

**BEFORE THE
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C.**

In the Matter of the Application of
Ryan William Mummert
For Review of Action Taken by
FINRA
File No. 3-20210

MR. MUMMERT’S BRIEF IN OPPOSITION TO FINRA’S MOTION TO ADDUCE

ADDITIONAL EVIDENCE

Applicant, Ryan Mummert, seeks Commission review of FINRA Dispute Resolution Services’ (“FINRA”) denial of its arbitration forum to expunge a customer dispute disclosure. FINRA filed a Motion to Adduce Additional Evidence (the “Motion”) on February 23, 2021. Mr. Mummert timely submits this Brief in Opposition to the Motion.

I. FACTUAL BACKGROUND

Mr. Mummert previously worked as a registered broker with Prudential Securities Incorporated (“Prudential”) from July of 1996 to August of 2000. (R. at 1).¹ While registered with Prudential, Mr. Mummert advised Mr. T and Ms. T², a mother and son (the “Customers”), regarding investments of their joint bank account. (R. at 3-4). In 1997, Mr. T, as a joint owner of the account, advised Mr. Mummert to sell a portion of their joint stocks. (R. at 4). Ms. T later alleged that the sale was not authorized. (*Id.*). Prudential found no evidence of wrongdoing after

¹ “R. at ____” refers to the certified record filed on February 22, 2021.

² The customers’ names have been abbreviated for privacy reasons. FINRA is aware of the customers’ full names.

its investigation. (*Id.*). However, on February 23, 1998, the Customers filed a complaint with the New York Stock Exchange (“NYSE”), Case No. 1998-006968, alleging “mismanagement, failure to follow [*sic*] instructions, and unauthorized sale of [certain stocks]” and claiming damages of \$5,000 against Prudential and Mr. Mummert. (*Id.*). On June 4, 1998, Prudential, Mr. Mummert, and the Customers agreed upon a settlement whereby certain shares would be returned to the Customers, along with a cash sum as interest. (R. at 5). The arbitrator memorialized this settlement into what was labelled at the time as an “award” document outlining the agreed upon terms. (*Id.*). Upon information and belief, the case never proceeded to a hearing on the merits and Mr. Mummert never had the opportunity to adequately defend against the allegations. Prudential returned the agreed-upon shares to the Customers and paid the total interest required per the settlement. (*Id.*). Mr. Mummert did not contribute anything to the settlement amount. (*Id.*). Even though the case was settled prior to an arbitration hearing, the occurrence was added as a disclosure to Mr. Mummert’s CRD and BrokerCheck records as an “award/judgment” (the “Disclosure”). (*Id.*). The Disclosure is readily accessible on Mr. Mummert’s BrokerCheck report, as well as a link to the settlement “award” document.

On April 21, 2020, Mr. Mummert filed a Statement of Claim with FINRA seeking expungement of the Disclosure, pursuant to FINRA Rule 2080 (FINRA Case Number 20-01275). (R. at 1-7). The Statement of Claim references recites the language of the arbitrator’s “award” and attached the document to the filing. (R. at 5). On April 22, 2020, FINRA accepted forum and served the named respondent – Prudential – with the Statement of Claim and service documents. Prudential filed its Submission Agreement (R. at 23-24) and its Statement of Answer (R. 21-22) on June 10, 2020. FINRA then issued arbitrator ranking forms on June 12, 2020. On June 18, 2020, Mr. Mummert submitted his arbitrator ranking sheet. On August 11, 2020, an Initial Pre-Hearing

Conference (“IPHC”) was held where the Chairperson inquired about the “award” and whether Mr. Mummert would be able to submit the settlement agreement. On September 24, 2020, in response to the Chairperson’s inquiry at IPHC, and in response to the IPHC Order issued by the Chairperson, Mr. Mummert submitted a letter to the Chairperson indicating that after good faith efforts, all attempts to locate the settlement agreement had been unsuccessful. (R. at 25). On September 24, 2020, Mr. Mummert served the underlying Customer Mr. T with notice of the expungement hearing and indicated that Mrs. T was deceased. (R. at 27-28). On September 29, 2020, Mr. Mummert submitted an Affidavit of Service regarding the Customer Mr. T. (R. at 27-28). On September 30, 2020, Mr. Mummert submitted to the FINRA DR Portal an updated BrokerCheck report, which references the “award/judgment” at issue and provides a link to the “award.” On December 8, 2020, Mr. Mummert submitted to the FINRA DR Portal hearing exhibits 1-19, which again included Exhibit 1: the “award” at issue. FINRA forwarded these Exhibits to the Chairperson in advance of the hearing.

Finally, on December 10, 2020, the expungement case proceeded to a hearing on the merits. During the expungement hearing, Mr. Mummert’s counsel introduced into evidence the nineteen (19) exhibits that were previously sent to FINRA, including Exhibit 1 – the “award” at issue. Additionally, Mr. Mummert submitted Exhibit 18, which is an account statement showing the transaction from Prudential returning the shares in dispute, that references the transaction as a “ADJ ARBITRATION SETTLEMENT” payment at the bottom of the page. (See attached Exhibit 1 at Mummert000050). Mr. Mummert also testified at the expungement hearing that, upon information and belief, the case was settled after mediation and that was no arbitration proceeding.

On December 24, 2020, two (2) weeks after the conclusion of the expungement hearing and closing of the record, FINRA notified Mr. Mummert that it was denying forum for arbitration because the expungement request involved a prior adverse arbitration award. (R. at 32).

On January 27, 2021, Mr. Mummert filed an application for review with the Commission, requesting that FINRA be ordered to allow Mr. Mummert access to its forum to arbitrate his expungement request. (R. at 37-41).

II. ARGUMENT

SEC Rule of Practice 452 requires that the movant – FINRA – “show with particularity that such additional evidence is material and that there were reasonable grounds for failure to adduce such evidence previously.” According to Black’s Law Dictionary, “material” means “important; more or less necessary; having influence or effect; going to the merits; having to do with matter, as distinguished from form.” Here, the two Declarations that FINRA seeks to admit do not meet these criteria and, thus, should not be admitted into evidence.

First, neither of the Declarations is material to the present matter. Mr. Mummert requests in his Application for Review that “he be permitted to have his expungement request in FINRA Case Number 20-01275 be resubmitted to the Chairperson (who has already heard all of the evidence), and to allow the Chairperson to issue a ruling” due to FINRA’s action of prohibiting “Mr. Mummert access to a fundamentally important service that it offers.” (R. at 37-29). The McNamire Declaration offers no evidence that is material to such a determination by the Commission. The only information the McNamire Declaration purportedly provides is that FINRA allegedly first learned *during* the expungement hearing on December 10, 2020 that there was an underlying “award” attached to the Disclosure. FINRA failed to explain how this information is material to Mr. Mummert’s Application for Review. The point in time when FINRA allegedly

learned the Disclosure involved an “award” is immaterial with respect to Mr. Mummert’s application for review, and it provides nothing that tends to prove or disprove Mr. Mummert’s claim at issue here.

Even if the McNamire Declaration did provide material information, which it does not, the information is superfluous and not credible. FINRA’s claim that it first learned that the Disclosure involved an alleged “award” during the expungement hearing could not possibly be true. The underlying “award” was referenced in the Statement of Claim and attached as Exhibit 1; FINRA served the documents, including the “award,” on respondent Prudential; FINRA coordinated the IPHC where the “award” and “settlement” was discussed; FINRA was provided with Mr. Mummert’s BrokerCheck report in advance of the hearing, which references the “award” and provides a hyperlink to the “award” document itself; Mr. Mummert also submitted to FINRA his hearing Exhibits 1-19 and FINRA forwarded the Exhibits to the Chairperson in advance of the hearing; and a readily apparent link to the “award” is listed on Mr. Mummert’s BrokerCheck page – a database created, operated, and maintained by FINRA. Over the span of eight months while this case was proceeding through FINRA’s dispute resolution forum, FINRA was aware of the “award” and ratified its acceptance of forum at every step of the way. Even if FINRA did first learn of the underlying “award” during the expungement hearing, nearly eight months after the claim was filed, it still allowed the expungement hearing to continue to conclusion, and then waited an additional two (2) weeks to deny forum. But again, the point in time when FINRA allegedly first learned that the Disclosure involved an “award” is immaterial.

Such proffered evidence is also superfluous, as Mr. Mummert does not dispute that the “award” document exists, but has presented evidence that it was labeled improperly as an “award/judgment” instead of the memorialization of a settlement agreement. There is no probative

value to the admittance of the McNamire Declaration. Thus, FINRA has not shown with particularity that the McNamire Declaration is material.

The Carey Declaration is also not material to the present matter as it offers no direct evidence significant to this case. Mr. Carey was not involved in FINRA's decision to deny Mr. Mummert access to its forum, he was not involved in Mr. Mummert's underlying action filed by the Customers, and he was not involved in Mr. Mummert's expungement arbitration. Mr. Carey can offer no evidence whatsoever to assist the Commission in its consideration of whether FINRA denied Mr. Mummert access to a fundamentally important service it provides or whether the particular underlying "award" was actually the arbitrator's memorialization of a settlement agreement between the parties. FINRA requests to admit the Carey Declaration because it "addresses the format of NYSE arbitration awards like the award issued in the customer arbitration here." *Mot. at 3*. Specifically, Mr. Carey testifies that the language "in full and final settlement of all claims" is standard on all NYSE award forms. However, that language is not dispositive here of whether the underlying "award" document was actually a true arbitration award or the memorialization of a settlement agreement.

In Comparing the "award" document from Mr. Mummert's underlying case with the four other arbitration awards Mr. Carey cites as examples ("Example Awards"), there are some key differences. For instance, in each of the Example Awards where the respondent was to pay the claimant a sum of money, the dollar amount was listed under the heading, "Award Data." However, in Mr. Mummert's "award" document, even though the respondent was to pay the Customers a sum of money, there was no dollar amount listed under the heading, "Award Data," and, instead, the letters "uns" were used in lieu of a dollar amount. Further, none of the Example Awards list forum fees/costs being assessed solely against the claimant, except for one of the

Example Awards in which the claimant's claims were dismissed. However, in Mr. Mummert's "award" document, the forum fees/costs were assessed solely against the Customers, even though, according to the "award," the respondents were required to return to the Customers shares of a security and pay interest. Because the Carey Declaration offers no evidence that would tend to prove or disprove Mr. Mummert's claims in this appeal, and FINRA has not shown with particularity that the Carey Declaration is material, it should not be admitted as additional evidence.

FINRA has also failed to establish reasonable grounds for its failure to adduce this proffered evidence previously. The fact that FINRA did not get around to drafting and signing these Declarations until almost a year after Mr. Mummert filed his Statement of Claim seeking expungement of the Disclosure does not obviate its need to adduce evidence in a timely fashion. FINRA can only point to two highly distinguishable Opinions of the Commission in support of its position: *Citizens Capital Corp.* and *Dennis A. Pearson, Jr.* In *Citizens Capital*, the Commission found reasonable grounds for failure to previously adduce two declarations. *Citizens Capital Corp.*, Exchange Act Release No. 67313, 2012 SEC LEXIS 2024, at *38 (June 29, 2012). One of the declarations included financial figures that were not yet determined at the time of the initial submission of evidence and were shown to be material in that they supported other declarations properly submitted. *Id.* The second declaration supported claims that were not developed until the appeal. *Id.* These are the types of reasonable grounds that the Commission has considered in the past when granting motions to adduce additional evidence. These grounds are very different from those presented in the present case – since Mr. Mummert filed his Statement of Claim in April of 2020 and FINRA's only justification in not adducing the proffered evidence sooner is that the Declarations had not yet been created and signed until recently. *Mot. at 3.* Critically though, the

information contained within the Declarations FINRA seeks to adduce was clearly known well in advance.

