

ONTARIO

Superior Court of Justice
Cour supérieure de justice

Third Amended as Fresh Plaintiff's Claim
Rectifié comme frais demande du demandeur

Form / Formule 7A Ont. Reg. No. / Règl. de l'Ont. : 25B/98

Toronto

Small Claims Court / Cour des petites créances de

SC-14-4776-00

Claim No. / N° de la demande

47 Sheppard Avenue East, Toronto, ON
M2N 5N1

Address / Adresse

416-326-3554

Phone number / Numéro de téléphone



Plaintiff No. 1 / Demandeur n° 1

Additional plaintiff(s) listed on attached Form 1A.
Le ou les demandeurs additionnels sont mentionnés
sur la formule 1A ci-jointe.

Under 18 years of age.
Moins de 18 ans.

2011 MAY 2 5 30 PM
COURT OF JUSTICE
TORONTO

Last name, or name of company / Nom de famille ou nom de la compagnie LEHRER		
First name / Premier prénom ANDY	Second name / Deuxième prénom	Also known as / Également connu(e) sous le nom de
Address (street number, apt., unit) / Adresse (numéro et rue, app. unité)		
[Redacted Address]		
Postal code / Code postal		Fax no. / N° de télécopieur

Defendant No. 1 / Défendeur n° 1

Additional defendant(s) listed on attached Form 1A.
Le ou les défendeurs additionnels sont mentionnés
sur la formule 1A ci-jointe.

Under 18 years of age.
Moins de 18 ans.

Last name, or name of company / Nom de famille ou nom de la compagnie ROURKE		
First name / Premier prénom TIM	Second name / Deuxième prénom	Also known as / Également connu(e) sous le nom de
Address (street number, apt., unit) / Adresse (numéro et rue, app. unité)		
[Redacted Address]		
City / Town / Cité / Ville	Province	Phone no. / N° de téléphone
Postal code / Code postal		Fax no. / N° de télécopieur

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SC-14-4776-00

Claim No. / N° de la demande

Plaintiff No. / Demandeur n°

Defendant No. / Défendeur n° 2

Last name, or name of company / Nom de famille ou nom de la compagnie
EASY DNS TECHNOLOGIES INC.

First name / Premier prénom

Second name / Deuxième prénom

Also known as / Également connu(e) sous le nom de

Address (street number, apt., unit) / Adresse (numéro et rue, app., unité)

[Redacted]

JULIE L. LEFEBVRE

BERSENAS JACOBSON CHAQUIST THOMSON BLACKBURN LLP

LSUC # / N° du BHC

Address (street number, apt., unit) / Adresse (numéro et rue, app., unité)

[Redacted]

First name / Premier prénom

Second name / Deuxième prénom

Also known as / Également connu(e) sous le nom de

Address (street number, apt., unit) / Adresse (numéro et rue, app., unité)

City/Town / Cité/ville

Province

Phone no. / N° de téléphone

Postal code / Code postal

Fax no. / N° de télécopieur

Representative / Représentant(e)

LSUC # / N° du BHC

Address (street number, apt., unit) / Adresse (numéro et rue, app., unité)

City/Town / Cité/ville

Province

Phone no. / N° de téléphone

Postal code / Code postal

Fax no. / N° de télécopieur

Plaintiff No. / Demandeur n°

Defendant No. / Défendeur n°

Last name, or name of company / Nom de famille ou nom de la compagnie

First name / Premier prénom

Second name / Deuxième prénom

Also known as / Également connu(e) sous le nom de

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City/Town / Cité/ville

Province

Phone no. / N° de téléphone

Postal code / Code postal

Fax no. / N° de télécopieur

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27**REASONS FOR CLAIM AND DETAILS / MOTIFS DE LA DEMANDE ET PRÉCISIONS**

Explain what happened, including where and when. Then explain how much money you are claiming or what goods you want returned.

Expliquez ce qui s'est passé, en précisant où et quand. Ensuite indiquez la somme d'argent que vous demandez ou les biens dont vous demandez la restitution, explication à l'appui.

If you are relying on any documents, you **MUST** attach copies to the claim. If evidence is lost or unavailable, you **MUST** explain why it is not attached.

*Si vous vous appuyez sur des documents, vous **DEVEZ** en annexer des copies à la demande. Si une preuve est perdue ou n'est pas disponible, vous **DEVEZ** expliquer pourquoi elle n'est pas annexée.*

What happened? (SEE PAGE 4)

Where?

When?

*Que s'est-il
passé?*

Où?

Quand?

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How much? \$ 25,000
Combien? \$
(Principal amount claimed / Somme demandée)

ADDITIONAL PAGES ARE ATTACHED BECAUSE MORE ROOM WAS NEEDED.
DES FEUILLES SUPPLÉMENTAIRES SONT ANNEXÉES EN RAISON DU MANQUE D'ESPACE.

The plaintiff also claims pre-judgment interest from May 7, 2014
Le demandeur demande aussi des intérêts antérieurs au jugement de (Date)

under:
conformément à :

(Check only one box / Cochez une seule case)

the Courts of Justice Act
la Loi sur les tribunaux judiciaires

an agreement at the rate of
un accord au taux de

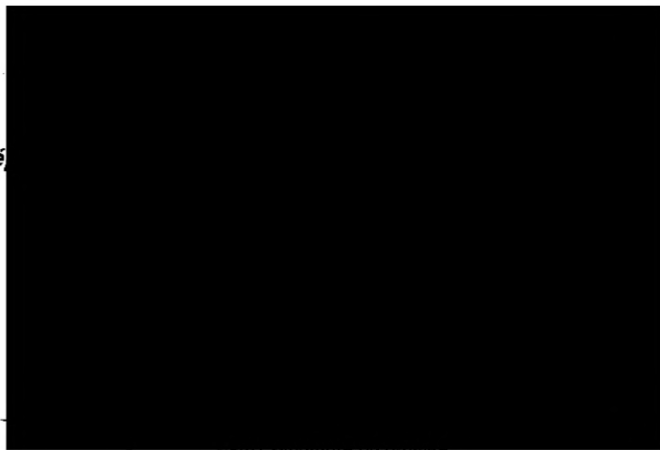
and post-judgment interest, and court costs.
et des intérêts postérieurs au jugement, ainsi que les dé

August 7, 2014;
Amended: December 14, 2014
2nd Amendment: February 22, 2015
3rd Amendment: May 10, 2015

Prepared on:
Fait le :

August 7, 2014
Amended on: December 19, 2014
2nd Amendment:
3rd Amendment: May 10, 2015

Issued on:
Délivré le :



CAUTION TO DEFENDANT:

IF YOU DO NOT FILE A DEFENCE (Form 9A) and an Affidavit of Service (Form 8A) with the court within twenty (20) calendar days after you have been served with this Plaintiff's Claim, judgment may be obtained without notice and enforced against you. Forms and self-help materials are available at the Small Claims Court and on the following website: www.ontariocourtforms.on.ca.

AVERTISSEMENT AU DÉFENDEUR :

SI VOUS NE DÉPOSEZ PAS DE DÉFENSE (formule 9A) et d'Affidavit de signification (formule 8A) auprès du tribunal au plus tard vingt (20) jours civils après avoir reçu signification de la présente demande du demandeur, un jugement peut être obtenu sans préavis et être exécuté contre vous. Vous pouvez obtenir les formules et la documentation à l'usage du client à la Cour des petites créances et sur le site Web suivant : www.ontariocourtforms.on.ca.

1) On or about May 7, 2014, I learned that on or about April 27, 2014, harassing, defamatory and libellous statements about me had been posted on the internet on a website owned by the Defendant, Tim Rourke ("Rourke"), and hosted on computer servers owned by the Defendant, Easy DNS Technologies Inc. ("EasyDNS"), an Internet Service Provider (ISP) which also operates under the name EasyWEB, at the following Uniform Resource Locator (URL) pages:

- a) <http://www.causepimps.ca/andy-lehrer/top.html> (hereafter referred to as "Webpage 1") [**EXHIBITS** BOOK, EXHIBIT 1]
- b) <http://www.causepimps.ca/andy-lehrer/contributed%20%about%20lehrer.html> (hereafter referred to as "Webpage 2") [**EXHIBIT 2**]
- c) <http://www.causepimps.ca/andy-lehrer/ARA/ara.html> (hereafter referred to as "Webpage 3") [**SUPPLEMENTARY EXHIBITS**, EXHIBIT A4]

Further, on or about April 9, 2015, Rourke posted a new page containing defamatory content at <http://www.causepimps.ca/lehrer.html> (hereafter referred to as "Webpage 4") [**ADDITIONAL SUPPLEMENTARY EXHIBITS**, EXHIBIT B1]

- 2) The aforementioned pages, along with the entire site located at <http://www.causepimps.ca> and several other domains owned by Rourke had previously been hosted by the internet provider HostPapa Inc., but had been removed from the internet by HostPapa Inc. on or about March 18, 2014, apparently due to violations by the website content of the company's terms of service agreement with Rourke. [**EXHIBIT 6**]
- 3) From approximately April 2013 until February 2014, the pages in question had been hosted by the internet provider Fused until the [causepimps.ca](http://www.causepimps.ca) site was suspended, apparently due to violations by Rourke of the company's terms of service agreement. Since approximately April 2014, Defendant Rourke's website has been hosted by the Defendant EasyDNS. In addition to providing web hosting services on its server, EasyDNS also provides Domain Name Services (DNS) to Rourke.
- 4) Notice of Libel pursuant to the Libel and Slander Act, R.S.O. 1990, c. L. 12 were served on or about May 7, 2014, on Rourke [**EXHIBIT 46**] and EasyDNS demanding the removal of the defamatory material outlined below. Rourke did not reply, though delivery of the notice was confirmed by his signature. Mark E. Jeftovic, Chief Executive Officer of Easy DNS,

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replied refusing to remove the material claiming that "Whether the content is defamatory or not is a dispute between you and the customer and a matter for the courts" and denying any legal responsibility for the contents of the website.

