

## NOTICE OF FILING

### Details of Filing

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File Title: FORTESCUE LIMITED ACN 002 594 872 & ORS v ELEMENT ZERO PTY LIMITED ACN 664 342 081 & ORS  
Registry: NEW SOUTH WALES REGISTRY - FEDERAL COURT OF AUSTRALIA



*Sia Lagos*

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### Important Information

This Notice has been inserted as the first page of the document which has been accepted for electronic filing. It is now taken to be part of that document for the purposes of the proceeding in the Court and contains important information for all parties to that proceeding. It must be included in the document served on each of those parties.

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Form 59  
Rule 29.02(1)

### Affidavit

No. NSD 527 of 2024

Federal Court of Australia  
District Registry: New South Wales  
Division: General

**Fortescue Limited (ACN 002 594 872) and others**

Applicants

**Element Zero Pty Limited (ACN 664 342 081) and others**

Respondents

Affidavit of: **Paul Alexander Dewar**  
Address: Level 4, 7 Macquarie Place, Sydney, NSW 2000  
Occupation: Lawyer  
Date: 4 July 2024

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Filed on behalf of (name & role of party) Fortescue Limited (ACN 002 594 872) and others, the Applicants  
 Prepared by (name of person/lawyer) Paul Alexander Dewar, Principal Lawyer  
 Law firm (if applicable) Davies Collison Cave Law  
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 (include state and postcode)

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4.	<b>Confidential Annexure PAD-20</b> , being a copy of a Confidentiality Agreement between Fortescue Future Industries Pty Ltd and M entity	19	14 – 26
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I, Paul Alexander Dewar, of Level 4, 7 Macquarie Place, Sydney in the State of New South Wales, Lawyer, affirm:

**A. Background**

1. I am a principal of the firm Davies Collison Cave Law (**DCCL**) and have the care, conduct and control of this proceeding on behalf of the Applicants.
2. This is my fifth affidavit in this proceeding (**Fifth Affidavit**). My first affidavit was affirmed on 1 May 2024 (**First Affidavit**), my second affidavit was affirmed on 9 May 2024, my third affidavit was affirmed on 14 May 2024, and my fourth affidavit was affirmed on 30 May 2024.
3. This Fifth Affidavit is in support of the Applicants' Interlocutory Application dated 3 July 2024 (**Suppression Application**) for an order prohibiting the publication or disclosure of information contained in Annexure A of the Suppression Application (**Annexure A**), pursuant to s 37AF of the *Federal Court of Australia Act 1976* (Cth) and/or under rule 2.32 of the *Federal Court Rules 2011* (Cth).
4. The defined terms in my First Affidavit are adopted in this Fifth Affidavit.
5. I am authorised to make this affidavit on behalf of the Applicants. I am not instructed, and do not intend in this affidavit, to waive privilege on behalf of the Applicants, nor do I have the authority to do so.
6. The statements that I make in this affidavit are based on my own knowledge, and where indicated, on information and belief from Mr Adrian Huber, Senior Legal Counsel of the Second Applicant, and from the deponents to the affidavits identified in Annexure A.





7. I note that there are certain items of information which are duplicated in Annexure A. This is because these items of information are reproduced across multiple affidavits. For example, Annexure A, item 53 and item 83 refer to the same information in the same email which has been reproduced in two affidavits.

**B. Categories of information that are the subject of the Suppression Application**

8. There are four categories of information that are the subject of the Suppression Application (as identified in the right-hand column of Annexure A):

- (a) **Category 1:** Personal Information
- (b) **Category 2:** Fortescue's confidential information
- (c) **Category 3:** Confidential information the subject of a confidentiality agreement with **M entity**
- (d) **Category 4:** Confidential information the subject of obligations of confidence to **B entity**

9. I set out in this Part B of my affidavit the bases upon which the Applicants contend that an order prohibiting publication or disclosure to the public of the information thin each category is necessary to prevent prejudice to the proper administration of justice or to protect the safety of certain persons.

**B.1 Personal Information**

**B.1.1 Signatures, residential addresses, mobile phone numbers, and other information**

10. Category 1 information includes signatures, residential addresses, and mobile telephone numbers of deponents of affidavits set out in Annexure A (**Deponents**), of other Fortescue employees and of third parties identified in those affidavits (see, for example, Annexure A, items 9–11).
11. I am informed by Mr Huber that the Deponents fear disclosure of their signatures, residential addresses and mobile telephone numbers (particularly together) may give rise to the possibility of identity theft or other fraudulent activity. Additionally, Mr Huber is concerned that the disclosure of such information of other employees of Fortescue and other third parties, who are not Deponents, may give rise to similar risks.





12. Annexed as **Annexure PAD-19** to this affidavit is the Federal Court of Australia's *Guide to the Anonymisation of Personal and Sensitive Information*, which contemplates the risk of identity theft associated with disclosure of personal identifiers in Court documents and provides guidance as to anonymisation of that information: see second paragraph.

### **B.1.2 Private investigation reports**

13. Category 1 also includes private investigation reports (Annexure A, items 1, 3, and 4) and a detailed summary (Annexure A, item 2) (together, the **private investigation reports**). The purposes of the private investigation reports were to:
- (a) confirm the search premises and whether they were business or private premises, as required by the Federal Court of Australia's *Search Orders Practice Note (GPN-SRCH)*, para 2.8(b);
  - (b) confirm the association of a Respondent with a particular search premises;
  - (c) ascertain the likely time/s when the Respondents would be present at the search premises, so that the search order can be executed when the Respondents are present and simultaneously across the multiple premises;
  - (d) ascertain the presence and type of vulnerable persons at each search premises, as required by GPN-SRCH, paras 2.8(f); and
  - (e) provide information to the Independent Lawyer to assist with the execution of the search order.

The private investigation reports contained information addressing these matters, and for that reason, they show the detailed whereabouts and movements of the Respondents in the weeks before the execution of the search order.

14. Although a summary of private investigation reports (contained in the Affidavit of Stephen Klotz affirmed on 14 May 2024) has been publicly disclosed, the totality of the information in the private investigation reports has not been made public.
15. I note that the First, Second and Fourth Respondents' Interlocutory Application dated 3 July 2024 also seeks an order that there be no disclosure (by publication or otherwise) of certain personal information contained in a number of the private investigation reports. I have read the supporting affidavit of Rebecca Mary Dunn sworn on 3 July 2024.
16. As these private investigation reports are cumulatively over 600 pages long, and because the Applicants' concern relates to the disclosure of the totality of the personal information contained in the private investigation reports, the Applicants contend that





the entirety of the private investigation reports should be suppressed from public disclosure.

## B.2 Fortescue's Confidential Information

17. Category 2 comprises Fortescue's confidential information. I have been informed by Mr Huber that disclosure of Fortescue's confidential information would cause harm to Fortescue because its commercial competitors would be able to gain insight into Fortescue's commercial strategies, business relationships, internal practices, proprietary technologies and research and development, amongst other things.
18. Some examples of Fortescue's confidential information in this category include:
  - (a) Dollar amounts spent by Fortescue on various projects, including in its research and development on electrochemical reduction of iron oxide and its pilot plant development program (for example, Annexure A, items 5, 6 and 8), disclosure of which would provide Fortescue's commercial competitors with insights into Fortescue's commercial and research and development strategies;
  - (b) Technical details regarding Fortescue's green iron technologies, including chemical compositions, temperature values, equipment selection, process configurations, and other parameters (for example, Annexure A, items 12–15), disclosure of which would provide Fortescue's commercial competitors with information that may be used to develop or improve competing technologies, or otherwise diminish the value of that confidential information;
  - (c) References to Fortescue's commercial relationships with third parties (for example, as disclosed in the email subject lines identified at Annexure A, items 39 and 70), disclosure of which would provide Fortescue's commercial competitors with insights into Fortescue's business relationships and strategies;
  - (d) A draft research plan concerning development of electrochemical green steel processes, including a discussion of key theoretical routes, technical research and development considerations, research priorities and topics (Annexure A, items 55 and 85), disclosure of which would provide Fortescue's commercial competitors with insights into Fortescue's research and development regarding electrochemical green steel; and
  - (e) A description of Fortescue's internal IT and data security practices, including Fortescue's IT access measures (Annexure A, item 95), disclosure of which may allow malicious actors to challenge the security of Fortescue's IT systems.