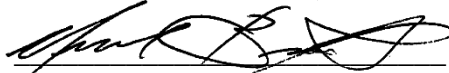
Further, in *Pearson*, the Commission commented in a footnote that the applicant was subject to sanctions by FINRA's predecessor, NASD, automatically and did not receive an evidentiary hearing in which he could present evidence that the sanctions were imposed wrongfully. *Dennis A. Pearson, Jr.*, Exchange Act Release No. 54913, 2006 SEC LEXIS 2871, at *11 n.15 (Dec. 11, 2006). The Commission found the lack of a prior evidentiary hearing to be reasonable grounds for the applicant's previous failure to present the evidence. *Id.* Because the Commission also found the evidence to be material, it admitted the evidence and granted the implied Motion to Adduce. *Id.* FINRA tried to analogize this case here in its claim that it was not given an evidentiary hearing here and, therefore, should be able to submit this additional evidence. However, if this is the type of proceeding in which an evidentiary hearing is not typically held, it is unclear why FINRA uses that as its standard in comparing its own argument with the position of the Commission in *Pearson*.

Additionally, FINRA had the opportunity to justify its reasoning to deny forum and refused to do so at the time it issued its Denial Notice – or perhaps, most appropriately, *before* it accepted forum and allowed Mr. Mummert and Prudential to engage in an arbitration spanning eight months before deciding to deny Mr. Mummert forum. Ms. McNamire and Mr. Carey were both working for FINRA at or around the time of the forum denial and could have provided this information to FINRA prior to the decision and issuance of the Denial Notice. FINRA has failed to show with particularity that it had reasonable grounds for its failure to adduce such evidence previously.

In conclusion, FINRA has failed to meet its burden of showing with particularity that the Declarations are both material and that it had reasonable grounds for failure to adduce such evidence previously. The Commission should deny FINRA's Motion.

Dated: March 1, 2021.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Michael Bessette", written over a horizontal line.

Michael Bessette

Senior Attorney

T: (720) 432-6546

E: michael.bessette@hlbslaw.com

HLBS Law, LLC

9737 Wadsworth Pkwy, G-100

Westminster, CO 80021

CERTIFICATE OF SERVICE

I, James Bellamy, on March 1, 2021, caused a copy of Applicant's Brief in Opposition to FINRA's Motion to Adduce Additional Evidence, to be served by email on:

Vanessa A. Countryman, Secretary
Securities and Exchange Commission
100 F St., NE
Room 10915
Washington, DC 20549-1090
apfilings@sec.gov

Celia L. Passaro
Assistant General Counsel
FINRA
1735 K Street, N.W.
Washington, D.C. 20006
ersilia.passaro@finra.org

General Counsel
FINRA
1735 K Street, NW
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Email: nac.casefilings@finra.org

Alan Lawhead
alan.lawhead@finra.org
nac.casefilings@finra.org
Office of General Counsel FINRA
1735 K Street, NW Washington, D.C. 20006

[X] (BY EMAIL) I caused the documents to be sent to the persons at the e-mail addresses listed above. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

[X] (STATE) I certify (or declare) under penalty of perjury under the laws of the State of Colorado that the foregoing is true and correct.

/s/James Bellamy
James Bellamy
9737 Wadsworth Pkwy Suite G-100
Westminster, CO 80021

EXHIBIT 1

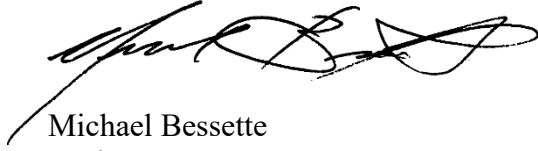
| | |
|--|--------------------------|
| FINANCIAL INDUSTRY REGULATORY AUTHORITY DISPUTE RESOLUTION | |
| In the Matter of the Arbitration Between: Claimant: Ryan William Ne Mummert v. Respondent: Prudential Equity Group, LLC | CASE NO. 20-01275 |
| SUBMISSION OF EXPUNGEMENT HEARING EXHIBITS | |

PLEASE TAKE NOTICE THAT Michael Besette, Counsel for Claimant at HLBS Law, hereby respectfully submits the following additional documentation in the aforementioned case:

- Exhibit 01** – 1998-06-04 Order on Settlement
- Exhibit 02** – 1997-01-01 Through 01-31 Monthly Account Statement
- Exhibit 03** – 1997-02-01 Through 02-28 Monthly Account Statement
- Exhibit 04** – 1997-03-01 Through 03-31 Monthly Account Statement
- Exhibit 05** – 1997-04-01 Through 04-30 Monthly Account Statement
- Exhibit 06** – 1997-05-01 Through 05-31 Monthly Account Statement
- Exhibit 07** – 1997-06-01 Through 06-30 Monthly Account Statement
- Exhibit 08** – 1997-07-01 Through 07-31 Monthly Account Statement
- Exhibit 09** – 1997-08-01 Through 08-31 Monthly Account Statement
- Exhibit 10** – 1997-09-01 Through 09-30 Monthly Account Statement
- Exhibit 11** – 1997-10-01 Through 10-31 Monthly Account Statement
- Exhibit 12** – 1997-11-01 Through 11-30 Monthly Account Statement
- Exhibit 13** – 1997-12-01 Through 12-31 Monthly Account Statement
- Exhibit 14** – 1998-01-01 Through 01-31 Monthly Account Statement
- Exhibit 15** – 1998-02-01 Through 02-28 Monthly Account Statement
- Exhibit 16** – 1998-03-01 Through 03-31 Monthly Account Statement
- Exhibit 17** – 1998-04-01 Through 04-30 Monthly Account Statement
- Exhibit 18** – 1998-05-01 Through 08-31 Monthly Account Statement
- Exhibit 19** – 1998-09-01 Through 09-30 Monthly Account Statement

DATED this 8th day of December, 2020.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Michael Bessette", with a long horizontal flourish extending to the left.

Michael Bessette

Senior Attorney

HLBS Law

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E: Legal.bessette@hlbslaw.com

9737 Wadsworth Parkway, Suite G-100

Westminster, CO 80021

EXHIBIT 1

**New York Stock Exchange
In the Matter of Arbitration Between**

NYSE

Case: David M. Treadwell & Gloria Treadwell v. Prudential Securities, Inc. & Ryan Mummert

Attorneys:

For Claimant(s):

David M. Treadwell - Albuquerque, NM

For Respondent(s):

Jeffrey Cohen Esq. - New York, NY

Date Filed: 02/23/1998

First Scheduled: 06/04/1998

Decided: 06/04/1998

Case Summary: Customer claimant alleges mismanagement, failure to follow instructions and unauthorized sale of Blackrock Insured Municipal 2008 Term Trust Inc.

Product: OTHER

Market:

Claim Data

Claim: \$5,000.00

Punitive: \$0.00

Atty Fees: \$0.00

Deposit: \$75.00

Award Data

Award: Uns

Punitive: \$0.00

Atty Fees: \$0.00

Costs: \$0.00

Forum Fees: \$75.00

Decision: The undersigned arbitrators have decided and determined in full and final settlement of all claims between the parties that: Respondents, jointly and severally, are liable to claimant as follows:

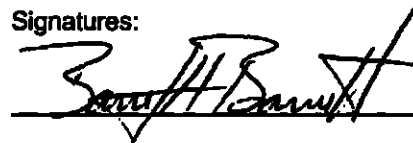
Respondents shall deliver to Claimant 189 shares of Blackrock Insured Municipal 2008 Term Trust Incorporated ("Blackrock"), plus a sum in cash equal to .441 times the value of one share of Blackrock on the date the 189 shares are acquired by Respondents (or the date of delivery to Claimants if the shares are delivered from inventory shares) and an additional \$185 for lost earnings on the investment; furthermore, that the costs of this hearing, \$75 are assessed against the Claimants.

Remarks: Small Claim on Papers.

Arbitrators: (D = Dissents)

Barry H. Barnett

Signatures:



City: Albuquerque

State: NM

Date: 06/04/1998

Docket #: 1998-006968

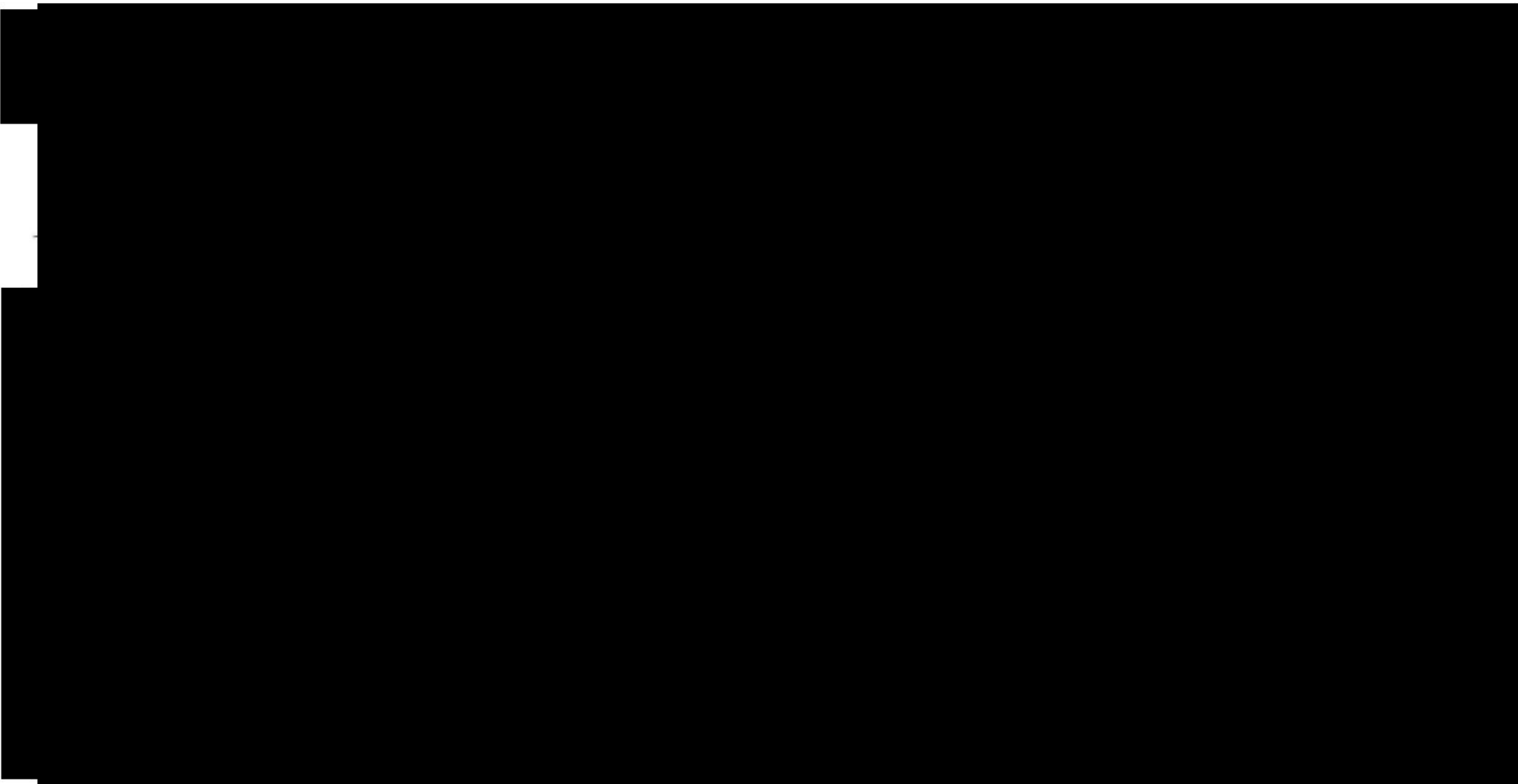
Sessions:

Hearing Dates:

