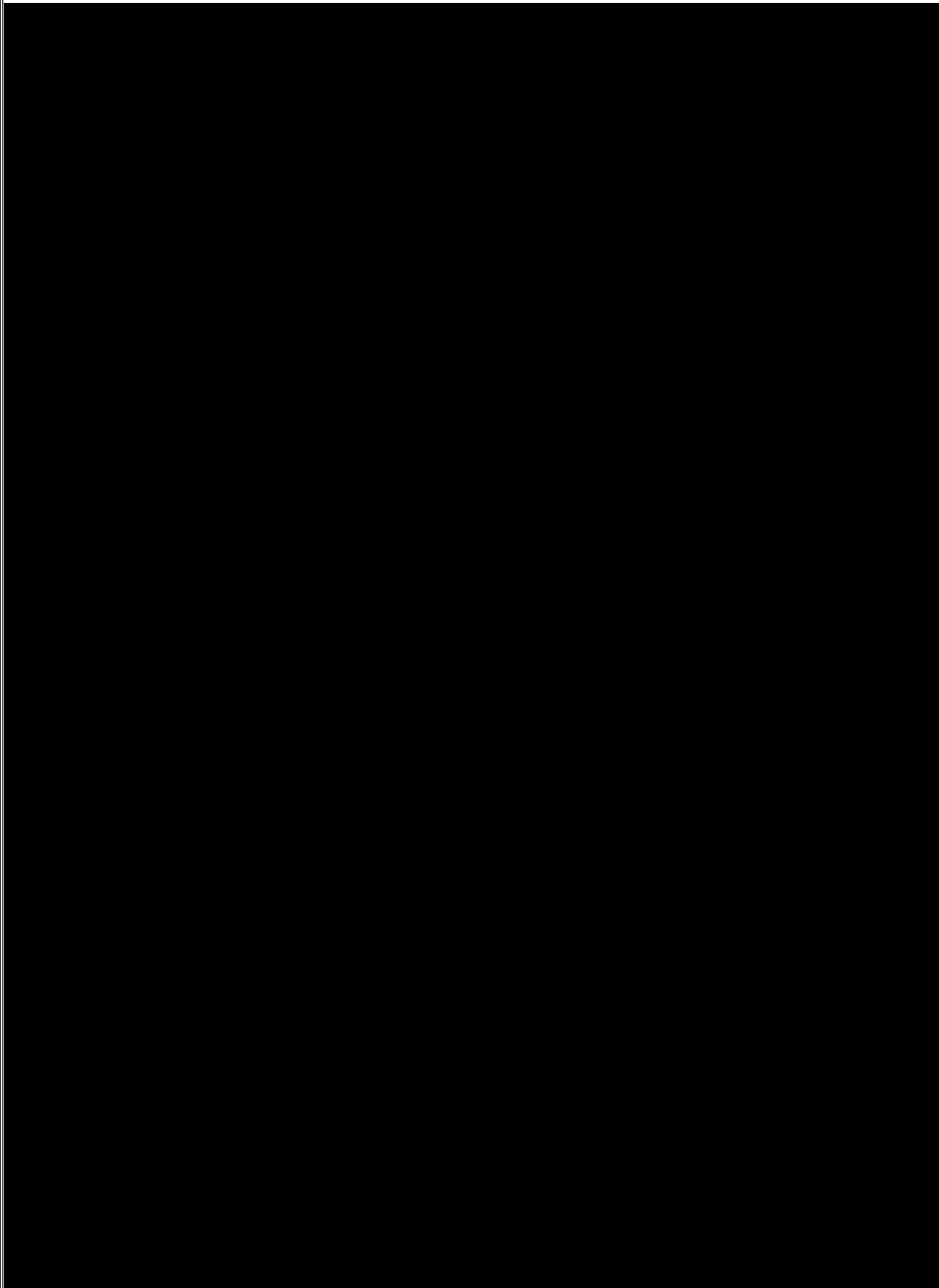
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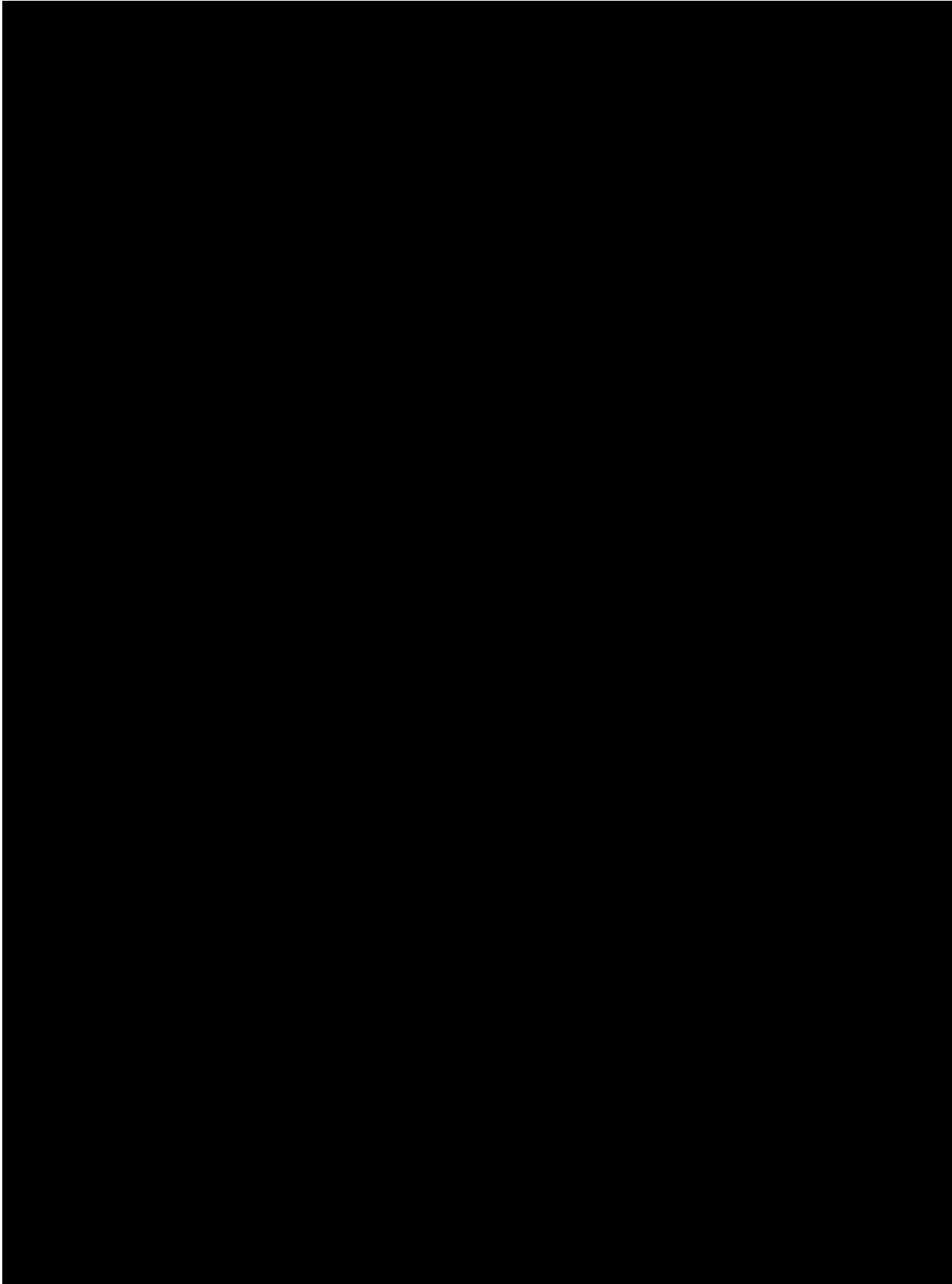
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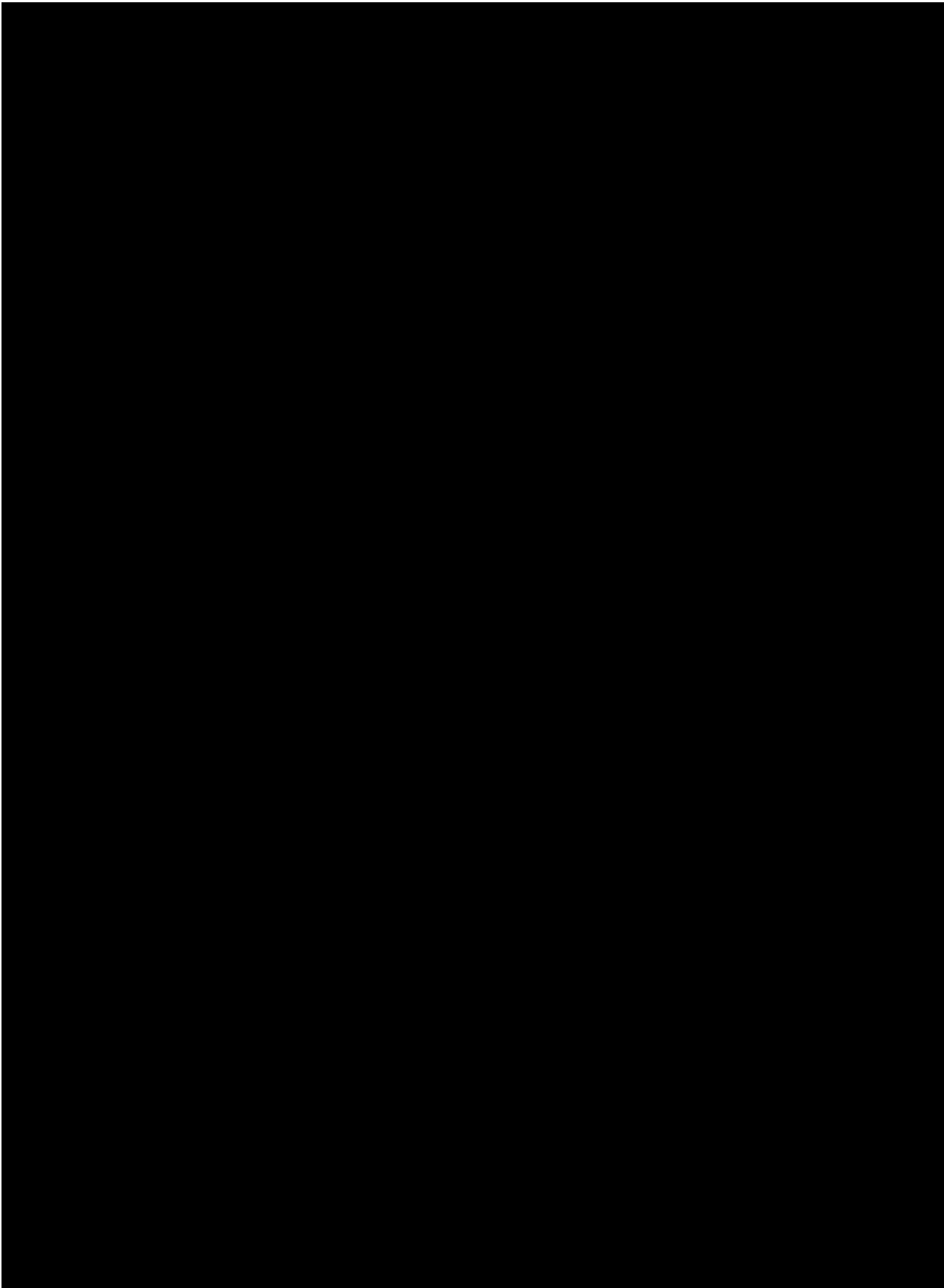
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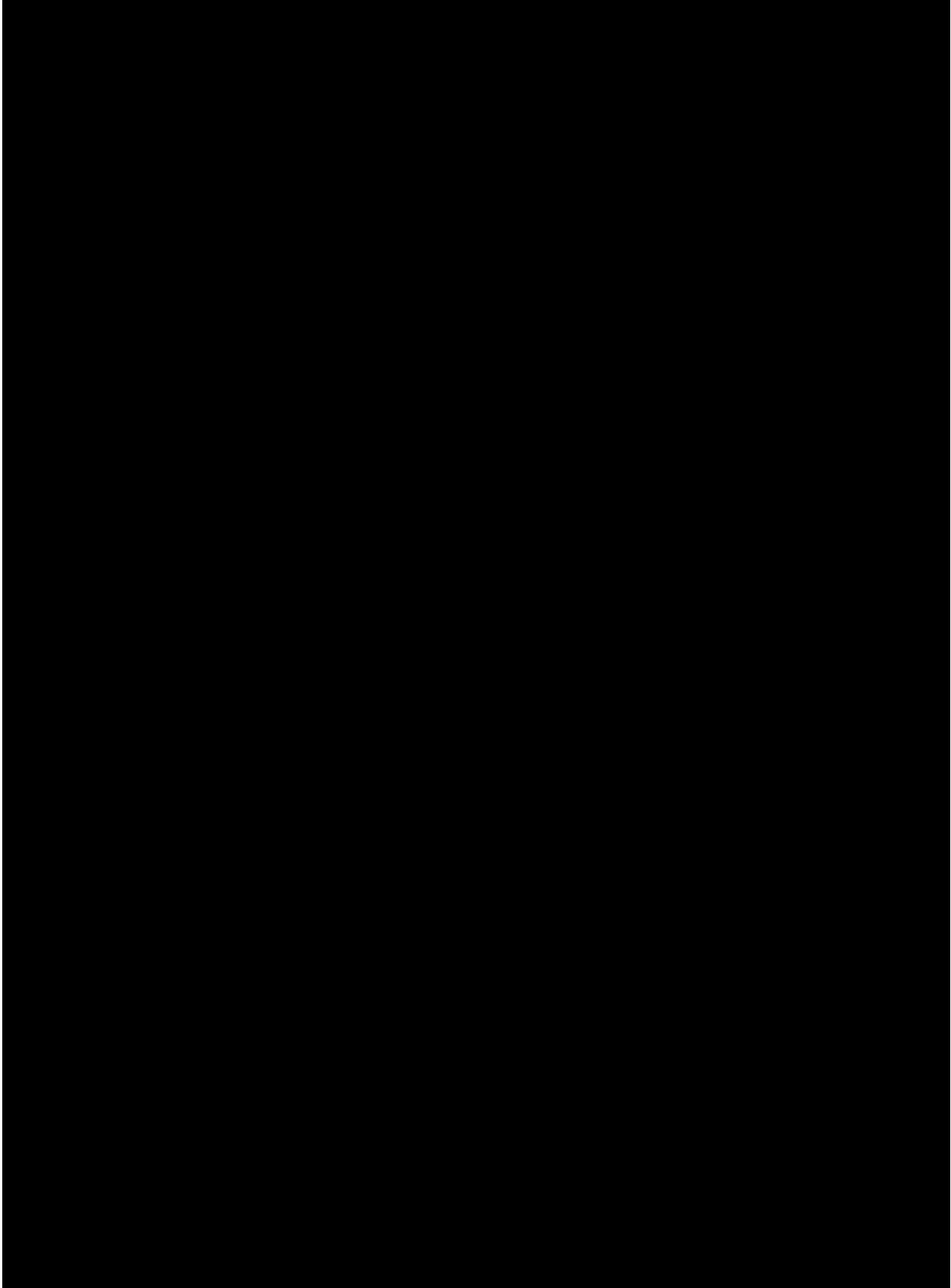
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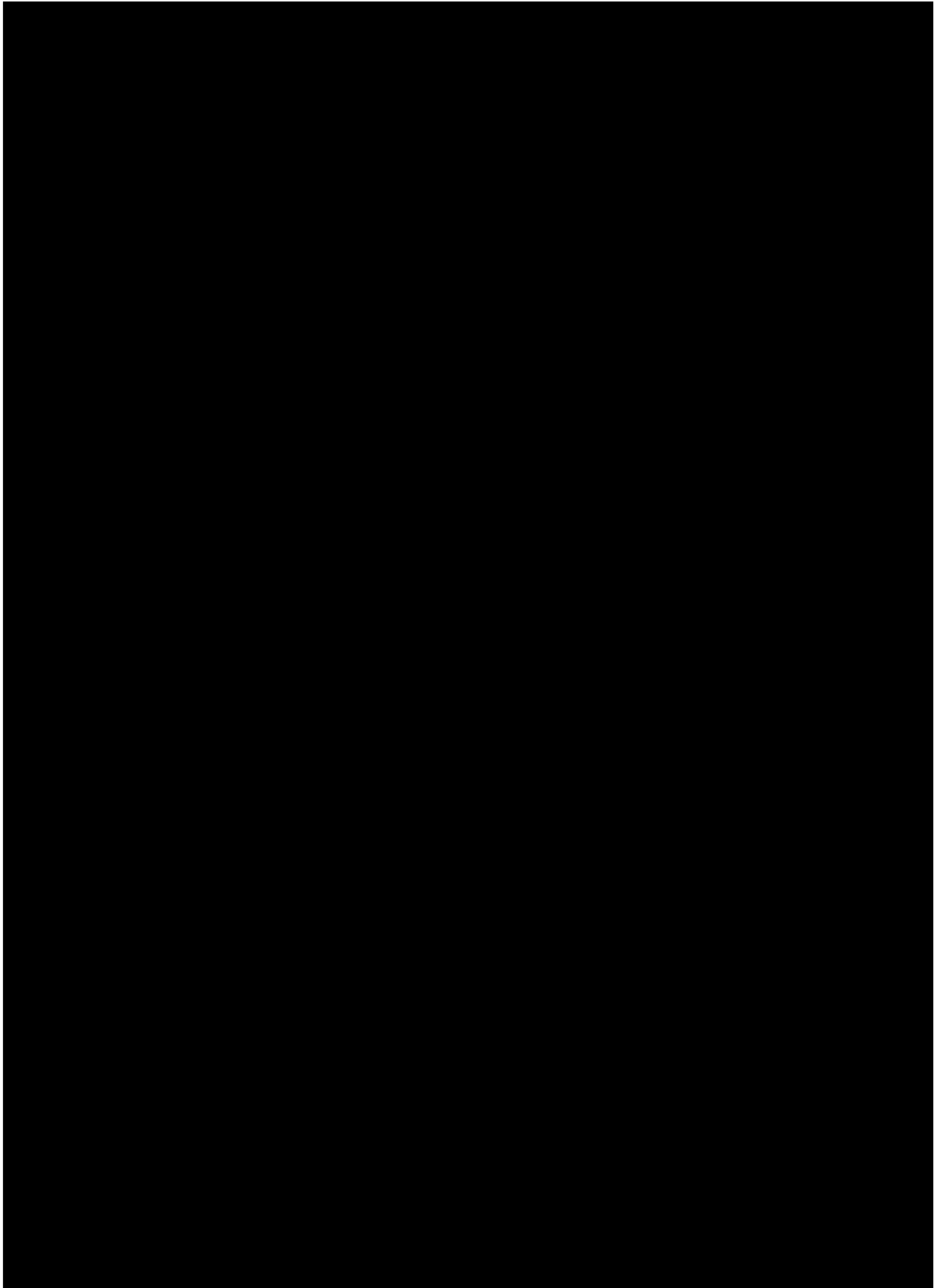
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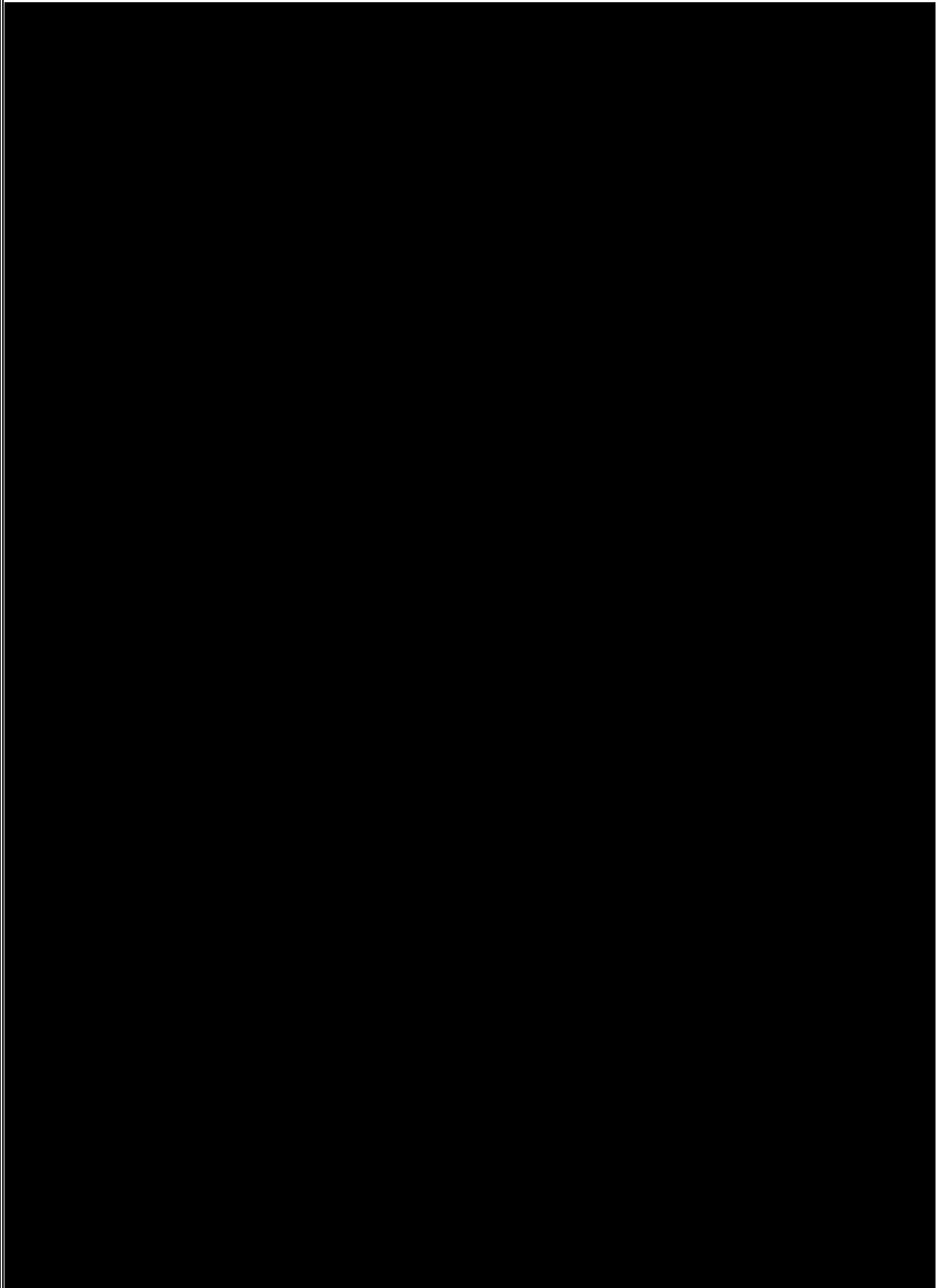
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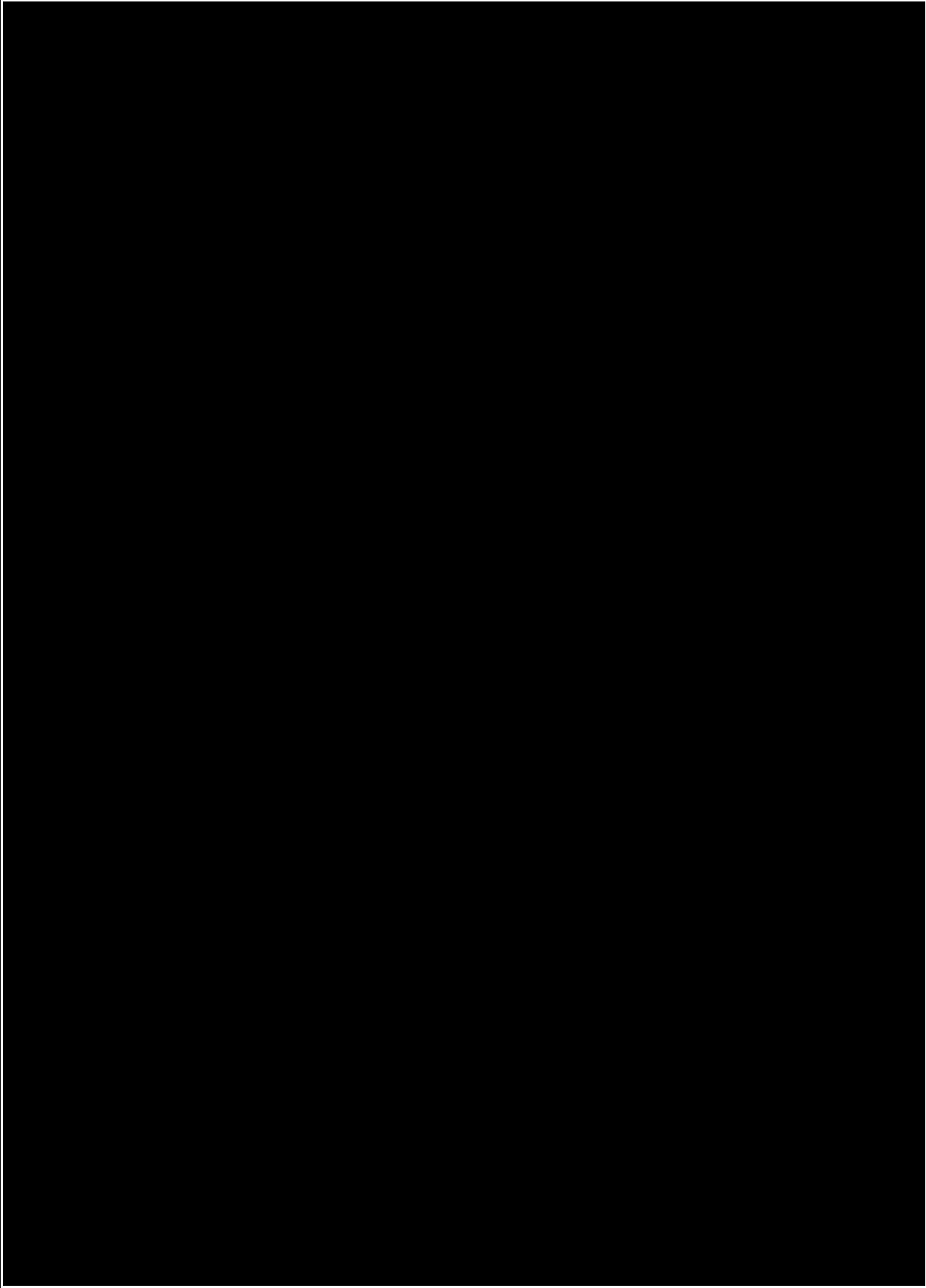
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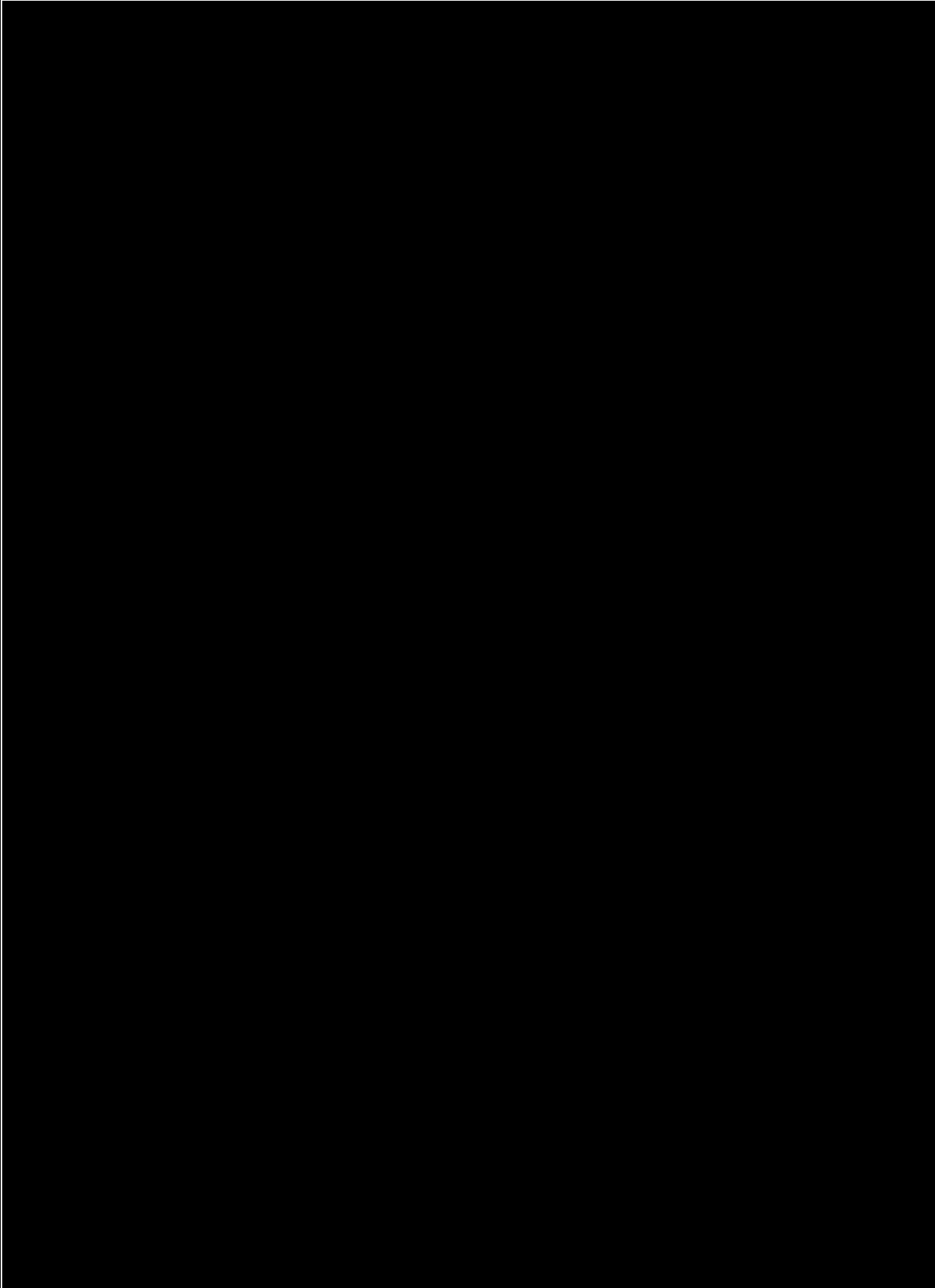
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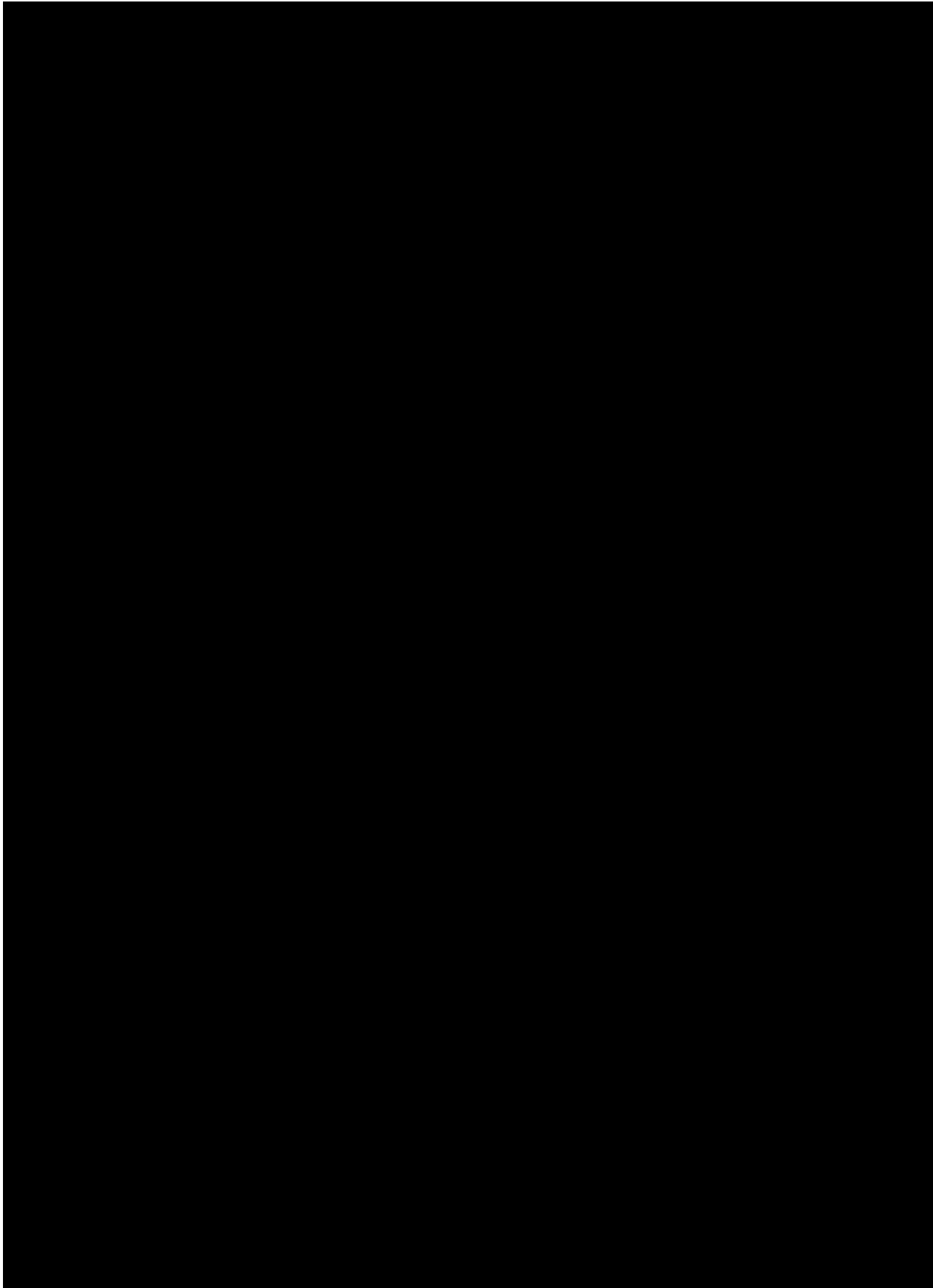
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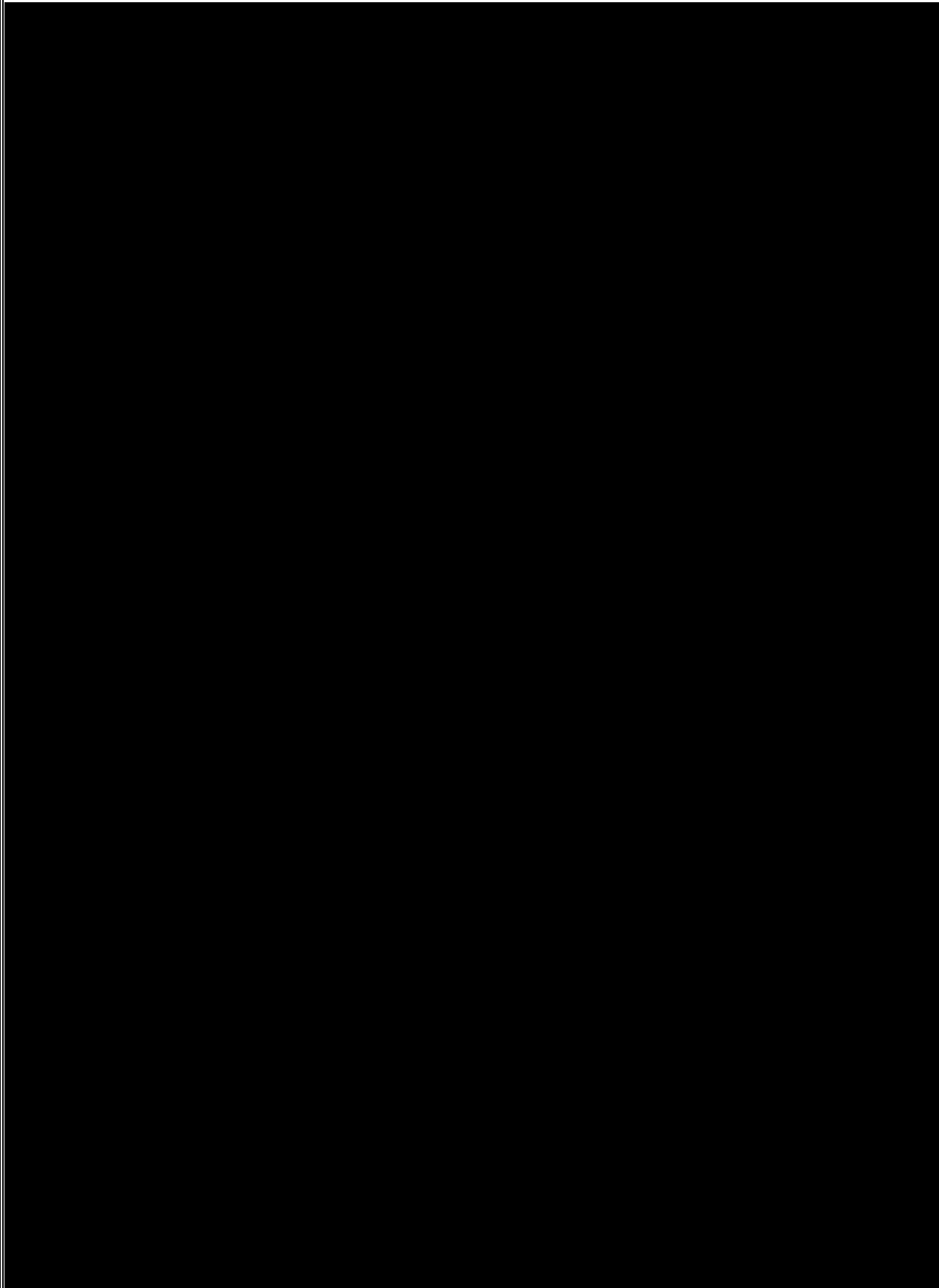
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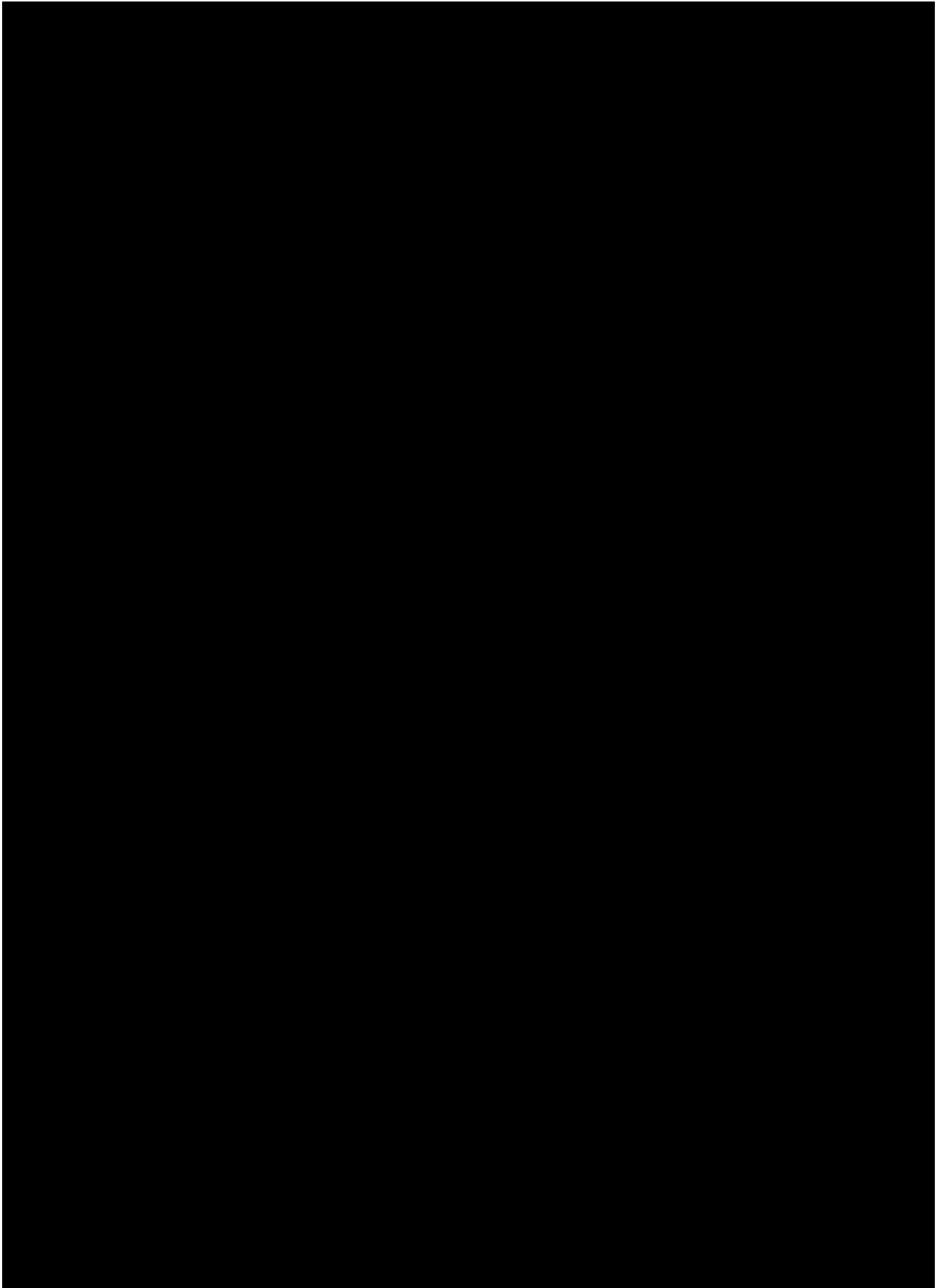
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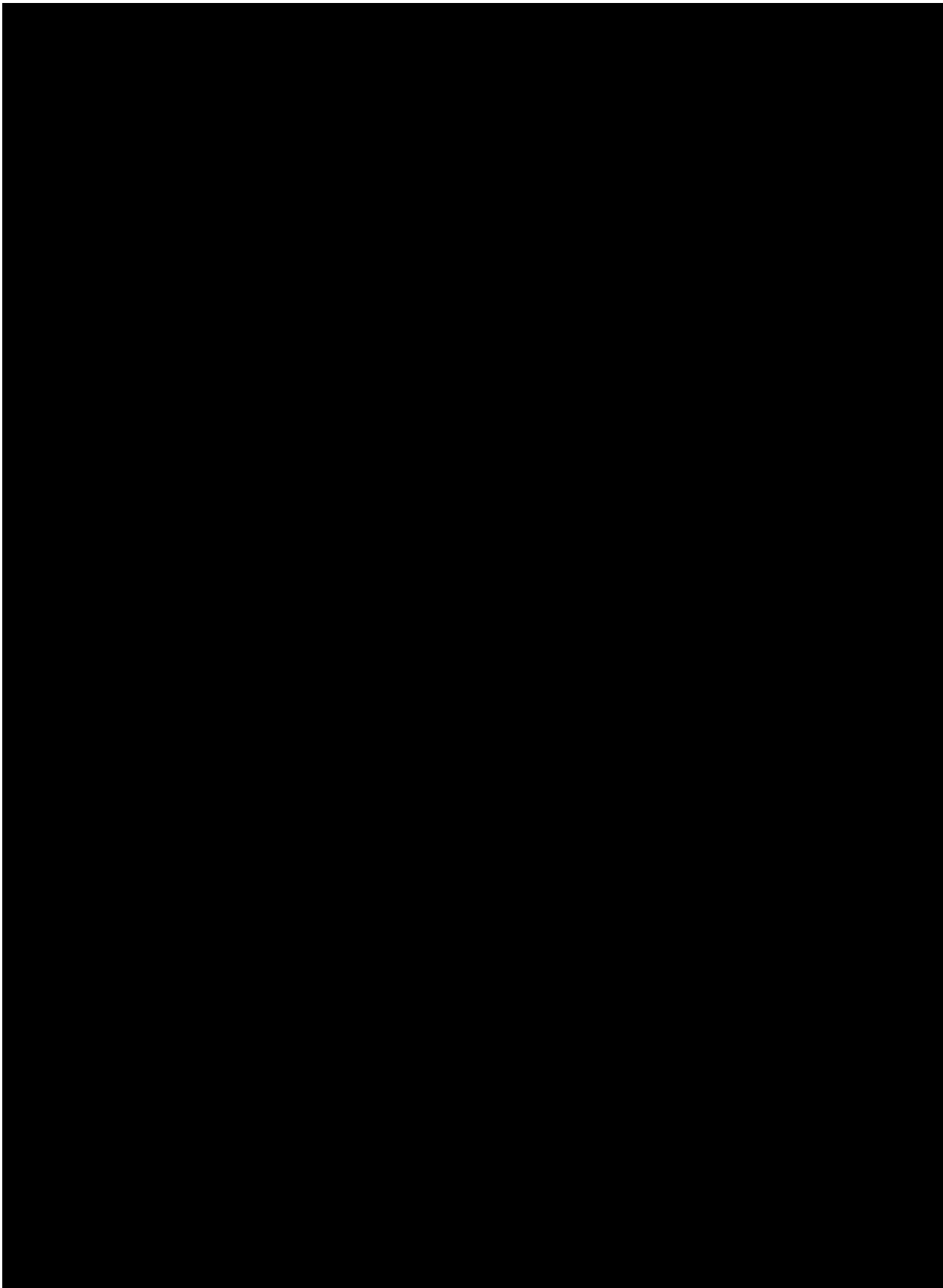
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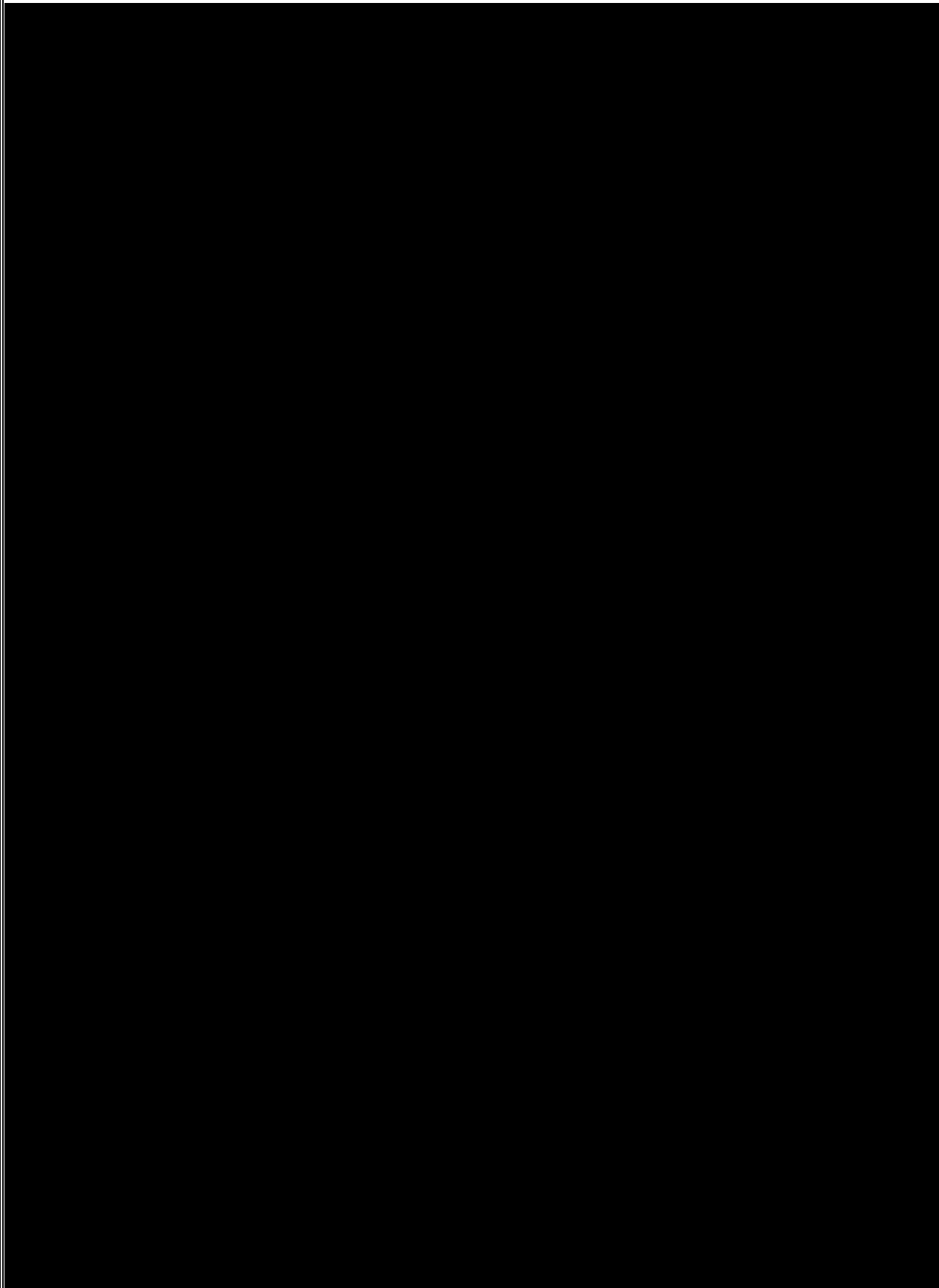
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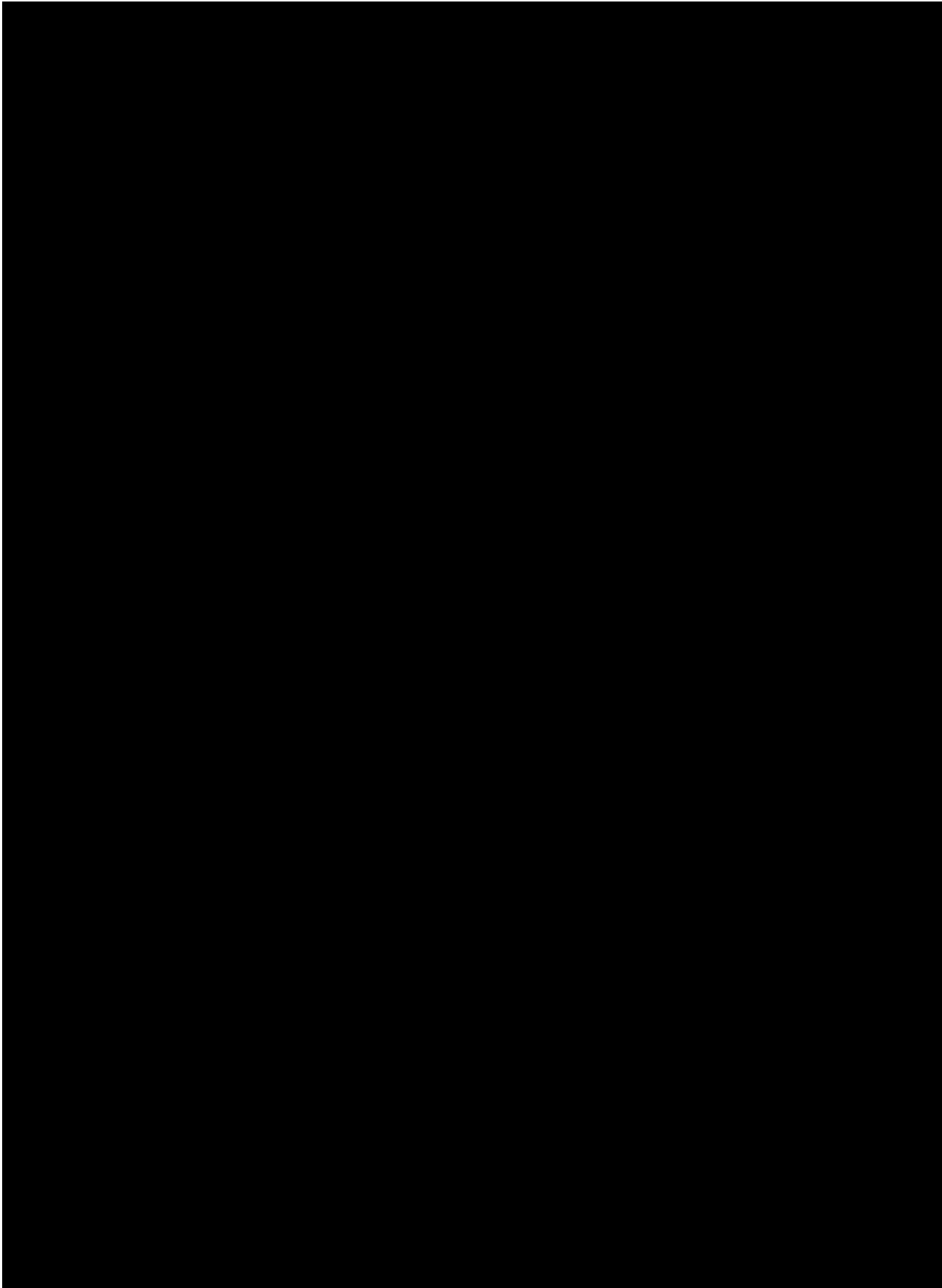
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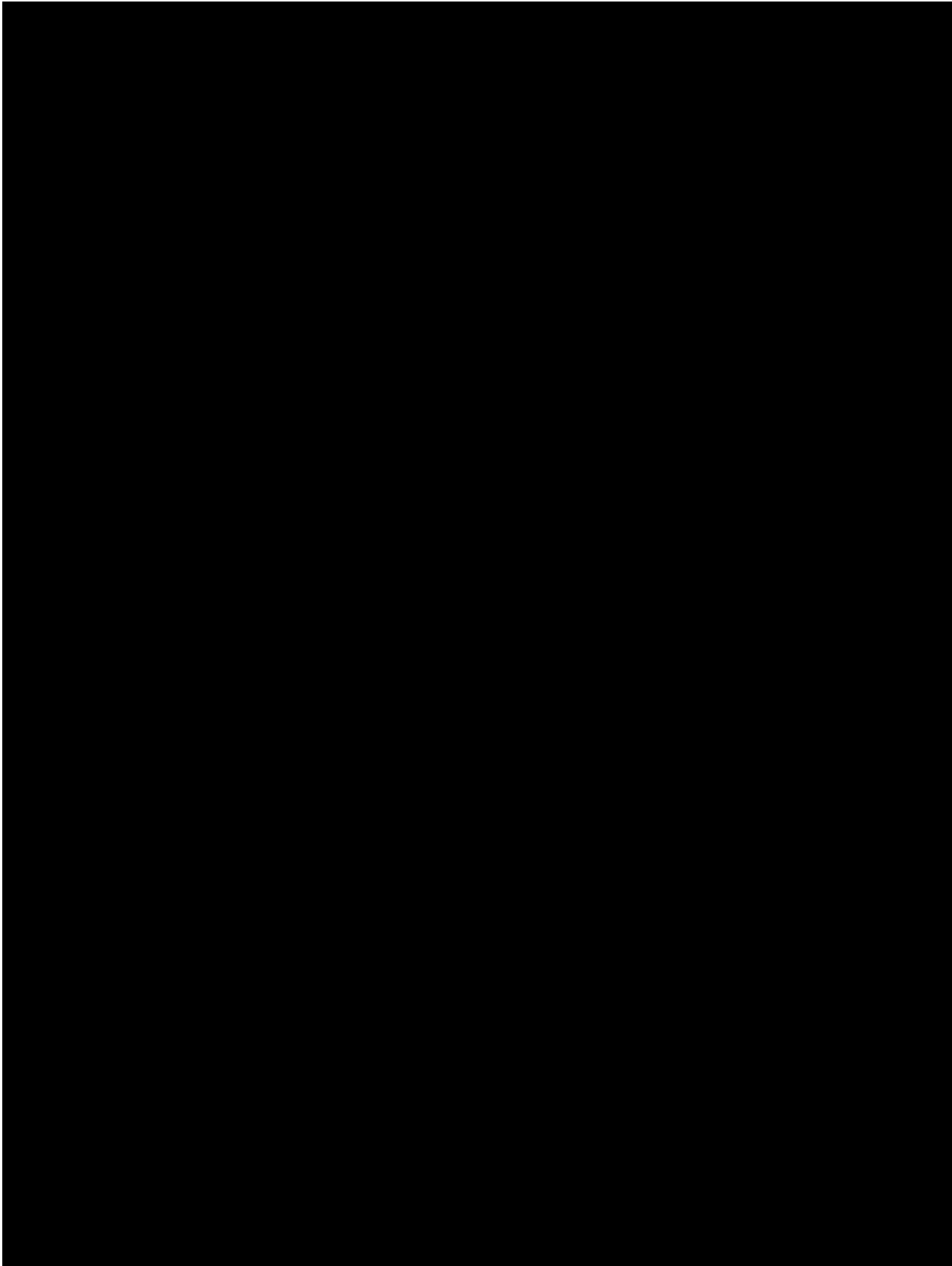
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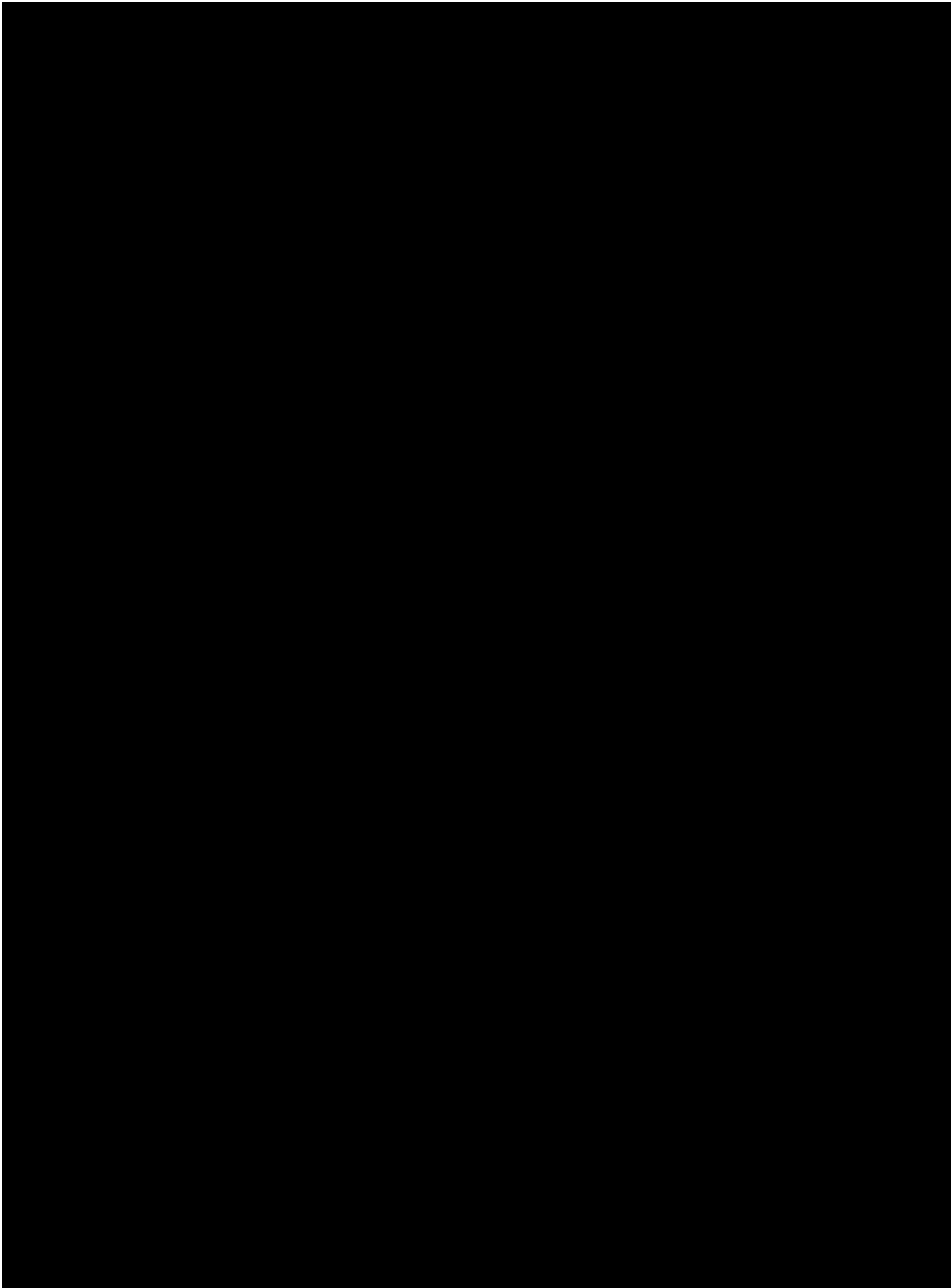
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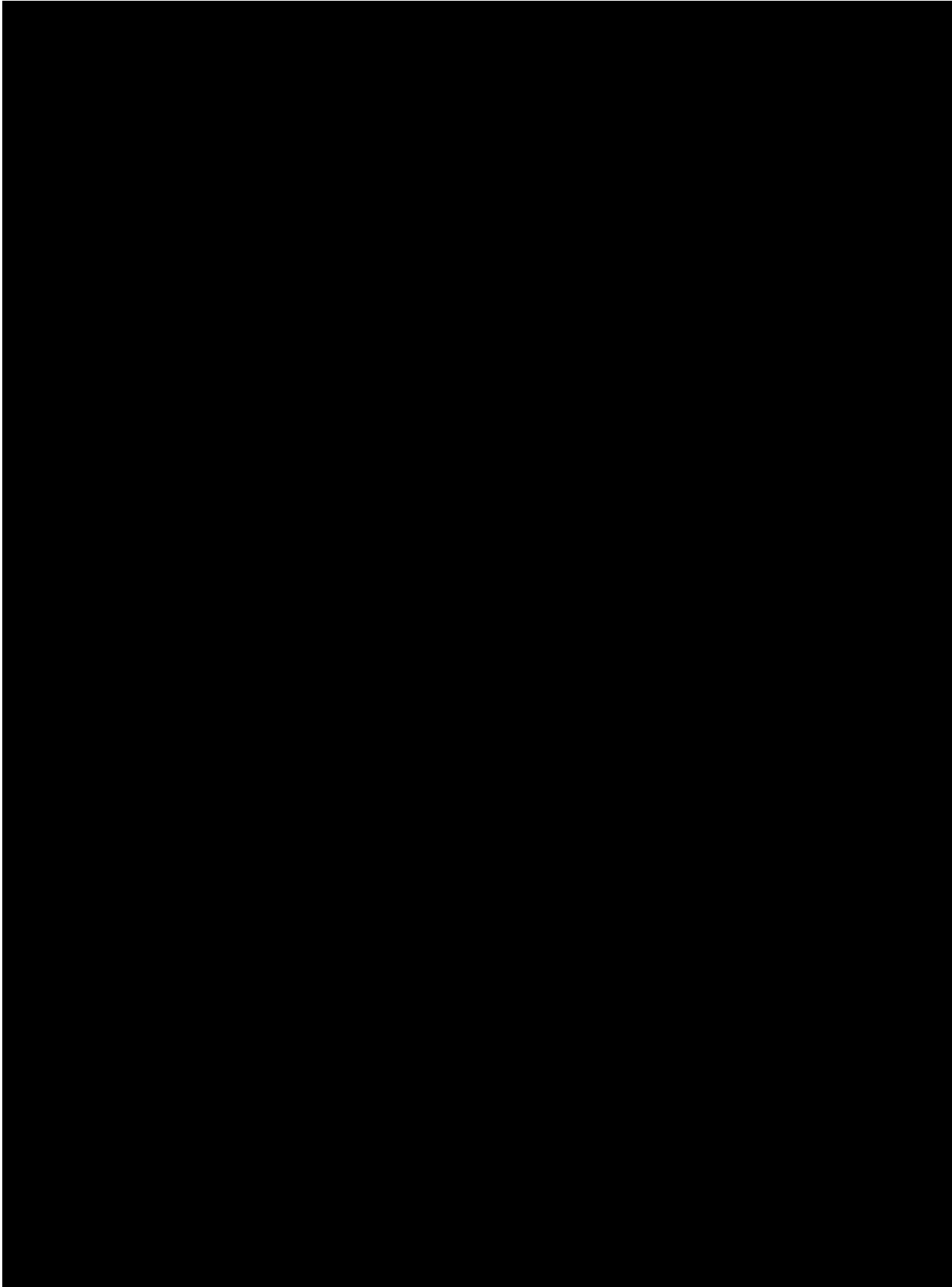
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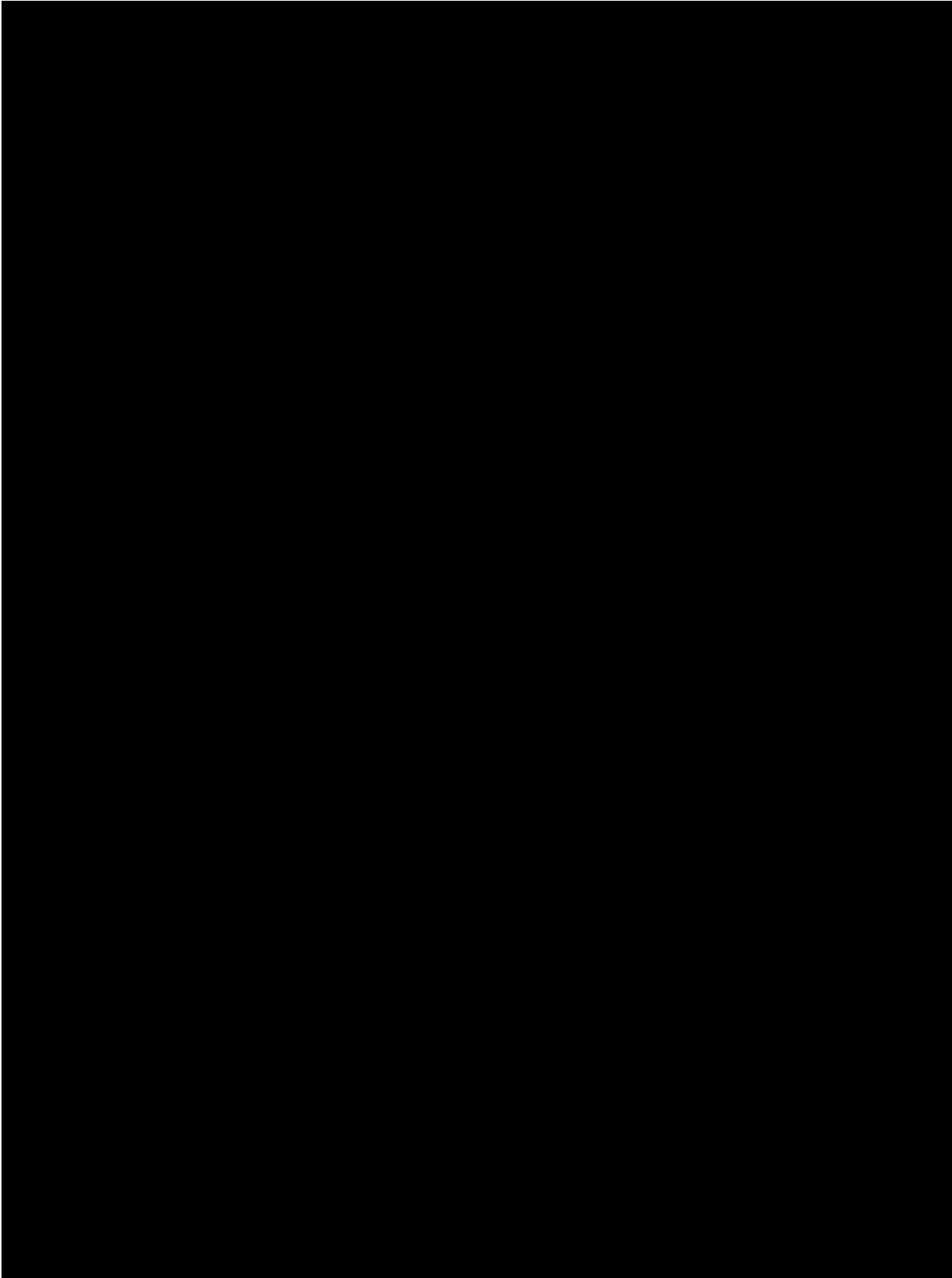
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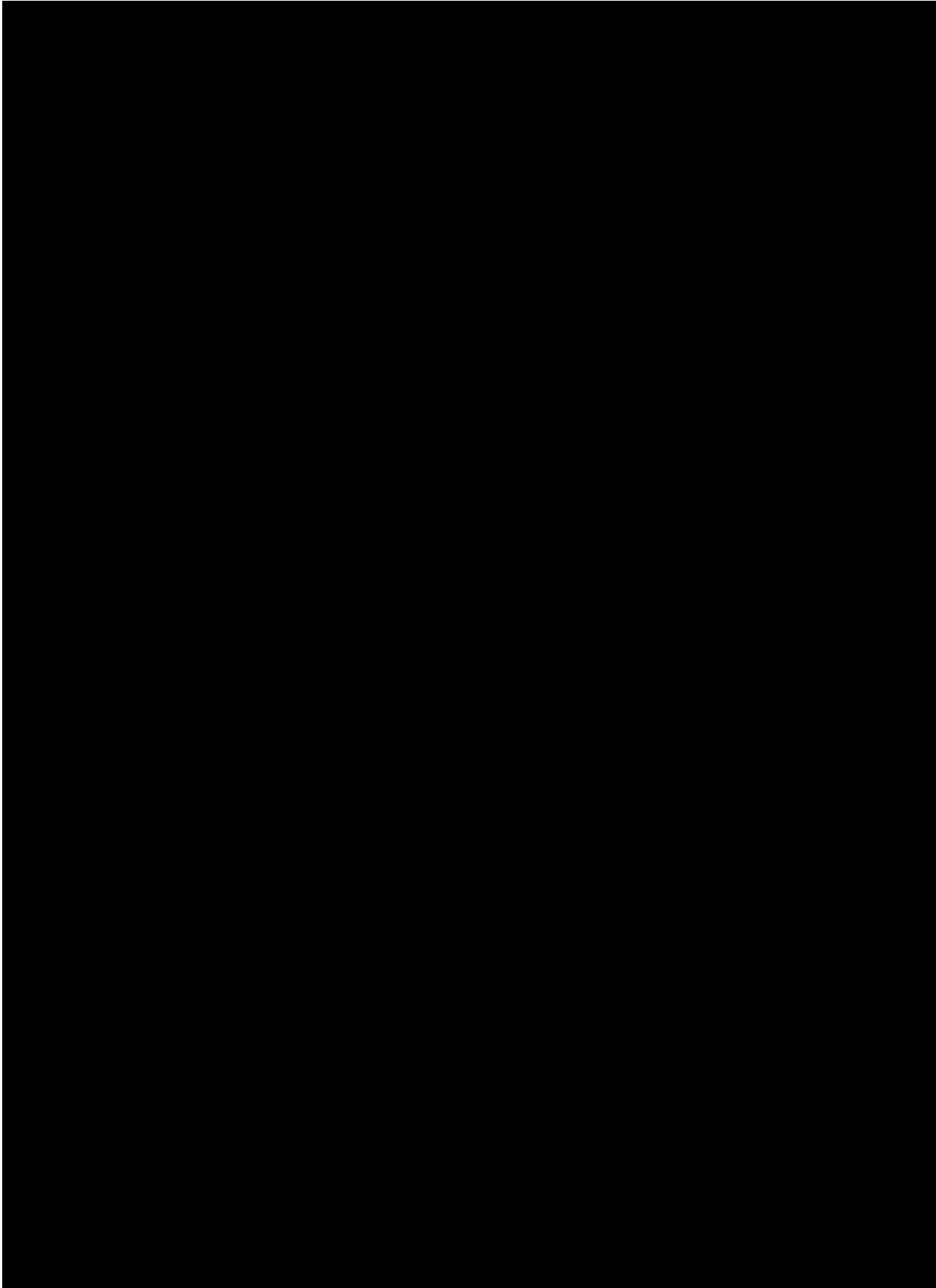
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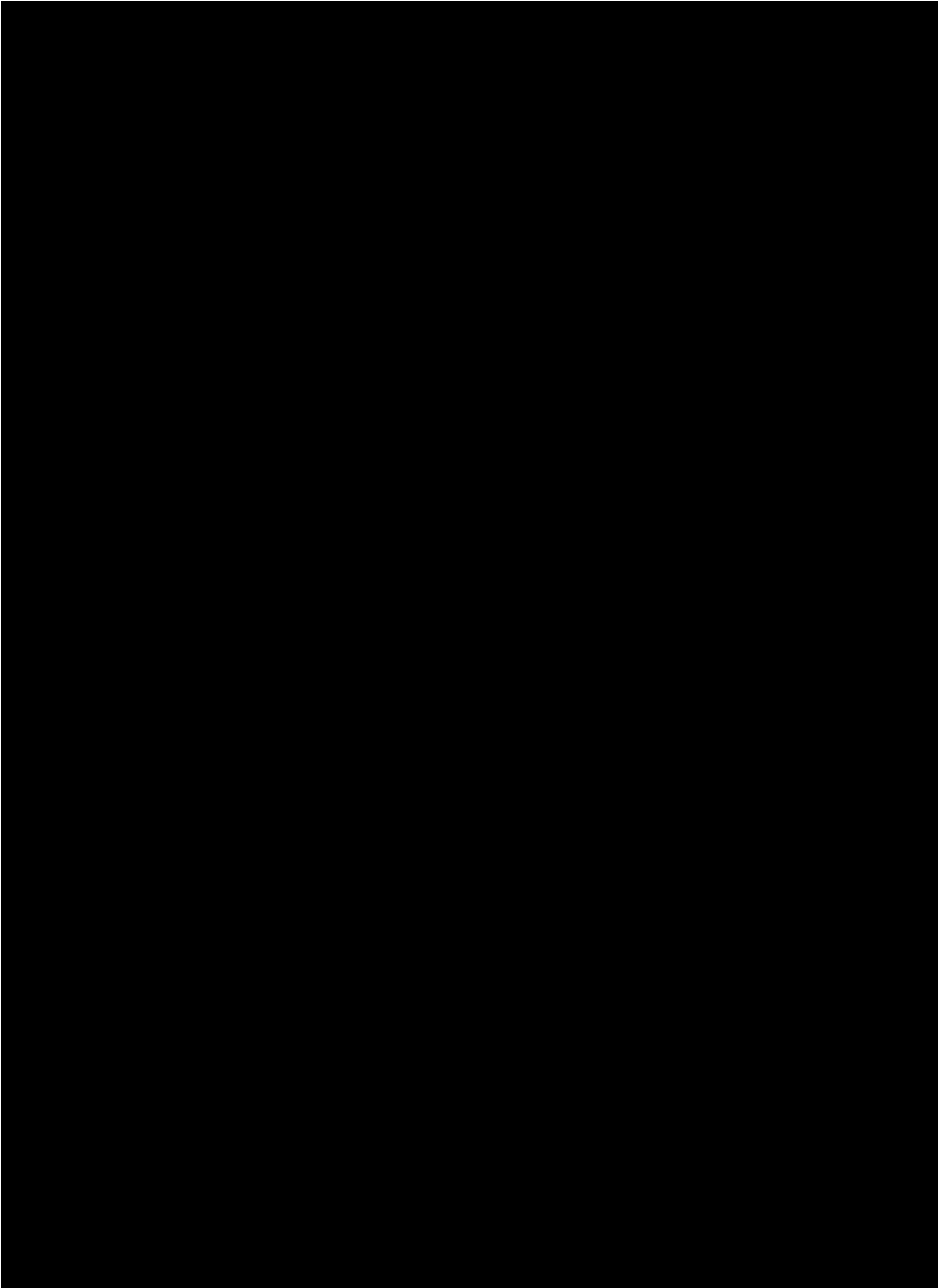
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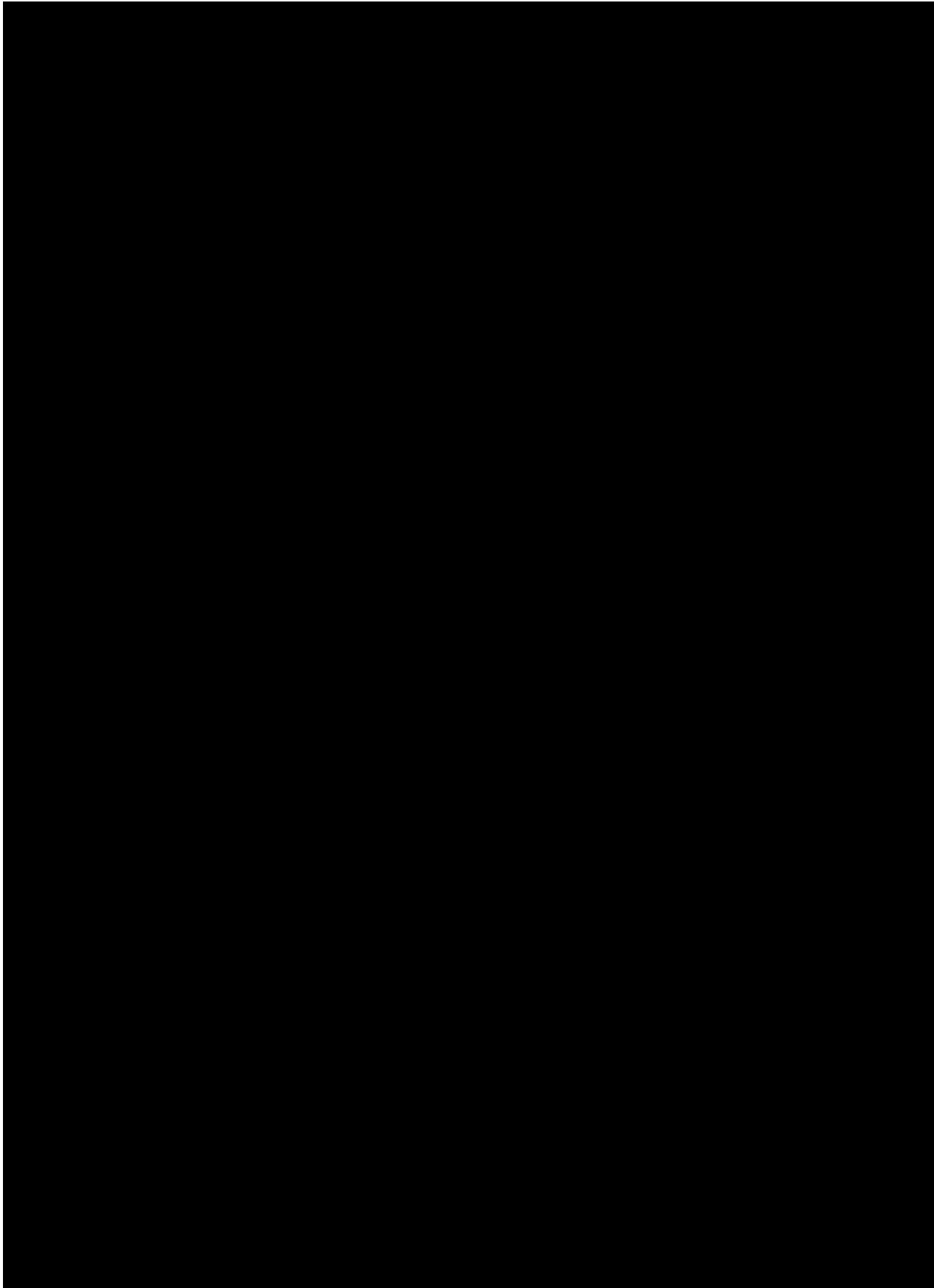
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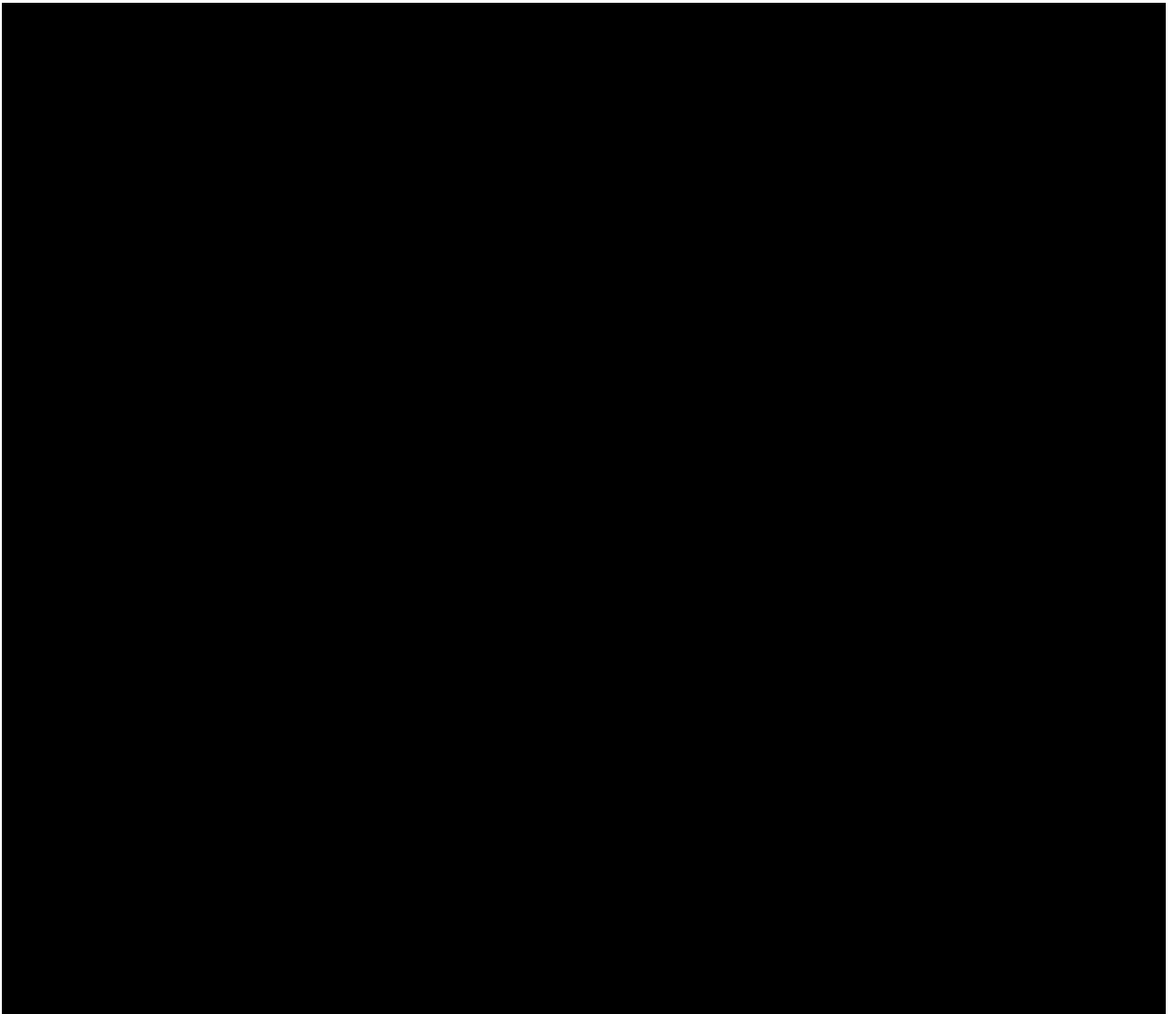
(Brief recess.)

PRESIDENT TERCIER: The court reporters are ready, and the interpreters are ready too?

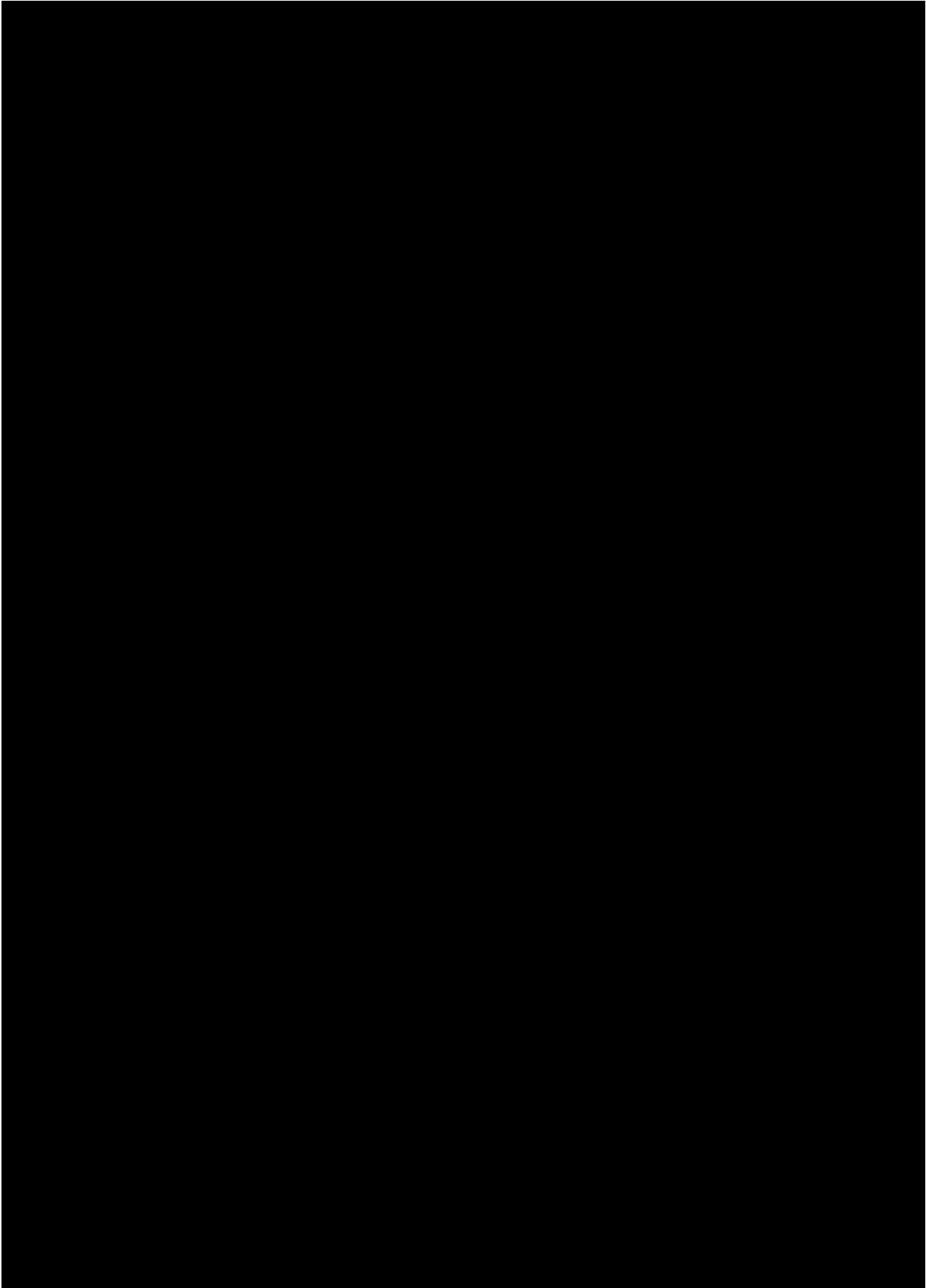
THE INTERPRETER: Yes, we are.

PRESIDENT TERCIER: Thank you very much. So, please, Mr. Lew, you may proceed.

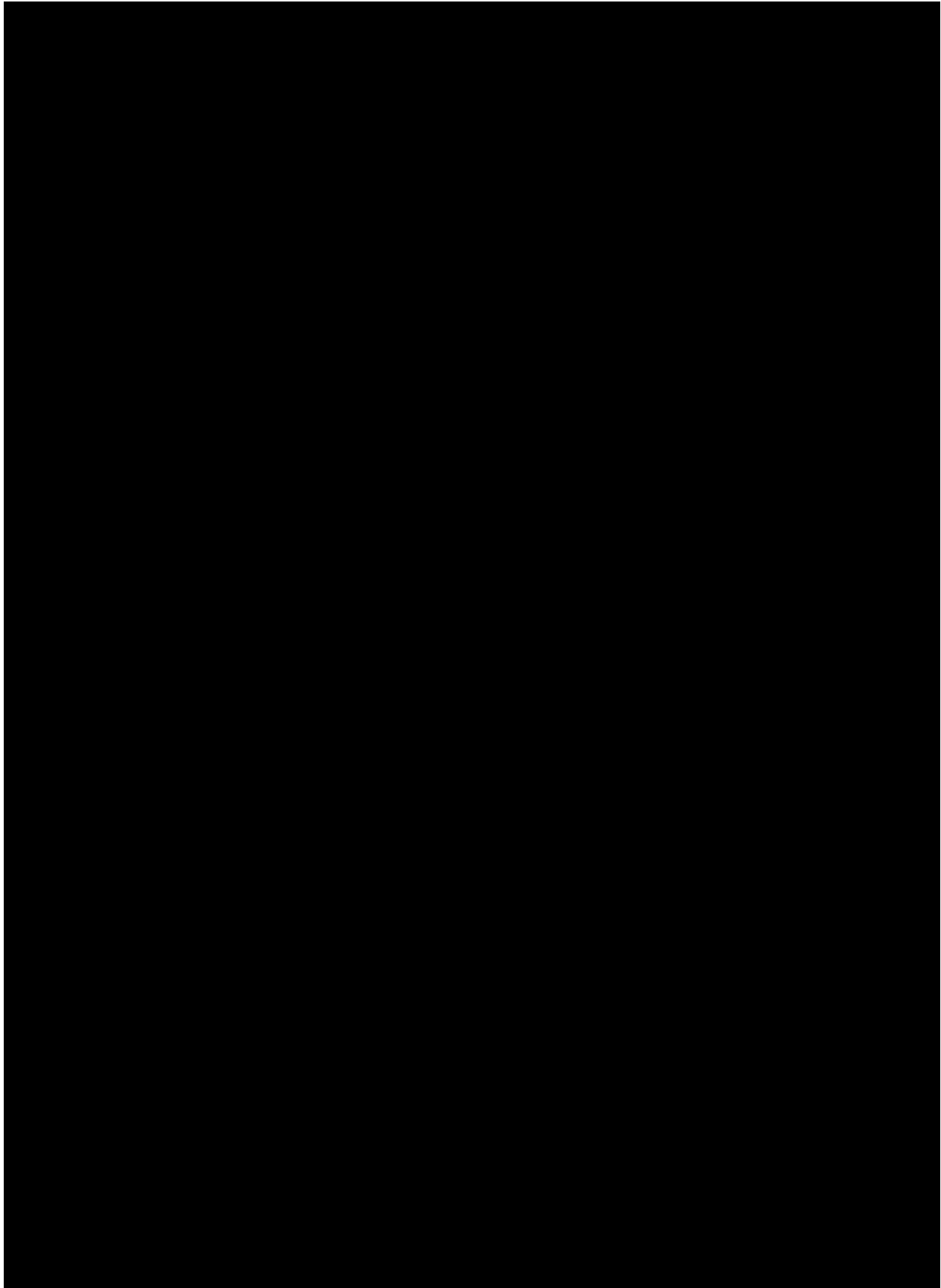
MR. LEW: Thank you, Mr. President.