**B.3 Confidential information the subject of a confidentiality agreement with M entity**

19. Category 3 comprises confidential information the subject of a confidentiality agreement with M entity. A copy of the **Confidentiality Agreement** is included at **Confidential Annexure PAD-20**.
20. I explain some relevant clauses of the Confidentiality Agreement in **Confidential Exhibit PAD-A**.
21. I consider that the information in Annexure A identified as belonging in Category 3 is confidential information that falls within the scope of the Confidentiality Agreement.
22. I am informed by Mr Huber and believe that the fact that Fortescue was in negotiations with M entity is not publicly known. The fact that those negotiations occurred is itself confidential information that falls within the scope of the Confidentiality Agreement with M entity.

**B.4 Confidential information the subject of obligations of confidence to B entity**

23. Category 4 comprises confidential information over which Fortescue owes an obligation of confidence to B entity.
24. I am informed by Mr Huber and believe that:
  - (a) The fact that Fortescue was in negotiations with B entity is not publicly known; and
  - (b) Information provided to Fortescue by B entity during those negotiations was treated by both Fortescue and B entity as being confidential.
25. Information provided by B entity to Fortescue was, at the time of disclosure, subject to contractual obligations of confidence contained in a Confidentiality Agreement between the Second Applicant (under its former company name FMG H2 Pty Ltd (ACN 625 711 373)) and B entity, a copy of which is included at **Confidential Annexure PAD-21**. These contractual obligations were "*in addition to and in no way detract from the equitable obligations of the Part in respect of Confidential Information*" (see clause 4.2).
26. Furthermore, some of the information in Annexure A identified as belonging in Category 4 is technical information provided by B entity. For example, Annexure A, item 52 comprises an email from the Second Respondent to the Third Respondent discussing technical details of the technology developed by B entity, including details about its process, operating temperature, and power consumption figures.






27. I consider that the fact that Fortescue’s negotiations with B entity occurred is itself confidential information which Fortescue is obliged not to disclose. I consider that the information in Annexure A identified as belonging in Category 4 is confidential information over which Fortescue has an obligation of confidence.

**C. Duration of suppression sought over information in Annexure A**

28. I am informed by Mr Huber and believe that the Category 1 personal information should be kept confidential for at least five years in order to protect the safety of the Deponents, Fortescue employees, and third parties described in Part B.1 above.

Affirmed by Paul Alexander Dewar )  
at Sydney in New South Wales )  
on 4 July 2024 )  
Before me: )



Signature of Paul Alexander Dewar



Signature of witness

**ROHIT MANOJ DIGHE**  
An Australian Legal Practitioner  
within the meaning of the Legal  
Profession Uniform Law (New South Wales)  
Davies Collison Cave Law Pty Ltd  
7 Macquarie Place, Sydney 2000



Federal Court of Australia  
District Registry: New South Wales  
Division: General

**Fortescue Limited (ACN 002 594 872)** and others  
Applicants

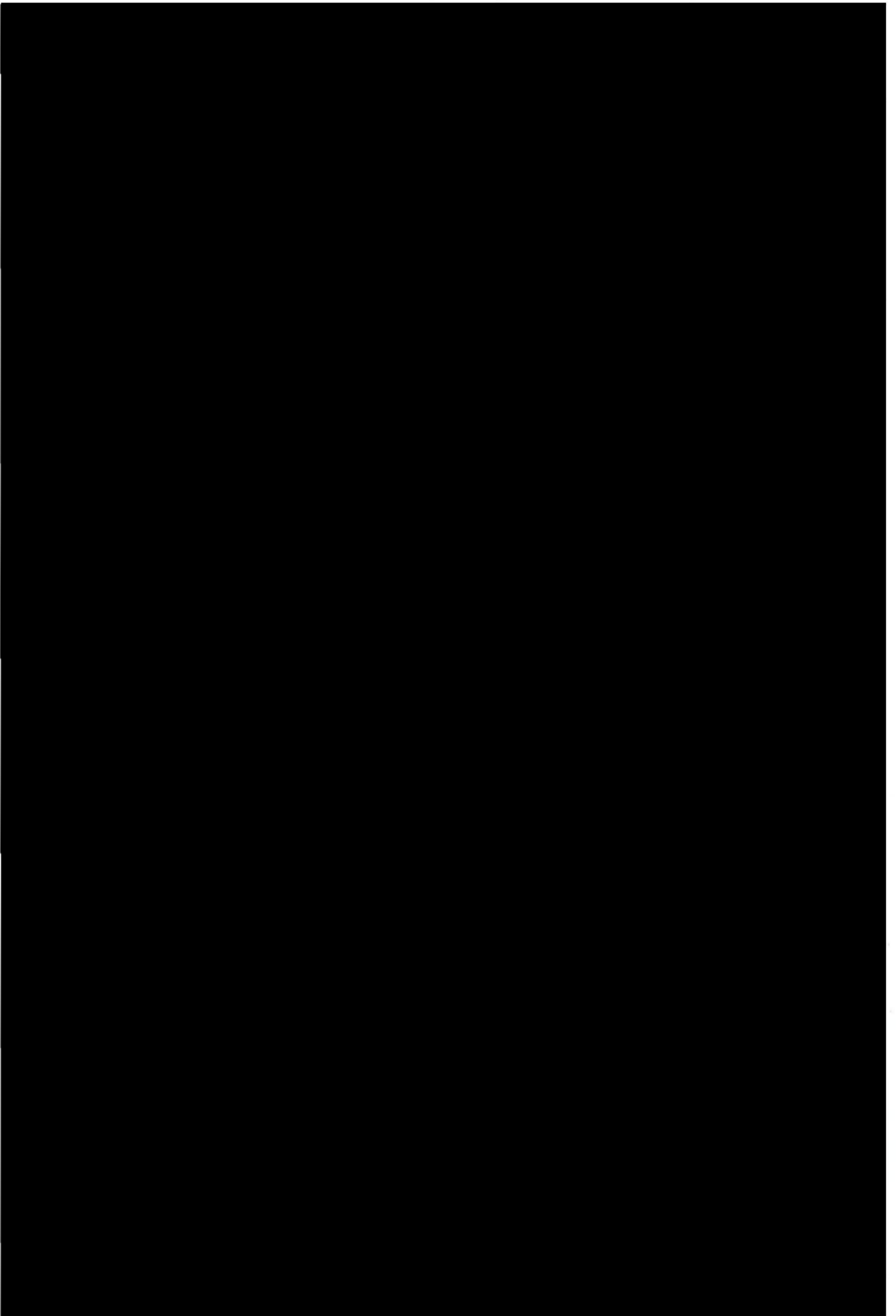
**Element Zero Pty Limited (ACN 664 342 081)** and others  
Respondents

**CONFIDENTIAL EXHIBIT PAD-A**

This is the CONFIDENTIAL exhibit marked **PAD-A** produced and shown to **PAUL ALEXANDER DEWAR** at the time of affirming his affidavit on 4 July 2024.

Before me: 

ROHIT MANOJ DIGHE  
An Australian Legal Practitioner  
within the meaning of the Legal  
Profession Uniform Law (New South Wales)  
Davies Collison Cave Law Pty Ltd  
7 Macquarie Place, Sydney 2000





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**ANNEXURE PAD-19**

This is the annexure marked **PAD-19** produced and shown to **PAUL ALEXANDER DEWAR** at the time of affirming his affidavit on 4 July 2024.

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7 Macquarie Place, Sydney 2000



# Guide to the Anonymisation of Personal and Sensitive Information

Personal identifiers are specific information that can uniquely identify an individual when used in combination with other information such as a name.

