ARKANSAS STATE CLAIMS COMMISSION

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| HALEY HUDSON, INDIVIDUALLY AND AS ADMINISTRATRIX OF THE ESTATE OF JACQUELINE LYNN ASHCRAFT, DECEASED, AND HALEY HUDSON AS PERMANENT LEGAL GUARDIAN OF [redacted] AND [redacted] MINOR CHILDREN, | ) |
| CLAIMANT, | ) CC NO. 230641 |
| VS. | ) |
| ARKANSAS DEPARTMENT OF HEALTH AND HUMAN SERVICES, | ) |
| RESPONDENT. | ) |

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ORAL AND VIDEOTAPED DEPOSITION OF

KRISTEN SHELTON

May 16, 2023

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ORAL AND VIDEOTAPED DEPOSITION OF KRISTEN SHELTON, produced as a witness at the instance of the CLAIMANT, and duly sworn, was taken in the above-styled and numbered cause on the 16th day of May, 2023, from 1:02 p.m. to 1:55 p.m., before Dana Hayden, CCR in and for the State of Arkansas, RMR, CRR, CRC, reported by machine shorthand, at the Arkansas Department of Human Services, 900 South Rogers Avenue, Clarksville, Arkansas, pursuant to the Arkansas Rules of Civil Procedure.

APPEARANCES

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ALSO PRESENT:

Mr. Garrett Smelley,
Certified Legal Video Specialist

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I N D E X

May 16, 2023


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EXHIBITS

| NO. | DESCRIPTION | MARKED |
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| Exhibit 1 | Documents Bates-stamped Ashcraft Rsp to Production 408 through 428 | 17 |
| Exhibit 2 | Fact-finding packet Bates-stamped 417 through 426 | 36 |

***** PROCEEDINGS *****

THE VIDEOGRAPHER: We are now on the record. Today's date is May 16th, 2023, and the time is 1:01. This deposition is taking place at 900 South Rogers Street in Clarksville, Arkansas, in the matter of Haley Hudson, et al. versus Arkansas Department of Human Services, Number 230641, in the Arkansas State Claims Commission.

The deponent is Kristen Shelton, and if counsel will introduce themselves, the witness will be sworn.

MR. JACKSON: Jim Jackson, attorney for the claimant.

MR. GASPER: Brent Gasper, attorney for the department.

THE STENOGRAPHER: Ma'am, if you'll raise your right hand.

KRISTEN SHELTON,

having been first duly sworn, testified as follows:

EXAMINATION

BY MR. JACKSON:

Q. Ms. Shelton, my name is Jim Jackson. We had a chance to meet just briefly beforehand. And as you know, I'm the attorney for the estate and for the

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guardian of the two children that were involved in the accident on June 11th, 2021. And I've brought a claim before the Arkansas Claims Commission, and I'm here to ask you -- or get information from you on what information you might have regarding Jennifer Wilkerson and the events that occurred that day.

A. (Nods head up and down.)

Q. And I see you nodded your head affirmatively --

A. Mm-hmm.

Q. -- but here in this, in this proceeding with a court reporter and a videographer, we have to have audible answers. So if you wouldn't mind, when I ask you questions, of saying "yes" or "no" or "Please repeat the question," okay?

A. Yes.

Q. And at any time -- I want to go over some of the ground rules of a deposition. Have you ever given a deposition before?

A. I have not.

Q. Okay. One of the -- we have to communicate with one another. I want to make sure you understand my question, and I want to make sure I understand your answer. So if at any time you don't understand my question, please ask me to restate it or rephrase it. I will be glad to do so, okay?

A. Okay.
Q. And if at any time during the deposition you think back to an answer you provided and you have additional information about that because time went by or something else came up and made you think about it, you can always go back and supplement your answer at the end of -- during the deposition, okay?
A. Okay.
Q. And one thing is I want you to be relaxed. This is not a marathon contest. It shouldn't last for more than an hour. But at any time you need to take a break, you want to have some of your Pepsi or step outside for any reason, visit with your attorney, feel free to do so. You are in charge of the proceeding of this deposition, okay?
A. Okay.
Q. What -- I want to ask you some questions about your background. Where did you go to high school?
A. Paris High School.
Q. And what year did you graduate from Paris?
A. 1993.
Q. Did you play volleyball back then?
A. No.
Q. And then what did you do after you graduated from high school?

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A. I went to college.
Q. And where did you go?
A. Arkansas Tech University.
Q. And did you -- what year did you graduate from ATU?
A. 1997.
Q. And what was your major?
A. Psychology.
Q. And what did you do after you graduated in 1997? Did you continue in education, or did you start employment?
A. No. I started employment.
Q. And where did you start?
A. I worked for International Paper, Incorporated.
Q. Where was that?
A. I worked at the Russellville location.
Q. And just out of curiosity, what were you doing at IP in Russellville?
A. I was an administrative assistant for their production manager.
Q. And then what did you do next professionally?
A. I came to work for the Department of Human Services as a family service worker here in Johnson County.
Q. Do you recall what year that was?

A. 2000.
Q. And from 2000 to today, have you continued to be employed with Department of Human Services?
A. Yes.
Q. And I'm not expecting you to remember everything, but kind of walk me through what your career has been from a family service worker to what you're doing today.
A. I started as a family service worker primarily doing casework. I transitioned to what we called our resource unit, which was responsible for recruiting and licensing foster homes and then I was promoted to the county supervisor in Franklin County. I was there approximately ten years.

Also while I was there, I also took over supervision of our adoptions unit and our resource unit. We got a new supervisor position added, so then I became just the adoption and resource unit supervisor.
Q. In Franklin County or --
A. Well, no. For a seven-county area.
Q. Okay.
A. And then I was promoted to the position I'm in now.
Q. What is that position, ma'am?

A. I'm a DHS program administrator, so I supervise the supervisors for a six-county area of the Division of Children and Family Services.
Q. And was that your job on June 11th of '21 --
A. Yes.
Q. -- when this accident happened? Okay.
What are the six counties?
A. Crawford, Franklin, Johnson, Scott, Logan, Yell.
Q. And what is the county seat of Franklin County? Do you know?
A. There's two county seats in Franklin County, Ozark and Charleston.
Q. Ozark and Charleston? Okay. Did you live in Charleston or Ozark within that time?
A. No.
Q. Okay. Were you the person that got called at 1:00 in the morning to be -- have children in place with you when a drug bust occurred, when you -- back in that time period?
A. When I was the Franklin County supervisor?
Q. (Nods head up and down.)
A. No.
Q. I understand that sometimes the placement of children can occur at some very difficult hours; is that --

A. Correct. As the supervisor, there would have been staff below me that would have responded to emergency situations.
Q. Explain to me what -- your understanding of what Jennifer Wilkerson's job was on -- what was she hired as on June 11th?
A. She was hired as a program assistant.
Q. If I see the phrase "PA" in messages, is that what pro- -- is that what "PA" stands for?
A. Yes.
Q. And then what does a program assistant stand for -- I mean, what does a program assistant do?
A. They assist the family service workers in providing services to the families. So primarily supervising parent-child visits, transporting clients for services, et cetera.
Q. How long -- what's your understanding of how long Jennifer Wilkerson had been employed by DHS?
A. Ten days prior to the accident.
Q. What -- do you know what her background was to make her -- what would make her eligible to have that job?
A. The -- as far as the eligibility criteria, I don't recall what her specific background was.
Q. Okay. Thank you. That was going to be my

second question. What is the eligibility requirement?
A. The only eligibility requirement is a high school diploma. We prefer work experience, certain work experiences, but it's not an eligibility requirement.
Q. Okay. Are there anything that -- if a person has been arrested for a felony, does that make them ineligible to be a program assistant?
A. A person would have to be convicted of a crime before we would know about it.
Q. How did you find out that there had been a wreck on June 11th with the DHS employee involved?
A. The Logan County supervisor contacted me.
Q. Who is the Logan County supervisor?
A. Pamela Feemster.
Q. At that time, would Ms. Feemster have been working in Paris?
A. Yes.
Q. Okay. How did she first contact you?
A. I don't recall.
Q. Do you recall the nature of what Ms. Feemster told you had happened?
A. That one of her employees had been involved in an auto accident in the state car.
Q. Do you recall anything else she told you at that

initial call?
A. I don't.
Q. And you don't recall if it was by phone or text or --
A. I don't.
Q. Okay. What -- when you got that information, what did you do?
A. I honestly don't remember what I did on that day, or if I did anything on that day specifically.
Q. And my understanding is that this accident occurred on a Friday? Does that sound correct to you?
A. I don't know for sure.
Q. What -- based on your experience, what would be your operating procedure for you to tell the Logan County supervisor when you got that information?
A. I would ask if our worker was okay, if they were seeking medical treatment. I mean, that's what I would normally do.
Q. Okay. Do you re- -- what's the next information you recall receiving about this accident?
A. I honestly don't recall. It's been almost two years, so...
Q. Do you recall doing an investigation about Ms. Wilkerson and what happened and doing any interaction with Ms. Wilkerson?

A. I did an internal fact-finding to determine if she had violated any of the behavior expectations that we have.
Q. And describe -- describe for me what that internal fact-finding, what that process is, please.
A. It's a process where we determine if any of the behavior expectations have been violated by reaching out to the person involved and any other people that might have information to gather what information we could to determine if there needed to be any discipline action.
Q. Do you recall who all you obtained information from about this?
A. I believe I obtained information from -- I know Ms. Wilkerson, Ms. Feemster, Pamela Feemster, Brandy Ezell. Those are the only ones I remember off the top of my head that I talked to.
Q. Did you ever talk to the -- anybody with the Arkansas State Police?
A. I did not.
Q. Okay. Who is Brandy Ezell?
A. She's a family service worker in Logan County.
Q. Is she still in Logan County?
A. Yes.
Q. And would Jennifer Wilkerson have been directly

under Brandy Ezell?
A. No. She was directly under Pamela Feemster.
Q. Okay. In way of seniority, who has seniority between Pamela Feemster and Brandy Ezell?
A. Pam.
Q. Okay.
A. Both Jennifer and Brandy worked for Pam.
Q. Okay. Thank you. Who is Staci Miller?
A. She was our HR, our human resource manager, in central office at the time.
Q. Okay.
MR. GASPER: What was the name again, Jim?
MR. JACKSON: Staci Miller.
MR. GASPER: Okay.
Q. So she is the HR liaison out of the Little Rock?
A. She was our manager, our HR manager.
Q. Manager?
A. She was. She's no longer with us.
Q. Who is -- and I'm going to -- I've got some employee -- some names on here I just want to go over with you that I got from these emails. Who is Miranda Raines?
A. She is also part of our executive staff in Little Rock, and I can't tell you what her exact title

is.
Q. Okay. But she's in the Little Rock --
A. Yes.
Q. -- office?
Tiffany Wright?
A. Tiffany Wright was, at the time, my supervisor's supervisor. She was our assistant director over field operations for the Division of Children and Family Services.
Q. Would she also be in the central office?
A. Yes, sir.
Q. Sara Snead?
A. There -- I don't know who Sara Snead is.
Q. Okay.
A. There is no Sara Snead.
Q. There may be one; you just don't know who it is?
A. Okay.
MR. GASPER: She's with HR, central office.
MR. JACKSON: That's fine.
A. I don't know who that is.
Q. That's fine. That's a perfectly good answer.
You don't know Trooper James Ray?
A. No.
Q. Okay.

A. No.
Q. Do you know who Scott Lindstrom is?
A. No.
Q. Do you know of anyone else that would have been part of the fact-finding that you did?
A. I discussed it with my direct supervisor. Sarah Sharum was our area director -- or is our area director.
Q. How do you spell Sarah's last name?
A. S-h-a-r-u-m.
MR. GASPER: That's an M, correct?
THE WITNESS: M.
MR. GASPER: M, as in "mom"?
A. Sharum.
Q. And where does Ms. Sharum work?
A. Sebastian County office, Fort Smith.
Q. It appears to me from the documents that you ended up terminating Ms. Wilkerson from employment at DHS on Wednesday, June 16th, 2021. Does that sound correct?
A. Yes.
Q. Okay.
A. I don't know the exact date but, yes, I did terminate her employment.
Q. Have you -- I'm going to hand you what we'll

mark as Exhibit 1.

MR. GASPER: Is this a copy of it?

MR. JACKSON: Yes.

MR. GASPER: I don't object.

Q. If you could --

MR. GASPER: I have no objection.

(Exhibit 1 marked for identification.)

MR. JACKSON: Let me make sure I got that -- yeah.

Q. Have you seen that document, or those documents that are part of Exhibit 1?

A. I have seen some of these documents. I have not seen all of these documents.

Q. Can you take a look at those documents? I want to ask you some questions about them and your involvement with those documents.

MR. GASPER: Do you have any specific ones you're asking about, or do we need to take some time for her to look over them?

MR. JACKSON: Yeah, let's just take a -- let's just go off the record for a moment.

THE VIDEOGRAPHER: The time is 1:19. We're now off the record.

(Recess from 1:20 p.m. to 1:22 p.m.)

THE VIDEOGRAPHER: The time is 1:22.

We're now on the record.
Q. Ms. Shelton, have you had a chance to look at what -- the documents attached as Exhibit 1 to your deposition?
A. Yes.
Q. I want to ask you: What are the requirements that the department has for an employee before they are able to drive a state-issued car?
A. I don't -- I mean, I don't know specifically what that is off the top of my head.
Q. Is there any --
A. I mean, they have to be an employee and they have to have passed our background checks and all of that, and they have to -- there is a vehicle policy that they have to sign. I mean, I don't -- I don't have that in front of me. That's not part of this documentation, so I don't know the specifics.
Q. Is there a vehicle policy that employees are expected to adhere to when they drive?
A. Yes.
Q. And are you familiar -- how familiar are you with that policy?
A. I have not read that policy in a long -- I've been employed a long time, so it's been a while since I've read that.

Q. And what is the gist of that policy?
A. I mean, I honestly can't get into the specifics about it. There are a couple of different pages that employees have to sign off on acknowledging that they understand it.
Q. What is your understanding about where Jennifer Wilkerson's, what the mission of her route on June 11th, '21 was?
A. My understanding is that she was going to travel from Paris to Beebe to pick up a foster child and transport that child back to Clarksville to meet another worker.
Q. And when you say "Clarksville," would the transfer to the other worker have occurred here at this office?
A. Yes.
Q. Okay.
A. Well, no, I don't know that it would have occurred at this office. It was set to occur in this town.
Q. Okay.
A. But I don't know where.
Q. Okay. Thank you for clarifying.
As part of your internal fact-finding, tell me what steps you took to investigate

Ms. Wilkerson's actions.
A. I notified her of the fact-finding and sent her a list of questions and then I also asked for statements from Ms. Feemster and Ms. Ezell that I know for sure.
Q. And the questions that you sent to Ms. Wilkerson are on an email dated June 16, 2021, at 10:47 a.m.; is that correct?
A. Yes.
Q. And whose handwriting is that?
A. Ms. Wilkerson's.
Q. And then it looks like you had a follow-up email right after that; is that -- with Ms. Wilkerson; is that correct?
A. Yes, I believe so.
Q. And did you ever -- do you recall having a telephone call with Ms. Wilkerson as part of the fact-finding?
A. I would not have had a telephone call with Ms. Wilkerson. We are specifically instructed to conduct our fact-findings in writing.
Q. You indicated you also obtained information from Randy Ezell?
A. Yes.
Q. And is that information contained in Exhibit 1?

A. Yes.
Q. And where is the -- and it looks like that would have been the email sent to you from Brandy Ezell on June 16th of '21 at 2:03 p.m.?
A. Yes.
Q. Okay. And then the same question for Pamela Feemster. Was the information you received from her via email at 1:41 p.m.?
A. Yes.
Q. Okay. And the same would be true with getting information from Ms. Ezell and Ms. Feemster: Everything you would get from them would be in writing?
A. Everything that I used during the fact-finding is in writing.
Q. Okay.
A. I'm not saying I didn't have a phone conversation with Ms. Feemster. She was directly under me. I was her direct supervisor. But all of the information that I used for the fact-finding is in writing.
Q. Gotcha. That makes sense.
Do you recall anything that Ms. Feemster may have told you that's outside of what's in the email about the accident?

A. I don't think so.
Q. So on Page 2 of the exhibit, there's an email from you to Tiffany Wright and some others -- oh, if you need to take that.
A. I'm sorry. No, it's -- I didn't think to silence my phone because I didn't bring it into the room, so I didn't think about my watch going off. I apologize.
Q. And we certainly understand if you have an emergency.
A. No, it's fine.
Q. Could you read your email that you sent to Tiffany Wright?
A. "New Logan County PA Jennifer Wilkerson just had an accident in a state car. We believe she was at fault but don't have all the details yet. She is being transported to the hospital but was alert. She did not have any clients in the car with her. The car is totaled.

"Allegedly she crossed the centerline and clipped a mobile home that was being transported, then she rear-ended the car in front of her. Her supervisor went to the scene and said her boyfriend came to the scene as well, and he appeared to be under the influence. He is a past client. We are asking

state police if their investigation will involve a toxicology report; if not, is there a way we can drug-screen her."

Q. And where would you have obtained that information about the accident?

A. Probably by phone from Ms. Feemster.

Q. Okay. And the supervisor that went to the scene, do you know if that would have been Ms. Ezell or Ms. Feemster?

A. Ms. Ezell's not a supervisor.

Q. Okay.

A. Ms. Feemster is the only supervisor.

Q. Ms. Ezell is a co-employee, the same?

A. Correct.

Q. Okay.

A. Not the same level, but she's not a supervisor.

Q. Thank you. Okay. Were you -- do you know what happened as far as on your request for a drug screen for Ms. Wilkerson?

A. We -- I know that Ms. Feemster followed the ambulance to the hospital, but she was not allowed to get into the hospital because they had it on lockdown. But she did notify that we were requesting a drug screen, but I don't know if we ever -- I don't know if that happened. I never saw any results of a drug

screen.
Q. Okay.
A. That we -- that we requested.
Q. Okay. Did you see any results of a drug screen at all --
A. No.
Q. -- for Ms. Wilkerson?
A. No, I have not.
Q. What -- so walk me through how Ms. Wilkerson is told that there's an internal fact-finding going to occur and she's going to have to answer these questions. What's the procedure for that?
A. It's in that email attached to the questions. That's how she was notified of the fact-finding. It's the one where she wrote out the answers, that page.
Q. Was there anything else beforehand that her supervisors told, or somebody tells Ms. Shelton [sic], hey, you need to look for this email; it's going to be coming from --
A. No.
Q. -- from Clarksville and you need to be ready for it, or it's just --
A. Not to my knowledge, no.
Q. Okay. I want to ask you. Ms. Wilkerson's answers to question number 5 is -- the question is:

"While you were driving, what happened to cause the accident?"

Can you read what Ms. Wilkerson's answer is?

A. "I remember seeing a car up ahead but no brake lights or signal lights. That's all I remember until I came to."

Q. Do you know anything else about -- whether Ms. Wilkerson had said anything else about what happened to cause the wreck other than that statement?

A. No.

Q. Okay. And then the same for question number 10: "Is there anything else you would like -- that you would like for me to know about" -- let me start over.

Question number 10: "Is there anything else that you would like for me to know regarding this incident?"

What was her answer?

A. "I am devastated over what happened, but I really don't know what happened because I don't remember, it happened so fast."

Q. And then it looks like you had two emails from Pamela Feemster and one from Brandy -- I'm sorry, three emails from Pamela Feemster and one from Brandy Ezell. Did those three emails and Ms. Wilkerson's

answers and Ms. Wilkerson's subsequent email, is that what made up your fact-finding?

A. Yes. And the fact that she had only been employed for ten days and was still in probationary status.

Q. And then how was Ms. Wilkerson notified that she was terminated? Is that something you do, or do you have Ms. Feemster do that?

A. Normally the supervisor would do that. I may have done that myself, and we normally would do that in person, but I honestly don't recall how we notified her.

Q. Do you recall ever meeting Ms. Wilkerson in person?

A. I don't recall that, no. I don't know if I did or not.

Q. Did you ever go to the accident site?

A. No.

Q. Do you know -- I mean, at any point have you ever driven by and said, you know, that's where the accident occurred?

A. I mean, I drive that road all the time.

Q. Highway 22?

A. I don't have any firsthand knowledge, though, of where that accident occurred.

Q. Okay. Was -- at the time of the accident, the state trooper reports it being called in at 12:50 p.m., and it's my understanding that Ms. Wilkerson was supposed to be at Beebe at 2:00 p.m. to pick up the child?
A. That's --
Q. Does that sound correct?
A. That's my understanding.
Q. So if that's correct, she would have been about an hour behind schedule when the wreck occurred; is that right?
A. Yes.
Q. And you don't have any reason to dispute that?
A. No.
Q. Okay. There is an email from Jennifer Wilkerson to Pamela Feemster in that package, and it's got the name of a client blacked out. Do you see that email?
A. Yes.
Q. And what is that Bates stamp number of that one? Is it 419?
A. Yes.
Q. Can you read what Ms. Wilkerson's email stated?
A. "On 6/11/21, I was going to Beebe, Arkansas to pick up," blank, "for a sibling visit in Clarksville, Arkansas. I left Paris about 12:30 p.m. and was

supposed to be there around 2:00 p.m. in Midday" -- I think she meant Midway -- "Arkansas. There was a car stopped in the road. I didn't see a turn signal, and the -- I remember the air back deploying and nothing else until the car was stopped. When I was able to get out of the car, there were already several people on the scene. I was there until I went to the ambulance -- or went to in the ambulance to the emergency room in Booneville, Arkansas. I had minor cuts and bruises."

Q. Okay. Are -- have we gone over all of the statements that you're aware of that Jennifer Wilkerson has made to anyone at DHS regarding what happened in the accident?

A. I believe there might be one other follow-up email that she sent me. It's stamped 423.

Q. Okay.

A. Where she emailed me following the initial questions, and I, in possibly even my follow-up questions, she said -- she sent me an additional email.

Q. Can you read what that email, what she says in that email?

A. "I wanted to mention that it was prescribed to be for ADHD but was used for people with narcolepsy

but that it was something I should inform Pam about. That's why I sent the message."

And that -- and then I think you already asked me, but I did -- I sent her some additional follow-up questions, and she did answer those in a separate email as well.

Q. Looking through the exhibits, or the documents in Exhibit 1, are you aware of any other emails or statements by Jennifer Wilkerson related to this accident?

A. No.

Q. Okay. As you sit here today, are you aware of any facts that would indicate that Jennifer Wilkerson was not 100 percent responsible for this accident?

MR. GASPER: I'm going to object to that. That's speculation. That's way out of her wheelhouse.

MR. JACKSON: Objection noted.

Q. Go ahead and answer the question to the best of your ability.

A. I did not do the investigation involving the accident, so I don't have any knowledge about what the outcome of that investigation was.

Q. Who would have been the person doing the investigation of the accident?

A. I believe the state police conducted the accident investigation.
Q. But as far as within the Department of Human Services, would there have been anybody else doing an investigation into the accident?
A. No. All we did was the fact-finding to determine if there was any violated behavior expectations that we needed to do discipline action on. We were not responsible for any investigation into the accident at all.
Q. Can you go through the list of actions that Ms. Wilkerson violated that would lead her to be terminated?
A. Well, because she was still on probation, it didn't take as much to terminate because technically we can terminate during that probationary period. So I was very concerned that she did not leave the office when she had been advised that she needed to leave the office. I was also concerned that she did admit during the fact-finding that she had taken a medication the day prior to the accident that she did not have a prescription for.
Q. Was there anything else that raised concerns to you?
A. No.

Q. Have you heard from any other source of how the accident may have occurred other than what's in the -- what you've already gone over?
A. No.
Q. What is your understanding of which DHS employees would have gone to the accident scene besides the ones that we've previously discussed, which is Brandy Ezell and Mrs. Feemster?
A. To my knowledge, those are the only employees of the Division of Children and Family Services that went to the scene.
Q. How did you -- what is your understanding of what Ms. Wilkerson did after the accident when she left from the Booneville hospital?
A. My understanding from what the trooper reported to Ms. Feemster is that she was asked to follow the trooper for a drug screen, stopped at McDonald's along the way, and the trooper had to go back and find her. And then I don't have any more knowledge after that.
Q. Do you know how far of a distance the hospital at Booneville is from the sheriff's department?
A. No.
Q. Okay.
A. I can -- I have them pictured in my mind, but I'm not good. I mean, it's -- I would say it's just a

few miles.
Q. Okay.
THE WITNESS: Could we take a quick break?
MR. JACKSON: Oh, yes. Yes, please.
THE WITNESS: Is that okay?
MR. JACKSON: Yes, yes. Certainly, yes.
THE VIDEOGRAPHER: The time is 1:46. We're now off the record.
(Recess from 1:46 p.m. to 1:49 p.m.)
THE VIDEOGRAPHER: The time is 1:49. We're now on the record.
Q. And I want to ask you some questions about Jacqueline Ashcraft. Did you know who she was?
A. No.
Q. Do you know -- have you heard of anything she did to cause this accident?
A. No.
Q. What about Bobby Wilson?
A. I don't know that name.
Q. The -- and I'll represent to you that Bobby Wilson is the name of the driver of the tractor-trailer rig that was hauling the modular home that was approaching, traveling west on Highway 22, when this accident happened. Have you heard of

anything that he may have done to cause this accident?
A. No.
Q. Do you know if anybody looked at Jennifer Wilkerson's -- well, let me back up.
What type of mobile device would DHS issue to somebody like Jennifer Wilkerson who was going to drive to Beebe to pick up a client, if any?
A. We issue state phones. I don't know if Jennifer Wilkerson had been issued one or not. That's -- I doubt she would have had one with only being employed ten days, but I don't know for sure.
Q. Are you aware of anybody looking at her phone records to see what she was doing at that time?
A. I'm not.
Q. Okay. I'm going to represent to you that the state trooper James Ray in his investigative report, he found that Jennifer Wilkerson's actions were, quote, inattentive, careless, negligent, or erratic operation, close quote, at the time of the crash.
Do you have any reason to disagree with Trooper Ray?
MR. GASPER: Object as to form.
You can answer that question, but this is not the witness to answer that question.
Go ahead.

A. No, I don't have any knowledge.
Q. Ms. Shelton, I want to go back and ask you an all-encompassing question which is as we've sat here today and I've asked you questions, is there anything that, at the end of this deposition, that you have thought of, of any information that you haven't told me about the accident, such as any telephone calls or additional email exchanges?
A. No, not anything that I can recall.
Q. Okay. Is -- attached to Exhibit 1 at the end are two photographs. Do you know what those -- do you have any knowledge about those two photographs?
A. I assume that they are of our state vehicle.
Q. But just as far as knowing, not assuming, but as far as you personally knowing?
A. No. I do think I -- I do think I was sent photos of the state car, but I don't -- I mean, I can't recall what they looked like or -- that I recognize as one of our employees in the photo. That's Ms. Ezell.
Q. Okay. And you're look -- you're pointing to a person in the right-hand side of Bates-stamped 427?
A. Yes.
Q. Okay. And as far as you're aware, everything that is in Exhibit 1 consists of your -- it may

consist of additional information, but it has your fact-finding efforts and results in it, correct?
A. Yes.
Q. Okay. I should have broken these up into separate exhibits, but the fact-finding would consist of the email from Pamela Feemster. That begins on what's Bates-stamped as?
A. The -- my fact-finding packet begins with the Notice of Disciplinary Action date that is stamped as 417.
Q. 417?
A. Yes.
Q. Okay. And then that would go through, from 417 through?
A. 426.
Q. 426?
A. Yes. I believe -- I believe all of those were included in my fact-finding packet.
MR. JACKSON: Brent, if you don't mind, can we attach 417 through 426 as Exhibit 2?
MR. GASPER: So as an additional exhibit?
MR. JACKSON: Let's do those -
MR. GASPER: Kind of pull them out?
MR. JACKSON: Yeah, let's just do that

as an additional exhibit.

MR. GASPER: That's fine.

(Exhibit 2 marked for identification.)

MR. JACKSON: I'm going to hand you, Madam Court Reporter, Exhibit 2.

Q. And we'll attach that as your exhibit to your deposition. And the two photographs that are attached, you don't know where they came from; you just recognize Brandy Ezell in one of the two photographs?

A. Correct.

Q. Okay. All right. Thank you. I'm finished.

MR. GASPER: I don't have anything.

THE VIDEOGRAPHER: This concludes the video deposition of Kristen Shelton. The time is 1:55. We're now off the record.

(Proceedings adjourned at 1:55 p.m.)

REPORTER CERTIFICATION

I, DANA HAYDEN, Certified Court Reporter for the State of Arkansas, do hereby certify to the following:

1) that on 05/16/2023, the witness, KRISTEN SHELTON, was duly sworn by me prior to the taking of testimony as to the truth of the matters attested to and contained therein;

2) that the foregoing pages contain and are a true and correct transcription of the proceedings as reported verbatim by me via realtime stenography to the best of my ability and transcribed at or under my direction and supervision, and subject to appropriate changes submitted by witness, if any, during his/her requested reading and signing of this deposition according to the Arkansas Rules of Civil Procedure;

3) that I am neither counsel for, related to, nor employed by any of the parties to the action in which this proceeding was taken; and that I am not a relative or employee of any attorney employed by the parties hereto;

4) that I am not financially interested or otherwise interested in the outcome of this action that affects or has substantial tendency to affect impartiality or requires me to relinquish control of

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an original or copies of a deposition transcript before it is certified, or that requires me to provide any service not made available to all parties to the action; and

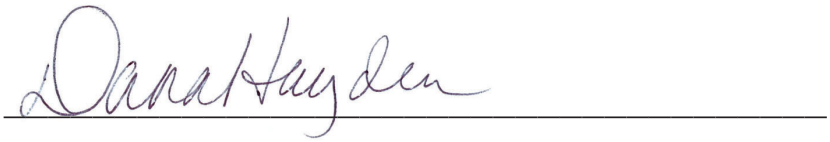
5) that I have no contract with the parties, attorneys, or persons with an interest in the action; and that I am not knowingly identified on a preferred provider list, whether written or oral, for any litigant, insurance company, or third-party administrator involved in this matter;

6) that signature of the witness is waived.

This transcript is prepared at request of counsel for PLAINTIFF, and all fees are billed directly to them in compliance with Arkansas Board of Court Reporter Examiners Regulations Section 19.

Witness my hand and seal this 24th of May, 2023.

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**Exhibits**

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ARKANSAS STATE CLAIMS COMMISSION

| | | |
|---|---|---|
| HALEY HUDSON, As Special Administratrix of the Estate of JACQUELINE LYNN ASHCRAFT, Deceased, and as Permanent Legal Guardian of [redacted] A Minor, | ) | CC NUMBER 230641 |
| CLAIMANT, | ) | |
| VS. | ) | |
| ARKANSAS DEPARTMENT OF HUMAN SERVICES, | ) | |
| RESPONDENT. | ) | |

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ORAL AND VIDEOTAPED DEPOSITION OF

BRANDY EZELL

August 1, 2023

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ORAL DEPOSITION OF BRANDY EZELL, produced as a witness at the instance of the CLAIMANT, and duly sworn, was taken in the above-styled and numbered cause on the 1st day of August, 2023, from 2:05 p.m. to 2:56 p.m., before Tammie L. Foreman, CCR in and for the State of Arkansas, RPR, CRR, reported by machine shorthand at the offices of Arkansas Department of Health and Human Services, 700 Main Street, Little Rock, Arkansas, pursuant to the Arkansas Rules of Civil Procedure.

APPEARANCES

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EXHIBITS

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BRANDY EZELL,

having been first duly sworn, testified as follows:

EXAMINATION

BY MR. JACKSON:

02:05PM Q. Ms. Ezell, my name is Jim Jackson. We met just before you were sworn in. And I'm the attorney for the Estate of Jacqueline Ashcraft, and I'm here to ask you questions regarding what happened on June 11th, 2021. And this -- the point of my questions is to 02:05PM gather information from you of what you know or saw or heard or observed. And have you ever given a deposition before?

A. No.

Q. Okay. I want to give you a couple of ground 02:05PM rules, and one of them is, give verbal answers. And in a normal conversation, you and I might shake our head or use a phrase of uh-huhs or huh-uhs. We'll know what each other is talking about at that time.

Because we have a court reporter, we'd 02:06PM like for you to verbally say yes or no. So if at any point I ask you is that a yes or a no, I'm not trying to be rude. I'm just trying to help the court reporter so Mr. Gasper and I can have a record later on to look at and we'll know that was an affirmative 02:06PM or negative response. Okay?

A. Okay.
Q. The other thing is, wait till -- you will know the answer to my question before I finish it. In normal conversation, you would start to answer it. We would have a flowing conversation. Here, it would be better if you would just wait for just a moment for me to complete my question before you respond. That allows the court reporter to take an accurate transcription of what is said. Okay?
A. Okay.
Q. And then if I ask any question that you don't understand or you want me to clarify, please ask me to do so. I'll try to be as clear as possible. But if at any point it will not offend me whatsoever if you ask me to rephrase or restate any question. Okay?
A. Okay.
Q. Okay. What is your residential address?
A. [redacted]
Q. And by whom are you employed?
A. State of Arkansas.
Q. And by what agency?
A. Logan County DHS.
Q. And how long have you been employed by Logan County DHS?
A. January 14th of 2019.

Q. And what is your current job title?
A. Family service worker specialist.
Q. Family service?
A. Worker specialist.
02:07PM Q. What does that entail? Kind of give us a day-to-day what you do?
A. Primarily, I do foster care. I'm a foster care case worker. When a kid is removed and everything, I build a case plan with the family. We go to court.
02:08PM We -- there's testimony. And we work with the family to get the child back home safely.
Q. In June of 2021, when this accident occurred, is that basically what you were doing at that time?
A. Yes.
02:08PM Q. Now I'm going to shift my questions to June 2021. What was your relationship with Jennifer Wilkerson in June of 2021?
A. She was a coworker.
Q. And did you have any -- my understanding is that
02:08PM she was a new employee?
A. She had started the day after Memorial Day, was her first day. And she was hired on to be a program assistant, which is program assistants help us do visits, teach parenting classes, get a lot of the --
02:09PM some of the services done that we can't do because

we're in the field seeing children or having to get stuff keyed into CHRIS. So program assistants do a lot of -- a lot of the visits. They're usually on the road a lot more than we are.

02:09PM Q. Okay. Did you have any relationship with Ms. Wilkerson outside of her employment with Logan County?

A. No.

Q. Okay. So on June 11th, I want to focus now on 02:09PM that -- earlier, we were focused on kind of the month in general. Now I want to focus on that day. Walk us through -- and I've been provided some emails and different things about that day, so I know a little bit.

02:10PM But I want to hear you -- from you what you recall happening that morning, and specifically with you, your interaction with Ms. Wilkerson, and her going to Beebe.

A. Okay. That was the first day Jennifer was going 02:10PM to take the state car to do a visit by herself, where she would pick up a child and meet another worker by herself.

At about 11:15, me and Jennifer left to go to the Casey's General Store to get gas in the 02:10PM vehicle. Usually new employees, their personnel

number is not in the system yet. So I went with her. Her personnel number wasn't in the system, so I used mine to put gas in the vehicle.

And she asked me -- she wasn't for sure where she was meeting the other worker. So when we got back to the office, I -- well, I showed her how to do the logbook with the car, put her name, the mileage, the time she left, the time she picked up the child.

02:11PM And when I got back, the worker was in Bentonville and the child that she was bringing to the -- it was a sibling visit. The child she was bringing couldn't get out of counseling till 2:00. So the plan was to meet in Clarksville McDonald's at 4:00.

02:12PM The other worker was going to pick up that child in northwest Arkansas, bring her to -- bring him to Clarksville McDonald's, and Jennifer was going to Beebe and bring his brother from Beebe to Clarksville McDonald's. And it was right around the same time frame, they were going to meet.

Q. So they were trying to coordinate that meeting together at Clarksville at the McDonald's?

A. Yes.

Q. And if this accident -- if everything had gone as planned, would the two siblings have gone on from

Clarksville to somewhere else together or were they just going to play there together and have lunch at McDonald's and go back separately, or what was ultimately the plan?

02:12PM A. They would have had lunch together at McDonald's and then the case workers would have taken them back to their placements and then been done for the day.

Q. I saw some -- somewhere in reference to a Map Quest being done. Do you recall --

02:13PM A. Yes. I had done the Map Quest to see if it was -- with the other case worker being in northwest Arkansas, would it be closer to meet in Russellville or Clarksville. And it was the same time, pretty much the same time from northwest Arkansas to Clarksville as it was from Beebe to Clarksville.

Q. All right. And then did -- and then what did you do -- what did Ms. Wilkerson do to know her route of where she was to go from Beebe?

A. It was getting closer to noon about that time,

02:13PM and I told her she needed to leave around 12:00, 12:15 to be able to get to Beebe by 2:00. The foster parents were going to have the child ready around 2:00. And I told her she needed to leave around 12:00, 12:15, to get to Beebe in time to pick up the

02:14PM child and then by that time, she would get to

Clarksville around 4:00.

And I explained to her, you know, we understand, you know, road construction, car wrecks, stuff like that. And I just told her to keep in contact with the other case worker she was meeting to let each other know where you're at, if you're going to be early or late.

Q. Okay. And did Ms. Wilkerson appear to understand --

02:14PM A. Yes.

Q. -- her task?

A. Yes.

Q. And then when was the last time that you saw Ms. Wilkerson before the wreck?

02:14PM A. Me and my boss were pulling out of the DHS office right around 12:07 to go to lunch, and I watched Jennifer walk to the state car to get in it.

Q. And how do you know what -- that it's 12:07? Do you have a time card?

02:14PM A. I'm always watching the time.

Q. Okay.

A. I'm always -- it's a -- I'm always watching the time. I'm always looking at my phone looking at the time. Because, I mean, I'm used to putting in

02:15PM contacts at the office and I have to know -- they want

to know exactly what time you did this, this, and this. What time did you get to this house and visit because if something happened, you know, they don't want -- you know, if you were there at 3:15 and something happened, they want to know what was going on, if something broke out at 4:00 and you were already gone.

Q. Gotcha. Okay.

A. So...

Q. Who was your boss that went to lunch with you that day?

A. Pamela Feemster.

Q. Do you happen to recall where y'all went to lunch?

A. The Thai restaurant there in Paris.

MR. GASPER: You want to spell that for the court reporter. Feemster.

THE WITNESS: F-E-E-M-S-T-E-R.

Q. (By Mr. Jackson:) Thank you for doing that. So you -- when you leave at 12:07, you see Ms. Wilkerson walking towards the state --

A. Walking to the car.

Q. Walking to the car. Okay. You and Ms. Feemster go to lunch?

A. Yes.

Q. And then what happens next in this -- what do you recall happening next?
A. Me and Pam came back from lunch. We were at the office at 12:55. I got a phone call, and it was
02:16PM Jennifer stating that she had been in a wreck. And I was, like, where are you at? Where are you at? You know, me and Pam, we'll come right now. Where are you at. And she was like, I don't know. I don't know.
And I said, "Jennifer, I need to know
02:17PM where you're at." I was expecting her to be -- at least be in Dardanelle, Pottsville, somewhere between there by that time. And she said, "By the airport." I said, "By the airport?" I said, "In Paris?" And she said "Yes." I said, "Okay. Me and Pam will be
02:17PM right down there."
Q. Okay. Then what did you do next?
A. We got in my car. We went to the accident -- to the accident site. Jennifer was sitting next to the state car. I asked her what happened. She said she'd
02:17PM stopped by Dairy Delite to get something to drink, and the next thing she remembers is a car stopped in front of her.
Q. Was Ms. Feemster with you when that conversation occurred?
02:18PM A. No. She was on the phone with Kristen Shelton

at that time.
Q. And did you drive a state car or your personal car?
A. My personal vehicle.
02:18PM Q. Was -- do you recall if the ambulance had arrived when you got there?
A. Yes, they have.
Q. Okay. Was a paramedic working with Ms. Wilkerson at the time; do you remember?
02:18PM A. No.
Q. Were you there when a paramedic came to work with her?
A. No. I was not sitting next to her when they put her in the ambulance.
02:19PM Q. Okay. Where did you -- so let me strike that. Start over. Back after she said a car stopped in front of me, what did you do next?
A. I didn't ask her any more questions. I walked back. I took some pictures of the car, of the state
02:19PM car. And me and -- me and Pam sat there and waited. They said they were having the state police work it, so we waited till the state police officer showed up.
Q. What type of medical condition was Ms. Wilkerson in?
02:19PM A. I mean, she was coherent.

MR. GASPER: Can I just pause real quick? Can you rephrase? I don't think she can say what kind of medical condition she was in. I think she can probably say what did she observe her acting like.

Q. (By Mr. Jackson:) Yeah. I mean, did you observe her grabbing her arm, being in pain?

A. No.

Q. Or anything?

A. She appeared upset.

Q. But you didn't see any lacerations, blood, anything like that --

A. No.

Q. -- on Ms. Wilkerson?

A. No.

Q. Did you go and speak to Jacqueline Ashcraft?

A. No.

Q. Did you go -- did you ever speak with Bobby Wilson, who I'll represent to you is the name of the driver of the tractor trailer rig?

A. No.

Q. Okay. Do you recall speaking to the paramedics at any time?

A. No.

Q. And where -- how close to the accident scene

were you able to get before you parked and got out to her; do you recall?

A. Probably -- a woman doing feet.

Q. Let's -- let's use something like, maybe, car lengths. How many cars. How many seconds would it have taken you to walk. You give me --

A. I ran. I ran.

Q. Okay.

A. I was scared for Jennifer when I got there. I didn't know what condition she was in. Between the state car and where I parked was probably seven to ten car lengths.

Q. Were there other cars between your car and Jennifer's car?

A. Police vehicles, yes.

Q. Okay. And what -- do you recall who was with Ms. Wilkerson when you -- when you left to go back to your car?

A. No one, I believe.

Q. Okay. And I -- do you remember her saying anything else at the accident scene in addition to what you testified to earlier about her stopping at the Dairy Delite?

A. It's a dairy cream in Paris. Dairy Delite.

Q. To get a drink and the next thing is she

remembers a car stopped in front of me?
A. Yes.
Q. Do you recall anything else that was said by Ms. Wilkerson?
02:23PM A. No.
Q. Okay. Did you overhear her talking to anyone else such as the state trooper or any of the people assisting the state trooper with the investigation?
A. No.
02:23PM Q. And the same question as far as with the paramedics, did you overhear her having any conversation with the paramedics?
A. No.
Q. What was your conversation that you and
02:23PM Ms. Feemster had in the car when you went back to the car; do you recall?
A. Rephrase that.
Q. So when you went back -- let me understand -- or clarify this for me. When you leave from
02:23PM Jennifer's -- from talking with Jennifer --
A. Yes.
Q. -- you go back to your car?
A. No. I stood around. Me and Ms. Feemster stood by one of the police vehicles. The state trooper, we
02:24PM were there about probably ten minutes before the state

trooper that was actually from Troop H that actually worked the scene arrived.

Q. Okay. And then when he arrived, what did you do next, if you recall?

02:24PM A. Me and Pam talked about the wreck, talked about how -- what was going on between the time I watched her get in the state car to leave the office to the time she called me. Pam was on the phone with Kristen, sending her pictures of the vehicle.

02:24PM Q. Do you --

A. I mean, we were both just in shock what had happened, 'cause the vehicle -- there was pieces -- I mean, there was a part of the bumper, there was part of the bumper in the grass. I mean, there was pieces

02:25PM in the grass on the eastbound and the westbound lane.

(Exhibit 1 marked for identification.)

Q. I am going to hand you what we'll mark as Exhibit 1. Does that appear to be a photograph of the car?

02:25PM A. Yes. Yes.

Q. And did you do anything to see if Ms. Wilkerson did go to Dairy Delite during that time period after she left and before the wreck?

A. Did I do --

02:26PM Q. See if she had a receipt from there or what --

A. That was not on my mind at that time.
Q. Okay. I mean, but since then, since that time? I mean, later that afternoon or any --
A. No.
02:26PM Q. Okay.
A. The ambulances were parked on that side of the car and the police officers were parked on this side and the semi was parked off the road, off the middle of the highway, heading westbound, like, over here.
02:26PM Q. Did you or Ms. Feemster go and do anything to check on any of the people -- I know you probably didn't know their names, but the people in the car, the blue car?
A. No. After the state trooper arrived, one of
02:27PM the -- his name is Chris Eley, I watched him, the state trooper, walk to the house, 'cause there's a -- you can see the driveway, walk to this house. And I saw him come out and yell for Chris Eley. I don't know if Chris -- I thought he -- I don't know if he
02:27PM was a paramedic or just a volunteer. I know him from town.
Q. Uh-huh. Yes.
A. And I watched Chris walk in there and carry a woman to the ambulance.
02:27PM Q. And there's -- okay. Did you overhear, either

that day or later, anybody saying I was a witness to the accident and I saw what happened?

A. No.

Q. When the paramedics transported Ms. Wilkerson and Ms. Ashcraft from the scene, what did you and Ms. Feemster do?

A. Ms. Feemster asked the state trooper if he was going to be doing a drug screen on Jennifer, and he said he usually didn't. We went to the Paris hospital and checked, and they didn't take her to Paris. So -- and we found out she went to Booneville, so we drove to Booneville. The hospital was locked down.

Q. Is that because of COVID?

A. No. The hospital was locked down due to, I guess, another guy showing up to visit Jennifer. And her boyfriend, I guess, at the time getting into an altercation.

Q. There at the --

A. Booneville hospital. When we pulled up, the boyfriend was getting out of a cop car.

Q. Out of a what car?

A. Cop car.

Q. Police car?

A. Police car. Police SUV. Jennifer's mom was there and the cop was there, and they had the doors

locked. And Jennifer's mom told me that Jennifer had went through Dairy Delite and then was heading on that visit. And I asked her why the cop was dropping off the boyfriend, Scott Lindstrom. And she told me that Scott and, I guess, another guy that had shown up had got in an altercation.

Q. Do you know if Mr. Lindstrom was at the accident scene on Highway 22?

A. Yes, he was.

Q. What about do you know who Sandra Wilkerson is? Is that Jennifer's mother?

A. That's Jennifer's mother.

Q. Did Ms. Sandra Wilkerson come on the accident scene on Highway 22; do you recall?

A. I don't remember seeing her.

Q. What did -- did you know Mr. Lindstrom before this?

A. Yes.

Q. And was it through your work you knew him or did you know him socially?

A. My ex-boyfriend that I have a daughter with, when we split up, he got with Scott's ex-wife. And after I did start at the State, there was -- both Scott and the ex-wife both had dealings with DCFS in Logan County.

Q. What was Mr. Lindstrom's presentation at the accident scene?
A. I saw him get in Jennifer's purse out of the back seat of the vehicle.
02:32PM Q. What did -- what else did you observe?
A. He was there when me and Pam arrived and the -- I just watched him get her stuff out of the vehicle. And afterwards, Pam asked me if -- did I see what Scott -- what vehicle Scott left in and I wasn't
02:33PM paying attention. But he was at Booneville when we got there.
Q. Did you talk to Mr. Lindstrom any at the accident scene?
A. No.
02:33PM Q. Okay. Sounds like he got to the accident scene before you and Ms. Feemster did?
A. Yes.
Q. And you didn't interact with -- do you recall -- do you recall overhearing him say anything while you
02:33PM were there at the accident scene, whether he was talking to you or Jennifer or anybody else?
A. No. I don't have a lot of conversations with him.
Q. What was he -- was he acting normal? What was
02:34PM he doing?

A. He was just getting her purse and her belongings out of the car.
Q. Then the lockdown, you believe, at the hospital -- I want to now shift over to the hospital and the lockdown.
A. Yes.
Q. Do you believe that the lockdown occurred because of a altercation between Mr. Lindstrom and one of the law enforcement officers or was it an ex-boyfriend? I didn't understand who you --
A. Sandra told me it was because Scott Lindstrom and another guy, I don't know if he was an ex-boyfriend or a friend or what. But some kind of friend of Jennifer's had got into it.
Q. Okay.
A. At the hospital, and that's why they locked it down and wouldn't let anybody else in the hospital.
Q. Okay.
A. To see Jennifer or to talk to her.
Q. Okay. And so what did you and Ms. Feemster do after you found out the hospital was in a lockdown?
A. Ms. Feemster went and talked to one of the nurses about Jennifer's condition and we left.
Q. Okay. I assume this but just clarify, did you and Ms. Feemster ride together from the scene to the

Paris hospital and from the Paris hospital to the Booneville hospital?

A. Yes.

Q. Okay. Still you driving your personal car?

02:36PM A. Yes.

Q. Okay. After you left from Booneville, where did you -- I assume you went back to Paris?

A. Yes.

Q. And where did you go?

02:36PM A. Back to the office.

Q. And then what did you do -- what did you do next; do you recall?

A. I was -- I was on call that night, so at that time our on call was a week at a time. So, I mean --

02:36PM Q. And when you do on call, is that something you go to your home and you're waiting for a phone call or are you at the office? How does that work?

A. On call is anything after about 4:00, if there's any hot line reports or police need an assistance,

02:36PM they call the on-call phone number and we go there and assist. Or if there's a hot line call, we talk to the on-call supervisor and go to the home or whatever they tell us to do.

Q. Okay. Have you discussed this accident with

02:37PM Jennifer Wilkerson since June 11th of '21?

A. No.
Q. Did she -- I know she was terminated the following week. Did you -- did she come into the office any the following week and where you would have
02:37PM interacted with her any?
A. She was on desk duty. And no, I did not talk to her at all.
Q. Okay. Would it be accurate to say that everything that Jennifer -- that you heard Jennifer
02:37PM talk about the wreck you have told us about and testified about earlier?
A. Yes.
Q. Okay. And if you need to correct -- you know, that was one of the rules I forgot is if we get to the
02:38PM deposition and you say hey, there's something else I remember, you can always go back and supplement, you know, something. Say hey, one of your questions reminded me I forgot something. Okay?
A. Okay.
02:38PM Q. The telephone system, when you -- in your position at Logan County DHS, do you have two telephones, a personal one and a work phone?
A. I did. Jennifer didn't at that time.
Q. Okay. When you took the photos of when you were
02:38PM at the accident scene, where are those photos and

would they -- which phone would you have taken them on?

A. They were on my work phone, and I had sent the photos to Kristen Shelton.

02:38PM Q. Ballpark, how many photos would you have taken?

A. I don't know. Twenty maybe.

Q. Okay.

A. Just like -- just like this.

(Exhibit 2 marked for identification.)

02:39PM (Exhibit 2A marked for identification.)

Q. And you're just showing Exhibit 1. I want to hand you -- this is a terrible, terrible photos. They're the same photos. Do you know who that -- we'll mark that as Exhibit 2 and 2A. Do you know if

02:39PM that would be a photo that you would have taken? And I'm going to ask you two questions in one while you're looking at it. And do you know who that person is?

A. I took a photo like this. And no, I don't know who that is.

02:40PM Q. And would you have sent those photos to Ms. Shelton by email or how would you --

A. Text.

Q. Text. Okay. Do you know if you happened to still have those photos?

02:40PM A. No, I do not. When I -- they sent me a new

phone, I didn't download any of them. When they sent me that phone, I literally had to put in -- I lost a lot of my foster contacts and all of my photos. The only pictures I usually download are pictures of kids and to update their pictures in our computer system.

Q. Do you know if Ms. Feemster happened to have taken any photos? Did you see her?

A. Yes, I believe she did.

Q. Do you know if she would have taken those on her personal phone or work phone, or do you have any way to know?

A. I'm not for sure.

(Exhibit 3 marked for identification.)

Q. Okay. Ms. Shelton did an investigation, and I believe she asked you some questions by email. I want to hand you what we'll mark as Exhibit 3 to your deposition.

A. Yes.

Q. Is that -- take a moment to look over that.

A. Yes.

Q. Okay. So that is your response?

A. To Ms. Shelton's email.

Q. Okay.

A. Ms. Shelton had asked -- she was doing a fact-finding with everything, so she'd ask to -- well,

you can see what she asked.
Q. Yes. Yes. So it's self-explanatory, Exhibit 3?
A. Yes.
(Exhibit 4 marked for identification.)
02:42PM Q. Would -- I am going to mark this as Exhibit 4. It's a photograph. Is that you in that photograph?
A. Yes, it is.
Q. Okay.
MR. GASPER: Can I see that?
02:43PM A. Ms. Feemster probably took that picture.
Q. (By Mr. Jackson:) I want to ask you a couple of housekeeping questions, probably seem kind of silly but I need to ask them. You didn't go back and do an investigation to find out what happened?
02:43PM A. No.
Q. That's not part of your responsibility at all?
A. No.
Q. While we've been sitting here asking all these questions, have you thought of anything else that
02:43PM Jennifer Wilkerson told you about what occurred in the wreck?
A. No.
Q. Have you thought of any names of any witnesses who may have told you that they observed what
02:43PM happened?

A. The only one I can think of is Scott, which I don't -- because he was there awfully fast. So I don't know. And I did ask the state trooper what time the accident happened, or what time -- yes, what time
02:44PM the accident happened. It had just happened when Jennifer called me.
Q. Do you think Mr. Lindstrom was in the car with her?
A. I've thought about that and --
02:44PM Q. That's something that has crossed your mind?
A. That's something that has crossed my mind, yes.
Q. And that would definitely be a violation of policies and procedures for --
A. Yes.
02:45PM Q. Any text messages between you and Ms. Wilkerson about what happened?
A. No.
Q. I know -- I think I asked you this earlier. I just want to make sure. Since Ms. Wilkerson was
02:46PM terminated, you haven't had any contact with her about this accident?
A. No.
Q. Have you had any contact with her about anything else?
02:46PM A. I --

Q. And I know it's a small town.
A. I've seen her at the Dollar Tree and at Walmart, but no.
Q. Okay. Nothing else other than just in passing?
02:46PM A. No.
Q. What -- did you know Jacqueline Ashcraft or her children?
A. No, I did not. But it is a small town. The next morning after the accident, I did get a call
02:46PM where I had to go out, and my daughter was 13, 14 when this accident happened. And I was gone for a couple of hours.

And I got home, and my daughter comes up to me and is like, "Mom, were you at a car accident
02:47PM this morning?" I said, "No. She's like, "You weren't at a car accident?" I said, "No."

And she's like, "Well, why is your vehicle on the Logan County Sheriff's page?" And, I mean, not very many people would know my vehicle but my
02:47PM daughter. And there was a picture of where my vehicle was parked with the accident. And she said, "That's your car." And I looked at it and I said, "Yeah." She's like, "This accident." I said, "That happened yesterday."

02:47PM And the woman that passed away, I guess my

daughter knew her daughter from school, that her daughter was the same age or something. But I didn't know her or any of her children.

Q. And not being nosy, did your daughter go to Paris at the time?

02:48PM

A. Yes.

Q. Do you know where Scott Lindstrom is now?

A. No.

Q. Is he incarcerated or do you know?

02:48PM

A. No. He was with Jennifer at the Dollar Tree when I saw them -- when I saw her, they were together.

Q. Did Mr. Lindstrom, did he appear intoxicated or under the influence of any controlled substances when you saw him on June 11th of 2021?

02:49PM

A. He didn't appear, no.

Q. Do you have any idea what time you would have gotten to the accident scene?

A. 12:58, 12:59. Where that's located is probably three miles from the DHS office, so it would only took

02:50PM

a couple of minutes.

Q. I'm terrible with numbers, so I try to write them down when I hear them in a deposition. And I think you said you returned from lunch at 12:55?

A. No. I returned from lunch about 12:40.

02:50PM

Q. 12:40. Okay.

A. I got the call from Jennifer at 12:55 that she was in a wreck.
Q. Thank you for clarifying that. I misunderstood. Thank you.
02:50PM A. You're welcome.
Q. The same question earlier, how you know it's 12:55, that's part of what your answer was earlier. You just know those things.
A. Well, I remember when I was writing this that I
02:50PM had looked at my phone and it had the time when Jennifer called me.
Q. Okay. So when you prepared your statement that is in Exhibit 3, you looked back at your phone for the time of that telephone call?
02:51PM A. Yes.
Q. Okay. And so that's why, in your statement, "She called me at 12:55," you know exactly --
A. Yes.
Q. -- when you got the call? And then you and
02:51PM Ms. Feemster went immediately to the accident site after you got the call?
A. Yes. Pam was asking me questions like, "What happened, where," and I was like, "I don't -- I don't know."
02:51PM Q. Just go towards the airport and see what

happens?
A. All I don't understand is she left at -- I know she would have had to pull out of the office. If we left at 12:07, she was walking to the car. I know she
02:51PM pulled out of the office in plenty of time. And to this day, it still bugs me why she wasn't three miles from the office a good 45 minutes later.
Q. And getting a soda at the Dairy Delite is on the way, shouldn't take more than five minutes if --
02:52PM A. Correct.
Q. And when you arrived, Mr. Lindstrom is present, getting Ms. Wilkerson's items out of the back of the car?
A. Yes.
02:52PM Q. Okay. And you only had conversation with Ms. Wilkerson and not Mr. Lindstrom?
A. I don't care too much for Mr. Lindstrom.
Q. I'll take that as a definitive no.
A. I did not have a conversation with him.
02:53PM Q. Okay. I may have asked this earlier and I apologize. Do you recall Mr. Lindstrom saying anything about what happened or what he observed?
A. I didn't stick around to listen if he did.
Q. Okay. I understand it may have been a one-way
02:53PM statement, but I just wondered if you did hear

anything.
A. No.
Q. Okay. Did you see or observe anything that the driver of the blue car may have done to cause this
02:53PM wreck?
A. All I know is that road is right there in front of the airport. It's a straight stretch. You can see in this -- in Exhibit 1 where this is Subi, Subiaco Hill. And, I mean, it's a straight stretch road. It
02:54PM appeared that the driver of -- or Ms. Ashcraft was turning -- going eastbound, turning left into that house.
Q. Ms. Ezell, thank you for your time. I know it was a pain for you to come down here for this, and I
02:54PM appreciate you coming down and providing your testimony. I know it's not pleasant.
A. Thank you.
MR. JACKSON: I pass you to Mr. Gasper.
MR. GASPER: I just have one or two real
02:55PM quick ones.

EXAMINATION

BY MR. GASPER:
Q. Brandy, the answer you just provided to Mr. Jackson about your observations about the wreck
02:55PM itself, you said that it appeared that she was turning

left into a driveway?
A. Yes.
Q. You don't know that?
A. No.
02:55PM Q. That's just what it kind of looked like to you?
A. Yes.
Q. You didn't -- the accident itself was not part of any kind of DHS investigation?
A. No.
02:55PM Q. Those are just personal, like, that's what it looked like to me?
A. Yes.
Q. Okay. And I just want to clear up, you don't know that Scott was in the car, Scott Lindstrom?
02:55PM A. No.
Q. This is kind of you've always just kind of wondered it?
A. I've always kind of wondered it because he was already there.
02:56PM Q. And it wasn't that far from Paris?
A. No.
Q. I mean, he could have been there in a couple of minutes?
A. Yes.
02:56PM Q. He could have just happened to be there?

A. Yes.

MR. GASPER: Okay. That's all I have.

MR. JACKSON: Thank you.

(The deposition was concluded at 2:56 p.m.)

* * * * *

REPORTER CERTIFICATION

I, TAMMIE L. FOREMAN, Certified Court Reporter for the State of Arkansas, do hereby certify to the following:

1) that on 08/01/2023, the witness, BRANDY EZELL, was duly sworn by me prior to the taking of testimony as to the truth of the matters attested to and contained therein;

2) that the foregoing pages contain and are a true and correct transcription of the proceedings as reported verbatim by me via realtime stenography to the best of my ability and transcribed at or under my direction and supervision, and subject to appropriate changes submitted by witness, if any, during his/her requested reading and signing of this deposition according to the Arkansas Rules of Civil Procedure;

3) that I am neither counsel for, related to, nor employed by any of the parties to the action in which this proceeding was taken; and that I am not a relative or employee of any attorney employed by the parties hereto;

4) that I am not financially interested or otherwise interested in the outcome of this action that affects or has substantial tendency to affect impartiality or requires me to relinquish control of

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5) that I have no contract with the parties, attorneys, or persons with an interest in the action; and that I am not knowingly identified on a preferred provider list, whether written or oral, for any litigant, insurance company, or third-party administrator involved in this matter;

6) that signature of the witness is waived.

This transcript is prepared at request of counsel for CLAIMANT, and all fees are billed directly to them in compliance with Arkansas Board of Court Reporter Examiners Regulations Section 19.

Witness my hand and seal this 20th of August, 2023.

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**Exhibits**

**Brandy Ezell Exhibit 1** 17:16,18 25:11 33:8

**Brandy Ezell Exhibit 2** 25:9,14

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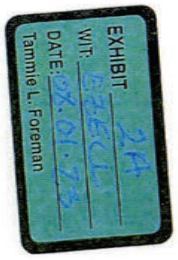
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EXHIBIT
WIT. 2 ECH
DATE: 8-9-23
Tammie L. Foreman


EXHIBIT 2.
WIT. EEE
DATE: 08.01.23
Tammie L. Foreman




EXHIBIT 2A
WIT. BAECL
DATE: 09.01.23
Tammie L. Foreman

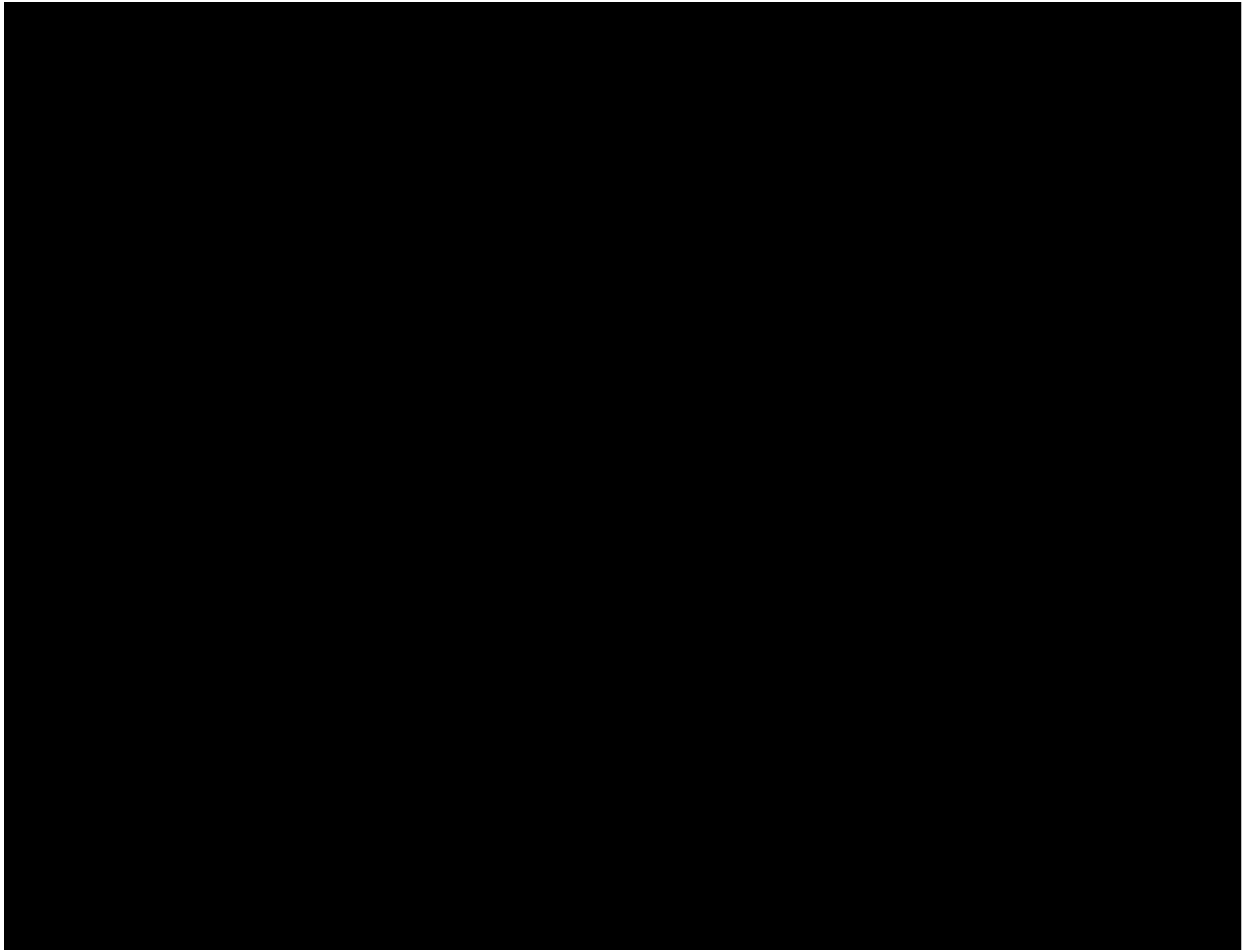



EXHIBIT 4
WIT:
DATE: 08-01-23
Tammie L. Foreman

ARKANSAS STATE CLAIMS COMMISSION

HALEY HUDSON, As Special Administratrix of the Estate of JACQUELINE LYNN ASHCRAFT, Deceased, and as Permanent Legal Guardian of [redacted] A Minor,

CLAIMANT,

VS.

ARKANSAS DEPARTMENT OF HUMAN SERVICES,

RESPONDENT.

CC NUMBER 230641

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ORAL AND VIDEOTAPED DEPOSITION OF

BRANDY EZELL

August 1, 2023

---

ORAL DEPOSITION OF BRANDY EZELL, produced as a witness at the instance of the CLAIMANT, and duly sworn, was taken in the above-styled and numbered cause on the 1st day of August, 2023, from 2:05 p.m. to 2:56 p.m., before Tammie L. Foreman, CCR in and for the State of Arkansas, RPR, CRR, reported by machine shorthand at the offices of Arkansas Department of Health and Human Services, 700 Main Street, Little Rock, Arkansas, pursuant to the Arkansas Rules of Civil Procedure.

APPEARANCES

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I N D E X

August 1, 2023


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WITNESS: BRANDY EZELL

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EXHIBITS

| NO. | DESCRIPTION | MARKED |
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BRANDY EZELL,

having been first duly sworn, testified as follows:

EXAMINATION

BY MR. JACKSON:

02:05PM Q. Ms. Ezell, my name is Jim Jackson. We met just before you were sworn in. And I'm the attorney for the Estate of Jacqueline Ashcraft, and I'm here to ask you questions regarding what happened on June 11th, 2021. And this -- the point of my questions is to 02:05PM gather information from you of what you know or saw or heard or observed. And have you ever given a deposition before?

A. No.

Q. Okay. I want to give you a couple of ground 02:05PM rules, and one of them is, give verbal answers. And in a normal conversation, you and I might shake our head or use a phrase of uh-huhs or huh-uhs. We'll know what each other is talking about at that time.

Because we have a court reporter, we'd 02:06PM like for you to verbally say yes or no. So if at any point I ask you is that a yes or a no, I'm not trying to be rude. I'm just trying to help the court reporter so Mr. Gasper and I can have a record later on to look at and we'll know that was an affirmative 02:06PM or negative response. Okay?

A. Okay.
Q. The other thing is, wait till -- you will know the answer to my question before I finish it. In normal conversation, you would start to answer it. We would have a flowing conversation. Here, it would be better if you would just wait for just a moment for me to complete my question before you respond. That allows the court reporter to take an accurate transcription of what is said. Okay?
A. Okay.
Q. And then if I ask any question that you don't understand or you want me to clarify, please ask me to do so. I'll try to be as clear as possible. But if at any point it will not offend me whatsoever if you ask me to rephrase or restate any question. Okay?
A. Okay.
Q. Okay. What is your residential address?
A. [redacted]
Q. And by whom are you employed?
A. State of Arkansas.
Q. And by what agency?
A. Logan County DHS.
Q. And how long have you been employed by Logan County DHS?
A. January 14th of 2019.

Q. And what is your current job title?
A. Family service worker specialist.
Q. Family service?
A. Worker specialist.
02:07PM Q. What does that entail? Kind of give us a day-to-day what you do?
A. Primarily, I do foster care. I'm a foster care case worker. When a kid is removed and everything, I build a case plan with the family. We go to court.
02:08PM We -- there's testimony. And we work with the family to get the child back home safely.
Q. In June of 2021, when this accident occurred, is that basically what you were doing at that time?
A. Yes.
02:08PM Q. Now I'm going to shift my questions to June 2021. What was your relationship with Jennifer Wilkerson in June of 2021?
A. She was a coworker.
Q. And did you have any -- my understanding is that
02:08PM she was a new employee?
A. She had started the day after Memorial Day, was her first day. And she was hired on to be a program assistant, which is program assistants help us do visits, teach parenting classes, get a lot of the --
02:09PM some of the services done that we can't do because

we're in the field seeing children or having to get stuff keyed into CHRIS. So program assistants do a lot of -- a lot of the visits. They're usually on the road a lot more than we are.

02:09PM Q. Okay. Did you have any relationship with Ms. Wilkerson outside of her employment with Logan County?

A. No.

Q. Okay. So on June 11th, I want to focus now on 02:09PM that -- earlier, we were focused on kind of the month in general. Now I want to focus on that day. Walk us through -- and I've been provided some emails and different things about that day, so I know a little bit.

02:10PM But I want to hear you -- from you what you recall happening that morning, and specifically with you, your interaction with Ms. Wilkerson, and her going to Beebe.

A. Okay. That was the first day Jennifer was going 02:10PM to take the state car to do a visit by herself, where she would pick up a child and meet another worker by herself.

At about 11:15, me and Jennifer left to go to the Casey's General Store to get gas in the 02:10PM vehicle. Usually new employees, their personnel

number is not in the system yet. So I went with her. Her personnel number wasn't in the system, so I used mine to put gas in the vehicle.

And she asked me -- she wasn't for sure where she was meeting the other worker. So when we got back to the office, I -- well, I showed her how to do the logbook with the car, put her name, the mileage, the time she left, the time she picked up the child.

And when I got back, the worker was in Bentonville and the child that she was bringing to the -- it was a sibling visit. The child she was bringing couldn't get out of counseling till 2:00. So the plan was to meet in Clarksville McDonald's at 4:00.

The other worker was going to pick up that child in northwest Arkansas, bring her to -- bring him to Clarksville McDonald's, and Jennifer was going to Beebe and bring his brother from Beebe to Clarksville McDonald's. And it was right around the same time frame, they were going to meet.

Q. So they were trying to coordinate that meeting together at Clarksville at the McDonald's?

A. Yes.

Q. And if this accident -- if everything had gone as planned, would the two siblings have gone on from

Clarksville to somewhere else together or were they just going to play there together and have lunch at McDonald's and go back separately, or what was ultimately the plan?

02:12PM A. They would have had lunch together at McDonald's and then the case workers would have taken them back to their placements and then been done for the day.

Q. I saw some -- somewhere in reference to a Map Quest being done. Do you recall --

02:13PM A. Yes. I had done the Map Quest to see if it was -- with the other case worker being in northwest Arkansas, would it be closer to meet in Russellville or Clarksville. And it was the same time, pretty much the same time from northwest Arkansas to Clarksville as it was from Beebe to Clarksville.

Q. All right. And then did -- and then what did you do -- what did Ms. Wilkerson do to know her route of where she was to go from Beebe?

A. It was getting closer to noon about that time,

02:13PM and I told her she needed to leave around 12:00, 12:15 to be able to get to Beebe by 2:00. The foster parents were going to have the child ready around 2:00. And I told her she needed to leave around 12:00, 12:15, to get to Beebe in time to pick up the

02:14PM child and then by that time, she would get to

Clarksville around 4:00.

And I explained to her, you know, we understand, you know, road construction, car wrecks, stuff like that. And I just told her to keep in contact with the other case worker she was meeting to let each other know where you're at, if you're going to be early or late.

Q. Okay. And did Ms. Wilkerson appear to understand --

02:14PM A. Yes.

Q. -- her task?

A. Yes.

Q. And then when was the last time that you saw Ms. Wilkerson before the wreck?

02:14PM A. Me and my boss were pulling out of the DHS office right around 12:07 to go to lunch, and I watched Jennifer walk to the state car to get in it.

Q. And how do you know what -- that it's 12:07? Do you have a time card?

02:14PM A. I'm always watching the time.

Q. Okay.

A. I'm always -- it's a -- I'm always watching the time. I'm always looking at my phone looking at the time. Because, I mean, I'm used to putting in

02:15PM contacts at the office and I have to know -- they want

to know exactly what time you did this, this, and this. What time did you get to this house and visit because if something happened, you know, they don't want -- you know, if you were there at 3:15 and something happened, they want to know what was going on, if something broke out at 4:00 and you were already gone.

Q. Gotcha. Okay.

A. So...

Q. Who was your boss that went to lunch with you that day?

A. Pamela Feemster.

Q. Do you happen to recall where y'all went to lunch?

A. The Thai restaurant there in Paris.

MR. GASPER: You want to spell that for the court reporter. Feemster.

THE WITNESS: F-E-E-M-S-T-E-R.

Q. (By Mr. Jackson:) Thank you for doing that. So you -- when you leave at 12:07, you see Ms. Wilkerson walking towards the state --

A. Walking to the car.

Q. Walking to the car. Okay. You and Ms. Feemster go to lunch?

A. Yes.

Q. And then what happens next in this -- what do you recall happening next?
A. Me and Pam came back from lunch. We were at the office at 12:55. I got a phone call, and it was
02:16PM Jennifer stating that she had been in a wreck. And I was, like, where are you at? Where are you at? You know, me and Pam, we'll come right now. Where are you at. And she was like, I don't know. I don't know.
And I said, "Jennifer, I need to know
02:17PM where you're at." I was expecting her to be -- at least be in Dardanelle, Pottsville, somewhere between there by that time. And she said, "By the airport." I said, "By the airport?" I said, "In Paris?" And she said "Yes." I said, "Okay. Me and Pam will be
02:17PM right down there."
Q. Okay. Then what did you do next?
A. We got in my car. We went to the accident -- to the accident site. Jennifer was sitting next to the state car. I asked her what happened. She said she'd
02:17PM stopped by Dairy Delite to get something to drink, and the next thing she remembers is a car stopped in front of her.
Q. Was Ms. Feemster with you when that conversation occurred?
02:18PM A. No. She was on the phone with Kristen Shelton

at that time.
Q. And did you drive a state car or your personal car?
A. My personal vehicle.
02:18PM Q. Was -- do you recall if the ambulance had arrived when you got there?
A. Yes, they have.
Q. Okay. Was a paramedic working with Ms. Wilkerson at the time; do you remember?
02:18PM A. No.
Q. Were you there when a paramedic came to work with her?
A. No. I was not sitting next to her when they put her in the ambulance.
02:19PM Q. Okay. Where did you -- so let me strike that. Start over. Back after she said a car stopped in front of me, what did you do next?
A. I didn't ask her any more questions. I walked back. I took some pictures of the car, of the state
02:19PM car. And me and -- me and Pam sat there and waited. They said they were having the state police work it, so we waited till the state police officer showed up.
Q. What type of medical condition was Ms. Wilkerson in?
02:19PM A. I mean, she was coherent.

MR. GASPER: Can I just pause real quick? Can you rephrase? I don't think she can say what kind of medical condition she was in. I think she can probably say what did she observe her acting like.

Q. (By Mr. Jackson:) Yeah. I mean, did you observe her grabbing her arm, being in pain?

A. No.

Q. Or anything?

A. She appeared upset.

Q. But you didn't see any lacerations, blood, anything like that --

A. No.

Q. -- on Ms. Wilkerson?

A. No.

Q. Did you go and speak to Jacqueline Ashcraft?

A. No.

Q. Did you go -- did you ever speak with Bobby Wilson, who I'll represent to you is the name of the driver of the tractor trailer rig?

A. No.

Q. Okay. Do you recall speaking to the paramedics at any time?

A. No.

Q. And where -- how close to the accident scene

were you able to get before you parked and got out to her; do you recall?

A. Probably -- a woman doing feet.

Q. Let's -- let's use something like, maybe, car lengths. How many cars. How many seconds would it have taken you to walk. You give me --

A. I ran. I ran.

Q. Okay.

A. I was scared for Jennifer when I got there. I didn't know what condition she was in. Between the state car and where I parked was probably seven to ten car lengths.

Q. Were there other cars between your car and Jennifer's car?

A. Police vehicles, yes.

Q. Okay. And what -- do you recall who was with Ms. Wilkerson when you -- when you left to go back to your car?

A. No one, I believe.

Q. Okay. And I -- do you remember her saying anything else at the accident scene in addition to what you testified to earlier about her stopping at the Dairy Delite?

A. It's a dairy cream in Paris. Dairy Delite.

Q. To get a drink and the next thing is she

remembers a car stopped in front of me?
A. Yes.
Q. Do you recall anything else that was said by Ms. Wilkerson?
02:23PM A. No.
Q. Okay. Did you overhear her talking to anyone else such as the state trooper or any of the people assisting the state trooper with the investigation?
A. No.
02:23PM Q. And the same question as far as with the paramedics, did you overhear her having any conversation with the paramedics?
A. No.
Q. What was your conversation that you and
02:23PM Ms. Feemster had in the car when you went back to the car; do you recall?
A. Rephrase that.
Q. So when you went back -- let me understand -- or clarify this for me. When you leave from
02:23PM Jennifer's -- from talking with Jennifer --
A. Yes.
Q. -- you go back to your car?
A. No. I stood around. Me and Ms. Feemster stood by one of the police vehicles. The state trooper, we
02:24PM were there about probably ten minutes before the state

trooper that was actually from Troop H that actually worked the scene arrived.

Q. Okay. And then when he arrived, what did you do next, if you recall?

02:24PM A. Me and Pam talked about the wreck, talked about how -- what was going on between the time I watched her get in the state car to leave the office to the time she called me. Pam was on the phone with Kristen, sending her pictures of the vehicle.

02:24PM Q. Do you --

A. I mean, we were both just in shock what had happened, 'cause the vehicle -- there was pieces -- I mean, there was a part of the bumper, there was part of the bumper in the grass. I mean, there was pieces

02:25PM in the grass on the eastbound and the westbound lane.

(Exhibit 1 marked for identification.)

Q. I am going to hand you what we'll mark as Exhibit 1. Does that appear to be a photograph of the car?

02:25PM A. Yes. Yes.

Q. And did you do anything to see if Ms. Wilkerson did go to Dairy Delite during that time period after she left and before the wreck?

A. Did I do --

02:26PM Q. See if she had a receipt from there or what --

A. That was not on my mind at that time.
Q. Okay. I mean, but since then, since that time? I mean, later that afternoon or any --
A. No.
02:26PM Q. Okay.
A. The ambulances were parked on that side of the car and the police officers were parked on this side and the semi was parked off the road, off the middle of the highway, heading westbound, like, over here.
02:26PM Q. Did you or Ms. Feemster go and do anything to check on any of the people -- I know you probably didn't know their names, but the people in the car, the blue car?
A. No. After the state trooper arrived, one of
02:27PM the -- his name is Chris Eley, I watched him, the state trooper, walk to the house, 'cause there's a -- you can see the driveway, walk to this house. And I saw him come out and yell for Chris Eley. I don't know if Chris -- I thought he -- I don't know if he
02:27PM was a paramedic or just a volunteer. I know him from town.
Q. Uh-huh. Yes.
A. And I watched Chris walk in there and carry a woman to the ambulance.
02:27PM Q. And there's -- okay. Did you overhear, either

that day or later, anybody saying I was a witness to the accident and I saw what happened?

A. No.

Q. When the paramedics transported Ms. Wilkerson and Ms. Ashcraft from the scene, what did you and Ms. Feemster do?

A. Ms. Feemster asked the state trooper if he was going to be doing a drug screen on Jennifer, and he said he usually didn't. We went to the Paris hospital and checked, and they didn't take her to Paris. So -- and we found out she went to Booneville, so we drove to Booneville. The hospital was locked down.

Q. Is that because of COVID?

A. No. The hospital was locked down due to, I guess, another guy showing up to visit Jennifer. And her boyfriend, I guess, at the time getting into an altercation.

Q. There at the --

A. Booneville hospital. When we pulled up, the boyfriend was getting out of a cop car.

Q. Out of a what car?

A. Cop car.

Q. Police car?

A. Police car. Police SUV. Jennifer's mom was there and the cop was there, and they had the doors

locked. And Jennifer's mom told me that Jennifer had went through Dairy Delite and then was heading on that visit. And I asked her why the cop was dropping off the boyfriend, Scott Lindstrom. And she told me that Scott and, I guess, another guy that had shown up had got in an altercation.

Q. Do you know if Mr. Lindstrom was at the accident scene on Highway 22?

A. Yes, he was.

Q. What about do you know who Sandra Wilkerson is? Is that Jennifer's mother?

A. That's Jennifer's mother.

Q. Did Ms. Sandra Wilkerson come on the accident scene on Highway 22; do you recall?

A. I don't remember seeing her.

Q. What did -- did you know Mr. Lindstrom before this?

A. Yes.

Q. And was it through your work you knew him or did you know him socially?

A. My ex-boyfriend that I have a daughter with, when we split up, he got with Scott's ex-wife. And after I did start at the State, there was -- both Scott and the ex-wife both had dealings with DCFS in Logan County.

Q. What was Mr. Lindstrom's presentation at the accident scene?
A. I saw him get in Jennifer's purse out of the back seat of the vehicle.
02:32PM Q. What did -- what else did you observe?
A. He was there when me and Pam arrived and the -- I just watched him get her stuff out of the vehicle. And afterwards, Pam asked me if -- did I see what Scott -- what vehicle Scott left in and I wasn't
02:33PM paying attention. But he was at Booneville when we got there.
Q. Did you talk to Mr. Lindstrom any at the accident scene?
A. No.
02:33PM Q. Okay. Sounds like he got to the accident scene before you and Ms. Feemster did?
A. Yes.
Q. And you didn't interact with -- do you recall -- do you recall overhearing him say anything while you
02:33PM were there at the accident scene, whether he was talking to you or Jennifer or anybody else?
A. No. I don't have a lot of conversations with him.
Q. What was he -- was he acting normal? What was
02:34PM he doing?

A. He was just getting her purse and her belongings out of the car.
Q. Then the lockdown, you believe, at the hospital -- I want to now shift over to the hospital and the lockdown.
A. Yes.
Q. Do you believe that the lockdown occurred because of a altercation between Mr. Lindstrom and one of the law enforcement officers or was it an ex-boyfriend? I didn't understand who you --
A. Sandra told me it was because Scott Lindstrom and another guy, I don't know if he was an ex-boyfriend or a friend or what. But some kind of friend of Jennifer's had got into it.
Q. Okay.
A. At the hospital, and that's why they locked it down and wouldn't let anybody else in the hospital.
Q. Okay.
A. To see Jennifer or to talk to her.
Q. Okay. And so what did you and Ms. Feemster do after you found out the hospital was in a lockdown?
A. Ms. Feemster went and talked to one of the nurses about Jennifer's condition and we left.
Q. Okay. I assume this but just clarify, did you and Ms. Feemster ride together from the scene to the

Paris hospital and from the Paris hospital to the Booneville hospital?

A. Yes.

Q. Okay. Still you driving your personal car?

02:36PM A. Yes.

Q. Okay. After you left from Booneville, where did you -- I assume you went back to Paris?

A. Yes.

Q. And where did you go?

02:36PM A. Back to the office.

Q. And then what did you do -- what did you do next; do you recall?

A. I was -- I was on call that night, so at that time our on call was a week at a time. So, I mean --

02:36PM Q. And when you do on call, is that something you go to your home and you're waiting for a phone call or are you at the office? How does that work?

A. On call is anything after about 4:00, if there's any hot line reports or police need an assistance,

02:36PM they call the on-call phone number and we go there and assist. Or if there's a hot line call, we talk to the on-call supervisor and go to the home or whatever they tell us to do.

Q. Okay. Have you discussed this accident with

02:37PM Jennifer Wilkerson since June 11th of '21?

A. No.
Q. Did she -- I know she was terminated the following week. Did you -- did she come into the office any the following week and where you would have
02:37PM interacted with her any?
A. She was on desk duty. And no, I did not talk to her at all.
Q. Okay. Would it be accurate to say that everything that Jennifer -- that you heard Jennifer
02:37PM talk about the wreck you have told us about and testified about earlier?
A. Yes.
Q. Okay. And if you need to correct -- you know, that was one of the rules I forgot is if we get to the
02:38PM deposition and you say hey, there's something else I remember, you can always go back and supplement, you know, something. Say hey, one of your questions reminded me I forgot something. Okay?
A. Okay.
02:38PM Q. The telephone system, when you -- in your position at Logan County DHS, do you have two telephones, a personal one and a work phone?
A. I did. Jennifer didn't at that time.
Q. Okay. When you took the photos of when you were
02:38PM at the accident scene, where are those photos and

would they -- which phone would you have taken them on?

A. They were on my work phone, and I had sent the photos to Kristen Shelton.

02:38PM Q. Ballpark, how many photos would you have taken?

A. I don't know. Twenty maybe.

Q. Okay.

A. Just like -- just like this.

(Exhibit 2 marked for identification.)

02:39PM (Exhibit 2A marked for identification.)

Q. And you're just showing Exhibit 1. I want to hand you -- this is a terrible, terrible photos. They're the same photos. Do you know who that -- we'll mark that as Exhibit 2 and 2A. Do you know if

02:39PM that would be a photo that you would have taken? And I'm going to ask you two questions in one while you're looking at it. And do you know who that person is?

A. I took a photo like this. And no, I don't know who that is.

02:40PM Q. And would you have sent those photos to Ms. Shelton by email or how would you --

A. Text.

Q. Text. Okay. Do you know if you happened to still have those photos?

02:40PM A. No, I do not. When I -- they sent me a new

phone, I didn't download any of them. When they sent me that phone, I literally had to put in -- I lost a lot of my foster contacts and all of my photos. The only pictures I usually download are pictures of kids and to update their pictures in our computer system.

Q. Do you know if Ms. Feemster happened to have taken any photos? Did you see her?

A. Yes, I believe she did.

Q. Do you know if she would have taken those on her personal phone or work phone, or do you have any way to know?

A. I'm not for sure.

(Exhibit 3 marked for identification.)

Q. Okay. Ms. Shelton did an investigation, and I believe she asked you some questions by email. I want to hand you what we'll mark as Exhibit 3 to your deposition.

A. Yes.

Q. Is that -- take a moment to look over that.

A. Yes.

Q. Okay. So that is your response?

A. To Ms. Shelton's email.

Q. Okay.

A. Ms. Shelton had asked -- she was doing a fact-finding with everything, so she'd ask to -- well,

you can see what she asked.
Q. Yes. Yes. So it's self-explanatory, Exhibit 3?
A. Yes.
(Exhibit 4 marked for identification.)
02:42PM Q. Would -- I am going to mark this as Exhibit 4. It's a photograph. Is that you in that photograph?
A. Yes, it is.
Q. Okay.
MR. GASPER: Can I see that?
02:43PM A. Ms. Feemster probably took that picture.
Q. (By Mr. Jackson:) I want to ask you a couple of housekeeping questions, probably seem kind of silly but I need to ask them. You didn't go back and do an investigation to find out what happened?
02:43PM A. No.
Q. That's not part of your responsibility at all?
A. No.
Q. While we've been sitting here asking all these questions, have you thought of anything else that
02:43PM Jennifer Wilkerson told you about what occurred in the wreck?
A. No.
Q. Have you thought of any names of any witnesses who may have told you that they observed what
02:43PM happened?

A. The only one I can think of is Scott, which I don't -- because he was there awfully fast. So I don't know. And I did ask the state trooper what time the accident happened, or what time -- yes, what time
02:44PM the accident happened. It had just happened when Jennifer called me.
Q. Do you think Mr. Lindstrom was in the car with her?
A. I've thought about that and --
02:44PM Q. That's something that has crossed your mind?
A. That's something that has crossed my mind, yes.
Q. And that would definitely be a violation of policies and procedures for --
A. Yes.
02:45PM Q. Any text messages between you and Ms. Wilkerson about what happened?
A. No.
Q. I know -- I think I asked you this earlier. I just want to make sure. Since Ms. Wilkerson was
02:46PM terminated, you haven't had any contact with her about this accident?
A. No.
Q. Have you had any contact with her about anything else?
02:46PM A. I --

Q. And I know it's a small town.
A. I've seen her at the Dollar Tree and at Walmart, but no.
Q. Okay. Nothing else other than just in passing?
02:46PM A. No.
Q. What -- did you know Jacqueline Ashcraft or her children?
A. No, I did not. But it is a small town. The next morning after the accident, I did get a call
02:46PM where I had to go out, and my daughter was 13, 14 when this accident happened. And I was gone for a couple of hours.

And I got home, and my daughter comes up to me and is like, "Mom, were you at a car accident
02:47PM this morning?" I said, "No. She's like, "You weren't at a car accident?" I said, "No."

And she's like, "Well, why is your vehicle on the Logan County Sheriff's page?" And, I mean, not very many people would know my vehicle but my
02:47PM daughter. And there was a picture of where my vehicle was parked with the accident. And she said, "That's your car." And I looked at it and I said, "Yeah." She's like, "This accident." I said, "That happened yesterday."

02:47PM And the woman that passed away, I guess my

daughter knew her daughter from school, that her daughter was the same age or something. But I didn't know her or any of her children.

Q. And not being nosy, did your daughter go to Paris at the time?

02:48PM

A. Yes.

Q. Do you know where Scott Lindstrom is now?

A. No.

Q. Is he incarcerated or do you know?

02:48PM

A. No. He was with Jennifer at the Dollar Tree when I saw them -- when I saw her, they were together.

Q. Did Mr. Lindstrom, did he appear intoxicated or under the influence of any controlled substances when you saw him on June 11th of 2021?

02:49PM

A. He didn't appear, no.

Q. Do you have any idea what time you would have gotten to the accident scene?

A. 12:58, 12:59. Where that's located is probably three miles from the DHS office, so it would only took

02:50PM

a couple of minutes.

Q. I'm terrible with numbers, so I try to write them down when I hear them in a deposition. And I think you said you returned from lunch at 12:55?

A. No. I returned from lunch about 12:40.

02:50PM

Q. 12:40. Okay.

A. I got the call from Jennifer at 12:55 that she was in a wreck.
Q. Thank you for clarifying that. I misunderstood. Thank you.
02:50PM A. You're welcome.
Q. The same question earlier, how you know it's 12:55, that's part of what your answer was earlier. You just know those things.
A. Well, I remember when I was writing this that I
02:50PM had looked at my phone and it had the time when Jennifer called me.
Q. Okay. So when you prepared your statement that is in Exhibit 3, you looked back at your phone for the time of that telephone call?
02:51PM A. Yes.
Q. Okay. And so that's why, in your statement, "She called me at 12:55," you know exactly --
A. Yes.
Q. -- when you got the call? And then you and
02:51PM Ms. Feemster went immediately to the accident site after you got the call?
A. Yes. Pam was asking me questions like, "What happened, where," and I was like, "I don't -- I don't know."
02:51PM Q. Just go towards the airport and see what

happens?
A. All I don't understand is she left at -- I know she would have had to pull out of the office. If we left at 12:07, she was walking to the car. I know she
02:51PM pulled out of the office in plenty of time. And to this day, it still bugs me why she wasn't three miles from the office a good 45 minutes later.
Q. And getting a soda at the Dairy Delite is on the way, shouldn't take more than five minutes if --
02:52PM A. Correct.
Q. And when you arrived, Mr. Lindstrom is present, getting Ms. Wilkerson's items out of the back of the car?
A. Yes.
02:52PM Q. Okay. And you only had conversation with Ms. Wilkerson and not Mr. Lindstrom?
A. I don't care too much for Mr. Lindstrom.
Q. I'll take that as a definitive no.
A. I did not have a conversation with him.
02:53PM Q. Okay. I may have asked this earlier and I apologize. Do you recall Mr. Lindstrom saying anything about what happened or what he observed?
A. I didn't stick around to listen if he did.
Q. Okay. I understand it may have been a one-way
02:53PM statement, but I just wondered if you did hear

anything.
A. No.
Q. Okay. Did you see or observe anything that the driver of the blue car may have done to cause this
02:53PM wreck?
A. All I know is that road is right there in front of the airport. It's a straight stretch. You can see in this -- in Exhibit 1 where this is Subi, Subiaco Hill. And, I mean, it's a straight stretch road. It
02:54PM appeared that the driver of -- or Ms. Ashcraft was turning -- going eastbound, turning left into that house.
Q. Ms. Ezell, thank you for your time. I know it was a pain for you to come down here for this, and I
02:54PM appreciate you coming down and providing your testimony. I know it's not pleasant.
A. Thank you.
MR. JACKSON: I pass you to Mr. Gasper.
MR. GASPER: I just have one or two real
02:55PM quick ones.

EXAMINATION

BY MR. GASPER:
Q. Brandy, the answer you just provided to Mr. Jackson about your observations about the wreck
02:55PM itself, you said that it appeared that she was turning

left into a driveway?
A. Yes.
Q. You don't know that?
A. No.
02:55PM Q. That's just what it kind of looked like to you?
A. Yes.
Q. You didn't -- the accident itself was not part of any kind of DHS investigation?
A. No.
02:55PM Q. Those are just personal, like, that's what it looked like to me?
A. Yes.
Q. Okay. And I just want to clear up, you don't know that Scott was in the car, Scott Lindstrom?
02:55PM A. No.
Q. This is kind of you've always just kind of wondered it?
A. I've always kind of wondered it because he was already there.
02:56PM Q. And it wasn't that far from Paris?
A. No.
Q. I mean, he could have been there in a couple of minutes?
A. Yes.
02:56PM Q. He could have just happened to be there?

A. Yes.

MR. GASPER: Okay. That's all I have.

MR. JACKSON: Thank you.

(The deposition was concluded at 2:56 p.m.)

* * * * *

REPORTER CERTIFICATION

I, TAMMIE L. FOREMAN, Certified Court Reporter for the State of Arkansas, do hereby certify to the following:

1) that on 08/01/2023, the witness, BRANDY EZELL, was duly sworn by me prior to the taking of testimony as to the truth of the matters attested to and contained therein;

2) that the foregoing pages contain and are a true and correct transcription of the proceedings as reported verbatim by me via realtime stenography to the best of my ability and transcribed at or under my direction and supervision, and subject to appropriate changes submitted by witness, if any, during his/her requested reading and signing of this deposition according to the Arkansas Rules of Civil Procedure;

3) that I am neither counsel for, related to, nor employed by any of the parties to the action in which this proceeding was taken; and that I am not a relative or employee of any attorney employed by the parties hereto;

4) that I am not financially interested or otherwise interested in the outcome of this action that affects or has substantial tendency to affect impartiality or requires me to relinquish control of

an original or copies of a deposition transcript before it is certified, or that requires me to provide any service not made available to all parties to the action; and

5) that I have no contract with the parties, attorneys, or persons with an interest in the action; and that I am not knowingly identified on a preferred provider list, whether written or oral, for any litigant, insurance company, or third-party administrator involved in this matter;

6) that signature of the witness is waived.

This transcript is prepared at request of counsel for CLAIMANT, and all fees are billed directly to them in compliance with Arkansas Board of Court Reporter Examiners Regulations Section 19.

Witness my hand and seal this 20th of August, 2023.

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**Exhibits**

**Brandy Ezell Exhibit 1** 17:16,18 25:11 33:8

**Brandy Ezell Exhibit 2** 25:9,14

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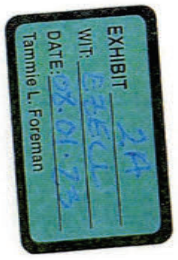
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EXHIBIT
WIT. 2 ECU
DATE: 8-9-23
Tammie L. Foreman


EXHIBIT 2.
WIT: Eric
DATE: 08.01.23
Tammie L. Foreman




EXHIBIT 2A
WIT. BAECL
DATE: 09.01.23
Tammie L. Foreman

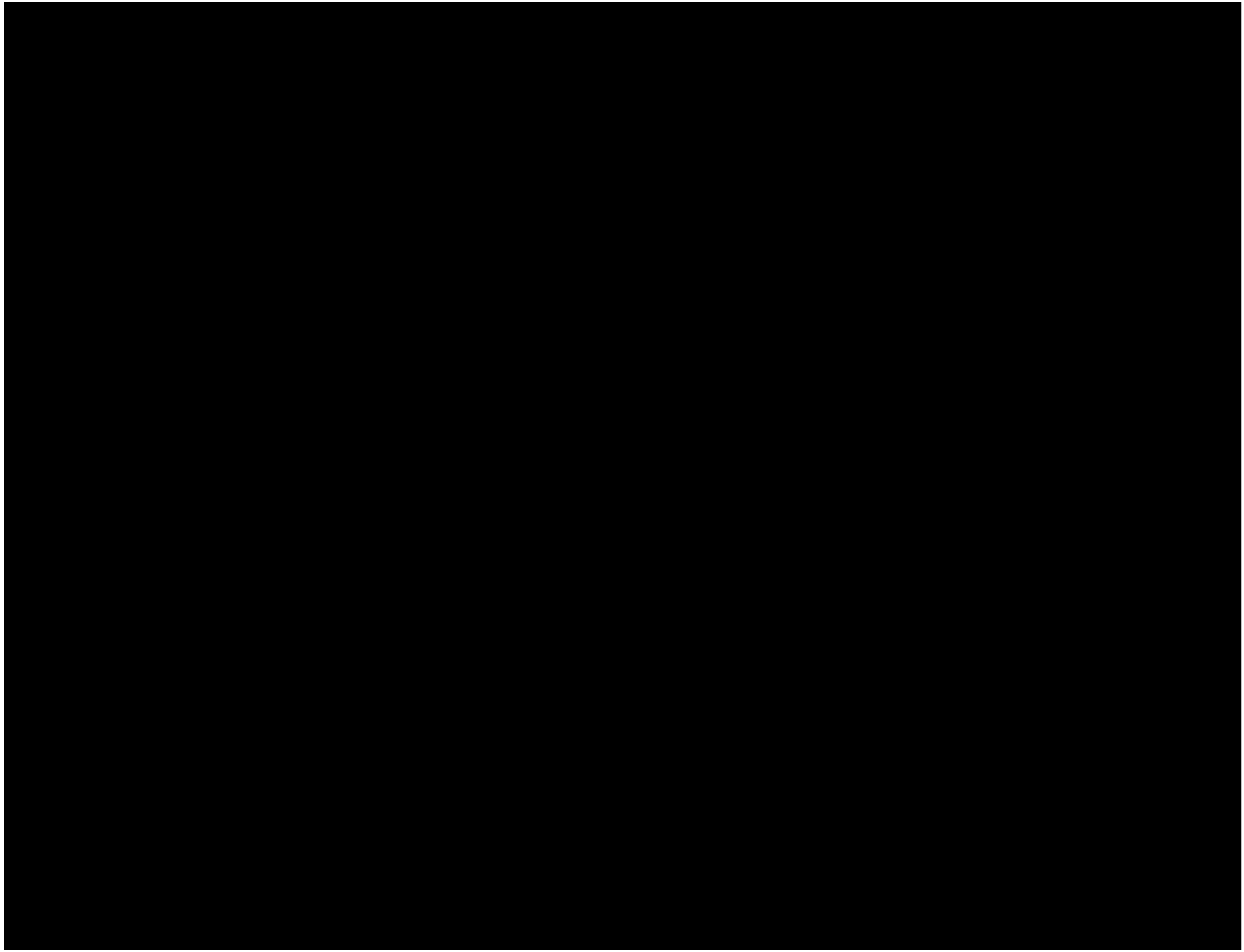



EXHIBIT 4
WIT:
DATE: 08-01-23
Tammie L. Foreman

ARKANSAS STATE CLAIMS COMMISSION

HALEY HUDSON, As Special Administratrix of the Estate of JACQUELINE LYNN ASHCRAFT, Deceased, and as Permanent Legal Guardian of [redacted], A Minor,

CLAIMANT,

VS.