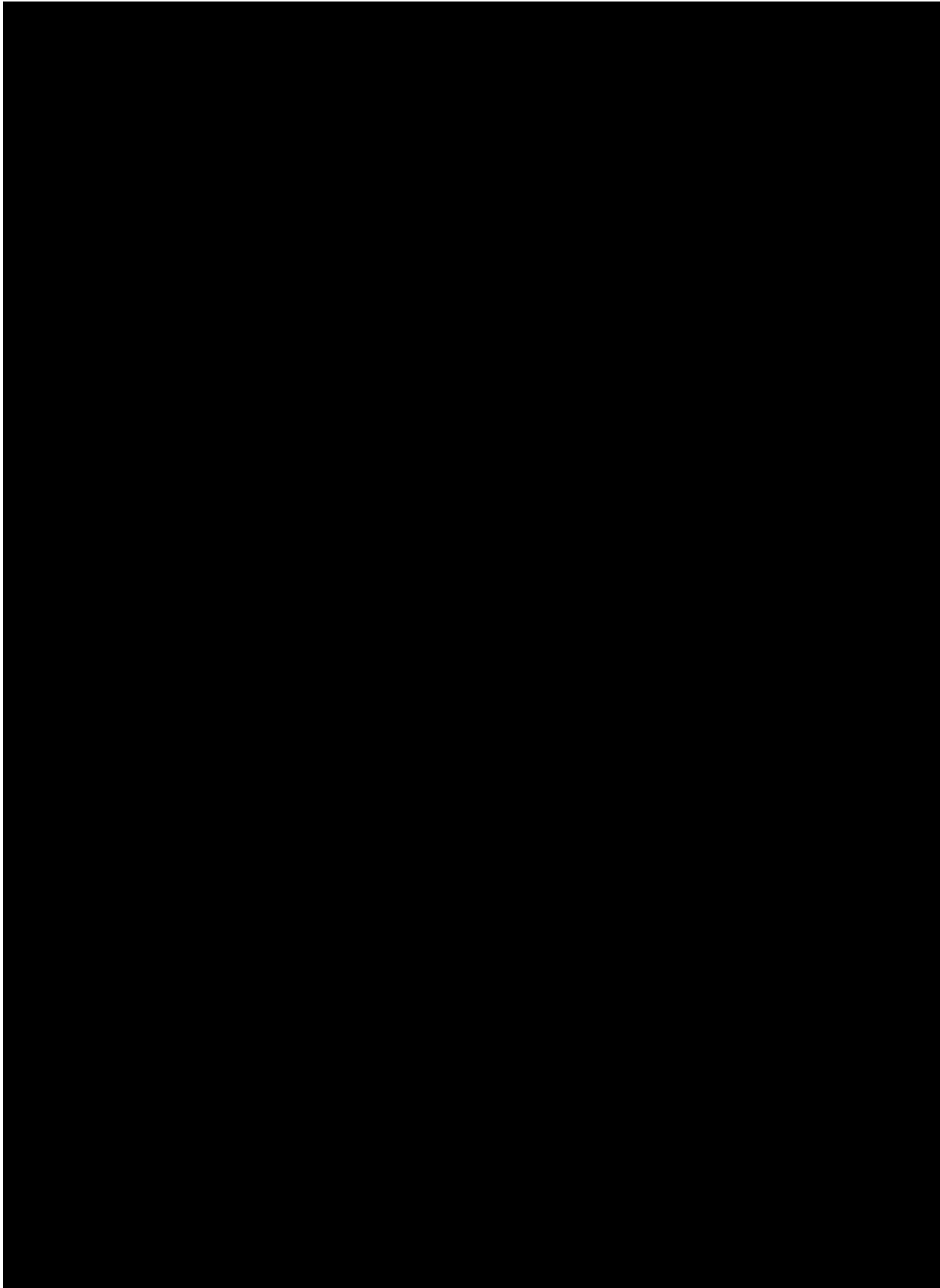
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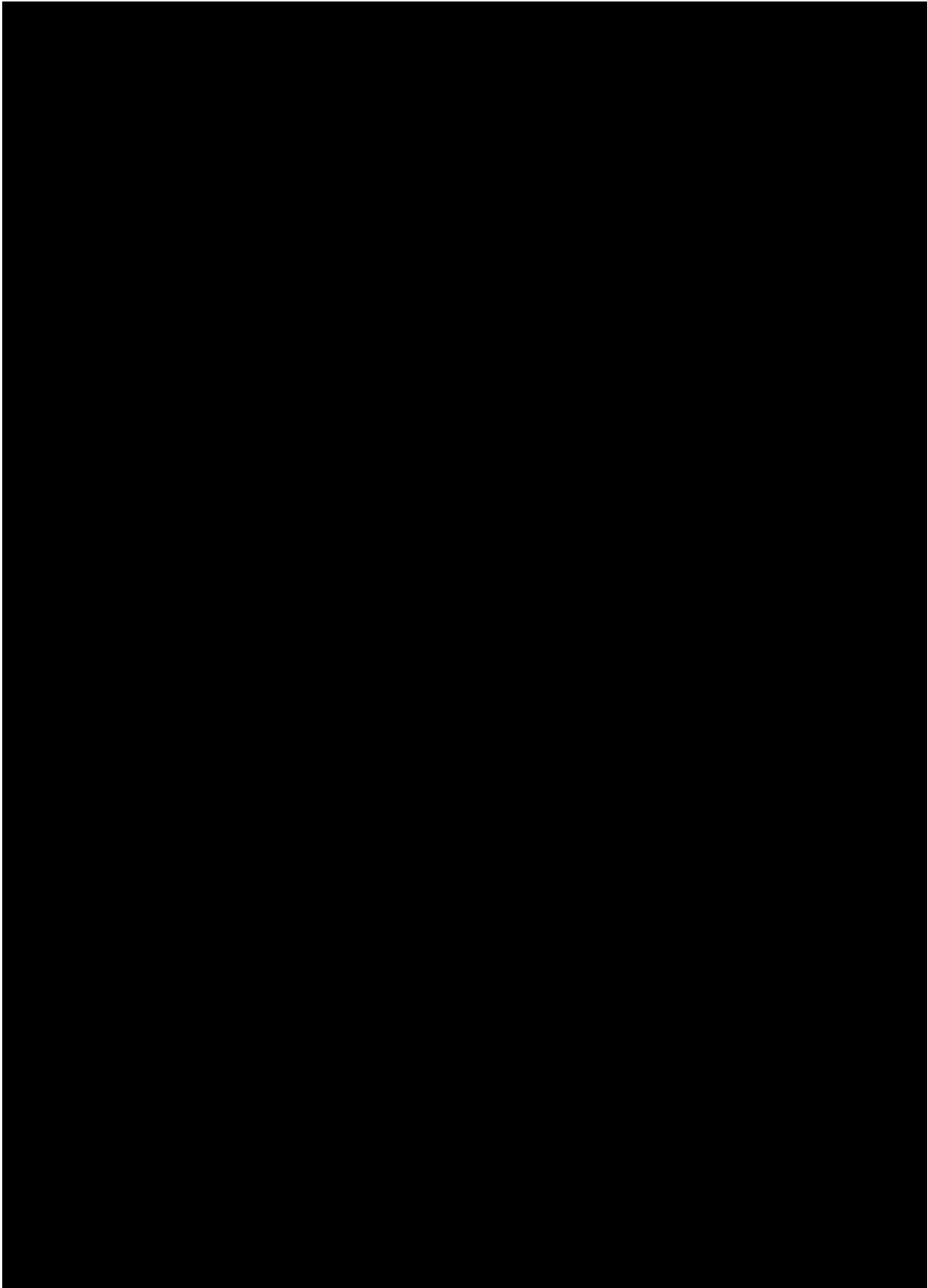
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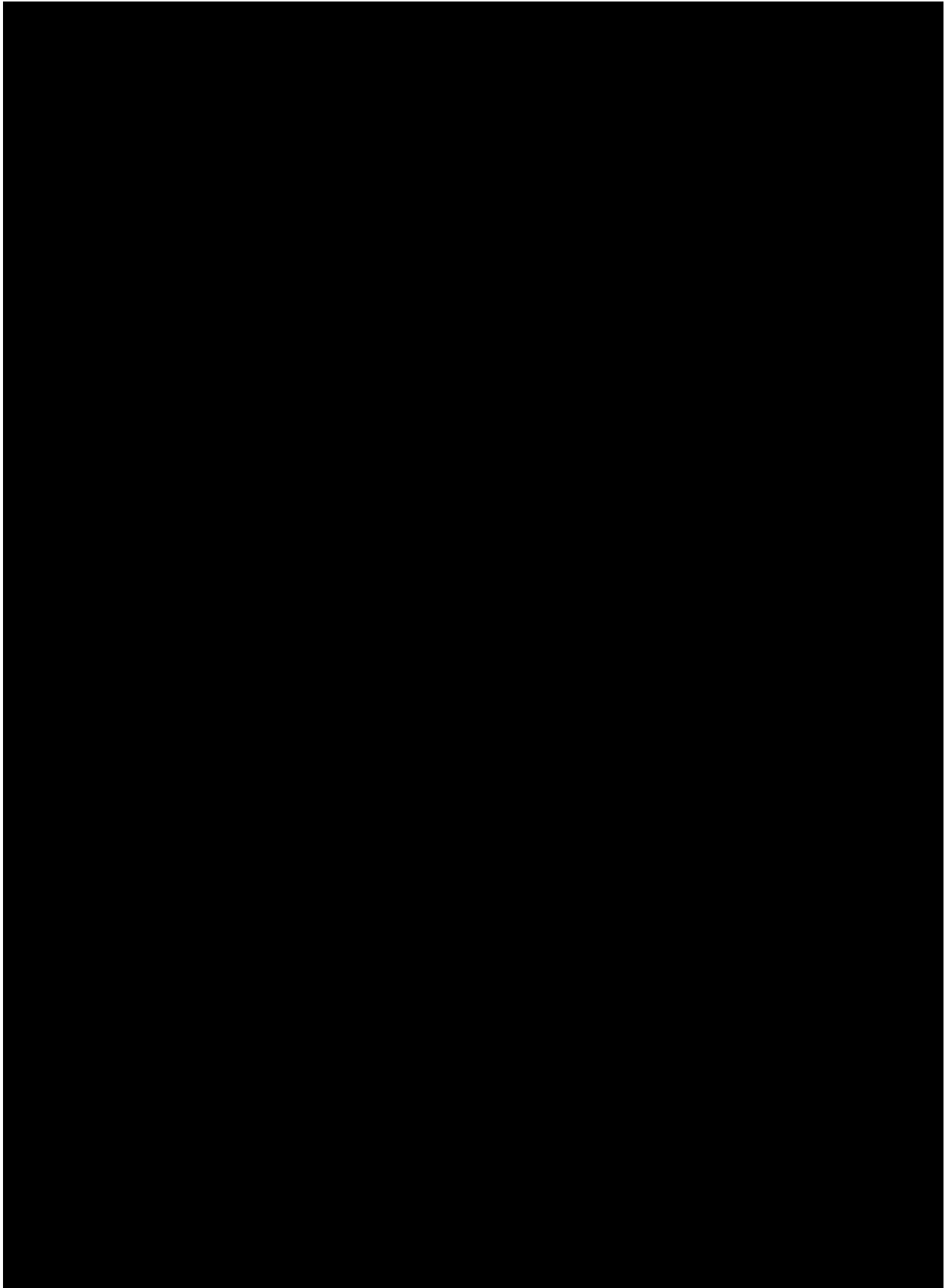
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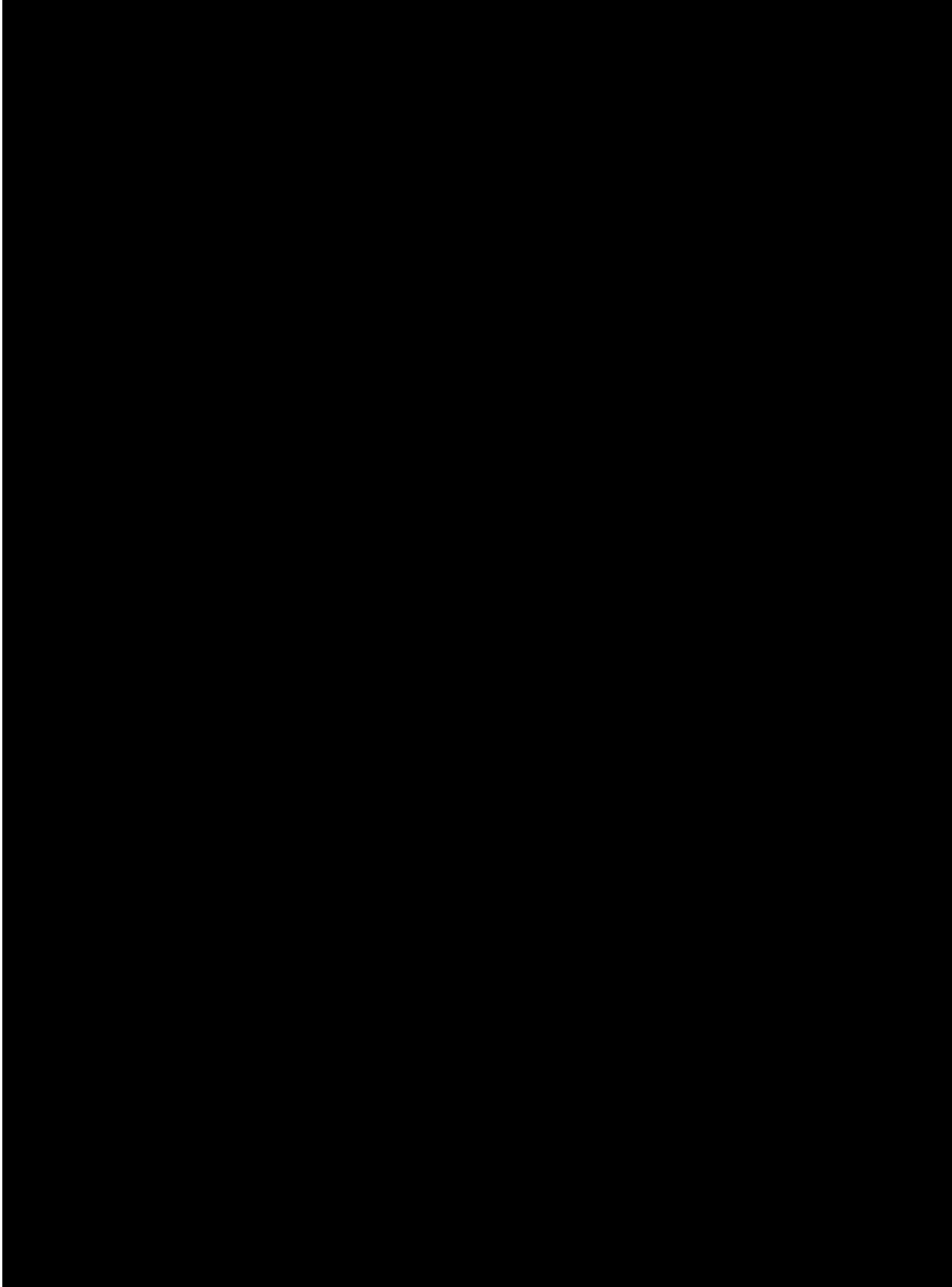
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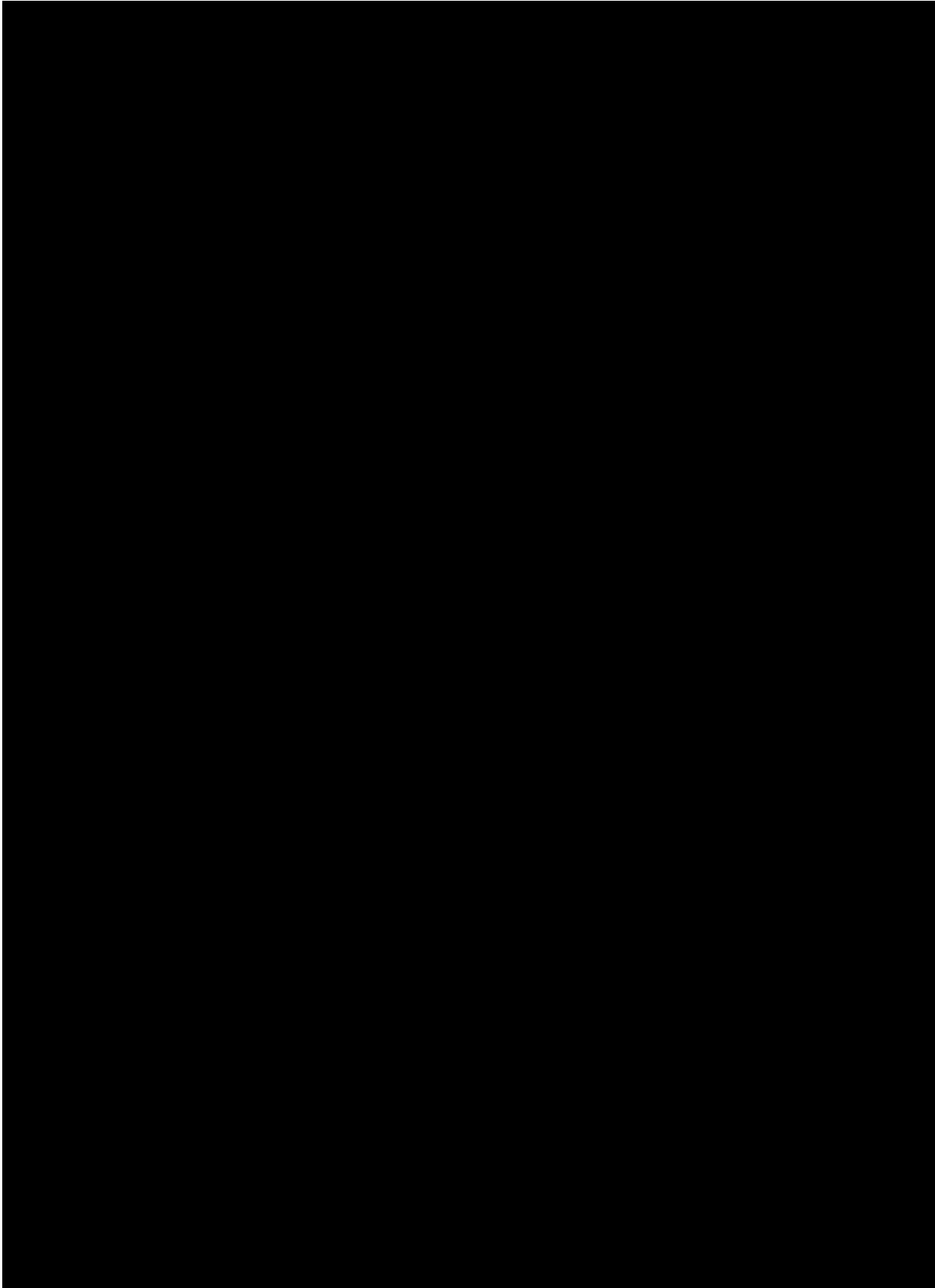
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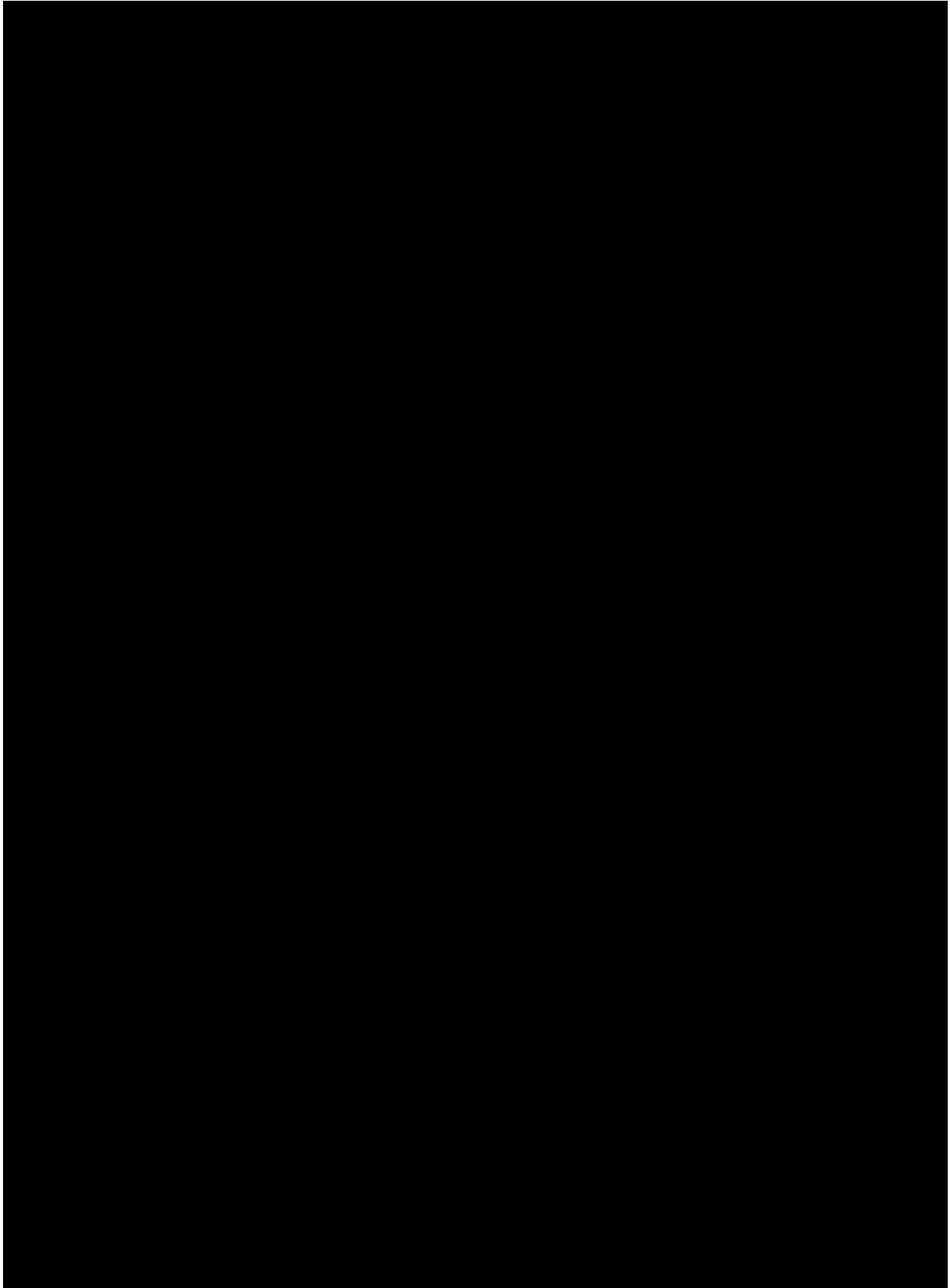
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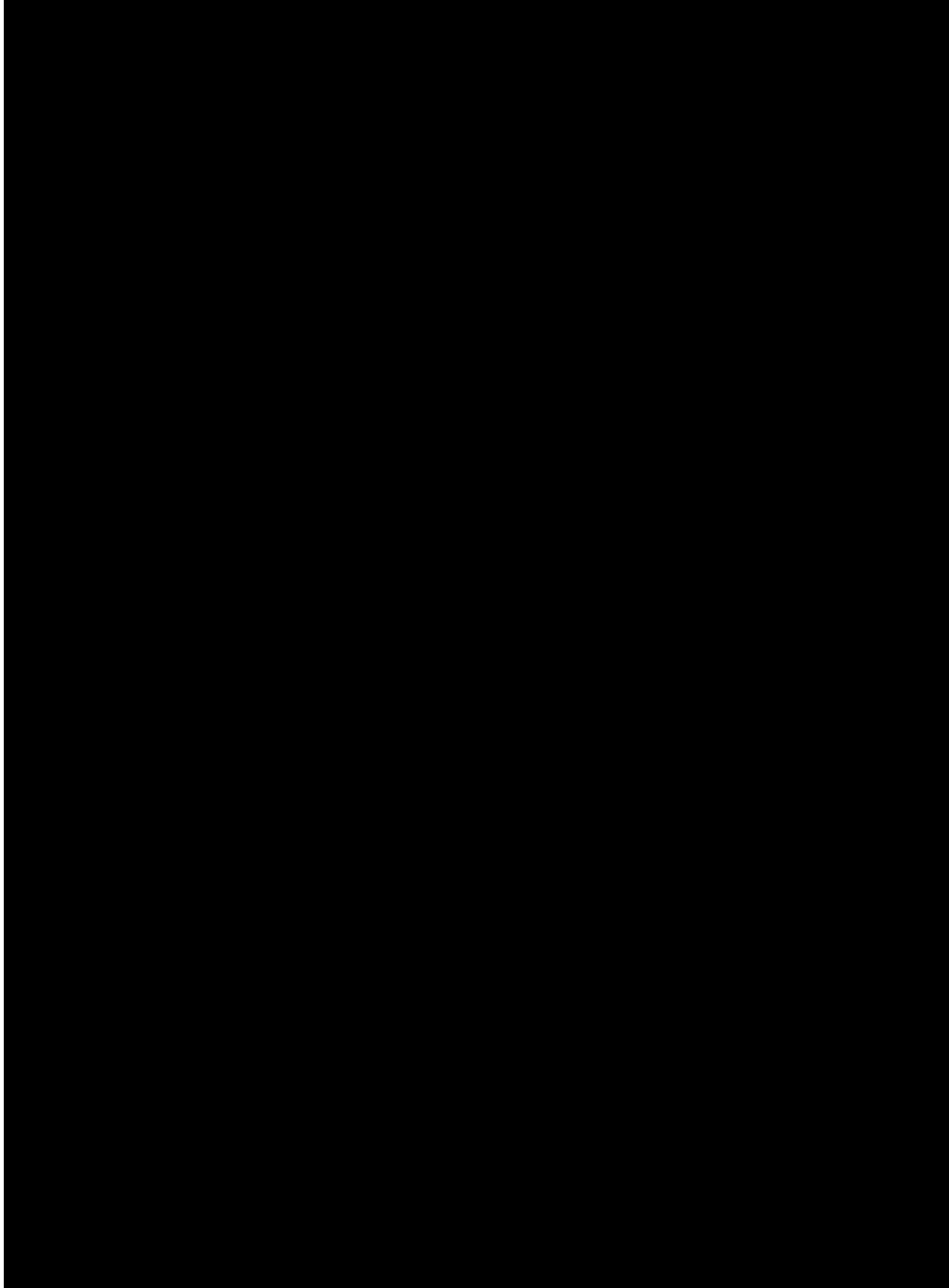
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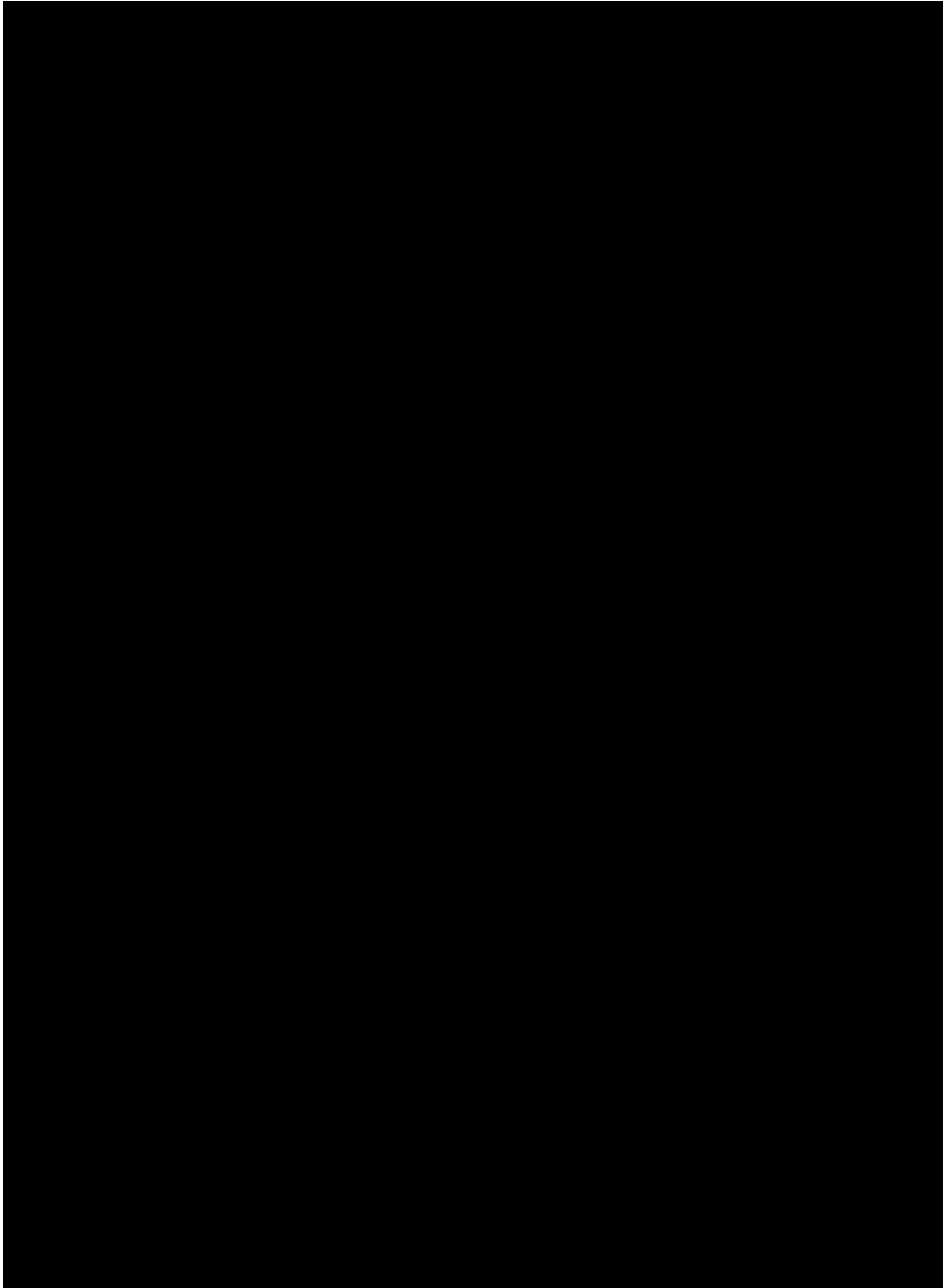
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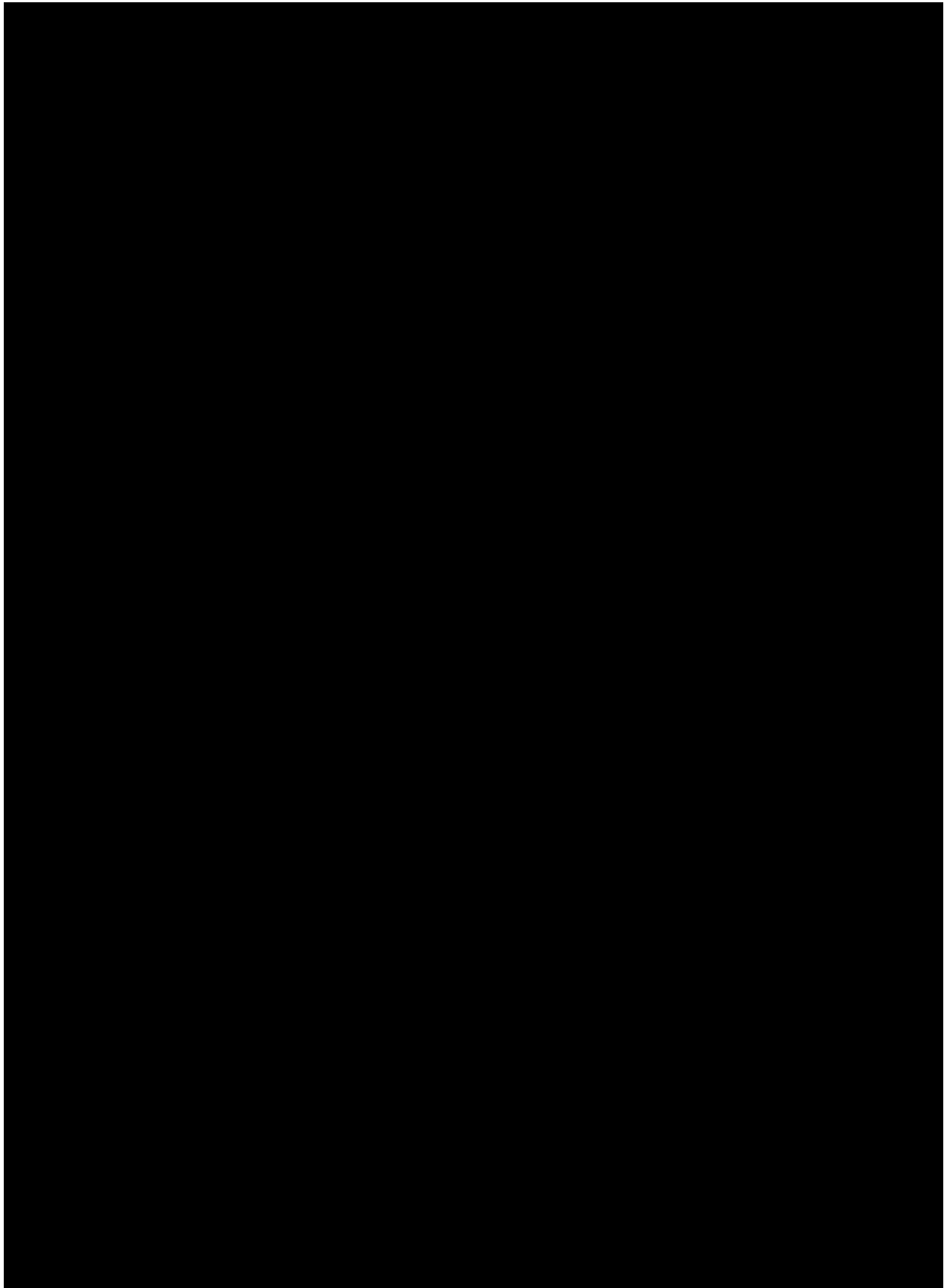
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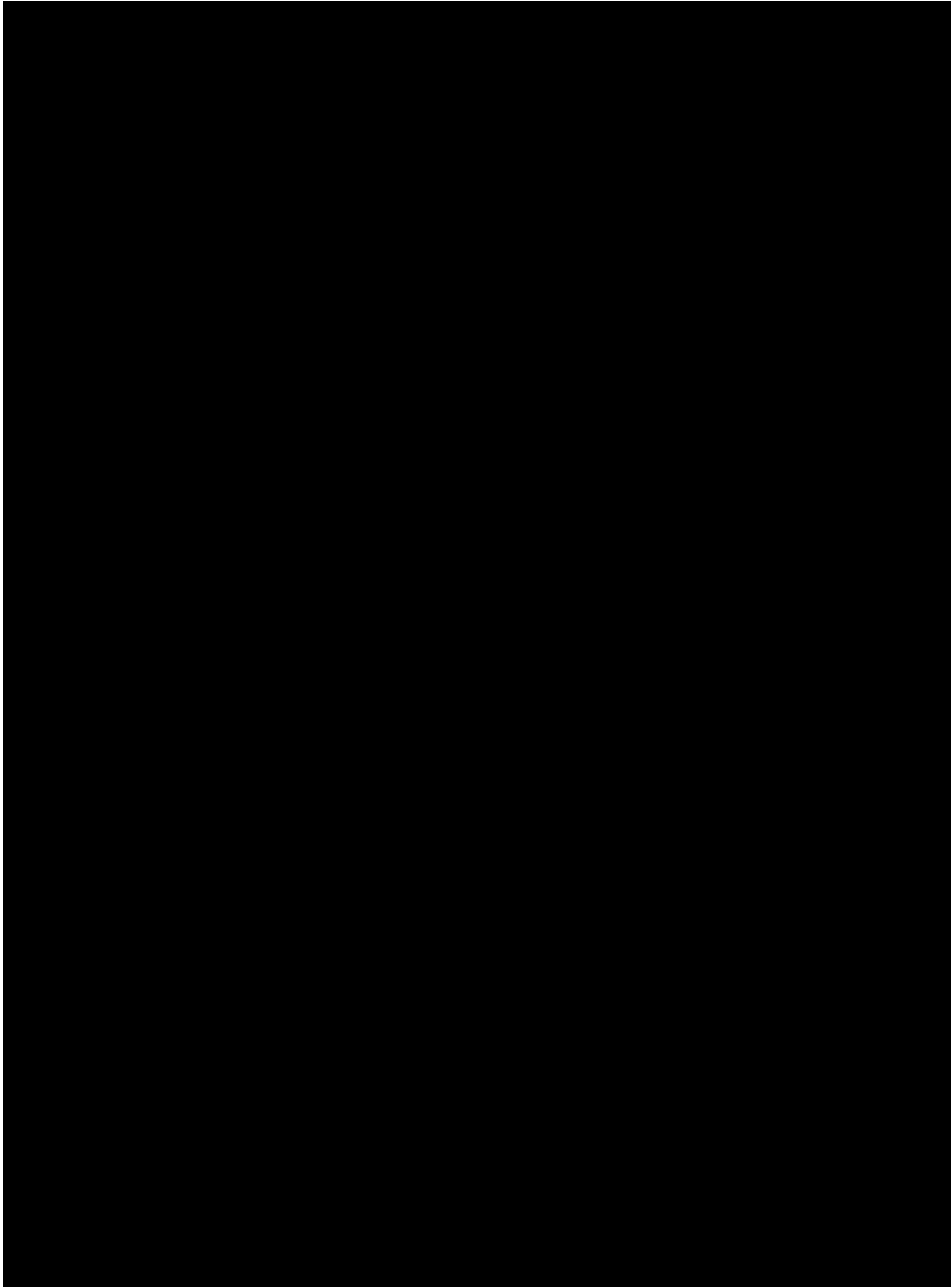
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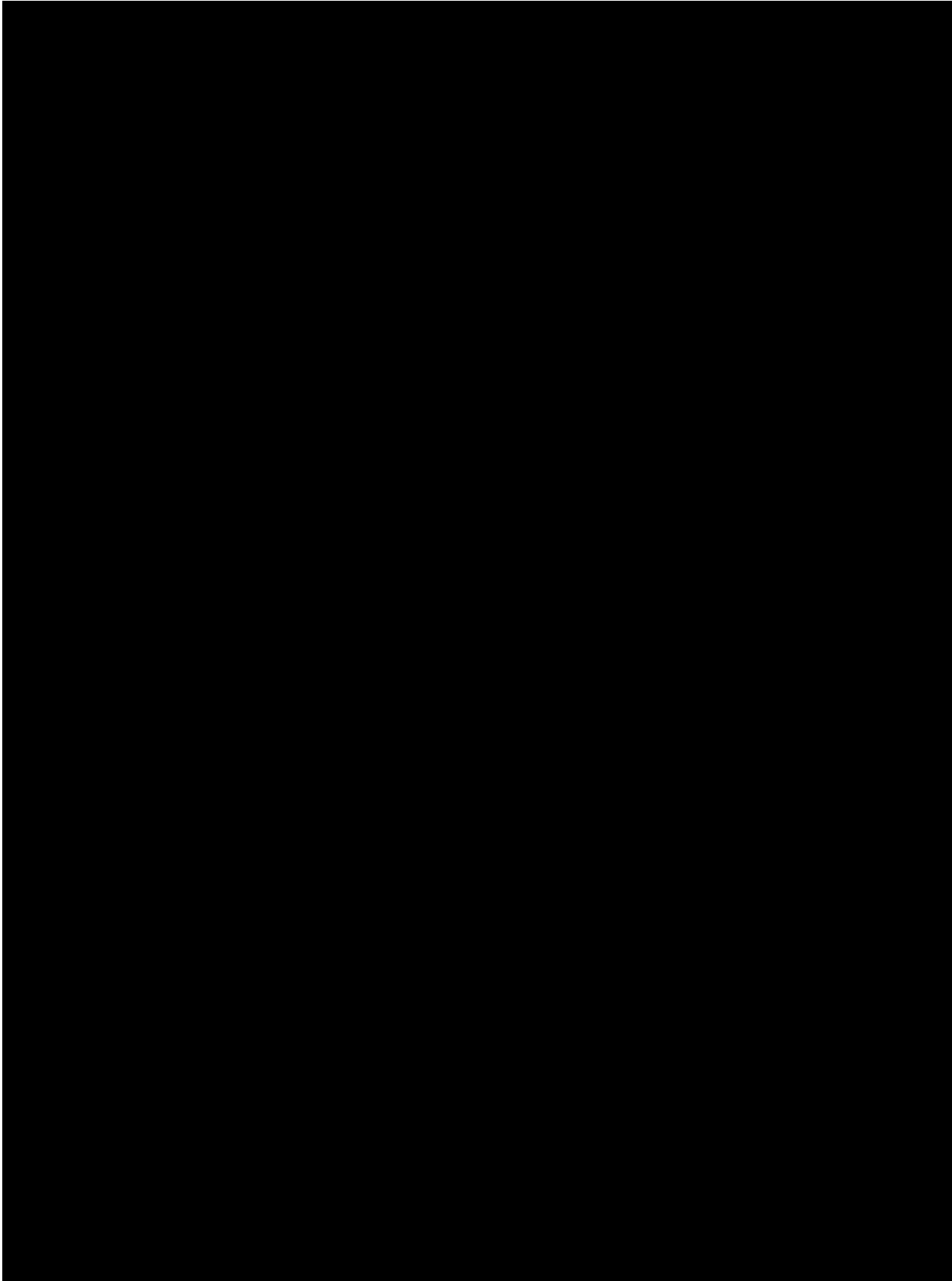
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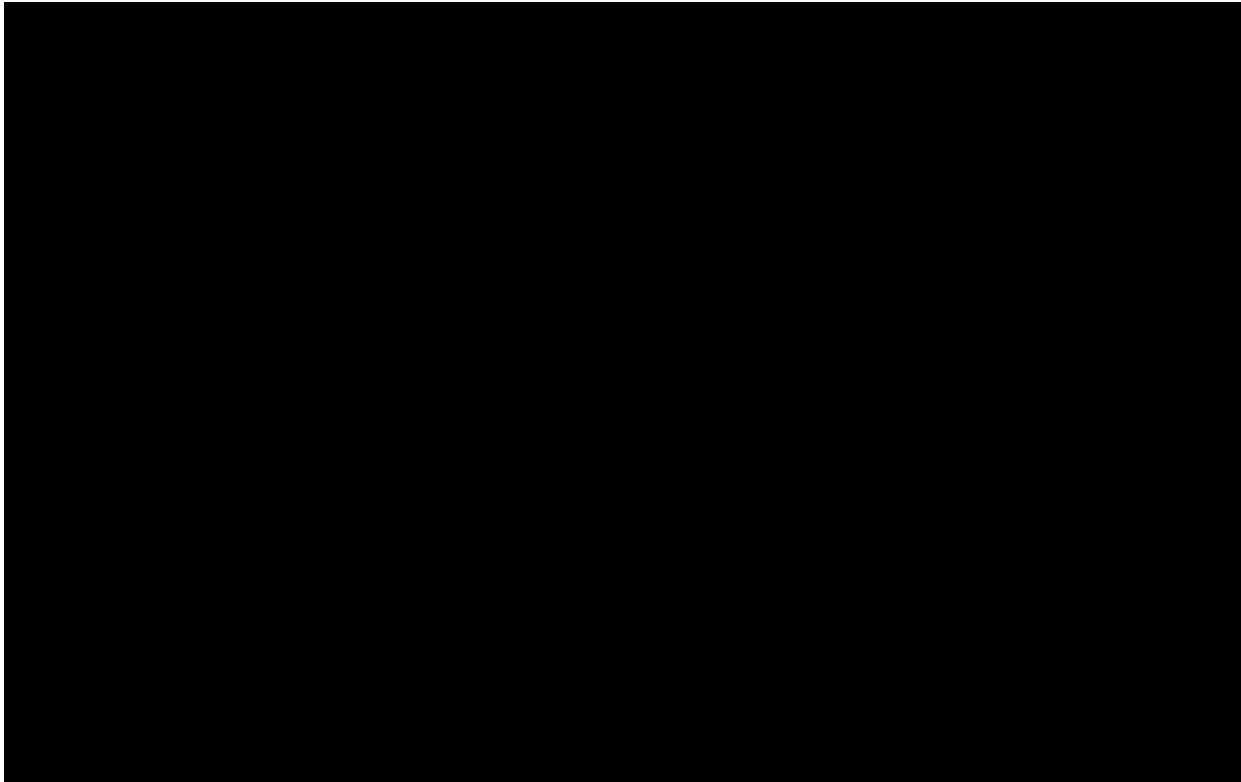
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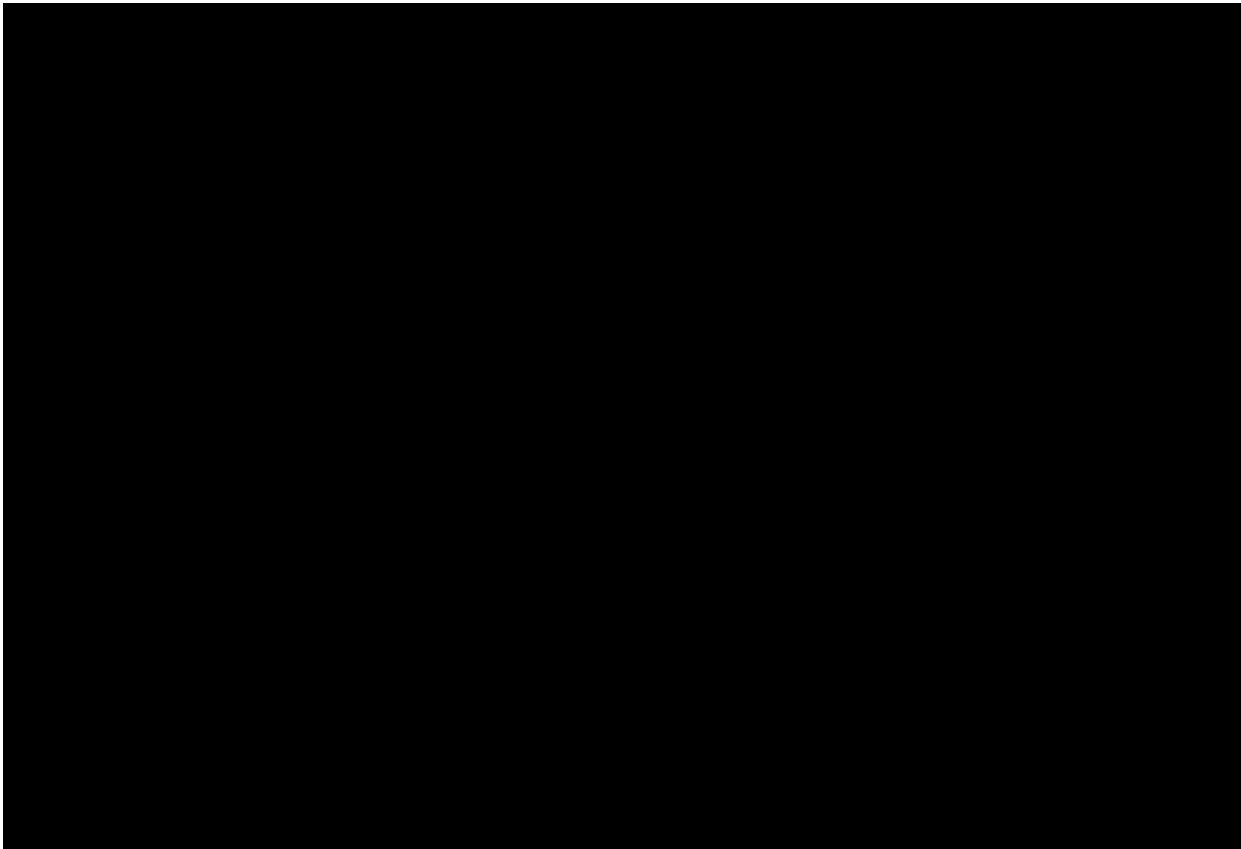
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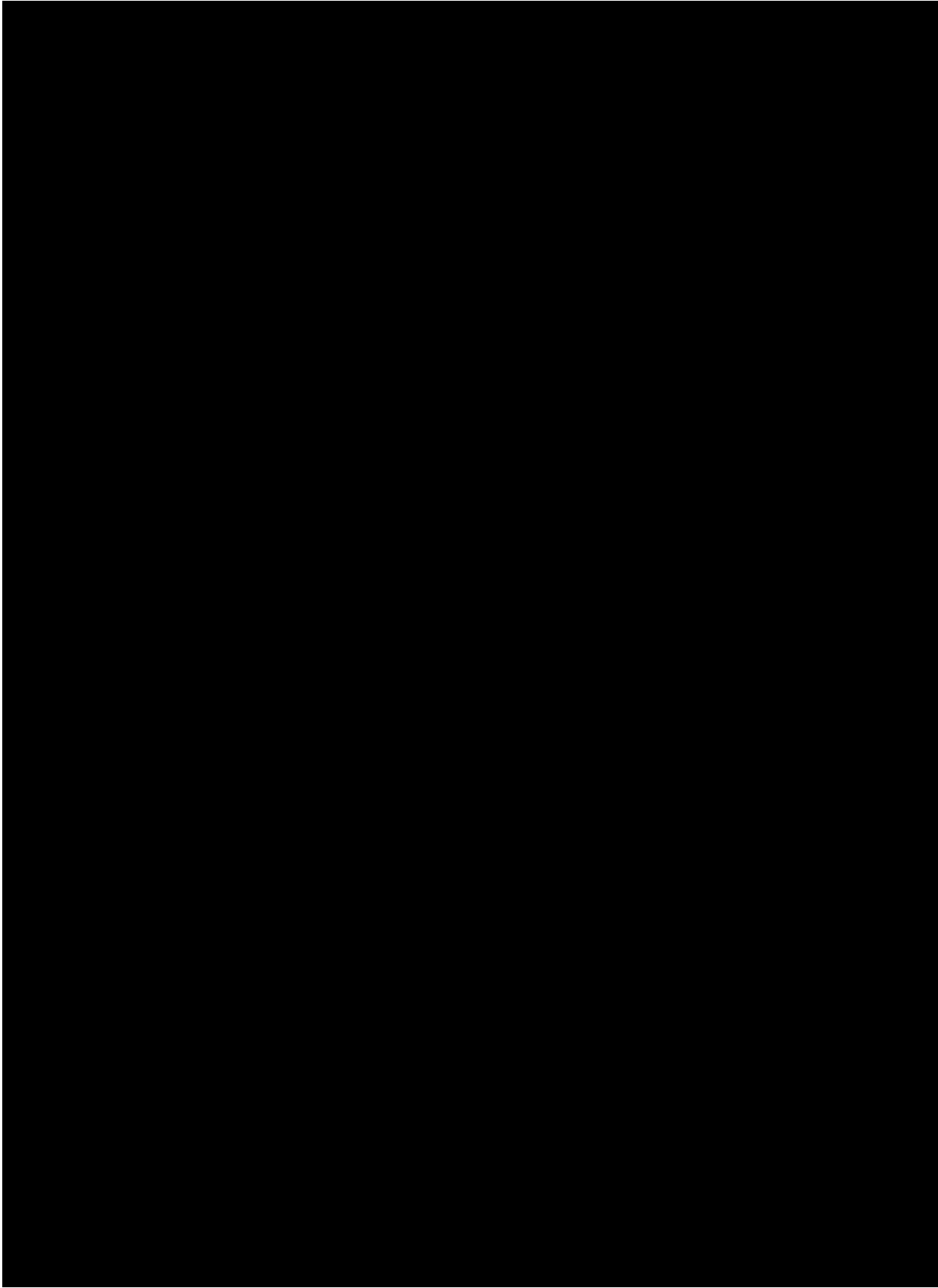
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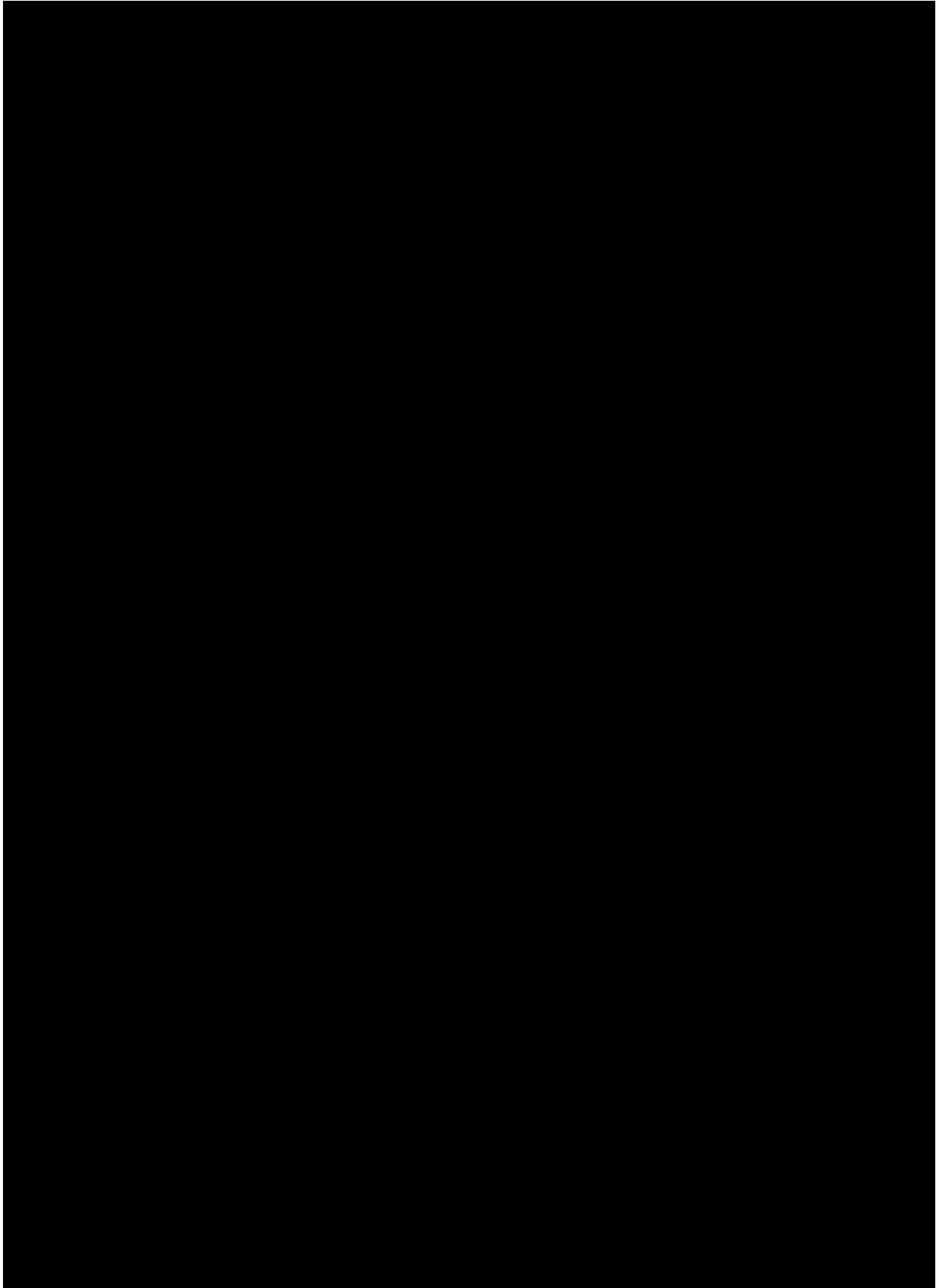
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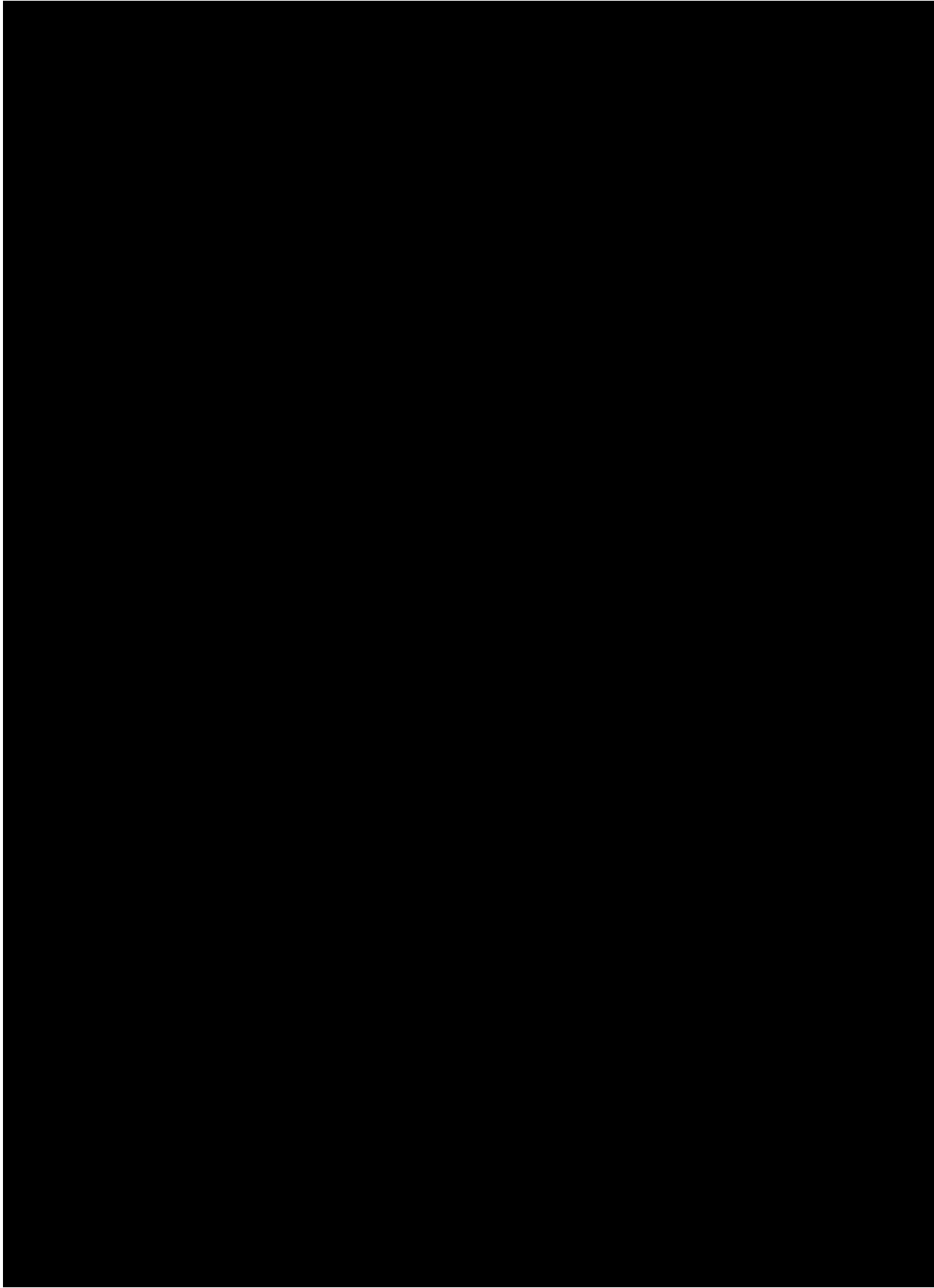
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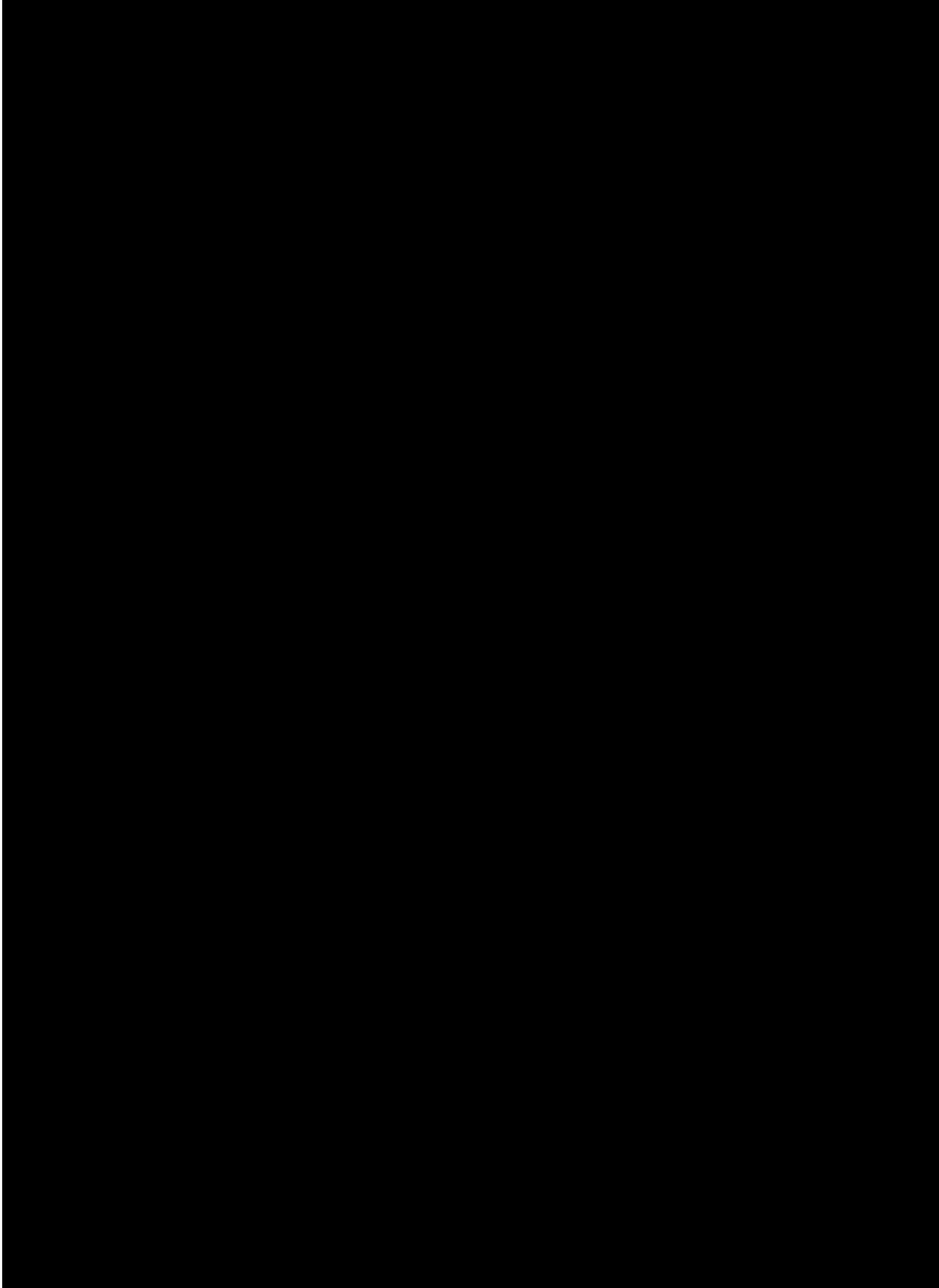
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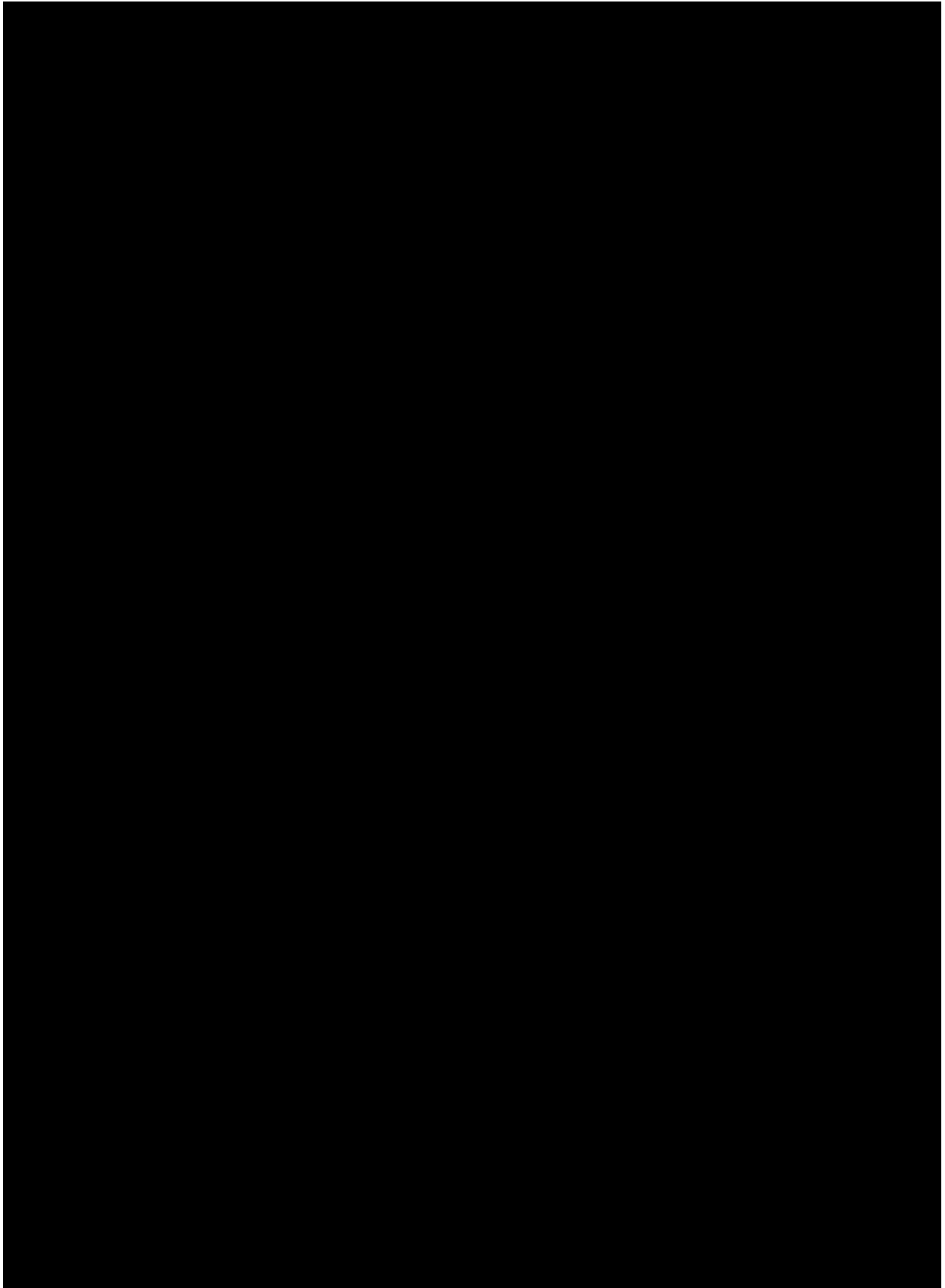
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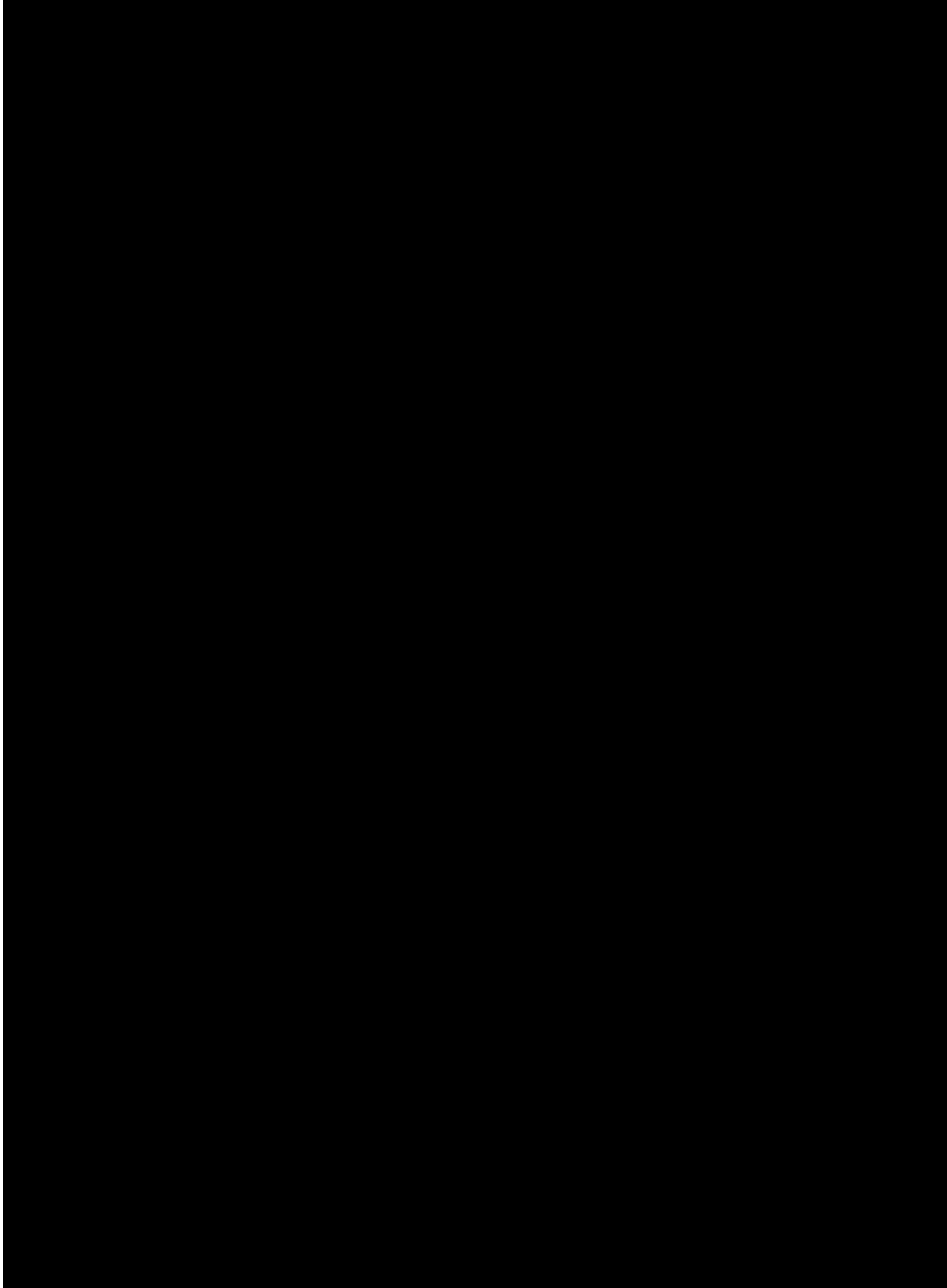
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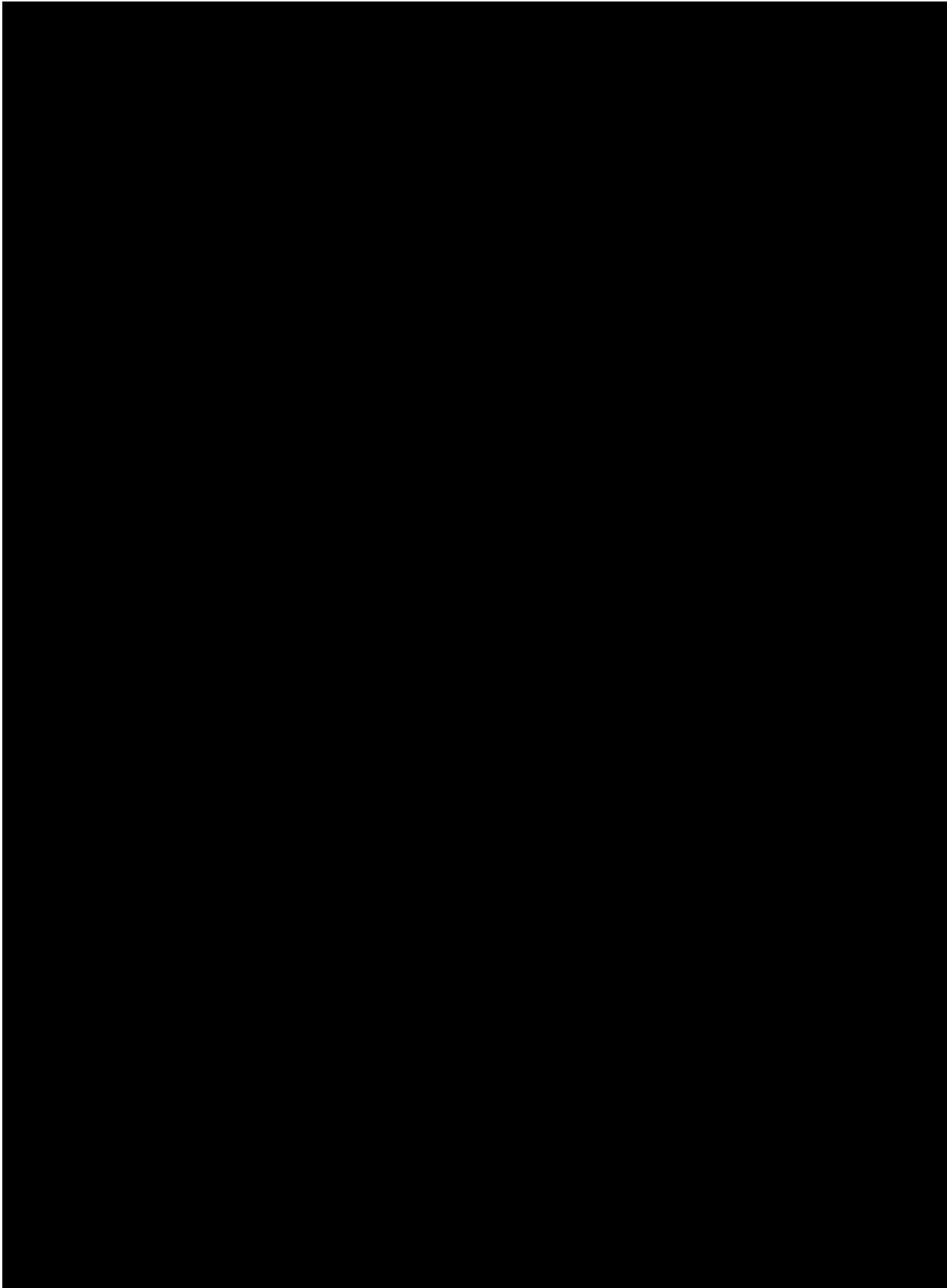
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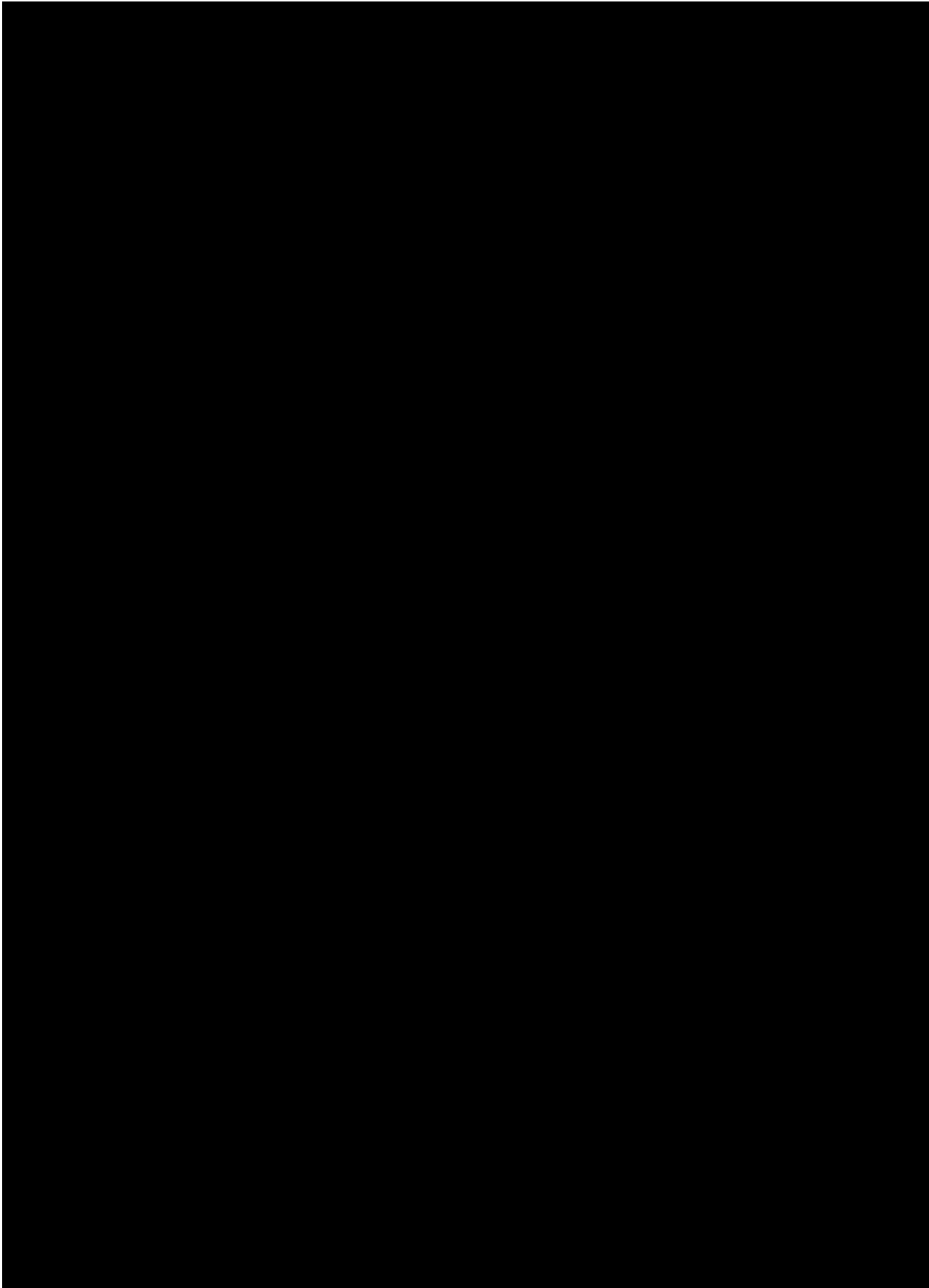
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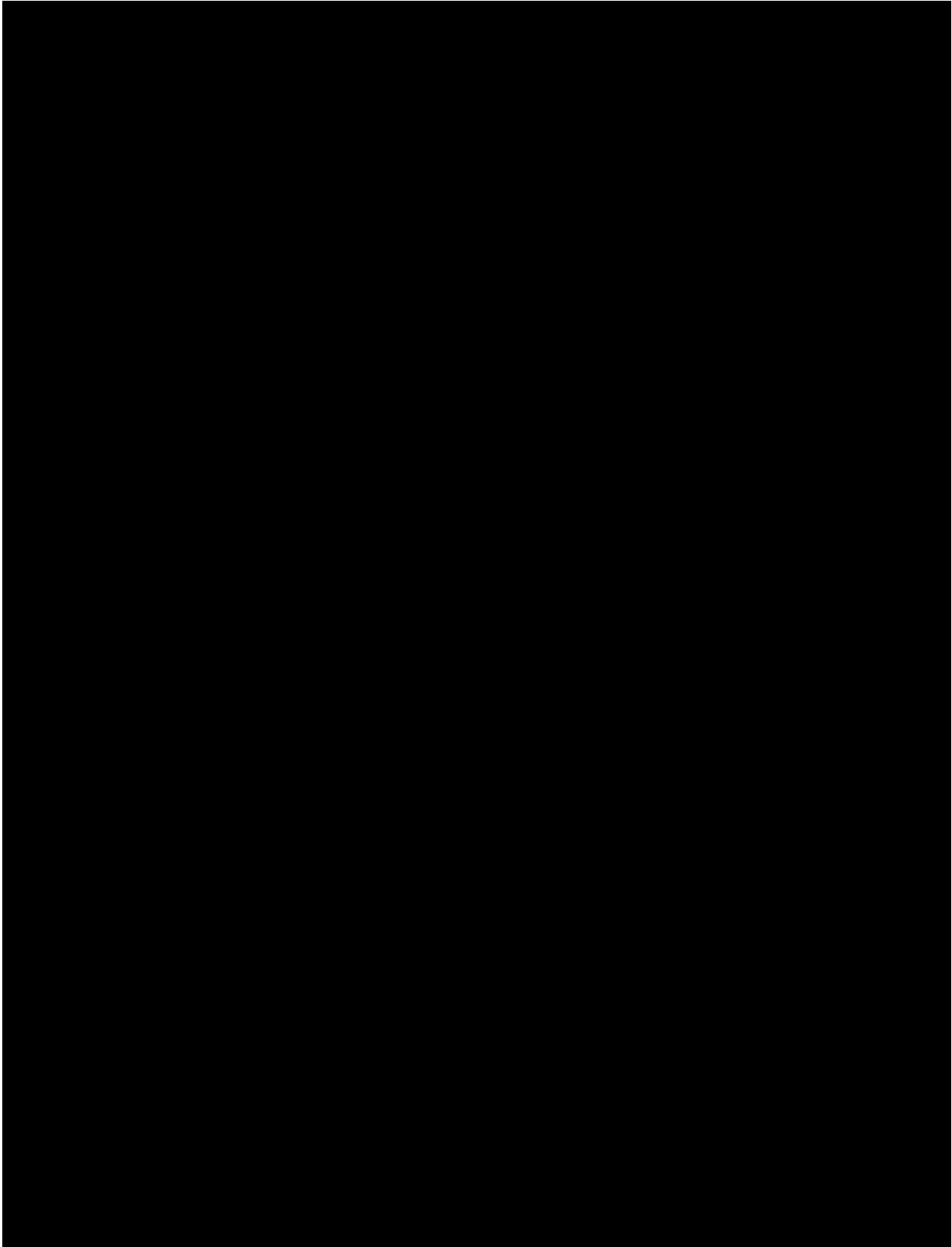
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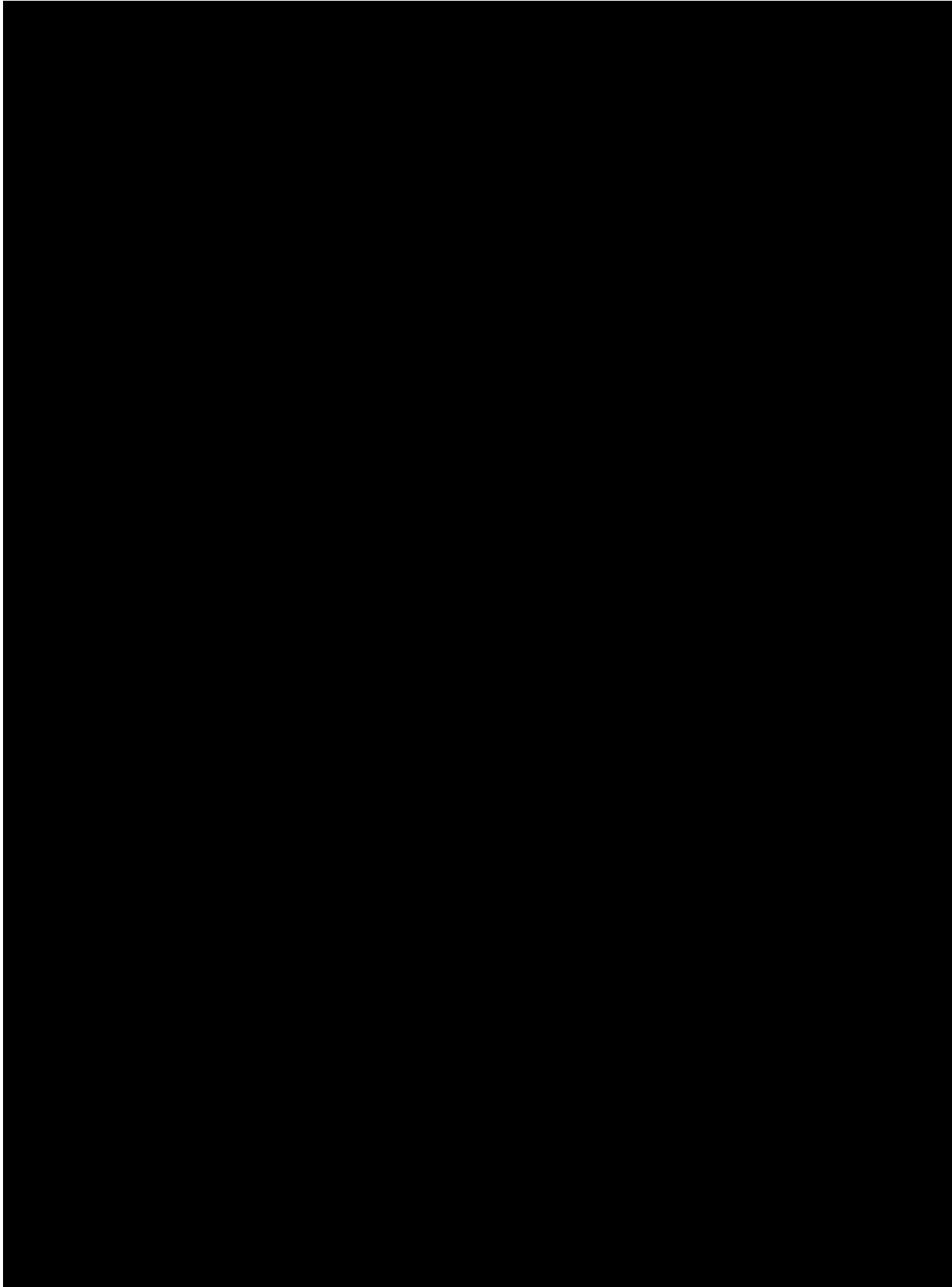


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QUESTIONS FROM THE TRIBUNAL

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1 PRESIDENT TERCIER: Thank you very much,
2 Mr. Ariton. I'd like to thank you for your testimony.

3 So, your examination is now over. We will
4 take five minutes to--

5 THE WITNESS: Thank you.

6 PRESIDENT TERCIER: Sorry.

7 --to have now Ms. Mocanu.

8 (Witness steps down.)

9 PRESIDENT TERCIER: According to the
10 estimation you made, the direct should last
11 15 minutes, the cross 2 hours and 10 minutes, and the
12 redirect 15. It's a good estimation?

13 DR. HEISKANEN: These are the estimates. And
14 the Parties--I expect both Parties will manage them in
15 accordance with their calendar.

16 PRESIDENT TERCIER: Okay. On your side too?
17 He spoke for both Parties, so I assume you will also
18 accept.

19 MR. LEW: I'll defer to my colleague,
20 Mr. Vasquez.

21 PRESIDENT TERCIER: Okay. Good.

22 MR. VASQUEZ: Yes.

1 PRESIDENT TERCIER: Yes?

2 MR. VASQUEZ: Yes.

3 PRESIDENT TERCIER: Fine.

4 MR. VASQUEZ: We will try--

5 PRESIDENT TERCIER: Thank you.

6 MR. VASQUEZ: --to adhere to that.

7 THE COURT: Thank you.

8 So, we now ask Ms. Mocanu to come.

9 (Brief recess.)

10 DORINA SIMONA MOCANU, RESPONDENT'S WITNESS, CALLED

11 PRESIDENT TERCIER: Good morning,

12 Mrs. Mocanu. I start before anything in addressing
13 the question of the language in which you wish to
14 testify in your Witness Statement.

15 And the second, you mentioned that you would
16 not only prefer, but you say that you will do it in
17 Romanian. You prefer to speak Romanian?

18 THE WITNESS: Indeed, I prefer to speak in
19 Romanian. Thank you.

20 PRESIDENT TERCIER: Very well. It is, of
21 course, your right.

22 Do you understand English? Do you read

1 English?

2 THE WITNESS: I understand and read English,
3 but it is more comfortable for me to speak in
4 Romanian.

5 PRESIDENT TERCIER: All right. Perfectly
6 clear. Perfectly clear.

7 Well, Ms. Mocanu, you will be heard in this
8 procedure as a witness. I would like to introduce you
9 the Members of the Tribunal. On my left-hand side is
10 Professor Grigera Naón; on my right-hand side is
11 Professor Zachary Douglas. My name is Pierre Tercier.
12 We have on our right the Secretary of The Tribunal and
13 beside her Ms. Athanasiou, who is Assistant to the
14 Tribunal. And I can imagine you know who are on both
15 sides of the room.

16 You will be heard as a witness; as such, you
17 are invited to read the Witness Declaration that is on
18 your table. But we will proceed like we did before,
19 if somebody would be nice enough to read it in
20 Romanian.

21 You read it, can you understand it? So,
22 please do it.

1 THE WITNESS: I can read it myself.

2 PRESIDENT TERCIER: Read it aloud, please.

3 THE WITNESS: Witness Declaration: I
4 solemnly declare upon my honor and conscience that I
5 shall speak the truth, the whole truth, and nothing
6 but the truth.

7 PRESIDENT TERCIER: Thank you very much.

8 As a witness for this procedure, you have
9 prepared two Witness Statements: The first dated 22nd
10 of February 2018, and the second the 23rd of May 2019.

11 Have you these two witnesses before you?

12 THE WITNESS: I do.

13 PRESIDENT TERCIER: You have them in the
14 English or in the Romanian version?

15 THE WITNESS: In both English and Romanian.

16 PRESIDENT TERCIER: That's perfect.

17 Now, can you confirm that this corresponds to
18 your testimony? In other terms, do you confirm the
19 content of these two statements or do you have some
20 amendments or things that you would like to change?

21 THE WITNESS: I confirm what I wrote in these
22 two statements, but I would like to make a correction:

1 In my First Statement, in Point 37, we should change
2 the date for the issuance of the Environmental Permit
3 for Cernavodă from 3rd of April 2013 to 25th of
4 September 2013, the date on which the Environmental
5 Permit was issued through decision of the Government
6 of Romania.

7 It's just a correction in the date.

8 PRESIDENT TERCIER: Okay. It is on the
9 fourth line. Good. Otherwise, you can confirm and
10 confirm that you confirm, yeah?

11 THE WITNESS: I do.

12 PRESIDENT TERCIER: You know how this
13 procedure will be conducted. I will ask you one or
14 two questions, and then it will be for counsel for
15 Respondent to make the so-called "direct," and then
16 you will have on the other side the cross-examination,
17 and then we'll have the redirect. It is very likely
18 there will be somewhere interruption for lunch break
19 during your examination.

20 Is it clear?

21 THE WITNESS: It is clear, very clear.

22 PRESIDENT TERCIER: Okay. Two points. The

1 first point is we have a transcript. It is important
2 we have to have a clear Transcript that you avoid to
3 overlap speaking, overlapping the person who speaks
4 before you.

5 And, secondly, before answering the question,
6 if you can just wait two or three seconds in order
7 give to the Interpreters the time to finish the
8 sentence; it's clear?

9 THE WITNESS: It is clear.

10 PRESIDENT TERCIER: Okay. Now, my first
11 question, just to introduce yourself and just set the
12 scene, can you tell us what has been your education,
13 what has been your involvement in this case, and what
14 is your current position, so just in a few words so
15 that we can be also informed.

16 Please.

17 THE WITNESS: Good afternoon, thank you,
18 President. My name is Dorina Mocanu. I graduated
19 from the Faculty of Chemistry at the Bucharest
20 University in 1982--1992, I'm sorry.

21 Until 2000, I worked at National Research
22 Institute in Environmental Protection. And starting

1 with the Year 2000, I started working at the Ministry
2 of Environment holding various positions, from
3 executive positions to Head of service then Director.

4 And I am currently Director General of the
5 Department General for Impact Assessment and Pollution
6 Control.

7 Throughout my activity in the Ministry, I
8 have had responsibilities related to air quality,
9 industrial Pollution Control, risk Management. And
10 since 2009, I was also responsible for Environmental
11 Impact Assessment. I have vast experience in
12 environmental matters already after my graduation from
13 university. I am an experienced person, and I've been
14 working in environmental protection for 20 years.

15 I now coordinate the Environmental Impact
16 Assessment for the Rosia Montana Project. In fact, my
17 involvement in this procedure started in 2004. I knew
18 from my colleagues that the application for the
19 Environmental Permit had been submitted.

20 PRESIDENT TERCIER: So, we will get to it
21 during the examination, I think, so we have a broad
22 view.

1 All right. My second question for all
2 witnesses, I would like to know the process that had
3 been followed in the preparation of this statement.
4 How, when it started, who started preparing it, with
5 whom, who drafted it, which version, Romanian and
6 English? Please.

7 You can leave the mike open because you will
8 have questions.

9 THE WITNESS: Yeah.

10 The preparation of these two statements
11 started in 2017. The statements were prepared by the
12 counsels for Romania, Lalive and Leaua. They were
13 prepared based on the information I provided regarding
14 the meetings we've had.

15 I drafted the draft statements that I
16 reviewed and which I accepted and were submitted to
17 the Tribunal. The statements were developed in
18 Romanian, then translated in English, and they are
19 identical in point of contents.

20 PRESIDENT TERCIER: Okay. In your statement
21 first--

22 (Overlapping interpretation with speaker.)

1 PRESIDENT TERCIER: --has been drafted by
2 counsel for Romania based on discussion I had with
3 them.

4 So, they wrote it or you did the draft? Who
5 did?

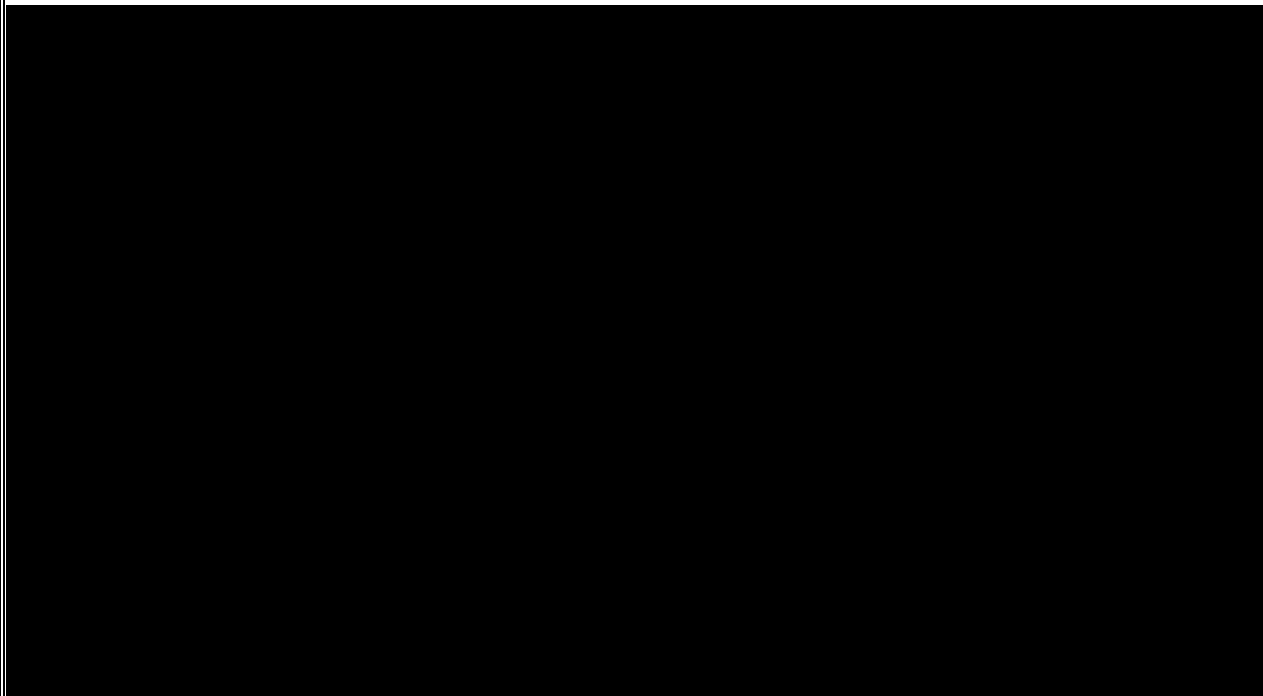
6 THE WITNESS: The counsel wrote it based on
7 the information I made available, including based on
8 the information retained during my meetings with the
9 counsels.

10 PRESIDENT TERCIER: Okay. Good.

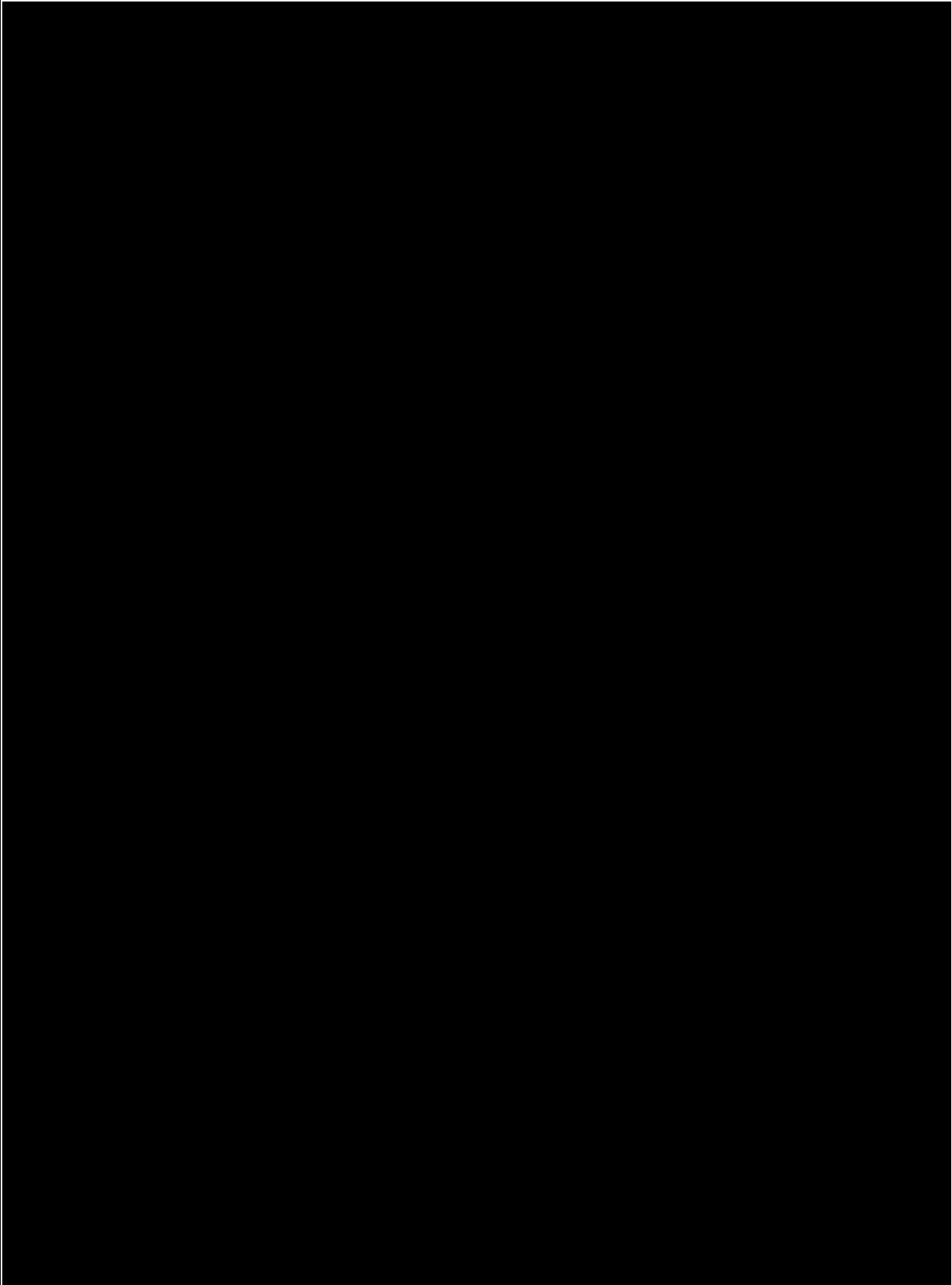
11 So, please, Ms. de Germiny.