BACKGROUND

- 5) Rourke has been engaging in a cyberbullying, harassment and online defamation campaign against various individuals and organizations for over a decade. Most of his attention has been directed at a non-profit tenant association, the Federation of Metro Tenants' Associations ("FMTA"), and its current and former staff and board members. Rourke was a member of the FMTA's board of directors until approximately 2000 when he was barred from the organization after allegedly physically intimidating an individual at a public meeting and then refusing the FMTA Board's demand that he apologize for allegedly physically attacking another board member. Since that time, Rourke has vindictively engaged in a campaign of harassment, vilification and defamation against the FMTA, its staff, board and volunteers. Approximately ten years ago, Rourke established a website attacking the organization and numerous individuals involved with it by name on a now defunct website located at URL <http://www.torontotenantsassociations.ca>. In 2009, Rourke added a gallery consisting of images of individuals involved with the FMTA and short descriptions of them, many of which defamatory or otherwise unflattering and insulting. The gallery in question is now located at the URL <http://www.causepimps.ca/FMTA/gallery.html>. **[EXHIBIT 17]**
- 6) Also in 2009, Rourke created the "Cause Pimps" website which was devoted to lengthier defamatory attacks of a personal nature against individuals with the FMTA, as well as other individuals and organizations, mostly anti-poverty and community activists, which Rourke wishes to vilify. **[EXHIBIT 4]**
- 7) I was elected to the FMTA's board in or around June 2008 and became its vice-chair shortly thereafter and remained on the board until November 25, 2009, when I resigned as commitments on another board I was serving on concurrently did not allow me enough time to devote to the FMTA. At about the same time, I was added to the gallery on Rourke's anti-FMTA webpage and a page attacking me was created by Rourke on his "Cause Pimps" website. In August 2010, Webpage 1 was removed from the Google web search engine due to copyright violations. Specifically, Rourke had illicitly used a photograph of me that had

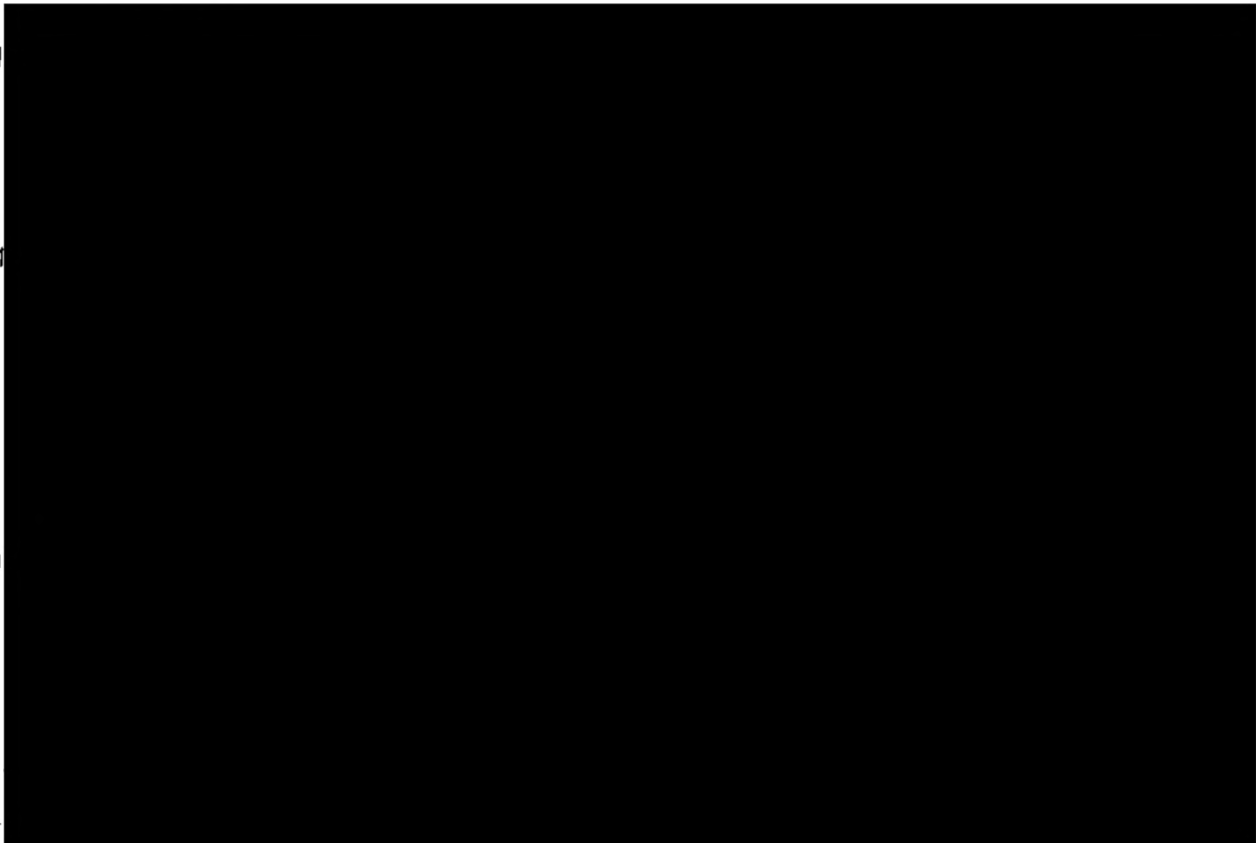
been created by Michael Laxer at his house. A copy was made without permission from Michael Laxer's Facebook page and used by Rourke on his website. Rourke subsequently retaliated by creating Webpage 2, Webpage 3, and various other pages under the subdomain <http://www.causepimps.ca/andy-lehrer/>

DEFAMATORY AND LIBELLOUS STATEMENTS

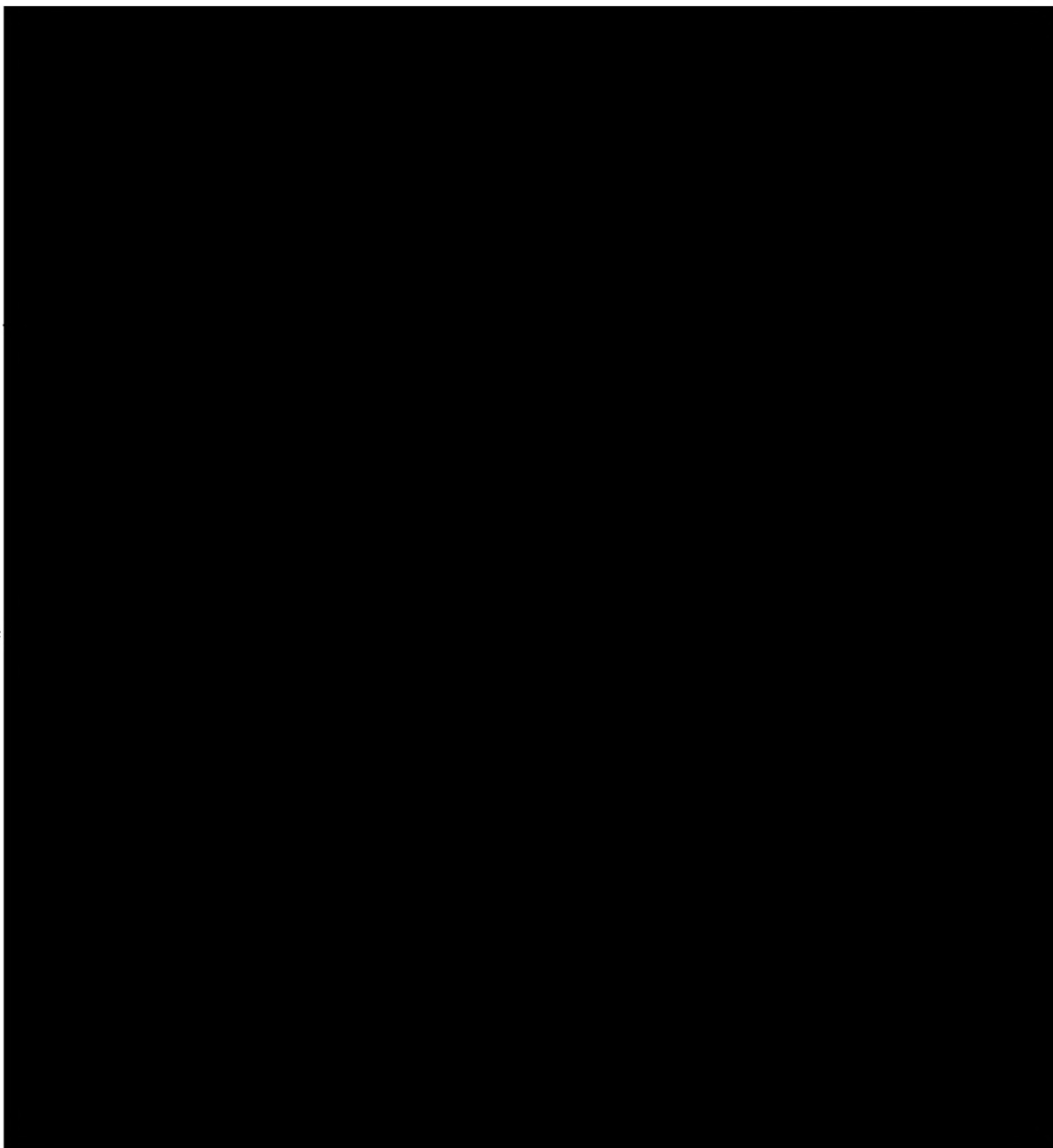
8) The intention of these pages is to maliciously harass and defame me in order to injure my reputation. The pages make various false allegations that are defamatory under the *Libel and Slander Act* (Ontario) (R.S.O. 1990, CHAPTER L.12) and common law. The pages also constitute tortuous harassment of me.

