UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

In the Matter of **Jay T. Comeaux** **Respondent.**	**ADMINISTRATIVE PROCEEDING** **File No. 3-15002**

RESPONDENT'S PETITION FOR REVIEW

Respondent Jay T. Comeaux ("Comeaux" or "Respondent") files this Petition for Review to the U.S. Securities and Exchange Commission ("Commission"), pursuant to Rule 410 of the Commission's Rules of Practice and 17 C.F.R. § 201.410, and would show as follows:

I. SUMMARY OF EXCEPTIONS TO THE INITIAL DECISION

Comeaux requests review of the following specific findings and conclusions of the Initial Decision ("I.D."). Supporting reasons are included below.

1. Finding of Fact: Comeaux received ill-gotten gains of $3,386,974.50. *See* I.D. at p.3.
2. Finding of Fact: Comeaux does have the financial ability to pay disgorgement plus prejudgment interest of a total of $5,155,346.88. *See* I.D. at p.3.
3. Conclusion: It is reasonable to conclude that Comeaux was unjustly enriched by $3,386,974.50, the amount of ill-gotten gains that are causally related to the violative activities during the Relevant Period. *See* I.D. at p.4.
4. The award of prejudgment interest. *See* I.D. at p.6.
5. The denial of Comeaux's objections to the Division's evidence. *See* I.D. at p.2.
6. The failure to admit the Hedges' Affidavit into evidence. *See* I.D. at p.2.

II. INTRODUCTION

The ALJ issued its Initial Decision in this proceeding on July 2, 2013. In response, on July 12, 2013, Comeaux filed a Motion to Correct a Manifest Error of Fact. The ALJ denied that motion on July 23, 2013. This Petition for Review is timely because it is filed within 21 days of that denial (although Comeaux was not served with that denial until July 29, 2013).

On August 31, 2012, the Commission accepted Comeaux's Offer of Settlement ("Offer") in its Order Instituting Administrative and Cease-and-Desist Proceedings (the "OIP"), in which Comeaux neither admitted nor denied the findings.[1] The parties agreed to determination of disgorgement and civil penalties by summary disposition. The ALJ issued its I.D. on July 2, 2013 and held that:

- Substantial penalties have already been imposed against Comeaux;
- Comeaux has not previously violated the federal securities laws;
- Comeaux has recognized the nature of his conduct;
- Comeaux has been permanently deprived of the ability to work in the securities industry and, therefore, future employment will not present opportunities for him to violate the securities laws; and
- Comeaux was not a principal actor in the creation and concealment of the Ponzi scheme operated by R. Allen Stanford.

See I.D. at p.5.

The Court also ordered, however, that Comeaux must disgorge a total of approximately $5,155,346.88,[2] including both disgorgement and prejudgment interest. The Court further ordered that this total amount is to be reduced by the assets under the control of the court-appointed receiver ($1,435,236.00), which in effect leaves Comeaux faced with a judgment of **$3,720,110.88** (the "Effective Judgment").

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[1] Comeaux incorporates the introduction and background facts (§1) included in his Response to the Division's Motion for Summary Disposition (the "Response").

[2] $3,386,974.50 in disgorgement plus the Division's calculation of $1,768,372.38 in prejudgment interest.

Comeaux presented the ALJ with uncontroverted evidence that his net worth – even including assets exempt from execution and also including the assets of his wife – is substantially *less than half* of the Effective Judgment amount. The Division presented no objection or contradictory evidence of Comeaux's financial ability to pay and the Division's expert offered no opinion on his financial ability to pay. Based on this undisputed evidence, Comeaux respectfully requests that the Commission review the I.D. and determine that the disgorgement and prejudgment interest ordered are not supported by the record and not in the public interest.

III. ARGUMENT AND AUTHORITIES

A. APPLICABLE STANDARDS

The Commission has broad discretion to set sanctions in administrative proceedings. *See Butz v. Glover Livestock Comm'n Co.*, 411 U.S. 182, 188-89 (1973); *In re Philip A. Lehman*, Release No. 34-54660, 2006 WL 3054584 at *3 (Oct. 27, 2006). When the Commission determines administrative sanctions, it considers the following factors:

(1) the egregiousness of the defendant's actions;
(2) the isolated or recurrent nature of the infraction;
(3) the degree of scienter involved;
(4) the sincerity of the defendant's assurances against future violations;
(5) the defendant's recognition of the wrongful nature of his conduct; and
(6) the likelihood that the defendant's occupation will present opportunities for future violations.

See Steadman v. SEC, 603 F.2d 1126, 1140 (5th Cir. 1979) (quoting *SEC v. Blatt*, 583 F.2d 1325, 1334 n.29 (5th Cir. 1978)), *aff'd on other grounds*, 450 U.S. 91 (1981).

In addition, the Commission must determine sanctions pursuant to a public interest standard. In considering whether a sanction is in the public interest, the Commission may consider the following factors:

(1) whether the act for which the penalty is assessed involved fraud, deceit, manipulation, or deliberate reckless disregard of a regulatory requirement;

(2) the harm to other persons as a result of the respondent's actions;

(3) the extent to which the respondent was unjustly enriched, taking into account any restitution made to persons injured by the behavior;

(4) whether the respondent previously violated federal securities (and other) laws;

(5) the need for deterrence; and

(6) other matters as justice may require.

See Exchange Act §§ 21B(c); Advisors Act §§ 203(i)(3); and Investment Company Act §§ 9(d)(3).

Comeaux asserts that the I.D. embodies findings or conclusions of material facts that are clearly erroneous; conclusions of law that are erroneous; and an exercise of discretion or policy that is important and that the Commission should review. *See* 17 C.F.R. § 201.411(b)(2)(ii).

B. COMEAUX'S UNDISPUTED FINANCIAL CONDITION

As part of his Response, Comeaux included an affidavit (Ex. A) and his Summary Financial Disclosure Statement ("Financial Disclosure") (Ex. C), which were both admitted into evidence by the ALJ without objection.[3] The Division did not offer any evidence to question or contradict the affidavit or the Financial Disclosure. As such, these documents are the only evidence in the record of Comeaux's financial condition.

Comeaux is 66 years old. *See* Response at Ex. A. He is not currently employed. *Id.* As a result of the permanent bar, he has lost his income, his career, and his livelihood. *Id.* He cannot be employed in the securities industry in the future. *Id.* Comeaux has had no earned income (or permanent employment) since February 2009 and his current source of income is comprised of social security payments. *Id.* at Ex. A and Ex. C.

[3] These documents are attached hereto as **Exhibit A** for the Commission's convenience.

The uncontroverted evidence demonstrates that Comeaux's total net worth, including his wife's separate property, their home, and his individual retirement accounts ("IRAs") amounts to a total of $1,424,951.39. *See* Response at Ex. C.[4] Even if Comeaux were forced to liquidate all of his and his wife's assets (including their home and IRAs), after the payment of merely a portion of the Effective Judgment, Comeaux would be left with debt of $2,295,159.49—with no source of income from which to make further payments.

Yet, even this overstates the amounts that Comeaux reasonably has available to pay any judgment because it includes assets in which Comeaux has no ownership interest and assets that are not subject to execution to satisfy the judgment (and would leave him and his wife destitute). When Comeaux's homestead and IRAs are properly excluded from the calculation, Comeaux's total net worth, even including $362,000 that is his wife's separate property, is merely $519,811.64. *See* Response at Ex. C, Schedule M. Further, as demonstrated by his attached tax returns, Comeaux has had no earned income (or permanent employment) since February 2009. *Id.* at Ex. C. The Effective Judgment of $3,720,110.88 (after the frozen assets reduce the total judgment) would leave Comeaux more than $3,200,299.24 in debt, with, again, no income to support future payments.

The undisputed facts in the record clearly demonstrate that Comeaux does not have the financial ability to pay an effective judgment of $3,720,110.88.[5]

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[4] Schedule A of Ex. C specifically noted that in the interest of full disclosure Comeaux was including his wife's separate property, in which Comeaux holds no ownership interest. He also attached a statement demonstrating his net worth including only those assets in which he had an actual ownership interest (separate or community). *See* Schedule M of Ex. C.

[5] The Division's Opposition to Respondent's Motion to Correct Manifest Error of Fact suggests that Comeaux "has already transferred significant assets to family members" and recommends that those family members should provide financial support if he and his wife are left destitute. *See* Opposition at p.2. Setting aside the mere egregious nature of such a statement, the Division cites to nothing in support of this bald statement that is both unsupported and untrue.

C. THE INITIAL DECISION DISINCENTIVIZES COOPERATION

The Commission has stated that cooperation by individuals in the Commission's investigations and related enforcement actions "can contribute significantly to the success of the agency's mission." *See* 17 C.F.R. § 202.12. Further, the Commission's policy is that:

> There is a wide spectrum of tools available to the Commission and its staff for facilitating and rewarding cooperation by individuals, ranging from taking no enforcement action to pursuing reduced charges and sanctions in connection with enforcement actions. As with any cooperation program, there exists some tension between the objectives of holding individuals fully accountable for their misconduct and providing incentives for individuals to cooperate with law enforcement authorities. [The Commission seeks] to resolve this tension in a manner that **ensures that potential cooperation arrangements maximize the Commission's law enforcement interests.**

Id. (emphasis added).

Should the ALJ's Effective Judgment stand, Comeaux, despite his substantial cooperation and recognition of the nature of his conduct (*see* I.D. at p.5), will suffer financial sanctions that far exceed the financial sanctions imposed upon other individuals who refused to cooperate with the Commission and forced it to conduct a full hearing, in which they were ultimately found liable.[6] Contrary to the purpose of deterring future misconduct and ensuring that future cooperation arrangements maximize the Commission's law enforcement interests, the imposition of such overwhelming financial sanctions against Comeaux will only serve to deter individuals from cooperating with the Commission in the future.

As demonstrated in the Response, Comeaux cooperated with the Commission, the FBI, and the DOJ throughout their investigations of the Stanford Entities.[7] In 2009, Comeaux and his

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[6] *See* August 2, 2013 Initial Decision, Release No. 502 Administrative Proceeding File No. 3-15003, *In re Daniel Bogar, Bernerd E. Young, and Jason T. Green. See also* **Exhibit B** attached hereto.

[7] Comeaux incorporates the more thorough discussion of his extensive cooperation in the Response at II.B., as if set forth fully herein.

lawyer met for several hours with Assistant U.S. Attorney Gregg Costa, the lead prosecutor at Allan Stanford's trial in 2012, and an FBI agent. In 2010, on two occasions Comeaux was interviewed for several hours by Commission attorneys and did not refuse to answer any questions. He answered every question to the best of his knowledge. In 2011, Comeaux and his lawyer travelled to Fort Worth, Texas, from Houston at the request of the Commission. In Fort Worth, Comeaux again answered all of the questions he was asked for several hours.

Further, in 2011, Comeaux submitted an Offer of Settlement ("Offer") and agreed to accept a cease and desist order and the permanent bar. *See* Offer at p.6. The Offer obviated the need for the Commission to conduct a contentious, expensive, and time consuming adversary hearing. Comeaux has also complied with his agreement not to take any action or make or permit to be made any public statement denying, directly or indirectly, any finding in the OIP.

In 2012, as the Allan Stanford trial approached, Comeaux answered questions transmitted from an FBI agent. In 2013, Comeaux and his lawyer met with Commission attorneys on two occasions to review Comeaux's testimony in the upcoming ALJ trial of Daniel Bogar, Jason Green, and Bernerd Young, and ultimately Comeaux then testified before the ALJ and responded fully and truthfully to every question he was asked by Commission counsel and three defense attorneys.

Comeaux has been cooperating in the Stanford investigation for four years. He has answered questions from three federal agencies. Comeaux's cooperation has been extensive and he should have been given credit for it.

It is well-established that the determination of appropriate remedial action depends on the facts and circumstances of each case. *See In re Joseph John Vancook*, Release No. 34-61039, 2009 WL 4005083 at *19 (Nov. 20, 2009). In fact, parties that "settle disciplinary proceedings

often receive less severe sanctions than those who do not." *See In re Justin F. Ficken*, Release No. 34-58802, 2008 WL 4610345 at *4 n.31 (Oct. 17, 2008) (collecting cases and quoting *Phlo Corp.*, Exchange Act Rel. No. 55562 (Mar. 30, 2007) that "the rationale for the imposition of lower sanctions is, at least in part, that settlement lets the Commission avoid time-consuming adversary proceedings and the concomitant expenditure of staff resources"); *In re J.H. Goddard & Co., Inc.*, et al., Release No. 34-7618, 1965 WL 87926 at *4 (June 4, 1965) (giving consideration to the fact that the case was decided upon a stipulation of facts and offer of settlement and that the respondent had been in the securities business for over 30 years without other disciplinary proceedings); *In re Stonegate Sec., Inc.*, Release No. 44933, 55 S.E.C. 346, 355 (2001) (noting that respondents who offer to settle may properly receive lesser sanctions based on considerations such as avoidance of time and manpower consuming adversary proceedings). Comeaux's extensive cooperation in and of itself demonstrates that the permanent bar previously imposed and agreed to is sufficient for his violations or, at a minimum, the financial sanctions awarded in the I.D. are too severe. *See In re Leo Glassman*, Admin. Proceeding No. 3-3758 at p.10 (Mar. 25, 1975) (giving consideration to respondent's cooperation and agreement that lesser sanctions were appropriate).

The ALJ specifically determined that:

> Substantial penalties have already been imposed against Comeaux; he consented to a cease-and-desist order and a permanent industry bar... These sanctions are more than sufficient to serve as a deterrence from committing the violations proven in this proceeding. Further, Comeaux has not previously violated the federal securities laws;[8] he has recognized the wrongful nature of his conduct; he has been permanently deprived of the ability to work in the securities industry and, therefore, future employment will not present opportunities for him to violate the securities laws;

[8] Indeed, in his 23-year career in the securities industry, Comeaux never received a single client complaint. *See* Response, Ex. A at ¶ 9.

> and he was not a principal actor in the creation and concealment of the Ponzi scheme operated by R. Allen Stanford, the owner of his former employer.[9]

I.D. at p.5. Yet, Comeaux was then further sanctioned with a financial sanction that is *more than double his current net worth*, plus millions more in prejudgment interest. There is little comfort or benefit to Comeaux in the fact that he was not additionally ordered to pay civil penalties when the financial sanction in the I.D. takes all of a his assets, including his wife's assets and their exempt assets, and still leaves him *owing over $2 million at 66-years of age*. Ultimately, particularly in comparison to individuals who did not cooperate with the Commission, Comeaux has received little to nothing in return for his cooperation and the mitigating factors listed in the I.D. The failure to recognize and reward Comeaux's cooperation is in direct opposition to the Commission's policy and will undoubtedly disincentivize future cooperation by individual defendants. The I.D., therefore, embodies an exercise of discretion or policy that is important and that the Commission should review. *See* 17 C.F.R. § 201.411(b)(2)(ii).

D. COMEAUX'S SPECIFIC EXCEPTION TO THE ALJ'S DETERMINATIONS THAT COMEAUX RECEIVED ILL-GOTTEN GAINS OF $3,386,974.50 AND THAT IT IS REASONABLE TO CONCLUDE THAT COMEAUX WAS UNJUSTLY ENRICHED BY $3,386,974.50

Based on the evidence admitted into the record, the Division failed to properly demonstrate that Comeaux received ill-gotten gains of $3,386,974.50 and therefore the ALJ's findings of fact and conclusions related to this amount is erroneous.

The Division bears the initial burden of persuasion that its disgorgement figure reasonably approximates the amount of unjust enrichment. *See S.E.C. v. First City Fin. Corp.*, 890 F.2d 1215, 1232 (D.C.Cir. 1989). The Division failed to meet that burden.

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[9] Even the Division acknowledges that R. Allen Stanford's conduct was more egregious and that Comeaux was not criminally prosecuted. *See* Division's Reply at p. 3. Comeaux was never alleged, much less found, to be directly connected to the Stanford Ponzi scheme. In fact, in the Bogar/Young/Green proceeding, there was testimony elicited that Comeaux "made a point of telling [his financial advisers] not to overallocate to the bank" and "to be mindful of their suitability obligations in recommending the SID CDs to clients...." *See* **Exhibit C**, excerpts of transcript of *In re Daniel Bogar, Bernerd E. Young, and Jason T. Green*, File No. 3-15003 at 1057:12 – 1058:19.

The Division did not object to Comeaux's Affidavit (Ex. A to the Response). Comeaux provided evidence to demonstrate that the Division's estimates and calculations of disgorgement were not a reasonable approximation of unjust enrichment. *First City Fin. Corp.*, 890 F.2d at 1232. Thus, the award of $3,386,974.50 in disgorgement against Comeaux is inequitable and without basis.

The Commission may exercise its equitable power of disgorgement only over property that the Division demonstrates is *causally related to the wrongdoing*. *Id.* at 1231 (emphasis added). Disgorgement serves two purposes: (1) to deter wrongdoing, and (2) to prevent unjust enrichment. *See S.E.C. v. McCaskey*, No. 98CIV6153SWKAJP, 2002 WL 850001 at *8 (S.D.N.Y. Mar. 26, 2002). Disgorgement may not be used punitively. *First City Fin. Corp.*, 890 F.2d at 1231; *McCaskey*, 2002 WL 850001 at *8. Therefore, the Commission generally must distinguish between legally and illegally obtained profits. *First City Fin. Corp.*, 890 F.2d at 1231. Although the Division must only demonstrate a reasonable approximation of the profits causally connected to the violation, this is not a complicated market timing case in which exact calculations "can be a near-impossible task."[10] *Id.* Given the fact that any disgorgement deemed necessary is easily calculable, the disgorgement ordered is insupportable, unreasonable, and erroneous.

(*I*) ***Comeaux presented evidence of Clear Miscalculations in the Division's Evidence which Cast Doubt on all the Division's Calculations***

Within the conclusory figures provided by the Division were patent miscalculations that cast doubt on the rest of the amounts included. The Division, and its expert Ms. Van Tassel, duplicated at least one subtotal under two categories, i.e., double counting. Paragraph 9(a)(i) (Employment Compensation) of the Declaration of Karyl Van Tassel (Div. Ex. A) (the "Van

[10] The Division presented no evidence; therefore there is none in the record, which demonstrates that Comeaux's receipts from Stanford Group Company were complicated to trace.

