

Sydney Metro City & Southwest

Independent Certification of the TSE Works

Independent Certifier Deed

Contract No: 00013/11201

Transport for NSW

ABN 18 804 239 602

APP Corporation Pty Limited

ABN 29 003 764 770

John Holland Pty Ltd

ABN 11 004 282 268

CPB Contractors Pty Ltd

ABN 98 000 893 667

Ghella Pty Ltd

ABN 85 142 392 461

(From the Accession Date) the person who accedes to
this deed under clause 2

OpCo2

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Exhibit

1 Initial Certification and Monitoring Plan

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THIS INDEPENDENT CERTIFIER DEED is made on

22 June

2017

BETWEEN:

- (1) **John Holland Pty Ltd** ABN 11 004 282 268 of Level 3, 65 Pirrama Road, Pyrmont NSW 2009;
- (2) **CPB Contractors Pty Ltd** ABN 98 000 893 667 of Level 18, 177 Pacific Highway, Chatswood NSW 2067;
- (3) **Ghella Pty Ltd** ABN 85 142 392 461 of Level 23, 111 Pacific Highway, North Sydney NSW 2060,

(together the **TSE Contractor**);
- (4) **Transport for NSW** ABN 18 804 239 602 a New South Wales Government agency constituted under section 3C of the *Transport Administration Act 1988* (NSW) of Level 43, 680 George Street, Sydney NSW 2000 (**TfNSW**);
- (5) **APP Corporation Pty Limited** ABN 29 003 764 770 of Level 10, 111 Pacific Highway, North Sydney NSW 2060 (**Independent Certifier**); and
- (6) **(From the Accession Date) the person who accedes to this deed under clause 2, being the person defined as the "Acceding Party" in the Accession Deed that TfNSW requires the Independent Certifier and OpCo2 to execute under clause 2(a) (OpCo2).**

RECITALS:

- (A) On or about the date of this deed, the TSE Contractor entered into the TSE Project Deed with TfNSW in respect of the TSE Works.
- (B) The Independent Certifier represents that it is experienced generally in design and construction and, in particular, in the design and construction of works similar to the TSE Works and offers its expertise in those fields.
- (C) The Project Agreements contemplate that the Independent Certifier will discharge those functions set out in Schedule 1.
- (D) The Independent Certifier will perform its obligations on the terms of this deed.
- (E) In accordance with the TSE Project Deed, the TSE Contractor will progressively hand control of the TSE Works to TfNSW, so that TfNSW may hand control of the TSE Works to OpCo2 in order to allow it to undertake the OTS2 Project Works and to commence operation of Sydney Metro City & Southwest.
- (F) The Independent Certifier will issue a Notice of Construction Completion in respect of each Portion of the TSE Works and OpCo2 will be bound by the Independent Certifier's certification as set out in each Notice of Construction Completion for the purposes of taking possession of the Construction Site.
- (G) OpCo2 has not been engaged by TfNSW. Once OpCo2 has been engaged, OpCo2 will execute the Accession Deed substantially in the form included in Schedule 6 and will thereby accede to the terms of this deed.

THE PARTIES AGREE AS FOLLOWS:

1. INTERPRETATION

1.1 Definitions

In this deed:

Accession Date has the same meaning as given to the term "Effective Date" in the Accession Deed, being the date from which OpCo2 accedes to this deed.

Accession Deed means the deed in substantially the same form as Schedule 6 (with relevant details duly completed) which is to be executed by the Independent Certifier, the TSE Contractor, TfNSW and OpCo2 in accordance with clause 2.

Additional Third Party Agreement has the meaning given in clause 4.17(a)(ii)(B).

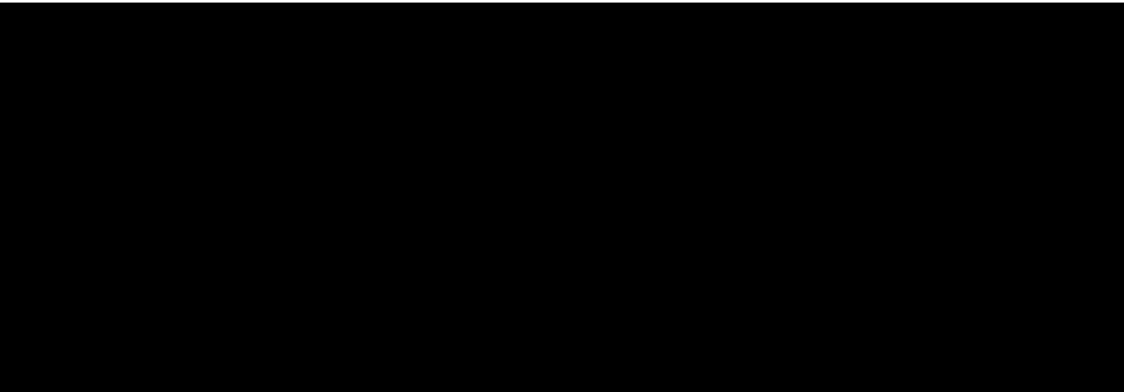
Barangaroo/Metro Interface Agreement means the deed entitled "Barangaroo/Metro Interface Agreement" between TfNSW and the Barangaroo Delivery Authority dated 16 June 2017, a copy of which is included in Schedule 8.

Certification and Monitoring Plan means the plan that the Independent Certifier is required to prepare in accordance with clause 4.8, and in respect of which TfNSW has not issued a notice under clause 4.8(c), as that plan is updated from time to time in accordance with clause 4.9 of this deed.

Completion Phase Services means all Services related to:

- (a) the Construction Completion of each Portion;
- (b) the performance by the TSE Contractor of its obligations in respect of Construction Completion of the TSE Works; and
- (c) completion under the other Project Agreements,

as described in Schedule 1.



Construction Phase Services means all Services related to:

- (a) the construction of the TSE Works;
- (b) the performance by the TSE Contractor of its construction obligations in respect of the TSE Works; and
- (c) construction under the other Project Agreements,

as described in Schedule 1.

[REDACTED]

Cross City Tunnel Interface Deed means the deed entitled "Cross City Tunnel Interface Deed" between TfNSW, Transurban CCT Nominees Pty Ltd in its own capacity and as trustee of the Transurban CCT Trust, Transurban CCT Pty Ltd, Roads and Maritime Services and the State of New South Wales.

Day 1 Clause means clauses 1, 2A, 5.2, 5.3, 7, 8, 9 and 12.

Defects Phase Services means the Services related to:

- (a) Defects;
 - (b) the performance by the TSE Contractor of its obligations to correct Defects during the Defects Correction Period; and
 - (c) defects under the other Project Agreements,
- as described in Schedule 1.

Design Phase Services means all Services related to:

- (a) the design of the TSE Works;
 - (b) the performance by the TSE Contractor of its design obligations in respect of the TSE Works; and
 - (c) design under the other Project Agreements,
- as described in Schedule 1.

Dispute Representatives has the meaning given to that term in clause 9.2.

Fee means the amount payable to the Independent Certifier for the performance of the Services in accordance with the Payment Schedule.

[REDACTED]

[REDACTED]

GST, GST law and other terms used in clause 11 have the meanings used in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) (as amended from time to time) or any replacement or other relevant legislation and regulations, except that **GST law** also includes any applicable rulings. Any reference to GST payable by the Supplier (as defined in clause 11) includes any GST payable by the representative member of any GST group of which the Supplier is a member.

Indemnity for Delay Loss means any liability under the indemnity for delay in clause 17.10(d)(ii) of the TSE Project Deed caused by any conduct, act or omission of the

Independent Certifier (other than any conduct or act performed in accordance with this deed) causing delay to the TSE Contractor achieving Construction Completion by the relevant Follow-on Site Access Dates.

Independent Certifier's Project Director means the relevant person referred to in Schedule 3 or any other person holding that position in accordance with clause 4.4(b)(ii).

Interface Owners means:

- (a) in relation to the Barangaroo/Metro Interface Agreement, Barangaroo Delivery Authority (ABN 94 567 807 277);
- (b) in relation to the Cross City Tunnel Interface Deed:
 - (i) Transurban CCT Nominees Pty Ltd (ACN 168 538 127) in its own capacity and as trustee of the Transurban CCT Trust;
 - (ii) Transurban CCT Pty Ltd (ACN 166 658 448); and
 - (iii) Roads and Maritime Services (ABN 76 236 371 088);
- (c) in relation to the Sydney Council Interface Agreement, Council of the City of Sydney (ABN 22 636 550 790);
- (d) in relation to the Sydney Trains TSE Interface Agreement:
 - (i) Sydney Trains (ABN 38 284 779 682); and
 - (ii) Rail Corporation of New South Wales (ABN 59 325 778 353);
- (e) in relation to the WAD, Roads and Maritime Services (ABN 76 236 371 088);
- (f) in relation to the WestConnex Interface Deed, Sydney Motorway Corporation Pty Ltd (ABN 47 601 507 591); and
- (g) in relation to the Willoughby Council TSE Interface Agreement, Willoughby City Council (ABN 47 974 826 099).

Liquidated Damages Loss means any liability for Liquidated Damages under the TSE Project Deed caused by any conduct, act or omission of the Independent Certifier (other than any conduct or act performed in accordance with this deed) causing delay to the TSE Contractor achieving Construction Completion by the relevant Date for Construction Completion.

Loss means any cost, expense, loss, damage, liability or other amount whether present, future, fixed, unascertained, actual or contingent.

Other Parties means TfNSW, the TSE Contractor and, from the Accession Date, OpCo2.

Payment Schedule means Schedule 2 to this deed.

PDCS means TfNSW's web based TeamBinder project data and collaboration system, or such other electronic project data and collaboration system notified by TfNSW's Representative under clause 12.1.

Performance Incentive Payment means the amount determined in accordance with Schedule 7.

Project Agreements means:

- (a) the TSE Project Deed;
- (b) the TSE-OTS2 Cooperation and Integration Deed;
- (c) the Third Party Agreements; and
- (d) any Additional Third Party Agreements.

RMS QA Specifications means all quality assurance specifications published from time to time by RMS on its website (www.rms.nsw.gov.au) and any other quality assurance specification prepared as approved and notified by RMS.

Services means the services listed in Schedule 1 to this deed.

Substitute Certifier has the same meaning as in clause 7(d).

Sydney Council Interface Agreement means the agreement entitled "Council Interface Agreement" between TfNSW and Council of the City of Sydney.

Sydney Trains TSE Interface Agreement means the agreement entitled "Tunnel and Station Excavation Works (TSE) Interface Agreement" between TfNSW and Sydney Trains.

Technical Director means the Sydney Metro Delivery Office role that leads the provision of expert technical assurance and advice on product outcomes across all Sydney Metro Northwest and Sydney Metro City & Southwest program phases and technical disciplines, and is TfNSW's technical authority for required technical and product outcomes for Sydney Metro Northwest and Sydney Metro City & Southwest.

Term means the term of this deed as set out in clause 3.2.

TfNSW's Representative has the same meaning as the "Principal's Representative" in the TSE Project Deed.

Third Party means a party to a Third Party Agreement other than TfNSW.

Third Party Agreements mean:

- (a) the Barangaroo/Metro Interface Agreement;
- (b) the Cross City Tunnel Interface Deed;
- (c) the Sydney Council Interface Agreement;
- (d) the Sydney Trains TSE Interface Agreement;
- (e) the WAD;
- (f) the WestConnex Interface Deed; and
- (g) the Willoughby Council TSE Interface Agreement.

TSE Project Deed means the deed titled "Sydney Metro City & Southwest - Tunnel and Station Excavation Works Design and Construction Deed" between TfNSW and the TSE Contractor dated on or about the date of this deed.

TSE Works means the Project Works and the Temporary Works.

WAD means the deed entitled "Works Authorisation Deed" between TfNSW and Roads and Maritime Service dated.

WestConnex Interface Deed means the agreement entitled "WestConnex Interface Deed" between TfNSW and Sydney Motorway Corporation Pty Ltd.

Wilful Misconduct means any malicious conduct or any breach of this deed which results from a conscious and intentional indifference and disregard to the relevant provisions of this deed and the risk of causing the Loss claimed by the relevant Other Party in respect of the breach but does not include errors of judgement, mistakes, errors or acts or omissions made in good faith.

Willoughby Council TSE Interface Agreement means the interface agreement entitled "Tunnel and Station Excavation Works (TSE) Interface Agreement" between TfNSW and Willoughby City Council.

1.2 Definitions in TSE Project Deed

Except as otherwise defined in clause 1.1, terms used in this deed that are defined in the TSE Project Deed will have the same meaning in this deed as in the TSE Project Deed.

1.3 Interpretation

In this deed:

- (a) headings are for convenience only and do not affect interpretation, and the following rules apply in interpreting this deed unless the context makes clear that a rule is not intended to apply:
 - (i) an obligation or a liability assumed by, or a right conferred on, 2 or more persons binds or benefits them jointly and severally;
 - (ii) **person** includes an individual, the estate of an individual, a body politic, a corporation, a statutory or other authority, an association or a joint venture (whether incorporated or unincorporated), a partnership and a trust;
 - (iii) a reference to a party includes that party's executors, administrators, successors and permitted substitutes and assigns, including persons taking by way of novation and, in the case of a trustee, includes a substituted or an additional trustee;
 - (iv) a reference to a document (including this deed and any other deed, agreement, instrument, guideline or code of practice) is to that document as amended, varied, novated, ratified, supplemented or replaced from time to time;
 - (v) a reference to a statute includes its delegated legislation and a reference to a statute or delegated legislation or any section or provision of either of these includes:
 - (A) all ordinances, by-laws, regulations of and other statutory instruments (however described) issued under the statute or delegated legislation; and
 - (B) any consolidations, amendments, re-enactments and replacements;
 - (vi) a word importing the singular includes the plural (and vice versa), and a word indicating a gender includes every other gender;
 - (vii) a reference to a party, clause, schedule, exhibit, attachment or annexure is a reference to a party, clause, schedule, exhibit, attachment or annexure to

or of this deed and a reference to this deed includes all schedules, exhibits, attachments and annexures to it;

- (viii) if a word or phrase is given a defined meaning, any other part of speech or other grammatical form of that word or phrase has a corresponding meaning;
- (ix) **includes** in any form is not a word of limitation;
- (x) a reference to **\$** or **dollar** is to Australian currency;
- (xi) where under this deed:
 - (A) a notice, certificate or direction is required to be given; or
 - (B) a default must be remedied, within a stated number of days, only Business Days will be counted in computing the number of days;
- (xii) for all purposes other than as set out in clause 1.3(a)(xi), day means calendar day;
- (xiii) a reference to a **month** is a reference to a calendar month;
- (xiv) a reference to a court or tribunal is to an Australian court or tribunal;
- (xv) a reference to a group of persons is a reference to all of them collectively, to any two or more of them collectively and to each of them individually; and
- (xvi) any reference to **information** will be read as including information, representations, statements, data, samples, calculations, assumptions, deductions, determinations, drawings, design, specifications, models, plans and other documents in all forms including the electronic form in which it was generated.

1.4 **Business Day**

If the day on or by which anything is to be done under this deed is not a Business Day, that thing must be done no later than the next Business Day.

1.5 **Ambiguous terms**

- (a) If TfNSW considers, or if any of the Independent Certifier, TSE Contractor or OpCo2 notifies TfNSW's Representative in writing that it considers, that there is an ambiguity, discrepancy, or inconsistency in, or between, the documents comprising this deed (including in any schedules), TfNSW's Representative must direct the interpretation of this deed which the parties must follow.
- (b) TfNSW's Representative, in giving a direction in accordance with clause 1.5(a), is not required to determine whether or not there is an ambiguity, discrepancy, or inconsistency in, or between, the documents comprising this deed.
- (c) Any direction which TfNSW's Representative gives in accordance with clause 1.5(a):
 - (i) will not relieve the Independent Certifier, the TSE Contractor or OpCo2 from or alter its liabilities or obligations under this deed or otherwise according to Law;

- (ii) will not limit or otherwise affect TfNSW's rights against any of the Independent Certifier, the TSE Contractor or OpCo2, whether under this deed or otherwise according to Law; and
- (iii) must, in respect of a notice given under clause 1.5(a) by the Independent Certifier, the TSE Contractor or OpCo2, be given within 20 Business Days of receipt of that notice.

1.6 **No bias against drafter**

In the interpretation of this deed, no rule of construction applies to the disadvantage of one party on the basis that the party or its representative put forward or drafted this deed or any provision in it.

1.7 **Excluding liability**

Any provision of this deed which seeks to limit or exclude a liability of a party is to be construed as doing so only to the extent permitted by Law.

2. **ACCESSION BY OPCO2**

- (a) The TSE Contractor and the Independent Certifier must, upon being requested by TfNSW, execute four counterparts of the Accession Deed in accordance with TfNSW's instructions and provide such copies to TfNSW, notwithstanding that the counterparts of the Accession Deed may not have been signed by TfNSW or OpCo2.
- (b) The TSE Contractor and the Independent Certifier may not object to the identity of the person selected by TfNSW to be OpCo2.
- (c) OpCo2 and the obligations owed to OpCo2 under this deed will only become effective upon the accession of OpCo2 to this deed in accordance with this clause 2 and the executed Accession Deed.
- (d) Upon accession of OpCo2 to this deed as referred to in clause 2(c), the rights and liabilities of the parties to this deed will be as set out in this deed as amended in accordance with the requirements of the Accession Deed.
- (e) TfNSW will provide each of the Independent Certifier and the TSE Contractor with a copy of the Accession Deed duly executed by TfNSW and OpCo2.

2A. **CONDITIONS PRECEDENT**

2A.1 **Commencement of obligations**

The rights and obligations of the parties under this deed will not commence unless and until TfNSW has notified the Independent Certifier in writing that each of the conditions precedent under the TSE Project Deed have been satisfied or waived, except for those under the Day 1 Clauses which will commence on the date of this deed.

2A.2 **Termination**

If the TSE Project Deed is terminated pursuant to clause 1A.4 of the TSE Project Deed, the Independent Certifier acknowledges that:

- (a) this deed will be taken to have terminated at the time the TSE Project Deed is terminated; and
- (b) no party will have any claim against any other party under or in respect of this deed or in respect of the reimbursement of costs or expenses or otherwise in

connection with Sydney Metro City & Southwest, except for any claim in relation to a breach of any Day 1 Clause.

3. APPOINTMENT OF THE INDEPENDENT CERTIFIER

3.1 Appointment

- (a) Each of the Other Parties appoint the Independent Certifier under this deed to perform the Services.
- (b) The Independent Certifier confirms its acceptance of the appointment referred to in clause 3.1(a).
- (c) The Independent Certifier must carry out the Services in accordance with the requirements of this deed and the Project Agreements and, to the extent the Certification and Monitoring Plan is not inconsistent with the Project Agreements or the nature of the Services, it will carry out and perform the Services in accordance with the Certification and Monitoring Plan.

3.2 Term

The Term of this deed commences on the date of this deed and continues until the earlier of:

- (a) completion of the Services; or
- (b) termination in accordance with clause 10.

3.3 Payment

TfNSW will pay the Independent Certifier:

- (a) the Fee subject to and in accordance with the Payment Schedule; and
- (b) the Performance Incentive Payment (if any) subject to and in accordance with Schedule 7 and the Payment Schedule.

3.4 Nature of Services

- (a) The Independent Certifier and the Other Parties acknowledge and agree that the Certification and Monitoring Plan is incidental to, and does not limit or otherwise affect the Services or the Independent Certifier's obligations under the deed.
- (b) Where this deed contemplates an action, agreement, decision, direction or the like by the Other Parties, and the Other Parties cannot reach agreement in respect of such action, decision, direction or the like, then TfNSW must, acting reasonably and after prior consultation with the TSE Contractor and, as relevant, OpCo2, determine the appropriate action, agreement, decision, direction or the like.
- (c) In reaching decisions in relation to this deed which may affect the Other Parties, TfNSW will take into account representations made by the TSE Contractor and OpCo2.

3.5 Rights under the Project Agreements

The Independent Certifier may exercise any of the rights granted to it under the Project Agreements for the purpose of performing the Services.

4. **INDEPENDENT CERTIFIER'S OBLIGATIONS**

4.1 **Acknowledgement**

The Independent Certifier acknowledges that:

- (a) it has received a copy of the execution version of each of the TSE Project Deed and TSE-OTS2 Cooperation and Integration Deed and draft versions of the Third Party Agreements and that it has read, and is familiar with, the terms of these documents to the extent they relate to the Services; and
- (b) its obligations extend to and include the obligations, functions, duties and services of the Independent Certifier under the Project Agreements.

4.2 **General representations and warranties**

The Independent Certifier represents and warrants that:

- (a) it is a company duly incorporated and existing under Law and has the power to execute, deliver and perform its obligations under this deed and that all necessary corporate and other action has been taken to authorise that execution, delivery and performance;
- (b) the information provided by it in connection with this deed is true, accurate and complete in all material respects and not misleading in any material respect (including by omission);
- (c) its obligations under this deed are valid, legal and binding obligations enforceable against it in accordance with its terms, subject to equitable remedies and Laws in respect of the enforcement of creditor's rights;
- (d) the execution, delivery and performance of this deed by it will not contravene any Law to which it is subject or any deed or arrangement binding on it;
- (e) it does not (in any capacity) have immunity from the jurisdiction of a court or from legal process (whether through service of notice, attachment prior to judgment, attachment in aid of execution, execution or otherwise); and
- (f) no litigation, arbitration, tax claim, dispute or administrative or other proceeding has been commenced or threatened against it which is likely to have a material adverse effect upon its ability to perform its obligations under this deed.

4.3 **Further acknowledgements and warranties**

The Independent Certifier:

- (a) acknowledges that each of the Other Parties:
 - (i) is relying upon the skill, expertise and experience of the Independent Certifier in the performance of its obligations under this deed; and
 - (ii) may suffer loss if the Independent Certifier does not perform its obligations in accordance with the requirements of this deed;
- (b) warrants to the Other Parties that, in performing the Services, it will comply with all Law, act honestly, diligently, reasonably and with the degree of professional care, knowledge, skill, expertise, experience and care which would be reasonably expected of a professional providing services similar to the Services within the

design and construction industries generally and the design and construction of major engineering works in particular;

- (c) warrants that it is familiar with and experienced in using the RMS QA Specifications;
- (d) must, at all times, act within the time requirements for the performance of its obligations under this deed and within the times prescribed under the Project Agreements (and, where no time is prescribed, within a reasonable time) and will comply with the requirements of the Payment Schedule;
- (e) without limiting clauses 4.3(a) and 4.3(b), acknowledges that the Other Parties are entitled to and will rely on any certificate or other document signed or given by the Independent Certifier under or pursuant to this deed or any Project Agreement;
- (f) without limiting its obligations under any provision of this deed, warrants to the Other Parties that:
 - (i) it will carry out and perform the Services;
 - (ii) in performing the Services it will provide, as a minimum, the levels of surveillance and resources specified in Schedule 3; and
 - (iii) without limiting subparagraphs (i) and (ii), to the extent the Certification and Monitoring Plan is not inconsistent with:
 - (A) the Project Agreements;
 - (B) the nature of the Services; or
 - (C) without limiting subparagraphs (A) or (B), the requirements of clause 4.15,

it will carry out and perform the Services in accordance with the Certification and Monitoring Plan;
- (g) will provide transport on site for the use of its site personnel;
- (h) will, in carrying out the Services, carry out physical inspections of the Construction Site, any Extra Land, the TSE Works and the TSE Contractor's Activities when appropriate or necessary to do so (including for the purpose of determining whether Construction Completion has been achieved by the TSE Contractor), and when reasonably requested by TfNSW or the TSE Contractor, in a manner which satisfies or exceeds the requirements of Schedule 3 and Schedule 4 and the Certification and Monitoring Plan (including surveillance levels and resources) and will invite and permit TfNSW and OpCo2 to accompany it on all such inspections;
- (i) will carry out the Services in a manner which does not prevent, hinder, disrupt, delay or otherwise interfere with any work or services performed by any person (including the TSE Contractor and OpCo2) except where it is the unavoidable consequence of performing the Services; and
- (j) in undertaking the Services, will comply with all the safe working requirements of the TSE Contractor and OpCo2, including the reasonable instructions of the TSE Contractor in relation to safety and site security while on the Construction Site.

4.4 Personnel

- (a) The Independent Certifier must provide experienced and skilled personnel to perform its obligations under this deed.
- (b) The Independent Certifier must ensure that the nominated people referred to in Schedule 3:
 - (i) perform the services required of their respective positions;
 - (ii) are not removed without the prior written consent of TfNSW (which consent must not be unreasonably withheld or delayed, and will be deemed to have been given in relation to a party if no response has been received from that party within 7 days of the request for removal), and if any of the people are removed:
 - (A) they must be replaced by people of at least equivalent skill, expertise and experience, having regard to the indicative requirements set out in paragraph 2 of Schedule 3 to this deed;
 - (B) they must be approved in writing by TfNSW, having regard to the indicative requirements set out in paragraph 2 of Schedule 3 to this deed; and
 - (C) there must be, prior to their removal and replacement, a proper handover to ensure that the new personnel have a reasonable understanding of the Project Agreements and the Services; and
 - (iii) are located in Sydney for the performance of the Services and are available for consultation as any party may reasonably require from time to time.
- (c) TfNSW may direct the Independent Certifier to remove from the performance of the Services any of the people referred to in Schedule 3 and the Independent Certifier must comply promptly with any such direction and nominate a replacement.
- (d) The Independent Certifier must notify the Other Parties in writing of the names of the person or persons that are authorised to sign the certificates and documents referred to in Schedule 1 which the Independent Certifier is required to execute as part of the Services, and must ensure that these certificates and documents are signed by the person or persons so notified.
- (e) The Independent Certifier must make available the additional personnel nominated in paragraph 5 of Schedule 2 to the extent required by TfNSW.
- (f) The Independent Certifier must ensure that the persons appointed to the positions of:
 - (i) the Independent Certifier's Project Director;
 - (ii) the Independent Certifier's Representative for Design Phase Services; and
 - (iii) the Independent Certifier's Representative for Construction Phase Services, including any replacements, at all times;
 - (iv) have the authority to act on behalf of and to bind the Independent Certifier in respect of the Services;

- (v) have full authority to promptly execute documents (including any certifications) and to promptly make decisions in relation to the Services; and
- (vi) have delegated authority to bind the Independent Certifier in relation to any matter without the need to obtain any additional internal or corporate approvals from the Independent Certifier or any entity that comprises the Independent Certifier.

4.5 **Subcontracting**

- (a) Subject to clause 4.5(c), the Independent Certifier may not subcontract the performance of any of the Services without the prior written consent of the Other Parties (which consent must not be unreasonably withheld or delayed, and will be deemed to have been given in relation to a party if no response has been received from that party within 7 days of the request to subcontract).
- (b) The Independent Certifier remains responsible for the performance of the Services in accordance with this deed, notwithstanding any such subcontracting and will be liable for the acts and omissions of any subcontractor as if they were acts or omissions of the Independent Certifier.
- (c) Unless TfNSW otherwise approves in writing, the Independent Certifier must contract with the subcontractors set out in Schedule 5 for the performance of the relevant parts of the Services.

4.6 **Quality Assurance**

- (a) The Independent Certifier must implement a quality system in accordance with AS/NZS ISO9000 and AS/NZS ISO9001, and otherwise in a form reasonably acceptable to the Other Parties to ensure compliance of the Services with the requirements of this deed.
- (b) The Independent Certifier will not be relieved of any requirement to perform any obligation under this deed as a result of:
 - (i) compliance with the quality assurance requirements of this deed; or
 - (ii) any acts or omissions of the Other Parties with respect to the quality assurance requirements of this deed, including any review of, comments upon, or notice in respect of, the Certification and Monitoring Plan or any audit under clause 4.11.

4.7 **Information provided to Independent Certifier**

Subject to clause 4.7(b), the Independent Certifier is entitled to rely on information provided to it in accordance with the TSE Project Deed by either of TfNSW or the TSE Contractor as being true and correct in all material respects unless:

- (a) such information is:
 - (i) manifestly incorrect;
 - (ii) provided on a qualified basis; or
 - (iii) actually known or ought to have been known by the Independent Certifier to be untrue or incorrect as a result of it carrying out the Services in accordance with, and to the standards acknowledged, required by, or warranted in this deed; or

- (b) TfNSW or the TSE Contractor (as the case may be) subsequently informs the Independent Certifier of any change to the information provided to it.

4.8 **Certification and Monitoring Plan**

- (a) The Independent Certifier must prepare and submit to the Other Parties within 25 Business Days of the date of this deed a Certification and Monitoring Plan which must:
 - (i) be based on the initial Certification and Monitoring Plan contained in Exhibit A;
 - (ii) meet or exceed the requirements of Schedule 3;
 - (iii) not reduce the effectiveness, methodology, scope, effect, resources or expertise contained in the initial Certification and Monitoring Plan; and
 - (iv) comply with the requirements for the Certification and Monitoring Plan in Schedule 4 of this deed.
- (b) The Other Parties may review the Certification and Monitoring Plan submitted under clause 4.8(a).
- (c) TfNSW may, if the Certification and Monitoring Plan does not comply with this deed or if TfNSW believes (after prior consultation with the TSE Contractor and, as relevant, OpCo2) that the Certification and Monitoring Plan does not provide the information required by Schedule 4, notify the Independent Certifier of the non-compliance.
- (d) If the Independent Certifier receives a notice under clause 4.7(b)(ii), the Independent Certifier must promptly submit an amended Certification and Monitoring Plan to the Other Parties, after which clause 4.7(b) will reapply.
- (e) If the Independent Certifier does not receive a notice under clause 4.7(b)(ii) within 15 Business Days after the submission of the relevant Certification and Monitoring Plan, the relevant Certification and Monitoring Plan submitted by the Independent Certifier will be the Certification and Monitoring Plan with which the Independent Certifier must comply (as it is updated under clause 4.9).

4.9 **Revisions to Certification and Monitoring Plan**

- (a) The Independent Certifier must:
 - (i) progressively amend, update and develop the Certification and Monitoring Plan throughout the performance of the Services as necessary to reflect the commencement of new stages of the TSE Works, any Changes and any changes in the manner of performing the Services;
 - (ii) ensure that any amendments, updates or developments of the Certification and Monitoring Plan under clause 4.9(a) are consistent with, and provide, the information set out in Schedule 4; and
 - (iii) submit each revision of the Certification and Monitoring Plan to the Other Parties for their review and comment.
- (b) The Other Parties may review the Certification and Monitoring Plan submitted under clause 4.9(a)(iii).

- (c) TfNSW may, if the Certification and Monitoring Plan does not comply with this deed or TfNSW believes (after prior consultation with the TSE Contractor and, as relevant, OpCo2) that the revised Certification and Monitoring Plan will lead to a reduction in the effectiveness, methodology, scope, effort, resources or expertise contained in the Certification and Monitoring Plan, notify the Independent Certifier of that non-compliance or reduction.
- (d) If the Independent Certifier receives a notice under clause 4.9(c), the Independent Certifier must promptly submit an amended Certification and Monitoring Plan to the Other Parties after which clause 4.9(b) will reapply.
- (e) The Other Parties owe no duty to the Independent Certifier to review the Certification and Monitoring Plan for errors, omissions or compliance with this deed.
- (f) Without limiting clauses 3.1(c) or 4.3(f), the Independent Certifier must not, either in the preparation of the Certification and Monitoring Plan required by clause 4.7 or the amending, updating and development of the Certification and Monitoring Plan required by clauses 4.9(a) and 4.9(d), decrease or otherwise reduce the effectiveness, methodology, performance and timing requirements, scope, effort, resources or expertise from that set out in the initial Certification and Monitoring Plan or the then existing Certification and Monitoring Plan without the written approval of TfNSW's Representative (after prior consultation with the TSE Contractor and, as relevant, OpCo2).
- (g) The Independent Certifier may not amend the Certification and Monitoring Plan other than in accordance with this clause 4.9.

4.10 **Progress Reports by the Independent Certifier**

The Independent Certifier must provide a monthly progress report to TfNSW's Representative, the TSE Contractor and OpCo2 no later than 5 Business Days after the end of the month and in such format as is required by TfNSW's Representative, containing, identifying or setting out:

- (a) an executive summary of the Services undertaken by the Independent Certifier during the reporting period, which must include:
 - (i) a summary and status of the key issues identified by the Independent Certifier in connection with the performance of the TSE Works by the TSE Contractor, including actions taken to address the issues in the reporting period and proposed future actions; and
 - (ii) the progress made by the TSE Contractor in the development of the Design Documentation or the construction of the TSE Works, by reference to the Program;
- (b) a high level summary of the surveillance, monitoring and auditing proposed to be undertaken by the Independent Certifier in the forthcoming reporting period, including the outcomes of the risk management processes used to determine the levels and scope of the surveillance activities;
- (c) the Independent Certifier's current and predicted resourcing structure for the performance of the Services;
- (d) details of any actual or potential Defects or other non-compliances in the TSE Works that it has identified during the reporting period; and
- (e) any additional information requested by the Other Parties from time to time.

4.11 **Audit and surveillance**

- (a) The Independent Certifier must:
 - (i) allow any audit of its quality assurance system under this deed by TfNSW or a third party at, in the case of a third party, the request of the Other Parties or any one of the Other Parties; and
 - (ii) fully co-operate with TfNSW or the relevant third party in respect of the carrying out of the quality assurance audit.
- (b) Without limiting the foregoing, the Independent Certifier must, at all times:
 - (i) give to TfNSW or the third party access to premises occupied by the Independent Certifier where the Services are being undertaken; and
 - (ii) permit TfNSW or the third party to inspect applicable information relevant to the quality assurance audit.

4.12 **Access to records**

The Independent Certifier must, within a reasonable time of any request, give the Other Parties access to any records or other documents received, prepared or generated by the Independent Certifier in the course of carrying out the Services. For the avoidance of doubt, OpCo2 is entitled to have access to such records and documents, including such records and documents as may have been created prior to OpCo2 acceding to this deed in accordance with clause 2 and the Accession Deed.

4.13 **Copies of notices and documents**

All notices and documents:

- (a) provided by the Independent Certifier to an Other Party must be copied to the other parties;
- (b) provided by an Other Party to the Independent Certifier must be provided by the Independent Certifier to the other parties; and
- (c) provided by the Independent Certifier to, or received by the Independent Certifier from, a counterparty to a Third Party Agreement in connection with the Services must be copied to the Other Parties.

4.14 **Independent Certifier deeds poll**

- (a) The Independent Certifier must:
 - (i) in respect of each Third Party Agreement executed by or on the date of this deed, on or within 5 Business Days of the date of this deed, deliver to TfNSW's Representative deeds poll in favour of each of the relevant Interface Owners duly executed by the Independent Certifier in the form required by the relevant Third Party Agreement; and
 - (ii) deliver to TfNSW's Representative such further deeds poll in favour of any applicable Third Party as may be required under the terms of any executed Draft Third Party Agreement or Additional Third Party Agreement within 5 Business Days of being provided with a copy of any executed Draft Third Party Agreement or Additional Third Party Agreement.

- (b) The Independent Certifier and TfNSW agree that the deed poll to be executed by the Independent Certifier in accordance with:
 - (i) the Cross City Tunnel Interface Deed will be in the form of the deed poll in Schedule 9; and
 - (ii) the Barangaroo/Metro Interface Agreement will be in the form of the deed poll in Schedule 10.

4.15 **Completion Steering Committee and Completion Working Group**

The Independent Certifier:

- (a) acknowledges the provisions of clauses 16.8 and 16.9 of the TSE Project Deed; and
- (b) must ensure that:
 - (i) the Independent Certifier's Project Director:
 - (A) attends all meetings of the Completion Steering Committee; and
 - (B) fulfils the role of a member of in the Completion Steering Committee; and
 - (ii) the Independent Certifier's Representative for Construction Phase Services:
 - (A) attends all meetings of the Completion Working Group; and
 - (B) fulfils the role of a member of in the Completion Working Group.

4.16 **Document management and transmission**

- (a) Without limiting clause 12.1, the Independent Certifier must manage and transmit documents, including using an electronic medium (such as the PDCS) where required by TfNSW's Representative, in accordance with the processes, procedures and systems in the SWTC or as otherwise required by TfNSW's Representative.
- (b) Documents supplied to the Independent Certifier will remain the property of TfNSW and must be returned by the Independent Certifier to TfNSW on demand in writing. The documents must not, without the prior written approval of TfNSW, be used, copied or reproduced for any purpose other than the execution of the Services.
- (c) The Independent Certifier must keep all the Independent Certifier's records relating to the Services in a secure and fire proof storage.
- (d) The Independent Certifier will not be entitled to make, and TfNSW or the TSE Contractor will not be liable upon, any claim arising out of or in any way in connection with complying with its obligations under this clause 4.16.
- (e) The Independent Certifier must ensure that any documentation that it provides to TfNSW or the TSE Contractor in computer readable form contains no virus or computer software code which is intended or designed to:
 - (i) permit access to or use of a computer system by a third person not authorised by TfNSW; or
 - (ii) disable, damage or erase, or disrupt or impair the normal operation of any other software or data on a computer system.

4.17 **Third Party Agreements**

- (a) The Independent Certifier acknowledges and agrees that:
 - (i) TfNSW will enter into the Third Party Agreements;
 - (ii) as at the date of this deed:
 - (A) the terms of the Third Party Agreements identified in Schedule D4 of the TSE Project Deed as "Draft" have not been finalised between TfNSW and the relevant Third Party (each a **Draft Third Party Agreements**); and
 - (B) there may be additional Third Party Agreements which TfNSW may, in its absolute discretion, enter into (each an **Additional Third Party Agreement**);
 - (iii) the Independent Certifier has reviewed the Draft Third Party Agreements;
 - (iv) following:
 - (A) finalisation of any Draft Third Party Agreement; or
 - (B) the execution of any Additional Third Party Agreement,after the date of this deed, TfNSW must promptly give the Independent Certifier a copy of the final (and, where applicable, executed) version of the Draft Third Party Agreement or the Additional Third Party Agreement (as applicable).
- (b) The Independent Certifier must carry out its obligations under this deed on the basis of the final version of the Draft Third Party Agreement or Additional Third Party Agreement (as applicable).
- (c) If compliance with the terms of:
 - (i) the final version of any Draft Third Party Agreement; or
 - (ii) any Additional Third Party Agreement,including any obligation to provide an additional deed poll contemplated by clause 4.14(a)(ii), causes the Independent Certifier to incur additional costs than it otherwise would have in complying with the terms of this deed, the Independent Certifier must notify TfNSW's Representative of such additional costs and TfNSW's Representative will then determine the amount of additional costs in accordance with paragraph 4 of Schedule 2.

5. **INDEPENDENCE, CONFIDENTIALITY AND EXCLUSIVITY**

5.1 **Independent Certifier to be independent**

- (a) The Independent Certifier warrants to the Other Parties that in performing the Services, it will act:
 - (i) independently of the Other Parties and any beneficiary to a deed poll executed by the Independent Certifier in accordance with clause 4.14;
 - (ii) honestly and reasonably;

- (iii) with the degree of professional care, knowledge, skill, expertise, experience and diligence which would be reasonably expected of a professional providing services similar to the Services within the design and construction industry generally and the design and construction of major engineering works in particular; and
 - (iv) within the times prescribed under the Project Agreements or as anticipated by the Overall D&C Program, or such other programs that become relevant to the performance of the Services during the Term.
- (b) Without limiting clause 5.3(a), the parties acknowledge that:
- (i) the Independent Certifier has been engaged by TfNSW and the TSE Contractor prior to OpCo2 having been engaged by TfNSW;
 - (ii) when OpCo2 has been engaged by TfNSW, OpCo2 will accede to this deed;
 - (iii) the Independent Certifier is obliged to act independently of OpCo2;
 - (iv) the Independent Certifier may (after consultation with the Other Parties) be engaged by OpCo2 in relation to the OTS2 Project Works but must demonstrate to the satisfaction of the parties that it has sufficient separation procedures in place to permit it to act independently of OpCo2;
 - (v) the TSE Contractor may not make any claim against the TfNSW or (to the extent that the Independent Certifier complies with this deed) the Independent Certifier arising out of or in any way in connection with the Independent Certifier being engaged by OpCo2 in relation to the OTS2 Project Works; and
 - (vi) neither TfNSW nor the TSE Contractor may challenge a decision of the Independent Certifier on the basis that the Independent Certifier lacks independence solely because it is engaged by OpCo2 in relation to the OTS2 Project Works.

5.2 Confidentiality

The Independent Certifier must:

- (a) keep confidential details of this deed and all information and documents provided to, or by, the Independent Certifier relating to the Services, the TSE Works, this deed, the Project Agreements or the Sydney Metro City & Southwest and not provide, disclose or use the information or documents except:
 - (i) to disclose them to the Other Parties;
 - (ii) for the purposes of performing the Services;
 - (iii) where required by Law or to obtain legal advice on this deed; or
 - (iv) with the prior written consent of the Other Parties; and
- (b) ensure that its subcontractors comply with the terms of clause 5.2(a).

This obligation will survive completion of the Services or the termination of this deed.

5.3 Exclusivity

- (a) The Independent Certifier must not, and must procure that:

- (i) any related body corporate (as defined by sections 9 and 50 of the *Corporations Act 2001* (Cth)) of the Independent Certifier; and
- (ii) any employees, agents, subcontractors and consultants who are involved in the provision of the Services,

do not, from the date of execution of this deed until the date of expiry of the Term in accordance with clause 3.2:

- (iii) have any direct or indirect involvement (whether under contract or any other arrangement):
 - (A) with the TSE Contractor or any of its contractors, consultants or providers, or OpCo2 or any of its contractors, consultants or providers in relation to the Project Agreements; or
 - (B) in the Project Agreements; or
- (iv) provide services to or advise any other person in relation to the Project Agreements,

other than the provision of the Services under this deed, except with the prior written consent of TfNSW which may be withheld or granted (after consultation with the Other Parties) in its absolute discretion.

(b) The Independent Certifier agrees that:

- (i) having regard to the Project Agreements and the Services, clause 5.3 is reasonable as regards the nature of the involvement restrained and the duration and scope of the restraint and that the restraints are reasonably necessary for the probity of the Project Agreements and to ensure the best value for money of the Project Agreements; and
- (ii) damages may not be a sufficient remedy for a breach of clause 5.3 and the Other Parties may be entitled to specific performance or injunctive relief (as appropriate) as a remedy for any breach or threatened breach by the Independent Certifier, in addition to any other remedies available at Law or in equity.

6. OBLIGATIONS OF THE OTHER PARTIES

6.1 No interference or influence

- (a) The Other Parties will not interfere with or attempt to improperly influence the Independent Certifier in the performance of any of the Services. The parties acknowledge that any communication allowed by this deed will not of itself constitute a breach of this clause.
- (b) Clause 6.1(a) will not prevent the Other Parties from providing written comments in accordance with the Project Agreements to the Independent Certifier in respect of the Design Documentation or any other aspect of the TSE Contractor's Activities (including in connection with the Independent Certifier's determination of whether Construction Completion has been achieved by the TSE Contractor) and the Independent Certifier must consider any such comments received from the Other Parties.

6.2 Co-operation

- (a) Without limiting or otherwise affecting any of the TSE Contractor's obligations under this deed or the Project Agreements, the TSE Contractor must:
 - (i) co-operate with and provide the Independent Certifier with all information and documents necessary or reasonably required by the Independent Certifier, or otherwise reasonably requested by the Independent Certifier or directed by TfNSW;
 - (ii) allow the Independent Certifier to attend all meetings and procure for the Independent Certifier access to all premises as may be reasonably necessary to enable the Independent Certifier to perform the Services or as reasonably requested by the Independent Certifier or directed by TfNSW, including allowing the Independent Certifier to have safe, convenient and unimpeded access to the Construction Site and any Extra Land and all areas where the TSE Works are being performed, from the date on which the TSE Contractor is provided with access under the TSE Project Deed; and
 - (iii) ensure that Hold Points and Witness Points are included in the Overall D&C Program as reasonably required by the Independent Certifier to enable the Independent Certifier to perform the Services.
- (b) The TSE Contractor must ensure that TfNSW is provided with a copy of any written communication given by the TSE Contractor to the Independent Certifier within 2 Business Days of providing the same to the Independent Certifier.
- (c) OpCo2 must ensure that TfNSW is provided with a copy of any written communication given by OpCo2 to the Independent Certifier within 2 Business Days of providing the same to the Independent Certifier.

6.3 TfNSW to have no liability

Each party acknowledges that TfNSW is not liable, nor will be taken to have a liability, or to have assumed a liability or become (on enforcement of any of their powers or otherwise) liable:

- (a) to any party to this deed by reason of TfNSW being a party to this deed; or
- (b) for the performance of any obligation of the TSE Contractor, OpCo2 or the Independent Certifier under this deed or under any Project Agreement.

7. CHANGE TO SERVICES, SUSPENSION OF SERVICES AND APPOINTMENT OF SUBSTITUTE CERTIFIER

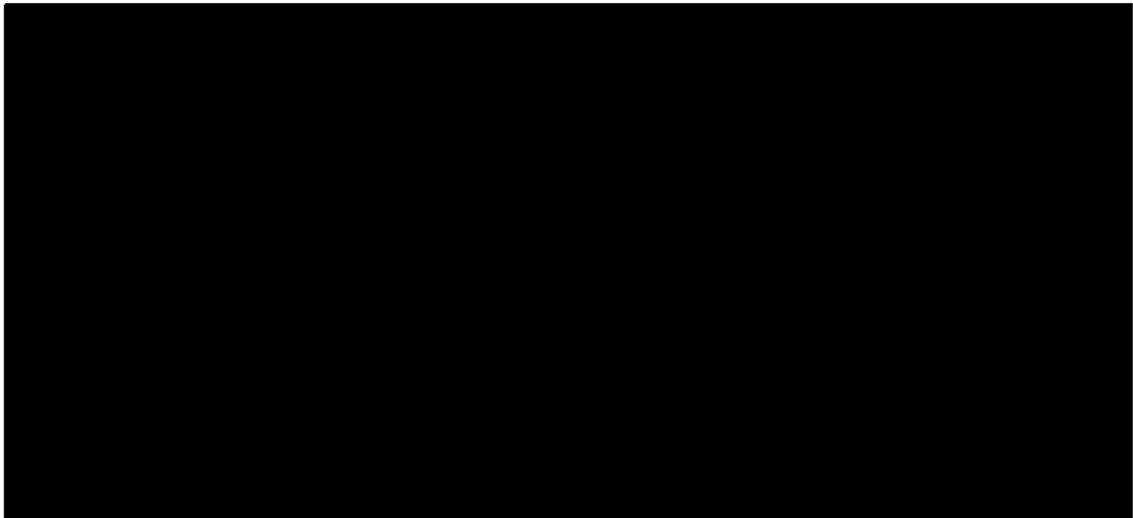
- (a) TfNSW (after prior consultation with the TSE Contractor and, as relevant, OpCo2) may, by written notice to the Independent Certifier, direct the Independent Certifier to carry out a change to the Services (including an addition or omission) and the Independent Certifier must comply with that direction.
- (b) The Fee to be paid to the Independent Certifier in relation to a change to the Services referred to in clause 7(a) will be determined in accordance with the schedule of rates set out in the Payment Schedule. If an amount for the change to the Services cannot be determined by reference to the schedule of rates, the amount will be a reasonable amount as stated in writing by TfNSW.
- (c) TfNSW (after prior consultation with the TSE Contractor and, as relevant, OpCo2) may, by written notice to the Independent Certifier (copied to the TSE Contractor and OpCo2), direct the Independent Certifier to suspend any or all of the Services

(other than the Services under clause 18.1(a)(v) of the TSE Project Deed relating to the provision of a certificate stating that the parts of the TSE Contractor's Activities claimed for payment comply with the requirements of the TSE Project Deed) for the period of time specified in the notice.

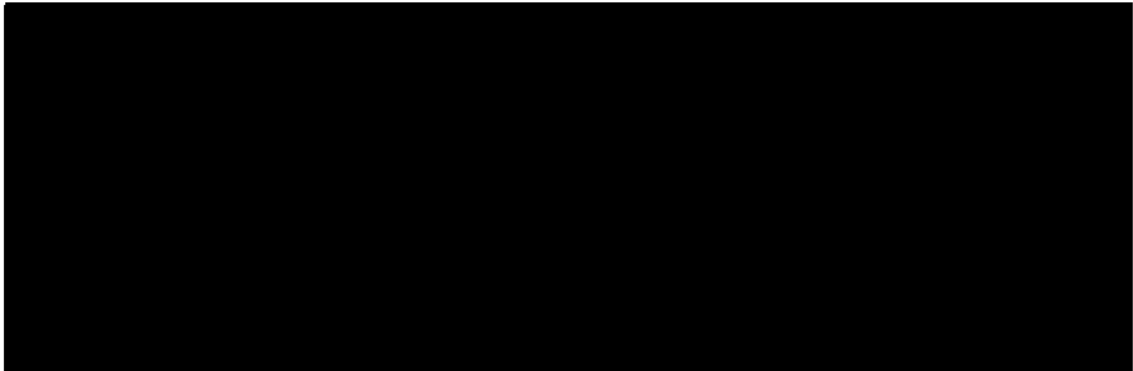
- (d) The Independent Certifier acknowledges and agrees that TfNSW may, after consultation with the Other Parties, appoint another certifier (**Substitute Certifier**) to carry out those Services which are omitted as a result of a change to the Services as directed under clause 7(a), and any decision of a Substitute Certifier appointed will be treated (between TfNSW, the TSE Contractor, OpCo2 and the Independent Certifier) as if it is a decision of the Independent Certifier, and the Substitute Certifier will have all of the rights, powers and obligations of the Independent Certifier under the Project Agreements in connection with those Services.
- (e) Notwithstanding a change to the Services or the appointment of a Substitute Certifier, the Independent Certifier must continue to perform the Services, as varied in accordance with this clause 7, in accordance with this deed. Without prejudice to any claim in respect of the performance of the Independent Certifier, the Independent Certifier is not responsible for the performance of the Substitute Certifier.

8. **LIABILITY, INSURANCE AND INDEMNITY**

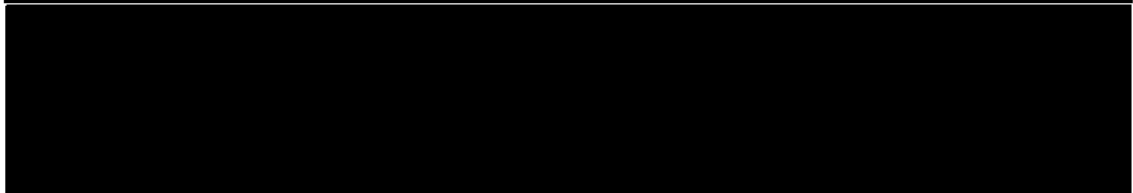
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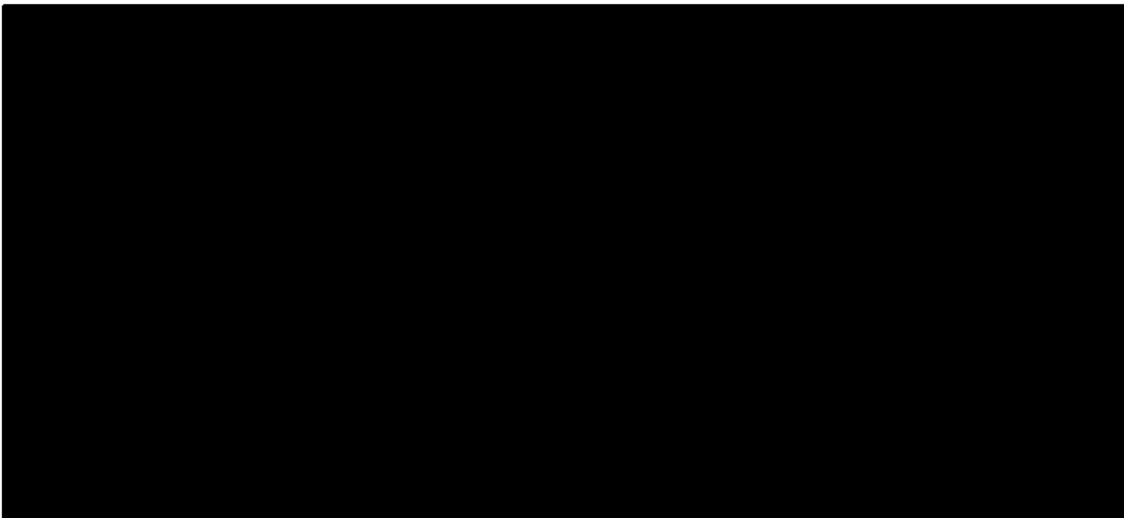


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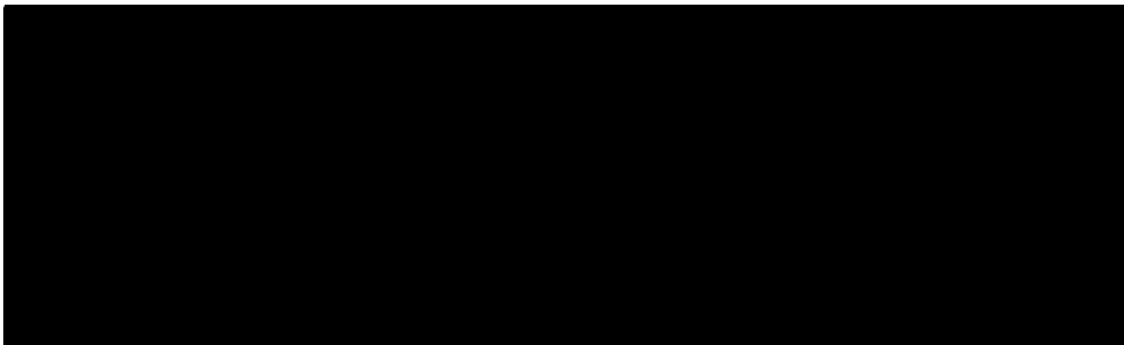
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8.4 **Insurances**

The Independent Certifier must, from the later of the date of the TSE Project Deed and the date of this deed, hold and maintain:



- (b) workers compensation insurance in accordance with the requirements of Law;
- (c) public liability insurance with:
 - (i) a limit of indemnity of not less than [REDACTED] for any one claim in respect of civil liability for third party property damage, personal injury or death arising from the performance of the Services under this deed; and
 - (ii) a deductible of not more than [REDACTED]; and
- (d) such other insurance as may reasonably be required by the Other Parties.

8.5 **Notice of matter affecting insurance**

The Independent Certifier must notify the Other Parties immediately upon becoming aware and, where possible, no later than 30 days in advance of any event which could affect its insurance cover or if any policy is cancelled, avoided or allowed to lapse.

8.6 **Provision of information**

- (a) The Independent Certifier must provide to the Other Parties:
 - (i) a certified copy of the insurance policy for the project-specific professional indemnity insurance; and

- (ii) certificates of currency, with respect to the insurances effected and maintained by the Independent Certifier for the purposes of this clause 8,

at any time and from time to time on request by any party and prior to the renewal of each policy.

(b) TfNSW will:

- (i) store the certified copy of the insurance policy for project-specific professional indemnity insurance in a secure location; and
- (ii) use the certified copy of the insurance policy for project-specific professional indemnity insurance solely for the purpose of ensuring coverage under the policy is adequate in light of the Services.

(c) The certified copy of the insurance policy for the project-specific professional indemnity insurance may have commercially sensitive pricing information redacted.

8.7 **Periods for insurance**

The Independent Certifier must maintain:

- (a) the project-specific professional indemnity insurance for a period of 7 years (whether annually renewable or a single project policy) after the Date of Construction Completion of the last Portion to achieve Construction Completion or the date of termination of this deed, whichever is earlier;
- (b) the workers compensation insurance until it ceases to perform the Services;
- (c) the public liability insurance until it ceases to perform the Services; and
- (d) any other insurances for such time as may reasonably be required by the Other Parties.

8.8 **Obligations unaffected by insurance**

The requirement to effect and maintain insurance in this clause 8 does not limit the liability or other obligations of the Independent Certifier under this deed.

8.9 **Indemnity**

- (a) Subject to clause 8.1, the Independent Certifier is liable for and indemnifies each Other Party against any liability, loss, claim, expense or damage which they may pay, suffer or incur in respect of:
 - (i) any damage to or loss of property; or
 - (ii) death of or injury to any person,insofar as the liability, loss, claim, expense or damage arises out of the act, error or omission of the Independent Certifier, its employees, agents or consultants.
- (b) The Independent Certifier's liability to indemnify an Other Party under clause 8.9(a) will be reduced to the extent that an act or omission of that Other Party has contributed to that liability, loss, claim, expense or damage.

9. **DISPUTE RESOLUTION**

9.1 **Procedure for resolving disputes**

- (a) The parties agree that they will attempt to resolve all disputes in accordance with the procedures set out in this clause 9.
- (b) It is a condition precedent to the referral of a dispute to litigation that a party first exhausts the procedures referred to in clause 9.2.

9.2 **Negotiation**

- (a) If a dispute arises, then a party to the dispute may give notice to the other parties to the dispute, requesting that the dispute be referred for resolution to the respective chief executive officers of those parties to the dispute.
- (b) A notice under clause 9.2(a) must:
 - (i) be in writing;
 - (ii) state that it is a notice under this clause 9.2; and
 - (iii) include, or be accompanied by, reasonable particulars of the matters in dispute.
- (c) If a dispute is referred to the persons referred to in clause 9.2(a) (**Dispute Representatives**), then the Dispute Representatives (or the persons for the time being acting in those positions) must meet and use reasonable endeavours acting in good faith to resolve the dispute (in whole or in part) within 10 Business Days of the date on which the notice under clause 9.2(a) is received. The joint decisions (if any) of the Dispute Representatives must be reduced to writing within the 10 Business Days referred to in this clause 9.2(c) and will be contractually binding on the parties to the dispute.
- (d) The 10 Business Days referred to in clause 9.2(c) may be extended by agreement of the parties to the dispute in writing.

9.3 **Continue to perform**

Notwithstanding the existence of a dispute, each of the Other Parties and the Independent Certifier must continue to perform their obligations under this deed.

10. **TERMINATION OF APPOINTMENT**

10.1 **Notice of termination**

Following consultation with the Other Parties, TfNSW may terminate the appointment of the Independent Certifier under this deed by notice in writing served on the Independent Certifier (copied to the TSE Contractor and OpCo2) if:

- (a) the Independent Certifier is in breach of this deed and the breach is not remediable in the reasonable opinion of TfNSW;
- (b) the Independent Certifier is in breach of this deed and the breach, being remediable in the reasonable opinion of the Other Parties, has not been remedied within 7 days of the service by TfNSW of a notice specifying the breach and requiring the breach to be remedied;
- (c) an Insolvency Event occurs in relation to the Independent Certifier; or

- (d) TfNSW in its absolute discretion for any reason whatsoever serves on the Independent Certifier a notice of termination of the appointment of the Independent Certifier in respect of the Services, on a date specified in the notice, being not less than 15 Business Days after the date of issue of the notice.

10.2 **Termination**

Where a notice is served on the Independent Certifier under clause 10.1, the appointment of the Independent Certifier will terminate upon the earlier of:

- (a) the date specified in the notice issued under clause 10.1; or
- (b) the appointment of a replacement for the Independent Certifier.

10.3 **Delivery of documents**

Upon the earlier of the date of termination of the appointment of the Independent Certifier and the date of completion of the Services, the Independent Certifier:

- (a) must deliver up to the Other Parties or to such other person as the Other Parties may direct, all books, records, drawings, specifications and other documents in the possession, custody or control of the Independent Certifier relating to the Services; and
- (b) acknowledges that the Other Parties have the right to use all such documents for any purposes in connection with the Sydney Metro City & Southwest, the TSE Works, the TSE Contractor's Activities or the Project Agreements.

10.4 **Reasonable assistance**

Where the Other Parties give a notice under clause 10.1 of termination of the appointment of the Independent Certifier, the Independent Certifier must provide full assistance to the Other Parties and any appointed replacement for the Independent Certifier in order to enable such replacement to be in a position to perform the Services with effect from the appointment of such replacement.

10.5 **Payment until date of termination**

Where the appointment of the Independent Certifier is terminated under clause 10.1(d), the Independent Certifier is only entitled to be paid by the TSE Contractor the proportion of the Fee for Services performed up to the date of the termination.

10.6 **Termination without prejudice**

Termination of the appointment of the Independent Certifier will be without prejudice to any claim which any of the Other Parties may have in respect of any breach of the terms of this deed which occurred prior to the date of termination.

10.7 **Survive termination**

This clause 10 will survive the termination of this deed by the Other Parties under clause 10.1.

10.8 **Rights upon termination**

If the appointment of the Independent Certifier is terminated pursuant to clauses 10.1(a) to 10.1(c), the parties' remedies, rights and liabilities will be the same as they would have been under the Law governing the deed had the Independent Certifier repudiated the deed and the Other Parties elected to treat the deed as at an end and recover damages.

11. **GST**

- (a) Except where the context suggests otherwise, terms used in this clause 11 have the meaning given to those terms by the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) (as amended from time to time).
- (b) Any part of a supply that is treated as a separate supply for GST purposes (including attributing GST payable to tax periods) will be treated as a separate supply for the purposes of this clause 11.
- (c) Unless otherwise expressly stated, all consideration to be provided under this deed (other than under this clause 11) is exclusive of GST. Any consideration that is specified to be inclusive of GST must not be taken into account in calculating the GST payable in relation to a supply for the purpose of this clause 11.
- (d) Any payment or reimbursement required to be made under this deed that is calculated by reference to a cost, expense or other amount paid or incurred will be limited to the total costs, expense or amount less the amount of any input tax credit to which an entity is entitled for the acquisition to which the cost, expense or amount relates.
- (e) If GST is payable in relation to a supply made under or in connection with this deed, then any party (**Recipient**) that is required to provide consideration to another party (**Supplier**) for that supply must pay an additional amount to the Supplier equal to the amount of that GST at the same time as any other consideration is to be first provided for that supply.
- (f) The Supplier must provide a tax invoice to the Recipient at the same time as any consideration is to be first provided for that supply.
- (g) If the GST payable in relation to a supply made under or in connection with this deed varies from the additional amount paid by the Recipient under clause 11(e), then the Supplier will provide a corresponding refund or credit to, or will be entitled to receive the amount of that variation from, the Recipient. Any payment, credit or refund under this clause 11(g) is deemed to be a payment, credit or refund of the additional amount payable under clause 11(e). If any adjustment event occurs in relation to a supply, the Supplier must give the Recipient an adjustment note event within 7 days after the date of the adjustment event.

12. **GENERAL**

12.1 **Notices**

- (a) Wherever referred to in this clause, "**Notice**" means each communication (including each notice, consent, approval, request and demand) under or in connection with this deed.
- (b) At any time and from time to time the TfNSW Representative may notify the Independent Certifier that a PDCS will be used for giving Notices under or in connection with this deed. The TfNSW Representative's notice will set out:
 - (i) the name of the relevant PDCS;
 - (ii) the commencement date for use of the PDCS;
 - (iii) any password, login details or similar information required for the Independent Certifier to use the PDCS; and

- (iv) any other information reasonably necessary for the use and service of Notices via the PDCS.
- (c) Each Notice must:
 - (i) before the date referred to in clause 12.1(b):
 - (A) be in writing;
 - (B) be addressed as follows (or as otherwise notified by that party to each other party from time to time):
 - (aa) to TfNSW's Representative:

Address: Level 43, 680 George Street
Sydney NSW 2000

Email: alan.morris@transport.nsw.gov.au

Attention: Alan Morris (any Notice in relation to a claim or a dispute must also be addressed to the Deputy General Counsel – Sydney Metro and sent to Catrina.Cresswell@transport.nsw.gov.au)
 - (bb) to the Independent Certifier:

Address: Level 10, 111 Pacific Highway
North Sydney NSW 2060

Email: jeff.sharp@app.com.au

Attention: Jeff Sharp, Project Director
 - (cc) to the TSE Contractor:

Address: Level 9, 50 Bridge Street
Sydney NSW 2000

Email: terry.sleiman@sydneymetro2.com.au

Attention: Terry Sleiman, Project Director
 - (ii) on and from the commencement date for use of the PDCS referred to in clause 12.1(b):
 - (A) be sent through the PDCS in accordance with the requirements set out in clause 12.1(e); and
 - (B) in circumstances where the PDCS is temporarily disabled or not operating for a period in excess of 2 hours, be issued in accordance with clause 12.1(c)(i).
- (d) A communication is taken to be received by the addressee:
 - (i) (in the case of a Notice sent through the PDCS) at the time recorded on the PDCS as being the time at which the Notice was sent;

- (ii) (in the case of prepaid post sent to an address in the same country) 2 Business Days after the date of posting;
 - (iii) (in the case of international post) 7 Business Days after the date of posting; and
 - (iv) (in the case of delivery by hand) on delivery.
- (e) With respect to Notices sent through the PDCS:
- (i) all Notices must be submitted by the party making it or (on that party's behalf) by the solicitor for, or any attorney, director, secretary or authorised agent of, that party;
 - (ii) only the text in any Notice, or subject to clause 12.1(e)(iii), any attachments to such Notice which are referred to in the Notice, will form part of the Notice. Any text in the subject line will not form part of the Notice; and
 - (iii) an attachment to a Notice will only form part of a Notice if it is uploaded to the PDCS in:
 - (A) pdf format;
 - (B) a format compatible with Microsoft Office; or
 - (C) such other format as may be agreed between the parties in writing from time to time.
- (f) The Independent Certifier warrants that it will:
- (i) ensure that it has internet access which is sufficient to facilitate use of the full functionality of the PDCS;
 - (ii) ensure that relevant personnel log on and use the PDCS and check whether Notices have been received on each Business Day;
 - (iii) comply with any user guide and protocol with respect to the PDCS provided by TfNSW to the Independent Certifier from time to time;
 - (iv) ensure all relevant personnel attend all necessary training required by TfNSW's Representative;
 - (v) advise TfNSW Representatives of which personnel require access to the PDCS;
 - (vi) at all times, ensure that it has access to personnel trained in the use of the PDCS so as to be able to view, receive and submit communications (including Notices) using the PDCS; and
 - (vii) as soon as practicable, at the first available opportunity following any period of time during which the PDCS is temporarily disabled or not operating, send all communications which have been issued pursuant to clause 12.1(c)(ii)(B) to the TfNSW Representative through the PDCS.
- (g) If the Independent Certifier is an unincorporated joint venture and one of the joint venturers is, a foreign company (as defined in the Corporations Act), the Independent Certifier must:

- (i) appoint a local process agent acceptable to TfNSW as its agent to accept service of process under or in any way in connection with this deed. The appointment must be in a form acceptable to TfNSW and may not be revoked without TfNSW's consent; and
 - (ii) obtain the process agent's consent to the appointment.
- (h) TfNSW has no liability for any losses the Independent Certifier may suffer or incur arising out of or in connection with its access to or use of the PDCS or any failure of the PDCS, and the Independent Certifier will not be entitled to make, and TfNSW will not be liable upon, any claim against TfNSW arising out of or in connection with the Independent Certifier's access to or use of the PDCS or any failure of the PDCS.
- (i) Wherever this deed requires the Independent Certifier to provide any documents, notices or other communications to a Follow-on Contractor, OpCo2 or any Alternate Operator, the Independent Certifier must address such communications to the relevant Follow-on Contractor, OpCo2 or Alternate Operator (as applicable):
- (i) at the address notified to the Independent Certifier by TfNSW; or
 - (ii) if required by TfNSW, by way of the PDCS.

12.2 **Governing Law**

This deed is governed by and must be construed according to the law applying in New South Wales.

12.3 **Jurisdiction**

Each party irrevocably:

- (a) submits to the non-exclusive jurisdiction of the courts of New South Wales and the courts competent to determine appeals from those courts, with respect to any action or proceedings which may be brought at any time relating in any way to this deed; and
- (b) waives any objection it may now or in the future have to the venue of any action or proceedings, and any claim it may now or in the future have that any action or proceedings have been brought in an inconvenient forum, if that venue falls within clause 12.3(a).

12.4 **TfNSW as a public authority**

- (a) This deed will not in any way unlawfully restrict or otherwise unlawfully affect the unfettered discretion of TfNSW to exercise any of its functions and powers pursuant to any Law.
- (b) Each of the Independent Certifier, the TSE Contractor and OpCo2 acknowledges and agrees that, without limiting clause 12.4(a), anything which TfNSW does, fails to do or purports to do pursuant to its functions and powers under any Law will be deemed not to be an act or omission by TfNSW under this deed and will not entitle any of the Independent Certifier, the TSE Contractor or OpCo2 to make any claim against TfNSW.
- (c) The parties agree that clauses 12.4(a) and 12.4(b) are taken not to limit any liability which TfNSW would have had to the Independent Certifier, the TSE Contractor or OpCo2 under this deed as a result of a breach by TfNSW of a term of this deed but for clauses 12.4(a) and 12.4(b) of this deed.

12.5 **Amendments**

This deed may only be varied by a deed executed by or on behalf of each of the parties.

12.6 **Waiver**

- (a) Failure to exercise or enforce, or a delay in exercising or enforcing, or the partial exercise or enforcement of, a right, power or remedy provided by Law or under this deed by a party does not preclude, or operate as a waiver of, the exercise or enforcement, or further exercise or enforcement, of that or any other right, power or remedy provided by Law or under this deed.
- (b) A waiver or consent given by a party under this deed is only effective and binding on that party if it is given or confirmed in writing by that party.
- (c) No waiver of a breach of a term of this deed operates as a waiver of another breach of that term or of a breach of any other term of this deed.

12.7 **Cost of performing obligations**

Each party must, unless this deed expressly provides otherwise, pay its own costs and expenses in connection with performing its obligations under this deed.

12.8 **Further acts and documents**

Each party must promptly do all further acts and execute and deliver all further documents (in form and content reasonably satisfactory to that party) required by Law or reasonably requested by another party to give effect to this deed.

12.9 **Consents**

A consent required under this deed from a party may be given or withheld, or may be given subject to any conditions, as that party (in its absolute discretion) thinks fit, unless this deed expressly provides otherwise.

12.10 **Assignment**

- (a) Subject to clause 12.10(b), a party cannot assign, novate or otherwise transfer any of its rights, interests or obligations under this deed without the prior written consent of each other party.
- (b) TfNSW may:
 - (i) assign, novate or otherwise transfer all or any part of its rights under this deed without the Independent Certifier, TSE Contractor, or OpCo2's prior approval, provided that the assignee, novatee or transferee (as applicable) is an authority of the State, a Minister, a government entity (including a State owned corporation) or an entity that is owned or controlled by the State; and
 - (ii) not otherwise assign, novate or otherwise transfer all or any part of its rights under this deed without the Independent Certifier, TSE Contractor, or OpCo2's prior written consent (which must not be unreasonably withheld),

and may disclose to a proposed assignee, novatee or transferee any information in the possession of TfNSW relating to the Independent Certifier, TSE Contractor, or OpCo2's.

12.11 **Replacement body**

Where a reference is made to any Authority, institute, association, body, person or organisation (**Former Body**) which is reconstituted, renamed, replaced, ceases to exist or has its powers or functions transferred to another Authority, institute, association, body, person or organisation, that reference will be deemed to refer to the Authority, institute, association, body, person or organisation (**Replacement Body**) which then serves substantially the same powers, functions or objects as the Former Body. Any reference to any senior officer of the Former Body will be to the equivalent senior officer of the Replacement Body.

12.12 **Counterparts**

This deed may be executed in any number of counterparts and by the parties on separate counterparts. Each counterpart constitutes the deed of each party who has executed and delivered that counterpart.

12.13 **No representation or reliance**

- (a) Each party acknowledges that no party (nor any person acting on a party's behalf) has made any representation or other inducement to it to enter into this deed, except for representations or inducements expressly set out in this deed.
- (b) Each party acknowledges and confirms that it does not enter into this deed in reliance on any representation or other inducement by or on behalf of any other party, except for representations or inducements expressly set out in this deed.

12.14 **Expenses**

Except as otherwise provided in this deed, each party must pay its own costs and expenses in connection with negotiating and preparing this deed.

12.15 **Entire agreement**

To the extent permitted by Law, in relation to its subject matter, this deed (together with the Accession Deed from the time of accession by OpCo2):

- (a) embodies the entire understanding of the parties, and constitutes the entire terms agreed by the parties; and
- (b) supersedes any prior written or other agreement of the parties.

12.16 **Indemnities**

- (a) Each indemnity in this deed is a continuing obligation, separate and independent from the other obligations of the parties, and survives termination, completion or expiration of this deed.
- (b) It is not necessary for a party to incur expense or to make any payment before enforcing a right of indemnity conferred by this deed.
- (c) A party must pay on demand any amount it must pay under an indemnity in this deed.

12.17 **No agency, partnership, joint venture or other fiduciary relationship**

Nothing in this deed will be construed or interpreted as:

- (a) conferring a right in favour of any party to enter into any commitment on behalf of another party or otherwise to act as agent of another party; or
- (b) constituting the relationship between any two or more of the parties (or all of the parties) as that of partners, joint venturers or any other fiduciary relationship.

12.18 Severance

If at any time any provision of this deed is or becomes void, illegal, invalid or unenforceable in any respect under the law of any jurisdiction, then that will not affect or impair:

- (a) the legality, validity or enforceability in that jurisdiction of any other provision of this deed; or
- (b) the legality, validity or enforceability under the law of any other jurisdiction of that or any other provision of this deed.

12.19 Moratorium legislation

To the fullest extent permitted by Law, the provisions of all Laws which at any time operate directly or indirectly to lessen or affect in favour of a party any obligation under this deed, or to delay or otherwise prevent or prejudicially affect the exercise by a party of any right, power or remedy under this deed or otherwise, are expressly waived.

SCHEDULE 1

Services

1. GENERAL

- (a) The Independent Certifier is engaged to certify that the TSE Contractor has designed and constructed the TSE Works in accordance with the requirements of the TSE Project Deed.
- (b) In order to do so, the Independent Certifier will be closely involved in the delivery of the TSE Project Deed from its commencement, including throughout the design, construction, completion and defects phases of the TSE Works until the correction of all Defects in the TSE Works.
- (c) The Independent Certifier must carry out its role proactively and provide feedback to the Other Parties in respect of the compliance or otherwise of the TSE Contractor's Activities. The Independent Certifier must identify and report to TfNSW issues which it considers will impact on the ability of the TSE Contractor to complete the design and construction of the TSE Works in accordance with the TSE Project Deed.
- (d) The Independent Certifier is obliged to act independently of TfNSW and the TSE Contractor.
- (e) The Independent Certifier must:
 - (i) at all times, be familiar with the role, functions, obligations, duties and services (express or implied) under this deed;
 - (ii) review information made available to the Independent Certifier by the Other Parties in order to become fully acquainted with the TSE Works and to carry out its obligations under this deed; and
 - (iii) attend meetings (including design meetings, Site meetings, Management Review Group meetings, meetings of the Dispute Avoidance Board and meetings with the Technical Director or any other nominee of TfNSW), provide feedback on compliance issues and report, as required from time to time by TfNSW's Representative.

2. METHODOLOGY

- (a) In performing the Design Phase Services set out in paragraph 4.2, the Independent Certifier is not required to carry out "first principles" calculations or "proof engineering" in connection with the Design Documentation.
- (b) In performing the Services, the Independent Certifier must review and have regard to all documents received by the Independent Certifier, including any reports submitted to the Independent Certifier by the Proof Engineer under clause 11.3 of the TSE Project Deed.
- (c) The Independent Certifier must provide the Services in no lesser levels of resourcing than that detailed in Schedule 3 and the initial Certification and Monitoring Plan included as Exhibit 1.
- (d) If the Independent Certifier identifies an actual or potential Defect, the Independent Certifier must take the actions specified in Integrated Management System document SM QM-FT-478. This includes the Independent Certifier

providing reports to TfNSW advising as to whether the proposed disposition of the Defect will affect the:

- (i) durability;
- (ii) whole of life performance;
- (iii) environment and sustainability performance;
- (iv) functional performance; or
- (v) safety,

of the TSE Works.

- (e) Where a Change is proposed by the TSE Contractor (or any other proposal by the TSE Contractor), TfNSW's Representative may request the Independent Certifier to report as to whether the proposal will affect the:

- (i) durability;
- (ii) whole of life performance;
- (iii) environment and sustainability performance;
- (iv) functional performance; or
- (v) safety,

of the TSE Works.

3. **SCOPE OF SERVICES**

- (a) The Services include all the functions, obligations, duties and services which the Project Agreements contemplate will be discharged by the Independent Certifier including providing various certificates required under the Project Agreements. These are set out in paragraph 4 below. To the extent of any discrepancy between paragraph 4 and a Project Agreement, the Project Agreement will prevail.

- (b) The Independent Certifier must, throughout the Term:

- (i) undertake the surveillance listed in the Certification and Monitoring Plan which, as a minimum, must include the surveillance in paragraph 3 of Schedule 3 to this deed;
- (ii) provide the surveillance resources in the performance of the Services listed in the Certification and Monitoring Plan which, as a minimum, must include the surveillance resources in paragraph 3 of Schedule 3 to this deed;
- (iii) promptly notify the other parties of actual or potential Defects or other non-compliances in the Works that it identifies when performing its surveillance and other functions, to be included in the monthly report pursuant to clause 4.10 of this deed; and
- (iv) take date stamped photographs sufficient to document the progress of the Project Works.

4. SERVICES UNDER THE TSE PROJECT DEED

4.1 General Services

The Independent Certifier must undertake the following throughout the Term:

- (a) **Clauses 9.3(a), 9.3(c), 9.4(a)(ii) and 9.4(b)(vi):** The Independent Certifier must review each Project Plan submitted by the TSE Contractor under these clauses and provide comments to TfNSW as to whether the Project Plan complies with the requirements of the TSE Project Deed. The Independent Certifier must provide these comments in sufficient time for TfNSW to provide them to the TSE Contractor.
- (b) **Clause 10.14A:** The Independent Certifier must review each Remediation Action Plan submitted by the TSE Contractor under clause 10.14A of the TSE Project Deed and provide comments to TfNSW as to whether the Remediation Action Plan complies with the requirements of the TSE Project Deed. The Independent Certifier must provide these comments in sufficient time for TfNSW to provide them to the TSE Contractor.
- (c) **Clause 10.14B:** The Independent Certifier must review each Validation Report, Site Audit Statement and Site Audit Report (including drafts of each) submitted by the TSE Contractor under clause 10.14B of the TSE Project Deed and provide comments to TfNSW as to whether the Validation Report, Site Audit Statement or Site Audit Report complies with the requirements of the TSE Project Deed. The Independent Certifier must provide these comments in sufficient time for TfNSW to provide them to the TSE Contractor.
- (d) **Clause 11.2(f):** The Independent Certifier must:
 - (i) attend design meetings; and
 - (ii) insert Hold Points or Witness Points in the Project Plans (acting reasonably) and designate the nominated authority to release the Hold Points.
- (e) **Clauses 11.4(a)(ii) and 11.4(a)(iii):** The Independent Certifier must observe, monitor and audit all aspects of quality in the TSE Contractor's Activities and the durability of the Project Works and the Temporary Works.
- (f) **Clause 11.4(b)(ii):** The Independent Certifier must review any comments submitted by the Quality Manager in respect of quality issues in accordance with the requirements of the TSE Project Deed.
- (g) **Clause 11.4(d)(i):** The Independent Certifier must review the TSE Contractor's quality system and provide the certificate set out in Schedule B6 of the TSE Project Deed once it is satisfied that it can certify the matters specified in that certificate. The Independent Certifier acknowledges the TSE Contractor's obligation to provide this certificate to TfNSW within 3 months of the date of the TSE Project Deed.
- (h) **Clause 11.4(d)(ii):** The Independent Certifier must provide the certificate set out in Schedule B7 of the TSE Project Deed once the Independent Certifier is satisfied that it can certify the matters specified in that certificate. The Independent Certifier acknowledges the TSE Contractor's obligation to provide this certificate to TfNSW every 3 months from the date of the TSE Project Deed until the Date of Construction Completion of the last Portion to achieve Construction Completion.

- (i) **Clause 11.4(e):** The Independent Certifier must audit and review each revision of the Quality Plan for compliance with the requirements of the TSE Project Deed within 10 Business Days of submission of that plan to TfNSW's Representative.
- (j) **Clause 18.4(a)(v):** The Independent Certifier must provide the certificate set out in Schedule B11 of the TSE Project Deed, once it is satisfied that it can certify the requirements specified in that certificate. The Independent Certifier acknowledges the TSE Contractor's obligation to provide this certificate to TfNSW with each payment claim.

4.2 Design Phase Services

- (a) **Clause 11.3:** The Independent Certifier must, prior to providing any certification in the Design Phase Services, in respect of the Proof Engineered Temporary Works (not including any Demolition Works), ensure that the TSE Contractor has provided a certificate from the Proof Engineer in the form of Schedule B20 of the TSE Project Deed.
- (b) **Clause 12.7(a):** The Independent Certifier must attend design presentation workshops delivered by the TSE Contractor under clause 12.7 of the TSE Project Deed.
- (c) **Clause 12.8(b):** The Independent Certifier must, within the IC Design Review Period:
 - (i) review the Design Documentation and, in so doing, must consider any non-compliances or potential non-compliances raised by TfNSW's Representative under clause 12.8(a) of the TSE Project Deed or by any Authorities (including Sydney Trains, RMS, North Sydney Council, Sydney City Council and Willoughby Council);
 - (ii) in respect of Design Stage 1 or Design Stage 2, notify the TSE Contractor of any actual non-compliance with the requirements of the TSE Project Deed (with detailed reasons). The Independent Certifier may also notify the TSE Contractor of any potential non-compliance with the requirements of the TSE Project Deed (with detailed reasons) or any other observation or comment which the Independent Certifier has on the Design Documentation; and
 - (iii) in respect of Design Stage 3, determine whether or not the Design Documentation complies with the requirements of the TSE Project Deed and either:
 - (A) reject the Design Documentation (with detailed reasons) (not including Design Documentation for the Temporary Works, the Handover Works or the Demolition Works) if the Independent Certifier considers that the Design Documentation:
 - (aa) does not comply with the requirements of the TSE Project Deed (Minor Non-Compliances excepted); or
 - (bb) is not sufficiently complete to enable the Independent Certifier to form a view on whether it is compliant; or
 - (B) if the Independent Certifier considers that the Design Documentation complies with the requirements of the TSE Project Deed, certify the Design Documentation (not including Design Documentation for the Temporary Works, the Handover Works or the Demolition Works) by:

- (aa) including a notation on each document forming part of the Design Documentation;
- (bb) providing to TfNSW's Representative, the TSE Contractor and, if required by TfNSW's Representative, OpCo2, a certificate in the form of Schedule B2 of the TSE Project Deed;
- (cc) where the Design Documentation relates to Sydney Trains Interface Works, providing to TfNSW's Representative and the TSE Contractor a certificate in the form of Schedule 4 of the Sydney Trains Interface Agreement;
- (dd) where the Design Documentation relates to WAD Works, providing to TfNSW's Representative and the TSE Contractor a certificate in the form of Schedule 2 of the WAD; and
- (ee) where the Design Documentation relates to Cross City Tunnel Works, providing to TfNSW's Representative and the TSE Contractor a certificate in the form of Schedule 5 of the Cross City Tunnel Interface Agreement; and
- (ff) where the Design Documentation relates to Sydney City Council Interface Works or Willoughby Council Interface Works, providing to TfNSW's Representative and the TSE Contractor a certificate in the form in Schedule 3 of the Sydney City Council Interface Agreement or the Willoughby Council TSE Interface Agreement.

The Independent Certifier must carry out its obligations in respect of clause 12.8(b) of the TSE Project Deed within the IC Design Review Period whether or not an Authority has raised any non-compliances or potential non-compliances.

- (d) **Clause 12.8(d):** The Independent Certifier is not required to certify any Design Documentation for Temporary Works, Handover Works or the Demolition Works.
- (e) **Clauses 12.8(e) and 12.8(ea):** The Independent Certifier must review any written statement submitted by the TSE Contractor which explains how any actual non-compliance notified by the Independent Certifier to the TSE Contractor in respect of Design Stage 1 or Design Stage 2 Documentation under clause 12.8(b)(ii) of the TSE Project Deed has been or will be addressed.
- (f) **Clause 12.8(g)(ii):** The Independent Certifier must, if the TSE Contractor gives a notice under clause 12.9(f)(iii) of the TSE Project Deed, within 10 Business Days after receipt of the notice, determine and notify the parties as to whether or not the notice satisfactorily addresses the Independent Certifier's concerns together with its reasons for forming that opinion and:
 - (i) if the Independent Certifier considers that the TSE Contractor's notice satisfactorily addresses the Independent Certifier's concerns, the Independent Certifier must provide the certification under clause 12.8(b)(iii)(B) of the TSE Project Deed as part of its notice; or
 - (ii) if the Independent Certifier considers that the notice does not satisfactorily address the Independent Certifier's concerns, clauses 12.8(h)(iv) and 12.8(h)(v) of the TSE Project Deed will apply.
- (g) **Clause 12.8(j):** The Independent Certifier may, if the certificate provided by the Independent Certifier pursuant to clause 12.8(b)(iii)(B)(bb) of the TSE Project Deed lists any Minor Non-Compliances, in the certificate:

- (i) recommend the action that could be taken by the TSE Contractor to address the Minor Non-Compliance; and
 - (ii) specify the timeframe (if any) within which the TSE Contractor must complete the recommended action, or take any other action the TSE Contractor deems reasonable in the circumstances, to correct the Minor Non-Compliance to the extent required for the Design Documentation to comply with the TSE Project Deed.
- (h) **Clause 12.8(k):** The Independent Certifier must, within 5 Business Days after:
- (i) providing a notice to the TSE Contractor under clause 12.8(b)(ii) of the TSE Project Deed in respect of Design Stage 1 or Design Stage 2 Design Documentation, to the extent that the Independent Certifier did not include in its notice to the TSE Contractor any comments received from TfNSW's Representative under clause 12.8(a) of the TSE Project Deed, provide TfNSW's Representative with detailed written reasons of why it did not include such comments;
 - (ii) rejecting Design Stage 3 Design Documentation under clause 12.8(b)(iii)(A) of the TSE Project Deed, to the extent that the Independent Certifier did not include in its notice to the TSE Contractor any comments received from TfNSW's Representative under clause 12.8(a) of the TSE Project Deed regarding non-compliances in the TSE Contractor's Design Stage 3 Design Documentation, provide TfNSW's Representative with detailed written reasons of why it did not include such comments; and
 - (iii) certifying Design Stage 3 Design Documentation under clause 12.8(b)(iii)(B) of the TSE Project Deed, to the extent that the Independent Certifier received comments from TfNSW's Representative under clause 12.8(a) of the TSE Project Deed regarding non-compliances in the TSE Contractor's Design Stage 3 Design Documentation, provide TfNSW's Representative with detailed written reasons of why it certified the Design Stage 3 Design Documentation despite the comments received from TfNSW's Representative.
- (i) **Clause 12.9:** The Independent Certifier may, in respect of Design Documentation submitted by the TSE Contractor at Design Stage 1, Design Stage 2 or Design Stage 3:
- (i) provide copies of such Design Documentation to; and
 - (ii) seek comments from and take into account the views of,
- the tenderers for any Interface Works or any operation and maintenance services, any Interface Contractor and any Authority (including Sydney Trains, RMS, North Sydney Council, Sydney City Council and Willoughby Council).
- (j) **Clause 12.11:** The Independent Certifier must, if the TSE Contractor wishes to amend Final Design Documentation prior to the Date of Construction Completion of a Portion to which the Final Design Documentation relates, comply with clause 12.8 as if the Design Documentation submitted to it in accordance with clause 12.11(a) is Design Stage 3 Design Documentation.
- (k) **Clause 16.3(a):** The Independent Certifier must attend any meetings of the TSE Contractor's design team including its designers and, where relevant, the Proof Engineer (and in any event at Design Stage 1 and the Design Stage 2 of each discrete design part or element in the TSE Contractor's Activities). The Independent Certifier must provide comments during such workshops if it

considers that the Design Documentation does not (or may not) comply with the terms of the TSE Project Deed.

4.3 Construction Phase Services

- (a) **Clause 14.6(a)**: The Independent Certifier may at any time:
- (i) inspect the TSE Contractor's Activities on the Construction Site; and
 - (ii) seek comments from others in respect of the TSE Contractor's Activities.

The Independent Certifier must consider any comments received.

- (b) **Clause 14.6(b)**: The Independent Certifier must accompany any Follow-on Contractor, any Alternate Operator or OpCo2 for the purpose of inspecting the TSE Contractor's Activities on the Construction Site, if requested by a Follow-on Contractor, any Alternate Operator, OpCo2 or TfNSW.
- (c) **Clauses 14.14(d), 14.14(e), 14.14(f) and 14.14(g)**: The Independent Certifier must review any Asset Management Information, or any draft Asset Management Information submitted to it.
- (d) **Clause 14.14(i)**: The Independent Certifier must provide comments to the TSE Contractor in relation to any Asset Management Information, or any draft Asset Management Information submitted to it if it considers that the Asset Management Information does not comply or may not comply with the terms of the TSE Project Deed.
- (e) **Clause 14.14(j)(i)**: The Independent Certifier must, within 15 Business Days of the submission of a set of Asset Management Information or a draft thereof, reject the Asset Management Information or the draft if it fails to comply with the requirements of the TSE Project Deed.
- (f) **Clause 14.14(j)(ii)**: The Independent Certifier must, within 15 Business Days of the submission of the final draft of a set of Asset Management Information (**Final Submission**), either:
- (i) reject the Final Submission for a failure to comply with the requirements of the TSE Project Deed, which rejection must specify what development, updating and amendment of the Final Submission is required (together with reasons) and a time within which this must occur; or
 - (ii) certify the Final Submission by:
 - (A) including a notation on the Final Submission; or
 - (B) providing to TfNSW's Representative, the TSE Contractor and, if required by TfNSW's Representative, OpCo2 the certificate in Schedule B10 to the TSE Project Deed.
- (g) **Clauses 14.15(c) and 14.15(d)**: The Independent Certifier must, within 15 Business Days of the submission of the as-built drawings for a Portion, either:
- (i) reject the as-built drawings for a failure to comply with the requirements of the TSE Project Deed, which rejection must specify what development, updating and amendment of the as-built drawings (together with reasons) and a time within which this must occur; or
 - (ii) certify the as-built drawings by:

- (A) including a notation on the as-built drawings; and
- (B) providing to TfNSW's Representative, the TSE Contractor and, if required by TfNSW's Representative, OpCo2 or any Alternate Operator, a document signed by the Independent Certifier in the form in Schedule B24 to the TSE Project Deed.

4.4 Completion Phase Services

- (a) **Clause 15.7(c):** The Independent Certifier must jointly with TfNSW's Representative, the Project Director and the representative of any relevant Authority, inspect the relevant Local Area Works when notified by the TSE Contractor that a discrete part of the Local Area Works is complete. Such joint inspection must take place at a mutually convenient time within 10 Business Days of the TSE Contractor's notification (or such longer period specified in any Third Party Agreement).
- (b) **Clause 15.7(d):** Following the joint inspection in clause 15.7(c) of the TSE Project Deed and subject to clause 15.7(e) of the TSE Project Deed, the Independent Certifier must notify the TSE Contractor and TfNSW in writing within 5 Business Days of the date of the inspection (or such longer period permitted under any relevant Third Party Agreement):
 - (i) if the discrete part of the Local Area Works is complete, of the date on which the TSE Contractor has completed the discrete part of the Local Area Works in accordance with the TSE Project Deed and the requirements of any relevant Third Party Agreement (if applicable); or
 - (ii) if the discrete part of the Local Area Works is not complete, the items which remain to be completed.
- (c) **Clause 15.7(e):** The Independent Certifier must:
 - (i) execute and provide to TfNSW's Representative the certificate in Schedule B9 to the TSE Project Deed with respect to the discrete part of the Local Area Works, if the discrete part is complete;
 - (iii) in the case of the WAD Road Works, execute and provide to TfNSW's Representative and RMS a certificate in the form of Schedule 3 to the WAD with respect to the discrete part of the Local Area Works, if the discrete part is complete;
 - (iv) in the case of any Council Works, execute and provide to TfNSW's Representative and the relevant Council a certificate in the form of Schedule 4 to the relevant Council Interface Agreement with respect to the discrete part of the Local Area Works, if the discrete part is complete; or
 - (v) in the case of any Sydney Trains Works, execute and provide to TfNSW's Representative and Sydney Trains a certificate in the form of Schedule 5 to the Sydney Trains Interface Agreement with respect to the discrete part of the Sydney Trains Works, if the discrete part is complete.
- (d) **Clause 17.11(b):** The Independent Certifier must, within 5 Business Days of receipt by TfNSW's Representative of a three month written notice from the TSE Contractor of the estimated Date of Construction Completion of the Last Portion under clause 17.11(a) of the TSE Project Deed, jointly with TfNSW's Representative and the Project Director, inspect the TSE Contractor's Activities at a mutually convenient time.

- (e) **Clause 17.11(c):** Within 2 Business Days of the joint inspection referred to in clause 17.11(b) of the TSE Project Deed, the Independent Certifier must give the TSE Contractor and TfNSW a notice either:
- (i) containing a list of items which it believes must be completed before Construction Completion of the Portion is achieved; or
 - (ii) stating that it believes the TSE Contractor is so far from achieving Construction Completion for that Portion that it is not practicable to issue a list as contemplated in clause 17.11(c)(i) of the TSE Project Deed.
- (f) **Clause 17.11(d):** The Independent Certifier must, after receipt of a notice from the TSE Contractor in writing stating that it considers it has achieved Construction Completion of the Portion under clause 17.11(d) of the TSE Project Deed and an executed certificate in the form of Schedule B1 to the TSE Project Deed, jointly inspect the TSE Contractor's Activities with TfNSW's Representative and the Project Director at a mutually convenient time.
- (g) **Clause 17.11(e):** Within 5 Business Days after receipt of a notice from the TSE Contractor under clause 17.11(d) or 17.11(f) of the TSE Project Deed, the Independent Certifier must:
- (i) if Construction Completion of the Portion has been achieved, provide to TfNSW's Representative and the TSE Contractor the certificate in Schedule B17 to the TSE Project Deed; and
 - (ii) additionally:
 - (A) if the relevant Portion includes WAD Project Works, provide to TfNSW's Representative and RMS a certificate in the form of Schedule 6 to the WAD with respect to the WAD Project Works;
 - (B) if the relevant Portion includes any Council Project Works, provide to TfNSW's Representative and the relevant Council a certificate in the form of Schedule 6 to the relevant Council Interface Agreement with respect to the relevant Council Project Works;
 - (C) if the relevant Portion includes any Cross City Tunnel Works, provide to TfNSW's Representative, RMS and [Insert name of Asset Owner] a certificate in the form of Schedule 6 to the Cross City Tunnel Interface Agreement with respect to the Cross City Tunnel Works; or
 - (D) if the relevant Portion includes any Sydney Trains Protection Zone Works, provide to TfNSW's Representative and Sydney Trains a certificate in the form of Schedule 6 to the Sydney Trains Interface Agreement with respect to the Sydney Trains Protection Zone Works;
 - (iii) if Construction Completion of the Portion has not been achieved, issue a notice to the TSE Contractor and TfNSW in which it states:
 - (A) the items which remain to be completed before Construction Completion of the Portion; or
 - (B) that the TSE Contractor is so far from achieving Construction Completion of the Portion that it is not practicable to notify the TSE Contractor of the items which remain to be completed as contemplated by clause 17.11(e)(ii)(A) of the TSE Project Deed.

- (h) **Clause 17.11(g)(ii):** In making its determination under clause 17.11(e), the Independent Certifier must consider comments from TfNSW's Representative, any Follow-on Contractor, OpCo2 or any Alternate Operator in relation to any non-compliance of the TSE Contractor's Activities with the TSE Project Deed.
- (i) **Clause 17.11A:** The Independent Certifier must, within 5 Business Days of receipt of a notice from the TSE Contractor in writing stating that it considers it has achieved Completion of the Portion under clause 17.11A(a) of the TSE Project Deed and an executed certificate in the form of Schedule B25 to the TSE Project Deed, jointly inspect the TSE Contractor's Activities with TfNSW's Representative and the Project Director at a mutually convenient time.
- (j) **Clause 17.11A(b):** Following the joint inspection under clause 17.11A(a) of the TSE Project Deed, the Independent Certifier must within 5 Business Days of receipt of a notice under clause 17.11A(a), or of receipt of a notice under clause 17.11A(c):
 - (vi) if Completion of the Portion has been achieved, provide to TfNSW's Representative and the TSE Contractor a document signed by the Independent Certifier in the form in Schedule B26 to the TSE Project Deed; or
 - (vii) if Completion of the Portion has not been achieved, issue a notice to the TSE Contractor and TfNSW in which it states:
 - (A) the items which remain to be completed before Completion of the Portion; or
 - (B) that the TSE Contractor is so far from achieving Completion of the Portion that it is not practicable to notify the TSE Contractor of the items which remain to be completed as contemplated by clause 17.11A(b)(ii)(A) of the TSE Project Deed.
- (k) **Clause 17.11A(d):** In making its determination under clause 17.11A(b), the Independent Certifier must consider comments from TfNSW's Representative, any Follow-on Contractor, OpCo2 or any Alternate Operator in relation to any non-compliance of the TSE Contractor's Activities with the TSE Project Deed.

4.5 Defects Phase Services

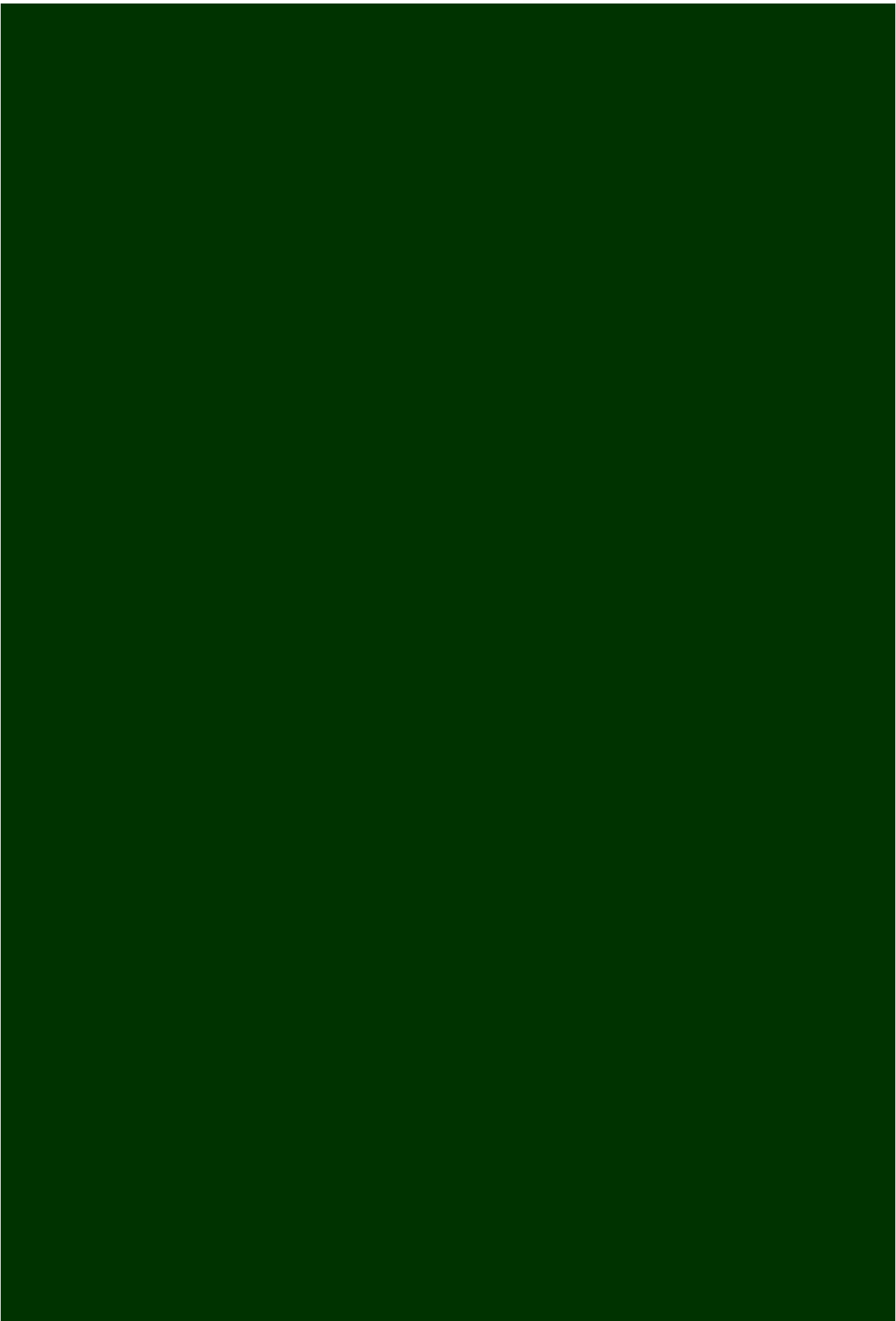
- (a) **Clause 11.4(d)(iii):** The Independent Certifier must certify the expiry of the Defects Correction Period by providing the certificate in Schedule B8 to the TSE Project Deed, once it is satisfied that it can certify the requirements specified in that certificate.
- (b) **Clause 15.14(a):** The Independent Certifier must, together with the TSE Contractor, TfNSW's Representative and either OpCo2 or an Alternate Operator, carry out a final inspection of the Project Works (other than the Third Party Works) 6 months before the end of the Defects Correction Period (**Final Inspection**).
- (c) **Clauses 15.14(b) and 15.14(c):** Where:
 - (i) OpCo2 is not involved in the Final Inspection, the Independent Certifier must:
 - (A) within 5 Business Days of the Final Inspection, receive any written notice from TfNSW's Representative or the Alternate Operator of any

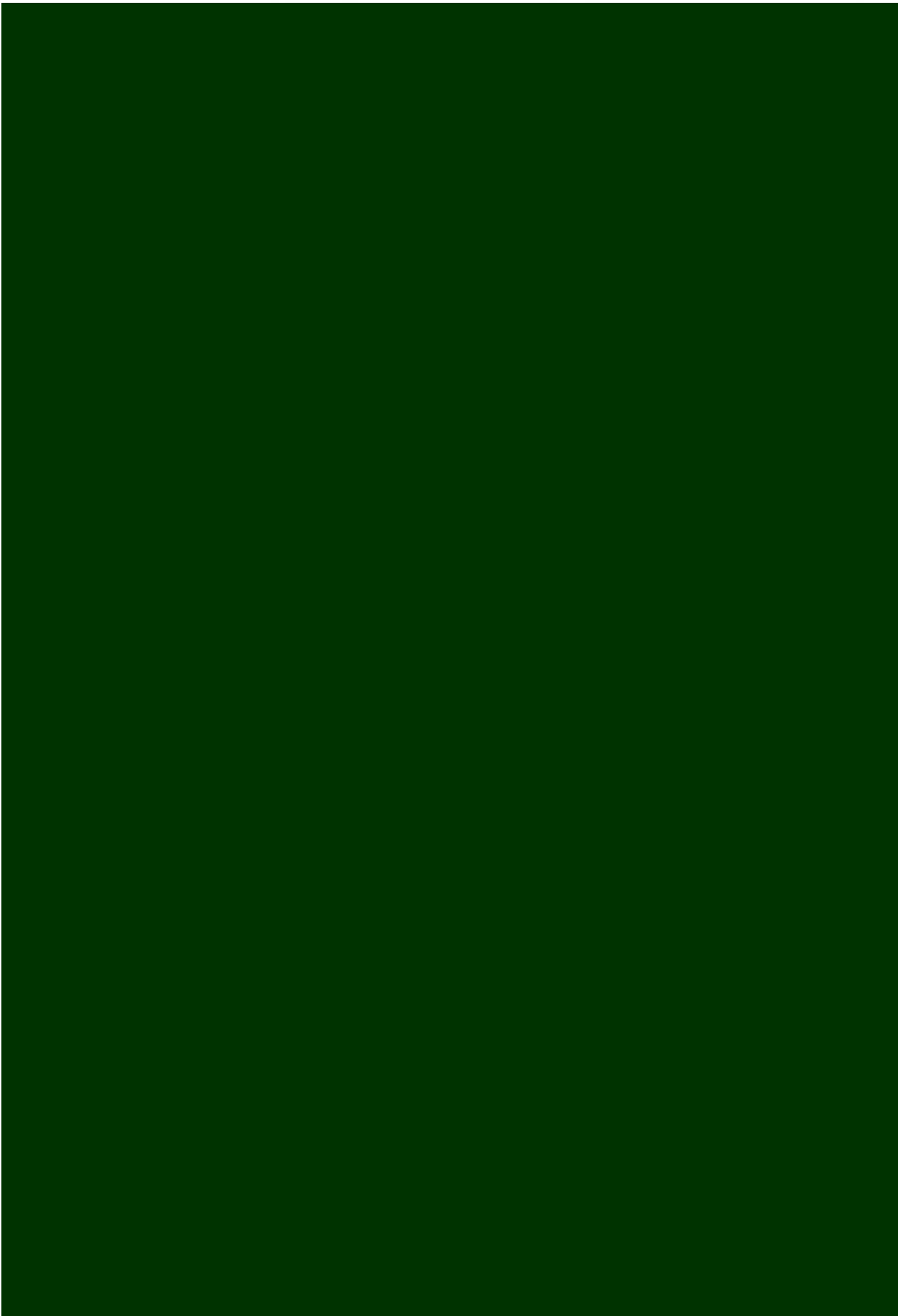
Defects which they observed during the Final Inspection or of which they are otherwise aware; and

- (B) within 10 Business Day of the Final Inspection, give TfNSW's Representative and the Alternate Operator a list of Defects (taking into account any notice received from TfNSW's Representative or Alternate Operator under clause 15.14(b)(i) of the TSE Project Deed);
- (ii) OpCo2 is involved in the Final Inspection, the Independent Certifier must comply with clause 5 of the TSE-OTS2 Cooperation and Integration Deed in relation to the Final Inspection.
- (d) **Clause 15.15:** The Independent Certifier must:
 - (i) together with the TSE Contractor, TfNSW's Representative and applicable Authorities, carry out a final inspection of the Third Party Works 3 months before the end of the Defects Correction Period (**Final Third Party Works Inspection**); and
 - (ii) during the Final Third Party Works Inspection, identify any Defects.
- (e) The Independent Certifier must carry out any additional Services relating to Defects required by TfNSW.