Examples of unique information include street numbers of past or present residential addresses, dates of birth, anniversary dates, Medicare numbers, bank account numbers, tax file numbers and driving licence numbers. Including unique personal identifiers when drafting court documents can lead to identity theft. The risk of identity theft can be reduced by avoiding or anonymising unique personal identifiers.

The practice suggested by the Court is to *minimise the use of personal identifiers of third parties* when drafting court documents. Where possible, general personal information should be provided over specifics and, where this is not possible, substitutions should be used.

## For example:

"the applicant's child, whose date of birth is 02 December 1988 and the subject of Australian citizenship number CN0000123K, was residing at 123 Main Street, Hobart TAS 7000"

Could be:

"the applicant's child, who was born in 1988 and the subject of Australian citizenship number CN xxxx xx3K, was residing in Hobart."

When drafting a document the following table serves as suggested substitutions for third party information:

Information	Suggested Substitutions
Dates of birth	Refer only to the year or, if absolutely necessary, the month and the year.
Address	Give a general indication of the location such as the name of the city.
Telephone numbers	Omit or partially obscure the phone or fax number by replacing a number of digits with 'xx'
Email addresses	Omit or partially obscure use xxx@xxx

Unique identifiers such as: Remove all or a sequence of the numbers to obscure the reference e.g. Passport No xxxx xxxx xx34

- bank account details
- tax file numbers
- Medicare numbers
- Citizenship numbers
- credit card numbers

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- car registration
- driving license numbers or
- passport

If it is essential that personal or sensitive information about an individual be included in a document, consideration should be given before lodgment to whether a suppression or non-publication order should be sought.

This guide does not apply to the provision of practitioners' or deponents' contact details to the Court in accordance with the Court's rules or practice and procedure.

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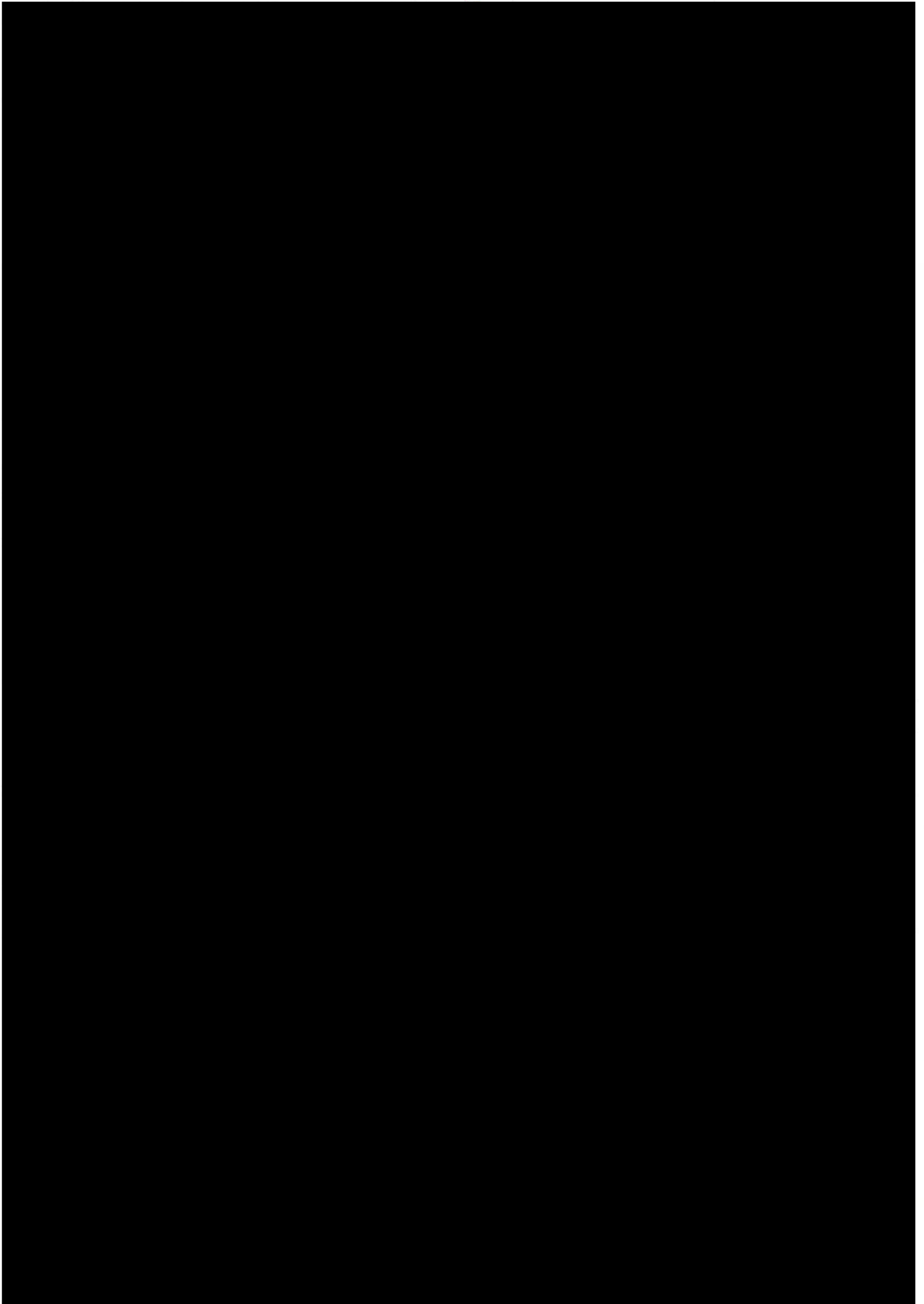
**CONFIDENTIAL ANNEXURE PAD-20**

This is the **confidential** annexure marked **PAD-20** produced and shown to **PAUL ALEXANDER DEWAR** at the time of affirming his affidavit on 4 July 2024.

