

**SAMSUNG ELECONTRICS
AMERICA, INC.,**

v.

ZIM INTEGRATED SHIPPING SERVICES LTD.

Docket No. 22-30

**Respondent ZIM Integrated Shipping Services Ltd.'s
Opposition to Complainant Samsung Electronics America, Inc.'s
Motion to Compel**

Public - Unrestricted

BEFORE THE
FEDERAL MARITIME COMMISSION

DOCKET NO. 22-30

SAMSUNG ELECTRONICS

AMERICA, INC.,

COMPLAINANT,

v.

ZIM INTEGRATED SHIPPING SERVICES LTD.,

RESPONDENT.

**RESPONDENT ZIM INTEGRATED SHIPPING SERVICES LTD.'S
OPPOSITION TO COMPLAINANT SAMSUNG ELECTRONICS AMERICA, INC.'S
MOTION TO COMPEL**

Respondent ZIM Integrated Shipping Services Ltd. (“ZIM”), through counsel, hereby opposes Complainant Samsung Electronics America, Inc.’s (“SEA”) Motion to Compel the Deposition of Xavier Destriau (“Motion”).

Because the deposition is not reasonably calculated to lead to the discovery of admissible evidence and intended solely to harass and embarrass, Complainant’s motion should be denied.

I. Introduction and Background

Pursuant to the amended schedule set forth in the April 3, 2023 Order in this proceeding, fact depositions were to conclude on May 22. SEA’s counsel initially noticed the depositions of all nine (9) individuals identified in ZIM’s initial disclosures, as well as the deposition of a corporate representative of ZIM. ZIM designated one or more individuals to testify to each of

the corporate representative topics and, pursuant to an agreement between counsel for the parties, individual witnesses that were designated as corporate representatives for one or more topics were deposed in their individual and corporate representative capacities in a single session.

Between May 1 and May 25, SEA counsel deposed ten (10) ZIM witnesses in their individual and/or corporate representative capacities.¹ The ZIM witnesses deposed by SEA included the Director of Financial Control of ZIM American Integrated Shipping Services Co., LLC (“ZIM American”); the Director of Finance of ZIM American; and the Chief Financial Officer of ZIM American. The former two report to the latter. The Chief Financial Officer reports to the President of ZIM American. Yaacoub Yaacoub Deposition Transcript², p. 18, L.2-L.11, attached hereto as Exhibit #1.

None of the deposed witnesses reports to Xavier Destriau, the Chief Financial Officer of ZIM Integrated Shipping Services Ltd., either directly or indirectly. Yaacoub, p. 17, L.19-L.24; Weingartner, p. 21, L.6-L.15; Rosenberg, p. 53, L.1-L.25, attached hereto as Exhibits #2, #3 and #4, respectively. Nevertheless, SEA now seeks to compel the deposition of Mr. Destriau.

SEA’s motion should be denied for the reasons set forth below.

II. The Testimony Sought Is Not Reasonably Calculated To Lead To The Discovery Of Admissible Evidence

Despite SEA’s overwrought protestations to the contrary, Mr. Destriau does not possess any information relevant to SEA’s claims, or which might be reasonably calculated to lead to the discovery of admissible evidence.

This is so for two reasons.

¹ Nine of the ten depositions taken by SEA lasted nearly all of the seven hours allowed under applicable regulations.

² References to transcripts of witness depositions are hereinafter referred to using only the surname of the witness.

A. ZIM's Haifa Headquarters And Mr. Destriau Play No Role With Respect To The Issues In This Proceeding

The Motion repeatedly claims that SEA is missing “critical” information that it must obtain from Mr. Destriau, but fails to clearly identify exactly what this allegedly critical information might be. Regardless, as explained below, this allegation is utterly devoid of merit.

SEA's theory appears to be that ZIM's profitability during the period from 2020 to 2022 is attributable to policies, practices and procedures relating to the assessment and collection of demurrage and detention, as well as the imposition of holds on cargo, in the United States. Further, SEA appears to believe these practices, policies and procedures were orchestrated by upper-level ZIM management in its Haifa headquarters.

The first and foremost problem with this theory is that it is without any basis in fact. All of ZIM's practices, policies and procedures with respect to the collection of past due invoices, the assessment and collection of demurrage and detention, and the imposition of cargo holds on past due customers are decided by ZIM American personnel here in the United States. See, Declaration of Mark Newcomb, Vice President and General Counsel of ZIM American, attached hereto as Exhibit #5 at ¶ 3. More specifically, Mr. Destriau had no role in determining detention and demurrage rates, nor did he have any role in forming or promulgating the policies or procedures employed by ZIM American with respect to the collection of these charges. Id.

Indeed, the authority to impose cargo holds resides with ZIM American. Yaacoub, p. 69, L.12-15, attached hereto as Exhibit # 6 (U.S. collection manager can impose hold); Exhibit 7 to deposition of Ilana Rosenberg, p. 4, attached hereto as Exhibit #7 (cargo hold escalated to U.S. Finance Manager and U.S. senior management).

The lack of involvement by ZIM's headquarters in U.S. demurrage and detention issues is further confirmed by testimony that ZIM did not change its practices, policies and procedures

relating to demurrage and detention, collections, and cargo holds during the period from 2020-22. Yaacoub, p. 125 L.15-p. 126 L.5 attached hereto as Exhibit #8 (cargo hold/demurrage policy not changed as a result of FMC's interpretative rule or OSRA 2022).

The sole basis for SEA's assertion that C-suite level executives in Haifa were involved in establishing practices, policies and procedures with respect to demurrage and detention in the United States appears to be a single email attached to the Motion as Exhibit 4. This email, from January of 2022, indicates that ZIM's CEO is concerned about overdue accounts. Nothing in this email indicates that this concern is related to or limited to payment of demurrage and detention. Moreover, ocean freight on shipments consigned to many U.S. importers is paid by the importer in the United States, meaning that overdue accounts would include those accounts that are delinquent in the payment of ocean freight. Newcomb Declaration, Exhibit #5, ¶ 4.

In addition, the fact that this email was sent in January of 2022, more than two years into the period during which SEA alleges that ZIM's C-suite level executives were actively managing U.S. demurrage and detention issues and is the only email upon which SEA relies, demonstrates the lack of ZIM Headquarters involvement in these issues.³

SEA complains that witnesses produced by ZIM were not prepared to testify on topics described in its 143(b)(6) notice. This alleged deficiency is a result of the manner in which SEA's attorneys posed questions to the witnesses and not a deficiency as to the competency of the evidence they adduced or the extent of their knowledge.

One strategy employed by SEA was to ask witnesses about specific dollar amounts that accrued during time frames that ranged over a three year period. No witness had or could

³ SEA's alleges that ZIM is withholding evidence, based on a lack of emails sent to/from Mr. Destriau. This is a ridiculous assertion since ZIM has produced over 22,000 documents, totaling over 86,000 pages. The lack of emails to/from Mr. Destriau does not, as SEA suggests, mean that ZIM is withholding evidence. To the contrary, it confirms that Mr. Destriau and ZIM Headquarters were not involved in U.S. demurrage/detention issues.

commit these figures to memory; however they were memorialized in documents produced by ZIM, which SEA's examiners chose not to show to the witnesses during their examination. Once this strategy became apparent to us, at least two of ZIM's witnesses attended their deposition with notes which contained figures and dates that no witness was capable of committing to memory. *See*, for example, deposition testimony given by Ms. Rosenberg with respect to specific figures and dates – all of which she was questioned about, and answered, without being shown a single document by the SEA examiner. Rosenberg, p. 39, attached hereto as Exhibit #9 (the notes were produced to SEA, pursuant to the request made at her deposition).

Another strategy was to ask questions about topics for which a witness had not been designated. One example, inaptly cited by SEA in its motion as an example of a deficiency, involved Mr. Yaacoub, ZIM American's Director of Finance, whose responsibilities entailed collection, freight issues and disputes. Yaacoub, p. 16, L.-14-L.23 (attached hereto as Exhibit #10). Notably, Mr. Yaacoub only became involved with issues involving SEA when its undisputed receivables were in the hundreds of thousands of dollars and had been outstanding for many months without any glimmer of payment or resolution.⁴ Mr. Yaacoub was not involved in invoicing or any of the other ministerial accounting functions that were unrelated to the collection of seriously overdue accounts. Nor was he involved in the analysis of SEA's claim after this case had gone into litigation. So it is not surprising that he was not familiar with the total amount claimed by SEA in this litigation. Yaacoub, p. 173, L.6-L.17, attached hereto as

⁴ Although ZIM had transparent and robust procedures in place for customers to contest charges, including charges for detention and demurrage, [REDACTED]

[REDACTED] Fernando, p. 72, L. 12 – p. 73, L. 5 (attached hereto as Exhibit #11). SEA would only start to substantively address ZIM's charges when they had snowballed into hundreds of thousands of dollars in receivables that were many months old and ZIM imposed cargo holds after exhausting all other collection efforts. Yaacoub, p. 171, L.19 – p. 173, L. 5 (attached hereto as Exhibit #12) Cleva, p. 50, L.3 – p. 51, L.8 (attached hereto as Exhibit #13).

Exhibit #14. But Mr. Yaacoub was totally familiar with the practices and policies employed by ZIM in collecting seriously overdue and uncontested receivables and was able to competently testify in detail about the cargo holds imposed by ZIM in order to incentivize SEA to meet its financial obligations. Yaacoub, p.168, L. 22- p. 170, L.2, attached hereto as Exhibit #15.

In summary, ZIM has produced ten witnesses who, during examinations which have exceeded seventy three hours, have competently answered all of the substantive questions about facts that are relevant to the disposition of SEA's claims.

For the foregoing reasons, the testimony of Mr. Destriau is not reasonably calculated to lead to admissible evidence, and should not be compelled.

B. ZIM's Overall Financial Results Are Irrelevant

The other basis upon which SEA appears to argue that Mr. Destriau's testimony is necessary is that ZIM's revenues increased in 2020-2022 and that this increase is the result of ZIM's collection of demurrage and detention in the United States. The implication is that if demurrage and detention contributed to profit, the charges were unreasonable. This argument is fatally flawed for three reasons.

First, carrier profitability (or lack thereof) is simply not a factor to be considered in determining the reasonableness of a demurrage or detention charge. The reasonableness of such charges is to be made on a case-by-case basis. 85 Fed. Reg. 29639 (May 18, 2020)("Each section 41102(c) case would continue to be decided on its particular facts..."). Overall carrier profitability has no place in that analysis. Indeed, if SEA is correct and carrier profitability is a factor in determining the reasonableness of demurrage and detention charges under the Shipping Act, then presumably if two carriers assess the same charge in the same circumstances one could

be in violation of the Shipping Act because it is profitable, while the other would not because it is not profitable. That absurd result demonstrates the fallacy in SEA's argument.

Second, ZIM is a global carrier. It has offices in approximately 120 countries throughout the world. Yaacoub, p. 16, attached hereto as Exhibit #10. Although the U.S. is a large and important market, it is nonetheless just one of many markets served by ZIM and from which ZIM derives revenue. This is illustrated by a simple examination of the magnitude of SEA's claim. The amount of damages claimed by SEA in its initial disclosures is \$ [REDACTED] subject to adjustment. According to ZIM's Annual Report to the U.S. Security and Exchange Commission for fiscal year ended December 31, 2022 (the relevant portion of which is attached hereto as Exhibit #16), ZIM's total EBITDA for the years 2020 through 2022 was \$15.1745 billion. In other words, the total amount of demurrage, detention and other charges that SEA seeks to recover for the periods of 2020 to 2022 are equal to approximately [REDACTED] % of ZIM's EBITDA for the same period ($[REDACTED] \div 15,174,500,000 = [REDACTED]$). This simple arithmetic lays waste to any claim that the demurrage and detention charges paid by SEA have any meaningful impact on ZIM's financial results, not to mention SEA's claim that the testimony of Mr. Destriau is necessary.⁵

Third, SEA's suggestion that ZIM's profitability is somehow tied to an "aggressive" or "expedited" collections policy with respect to demurrage and detention are baseless. As noted above, there was no change in ZIM's collection policy during the period in question. Moreover, ZIM witnesses have testified that references to "aggressive" and "expedited" collections efforts were references to trying to bring the collections process, which had become delayed due to the

⁵ SEA's damages claim includes demurrage paid to marine terminals and railroads, as well as other charges paid to entities other than ZIM. Newcomb Declaration, ¶ 5. Thus, the amount actually paid to ZIM is lower than the amount being claimed and the impact of demurrage and detention on ZIM's financial results is even lower than the infinitesimal impact demonstrated here.

volume of business during 2020-2022, more closely in line with ZIM's long-standing and unchanged collections policy. Yaacoub, p. 153, L.7-L.23; p. 159, L.13-p. 160, L.1; Rosenberg, p.156, L.2-L.22; p. 177 L.24-p. 178, L.5, attached hereto as Exhibits #17 and #18, respectively.

III. The Deposition Of Mr. Destriau Constitutes Improper Harassment Of ZIM and Its Employee

In light of the facts set forth above, it appears the sole object of SEA in taking the deposition of Mr. Destriau is to characterize ZIM's profits during the period from 2020 to 2022 as excessive and thereby attempt to taint the legitimacy of the challenged charges indirectly. While this approach might work with xenophobic members of Congress who are susceptible to such arguments, it is not evidence that should be considered to be probative by the expert agency charged with oversight of the ocean shipping industry when acting in its judicial capacity.

The law protects senior corporate executives from harassing depositions. In this regard, requests to depose high-level corporate officers are commonly referred to as 'apex' depositions. *Chick-Fil-A, Inc. v. CFT Dev., LLC*, Case No. 5:07-cv-501-OC-10GRJ, 2009 WL 928226, at *1 (M.D. Fla. Apr. 3, 2009). Courts generally restrict parties from deposing high-ranking officials because (by virtue of their position) they are vulnerable to numerous, repetitive, harassing, and abusive depositions, and therefore need some measure of protection from the courts." *REV Group, Inc. v. Scheuler*, 8:19-CV-2411-T-36AAS, 2020 WL 7426180, at *1 (M.D. Fla. Jan. 15, 2020); *Harapeti v. CBS Television Stations Inc.*, 2021 WL 3932424, *2 (S.D. N.Y. 2021) ("unless the executive has unique evidence, personal knowledge of the claims at issue, and other witnesses are incapable of providing testimony about the conduct alleged, executives are safeguarded from depositions."); *Iowa Pub. Employees' Ret. Sys. v. Merrill Lynch, Pierce, Fenner & Smith Inc.*, No. 17 CIV. 6221 (KPF), 2020 WL 6273396, at *1 (S.D.N.Y. Aug. 28, 2020) ("Even if Plaintiffs demonstrated that [CEO]'s testimony would be relevant, they have

failed to establish that it is warranted under the apex doctrine, pursuant to which doctrine “[c]ourts have recognized an additional layer of protection for senior corporate executives subject to depositions.” (quoting *Scott v. Chipotle Mexican Grill, Inc.*, 306 F.R.D. 120, 122 (S.D.N.Y. 2015)).

A party seeking an apex deposition bears the burden of demonstrating (1) “an executive has unique knowledge of the issues in the case” or (2) “the information sought has been pursued unsatisfactorily through less intrusive means.” *Goines v. Lee Mem’l Health Sys.*, 2:17-CV-656-FTM-29CM, 2018 WL 3831169, at *4 (M.D. Fla. Aug. 13, 2018); see also *Sun Cap. Partners, Inc. v. Twin City Fire Ins. Co.*, 310 F.R.D. 523, 527 (S.D. Fla. 2015).

In light of the facts set forth above, SEA has not shown that Mr. Destriau has unique knowledge of the issues in this case. Indeed, it cannot do so because there is not a single email authored by Mr. Destriau in ZIM’s 86,000 page document production. Neither can SEA demonstrate that it has sought the information at issue through other means. In this regard, none of the topics set forth in SEA’s notice of corporate representative deposition identify ZIM’s profitability as an issue to be covered in deposition testimony. See Exhibit #19. The only SEA discovery request that sought information regarding profitability was Request for Production of Documents #9, which reads:

Produce all Documents relating to Zim’s cost, pricing, revenue or profit from freight for U.S. destination for Store Door Container moves versus CY moves (including studies, analyses, tracking data, reports, presentations, memorandums, etc.), in connection with Demurrage and Detention charges.

In its February 21, 2023 response to the foregoing request, ZIM objected to the request on multiple grounds. To date, SEA has raised no concerns with respect to this objection. Given SEA’s lack of concern with ZIM’s objections to this Request for Production, SEA’s present insistence that information on ZIM’s profitability is now “critical” rings hollow.

CONCLUSION

ZIM's global headquarters generally and its CFO, Xavier Destriau, specifically, had no role in U.S. demurrage/detention assessment or collection, or with respect to the imposition of cargo holds. In light of this fact, and the fact that ZIM's overall financial performance is irrelevant to the reasonableness of the charges herein at issue, Mr. Destriau's testimony is not reasonably calculated to lead to the discovery of admissible evidence. It appears the only purpose SEA has for taking this deposition is to harass ZIM and attempt to portray ZIM's profitability in a negative light and to use that profitability to argue that demurrage and detention charges were unreasonable.

The motion to compel should be denied.

Respectfully submitted,

COZEN O'CONNOR

By: s/ Christopher Raleigh

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Dated: June 8, 2023

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 8th day of June, 2023, a true and correct copy of the foregoing Opposition was served via email on all counsel for Samsung Electronics America, Inc. in FMC Docket No. 22-30.

s/ Christopher Raleigh

LEGAL\64075082\1

EXHIBIT 1

BEFORE THE FEDERAL MARITIME COMMISSION

SAMSUNG ELECTRONICS AMERICA, INC.

Complainant,

FMC Docket No. 22-30

vs.

ZIM INTEGRATED SHIPPING SERVICES LTD.

Respondent.

_____ /

Zoom Deposition of YAACOUB YAACOUB

Wednesday, May 3, 2023 - 9:03 a.m.

Reported by:

Viola Kay Newman, CSR-4320, RPR, CRR

Job No.: 7111

1 A. Right.

2 Q. Do you happen to know who Ilana reports to?

3 A. She reports to the U.S. president.

4 Q. U.S. president. Okay.

5 Who is ZIM's U.S. president currently?

6 A. Yochai Nissim.

7 Q. Okay. And there was -- I believe there was a change
8 in that position recently?

9 A. Yes.

10 Q. So the predecessor's name was George Goldman?

11 A. Correct.

12 Q. Okay. In terms of operating the U.S. agency of ZIM,
13 how much of a direction does -- does ZIM HQ Israel
14 have?

15 A. In which aspect?

16 Q. Let's see. Finance.

17 A. The finance is huge. Like --

18 Q. Okay.

19 A. -- can you be more specific, please?

20 Q. Your job responsibilities. Let's put it -- let's
21 limit it that way.

22 A. So we have an interaction of cash flows. That's one.
23 So that's one -- one aspect of it. We have reviews
24 for the aging for the past due on the collection. On
25 the procedures, if there's any global or internal --

EXHIBIT 2

BEFORE THE FEDERAL MARITIME COMMISSION

SAMSUNG ELECTRONICS AMERICA, INC.