5. **SERVICES UNDER THE SYDNEY TRAINS TSE INTERFACE AGREEMENT**

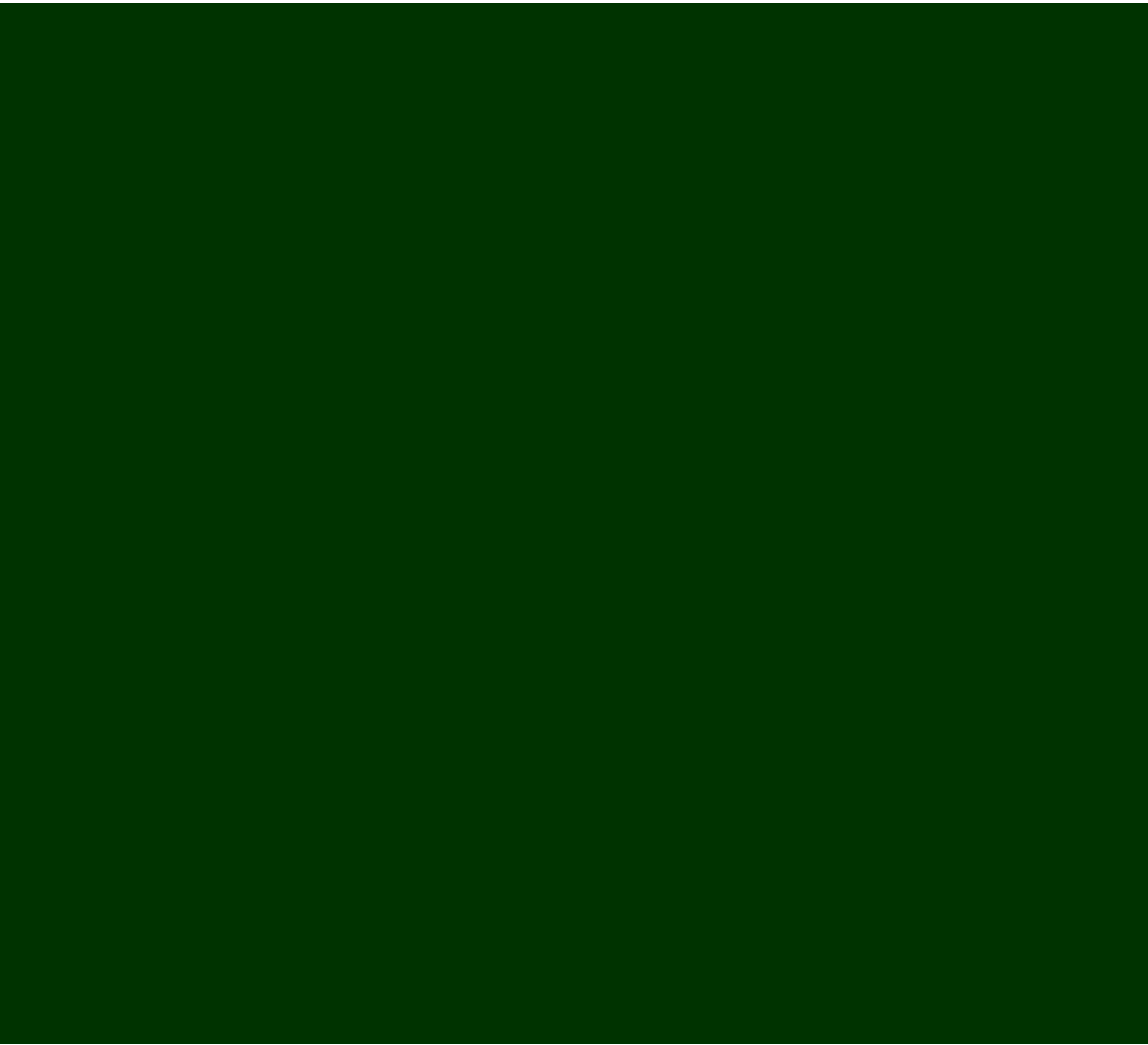






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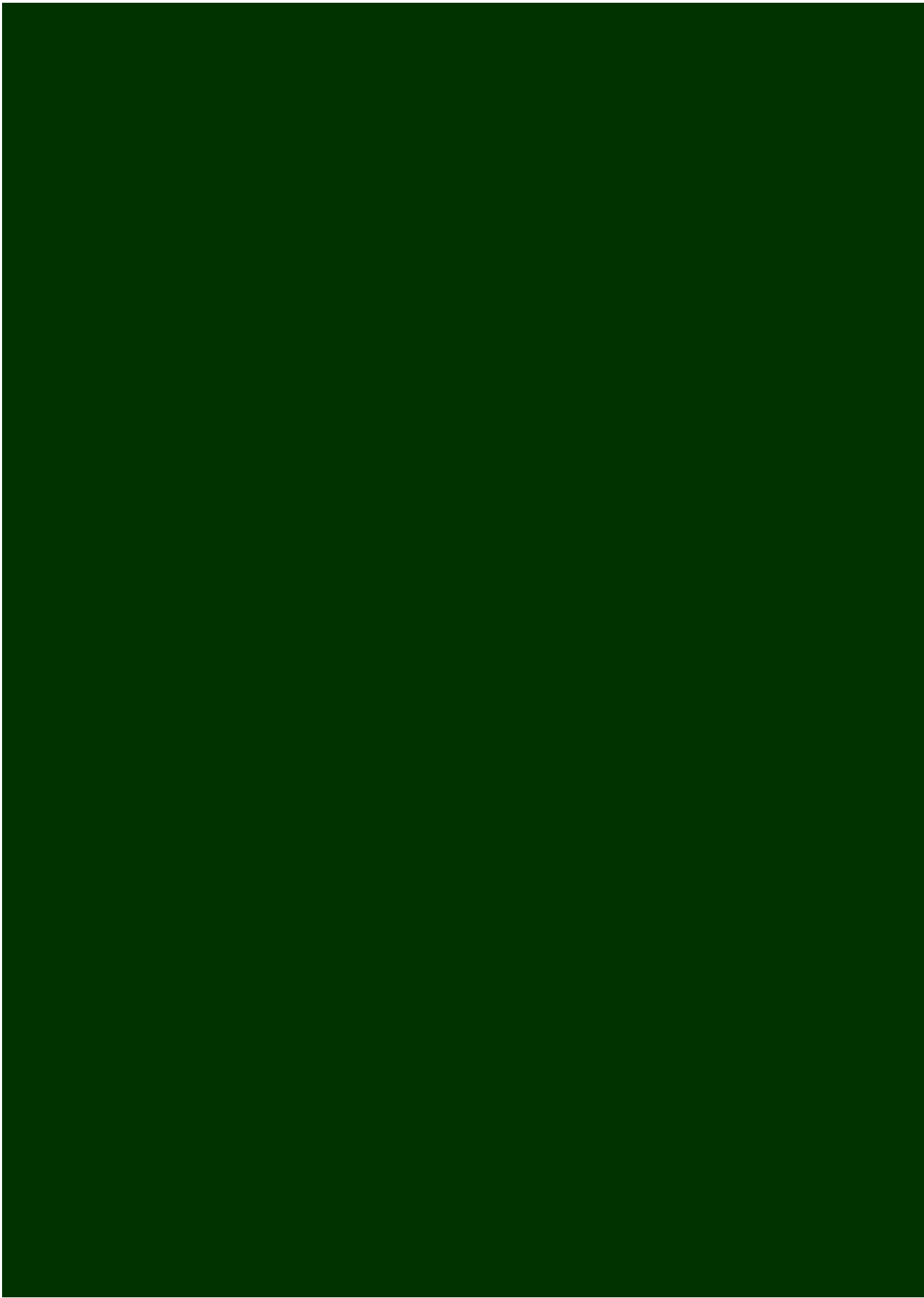
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6. **SERVICES UNDER THE WAD**

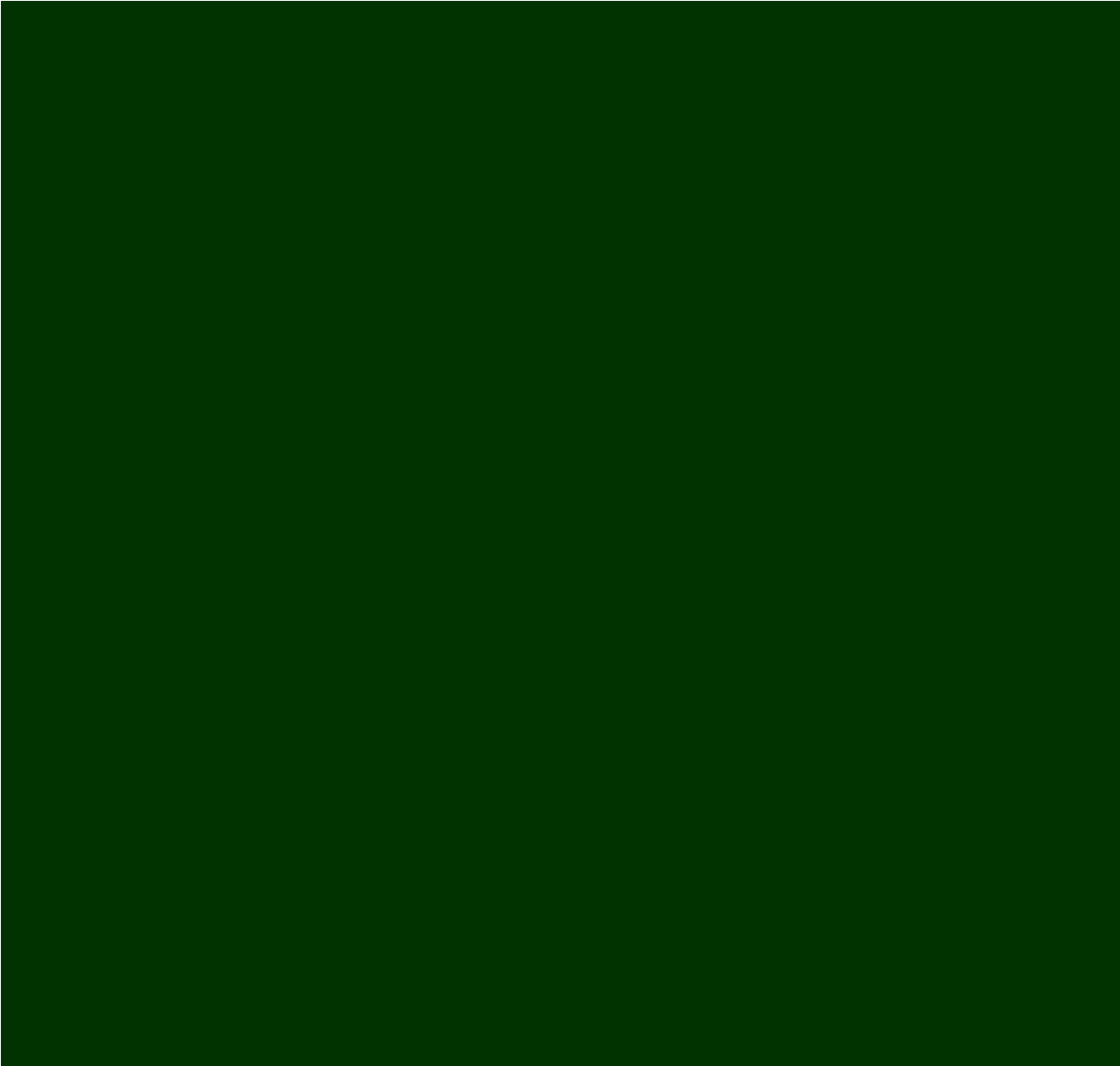








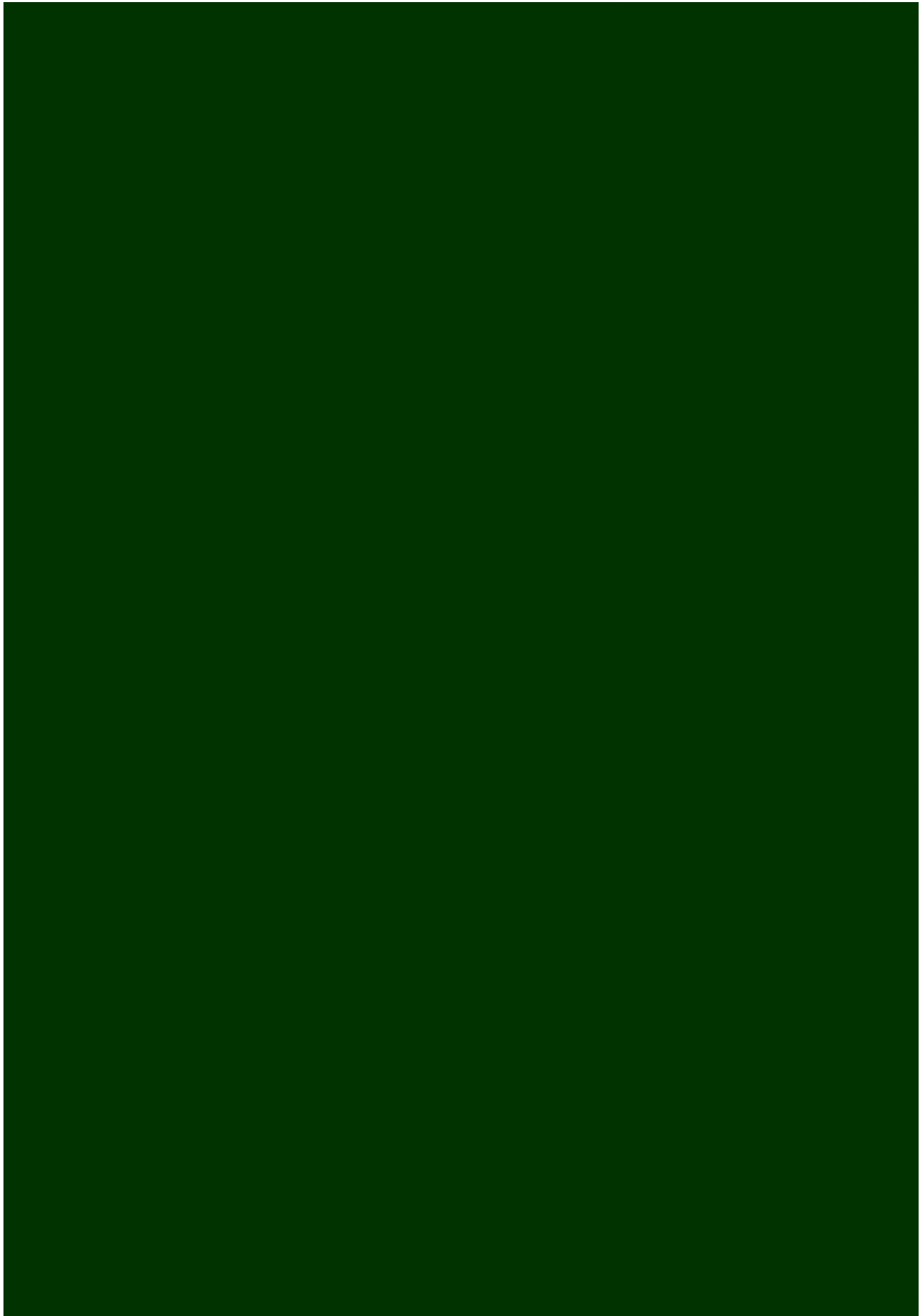
7. SERVICES UNDER THE CROSS CITY TUNNEL INTERFACE DEED





8. **SERVICES UNDER THE SYDNEY COUNCIL INTERFACE AGREEMENT**





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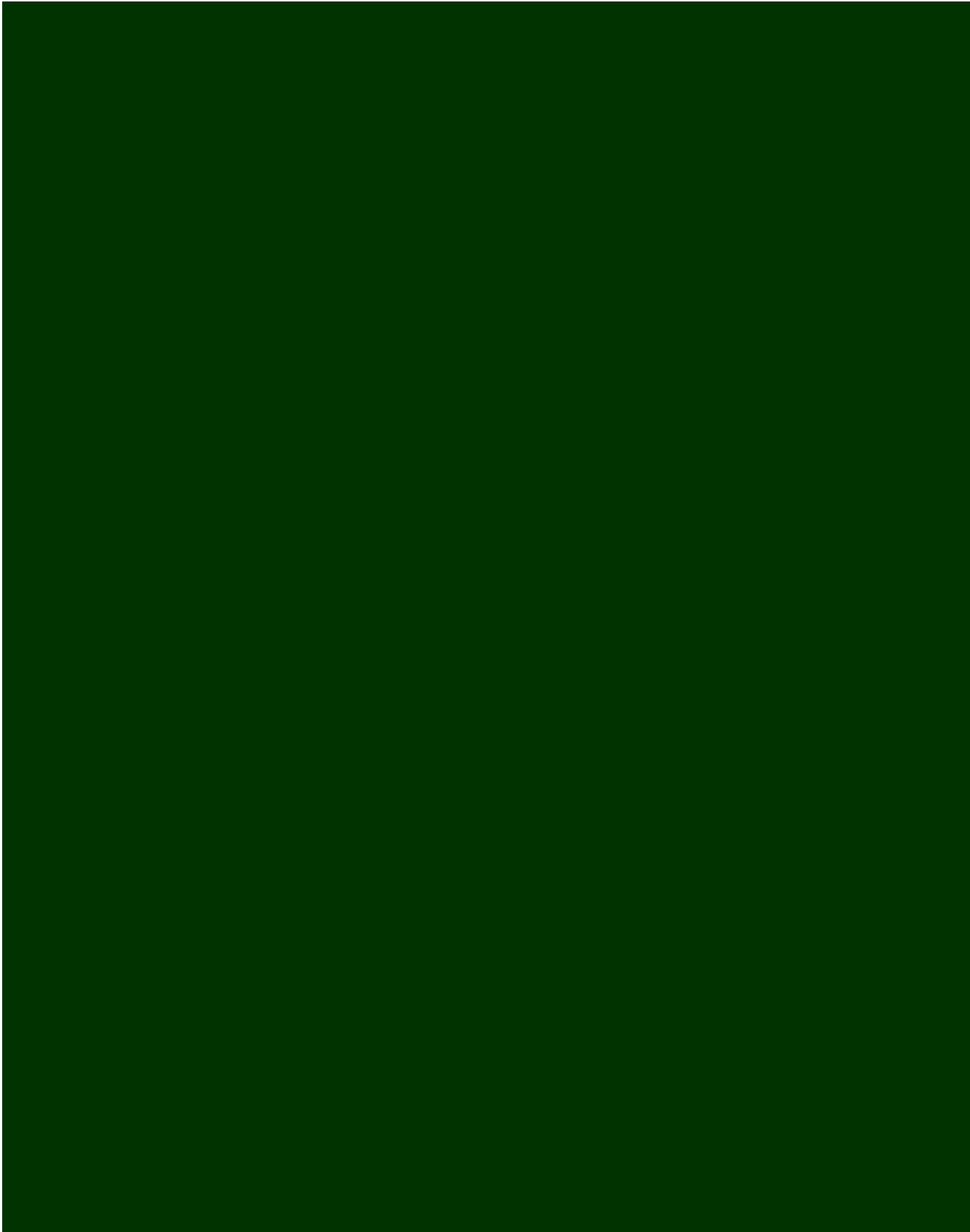


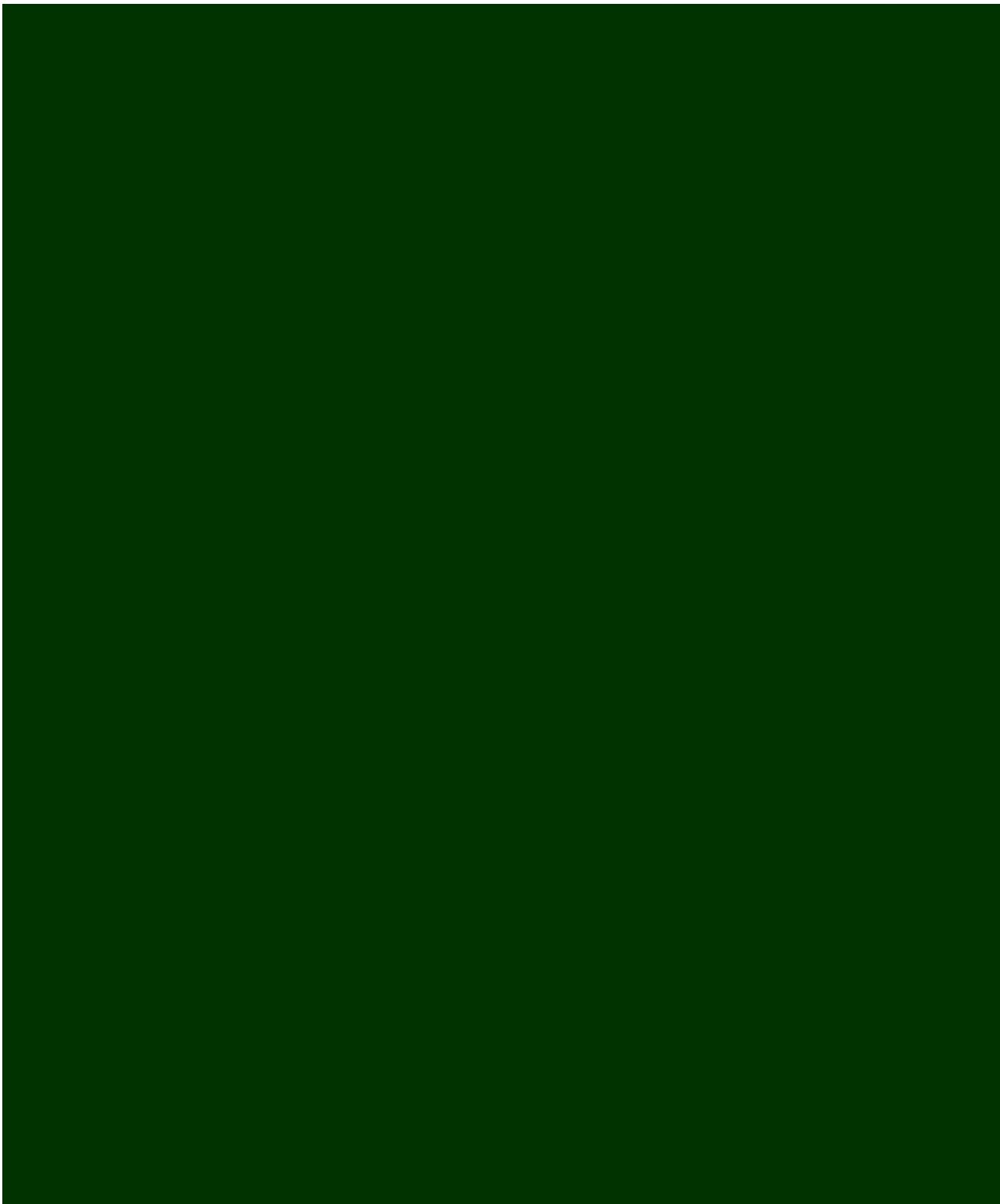
9. **SERVICES UNDER THE WILLOUGHBY COUNCIL TSE INTERFACE AGREEMENT**





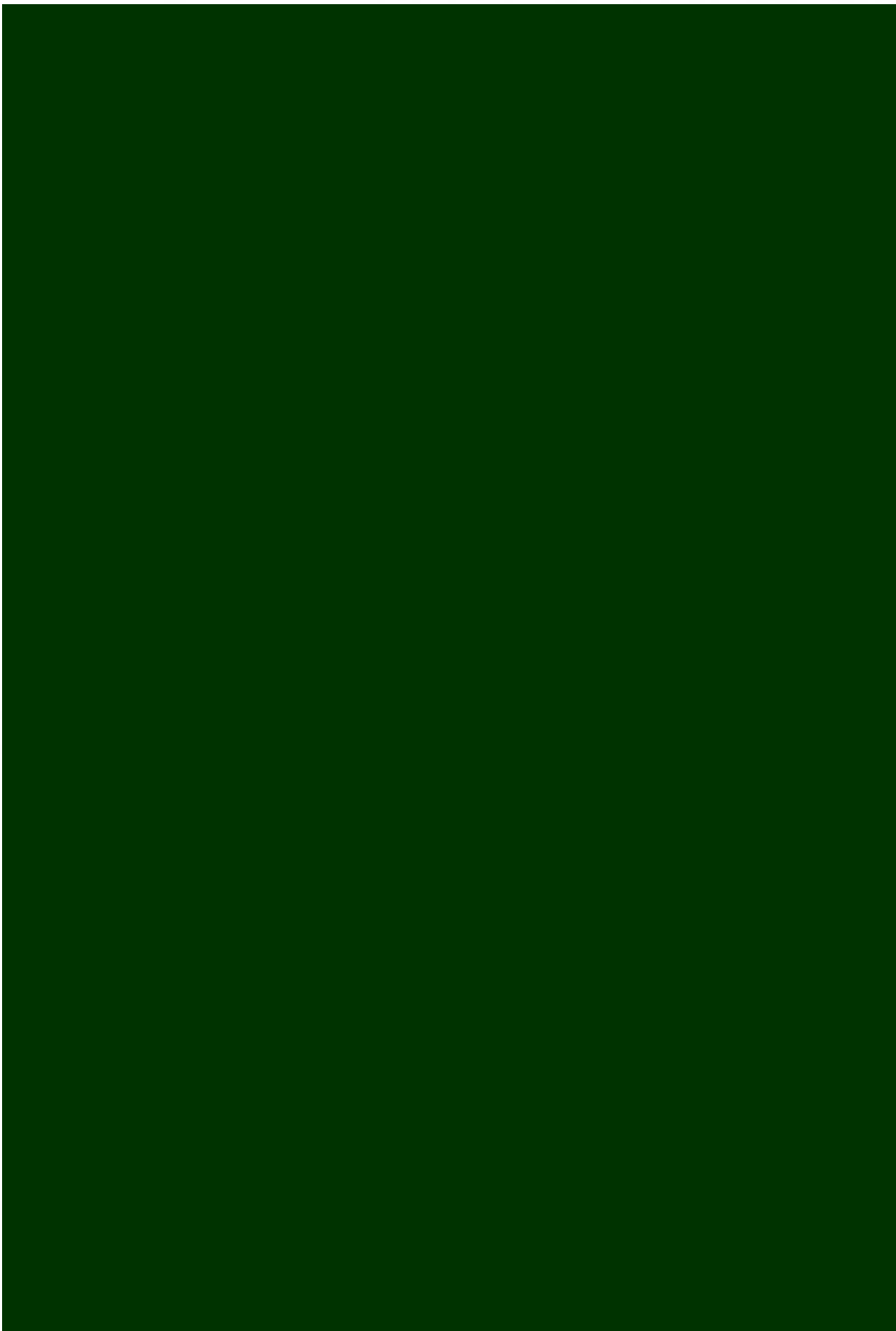
10. SERVICES UNDER THE WESTCONNEX INTERFACE DEED





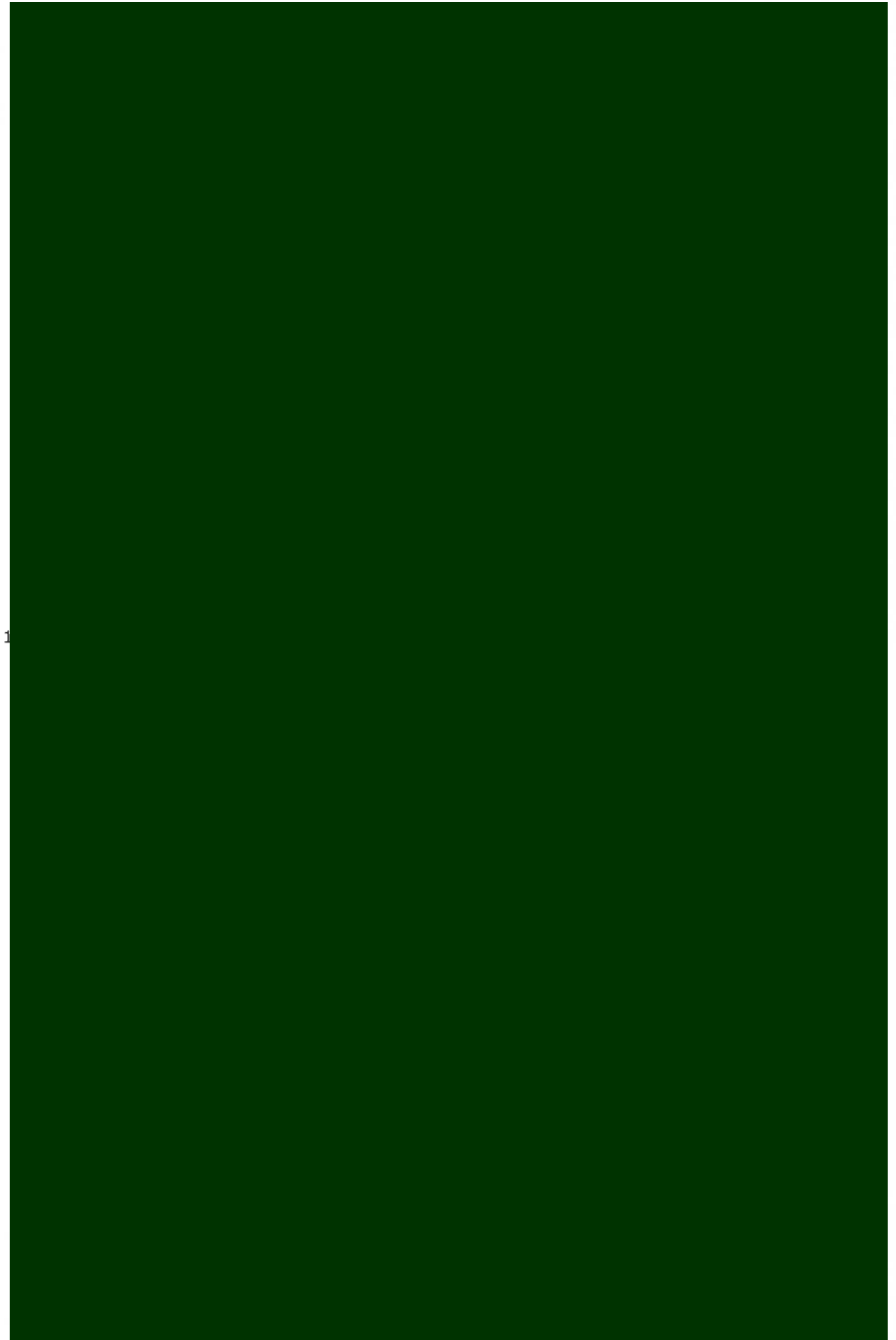
11. SERVICES UNDER THE BARANGAROO/METRO INTERFACE AGREEMENT

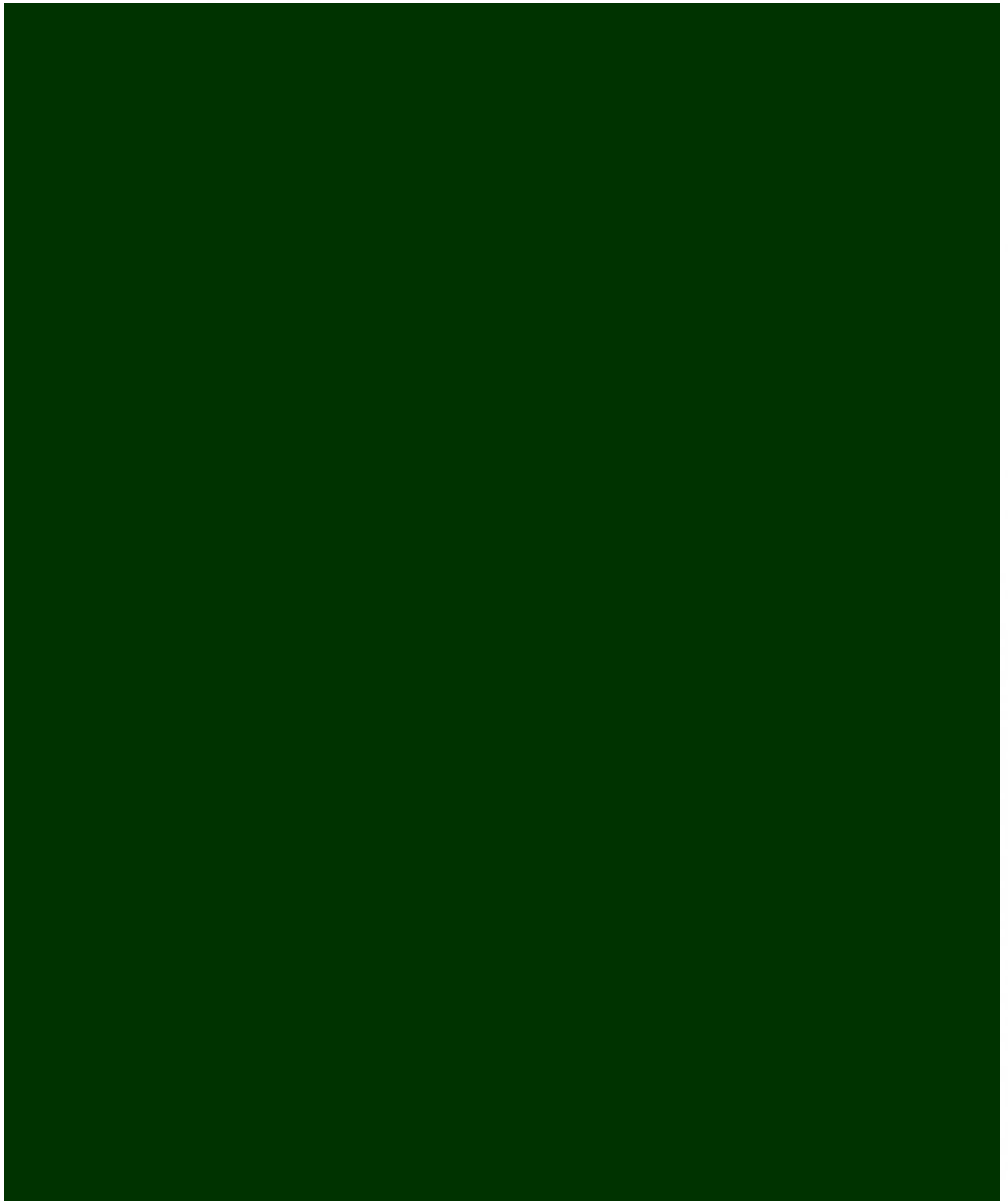




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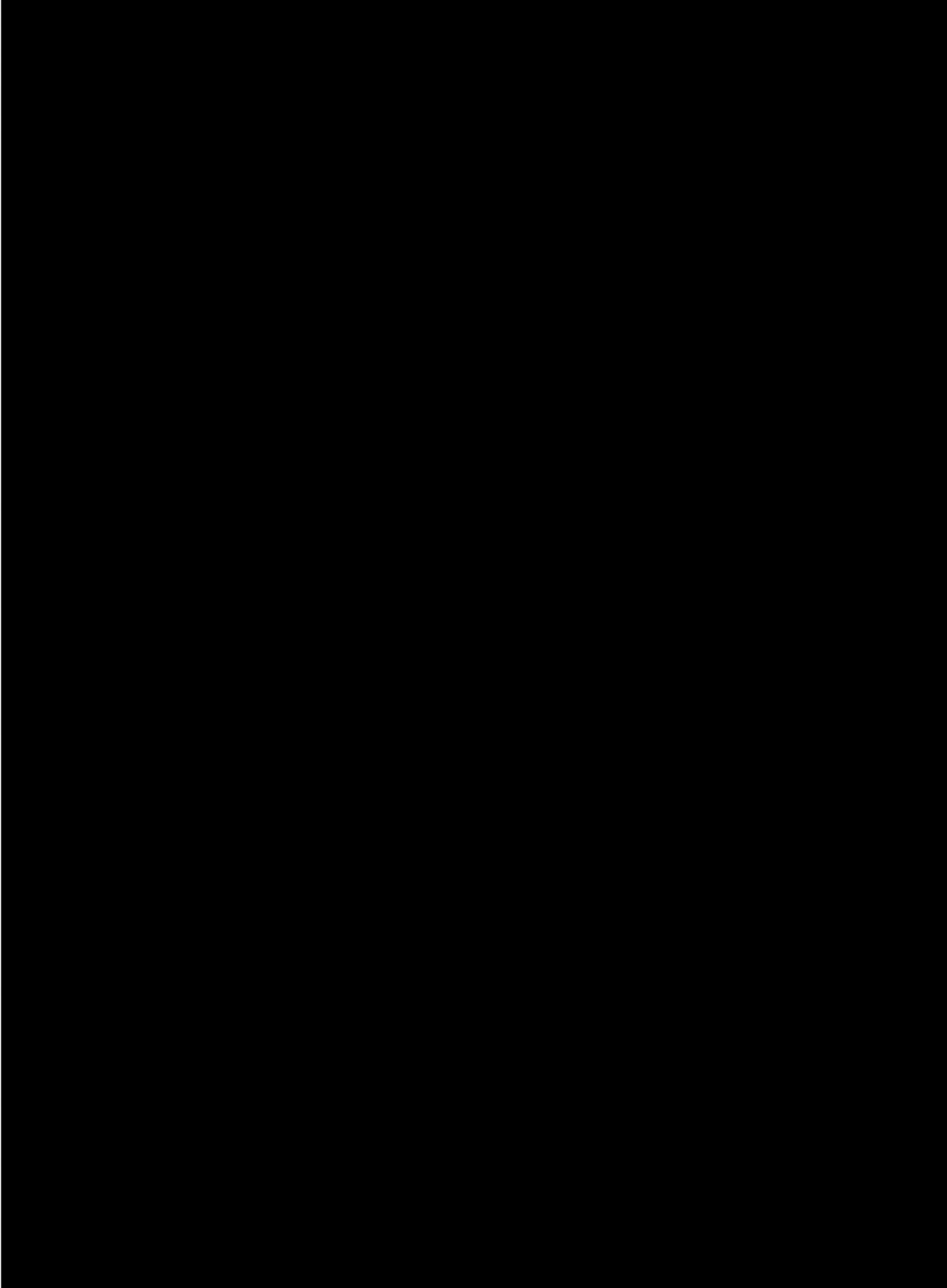


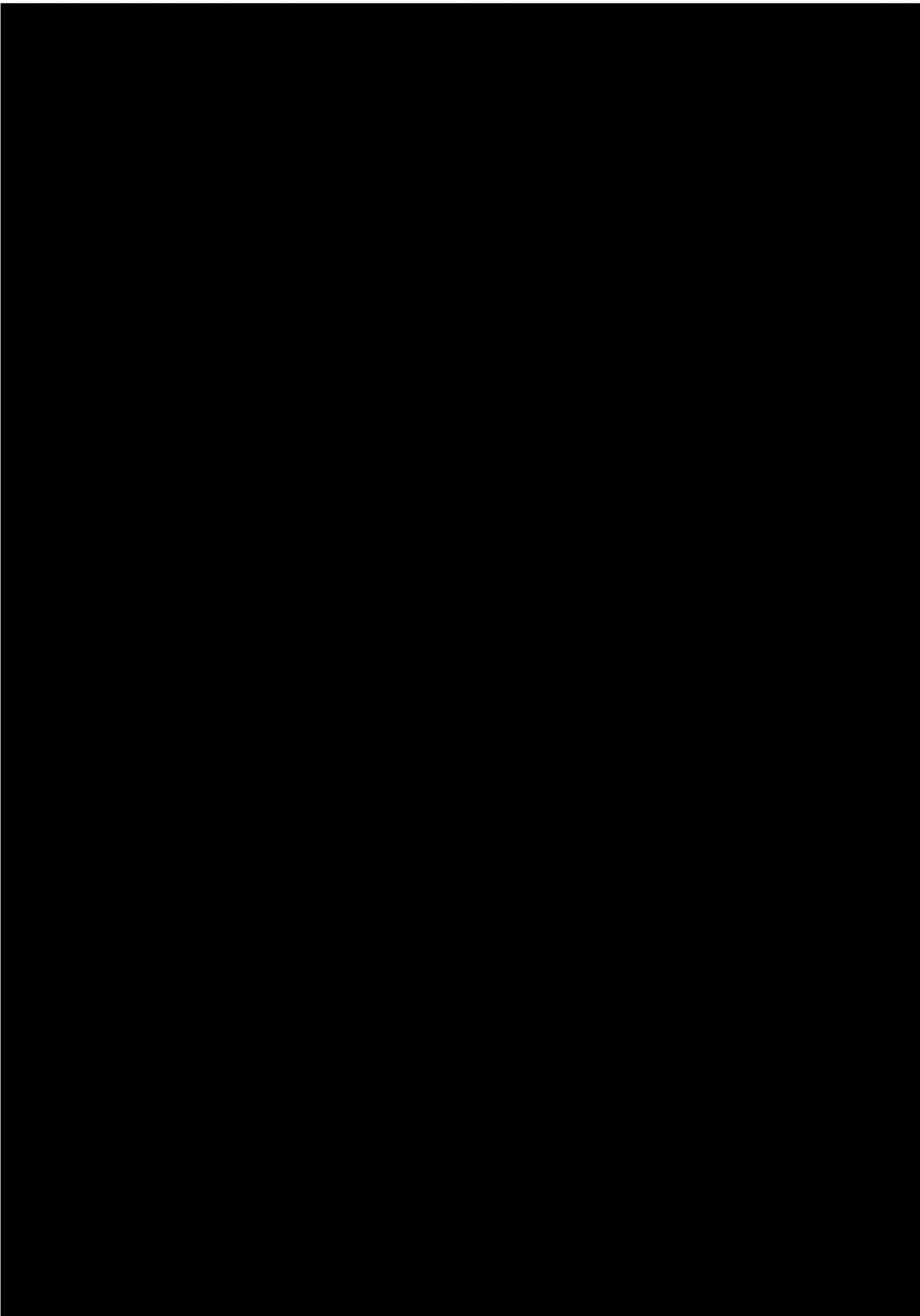
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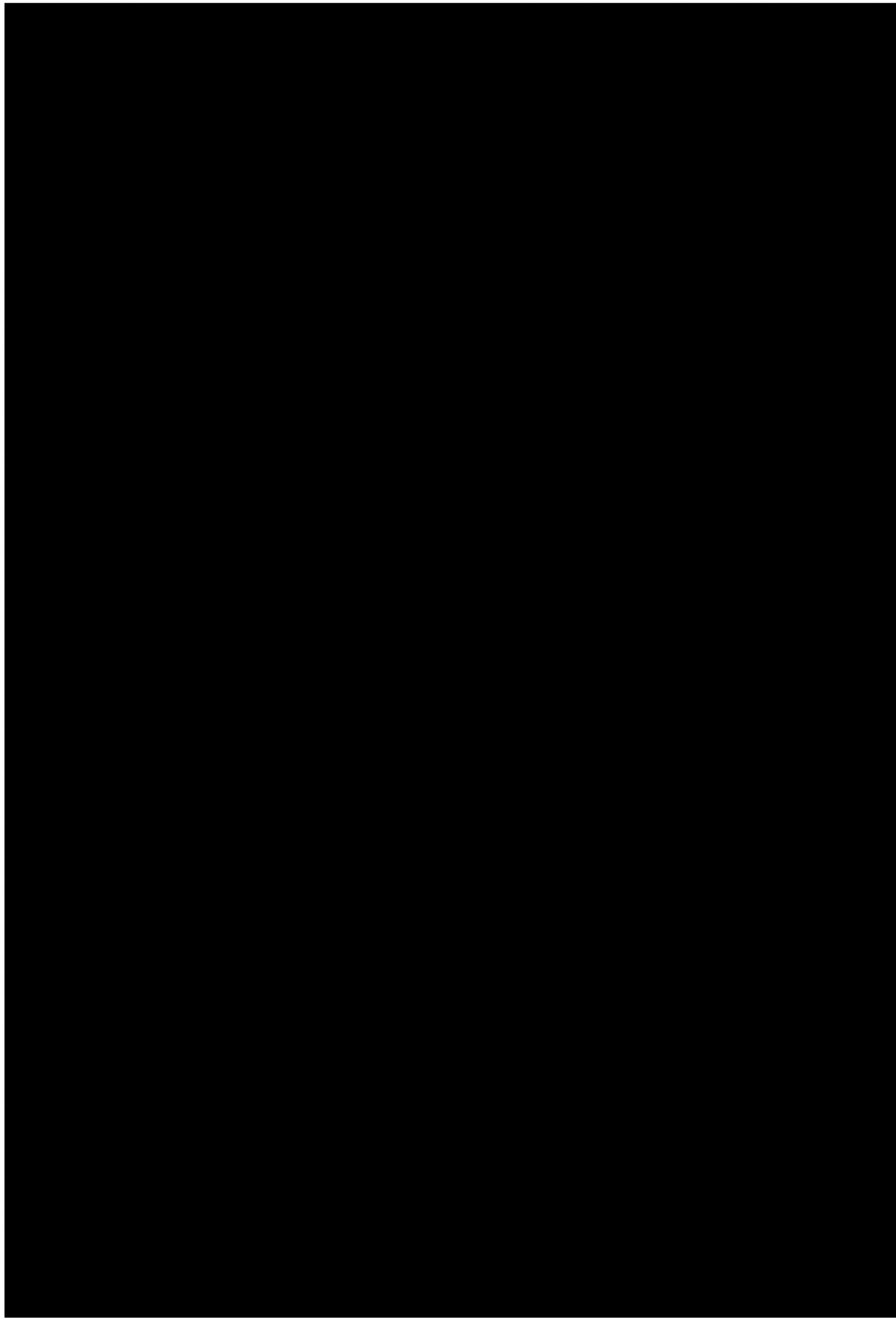
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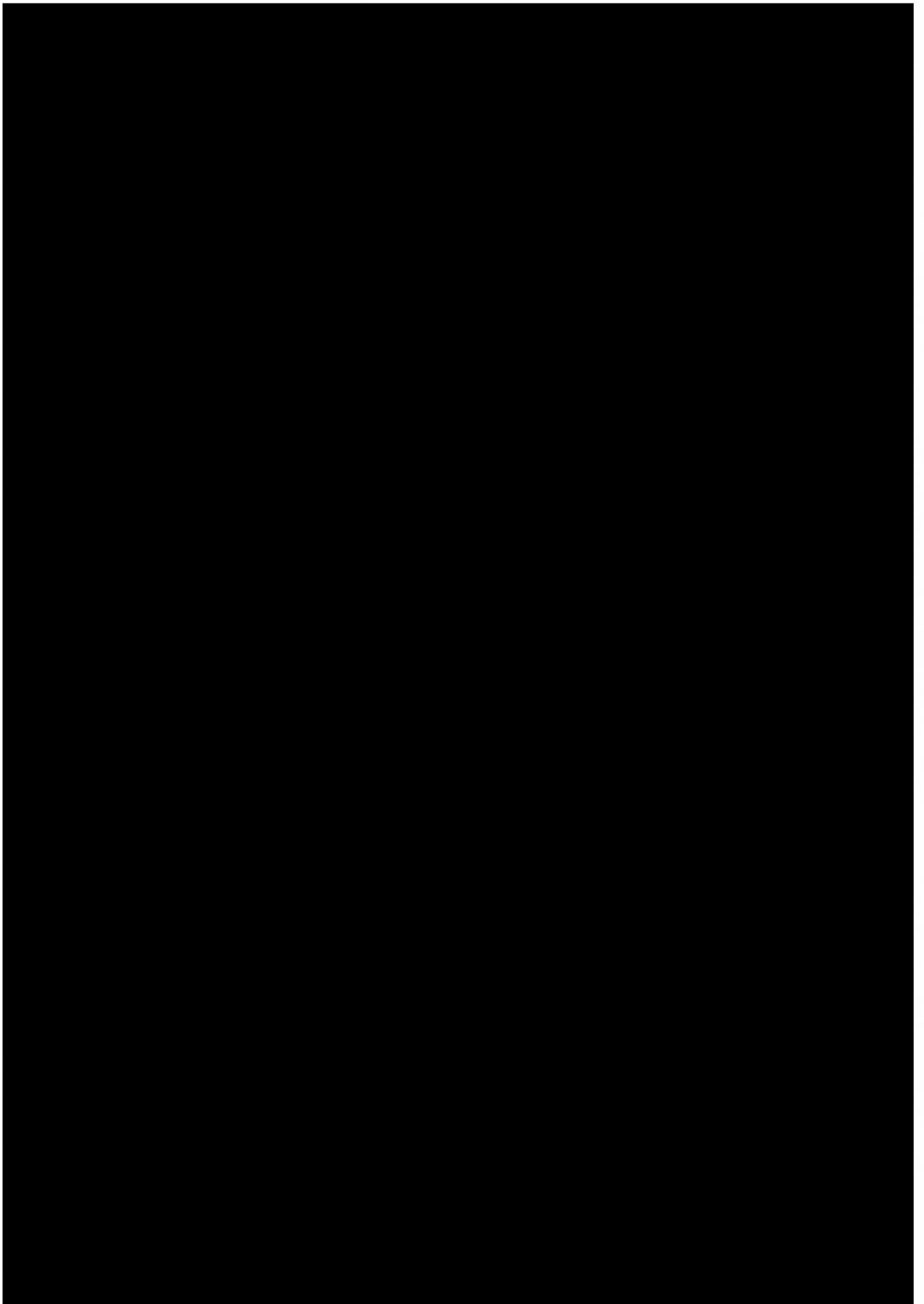
SCHEDULE 2

Payment Schedule



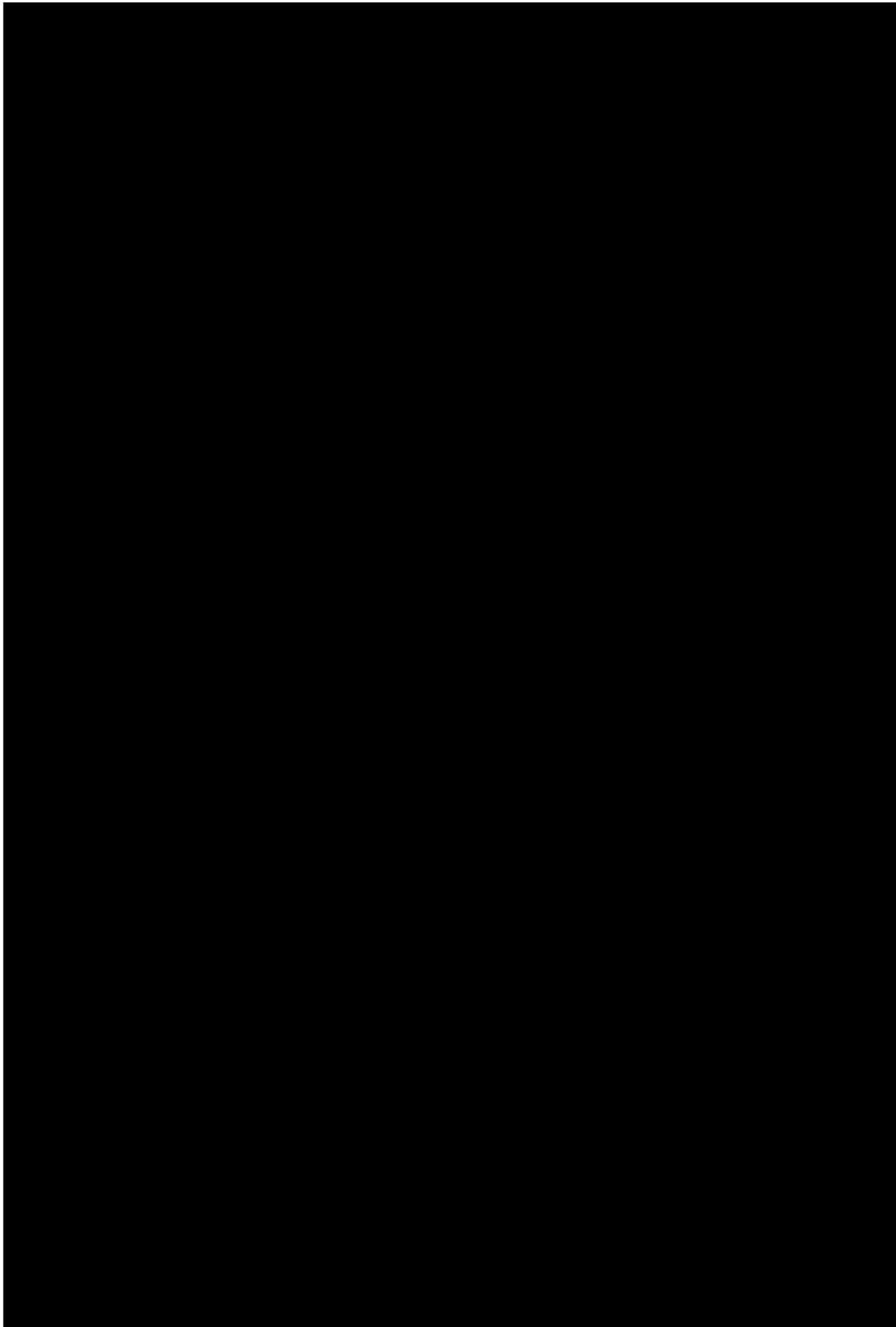






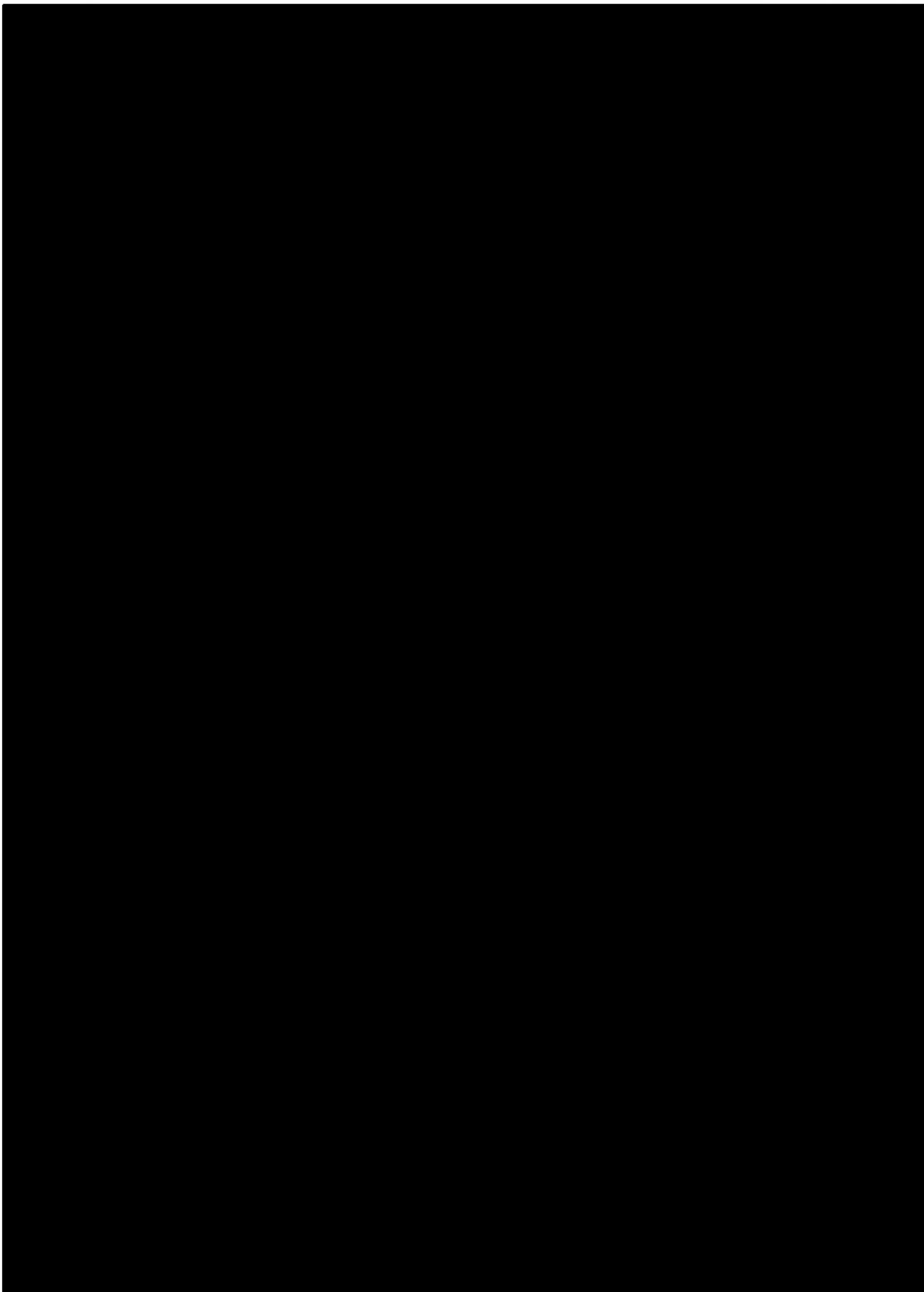
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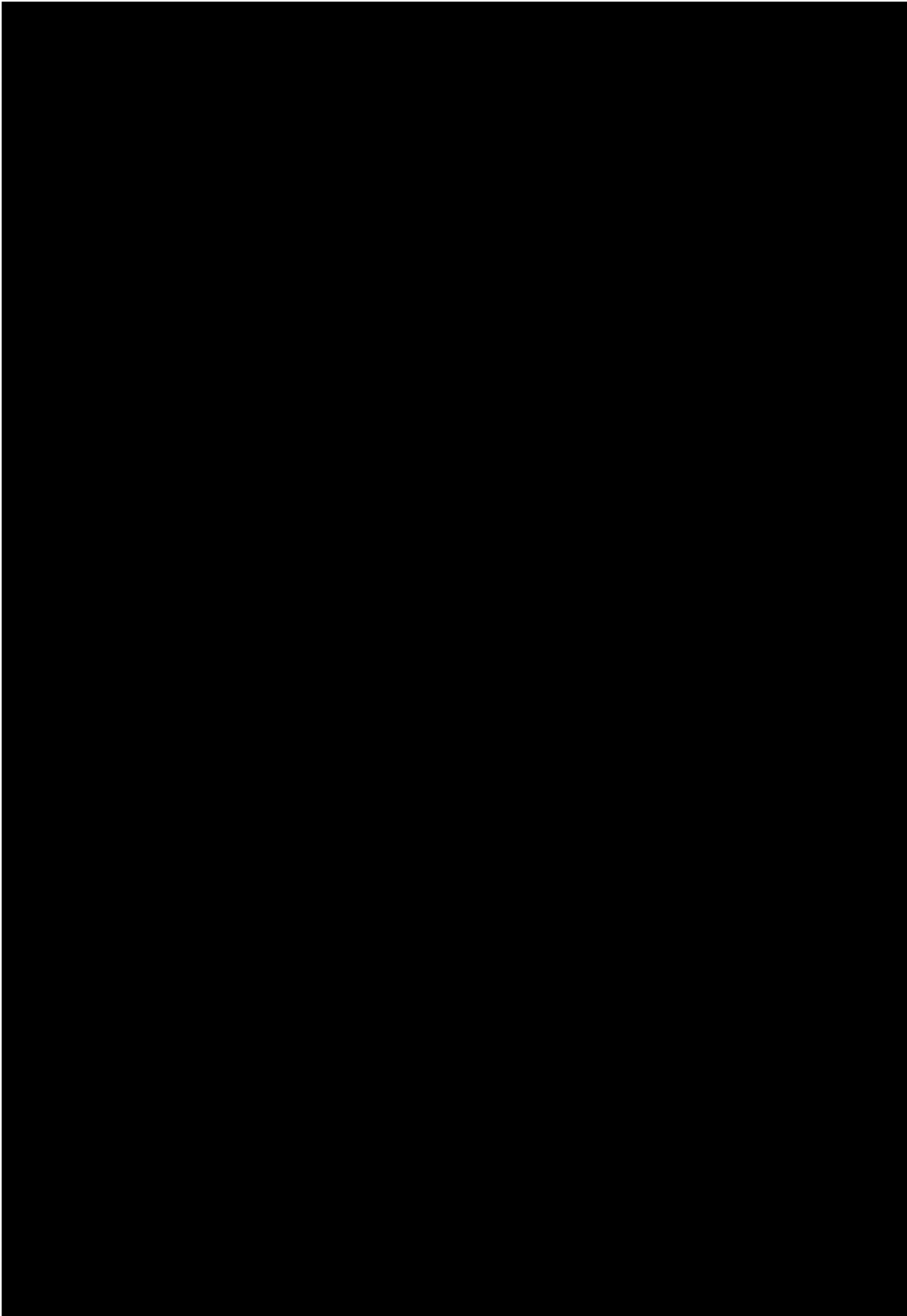
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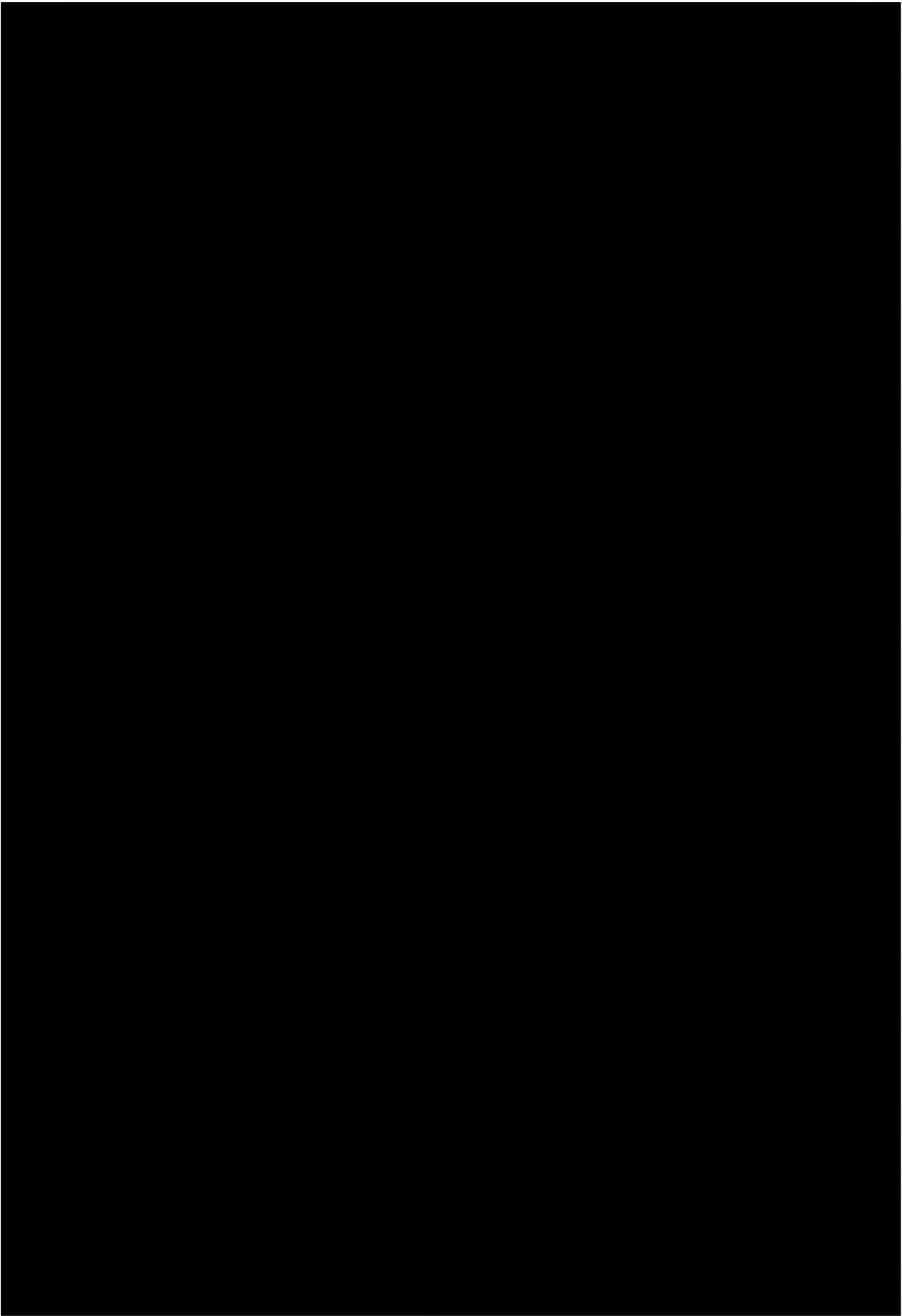


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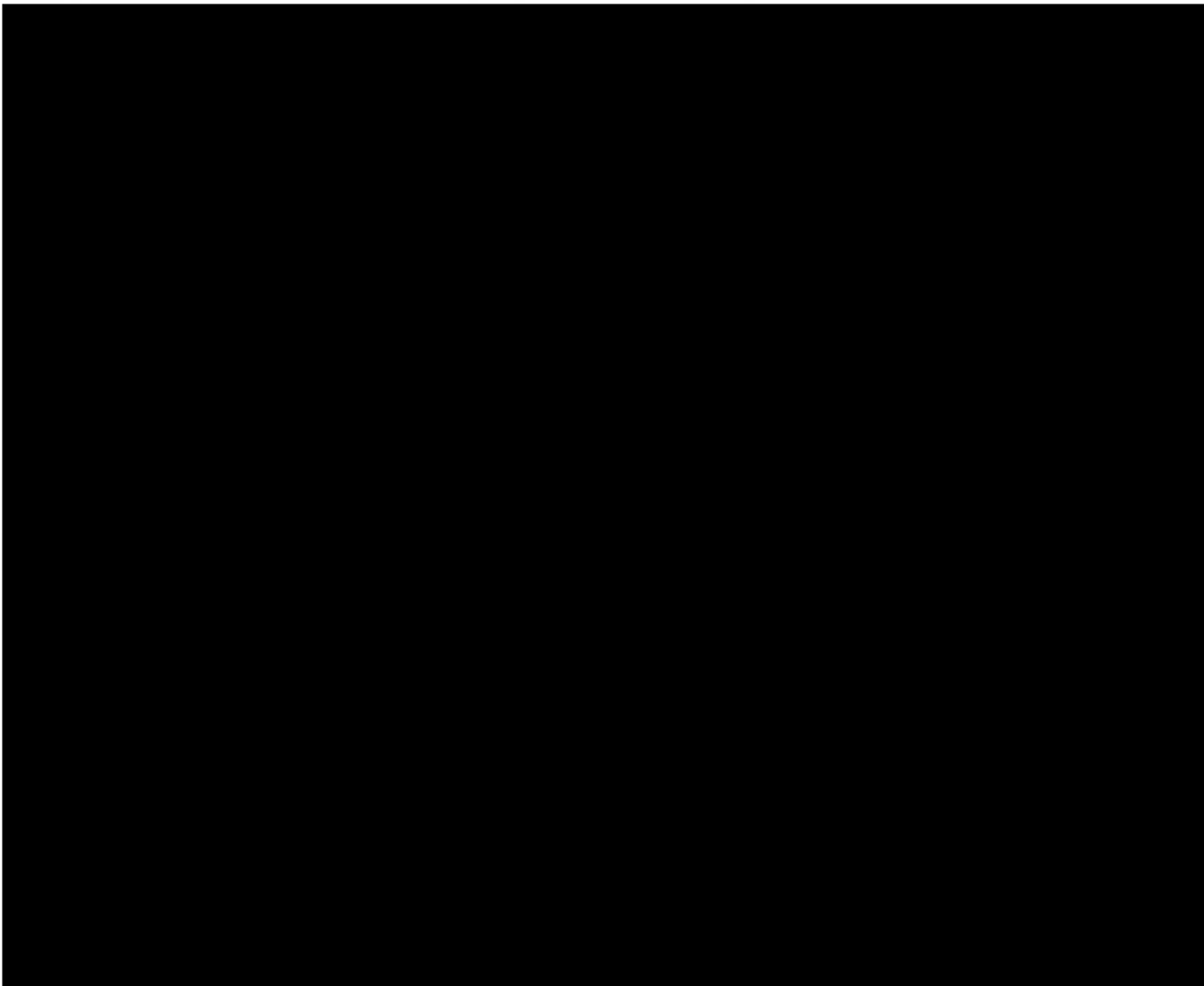


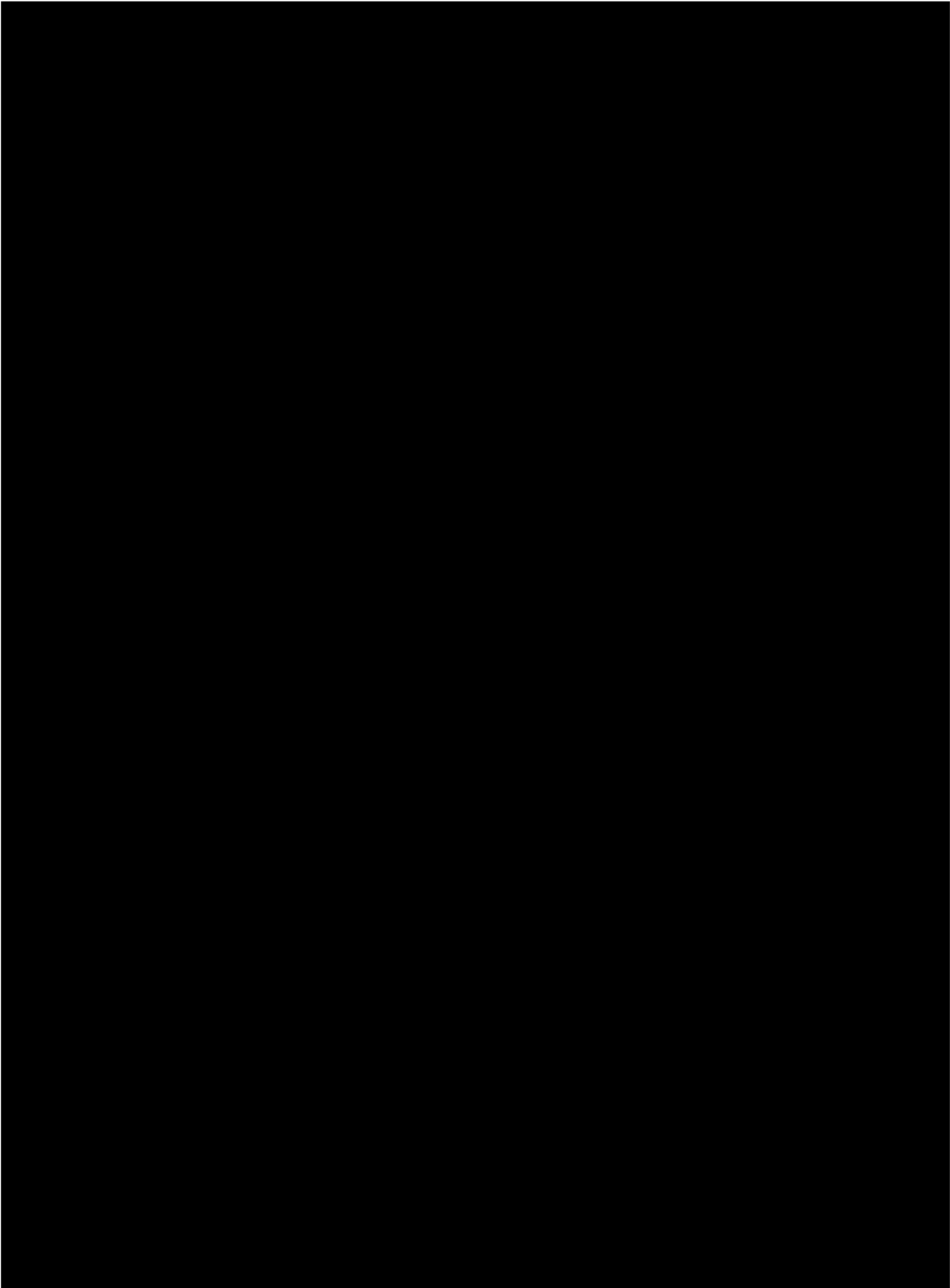




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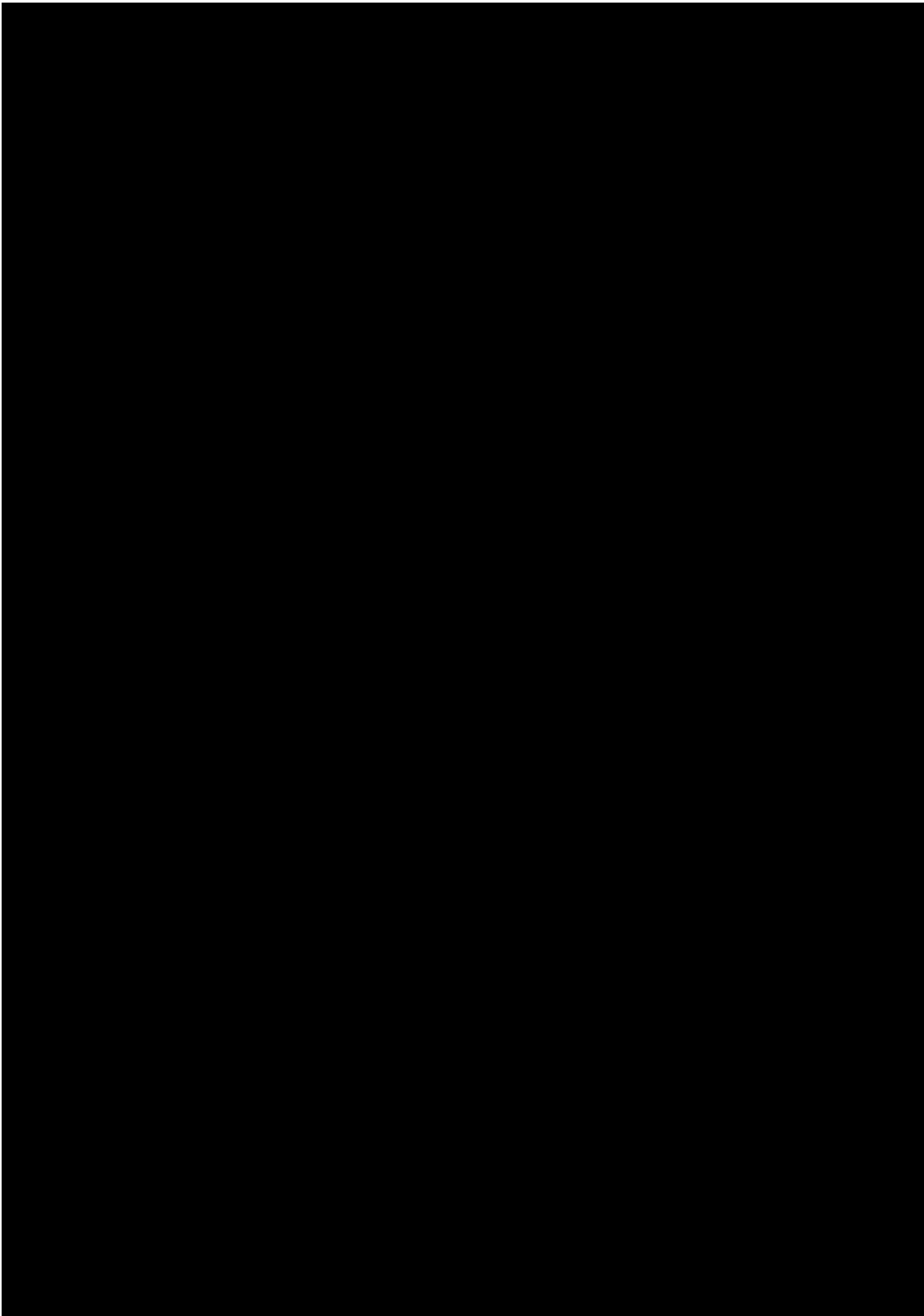






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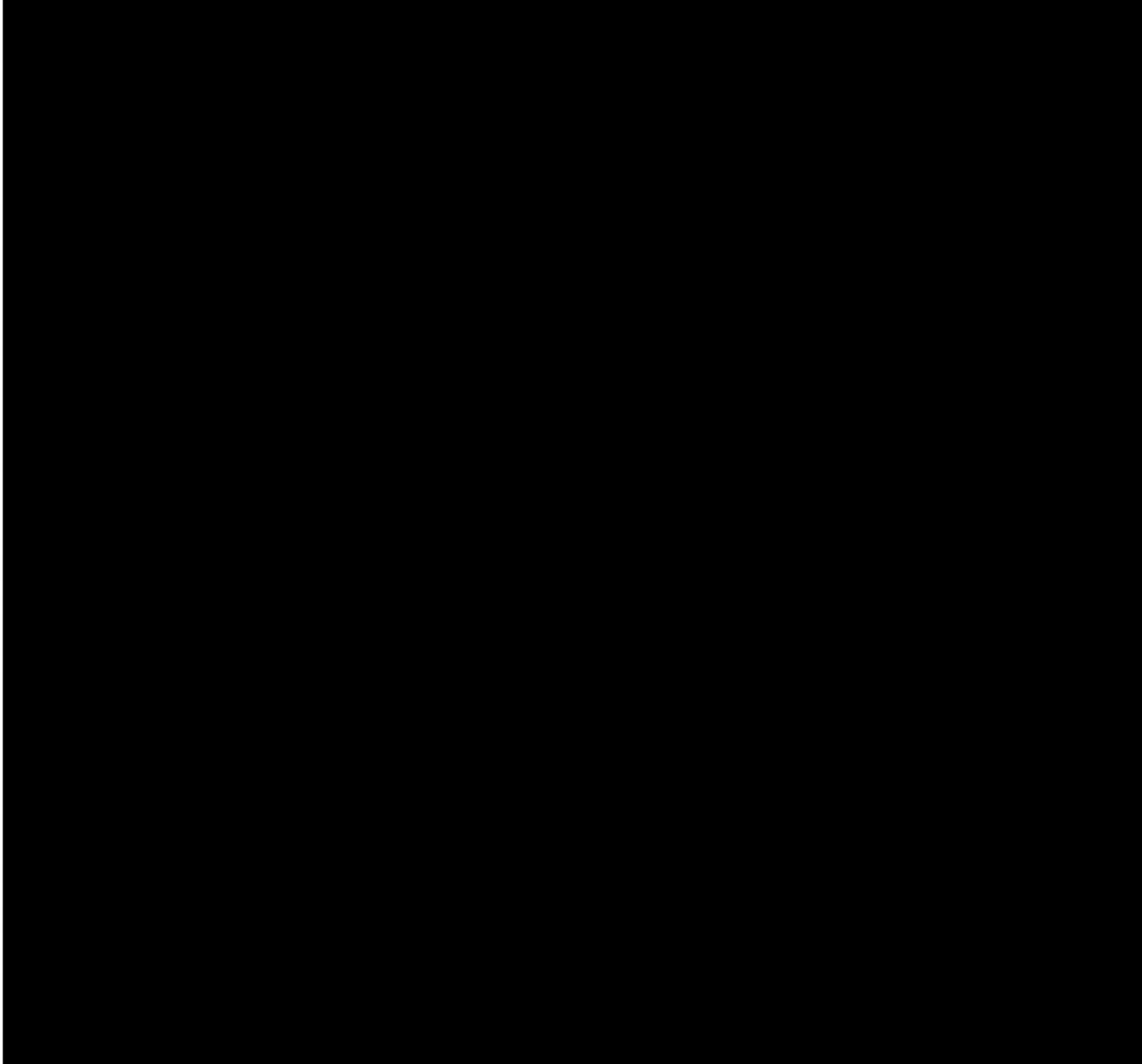


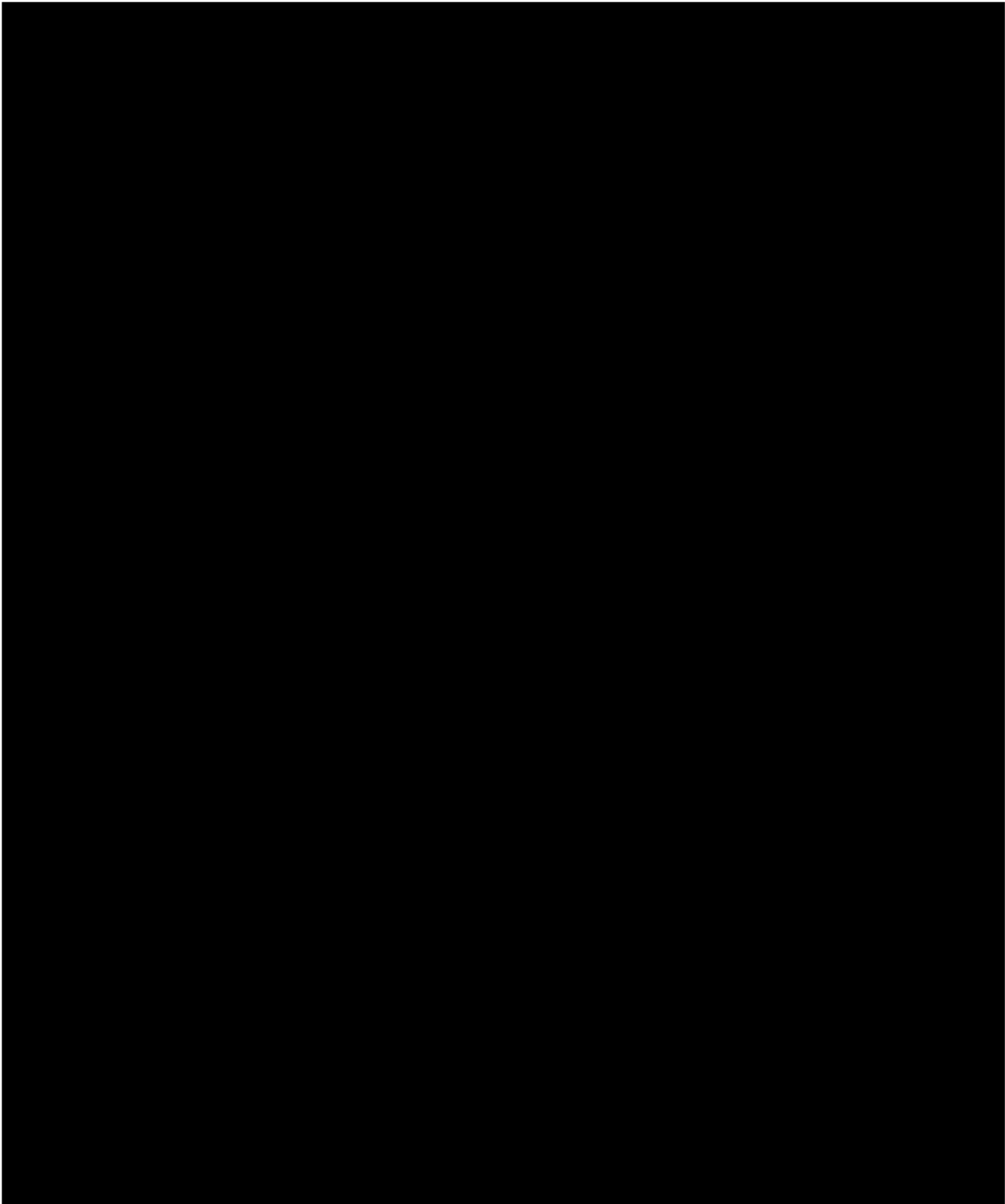
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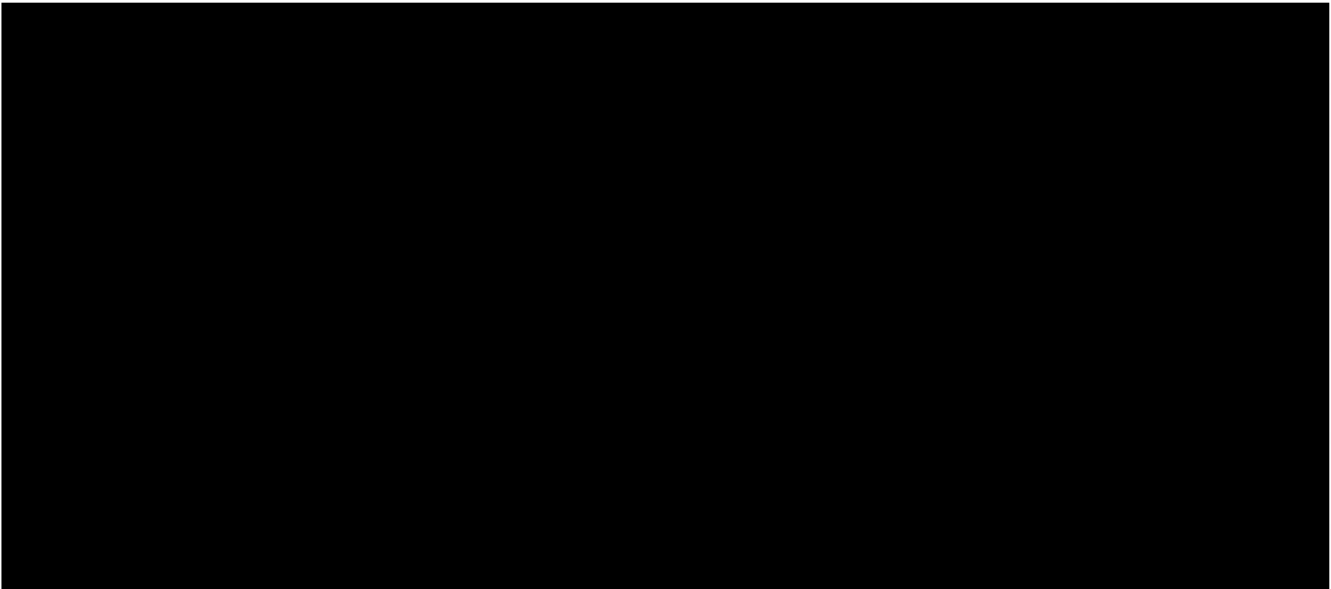
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SCHEDULE 3

Minimum resources and surveillance levels

1. MINIMUM RESOURCES COMMITMENT

The Independent Certifier acknowledges and agrees that the minimum levels of resources, including man-days, set out in this Schedule 3 are minimum requirements only and do not in any way limit or otherwise affect the obligations of the Independent Certifier to perform the Services in accordance with this deed.

In this Schedule 3, a reference to "days" excludes public holidays and includes only those days which are stated in the Overall D & C Program as working days.

1.1 Design Phase Services

The Independent Certifier must provide at least the following key personnel to perform the Design Phase Services with the minimum days to be committed to the TSE Works at each phase as set out below:

Position	Name	Minimum commitment	
		During performance of the TSE Contractor's Activities relating to design, until all discrete design elements/components have passed Design Stage 3	During performance of the TSE Contractor's Activities relating to construction, until the expiry of the last Defects Correction Period
Independent Certifier's Project Director			
Independent Certifier's Representative for Design Phase Services			
Design Review Manager			
Quality Manager			
Geotech/Hydrogeology			
Tunnel and Cavern Design			
Tunnel Lining/ Invert/Arch			
Finite Element Soil Analysis			

Position	Name	Minimum commitment	
		During performance of the TSE Contractor's Activities relating to design, until all discrete design elements/components have passed Design Stage 3	During performance of the TSE Contractor's Activities relating to construction, until the expiry of the last Defects Correction Period
Station/Shaft Ground Support			
Civil/Services/Traffic			
Planning and Environmental			
Noise and Vibration			
Earthing & Bonding			
Admin/ Doc controller Design			
Alignment design Scope adjustment: Indicative days at generic rate of \$2200/day, various resource as appropriate.			
Totals			

1.2 Construction Phase Services

The Independent Certifier must provide the following personnel, as a minimum, in the roles/positions for the durations and at the locations set out below, to perform the relevant aspects of the Construction Phase Services:

Role/Position	Name(s)	Minimum Attendance and Location
Independent Certifier's Project Director		
Independent Certifier's Representative for		

Role/Position	Name(s)	Minimum Attendance and Location
Construction Phase Services		
Senior Tunnelling Engineer & Construction Manager		
Geotechnical Engineer		
Project Engineer - Station Excavation Works		
Surveillance Officer - Station Excavation Works		
Project Engineer - Civil and Structural Works		
Project Engineer - Civil and Structural Works		
Surveillance Officer - Civil and Structural Works		
Surveillance Officer - Civil and Structural Works		
Project Engineer - Tunnelling Works		
Surveillance Officer - Tunnelling Works		

Role/Position	Name(s)	Minimum Attendance and Location
Document Controller/Site Administrative Assistant		
Construction Quality and Completions Manager		

Note: In the table above, full time means a minimum of 9 hours per day Monday to Friday and a minimum of 5 hours on Saturday.

1.3 Completion Phase Services

The Independent Certifier must provide the following personnel, as a minimum, in the roles/positions for the durations and at the locations set out below, to perform the relevant aspects of the Completion Phase Services:

Role/Position	Name(s)	Minimum Attendance and Location
Independent Certifier's Project Director		
Independent Certifier's Representative for Construction Phase Services		
Senior Tunnelling Engineer & Construction Manager		
Geotechnical Engineer		
Project Engineer - Station Excavation Works		
Surveillance Officer - Station Excavation Works		
Project Engineer - Civil and Structural Works		
Project Engineer - Civil and Structural Works		
Surveillance Officer - Civil and Structural Works		

Role/Position	Name(s)	Minimum Attendance and Location
Surveillance Officer - Civil and Structural Works		
Project Engineer - Tunnelling Works		
Surveillance Officer - Tunnelling Works		
Document Controller/ Site Administrative Assistant		
Construction Quality and Completions Manager		

Note: In the table above, full time means a minimum of 9 hours per day Monday to Friday and a minimum of 5 hours on Saturday.

1.4 Defects Phase Services

The Independent Certifier must provide the following personnel, as a minimum, set out below to perform the relevant aspects of the Defects Phase Services:

Position	Name	Availability for the TSE Works
Independent Certifier's Representative		
Project Engineer - Defects		
Surveillance Officer - Defects		

2. INDICATIVE ABILITY, KNOWLEDGE, SKILL, EXPERTISE AND EXPERIENCE OF INDEPENDENT CERTIFIER'S PERSONNEL

The following are indicative of the level of ability, knowledge, skill, expertise and experience required of the Independent Certifier's personnel for the specified roles. TfNSW will have regard to the criteria set out in this paragraph 2 in determining whether to approve replacement personnel in accordance with clause 4.4 of this deed.

2.1 Independent Certifier's Project Director

The Independent Certifier's Project Director will possess a recognised qualification relevant to the position and the Services and have extensive experience in the project certification of large projects similar to the TSE Works and the TSE Contractor's Activities.

2.2 Independent Certifier's Representative for the Design Phase Services

The Independent Certifier's Representative for the Design Phase Services will possess a recognised qualification relevant to the position and the Services and have at least five years' experience in the design certification of large projects similar to the TSE Works and the TSE Contractor's Activities and at least 20 years of experience in the design of major infrastructure projects.

2.3 Independent Certifier's Representative for the Construction Phase Services

The Independent Certifier's Representative for the Construction Phase Services will possess a recognised qualification relevant to the position and the Services and have at least five years' experience in the construction certification of large projects similar to the TSE Works and the TSE Contractor's Activities and at least 20 years of experience in construction including strong experience in infrastructure construction.

2.4 Senior Tunnelling Engineer - Tunnelling Works Construction

The Tunnelling Engineer - Tunnelling Works Construction will possess a recognised qualification relevant to the position and the Services and have at least three years' experience in the construction certification of large projects similar to the TSE Works and the TSE Contractor's Activities and at least 15 years of experience in construction including strong experience in tunnelling construction.

2.5 Geotechnical Engineer - Tunnelling Works Construction

The Geotechnical Engineer - Tunnelling Works Construction will possess a recognised qualification relevant to the position and the Services and have at least three years' experience in the construction certification of large projects similar to the TSE Works and the TSE Contractor's Activities and at least 15 years of experience in construction including strong experience in tunnelling construction.

2.6 Project Engineer - Tunnelling Works Construction

The Project Engineer - Tunnelling Works Construction will possess a recognised qualification relevant to the position and the Services and have experience in the construction certification of large projects similar to the TSE Works and the TSE Contractor's Activities and at least 10 years of experience in construction including strong experience in tunnelling construction.

2.7 Project Engineer - Station Excavation Works

The Project Engineer - Station Excavation Works will possess a recognised qualification relevant to the position and the Services and have experience in the construction certification of large projects similar to the TSE Works and the TSE Contractor's Activities and at least 10 years of experience in construction including strong experience in significant excavation works.

2.8 Project Engineer - Civil Works Construction

The Project Engineer - Civil Works Construction will possess a recognised qualification relevant to the position and the Services and have experience in the construction certification of large projects similar to the TSE Works and the TSE Contractor's Activities and at least 10 years of experience in civil construction including in traffic management and environmental management.

2.9 Project Engineer - Structural Works Construction

The Project Engineer - Structural Works Construction will possess a recognised qualification relevant to the position and the Services and have experience in the construction certification of large projects similar to the TSE Works and the TSE Contractor's Activities and at least 10 years of experience in the construction of structures including experience in structures construction.

2.10 Project Engineer - Defects

The Project Engineer - Defects will possess a recognised qualification relevant to the position and the Services and have experience in the defect certification of large projects similar to the TSE Works and the TSE Contractor's Activities and at least 10 years of experience in the construction of structures including experience in civil construction.

2.11 Surveillance Officer - Tunnelling Works Construction

The Surveillance Officer - Tunnelling Works Construction will have at least 15 years of experience in the construction industry and at least 10 years in surveillance of construction, including tunnelling.

2.12 Surveillance Officer - Station Excavation Works

The Surveillance Officer - Station Excavation Works will have at least 15 years of experience in the construction industry and at least 10 years in surveillance of construction, including significant excavation works.

2.13 Surveillance Officer - Civil Works Construction

The Surveillance Officer - Civil Works Construction will have at least 15 years of experience in the civil engineering industry and at least 10 years in surveillance of roadworks, traffic management and environmental management.

2.14 Surveillance Officer - Structural Works Construction

The Surveillance Officer - Structural Works Construction will have at least 15 years of experience in the civil engineering construction industry and at least 10 years in surveillance of the construction of structures, including piling, concrete work, pre-casting, pre-stressing, steel fabrication and erection.

2.15 Surveillance Officer - Defects

The Surveillance Officer - Defects will have at least 15 years of experience in the civil engineering industry and at least 10 years in surveillance of civil construction.

2.16 Document Controller/Site Administrative Assistant

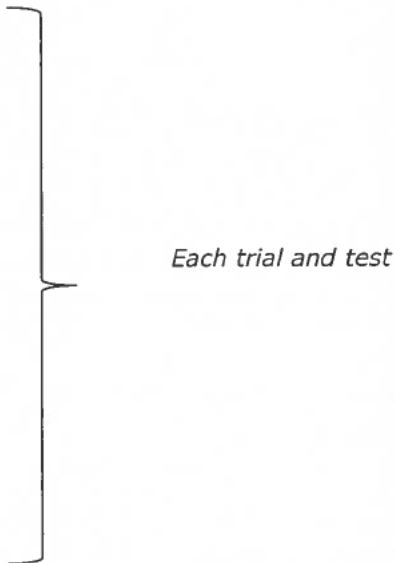
The Document Controller/Site Administrative Assistant will have experience in document control and site administration on major civil engineering projects.

3. MINIMUM SURVEILLANCE COMMITMENT

The Independent Certifier acknowledges and agrees that the minimum surveillance levels set out in this Schedule 3 are minimum requirements only and do not in any way limit or otherwise affect the obligations of the Independent Certifier to perform the Services in accordance with this deed.