ARKANSAS DEPARTMENT OF HUMAN SERVICES,

RESPONDENT.

CC NUMBER 230641

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ORAL AND VIDEOTAPED DEPOSITION OF

JENNIFER LEANN WILKERSON

October 20, 2023

---

ORAL AND VIDEOTAPED DEPOSITION OF JENNIFER LEANN WILKERSON, produced as a witness at the instance of the CLAIMANT, and duly sworn, was taken in the above-styled and numbered cause on the 20th day of October, 2023, from 12:54 p.m. to 4:05 p.m., before Tammie L. Foreman, CCR in and for the State of Arkansas, RPR, CRR, reported by machine shorthand at the Logan County Courthouse, 25 West Walnut Street, Paris, Arkansas, pursuant to the Arkansas Rules of Civil Procedure.

APPEARANCES

FOR THE CLAIMANT:

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FOR THE RESPONDENT:

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ALSO PRESENT:
Garrett Smelley, Videographer
Sandra Wilkerson

# I N D E X

October 20, 2023


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WITNESS: JENNIFER LEANN WILKERSON

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EXHIBITS

| NO. | DESCRIPTION | MARKED |
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| Exhibit 1 | Subpoena Issued by the Arkansas Claims Commission for Jennifer Leann Wilkerson | 5 |
| Exhibit 2 | Note from Northwest Counseling, Inc., regarding Jennifer Wilkerson, signed by Mollie Sweetser, PPC | 21 |
| Exhibit 3 | A Series of emails between Kristen Shelton and Jennifer Wilkerson | 23 |
| Exhibit 4 | Diagram from Trooper Ray's crash report, labeled as page 17 of 18 | 33 |
| Exhibit 5 | Diagram from Trooper Ray's crash report, labeled as page 18 of 18 | 33 |
| Exhibit 6 | Arkansas State Police Accident Supplement Form Driver Statement/Witness Statement of Jennifer Wilkerson | 38 |
| Exhibit 8 | Arkansas State Crime Laboratory Report of Laboratory Analysis | 61 |
| Exhibit 9 | Letter dated July 25, 2023, to Jennifer Wilkerson from Jim Jackson | 125 |
| Exhibit 10 | A Series of Text Messages | 136 |

(Exhibit 1 premarked for identification.)

THE VIDEOGRAPHER: We're now on the record. Today's date is October 20th, 2023; and the time is 12:54. This deposition is taking place at 25 West Walnut Street in Paris, Arkansas, in the matter of Haley Hudson versus Arkansas Department of Human Services.

12:54PM

12:54PM

12:55PM

The deponent is Jennifer Leann Wilkerson. And if counsel will introduce themselves, the witness will then be sworn.

MR. JACKSON: Jim Jackson, attorney for the claimant.

MR. GASPER: My name is Brent Gasper. I'm an attorney for the Department of Human Services.

THE COURT REPORTER: Would you raise your right hand, please, to be sworn?

JENNIFER LEANN WILKERSON,

having been first duly sworn, testified as follows:

EXAMINATION

BY MR. JACKSON:

Q. State your name for the record.

12:55PM

MR. GASPER: Can we -- can we take care

of some preliminary matters first, Jim, if you don't mind?

Ms. Wilkerson, my name is Brent Gasper. I'm the attorney for the Department of Human Services.

I am not your lawyer. I just need to make sure that you understand this.

THE WITNESS: Oh, yeah. I do.

MR. GASPER: Okay. I do not represent you.

THE WITNESS: I knew -- I knew that.

MR. GASPER: Okay. I just wanted to make sure that we were all on the same page, that you did -- at the time this occurred, you were employed at DHS. But you are no longer; therefore, you are not my client and you cannot rely on --

THE WITNESS: Yeah. I had a lawyer.

MR. GASPER: Okay. Very good. Have you -- are you aware of your constitutional right to self-incrimination, to prevent self-incrimination?

THE WITNESS: I am now.

MR. GASPER: Okay. Go ahead.

12:55PM 12:55PM 12:55PM 12:56PM 12:56PM

Q. (By Mr. Jackson:) Okay. Ms. Wilkerson, I am

going to ask -- I just met you in person a few moments ago. And one of the things I told you was, we want to explain this process and procedure to you.

A. Yes.

12:56PM Q. So a deposition is a chance for us to make a record of what a witness saw, heard, observed in a -- in a incident. And so I want to be asking you -- we're going to ask you a series of questions. In a normal conversation, you would start -- you would know

12:56PM what my question is and you would start answering it before I was finished.

Today, we have a court reporter. So if you would, just give me a moment to finish my question and then answer it so that the court reporter can keep

12:56PM up with you and me.

A. Okay.

Q. And that way, we don't have two -- what we're trying to avoid is have two people speak simultaneously. Okay?

12:57PM A. (Witness nodding head.)

Q. And then one thing that we've got to do is to make a record, we've got to have yeses or noes, or verbal answers. And so nodding of heads, when we look back later and the court reporter writes "Witness

12:57PM nodded head," we don't know if that's a yes or a no.

Okay?
A. Okay.
Q. So if, at any point, Mr. Gasper or I ask you, is that a yes or a no, in normal conversation, that would be something rude and would be offensive. But here, we're trying to help make a record, so we're not trying to offend you or pick at you. Okay?
A. Yes, sir.
Q. And then at any time, if you don't understand my question, feel free to ask me to rephrase it, restate it, at any time. Okay?
A. Okay.
Q. And what we're trying to -- what I want to get from you or learn from you is what happened on June 11th and what you recall and don't recall. Okay?
A. Yes, sir.
Q. And then also, if, at any point, you need to take a break -- I know your mother is here with you. But if you ever need to step out, talk to your mom, or smoke a cigarette, whatever, please feel free to do so. I would like to ask you to go ahead and answer if there's a question pending, go ahead and answer it and then say let's take a break. Okay?
A. Okay.
Q. And we'll try to be as quickly as possible with

this. Okay?
A. Okay.
Q. It's not a marathon session at all. My understanding is the accident occurred on Friday, June
12:58PM 11th, 2021. Does that sound correct to you?
A. Yes.
Q. And what was your job description for DHS? Do you recall the title? Does the phrase "program assistant" mean anything to you?
12:58PM A. Yes. Yes. Yes.
Q. What is a -- when did you start working for the Arkansas Department of Human Services?
A. I think it was exactly -- I got in the wreck exactly two weeks since I had started. So, you know,
12:59PM the date?
Q. And we need for you -- if you don't know something, just say I don't know, so you don't have to ask your mom or anything. This is not like school, where an answer of "I don't know" gets you an F.
12:59PM A. Yeah.
Q. Here, if you don't know, you don't know. Okay?
A. I know I've sent you -- I've talked to you, so I've sent you that. I just don't remember the exact dates. That was two years ago.
12:59PM Q. Certainly. So I looked back at the calendar.

It looks like Memorial Day was on Monday, the 31st, and that maybe you may have started on June 1st?
A. Yes.
Q. And then the accident happened on Friday, June 11th?
12:59PM
A. Correct.
Q. Was this your first time to leave Paris to go on a child visit?
A. Yes.
01:00PM
Q. Okay. Just briefly explain what -- what your understanding of what you were supposed to do on that afternoon. What was your responsibility?
A. Well, I was supposed to go on an eight and a half hour, I guess, trip to go pick up a child. I don't have a child, so I don't even know how to use a car seat or anything like that.
01:00PM
I had never -- I didn't have a gas card. I guess you have to have -- I didn't even know all the procedures yet 'cause I was -- I had no training or anything like that. So it was just -- I mean, to go and pick up the kid and then bring them back to Clarksville -- well, it changed so much 'cause I -- and it wasn't planned out. Okay?
01:00PM
So it was the night -- the night before, I was with Brandy Ezell, and she had told me to be
01:01PM

there -- it was going to be at night, and -- or be there at 8:00 in the morning.

Q. At the office?

A. Yes.

01:01PM Q. At the Logan County DHS office?

A. Yes.

Q. Okay.

A. And I was going to leave then. Then before I even left the parking lot, it was don't come in till 01:01PM 9:00. And there was no set hour, set time that I was supposed to leave.

And I'm pretty sure the policy -- I mean, I didn't know anything I was supposed to be doing. I know I was sent with no gas card so if I had ran out 01:01PM of gas, I had to call Brandy because she used hers to put gas in there.

Q. Did she help you fill up the car on the morning of -- that Friday morning?

A. Yes. She -- that was the first time I had ever 01:02PM been in that car, 'cause they drive their private vehicles, personal vehicles everywhere. And so they -- we went to see -- so she could show me then for the first time, and my number didn't work.

Q. Was this at Casey's Fuel Station?

01:02PM A. Yes, it was at Casey's. So she used her number

and filled the car up, and then we went back. And at that time, I should have already left, I mean, if you're going to do the math and all that. And that's what I've been trying to say all morning, you know, 'cause I like to plan, you know. Why are you going to send someone that doesn't even know what they're doing?

And I -- that was the first job I had in a long time. I was -- you know, and they knew that. And that is not really what they told me my job description was when I -- in the interview.

Q. So did you and -- I'll call her, Brandy, Ms. Ezell. Did you and Ms. Ezell come up with a map for your directions of where you were to go?

A. I didn't even have the person's phone number. I had, I guess, an address. And we didn't do that until after the gas.

Q. You didn't -- you got the address after you got the fuel?

A. Yeah. On what time to leave, 'cause there was another lady that was going to Fayetteville and to get another kid. And I was going to go -- I was supposed to go to Beebe and get a kid. And then it was for a 30-minute visit in the middle.

Q. Was the other lady who left to Fayetteville, was

she working in the Paris office?
A. Yes. Yes. And she had told me she didn't -- she didn't know what time that she was going to -- the kid had counseling or something like that, and that
01:04PM she didn't know. And then I'm, like, trying to tell Brandy, you know, well, she -- I need to know what time to leave, like, all morning. And then -- so either way, a professional to me is, you would have had -- I should have left, like, in time for -- if I
01:04PM ran out of gas or -- so yeah. I don't know.
Q. What's the name of the lady that went to Fayetteville; do you recall?
A. I would know if I heard it. I can't remember.
Q. Okay. That's fine. So --
01:05PM A. And then -- but it changed from first it was meet at -- we were supposed to meet in Russellville or -- yeah, in Russellville; then it went to Clarksville.
Q. Okay. Did you or Brandy Ezell print out
01:05PM anything on paper to show you your route?
A. No.
Q. How did you know what route to take to go to Beebe?
A. I didn't really. She got on map -- one of the
01:05PM map things and I was supposed to go by that.

Q. And so I have a map on my telephone, Google Maps, and I use that. Is that what you are talking about?
A. That's not what I -- what we were using -- what she used.
Q. Was it on a handheld device or was it on a computer that's --
A. No. It was --
Q. -- desktop?
A. Well, I didn't have a State phone yet, so I had my personal iPhone. And she was using hers, so...
Q. How -- what -- what device or object map were you going to use to get to Beebe? Was it the map on your iPhone?
A. Yes. That's what I was supposed to use.
Q. Okay. And did you type in the address of your destination and put search and find a route? Is that how it worked at the time?
A. That's -- Brandy did that. Brandy did that.
Q. On your phone or her phone?
A. On -- well, on -- I guess on hers and then I had -- I did it on mine.
Q. All right. Ms. Ezell testified that she and Ms. Feemster left about 12:07 p.m. on Friday from the DHS office, and that was about the same time that you

were getting ready to leave or maybe you were leaving at the same time. Does that sound correct?
A. Can you repeat that?
Q. Sure. Ms. Ezell testified that she and
01:07PM Pamela Feemster went to lunch at 12:07 on Friday, June 11th; and that at approximately that same time, you were either in the parking lot or going to the parking lot getting ready to leave to go. Does that sound correct?
01:07PM A. I don't know what's -- they were not in the parking lot with me 'cause we had just got back from the gas -- getting gas at that time. And so we got gas and then she's like, "Okay. You need to go." It was not planned ahead of time.
01:08PM Q. Okay. And so then after y'all get back, I assume -- you say you got back, you went back from Casey's back to the DHS office?
A. Correct.
Q. And Ms. Ezell was riding with you to Casey's and
01:08PM back in that car, correct?
A. Correct.
Q. And y'all had -- and had you driven the State car to Casey's?
A. I didn't drive it; she drove it.
01:08PM Q. Okay. So then when she gets out of -- tell me,

when you pull back in, kind of what happens next kind of up to the wreck. Okay?

A. Okay. So when I got to the DHS office?

Q. Yes. Back from Casey's.

01:08PM A. Okay.

Q. And is Brandy driving back from Casey's to the DHS office?

A. Yes. She drove the whole -- she drove that whole time.

01:08PM Q. You were the front seat passenger, correct?

A. Yes.

Q. Okay.

A. Okay. So we got back there, and then we went inside and my -- the concession was, you know, my card

01:09PM didn't work. Okay. And she said, well, not to use my personal -- my own gas money on any -- I think I would have ran out of gas on a eight and a half our trip. But -- so I was nervous about that. And -- but then that's when she did the directions.

01:09PM Q. On her phone?

A. Yeah. Well, she called -- she called that other lady and asked to talk to her 'cause I tried to tell her that -- what she told me. And Brandy is not -- wasn't even my supervisor, for one.

01:09PM And she was -- I had been going with

Brandy, like, every day to do her visits, like, in her personal car on her visits. And she smoked in her car. I guess that's why they don't take -- they want to use their personal vehicles because you can smoke in your vehicle. You can go -- they go and eat during their sessions and leave early and stuff like that.

Q. Okay. So I'd like for us to focus on --

A. Yeah.

Q. -- what happened on Friday.

A. Okay.

Q. You and Ms. Ezell returned from Casey's to the DHS parking lot, correct?

A. Yes. And then --

Q. You're in the passenger's seat, correct?

A. Uh-huh.

Q. You go inside with Ms. Ezell, correct?

A. Yes.

Q. Tell me what happens next.

A. Okay. That's when she figures out on the maps, when I needed to leave, and it was I needed to leave then because I needed to leave earlier than that really.

And so I left, and I had called in some food at Dari-Delite because I knew that's what she does, and this is a eight-hour trip with no -- no gas

already. And then I was driving, and that's when -- okay.

Q. So I want to stop you before you --

A. Oh, yeah. Okay. So I went -- okay.

01:11PM Q. So you went to Dari-Delite?

A. Yes. Pick up, just, something to eat because I hadn't had anything.

Q. Okay.

A. And that's what I thought -- I mean, Brandy,

01:11PM that's -- if I was -- she was training me. I mean, that was what I --

Q. Did you go inside and sit down and eat or was it a drive-through? I don't know how that works at Dari-Delite.

01:11PM A. You can do either way.

Q. What did you do?

A. I went and picked it up. I went in and got it.

Q. Okay. After the accident occurred, do you remember who came to the accident scene?

01:12PM A. Like, Brandy?

Q. (Nodding head.)

A. Brandy and Pam.

Q. Yes. Who else? Who did you call and who came to the accident scene? Those are two separate

01:12PM questions, so let me back up. Did you call anyone?

A. I called Brandy.
Q. And what did you tell her?
A. That I'd just got in a car accident.
Q. Okay. And then who else did you call after
01:12PM that?
A. I called my boyfriend at that time. He's not my
boyfriend anymore.
Q. And then --
A. And then I called my mom.
01:12PM MR. GASPER: Can we -- can we get a
name?
Q. (By Mr. Jackson:) Yeah. What's the name of
your boyfriend?
A. Ex-boyfriend.
01:12PM Q. Ex-boyfriend, I mean.
A. Scott Thomas Lindstrom.
Q. Okay. And did all -- did you call -- do you
remember calling anybody else other than those three?
A. I called my mom.
01:13PM Q. You said your mom. You said Scott Lindstrom.
And you said Brandy Ezell. Were there any other calls
you made that you recollect?
A. No. I don't -- I don't think so.
Q. Did all three of those people come pretty
01:13PM quickly to the accident scene?

A. No. Well, my mom, she didn't have a vehicle. And Scott, he got there first. And then Brandy, I just remember her yelling, screaming at me, and, you know, I didn't know what even happened.

01:13PM Q. What was she screaming?

A. Just -- I don't even -- just, "Which way were you going?" Like -- like -- you know, I guess I didn't know -- I didn't know that I hit a semi trailer truck. I didn't know that at all until someone told

01:14PM me.

Q. Okay. So when she was screaming at you, was that on the telephone or when she was there in person?

A. No. In -- in person.

Q. Okay. All right. So do you remember talking to

01:14PM the Arkansas State Police who came and investigated at the scene?

A. I -- I don't remember talking to anyone there. But everyone -- I know that -- I might have. I just know that there was -- there were so many police there

01:14PM that not even the county cops or city cops that I knew, they didn't ask me one question. They didn't even talk to me. No "how are you doing? Are you okay?"

Q. Did you know any of the city police officers

01:15PM that were there?

A. Yeah.
Q. Okay. Who -- who? Can you give us names?
A. Yeah. Well, I mean, every one of them. The sheriff, Jason Massey. Officer Hayden, he actually
01:15PM peeked his head in the ambulance when I was in there and looked around.
And I didn't think anyone -- spoke to -- they wasn't supposed to be in there because the State had already picked that up. If you are going to do
01:15PM that, we went to school together. He could have said, "I'm glad you're okay," or something. But I didn't get no none of that. So --
Q. What was his name again?
A. Chris Hayden. Officer Hayden.
01:15PM Q. And who is -- who is he employed by?
A. The -- or I don't know if he's even employed. The city police.
Q. City, you mean the City of Paris, correct?
A. Yeah.
01:15PM Q. Okay. And where --
A. Oh, yes. This is from my doctor. I didn't know if I --
(Exhibit 2 marked for identification.)
Q. Okay. We'll mark that as Exhibit Number 1 --
01:16PM Number 2, I'm sorry, to your deposition. It's a note

from your physician.

[redacted]

01:17PM [redacted]

[redacted].

01:17PM Q. Do you remember giving -- the week after the accident, do you recall -- do you know who -- do you recall the name Kristen Shelton?

A. Yes.

Q. Who is she?

01:18PM A. I've never -- I don't think I've ever met her. But I got an email. I guess -- I think that was from her.

Q. And --

A. And I -- I had actually broke my back in that

01:18PM car accident.

Q. I didn't understand you. Can you --

A. I broke my back in that car accident.

Q. On June 11th, 2021?

A. Yes.

01:18PM Q. Okay.

A. But they didn't do anything -- anything then, so I didn't know for two months that my back was broke. And I was in so much pain that they made me come in to work just to do that thing, and I didn't even know what it was.

01:18PM

(Exhibit 3 marked for identification.)

Q. I am going to hand you a document. We'll mark it as Exhibit Number 3 to your deposition. Is that what you are talking about?

A. Yes.

01:19PM

Q. Okay. So this is part of where we need to make a record. That document is -- looks like an email from Kristen Shelton to you that was printed out, 10 questions, and then there's handwritten responses under each question. Is that your handwritten -- handwriting?

01:19PM

A. Yes.

Q. And is that your statement that you gave to DHS as to what happened?

A. I guess -- I guess so. I didn't know what it was. I just got -- I wasn't explaining anything. Pam just said, "Fill it out."

01:19PM

Q. Will you look over --

A. Yes.

Q. Can you just take a moment and look over the

01:19PM

questions and your answers before we --
A. Yeah.
Q. Take your time.
A. A lot of the answers are -- I was -- I was confused.
Q. I tell you what, why don't you silently read the questions and then read your answers, and then I'll ask you and then you can elaborate. Okay?
A. Okay. Number 1 --
Q. No, I want you to read all 10 of them, please.
A. Oh. I've read over this a -- quite a bit of times, so I kind of know what my answers are and --
Q. And those --
A. Yeah.
Q. -- are -- you've had a moment to look over this?
A. Yes.
Q. Is that what happened?
A. No.
Q. Okay. Go -- so let's start with question -- your answer to number 1.
A. Well, the question, for one, I wasn't assigned to pick up a child in Beebe at 2:00 p.m. I was assigned -- I think you have to be assigned -- from the policy, it said -- for one, I had no training. It had to be documented, and you have to have gas card to

train. So if it was assigned at 2:00 p.m., and it takes -- every map, every different thing, it doesn't say 100 -- or an hour and 57 minutes.

So when I got on my thing, I mean, I didn't have a scheduled time. And I don't think I would have made it there by 2:00. And why would you have someone get there just at -- on -- on the wreck, you know, at that time instead of early, especially after I didn't have no gas.

01:22PM Q. Okay. Your answer to question number 1 is, "I did not have a scheduled time. This was my first time going anywhere myself."

A. Okay.

Q. Well, is that correct?

01:22PM A. It was not my first time going anywhere by myself. It was my first, like, actual, you know, going somewhere, like, a distance. Like, I went in my personal car to Booneville and met someone there and I was never alone, so -- and is that --

01:23PM Q. So --

A. But it was my first, you know --

Q. Was this your first time to go in a State car by yourself?

A. Yes.

01:23PM Q. Question number 5, "While you were driving, what

happened to cause the accident?" Do you see that question?
A. Yes.
Q. Do you see your answer?
01:23PM A. Yes.
Q. Is there anything else that you recall about -- that you would like to add to your response to question number 5?
A. I still don't know what happened. It's, like, 01:23PM she was idling. And so if I was driving the speed limit, which I'm pretty sure that I had my thingy -- cruise on, so I know I was driving the speed limit, lower than the speed limit.
And there was -- and, you know, so if I 01:24PM was going that -- it's, like, she was -- I didn't know if she was stopped. And then -- and traffic -- I mean, I just don't know what happened at all.
Q. Okay. When did you first recognize that there was a tractor trailer rig carrying a modular home? 01:24PM Was that before or after --
A. After.
Q. Let me finish my question.
A. I'm sorry.
Q. I'm sorry. It helps us to make a record. Okay?
01:24PM A. Yes. Go ahead.

Q. Was it before the wreck, after the wreck, or during the wreck?
A. Okay. I didn't -- I didn't know that I had hit a tractor trailer till after the wreck.
01:25PM Q. That's not my question. My question is, when did you first observe the tractor trailer rig carrying the modular home, before the accident, after the accident, or during the accident?
A. Not until I stood up.
01:25PM Q. When did you stood up? What's that mean?
A. To get -- to get on the -- to get in the ambulance.
Q. Okay. So I'm going to ask you this question one more time. So you got in the ambulance after the
01:25PM wreck obviously, correct?
A. Yes.
Q. So when did you first observe the tractor trailer rig carrying the modular home, before the accident, during the accident, or after the accident?
01:25PM A. After the accident.
Q. Okay. Did you ever notice an escort car? Do you know what an escort vehicle is for a oversized load?
A. Yes.
01:26PM Q. Did you notice an escort car that day?

A. No. And -- that I -- there was one in the back, I guess. Not in front.
Q. Is that what you saw after the accident when you got out of your car?
01:26PM A. No. Actually, I got that from -- I researched it on their research and it showed up.
Q. So let's --
A. But no, I didn't see.
Q. Let's talk about what you, yourself, saw and
01:26PM observed on June 11th and not what you did research on later.
A. No.
Q. And thank you for letting me know that you did the research later because that -- we need to know --
01:26PM I want to know when you learned different things. Okay?
A. Okay.
Q. I want to go back to the -- I want to start back with the escort car question. When did you -- did you
01:26PM ever -- did you ever see an escort car on Friday, June 11th, with your eyes?
A. I don't recall.
Q. Okay. And that's a fine answer. I mean, you know, like I said earlier, you don't have to -- if you
01:27PM don't know something, you don't know. Okay?

A. (Witness nodding head.)
Q. Your answer to question number 10, can you look at that, please?
A. Yes.
01:28PM Q. Is that still true and correct as of today?
A. Yeah.
Q. And your answer is, "I am devastated over what happened but I really don't know what happened."
A. And I --
01:28PM Q. "Because I don't remember. It happened so fast."
A. I didn't really -- I didn't even know what the question -- they weren't described to me, so I didn't know what kind of answer I was supposed to write.
01:28PM Q. I mean, well, look at it today and take your time. And is that accurate today?
A. No. There was a lot more to this.
Q. Okay. What is what more to it?
A. Well, like, everything leading up to it, how
01:28PM long I worked there, just the -- I mean, they want to get their own policies and procedures, I feel like.
Q. So we'll go back into policies and procedures a little bit later, but I'm just talking about generally on what caused the accident or what you recall about
01:29PM the accident, the impact, and the vehicles that day.

Okay? That's what I'm talking about, when the impact occurred.

A. That all I saw was the vehicle in front of me, and I didn't -- I didn't even -- I didn't know if she

01:29PM was stopped because there was no lights on. I didn't see no lights or anything. So if you're going down a highway, I mean...

Q. How far away from -- it was a blue car that was in front of you, correct? Does that sound right?

01:29PM A. Blue or -- blue or green, something like that.

Q. How far in front of your car was it the first time you saw it?

A. I mean, it was really bright. Okay. So it was -- I mean, I saw it but not saw it stopped until I

01:30PM slammed on my brakes, and then that knocked me out. And then I woke -- I guess I woke up during the second wreck and thought I was dead, or it was just like it was never ending.

And then when it stopped, there was still

01:30PM those people that were stopped there, and I couldn't, like, talk. I couldn't say anything. And -- 'cause I guess that's -- that's why I had a compression fracture, someone told me, squashed my --

Q. Did -- is that -- did your airbags in your

01:30PM vehicle go off?

A. Yes. Like, my bracelet was on the ground I picked up while I was sitting there. And I had glass in my head that they got out at the hospital. But they didn't even get all the glass out. My mom had to
01:31PM get it out later.
Q. Do you recall where in the lane of travel -- you were headed --
A. From Paris towards Russellville.
Q. This is a diagram that Trooper James Ray
01:31PM attached to his report, and I'll represent to you that he has V2 as your vehicle.
A. Uh-huh.
Q. Here is Paris and the airport would be here. And this is Subiaco. And this is the truck, and
01:32PM that's V1 is Jacqueline Ashcraft's vehicle.
A. Okay. Yes.
Q. Do you see anything in that diagram that you disagree with as far as the arrows pointing which direction the vehicles were traveling or the name of
01:32PM the highway or anything?
MR. GASPER: Can we note that that is a not-to-scale drawing, Jim?
MR. JACKSON: Yes. It says "not to scale" right here.
01:32PM A. What does that mean?

Q. (By Mr. Jackson:) It means the scale of one inch to one mile is not exactly -- is not correct.
A. Oh, yeah. We were both going that same way, and I guess that -- I didn't really see that person.
01:32PM Q. When we say "that person," you're talking about what is marked as V3, which is the tractor trailer rig?
A. Yes.
Q. Okay. Is that correct?
01:32PM A. Yes.
Q. Okay.
A. She was -- I guess she was turning in to a house.
Q. I don't want you to try to guess. Just --
01:33PM A. Well, that -- she was 'cause they walked her in -- they walked her around.
Q. And that was after the accident?
A. Yes.
Q. Okay. Do you know who they -- who it was that
01:33PM walked her around?
A. The EMS driver, 'cause they said that she was fine. I mean, she was fine and then she said she didn't feel good. I was in the ambulance at this time, and so I was just hearing what -- hearing. And
01:33PM then I had to see all that that no one else saw. But

they walked her in to that house, which was --
Q. Would it be right here next to that private driveway?
A. Yes. Adam Capo, I believe who that was.
01:33PM Q. His wife's name is Jessica, or his daughter's name Jessica?
A. I don't know.
Q. Okay.
A. I mean, I just know who they are.
01:34PM Q. At the -- before you got into the -- before the paramedics put you in the ambulance, did you talk to Jacqueline Ashcraft?
A. No -- I don't recall, no.
Q. Okay. Had you ever spoken to Jacqueline Ashcraft before this?
01:34PM A. No. I didn't know her.
(Exhibit 4 marked for identification.)
MR. JACKSON: Okay. We'll mark this as Exhibit Number 4 to your deposition.
01:34PM MR. GASPER: Number 4, you said?
MR. JACKSON: Yes.
(Exhibit 5 marked for identification.)
Q. (By Mr. Jackson:) We'll mark page 2 of the diagram. And -- as Exhibit 5. And I'll represent to you that this is Trooper Ray's illustration showing

how the impact occurred, and the arrows right here showing a vehicle going counterclockwise after hitting the modular home tractor trailer rig, and that would be your vehicle. Does that sound correct?

01:35PM A. Sorry. This is final rest?

Q. That would be final rest on that one, yes. Where it's shaded. The dark color and then you have the light color. The light color would be the final rest of V2, which would be the vehicle driven by

01:36PM Jennifer Wilkerson.

A. I think that's right. That's where I was so confused. That's why I was so confused when Brandy was screaming at me.

Q. 'Cause your vehicle was pointed back towards

01:36PM Paris?

A. Yes.

Q. Okay.

A. And I didn't know. I didn't know that.

Q. Okay. I see what you meant earlier. I didn't

01:36PM understand. So okay.

A. Yeah.

Q. 'Cause your vehicle -- the front of your vehicle was pointed --

A. 'Cause I was -- yes. I was still sitting on the

01:36PM highway.

Q. Uh-huh. What was the temperature like that day; do you recall?
A. It was hot.
Q. Okay. This arrow right here where it shows where V2 impacts V1, or the point of -- POI, point of impact, can you look at that and let us know if you disagree with any part of that diagram, based upon what you observed?
A. That's me?
Q. Correct.
A. I mean, like, I am supposed to be that close?
Q. Yeah. Yes. Does that seem approximately where the vehicles were at that point of impact?
A. I don't know if I was that close. I don't know. I don't recall.
Q. Okay. Do you recall -- if the evidence is that Ms. Ashcraft was getting ready to make a left-hand turn into the driveway, do you have any reason to disagree with that evidence?
A. I wouldn't have known that.
Q. But based on what you saw that day, and recall, do you have any reason to disagree with that?
A. There was no lights on, I mean, or else I would have saw that. I mean, so she was idling or --
Q. And we know an accident occurred.

A. Yes.
Q. And so what I'm trying to -- so what I want to make sure of, as I understand what -- as best as we can as to what happened. And I heard evidence that
01:38PM Ms. Ashcraft was going to take --
MR. GASPER: I am going to object to the form of this question. You're putting words -- you're suggesting evidence to her at this point.
01:38PM MR. JACKSON: I think --
MR. GASPER: You can produce it.
Q. (By Mr. Jackson:) That Ms. Ashcraft was going to make a left-hand turn into that drive. Would you have any reason to disagree with that?
01:38PM A. Can he say what --
Q. Sure. He objected to the form of the question, and then his objection is noted. And then you can answer the question, if you can.
A. Okay. Can you say it one more time? I'm sorry.
01:39PM Q. Do you have any reason to disagree with the assertion that Jacqueline Ashcraft was going -- was attempting to make a left-hand turn into that driveway when the accident occurred?
A. No. I believe that's what she was doing.
01:39PM Q. I mean -- okay.

A. Is that --
Q. That's fine. I mean, it's not a trick question. Do you recall where in the roadway her vehicle was right before you first saw it?
01:39PM A. Right in front of me.
Q. Okay. I sent you -- did you get that affidavit I mailed to you?
A. Yes.
Q. Okay. Did you have a chance to look over it?
01:40PM A. Yes. Yes. And I tried to call you and then -- 'cause I didn't know -- I couldn't never get ahold of the --
Q. Notary public?
A. No. Ernie told me not to -- not to do anything.
01:40PM Q. Okay.
A. And so I just went by what he said.
Q. Sure.
A. And then he decided that he didn't want to -- isn't going to be my lawyer anymore.
01:40PM Q. Here's what I was looking for earlier when I was going through all my papers. Trooper Ray and Trooper Quinton Porter, do you know either one of them?
A. Is that Tyler Porter?
Q. Yes.
01:41PM A. I didn't know it was Quinton Porter. I know --

I don't "know" know him. I know of him.
Q. Okay. I am going to ask you to look at this, the --
MR. GASPER: Can I see that first, please? Okay. That's fine.
(Exhibit 6 marked for identification.)
Q. (By Mr. Jackson:) We'll mark that as -- this as Exhibit Number 6. And I'll represent to you that this is a statement that was attached to Trooper Ray's report, and it has your name. It's called a driver's statement/witness statement. And can you read the handwriting, beginning from here?
A. "Hit car that stopped in front. All I remember."
Q. And I believe that may be Trooper Porter's signature, and it says, "Transcribed by Trooper Porter." Is that -- do you know if that's correct or not?
A. I don't know. I didn't remember Tyler Porter being there, but I don't know. I just know that I didn't talk to any troopers until the hospital, and one of the troopers had gave me a piece of paper to write a statement on. And then before -- and then another one came back and said -- and took it and said he didn't -- they didn't need it.

Q. Okay. As far as this statement that is written here that was attached, is that correct?
A. I mean, it's correct that I don't know -- I didn't -- I don't know if I said that. I don't
01:43PM remember talking to anyone there.
Q. Okay. All right. We'll attach this as Exhibit 6 to your deposition. We're going to attach this as Exhibit 7. That's the affidavit I believe that I sent to you.
01:43PM MR. GASPER: Can I see that, please? Was this ever notarized or attested to? You did not sign this? This is not your statement?
THE WITNESS: (Witness shaking head.)
01:44PM MR. GASPER: Okay.
THE WITNESS: No.
Q. (By Mr. Jackson:) Can you look at this exhibit? And take your time and read it, and then I want to ask you what -- after you've finished reading it, I want
01:44PM to ask you what parts of it are incorrect.
A. Well, for one, okay -- before I answer that question, if I didn't give a statement then and this was hearsay, so [redacted]
01:44PM [redacted]

F.2

3223

A. [redacted]

01:45PM [redacted]

01:45PM [redacted]

Q. All right.

01:45PM A. And I -- I have wondered why I didn't get to write my statement to begin with after the wreck, you know.

Q. But we went over your statement in Exhibit 2. What else would you like to -- I'm not talking about

01:45PM the policies and procedures. I'm talking about --

A. No. I'm talking about the actual written statement that I was supposed to have filled out.

Q. What would you like to -- what would you like to -- would you like to fill one out now?

01:46PM A. No. It's been two years.

Q. What else about the wreck do you recall? I'm talking about the actual five seconds before impact until the vehicles came to rest.
A. That I was dead, going to die.
01:46PM Q. You thought you were dead after the accident?
A. Well, yeah.
Q. Or during the accident?
A. Well, I mean, since my -- okay. I know you don't want to hear about my past trauma. But my dad
01:46PM was dead, and then my boyfriend --
Q. It's not our business. It's not our business.
A. I know.
Q. But if you want to tell us, I just don't want. You thinking we are prying into your past?
01:46PM A. No. That's -- that's what I'm saying. Okay. I've had people tell me that they know this about my -- they know this about me. And I'm like, okay. My dad, he was -- he died in 2010, or -- and then my fiance was killed by a drunk driver a year after that.
01:47PM [redacted] It's just over and over again.
And then so I got fired from this job. Broke my back. Paid for -- end up paying for all of these ambulance bills, doctors' bills, and paying for
01:47PM my prescriptions because DHS says I make too much

money as the head of household. I'm confused on that because I don't have -- I can't get employment. The last job that I got was funded by DHS at Western Guidance Center, and I got terminated the second day of training.

Q. And was that after this June 11th, 2021?

A. Yes.

Q. Okay. All right. So you just gave us a lot of information.

A. I'm sorry.

Q. I appreciate it. And sometimes it makes it hard for us when we go back -- when Mr. Gasper and I go back and look at this, we're going to be, well, we started here and we ended up, you know, somewhere else.

So I want to go back and ask you, from the five seconds before the impact until the vehicles come to rest, is there anything else you recall about the wreck that you have not told us?

A. No. Not that I recall. I mean --

Q. Okay. Attached to your affidavit -- put this exhibit, which is Exhibit Number 6, which is the state police one that says, "Hit car --

A. Yes.

Q. "-- stopped in front. All I remember."

A. Uh-huh.
Q. And then the other one was your answers to Kristen Shelton you had handwritten.
A. Yes.
01:49PM Q. And then you've also told us about your feeling that you were dying or --
A. I mean, not dying. You know, I didn't know what happened.
Q. The loudness of the -- I know it was a loud
01:49PM noise.
A. Well, I was -- I guess I got knocked out as soon as it happened.
Q. And you had the airbags deploy?
A. Yes.
01:50PM Q. And that's what you recollect about this accident?
A. Yes. And then when I stopped, my seatbelt, I couldn't get it off. I couldn't even -- I couldn't talk. I guess that's because of the car -- that's
01:50PM where the compression fracture come in.
Q. Okay. What happened after you gave the handwritten statement to Kristen Shelton the following week -- now I'm moving to the following week. After you gave the handwritten statement to Ms. Shelton,
01:51PM were you fired that day?

A. No. I didn't go to -- I was in so much pain, I didn't go to work Monday or Tuesday. And they -- she told me that I had to come in.

Q. On Wednesday?

01:51PM A. Yeah. And just to do that. And I didn't know what that -- I don't know -- didn't have -- don't know who Kristen Shelton is. I didn't know what that was or anything.

And, you know, no one -- no one talked to

01:51PM me there. It was just, like -- so I was just, you know -- it's like I had already kind of knew the way they acted.

Q. So were you terminated that day?

A. No, I was not.

01:52PM Q. When were you discharged?

A. I was terminated, I believe, that -- the Friday.

Q. Two days later?

A. Yeah. That I didn't go to work the Monday and Tuesday. So I worked Wednesday, Thursday, and got

01:52PM terminated Friday.

Q. All right. What were your -- you were transported to the emergency room at Booneville, correct?

A. Correct.

01:52PM Q. And were you in the -- in the gurney in the back

of the ambulance the entire time?
A. Yes.
Q. Okay. And what do you recall? Do you remember that trip?
01:52PM A. Yes.
Q. Something you'll never forget?
A. Uh-huh.
Q. A lot of -- I don't want to go into the details, but tell us generally what you recollect about that.
01:53PM A. So I was the only one that was in there.
Q. Well, there had to be a driver.
A. Well, I mean, at the -- I was the only one that they were going to transport. And that's -- Brandy said I had to go. And then the EMS guy at first, you
01:53PM know, he thought that I needed to go. And then after being there for so long, I wasn't, you know, in as much pain.
I don't know exactly how long we were there, but they -- I know -- I remember Jacqueline
01:54PM walking around and talking with her kids, and, you know, why were y'all walking around. I mean, if they had -- if they had done -- you know, it was just -- it seemed like so much negligence. And she said she didn't feel good. I heard them talk, say they walked
01:54PM her around or into the house, that she was going to go

to get some air.

And then -- -then all of a sudden, she's in the ambulance, and it just got worse throughout that whole process. They gave her -- and they said they thought that -- they gave her a Narcan shot because they thought that she was having withdrawals, drug withdrawals or something.

And they couldn't -- they couldn't get an IV or anything in there. So -- and they couldn't get one in me, so I had bruises all over, and we wasn't even driving then. And it just got worse. She was getting worse.

And they said they thought that she had a brain -- had a brain aneurysm and that it was -- that they couldn't say that it wasn't -- that's not -- wasn't happening before the wreck. I mean, that it -- that's not -- that she wasn't having the brain aneurysm, you know, at that time before I even hit her.

01:55PM MR. GASPER: That she was or was not?

Q. (By Mr. Jackson:) Yeah. I didn't understand that last sentence you just said.

A. That that was -- that it was possible that she was stopped because she was having that brain aneurysm.

MR. GASPER: Stopped -- I'm sorry. This is Jim's question. I'm just trying to --

THE WITNESS: Or that it triggered or that it was going on.

01:56PM Q. (By Mr. Jackson:) Where were you when you heard this?

A. In the EMS. In the ambulance. It was just us on the way -- there was another wreck that day, so that -- we couldn't go to Paris. It would be a longer 01:56PM wait, is what --

Q. So you went to -- they transported you to Booneville?

A. Yes.

Q. And there was a female medic driving, correct?

01:56PM A. Yes.

Q. And there was a male medic in the back?

A. Yes.

Q. Okay. Do you know either one of them?

A. No.

01:56PM Q. Okay. And where -- when you got to the emergency room, I assume all the attention was being put on Jacqueline Ashcraft and you were secondary; would that be fair to say? Or did they have a ER doctor there for you? How did that work?

01:57PM A. I -- I didn't know. I was just -- I would say

that that's probably correct because I was by myself for a long time, not knowing what was going on. My mom wasn't allowed to go in there.

Q. Somebody said the hospital was in a lockdown. Do you know what that was about?

A. No.

Q. Did you ever hear anything about the hospital being put in a lockdown?

A. No. I just know that they -- she couldn't come -- they couldn't come inside.

Q. Why could -- what's your understanding as to why your mom wasn't allowed to come inside?

A. I don't know.

Q. She never told you what was -- happened or anything like that?

A. I was under the impression she -- she didn't know.

Q. Okay. Then what tests were done on you at Booneville hospital?

A. None.

Q. X-rays of any sort?

A. No.

Q. And you said that you -- later, you got diagnosed with a compression fracture?

A. Yes.

Q. In what part of your body?
A. My T11 vertebra.
Q. And that was a couple of weeks after the accident?
01:58PM A. Two months afterwards.
Q. Two months later?
A. Yeah.
Q. Okay. And then who paid for your ambulance bill and your emergency room treatment at Booneville?
01:58PM A. My mom.
Q. Did you ever make a workers' comp. claim with DHS for that? Don't look at your mother.
A. No.
Q. If you don't know, you don't know.
01:58PM A. No. I didn't know to.
Q. Have you ever spoken to anyone who claims to have witnessed the wreck?
A. I don't think -- not anyone that witnessed it. Just people that think that -- have stuff to say about
01:59PM it.
Q. So elaborate. I don't understand what you mean.
A. Just that I -- I mean, how did any information from DHS even get out? Like --
Q. I don't understand what you're saying.
01:59PM A. Slander. Brandy Ezell, my boyfriend at that

time, Scott Thomas Lindstrom, his ex-wife was Brandy Lindstrom. And Brandy Ezell and -- has a kid -- has kids with -- how do you say it, with his ex-wife. So she couldn't be on his case because of a conflict of interest.

And -- but my uncle was -- she was his case worker and took his kids away. And I think that would be conflict of interest 'cause my mom should have got those kids.

Q. Have you spoken with anyone who claims to have witnessed the wreck?

A. No. I didn't talk to anyone.

Q. Since the wreck happened, in the next week or two or months later, has anybody come up to you and said Jennifer --

A. Oh, yes.

Q. "Were you in that bad wreck? I saw it."

A. No. They said, "Oh, I heard you killed someone and you're going to -- you'll be going to prison."

Q. I'm talking about people who claims that they saw the wreck.

A. Someone -- Brandy Ezell's daughter supposedly is -- which that would be -- was -- said that she saw me or something, and I was going from Booneville. I don't know. Some elaborate -- some story that I have

no idea. That's the only thing.
Q. Okay. I am going to ask you one more time. Have you spoken to anyone who claims that they witnessed the wreck on June 11th, 2021?
02:02PM A. No.
Q. Have you received a message through any social media saying, hey, Jennifer, I saw the wreck, how are you doing, anything like that?
A. No.
02:02PM Q. Are you aware of the identity of any eyewitnesses to the wreck?
A. No.
MR. GASPER: Excuse me.
A. Well, I don't know. Adam Copo said his wife saw
02:02PM it. I don't know if that's true though.
Q. (By Mr. Jackson:) And that's what I'm looking for, if anybody said, hey, I saw it or my daughter saw the wreck, anything like that. So Adam Copo told you that his wife may have seen it, may have been a
02:03PM witness?
A. He said -- he says that she was his -- that they were related --
Q. Listen to my question. Listen to my question.
A. Yes. That he -- no one told me. But, like,
02:03PM they -- my boyfriend at that time, his friends have

heard and messaged him about it.
Q. I'm talking about people who saw the wreck.
A. Oh, no.
Q. I'm not talking about heard about the wreck.
02:03PM I'm talking about witnesses. Eyewitnesses.
A. No.
Q. Okay. Adam Copo told you that maybe his wife may have seen it?
A. Yeah.
02:03PM Q. Anybody else?
A. (Witness shaking head.)
Q. Please speak up.
A. No. Not that I recall.
Q. How many cellular telephones were in your car at
02:04PM the time of the wreck?
A. One.
Q. And that was your personal cellular phone?
A. Yes.
Q. And were you using that as your guide of where
02:04PM to go?
A. Yes. But it wasn't going on -- it wasn't going -- I mean, I didn't have it talking to me or anything.
Q. Was it -- I know this was an older car. I
02:04PM forget what year it was. So was your -- I can connect

my cell phone to my wire and it connects and I can see a map come up on my screen. Do you know what I'm talking about?

A. Yes.

02:05PM Q. Did that car have that capability?

A. Not that I know of.

Q. Okay. Where was your cell phone at the time three seconds before the wreck?

A. It was sitting -- it was sitting in the seat, I

02:05PM guess. I couldn't find it. It was not on, like --

Q. Were you looking at your cell phone prior to the wreck occurring?

A. No. No.

Q. Was there anything that would have blocked your

02:05PM visibility on Highway 22 on June 11th of '21?

A. No. I've lived here all my life. So that's just -- still today, I don't even know how that even happened.

Q. Is that because it's such a straight stretch of

02:06PM the road?

A. I mean, yeah. I mean, I've drove on that road every day to college and, you know, it was really -- it was right in the middle of the day. I don't know. If I -- I told them that I didn't want to do this, to

02:07PM do it because I didn't know -- you know, I hadn't

drove that far in forever. It was the first job that I had had in quite a long time because I had -- I was -- I had clinical depression. And so that was my -- so I was just taking -- you know, I took my job seriously, you know.

02:07PM

Q. You took the what job?

A. My job seriously. Like, you know, I was -- so I wanted to make sure everything went perfect. You know, things were planned out, you know.

02:07PM

They wouldn't even show me how to put a car seat in. I know that sounds stupid, but I don't know how to put a car seat in because I don't have kids.

Q. What is your date of birth?

02:08PM

A. [redacted].

Q. How old are you currently?

A. 35.

Q. You were 33 at the time of the wreck?

A. Yes.

02:08PM

Q. What was -- what was the job you had immediately prior to this job? You said there was a period where you weren't employed. What was your prior job?

A. I worked at the lodge at Mount Magazine.

Q. And I'm not -- this is not a memory test but

02:08PM

just kind of, like, what year would you have done

that?
A. It was --
Q. If you don't know, just tell me.
A. It was --
02:08PM Q. Let's do this. What year did you graduate from high school?
A. 2006.
Q. What high school did you graduate from?
A. Paris High School.
02:08PM Q. And did you go to college after that?
A. Yes.
Q. Where did you go?
A. I first went to UCA in Conway.
Q. And then where did you go after that?
02:09PM A. At Russellville, Arkansas Tech University, where I graduated.
Q. What year did you graduate?
A. 2011.
Q. And that's right around the time you had a lot a
02:09PM of trauma in your life?
A. Yes.
Q. Then after you graduated, what did you -- from Arkansas Tech, what was your degree in?
A. Psychology.
02:09PM Q. What did you start doing after that?

A. Well, my dad died while I was in -- still in college, and I graduated on my birthday. And then I worked at the Bank of the Ozarks.
Q. Where? Paris?
02:09PM A. In Ozark. And you want me to keep going?
Q. Yes.
A. Okay. I worked there, and then I got a different job opportunity here at Stark Manufacturing.
Q. Stark Manufacturing?
02:10PM A. Yes.
Q. Is that in Paris?
A. Yes. And I was --
Q. Did you take that opportunity?
A. Yes.
02:10PM Q. How long were you there?
A. I was not there for very long. I was there about three -- probably three months. I -- the lady who hired me, it was because I was dating her son. We broke up; she fired me.
02:10PM Q. And where did you go after Stark?
A. After Stark's, I -- well, my boyfriend got killed by a drunk driver in 2011.
Q. Where did you go after working at Stark's?
A. Okay. So then I went through a -- like, a
02:11PM depression. And so for the two years, I don't

remember, like, two years throughout that time. I didn't work for --

Q. So where did you go to work after you came out of your depression?

02:11PM A. I worked at Dick's Sporting Goods.

Q. Where?

A. In Fort Smith as a door greeter.

Q. Where did you work after that?

A. Then I -- I worked for Work Force, the temp agency.

02:11PM Q. Uh-huh.

A. And then various jobs.

Q. Where was that temp agency?

A. In Fort Smith.

02:11PM Q. And then --

A. And I was going to John Brown University.

Q. Is that in Siloam Springs?

A. It was in Fort Smith at the time.

Q. Okay. And then after the temp agency jobs, what did you do?

02:11PM A. I worked at Valley Behavioral Health.

Q. Is that in Fort Smith?

A. Yes.

Q. And then where did you go after that?

02:12PM A. I went back into a depression -- depressive

state 'cause I got in a wreck and wrecked my car.
Q. And we're not talking about the wreck that's the subject of this?
A. Correct. No. A different wreck.
02:12PM Q. So where did you go to work after you came out of your depression?
A. Well, I applied for many jobs. And the lodge.
Q. At Mount Magazine?
A. Yeah.
02:12PM Q. What did you do there?
A. I was a -- I was a hostess.
Q. And how long were you there?
A. And then I was a front desk clerk. I was there for over a year and then I -- I quit or I put in my --
02:12PM I quit 'cause it was miserable, and then I tried to retract my statement and then they -- they just let me go.
Q. And then you didn't work for a while and then got a job with DHS as a program assistant?
02:13PM A. Yes. After -- and I had applied with DHS since I got out of college over hundreds of times. Even with the same -- with the same people over and over again.
Q. Tell me -- earlier in the deposition, we talked
02:13PM about policies and procedures, and I said we'd get a

chance to come back to that.
A. Uh-huh.
Q. You were -- indicated that some policies and procedures you felt like weren't followed. Can you
02:13PM tell -- elaborate on that?
A. Well, I don't have the -- they took all the -- everything from me that I had and -- except the key -- I still have the key because I guess they forgot that they gave me two keys. So when they were trying to
02:14PM rush me out of there, I mean, but I don't even know where that's at, but --
Q. A key to the office or to the car?
A. To the office.
MR. JACKSON: Okay. Do you mind if we
02:14PM take a break for a minute?
THE WITNESS: No.
MR. JACKSON: Go off the record.
THE VIDEOGRAPHER: The time is 2:14. We're now off the record.
02:18PM (Recess from 2:14 p.m. to 2:21 p.m.)
THE VIDEOGRAPHER: Time is 2:21. We're now on the record.
Q. (By Mr. Jackson:) Ms. Wilkerson, I've just got a couple of follow-up questions on some things that
02:21PM happened after the accident. Do you recall a trooper

F.2

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escorting you to the sheriff's office to give a urine sample?

A. Yes.

Q. And did you get the results of that urinalysis?

02:22PM A. Huh-uh.

Q. Have you heard what the results were?

A. Huh-uh.

Q. [redacted]

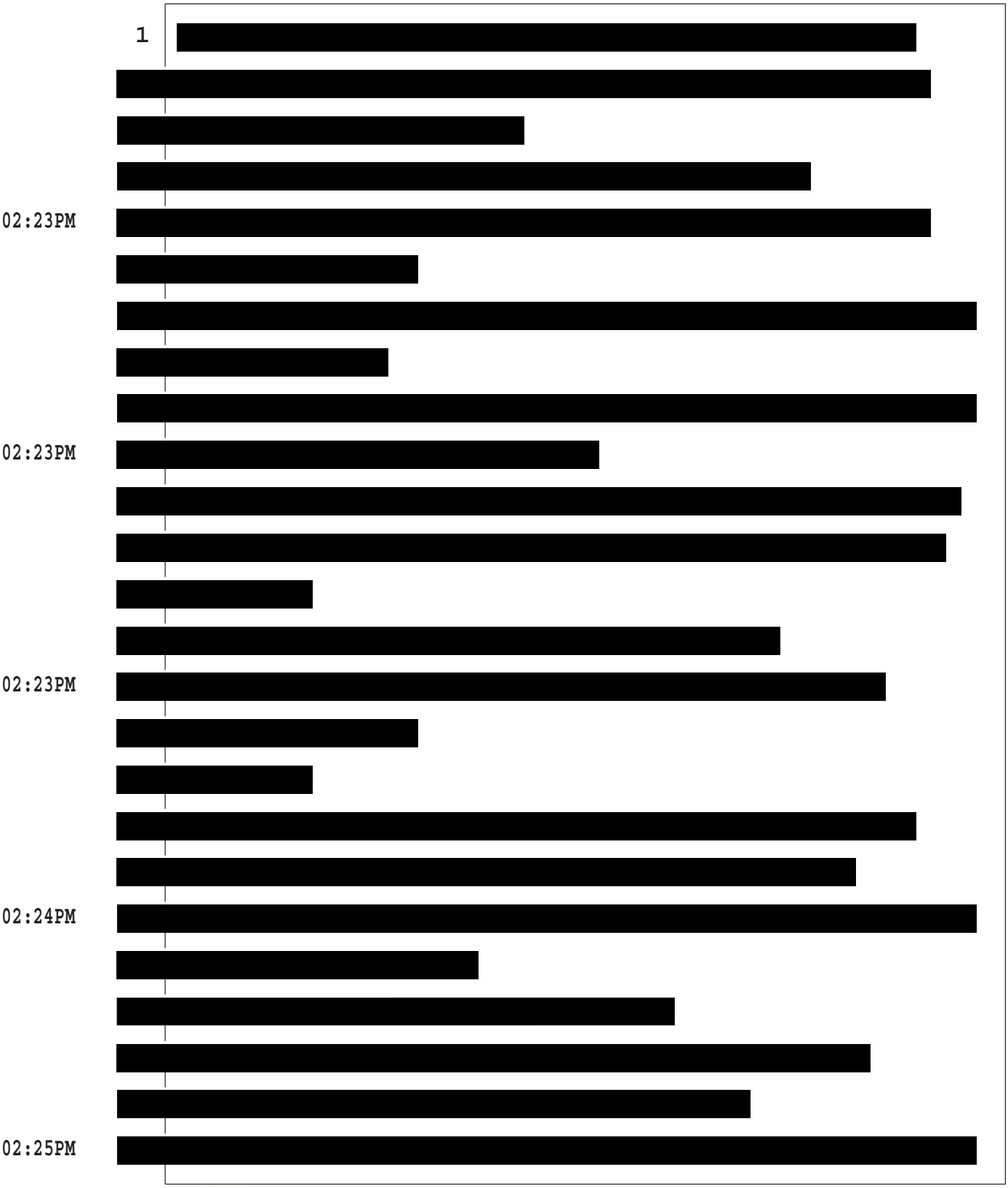
02:22PM [redacted]

Q. [redacted]

02:22PM [redacted]

02:22PM [redacted]

02:23PM [redacted]


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02:23PM
02:23PM
02:23PM
02:24PM
02:25PM

[redacted]

02:25PM [redacted]

Q. Okay. And have you applied for Social Security disability?

A. I -- I don't know how. I've tried to start it, but I didn't know how. And that's -- my mom said that I wouldn't -- she didn't think that was a good idea. I don't know.

02:25PM Q. Jennifer, you've -- we've sat here today, started a little bit before 1:00, and thank you for coming in. I'm about at the end of my questions. Mr. Gasper may have some questions for you.

But as you sit here, is there anything

02:26PM else you recall about the wreck, and from that five seconds till the vehicles came to impact that you haven't already told us?

A. Can you say that again?

Q. Sure. We took a break. You've been asked a lot

02:26PM of questions --

A. Uh-huh.
Q. -- about the five seconds till the time of rest. Have you thought of anything else about that time period that you haven't already shared with us?
02:26PM A. Not before the wreck.
Q. I'm talking about that five seconds before the wreck until the vehicles come to rest.
A. Not -- not anything before the wreck.
Q. Okay. Any other policies and procedures leading
02:27PM up to days before the wreck that you can think of that you haven't shared with us that may have been not exactly followed by the DHS?
A. I had no idea what my job was even to do. They had me doing everything. I was riding around with
02:28PM Brandy every day, and -- instead of learning what I was supposed to do. And if I had -- that's not the job that I thought it was going to be.
Q. What did you think it was going to be?
A. I thought I was going to be working for the
02:28PM place that actually cares about their job, and they told me that I -- they didn't tell me that I would be driving all the time, like, constantly; that -- that I was just basically there doing what they didn't want to do.
02:28PM MR. JACKSON: That's all the questions

I've got.

MR. GASPER: Okay.

MR. JACKSON: Mr. Gasper may have some questions for you.

02:29PM MR. GASPER: Yes.

EXAMINATION

BY MR. GASPER:

Q. Again, my name is Brent Gasper -- put it on? Yeah. Sorry. You got me? Again, my name is 02:29PM Brent Gasper. I am an attorney in Little Rock for the Department of Human Services.

As I explained at the very beginning of this, you do understand I am not your lawyer?

A. Yes.

02:29PM Q. I represent the Department of Human Services in this case and in other cases as well. Now, do you mind if I call you Jennifer?

A. No. That's fine.

Q. Just so I have this, can you state your current 02:29PM address and phone number?

A. [redacted].

Q. Okay.

A. [redacted].

02:30PM Q. Thank you. Do you have any social media

accounts or handles, Twitter, Snapchat, Finsta, any of those? Do you do any of those?

A. I have Facebook.

Q. Facebook? Do you know what your Facebook handle is? Your ID? Like, what do you go by under Facebook?

A. Well, I think I have multiple ones.

Q. Okay.

A. And then some that I can't get in.

Q. Okay.

A. But [redacted]

Q. One word? What, no spaces? Just one word?

A. Oh, I don't know what the actual --

Q. That's fine.

A. I can look. That's just my name on there. You can look it up.

Q. Now, Jennifer, do you know what we're doing here? Has anyone explained to you what we are doing here right now? If so, can you please let me know what you understand is going on?

A. That this wreck triggered something to do with my dad --

Q. No.

A. -- is what I was told. I don't know.

Q. Who told you that?

A. Michelle Kreager.
Q. I don't know. Who is that?
A. Michelle Grigsby.
Q. Michelle Grigsby? Who is that?
02:31PM A. This has to do with Chris Grigsby.
Q. I don't know who Chris Grigsby is.
A. Oh, I don't -- I mean, I went to school with him.
Q. Okay. No. This does not involve that at all.
02:31PM A. Oh.
Q. This involves the wreck that we've been talking about. Because you were employed by DHS at the time, Jim's clients, who are the estate of Jacqueline Ashcraft, the car in front of you, and her daughter [redacted] are suing DHS for $5 million because you -- they are alleging that what you did caused the death, you directly attributable to the death of Jacqueline Ashcraft. That when you hit her from the rear, something, I don't know, banged her head or something like that and caused the brain bleed.
Because -- this is their allegation. Because of that, she died. The but-for. It's called the but-for. But for the wreck, she might not have died. They're saying that we're on the hook. Not you yet. We are on the hook for $5 million. Okay?

That's why we are here.
A. Okay.
Q. And you are being deposed because you were not only a participant but also an eyewitness, clearly. You were involved in the wreck. It's what you call in law, called respondeat superior. I might have mispronounced that. Which means DHS is liable for the actions of its employees. And you were an employee at the time. Therefore, what you do is imputed to the agency. Okay. And because of something complicated called sovereign immunity --
A. Uh-huh.
Q. -- they are filing a lawsuit against the Department of Human Services based upon what they say you did in the Arkansas Claims Commission. It's basically a court. Not really a court, but more or less.
A. Yeah. I was going to -- I just figured out that I should have filed a claim against them, but --
Q. Can I -- I will let you finish. Can I finish though?
A. Yes.
Q. Okay. So that's why you're here. Michelle Grigsby or whomever, I don't know what that's about. Does it have anything to do with this wreck?

A. No. I mean, no.
Q. Okay. Fine. Then that's your business. It's not our business. We don't care about that. But I wanted to understand if you were aware of a lawsuit against DHS. Before I just told you what I did, were you aware that's why we were all here?
A. I knew I was here for the wreck.
Q. Okay. How did you know that?
A. Just because that's what --
Q. Did someone tell you that?
A. Yeah.
Q. Who told you that? I'm not trying to be accusatory. I'm just trying to figure out who told you we were here because of the wreck?
A. Jim Jackson.
Q. The gentleman across?
A. (Witness nodding head.)
Q. Okay. You and I have never spoken, correct?
A. Not that I know of. No.
Q. Okay. But you had spoken with Jim prior to being here today?
A. Yes.
Q. What did you guys talk about?
A. Not much. He sent me an email and he just asked me if -- the first time, and I asked my -- talked to

my lawyer, 'cause I had a lawyer. And he said that he just -- that DHS -- all they said was that I worked there at that time and I no longer work there.

I mean, I have the emails. And so -- and so I said I worked -- yes, I did work there because I was driving the car. And then he wanted me to go sign this affidavit.

Q. How long ago was this?

A. Which?

Q. Like, this -- when did he first contact you?

A. It was, like, a year ago or, I mean, it was -- I don't know. I mean --

Q. He contacted you a year ago?

A. He contacted me quite a while ago, yeah.

Q. Okay.

A. By email.

Q. Okay. You said you have copies of these emails?

A. Yes, I do.

Q. Like, on you right now?

A. Yeah.

Q. Can you forward those to me?

A. Yeah.

Q. Okay.

A. And then I have a bunch of calls from him.

Q. Okay.

A. And text messages.
Q. Oh, okay. Yeah, I'd love to see those. Whenever you get the email up, can you just -- I can give you my email just at DHS, and you can forward it to me.

MR. GASPER: I'm going to need all the correspondence with Ms. Wilkerson that you have with Ms. Wilkerson, James.

MR. JACKSON: I don't know if you're entitled to that.

MR. GASPER: I believe -- she's not your client. She's a statement of a witness that you have knowledge of. You have not disclosed that -- well, still haven't disclosed that to me. And she is not your client. I don't understand under what theory I would not be able to get that information. If so, we can ask the claims commission.

MR. JACKSON: We can visit with the claims commission about it. She is going to forward that to you.

MR. GASPER: Yeah. But I don't know -- I don't know what she might have filled you in on the accident. I think that probably

you should turn it over very, very soon.
Yes.
Q. My email is Brent.gasper --B-R-E-N-T.
A. B-R-E-N-T?
02:38PM Q. Yes. At.
A. Brent Gasper?
Q. Yes.
A. G-A-S.
Q. P-E-R @dhs. Arkansas is spelled out. .gov.
02:38PM A. There's another -- okay. I feel like there's another one, but I would have to -- I can look. It's hard to find it on the -- this might be the same one, but I'm sending it to you anyways. Okay.
Q. Okay. You say he called you as well?
02:39PM A. Yes.
Q. Can you give us the dates that he would have started doing that?
A. Let me see if I can --
Q. I don't know if you can filter those on that, 02:40PM make it easier.
A. Okay. I found the one.
Q. Okay.
A. Messages.
Q. Is it a voicemail?
02:40PM A. I have -- I had voicemails, but this is actually

to my text message.
Q. Okay. Can you screenshot that and email it to me? Or forward the text to my email? I'm kind of a -- I'm not sure how you can do things. My daughter knows how to do all those things, but --
A. Okay.
Q. When was that? Is there a date on that?
A. September 11th at 9:38 a.m.
Q. Of this year?
A. And then September 14th. Yes.
Q. Okay. Do you remember any text messages prior to that?
A. I believe that I blocked him because he was calling me a whole lot.
Q. Oh, really? Like, how many times, you think?
A. Quite a bit.
Q. Okay. Did you ever talk to him?
A. No, I didn't -- I think I answered -- I don't know if I answered. I don't know if I ever talked to him.
Q. Okay. So you received letters from Mr. Jackson?
A. I received that affidavit.
Q. Okay. We'll get to that. But prior to the affidavit, did you receive letters?
A. I don't think any letter.

Q. Emails?
A. Emails, yeah.
Q. Yes. Okay. And while I'm thinking about it, after the deposition, can you look through your emails
02:42PM and forward anything that he sent to you to that email address?
A. Yeah.
Q. You don't have to do it right now.
A. Okay.
02:42PM Q. We can go ahead. But afterward. And also, I'll need -- if you have screen shots of any, like, times he called, like if you have a call log or anything like that. Okay.
A. Okay. I think you can get a call log.
02:43PM Q. Okay. Maybe we'll do it at the break. Now, has Mr Jackson ever represented to you that he's your lawyer?
A. No. After that wreck, after -- I went to a lawyer myself.
02:43PM Q. Who is that?
A. Ernie Witt.
Q. Ernie Witt? W-H-I-T-T or W-I-T-T?
A. I think it's W-I-T-T.
Q. Okay. Is he local in Paris?
02:43PM A. He is in Ozark.

Q. Okay. Has he represented you in the past?
A. Yes.
Q. Okay. In what capacity?
A. We've -- when we --
02:43PM Q. Like, did you have charges against you or domestic issues or probate or, I mean, I just --
A. He -- well, when I was 18, I shoplifted a flask, and --
THE COURT REPORTER: You what?
02:44PM THE WITNESS: I shoplifted a flask.
Q. (By Mr. Gasper:) When you were 18?
A. Yes.
Q. Okay.
A. And my dad took me to him. And then he was my
02:44PM lawyer that -- I mean, he didn't do anything, but --
Q. Okay.
A. But --
Q. Is he your lawyer now?
A. He was, but -- until I told him to come -- or I
02:44PM went to him.
Q. Okay.
A. -- about --
Q. The affidavit?
A. Yes. And he took copies of it and he told me I
02:44PM would hear from him before the day -- or the next day

for sure, and I never heard from him. And I spoke -- I did speak with him on the phone and I told him that I had an attorney and --

Q. You told this to Mr. Jackson?

02:45PM A. Yes.

Q. Okay.

A. And then he sent me a message and said to -- he talked to Ernie's secretary in person.

Q. Uh-huh.

02:45PM A. And to go down there, to go to the office and sign the affidavit. Well, I had the actual affidavit with me, so why would I go down there.

Q. Okay. Did you ask him to make an affidavit for you?

02:45PM A. No.

Q. He just sent it to you?

A. Yeah.

Q. Did you know it was coming?

A. No.

02:45PM Q. Okay. So -- okay. Did you talk to anybody else about this testimony, today's testimony, prior to today?

A. (Witness shaking head.)

Q. Mr. Witt, does he know that you were going to

02:45PM have a deposition today?

A. He knew the same day that I found out.
Q. Okay. All right.
A. Or right before. And he said he wasn't showing up unless I had money.
02:46PM Q. Okay.
A. And then yesterday, I told him, I was like, well, I've got money. You just wouldn't tell me what it was. And he said he couldn't be here 'cause he was in Booneville.
02:46PM Q. Okay. Have you spoken with Mr. Jackson about your testimony today?
A. No. I've not spoke to anyone except Ernie.
Q. Okay. I am going to be kind of blunt here. Do you understand that you might be liable personally for
02:46PM this wreck? Do you understand that? Do you know what that means?
A. Yeah. It says no fault on my police report.
Q. Okay. That's --
A. And --
02:47PM Q. That is not the allegation that Jim is making for his client --
A. Well, I do know that.
Q. Let -- okay. I'm sorry. Go ahead. I'll let you finish. I tend to talk over people. It's my
02:47PM problem. I'm working on it.

A. Me too. I'm sorry. I know that -- and Ernie said that that didn't matter. But my aunt works -- or she knows the nurse at the Booneville hospital, and she said that she had been in there every week for her brain aneurysms and all -- there's court records or those documents. I mean, I don't --

Q. Wait. Wait. Who had been in there every week for a brain aneurysm?

A. Jacqueline Ashcraft.

Q. Had been to the hospital?

A. At Booneville, yes.

Q. About her head?

A. Yes.

Q. This is before she passed?

A. Yes.

Q. What's the name of your aunt?

A. Marlena Fulmer.

Q. Is she a nurse, or what does she do at the hospital?

A. She lives -- I guess she goes -- that's where she goes to the -- she lives in Booneville.

Q. Oh, so she doesn't work at the hospital?

A. No.

Q. She just goes to the hospital?

A. I guess.

Q. Like, for her own -- for her own reasons, her own business?
A. I guess so, yeah.
Q. And she had seen Jackie Ashcraft --
02:48PM A. No. She knows a nurse there.
Q. Oh, she knows a nurse that saw Jacqueline Ashcraft?
A. Well, that told her that.
Q. That was going to -- okay. So --
02:48PM A. And then -- yeah. And Billy -- I don't know if you know Billy Warnock.
Q. I do not. Who is Billy?
A. Billy Warnock lives in this town, and he was a bondsman.
02:48PM Q. Uh-huh.
A. And his daughter -- he has a daughter that works for DHS.
Q. Okay.
A. In Conway.
02:48PM Q. Uh-huh.
A. Meagan Warnock.
Q. Okay.
A. And she -- I do know that 'cause my mom used to work for Billy.
02:49PM Q. Okay.

A. And his girlfriend, Angie, came in and asked her about the wreck.
Q. Angie who? Do you know her last name?
A. Angie Shelton.
02:49PM Q. Okay.
A. Because she -- Meagan sent her pictures of all -- of the accident.
Q. Uh-huh.
A. And told her all this -- told her all this
02:49PM stuff.
Q. And what?
A. What did she tell you, Mom? I mean, Angie showed her pictures --
Q. Yeah.
02:49PM A. -- of the accident.
Q. Of the accident that you were in?
A. Yes.
Q. And?
A. And I don't know what she -- what told that --
02:49PM what she told them. That that's kind of not -- that's confidentiality.
Q. Oh, okay. All right. I'm not sure I understand -- I fully understand. I'm sorry. Is this in relation to Ms. Ashcraft going to Booneville prior
02:50PM to --

A. No. It's just it's -- there was so much negligence on the ambulance and the hospital and the City --
Q. Oh, okay.
02:50PM A. -- that I don't -- she shouldn't -- I don't think that she should have died.
Q. Oh, okay.
A. And I had -- I see that. Why would they walk her around, you know? They should have -- and why
02:50PM didn't they have two ambulances? Why was there just one?
Q. I don't know the answers to those questions, but I have very curious about Jackie Ashcraft going to the doctor prior to her wreck. And you say -- could you
02:50PM repeat again the names of those people?
A. Yes. Marlene Faulk.
Q. Do you know how to get ahold of Marlene? Do you have a number or anything?
A. Yeah.
02:51PM Q. Can you just read it into the record? Who is she? Is she a friend of yours?
A. She is married to my mom's brother.
Q. Okay. Marlene Fox? Can you --
A. Marlene Fulmer.
02:51PM Q. Fulmer. Can you give me her number?

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A. [redacted]--
Q. Wait. Wait. Whoop, whoop, whoop. [redacted]-[redacted] --
A. -- [redacted]
Q. All right. Good. And the other person?
02:51PM A. I don't know the name of the nurse.
Q. It was a nurse. A nurse told Marlene?
A. That's what I was understanding.
Q. In Booneville. Booneville hospital. Okay. Gosh. Well, let's get back to this. You
02:52PM understand -- you know what -- you know what personal liability means? I sue you; you pay me. Right?
A. (Witness nodding head.)
Q. Jim's client can sue you; do you understand that?
02:52PM A. I mean, yeah.
Q. He can sue DHS. He has chosen to sue DHS. But he can come after you personally as well, or his client can personally.
So I just say that as if he's offering to
02:52PM do you any favors or getting you to sign a thing, it may not be purely for your benefit.
A. That's kind of why I never talk to anyone.
Q. Do you understand what criminal liability means?
A. No.
02:52PM Q. I shoplift a flask; I'm going to be arrested and

I'm going to pay a fine. I'm criminally liable. All right?

A. (Witness nodding head.)

Q. Negligent homicide in Arkansas.

02:53PM A. I know what that is.

Q. Okay. Do you know what the B felony version of negligent homicide? If you are under the influence at the time of an intoxicating substance to cause the death of another person, it's a B felony in Arkansas.

02:53PM B felony statute of limitations is three years. It has not run yet.

So if a person is asking you to make some signatures about a thing, that could be used against you by the prosecuting attorney. You have not escaped

02:53PM criminal liability yet if, in fact, you did -- you were under the influence of an intoxicant at the time of the wreck. So I just say that for your own edification. Whatever Mr Jackson is telling you is not for your benefit.

02:53PM A. Okay.

Q. Criminally or civilly. He is not your friend. He's a perfectly nice man, but he's doing a job. He's got clients. Okay?

So let's go back to the notary thing.

02:54PM What did you understand when you got the notary -- the

affidavit in the mail?
A. Well, it was opposite of -- I was -- didn't really know. I haven't heard anything about the wreck, you know, since then. And Ernie, he didn't even know the wreck even happened, which is weird 'cause he's a criminal lawyer.
Q. Uh-huh.
A. I know that the cops have been following me around, and other people that are around me, for a long -- especially the past few days.
Q. Why do you think that is?
A. I don't -- I don't know.
Q. All right. But you got this letter in the mail, and you did not know it was coming?
A. No.
Q. Did it surprise you that it came in the mail?
A. Yeah. I mean, because I -- you know, it was a big deal, I mean, the accident was. And no one told me anything.
Q. Well, was there any accompanying letter or anything that said, maybe you should get a lawyer to look at this with you?
A. No.
Q. No? Okay. But Ernie was your lawyer in the past and you consulted him about this. But it had

nothing to do with Mr Jackson; Ernie is a completely different lawyer doing his own little thing?
A. Well, I went to him actually for the wreck to begin with.
02:55PM Q. Okay.
A. And paid for -- he's, like, basically, you're paying me for a peace of mind.
Q. Okay.
A. And he had -- he told me that there -- it was --
02:56PM the police report said she was stopped in the middle of the road.
Q. And --
A. So if she was just stopped in the middle of the road, why would you stop in the middle of the road
02:56PM with no blinkers?
Q. Okay. That's a good question. We're going to come to that. But as far as Ernie goes --
A. So yeah. Then I get this affidavit.
Q. This is, like, years later or --
02:56PM A. No. This affidavit -- or yeah. It's been two years.
Q. Since the wreck?
A. Yeah.
Q. So you talked to Ernie back then?
02:56PM A. Yes.

Q. Okay.
A. And there was a, I guess, DHS lawyer is who he dealt with then.
Q. It's possible. Yeah, I know that there were some insurance issues. Maybe that was it.
A. Yes. Yes.
Q. Okay.
A. And so he was -- I called him about this and made an appointment and went in there, went and talked to him. And he had said, "Are you ready for this to stop?" He said --
Q. He said this to you or you said this to him?
A. He said this to me. And, you know, I mean, yeah, I'm ready for it to -- this nightmare to stop.
Q. Okay.
A. But I don't know what he's exactly talking about, 'cause he's not here.
Q. "He" being who is not here?
A. Ernie.
Q. Okay. Okay. Wait. I'm confused.
A. Because Ernie has been my lawyer on the -- for the wreck.
Q. Uh-huh.
A. I mean, it's on the --
Q. Who said, "Are you ready for this to stop?"

A. Ernie.
Q. Okay.
A. He said, "When you mess with people like Brandy Ezell," I don't know what that means.
02:58PM Q. Okay.
A. But he didn't really say anything.
Q. So you told him about the affidavit and --
A. Yeah. She took -- he took copies of it.
Q. Okay.
02:58PM A. And then Jim apparently went down to his office and talked to his secretary.
Q. Okay.
A. And he called me and told me to go to Ernie's office and sign that.
02:58PM Q. Okay. Jim told you to go to Ernie's office?
A. Yes.
Q. Okay. Okay.
A. Yes. And, well, for one, why would I go there to sign it because I had it?
02:58PM Q. Okay.
A. And Ernie is my lawyer.
Q. Uh-huh.
A. He should be telling me.
Q. Right. My guess is, he probably wanted you to
02:58PM go sign it under oath. That way, you're locked into

the statement. And if you decide you've changed your mind or he would probably threaten you with perjury.
A. Yeah. That's what I figured, 'cause, you know, I didn't write that statement. He said it was based off of the knowledge that he got from the state troopers. So...
Q. Okay. Well, now -- I'm sorry. Go ahead.
A. No. You go ahead.
Q. I was going to say, now, do you understand what all this is?
A. I mean, I figured it was something like this. Yeah.
Q. Okay. A major lawsuit with a lot of money at stake. You're still a player in this. So in the future, if anyone reaches out to you like Mr. Jackson or anybody else about this case, I would maybe suggest calling Ernie or letting someone know because there's a lot more here than just a fender bender where someone got hurt.
A. Well, I let Ernie know, and then he couldn't come. He's not here. So...
Q. It's food for thought. So --
A. No lawyers around here want to do anything.
Q. Okay. I'm not from here, so I don't know anyone that practices in Logan County.

A. That's a good thing.
Q. All right. So let's kind of move on a little bit to make sure. You said you didn't talk to anybody else about this except for Ernie.
03:00PM You had correspondence multiple times with Jim, where he corresponded with you. Did you talk to a doctor about this, therapists or --
A. Oh, yes, sir.
Q. Can you go into that? And I don't want to pick at a scab. I know this is a major traumatic event. However, if there's anything that is -- you know, that you might have told the doctor or a therapist or something, that might shed some light on this case, we want to know about it. So...
A. I mean, I did, like, [redacted] which is trying to remember.
Q. Sure.
A. Go back and remember your trauma.
Q. Did you remember anything that you didn't remember beforehand?
A. Well, that didn't really work out.
Q. Okay.
A. Because it's -- I go -- it started going further back to my original traumas.
Q. Okay. Okay. So that was -- you went to a

therapist for that or a psychiatrist or a doctor?

A. [redacted]

03:01PM [redacted]

Q. I don't think we'll need to talk to them, but perhaps in the future I wanted to ask -- talk to them about just this case. I'm not really concerned about your past or anything. But just about this case, would that be something I could do?

A. Would you be --

Q. I would need your permission to do so.

03:02PM A. They can't even -- it's a breach of confidentiality.

Q. Oh, yeah. But you can waive it. You have the ability to say, you can talk to Mr. Gasper, talk to Mr. Jackson, or talk to whomever. It's your

03:02PM privilege. It's not theirs.

So -- but anyway, we can maybe cross that bridge later. Again, I doubt I'll need to speak to them about that, but you just never know. This case has thrown so many curve balls our way so far. Here's

03:02PM one today. I couldn't believe it.

So anyway, let's move on. I am going to ask -- I think I know the answer to this, but I haven't heard you answer it. Were you alone in the car when this happened?

03:02PM A. Yes.

Q. Okay. You said -- I quoted this. I'm not sure I knew what you were talking about. You said, "The car didn't work." Do you remember saying that earlier today? I think you did. Maybe you didn't.

03:03PM A. The card.

Q. Oh, card.

A. The gas card.

Q. Oh, okay. It wasn't the car. It wasn't the automobile.

03:03PM A. No. No. No. It was -- I guess you have a gas -- everyone that works there has a gas card.

Q. Okay.

A. And I didn't know anything about it. I just didn't know anything about any of that.

03:03PM Q. Okay. Well, about the car, was it in -- it looked like an older car, but was it in good shape?

A. The car?

Q. The car you were driving.

A. The car was, I guess, fine. I was talking about

03:03PM the gas card.

Q. Right. I'm not too concerned about the gas card.
A. Okay.
Q. Just the car itself. The automobile.
03:03PM A. I mean, as far as -- I mean, I guess.
Q. Maybe it was easy to drive?
A. I never drove it before.
Q. Okay.
A. So -- I mean, and I hadn't drove in a long time, so...
03:03PM Q. You hadn't driven in a long time?
A. Well, not a long distance, especially eight hours and something.
Q. Okay. Did you notice anything about the brakes or steering or anything like that that would have, like, oh, that's weird?
03:04PM A. No.
Q. Okay. Just a normal car. That's fine. But it was the first time that you had ever driven that car?
A. Yes.
Q. Okay. Now, I have heard you say multiple times, and I haven't heard anything ever to the contrary, that you say you did not see brake lights or a turning signal; is that correct?
03:04PM A. Yes.

Q. Okay. So at all times that you recall -- I know this all happened pretty quick. But there was never, like, you know -- you know, what I'm talking about, brake lights on the side and then the one in the
03:04PM middle, right?
A. Yes.
Q. Like the cyclops, we used to call it back in the older days. And you know what a turn signal is?
A. Yes.
03:04PM Q. You know, it blinks? You never saw any of that?
A. No.
Q. Okay. One thing you did say that I thought was interesting, you said you thought the car was idling. What does that word mean to you? What does that mean,
03:05PM idling?
A. I mean, I didn't see the semi either.
Q. Right. Right. But you said you thought --
A. That she was -- so if she was turning --
Q. Yeah.
03:05PM A. You know, if you're -- so she was -- she must have -- she may have saw the semi.
Q. Uh-huh.
A. And -- or I don't know. Idling, not stepping on the brake.
03:05PM Q. Yeah. So the -- yeah. If her foot was on the

brake, you would think the brake lights would have been on, right?
A. Yes.
Q. Now, you said you didn't see the truck until
03:05PM after the fact; is that right?
A. Yeah. I didn't even know that -- I didn't know there was even -- until someone said that.
Q. Okay. So you didn't see -- I think Jim asked you this before. You didn't see a flagging vehicle in
03:05PM front of it, like, a flag -- you know what Jim's talking about?
A. No. Yes.
Q. The flags and --
A. There wasn't one in the front.
03:06PM Q. You did not see one?
A. No.
Q. Okay. Now, you said something else interesting about maybe she wasn't moving. I mean, is it possible that she had pulled over to the shoulder if a truck is
03:06PM coming on? Maybe that's why you didn't see something in front of you?
A. I --
Q. Is it possible?
A. I guess. I mean, I just -- I don't understand
03:06PM how my car went to the left.

Q. I know. It's weird. You know what, we hired a person to look into it, and that's a question I've always had. And what happened apparently -- this is kind of an aside, is, when you hit the back of
03:06PM Ms. Ashcraft's car, you know how the oversized load hangs over really far, you know? 'Cause there's the truck and they're holding, like, half a house. And there's kind of -- it hangs over.
A. Uh-huh.
03:07PM Q. Apparently, your car got caught in the front corner of that and it spun it. It pushed it forward. It's really interesting. Do you remember any of this?
A. No.
Q. Okay. But yeah, I had always -- asked myself,
03:07PM how did she go in the other direction. But apparently, there is an explanation for that. So -- but let's get back to the shoulder.
Like, so you don't know, she very well could have been on the shoulder or over all the way
03:07PM off on the shoulder or halfway on the shoulder, right?
A. Yeah. Yes.
Q. Okay. And like, for instance, it's possible that she saw the truck coming, the big 14-feet-wide truck, and pulled over. And then maybe kind of waited
03:07PM for it to start coming by, then moved back into

traffic and you hit her from the rear. Would that be maybe a possibility of what happened?
A. Yes.
Q. Yes? Okay. Or perhaps Ms. Ashcraft's car just was moving very slowly? Would you agree that's a possibility?
A. Yes.
Q. Yes? Now, you also made a mention of it being very bright outside. You were traveling eastbound, right? Was the sun in your eyes? I'm trying to think of where -- do you know?
A. I just know it was during the daylight. And I don't really get a lot of sun out a lot, and so it was just, like, you know -- it was just, like, you know, things were -- you know, there should have been no, just easy, easy way and then all of a sudden this happens out of nowhere.
Q. Okay.
A. And I still don't even know didn't know how it happened. I didn't understand how, you know -- it just didn't still doesn't make sense to me.
Q. Okay.
A. I mean, but you -- what you said, that -- those could make sense of why that --
Q. What, when you say what I said?

A. Just a couple of examples.
Q. Like, maybe her being on the shoulder or something like that, or I'm not sure I understand.
A. Yeah. And there was no flagger.
03:09PM Q. Okay. Maybe that was -- maybe that's why you didn't -- weren't aware or looking out for the truck, 'cause there wasn't a flagger or --
A. I mean, I don't remember seeing it at all.
Q. Okay.
03:09PM A. And I didn't even know I went through it, so I got in two wrecks. So I woke up -- I got knocked out. I guess I woke up before the second wreck was over.
Q. And got -- and then the semi hit you?
A. Well --
03:10PM Q. Or you hit the semi, I should say?
A. Yeah.
Q. Or during the collision of some sort. Yeah.
A. And so I didn't even know that until someone told me.
03:10PM Q. So you can't -- you don't even know how far over the truck was in the lane?
A. No.
Q. Or you -- relative to where the lanes were, you don't have any -- any knowledge of where a truck might
03:10PM have been?

A. No.
Q. Over this far? Over this far? Or you don't even know?
A. No.
03:10PM Q. Okay. You said that you were using your phone as a guide? Like a map, like the maps app basically? Is that what you're talking about? Or Google Maps or --
A. One of those apps that Brandy set up that -- I
03:10PM mean, I knew how to get to -- I knew how to get to where I -- at least Russellville and get on the interstate. So I didn't need that.
Q. Okay. Now, if there was an allegation that you were looking at your cell phone at the time of the
03:11PM accident, would that be true or false?
A. False.
Q. So you are saying you were not looking at your cell phone at the time of the accident?
A. I was not looking at my cell phone.
03:11PM Q. Okay. Where was your cell phone located?
A. In the --
Q. Like, at the time, where was it sitting? Where did you have it?
A. In the console. I mean, I don't recall.
03:11PM Q. Okay.

A. But that's where I would say it was, in the console.
Q. Okay. And you say it got knocked around somewhere. Where did it get knocked around at?
03:11PM A. I found it somewhere either in the back -- in the floorboard, maybe, on the passenger's side.
Q. Okay. But that's going to be, in this particular case, probably a real point of argument, whether or not you were looking at your cell phone.
03:12PM And you are telling us, me and Mr. Jackson, here today that you were not looking at your cell phone?
A. Correct.
Q. Okay. Thank you for that. I want to talk about briefly when you were in the ambulance with
03:12PM Ms. Ashcraft. I don't think I understood. Did she say anything to you while you were in the ambulance?
A. No. She had just -- she started getting worse and worse.
Q. Okay. So you did not have a conversation?
03:12PM A. No.
Q. And did she -- she didn't say anything, like --
A. She couldn't say anything. She just kept, like --
Q. She was in bad condition?
03:12PM A. Yeah. I didn't want to even look over there.

Q. Okay. Okay. Now, you said, I believe, that while you were in the ambulance, you overheard the EMS folks talking about Ms. Ashcraft's aneurysm or something like that? Can you explain that, flesh that out a little more for us?

A. They said that she said, you know, she was fine, and then the girl had said she walked her into that Copo's house --

Q. Okay.

A. So she could get some air.

Q. Okay.

A. And then, you know, I was in the ambulance. So I just remember -- I know she was fine. I heard her talking and stuff.

Q. Her being?

A. Jacqueline. After the wreck.

Q. Oh, not in the ambulance but just after --

A. No. Not in the ambulance. And then she was -- they said -- I don't know what -- what -- I only know what she was like inside the ambulance. I don't know if it started outside or how that was other than she felt sick.

Q. Okay.

A. But they did gave her -- they gave her a Narcan shot.

Q. Okay.
A. And they didn't know what was going on. They couldn't get an IV in her arm.
Q. Uh-huh.
03:14PM A. And they thought that it was -- that it was maybe a brain aneurysm.
Q. Okay.
A. And that she was -- she could have been having that before the wreck.
03:14PM Q. Like, it could have occurred prior to the accident?
A. Correct. Going -- like, there was no way that they can tell if that --
Q. If the wreck caused it or if it was already
03:14PM occurring?
A. Yes.
Q. Okay.
A. And then I found out that she -- she had been in the Booneville hospital for, I guess --
03:14PM Q. Treatment of some sort?
A. Yes.
Q. Okay. Do you remember, was it a male or a female who was saying about the aneurysm before? Maybe before, maybe during? Do you remember?
03:15PM A. It was the female.

Q. The female?
A. Or -- well, the female was driving.
Q. Okay.
A. So it was just both.
03:15PM Q. They were having a conversation?
A. Yeah.
Q. Okay. But you don't know who made that particular statement?
A. I think the girl.
03:15PM Q. Okay. That's fine.
A. 'Cause she was the one I remember, I'm pretty sure, that had walked her around.
Q. Okay. Okay. I am going to ask you about Scott. You probably don't want to talk about Scott, do you?
03:15PM A. No.
Q. Okay. I've got to talk about Scott, so I'm sorry for that.
A. Uh-huh.
Q. He was one of the people who came to the scene; 03:15PM is that correct?
A. (Witness nodding head.)
Q. Okay. You were in a relationship with him at that particular point in time?
A. (Witness nodding head.)
03:16PM Q. Like, boyfriend/girlfriend? Fiance?

A. Boyfriend and girlfriend, I guess.
Q. Just a -- you weren't engaged or married?
A. No.
Q. Okay. And you say Scott got there first; is
03:16PM that right? That's what I've got written down. I may
have written it down wrong. Who arrived first? Your
mom?
A. No. My mom didn't -- no one -- my mom didn't
come there at all.
03:16PM Q. Oh, she didn't? Okay. It was just --
A. Scott was the only person that --
Q. Were you talking to your mom on the phone?
A. I talked -- talked with her. Yes.
Q. Scott came and got you?
03:16PM A. No. He came to the wreck.
Q. Right. Now, you had been with Scott prior to
that, right? Like, at Dari-Delite?
A. Yes, I saw him.
Q. You saw him there or did you meet him there?
03:16PM A. I mean, he was there, and that's where I got
food.
Q. Okay. Was it prearranged to meet there or just
bumped into him?
A. I mean, I was going there --
03:17PM Q. Okay.

A. -- already.
Q. Okay. Did you have an argument or anything?
A. No.
Q. No? Okay. And -- okay. Well, we can skip --
03:17PM we can move on from Scott then. I want to know, do you know Jason Massey, the Sheriff Massey? And Officer Hayden is someone you went to school with?
A. Yes.
Q. He's with Paris PD?
03:17PM A. Yes.
Q. And Tyler Porter is a trooper. Did you say you knew him?
A. Game & Fish. He's Game & Fish is what Ernie said now.
03:17PM Q. I don't know if Tyler Porter is Game & Fish or not. But Mr. Porter dictated -- you dictated a statement, allegedly, to a trooper. He wrote it down. I'm trying to ascertain who that was that you gave a statement to.
03:18PM A. Well, he's one of those people that I said was following me.
Q. Oh, is he?
A. I mean, I have a radar detector.
Q. Okay.
03:18PM A. And it started going off. It's never went off

like that ever.
Q. Okay. Well, the statement -- it's one of these over here.
A. But I don't remember.
03:18PM Q. This right here. Plaintiff's Exhibit 2, it says James Ray at the bottom of it. Okay. James Ray. I got it. I was mixed up. Do you remember talking to -- James Ray is at Game & Fish now. Do you remember talking to him?
03:18PM A. I don't know. I don't remember. I don't think Tyler -- I don't remember Tyler Porter. I know Scott knows Tyler Porter, and --
Q. Okay.
A. I think Tyler Porter, is that who you talked
03:18PM to when I got pulled over that once?
Q. You don't need to bring your mom into this. So --
A. So --
Q. About that, about that -- what you've got right
03:19PM in front of you, is that your handwriting?
A. No.
Q. Okay. That's James Ray's handwriting -- the trooper's handwriting as far as you know, right? That's who signed it.
03:19PM A. I don't know James Ray. But yeah.

Q. You did not write that?
A. No.
Q. Did you give a statement to a state trooper about this wreck?
03:19PM A. No.
Q. You didn't -- go ahead. I'm sorry.
A. When I was in the hospital.
Q. Uh-huh.
A. One of the state troopers came in and gave me
03:19PM one of these to fill out.
Q. Uh-huh.
A. And then -- but I didn't have time. Then they were -- released me. And another trooper came in and took -- said he didn't -- they didn't need my
03:19PM statement.
Q. Okay. So I'm just trying to make sure we are clear for the record here. You --
A. But I --
Q. I'm sorry.
03:20PM A. I never gave any statement to anyone.
Q. Okay. No law enforcement?
A. No.
Q. Okay. Never -- okay. You did write those to Kristen -- is that Kristen Shelton or Brandy Ezell?
03:20PM This right here. This is your handwriting, right?

A. Yes. And my answers are not really correct.
Q. Okay. But that is yours? You did write those out?
A. Yes. There was more to it, though, than that though, 'cause we emailed back and forth.
Q. Right. And we've seen the emails.
A. Okay. Yeah.
Q. As far as that particular document goes, that's your handwriting?
A. Yes.
Q. Okay.
A. Yes. Correct.
Q. Okay. So did anyone ever get your side of the story?
A. No.
Q. No one ever contacted you -- aside from DHS doing their investigation here -- about -- about -- no one ever contacted you about this accident?
A. (Witness shaking head.)
Q. Okay.
A. I just knew she died because she was -- she posted on Facebook and I saw that, and then I saw it again. And then Scott, he apparently had a relationship with her -- I don't know, her aunt, some girl, Danielle Jackson.

Q. So Scott had a relationship with Danielle Jackson?
A. That was supposedly her aunt.
Q. Okay. Is this at the time or before that or after that? When was that?
A. Who knows? Probably the whole time.
Q. Oh.
A. I don't know.
Q. But it happened -- did it occur prior to the wreck, as far as you know?
A. Yeah.
Q. Okay. Well, I mean, I think we probably have piecemealed your side of the story here. But is there a statement you want to say about what -- what -- is there anything we've not gone over about this that you want to say?
A. I just -- I'm so dumbfounded about what's going on.
Q. Okay. Well, like I said, I still have some more questions, but we are -- we're kind of moving toward the end here. Okay?

I do want to ask you -- and I'm sorry. Again, I am going to pick a scab.