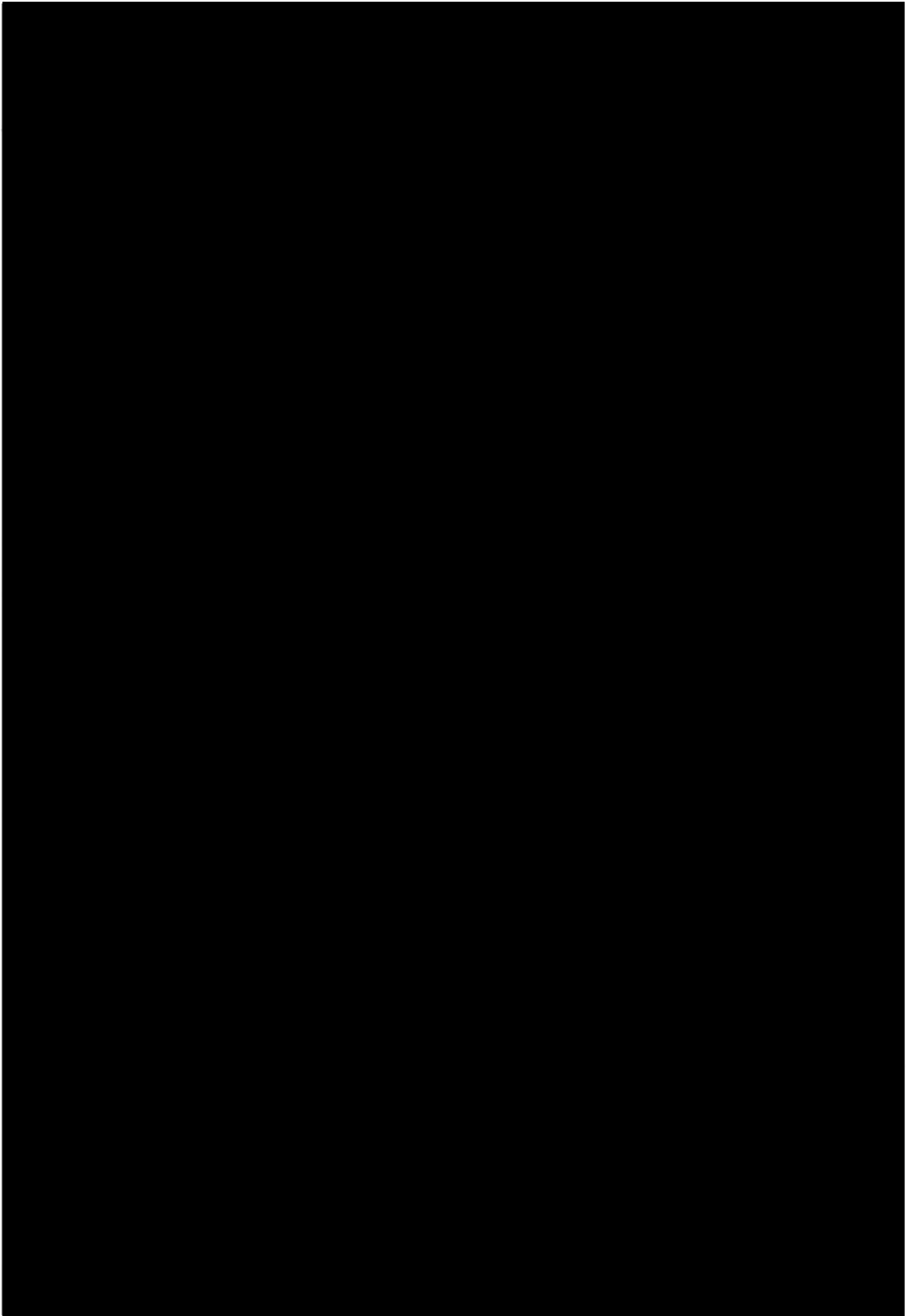
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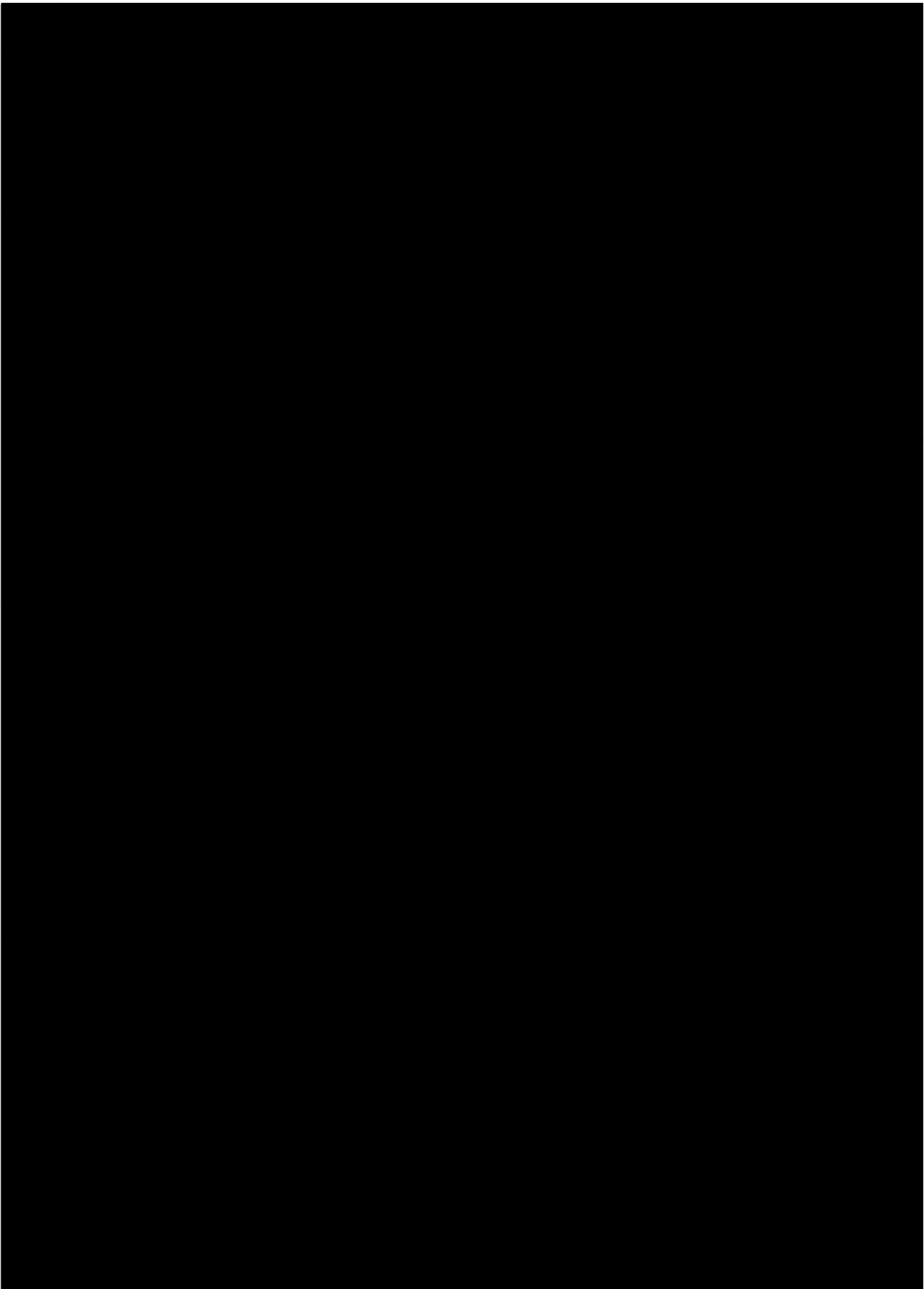