The Independent Certifier must carry out, as a minimum, the following surveillance activities at the frequencies set out below:

Surveillance Activity	Frequency during the TSE Contractor's Activities
<p>Traffic and Transport Surveillance</p> <ul style="list-style-type: none"> • Monitor the traffic and transport management and control provisions for compliance with the relevant Project Plans, including: <ul style="list-style-type: none"> • layouts for compliance with approved Traffic and Transport Management Plans and control plans, including sign maintenance and delineation; • provisions for bicyclists, pedestrians, disabled persons, public transport passengers, public transport operators and road traffic; • timing and duration of road occupancies; • qualifications of traffic control personnel; and • truck haulage routes off the Construction Site. 	<p></p> <p><i>Daily</i></p> <p><i>Daily</i></p> <p>} <i>Weekly</i></p>
<p>Work Health and Safety Observation</p> <ul style="list-style-type: none"> • In conjunction with provision of the other Services, advise the TSE Contractor and TfNSW of issues that the Independent Certifier becomes aware of which may affect the safety of persons or property. 	<p><i>As required</i></p>
<p>Quality Management Surveillance</p> <ul style="list-style-type: none"> • Inspect the TSE Contractor's Activities for compliance with the requirements of the TSE Project Deed. 	<p><i>Twice weekly</i></p>
<ul style="list-style-type: none"> • Inspect circumstances where significant non-compliances with the TSE Project Deed are or will be reported. 	<p><i>Each occurrence</i></p>
<ul style="list-style-type: none"> • Check compliance with the Quality Plans, process control plans and work processes. 	<p><i>Each method statement</i></p>
<ul style="list-style-type: none"> • Check implementation of inspection and test plans, including: <ul style="list-style-type: none"> • testing frequencies; • test methods; and • release of Hold Points. 	<p>} <i>Weekly</i></p> <p><i>All Hold Points</i></p>

Surveillance Activity	Frequency during the TSE Contractor's Activities
<ul style="list-style-type: none"> Monitor the rectification of non-conforming product or work. 	<i>All rectifications</i>
<p>Construction Surveillance</p> <ul style="list-style-type: none"> Monitor the TSE Contractor's obligations to inform the local community of planned investigations and construction operations and changes that affect properties, residences and businesses; 	<i>Monthly</i>
<ul style="list-style-type: none"> Check that the TSE Contractor's Activities including in relation to the tunnel alignment, station excavations, service facility shafts, cross passages, cross passages with sumps and construction work is within each relevant design tolerance; 	<i>Weekly</i>
<ul style="list-style-type: none"> Check that the Project Works and Temporary Works are being constructed using Design Documentation in compliance with the TSE Project Deed including clause 12.10 of the TSE Project Deed. 	<i>Weekly</i>
<ul style="list-style-type: none"> Check that durability requirements of the Project Works are being addressed and applied; 	<i>Weekly</i>
<ul style="list-style-type: none"> Witness construction trials and commissioning tests, including: <ul style="list-style-type: none"> use of any materials, plant and equipment that differs from accepted industry standards; concrete including in-situ concrete and precast elements; sprayed concrete; waterproofing systems; water collection, treatment and discharge systems; rock bolts/ground anchors; blasting; tunnel and cavern lighting and ventilation systems; and Utility Service diversions. 	<div style="text-align: right;">  <p><i>Each trial and test</i></p> </div>

Surveillance Activity	Frequency during the TSE Contractor's Activities
<ul style="list-style-type: none"> • Witness the construction of the Project Works and Temporary Works including: <ul style="list-style-type: none"> • tunnel excavation; • cross passages; • nozzle enlargements; • ground support and treatment; • waterproofing; • permanent structural concrete linings; • tunnel portal, headwalls and wing walls; • dive structures; • slope protection and retaining structures; • flood protection including sump and drainage systems; • crossover cavern; • structural connections; • groundwater collection, treatment and drainage systems; • shaft and station box excavation; • concrete blinding layer; • soil and rock bolts and anchors; • niches and enlargements excavation; • earthing and electrolysis protection, including earthing and bonding of reinforcement and monitoring points; • haulage roads; • provisions to access, secure, support and hand over the Rail Works, Local Area Works and Utility Service Works; • Utility Service diversions; and • adjustments to or demolition of existing infrastructure and buildings. 	<div style="display: flex; align-items: center; justify-content: center;"> <div style="border-left: 1px solid black; border-right: 1px solid black; border-bottom: 1px solid black; width: 100%; height: 100%;"></div> <div style="margin-left: 10px;"> <p><i>Daily</i></p> </div> </div>
<p>Quality Product Surveillance Monitoring</p> <ul style="list-style-type: none"> • Monitor structure foundation and subgrade preparation and treatments; 	<p><i>Initial preparation and treatment</i></p>
<ul style="list-style-type: none"> • Monitor compaction of earthworks and spoil; • Monitor manufacture of off-site precast units. 	<p><i>Weekly</i></p> <p><i>Weekly</i></p>

Surveillance Activity	Frequency during the TSE Contractor's Activities
<ul style="list-style-type: none"> • Monitor <ul style="list-style-type: none"> • preparation and testing of grout test specimens; and • bolt anchorage testing of rock bolts • Monitor preparation of sprayed concrete test specimens; • Monitor concrete supply, including: <ul style="list-style-type: none"> • audits of each batch plant; • reviews of grout, mortar, concrete, precast concrete and sprayed concrete mix designs (including off-site work); and • monitoring of supplied mixes compared with mix designs. 	<p data-bbox="1013 358 1404 504">} <i>Initial test specimens and testing, then weekly for four weeks and fortnightly thereafter.</i></p> <p data-bbox="1013 526 1109 560"><i>Monthly</i></p> <p data-bbox="1013 616 1109 649"><i>Weekly</i></p> <p data-bbox="1013 683 1125 716"><i>Each mix</i></p> <p data-bbox="1013 840 1109 873"><i>Weekly</i></p>
<ul style="list-style-type: none"> • Monitor concreting and associated works including: <ul style="list-style-type: none"> • preparation; • formwork; • bracing; • reinforcement; • placing; • stressing; • finishing; • curing; and • stripping formwork. 	<p data-bbox="1013 1075 1348 1344">} <i>Initial activity and twice weekly thereafter</i></p>
<ul style="list-style-type: none"> • Sprayed concrete, including: <ul style="list-style-type: none"> • Batching and mixing • Application • Depth control • Curing • Production tests 	<p data-bbox="1013 1568 1204 1601"><i>Each procedure</i></p> <p data-bbox="1013 1624 1181 1657"><i>Twice weekly</i></p> <p data-bbox="1013 1668 1181 1702"><i>Twice weekly</i></p> <p data-bbox="1013 1713 1117 1747"><i>Monthly</i></p> <p data-bbox="1013 1758 1085 1792"><i>Daily</i></p>

Surveillance Activity	Frequency during the TSE Contractor's Activities
<ul style="list-style-type: none"> • Monitor steel fabrication, including: <ul style="list-style-type: none"> • reviews of welding procedures; and • monitoring of the fabrication and welding processes for major members (off-site). 	<p><i>Each procedure</i></p> <p><i>Twice weekly</i></p>
<ul style="list-style-type: none"> • Monitor protective treatment systems (off-site). 	<p><i>Twice weekly</i></p>
<ul style="list-style-type: none"> • Monitor ground movement equipment monitors including: <ul style="list-style-type: none"> • audits of equipment; and • review of results. 	<p><i>Monthly</i></p> <p><i>Daily</i></p>

SCHEDULE 4

Requirements for Certification and Monitoring Plan

The Certification and Monitoring Plan must, as a minimum, address and detail:

- (a) the management team structures, positions, nominated personnel and subcontractors to be engaged on and off the Construction Site and the roles and tasks of the nominated personnel and subcontractors;
- (b) the minimum skill, expertise and experience levels of each position and details of personnel resource levels;
- (c) the Independent Certifier's internal and external lines of authority, communication and reporting, including those with the Other Parties;
- (d) the identification of delegated authorities of the Independent Certifier's personnel, including identification of personnel with delegated authority to execute certificates on behalf of the Independent Certifier;
- (e) the Independent Certifier's internal processes for ensuring all documents and supporting evidence have been completed and approved (where required) by persons with appropriate delegated authority and competency and are available as supporting evidence;
- (f) all compliance records to be maintained;
- (g) the proposed timing of progressive performance of discrete elements of the Services including the timing for conducting reviews, audits of Project Plans and other aspects of the TSE Contractor's Activities;
- (h) Hold Points and Witness Point requirements, in the form of a schedule, including the identification of all Witness Points and Hold Points required by the Independent Certifier;
- (i) the Independent Certifier's comprehensive plans for:
 - (i) continual observation, monitoring, auditing, reviewing, assessment and testing of the TSE Contractor's Activities;
 - (ii) without limiting sub-paragraph (i), observation, monitoring, auditing, reviewing, assessment and testing of the quality and durability of the TSE Works to determine and ensure the TSE Contractor's compliance with the requirements of the TSE Project Deed;
 - (iii) audit and surveillance, including identification of resources, methodology, scope, levels of surveillance, inspection, testing and survey; and
 - (iv) off-site surveillance of critical activities, including precasting yards, concrete production plants and steel fabrication;
- (j) the Independent Certifier's strategies, processes, methodologies and procedures for:
 - (i) reviewing the Project Plans;
 - (ii) addressing environmental monitoring and protection;

- (iii) audit, surveillance and monitoring of the TSE Contractor's design and construction activities, including the processes used for determining the levels and scope of surveillance of activities;
 - (iv) certification in the Design Phase Services in respect of the Proof Engineered Temporary Works;
 - (v) identifying and managing the Services to be subcontracted, including quality, reporting and communication aspects of the Services;
 - (vi) providing comments to the TSE Contractor in respect of its carrying out of the TSE Contractor's Activities, whether by participation in design workshops, design surveillance or otherwise;
 - (vii) ensuring that the TSE Contractor has addressed all issues of review, comment and consultation with TfNSW in respect of the Design Documentation and the TSE Contractor's Activities; and
 - (viii) risk management of the work covered by sub-paragraphs (ii), (iii) and (iv) above;
- (k) the Independent Certifier's strategies, systems, procedures, processes, methodologies and reporting protocols to be applied whereby each of the following requirements will be achieved and satisfied:
- (i) the functions, obligations, duties and services which the Project Agreements contemplate will be discharged by the Independent Certifier as set out in Schedule 1;
 - (ii) certification of the Design Documentation (Schedule B2, TSE Project Deed);
 - (iii) certification of the Quality Management System (Schedule B6, TSE Project Deed);
 - (iv) progressive certification (Schedule B7, TSE Project Deed);
 - (v) certification of the Asset Management Information (Schedule B10, TSE Project Deed);
 - (vi) certification of the quality and quantum of work the subject of progress claims made by the TSE Contractor in order to provide the certificate in Schedule B11, TSE Project Deed;
 - (vii) certification of Construction Completion of each Portion, noting the Independent Certifier's involvement in the Completion Steering Committee and development of processes through the Completion Steering Committee, which will apply across each Portion with the objective of achieving Construction Completion in accordance with the TSE Project Deed (Schedule B17, TSE Project Deed);
 - (viii) certification of Completion of Local Area Works (Schedule B9, TSE Project Deed);
 - (ix) certification of Completion (Schedule B26, TSE Project Deed);
 - (x) certification of as-built drawings (Schedule B24, TSE Project Deed);
 - (xi) certification at the end of the Defects Correction Period (Schedule B8, TSE Project Deed); and

- (xii) determination of any matters required by the Project Agreements;
- (l) the Independent Certifier's proposed standards including:
 - (i) committed surveillance activities; and
 - (ii) committed surveillance resources;
- (m) the basis of the initial Certification Monitoring Plan in terms of the assumptions relating to the TSE Contractor's Activities including:
 - (i) number of design lots developed; and
 - (ii) program durations; and
 - (iii) how the Independent Certifier will address the reporting requirements set out in clause 4.10 of this deed and otherwise advise TfNSW of issues that it identifies in carrying out the Services, and considers may impact on or delay the ability of the TSE Contractor to design and construct the TSE Works in accordance with the requirements of the TSE Project Deed.

SCHEDULE 5

Subcontractors

Name of subcontractor	Part of the Services
SMEC Australia Pty Limited	Technical Services and Specialist Resources as part of the APP-SMEC Integrated Project Team

SCHEDULE 6

Form of Accession Deed

This Accession Deed made at _____ on _____

BETWEEN:

- (1) **Transport for NSW (ABN 18 804 239 602)** a New South Wales Government agency constituted under section 3C of the *Transport Administration Act 1988* (NSW) of Level 43, 680 George Street, Sydney NSW 2000 (**TfNSW**);

[Note: Insert details of TSE Contractor and Independent Certifier.](together the Continuing Parties)

- (2) **[insert name of OpCo2] (ABN [insert])** of **[insert address]** (**Acceding Party**)

RECITALS

- (A) The Continuing Parties are each party to the Independent Certifier Deed.
- (B) Each of the Continuing Parties and the Acceding Party has agreed that the Acceding Party will accede to the Independent Certifier Deed on or about the date of execution of the OTS2 Project Deed, on the terms of this deed.
- (C) The Continuing Parties and the Acceding Party have agreed to amend the Independent Certifier Deed on the terms set out in this deed.

THE PARTIES AGREE AS FOLLOWS:

1. INTERPRETATION

1.1 Definitions

In this deed:

Accession Deed means this deed.

Effective Date means the date of this deed.

Independent Certifier Deed means the deed titled "Sydney Metro City & Southwest Independent Certification of the TSE Works: Independent Certifier Deed" which was originally entered into between the Continuing Parties on **[insert date]**.

OpCo2 means the entity or person that enters into the OTS2 Project Deed with TfNSW.

OTS2 Project Deed means the deed entitled **[insert full title of the OTS2 Project Deed]** entered into between TfNSW and OpCo2 on or about the date of this deed.

1.2 Definitions in TSE Project Deed

Except as otherwise defined in clause 1.1, terms used in this deed that are defined in the TSE Project Deed will have the same meaning in this deed as are provided for in the TSE Project Deed.

1.3 Interpretation

In this deed:

(a) headings are for convenience only and do not affect interpretation,

and the following rules apply in interpreting this deed unless the context makes clear that a rule is not intended to apply:

(b) an obligation or a liability assumed by, or a right conferred on, 2 or more persons binds or benefits them jointly and severally;

(c) person includes an individual, the estate of an individual, a body politic, a corporation, a statutory or other authority, an association or a joint venture (whether incorporated or unincorporated), a partnership and a trust;

(d) a reference to a party includes that party's executors, administrators, successors and permitted substitutes and assigns, including persons taking by way of novation and, in the case of a trustee, includes a substituted or an additional trustee;

(e) a reference to a document (including this deed and any other deed, agreement, instrument, guideline or code of practice) is to that document as amended, varied, novated, ratified, supplemented or replaced from time to time;

(f) a reference to a statute includes its delegated legislation and a reference to a statute or delegated legislation or any section or provision of either of these includes:

(i) all ordinances, by-laws, regulations of and other statutory instruments (however described) issued under the statute or delegated legislation; and

(ii) any consolidations, amendments, re-enactments and replacements;

(g) a word importing the singular includes the plural (and vice versa) and a word indicating a gender includes every other gender;

(h) a reference to a party, clause, schedule, exhibit, attachment or annexure is a reference to a party, clause, schedule, exhibit, attachment or annexure to or of this deed, and a reference to this deed includes all schedules, exhibits, attachments and annexures to it;

(i) if a word or phrase is given a defined meaning, any other part of speech or other grammatical form of that word or phrase has a corresponding meaning;

(j) **includes** in any form is not a word of limitation;

(k) a reference to **\$** or **dollar** is to Australian currency;

(l) where under this deed:

(i) a notice, certificate or direction is required to be given; or

(ii) a default must be remedied,

within a stated number of days, only Business Days will be counted in computing the number of days;

(m) for all purposes other than as set out in clause 1.3(l), **day** means calendar day;

(n) a reference to a **month** is a reference to a calendar month;

(o) a reference to a court or tribunal is to an Australian court or tribunal;

- (p) a reference to a group of persons is a reference to all of them collectively, to any two or more of them collectively and to each of them individually; and
- (q) any reference to **information** will be read as including information, representations, statements, data, samples, calculations, assumptions, deductions, determinations, drawings, design, specifications, models, plans and other documents in all forms including the electronic form in which it was generated.

1.4 **No bias against drafter**

In the interpretation of this deed, no rule of construction applies to the disadvantage of one party on the basis that the party or its representative put forward or drafted this deed or any provision in it.

2. **CONSIDERATION**

In consideration of the Acceding Party executing this deed, each Continuing Party agrees to pay the Acceding Party \$1 upon the Acceding Party's request.

3. **COVENANT**

3.1 **Covenant by Acceding Party**

The Acceding Party confirms that it has been supplied with a copy of the Independent Certifier Deed as originally executed by the Continuing Parties and covenants with each of the Continuing Parties, with effect from the Effective Date, to be bound by the provisions of, and to perform all of OpCo2's obligations under, the Independent Certifier Deed (as amended by Schedule 1 to this deed) in so far as they may remain to be observed and performed as at the date of this Accession Deed.

3.2 **Covenant by Continuing Parties**

Each Continuing Party covenants with the Acceding Party, with effect from the Effective Date, to be bound by the provisions of, and to perform all its obligations under the Independent Certifier Deed (as amended by Schedule 1 to this deed) in so far as they may remain to be observed and performed as at the date of this Accession Deed.

3.3 **Amendment to Independent Certifier Deed**

Each Continuing Party and the Acceding Party agree that the Independent Certifier Deed is amended as set out in Schedule 1 to this deed.

4. **REPRESENTATIONS AND WARRANTIES**

The Acceding Party represents and warrants to each of the Continuing Parties that the obligations in this deed are valid and binding obligations of the Acceding Party.

5. **GENERAL**

5.1 **Notices**

Each communication (including each notice, consent, approval, request and demand) under or in connection with this deed:

- (a) must be in writing;
- (b) must be addressed as follows (or as otherwise notified by that party to each other party from time to time):

Name: [insert]
Address: [insert]
Fax no: [insert]
For the attention of: **[Insert name of TfNSW's Representative]**
Name: [insert]
Address: [insert]
For the attention of: **[Note: Insert details of TSE Contractor.]**
Name: [insert]
Address: [insert]
Fax no: [insert]
For the attention of: **[Note: Insert details of Independent Certifier.]**

- (c) must be signed by the party making it or (on that party's behalf) by the solicitor for, or any attorney, director, secretary, or authorised agent of, that party;
- (d) must be delivered by hand or posted by prepaid post to the address, or sent by fax to the number, of the addressee, in accordance with clause 5.1(b); and
- (e) is taken to be received by the addressee:
 - (i) (in the case of prepaid post sent to an address in the same country) on the third day after the date of posting;
 - (ii) (in the case of prepaid post sent to an address in another country) on the fifth day after the date of posting by airmail;
 - (iii) (in the case of fax) at the time in the place to which it is sent equivalent to the time shown on the transmission confirmation report produced by the fax machine from which it was sent; and
 - (iv) (in the case of delivery by hand) on delivery,

but if the communication is taken to be received on a day that is not a Business Day or after 5:00pm, it is taken to be received at 9:00am on the next Business Day.

5.2 **Governing Law**

This deed is governed by and must be construed according to the Law applying in New South Wales.

5.3 **Jurisdiction**

Each party irrevocably:

- (a) submits to the non-exclusive jurisdiction of the courts of New South Wales and the courts competent to determine appeals from those courts, with respect to any action or proceedings which may be brought at any time relating in any way to this deed; and

- (b) waives any objection it may now or in the future have to the venue of any action or proceedings, and any claim it may now or in the future have that any action or proceedings have been brought in an inconvenient forum, if that venue falls within clause 5.3(a).

5.4 **TfNSW as a public authority**

- (a) This deed will not in any way unlawfully restrict or otherwise unlawfully affect the unfettered discretion of TfNSW to exercise any of its functions and powers pursuant to any Law.
- (b) Each of the Independent Certifier, the TSE Contractor and OpCo2 acknowledges and agrees that, without limiting clause 5.4(a), anything which TfNSW does, fails to do or purports to do pursuant to its functions and powers under any Law will be deemed not to be an act or omission by TfNSW under this deed and will not entitle any of the Independent Certifier, the TSE Contractor or OpCo2 to make any claim against TfNSW.
- (c) The parties agree that clauses 5.4(a) and 5.4(b) are taken not to limit any liability which TfNSW would have had to the Independent Certifier, the TSE Contractor or OpCo2 under this deed as a result of a breach by TfNSW of a term of this deed but for clauses 5.4(a) and 5.4(b) of this deed.

5.5 **Amendments**

This deed may only be varied by a deed executed by or on behalf of each of the parties.

5.6 **Waiver**

- (a) Failure to exercise or enforce, or a delay in exercising or enforcing, or the partial exercise or enforcement of, a right, power or remedy provided by Law or under this deed by a party does not preclude, or operate as a waiver of, the exercise or enforcement, or further exercise or enforcement, of that or any other right, power or remedy provided by Law or under this deed.
- (b) A waiver or consent given by a party under this deed is only effective and binding on that party if it is given or confirmed in writing by that party.
- (c) No waiver of a breach of a term of this deed operates as a waiver of another breach of that term or of a breach of any other term of this deed.

5.7 **Cost of performing obligations**

Each party must, unless this deed expressly provides otherwise, pay its own costs and expenses in connection with performing its obligations under this deed.

5.8 **Further acts and documents**

Each party must promptly do all further acts and execute and deliver all further documents (in form and content reasonably satisfactory to that party) required by Law or reasonably requested by another party to give effect to this deed.

5.9 **Consents**

A consent required under this deed from a party may be given or withheld, or may be given subject to any conditions, as that party (in its absolute discretion) thinks fit, unless this deed expressly provides otherwise.

5.10 **Assignment**

A party cannot assign, novate or otherwise transfer any of its rights or obligations under this deed without the prior consent of each other party unless this deed expressly provides otherwise.

5.11 **Replacement body**

Where a reference is made to any Authority, institute, association, body, person or organisation (**Former Body**) which is reconstituted, renamed, replaced, ceases to exist or has its powers or functions transferred to another Authority, institute, association, body, person or organisation, that reference will be deemed to refer to the Authority, institute, association, body, person or organisation (**Replacement Body**) which then serves substantially the same powers, functions or objects as the Former Body. Any reference to any senior officer of the Former Body will be to the equivalent senior officer of the Replacement Body.

5.12 **Counterparts**

This deed may be executed in any number of counterparts and by the parties on separate counterparts. Each counterpart constitutes the deed of each party who has executed and delivered that counterpart.

5.13 **No representation or reliance**

- (a) Each party acknowledges that no party (nor any person acting on a party's behalf) has made any representation or other inducement to it to enter into this deed, except for representations or inducements expressly set out in this deed.
- (b) Each party acknowledges and confirms that it does not enter into this deed in reliance on any representation or other inducement by or on behalf of any other party, except for representations or inducements expressly set out in this deed.

5.14 **Expenses**

Except as otherwise provided in this deed, each party must pay its own costs and expenses in connection with negotiating and preparing this deed.

5.15 **Stamp duties**

TfNSW:

- (a) must pay all stamp duties and any related fines and penalties in respect of this deed, the performance of this deed and each transaction effected by or made under this deed;
- (b) indemnifies each other party against any liability arising from failure to comply with clause 5.15(a); and
- (c) is authorised to apply for and retain the proceeds of any refund due in respect of stamp duty paid under this clause.

5.16 **Entire agreement**

To the extent permitted by Law, in relation to its subject matter, this deed:

- (a) embodies the entire understanding of the parties, and constitute the entire terms agreed by the parties; and

- (b) supersedes any prior written or other agreement of the parties.

5.17 Indemnities

- (a) Each indemnity in this deed is a continuing obligation, separate and independent from the other obligations of the parties, and survives termination, completion or expiration of this deed.
- (b) It is not necessary for a party to incur expense or to make any payment before enforcing a right of indemnity conferred by this deed.
- (c) A party must pay on demand any amount it must pay under an indemnity in this deed.

5.18 No agency, partnership, joint venture or other fiduciary relationship

Nothing in this deed will be construed or interpreted as:

- (a) conferring a right in favour of any party to enter into any commitment on behalf of another party or otherwise to act as agent of another party; or
- (b) constituting the relationship between any two or more of the parties (or all of the parties) as that of partners, joint venturers or any other fiduciary relationship.

5.19 Severance

If at any time any provision of this deed is or becomes void, illegal, invalid or unenforceable in any respect under the law of any jurisdiction, then that will not affect or impair:

- (a) the legality, validity or enforceability in that jurisdiction of any other provision of this deed; or
- (b) the legality, validity or enforceability under the law of any other jurisdiction of that or any other provision of this deed.

5.20 Moratorium legislation

To the fullest extent permitted by Law, the provisions of all Laws which at any time operate directly or indirectly to lessen or affect in favour of a party any obligation under this deed, or to delay or otherwise prevent or prejudicially affect the exercise by a party of any right, power or remedy under this deed or otherwise, are expressly waived.

SCHEDULE 1

The Independent Certifier Deed is deemed to be amended by:

1. immediately after the definition of "Independent Certifier's Representative" in clause 1.1, insert the following definition:

"OpCo2" means **[insert full name of OpCo2]** (ABN **[insert]**) of **[insert]**.

2. inserting the following details at the end of clause 11.1(b):

Name: **[insert name of OpCo2]**

Address: **[insert]**

Fax no: **[insert]**

For the attention of: **[insert]**

Executed as a deed.

Executed by **Transport for NSW (ABN 18 804 239 602)** by its authorised delegate in the presence of:

Signature of authorised delegate

Signature of witness

Name of authorised delegate

Name of witness in full

Executed by **[Note: insert name of Independent Certifier.]** in accordance with section 127 of the *Corporations Act 2001* (Cth)

Signature of Director

Signature of Secretary/other Director

Name of Director in full

Name of Secretary/other Director in full

Executed by **[Note: Insert name and ABN of TSE Contract entity.]** in accordance with section 127 of the *Corporations Act 2001* (Cth)

Signature of Director

Name of Director in full

Signature of Secretary/other Director

Name of Secretary/other Director in full

Executed by **[Note: Insert name and ABN of TSE Contract entity.]** in accordance with section 127 of the *Corporations Act 2001* (Cth)

Signature of Director

Name of Director in full

Signature of Secretary/other Director

Name of Secretary/other Director in full

Executed by **[Note: Insert name and ABN of TSE Contract entity.]** in accordance with section 127 of the *Corporations Act 2001* (Cth)

Signature of Director

Name of Director in full

Signature of Secretary/other Director

Name of Secretary/other Director in full

Executed by **OpCo2 ABN [insert ABN]** in accordance with section 127 of the *Corporations Act 2001* (Cth)

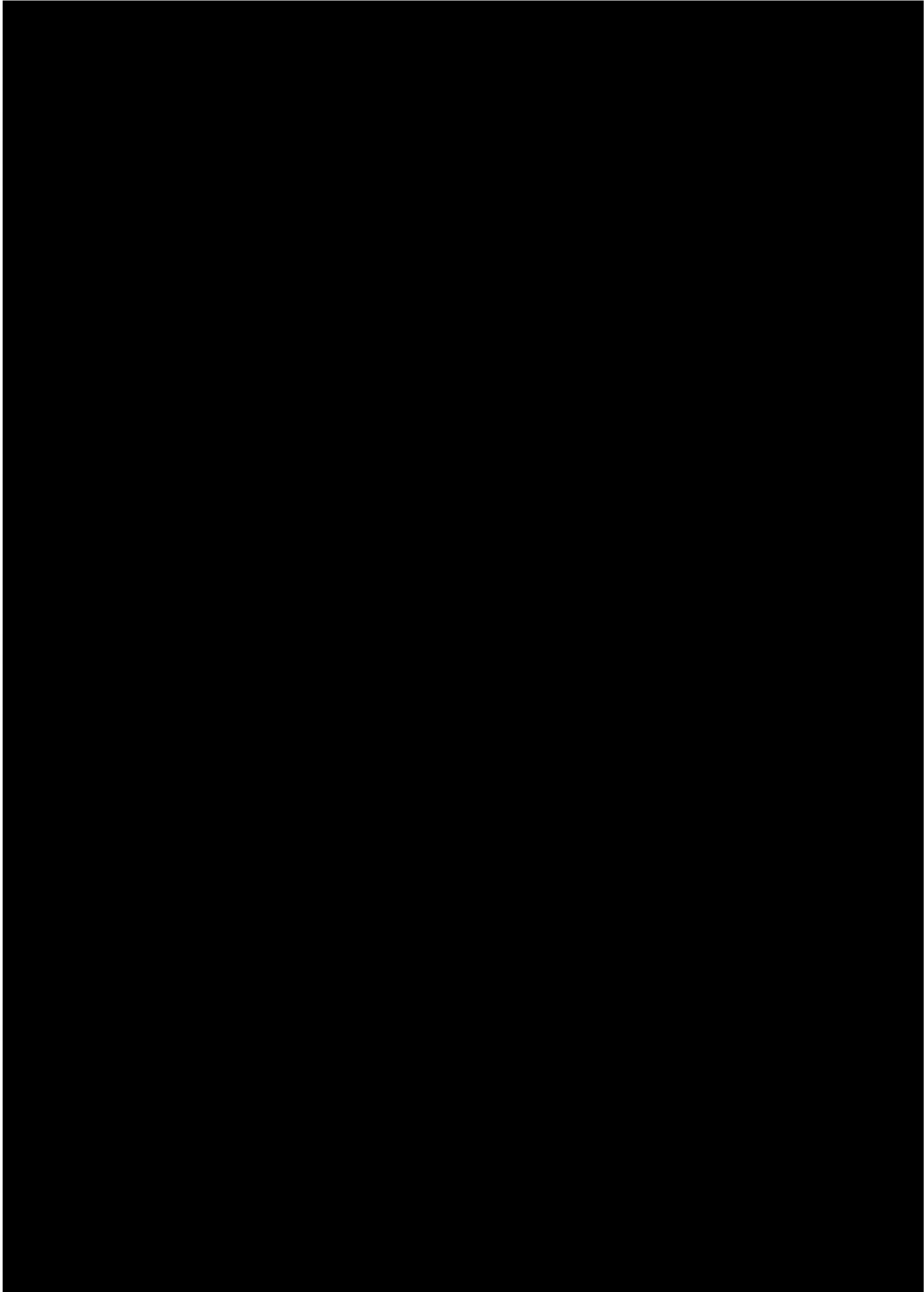
Signature of Director

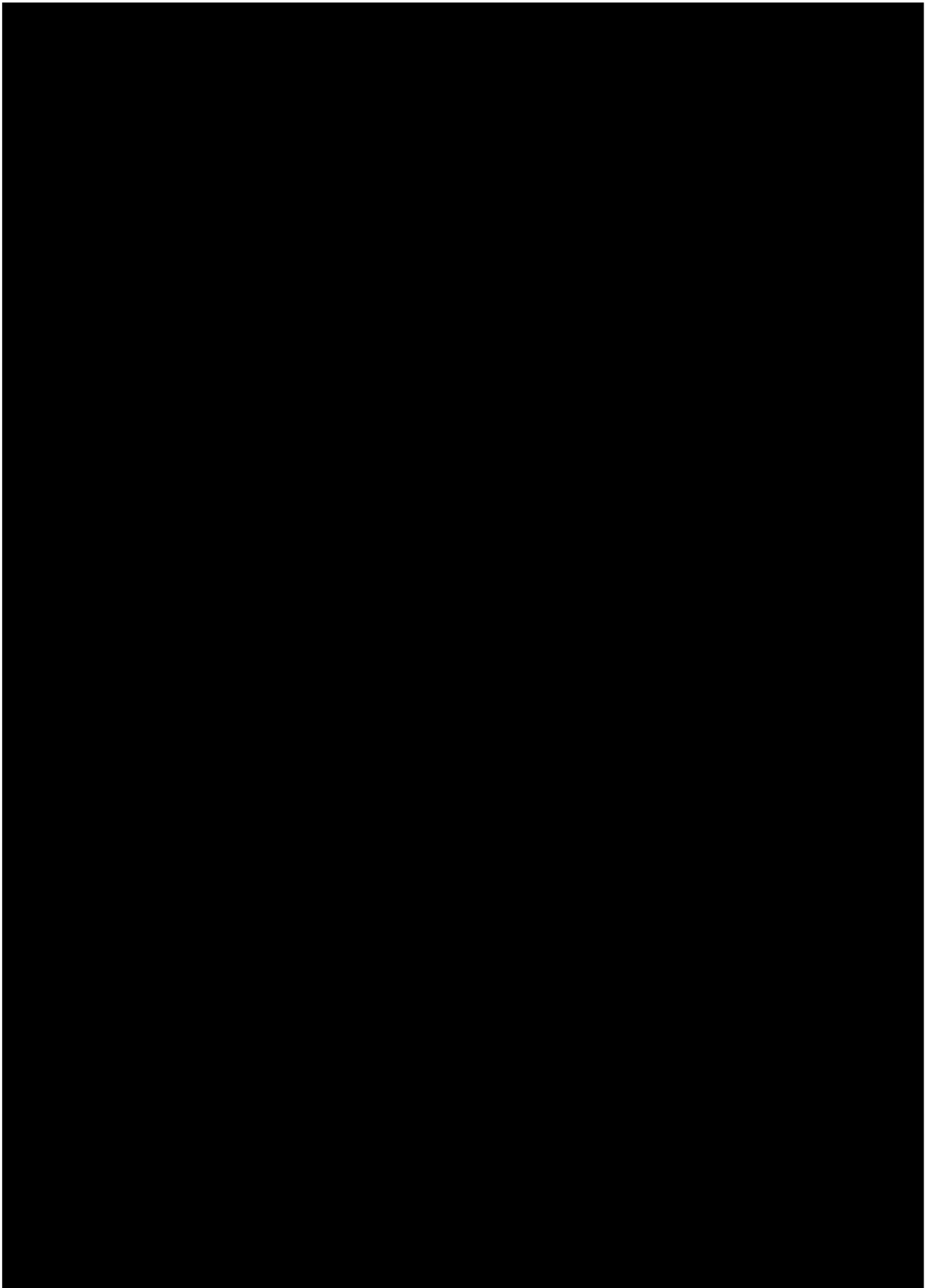
Name of Director in full

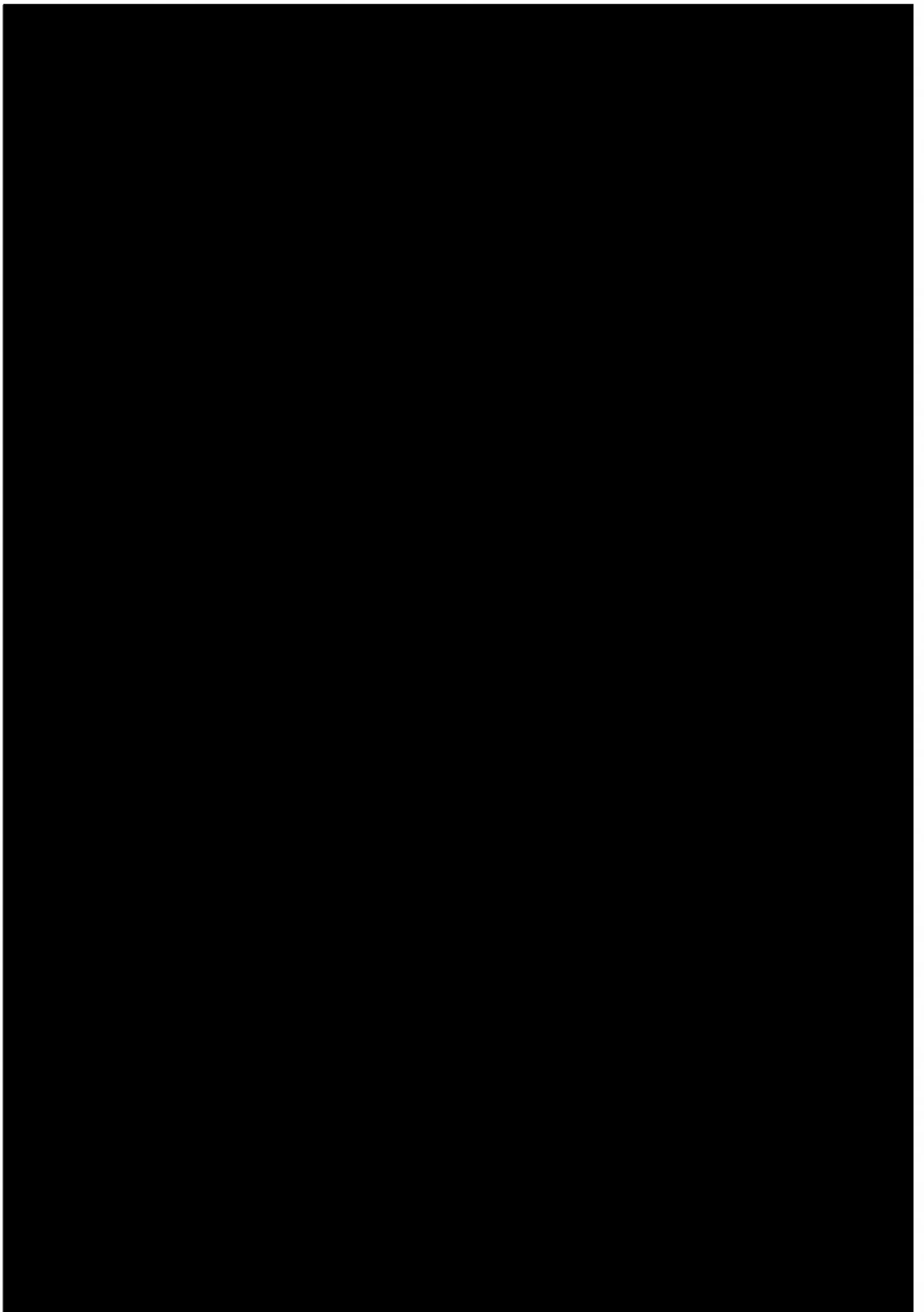
Signature of Secretary/other Director

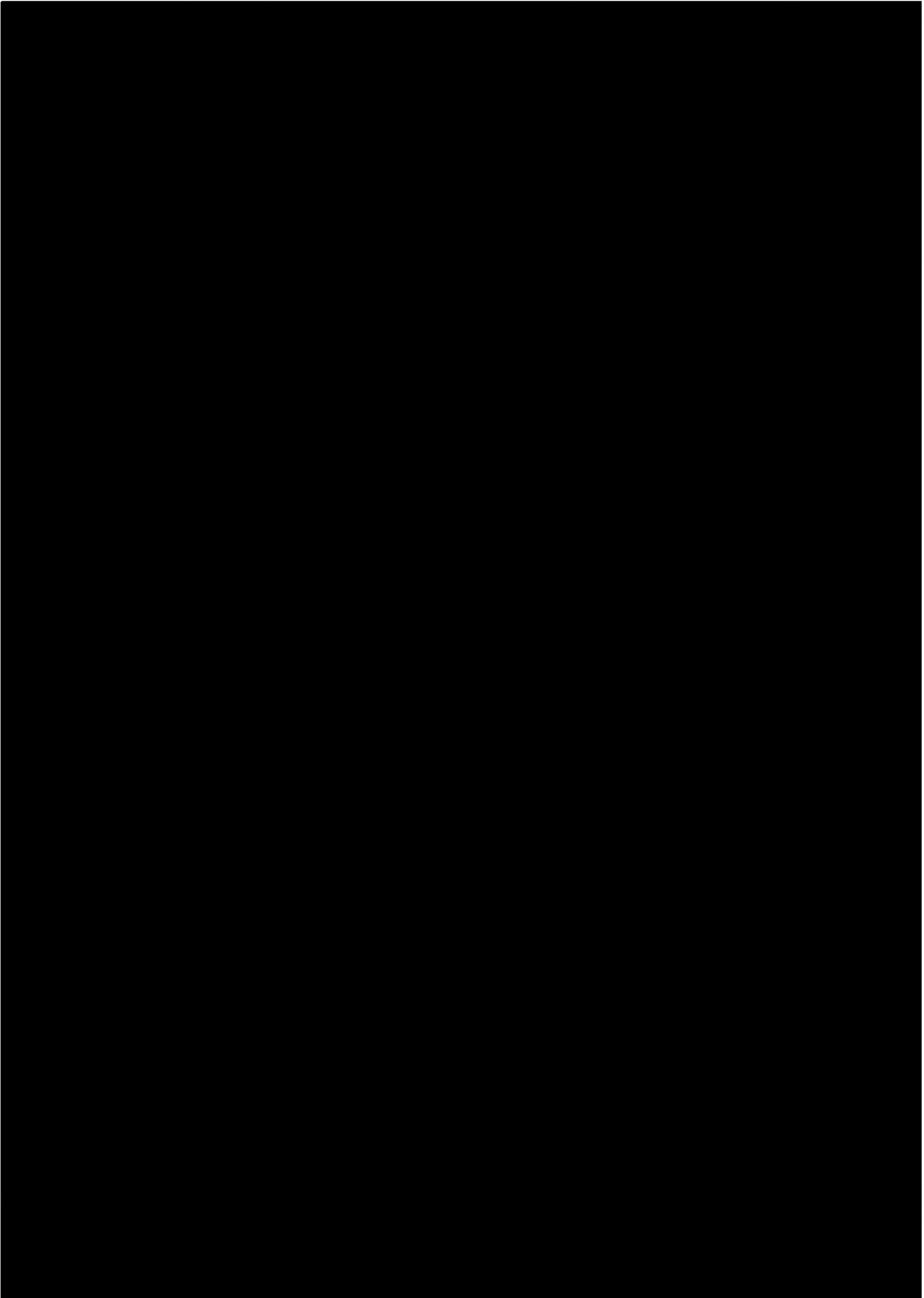
Name of Secretary/other Director in full

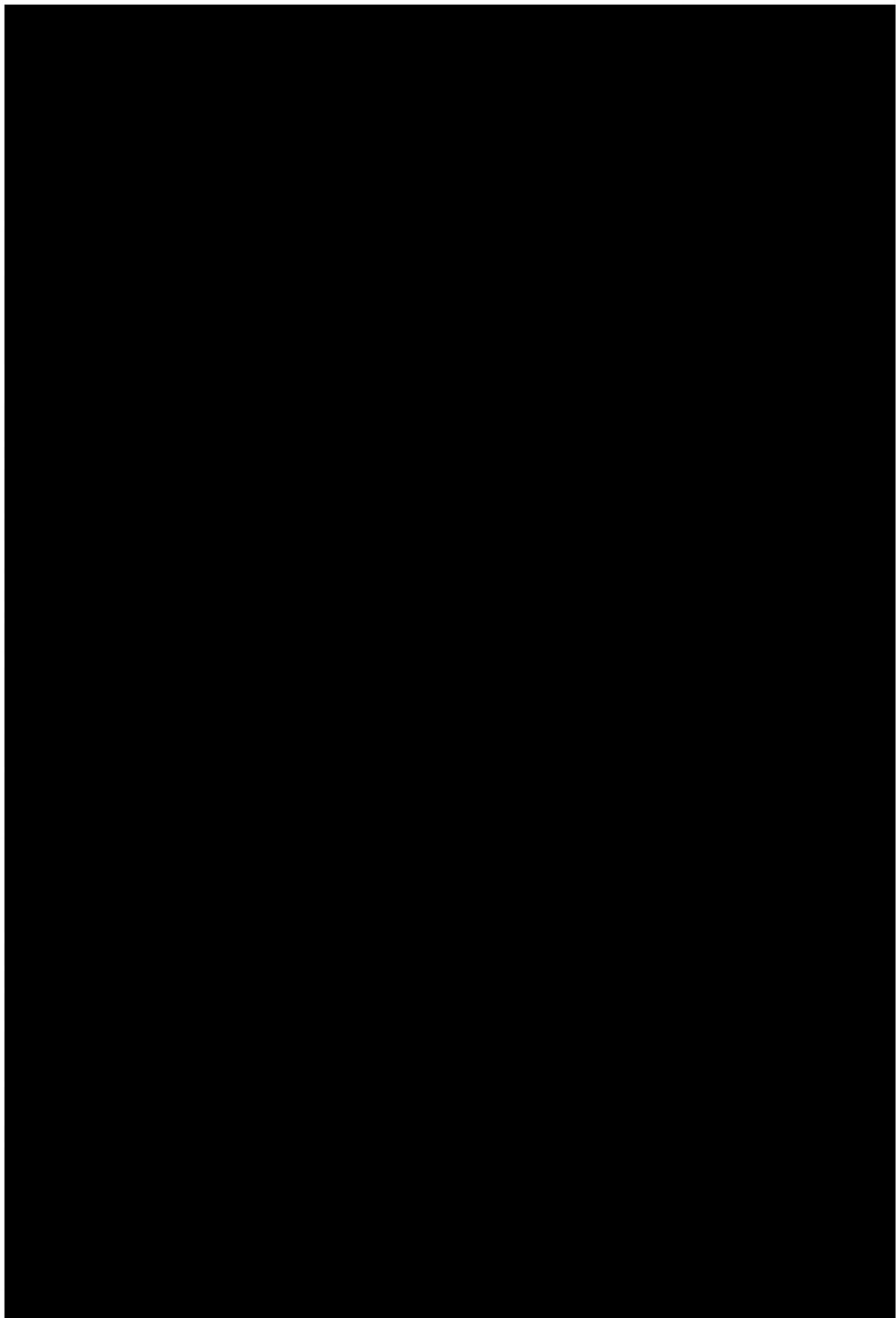
SCHEDULE 7

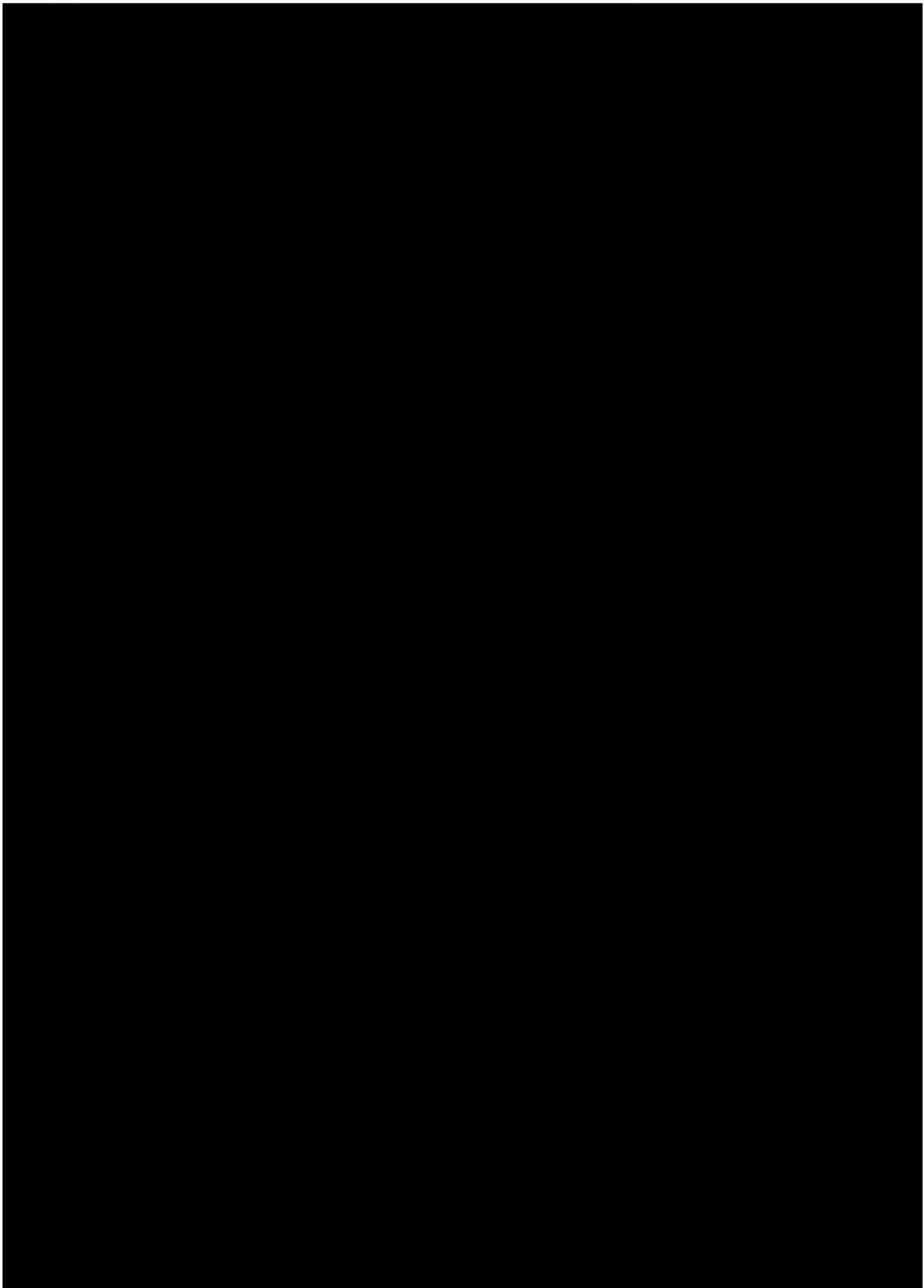


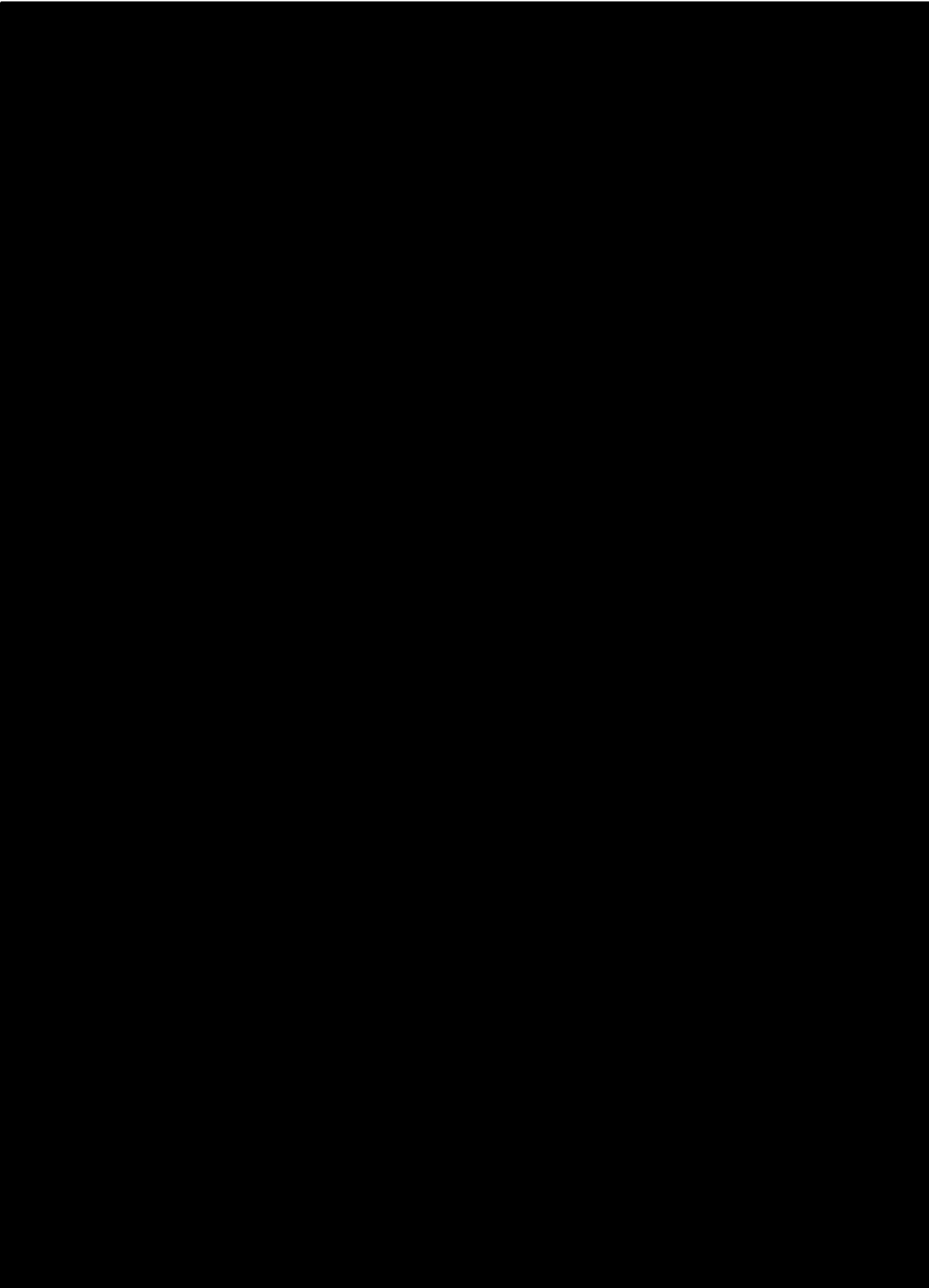


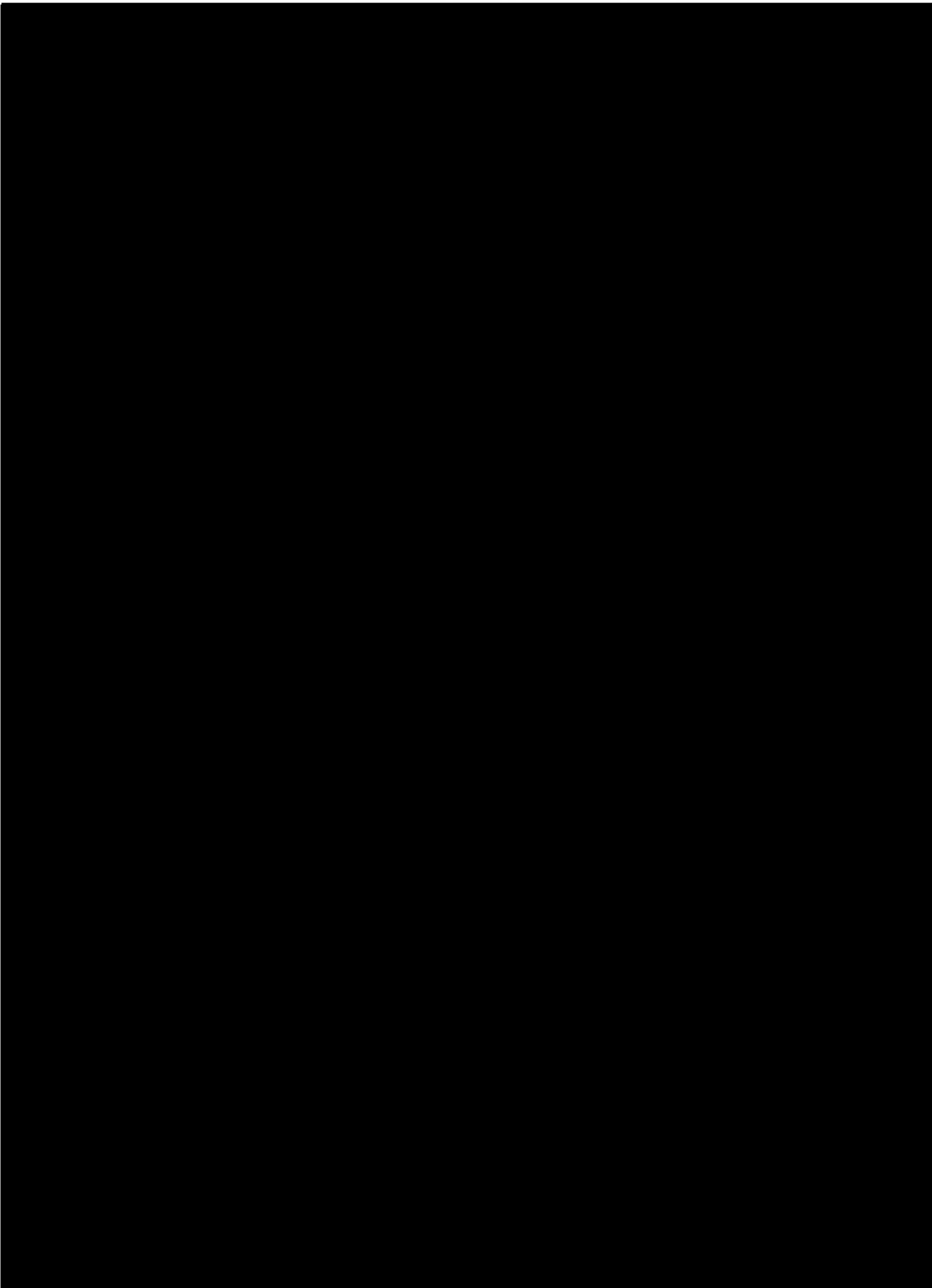


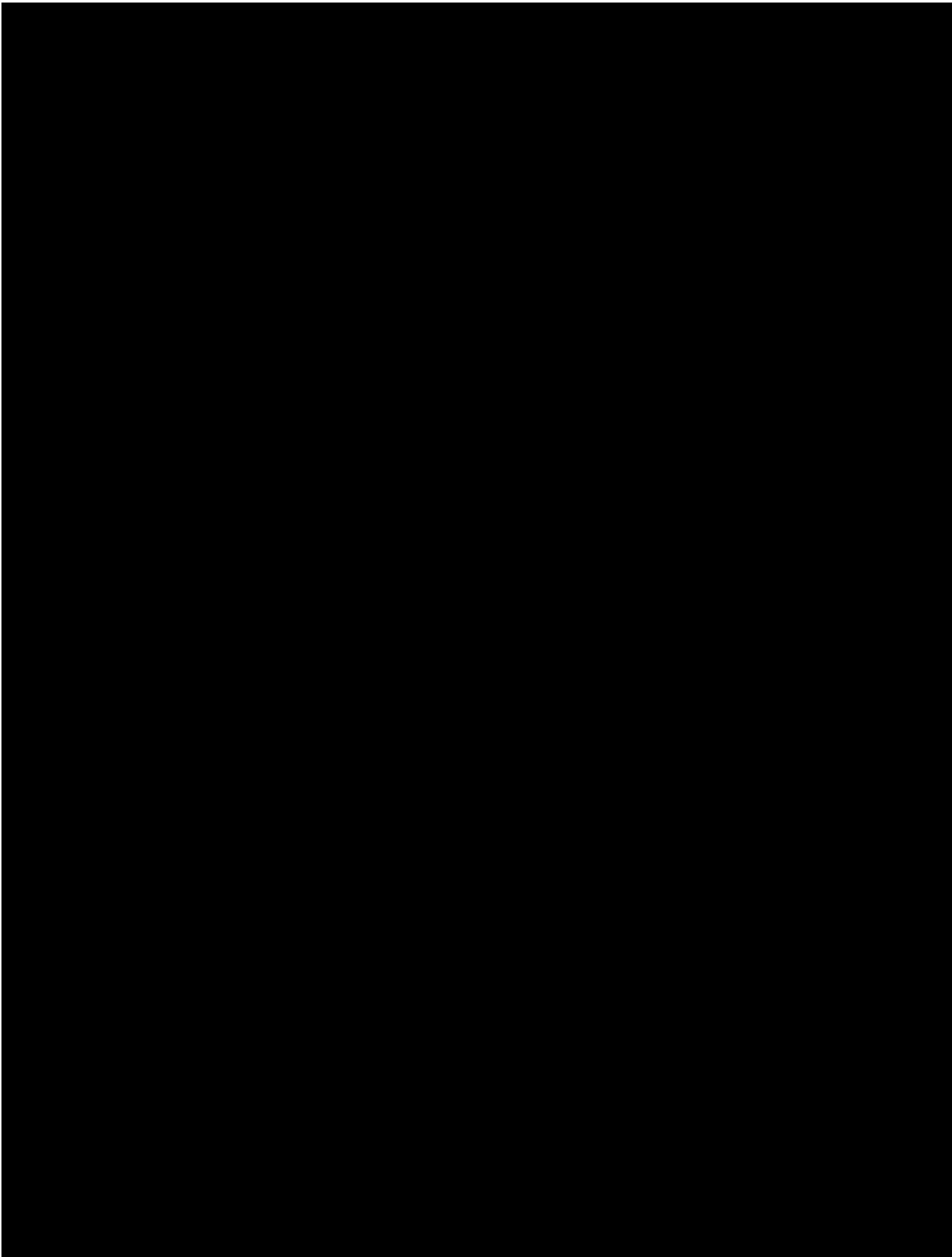






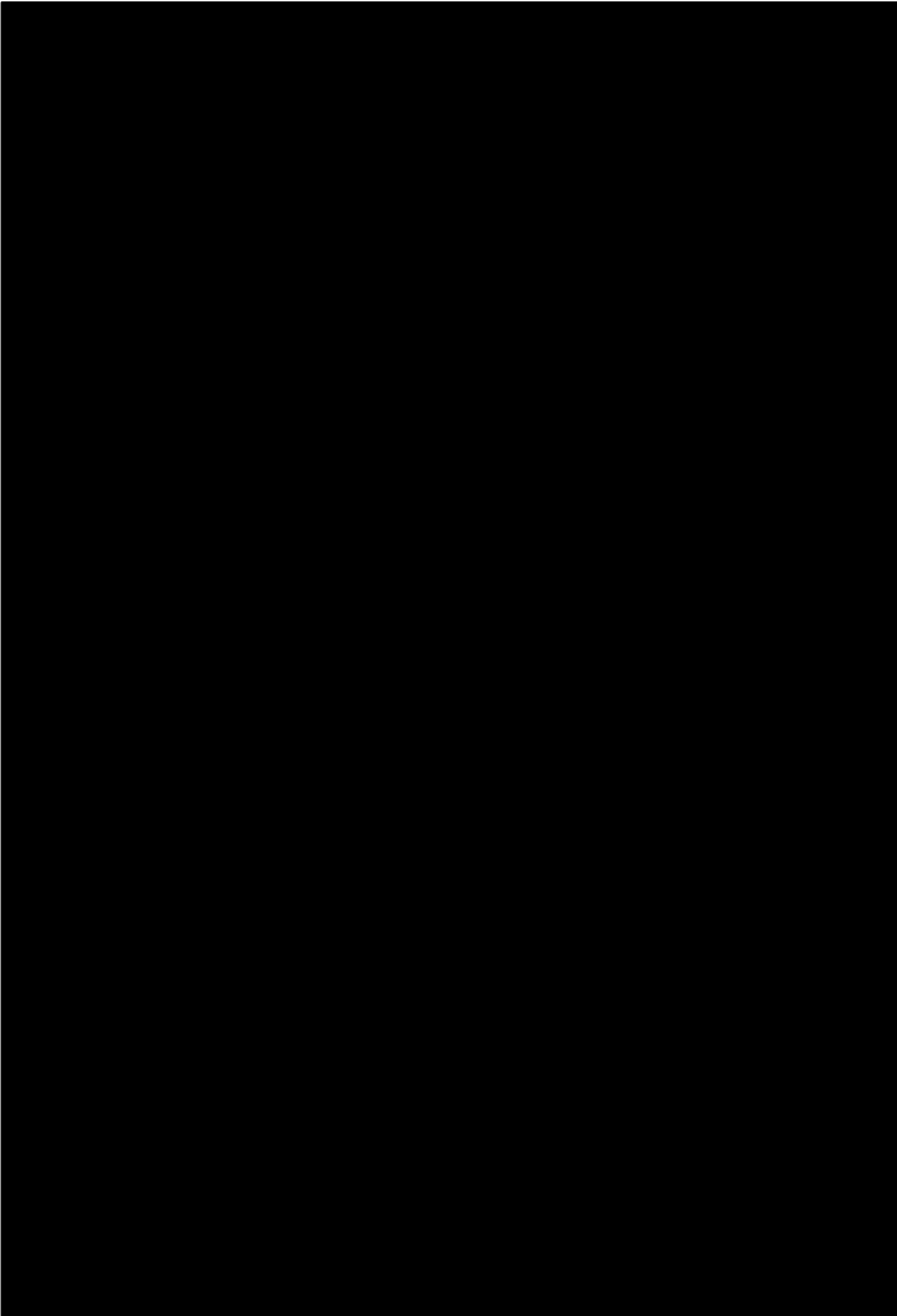


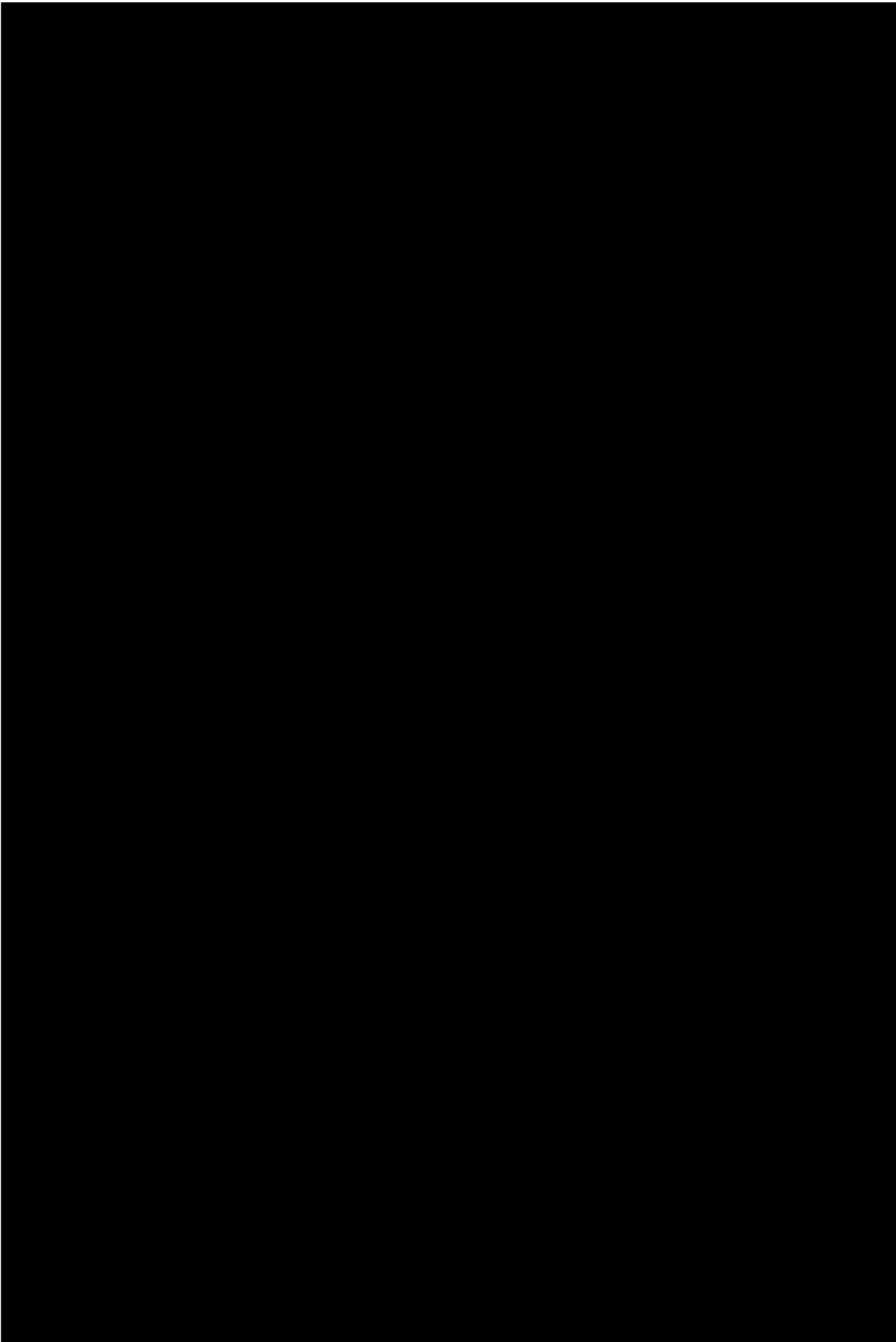




SCHEDULE 8

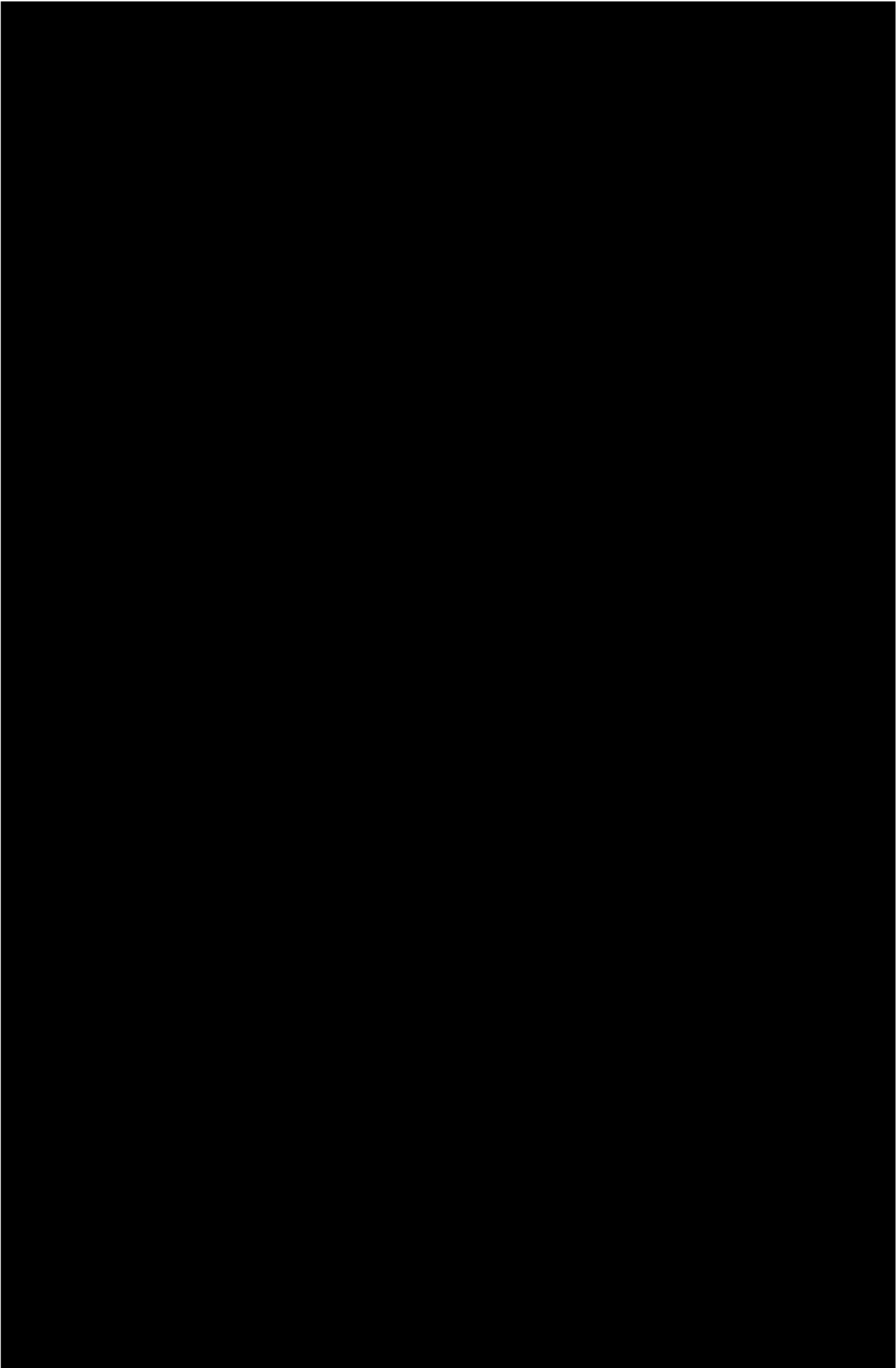






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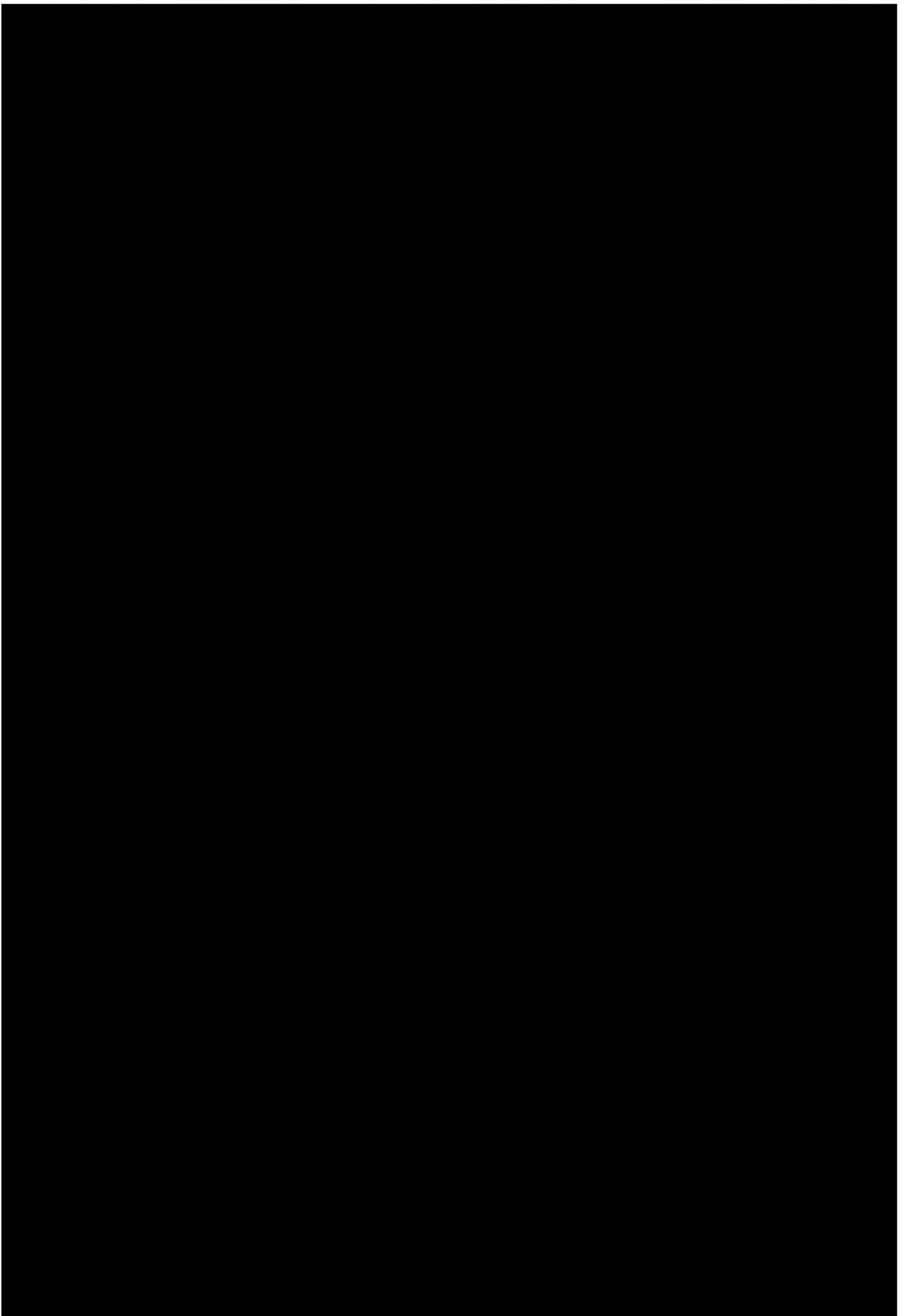
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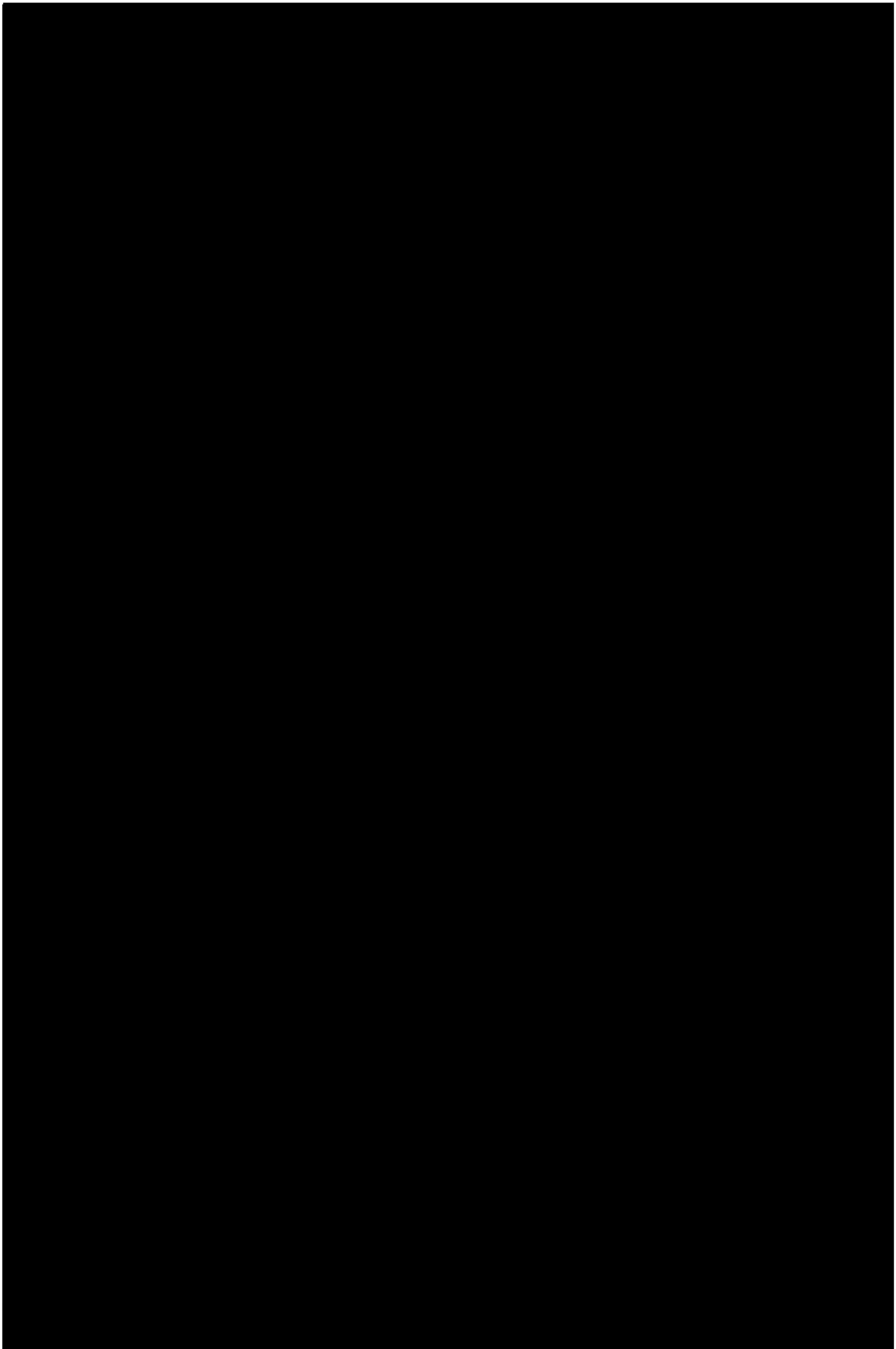
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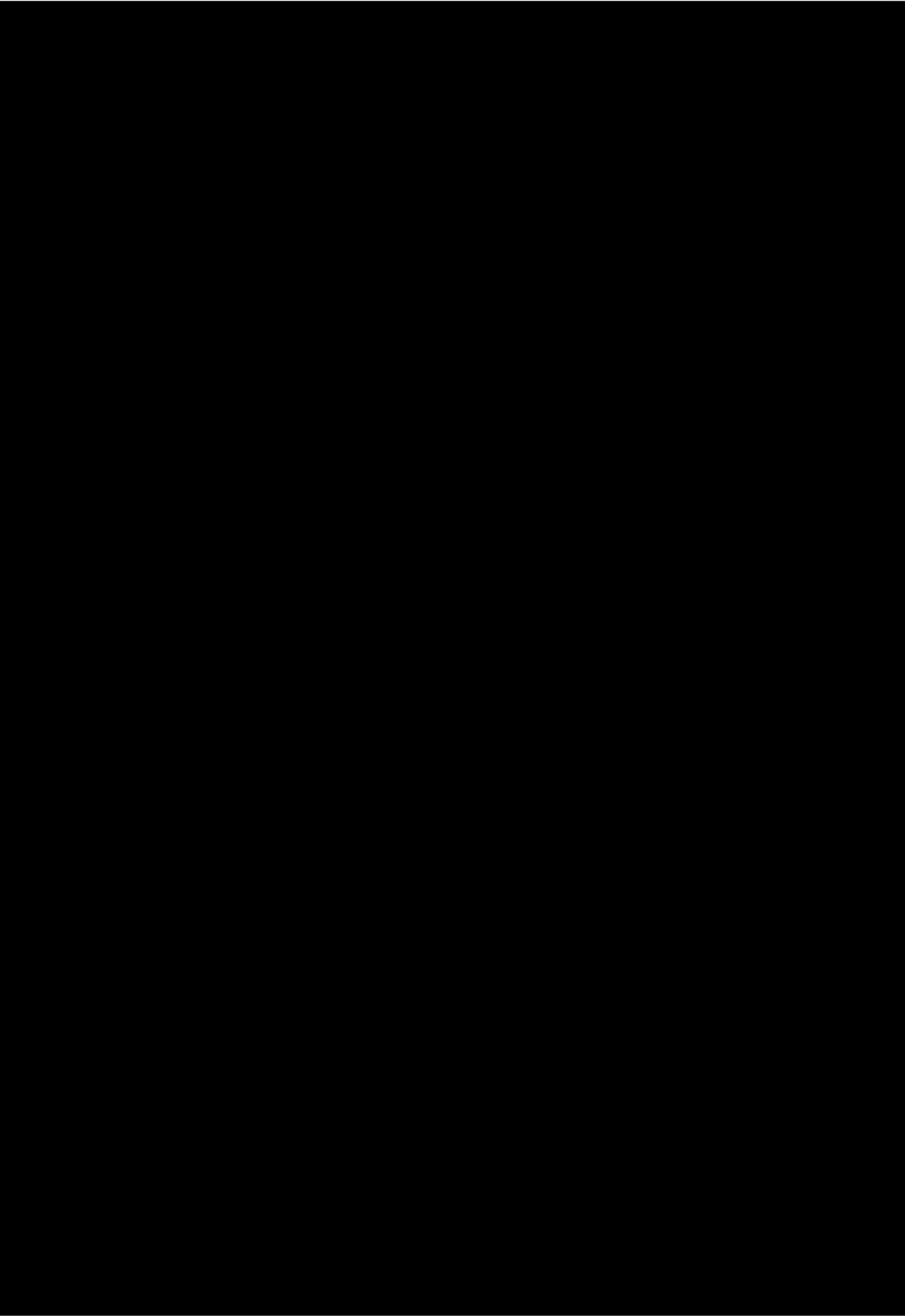


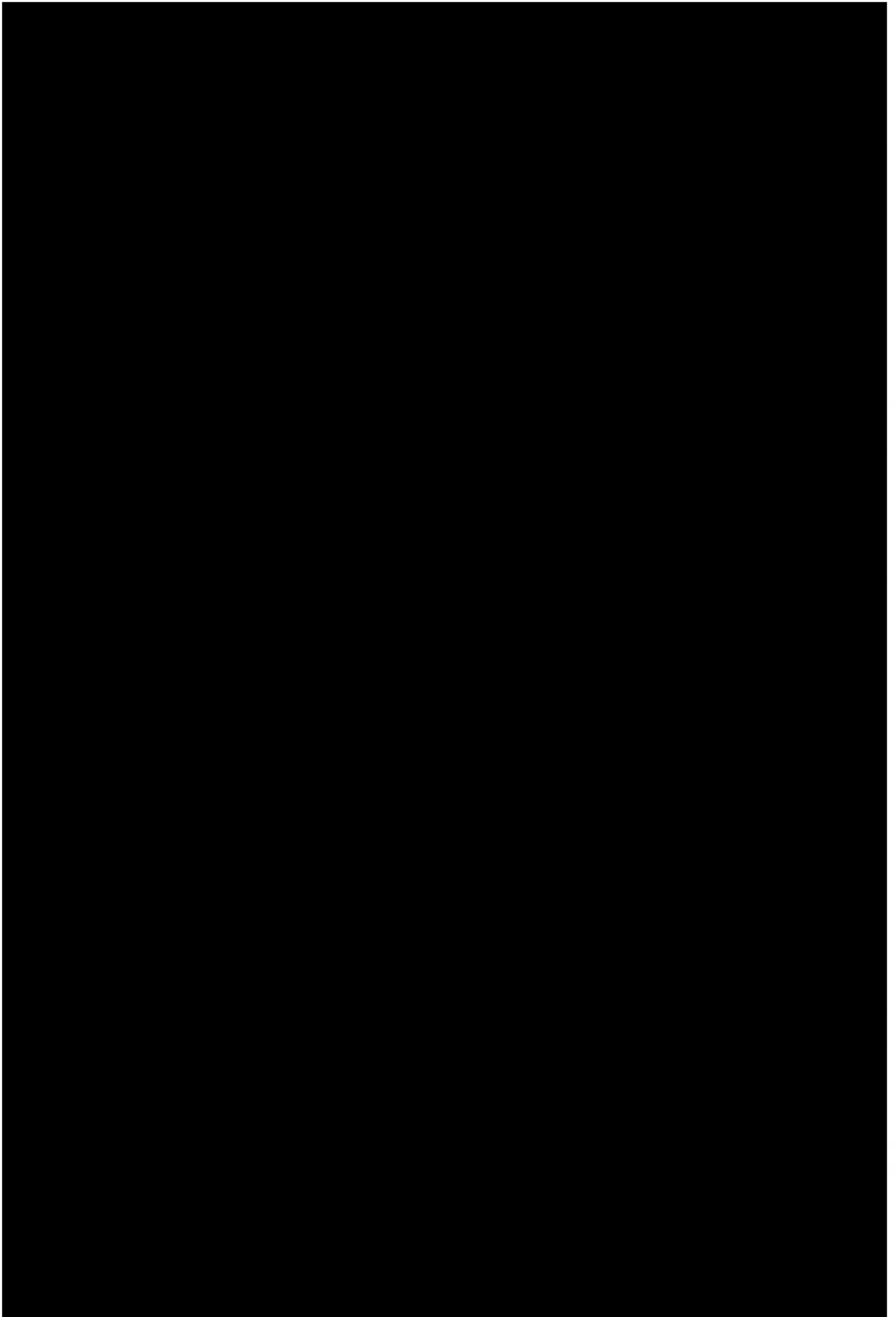
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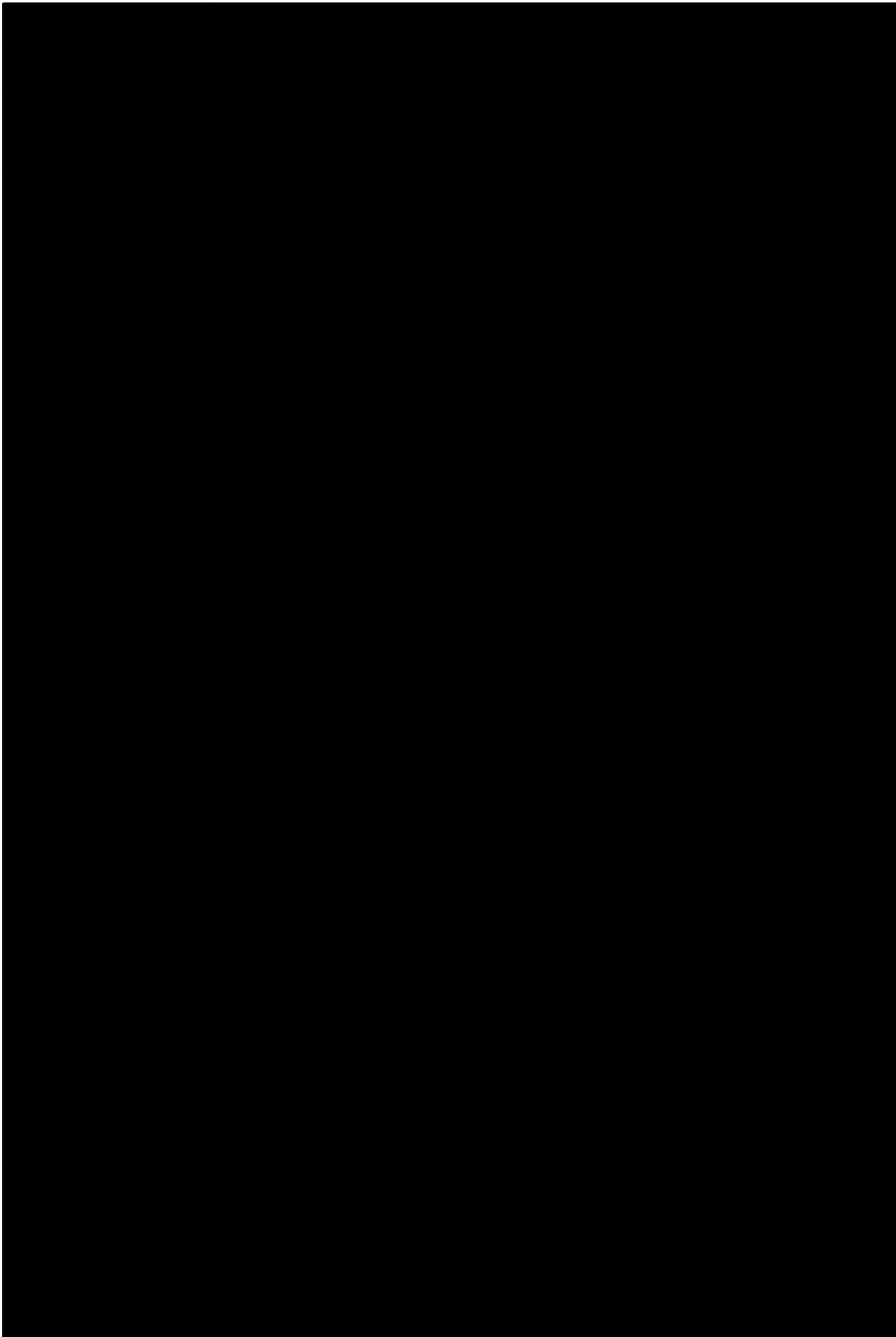


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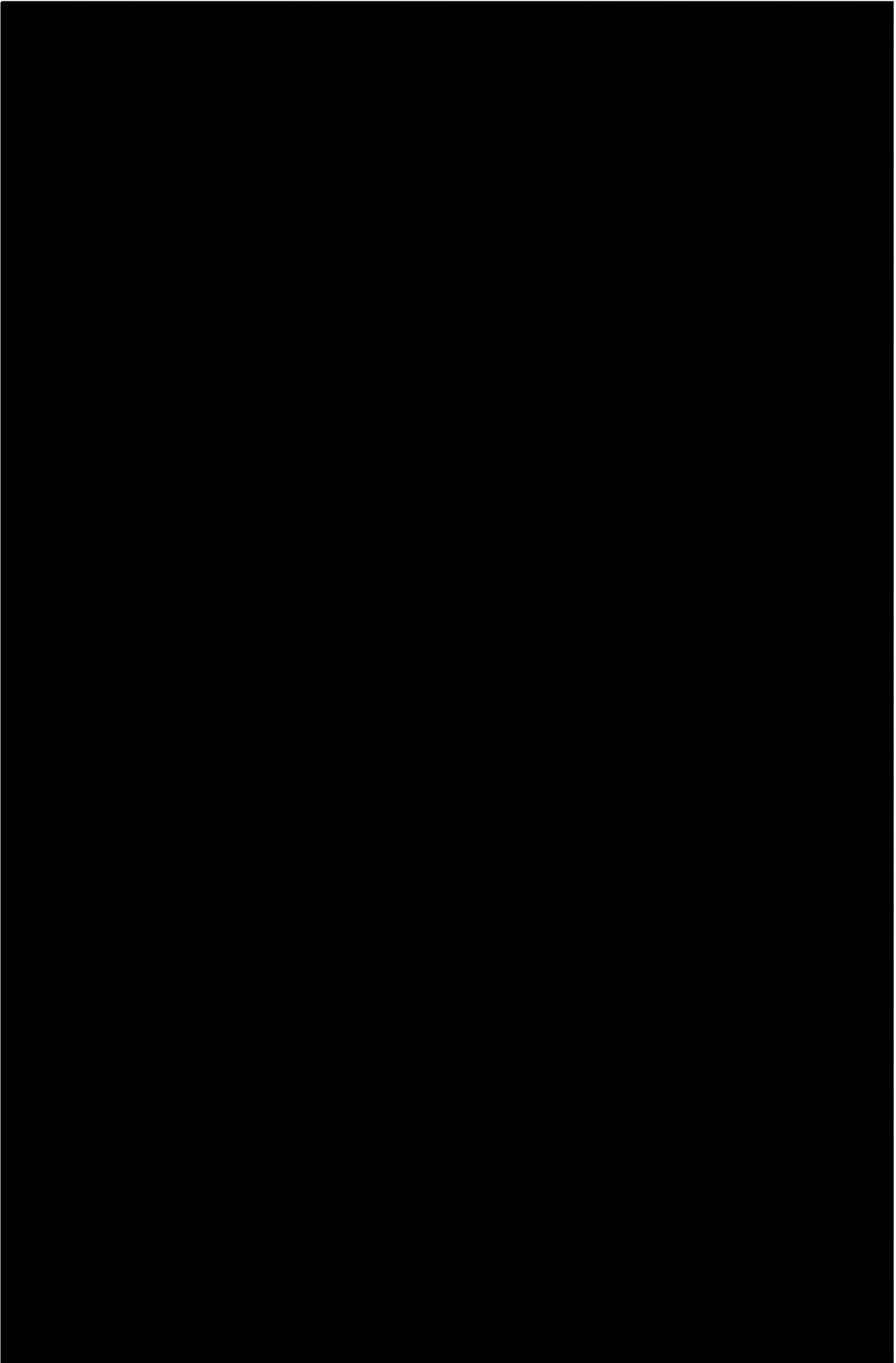
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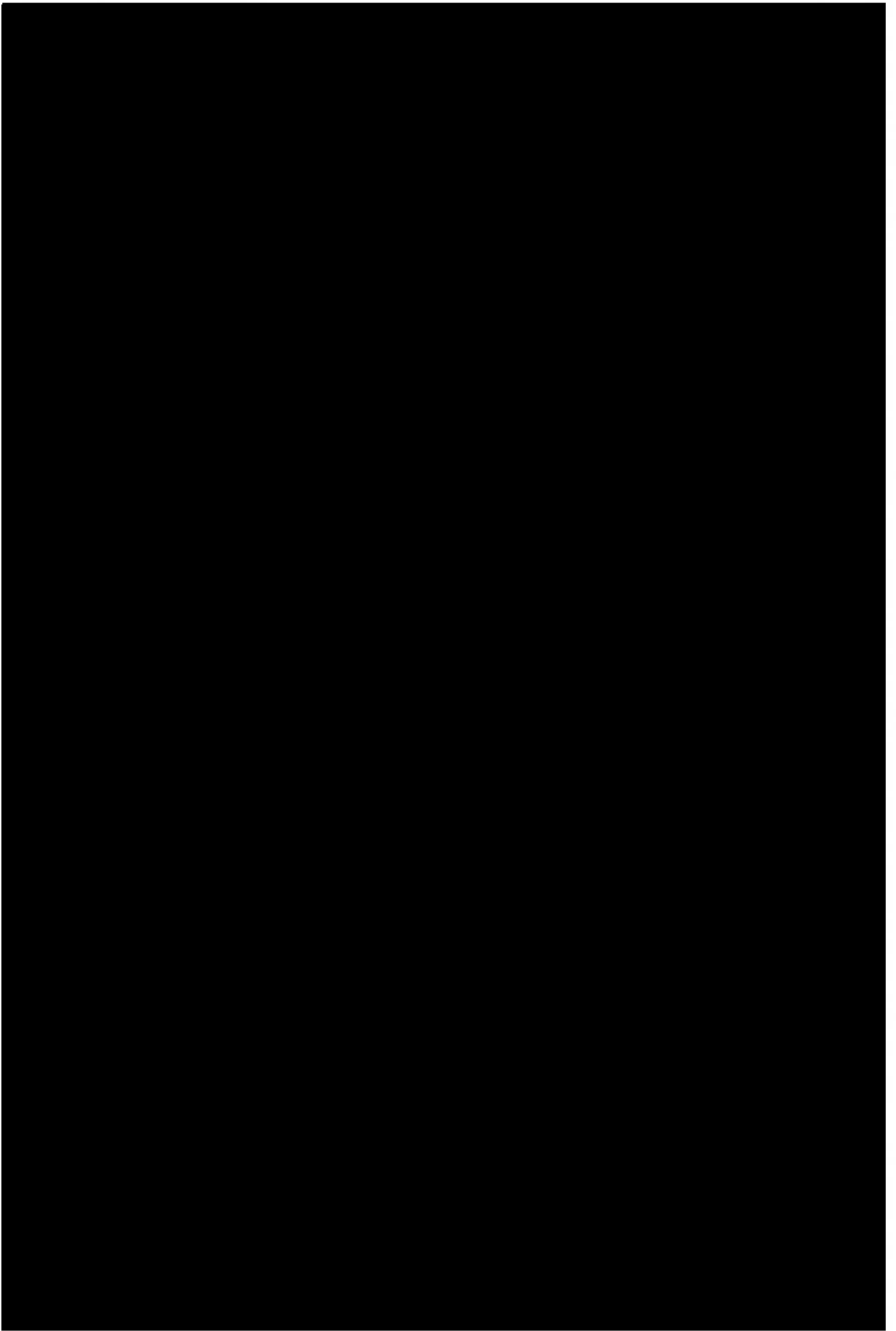
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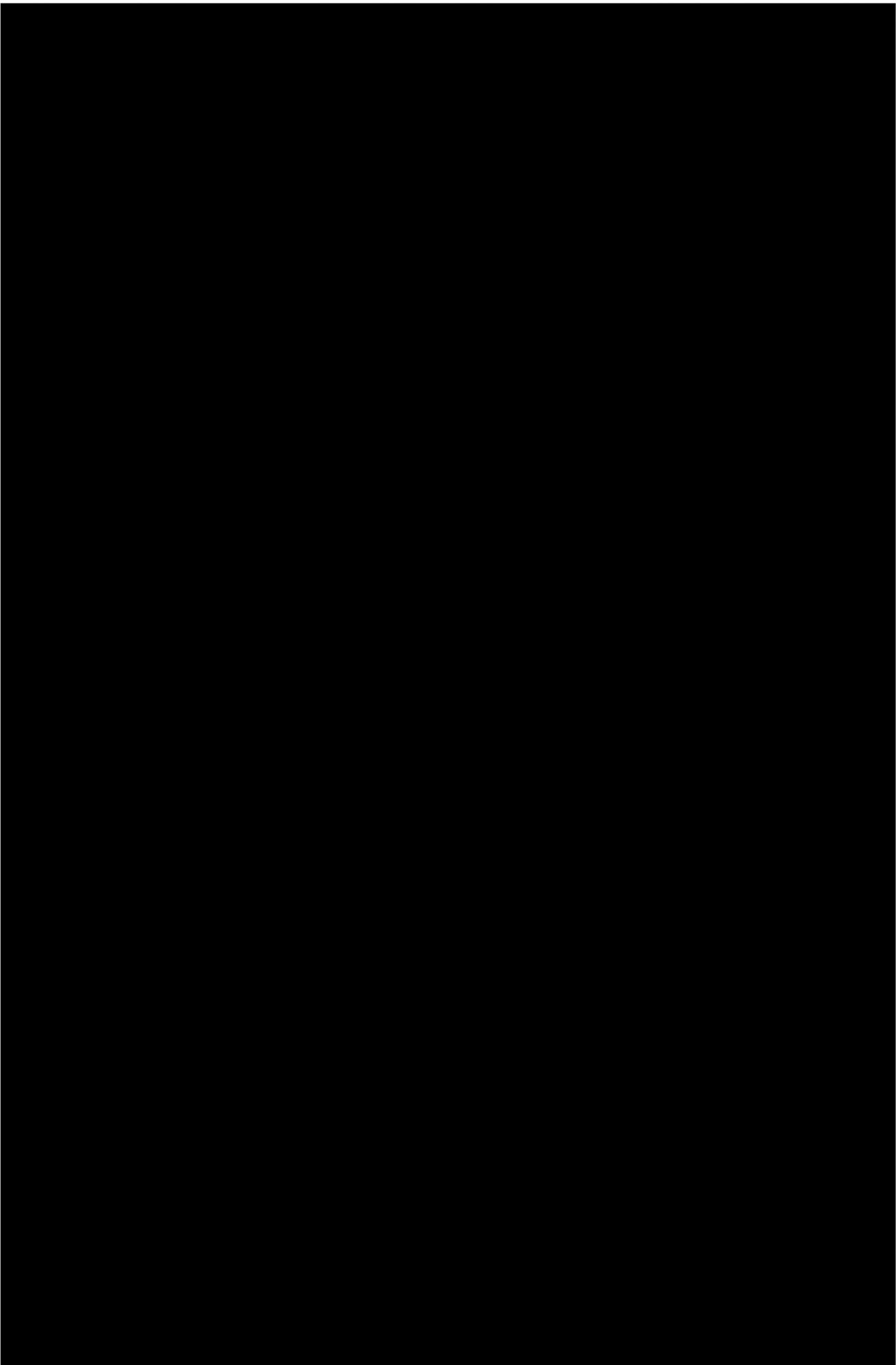