P-000001

Mummert000002

EXHIBIT 2



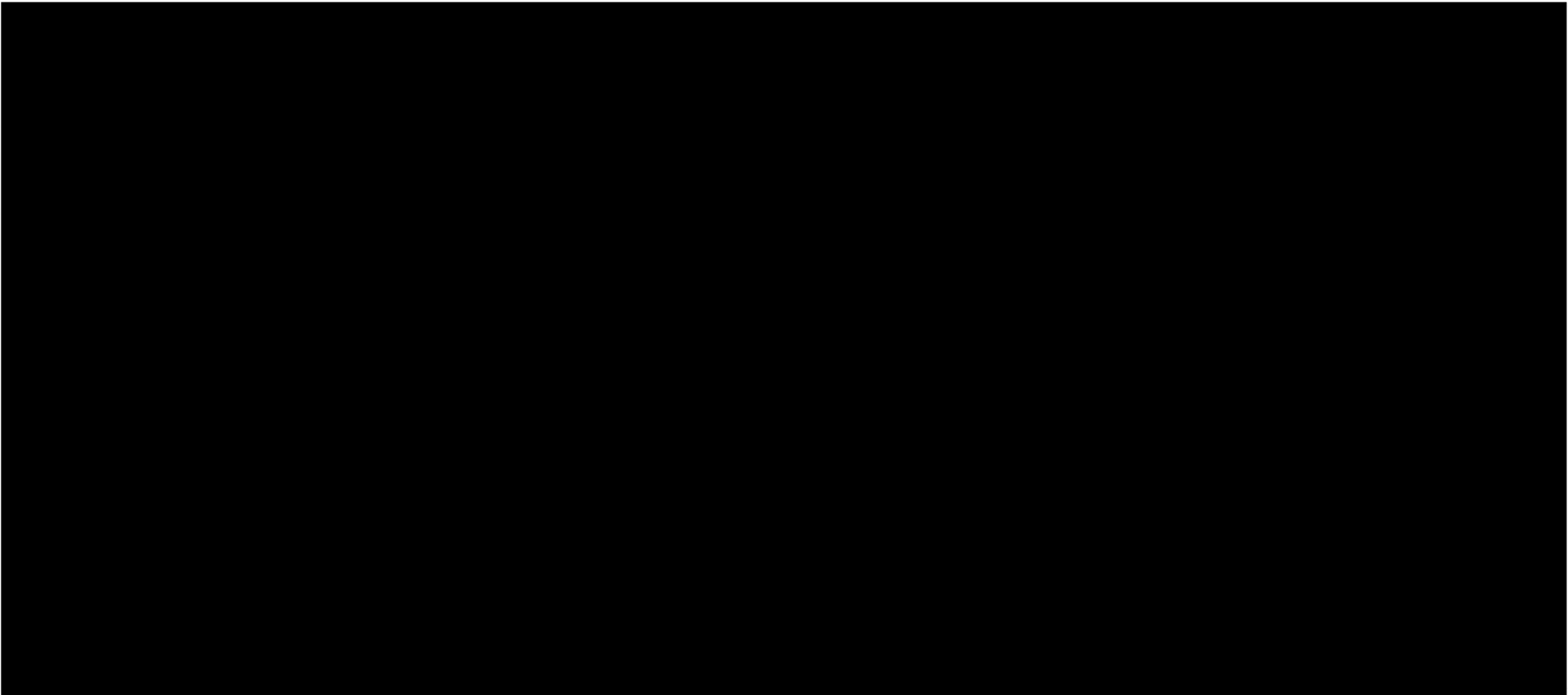
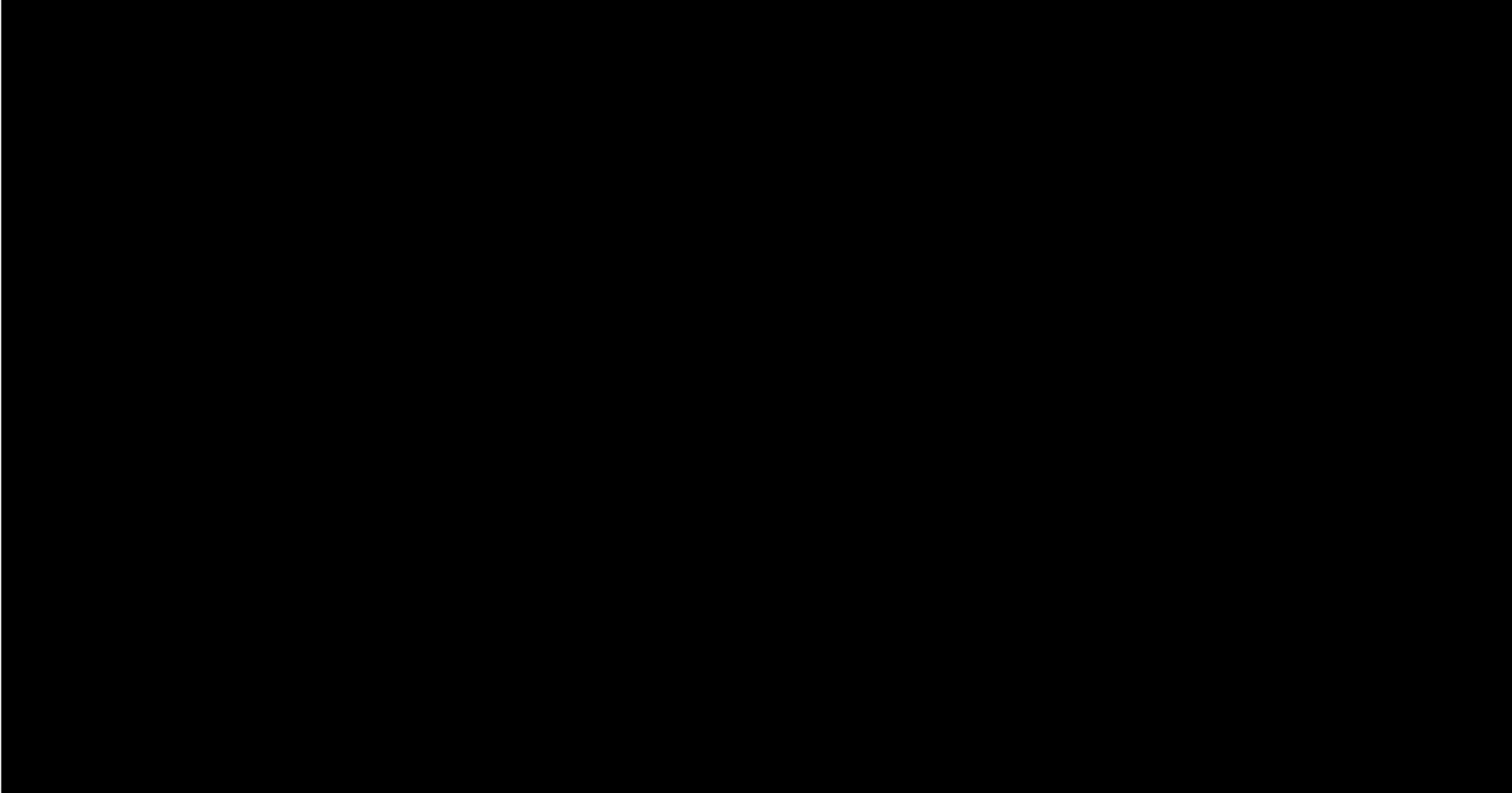