Complainant,

FMC Docket No. 22-30

vs.

ZIM INTEGRATED SHIPPING SERVICES LTD.

Respondent.

_____ /

Zoom Deposition of YAACOUB YAACOUB

Wednesday, May 3, 2023 - 9:03 a.m.

Reported by:

Viola Kay Newman, CSR-4320, RPR, CRR

Job No.: 7111

1 you have any direct reports to you?

2 A. Yes. I have three managers report to me. I have a
3 treasury, supervisor, analyst.

4 Q. Okay. I think we're going to see some of their names
5 in the exhibits down the road.

6 So just for the record, so that you and I
7 have a same level playing field, could you just give
8 me the name of those direct reports, the three
9 managers that you mentioned?

10 A. The collection manager is Adrienne Martin.

11 Q. Okay.

12 A. Freight issue manager is Tom Collins. The dispute
13 manager is Sandra Leads (ph), treasury supervisor is
14 Amber Neal; analyst, Vanessa Lesquaz (ph).

15 Q. Adrienne Martin, you know, is it a he or a she? You
16 know, I apologize. I just didn't -- couldn't tell.

17 A. She's a she.

18 Q. Oh, it's a she. All right. Thank you.

19 And who do you report to?

20 A. I report to the CFO.

21 Q. CFO. Okay. And his or her name?

22 A. Ilana Rosenberg.

23 Q. I missed that. Is it Ilana?

24 A. Ilana Rosenberg.

25 Q. She is also SVP, senior vice president?

EXHIBIT 3

BEFORE THE FEDERAL MARITIME COMMISSION

SAMSUNG ELECTRONICS AMERICA, INC.

Complainant,

FMC Docket No. 22-30

vs.

ZIM INTEGRATED SHIPPING SERVICES LTD.

Respondent.

_____ /

Zoom Deposition of THOMAS WEINGARTNER

Monday, May 15, 2023 - 9:00 a.m.

Reported by:

Viola Kay Newman, CSR-4320, RPR, CRR

Job No.: 7149

1 A. Some other parts of finance.

2 Q. Okay. But you're not -- your group is not responsible
3 for the performance of those parts, like accounts
4 receivable or accounts payable; is that correct?

5 A. That is correct.

6 Q. Okay. That makes sense.

7 And what does the group report to, or who
8 in the organization -- either kind of what group or
9 what persons does your group report to?

10 A. Well, my group reports to me. Really, I have one
11 manager within the team -- or supervisor, that is, and
12 I report directly to the CFO of the Americas.

13 Q. And that person is?

14 A. Ilana Rosenberg.

15 Q. Ilana Rosenberg.

16 And who do you have on your team?

17 A. I have presently Samantha Carter, who is our team
18 leader/supervisor. I have another individual by the
19 name of Carl Lojo, who is a cost reporting analyst. I
20 have a senior analyst by the name of Ben Kruthrall
21 (ph), who just joined ZIM three weeks ago as a senior
22 revenue analyst.

23 I have a junior analyst by the name of
24 Alana Johnson, who reports and performs analysis on
25 demurrage and demurrage-related activity. And I have

EXHIBIT 4

BEFORE THE FEDERAL MARITIME COMMISSION

SAMSUNG ELECTRONICS AMERICA, INC.

Complainant,

FMC Docket No. 22-30

vs.

ZIM INTEGRATED SHIPPING SERVICES LTD.

Respondent.

_____ /

Zoom Deposition of ILANA ROSENBERG

Thursday, May 25, 2023 - 9:04 a.m.

Reported by:

Viola Kay Newman, CSR-4320, RPR, CRR

Job No.: 7283

1 Q. Do you have any direct reports to you?

2 A. Yes.

3 Q. How many are there?

4 A. Total, six.

5 Q. Okay. Can you name them, please?

6 A. Names or positions?

7 Q. Well, name and position, if you recall them all.

8 A. Yeah. Okay. My assistant, Teniecia.

9 Do you need the full name?

10 No? Okay.

11 I have my senior finance analyst Beau.

12 THE COURT REPORTER: What was that?

13 THE WITNESS: Beau, B-e-a-u.

14 THE COURT REPORTER: Thank you.

15 THE WITNESS: Director of finance, Yaacoub

16 Yaacoub; director of finance control, Tom; the

17 accounting, VP accounting, Stephanie; and Tyson, who's

18 the D&D director.

19 BY MR. YOON:

20 Q. Who's the D&D director? I'm sorry.

21 A. Tyson.

22 Q. Okay. And who do you report to?

23 A. To the president of ZIM U.S.

24 Q. And his or her name?

25 A. Nissim. It's N-i-s-i-m.

EXHIBIT 5

BEFORE THE
FEDERAL MARITIME COMMISSION

DOCKET NO. 22-30

SAMSUNG ELECTRONICS AMERICA, INC.,
COMPLAINANT,

v.

ZIM INTEGRATED SHIPPING SERVICES LTD.,
RESPONDENT.

DECLARATION OF MARK E. NEWCOMB

1. My name is Mark E. Newcomb, and I am the Vice President and General Counsel of ZIM American Integrated Shipping Services Co., LLC. ("ZIM American").

2. In my capacity as Vice President and General Counsel, I am familiar with the structure of ZIM American, the scope of authority and duties of the officers of ZIM American, the relationship of ZIM American with its parent company, ZIM Integrated Shipping Services Ltd. ("ZIM"), and ZIM American's operations in the United States.

3. All of ZIM's practices, policies and procedures with respect to the assessment and collection of demurrage and detention, including pursuit of past due invoices and the imposition of cargo holds on past due customers, are decided by ZIM American personnel here in the United States. Xavier Destriau, the CFO of ZIM had no role in determining detention and demurrage rates charged by ZIM American, nor did he have any role in establishing or promulgating the policies and procedures employed by ZIM American in the collection of these charges

4. Ocean freight on shipments consigned to many U.S. importers is paid by the importer in the United States. Accordingly, within ZIM American, references to overdue accounts would include those accounts that are delinquent in the payment of ocean freight.

5. The damages claim of Samsung Electronics America, Inc. in this proceeding includes demurrage paid to marine terminals and railroads, as well as other charges paid to entities other than ZIM or ZIM American.

I declare that the foregoing is true and correct under penalty of perjury.

Dated: June 7, 2023



Mark E. Newcomb

EXHIBIT 6

BEFORE THE FEDERAL MARITIME COMMISSION

SAMSUNG ELECTRONICS AMERICA, INC.

Complainant,

FMC Docket No. 22-30

vs.

ZIM INTEGRATED SHIPPING SERVICES LTD.

Respondent.

_____ /

Zoom Deposition of YAACOUB YAACOUB

Wednesday, May 3, 2023 - 9:03 a.m.

Reported by:

Viola Kay Newman, CSR-4320, RPR, CRR

Job No.: 7111

1 container and someone -- some ZIM employees say, no,
2 you can't go in? That's how it works?

3 A. No. The customer will be advised that they are on
4 hold. They cannot release the container.

5 Q. Understood. How does not releasing the container
6 work?

7 A. So the customer or the trucker, on behalf of the
8 customer, cannot pick up the container.

9 Q. Well, they can pick up the container until somebody
10 says no, right?

11 A. Yeah. So --

12 Q. Right. So who says no and in what form?

13 A. The collection manager will say no. They will put the
14 hold on the system, on our system, and that will not
15 allow the container to be released.

16 Q. Okay. So ZIM is keeping the containers until the hold
17 is released?

18 A. ZIM not releasing the containers, yes.

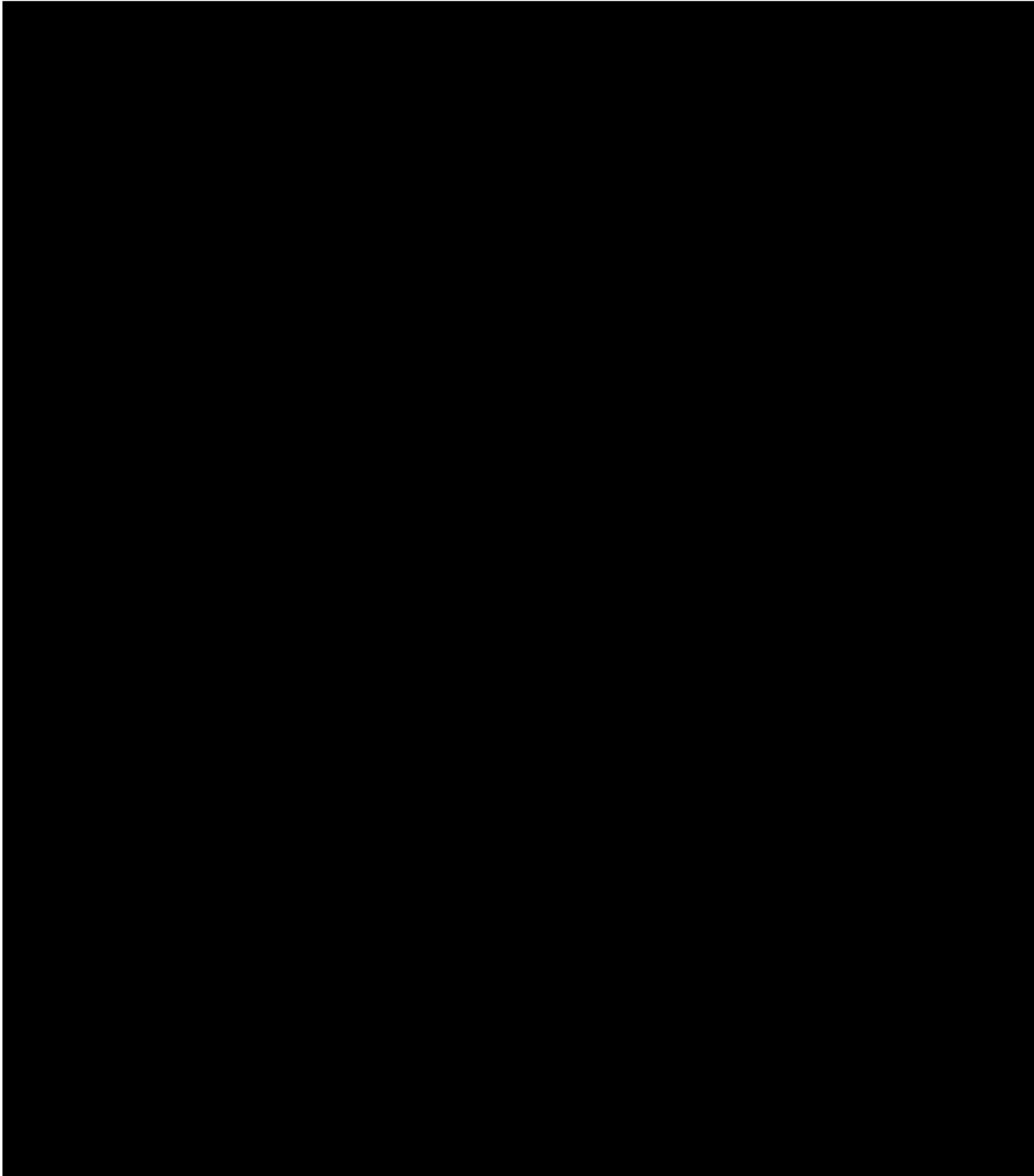
19 Q. Okay. The action plan column on this Excel
20 spreadsheet says, ZIM senior finance and commercial
21 management negotiating with Samsung Korea, right?

22 A. Can you scroll because I --

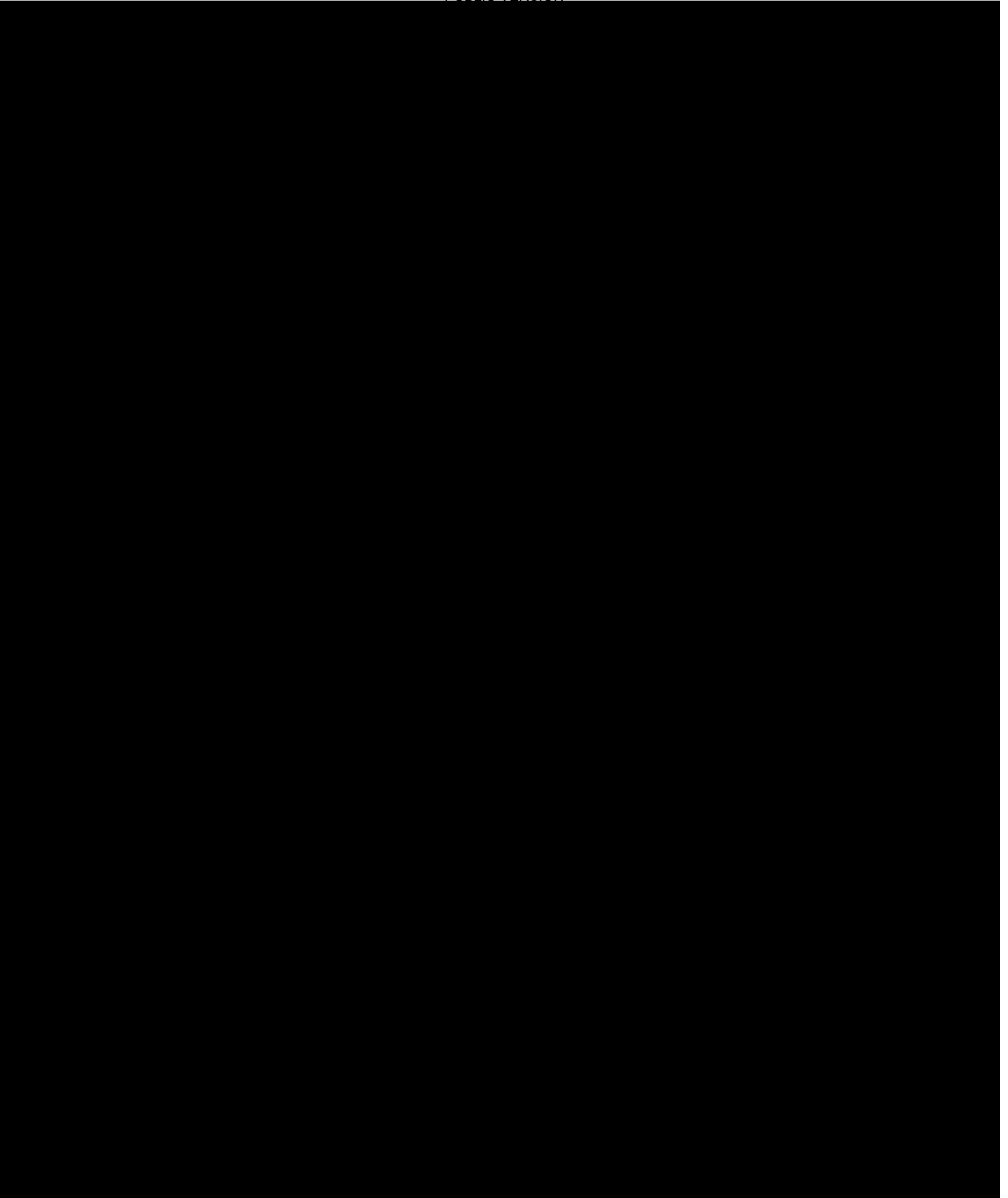
23 Q. Oh, yeah.

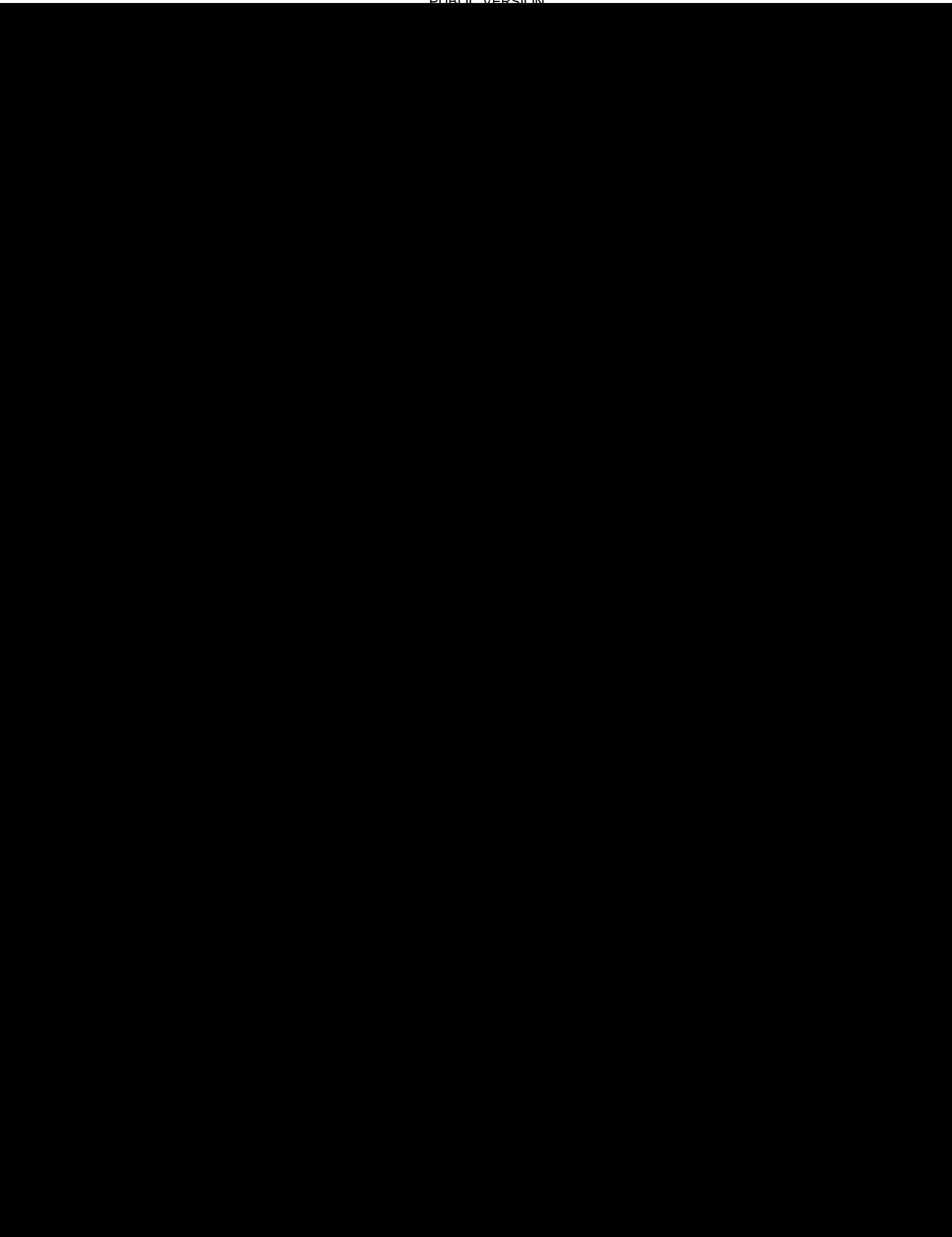
24 MR. YOON: Allison, would you mind
25 scrolling just to the right a little bit.