A. I don't know what to even say because no one has ever asked me anything.

Q. Okay. Well, can we go on? Can I ask you about [redacted]

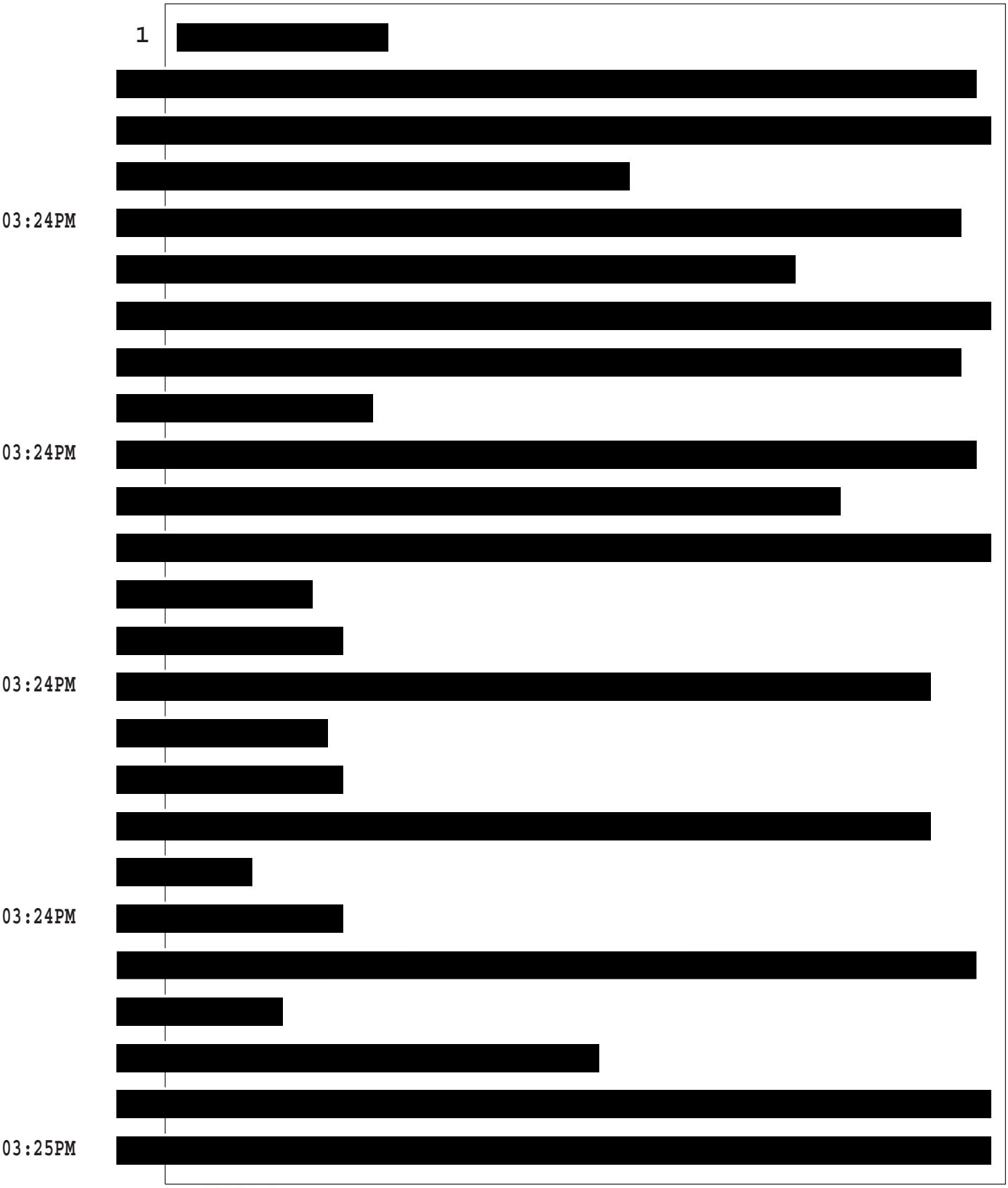
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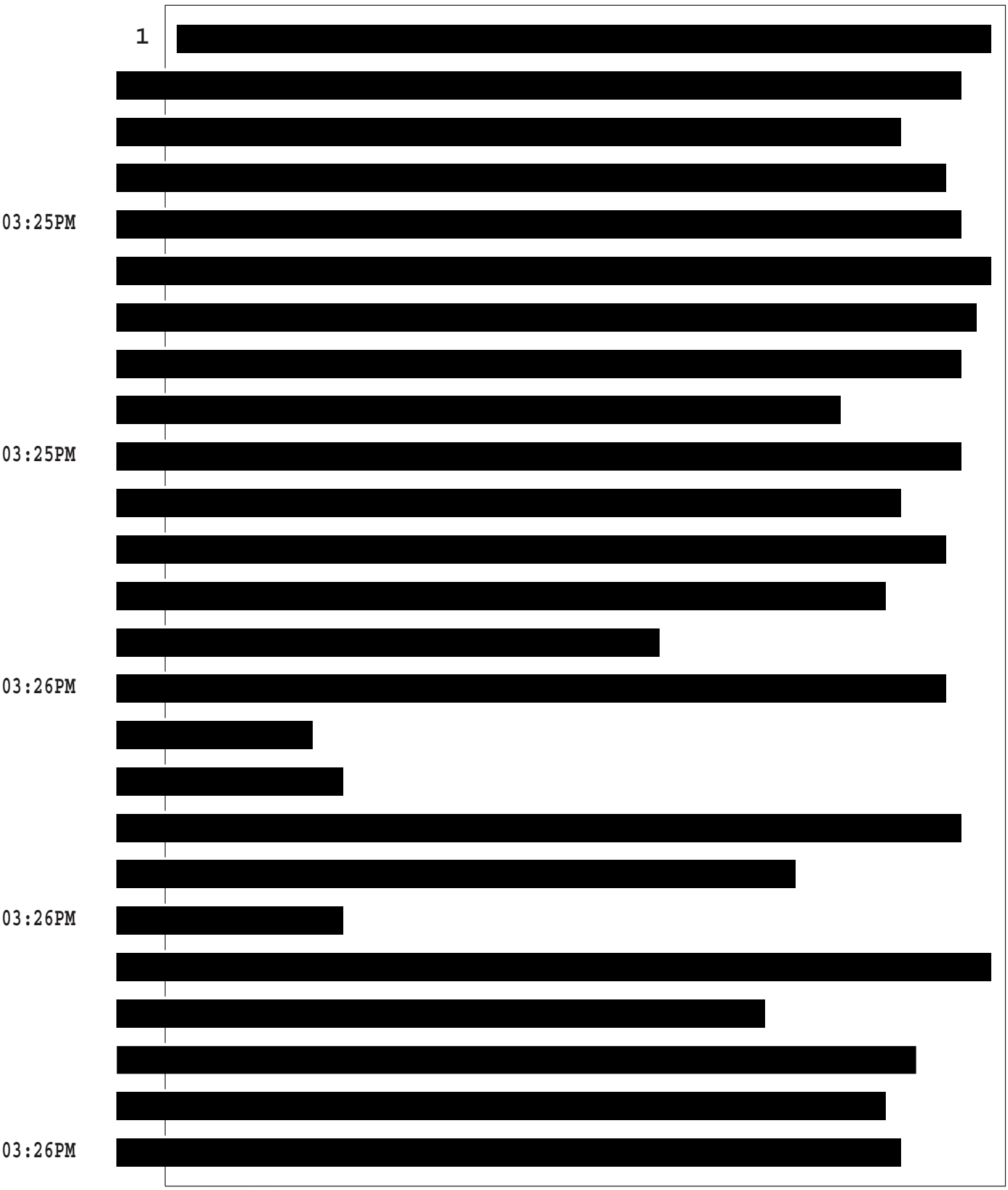
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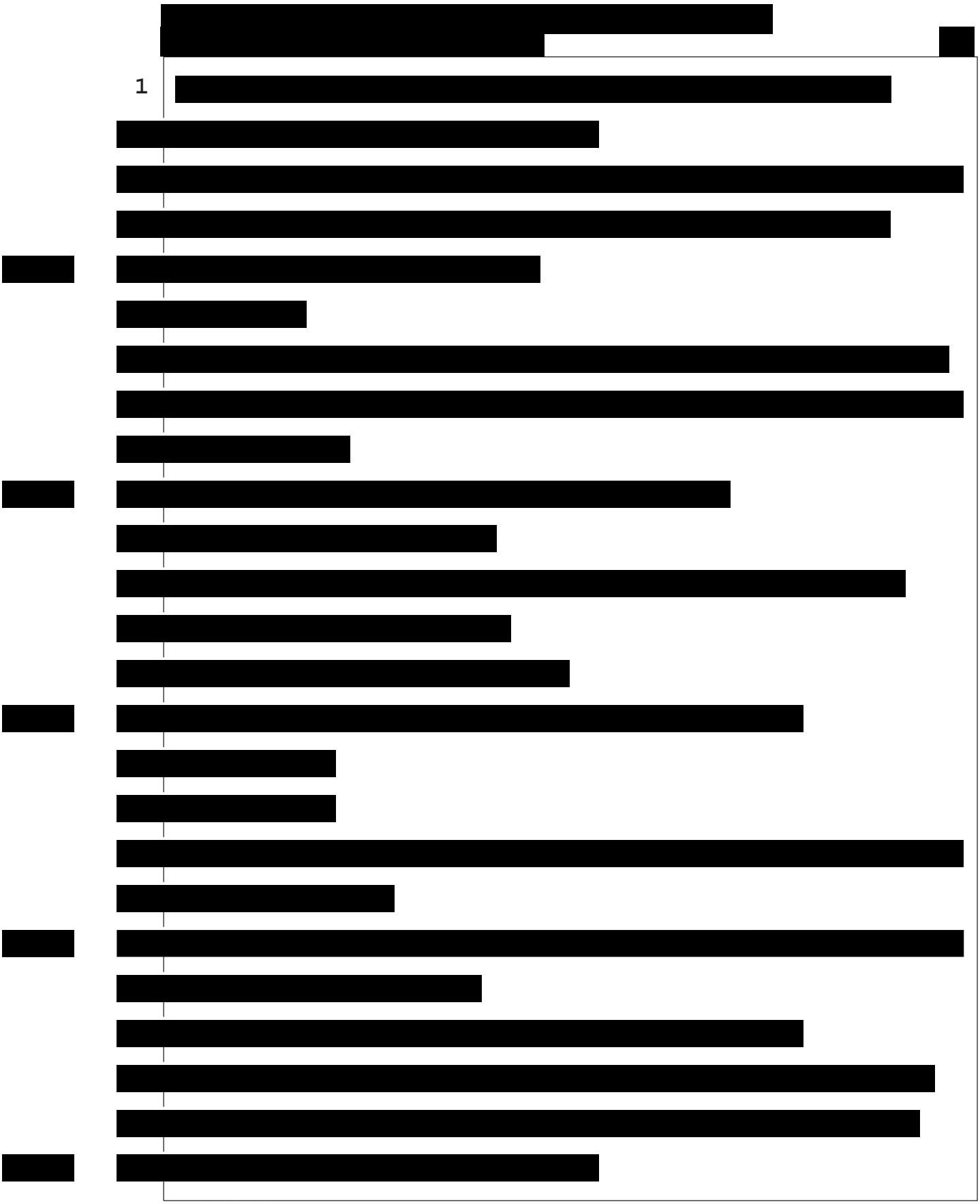
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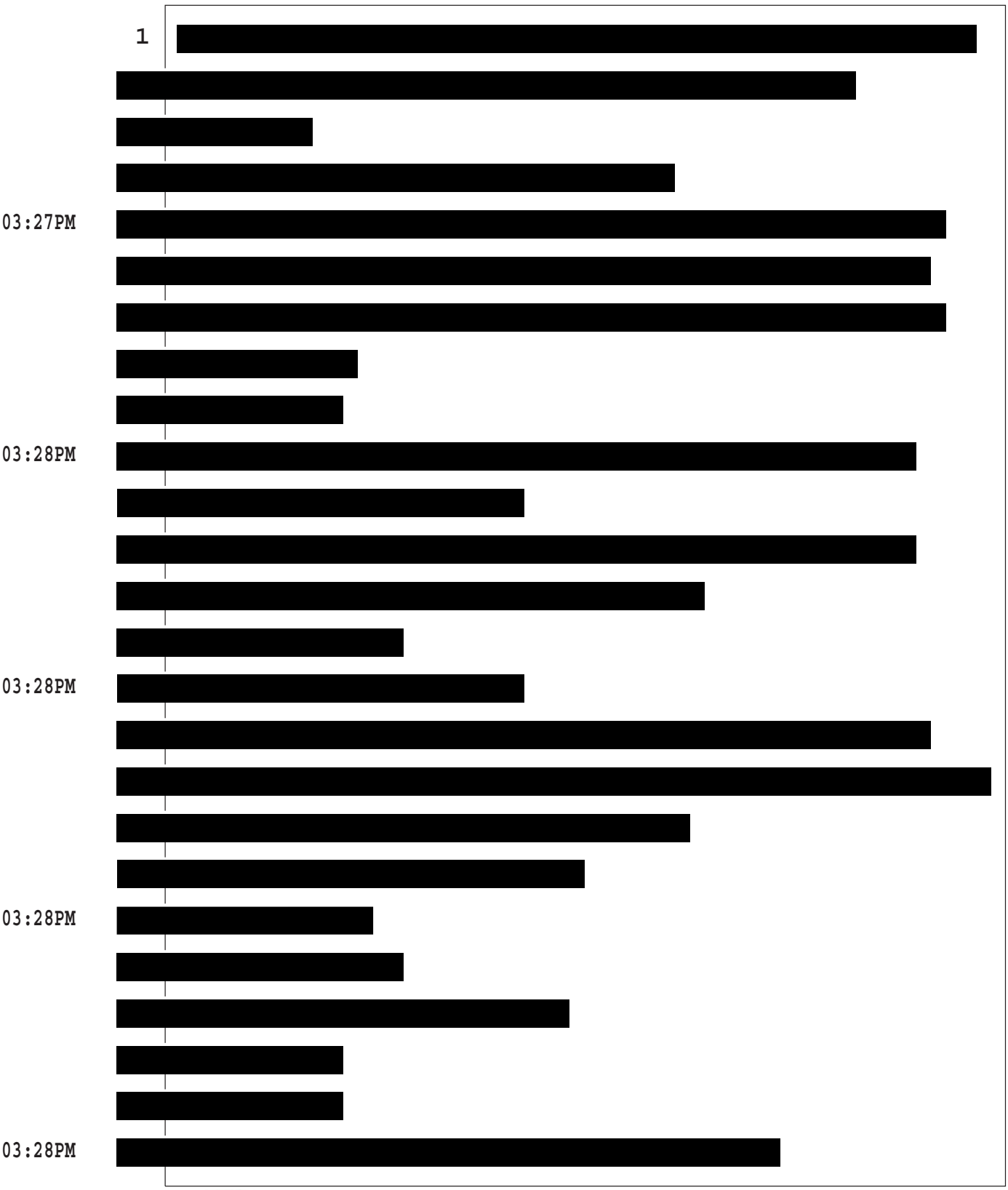
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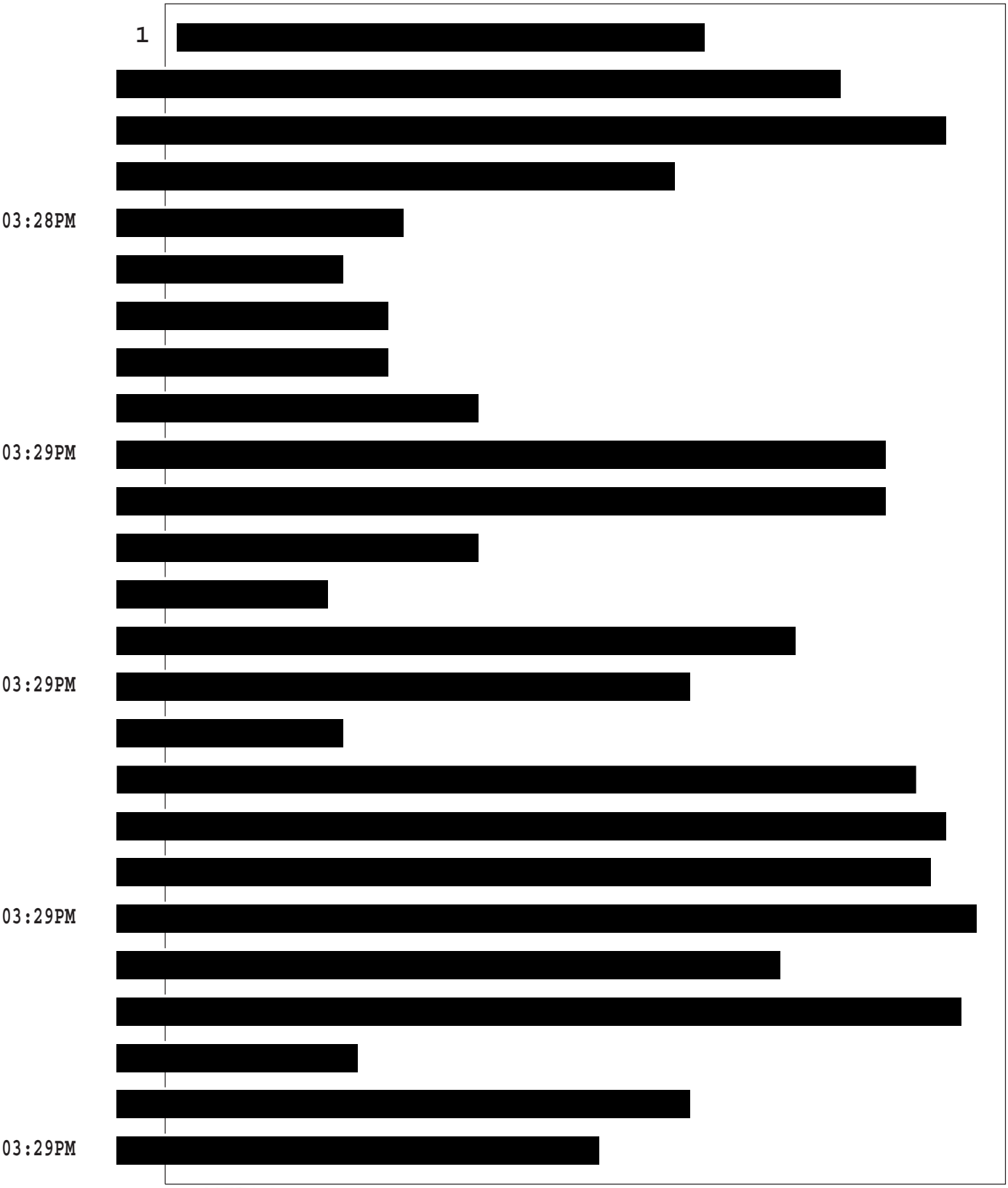
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[redacted]

03:30PM [redacted]

03:30PM [redacted]

Q. Okay.

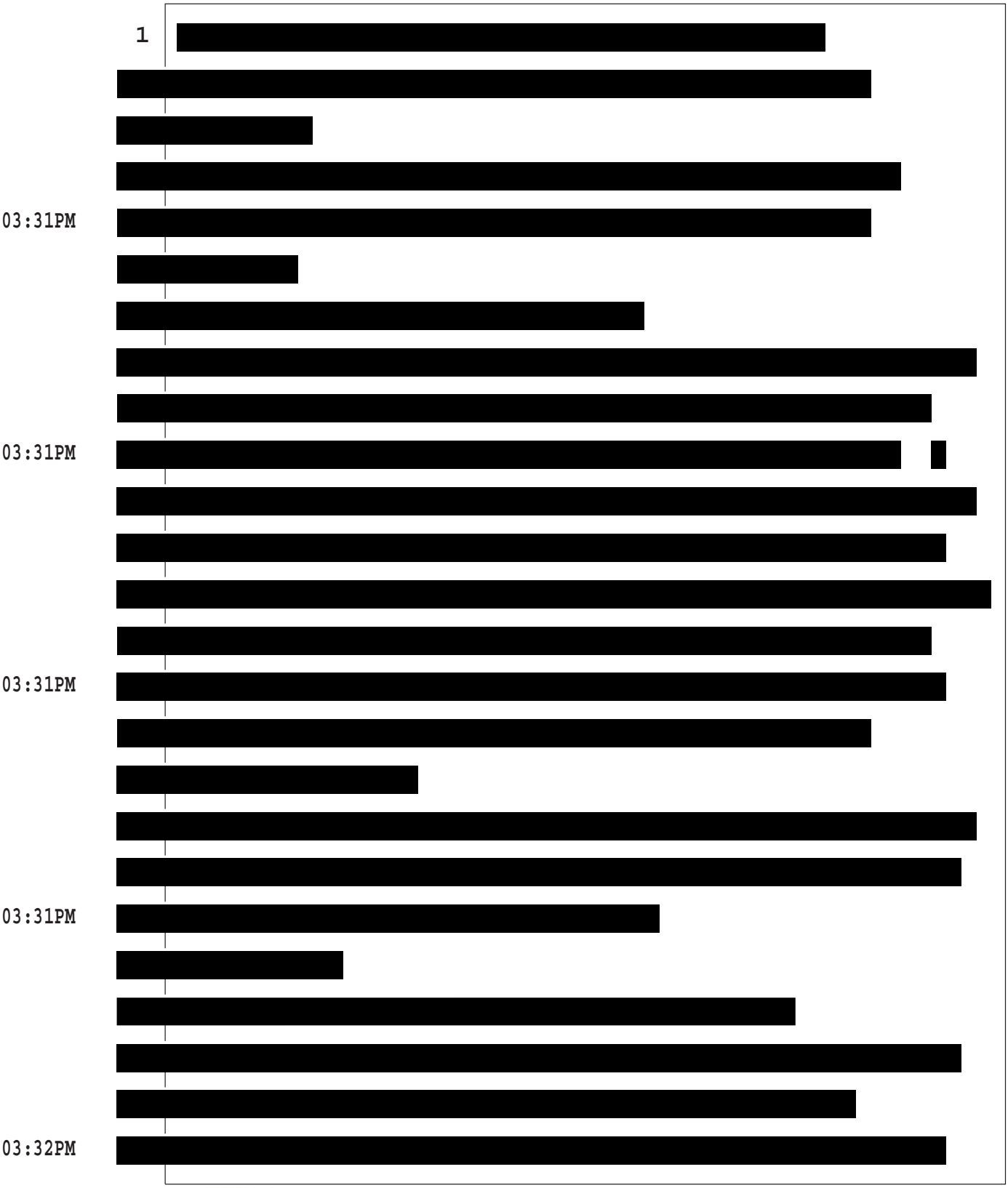
A. I don't know what caffeine is. Maybe I had coffee.

Q. Yeah. Coffee or a soda, even a Coke or a Dr. Pepper?

[redacted]

03:30PM [redacted]

03:30PM [redacted]


1
03:31PM
03:31PM
03:31PM
03:31PM
03:32PM

F.2

3299

[redacted]

03:32PM [redacted]

[redacted]

03:32PM [redacted]

[redacted] I mean, or did -- I mean, some medications can cause, you know --

A. Not -- not at that time.

03:32PM Q. Okay.

A. Not that I -- not that I was aware of.

Q. Okay. So you felt okay driving that day?

A. Yeah.

Q. Okay. This is going to be kind of a silly

03:33PM question, but have you ever tried to go -- undergo, like, a hypnosis or, like, a memory recollection or anything like that? You kind of mentioned something about that earlier, but is that ever something you tried?

03:33PM A. MDR.

F.2

3300

Q. [redacted]

[redacted]

03:33PM [redacted]

[redacted]

03:33PM Q. Okay. Gotcha. You are wearing glasses. Is that -- how is your vision?

A. Oh, it's actually perfect.

Q. Are those, like, stylish glasses you wear?

A. No. I have 20/20 vision, but they say they can always improve your vision.

03:33PM Q. Okay.

A. I don't think --

Q. There's nothing wrong? You don't have any issues driving vision-wise?

03:34PM A. Uh-huh.

Q. Do you wear contacts or prescription glasses?

A. No. I mean, these are prescription.

Q. Very light? Like, a light prescription?

A. Yeah.

03:34PM Q. Okay. Do you normally wear glasses when you

drive, or do you just --
A. No.
Q. Okay. Not counting sunglasses. But, like, prescription lenses? When I do this (indicating),
03:34PM you're blurry so I have to put these on.
A. No. I see better without them.
Q. Okay. I'm sorry. I've got some notes I'm just going through here. Okay. [redacted]

[redacted]
03:34PM [redacted]
[redacted]
03:34PM [redacted]
03:35PM [redacted]
03:35PM [redacted]

F.2

3302

[redacted]

Q. Okay. I've seen the pictures. You're lucky to be alive. I don't want to sound glib, but those are some really devastating pictures. [redacted]

03:35PM [redacted]

03:36PM [redacted]

03:36PM [redacted]

03:36PM [redacted]

and I couldn't get my seatbelt off. I couldn't even talk. And I remember some guy saying don't -- he cut the seatbelt off of me, and they -- and then some people that I didn't know, I got my phone and then I

03:37PM called Brandy. And they stopped. And I guess I was

bleeding out of my head, and I remember some girl saying that she used to be a nurse or something. I don't --

Q. Okay. Were you able to fill out forms or write anything?

03:37PM

A. Huh?

Q. Were you able to fill out any forms or write anything?

A. I wasn't asked to.

03:37PM

Q. Could you have?

A. Uh-huh.

Q. Okay. It wasn't debilitating to the point you couldn't, like --

A. No. Actually, the pain -- I didn't feel the

03:37PM

pain until the next -- like, really, after -- I mean, I couldn't -- it hurt. Well, no. Actually, I do remember, I was in a lot of pain. That's why I didn't -- they didn't do x-rays or anything.

Q. Okay.

03:38PM

A. And then finally, you know, it just -- it was so bad, I went to my doctor and they had to do -- [redacted]

[redacted]

Q. I am going to ask you -- I've only got two --

03:38PM

one or two more questions. They're about the Copos,

Adam Copo lived at that house. Are you familiar with him? Do you know who he is?

A. Uh-huh.

Q. Who is Adam Copo? Can you describe him?

03:38PM A. He's not someone that I hang out with. I just happen to have heard right before that that [redacted]

Q. Okay. Do you know anything about his wife, Jessica?

03:39PM A. I don't know. I know who she is. I've never met her.

Q. You've never met her?

A. No.

Q. You just know of her?

03:39PM A. I've seen her at -- yeah. Them together.

Q. And someone told you, I guess, that Adam said his wife saw the accident?

A. Well, Adam said that she -- that that was his kids's aunt.

03:39PM Q. Yes. Yeah. Yeah. There was relations there. But one of his children was in the car. Was fine, but --

A. And I've seen him recently and it was -- it's been weird.

03:39PM Q. Okay.

A. Like, random places. Like, I was driving with someone, and he was trying to get her to go meet him somewhere.

MR. GASPER: Okay. Well, Jennifer, that is all I have today. Pending if Jim probably has some follow-ups for you. I may have some follow-ups. If he has follow-ups, generally, I think that you answered most of my questions and gave us a lot of good information. I appreciate you showing up today. So I'll pass the witness to Jim.

MR. JACKSON: Jennifer, just a few follow-up questions.

FURTHER EXAMINATION

BY MR. JACKSON:

Q. Did you still have your meal with you from the Dari-Delite?

A. No.

Q. Did you eat your meal at -- where did you eat the meal?

A. I think I did have -- actually, I -- I think I had some coffee in there. I had my drink in there.

Q. So where did you eat? Where did you eat your meal from the Dari-Delite?

A. I'm trying to recall. I ate -- I guess I ate

it -- it was when I went in and then I threw it away there.

Q. So you went inside and sat at a booth or a table?

03:41PM A. No. I went inside to pick up my meal, like I said earlier.

Q. Okay.

A. So instead of waiting through the drive-through.

Q. Okay.

03:41PM A. And I went ahead and ate it. I didn't sit down at the booth 'cause I didn't get very much to eat.

Q. So you -- just -- I'm not trying to be difficult, but just to help me understand. So you went in, you would have had a sack or something? You

03:41PM would have picked it up and gone back to your car and eaten?

A. Well, Scott was there. He knew that I was going to be there, so he was there. It was not -- that was not planned. And that's -- that's how it --

03:42PM Q. What was the meal? Was it a hamburger? What -- I heard you say coffee.

A. Yeah. A hamburger.

Q. Okay. And by the time of the wreck, had you eaten the hamburger or thrown it away?

03:42PM A. Yeah. I had already ate it.

Q. Okay. Where were you physically when you ate -- when you consumed the hamburger?
A. At the Dari-Delite.
Q. Were you at a booth or at a table or in the parking lot?
A. I was in the -- standing inside.
Q. Okay. So you just went in and ate your hamburger standing there inside the Dari-Delite?
A. Yeah. That's kind of how it is around here.
Q. Okay. So that's why you looked at me odd when I asked you if you were sitting at a booth. You were standing?
A. Yeah.
Q. All right. The person that cut the seatbelt, do you know who he is?
A. No. I didn't know who any of them were.
Q. So the person that -- any of the women that were there right afterwards, you don't know who they were?
A. No. I was not even paying attention. I just know that there was blood and I was sitting. I was out of it.
Q. All right. And then now I want to go back to what -- some of the things that Mr. Gasper asked you at the very beginning of his questions. He said Mr. Jackson is not your friend and then he went

through some questions. Have I ever done anything to ask you to do anything other than tell the truth?

A. You -- no. You asked me to sign an affidavit that I didn't -- which is -- as I take it, it's a statement that I should have wrote and I didn't write it. So that right there is confusing -- would confuse someone if they're trying to tell me, you know, did this happen. It's like manipulation.

(Exhibit 9 marked for identification.)

Q. And can you look at that exhibit -- I am going to represent to you this is a copy of the cover letter that went with it. It's dated July 25 of this year. We'll mark that as Exhibit Number 9 to your deposition.

MR. GASPER: Can I see that after you're finished looking at it, Jennifer?

THE WITNESS: Yes.

Q. (By Mr. Jackson:) Do you recall that letter being with the affidavit?

A. Yeah. And, I mean, I don't understand why you said the courthouse to go pay for it because I know I have a notary that I would go to. And Tyler Porter, that's just -- that's just -- that's a name that -- why did you want me to go to the courthouse specifically where his wife works?

Q. And if I represented to you that I have no idea who Tyler Porter's wife is or where she works. I don't know where notary publics are in Paris, Arkansas. But I knew there would be one here at the courthouse in one of these offices, would that be reasonable to you? Do you have any reason to disagree with that statement?

A. No. That could be possible. Yeah.

Q. And does the letter say that if the affidavit is correct, for you to review it and ask you to --

A. I tried to call you and talk to you about it, and you said just take it to the courthouse and get it signed. So then that set off a red flag because I tried to call you to tell you some information.

Q. Can you look at the affidavit and tell us what part of it is not correct?

A. What part of it is not correct is, I didn't write it.

Q. Well, just because you didn't write it doesn't mean -- I mean, look at paragraph one.

A. Okay.

Q. Is paragraph one --

A. I mean, am I mentally competent? I don't know.

[redacted]

[redacted]

Q. And that's a good -- good -- you know, if you're not mentally competent --
A. I mean, I believe I'm -- I believe I'm mentally competent because I'm smart and very intelligent. I'm not stupid.
Q. Okay. So anything else on paragraph one that you would disagree with or raise questions about? I'm talking about paragraph one only right now.
A. For one -- okay. Paragraph one is correct.
Q. Okay. And you didn't write paragraph one but it's still to be correct; is that right?
A. Could be.
Q. It is correct, isn't it?
A. Yeah. I mean, that's where I reside.
Q. Okay. Now, go through paragraph two. Is that correct?
A. Yes.
Q. Okay.
A. But I had no idea who I was meeting, no phone number to call anyone. No nothing.
Q. There are things you'd like to add to the affidavit; is that what you are saying?
A. No. I was traumatized by the event because both personal automobiles were totaled. Okay. One was a State vehicle, not a personal automobile.

Q. That's a good point. Okay. Thank you for pointing that out. One was owned by DHS.
A. Yes.
Q. Okay. All right. Go through that -- and what
03:48PM paragraph is that in, Jennifer?
A. Four.
Q. Okay.
A. Or -- yes. Four.
Q. Okay. Let's go up to paragraph three. Can you
03:48PM look at it?
A. I mean, I don't know if it was -- I've never heard tractor trailer rig and modular home. It was a different way. I'm not sure exactly what it was.
Q. Okay. Anything else about paragraph three of
03:49PM you not knowing whether it's a modular home? Anything else about paragraph three?
A. I mean, I thought it was a semi trailer truck. Is that the same thing?
Q. If I represent to you tractor trailer rig and
03:49PM semi trucks are used interchangeably; they have the same meaning?
A. Are they? I mean, I don't know that.
Q. Okay. All right. So you have an issue with not knowing whether paragraph three was a modular home --
03:49PM whether or not it was a modular home was on the back;

is that correct?
A. I mean, there was a -- it was carrying a mobile home.
Q. Okay.
03:50PM A. So --
Q. So --
A. I guess on there.
Q. So that is correct then?
A. I mean, I guess so.
03:50PM Q. I mean, you were -- you just said it was carrying a mobile home.
A. I mean, I don't -- I didn't know. I don't know that. I didn't never -- I didn't even see it.
Q. But you saw it after the wreck though, correct?
03:50PM A. Not really. Didn't they keep their names under -- off the record? Certain people's names off the record?
Q. What are you talking about, Jennifer? I don't understand.
03:50PM A. Well, one of the guys -- I went to criminal traffic court over not being in his town because he was supposed to be in front of the thing, I believe.
MR. GASPER: I'm not sure I understand either.
03:51PM A. I'm confused.

Q. (By Mr. Jackson:) I'm confused also, Jennifer.
A. I've been confused for so long.
Q. Were you in a wreck on June 11th, 2021?
A. Yes, I was in a wreck.
03:51PM Q. Was there a vehicle that you -- that your car rear-ended?
A. Yes. And there was also an email from you. And I asked you does this have anything to do with me specifically, and you said no. Not at all.
03:51PM Q. And as to you --
A. And you called me so many times, it was harassment.
Q. Jennifer, we've been trying to get your statement about what happened.
03:51PM A. I've been trying to give a statement for -- since -- for two years.
Q. Well, this is your chance to give it.
A. Two years later. I mean, and you want me to remember everything. This is like -- this is, like, 03:51PM other investigations where you say, you know, put people in a room. Kind of like Morgan Nick. She was murdered, and -- okay. And you put someone -- was it a red vehicle or was it not a red vehicle. Well, now it goes back to, it wasn't that color red.
03:52PM So everyone has been saying stuff to me,

trying to make me believe things that aren't even real. Messing with my head. Manipulation. And so that's -- that's exactly what I feel like.

Q. You know, you were -- at the very beginning of this deposition, you were asked to tell the truth. And have you been trying to do so --

A. Yeah.

Q. -- today? Okay. You were involved in a wreck on June 11th, 2021, correct?

A. Correct.

Q. Do you remember a mobile home or modular home being involved in that wreck?

A. I know there was one.

Q. How did you get that knowledge?

A. It was -- I was told.

Q. Did you ever -- after the wreck, before you were transported by ambulance, did you ever see --

A. I do not recall.

Q. Okay. And that's a fine answer. That's what I want. So your knowledge about the modular home is something that you got secondhand from other people telling you about the wreck?

A. No. There was a modular home.

Q. Okay. And I'm sorry. I am confused.

A. I sat there on the ground for hours. Okay?

Q. Waiting on a ambulance?
A. The ambulance was there.
Q. Okay.
A. So, I mean, why wasn't this -- why wasn't the
03:54PM lady transported --
Q. Jennifer, let's say focused on the modular home.
While you were there on the ground, did you see a
modular home?
A. No. Not while I was sitting on the ground at
03:54PM all. I didn't even see a police officer until I stood
up.
Q. So I'm confused. How did you find out that a
modular home was involved in the wreck?
A. Because I got up and was just -- I mean, how do
03:54PM I know if I was passed out and knocked out from one
vehicle and then wake up during the other one? It
lasted so long.
Q. So my question is, where did you get the
knowledge that a modular home was involved? Was it
03:54PM something --
A. Because it was.
Q. Okay. After the wreck, did you see it or --
A. I mean, I'm sure I saw it when I stood up. And
Scott told me, "You hit a mobile home."
03:55PM Q. Okay. So --

A. So, I mean, that's my -- I got -- I have suffered -- I have to be the one that suffered. I can't get a job because they want to retaliate against me, the State of Arkansas.

03:55PM Q. Okay.

A. It was, I mean --

Q. So in paragraph --

A. It just wasn't my -- I mean, I didn't sign this.

Q. I know it.

03:55PM A. You said you got the information from the state troopers, and that's hearsay. That is -- I wasn't going to -- unless I wrote that --

Q. I'm trying to find out what is wrong in that affidavit. And so --

03:56PM A. Well, for one, there was not a -- it was not -- it was not both personal automobiles.

Q. Okay. We've gone over that.

A. And -- well, how do you know how I felt? And I don't know. Obviously, he told me that it was

03:56PM possible that different scenarios that make a lot of -- a lot of sense now.

Q. So can you look at your answer to question number 10 on the -- where is that? Where you gave your handwritten -- yeah. It says, "I am devastated."

03:57PM A. Yeah, I'm devastated 'cause someone is dead and

my life -- I have to deal with that because my boyfriend was killed by a drunk driver, got negligent -- fifteen years negligent homicide and was up for parole within two years.

03:57PM Okay. I had it published on Citizens against Homicide because accidental death, so that's a lot of trauma.

Q. So --

A. And Brandy Ezell, she committed fraud from there

03:58PM and everything else.

Q. I'm not talking about Brandy Ezell.

A. Okay. Well, that has to do with it, the job.

Q. Tell us how it has to do with it.

A. Because I was working for them. It wasn't

03:58PM her -- she wasn't my boss. Pam was.

Q. What did she do, Brandy? How did she commit fraud?

A. I mean, it was in the -- look in the court records. I mean, look at the law. You're a lawyer.

03:58PM I mean, she frauded her own DHS and then got to keep her job.

Q. Was this on June 11th of '21, that she did this?

A. I mean, it was going on at that time, on Court Connect.

03:58PM Q. What -- can you look through that affidavit,

tell me what else is wrong with it?
A. What's wrong with it? It is not signed. It's not --
Q. I understand, it's not signed. That's clear, it's not signed. We can see that.
A. Okay. And --
Q. So what in the wording besides the personal vehicle versus State vehicle?
A. I was in a traumatic event that you're telling me I did all this. This happened. This happened.
Q. Is it not -- well, tell me what's not correct in that affidavit besides the personal vehicle and it was a State vehicle.
A. "I do not recall any additional details about this collision other than the information contained in the statements that I have previously provided in Exhibit 2 and 3." What's that mean?
Q. That was the statement, your handwritten statement for --
A. I didn't give no handwritten statement. I never gave a handwritten statement to one person. That is not my handwriting. That is -- this is not my handwriting.
Q. Whose handwriting is that?
A. That is my handwriting, but where's the rest of

the -- where's the rest of the paper? I mean, 'cause my answers are wrong on here because I was in a traumatic event. I was not explained anything.

Q. There's your -- these --

04:01PM A. I mean, there was -- we talked back and forth to one another. And aren't they supposed to --

Q. I am going to hand you a packet. Is that what you are talking about?

A. No. I'm just not -- I'm just not on the same 04:01PM page with them on things.

(Exhibit 10 marked for identification.)

Q. Okay. We'll mark that as Exhibit Number 10 to your deposition.

A. Okay.

04:01PM Q. As far as your recollection of the accident, is there anything else that you remember about the accident that you have not told us today? And I'm talking about the five seconds before the impact until the vehicles came to rest.

04:02PM A. No.

Q. And before Mr. Gasper gave you these different possibilities scenarios, had you ever thought about those scenarios before today?

A. I knew something wasn't -- didn't add up, that 04:02PM I -- I mean, that's the only -- that -- actually, for

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the first time, that makes sense.

MR. JACKSON: That's all the questions I've got.

MR. GASPER: I only have one question and one thing to say.

FURTHER EXAMINATION

BY MR. GASPER:

Q. Do you feel like you're being manipulated into signing that affidavit?

A. Yes.

Q. Do you feel like you're being pushed around?

A. Yes.

Q. Do you feel like you're being bullied?

A. Yes.

Q. I am right now going to ask you for your phone number.

A. [redacted]

Q. This is my DHS phone. It does not belong to me. This is -- so I'm going to send you a message on this phone. It says Brent. See if it gets there.

I'm going to ask you -- you are not

obligated to do this at all. But I'm going to ask you to forward me any emails, screen shots, text messages, or anything else you might have received from Mr. Jackson. Again, I am not your lawyer. But this could be evidence in this case. So that's why I am asking you to do this. Jim will be able to get copies of anything you send me under the rules of discovery.

You can do this today, do it tomorrow, do it next week, wait a month, or you can never do it at all. It is up to you. But if you choose to do so, this is my phone number. Did you receive my text message?

A. (Witness nodding head.)

MR. GASPER: Okay. Gotcha. That's all the questions I have.

FURTHER EXAMINATION

BY MR. JACKSON:

Q. Ms. Wilkerson, you just answered that you feel like you were being bullied. Can you elaborate on that?

A. I don't have anything else to say. Can I say that?

Q. Your answer is your answer. Have you understood our questions today?

A. Yeah.

Q. Are you under the influence of anything that would make you not able to truthfully answer the questions that were propounded to you today?
A. No.

04:05PM MR. JACKSON: That's all the questions I've got.

THE VIDEOGRAPHER: This concludes the videotape deposition of Jennifer Leann Wilkerson. The time is 4:05. We are now 04:05PM off the record.

(The deposition was concluded at 4:05 p.m.)

* * * * *

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REPORTER CERTIFICATION

I, TAMMIE L. FOREMAN, Certified Court Reporter for the State of Arkansas, do hereby certify to the following:

1) that on 10/20/2023, the witness, JENNIFER LEANN WILKERSON, was duly sworn by me prior to the taking of testimony as to the truth of the matters attested to and contained therein;

2) that the foregoing pages contain and are a true and correct transcription of the proceedings as reported verbatim by me via realtime stenography to the best of my ability and transcribed at or under my direction and supervision;

3) that I am neither counsel for, related to, nor employed by any of the parties to the action in which this proceeding was taken; and that I am not a relative or employee of any attorney employed by the parties hereto;

4) that I am not financially interested or otherwise interested in the outcome of this action that affects or has substantial tendency to affect impartiality or requires me to relinquish control of an original or copies of a deposition transcript before it is certified, or that requires me to provide any service not made available to all parties to the

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action; and

5) that I have no contract with the parties, attorneys, or persons with an interest in the action; and that I am not knowingly identified on a preferred provider list, whether written or oral, for any litigant, insurance company, or third-party administrator involved in this matter;

6) that signature of the witness is waived.

This transcript is prepared at request of counsel for CLAIMANT, and all fees are billed directly to them in compliance with Arkansas Board of Court Reporter Examiners Regulations Section 19.

Witness my hand and seal this 6th of November, 2023.

TAMMIE L. FOREMAN ARKANSAS SUPREME COURT No. 305 CERTIFIED COURT REPORTER

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F.2

3340

Issued by the
ARKANSAS STATE CLAIMS COMMISSION

HALEY HUDSON, Individually and as Special Administratrix of the Estate of Jacqueline Lynn Ashcraft, deceased, and HALEY HUDSON as Permanent Legal Guardian of Kadey Lynn Jones, a Minor Child, Claimant

V.

ARKANSAS DEPARTMENT OF HUMAN SERVICES, Respondent

**SUBPOENA**

CLAIM NO. 230641

TO: Ms. Jennifer Leann Wilkerson
[redacted]

____ YOU ARE COMMANDED to appear at the Arkansas State Claims Commission at the place, date, and time specified below to testify in the above case.

_X___ YOU ARE COMMANDED to appear at the place, date, and time specified below to testify in the taking of a deposition in the above case.

Date: Friday, October 20, 2023
Time: 1:00 p.m.
Location: Logan County Courthouse
25 West Walnut Street
Paris, AR 72855

____ YOU ARE COMMANDED, at the time of trial, hearing, or deposition described above, to produce and permit inspection and copying of the following documents or objects (list documents or objects):

____ YOU ARE COMMANDED, no more than 3 business days after receiving this subpoena, to produce and permit inspection and copying of the following documents or objects (list documents of objects):

Kathryn Irby, Director
Arkansas State Claims Commission
101 East Capitol Avenue, Suite 410
Little Rock, Arkansas 72201

October 5, 2023
Date

RECEIVED
OCT 16 2023
JASON W. MASSEY, SHERIFF
LOGAN COUNTY, PARIS ARKANSAS

EXHIBIT
WIT Wilkerson
DATE 10.20.23
Tammie L. Foreman

**PROOF OF SERVICE**

Jennifer Wilkerson
SERVED ON (Print Name)

10/16/23
DATE

[redacted]

Personal Service
MANNER OF SERVICE

Charlie M. Edmonson
SERVED BY (Print Name)

Deputy LC/4
TITLE

**DECLARATION OF SERVER**

I declare, under penalty of perjury under the laws of the State of Arkansas, that the foregoing information contained in the Proof of Service is true and correct.

Executed on 10/16/23 Dep Charlie M. Edmonson
DATE

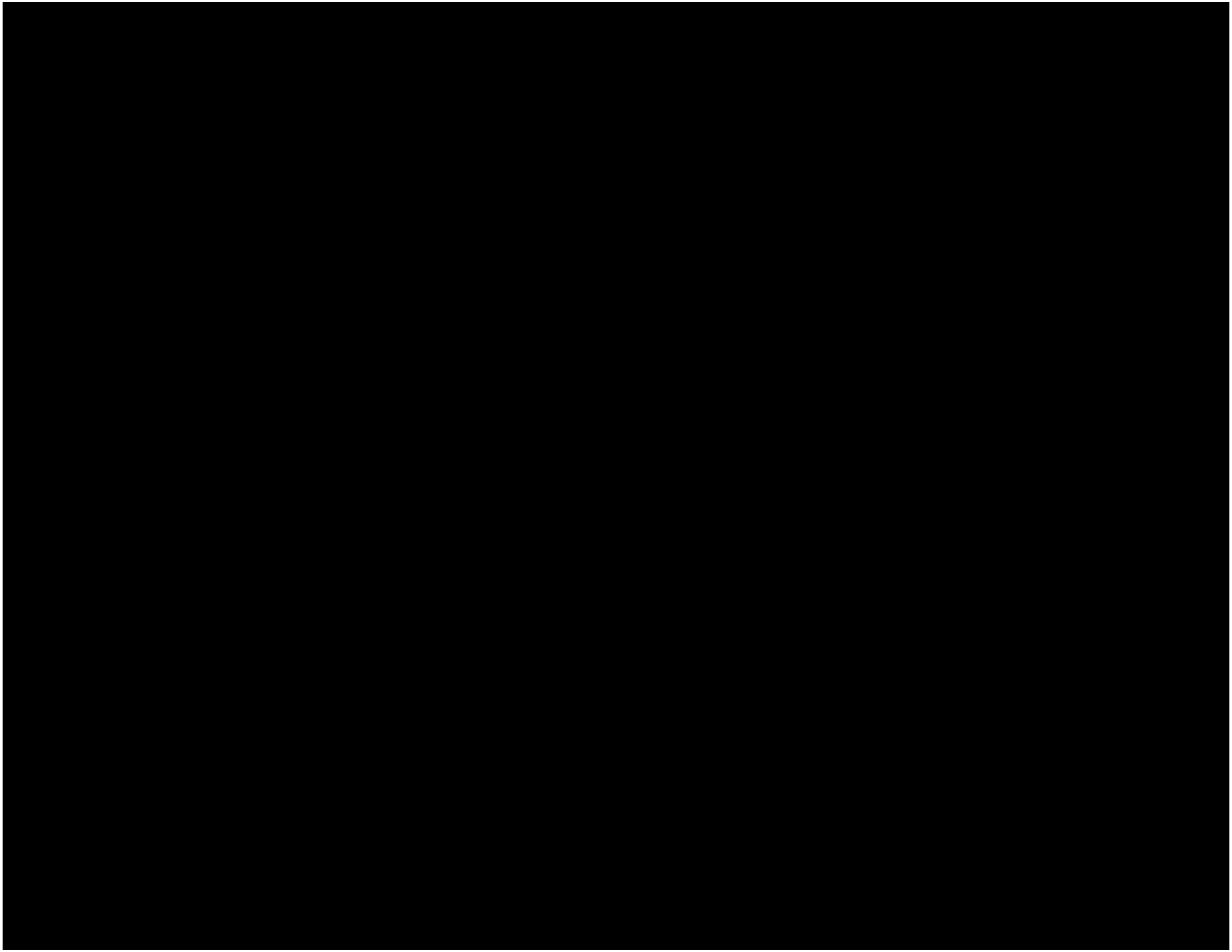
[redacted]

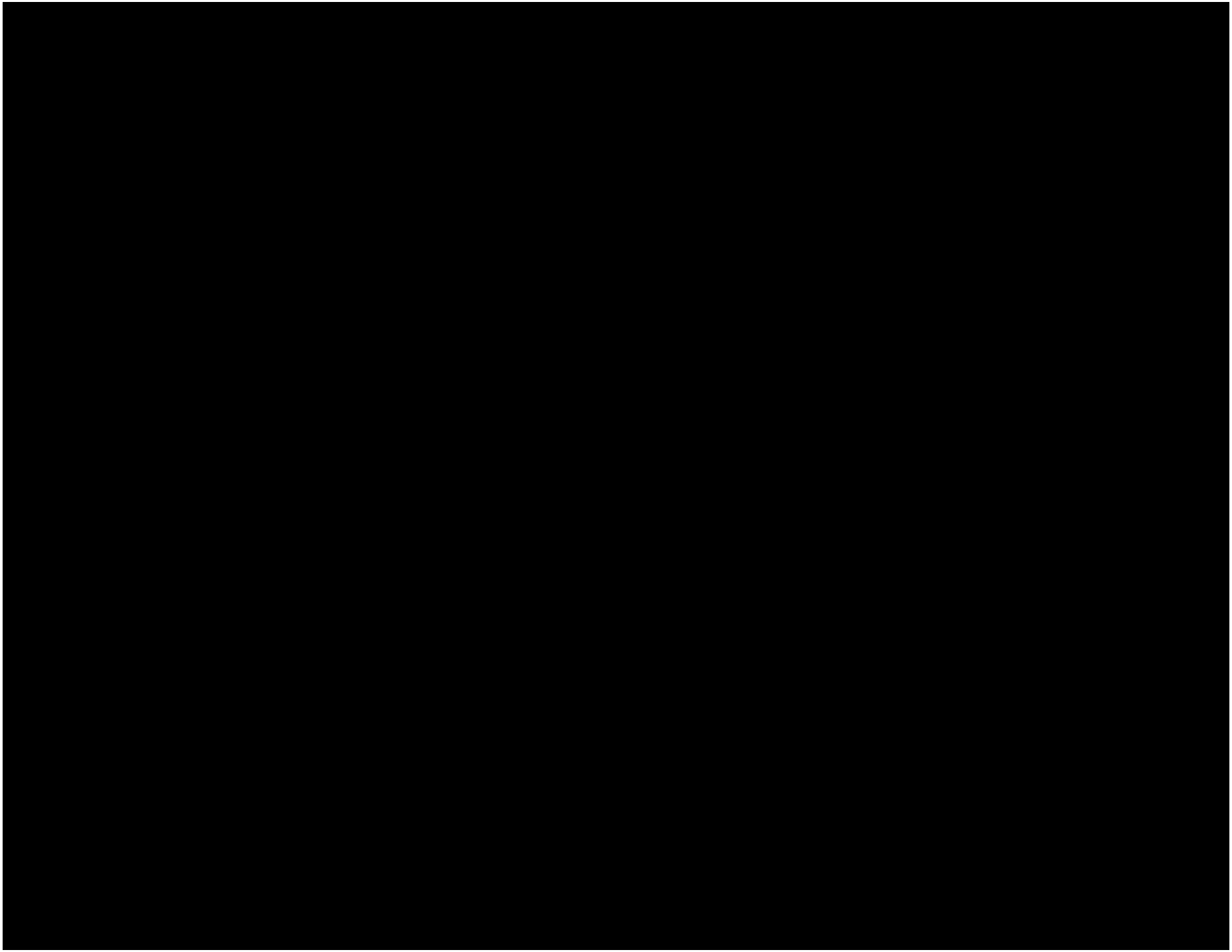
**NOTICE TO PERSONS SUBJECT TO SUBPOENAS**

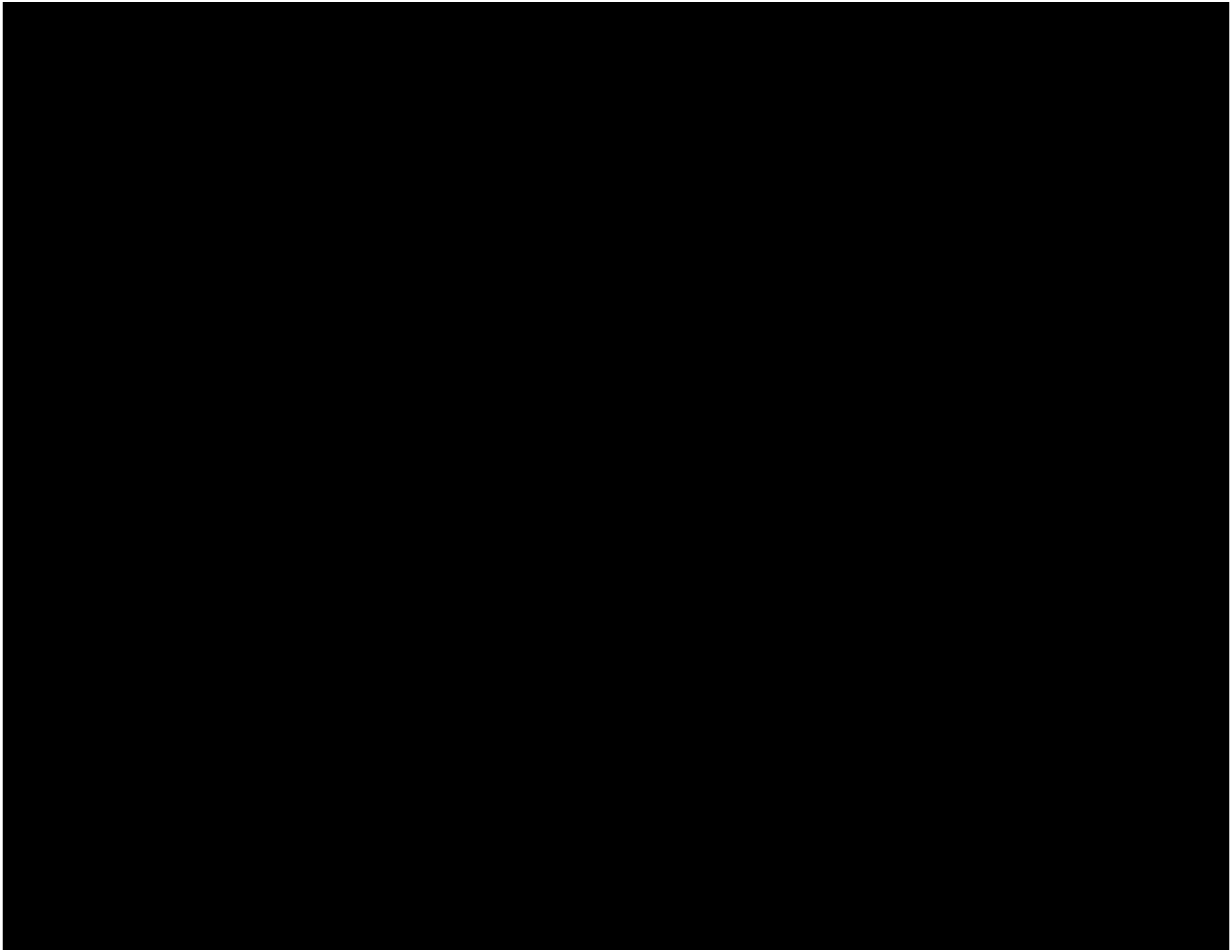
Regardless of his or her county of residence, a witness subpoenaed for examination at a trial or hearing must be properly served with a subpoena at least two days prior to the hearing, or within a shorter time if the court so orders. The subpoena must be accompanied by a witness fee calculated at the rate of $30.00 per day for attendance and $0.25 per mile for travel from the witness' residence to the place of the trial or hearing. Ark. R. Civ. Proc. 45(d), Claims Commission Rule 3.2(d).

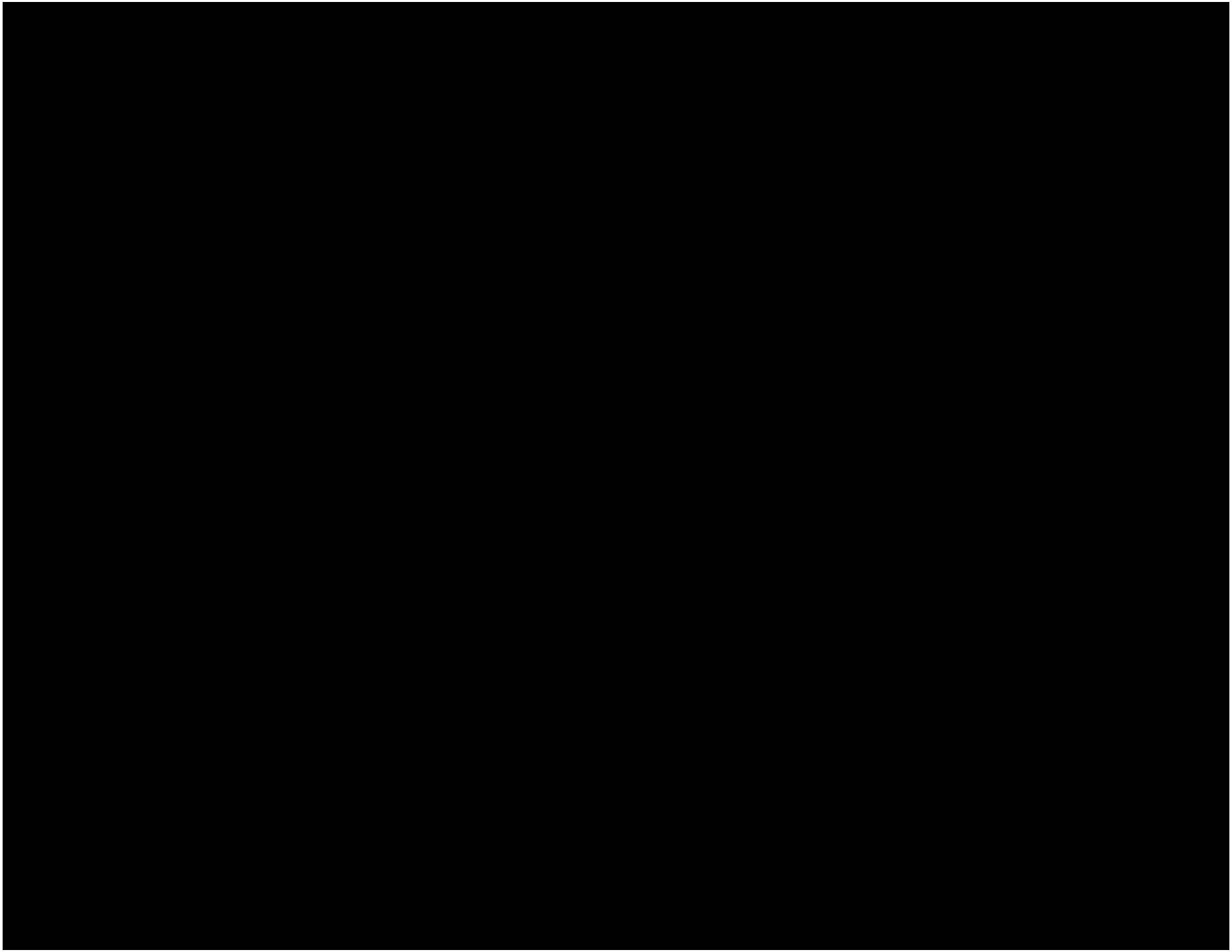
A witness subpoenaed in connection with a deposition must be properly served with a subpoena at least five business days prior to a deposition, or within a shorter time if the court so orders. The witness is required to attend a deposition at any place within 100 miles of where he or she resides, is employed, or transacts business in person, or at such other convenient place set by court order. The subpoena must be accompanied by a witness fee calculated at the rate of $30.00 per day for attendance and $0.25 per mile for travel from the witness' residence to the place of the deposition. Ark. R. Civ. Proc. 45(e), Claims Commission Rule 3.3.

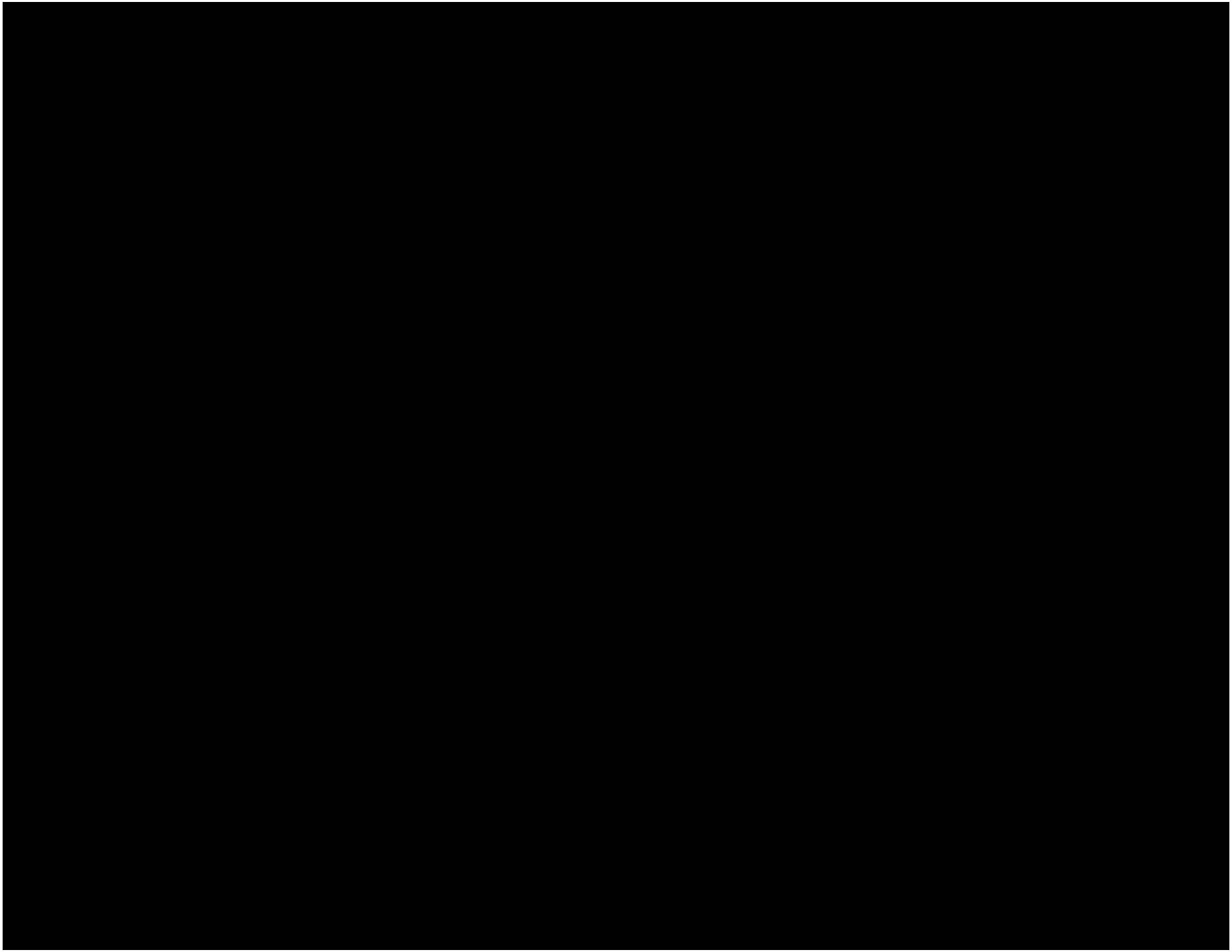
A subpoena may command the person to whom it is directed to produce for inspection any books, papers, documents, or tangible things designated in the subpoena. The person subpoenaed may ask the court to quash or modify the subpoena if it is unreasonable or oppressive or to require that the person on whose behalf the subpoena is issued pay the reasonable cost of such production. Ark. R. Civ. Proc. 45(b). The person subpoenaed may also object in writing to inspection or copying of any or all of the designated materials or seek a protective order from the Claims Commission. If a written objection is made within ten days of service of the subpoena or on or before the time specified for compliance if such time is less than ten days, the party causing the subpoena to be issued is not entitled to inspect the materials unless the court so orders. Ark. R. Civ. Proc. 45(e). When a witness fails to attend in obedience to a subpoena or intentionally evades the service of a subpoena by concealment or otherwise, the Claims Commission may enforce the subpoena pursuant to Ark. Code Ann. § 19-10-207(d).

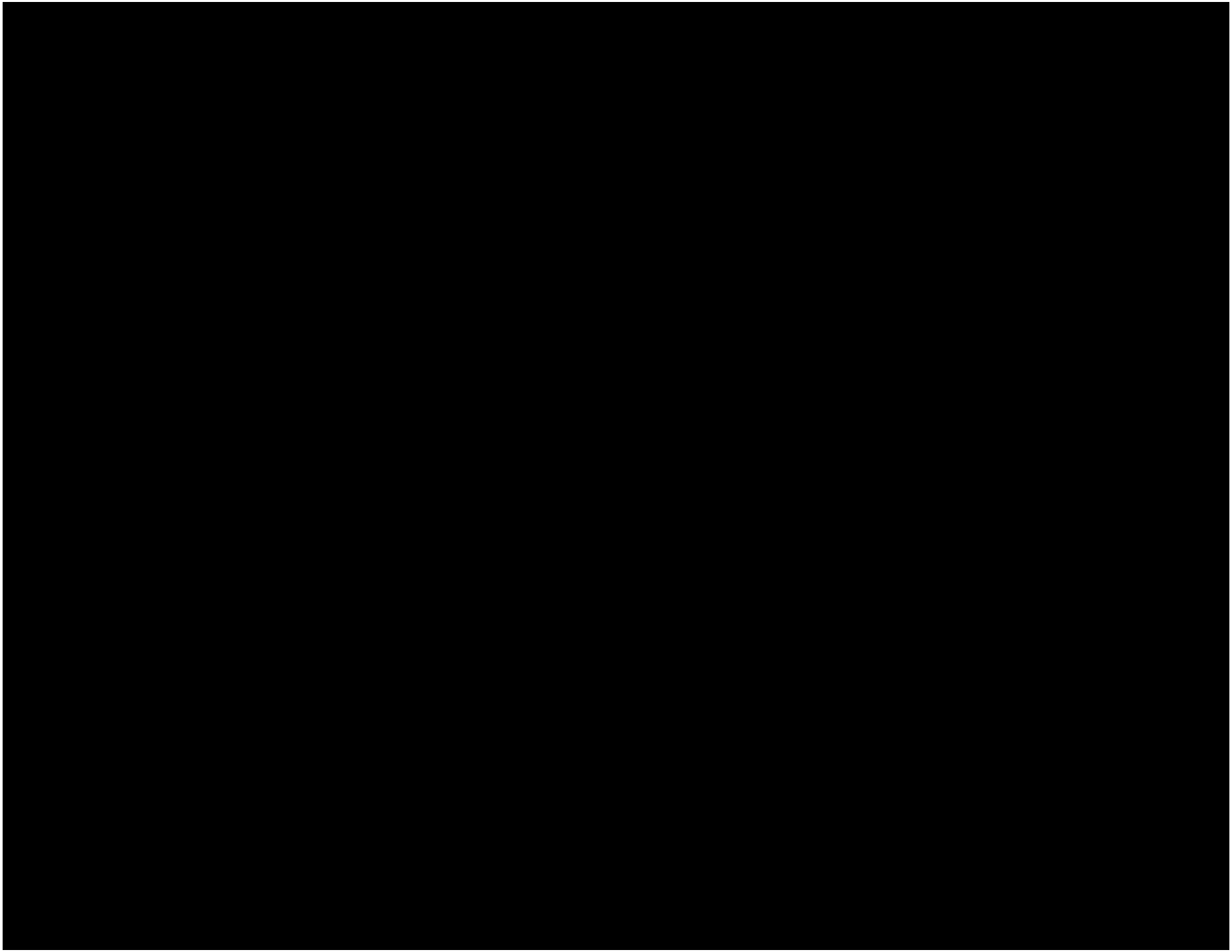












ARKANSAS CLAIMS COMMISSION

HALEY HUDSON, SPECIAL ADMINISTRATRIX OF THE ESTATE OF JACQUELINE LYNN ASHCRAFT, DECEASED, AND HALEY HUDSON AS PERMANENT LEGAL GUARDIAN OF KADEY LYNN JONES, A MINOR CHILD — CLAIMANT

VS. CC NO. 230641

ARKANSAS DEPARTMENT OF HUMAN SERVICES — RESPONDENT

## AFFIDAVIT OF JENNIFER WILKERSON

Comes now Jennifer Wilkerson, and for her Affidavit, states:

1. My name is Jennifer Wilkerson. I reside a [redacted] My date of birth is [redacted] I am over the age of 18 and am mentally competent to make this affidavit.

2. I was traveling from Paris to Beebe on June 11, 2021, on State Highway 22.

3. I was involved in a car accident in which my vehicle rear-ended another car and then spun into a tractor trailer rig that was transporting a modular home.

4. I was traumatized by the event because both personal automobiles were totaled from the wreck. Attached as Exhibit 1 is a photo of the car I was driving.

5. The investigating officers asked me at the scene what happened, and he wrote down my statement.

6. Attached as Exhibit 2 is a copy of the Witness Statement which reflects what I told the officers.

7. The following week, I was given a series of questions by Kristen Shelton who is a DHS official in Clarksville investigating the circumstances of the car wreck.

EXHIBIT 7
WIT:
DATE:
Tammie L. Foreman

8. Attached is Exhibit 3 is my handwritten response to the series of questions about what happened in the wreck.

9. I do not recall any additional details about this collision other than the information contained in the statements that I have previously provided in Exhibits 2 and 3.

Further Affiant saveth not

_____
Jennifer Wilkerson

**ACKNOWLEDGMENT**

STATE OF ARKANSAS )
)
COUNTY OF ____ )

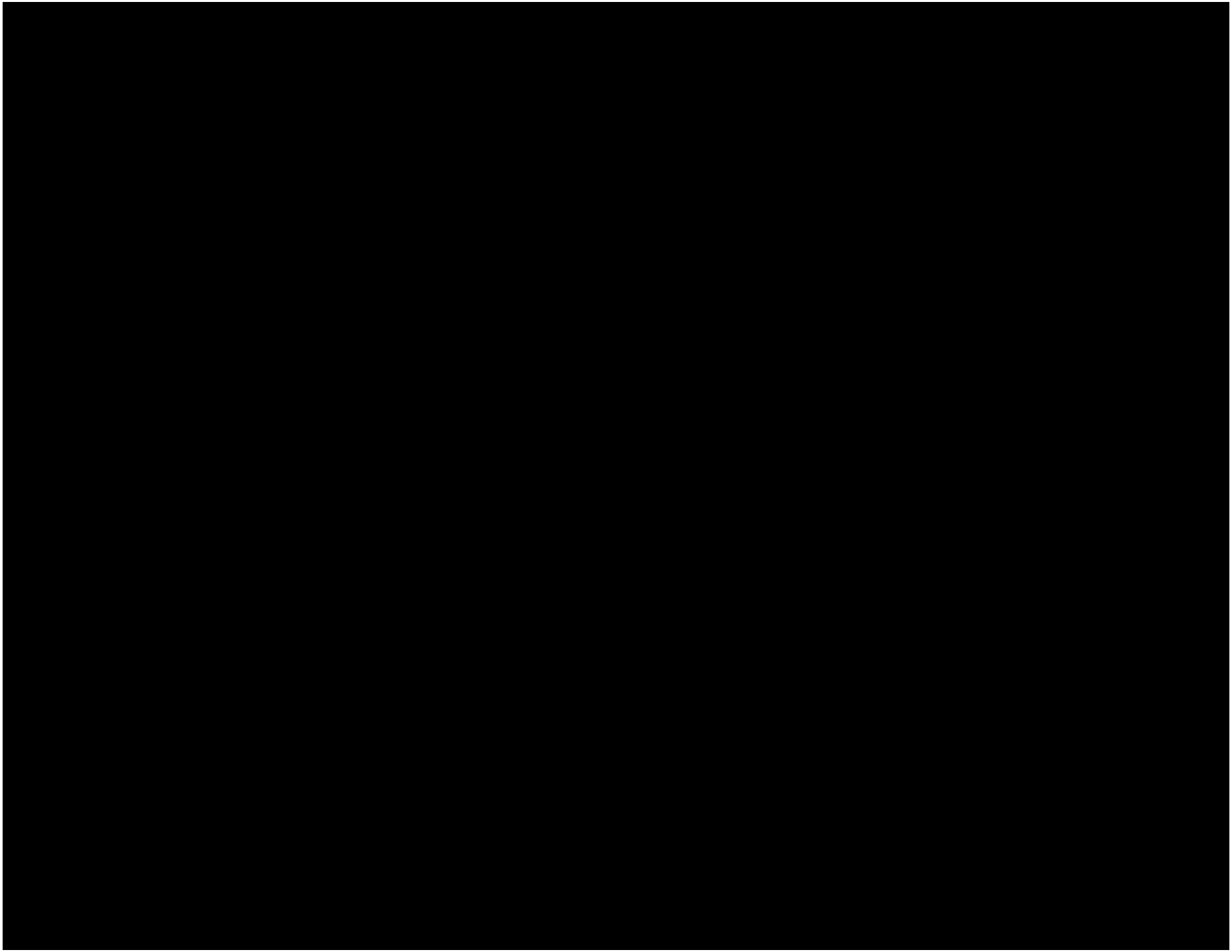
SUBSCRIBED AND SWORN to before me, a Notary Public, on this ___ day of _____, 2023.

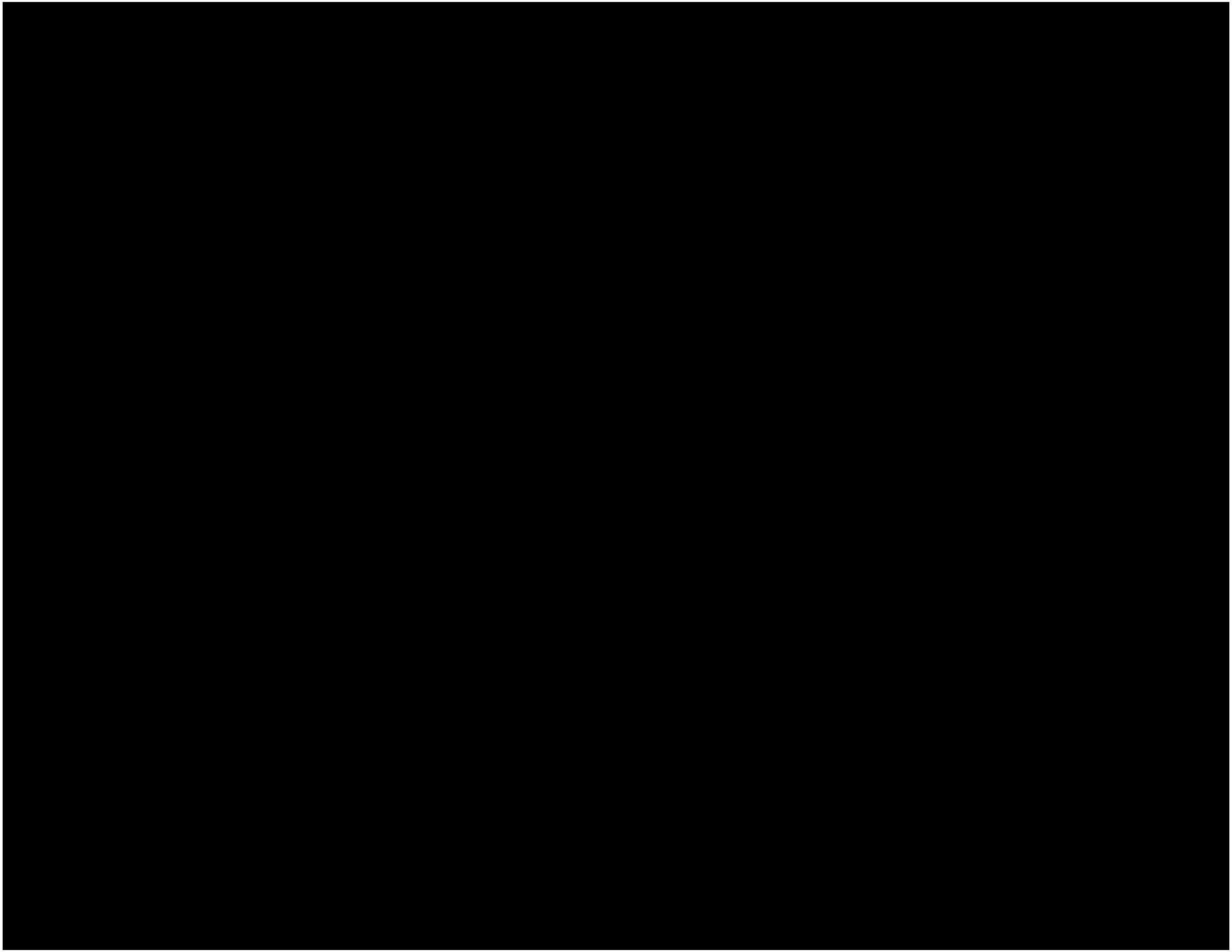
_____
NOTARY PUBLIC

My Commission Expires:

_____

*SEAL*





JACKSON
LAW FIRM

July 25, 2023

Ms. Jennifer L. Wilkerson
[redacted]

*Re: Incident Date: 6/11/2021 - Logan County*

Dear Jennifer:

I hope this letter finds you doing well. I am an attorney representing the family involved in the wreck. We have a hearing before the Arkansas Claims Commission this fall.

I am enclosing an Affidavit for you to review. If the Affidavit is true and correct, please sign it in front of a Notary Public and return it to my office in the enclosed self-addressed, pre-stamped envelope. A Notary Public can be found at your bank, your insurance office or at the courthouse.

***IF ANY CHANGES NEED TO BE MADE TO MAKE THIS A TRUTHFUL AFFIDAVIT, PLEASE E-MAIL ME IMMEDIATELY WITH THE LINE NUMBER AND THE CHANGE AND WE WILL MAKE IT IMMEDIATELY.***

Please call me at (501) 823-3610 with any questions or suggestions. My e-mail address is *Jim@JimJacksonAtty.com*.

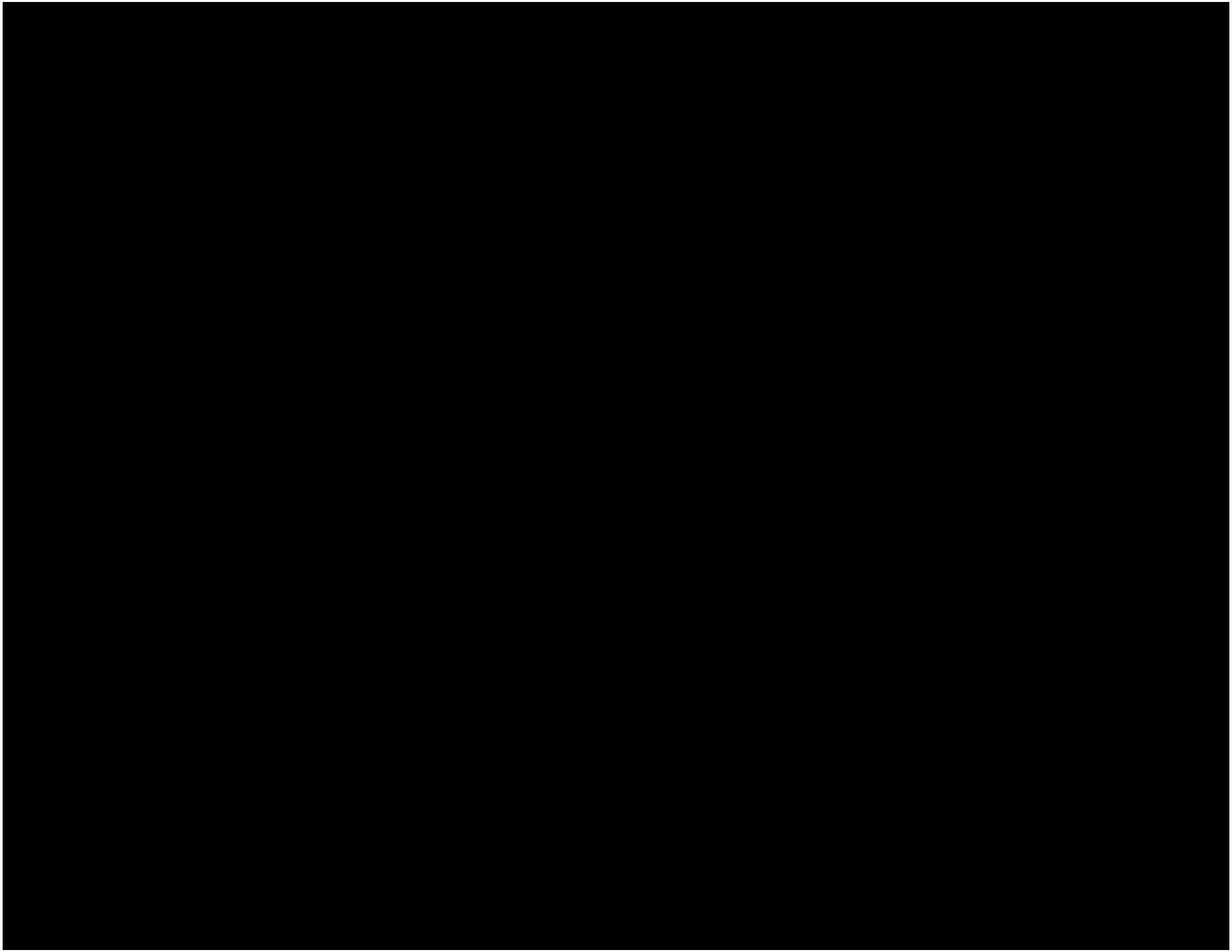
Sincerely,

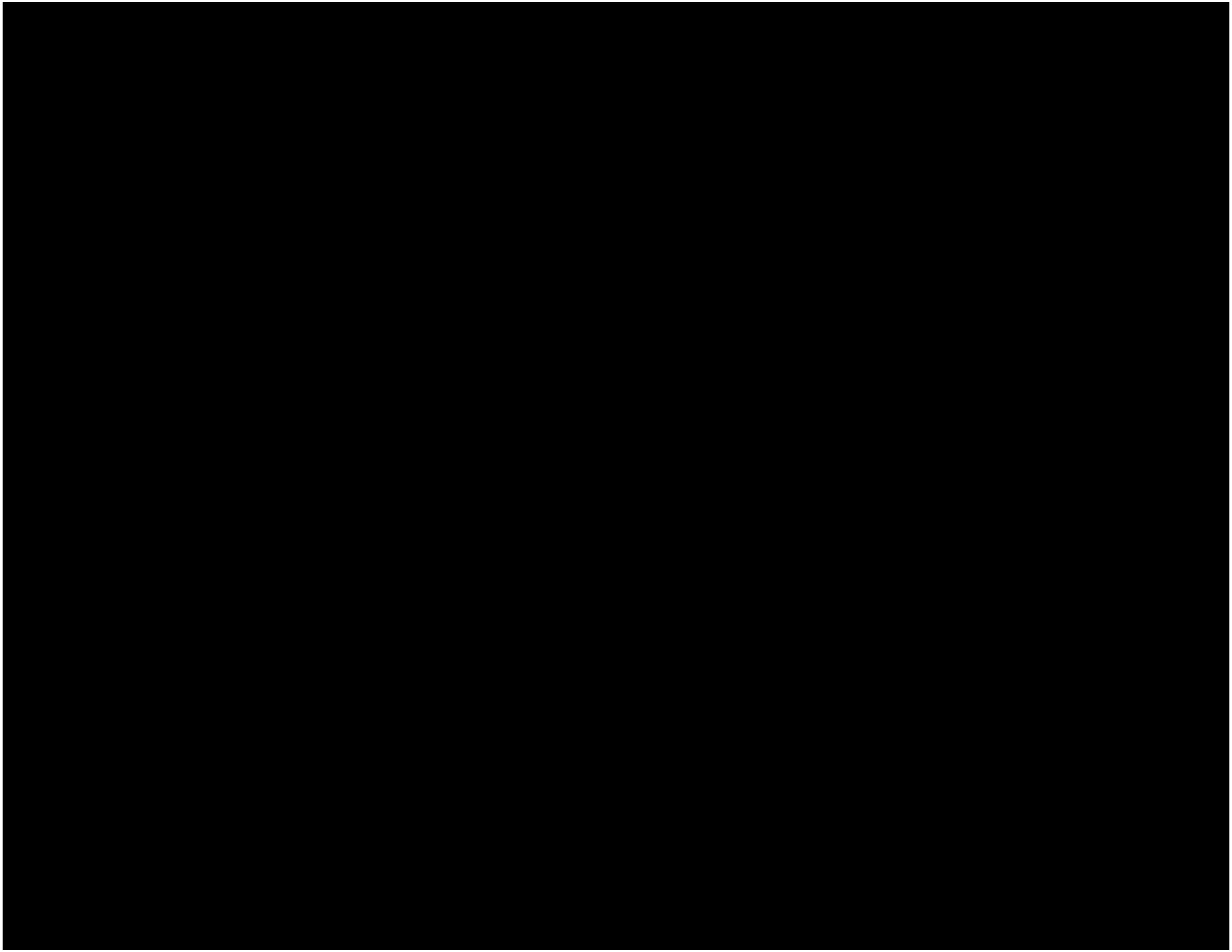
Jim R. Jackson

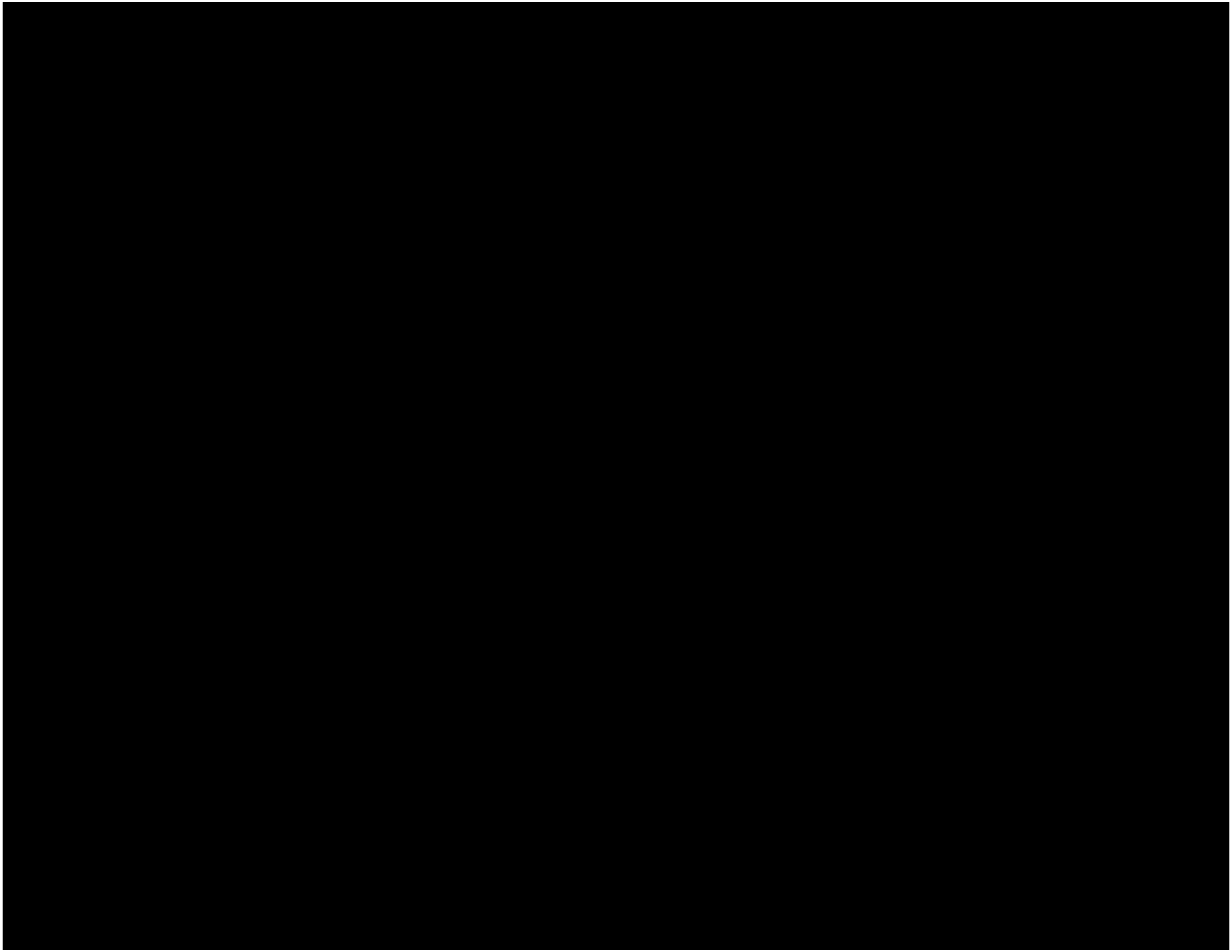
JRJ/mc
Enclosure

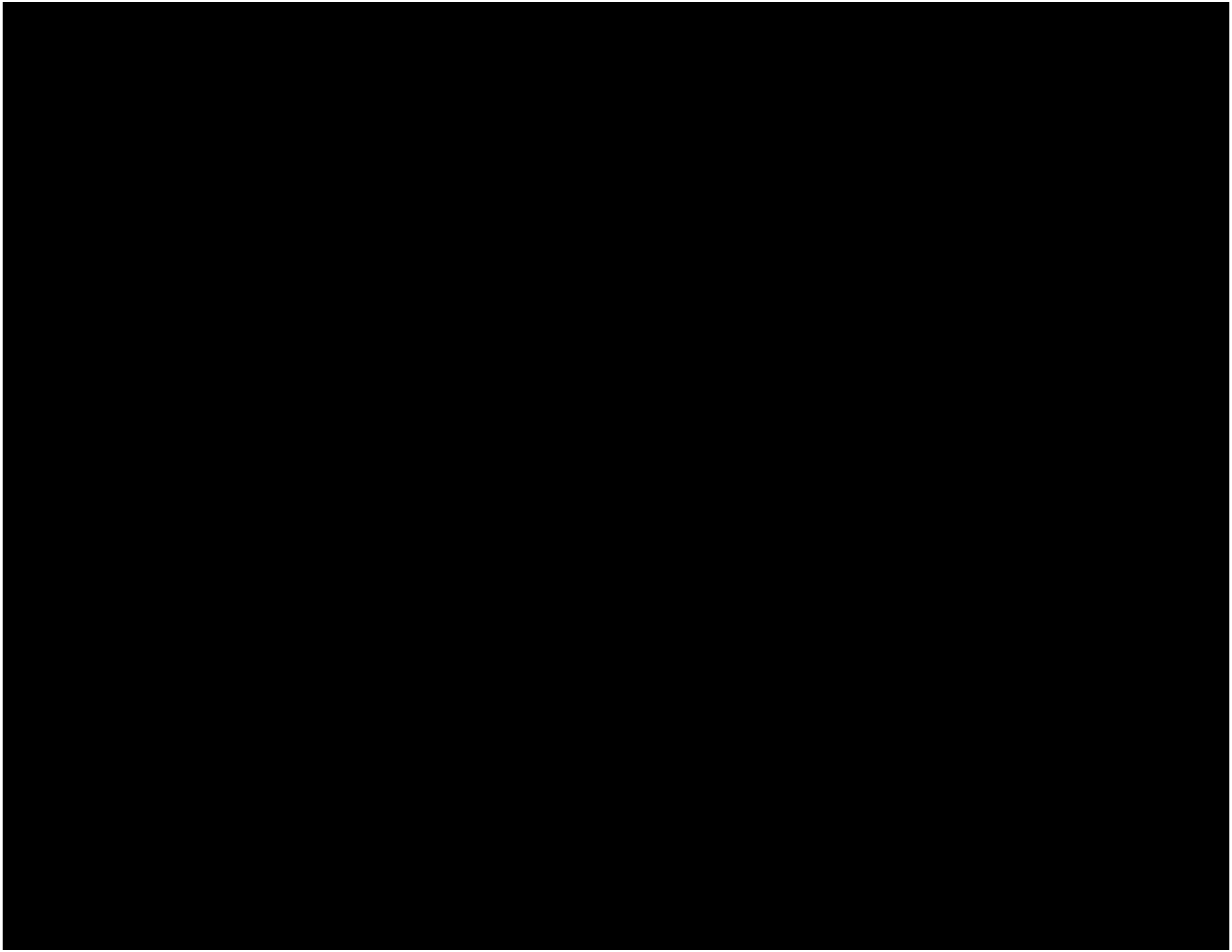
EXHIBIT
WIT:
DATE:
Tammie L. Foreman

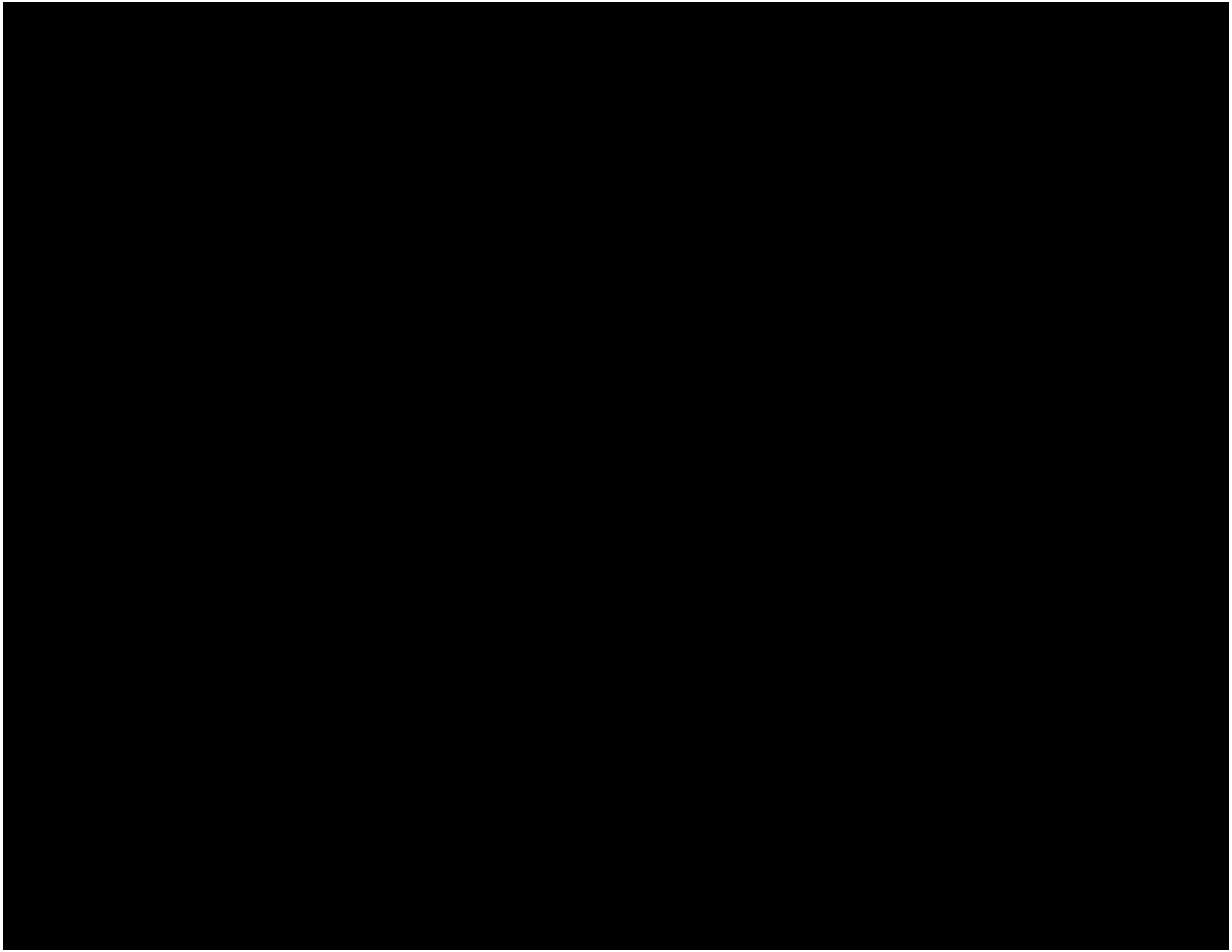
JIM JACKSON // Attorney at Law
700 W. Broadway Street; Suite 200
North Little Rock, AR 72114-5528 • 501.823.3610 • Fax 501.823.3611 • Jim@JimJacksonAtty.com • www.JimJacksonAtty.com