9) Below, I have noted some of the more malicious, libellous and defamatory comments published on-the webpages in question. The malicious, libelous and defamatory material includes:

A) Webpage 1

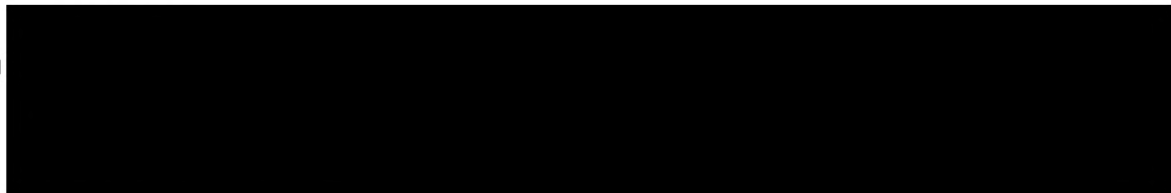


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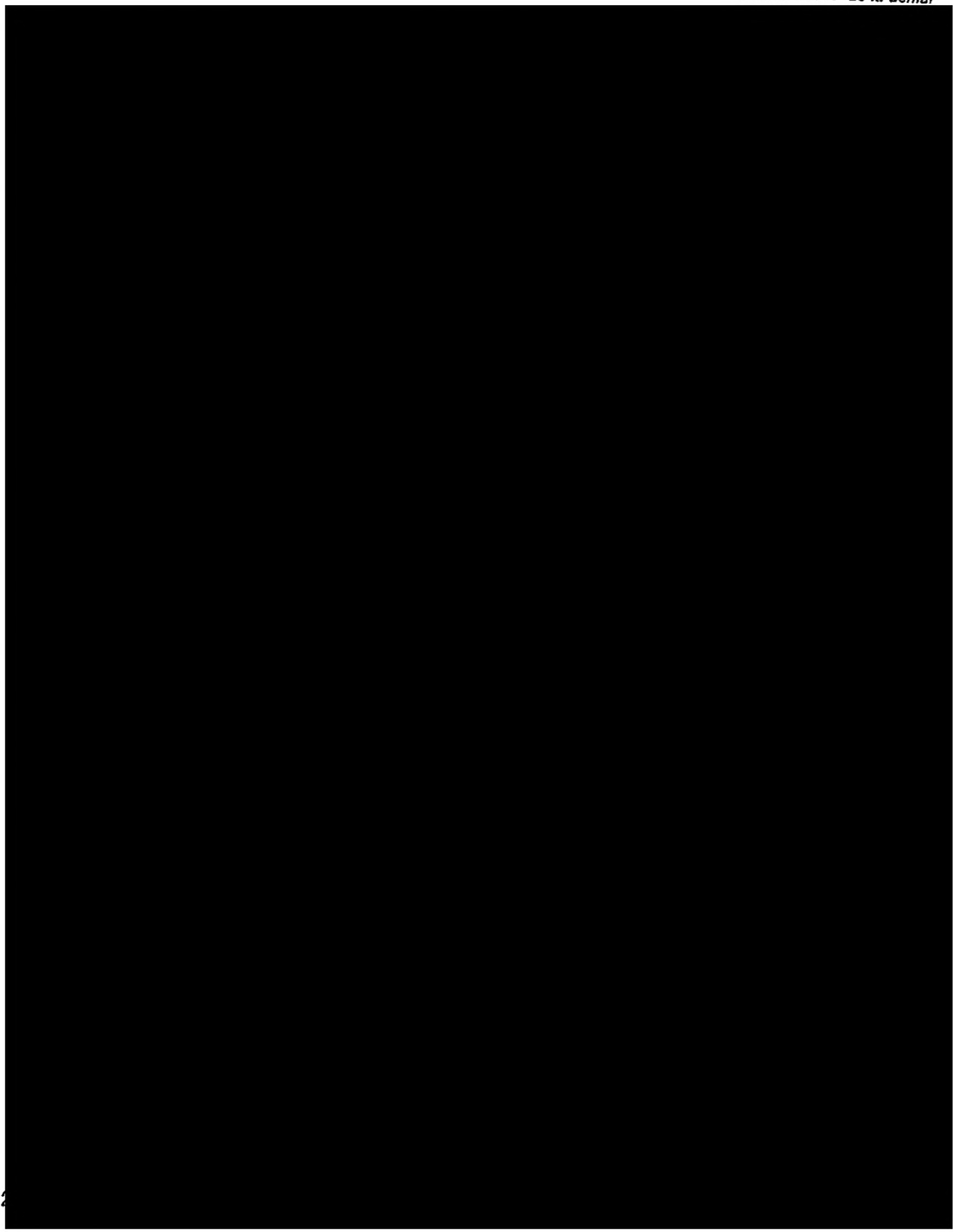


B) Webpage 2

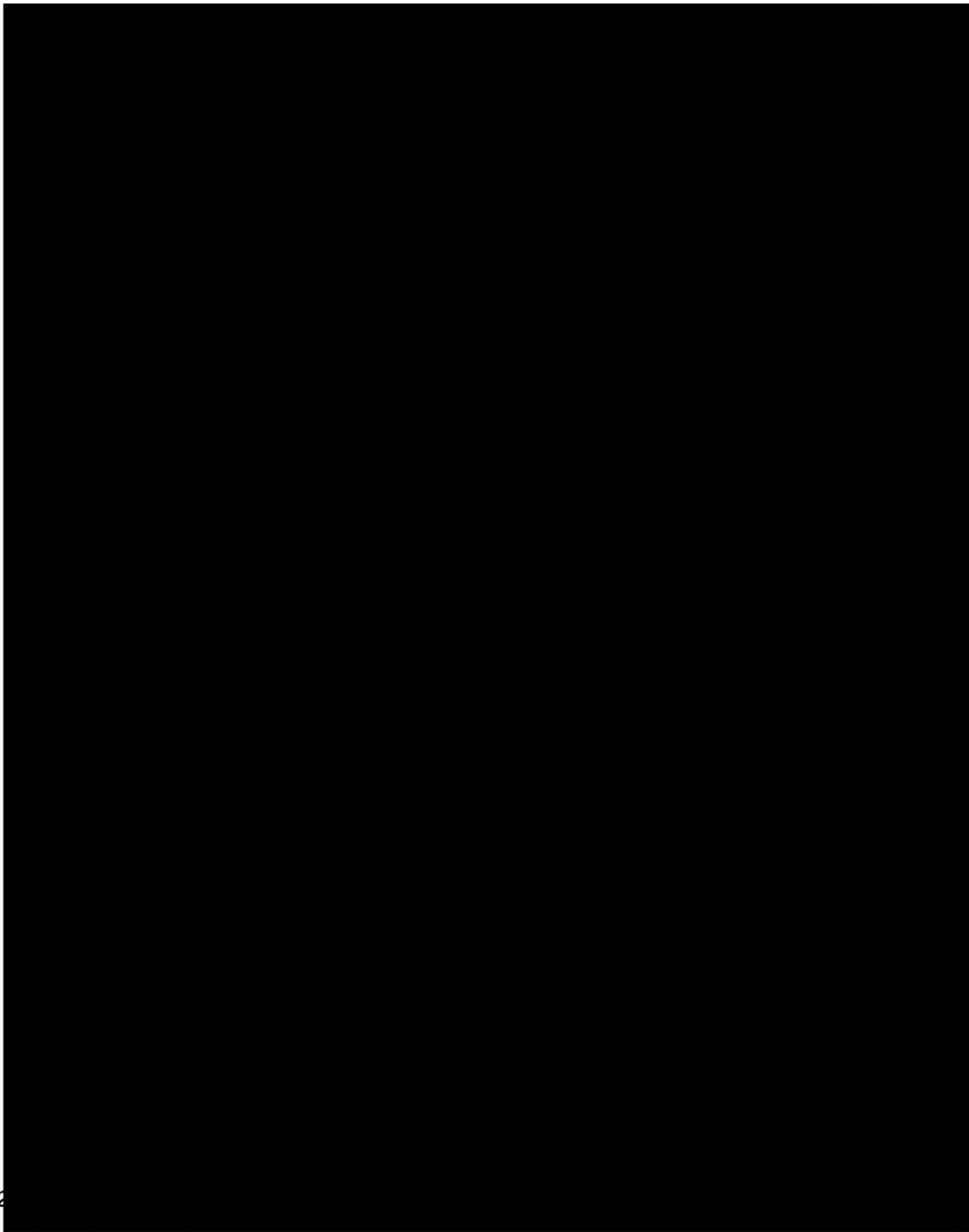
17)