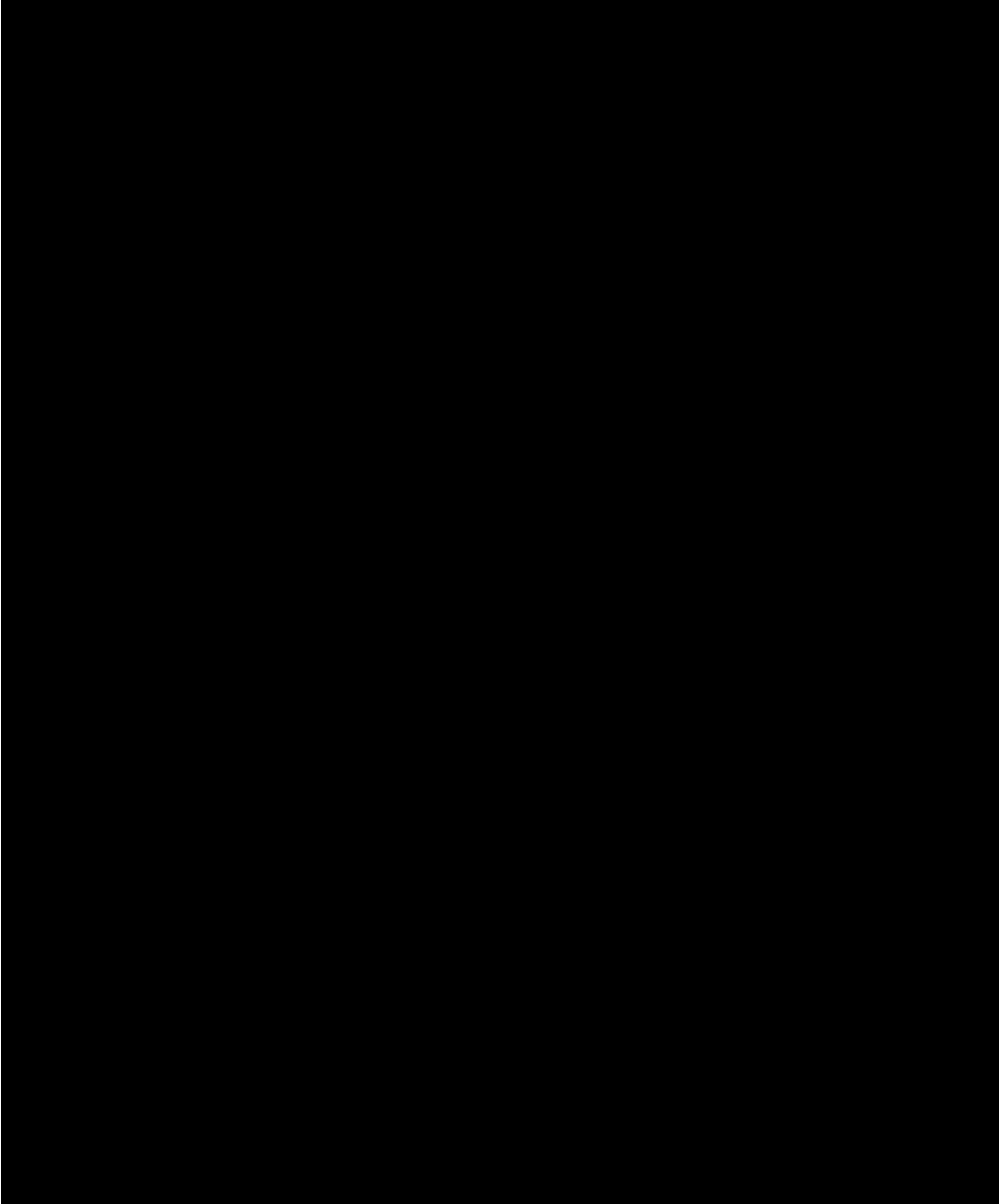
EXHIBIT 7

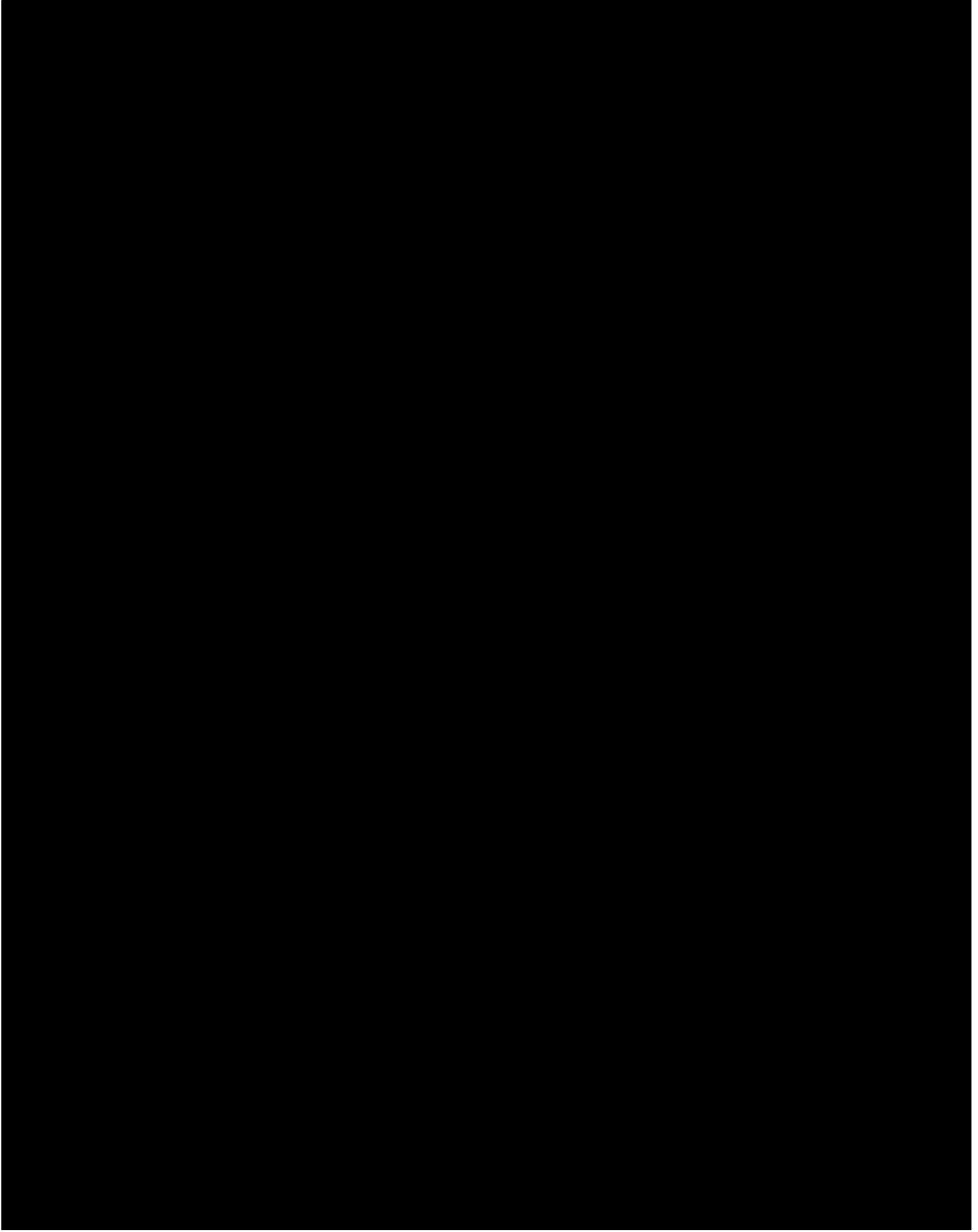


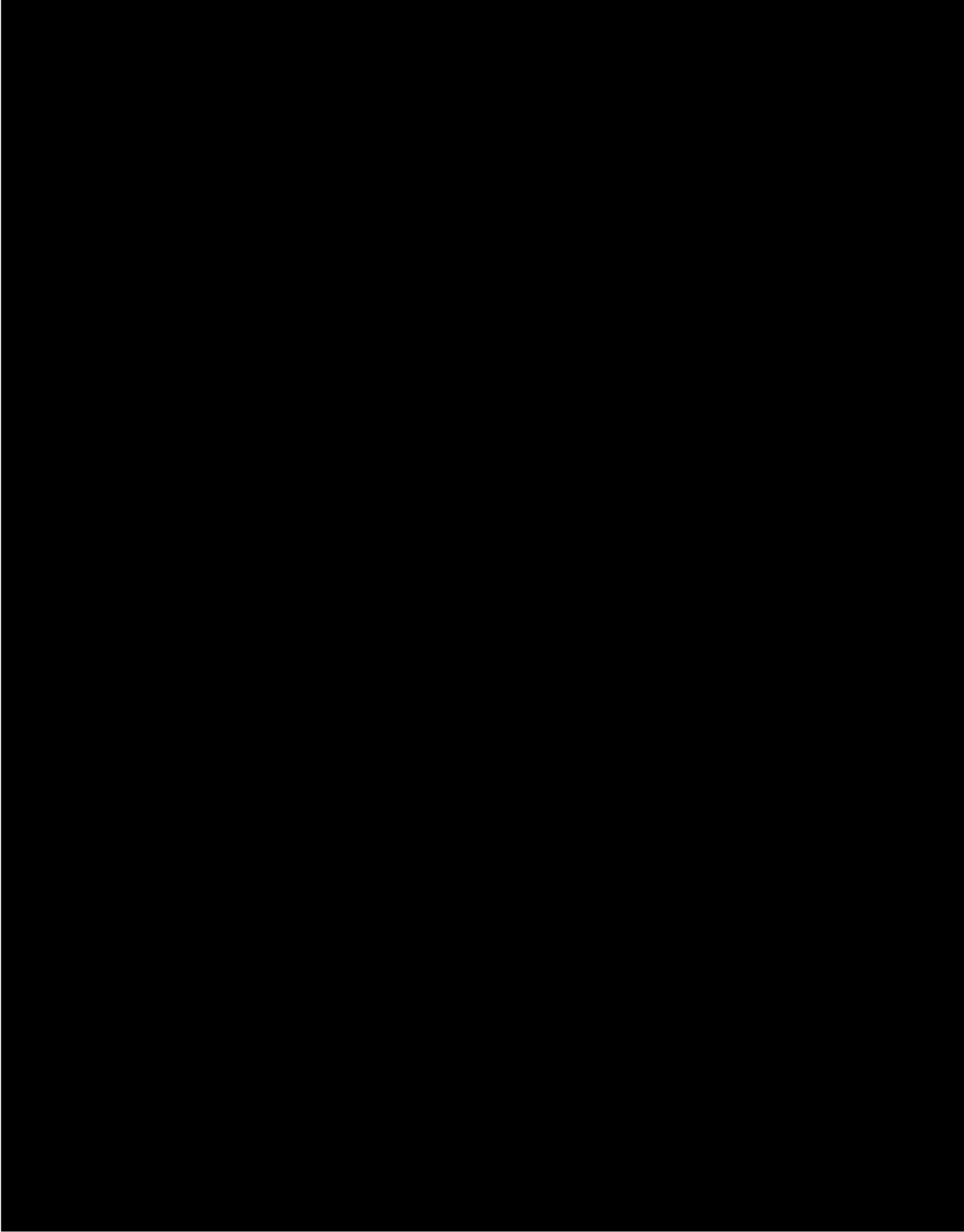
Ilana Rosenberg
Exhibit_7
5/25/2023

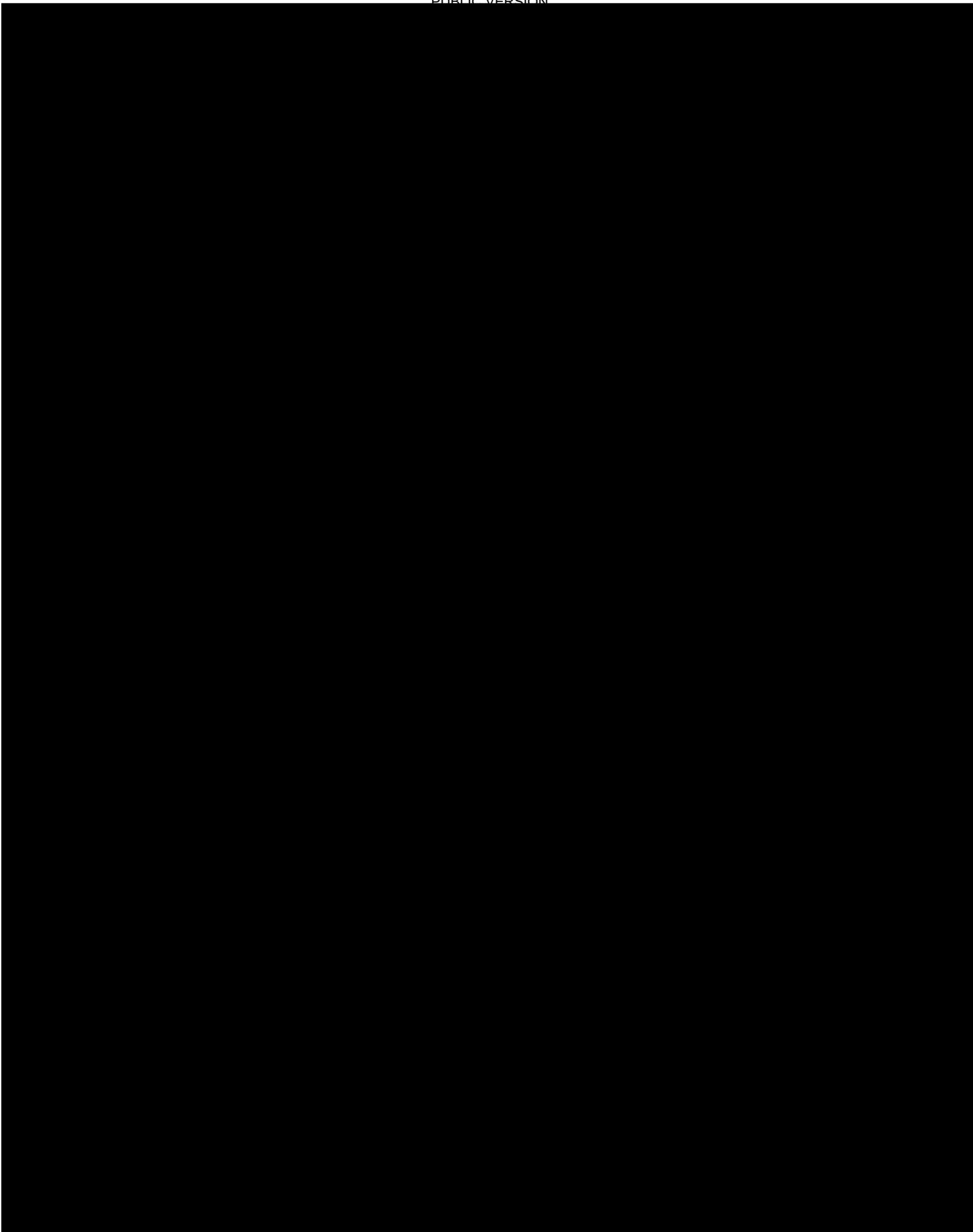


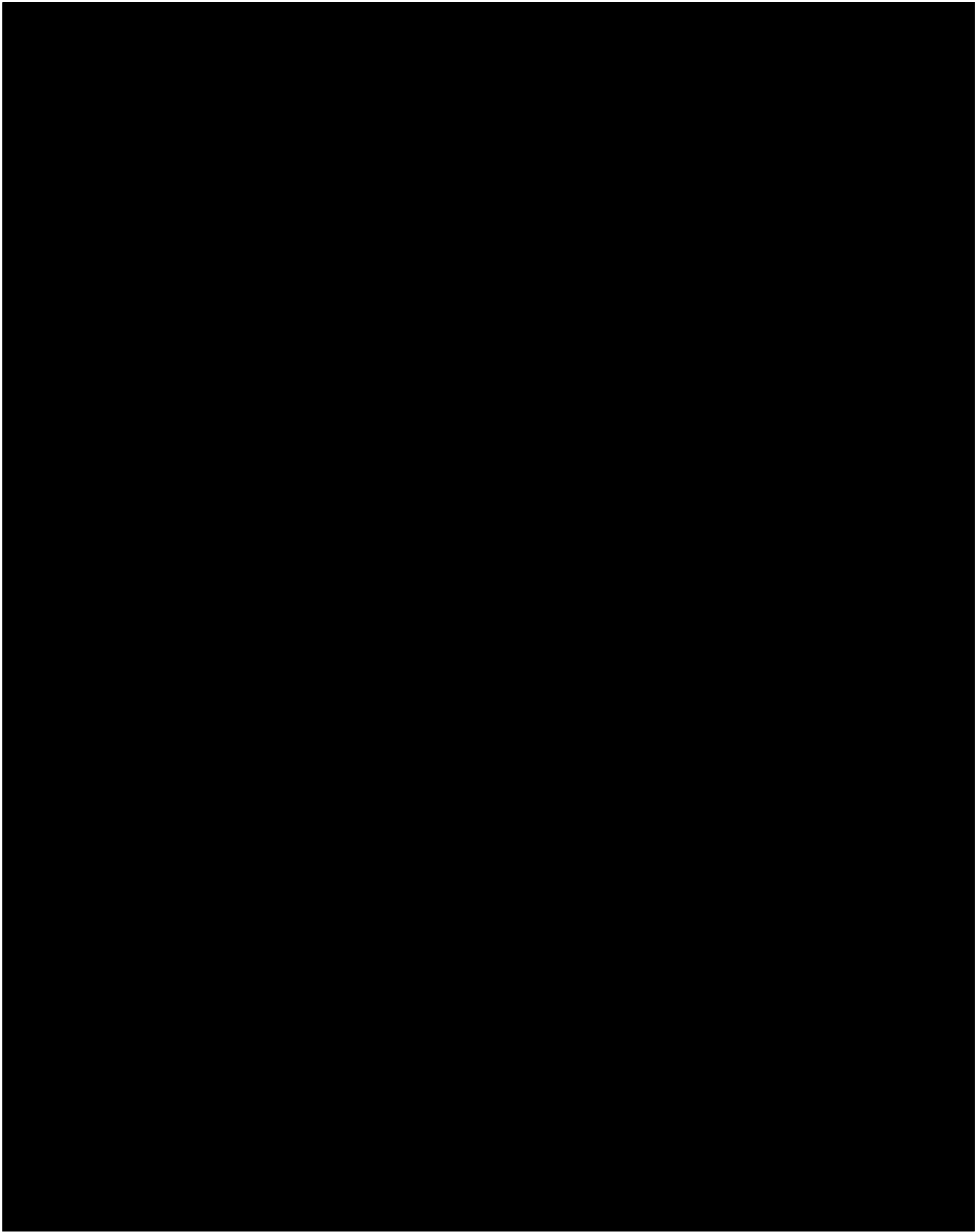


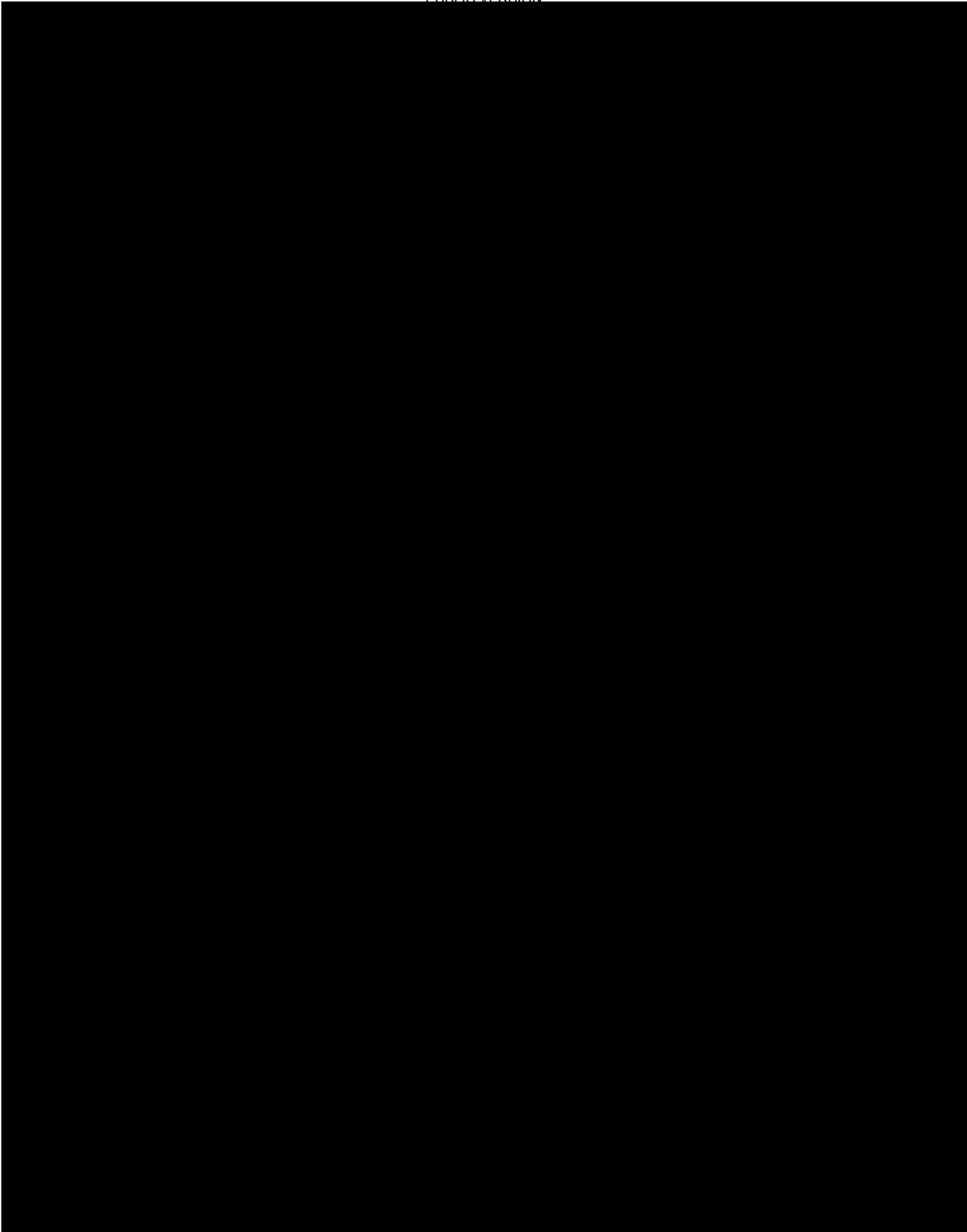


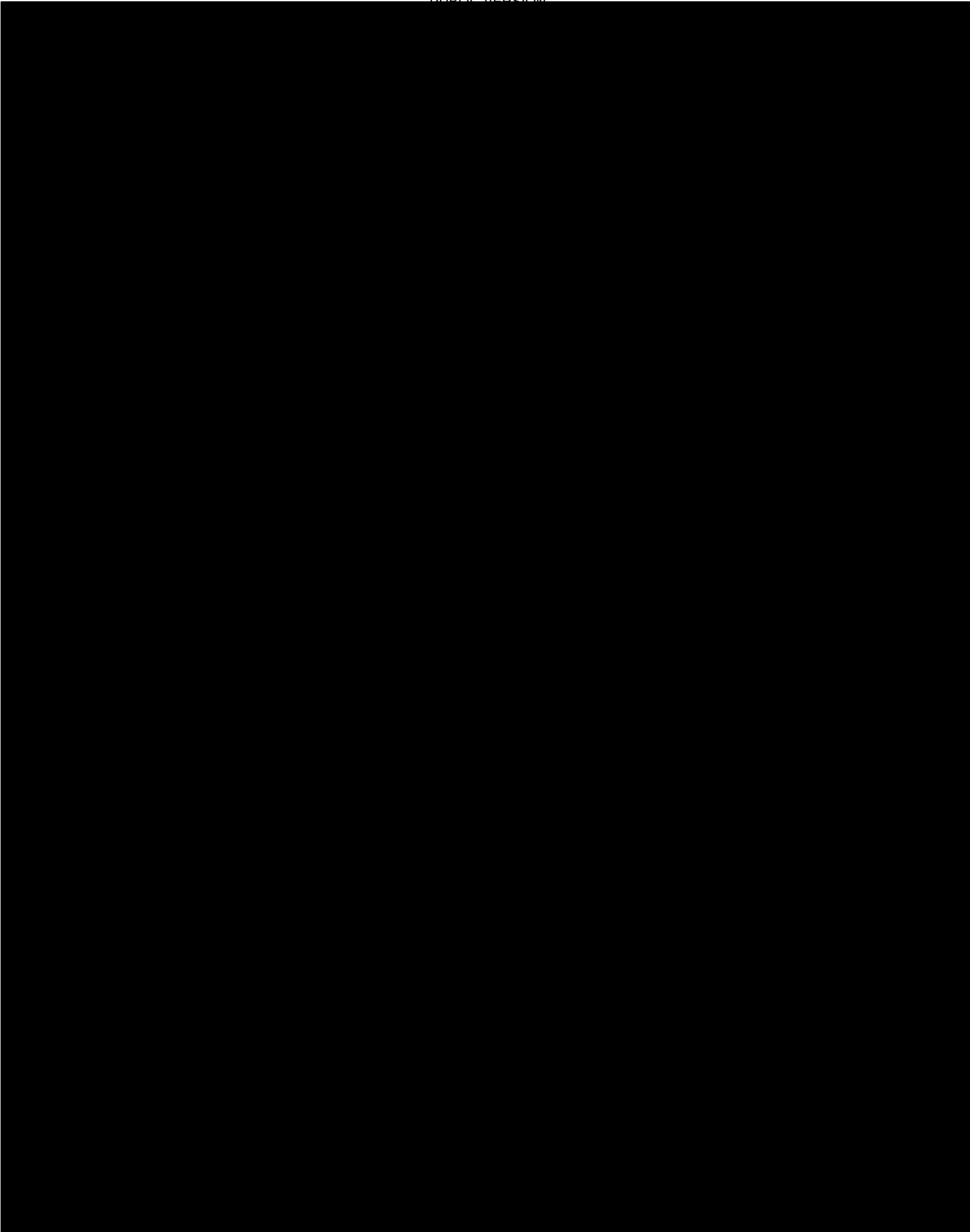


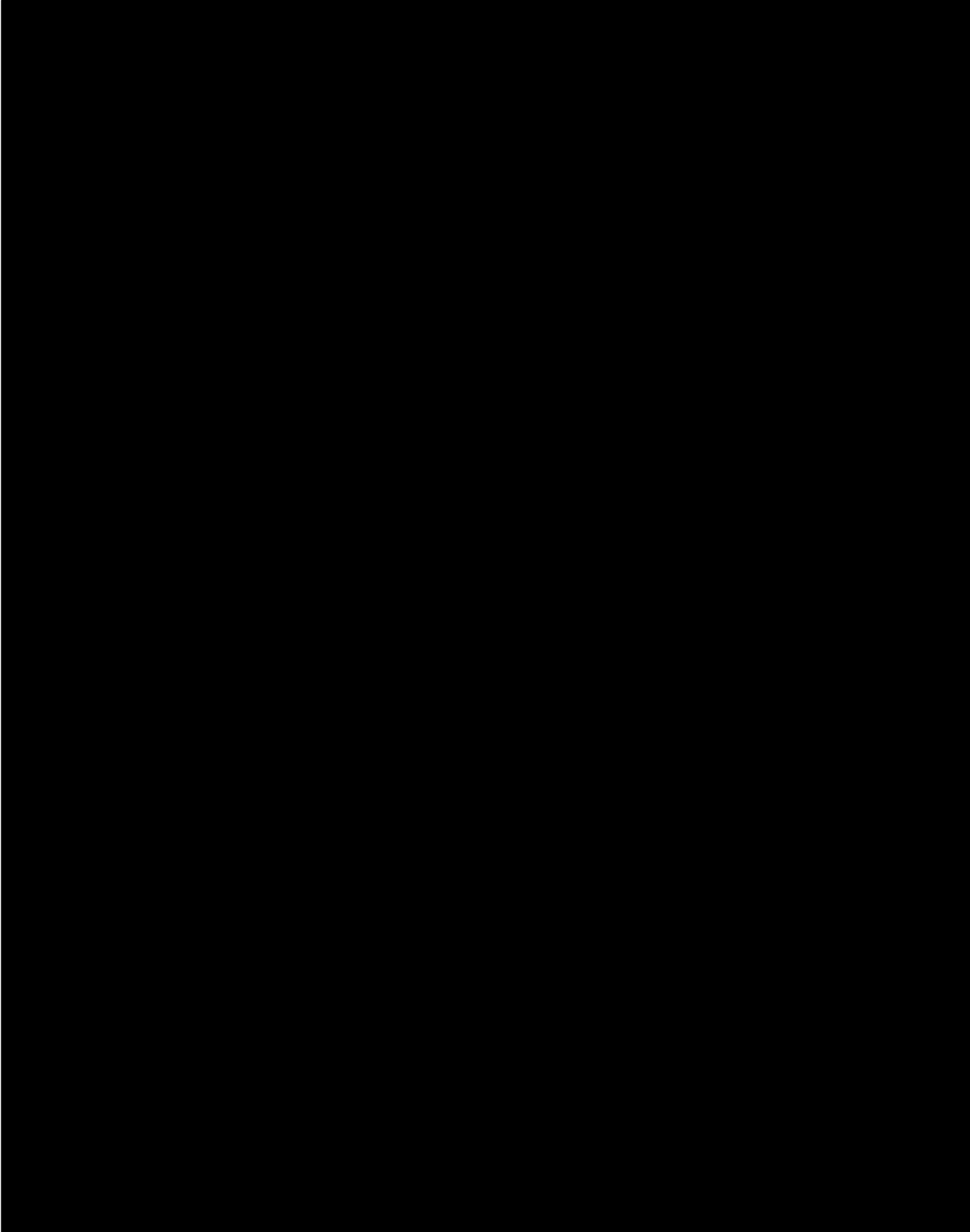


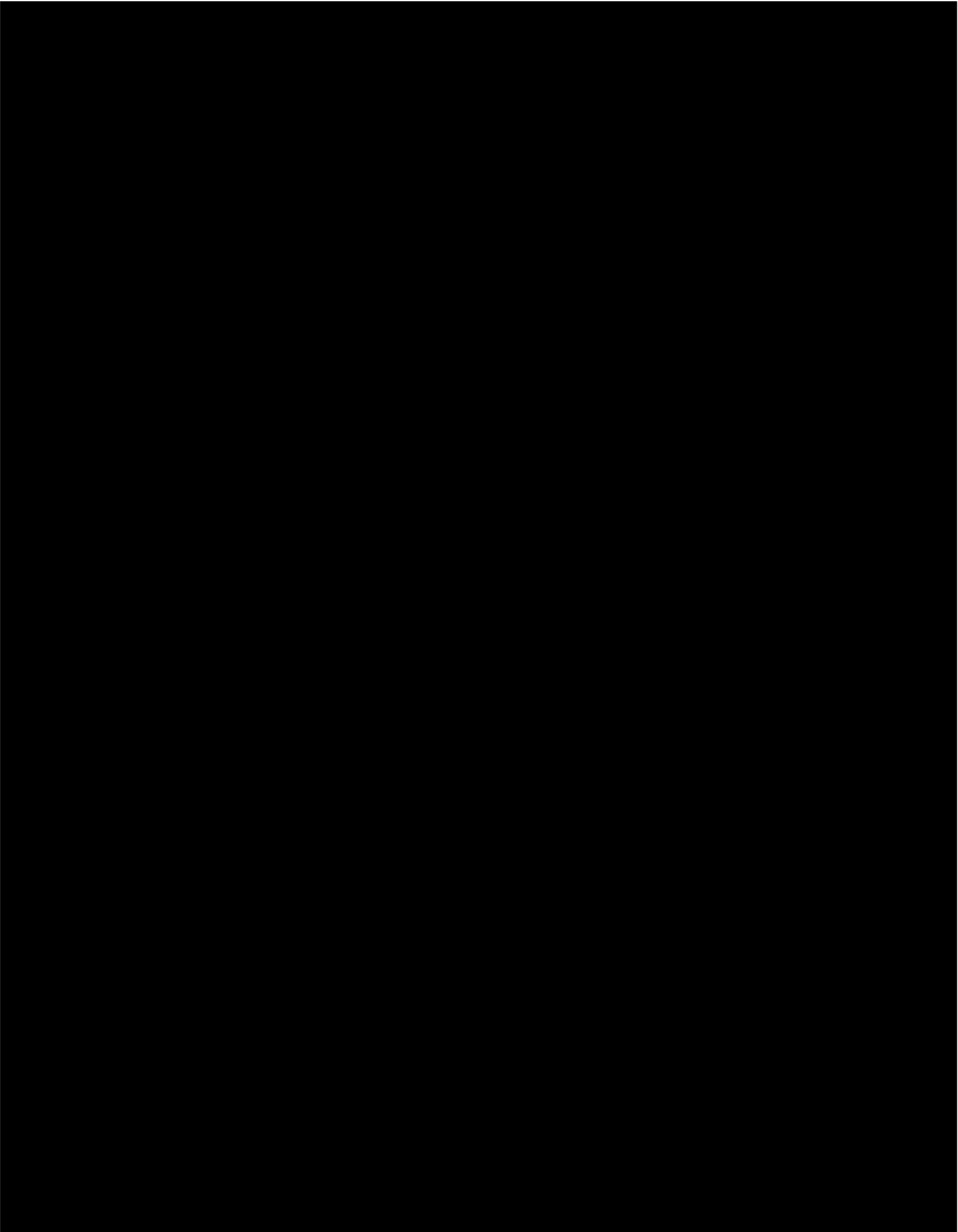


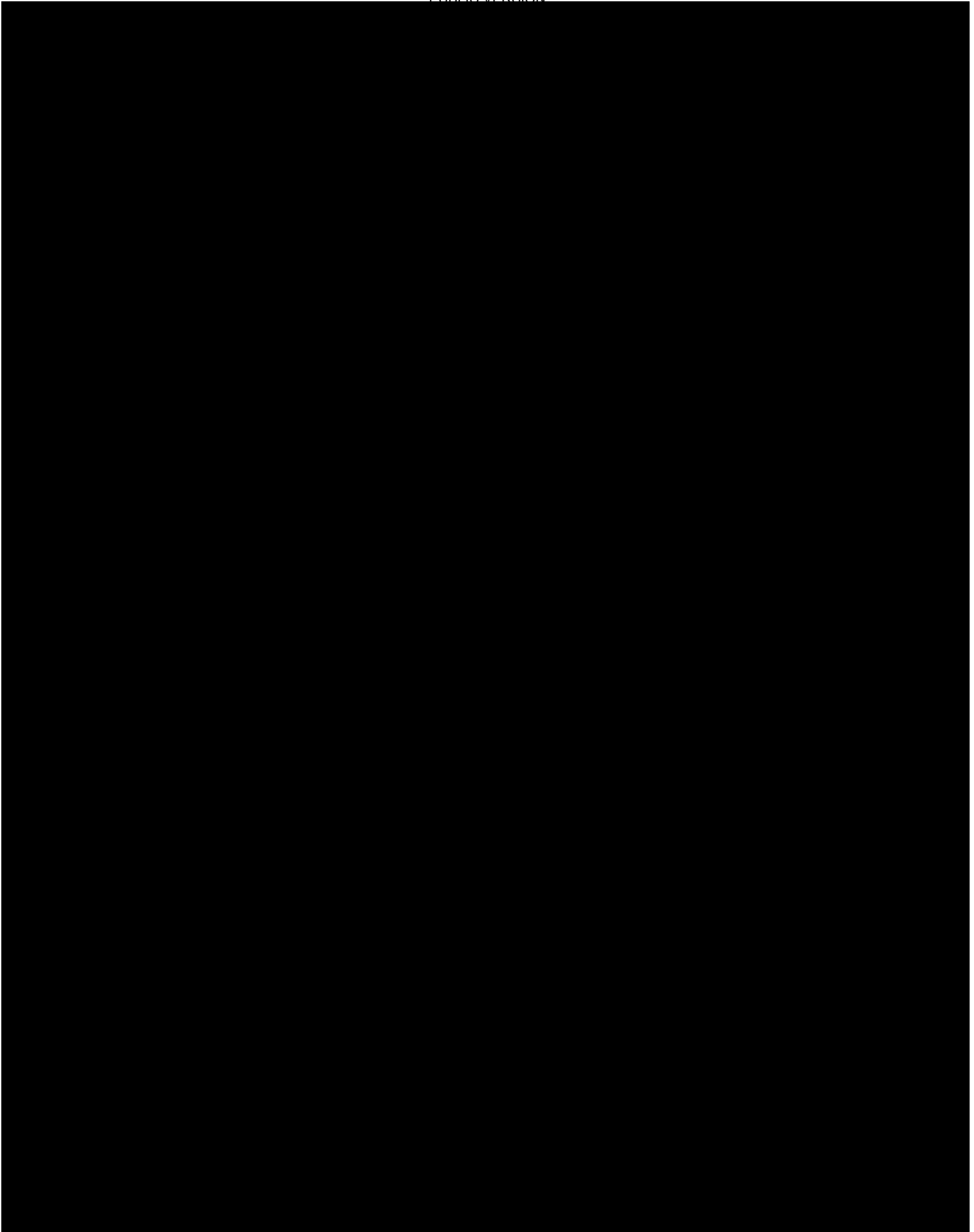


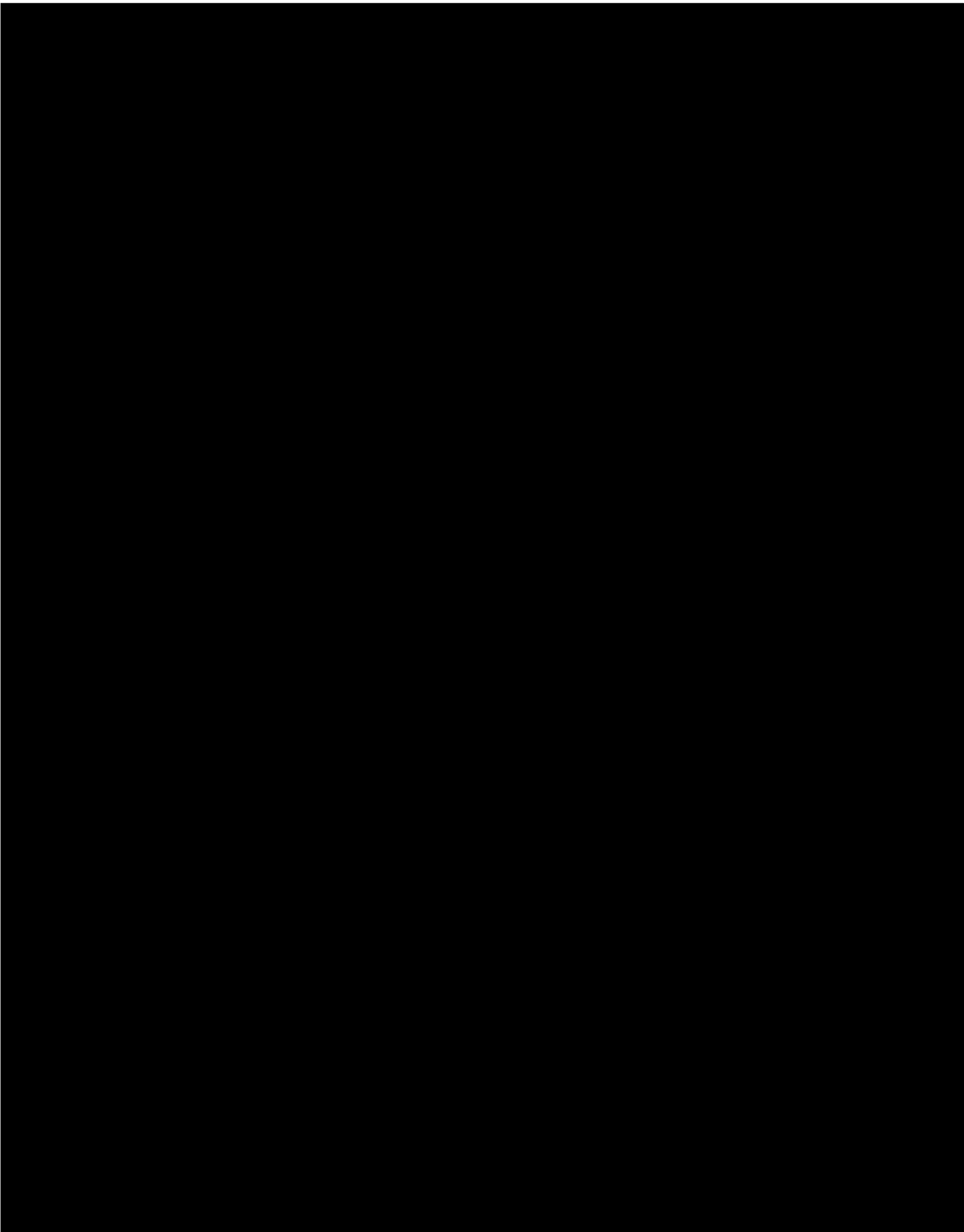


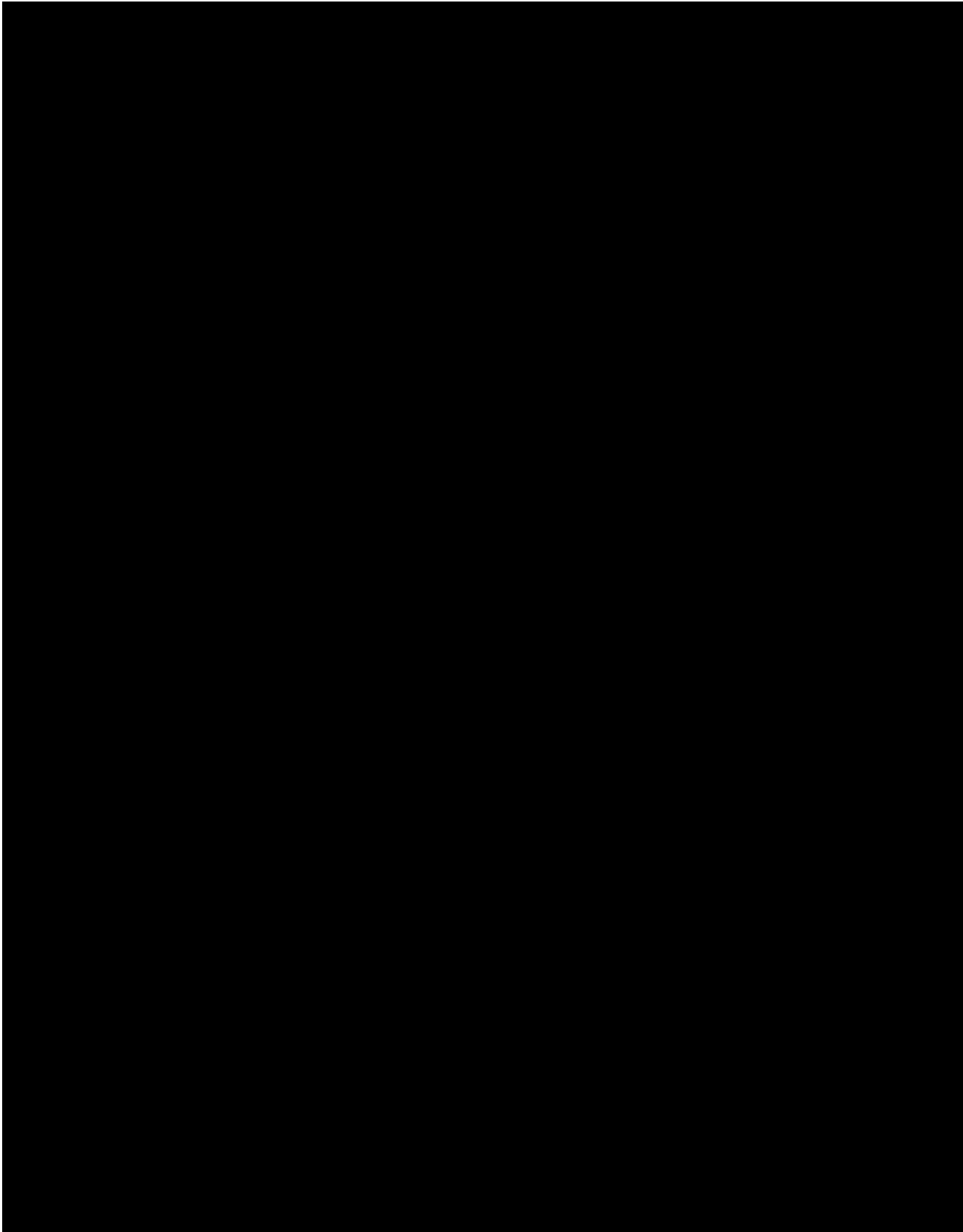


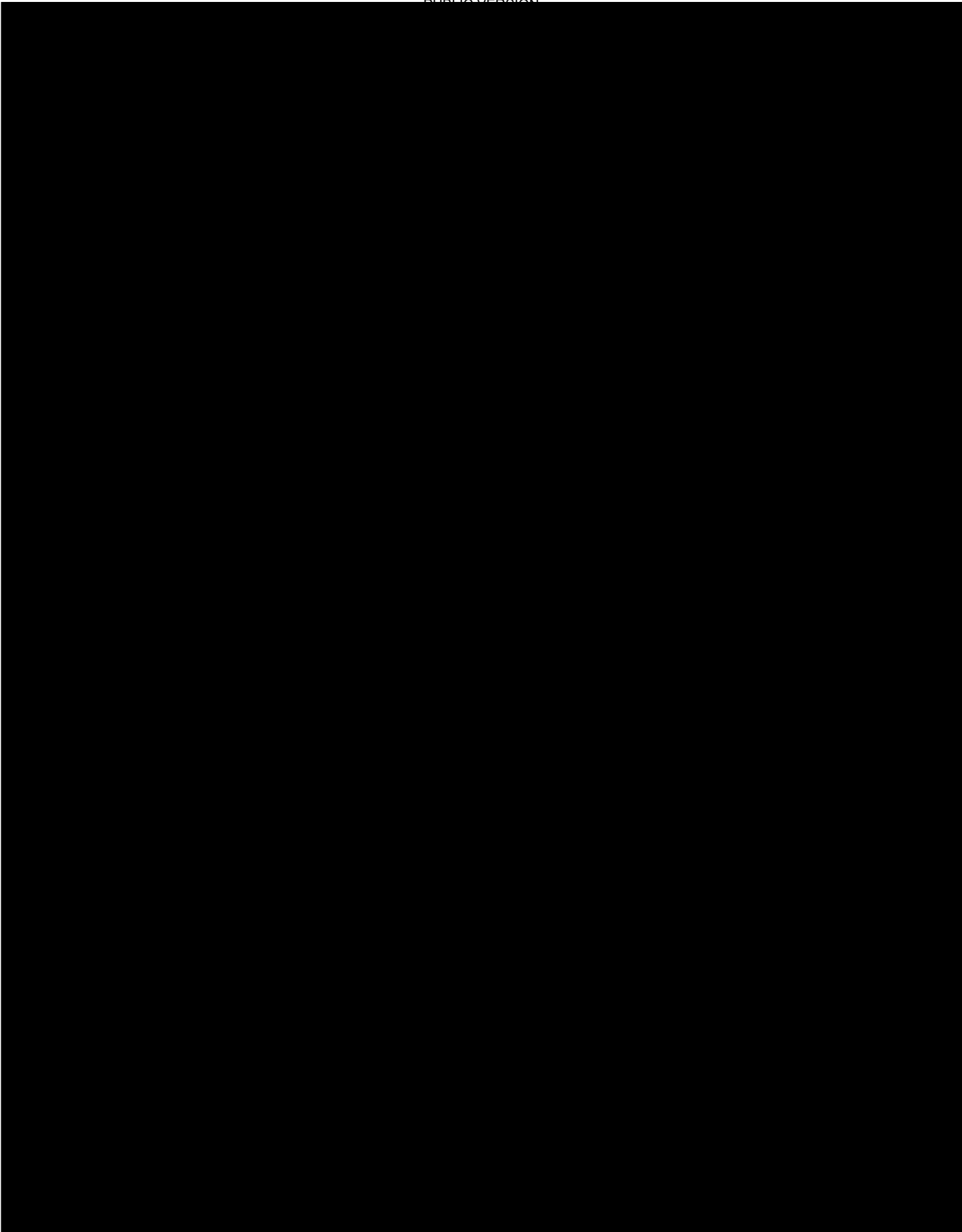


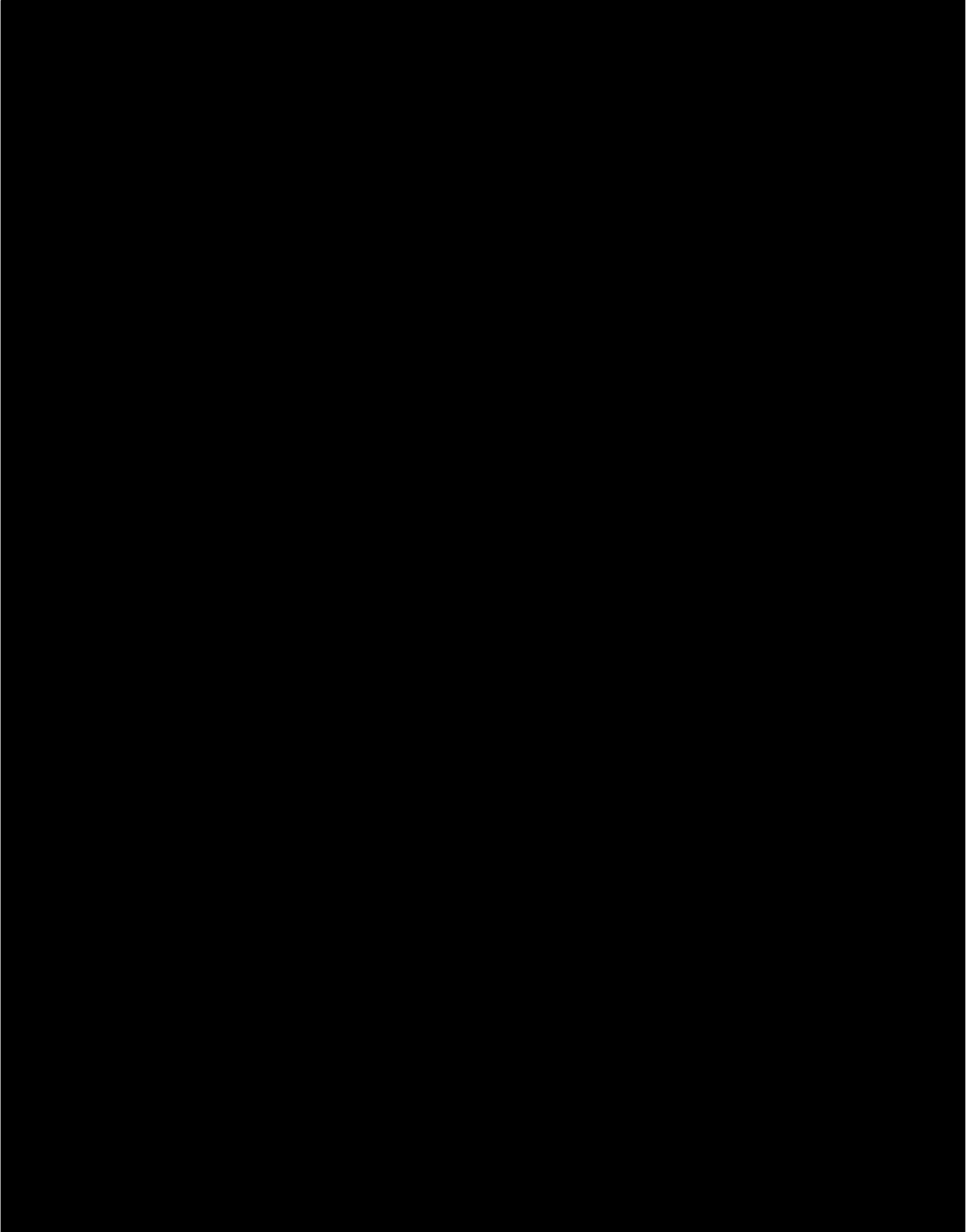


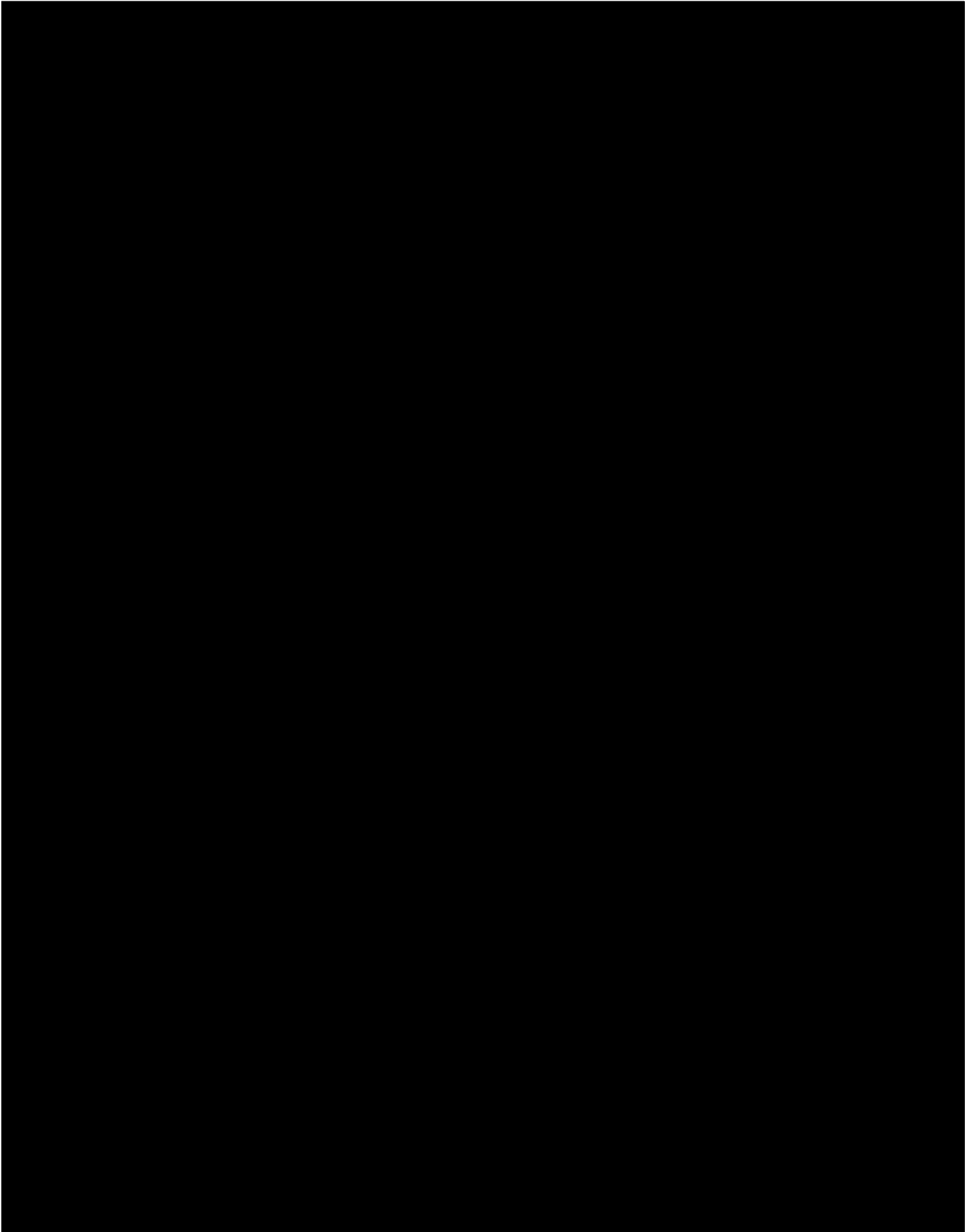


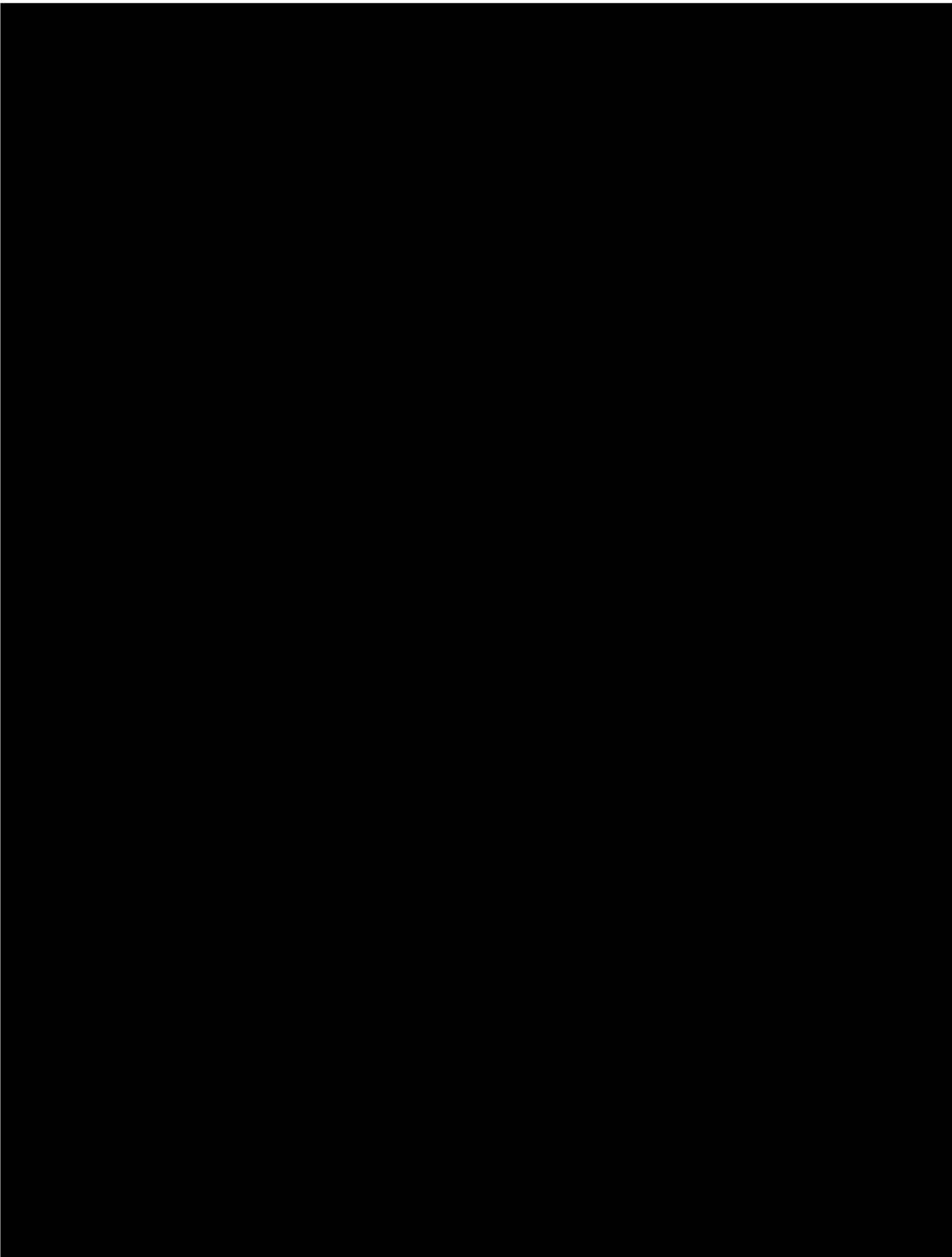


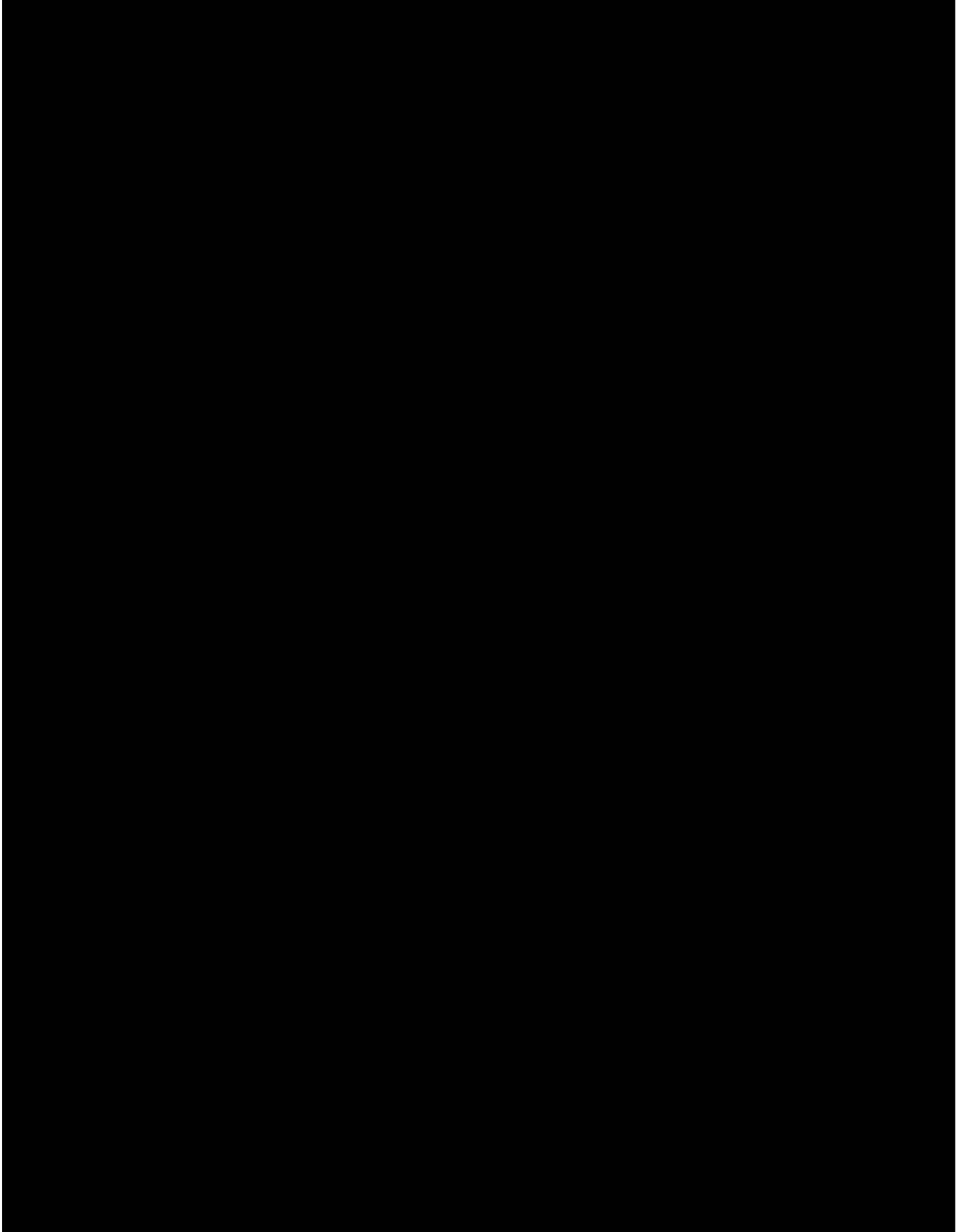


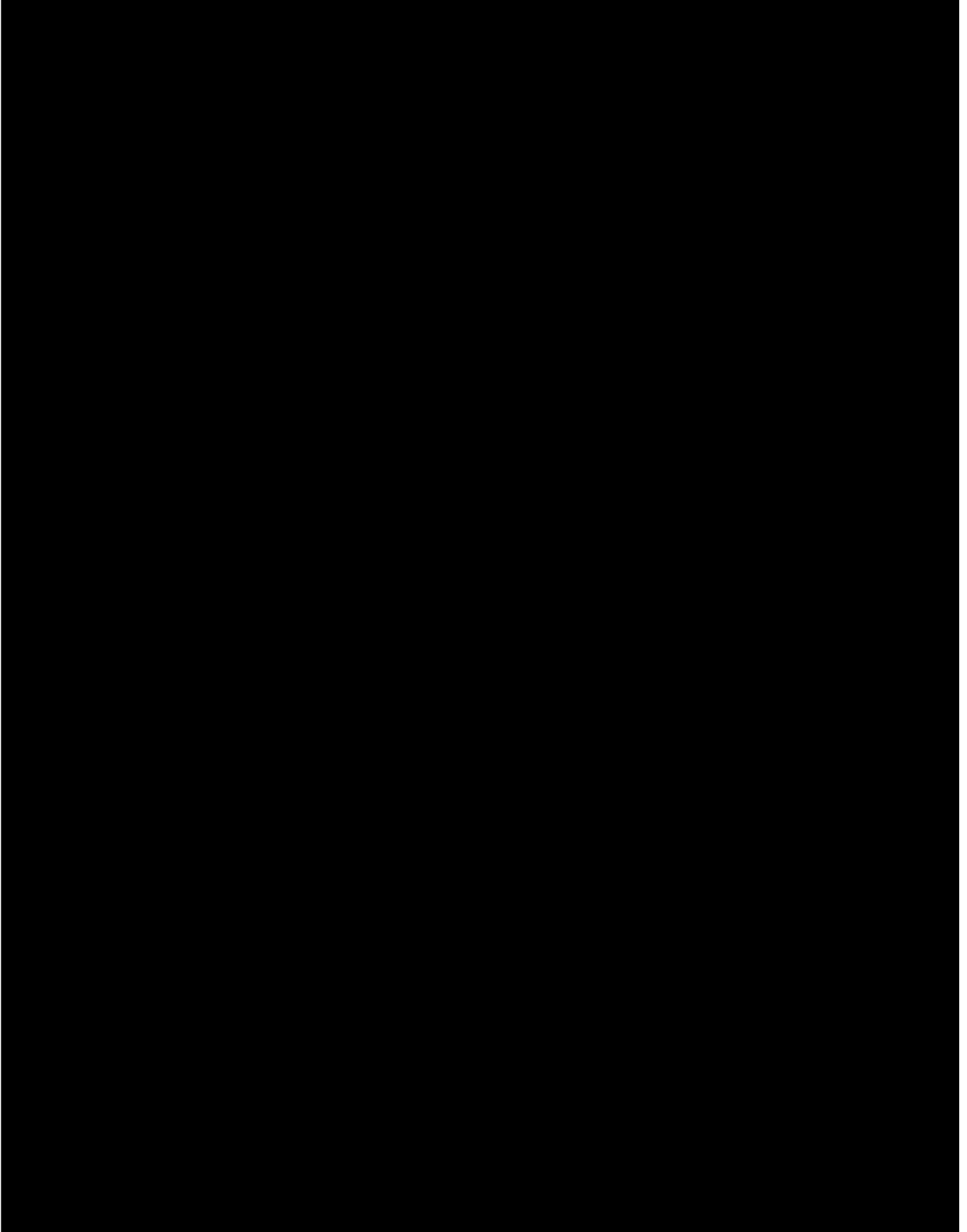


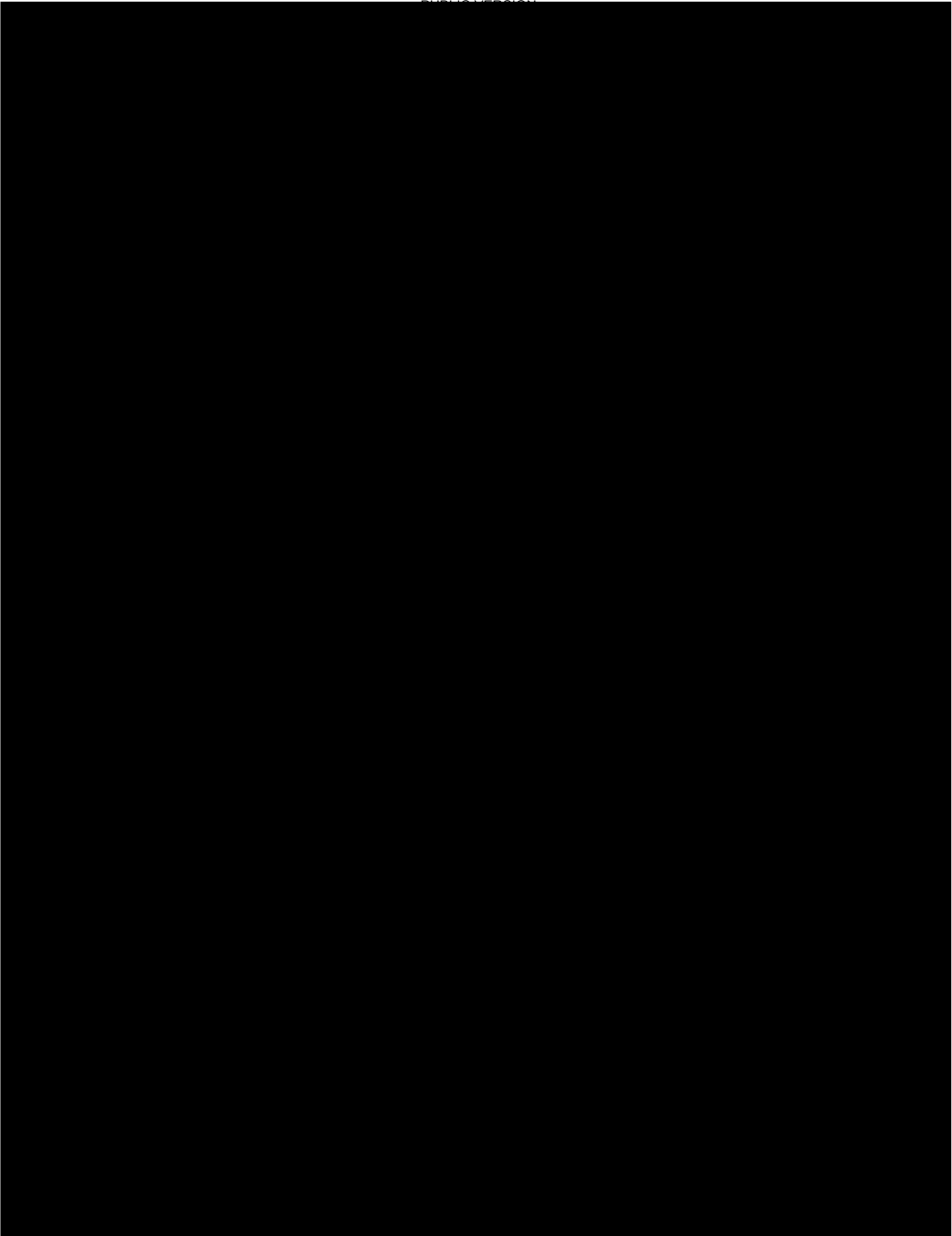


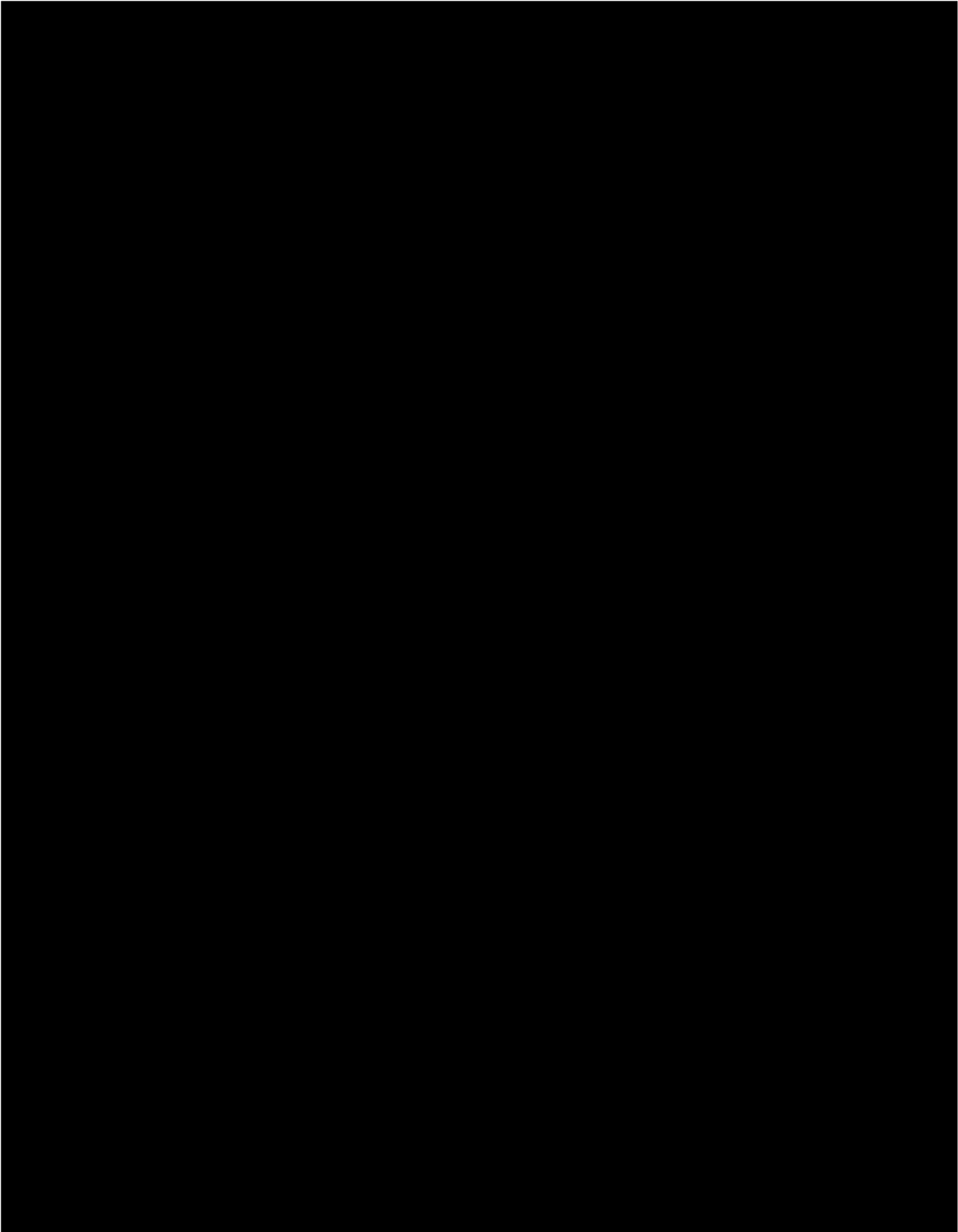


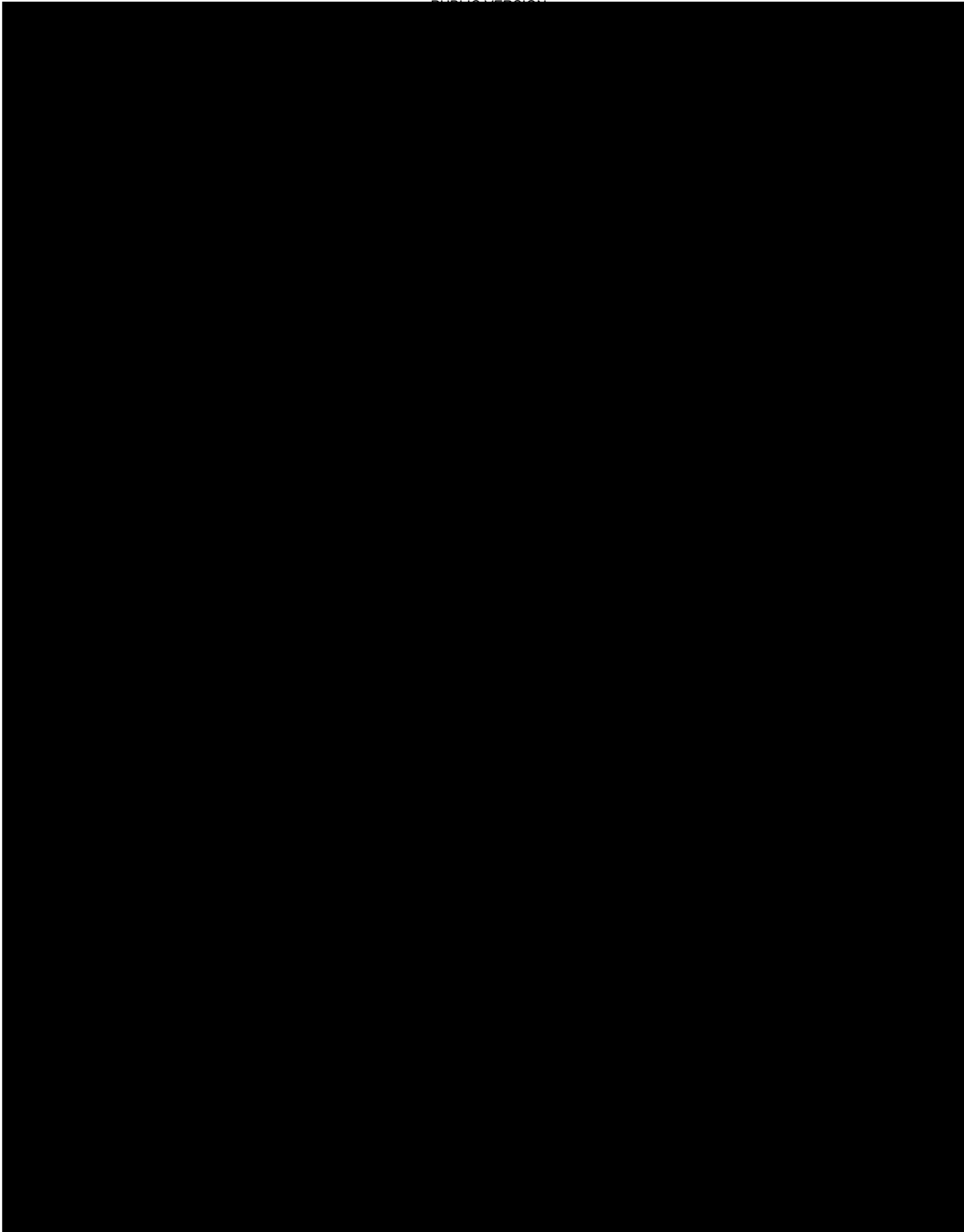












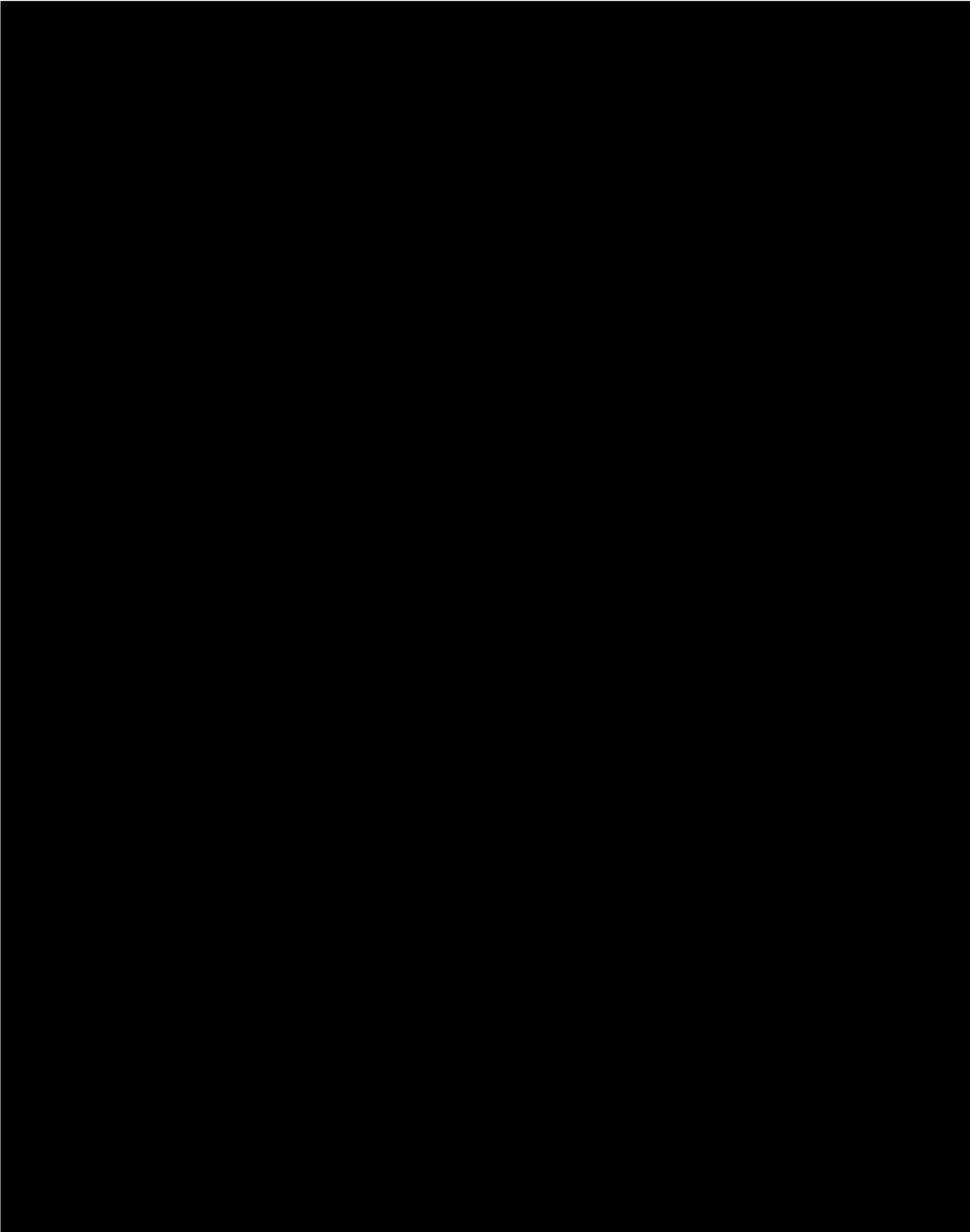


EXHIBIT 8

BEFORE THE FEDERAL MARITIME COMMISSION

SAMSUNG ELECTRONICS AMERICA, INC.

Complainant,

FMC Docket No. 22-30

vs.

ZIM INTEGRATED SHIPPING SERVICES LTD.

Respondent.

_____ /

Zoom Deposition of YAACOUB YAACOUB

Wednesday, May 3, 2023 - 9:03 a.m.

Reported by:

Viola Kay Newman, CSR-4320, RPR, CRR

Job No.: 7111

1 A. You mean demurrage?

2 Q. Yes.

3 A. So there's no intent to charge demurrage if the cargo
4 is -- if the past due is paid. We're charging the
5 port or us charging the demurrage for the use of the
6 container. At the end of the day, the container is
7 sitting on the port, and is not released and we're
8 charging for the container.

9 Q. And what is ZIM's current policy or procedure
10 regarding use of credit suspension or cargo holds in
11 connection with invoices that are disputed?

12 A. If the invoice is disputed, we don't do any credit
13 suspension or cargo hold. We don't take up collection
14 actions on any invoice that is disputed.

15 Q. Okay. What is ZIM's current practice or policy
16 regarding the use of credit suspension or credit holds
17 in connection with charging demurrage during those