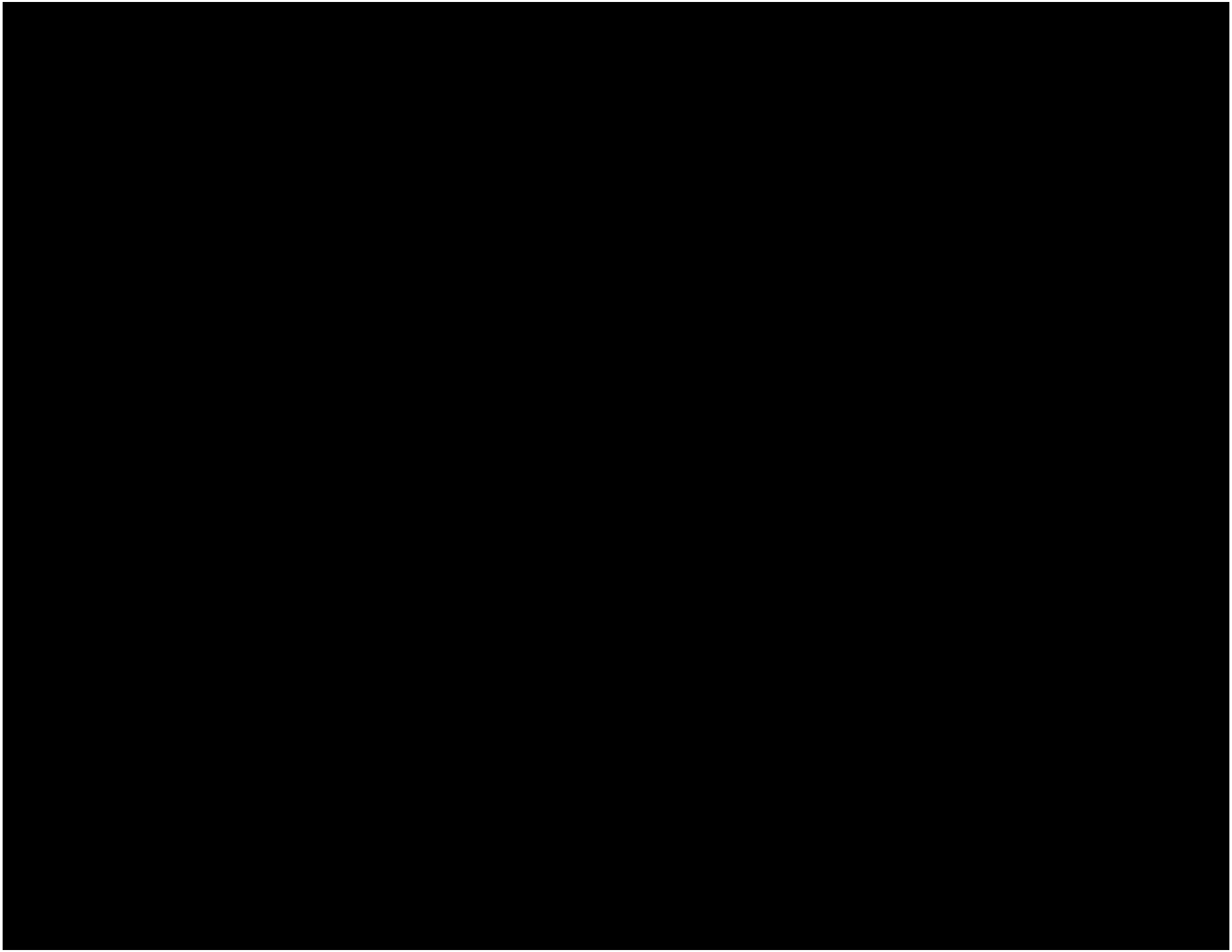


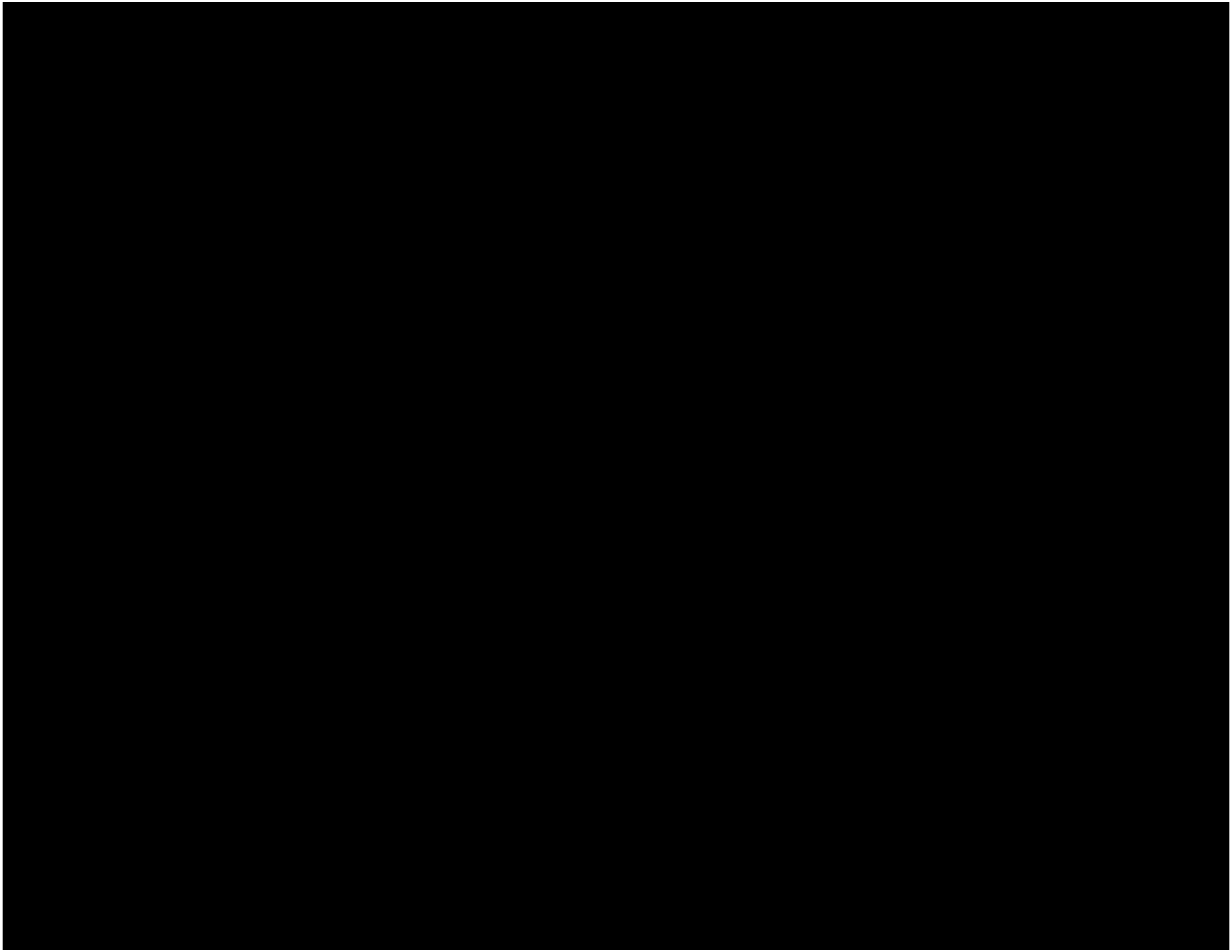


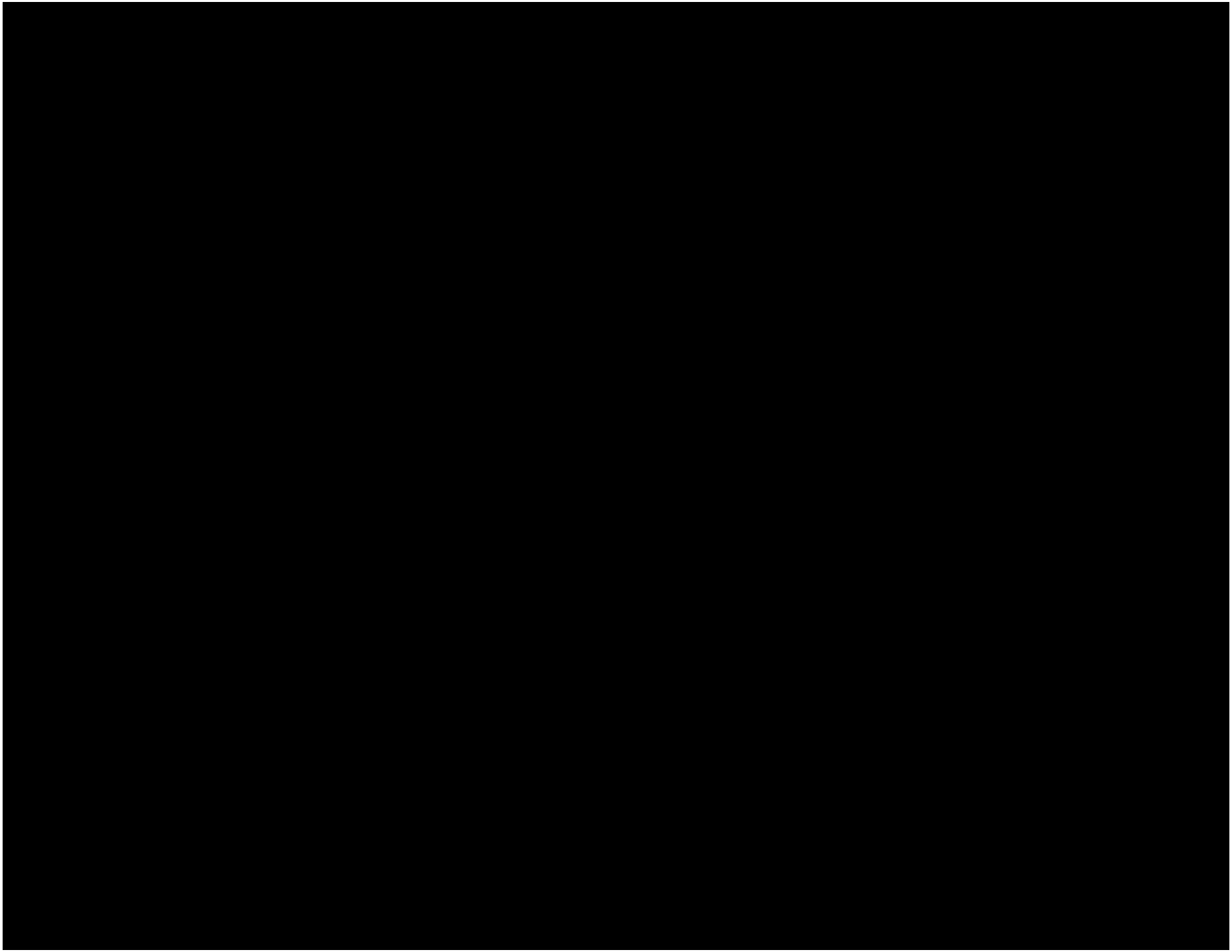


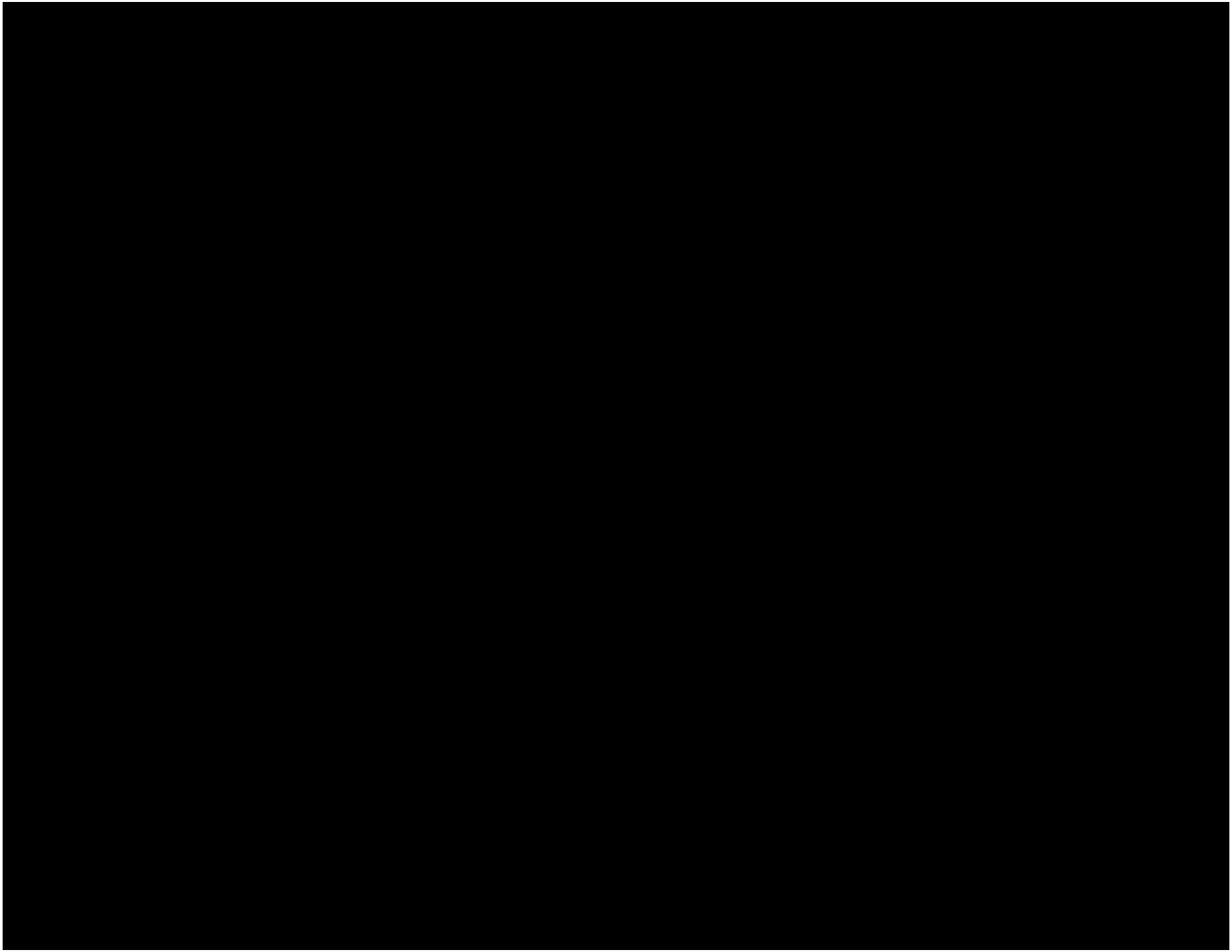


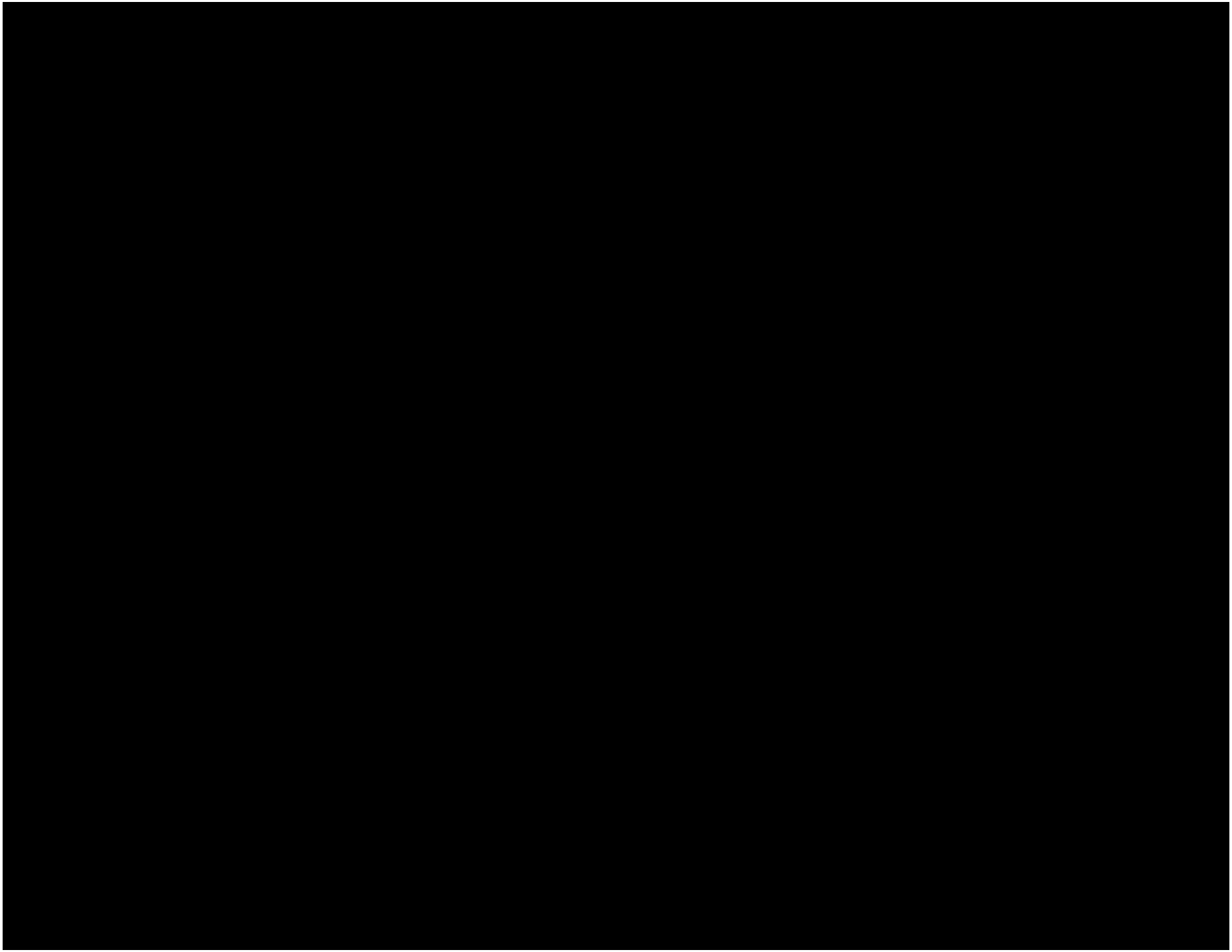


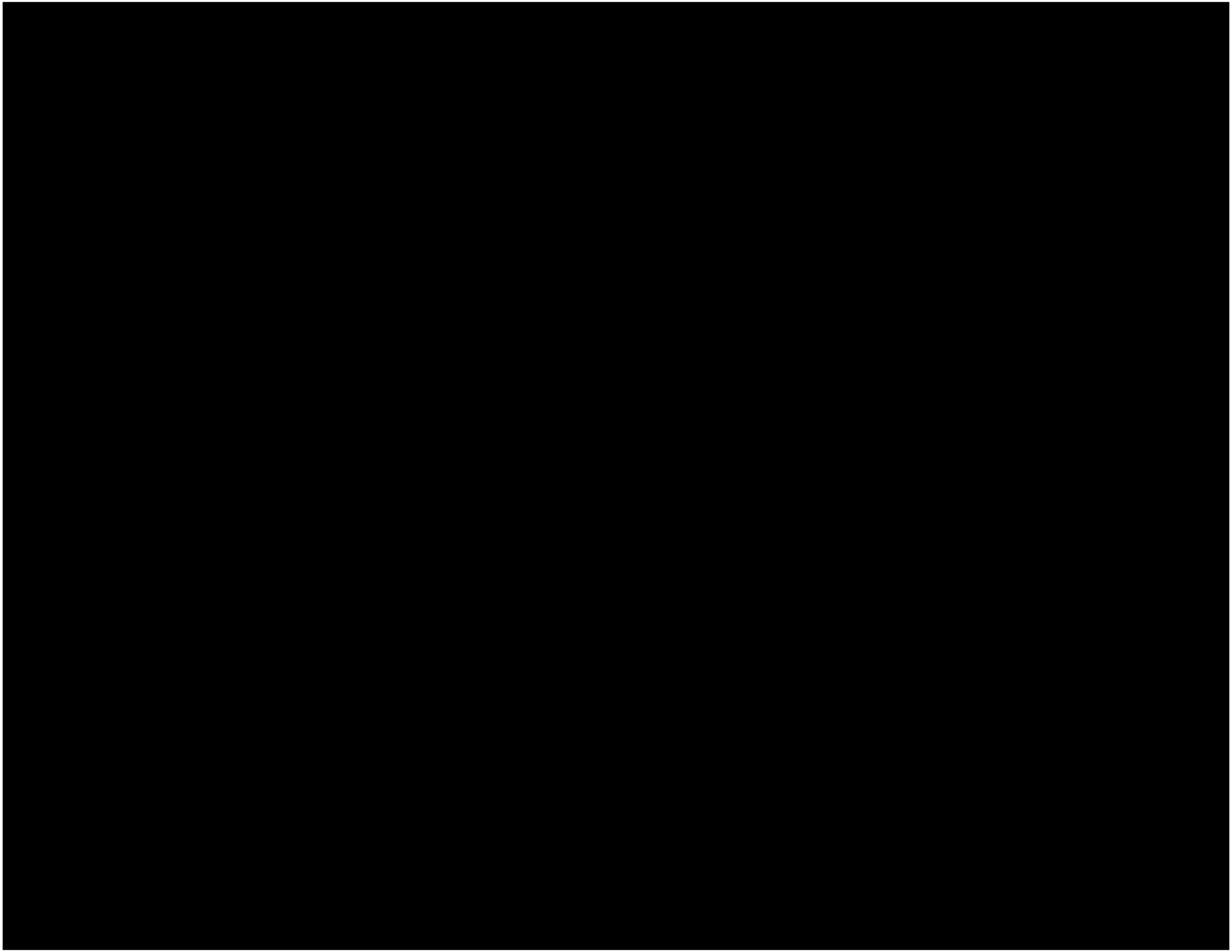


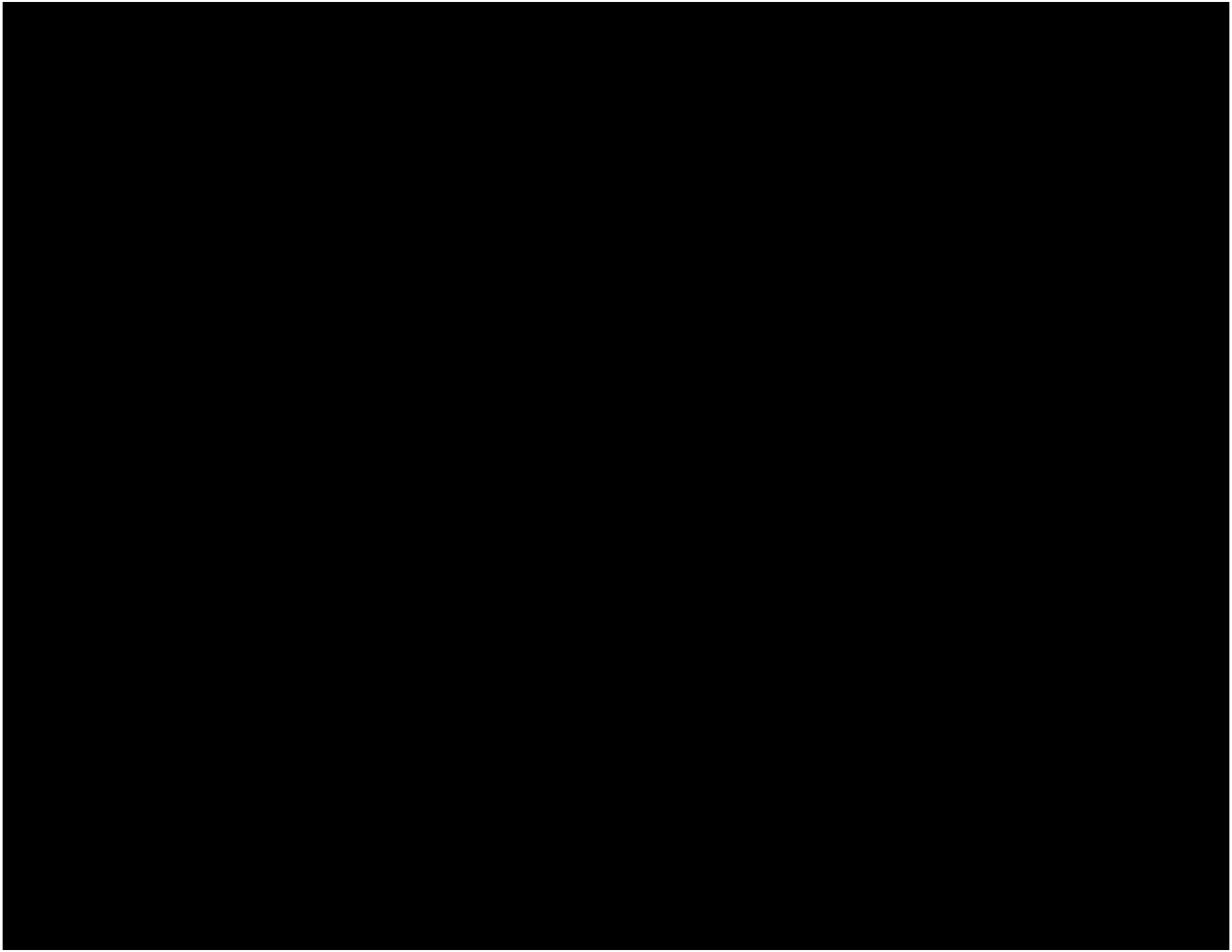


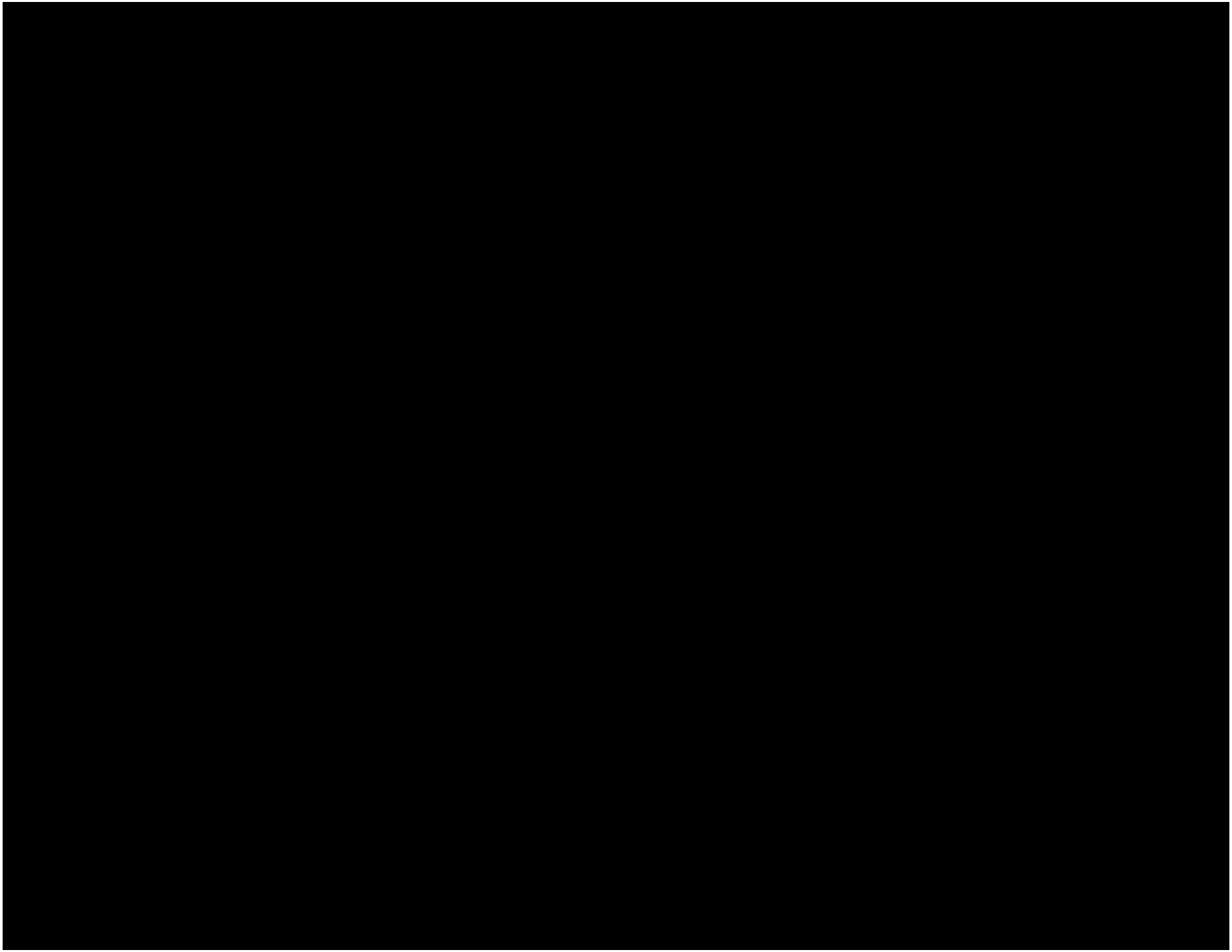


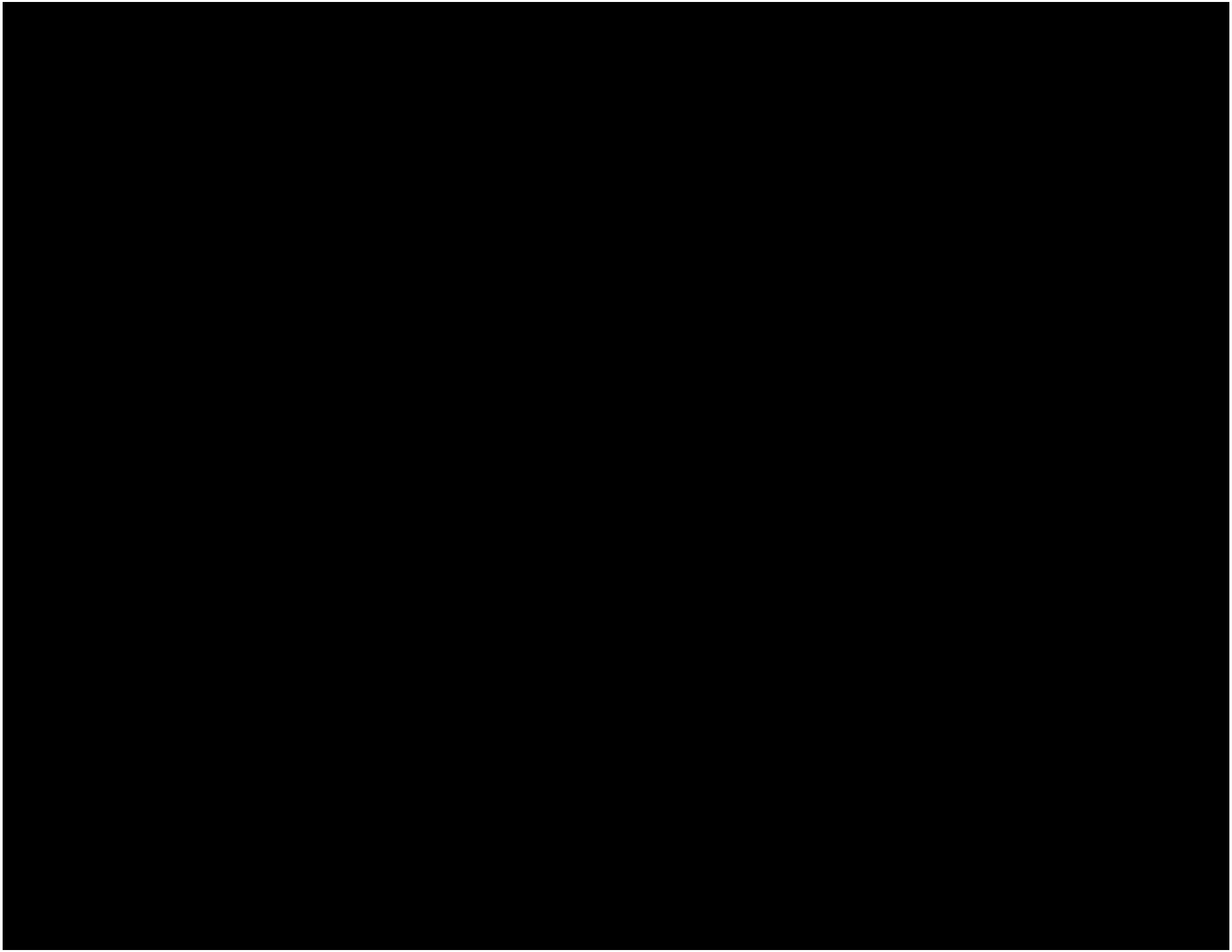


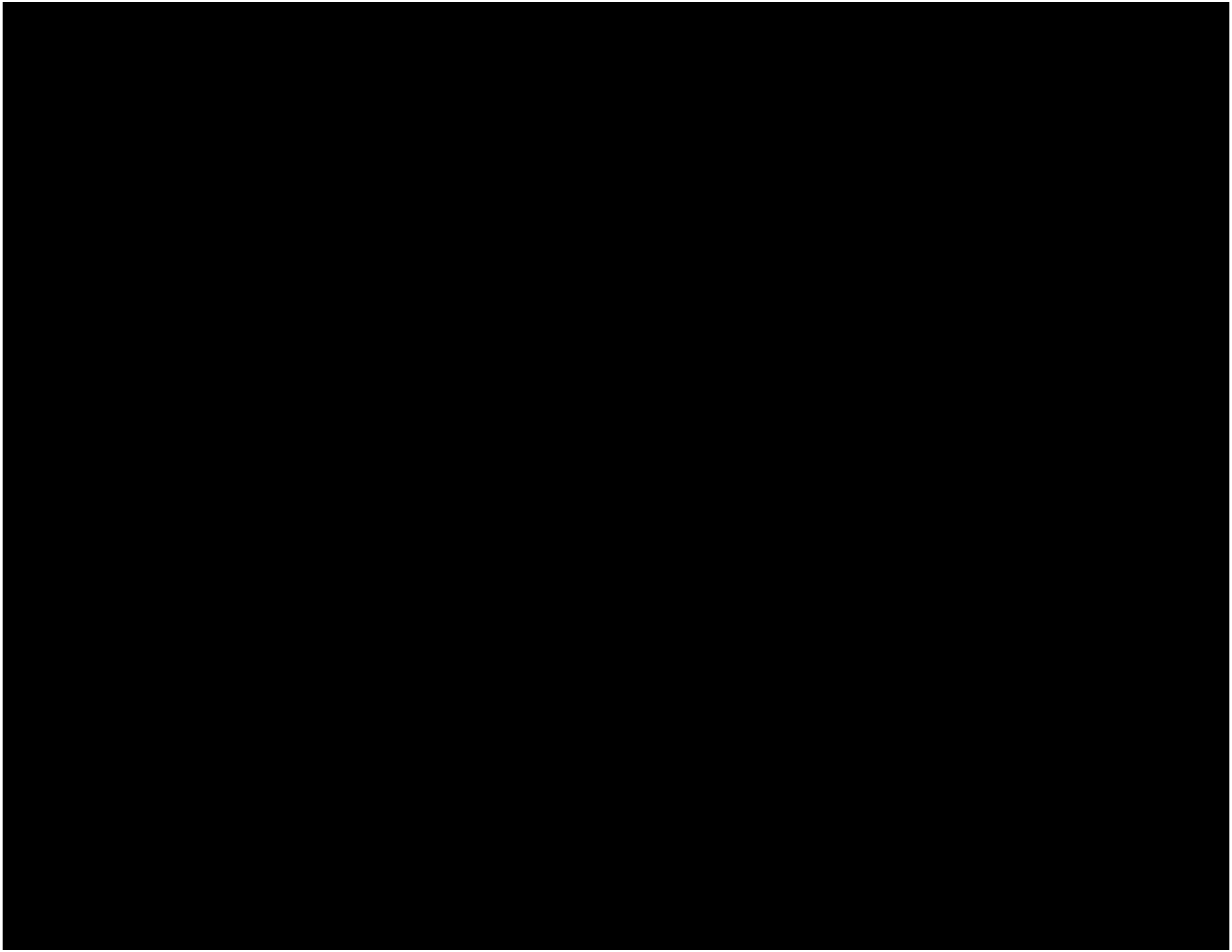


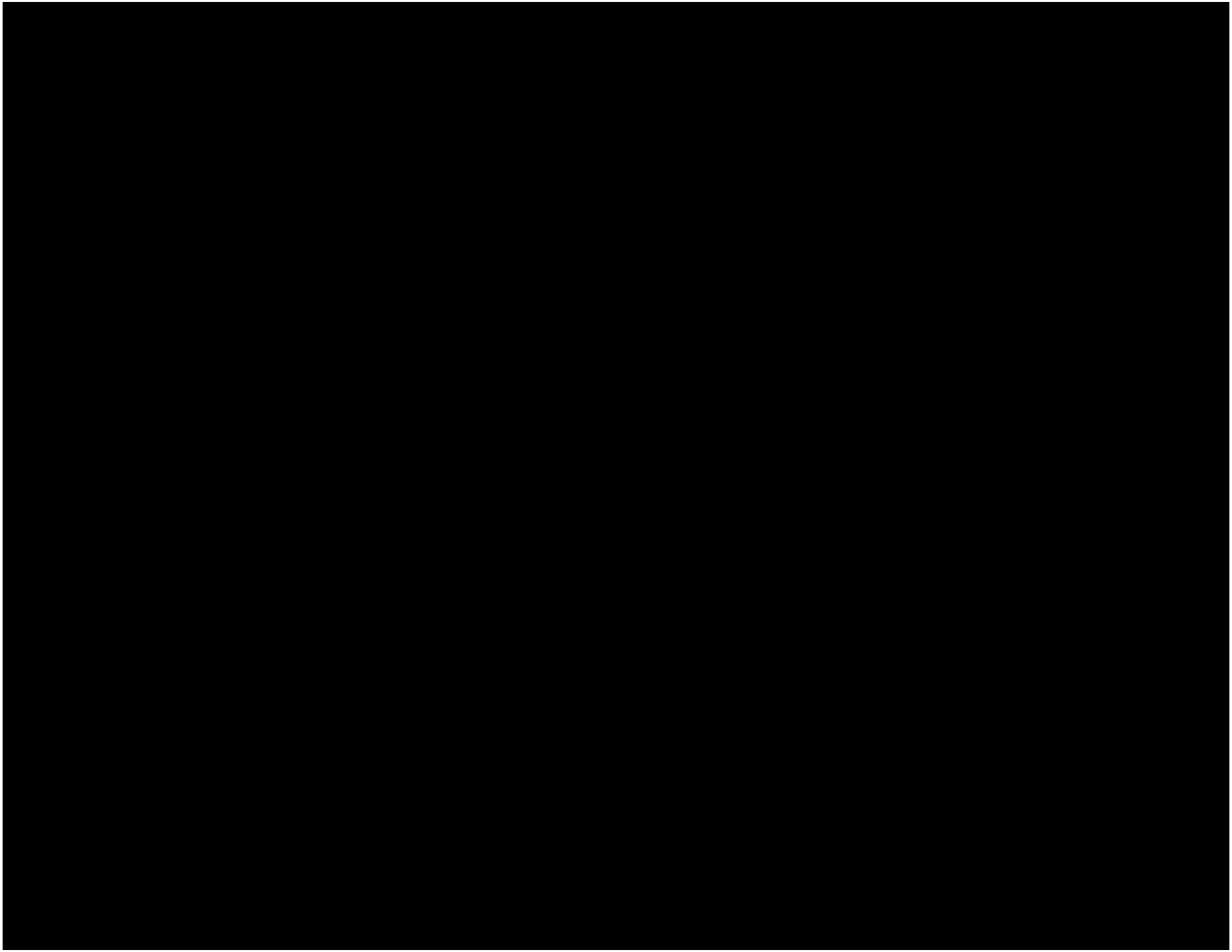


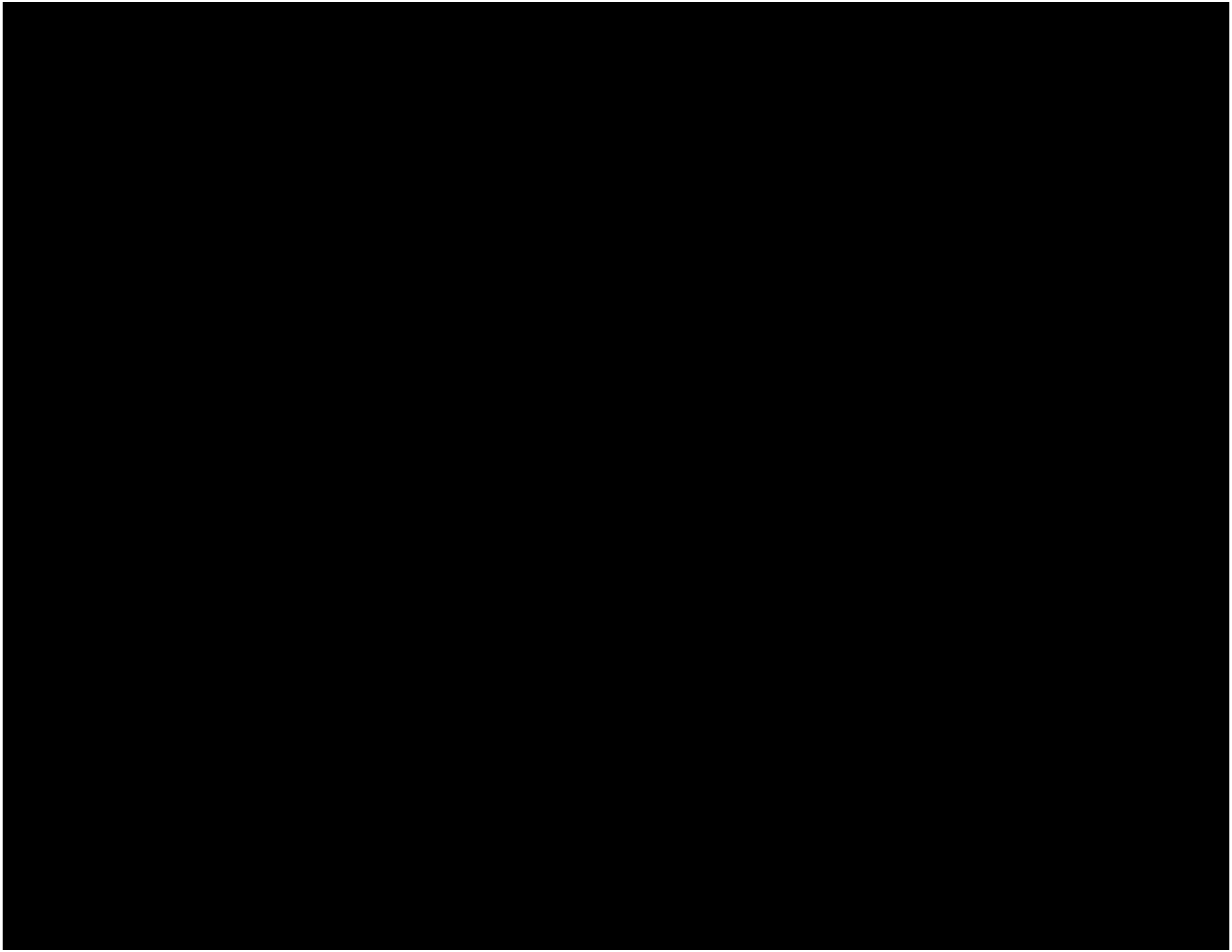


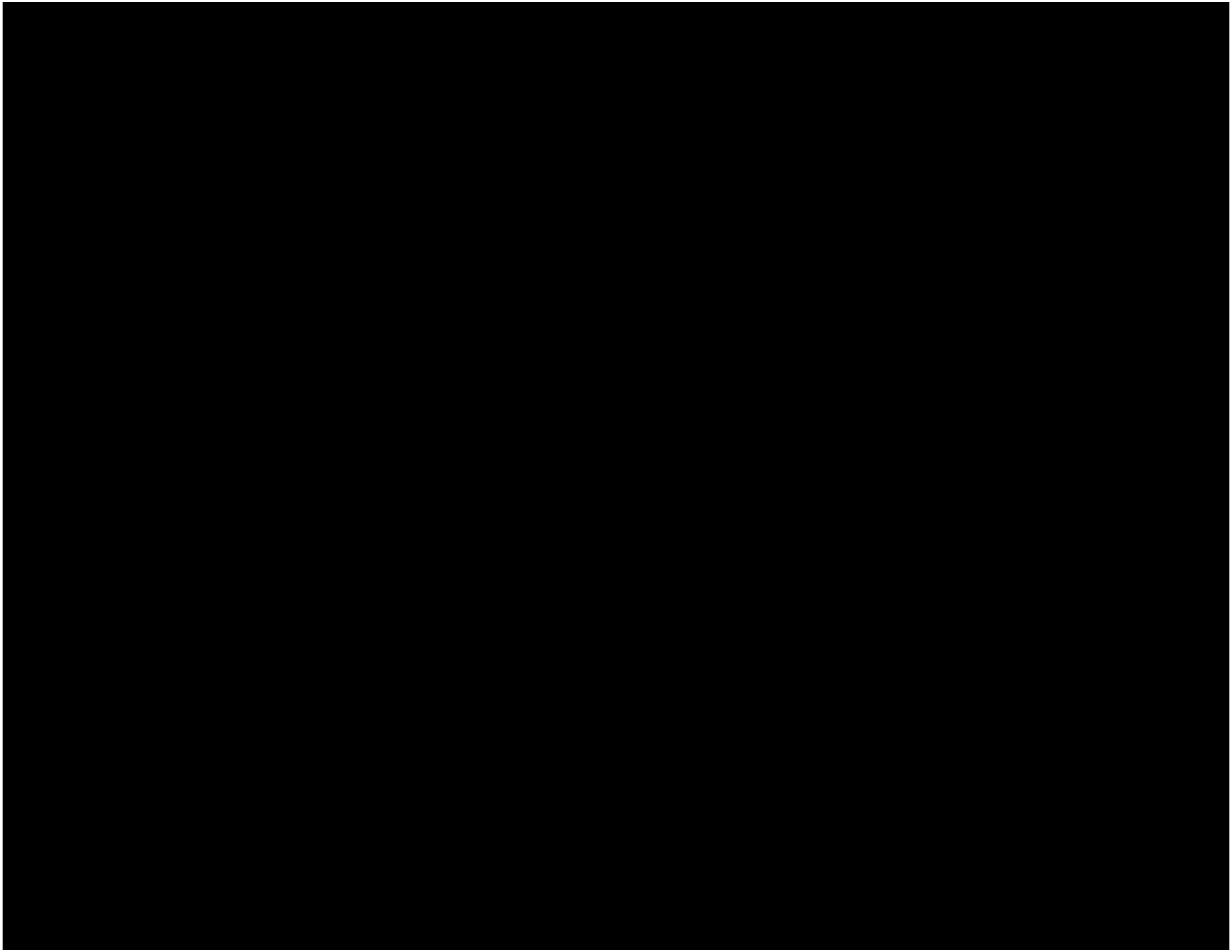


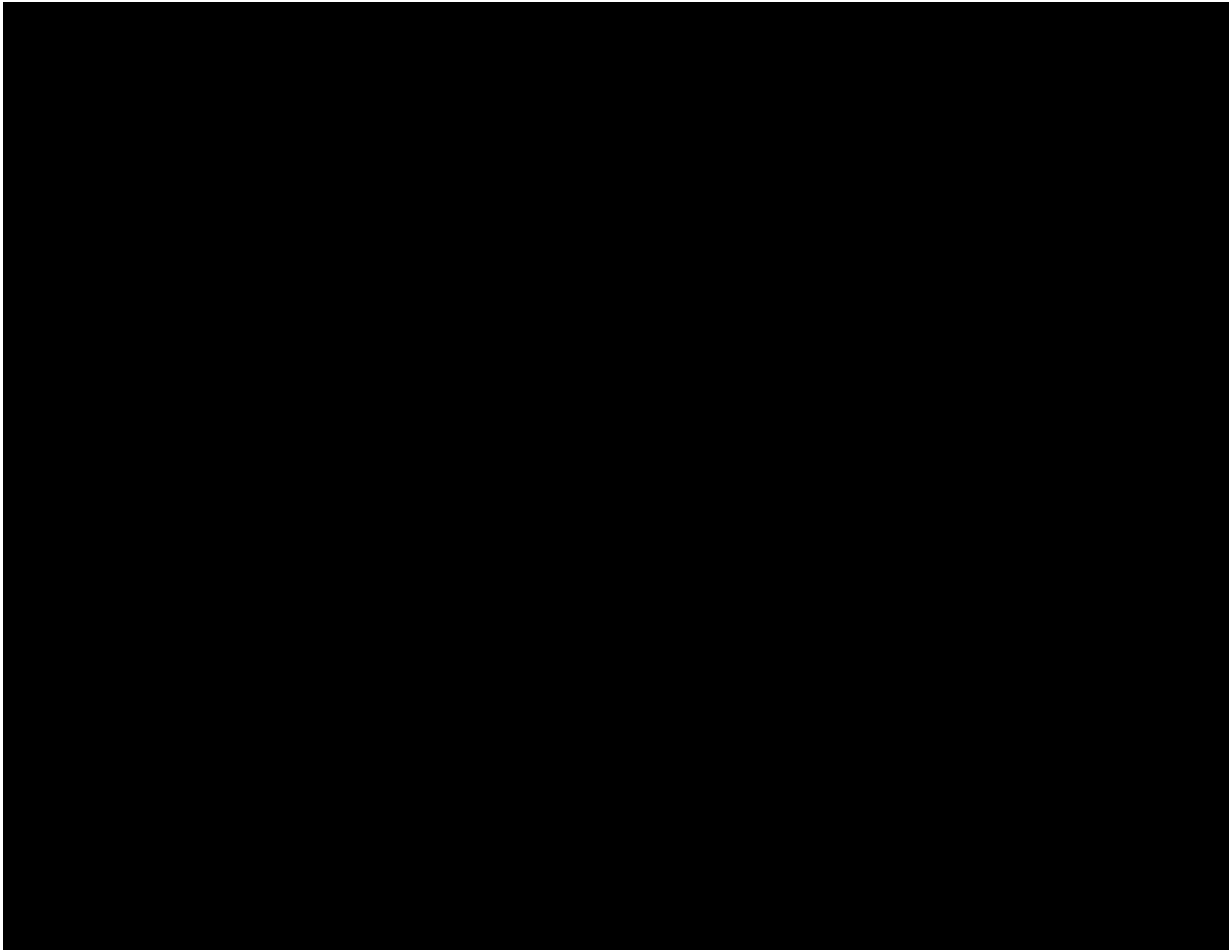


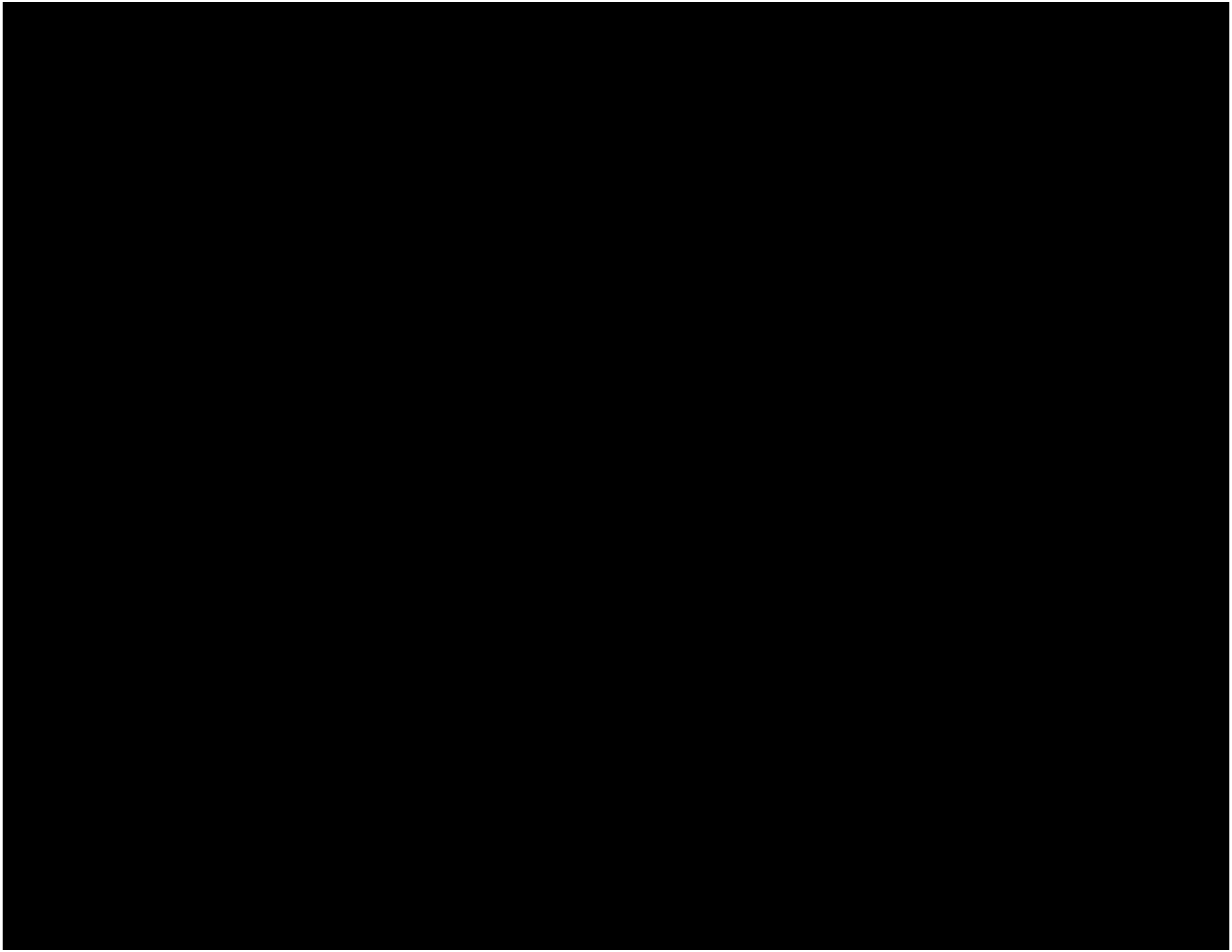


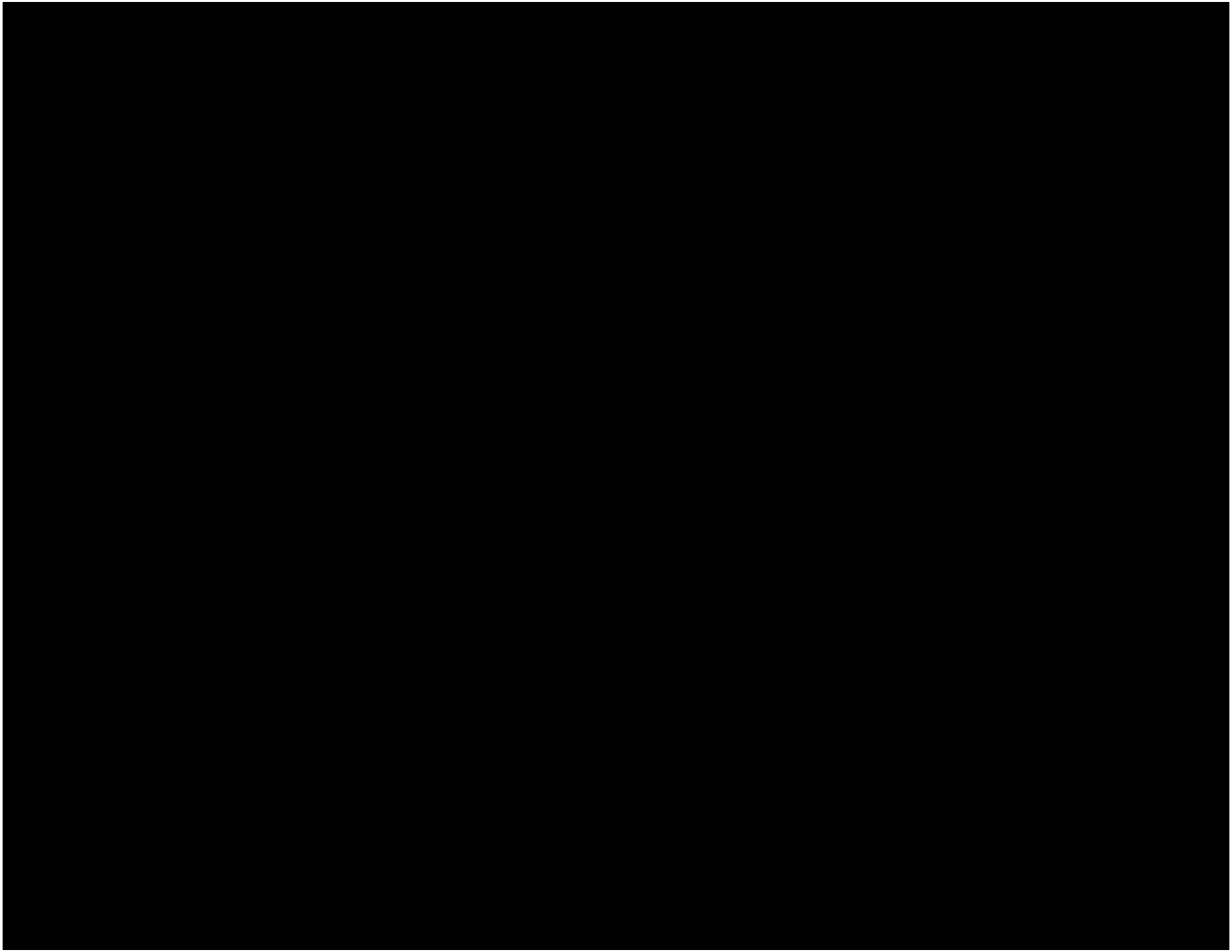












ARKANSAS CLAIMS COMMISSION

HALEY HUDSON, SPECIAL ADMINISTRATRIX OF THE ESTATE OF JACQUELINE LYNN ASHCRAFT, DECEASED, AND HALEY HUDSON AS PERMANENT LEGAL GUARDIAN OF [redacted]A MINOR CHILD — CLAIMANT

VS. CC NO. 230641

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Further Affiant sayeth not

_____
Jennifer Wilkerson

**ACKNOWLEDGMENT**

STATE OF ARKANSAS )
)
COUNTY OF _____ )

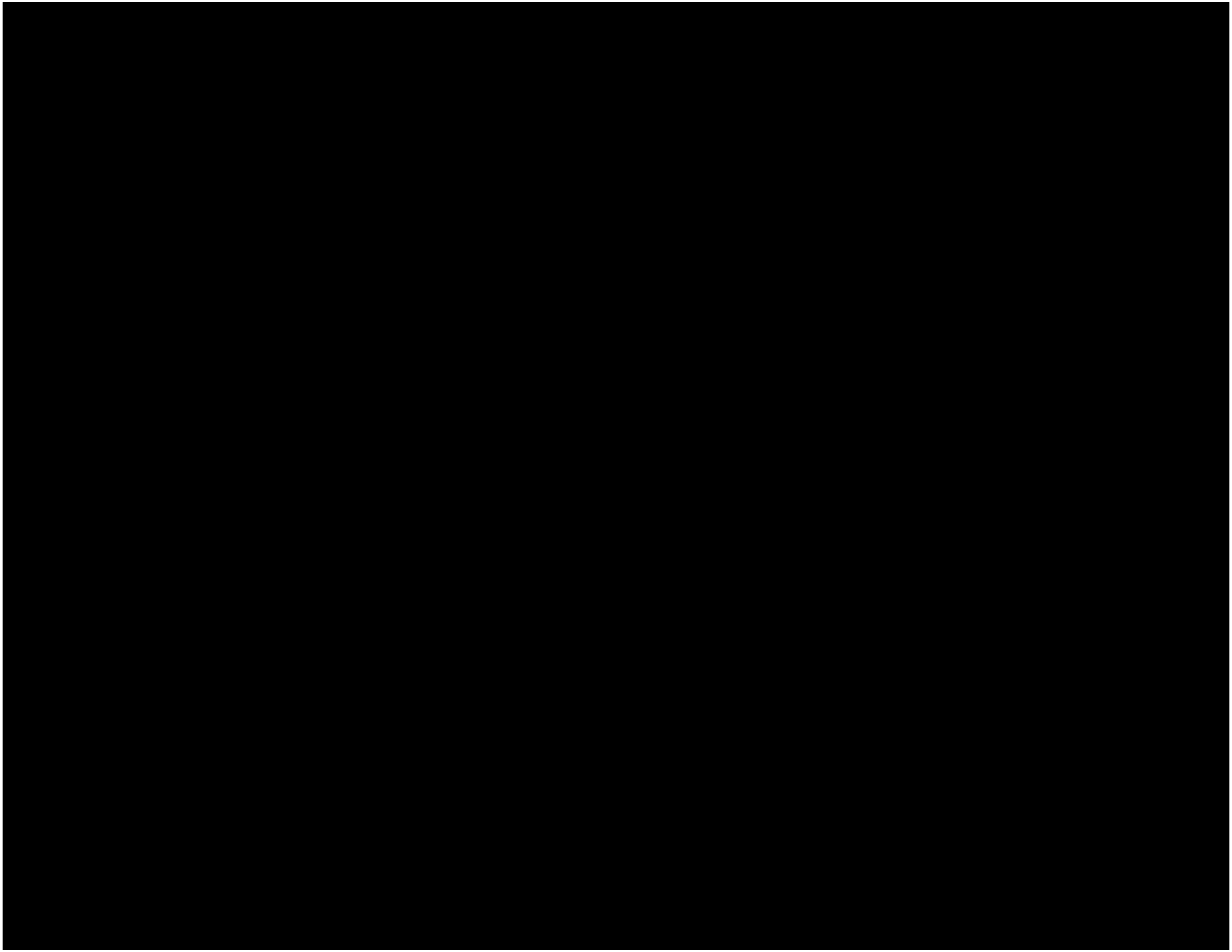
SUBSCRIBED AND SWORN to before me, a Notary Public, on this ___ day of _____, 2023.

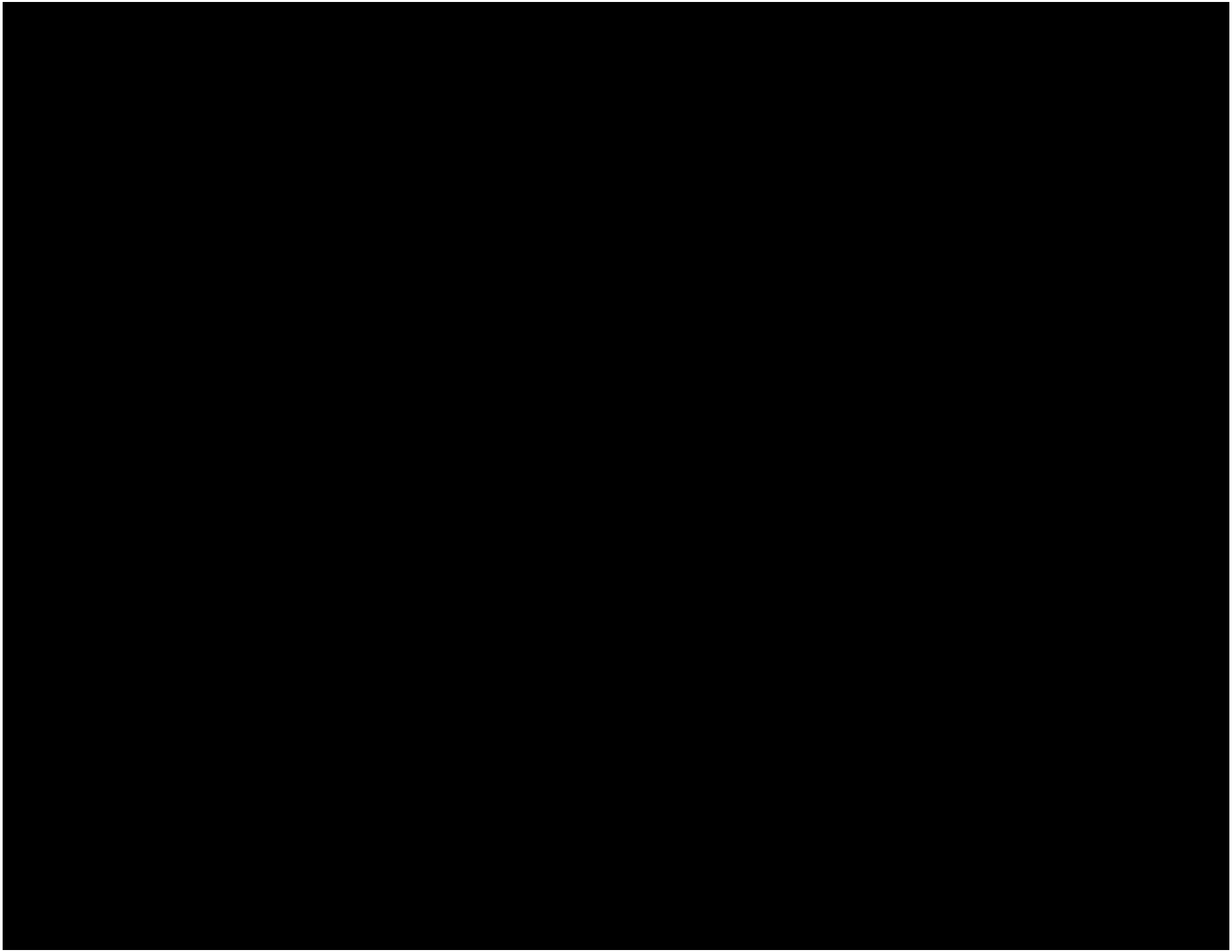
_____
NOTARY PUBLIC

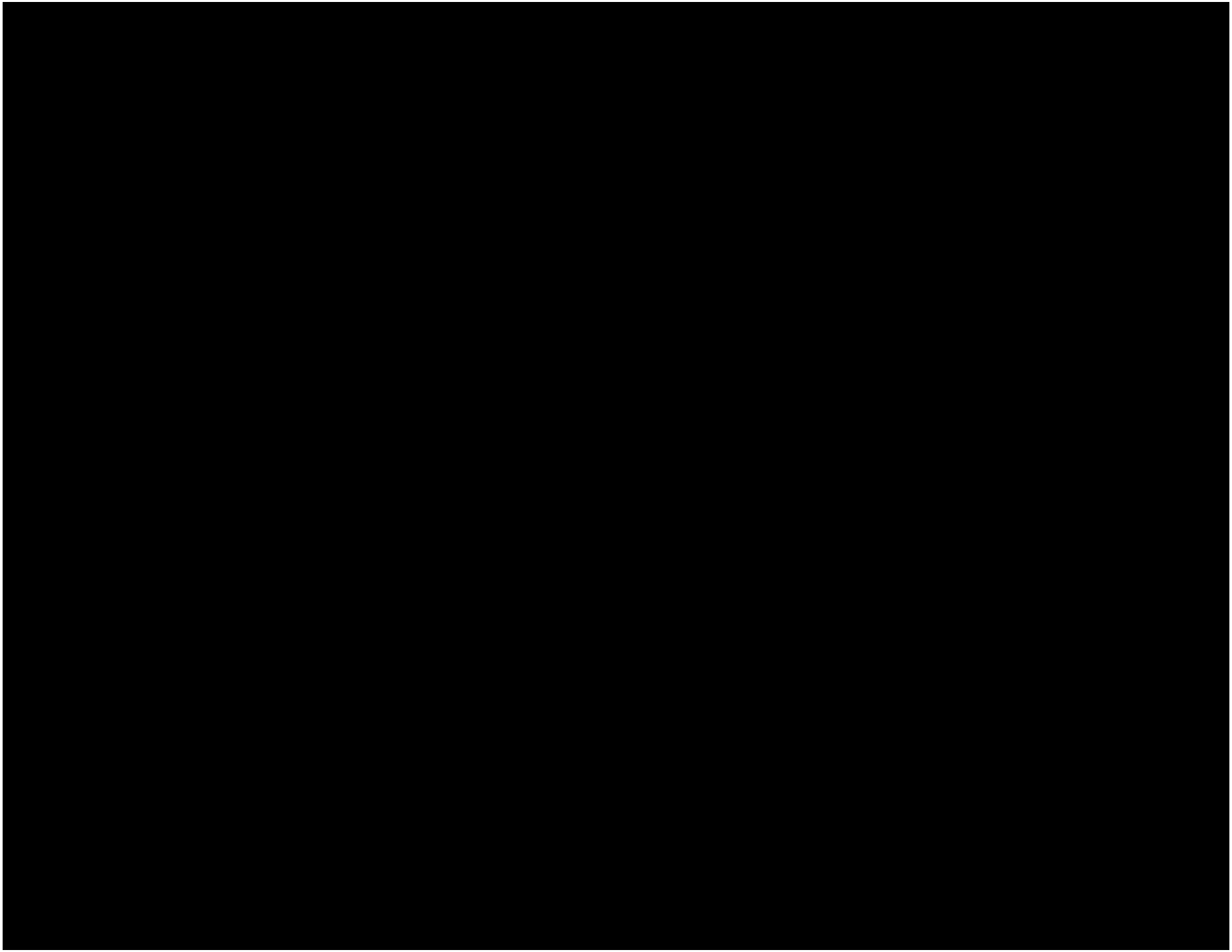
My Commission Expires:

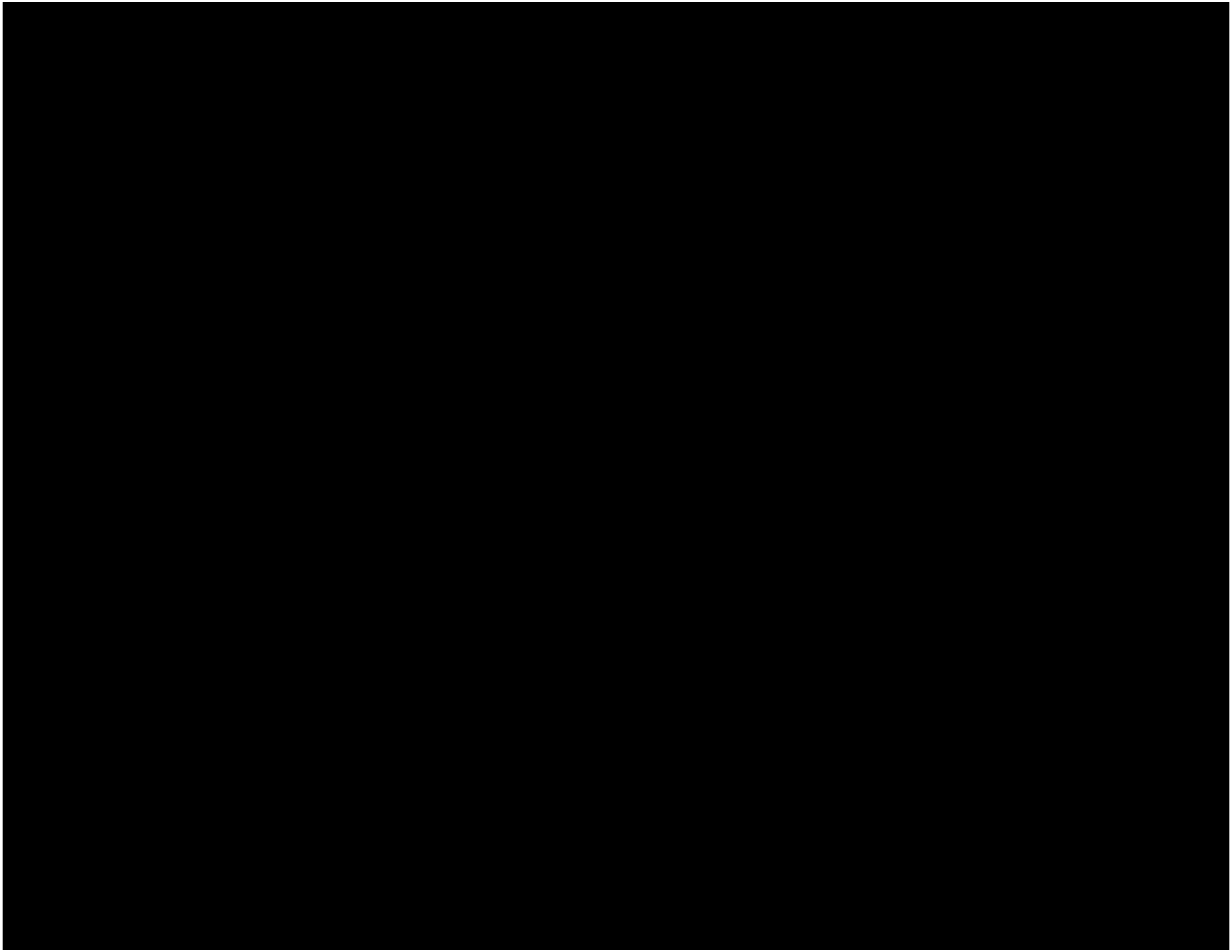
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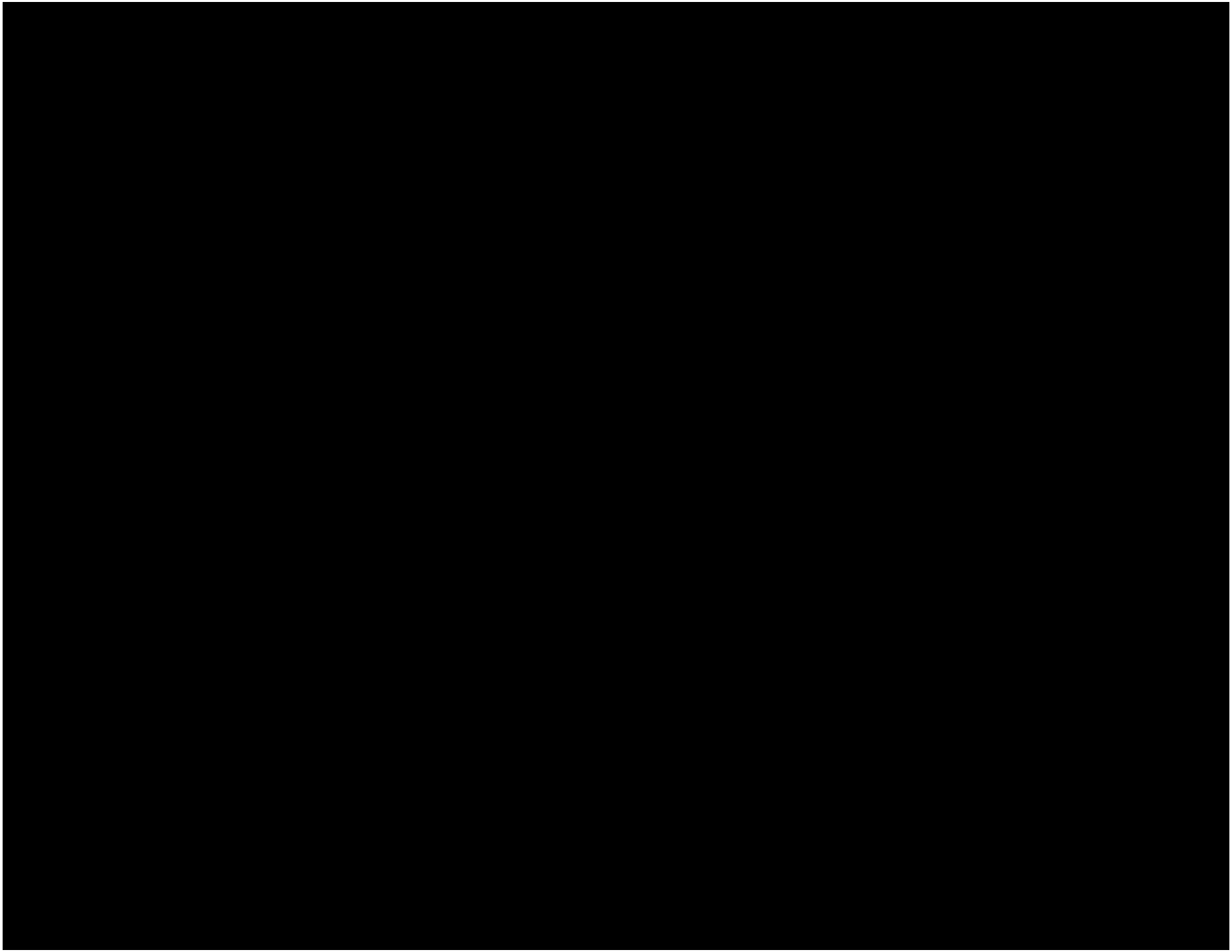
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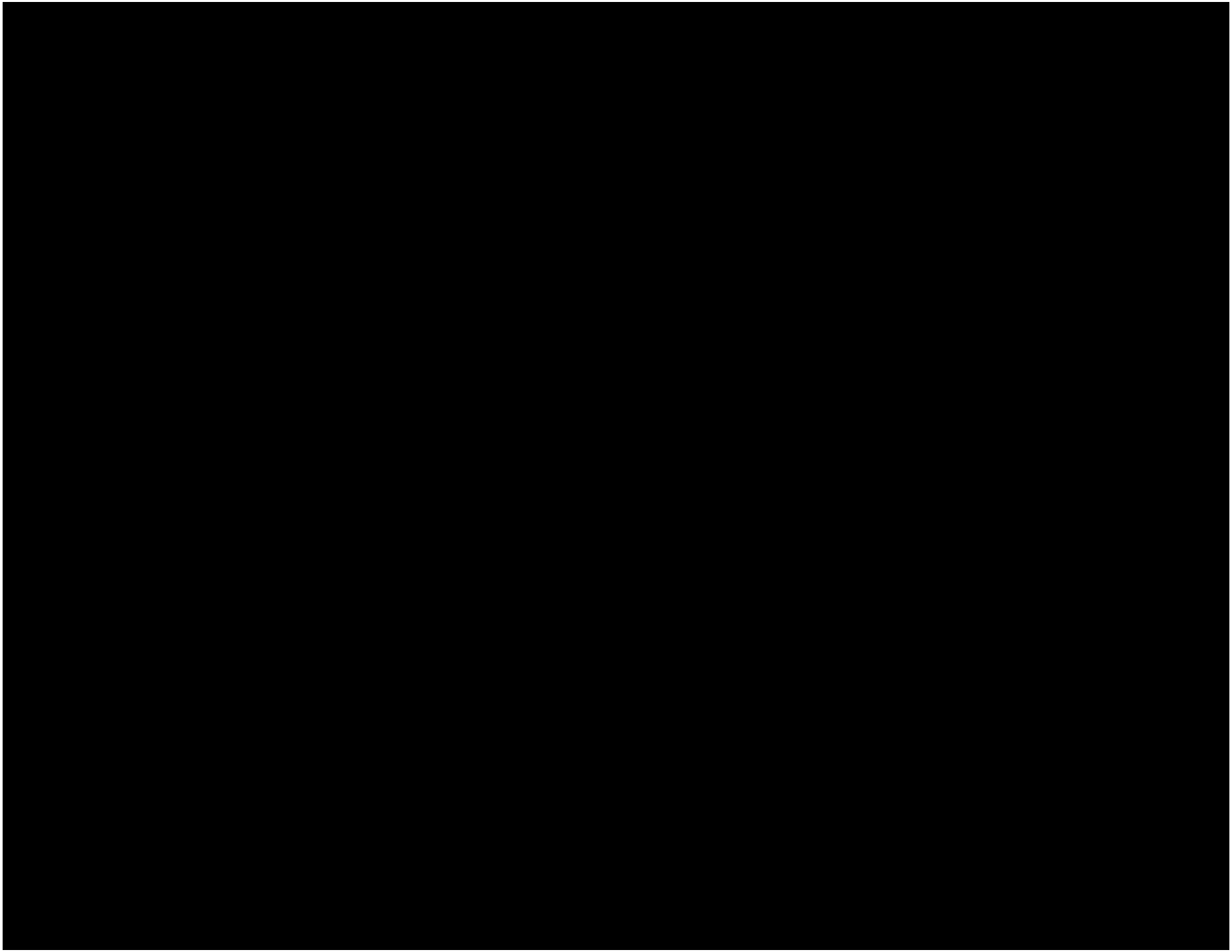