EXHIBIT 3



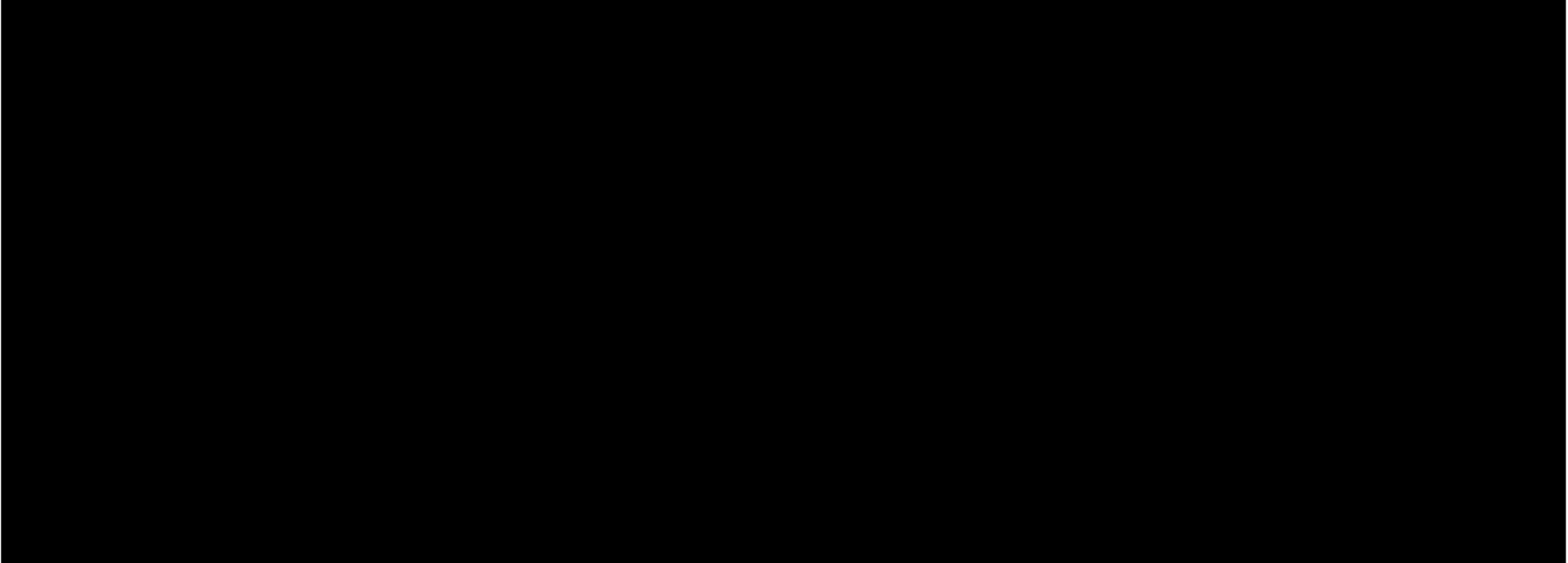


EXHIBIT 4

EXHIBIT 5

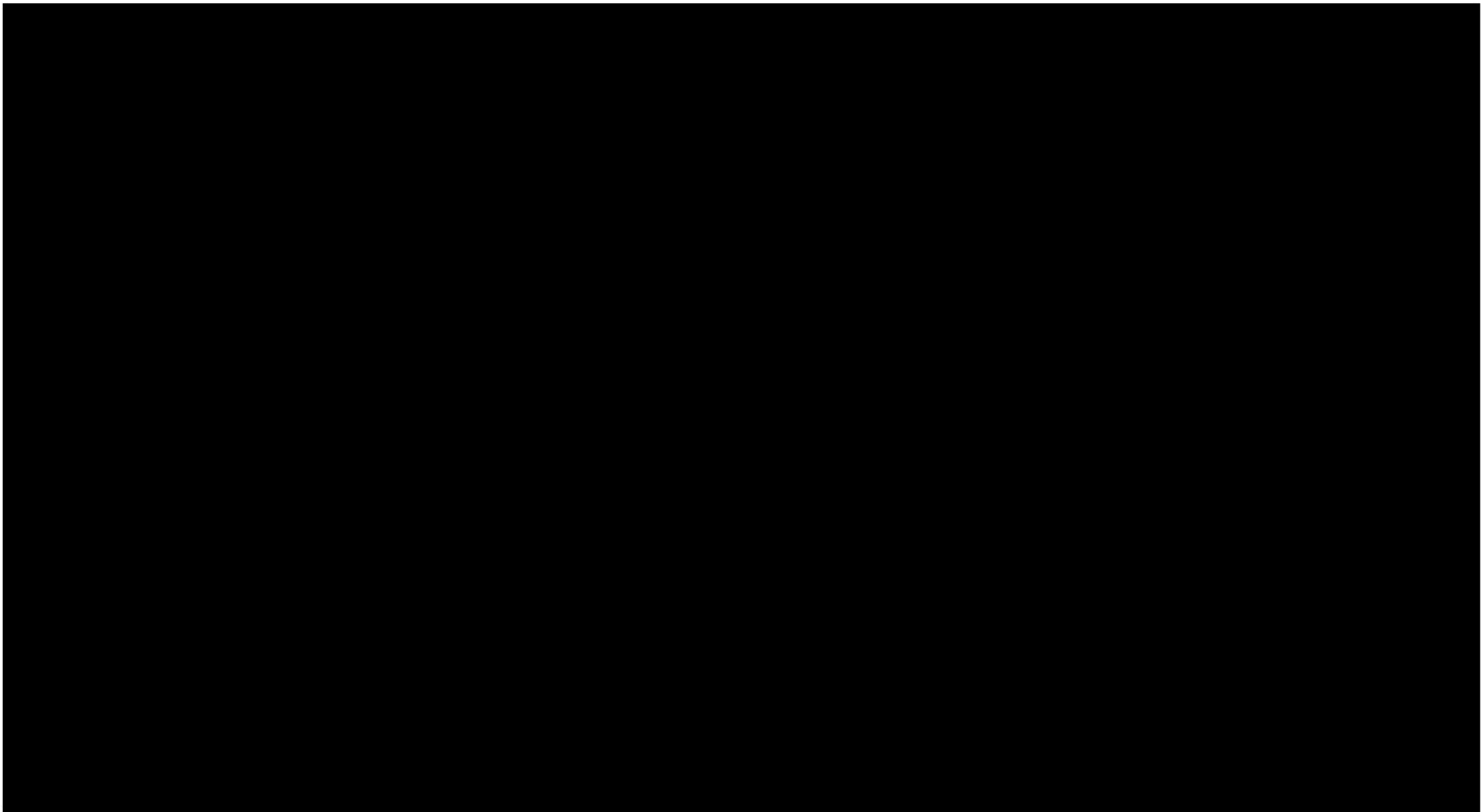
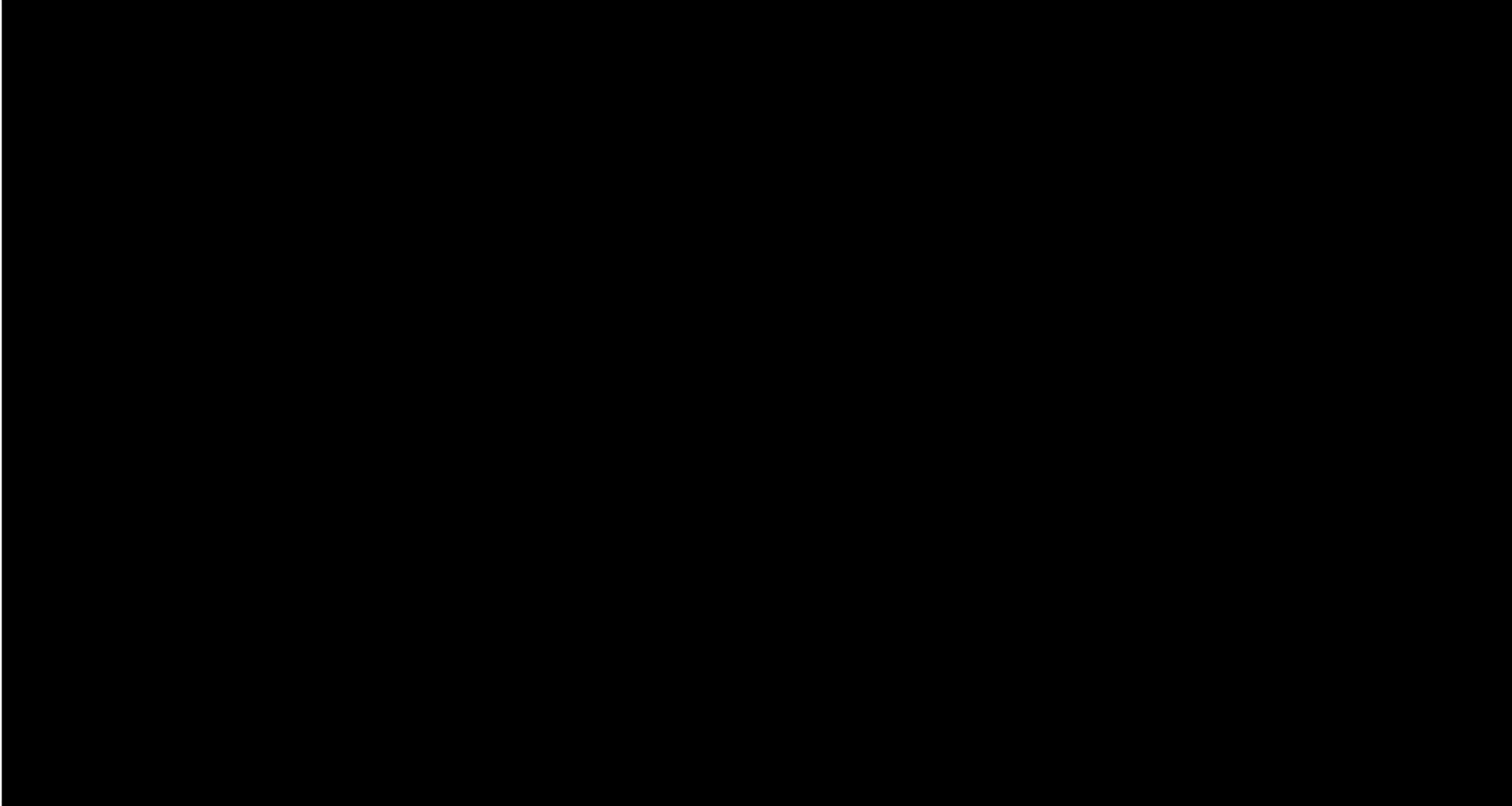




EXHIBIT 6



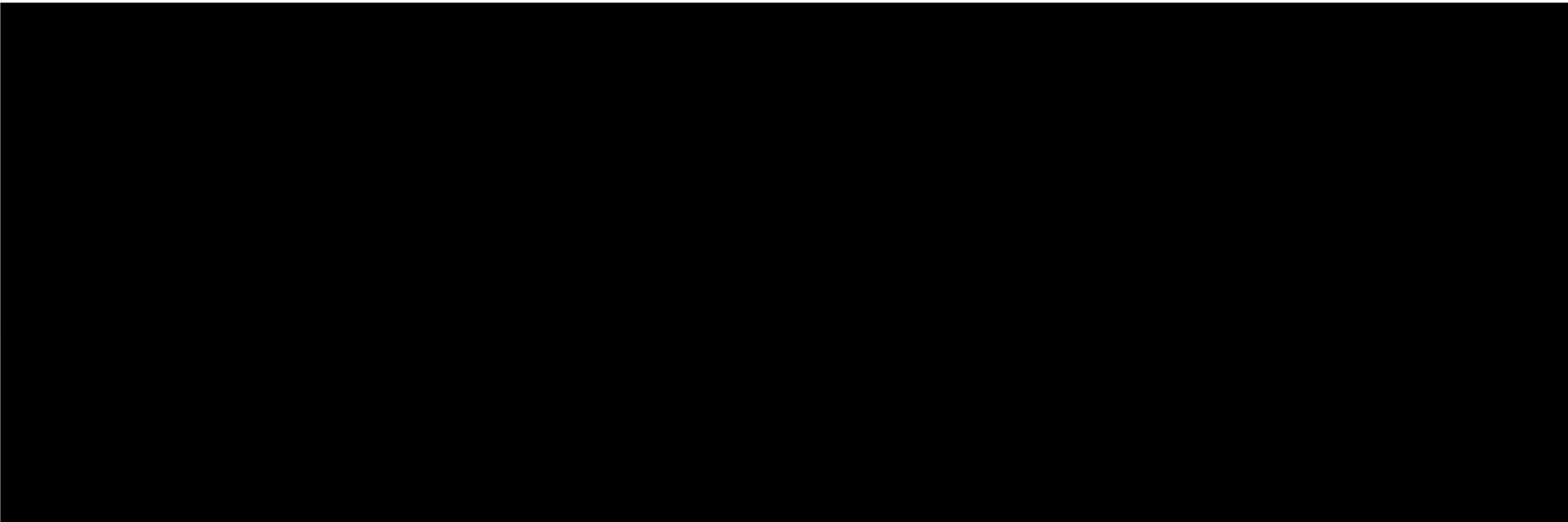
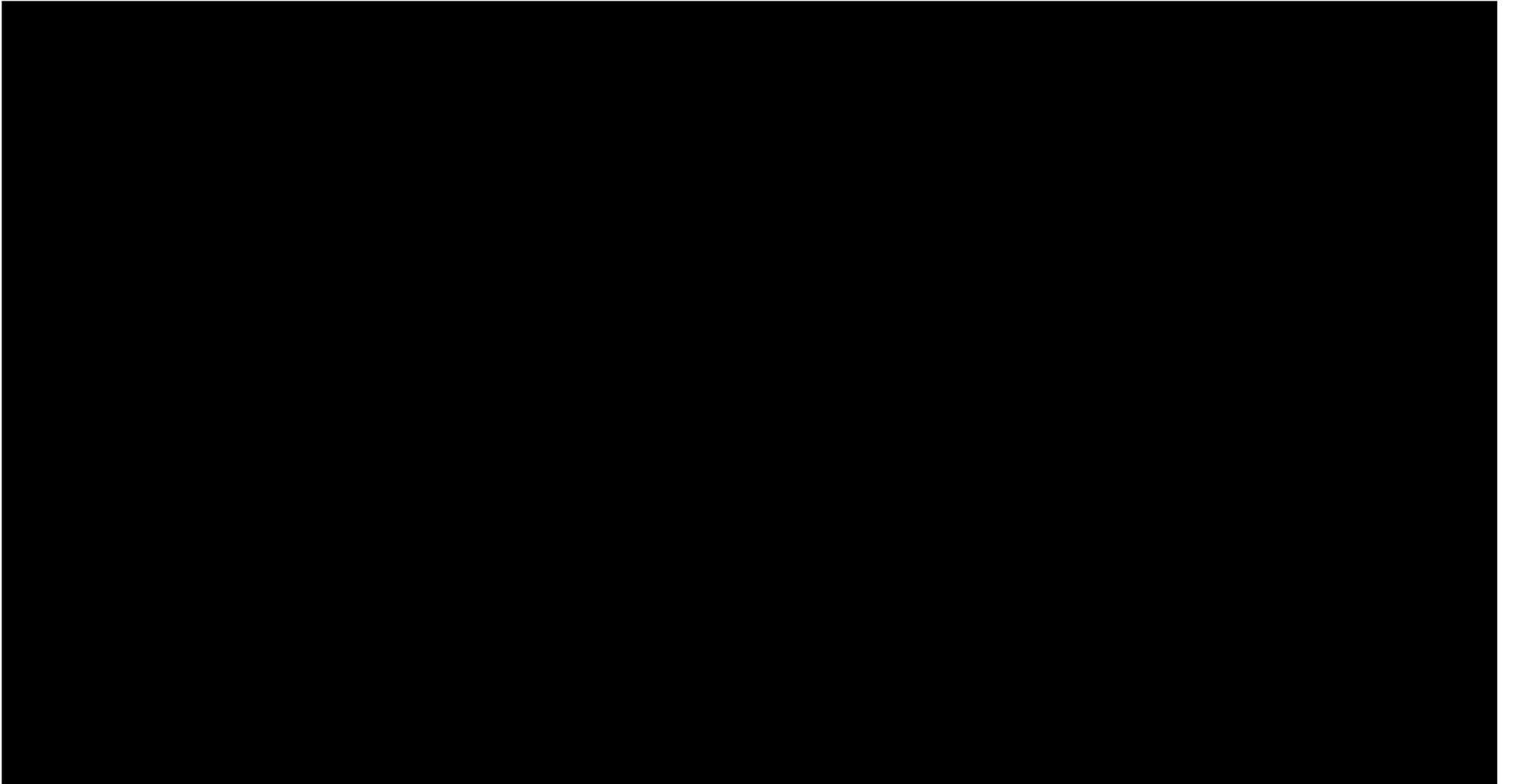