Tassel Declaration") includes "$289,010.00 between April 30, 2008 and January 30, 2009. These payments include, but are not limited to, payments described as wages, commissions, bonuses, etc." *See* Division's Motion at Ex. A ¶ 9(a)(i). Yet, those same payments are also included in a category described as "Upfront Loans." *Id.* at ¶ 9(b)(viii). The $289,010.00 (a figure that actually constituted two loans for purposes of recording the expenditures over the period of the notes) *was only received once by Comeaux,* but was included twice by the Division. *See* Response at Ex. A ¶ 14. These figures are improperly double counted in the Van Tassel Declaration. The Division, and Ms. Van Tassel, also asserts that Comeaux received a total of "at least" $7,457,985.83 from SGC between January 15, 2005 and February 13, 2009. Comeaux's tax returns for this period of time, however, demonstrate that he and his wife's combined total earnings were a maximum of $6,264,589.00. *See* Response at Ex. A ¶ 11. In total, these two obvious miscalculations amount to a total of $1,482,406.83 of patent errors in the Van Tassel Declaration.

The inclusion of these two clear miscalculations cast doubt on the Division's entire calculations – particularly in light of the fact that it failed to provide any data to support its figures. As such, the Division failed to meet its burden to reasonably approximate any purported unjust enrichment and the ALJ's findings and conclusions based upon this evidence are erroneous.

(2) ***The Division made No Attempt to Link "Receipts" to Comeaux's Violations***

It is well established that the Division does not meet its burden by merely asserting that Comeaux "received" funds, but instead it must distinguish between legally and illegally obtained profits. *First City Fin. Corp.*, 890 F.2d at 1231.

The ALJ accepted only the Division's alternatively proffered and lower calculation that Comeaux "received" $3,386,974.50 of "ill-gotten" payments of compensation, commissions and

bonuses that the Division alleged were "in connection with" marking the SIB CDs. Motion at p.8. The Division, however, failed to properly demonstrate how these "receipts" were actually related to Comeaux's violations. Instead, it attempted to impute Stanford Investment Bank's, Stanford Group Company's, or other's conduct to Comeaux. The OIP is clear as to the violations of Comeaux: (1) Comeaux did not have a reasonable basis to recommend SIB CDs to investors (OIP at p.4); and (2) by failing to fully disclose SGC's and his own financial interest in selling the SIB CDs, Comeaux failed to disclose material conflicts of interest. *Id.* As such, the only "receipts" that can be causally connected to Comeaux's violations are receipts related to Comeaux's sale of the SIB CDs. The Division provided no evidence, and the ALJ had no evidence to determine, that Comeaux's non-SIB CD commission compensation was in any way causally connected to his violations. It would be inequitable to sanction Comeaux with the dearth of evidence provided by the Division that his compensation derived from illegal profits. The I.D.'s acceptance of the Division's disgorgement calculation does not "distinguish between legally and illegally obtained profits," as is required and is therefore erroneous. *First City Fin. Corp.*, 890 F.2d at 1231.

Instead, Comeaux asserts that based upon the *Steadman* factors, the public interest, and his extensive cooperation, the Commission should find that the severe sanctions previously imposed are sufficient. If the Commission does not agree, however, the undisputed evidence before the Commission demonstrates that the only purported unjust enrichment that can be causally connected to Comeaux's violations are receipts actually related to Comeaux's sale of the SIB CDs. Any amounts in excess of this limited calculation are an attempt to punish Comeaux for an affiliation with Allen Stanford or the Stanford Entities. Comeaux has admitted that he received direct commissions of at least $1.3 million on the sales of the SIB CDs. OIP at

p.3. Because these are the only receipts that can be causally connected to his violations, this should be the maximum amount of disgorgement under consideration.[11]

Because the Division failed to reasonably approximate the amount of unjust enrichment, the ALJ was without basis to for its findings and conclusions that Comeaux received $3,386,974.50 in unjust or ill-gotten gains. The I.D., therefore, embodies findings of facts and conclusions of law that are erroneous, the Commission should review the I.D. and reverse the ALJ's order.

E. COMEAUX'S SPECIFIC EXCEPTION TO THE ALJ'S DETERMINATION THAT COMEAUX DOES HAVE THE FINANCIAL ABILITY TO PAY DISGORGEMENT PLUS PREJUDGMENT INTEREST AND THE AWARD OF PREJUDGMENT INTEREST

As demonstrated in Comeaux's Affidavit and Financial Disclosure Statement, Comeaux does not have the financial ability to pay disgorgement plus prejudgment interest. The Division did not object to this evidence, and the ALJ admitted these documents into the record. The undisputed evidence before the Commission regarding Comeaux's financial condition demonstrates that Comeaux's total net worth, including his wife's separate property, their home, and individual retirement accounts amounts to a total of $1,424,951.39. *See* Response at Ex. C. The ALJ's Effective Judgment amounts to a minimum of $3,720,110.88 in disgorgement and prejudgment interest. Comeaux does not have the financial ability to pay such an amount.

The Division presented no evidence that Comeaux is able to pay the amount ordered by the ALJ. Instead, the Division's sole argument regarding Comeaux's inability to pay the judgment was that while proper exclusions of state and federal exemptions do prevent execution to satisfy a judgment, "those exemptions do not prevent those assets from *being used to pay* a judgment..." *See* Division's Reply at p.11, n.14 (emphasis added). Such an argument is the exact reason why such exemptions have been established.

[11] Comeaux also incorporates the alternative calculation contained in the Response at § II.C.3.

The policy behind the Texas homestead exemption has been expressed as follows:

> A homestead in Texas is a place of residence for the family, where the independence and security of a home may be enjoyed, without danger of its loss or harassment and disturbance by reason of the improvidence or misfortune of a head or any other member of the family. It is a secure asylum of which the family cannot be deprived by creditors. Within its sanctuary, however urgent may be their demands, they cannot intrude.

See In re Neal, 274 F. Supp. 696, 973 (N.D.Tex. 1967) (citing *Cocke v. Conquest*, 35 S.W.2d 673, 678 (Tex. 1931). The Interpretative Commentary to the Texas Constitution states that one of the three core purposes of the exemption established by the Constitution is to "provide the debtor with a home for his family and some means to support them and to recoup his economic losses so as to **prevent the family from becoming a burdensome charge upon the public.**" *See* Interpretive Commentary to Texas Constitution Art. XVI, Section 50 (emphasis added).

Similarly, the goal of the federal bankruptcy laws and ERISA is the protection of pension benefits and to ensure that if a worker has been promised a benefit upon retirement and if he has fulfilled whatever conditions are required to obtain a vested benefit, he actually will receive it. *See Patterson v. Shumate*, 504 U.S. 753, 765 (1992) (citing 29 U.S.C. §§ 1001(b) and (c)). Such accounts are designed to safeguard a stream of income for pensioners—and their dependents, who may be, and perhaps usually are, blameless. *Id.* (citing *Nachman Corp. v. Pension Benefit Guaranty Corp.*, 446 U.S. 359, 376 (1980).

The Effective Judgment in the I.D. will result in one of two potential alternatives. First, if the Division's suggestion that Comeaux use his exempt assets to satisfy the Effective Judgment is taken at face value, Comeaux will be forced to liquidate all his and his wife's assets to pay only a small a portion of the judgment. After that liquidation (and without exaggeration), Comeaux and his wife will be homeless, penniless, and still ***$2,295,159.49 in debt***, with absolutely no income from which to make future payments. Under this scenario, which is the

status quo under the I.D., Comeaux and his wife will have no choice but to become "a burdensome charge upon the public."

The second alternative is only slightly better: Comeaux keeps his home and makes payment from his non-exempt assets. But in this scenario Comeaux is still left with $3,200,299.24 in debt, again, with no income from which to make future payments. These uncontroverted facts establish that Comeaux does not have the financial ability to pay the disgorgement plus prejudgment interest currently ordered. As such, the I.D. contains findings of fact and conclusions of law that are clearly erroneous. Comeaux requests that the Commission review the I.D. and reverse the order.

F. COMEAUX'S SPECIFIC EXCEPTION TO THE ALJ'S DENIAL OF COMEAUX'S OBJECTIONS TO THE DIVISION'S EVIDENCE

The ALJ admitted into evidence the Van Tassel Declaration and the Stanford Financial Receivership, Payment Activity Report for Jay Comeaux (Div. Ex. KVT-7) ("KVT-7"), despite Comeaux's objections to such evidence. Although Comeaux did not challenge the credentials of Ms. Van Tassel, he objected to the Van Tassel Declaration as conclusory, failing to adequately explain the source of the funds discussed, and failing to explain how the information contained therein is within the personal knowledge of Ms. Van Tassel.

In order to justify a finding of disgorgement, the Division must "explain adequately the source of funds." *See S.E.C. v. Seghers*, 2010 WL 5115674, 404 Fed. Appx. 863, 864 (5th Cir. 2010) (holding that the Commission has not met its burden where the supporting declaration is merely conclusory). In order to provide non-conclusory evidence, the Division must provide data whereby the calculations performed can be replicated—not merely accepted at face value. *Id.*

Comeaux objected to the Van Tassel Declaration, its calculations related to Comeaux, (¶¶ 8-9), and its supporting schedule, KVT-7, as conclusory. The Van Tassel Declaration failed to attach, or reference, the actual data its calculations are based on. The one paragraph that even purports to contain "calculations" includes only subtotals and fails to demonstrate individual payments received. Motion at Ex. A ¶ 9. The sole supporting schedule, KVT-7, the Division included a spreadsheet that *contained nothing but two numbers and a total column.* The schedule stated that it is "based on available source data" – without providing that data, or even explaining what it constitutes. Motion at Ex. KVT-7. Without providing the underlying data and explanations of how these figures were generated, neither Comeaux nor the Commission is able to test and/or recreate the calculations. Because the Van Tassel Declaration is conclusory and failed to adequately explain the source of funds involved, the ALJ should not have admitted it into evidence.

Further, in the Van Tassel Declaration, Ms. Van Tassel states that the "statements made in this declaration are true and correct based on the knowledge I have gained from the evidence[12] and many documents I have reviewed and other work I and my team have performed in the course of our investigation on behalf of the Receiver." Motion at Ex. A, ¶ 5. Comeaux objected to the Van Tassel Declaration because the declaration does not state or explain how the work provided by Ms. Van Tassel as the Receiver's forensic accountant relates to the specific calculations regarding Comeaux and how that information is within her personal knowledge.[13]

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[12] Ms. Van Tassel does not explain what evidence she relies upon and, as previously noted, cites only to one recreated spreadsheet (purportedly based on "available source data") that merely provides lump sum figures without detail.

[13] Comeaux also objected to Paragraphs 10 and 11 of the Van Tassel Declaration as irrelevant. These paragraphs relate to Ms. Van Tassel's conclusion that the Stanford Entities were collectively operated as a Ponzi scheme, but fail to relate to (or even mention) Comeaux's violations.

Although the ALJ did not specifically rule on these objections, it admitted the Van Tassel Declaration and KVT-7 into evidence. Comeaux asserts that the de facto denial of these objections is erroneous and requests that the Commission review the I.D., sustain these objections, and refuse to admit this evidence.

G. COMEAUX'S SPECIFIC EXCEPTION TO THE ALJ'S FAILURE TO ADMIT THE HEDGES' AFFIDAVIT INTO EVIDENCE

Finally, although the Division presented no objections, the ALJ did not admit the Affidavit of Daniel K. Hedges ("Hedges Aff."), attached as Ex. B to the Response, into evidence. The ALJ did not provide any basis for the exclusion of the Hedges Aff. This affidavit demonstrates the extensive cooperation provided by Comeaux. Comeaux requests that the Commission review the I.D., admit the Hedges Aff. into evidence, and properly recognize and reward Comeaux's cooperation, in accordance with the Commission's policy, by reducing Comeaux's financial sanctions, if any, to an amount that he can financially afford.

IV. CONCLUSION

For these reasons, Respondent Jay Comeaux respectfully asserts that the Initial Decision embodies findings or conclusions of material facts that are clearly erroneous; conclusions of law that are erroneous; and an exercise of discretion or policy that is important and that the Commission should review. Comeaux, therefore, respectfully requests that the Commission review the Initial Decision, set forth a briefing schedule in accordance with 17 C.F.R. § 201.450, and ultimately reverse the ALJ's order.

Dated: August 13, 2013.

Respectfully submitted,

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EXHIBIT A

Affidavit of Jay T. Comeaux and Financial Disclosure Statement

(Exhibits A and C respectively to Respondent's Response to Division's Motion for Summary Disposition)

EXHIBIT A

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

In the Matter of Jay T. Comeaux Respondent.	ADMINISTRATIVE PROCEEDING File No. 3-15002

AFFIDAVIT OF JAY T. COMEAUX

State of Texas §
§
County of Harris §

BEFORE ME, the undersigned authority, on this day personally appeared Jay T. Comeaux, who is personally known to me, and who first being duly sworn by me, according to law, upon his oath deposed and stated the following:

1. "My name is Jay T. Comeaux. I am over the age of eighteen (18). I have never been convicted of a felony or a crime involving moral turpitude. I am fully competent to make this affidavit.

2. I am not currently employed. I was the President of Stanford Group Company ("SGC") from January 1996 until March 2005. I was the Executive Director of SGC from March 2005 through February 2009. As an Executive Director, my responsibilities were limited to management of the SGC Houston branch office. Through the experience in these positions, and my review of personal financial information, I have personal knowledge of all the facts stated herein and they are true and correct.

3. For purposes of this proceeding, I hereby incorporate into this affidavit testimony the Offer of Settlement of Jay T. Comeaux, filed with the Securities and Exchange Commission ("Commission") on December 1, 2011. In addition, for purposes of this proceeding, I accept, and do not challenge or dispute, the Commission's August 31, 2012 Order Instituting Administrative and Cease-and-Desist Proceedings (the "OIP") and understand that the allegations and violations contained therein are deemed true for purposes of this proceeding. I also understand that the OIP contains substantial sanctions - a cease and desist order and permanent bar – and I accept those sanctions and recognize the wrongful nature of those violations.

4. Prior to joining SGC, I worked for nine years at Merrill Lynch in Baton Rouge, Louisiana. I have 23 years' experience in the securities industry and it comprised my only earned income stream for myself and my family since 1986. I am currently 66 years old, and I have not had full time employment since February 2009.

5. I have complied with the sanctions ordered in the OIP and I will hereafter continue to comply with those sanctions. I hereby state unequivocally that I will not commit any future violations of federal (or other) securities laws.

6. As a result of the permanent bar I have lost my income, my career, and my livelihood. To that end, and as a result of the permanent bar, I will not be employed in the securities industry in the future and will, thus, not even be exposed to the opportunity for future violations. If I am able to obtain full time employment in the future to support myself and my wife, it will be in an entirely different industry.

7. I have also complied with the Commission's policy not to permit a defendant or respondent to consent to a judgment or order that imposes a sanction while denying the allegations in the complaint or order or proceedings. Further, I have agreed not to take any action to make or permit to be made any public statement denying, directly or indirectly, any finding in the OIP or creating the impression that the Order is without factual basis.

8. I have, to the best of my ability, worked fully and cooperatively with various government agencies related to Stanford investigations, by meeting with, being interviewed by, and testifying on behalf of those agencies.

9. In my 23 year career in the securities industry, I have never received a single client complaint registered against me. Prior to this proceeding, I have never violated any federal (or other) securities laws. I have no prior record of securities infractions.

10. Currently, I have over $1.4 million in assets frozen and subject to the control of the court-appointed receiver in *SEC v. Stanford*. I have not had access to or been in control of those assets, or the income from those assets, since 2009. I have, however, paid taxes on that income (even though I have not received it) each tax year since it was frozen.

11. My family tax returns (married filing jointly along with my wife) include the following amounts for wages, salaries, tips, etc. for the relevant time periods: 2005: $1,383,287; 2006: $1,292,145; 2007: $1,698,066; 2008: $1,648,282; 2009: $242,818. This amounts to a total of $6,264,598. For 2010 and 2011, my wife and I had no ($0.00) wages, salaries, tips, etc. income.

12. With regard to my income while employed by SGC, while I earned a salary of $500,000 per year, that salary was essentially a draw against commissions and bonuses, not in addition to those amounts. The balance of my compensation was earned through either commissions or the SGC bonus structure.

13. Bonuses from 2005 through 2009 were based upon three factors: (1) asset growth; (2) revenues; and (3) profitability. Not all of these factors included, or consisted entirely of,

Stanford International Bank ("SIB") CD revenues. For example, the asset growth factor was greatly enhanced by recruiting new advisors/clients, who would move assets into the Houston branch. These were in conventional assets when transferred and were not necessarily placed in SIB product when moved. Further, the revenue factor represented brokerage fees, other commissions, insurance products, and bank commissions, not only SIB commissions in total. Based on my years of experience in the securities industry, my personal knowledge of this bonus structure, and my actual receipts from that bonus structure, the SIB CD sales never constituted more than 50% of the total bonus calculations. I received a total of $1,834,000.00 in bonuses from 2005 through 2009 (2005: $189,000; 2006: $381,000; 2007: $628,000; 2008: $523,000; 2009: $113,000).

14. A portion of my earned bonuses were converted into upfront loans via promissory notes. There were two such notes, one for $75,028.50 and a second for $213,981.50. The total, $289,010 was only received once by me. Although it was an earned bonus, for purposes of financial reporting, SGC recorded these bonuses as loans that would be "paid back" by service time (essentially a vesting program). This program allowed SGC to record the bonus over the period of the notes. I did not receive the $289,010 twice.

15. As a result of my loss of income, I am financially unable to pay significant monetary sanctions, if such sanctions are imposed. I have reviewed the financial disclosure forms attached to the Response they are a true and accurate reflection of my financial status."

Further affiant sayeth not.