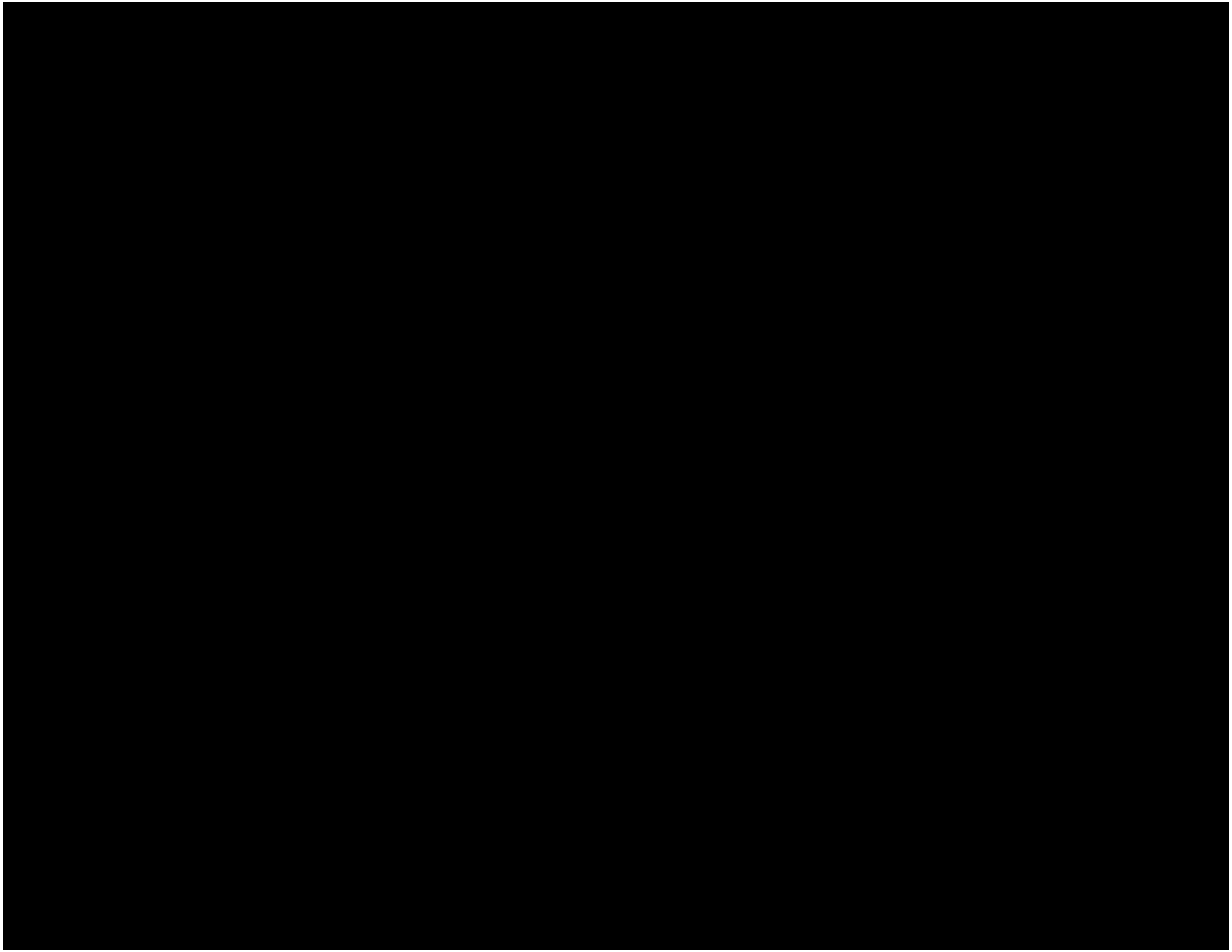


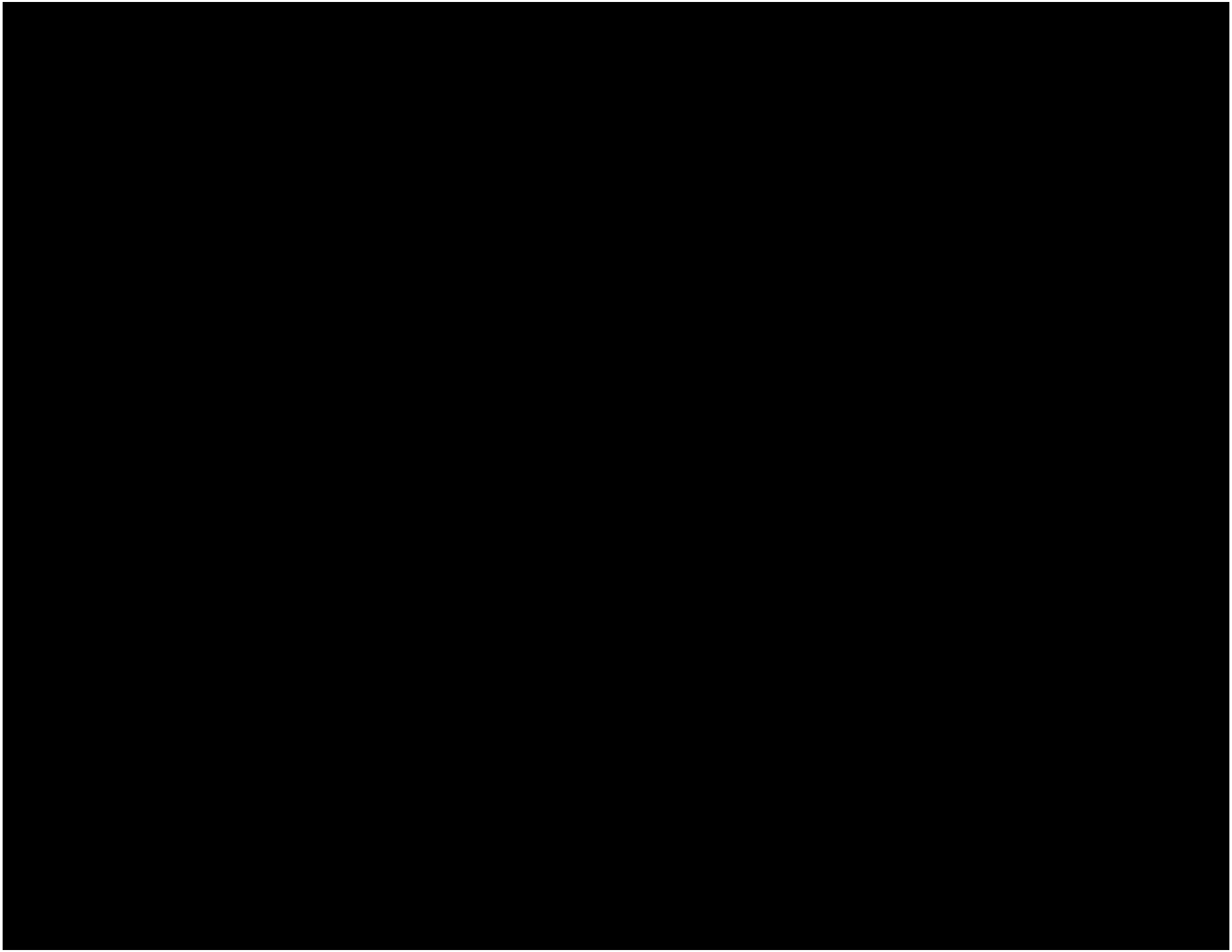


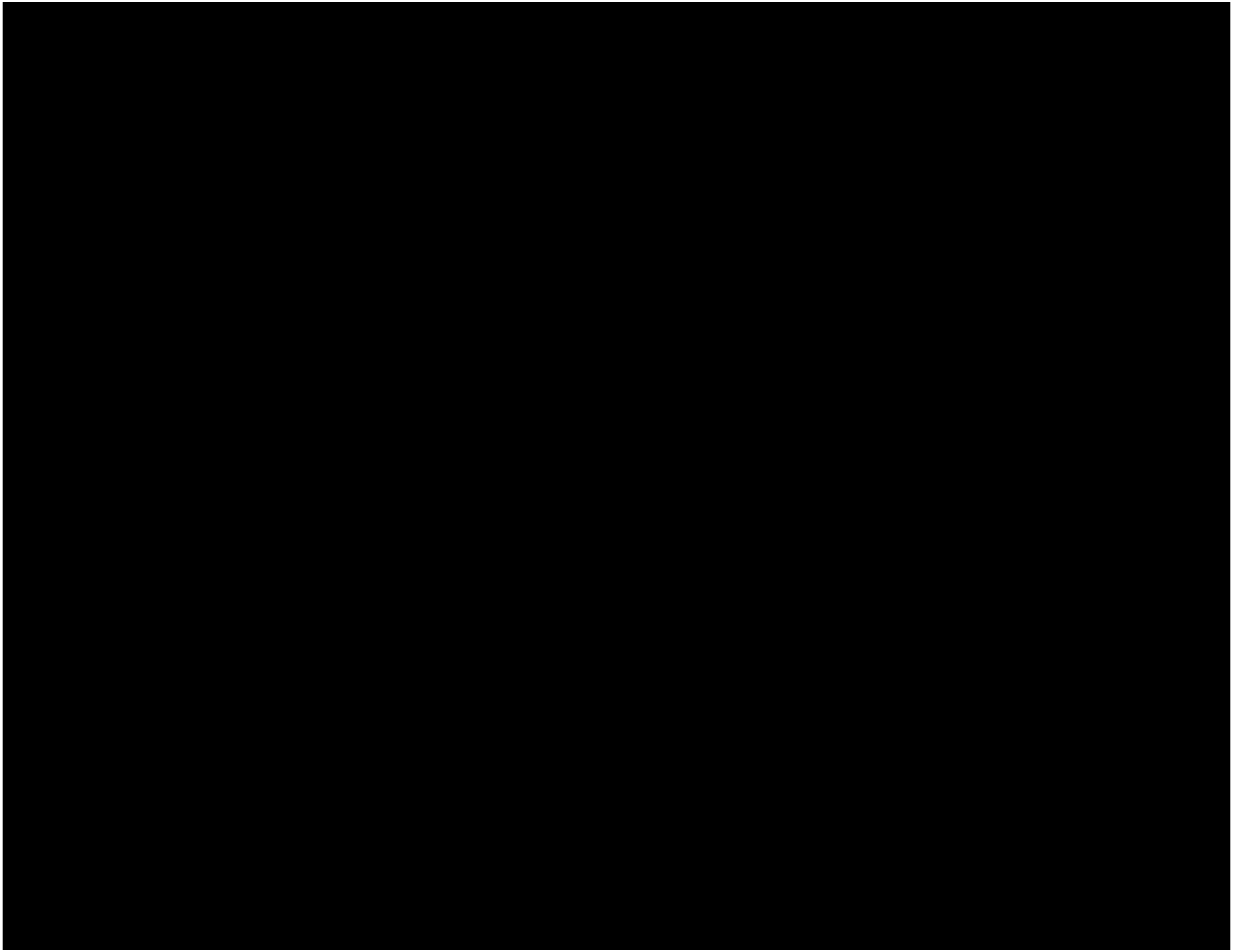


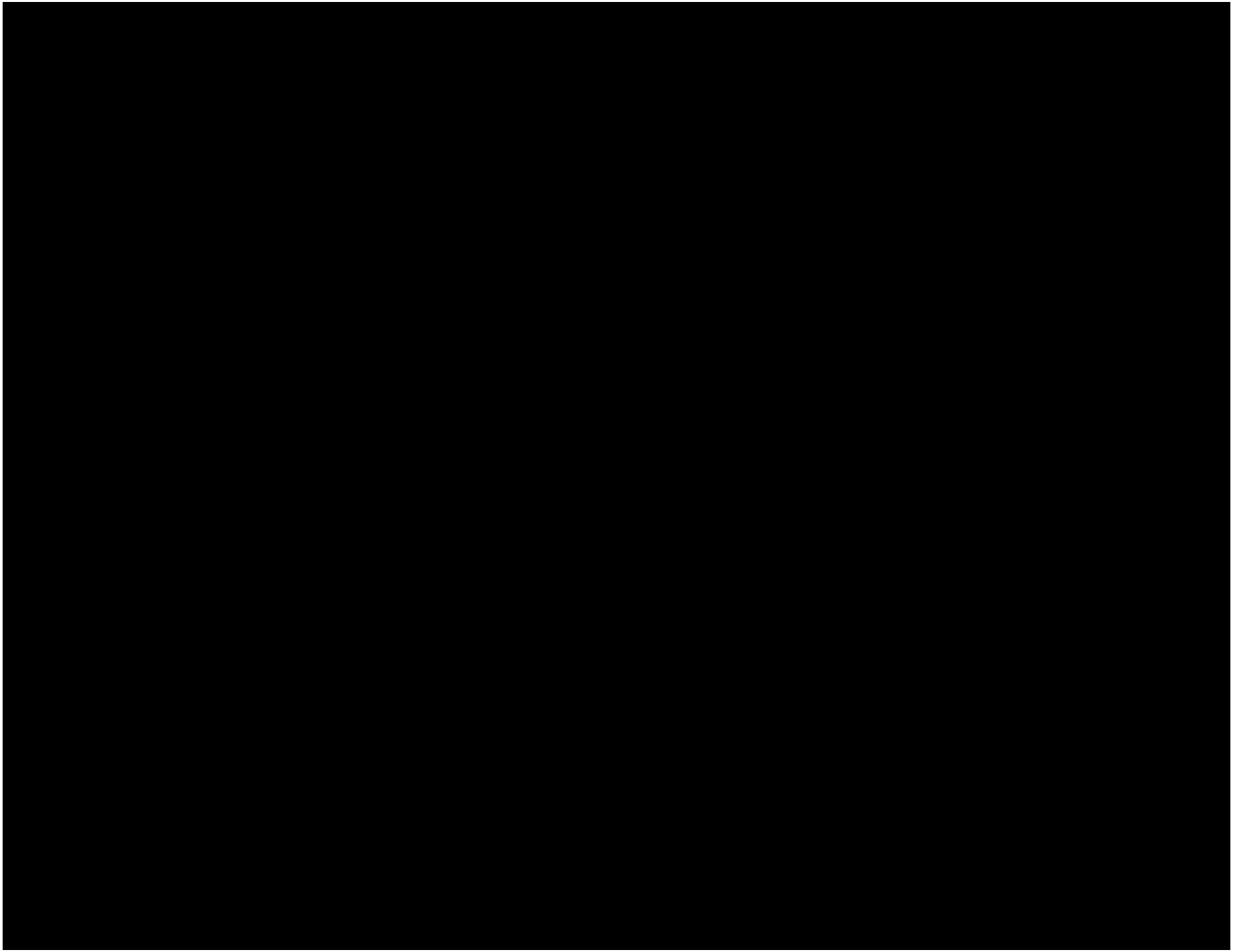


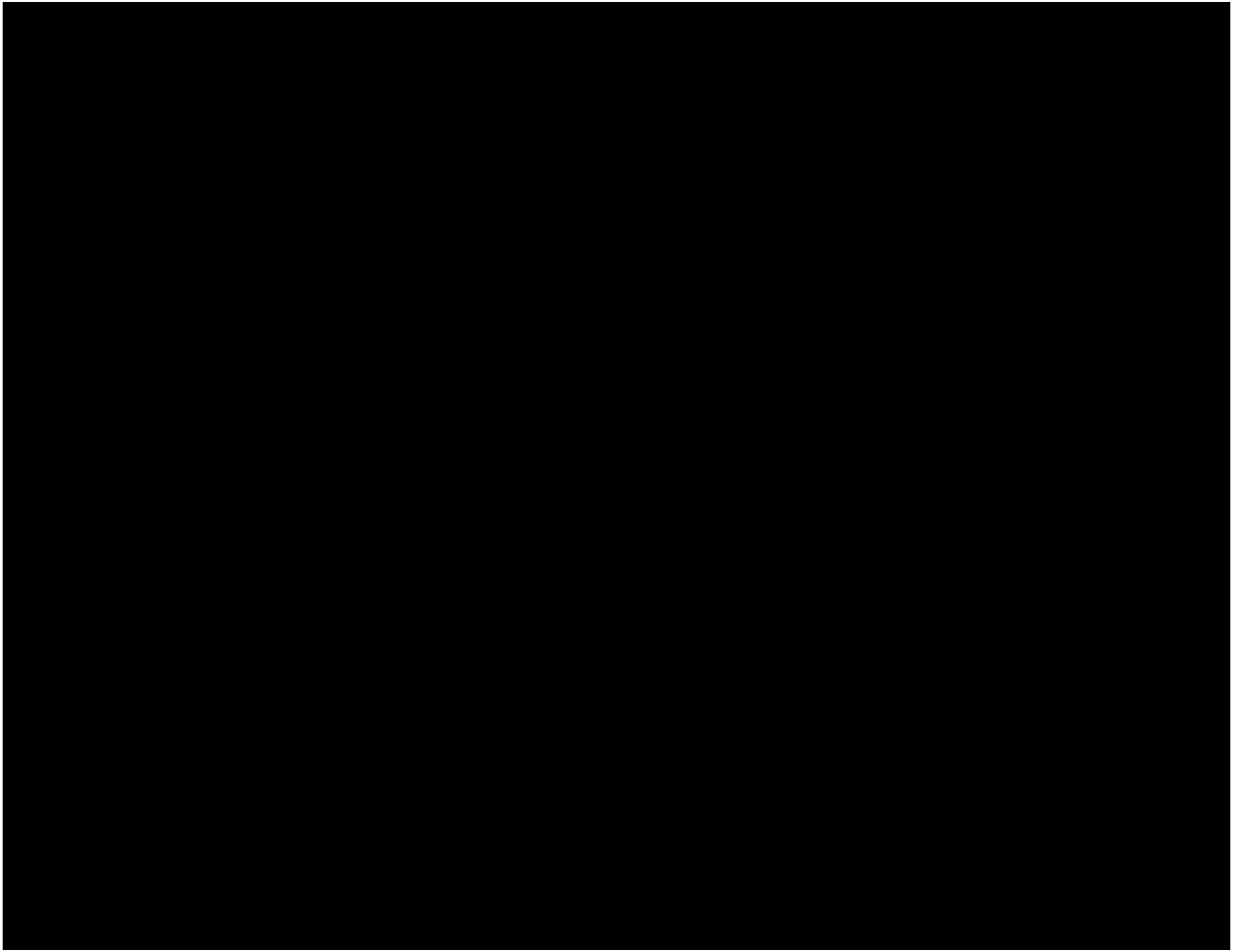


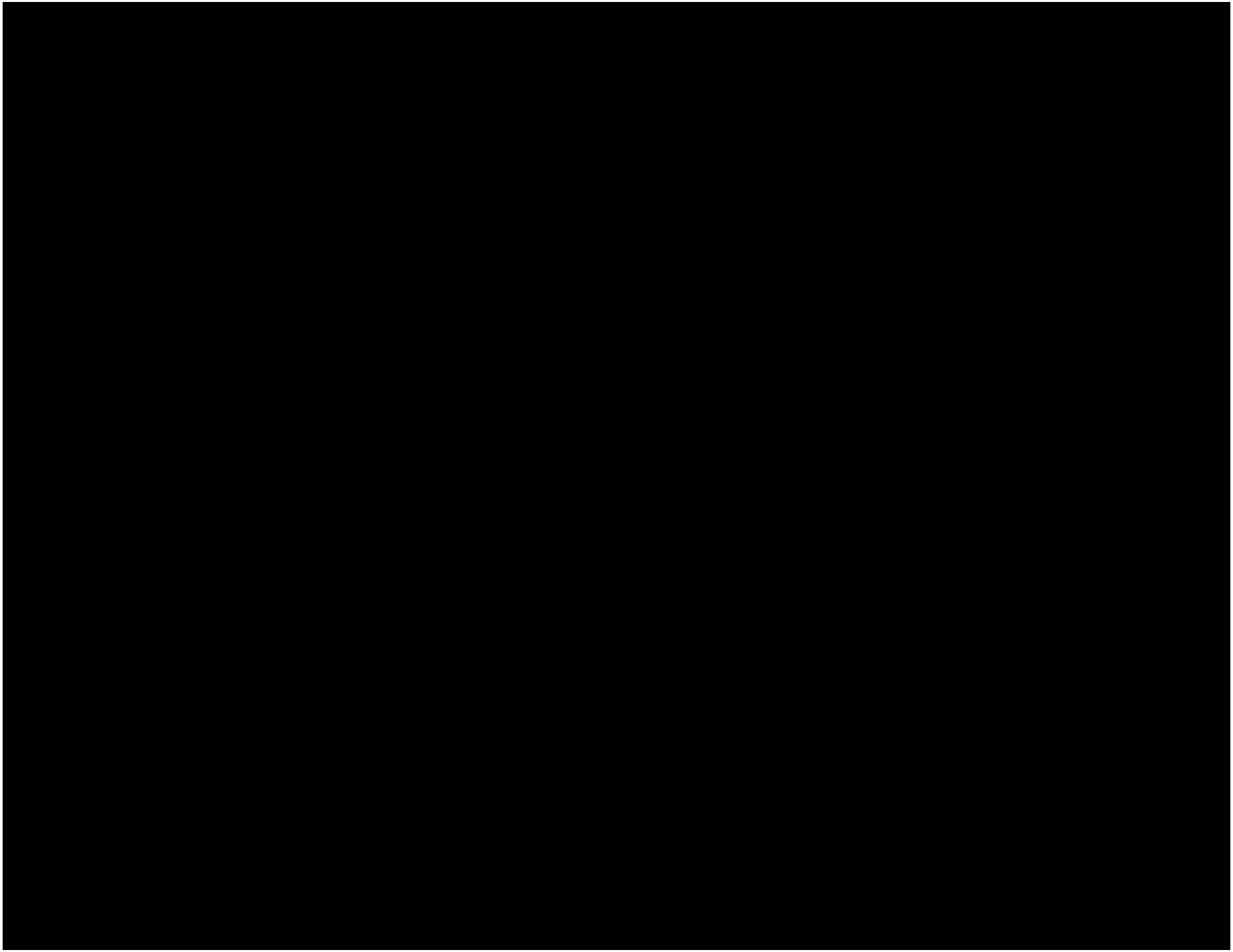


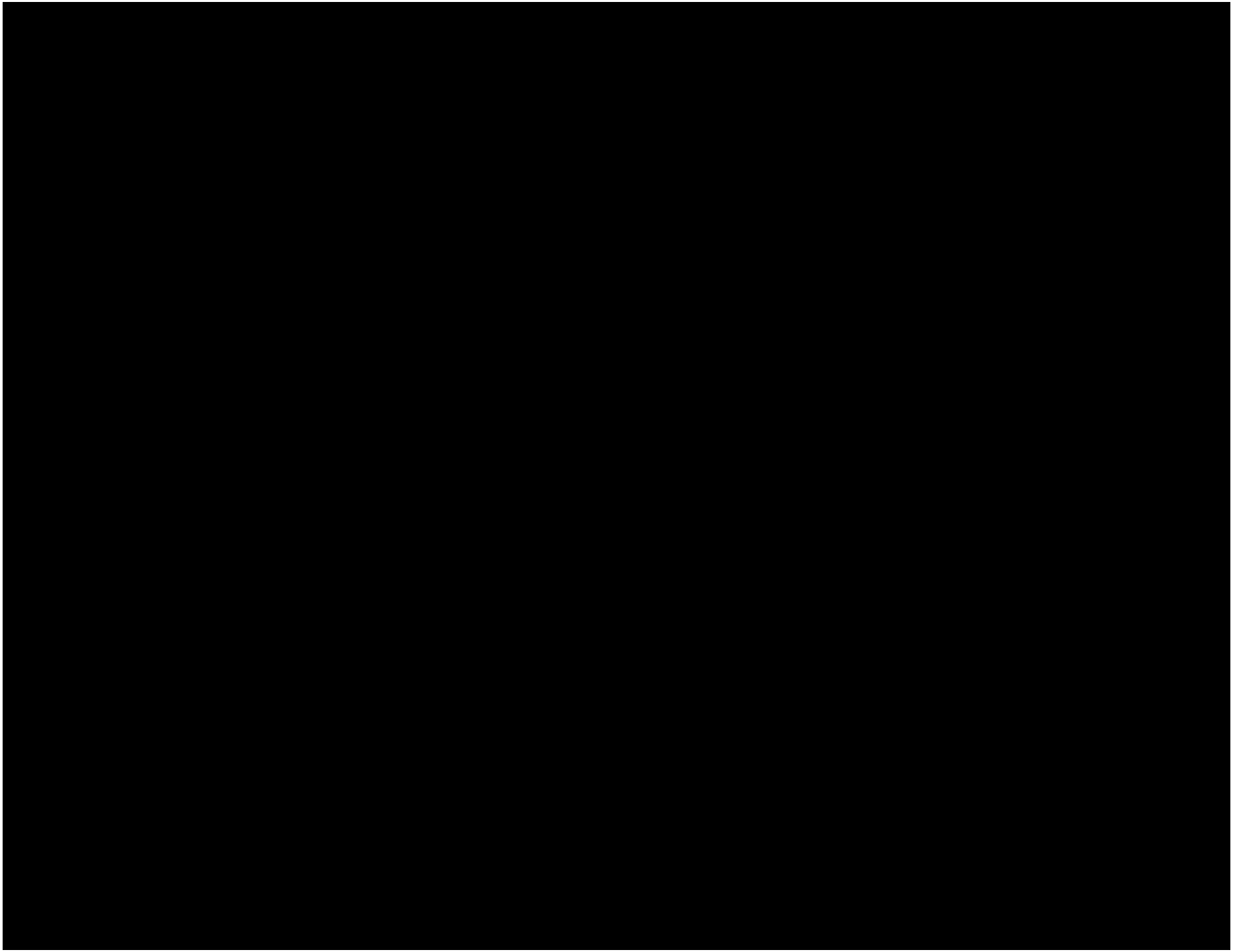


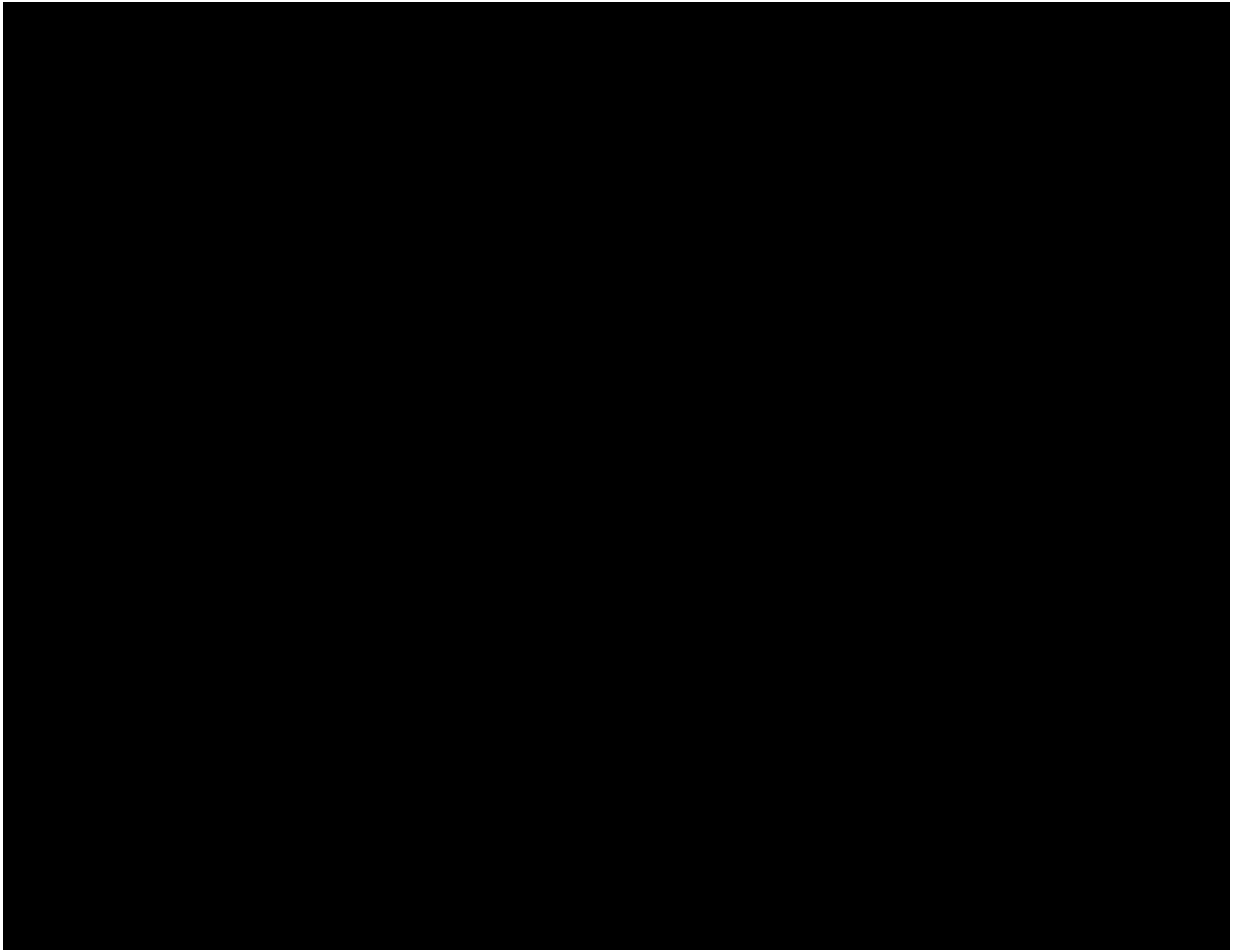


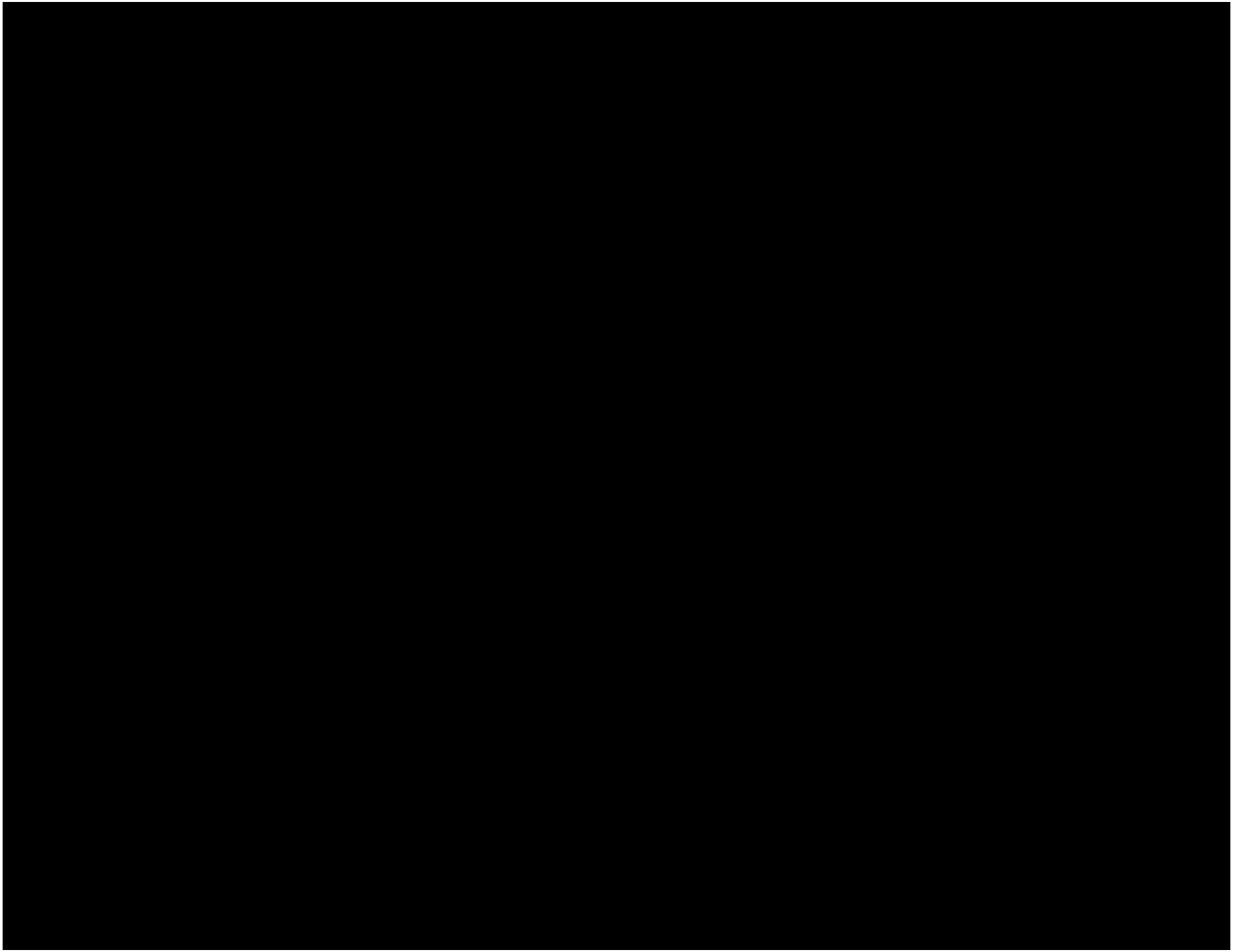


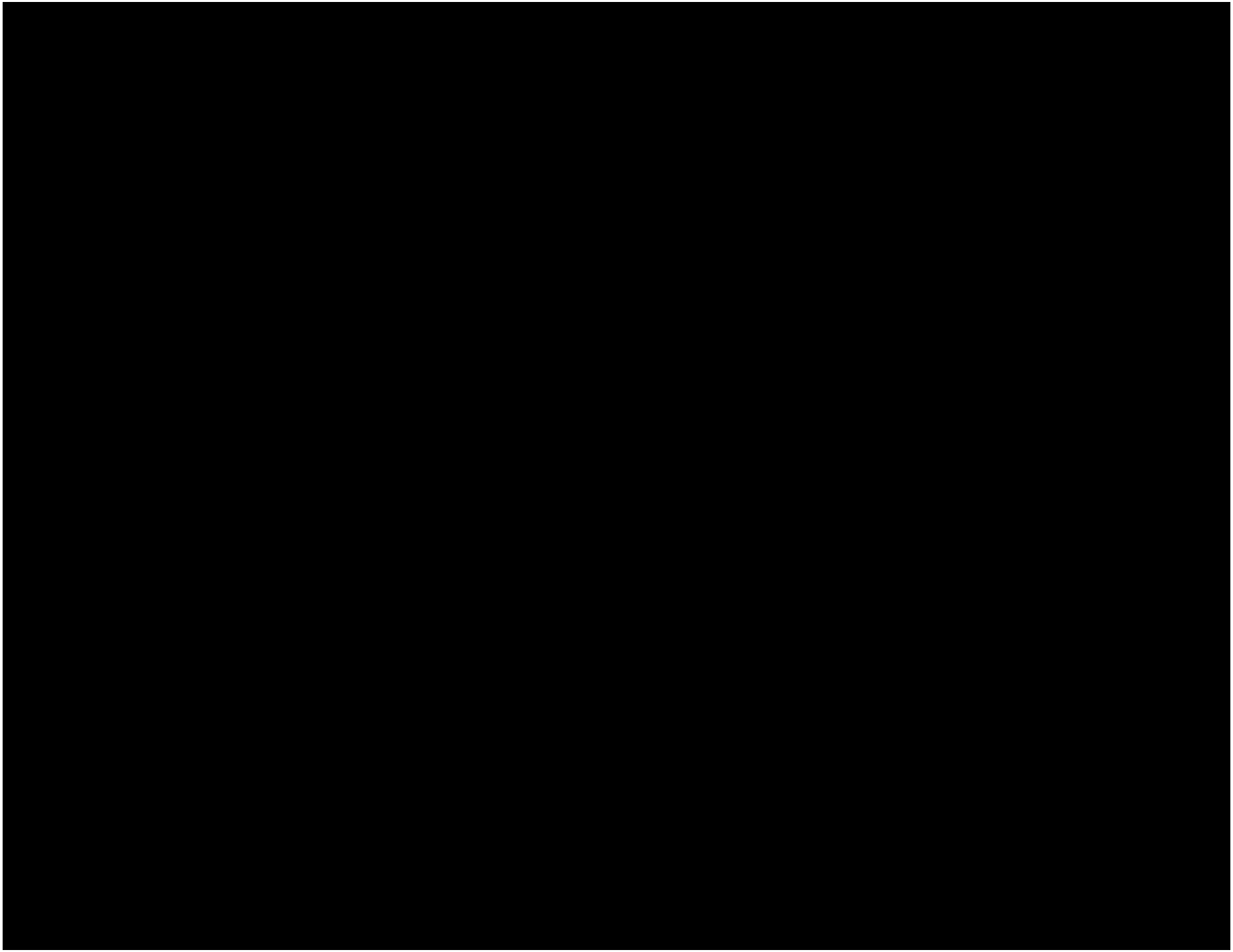


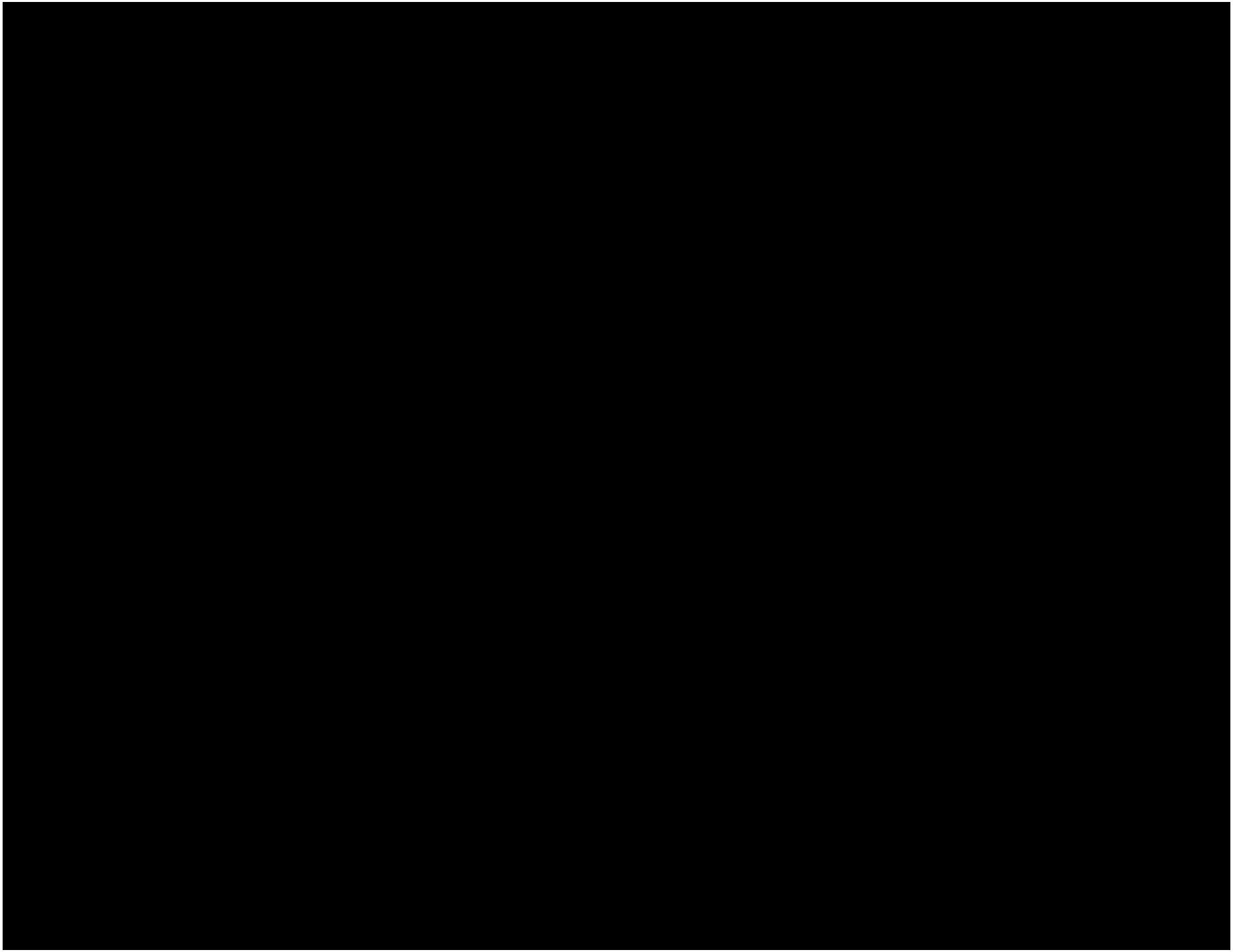


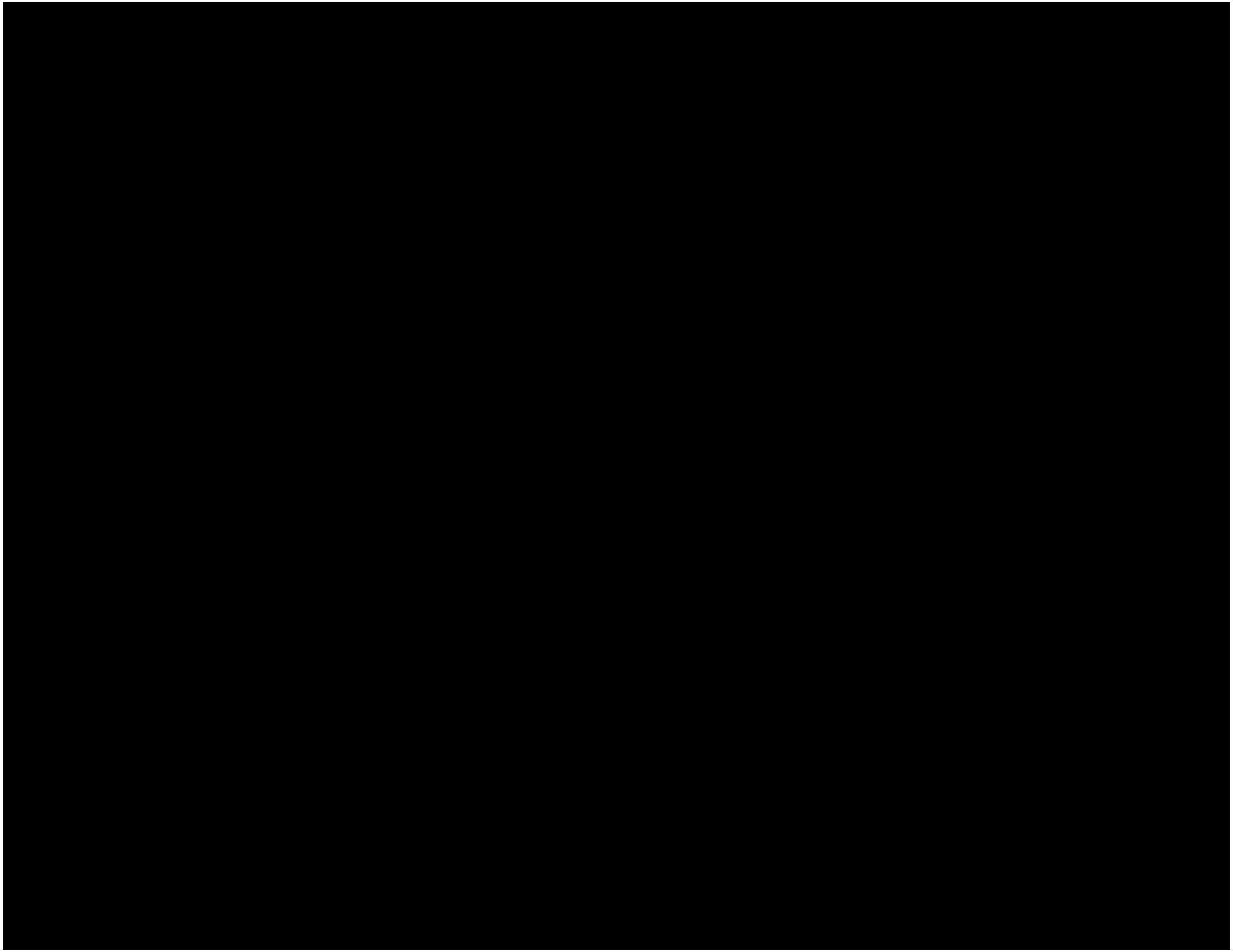


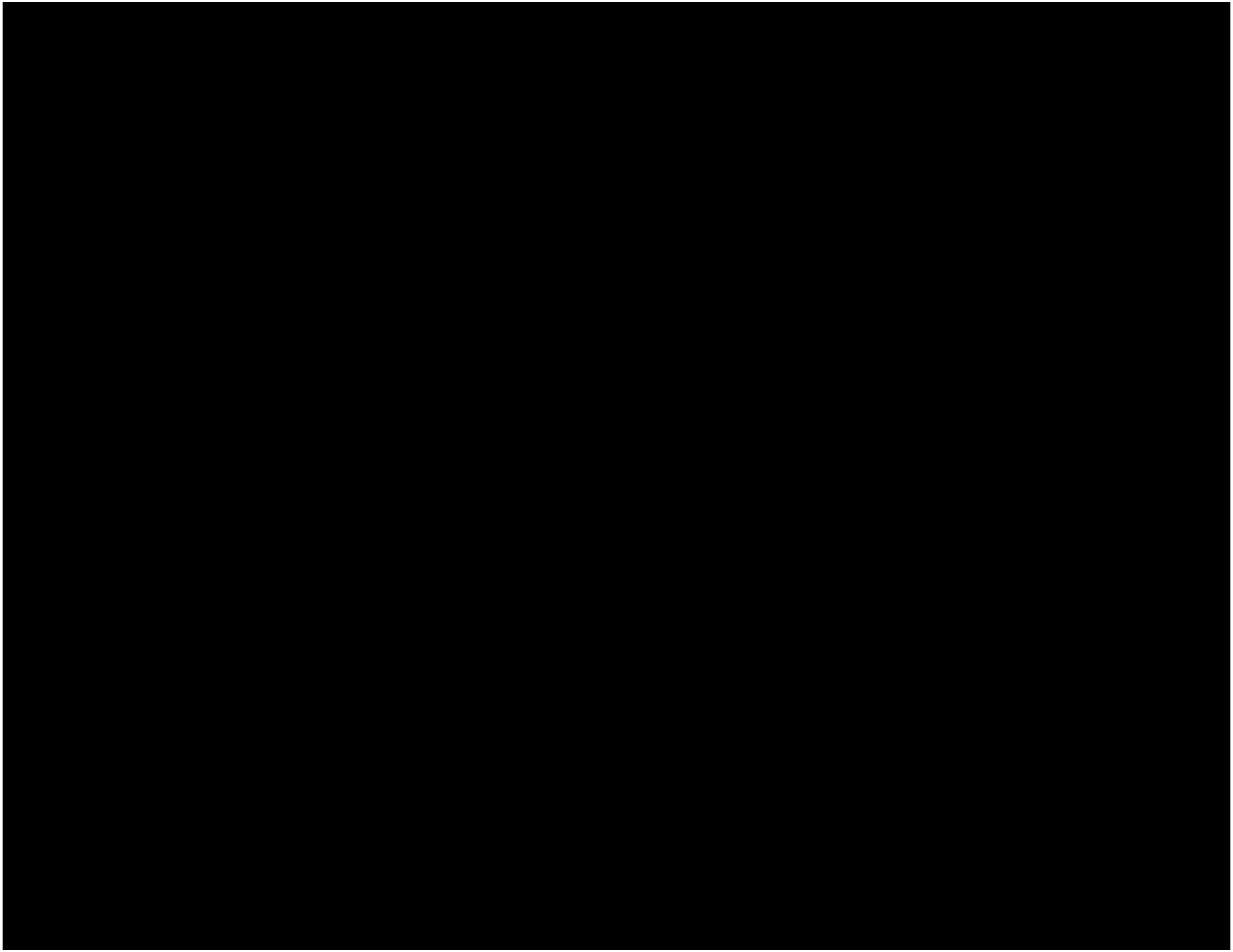


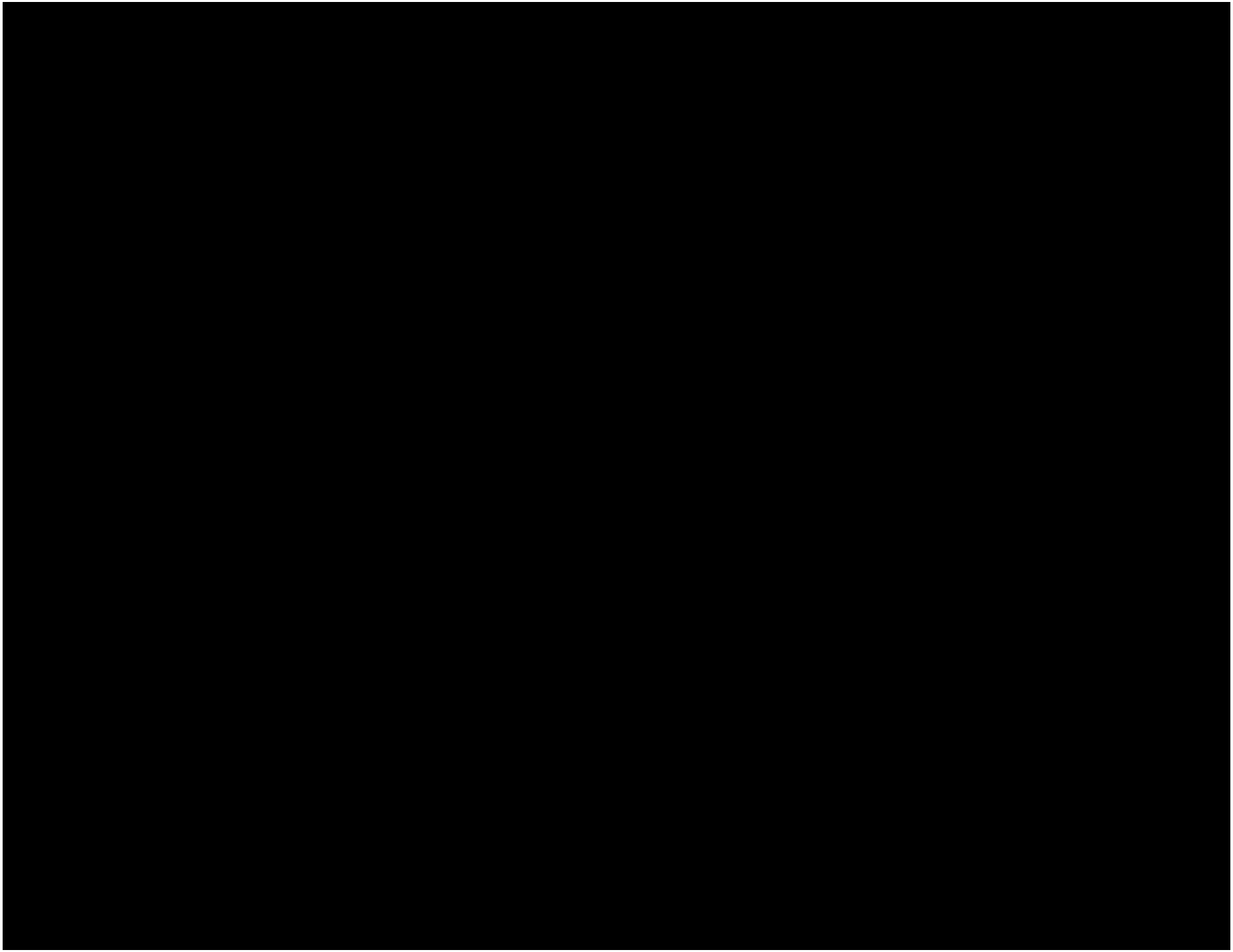


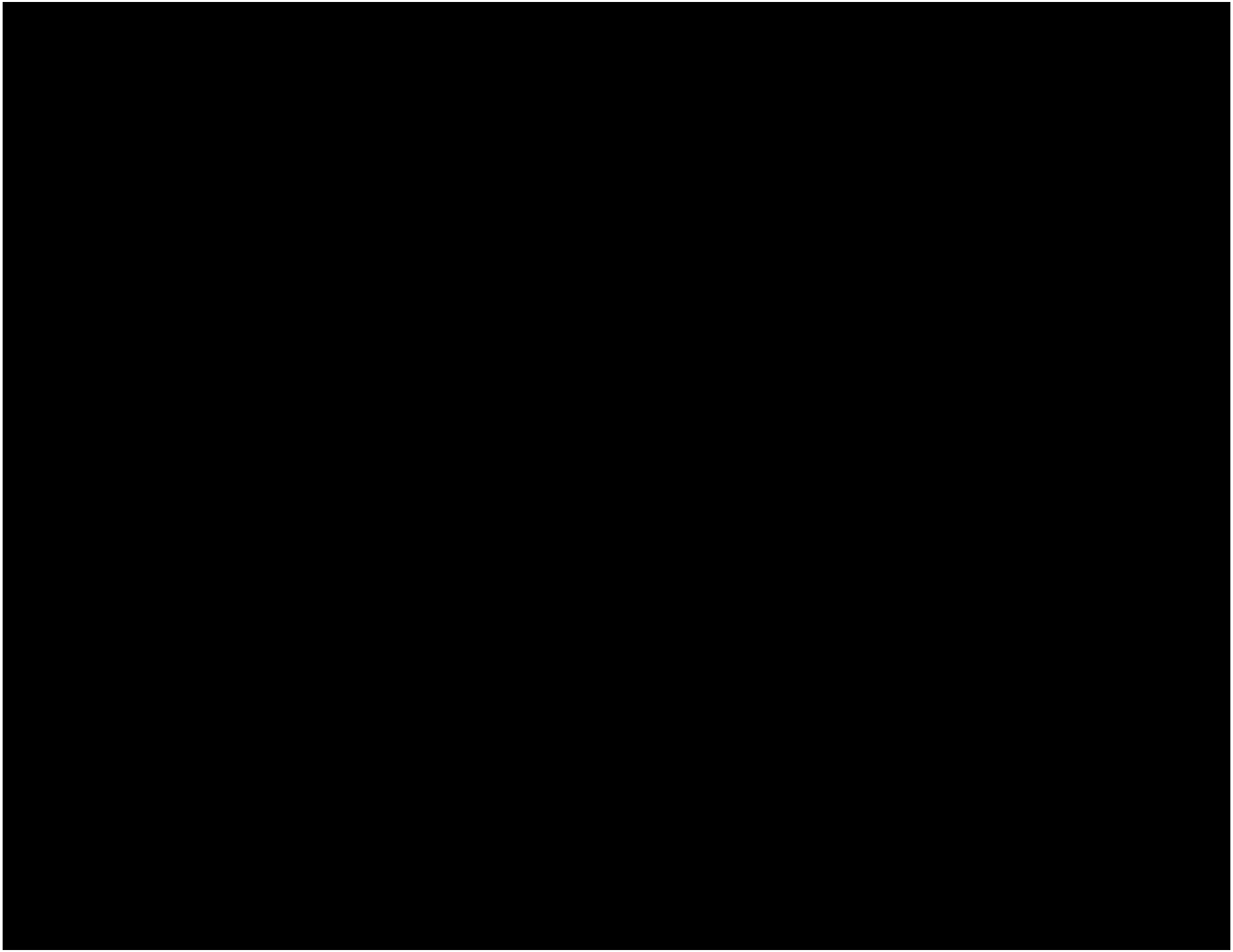


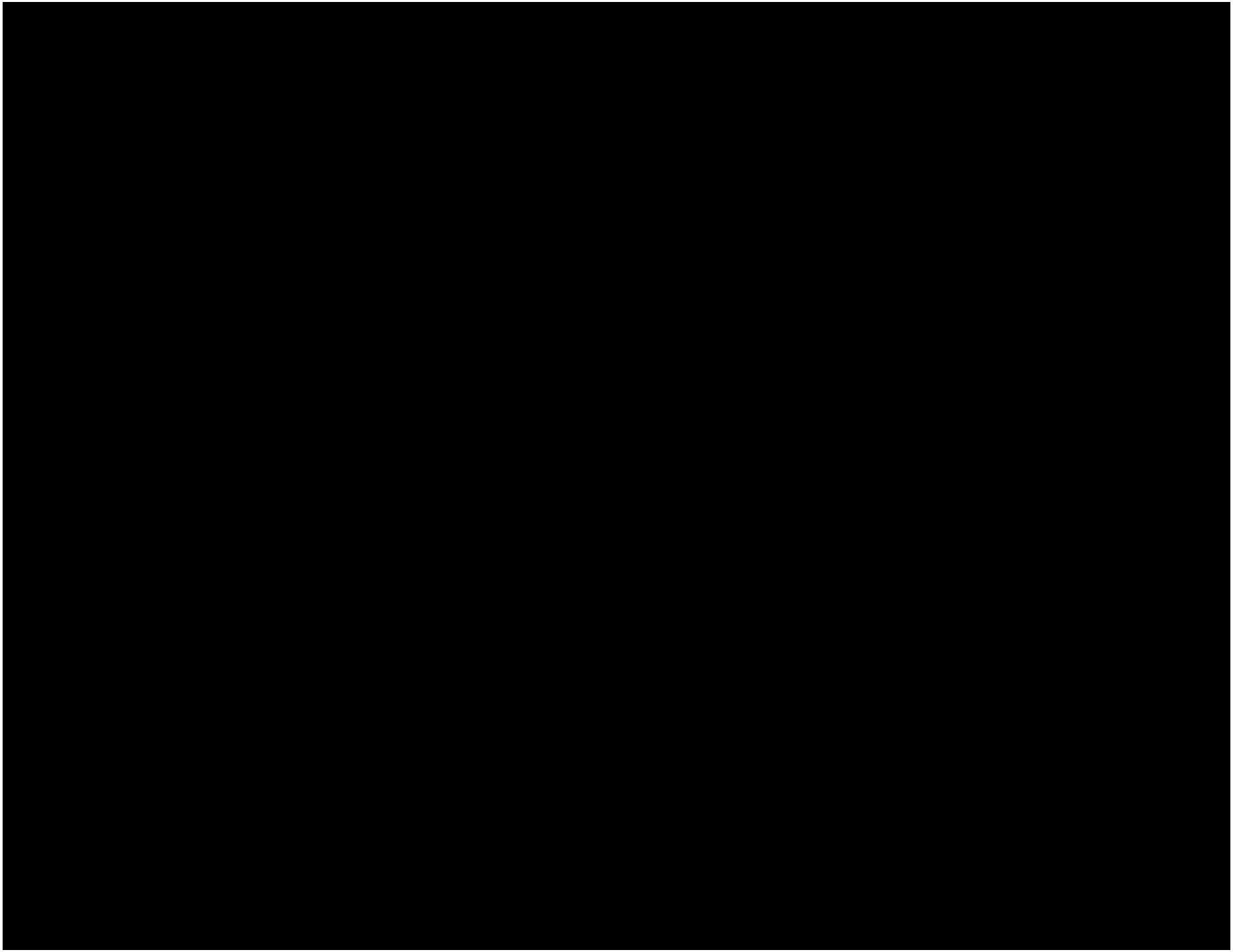


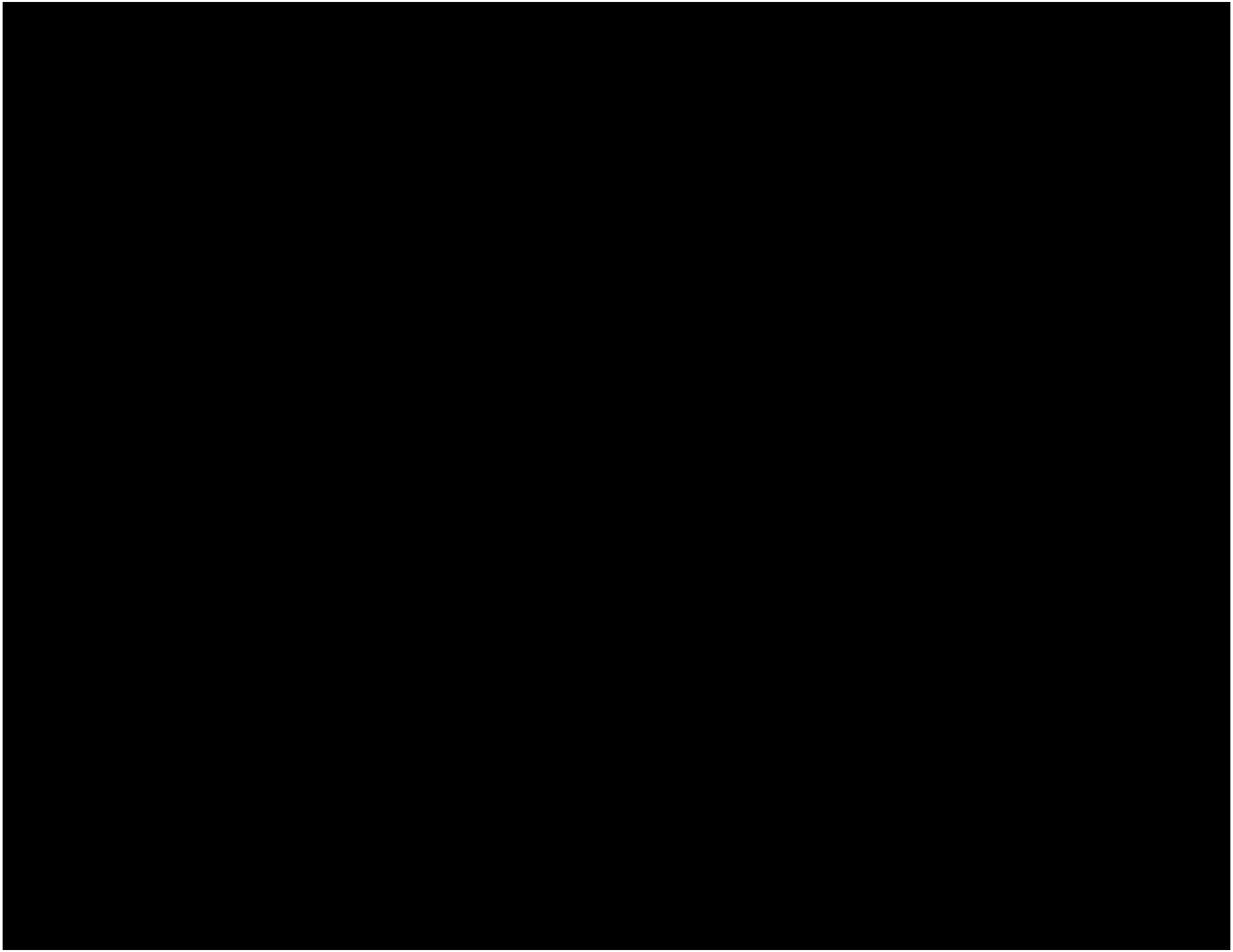


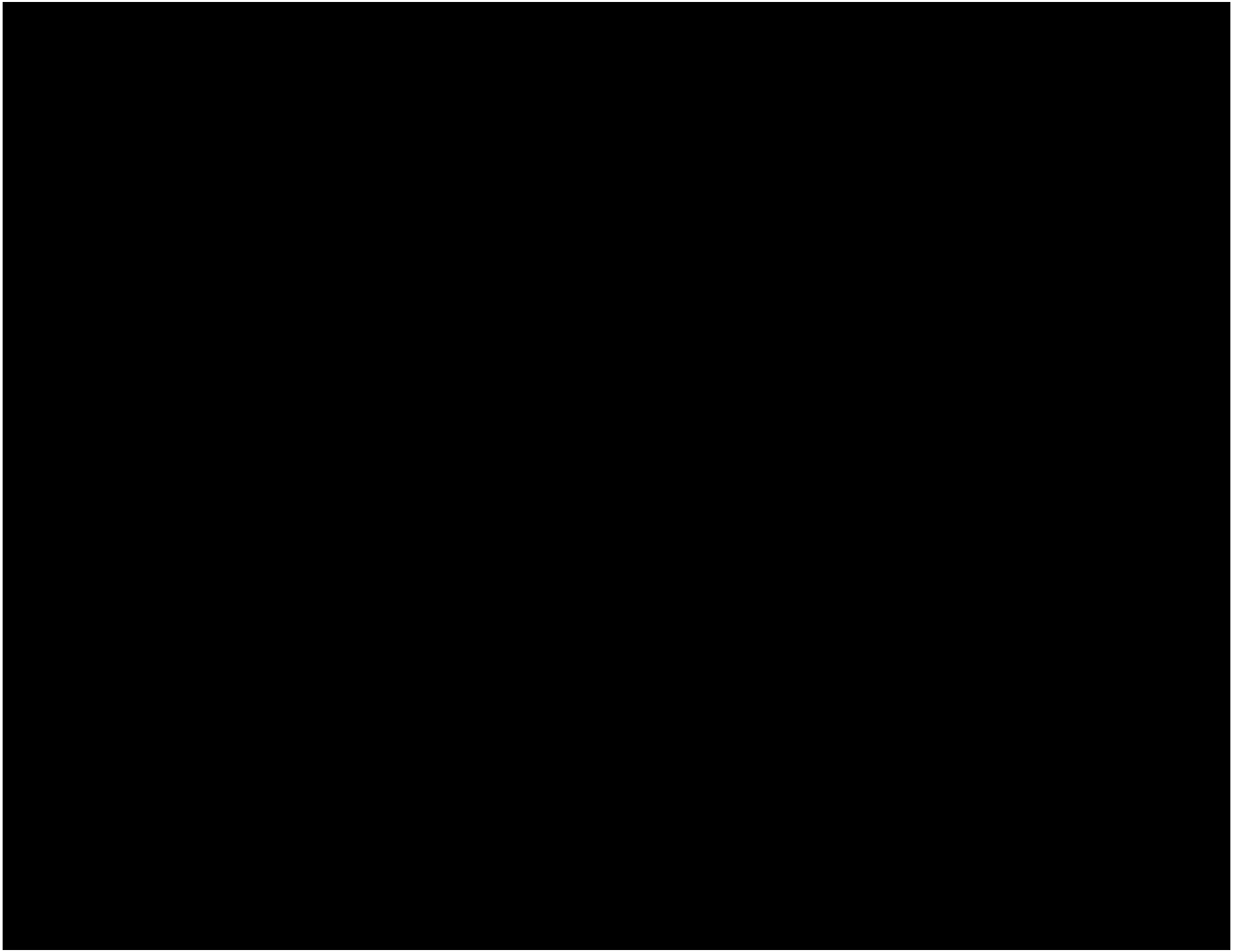


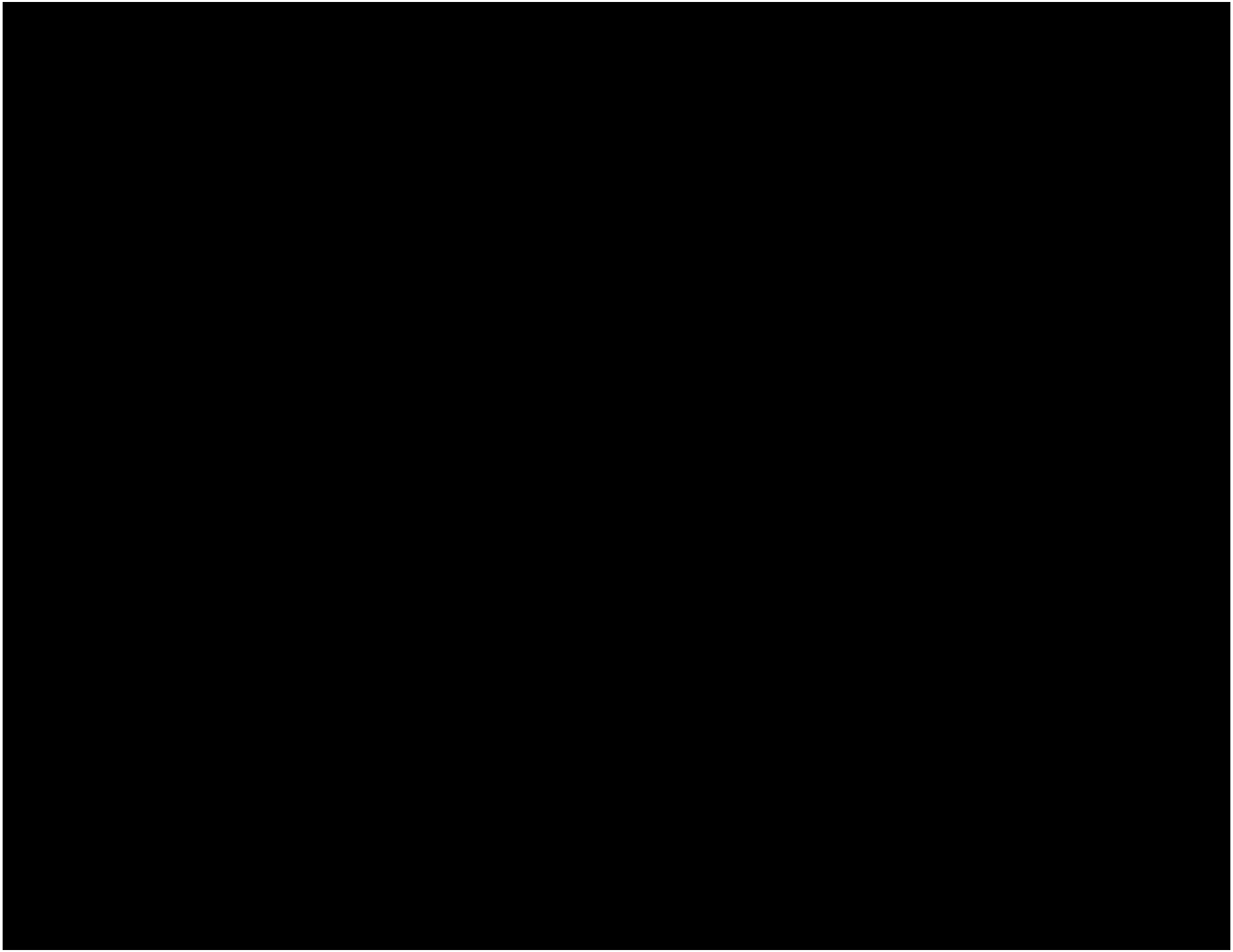


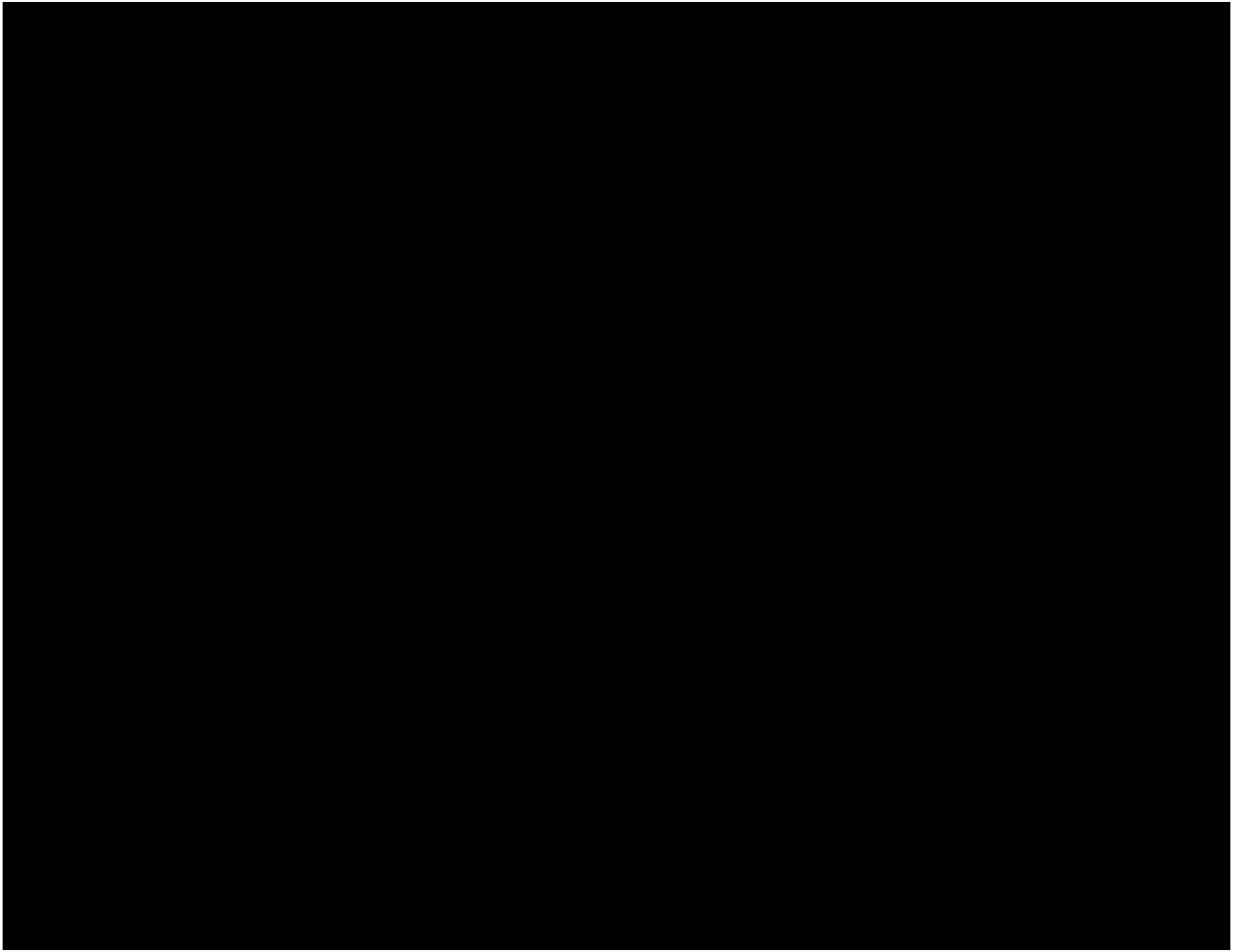


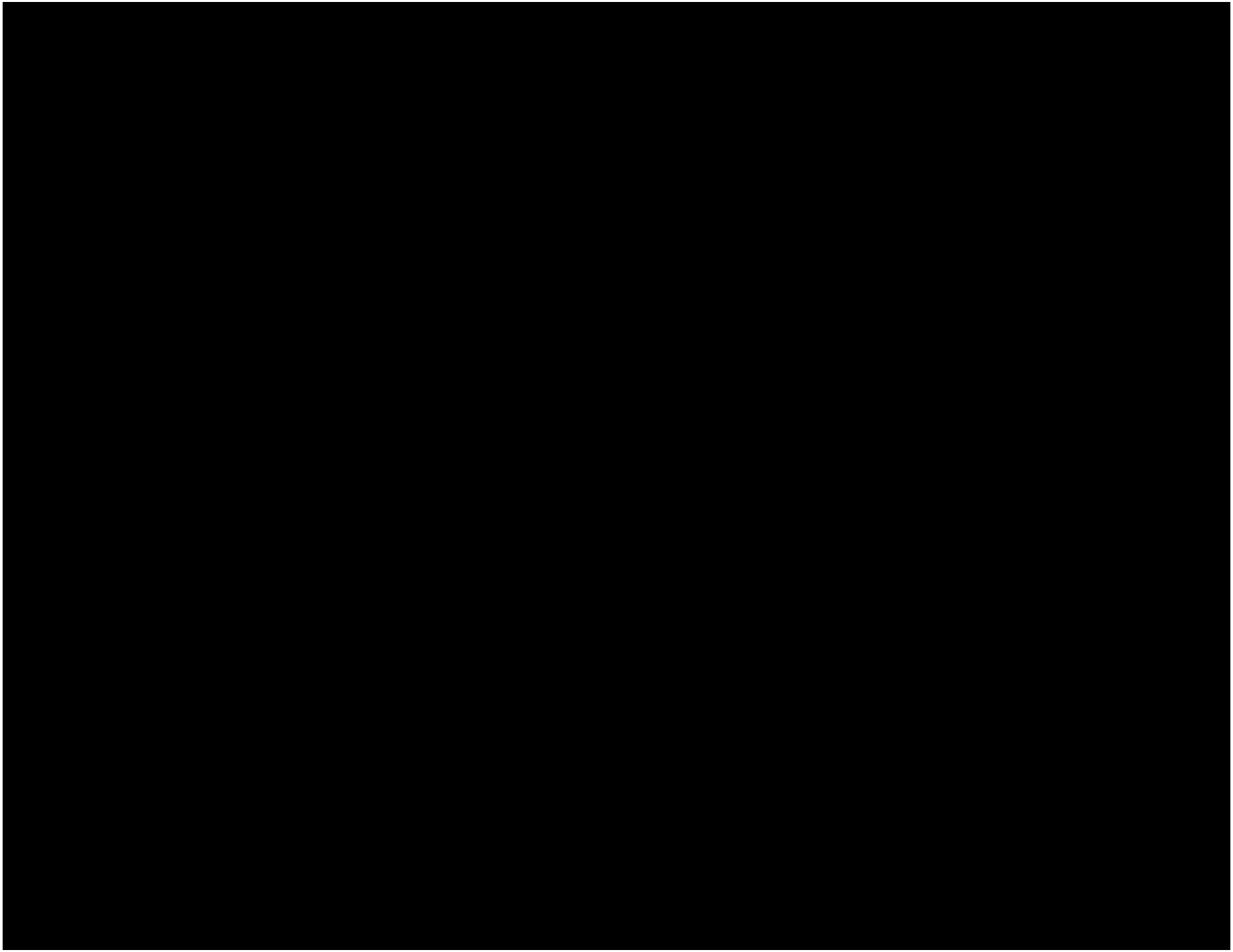


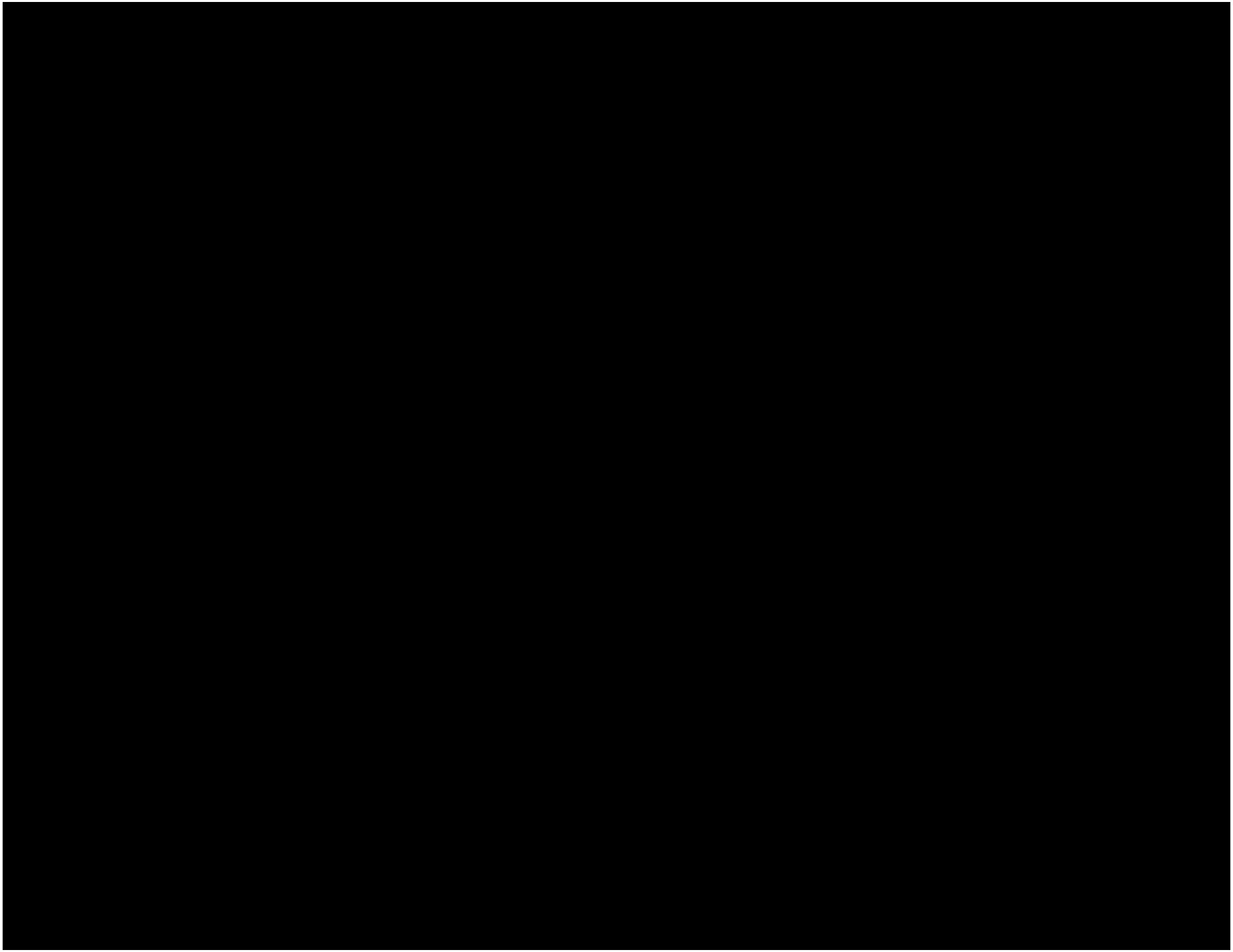


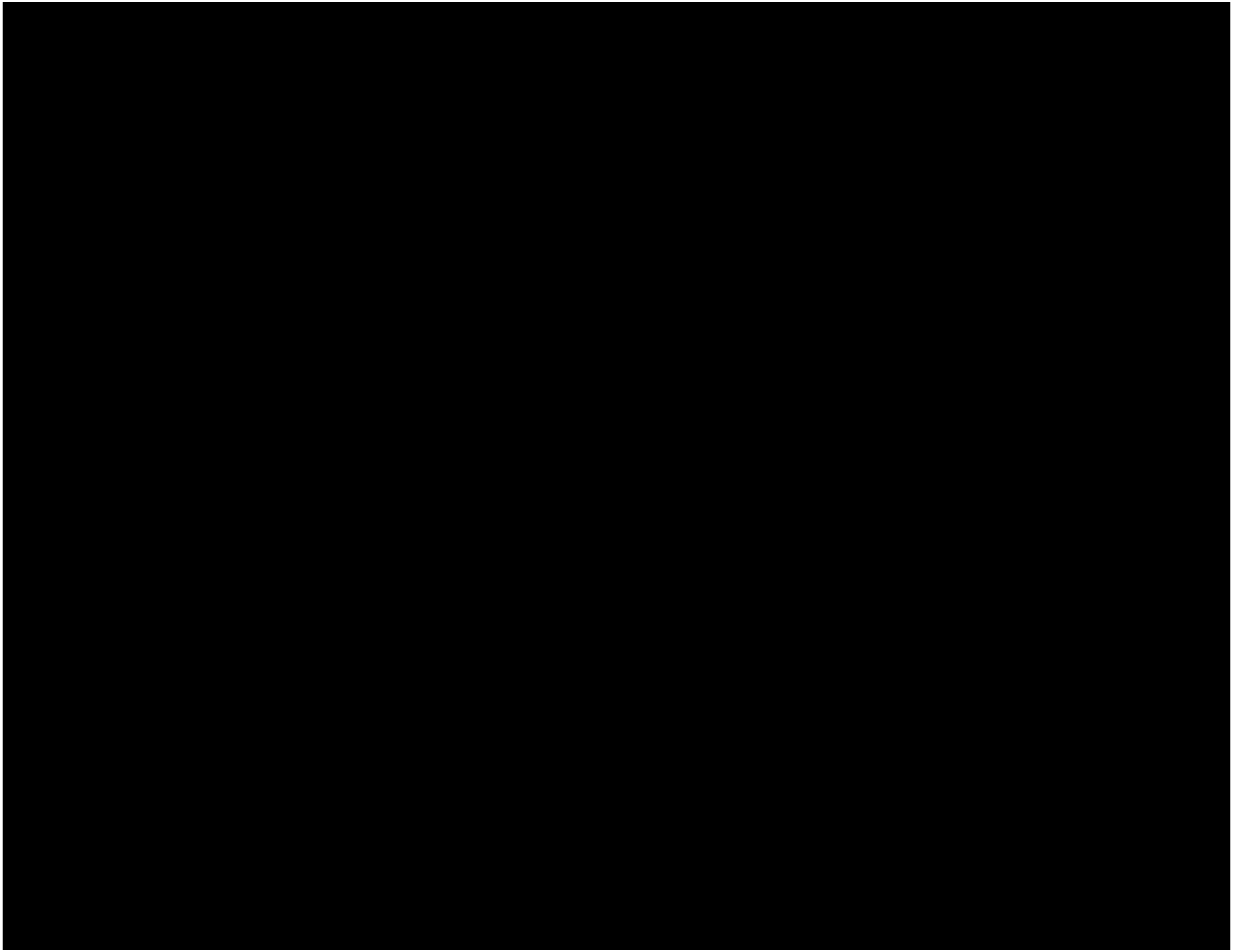


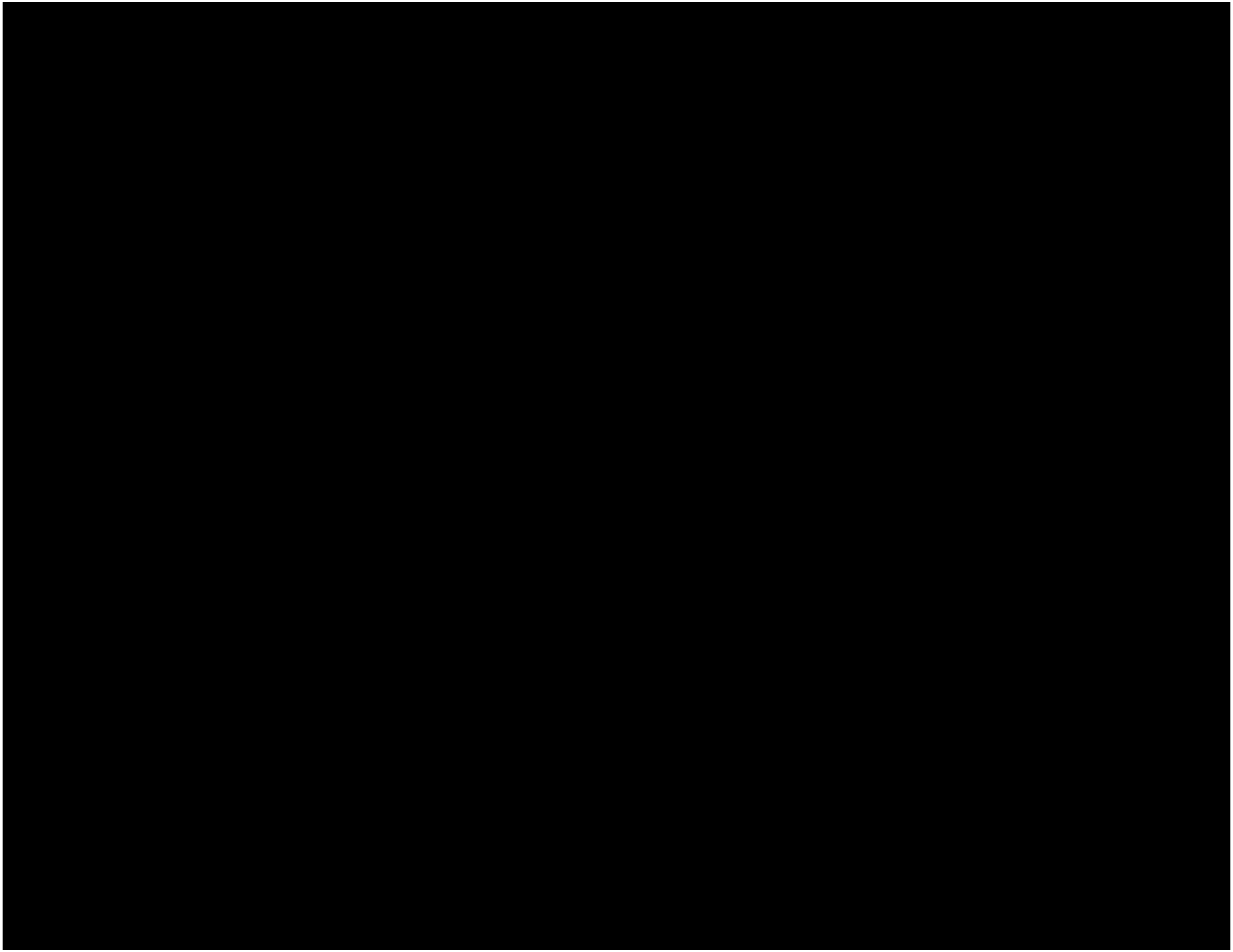


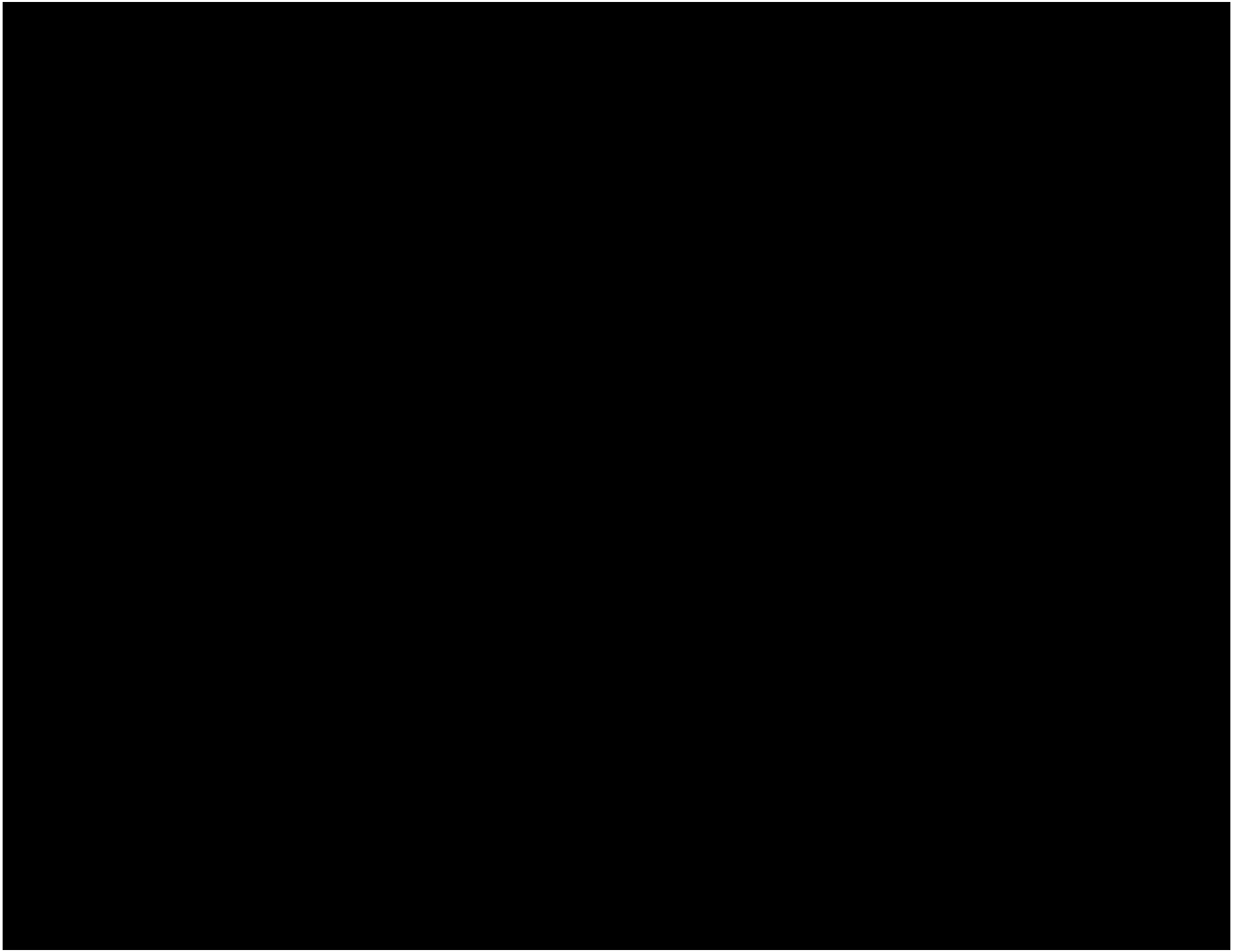


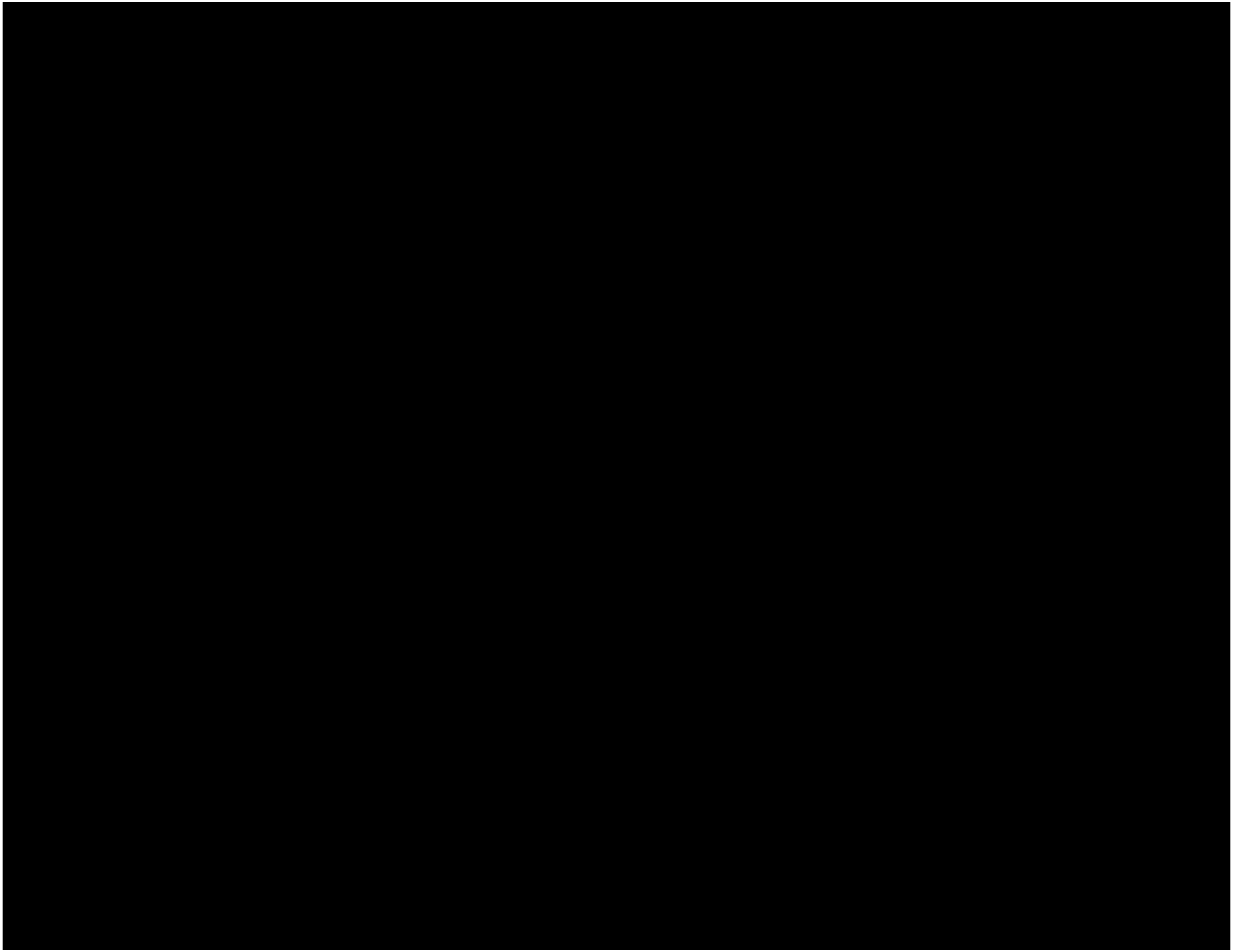


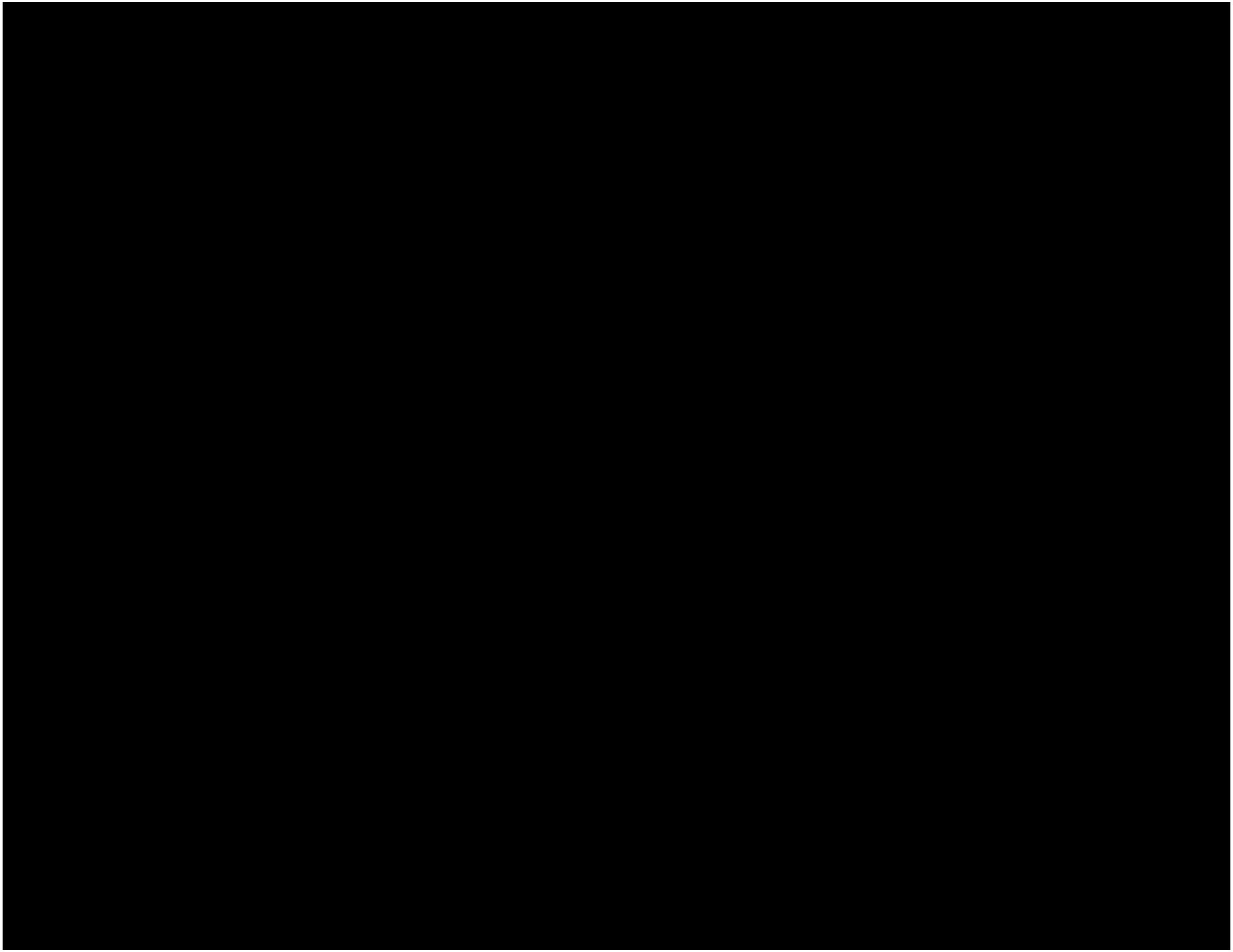


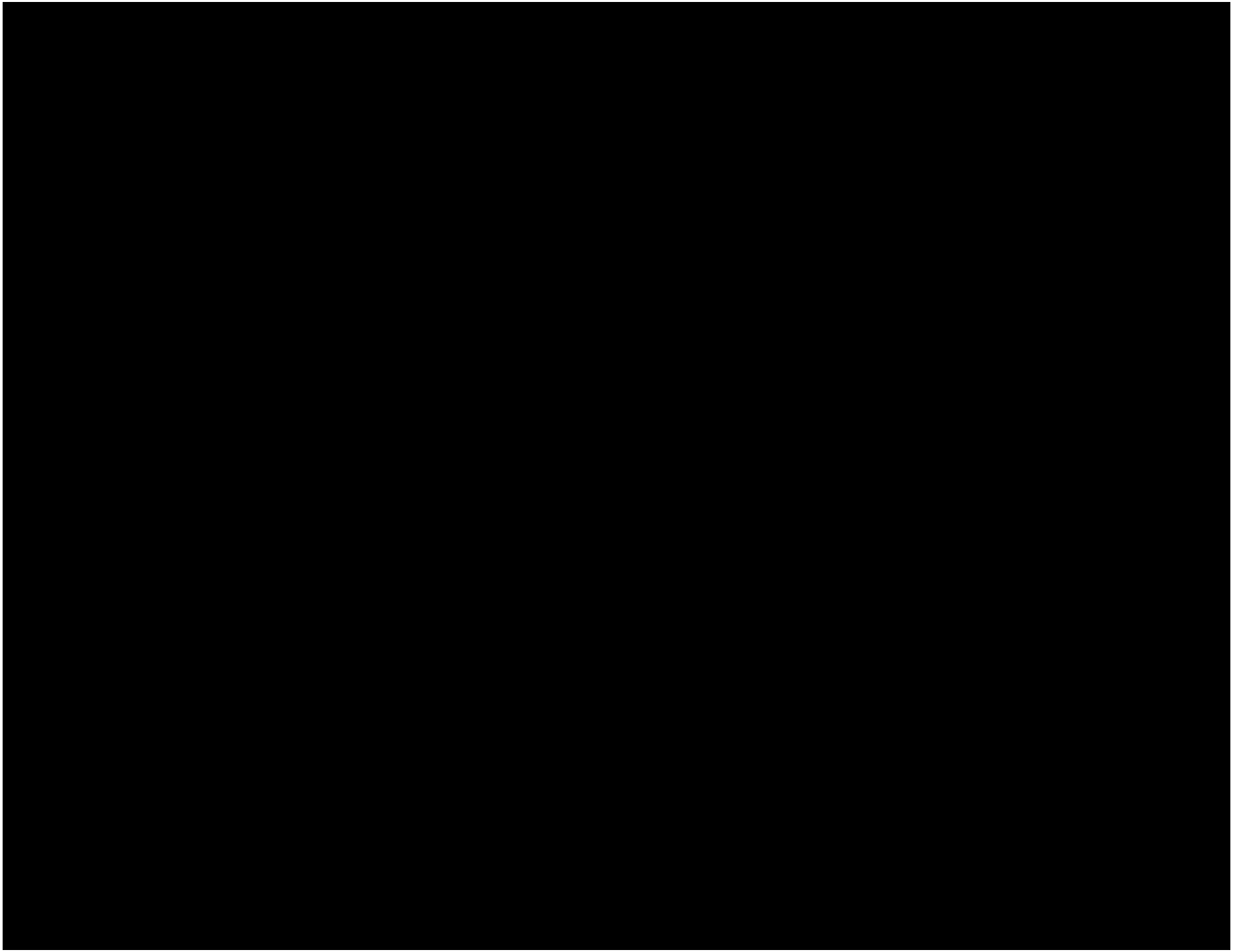


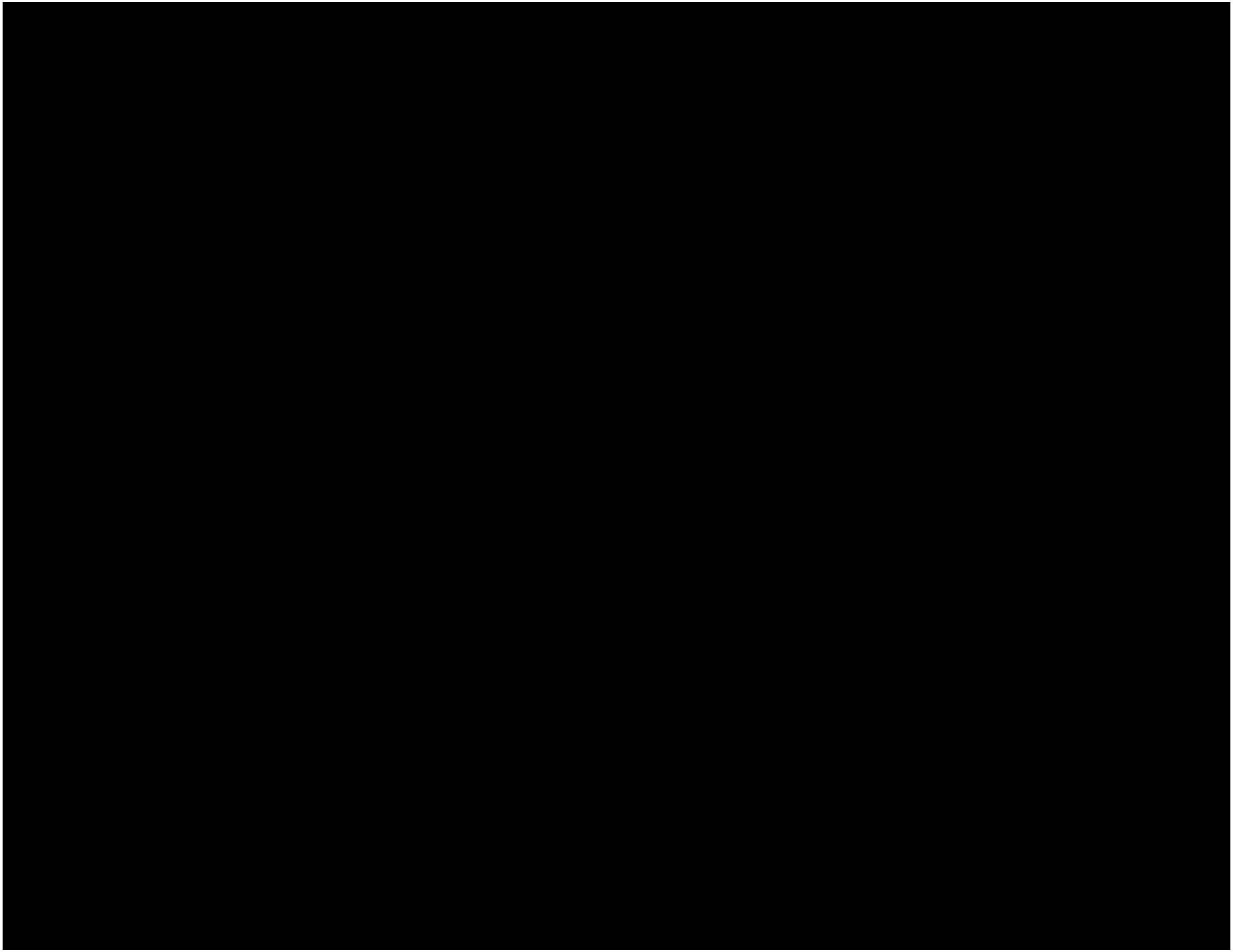


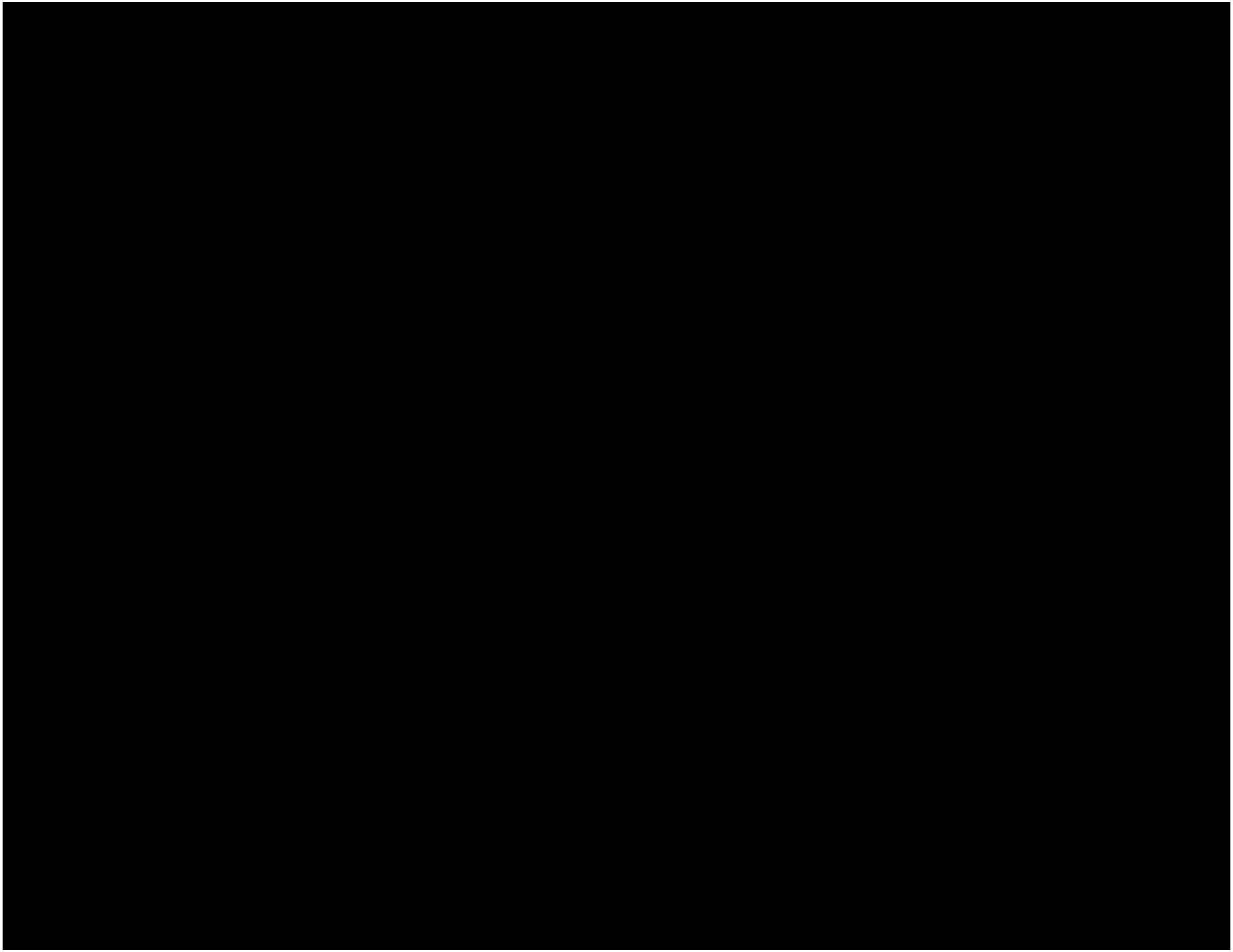


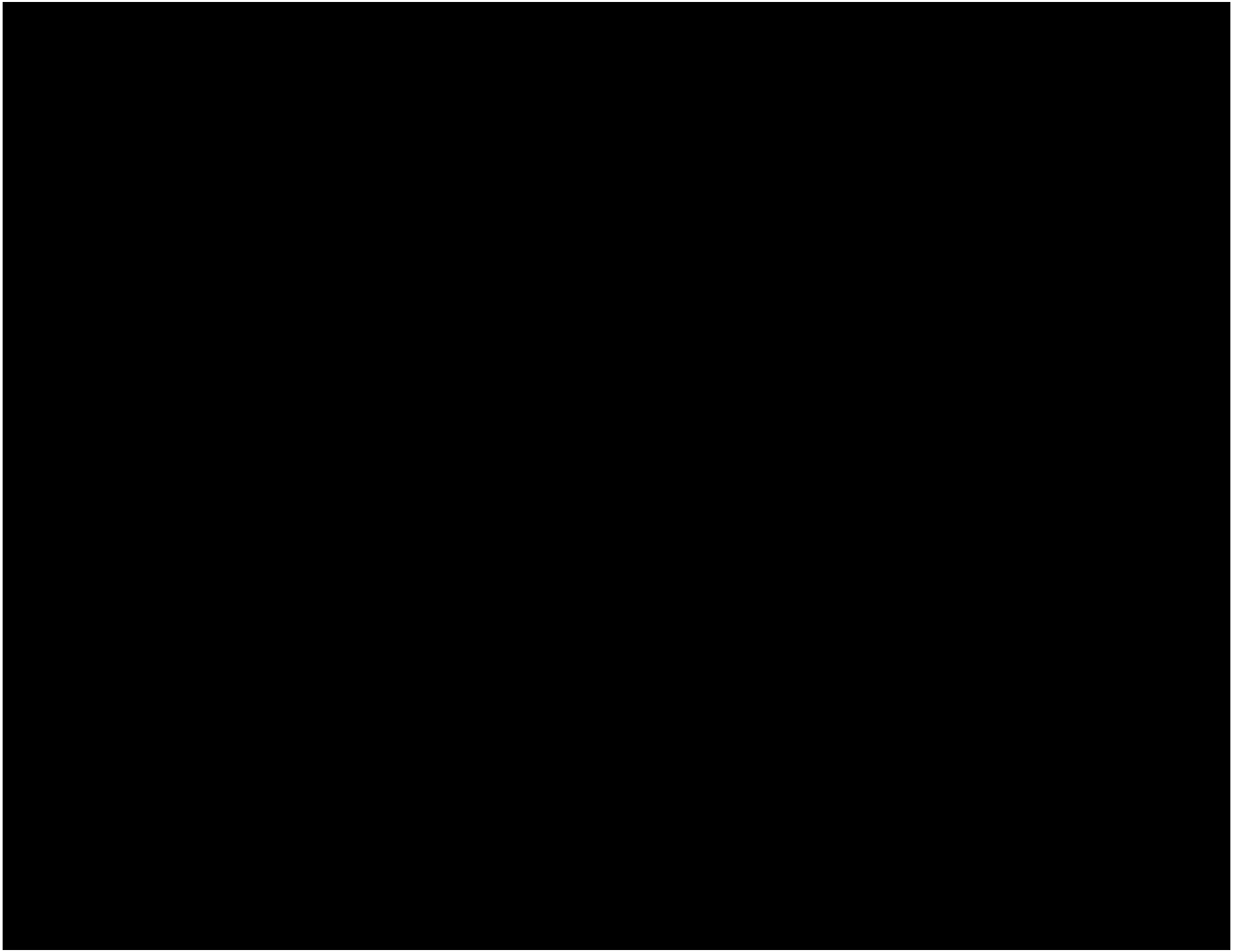


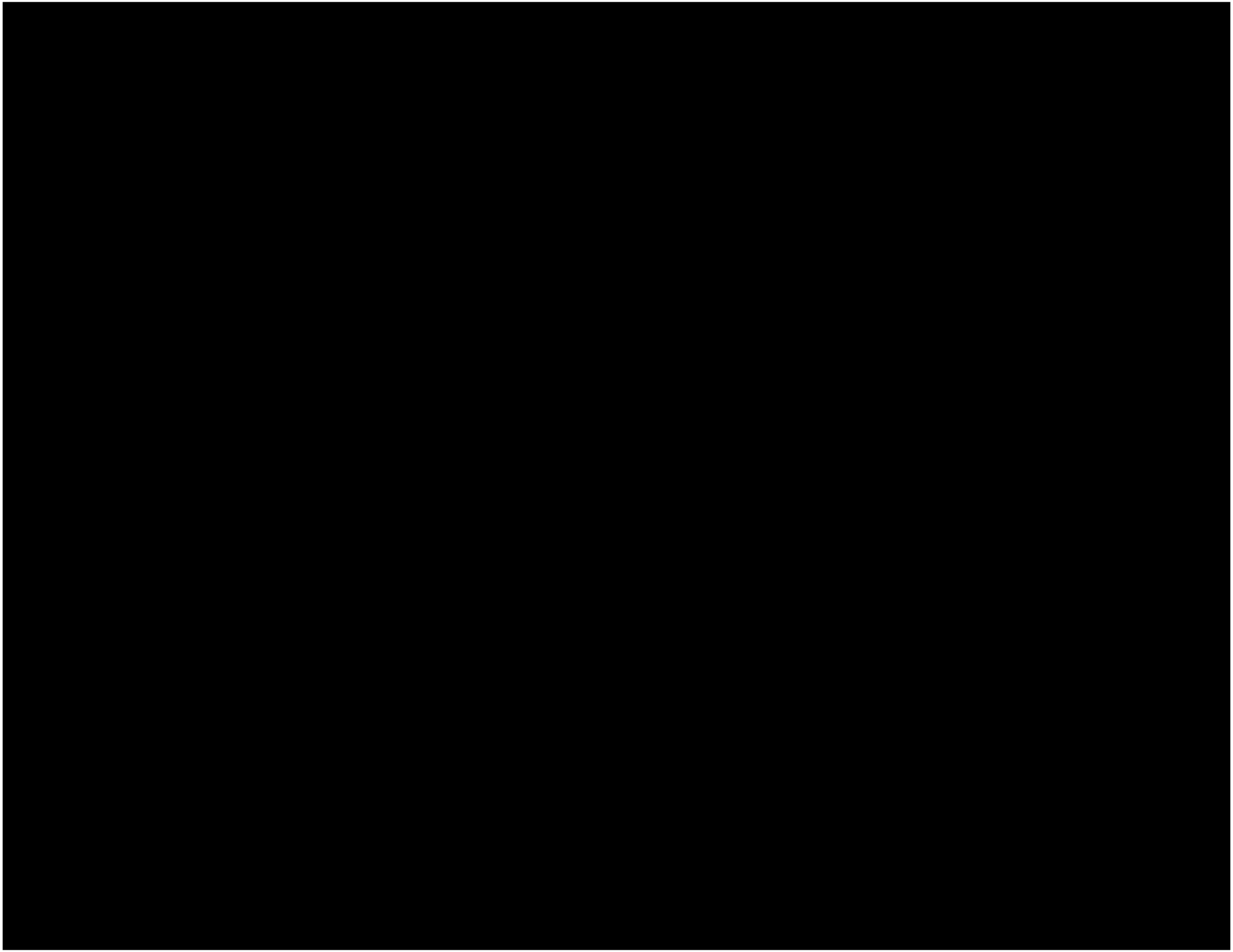


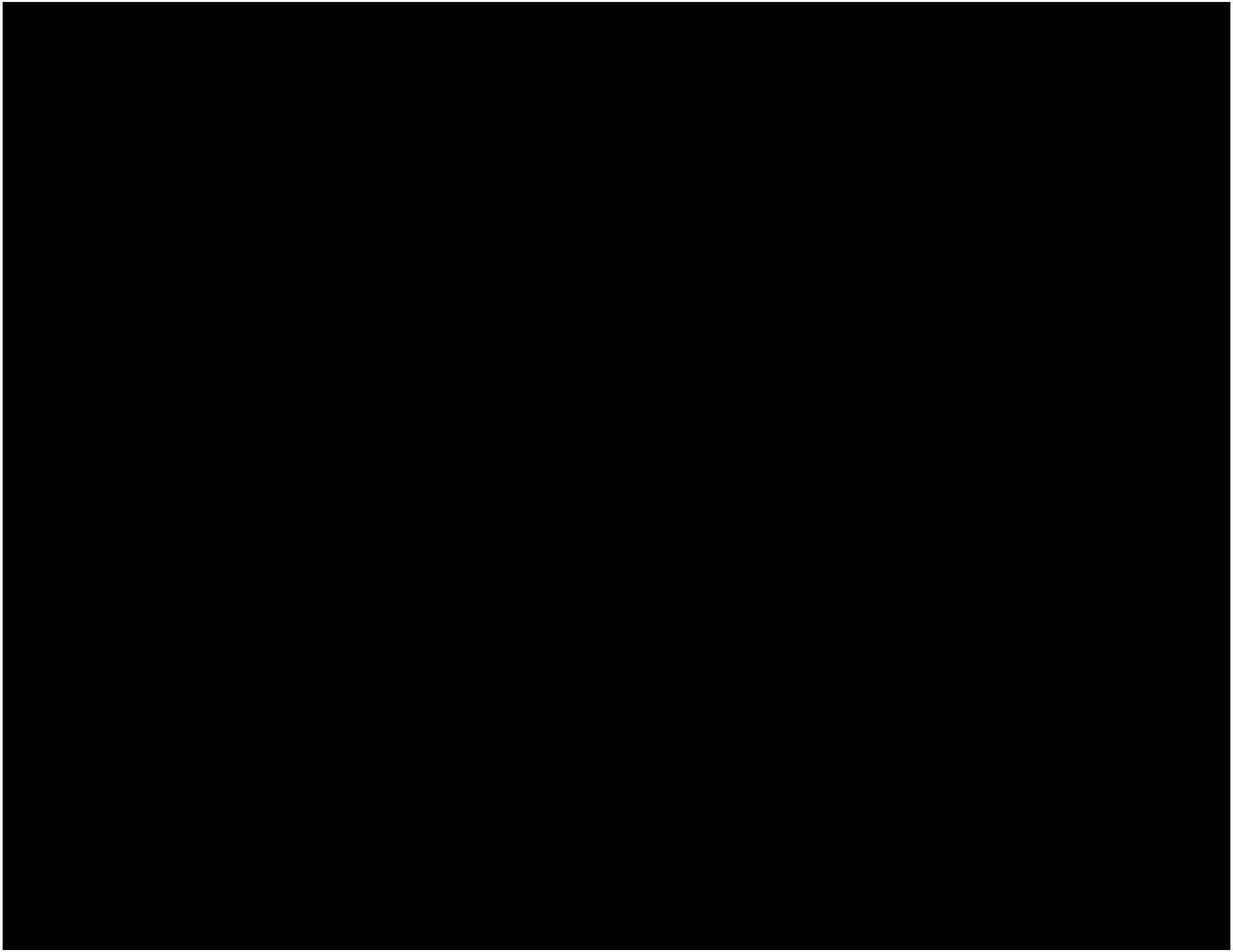


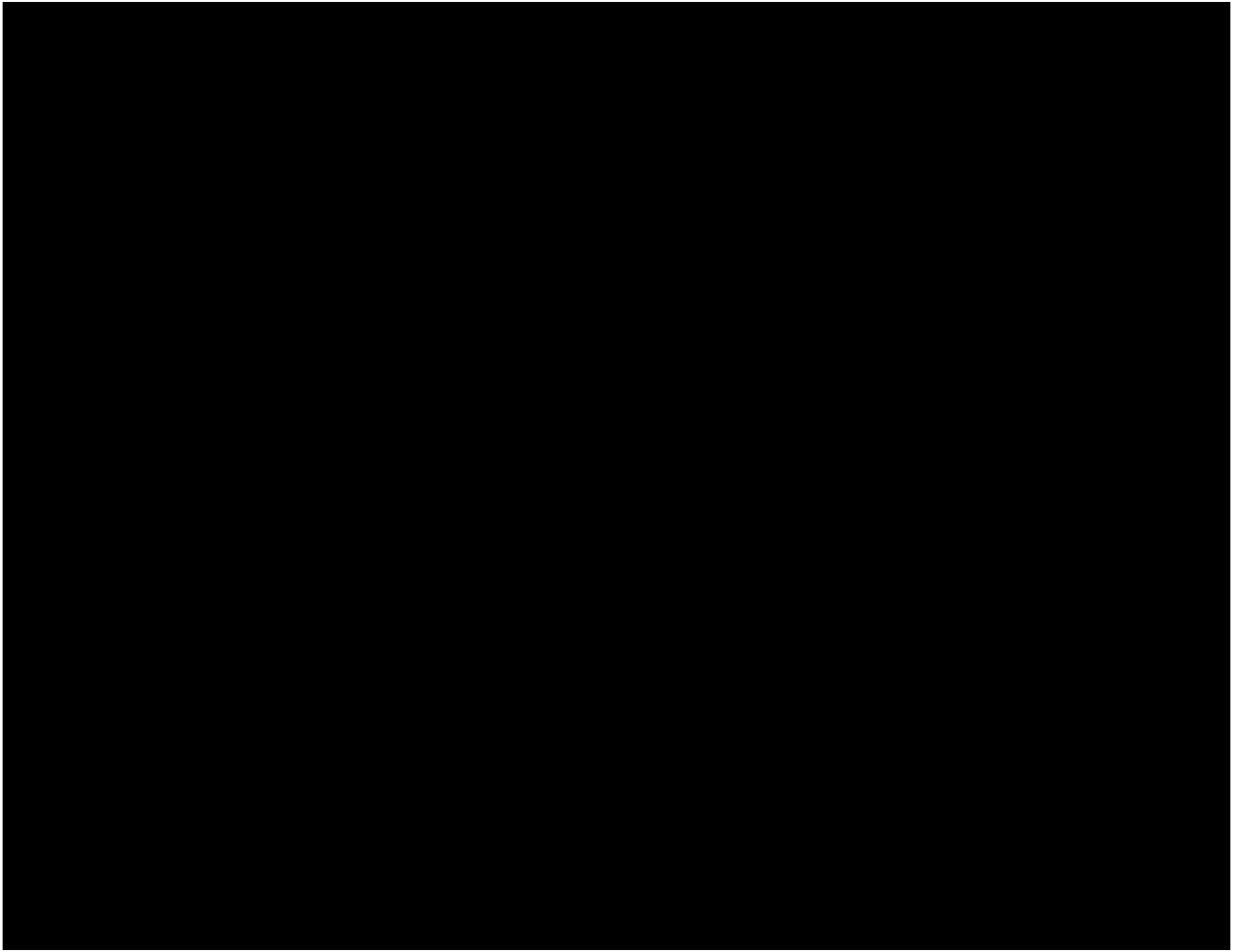


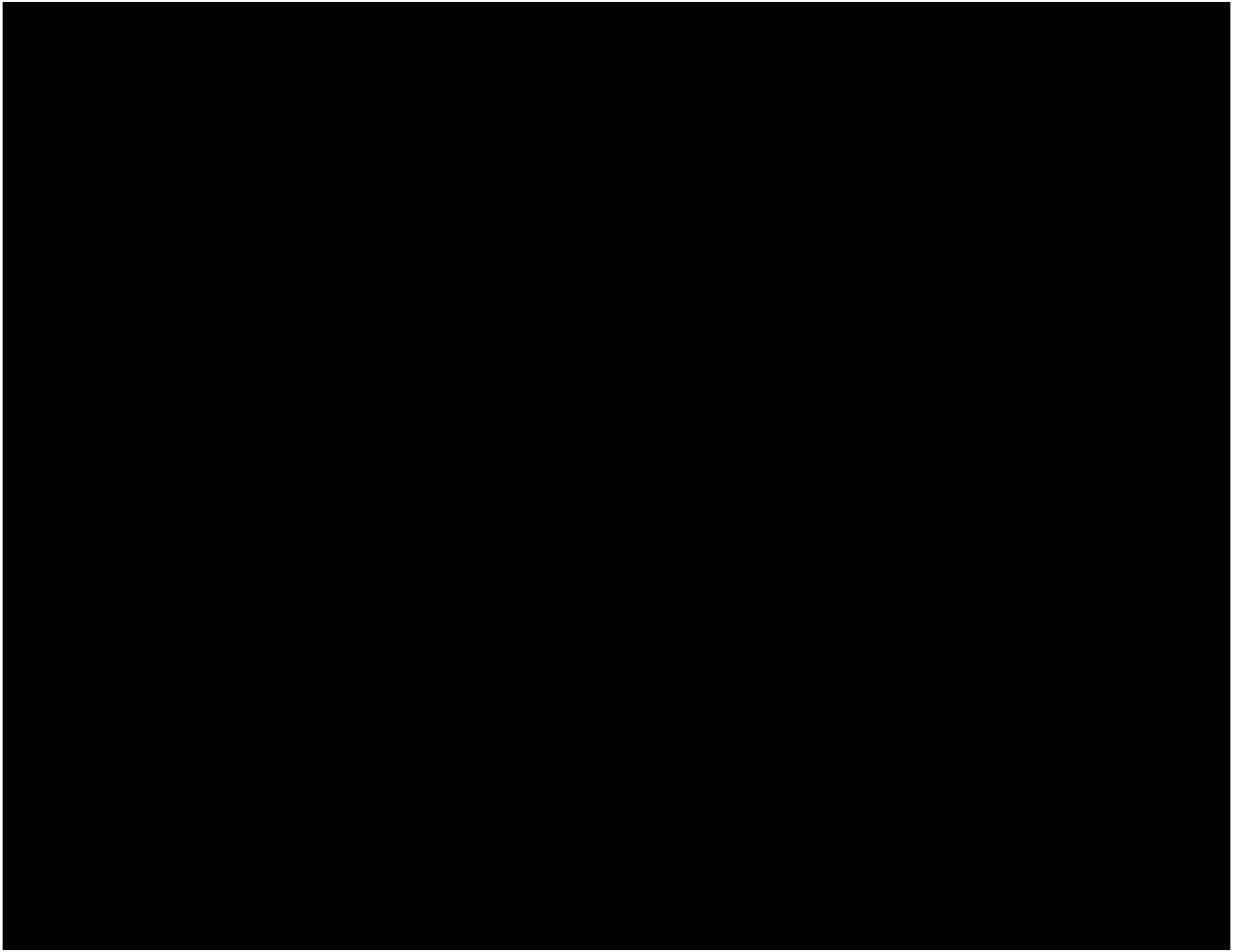


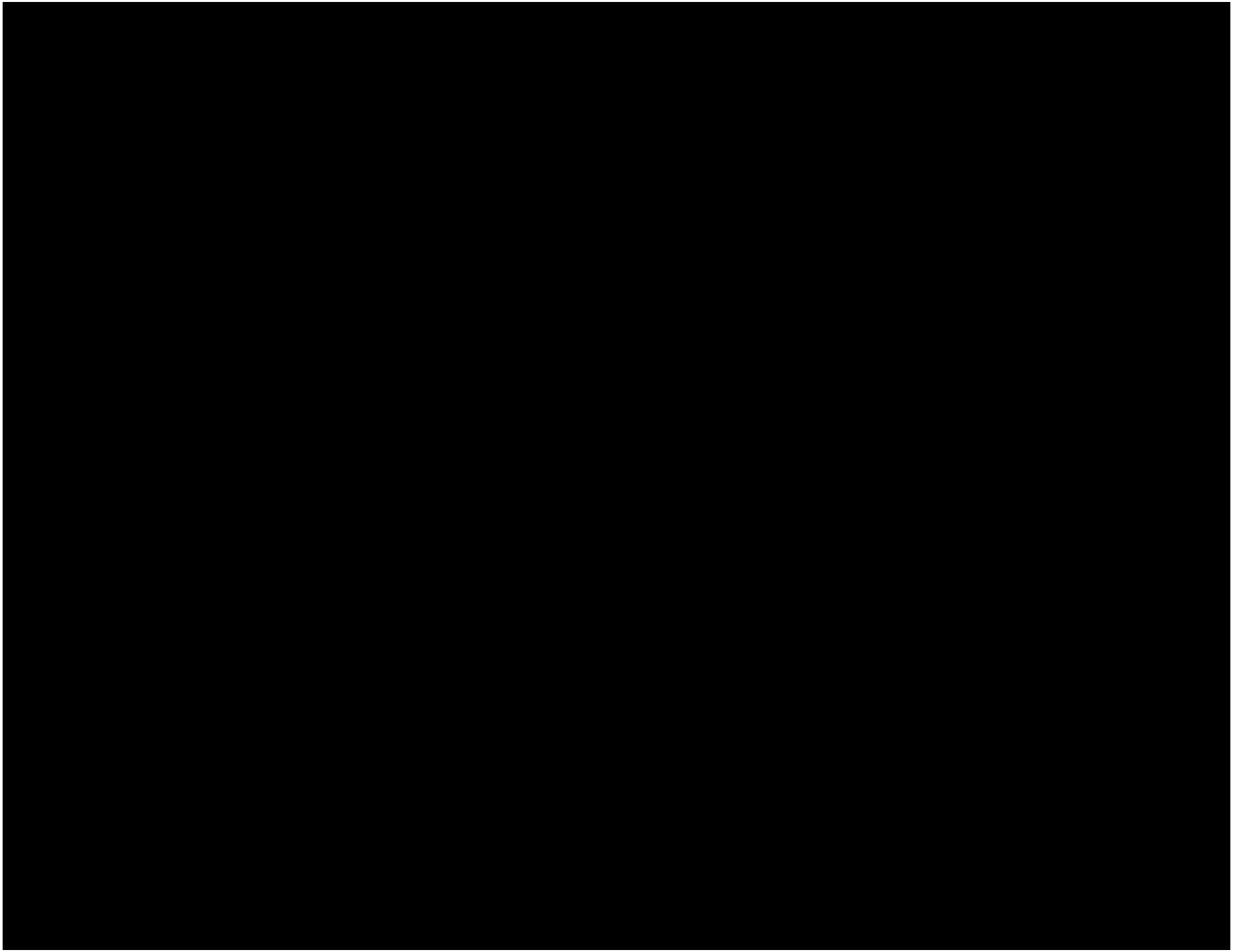


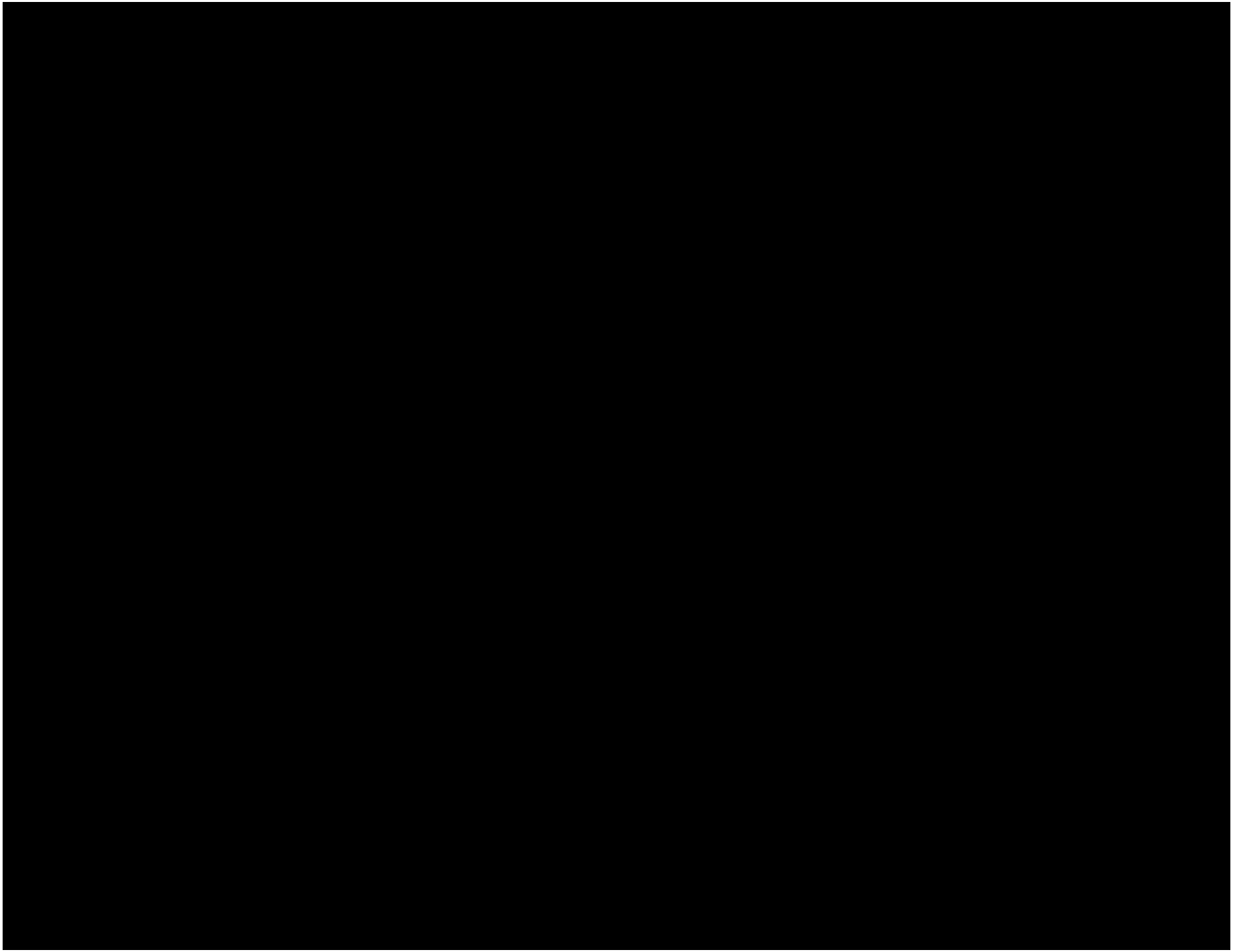


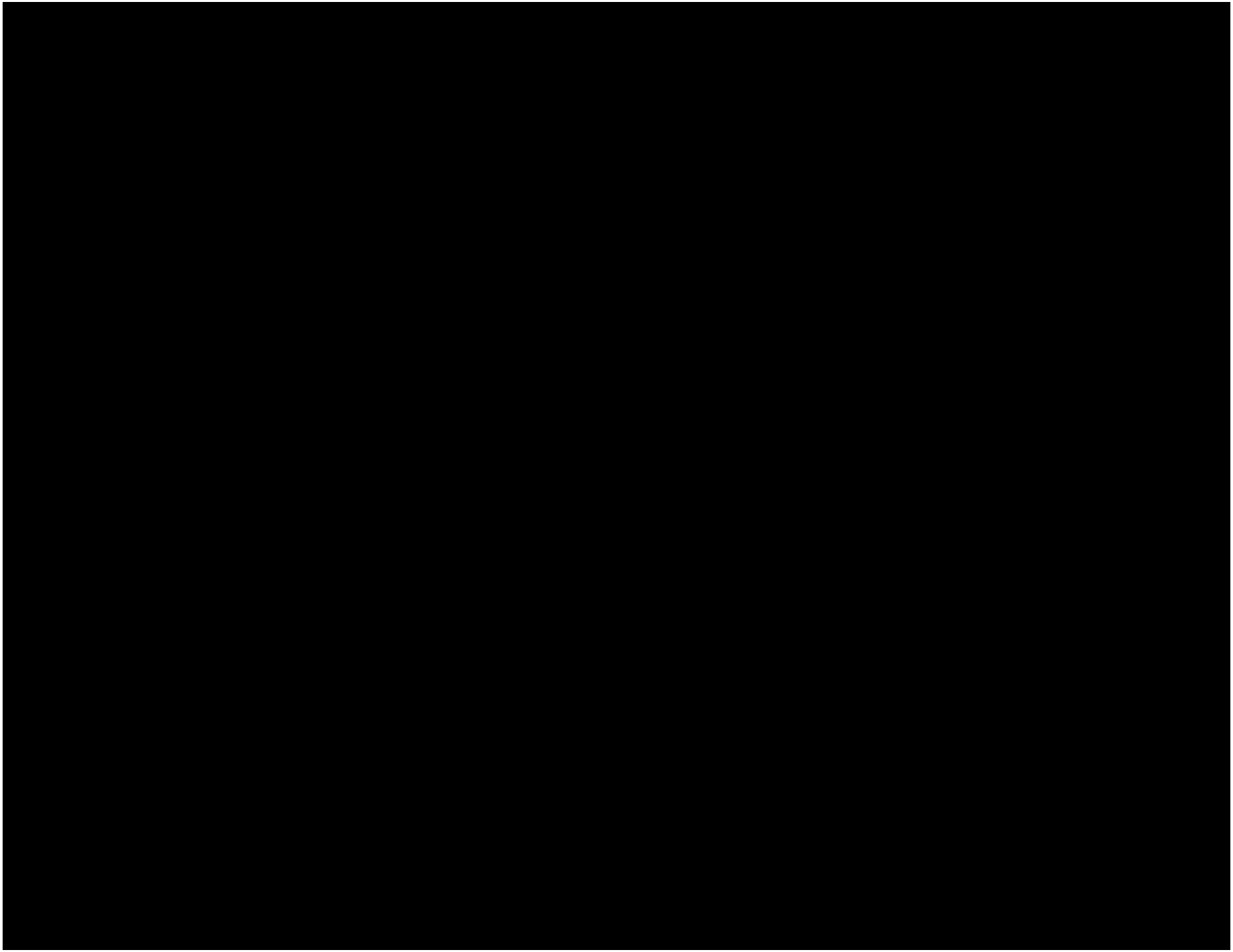


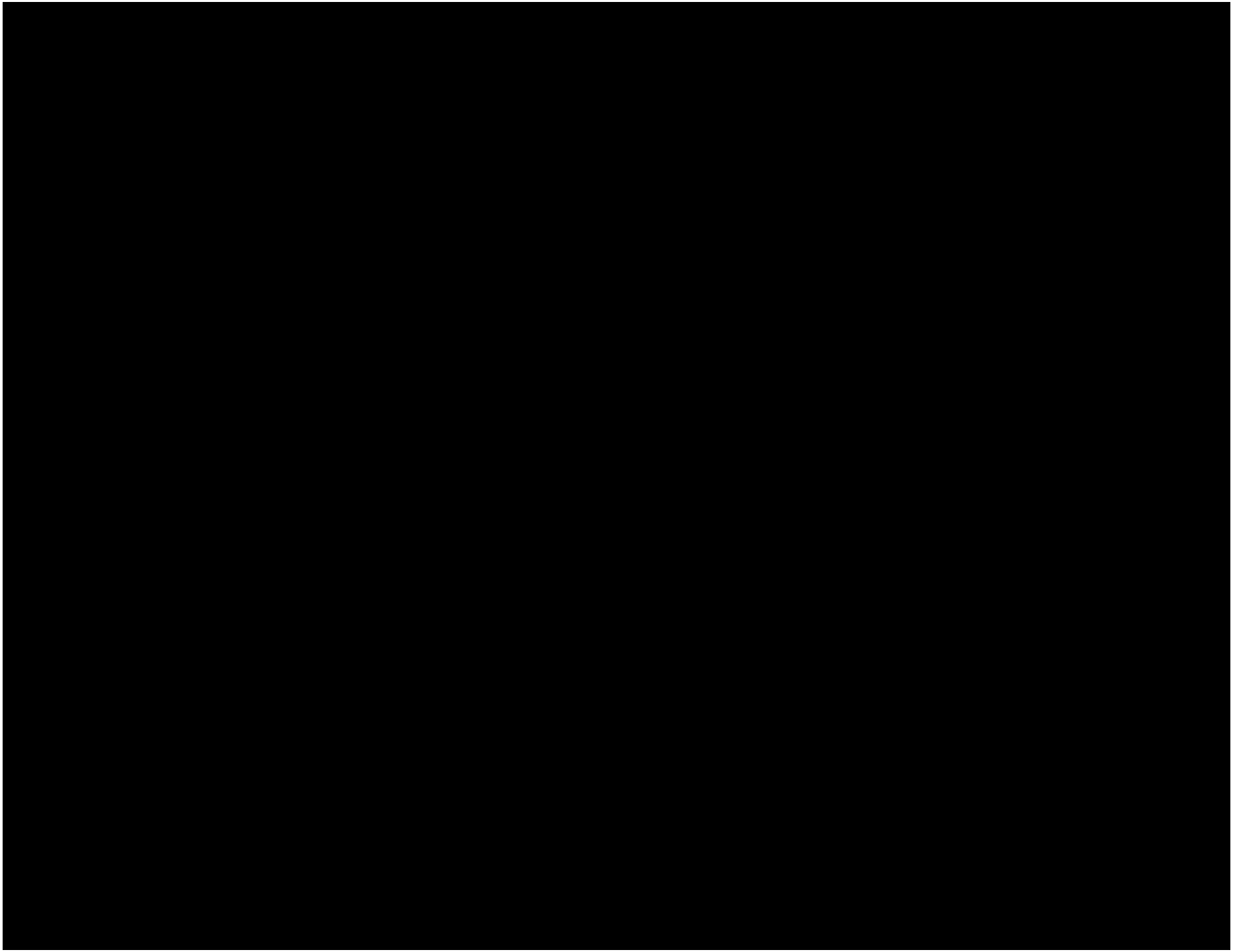


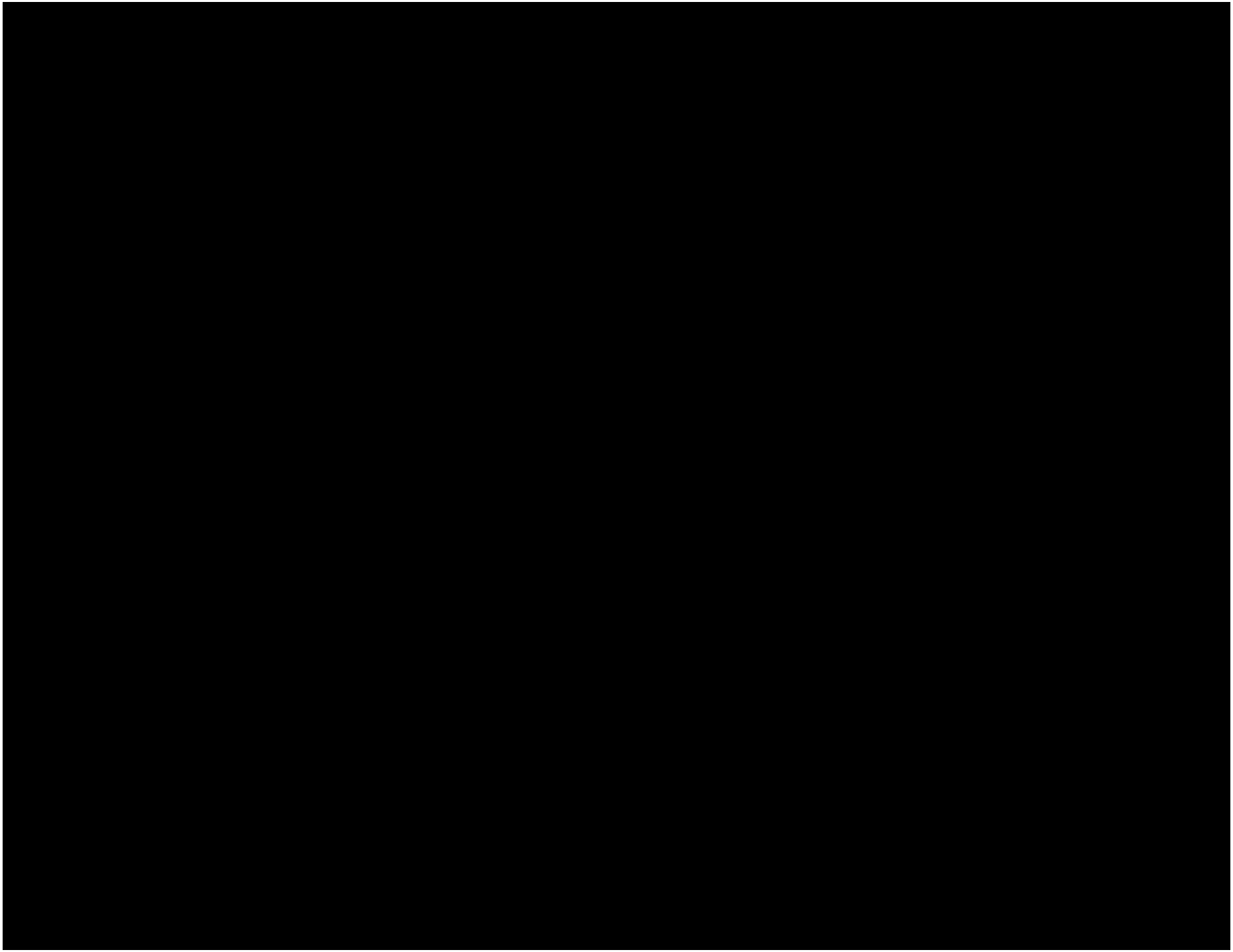


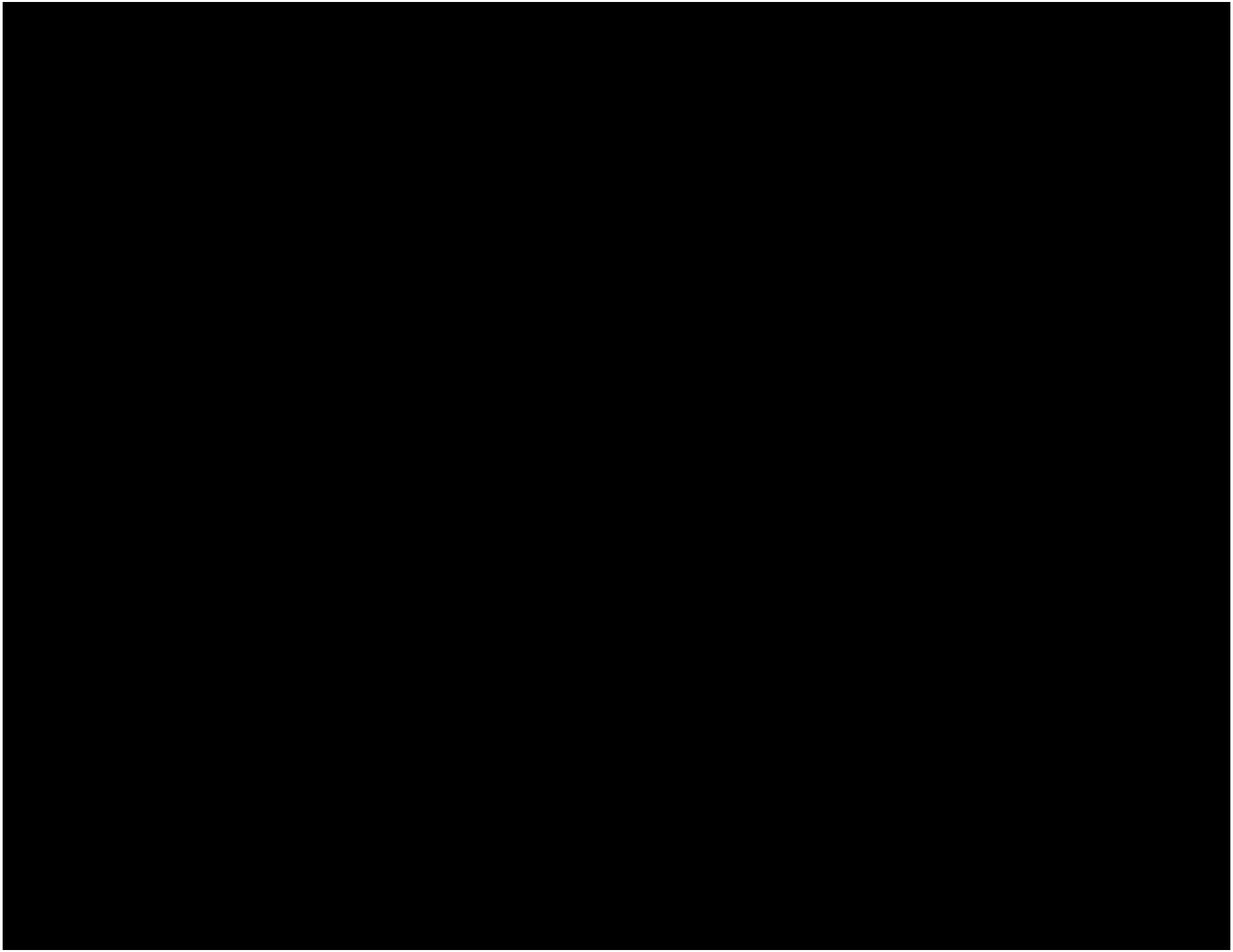


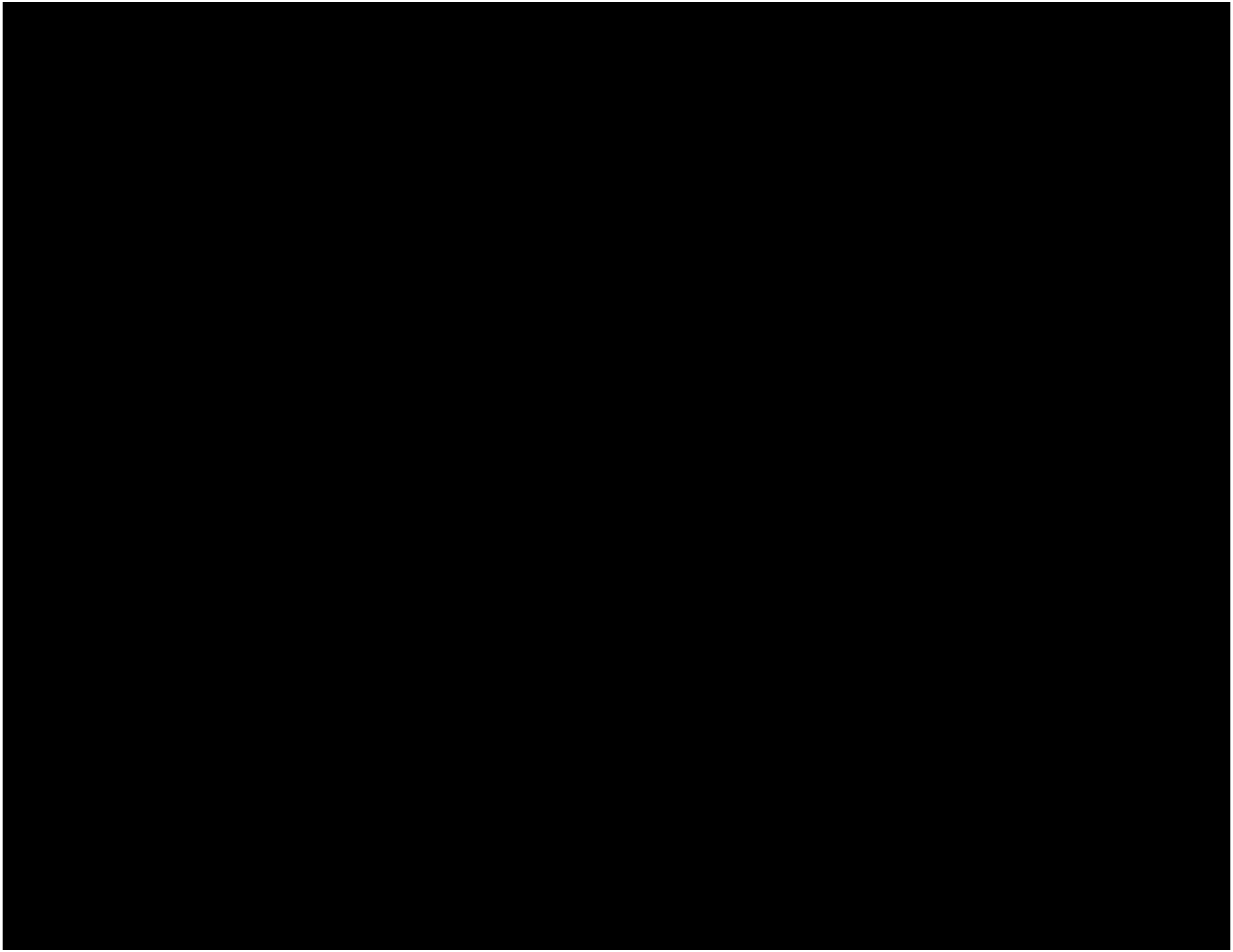


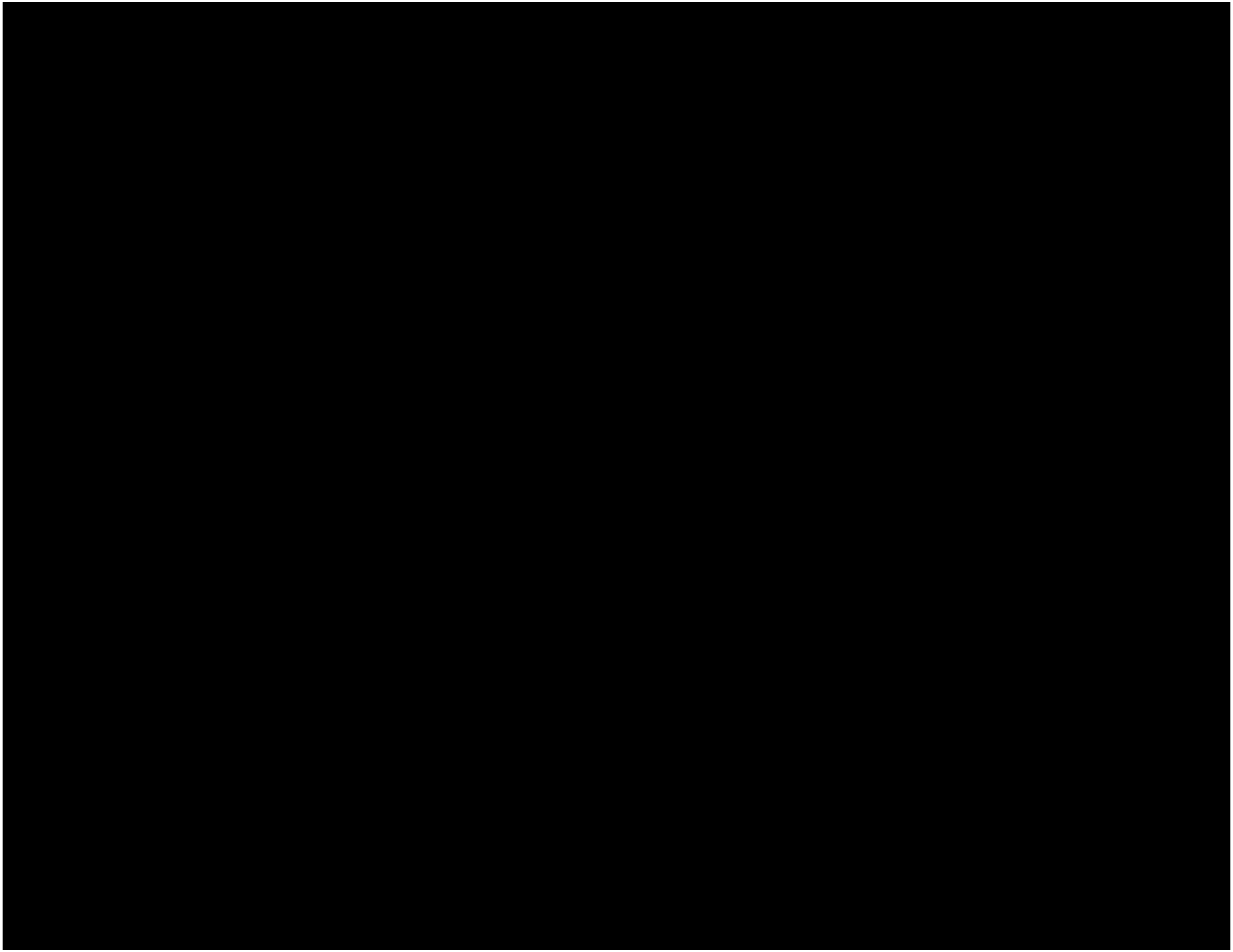


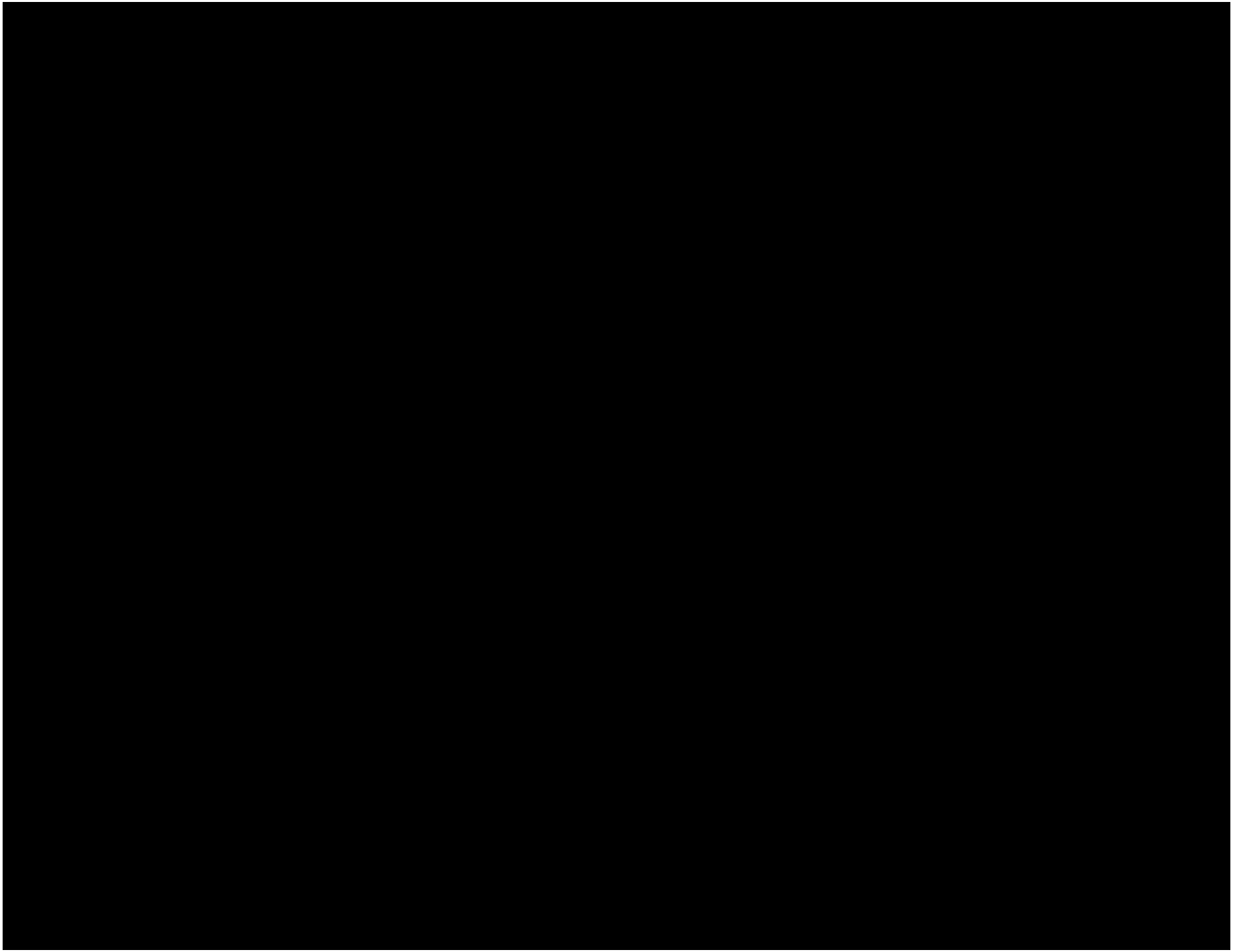


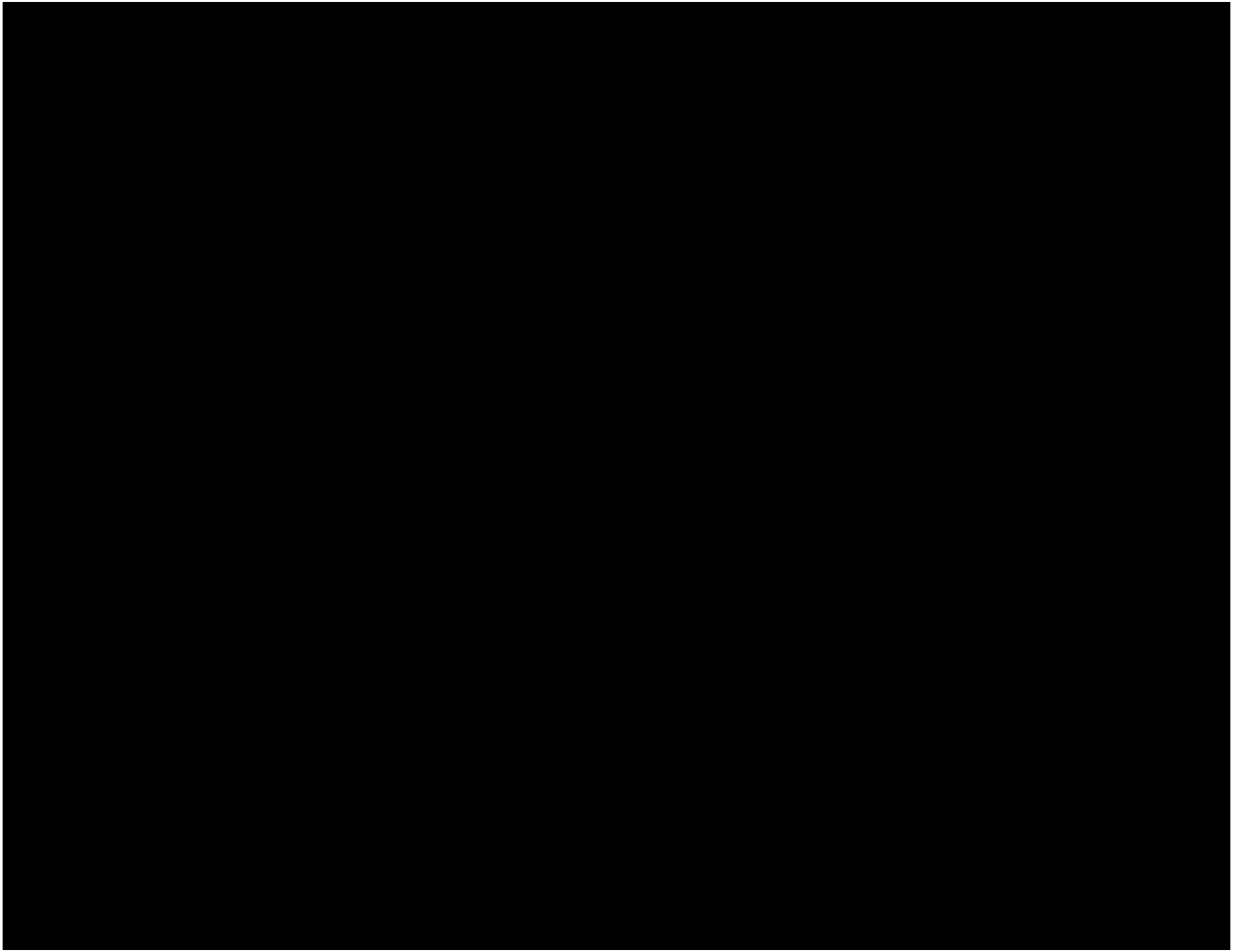


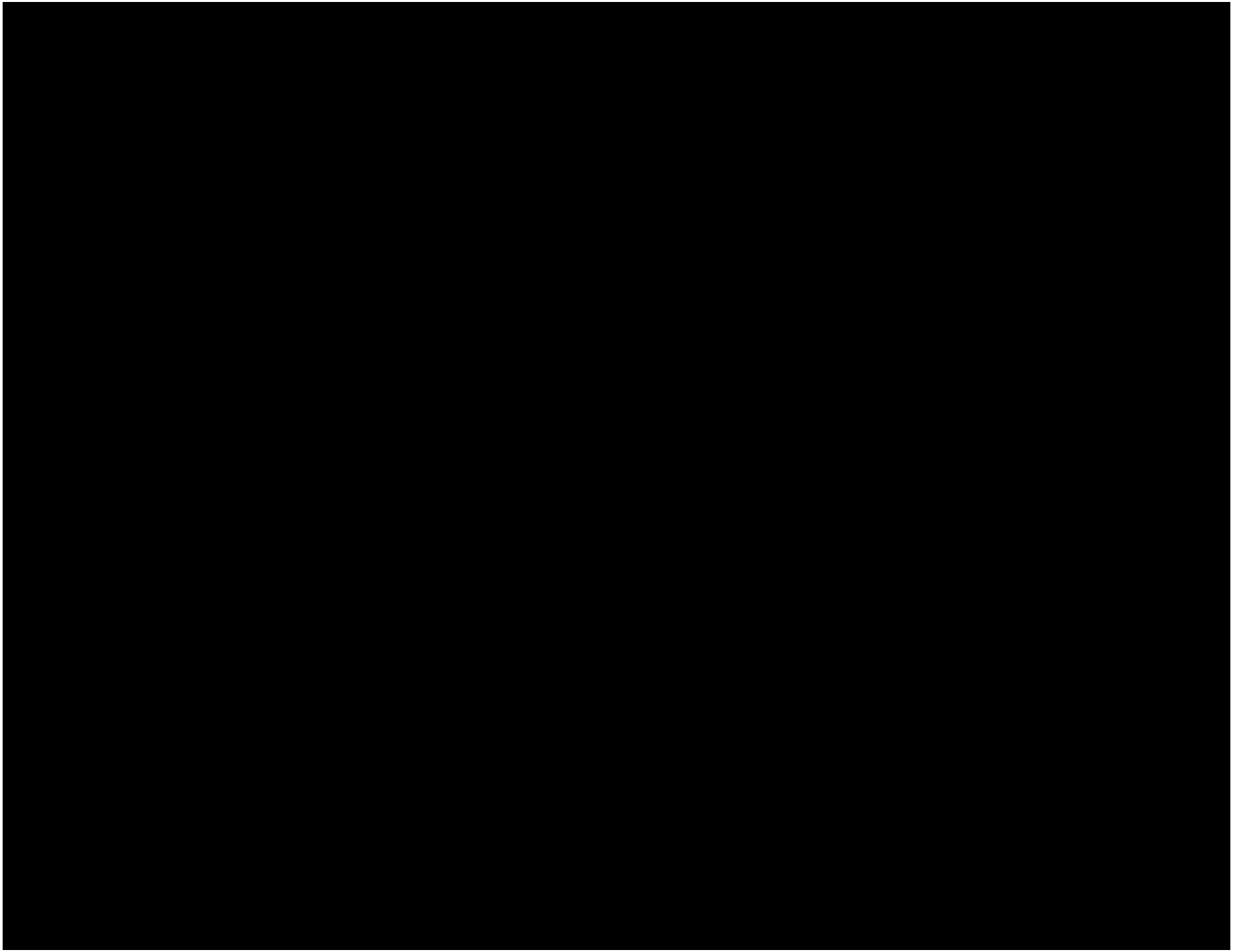


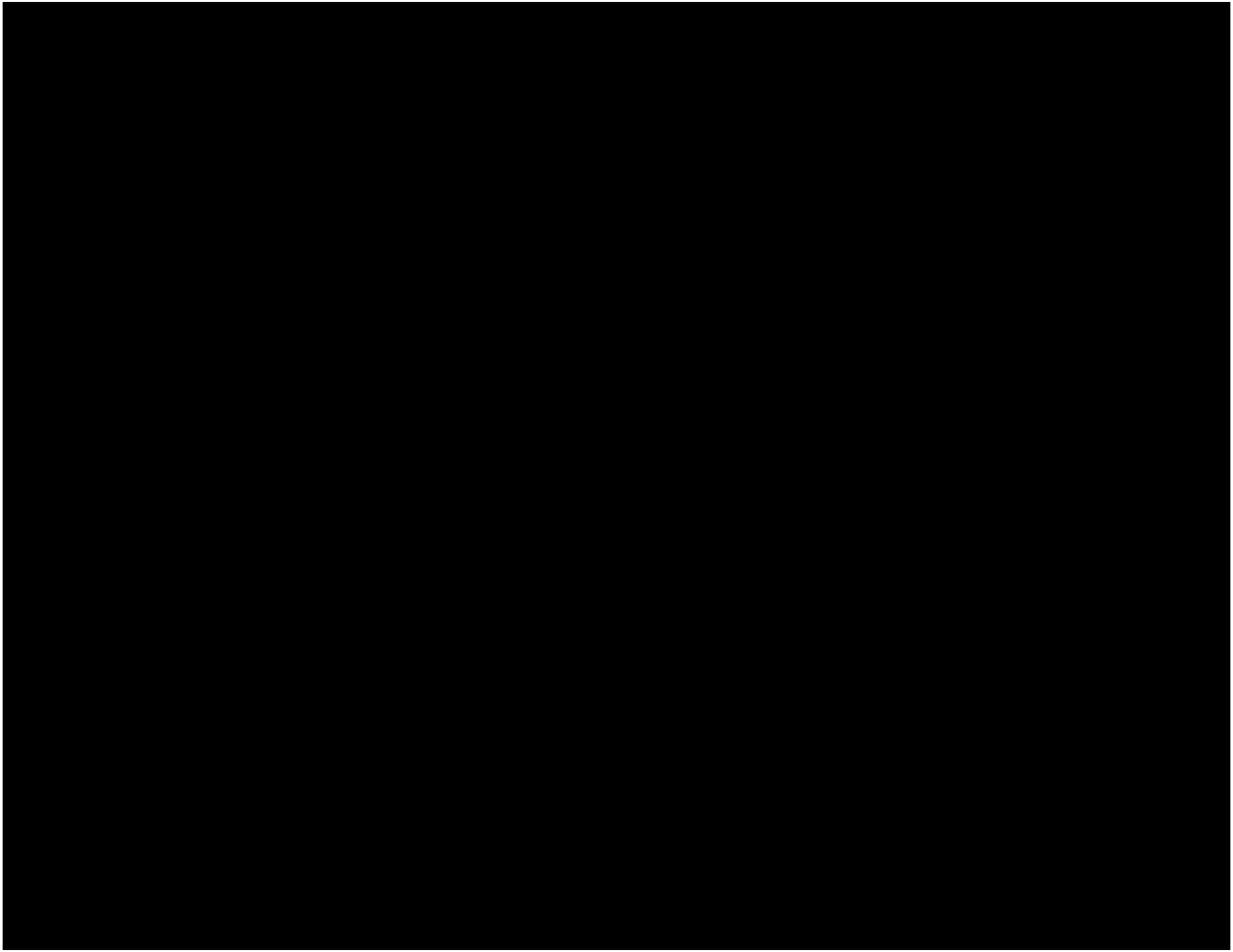


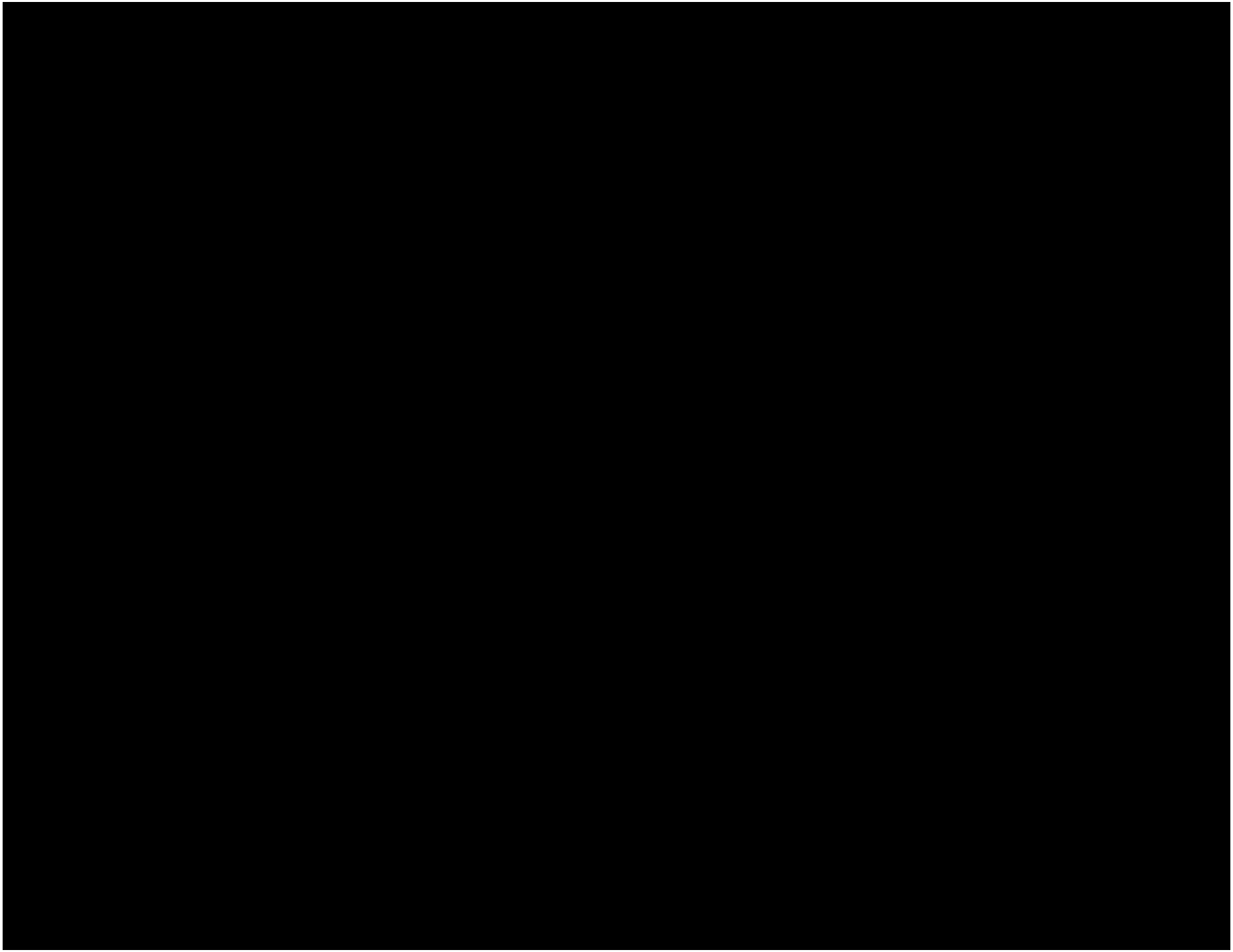


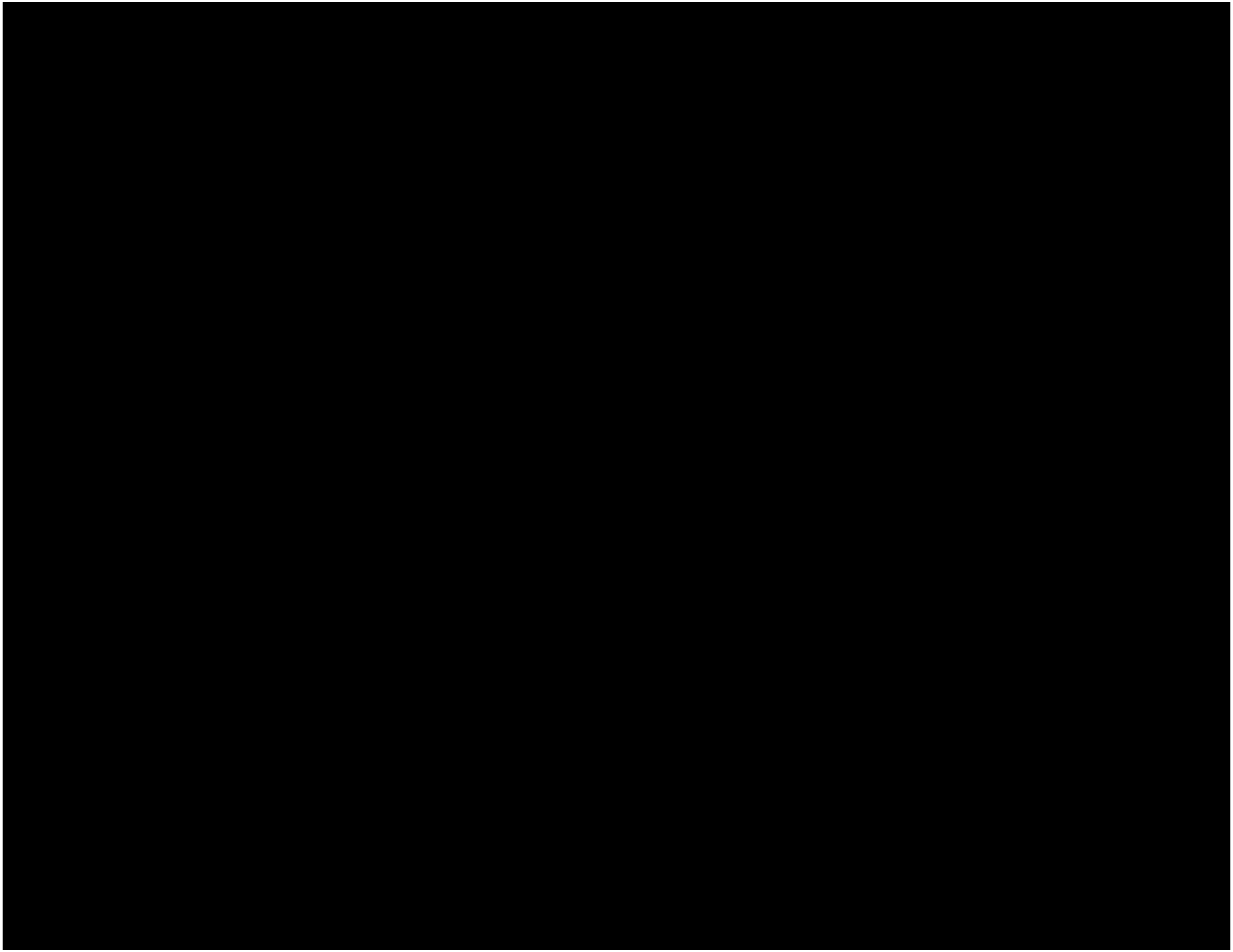


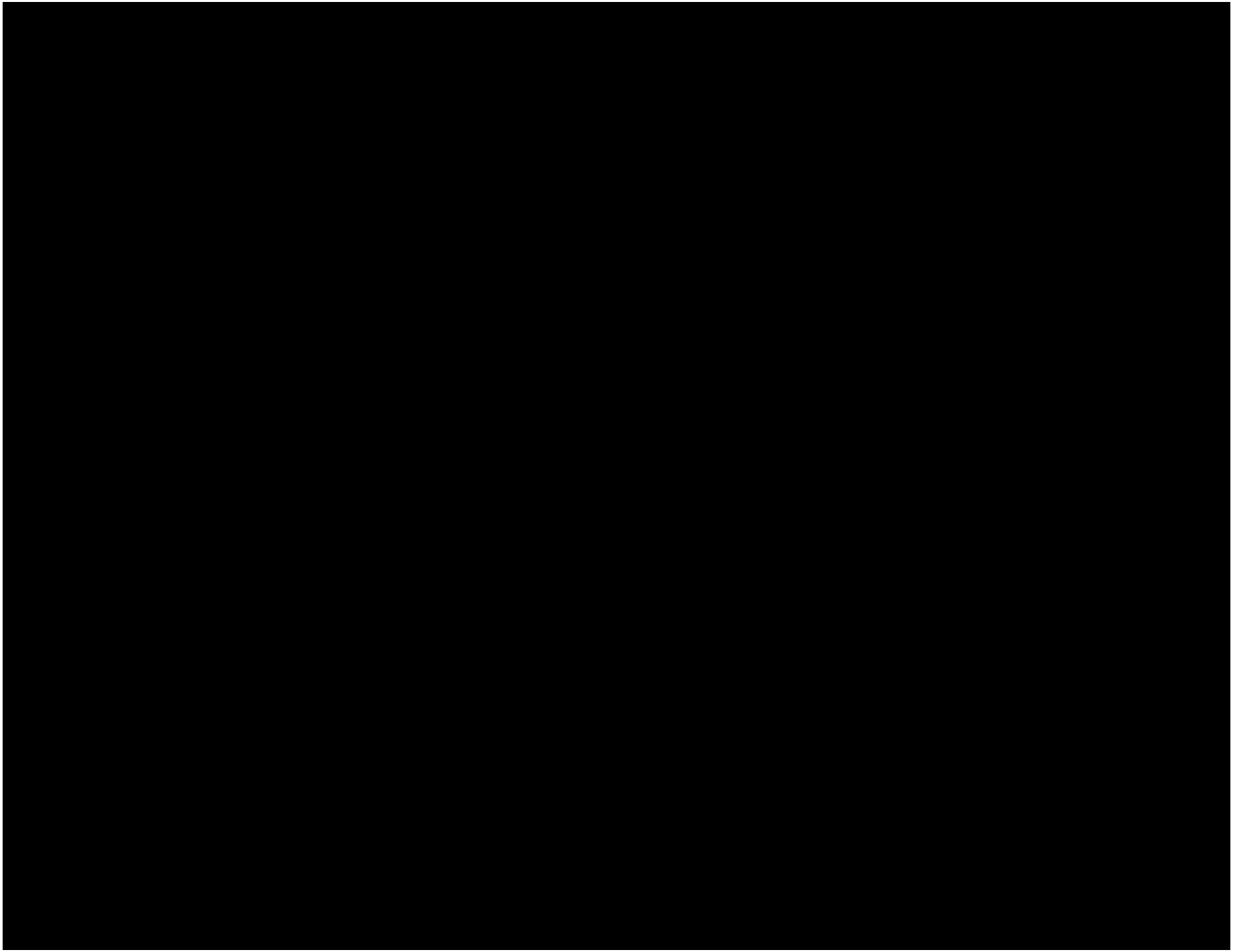


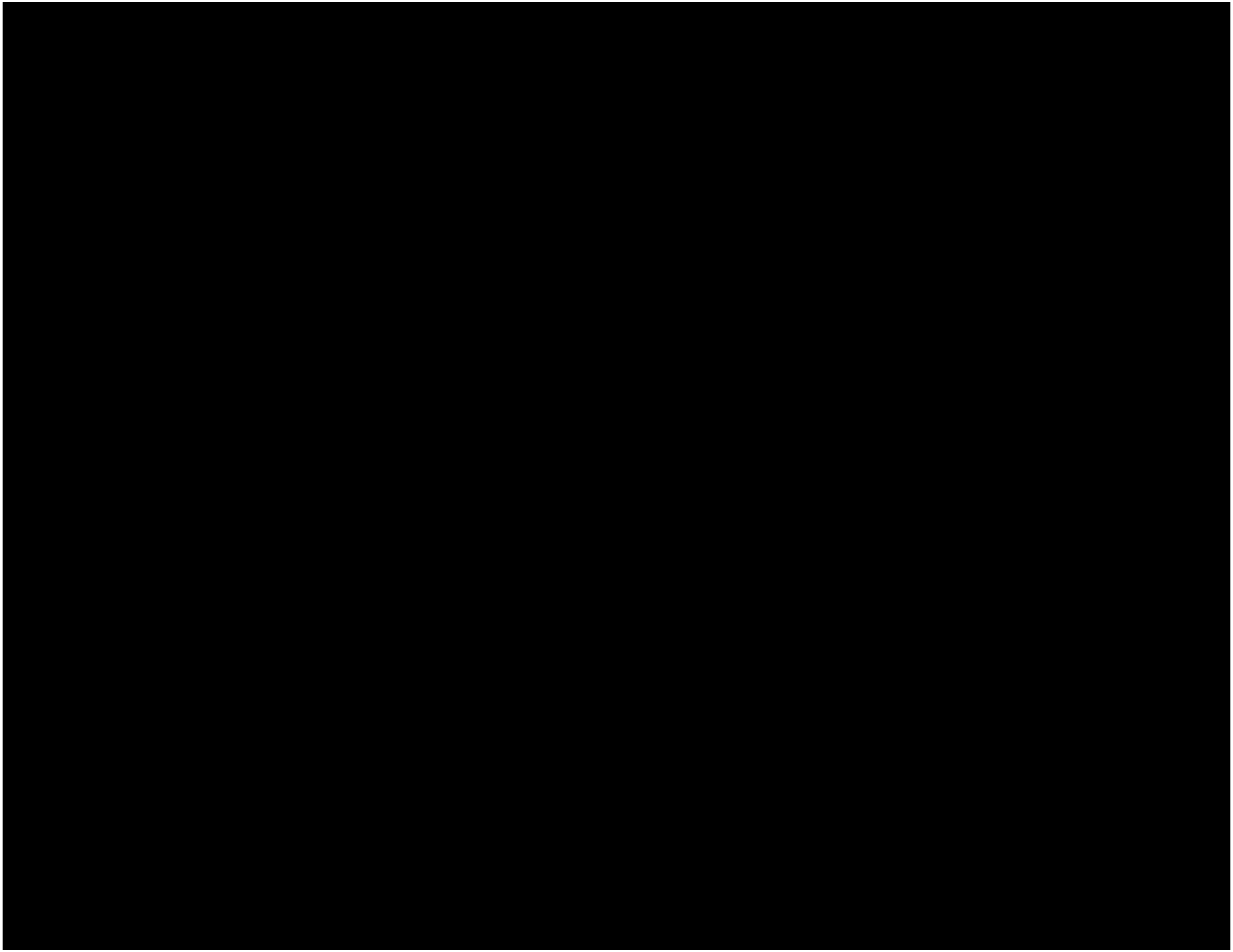


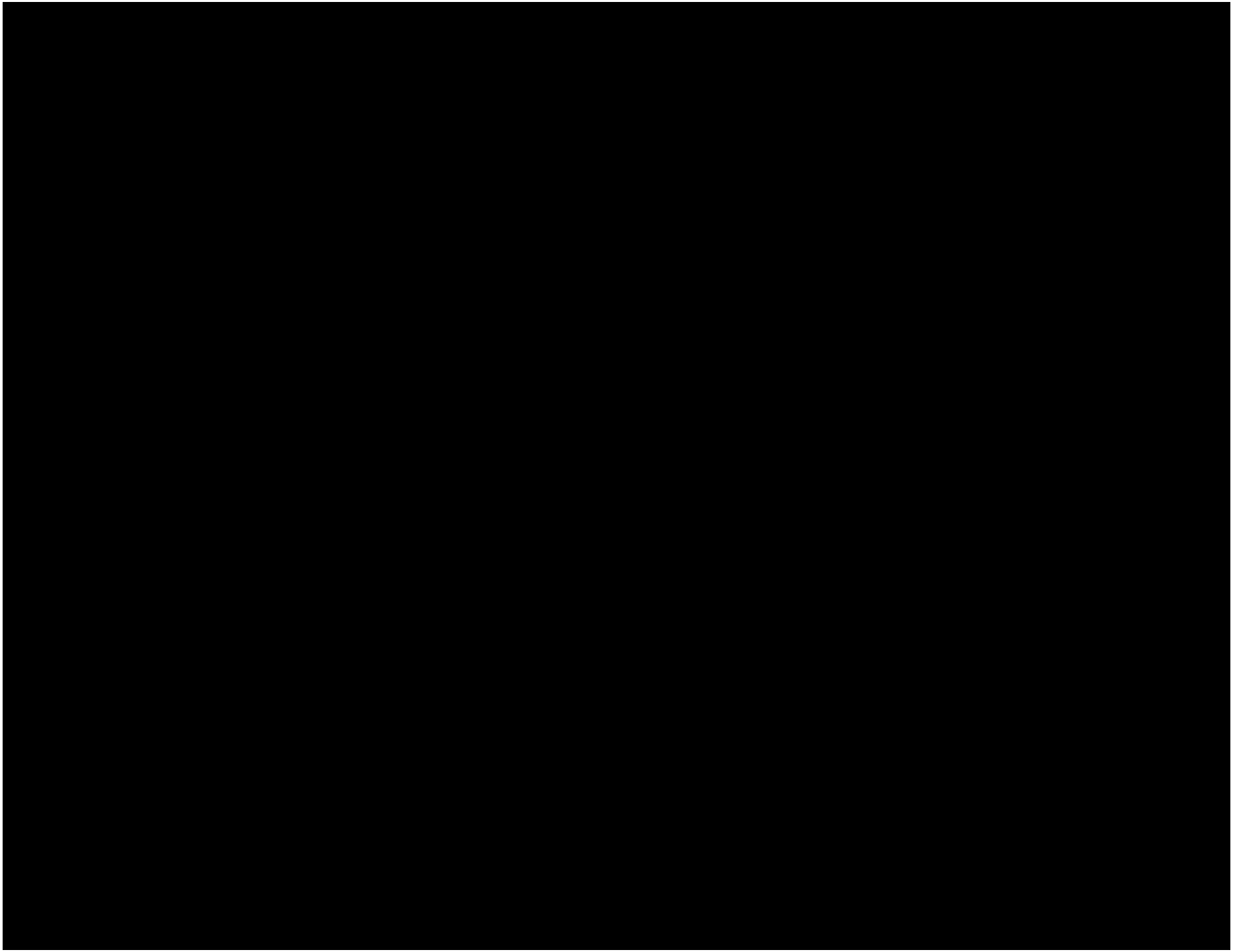


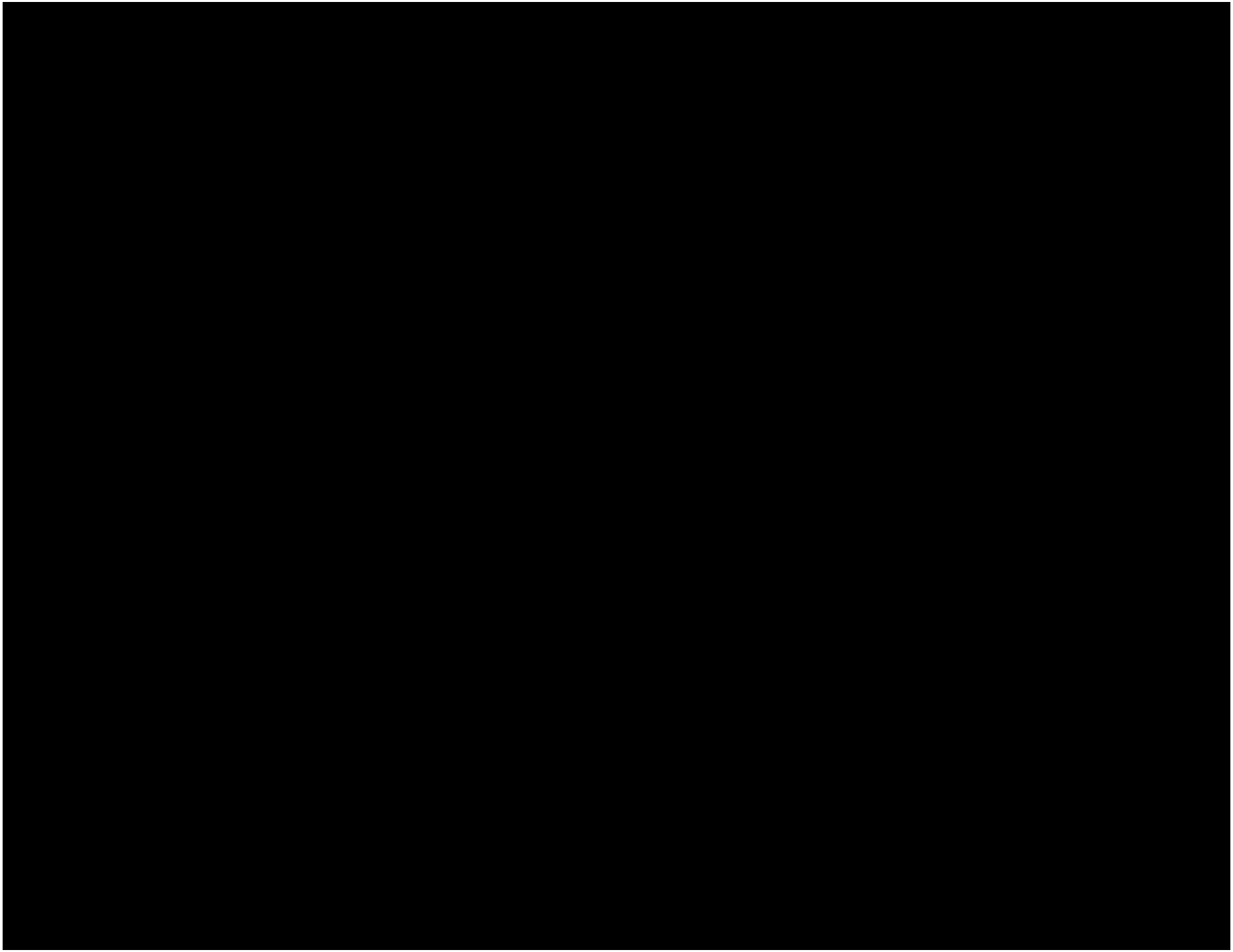


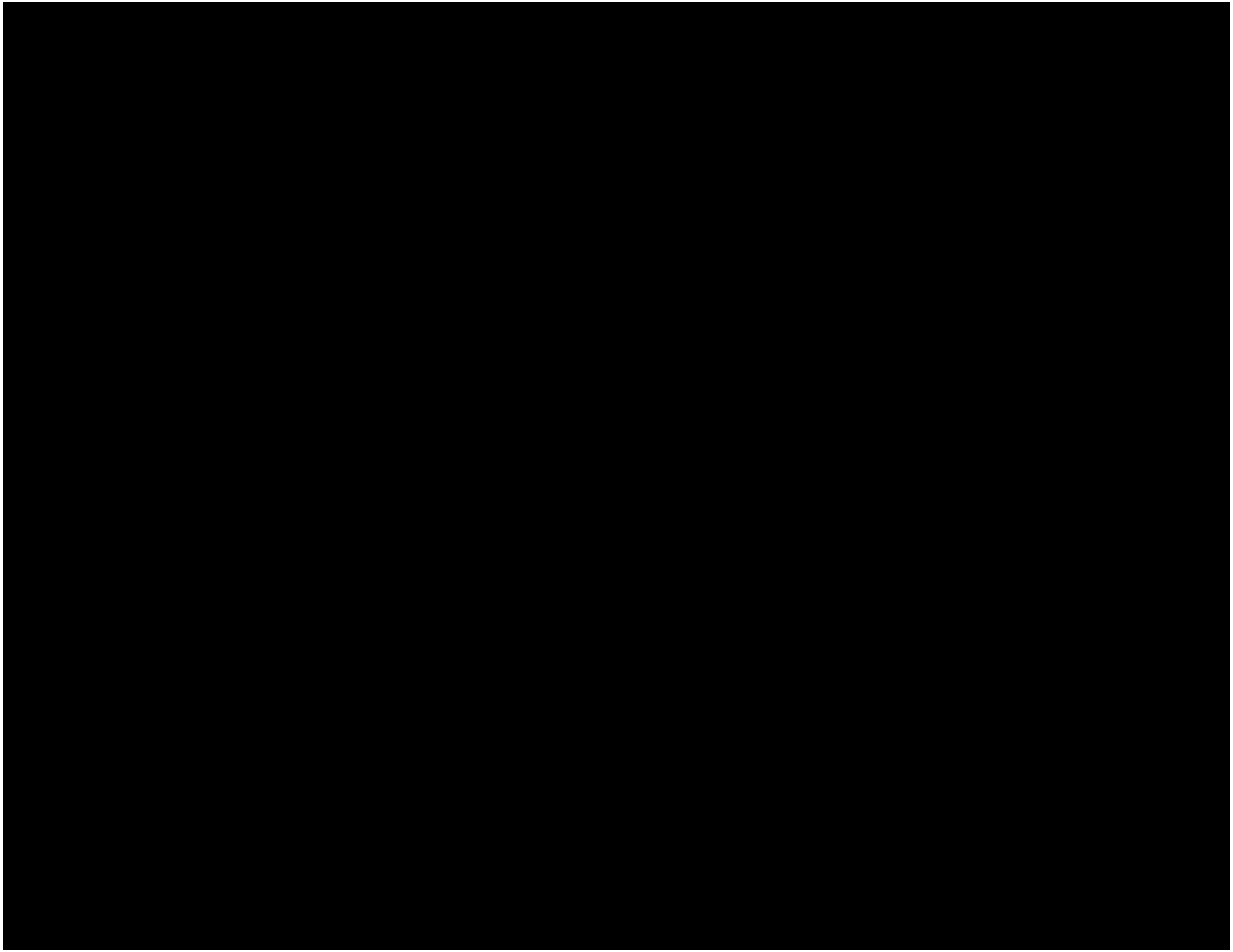


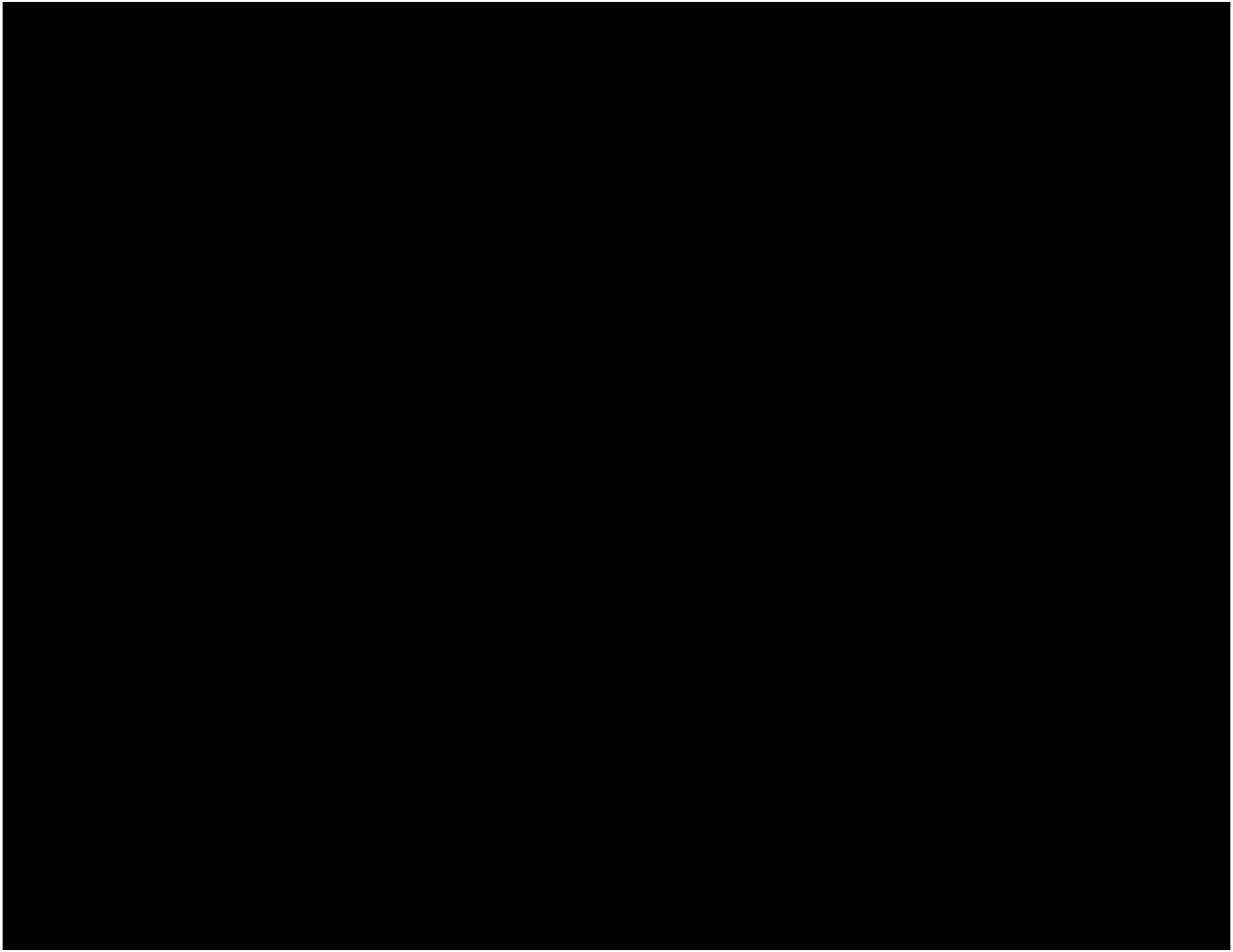


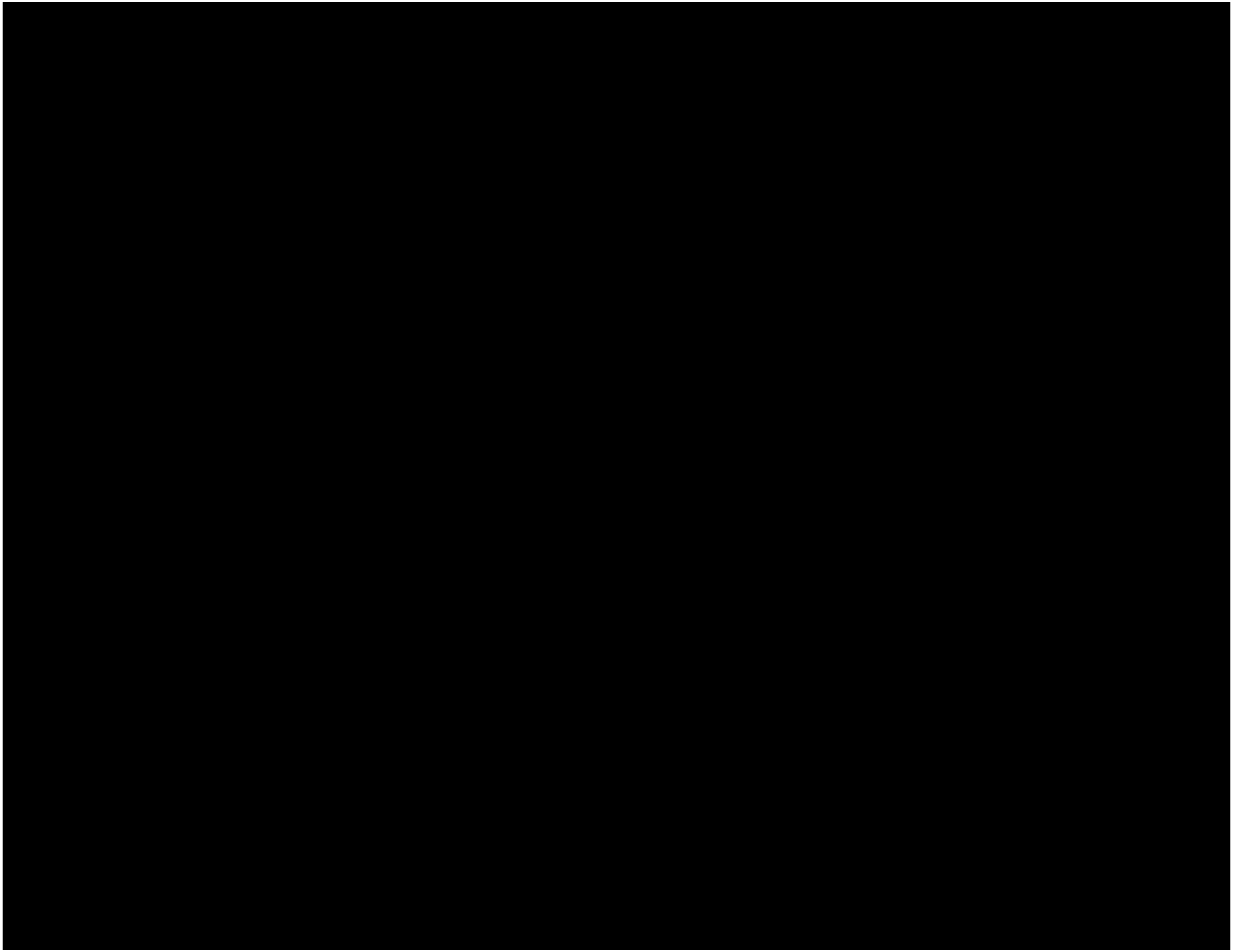


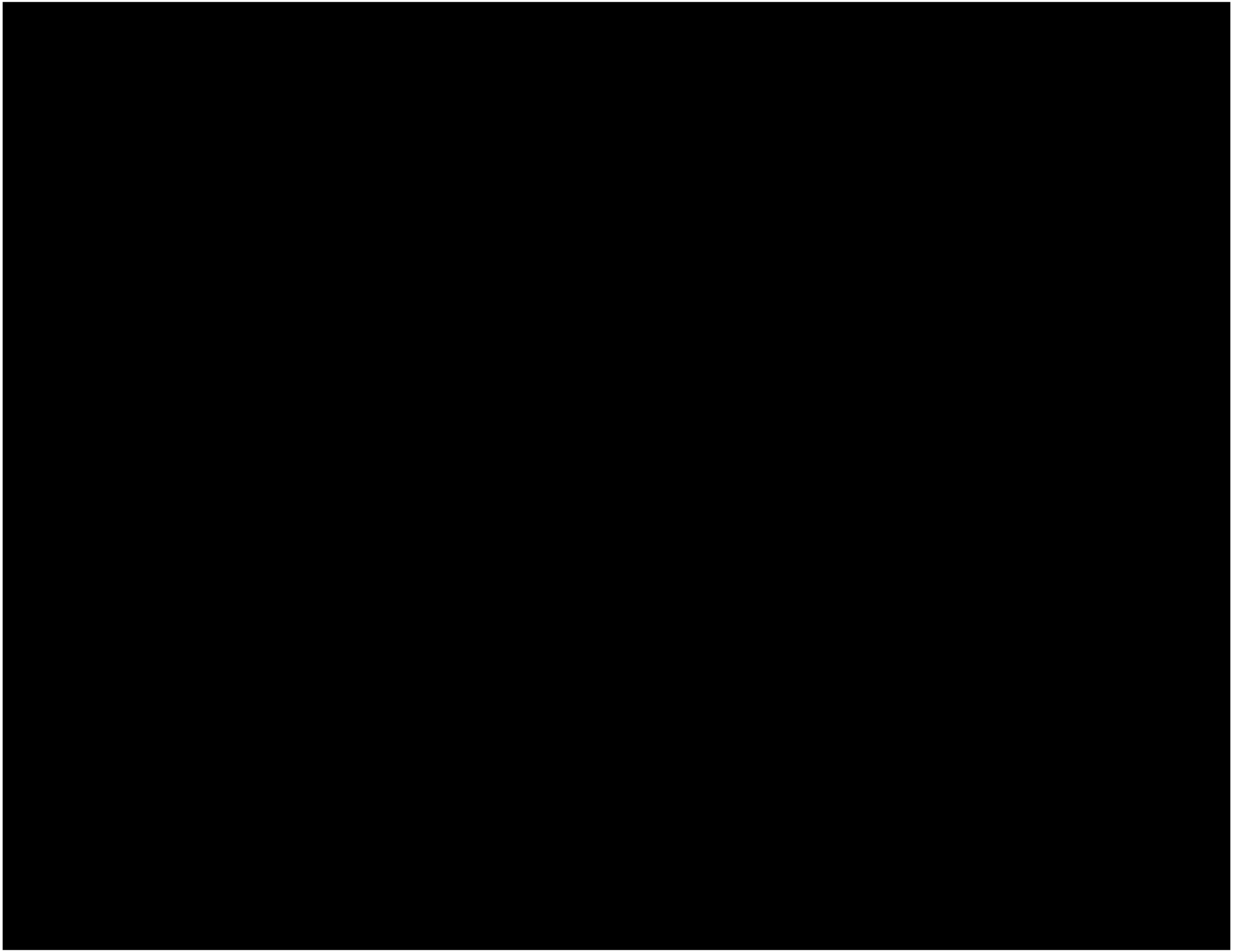


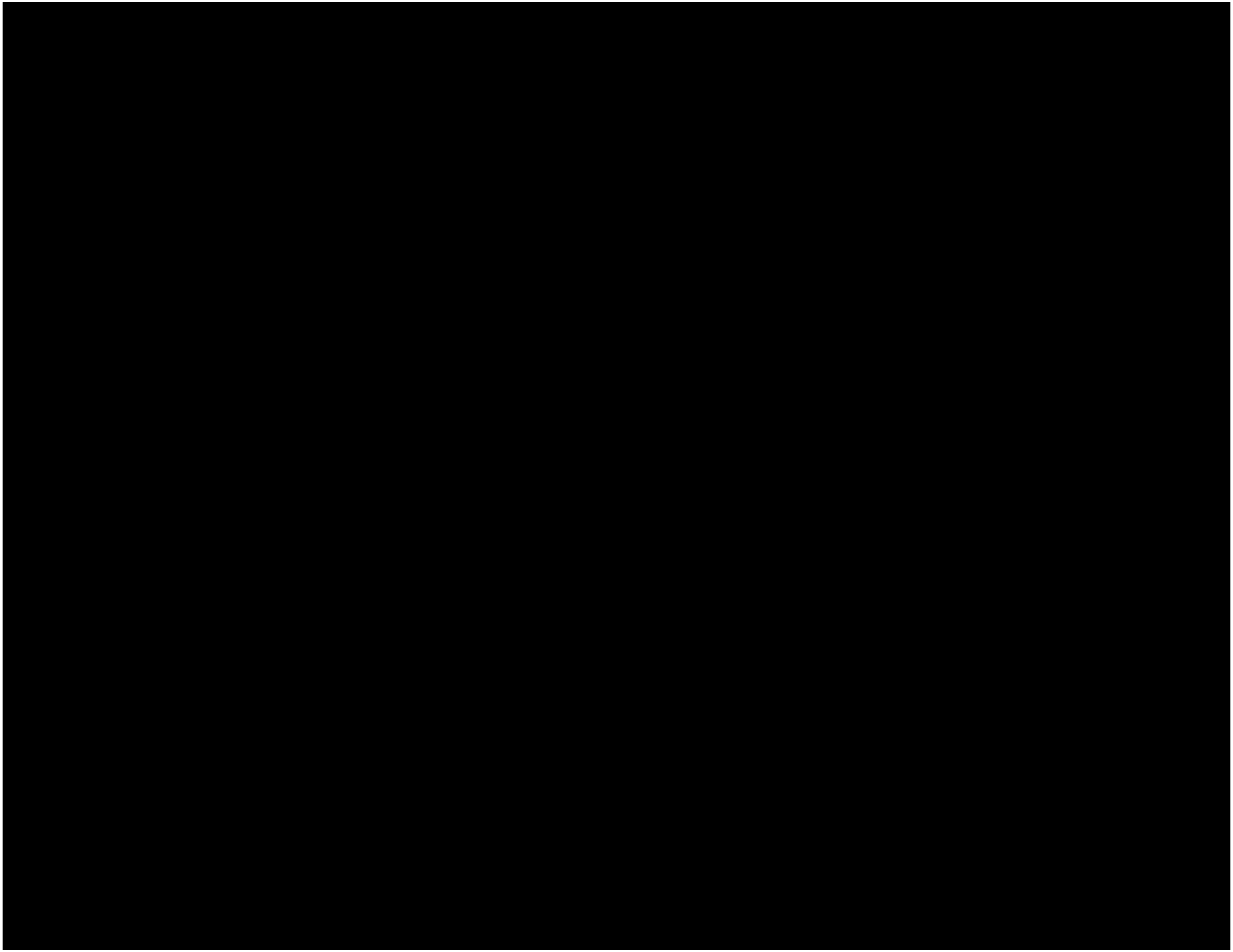


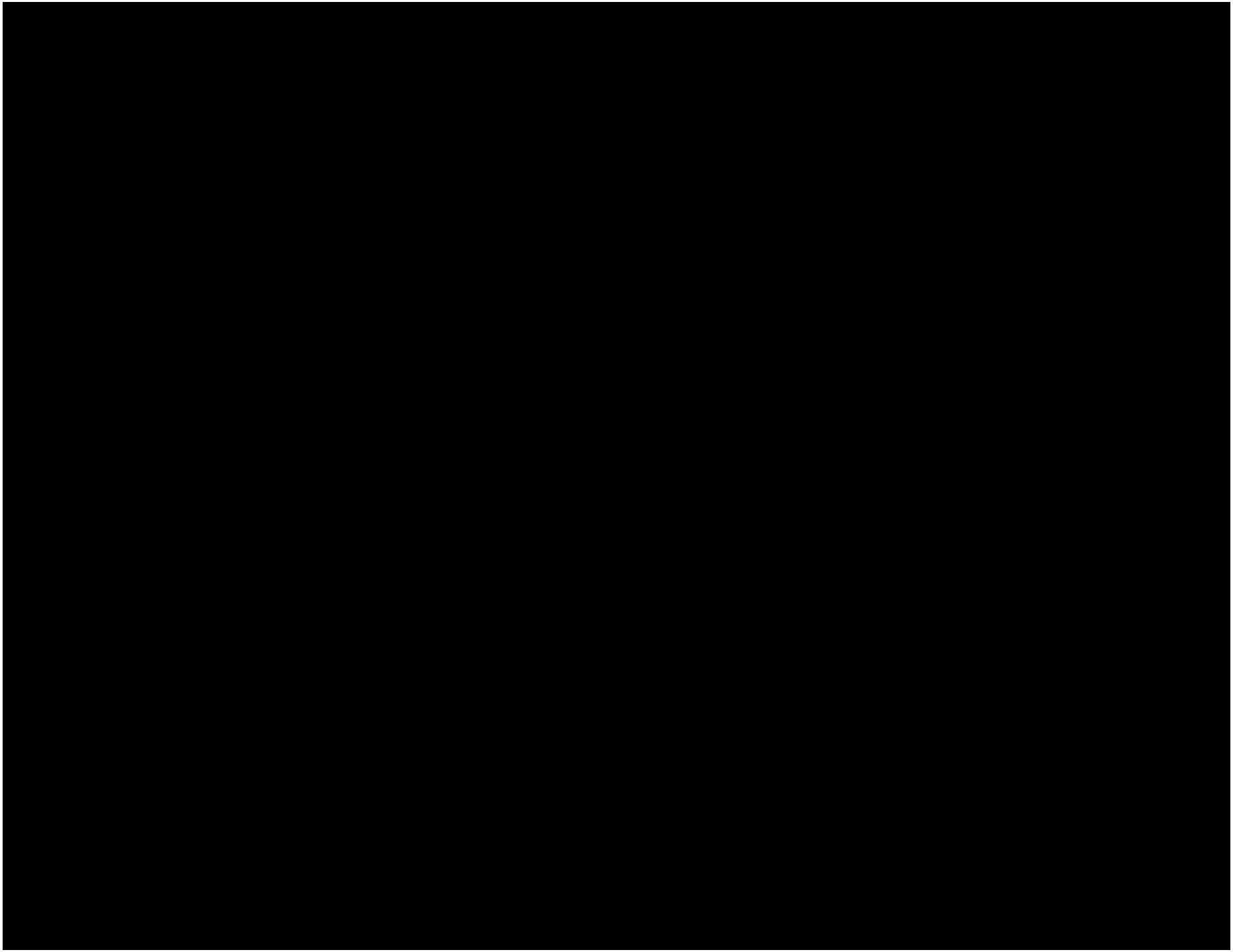


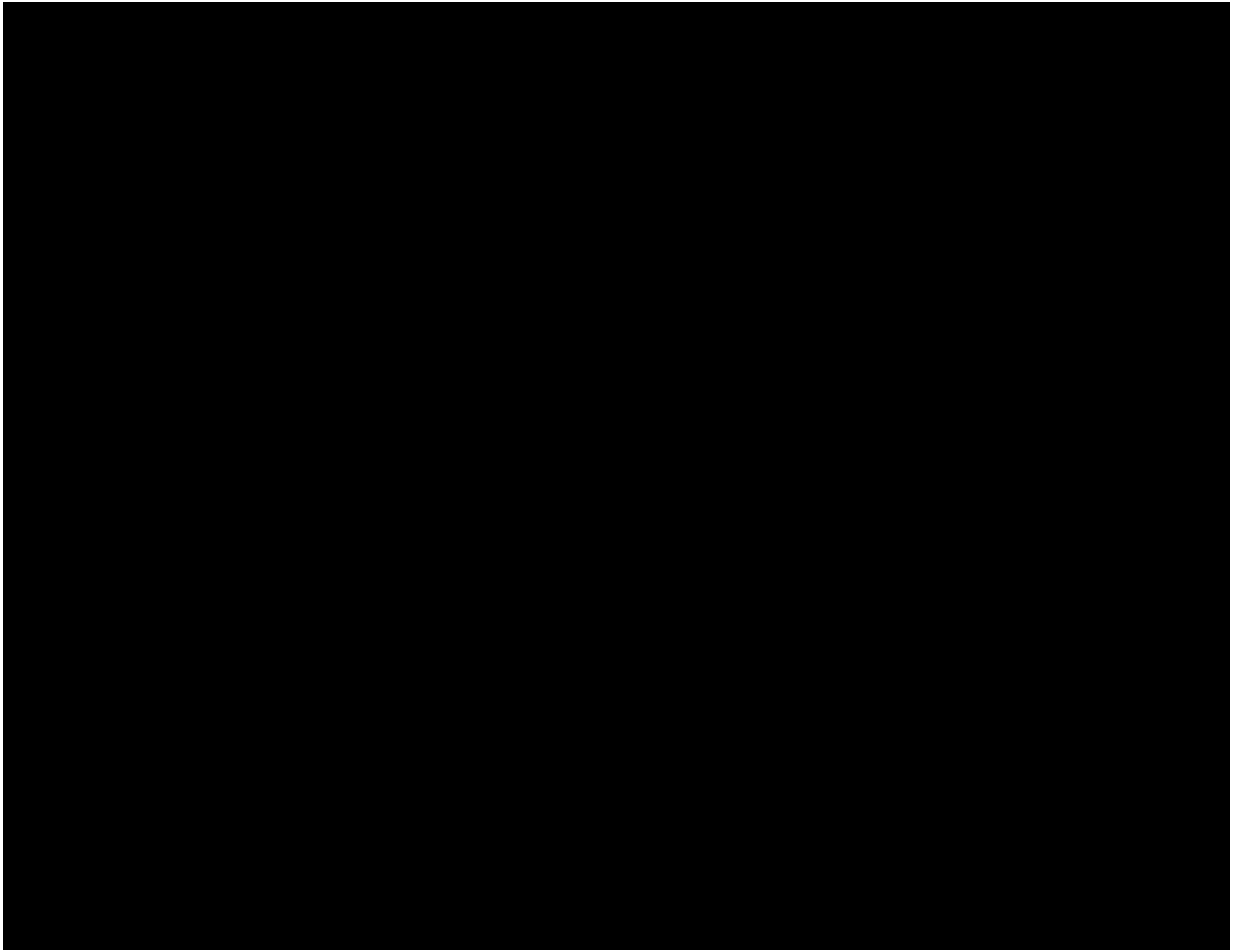












**From:** Kathryn Irby
**To:** Jim Jackson; Vincent France
**Cc:** Martha Cox; Daiquiri Carter
**Subject:** INFO NEEDED: Hudson v. DHS, Claim No. 230641
**Date:** Tuesday, September 3, 2024 11:14:26 AM
**Attachments:** [redacted]

---

**Jim and Vincent**, have the parties conferred about the expected witness testimony? Is everyone confident that this hearing can be completed in one day? I have a full day of hearings on Friday, so we do not have a second day available for this hearing.

On a related note, **Jim**, can you please confirm whether you are still expecting to call all of the witnesses on the attached list? I know that your witness list was filed before the Commission entered its order on the MSJs.