18 times?

19 A. So if the cargo -- if we implemented the hold and the
20 container is sitting on the port incurring demurrage,
21 these charges are for the customer's account.

22 Q. Has that policy been changed because of OSRA and the
23 Interpretive Rule?

24 A. No.

25 Q. Has that policy changed at all between 2018 to

1 present?

2 A. (No verbal response.)

3 THE COURT REPORTER: Answer out loud,
4 please.

5 THE WITNESS: No.

6 THE COURT REPORTER: Thank you.

7 BY MR. YOON:

8 Q. Would you be able to confirm the cargo hold periods
9 for Samsung accounts?

10 A. I will try my best, yes.

11 Q. Okay. And would you also be able to confirm the
12 amount of new demurrages during the whole period, to
13 the extent that they were charged?

14 A. Demurrages after the hold?

15 Q. Yes.

16 A. I can check it, but I don't have that number in front
17 of me.

18 Q. Okay. Would you be able to -- I'm not asking you to
19 do it now, but would you be able to check it
20 relatively easily?

21 A. No. Probably that's a calculation that we need to do.

22 Q. So it would take more than, say, a few minutes?

23 A. No. Yes, it would take more than a few minutes.

24 Q. Just so -- for the record, how long would that take?
25 How long would that take to get those numbers?

EXHIBIT 9

BEFORE THE FEDERAL MARITIME COMMISSION

SAMSUNG ELECTRONICS AMERICA, INC.

Complainant,

FMC Docket No. 22-30

vs.

ZIM INTEGRATED SHIPPING SERVICES LTD.

Respondent.

_____ /

Zoom Deposition of ILANA ROSENBERG

Thursday, May 25, 2023 - 9:04 a.m.

Reported by:

Viola Kay Newman, CSR-4320, RPR, CRR

Job No.: 7283

1 A. I do have an exact amount, if you need. I mean, I
2 think you -- the 36,710, that's just a number that
3 we . . .

4 Q. And, again, I'm not suggesting anything. You seem
5 like you have something -- when you say you have the
6 number in front of you, what exactly are you looking
7 at?

8 A. Well, there's a table of -- like I say, I went back to
9 some of the emails. So if you need the numbers, I
10 won't remember them otherwise. So those are the
11 numbers of the overdue and how much was paid.