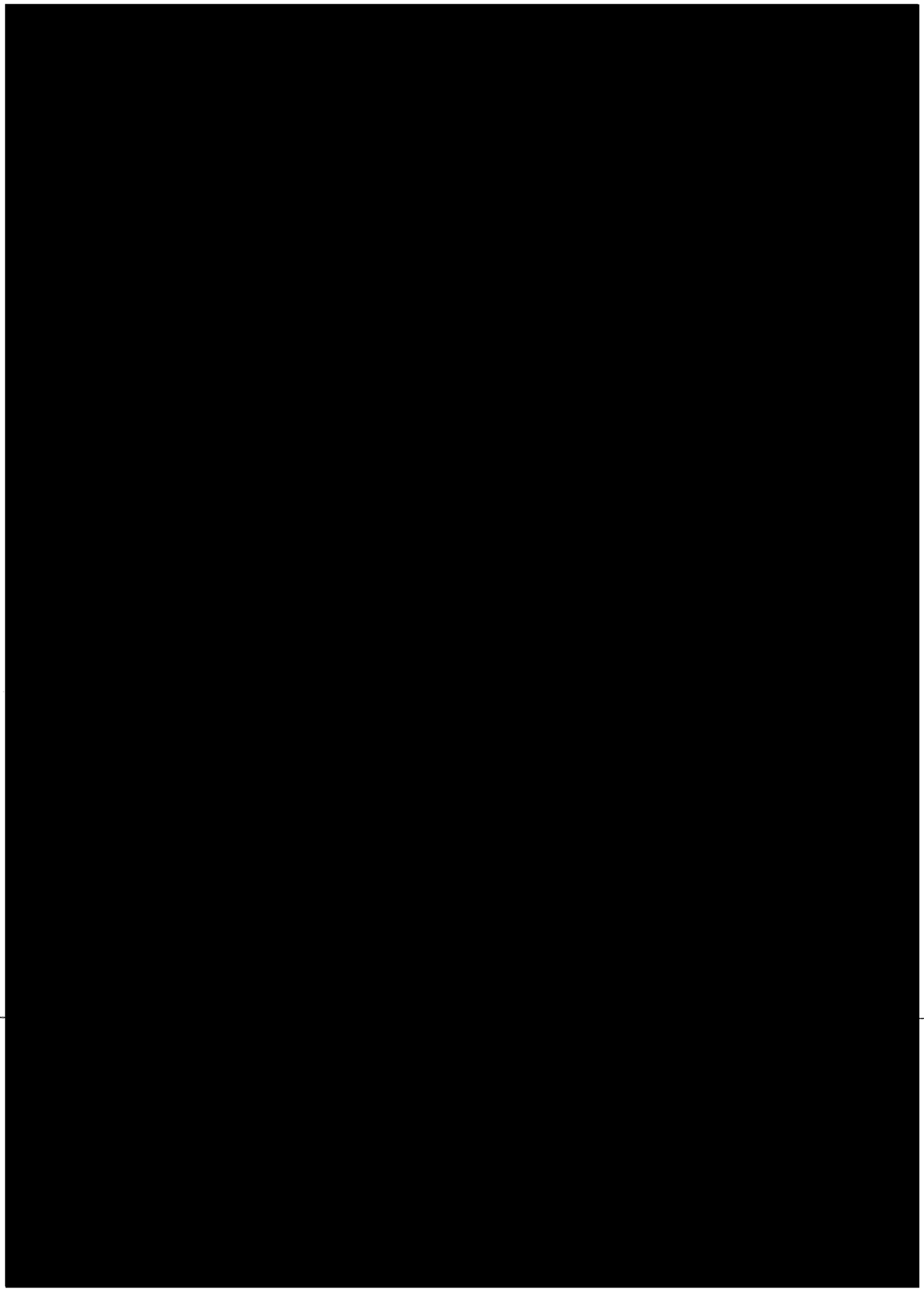
Jay T. Comeaux

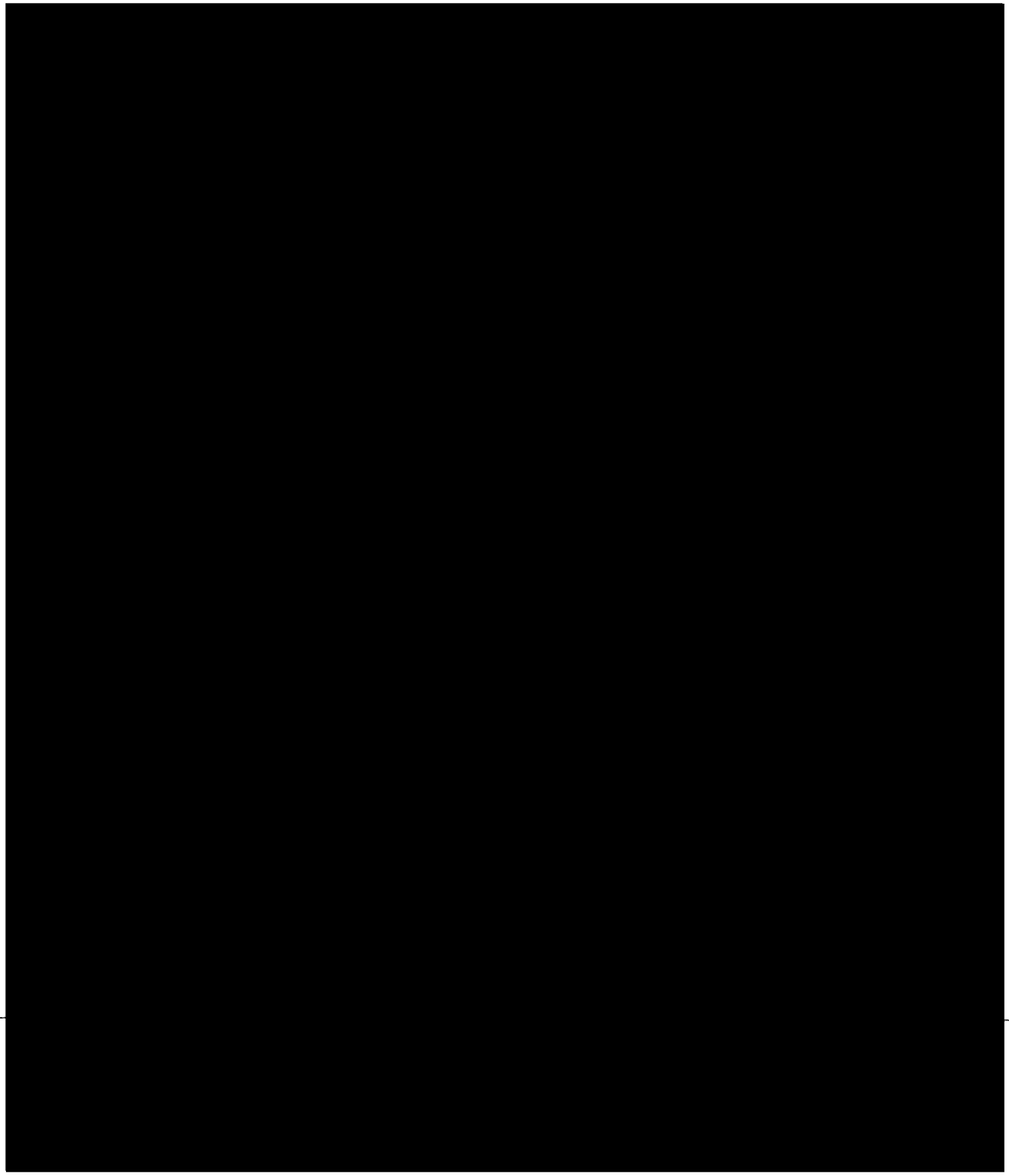
SUBSCRIBED AND SWORN TO before me on this 24th day of April, 2013.

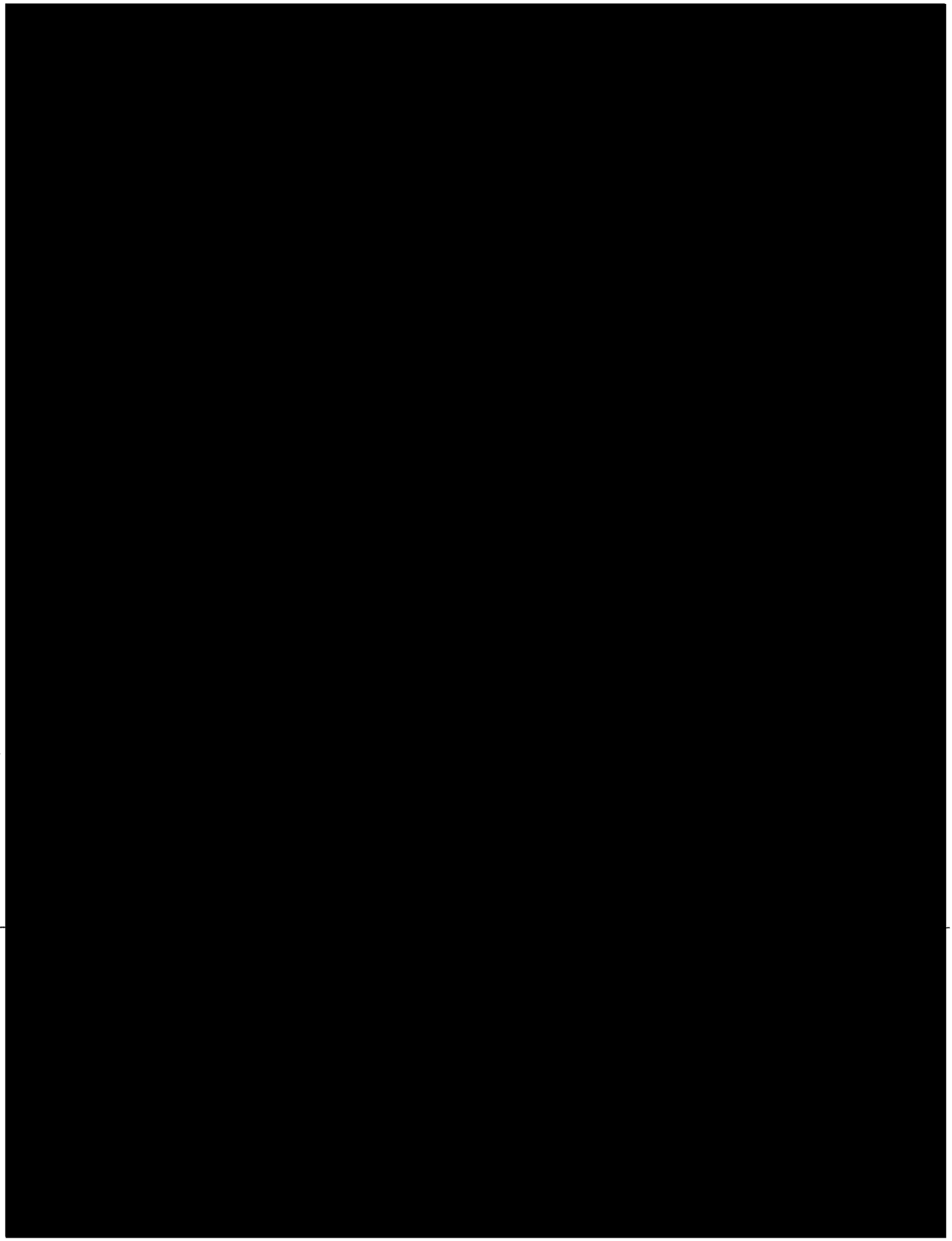
Cynthia O. White
Notary Public

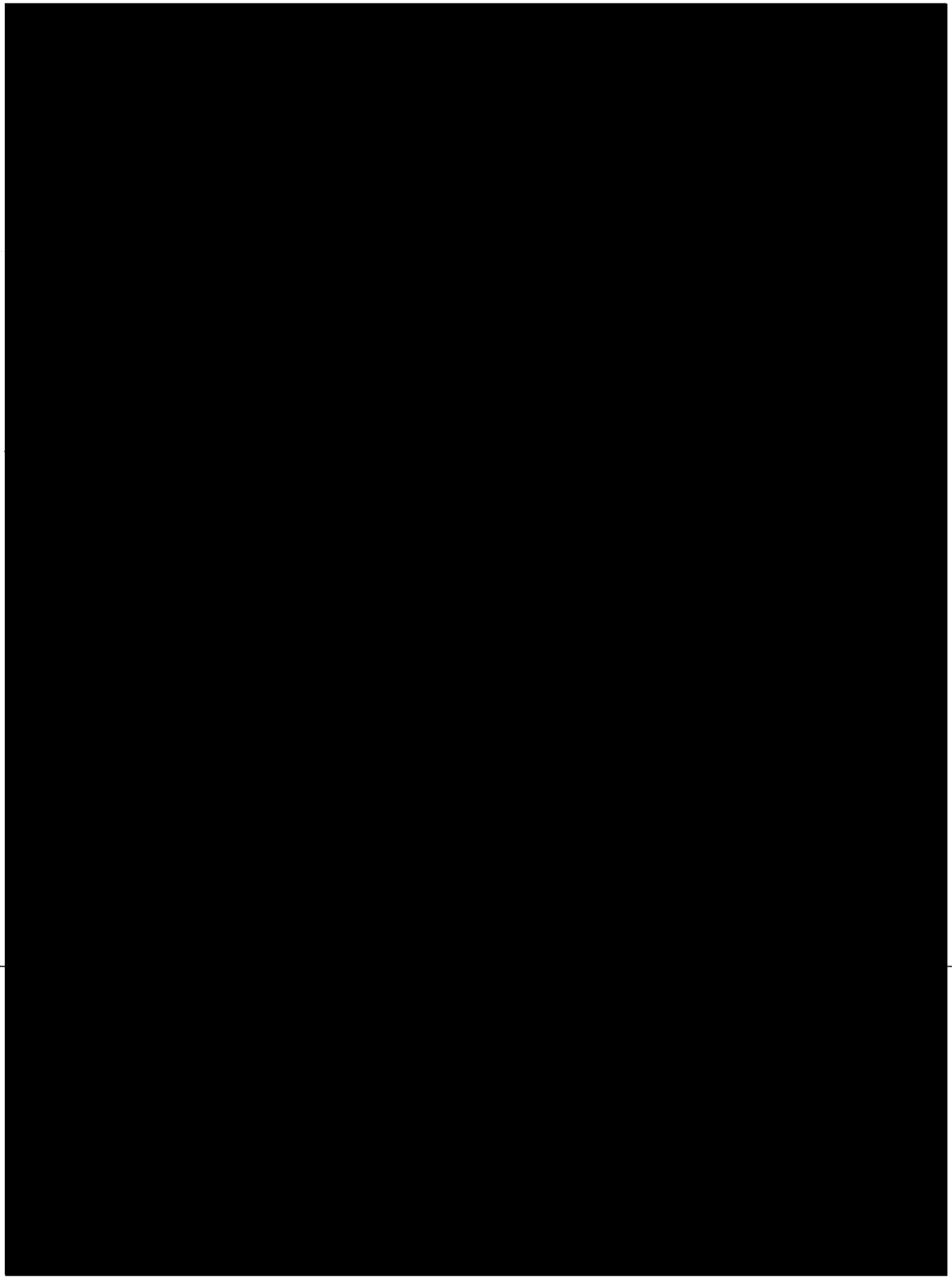
CYNTHIA O WHITE
NOTARY PUBLIC, STATE OF TEXAS
MY COMMISSION EXPIRES
MARCH 21, 2016