Thanks,
Kathryn Irby

**Kathryn Irby**
**Arkansas State Claims Commission**
101 East Capitol Avenue, Suite 410
Little Rock, Arkansas 72201
(501) 682-2822

**From:** Jim Jackson
**To:** Kathryn Irby; Vincent France
**Cc:** Martha Cox; Daiquiri Carter
**Subject:** RE: INFO NEEDED: Hudson v. DHS, Claim No. 230641
**Date:** Wednesday, September 4, 2024 5:21:57 PM
**Attachments:** image001.jpg
image002.jpg
image003.jpg
image004.jpg

---

Kathryn,
I will send the witness list on Friday.
Thank you,
Jim

**Jim Jackson**
Jackson Law Firm
JimJacksonAtty.com

700 W. Broadway
North Little Rock, AR 72114
**P** (501) 823-3610
**F** (501) 823-3611

---

**From:** Kathryn Irby <Kathryn.Irby@arkansas.gov>
**Sent:** Wednesday, September 4, 2024 5:20 PM
**To:** Jim Jackson <jim@jimjacksonatty.com>; Vincent France <Vincent.P.France@dhs.arkansas.gov>
**Cc:** Martha Cox <mcox@jimjacksonatty.com>; Daiquiri Carter <Daiquiri.Carter@dhs.arkansas.gov>
**Subject:** RE: INFO NEEDED: Hudson v. DHS, Claim No. 230641

**Jim**, thanks for this information. If you can send me that amended witness list this week, that will be helpful to the Commission when reviewing the file in preparation for the hearing on September 19.

**Jim and Vincent**, on September 19, the office will be open by 8am, if not before. Please give yourself plenty of time with parking, as the parking deck is on the south side of 6th Street, and the entrance to the building is near the Capitol/Main intersection. There may also be street parking available, but you may have to feed the meter periodically. If you can arrive near 8am, that will allow everyone to get set up, so that we can begin as close to 9am as possible.

Thanks,
Kathryn

---

**From:** Jim Jackson <jim@jimjacksonatty.com>
**Sent:** Tuesday, September 3, 2024 1:20 PM
**To:** Kathryn Irby <Kathryn.Irby@arkansas.gov>; Vincent France <Vincent.P.France@dhs.arkansas.gov>
**Cc:** Martha Cox <mcox@jimjacksonatty.com>; Daiquiri Carter <Daiquiri.Carter@dhs.arkansas.gov>
**Subject:** RE: INFO NEEDED: Hudson v. DHS, Claim No. 230641

Kathryn,
I need to submit an amended list based on the July 25 decision.
My understanding of the trial will be that since Wilkerson's negligence is not an issue, the claimant will present damage testimony and then the respondent will present an affirmative defense of outside of scope of employment.
I do not see any reason that this cannot be done in one day.
I will confer with Vincent.
Thank you,
Jim

**Jim Jackson**
Jackson Law Firm
JimJacksonAtty.com

700 W. Broadway
North Little Rock, AR 72114
**P** (501) 823-3610
**F** (501) 823-3611

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On a related note, **Jim**, can you please confirm whether you are still expecting to call all of the witnesses on the attached list? I know that your witness list was filed before the Commission entered its order on the MSJs.