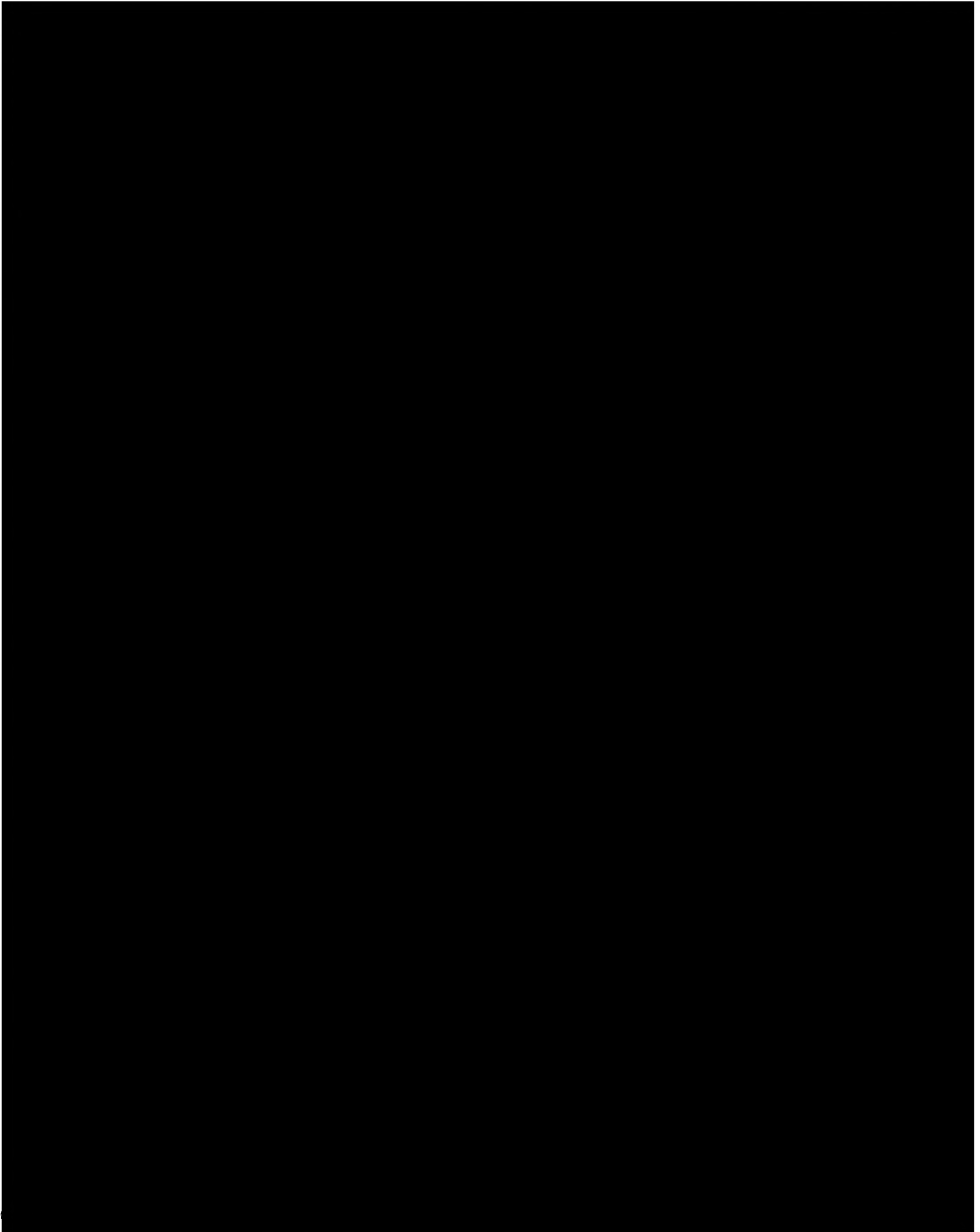
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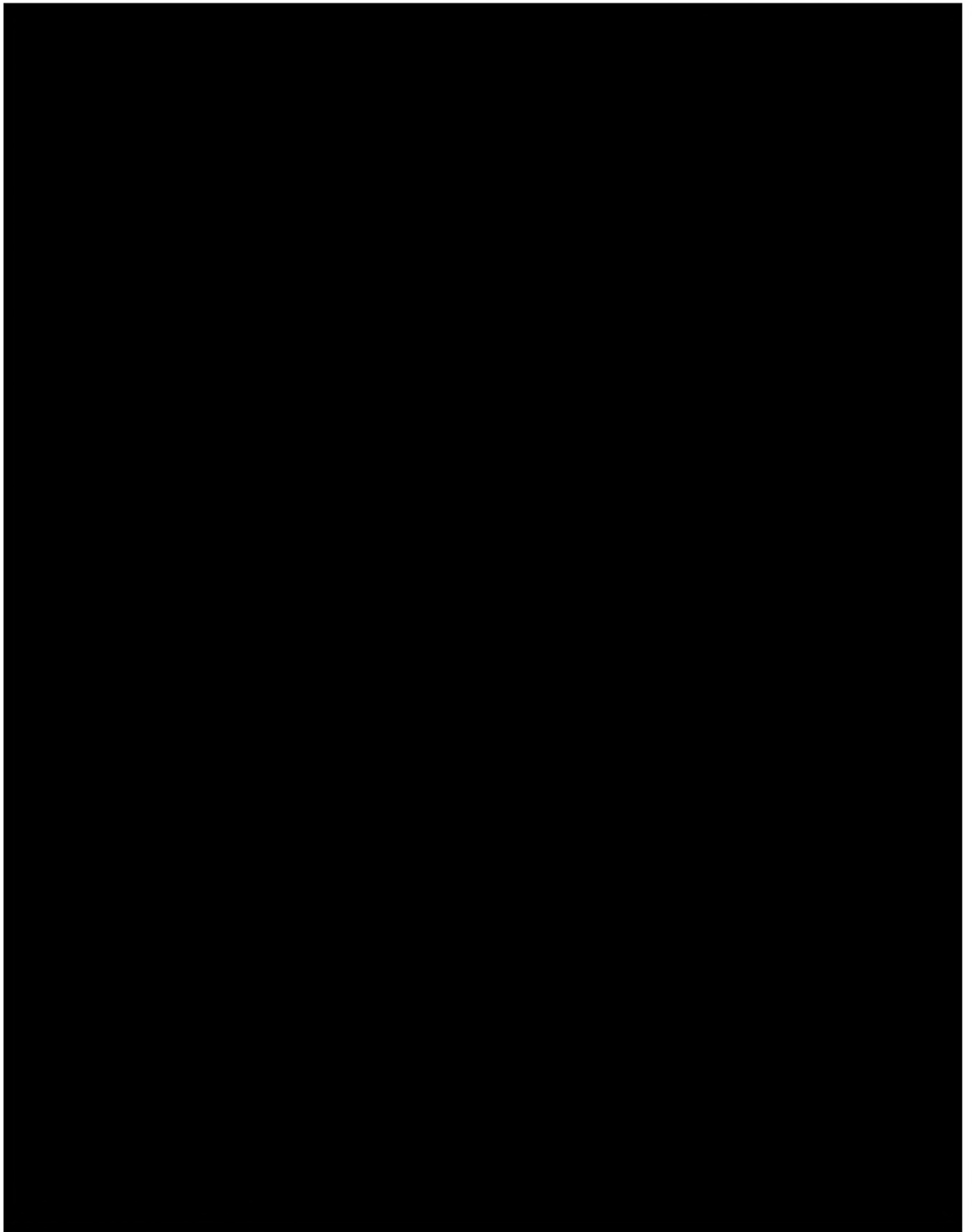