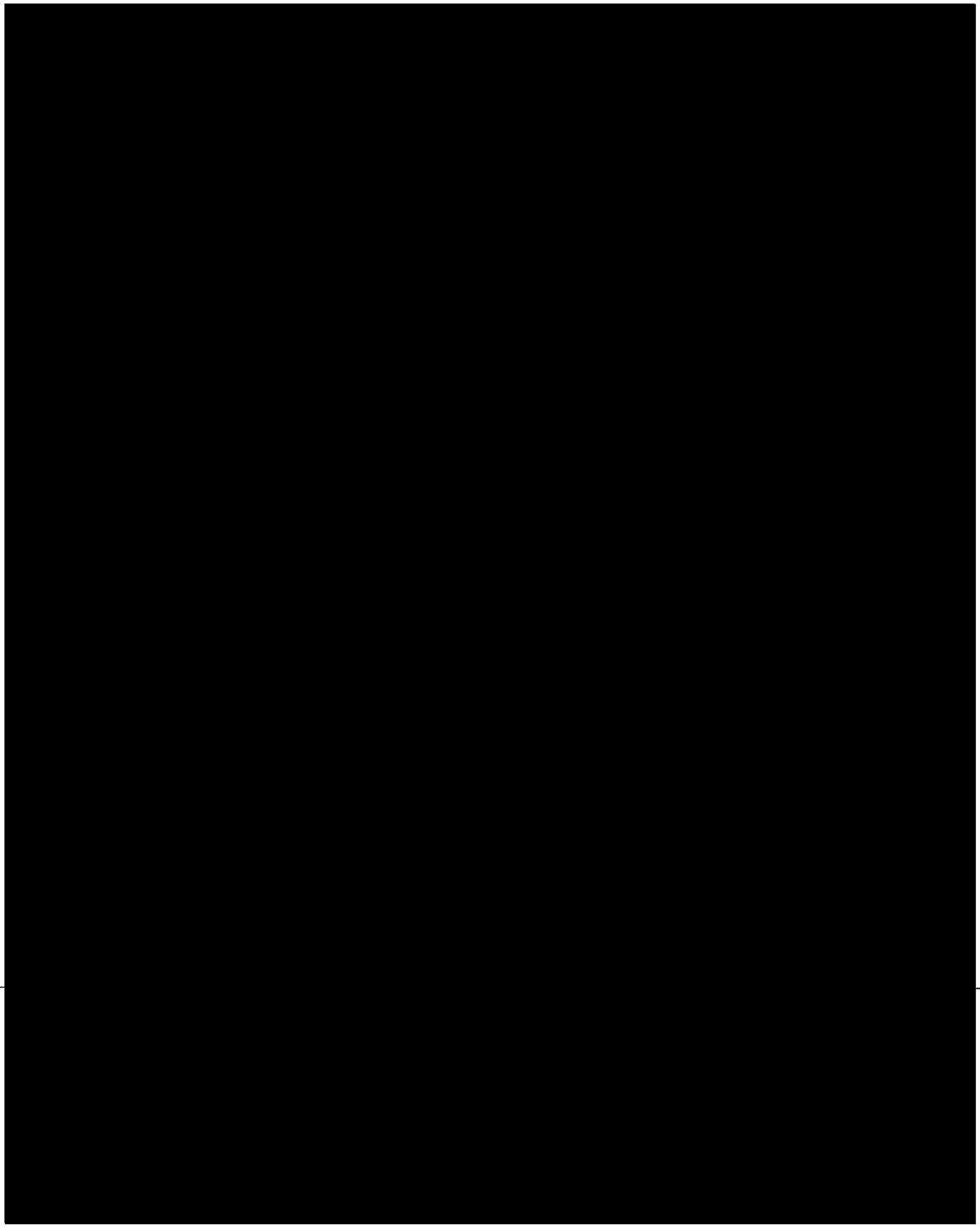
My commission expires: 3/21/2016

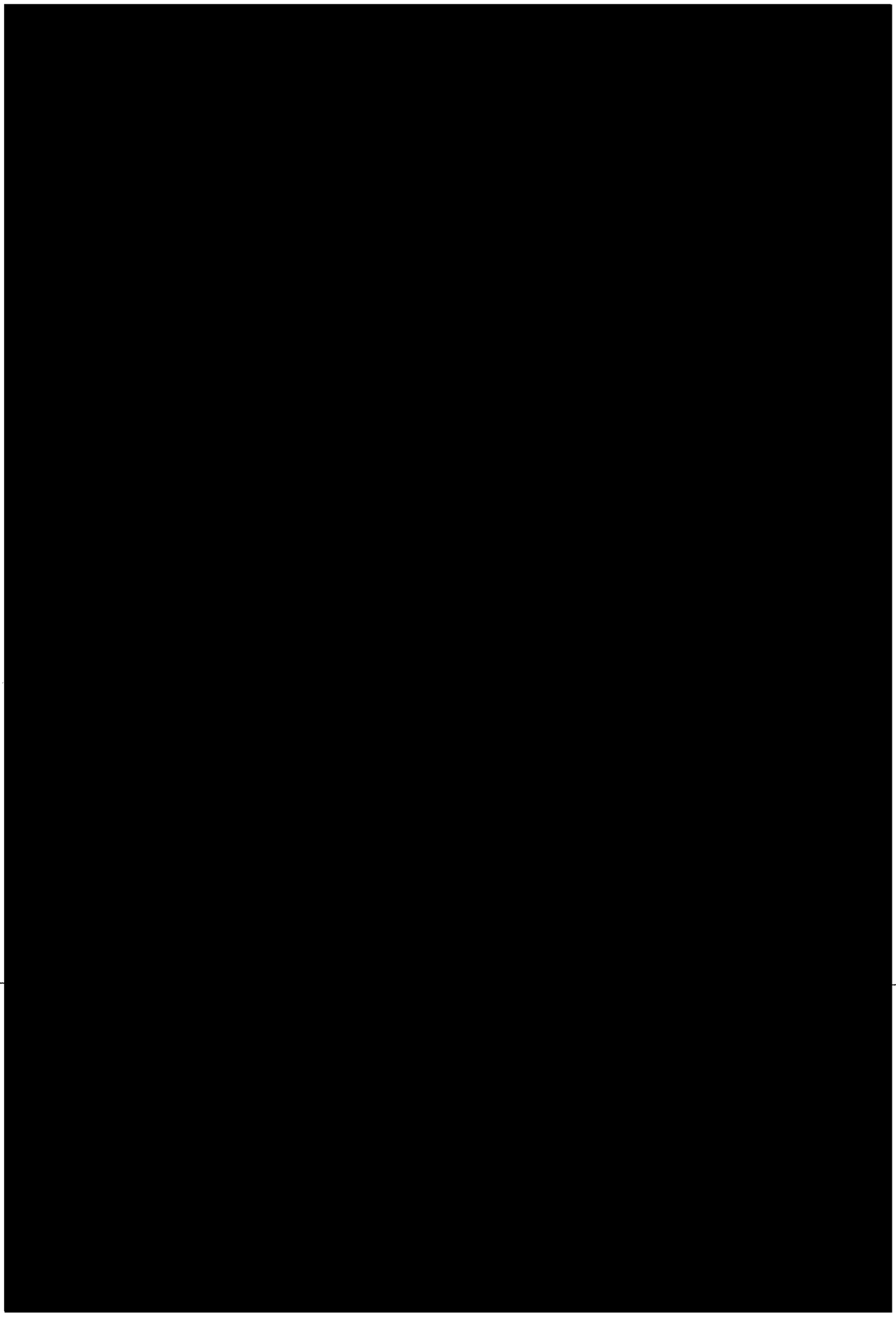


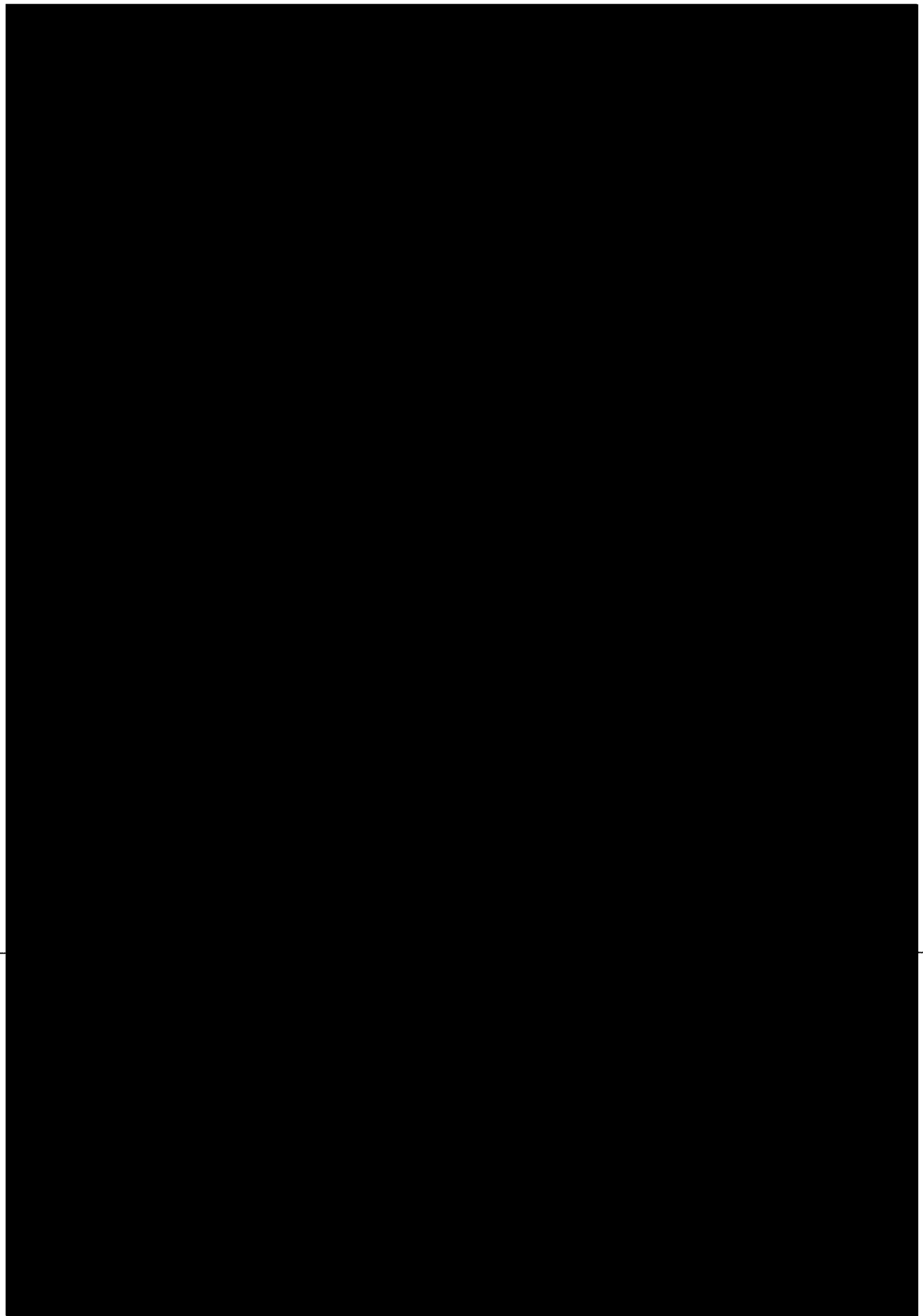


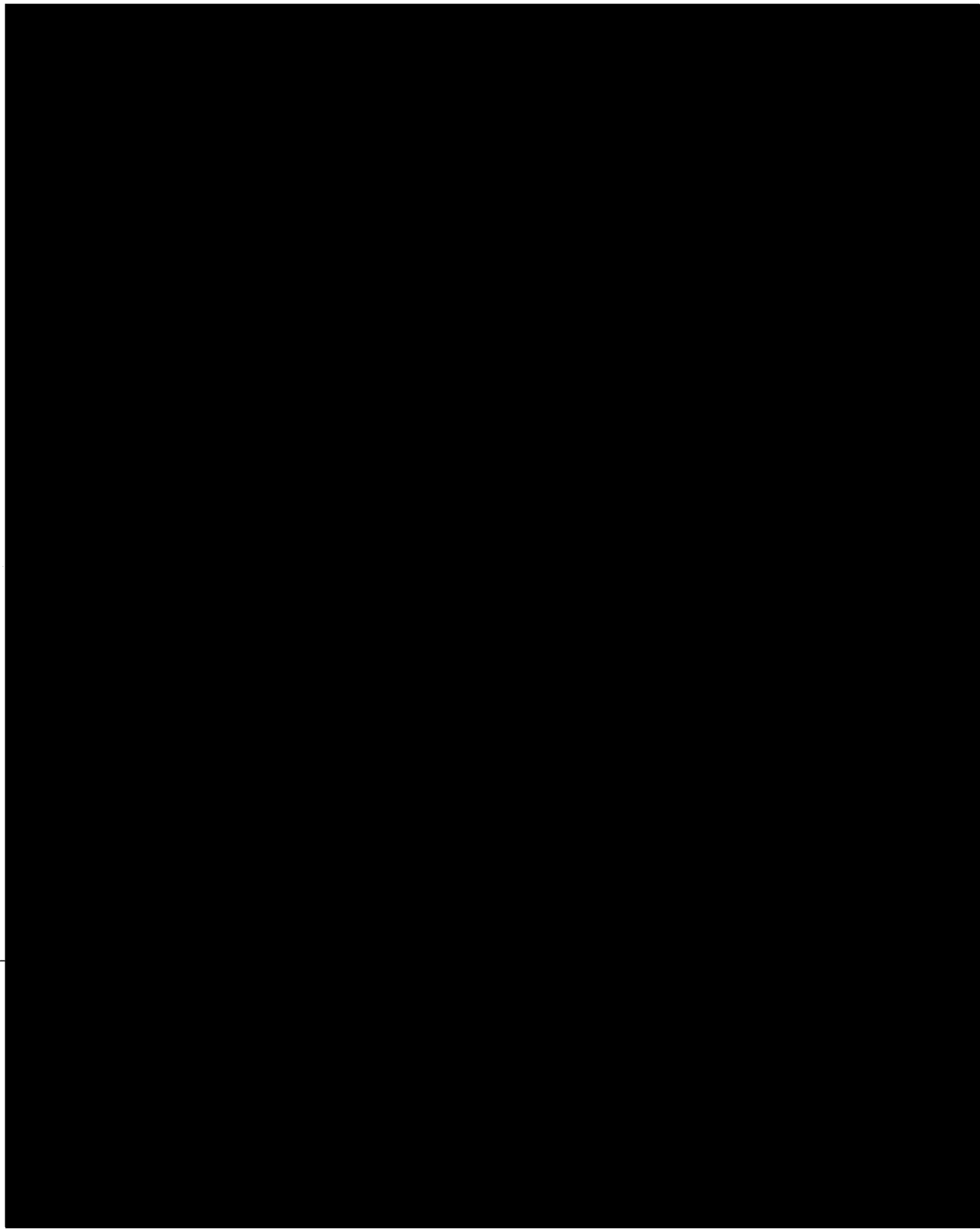


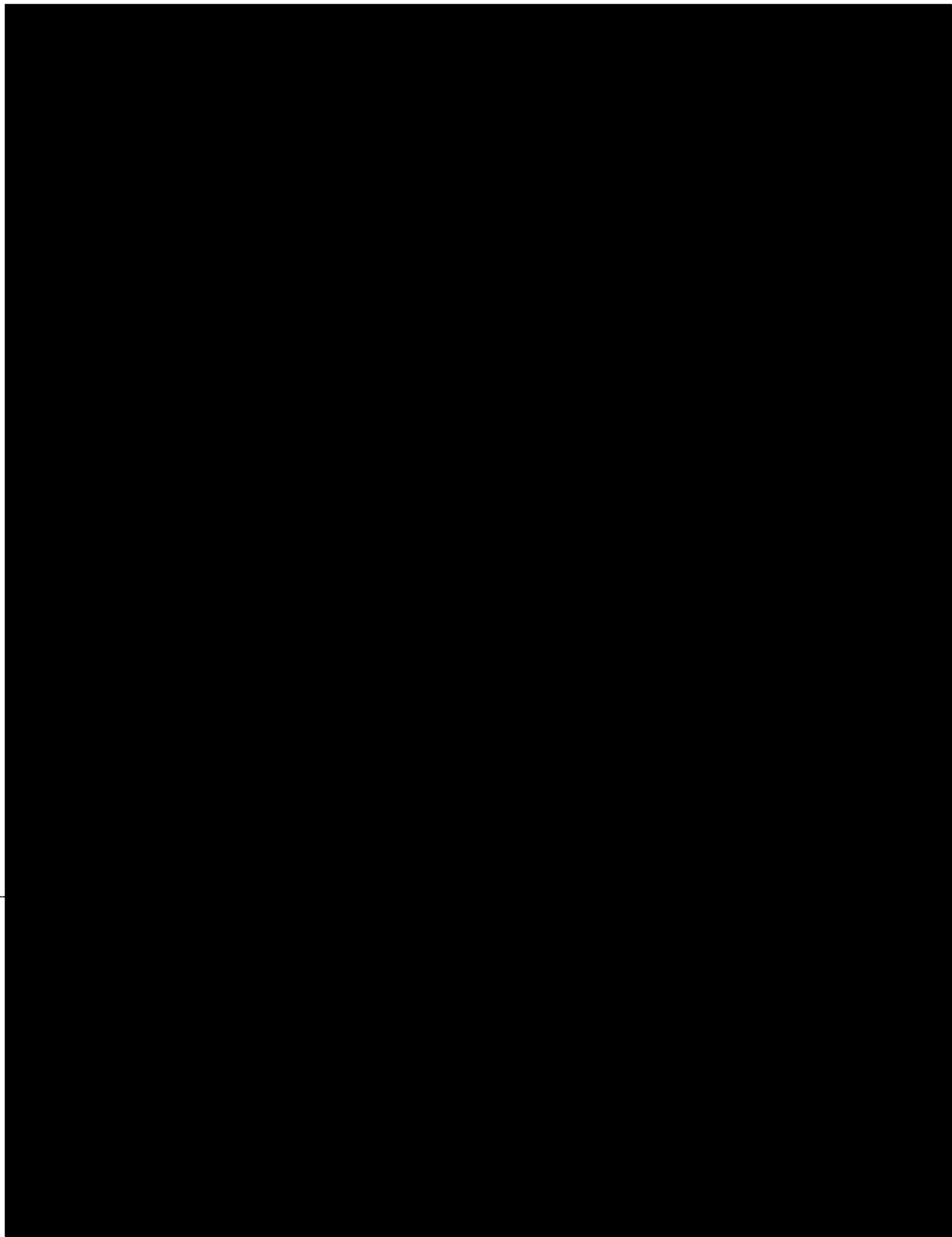


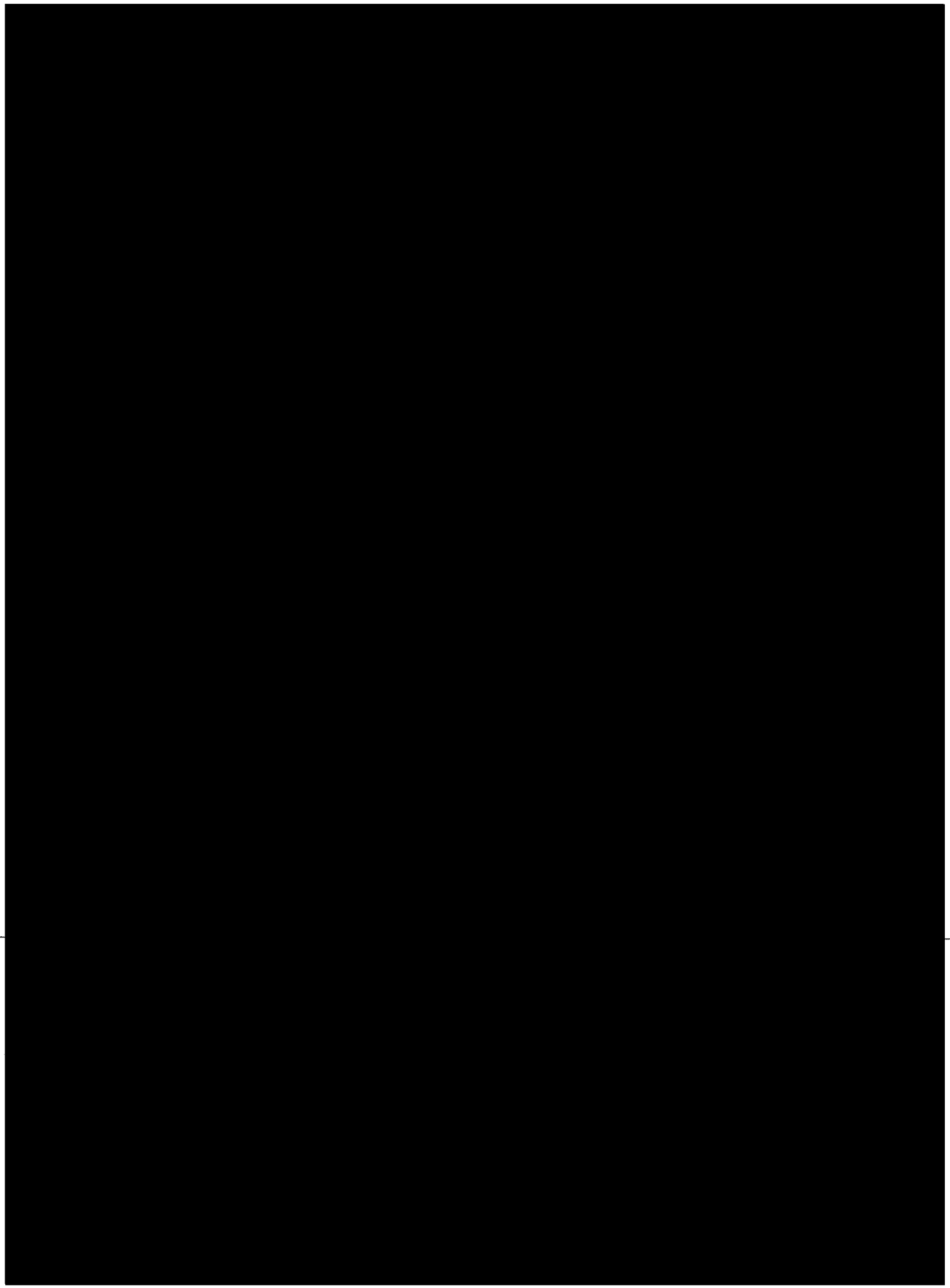


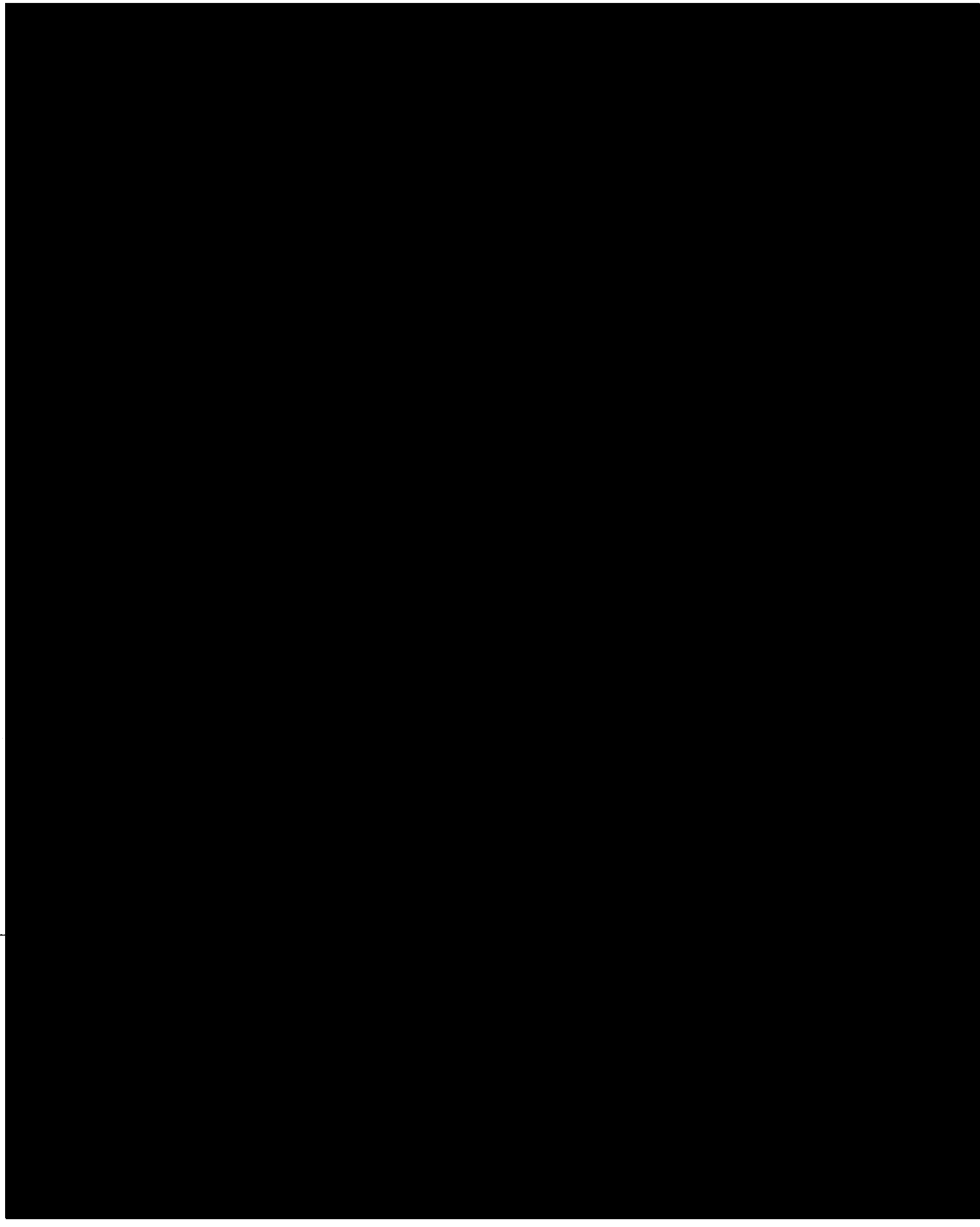


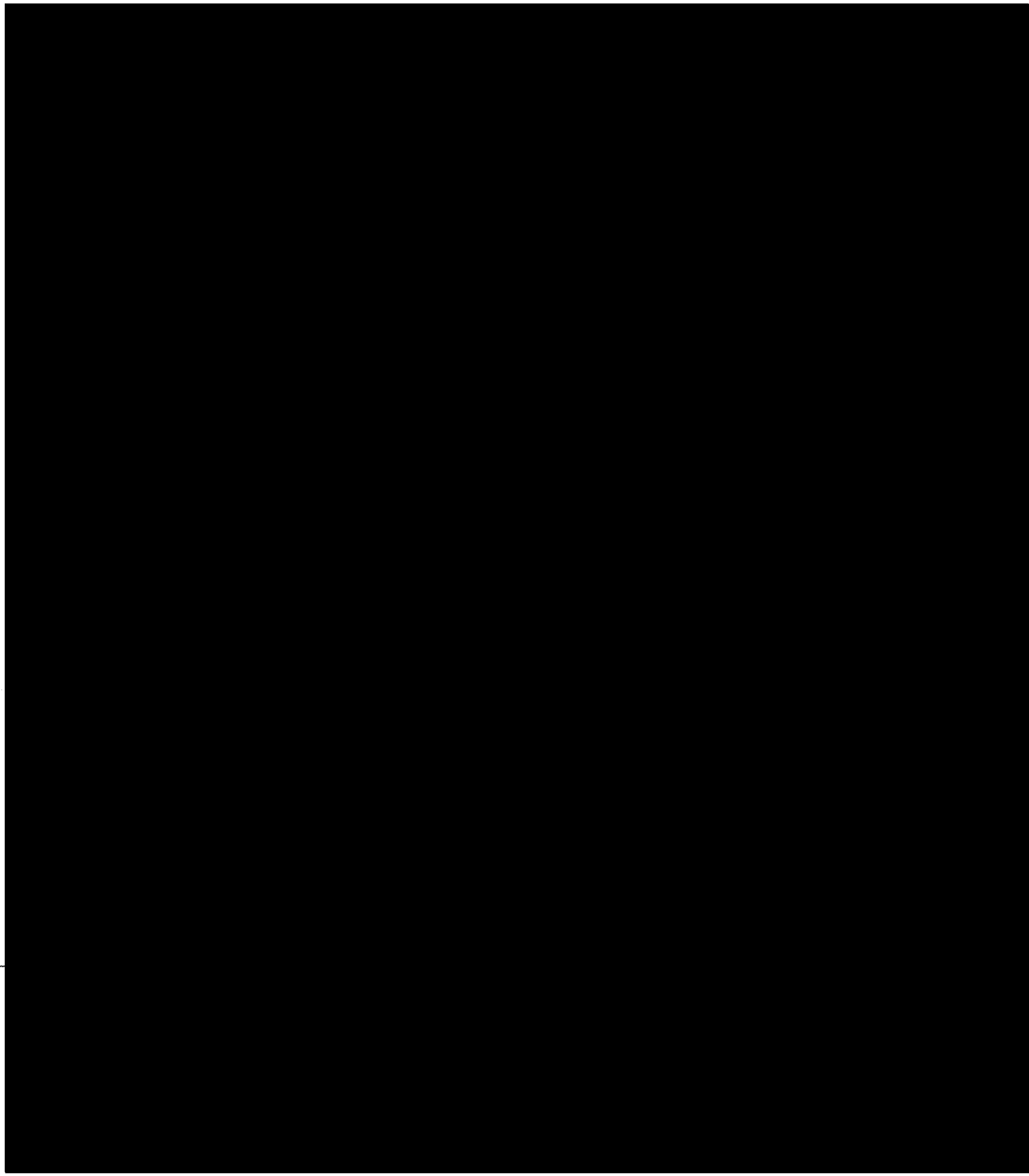


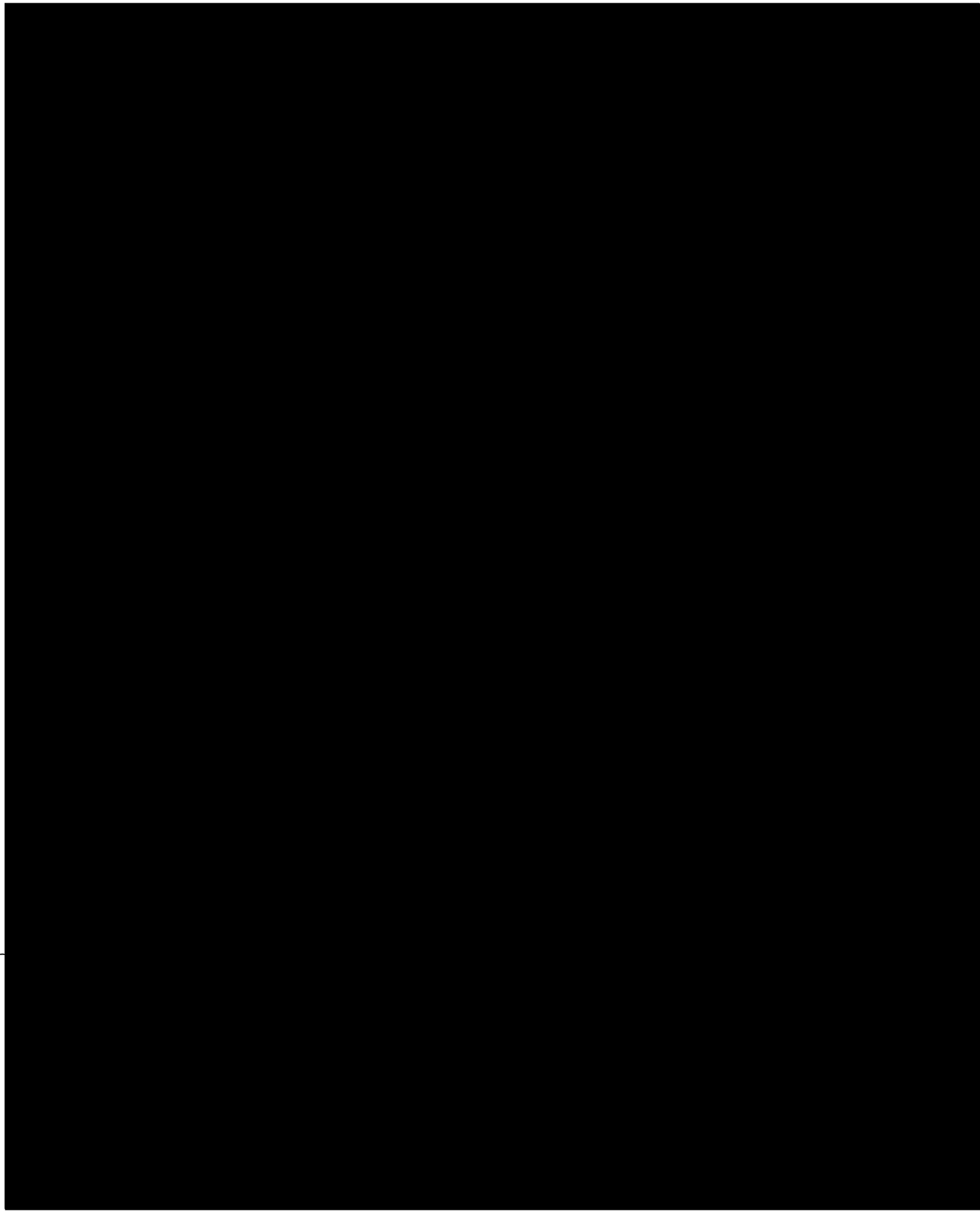


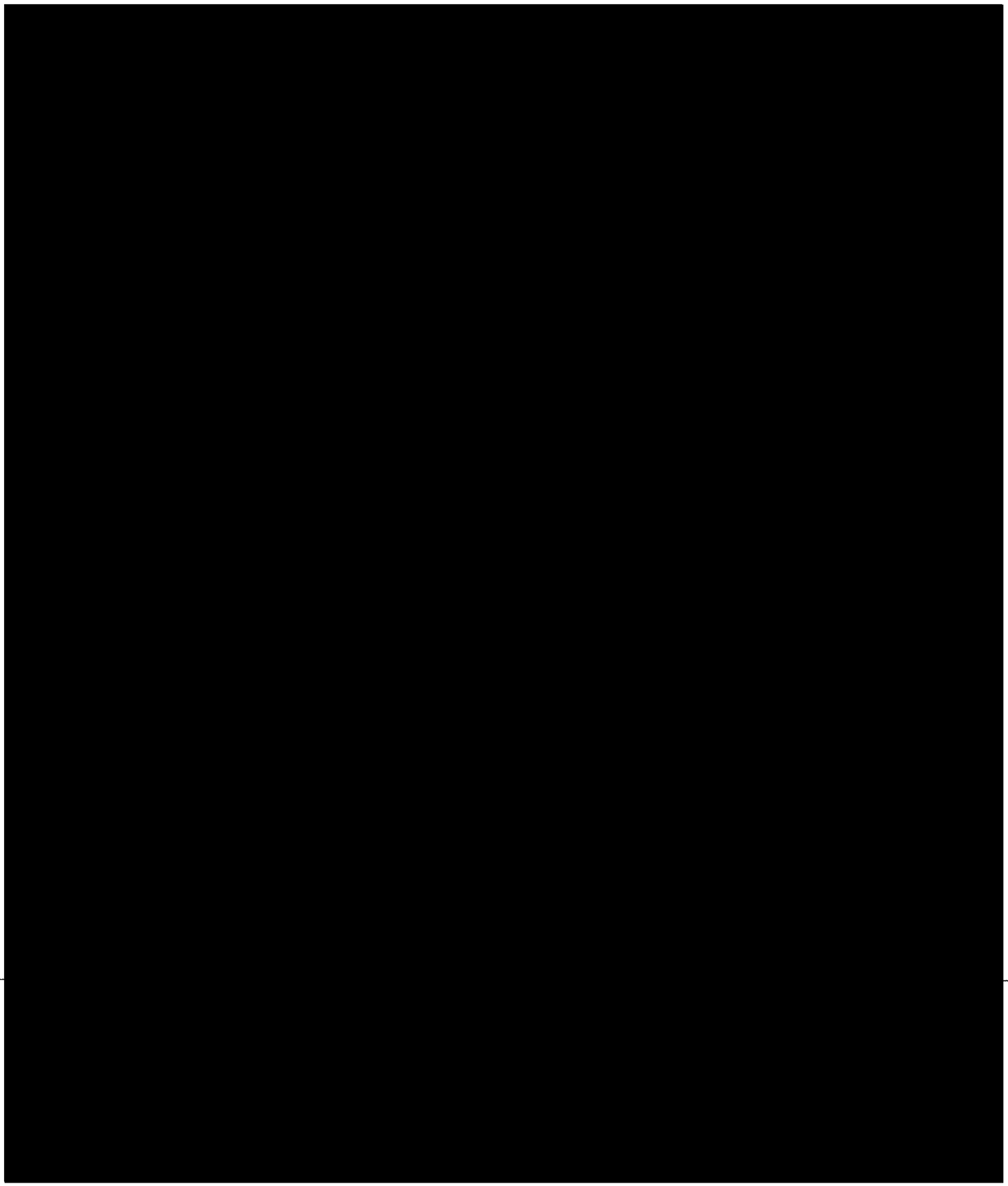


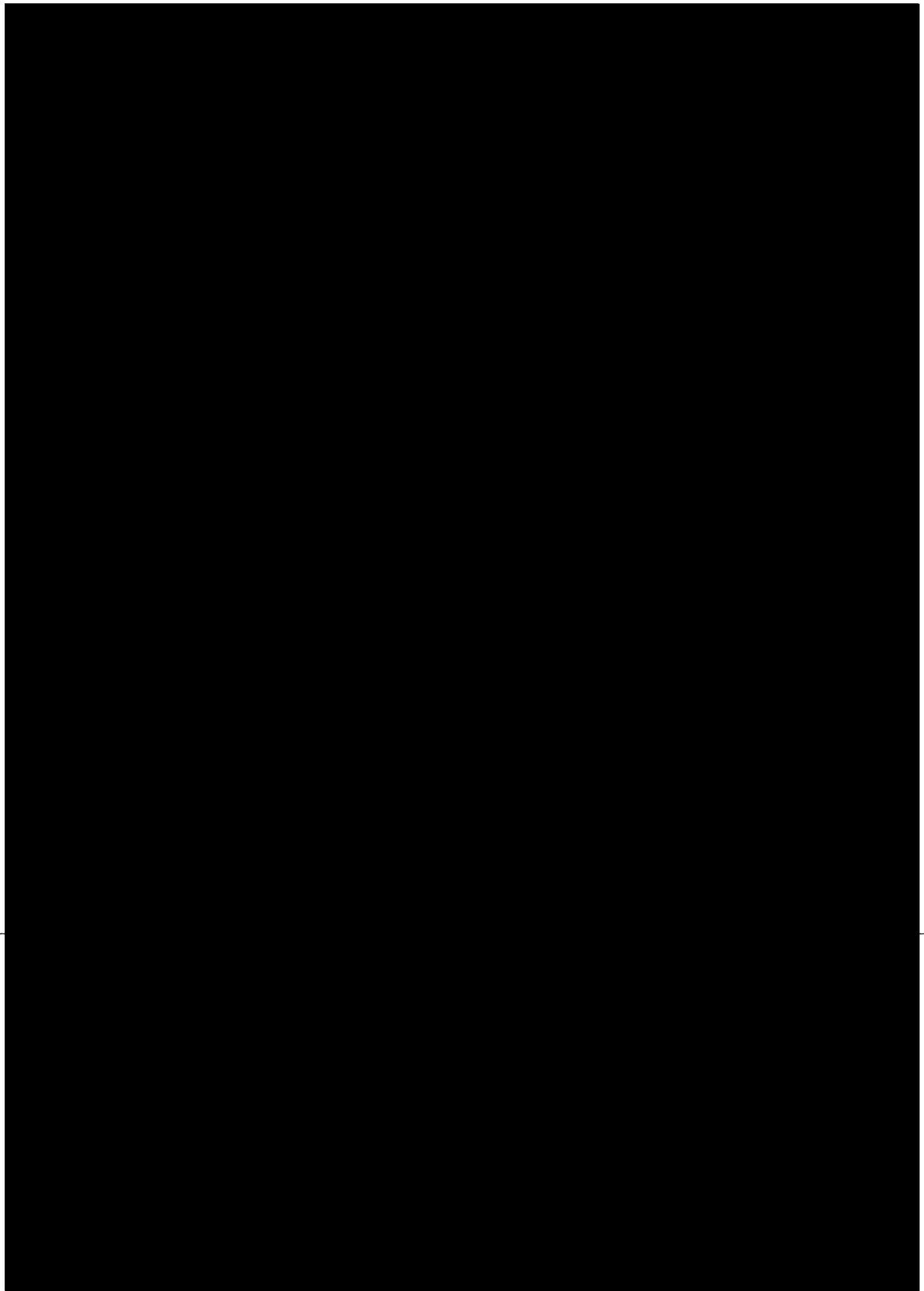


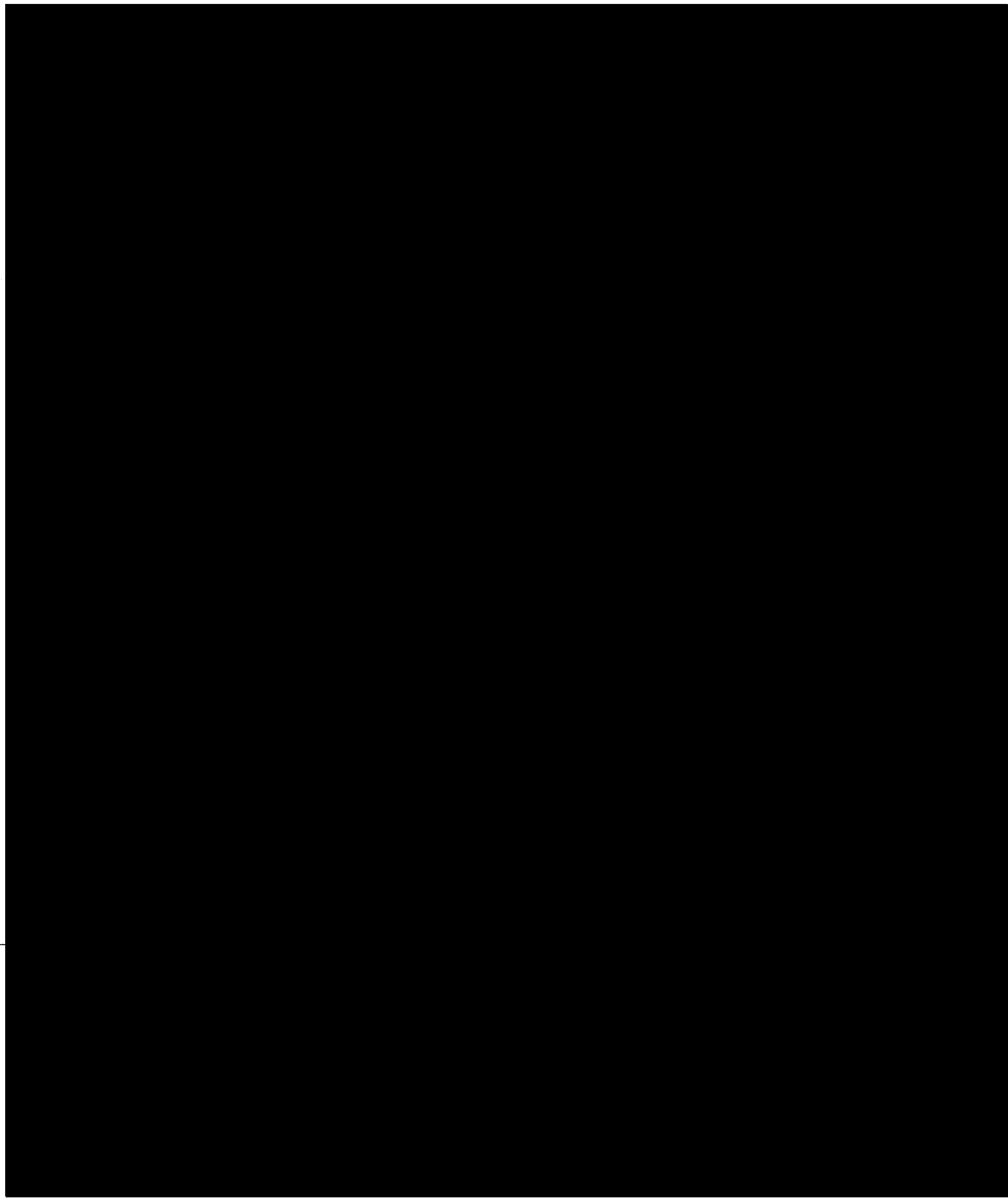


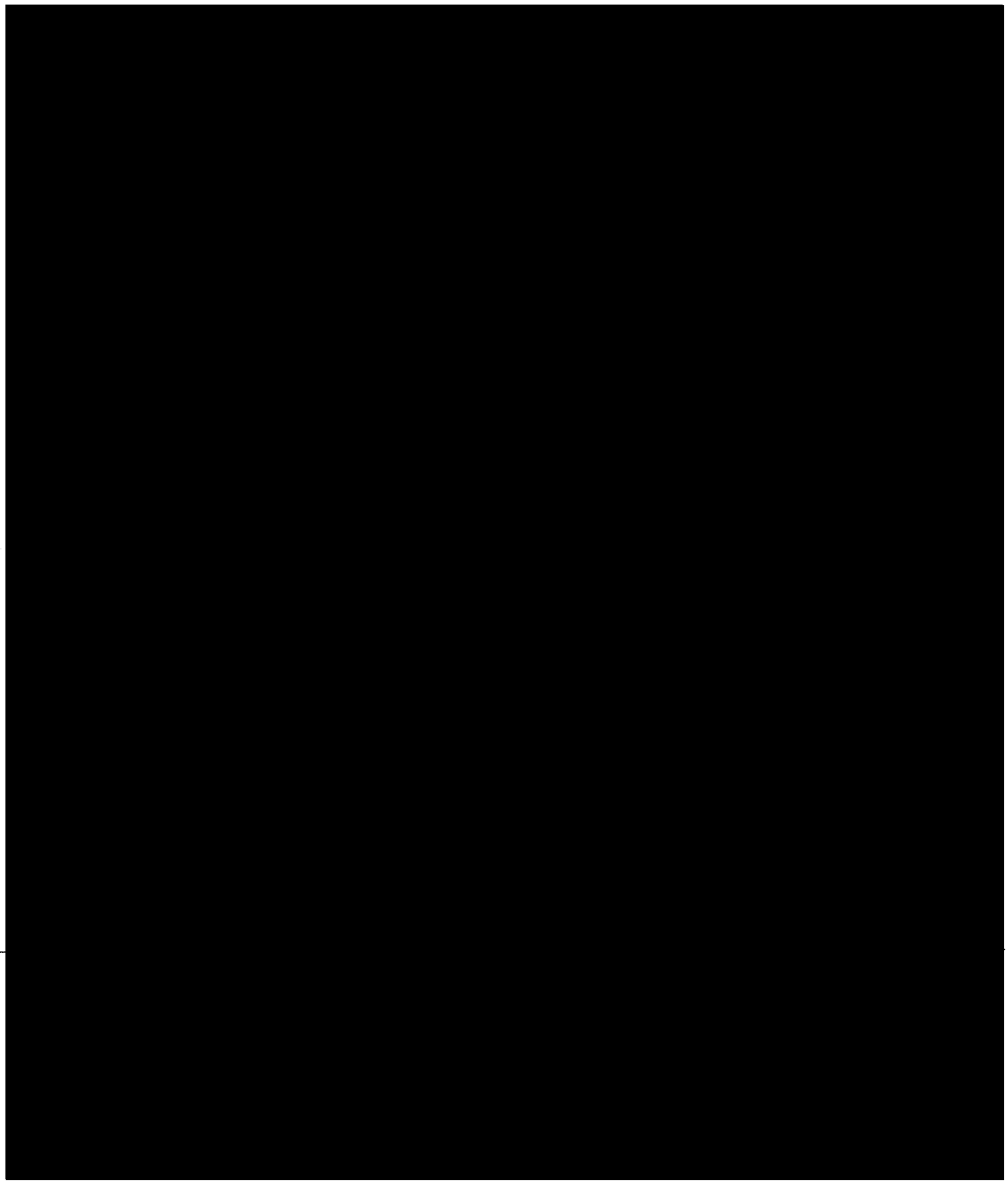


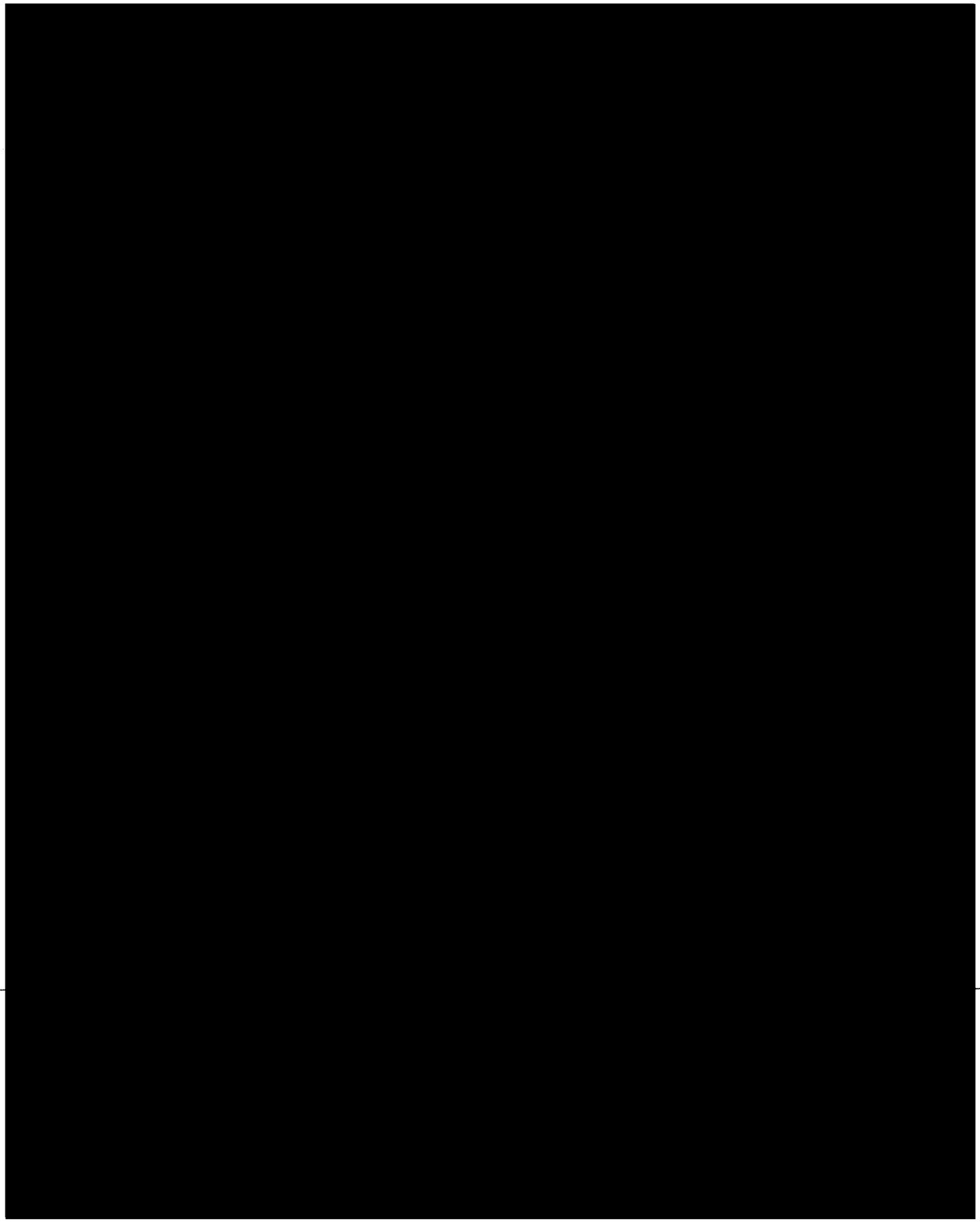


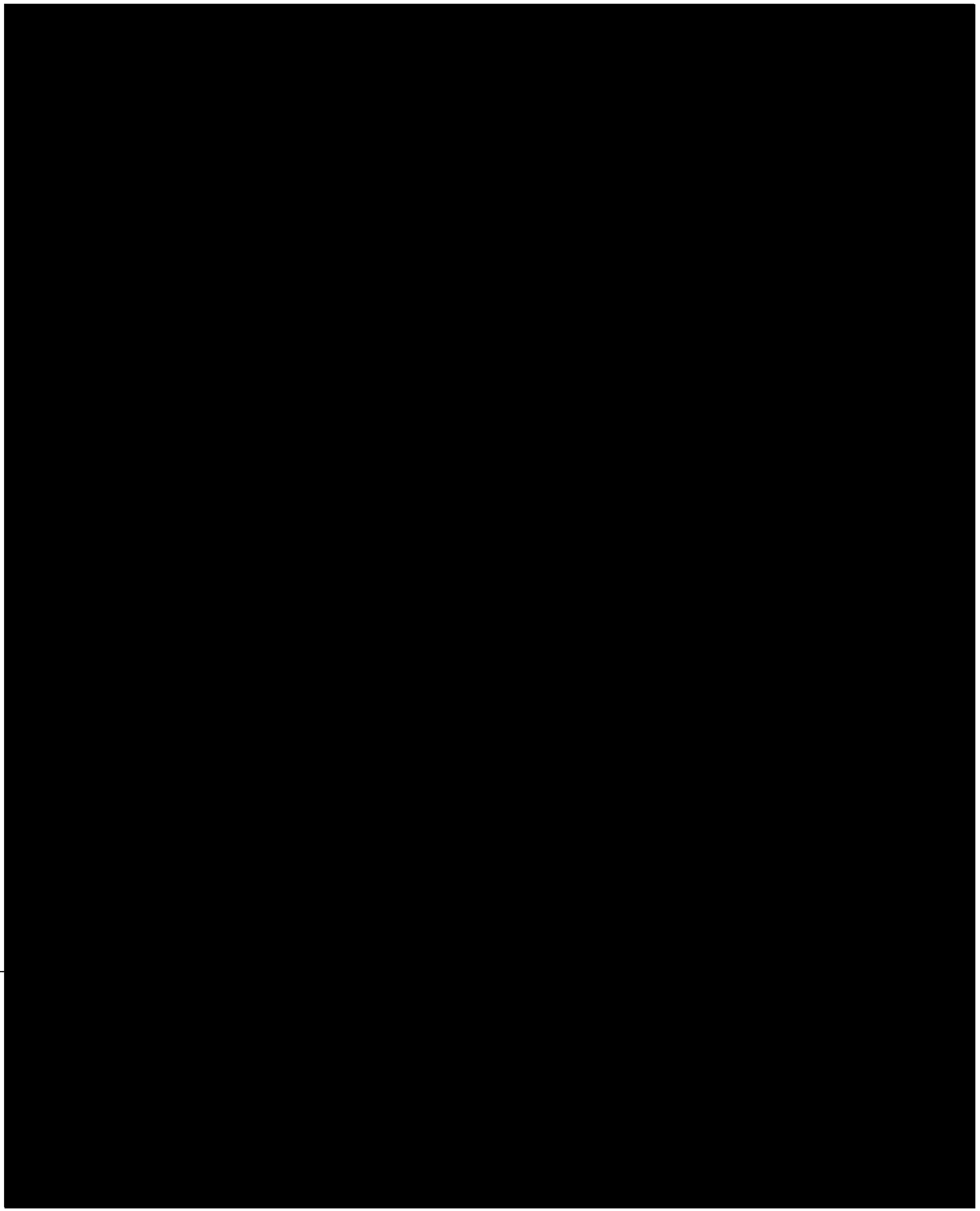


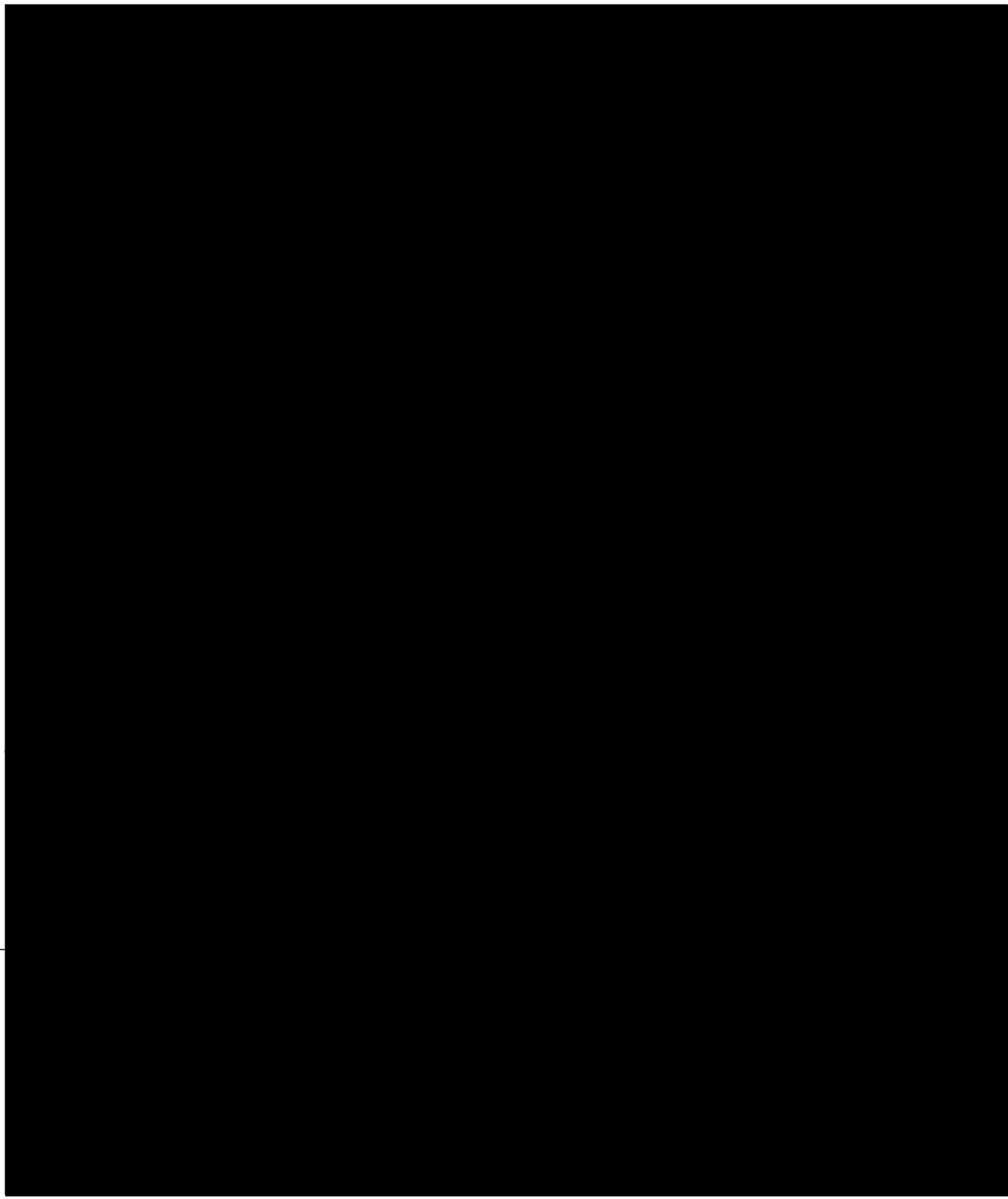


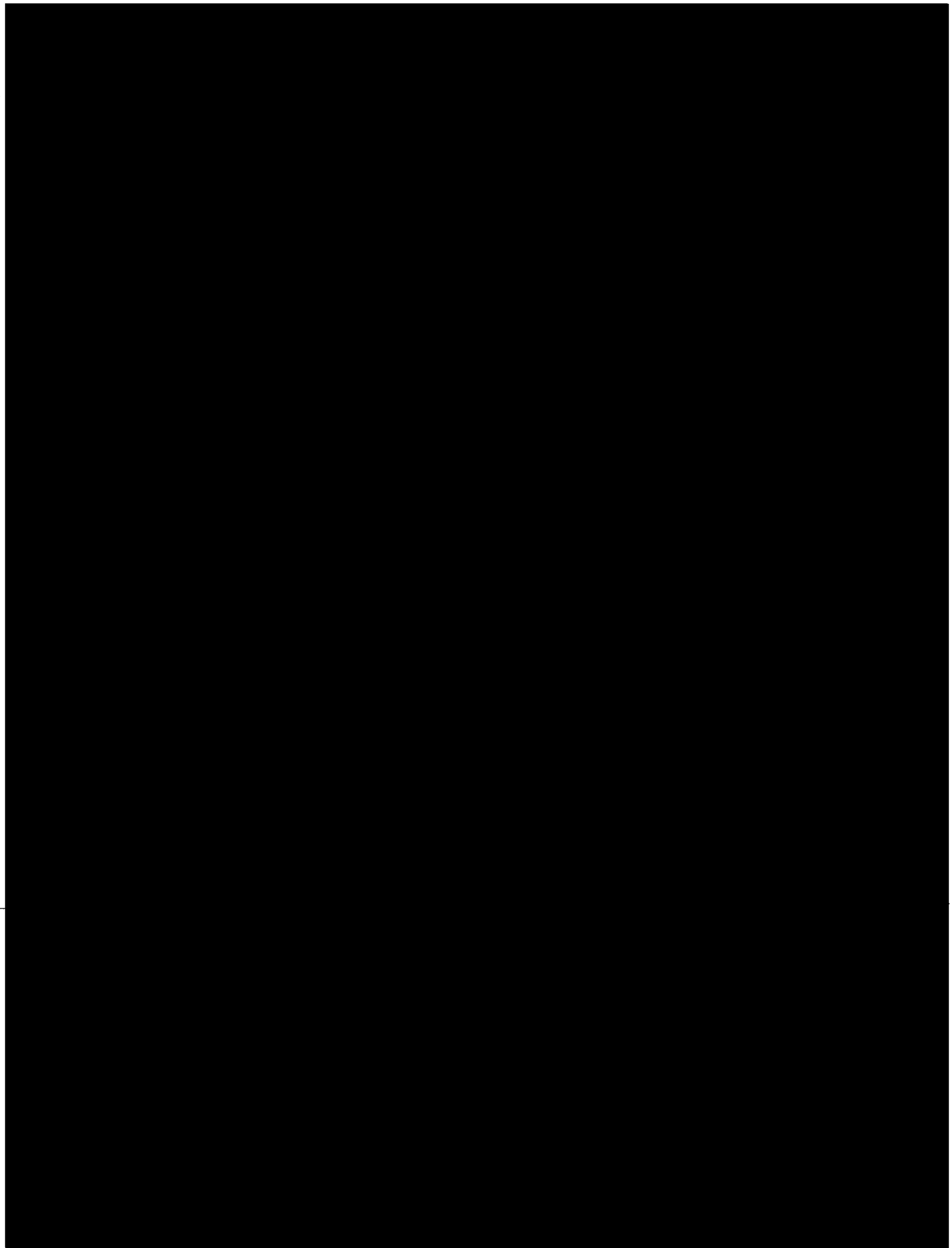


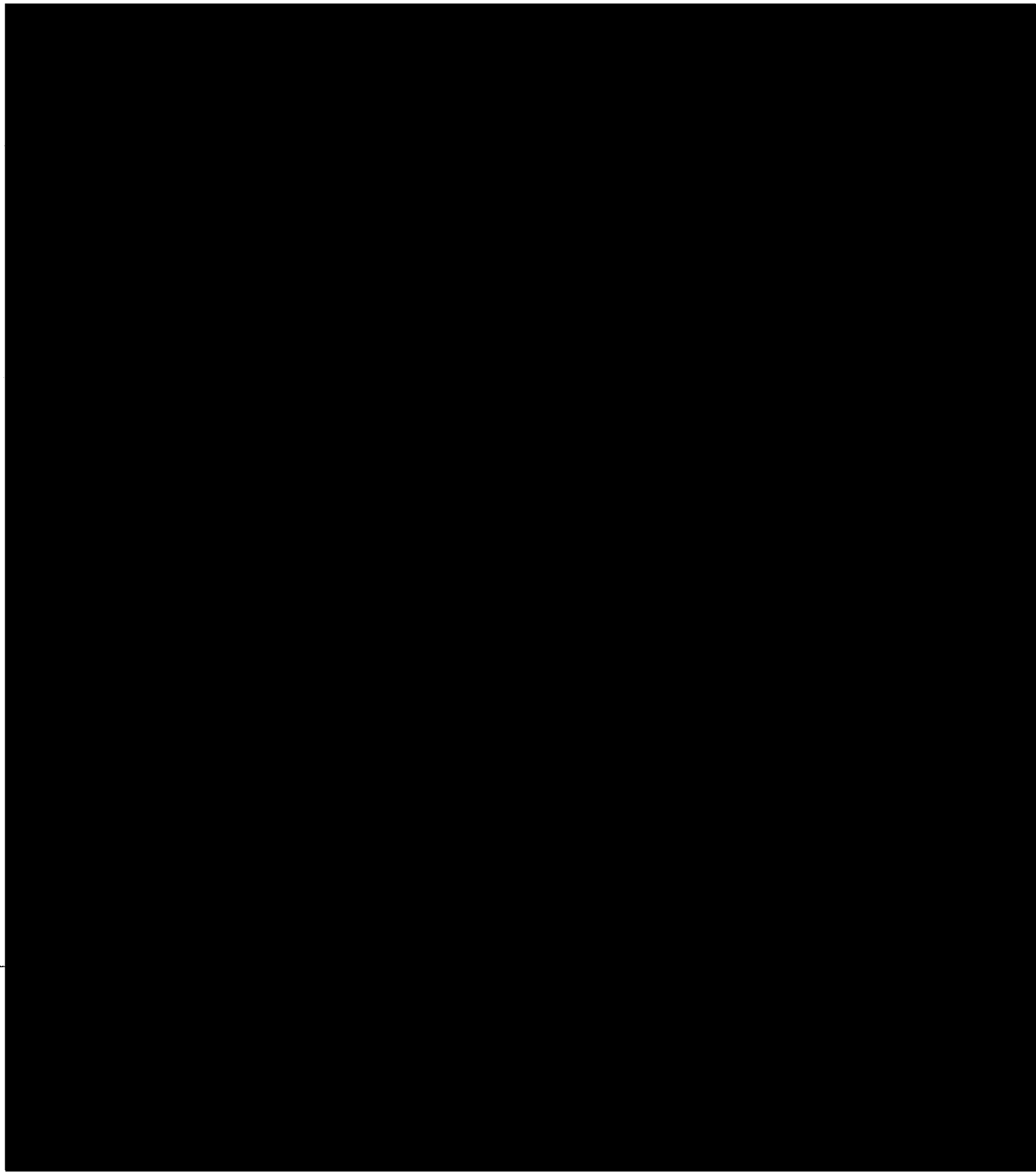


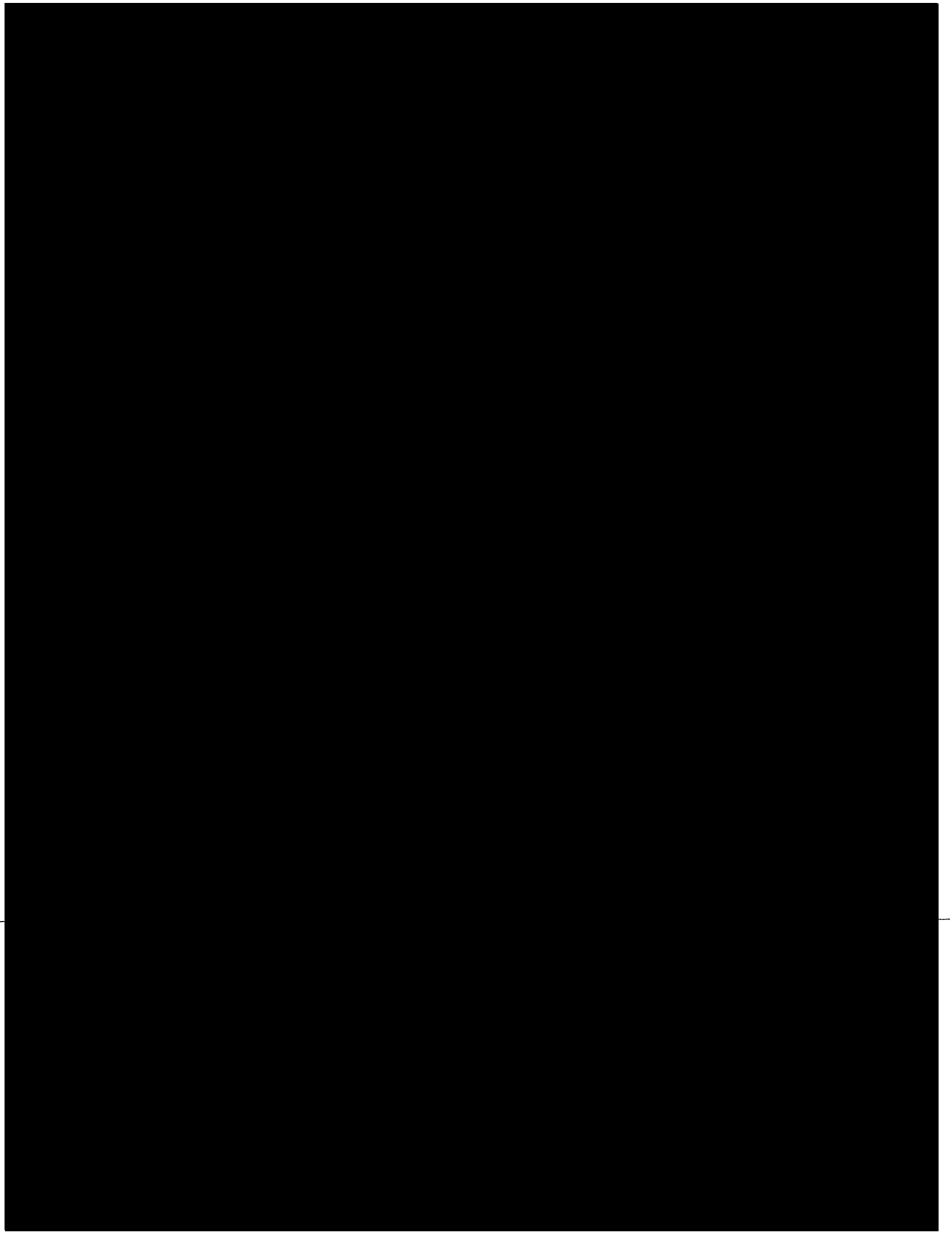


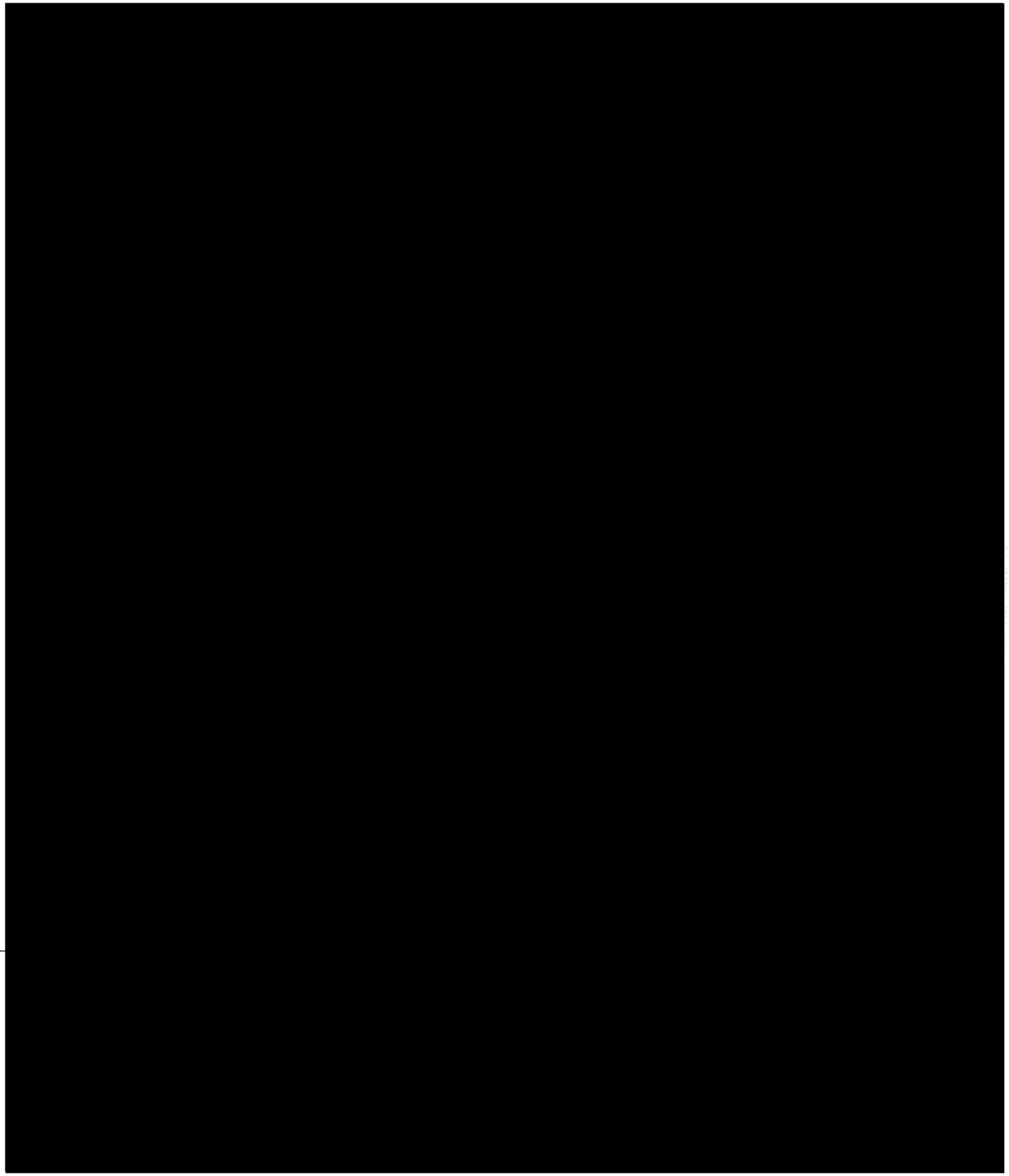


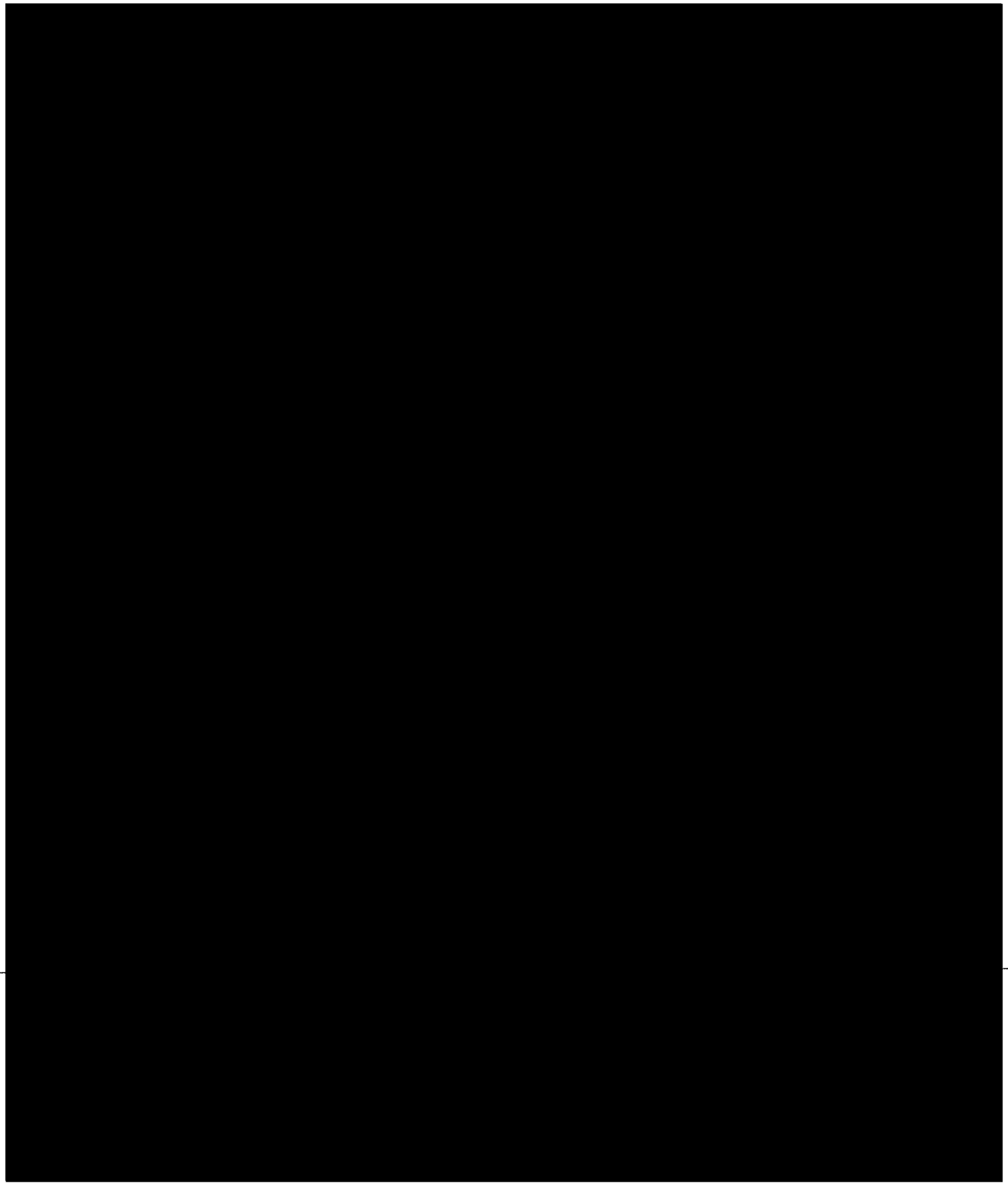


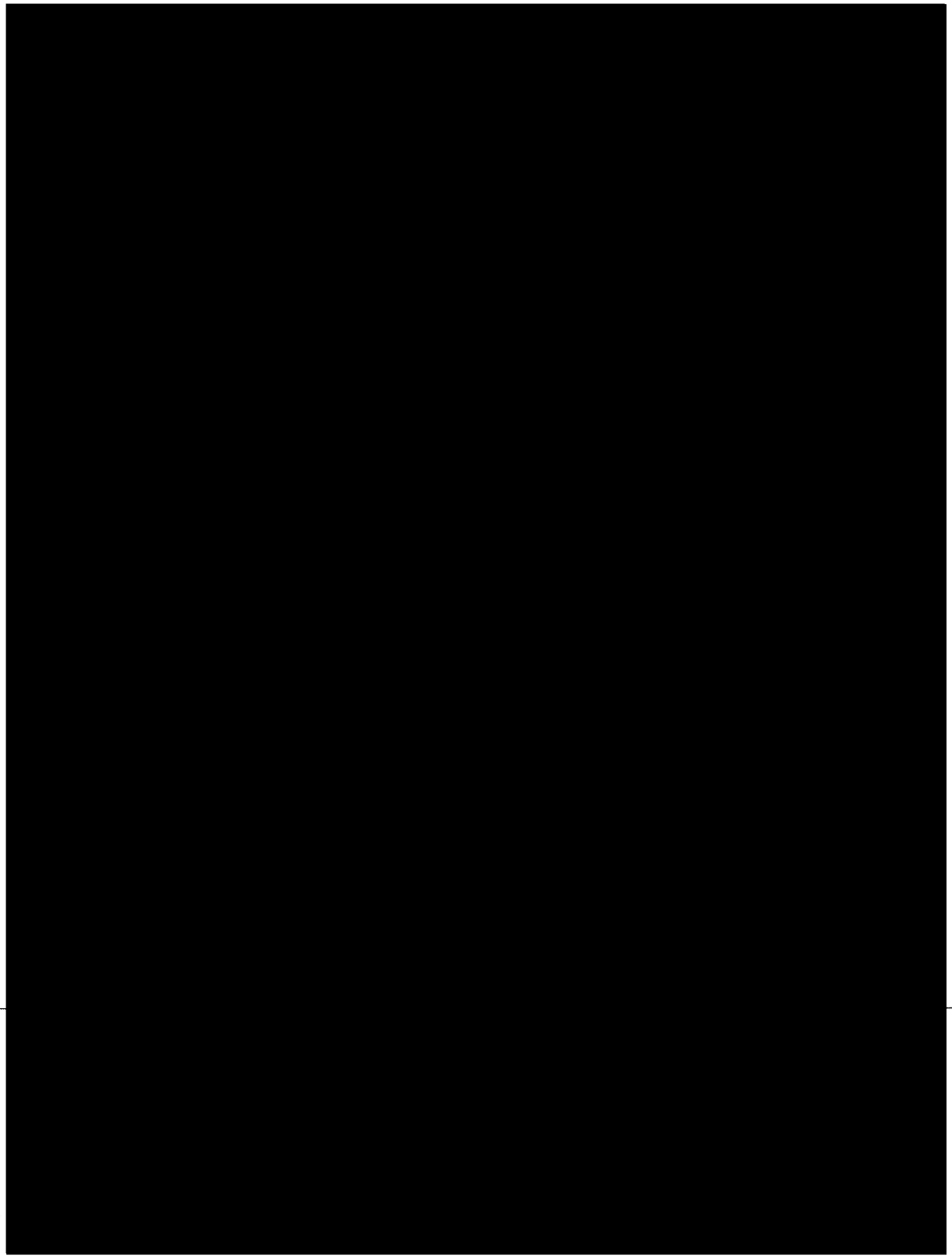












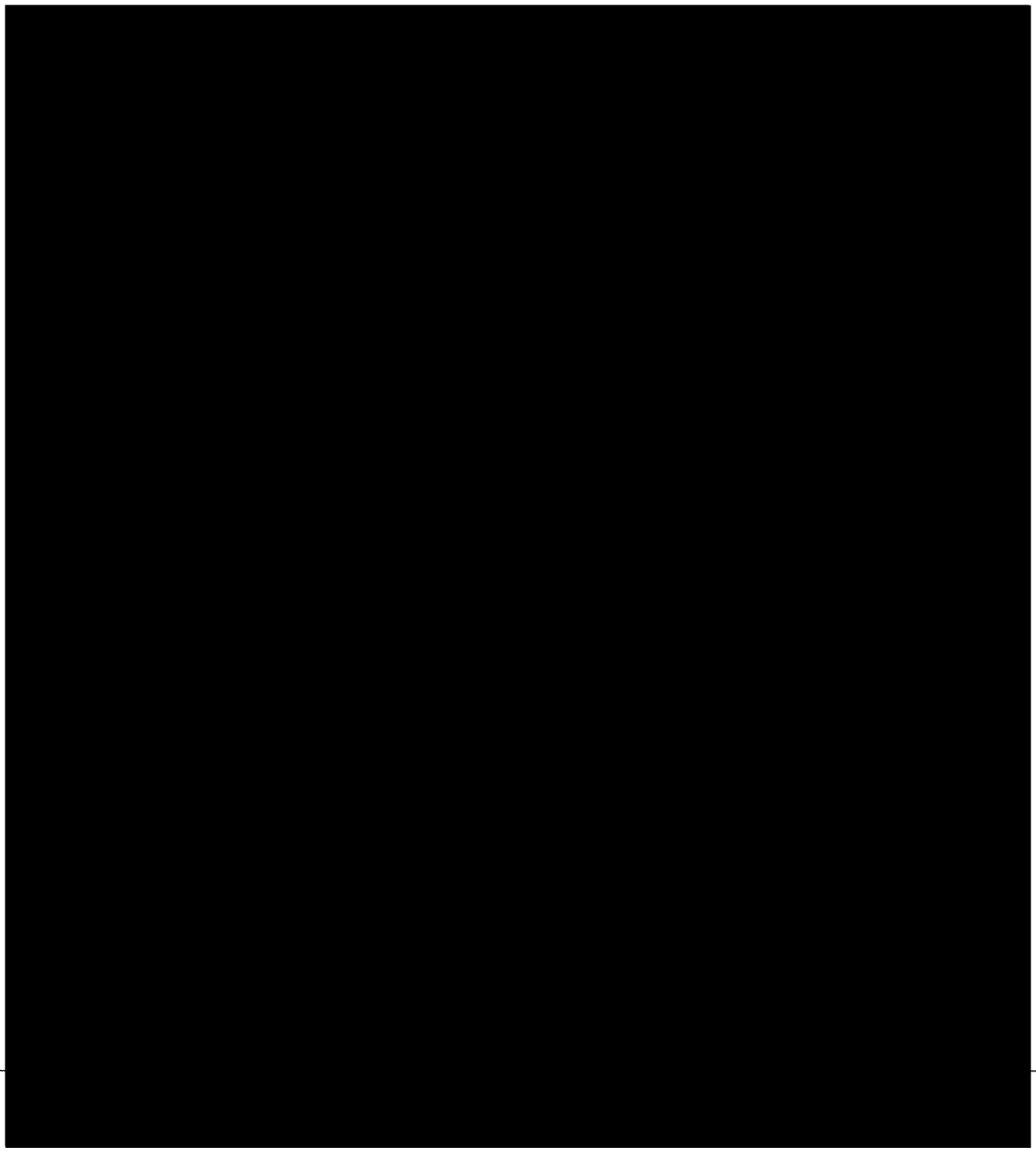


EXHIBIT B

Reuters, *SEC Judge Rules Stanford Executives are Liable for Fraud*, August 6, 2013

8/6/13 REUTERS 09:59:57

REUTERS

August 6, 2013

SEC judge rules Stanford executives are liable for fraud

By Sarah N. Lynch

WASHINGTON (Reuters) - In a victory for federal regulators, an administrative judge has found three former executives who worked for Allen Stanford's now-defunct brokerage liable for fraud and said they should banned from the industry.

The ruling comes more than a year after Stanford was sentenced to 110 years in prison for bilking investors through a Ponzi scheme with fraudulent certificates of deposit issued by Stanford International Bank, his bank in Antigua.