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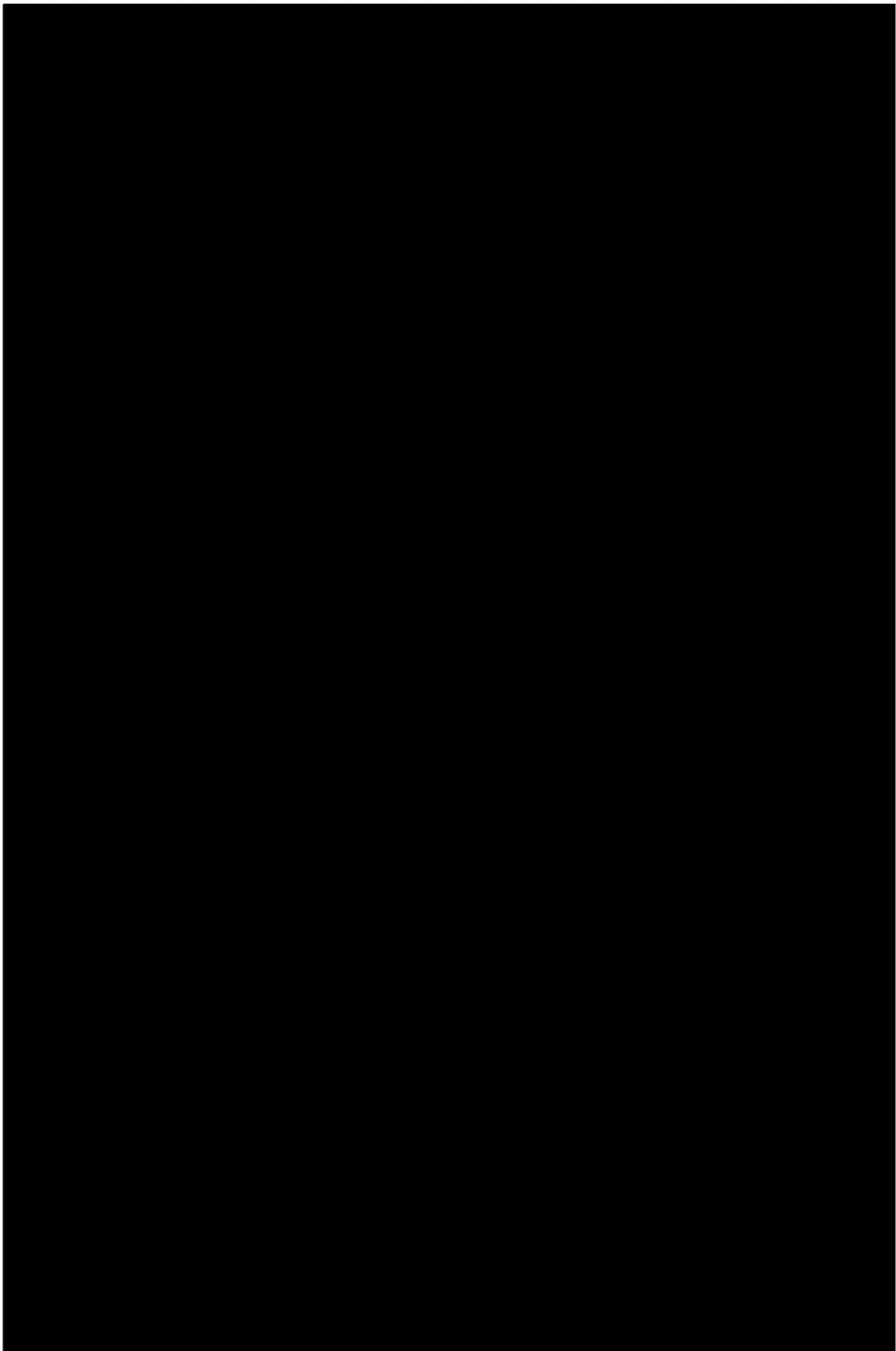
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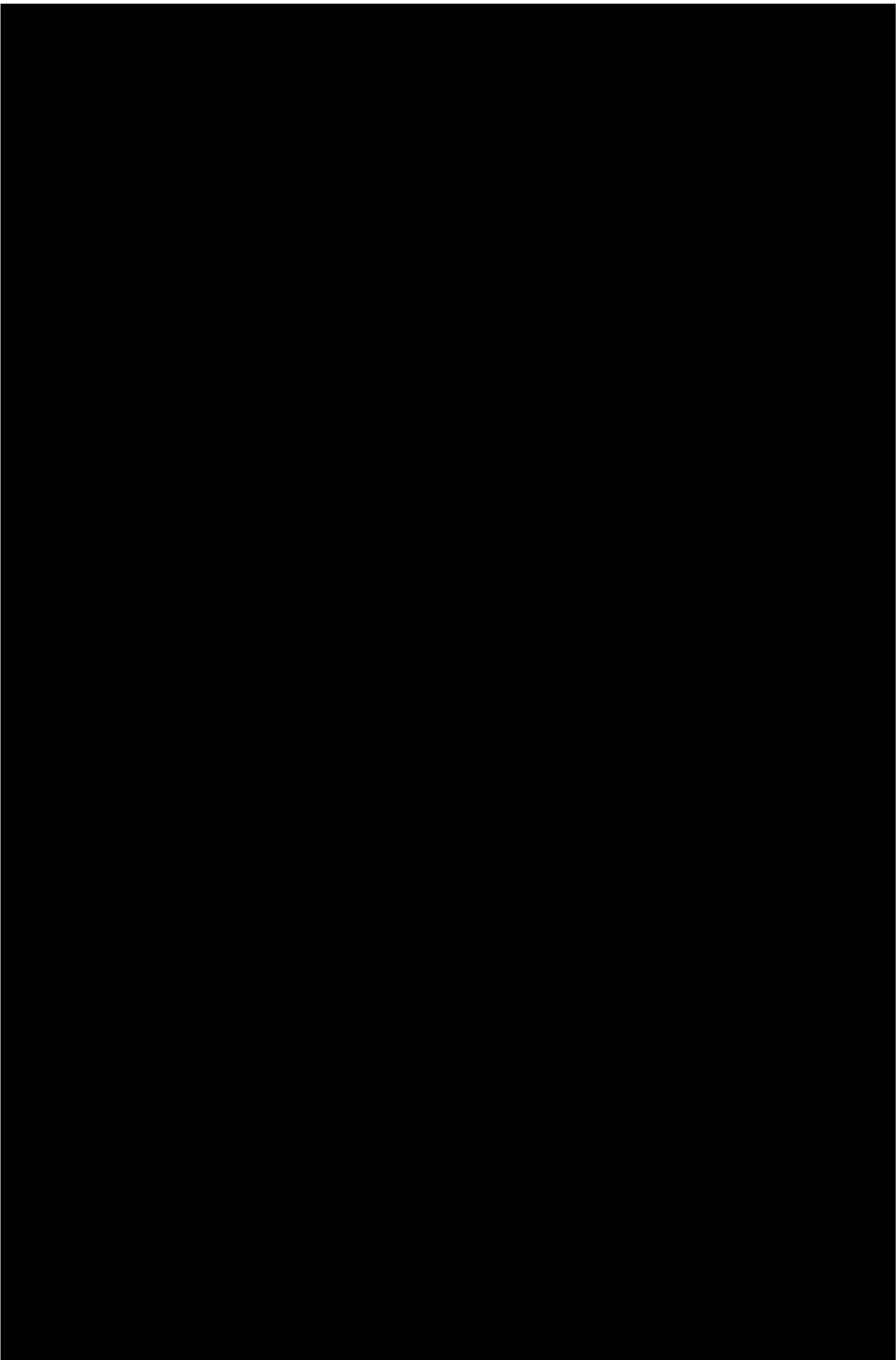
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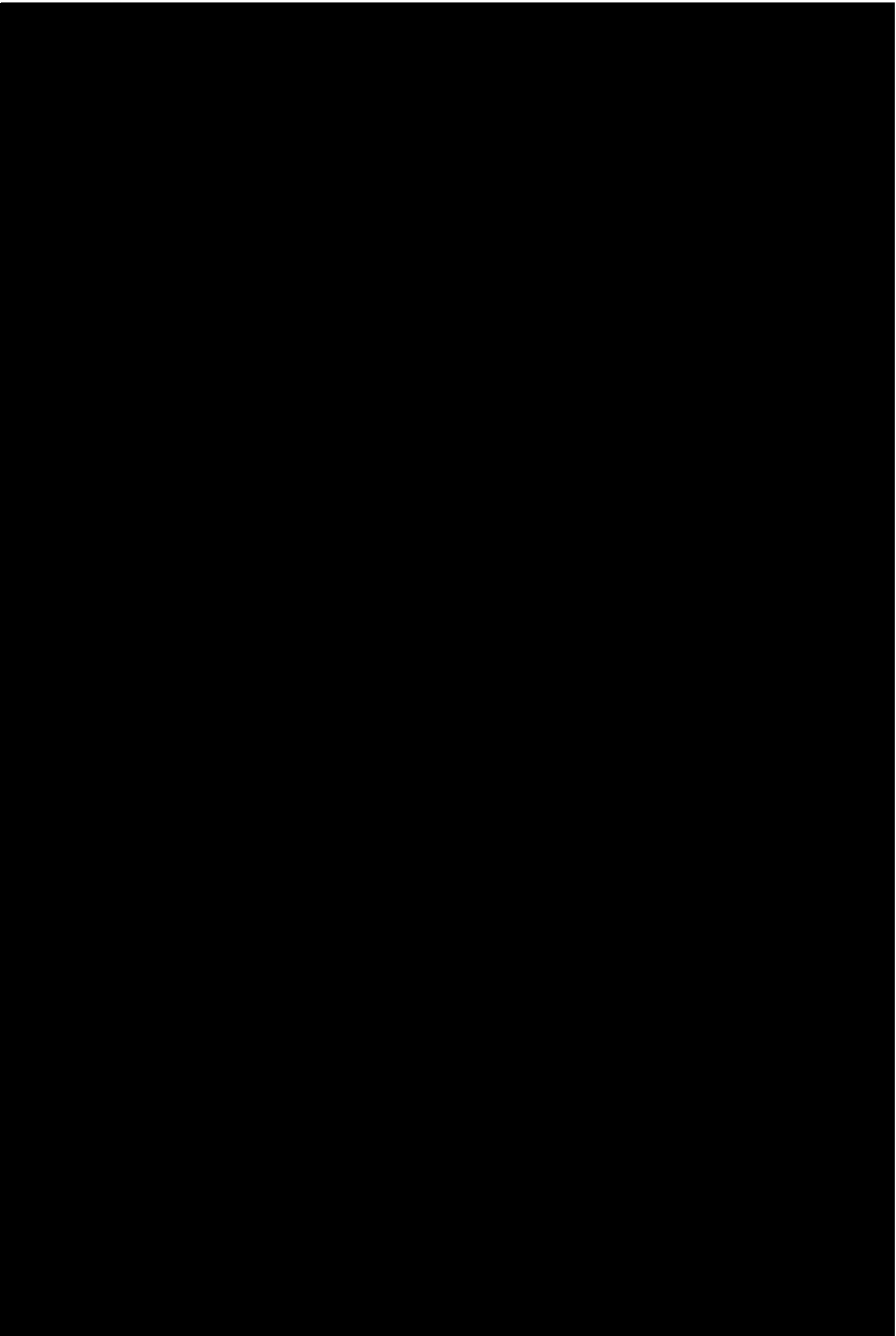
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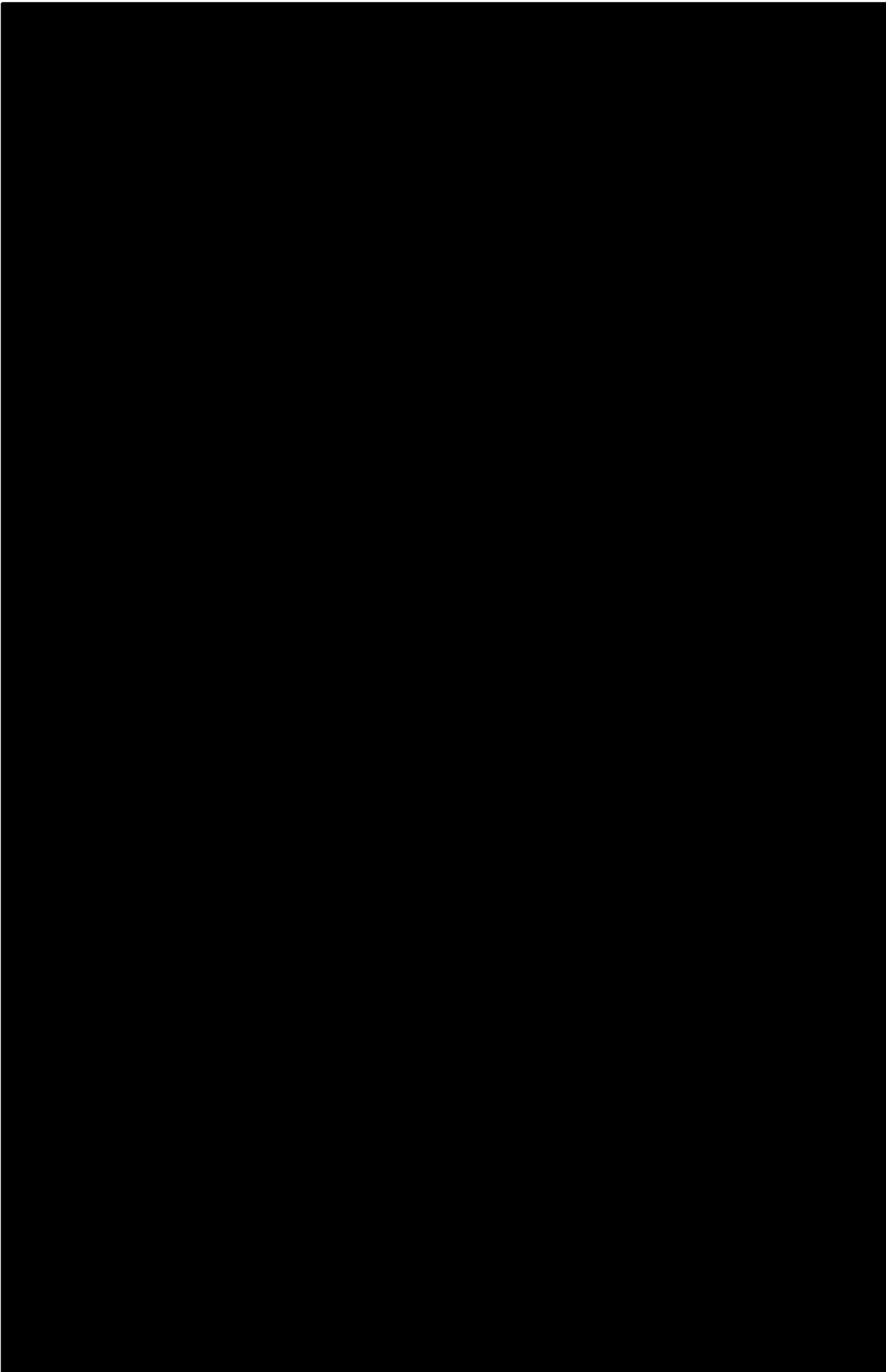
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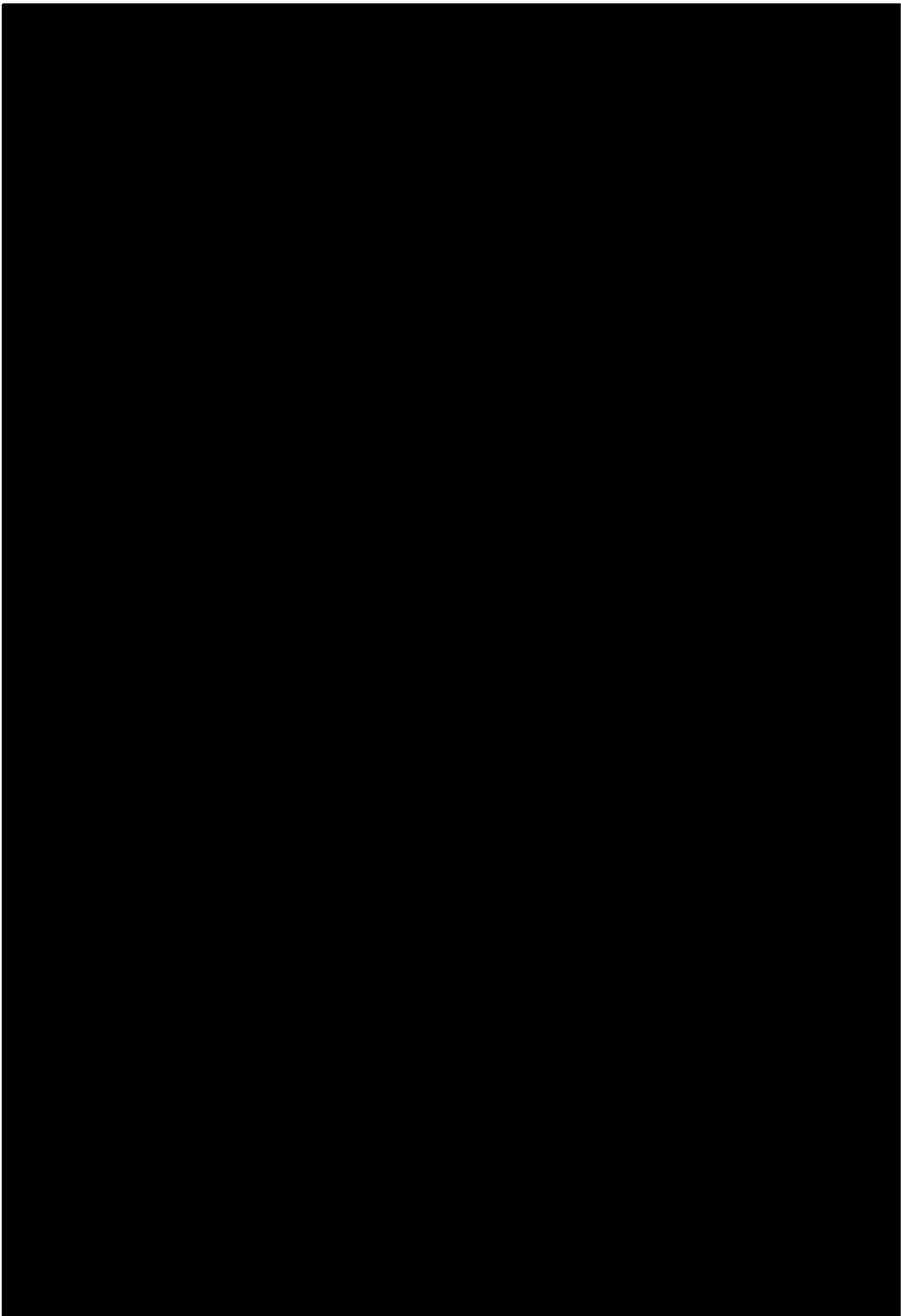
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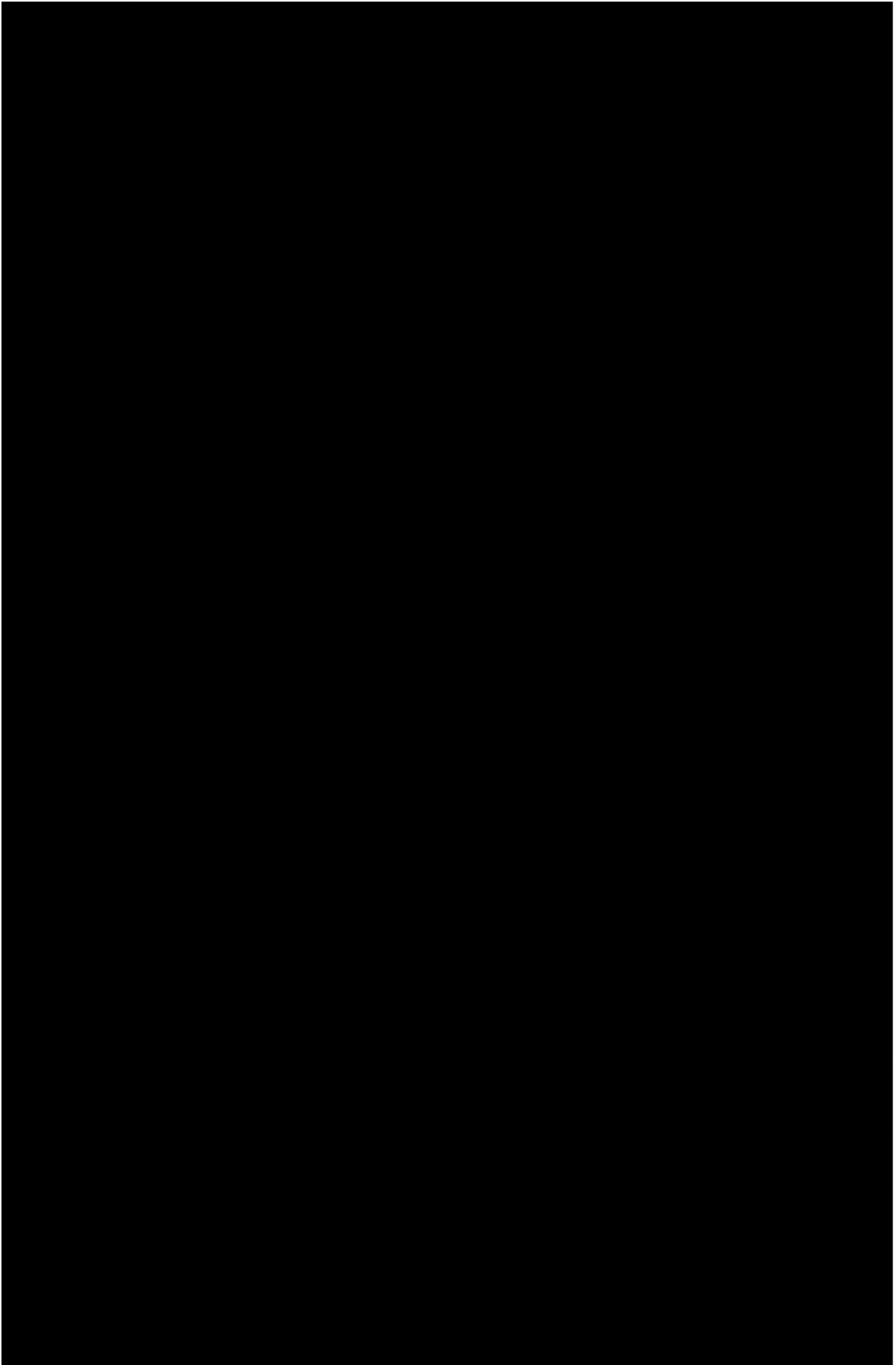
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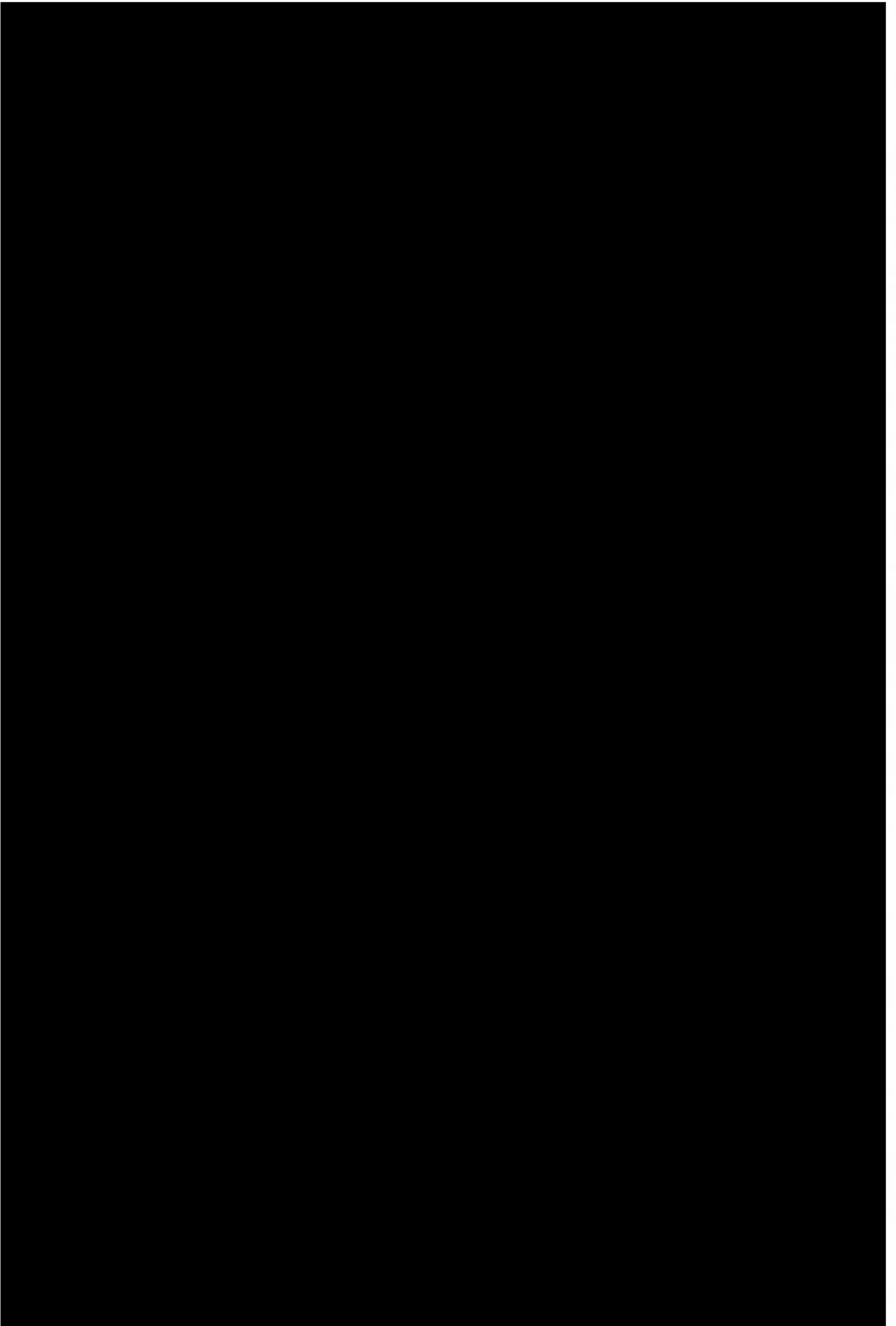
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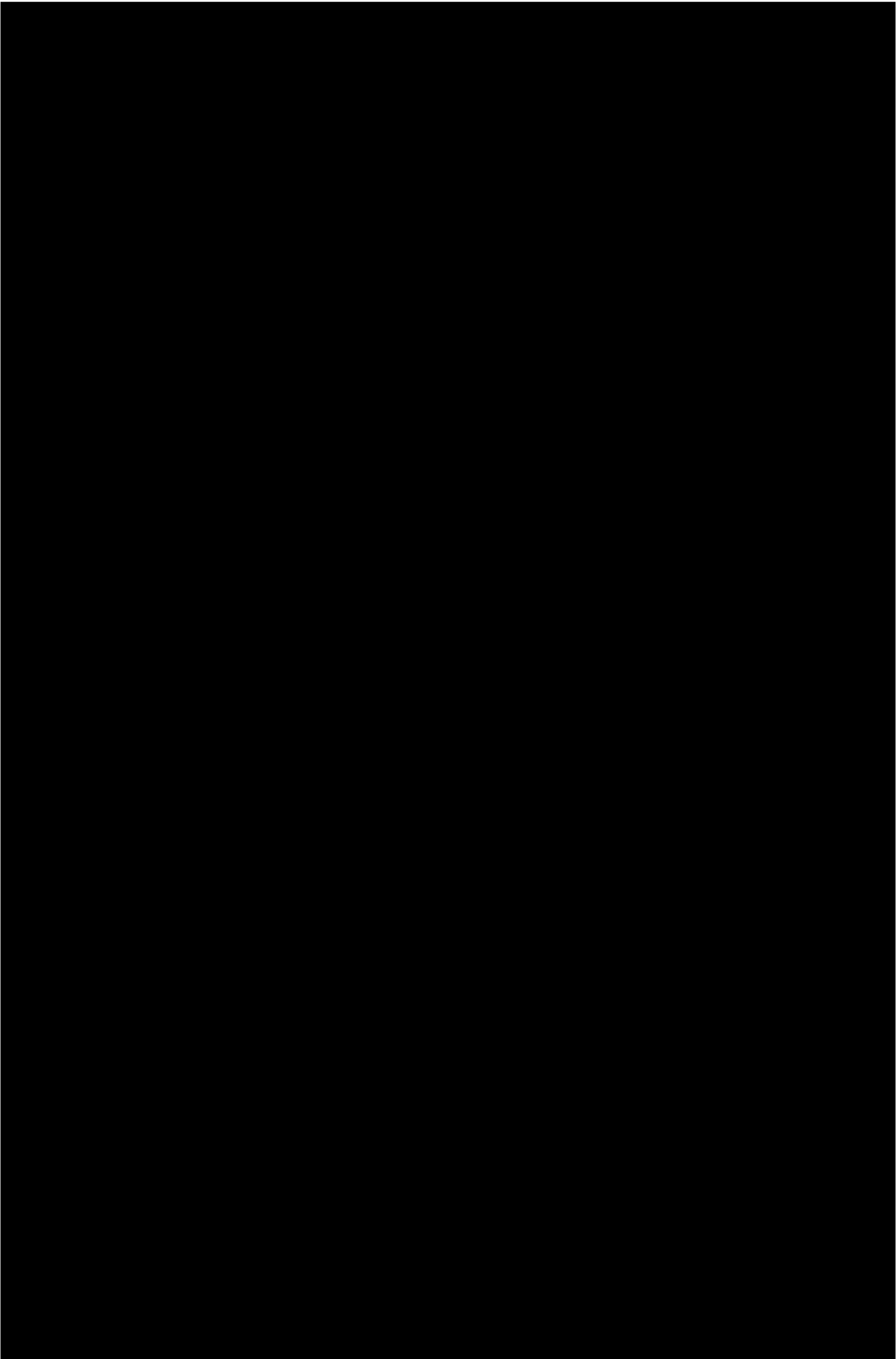
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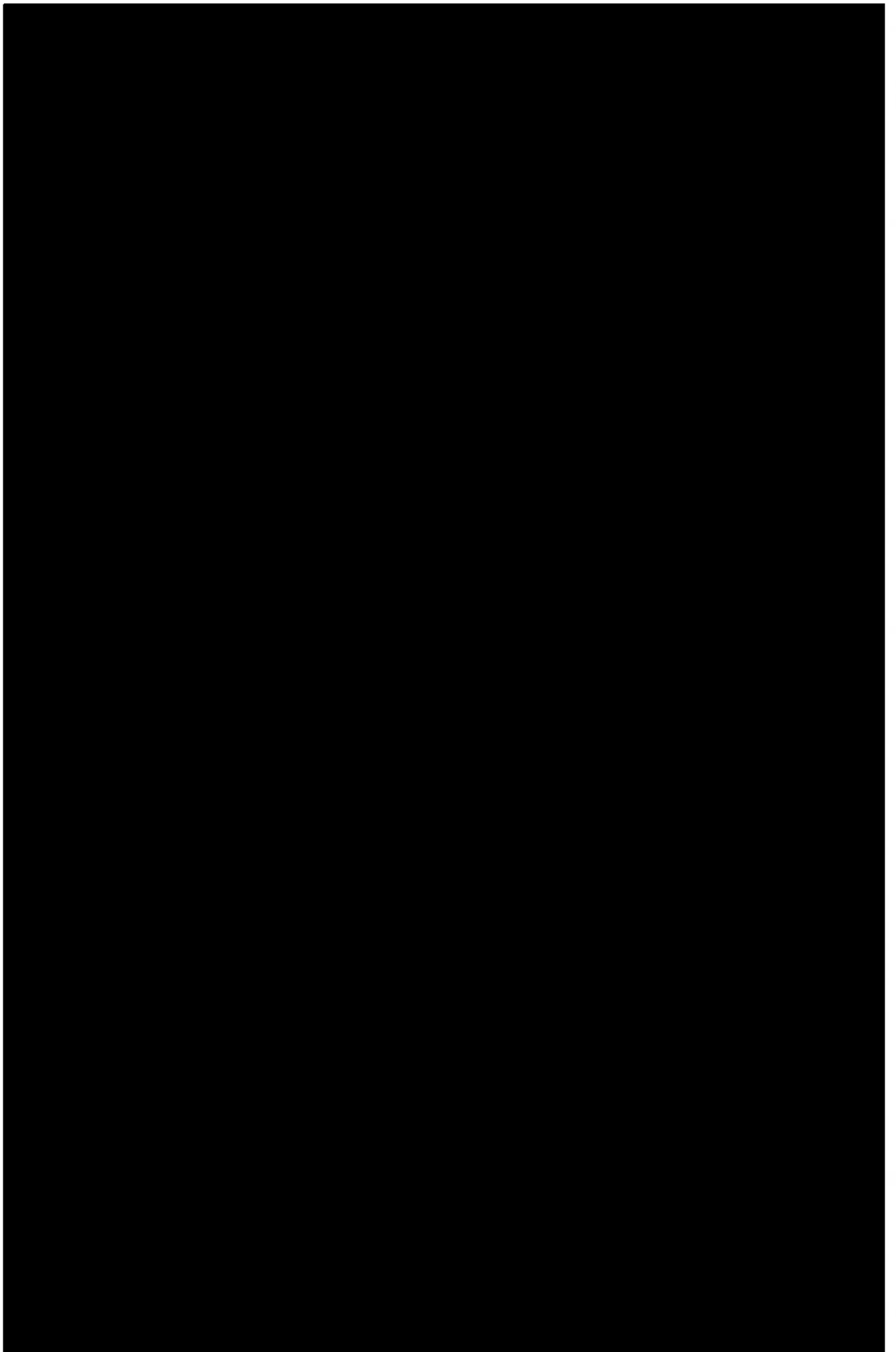
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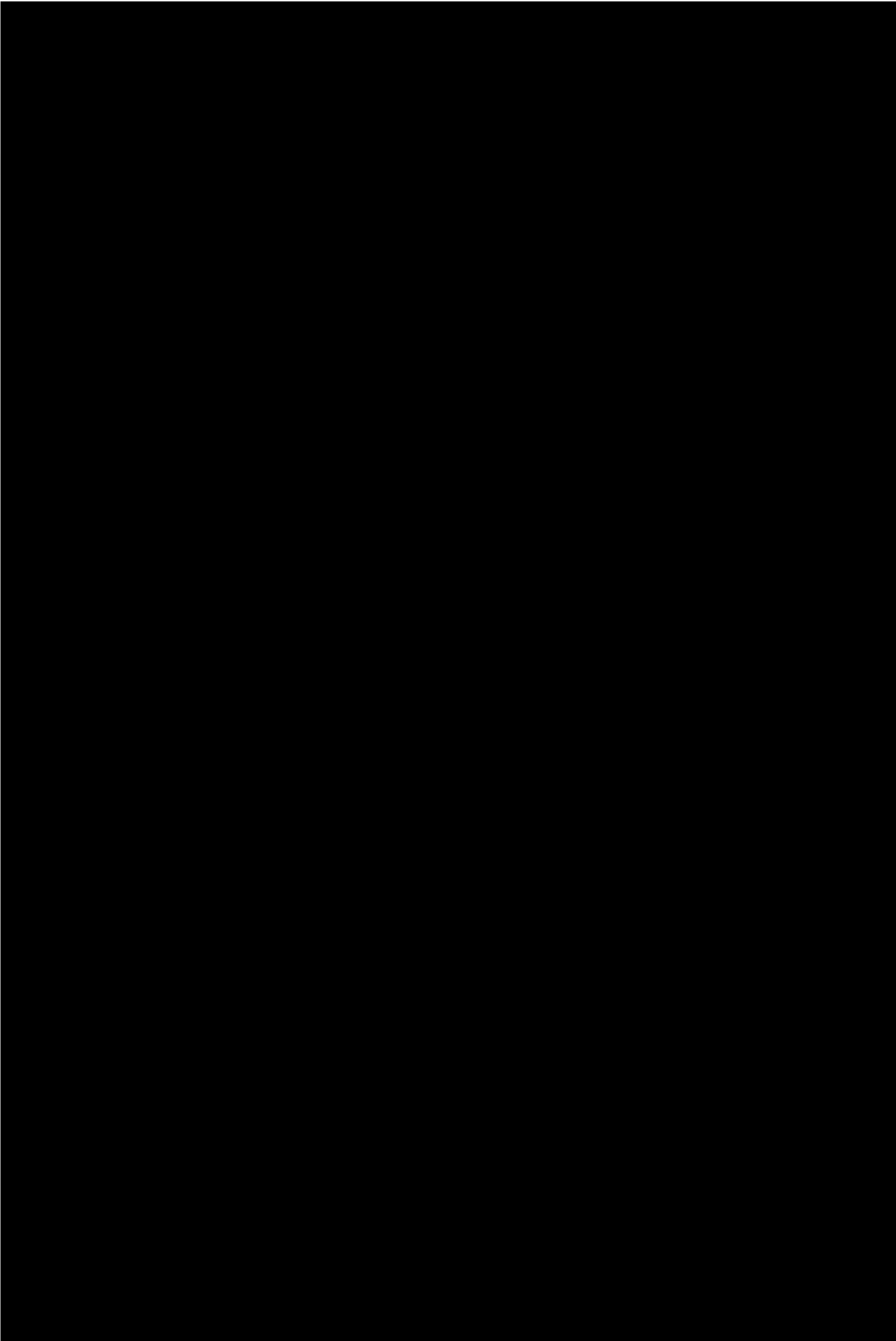
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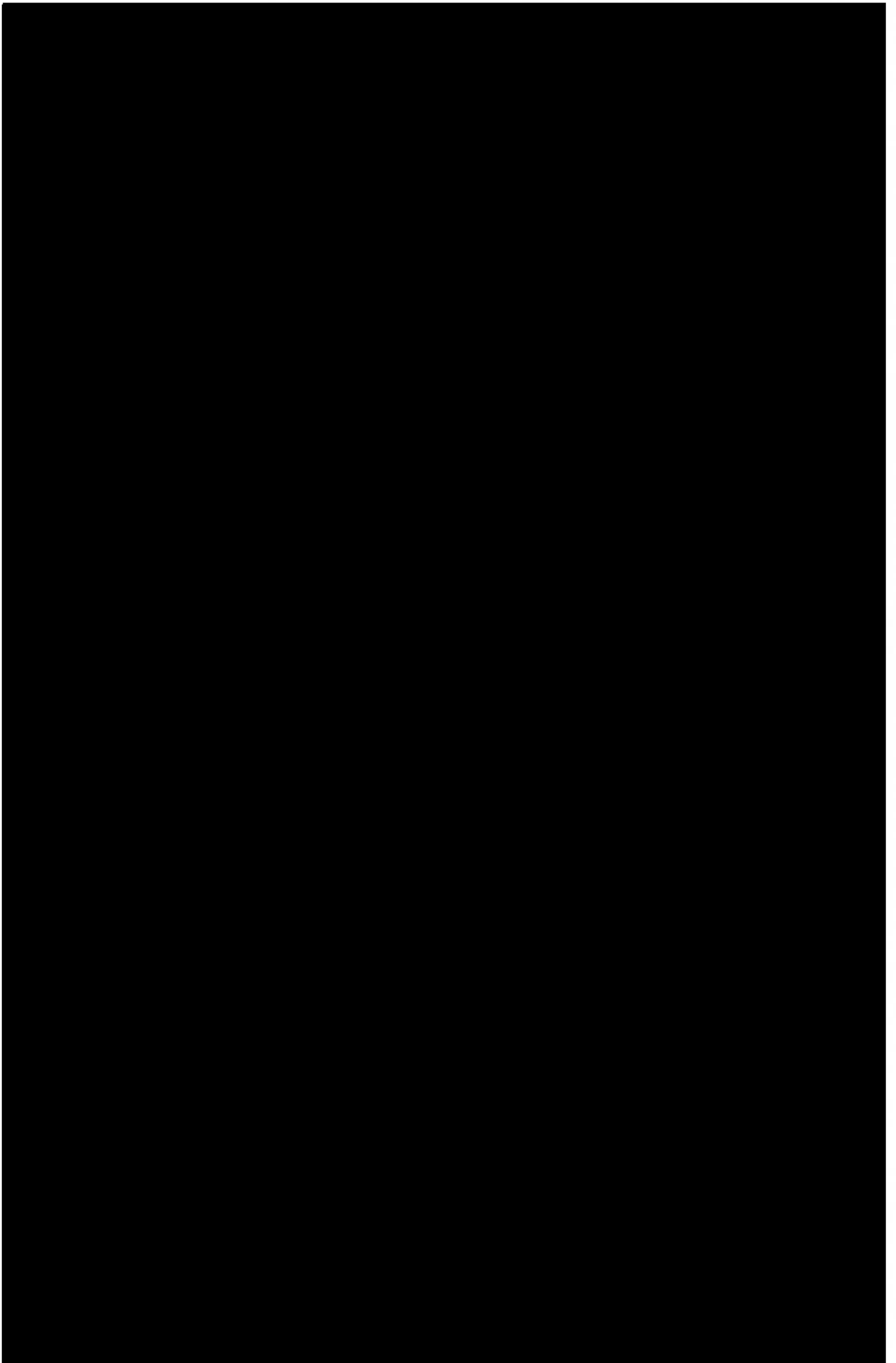
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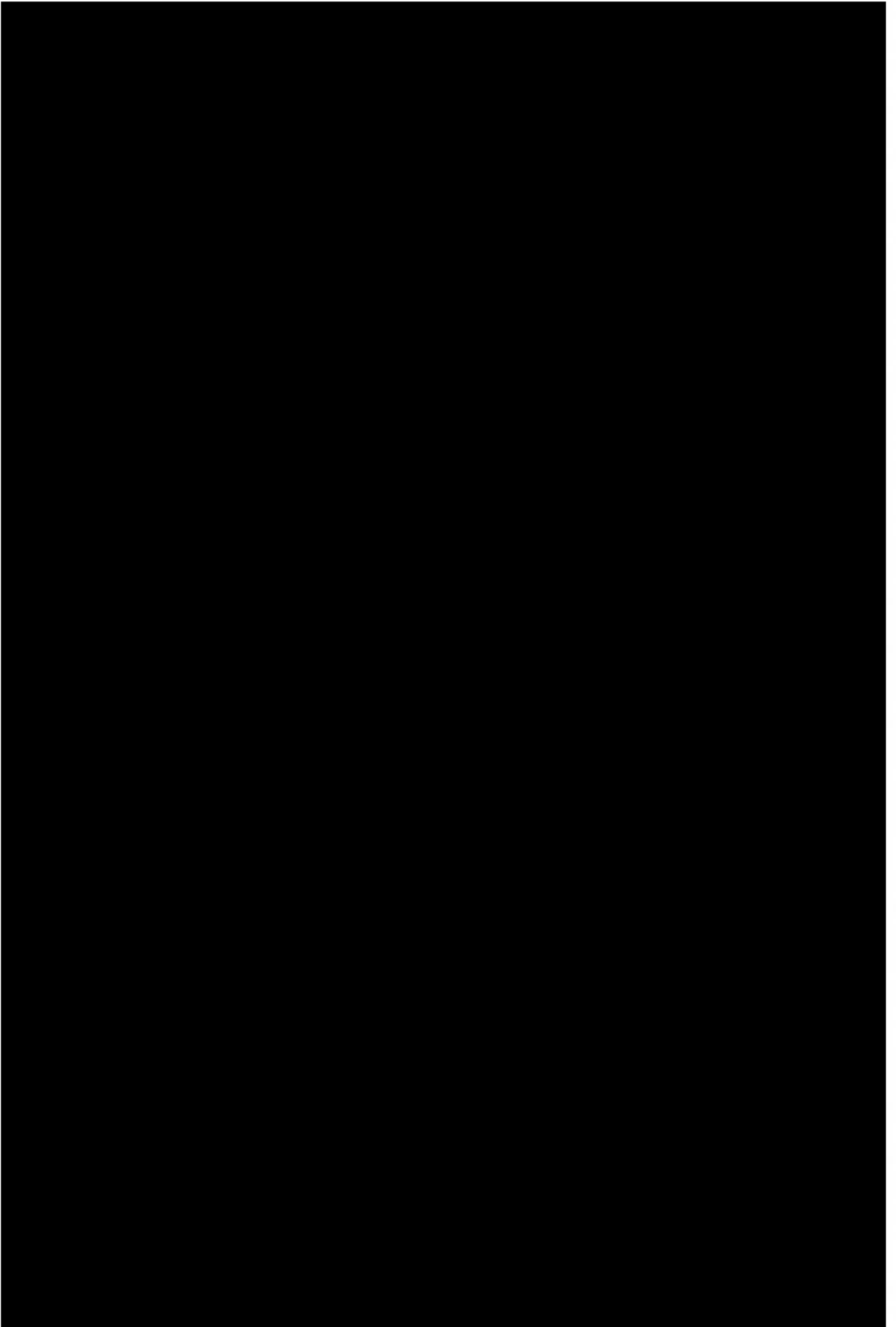
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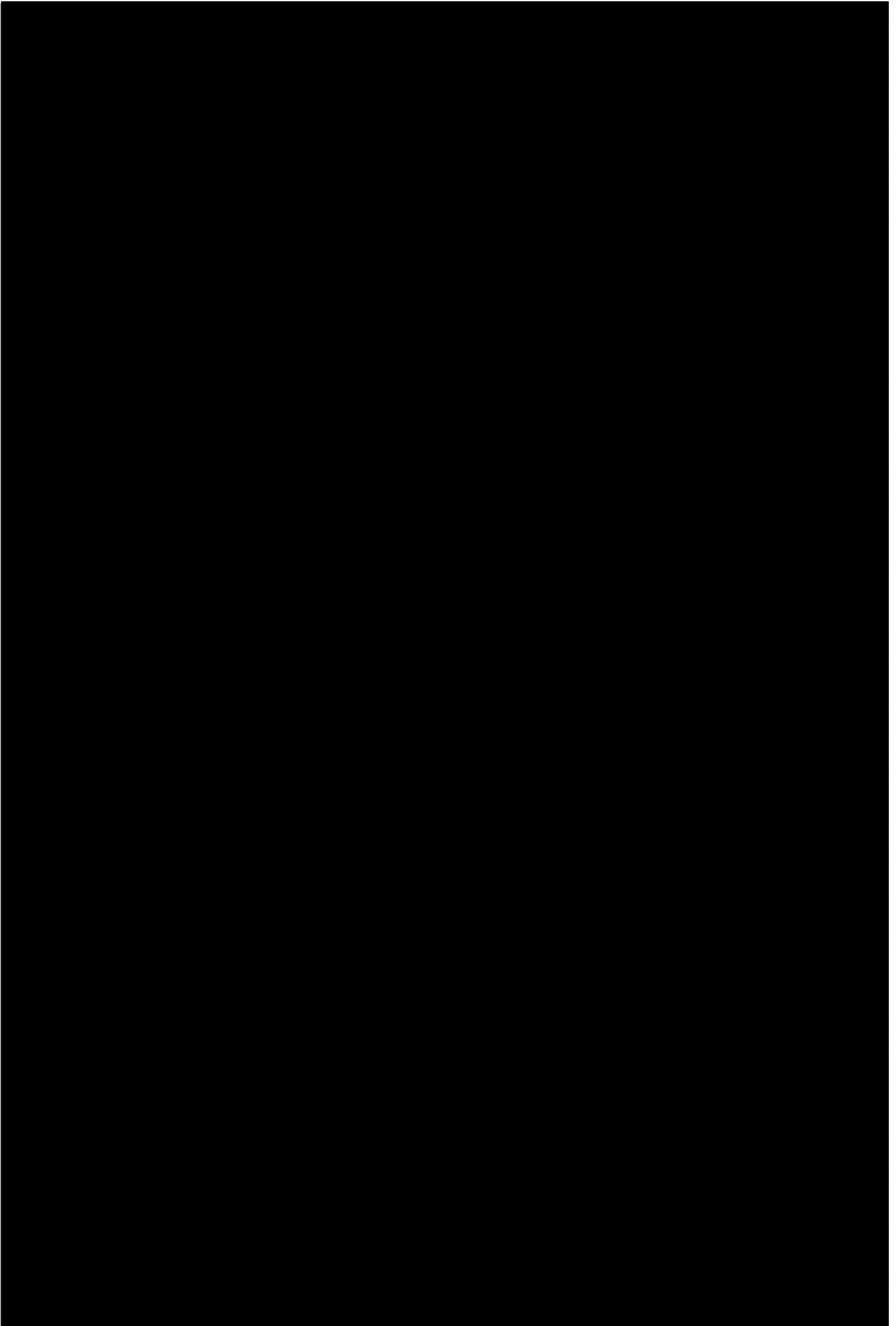
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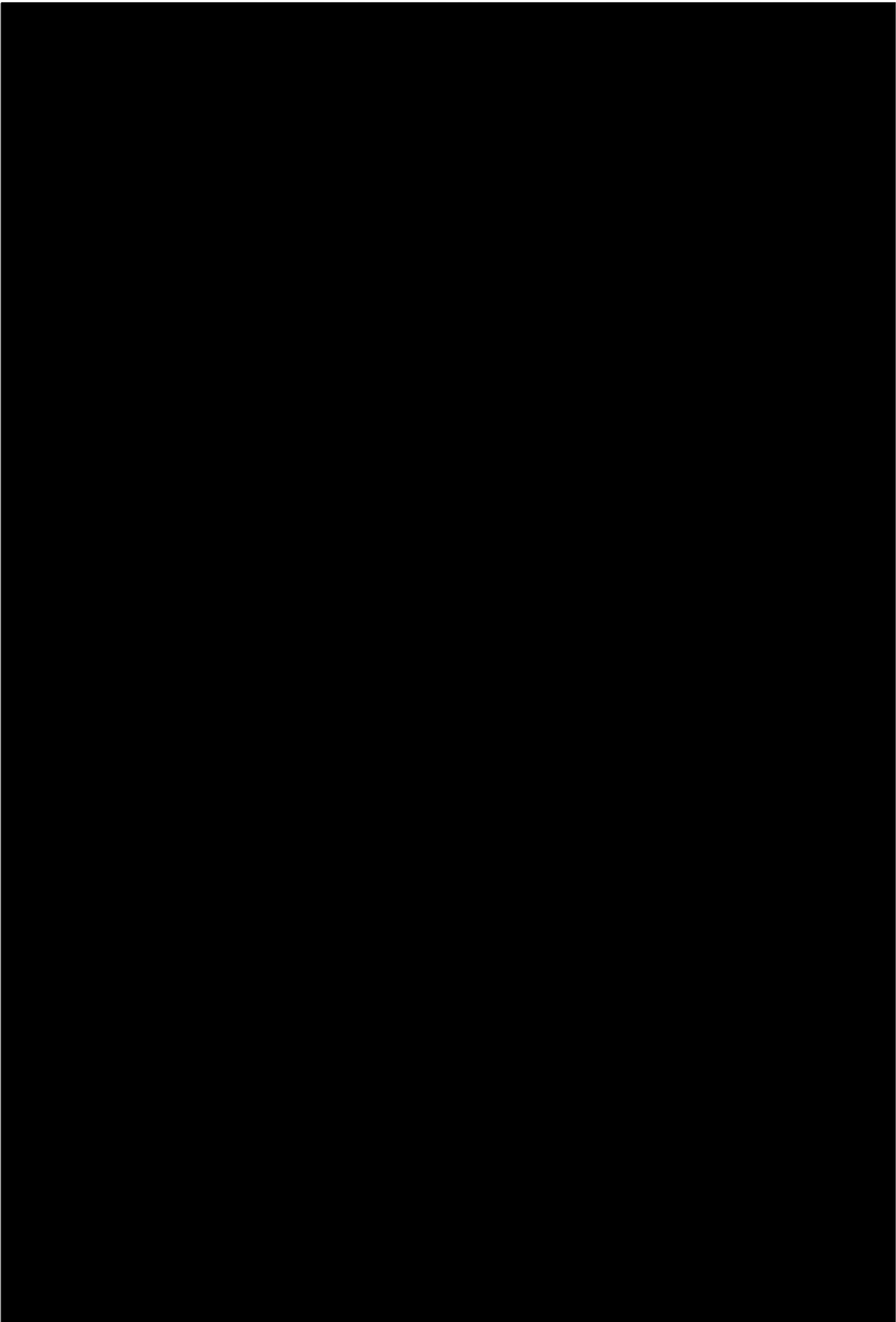
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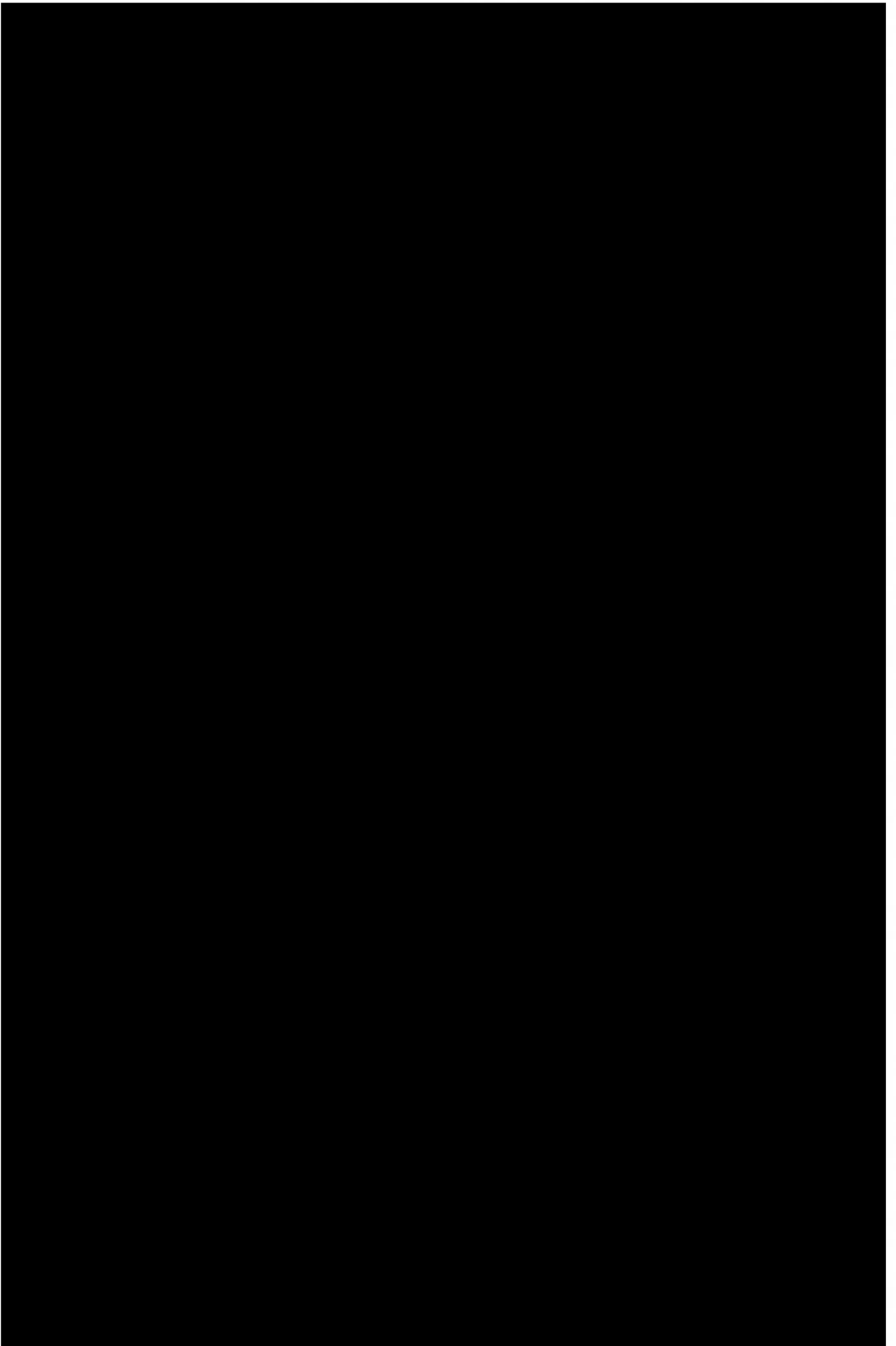
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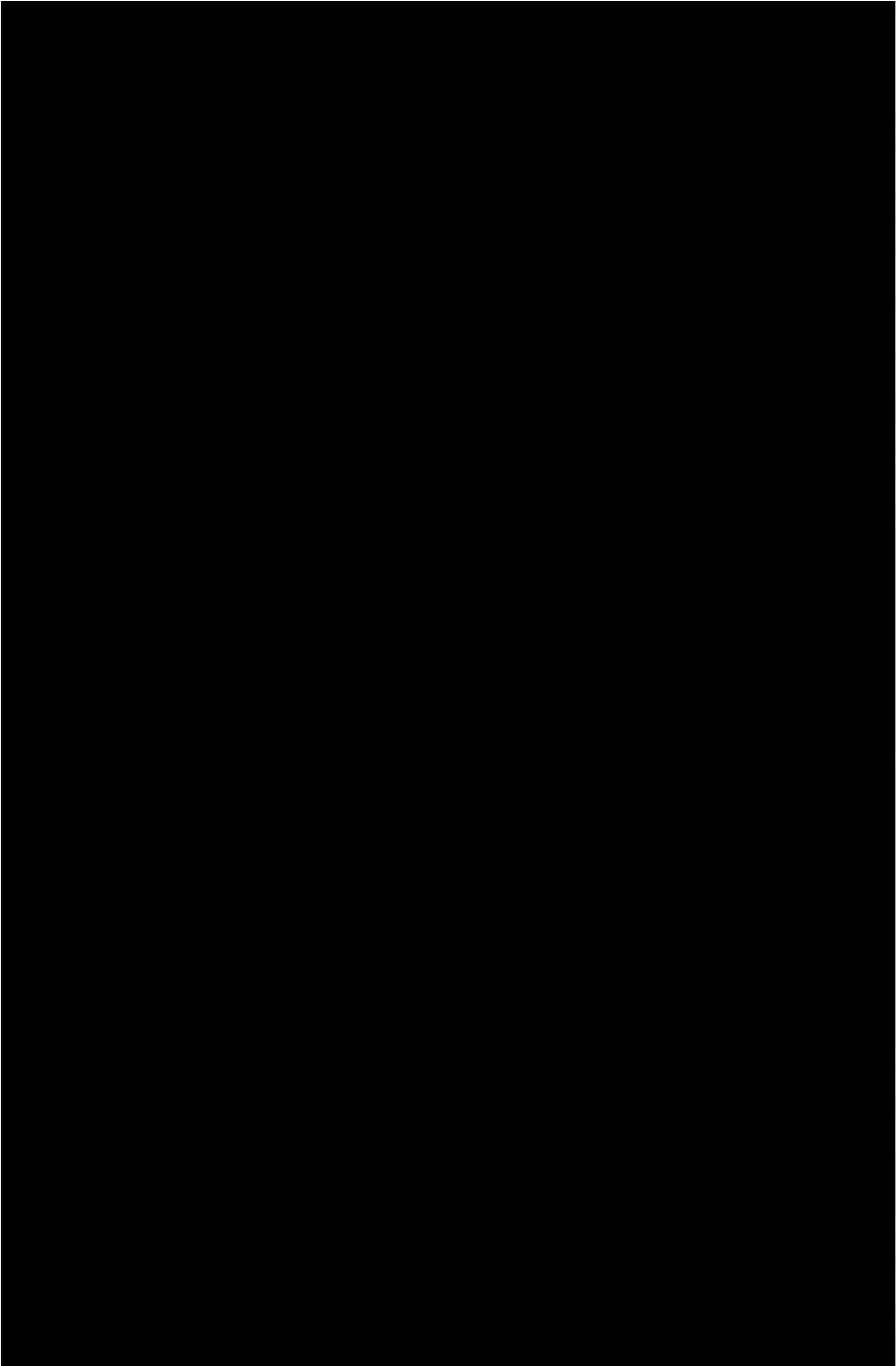
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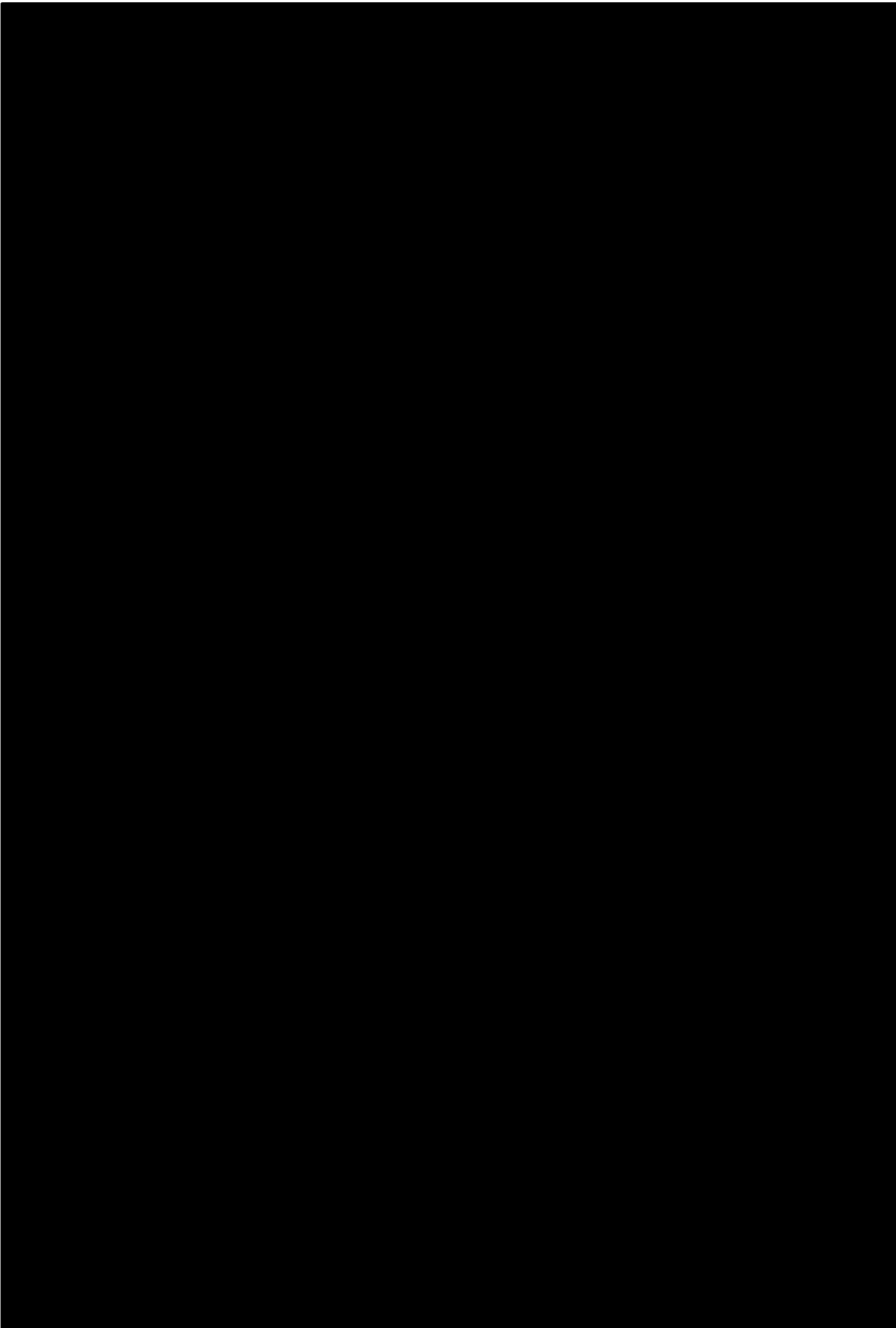
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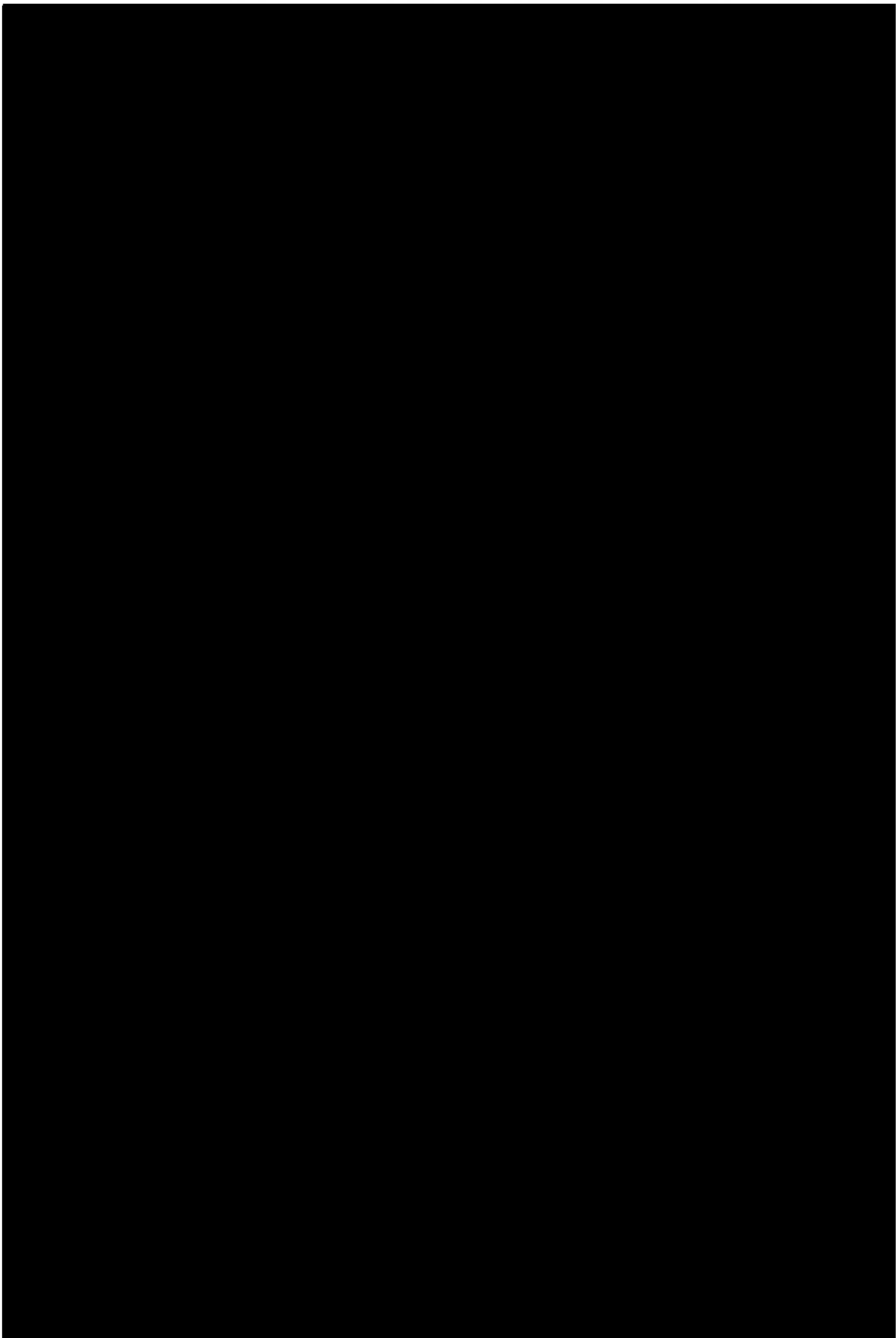


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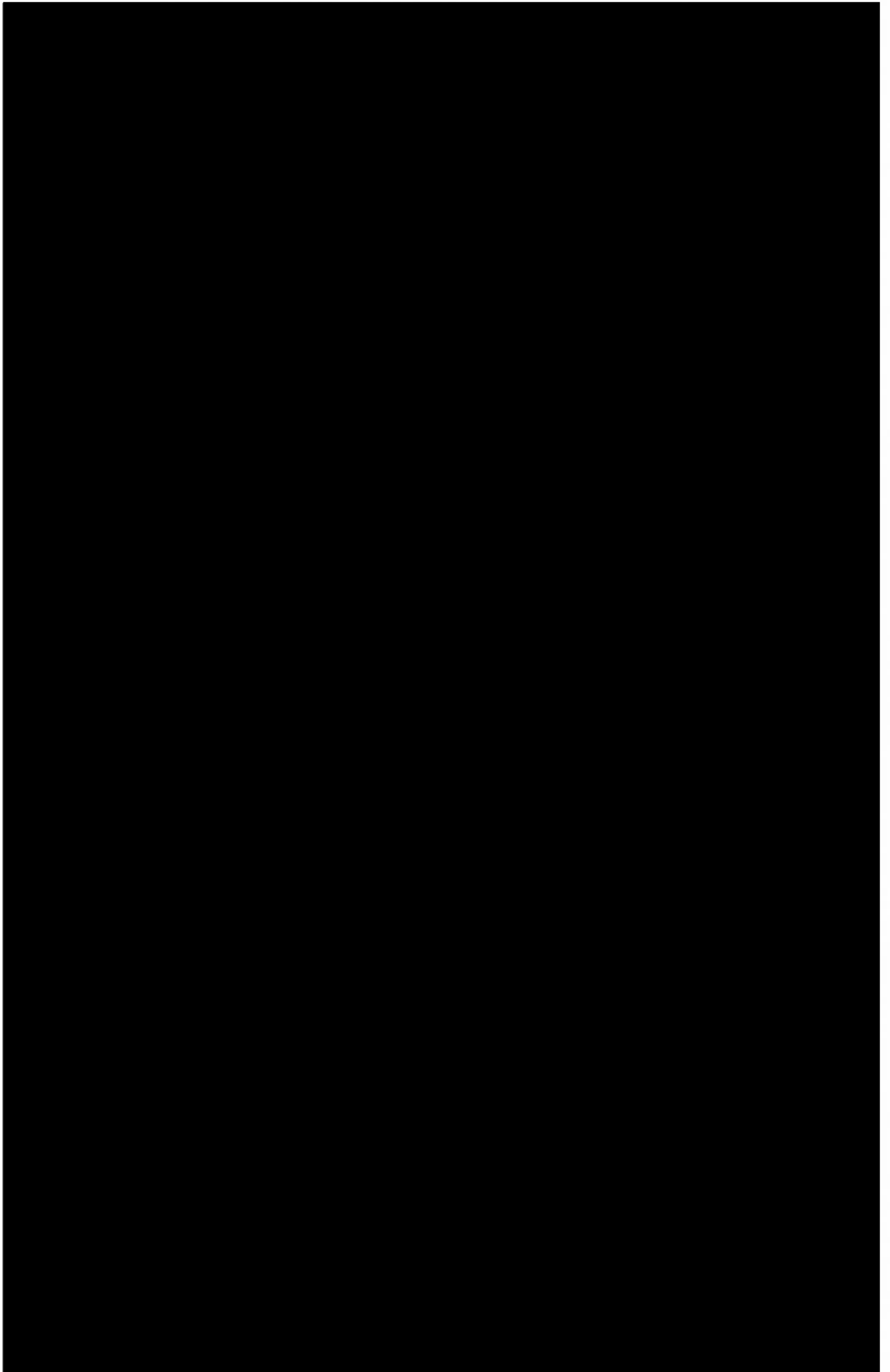
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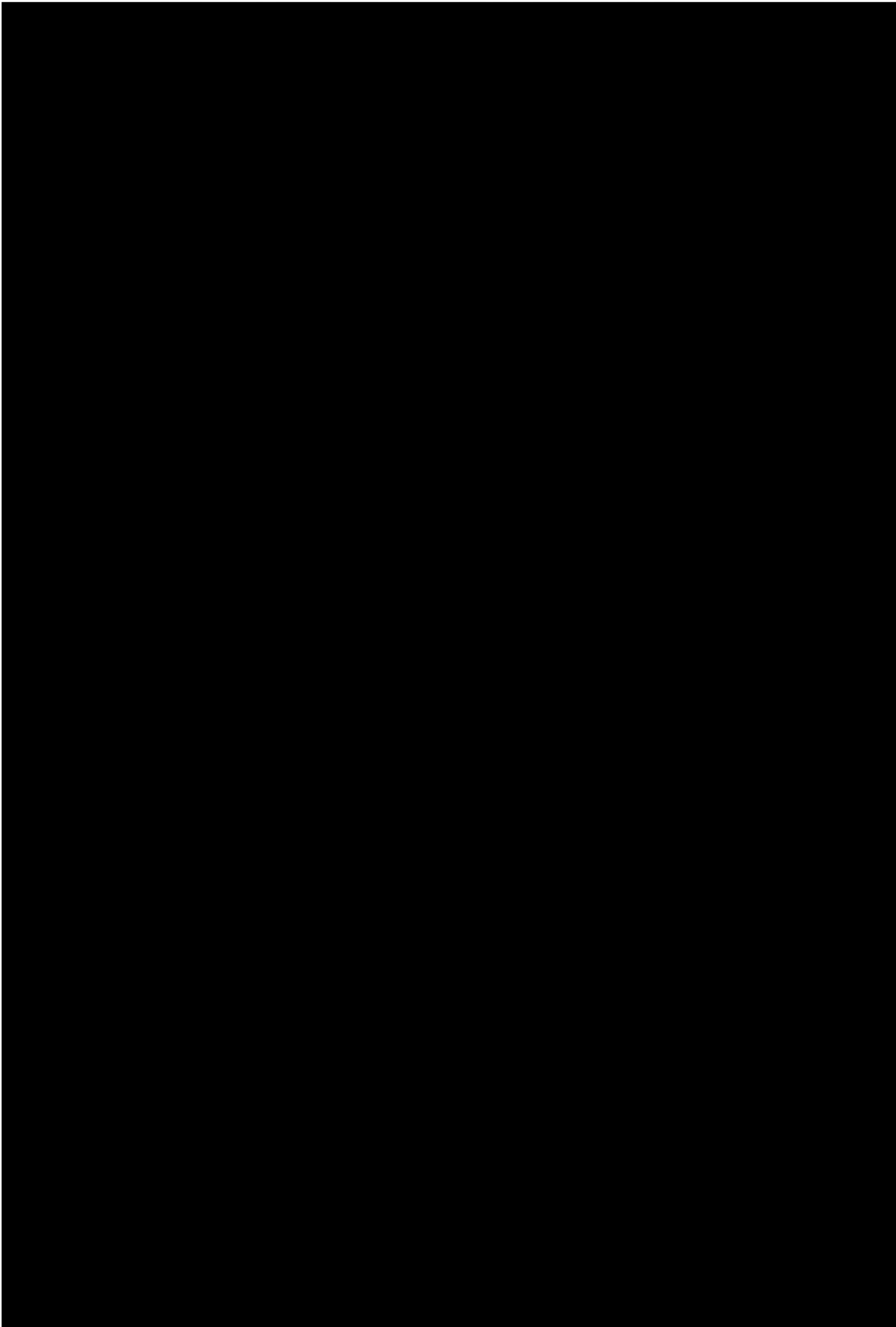
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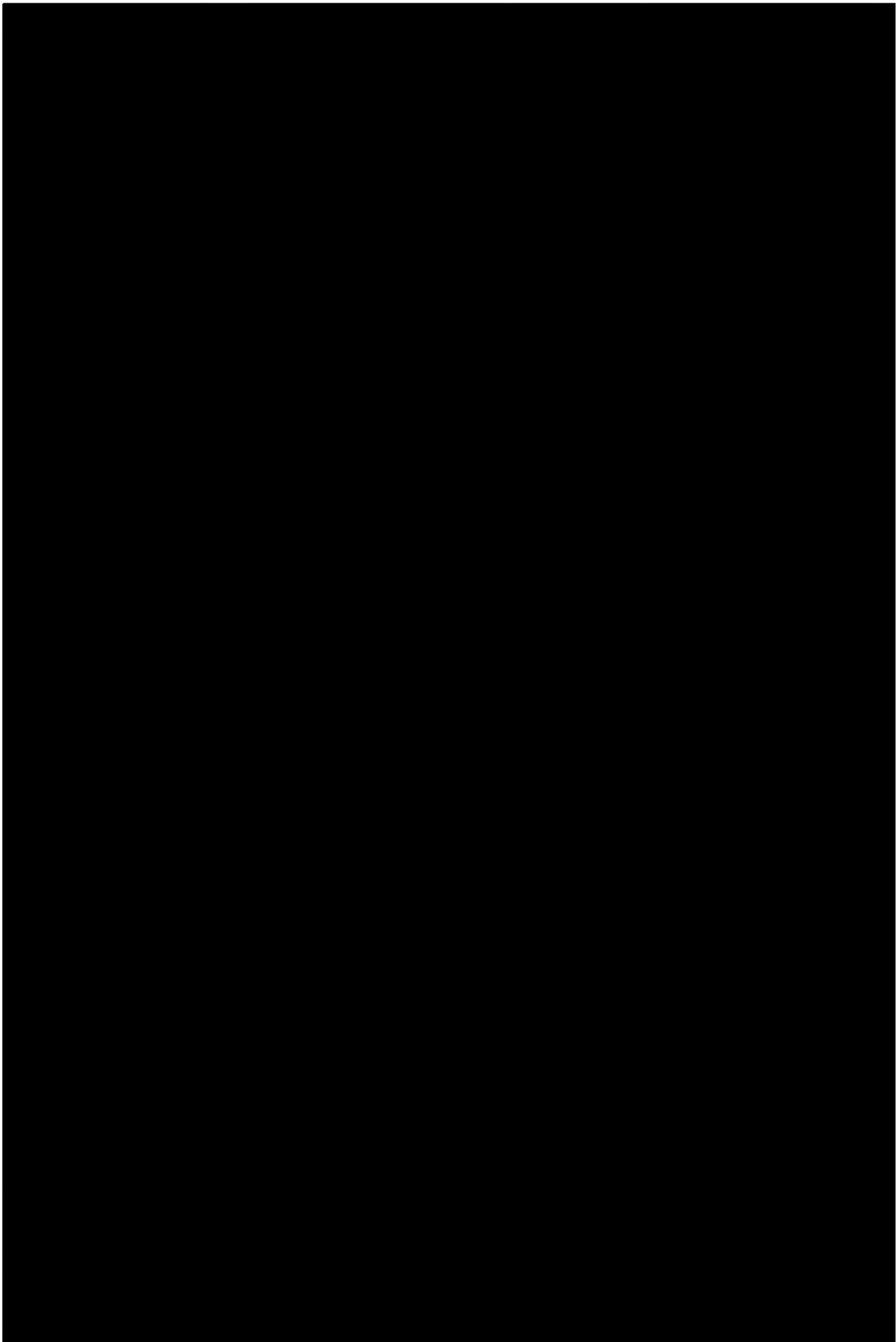
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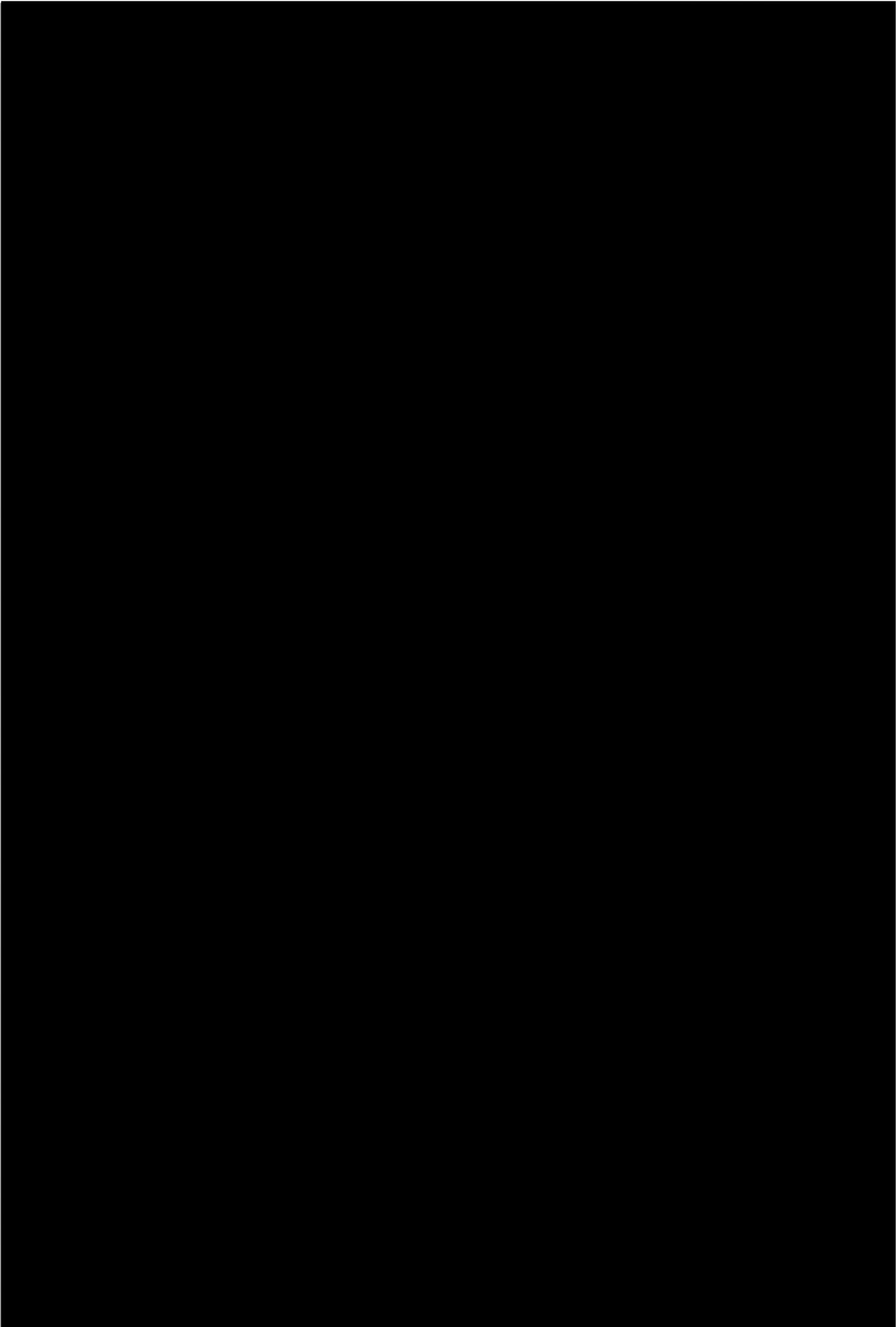
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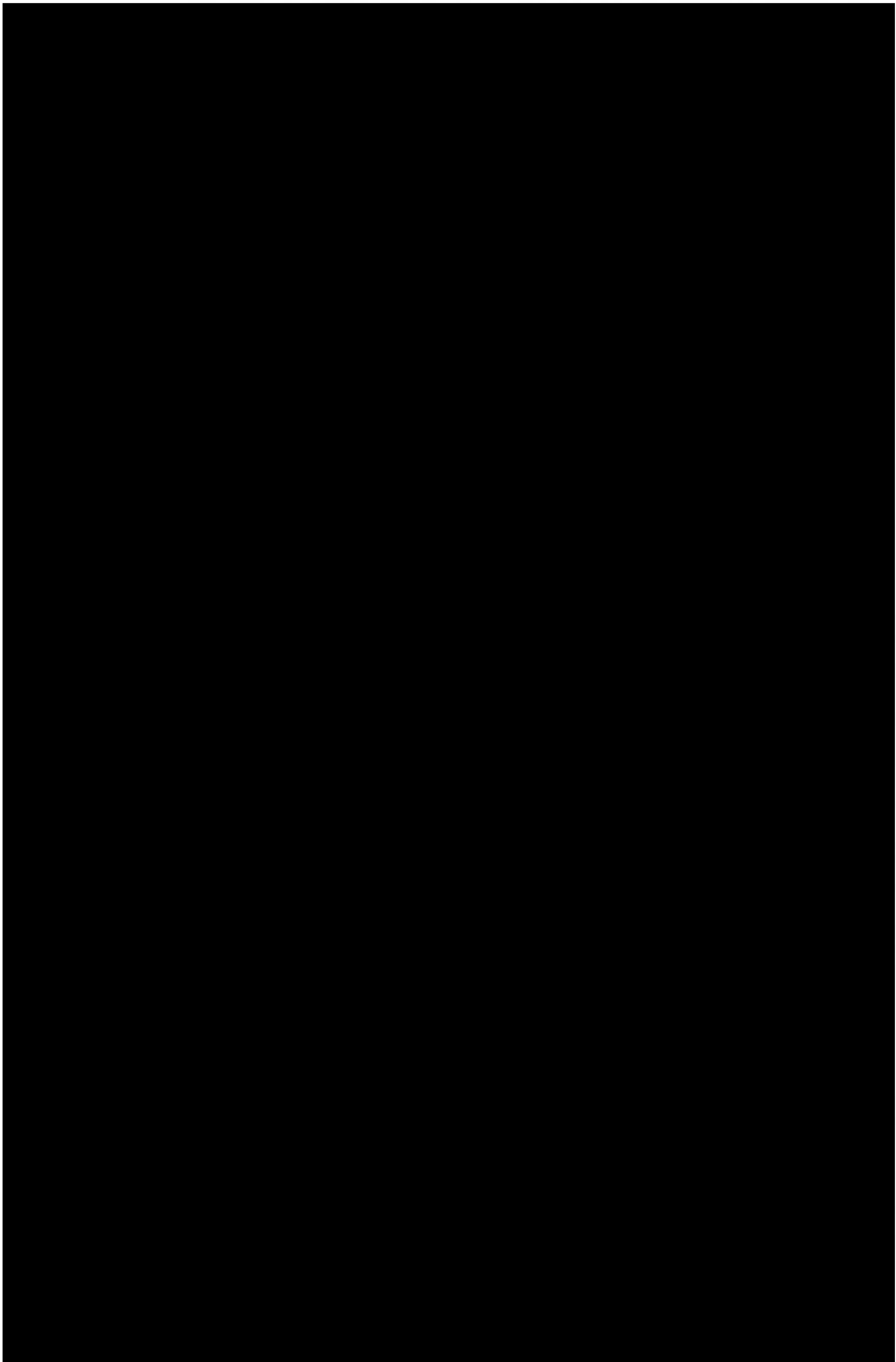
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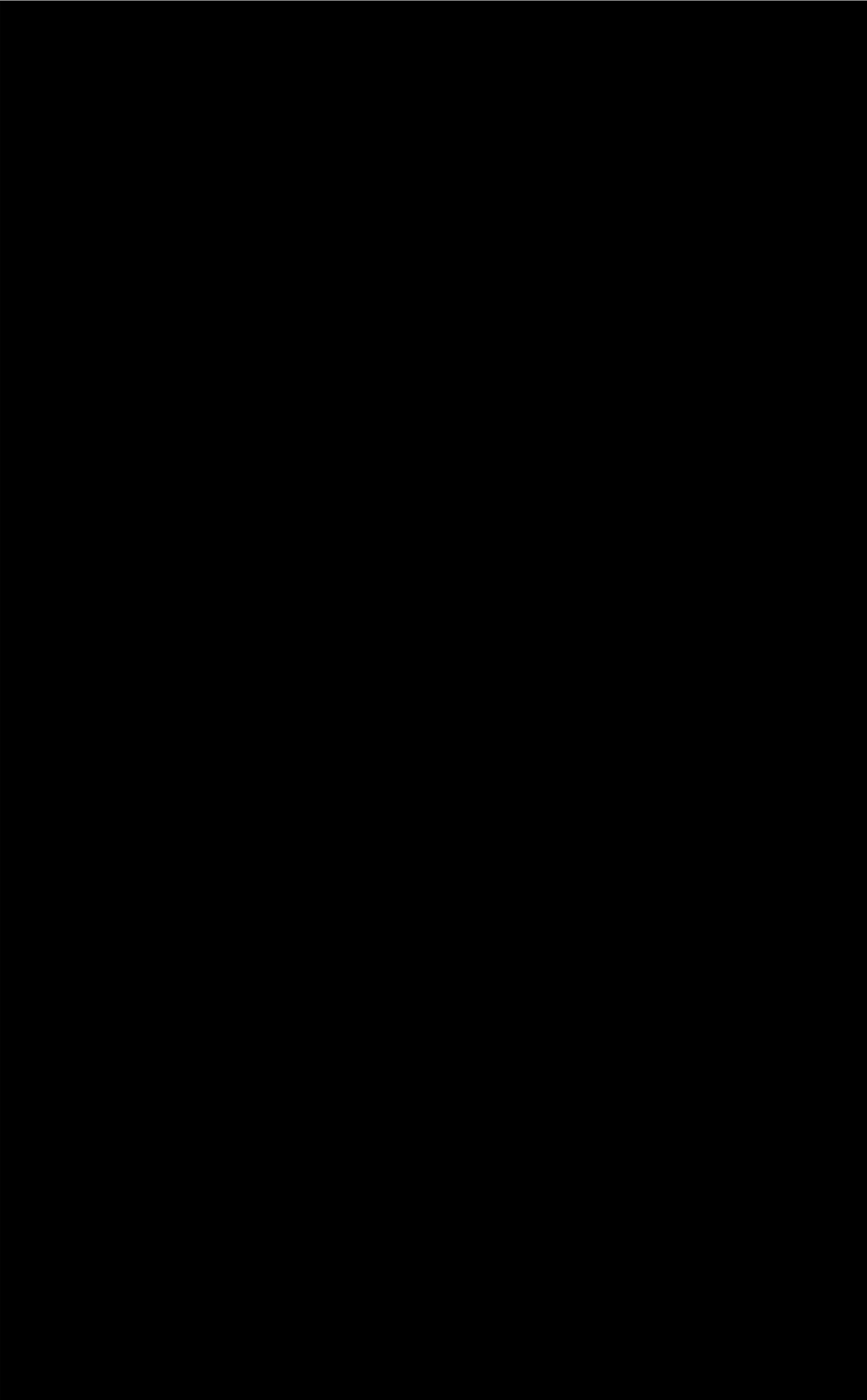
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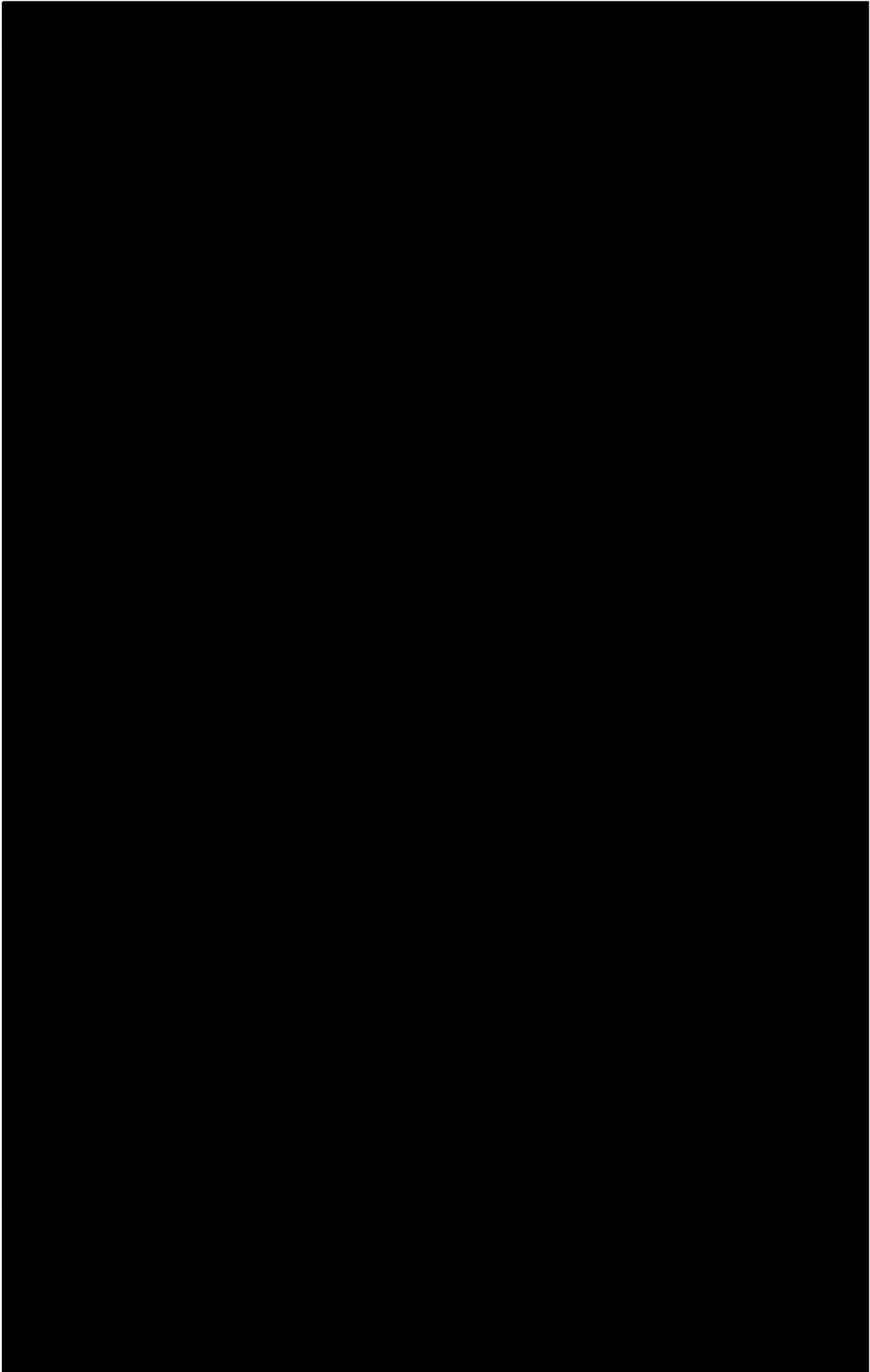
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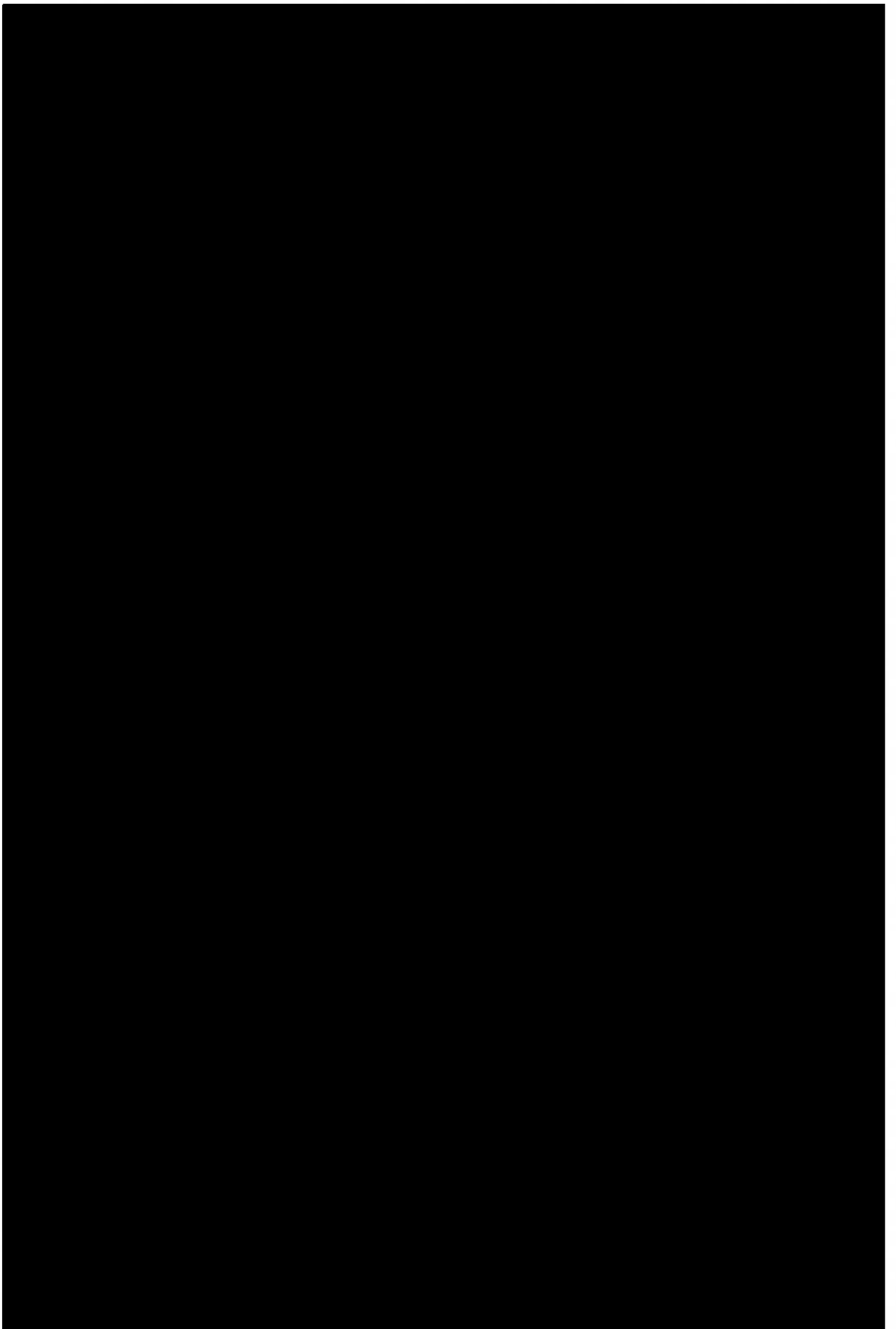