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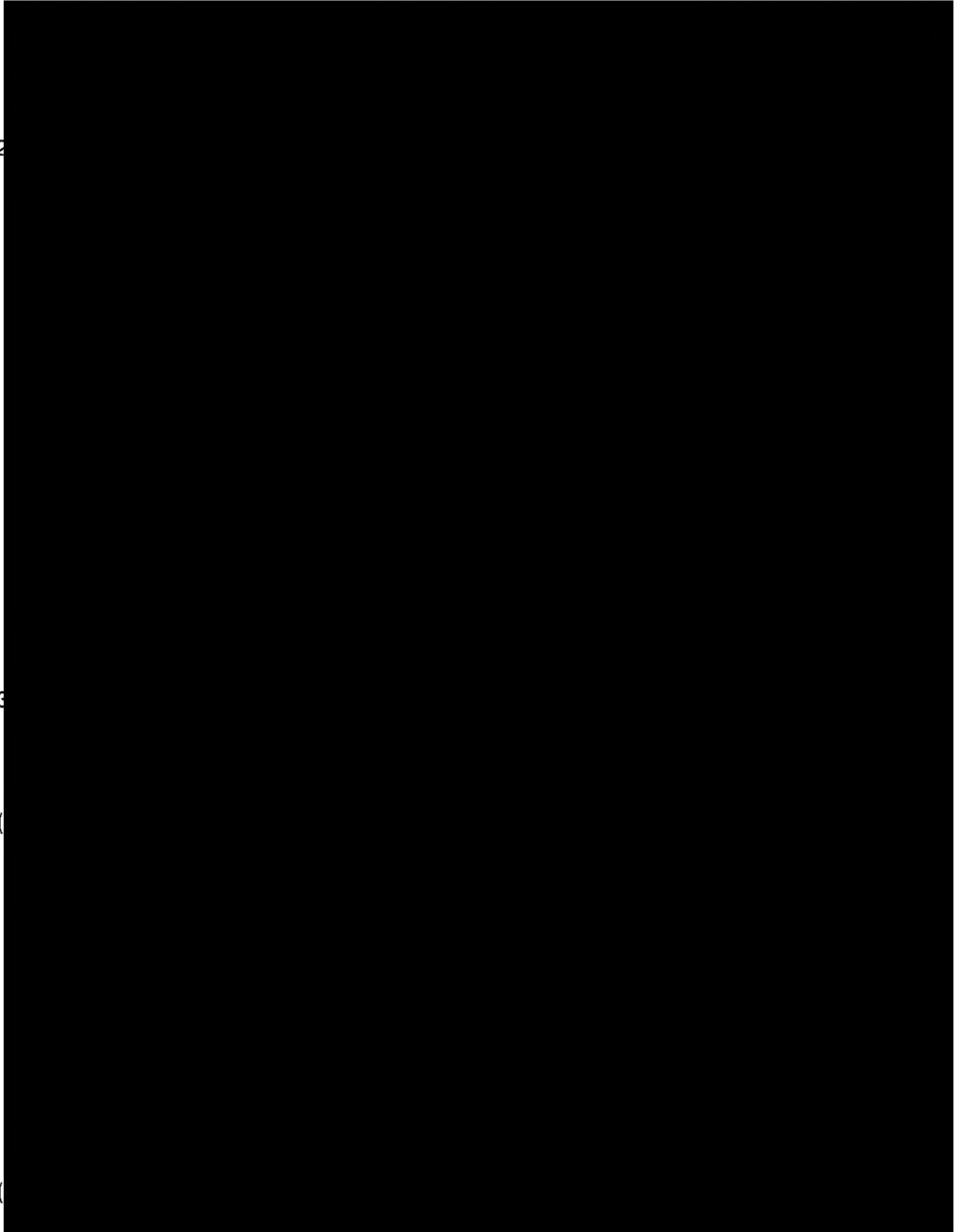