In her ruling, Securities and Exchange Commission Judge Carol Fox Foelak described as "egregious" the conduct of former Stanford Group Co. chief compliance officer Bernerd Young, former president Daniel Bogar and Jason Green, a former head of the private client group.

Foelak also ordered the three executives to pay fines and forfeit ill-gotten profits.

The SEC's case against the three executives did not allege they actually knew about Stanford's Ponzi scheme.

Instead, it hinged on whether they sufficiently ensured that marketing materials and other disclosures were adequate for investors.

All three executives have vigorously denied any wrongdoing.

Young, who was previously a regulator with the group now known as the Financial Industry Regulatory Authority, told Reuters in the summer of 2012 that he took due diligence steps including reviewing quarterly financial statements and reading annual reports about the bank.

But he said in the exclusive interview that Antiguan privacy laws kept him from seeing more details about the investment portfolio, so he relied on the bank's compliance experts.

"If there is such a thing as a...perfect scam, this was the perfect scam," Young told Reuters last year.

Foelak ordered Young, Bogar and Green to each pay a $260,000 civil penalty.

In addition, Young was ordered to return roughly $592,000 plus interest. Bogar was ordered to forfeit about $1.5 million, and Green must pay $2.6 million.

Lawyers for both Young and Bogar said they were disappointed in the judge's ruling and are still considering their options.

If they decide to appeal, the case would first go before the full five-member SEC.