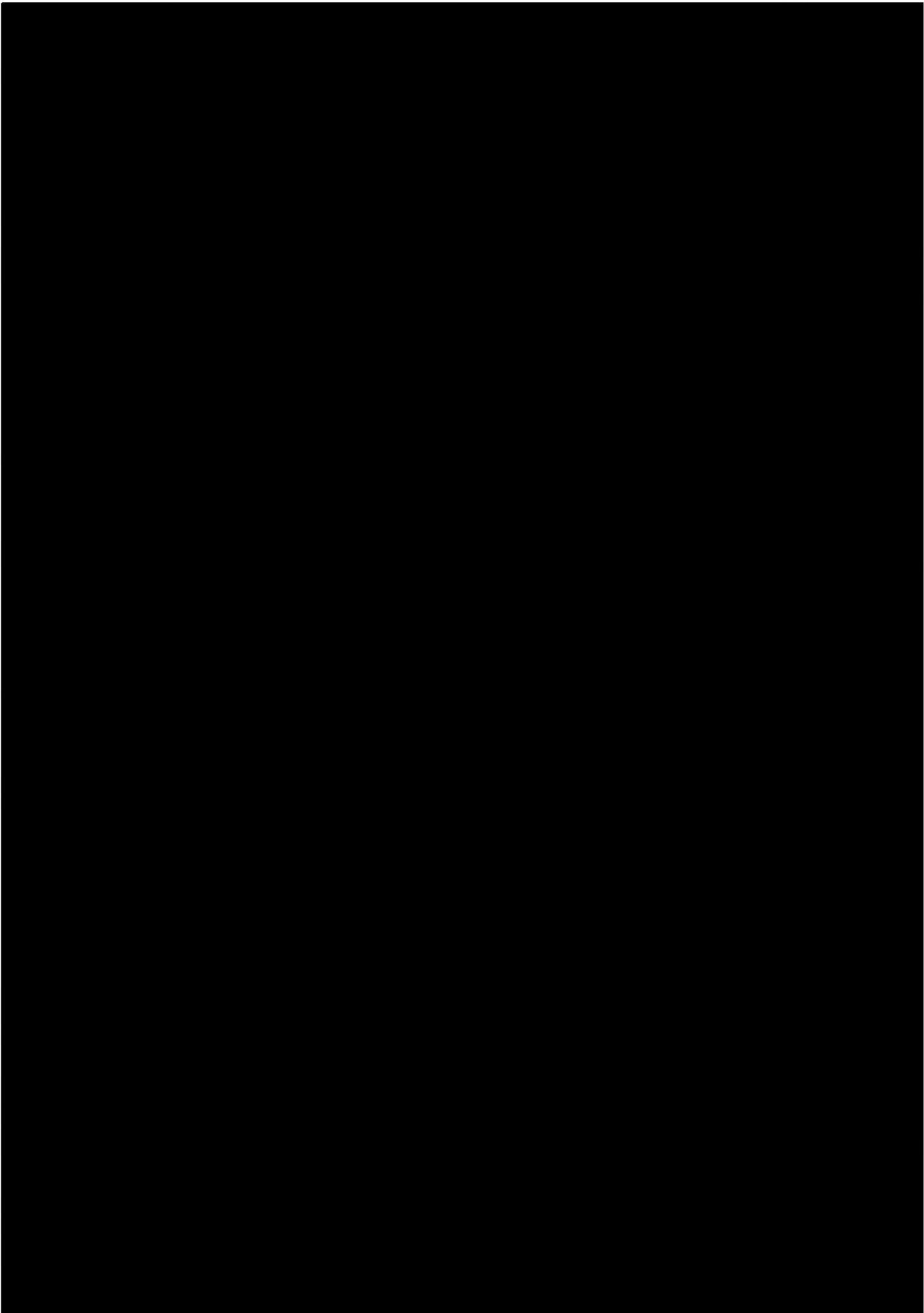
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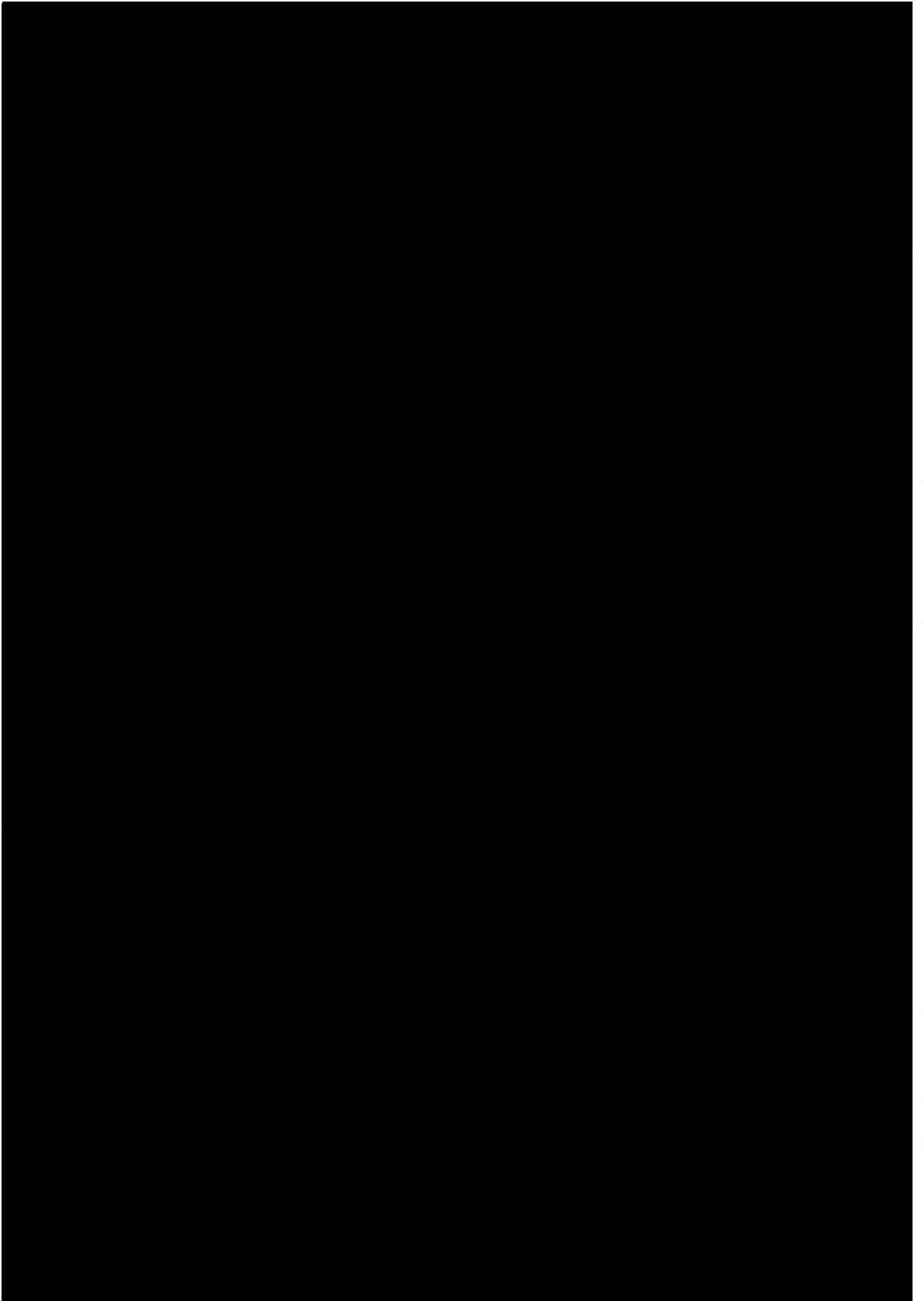