EXHIBIT 7



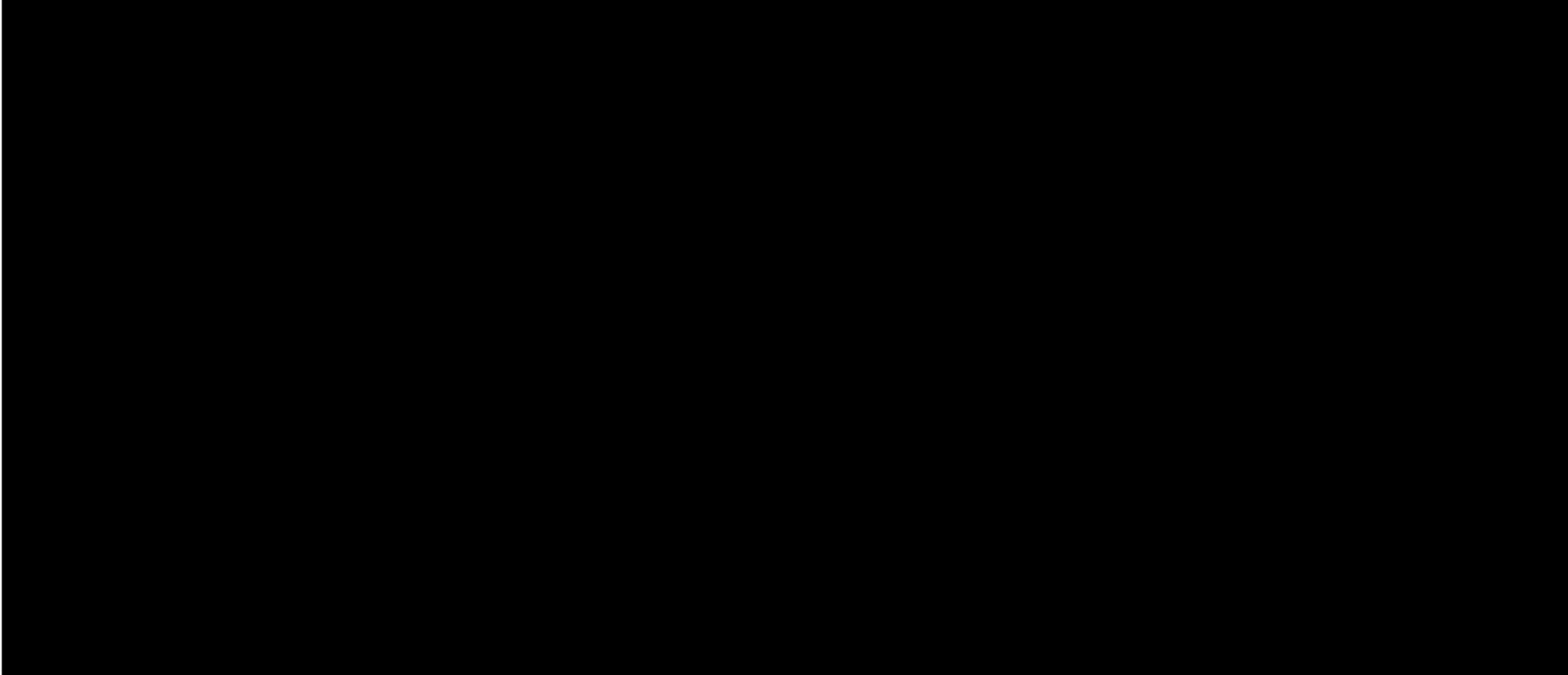
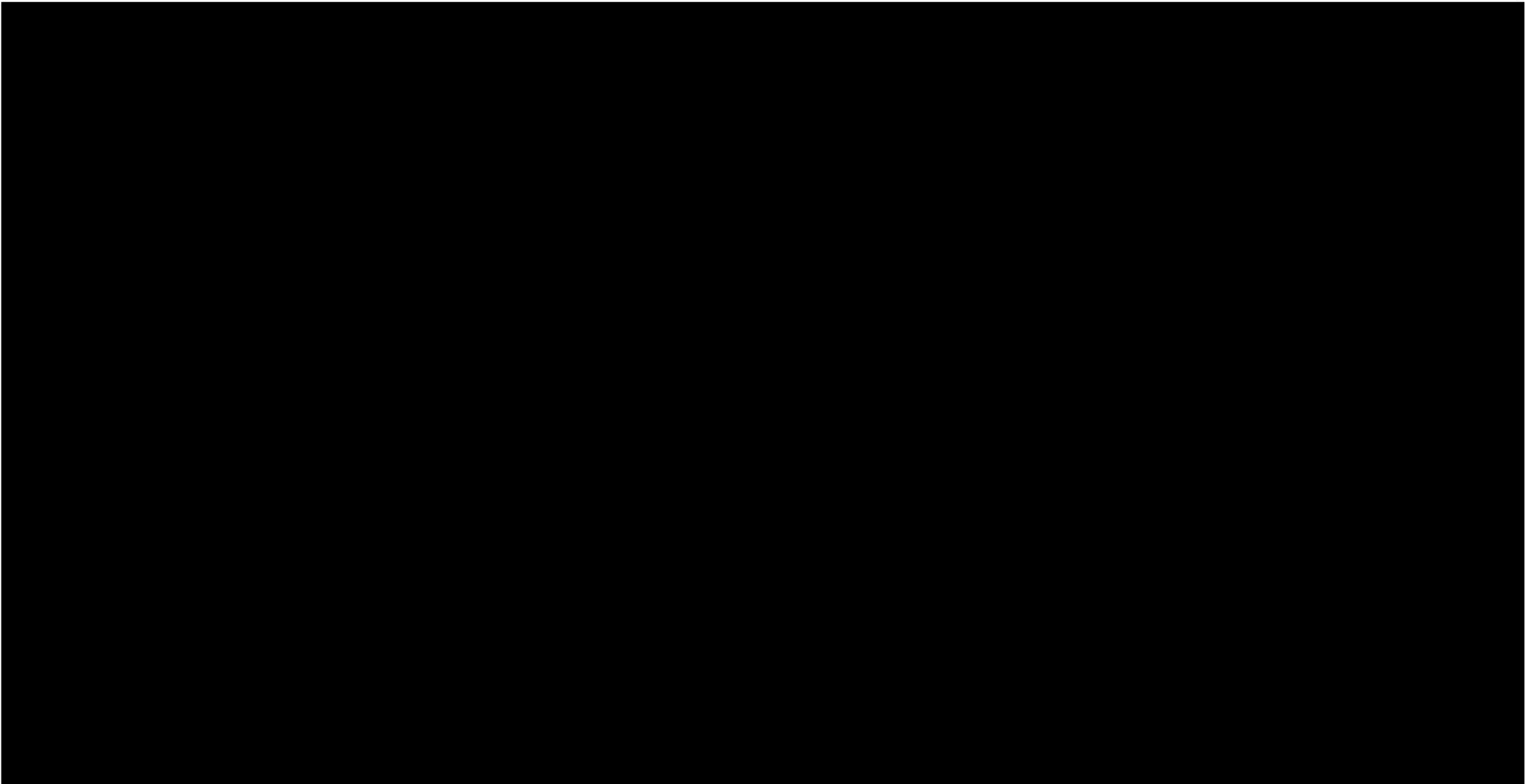


EXHIBIT 8



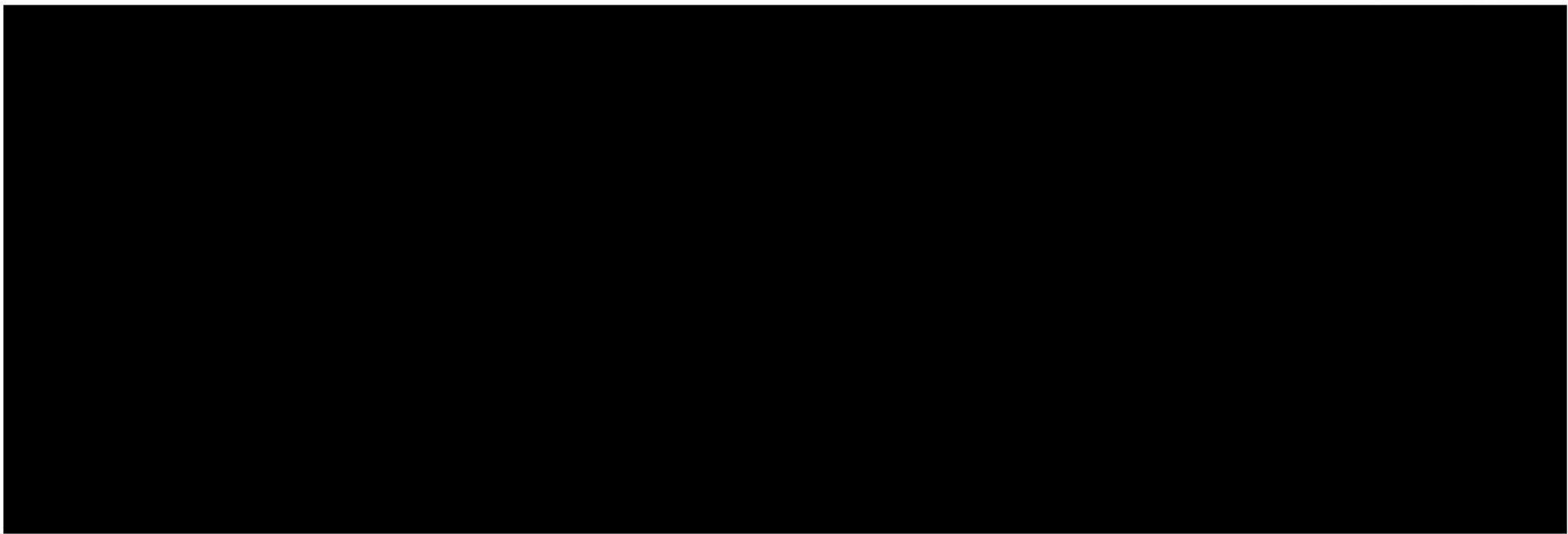
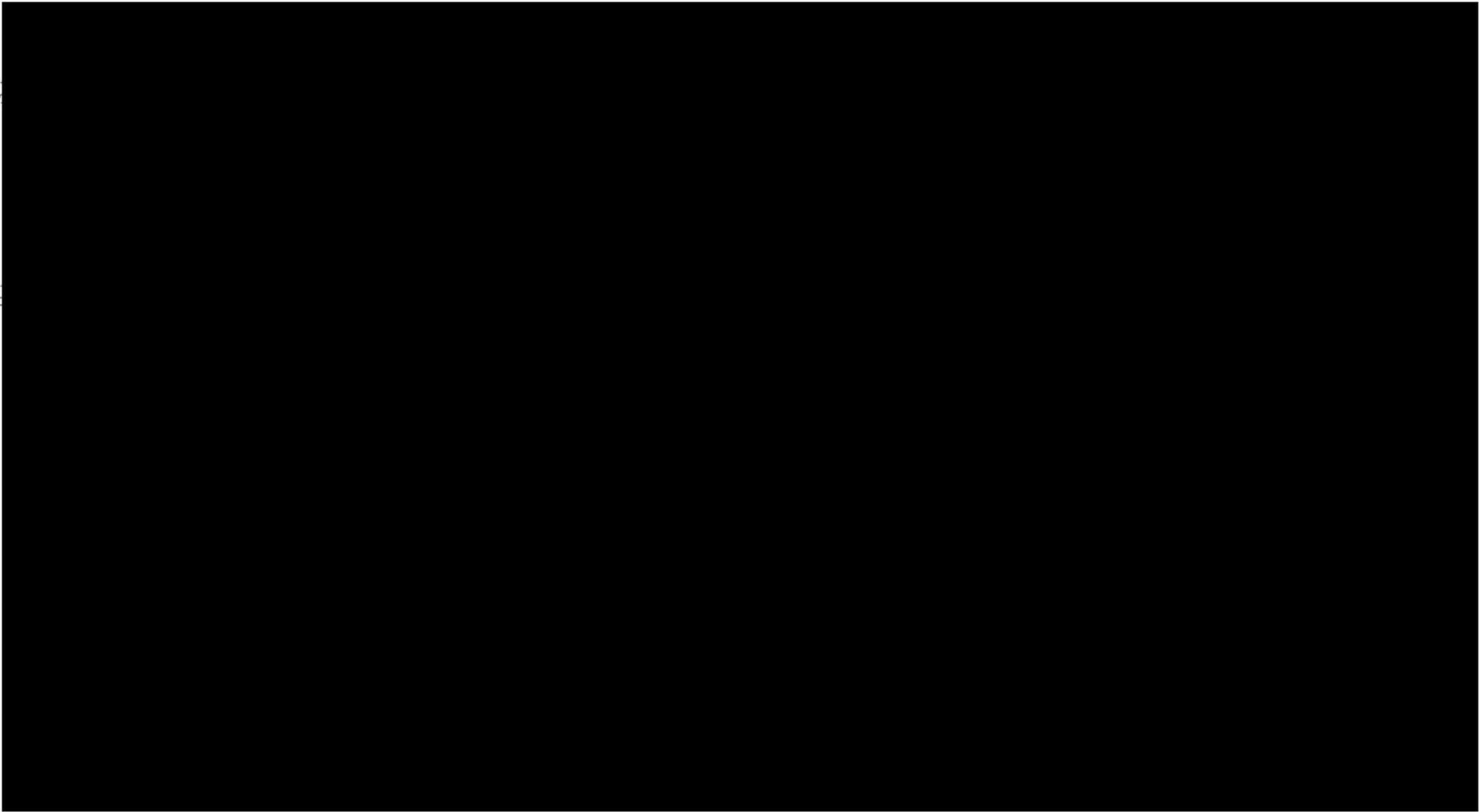