12 Q. Again, are you looking at your personal handwritten
13 note or a handwritten note?

14 A. Yep.

15 Q. Okay. With respect to that note, did you create --
16 when did you create that note?

17 A. As I said, I went back to some of the emails and just
18 drafted the time line of the holds.

19 MR. YOON: Okay. Just for the record,
20 Mr. Rohde, we'll call for the production of her
21 handwritten notes after the deposition, unless you're
22 claiming privilege.

23 MR. ROHDE: We'll review the document and
24 get back to you.

25 THE WITNESS: Okay. It's just like a few

EXHIBIT 10

BEFORE THE FEDERAL MARITIME COMMISSION

SAMSUNG ELECTRONICS AMERICA, INC.

Complainant,

FMC Docket No. 22-30

vs.

ZIM INTEGRATED SHIPPING SERVICES LTD.

Respondent.

_____ /

Zoom Deposition of YAACOUB YAACOUB

Wednesday, May 3, 2023 - 9:03 a.m.

Reported by:

Viola Kay Newman, CSR-4320, RPR, CRR

Job No.: 7111

1 A. Yes.

2 Q. Are there any other geographical agencies of ZIM
3 around the world?

4 A. Yes.

5 Q. Can you just name them? You know, to the extent that
6 you know, where are they?

7 A. We are in more than 120 countries.

8 Q. So in each and every -- go ahead.

9 A. Yes. We are located in 120 countries, and we have
10 agencies in those countries.

11 Q. Oh, okay. So one agency for one country, more or
12 less; is that fair?

13 A. Yes.

14 Q. Okay. So in your capacity as a director of finance
15 for the U.S. agency of ZIM, what's your job
16 responsibilities?

17 A. I'm responsible for collection, for freight issue,
18 credit, treasury, and disputes.

19 Q. Collection. And the second one? I apologize. I
20 missed that.

21 A. Treasury --

22 Q. Okay.

23 A. -- credit, freight issue, and disputes.

24 Q. Disputes. Okay.

25 Just so I understand your day to day, do

EXHIBIT 11

BEFORE THE FEDERAL MARITIME COMMISSION

SAMSUNG ELECTRONICS AMERICA, INC.

Complainant,

FMC Docket No. 22-30

vs.

ZIM INTEGRATED SHIPPING SERVICES LTD.

Respondent.

_____ /

Zoom Deposition of MARIA KRISTINA FERNANDO

Thursday, May 18, 2023 - 9:31 a.m.

Reported by:

Viola Kay Newman, CSR-4320, RPR, CRR

Job No.: 7234

EXHIBIT 12