"Mr. Young...is deeply troubled by the initial decision's disturbing implications for the securities compliance industry and the newer and more Draconian standards that compliance officers may be facing," said Randle Henderson, Young's attorney.

"The decision demonstrates the real danger to compliance officers relying upon advice of independent outside counsel, fully licensed and qualified accounting firms and the audited financial opinions they issue, and the sovereign financial regulatory agencies of foreign countries."

Thomas Taylor, a lawyer for Bogar, said that while he felt his client got a "full and fair hearing," he disagreed with her outcome profoundly.

An attorney for Green could not be immediately reached.

Friday's ruling by the administrative judge marked the second big trial victory for the SEC in one week.

On Thursday, a jury in New York found former Goldman Sachs Group Inc. vice president Fabrice Tourre liable for federal securities law violations for his role in a complex mortgage deal that cost investors $1 billion when it failed.

--- Index References ---

Company: FINANCIAL INDUSTRY REGULATORY AUTHORITY INC; GOLDMAN SACHS GROUP INC (THE); STANFORD INTERNATIONAL BANK LTD; STANFORD GROUP CO

News Subject: (Regulatory Affairs (1RE51); Criminal Law (1CR79); Legal (1LE33); Financial Fraud (1FI18); Fraud (1FR30); Crime (1CR87); Social Issues (1SO05); Judicial Cases & Rulings (1JU36))

Region: (Latin America (1LA15); Antigua & Barbuda (1AN04); West Indies (1WE90); Americas (1AM92); Leeward Islands (1LE19); Caribbean (1CA06))

Language: EN

Other Indexing: (Joe Skipper; Jason Green; Carol Fox Foelak; Allen Stanford; Randle Henderson; Daniel Bogar; Thomas Taylor; Fabrice Tourre; Bernerd Young)

Keywords: securities; sec; stanford; executives; fraud (MCC:OEC); (N2:US); (N2:AMERS)