EXHIBIT 9



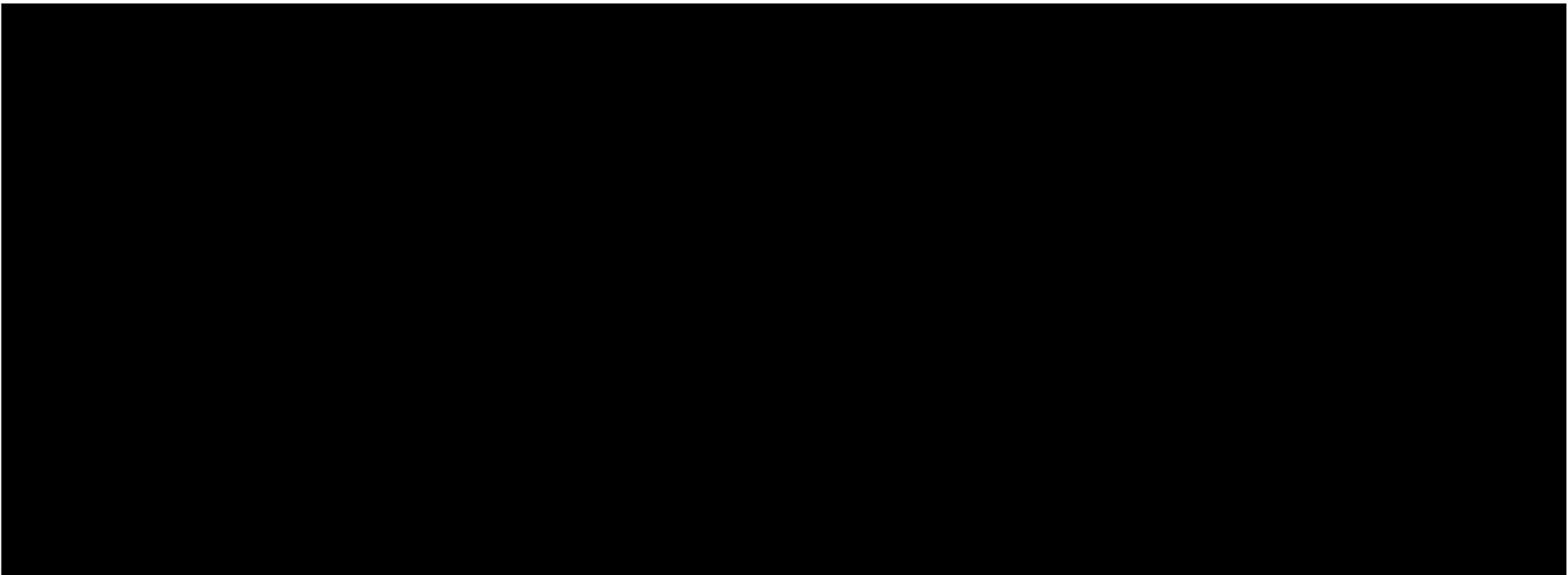
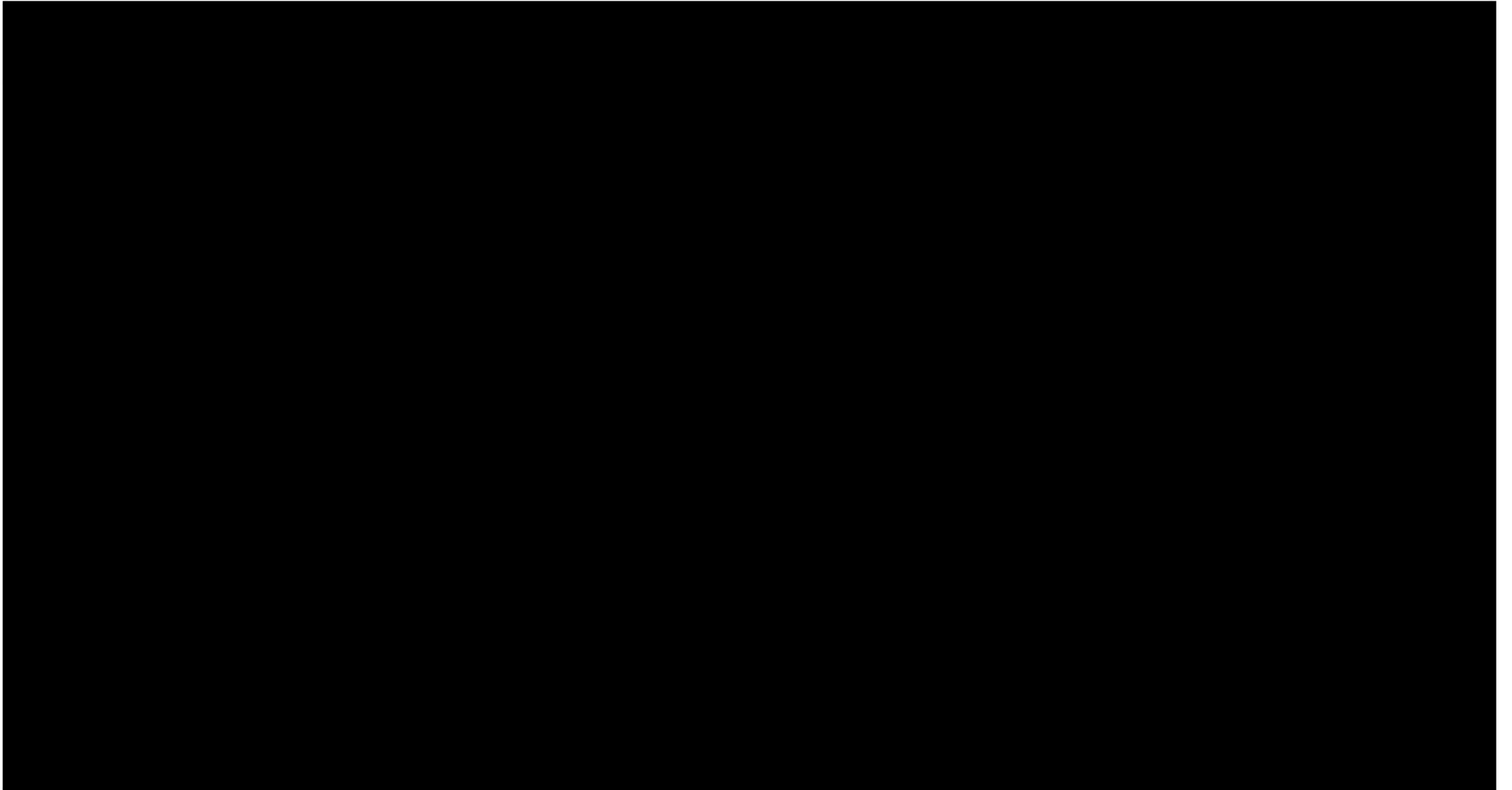