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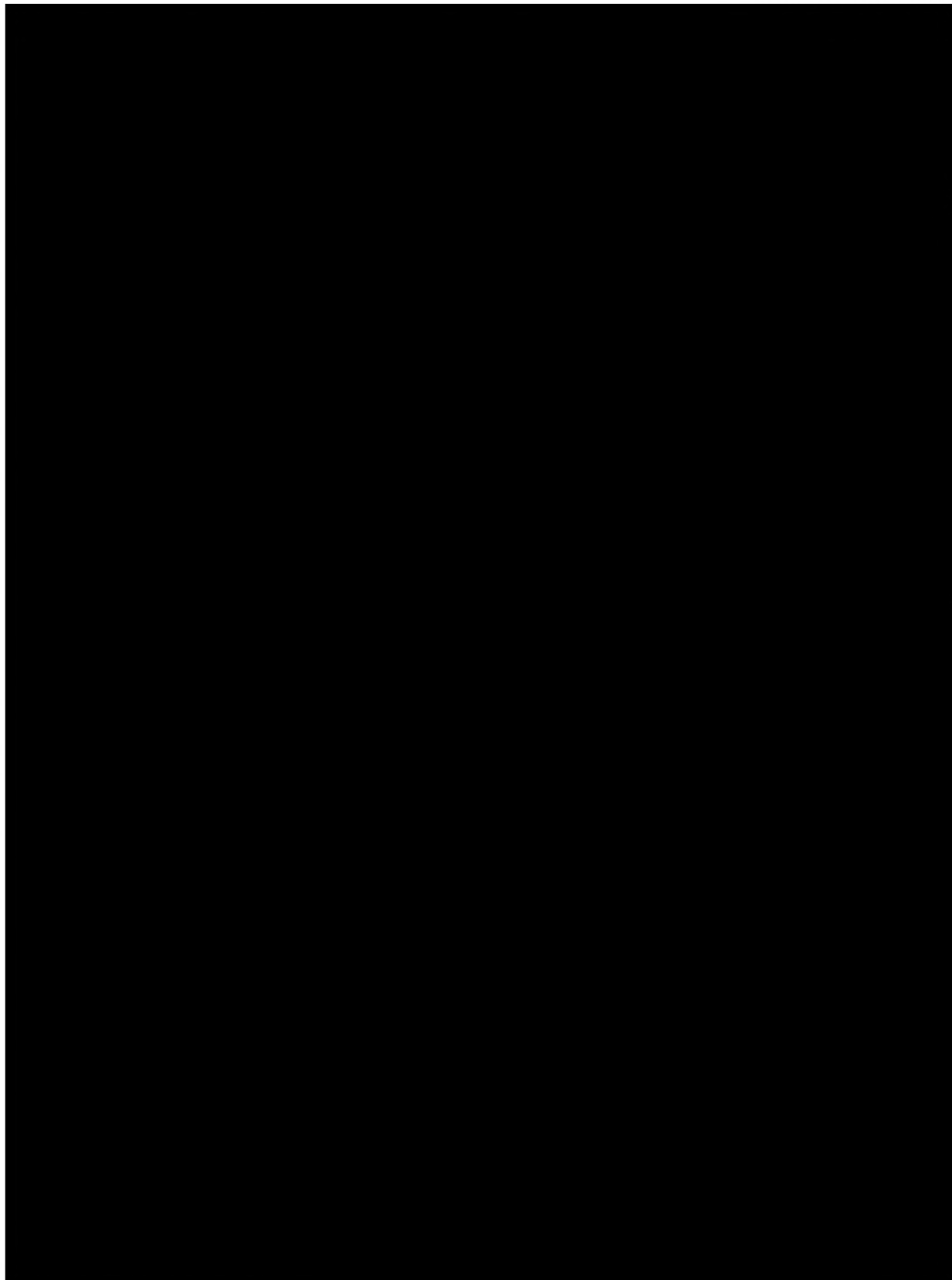
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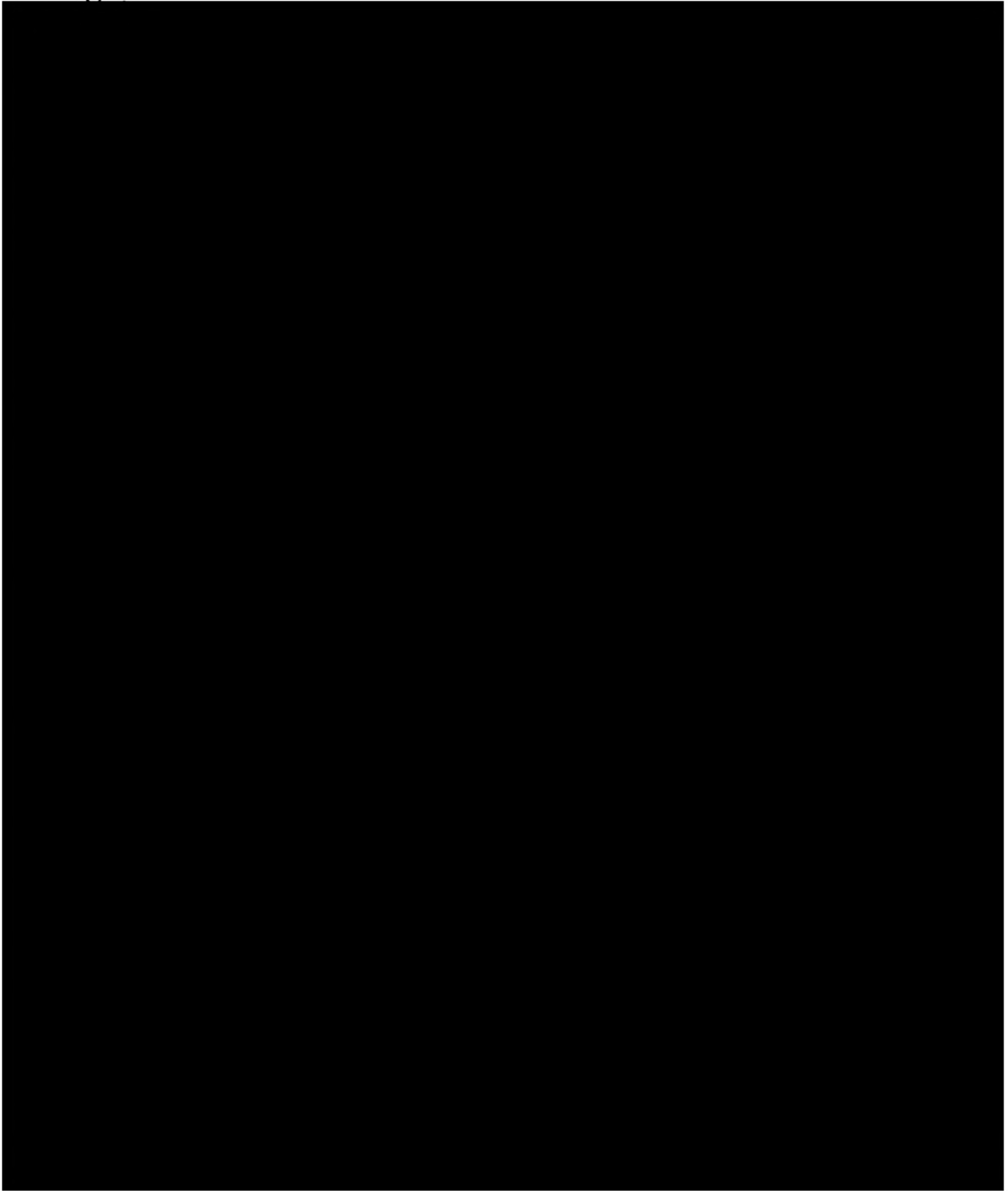
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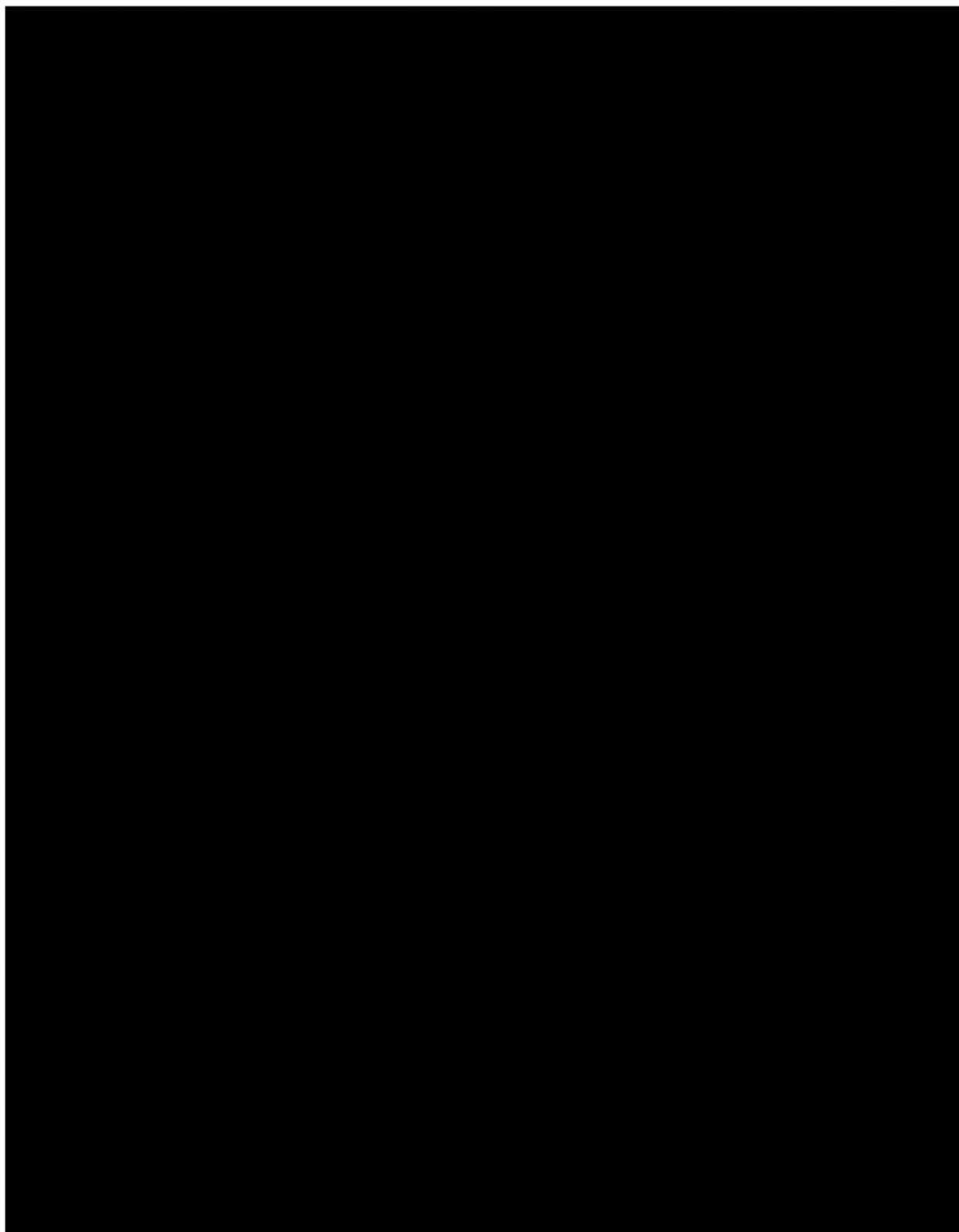
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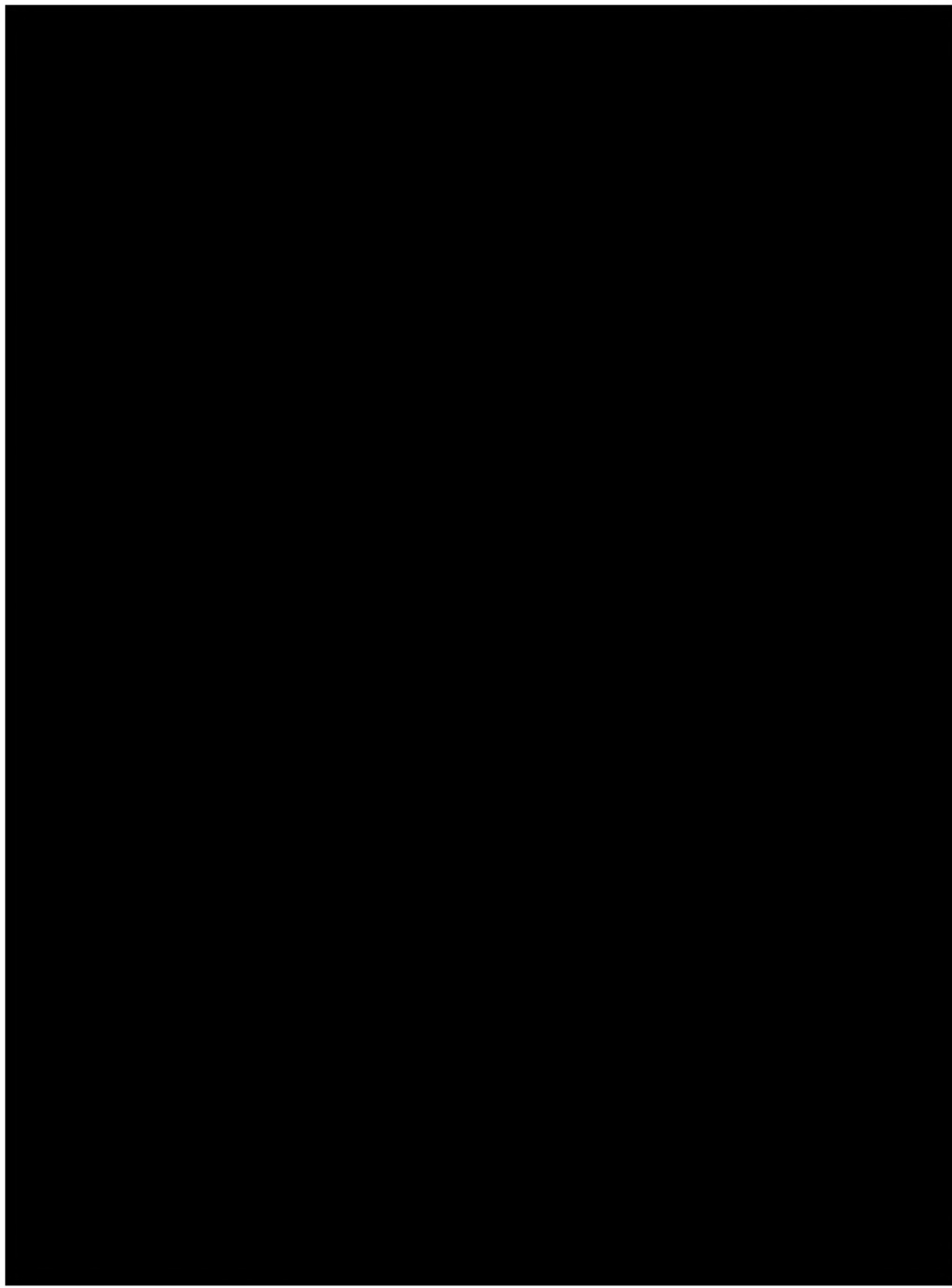
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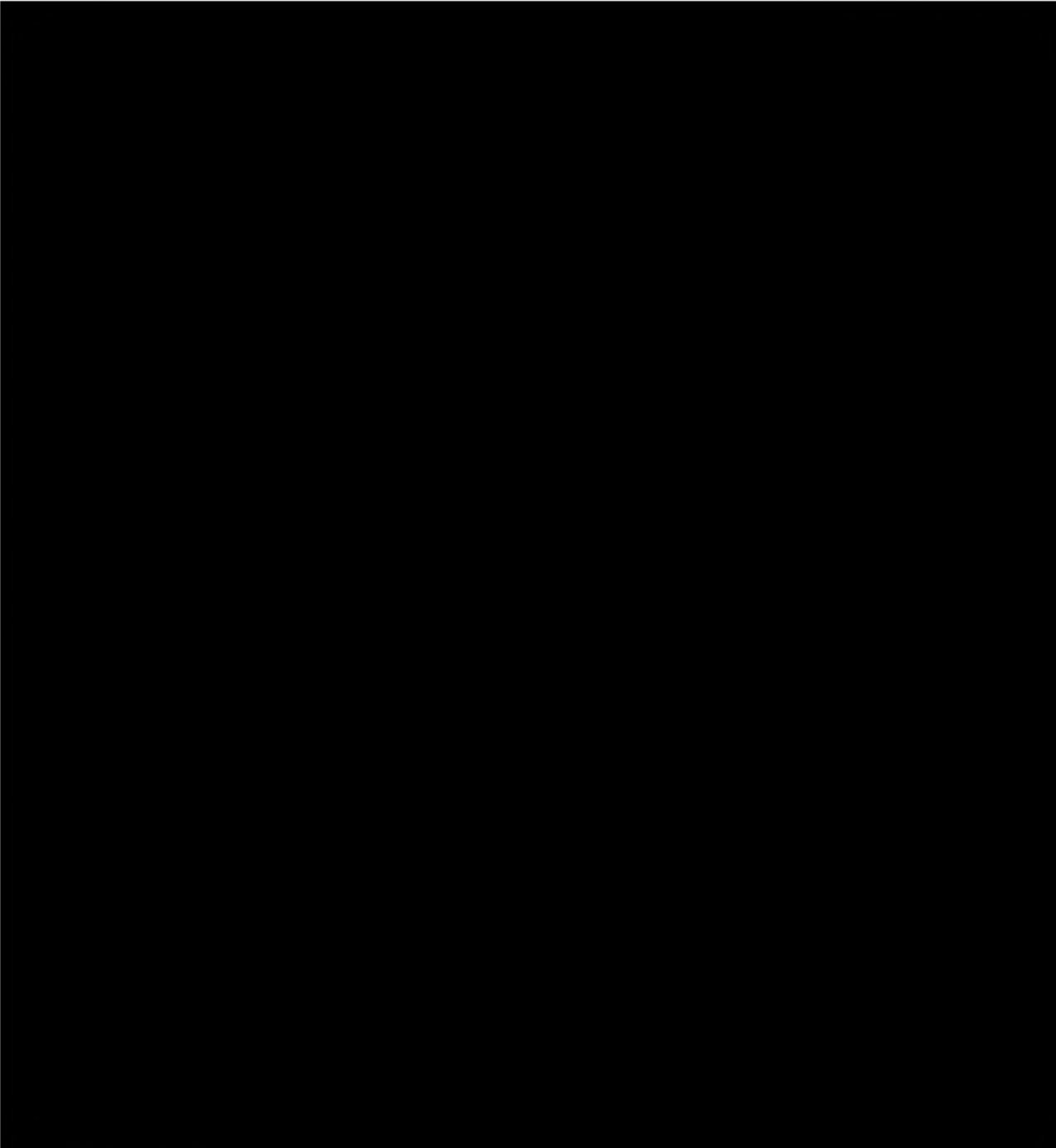
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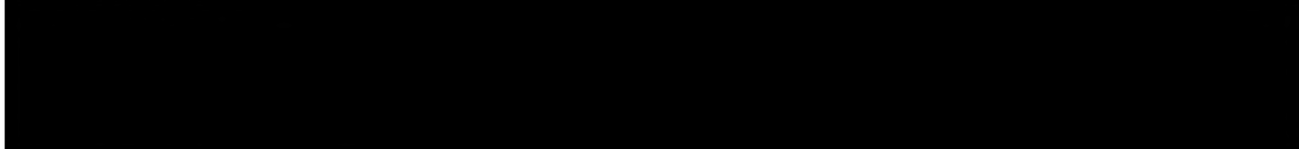
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C) Webpage 3