Word Count: 563

End of Document

EXHIBIT C

Excerpts of transcript of *In re Daniel Bogar, Bernerd E. Young, and Jason T. Green*, File No. 3-15003 at 1057:12 – 1058:19.

UNITED STATES SECURITIES AND EXCHANGE COMMISSION

In the Matter of:	)	
	)	File No. 3-15003
DANIEL BOGAR, BERNERD E. YOUNG	)	
AND JASON T. GREEN	)	

ADMINISTRATIVE PROCEEDING - HEARING, VOLUME IV

PAGES: 910 through 1235

PLACE: South Texas College of Law
1303 San Jacinto Street
Houston, TX 77002

DATE: Thursday, February 14, 2013

The above-entitled matter came on for hearing, pursuant to notice, at 9:03 a.m.

BEFORE:

CAROL P. FOX FOELAK, Administrative Law Judge

C O N T E N T S

effective at that, yes.

Q And you were one of the people, in fact, who initially trained Jason Green at Stanford, right?

A Well --

Q Helped train him?

A Pardon me?

Q Helped train him.

A I think there was probably some contributions made to him by me, but Jason was --

Q A self-starter?

A -- a self-starter. I mean, he was good.

Q Now, Doug Shaw - you recruited him, correct?

A I did.

Q And that was around 2004?

A Probably around that time, I guess, yes.

Q And when you recruited Mr. Shaw in 2004, you thought that the firm at that point had developed an outstanding reputation as a sophisticated boutique brokerage firm, right?

A Yes.

Q And you understood that that reputation only increased or was enhanced over the next three or four years, correct, sir?

A We -- that was our attempt, yes.

Q And you took your suitability obligations

seriously, right?

A Yes, I did.

Q And you took your supervisory responsibilities seriously, as well, correct, sir?

A I tried.

Q And particularly with respect to making suitability determinations, right?

A Right.