12 MS. de GERMINY: Thank you, Mr. President.

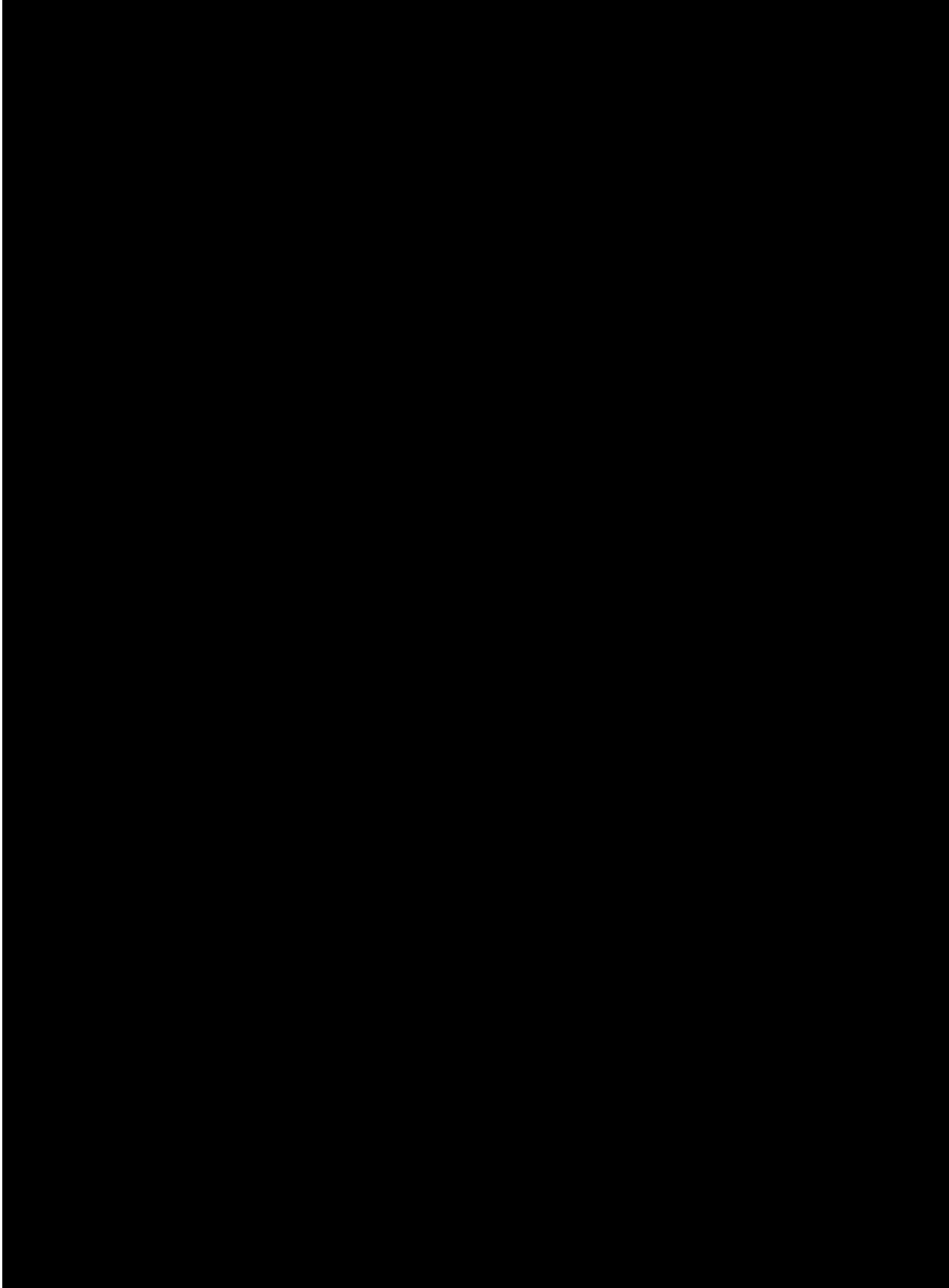
13 DIRECT EXAMINATION



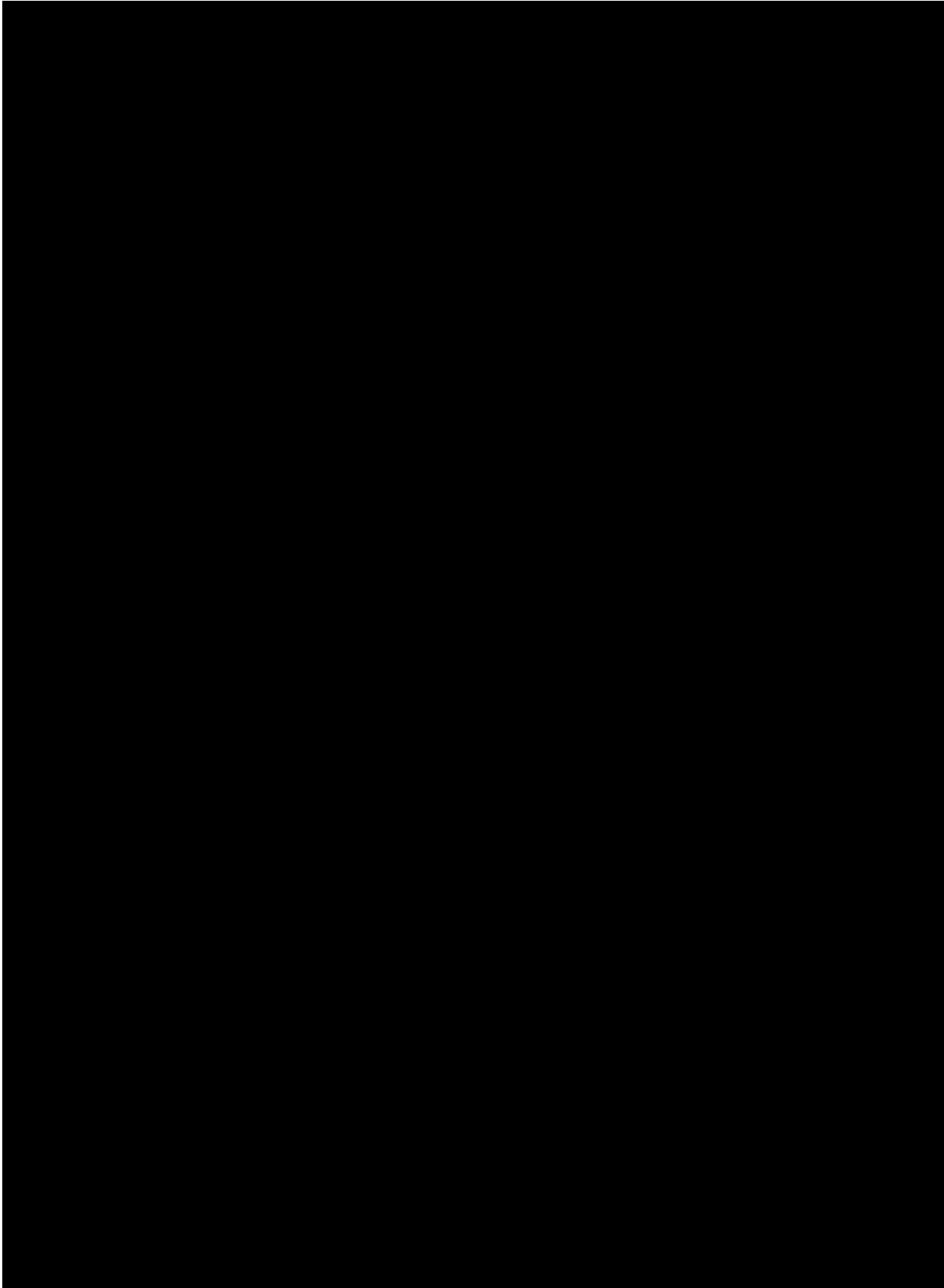
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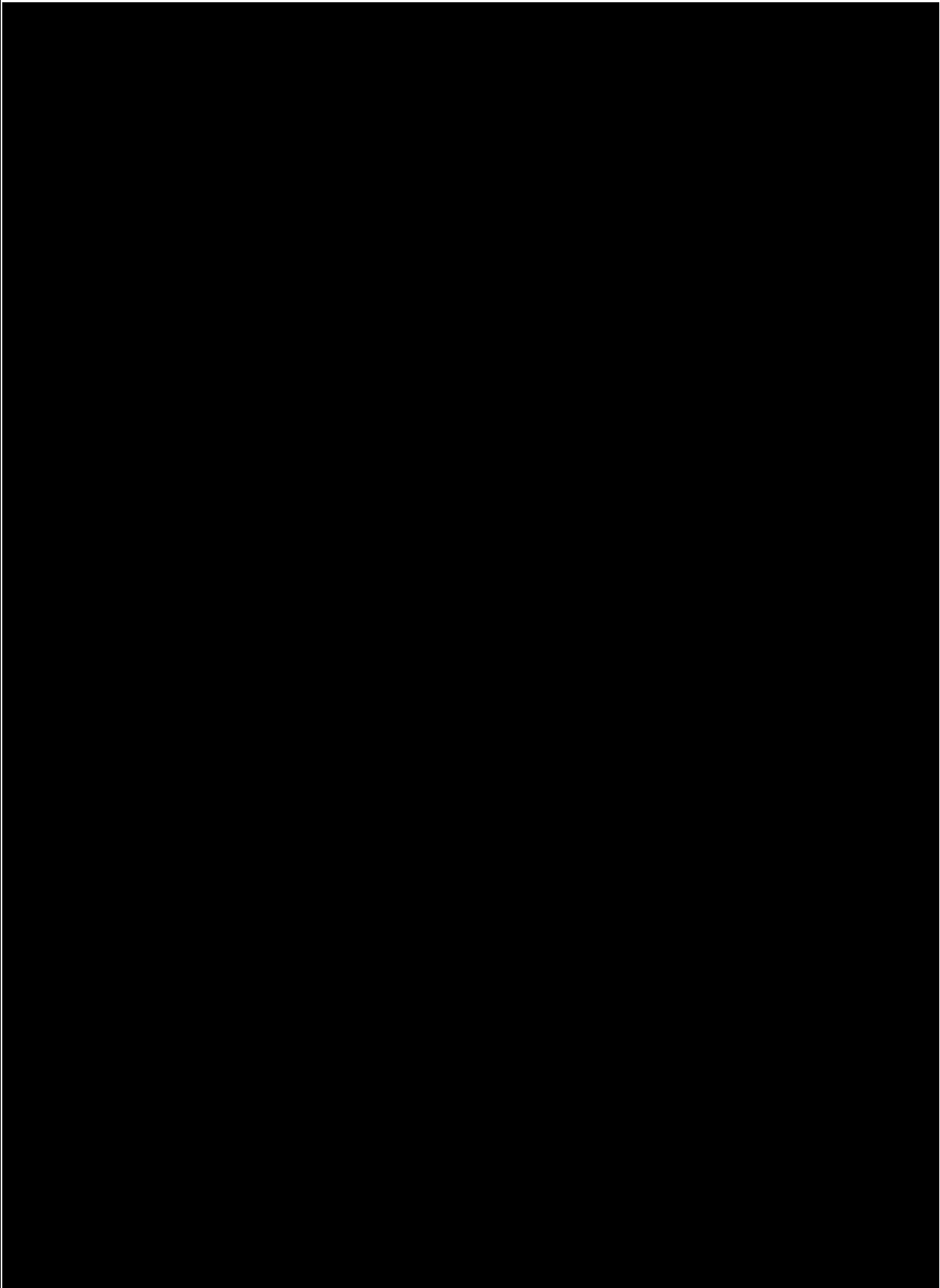
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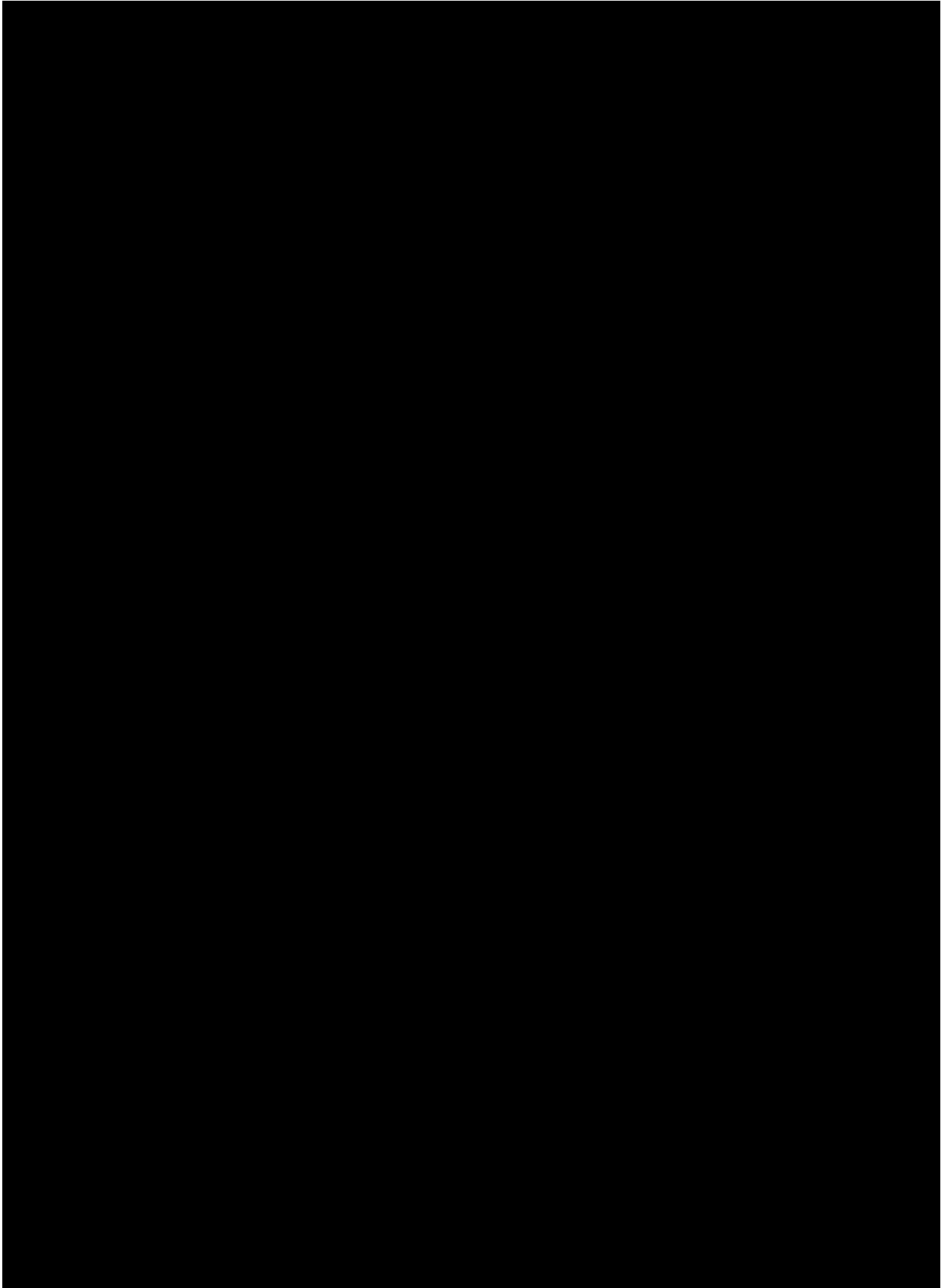
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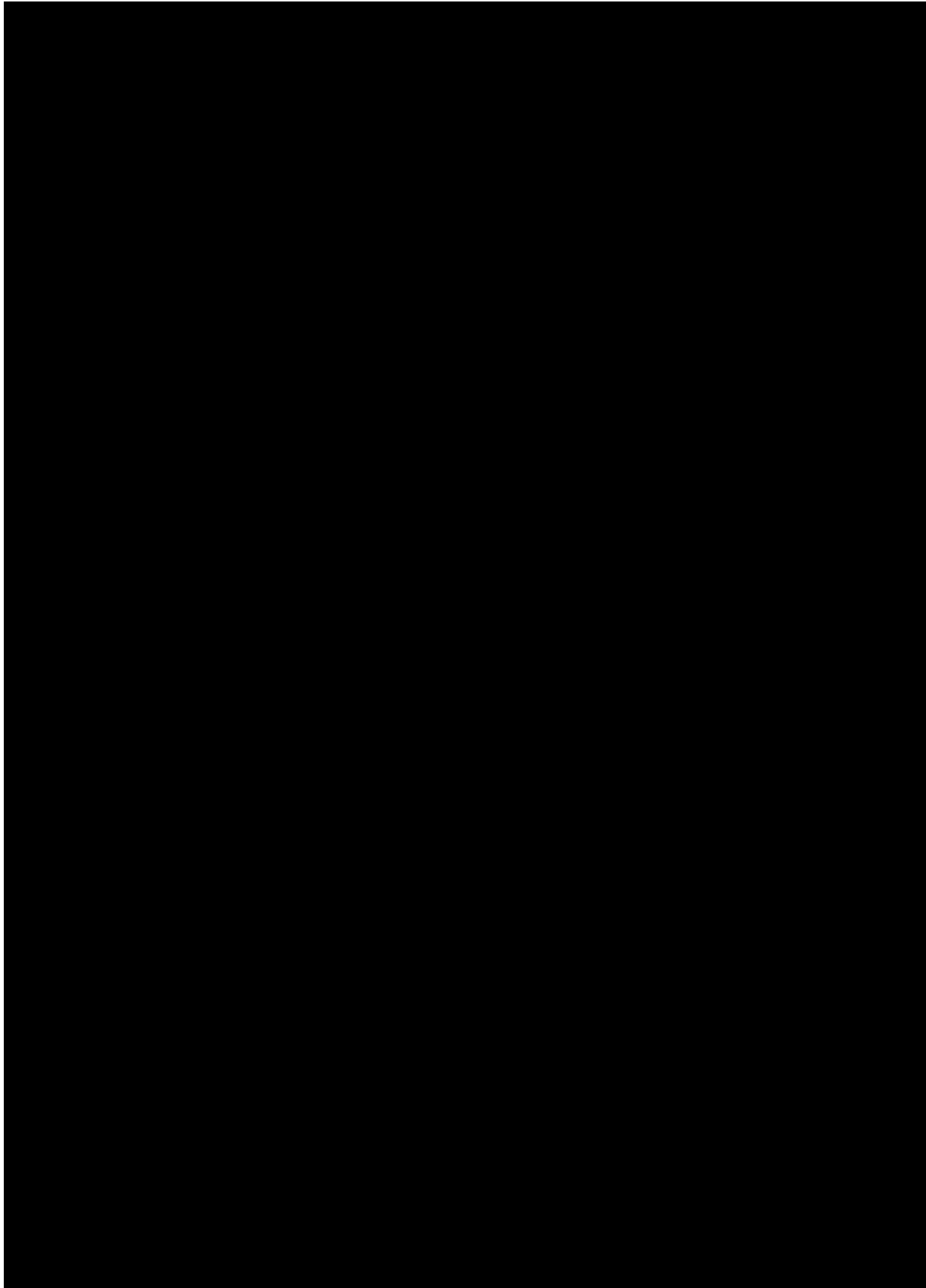
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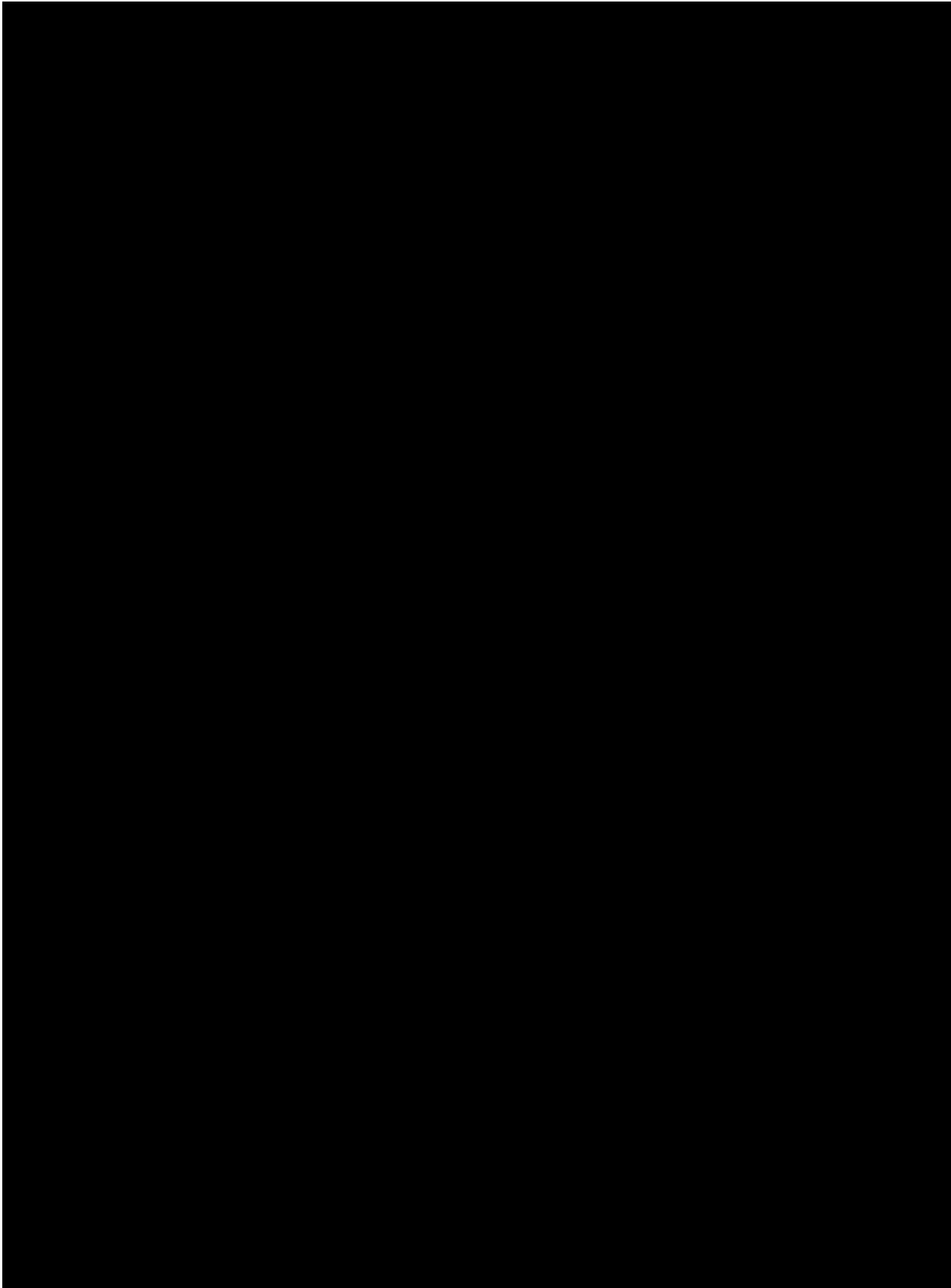
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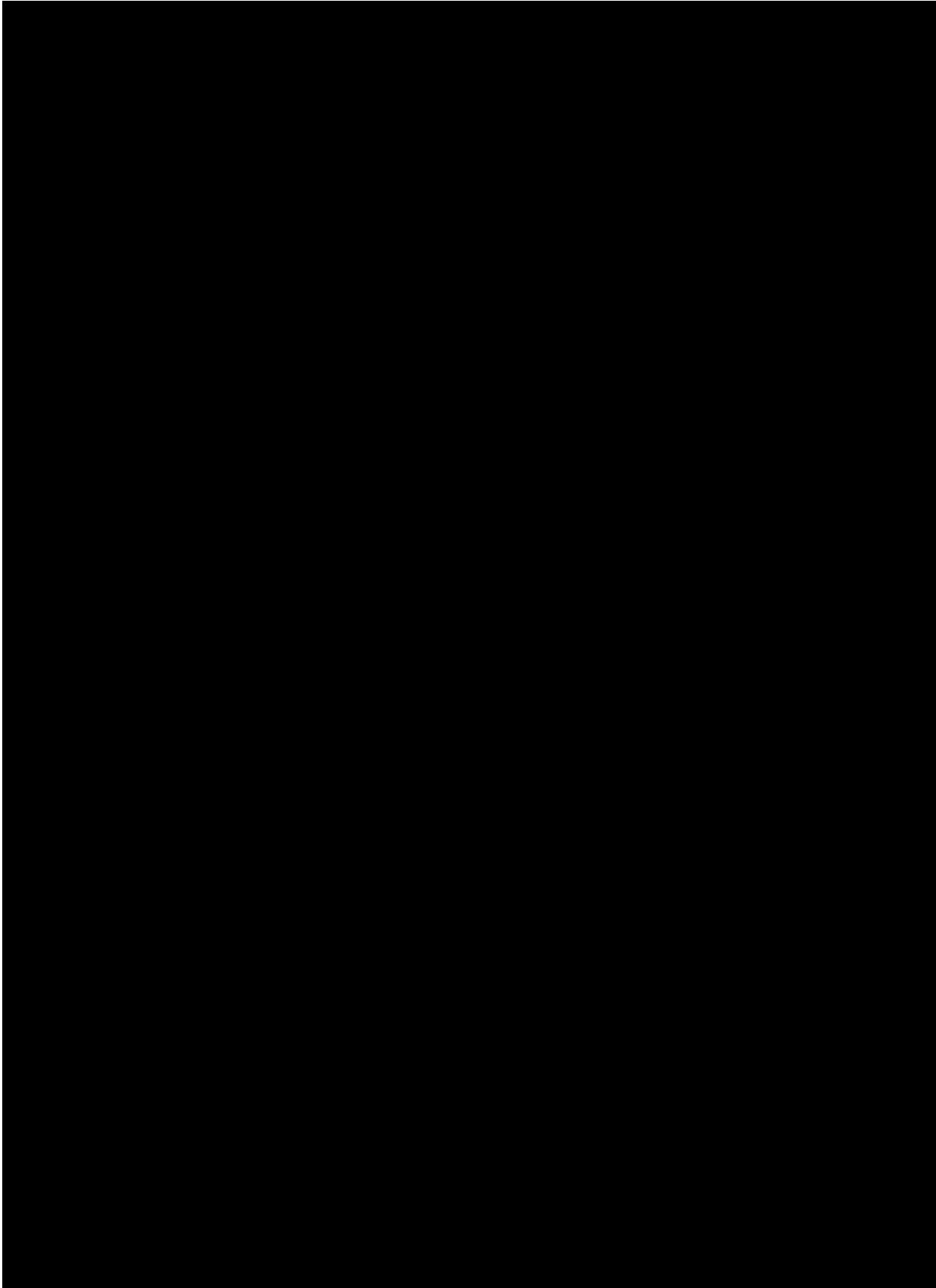
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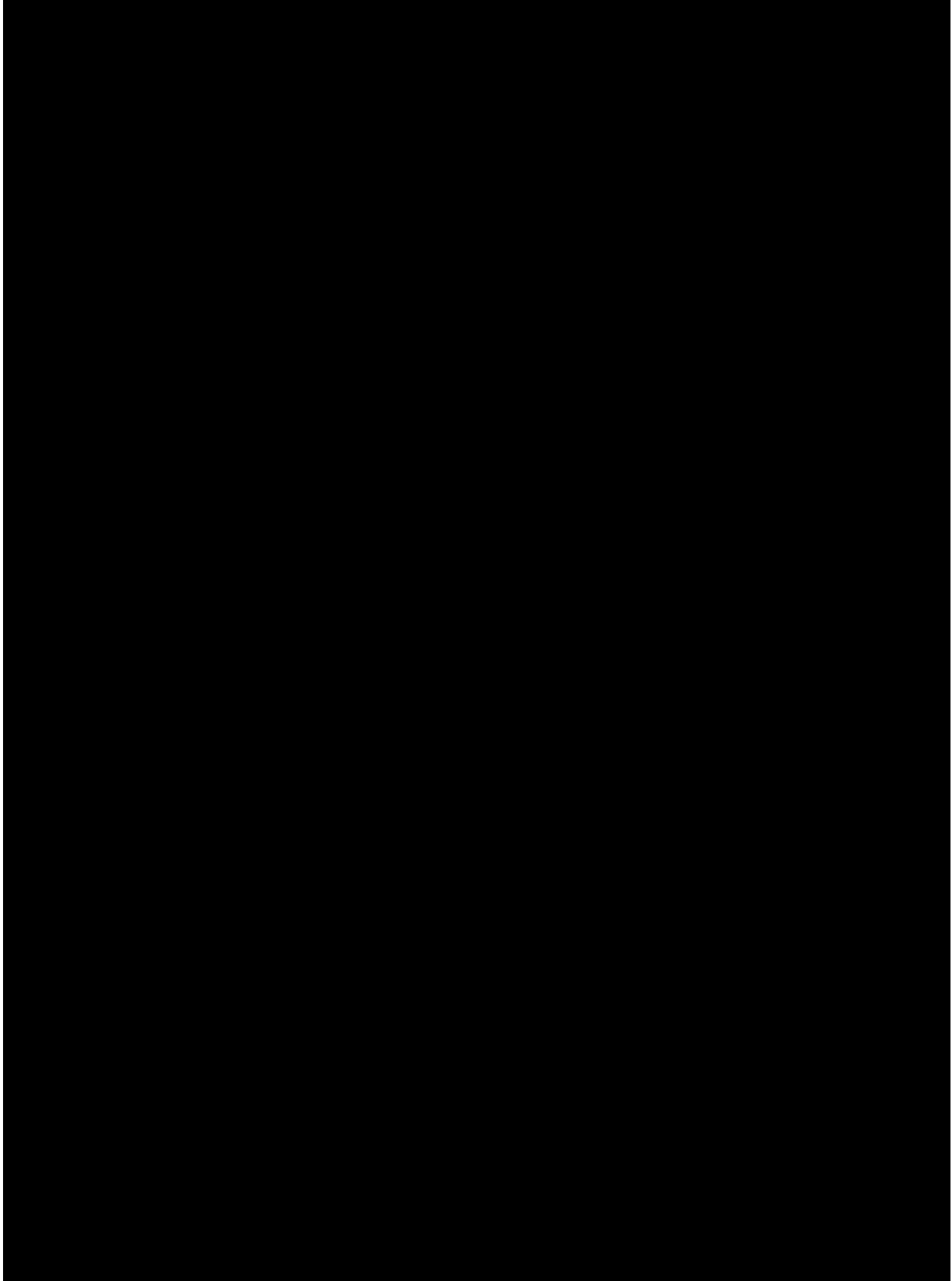
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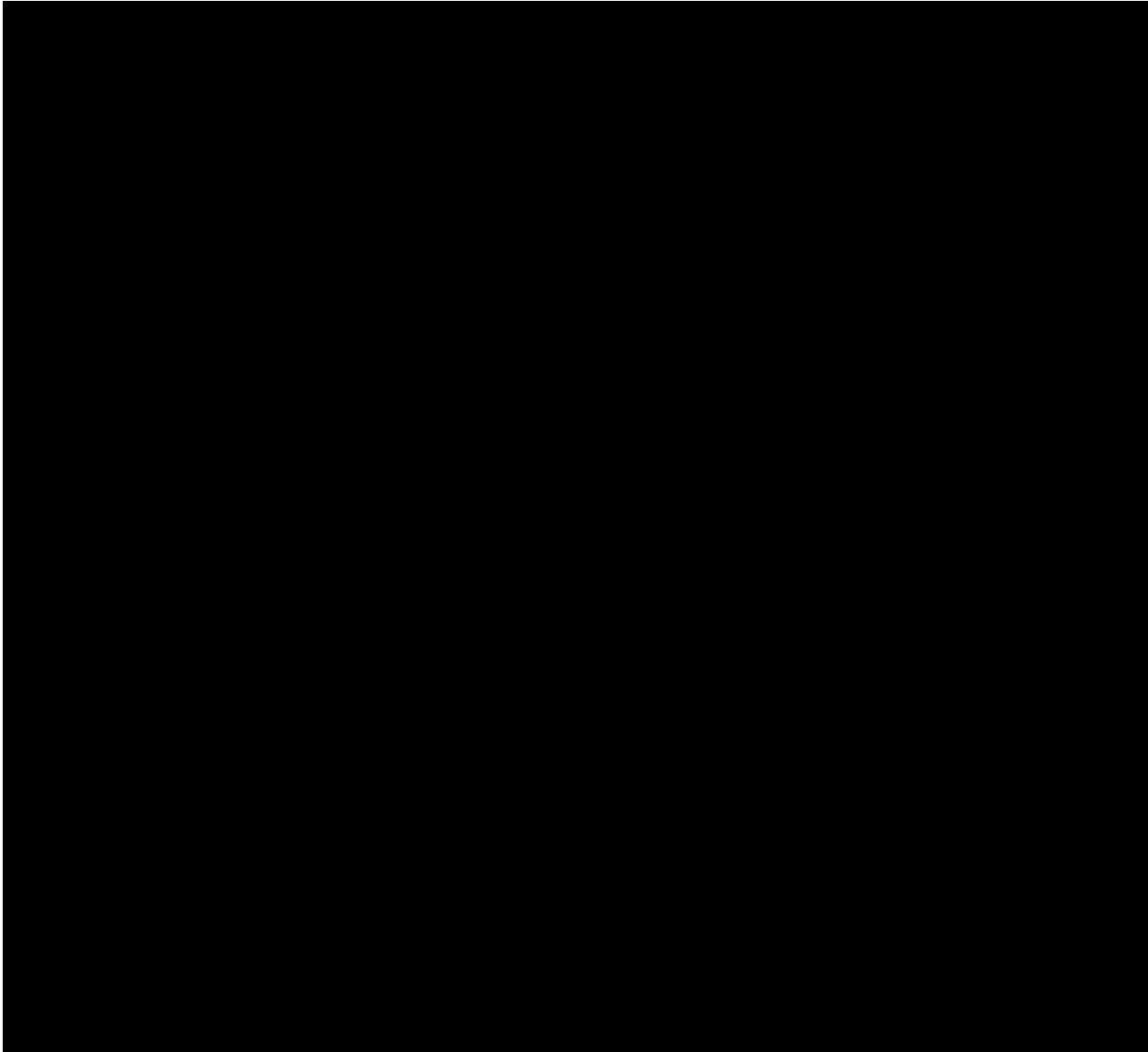
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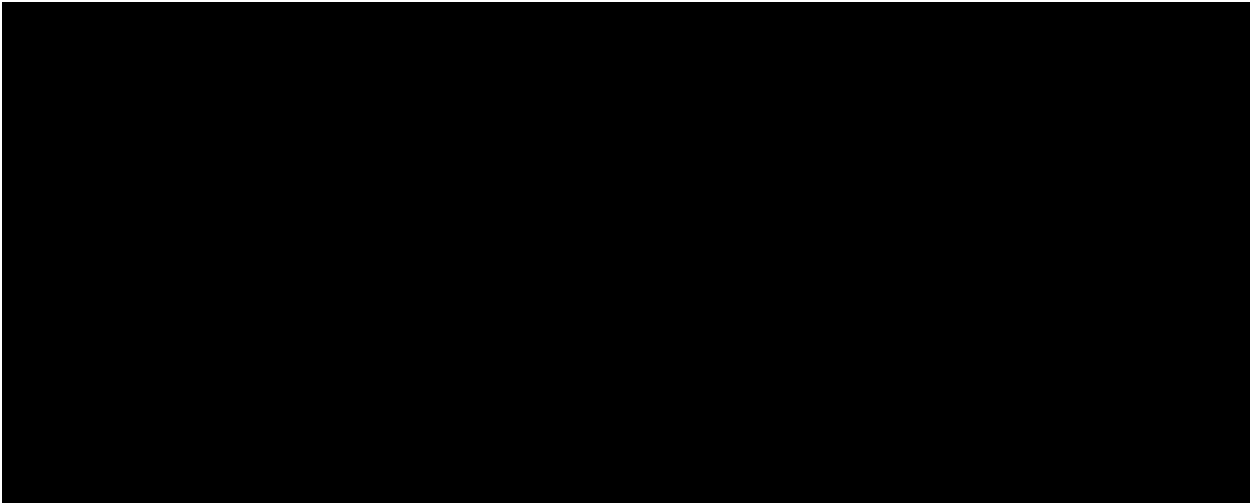
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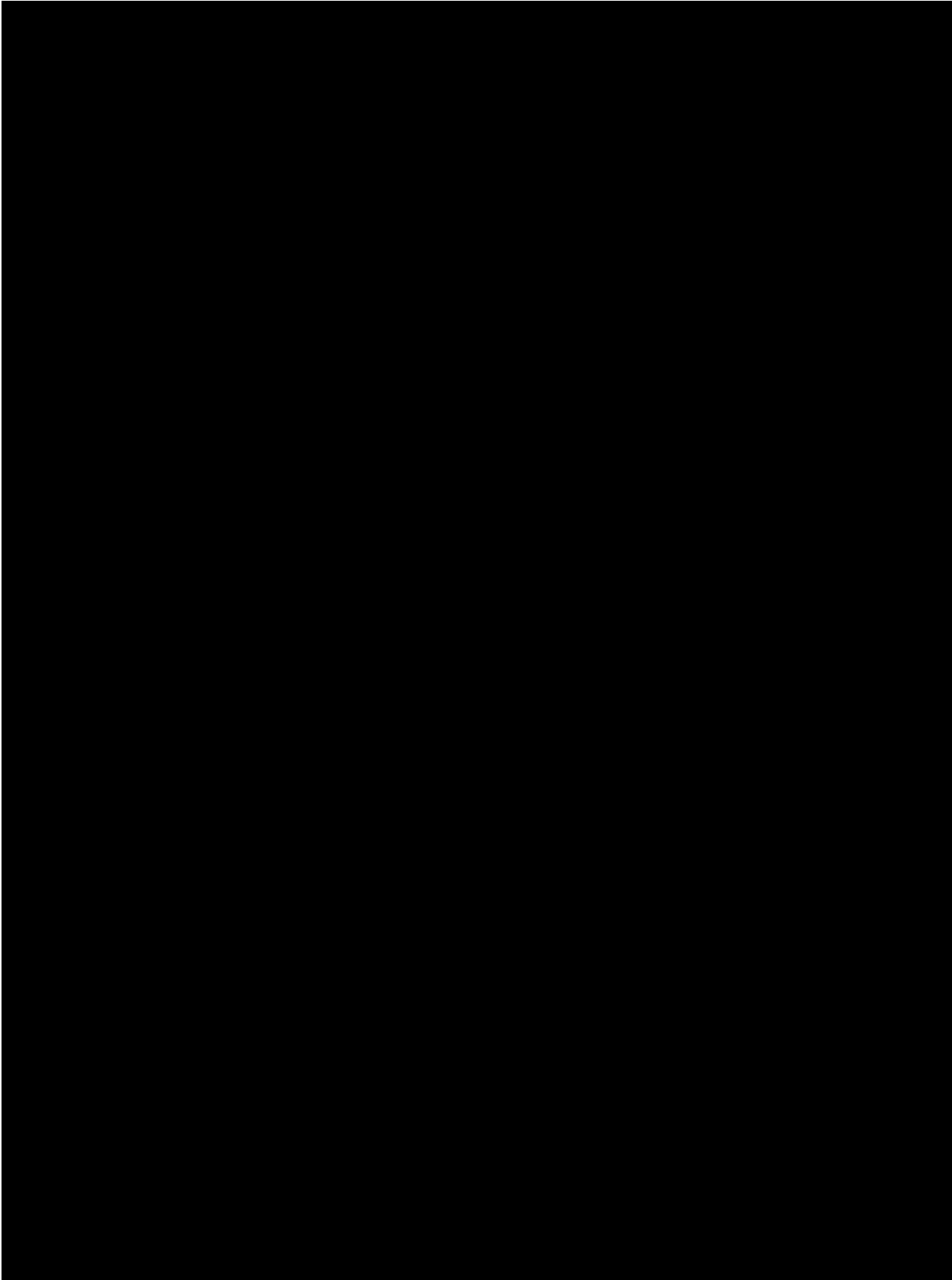
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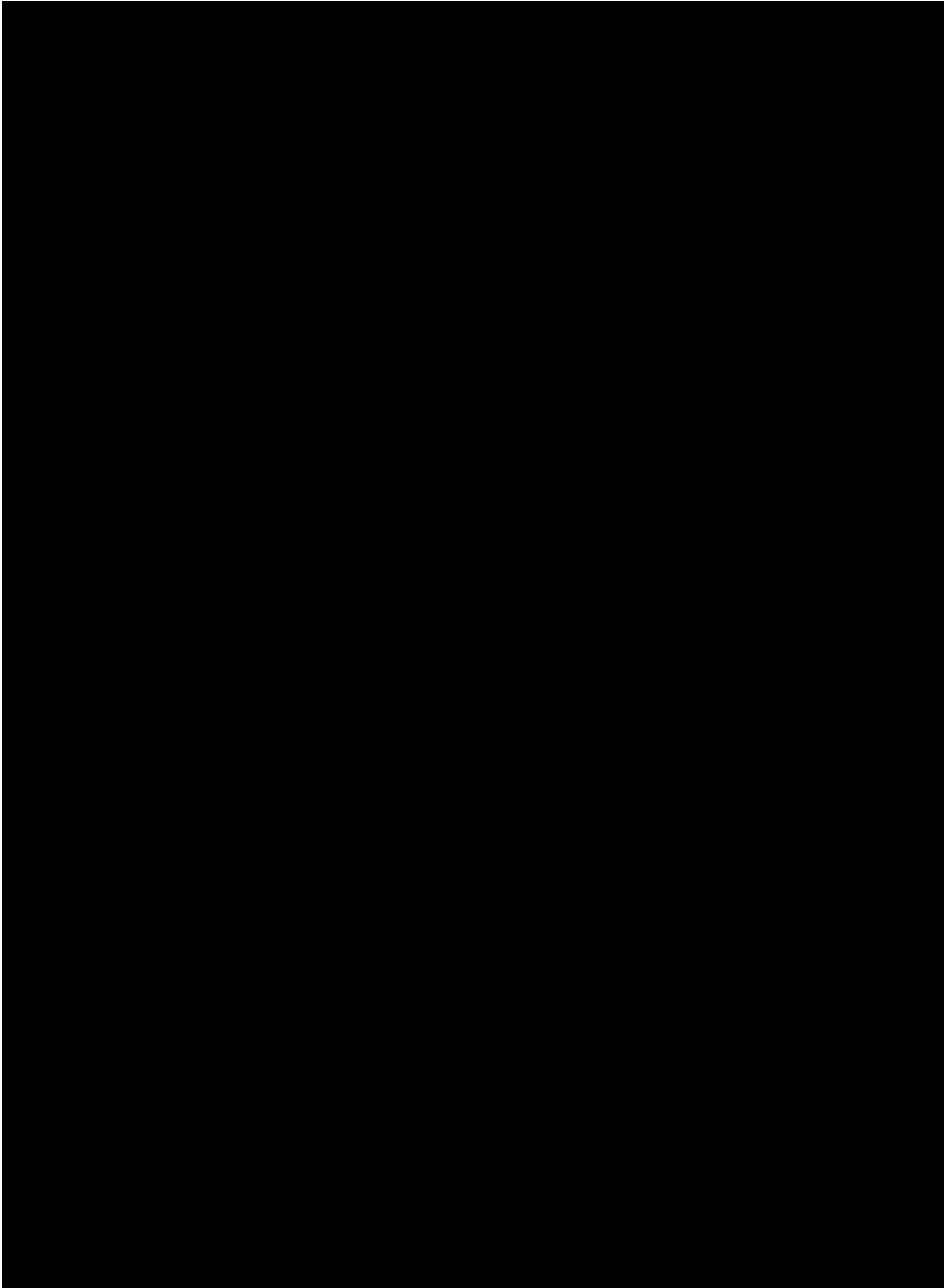
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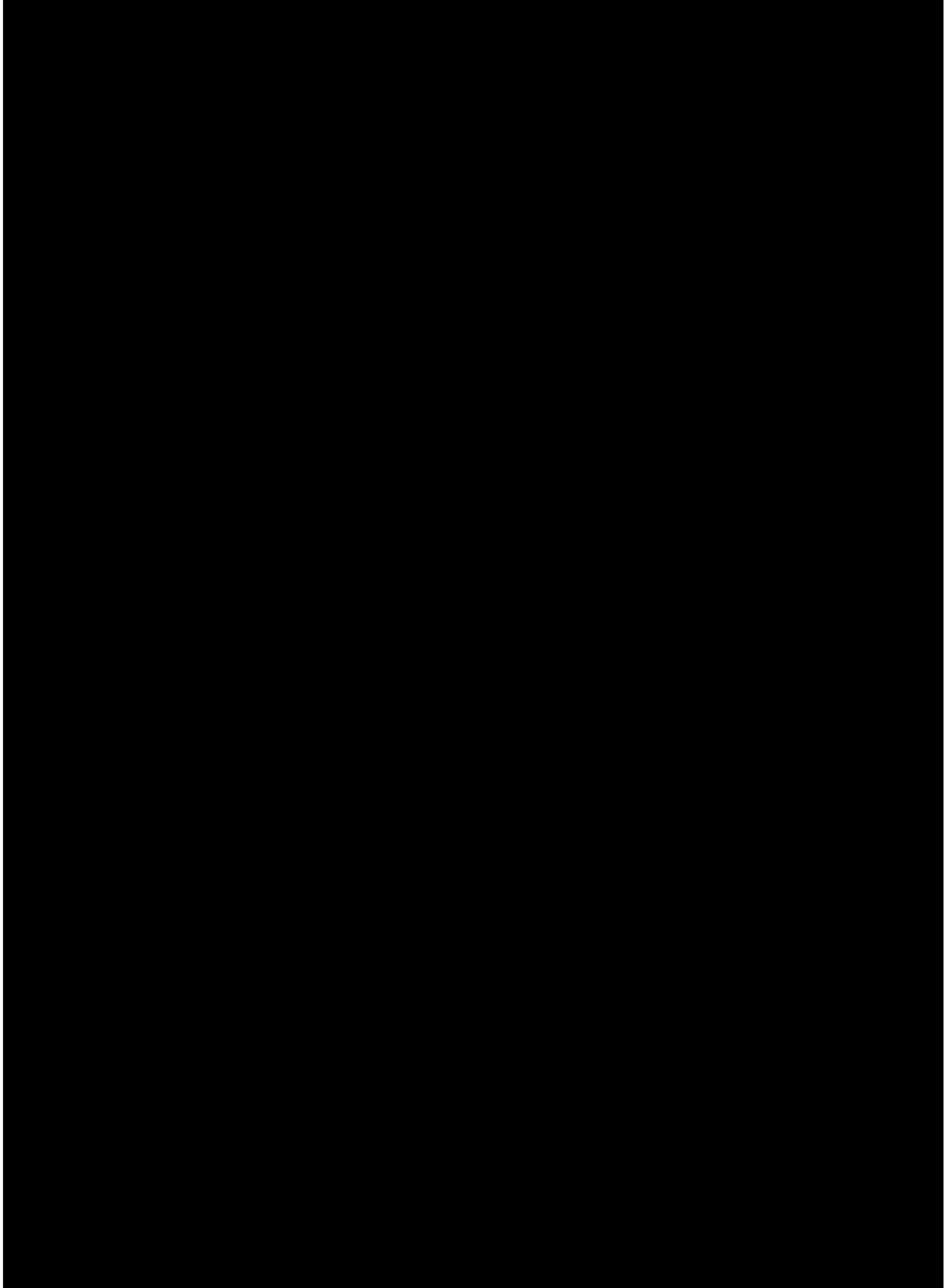
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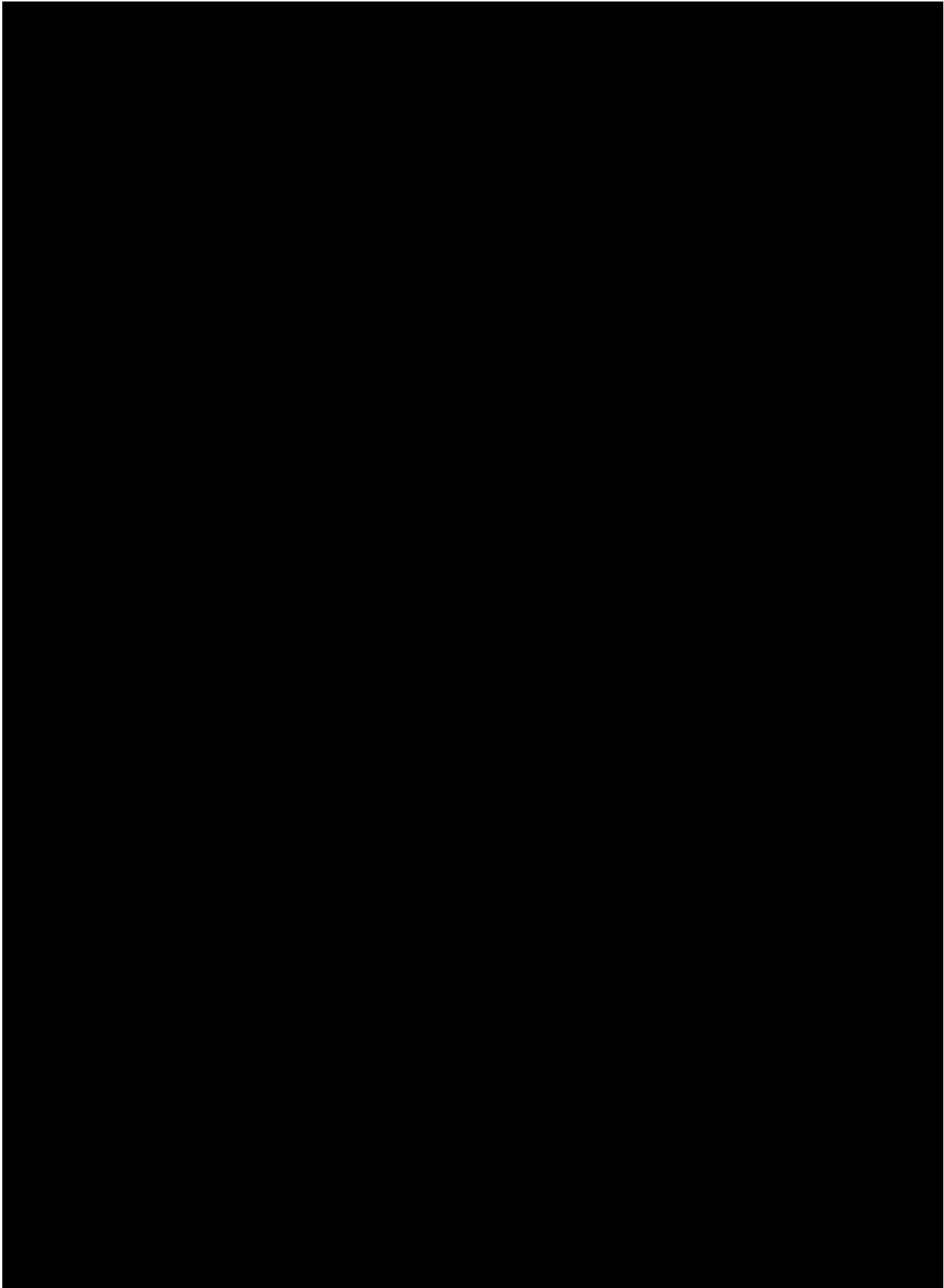
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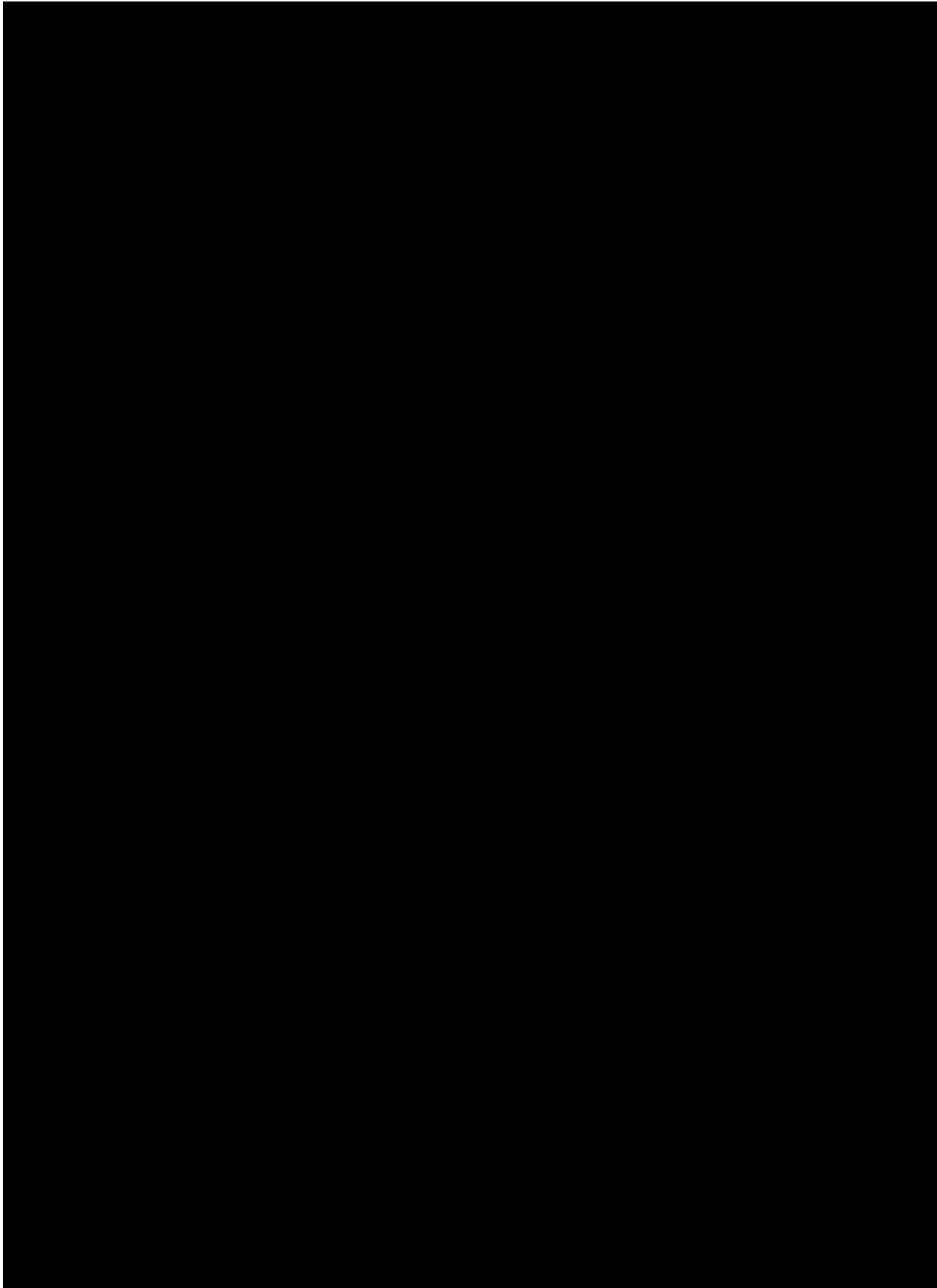
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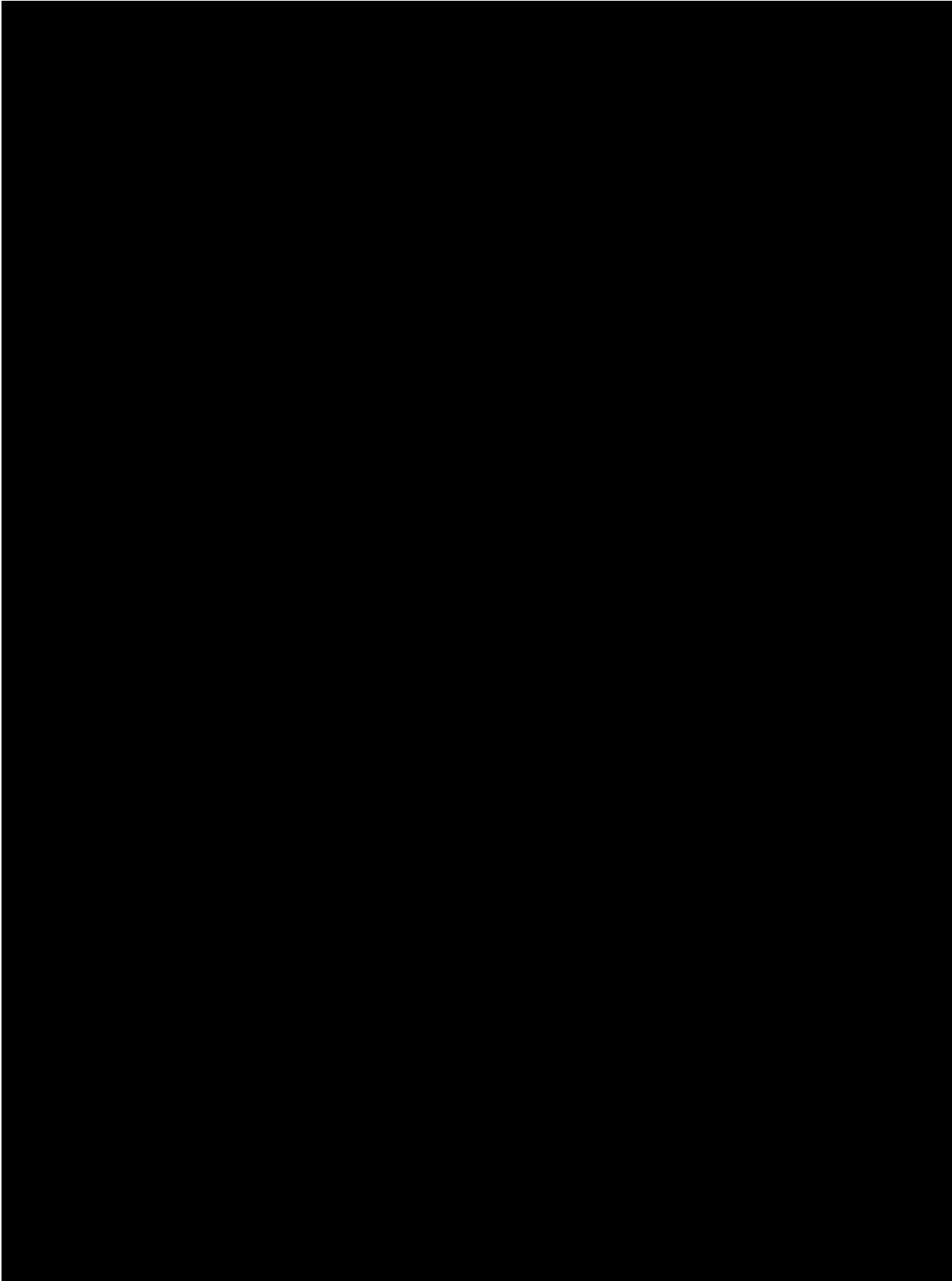
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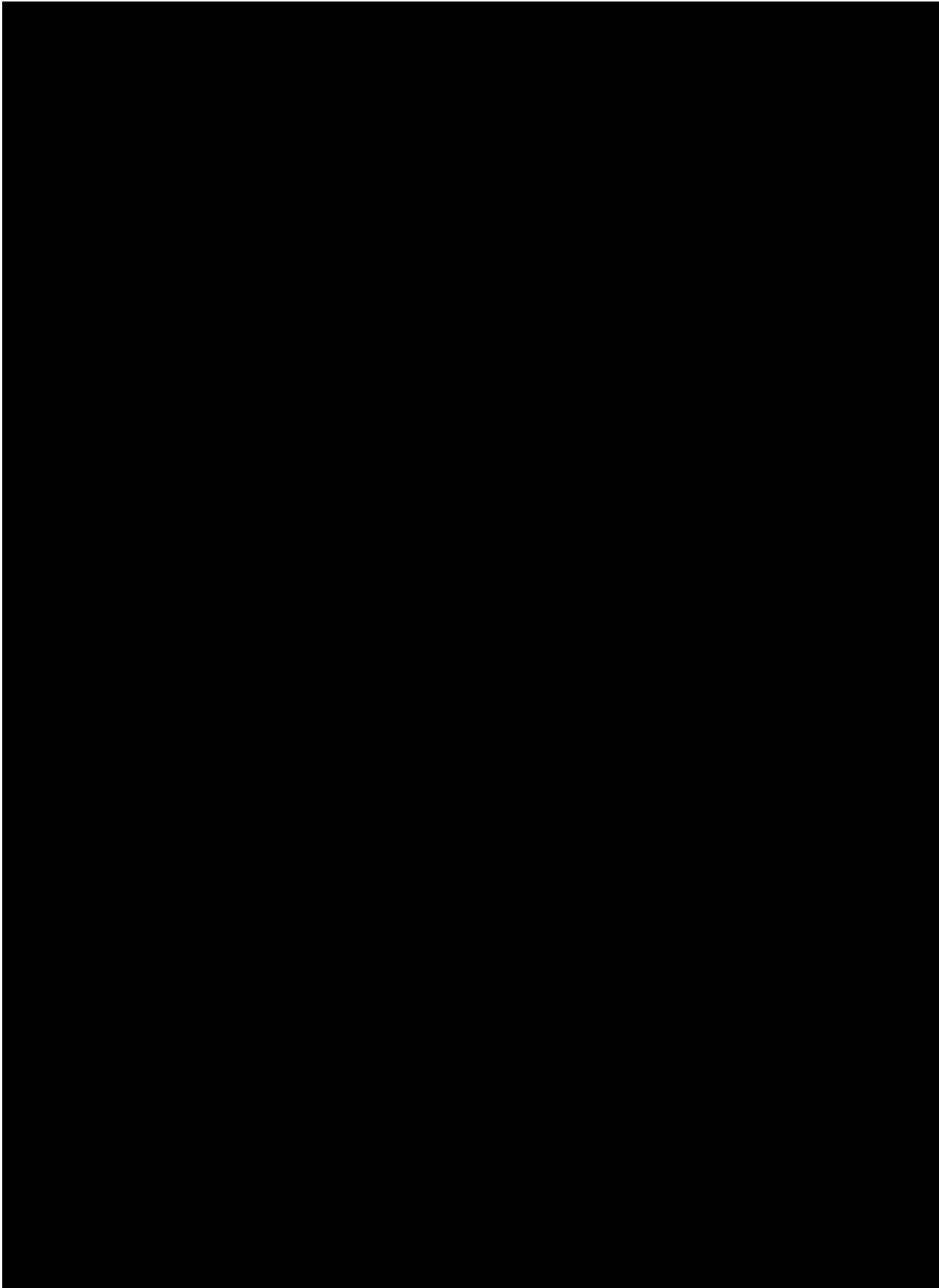
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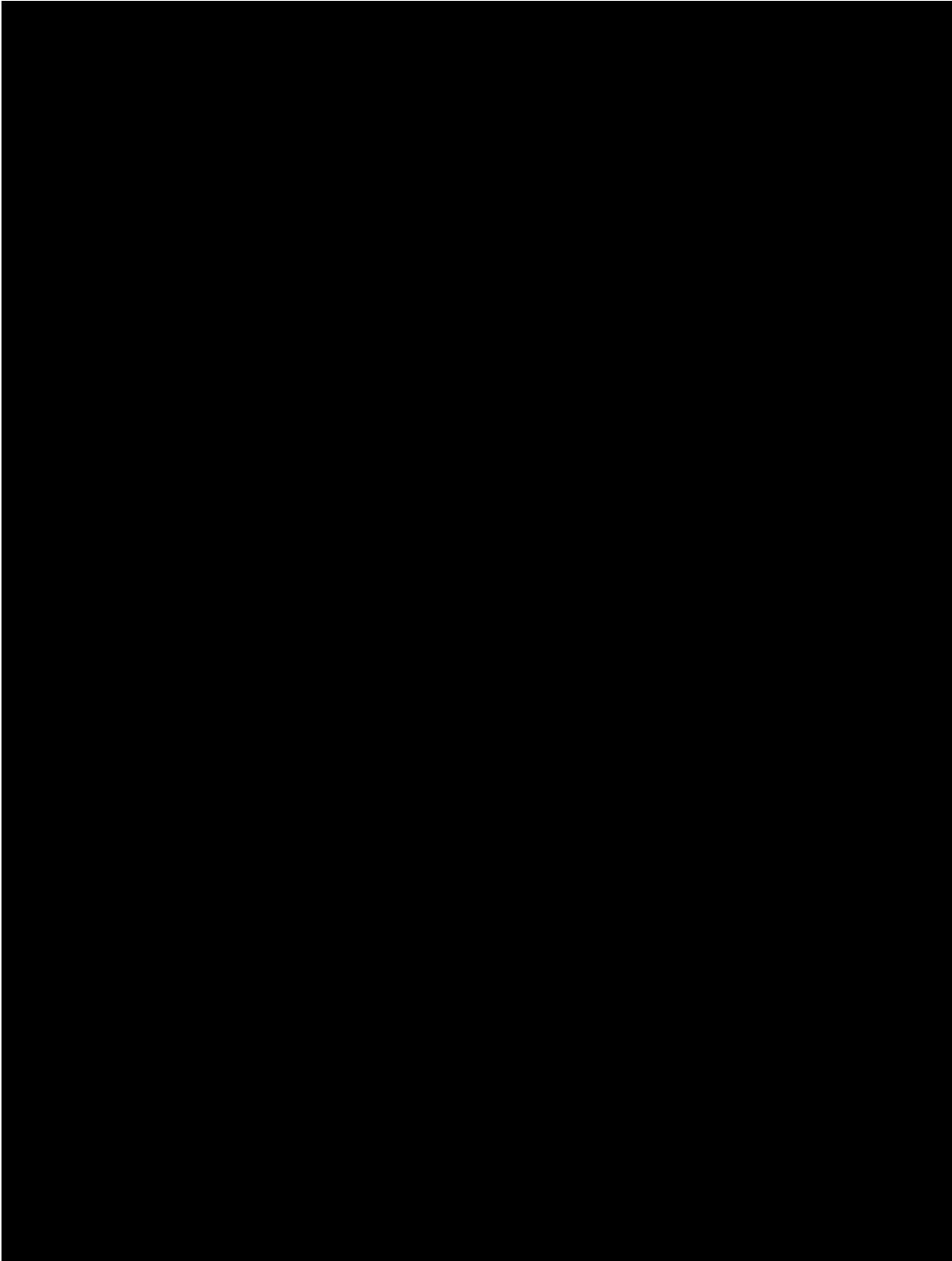
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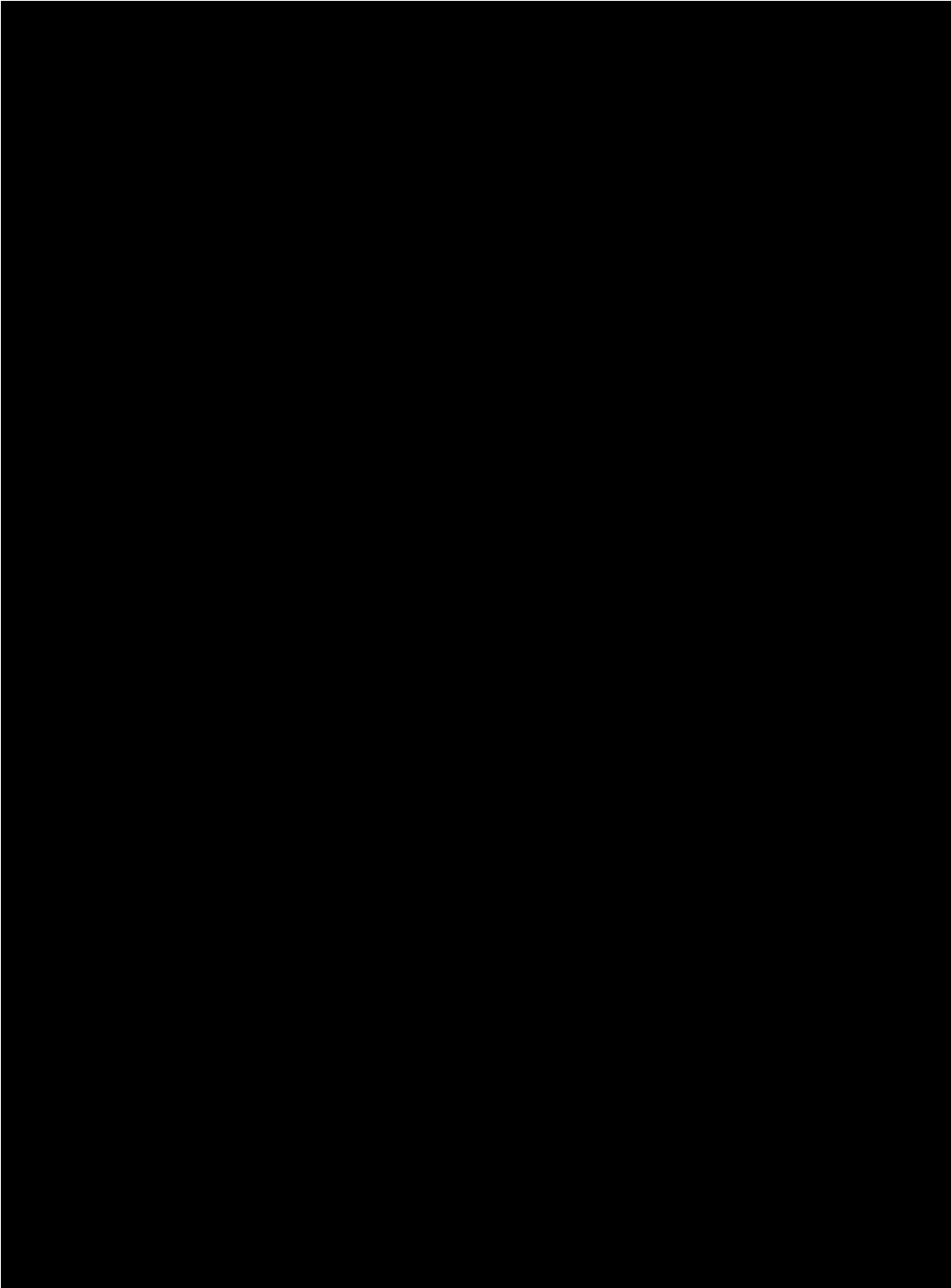
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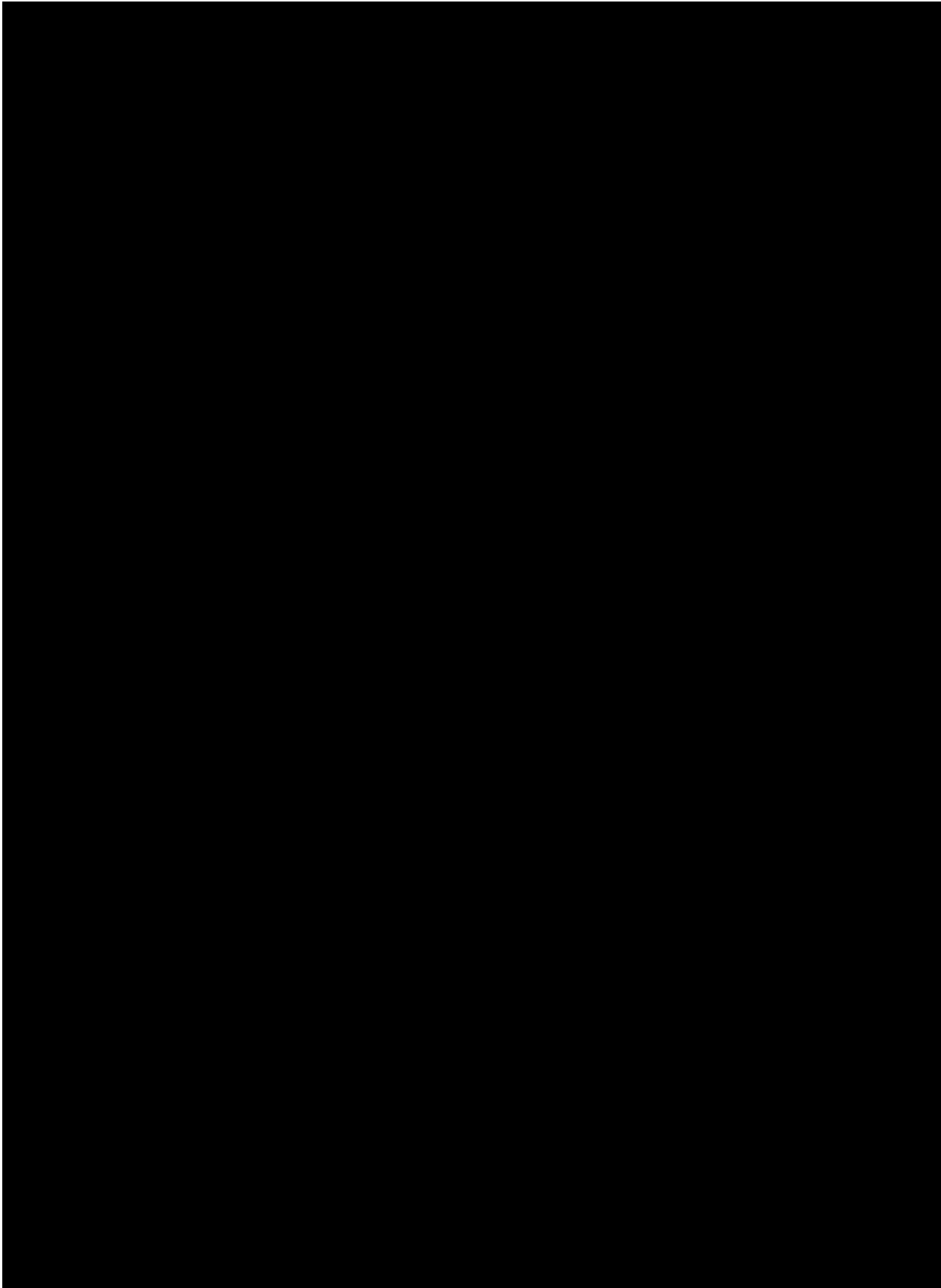
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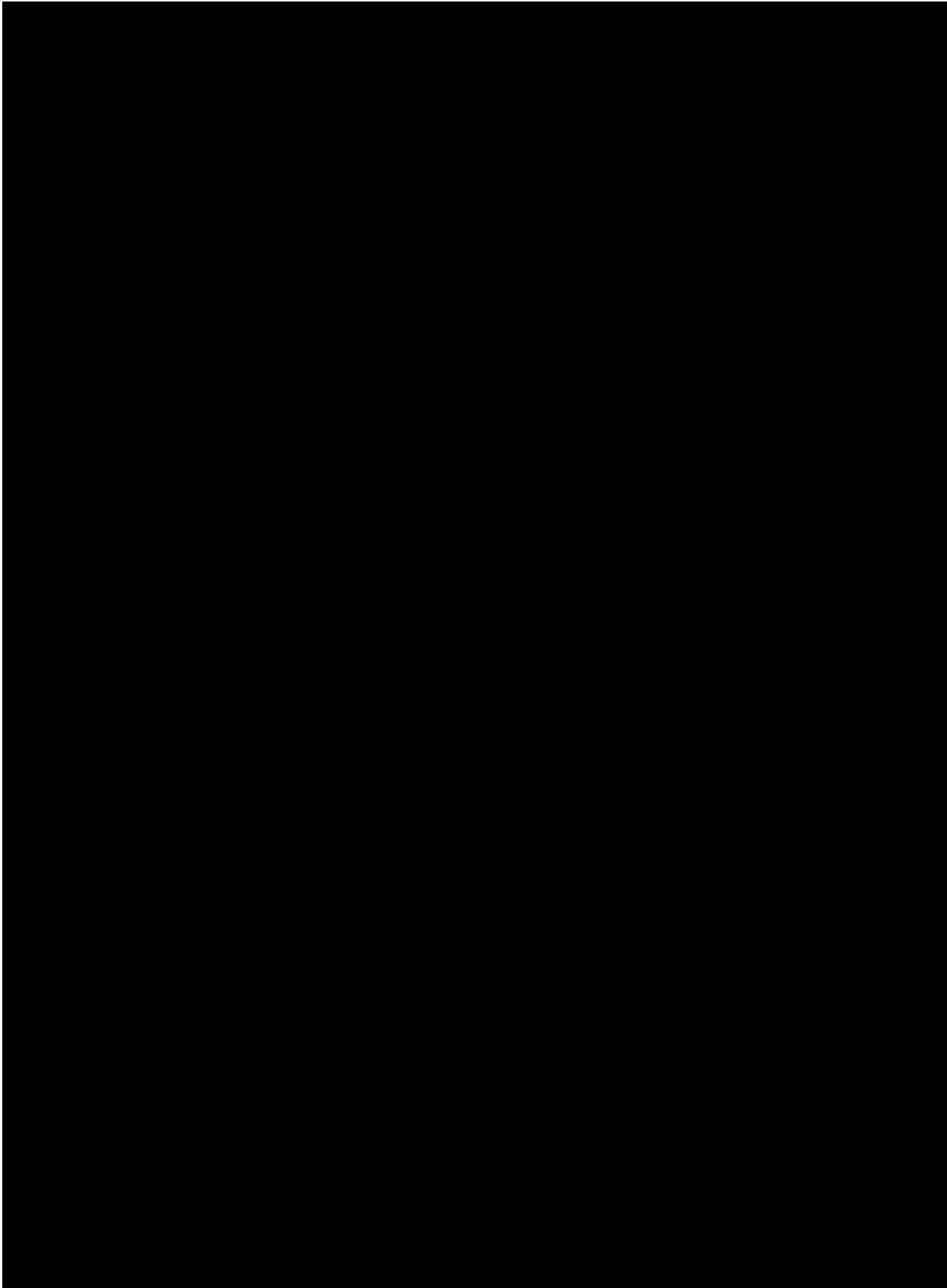
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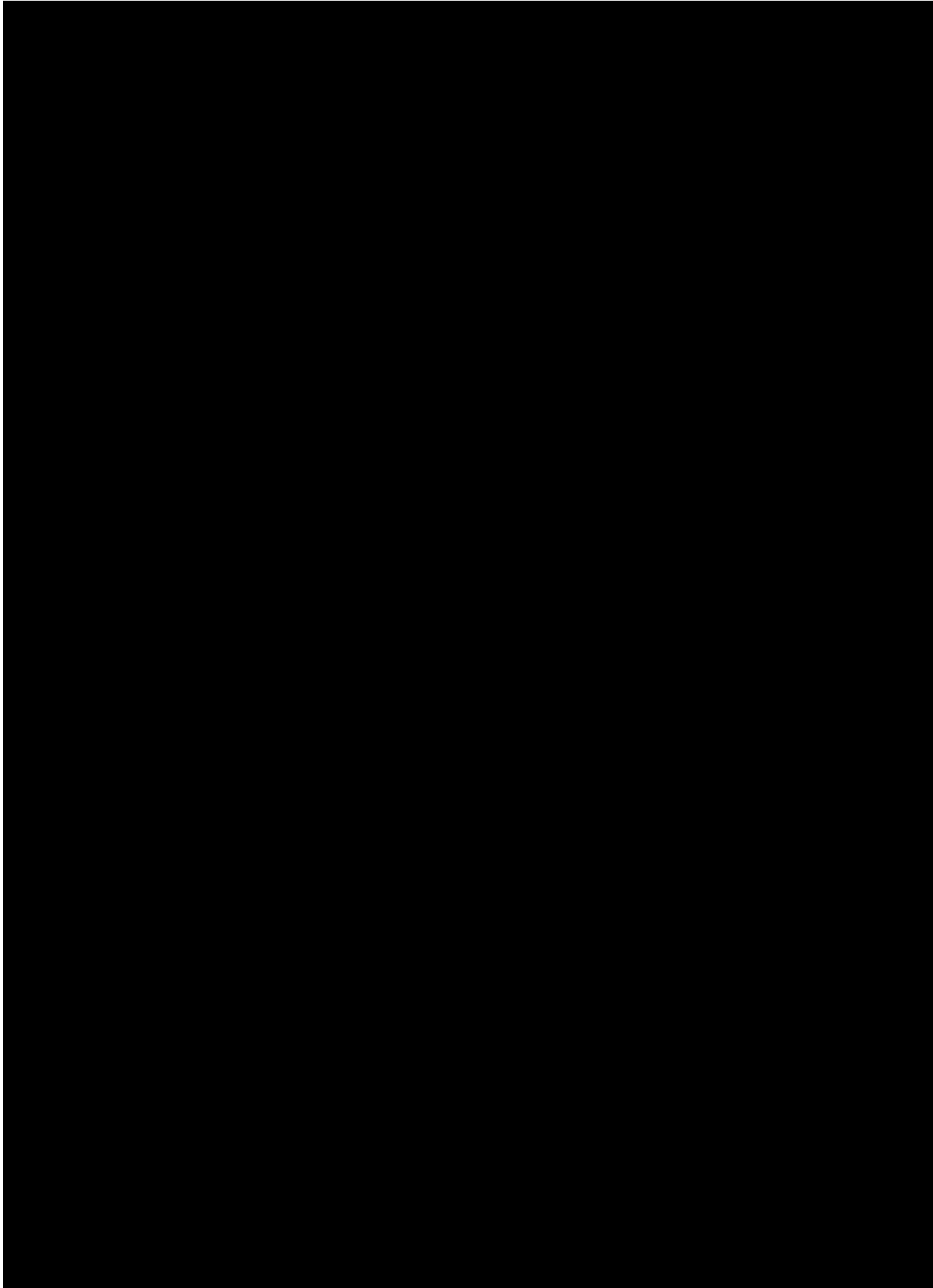
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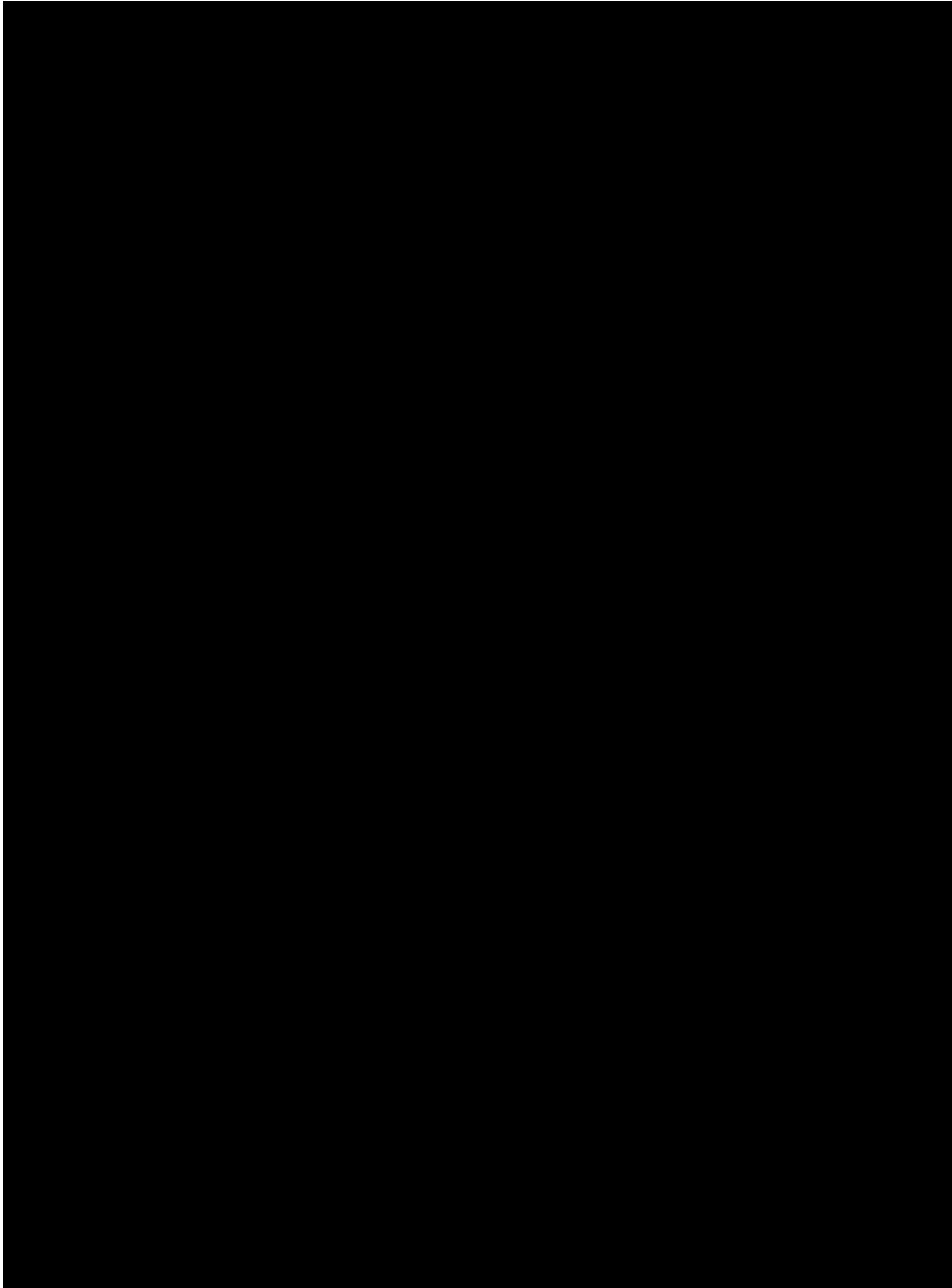
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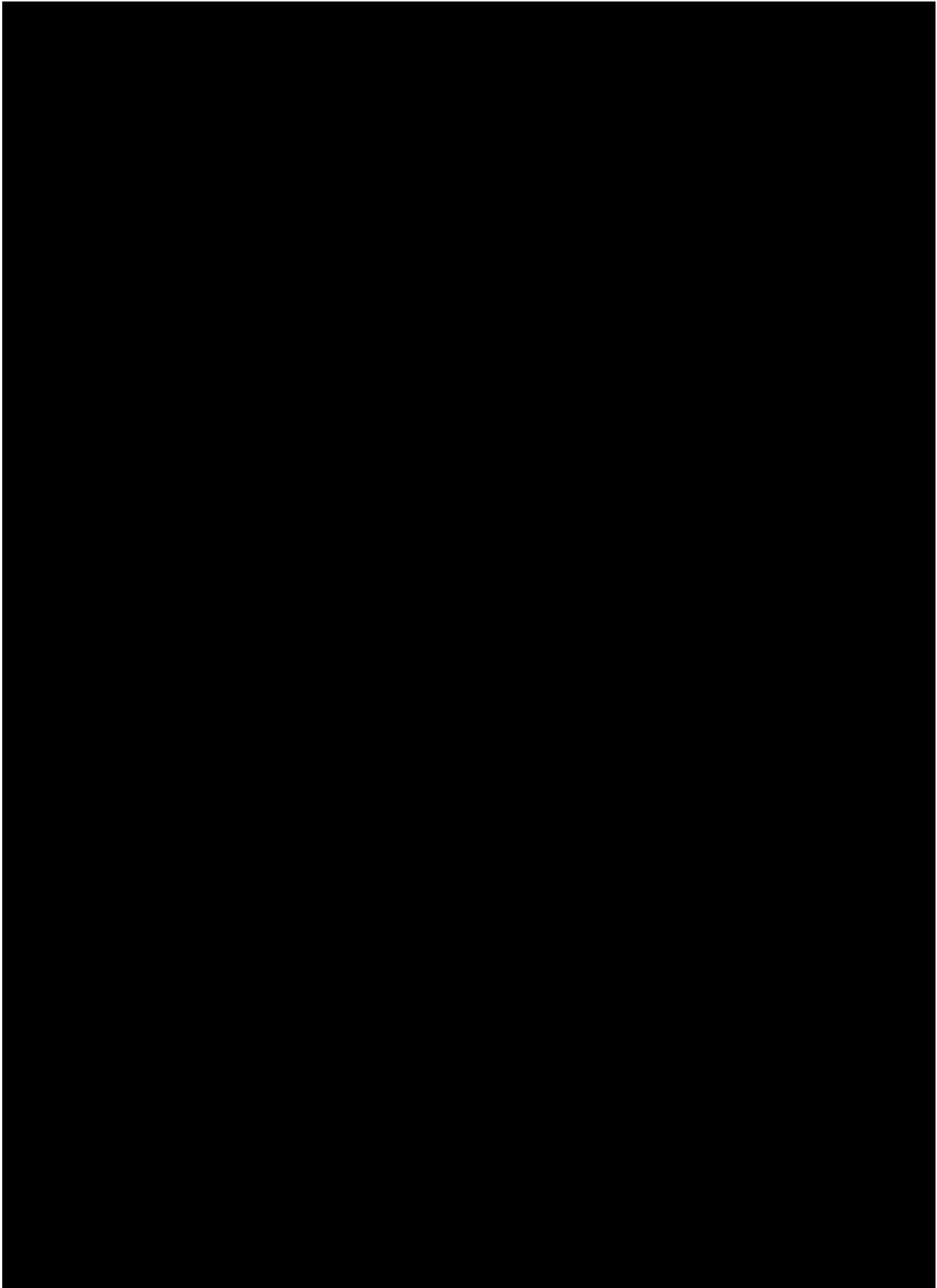
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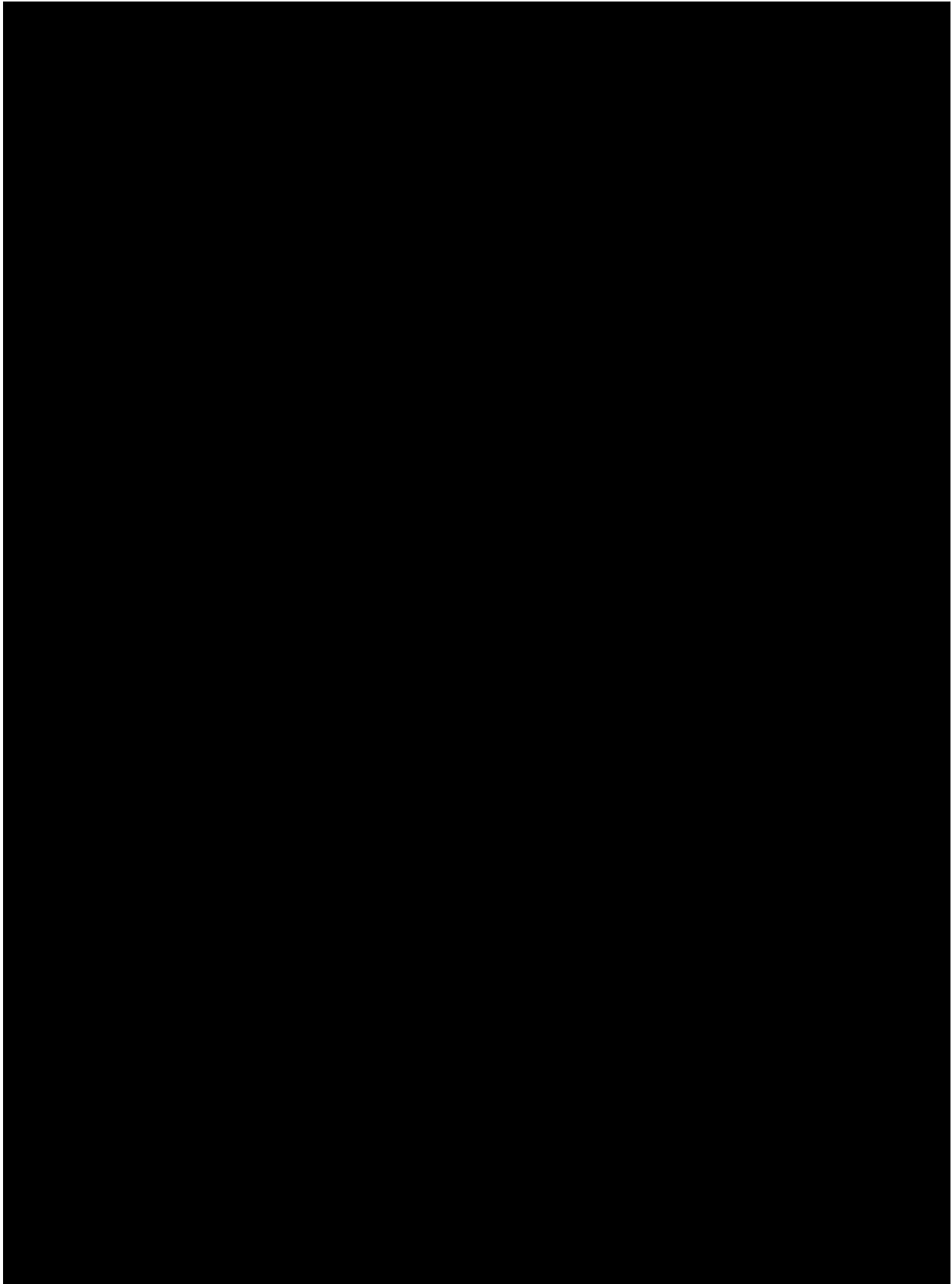
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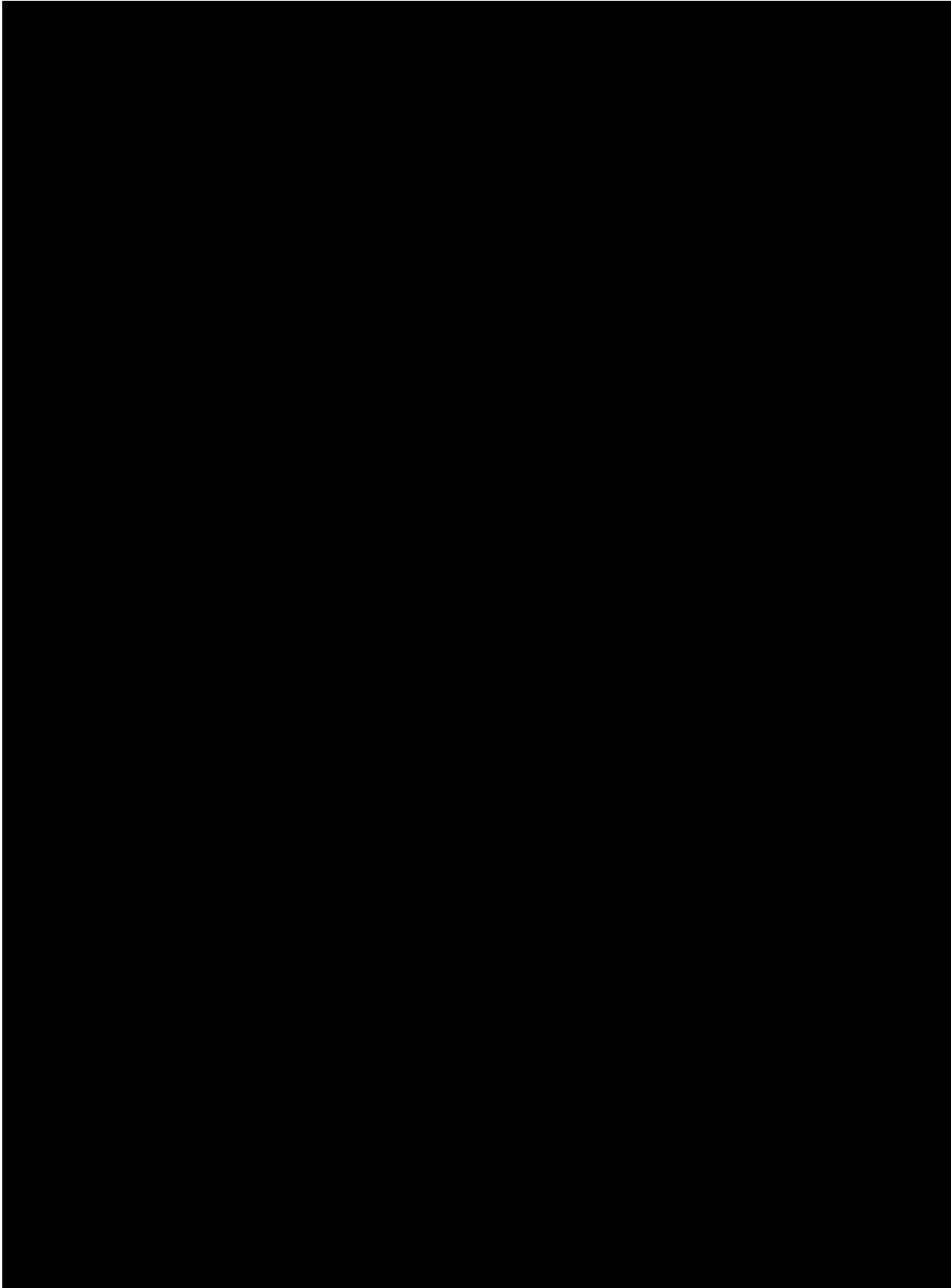
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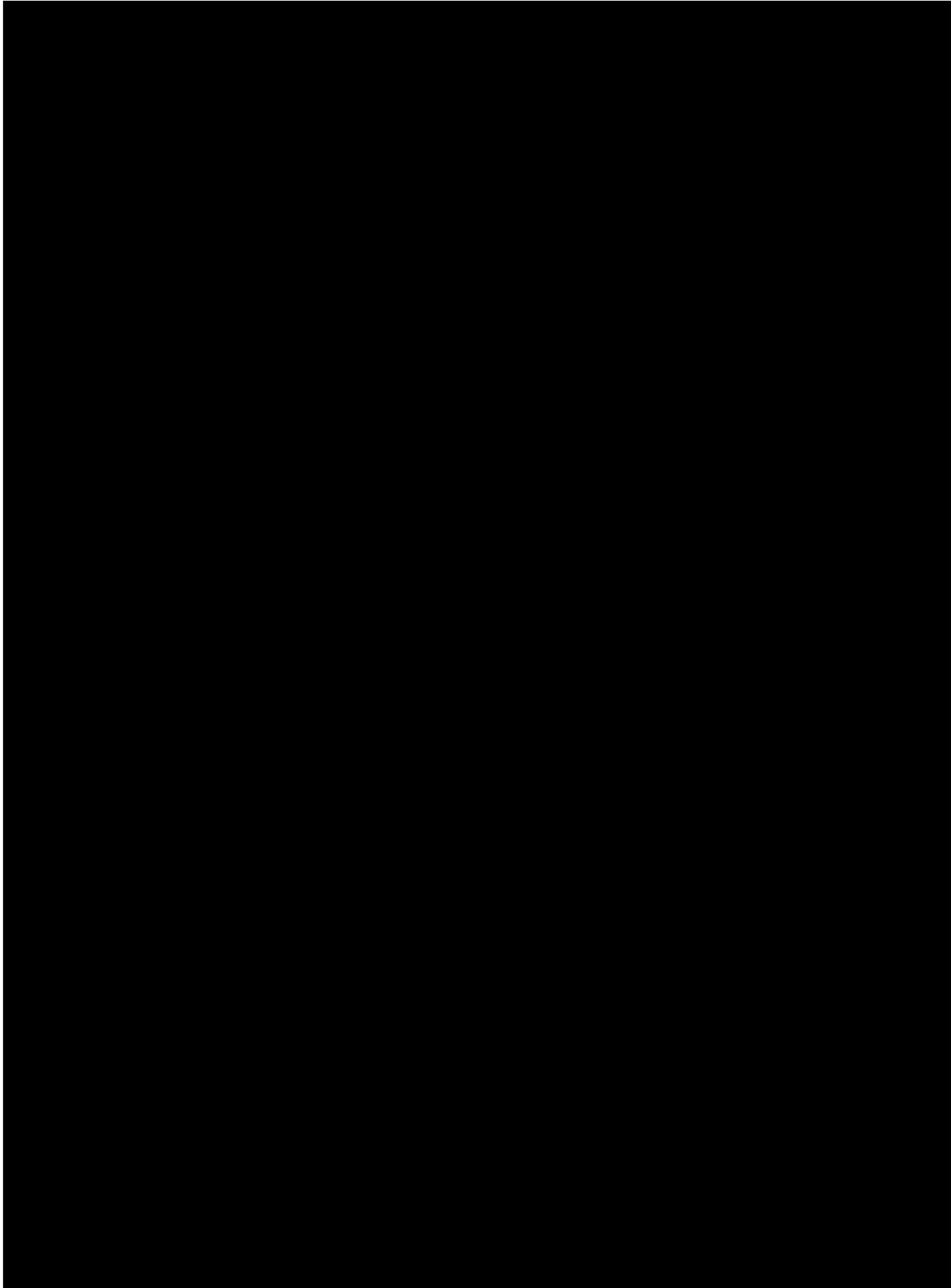
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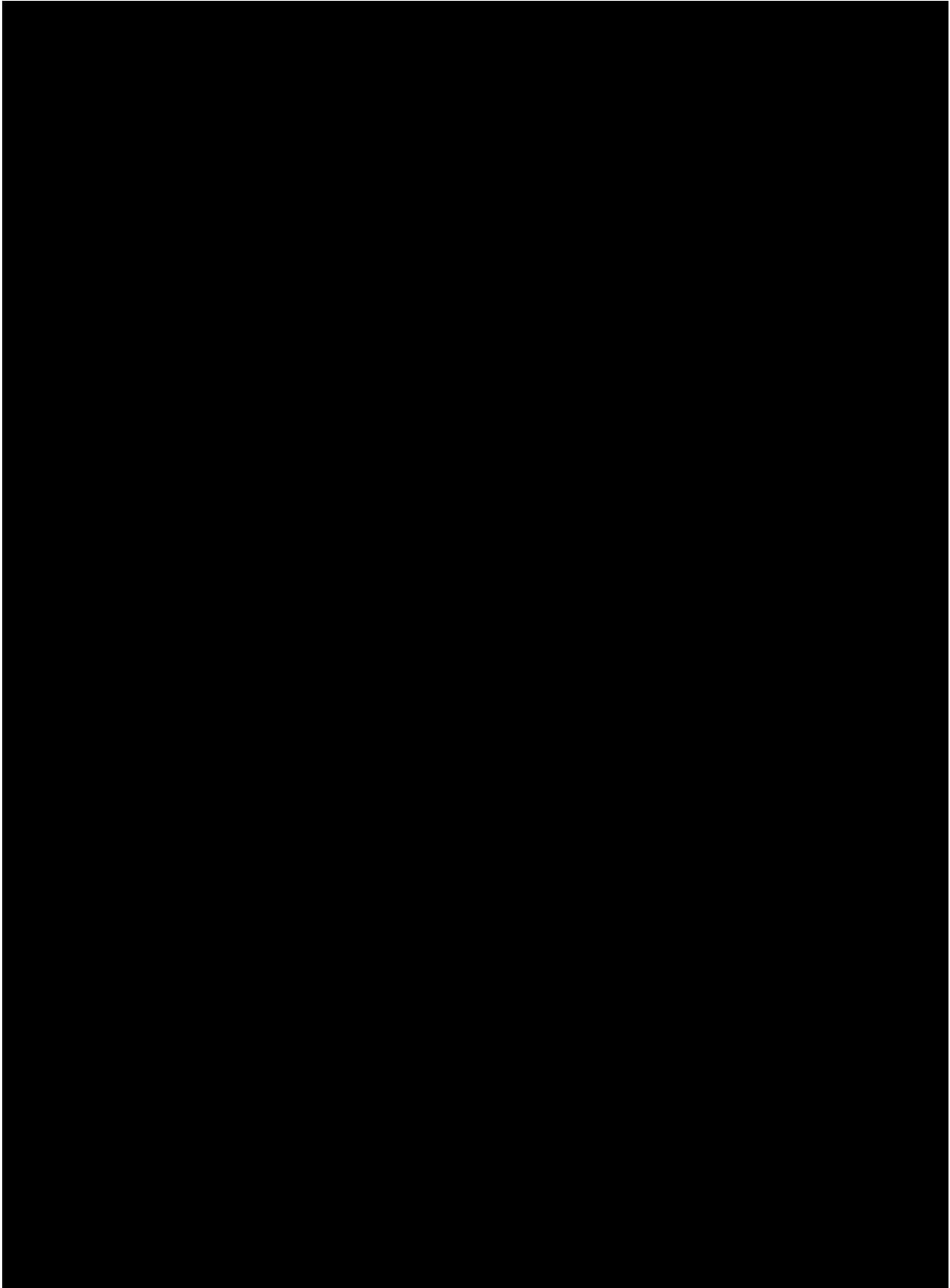
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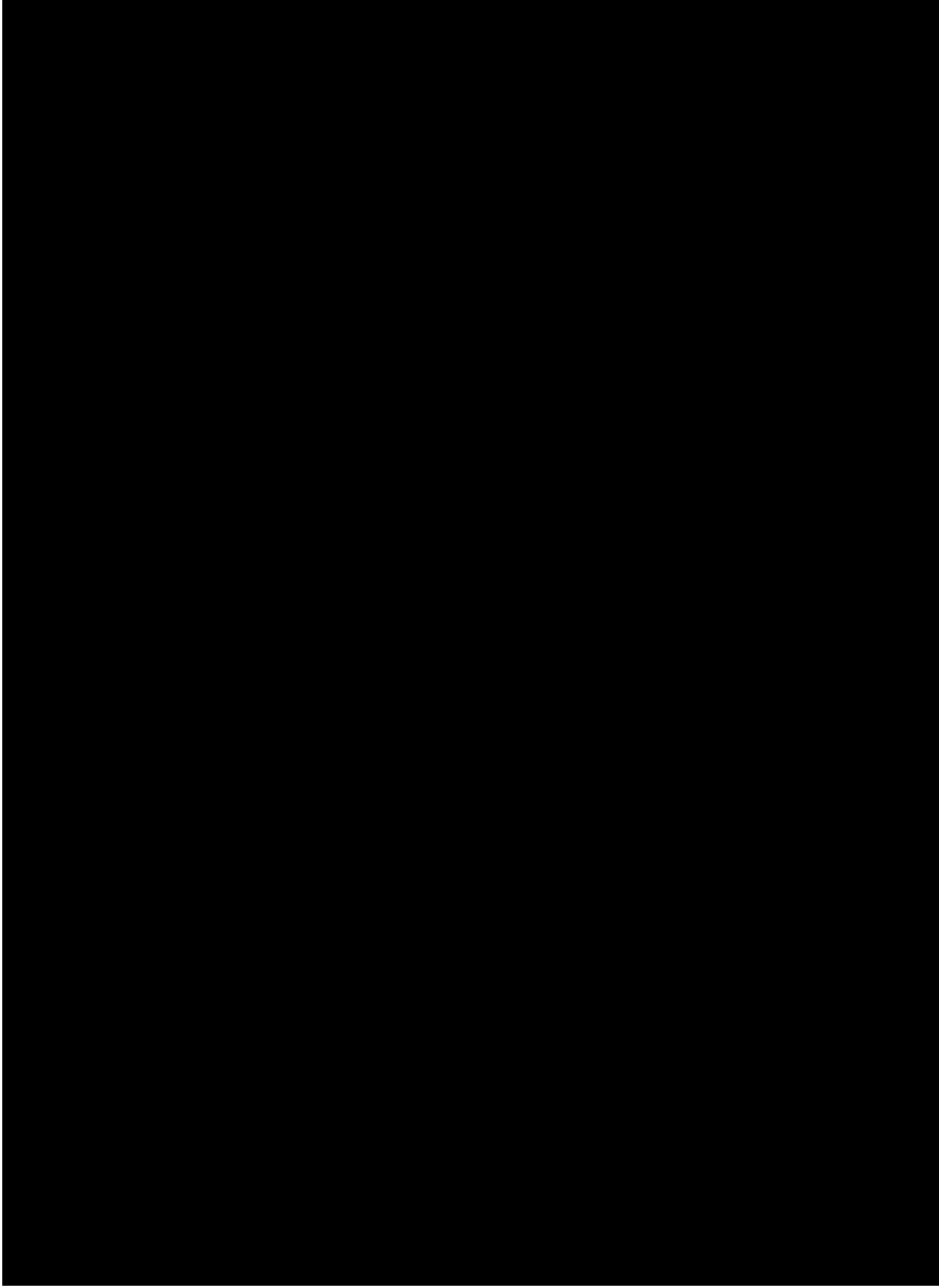
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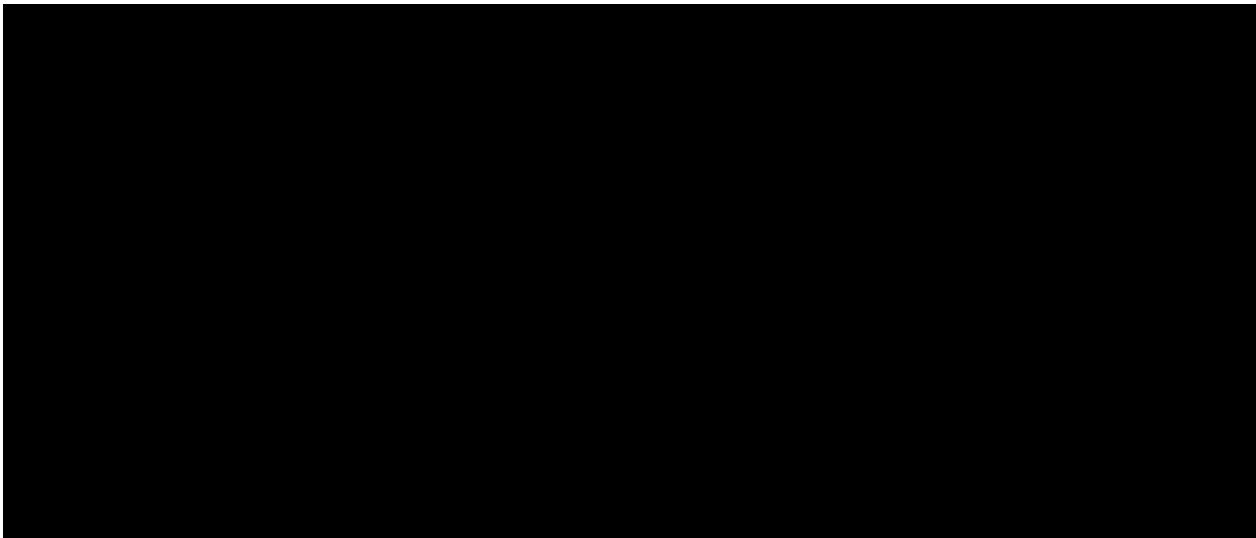
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(Whereupon, at 1:14 p.m., the Hearing was
adjourned until 2:15 p.m., the same day.)