BEFORE THE FEDERAL MARITIME COMMISSION

SAMSUNG ELECTRONICS AMERICA, INC.

Complainant,

FMC Docket No. 22-30

vs.

ZIM INTEGRATED SHIPPING SERVICES LTD.

Respondent.

_____ /

Zoom Deposition of YAACOUB YAACOUB

Wednesday, May 3, 2023 - 9:03 a.m.

Reported by:

Viola Kay Newman, CSR-4320, RPR, CRR

Job No.: 7111

EXHIBIT 13

BEFORE THE FEDERAL MARITIME COMMISSION

SAMSUNG ELECTRONICS AMERICA, INC.

Complainant,

FMC Docket No. 22-30

vs.

ZIM INTEGRATED SHIPPING SERVICES LTD.

Respondent.

_____ /

Zoom Deposition of JONATHAN CLEVA

Friday, May 12, 2023 - 9:03 a.m.

Reported by:

Viola Kay Newman, CSR-4320, RPR, CRR

Job No.: 7148

1 Samsung's containers in this example?

2 A. For this example, I cannot accurately recall.

3 Q. Okay. Do you think cargo holds incentivizes the
4 movement of cargo?

5 A. I do, yes.

6 Q. You do.

7 How so?

8 A. I mean, it is a last resort usually when monies are
9 owed and the -- if a container is held, there is still
10 time-sensitive charges that accrue against that
11 container, which helps to incentivize a customer to
12 resolve any issues or items that were the direct
13 reason of said hold.

14 Q. So you're saying cargo holds incentivize the movement
15 of cargo by incentivizing customers to pay certain
16 owed charges; is that what you're saying?

17 A. Not entirely.

18 Q. Well, can you clarify what you mean by cargo holds
19 incentivizes the movement of cargo?

20 A. Maybe I inaccurately answered the prior question.

21 Q. Okay. So let me ask again just for a clear record.

22 Do you believe cargo holds incentivizes the
23 movement of cargo in general?

24 MR. RALEIGH: Objection. Asked and
25 answered.

1 You can answer it again, sir.

2 THE WITNESS: Cargo hold is one of the very
3 last resorts or tools that we turn to in specific
4 situations where a customer may be nonresponsive or
5 too slow or unwilling to remit on services rendered or
6 resolve disputes.

7 So from that perspective, it is a tactic we
8 use to assist in efficient cargo flow.

9 BY MR. YOON:

10 Q. The second bullet here. The small bullet says,
11 restricting credit terms.

12 Is that otherwise known as credit