Q And that would be true throughout your tenure at Stanford?

A Yes.

Q With respect to the SIB CDs, you made a point of telling your FAs not to overallocate to the bank, correct?

A That's correct.

Q And to be mindful of their suitability obligations in recommending the SIB CDs to clients, correct?

A Yes.

Q And you're confident Jason Green did the same, right, sir?

A I have no reason to think that he didn't.

Q And you'd be confident that, in fact, he did, right, given the kind of person he was and as well as you knew him?

HARD COPY

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August 13, 2013

010995-0001

Via Fax (202)772-9324 and Federal Express (enclosing original and ten copies)
Office of the Secretary
United States Securities and Exchange Commission
100 F Street NE, Mail Stop 1090
Washington, DC 20549

Re: *In the Matter of Jay T. Comeaux*; Administrative Proceeding No. 3-15002

Dear Ladies and/or Gentlemen:

This letter delivers to your office an original and ten copies of Jay T. Comeaux's *Petition for Review.* Please file the enclosed pleading in the referenced proceeding.

Very truly yours,

Daniel K. Hedges by permission DKH

DKH:bkg
Enclosures

cc: Honorable Carol Fox Foelak
Administrative Law Judge
Securities and Exchange Commission
100 F Street, N.E.
Washington DC 20549-2557 (w/encl.) ***Via E-mail: ALJ@sec.gov and UPS***

David Reece, Esq.
B. David Fraser, Esq.
Chris Davis, Esq.
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Fort Worth Regional Office
Securities and Exchange Commission
801 Cherry Street, Suite 1900
Fort Worth, Texas 76102 (w/encl.) ***Via Fax (817) 978-4927, e-mail Reeced@sec.gov, shieldsk@sec.gov, and FairchildR@sec.gov and Certified Mail, Return Receipt Requested***