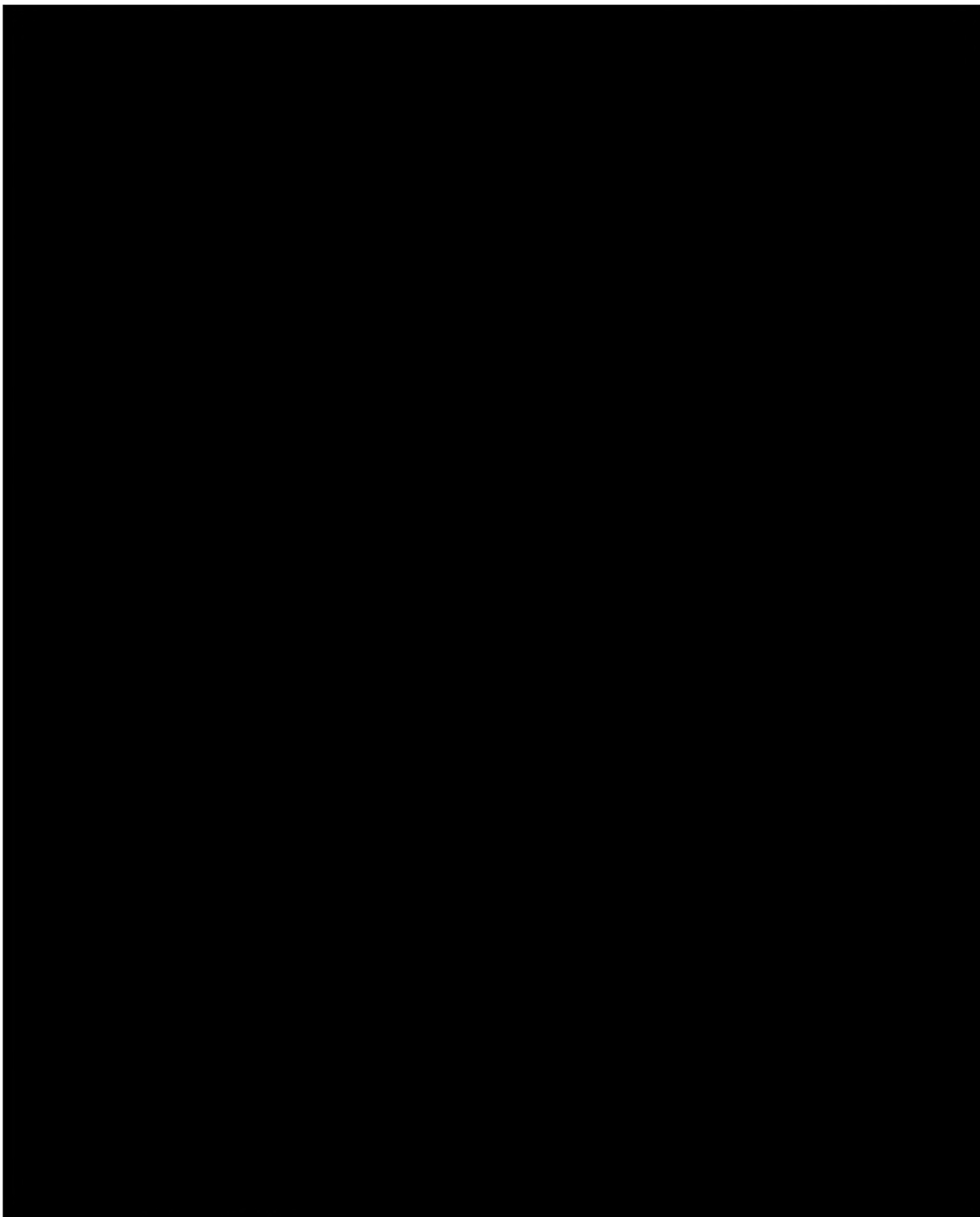


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FORM / FORMULE 7A

PAGE 17

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D) Webpage 4**MALICE AND DAMAGES**