13 suspension within ZIM?

14 A. It could be alluding to that, yes.

15 Q. Are there other ways of restricting credit terms other
16 than credit suspension?

17 A. Aside from physically reducing the amount or term, no.
18 This would be alluding to credit suspension.

19 Q. Why does ZIM restrict credit terms?

20 A. In terms of the amount and term to give to the
21 customer, or are you talking about credit suspension?

22 Q. Both. Either way.

23 A. Okay. For credit terms, like the credit amount or
24 level and terms that we give to a customer is a risk
25 taken by Zim to afford a customer credit. It's a risk

EXHIBIT 14

BEFORE THE FEDERAL MARITIME COMMISSION

SAMSUNG ELECTRONICS AMERICA, INC.

Complainant,

FMC Docket No. 22-30

vs.

ZIM INTEGRATED SHIPPING SERVICES LTD.

Respondent.

_____ /

Zoom Deposition of YAACOUB YAACOUB

Wednesday, May 3, 2023 - 9:03 a.m.

Reported by:

Viola Kay Newman, CSR-4320, RPR, CRR

Job No.: 7111

█ [REDACTED]

█ [REDACTED]

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█ █ [REDACTED]

█ █ [REDACTED]

█ █ [REDACTED]

18 Q. Okay.

19 MR. YOON: Allison, would you mind pulling
20 up what is internally marked as Exhibit 16.

21 MARKED BY THE REPORTER:

22 DEPOSITION EXHIBIT 15

23 3:46 p.m.

24 MS. SKOPEC: It's up as Exhibit 15 now.

25 MR. YOON: Yes.

EXHIBIT 15

BEFORE THE FEDERAL MARITIME COMMISSION

SAMSUNG ELECTRONICS AMERICA, INC.

Complainant,

FMC Docket No. 22-30

vs.

ZIM INTEGRATED SHIPPING SERVICES LTD.

Respondent.

_____ /

Zoom Deposition of YAACOUB YAACOUB

Wednesday, May 3, 2023 - 9:03 a.m.

Reported by:

Viola Kay Newman, CSR-4320, RPR, CRR

Job No.: 7111

1 now including Lee Chen and Jang Hyunseon.

2 Both individuals appear to be affiliated
3 with Korean ZIM; is that correct?

4 A. Let me read it too.

5 Yes, I read that.

6 Q. Okay. And on the first page, there's a further,
7 again, ZIM-only discussions between Ms. Adrienne
8 Martin and Giles, and, you know, at the very top is
9 the Ms. Harris and Ms. Martin's back and forth, and it
10 ends with a directive with a smiley face saying, hold
11 their cargo; is that right?