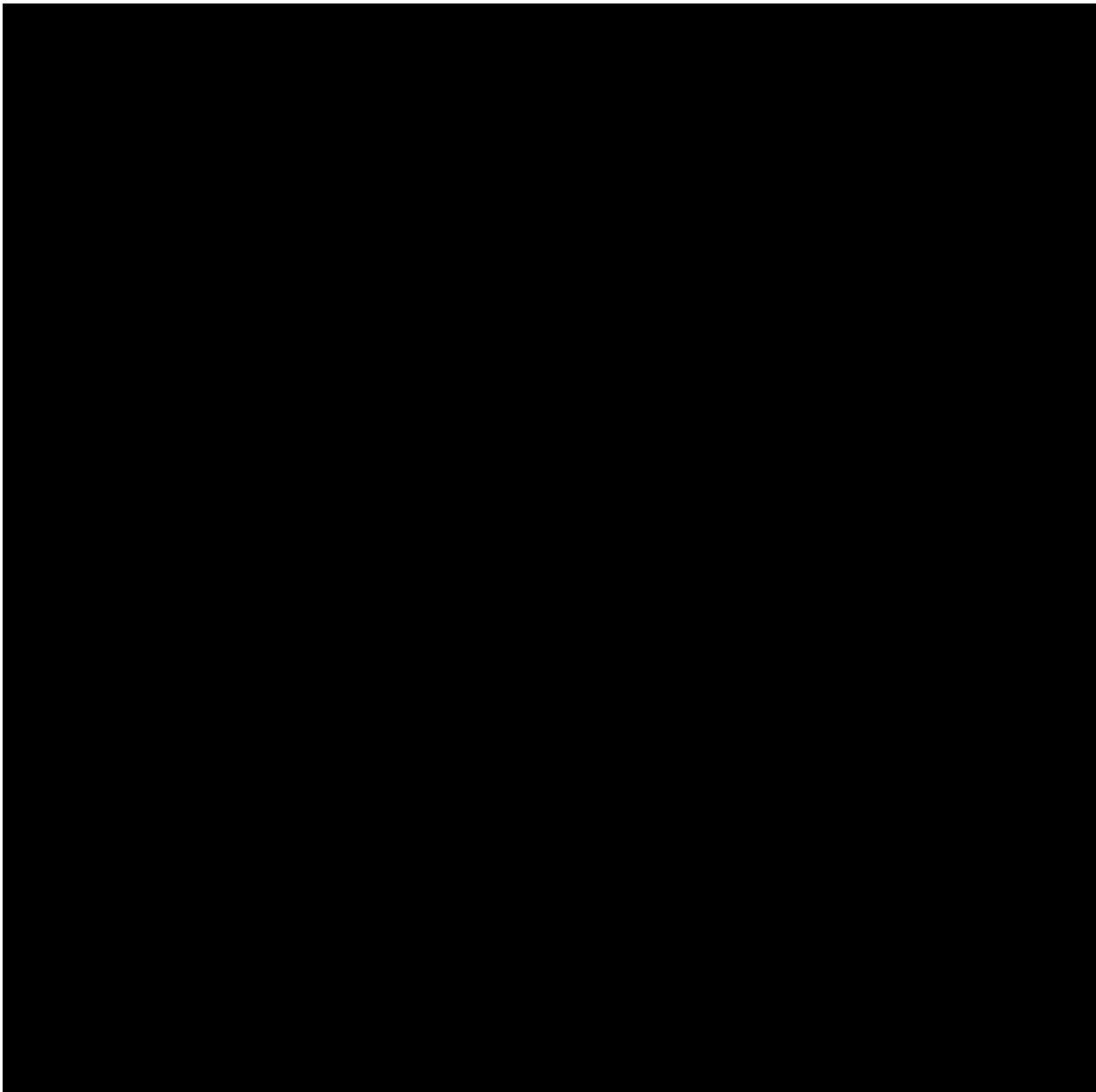
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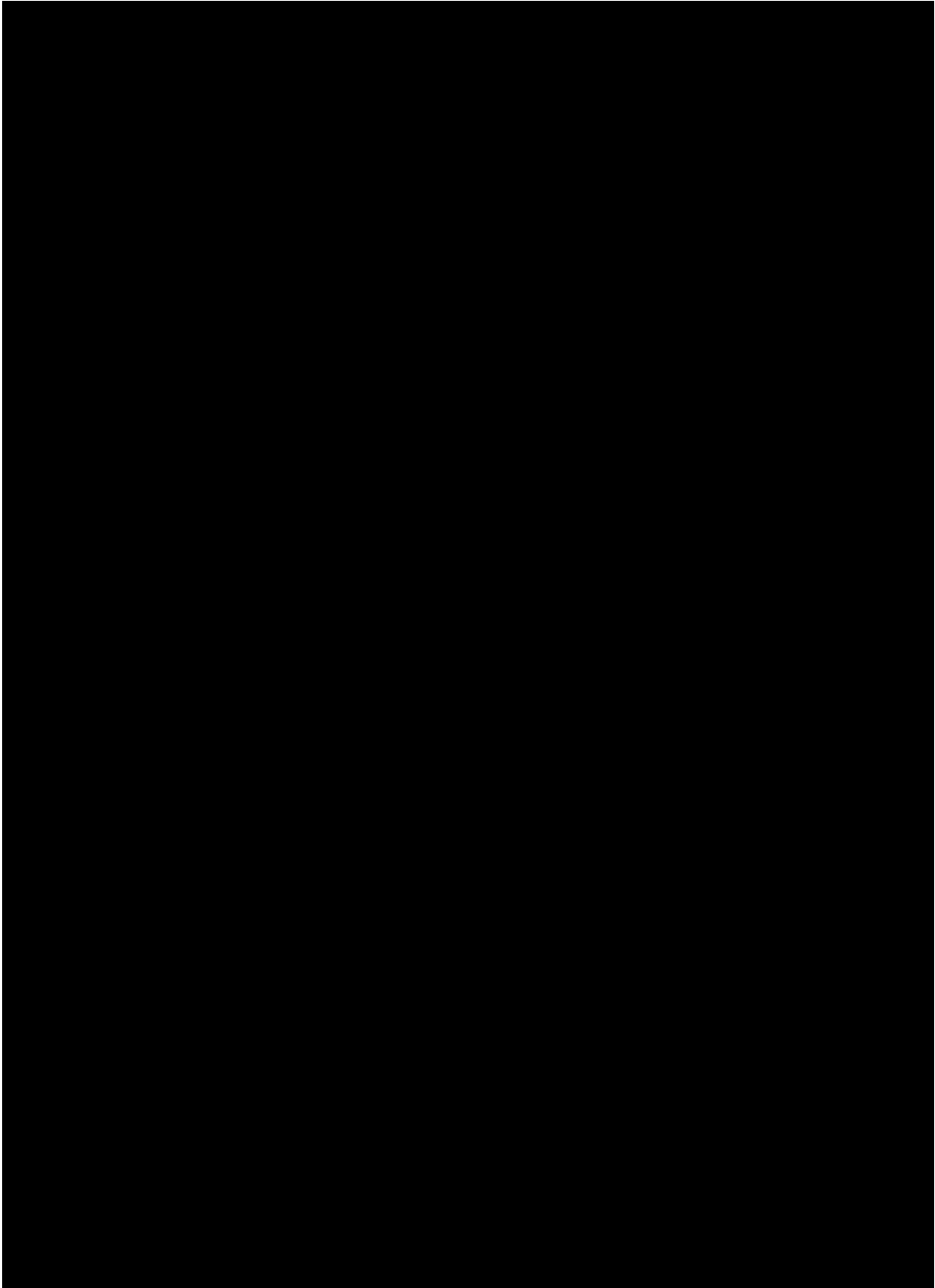
PRESIDENT TERCIER: Okay. Fine. So, ladies and gentlemen, good afternoon. I suggest that we proceed.

Please, Mr. Vasquez.

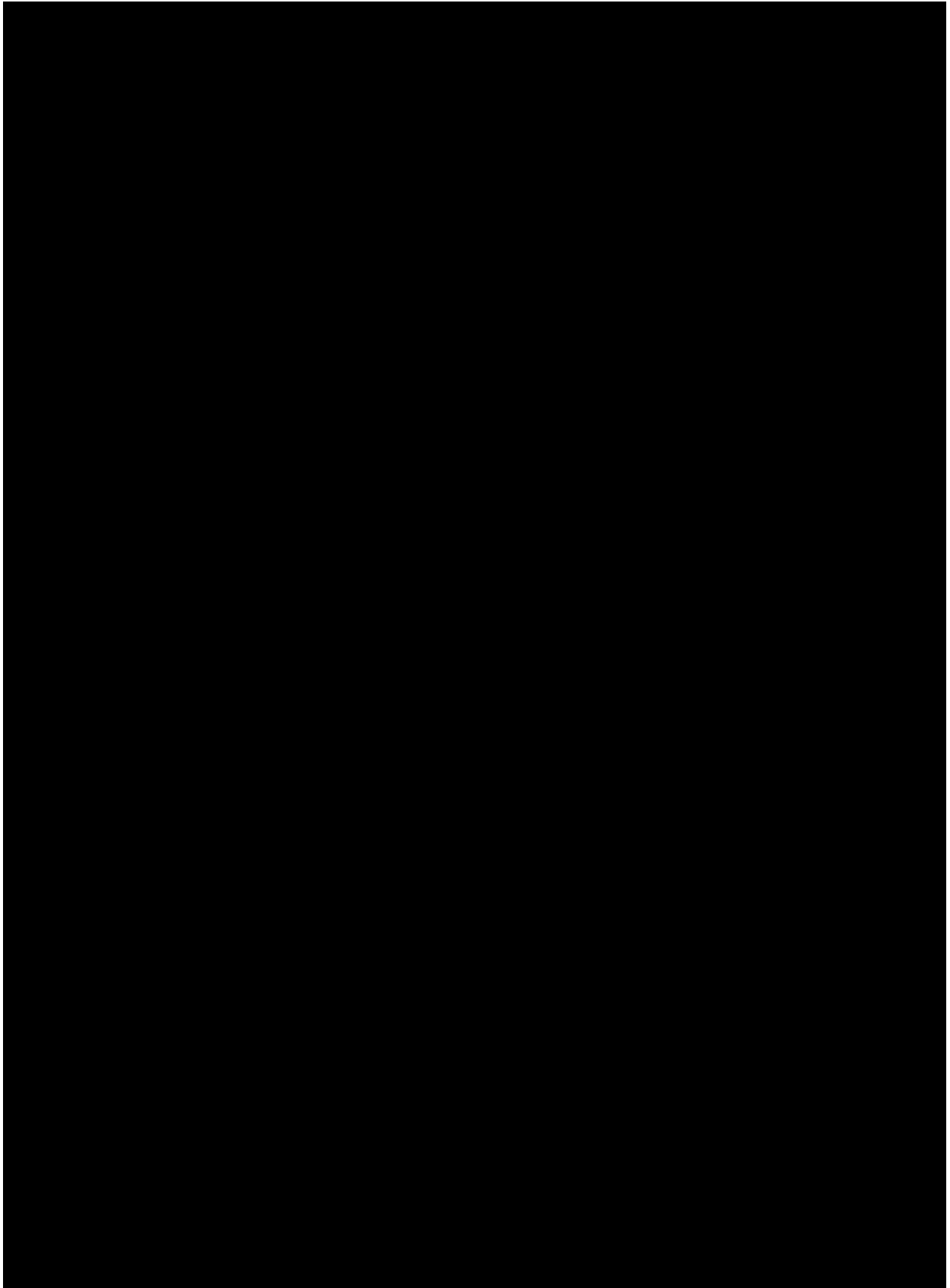
MR. VASQUEZ: Thank you.