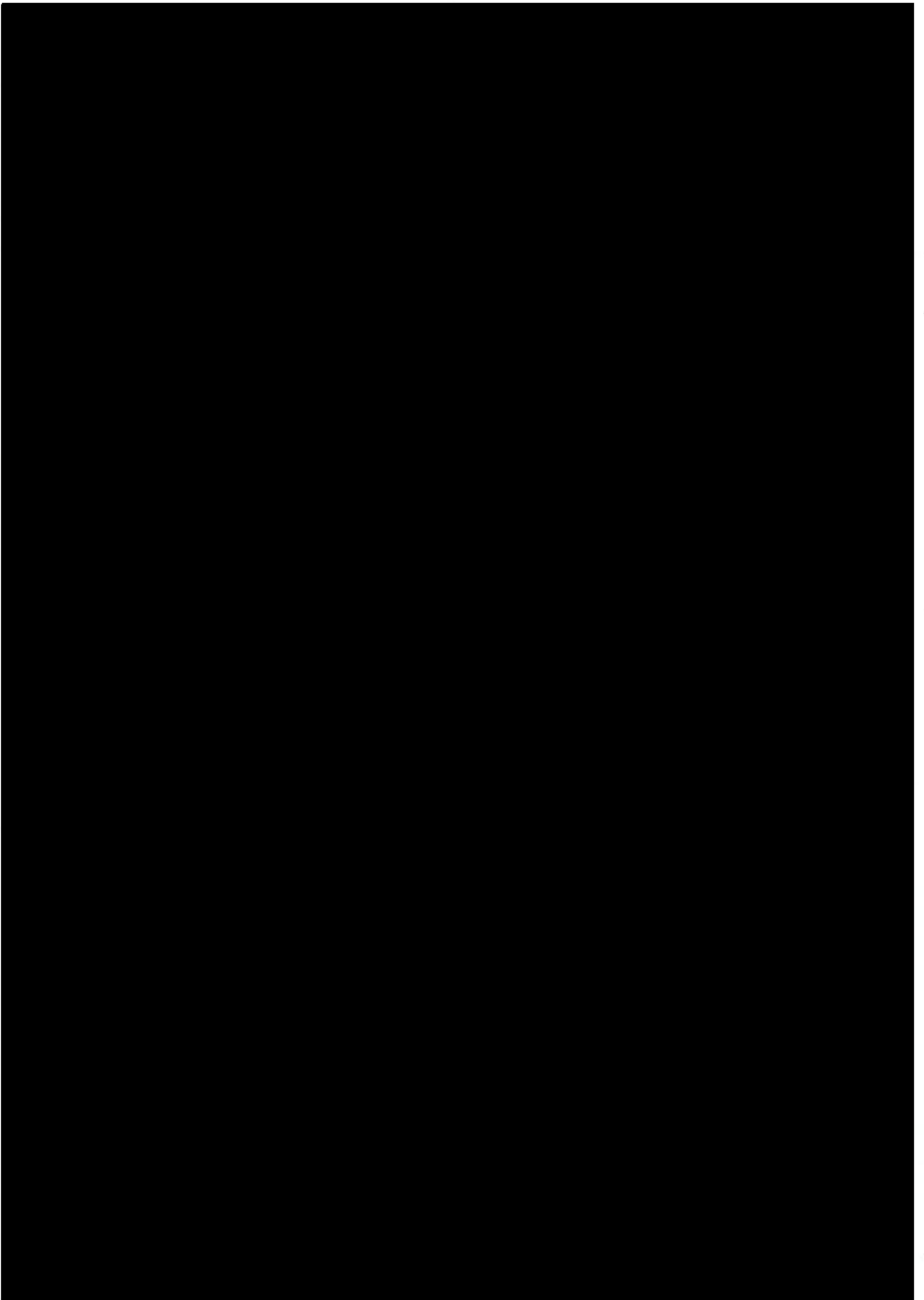


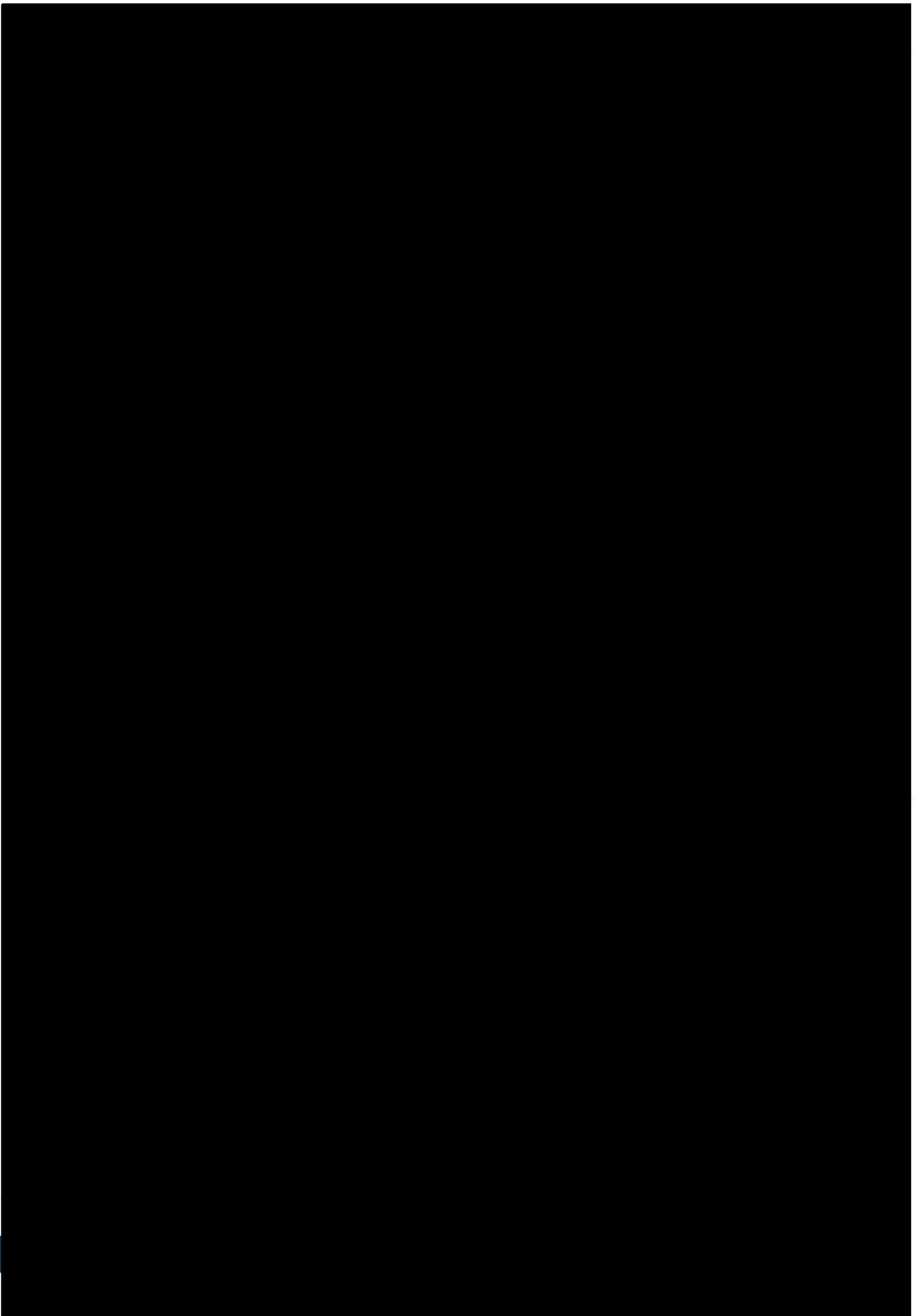


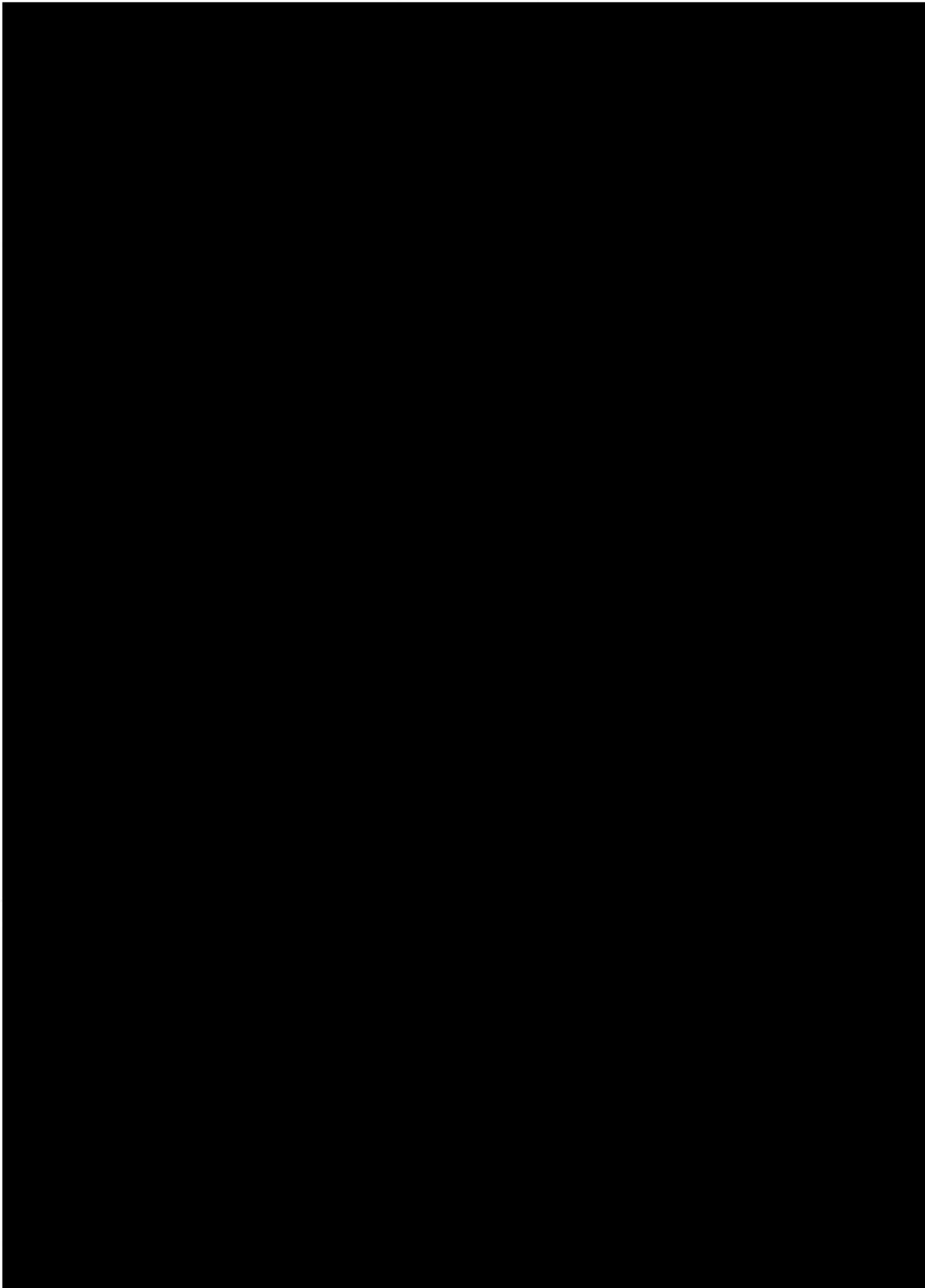