12 A. (No verbal response.)

13 MR. RALEIGH: Are you asking him to read
14 that the email says, hold their cargo? Is that the
15 question?

16 MR. YOON: Sure.

17 MR. RALEIGH: Okay.

18 That's the question, sir. Can you answer
19 it?

20 THE WITNESS: I see it.

21 BY MR. YOON:

22 Q. Okay. Do you know if ZIM ended up implementing credit
23 hold or cargo hold or credit suspension as a result of
24 this incident around the -- August 5th of 2020?

25 A. Yes.

1 Q. Just to clarify, yes, as in you did implement some
2 form of hold or suspension?

3 A. We implemented the cargo hold on August 5th, 2020.

4 Q. Okay. For 2020, was there another
5 cargo-hold-implemented period?

6 A. Other customers?

7 Q. I'm sorry. For Samsung.

8 A. I don't understand the question. Can you repeat it?

9 Q. Sure. In 2020, other than the August of 20 -- August
10 5th of 2020, has ZIM put Samsung on any form of hold
11 other -- any other form of hold in the rest of the
12 period of 2020?

13 A. I don't recall that we did, but that's what I recall.

14 Q. How about 2021?

15 A. Yes, we did.

16 Q. Can you tell me the timing of the credit hold?

17 A. Yeah. It was on May -- end of May. The other one was
18 in end of September.

19 Q. So two times?

20 A. Yes.

21 Q. Okay. And in 2022, how many were there?

22 A. I recall one on January 2022. That's the one that I
23 recall.

24 Q. How on -- around the October of 2022?

25 A. Might be, but I don't have a record for that in front

1 of me or with me. I don't recall that date exactly
2 for October.

3 Q. Is that -- is that information something you can
4 quickly find out?

5 A. Not without -- I would say, if I look, if there's any
6 record here or ask, but if I'm not allowed to ask or
7 that's -- could be an issue. But not at the moment.
8 I cannot tell you.

9 Q. How about 2023 so far?

10 A. No. I don't think we have anything on hold for 2023.

11 Q. Okay. Is Samsung an active customer of ZIM?

12 A. Yes.

13 Q. These are the only -- the time periods in which you
14 can recall as ZIM having placed some type of hold on
15 SEA -- Samsung on cargo?

16 A. Yes.

17 Q. Okay. And your answer would not change even in light
18 of the fact that you're the sole designee of the Topic
19 12 of the corporate designee topic, which reads:

20 ZIM's cargo hold and credit holds on SEA
21 shipments at issue in this proceeding, correct?

22 A. Yes.

23 Q. Okay. August of 2020, you mentioned was a -- you
24 recall it as having a credit hold. Do you know what
25 the amount was -- what the amount -- sorry.

EXHIBIT 16

PUBLIC VERSION

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
 Washington, D.C. 20549

FORM 20-F

(Mark One)

REGISTRATION STATEMENT PURSUANT TO SECTION 12(b) OR (g) OF THE SECURITIES EXCHANGE ACT OF 1934

OR

ANNUAL REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934

For the fiscal year ended December 31, 2022

OR

TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934

For the transition period from _____ to _____.

OR

SHELL COMPANY REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934

Date of event requiring this shell company report _____

Commission file number: 001-39937

ZIM INTEGRATED SHIPPING SERVICES LTD.

(Exact name of Registrant as specified in its charter)

State of Israel

(Jurisdiction of incorporation or organization)

9 Andrei Sakharov Street
 P.O. Box 15067

Matam, Haifa 3190500, Israel
 (Address of principal executive offices)

Noam Nativ

EVP, General Counsel & Company Secretary
 9 Andrei Sakharov Street

P.O. Box 15067

Matam, Haifa 3190500, Israel
 nativ.noam@zim.com

+972-4-8652170, +972-4-8652990

(Name, Telephone, E-mail and/or Facsimile number and Address of Company Contact Person)

Securities registered or to be registered pursuant to Section 12(b) of the Act:

Title of each class
 Ordinary shares, no par value

Trading Symbol
 "ZIM"

Name of each exchange on which registered
 The New York Stock Exchange

Securities registered or to be registered pursuant to Section 12(g) of the Act:

None

Securities for which there is a reporting obligation pursuant to Section 15(d) of the Act:

None

Indicate the number of outstanding shares of each of the issuer's classes of capital or common stock as of the close of the period covered by the annual report: 120,149,921 as of December 31, 2022, and 120,184,098 as of March 1, 2023.

Yacooub Yacooub
 Exhibit_8
 5/3/2023

Adjusted EBIT and Adjusted EBITDA

Adjusted EBIT is a non-IFRS financial measure that we define as net income (loss) adjusted to exclude financial expenses (income), net and income taxes, in order to reach our results from operating activities, or EBIT, and further adjusted to exclude impairment of assets, non-cash charter hire expenses, capital gains (losses) beyond the ordinary course of business and expenses related to legal contingencies. Adjusted EBITDA is a non-IFRS financial measure that we define as net income (loss) adjusted to exclude financial expenses (income), net, income taxes, depreciation and amortization in order to reach EBITDA, and further adjusted to exclude impairments of assets, non-cash charter hire expenses, capital gains (losses) beyond the ordinary course of business and expenses related to legal contingencies.

We present Adjusted EBIT and Adjusted EBITDA in this Annual Report because each is a key measure used by our management and Board of Directors to evaluate our operating performance. Accordingly, we believe that Adjusted EBIT and Adjusted EBITDA provide useful information to investors and others in understanding and evaluating our operating results and comparing our operating results between periods on a consistent basis, in the same manner as our management and Board of Directors.

The following is a reconciliation of our net income (loss), the most directly comparable IFRS financial measure, to Adjusted EBIT and Adjusted EBITDA for each of the periods indicated.

	Year Ended December 31,		
	2022	2021	2020
	(in millions)		
RECONCILIATION OF NET INCOME (LOSS) TO ADJUSTED EBIT			
Net income (loss)	\$ 4,629.0	\$ 4,649.1	\$ 524.2
Financial expenses, net	108.5	156.8	181.2
Income taxes	<u>1,398.3</u>	<u>1,010.4</u>	<u>16.6</u>
Operating income (EBIT)	6,135.8	5,816.3	722.0
Non-cash charter hire expenses ⁽¹⁾	0.4	1.5	7.7
Capital loss (gain), beyond the ordinary course of business ⁽²⁾	(0.6)	(0.1)	(0.1)
Assets Impairment loss (recovery)	0.0	0.0	(4.3)
Expenses related to legal contingencies	9.8	2.0	3.3
Adjusted EBIT	<u>\$ 6,145.4</u>	<u>\$ 5,819.7</u>	<u>\$ 728.6</u>
Adjusted EBIT margin⁽³⁾	<u>48.9%</u>	<u>54.2%</u>	<u>18.3%</u>

(1) Mainly related to amortization of deferred charter hire costs, recorded in connection with the 2014 restructuring.

(2) Related to disposal of assets, other than container and equipment (which are disposed on a recurring basis).

(3) Represents Adjusted EBIT divided by Income from voyages and related services.

EXHIBIT 17

BEFORE THE FEDERAL MARITIME COMMISSION

SAMSUNG ELECTRONICS AMERICA, INC.

Complainant,

FMC Docket No. 22-30

vs.

ZIM INTEGRATED SHIPPING SERVICES LTD.

Respondent.

_____ /

Zoom Deposition of YAACOUB YAACOUB

Wednesday, May 3, 2023 - 9:03 a.m.

Reported by:

Viola Kay Newman, CSR-4320, RPR, CRR

Job No.: 7111

■ [REDACTED]

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EXHIBIT 18

BEFORE THE FEDERAL MARITIME COMMISSION

SAMSUNG ELECTRONICS AMERICA, INC.

Complainant,

FMC Docket No. 22-30

vs.

ZIM INTEGRATED SHIPPING SERVICES LTD.

Respondent.

_____ /

Zoom Deposition of ILANA ROSENBERG

Thursday, May 25, 2023 - 9:04 a.m.

Reported by:

Viola Kay Newman, CSR-4320, RPR, CRR

Job No.: 7283

1 A. Okay.

2 Q. So my question to you is, were you wanting to change
3 the speed of the collection process for strategic
4 accounts in response to that global CEO's message?

5 A. The answer is yes. But I want to explain, as I
6 mentioned before, we are talking about here a period
7 of very high activity with a very high volume. And
8 looking at the time line of the collection versus the
9 collection procedure, we are far behind moving from
10 one step to another, and you can see this large
11 distances and long periods before one step to the
12 other.

13 So the point here is that we will start to
14 get closer to our guidelines, rather than taking month
15 and month between each and every step or several weeks
16 between steps, and that's the point here.

17 Q. And just for clarity, your point in saying this
18 paragraphs are in an attempt to bring the collection
19 process more in compliance with the collection policy
20 in terms of time line; is that fair to say?

21 A. It is very fair to say. You can also look at the
22 dates here.

23 THE COURT REPORTER: I'm sorry. You can
24 also look at the what?

25 THE WITNESS: Dates.

1 billed in mass billing by the end of January.

2 I assume 2022, correct?

3 A. Correct.

4 Q. We earlier looked at that -- the bug where it caused
5 some emails to be posted internally but didn't
6 actually go out. Was this part of the mass billing
7 that was a part of -- the bug was part of?

8 A. The email that you showed me mentioned November, part
9 of November billing.

10 Q. Okay. And if you go down to the bottom half, it
11 starts with, in bold print, combined late billing,
12 November to January, assuming demurrage is included,
13 is 115 million.

14 Was that a large amount of late billing?

15 A. That is a large amount, relatively.

16 Q. Okay. And it goes on to say, all those amounts roll
17 into past due immediately.

18 What does that mean?

19 A. That there is no credit on detention and demurrage.
20 Therefore, they're due based on the invoice date.

21 Q. And this slide at the end ends with, assertive and
22 expedited collection actions will be taken to ensure
23 collection.

24 I know we discussed a few of those details,
25 but when you say assertive and expedited collection

EXHIBIT 19

BEFORE THE FEDERAL MARITIME COMMISSION

<hr/>)
SAMSUNG ELECTRONICS AMERICA, INC.)
	Complainant,)
v.)
)
ZIM INTEGRATED SHIPPING SERVICES LTD.)
	Respondent.)
<hr/>)

FMC Docket No. 22-30

**COMPLAINANT SAMSUNG ELECTRONICS AMERICA, INC'S
NOTICE OF DEPOSITION OF
RESPONDENT ZIM INTEGRATED SHIPPING SERVICES LTD.**

PLEASE TAKE NOTICE that, pursuant to Rules 142 and 143(b)(6) of the Federal Maritime Commission Rules of Practice and Procedure (the "Rules"), 46 C.F.R. §§ 502.142 and 502.143(b)(6), Complainant Samsung Electronics America, Inc. ("SEA"), by and through its attorneys, Holland & Knight LLP, will take the deposition, upon oral examination, of Zim Integrated Shipping Services Ltd. ("Zim").

The deposition will take place on the date, time and location specified below:

LOCATION: Deposition to be taken virtually using TransPerfect Legal Solutions Inc.

DATE: April 14, 2023

TIME: 9:00 am (eastern)

The deposition will commence at the specified time and the examination will continue for up to seven (7) hours and continue from day to day until completed. The deposition will be taken by stenographic means and/or videographic means, before a Notary Public or other person duly

authorized to administer oaths and record testimony. This deposition is to be taken for all purposes permitted, including discovery and as evidence for hearing or trial.

A list of the matters for examination is attached hereto as **Schedule A**. Pursuant to Rule 143(b)(6), Zim is required to designate one or more officers, directors, managing agents, or other persons having knowledge of matters set forth in Schedule A who will testify on such matters on behalf of Zim during the period of January 1, 2020 to date, unless a different period is specifically indicated for a matter in Schedule A. Please designate in writing to SEA the name(s) and title(s) of the person(s) who will testify on behalf of Zim, and if more than one designee, please identify the specific matters for which each person has been designated to testify.

Dated: March 2, 2023

Respectfully submitted,

HOLLAND & KNIGHT LLP

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Counsel to Samsung Electronics America, Inc.

SCHEDULE A

TOPICS

1. Zim's practices, policies, procedures and decision making in connection with Free Time, Demurrage and Detention, including planning, negotiating, assessment, determination of responsibility, waiver, charging, invoicing, and collection for U.S. containers since 2018 to the present.
2. Zim's practices, policies, procedures and decision making for arranging and providing Inland Transportation of Containers in the U.S. since 2018 to the present.
3. Zim's pricing, contracts, agreements and arrangements with Motor Carriers, Marine Terminals, Inland Terminals, and Rail Carriers in connection with the Inland Transportation of Containers in the U.S., including with respect to chassis at Inland Terminals.
4. Zim's costs for providing Inland Transportation in the U.S., Zim's costs for equipment past free time in the U.S., and Zim's revenue from demurrage and detention in the U.S.
5. Zim's relative proportion of shipments into the U.S. on Store Door terms and on CY terms.
6. Zim's practices, policies, procedures and decision making in connection with the extension of Free Time, requests or waivers of Demurrage and Detention charges, and dispute resolution in connection with Demurrage and Detention charges.
7. Zim's practices, policies, procedures and decision making with respect to collection of unpaid invoices, cargo holds and credit holds in connection with Containers shipped to the U.S.
8. Zim's practices, policies, procedures and decision making relating to costs, revenue, sales, pricing, negotiation and agreements on freight rates and terms for transportation to the U.S. of shipments on similar port to port itineraries, but differing by (a) Store Door terms, (b)

CY terms, and (c) in connection with preferred trucker or customer nominated trucker rights or arrangements.

9. Zim's deliberation and decision making concerning responsibility for Inland Transportation charges in connection with pandemic-era congestion and equipment availability constraints.

10. Zim's agreements with the shippers of SEA Containers.

11. Zim's assessment, invoicing and collection of Demurrage and Detention on SEA Shipments at issue in this proceeding.

12. Zim's cargo holds and credit holds on SEA Shipments at issue in this proceeding.

DEFINITIONS TO SCHEDULE A

1. The term “Document” or “Documents” shall mean all “documents” and “tangible things” subject to a request for production under 46 C.F.R. § 502.146.

2. “Chassis” refers to the load-bearing framework and associated equipment designed for use by Motor Carriers for over-the-road transportation of international shipping containers in the United States.

3. “Communication” whether used in the singular or plural means the transmission, sending and/or receipt of information of any kind, or the attempt to elicit information of any kind, by and/or through any means between any Person or Persons. The phrase “communication between” is defined to include instances where one party communicates with another party but that other party does not necessarily respond.

4. “Container” or “Containers” means an intermodal shipping container used for the carriage of goods in Ocean Transportation and Inland Transportation.

5. “CY move” or “CY terms” means Ocean Transportation under an Ocean Carrier bill of lading or sea waybill to a Marine Terminal, not including further Inland Transportation.

6. “Demurrage” means charges assessed in connection with Containers at a Marine Terminal, Inland Terminal or rail yard for pickup after the applicable period of Free Time, including, but not limited to, similar charges of the type described but having other names, such as “line demurrage,” “port demurrage,” “terminal demurrage,” “long-dwell fees,” “storage” charges, *etc.*

7. “Detention” means charges assessed with respect to Containers or equipment during a period after removal from a Marine Terminal or Inland Terminal beyond the applicable Free Time period before the Container or equipment is returned to a designated return location, including, but not limited to, similar charges of the type described but having other names, such as “Per Diem.”

8. “FMC” means the Federal Maritime Commission and any and all of its agents, representatives, employees, consultants, contractors, subcontractors, investigators, attorneys, and any other persons or entities acting or purporting to act on behalf of the Federal Maritime Commission.

9. “Free Time” means the period of time a (i) Container can remain at a Marine Terminal or Inland Terminal without incurring Demurrage charges, and (ii) Container and/or a

Chassis can remain outside of a Marine Terminal or Inland Terminal without incurring Detention charges.

10. “Inland Terminal” means rail terminals, Container yards, off-dock Container yards (“ODCYs”), freight stations, intermodal equipment storage areas, Container depots, and similar facilities in the United States used for the transportation of Containers in Inland Transportation.

11. “Inland Transportation” means the overland transportation of goods or Containers by rail or truck to or from the inland place of receipt or place of delivery identified on a bill of lading or sea waybill to or from the port of loading or discharge identified on a bill of lading or sea waybill.

12. “Marine Terminal” means a terminal located in a U.S. port of loading or discharge identified on a bill of lading or sea waybill where the loading or discharge of Containers to or from vessels for Ocean Transportation occurs.

13. “Motor Carrier” refers to a motor vehicle operator and/or drayage company transporting property for compensation.

14. “Ocean Carrier” is a Person that is an “ocean common carrier” as defined under the Shipping Act of 1984 and subsequent FMC regulations, including Zim.

15. “Ocean Transportation” means the transportation over water between a port in the United States and a foreign port identified on a bill of lading or sea waybill.

16. “Rail Carrier” means a company whose business is transporting goods by railway vehicle on a railroad.

17. “Relevant Time Period” shall mean the period of time from January 1, 2020 to present, unless otherwise specifically indicated.

18. “SEA” or “Complainant” means Samsung Electronics America, Inc.

19. “SEA Shipment(s)” means the Container shipments of goods transported by Zim, its affiliates, contractors, sub-contractors and/or agents for which Zim was identified as the carrier and SEA was identified as a consignee or notify party on a Zim bill of lading or sea waybill, or for which Zim directly or indirectly assessed or invoiced SEA (including but not limited to invoices for demurrage or detention from Zim listing SEA as Payer or consignee).

20. “Store Door move” or “Store Door terms” means the combined Ocean Transportation and Inland Transportation under one Ocean Carrier bill of lading or sea waybill to

and through a Marine Terminal at a port of discharge or destination and to an inland place of delivery or final destination stated on the bill of lading or sea waybill.

21. “You” or “Yours” means Zim Integrated Shipping Service Ltd.

22. “Person” whether used in the singular or plural means any natural person, firm, association, partnership, corporation, business, trust, public entity, or other form of legal entity.

23. “Zim” means and includes Zim Integrated Shipping Service Ltd. and its subsidiaries, affiliates, predecessors, successors and assigns, and all their officers, directors, employees, agents, representatives, and persons acting or purporting to act on their behalf, including, but not limited to, ZIM American Integrated Shipping Services Company Co. LLC.

CERTIFICATE OF SERVICE

I hereby certify that on March 2, 2023, I caused a true and correct copy of the foregoing

to be served electronically on:

Wayne R. Rohde
Christopher Raleigh
Kathryn Sobotta
Cozen O'Connor
1200 19th Street NW
Washington, D.C. 20036

wrohde@cozen.com;
craleigh@cozen.com;
ksobotta@cozen.com.

Executed: March 2, 2023

/s/ Kristine Little