EXHIBIT 10



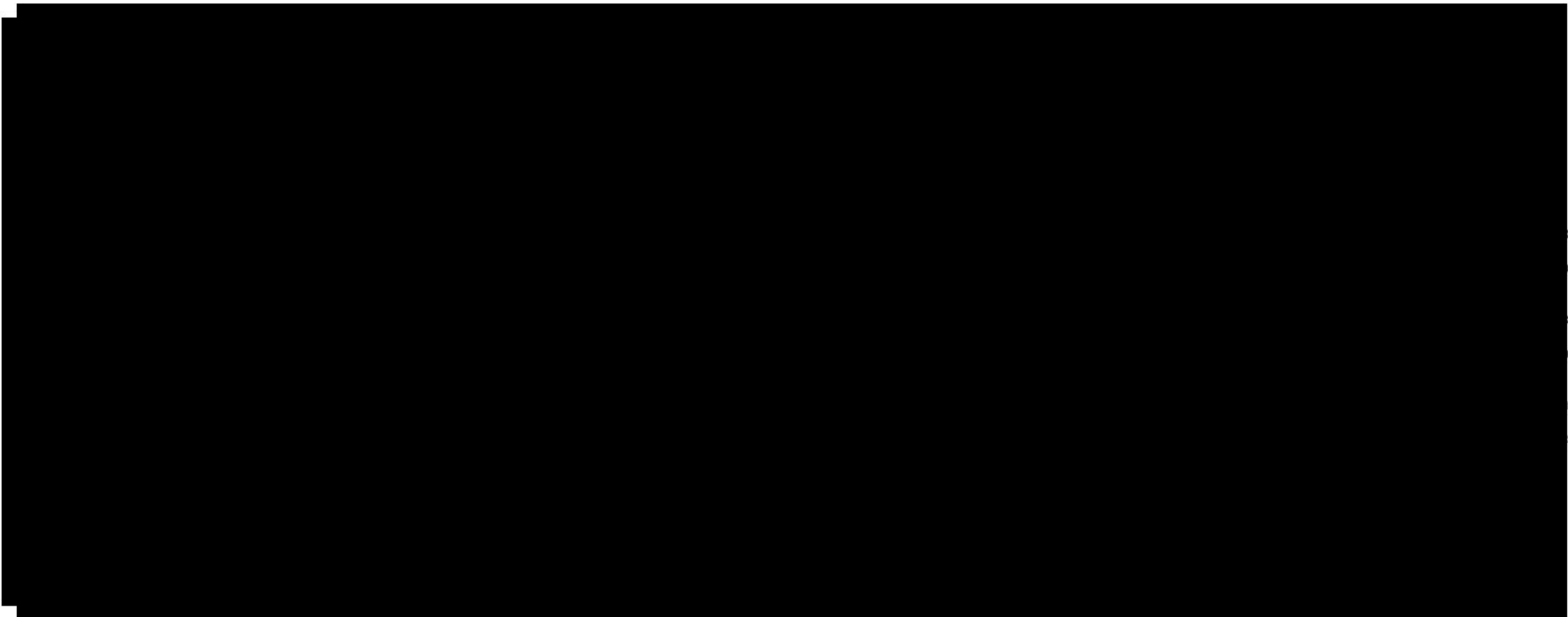


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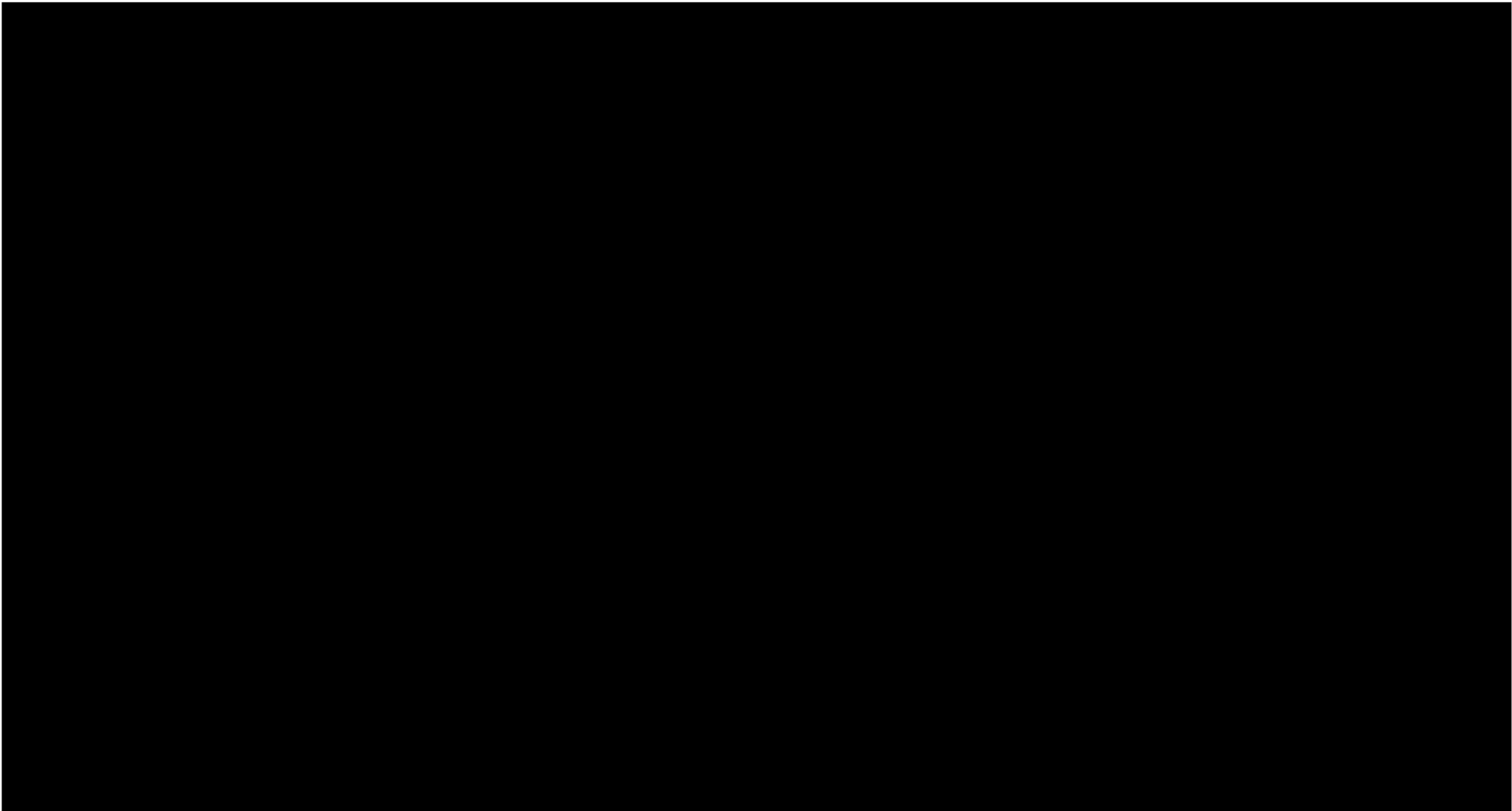


EXHIBIT 12

EXHIBIT 13

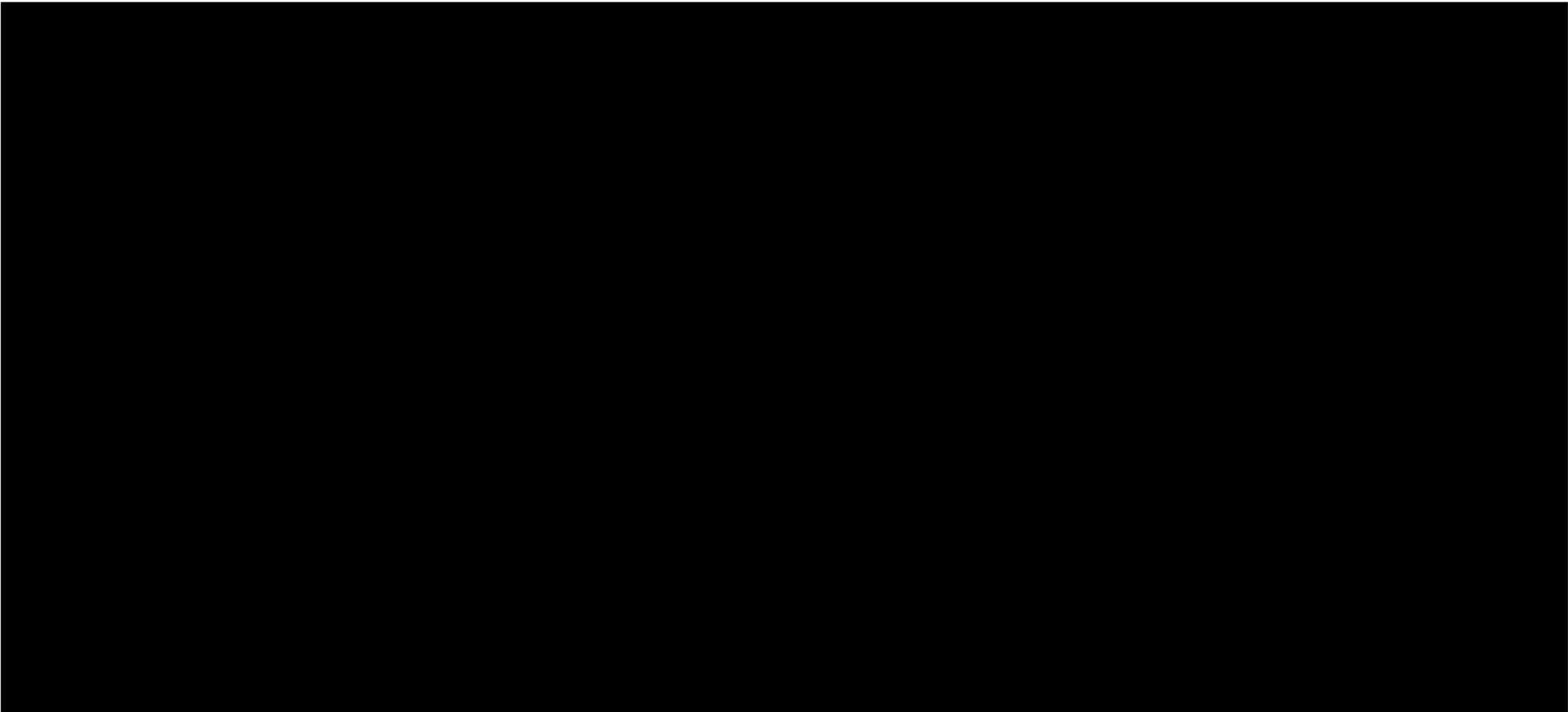
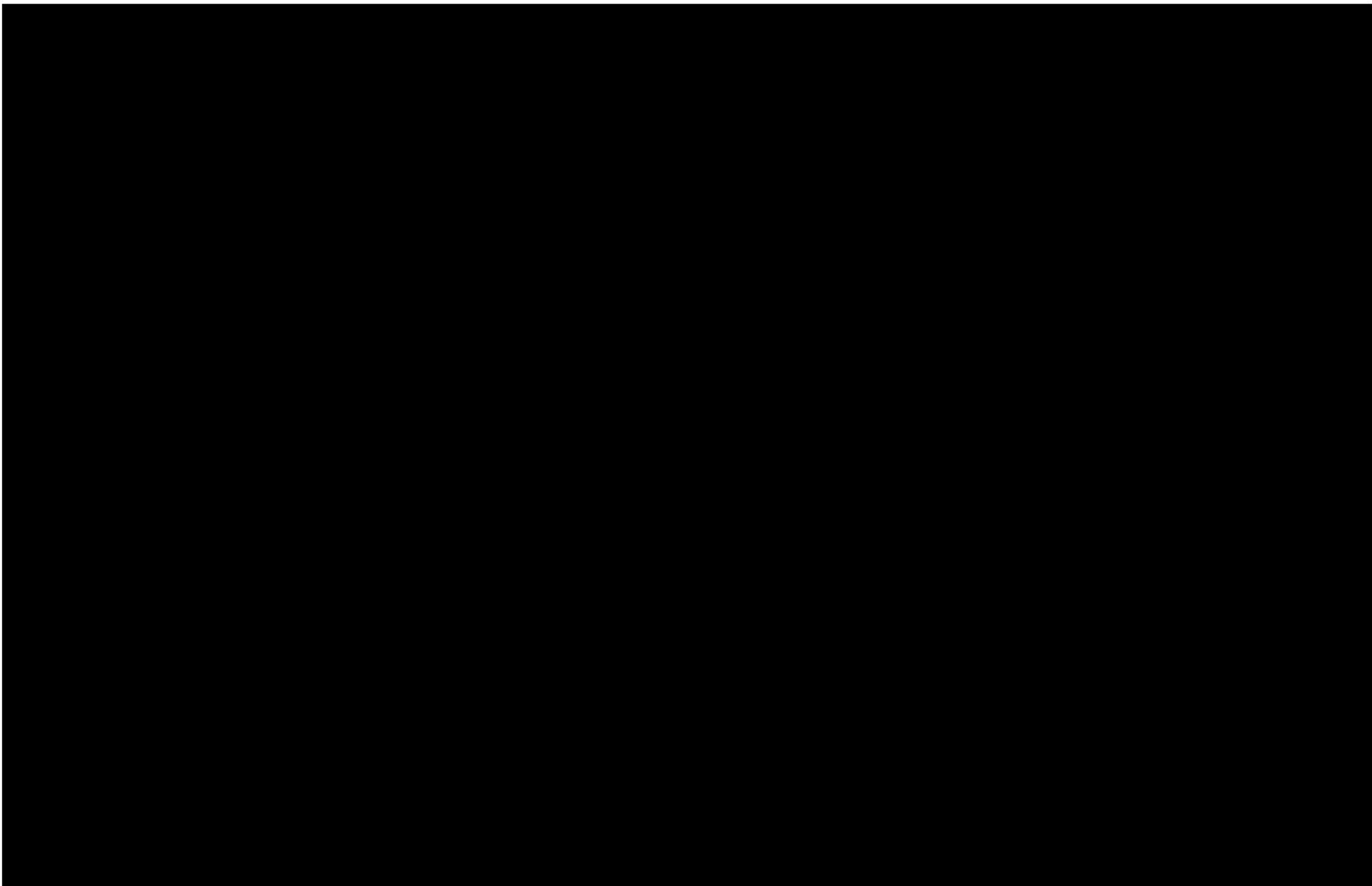