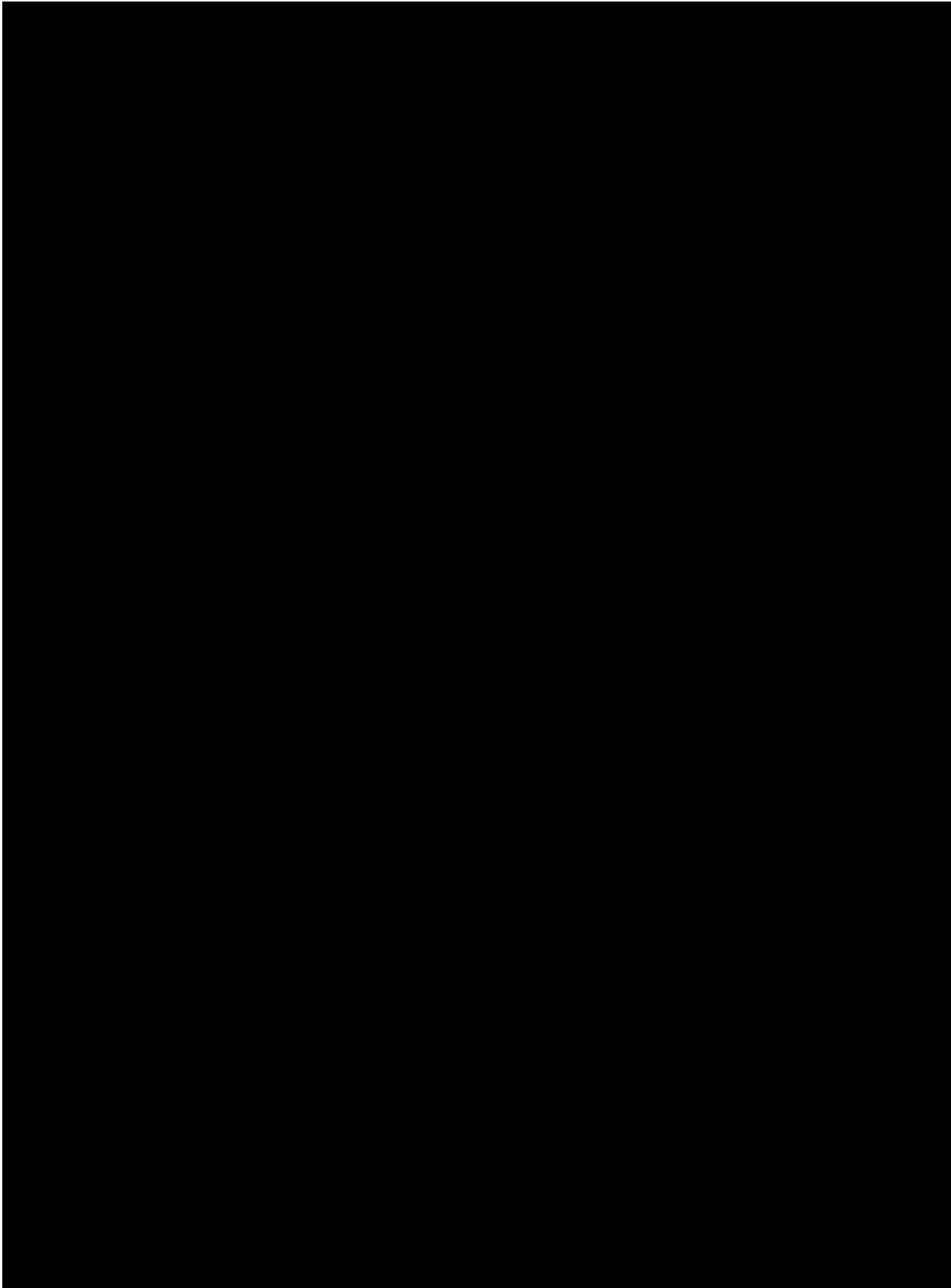
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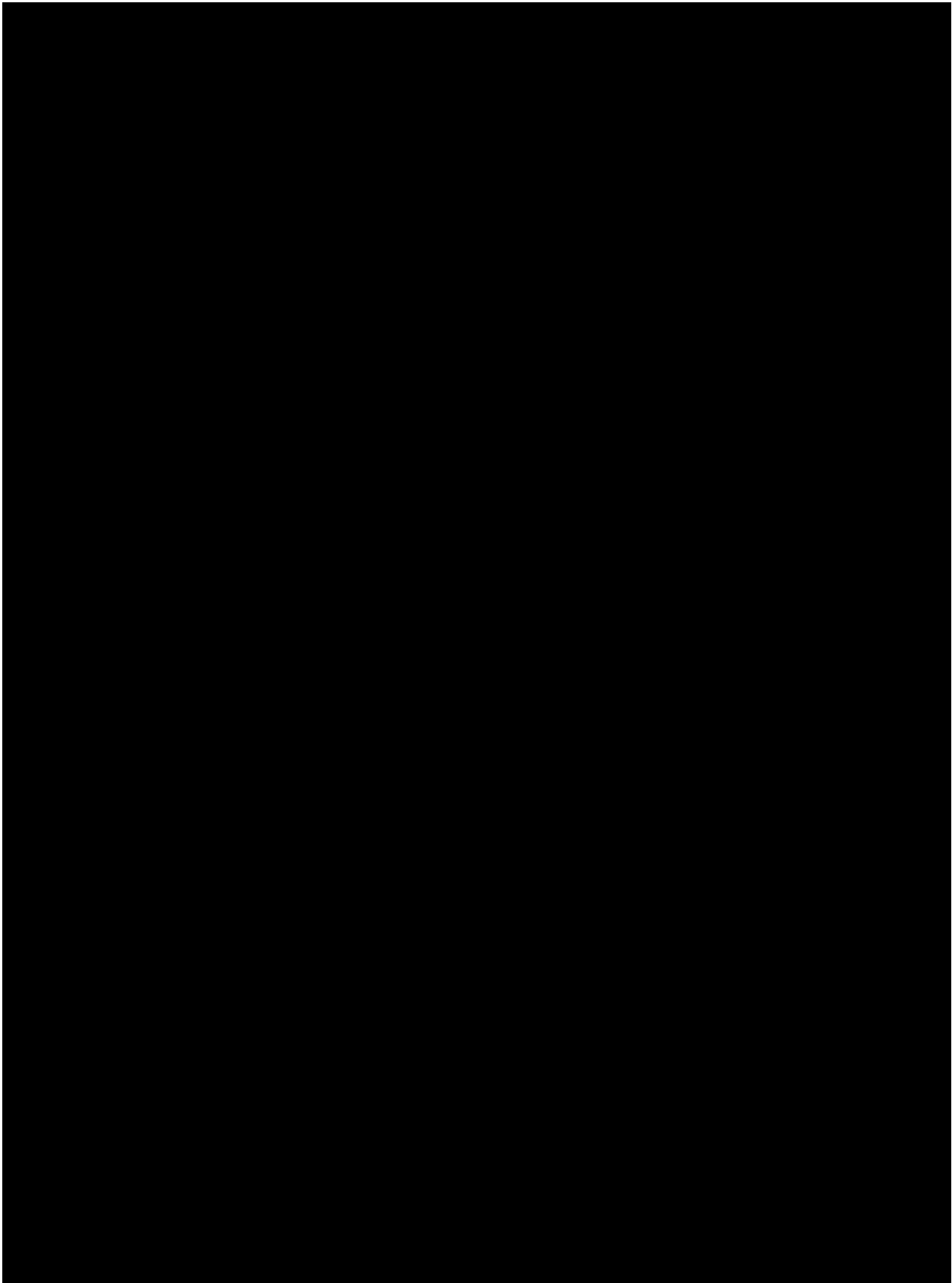
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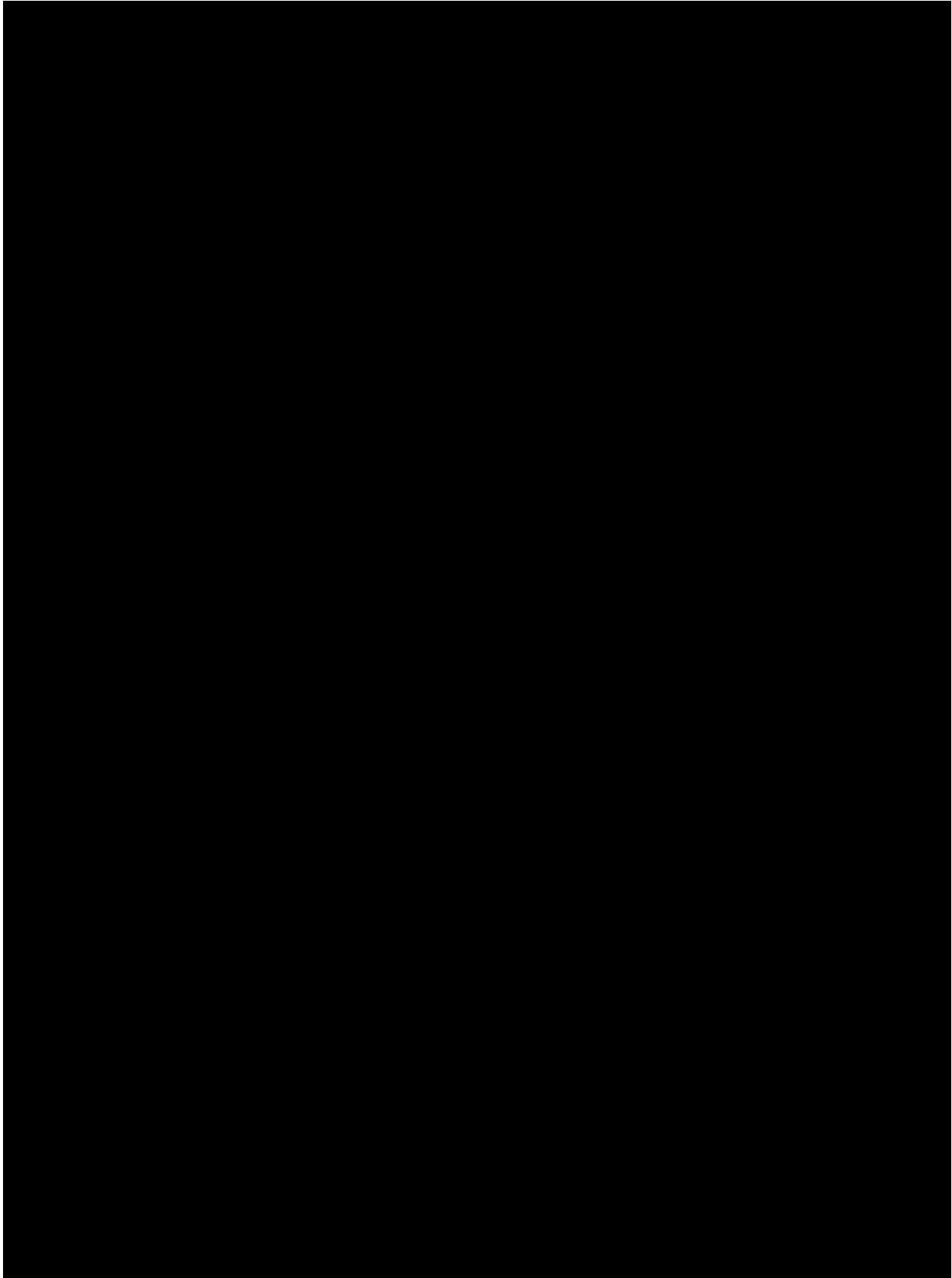
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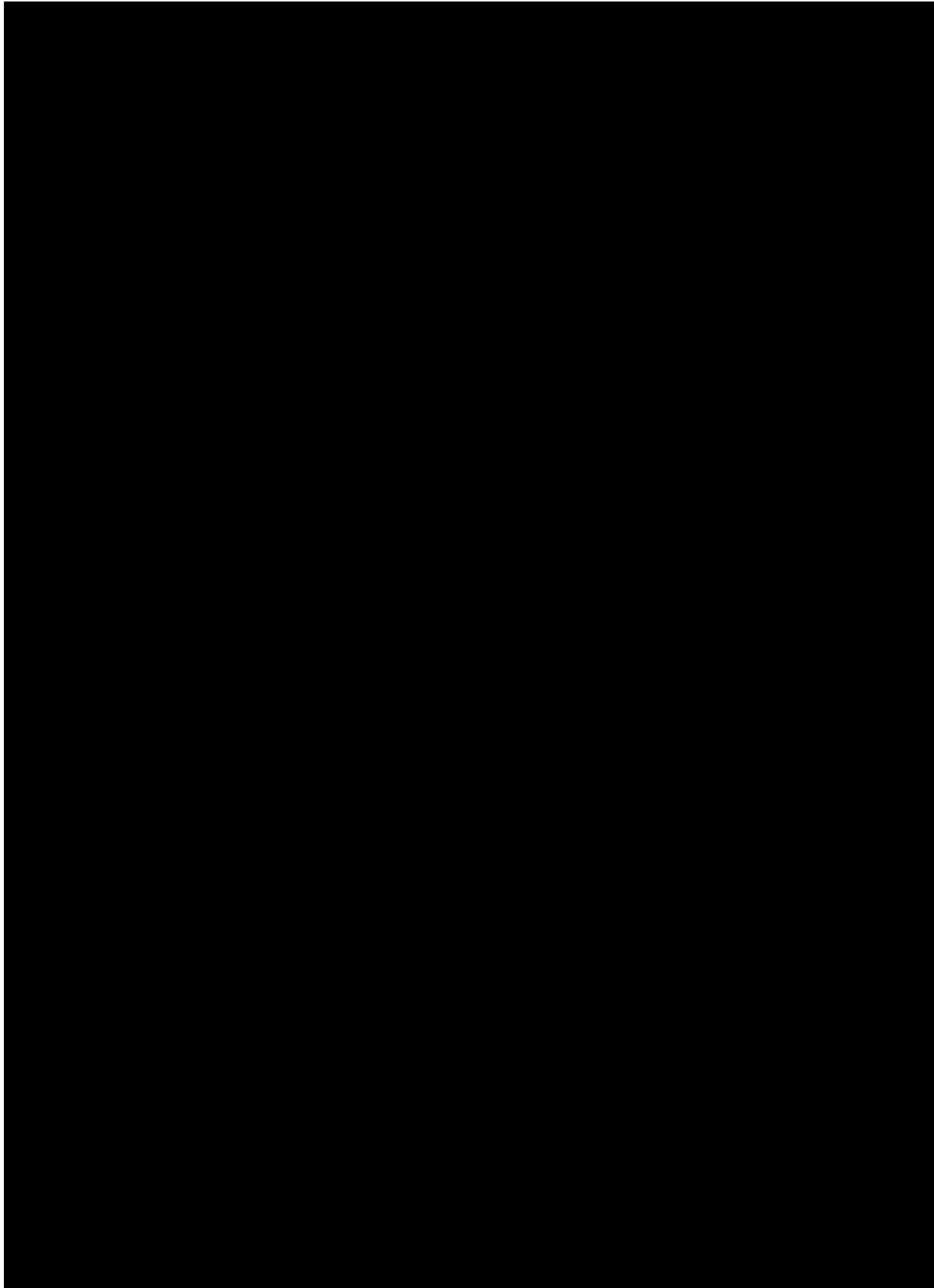
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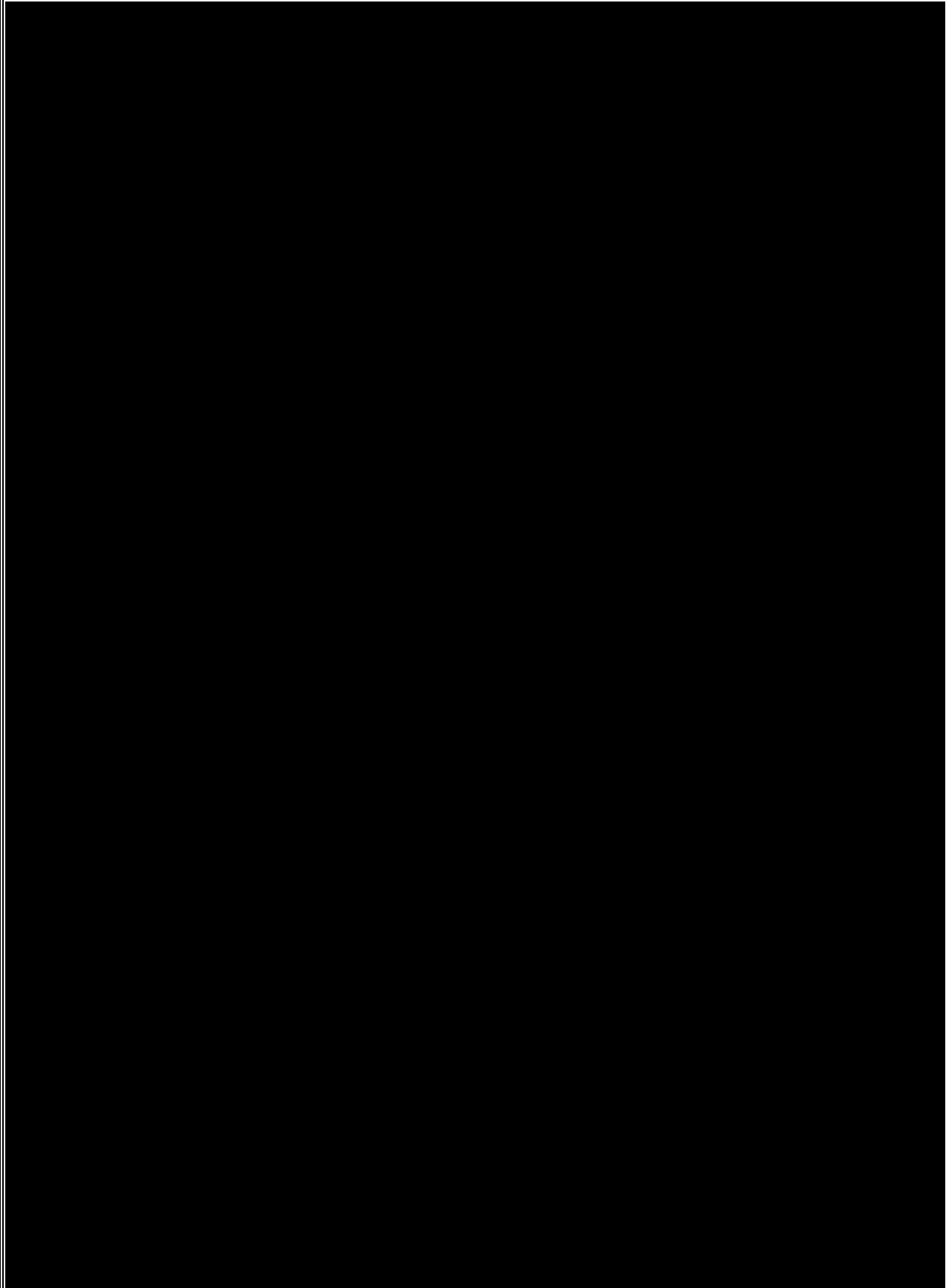
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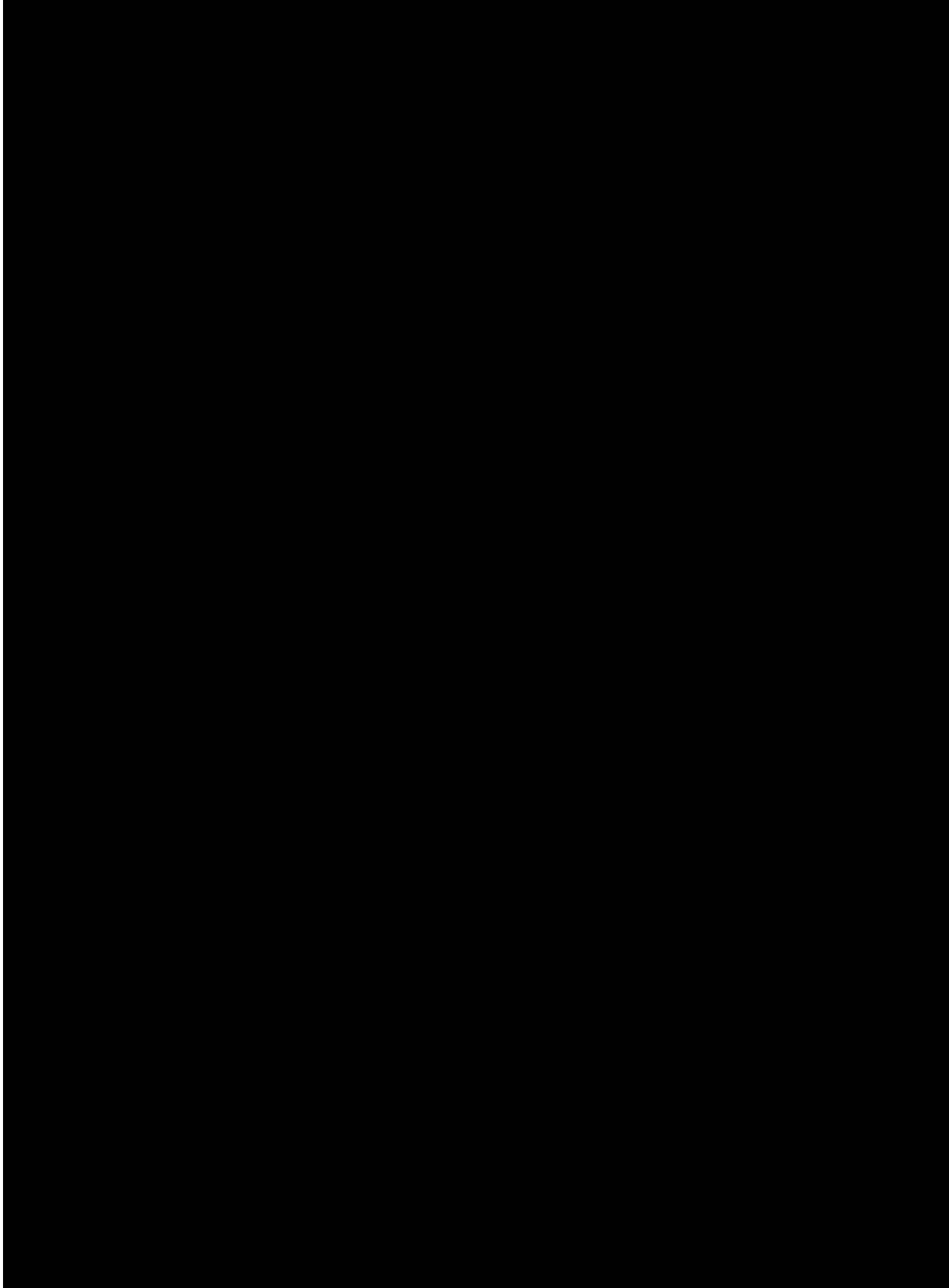
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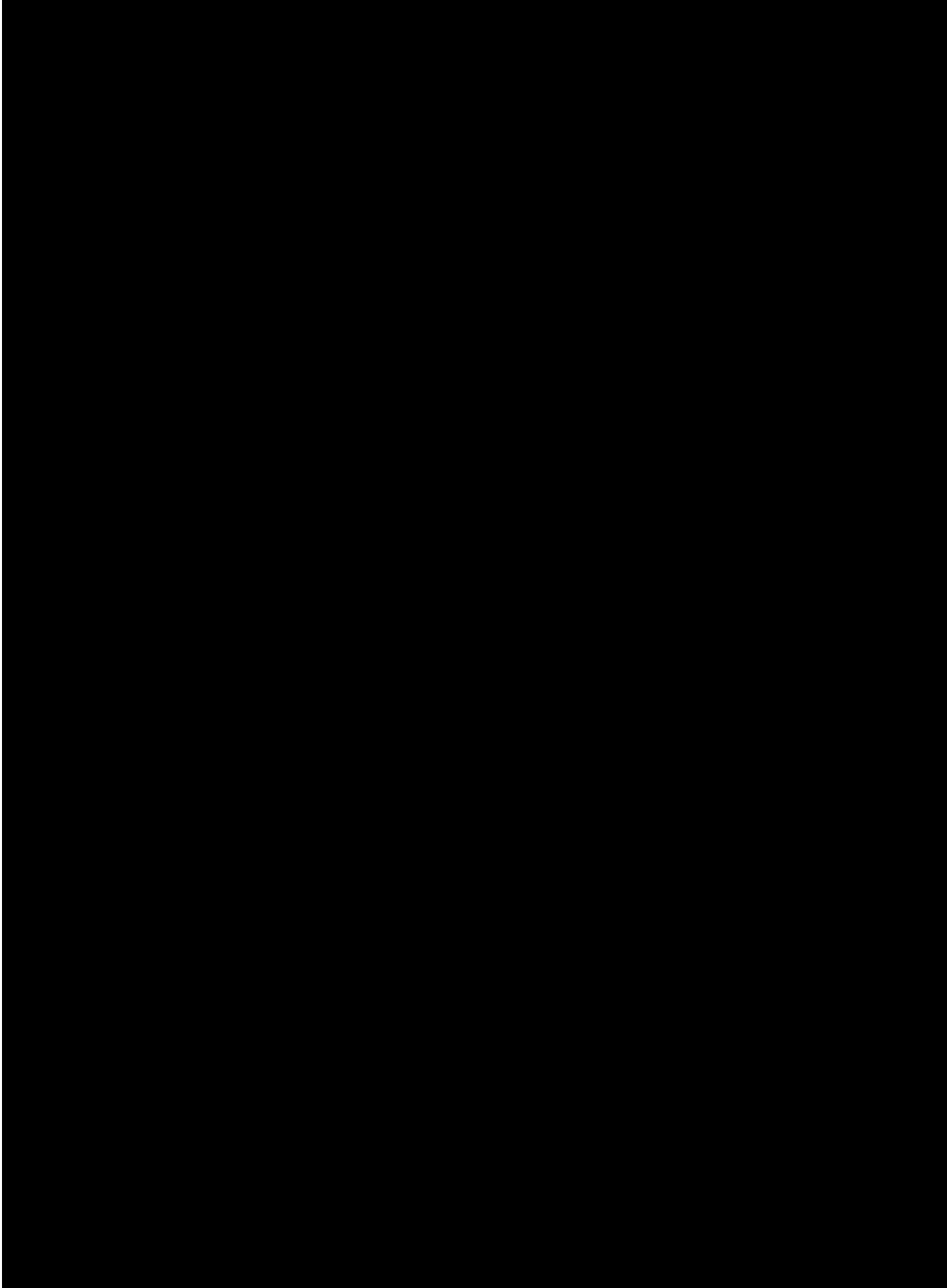
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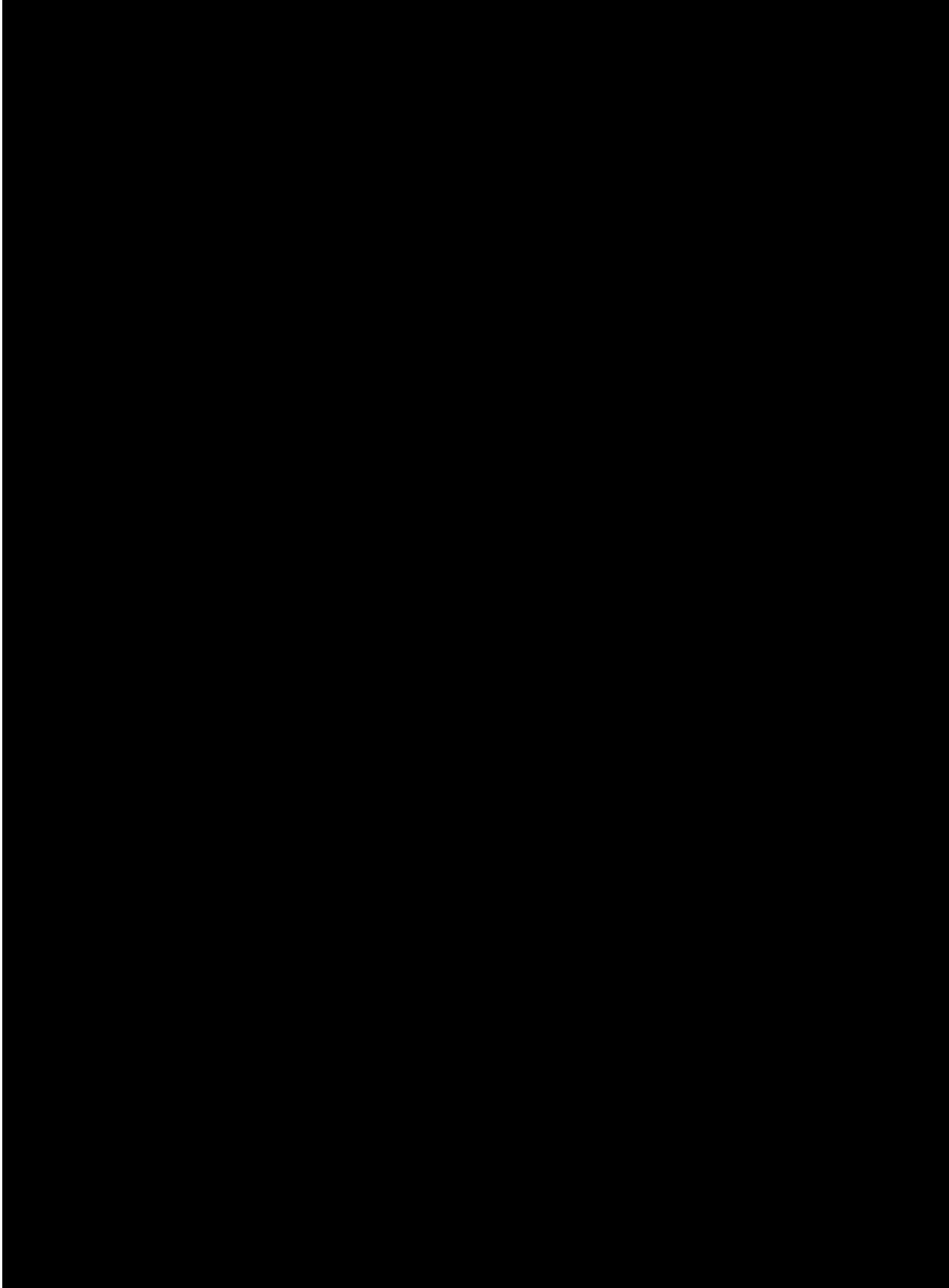
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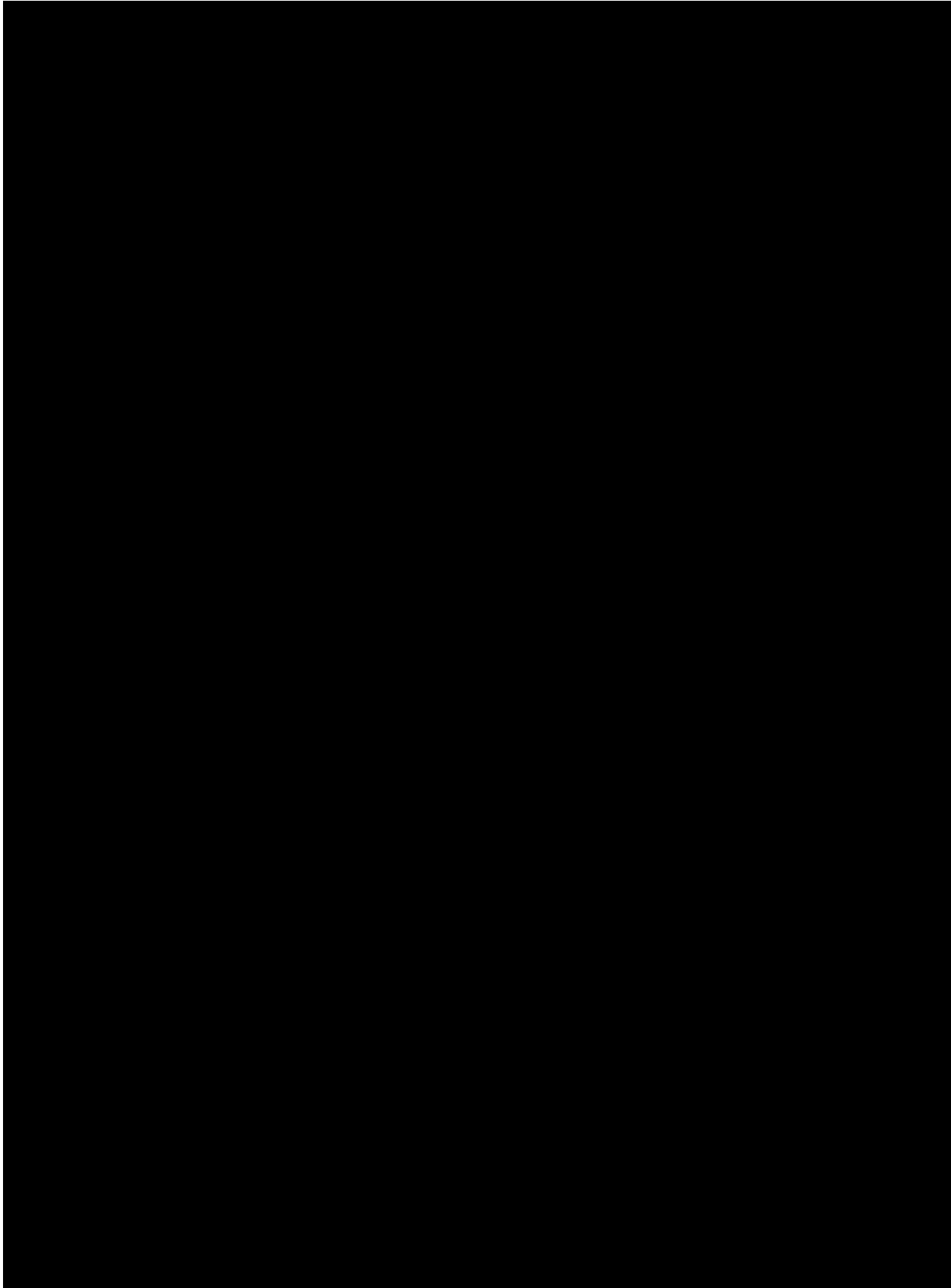
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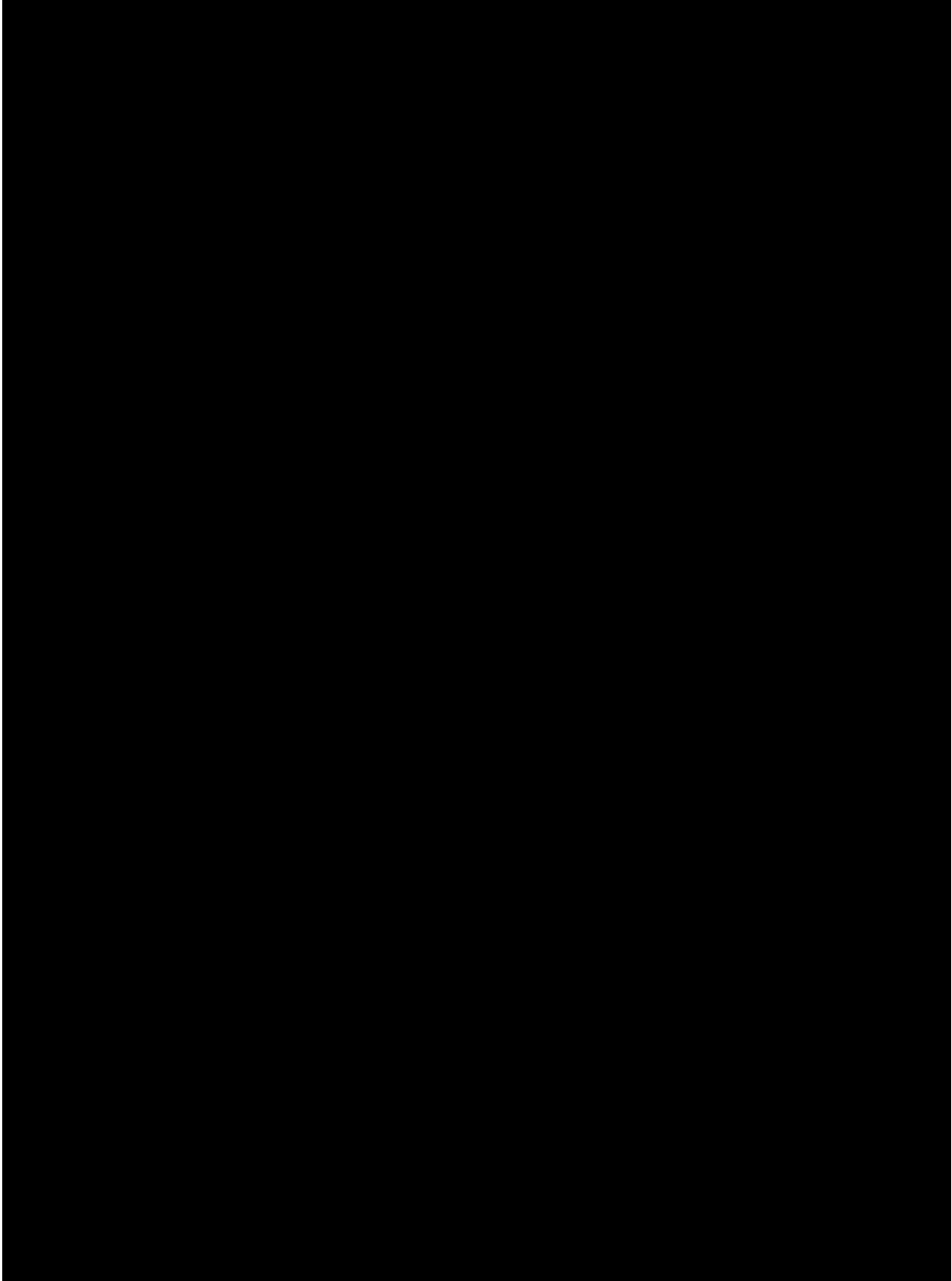
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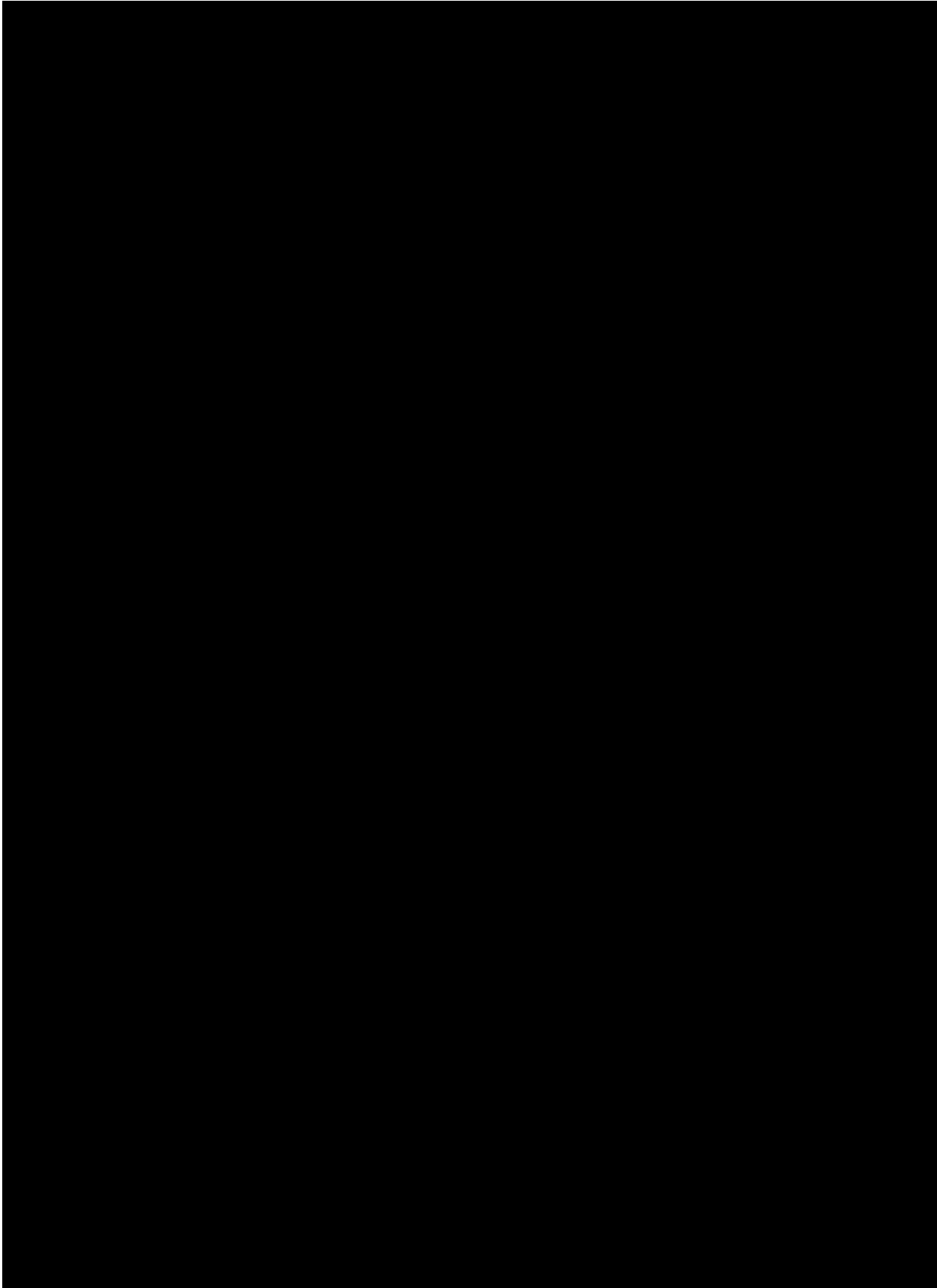
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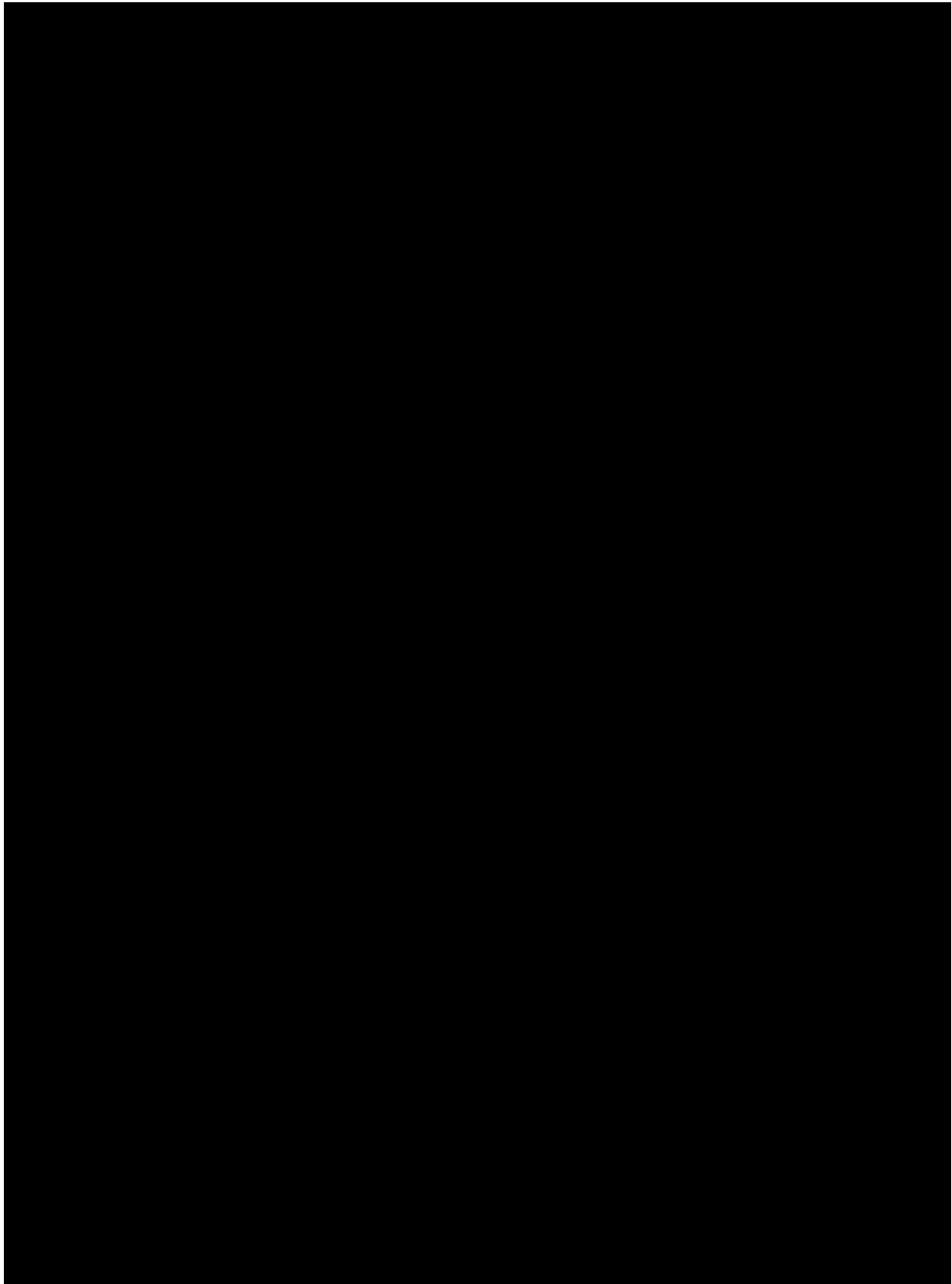
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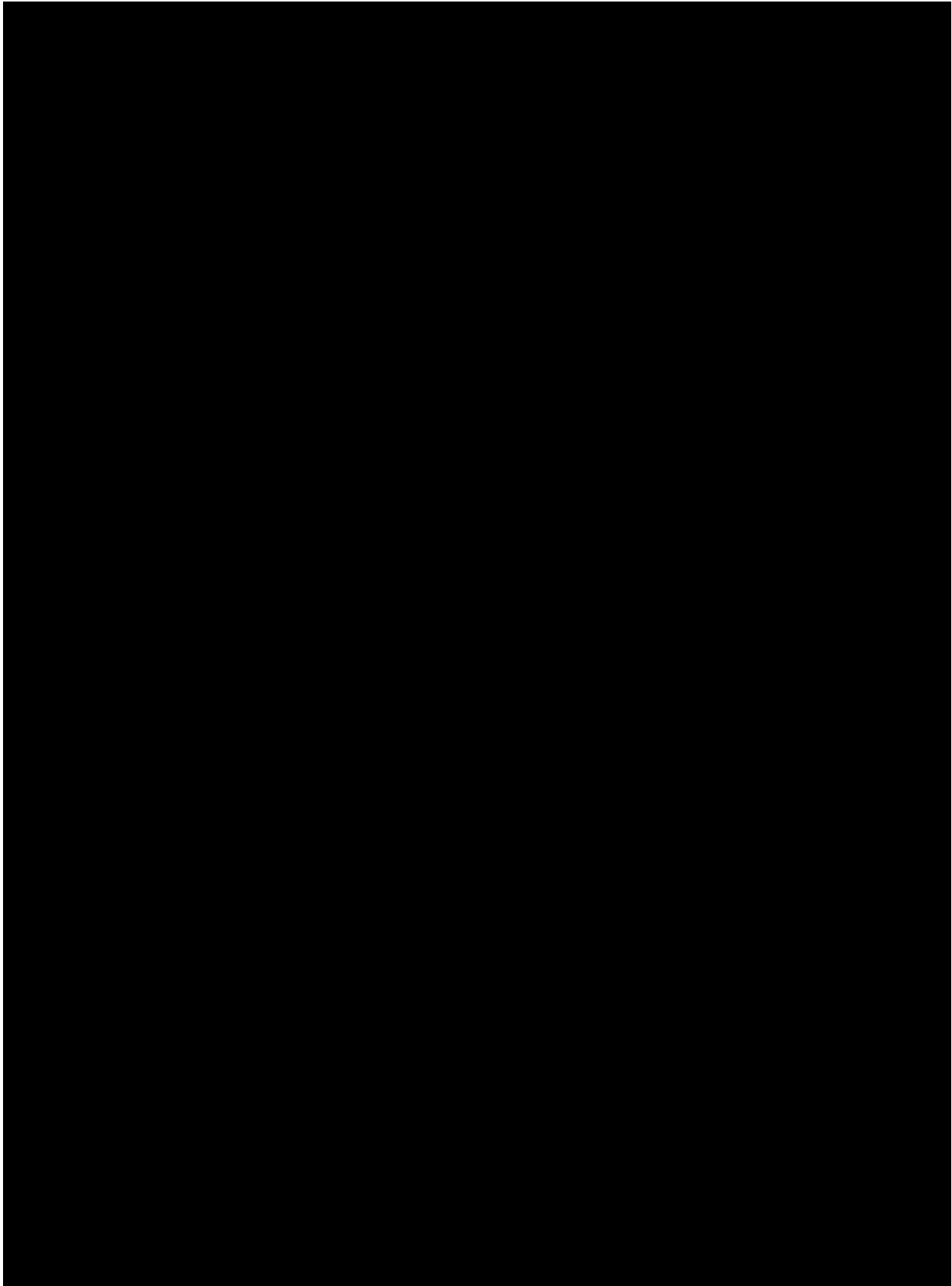
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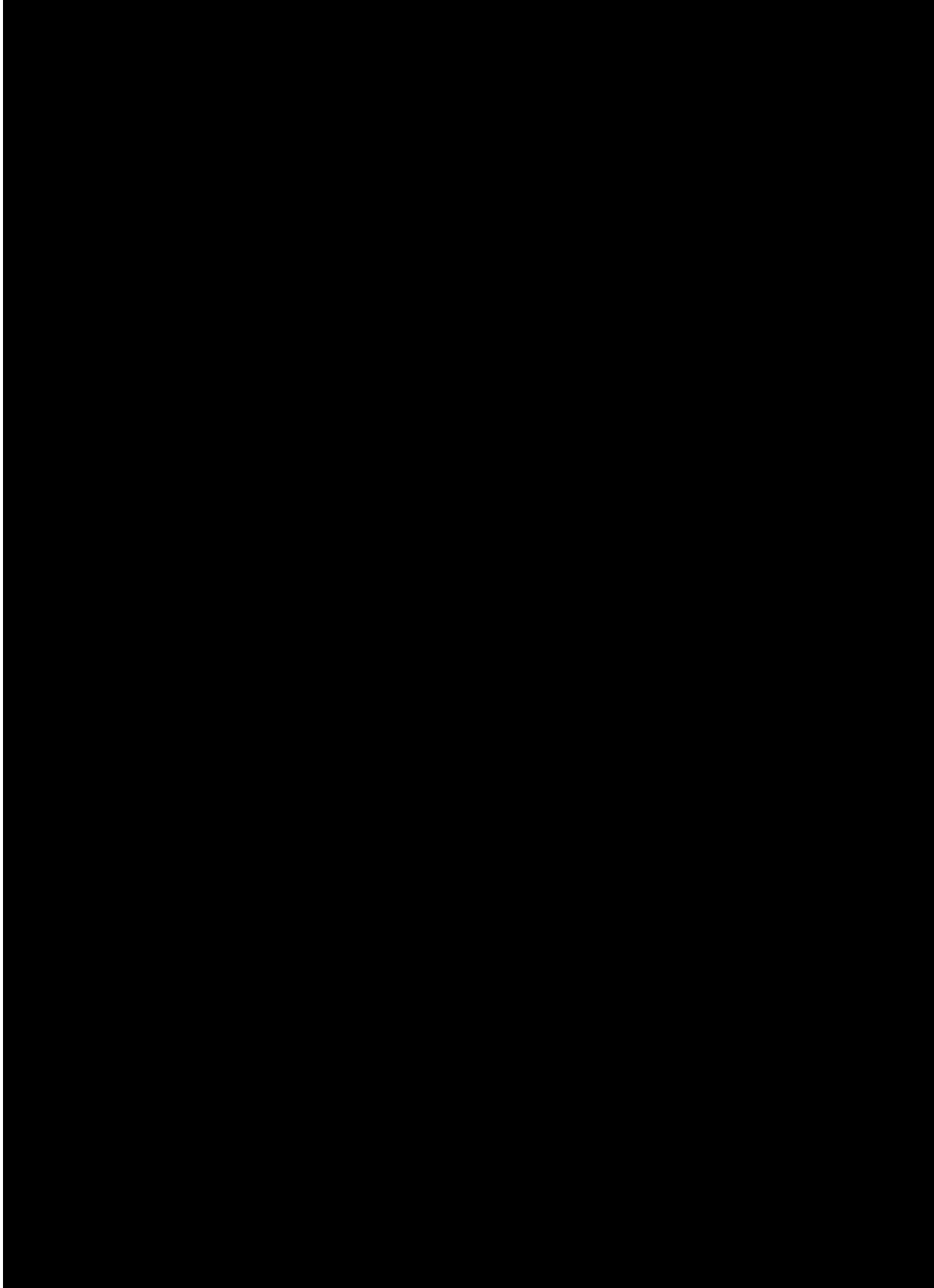
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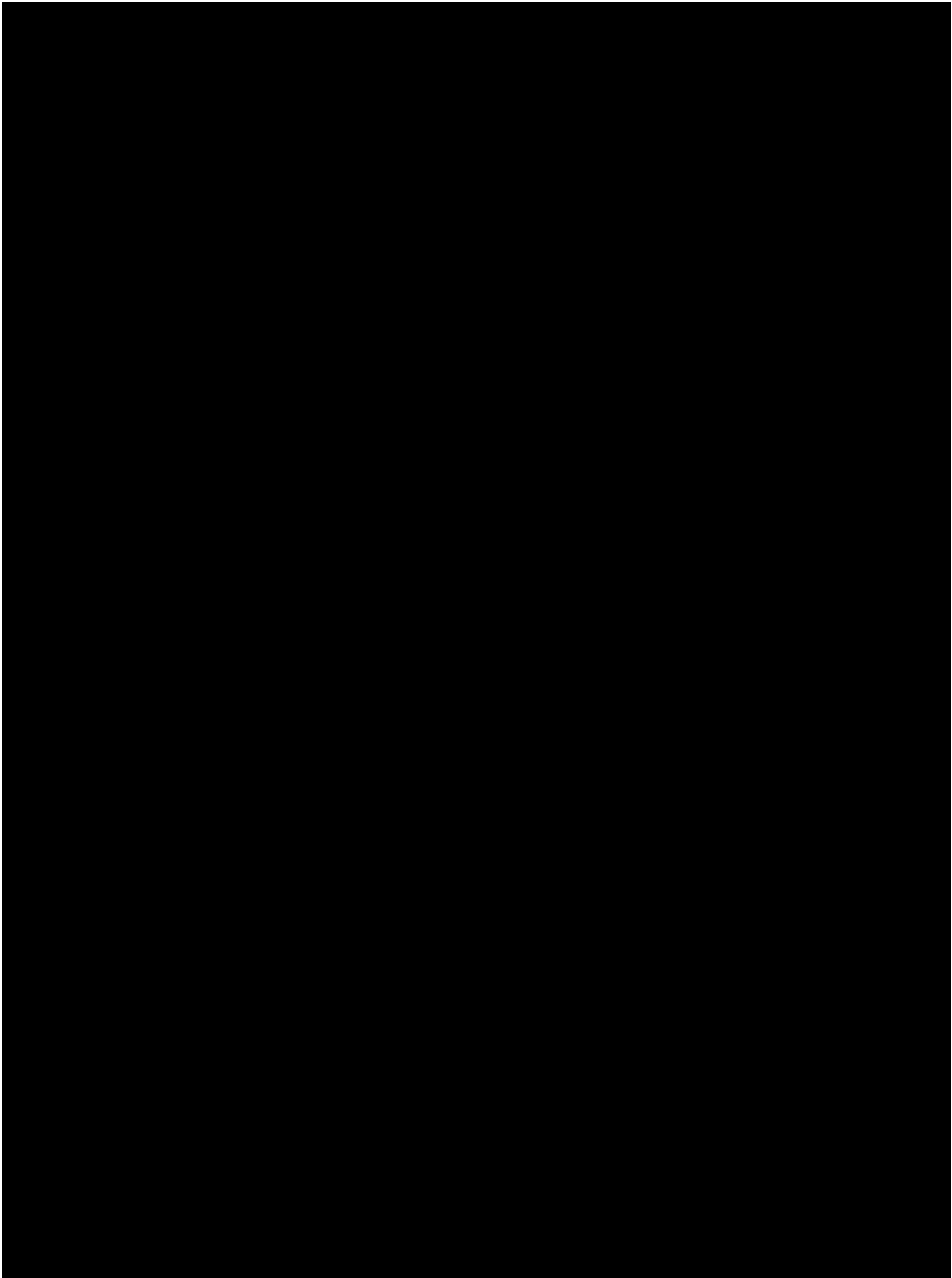
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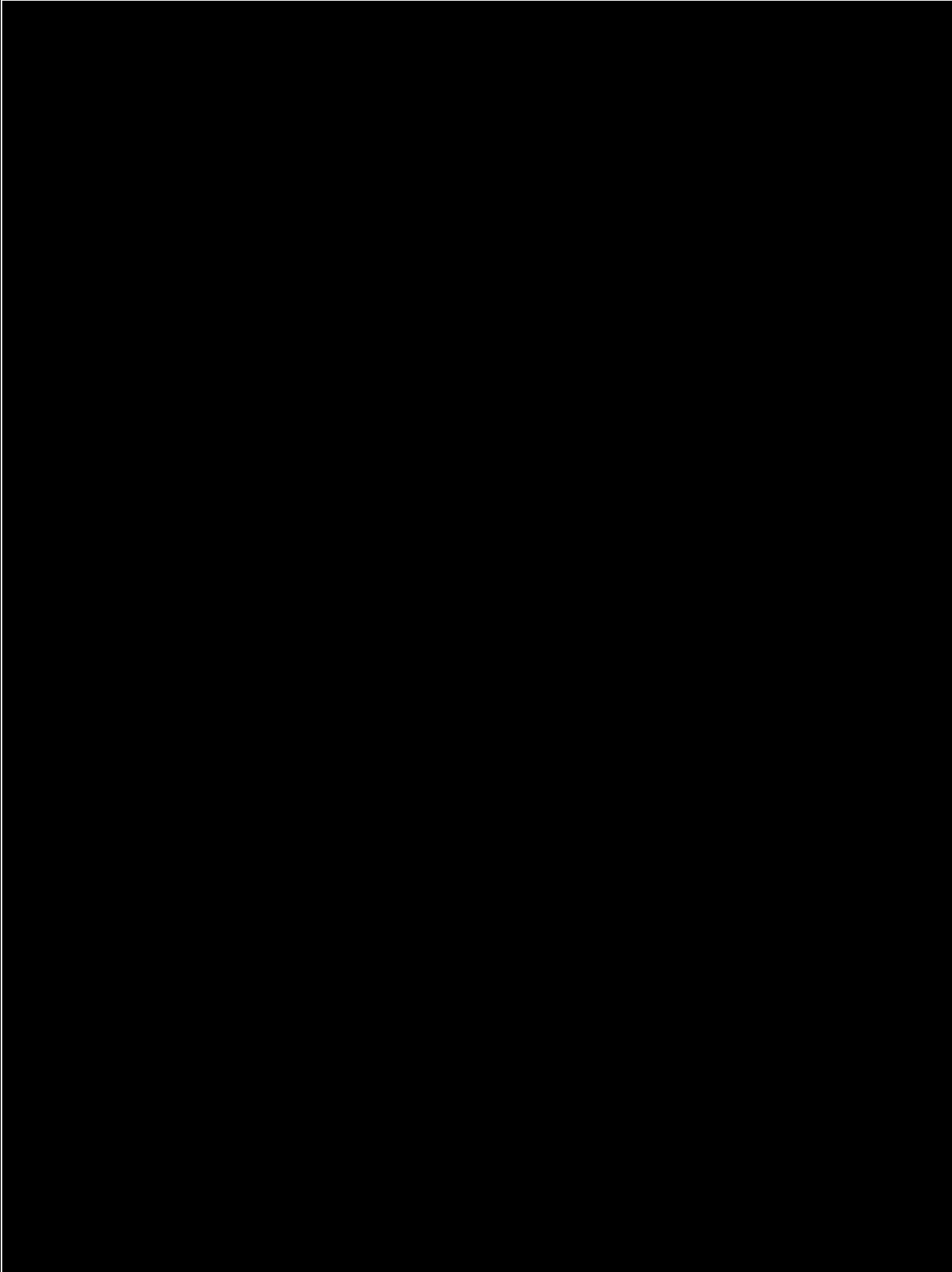
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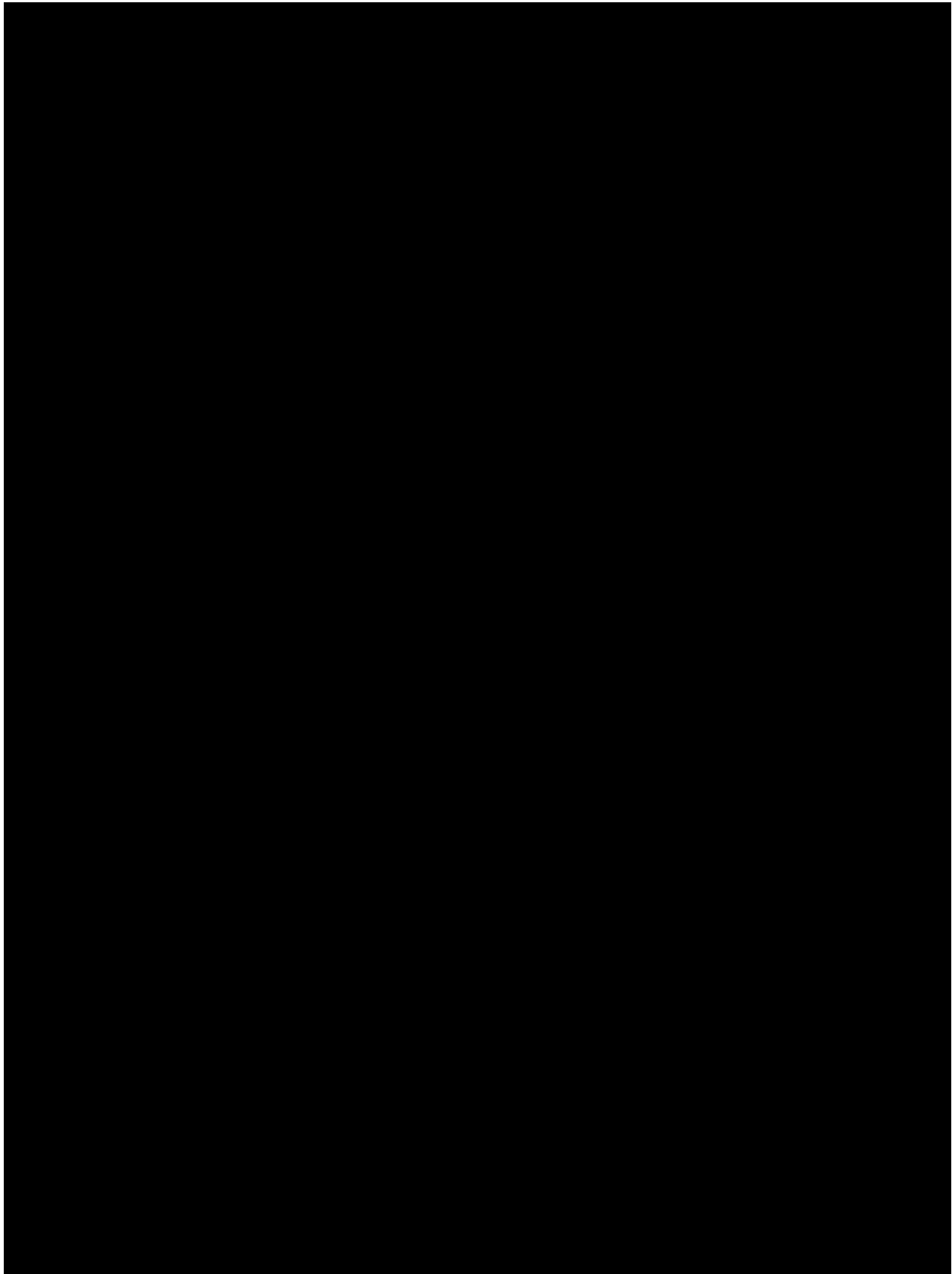
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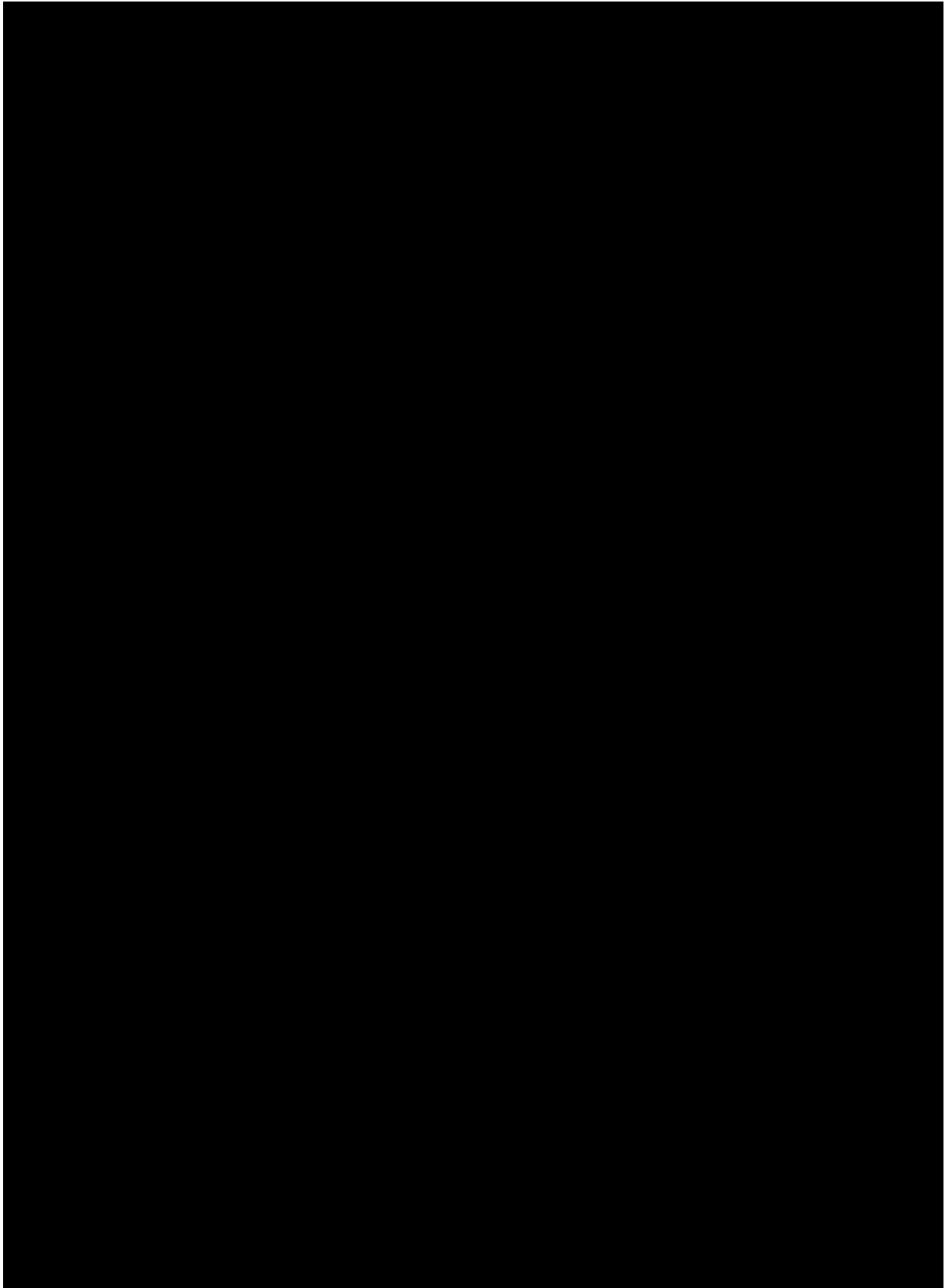
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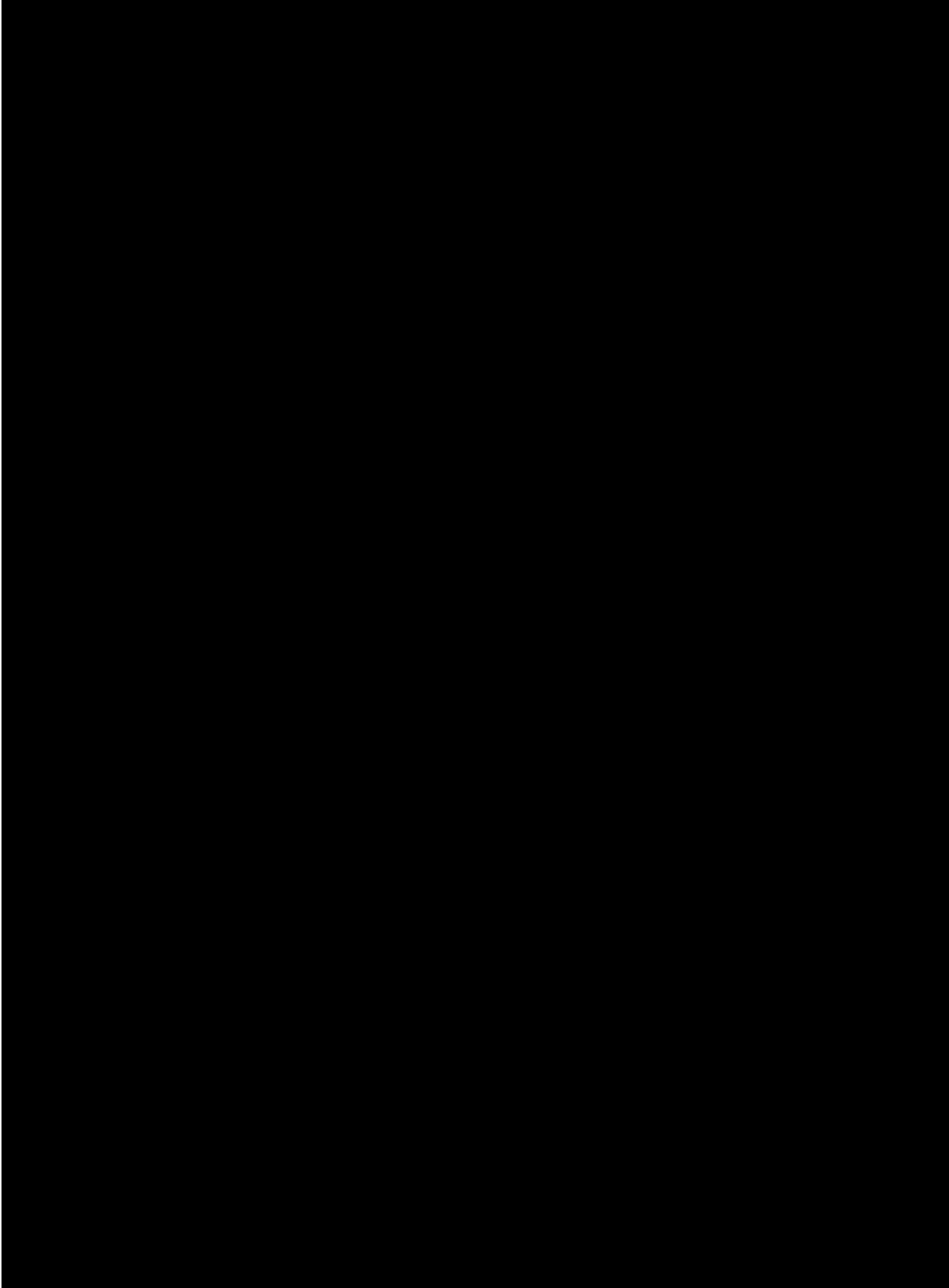
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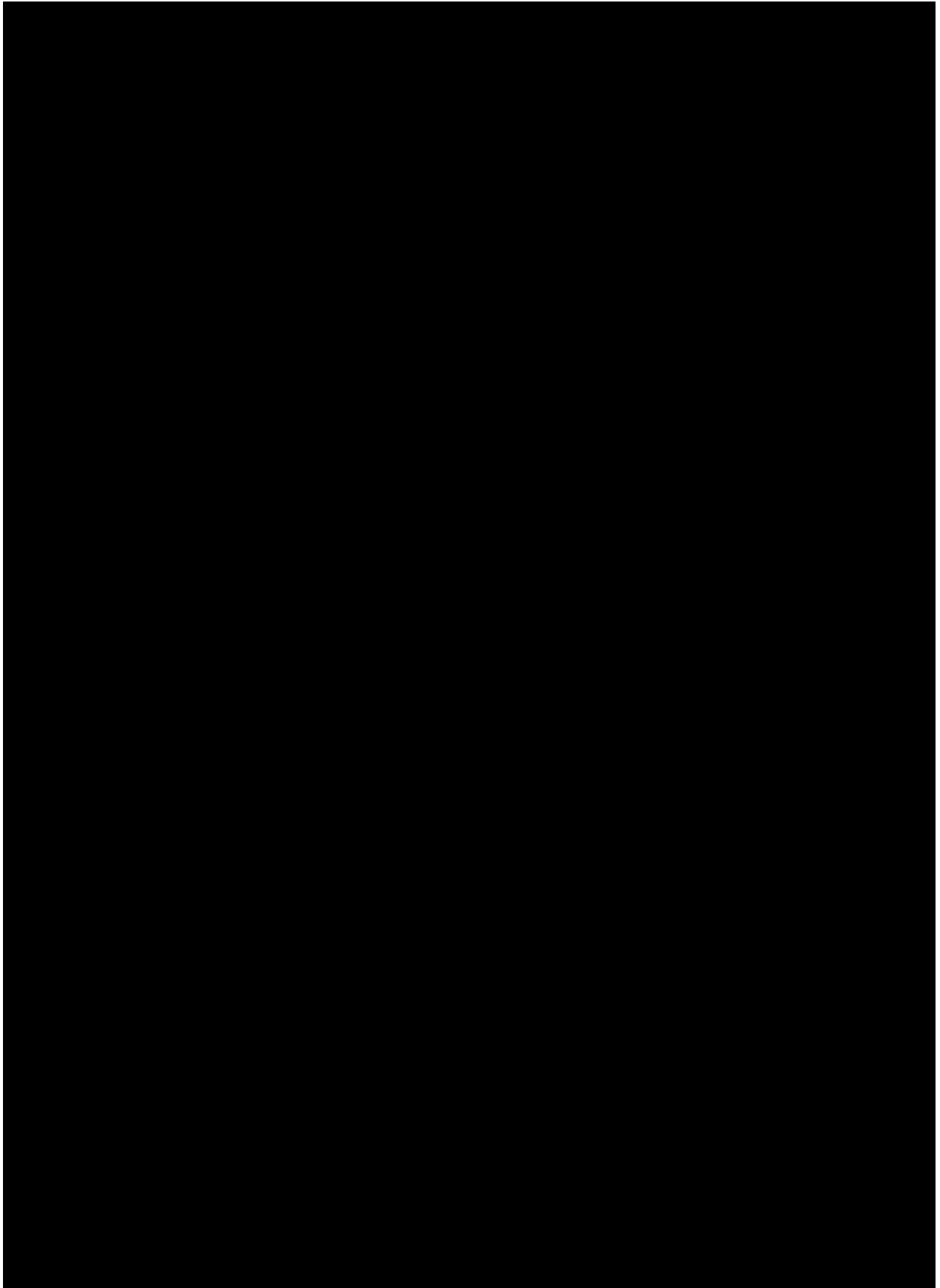
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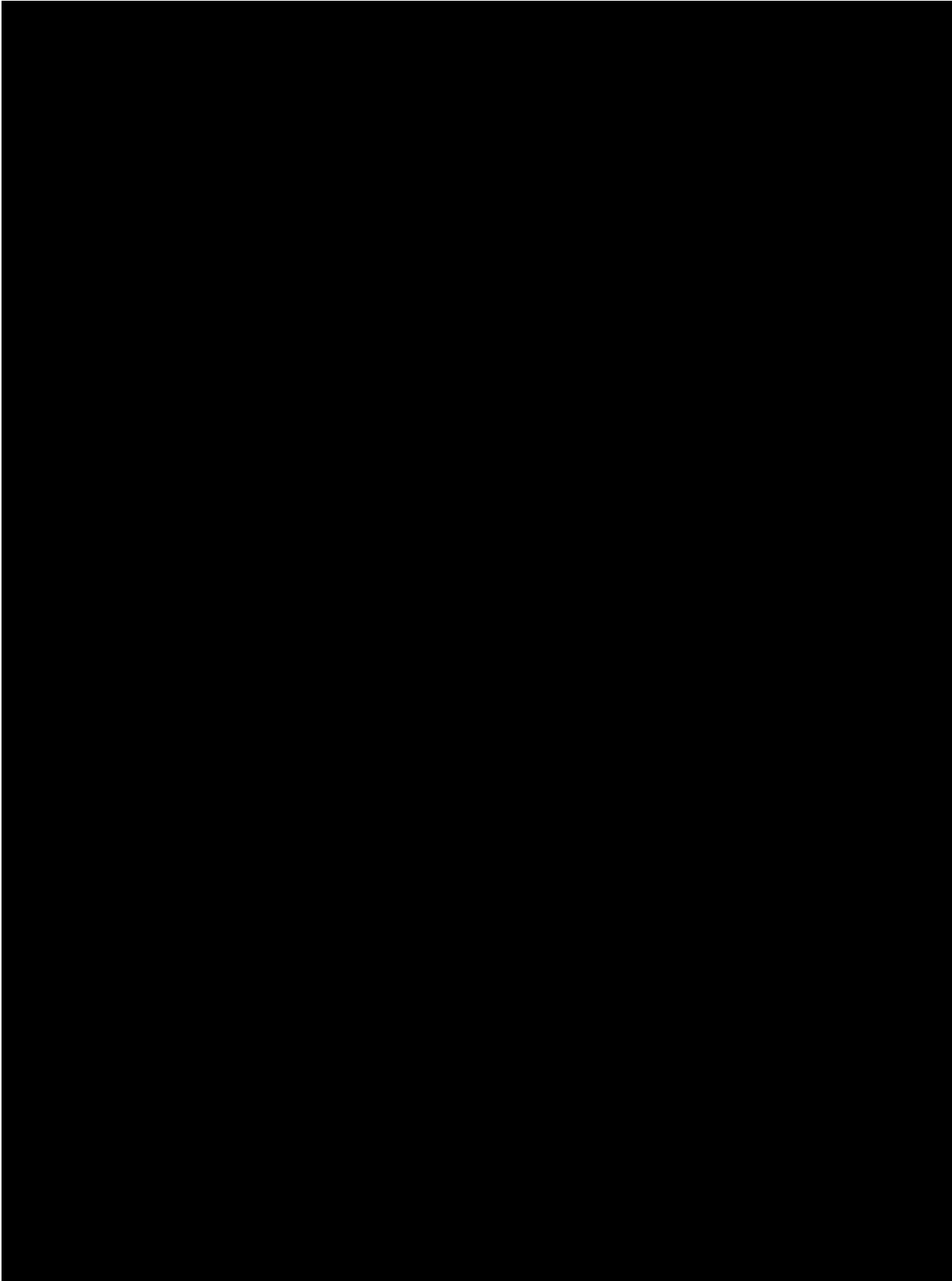
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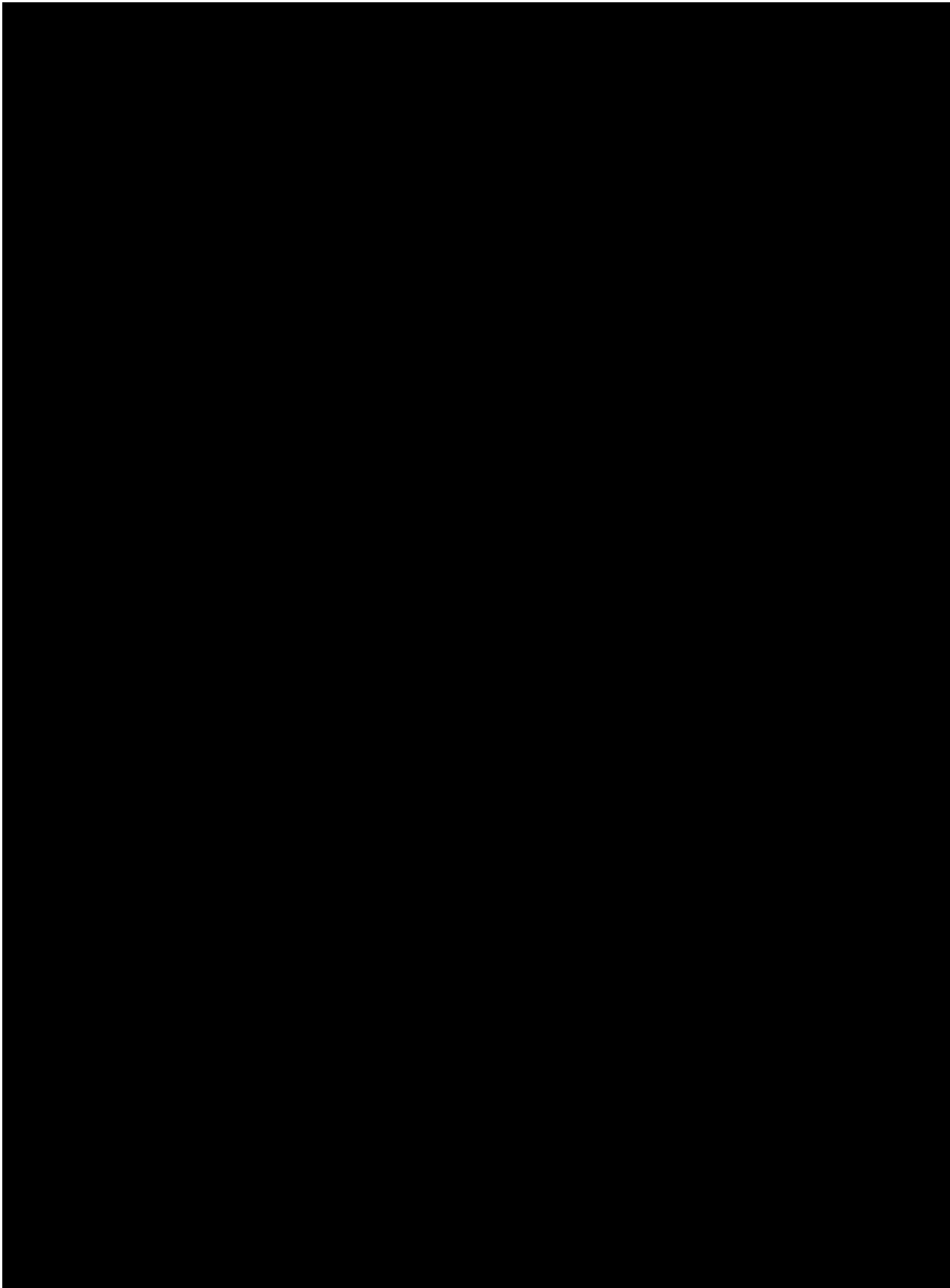
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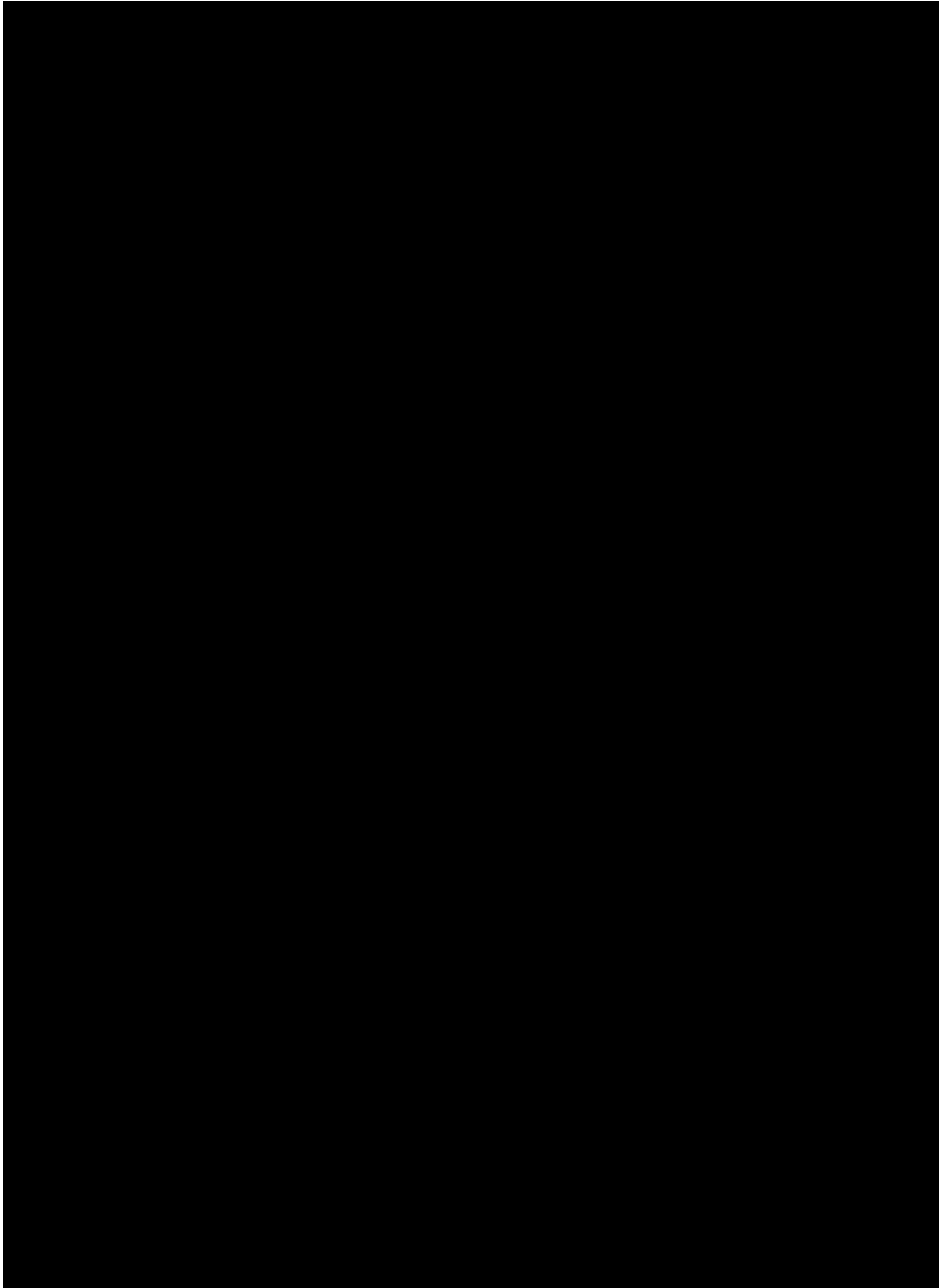
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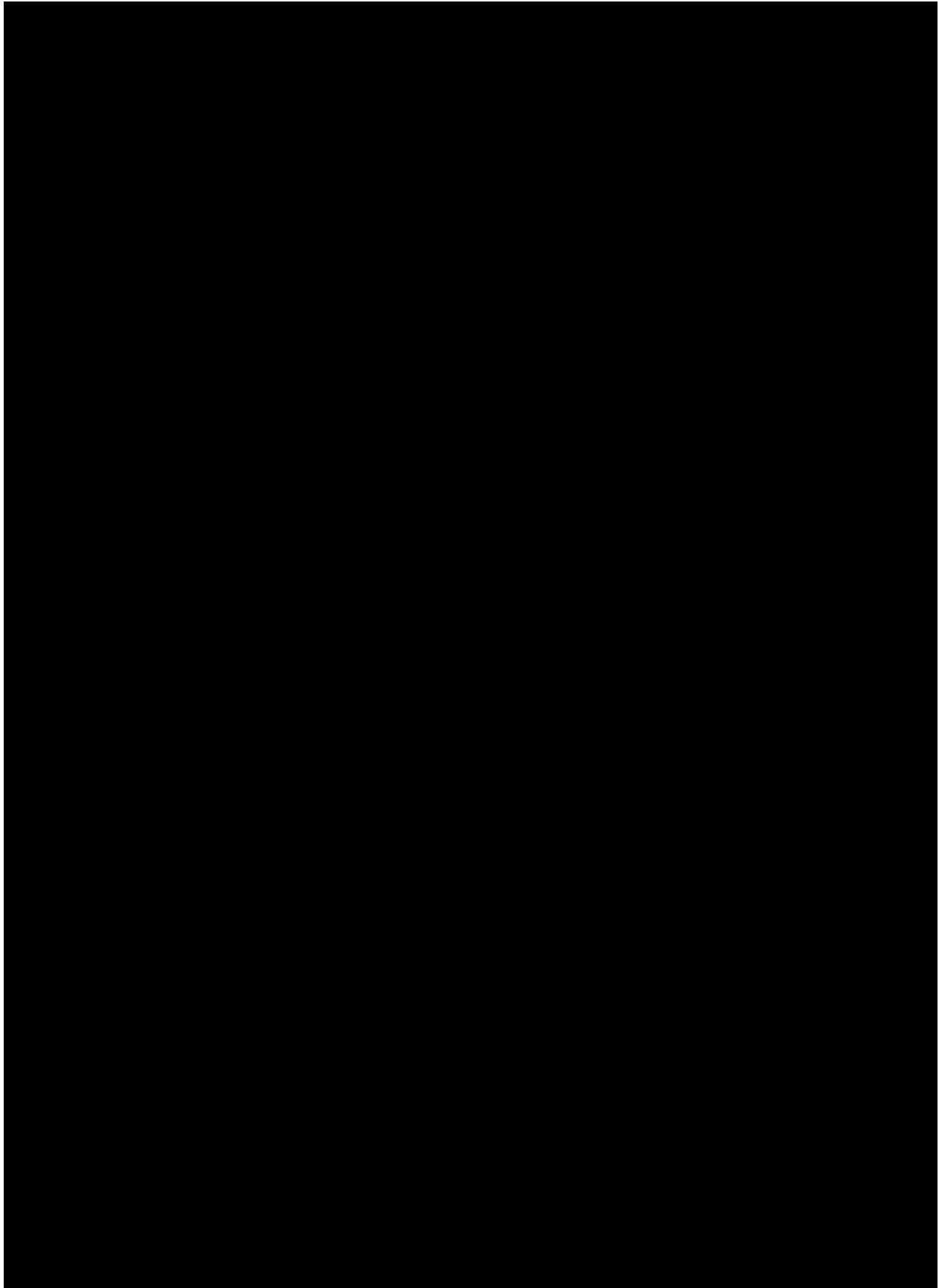
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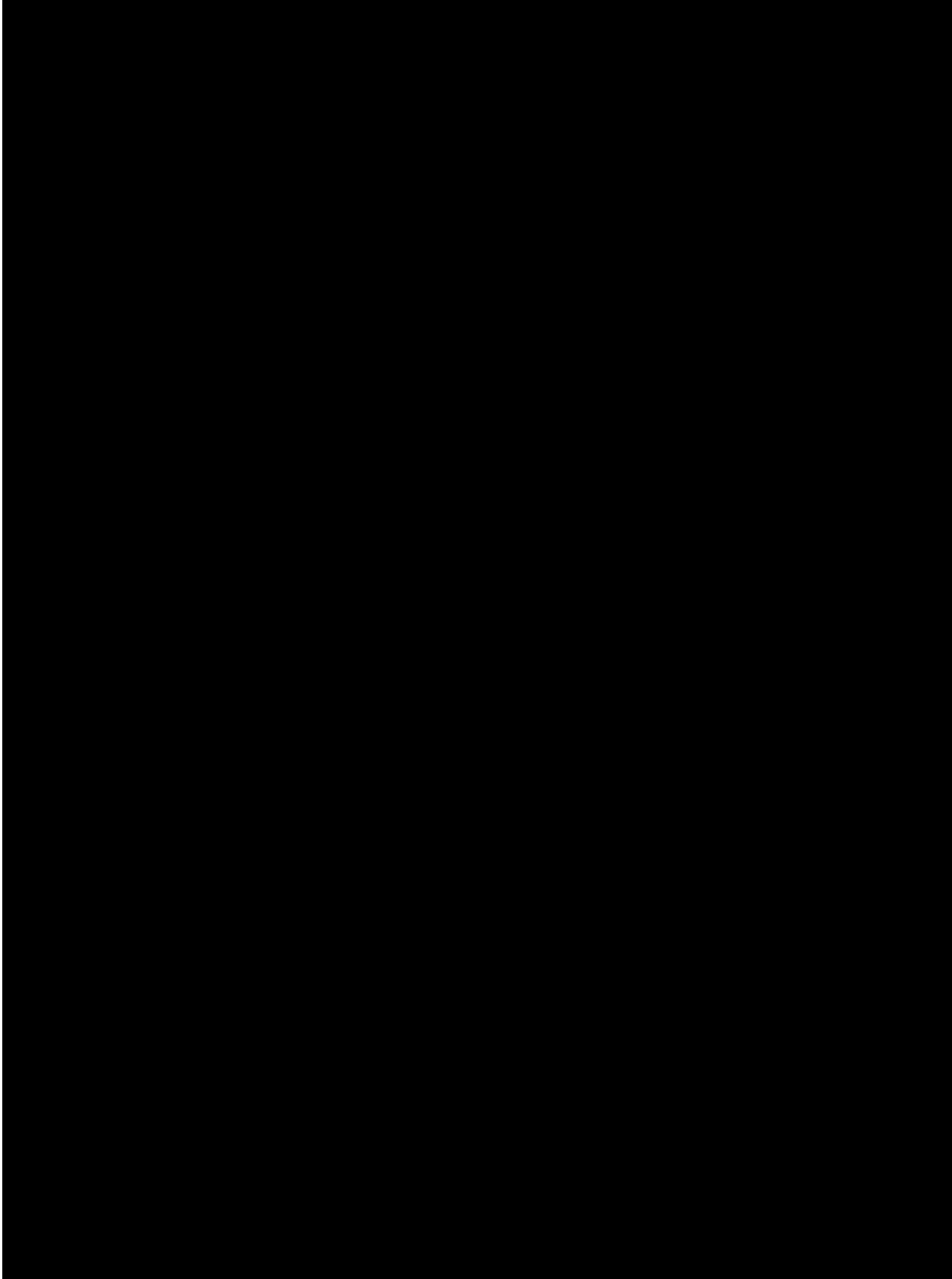
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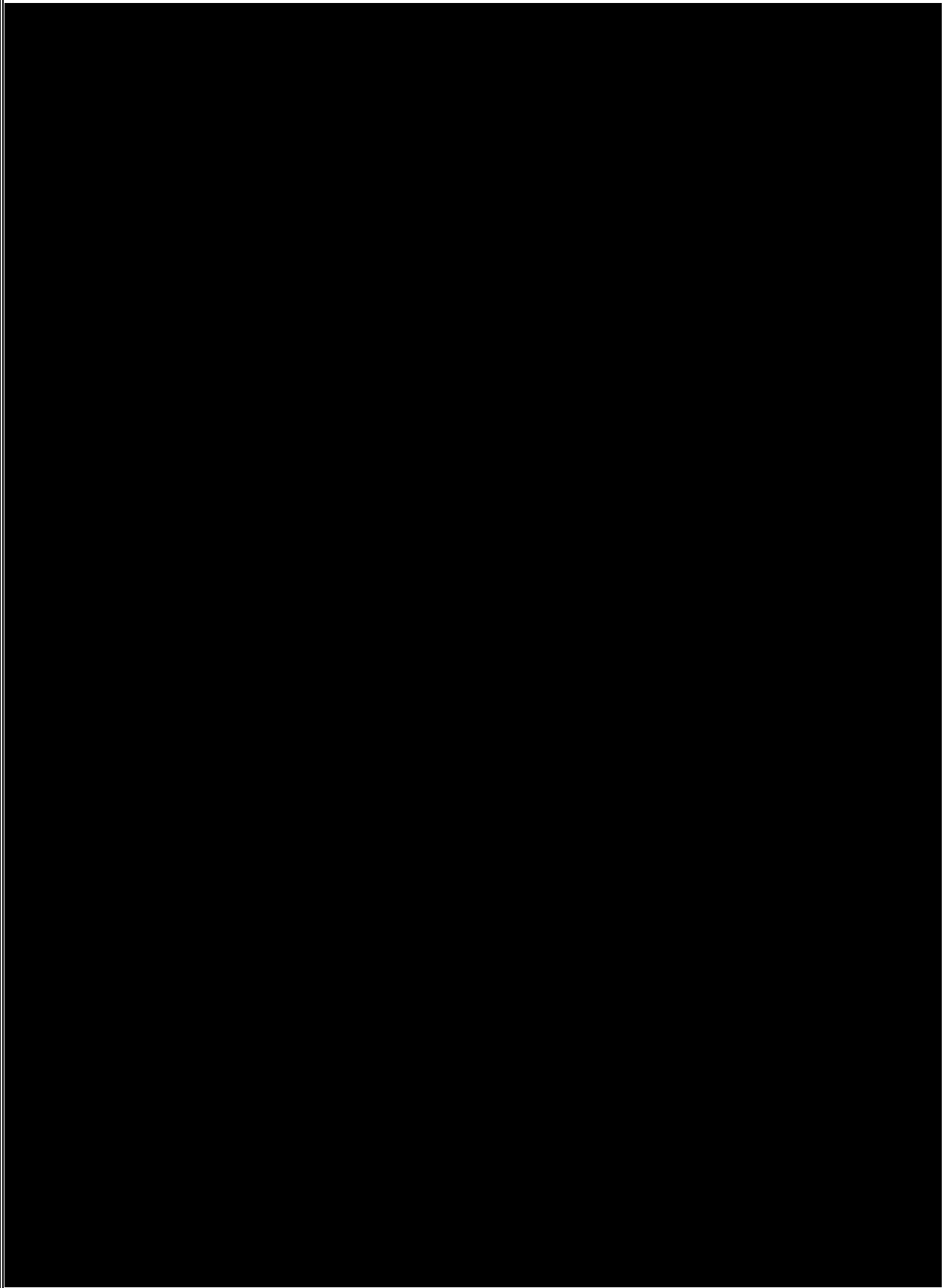
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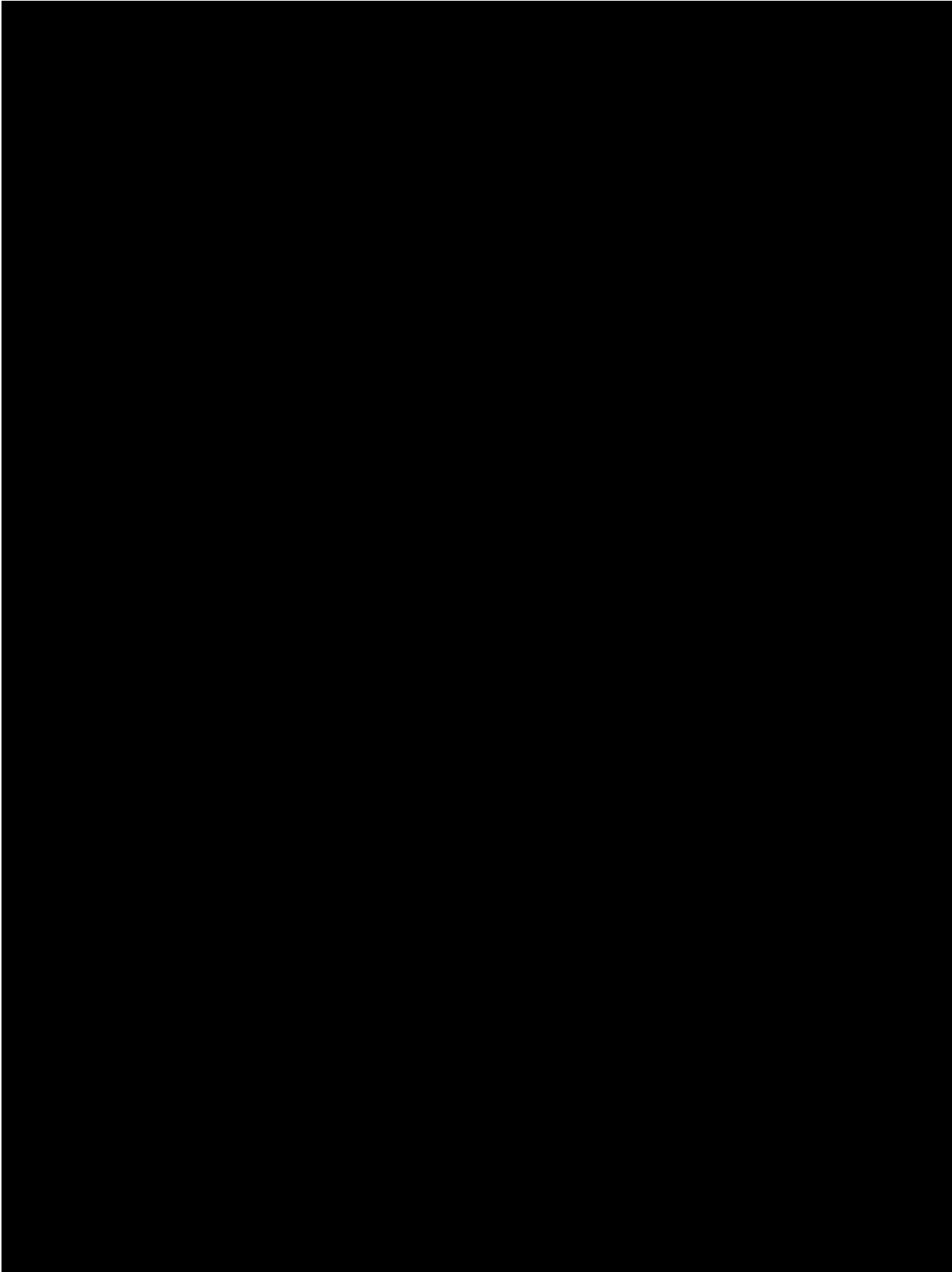
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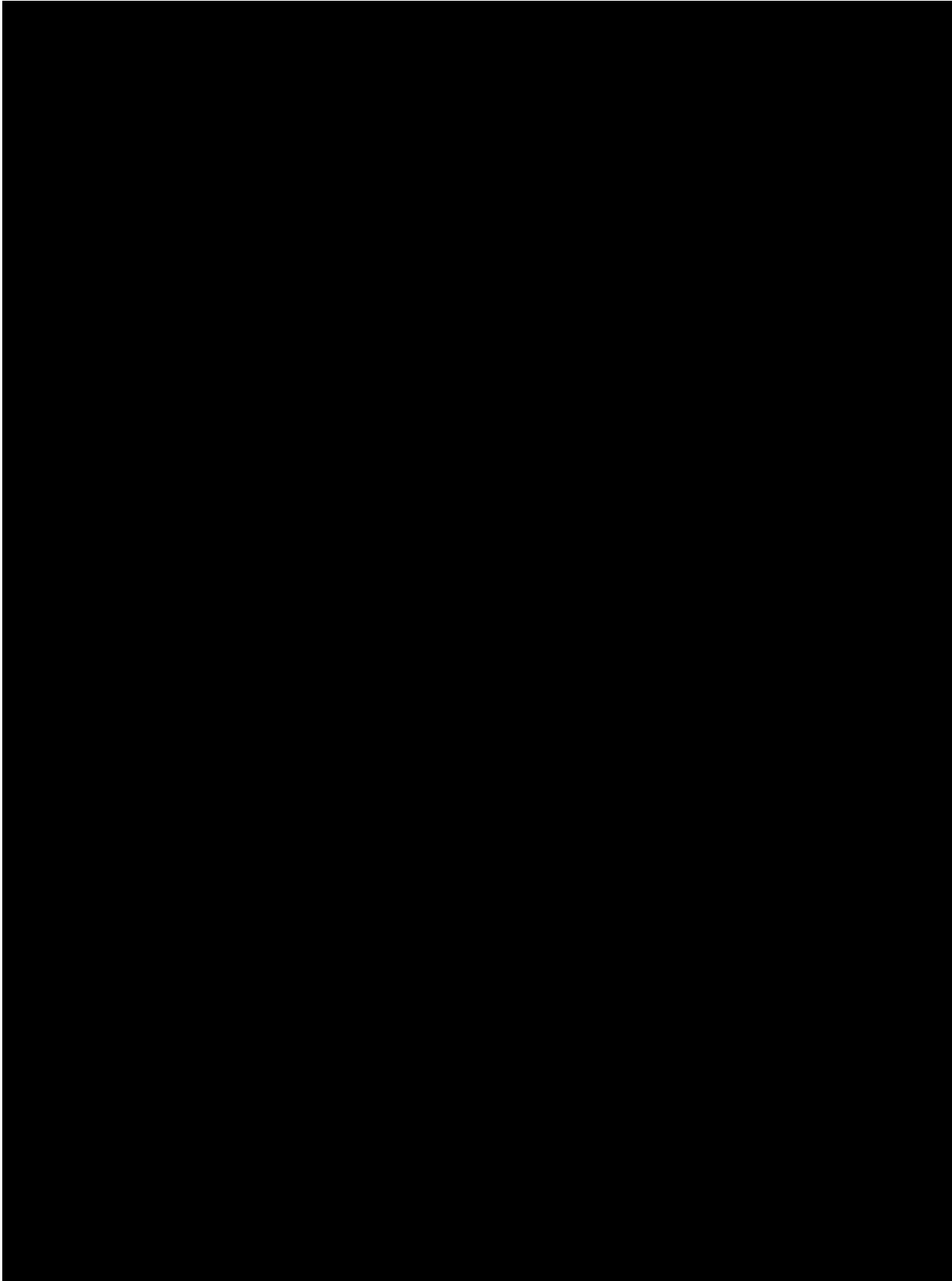
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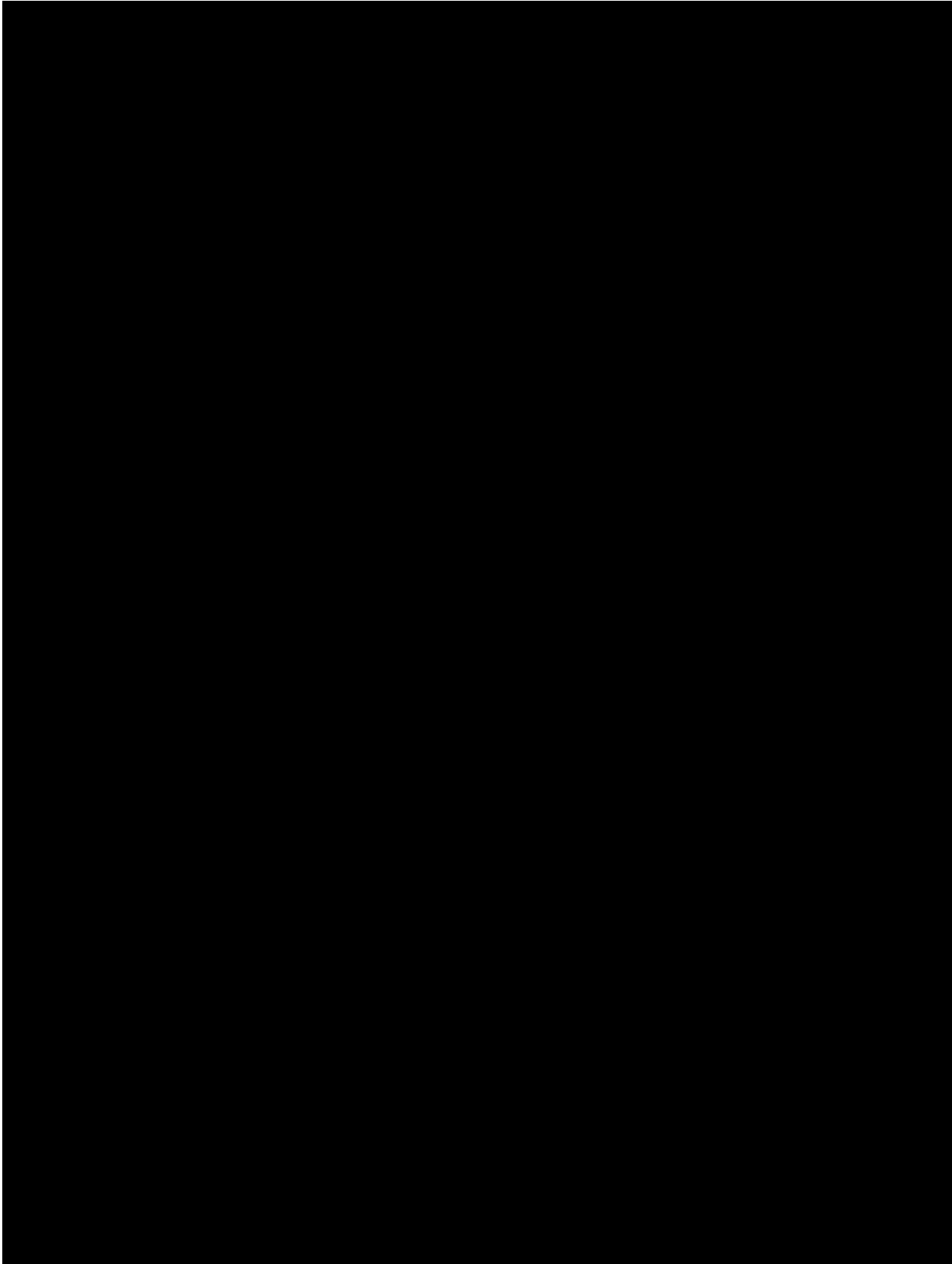
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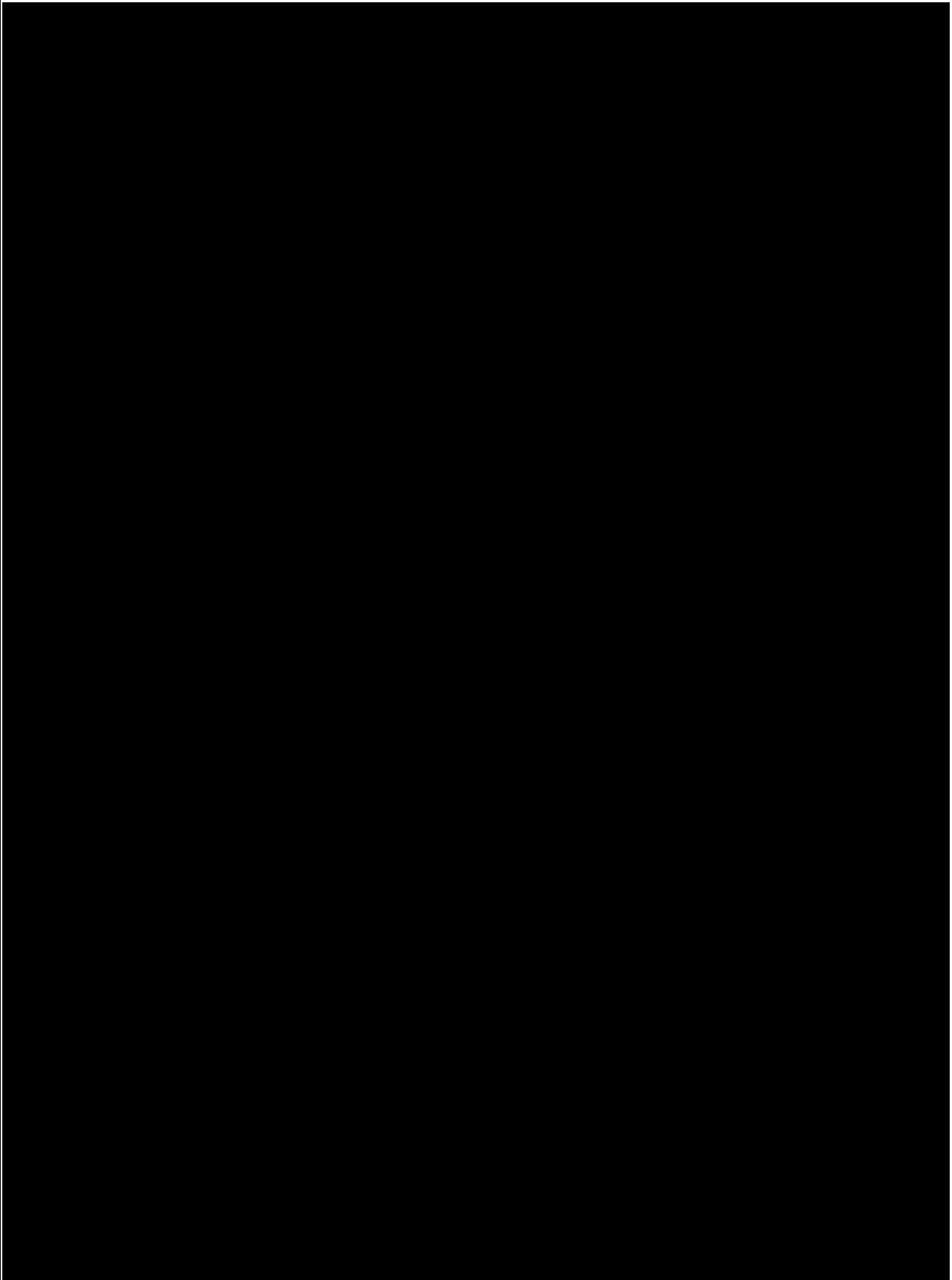
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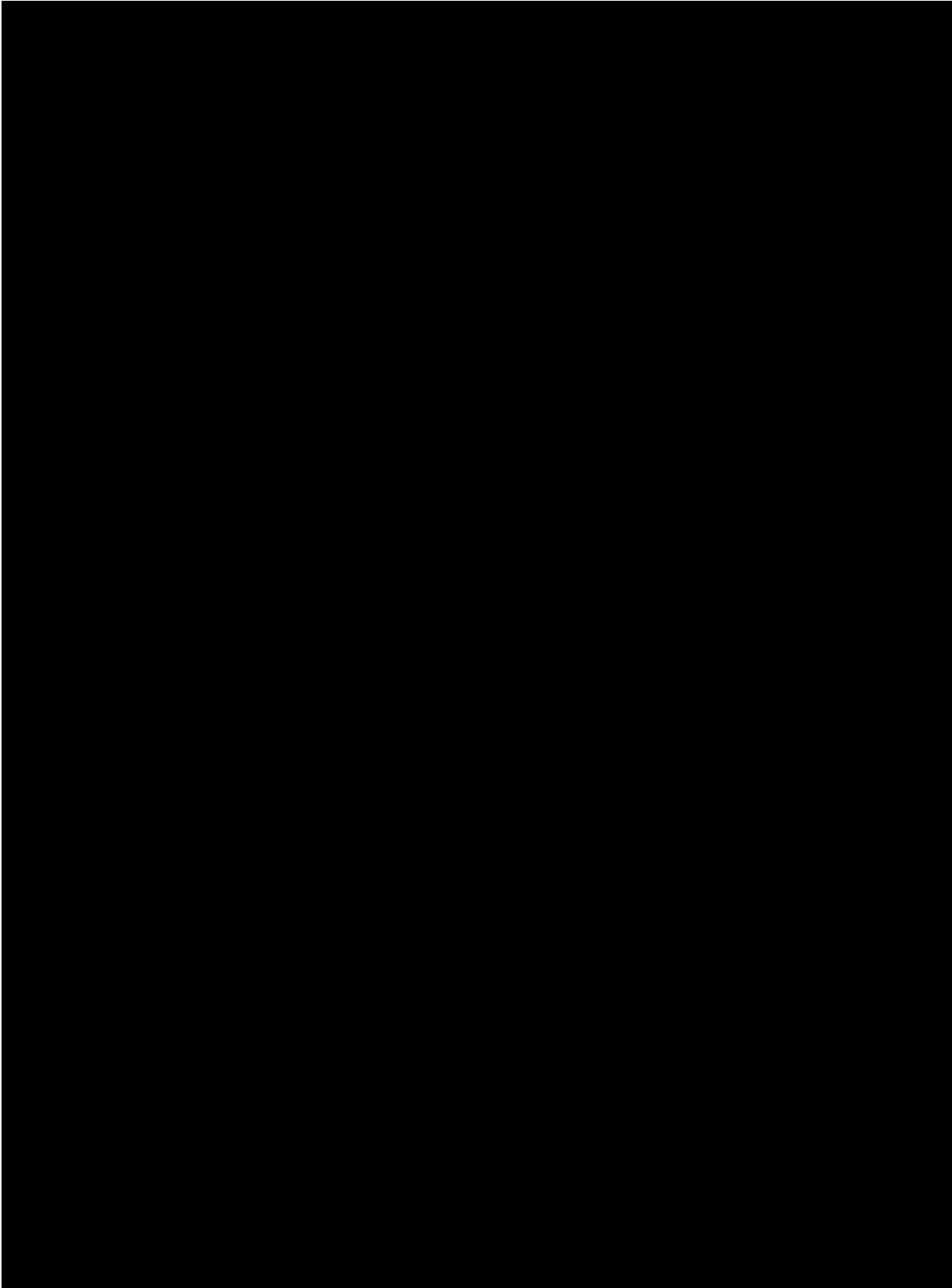
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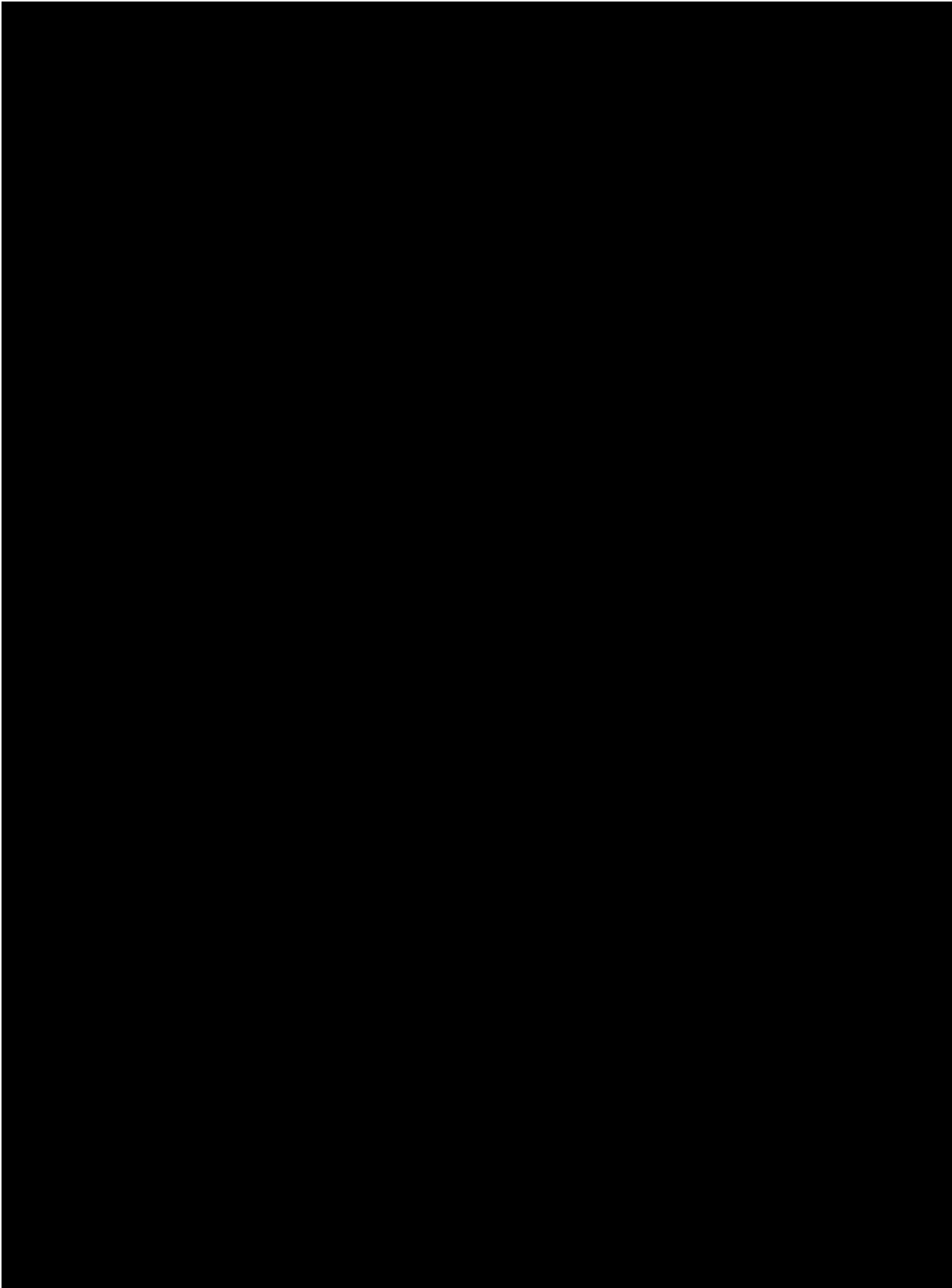
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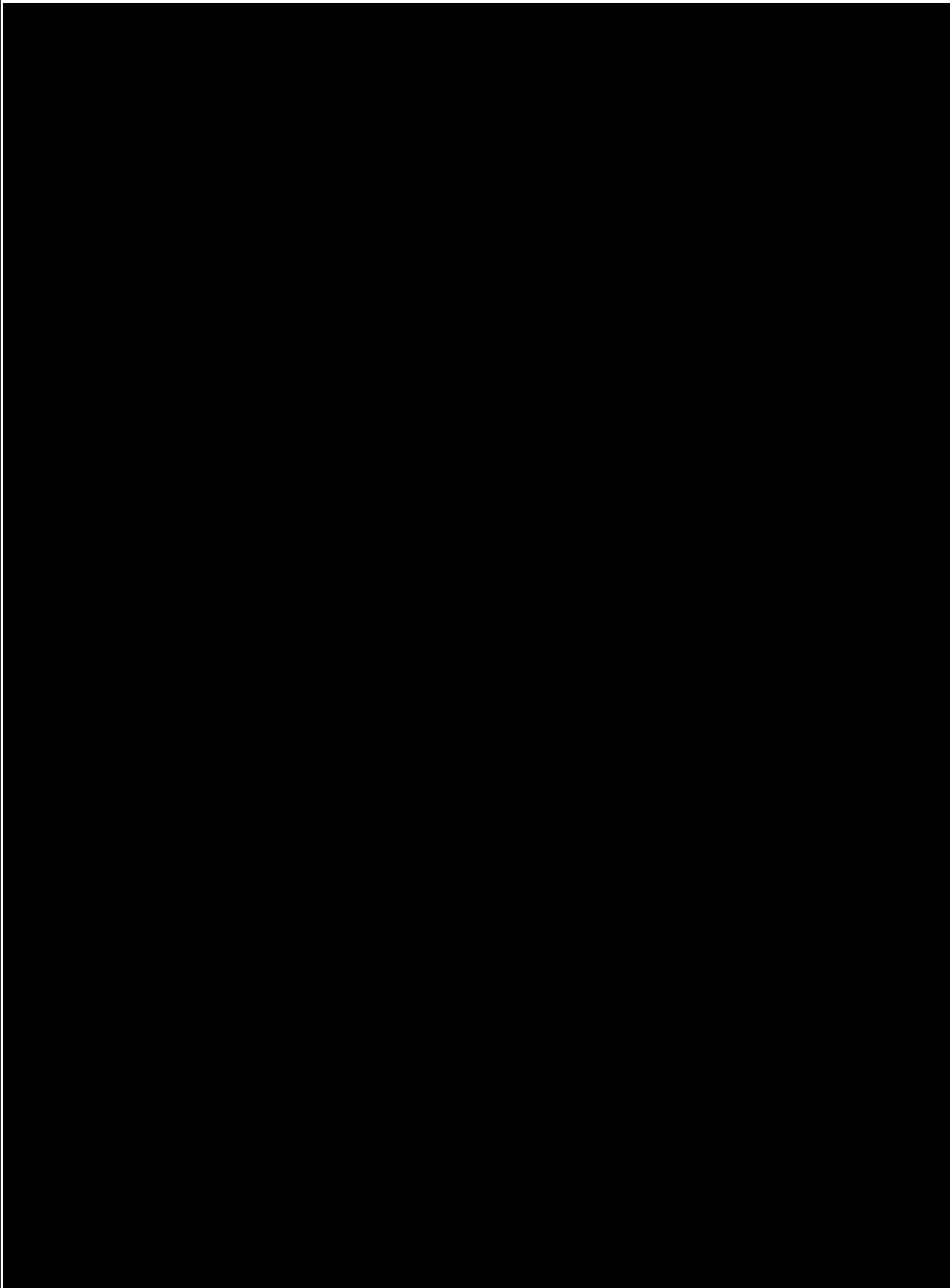
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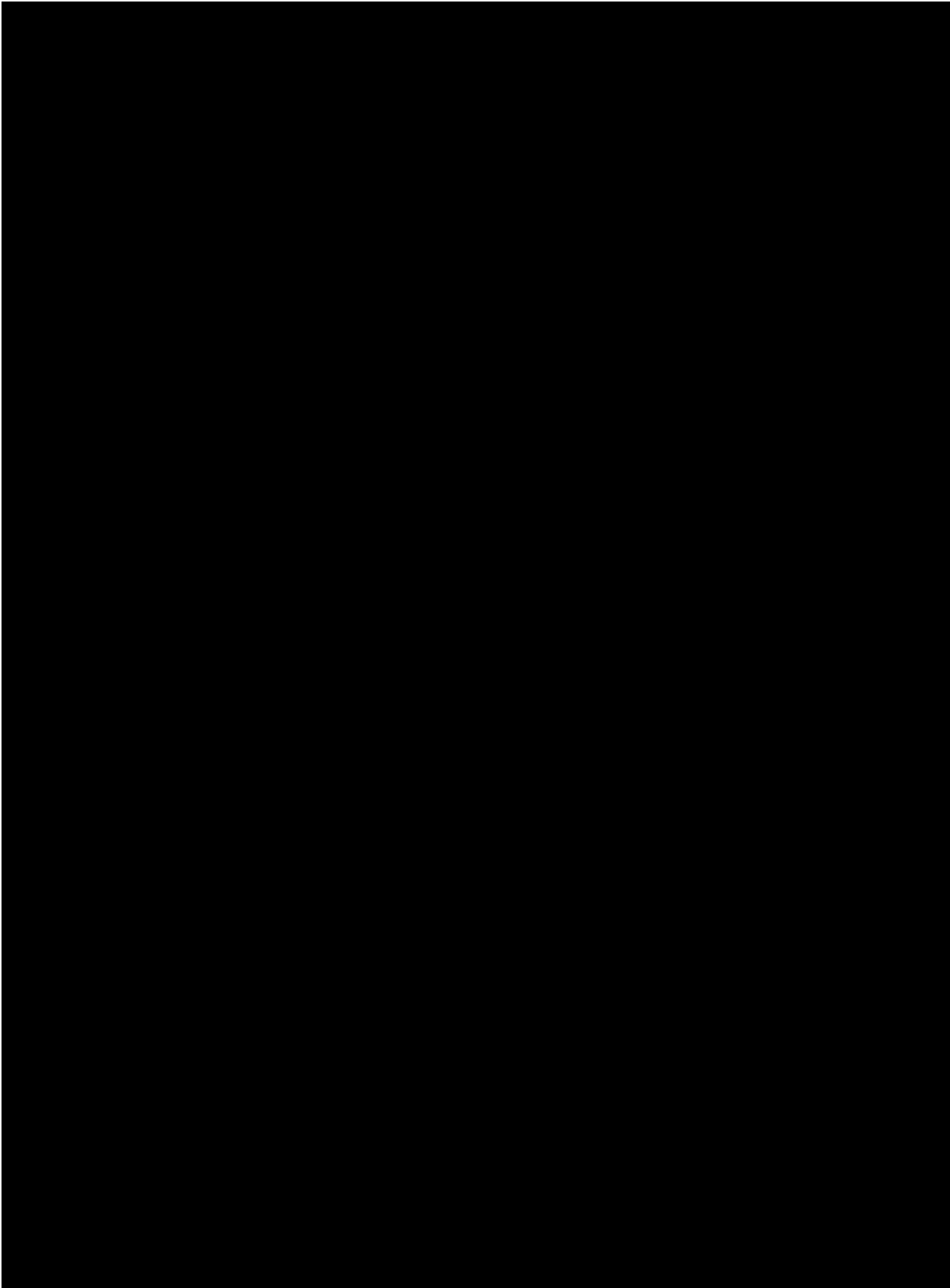
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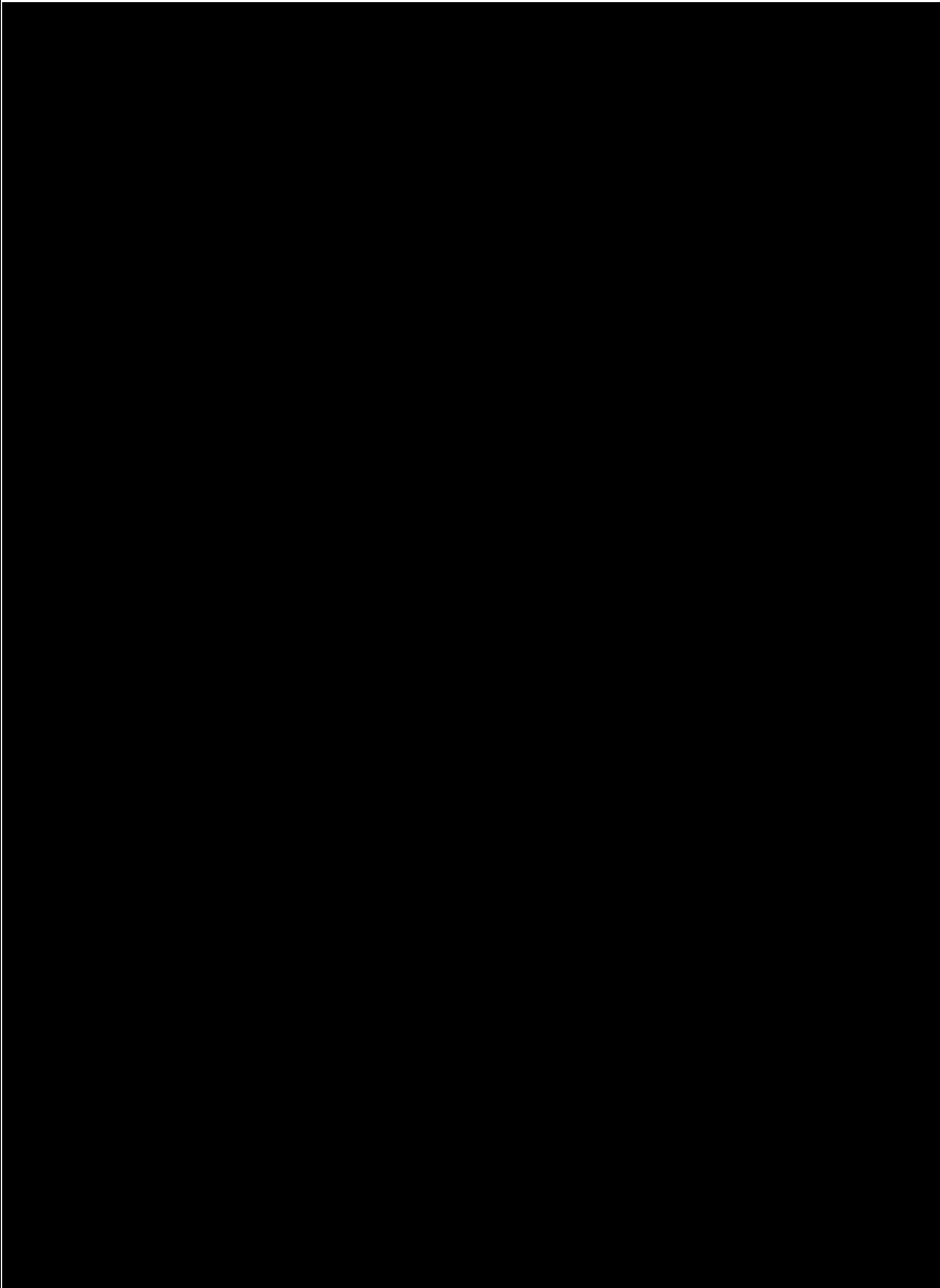
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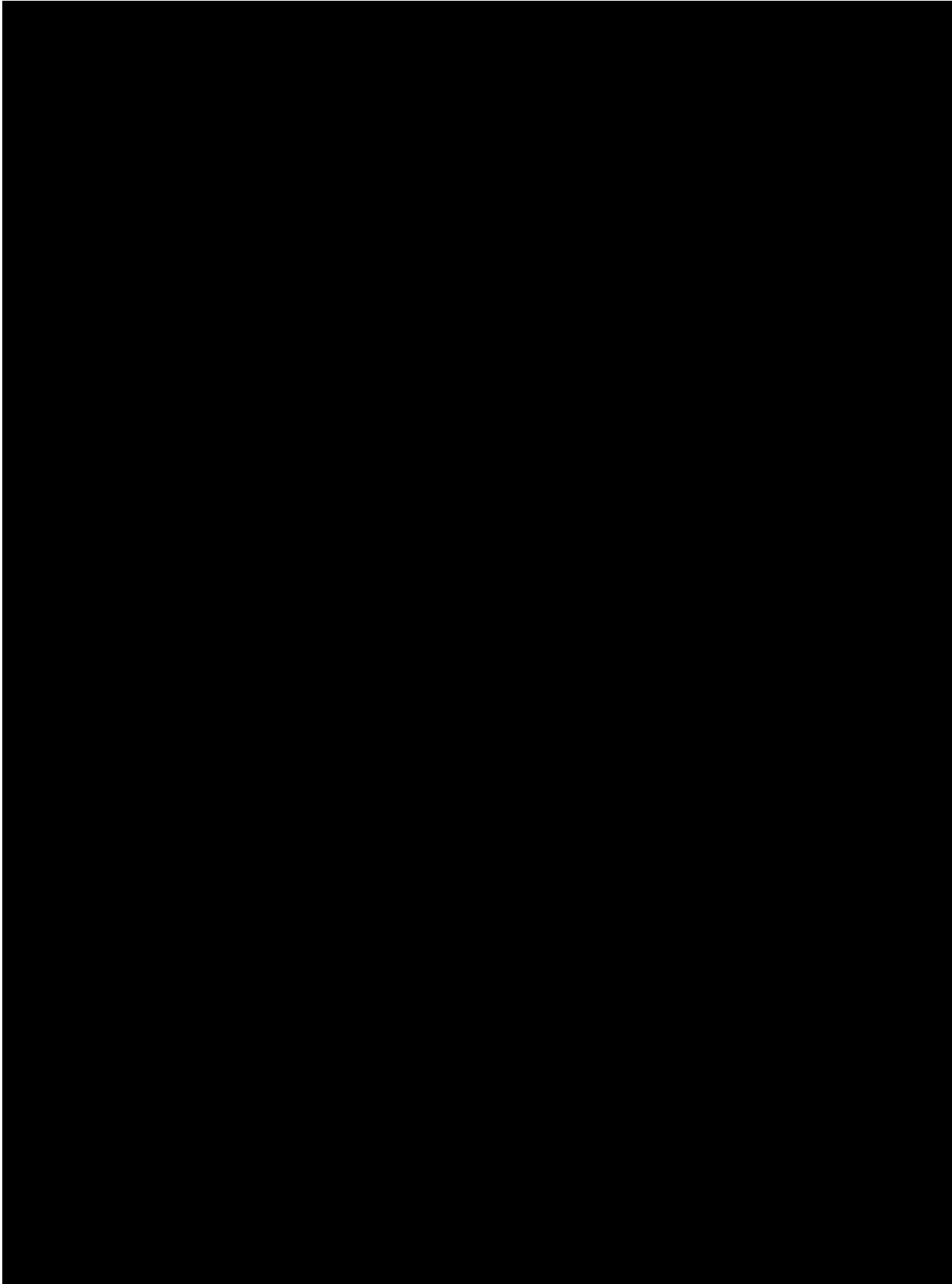
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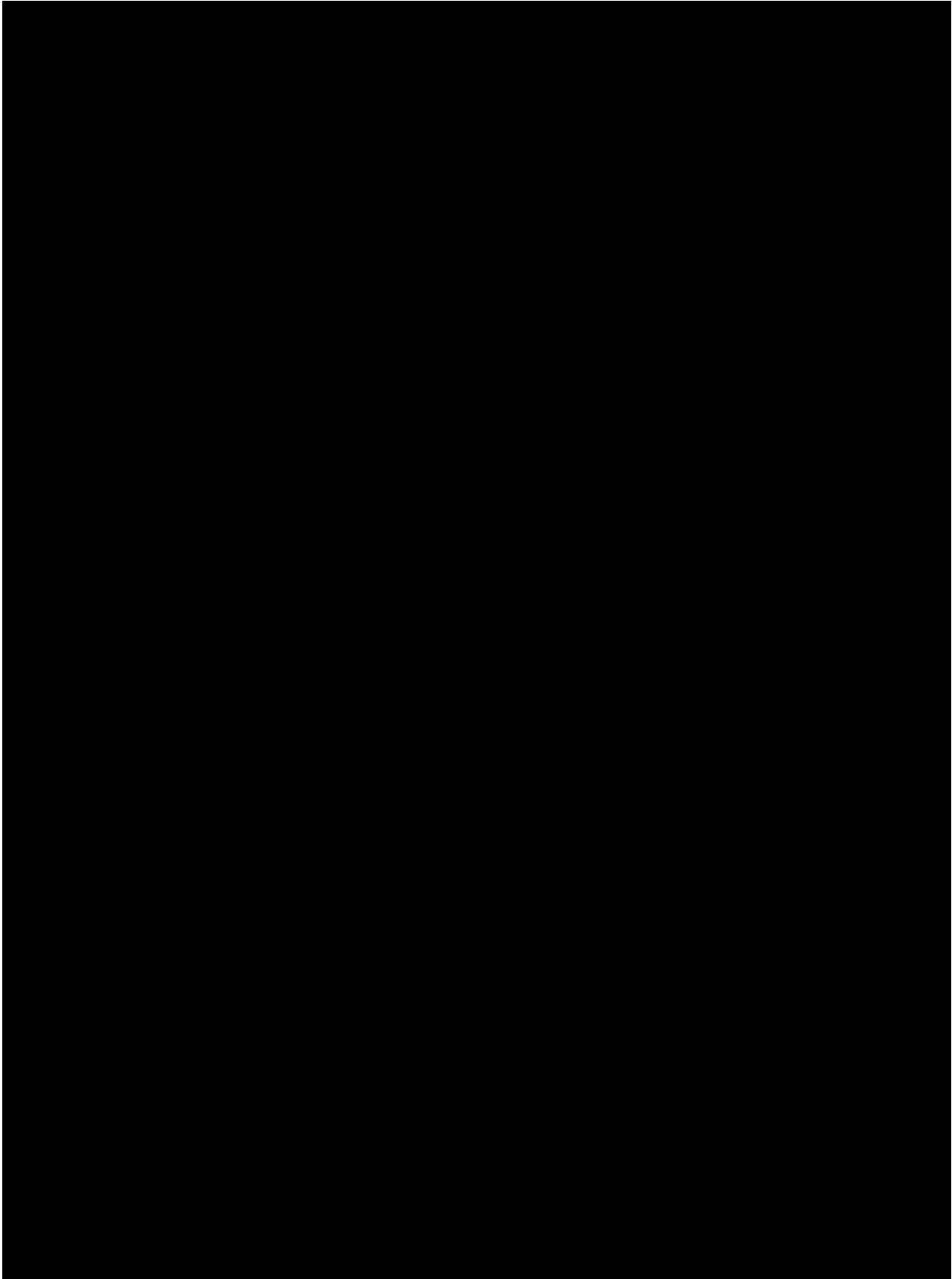
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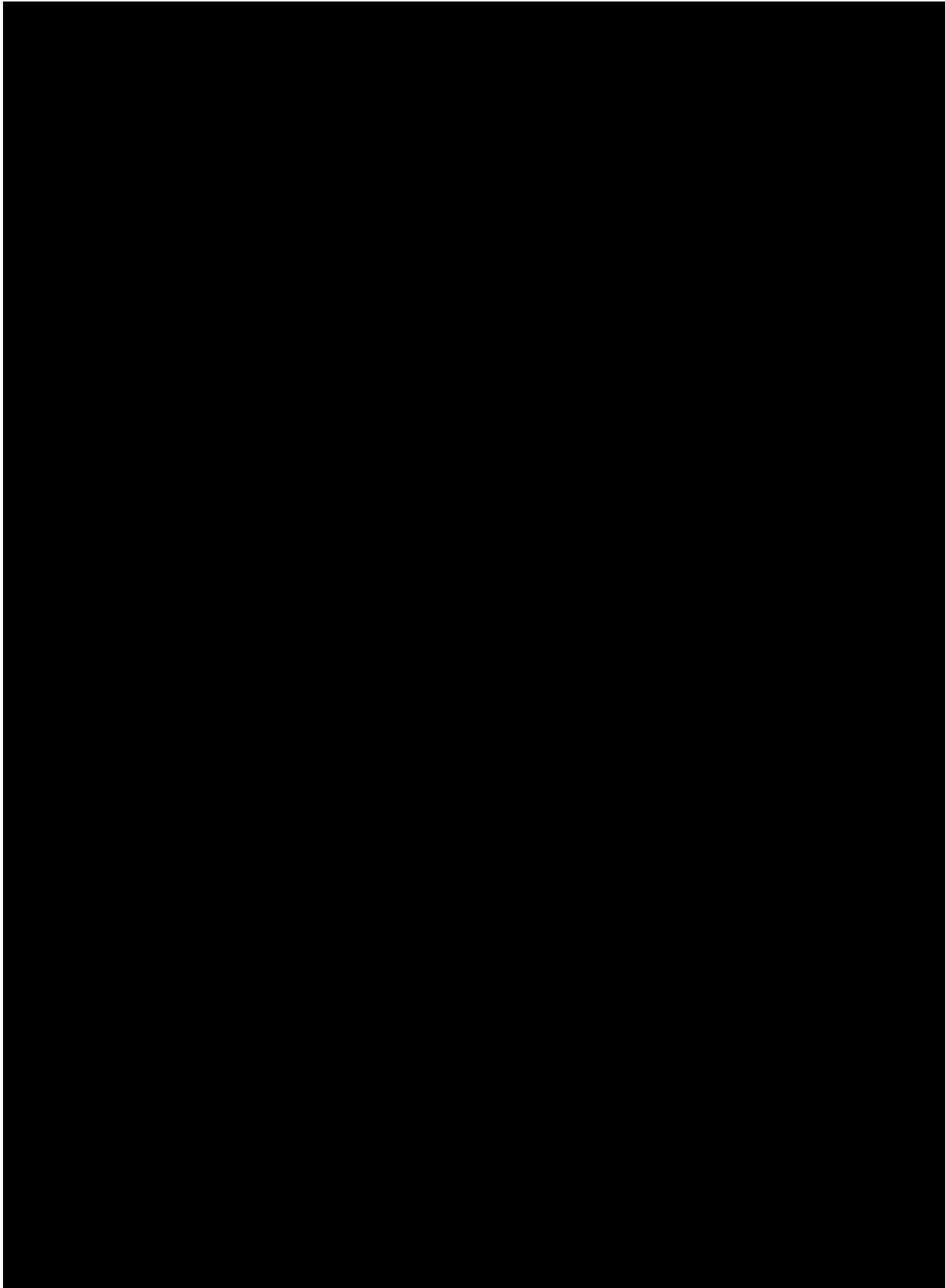
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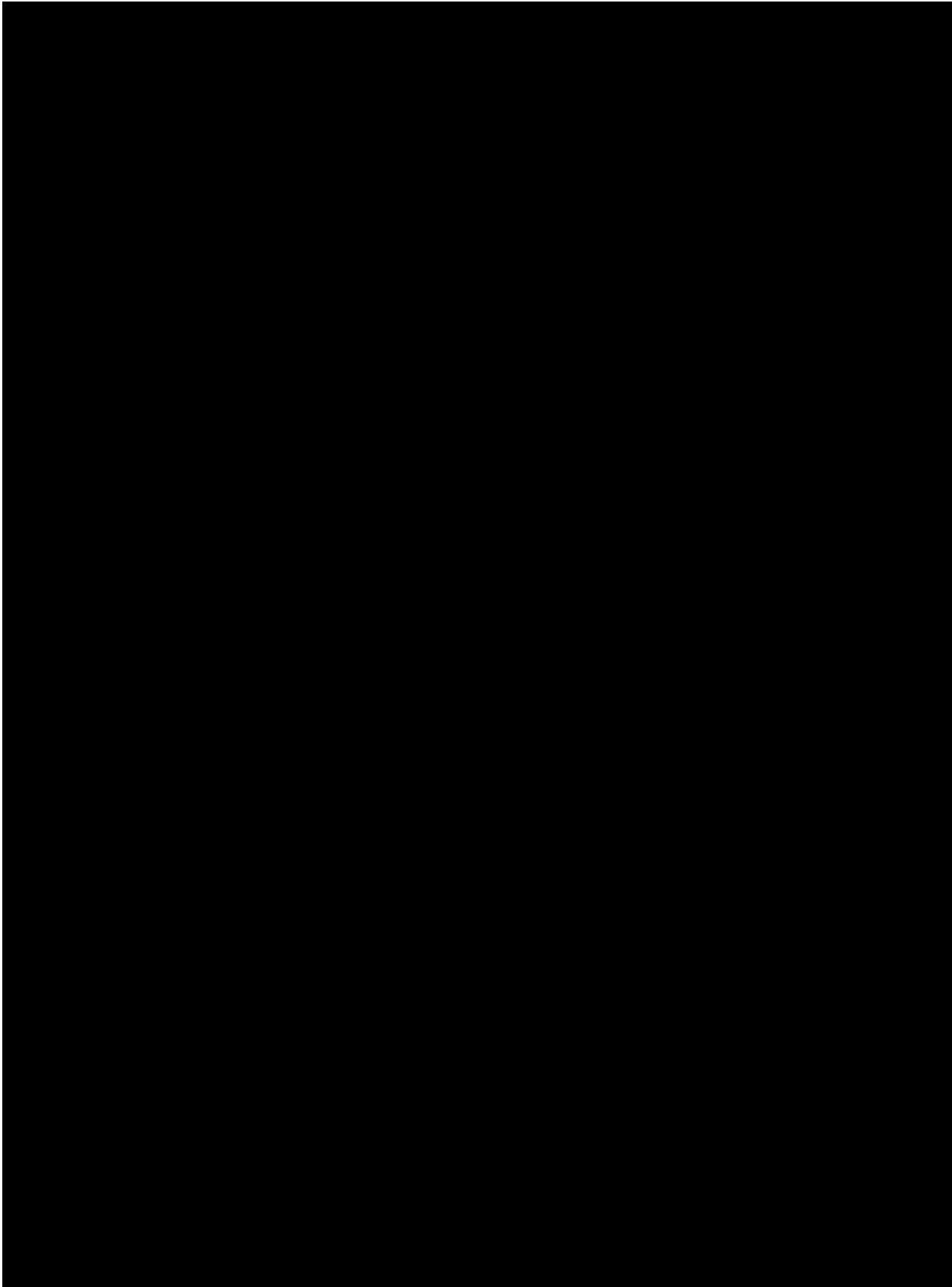
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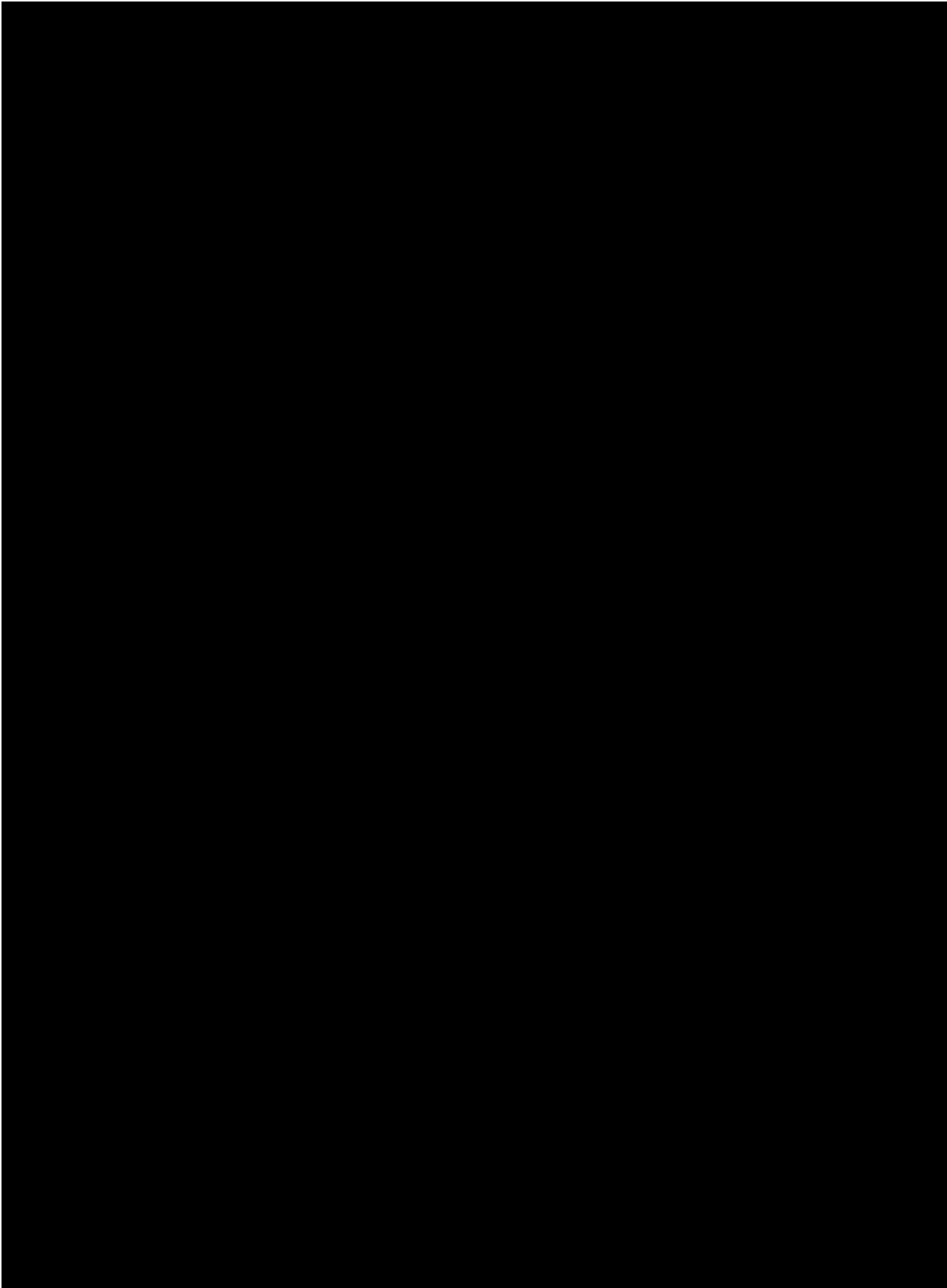
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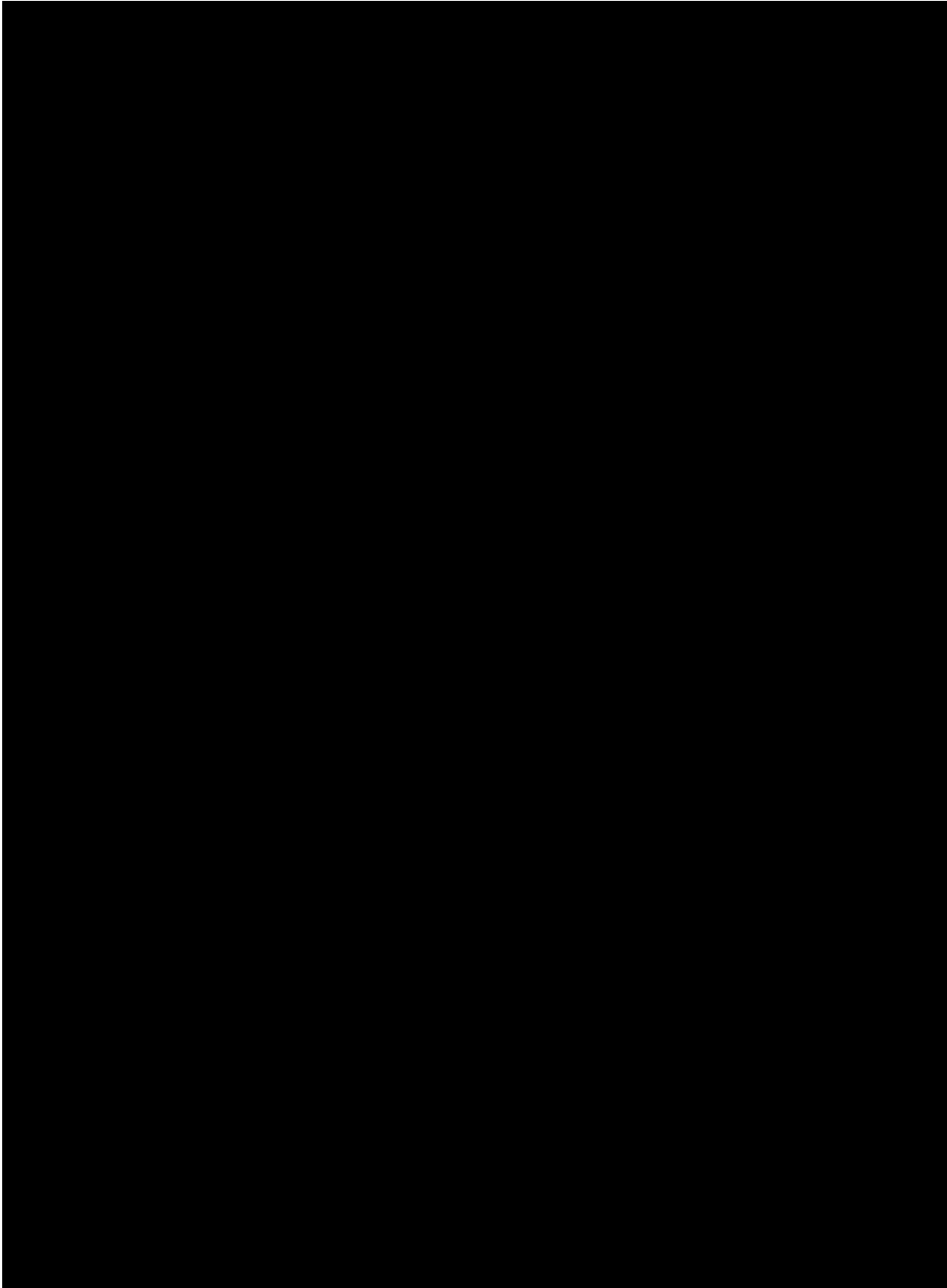
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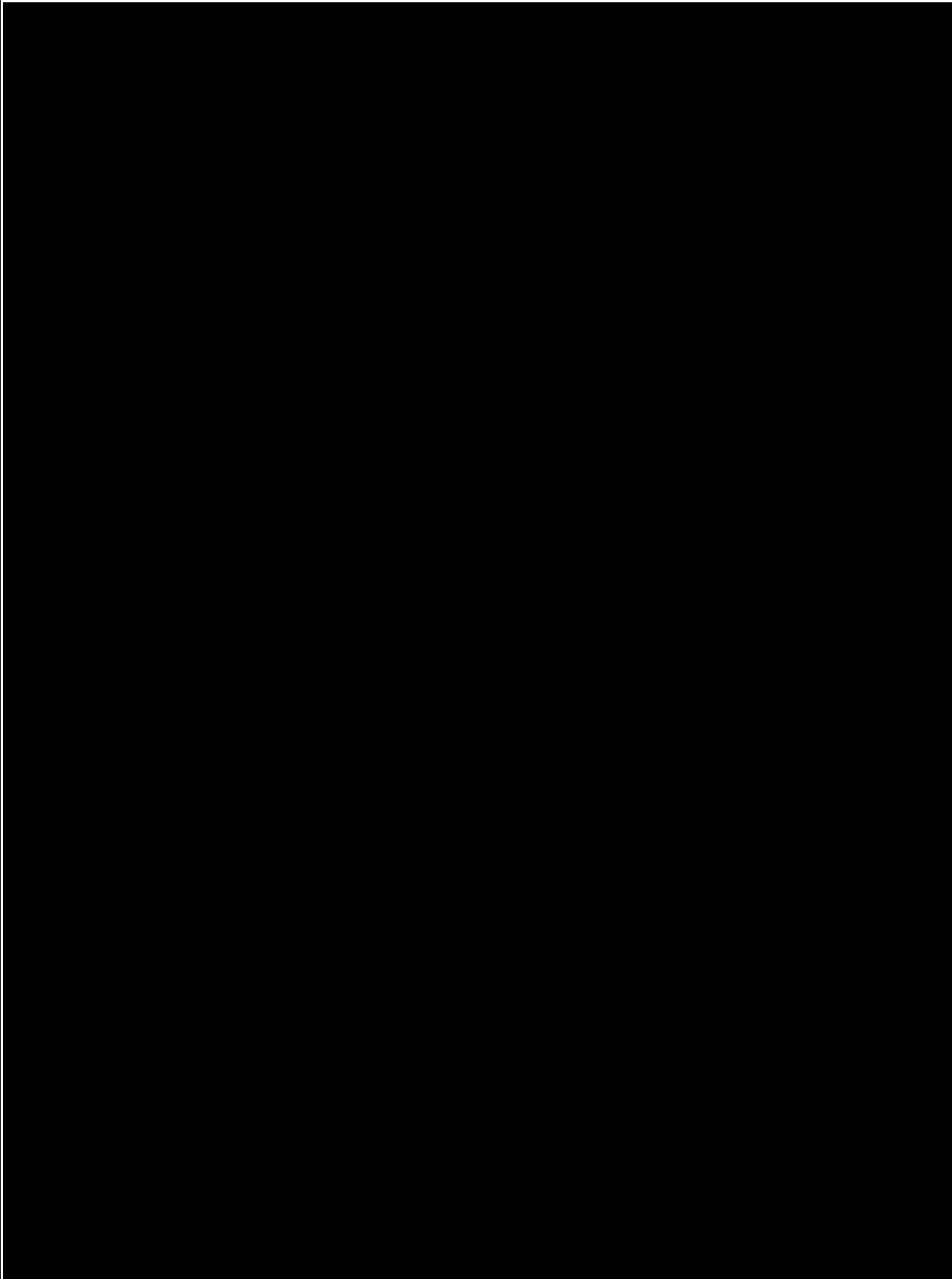
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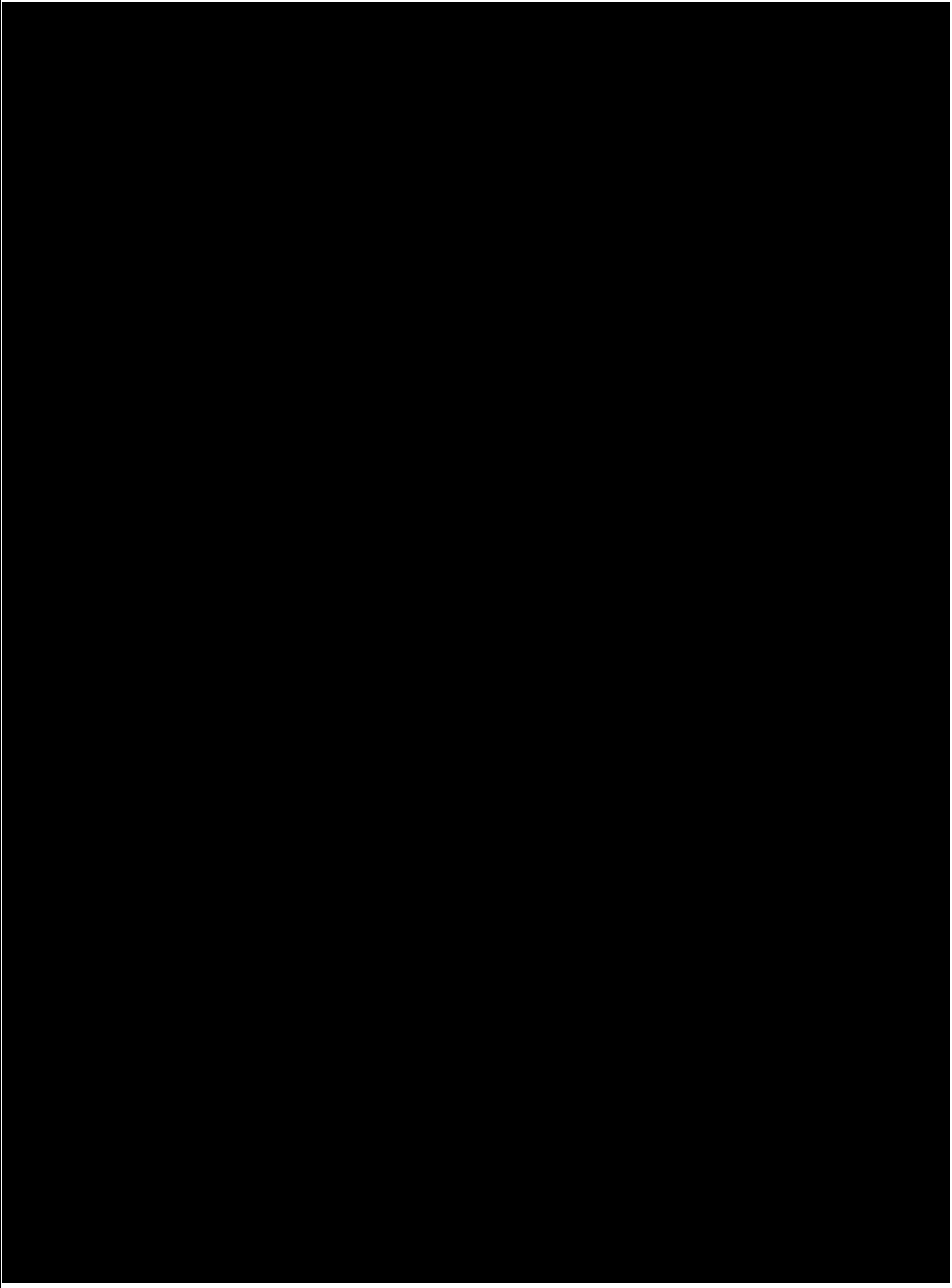
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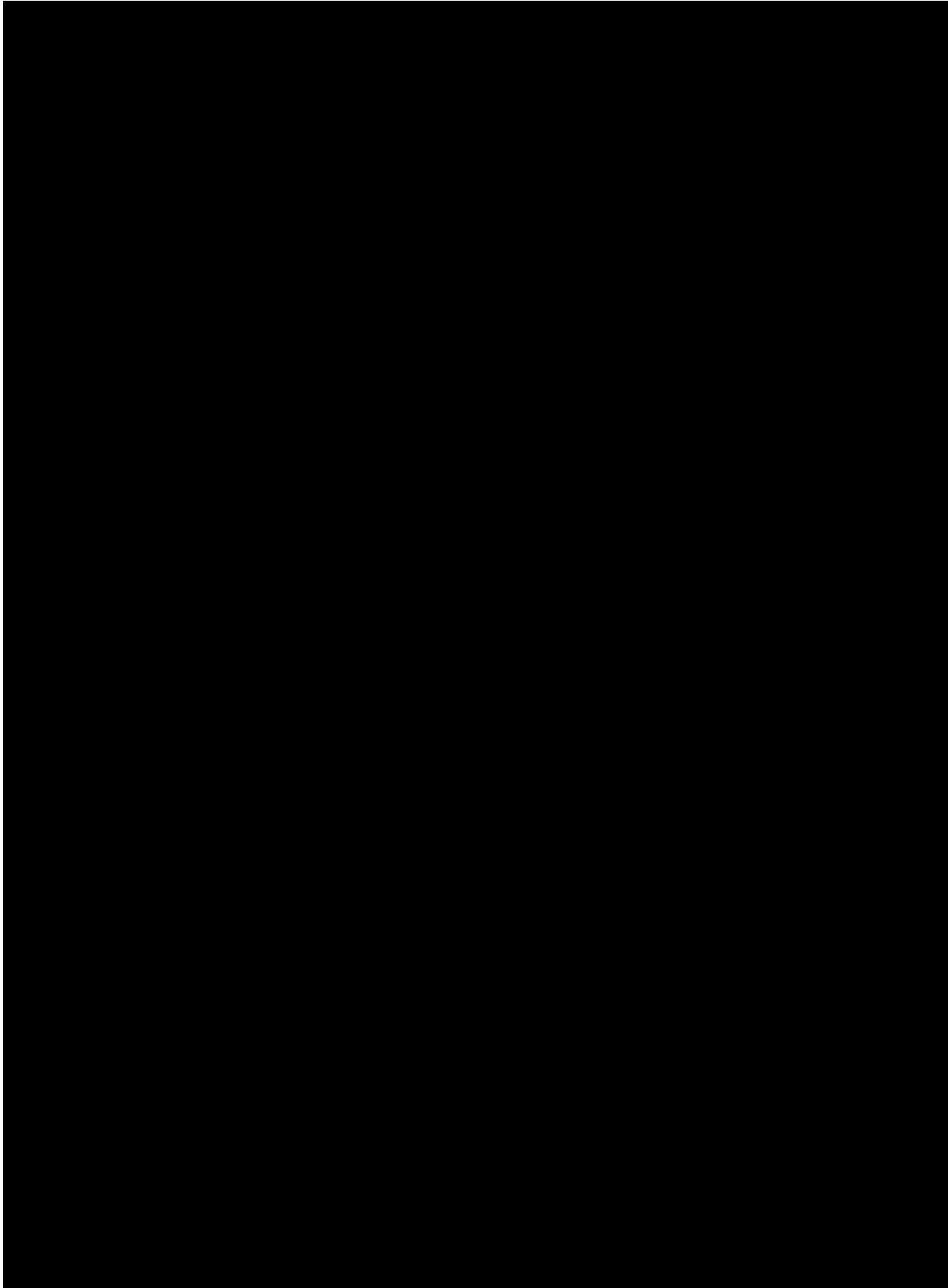
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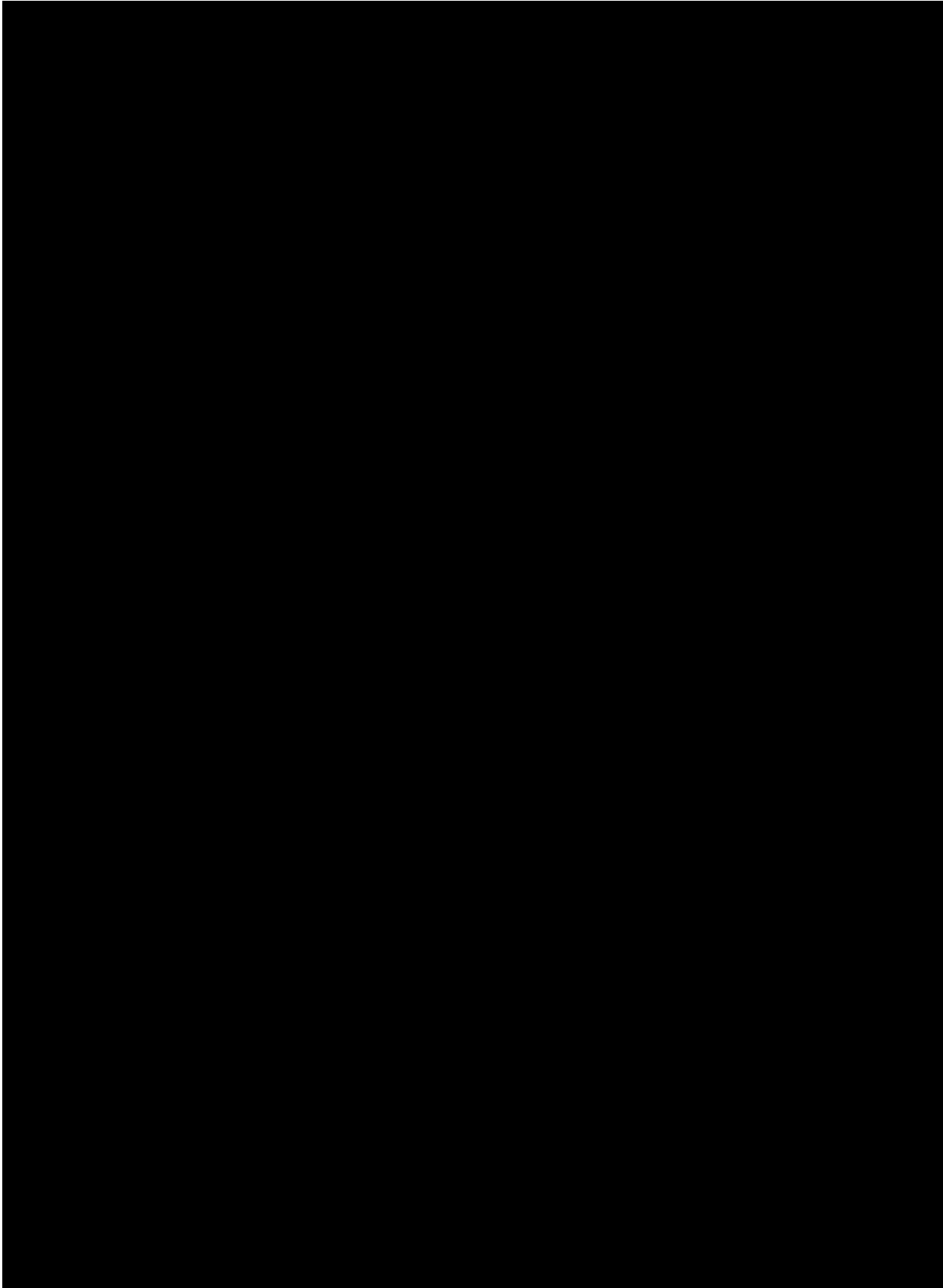
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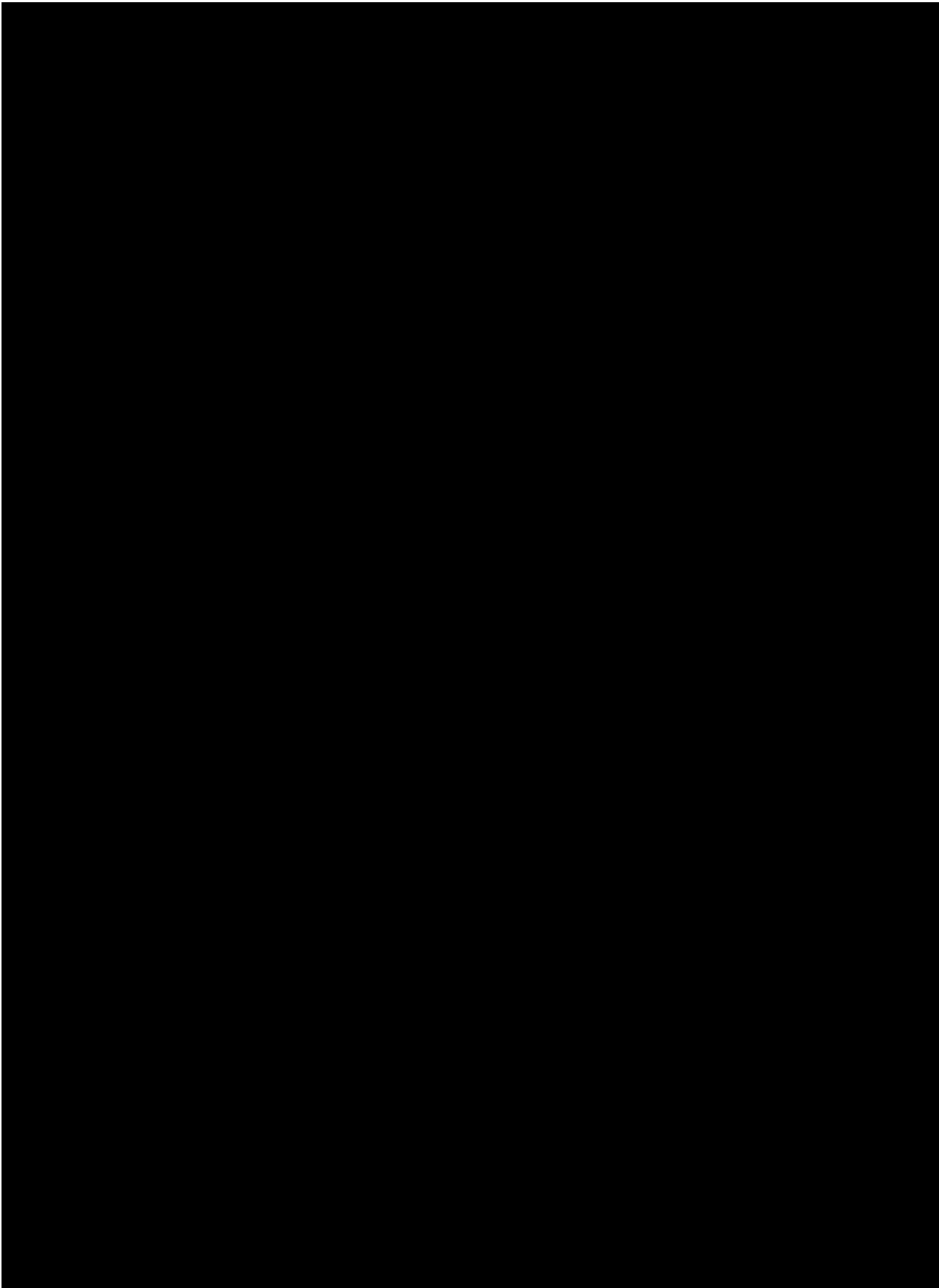
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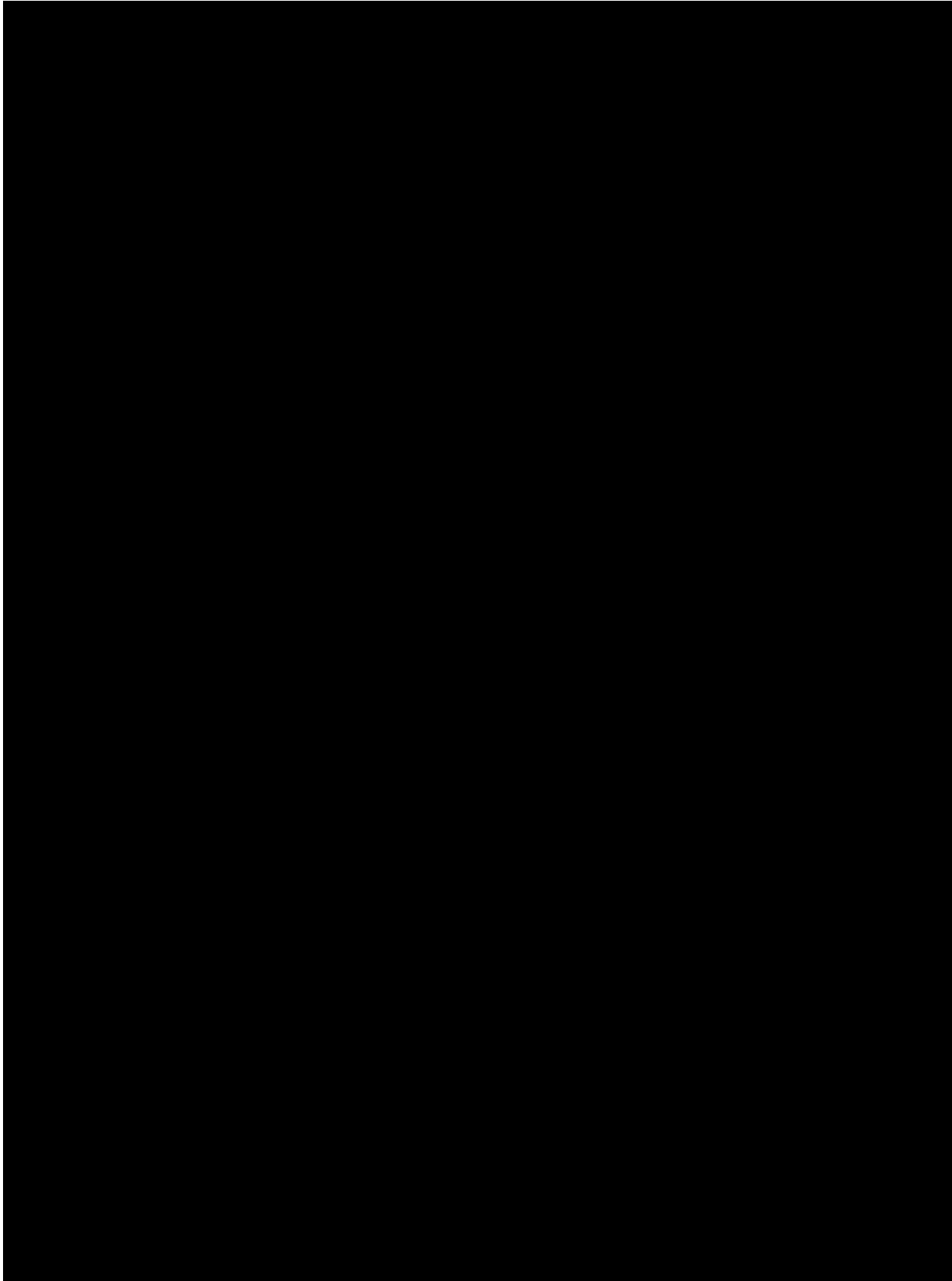
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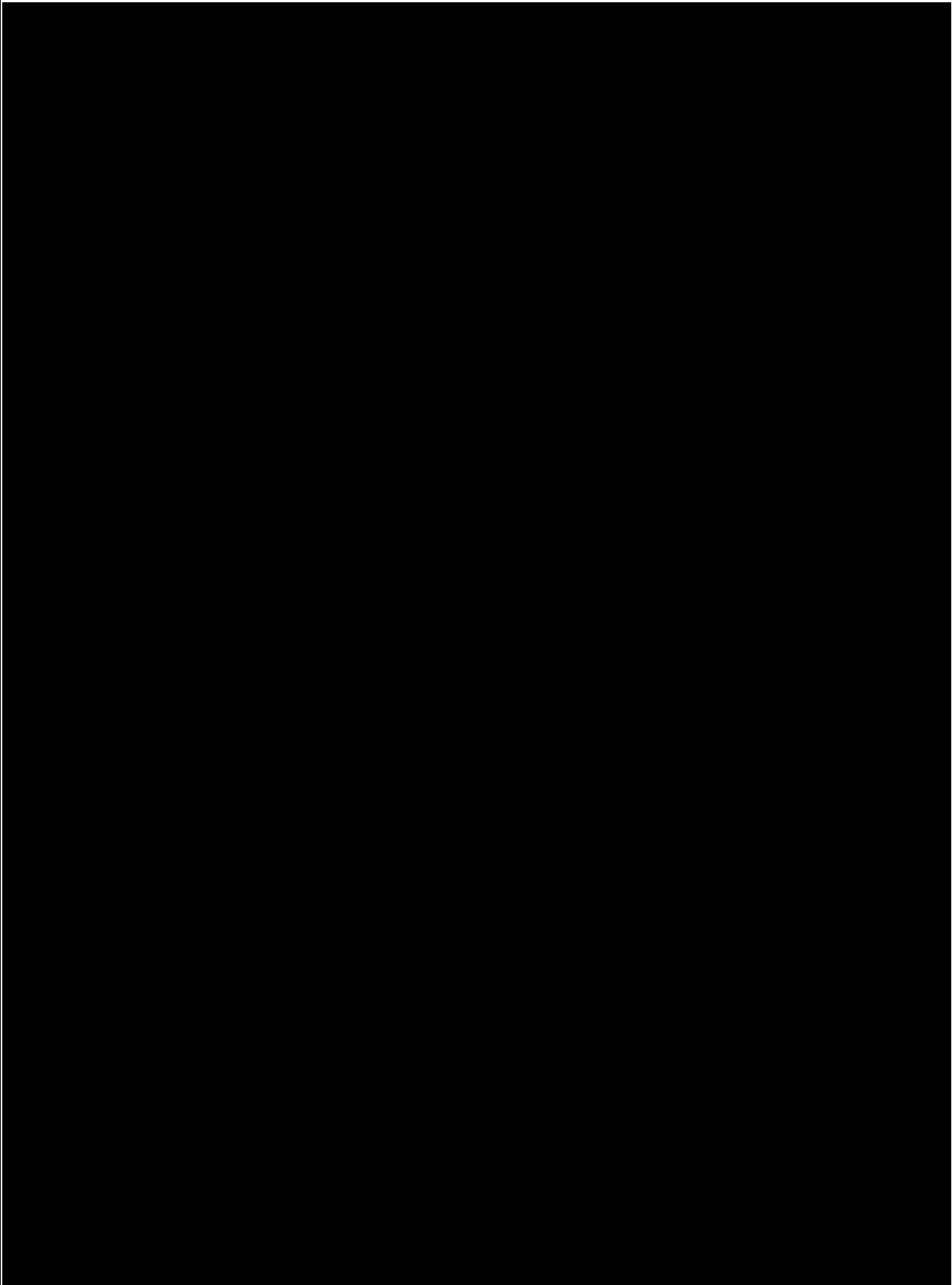
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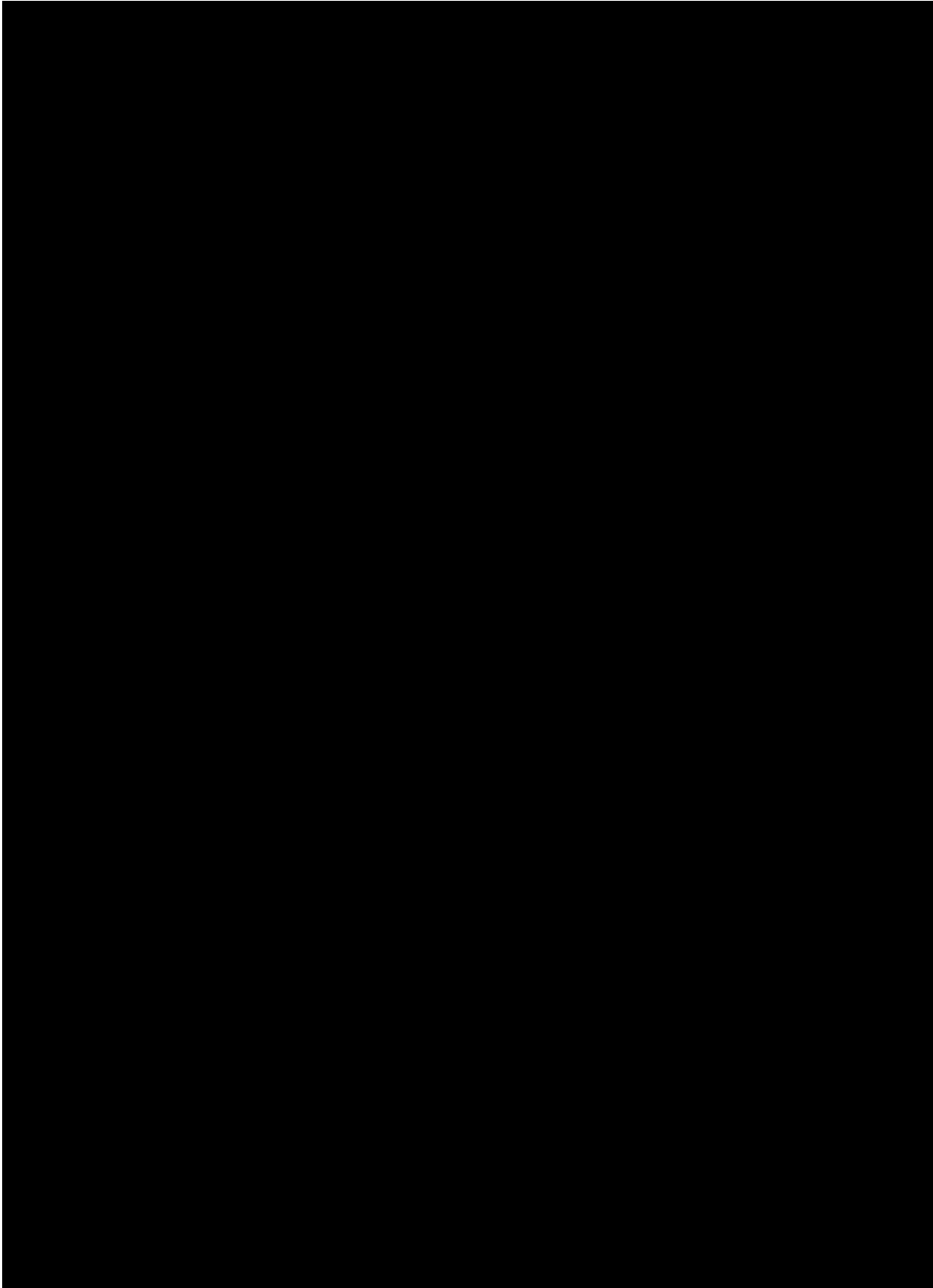
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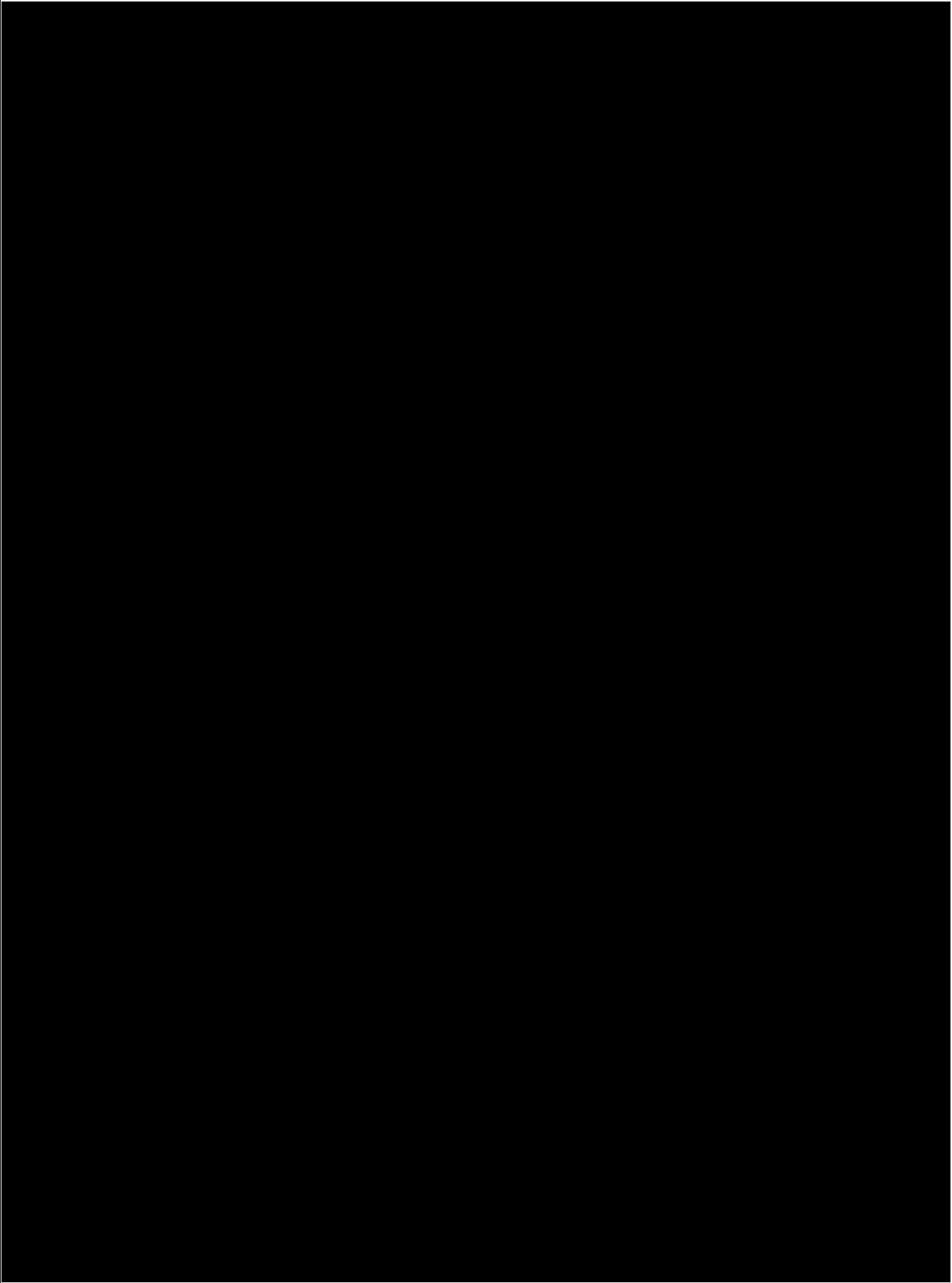
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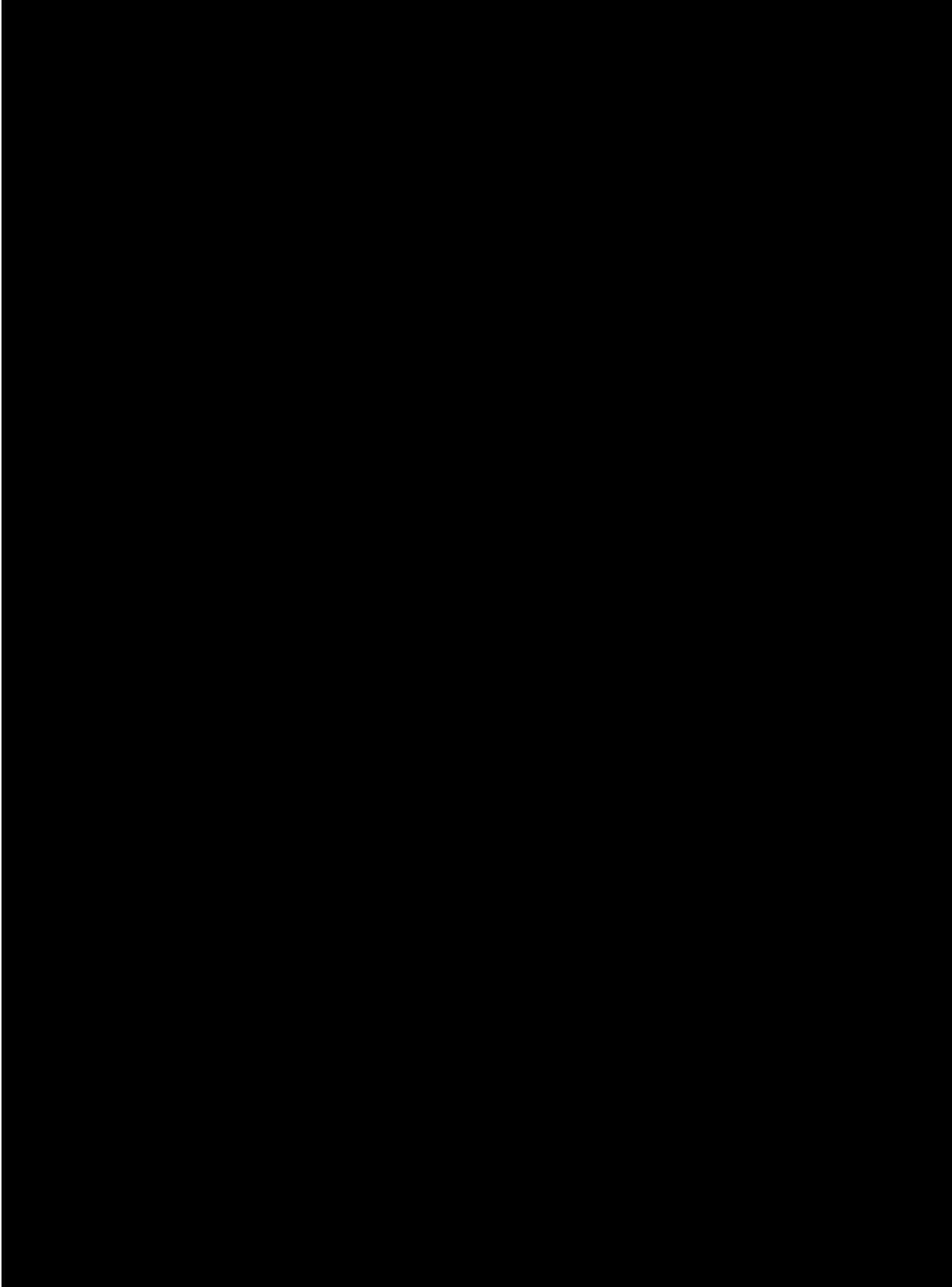
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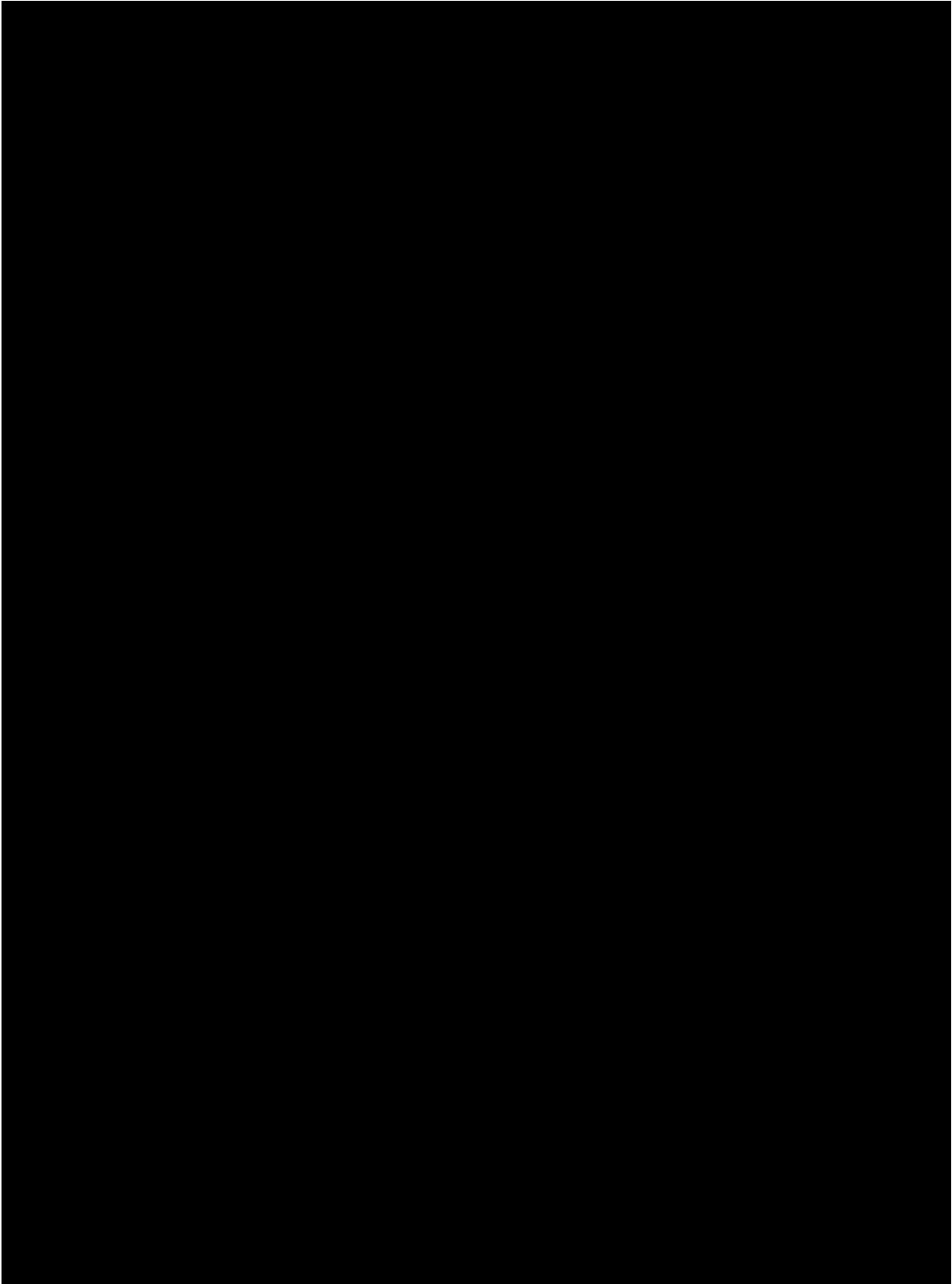
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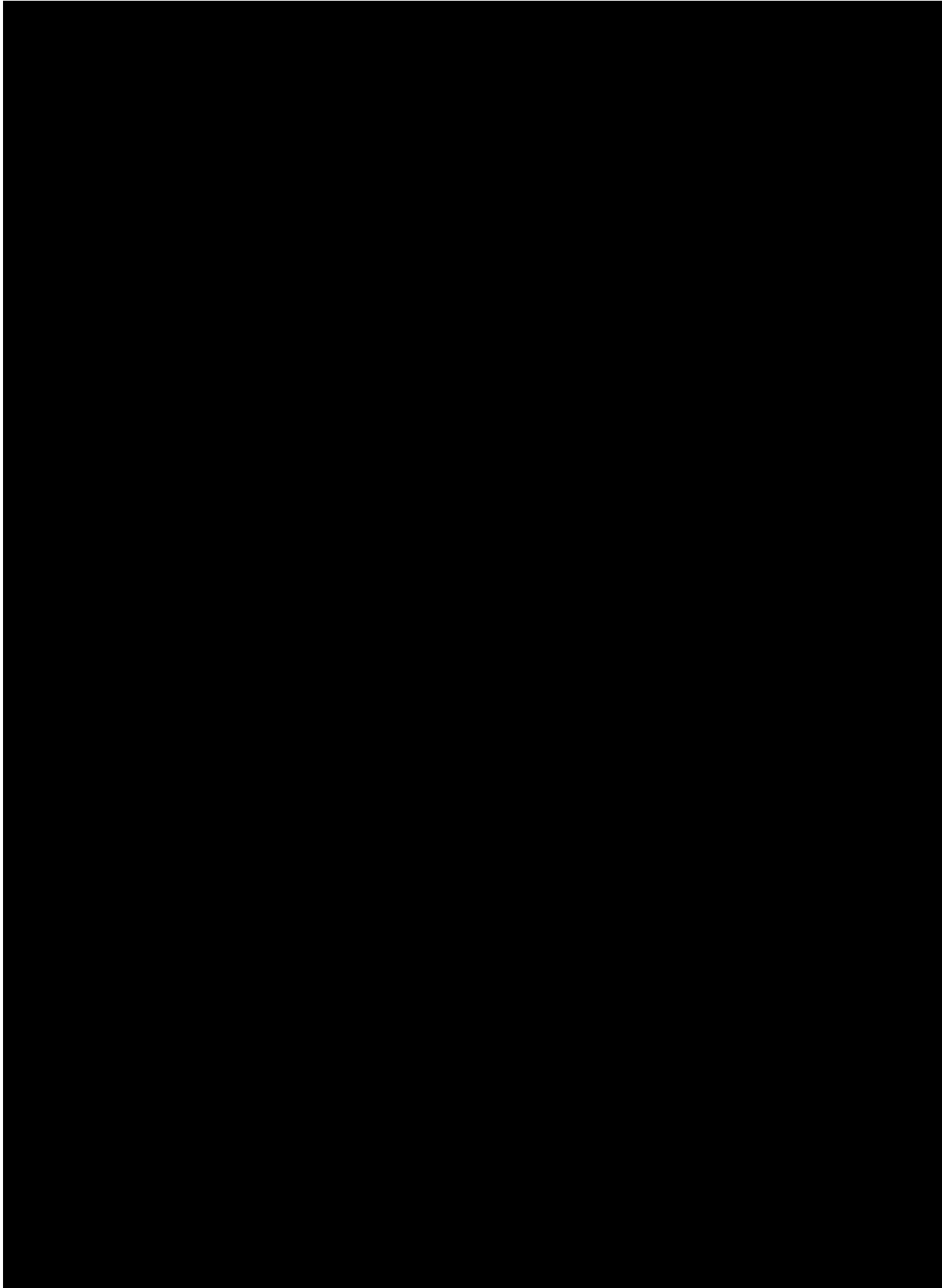
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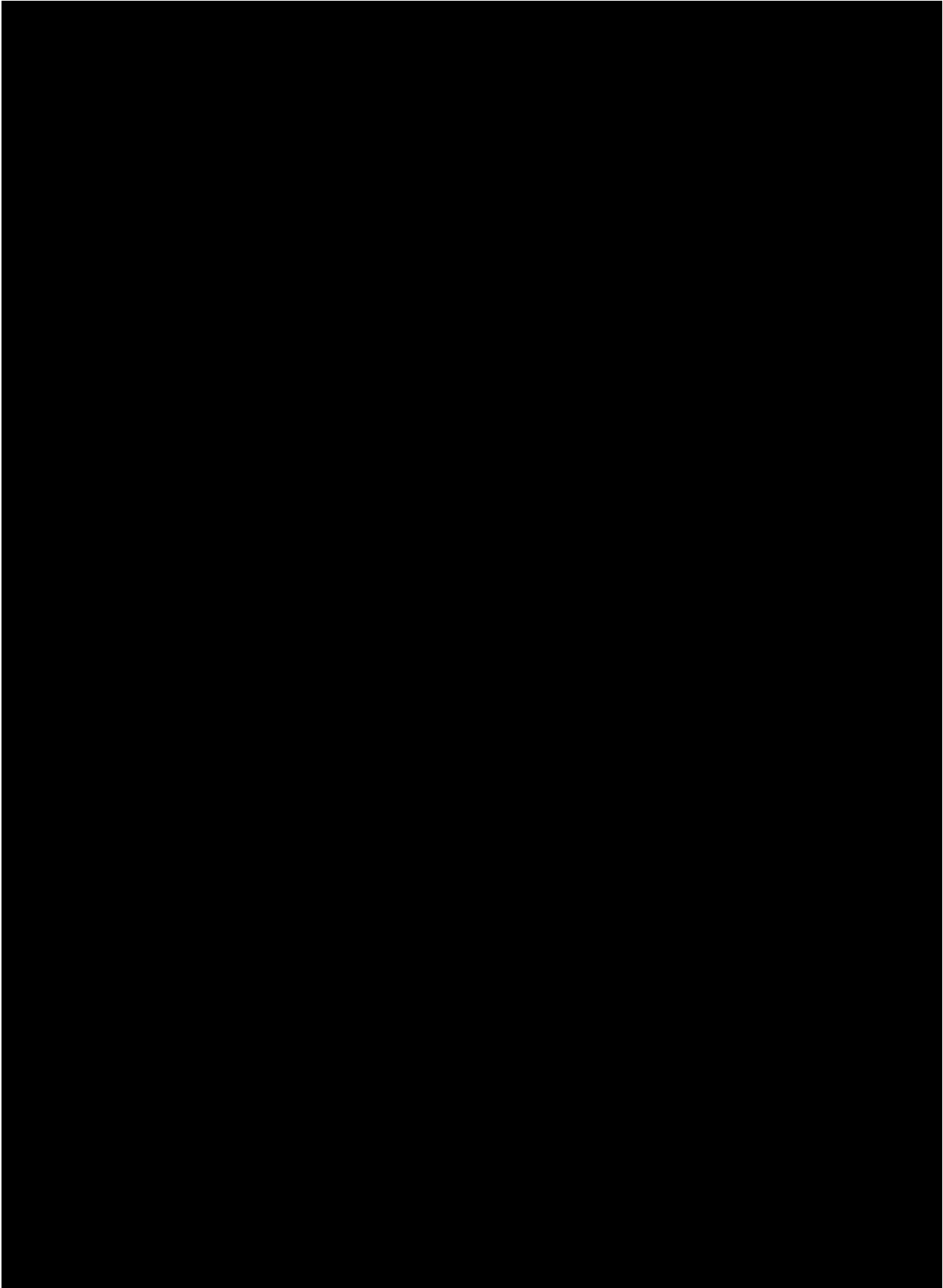
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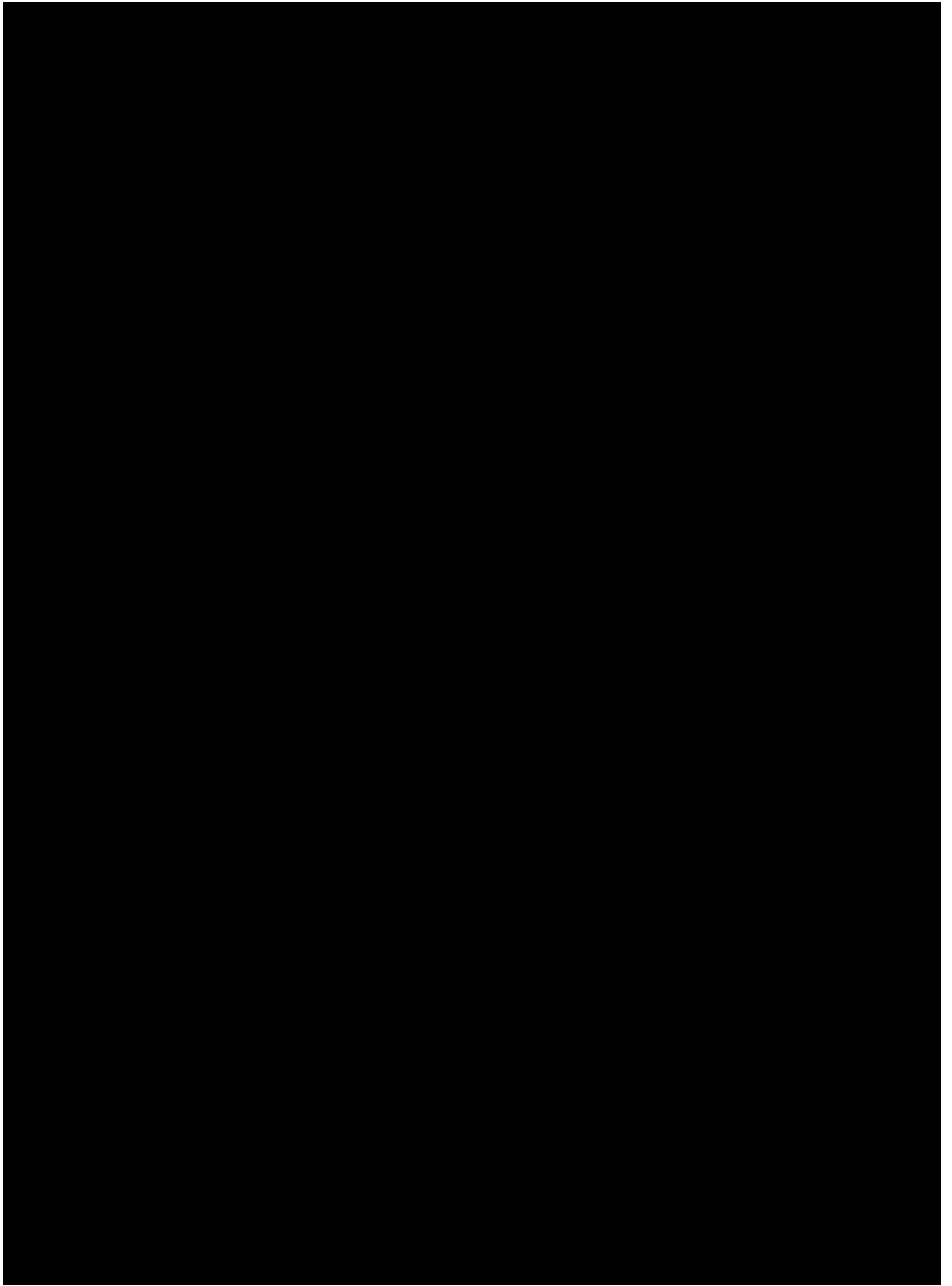
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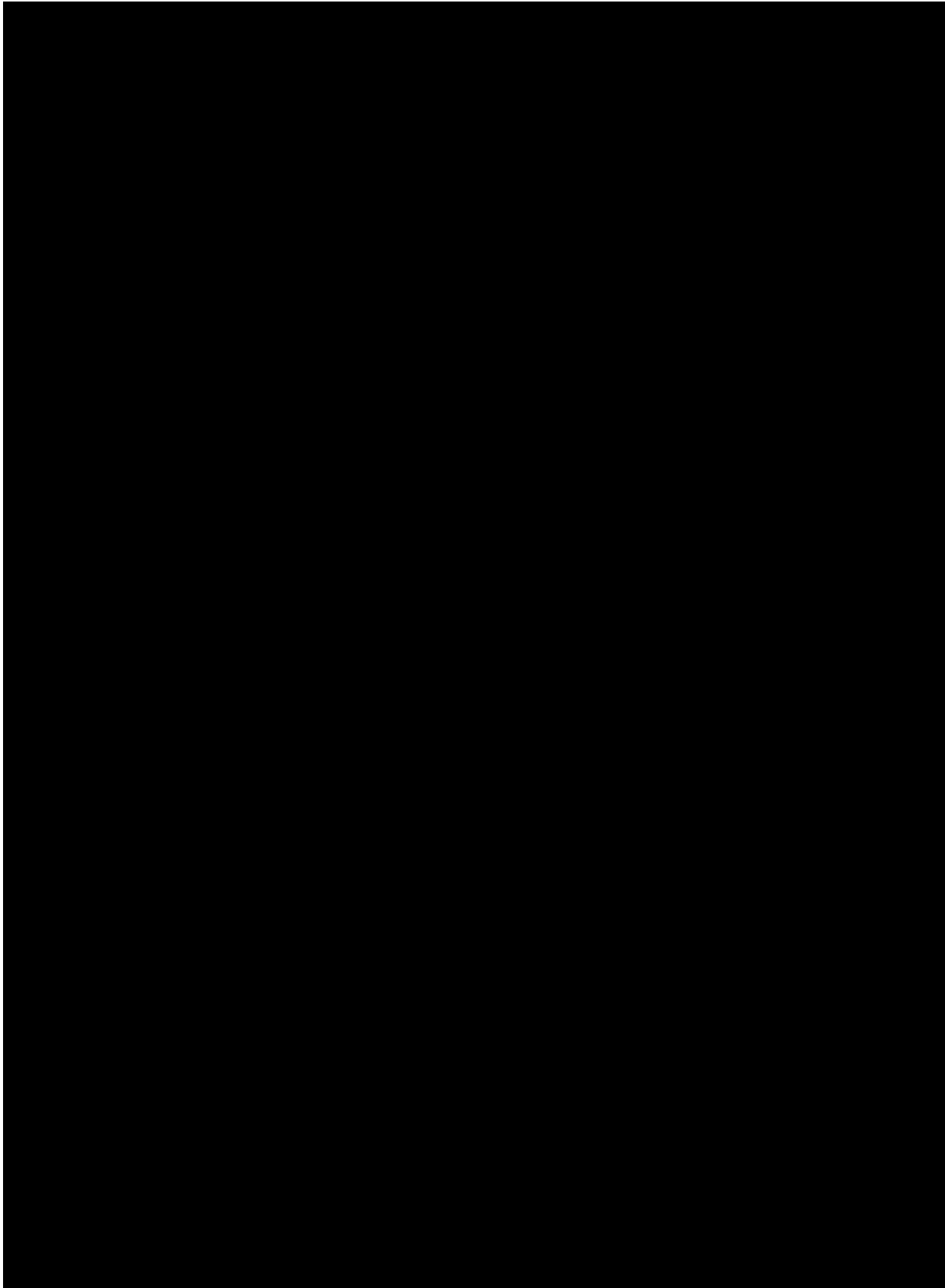
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(Brief recess.)