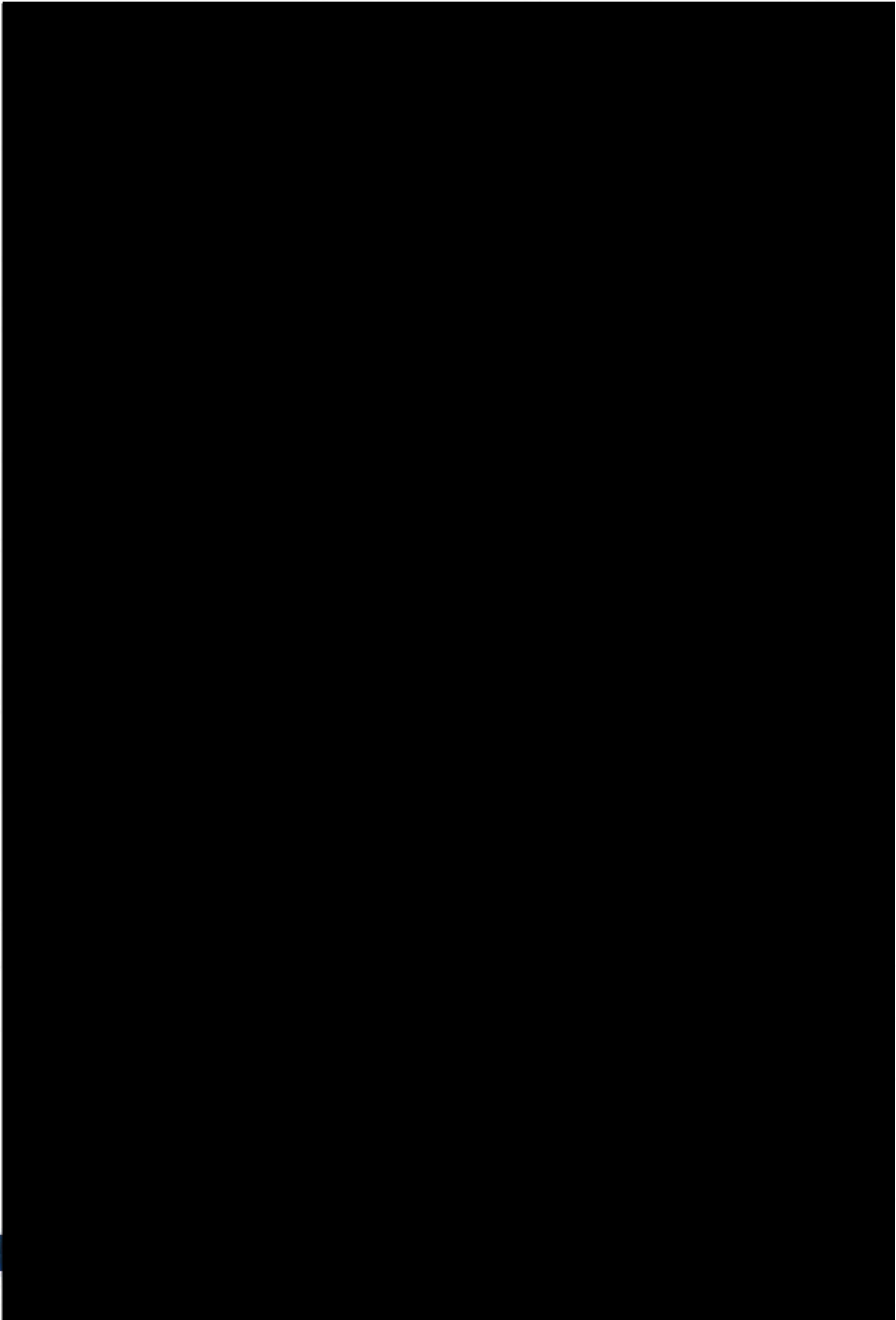




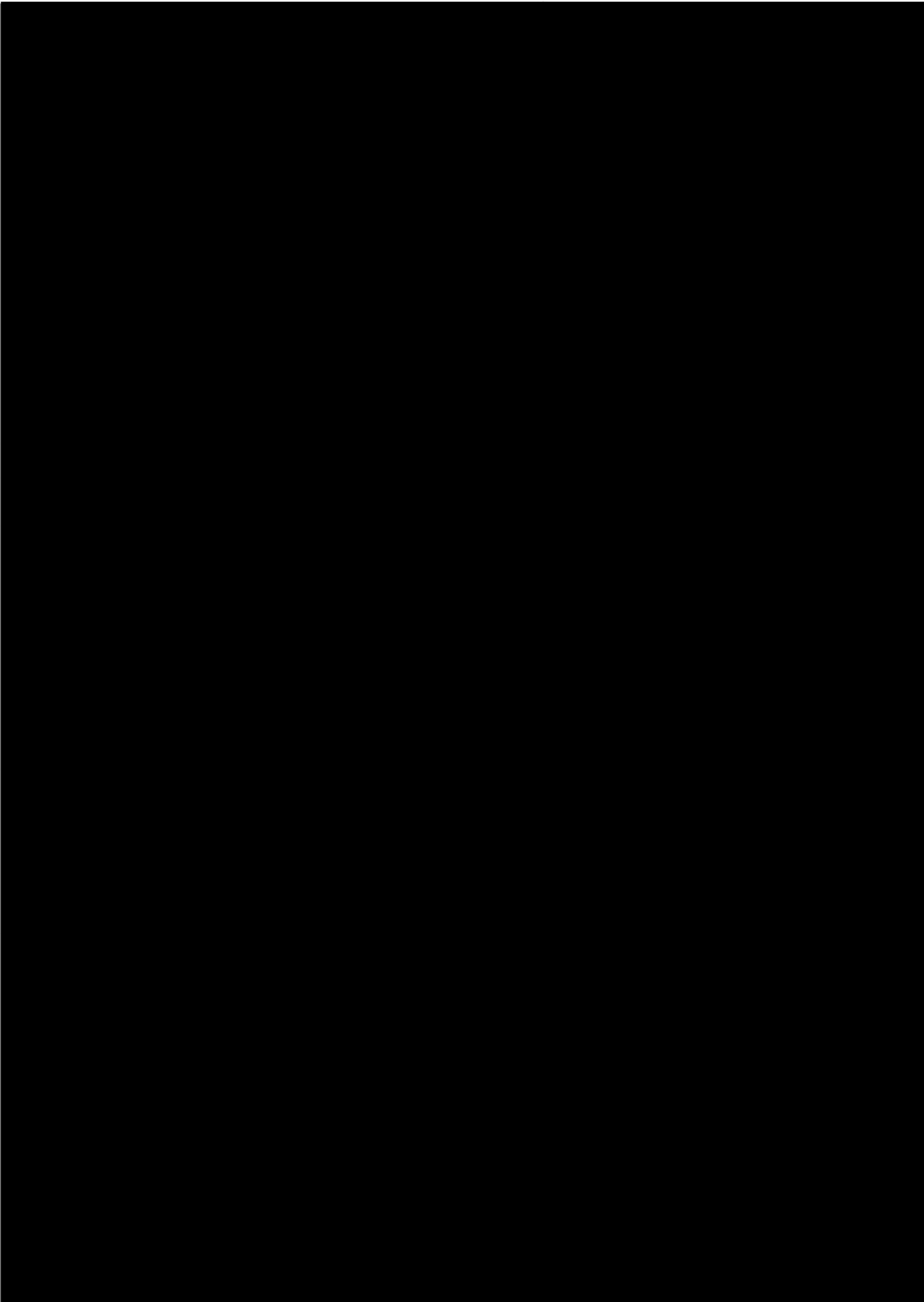


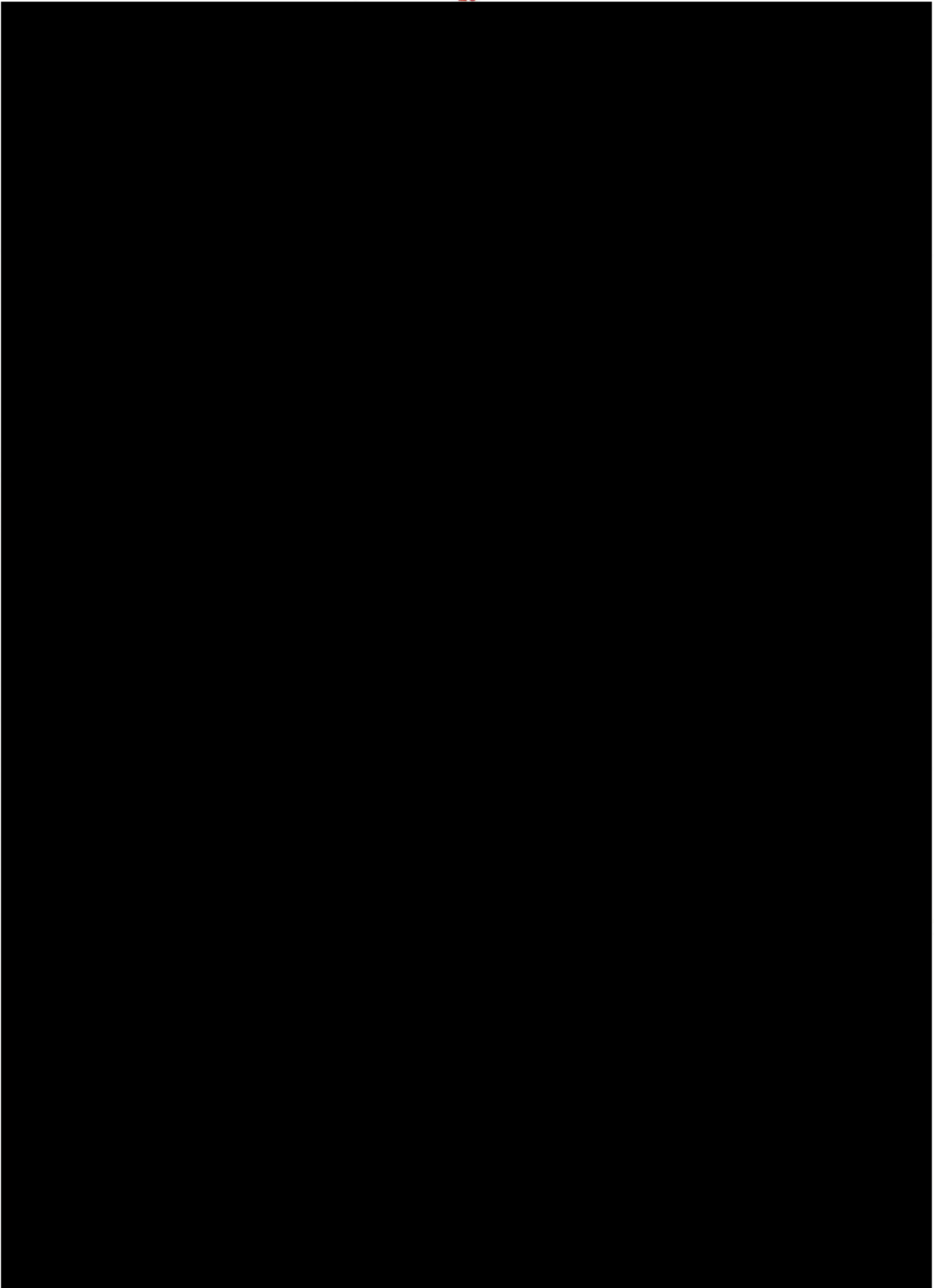


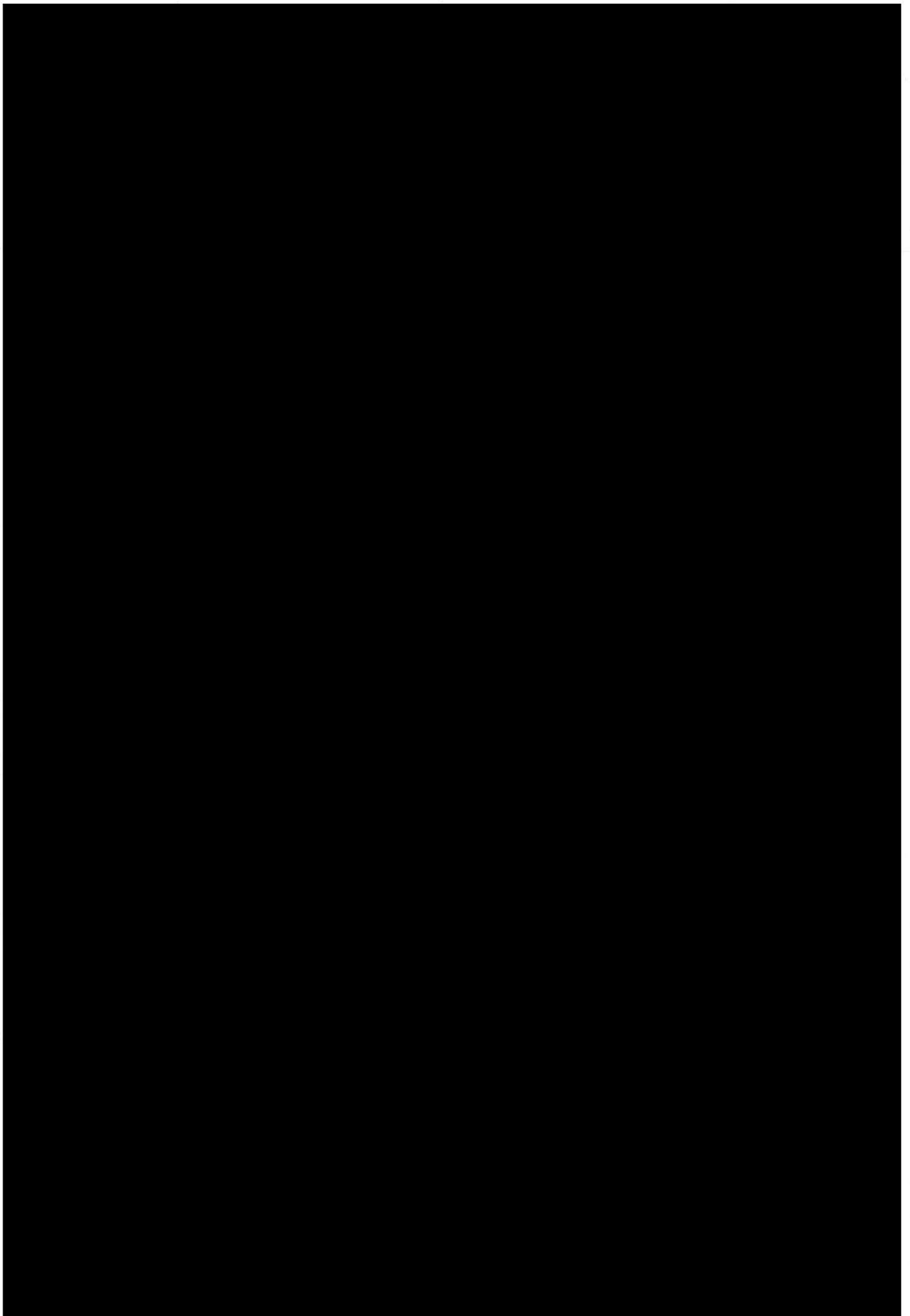












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**CONFIDENTIAL ANNEXURE PAD-21**

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