EXHIBIT 14



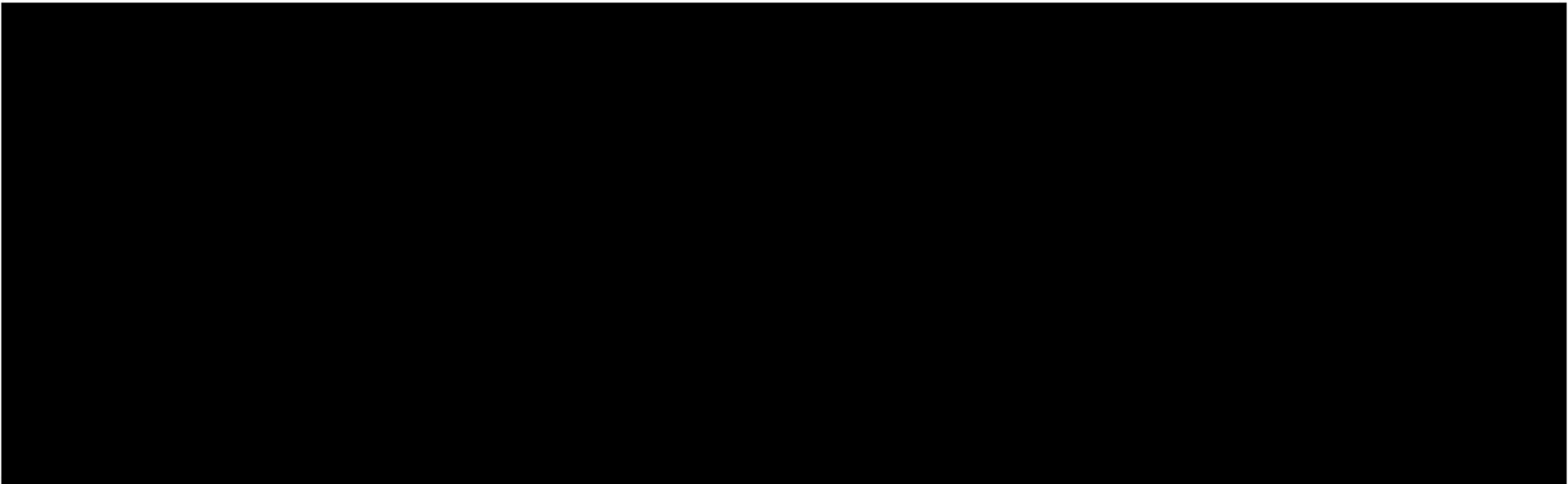
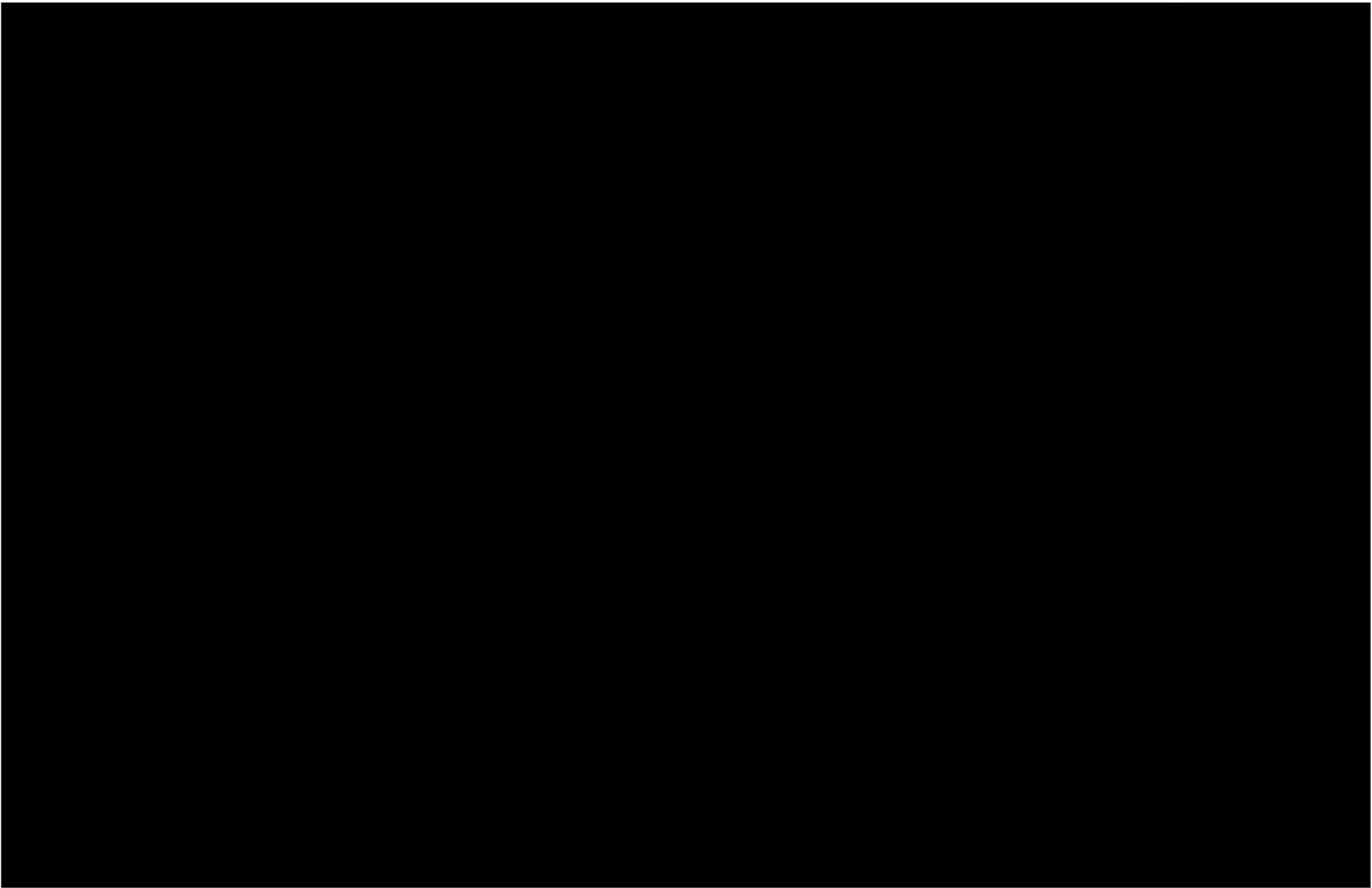


EXHIBIT 15



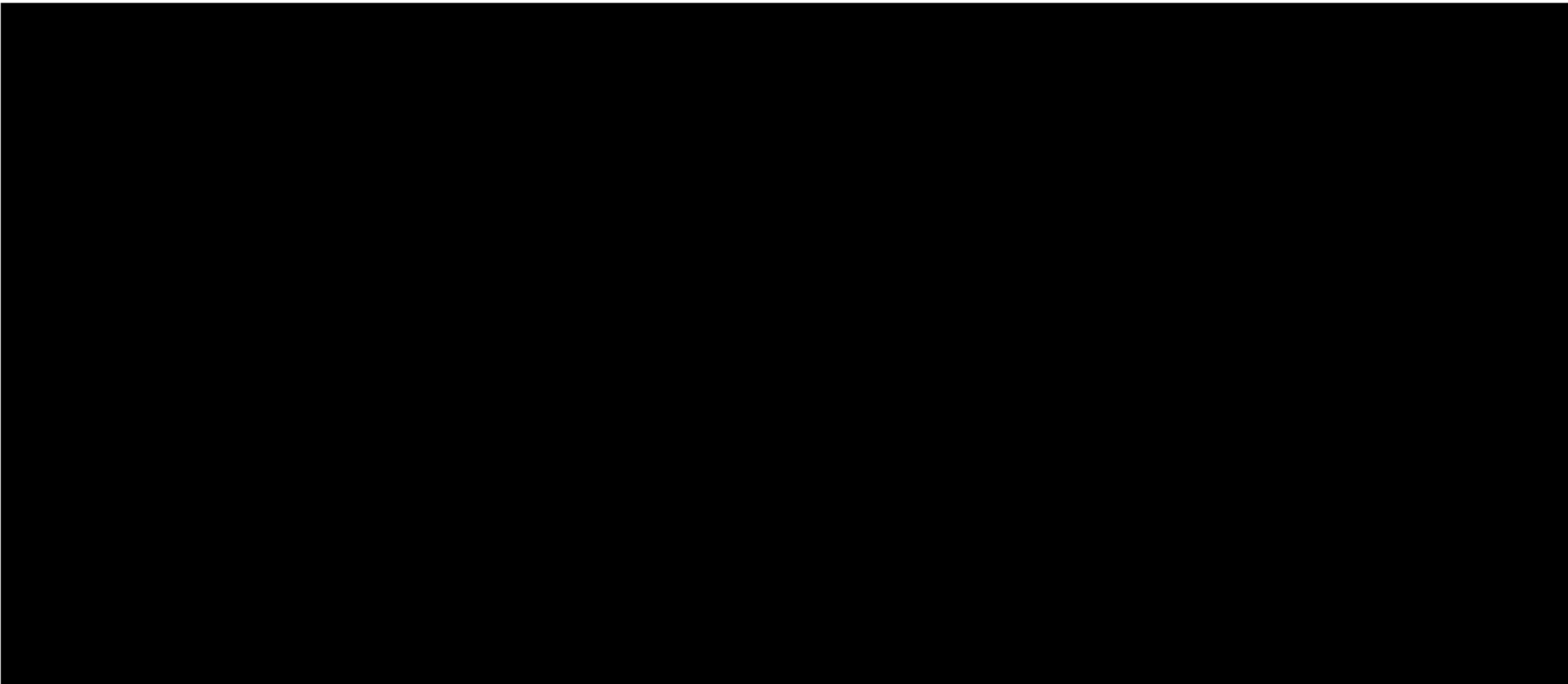


EXHIBIT 16

EXHIBIT 17

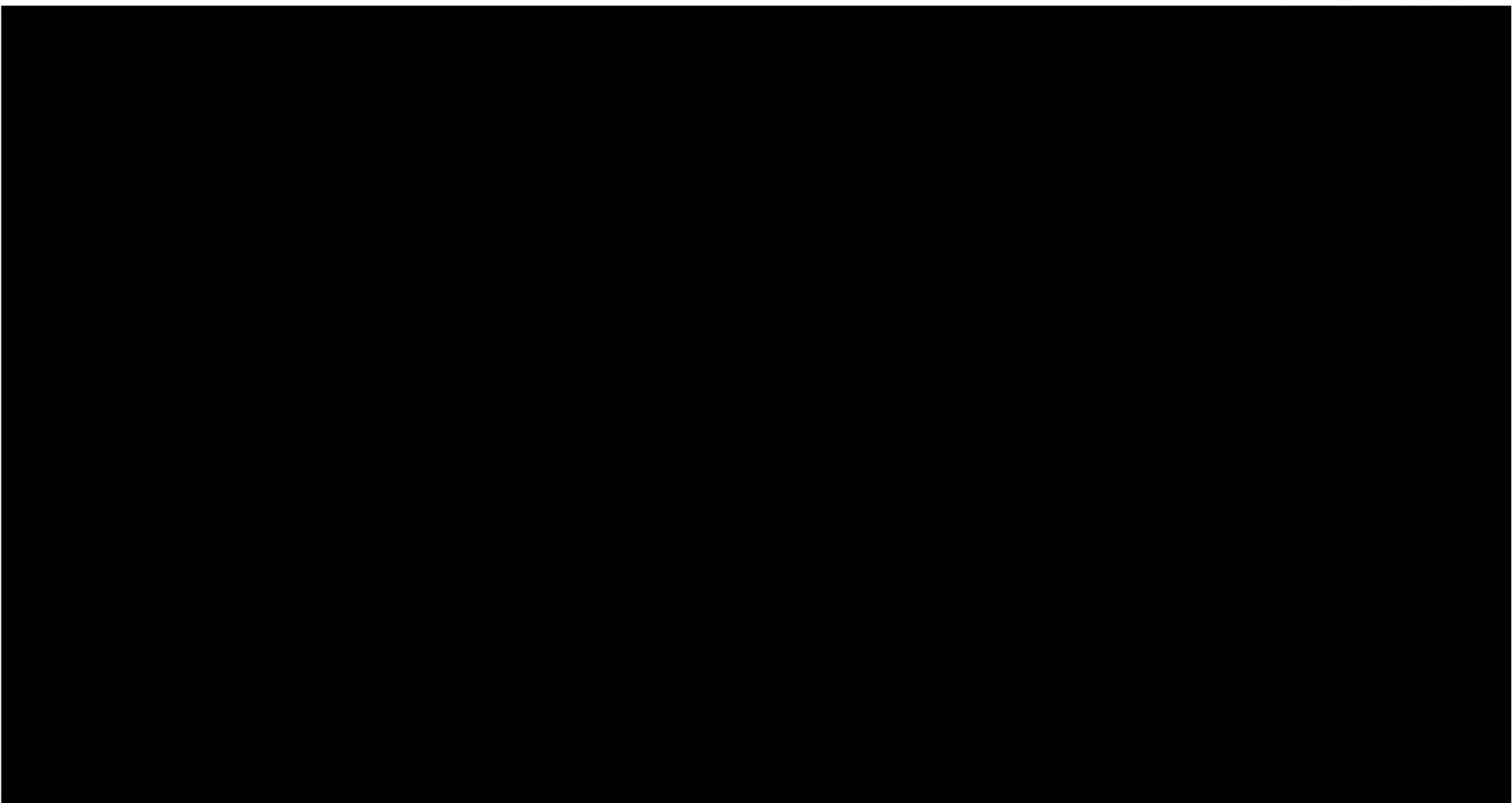


EXHIBIT 18



EXHIBIT 19

PROOF OF SERVICE

STATE OF COLORADO, COUNTY OF JEFFERSON:

I, Michael Wunderlich, am employed in the aforesaid county, State of Colorado; I am over the age of 18 years and not a party to the within action; my business address is 9737 Wadsworth Pkwy, Suite G-100, Westminster, Colorado 80021.

On December 8, 2020, I served the foregoing **SUBMISSION OF EXPUNGEMENT HEARING EXHIBITS** on Interested Parties in this action as follows:

Ms. Jennifer E. Novoselsky, Esq.
E-mail: jnovoselsky@rkchicago.com
Reyes Kurson LTD
Attorney for Respondent
Prudential Equity Group, LLC

[X] (BY DR PORTAL) I caused the documents to be uploaded to the FINRA Dispute Resolution Portal upon which the documents are accessible to the persons listed above. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

[X] (STATE) I certify (or declare) under penalty of perjury under the laws of the State of Colorado that the foregoing is true and correct.

Executed on December 8, 2020, at Westminster, Colorado.



Michael Wunderlich
HLBS Law
T: (720) 600-4298
E. discovery@hlbslaw.com