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PRESIDENT TERCIER: If everybody is ready, we
6 are ready for the redirect.

7

Ms. de Germiny.

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REDIRECT EXAMINATION

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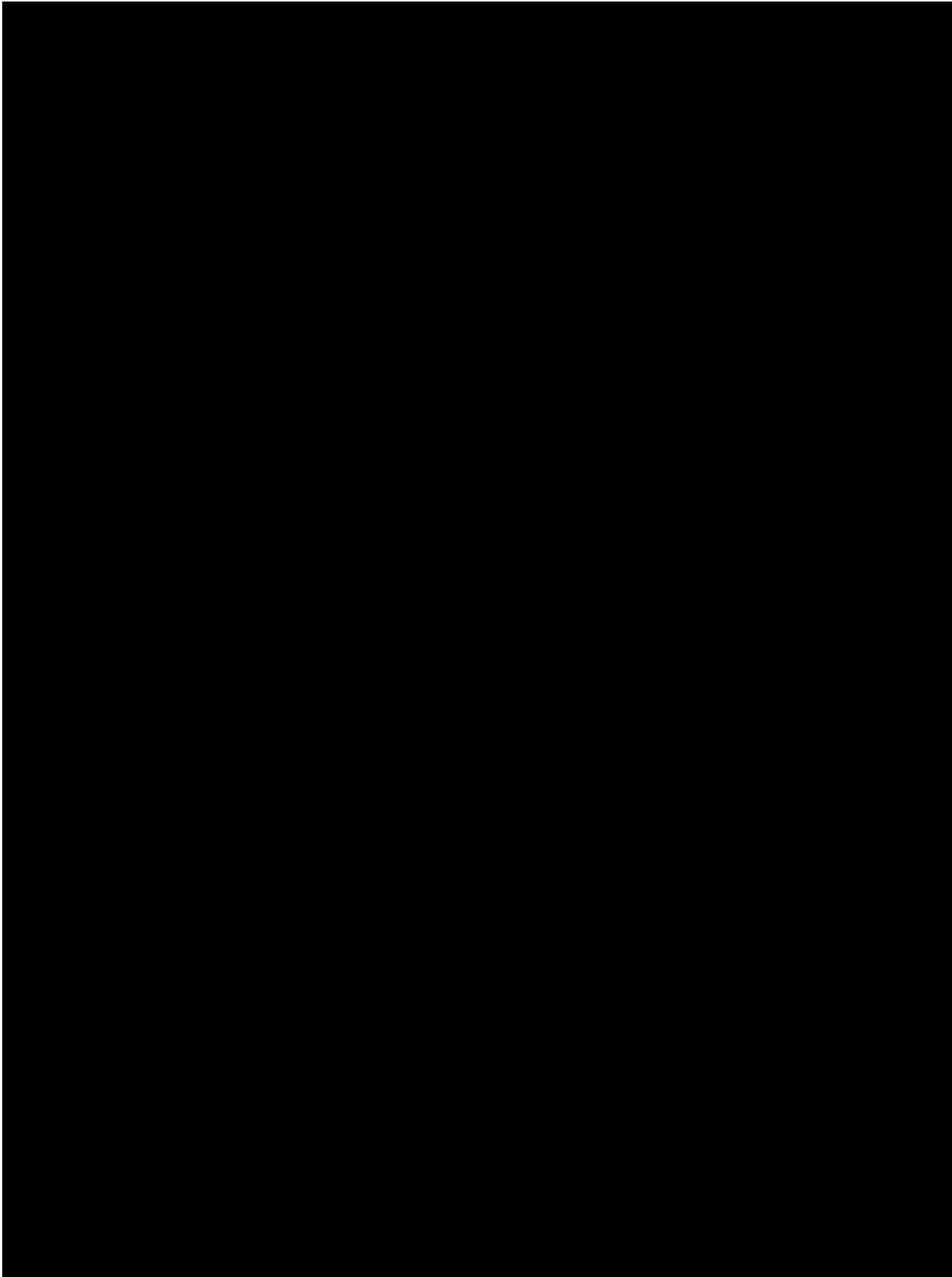
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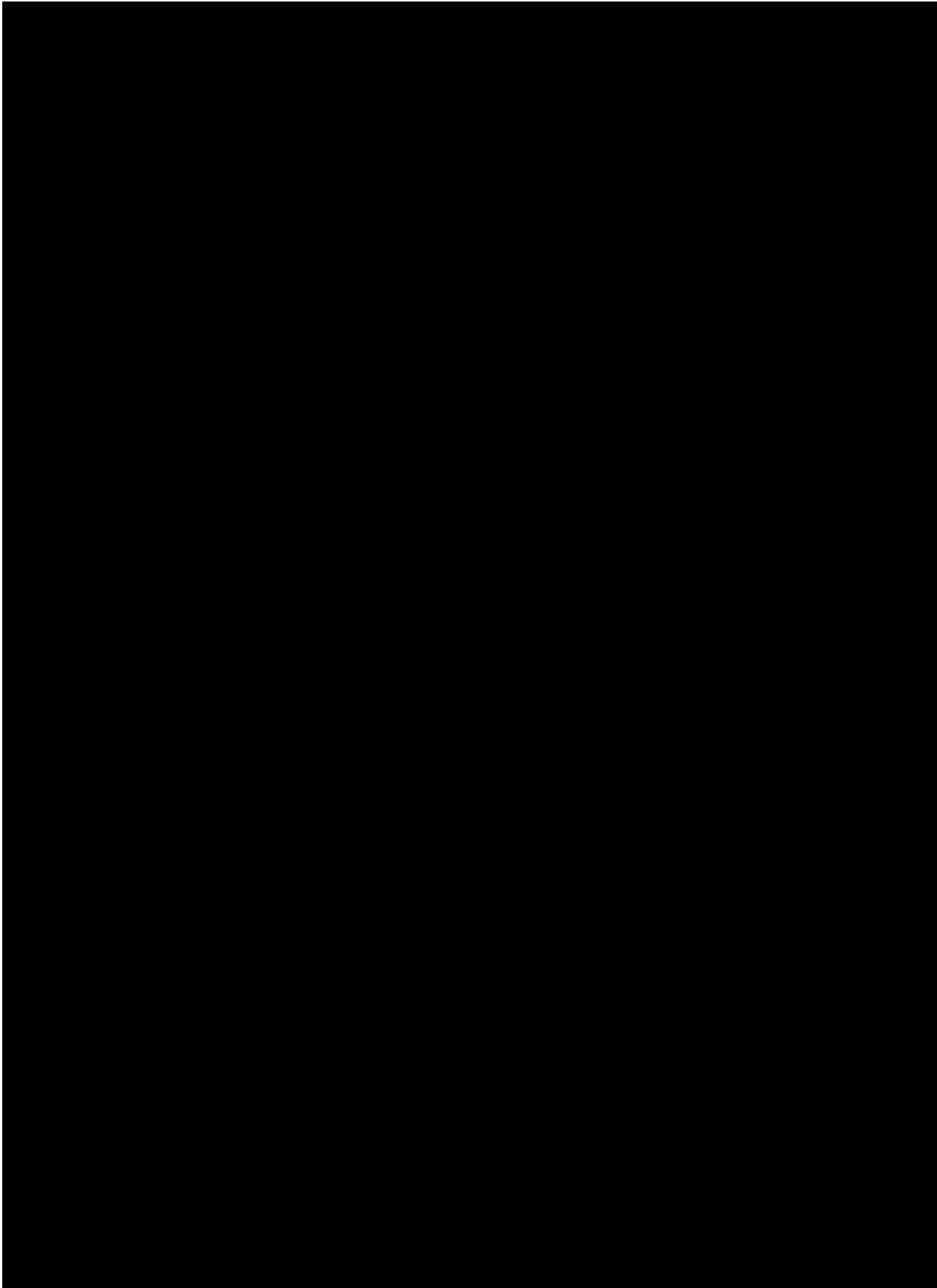
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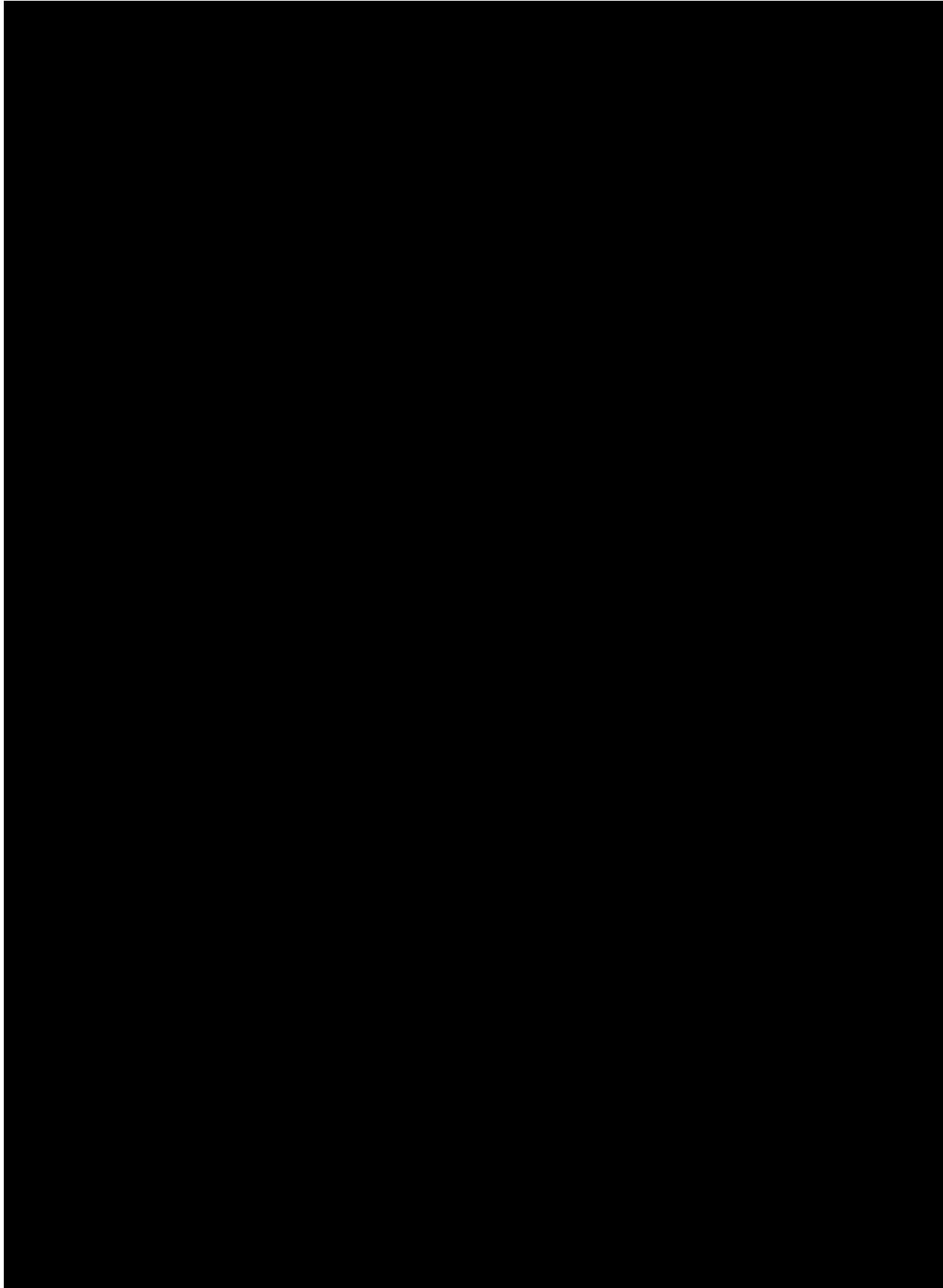
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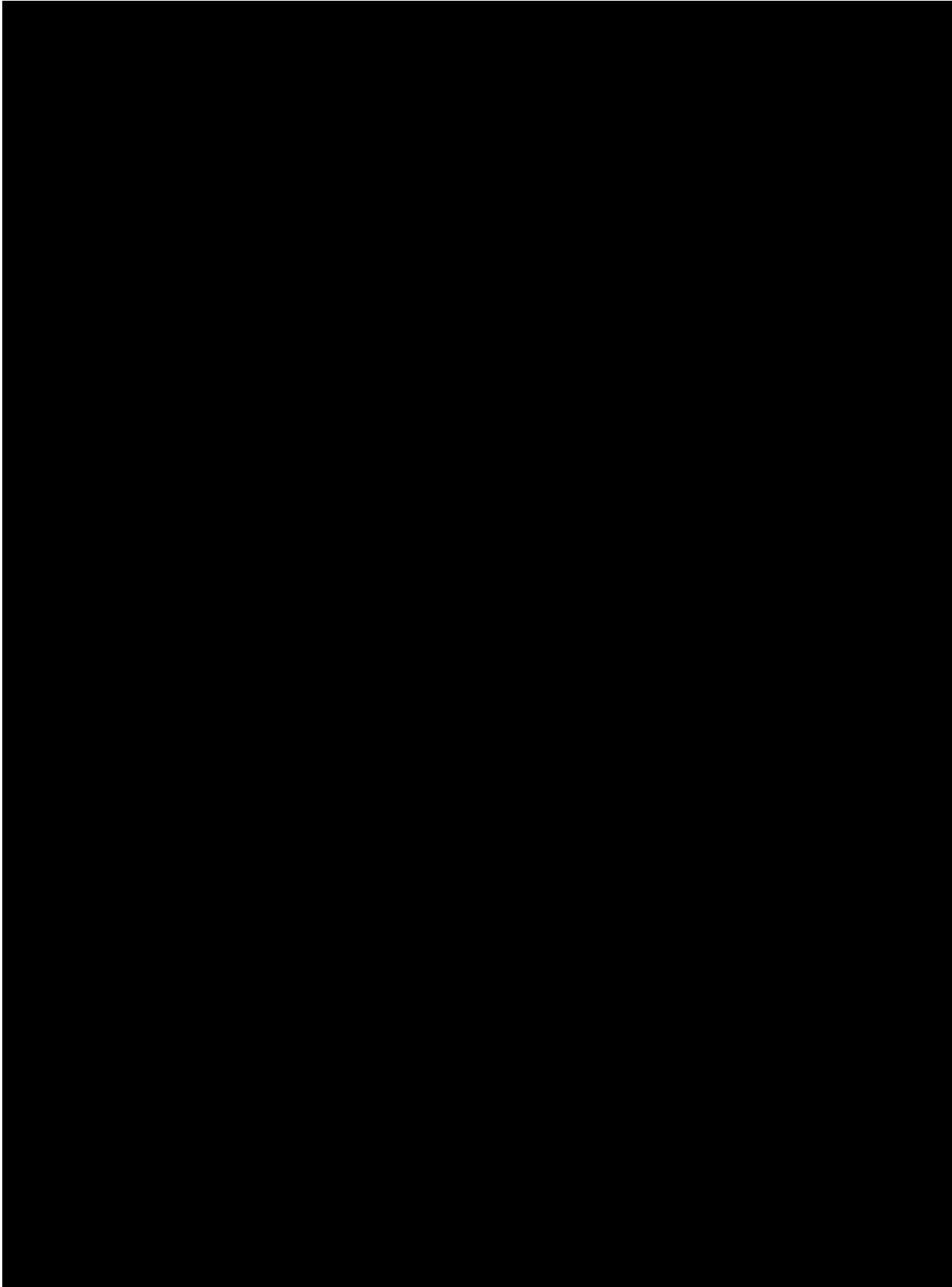
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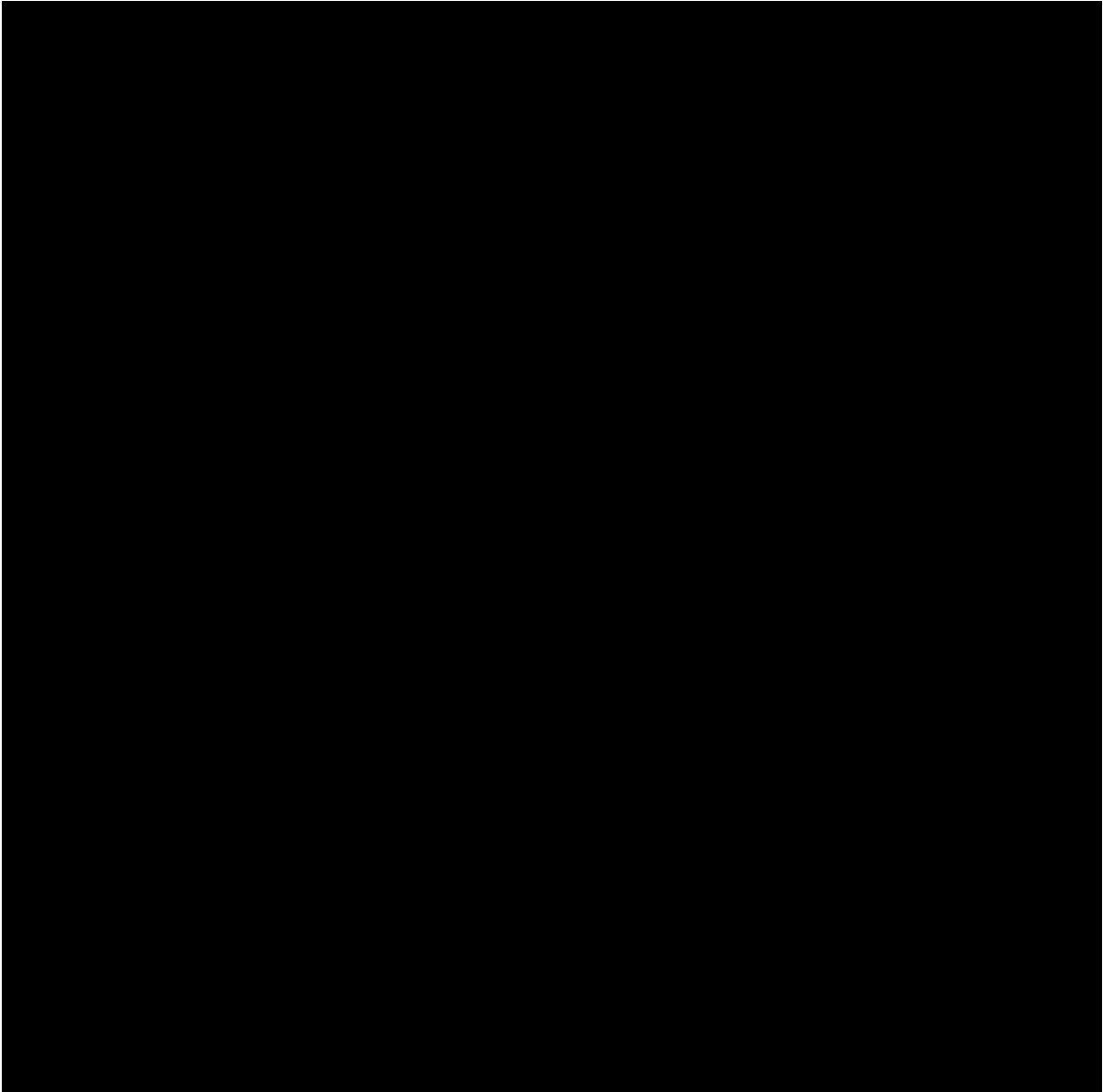
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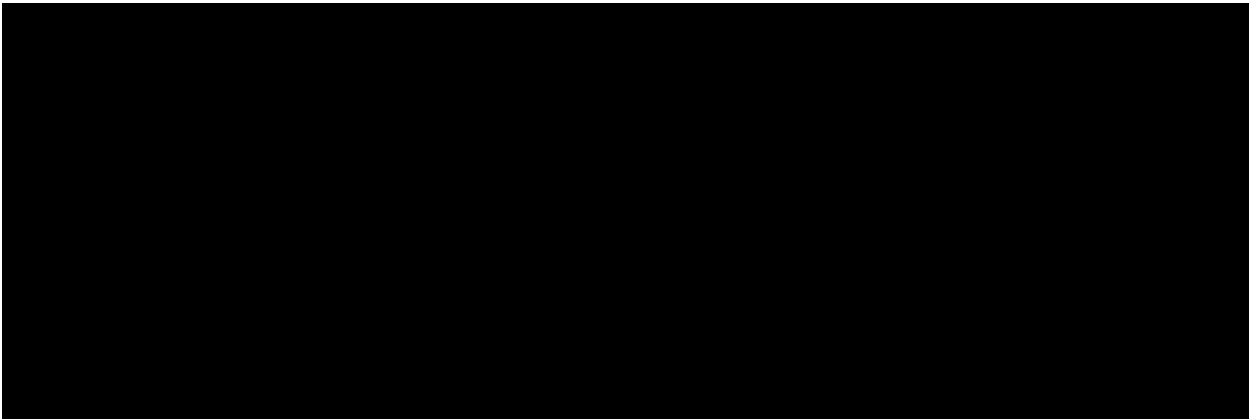
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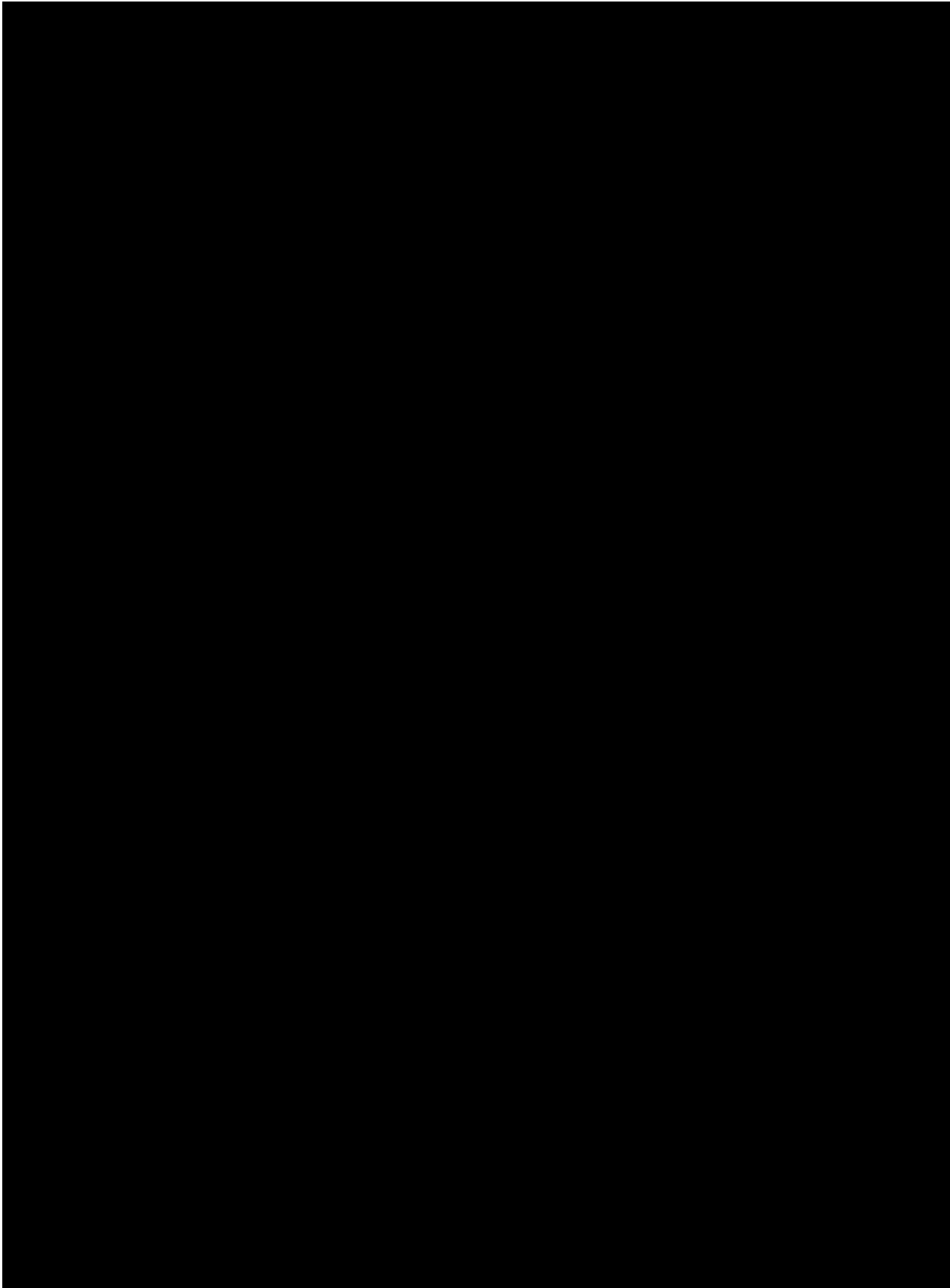
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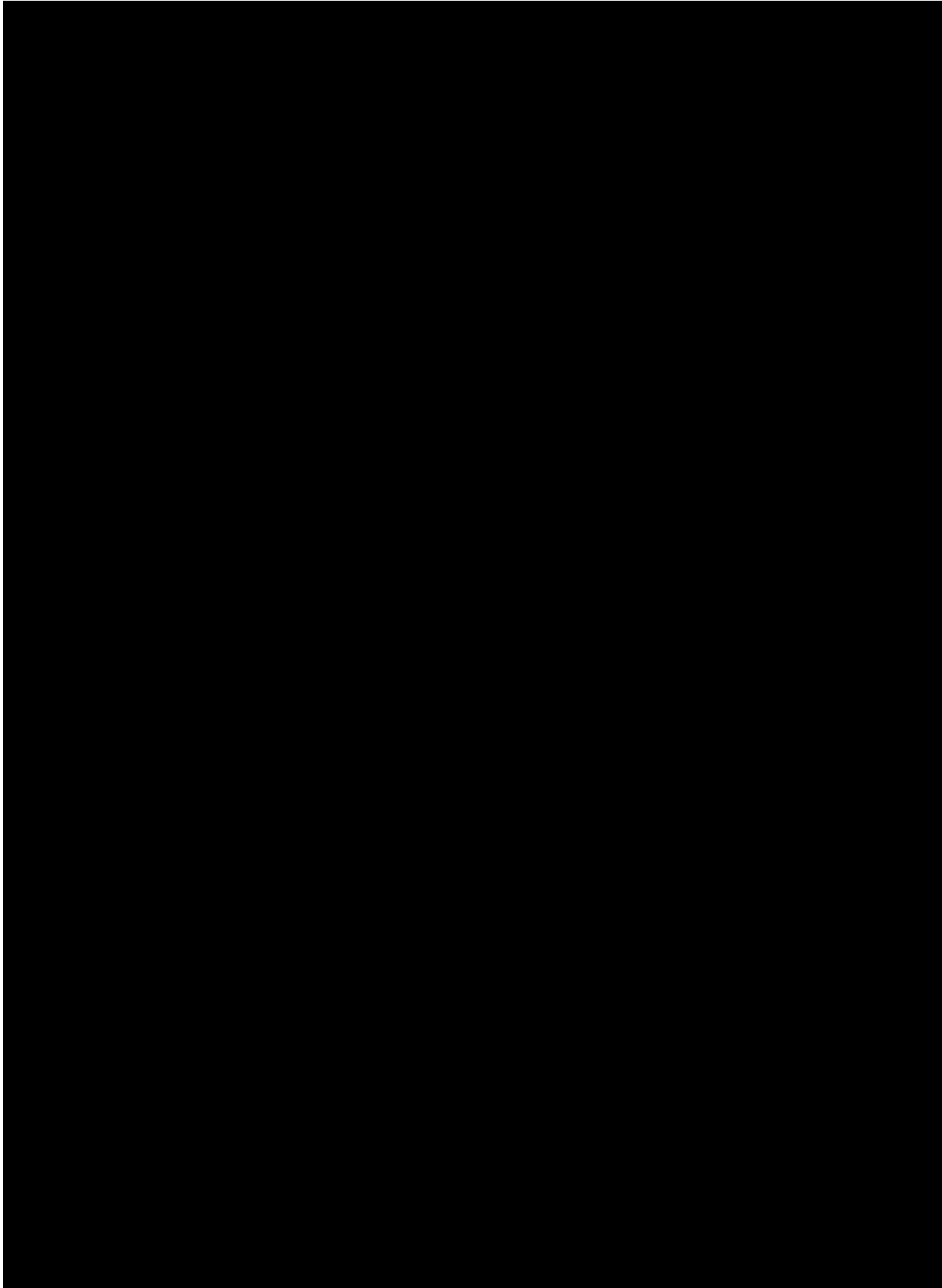
QUESTIONS FROM THE TRIBUNAL



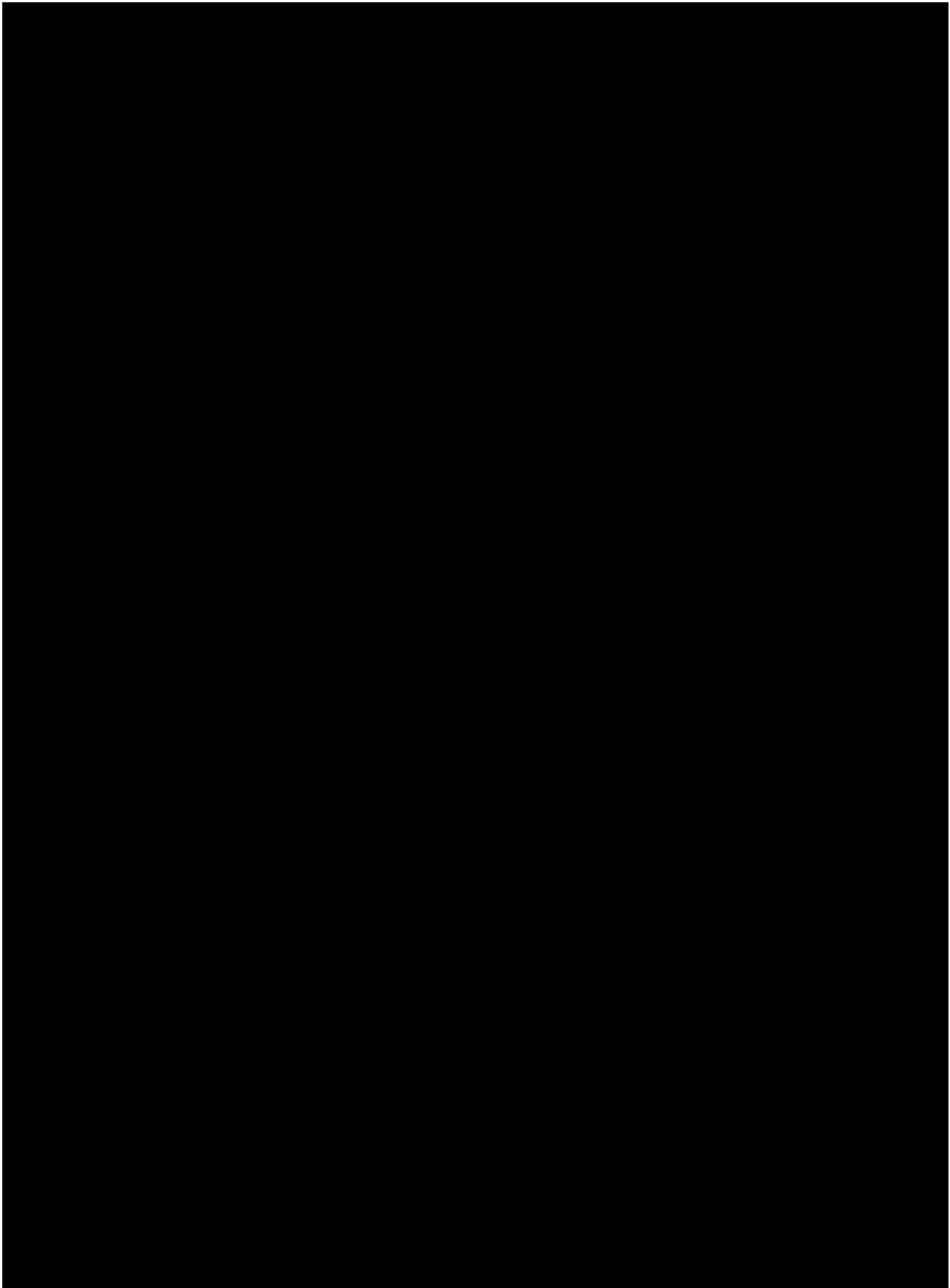
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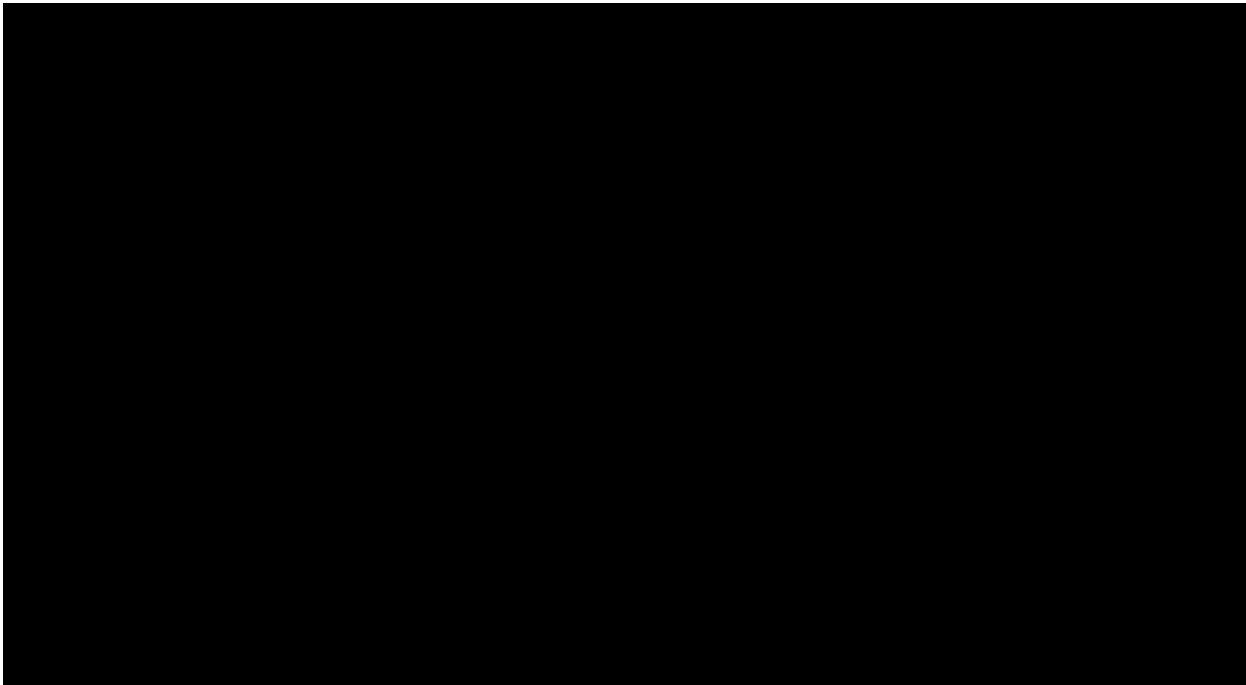
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10 PRESIDENT TERCIER: And the examination now
11 is completed, and you may again be free, if I may say
12 so.

13 (Witness steps down.)

14 PRESIDENT TERCIER: I would like now to
15 change, we have five minutes.

16 THE WITNESS: Thank you very much.

17 PRESIDENT TERCIER: Five minutes sufficient
18 to, if you like, for Ms. Serban to come? Good.

19 (Brief recess.)

20 AMALIA LUCIA SERBAN, RESPONDENT'S WITNESS, CALLED

21 PRESIDENT TERCIER: Good afternoon,
22 Ms. Serban. Welcome in this procedure. I always

1 start with the question of the language.

2 THE WITNESS: Good evening, Mr. President.

3 Thank you. I'll prefer to speak in Romanian.

4 PRESIDENT TERCIER: No problem. We will do
5 it. Good.

6 THE WITNESS: Thank you.

7 PRESIDENT TERCIER: You will be heard as a
8 witness. I would like to introduce the members of the
9 Arbitral Tribunal. On my left-hand side, Professor
10 Horacio Grigera Naón; and, on my right-hand side,
11 Professor Zachary Douglas. My name is Pierre Tercier,
12 and we have the Secretary and the Assistant to the
13 Tribunal. You will be heard as a witness; as such, I
14 would like you to read the Declaration. I think you
15 speak sufficient English to read it yourself. Can you
16 read the Declaration, please?

17 THE WITNESS: Of course, Mr. President. I
18 solemnly declare upon my honor and conscience that I
19 shall speak the truth, the whole truth, and nothing
20 but the truth.

21 PRESIDENT TERCIER: Okay. You have prepared
22 for this procedure a witness statement dated

1 20 September 2019.

2 You have this document in front of you?

3 THE WITNESS: Yes, yes, I have it. Thank
4 you.

5 PRESIDENT TERCIER: If you answer in English,
6 it would be difficult for the Interpreter to translate
7 it. That's fine.

8 You can confirm the content of this document.

9 THE WITNESS: Yes, I have it in front of me.
10 Thank you.

11 PRESIDENT TERCIER: Good. You know how it
12 will be conducted. The first question for me, then
13 question from Mr. Rigau deau from counsel for
14 Respondent, then it will be Ms. Cohen Smutny, who will
15 lead the cross-examination, and then the redirect,
16 and then the Tribunal having the right at any time to
17 ask questions. Just two points on my side, the first
18 very shortly, if you can present yourself, introduce
19 yourself with your education, and especially your
20 involvement in this case so that we know a little bit
21 even if you have described it partly in your document,
22 in your statement. Please.

1 THE WITNESS: Thank you, Mr. President.

2 I will start with my personal background.

3 I'm Amalia Serban. I was born in January 1972. After
4 graduating from high school, I attended the Faculty of
5 General Medicine and Pharmacy, which I graduated from
6 in 1997. Afterwards, I specialized in infectious
7 disease-epidemiology. And in 2009, I became a primary
8 epidemiologist, which is the highest level of training
9 in this specialization.

10 At the same time I started working for the
11 Ministry of Health in 2002. In the first two years, I
12 worked as a volunteer. Afterwards, in 2004, I
13 attended a contest, and was hired as an advisor in the
14 Public Health Department within the Ministry of
15 Health. I was mainly in charge with the epidemiology
16 of infectious diseases.

17 In 2007, I became Deputy Director of the
18 Public Health Directorate within the Ministry of
19 Health. In this capacity, I was in charge of
20 coordinating several departments in relation to public
21 health, in particular infectious diseases, public
22 health, promotion of health, and the Environmental

1 Unit within the Ministry of Health.

2 Later on, I held several positions. I don't
3 know how much you know about Romania, but in our
4 public institutions, the structure changes every time
5 there is a change in Management. And, therefore,
6 throughout the years, the positions I've held and the
7 structures in which I worked continued to change.

8 However, since 2007, I've held Management
9 positions in the Public Health Department. The Public
10 Health Department and State Health Inspection in 2010.

11 In 2014, I became Deputy Director General of
12 the Medical Assistance and Public Health Directorate,
13 and this is the structure which I still coordinate
14 today.

15 My involvement--I'm coming there, I'm coming
16 to my involvement. My involvement and the reason why
17 I'm here today is that the Public Health Department
18 within the Ministry has this environmental component,
19 which has a regulatory role and also the role of
20 monitoring compliance with the public health
21 legislation at national level.

22 The Ministry of Health is also a member in

1 the TAC established at the level of the Ministry of
2 the Environment according to the Ministerial Order
3 regulating this Committee.

4 Furthermore, since 2014, up to present, I've
5 been in charge with coordinating the Medical
6 Assistants Department. They have a role to regulate
7 and monitor compliance with the legislation at the
8 national level in the field of primary medical care,
9 hospital care, and emergency care.

10 PRESIDENT TERCIER: Thank you very much.

11 My second question is linked to your
12 testimony. Can you, in a very few words, tell us the
13 process that have been followed to prepare this
14 statement. You had contact with the counsel who wrote
15 it? So how did you prepare this document?

16 THE WITNESS: I would start with--

17 PRESIDENT TERCIER: Just in a few words.

18 THE WITNESS: I prepared this statement by
19 reviewing the letter of the Ministry of Health from
20 May 7 addressed to the counsel for Romania. This
21 letter was drafted and signed by the person who
22 replaced me back then. I reviewed what was written in

1 this letter. And upon the request of the counsel, I
2 confirmed that its contents reflected the reality, and
3 I agreed to give this Witness Statement.

4 PRESIDENT TERCIER: And you wrote it
5 yourself?

6 THE WITNESS: Yes.

7 PRESIDENT TERCIER: In Romanian?

8 THE WITNESS: Yes.

9 PRESIDENT TERCIER: Okay. You know the
10 official language is English, we have the English
11 versions. Have you had a chance to check the English
12 version?

13 THE WITNESS: Yes.

14 PRESIDENT TERCIER: I'm not sure whether I
15 asked you whether you have or if you can confirm the
16 contents of this document or whether you wish to make
17 amendments to it?

18 THE WITNESS: I can confirm that this
19 document is a reflection of reality.

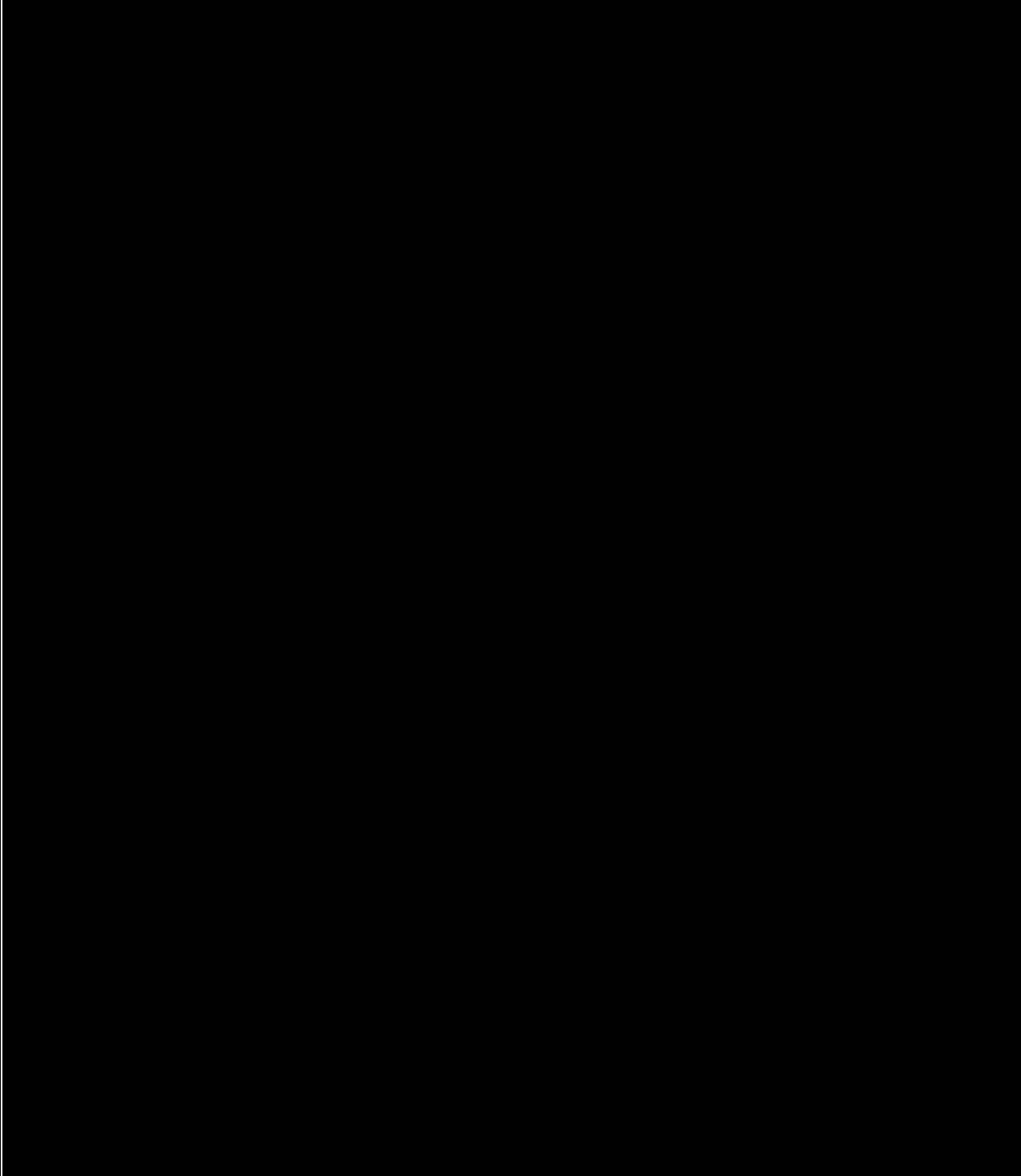
20 PRESIDENT TERCIER: Thank you. I apologize
21 for not putting all questions in the right order.

22 Good. Mr. Rigaudeau, you have the floor.

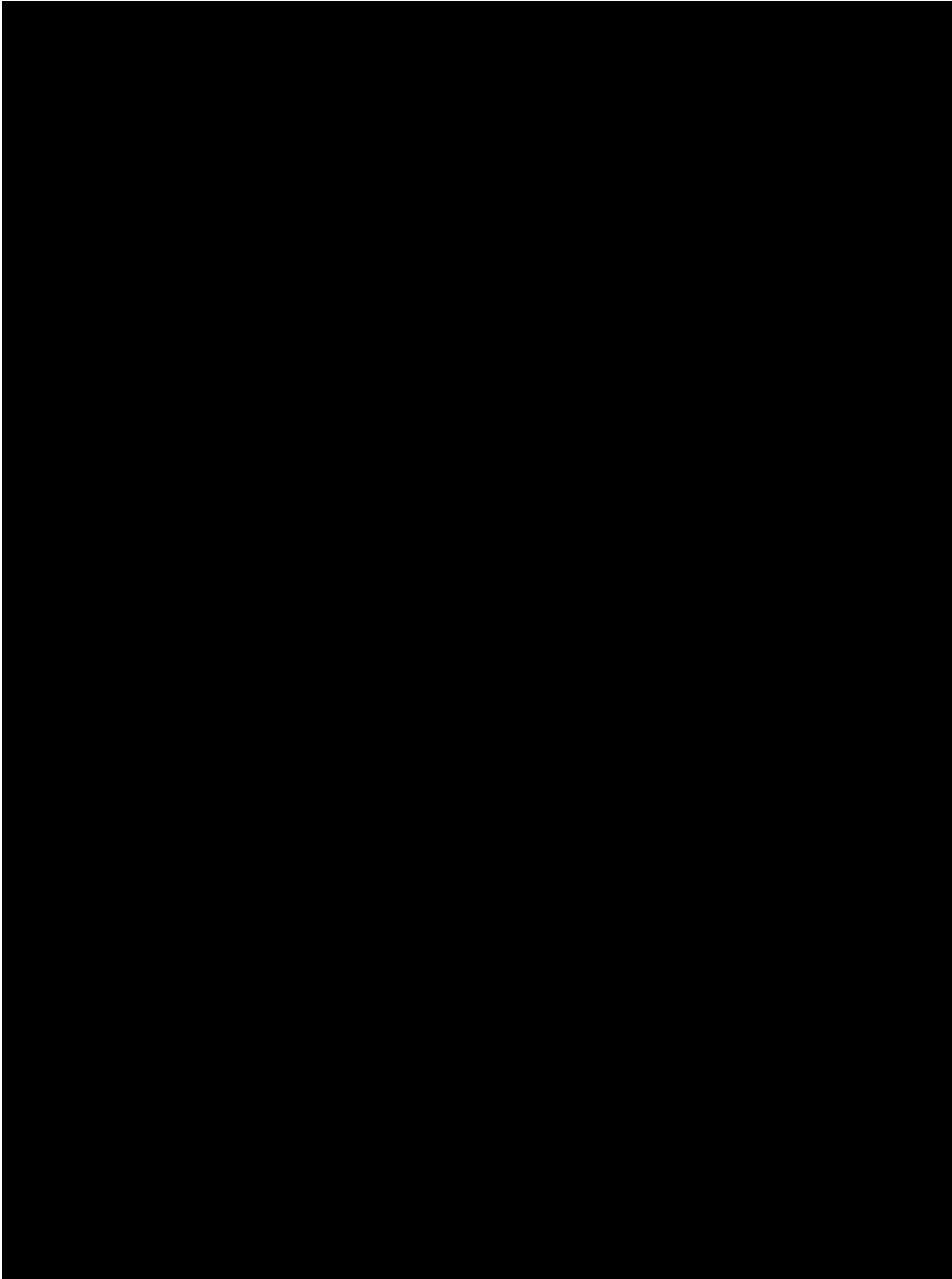
1 MR. RIGAUDEAU: Thank you very much,
2 Mr. President.