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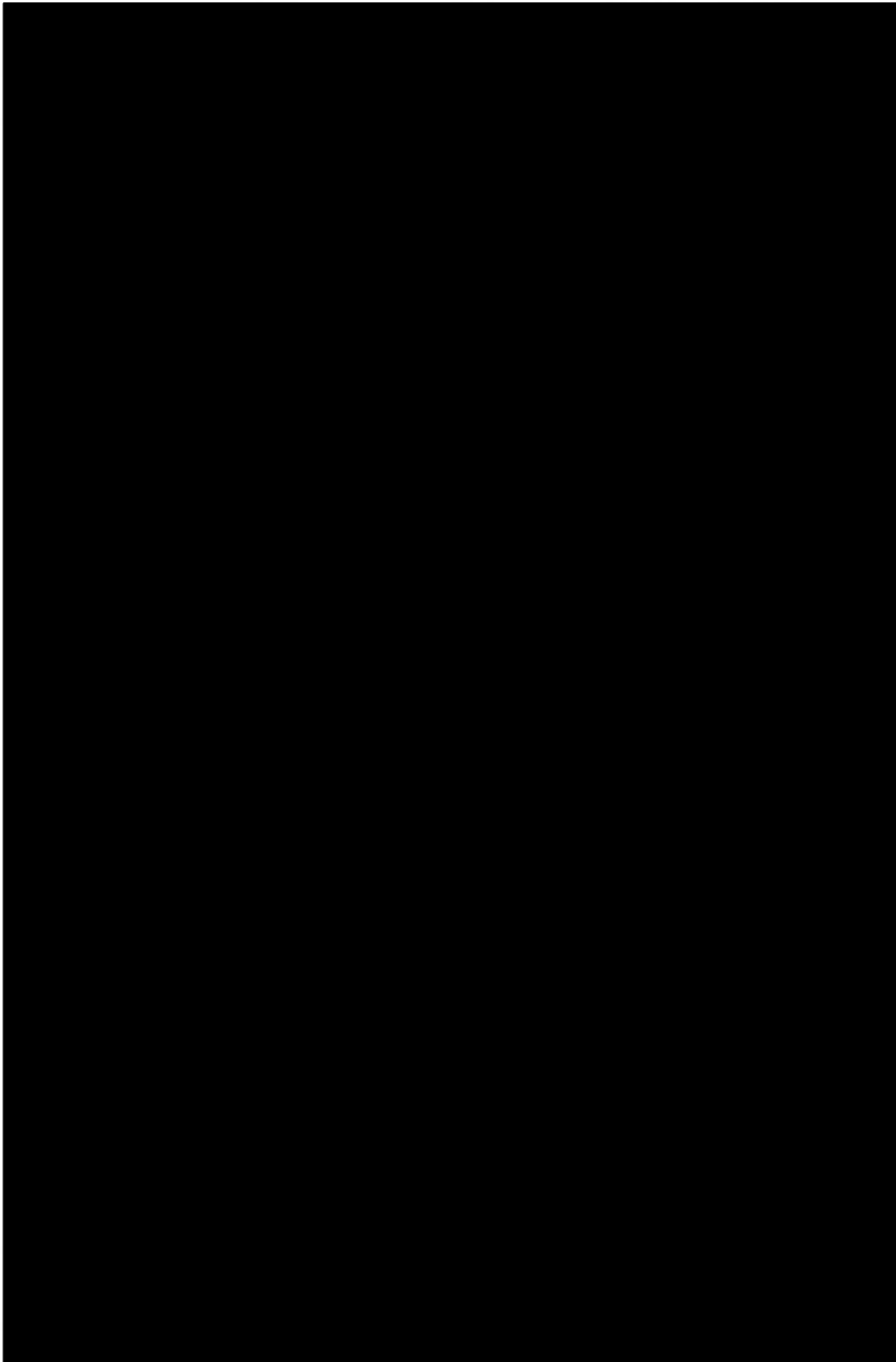
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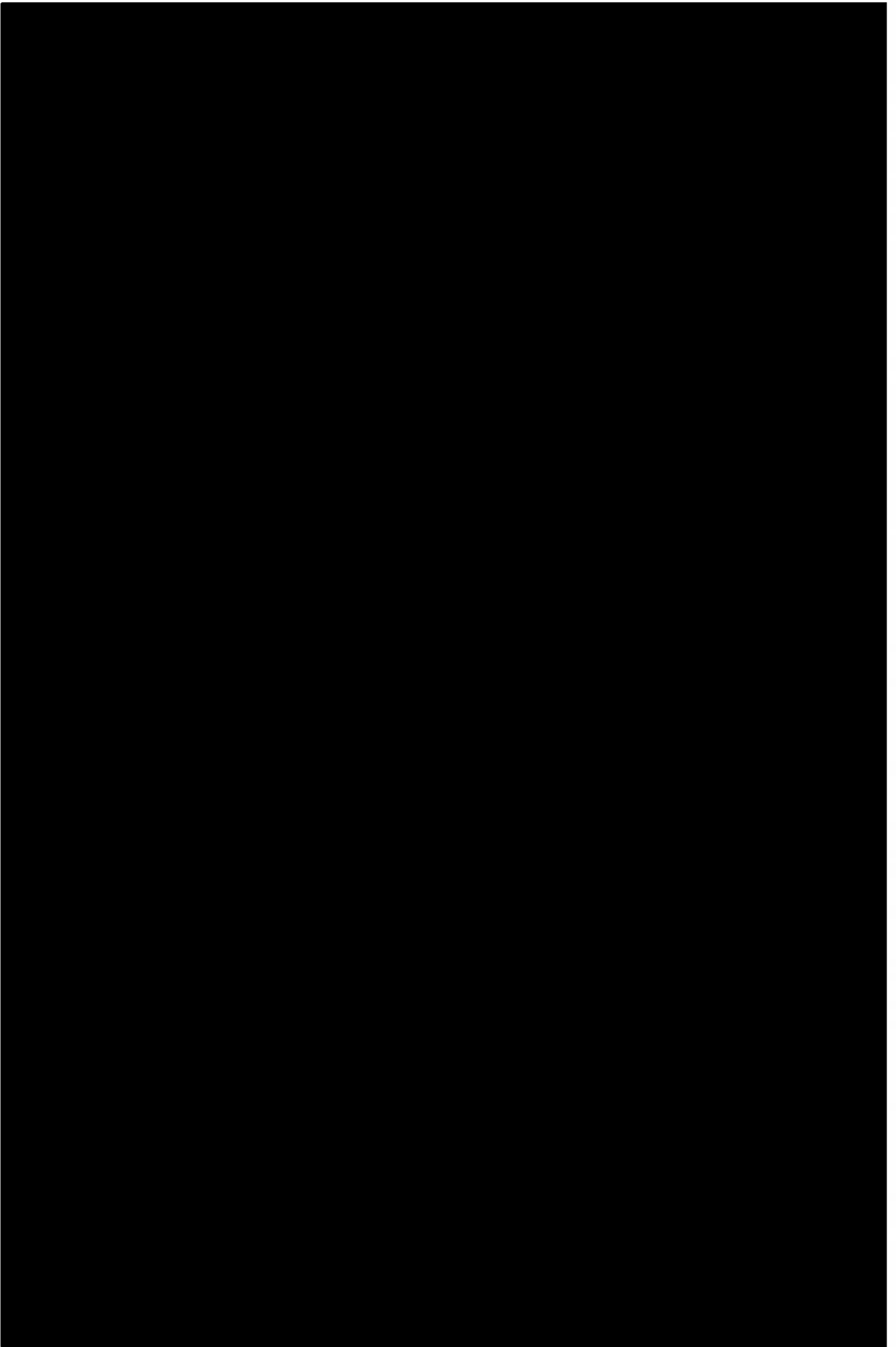
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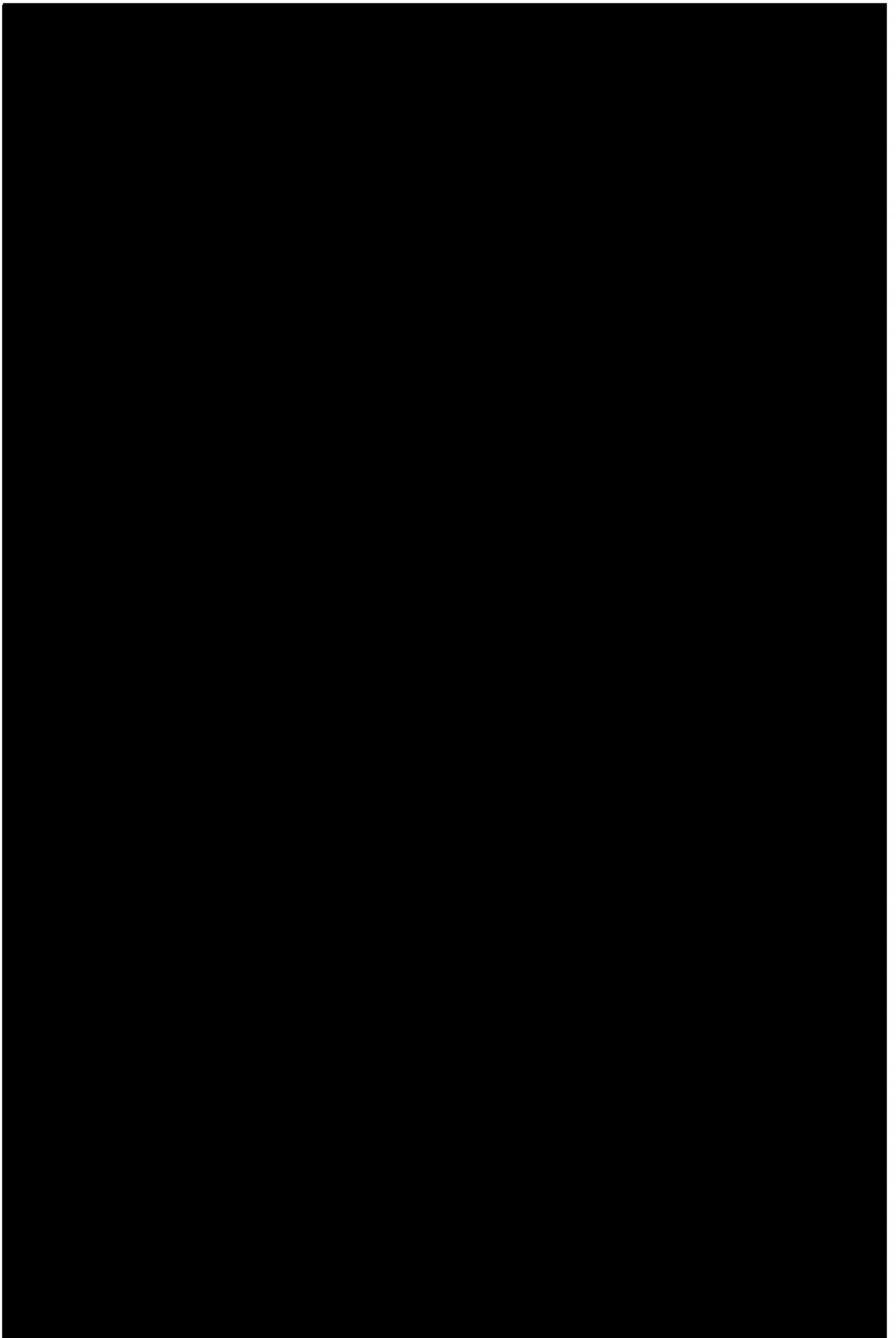
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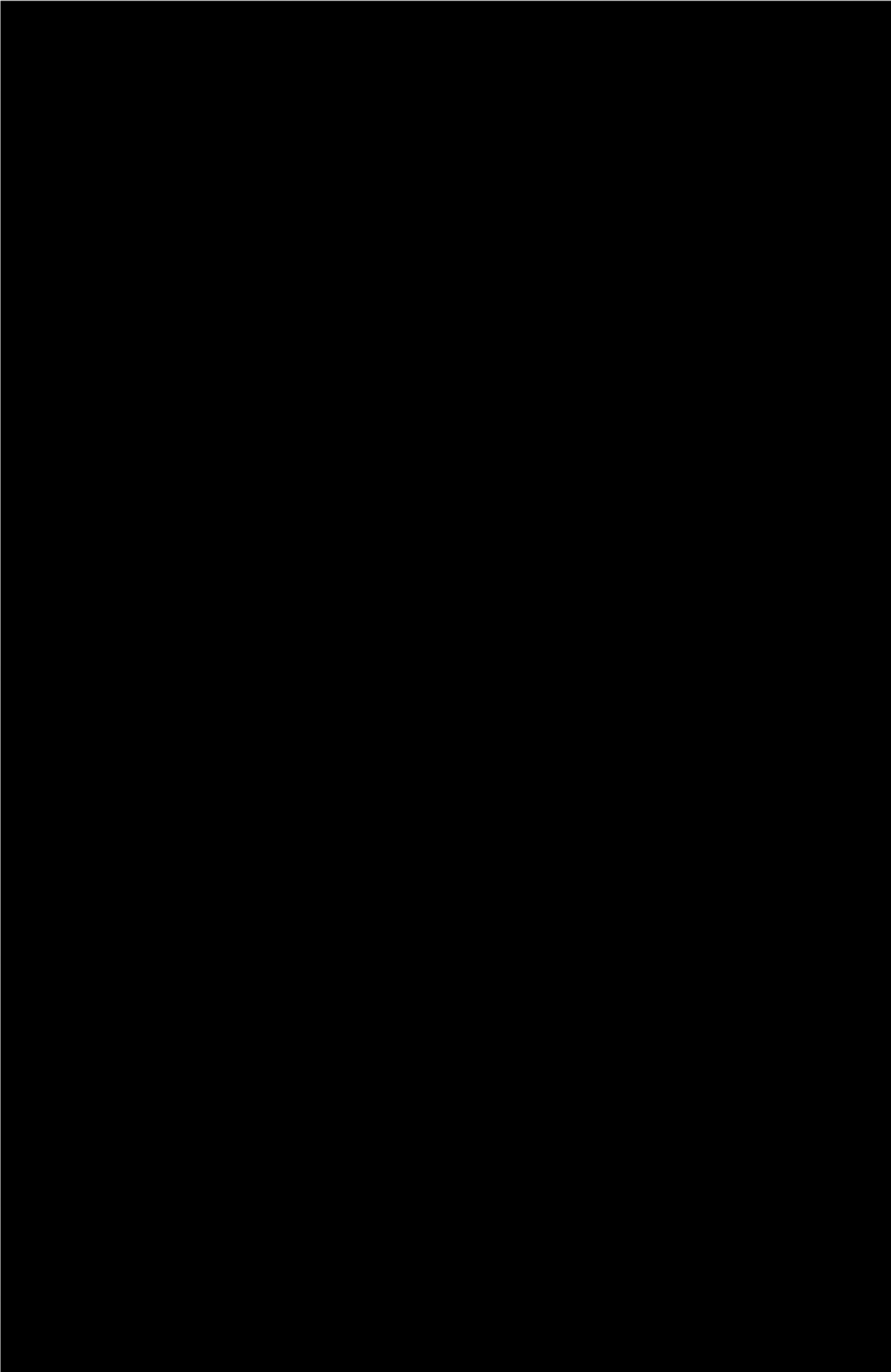
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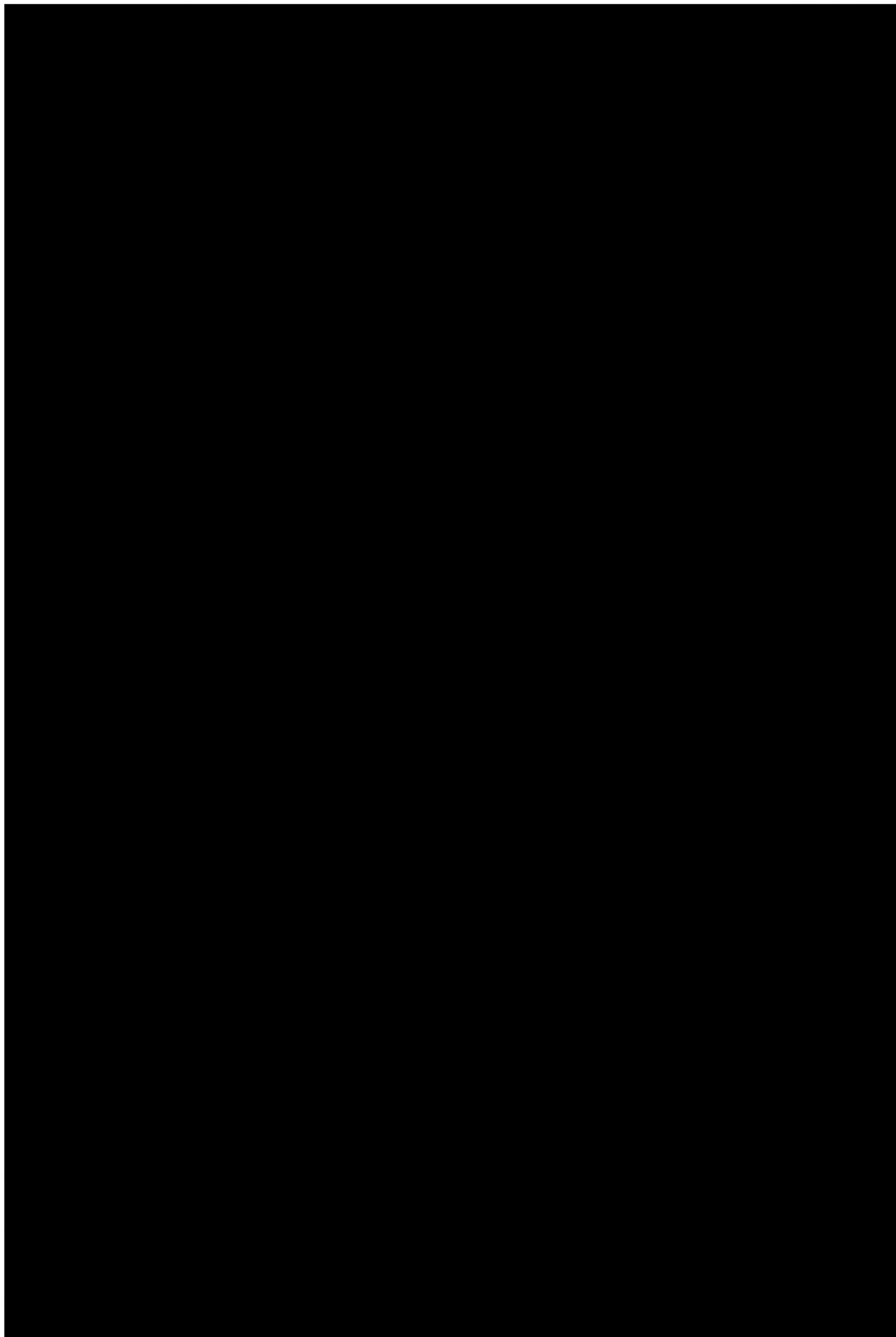
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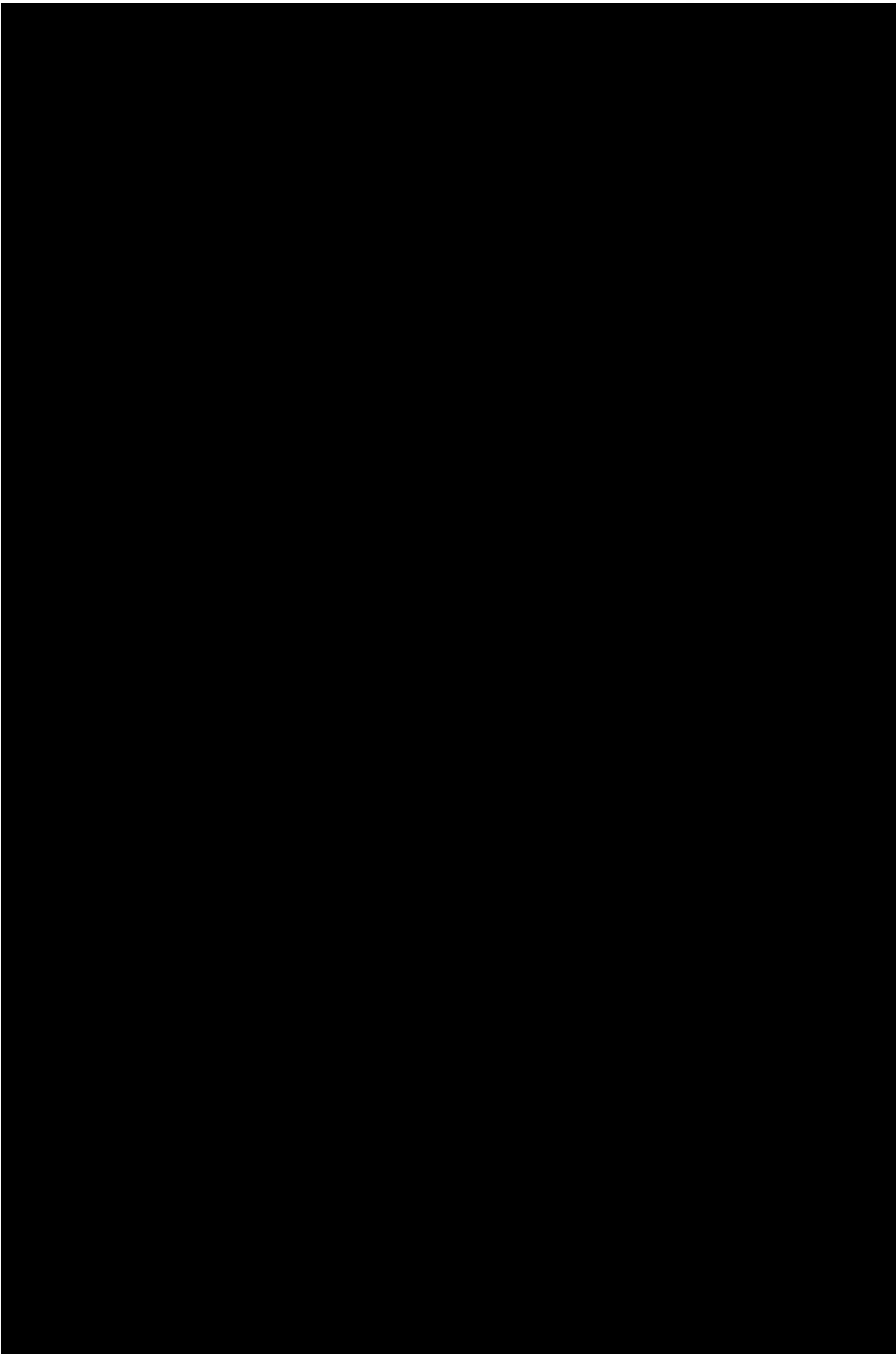
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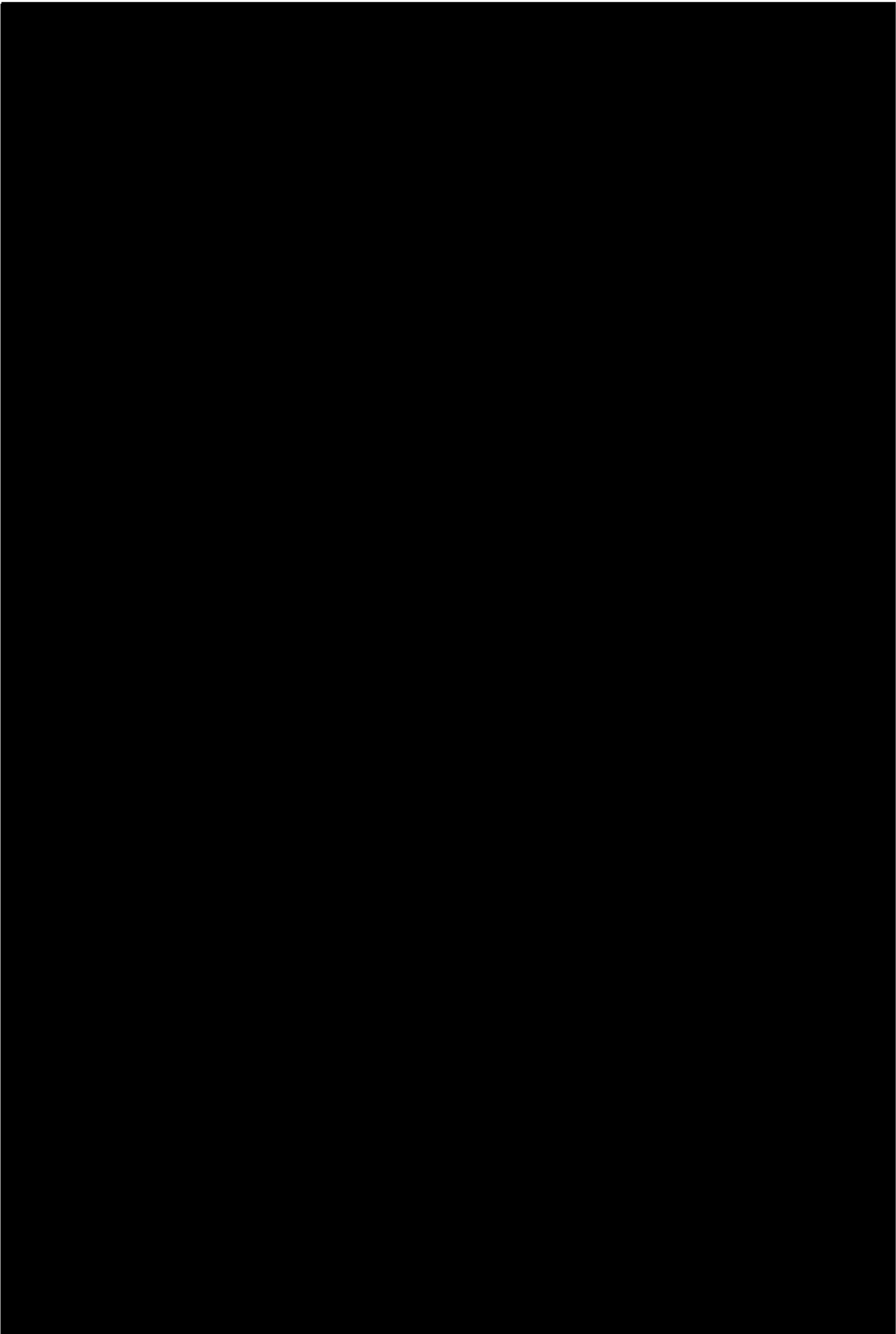


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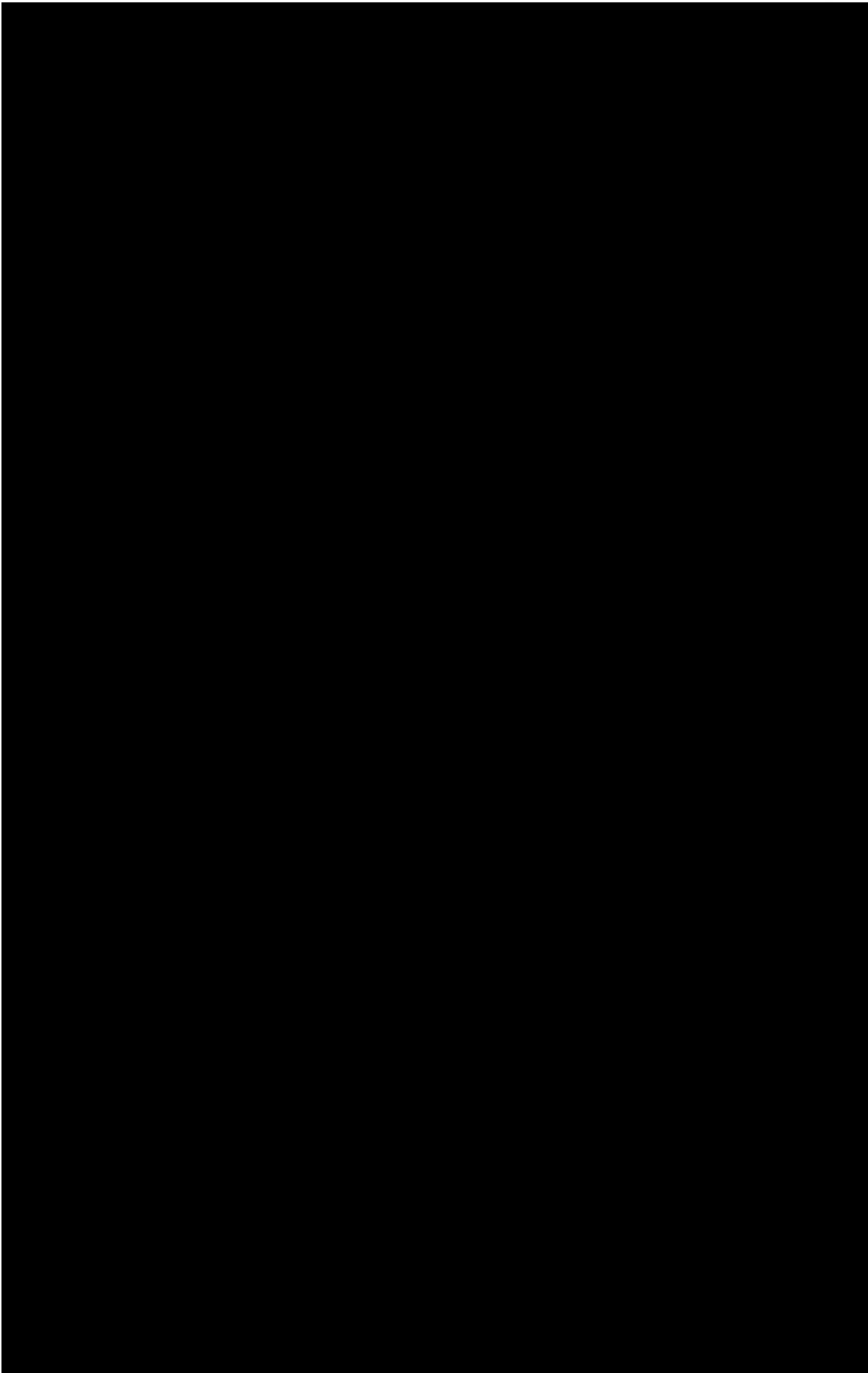
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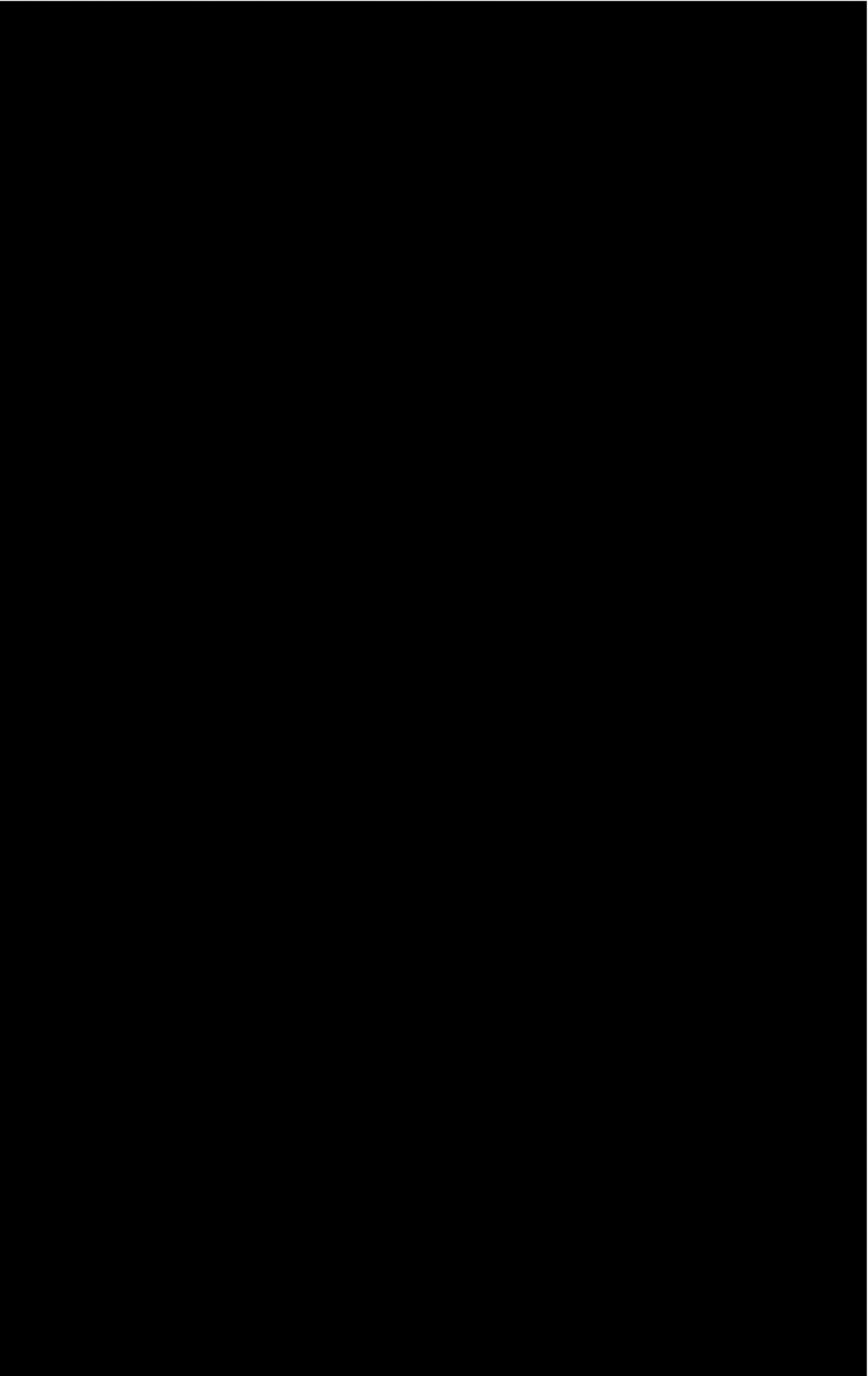
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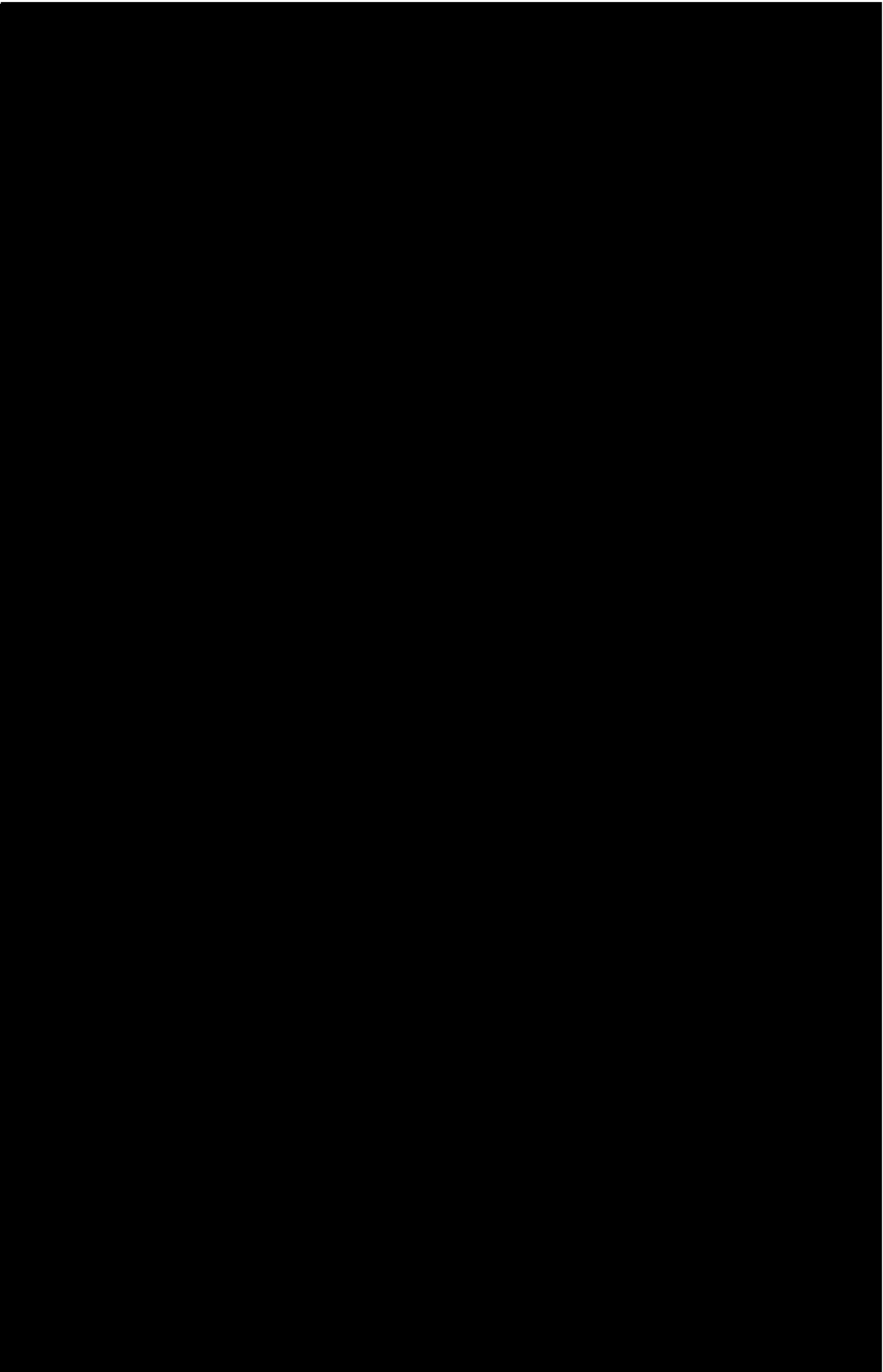


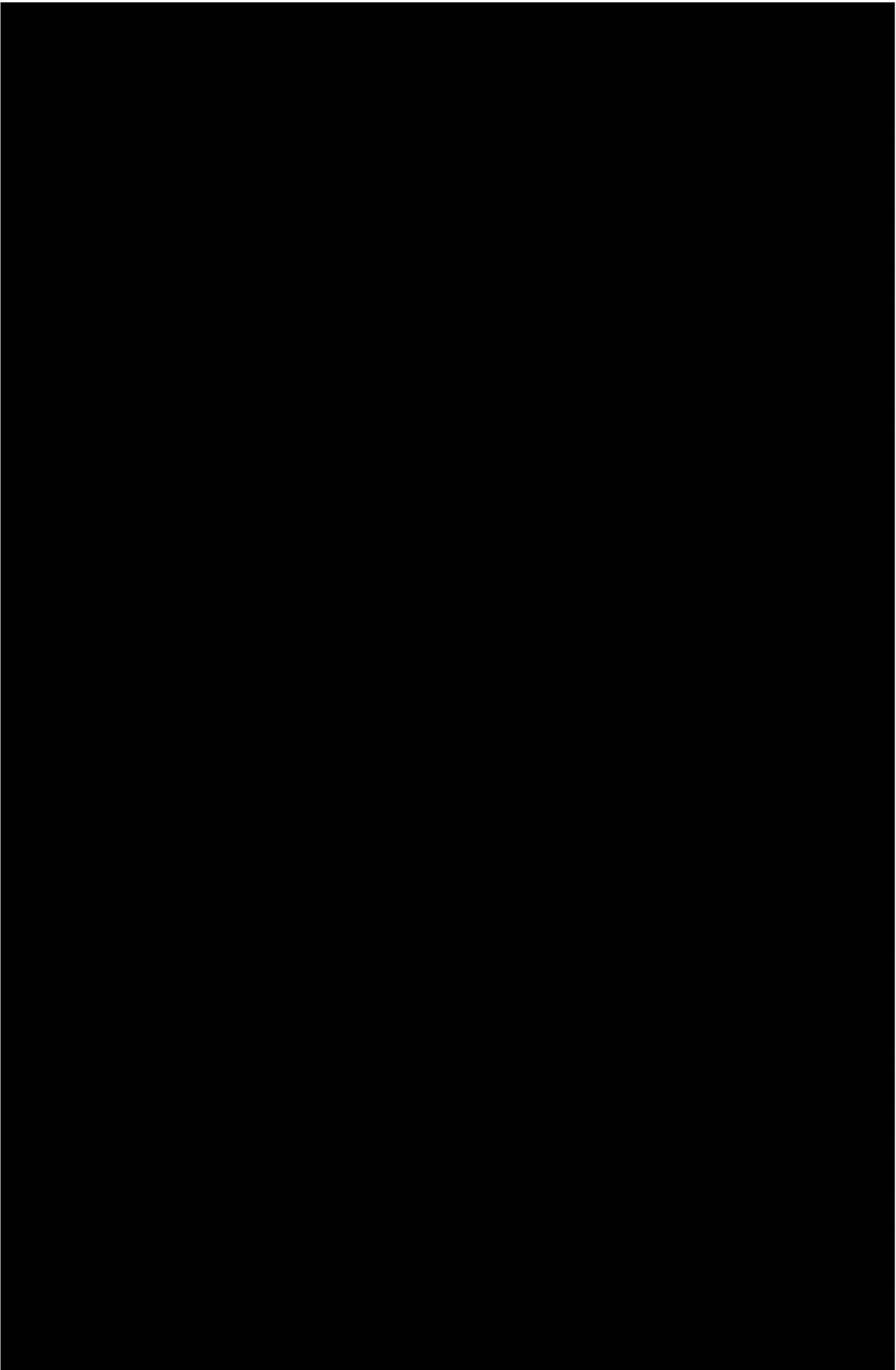
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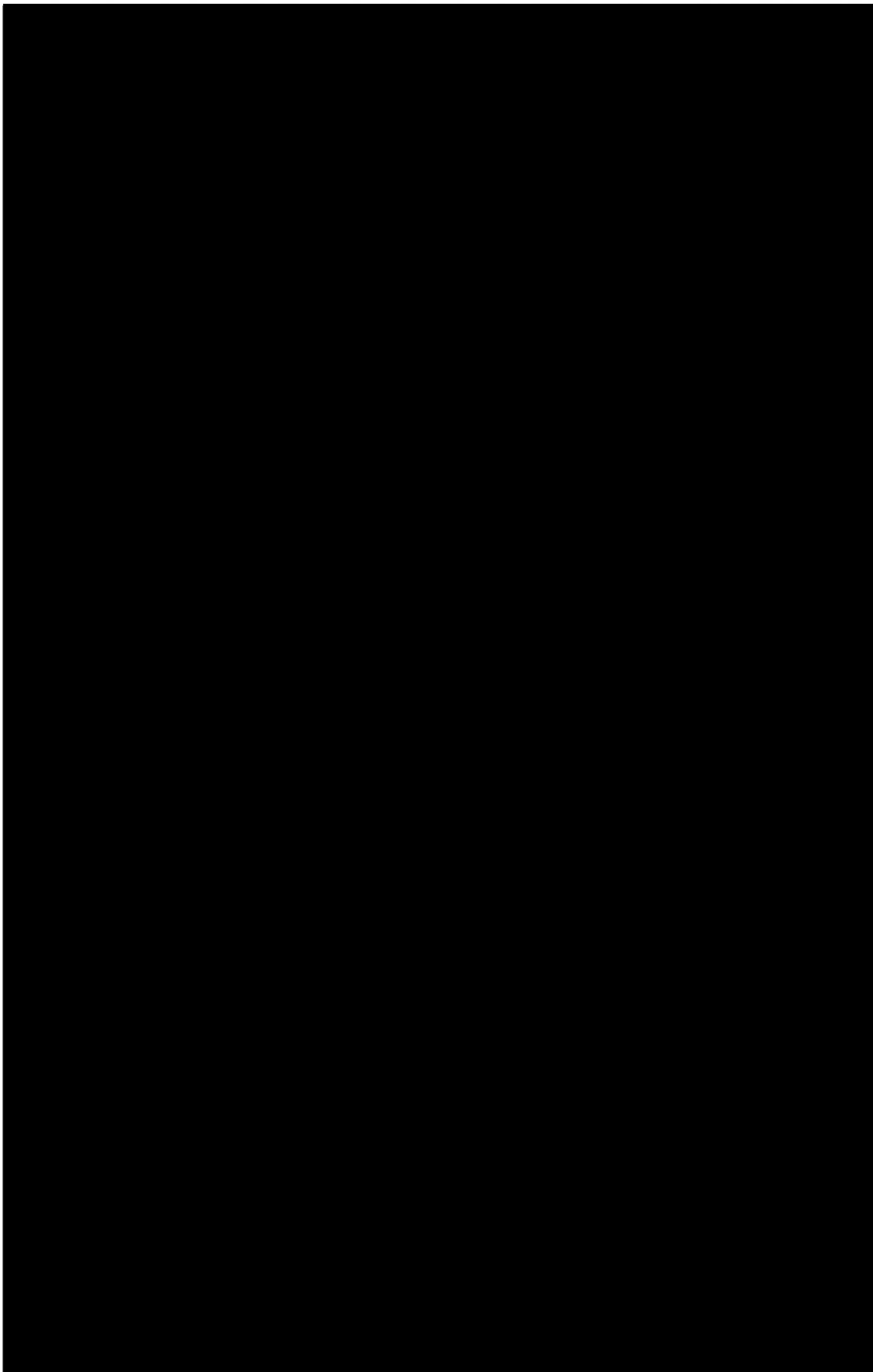
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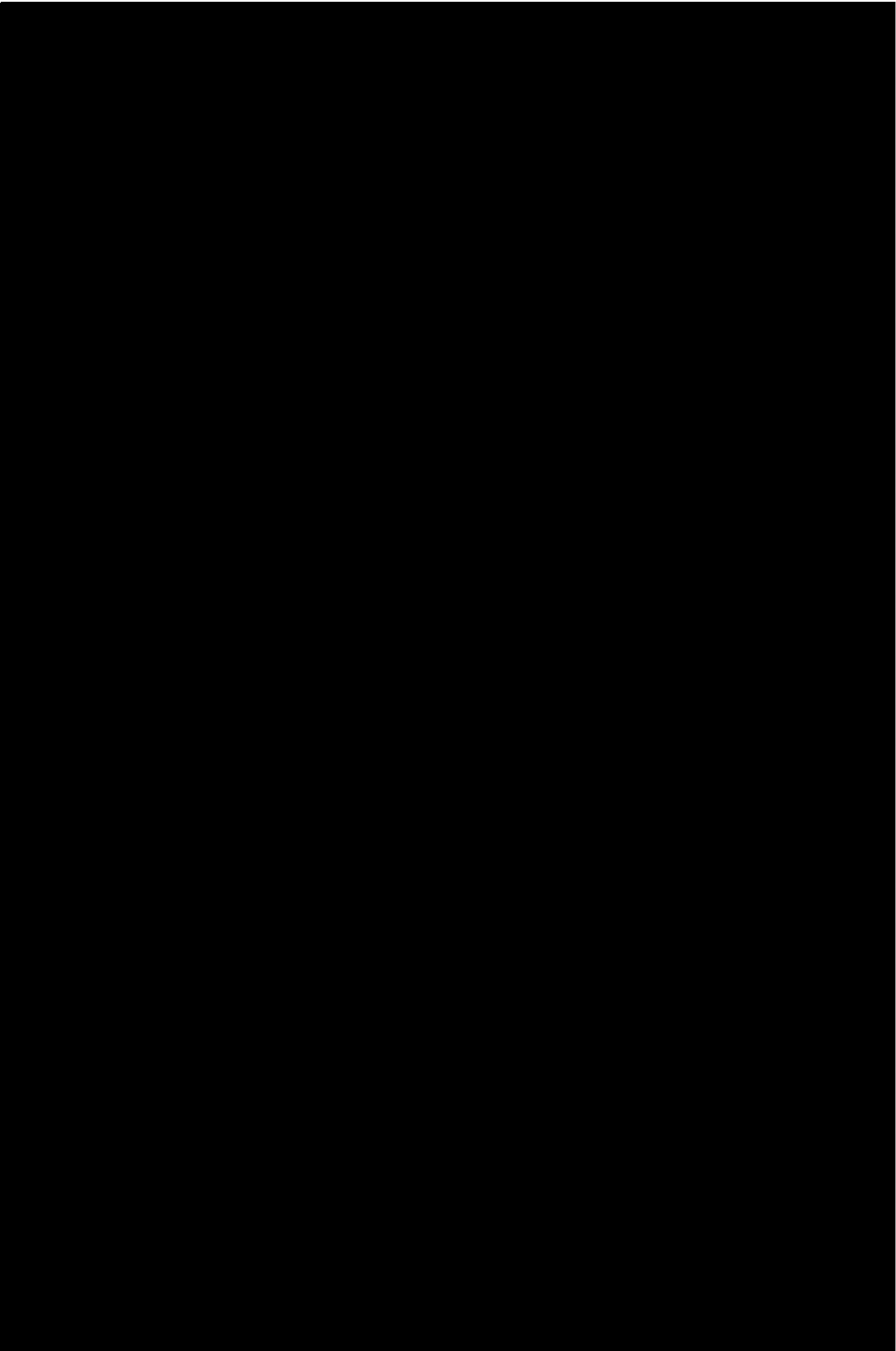