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**Arkansas State Claims Commission**
101 East Capitol Avenue, Suite 410
Little Rock, Arkansas 72201
(501) 682-2822

**From:** Jim Jackson
**To:** ASCC Pleadings; Kathryn Irby; Vincent France; Daiquiri Carter
**Cc:** Martha Cox
**Subject:** Haley Hudson, v DHS Arkansas State Claims Commission No. 230641
**Date:** Friday, September 6, 2024 3:43:18 PM
**Attachments:** [redacted]
Holly Newman Deposition Summary by Jim Jackson.pdf
Updated Claimant's Witness & Exhibit List.pdf

---

All,
Attached for filing is the Claimant's Updated Witness & Exhibit List and a Deposition Summary for witness Holly Newman who is a paramedic.
Thank you,
Jim

**Jim Jackson**
Jackson Law Firm
JimJacksonAtty.com

700 W. Broadway
North Little Rock, AR 72114
**P** (501) 823-3610
**F** (501) 823-3611

**ARKANSAS STATE CLAIMS COMMISSION**

**HALEY HUDSON, SPECIAL ADMINISTRATRIX OF THE ESTATE OF JACQUELINE LYNN ASHCRAFT, DECEASED, AND HALEY HUDSON AS PERMANENT LEGAL GUARDIAN OF [redacted], A MINOR CHILD** — **CLAIMANT**

**VS.** **CC NO. 230641**

**ARKANSAS DEPARTMENT OF HUMAN SERVICES** — **RESPONDENT**

## CLAIMANT'S UPDATED WITNESS & EXHIBIT LIST

Comes now the claimant and submits the following Updated Witness and Exhibit List for trial on September 19, 2024. This list is updated based on the oral arguments made during the hearing on May 29, and the Claims Commission's ruling handed down on July 25. The Claimant anticipates putting on testimony solely regarding damages since the allegation of negligence of Jennifer Wilkerson has been admitted to by counsel for the respondent. The Claimant understands that the respondent will present an affirmative defense of whether Jennifer Wilkerson was acting outside the scope of her employment with the respondent at the time of the collision.

The claimant's witnesses and exhibits for damages are:

**Live Witnesses**

Haley Hudson - Daughter
[redacted] Daughter
[redacted] - Daughter
Dylan Ashcraft – Son
Cody Ashcraft – Son
Dr. Garrett Andrews
Ralph Scott, Ph.D. (Economist)

**Witnesses by Deposition**

Christopher Bell, M.D.
Holly Newman (Paramedic)[1]

[1] Attached is a summary of Holly Newman's deposition.

**CLAIMANT'S EXHIBITS ON DAMAGES**

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2. Arkansas Department of Health – Vital Records - Certificate of Death
3. Funeral Program/Obituary
4. Invoice from Brotherton Funeral Home for $1,195.95
5. Family photos and Facebook posting
6. ~~Arkansas State Trooper James Ray's Diagram of accident scene~~
7. ~~Photos of Crash Scene~~
8. ~~Stanley Cain's Expert Report~~
9. [redacted]' medical records
    a. Logan County EMS
    b. Mercy Clinic – Paris
    c. Scarbrough Clinic
    d. Belinga Clinic
    e. Wynne Medical Clinic
10. Dr. Ralph Scott's report on economic damages
11. Estimated Cost to Attend the University of Arkansas
12. Dr. Garrett Andrews' neuropsychology report
13. ~~Michael Kerley's Expert Report – Liability~~
14. ~~Mosaic/aerial photograph from Michael Kerley's deposition~~n
15. ~~Photos from Michael Kerley's file~~
16. Any exhibit contained in the Respondent's Exhibit List
17. Any exhibit attached to any deposition in this cause of action.

Respectfully submitted,

BY: /s/ *Jim Jackson*

Jim R. Jackson, AR Bar #93-209
Jackson Law Firm
700 West Broadway Street, Suite 200
North Little Rock, AR 72114-5528
(501) 823-3610 phone
(501) 823-3611 facsimile
*Jim@JimJacksonatty.com*

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the above and foregoing Updated Exhibit & Witness List was served on the following counsel of record by email on September _____, 2024:

Mr. Vincent France
Assistant Deputy Chief Counsel
Arkansas Department of Human Services
P.O. Box 1437
Little Rock, AR 72203-1437

*/s/ Jim R. Jackson*.
Jim R. Jackson

# Summary of Deposition of Holly Newman

- **Role**: Paramedic employed by Logan County EMS at the time of the incident.

**Key Points:**

- **Introduction and Background (Page 4-6)**

- Holly Newman introduced herself and provided her professional background and licensing details. Newman passed the national test that every paramedic takes in 2016. She does Advanced Life Support ambulance care for the last ten years.

**Incident Description (Page 7, Lines 1-25; Page 8, Lines 1-25)**

- Newman's ambulance was dispatched from Paris, Arkansas, to the accident site near Subiaco.
- Describes arriving and parking near the wrecked vehicles, identifying Ms. Ashcraft and her children.

- **Initial Assessment (Page 10, Lines 1-25; Page 11, Lines 1-25)**

- Newman conducted an initial assessment of Ms. Ashcraft and noted that Ashcraft seemed fine initially.
- On initial assessment, no complaints of chest pain from Ashcraft when her chest was palpated (p. 51, lines 3-4).

- Ashcraft was wearing a shoulder and lap belt and the airbags deployed. **Page 27, Line 12-18.**

- Ashcraft's pupils were 2 millimeters at the time of the initial assessment which is what is to be expected. (**Page 19, lines 1-16**)
- [redacted] had signs of a possible concussion but both children were not in immediate life-threatening conditions.

- **Interaction with Ms. Ashcraft (Page 13, Lines 1-25; Page 14, Lines 1-25)**

- Newman explained procedures and her insistence on medical evaluations for the children.

- **Initial Medical Details (Page 17, Lines 1-25; Page 18, Lines 1-25)**

- Documented medical assessments of Ms. Ashcraft and [redacted].
- Describes initial evaluations such as mental status orientation, pupil measurements, and physical examinations. All within normal range. However, Newman explains that they do not have a portable CT Scanner with their ambulance.

- Newman walked with Ashcraft to the house across the street from the accident site. Newman then walked to check on Bobby Wilson who was the truck driver. He was ok. Newman then went to the ambulance to assist the other paramedic who was working on Jennifer Wilkerson. That is when a State Trooper knocked on the door of the ambulance to inform them that Ashcraft needed emergency care. (Pages 23-24)

- **Subsequent Developments (Page 24, Lines 1-25; Page 25, Lines 1-25)**

- Neurological symptoms like facial droop or left-sided weakness emerged post-accident but were not evident during Newman's initial encounter **(p. 54, lines 12-15).**

- Noted significant mental status changes in Ashcraft, indicating possible brain bleed, which could not be detected initially without a CT scan (**p. 56, lines 1-25; p. 57, lines 23-24)**

- Describes Ms. Ashcraft's deteriorating condition at the house near the accident scene.

- Newman started an IV and requested another ambulance unit, but ultimately transported Ms. Ashcraft to the hospital after paramedic Marry assisted.

- **Transport to Hospital (Page 27, Lines 1-25; Page 28, Lines 1-25)**

- Discussed transport logistics and medical actions taken en route to Booneville since the nearest facility (Paris) had a down CT scanner.
- Mentioned re-evaluations and continuous medical assistance provided during transport.

- Jennifer Wilkerson,was transported in the same ambulance (**p. 65, lines 15-25; p. 66, lines 1-13).**

## Coup-Contrecoup Injuries:

- **Coup-Contrecoup Explanation:**

- Newman explained that the force of a motor vehicle accident can cause the brain to move rapidly back and forth within the skull, resulting in injuries on the site of impact (coup) and the opposite side (contrecoup) (**p. 86, lines 1-11).**

- **Impact of the Accident:**

- Newman suggests that the force from the rear-end collision likely caused internal brain injuries (coup-contrecoup effect) that contributed to the symptoms observed in Haley Hudson later **(p. 86, lines 1-11).**

- This concept helps explain why visible external signs were not evident during the initial assessment but severe internal damage was present.

- **Comparison with Other Injury Mechanisms:**

- Newman  emphasized that blunt force trauma from an accident (e.g., the car impact) differs from injuries caused by direct blows (e.g., hitting with an object) (p. 86, lines 12-25).

- Newman highlighted the higher likelihood of internal brain injury from the high-force dynamics of a car crash compared to other types of head trauma (p. 87, lines 1-24).

- **Definition of Coup-Contrecoup**:

- **Testimony**: The coup-contrecoup injury is explained as the brain hitting the front of the skull and then the back of the skull during a rear-end collision.
- **Reference**: pp. 35, lines 1-8 **Newman, Holly (2) page 1-50.pdf.**

- **Cause of Brain Bleed**:

- **Testimony**: The force of the car hitting the back of the head is described. The force inside a motor vehicle accident (MVA) is often what causes the coup-contrecoup injury.
- **Reference**: pp. 87, lines 1-11 **Newman, Holly (3) page 51-95.pdf.**

- **Comparison to Other Injuries**:

- **Testimony**: Comparing the force of an MVA to other types of impacts, like being hit with a baseball bat or a book, is discussed. These other impacts are more direct to the skull, as opposed to the coup-contrecoup which results from the force in an MVA.
- **Reference**: **pp. 87, lines 3-15  page 51-95.pdf.**

**TIMELINE**

- Paramedics arrived at scene at 1:04 p.m. Paramedics departed the scene at 1:44 p.m. and arrived at Booneville Hospital 28 minutes later which is when they transferred Ashcraft's care to Mercy Medical. **Page 90**

Arkansas
State Claims Commission
SEP 06 2024
RECEIVED

**IN THE ARKANSAS STATE CLAIMS COMMISSION**

**HALEY HUDSON, INDIVIDUALLY
HALEY HUDSON, SPECIAL ADMINISTRATRIX OF
THE ESTATE OF JAQUELINE LYNN ASHCRAFT,
DECEASED, AND HALEY HUDSON, AS PERMANENT
LEGAL GUARDIAN OF [redacted]
[redacted] MINOR CHILDREN** **CLAIMANTS**

**vs.** **CC No. 230641**

**ARKANSAS DEPARTMENT OF
HUMAN SERVICES** **RESPONDENT**

## RESPONDENT'S EXHIBIT LISTS

1. Pamela Feemster Affidavit & Exhibits attached thereto;
2. Aerial Photographs produced by DHS (bates number 85-91);
3. Accident Scene Photographs produced by DHS (bates number 19-37);
4. Wilkerson Toxicology Report (Ashcraft bates number 258-259);
5. DHS Emails RE Wilkerson's termination (Ashcraft bates number 408-428);
6. Wilkerson's termination document;
7. Kristen Shelton's Deposition and exhibits attached thereto;
8. Brandy Ezell's Deposition and exhibits attached thereto;
9. Jennifer Wilkerson's Deposition and exhibits attached thereto;
10. DHS Vehicle Policy;
11. ASP Accident Report (Ashcraft bates number 291-308) *if necessary*;
12. Ashcraft Insurance policy;
13. Ashcraft toxicology report.

**From:** Jim Jackson
**To:** Vincent France; Kathryn Irby
**Cc:** Daiquiri Carter; Martha Cox
**Subject:** Haley Hudson v. DHS - Arkansas State Claims Commission No. 230641 Incident Date: 6/11/2021
**Date:** Friday, September 6, 2024 10:29:11 AM
**Attachments:** [redacted]

---

Vincent,
I enjoyed visiting with you this morning about the witnesses and exhibits and the expected Trial Testimony.
Please find attached the claimant's updated Witness & Exhibit list.
I am still working on the summary of Holly Newman's deposition and will send it later in the day.
I stipulated to the admission of your Exhibits #1-12.
I know you are looking at which exhibits of the claimant you can stipulate to.
I believe we are comfortable that we can present both the case in chief and your affirmative defense in one day.
I am cc'ing Kathryn so she knows that we have conferenced on this matter and knows that we are actively working together to streamline the testimony and exhibits.

Please feel free to correct any errors if my understanding of our call is not the same as yours.

Thank you,

Jim

**Jim Jackson**
Jackson Law Firm
JimJacksonAtty.com

700 W. Broadway
North Little Rock, AR 72114
**P** (501) 823-3610
**F** (501) 823-3611

**From:** Jim Jackson
**To:** Vincent France; Kathryn Irby
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**Subject:** Haley Hudson v. DHS - Arkansas State Claims Commission No. 230641 Incident Date: 6/11/2021
**Date:** Friday, September 6, 2024 10:29:11 AM
**Attachments:** [redacted] Updated Claimant's [redacted] Exhibit List.docx

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North Little Rock, AR 72114
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**ARKANSAS STATE CLAIMS COMMISSION**

| | |
|---|---|
| **HALEY HUDSON, SPECIAL ADMINISTRATRIX OF THE ESTATE OF JACQUELINE LYNN ASHCRAFT, DECEASED, AND HALEY HUDSON AS PERMANENT LEGAL GUARDIAN OF [redacted], A MINOR CHILD** | **CLAIMANT** |
| **VS.** **CC NO. 230641** | |
| **ARKANSAS DEPARTMENT OF HUMAN SERVICES** | **RESPONDENT** |

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The claimant's witnesses and exhibits for damages are:

**Live Witnesses**

Haley Hudson - Daughter
[redacted] - Daughter
[redacted] - Daughter
Dylan Ashcraft – Son
Cody Ashcraft – Son
Dr. Garrett Andrews
Ralph Scott, Ph.D. (Economist)

**Witnesses by Deposition**

Christopher Bell, M.D.
Holly Newman (Paramedic)[1]

[1] Attached is a summary of Holly Newman's deposition.

**CLAIMANT'S EXHIBITS ON DAMAGES**

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7. ~~Photos of Crash Scene~~
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14. ~~Mosaic/aerial photograph from Michael Kerley's deposition~~
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16. Any exhibit contained in the Respondent's Exhibit List
17. Any exhibit attached to any deposition in this cause of action.

**Formatted:** Font color: Red

Respectfully submitted,

BY: ____/s/ *Jim Jackson*_____

Jim R. Jackson, AR Bar #93-209
Jackson Law Firm
700 West Broadway Street, Suite 200
North Little Rock, AR 72114-5528
(501) 823-3610 phone
(501) 823-3611 facsimile
*Jim@JimJacksonatty.com*

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the above and foregoing Updated Exhibit & Witness List was served on the following counsel of record by email on September _____, 2024:

Mr. Vincent France
Assistant Deputy Chief Counsel
Arkansas Department of Human Services
P.O. Box 1437
Little Rock, AR 72203-1437

*/s/ Jim R. Jackson*_____.
Jim R. Jackson

**From:** Kathryn Irby
**To:** "Jim Jackson"; Vincent France
**Cc:** Daiquiri Carter; Martha Cox
**Bcc:** Kathryn Irby
**Subject:** INFO NEEDED: Haley Hudson v. DHS - Arkansas State Claims Commission No. 230641 Incident Date: 6/11/2021
**Date:** Saturday, September 14, 2024 11:56:00 AM
**Attachments:** ~~image001.jpg~~ ~~image002.jpg~~ ~~image003.jpg~~ ~~image004.jpg~~

---

Jim and Vincent, do you have an update on the below email re stipulations?

Thanks,
Kathryn

---

**From:** Jim Jackson <jim@jimjacksonatty.com>
**Sent:** Friday, September 6, 2024 10:29 AM
**To:** Vincent France <vincent.p.france@dhs.arkansas.gov>; Kathryn Irby <kathryn.irby@arkansas.gov>
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**Date:** Saturday, September 14, 2024 12:14:13 PM
**Attachments:** image001.jpg
image002.jpg
image003.jpg
image004.jpg

Kathryn,
Vincent and I visited Friday about the testimony of Jennifer Wilkerson.
We are going to use excerpts from her deposition and create a video clip from it.
Vincent and I have created a page number and line number list which greatly reduces the amount of time it will take for Wilkerson's testimony.
I know Vincent was reviewing the Claimants' Exhibit List and was going to get with me as soon as possible on stipulations.
Thank you,
Jim

**Jim Jackson**
Jackson Law Firm
JimJacksonAtty.com

700 W. Broadway
North Little Rock, AR 72114
**P** (501) 823-3610
**F** (501) 823-3611

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**To:** Jim Jackson <jim@jimjacksonatty.com>; Vincent France <Vincent.P.France@dhs.arkansas.gov>
**Cc:** Daiquiri Carter <Daiquiri.Carter@dhs.arkansas.gov>; Martha Cox <mcox@jimjacksonatty.com>
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I know you are looking at which exhibits of the claimant you can stipulate to.
I believe we are comfortable that we can present both the case in chief and your affirmative defense in one day.
I am cc'ing Kathryn so she knows that we have conferenced on this matter and knows that we are actively working together to streamline the testimony and exhibits.

Please feel free to correct any errors if my understanding of our call is not the same as yours.

Thank you,

Jim

**Jim Jackson**
Jackson Law Firm
JimJacksonAtty.com

700 W. Broadway
North Little Rock, AR 72114
**P** (501) 823-3610
**F** (501) 823-3611

**From:** Kathryn Irby
**To:** Jim Jackson
**Subject:** RE: Prior order
**Date:** Monday, September 16, 2024 9:01:00 AM
**Attachments:** [redacted] order.pdf
[redacted]

---

Jim, please see attached order entered by the Commission in September 2020. The Claims Review Subcommittee ultimately voted to award the claimant $100,000 in March 2021.

Thanks,
Kathryn

---

**From:** Jim Jackson <jim@jimjacksonatty.com>
**Sent:** Monday, September 16, 2024 8:52 AM
**To:** Kathryn Irby <kathryn.irby@arkansas.gov>
**Subject:** Prior order

Kathryn,
Vincent referenced a decision in the case of:
Dayong Yang v State
Claim No. 16-0496

I would like to request a copy of the Commission's Order.

Thank you,

Jim

**Jim Jackson**
Jackson Law Firm
JimJacksonAtty.com

700 W. Broadway
North Little Rock, AR 72114
**P** (501) 823-3610
**F** (501) 823-3611

**BEFORE THE ARKANSAS STATE CLAIMS COMMISSION**

**DAYONG YANG, AS SPECIAL ADMINISTRATOR OF THE ESTATE OF LE YANG, DECEASED** **CLAIMANT**

**V.** **CLAIM NO. 16-0496-CC**

**ARKANSAS DEPARTMENT OF EMERGENCY MANAGEMENT** **RESPONDENT**

**ORDER**

Now before the Arkansas State Claims Commission (the "Claims Commission") is the renewed motion filed by the Arkansas Department of Emergency Management (the "Respondent") for judgment on the pleadings filed by Dayong Yang, as special administrator of the Estate of Le Yang, deceased (the "Claimant"). At the hearing on the motion, Carter C. Stein appeared on Claimant's behalf, and Vincent P. France appeared on behalf of Respondent. Based upon a review of the motion, the arguments made therein, and the law of Arkansas, the Claims Commission hereby finds as follows:

1. The Claims Commission has jurisdiction to hear this claim pursuant to Ark. Code Ann. § 19-10-204(a).

2. Claimant filed his indemnification claim on January 12, 2016, pursuant to Ark. Code Ann. § 21-9-304(a). At the time of filing, Claimant requested that the claim be held in abeyance until the underlying litigation was concluded. This claim relates to the failure of a City of Little Rock dispatcher, Candace Middleton, to send police and fire units to the scene of a one-vehicle accident, in which Jinglei Yi and her young son, Le Yang, ended up in a vehicle submerged in a pond. Jinglei Yi died as a result, and Le Yang suffered an anoxic brain injury and died two years later. As part of the underlying litigation, the Pulaski County Circuit Court entered a default judgment against Ms. Middleton in the amount of $17,627,638.04.

3. After the underlying litigation was concluded, Respondent filed the instant motion, arguing that Claimant's claim is (1) barred by the doctrine of collateral estoppel, (2) prohibited by the Arkansas Constitution, and (3) not permitted by Ark. Code Ann. § 21-9-304.

4. Claimant filed a response, arguing that Respondent's collateral estoppel argument fails due to Respondent's inconsistent positions (Respondent argued to the circuit court that the Claims Commission has jurisdiction to determine Respondent's liability under Ark. Code Ann. § 21-9-304, and Respondent is now arguing to the Claims Commission that the circuit court had jurisdiction of the indemnification issue and adjudicated that issue) and the fact that the indemnification issue was not litigated or dismissed by the circuit court. As to the constitutional argument, Article 12 § 12 of the Arkansas Constitution provides an applicable exception to the rule against the state paying cities' liabilities. As to Respondent's argument regarding Ark. Code Ann. § 21-9-304, the facts in this claim satisfy the statutory requirements because the 911 system is a statewide system coordinated by and carried out under the supervision of State employees.

5. Respondent replied, arguing that it did not take inconsistent positions in the underlying litigation and the instant claim. If the circuit court had found that the facts supported state indemnification, Claimant's claim would be "ripe for adjudication" by the Claims Commission. In the underlying litigation, the City of Little Rock, its employees, and Ms. Middleton were not represented by the Arkansas Attorney General's Office because these defendants were not assisting the state and acting under the supervision of a state employee. Had they been, the Arkansas Attorney General would have been "statutorily obligated" to represent them.

6. At the hearing, Respondent argued that there is no statewide 911 operating system and pointed to Ark. Code Ann. §§ 12-10-302(e)(3)[1] and 12-10-304 as evidence that 911 systems are local. Respondent is not responsible for maintaining, operating, or running 911 centers. Ark. Code Ann. § 21-9-304 pertains to situations where the State calls for the assistance of local officials for help with a state issue and the local officials are sued as a result of assisting the state. Ms. Middleton was not assisting the state, and Respondent did not oversee her work. To permit Claimant to recover would open Pandora's box.

7. Claimant responded, arguing that Respondent is trying to read "direct supervision" into the requirements of Ark. Code Ann. § 21-9-304. The City of Little Rock was called upon by the state to operate a 911 center. Respondent wants the state to have a statewide 911 system for the benefits (David Maxwell, who was appointed to be the state's 911 coordinator, applied for and received federal funding for the state's 911 programs) but not the liabilities. The facts of this claim show a statewide 911 system, in that when Jinglei Yi called 911, Pulaski County dispatch answered the call and then transferred it to the City of Little Rock. The Claims Commission is the conscience of the State of Arkansas.

8. Upon a question by a commissioner, Claimant confirmed that Mr. Maxwell is the only state employee identified in this claim, although Claimant referenced some other state employees identified in the underlying litigation.

9. Upon a question by a commissioner as to the indicia of supervision by Mr. Maxwell over Ms. Middleton and whether Claimant's counsel could amend his complaint to provide any

[1] Ark. Code Ann. § 12-10-302(e)(3) provides that "It is found and declared necessary to [e]ncourage the political subdivisions to implement public safety answering points . . . ." Ark. Code Ann. § 12-10-304 permits the "chief executive of a political subdivision" to "[r]etain a dispatch center to serve both public safety answering point and dispatch functions."

further details regarding supervision, Claimant confirmed that Mr. Maxwell did not directly supervise Ms. Middleton and probably did not know her name.

10. Upon a question by a commissioner as to whether Claimant believes the state to be responsible for any negligence on the part of a 911 response, Claimant stated that an analysis must be done through Ark. Code Ann. §§ 21-9-301 and 21-9-304. As to the amount of the judgment, Claimant also noted that the state extricated itself from the underlying litigation and could have stayed in.

11. Upon a question from a commissioner as to the permissive language in Ark. Code Ann. § 12-10-302, Claimant stated that the permissiveness of the language does not matter because the City of Little did decide to operate a 911 center.

12. Ark. Code Ann. § 21-9-304 provides, in pertinent part, that:

> (a) When any city of the first class, city of the second class, incorporated town, county, and its employees are called upon to assist the state and its employees and, as a result, are sued for their actions performed under the supervision of a state official or employee, the Attorney General shall defend the city of the first class, city of the second class, incorporated town, county, and its employees.
>
> (b) Should a judgment be rendered against the city of the first class, city of the second class, incorporated town, county, or its employees, the state shall pay actual, but not punitive, damages adjudged by a state or federal court, or entered by the court as a result of a compromise settlement approved and recommended by the Attorney General, based on an act or omission by the officer or employee while acting without malice and in good faith within the course and scope of his or her employment and in performance of his or her official duties

(emphasis added).

13. The Claims Commission finds that there are no facts pled to support a claim that Mr. Maxwell was supervising Ms. Middleton. While the Claims Commission appreciates Claimant's counsel's diligent representation of his client, without specific guidance from the

Arkansas General Assembly, the Claims Commission is unwilling to find that the existence of a 911 coordinator means that the state is supervising every 911 dispatcher and emergency responder.

14. Because the Claims Commission finds that dismissal is appropriate pursuant to Ark. R. Civ. Proc. 12(c), it need not reach Respondent's collateral estoppel and constitutional arguments.

15. As such, the Claims Commission GRANTS Respondent's motion for judgment on the pleadings and DISMISSES Claimant's claim.

IT IS SO ORDERED.



ARKANSAS STATE CLAIMS COMMISSION
Courtney Baird



ARKANSAS STATE CLAIMS COMMISSION
Paul Morris, Chair



ARKANSAS STATE CLAIMS COMMISSION
Sylvester Smith

DATE: September 15, 2020

**Notice(s) which may apply to your claim**

**(1)** A party has forty (40) days from the date of this Order to file a Motion for Reconsideration or a Notice of Appeal with the Claims Commission. Ark. Code Ann. § 19-10-211(a)(1). If a Motion for Reconsideration is denied, that party then has twenty (20) days from the date of the denial of the Motion for Reconsideration to file a Notice of Appeal with the Claims Commission. Ark. Code Ann. § 19-10-211(a)(1)(B)(ii). A decision of the Claims Commission may only be appealed to the General Assembly. Ark. Code Ann. § 19-10-211(a)(3).

**(2)** If a Claimant is awarded less than $15,000.00 by the Claims Commission at hearing, that claim is held forty (40) days from the date of disposition before payment will be processed. *See* Ark. Code Ann. § 19-10-211(a). Note: This does not apply to agency admissions of liability and negotiated settlement agreements.

**(3)** Awards or negotiated settlement agreements of $15,000.00 or more are referred to the General Assembly for approval and authorization to pay. Ark. Code Ann. § 19-10-215(b).

**From:** Jim Jackson
**To:** Vincent France; Kathryn Irby
**Cc:** Daiquiri Carter; Martha Cox
**Subject:** Haley Hudson v.DHS, Arkansas State Claims Commission No. 230641
**Date:** Monday, September 16, 2024 8:00:27 AM
**Attachments:** [redacted]
Holly Newman [redacted] Excerpts .pdf

---

Vincent,
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The videos are identical.
One is a MPEG 4 format.
The other is in PowerPoint.
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There is a third file in this folder.
It is a Word Document which contains the Transcript verbatim that matches the Video Testimony.
I plan on printing this 25 page Word document and giving a copy to the Commission so they can refer to it while the video is played.
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- Page 22, line 10 through page 26, line 17
- Page 43, Line 21 through Page 44, Line 20
- Page 122, Line 16 through Page 124, Line 13.
- Page 60 line 13 through page 62 line 8, which includes Exhibit 8 of her deposition;
- Page 83 line 24 through page 86 line 23
- Page 108, lines 10 through 16. (Added by Jim)

Please review and let me know if you have any questions/suggestions.
The Wilkerson video is 29 minutes long and it has the transcript playing as the witness speaks.

Witness Holly Newman

Attached is a PDF file with Deposition excerpts from paramedic Holly Newman who provided initial assessment of Ms. Ashcraft and her children.
It is 15 pages.

I am copying Kathryn on this email so she knows we are working to condense the trial presentation.

Thank you,

Jim

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**F** (501) 823-3611

**Newman, Holly, (Pages 9:6 to 12:24)**

Page 9

Q. And where did you park your ambulance?
A. If I remember correctly, we pulled up slightly passed the DHS car because as Zach was looking at it, he went to her. And then I looked up and seen Ms. Ashcraft and the two kids above us. So we were parked in between them two still facing towards Subiaco.
Q. And then tell me -- tell us what you did when you arrived on the scene and you get out. Walk us through what -- your interaction with Ms. Ashcraft and her children.
A. So I walked up to Ms. Ashcraft and her children once Zach went to the other patient. I noticed that the two children were sitting on the ground and Ms. Ashcraft was standing up. She was smoking a cigarette at that time.
So initially, as I do every parent, I look at her, I make sure she's okay because all of them are breathing. So neither one of them needed my attention more than the other at that time.

Page 10

So I talked to Ms. Ashcraft and said, hey, you know, can I check out your children, get permission from her because they are minors. She said yes, that's fine. So I turn my attention to the children.

One was completely, utterly fine. She was talking and everything, answering all questions. And the other one had some slight repetitive questioning, which showed signs of possible concussion. So I talked to Ms. Ashcraft and her both back and forth.

Initially, she didn't want the children to go to the hospital, despite the efforts that I very much wanted them to. In our line of work, we can't physically take a child from a parent unless it's a true life threat. At that time, a concussion, it could be borderline, but it was not -- she was not considered a life threat because she had her own airway. She was able to talk. She was not showing signs of lack of oxygen. You know, she wasn't obviously bleeding everywhere. That would have turned into something else.

Q. Did you -- were you able to physically examine her head and her skull to see if she had any contusions or abrasions?

A. And she had none that I seen.

Q. And if I represent to you that that child's name is [redacted] would that be consistent with your recollection?

A. I'm pretty sure, and I think her sister was named Haley?

Q. [redacted]

A. [redacted] Okay.

Q. And [redacted] was the sister -- I'll represent to you [redacted] was the sister that did not have any issues. And so what -- what did you do next -- what did you find on -- when you did the physical examination of [redacted]

A. To my recollection, I didn't find anything. There was no what we call depressed skull fracture, which would be, like, an indention in the back of her head. There was no tenderness, nothing. She just had the repetitive questioning. As we sat there with her, she started regaining her memory more and more as well.

Q. And that's a good sign, correct?

A. Yes. That's a very good sign.

Q. And then what did you turn your -- who did you turn your attention to next?

A. Ms. Ashcraft. She told us that they were actually trying to go to the house, that they

happened -- that happened to be across the road. And it was a very hot day. And so between the conversation and her not -- adamantly not wanting the kids to go to the hospital, she signed a refusal form for them both. If I remember correctly, there was one done on [redacted] There should also be one done on Haley as well.

So she told me that she wanted to go across the road. So at that time, Zach didn't need my help with the other patient. He had all of that under control. So since they weren't going to go with us, I walked them across the road and into that house.

She walked just fine. Ms. Ashcraft, all of them had a steady gait. She sat herself on the couch along with the kids. And then the lady in there, I distinctly told the lady, I said, "If anything changes, come and get me" because at this point, nobody, to my recollection, had even checked on the -- the 18-wheeler.

Q. The tractor trailer driver?

A. Yes. So then that was in the back of my mind was, like, well, at least somebody needs to go lay eyes on him. And so that's -- after I took them to the house, that's where I went.

**Newman, Holly, (Page 17:4 to 17:12)**

page 17

Q. And so my question is, tell us what the time -- at the time and what your description is on that flow chart prepared by you for Jacqueline Ashcraft.

A. That 1304 ALS assessment, patient is alert and oriented times four, which means down at the bottom, the initial assessment, oriented to person, place, time, event. She was walking around the car. She -- patient's response unchanged, successful; complication, none.

**Newman, Holly, (Pages 18:6 to 19:21)**

Page 18

Q. All right. Under the category HEENT, tell us -- explain to us what that means.

A. Head, eyes, ears, nose, and throat.

Q. Thank you. And explain to us what you observed about her head and face.

A. There was no abnormalities. Her pupils were equal. The neck --

Q. Let me stop you right there. Her pupils being equal, what does that mean to you as a paramedic?

A. That means that there's nothing going on in her head at that time that I can tell. Again, I don't have x-ray. I don't have CT. But on the physical outside findings, that's something we look for. If they're unequal, that means something is going on.

Q. And I notice you have a measurement next to the eyes of the size of the pupils.
A. Yes.
Q. And what is that measurement?
A. That's two millimeters. That means they're on the smaller side.

Page 19

Q. And that's what you would expect for somebody who is out in the sun?
A. Yes, sir.
Q. And that's normal or -- of someone -- that's what you would expect for them to have or what you would hope to have is the same size pupils and for them to be small or constricted; is that right?
A. Well, I wouldn't say constricted. Constricted are really a lot smaller, kind of almost pinpoint. That would suggest other things. But you do want them on the smaller side out in the sun in that they're not --
Q. Oh, sorry. Go ahead.
A. No. Go ahead.
Q. Is two to four millimeters normal for a patient?
A. Yes, sir.
Q. Nothing there gave you any pause for concern when you observed her eyes?
A. Not at that time, no.

Q. During that initial assessment?
A. Correct.

**Newman, Holly, (Pages 23:16 to 25:13)**

Page 23

Q. Okay. And then what happens next?
A. So I climbed in the back of the ambulance to make sure he needed -- if he needed any assistance. And about that time, a state trooper knocked on the door, knocked on the back of the ambulance and said, hey, y'all are needed inside the house.

And I looked at Zach and I said, "Well, I'll go," since I had initial contact and he was with his patient. So I walked back in the house to go reassess Ms. Ashcraft.

Page 24

Q. And what did you find when you walked back into the house to reassess Ms. Ashcraft?
A. I found that she was laying her head on -- I cannot recall the person who she was laying or sitting next to. But she was not responding the way she was initially when I had left her. She was still able to respond to me, but it was not like she was.
Q. And what -- so what did -- as a paramedic, what do you do?
A. Well, initially, I thought she may have been dehydrated because it wasn't necessarily the coldest

in that house either. So I started a IV on her, called for another unit.

And then that's when I was informed that we didn't have another unit. My partner come back in there and said, "Hey, we're it. We're going to have to take her as well." So there's nobody else. Everybody else was on calls. And I said okay. So my partner, he just picked her up and started carrying her.

Q. And where does Paramedic Marry take her to?

A. To the ambulance, the back of the ambulance, and laid her on the bench seat.

Q. And then what happens next on the transport?

A. I get in the driver's seat and we drive to the

Page 25

hospital. On the way there, Paris told us that their CT scanner was down, so our closest to divert to unfortunately was Booneville, which was clear across to the other side of the county.

Q. And what is -- are you -- what is Ms. Ashcraft's condition while you're in transport? Are you communicating with Medic Marry, or do you know?

A. We are a little bit back and forth. We're talking about the possibilities and what was going on. He had restarted an IV because mine got pulled out. So other than that, I don't know what kind of

12 treatment. I'd have to look back at the report to see
13 if he did any kind of treatment.

Newman, Holly, (Page 27:12 to 27:18)

27

12 Q. And she's the driver. Airbag deployment, does
13 it tell us what you found on the airbags?
14 A. Front deployment.
15 Q. Okay. And then safety devices, what did you
16 find on the safety devices?
17 A. She had shoulder and lap belt, which means the
18 normal seatbelt.

**Newman, Holly, (Page 28:5 to 28:12)**

Page 28

5 Q. And what was Ms. Ashcraft's condition when you
6 got to the emergency room at Booneville?
7 A. When I opened up the back doors, she was still
8 responding to that command. I'm pretty sure she still
9 had motor function. I don't think she was talking
10 clearly, but I did see her nod her head into a
11 question we had asked her. So I knew she was still
12 responding to him.

**Newman, Holly, (Pages 30:20 to 31:14)**

Page 30

Q. And you went through on your initial assessment of [redacted] you talked about it earlier. One of the things you mentioned is that she had, I believe you called it, repetitive questioning. What is -- do you remember what her questions were or what they were?

Page 31

A. I know she kept asking what happened. She didn't remember -- I think the last thing she remembered, I think they had went to McDonald's and she had a McDonald's cup. She just kept asking what happened and that she didn't remember anything.
Q. And then as far as looking at her head, I know -- and the HEENT, it states there was a hematoma to the back of her head, no deformity noted. Is that, like, a hematoma I think of as a -- tell us what a hematoma is.
A. It's swelling. It's a swelling in the head -- on the outside of the head.
Q. And then her eyes, were they normal?
A. Yes. They were three millimeters.

**Newman, Holly, (Pages 32:3 to 33:4)**

Page 32

in the narrative of your assessment, it states that "Mom holds up finger for her to see." And

is that the mother holding up two fingers or three fingers and saying how many fingers are you seeing?

A. Yes, sir. So with head trauma, that's the unequal pupils and blurred investigation and vomiting are signs of progressive head injuries. So I had mom -- not like right here, but in the peripheral part, hold up two fingers and she was able to identify both correctly on each side.

Q. And was Jacqueline Ashcraft able to assist you in holding up the fingers and doing what you were asking her to do?

A. Yes, sir.

Q. And so both Jacqueline Ashcraft and [redacted] were able to follow your commands and appeared normal after this accident; is that correct?

A. After my initial assessment.

Q. After your assessment. Yes. Okay. And then you were able to consult with Ms. Ashcraft to tell her what to look for and what to do if [redacted] had experienced any of these issues such as vomiting, nausea, blurred vision; is that correct?

Page 33

A. Severe headache. Yes.

Q. Okay. And Ms. Ashcraft seemed to understand and be able to appreciate and respond to you appropriately?

A. Yes, sir.

**Newman, Holly, (Pages 34:23 to 35:19)**

34

Q. And what does coup-contrecoup mean to somebody that is a paramedic, somebody who responds to motor vehicle accidents?

Page 35

A. That means that the patient's brain -- so our brain doesn't touch the skull at all times. It is slightly smaller than our skull. So it happens in rear-end collisions.

So when we get hit in the back of the head, the brain comes up, hits the front of the skull, and then hits the back of the skull and it kind of just plays bouncy ball.

Q. And do you have any criticism of Ms. Ashcraft or any of her medical decisions that she made during that initial assessment?

A. What do you mean criticisms?

Q. In that she was belligerent, refusing to take your advice, anything like that?

A. No. She was very nice, very understanding, very "Okay. I will. I understand."

Q. Did she appear to be a normal mother of two teenage daughters who are out going to see somebody on a -- on an afternoon?

**Newman, Holly, (Pages 48:6 to 49:3)**

Page 48

We talked -- you talked about the eyes. Initially, they were, I guess, fine. Okay. Two millimeters. You suggested that that was a normal, within-range reaction or measurement of the eyes?

A. In light, they constrict. They get smaller in light.

Q. Okay. Okay. What -- in your experience of seeing people under the influence of a controlled substance, does that affect their eyes at all?

A. Under narcotics. Not every drug.

Q. Okay. Like, what type narcotics?

A. Opiates.

Q. Opiates? What do opiates do to a person's eyes?

A. They constrict them, make them smaller, nonreactive.

Q. Okay. Would her measurements have been consistent -- not saying that she was under the influence of opioids. But if she had been, would her eyes have been consistent with that finding?

Page 49

A. They would typically be smaller than the two.

Q. So, like, a one or something like that?

A. Correct. Or what we call pinpoint.

**Newman, Holly, (Pages 60:13 to 61:19)**

Page 60

Q. Okay. Now, can we go back and maybe -- can you again describe the condition of Jackie Ashcraft when you first saw her?

A. When I first initially had encounter with her, she was alert, standing outside behind the car, alert and oriented. She was smoking her cigarette, and her two kids were sitting on the side.

Q. Okay. Any trouble with balance that you could tell?

A. No. She had a normal gait. Her speech wasn't slurred. She was able to carry on a full conversation.

Q. Okay. Did she tell you if any parts of her body were hurt or injured or achy due to the wreck?

Page 61

A. No. She was more worried about her kid and making sure she was okay first.

Q. Okay. Okay. And you said that [redacted] the youngest of the girls, was fine. And [redacted] the older of the girls, had a hematoma on the back of her head?

A. That's what the report says, yes.

Q. Okay. And that's a bump or -- I don't want to be too --

A. Yes. It's -- hematoma is a common name for swelling or a bump. And if you -- you know kind of how you bruise on your leg if you hit something. And

your head, it kind of swells out.

Q. Okay.

A. If it swells in, then it's more a medical problem.

Q. Okay. So she would have gotten that injury presumably from hitting her head back on the headrest or the seats?

A. That's what I would assume.

**From:** Jim Jackson
**To:** Kathryn Irby; Vincent France
**Cc:** Daiquiri Carter; Martha Cox
**Subject:** RE: Haley Hudson v.DHS, Arkansas State Claims Commission No. 230641
**Date:** Monday, September 16, 2024 9:19:13 AM
**Attachments:** image001.jpg
image002.jpg
image003.jpg
image004.jpg
image005.png

Yes. I will have it all printed and on a flash drive.
Jim

**Jim Jackson**
Jackson Law Firm
JimJacksonAtty.com

700 W. Broadway
North Little Rock, AR 72114
**P** (501) 823-3610
**F** (501) 823-3611

**From:** Kathryn Irby <kathryn.irby@arkansas.gov>
**Sent:** Monday, September 16, 2024 9:16 AM
**To:** Jim Jackson <jim@jimjacksonatty.com>; Vincent France <Vincent.P.France@dhs.arkansas.gov>
**Cc:** Daiquiri Carter <Daiquiri.Carter@dhs.arkansas.gov>; Martha Cox <mcox@jimjacksonatty.com>
**Subject:** RE: Haley Hudson v.DHS, Arkansas State Claims Commission No. 230641

Jim, thank you for this information. On Thursday, will you bring a flash drive that contains the documents in the link? That will help me upload those docs to our database. When I tried to download the video, my computer did not have the software to open and play it (although it did play through your OneDrive link). To the extent that this Legislature may review this claim at some point, I need to be have all of the materials in a transferable format.

Thanks,
Kathryn

**From:** Jim Jackson <jim@jimjacksonatty.com>
**Sent:** Monday, September 16, 2024 8:00 AM
**To:** Vincent France <vincent.p.france@dhs.arkansas.gov>; Kathryn Irby <kathryn.irby@arkansas.gov>

**Cc:** Daiquiri Carter <daiquiri.carter@dhs.arkansas.gov>; Martha Cox <mcox@jimjacksonatty.com>
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**From:** Jim Jackson
**To:** Kathryn Irby
**Cc:** SaBreana Hyche
**Subject:** RE: Haley Hudson v.DHS, Arkansas State Claims Commission No. 230641
**Date:** Monday, September 16, 2024 9:26:44 AM
**Attachments:** image001.jpg image002.jpg image003.jpg image004.jpg image005.png

---

Perfect.
Jim

**Jim Jackson**
Jackson Law Firm
JimJacksonAtty.com

700 W. Broadway
North Little Rock, AR 72114
**P** (501) 823-3610
**F** (501) 823-3611

---

**From:** Kathryn Irby <kathryn.irby@arkansas.gov>
**Sent:** Monday, September 16, 2024 9:25 AM
**To:** Jim Jackson <jim@jimjacksonatty.com>
**Cc:** SaBreana Hyche <SaBreana.Hyche@arkansas.gov>
**Subject:** RE: Haley Hudson v.DHS, Arkansas State Claims Commission No. 230641

Jim, that is perfectly fine. Copying SaBreana Hyche on this email. If you will let her know when you plan to come by, that would be great. She can get you set up.

The Hudson hearing is the only one set for Thursday, so you are welcome to set up anything you need on Wednesday.

Kathryn

---

**From:** Jim Jackson <jim@jimjacksonatty.com>
**Sent:** Monday, September 16, 2024 9:20 AM
**To:** Kathryn Irby <kathryn.irby@arkansas.gov>
**Subject:** RE: Haley Hudson v.DHS, Arkansas State Claims Commission No. 230641

Kathryn,
If possible, I would like to come to the room Wednesday and rehearse and get everything organized.
I can bring all of these on Wednesday with me.
Will that be an issue?
Thank you,
Jim

**Jim Jackson**
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JimJacksonAtty.com

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**F** (501) 823-3611

---

**From:** Kathryn Irby <kathryn.irby@arkansas.gov>
**Sent:** Monday, September 16, 2024 9:16 AM
**To:** Jim Jackson <jim@jimjacksonatty.com>; Vincent France <Vincent.P.France@dhs.arkansas.gov>
**Cc:** Daiquiri Carter <Daiquiri.Carter@dhs.arkansas.gov>; Martha Cox <mcox@jimjacksonatty.com>
**Subject:** RE: Haley Hudson v.DHS, Arkansas State Claims Commission No. 230641

Jim, thank you for this information. On Thursday, will you bring a flash drive that contains the documents in the link? That will help me upload those docs to our database. When I tried to download the video, my computer did not have the software to open and play it (although it did play through your OneDrive link). To the extent that this Legislature may review this claim at some point, I need to be have all of the materials in a transferable format.

Thanks,
Kathryn

---

**From:** Jim Jackson <jim@jimjacksonatty.com>
**Sent:** Monday, September 16, 2024 8:00 AM
**To:** Vincent France <vincent.p.france@dhs.arkansas.gov>; Kathryn Irby <kathryn.irby@arkansas.gov>
**Cc:** Daiquiri Carter <daiquiri.carter@dhs.arkansas.gov>; Martha Cox <mcox@jimjacksonatty.com>
**Subject:** Haley Hudson v.DHS, Arkansas State Claims Commission No. 230641

Vincent,
Below is a Hyperlink that contains the Jennifer Wilkerson video excerpts from the pages and lines we have emailed about.
The videos are identical.
One is a MPEG 4 format.
The other is in PowerPoint.
[redacted]
There is a third file in this folder.
It is a Word Document which contains the Transcript verbatim that matches the Video Testimony.
I plan on printing this 25 page Word document and giving a copy to the Commission so they can refer to it while the video is played.
Below are the Wilkerson deposition pages for your reference.

- Page 9, line 3 through page 19, Line 20
- Page 22, line 10 through page 26, line 17
- Page 43, Line 21 through Page 44, Line 20
- Page 122, Line 16 through Page 124, Line 13.
- Page 60 line 13 through page 62 line 8, which includes Exhibit 8 of her deposition;
- Page 83 line 24 through page 86 line 23
- Page 108, lines 10 through 16. (Added by Jim)

Please review and let me know if you have any questions/suggestions.
The Wilkerson video is 29 minutes long and it has the transcript playing as the witness speaks.

Witness Holly Newman

Attached is a PDF file with Deposition excerpts from paramedic Holly Newman who provided initial assessment of Ms. Ashcraft and her children.
It is 15 pages.

I am copying Kathryn on this email so she knows we are working to condense the trial presentation.

Thank you,

Jim

**Jim Jackson**
Jackson Law Firm

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North Little Rock, AR 72114
**P** (501) 823-3610
**F** (501) 823-3611



**From:** Jim Jackson
**To:** Kathryn Irby; Vincent France
**Cc:** Daiquiri Carter; Martha Cox
**Subject:** Haley Hudson v. Arkansas DHS; Claims Comm. No. 230641, DOI: 6/11/2021
**Date:** Monday, September 16, 2024 3:30:33 PM
**Attachments:** [redacted]

---

Kathryn,
Vincent and I just visited and we have nearly everything agreed upon.
For the Claimant's Exhibits on Jacqueline Ashcraft:
I am going to withdraw Bates #: 90-139 & 144
Vincent is still reviewing the Holly Newman Deposition excerpts and will get back with me as soon as possible.
We will remove Bates # 39-63 and replace it with excerpts.

For [redacted] exhibits
We will remove Bates 001-010 which is the deposition of Garrett Andrews.
Dr. Andrews is testifying in person so his deposition is not admissible.
Vincent had no objections to the remainder of the [redacted] Exhibits

The Respondent's Exhibits
Vincent has 13 exhibits.
I stipulate to the admissibility of Exhibits 1-12.
I will file a Motion with Brief objecting to the relevancy of Exhibit 13 which is the Toxicology Report of Ashcraft.

Thank you,

Jim

**Jim Jackson**
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**ARKANSAS STATE CLAIMS COMMISSION**

**HALEY HUDSON, SPECIAL ADMINISTRATRIX OF THE ESTATE OF JACQUELINE LYNN ASHCRAFT, DECEASED, AND HALEY HUDSON AS PERMANENT LEGAL GUARDIAN OF [redacted], A MINOR CHILD** **CLAIMANT**

**VS.** **CC NO. 230641**

**ARKANSAS DEPARTMENT OF HUMAN SERVICES** **RESPONDENT**

**TRIAL EXHIBITS FOR WRONGFUL DEATH CLAIM OF JACQUELINE LYNN ASHCRAFT, DECEASED**

| Exhibit # | Description | Bates # |
|---|---|---|
| 1 | Trooper James Ray Deposition Excerpt for Photographs | 001-006 |
| 2 | Photos of Ashcraft car after wreck | 007 |
| 3 | Photos of DHS car after wreck | 008 |
| 4 | Jacqueline Ashcraft Family Photographs | 009-013 |
| 5 | Funeral program for Jacqueline Ashcraft | 014 |
| 6 | Death Certificate for Jacqueline Ashcraft | 015 |
| 7 | Brotherton Funeral Home invoice | 016 |
| 8 | Deposition of Christopher Bell, M.D. with six exhibits | 017 - 038 |
| 9 | Deposition of Holly Newman (condensed transcript) | 039 - 063 |
| 10 | Dr. Ralph Scott's expert report with supporting documents | 064-89, 140[1] - 143 |
| ~~11~~ | ~~Cost of Tuition – University of Arkansas~~ | ~~144~~ |
| 12 | Jacqueline Ashcraft's Medical Records with affidavit | 145 - 184 |

[1] Bates Numbers 90-139 will be excluded. Not relevant.

**From:** Martha Cox
**To:** Kathryn Irby; ASCC Pleadings
**Cc:** Vincent France; Daiquiri Carter; Jim Jackson
**Subject:** Haley Hudson v. Arkansas DHS; CCNo. 230641
**Date:** Tuesday, September 17, 2024 10:06:23 AM
**Attachments:** [redacted] Exhibit 13.pdf
[redacted] Ex. 13 9-17-2024.pdf

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Please find attached a letter from Attorney Jim Jackson and the claimant's Objection to Respondent's Exhibit 13 for filing in the above-referenced claim.

The original and three copies of the claimant's Objection to Respondent's Exhibit 13 is being hand-delivered today to the Claims Commission.

Thank you.

Martha Cox, PP, PLS
Paralegal for The Jackson Law Firm
700 West Broadway, Suite 200
North Little Rock, AR 72114
Phone: (501) 823-3610
Fax: (501) 823-3611
mcox@jimjacksonatty.com

JACKSON
LAW FIRM

September 16, 2024

VIA E-Mail and Hand Delivery

Ms. Kathryn Irby
Arkansas State Claims Commission
101 East Capitol Avenue, Suite 410
Little Rock, AR 72201

Re: Haley Hudson v. Arkansas DHS;
Claims Commission No. 230641

Dear Kathryn,

Please find enclosed an original and three copies of the Claimant's Objection to Respondent's Exhibit 13 along with a copy of the cases cited in the objection.

My office will put this on a flash drive for Thursday.

Please call me at (501) 823-3610 with any questions or suggestions.

Sincerely,

Jim R. Jackson

JRJ/mc
Enclosure
cc:w/enc. Mr. Vincent France

JIM JACKSON / Attorney at Law
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**ARKANSAS STATE CLAIMS COMMISSION**

**HALEY HUDSON, SPECIAL ADMINISTRATRIX OF THE ESTATE OF JACQUELINE LYNN ASHCRAFT, DECEASED, AND HALEY HUDSON AS PERMANENT LEGAL GUARDIAN OF [redacted], A MINOR CHILD** — **CLAIMANT**

**VS.** — **CC NO. 230641**

**ARKANSAS DEPARTMENT OF HUMAN SERVICES** — **RESPONDENT**

**CLAIMANT'S OBJECTION TO RESPONDENT'S EXHIBIT 13**

The claimant stipulates the admissibility of respondent's Exhibit numbers 1 through 12. However, the claimant objects to the introduction of Exhibit 13, which is the toxicology report for Jacqueline Ashcraft. It is standard practice for the Arkansas State Police to obtain urine samples from all parties involved in a fatal motor vehicle collision. Both Jennifer Wilkerson and Jacqueline Ashcraft's toxicology reports tested positive for methamphetamine.

Liability in this case has already been determined, making the toxicology reports for both drivers irrelevant. Even if liability were still at issue, the toxicology reports do not indicate whether or not either driver was legally intoxicated at the time of the collision.

Under Rule 402 of the Arkansas Rules of Evidence, irrelevant evidence is inadmissible: "Evidence which is not relevant is not admissible." Furthermore, Rule 403 of the Arkansas Rules of Evidence allows for the exclusion of relevant evidence if its probative value is substantially outweighed by the danger of unfair prejudice, confusion, or waste of time: "Although relevant, evidence may be excluded if its probative value is substantially

outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence."

The toxicology reports are not relevant, as they do not assist in understanding the issue of liability. The only purpose of attempting to introduce Ashcraft's toxicology report is to cause prejudice to the claim and lead to needless embarrassment for her family.

Even if deemed relevant, the test results are prejudicial and confusing. No employee from the Arkansas Crime Lab is identified as a witness to elaborate on the two toxicology reports. Therefore, it is unknown if the results were

- "False positives"
- The half-life of the drug,
- Of the substance detected could be a by-product of a prescription drug such as Adderall which is a mixture of dextroamphetamine and amphetamine.

Most importantly, there is no testimony that Ashcraft was impaired. There has been no testimony that Ashcraft was driving erratically or under the influence. Paramedic Holly Newman provided testimony that Ashcraft appeared normal following the collision. Ashcraft responded appropriately to questions and her pupils dilated to the normal range, suggesting she was not under the influence of an opiate. Paramedic Newman testified that Ashcraft did not have "Pin Prick" pupils, which are a tell-tale sign that a person is under the influence of an opiate.

The Arkansas Supreme Court, in *Wade v. Grace*, 321 Ark. 482, 902 S.W.2d 785 (1995), asserted that evidence of alcohol or drug usage must demonstrate legal intoxication or impairment to be admissible. In *Wade v. Grace*, *supra*, the Arkansas Supreme Court considered a boating accident where the plaintiff sought to introduce evidence of alcohol use on the part of another boat driver, Grace. The alcohol usage evidence consisted of:

1. Seeing "six beer cans in the water immediately after the accident,"
2. Grace admitting to Game and Fish Officer Hatch that "he had one beer,"
3. Game and Fish Officer Hatch's testimony that he could smell a "medium" odor of alcohol,
4. Game and Fish Officer Rowlett's testimony that Rowlett could smell a "moderate" odor of alcohol.

With these facts, the Arkansas Supreme Court recognized, "the mere fact of drinking intoxicating liquor is not admissible, being unfairly prejudicial, unless it reasonably establishes a degree of intoxication which proves unfitness to drive." *Wade v. Grace*, 321 Ark. at 489. The Supreme Court also affirmed trial Court's exclusion of the beer cans based on the trial judge's assessment that jurors would be unfairly prejudiced by such testimony.

In the case *City of Little Rock v. Cameron*, 320 Ark. 444, 897 S.W.2d 562 (1995), the court concluded that mere evidence of alcohol consumption is not sufficient to establish negligence unless it shows intoxication affecting behavior and causing the plaintiff's injuries. The City's evidence suggesting that Defendant was negligent because of alcohol use consisted of:

1. Before the accident, Defendant had left Bobbisox Lounge where he admittedly drank alcoholic beverages;
2. Defendant was unaware of contact between the two vehicles; and
3. LRPD Officer Howard gave Defendant a portable breathalyzer which revealed a blood alcohol level of .05 percent.

There the Court stated at page 448, 449:

> The mere fact that Cameron had been drinking alcoholic beverages is not sufficient evidence of negligence, standing alone, for this claim, to withstand a directed verdict. Cameron was not legally intoxicated based on his percentage of blood/alcohol content. See Ark. Code Ann. § 5-65-103(b) (Repl. 1994), But even had he been intoxicated, a distinguished treatise on torts concludes that the fact of intoxication is not negligence in itself, but it must be shown to have caused the actor's behavior to have deviated from that of a reasonable person and to have caused the Plaintiff's injuries. *See Prosser and Keaton on Torts* § 32, pp. 178-179 (5th Ed. 1984); see also *Restatement (Second) of Torts* § 283C, Comment D. In this vein, we have stated that

> voluntary intoxication may be a factor to be considered by the trier of fact in determining negligence. *Jernigan v. Cash*, 298 Ark. 347, 767 S.W.2d 517 (1989).
>
> We can readily agree with Officer Howard that drinking alcoholic beverages may impair one's ability to drive. Here, though, there was no evidence that Cameron was intoxicated or otherwise impaired at the time of the accident or that his liquor consumption either evidenced a lack of reasonable care on Cameron's part or caused the wreck in any way. In sum, we agree that the City's proof does not give rise to an inference of negligence but only to conjecture and speculation. See *Sanford v. Ziegler*, 312 Ark. 524, 851 S.W.2d 418 (1993). The trial court did not err in granting the directed verdict.

Similarly, the Eighth Circuit was faced with a test that allegedly showed the existence of cocaine in a defendant in *Simco v. Ellis*, 393 F.3d 929 (8th Cir. 2002). In that case, a plaintiff proffered blood test evidence that the plaintiff contended showed that the defendant driver had ingested cocaine on the morning of the accident. The trial court noted that the test was incomplete and further that there was no evidence that the driver was intoxicated or impaired at the time of the accident and that "the mere mention of cocaine would inflame the jury and be extremely prejudicial to the defendants." *Id*. at 933. The Eighth Circuit affirmed the decision of the trial judge.

CONCLUSION

Given the fact that liability is not an issue and the lack of evidence on the validity or reliability of the toxicology reports, and the absence of any indication that Ms. Ashcraft was impaired, the introduction of these reports would be irrelevant, inflammatory and prejudicial. Therefore, the toxicology reports for Ashcraft should be excluded.

Respectfully submitted,

BY: */s/ Jim R. Jackson*

Jim R. Jackson, AR Bar #93-209
Jackson Law Firm
700 West Broadway Street, Suite 200
North Little Rock, AR 72114-5528
(501) 823-3610 phone
(501) 823-3611 facsimile
*Jim@JimJacksonatty.com*

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the above and foregoing Objection was served on September 17, 2024, on the following counsel of record by electronic service, E-Mail, to:

Mr. Vincent France
Assistant Deputy Chief Counsel
Arkansas Department of Human Services
P.O. Box 1437
Little Rock, AR 72203-1437

*/s/ Jim R. Jackson* .
Jim R. Jackson

Page 785

**902 S.W.2d 785**
**321 Ark. 482**
**Barbara WADE and Charles Wade,**
**Appellants,**
**v.**
**Geoffrey P. GRACE and Greer Grace,**
**Appellees.**
**No. 95-102.**
**Supreme Court of Arkansas.**
**July 17, 1995.**

Page 787

[321 Ark. 484] James F. Swindou, Little Rock, for appellant.

Overton S. Anderson, Little Rock, for appellees.

ROAF, Justice.

This case arises from a boating accident which occurred on Lake Hamilton. Appellants Barbara Wade and Charles Wade filed an action to recover for injuries sustained as a result of the accident. The jury returned a verdict in favor of the appellees, Geoffrey and Greer Grace. We affirm.

On the evening of May 23, 1992, Barbara Wade was operating a party barge owned by her and her husband, Charles. Mrs. Janet Cameron was a passenger on the party barge. At approximately 10:00 p.m., the party barge was involved in a collision with a ski boat operated by Geoffrey Phillip Grace and owned by his stepmother, Greer Grace. Geoffrey Grace was seventeen years old at the time of the accident, and seven other teenagers were riding in the boat.

Janet Cameron and her husband, Chester Cameron, brought suit against Geoffrey and Greer Grace. Geoffrey and Greer Grace answered the Camerons' complaint, filed a counterclaim against the Camerons, and filed a third-party complaint against Barbara and Charles Wade. Subsequently, the Wades filed a third-party counterclaim against Geoffrey and Greer Grace. The Wades principally asserted that Geoffrey Grace was operating the ski boat in a negligent manner. The Wades' claims against the Graces, which are the subject of this appeal, were the sole claims tried to the jury. The record reflects that the remaining claims were dismissed with prejudice.

The appellants raise four points on appeal: (1) the trial court wrongly excluded testimony and law regarding good boating practices on Lake Hamilton; (2) the trial court wrongly excluded evidence that the minors involved were in possession of alcohol and were drinking alcohol at the time of the accident; (3) the trial court improperly restricted Officer Richard Rowlett from [321 Ark. 485] giving expert testimony with regard to deformation of light filaments; and (4) appellants were wrongly denied the opportunity to put on expert testimony through John Bentley either in their case-in-chief or in rebuttal of appellees' expert witness.

I. Good Boating Practices

Robert Charlesworth, the Marine Patrol Supervisor with the Garland County Police Department and an investigating officer on the scene of the accident, was called as a witness by the appellants. Officer Charlesworth testified that the purpose of navigation lights is to alert other boaters of the position of your boat. He stated the red lens is on the left side of a boat, the green lens is on the right side, and the white light is commonly called the stern (rear of boat) or anchor light.

Officer Charlesworth testified that if you are approaching a boat and see the red light,

Page 788

that boat has the right-of-way. Counsel for the appellees objected to the testimony on the basis that it was improper for the witness to inform the jury which boat had the right-of-way. Counsel for the appellants asserted the witness was simply testifying to "general boating practice" on the lake and how you know to go to the right, or toward

the stern of the boat that is approaching when the red light is displayed. The trial court sustained the appellees' objection.

On appeal, the appellants assert the trial court erred in excluding the testimony because appellants were simply attempting to establish the "rules of the road" for good boating practice, which are not as familiar to all jurors as the rules of the road for automobiles. The appellants rely upon Parker v. Price, 241 Ark. 940, 411 S.W.2d 12 (1967), where the appellant asserted the jury should have been instructed that the standard of care imposed on a boat operator is the exercise of "due diligence and maritime skill" rather than simply ordinary care. In affirming the circuit court's decision, we noted that the appellant's requested instruction was simply another way of stating the operator should act as a reasonably careful person would act under the circumstances. Further, we commented:

In the case at bar, the trial court properly permitted two witnesses of considerable experience with watercraft to testify concerning facts constituting good or poor seamanship. [321 Ark. 486] They were also permitted to give opinion testimony based on hypothetical questions.

Thus, the jury had for its consideration testimony going to the main issue--whether the boats in question were operated with reasonable care under all the circumstances, including, but not limited to, maritime skill.

In the instant case, the appellants place significance on our statement regarding the testimony concerning good or poor seamanship.

Arkansas Rule of Evidence 702 provides expert testimony may be admissible if such specialized knowledge will aid the trier of fact in understanding the evidence or in determining a fact in issue. Williams v. Ingram, 320 Ark. 615, 899 S.W.2d 454 (1995). Whether a witness may give expert testimony rests largely within the sound discretion of the trial court, and that determination will not be reversed absent an abuse of discretion. Id. On appeal, the appellant must demonstrate that the trial court has abused its discretion. Id.

In Williams, supra, the appellant asserted the trial court erred in excluding testimony from a maritime and marine safety expert regarding the requisite standard of care and the danger of river currents. In affirming the decision of the trial court, we concluded that nothing in the expert's deposition indicated that the knowledge he displayed was so specialized that it was beyond the ability of the trier of fact to understand and draw its own conclusions. We noted the potential dangers of the Arkansas River's currents were not beyond the comprehension of the jury.

In the instant case, the appellants have failed to establish that the trial court abused its discretion. The appellants simply assert the officer would testify regarding the general boating practices on Lake Hamilton. At one point, counsel for the appellants even stated the testimony would simply confirm "what everybody uses as ordinary care." Further, counsel for the appellants asserted the officer's testimony was not "even really an opinion ... that's what you do on the lake." Thus, there is no indication that the witness had specialized knowledge that went beyond the general knowledge of an average person. Even assuming Charlesworth was not testifying as an expert, it is within the [321 Ark. 487] discretion of the trial court to limit the testimony of witnesses and that decision will not be reversed absent a manifest abuse of that discretion. Garner v. Kees, 312 Ark. 251, 848 S.W.2d 423 (1993).

Further, it is the duty of the judge to review the evidence presented, decide what the applicable law is, and instruct the jury. Whitlock v. Smith, 297 Ark. 399, 762 S.W.2d 782 (1989); See also Montgomery v. Butler, 309 Ark. 491, 834 S.W.2d 148 (1992). The jury was instructed that there was in force a statute which provided "every motorboat shall have a light sufficient to make the



fastcase
Smarter legal research.

motorboat's presence and location [known] to any and all other vessels when in operation during the hours of darkness." See Ark.Code Ann. § 27-101-203(a)(2) (Repl.1994). The jury was further instructed that "the boat must have a red light on the left side of the bow, a green light on the right side with a horizon--a white horizon light aft." Because the judge should instruct the jury regarding the applicable law, the officer was properly prohibited from testifying as to the "rules of the lake" and who had the right-of-way.

The appellants further assert the trial court erred in refusing to instruct the jury regarding the federal law on navigable waters. Counsel for the appellants did argue that federal law applied; however, the appellants' requested jury instructions are not in the abstract or the record. It is well established that a party cannot complain about the failure to give an instruction when he did not proffer the instruction. ARCP Rule 51; Quinney v. Pittman, 320 Ark. 177, 895 S.W.2d 538 (1995). Further, we have said that the proffered instruction must be included in the record and in the abstract to enable the appellate court to consider it. Mings v. State, 318 Ark. 201, 884 S.W.2d 596 (1994). Consequently, we will not address this issue.

II. Evidence of Intoxication

At trial, counsel for the appellants sought to admit evidence that Geoffrey Grace was intoxicated at the time of the collision. Counsel for the appellants asserted there were six beer cans in the water immediately after the accident, and counsel for the appellees stated Geoffrey Grace would testify he had one beer. In addition, the appellants proffered the testimony of Officer Paul Hatch of the Arkansas Game and Fish Commission, who inspected the Grace boat on the night of the accident. Officer Hatch stated [321 Ark. 488] that he observed Geoffrey Grace and smelled alcohol. He described the smell as a medium odor--"not heavy and not light or not excessive." However, Hatch observed Grace walk and speak, and he could not say that Grace was under the influence of alcohol. The appellants also proffered the testimony of Officer Richard Rowlett of the Arkansas Game and Fish Commission. Officer Rowlett testified he smelled the odor of intoxicants on Geoffrey Grace. Rowlett described the level as moderate, and he testified he did not observe any other evidence of intoxication.

The trial court stated the evidence regarding alcohol was not admissible unless there was some evidence that Geoffrey Grace was in fact intoxicated, and the trial court concluded there was no such evidence. The court found that even the testimony regarding beer cans found in the water was inadmissible because it was prejudicial. Further, the court concluded the fact that the teenagers may have been drinking underage had nothing to do with whether they were intoxicated or negligent.

We have stated that voluntary intoxication may be a factor to be considered by the trier of fact in determining negligence. City of Little Rock v. Cameron, 320 Ark. 444, 897 S.W.2d 562 (1995). Further, Ark.Code Ann. § 27-101-202(7) (Repl.1994) provides no person shall operate any motorboat while intoxicated. However, Arkansas Rule of Evidence 403 allows a trial court to exclude relevant evidence if its probative value is substantially outweighed by the danger of unfair prejudice or possibility of confusion of issues. The balancing of probative value against prejudice is a matter left to the sound discretion of the trial judge and his decision on such a matter will not be reversed absent a manifest abuse of discretion. Gipson v. Garrison, 308 Ark. 344, 824 S.W.2d 829 (1992).

We hold the appellants have failed to establish that the trial court abused its discretion. The trial court found there was simply no evidence that Geoffrey Grace was intoxicated, and, as to beer cans both in the water and on the party barge, the trial court noted that "we have jurors that when they hear the word beer cans, it's all over for either side. And I don't admit those unless there's evidence of intoxication."

It has been stated that courts are divided as to whether, in traffic accident cases, evidence that

one of the motorists had [321 Ark. 489] recently consumed an alcoholic beverage should be admitted in the absence of evidence that it

Page 790

rendered him or her unfit to drive. Clifford S. Fishman, Jones on Evidence: Civil and Criminal § 11:15 (7th ed. 1994). In Fisher v. Dye, 386 Pa. 141, 125 A.2d 472 (1956), the Supreme Court of Pennsylvania recognized that "while proof of intoxication is relevant where reckless or careless driving of an automobile is the matter at issue, the mere fact of drinking intoxicating liquor is not admissible, being unfairly prejudicial, unless it reasonably establishes a degree of intoxication which provides unfitness to drive." See also Hannon v. City of Philadelphia, 138 Pa.Cmwlth. 166, 587 A.2d 845 (1991). Further, it is within the discretion of a trial court to refuse to admit evidence that a driver ejected from his vehicle after an accident an open whiskey bottle because it could be determined that the marginal probative value of such evidence was substantially outweighed by the possibility of unfair prejudice. Gardner v. Smith's Transfer Corp., 610 F.2d 810, 5 Fed.Evid.Rep. 67 (4th Cir.1979).

III. Testimony of Officer Rowlett

One issue contested at trial was whether the white light on the aft of the party barge (stern/anchor light) was on at the time of the collision. The appellants sought to present the testimony of Officer Rowlett, one of the investigating officers, who was trained in filament deformation. The appellees contended Rowlett should not be allowed to testify that he examined the filaments in the white bulb from the party barge and, in his opinion, the light was on at the time of the collision. The appellees asserted they did not learn of Rowlett's testimony until the opening statement by counsel for appellants and the failure to disclose was a violation of ARCP Rule 26 regarding discovery.

In response to an interrogatory requesting the names of persons who would offer opinions, expert or otherwise, the Wades stated that other than physicians who were expected to testify regarding medical treatment, "no other expert witnesses have yet to be determined." The response further stated that "Lay witnesses are expected to testify as to their observations which may include some opinions based upon observations or mixed questions of opinion or observation." The trial judge commented that "this is not the way to try a lawsuit," and he determined the fair thing was to only allow Rowlett to testify as to what he observed [321 Ark. 490] when he made his investigation. The trial court held that Rowlett could not give an opinion as to whether the light was on or off.

At trial, Rowlett testified he attended a school regarding the investigation of boating accidents. Officer Rowlett testified he observed the aft light and retained the bulb; he stated "the light is deformed." At an in camera hearing, counsel for the appellants proffered additional testimony from Officer Rowlett. Rowlett stated that the bulb was deformed or distorted, and such deformation indicated the bulb was on at the time of the collision.

Although Rowlett was listed as a witness, he was not disclosed as an expert. Counsel for the appellants stated he visited with the officer the day before the trial and found that the officer was in possession of the bulb recovered from the accident. The appellants principally assert that the disclosure of Rowlett as a witness was sufficient, and that according to Banks v. Jackson, 312 Ark. 232, 848 S.W.2d 408 (1993), there must be "at least a passive concealment before any imposition of a sanction." Further, the appellants submit the appellees presented no reason for their failure to depose Officer Rowlett.

Arkansas Rule of Civil Procedure 26(e)(1) provides:

A party is under a duty to seasonably supplement his response with respect to any questions directly addressed to ... the identity and location of each person expected to be called as a witness at trial, and in the case of expert witnesses, the subject

matter on which he is expected to testify, and the substance of his testimony.

Further, we have stated that a trial court has broad discretion in matters pertaining to discovery, and that discretion will not be second-guessed by the appellate court absent an abuse of discretion that is prejudicial to the appealing party. Banks, supra; Morris v.

Page 791

Cullipher, 306 Ark. 646, 816 S.W.2d 878 (1991).

As to the requirement of a concealment, the Banks case addressed a violation of ARCP Rule 26(e)(2)(B). Rule 26(e)(2)(B) provides a party is under a duty to seasonably amend a prior response if he obtains information which would make the prior response, though correct when made, no longer true and the circumstances are such that a failure to amend the response [321 Ark. 491] is in substance a knowing concealment. There is no requirement that the trial court make a finding of concealment under Rule 26(e)(1).

Under the circumstances, we cannot say the trial court abused its discretion by allowing the witness to testify as to his observations and prohibiting him from providing his opinion regarding whether the light was on at the time of the collision.

IV. Testimony of John Bentley

The appellants sought to present the testimony of John Bentley, an expert in accident reconstruction. Once again, the appellees objected to such testimony based upon a failure to respond to discovery requests. The trial of this matter began on July 12, 1994. At an in camera hearing, it was determined that the counsel for the appellees received a letter on June 21, 1994, stating that Bentley might be used as an expert witness to rebut the testimony of Lonnie Buie, an accident expert expected to be called as a witness by the Graces. Counsel for the appellees asserted that the week before the trial the appellees asked for the opportunity to take Bentley's deposition, but he was out of town. Mr. Bentley's deposition was taken the night before the trial.

Counsel for the appellants stated he was hired "last Tuesday to try this lawsuit" and "we invited John [Bentley] as soon as we could." The trial court concluded it was unfair to wait until the day before trial and provide an expert in this type of case. The trial court commented that it had become a fad for plaintiff's lawyers to "hire an expert and call him a consultant and play a game until right up before trial." Subsequently, the appellants attempted to present the testimony of Bentley in rebuttal of the testimony of Lonnie Buie.

Lonnie Buie, Jr., an electrical engineer, testified that based upon the lack of deformation of the filament within the bulb, it was his opinion the white stern light on the party barge was not on at the time of the collision. Buie stated that a heated filament is more pliable, and tests have established that on impact, if the light is on, it will elongate. During cross-examination by counsel for the appellants, Buie testified that if a bulb filament is deformed, then it was on at the time of the accident. Buie further stated that when the ski boat hit the canopy of the party [321 Ark. 492] barge, the element of the light would have deformed had it been on. The appellants asserted that the testimony of Bentley would rebut the testimony of Lonnie Buie with respect to whether the force applied to the canopy was sufficient to deform the bulb.

First, the appellants assert that the appellees knew nineteen days before trial that Bentley would be called as an expert witness, and the appellees did in fact take Bentley's deposition. The appellants rely upon Banks v. Jackson, supra, where we noted that last-minute depositions are not unique in trial preparation. In Banks, however, we simply held the trial court's decision allowing the testimony was not an abuse of discretion. The trial court has broad discretion in matters pertaining to discovery. Id. Also, the opposing party in Banks was informed of the substance of the testimony which would be offered by the expert, including his opinions.

Second, rebuttal testimony must rebut the testimony advanced by the other side and should not consist of testimony which might have been advanced as proof in chief. Phillips v. McAuley, 297 Ark. 563, 764 S.W.2d 424 (1989). The exclusion of testimony offered on rebuttal is within the discretion of the trial court. See Wilkins v. El Dorado & Wesson R.R., 282 Ark. 236, 668 S.W.2d 6 (1984).

More significantly, the appellants did not make a proffer of the testimony which Mr. Bentley would have presented. Counsel for appellants simply asserted that Bentley's testimony would rebut the testimony

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of Lonnie Buie. It is well established that in order to challenge a ruling excluding evidence, an appellant must proffer the excluded evidence so we can review the trial court's decision, unless the substance of the evidence is apparent from the context. A.R.E.Rule 103(a)(2); Davis v. State, 319 Ark. 460, 892 S.W.2d 472 (1995). In the instant case, there was no proffer and the substance of the answer is not apparent. There is no way of even knowing if Mr. Bentley's testimony would have been inconsistent with Mr. Buie's testimony. Accordingly, this argument is not preserved for review.

Affirmed.

HOLT, C.J., and BROWN, J., concur.

DUDLEY, J., not participating.

[321 Ark. 493] BROWN, Justice, concurring.

I concur in the result but believe the trial court used the wrong standard in excluding all evidence of alcohol consumption by appellee Geoffrey Philip Grace in this case. However, because the correct standard was not argued to the trial court, I cannot say that the court abused its discretion in excluding the evidence.

This case appears to raise an issue which this court has not addressed directly in the past. The circuit court excluded evidence of Grace's consumption on the basis that it was not relevant "unless there's evidence of intoxication." Without intoxication, the court concluded that evidence of mere consumption of alcohol would be too prejudicial. I disagree that a person must be drunk or legally intoxicated for proof of alcohol consumption to be relevant. Rather, the proper test is that alcohol consumption is relevant when accompanied by other evidence of impairment. See Clement v. Consolidated Rail Corp., 130 F.R.D. 530 (D.N.J.1990); Kaeo v. Davis, 68 Haw. 447, 719 P.2d 387 (1986).

In Kaeo v. Davis, supra, the Hawaii Supreme Court vacated a judgment in favor of the defendant, who was driving the car with the injured party as a passenger, and remanded for a new trial when the trial court had excluded evidence of the driver's drinking. The driver had consumed "several beers" that afternoon before the accident at dusk. The trial court in Kaeo had concluded, similar to the instant case, that any evidence of drinking regardless of the amount would raise undue prejudice against the driver. The Supreme Court concluded that this analysis was error and constituted an abuse of discretion:

Granted, the evidence of drinking was prejudicial. Still, evidence with a capacity for unfair prejudice cannot be equated with testimony simply adverse to the opposing party; for evidence is only material if it is prejudicial in some relevant respect. 1 J. Weinstein and M. Berger, Evidence p 403 (1985) (citation omitted). We are not willing to assume "any indication of drinking" is so unfair to the drinking driver that the opposing party must be denied his right to have relevant and material evidence considered by the trier of fact. Nor are we willing to concede the trial juries, with guidance from the trial court, are incapable of rendering objective fact determinations in trials of negligence actions in which drinking is involved.

[321 Ark. 494] The judge's ruling of inadmissibility, it appears, was influenced by

representations that in pre-trial depositions Miss Kido and Samuel Taupo testified Davis was sober prior to the accident and the investigating officer detected none of the tell-tale signs of drunkenness when he questioned Davis at the accident scene. These, however, were matters that could have been offered instead for assessment by the trier of fact along with the evidence of drinking by the driver. The trial judge's decision not to permit the jury to hear such evidence was an abuse of discretion amounting to error, and we cannot say it had no effect upon the outcome of the trial. Since our conclusion compels a retrial of the action, we proceed to the issue raised by the plaintiff in her cross-appeal.

Kaeo, 719 P.2d at 392.

The Supreme Court in Kaeo did state that had the driving of the car been wholly beyond criticism, the trial court's ruling would have been correct. But there was evidence of speeding and the driver's taking his eyes off the road while attempting to round a

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curve. The Supreme Court observed that there was enough from which the jury could conclude that the driver was impaired in his ability to perceive the damages with clarity, make decisions with prudence, and operate the vehicle with the skill and caution required by law.

It is clear that mere alcohol consumption by itself cannot be equated to unfitness to drive. City of Little Rock v. Cameron, 320 Ark. 444, 897 S.W.2d 562 (1995); Clement v. Consolidated Rail Corp., supra. But when coupled with other evidence of impairment and unfitness to drive, such as erratic driving, it is relevant. Jones v. Freese, 743 S.W.2d 454 (Mo.App.1987); McCall v. Liberty, 248 Ark. 618, 453 S.W.2d 24 (1970). That is what we have in the matter before us.

The circumstances of this case were that it occurred at about 10:00 p.m. Eight teenage boys were in a ski boat operated by Grace on Lake Hamilton. Grace was 17 at the time and admitted to drinking one beer before the accident. According to two investigatory officers, Grace was not intoxicated but had a "moderate" or "medium" smell of alcohol about him at some point after the collision. There were six empty beer cans around the [321 Ark. 495] scene of the accident. Grace at some time after the collision tested at .04 blood/alcohol content on a field breathalyzer test, according to the proffered testimony of Officer Richard Rowlett, but admittedly field breathalyzer tests are of questionable probative value. The complaint by the Wades alleged that the ski boat was speeding and that the driver had failed to keep a proper lookout. Grace admitted to driving 30 miles per hour. The Wades' theory of the case was that the ski boat attempted to pass the party barge on the wrong side.

To be sure, the central issue in this case was whether the party barge had the appropriate lighting. But any impairment of the driver, due to alcohol consumption, coupled with allegations of speeding was an appropriate matter for the jury to weigh.

I am fearful that this case will be precedent for the proposition that only proof of legal intoxication is relevant in a negligence case involving reckless driving of cars or boats. That should not be the law. Nevertheless, because our trial courts are granted great discretion in this area, and because the correct standard was not argued to the trial court and, indeed, was not argued on appeal, I cannot say that the trial court abused its discretion.

HOLT, C.J., joins in this concurrence.

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**897 S.W.2d 562**
**320 Ark. 444**
**CITY OF LITTLE ROCK, Appellant,**
**v.**
**Kevin Scott CAMERON, Appellee.**
**No. 94-1334.**
**Supreme Court of Arkansas.**
**May 8, 1995.**

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[320 Ark. 445] Thomas M. Carpenter, Anthony W. Black, Little Rock, for appellant.

Sarah Presson, Julia L. Busfield, Little Rock, for appellee.

BROWN, Justice.

This case involves an appeal from a grant of a directed verdict in favor of the appellee, Kevin Scott Cameron. The City of Little Rock, as appellant, contends that the trial court erred in its ruling. We do not agree and affirm.

At approximately midnight on March 5, 1992, Cameron left the Bobbisox Lounge at the Holiday Inn by the Little Rock Airport. He had been drinking alcoholic beverages. He went to a Waffle House across the street and left there at about 2:00 a.m. He drove into downtown Little Rock. It was raining. At the intersection of West Markham and McKinley, his car struck a traffic [320 Ark. 446] signal pole and destroyed it. The City sued Cameron for negligence and for damages in the amount of $4,562.70 for the destruction of the pole.

At the resulting jury trial, the City called Officer Linda Barron as a witness. Officer Barron testified that she was the investigating officer and that two vehicles were involved in the accident: Cameron's 1987 Ford Taurus and a 1989 G.M.C. pickup driven by Othlea Patterson. Officer Barron testified that she smelled alcohol on Cameron's breath. She stated that Cameron told her that the pickup truck had entered his lane and that he had swerved to miss it and struck the pole. She noted that Cameron's vehicle had hit the pickup but stated that Cameron was unaware of this at the time. No citations were issued to the driver of either vehicle, and the police officer's accident report noted no contributing causes for the wreck.

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Officer Roy Howard of the Little Rock Police Department testified that he administered a portable breathalyzer test to Cameron at the scene and that Cameron tested for a blood/alcohol level of .05 percent. He stated that he did not believe that Cameron was "impaired to an extreme point," though he did state he believed that drinking alcoholic beverages does impair one's ability to drive.

The City rested its case after providing proof of its damages. Cameron moved for a directed verdict, and it was granted.

The City urges on appeal that the trial court erred in granting Cameron's motion for directed verdict. In determining the correctness of the trial court's ruling, we view the evidence in the light most favorable to the party against whom the verdict is sought and give it the highest probative value, taking into account all reasonable inferences deducible from it. Bice v. Hartford Acc. & Indem. Co., 300 Ark. 122, 777 S.W.2d 213 (1989). A motion for directed verdict should be granted only if the evidence so viewed would be so insubstantial as to require a jury verdict for the party to be set aside. Id.; Campbell Soup Co. v. Gates, 319 Ark. 54, 889 S.W.2d 750 (1994). Evidence is insubstantial when it is not of sufficient force or character to compel a conclusion one way or the other or if it does not force a conclusion to pass beyond suspicion or conjecture. See Allred v. [320 Ark. 447] Demuth, 319 Ark. 62, 890 S.W.2d 578 (1994); Moore v. State, 315 Ark. 131, 864 S.W.2d 863 (1993).

In the case before us, the trial court found that there was insufficient evidence to support a claim of negligence. To establish a prima facie case in tort, a plaintiff must show that damages

were sustained, that the defendant was negligent, and that such negligence was a proximate cause of the damages. Arkansas Kraft v. Cottrell, 313 Ark. 465, 855 S.W.2d 333 (1993). We reiterated our definition of negligence in Cottrell:

Negligence is the failure to do something which a reasonably careful person would do. A negligent act arises from a situation where an ordinarily prudent person in the same situation would foresee such an appreciable risk of harm to others that he would not act or at least would act in a more careful manner. White River Rural Water Dist. v. Moon, 310 Ark. 624, 839 S.W.2d 211 (1992).

313 Ark. at 470, 855 S.W.2d at 337. While a party can establish negligence by direct or circumstantial evidence, he cannot rely upon inferences based on conjecture or speculation. Id.

The mere fact that Cameron had been drinking alcoholic beverages is not sufficient evidence of negligence, standing alone, for this claim, to withstand a directed verdict. Cameron was not legally intoxicated based on his percentage of blood/alcohol content. See Ark.Code Ann. § 5-65-103(b) (Repl.1994). But even had he been intoxicated, a distinguished treatise on torts concludes that the fact of intoxication is not negligence in itself, but it must be shown to have caused the actor's behavior to have deviated from that of a reasonable person and to have caused the plaintiff's injuries. See Prosser and Keaton on Torts § 32, pp. 178-179 (5th Ed.1984); see also Restatement (Second) of Torts § 283C, Comment D. In this vein, we have stated that voluntary intoxication may be a factor to be considered by the trier of fact in determining negligence. Jernigan v. Cash, 298 Ark. 347, 767 S.W.2d 517 (1989).

We can readily agree with Officer Howard that drinking alcoholic beverages may impair one's ability to drive. Here, though, there was no evidence that Cameron was intoxicated or otherwise impaired at the time of the accident or that his liquor [320 Ark. 448] consumption either evidenced a lack of reasonable care on Cameron's part or caused the wreck in any way. In sum, we agree that the City's proof does not give rise to an inference of negligence but only to conjecture and speculation. See Sanford v. Ziegler, 312 Ark. 524, 851 S.W.2d 418 (1993). The trial court did not err in granting the directed verdict.

Affirmed.

GLAZE and CORBIN, JJ., dissent.

CORBIN, Justice, dissenting.

I dissent.

The case should have been submitted to the jury for decision. The facts of the appellee's

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drinking mixed with a collision with another vehicle he did not know he hit and his collision with a traffic light pole should have been submitted to the jury to resolve whether he was negligent in the operation of his vehicle. One does not have to be intoxicated under a legal definition of 0.10% before having his mental and reaction time slowed down by the drink. See Stephens v. State, 320 Ark. 426, 898 S.W.2d 435 (1995). When all of this is coupled with rain slicked streets, it would be a proper issue for a jury to draw upon their individual experiences to determine if, under all of these conditions, negligence existed. I would reverse and remand for trial.

GLAZE, J., joins in this dissent.

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**303 F.3d 929**
**Geraldine SIMCO, Administratrix of the Estate of Doris M. Smith, Deceased; Patti Lynn Bradley; Dan David Bradley, Appellees/Cross-Appellants,**
**v.**
**Willie R. ELLIS, doing business as Ellis Trucking; Andrew L. McCalpin, Appellants/Cross-Appellees.**
**No. 01-2095.**
**No. 01-2167.**
**United States Court of Appeals, Eighth Circuit.**
**Submitted: May 13, 2002.**
**Filed: September 17, 2002.**
**Rehearing and Rehearing En Banc Denied: October 23, 2002.**

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D. Keith Fortner, Little Rock, AR, for appellants/cross-appellees, McCalpin and Ellis.

James Melvin Dunn, Fort Smith, AR, for appellees/cross-appellants, Dan and Patti Bradley.

Ronald W. Metcalf, Fort Smith, AR, for appellee/cross-appellant, Geraldine Simco.

Before BOWMAN and BYE, Circuit Judges, and NANGLE,[1] District Judge.

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BOWMAN, Circuit Judge.

In this negligence case, Willie R. Ellis, doing business as Ellis Trucking, and Andrew McCalpin appeal from the judgment of the District Court[2] in favor of plaintiffs Geraldine Simco, administratrix of the estate of Doris Smith, and Patti Lynn Bradley and her husband, Dan David Bradley. Simco cross appeals, raising an evidentiary issue. We affirm.

On a March morning in 1999, a tractor-trailer flat-bed truck loaded with lumber and driven by McCalpin[3] overturned on a rain-soaked Arkansas state highway as the truck approached the second part of a sharp downhill s-curve. The truck and its load slid across the center line and smashed into a pickup truck driven by Doris Smith, who had pulled her truck over to the guardrail in an attempt to avoid the collision. Smith was killed and her passenger, Patti Bradley, was injured. In October 1999, the plaintiffs brought a state-court lawsuit, which was timely removed to the District Court, against Ellis, the owner of the truck and McCalpin's employer at the time of the accident, and against McCalpin, alleging that McCalpin's negligence was the cause of the accident.

At the end of a three-day trial, the jury found for the defendants on the question of McCalpin's negligence. The District Court granted the plaintiffs' motion for a new trial "solely on the grounds that the verdict was against the great weight of the evidence." *Simco v. Ellis,* No. 99-2194, Memorandum & Order at 5 (W.D.Ark. July 21, 2000) (granting motion for new trial). After a second trial, a different jury awarded $60,000 to Smith's estate, $225,000 to Patti Bradley, and $25,000 to Dan Bradley. McCalpin appeals, challenging the District Court's decision to grant a new trial and raising several issues related to the second trial. In a cross appeal, Simco challenges the exclusion of evidence relating to a drug test performed on a blood sample taken from McCalpin shortly after the accident.

We will reverse a district court's decision to grant a motion for a new trial only if it reflects a clear abuse of the court's broad discretion. *Walzer v. St. Joseph State Hosp.,* 231 F.3d 1108, 1111 (8th Cir.2000). We do require from the district court, however, an articulation of the basis for granting the motion "to permit meaningful review of its decision." *Children's Broad. Corp. v. Walt Disney Co.,* 245 F.3d 1008, 1017 (8th Cir.2001). Here, the District Court in its order granting a new trial carefully laid out the evidence that was before the jury and clearly spelled out the reasons for granting the motion. Recognizing the import of a decision to abrogate a jury verdict, the court

nevertheless concluded that such a course of action was warranted in this case. We agree.

The transcript of the first trial included the following evidence. McCalpin was twenty-one years old and had been licensed as a truck driver for a few months at the time of the accident. He had never before driven a load for a long distance unaccompanied by his boss, and when he left Port Gibson, Mississippi, the evening before the accident, he was unfamiliar with the roads he was to take to his final destination, Kansas City, Missouri. In fact, McCalpin missed the turnoff to a route

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that would have avoided altogether the perilous stretch of road where the accident occurred. McCalpin was accompanied on the trip by his brother and a younger cousin.

The scene of the accident was an s-curve on old highway 71 near Mountainburg, Arkansas. Because of a steep hill, there were two lanes southbound, one of which served as a lane for vehicles to use in order to pass slower-moving traffic ascending the hill. There was only one northbound lane. The weather shortly after 8 a.m. on March 8, 1999, was cloudy and rainy. As McCalpin's northbound truck approached the first part of the curve, it was traveling at a speed exceeding the recommended twenty miles per hour, despite the signs and flashing lights posted along the highway warning of the approaching dangerous curves and steep descent. McCalpin testified that he was blinded by a flash of light (although the length of time this visual impairment lasted is unclear) as he approached the first curve, yet he continued to drive without attempting to slow down. McCalpin lost control of the truck, and it turned over and slid across the center line into the southbound pickup truck driven by Doris Smith, which she had pulled over as far from the tractor-trailer as she could when she first saw it approaching, as McCalpin's truck already had crossed the center line and was tipped up on its left wheels.

The court advised the jury of the duty incumbent upon drivers of motor vehicles on the roads in Arkansas to keep a lookout, to keep their vehicles under control, and to drive at a reasonable and prudent speed under the circumstances, and the jury was instructed that the failure to conform to these rules was negligence. *See* Instruction No. 14 (Common Law Rules of Road). Negligence also was defined for the jurors as "the failure to do something which a reasonably careful person would do, or the doing of something which a reasonably careful person would not do, under circumstances similar to those shown by the evidence in this case." Instruction No. 15 (Negligence-Definition). The jury was further instructed that it is negligence to fail to exercise ordinary care — "how a reasonably careful person would act under [the] circumstances." Instruction No. 16 (Ordinary Care).

Notwithstanding this evidence and these instructions, the first jury to hear the evidence in the case determined that McCalpin was not negligent. The District Court, in its review of the record upon the plaintiffs' motion for new trial, determined that "all of the evidence presented indicated that the accident was caused by McCalpin's negligence.... [I]t was a miscarriage of justice for the jury to conclude that the defendants were not at fault in causing the fatal crash or that the accident was unavoidable." Simco, No. 99-2194, Memorandum & Order at 5 (granting motion for new trial). The court granted the motion, and McCalpin contends that decision was an abuse of the court's discretion.

Ironically, McCalpin faults the District Court for relying solely on his, McCalpin's, description of events that day, while ignoring the supposedly contrary testimony of his passengers. According to McCalpin, his own sworn testimony was "implausible," and the passengers' versions were "much more logical." Br. of Appellant at 50. But when a district court is considering a new trial motion on the grounds that the verdict is against the great weight of the evidence, the court "is entitled to interpret the evidence and judge the credibility of witnesses" for itself. *Van Steenburgh*

*v. Rival Co.,* 171 F.3d 1155, 1160 (8th Cir.1999). This is not a case where the court has "usurp[ed] the role of the jury by granting a new trial simply because it believes other inferences

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and conclusions are more reasonable." *Id.* Instead, the District Court reviewed the evidence and determined that Doris Smith and Patti Bradley had no responsibility for the accident and that the accident was not unavoidable in the absence of McCalpin's negligence — negligence that was readily apparent from the uncontroverted evidence at trial. There is ample record support for these conclusions. The District Court did not abuse its discretion in deciding that a new trial was required to avoid a miscarriage of justice in this case.

McCalpin's remaining issues on appeal arise from the second trial, where the jury found for the plaintiffs and awarded damages. First, McCalpin contends there was insufficient evidence to submit to the jury the issues of Bradley's permanency of injury, her future pain and suffering, her future medical expenses, and her future lost earnings and Smith's conscious pain and suffering. Because he failed to raise these sufficiency issues in his motions under Federal Rule of Civil Procedure 50(b), we review only for plain error, *see Broadus v. O.K. Indus., Inc.,* 238 F.3d 990, 991 (8th Cir.2001) (per curiam), and find none. Likewise, McCalpin's claim that the verdict was excessive as to the Bradleys was not raised in post-trial motions and so is subject to review only for plain error. *See Loehr v. Walton,* 242 F.3d 834, 837 (8th Cir.2001). Under the plain-error standard of review, we will reverse only if the amount of damages is so disproportionate that it would be a miscarriage of justice to affirm it. *See id.* The $250,000 in damages awarded to the Bradleys does not meet that standard.

McCalpin also claims that the submission of punitive damages (which the jury declined to award) was error because there was insufficient evidence to merit such an instruction. But even if the District Court abused its discretion in giving the instruction, a question we need not decide, any error was harmless and the defendants cannot show otherwise. *See Warren v. Prejean,* 301 F.3d 893, 899-900 (8th Cir. 2002).

Finally, McCalpin argues that the District Court should not have permitted Arkansas State Trooper Brian Davis, who investigated the accident, to testify on certain matters because he was not qualified as an expert. Davis's testimony had to do with his observations at the scene of the accident and his conclusions drawn from those observations as to a possible load shift and the speed of the truck before the accident. It is not entirely clear to us that all the testimony in question was that of an expert. But to the extent the evidence is properly classified as expert testimony, we do not think the District Court abused its discretion in allowing Davis to testify as he did. *See Lloyd v. Am. Airlines, Inc. (In re Air Crash at Little Rock Ark., on June 1, 1999*), 291 F.3d 503, 509 (8th Cir.2002) (standard of review), *petition for cert. filed,* ___ U.S. ___, ___ S.Ct. ___, ___ L.Ed2d ___ (2002).

In her cross appeal, Simco challenges the District Court's decision to exclude blood-test evidence that she claims shows McCalpin had ingested cocaine on the morning of the accident. After a lengthy hearing on McCalpin's motion in limine, filed before the first trial, the District Court concluded that the drug test was incomplete and the inference to be drawn from it — that McCalpin had used cocaine the morning of the accident — therefore was unreliable. Further, the court noted there was no evidence that McCalpin was intoxicated or impaired at the time of the accident and "the mere mention of cocaine would inflame the jury and be extremely prejudicial to the defendants." *Simco v. Ellis,* No. 99-CV-2194, Order at 3 (W.D. Ark. June 1, 2000) (granting defendants' motion in limine), *reconsideration*

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*denied, Simco v. Ellis,* No. 99-CV-2194 (W.D.Ark. Mar. 22, 2001). We see no clear abuse of

discretion in the District Court's carefully considered order. *See Stafne v. Unicare Homes,* 266 F.3d 771, 776 (8th Cir.2001) (standard of review).

The District Court is affirmed in all respects.

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Notes:

1. The Honorable John F. Nangle, United States District Judge for the Eastern District of Missouri, sitting by designation.

2. The Honorable Robert T. Dawson, United States District Judge for the Western District of Arkansas.

3. Following the lead of the parties and the District Court in this case, we will generally refer to the defendants collectively as McCalpin. It should be clear from the context when we are referring to McCalpin individually as the driver of the truck in question.

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**From:** Jim Jackson
**To:** Kathryn Irby; Vincent France
**Cc:** Daiquiri Carter; Martha Cox
**Subject:** Undisputed Facts
**Date:** Tuesday, September 17, 2024 4:32:57 PM
**Attachments:** [redacted]
Joint Stipulated Facts [redacted] both parties.pdf

---

Kathryn,
Attached is a pleading titled “Undisputed Facts Submitted by both Parties” which was mostly prepared by Vincent.
Can you add this pleading to the docket?
Thank you,
Jim

**Jim Jackson**
Jackson Law Firm
JimJacksonAtty.com

700 W. Broadway
North Little Rock, AR 72114
**P** (501) 823-3610
**F** (501) 823-3611

---

**From:** Jim Jackson
**Sent:** Tuesday, September 17, 2024 4:17 PM
**To:** 'Kathryn Irby' <kathryn.irby@arkansas.gov>; Vincent France <Vincent.P.France@dhs.arkansas.gov>
**Cc:** Daiquiri Carter <Daiquiri.Carter@dhs.arkansas.gov>; Martha Cox <mcox@jimjacksonatty.com>
**Subject:** RE: Haley Hudson v. Arkansas DHS; Claims Comm. No. 230641, DOI: 6/11/2021

Kathryn,
Holly Newman will just be a transcript.
No video of her deposition.
Here it is as Bates 185-199 of the claimant’s Trial Exhibits.

Thx,
Jim



**Jim Jackson**
Jackson Law Firm
JimJacksonAtty.com

700 W. Broadway
North Little Rock, AR 72114
**P** (501) 823-3610
**F** (501) 823-3611



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**From:** Kathryn Irby <kathryn.irby@arkansas.gov>
**Sent:** Tuesday, September 17, 2024 3:23 PM
**To:** Jim Jackson <jim@jimjacksonatty.com>; Vincent France <Vincent.P.France@dhs.arkansas.gov>
**Cc:** Daiquiri Carter <Daiquiri.Carter@dhs.arkansas.gov>; Martha Cox <mcox@jimjacksonatty.com>
**Subject:** RE: Haley Hudson v. Arkansas DHS; Claims Comm. No. 230641, DOI: 6/11/2021

Thanks, Jim. Is this a video deposition that you're putting on a flash drive? If so, will you send me a link (and bring me a flash drive on Thursday)? I can forward the video link to the commissioners to review prior to Thursday, and I can use the flash drive to upload the video to our database.

That make sense?