- 44) On or about April 5, 2015, the Defendant removed the aforementioned Webpages 1, 2, and 3 while posting Webpage 4 [EXHIBIT B1] at URL <http://www.causepimps.ca/lehrer.html>. Webpage 1 and 2 were replaced by a page with a redirect command that automatically forwards internet users to Webpage 4. Rourke also posted the contents of this new page at URL <http://www.qaz.ca/blog/2015-04-05.html>
- 45) This new page, titled "The Andy Lehrer Page" and "The Contingent Lehrer Page", [EXHIBIT A] is a long diatribe which expresses Rourke's view on the lawsuit, makes several defamatory comments about the Plaintiff, and discusses at length, but also selectively and in a self-serving manner, the proceedings of the mediation session including some settlement offers made by both parties.
- 46) Rourke writes the following statements which disclose either the contents of confidential discussions at the mediation session or offers to settle made prior to or during the conference.
- 47) Confidentiality is an essential requirement of settlement negotiations so that both parties can feel comfortable to attempt to discuss the issues freely and attempt to reach a settlement. The breaching of the veil of confidentiality that surrounds such negotiations is an act of bad faith and violation of trust which, if allowed to go unpunished, threatens the administration of justice by making it much more difficult, if not impossible, for parties to enter into settlement discussions with any confidence that the process will be respected and not be injurious to their position.

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- 48) The Plaintiff asserts that he had a reasonable expectation of confidentiality given the direction given by the mediators to parties at the beginning of the session that the contents of the session are to remain confidential and the fact that the Ministry of the Attorney General's pamphlet "Small Claims Court: Guide to Getting Ready for Court" states on page 3: "the settlement conference and any settlement discussions between the parties are private and cannot be disclosed to others, unless you have the consent of all of the parties to do so."
- 49) On April 10, 2015, the Plaintiff sent Rourke an e-mail advising him that "I have not, at any time, given my consent for you to disclose the content of negotiations, however your new "contingent" page does just that, at least in part." Further, in the email, the Plaintiff continued: "I request that you remove the page. Otherwise, I will have to add it to my statement of claim or make a motion in regards to it and its content which may constitute either contempt of court or a violation of procedure." To date, Rourke has neither replied to the email nor removed the page or any of its contents.
- 50) The Plaintiff therefore requests that the Court order the Defendant Rourke to pay the Plaintiff a financial penalty of \$500, or whatever the Court finds to be appropriate, for negotiating in bad faith and any other relief or action that the Court finds to be appropriate.
- 51) In addition, "Webpage 4" incoudes several statements that defame the Plaintiff:
-
- 52) Both of these statements are false and defamatory. In addition, while Rourke has removed Webpages 1, 2, and 3, he has neither apologized for nor retracted his false and defamatory claims. Instead, he has distilled them into the statements quoted above in paragraph 51.
- 53) Due to the unusual situation of Rourke posting statements which are both defamatory and which violate the in camera nature of negotiations, the printout of the page filed as EXHIBIT B1 redacts elements which discuss the Plaintiff's settlement with EasyDNS and settlement negotiations with Rourke. An unredacted version fo the exhibit will be available at trial

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should the Court wish to examine it. The Defendant, as the author, already has access to the unredacted statement.

MALICE AND DAMAGES

- 52) 44) The Plaintiff pleads that the Defendants acted maliciously in that:
- After a notice of libel was sent to the Defendants, they he continued to post defamatory materials. Specifically, Webpage 1 was expanded in early June 2014 with material attempting to intimidate the Plaintiff by listing several of the Friends listed in my Google+ webpage;
 - The Defendants have not, as of this date, removed any of the Postings; The Defendant did not remove the original postings made on Webpages 1, 2, and 3 until on or about April 5, 2015, approximately 11 months after a Notice of Libel was served on the Defendant and almost eight months after the original Statement of Claim was filed. Concurrent with removing the original postings, the Defendant posted a new statement on his website, Webpage 4, that made additional defamatory statements. Nor did the Defendant make any commitment to remove Webpages 1, 2, and 3 permanently, hence his use of the word "contingent" in the new page's title.
 - The Defendants has not, as of this date, retracted the Postings and/or apologized to the Plaintiff for having defamed him
- 53) 45) The Plaintiff pleads that as a result of the Posting, his personal and professional reputation have suffered; the Plaintiff has been brought into ridicule, scandal and contempt both personally and professionally; the Plaintiff's livelihood has been threatened; and the Plaintiff has suffered damages.
- 54) 46) The Plaintiff states that the conduct of the Defendants towards him has been malicious, reckless and reprehensible and in complete and total disregard for his personal and professional reputation and that such conduct warrants the imposition of aggravated and punitive damages.
- 55) 47) The Plaintiff pleads and relies on the *Libel and Slander Act*, R.S.O. 1990, c-L.12. and on the civil tort of defamation.

- 56) 48) Several of these pages appear, or have appeared, on the first page of results when my name is entered into Google and thus has caused harm to me and hold the potential to cause ongoing harm to my reputation.
- 57) 49) Rourke's defamatory webpages have been widely promoted on the internet by links to them being posted on the comment sections of various blogs and by being listed in various internet directories, possibly by Rourke himself. These actions aggravate the damage to the Plaintiff. As of January 6, 2012 the aforementioned defamatory web pages continue to be broadcast on the internet.
- 58) 50) The Plaintiff states that the Defendants ~~are~~ is liable to him for all damages flowing from the defamatory words as set out herein.
- 59) 51) The Plaintiff states that by the publication of the words as set out herein, his reputation has been seriously prejudiced and his integrity has been impugned. The Plaintiff has been held up to ridicule and contempt as a result of the actions of the Defendants as set out in this statement of claim.
- 60) 52) The Plaintiff further states that the conduct of the Defendants constitutes harassment. In particular, the defendant Rourke has aggressively promoted the defamatory pages on the internet, causing links to the defamatory pages to be posted in various locations on the internet including in the comment sections of various web logs ("blogs"), comment sections of news articles and other locations and by republishing the comments after they have been removed by his previous Internet Service Providers and also causing the comment to be republished on other websites. The behaviour of the Defendant has caused the Plaintiff to be fearful of physical and other forms of harm. The behaviour of the Defendant in targeting friends and associates of the Plaintiff has caused strain to his personal relationships and his ability to establish further social relationships.
- 61) 53) The Plaintiff further states that the conduct of the Defendants ~~in their~~ in his failure to properly, or at all, ascertain correct information prior to publication of the libels set out in this statement of claim acted in a callous, malicious, and high-handed matter and that their conduct should attract the censure of the court. The Plaintiff therefore seeks punitive damages.

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- 54) Further, the Defendant EasyDNS has, on August 22, 2014, November 13, 2014 and December 10, 2014, posted publicly about this lawsuit on <http://blog.easydns.org> and directed people to the Defendant Rourke's content despite knowing that the Plaintiff views this content as defamatory. According to a chart posted on the Defendant EasyDNS's November 13, 2014 posting, the earlier blog entry of August 22 resulted in substantial increase in the number of individuals viewing the causepimps.ca website. The postings by EasyDNS constitute egregious and non-content neutral behaviour which is contrary to the EasyDNS's claim of "innocent dissemination" and deserves the censure of this court.
- 62) 55) In addition, in reaction to the within proceeding, the Defendants ~~easyDNS and Rourke~~ have has both published the statement of claim on ~~their respective websites~~ his website. In addition, Defendant EasyDNS has published the statement of claim on the online publishing platform Scribd. The Defendants have thus furthered the libels after being put on notice of the defamation. ~~Their~~ His conduct is egregious, is deserving of the censure of this court including the imposition of punitive damages.
- 63) 56) The Plaintiff pleads that the Defendants deliberately, intentionally or recklessly harmed and damaged the Plaintiff by publishing and distributing the defamatory words and that they acted with actual malice by either publishing and distributing the defamatory statements with the knowledge that the information was false or with reckless disregard of whether it was false or not.
- 64) 57) The Plaintiff seeks costs on a substantial indemnity basis.