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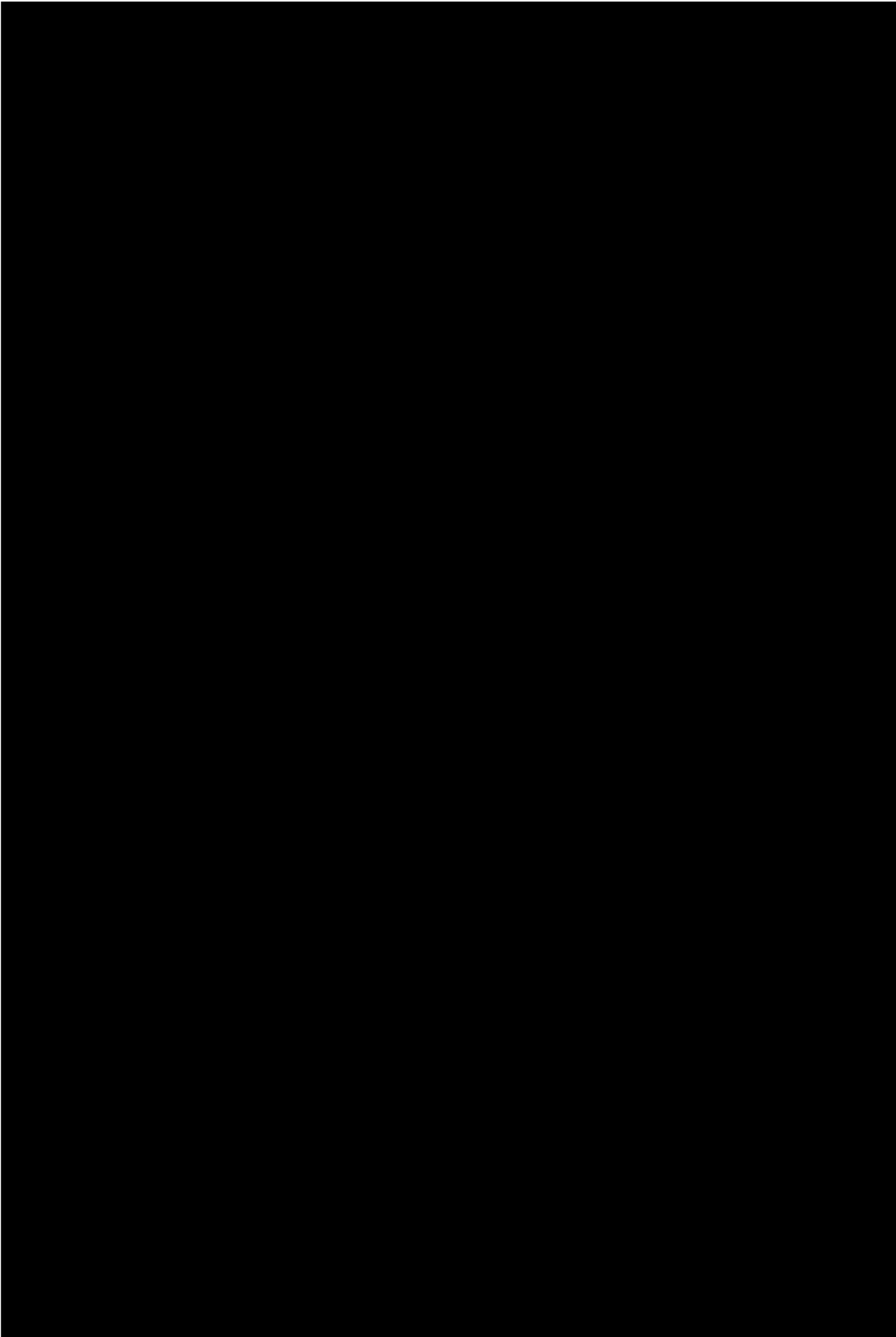
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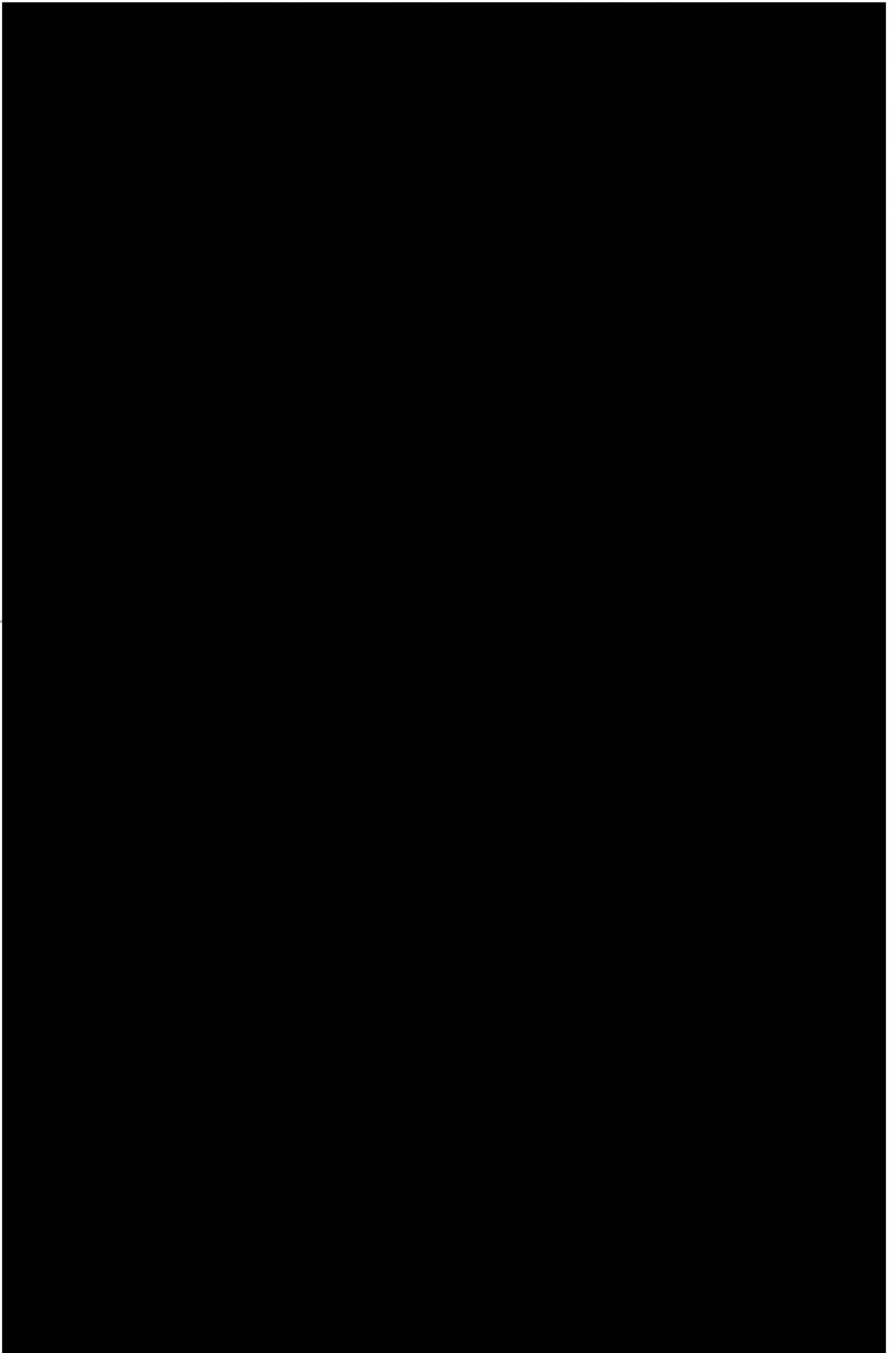
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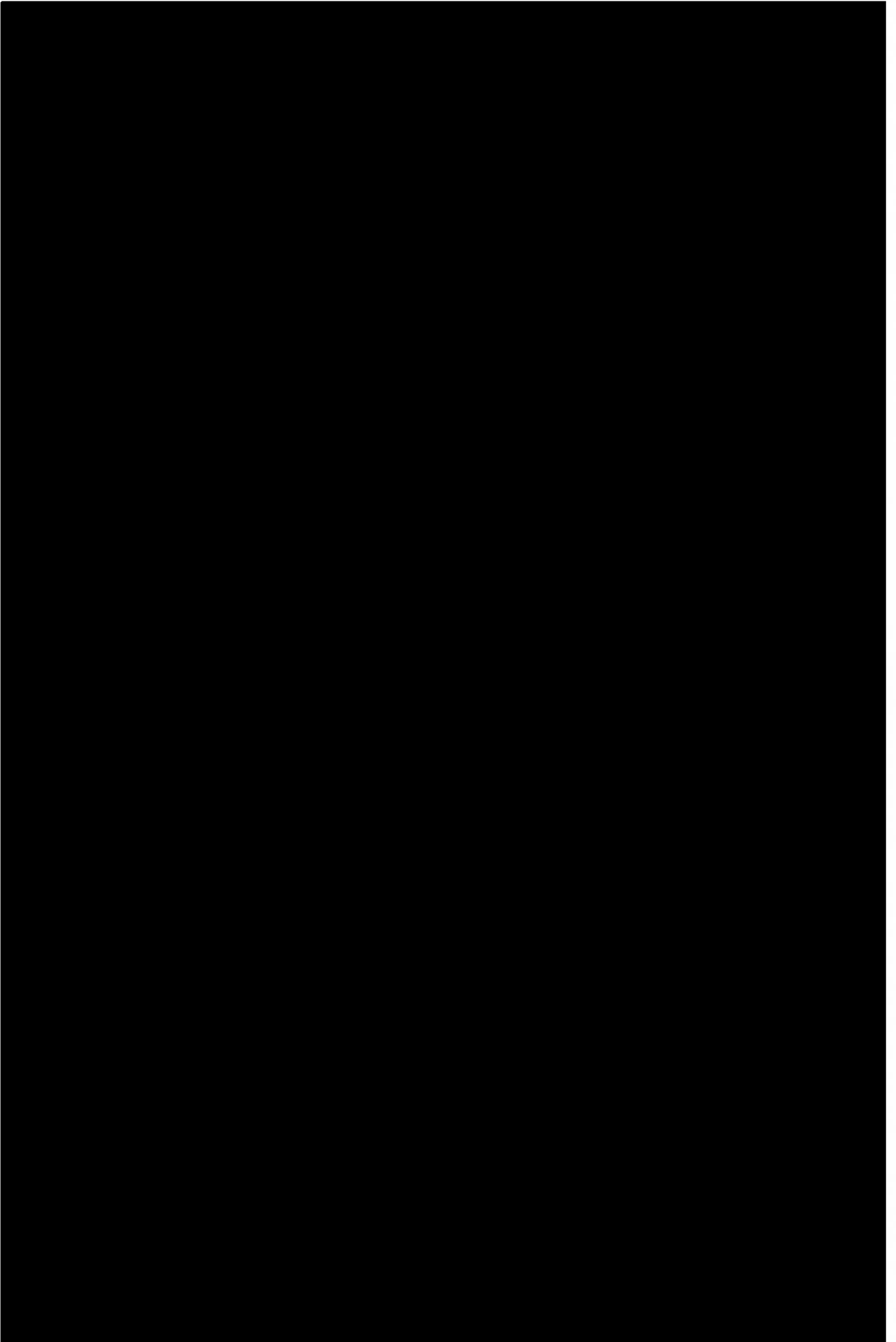
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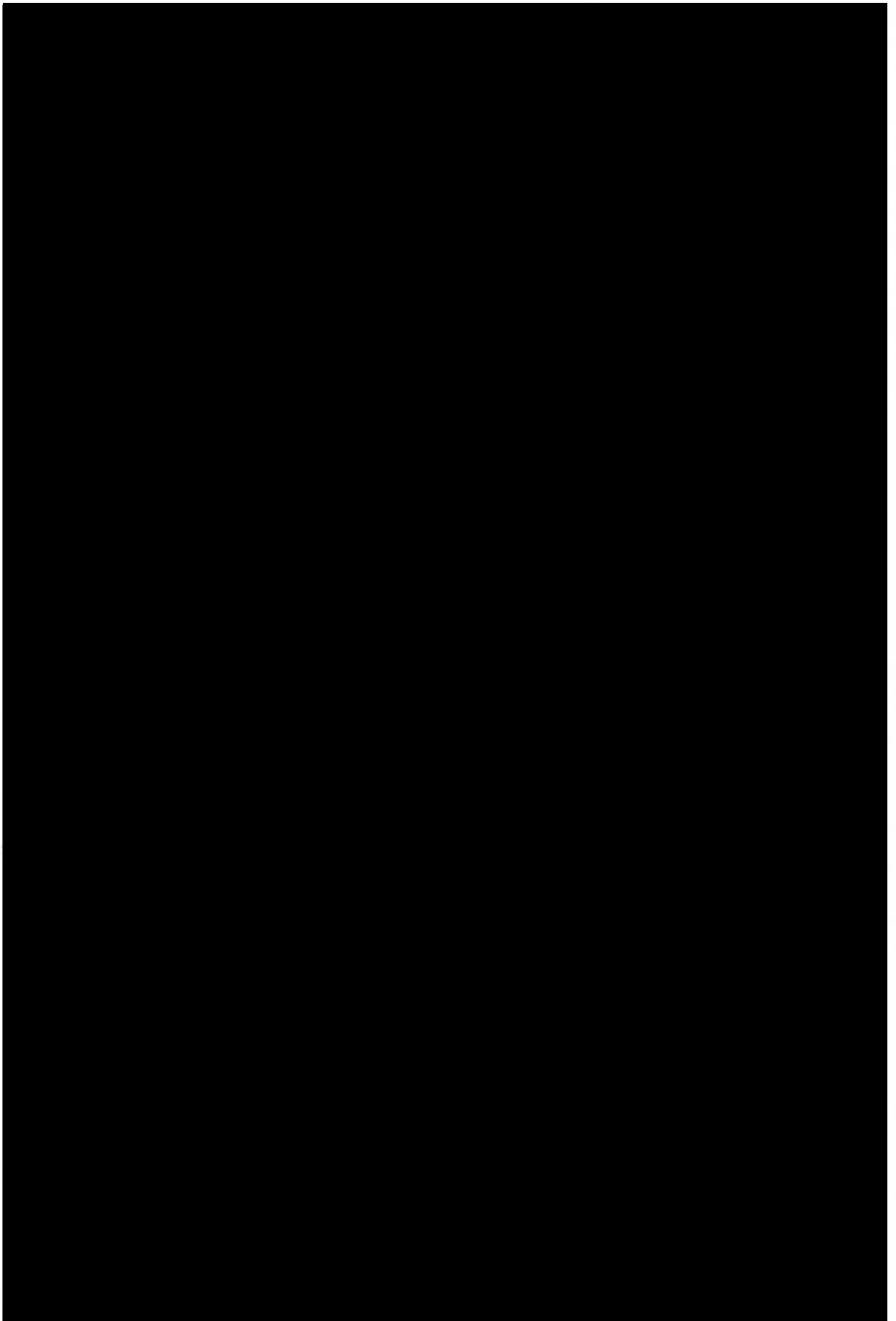
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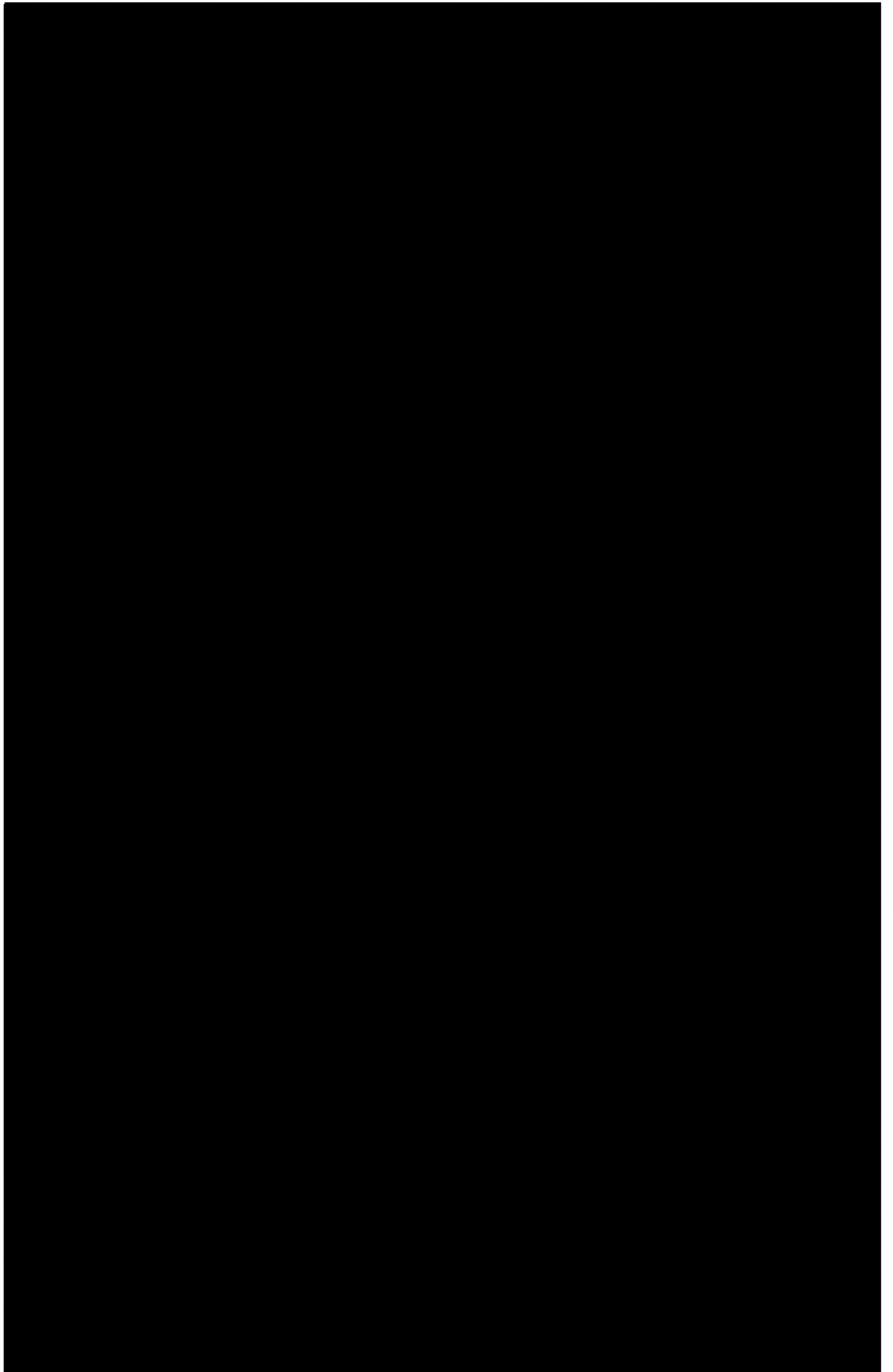
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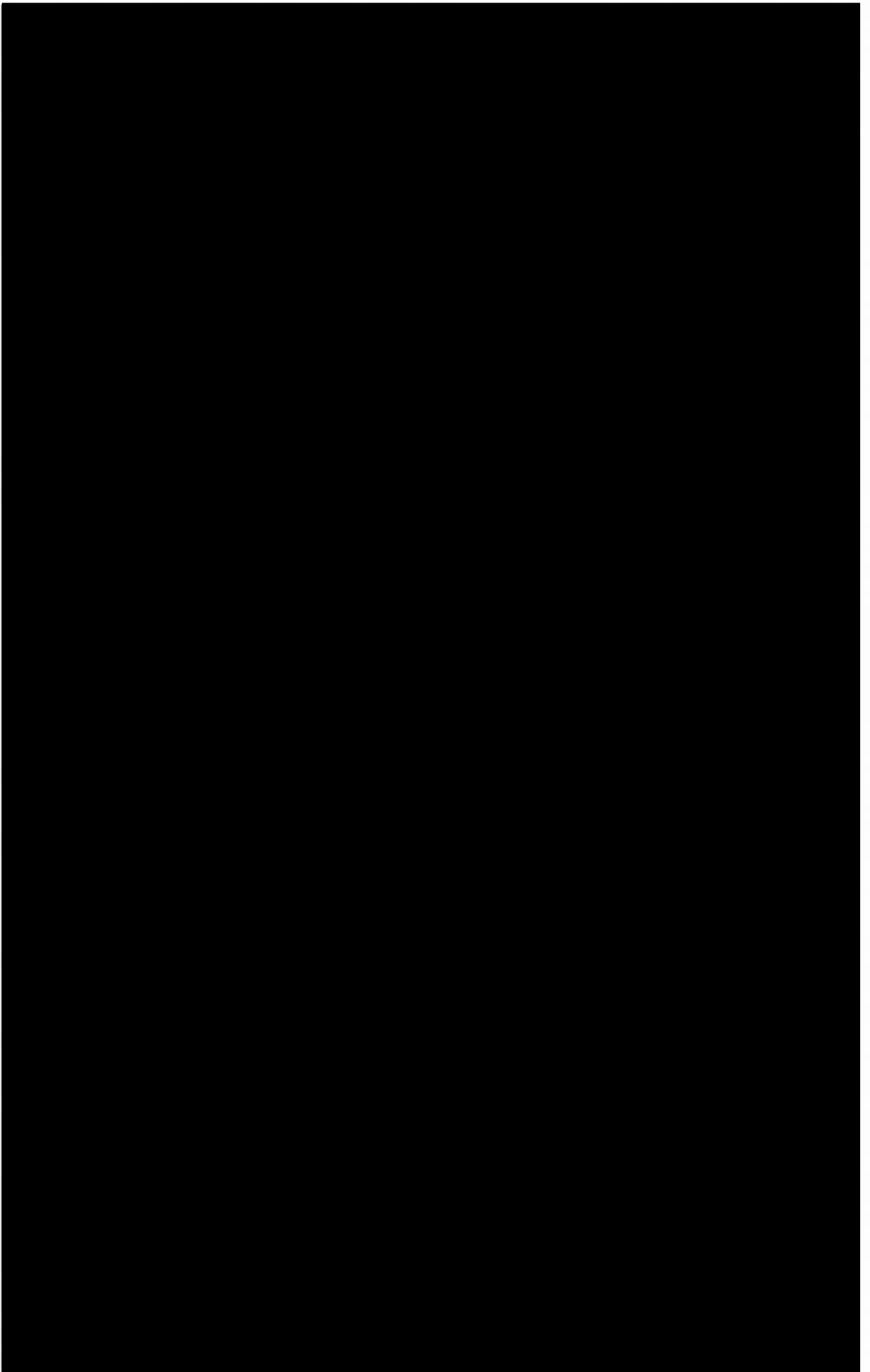
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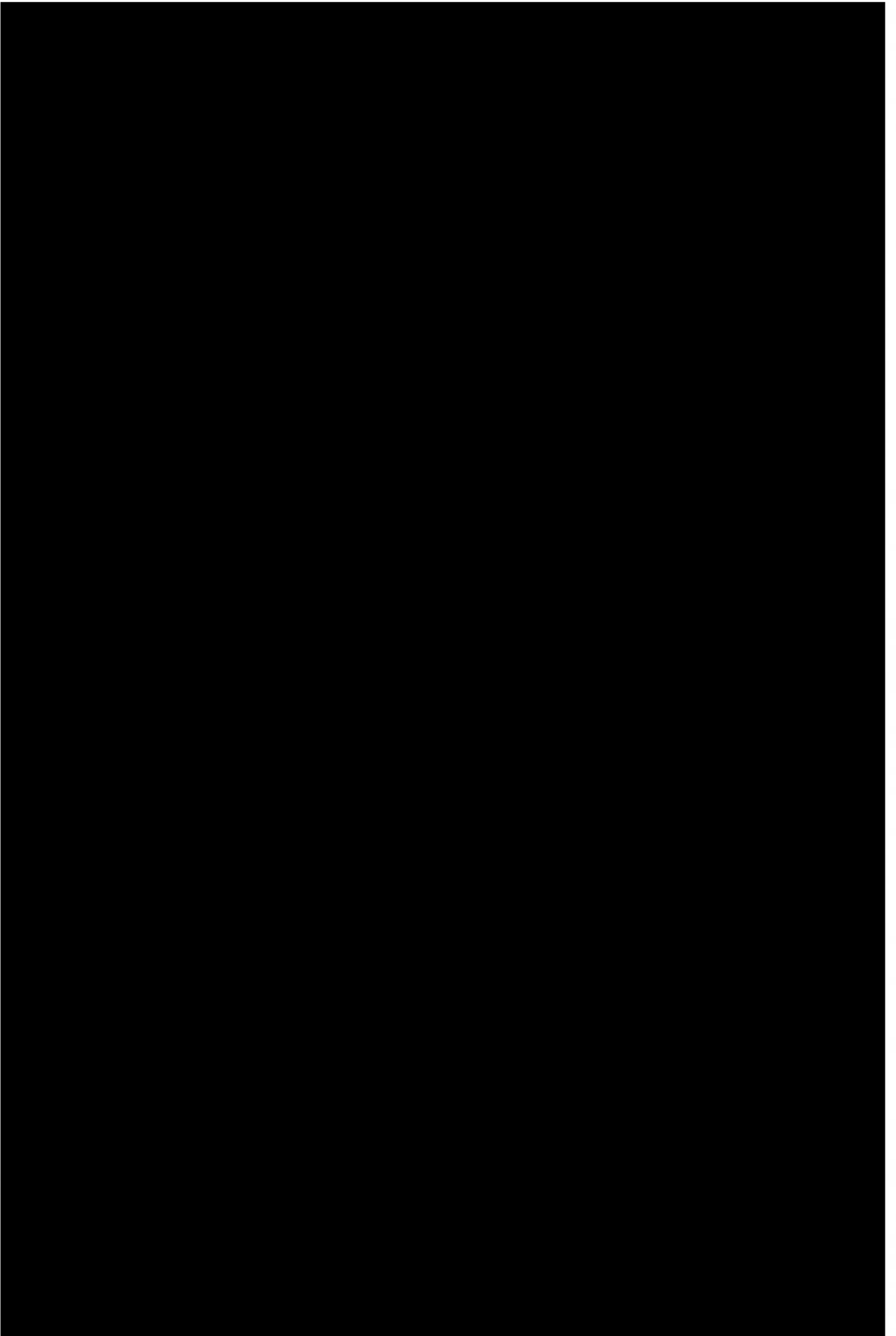
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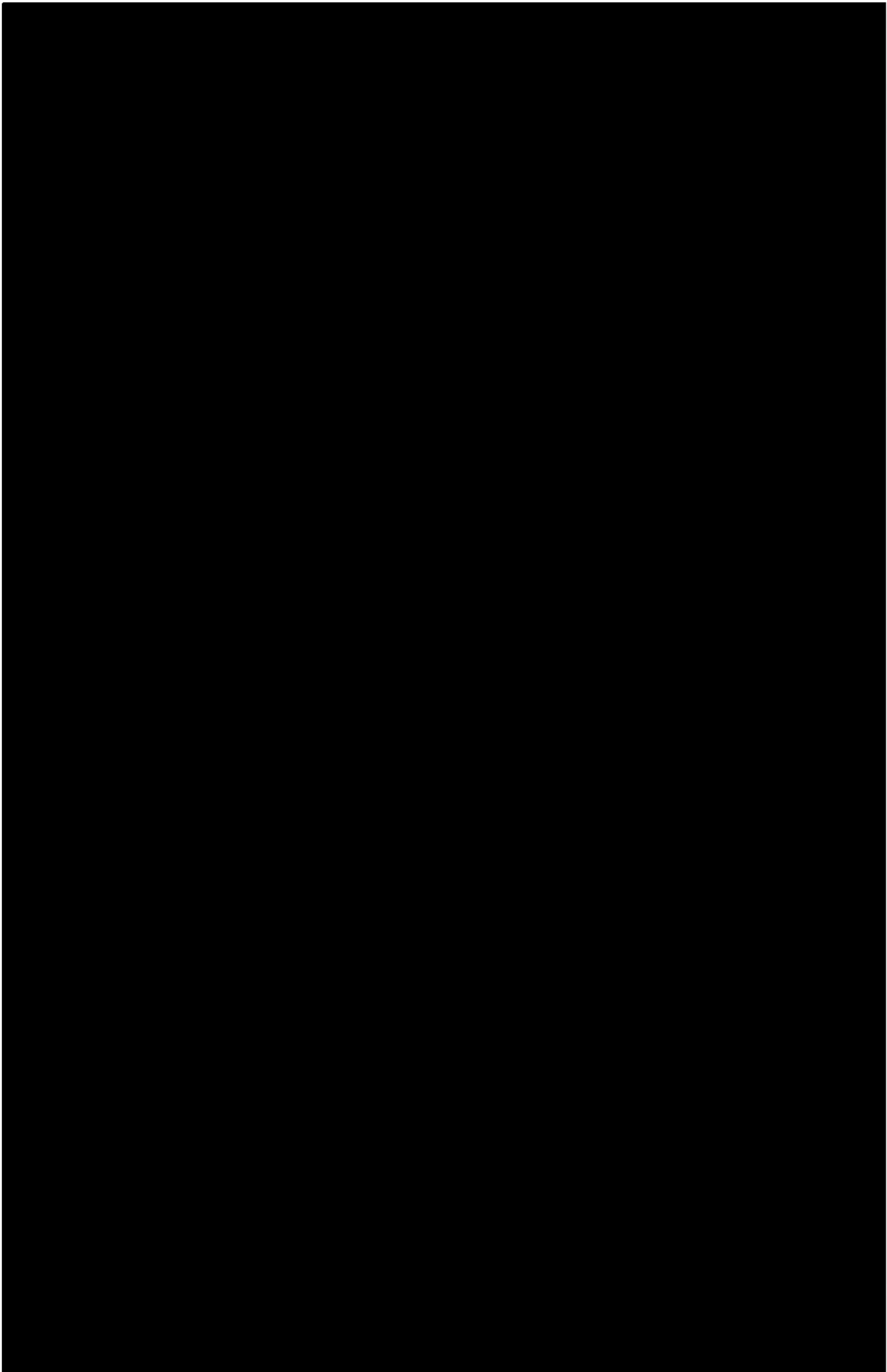
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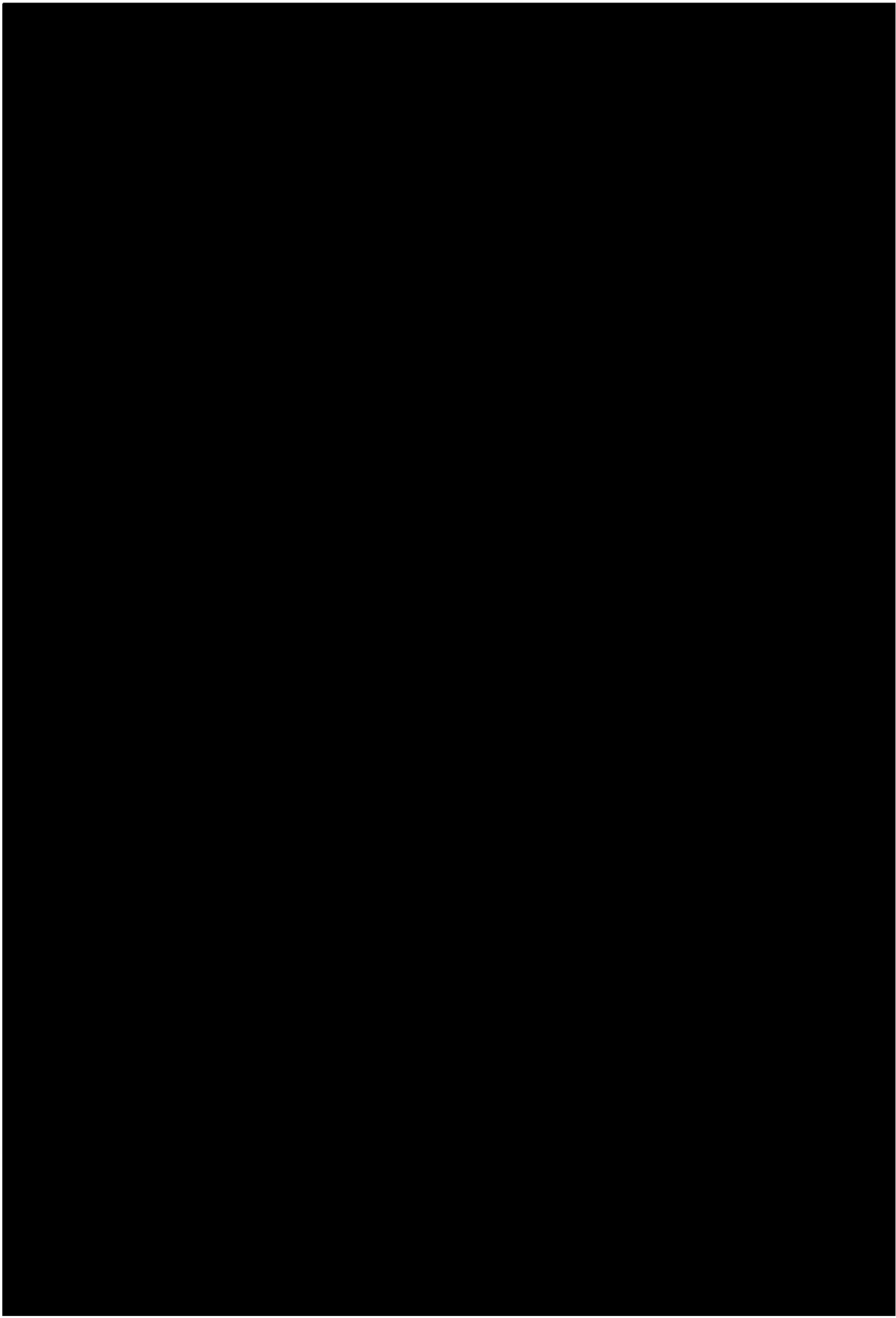
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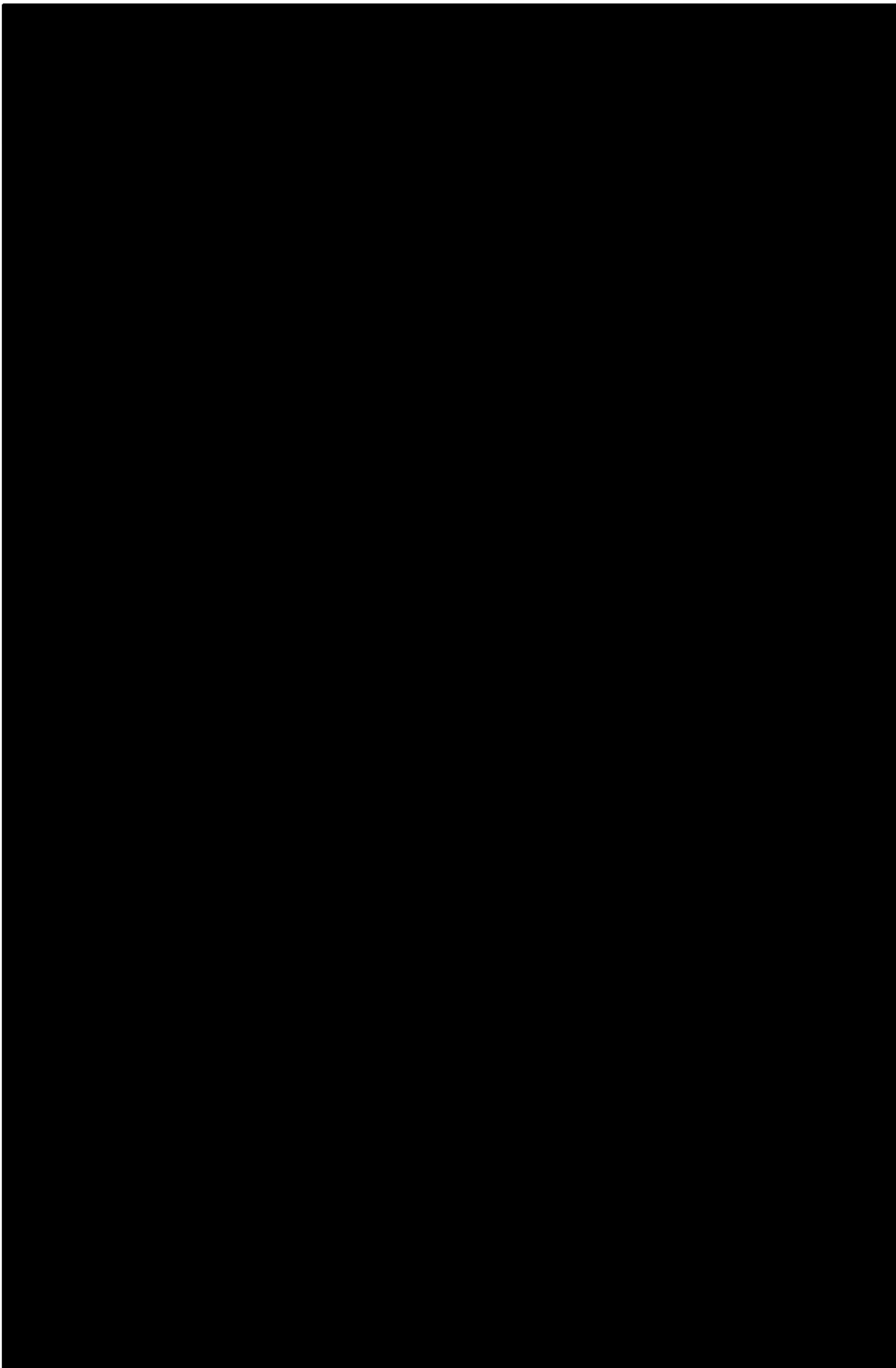
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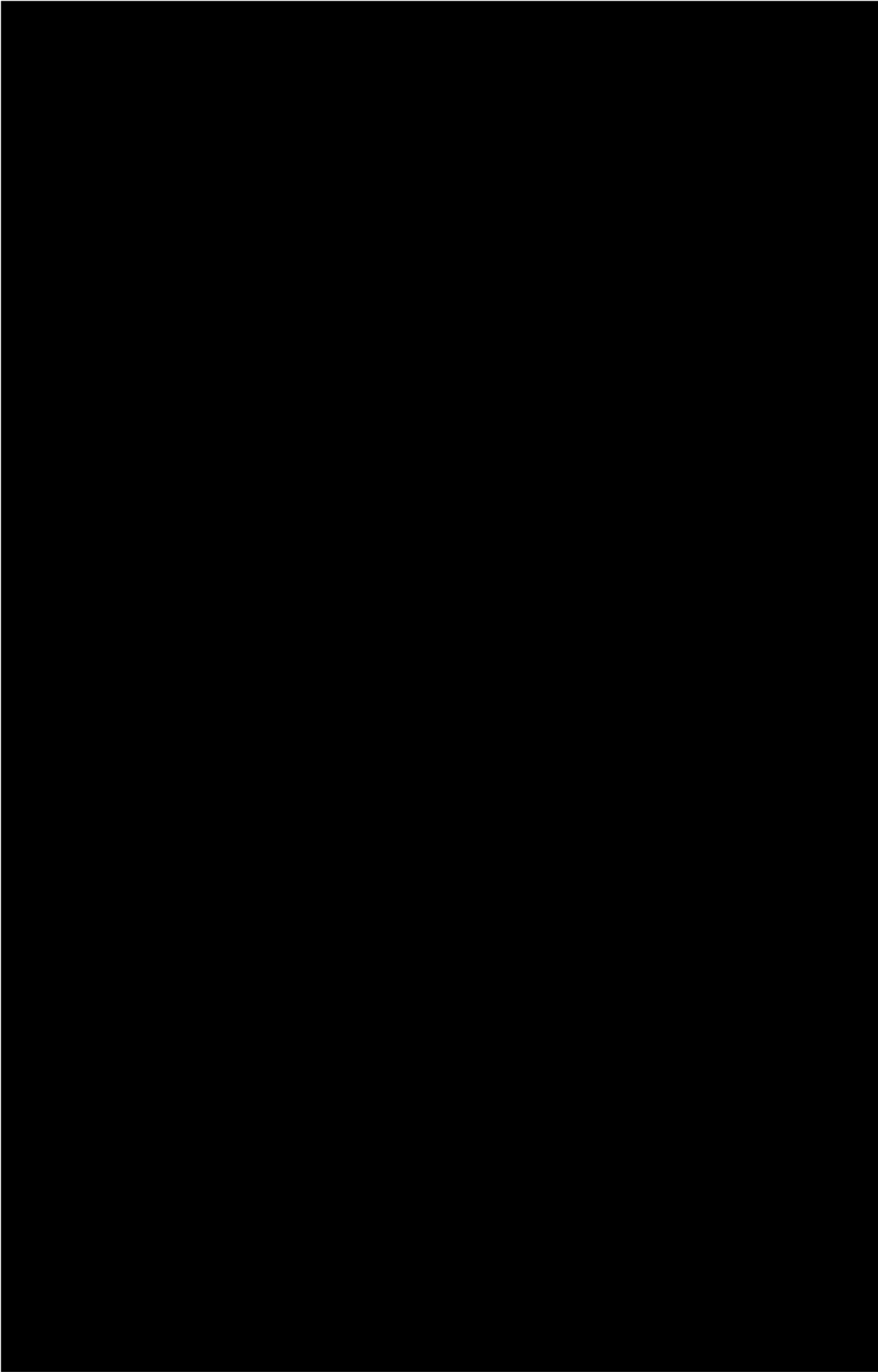
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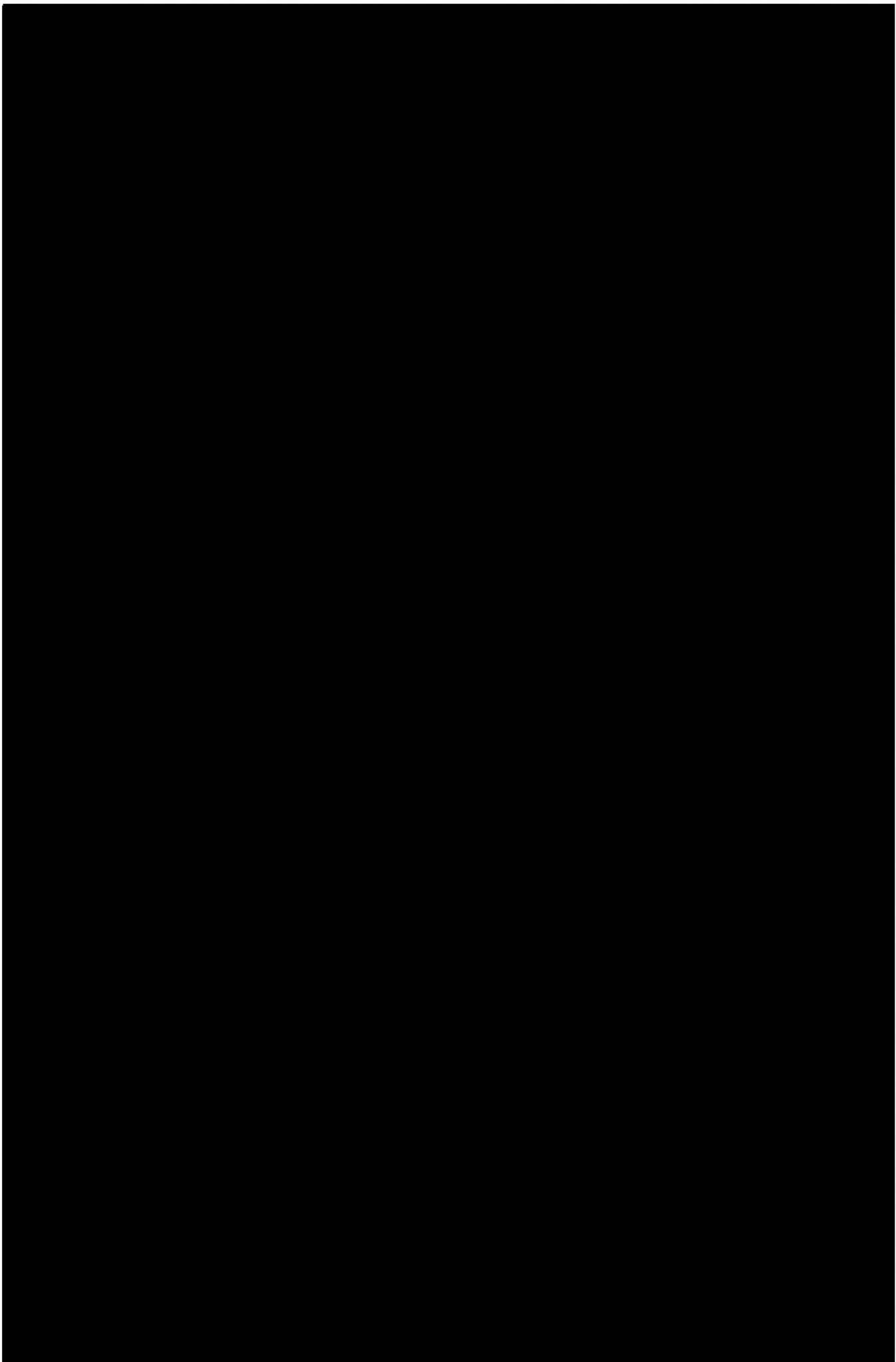
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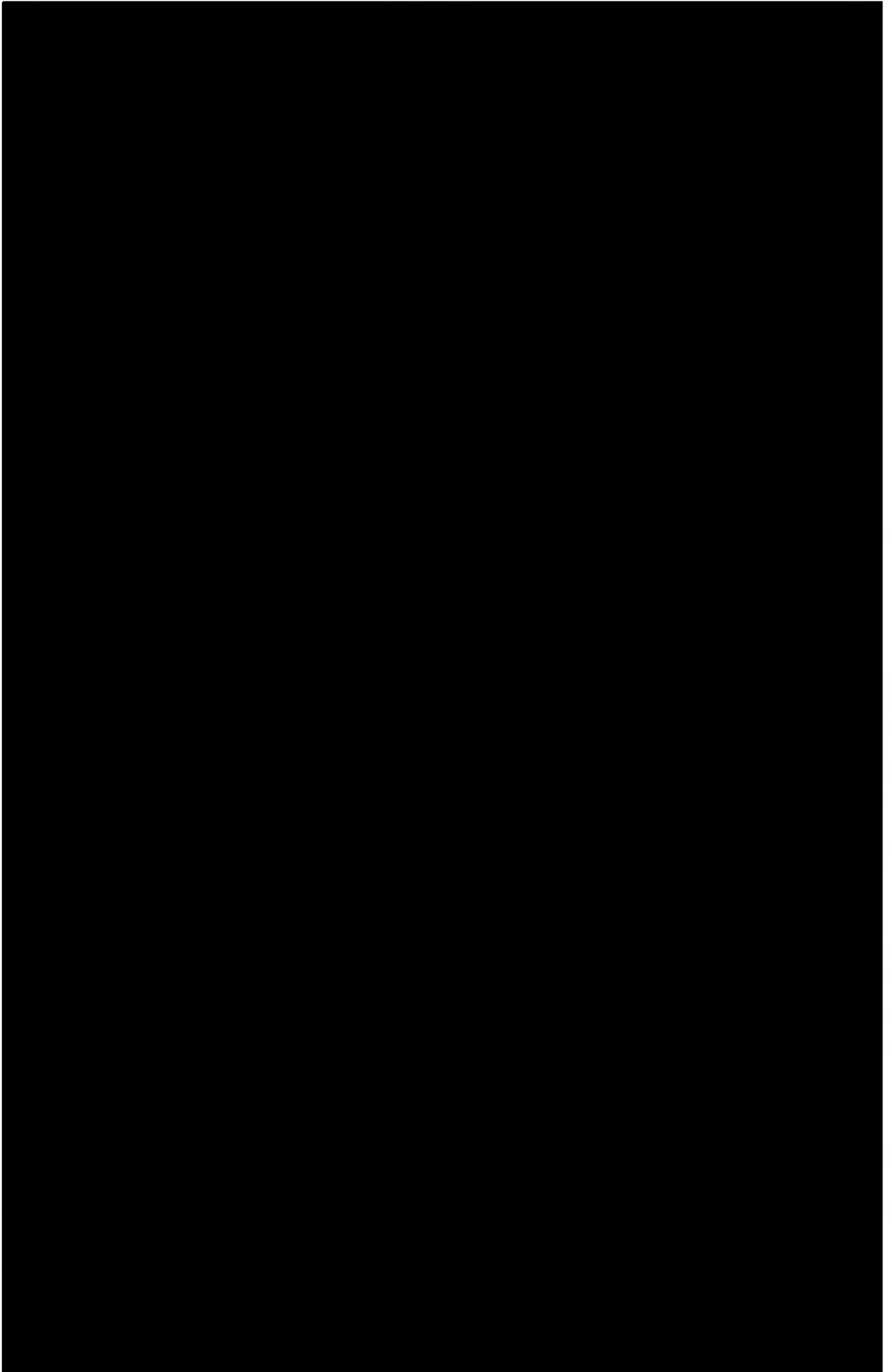
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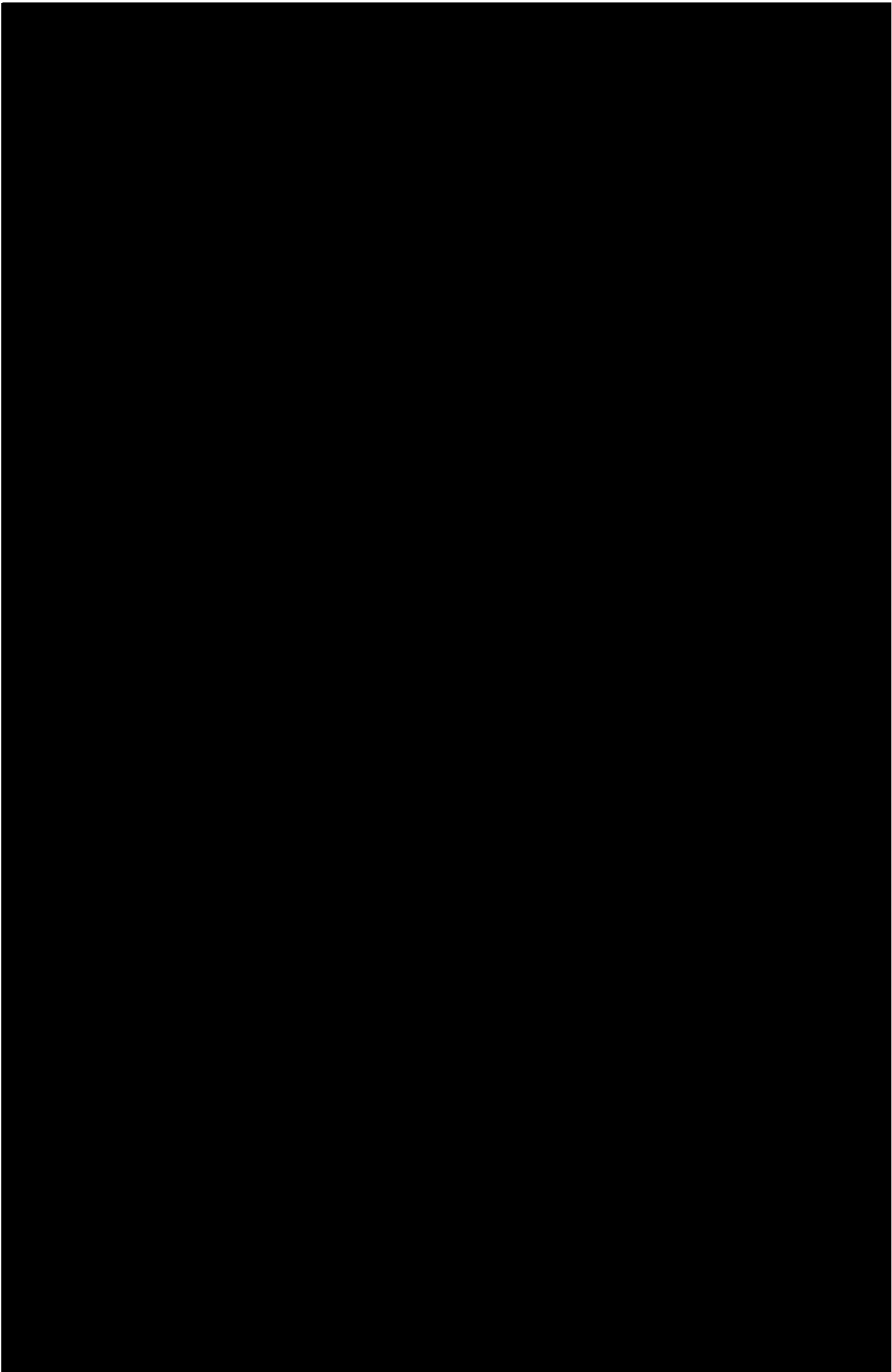
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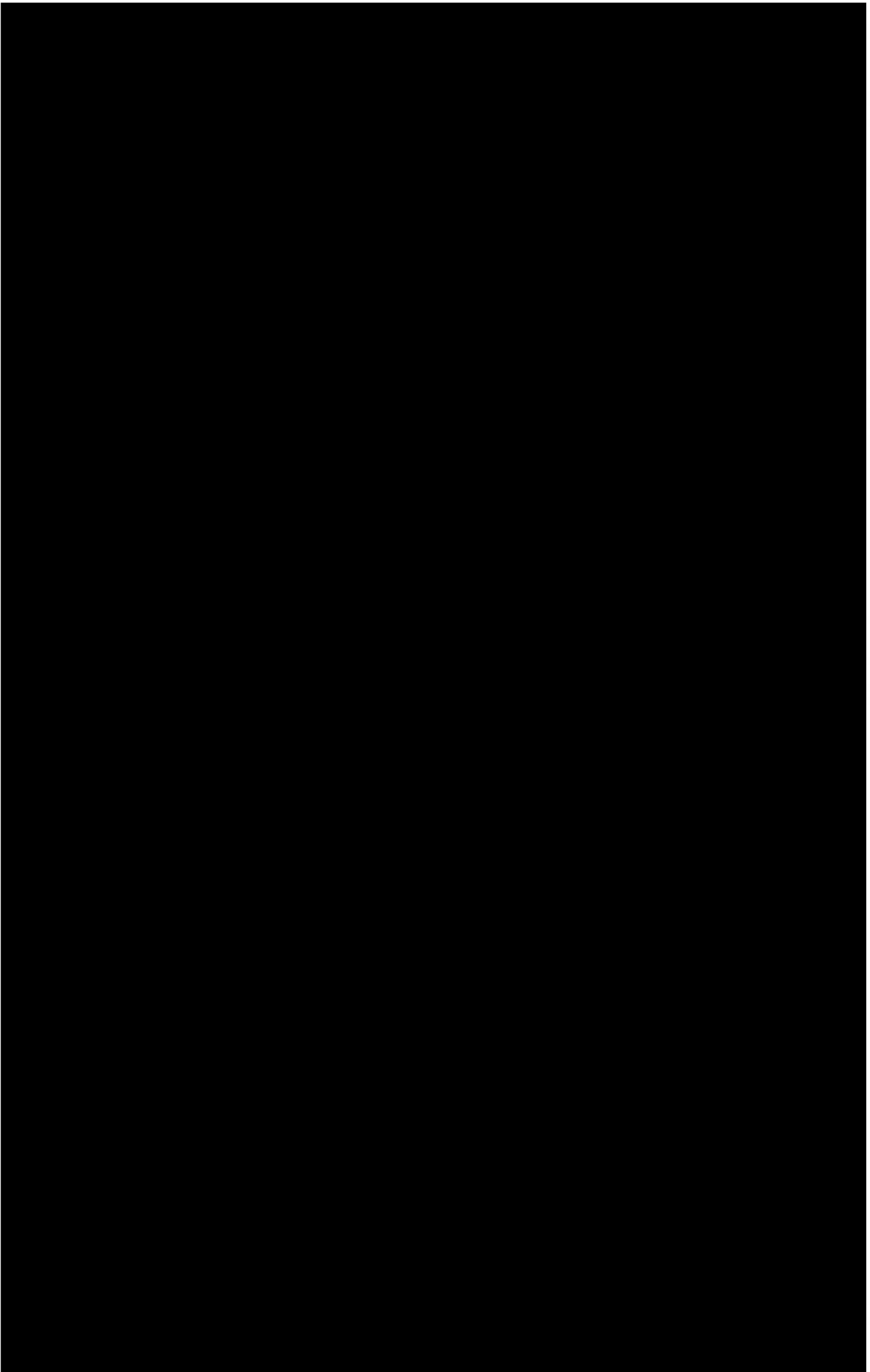
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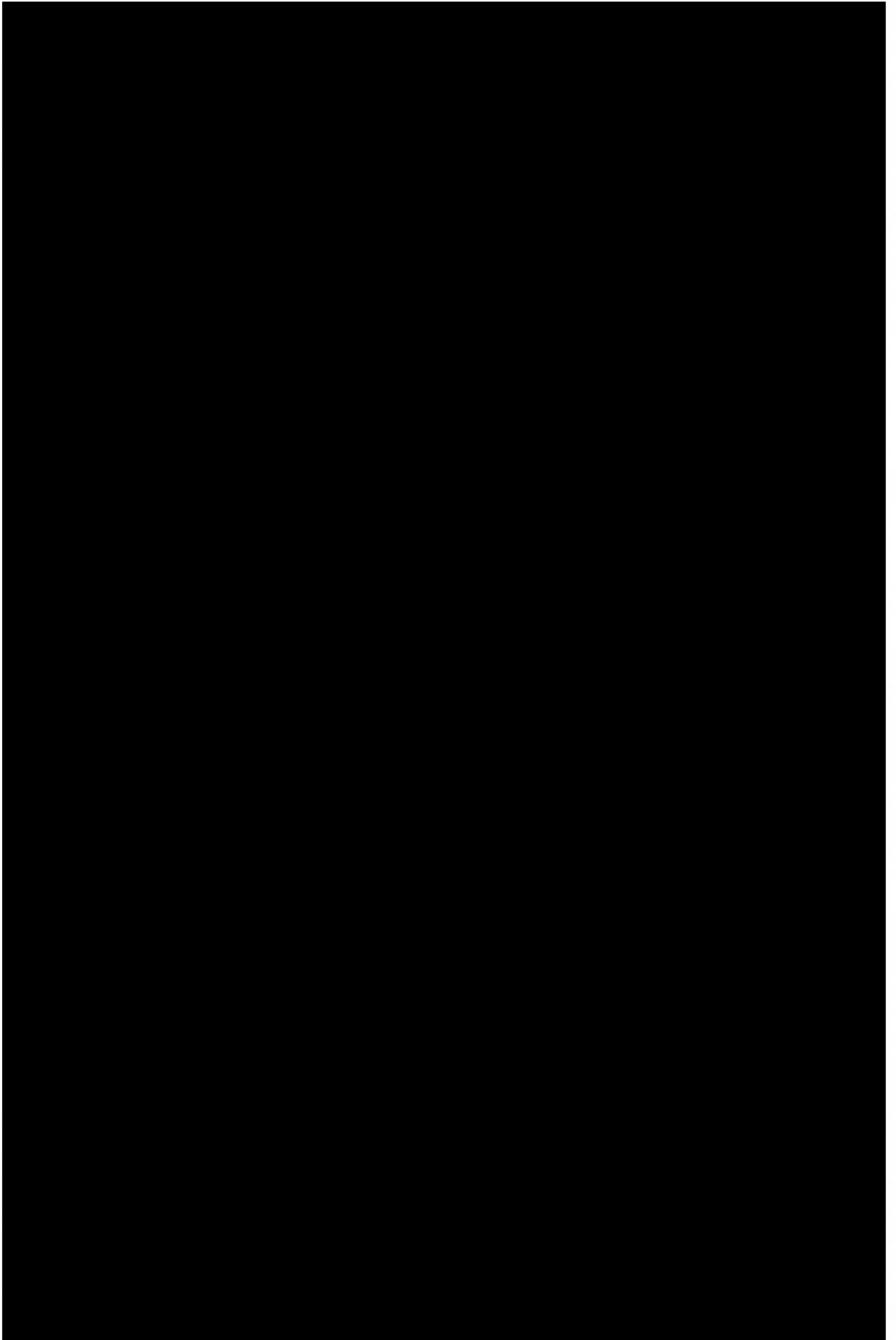
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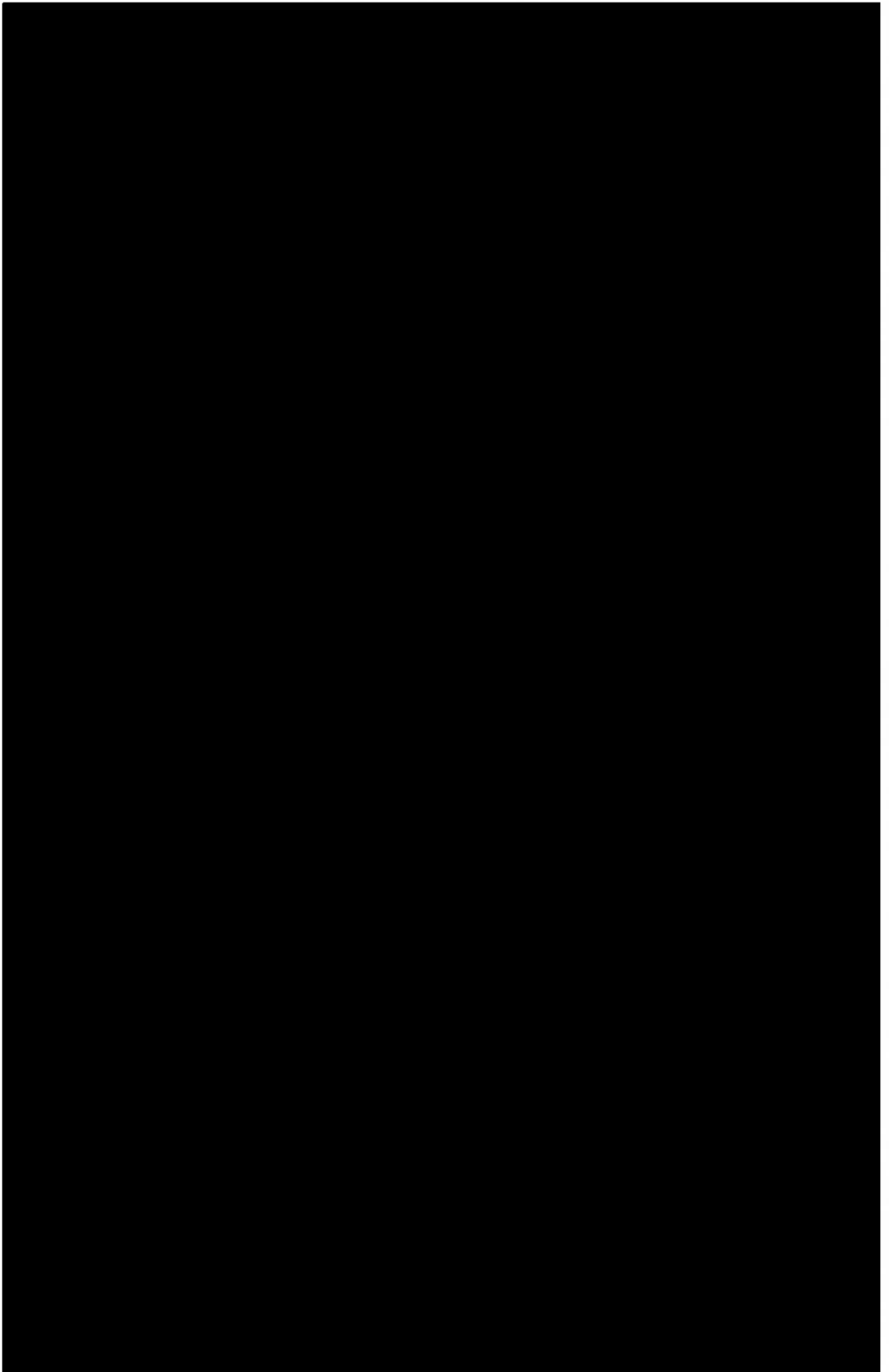
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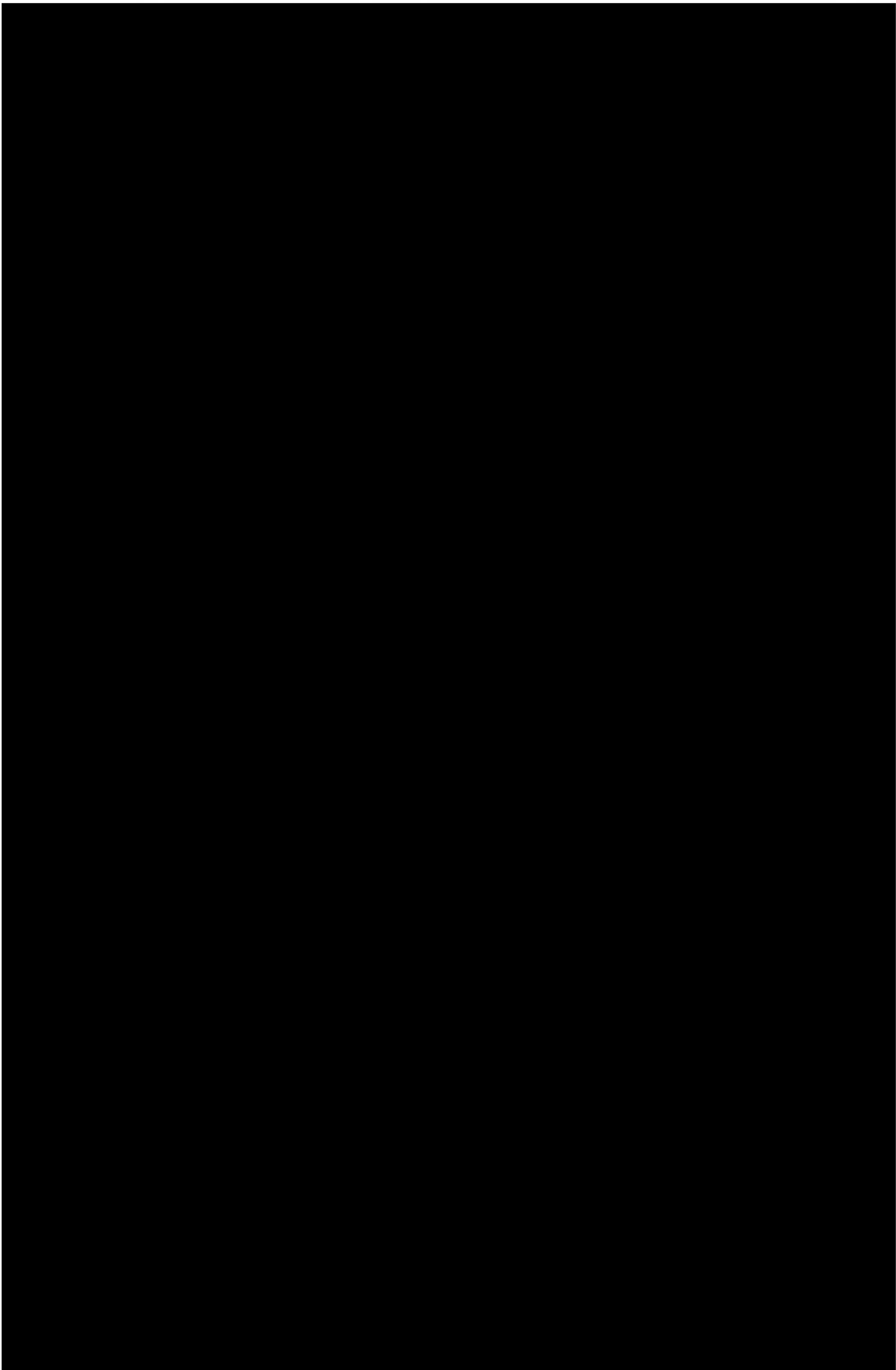
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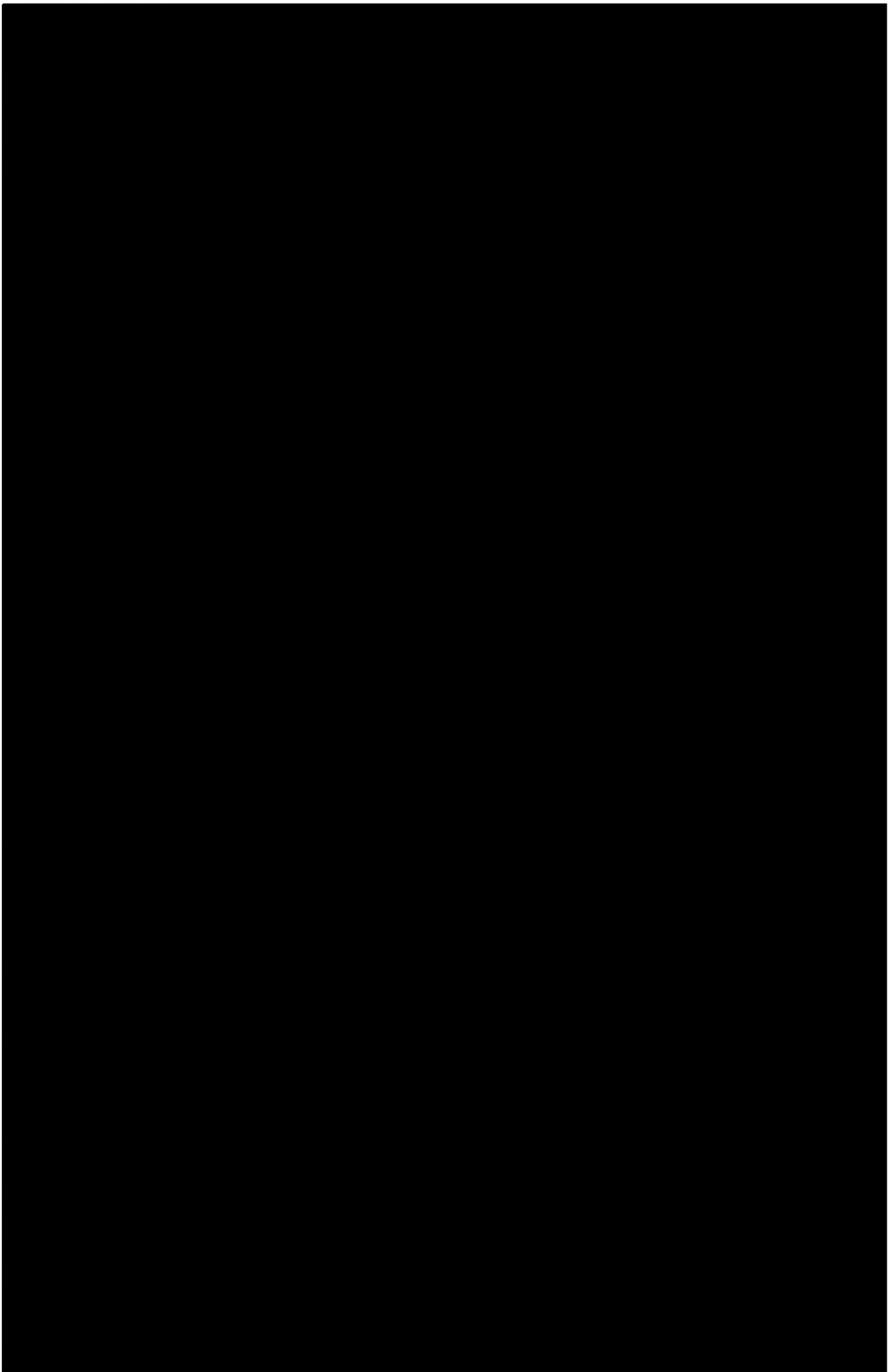
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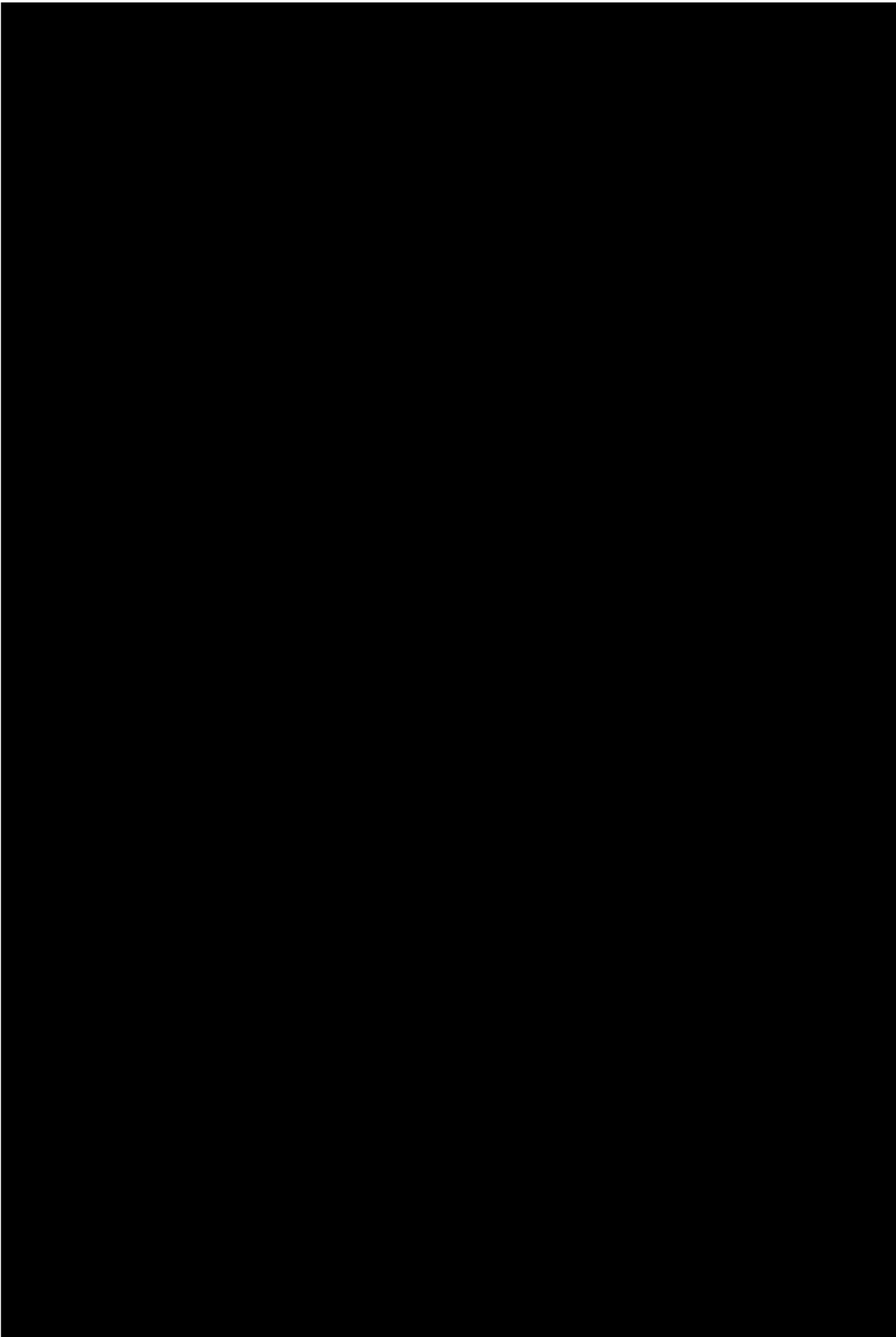
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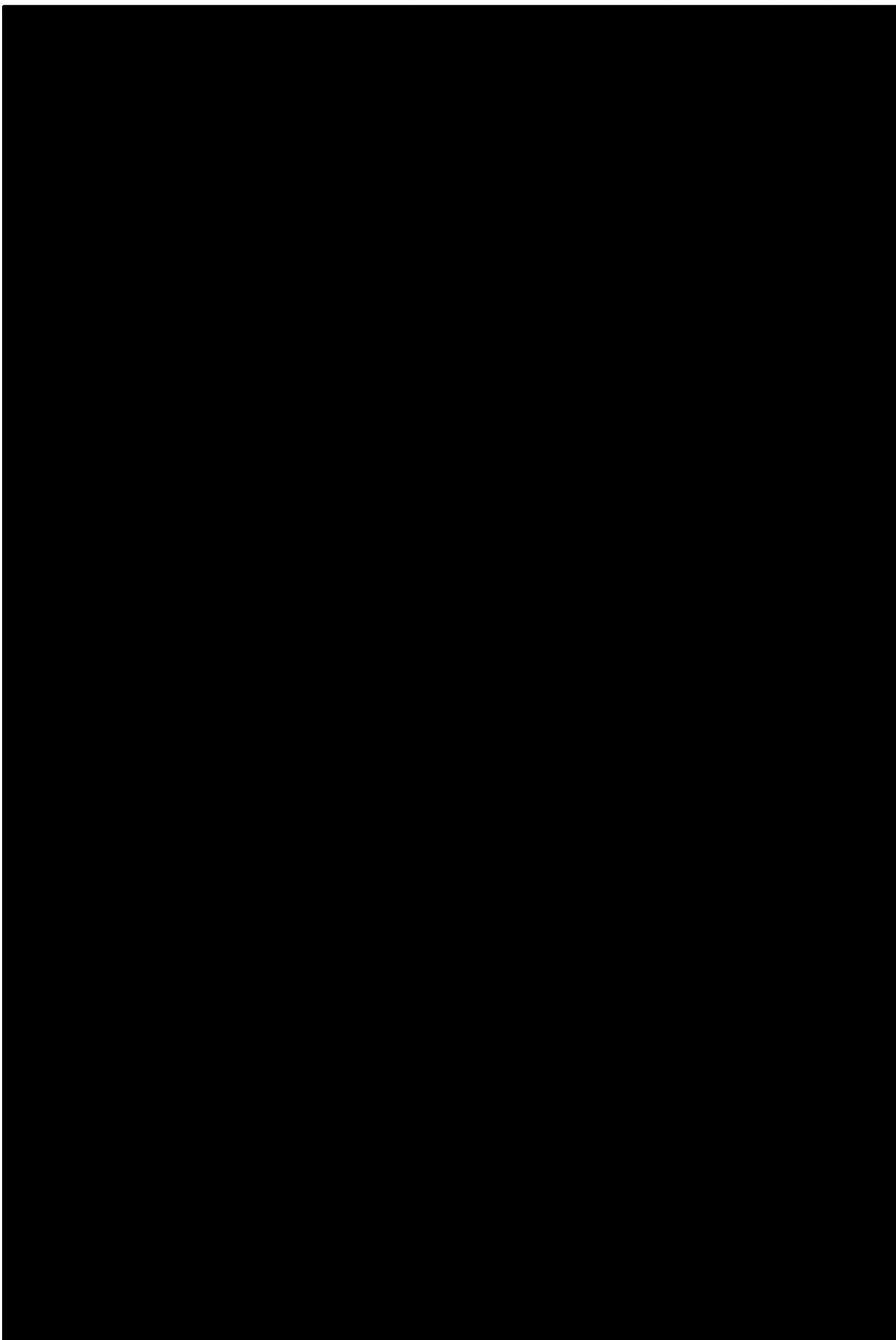
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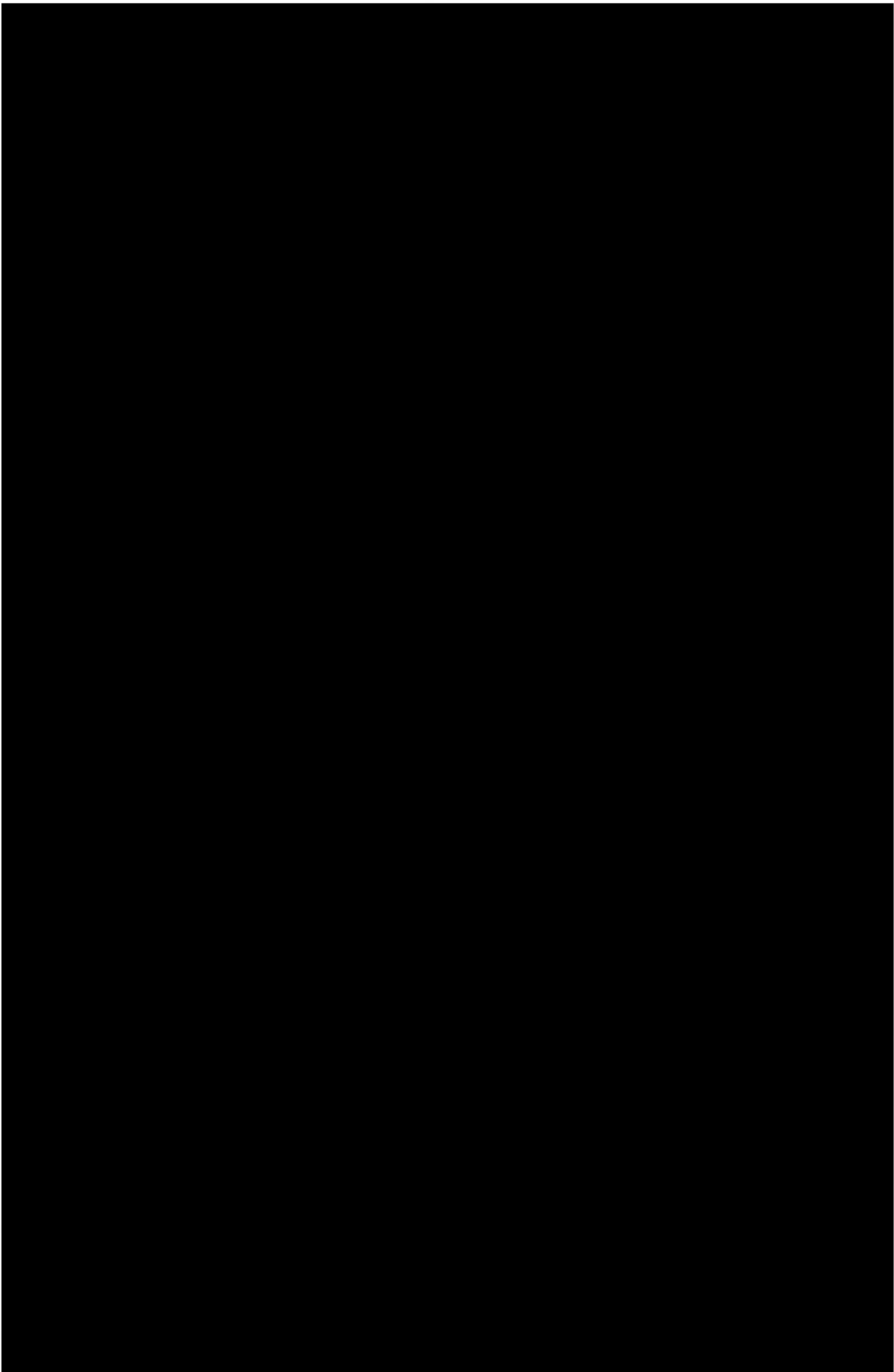
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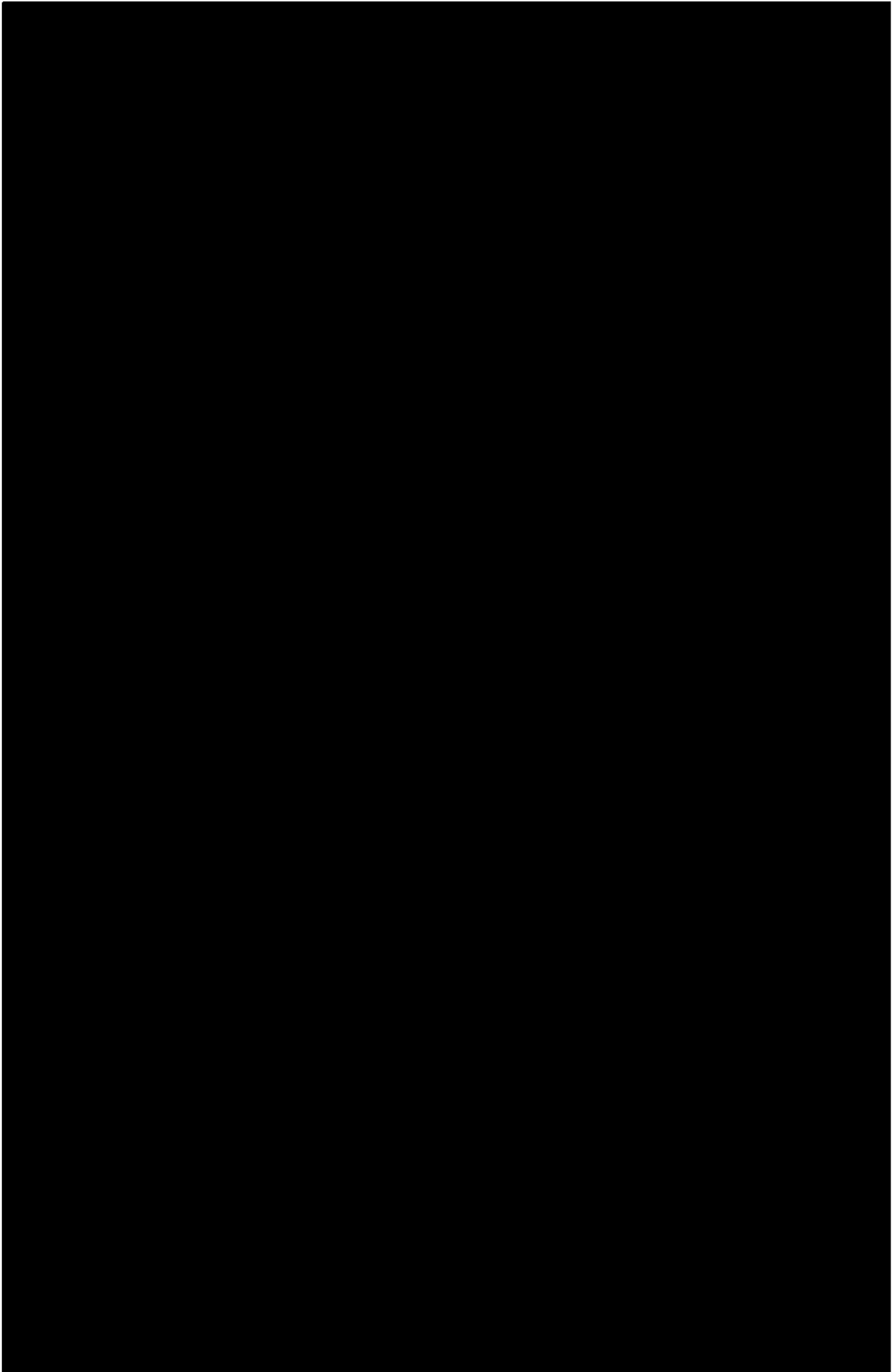
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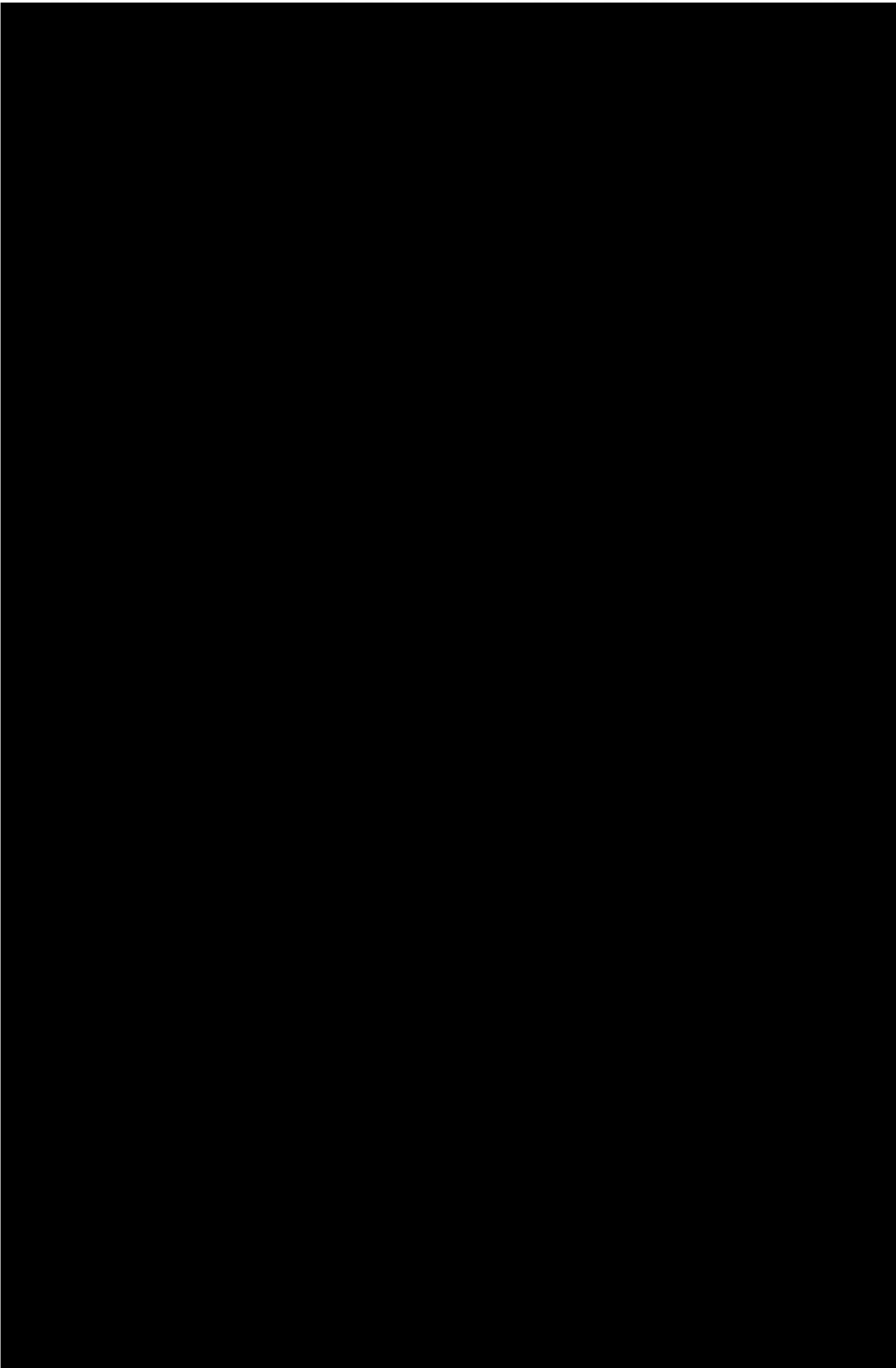
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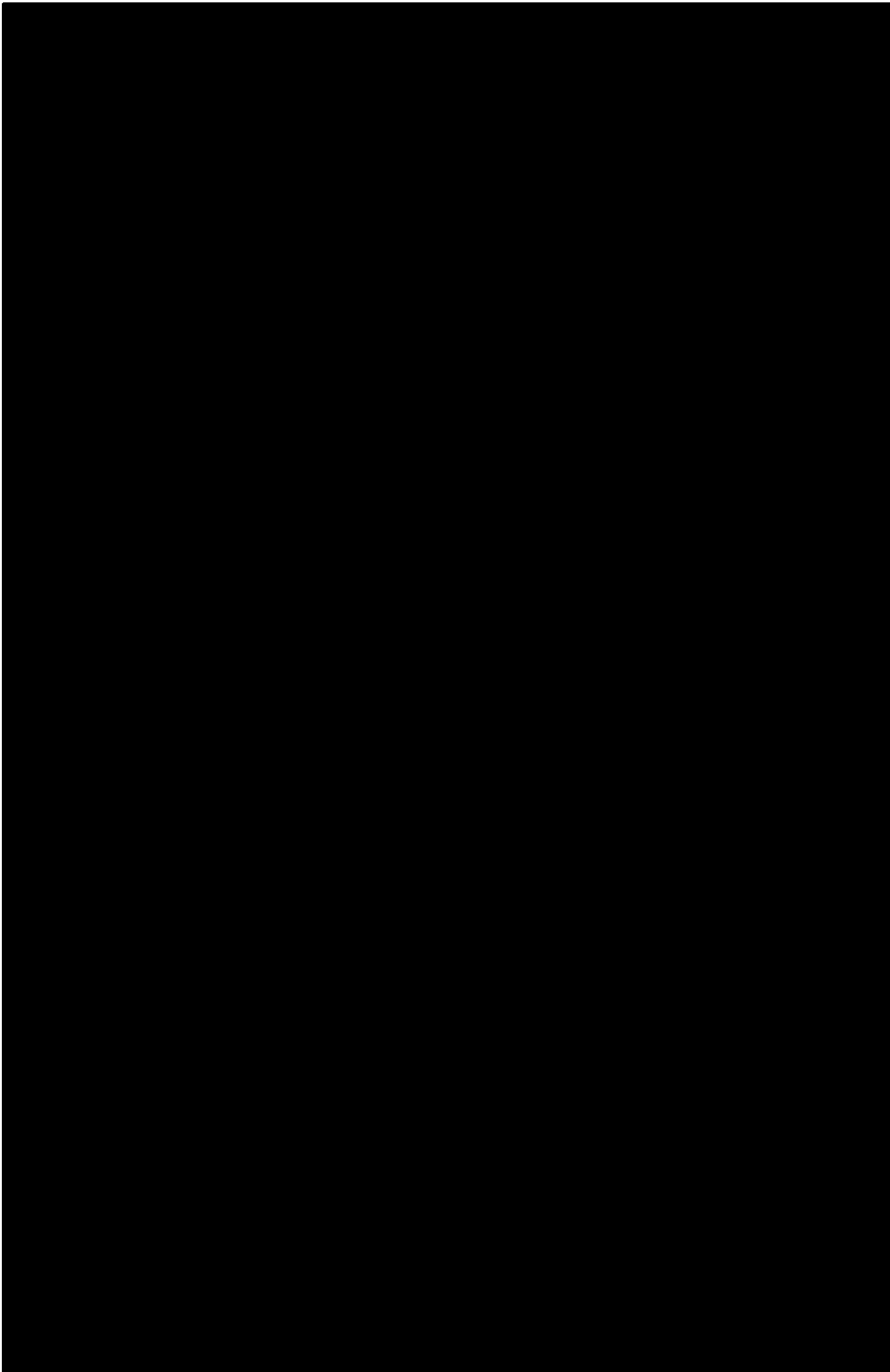
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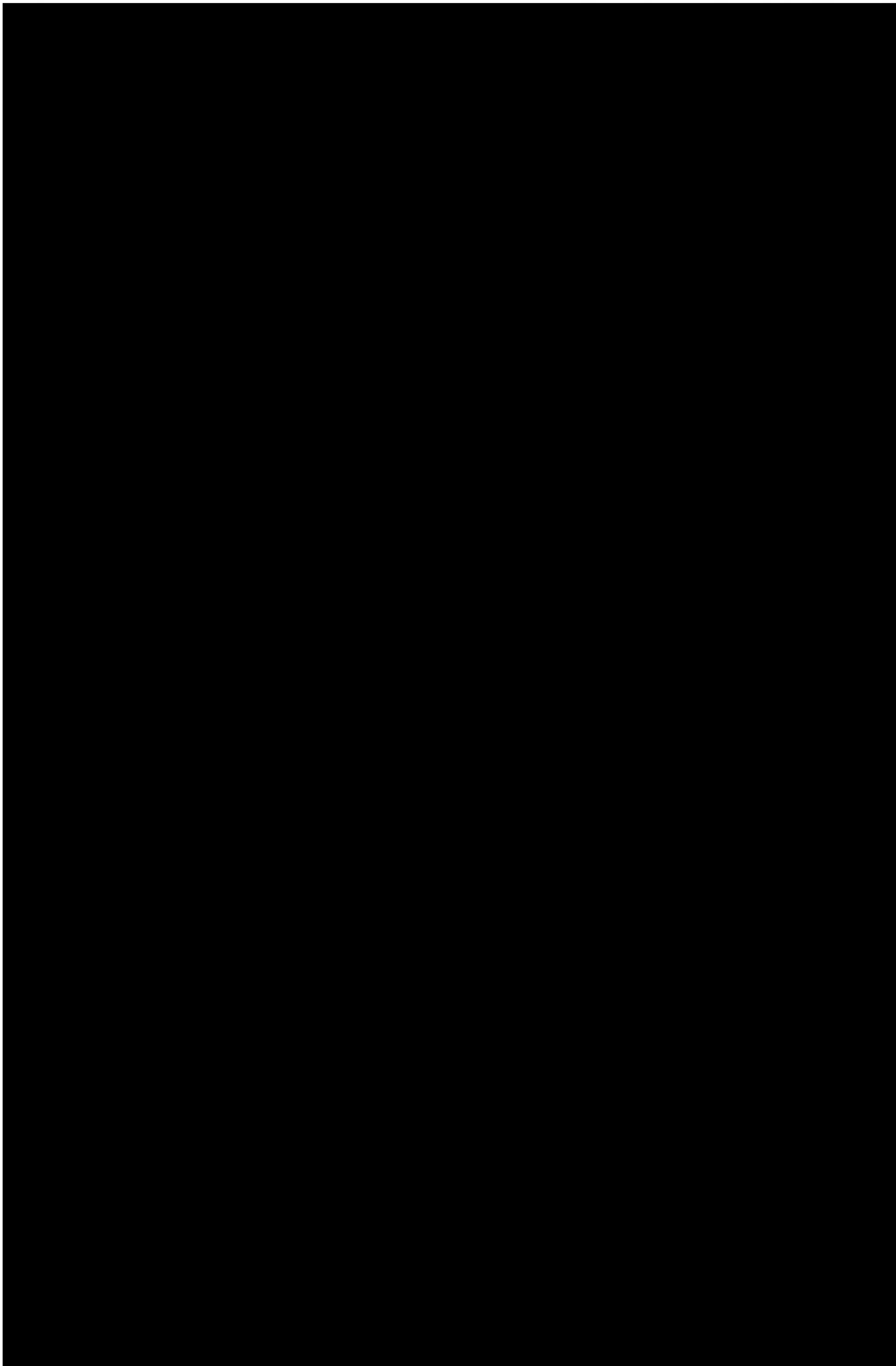
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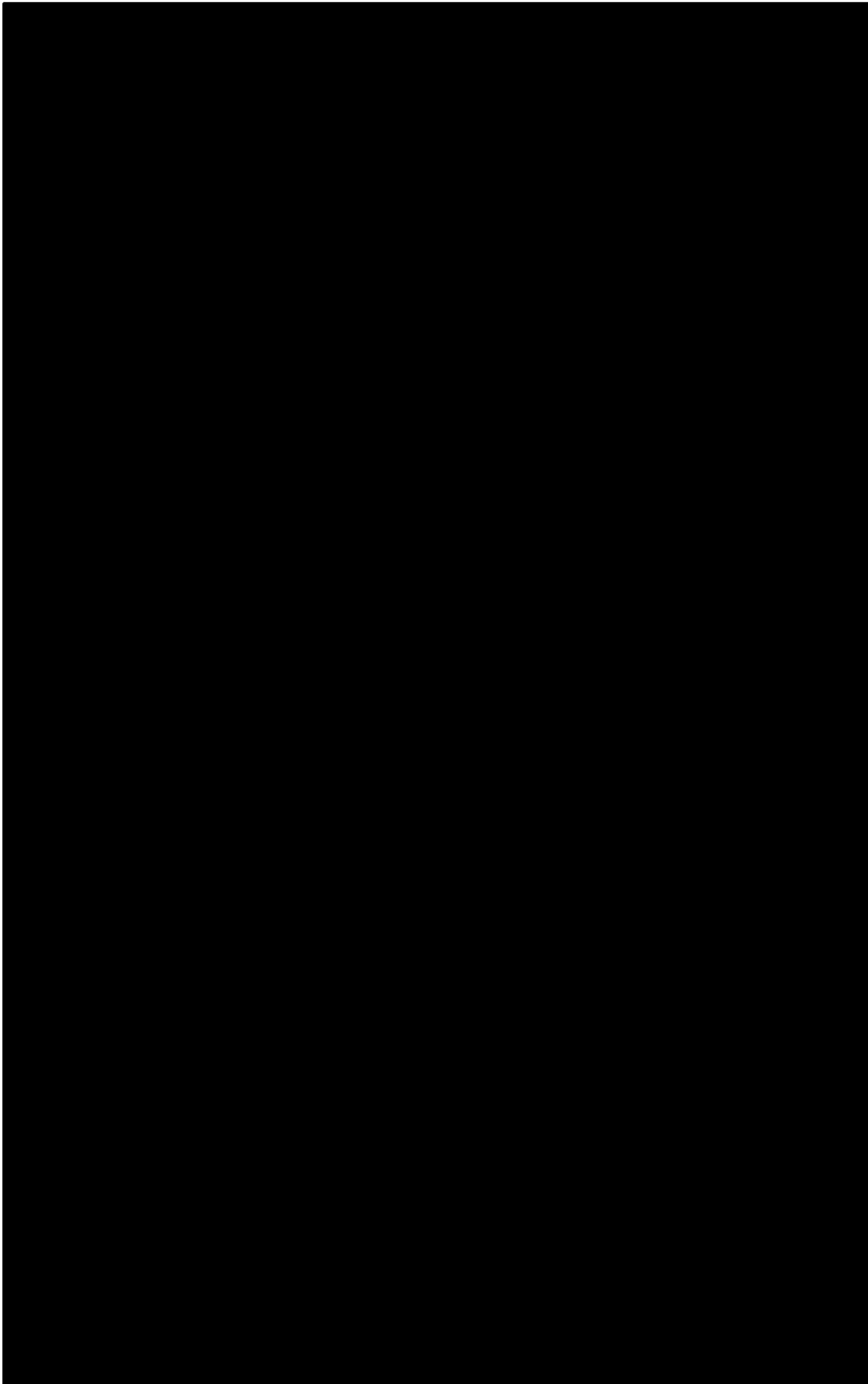
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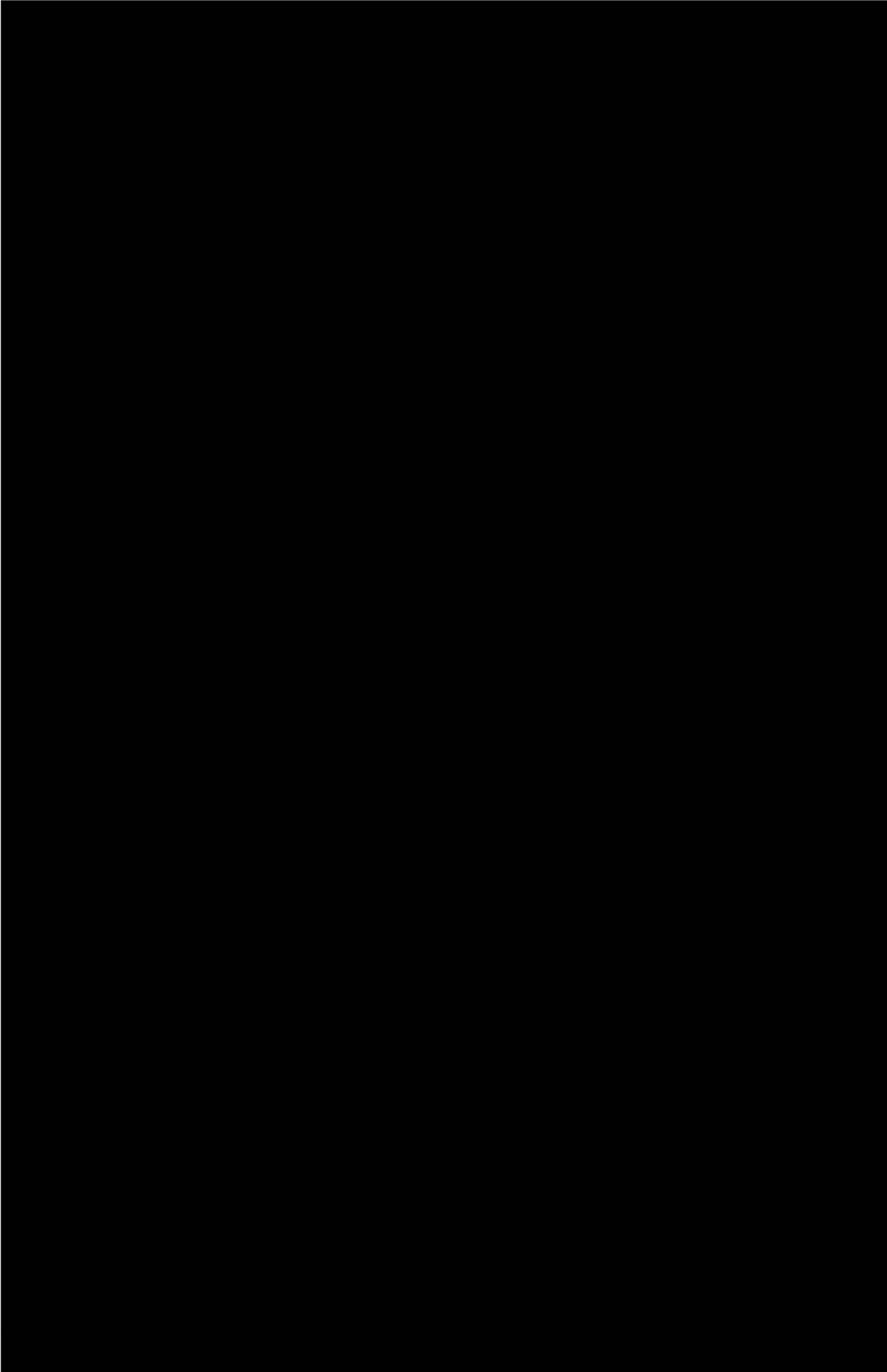
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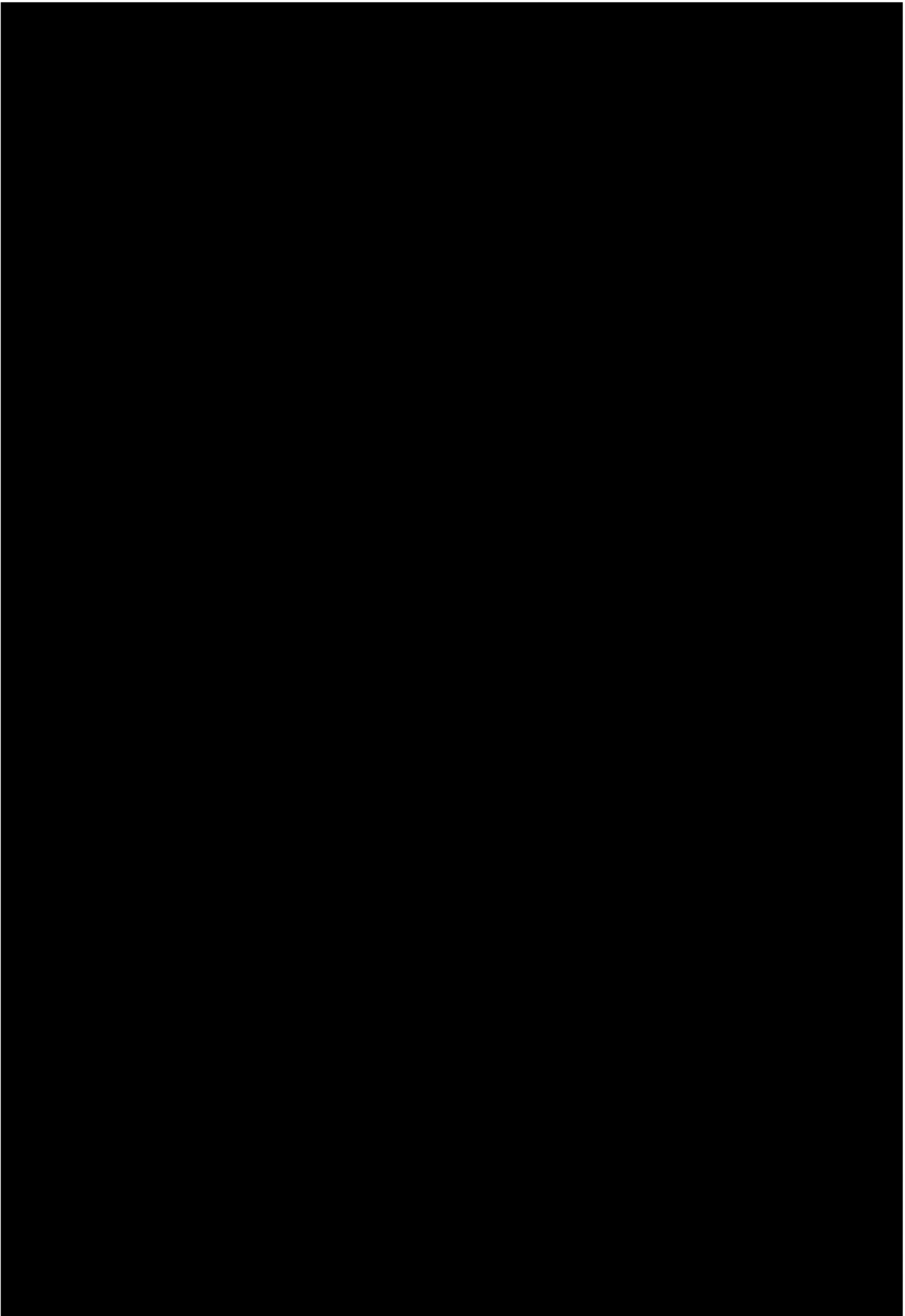
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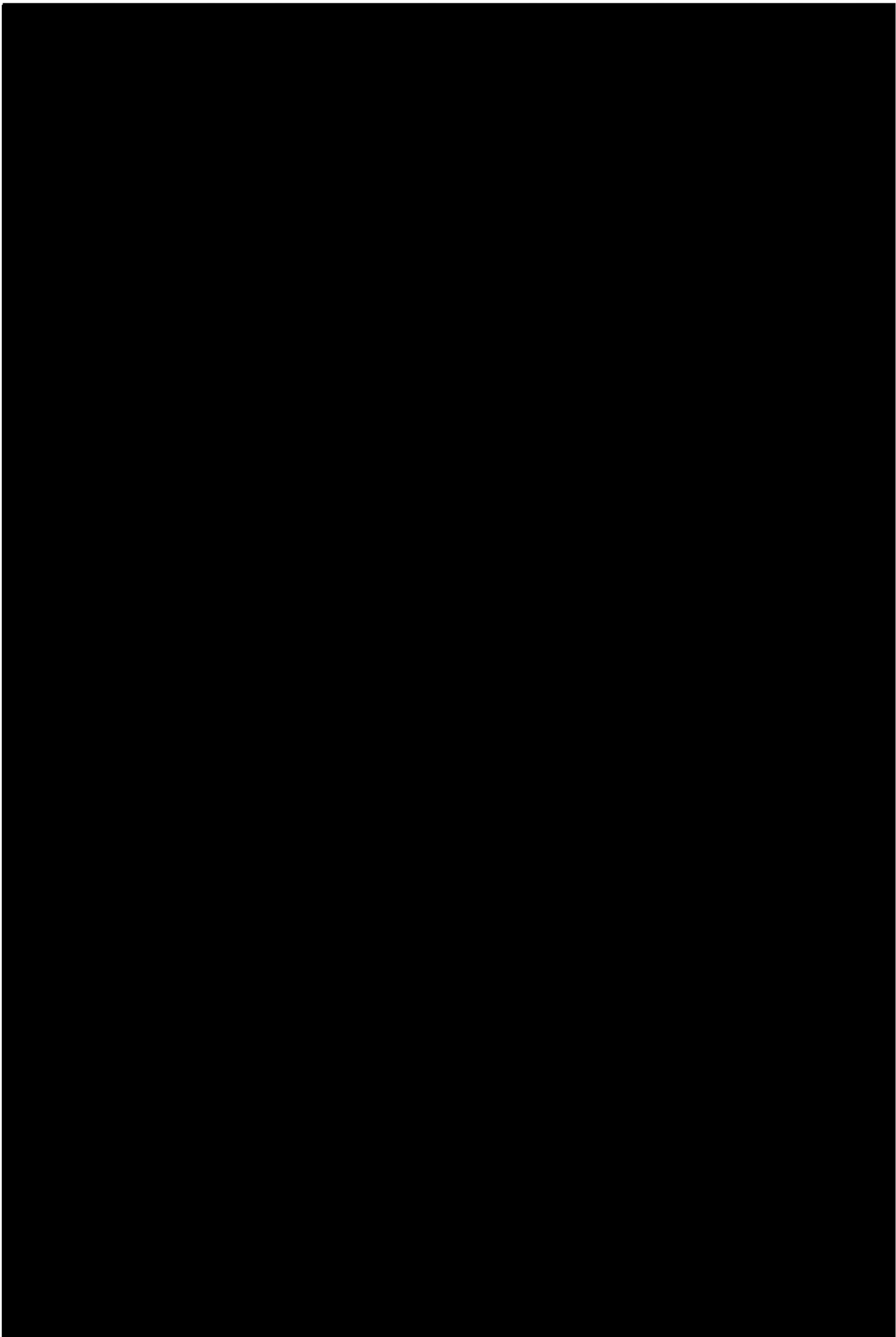
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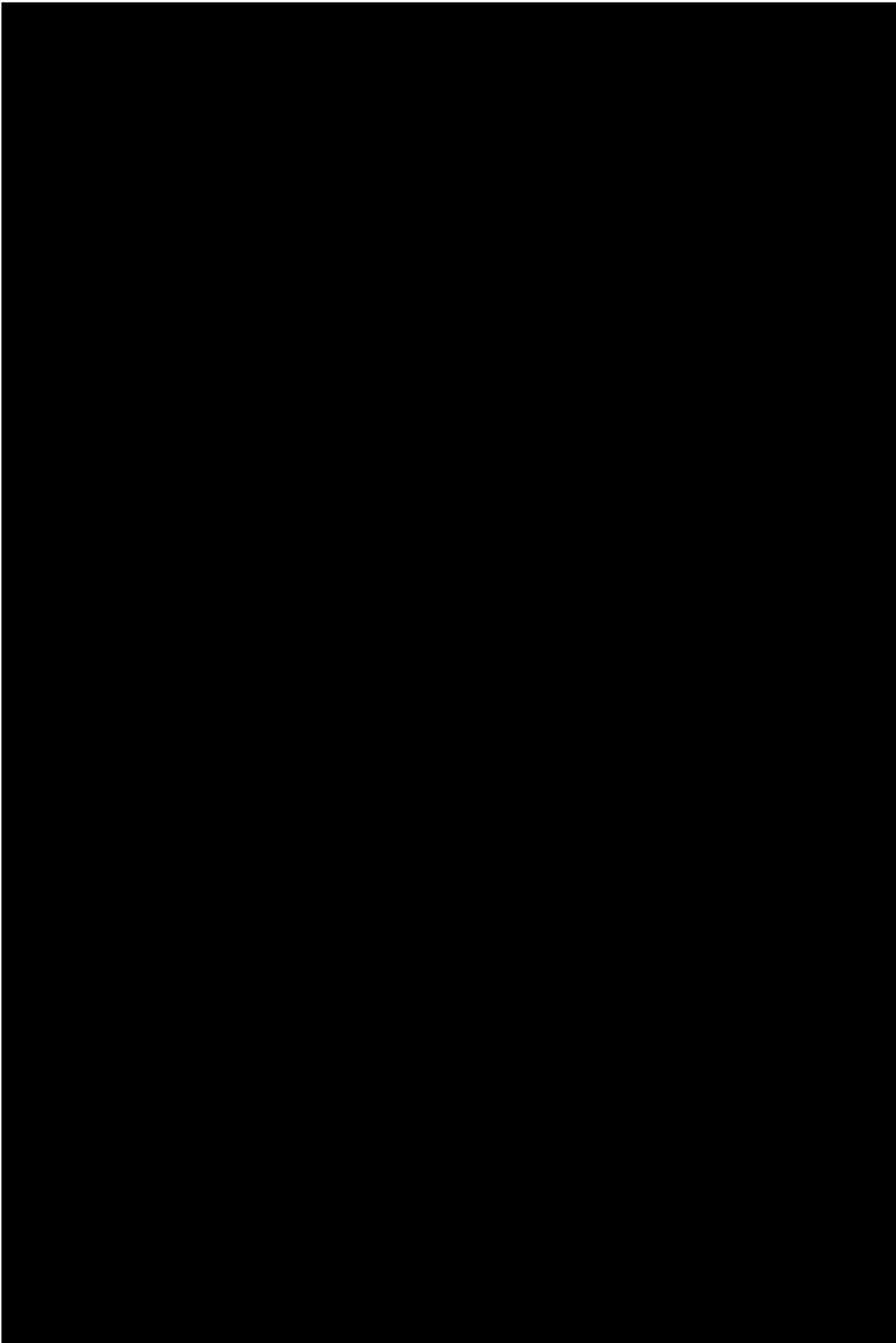
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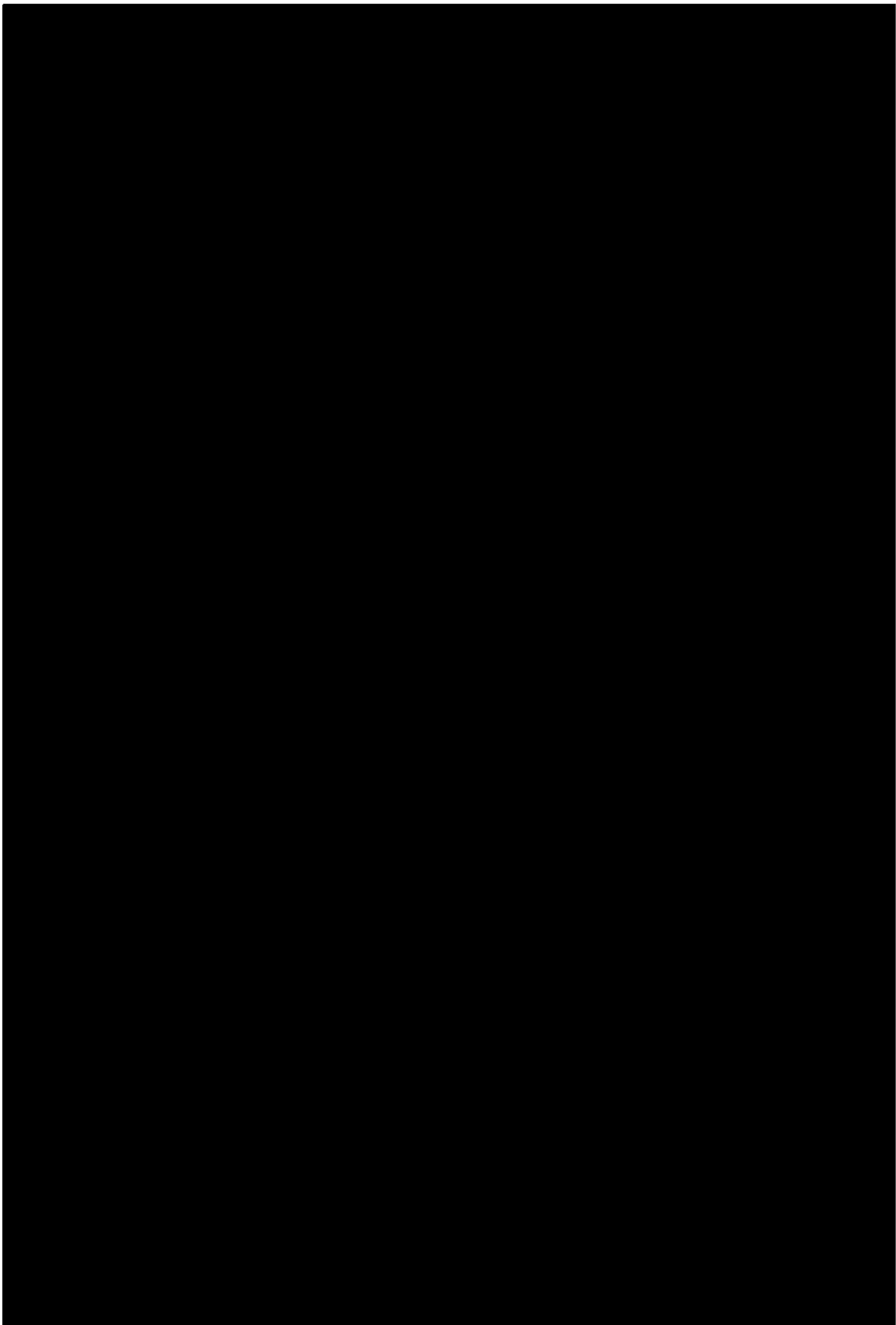
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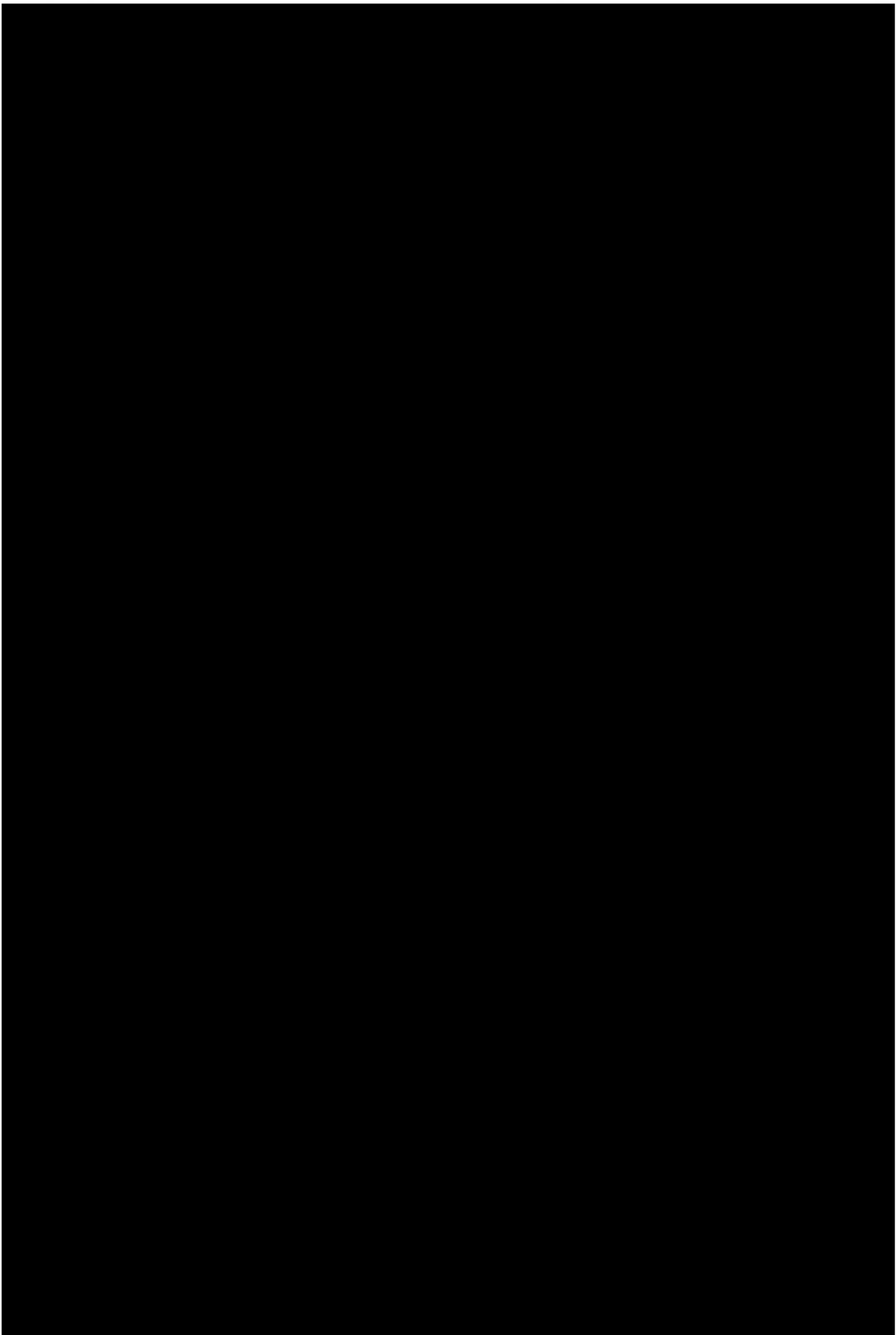
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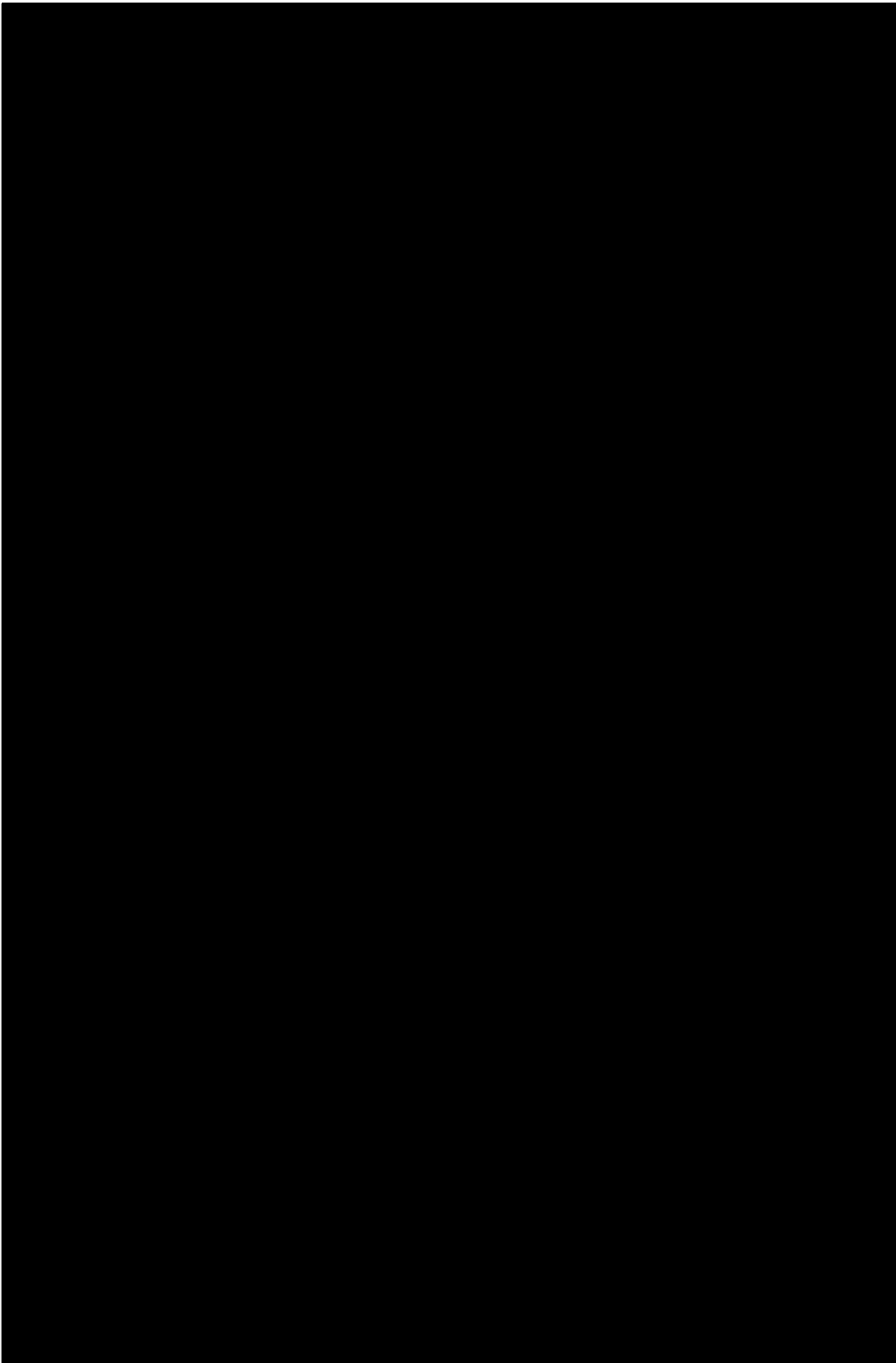
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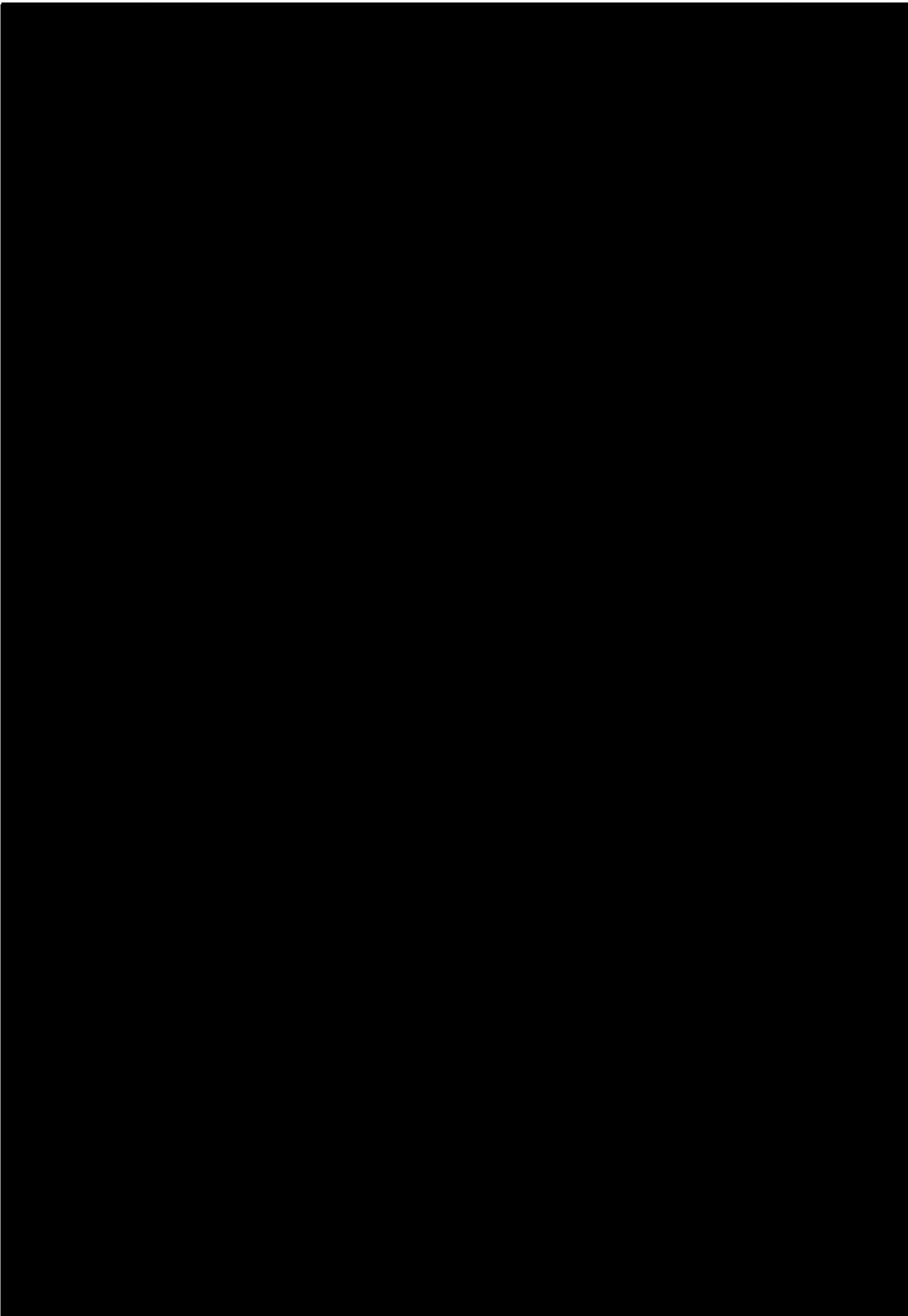
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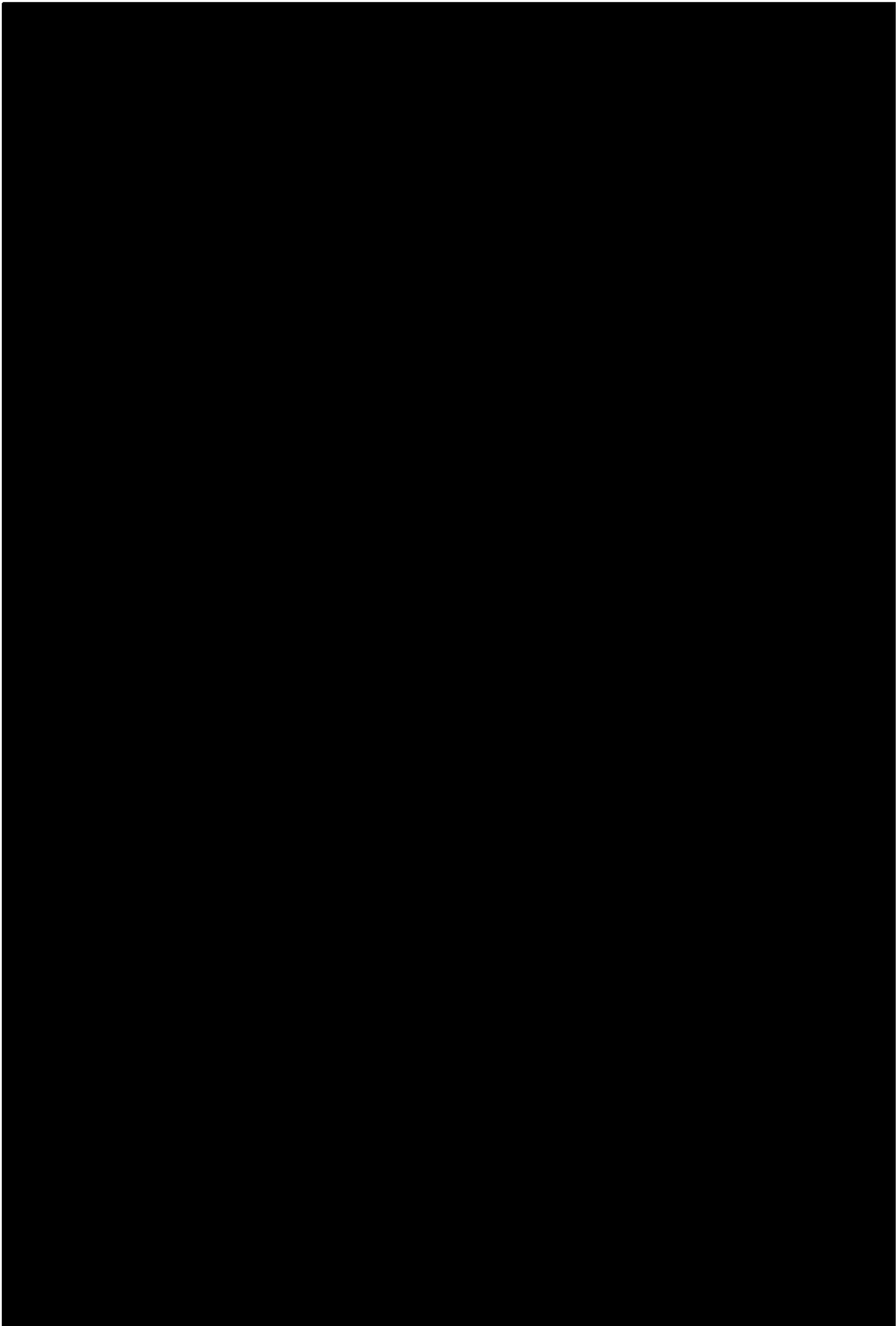
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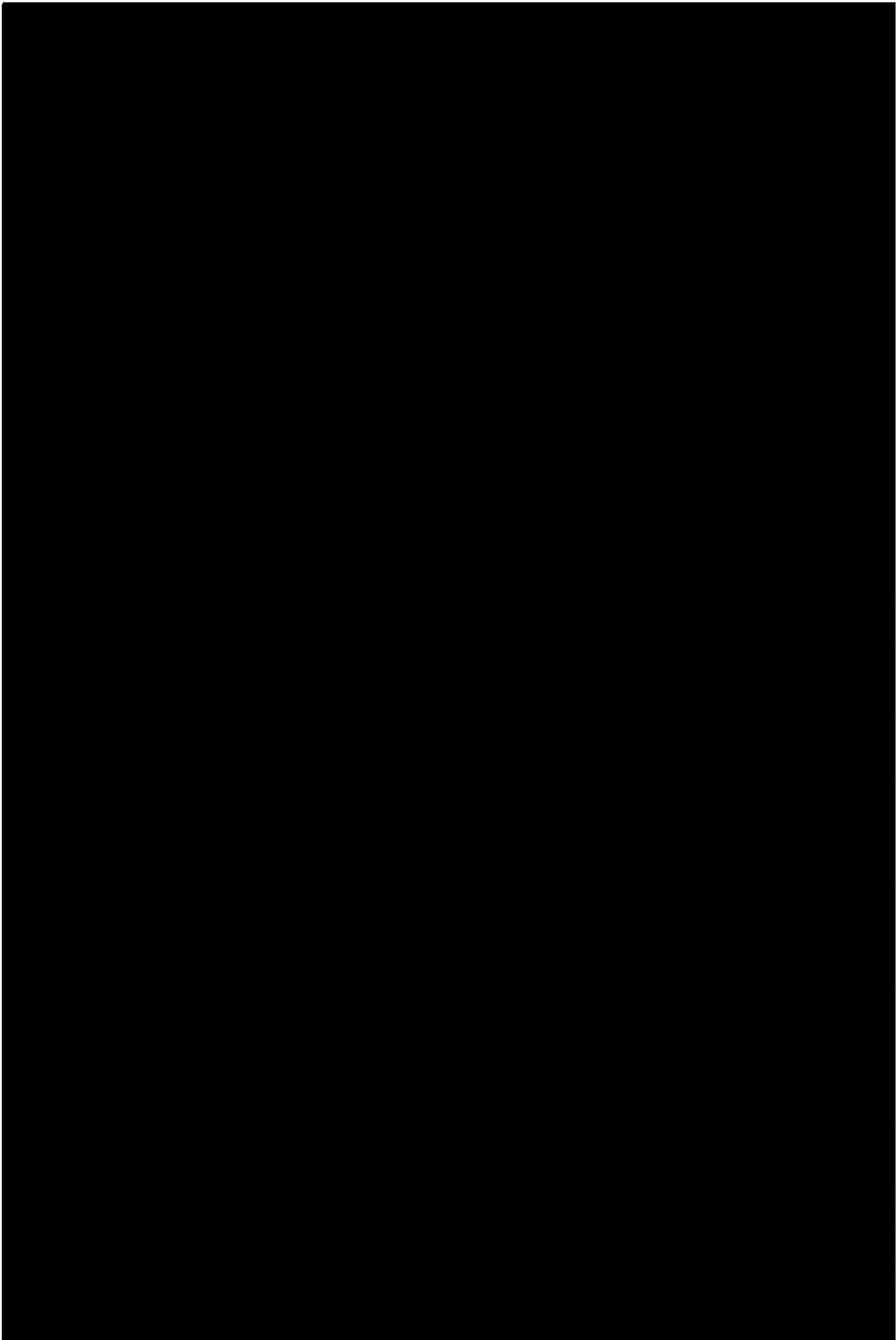
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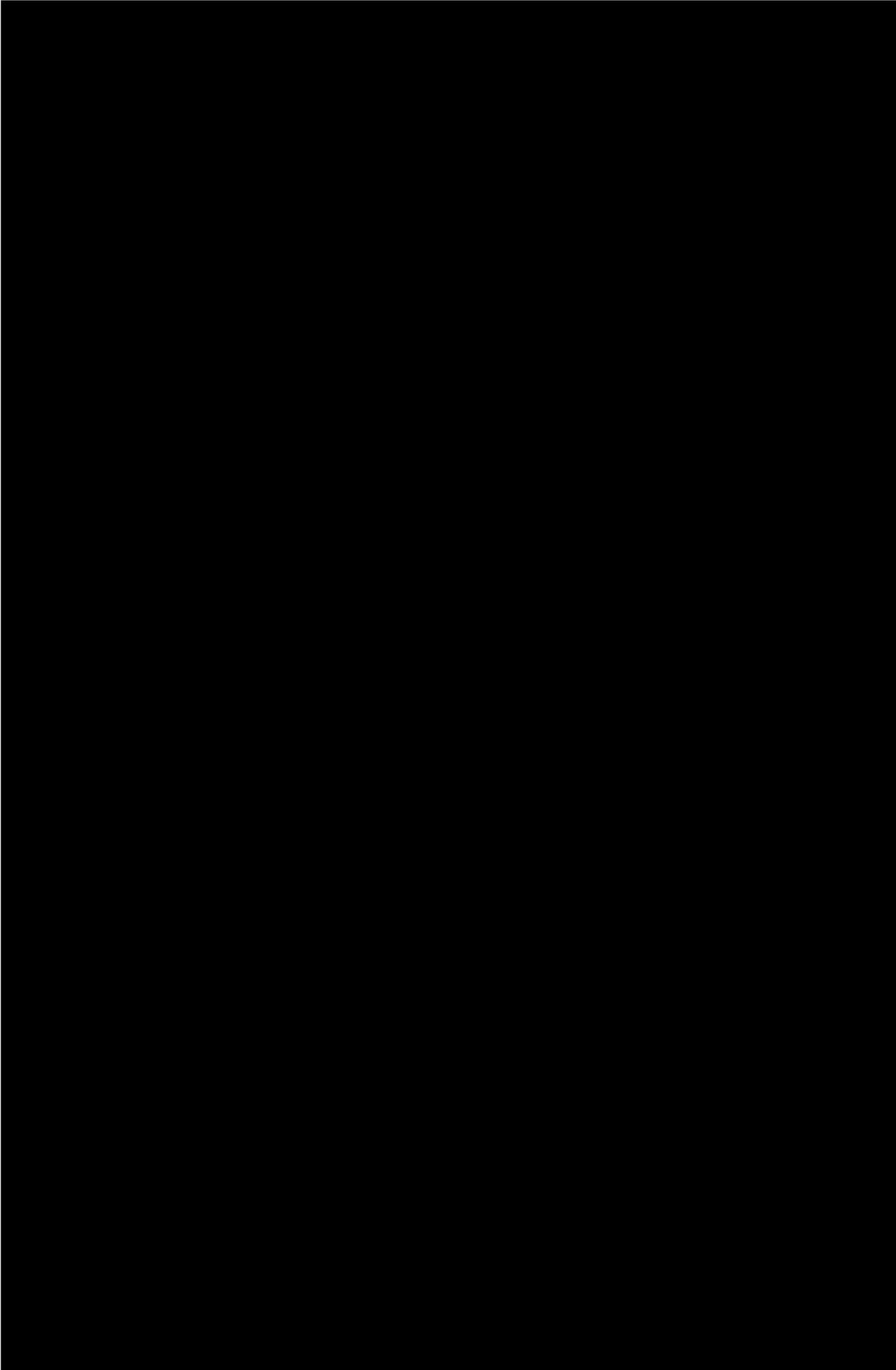
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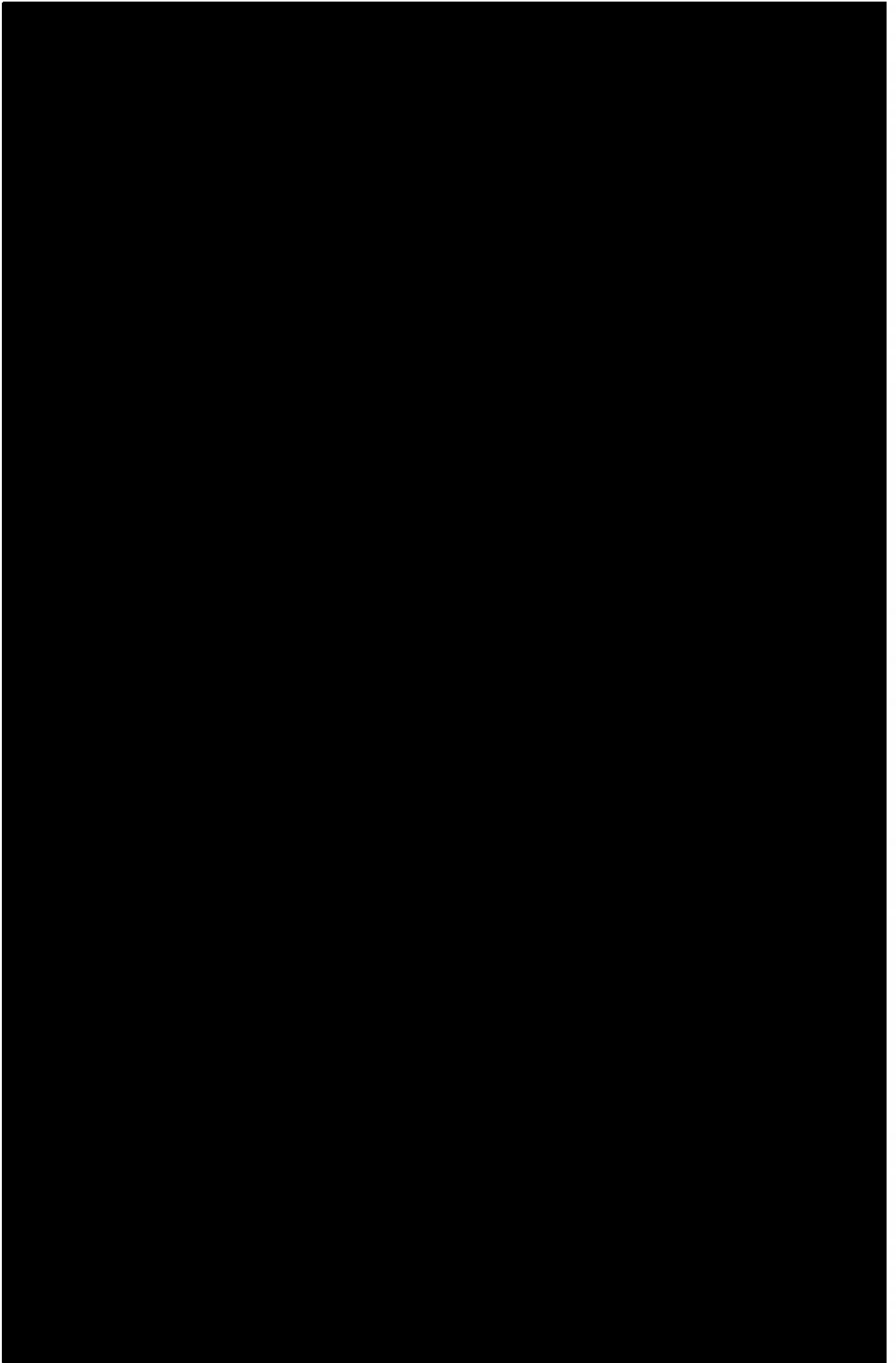
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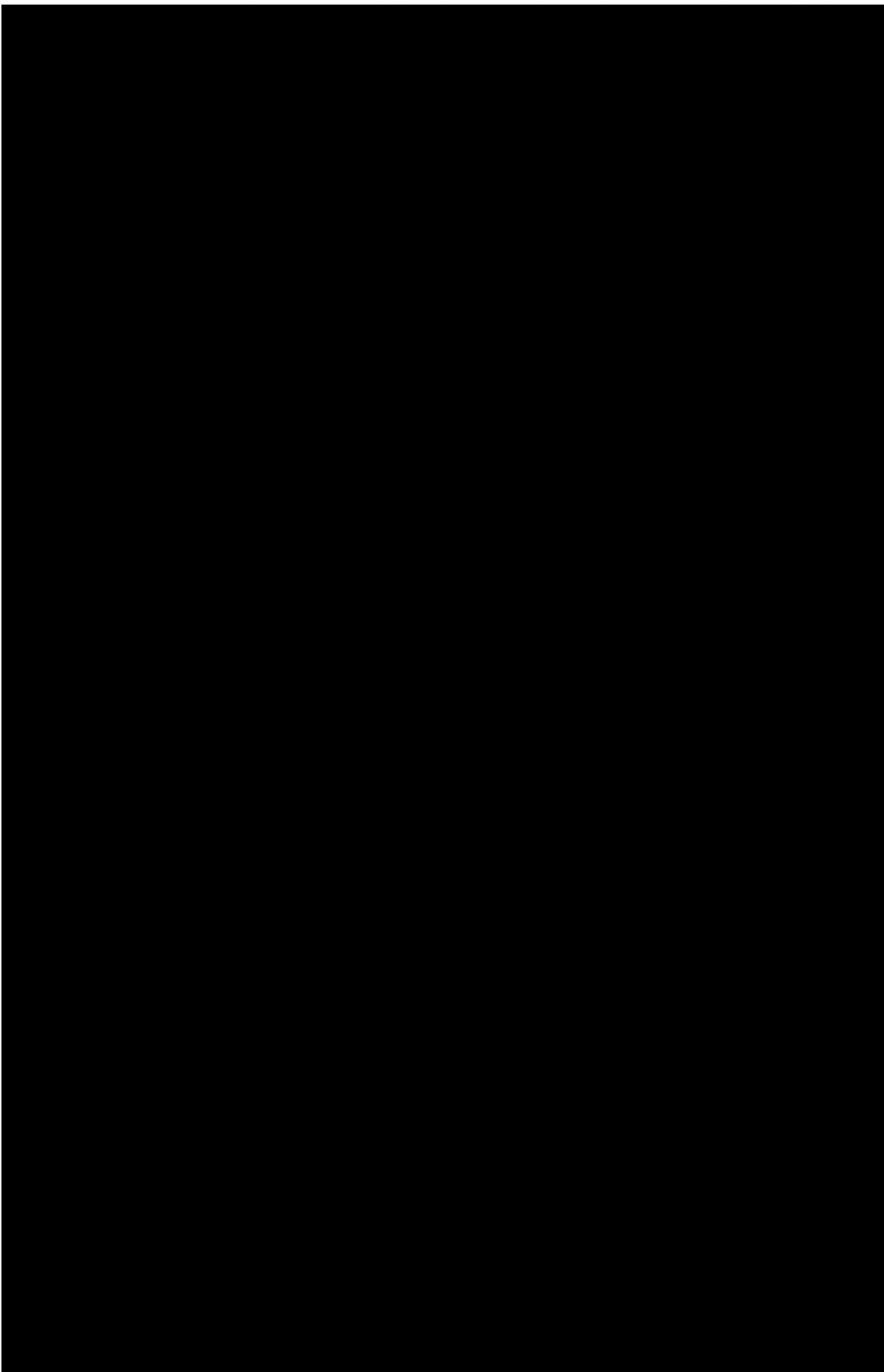