3 DIRECT EXAMINATION

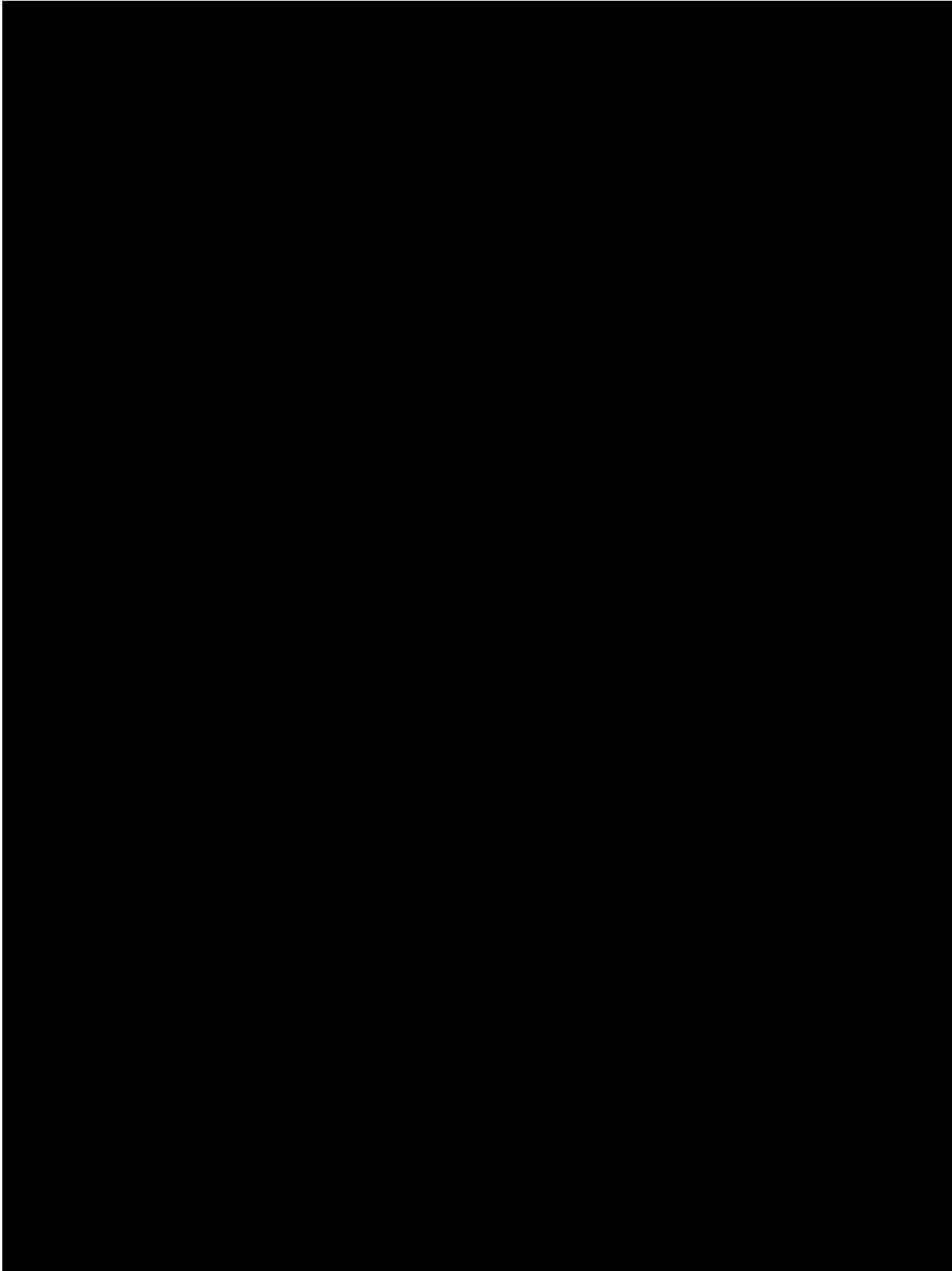
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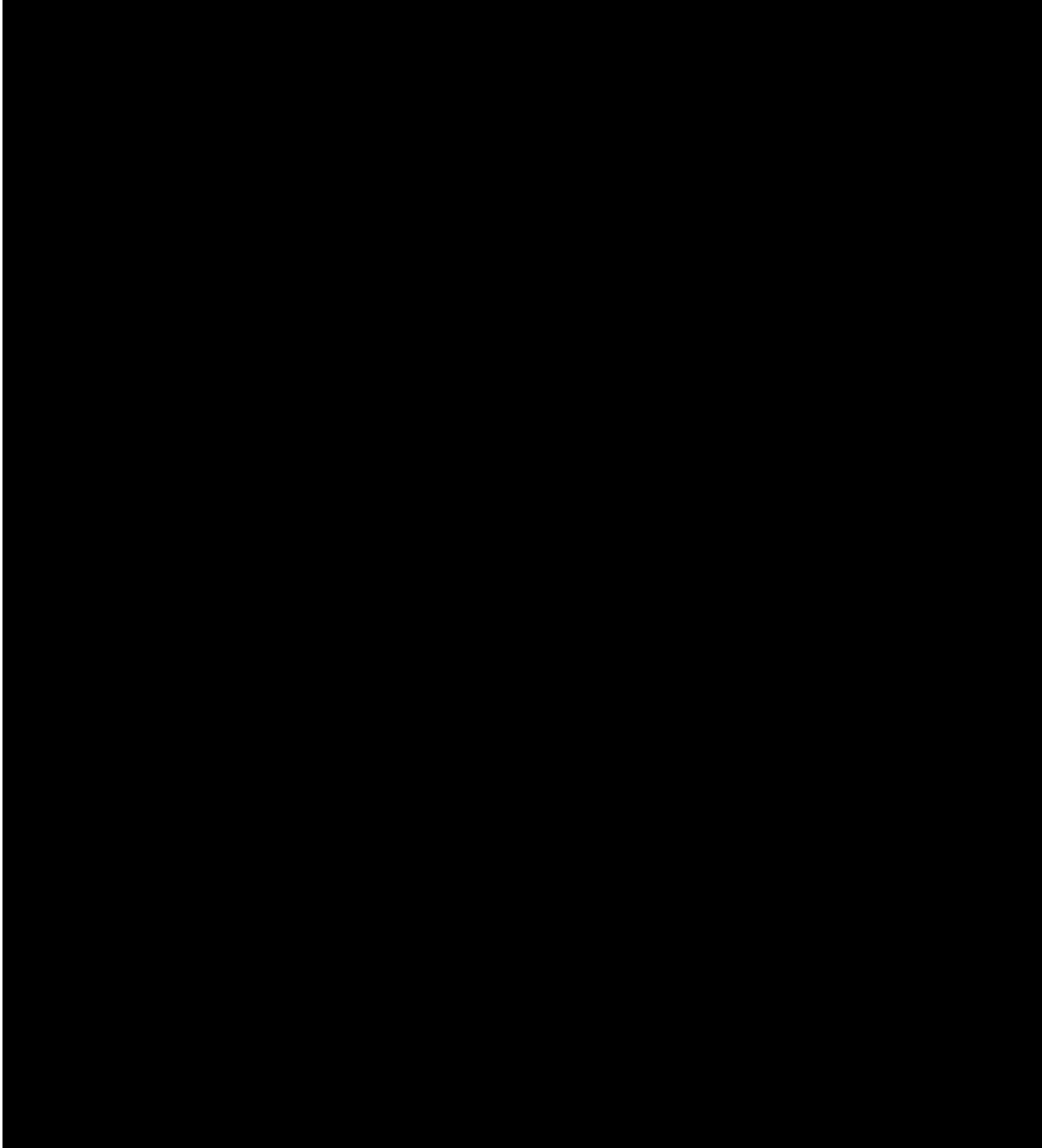
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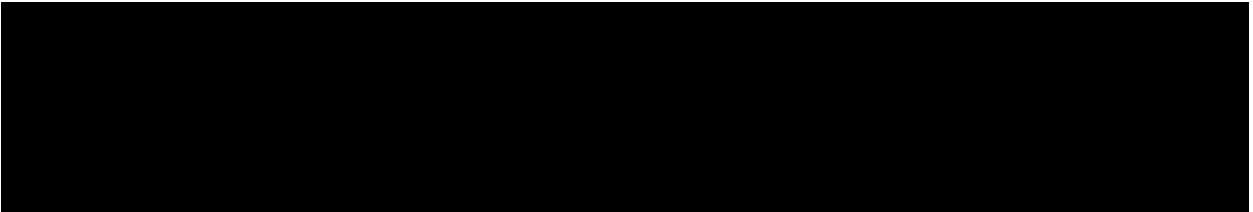
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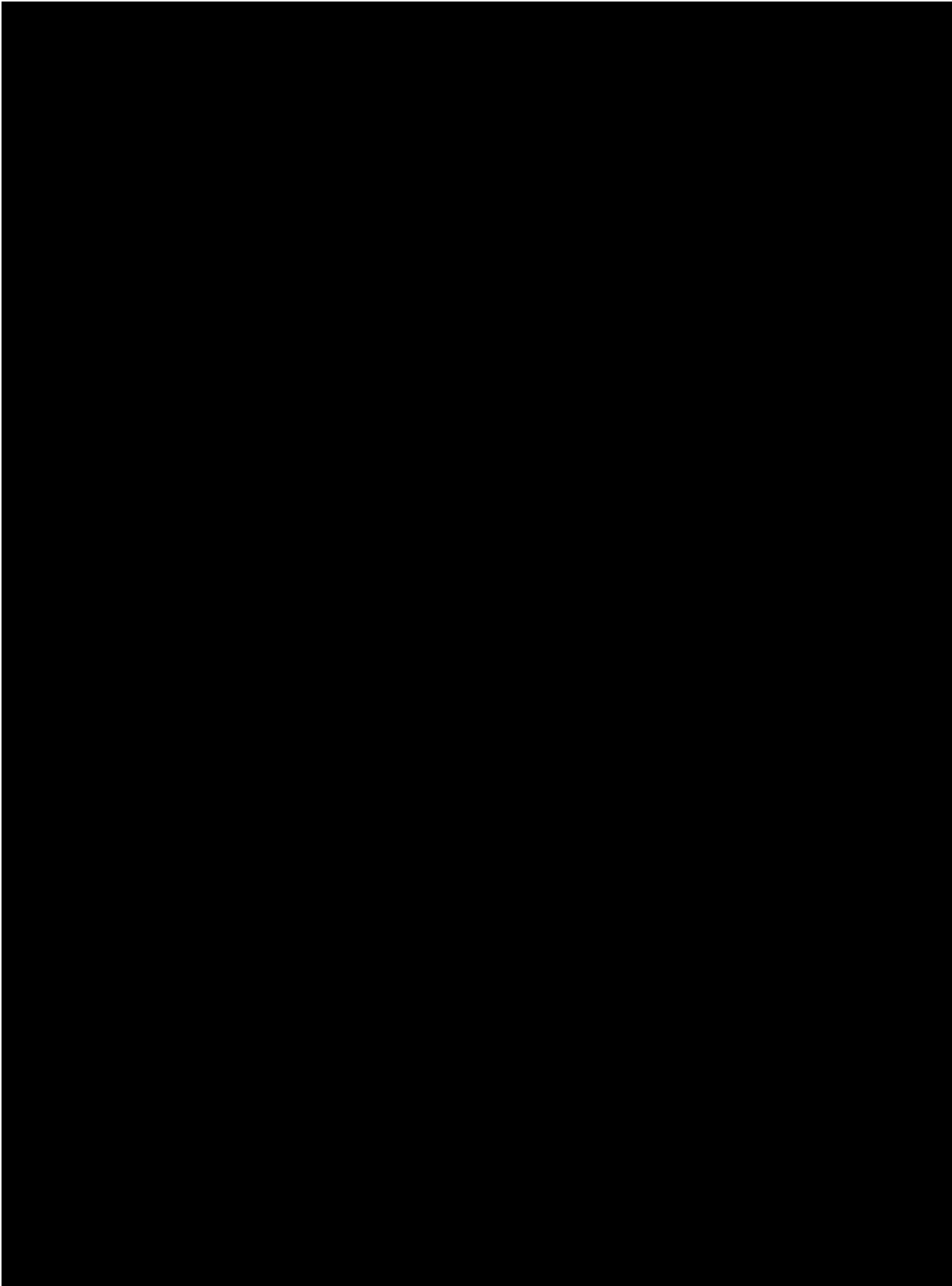
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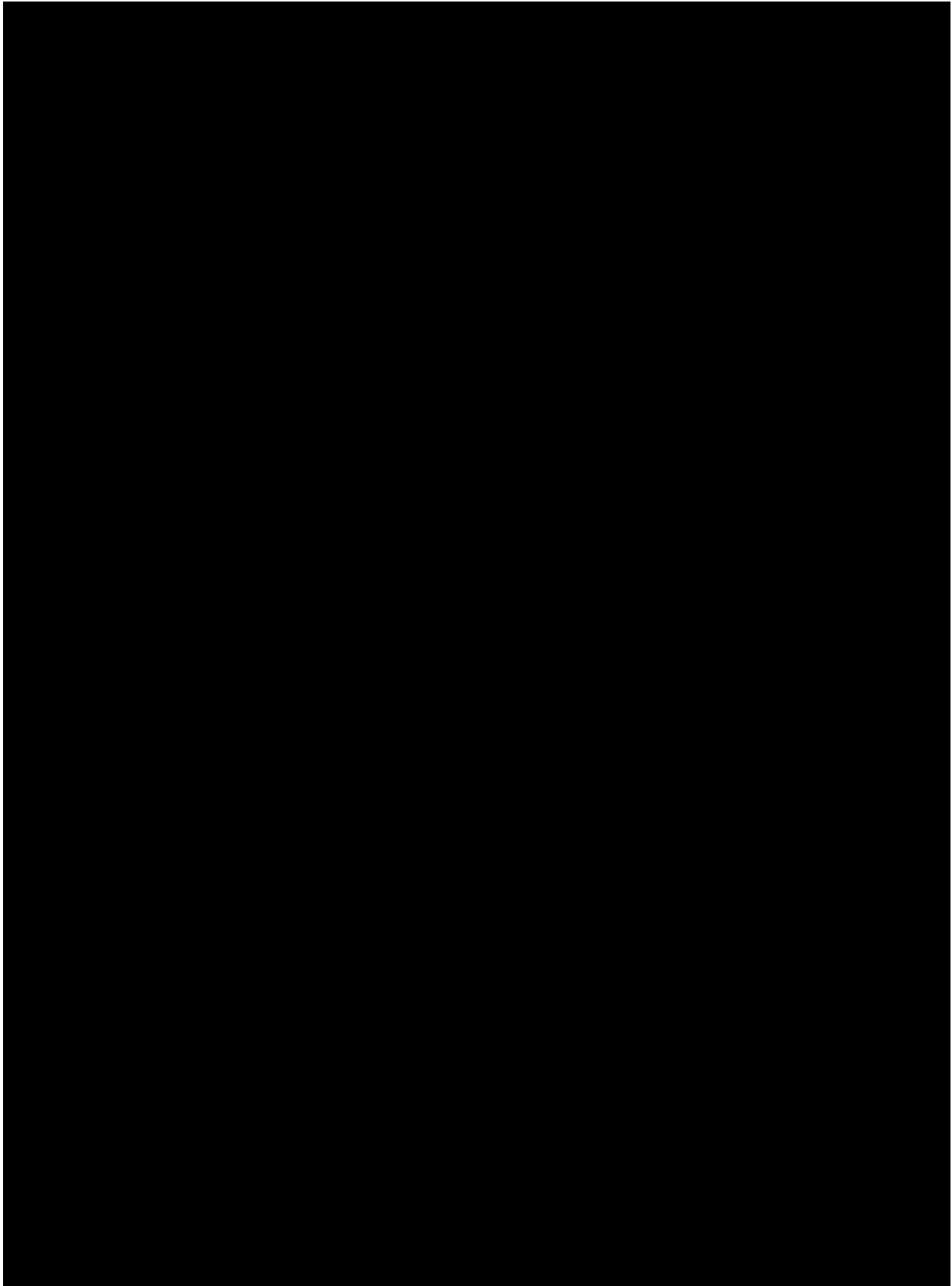
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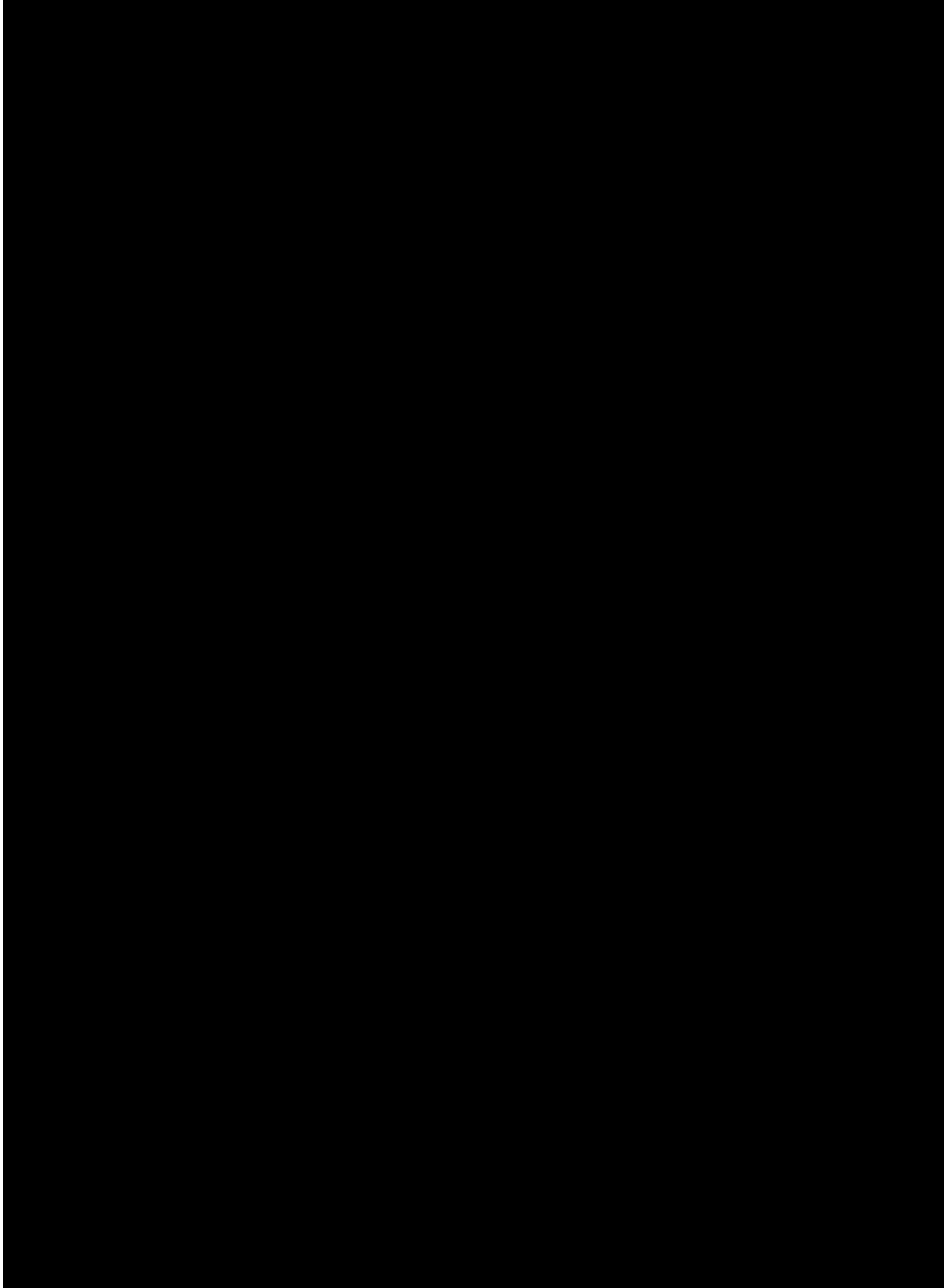
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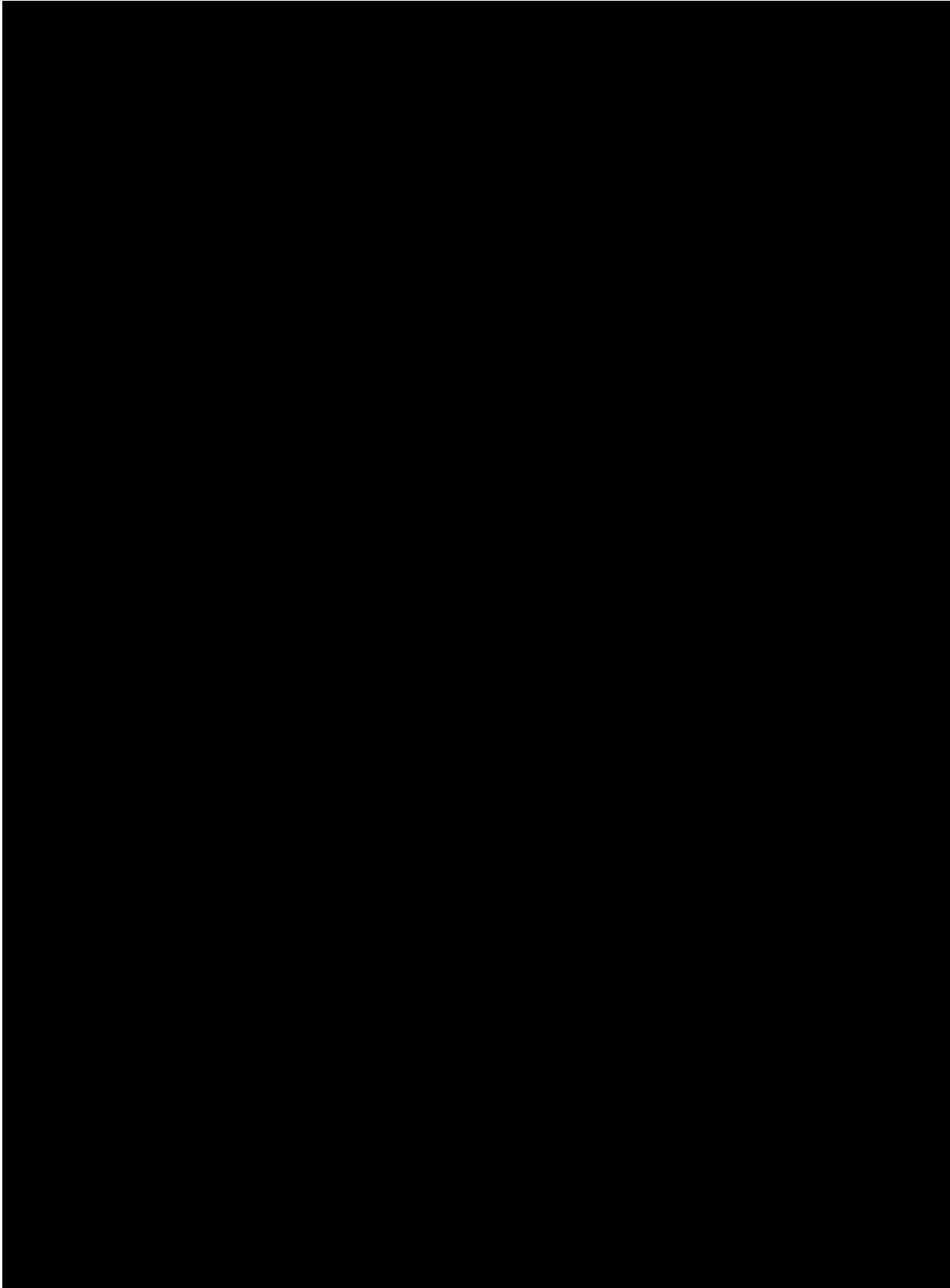
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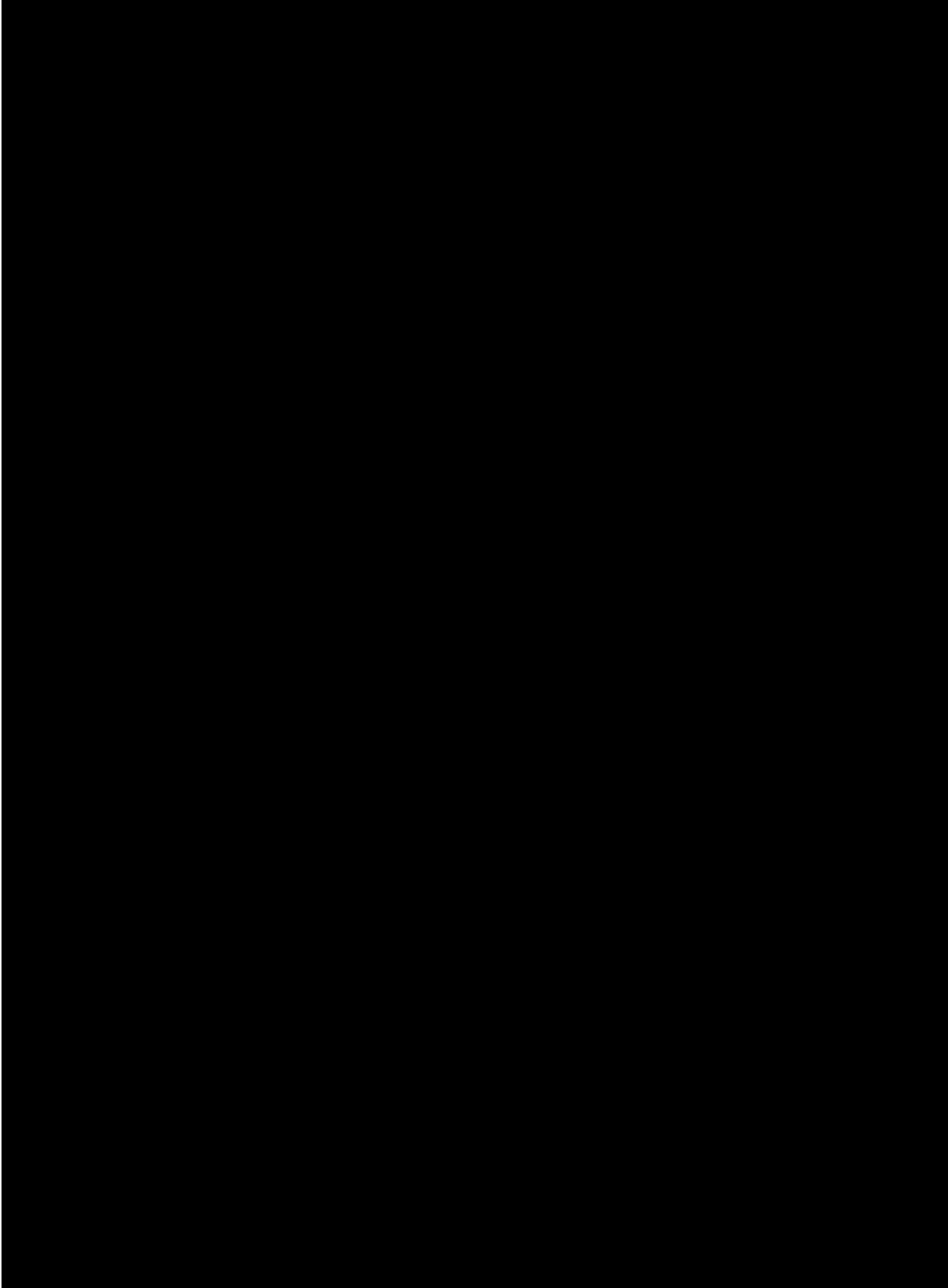
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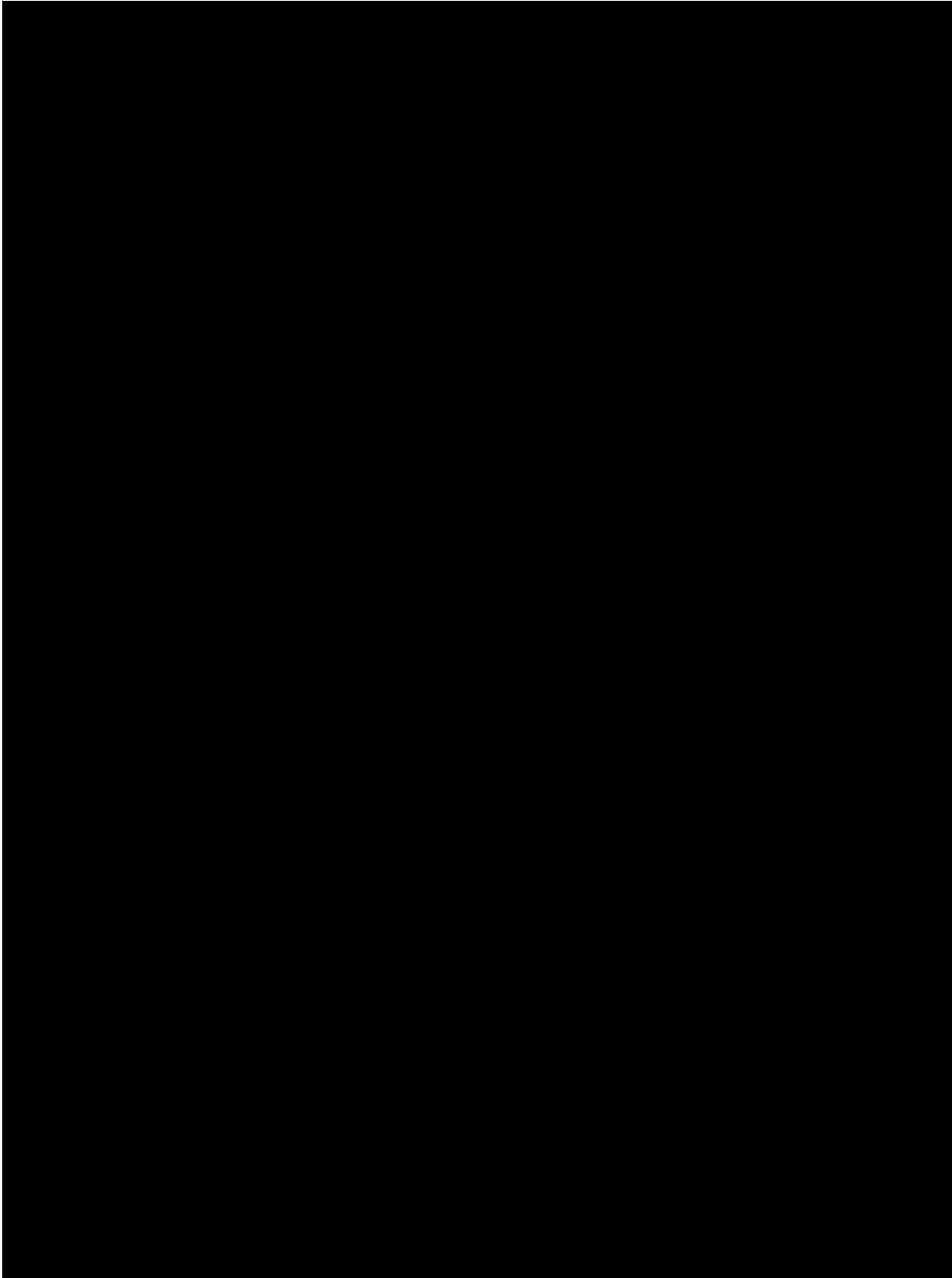
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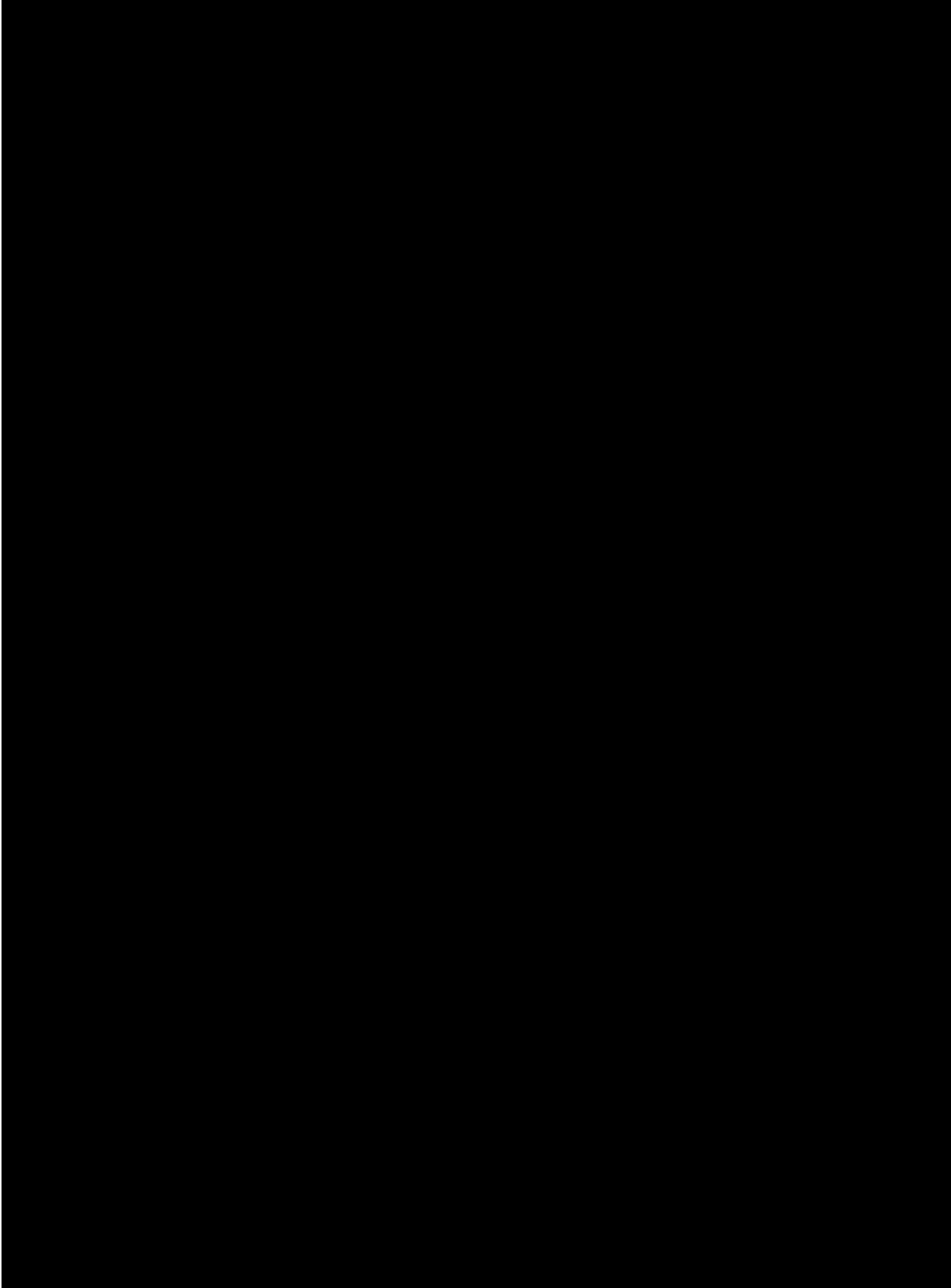
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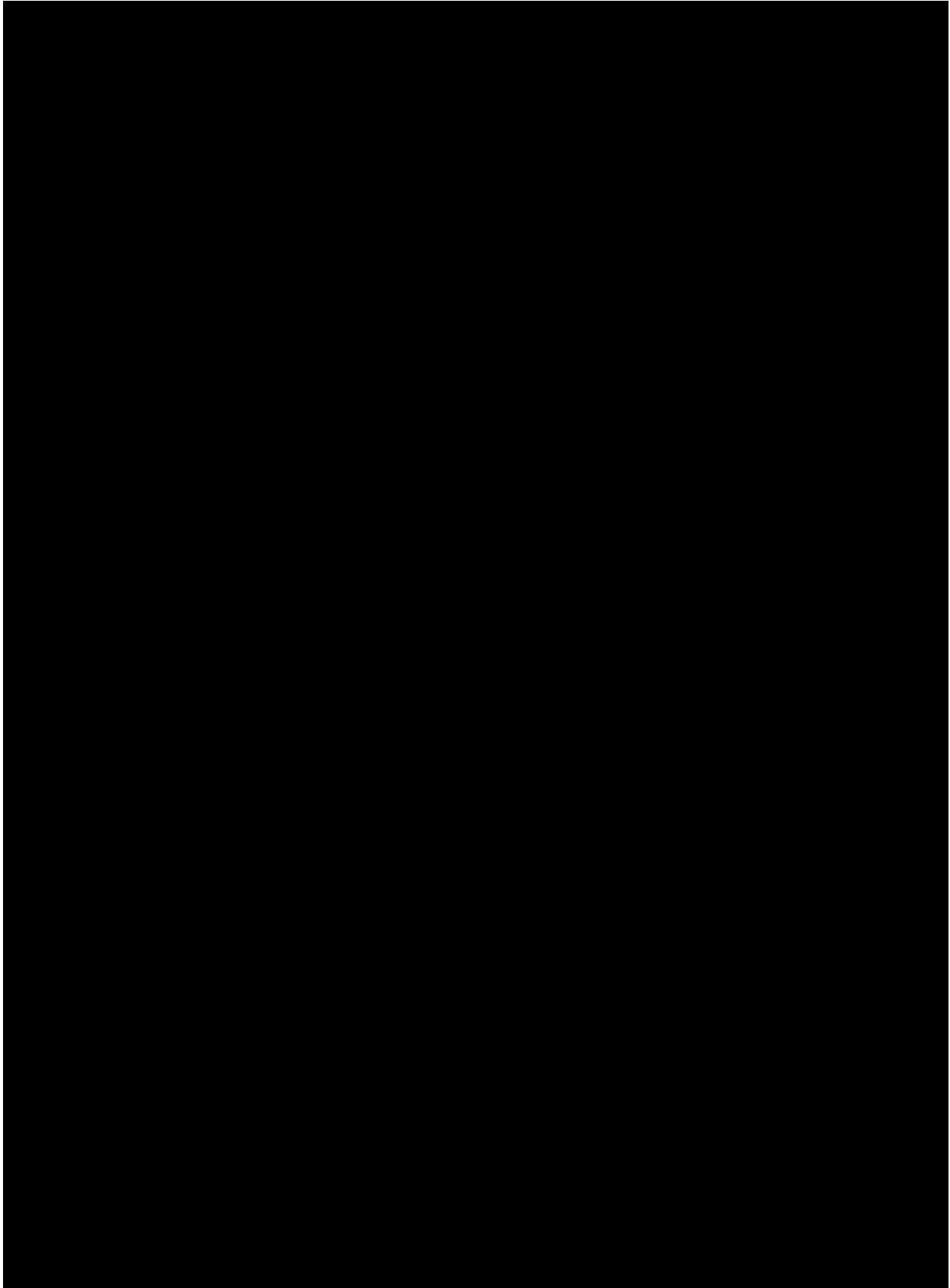
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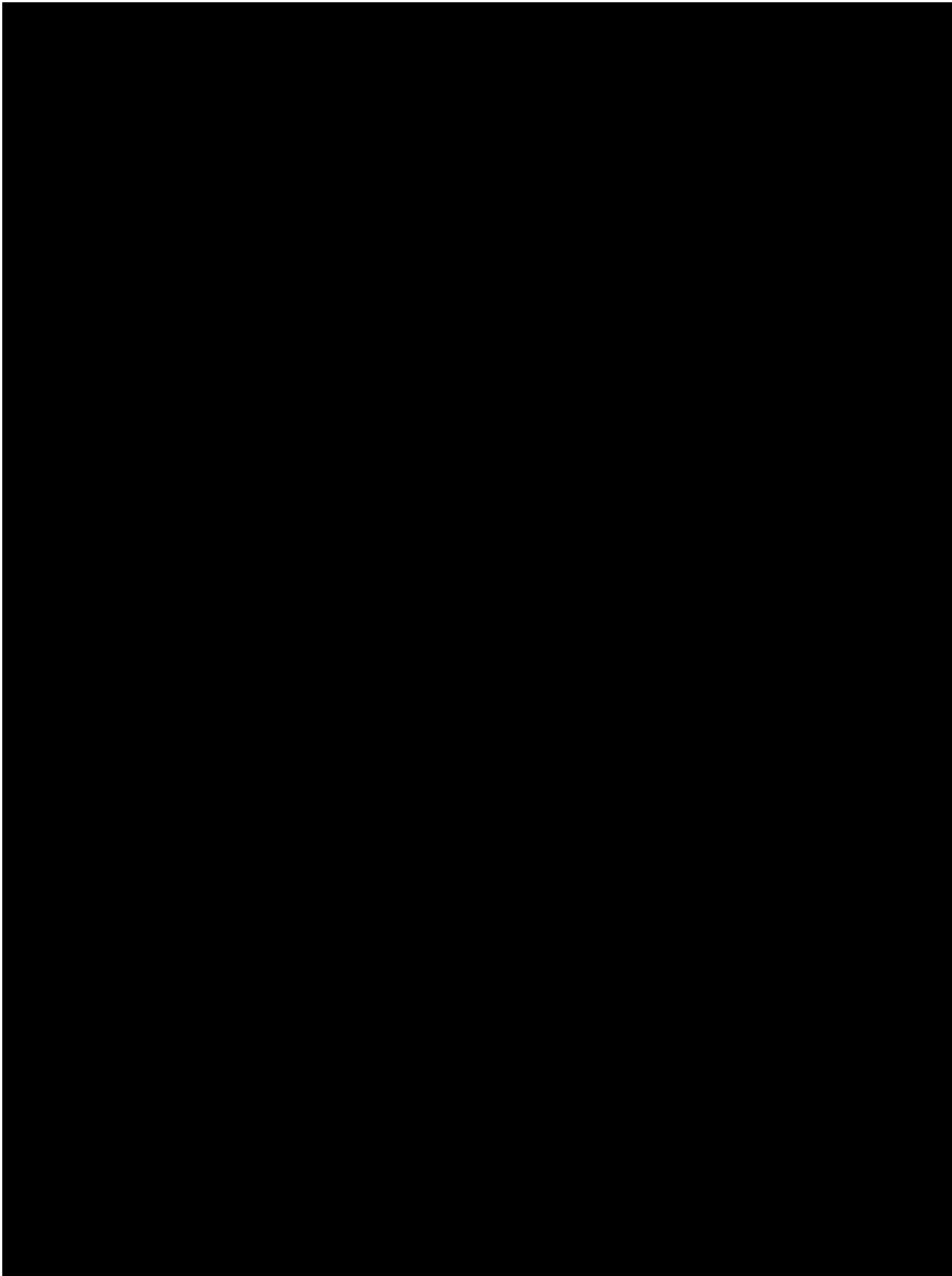
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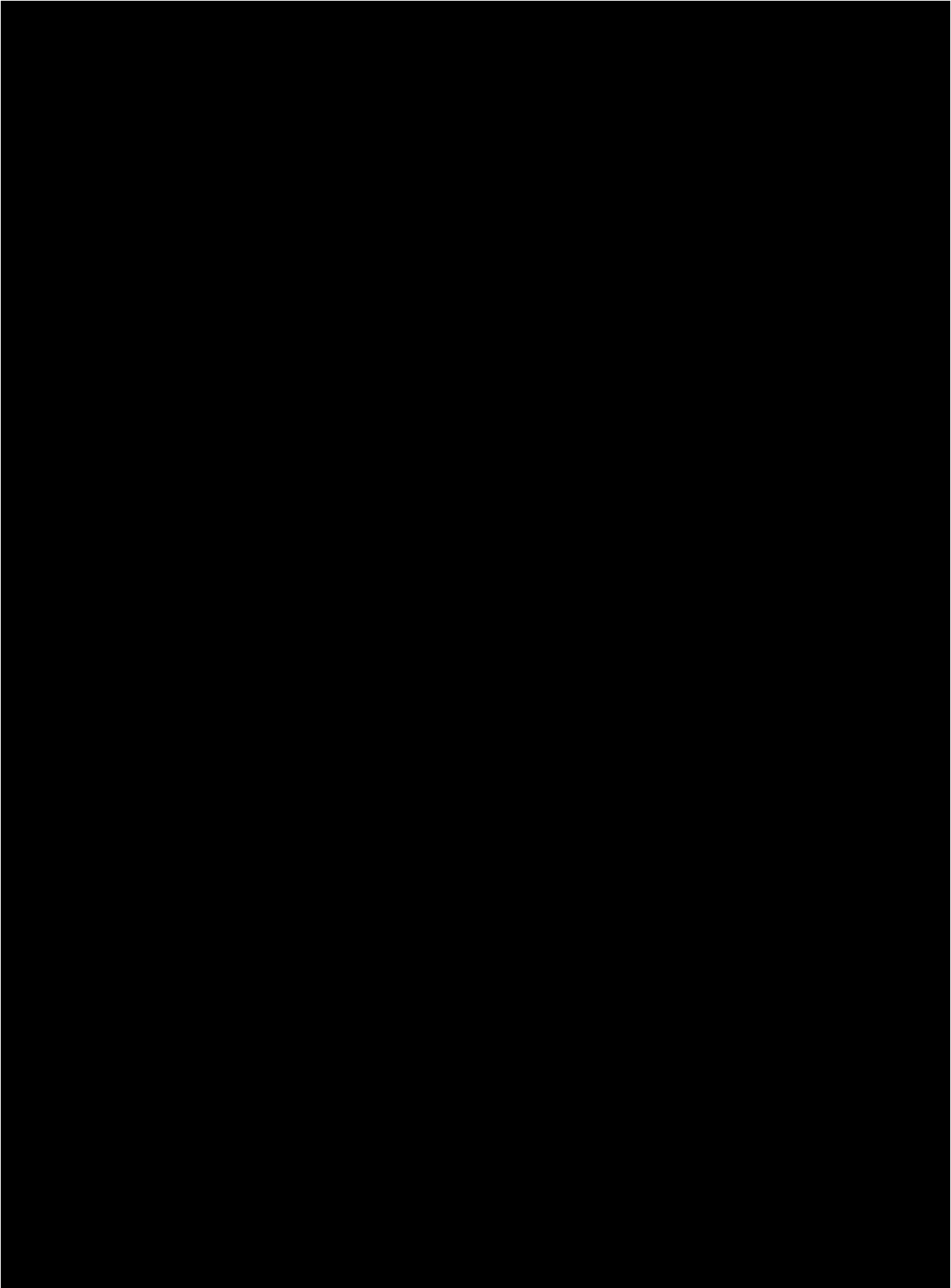
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18 PRESIDENT TERCIER: Good. So, we can now
19 come to the fourth witness of the day, Mr. Jurca.

20 (Pause.)

21 IOAN "SORIN" JURCA, RESPONDENT'S WITNESS, CALLED

22 (Discussion off the record.)

1 PRESIDENT TERCIER: Good afternoon,
2 Mr. Jurca.

3 Before going into our discussion, I would
4 like to know in which language you are ready to
5 testify. You push on the microphone, please, the red
6 button.

7 Okay, that's it, good.

8 THE WITNESS: I wish to testify in Romanian.

9 PRESIDENT TERCIER: Fine.

10 You will be heard in this--do you understand
11 a bit of English or not at all?

12 THE WITNESS: Hardly anything, very little.

13 PRESIDENT TERCIER: Good--not "good." I will
14 take note of it.

15 You will be heard as a witness, as you know,
16 in this proceeding. I would like to introduce a
17 Member of the Tribunal, Professor Horacio Grigera
18 Naón, Professor Zachary Douglas. My name is Pierre
19 Tercier, and we have the Secretary and the Assistant
20 to the Tribunal and the Assistant. And I assume you
21 imagine who are the teams on both sides of the room.

22 You will be heard as a witness. As such, you

1 are invited to read the Declaration that you should
2 find on the desk, on the table.

3 Wait a second. There must be one. It is in
4 English? You prefer that somebody read it in English
5 for you or you can do it?

6 THE WITNESS: I'll try.

7 PRESIDENT TERCIER: Good. Important is that
8 you understand, of course, yeah?

9 THE WITNESS: I solemnly declare upon my
10 honor and conscience that I shall speak the truth, the
11 whole truth, and nothing but the truth.

12 PRESIDENT TERCIER: You can confirm it?

13 THE WITNESS: I can.

14 PRESIDENT TERCIER: You have prepared for
15 this proceeding a witness statement and the Witness
16 Statement from the 24th of April 2019. You have it?

17 THE WITNESS: I do.

18 PRESIDENT TERCIER: Fine. Can you confirm--

19 MS. SIMULESCU: Excuse me for intervening,
20 Mr. President. Our witness prepared two Witness
21 Statements.

22 PRESIDENT TERCIER: Sorry. It's good that

1 you mention it to me.

2 MS. SIMULESCU: The second one is a
3 supplemental witness statement, and he has both of
4 them in front of him.

5 PRESIDENT TERCIER: Okay, sorry. Indeed.

6 Second, I think I have only one. Can you
7 tell me when was the date of the second?

8 SPEAKER: The second, 10th of May 2018.

9 PRESIDENT TERCIER: The 10th of May two
10 thousand--no.

11 MS. SIMULESCU: It's 11 of November 2019.

12 PRESIDENT TERCIER: 11 of November 2019.

13 Okay.

14 Sorry. You have it. I have it not in the
15 file that was prepared.

16 Can you confirm their content of these two
17 Witness Statements?

18 THE WITNESS: Yes, I can confirm.

19 PRESIDENT TERCIER: You have no amendments,
20 nothing to add or to change?

21 THE WITNESS: I just have one amendment in
22 Paragraph 31 and 32.

1 There was an error. Instead of the General
2 Urbanism Plan, I said "Zonal Urbanism Plan."

3 PRESIDENT TERCIER: You wrote the zoning plan
4 for the Project Area?

5 THE WITNESS: Da.

6 PRESIDENT TERCIER: And what should be there?
7 Plan--

8 (Overlapping speaker with interpretation.)

9 THE WITNESS: It should have been in PUG,
10 General Urbanism Plan.

11 PRESIDENT TERCIER: Okay, that's for the
12 changes.

13 Now, you know how this procedure will be
14 conducted. I will ask you one or two questions. Then
15 we will have counsel for Respondent starting with the
16 direct, then counsel for Claimants making the
17 cross-examination, and then again a redirect, the
18 Tribunal having the right to ask questions at any
19 time.

20 Just starting, could you just in a few words
21 introduce yourself, telling what is your education
22 first and what has been your involvement in the

1 procedure.

2 THE WITNESS: My name is Jurca Ioan.
3 Everybody knows me by the name "Sorin." And this is
4 what I was called in the family. I was born in Brad.
5 Then I came back with my family at home in Rosia
6 Montana where I've been living for a lifetime.

7 I have three properties, one in the
8 Industrial Area of the Project, one in the Historical
9 Center, and the other one in the sanitary zone.

10 I established a family there. I graduated
11 from the industrial high school, the electric
12 technical high school in Abrud, after which I joined
13 the Army. And when I returned, I was trained in a
14 high school in Deva. This allowed me to start working
15 as an assistant geologist for almost 20 years in the
16 Rosia Montana mining exploitation, and this happened
17 until 2006.

18 What I can say is that my life has changed a
19 lot in the past 22 years because, with the arrival of
20 this mining company which wanted to develop the
21 Project in Rosia Montana, I found out from an
22 Australian geologist called "Greg," that if I can see

1 this mountain, the Cârnic Massif next to the
2 Historical Center where I live, that Massif was going
3 to be destroyed. It was going to be mined in 25
4 years.

5 PRESIDENT TERCIER: If I interrupt you, we
6 will certainly go into this point. If you can just,
7 for us to have the screen, your involvement generally
8 and then we will give the floor to the counsel.

9 THE WITNESS: Okay. When I found out what
10 was going to happen, I considered it was necessary for
11 me to get involved. My involvement consisted in
12 enrolling in the Alburnus Maior Association. It's an
13 association of the owners of Rosia Montana who did not
14 want to sell their properties. Afterwards, I
15 participated in many protest, and I also filed a
16 petition with the European Parliament.

17 I also established a cultural foundation
18 called the Rosia Montana Cultural Foundation.

19 Along the years, nobody and nothing could
20 change my opinion. I was, I am, and will remain an
21 opponent of this project.

22 PRESIDENT TERCIER: Okay. Now, a second

1 question is linked to the drafting of your Witness
2 Statements. You have prepared it yourself or have you
3 had contact with the counsel? In which language did
4 you prepare it? Just a few words.

5 THE WITNESS: I collaborated with the
6 counsels. Many of the statements in English or many
7 of the references in English were translated to me,
8 and I agreed with everything we drafted together.

9 PRESIDENT TERCIER: Okay. You have seen the
10 English version?

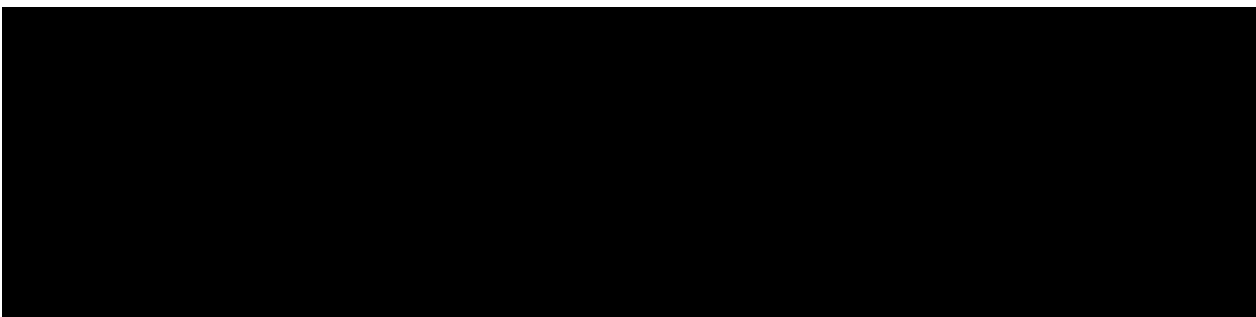
11 THE WITNESS: Yes, the version of certain
12 documents which were translated to me. Some documents
13 were indeed in English and they were translated to me.

14 PRESIDENT TERCIER: Okay. Good. If there
15 are no questions from my co-Arbitrators.

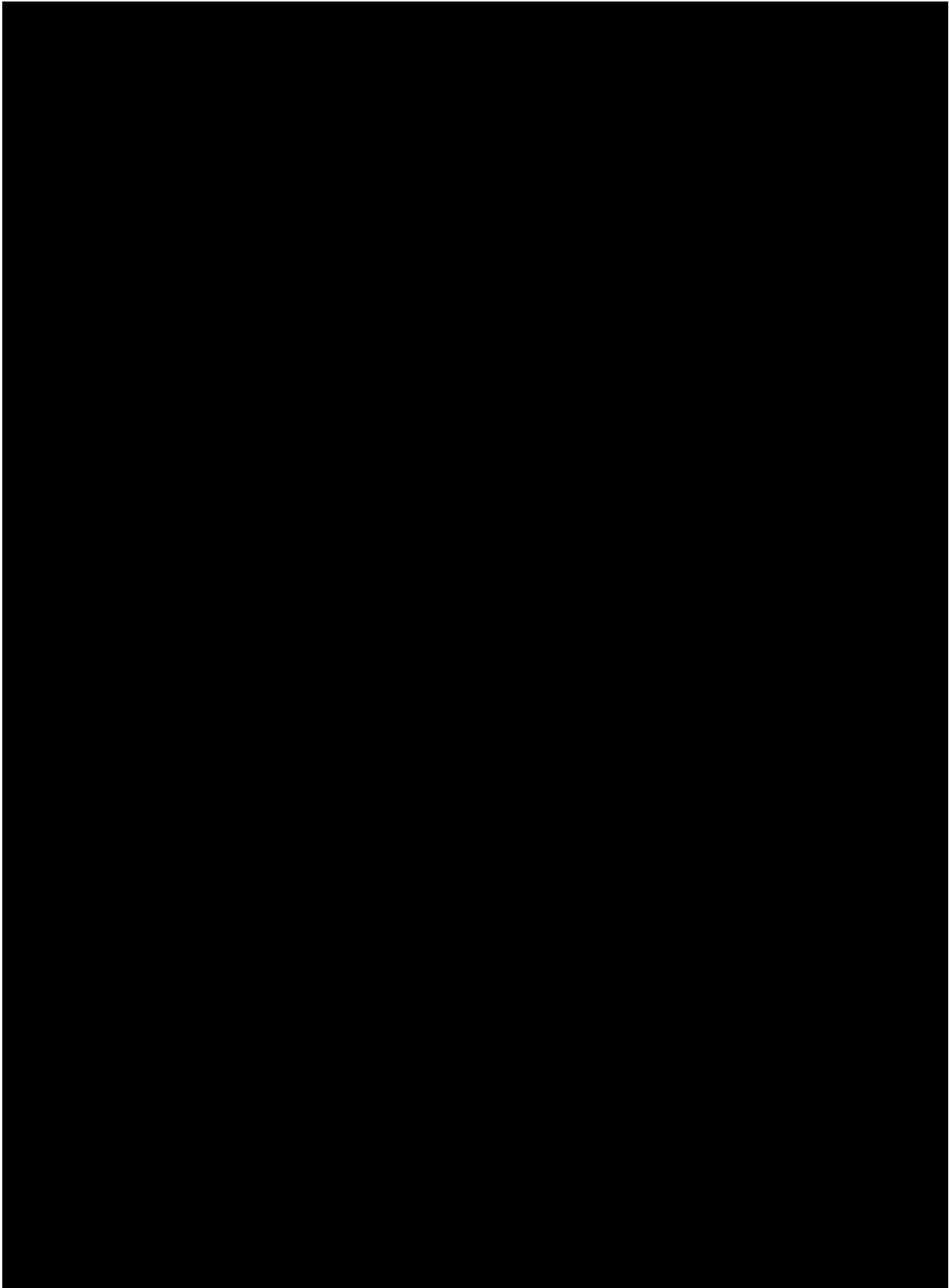
16 Please, you have the floor.