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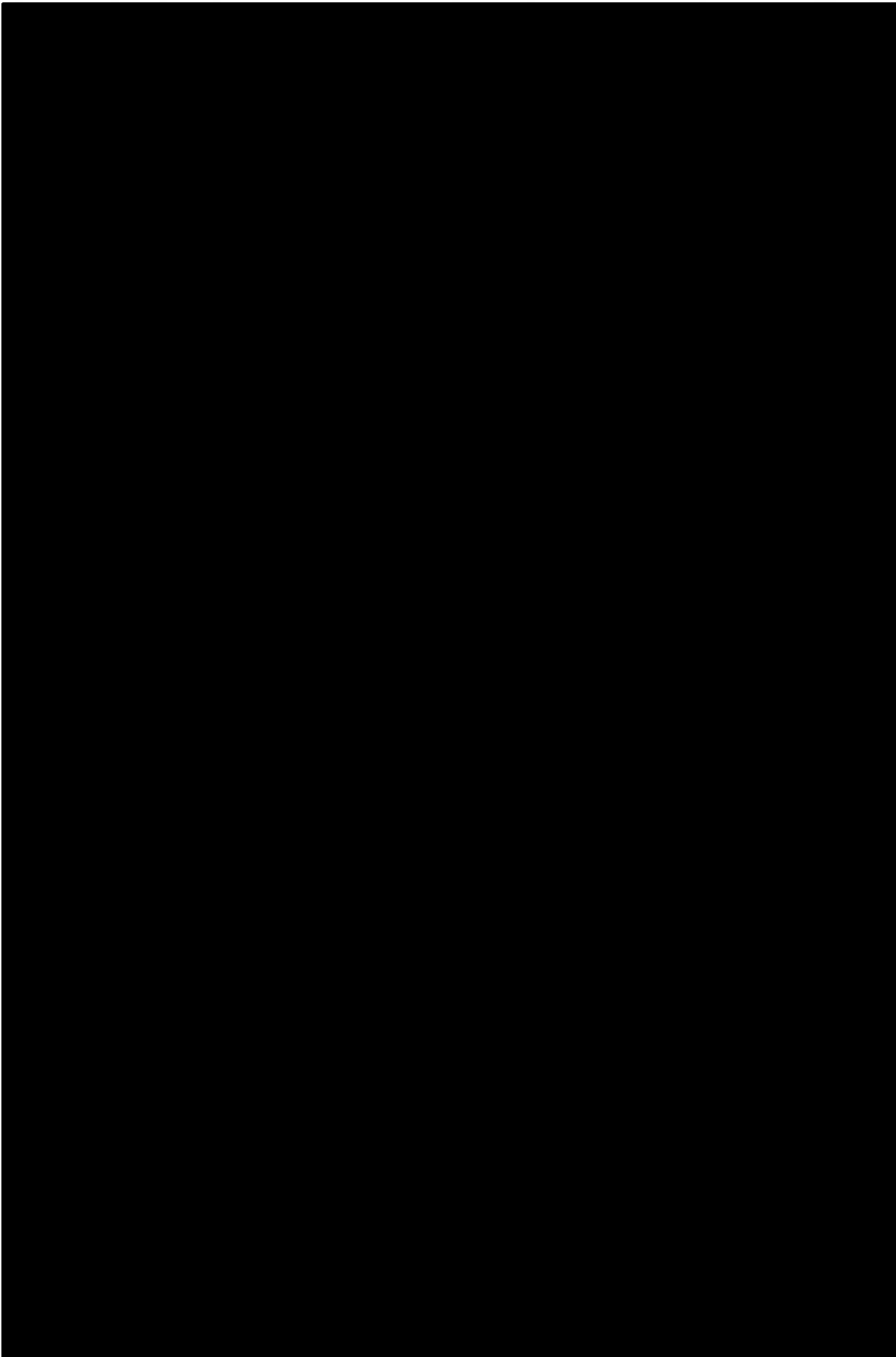
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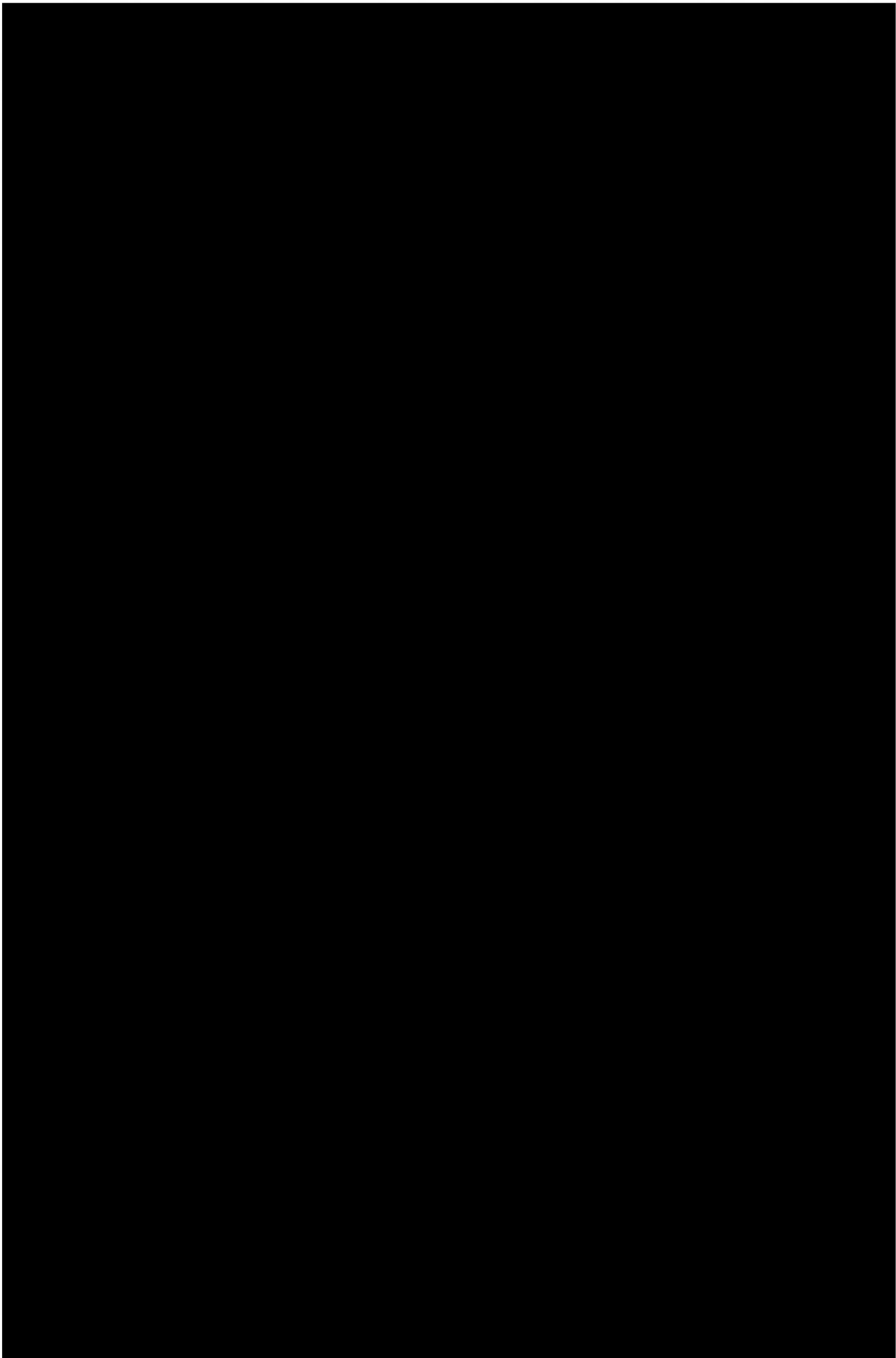
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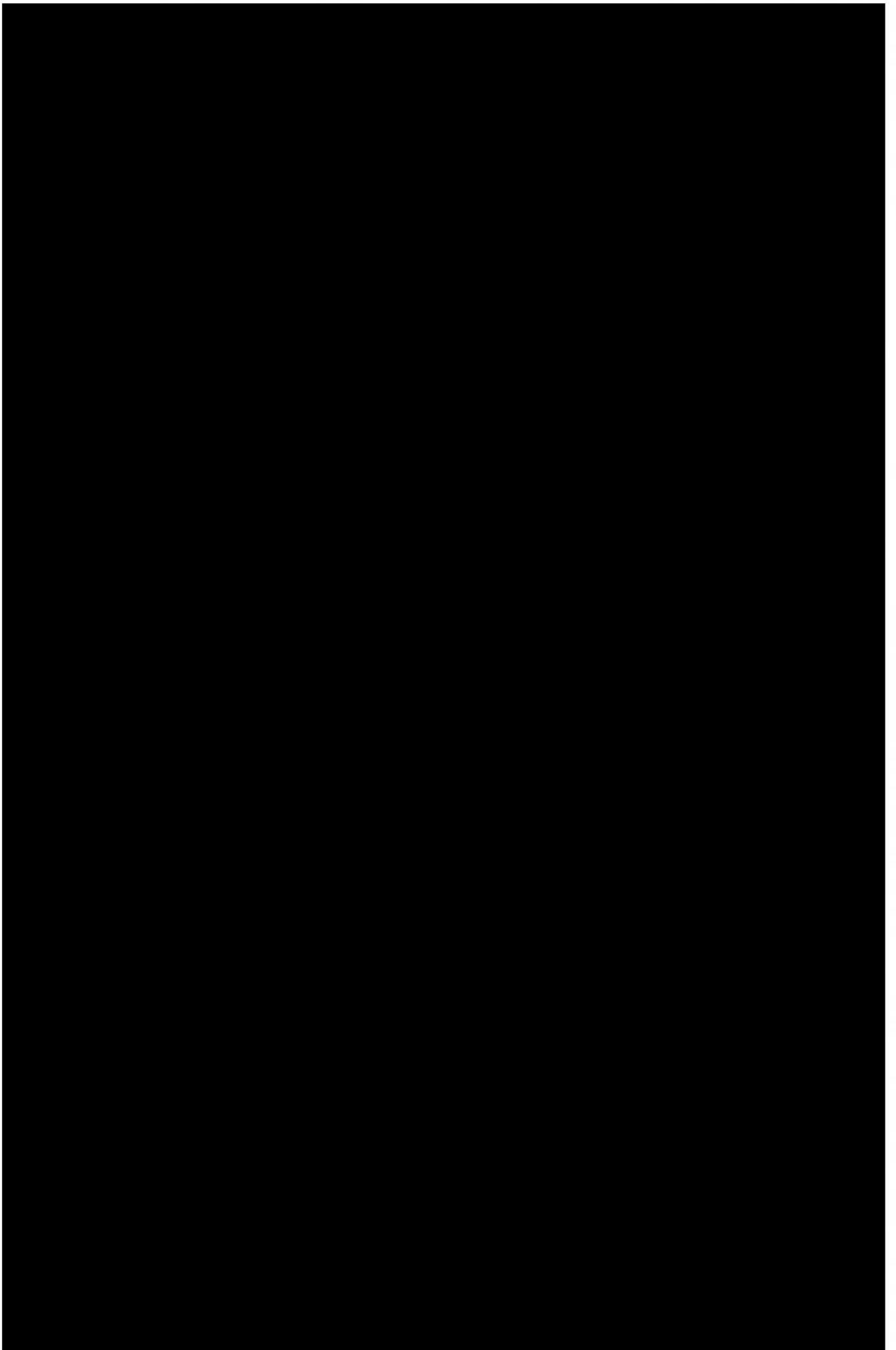
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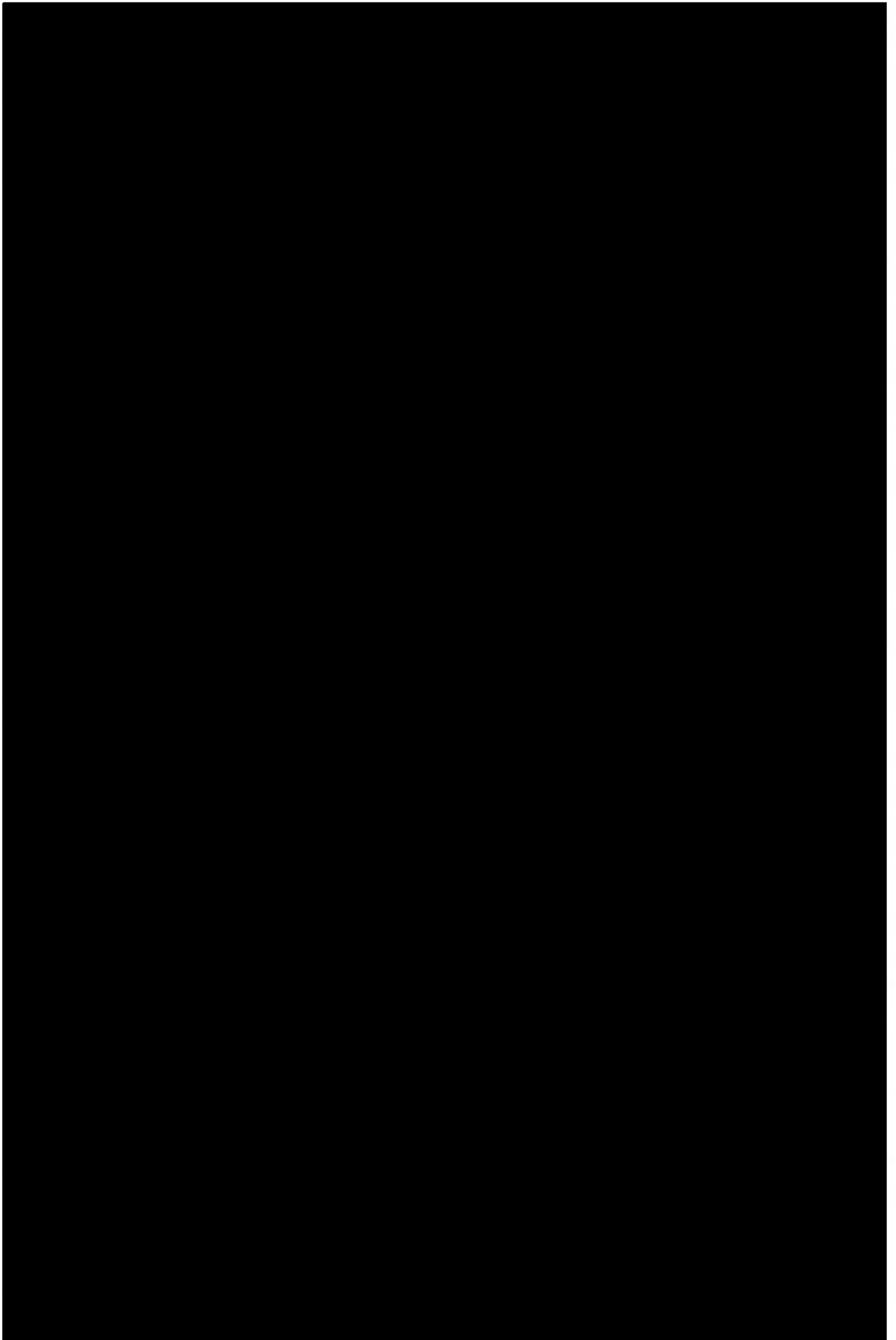
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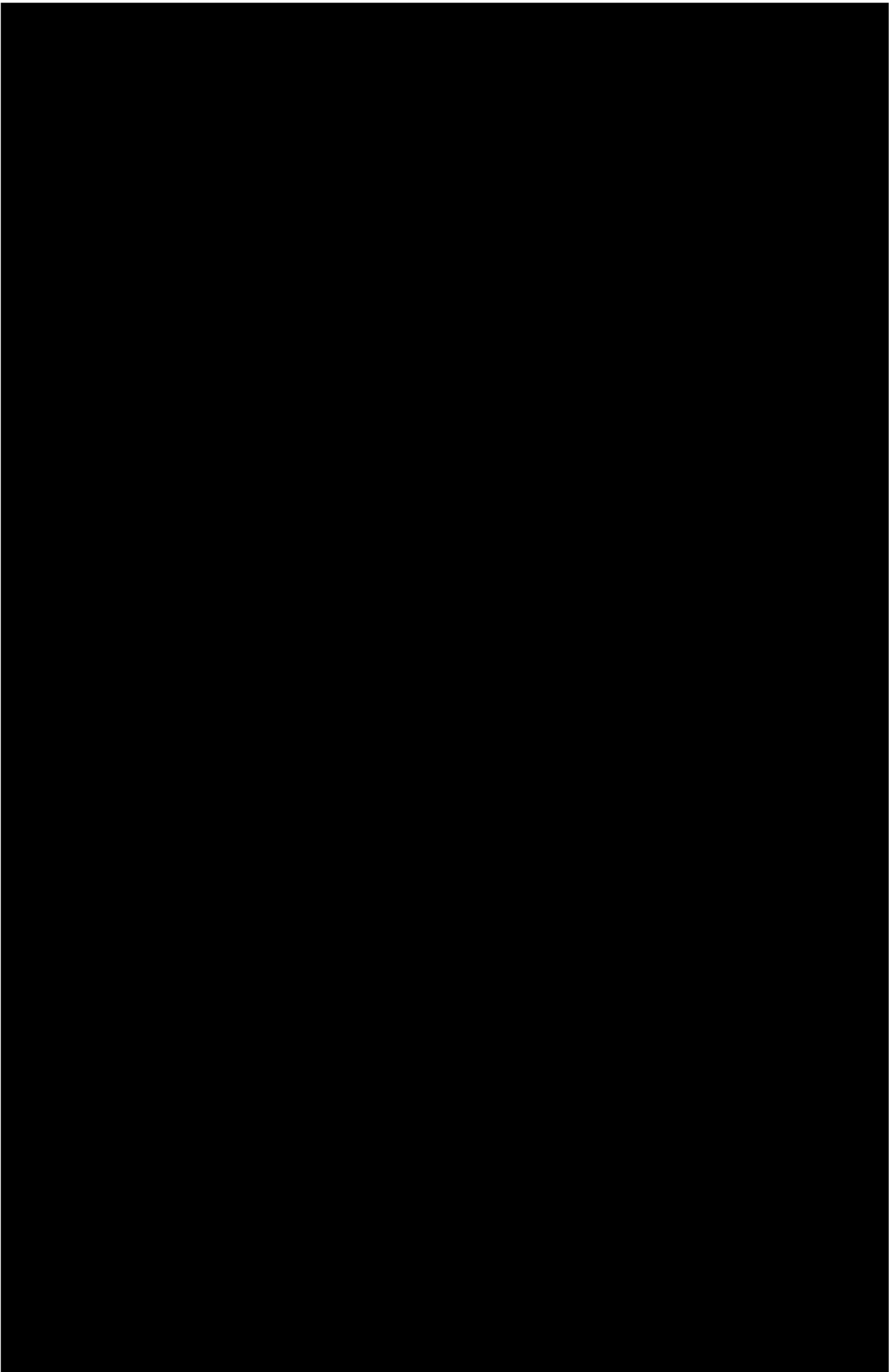
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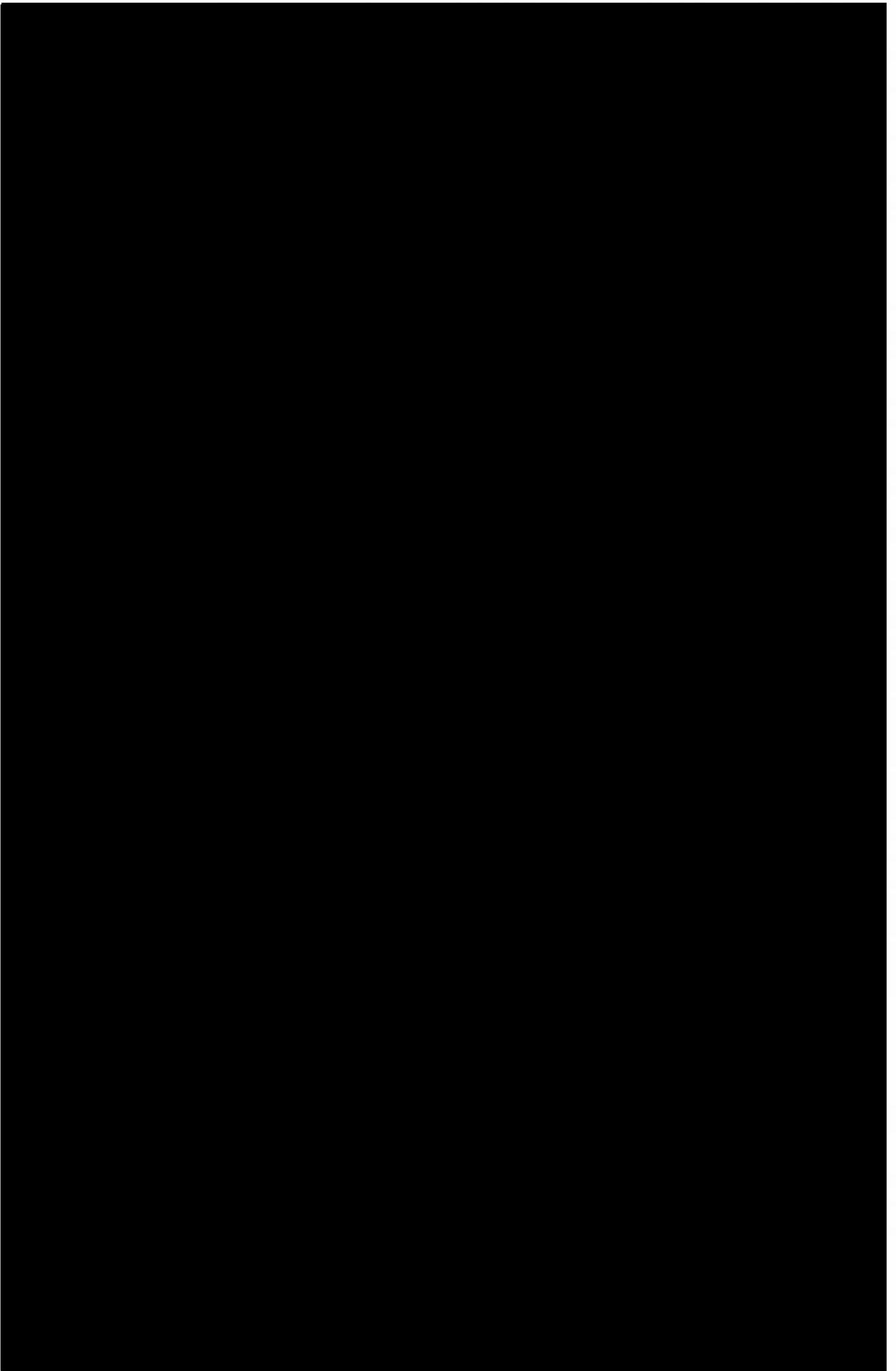
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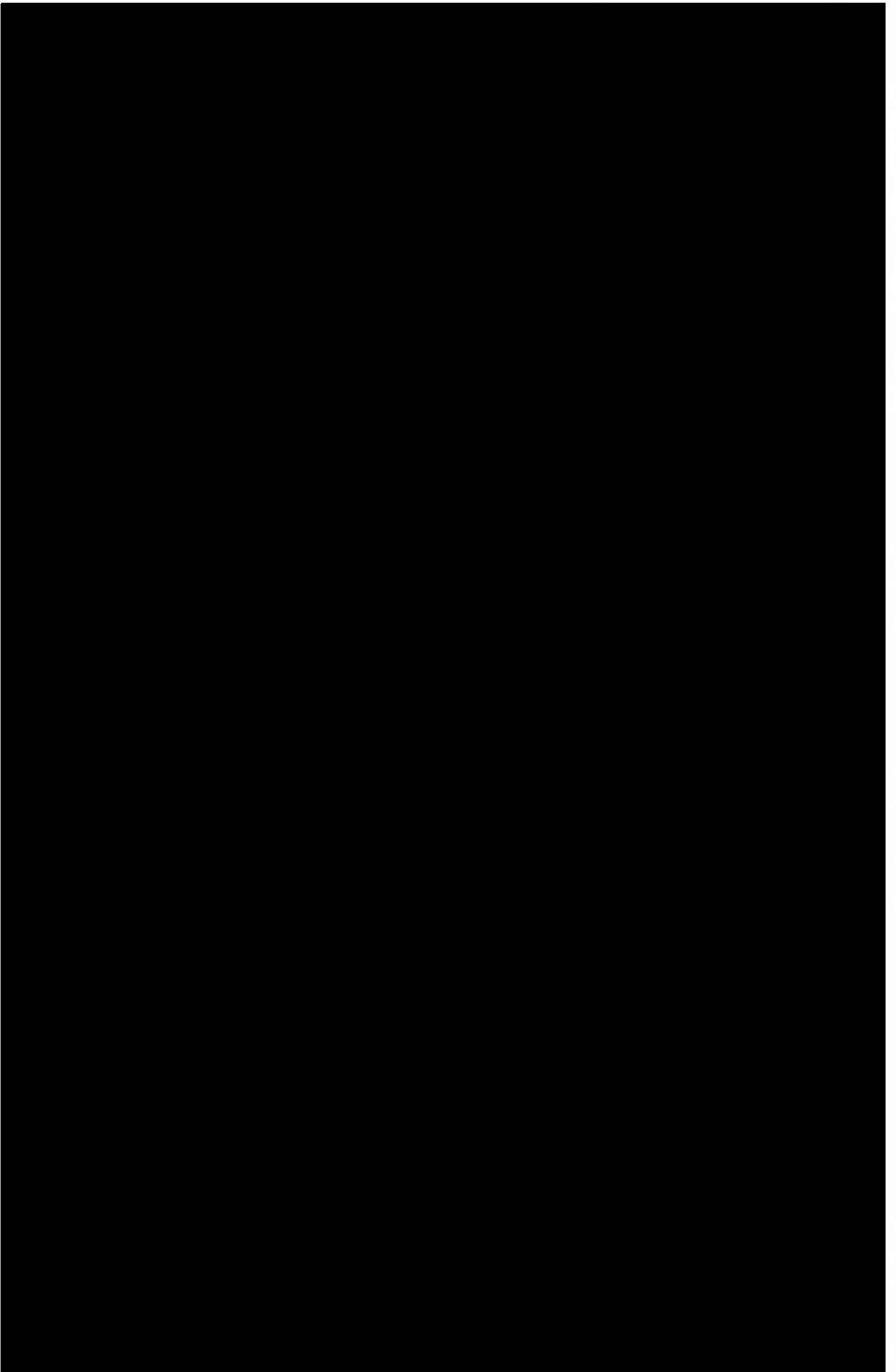
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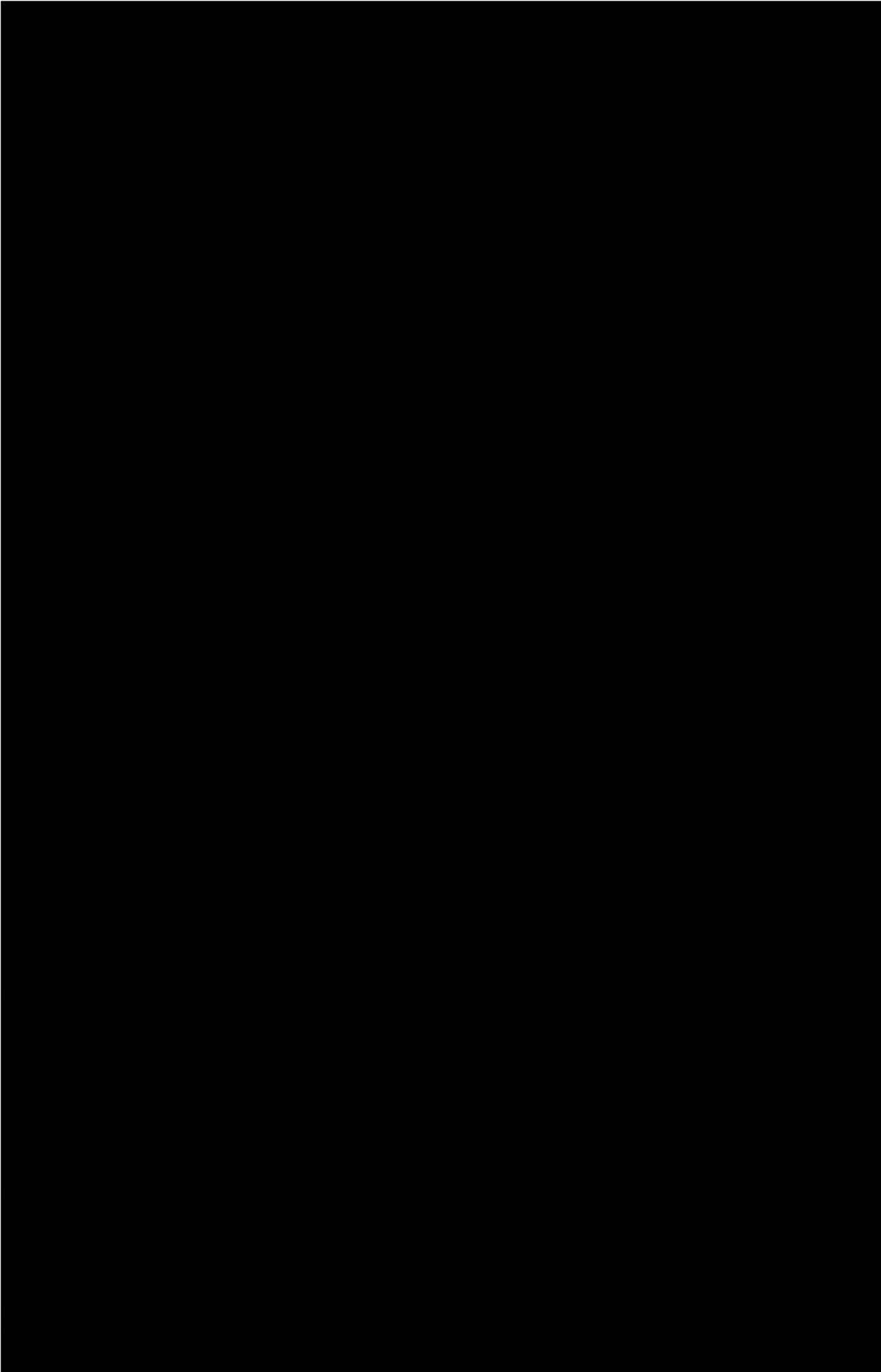
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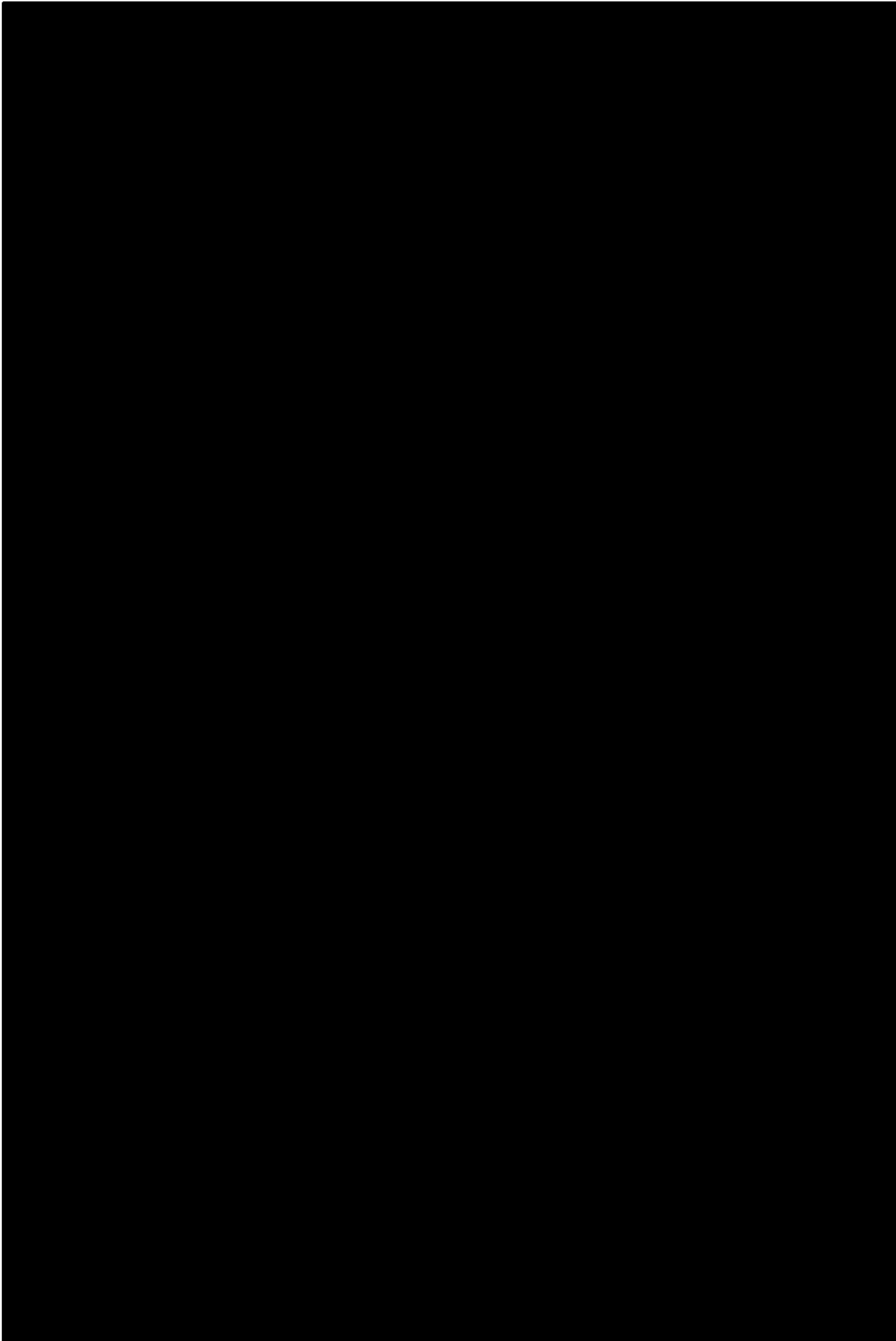
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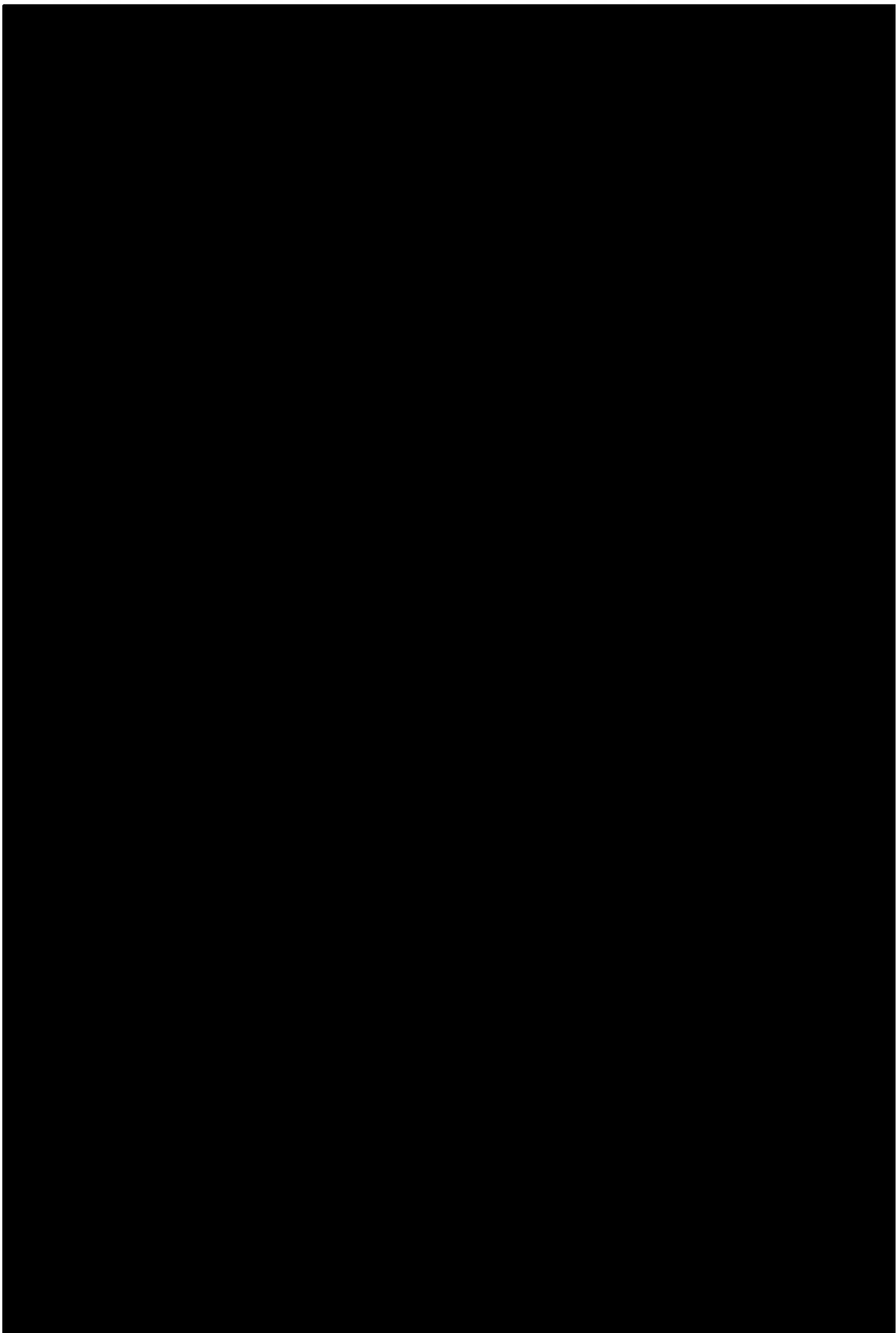


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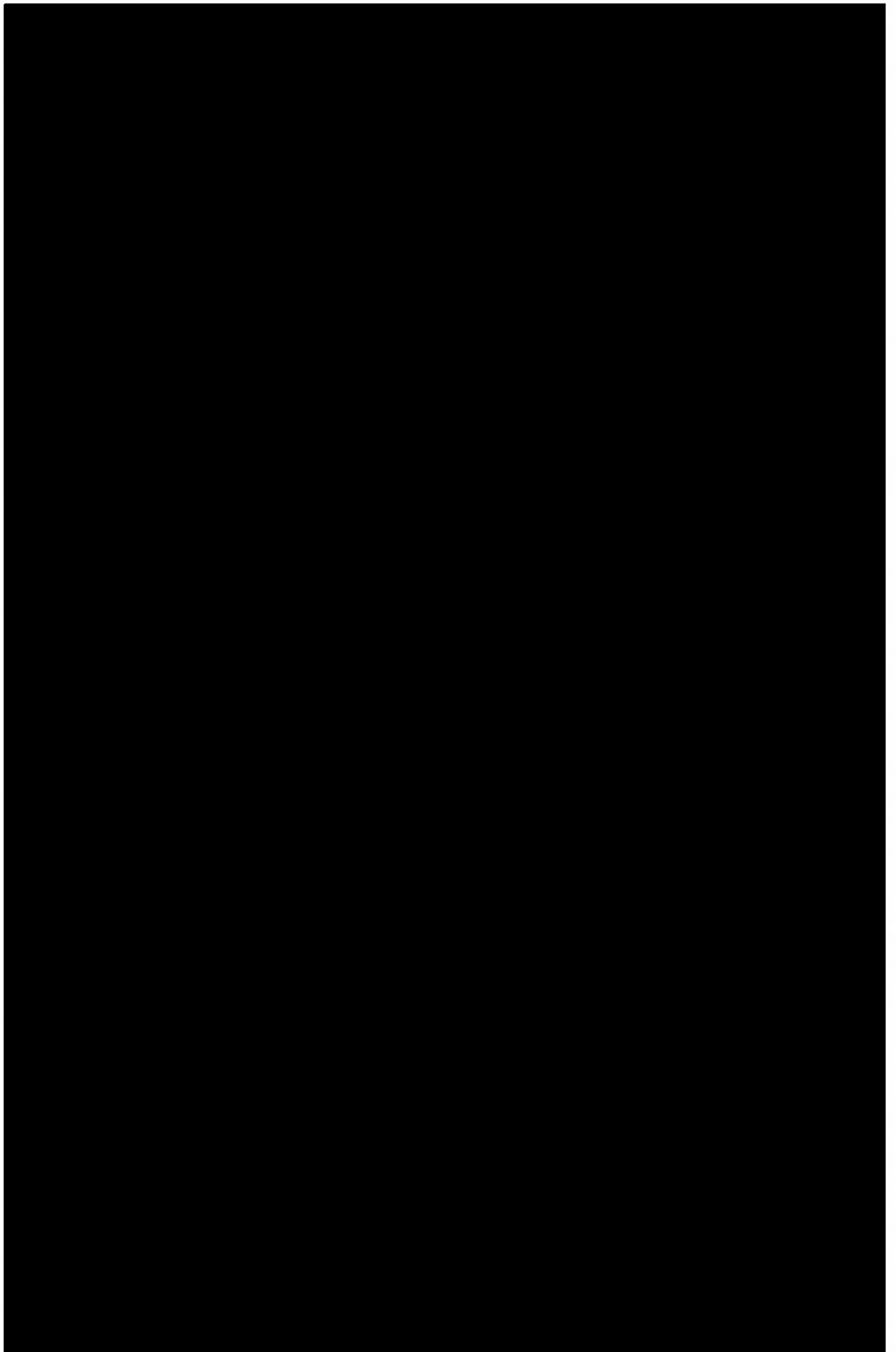
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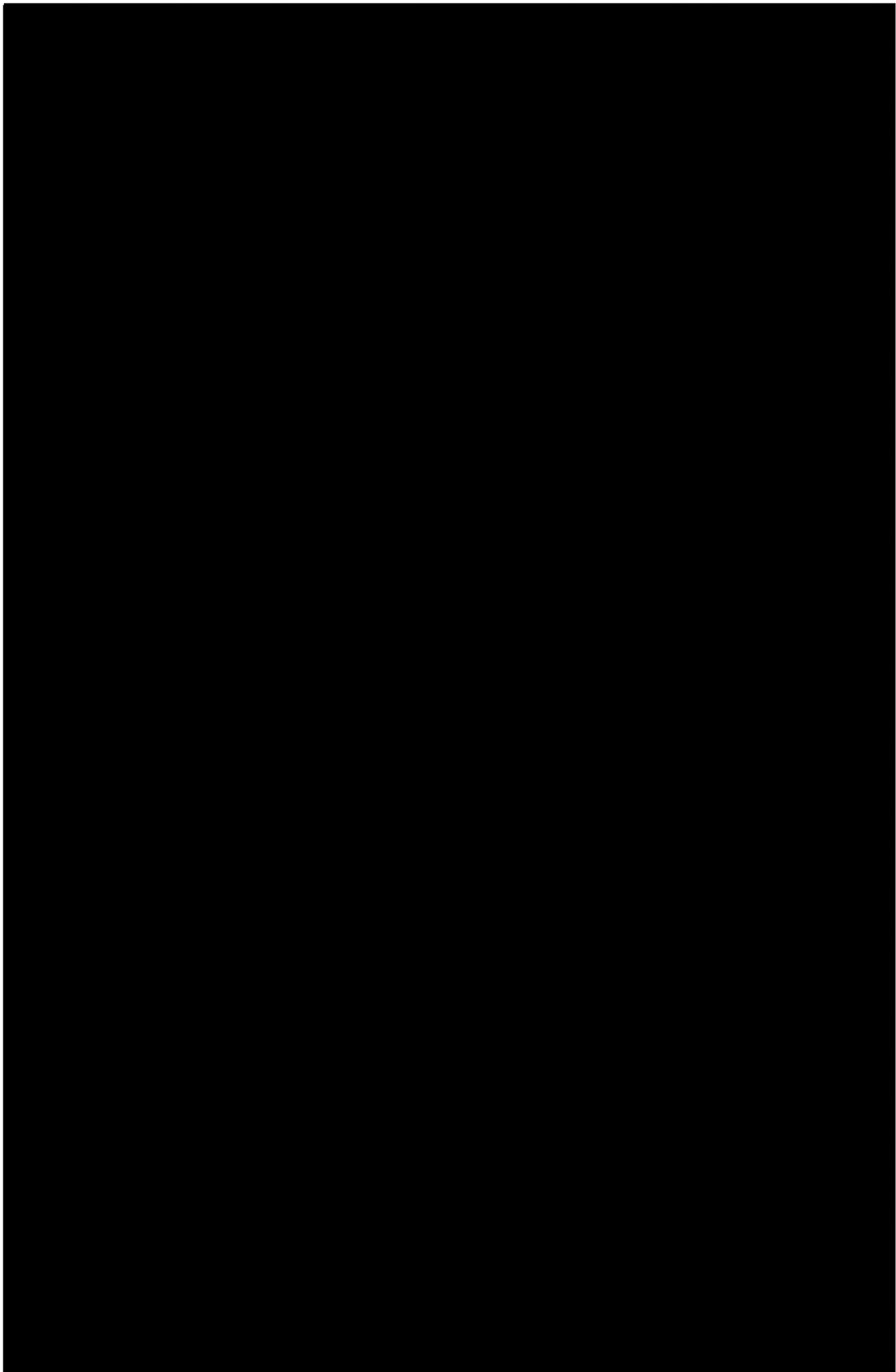
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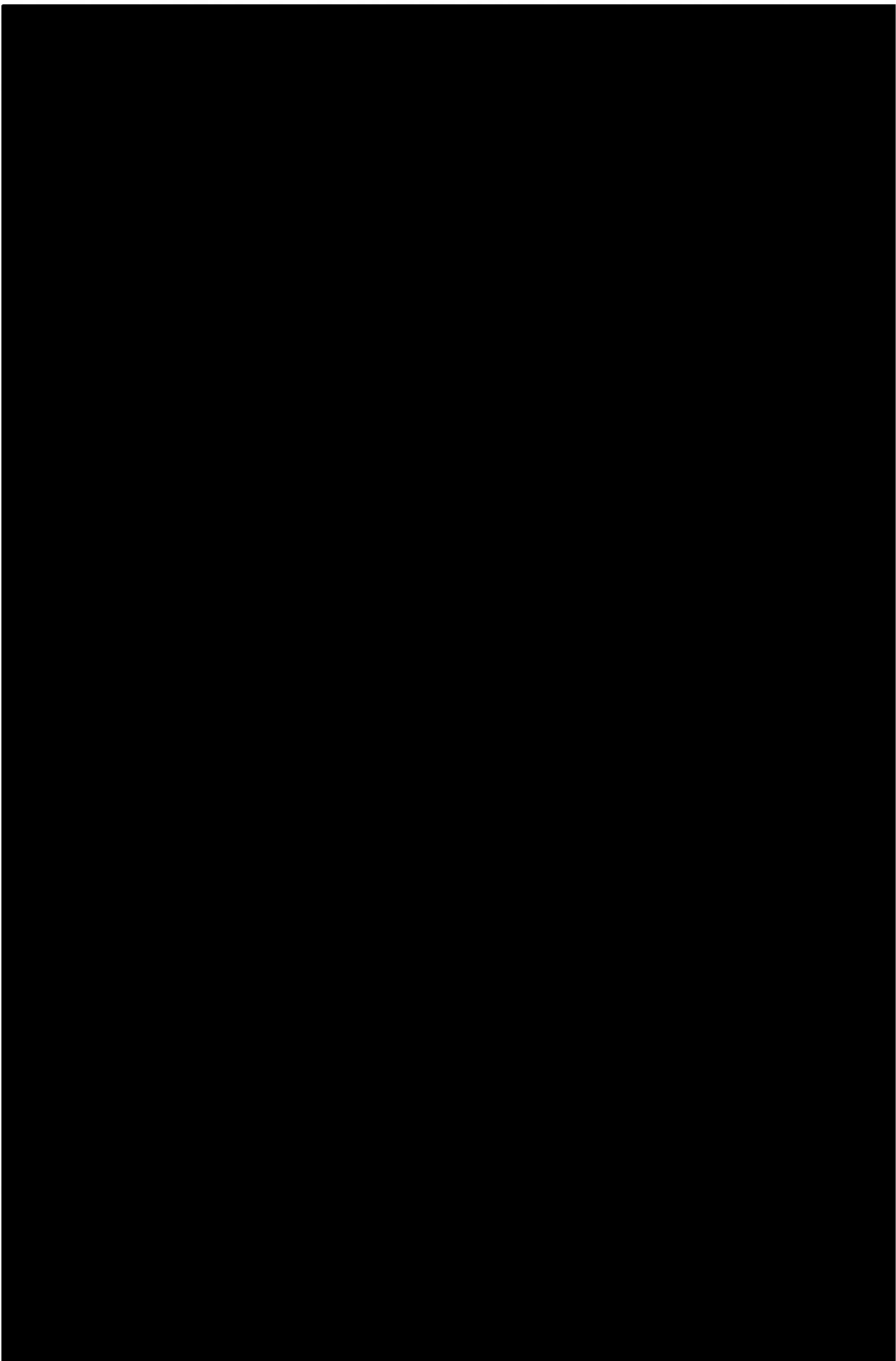
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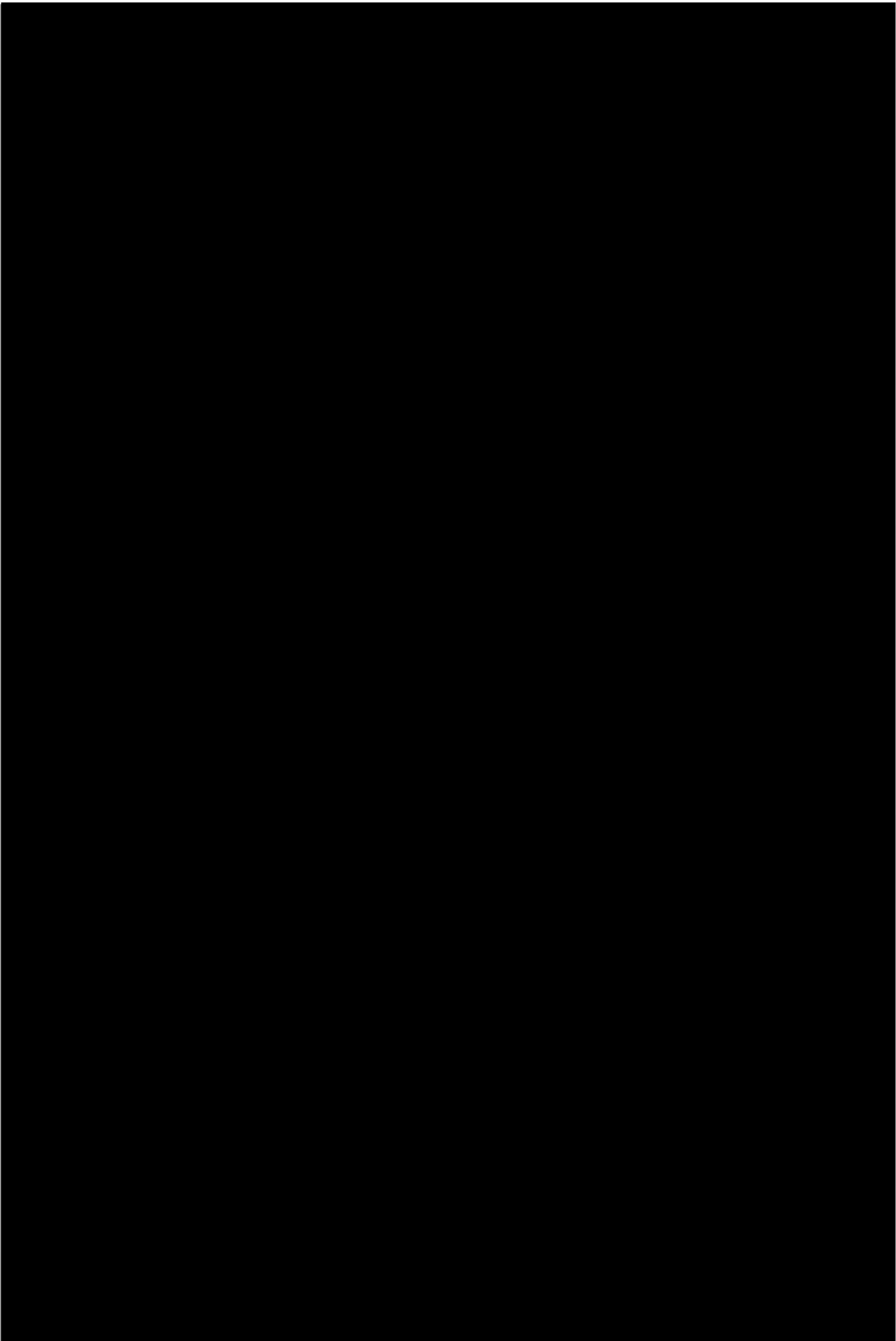
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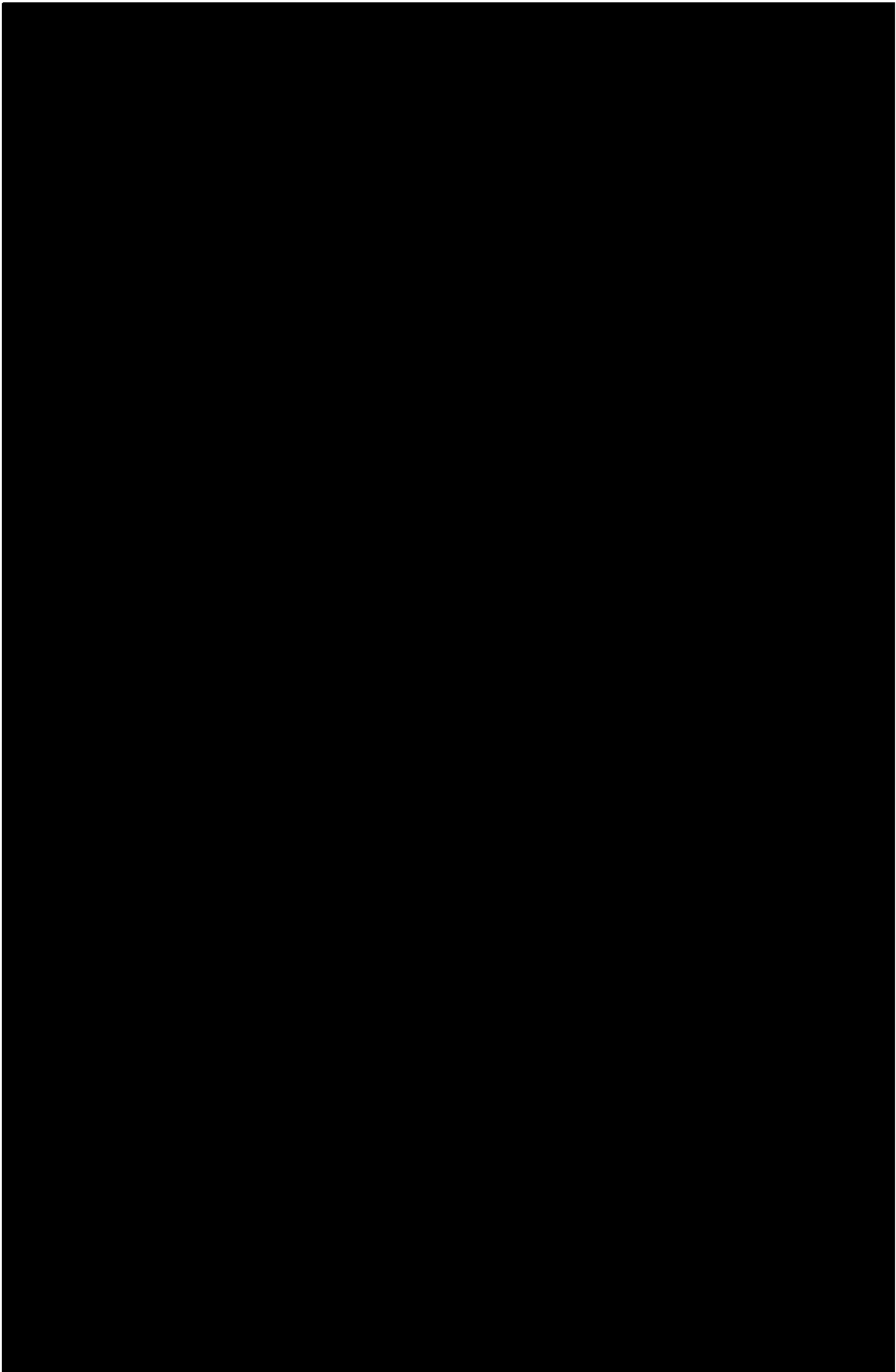
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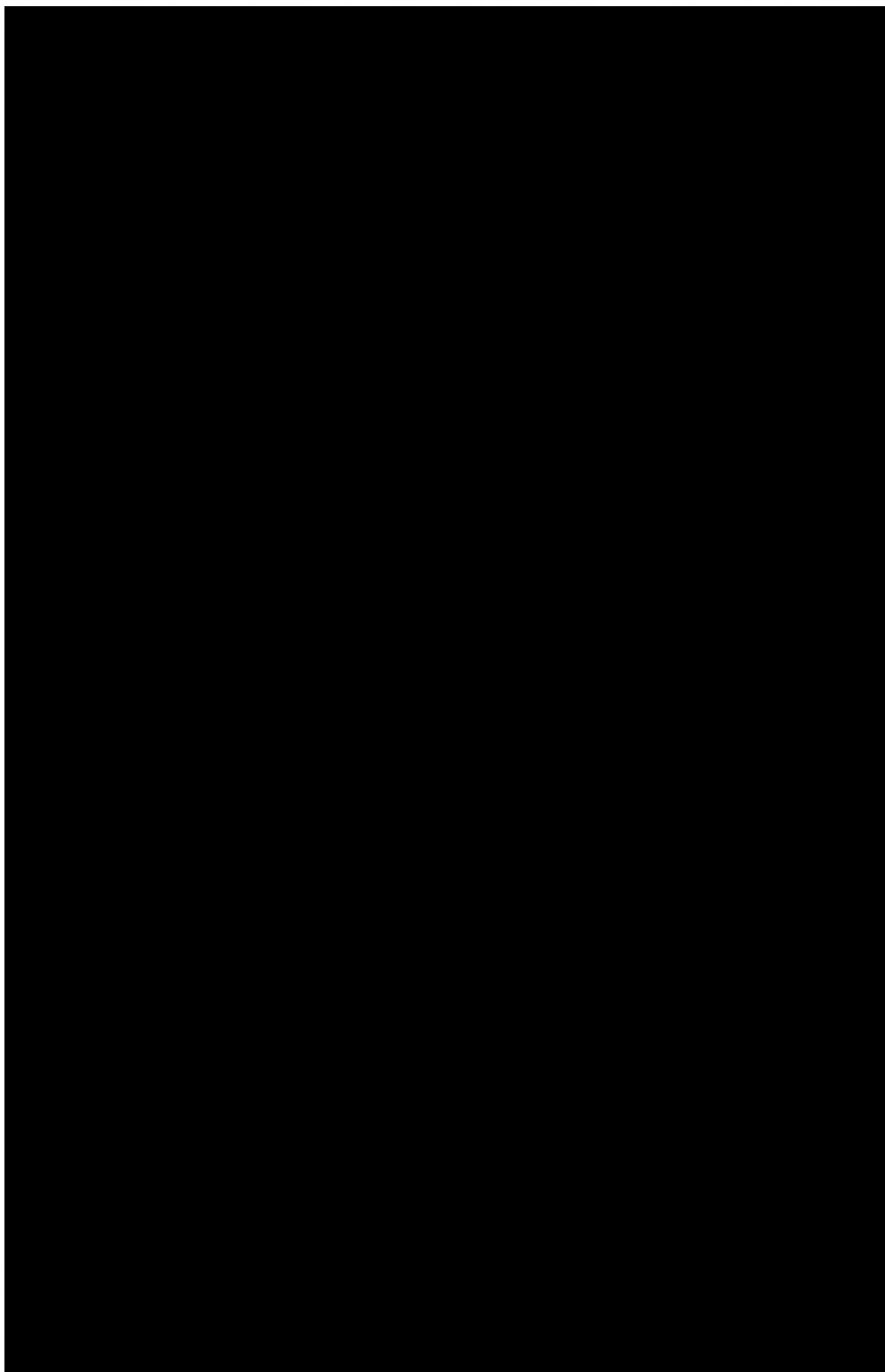
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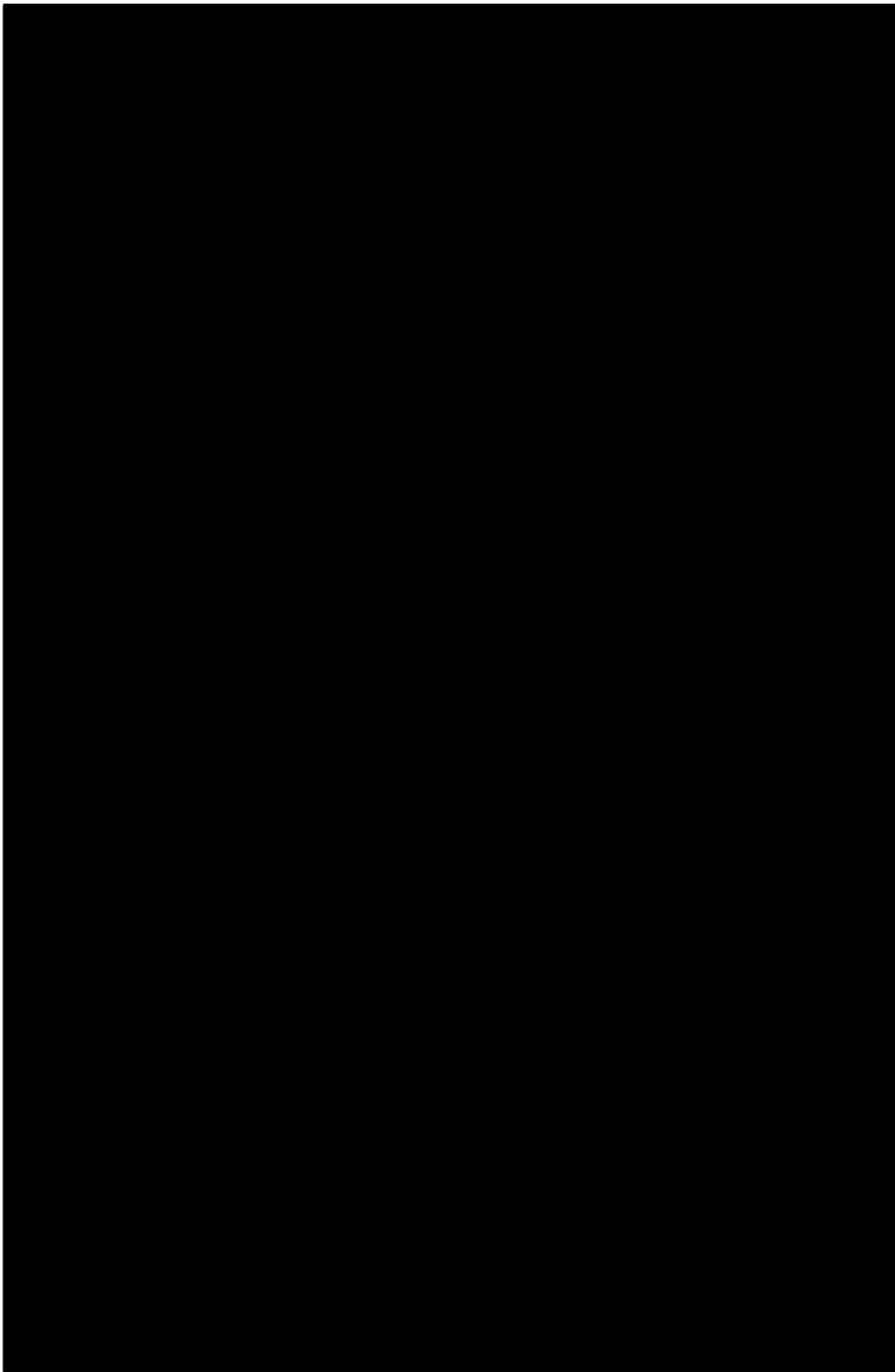
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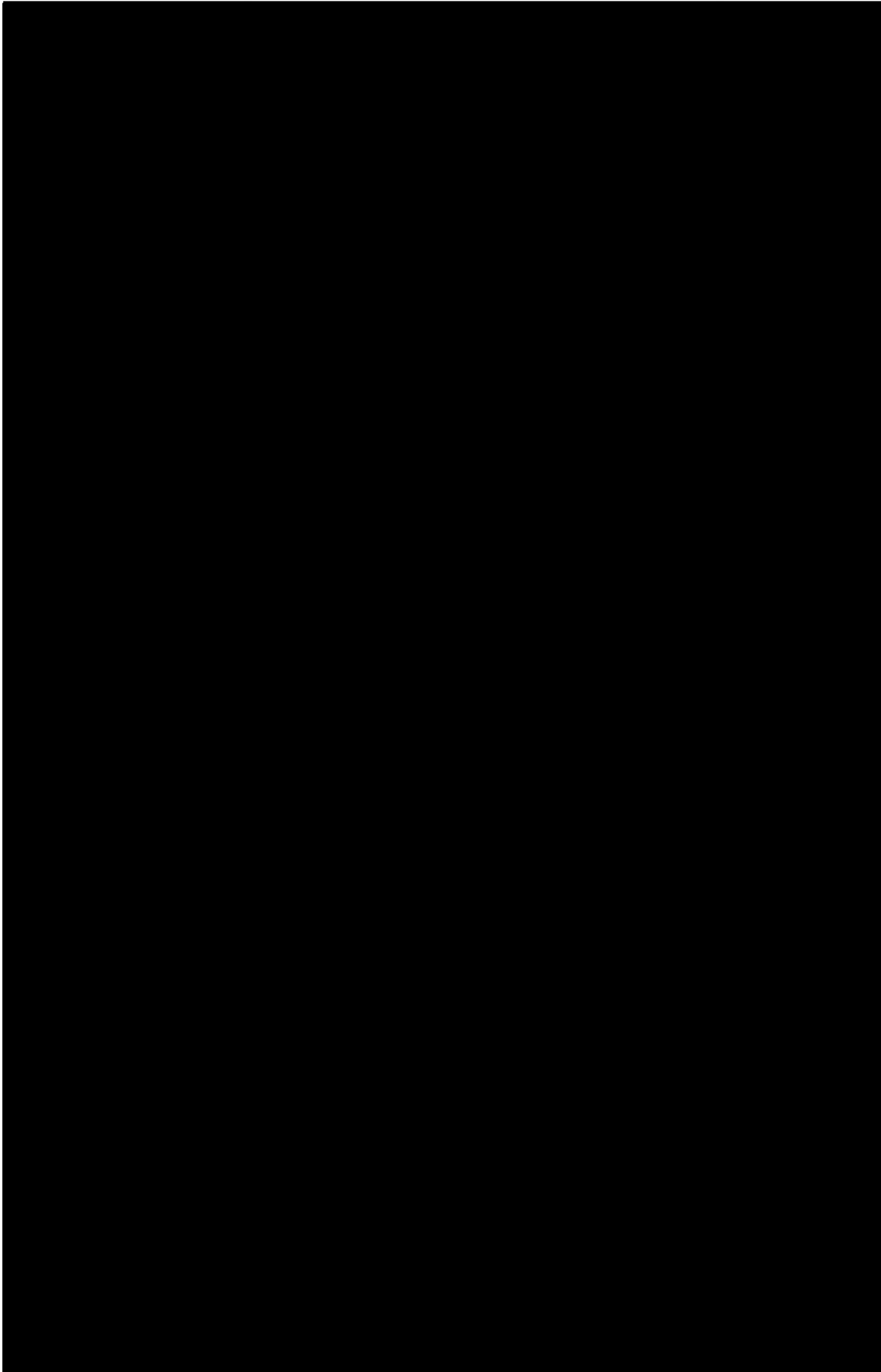
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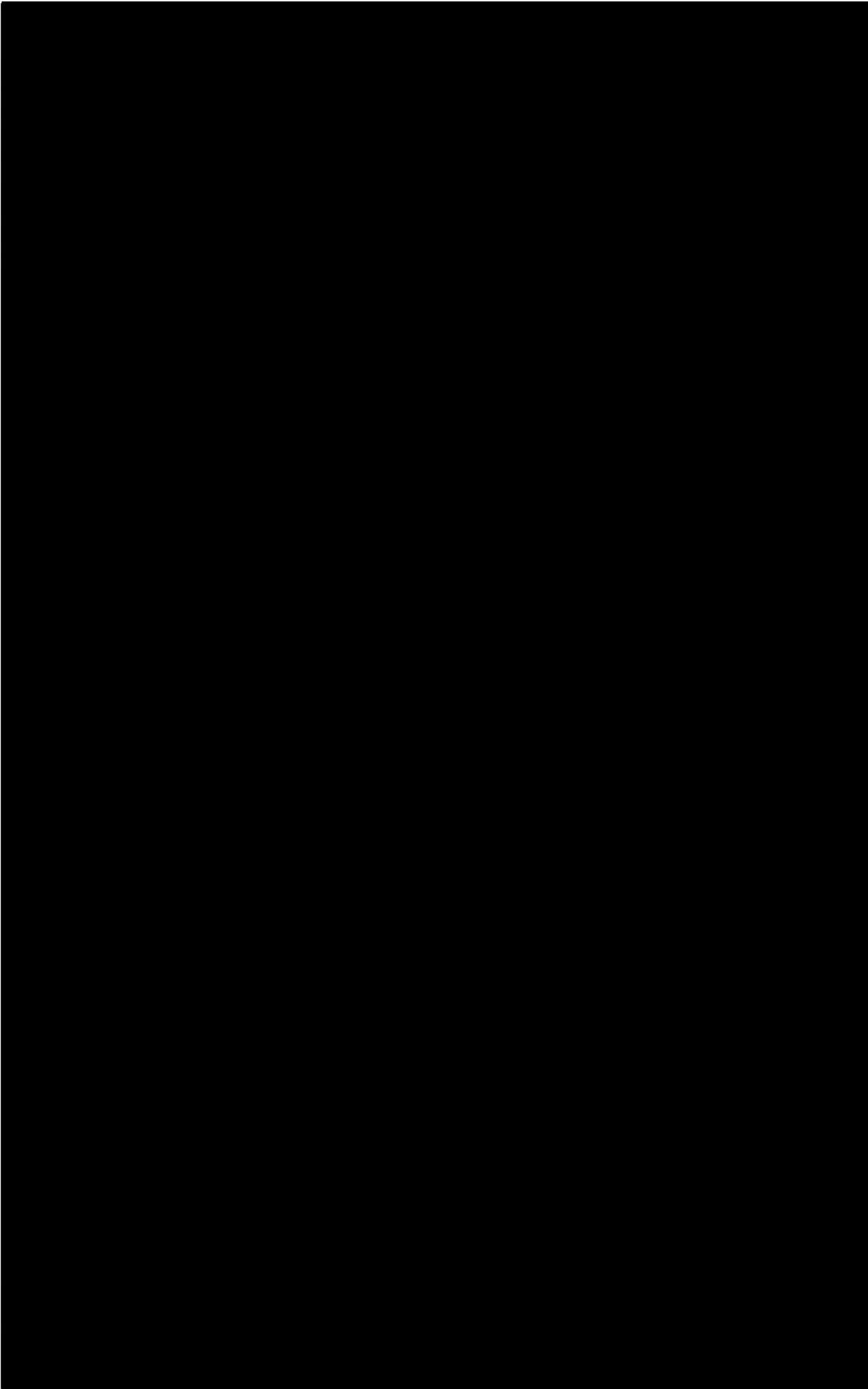
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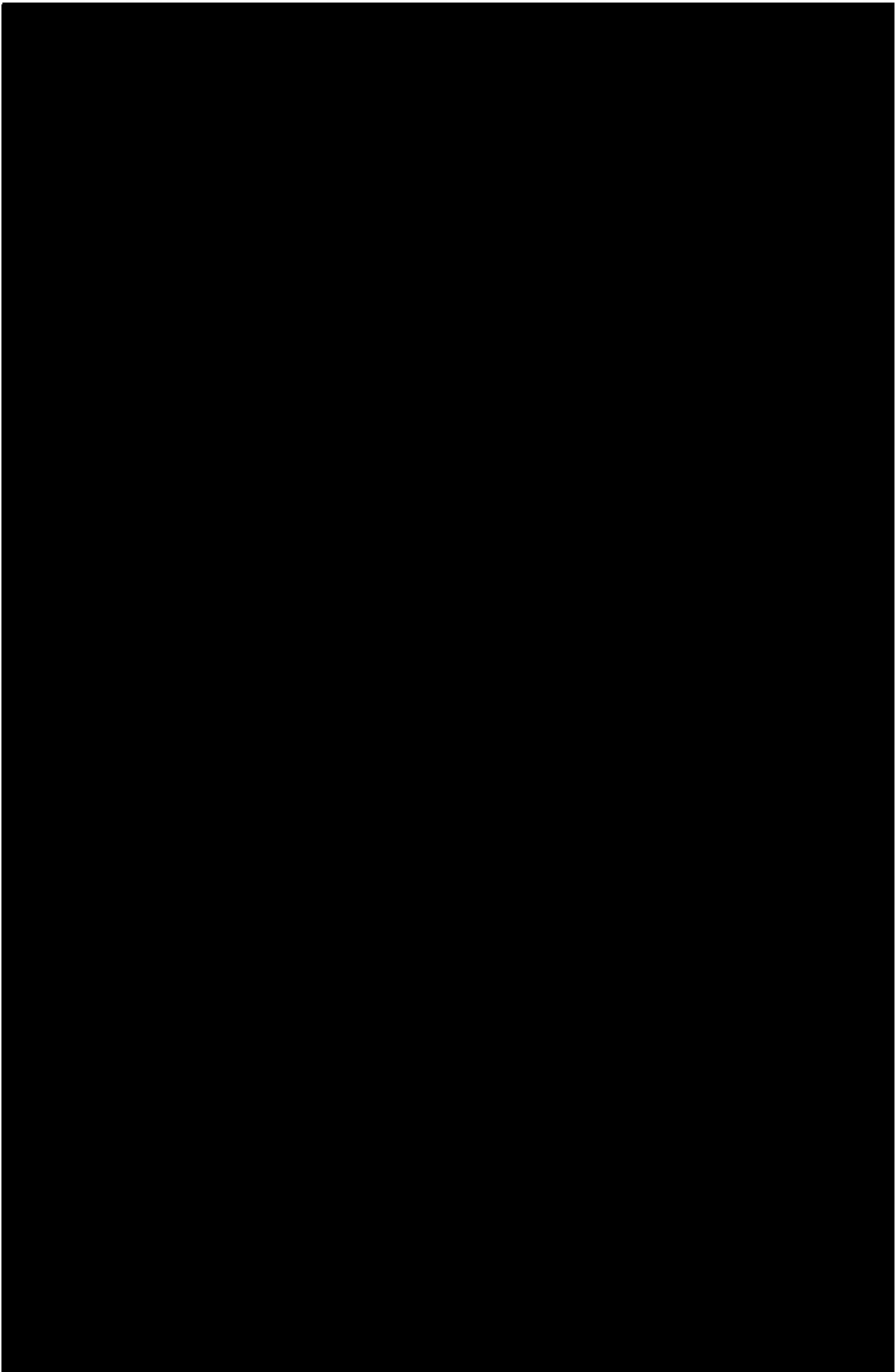
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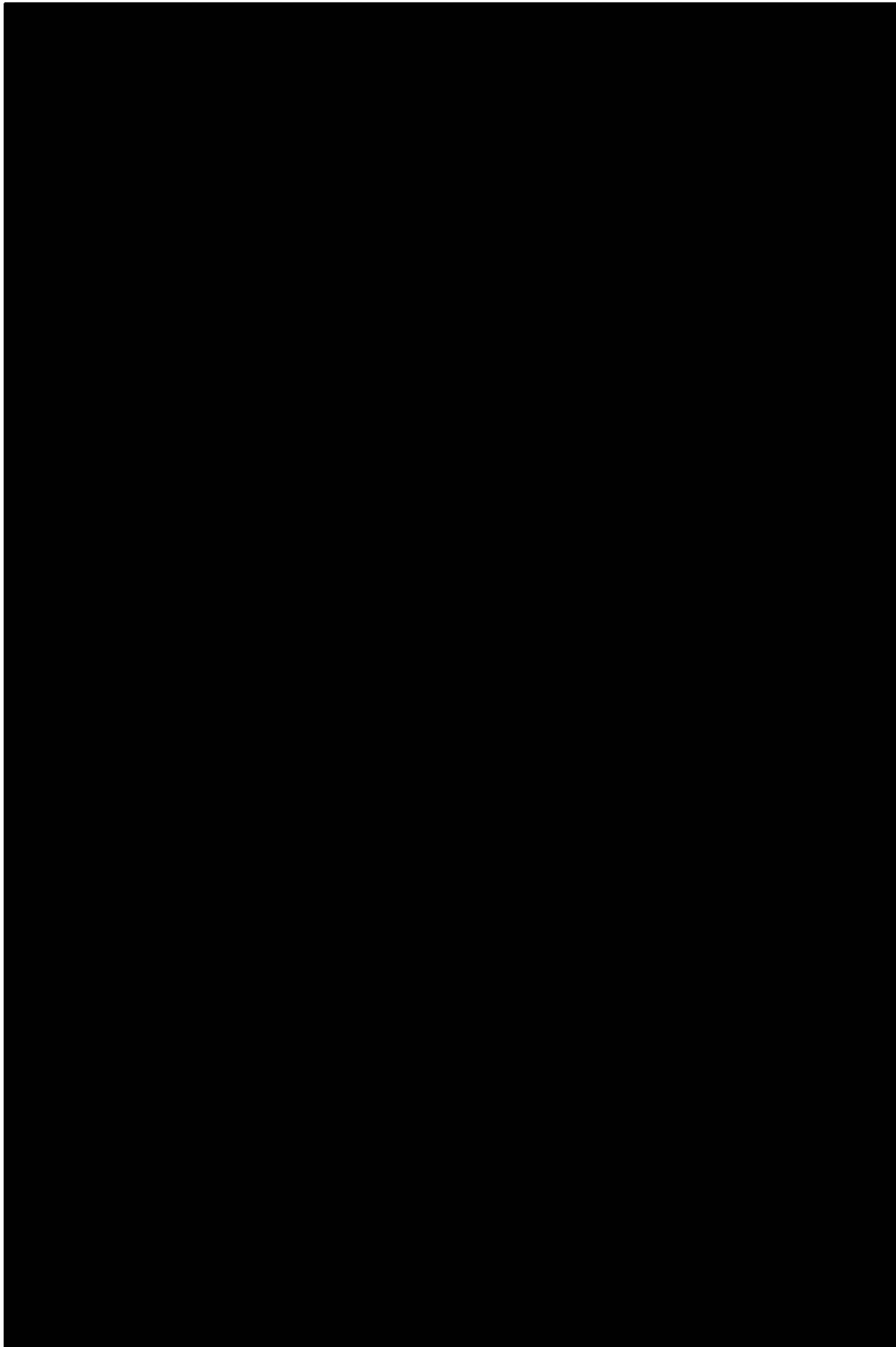
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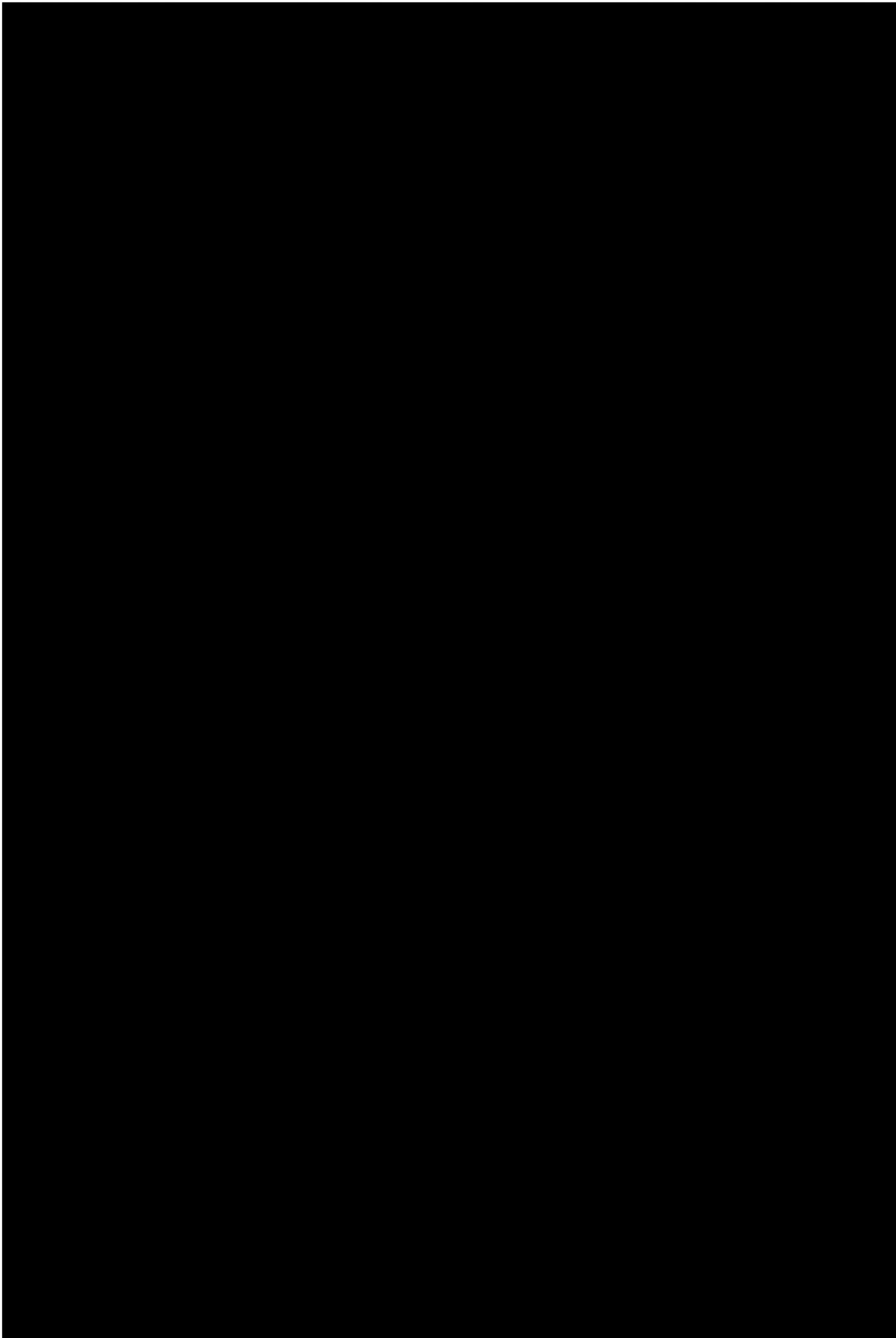
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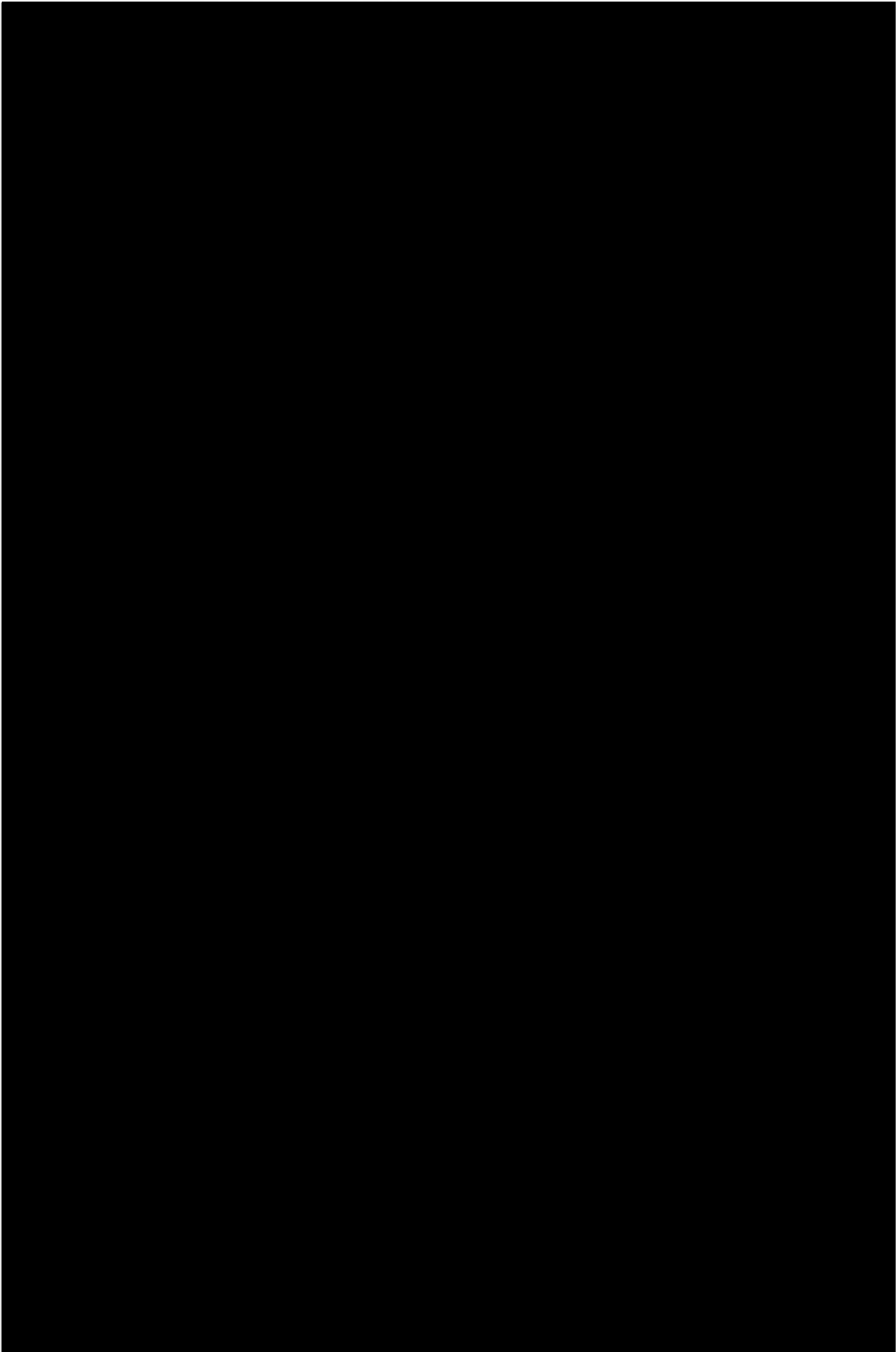
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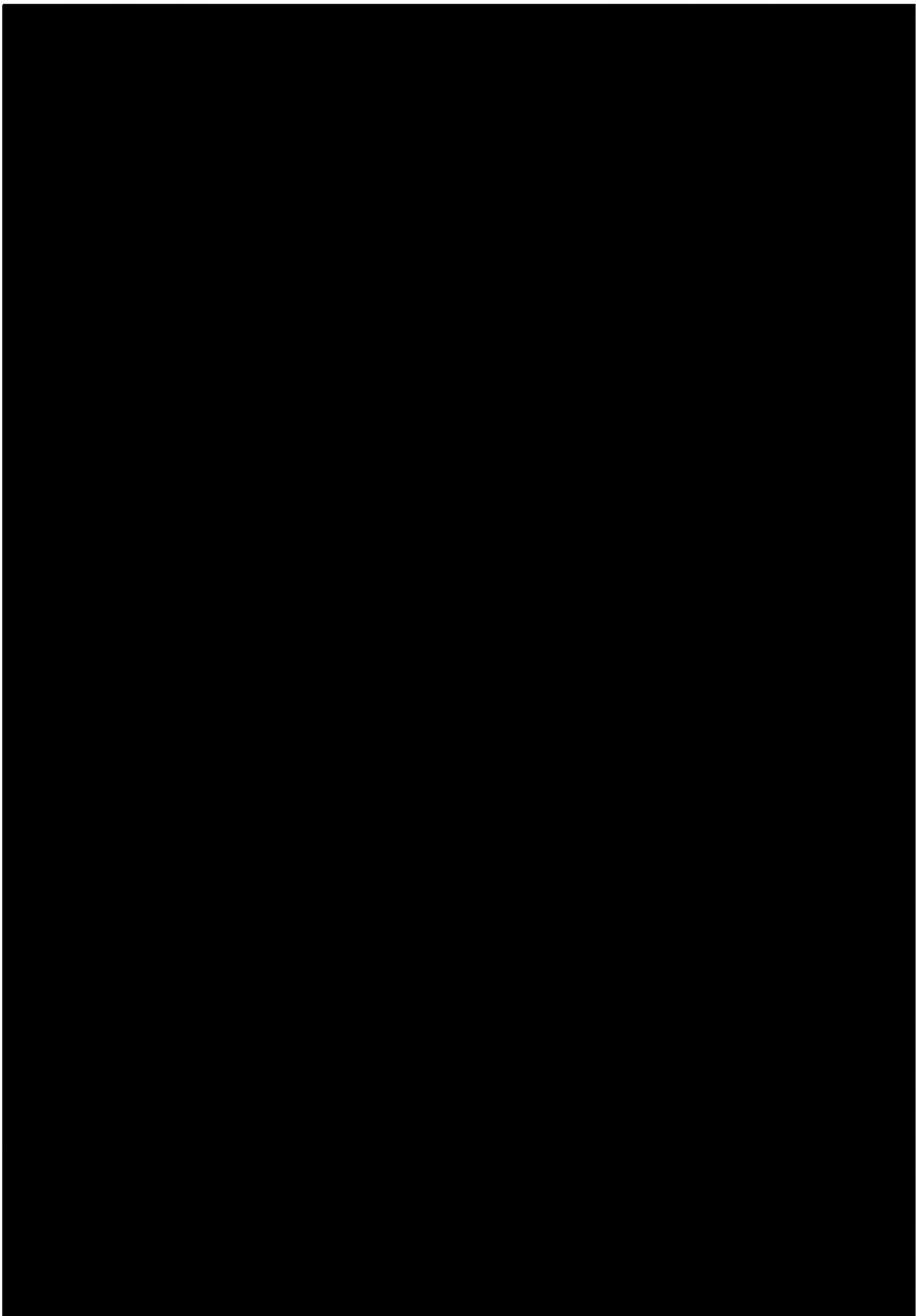
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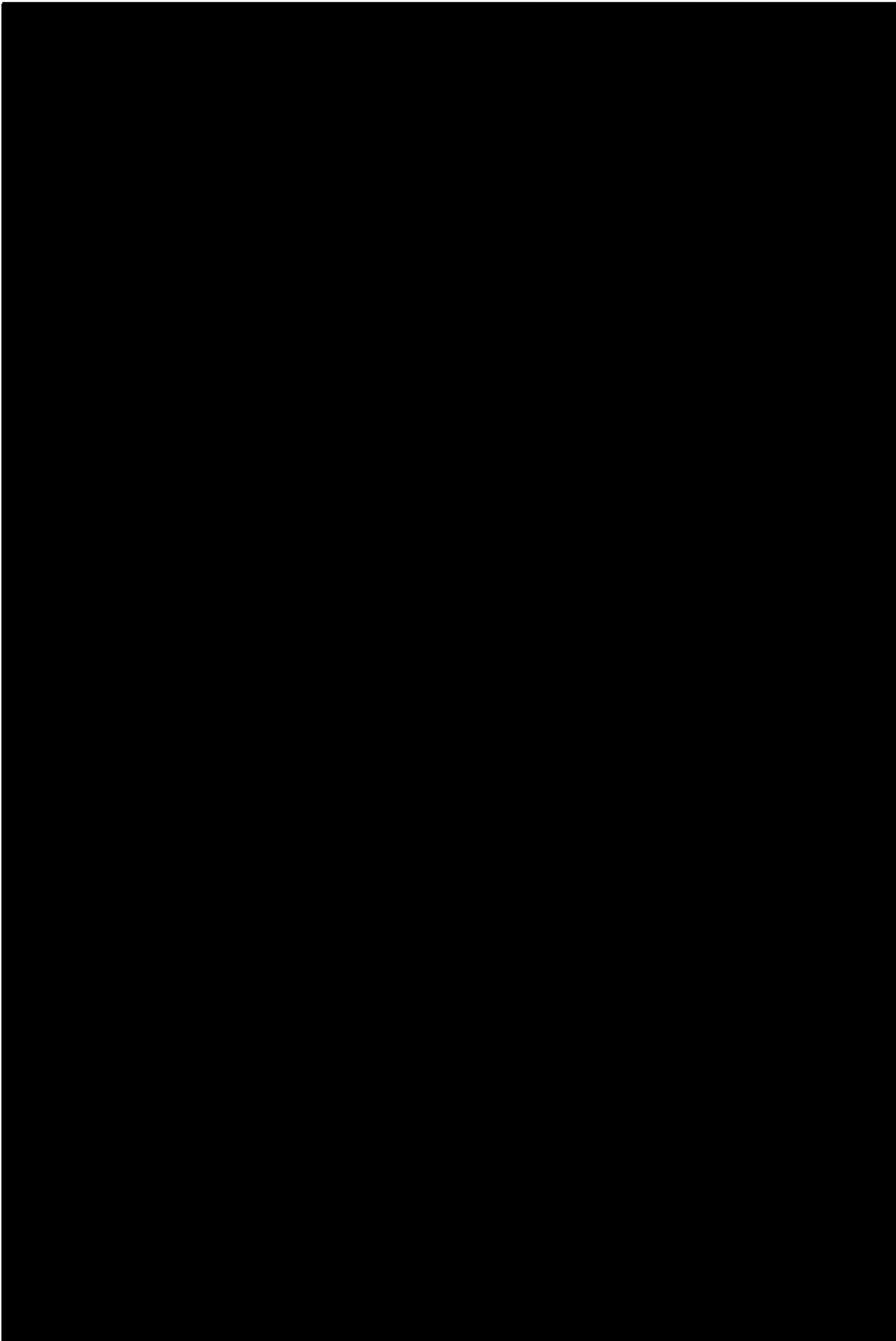
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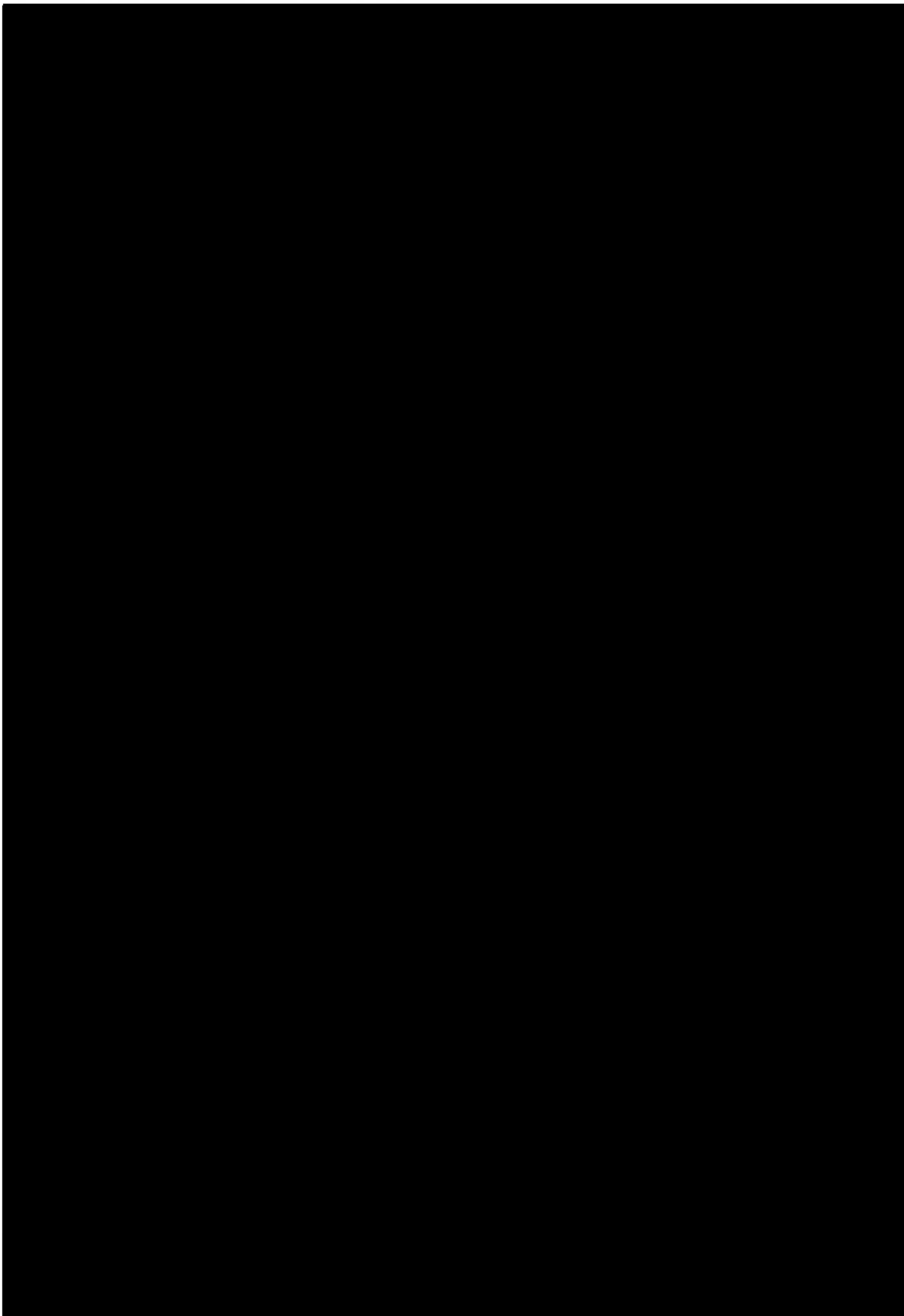
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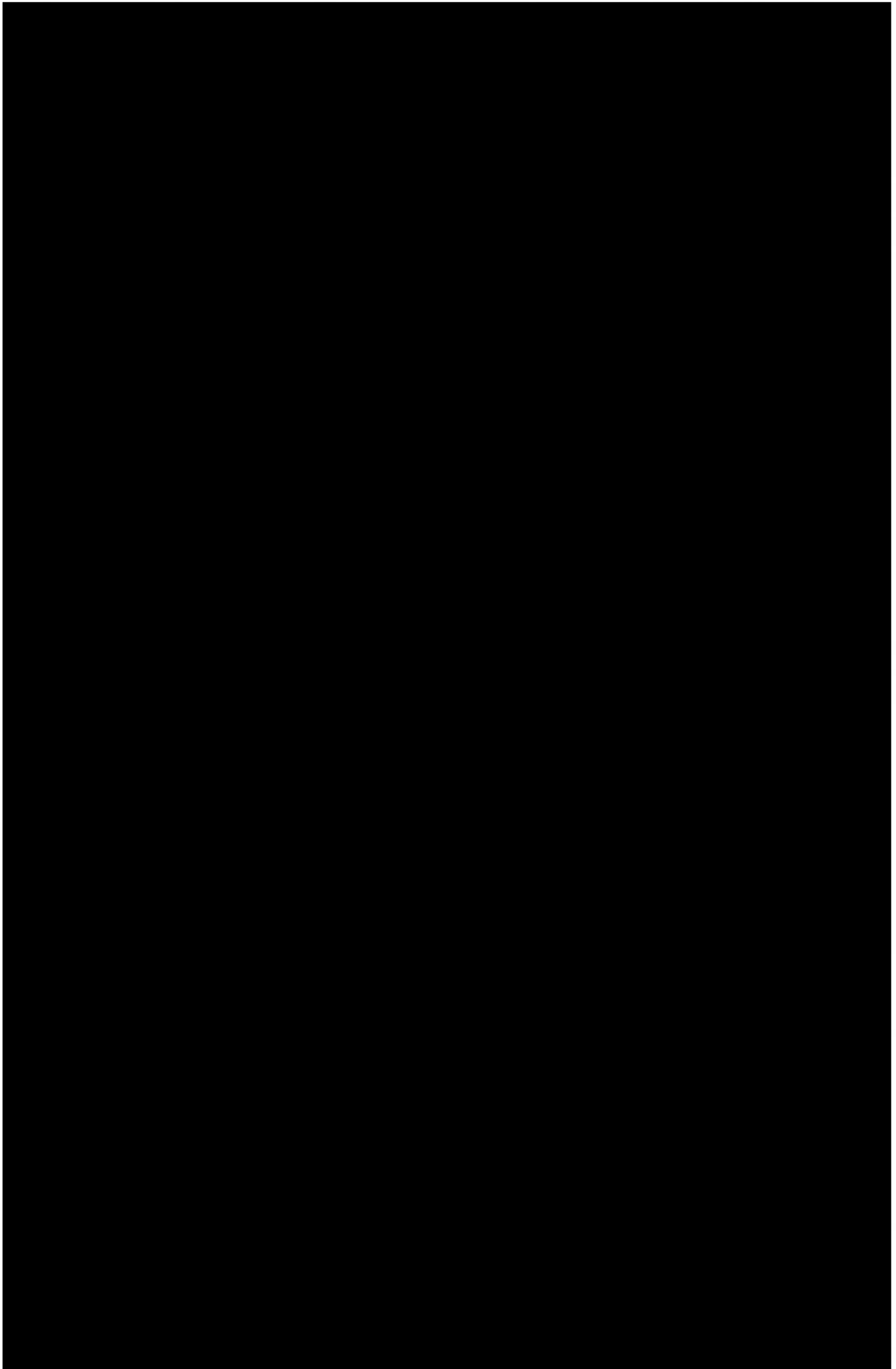


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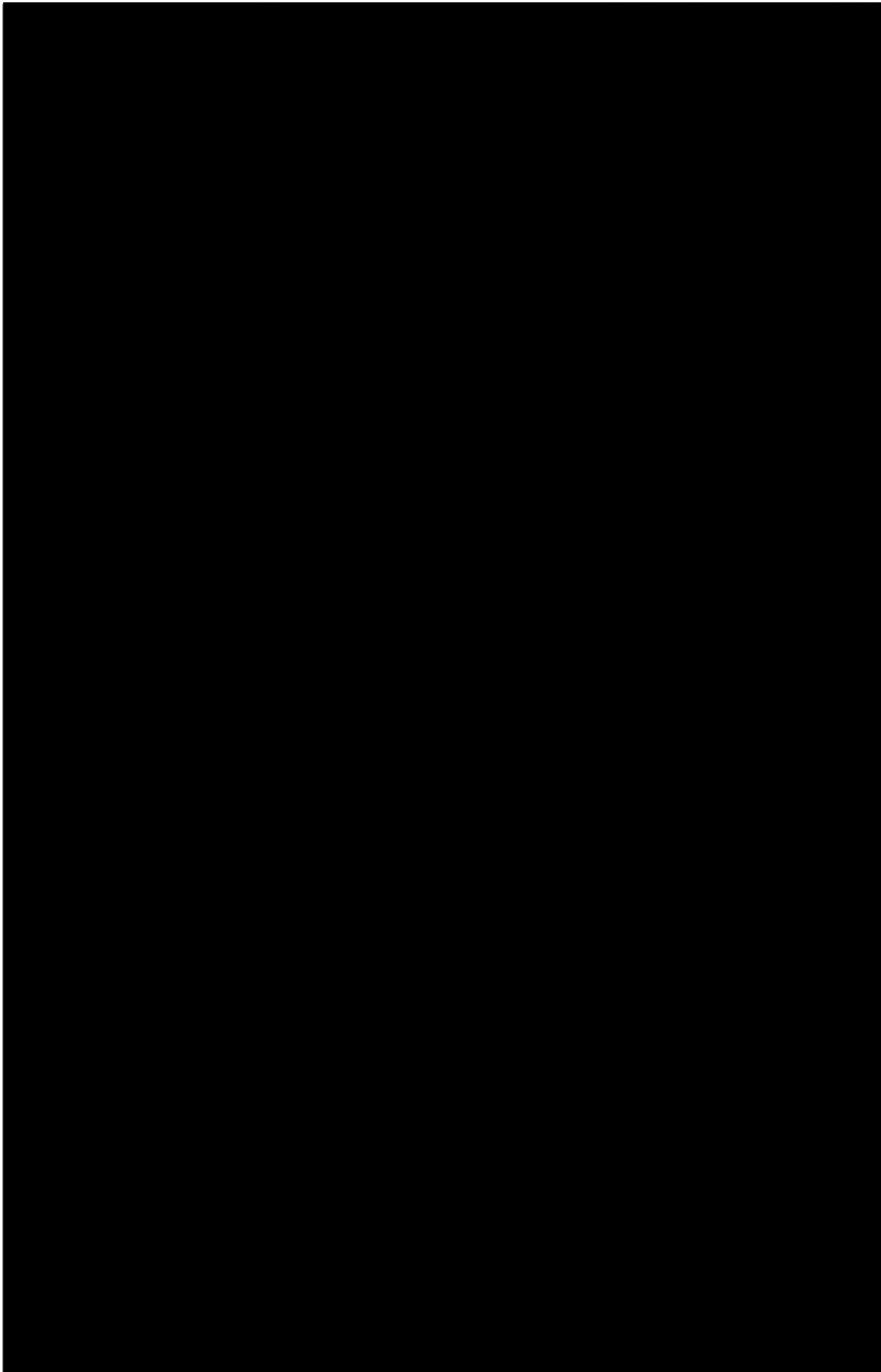


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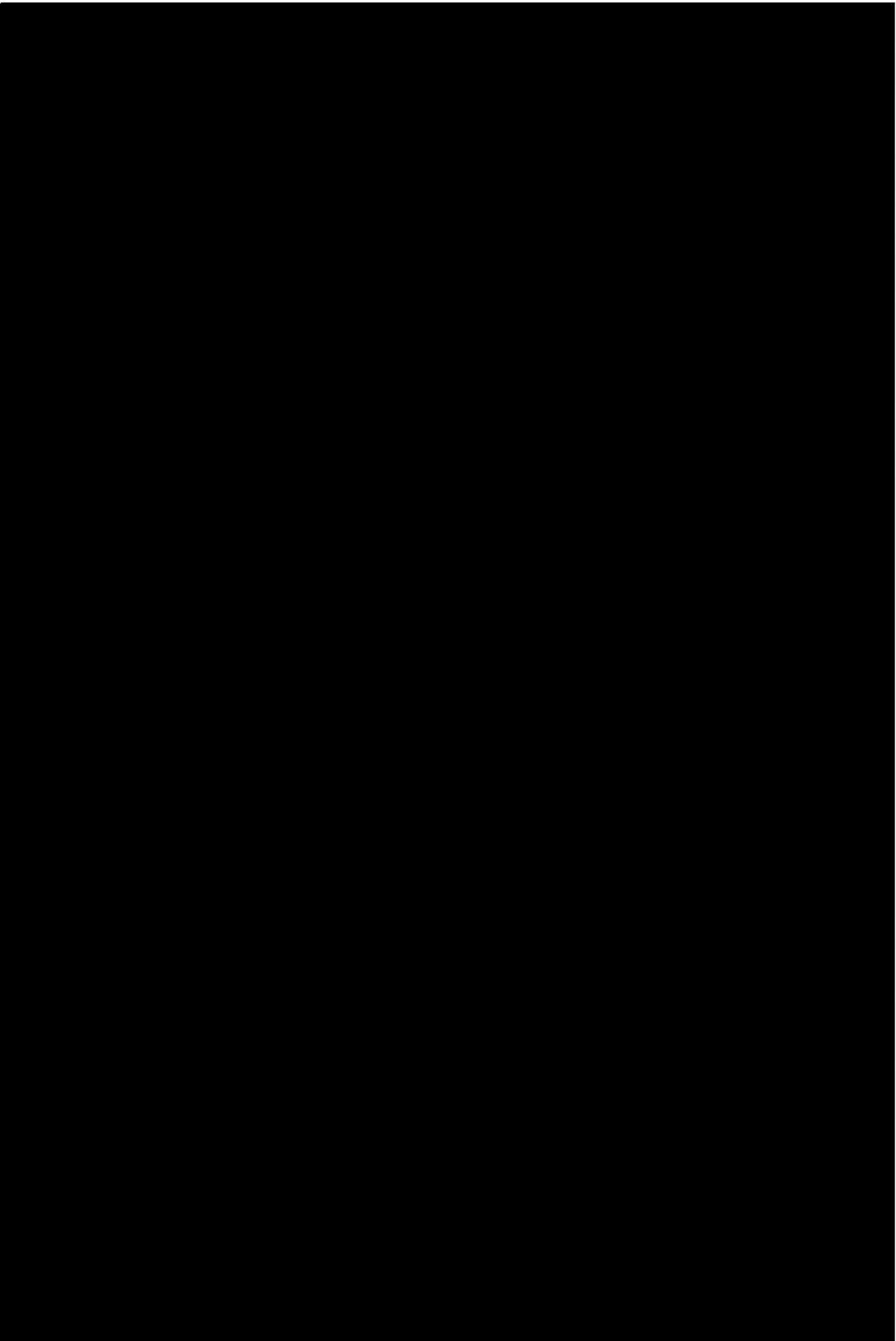