17 MS. SIMULESCU: Thank you, Mr. President.

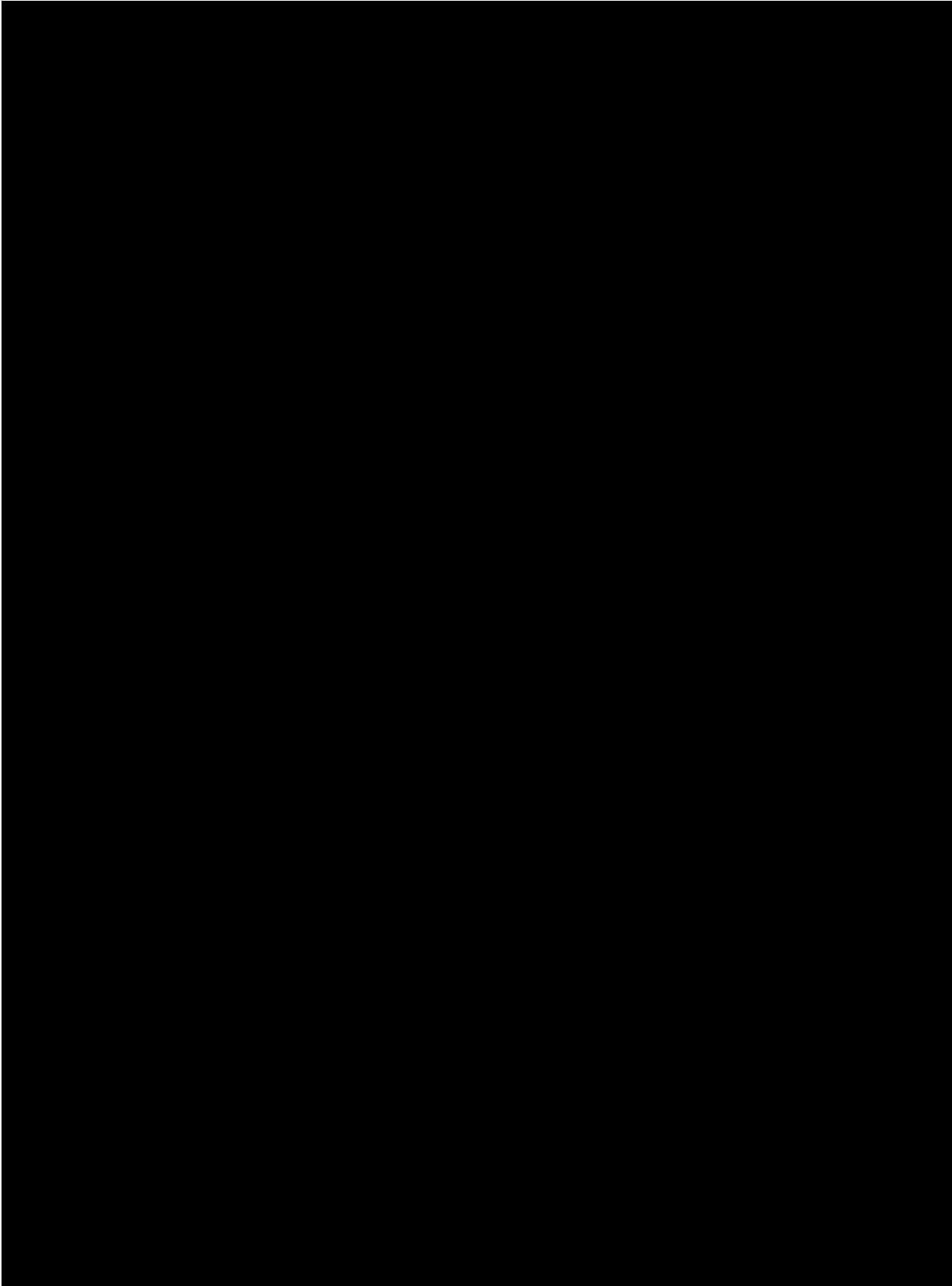
18 DIRECT EXAMINATION



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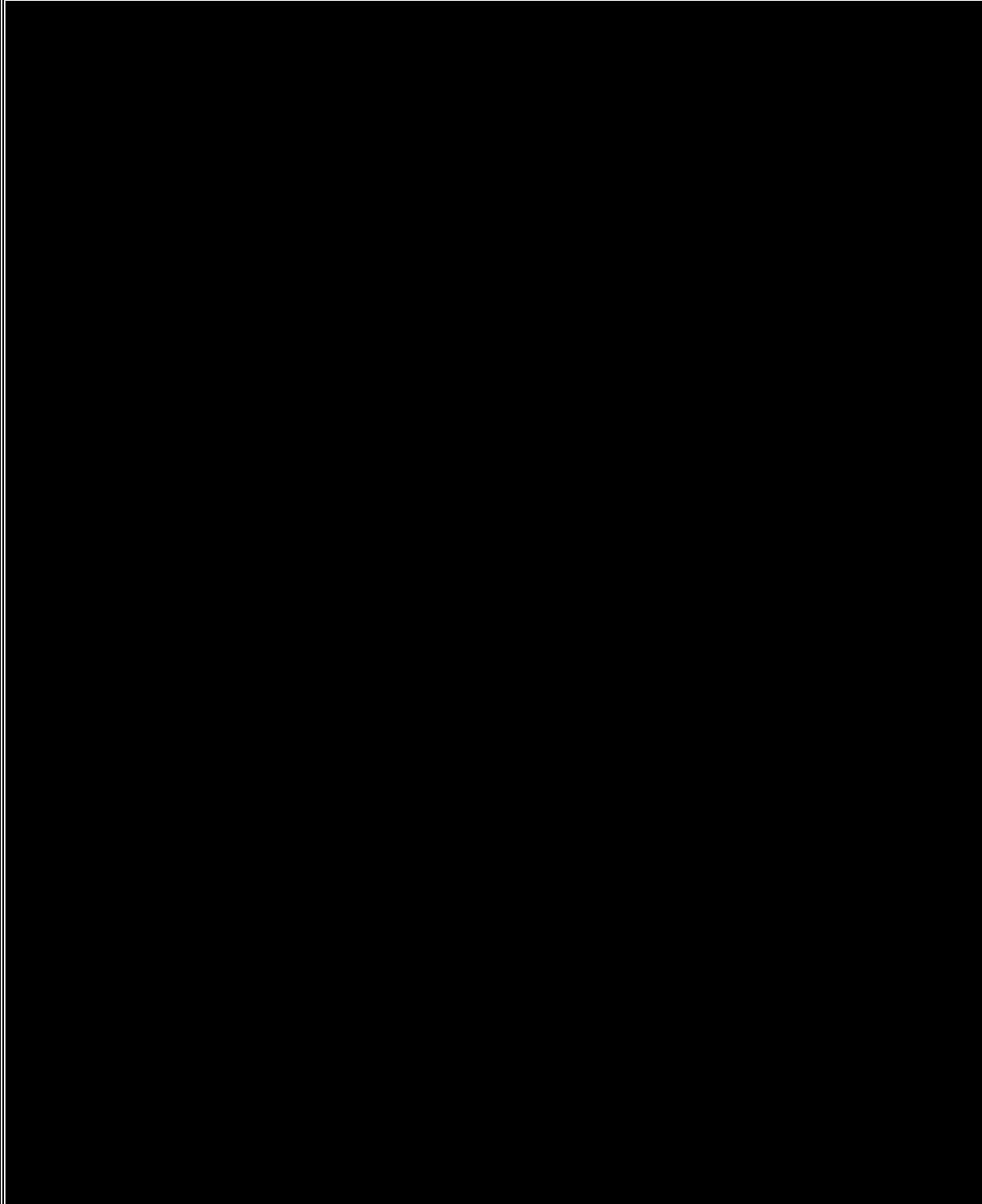
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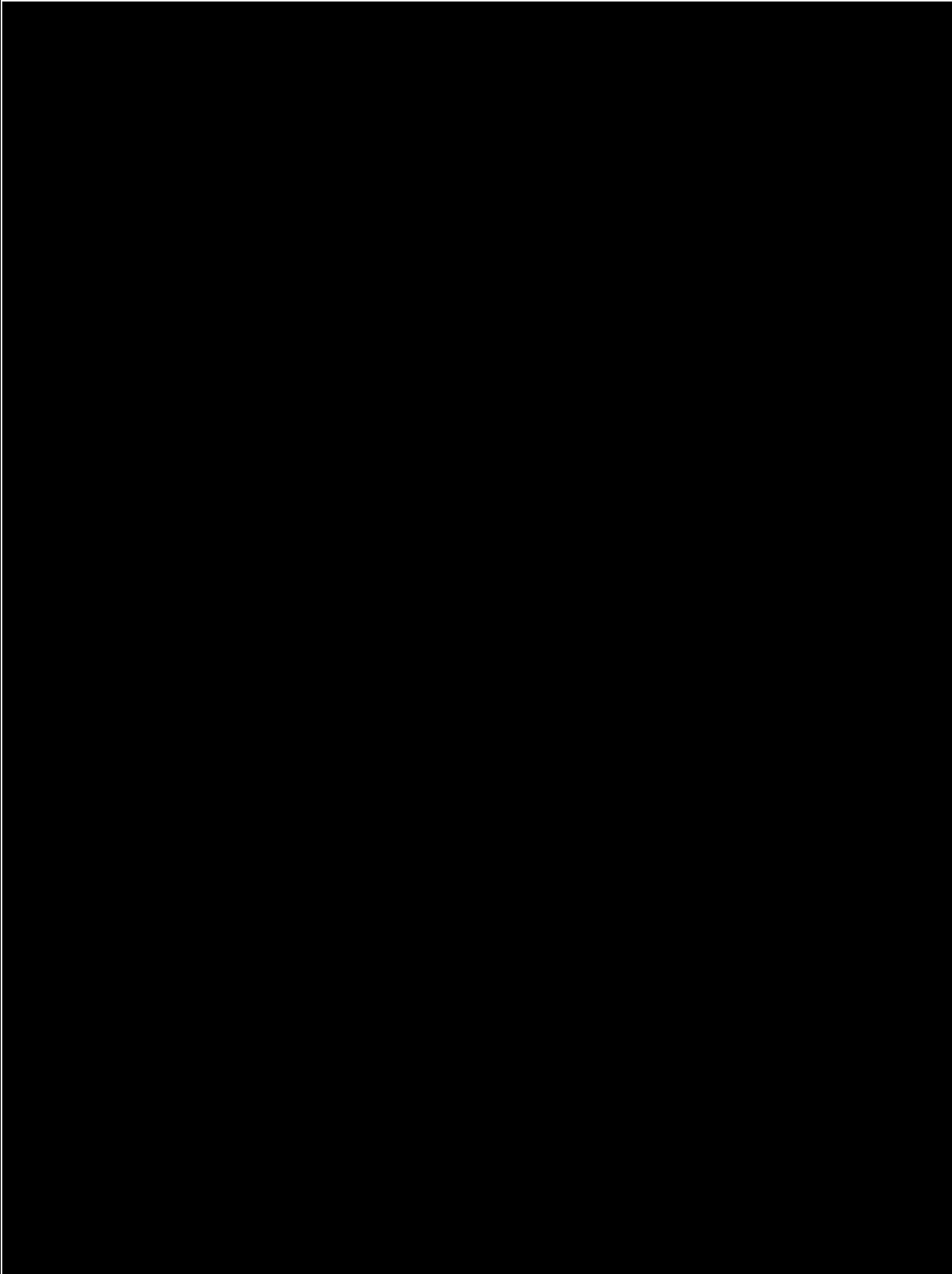
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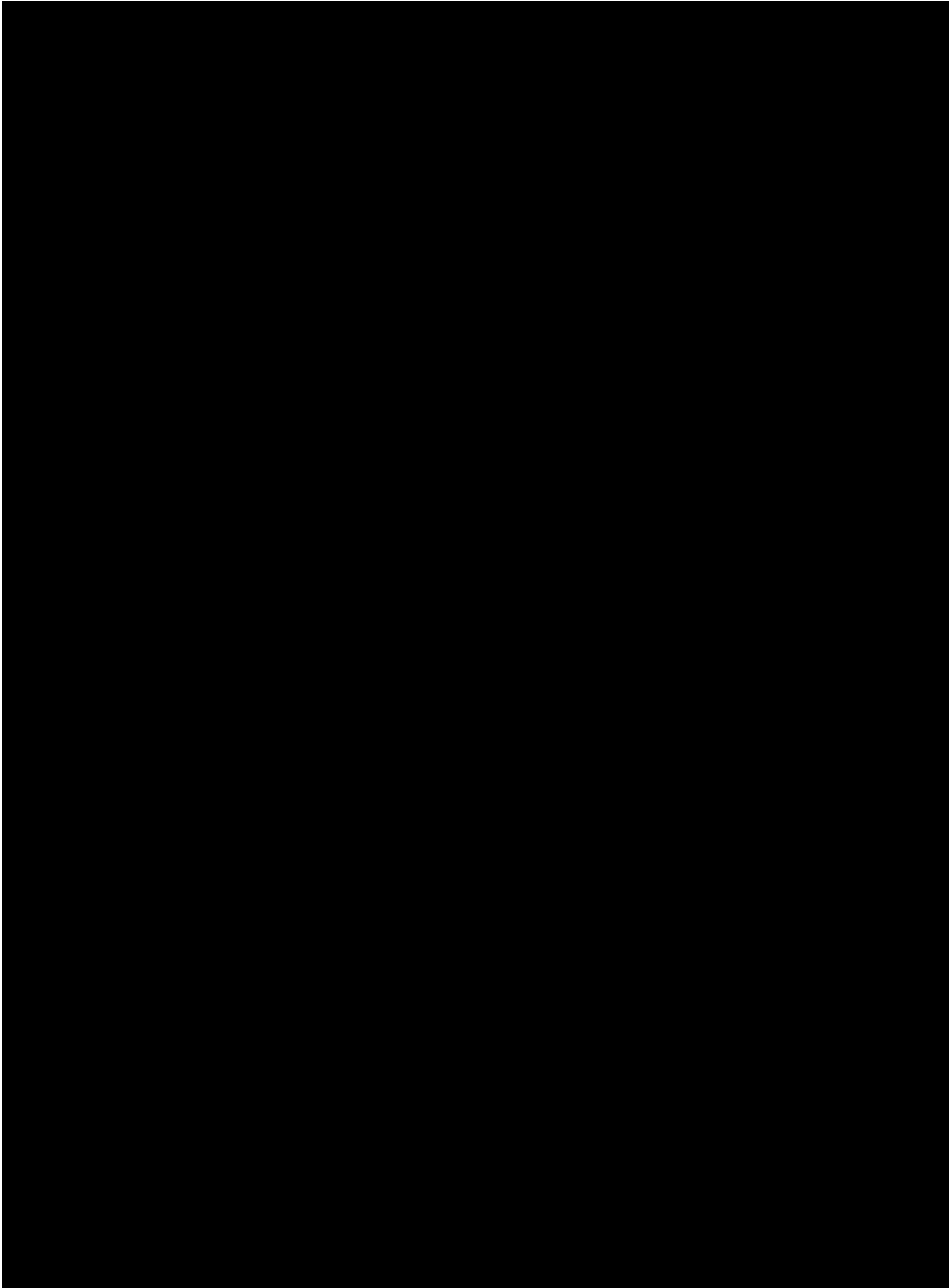
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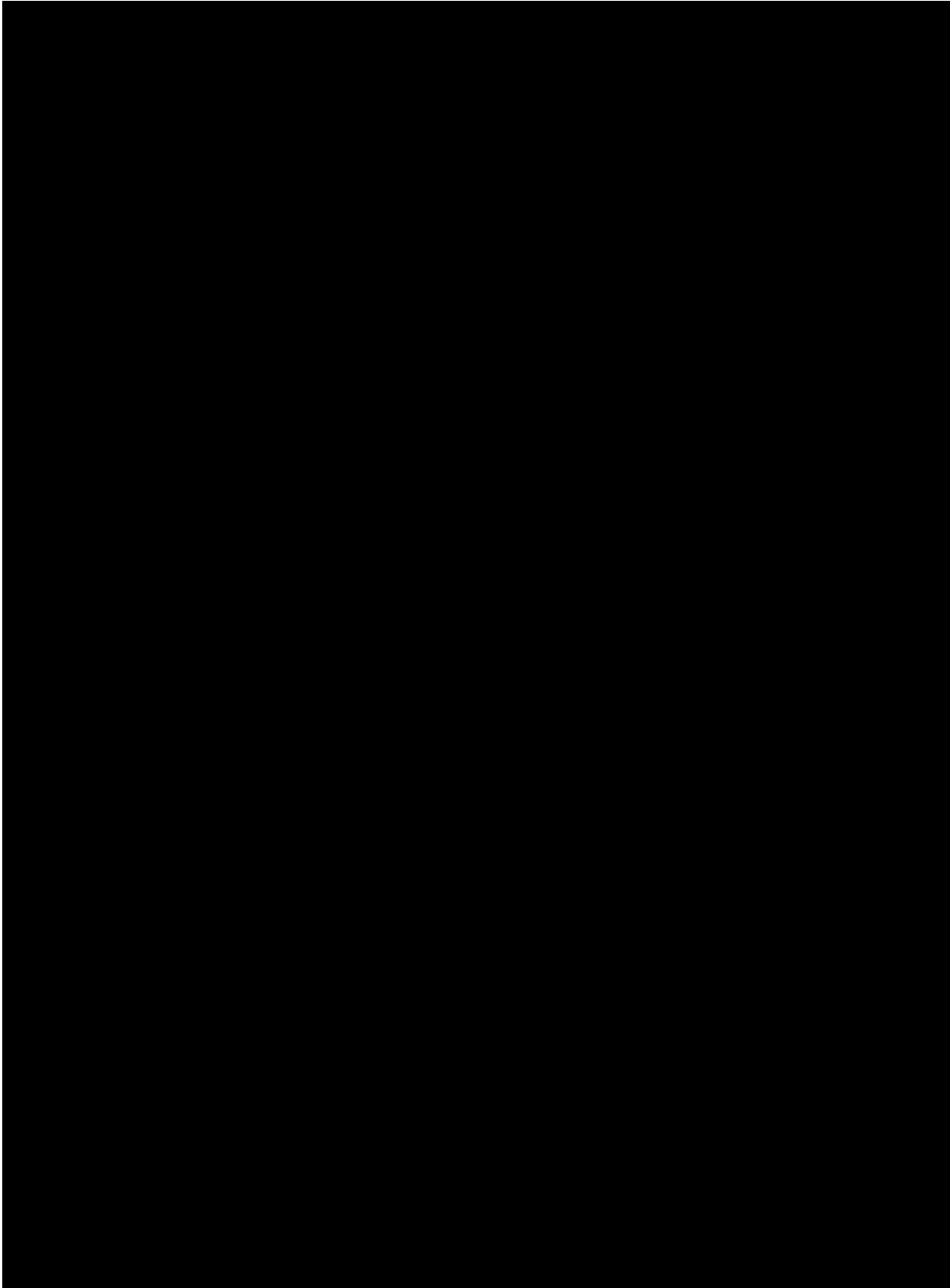
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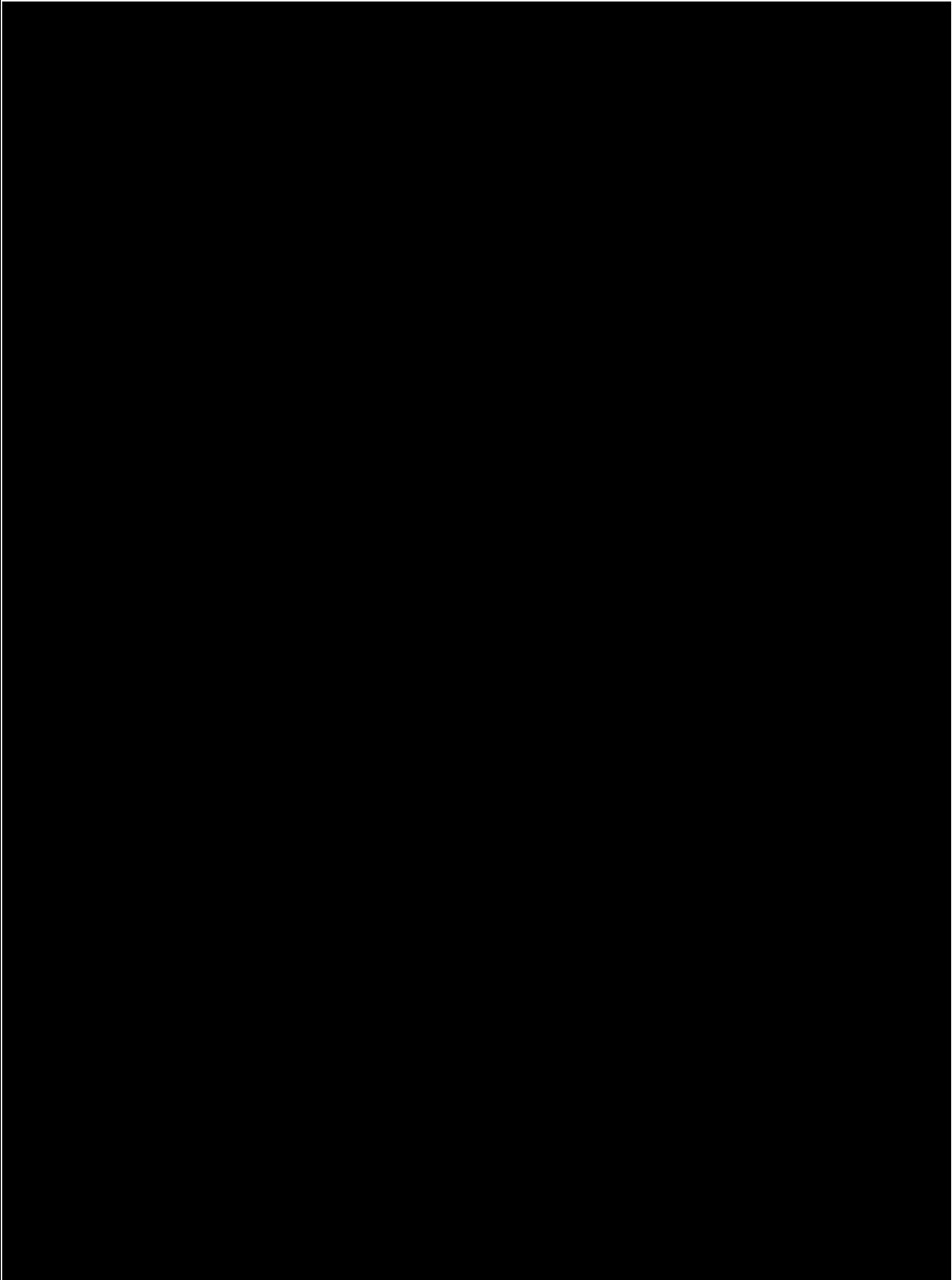
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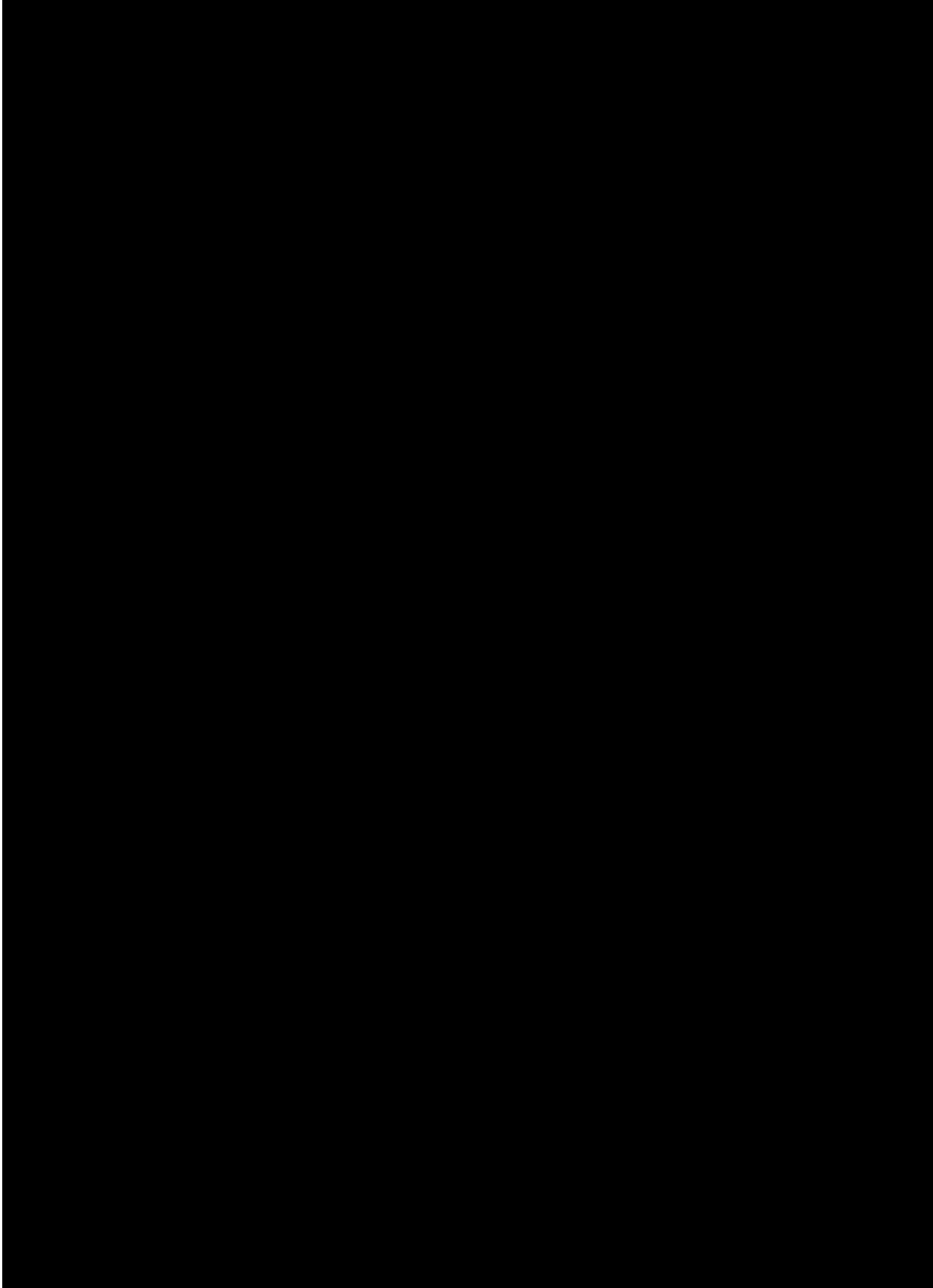
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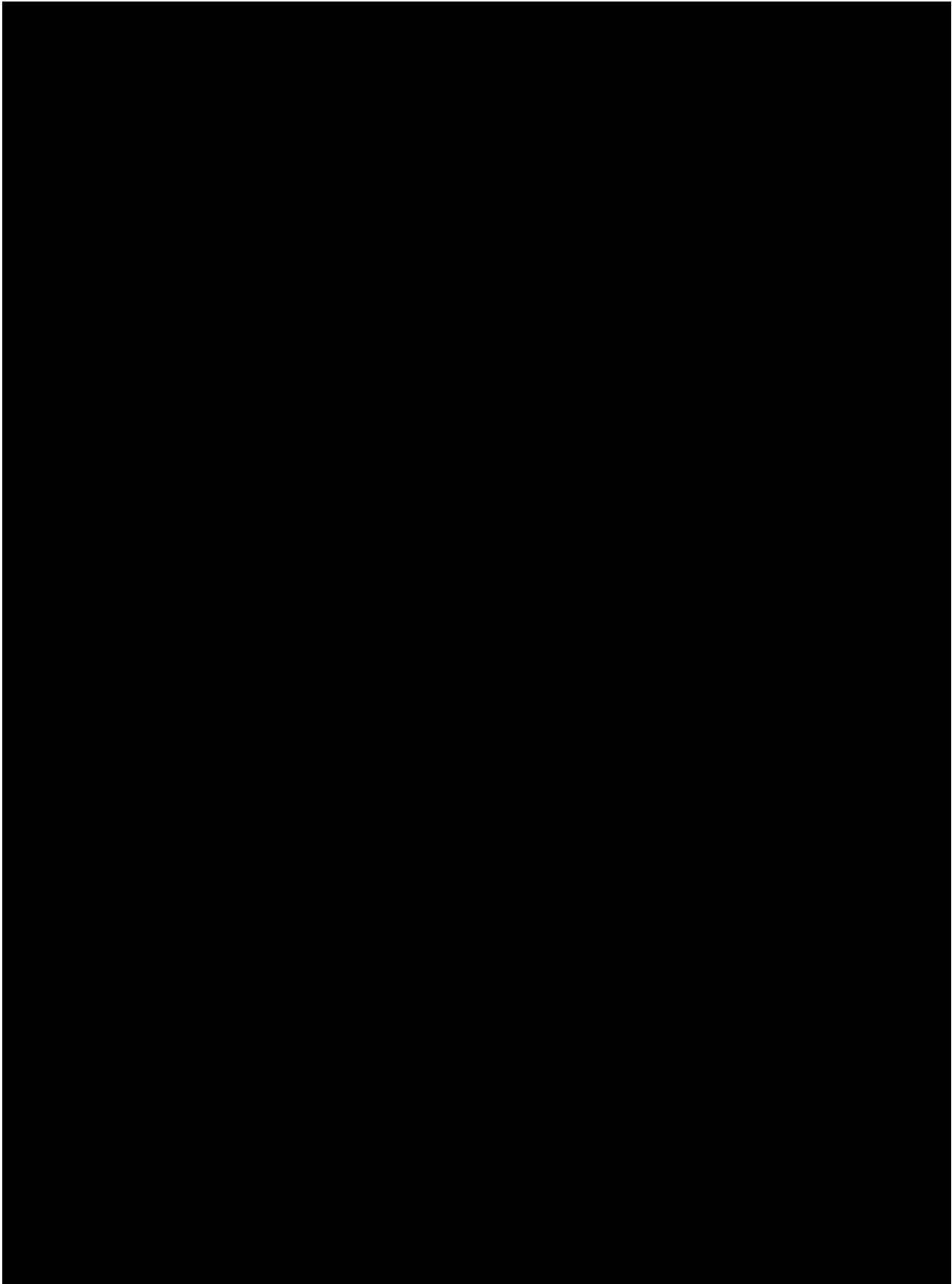
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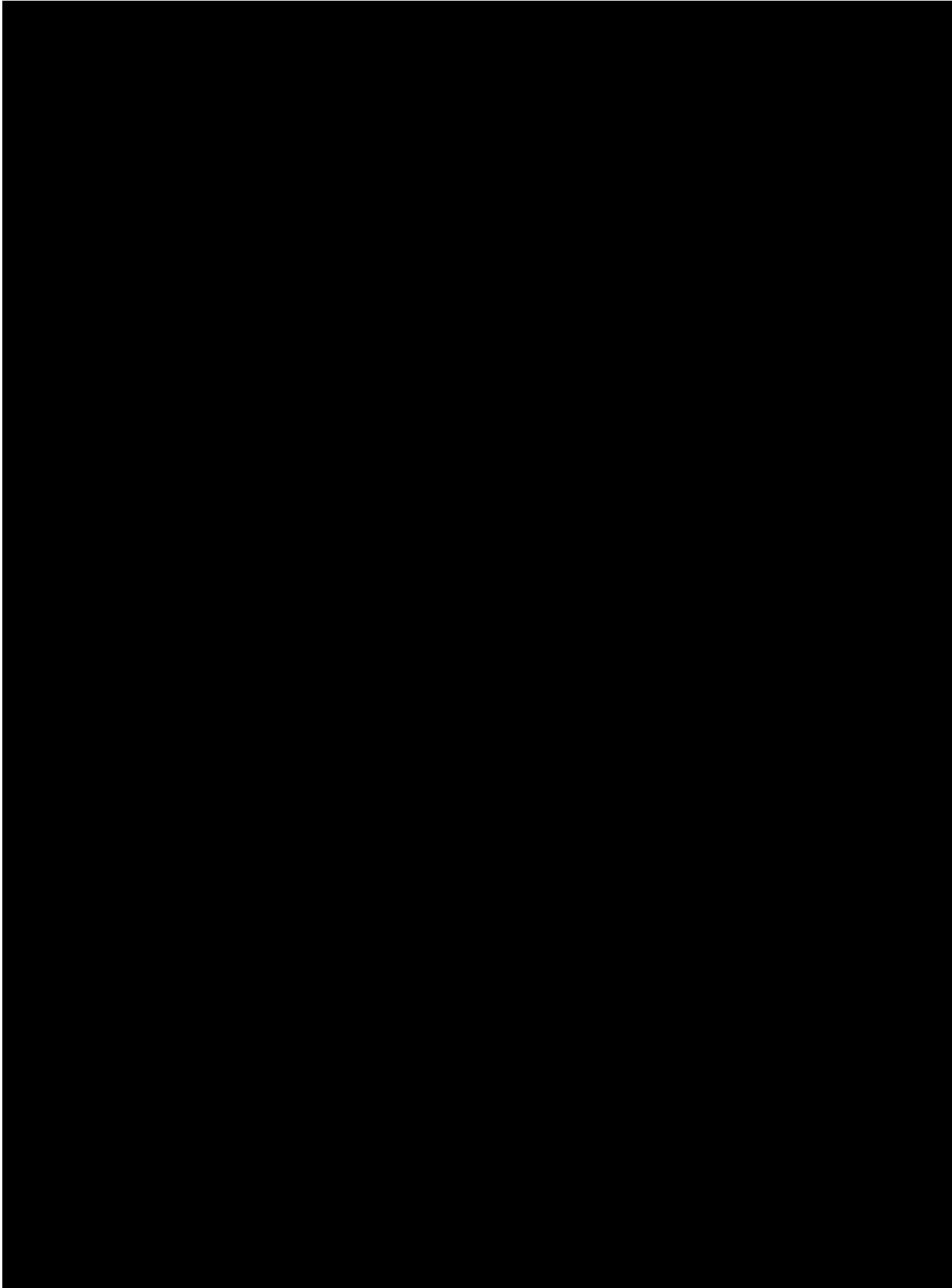
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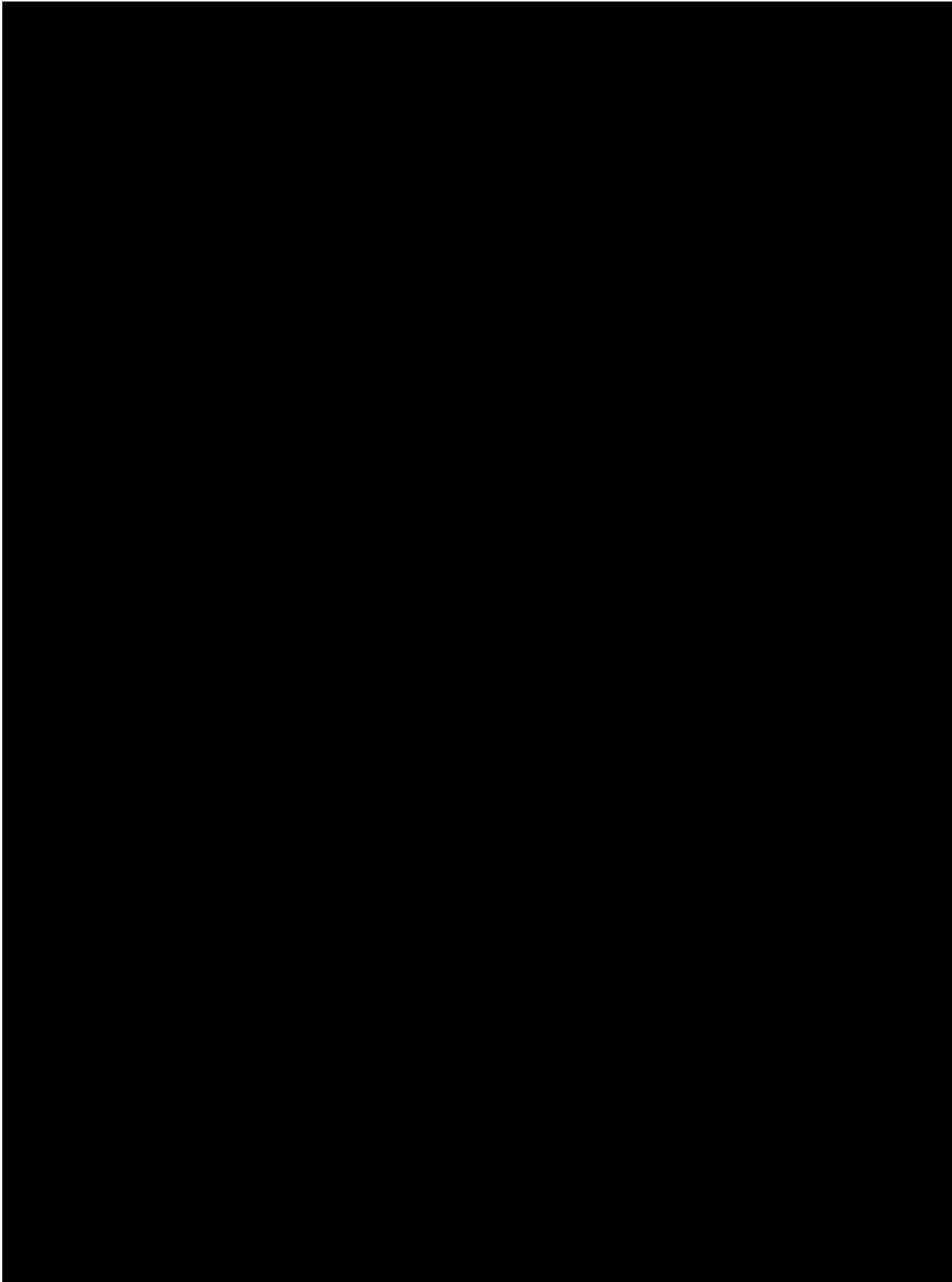
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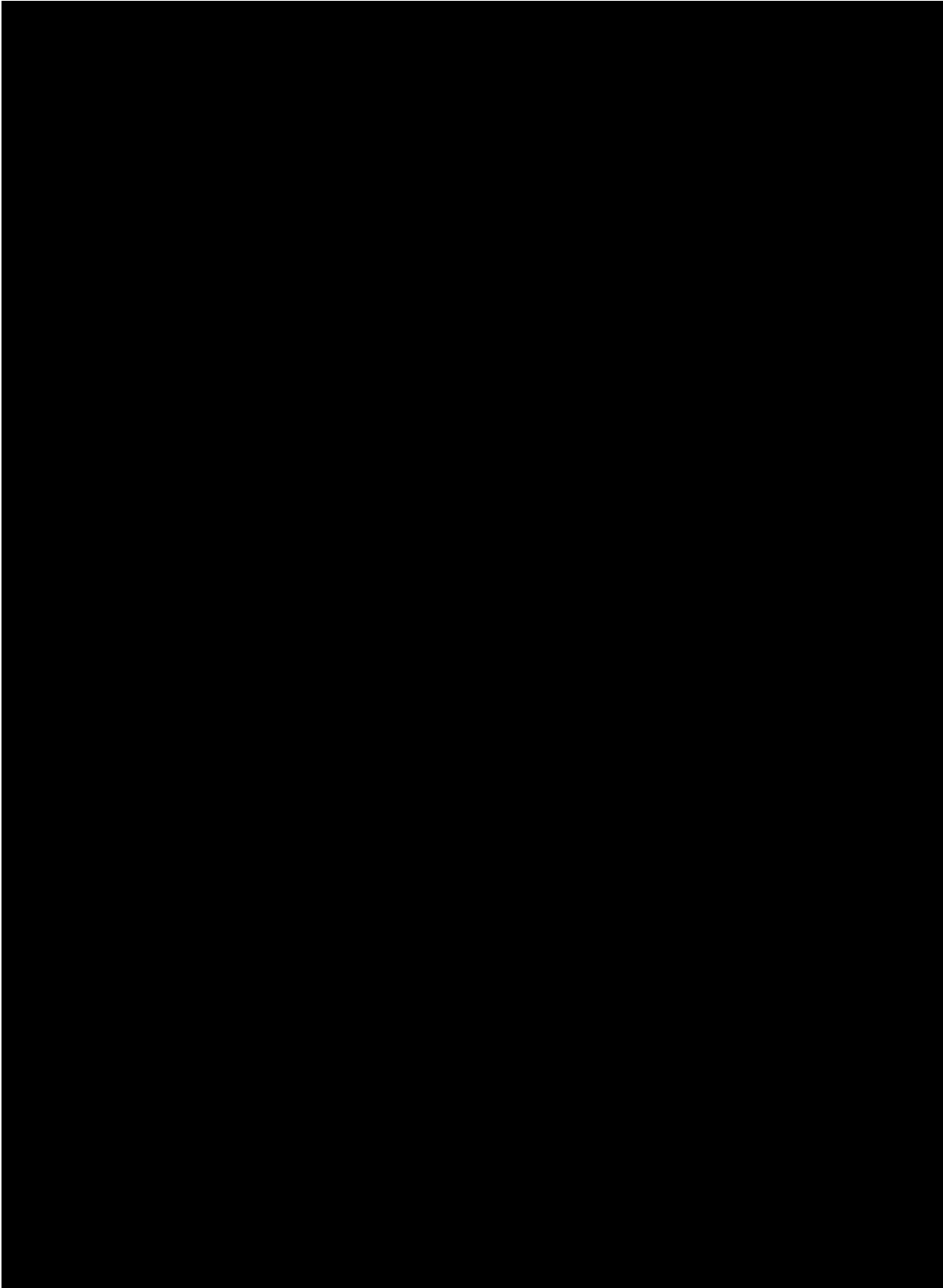
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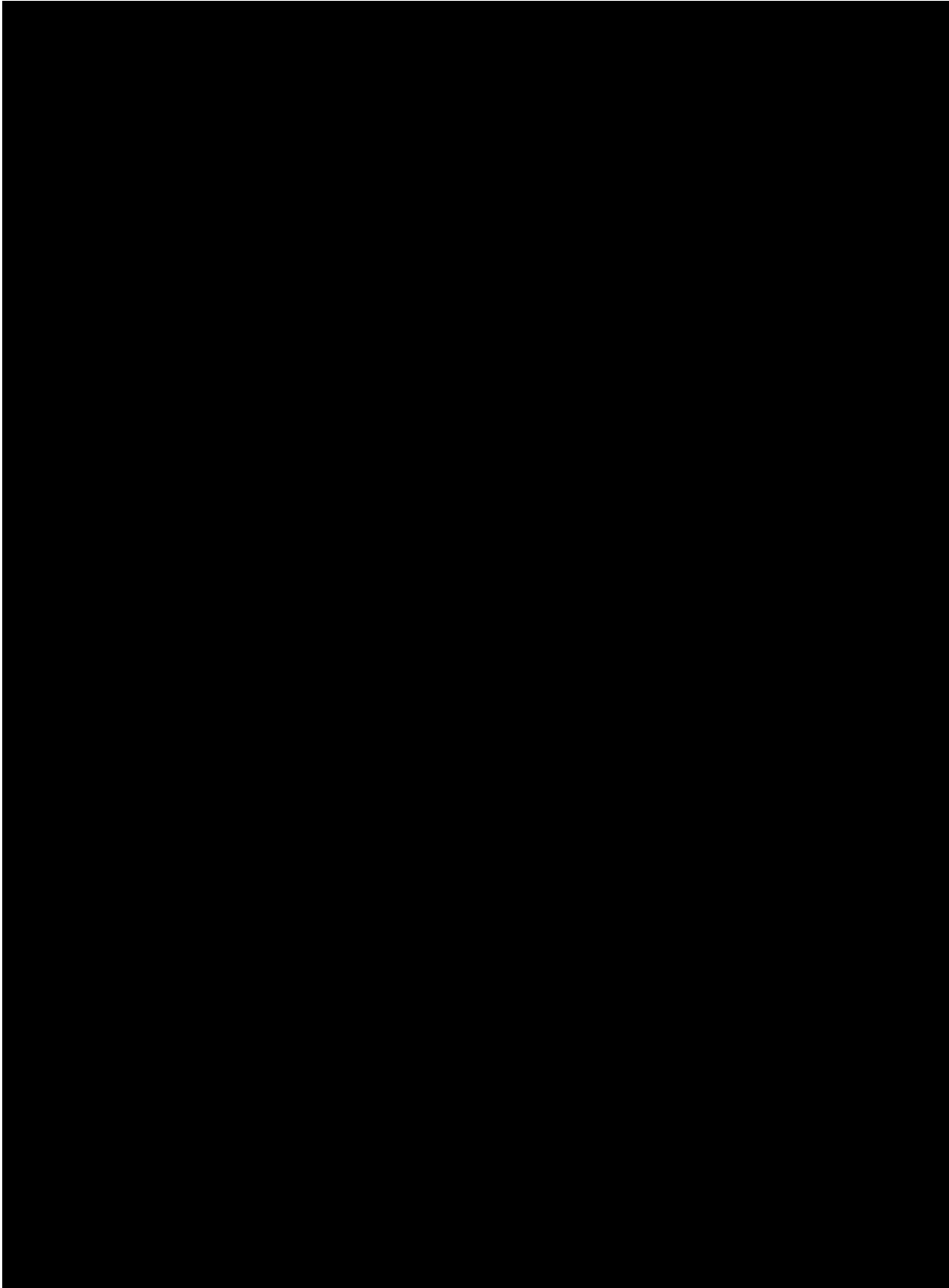
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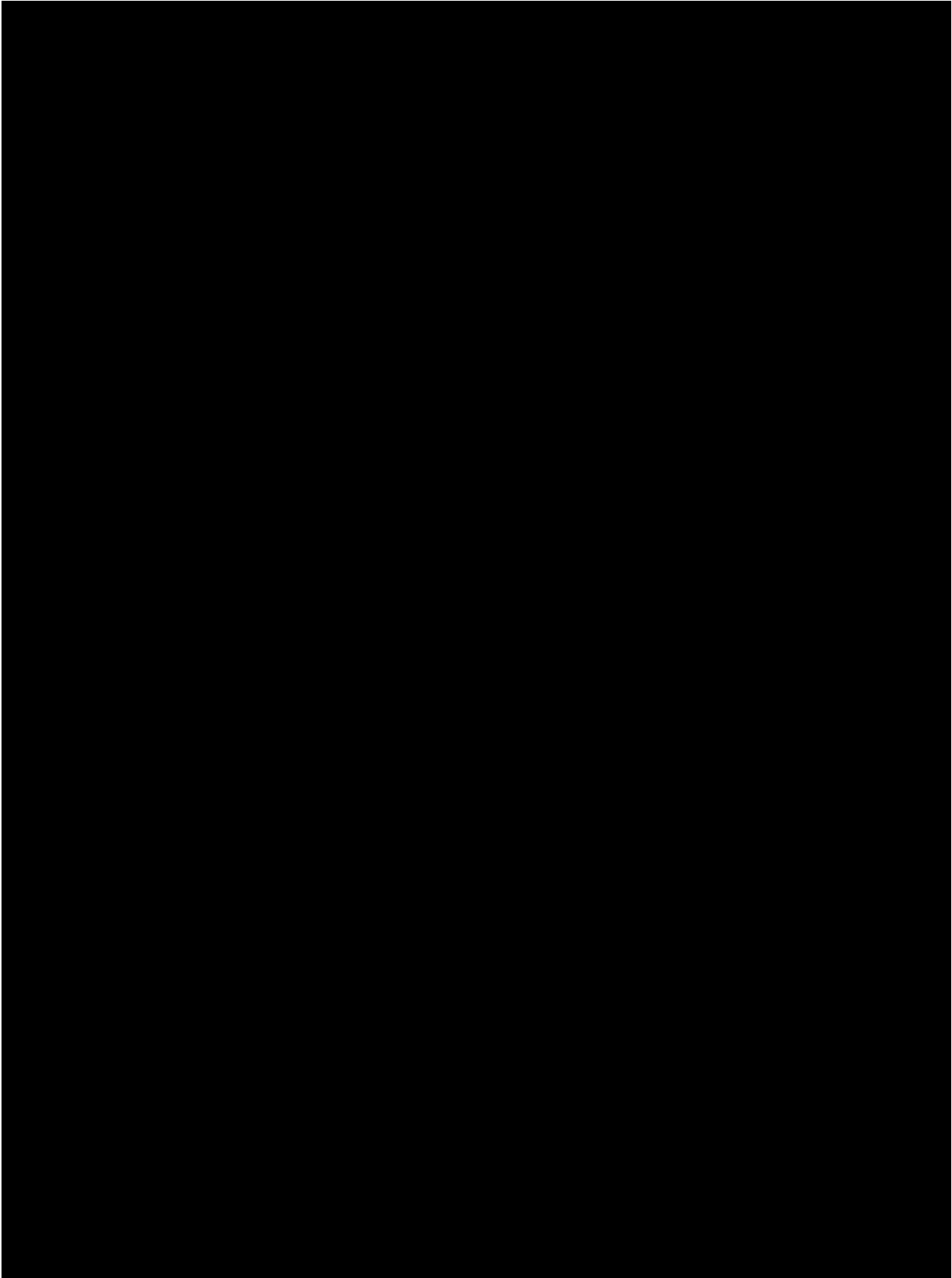
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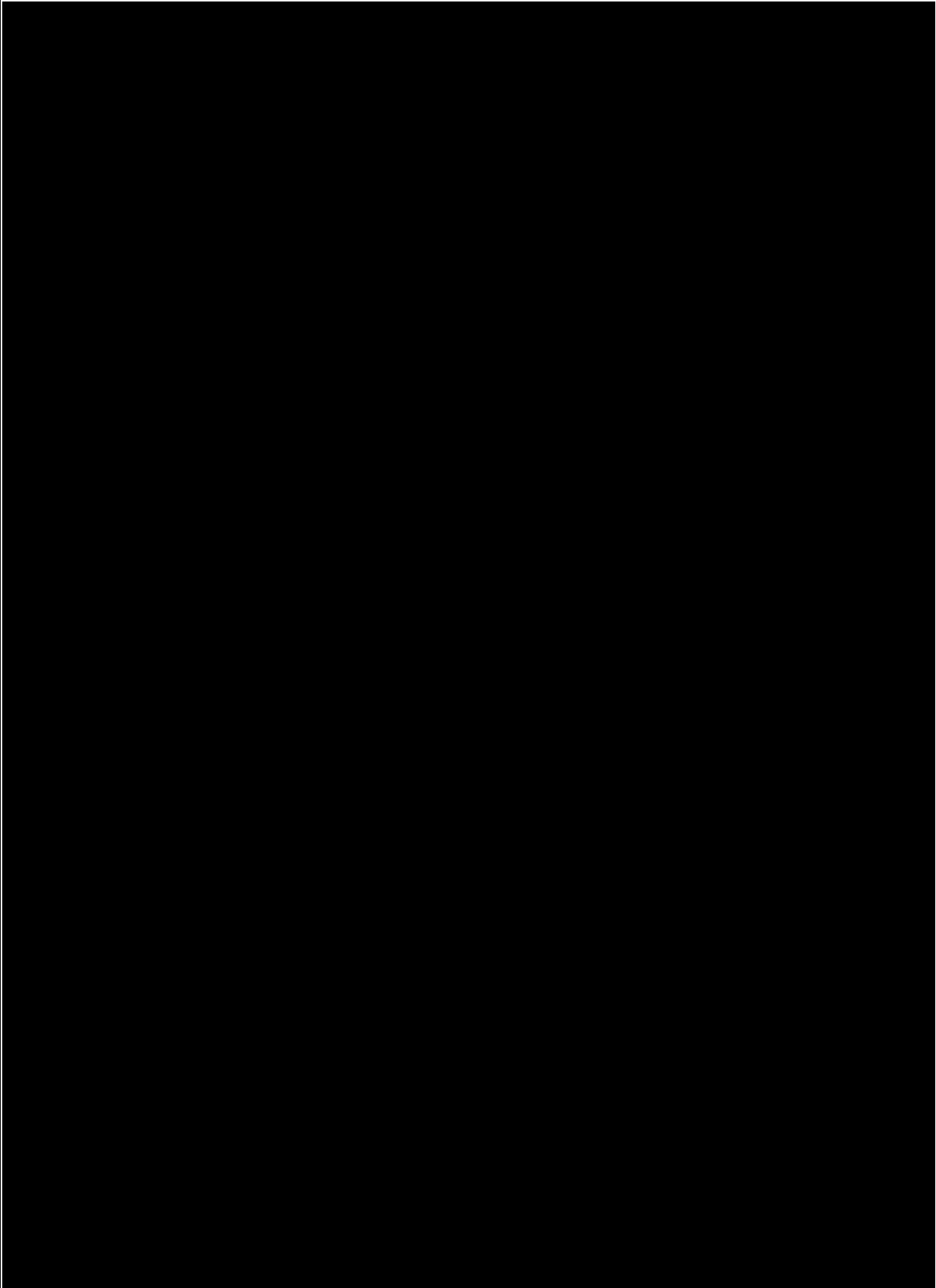
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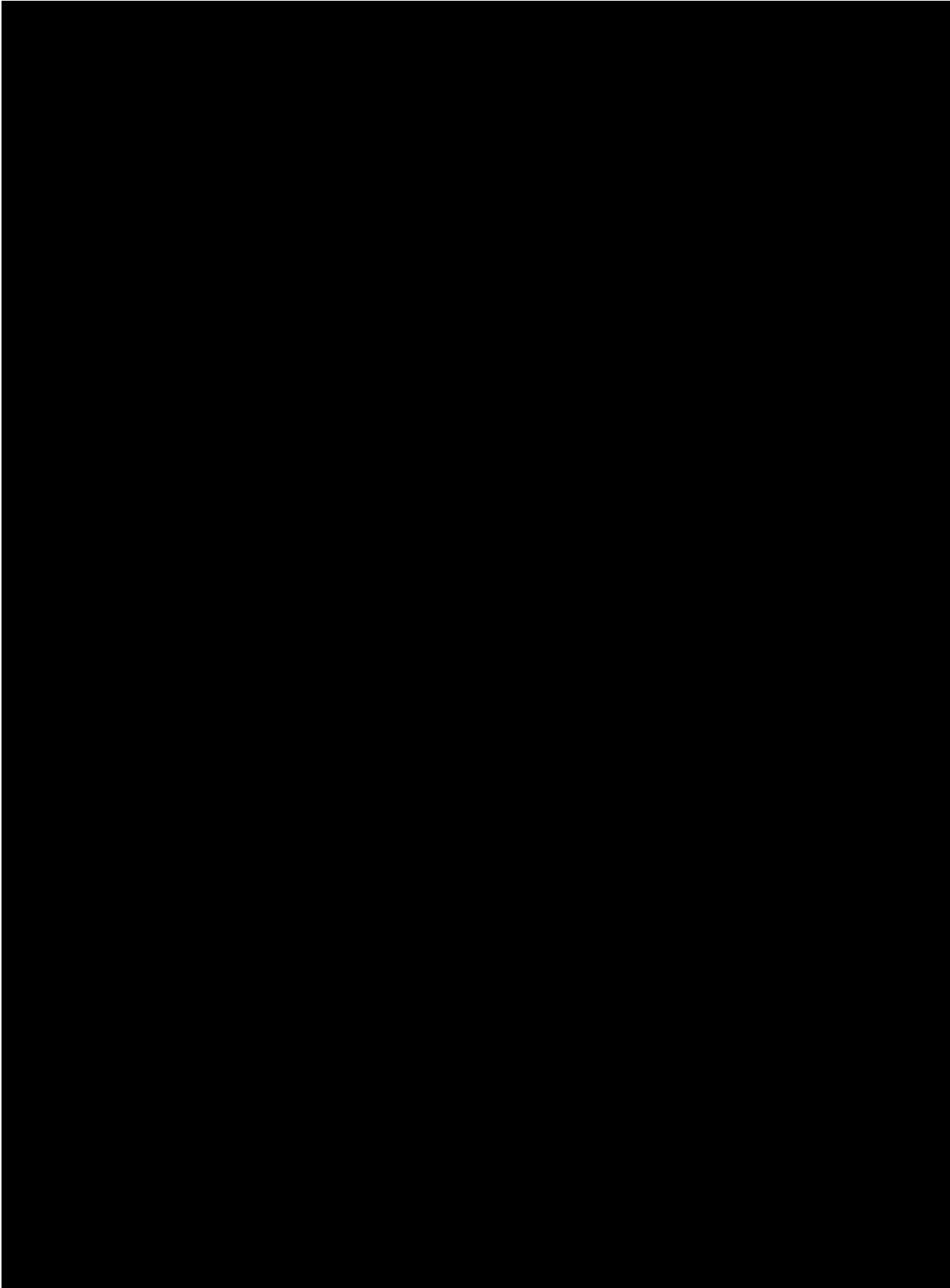
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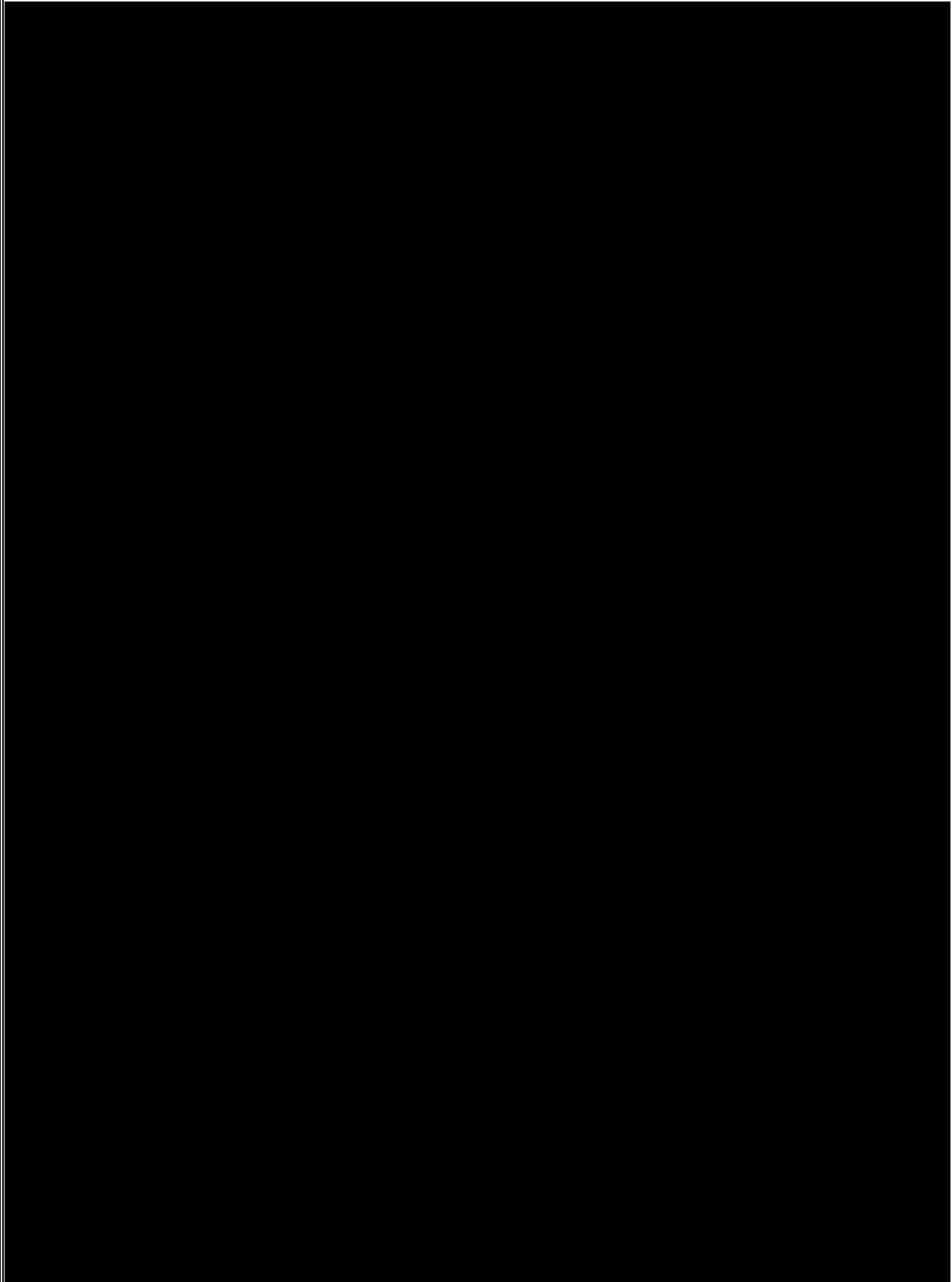
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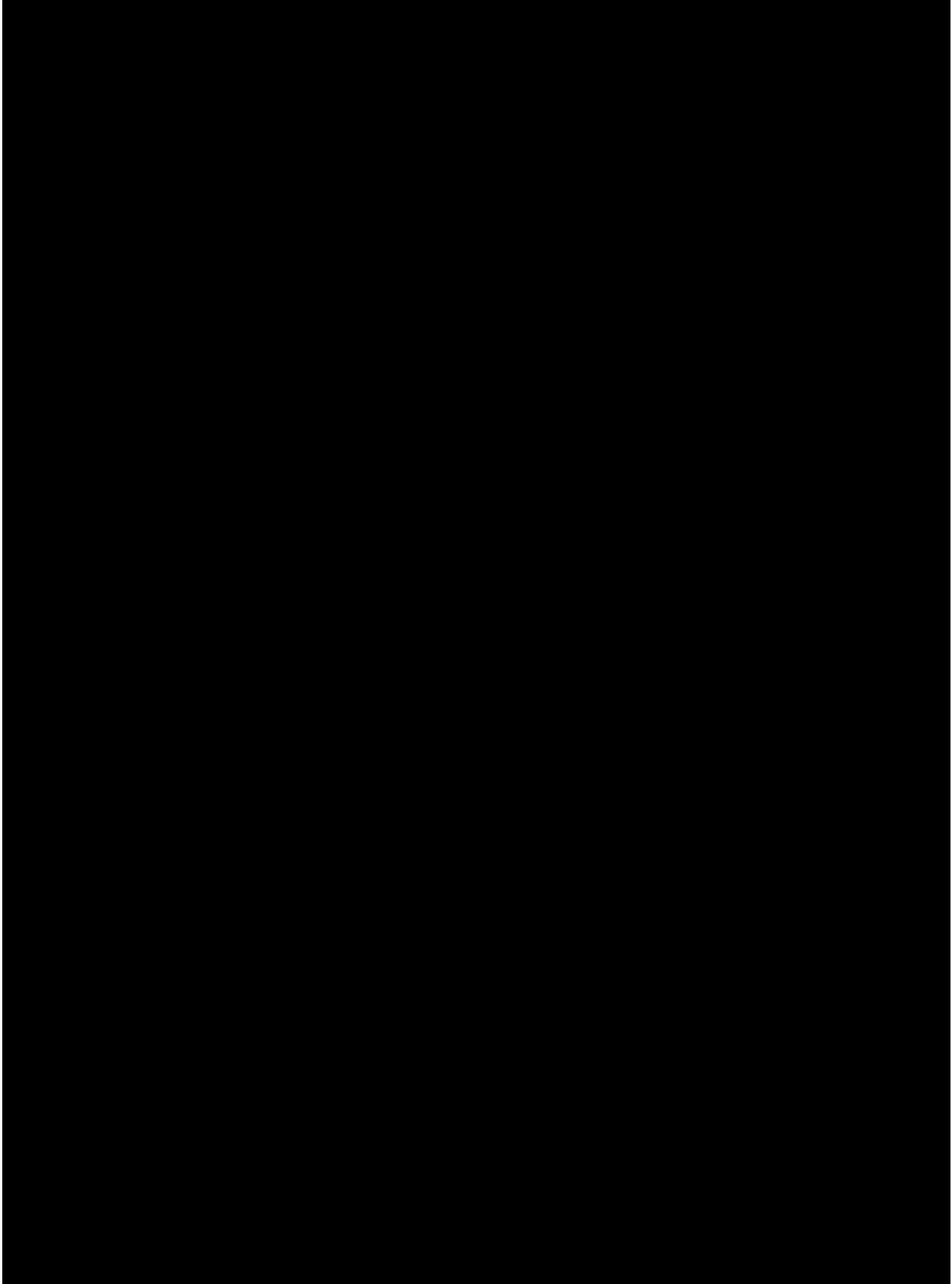
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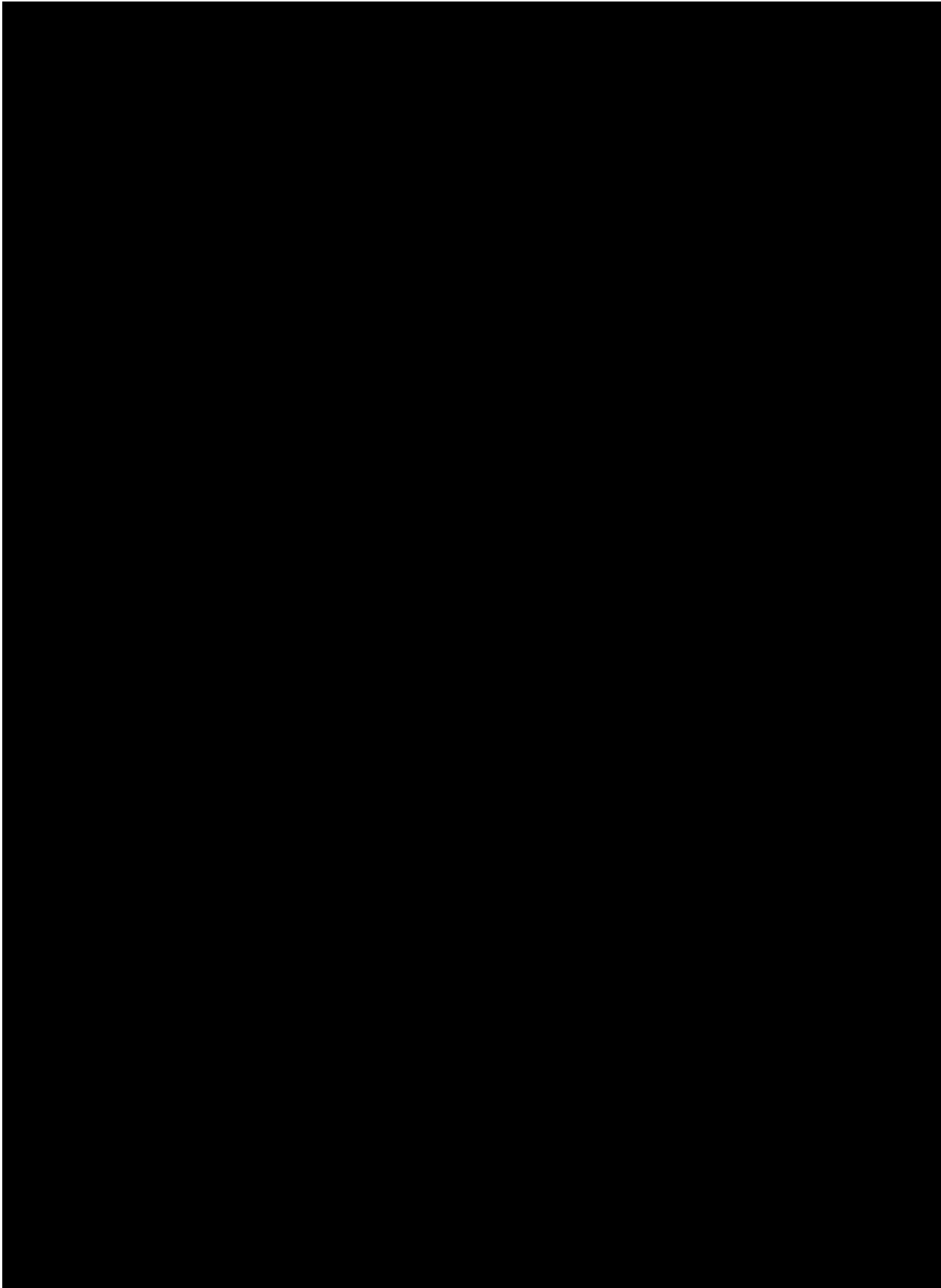
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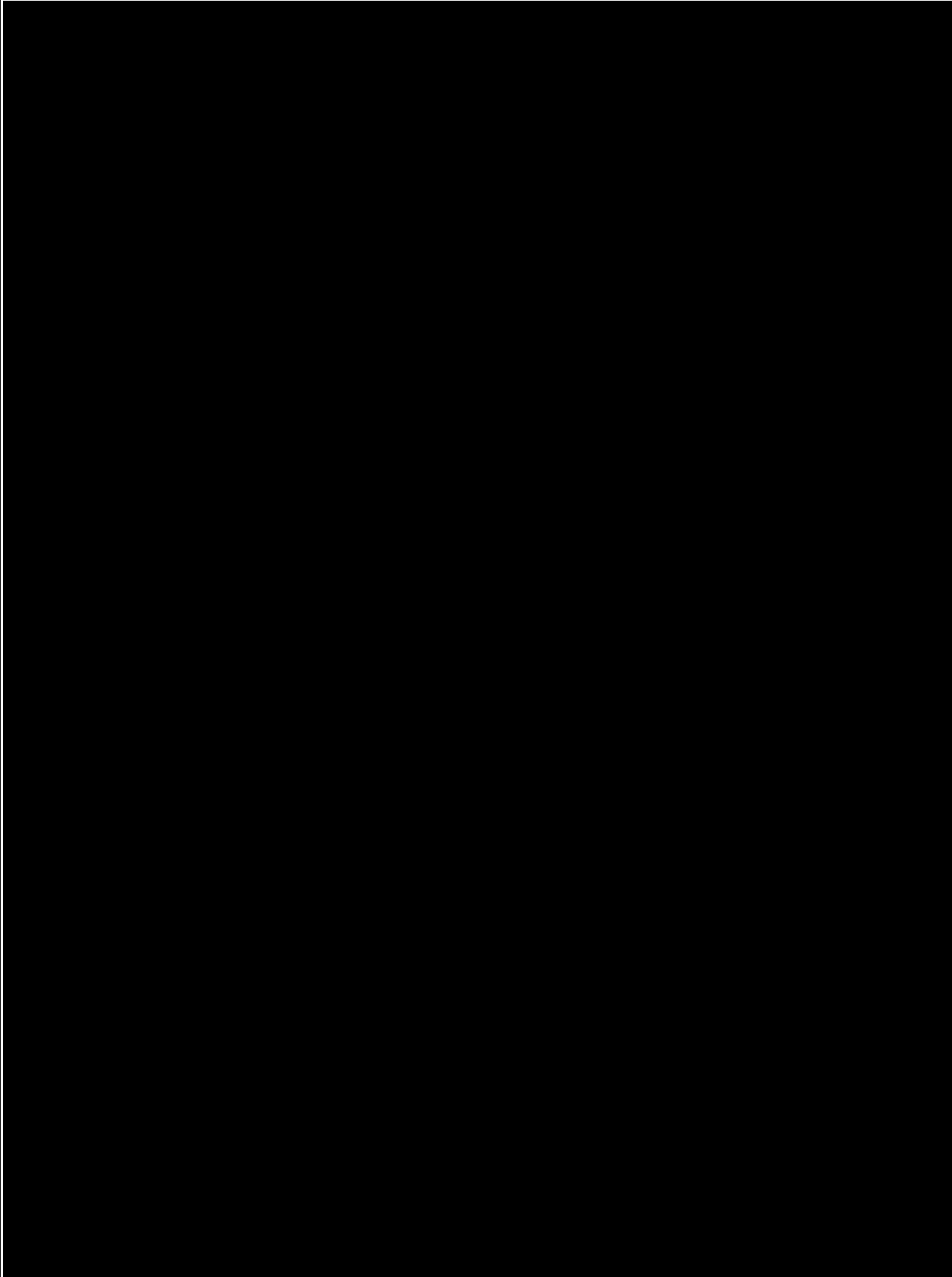
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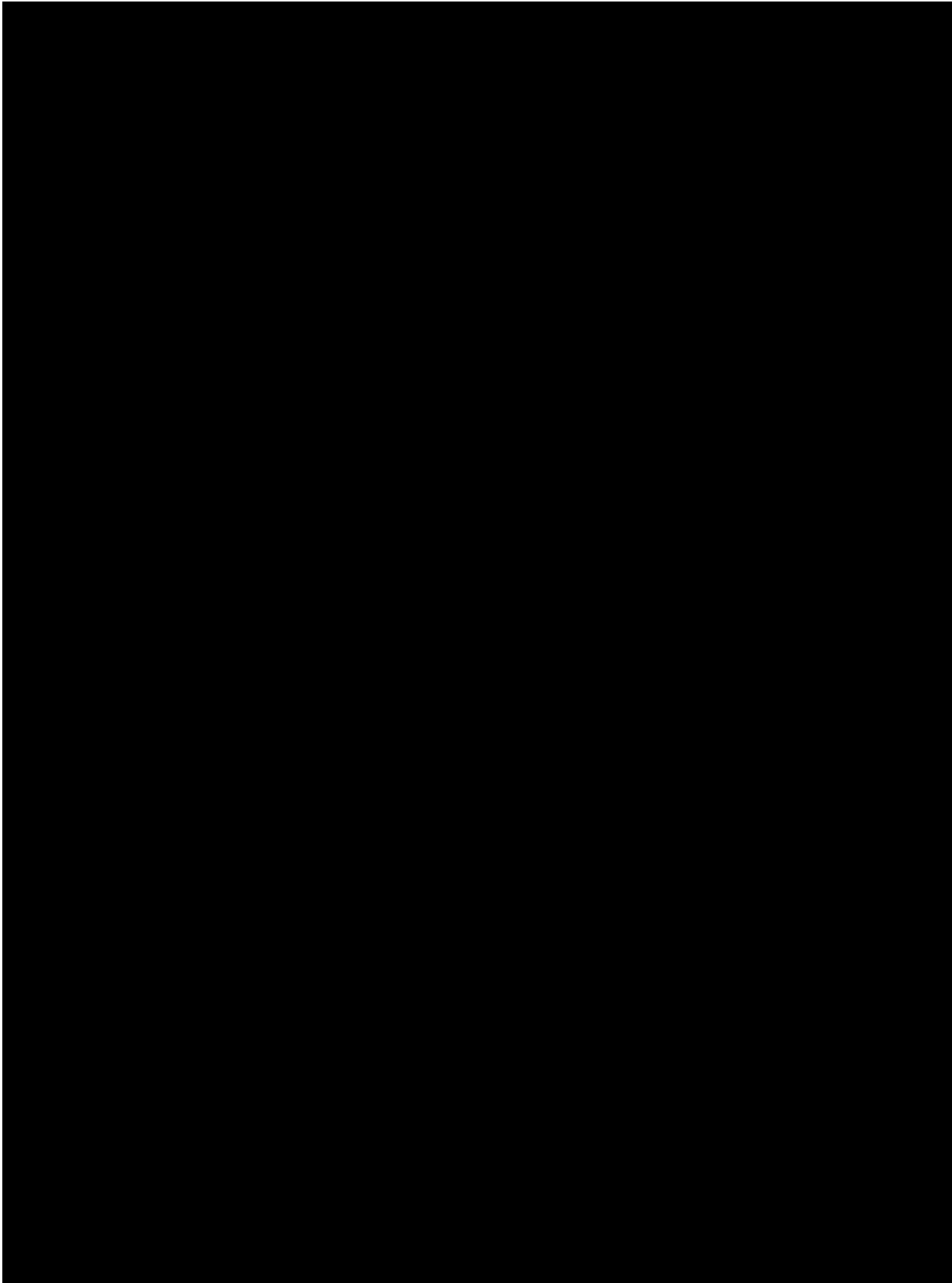
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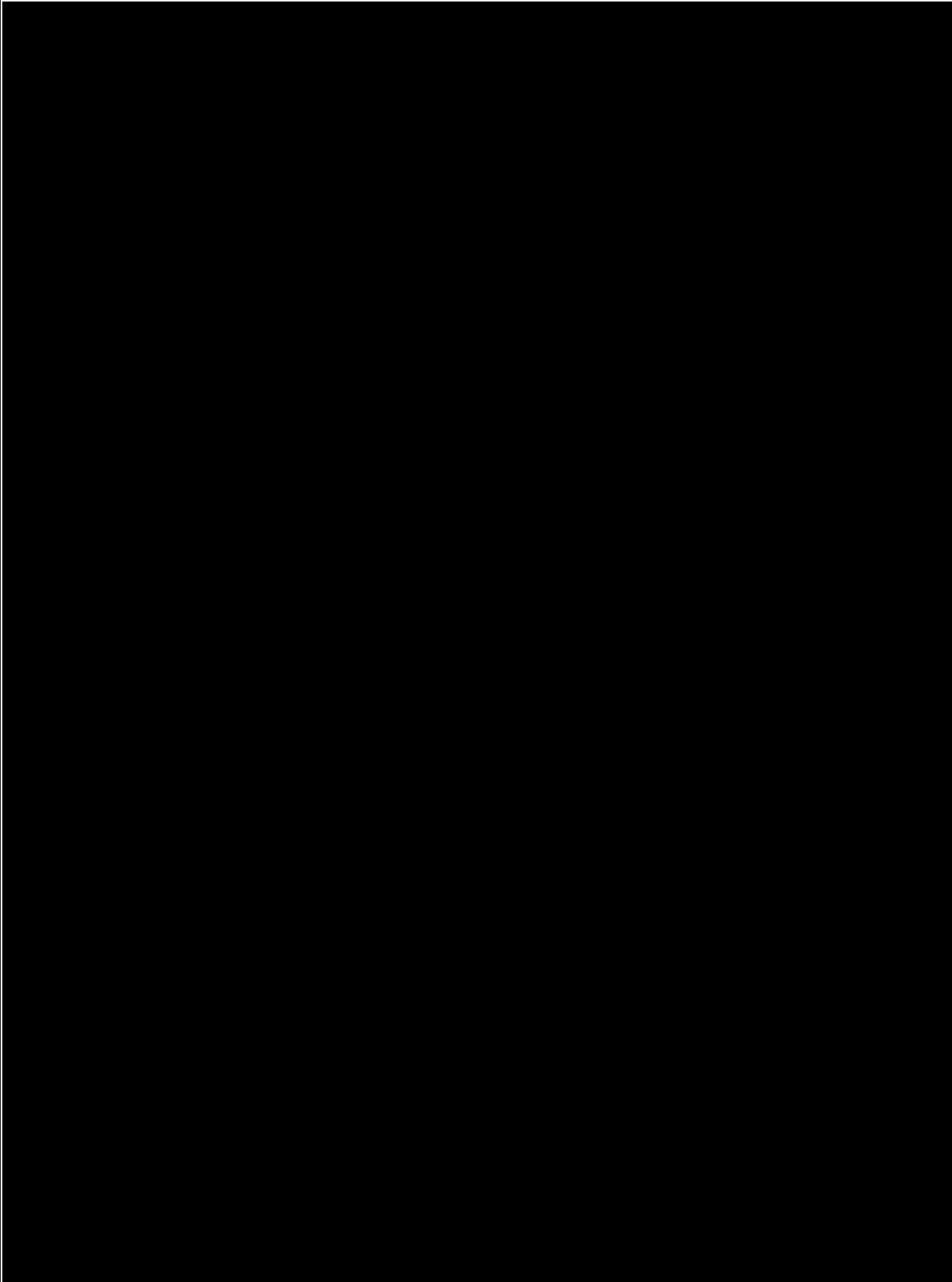
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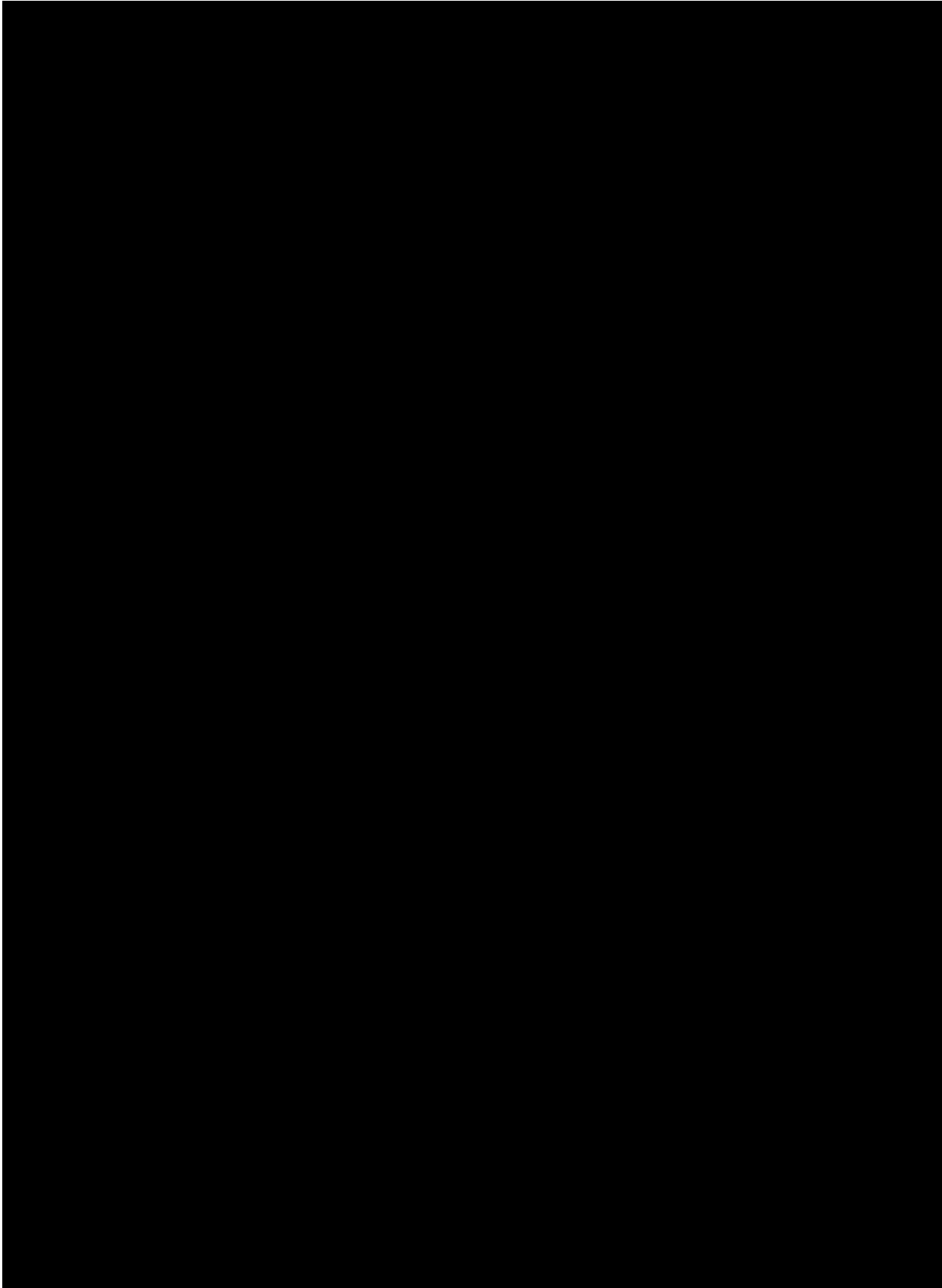
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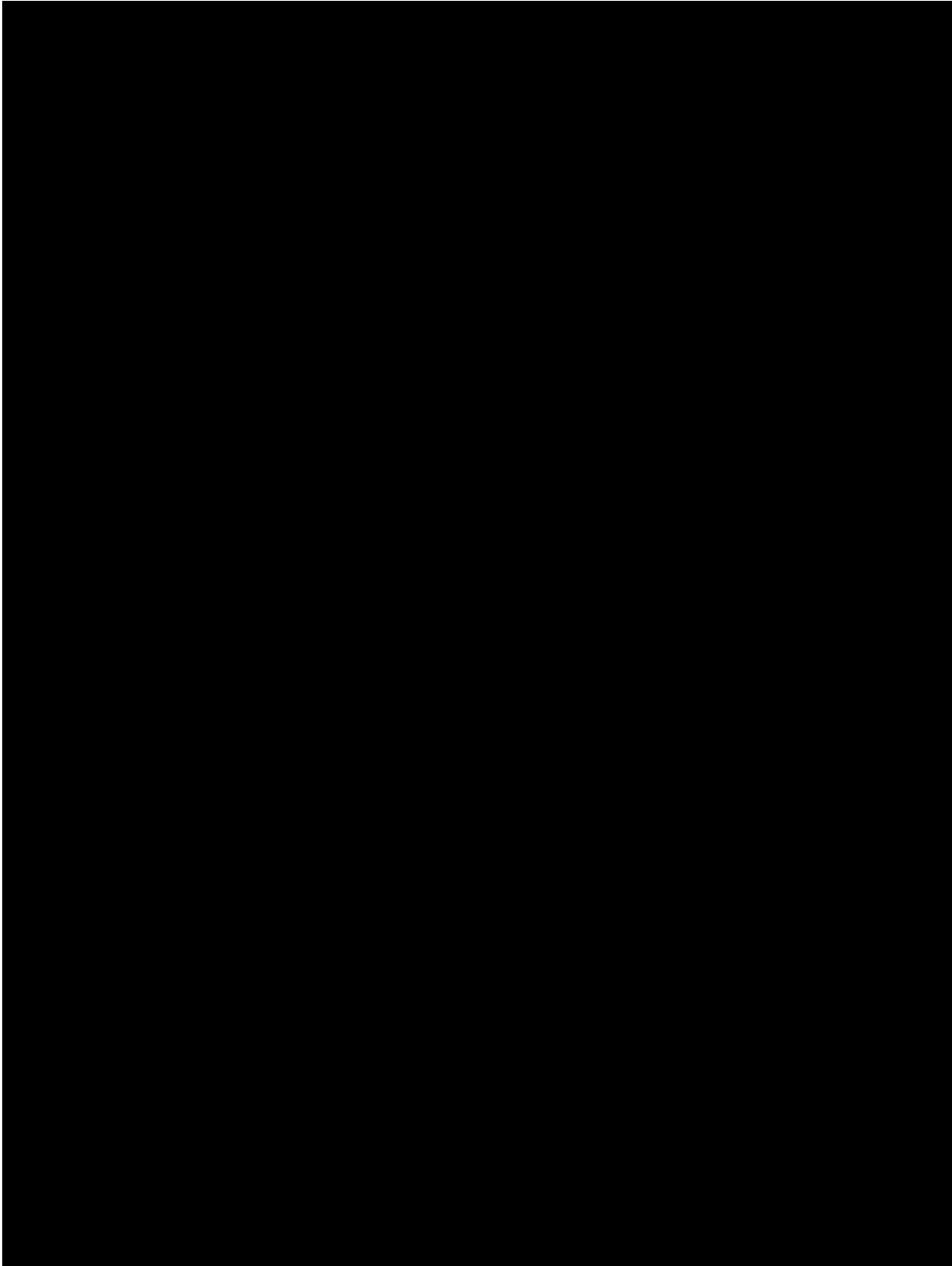
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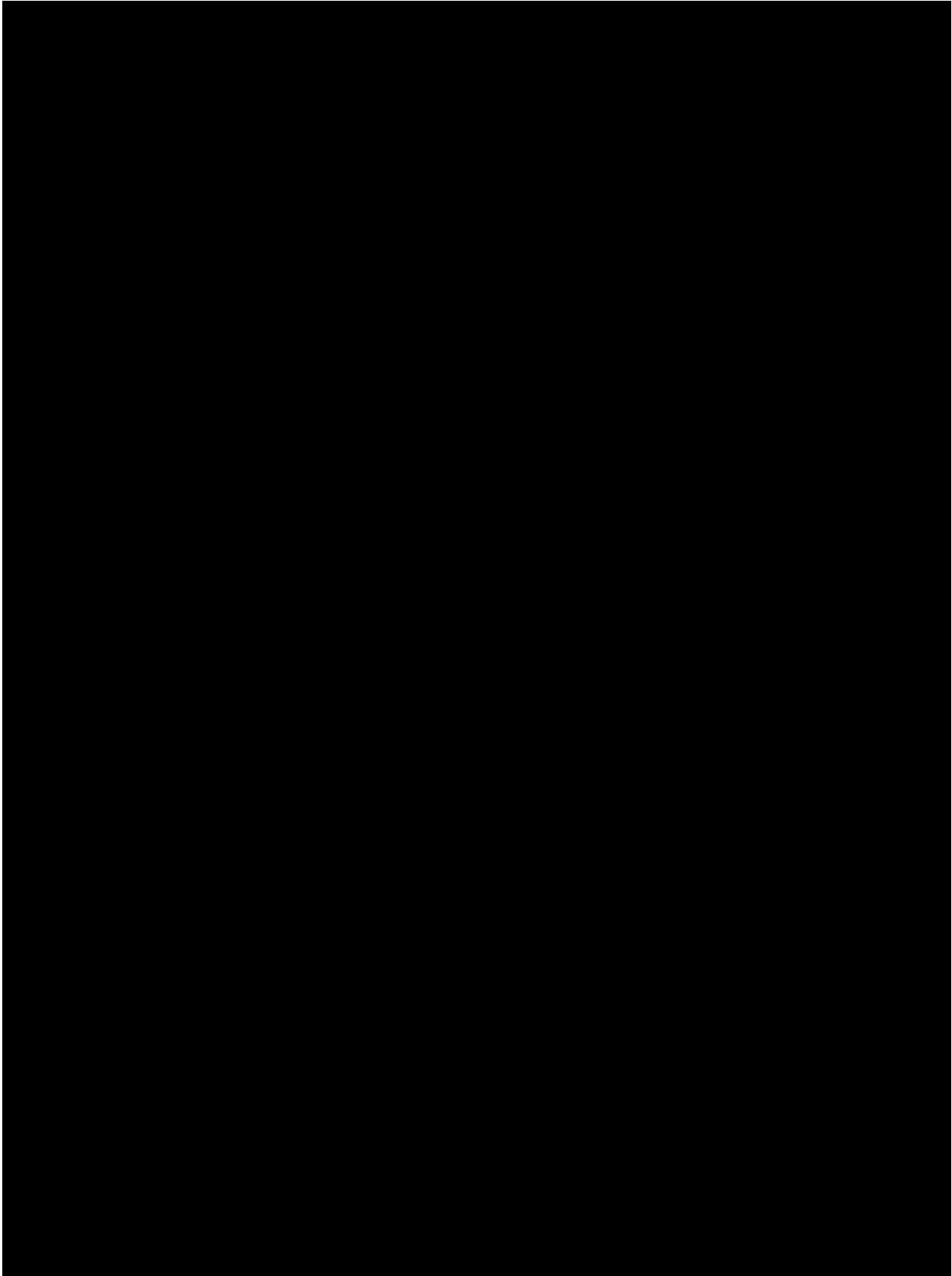
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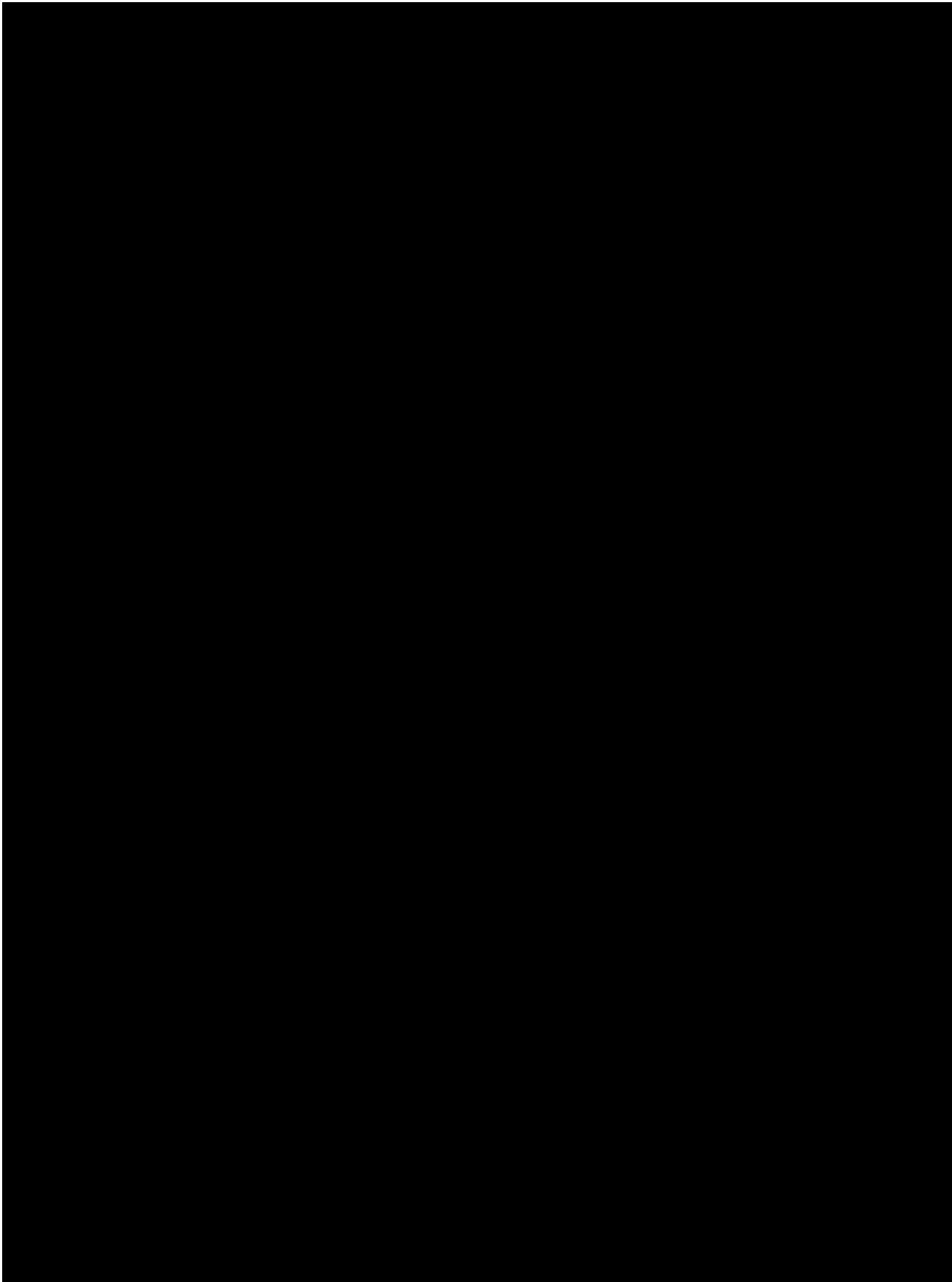
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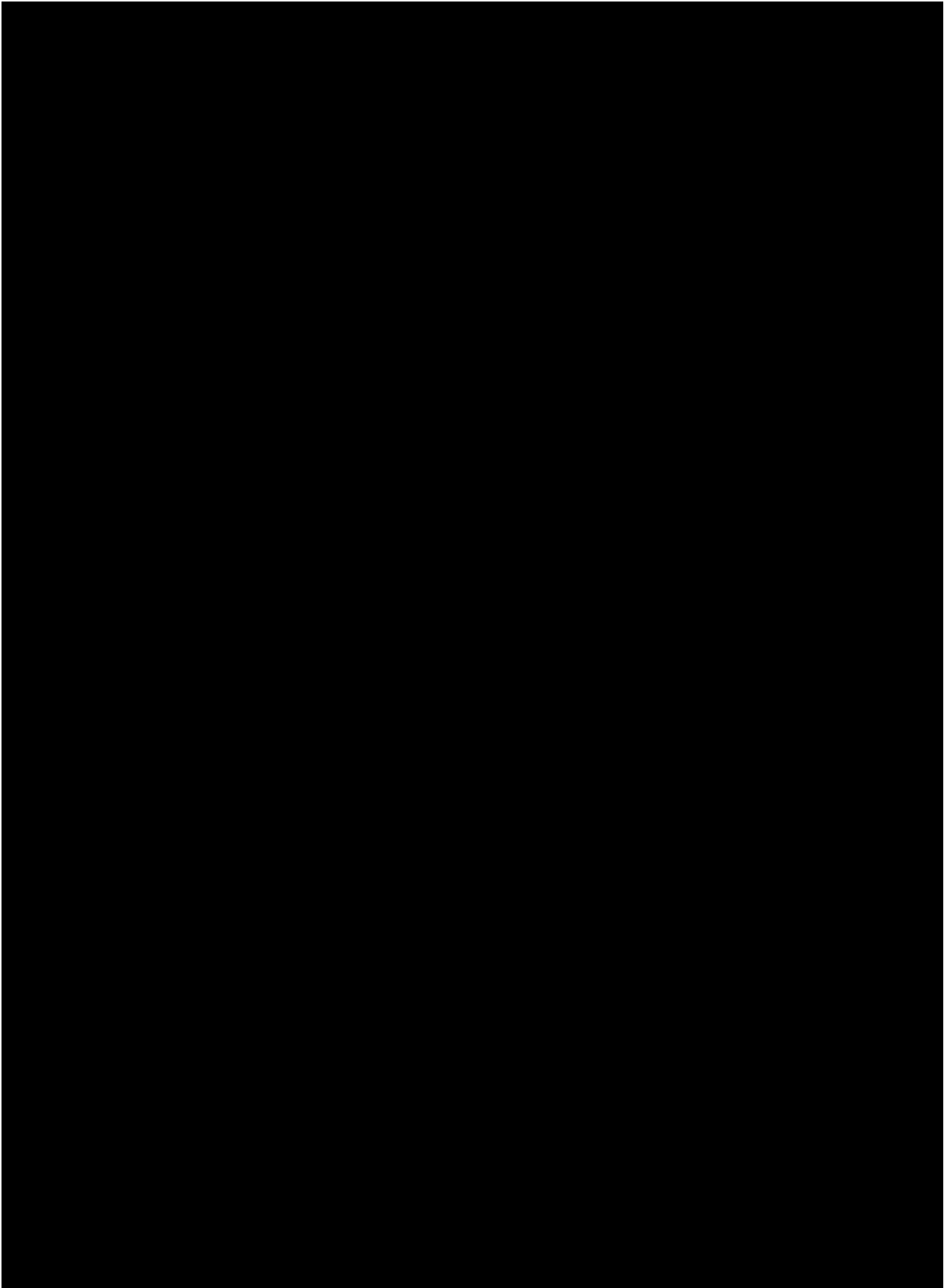
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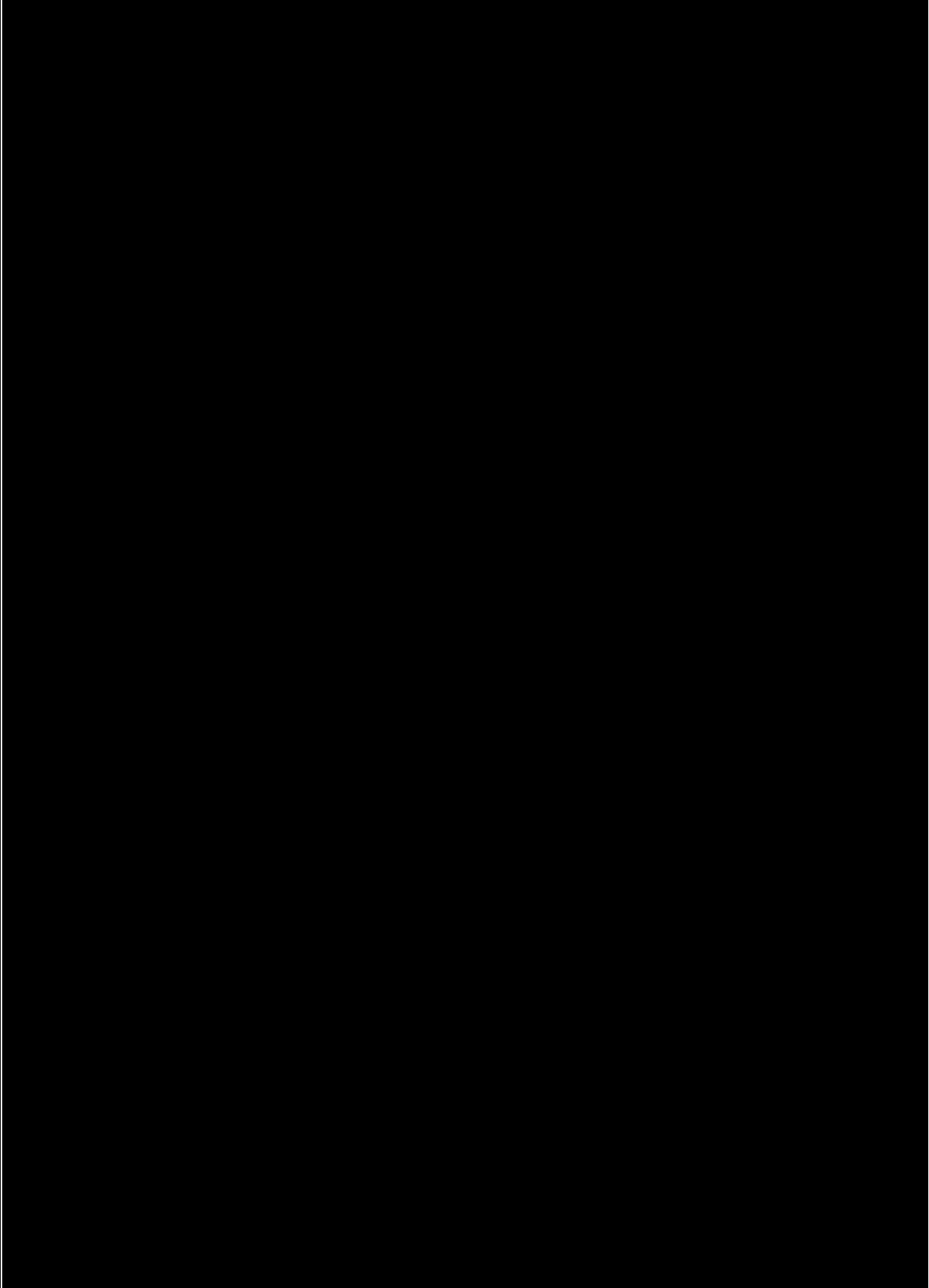
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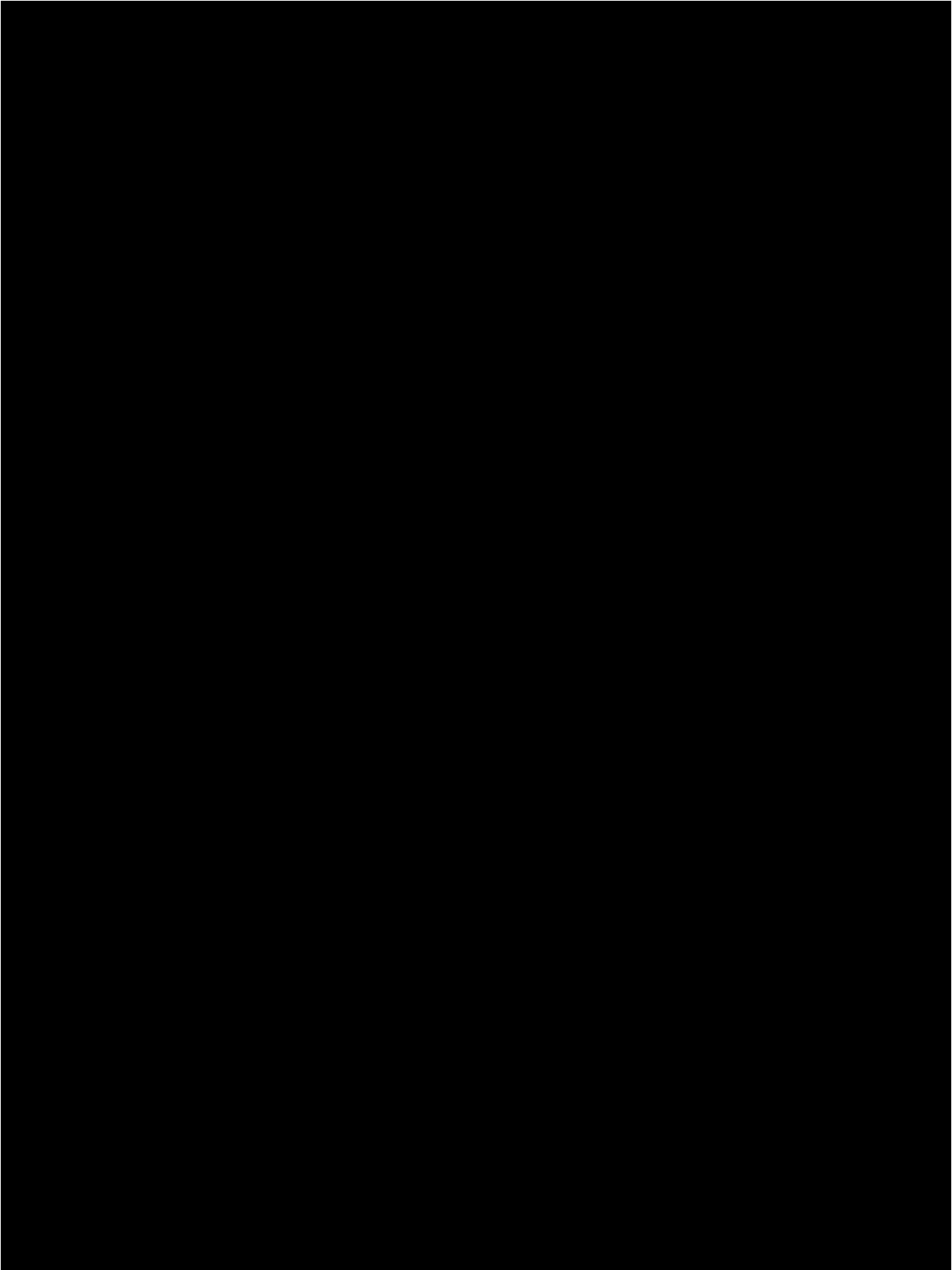
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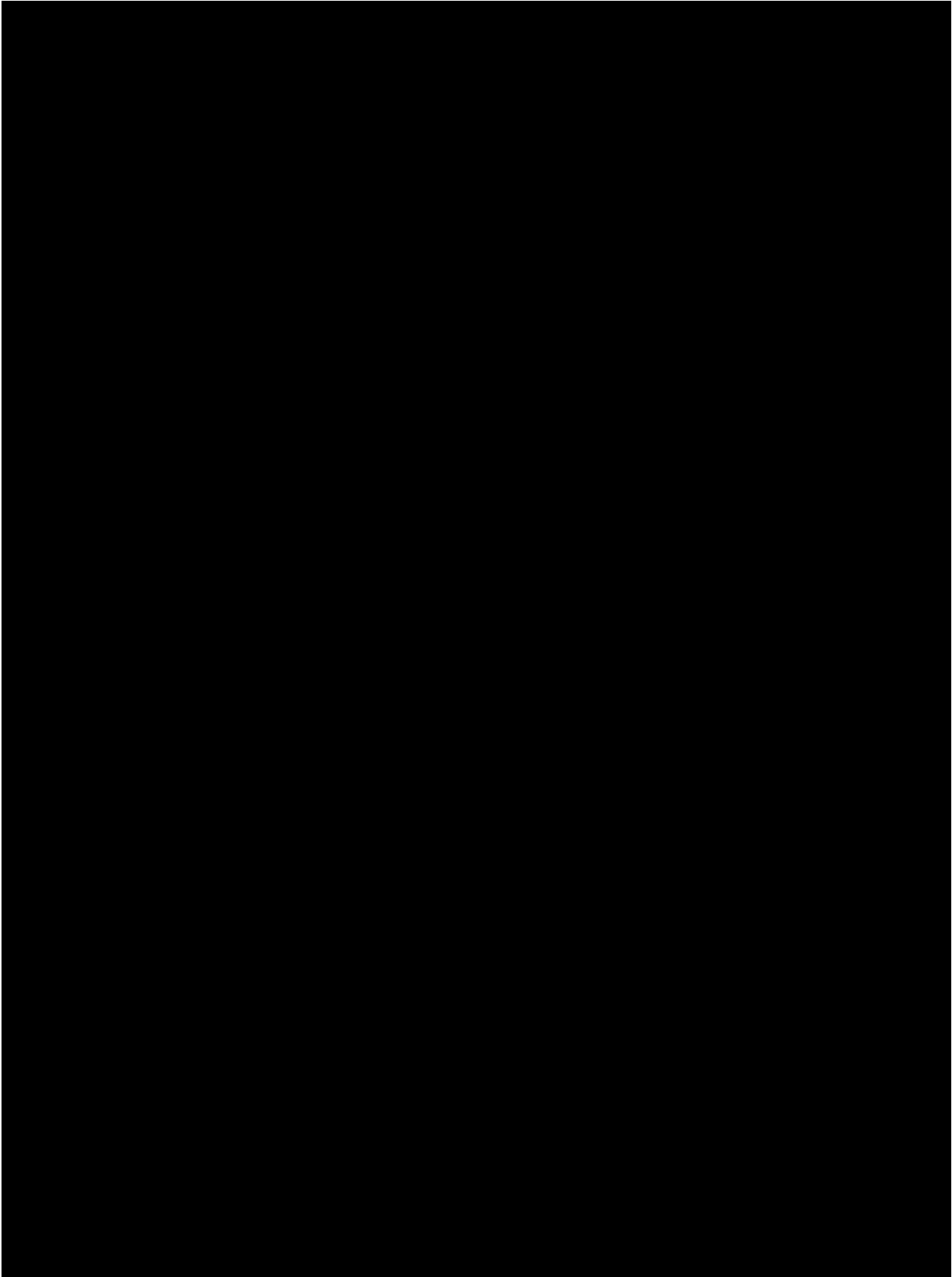
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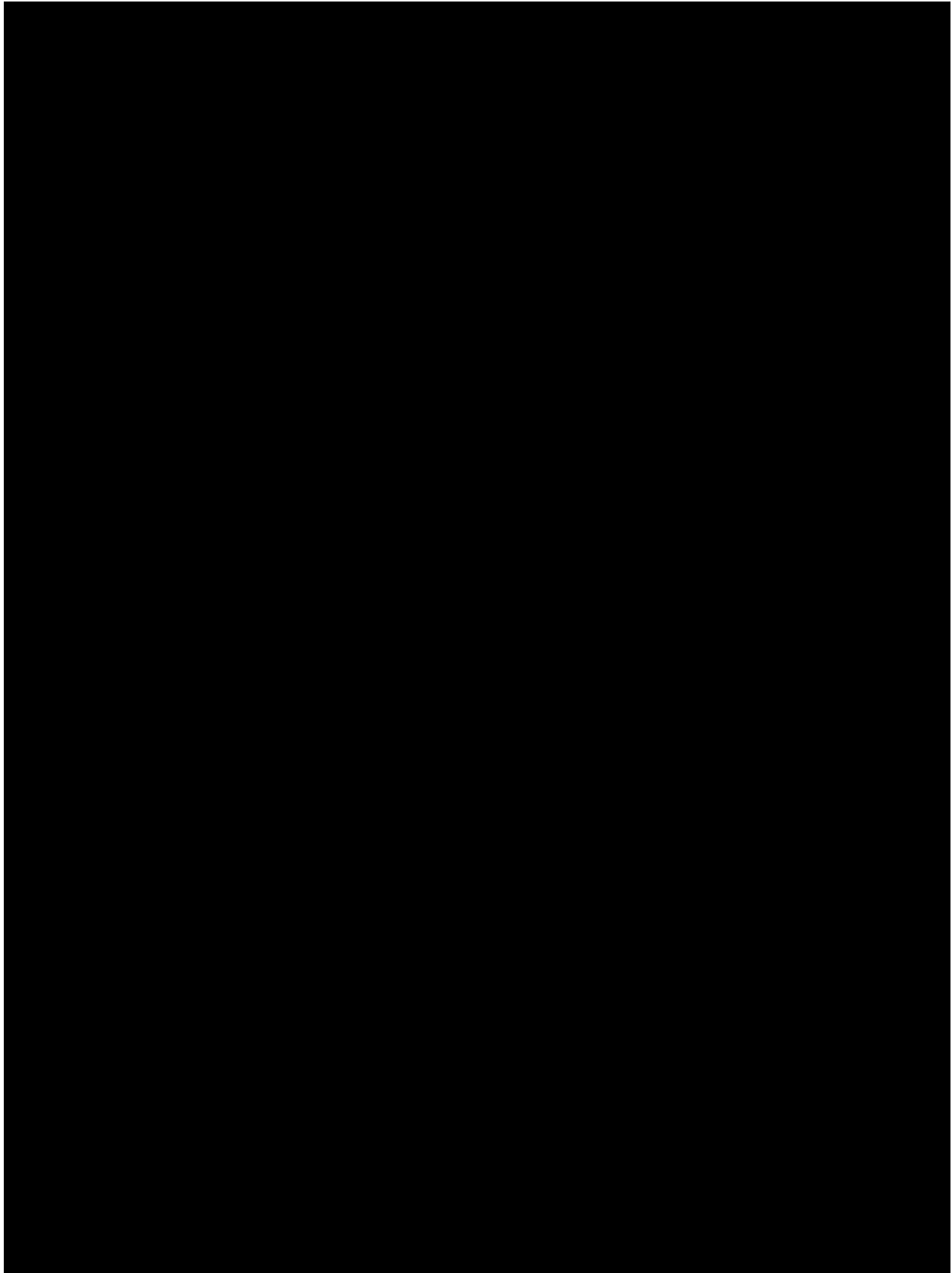
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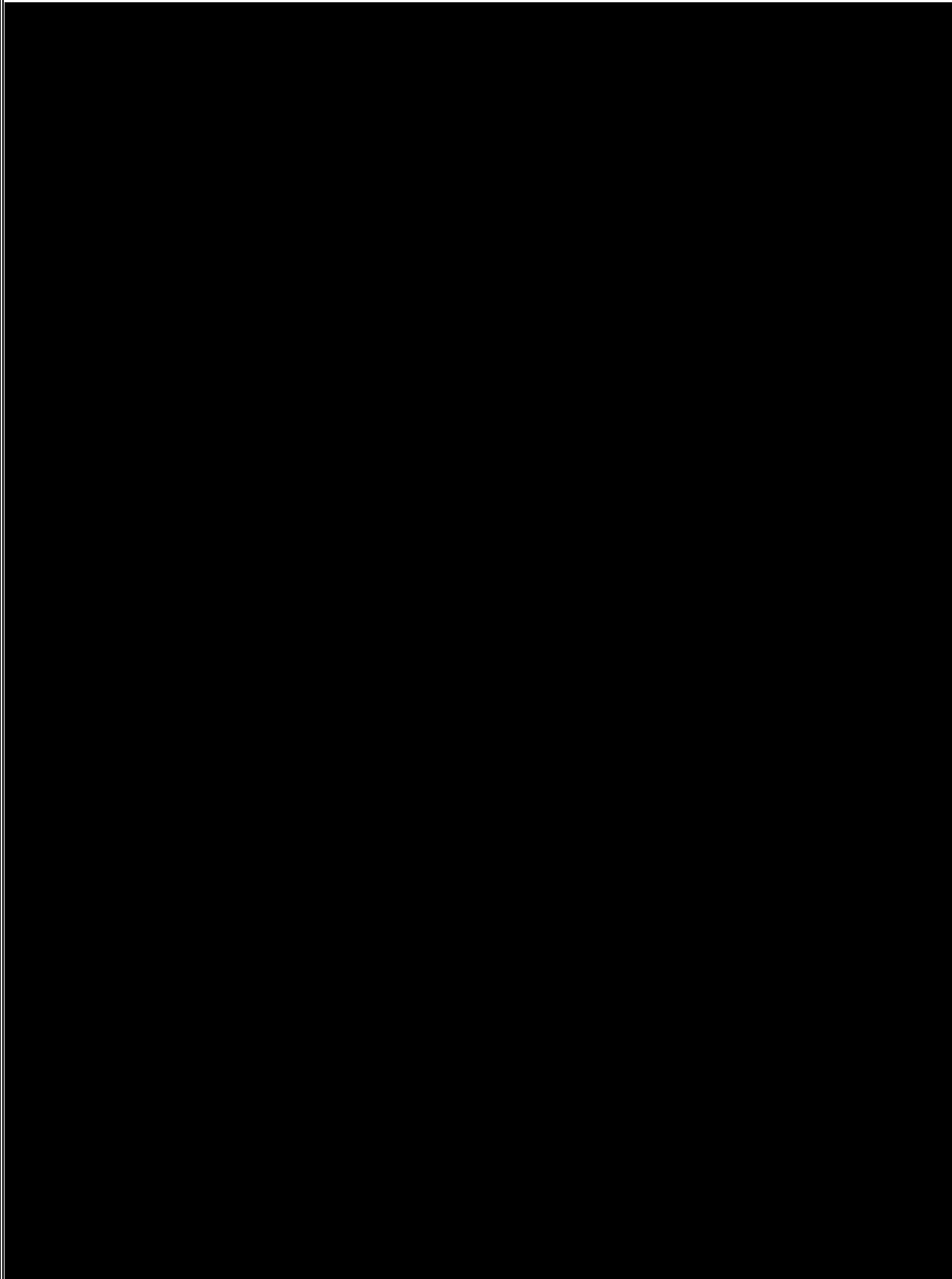
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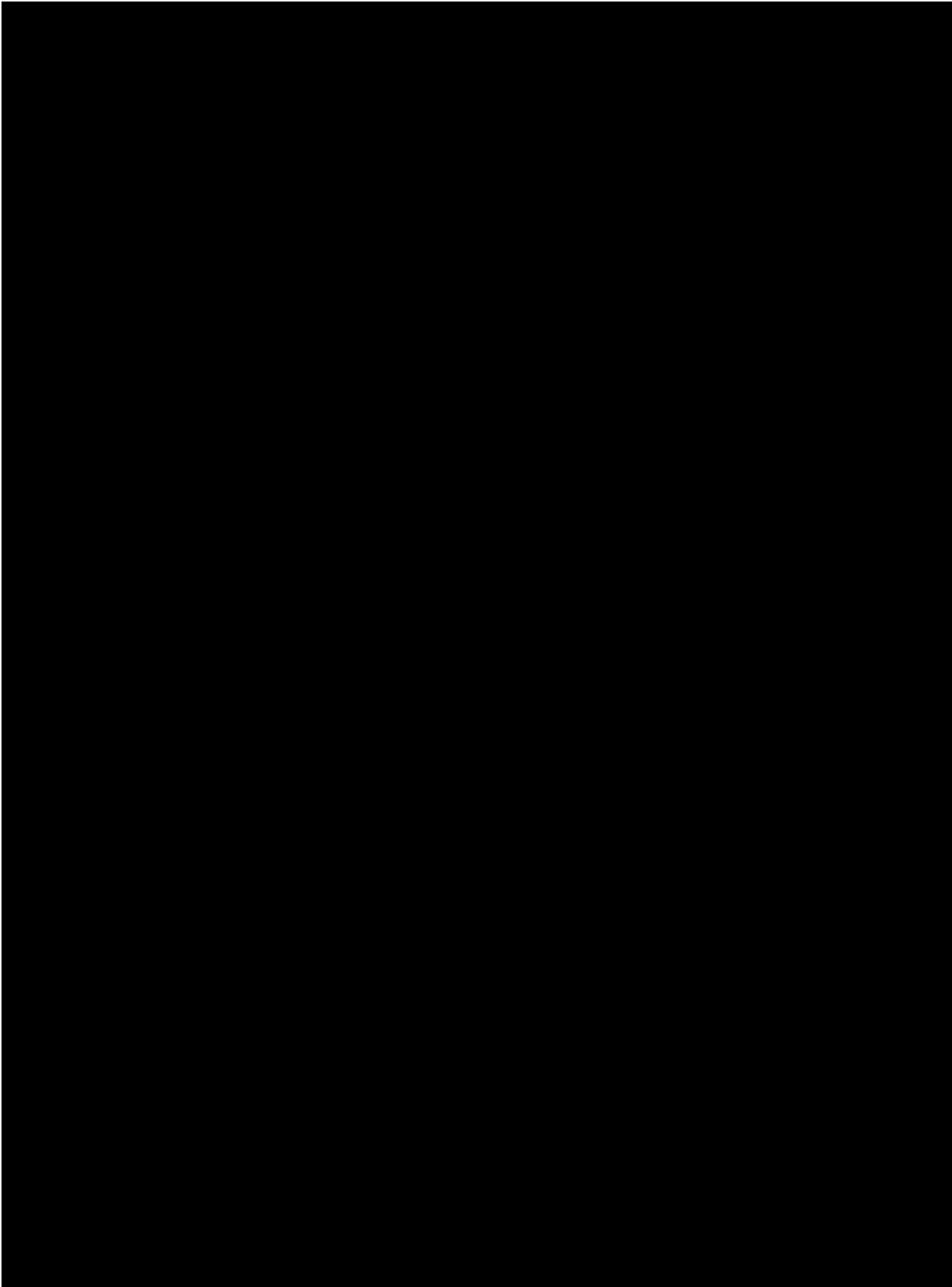
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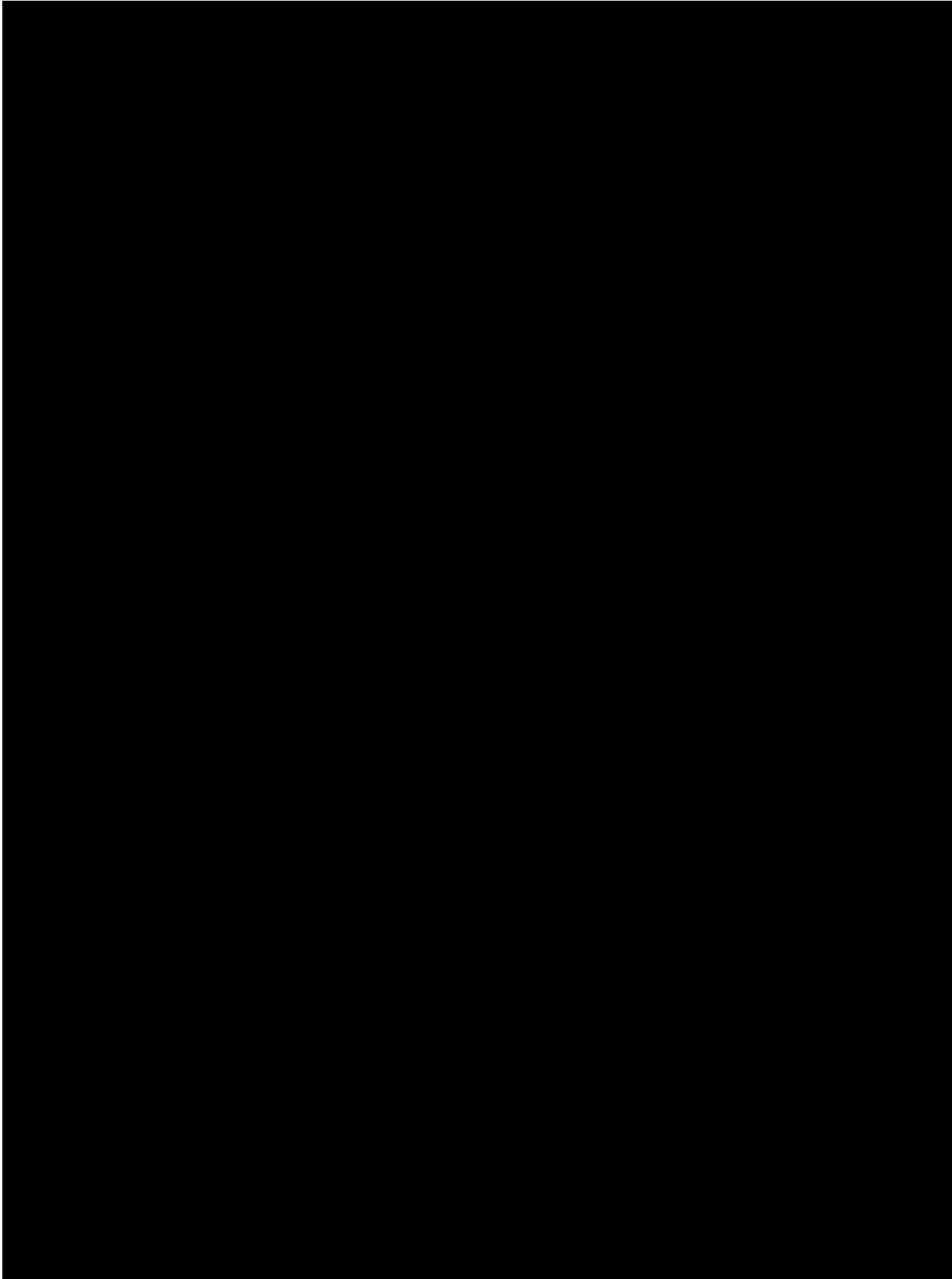
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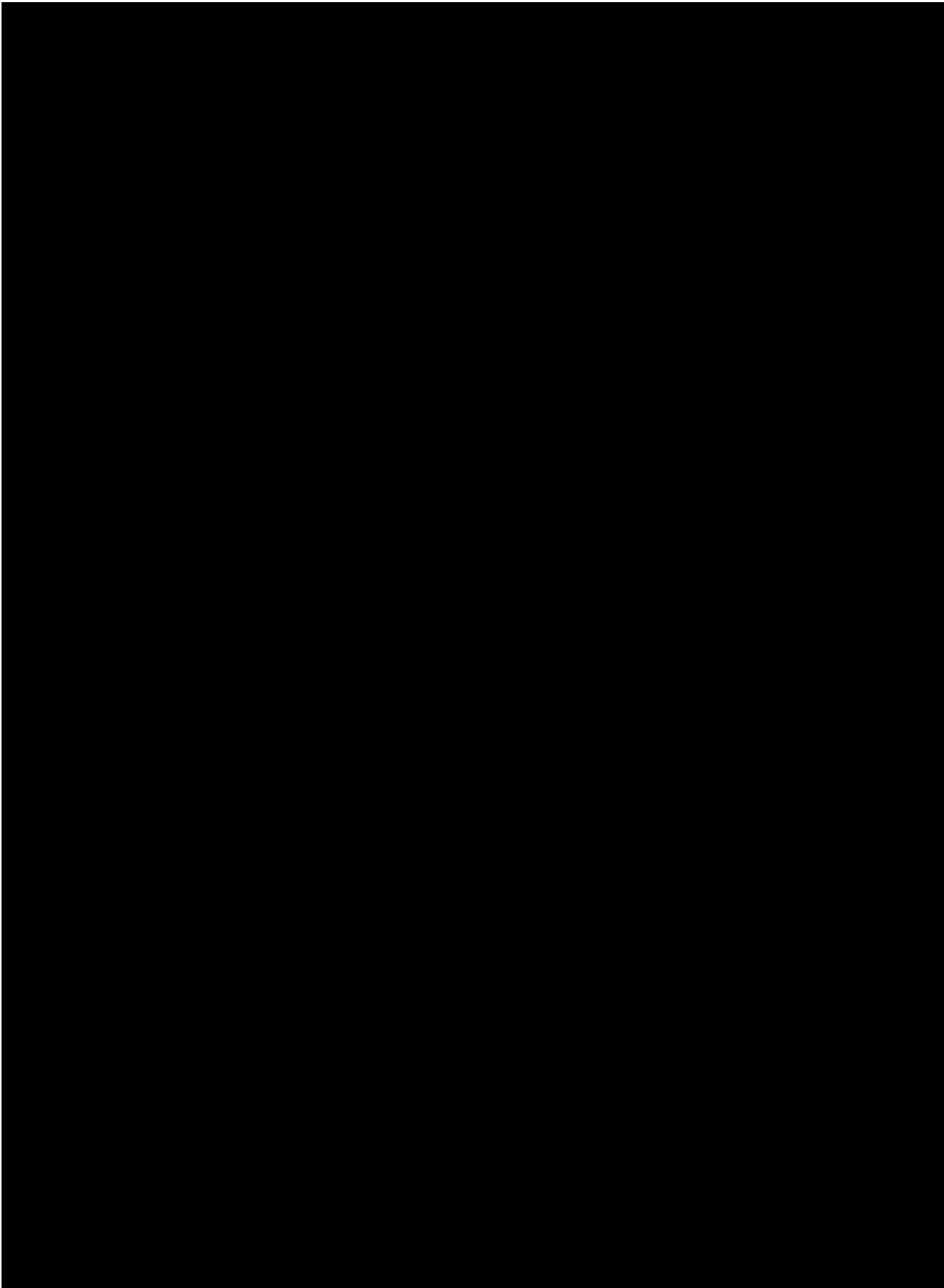
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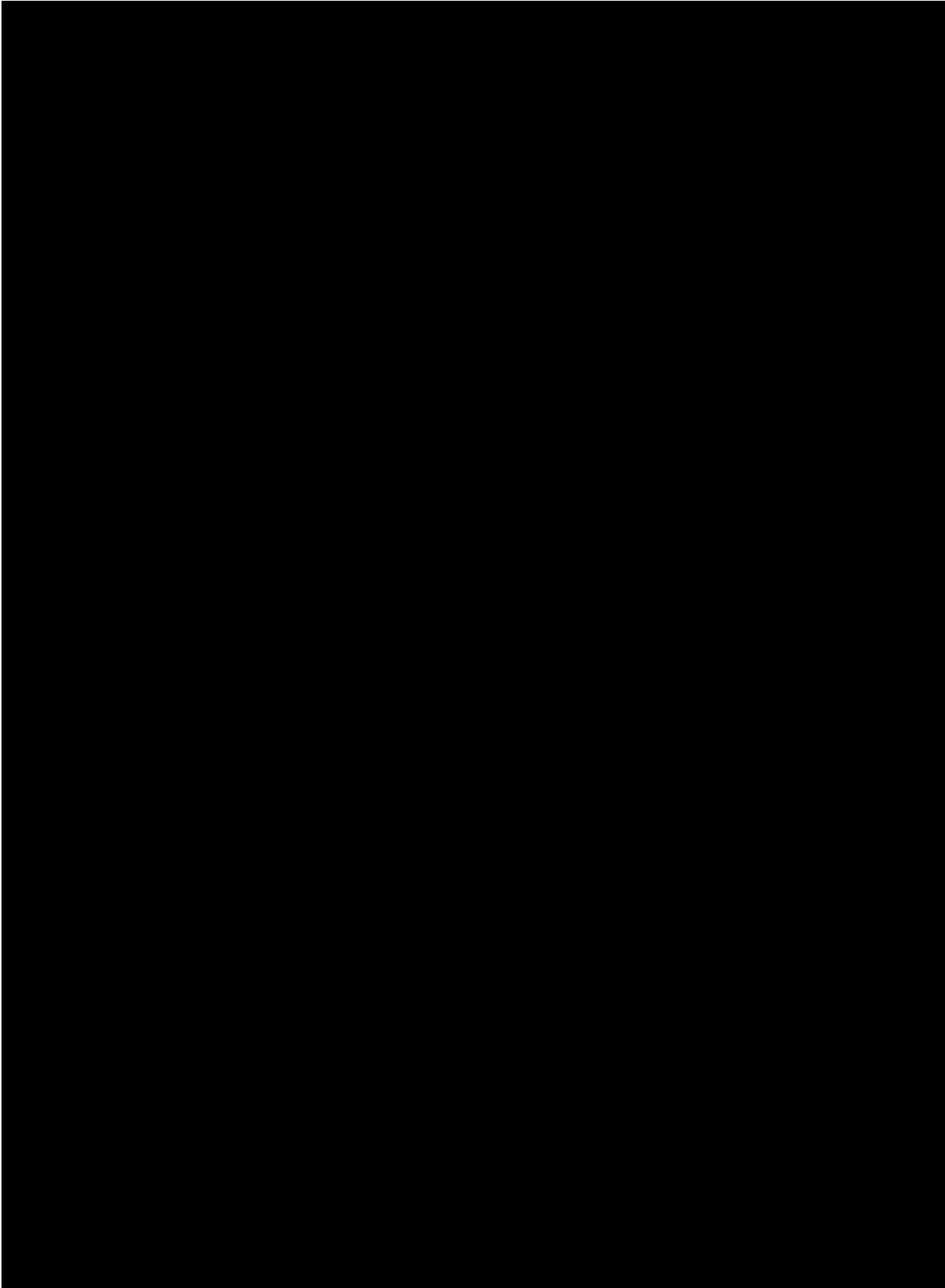
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DR. HEISKANEN: Mr. President, it's well over 6:00 o'clock. We are happy to continue if it's going to go on for another five, ten minutes, but if it's more than that, we would prefer to call it a day.

7

PRESIDENT TERCIER: How long do you think you will have? We're over 90 minutes.

9

MR. PHAM: I understand that we are 57 minutes in so far, and I do expect it to go another 30 minutes, about.

12

PRESIDENT TERCIER: For us, no problem.

13

Do you have an objection on your side?

14

DR. HEISKANEN: 30 minutes is fairly long. We would prefer to continue tomorrow.

16

MR. GREENWALD: We indicated flexibility earlier to have Mr. Ariton go on Saturday. Now we're going to potentially continue with this witness tomorrow. It's fine. It's just that we'll -- eventually we have to finish.

21

And the time that remains is remaining, so we suggest we continue.

22

1 (Tribunal confers.)

2 PRESIDENT TERCIER: Okay. There are two
3 questions. The first question is to see whether it's
4 not late, and how long it would be. If it's half an
5 hour, it would mean--and you have, certainly, 10,
6 15 minutes.

7 DR. HEISKANEN: We will have redirect.

8 PRESIDENT TERCIER: Of course. So, that
9 means we would have almost 45 minutes.

10 And the second question that is linked to it
11 is tomorrow do you think we will be able to cover the
12 program without being too much under pressure if we
13 indeed start with 45 minutes with Mr. Jurca?

14 It is in your hands.

15 DR. HEISKANEN: Yeah, we will be in the
16 driver's seat tomorrow. We haven't had a chance yet
17 to look at the new program that was circulated this
18 morning, but certainly we are well within our time
19 budget. We don't see any issues with the current
20 program. We will be finishing Friday in any event
21 without having to sit longer days.

22 PRESIDENT TERCIER: Okay. So, in that case

1 we interrupt now.

2 MR. GREENWALD: It's not going to be possible
3 to complete this examination tomorrow and complete the
4 other four examinations.

5 DR. HEISKANEN: They don't need to be
6 completed tomorrow. The only thing is--the goal is to
7 complete on Friday within the time budget of each
8 Party, and we have no issue with our time budget.

9 MR. GREENWALD: And what we would point out
10 is that at present--at the moment, Respondent has used
11 a number of hours more than Claimants have, and what
12 we don't want to end up having is a situation where
13 Respondent is able to use all of its time and
14 Claimants are not.

15 PRESIDENT TERCIER: It will not be the case.
16 I can assure you, you will have an equal time and we
17 will make our best effort--not only our best effort,
18 but this will be complied with, what we said.

19 MS. COHEN SMUTNY: There's just one other
20 logistical issue with that. Tomorrow morning
21 arrangements have been made for Professor Bîrsan for a
22 particular time. I think there's--my understanding is

1 that there is some room for flexibility there. Some
2 of that depends, of course, on the World Bank
3 facilities and the time difference.

4 So, some of it is need for flexibility for
5 Professor Bîrsan. I understand that he does have some
6 flexibility. But then I think we just need
7 confirmation that the World Bank facility will allow
8 us to continue with the videoconference.

9 So, that's just one other consideration.
10 But, of course, we're--if it works, we have no
11 objection, of course. I think we're just concerned
12 that it work out.

13 PRESIDENT TERCIER: Yeah. Can we know that?

14 SECRETARY YETANO: So, just to be clear, what
15 time would we then think that we would start with--

16 PRESIDENT TERCIER: 10:00. Professor Bîrsan?

17 SECRETARY YETANO: 10:00. One hour. Okay.

18 PRESIDENT TERCIER: So, with the break and--

19 SECRETARY YETANO: Even though it's a bit
20 late to ask for confirmation, but we will get the
21 confirmation from our team in Romania before we start.

22 PRESIDENT TERCIER: Okay. And if it's not

1 possible, we would start with Mr. Bîrsan and have
2 Mr. Jurca right after.

3 I think it would be long today, indeed, if we
4 have half an hour minimum and then redirect. I think
5 that's quite a long--quite a long day.

6 So, you will start tomorrow morning fresh.

7 Okay. So, Mr. Jurca, what I will say is very
8 important. You are under testimony. It means that
9 you have not the right to have any contact with
10 counsel or representatives of Respondent.

11 You heard that--

12 THE WITNESS: I understand.

13 PRESIDENT TERCIER: You heard that we will
14 now interrupt and continue tomorrow morning at 9:00,
15 and everybody will try to be flexible.

16 Okay. So, I would like to thank you very
17 much and wish you a very pleasant evening.

18 (Whereupon, at 6:12 p.m., the Hearing was
19 adjourned until 9:00 a.m. the following day.)

CERTIFICATE OF REPORTER

I, David A. Kasdan, RDR-CRR, Court Reporter, do hereby certify that the foregoing proceedings were stenographically recorded by me and thereafter reduced to typewritten form by computer-assisted transcription under my direction and supervision; and that the foregoing transcript is a true and accurate record of the proceedings.

I further certify that I am neither counsel for, related to, nor employed by any of the parties to this action in this proceeding, nor financially or otherwise interested in the outcome of this litigation.

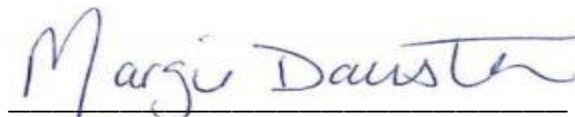


DAVID A. KASDAN

CERTIFICATE OF REPORTER

I, Margie Dauster, RMR-CRR, Court Reporter, do hereby certify that the foregoing proceedings were stenographically recorded by me and thereafter reduced to typewritten form by computer-assisted transcription under my direction and supervision; and that the foregoing transcript is a true and accurate record of the proceedings.

I further certify that I am neither counsel for, related to, nor employed by any of the parties to this action in this proceeding, nor financially or otherwise interested in the outcome of this litigation.


MARGIE DAUSTER