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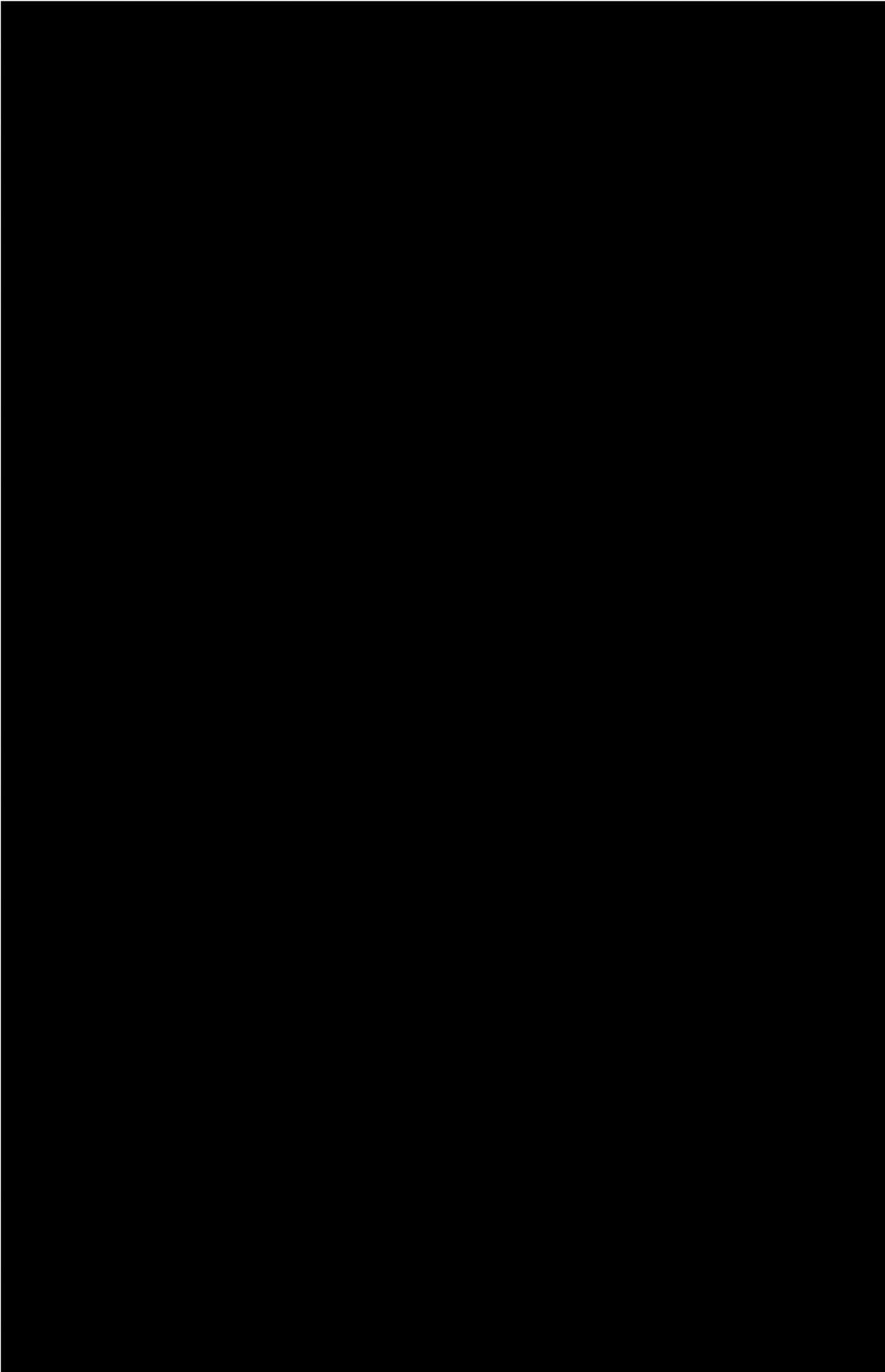
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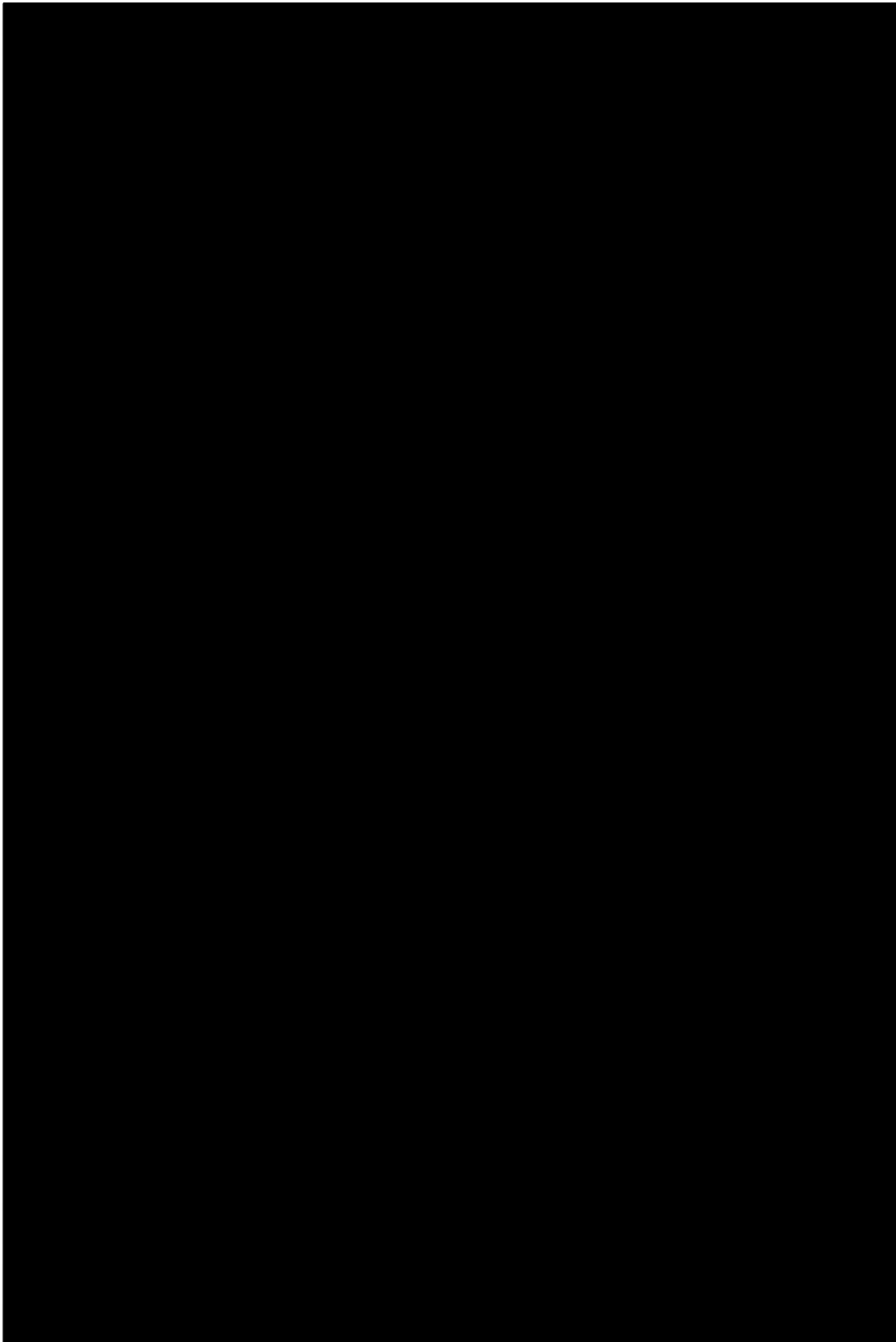
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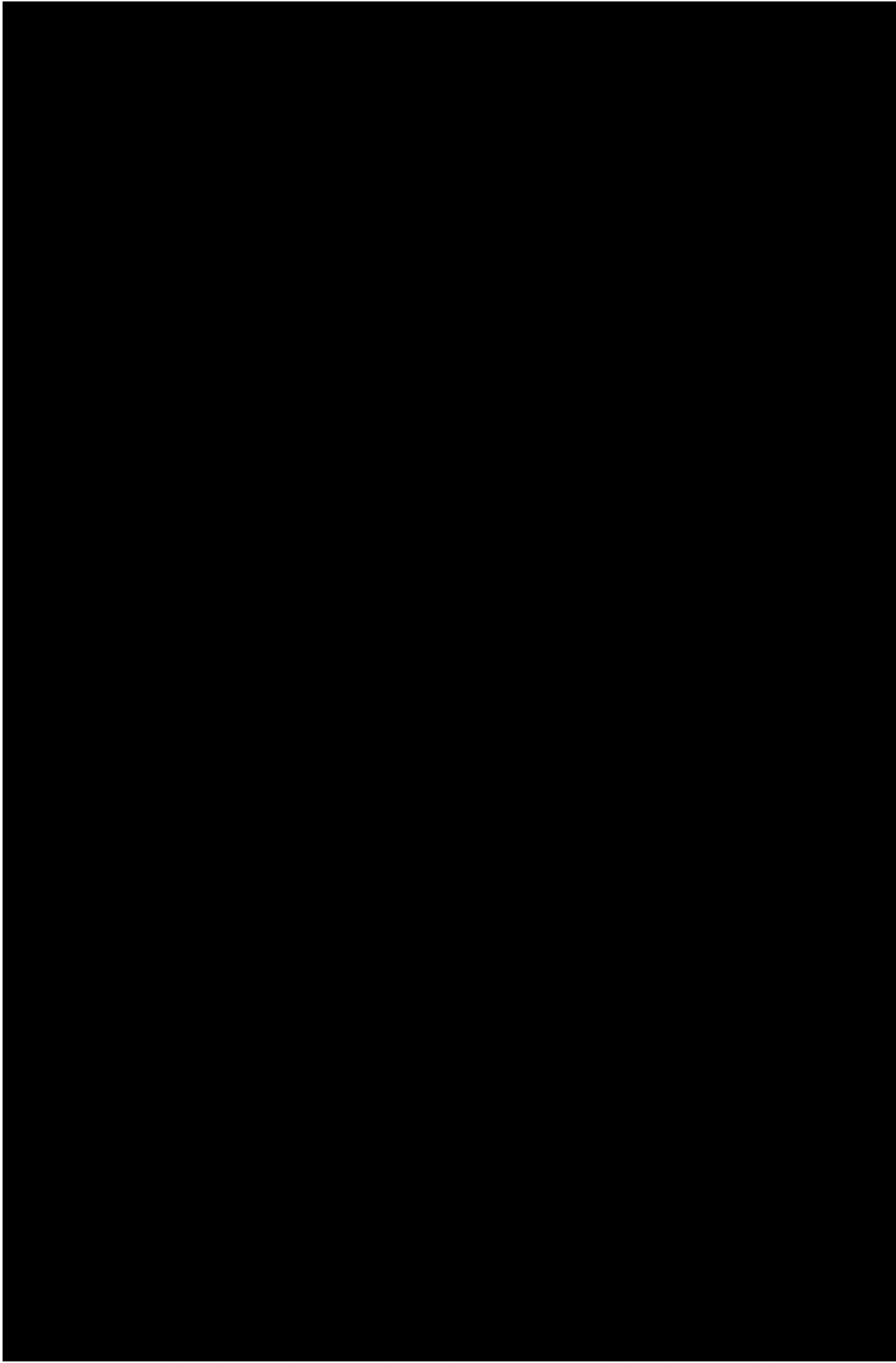
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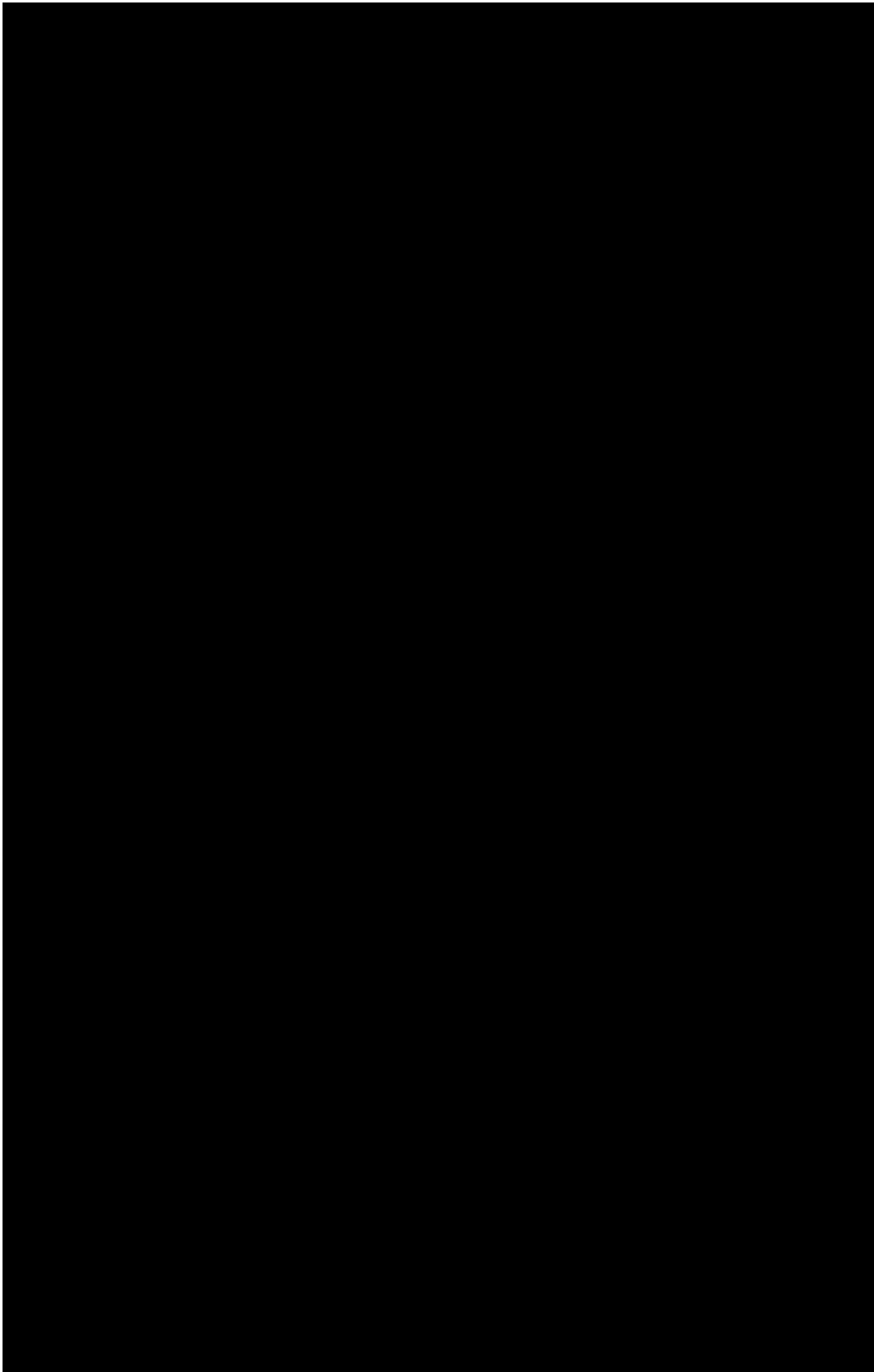
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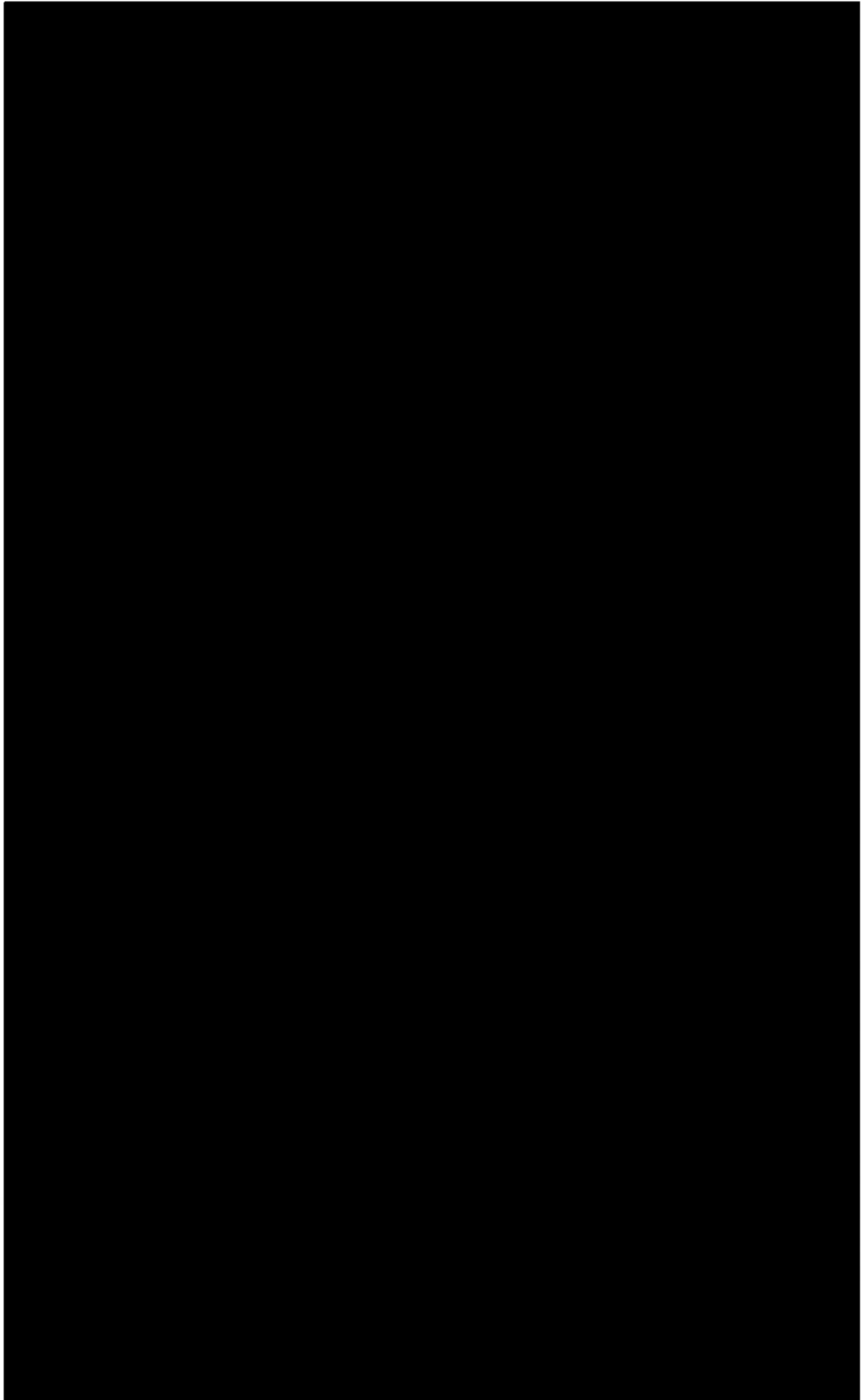
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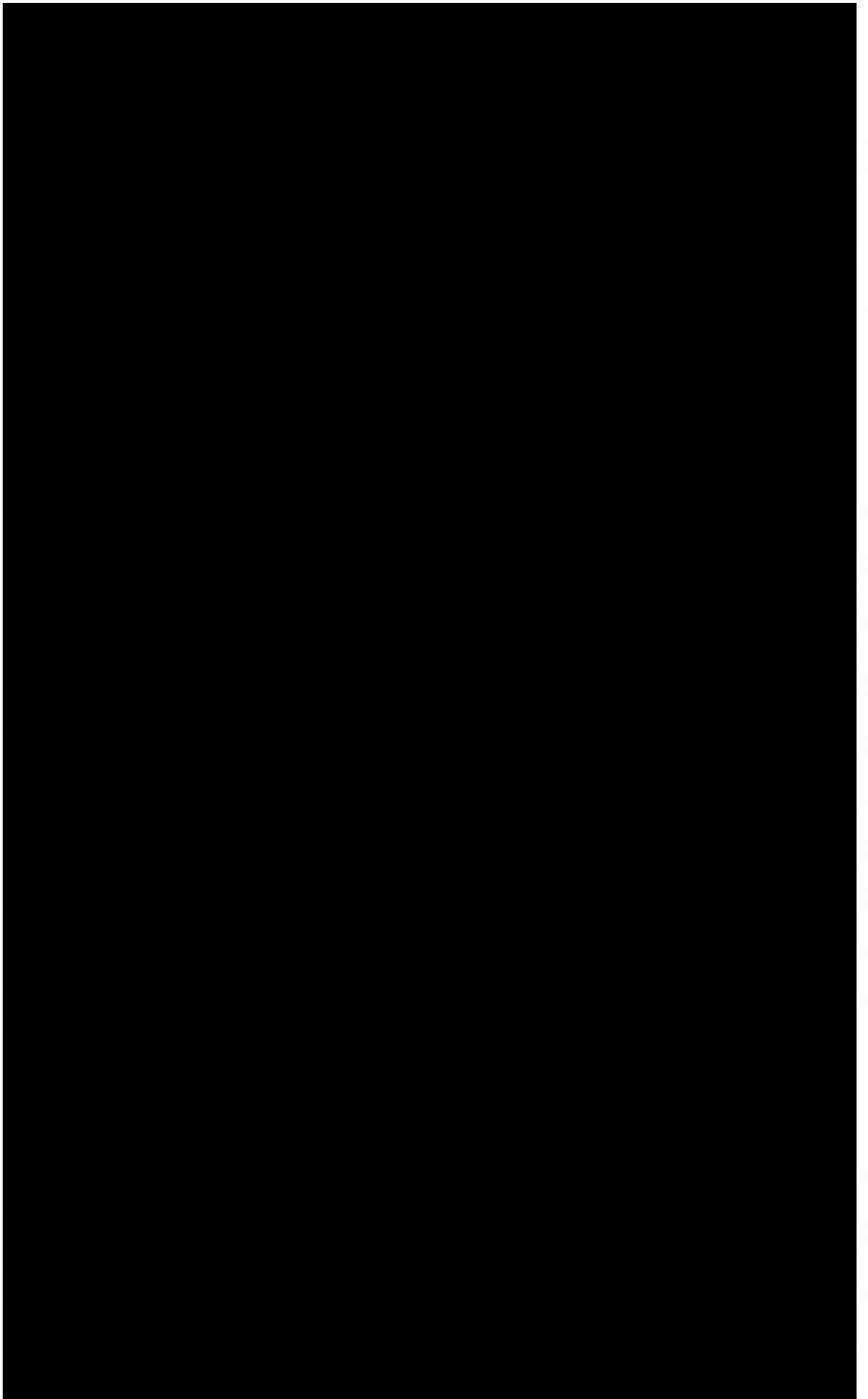
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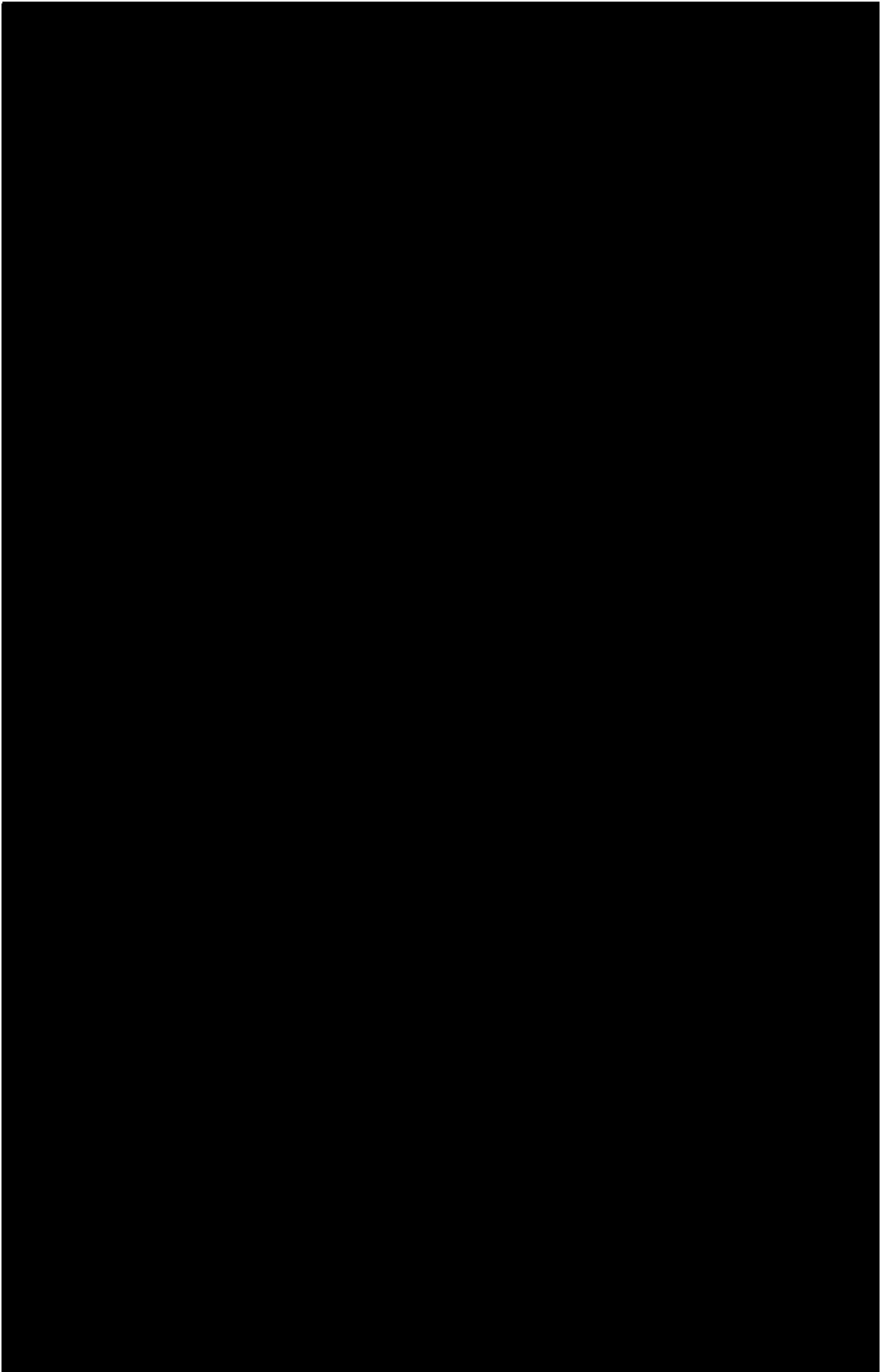
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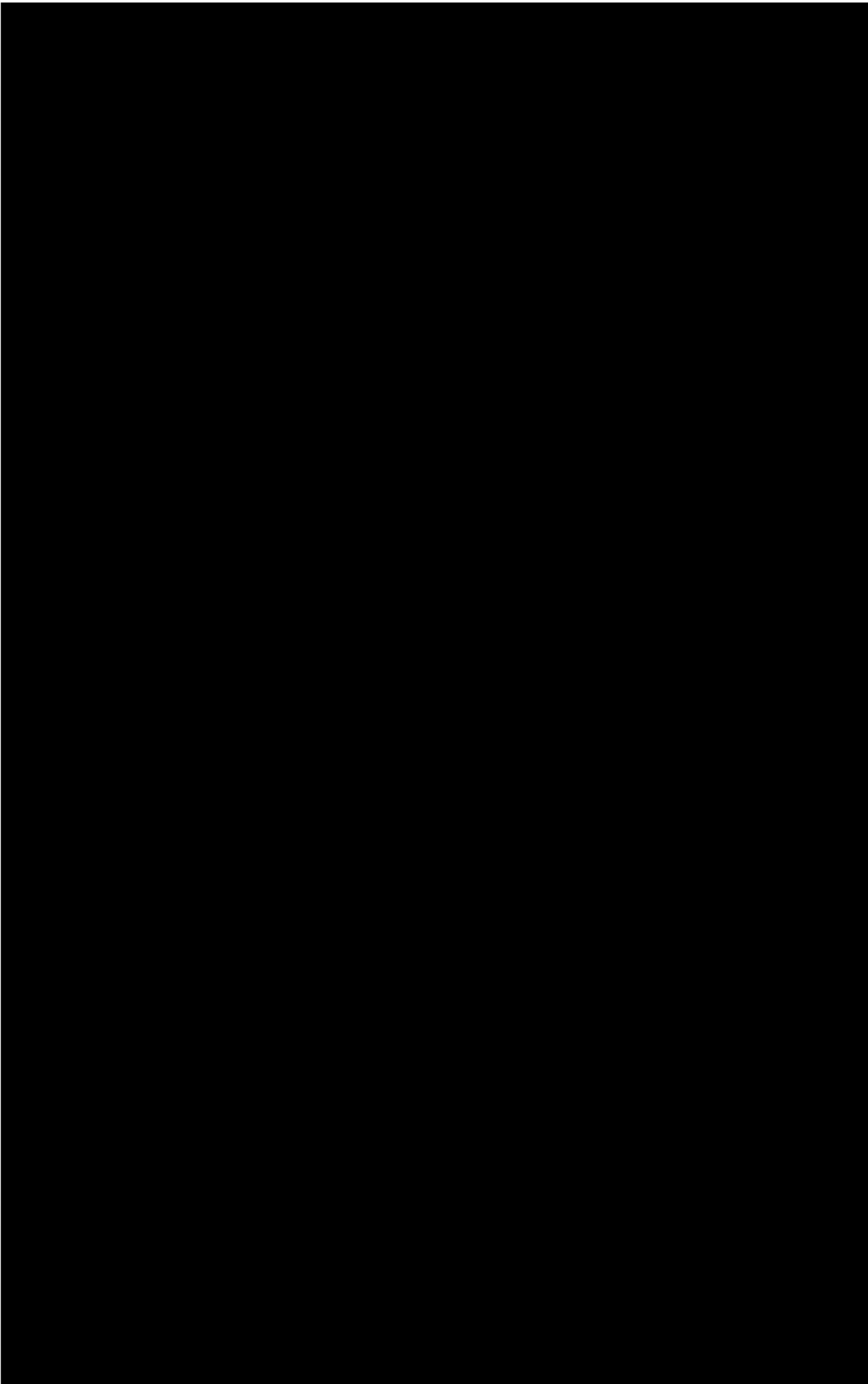
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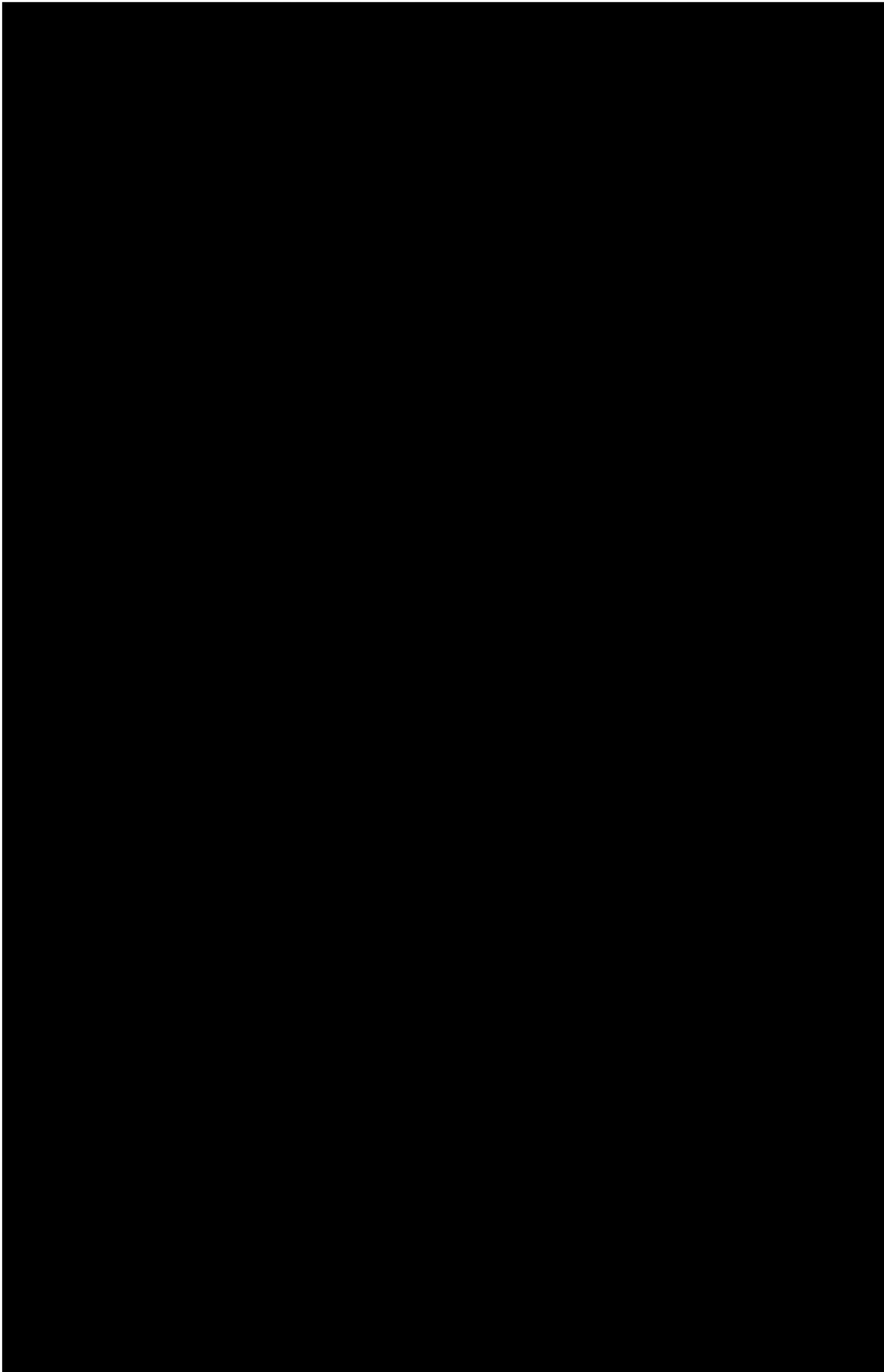
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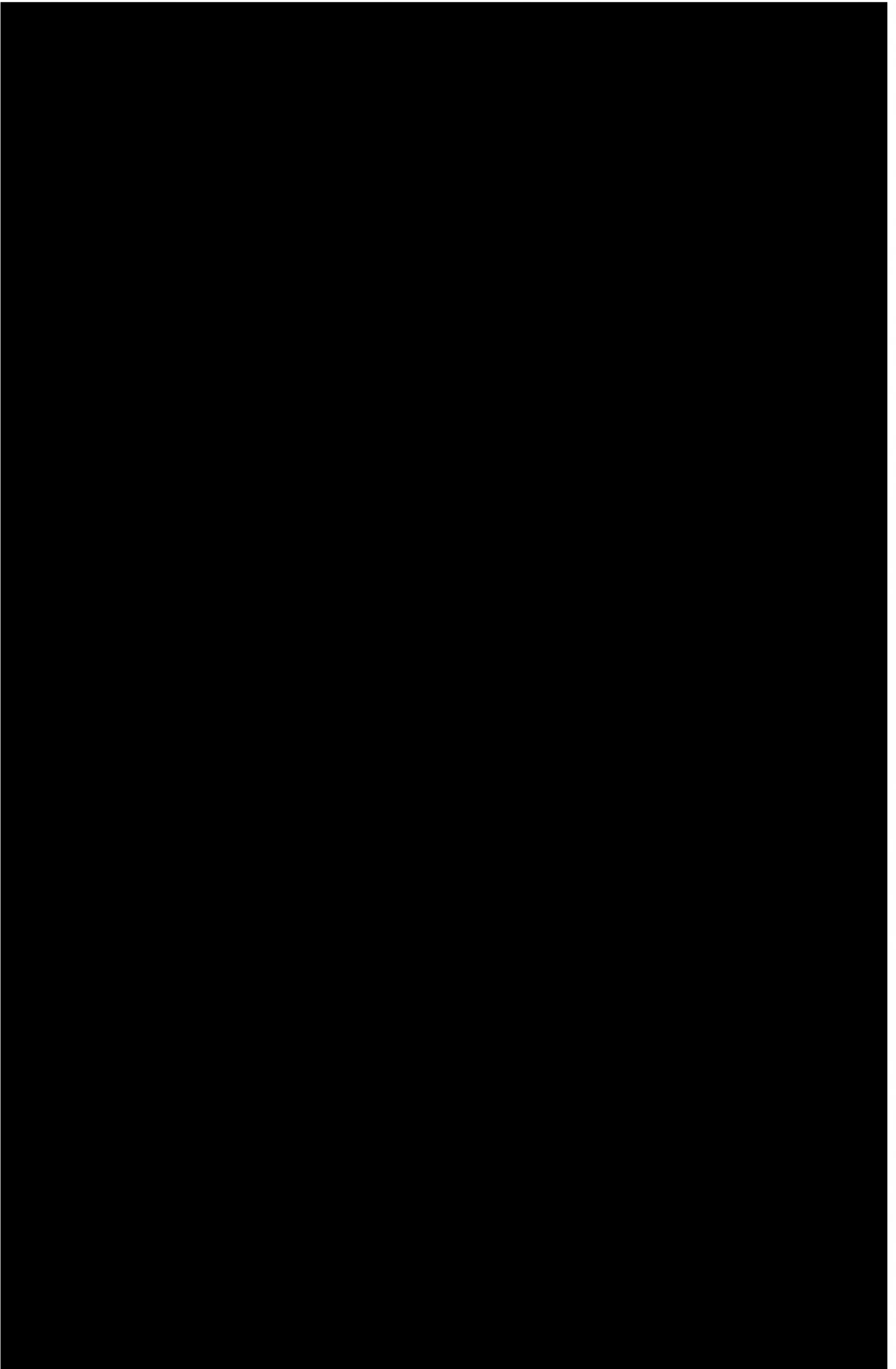


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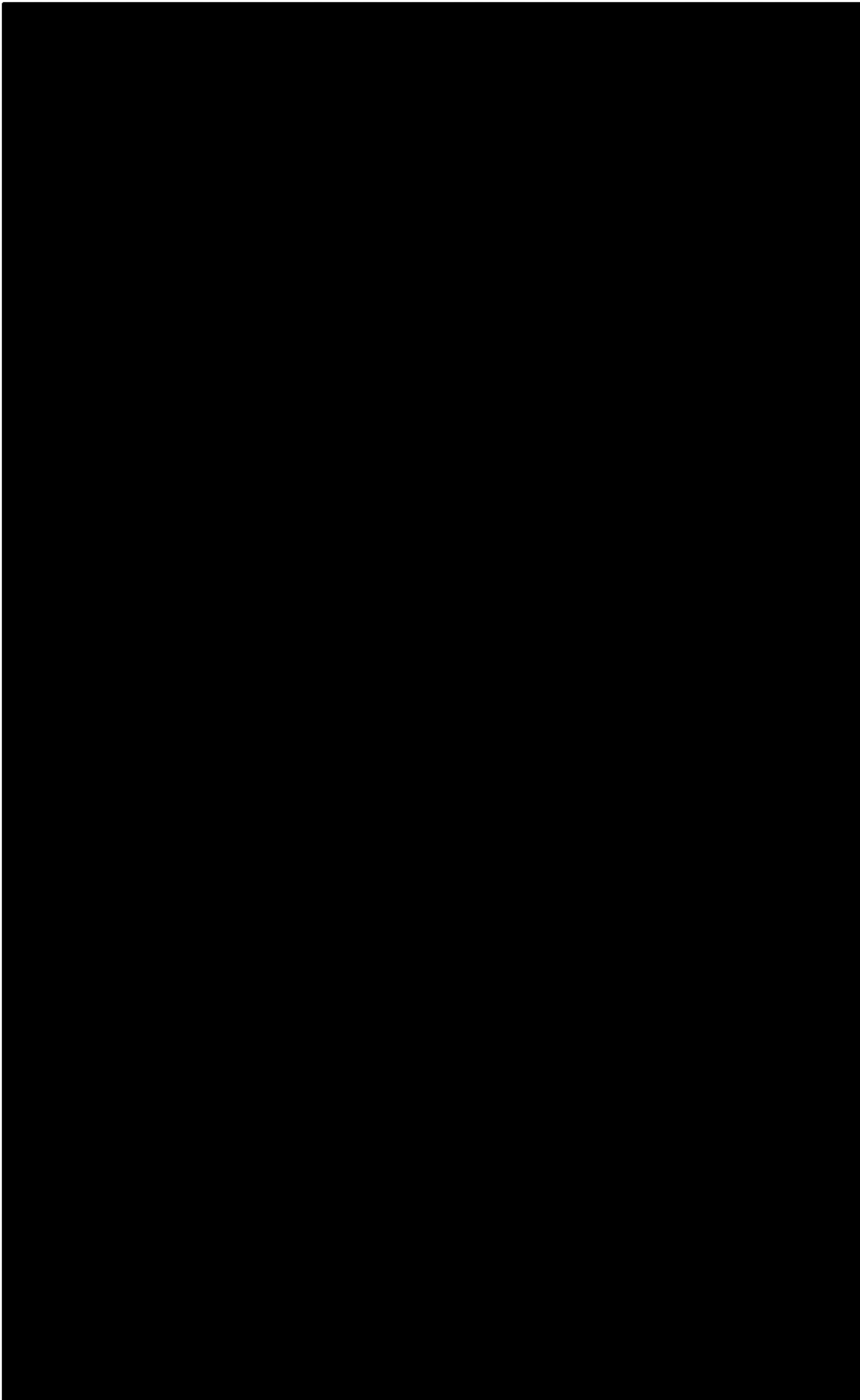
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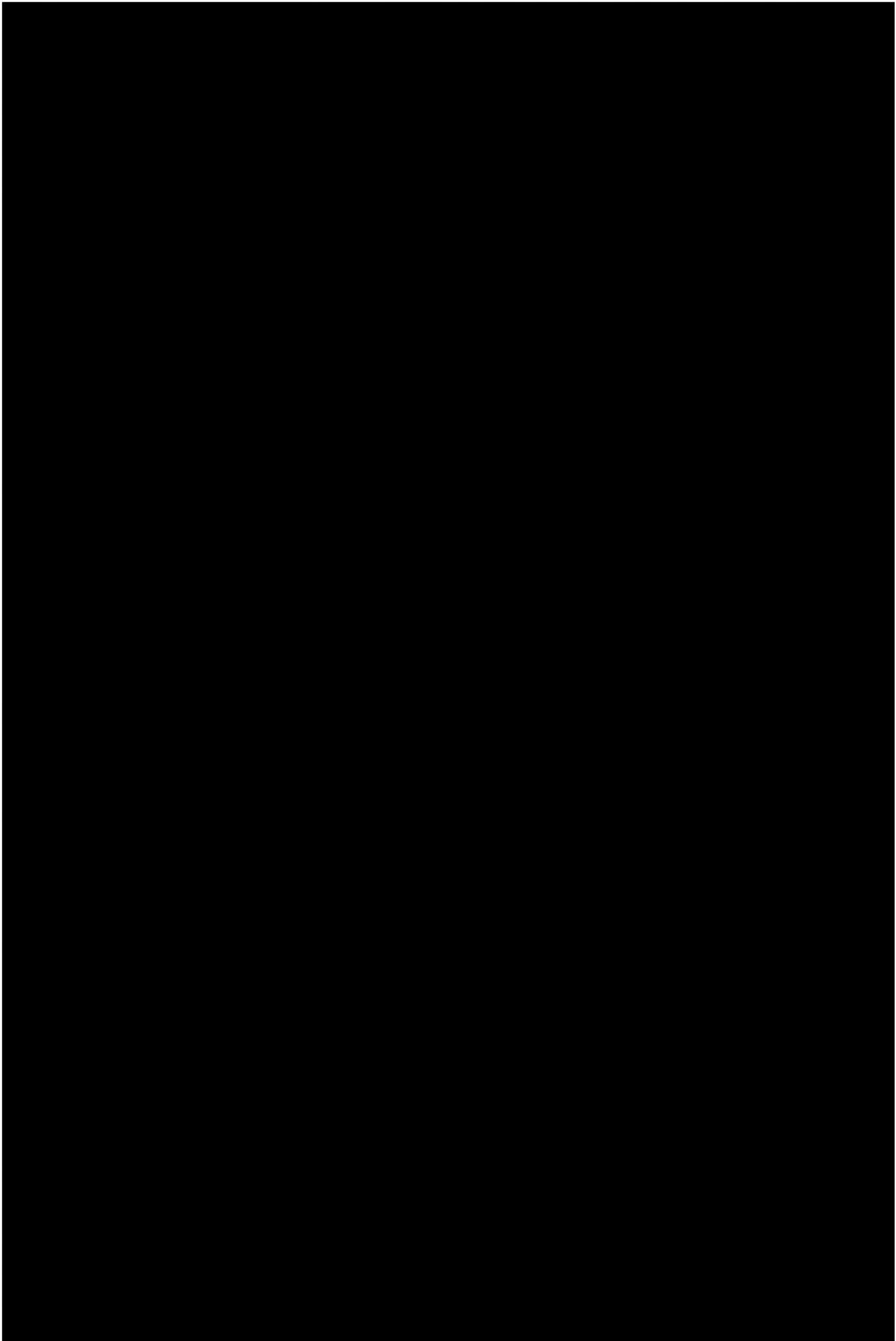
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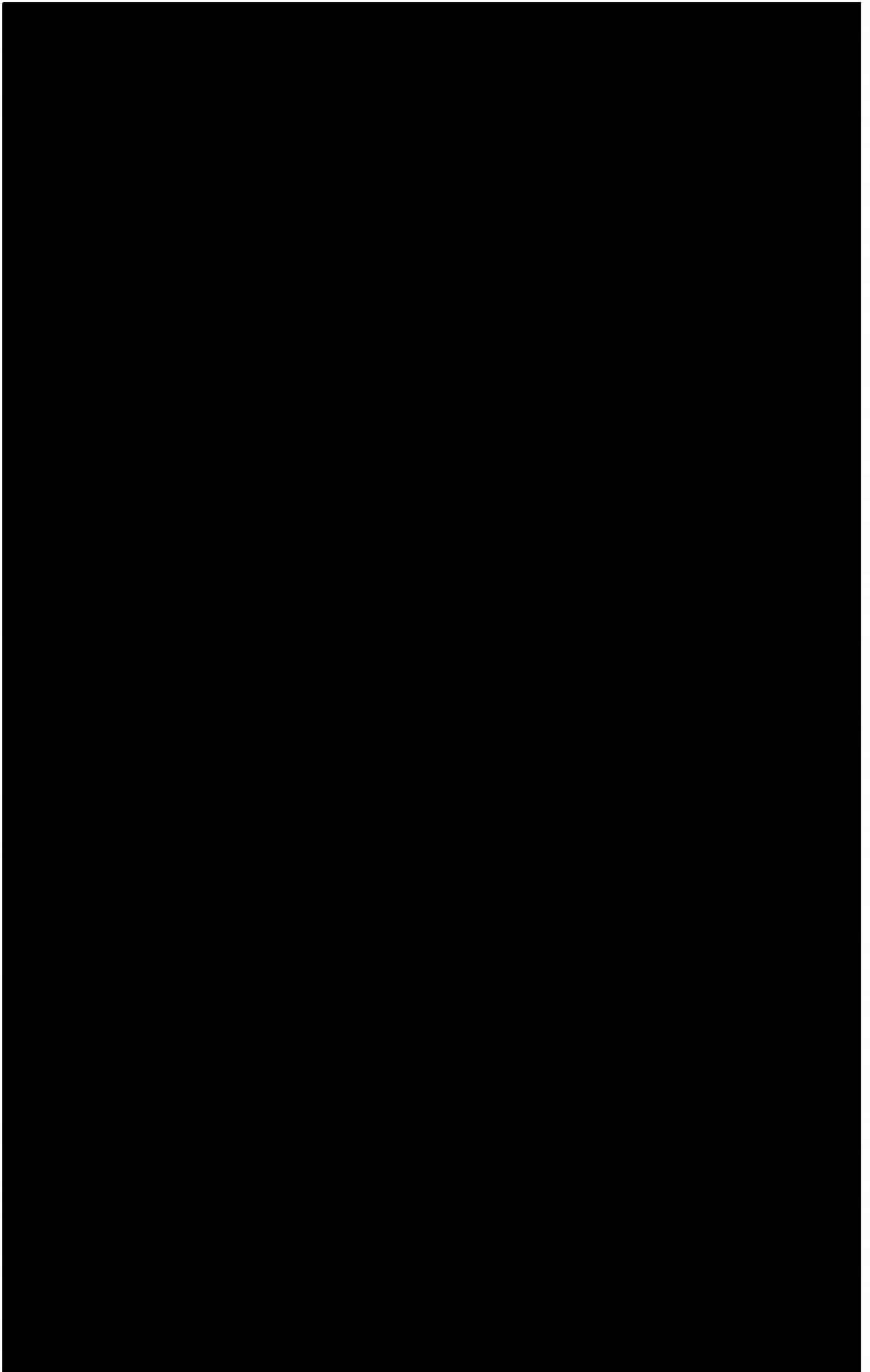
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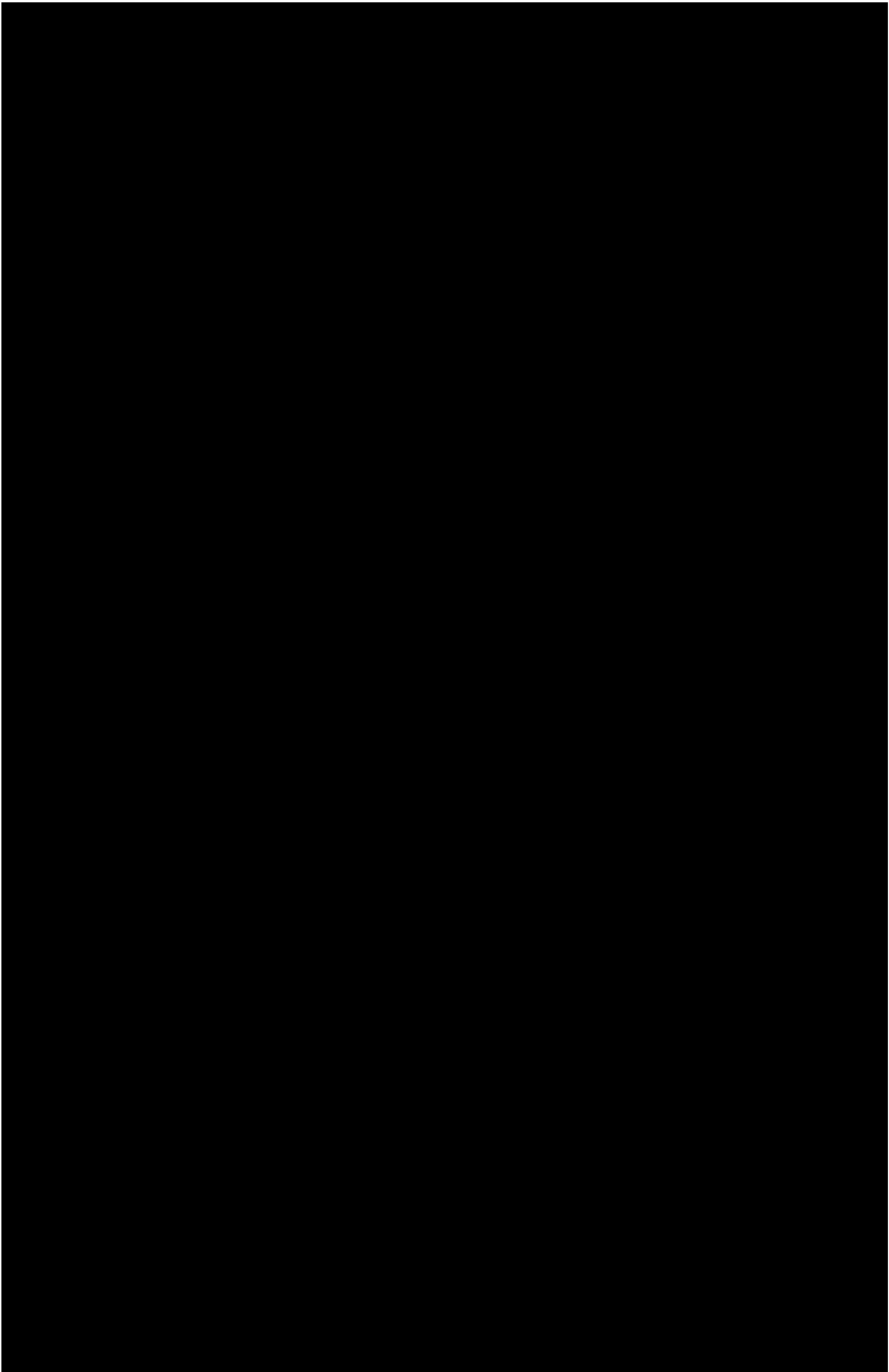
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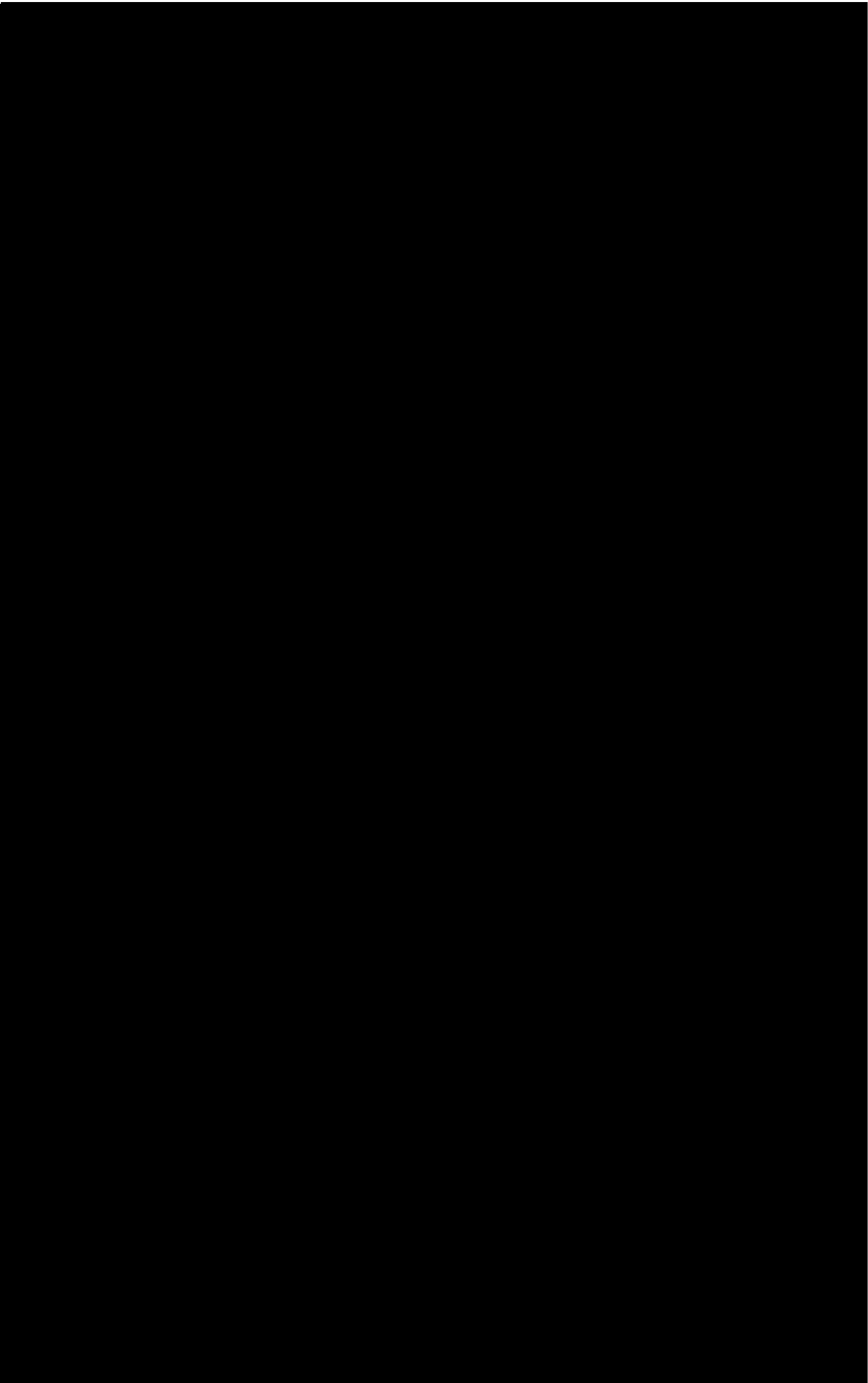
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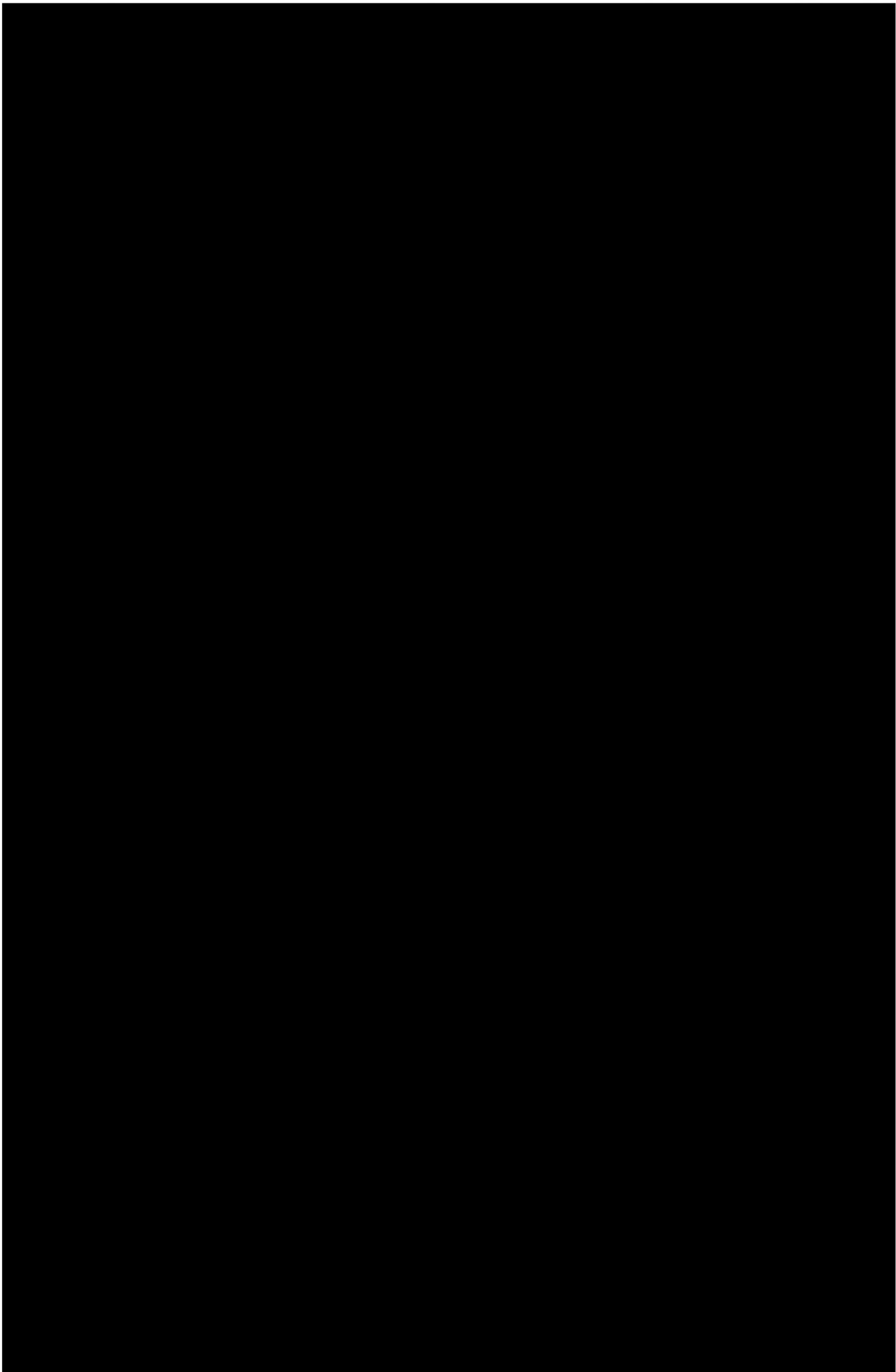
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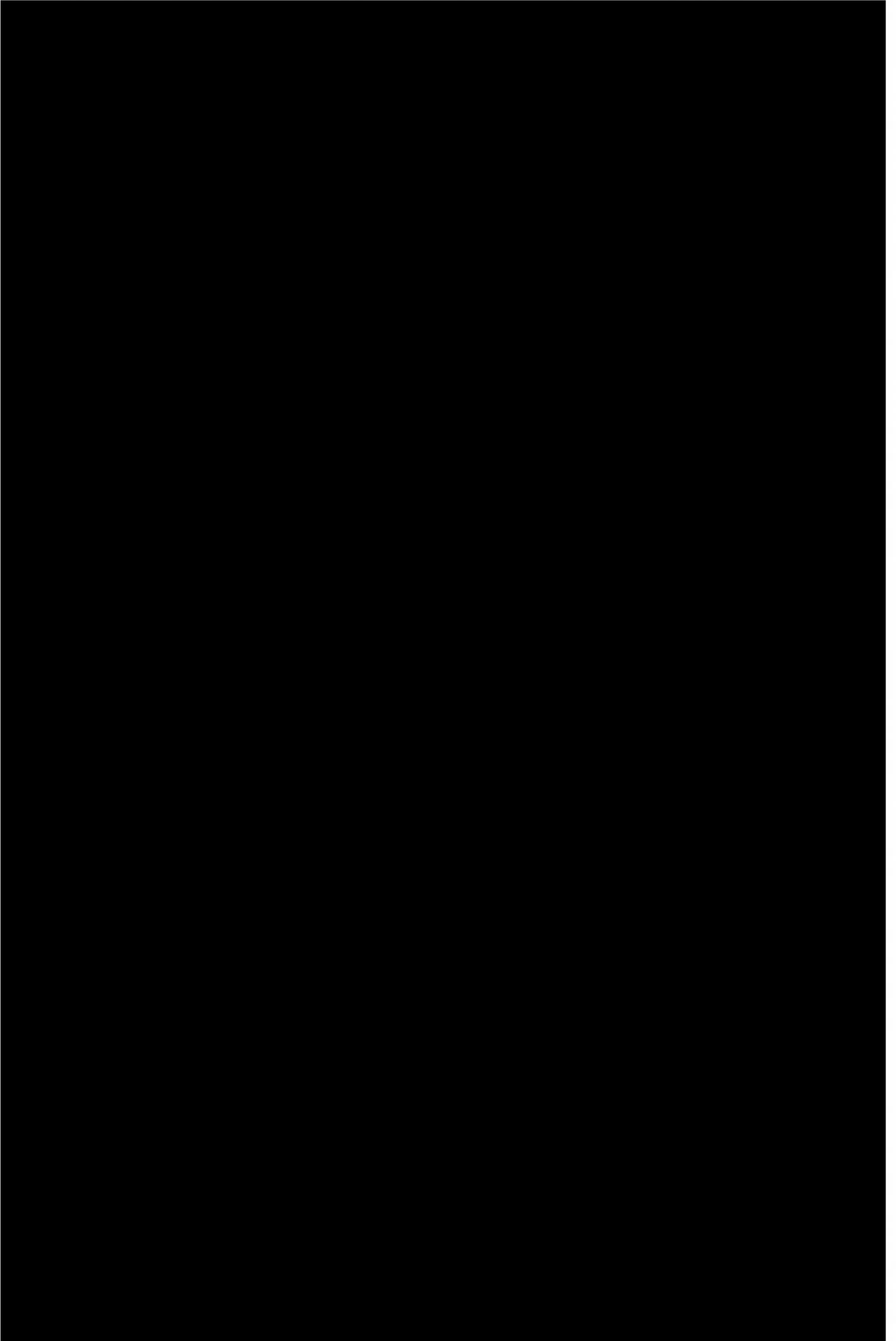
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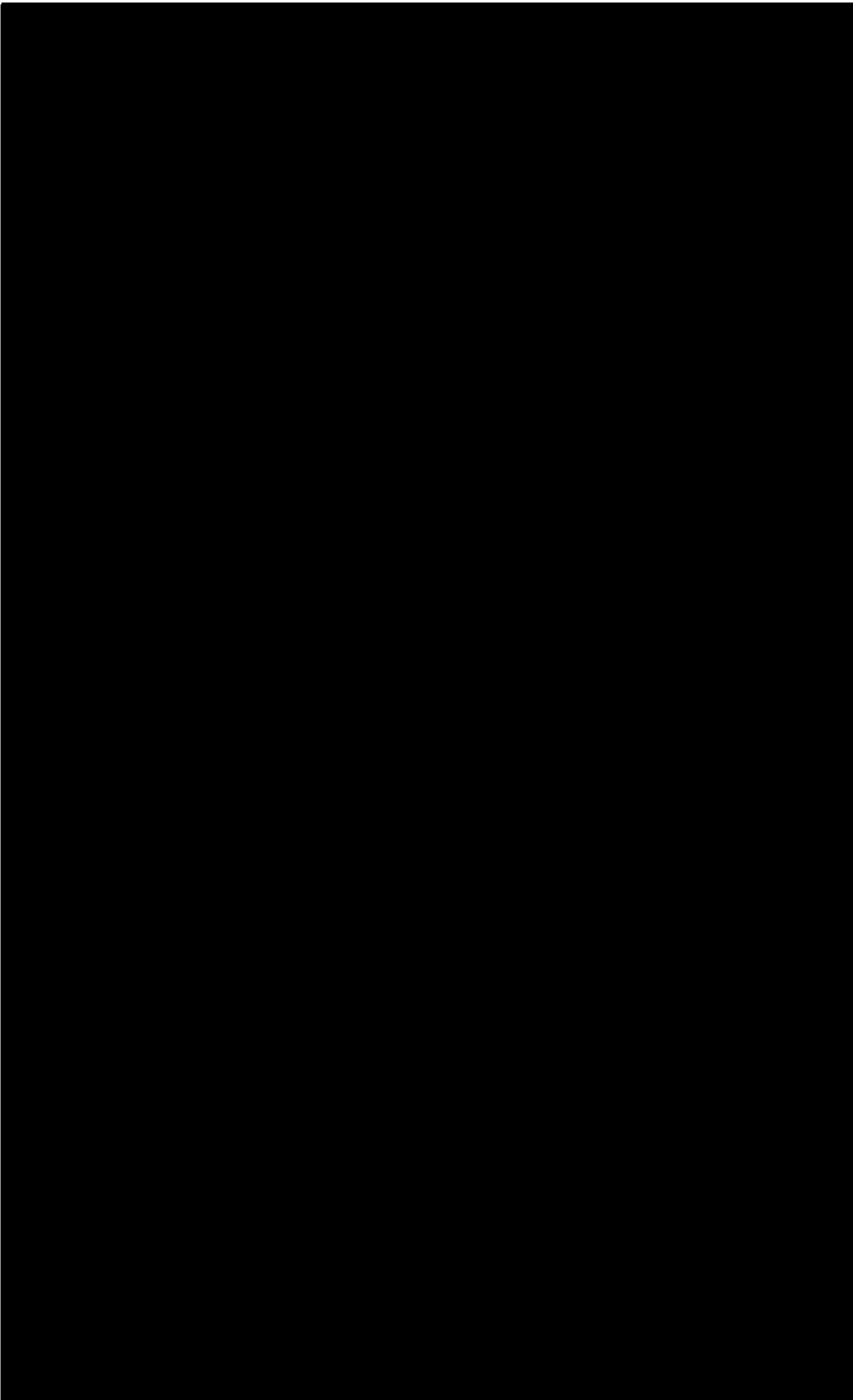


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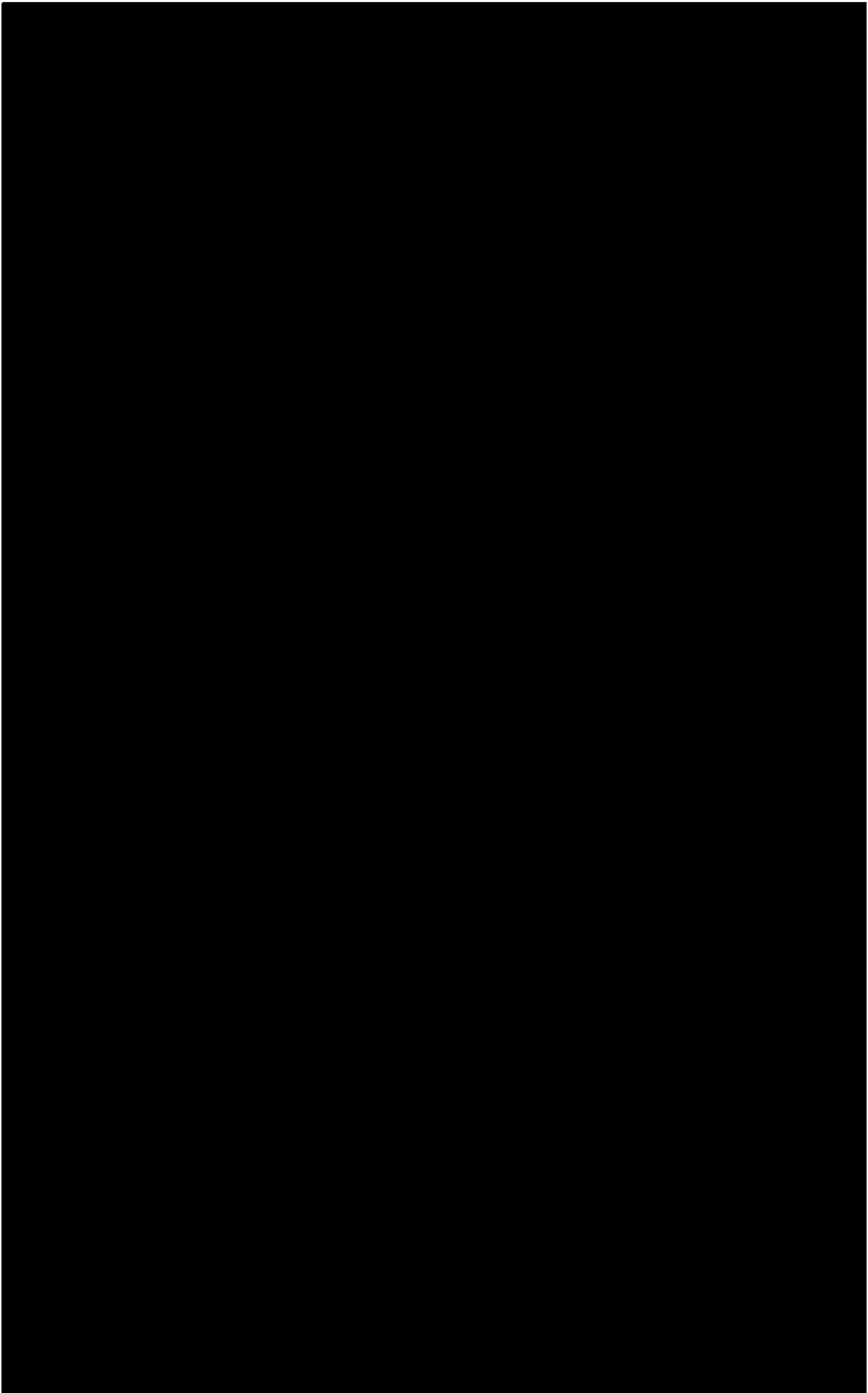
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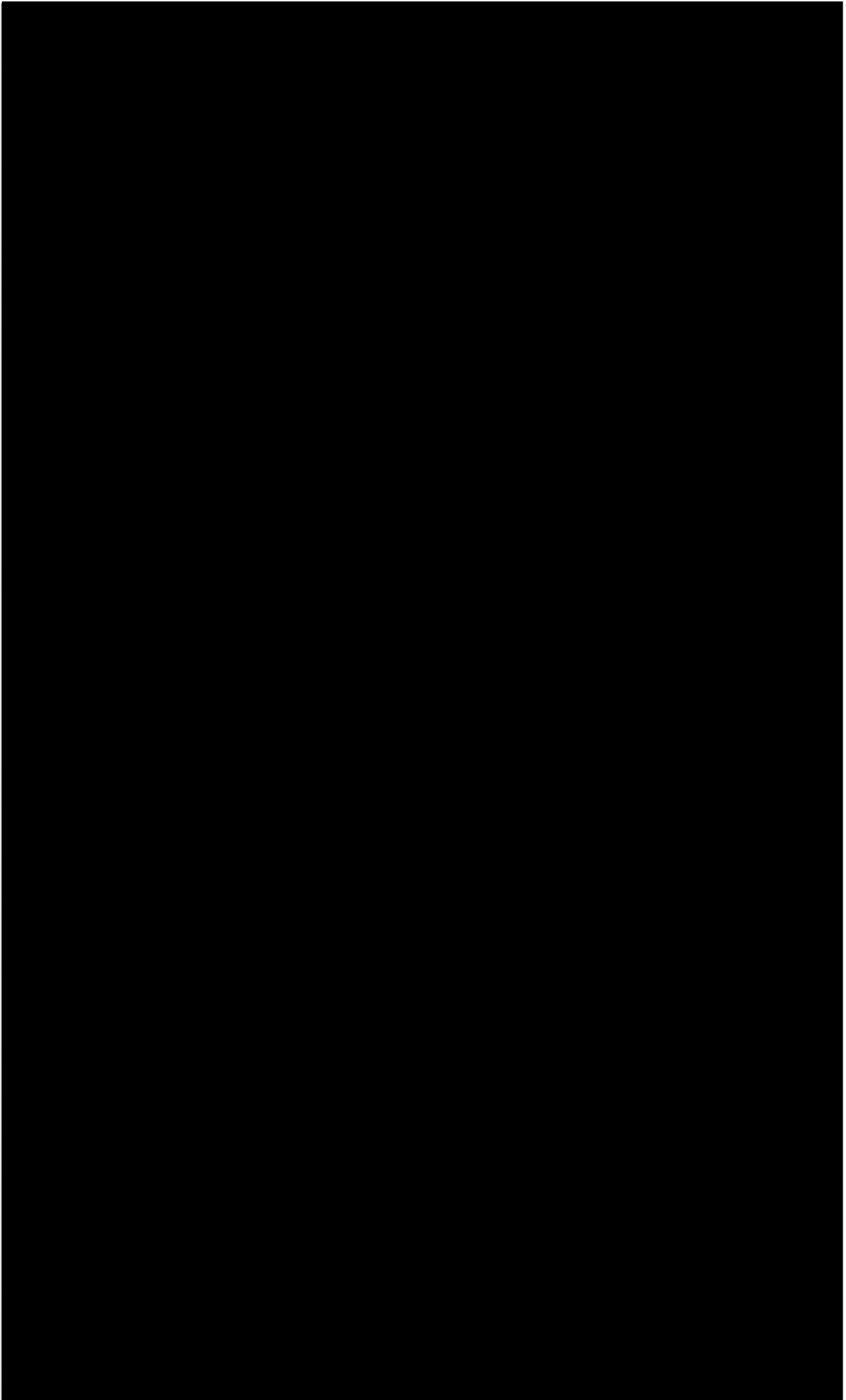
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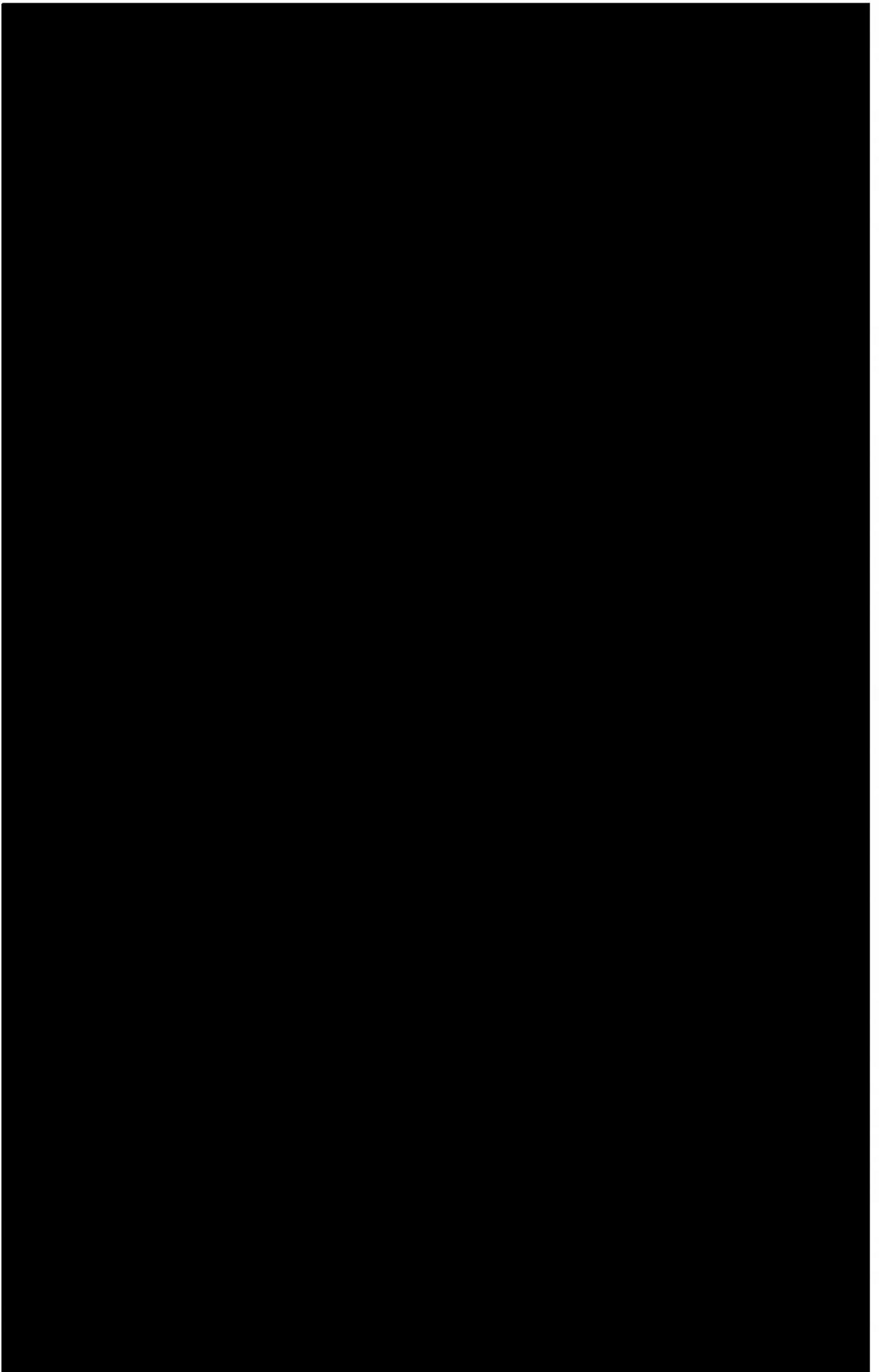
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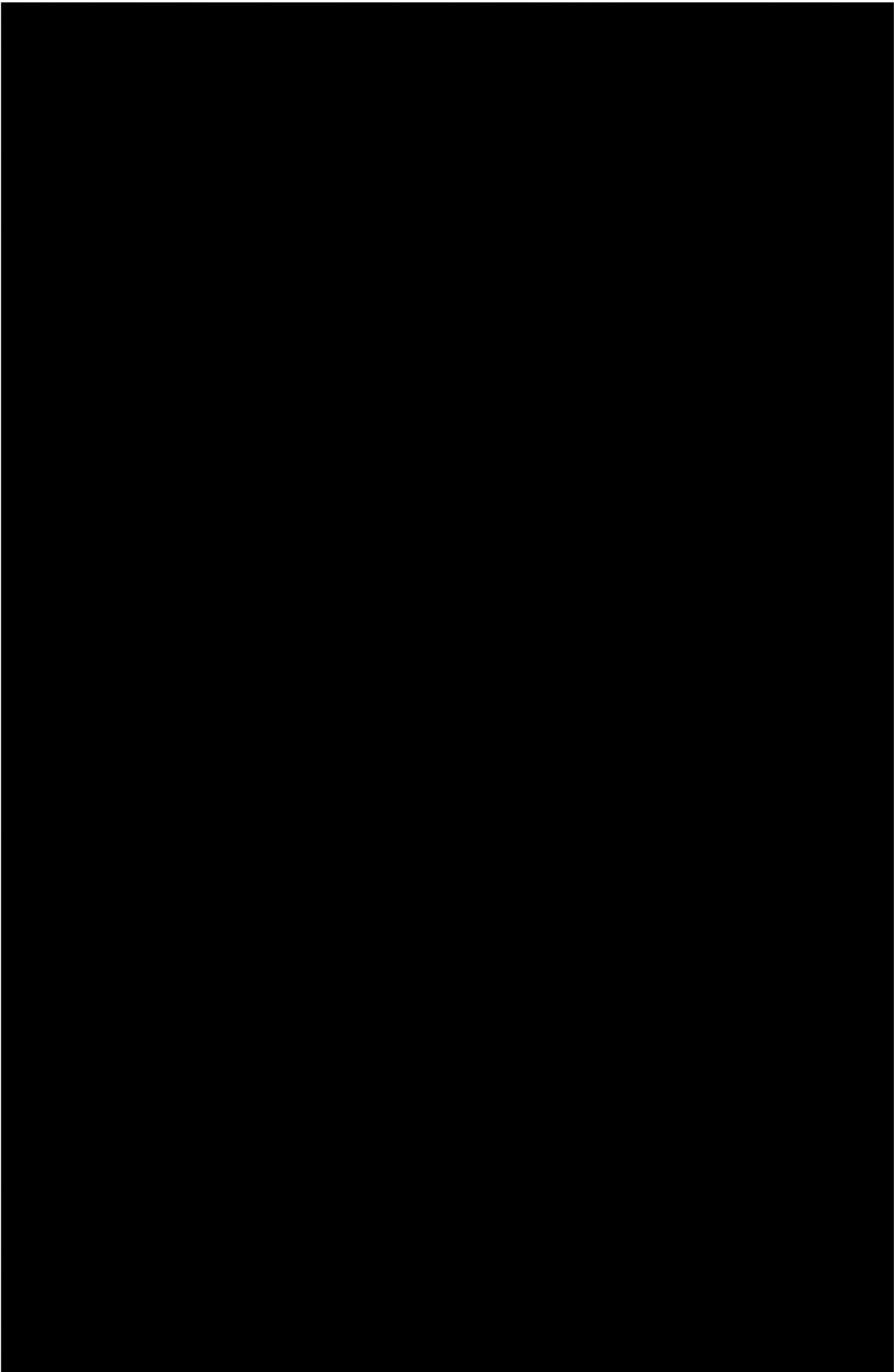
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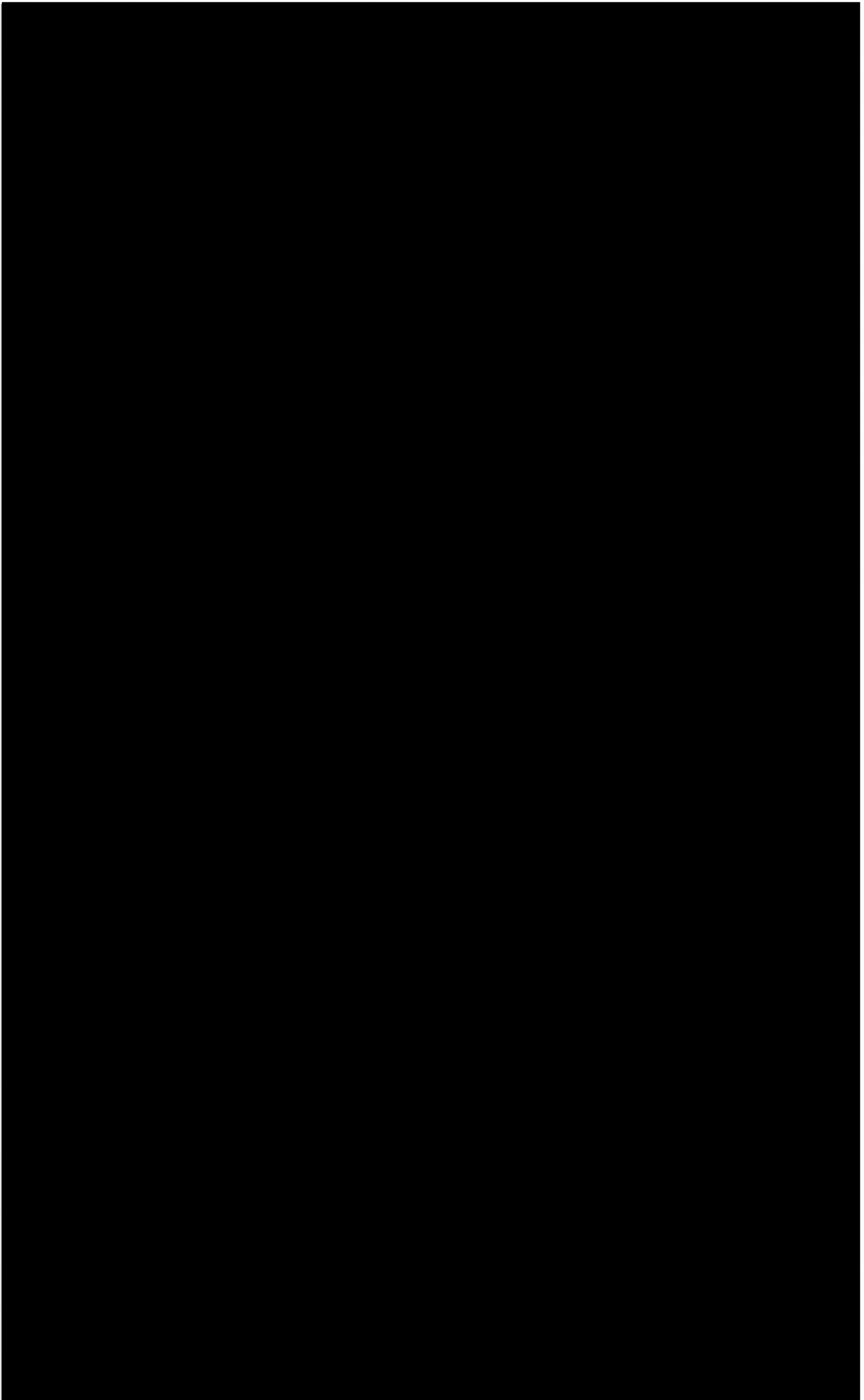
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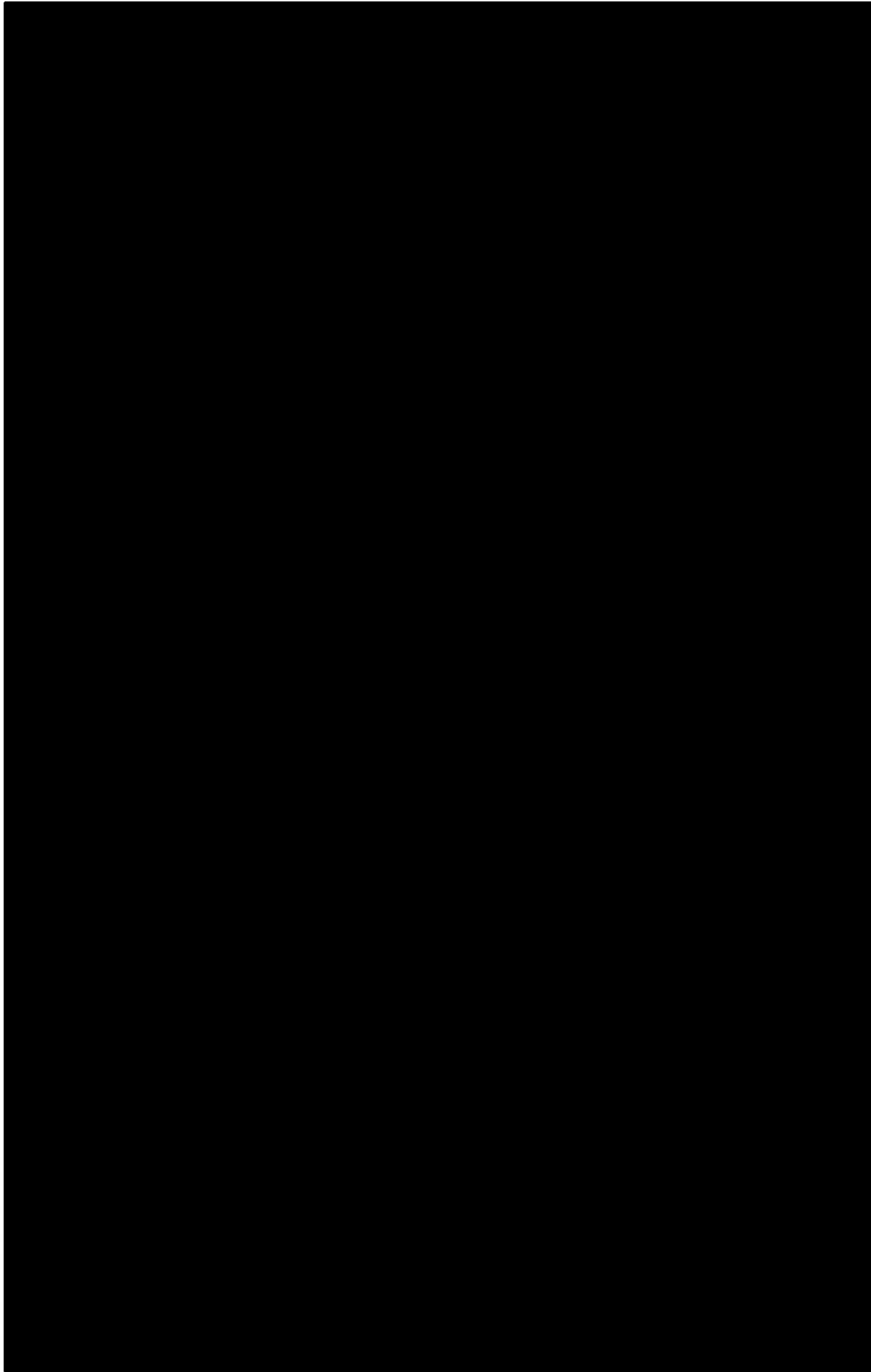


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SCHEDULE 9

Independent Certifier Deed Poll – Cross City Tunnel Interface Deed

(Clause 4.14(b)(i))

THIS DEED is made on [year]

BY:

- (1) [Insert] ABN [insert] whose registered office is at [insert] (the **Independent Certifier**);

FOR THE BENEFIT OF:

- (2) Transurban CCT Nominees Pty Ltd (ACN 168 538 127) in its own capacity and as trustee of the Transurban CCT Trust of Level 23, 727 Collins Street Docklands Victoria 3000 and Transurban CCT Pty Ltd ACN 166 658 448 of Level 23, 727 Collins Street Docklands Victoria 3000 (**CCT**).
- (3) **Roads and Maritime Services** ABN 76 236 371 088 of 101 Miller Street, North Sydney, New South Wales 2060 (**RMS**).

RECITALS:

- (A) The Developer, CCT and RMS are parties to the Interface Agreement.
- (B) The Developer and [insert] (**Contractor**) have entered into the Project Deed.
- (C) In accordance with the Project Deed, the Developer and the Contractor have appointed the Independent Certifier under the Deed of Appointment of Independent Certifier.
- (D) The Independent Certifier executes this document in accordance with clause 4.14 of the Independent Certifier Deed.

This deed poll witnesses:

1. INTERPRETATION

1.1 Definitions

The defined terms in clause 1.1 of the Independent Certifier Deed have the same meaning in this deed poll unless a term is defined in this deed poll, in which case the meaning given in this deed poll will prevail.

Developer means [insert].

Independent Certifier Deed means the deed entitled "Sydney Metro City & Southwest Independent Certification of the TSE Works – Independent Certifier Deed" between the Developer, the Independent Certifier and the Contractor and dated on or about [insert].

Interface Agreement means the agreement between the Developer, CCT and RMS and entitled the "[insert] Interface Deed" dated on or about [insert].

Contractor means [insert].

Works has the meaning given to the term "Works" in the Interface Agreement.

1.2 Interpretation

The following apply in the interpretation of this deed poll, unless the context requires otherwise:

- (a) a reference to this deed poll, this document or a similar term means either the agreement set out in this document or the document itself, as the context requires;
- (b) a reference to any Act, regulation, rule or similar instrument includes any consolidations, amendments or re-enactments of it, any replacements of it, and any regulation or other statutory instrument issued under it;
- (c) a reference to the singular includes the plural number and vice versa;
- (d) a reference to a gender includes a reference to each gender;
- (e) a reference to a party means a person who is named as a party to this deed poll;
- (f) person includes a firm, corporation, body corporate, unincorporated association and a governmental authority;
- (g) a reference to a party or a person includes that party's or person's executors, legal personal representatives, successors, liquidators, administrators, trustees in bankruptcy and similar officers and, where permitted under this deed poll, their substitutes and assigns;
- (h) an agreement on the part of, or in favour of, two or more persons binds or is for the benefit of them jointly and severally;
- (i) includes means includes but without limitation;
- (j) where a word or expression has a defined meaning, its other grammatical forms will have a corresponding meaning;
- (k) a reference to doing something includes an omission, statement or undertaking (whether or not in writing) and includes executing a document;
- (l) a reference to a clause, schedule or annexure is a reference to a clause of, or a schedule or an annexure to this deed poll;
- (m) a reference to a document or agreement, or a provision of a document or agreement, is to that document, agreement or provision as amended, supplemented, replaced or novated; and
- (n) headings in this deed poll shall not form part of this deed poll and shall not be used in the interpretation of this deed poll.

2. BENEFIT OF DEED POLL

- (a) The Independent Certifier acknowledges and agrees that this deed poll is for the benefit of CCT and RMS.
- (b) This document operates as a deed poll and is enforceable against the Independent Certifier in accordance with its terms by CCT and RMS, even though CCT and RMS are not a parties to this deed poll.
- (c) This deed poll may not be revoked or otherwise modified without the prior written consent of CCT and RMS.

3. SERVICES UNDER THE INTERFACE AGREEMENT FOR THE BENEFIT OF CCT AND RMS

- (a) Without limiting any other clause of this deed poll the Independent Certifier must carry out the Independent Certifier's Services under the Interface Agreement for the benefit of CCT and RMS including those referred to or required under:
- (i) clause 7.6(a);
 - (ii) clause 8.3(b)(ii);
 - (iii) clause 8.4; and
 - (iv) clause 9.1(c),
- of the Interface Agreement.
- (b) Without limiting paragraph (a) the Independent Certifier must provide CCT and RMS with all certificates required from the Independent Certifier under the Interface Agreement within the time frames required by the Interface Agreement (including those set out in Schedule 5 and Schedule 6 of the Interface Agreement).

4. WARRANTIES

- (a) The warranties, covenants and acknowledgments set out in clauses 4.2, 4.3, 4.4, 4.5, 4.6 and 5.1 of the Independent Certifier Deed are repeated for the benefit of CCT and RMS and are enforceable by CCT and RMS against the Independent Certifier.
- (b) Without limiting any other clause of this deed poll the Independent Certifier covenants with CCT and RMS that the Independent Certifier Deed operates as if the Interface Agreement were a Project Agreement within the meaning of that term in the Independent Certifier Deed.

5. INDEMNITIES

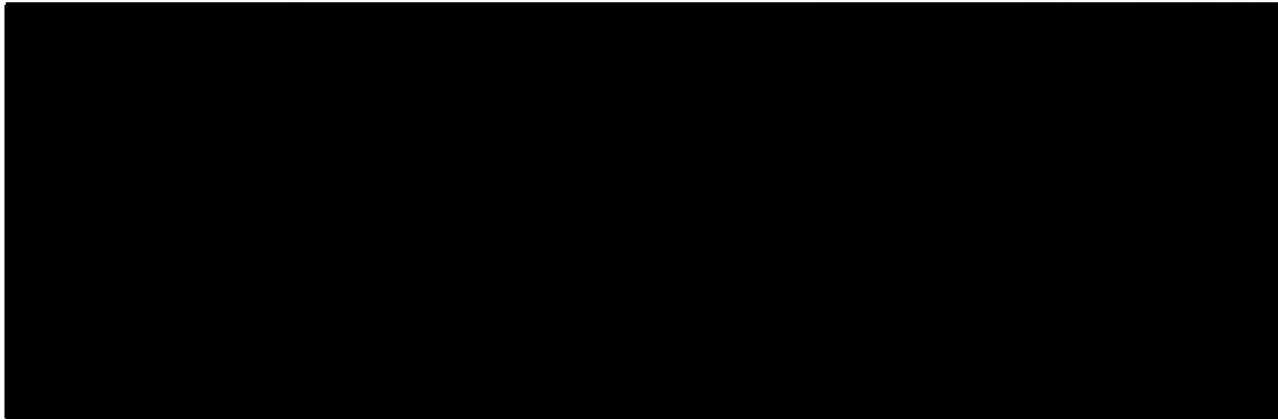
5.1 Indemnity

- (a) The Independent Certifier is liable for and indemnifies CCT and RMS against any liability, loss, claim, expense or damage which it may pay, suffer or incur in respect of:
- (i) any damage to or loss of property; or
 - (ii) death of or injury to any person,
- insofar as the liability, loss, claim, expense or damage arises out of the act, error or omission of the Independent Certifier, its employees, agents or consultants in respect of or in relation to the Independent Certifier's Services referred to in clause 3.
- (b) The Independent Certifier's liability under this clause will be reduced proportionally to the extent that a negligent act or omission of CCT or RMS may have contributed to the loss or damage.

5.2 Indemnity survives

Each indemnity contained in this deed poll:

- (a) is a continuing obligation despite a settlement of account or the occurrence of any other thing, and remains fully effective until all money owing, contingently or otherwise, under an indemnity has been paid in full;
- (b) is an additional, separate and independent obligation and no one indemnity limits the generality of another indemnity; and
- (c) survives the termination of this deed poll.



7. NO PAYMENT BY CCT OR RMS

For the avoidance of doubt, the Independent Certifier acknowledges and agrees that CCT and RMS will have no obligation to make any payments whatsoever to the Independent Certifier caused by, arising out of or in connection with the Independent Certifier's Services.

8. SEVERABILITY

If any provision of this deed poll is illegal, void, invalid or unenforceable for any reason, all other provisions which are self-sustaining and capable of separate enforcement will, to the maximum extent permitted by law, be and continue to be valid and enforceable.

EXECUTED as a deed poll on

Executed by **APP Corporation Pty Limited (ABN 29 003 764 770)** in accordance with section 127 of the *Corporations Act 2001 (Cth)*:

Signature of Director

Signature of Secretary/other Director

Full name of Director in full

Name of Secretary/other Director in full

SCHEDULE 10

Independent Certifier Deed Poll – Barangaroo/Metro Interface Agreement

(Clause 4.14(b)(ii))

By: [Independent Certifier] [ABN] of [address] (the Independent Certifier)

In favour of: Barangaroo Delivery Authority ABN 94 567 807 277; and

[] ABN [] of [address] (Central Barangaroo Developer).

Background

- (A) TfNSW is party to the Barangaroo/Metro Interface Agreement with BDA.
- (B) It is a term of the Barangaroo/Metro Interface Agreement that TfNSW must require the Independent Certifier to execute this deed poll.
- (C) The Independent Certifier has agreed to provide BDA and the Central Barangaroo Developer with certain rights on the terms and conditions of this deed poll.

Operative provisions

1. Interpretation

1.1 Definitions

The defined terms in clause 1.1 of the Independent Certifier Deed have the same meaning in this deed poll unless a term is defined in this deed poll, in which case the meaning given in this deed poll will prevail.

BDA means Barangaroo Delivery Authority ABN 94 567 807 277.

Barangaroo/Metro Interface Agreement means the agreement between TfNSW and BDA entitled the " Sydney Metro City & Southwest Barangaroo/Metro Interface Agreement " dated on or about [insert].

Central Barangaroo Developer means [insert].

Independent Certifier Deed means the deed entitled [insert title] between TfNSW, the TfNSW Contractor and the Independent Certifier and dated on or about [insert].

TfNSW means Transport for NSW ABN 18 804 239 602.

TfNSW Contractor means [insert].

1.2 Interpretation

The following apply in the interpretation of this deed poll, unless the context requires otherwise:

- (a) a reference to this deed poll, this document or a similar term means either the agreement set out in this document or the document itself, as the context requires;
- (b) a reference to any Act, regulation, rule or similar instrument includes any consolidations, amendments or re-enactments of it, any replacements of it, and any regulation or other statutory instrument issued under it;
- (c) a reference to the singular includes the plural number and vice versa;

- (d) a reference to a gender includes a reference to each gender;
- (e) a reference to a party means a person who is named as a party to this deed poll;
- (f) person includes a firm, corporation, body corporate, unincorporated association and a governmental authority;
- (g) a reference to a party or a person includes that party's or person's executors, legal personal representatives, successors, liquidators, administrators, trustees in bankruptcy and similar officers and, where permitted under this deed poll, their substitutes and assigns;
- (h) an agreement on the part of, or in favour of, two or more persons binds or is for the benefit of them jointly and severally;
- (i) includes means includes but without limitation;
- (j) where a word or expression has a defined meaning, its other grammatical forms will have a corresponding meaning;
- (k) a reference to doing something includes an omission, statement or undertaking (whether or not in writing) and includes executing a document;
- (l) a reference to a clause, schedule or annexure is a reference to a clause of, or a schedule or an annexure to this deed poll;
- (m) a reference to a document or agreement, or a provision of a document or agreement, is to that document, agreement or provision as amended, supplemented, replaced or novated; and
- (n) headings in this deed poll shall not form part of this deed poll and shall not be used in the interpretation of this deed poll.

2. **Benefit of deed poll**

- (a) The Independent Certifier acknowledges and agrees that this deed poll is for the benefit of BDA and the Central Barangaroo Developer.
- (b) This document operates as a deed poll and is enforceable against the Independent Certifier in accordance with its terms by BDA or the Central Barangaroo Developer, even though BDA and the Central Barangaroo Developer are not a party to this deed poll.
- (c) This deed poll may not be revoked or otherwise modified without the prior written consent of BDA and the Central Barangaroo Developer.

3. **Services**

- (a) Without limiting any other clause of this deed poll the Independent Certifier must carry out the Independent Certifier Services under the Barangaroo/Metro Interface Agreement for the benefit of BDA and the Central Barangaroo Developer.
- (b) Without limiting paragraph (a) the Independent Certifier must provide BDA with all certificates required from the Independent Certifier under the Barangaroo/Metro Interface Agreement within the time frames required by the Barangaroo/Metro Interface Agreement.

4. **Warranties**

- (a) The warranties, covenants and acknowledgments set out in the Independent Certifier Deed are repeated for the benefit of BDA and the Central Barangaroo Developer and are enforceable by BDA or the Central Barangaroo Developer against the Independent Certifier.
- (b) Without limiting any other clause of this deed poll the Independent Certifier covenants with BDA and the Central Barangaroo Developer that the Independent Certifier Deed operates as if the Barangaroo/Metro Interface Agreement were a Project Agreement within the meaning of that term in the Independent Certifier Deed.

5. **Indemnities**

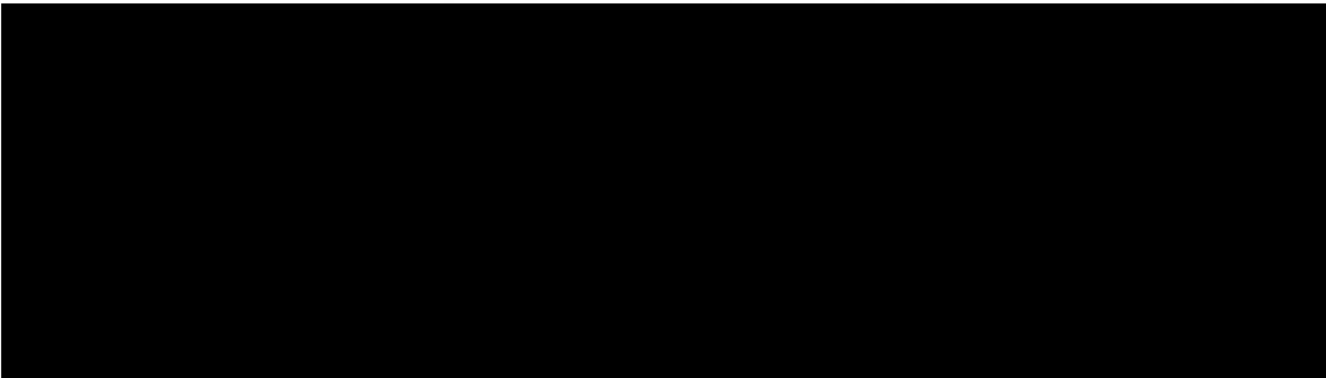
5.1 **Indemnity**

- (a) The Independent Certifier is liable for and indemnifies each of BDA and the Central Barangaroo Developer against any liability, loss, claim, expense or damage which it may pay, suffer or incur in respect of:
 - (i) any damage to or loss of property; or
 - (ii) death of or injury to any person,insofar as the liability, loss, claim, expense or damage arises out of the act, error or omission of the Independent Certifier, its employees, agents or consultants in respect of or in relation to the Independent Certifier Services referred to in clause 3.
- (b) The Independent Certifier's liability to BDA or the Central Barangaroo Developer under this clause 5 will be reduced proportionally to the extent that a negligent act or omission of BDA or the Central Barangaroo Developer (as applicable) may have contributed to the loss or damage.

5.2 **Indemnity survives**

Each indemnity contained in this deed poll:

- (a) is a continuing obligation despite a settlement of account or the occurrence of any other thing, and remains fully effective until all money owing, contingently or otherwise, under an indemnity has been paid in full;
- (b) is an additional, separate and independent obligation and no one indemnity limits the generality of another indemnity; and
- (c) survives the termination of this deed poll.



7. **No payment by BDA**

For the avoidance of doubt, the Independent Certifier acknowledges and agrees that BDA will have no obligation to make any payments whatsoever to the Independent Certifier caused by, arising out of or in connection with the Independent Certifier Services.

8. **Severability**

If any provision of this deed poll is illegal, void, invalid or unenforceable for any reason, all other provisions which are self-sustaining and capable of separate enforcement will, to the maximum extent permitted by law, be and continue to be valid and enforceable.

EXECUTED as a deed poll on

Signed, sealed and delivered by

[Independent Certifier] by:

Signature of director/company secretary

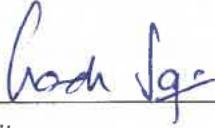
Signature of director

Print name

Print name

EXECUTED as a deed.

Executed by Transport for NSW (ABN 18 804 239 602) by its authorised delegate in the presence of:



Signature of witness

GARETH SAGE

Name of witness in full



Signature of authorised delegate

RODD STAPLES

Name of authorised delegate

Executed by APP Corporation Pty Limited (ABN 29 003 764 770) in accordance with section 127 of the *Corporations Act 2011* (Cth):



Signature of Director

ADAM CASTRO

Name of Director in full

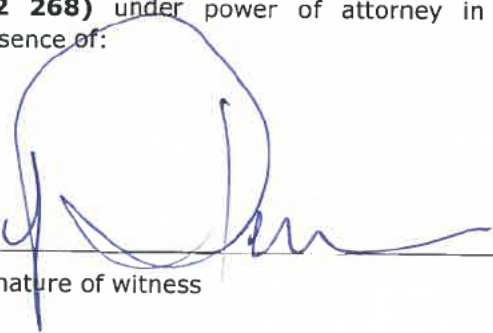


Signature of Secretary/other Director

IAN MAXTED


Name of Secretary/other Director in full

Signed, sealed and delivered for and on behalf of **John Holland Pty Ltd (ABN 11 004 282 268)** under power of attorney in the presence of:


Signature of witness

Terry Skiman
Full name of witness

26 Queens Rd Connells Pt
Address of witness


Signature of attorney

GERARD ANTHONY KODOMICHALOS
Name

16 June 2017
Date of power of attorney

Signed, sealed and delivered for and on behalf of **CPB Contractors Pty Ltd (ABN 98 000 893 667)** by its Attorneys under a Power of Attorney dated 20 June 2017 (and the Attorneys declare that the Attorneys have not received any notice of the revocation of such Power of Attorney) in the presence of:

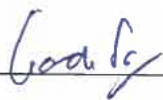
sign here ► 
Attorney

print name Stuart McKenzie

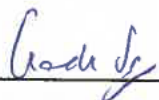

Attorney

MARK BADGER

in the presence of

sign here ► 
Witness

print name GARETH SAGE


Witness

GARETH SAGE

Executed by Ghella Pty Ltd (ABN 85 142 392 461 in accordance with section 127 of the *Corporations Act 2011 (Cth)* :

Signature of Director

LECH JOSEPH GARWACKI
Name of Director in full

Signature of Secretary/other Director

JALE GILBERT
Name of Secretary/other Director in full

EXHIBIT 1