Kathryn

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**From:** Jim Jackson <jim@jimjacksonatty.com>
**Sent:** Tuesday, September 17, 2024 3:19 PM
**To:** Kathryn Irby <kathryn.irby@arkansas.gov>; Vincent France <Vincent.P.France@dhs.arkansas.gov>
**Cc:** Daiquiri Carter <Daiquiri.Carter@dhs.arkansas.gov>; Martha Cox <mcox@jimjacksonatty.com>
**Subject:** RE: Haley Hudson v. Arkansas DHS; Claims Comm. No. 230641, DOI: 6/11/2021

Kathryn,
We have agreed upon Holly Newman's deposition Excerpts.
I will bring four copies and have it on a Flash Drive.
Thank you,
Jim

**Jim Jackson**
Jackson Law Firm
JimJacksonAtty.com

700 W. Broadway
North Little Rock, AR 72114
**P** (501) 823-3610
**F** (501) 823-3611

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**From:** Kathryn Irby <kathryn.irby@arkansas.gov>
**Sent:** Tuesday, September 17, 2024 2:54 PM
**To:** Jim Jackson <jim@jimjacksonatty.com>; Vincent France <Vincent.P.France@dhs.arkansas.gov>
**Cc:** Daiquiri Carter <Daiquiri.Carter@dhs.arkansas.gov>; Martha Cox <mcox@jimjacksonatty.com>
**Subject:** RE: Haley Hudson v. Arkansas DHS; Claims Comm. No. 230641, DOI: 6/11/2021

Received on 9/16, thanks

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**From:** Jim Jackson <jim@jimjacksonatty.com>
**Sent:** Monday, September 16, 2024 3:30 PM
**To:** Kathryn Irby <kathryn.irby@arkansas.gov>; Vincent France <vincent.p.france@dhs.arkansas.gov>
**Cc:** Daiquiri Carter <daiquiri.carter@dhs.arkansas.gov>; Martha Cox <mcox@jimjacksonatty.com>
**Subject:** Haley Hudson v. Arkansas DHS; Claims Comm. No. 230641, DOI: 6/11/2021

Kathryn,
Vincent and I just visited and we have nearly everything agreed upon.
For the Claimant's Exhibits on Jacqueline Ashcraft:
I am going to withdraw Bates #: 90-139 & 144
Vincent is still reviewing the Holly Newman Deposition excerpts and will get back with me as soon as possible.
We will remove Bates # 39-63 and replace it with excerpts.

For [redacted] [redacted] exhibits
We will remove Bates 001-010 which is the deposition of Garrett Andrews.
Dr. Andrews is testifying in person so his deposition is not admissible.
Vincent had no objections to the remainder of the [redacted] [redacted] Exhibits

The Respondent's Exhibits
Vincent has 13 exhibits.

I stipulate to the admissibility of Exhibits 1-12.
I will file a Motion with Brief objecting to the relevancy of Exhibit 13 which is the Toxicology Report of Ashcraft.

Thank you,

Jim

**Jim Jackson**
Jackson Law Firm
JimJacksonAtty.com

700 W. Broadway
North Little Rock, AR 72114
**P** (501) 823-3610
**F** (501) 823-3611

**IN THE ARKANSAS STATE CLAIMS COMMISSION**

**HALEY HUDSON, INDIVIDUALLY
HALEY HUDSON, SPECIAL ADMINISTRATRIX OF
THE ESTATE OF JAQUELINE LYNN ASHCRAFT,
DECEASED, AND HALEY HUDSON, AS PERMANENT
LEGAL GUARDIAN OF [redacted]
[redacted] MINOR CHILDREN** **CLAIMANTS**

**vs.** **CC No. 230641**

**ARKANSAS DEPARTMENT OF
HUMAN SERVICES** **RESPONDENT**

## JOINT STIPULATED FACTS

COME NOW, the Parties, by and through their respective counsel, and provide the Arkansas State Claims Commission with this Joint Set of Stipulated Facts, which are as follows:

Note, the Parties are providing the Commission with these Joint Stipulated Facts so that the Commissioners can have a clear comprehensive set of facts in an effort to streamline the hearing on the merits of this case. Although some of these facts will be presented at the hearing, the parties agree that all of these facts are sufficiently supported by evidence and testimony that is already contained in the record.

1. This claim arises from a motor vehicle accident involving three vehicles that occurred on Friday, June 11, 2021, on State Highway 22 in Logan County, Arkansas near Paris, Arkansas. Subsequently, Jacqueline Ashcraft, the driver of one of the vehicles, died on the early morning of June 12, 2021.

2. One of the vehicles involved in the accident was a vehicle owned by Respondent, Arkansas Department of Human Services (hereinafter "DHS"), which was being driven by Jennifer Wilkerson.

3. On June 1, 2021, Jennifer Wilkerson began working for DHS.

4. Ms. Wilkerson was hired by DHS after she was interviewed by Pamela Feemster.

5. Prior to starting her position with DHS, Ms. Wilkerson was required to pass a pre-employment drug test, which was clean, and she agreed to obey all traffic laws and follow DHS driving policies.

6. Prior to beginning her employment with DHS, Ms. Wilkerson also passed a criminal background check.

7. Jennifer Wilkerson was hired as a Program Assistant for DCFS in Logan County, which is located at 17 W. McKeen Street, Paris, Arkansas 72855.

8. As a Program Assistant, Ms. Wilkerson's main responsibilities were transportation of children and to conduct supervised visitations.

9. On June 11, 2021, Ms. Wilkerson was scheduled to go to Beebe, Arkansas, to pick up a child and transport the child to Clarksville, Arkansas, for a sibling visit.

10. It takes approximately two (2) hours to drive from Paris to Beebe.

11. Brandy Ezell showed Ms. Wilkerson on a map where she needed to go in Beebe.

12. At 12:07 p.m., Brandy Ezell and Pamela Feemster saw Ms. Wilkerson getting into the vehicle to head to Beebe.

13. Ms. Wilkerson's undisputed testimony was that she needed to leave earlier.

14. Rather than beginning her trip to Beebe, Arkansas, Ms. Wilkerson admits that she instead stopped, went inside, and ate at a restaurant called the Dari-Delite.

15. Ms. Wilkerson admits that she met her boyfriend at Dari-Delite.

**The Accident**

16. Around 12:50 p.m., near the intersection of 5033 State Highway 22, Ms. Wilkerson rear-ended a vehicle that was driven by Ms. Jacquelin Ashcraft and three passengers including two of Ms. Ashcraft's minor daughters, [redacted].

17. Both Ms. Wilkerson's vehicle and Ms. Ashcraft's vehicle were facing east on Highway 22.

18. Ms. Ashcraft was attempting to turn left into a private residence.

19. The force of the collision caused Ms. Wilkerson's vehicle to spin into the opposite lane of travel and strike an overside load trailering a mobile home.

20. DHS is not challenging how the accident occurred.

21. The speed limit where the accident occurred is 55 mph.

22. The weather was clear and the roadway was dry and neither was a factor in the accident.

23. This portion of Highway 22 is straight and flat.

24. When the impact occurred between the vehicle Ms. Wilkerson was driving and the vehicle driven by Ms. Ashcraft, it is estimated that Ms. Wilkerson could have been going at least 70 mph according to an accident reconstruction expert Stanley Cain hired by Claimants.

25. Based upon Trooper Ray's investigation, he found that Ms. Wilkerson was responsible for the accident based upon her inattentive, careless, negligent, or erratic driving.

**Post Accident**

26. Following the accident, Ms. Wilkerson called Brandy Ezell, her boyfriend at the time, Scott Lindstrom, and her mother.

27. As Brandy Ezell and Pamela Feemster were returning from lunch, Brandy Ezell received the call from Ms. Wilkerson concerning the accident at 12:55 p.m.

28. Immediately upon learning that Ms. Wilkerson had been in a motor vehicle accident, Ms. Ezell "was expecting her to be at least be in Dardanelle, Pottsville, somewhere between there by that time."

29. Given the location of the accident and the time it occurred, Ms. Wilkerson was significantly behind schedule, by approximately an hour behind. In her deposition, Ms. Ezell testified to the following, "And to this day, it still bugs me why she wasn't [more than] three miles from the office a good 45 minutes later."

30. Ms. Wilkerson informed Ms. Ezell that she thinks the accident occurred near the airport in Paris, Arkansas.

31. Immediately, Ms. Ezell and Ms. Feemster headed to the accident.

32. It only took Ms. Ezell and Ms. Feemster a few minutes to arrive at the scene, which was approximately 3 miles from the DHS office.

33. Upon arriving at the scene, Ms. Ezell went over to check on Ms. Wilkerson and Ms. Feemster called her supervisor, Kristen Shelton.

34. Eventually, both Ms. Ashcraft and Ms. Wilkerson were taken by the same ambulance to the hospital in Booneville, Arkansas.

35. On June 11, 2021, after the accident and after Ms. Wilkerson had arrived at the Booneville hospital, Ms. Feemster received a text message from Ms. Wilkerson in which Ms. Wilkerson informed her that she anticipated that the drug screen would come back positive because she had taken Adderall prior to the accident, but that she did not have a prescription for the medication.

36. The toxicology report for Ms. Wilkerson showed that she was positive for amphetamine, methamphetamine, and benzodiazepines.

**DHS Investigation**

37. On June 11, 2021, Ms. Feemster and Ms. Shelton first considered the possibility of terminating Ms. Wilkerson based upon the facts known to them.

38. As required by DHS policy, a fact-finding investigation to determine if any policy violations occurred to determine whether to terminate an employee.

39. Kristen Shelton conducted the fact-finding investigation, in which she sent emails to Brandy Ezell, Pamela Feemster, and Ms. Wilkerson asking about the accident.

40. Following the conclusion of the fact-finding investigation, Kristen Shelton made the decision on Wednesday, June 16, 2021, to terminate Ms. Wilkerson.

41. Kristen Shelton decided to terminate Ms. Wilkerson from DHS because she did not leave on time for Beebe and was behind schedule, she admitted to taking drugs without a prescription, and she was still in her probationary period as an employee.

Jointly submitted,

By: */s/ Jim Jackson*__
For Claimant

By: */s/ Vincent P. France*
Vincent P. France, Ark. Bar No. 2010063
Deputy Chief Counsel
Arkansas DHS
P.O. Box 1437, Slot S260
Little Rock, AR 72203
Phone: (501) 534-4127
Email: Vincent.P.France@DHS.Arkansas.gov
*Attorney for Respondent*

**CERTIFICATE OF SERVICE**

I, Vincent P. France, hereby certify that on September 17, 2024, I electronically filed the foregoing with the Arkansas State Claims Commission by emailing it to asccpleadings@arkansas.gov and by sending a copy to Claimant's attorney Jim Jackson via email as indicated below.

Jim Jackson
Jim@JimJacksonatty.com

*/s/ Vincent P. France*
Vincent P. France

**From:** Vincent France
**To:** ASCC Pleadings; Kathryn Irby
**Cc:** jim@jimjacksonatty.com; Martha Cox; Daiquiri Carter
**Subject:** Haley Hudson v. Arkansas DHS; Claims Comm. No. 230641
**Date:** Wednesday, September 18, 2024 9:01:23 AM
**Attachments:** [redacted] to Ex 13.pdf
[redacted].png
[redacted].png

---

Please find attached DHS's Response to Claimants Objections.

Sincerely,

**Vincent P. France**
Deputy Chief Counsel for Litigation
Office of Chief Counsel
PO Box 1437, Slot S260
Little Rock, AR 72203-1437
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**NOTE - This email may contain sensitive or confidential information.**

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**IN THE ARKANSAS STATE CLAIMS COMMISSION**

**HALEY HUDSON, INDIVIDUALLY
HALEY HUDSON, SPECIAL ADMINISTRATRIX OF
THE ESTATE OF JAQUELINE LYNN ASHCRAFT,
DECEASED, AND HALEY HUDSON, AS PERMANENT
LEGAL GUARDIAN OF [redacted], MINOR CHILDREN** **CLAIMANTS**

**vs.** **CC No. 230641**

**ARKANSAS DEPARTMENT OF
HUMAN SERVICES** **RESPONDENT**

**RESPONDENT'S RESPONSE IN OPPOSITION TO
CLAIMANTS' OBJECTION TO RESPONDENT'S EXHIBIT 13**

COMES NOW, Respondent, Arkansas Department of Human Services, by and through its attorney, Vincent P. France Deputy Chief Counsel for the Arkansas Department of Human Services, and for its Response in Opposition to Claimants' Objection to Respondent's Exhibit 13, states the following:

To begin, DHS agrees with Claimants' position that the toxicology report of Jacqueline Ashcraft is irrelevant for the purposes of liability. Furthermore, DHS does not plan on presenting the toxicology report for such a purpose. Rather, DHS intends to use the toxicology report of Ms. Ashcraft to refute and/or mitigate the prospect of damages, if the Commission finds in favor of the Claimants. In a case involving a motor vehicle accident and the consideration of the appellant's life expectancy, the Arkansas Supreme Court found that evidence of the appellant's habit of consuming alcohol was relevant and admissible to the jury. *Oxford v. Hamilton*, 297 Ark. 512, 515, 763 S.W.2d 83, 85 (1989). The Arkansas Supreme Court explained that "[g]iven the fact that evidence of the appellant's habits was useful and ***even necessary*** to assist the jury in determining his life expectancy." *Id*. (emphasis added). Additionally, in *Burnett v. Fowler*, a medical malpractice case, the Arkansas Supreme Court noted that the plaintiff's use of marijuana was

relevant regarding damages that were based upon the plaintiff's future employability and life expectancy. 315 Ark. 646, 650, 869 S.W.2d 694, 697 (1994). In fact, the Arkansas Supreme Court has historically allowed evidence of drug and alcohol use to be used to provide the fact-finder with an accurate picture of a plaintiff's damages. In *Biddle v. Riley*, 118 Ark. 206, 219, 176 S.W. 134, 138 (1915), the Arkansas Supreme Court held that "it was not improper to present to the jury proof of the plaintiff's … habits of sobriety and industry, for the purpose of drawing a picture before the jury of the earning capacity of which he had been permanently deprived."

In the claim-at-hand, DHS plans to submit Exhibit 13, the toxicology report of Jacqueline Ashcraft, to the Arkansas State Claims Commission for the purposes of arguing damages. Specifically, the toxicology report is relevant to show that Jacqueline Ashcraft had a habit of using drugs that would have caused a decrease to her earnings capacity, impacted her future employability, and lessened her life expectancy. *See Oxford*, 297 Ark. at 515, 763 S.W.2d at 85. Thus, the toxicology report is relevant under Ark. R. Evid. 401, admissible in accordance with Ark. R. Evid. 402, and is not unfairly prejudicial under Ark. R. Evid. 403. Accordingly, DHS should be allowed to introduce the toxicology report of Jacqueline Ashcraft to rebut any claims for damages by her estate especially regarding her earnings capacity and her life expectancy.

WHEREFORE, DHS respectfully requests that Claimants' Objection to Respondent's Exhibit 13 be denied and overruled, along with any other just and proper relief to which it is entitled.

Respectfully submitted,

By: */s/ Vincent P. France*

Vincent P. France, Ark. Bar No. 2010063
Deputy Chief Counsel
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P.O. Box 1437, Slot S260
Little Rock, AR 72203

Phone: (501) 534-4127
Email: Vincent.P.France@DHS.Arkansas.gov
*Attorney for Respondent*

**CERTIFICATE OF SERVICE**

I, Vincent P. France, hereby certify that on September 18, 2024, I electronically filed the foregoing with the Arkansas State Claims Commission by emailing it to asccpleadings@arkansas.gov and by sending a copy to Claimant's attorney Jim Jackson via email as indicated below.

Jim Jackson
Jim@JimJacksonatty.com

*/s/ Vincent P. France*
Vincent P. France

**ARKANSAS STATE CLAIMS COMMISSION**

**HALEY HUDSON, SPECIAL ADMINISTRATRIX OF THE ESTATE OF JACQUELINE LYNN ASHCRAFT, DECEASED, AND HALEY HUDSON AS PERMANENT LEGAL GUARDIAN OF [redacted], A MINOR CHILD** **CLAIMANT**

**VS.** **CC NO. 230641**

**ARKANSAS DEPARTMENT OF HUMAN SERVICES** **RESPONDENT**

**TRIAL EXHIBITS FOR WRONGFUL DEATH CLAIM OF JACQUELINE LYNN ASHCRAFT, DECEASED**

| Exhibit # | Description | Bates # |
|---|---|---|
| 1 | Trooper James Ray Deposition Excerpt for Photographs | 001-006 |
| 2 | Photos of Ashcraft car after wreck | 007 |
| 3 | Photos of DHS car after wreck | 008 |
| 4 | Jacqueline Ashcraft Family Photographs | 009-013 |
| 5 | Funeral program for Jacqueline Ashcraft | 014 |
| 6 | Death Certificate for Jacqueline Ashcraft | 015 |
| 7 | Brotherton Funeral Home invoice | 016 |
| 8 | Deposition of Christopher Bell, M.D. with six exhibits | 017 - 038 |
| ~~9~~ | ~~Deposition of Holly Newman (condensed transcript)~~ | ~~039 - 063~~ |
| 10 | Dr. Ralph Scott's expert report with supporting documents | 064-89, 140[1] - 143 |
| ~~11~~ | ~~Cost of Tuition – University of Arkansas~~ | ~~144~~ |
| 12 | Jacqueline Ashcraft's Medical Records with affidavit | 145 - 184 |
| 13 | Holly Newman (Paramedic) Deposition excerpts | 185 - 199 |

[1] Bates Numbers 90-139 will be excluded. Not relevant.

**ARKANSAS STATE CLAIMS COMMISSION**

**HALEY HUDSON, SPECIAL ADMINISTRATRIX OF THE ESTATE OF JACQUELINE LYNN ASHCRAFT, DECEASED, AND HALEY HUDSON AS PERMANENT LEGAL GUARDIAN OF [redacted], A MINOR CHILD** **CLAIMANT**

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| 9 | Deposition of Holly Newman (condensed transcript) | 039 - 063 |
| 10 | Dr. Ralph Scott's expert report with supporting documents | 064 - 143 |
| 11 | Cost of Tuition – University of Arkansas | 144 |
| 12 | Jacqueline Ashcraft's Medical Records with affidavit | 145 - 184 |

[redacted]

**EXHIBIT**
**1**

APPEARANCES

ON BEHALF OF THE CLAIMANT:

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ALSO PRESENT:

RICHARD HAYDEN, VIDEOGRAPHER

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EXHIBITS

1. Photograph.
2. Photograph.
3. Photograph.
4. Photograph.
5. Photograph.
6. Photograph.
7. Photograph.
8. Photograph.
9. Photograph.
10. Photograph.
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12. Photograph.
13. Photograph.
14. Photograph.
15. Photograph.
16. Wilson Statement.
17. Wilkerson Statement.
18. Diagram Pg. 16 of 18
18. Diagram Pg. 17 of 18
19. Diagram Pg. 18 of 18
20. Paramedic report.
21. Photograph.
22. Photograph.
23. Photograph.
24. Photograph.
25. Photograph.
26. Photograph.
27. Photograph.
28. Thumb Drive

(Court Reporter Note: Physical Copy of thumb drive Exhibit No. 28 mailed to each attorney.)

operation.
Q And for vehicle three, the same question is going to be on page 14. And what did you -- what was your finding on the vehicle -- on that driver's contributory actions?
A No contributing action.
Q And one bit of housekeeping matters.
MR. JACKSON: What's our last Exhibit number? 20? I'm going to mark as Exhibits 21-27, and represent to you that those are the photos that I've shown you previously in the slide as the Respondent's vehicle.
(WHEREUPON, the documents were marked for identification as Exhibit No. 21-27 and are attached hereto.)
BY MR. JACKSON:
Q And if you could look through that stack and verify that those are correct, I'll ask to attach them to your deposition.
A Correct.
Q And today you've brought a thumb drive with you to the -- to the deposition and tell us what is on that thumb drive.
A My photographs from the accident.
MR. JACKSON: And let's go off the

record for just a moment.

THE VIDEOGRAPHER: Sure. Off the record at 2:02.

(Break taken at 2:02 p.m.)

(Resume at 2:03 p.m.)

THE VIDEOGRAPHER: On the record at 2:03.

BY MR. JACKSON:

Q And you brought, we're going to attach as Exhibit No. 28, the thumb drive containing the images, and these are jpegs that you took as part of your investigation of the accident?

A Correct.

(WHEREUPON, the document was marked for identification as Exhibit No. 28 and is attached hereto.)

BY MR. JACKSON:

Q Thank you. And then how did you find out that Ms. Ashcraft passed away later that night?

A After being in contact with the hospital.

Q Okay. All right. And that's all the questions I have.

BY MR. GASPER:

Q Just a real-quick follow-up. You mentioned on -- on your report that there was a box that you've marked




Photos of Jacqueline Ashcraft's car taken by Arkansas State Trooper James Ray

**EXHIBIT**
**2**



Photos of Arkansas Department of Human Services car driven by employee Jennifer Wilkerson. These photos were taken by Arkansas State Trooper James Ray

**EXHIBIT**
**3**



**EXHIBIT**
**4**

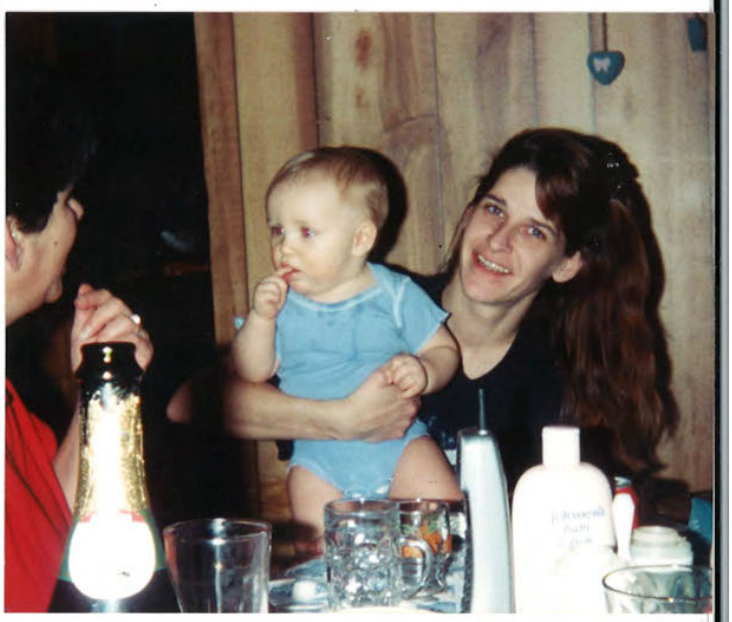

Pizza Hut
















TFW LTE
7:21 AM
100%
Memories
On this day
1 year ago
Jackie Ashcraft
Dec 30, 2020 ·
Shouting a VERY happy birthday to my oldest daughter Haley Nicole Hudson. I am really struggling to think you are 29..but honestly you are my bff..my side kick..my compadre..my ride or die❤️❤️❤️❤️ALWAYS!!! I really wish I could be there with you...and not only cause I'm jealous that Ray is there😂😂😂
You are always there for me and the girls..and everyone else and truthfully you have pulled me through stuff that I'd didn't want to deal with..but you always did and for that I am grateful❤️❤️ I hope you have had the best birthday EVER...cause no more 20's😂😂. I'm so happy you have an amazing family life job kids...I thank God...but you deserve it and more!! Thank you for letting me be your mama...I couldn't have made it without you ❤️I love you with everything inside my heart and soul💋💋💋
Ladonna Jackson and 17 others
6 Comments
Send
Share
News Feed
Watch
9+
Groups
9+
News
5
Notifications
9+
Menu

# In Loving Memory



# Jackie Lynn Ashcraft

May 27, 1971 - June 12, 2021

F.2

## Jacqueline "Jackie" Lynn Ashcraft,

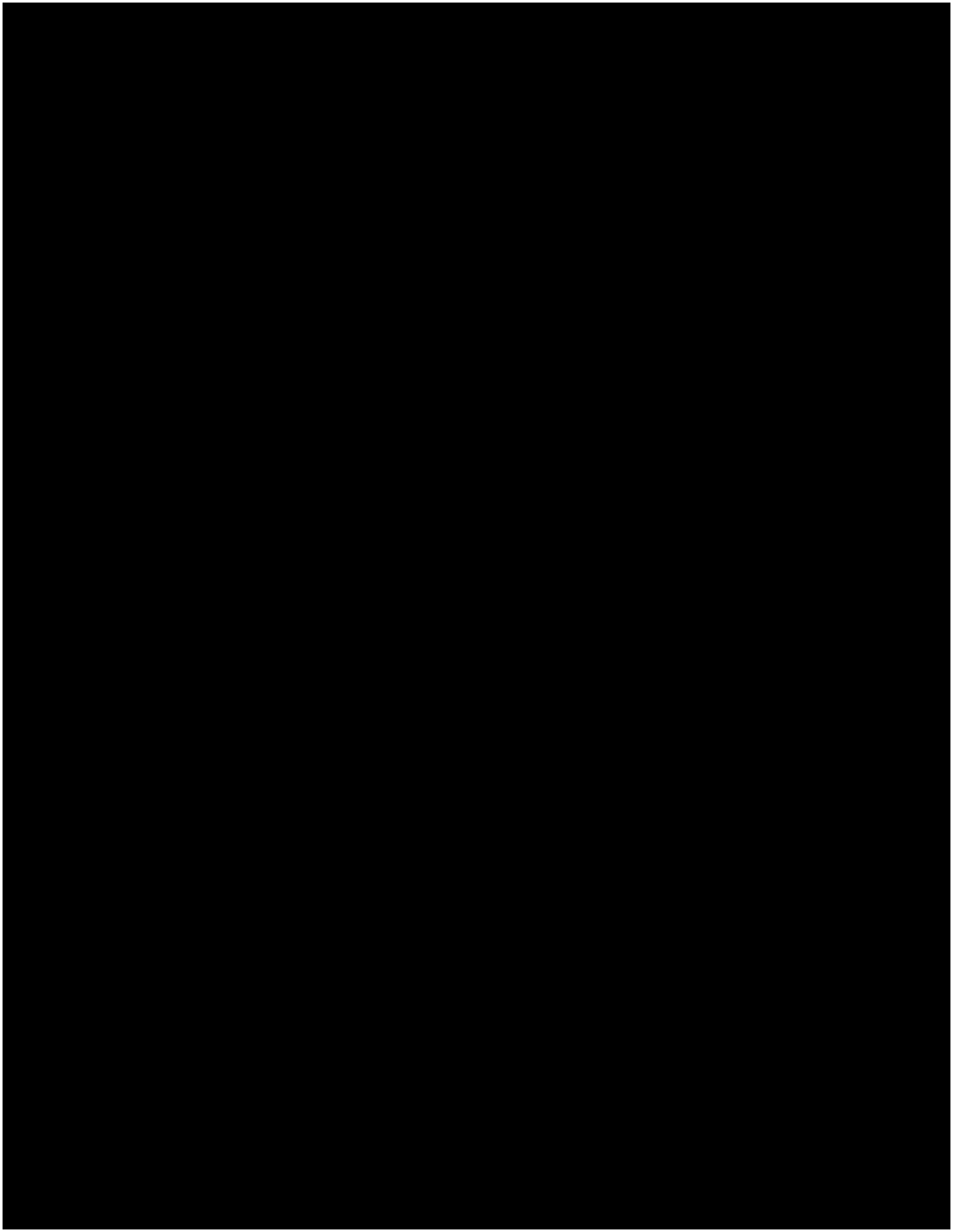
*Jacqueline "Jackie" Lynn Ashcraft, who resided in Paris, Arkansas, passed away Saturday, June 12, 2021 in Fort Smith. She was born in Pine Bluff, Arkansas to the late Bobby Wayne Ashcraft and Ladonna Grice Jackson. She was 50 years old. She was preceded in death by her father and a sister, Kimberly Nicole Jackson.*

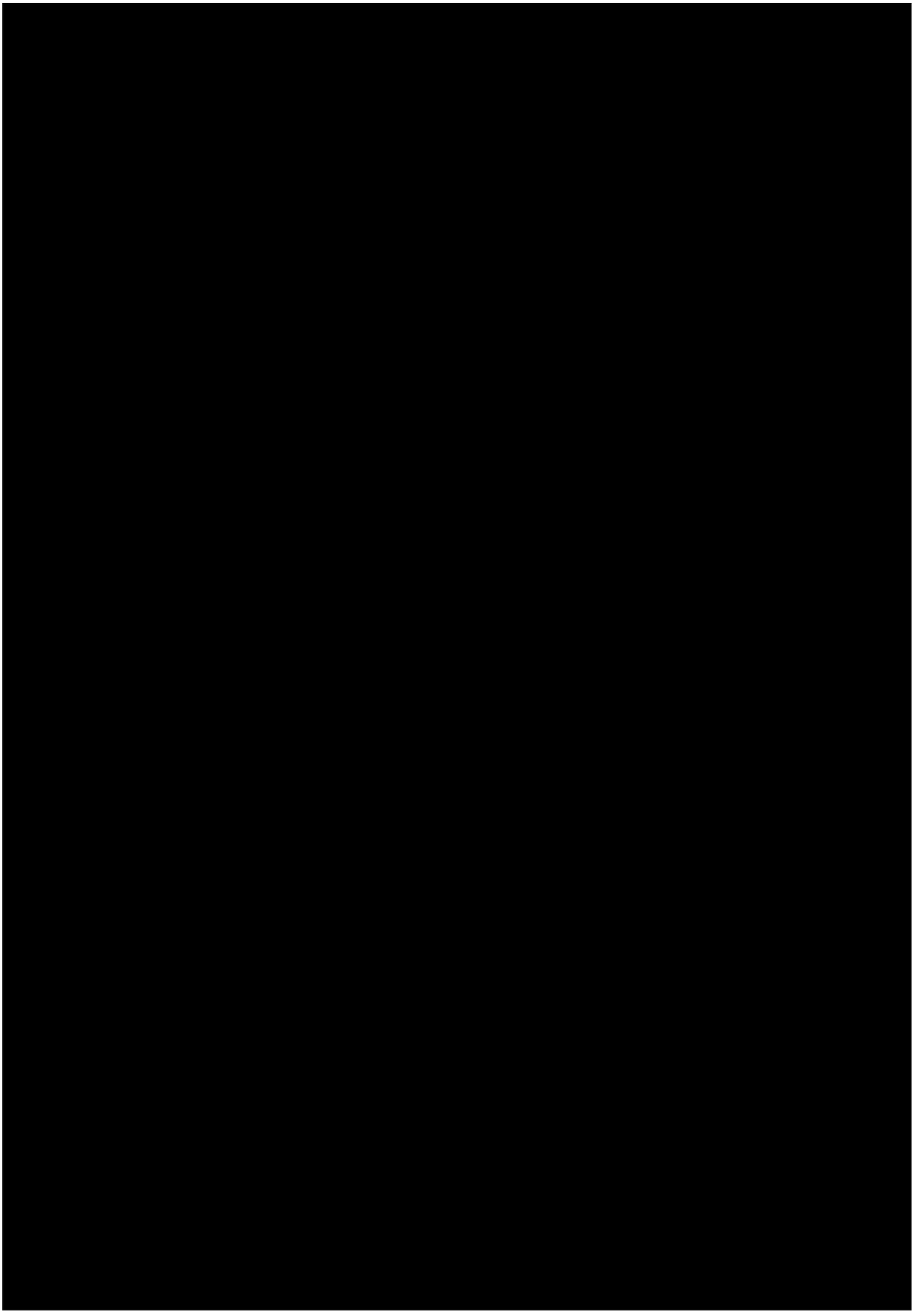
*Jackie was a homemaker, she was a great friend, a loving and caring soul, and was always there if you needed her. She was loved dearly by her friends and family.*

*Jackie is survived by her mother, Ladonna Jackson of Benton; stepmother Joanie Ashcraft of Pine Bluff; three daughters, Haley Hudson and Tyler Moore of Wynne, Kadey Jones and Carley Jones both of Paris; two sons, Dylan Hudson and wife Sunny of Ozark and Cody Ashcraft of Paris; two sisters, Jennifer Howard and husband Chad of Benton, Libby Handy and husband Jeff of Pine Bluff; four brothers, Jeff Ashcraft and wife Saundria of Batesville, Josh Jackson and wife Lisa of Paris, Bobby Ashcraft of Pine Bluff, and Jason May and wife Dray of Grapevine, Arkansas; and seven grandchildren, Rayleigh Hudson, Bentlei Moore, Makynzi Moore, Braxton Graham, Jackson Graham, Kayden Graham, and Emerson Waits.*

*Jackie was a beloved Daughter, Sister, Mother, Aunt and Gammi. She was also a bonus mom to many kids in Cross County. Her house wasn't only the "Hang Out Spot", it was also a safe place where the kids could go and talk about things without any judgement. Her kindness and heart of gold is something we will forever cherish.*

EXHIBIT 5





ARKANSAS STATE CLAIMS COMMISSION

| | | |
|---|---|---|
| HALEY HUDSON, INDIVIDUALLY AND AS ADMINISTRATRIX OF THE ESTATE OF JACQUELINE LYNN ASHCRAFT, DECEASED, AND HALEY HUDSON AS PERMANENT LEGAL GUARDIAN OF [redacted] MINOR CHILDREN, | ) | |
| CLAIMANT, | ) | CC NO. 230641 |
| VS. | ) | |
| ARKANSAS DEPARTMENT OF HEALTH AND HUMAN SERVICES, | ) | |
| RESPONDENT. | ) | |

---

DEPOSITION UPON WRITTEN QUESTIONS OF

CHRISTOPHER BELL, M.D.

June 19, 2024

---

ORAL DEPOSITION OF CHRISTOPHER BELL, M.D., produced as a witness at the instance of the CLAIMANT, and duly sworn, was taken in the above-styled and numbered cause on the 19th day of June 2024, from 1:35 p.m. to 1:43 p.m., before Dana Hayden, CCR in and for the State of Arkansas, RMR, CRR, CRC, reported by machine shorthand, at Hardin, Jesson & Terry, PLC, 5000 Rogers Avenue, Suite 500, Fort Smith, Arkansas, pursuant to the Arkansas Rules of Civil Procedure.

EXHIBIT 8

APPEARANCES

FOR THE WITNESS:

Mr. Kirkman T. Dougherty

Hardin, Jesson & Terry, PLC

5000 Rogers Avenue, Suite 500

Fort Smith, Arkansas 72901

(479) 452-2200

Kdougherty@hardinlaw.com

HALEY HUDSON vs ARKANSAS DEPARTMENT OF HEALTH
BELL, M.D., CHRISTOPHER on 06/19/2024

# I N D E X

June 19, 2024

Appearances 2

Reporter Certification 10

WITNESS: CHRISTOPHER BELL, M.D.

Examination By Claimant 4

HALEY HUDSON vs ARKANSAS DEPARTMENT OF HEALTH
BELL, M.D., CHRISTOPHER on 06/19/2024

## EXHIBITS

| NO. | DESCRIPTION | MARKED |
|---|---|---|
| Exhibit 1 | (Not Marked) | |
| Exhibit 2 | Page 1 of Jacqueline Ashcraft's medical records from Mercy Hospital | 4 |
| Exhibit 3 | Pages 33, 34 & 35 of Jacqueline Ashcraft's medical records from Mercy Hospital | 5 |
| Exhibit 4 | Four photographs | 7 |
| Exhibit 5 | CT scan results from Mercy Hospital Booneville | 8 |
| Exhibit 6 | Death certificate for Jacqueline Ashcraft issued by the Arkansas Department of Health | 8 |

CHRISTOPHER BELL, M.D.,
having been first duly sworn, testified as follows:

EXAMINATION

BY CLAIMANT:

Q. Will you state your name and your place of employment?

A. Chris Bell, Mercy, Fort Smith, Arkansas, emergency room.

Q. Okay. Can you provide us with a copy of your CV which we will have marked as Exhibit 1 to your deposition?

A. No.

MR. DOUGHERTY: "No, I don't have a CV."

A. I don't have a CV.

Q. Was Jacqueline Ashcraft a patient of yours on June 11 and 12, 2021?

A. According to the chart, Dr. Woolley was the attendee and then it was transferred to me.

(Exhibit 2 marked for identification.)

Q. Attached as Exhibit 2, which is right here, is Page 1 of Jacqueline Ashcraft's medical records from Mercy Hospital. I want to turn your attention to the section at the top of the page that states: [redacted]

[redacted]

[redacted]

My question to you after you review Exhibit 2 is: Do you have any reason to disagree with the description contained in the Chief Complaint?

A. No.

Q. Do you have any reason to disagree with the diagnosis of Jacqueline Ashcraft of having sustained [redacted]"?

A. No.

Q. All right. Moving right along, Exhibit 3.

(Exhibit 3 marked for identification.)

Q. Attached as Exhibit 3 to your deposition are pages 33, 34 & 35 of Jacqueline Ashcraft's medical records from Mercy Hospital. Do you have any reason to disagree with page 33 of the medical records where the notes state: [redacted]

A. No.

Q. Next I want to turn your attention to the

medical decision-making and plan of care beginning on page 34 of Ms. Ashcraft's medical records. The record states: [redacted]

Is this your understanding of the course of the medical decision making and plan of care for Ms. Ashcraft when she was turned over to you as a patient?

A. According to Woolley's chart, yes.

Q. All right. The next question: I want to turn your attention to page 35. The final diagnoses states [redacted]."

Do you have any reason to disagree with this final diagnosis in Mercy's records?

A. No.

Q. Did you order the endotracheal tube to be

removed from Jacqueline Ashcraft shortly after midnight on June 12, 2021?

A. Is there a place in the records that's going to state that? I don't even -- I don't recall.

HALEY HUDSON vs ARKANSAS DEPARTMENT OF HEALTH
BELL, M.D., CHRISTOPHER on 06/19/2024

01:39PM Q. Okay. Did Ms. Ashcraft die shortly after she was extubated from the mechanical ventilator?

A. I don't recall.

Q. Are you familiar with the contrecoup brain injury mechanism when a person is involved in a

01:40PM rear-end motor vehicle accident?

A. Yes.

Q. I want to ask you to review a series of four photographs which will be marked as Exhibit 4 to your deposition.

(Exhibit 4 marked for identification.)

Q. I will represent to you that Ms. Ashcraft was the driver of the blue vehicle which was rear-ended while slowing or stopping to make a left hand turn by the brown car. Testimony from experts indicate that the speed of the brown car ranged from 50 to 70 miles per hour.

My question is this: Is the impact depicted in the four photographs of Exhibit 4 the type of impact that you would expect a person to sustain a

01:41PM coup-contrecoup brain injury?

A. I don't have an opinion.
Q. Is a coup-contrecoup brain injury initially difficult to diagnose due to a lack of outward sign of trauma to the head?
A. I don't have an opinion.
Q. Would it surprise you that a person involved in the collision depicted in the photographs marked as Exhibit 4 would sustain an intraparenchymal hemorrhage of brain?
A. I don't have an opinion.
(Exhibit 5 marked for identification.)
Q. I would like to turn your attention to Exhibit 5 which is the CT scan results from Mercy Hospital Booneville. Is a patient who was involved in a rear end car wreck at 12:50 p.m. and has a CT scan at 2:21 p.m., approximately 90 minutes after the wreck, [redacted], consistent with a patient who experienced a brain trauma caused from the impact of a wreck?
A. I don't have an opinion.
(Exhibit 6 marked for identification.)
Q. I would like to ask you to review what has been marked as Exhibit 6 to your deposition which is the death certificate for Jacqueline Ashcraft issued by the Arkansas Department of Health. I want to turn

your attention to the middle of Ms. Ashcraft's death certificate which has a section titled "Cause of Death." [redacted]

My question to you is: Do you have any reason to disagree with the cause of death and underlying cause as stated in the Death Certificate for Jacqueline Ashcraft?

A. No.

Q. Has all of your testimony in this matter been based upon your medical education, medical training and treatment of patients presenting to the emergency room with medical conditions similar to Jacqueline Ashcraft's condition?

A. My answers were based on the chart that I read.

Q. Have your opinions given in this deposition been given within a reasonable degree of medical probability?

A. I didn't provide any opinions.

Thank you. This concludes the deposition of Dr. Bell.

REPORTER CERTIFICATION

I, DANA HAYDEN, Certified Court Reporter for the State of Arkansas, do hereby certify to the following:

HALEY HUDSON vs ARKANSAS DEPARTMENT OF HEALTH
BELL, M.D., CHRISTOPHER on 06/19/2024

1) that on 06/19/2024, the witness, CHRISTOPHER BELL, M.D., was duly sworn by me prior to the taking of testimony as to the truth of the matters attested to and contained therein;

2) that the foregoing pages contain and are a true and correct transcription of the proceedings as reported verbatim by me via realtime stenography to the best of my ability and transcribed at or under my direction and supervision, and subject to appropriate changes submitted by witness, if any, during his/her requested reading and signing of this deposition according to the Arkansas Rules of Civil Procedure;

3) that I am neither counsel for, related to, nor employed by any of the parties to the action in which this proceeding was taken; and that I am not a relative or employee of any attorney employed by the parties hereto;

4) that I am not financially interested or otherwise interested in the outcome of this action that affects or has substantial tendency to affect impartiality or requires me to relinquish control of

an original or copies of a deposition transcript before it is certified, or that requires me to provide any service not made available to all parties to the action; and

HALEY HUDSON vs ARKANSAS DEPARTMENT OF HEALTH
BELL, M.D., CHRISTOPHER on 06/19/2024

5) that I have no contract with the parties, attorneys, or persons with an interest in the action; and that I am not knowingly identified on a preferred provider list, whether written or oral, for any litigant, insurance company, or third-party administrator involved in this matter;

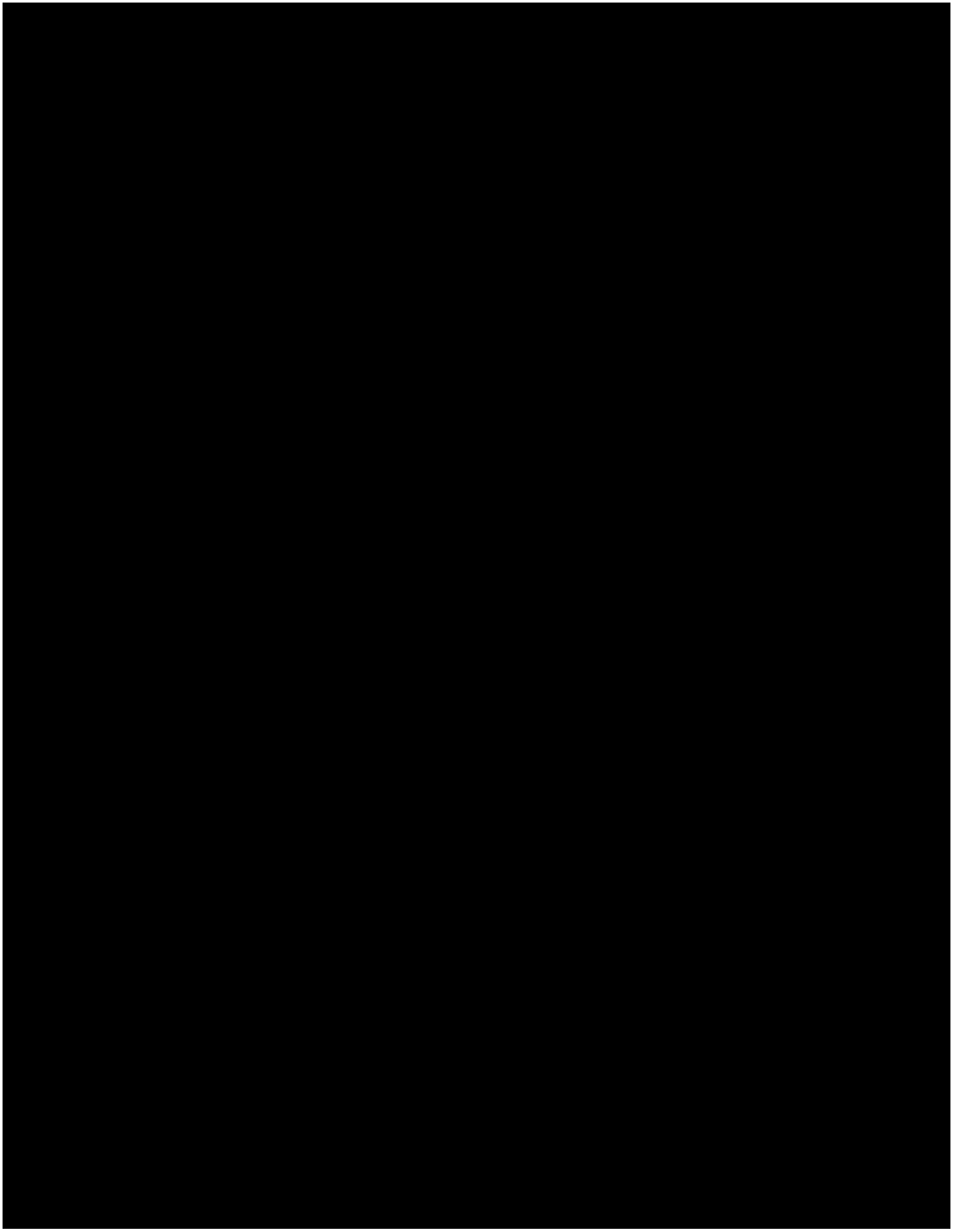
6) that signature of the witness is waived.

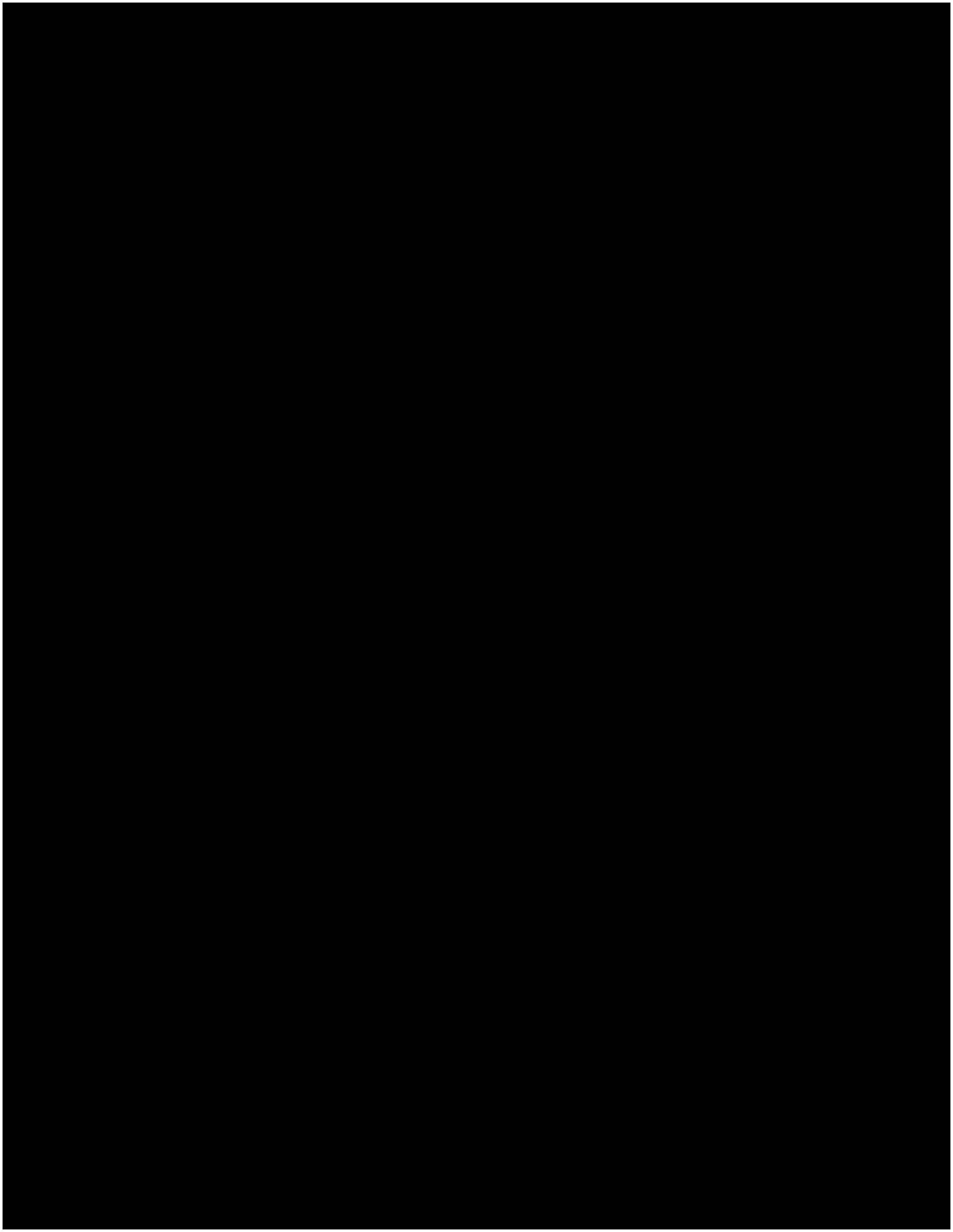
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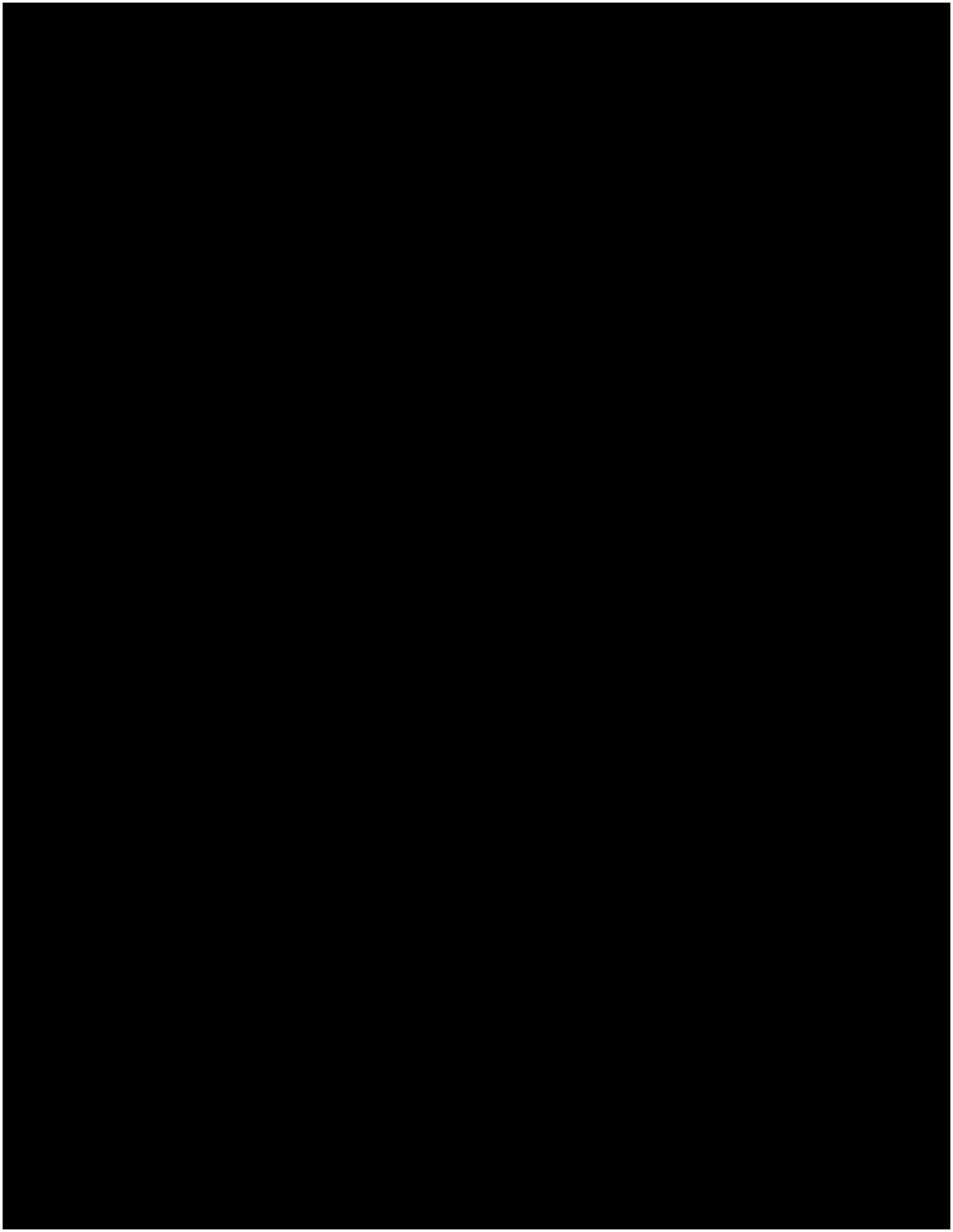
Witness my hand and seal this 21st of June, 2024.

DANA HAYDEN
CERTIFIED COURT REPORTER
ARKANSAS SUPREME COURT
LS NO. 714

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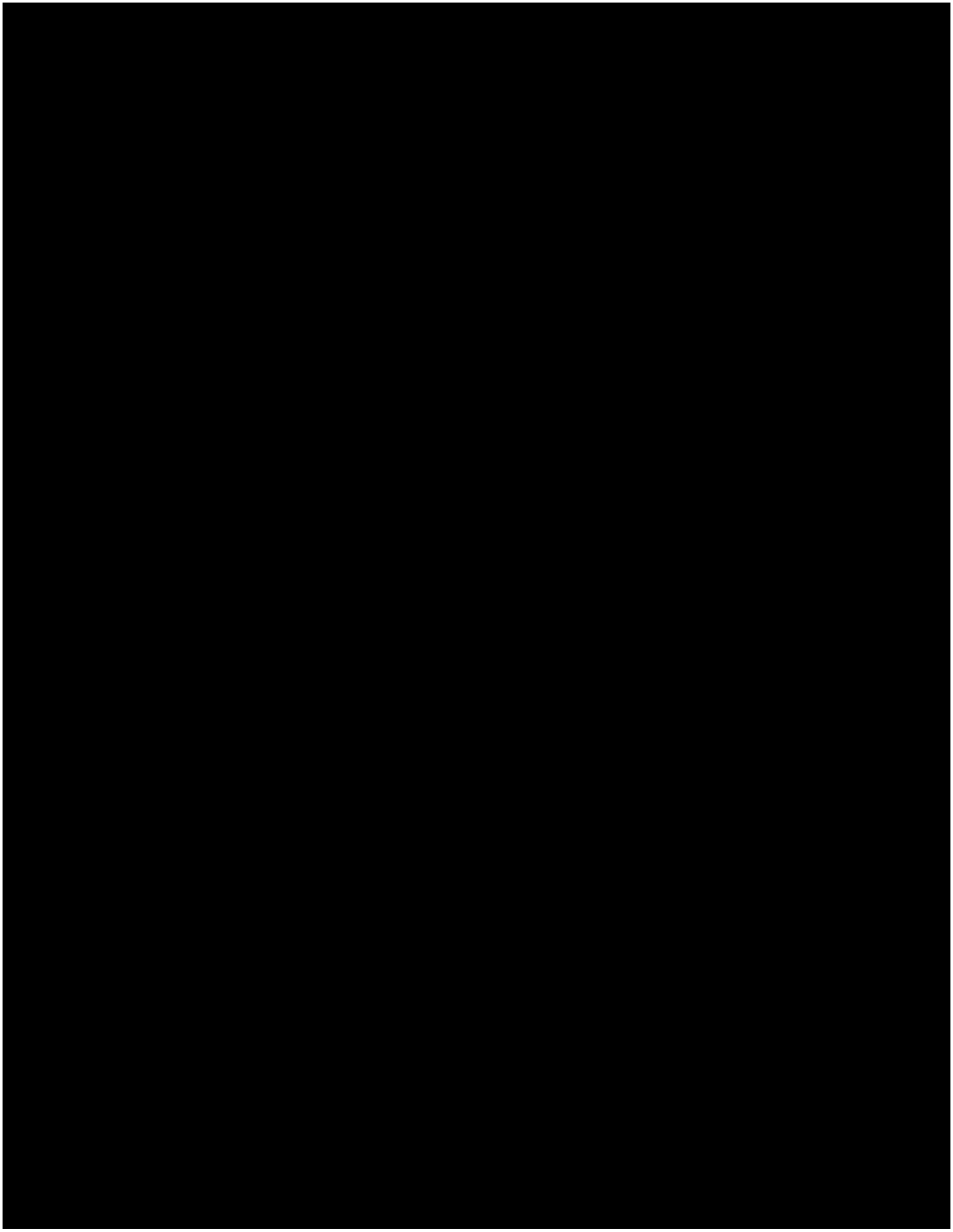
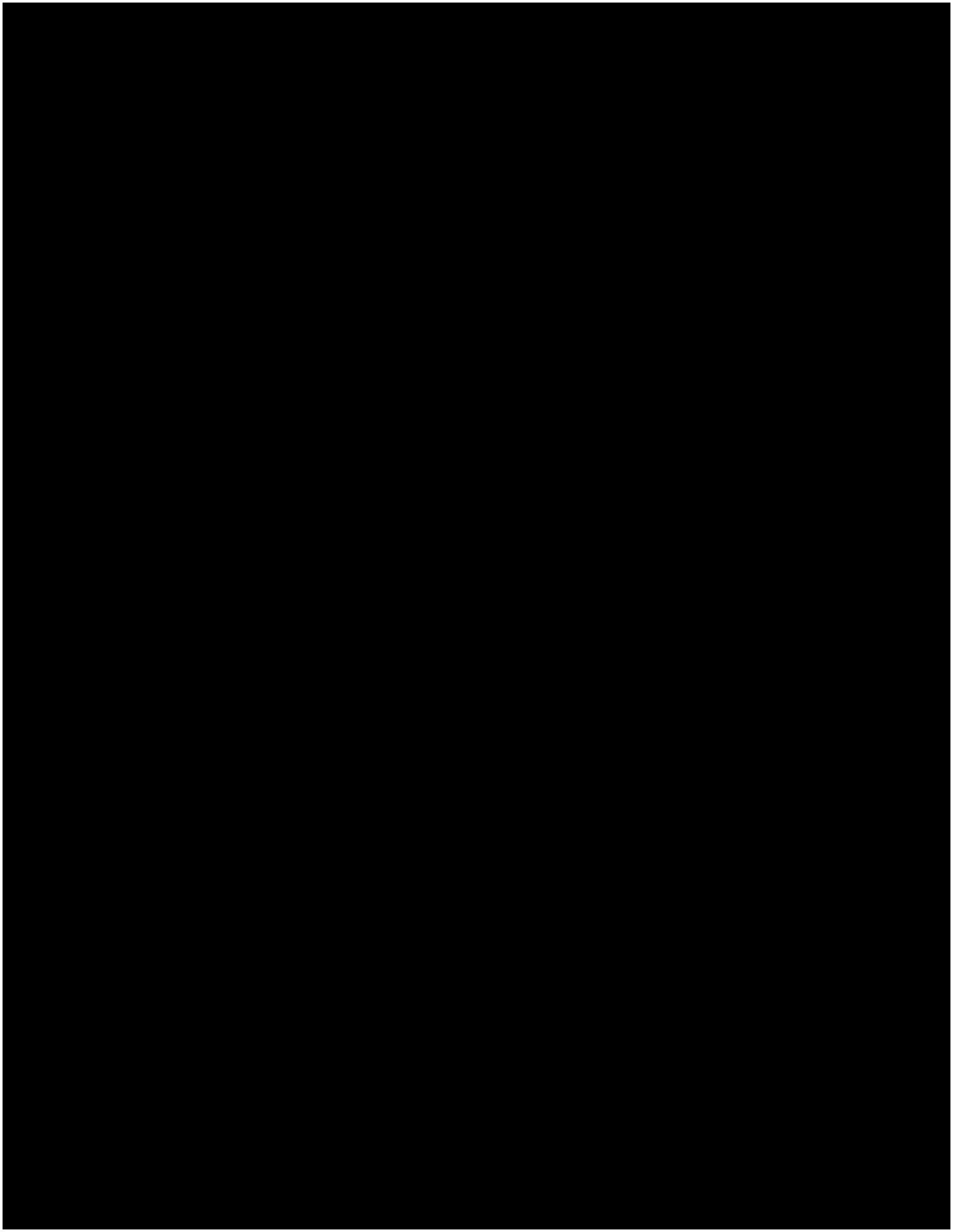


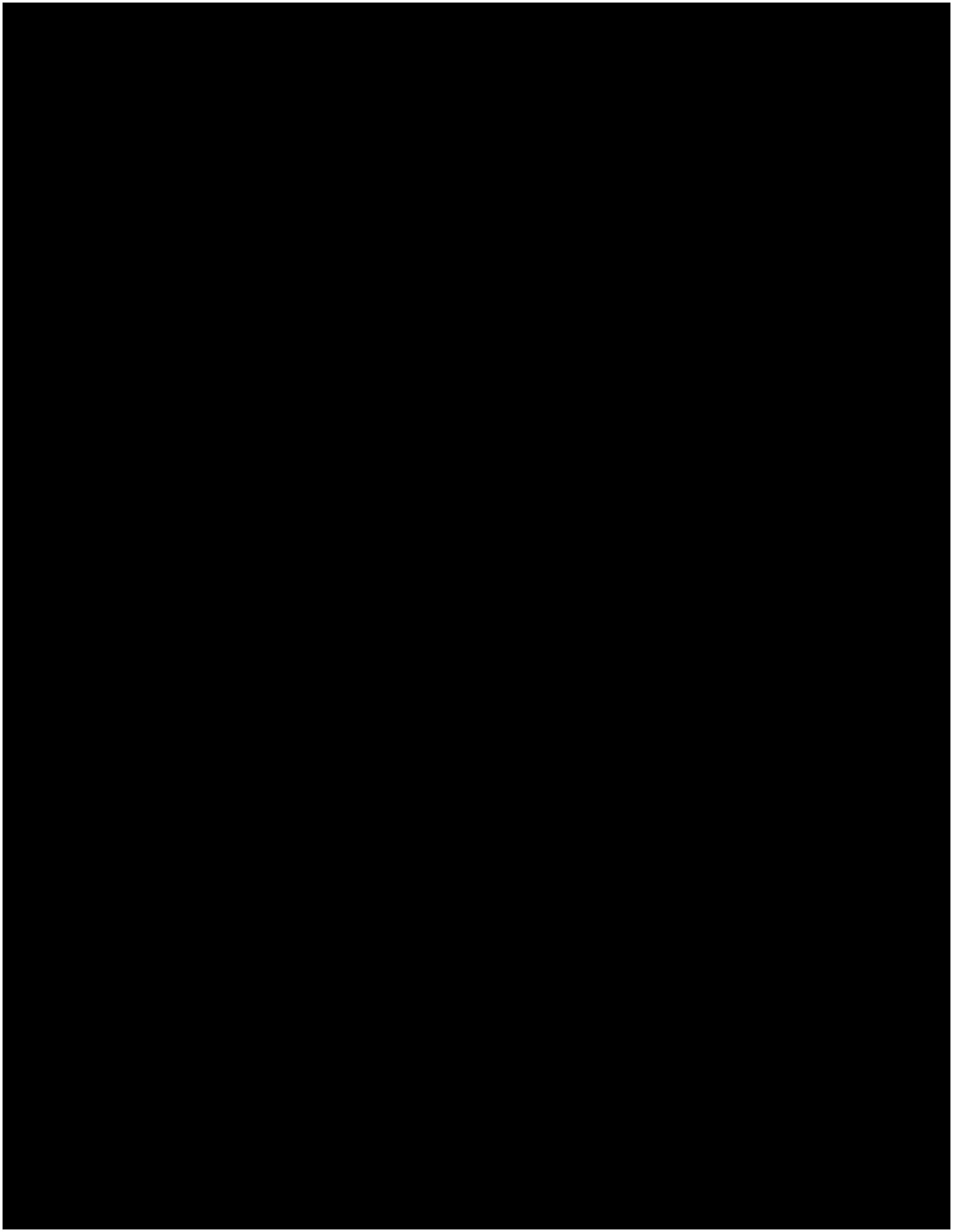

EXHIBIT
4

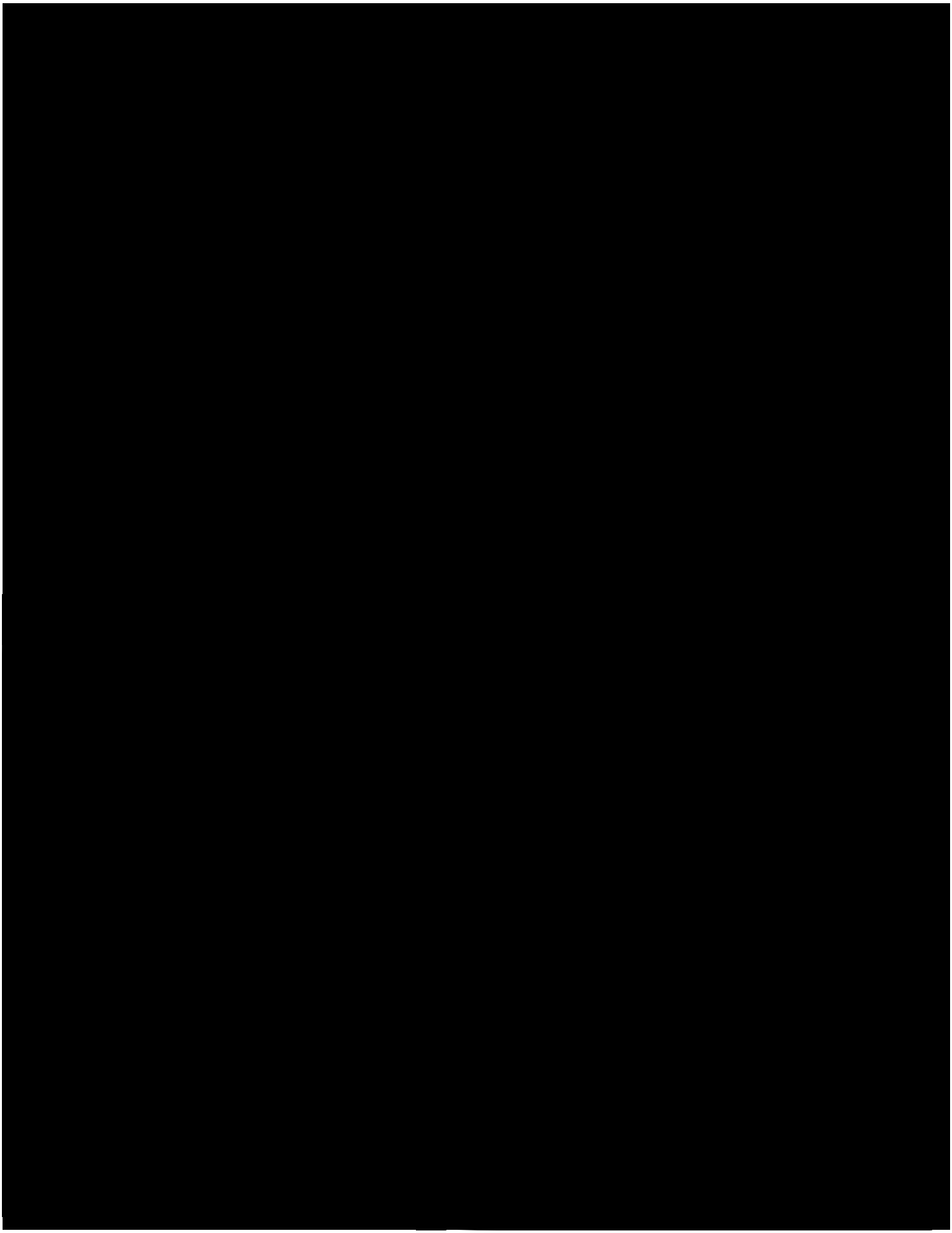



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ARKANSAS STATE CLAIMS COMMISSION

| | | |
|---|---|---|
| HALEY HUDSON, As Special Administratrix of the Estate of JACQUELINE LYNN ASHCRAFT, Deceased, and as Permanent Legal Guardian of [redacted], A Minor, | ) | CC NUMBER 230641 |
| CLAIMANT, | ) | |
| VS. | ) | |
| ARKANSAS DEPARTMENT OF HUMAN SERVICES, | ) | |
| RESPONDENT. | ) | |

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ORAL AND VIDEOTAPED DEPOSITION OF

HOLLY NEWMAN

July 31, 2023

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ORAL AND VIDEOTAPED DEPOSITION OF HOLLY NEWMAN, produced as a witness at the instance of the CLAIMANT, and duly sworn, was taken in the above-styled and numbered cause on the 31st day of July, 2023, from 9:58 a.m. to 12:07 p.m., before Tammie L. Foreman, CCR in and for the State of Arkansas, RPR, CRR, reported by machine shorthand via audio-videoconference, pursuant to the Arkansas Rules of Civil Procedure.

**EXHIBIT 9**

APPEARANCES

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ALSO PRESENT:
Richard Hayden, Videographer



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By Mr. Jackson

Examination 36
By Mr. Gasper

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By Mr. Jackson

Further Examination 93
By Mr. Gasper

EXHIBITS

NO. DESCRIPTION MARKED
Exhibit 1 Medical Records for Jacqueline Ashcraft 13
Exhibit 2 Medical Records for Kadey Jones 30



THE VIDEOGRAPHER: Good morning. I'm Richard Hayden. I will be your videographer this morning. The date is July 31st, 2023. The time is 9:58 a.m.

This deposition is taking place via Zoom. This is case number CC 230641 in the matter of Ashcraft versus Arkansas Department of Human Services. The deponent is Holly Newman. Our court reporter is Tammie Foreman. If counsel will introduce themselves, the witness will be sworn.

MR. JACKSON: Jim Jackson representing the claimant.

MR. GASPER: Brent Gasper representing the Department of Human Services.

HOLLY NEWMAN,
having been first duly sworn, testified as follows:

EXAMINATION

BY MR. JACKSON:

Q. Good morning, Ms. Newman. Would you introduce yourself to the members of the Claims Commission?

A. I'm Holly Newman. I was a paramedic and actually taking care of Ms. Ashcraft during her wreck.

Q. And Ms. Newman, if I call you Holly during the deposition, will that be okay?



A. Yes, sir.

Q. Okay. And what is your date of birth?

A. [redacted]

Q. And what is your current address?

A. I currently reside at [redacted]

Q. And what is your vocation, your profession?

A. Paramedic.

Q. Explain to us how one becomes a licensed paramedic and what those steps are.

A. Initially, you become an EMT, which is approximately a six-month course depending on what time the school starts. And then you test for National Registry.

Once you become an EMT, depending on the program that you go to, you can go straight through or you have to wait eight to nine years, which is set by the program itself. I happen just to wait three years due to family and my kids and the ages that they were when I became an EMT.

So during paramedic school, the program that I went to, we were allotted to -- we had to do 300 hours of clinical, which is all hospital-based. And then we did 300 hours on the ambulance, which was from August to December. We graduated in December and

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then we kept our National Registry.
Q. And that's a National Registry to become a paramedic?
A. Yes, sir. The NREMT, which is the National Registry Emergency Medical Technician, the program itself that every paramedic has to go to. Like, it's one nationally-set test that we all have to pass.
Q. And what year did you pass that test?
A. 2016.
Q. And where were you living and working in 2016 when you passed the test?
A. At Medtech in Conway County.
Q. And what does -- does that mean that you are able to do what is called Advanced Life Support work for an ambulance company?
A. Yes, sir.
Q. And how many ambulance runs do you think you've made since you got into the field, either as a EMT or as a paramedic?
A. At the end of next month, I'll be 10 years in. So I couldn't even a lot begin the amount of numbers. I can tell you all of last year here in New Orleans, I worked 2,265 hours alone just that year.
Q. That obviously is a large number.
A. Yes.

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Q. So Holly, I want to take you to the date of June 11th, 2021, which is the date of the accident that this claim is regarding. Where were you stationed physically when you -- when your ambulance received the call that you needed to be dispatched?
A. I believe we were at our station in Paris.
Q. Okay. And who was your employer on that date?
A. Logan County EMS.
Q. Okay. And you were employed as a paramedic on that date?
A. Yes, sir.
Q. Okay. And who was with you?
A. Zach Marry.
Q. Okay. And tell us, when you get a call -- I know you're not going to remember everything. But just typically, when you get a call, you're at the station, what do you -- what do you do and how do you respond?
A. Can you clarify a little more? Like, what you mean, like --
Q. Do you turn on your lights? Do you -- what -- what -- what information are you trying to get from dispatch and how do you know where to go, those type of things.
A. Okay. So once we're in the truck?

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Q. Yes.
A. Okay. So it is a legal obligation that we run lights and sirens together once we go on a 911 call. During the call, dispatch will, like, give us an update on how many vehicles or, for this particular instance, how many patients there were, and this and that.
Zach Marry is also s a paramedic, so we were running a double paramedic truck. I don't -- I didn't actually recall the events of the dispatch. I just knew we were going to a vehicle accident. And go ahead.
Q. And who was the driver to the accident, if you recall?
A. I believe I was driving.
Q. Okay.
A. I'm pretty sure I was driving because I remember pulling up.
Q. Go ahead. I didn't mean to cut you off. You remember driving, and I think you said pulled in or pulled up?
A. Yes, sir. Because I remember Zach being in the passenger's side and initially seeing the car, the DHS car.
Q. Okay. And you're coming from Paris towards

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Subiaco, which would be coming from the west traveling east on Highway 22; is that correct?
A. Sure. I'm not good with directions. I know I was headed to Subiaco area. Whether that's west or east...
Q. And where did you park your ambulance?
A. If I remember correctly, we pulled up slightly passed the DHS car because as Zach was looking at it, he went to her. And then I looked up and seen Ms. Ashcraft and the two kids above us. So we were parked in between them two still facing towards Subiaco.
Q. And then tell me -- tell us what you did when you arrived on the scene and you get out. Walk us through what -- your interaction with Ms. Ashcraft and her children.
A. So I walked up to Ms. Ashcraft and her children once Zach went to the other patient. I noticed that the two children were sitting on the ground and Ms. Ashcraft was standing up. She was smoking a cigarette at that time.
So initially, as I do every parent, I look at her, I make sure she's okay because all of them are breathing. So neither one of them needed my attention more than the other at that time.

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So I talked to Ms. Ashcraft and said, hey, you know, can I check out your children, get permission from her because they are minors. She said yes, that's fine. So I turn my attention to the children.

One was completely, utterly fine. She was talking and everything, answering all questions. And the other one had some slight repetitive questioning, which showed signs of possible concussion. So I talked to Ms. Ashcraft and her both back and forth.

Initially, she didn't want the children to go to the hospital, despite the efforts that I very much wanted them to. In our line of work, we can't physically take a child from a parent unless it's a true life threat. At that time, a concussion, it could be borderline, but it was not -- she was not considered a life threat because she had her own airway. She was able to talk. She was not showing signs of lack of oxygen. You know, she wasn't obviously bleeding everywhere. That would have turned into something else.

Q. Did you -- were you able to physically examine her head and her skull to see if she had any contusions or abrasions?

A. And she had none that I seen.

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Q. And if I represent to you that that child's name is [redacted] would that be consistent with your recollection?

A. I'm pretty sure, and I think her sister was named Haley?

Q. [redacted]

A. [redacted] Okay.

Q. And [redacted] was the sister -- I'll represent to you [redacted] was the sister that did not have any issues. And so what -- what did you do next -- what did you find on -- when you did the physical examination of [redacted]

A. To my recollection, I didn't find anything. There was no what we call depressed skull fracture, which would be, like, an indention in the back of her head. There was no tenderness, nothing. She just had the repetitive questioning. As we sat there with her, she started regaining her memory more and more as well.

Q. And that's a good sign, correct?

A. Yes. That's a very good sign.

Q. And then what did you turn your -- who did you turn your attention to next?

A. Ms. Ashcraft. She told us that they were actually trying to go to the house, that they

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happened -- that happened to be across the road. And it was a very hot day. And so between the conversation and her not -- adamantly not wanting the kids to go to the hospital, she signed a refusal form for them both. If I remember correctly, there was one done on [redacted] There should also be one done on Haley as well.

So she told me that she wanted to go across the road. So at that time, Zach didn't need my help with the other patient. He had all of that under control. So since they weren't going to go with us, I walked them across the road and into that house.

She walked just fine. Ms. Ashcraft, all of them had a steady gait. She sat herself on the couch along with the kids. And then the lady in there, I distinctly told the lady, I said, "If anything changes, come and get me" because at this point, nobody, to my recollection, had even checked on the -- the 18-wheeler.

Q. The tractor trailer driver?

A. Yes. So then that was in the back of my mind was, like, well, at least somebody needs to go lay eyes on him. And so that's -- after I took them to the house, that's where I went.

(Exhibit 1 marked for identification.)

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Q. Okay. And then I notice on what we've marked as Exhibit 1 to your deposition, there is an initial assessment for Jacqueline Ashcraft. And I assume that's something that you -- or is that something you create for every patient that you interact with?

A. Yes.

MR. GASPER: Jim, real quick, I had a pause on my video. Are you guys froze? I've got an unstable -- can you maybe go back and repeat the question that you asked 15 seconds ago?

MR. JACKSON: Is it the question where I asked about the initial assessment?

MR. GASPER: Maybe so. Yeah. I'm in my office. It's just my connection is bouncing in and out. So...

MR. JACKSON: Tammie, can you -- do you want to read it? Can you read it to us to?

THE COURT REPORTER: I can find it very quickly. The question at 10:09 was, "And then I notice on what we've marked as Exhibit 1 to your deposition, there is an initial assessment for Jacqueline Ashcraft. And I assume that's something that you -- or is that something you create for every

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patient that you interact with?"
MR. GASPER: In regards to the refusal, again, you're bouncing in and out, so refusal form, Jim?
MR. JACKSON: I can't hear you.
MR. GASPER: Hold on. My connection is -- again, it is intermittent. If you were asking her about a document, was that the refusal form?
MR. JACKSON: No. It's Exhibit 1 to her -- that we'll be attaching as Exhibit 1 to her deposition.
MR. GASPER: Oh, that's the medical records here?
MR. JACKSON: Yes.
MR. GASPER: Okay. I didn't know if you were referring to a specific document within that or the entire thing. Okay. I'll do the best I can to follow along. Go ahead.
Q. (By Mr. Jackson:) And Ms. Newman, are you able to see, on your Exhibit 1, which is the Jacqueline Ashcraft record from Logan County EMS what your initial assessment states about her mental -- about Ms. Ashcraft's mental status?
A. Is that something you can put on the screen? We

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haven't been in our house all weekend. Our AC went out. So I don't have those papers. I'm sorry.
Q. Oh, my gosh.
A. It's been a weekend, I'll just say that.
MR. JACKSON: Richard, it will be page 1 of the Exhibit 1. And when I say "page 1," the first page is that -- yes. That is page 1 of 9.
And Richard, can you enlarge the bottom third, please? Richard, can you enlarge the bottom third of that page?
THE VIDEOGRAPHER: Just a second. I'm working on it.
MR. JACKSON: Thank you.
Q. (By Mr. Jackson:) And Ms. Newman, can you see under the "mental status" the initial assessment?
A. I see the initial -- okay. This L, is that what you are talking about?
Q. Right above "skin" is the category of mental status.
A. Event oriented, person oriented, place oriented, time oriented.
Q. And is that something that you, as a paramedic, obtain from every initial encounter you have with a patient?

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A. Yes, sir.
Q. And do you do that multiple times when you interact with a patient?
A. Yes, sir.
Q. And how many times are you getting that event oriented, person oriented, place oriented, time oriented, what's your normal protocol that you do as a paramedic?
A. We assess all the time mental status. That just means she's alert to where she's at, who she is, what time it is, and certain events that are happening either past or current. We do it all the time.
And if there's any change. It's just like carrying on a conversation with somebody, you can tell when they're starting to not be normal or not normal as they were when you initially got to them. So --
Q. And we'll look and we'll see that in the ongoing assessment where those changes are noted; is that correct?
A. Yes, sir.
Q. And it looks like your records show that -- and then on your ALS assessment immediately above, tell us what the time is and what your initial assessment, and tell us what -- first, tell us what ALS means.
A. It's Advanced Life Support.

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Q. And that's something you're trained to do and that's your job as a paramedic, correct?
A. Yes, sir.
Q. And so my question is, tell us what the time -- at the time and what your description is on that flow chart prepared by you for Jacqueline Ashcraft.
A. That 1304 ALS assessment, patient is alert and oriented times four, which means down at the bottom, the initial assessment, oriented to person, place, time, event. She was walking around the car. She -- patient's response unchanged, successful; complication, none.
Q. And then I want to go on again, following on your initial assessment on the -- there at the bottom of the skin and what was the significance of the temperature and her skin?
A. It was hot outside. If I remember correctly, I don't think Ms. Ashcraft was every bit of 100 pounds. It was hot outside. Diaphoresis means sweating.
MR. JACKSON: And then I want to go, Richard, to the next page, which will be page 2 of 9. Where your initial assessment continues.
Q. Are you able to see that, Ms. Newman, or do you need for us to enlarge it?

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A. Just a tad. I can see it a little bit. Just maybe one or two clicks.
MR. JACKSON: Richard, can you enlarge it a little bit, that first bit? Yes.
A. That's good.
Q. All right. Under the category HEENT, tell us -- explain to us what that means.
A. Head, eyes, ears, nose, and throat.
Q. Thank you. And explain to us what you observed about her head and face.
A. There was no abnormalities. Her pupils were equal. The neck --
Q. Let me stop you right there. Her pupils being equal, what does that mean to you as a paramedic?
A. That means that there's nothing going on in her head at that time that I can tell. Again, I don't have x-ray. I don't have CT. But on the physical outside findings, that's something we look for. If they're unequal, that means something is going on.
Q. And I notice you have a measurement next to the eyes of the size of the pupils.
A. Yes.
Q. And what is that measurement?
A. That's two millimeters. That means they're on the smaller side.

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Q. And that's what you would expect for somebody who is out in the sun?
A. Yes, sir.
Q. And that's normal or -- of someone -- that's what you would expect for them to have or what you would hope to have is the same size pupils and for them to be small or constricted; is that right?
A. Well, I wouldn't say constricted. Constricted are really a lot smaller, kind of almost pinpoint. That would suggest other things. But you do want them on the smaller side out in the sun in that they're not --
Q. Oh, sorry. Go ahead.
A. No. Go ahead.
Q. Is two to four millimeters normal for a patient?
A. Yes, sir.
Q. Nothing there gave you any pause for concern when you observed her eyes?
A. Not at that time, no.
Q. During that initial assessment?
A. Correct.
Q. And then did you -- the chest and abdomen, were those things you checked for physically during that initial assessment, or was that just --
A. Yes.

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Q. Okay. Tell us what you would have done to check for her chest and abdomen there.
A. I would have done this to make sure there was no tenderness and slightly palpate her belly, which, again, Ms. Ashcraft was very thin. So if she had any kind of distention, you would have been able to see it without even touching.
Q. And when you say "I do this," just so if we look at it later on the record, it looks like you're pressing across your chest; is that -- is that correct?
A. No. I'm sorry. It's palpating, like, you touch.
Q. Okay.
A. Kind of like you would touch somebody's skin. Like, you touch here.
Q. Okay. And that's what I meant to say was, you're pressing against the skin of her upper chest to see if there's anything going on in that area; is that right?
A. Yes.
Q. And that was all normal?
A. Yes.
Q. What is the -- did you take a pulse of Ms. Ashcraft?

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A. Physically on her wrist, yes.
Q. Okay. And what is -- explain to us what your notes say about the pulse and what that means.
A. We're still under the initial, right?
Q. Yes. Yes. We're still at the initial on all these questions.
A. So it says plus two, plus, which is normal. So depending on your type of, like, the blood pressure or anything that's going on, you could feel a radial pulse. And if you have significant bleeding or something like that going on internally, it sometimes will be lower, which means your blood pressure is lowering. It becomes weaker. So with hers being two plus in a normal status, that she had a normal pulse.
Q. Explain to us the capillary refill section and what that means.
A. So it is less than two seconds, which is good. Again, if you're internally bleeding, you're going to start to shunt, which means everything is coming away from your peripheral, which is your hands, your feet, your toes, and it's going to push everything to the core, in trying to keep basically the lungs and the heart and the brain alive as long as it can. So the shorter amount of seconds for her capillary means good. If it was five or six, then that would mean

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it's delayed.
Q. And these are all items of this initial assessment that you made around that 1:04 time period, I assume, before you walked her over into the -- before she walked over across the street into the house?
A. I'm sorry. It froze at, like, the very first of your sentence.
Q. Sure. These were all the diagnostic assessments that you made initially and everything came back normal; is that correct?
A. Prior to walking her over, yes.
Q. Yes. All right. And then you were explaining to us that you -- when Ms. Ashcraft is seated in the house, do you do anything like does she get any ice, drink some water? Do you recall anything like that?
A. I want to say there may have been put a wet towel back on her neck. But other than that, I don't recall her drinking any water.
Q. And then what -- tell us, you were starting to tell us about you leave because there's a third driver in this accident?
A. Yes, sir.
Q. And go back and tell us what you were doing to assist that driver?

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A. So after I walked Ms. Ashcraft to the house, again, I turned around, walked out. And then I walked to the right and walked down the road a ways.
He was standing outside his 18-wheeler. And then I talked to him, and he presented to be fine and didn't want to go to the hospital. So after I got the information from him, I turned around and I walked back to my partner.
Q. And where was he, your partner, at that time?
A. In the ambulance.
Q. Okay.
A. With the other victim.
Q. Did he have the DHS driver, was she on a cot in the ambulance at that time?
A. I believe so, yes.
Q. Okay. And then what happens next?
A. So I climbed in the back of the ambulance to make sure he needed -- if he needed any assistance. And about that time, a state trooper knocked on the door, knocked on the back of the ambulance and said, hey, y'all are needed inside the house.
And I looked at Zach and I said, "Well, I'll go," since I had initial contact and he was with his patient. So I walked back in the house to go reassess Ms. Ashcraft.

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Q. And what did you find when you walked back into the house to reassess Ms. Ashcraft?
A. I found that she was laying her head on -- I cannot recall the person who she was laying or sitting next to. But she was not responding the way she was initially when I had left her. She was still able to respond to me, but it was not like she was.
Q. And what -- so what did -- as a paramedic, what do you do?
A. Well, initially, I thought she may have been dehydrated because it wasn't necessarily the coldest in that house either. So I started a IV on her, called for another unit.
And then that's when I was informed that we didn't have another unit. My partner come back in there and said, "Hey, we're it. We're going to have to take her as well." So there's nobody else. Everybody else was on calls. And I said okay. So my partner, he just picked her up and started carrying her.
Q. And where does Paramedic Marry take her to?
A. To the ambulance, the back of the ambulance, and laid her on the bench seat.
Q. And then what happens next on the transport?
A. I get in the driver's seat and we drive to the

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hospital. On the way there, Paris told us that their CT scanner was down, so our closest to divert to unfortunately was Booneville, which was clear across to the other side of the county.
Q. And what is -- are you -- what is Ms. Ashcraft's condition while you're in transport? Are you communicating with Medic Marry, or do you know?
A. We are a little bit back and forth. We're talking about the possibilities and what was going on. He had restarted an IV because mine got pulled out. So other than that, I don't know what kind of treatment. I'd have to look back at the report to see if he did any kind of treatment.
Q. One question I want to ask you about is -- that I forgot to ask you about earlier is did Ms. Ashcraft tell you what -- anything about the accident itself? Did she give you a history of what occurred?
A. From what I understand is my understanding is that she was sitting waiting to turn into the house when she got rear-ended.
Q. And where would you have gotten that information from?
A. Her.
Q. Okay. And that's information she would have told you there at the scene during that initial

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assessment?
A. Yes. And then her trunk being dented in kind of confirmed it.
Q. I want to ask you about page -- what is page 3 of 9 on Exhibit Number 1. And at the bottom, it's got a section called specialty patient motor vehicle collision. And I was going to ask Richard if he can enlarge that.
THE VIDEOGRAPHER: What page is that?
MR. JACKSON: It's going to be page 4. Yes. That page there. And at the bottom where it's black, yes. If you could highlight and enlarge all of that.
Q. (By Mr. Jackson:) Is this a normal section you fill out every time you respond to a motor vehicle collision with a patient?
A. For a motor vehicle, yes.
Q. And what is the collision indicators? Can you read that and tell us what those symbols mean and what the significance of the collision indicators are for a licensed paramedic?
A. So collision indicators and the motor, that is a trauma related. That's not necessarily set by paramedics itself. That is the Arkansas Trauma Comm. They set X amount of standards for different levels of

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trauma. So this particular one shows an intrusion greater than 12 inches, crash vehicle telemetry data consistent with high risk of injury in EMS provider judgment.
Q. And that's information you get from your observation of the vehicles that are involved in this collision, correct?
A. Correct.
Q. Okay. And then the passenger seating on seat row one meaning she's sitting in the front seat?
A. As she's the driver, yes.
Q. And she's the driver. Airbag deployment, does it tell us what you found on the airbags?
A. Front deployment.
Q. Okay. And then safety devices, what did you find on the safety devices?
A. She had shoulder and lap belt, which means the normal seatbelt.
Q. And then the initial vital signs -- well, tell us below what the specialty patient trauma criteria, what is that?
A. This is some of the stuff that would classify those different levels of trauma that I was explaining earlier. Her initial GCS would not have been below 13 either. Her second round, when I remade contact, then

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her GCS would be below that. The anatomy of the injury says none. Mechanism injury consistent with greater than 12 inches, which would have been the trunk part of hers. And then EMS provider judgment.
Q. And what was Ms. Ashcraft's condition when you got to the emergency room at Booneville?
A. When I opened up the back doors, she was still responding to that command. I'm pretty sure she still had motor function. I don't think she was talking clearly, but I did see her nod her head into a question we had asked her. So I knew she was still responding to him.
Q. And what did you -- I saw somewhere in the notes where it looks like you and Paramedic Marry stayed and helped the emergency room with the treatment or while she's being assessed?
A. You're breaking up. I heard me and Mr. Marry stayed.
Q. Let me rephrase that. Did you stay and assist the emergency room department with the assessment and treatment of Ms. Ms. Ashcraft?
A. We stayed, but I did not stay in the room with the hospital staff.
Q. Okay. So is it fair to say at that point, when you get to the emergency room at Booneville, you, as

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part of Logan County EMS, then transfer her care to the Booneville -- to the emergency room at Booneville?
A. Yes.
Q. Okay. Then do you go back to your vehicle and finish out writing out your report for the patient?
A. Either that or I stay in the lobby to obtain the face sheet from the clerical staff.
Q. And then while you were with -- and in part of medical record Exhibit 1, there's a refusal form that is on page 11 of Exhibit 1. And that's, I assume -- or tell me, is that a standard form that you ask parents to sign who deny -- who say we don't need to be taken to the emergency room?
A. That is Logan County's official form. And yes, Logan County unfortunately does everything by paper, or did while I was still there.
Q. And that is down at the bottom, the printed name and signature, that was done by Ms. Ashcraft, correct?
A. Correct.
Q. And then where -- and then you also had her do one for [redacted] as well?
A. Yes, sir.
Q. Okay.
MR. GASPER: Jim, real quick, I'm not sure if we got a verbal response to that

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question about whether or not Jackie signed and dated. All I saw was a head nod. Could you ask that question again?

MR. JACKSON: Sure.

Q. (By Mr. Jackson:) Ms. Newman, did Ms. Ashcraft herself sign the Logan County EMS patient refusal form?

A. Yes.

MR. GASPER: Thank you.

Q. (By Mr. Jackson:) And did she also sign one for her daughter [redacted] as her mother?

A. Yes.

(Exhibit 2 marked for identification.)

Q. I want to turn your attention now to [redacted] which is the daughter, and that's going to be Exhibit Number 2.

MR. JACKSON: Richard, could you pull us Exhibit 2, please? And turn to the next page, please.

Q. And you went through on your initial assessment of [redacted] you talked about it earlier. One of the things you mentioned is that she had, I believe you called it, repetitive questioning. What is -- do you remember what her questions were or what they were?

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A. I know she kept asking what happened. She didn't remember -- I think the last thing she remembered, I think they had went to McDonald's and she had a McDonald's cup. She just kept asking what happened and that she didn't remember anything.

Q. And then as far as looking at her head, I know -- and the HEENT, it states there was a hematoma to the back of her head, no deformity noted. Is that, like, a hematoma I think of as a -- tell us what a hematoma is.

A. It's swelling. It's a swelling in the head -- on the outside of the head.

Q. And then her eyes, were they normal?

A. Yes. They were three millimeters.

Q. Okay. And then based on what you saw for her initial assessment, it looks like on the next page, on page 3 of 8 is your narrative. Have you had a chance to look at that narrative?

A. No, sir. Can you flip it over, please?

MR. JACKSON: Oh, Richard, the next page, which would be page 4 of the PDF, or page 3 of 8 of the records. Yes. At the top is the narrative.

Q. Take a moment and let you look over that narrative.

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A. Okay.

Q. The -- you've gone over some of this with us. What's -- but in the narrative of your assessment, it states that "Mom holds up finger for her to see." And is that the mother holding up two fingers or three fingers and saying how many fingers are you seeing?

A. Yes, sir. So with head trauma, that's the unequal pupils and blurred investigation and vomiting are signs of progressive head injuries. So I had mom -- not like right here, but in the peripheral part, hold up two fingers and she was able to identify both correctly on each side.

Q. And was Jacqueline Ashcraft able to assist you in holding up the fingers and doing what you were asking her to do?

A. Yes, sir.

Q. And so both Jacqueline Ashcraft and [redacted] were able to follow your commands and appeared normal after this accident; is that correct?

A. After my initial assessment.

Q. After your assessment. Yes. Okay. And then you were able to consult with Ms. Ashcraft to tell her what to look for and what to do if [redacted] had experienced any of these issues such as vomiting, nausea, blurred vision; is that correct?

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A. Severe headache. Yes.

Q. Okay. And Ms. Ashcraft seemed to understand and be able to appreciate and respond to you appropriately?

A. Yes, sir.

Q. Okay. And have you had a chance previously to look at Exhibit 2? I know you weren't able to bring it with you because of the air conditioning. But we mailed or emailed, I think, a copy of this to you. Have you had a chance to look at Exhibit 2?

A. I looked at it a little bit, but if you could put it up, I'll relook at it.

Q. It is a nine-page -- or it's an eight-page document. Does this all appear -- and I want to ask if it appears to be your records from -- well, let me just -- I'll let Richard go through slowly all eight pages.

A. So you're referencing her EMS report from Logan County? Is that what you are asking me?

Q. Yes. Yes.

A. That is from Logan County.

Q. Okay. All right. All right. So we are going to attach what's been marked as Exhibits 1 and 2 to your deposition. I've got one housekeeping -- a couple of housekeeping questions. Going back on Jacqueline Ashcraft, there was a mention of one of the

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children said that her mother had been nauseous for two X, which I assume is two days; do you recall that?
A. Yes. I want to make sure it was Haley.
Q. Haley is not there. So it's going to be either [redacted] or [redacted] And I'll represent to you [redacted] is the older.
A. I'm sorry.
Q. That's okay. It's very confusing. There's a lot of women names here. [redacted] is the oldest; [redacted] is the youngest, I believe.
A. I believe it was [redacted] that stated she had been vomiting for two days and has had a headache for two days.
Q. Okay. And was that something that you got during your initial assessment or during the ongoing assessment when you went back and she was having some issues.
A. The initial.
Q. The initial. Okay. And did Ms. Ashcraft comment on that, or do you recall her saying anything about being -- having headache or nausea?
A. I do not recall.
Q. And what does coup-contrecoup mean to somebody that is a paramedic, somebody who responds to motor vehicle accidents?

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A. That means that the patient's brain -- so our brain doesn't touch the skull at all times. It is slightly smaller than our skull. So it happens in rear-end collisions.
So when we get hit in the back of the head, the brain comes up, hits the front of the skull, and then hits the back of the skull and it kind of just plays bouncy ball.
Q. And do you have any criticism of Ms. Ashcraft or any of her medical decisions that she made during that initial assessment?
A. What do you mean criticisms?
Q. In that she was belligerent, refusing to take your advice, anything like that?
A. No. She was very nice, very understanding, very "Okay. I will. I understand."
Q. Did she appear to be a normal mother of two teenage daughters who are out going to see somebody on a -- on an afternoon?
A. To me, yes.
MR. JACKSON: Okay. That's all the questions I have. Pass the witness.
MR. GASPER: Jim, before we get started, can maybe we take a five-minute break, just so I can use the restroom and kind of

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stretch a little bit.
MR. JACKSON: Sure. Go off the record for a moment.
THE VIDEOGRAPHER: So off the record at 10:45.
(Recess from 10:45 a.m. to 10:50 a.m.)
THE VIDEOGRAPHER: On the record at 10:50.
EXAMINATION
BY MR. GASPER:
Q. Good morning, Holly.
A. Good morning.
Q. My name is Brent Gasper. Again, I represent the Department of Human Services. The estate of Jacqueline Ashcraft, I guess, has brought against the agency alleging that our employee, Jennifer Wilkerson, caused a wreck that, in turn, caused a head injury to Ms. Ashcraft, which ultimately led to her being deceased because of that wreck. You understand that your treatments, your medical -- the way you --- the treatment you provided is not being called into question; you understand that?
A. Yes, sir.
Q. We are trying to ascertain exactly what happened to her and kind of an understanding, fleshing out what

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your notes mean, what the records mean because you were there. We weren't there. So I am going to go over several topics with you. Some of these things Jim has touched on already.
Let's go back to your work history. You said you had been an EMT since -- did you say -- when were you first licensed as an EMT?
A. As an EMT in 2013.
Q. But before that, what was your vocation?
A. Before I become an EMT?
Q. Yes, ma'am.
A. Before I was an EMT, I was a ER clerk and technician at St. Mary's from 2011 to 2013.
Q. So when you were in school and in training to become an EMT, I'm assuming you took classes that were geared toward the types of calls you would see out in the field; is that correct?
A. You're really muffled. I'm having a real hard time understanding what you're saying.
Q. Okay. I'll maybe talk louder. Does that help at all?
A. A little bit.
Q. Okay. I don't know how to fix that. If I talk right here, does that help?
A. That's a lot better.

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Q. I'll pull my phone over here. Maybe that's what it was. Okay. Yes? Much better?
A. A lot clearer. It's not as muffled.
Q. Okay. Okay. Well, let me back up. Whenever you were training to become an EMT, taking classes and whatnot, you were -- I'm assuming you were given training instruction on the types of calls you would expect to see out in the field, correct? Like motor vehicle accidents, head injuries, gunshot wounds, that sort of thing?
A. Yes.
Q. Okay. So when it comes to -- so you know to expect generally when you arrive at a motor vehicle accident? You know, is there, like, a protocol that you -- that you go through when you arrive to a wreck such as this one?
A. Any -- we have the same protocol. It's a trauma assessment we go through.
Q. Okay. Okay. And were you ever given any training specific to head trauma?
A. Define specific.
Q. Well, like, I mean, today, class, we're going to look at head trauma, head wounds, and how they are caused and, you know, what to look for, symptoms to look for and that sort of thing, treatments like

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specific to --
A. Yes.
Q. Okay.
A. In the general area.
Q. Yeah. Right. Right. Okay. What about training in regards to when a person is under the influence of a controlled substance?
A. Such as narcotics?
Q. Yeah. Like when -- you know, if a person is in crisis or whatnot and you see them out in the field, you'd know how to treat them and what to look for, that sort of thing?
A. Yes.
Q. Okay. And in regards to -- are there standards that you're aware of or that you go by in regards to assessments you make to whether a person should be transported to the hospital or not? I understand they can refuse to go to the hospital. But is there some sort of this person displays X, Y, or Z, we need to advise them to go to the hospital? Are there standards that -- that you would go by?
A. Well, we always advise everybody to go to the hospital. But if you're asking me if they present with, like, altered mental status or alcohol or things like that, is it a guarantee that they have to go? Is

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that what you are asking me, if there's a final where they have on to or where we --
Q. No. Not a compulsory you have to go but a -- maybe you might have answered my question. You said that you advise everyone to go to the hospital who you see when you go out to a call?
A. Yes. Because we're not doctors. We aren't technically allowed to diagnose in the field. We have a general idea of what's happened and what is wrong with them. But that is for a doctor to completely utterly say, hey, this is what you have.
Q. Okay. So you would have advised Ms. Ashcraft to go to the hospital?
A. For that wreck, yes.
Q. Just due to the severity of the wreck?
A. Correct.
Q. So would you have advised the children, the girls, to have gone to a hospital?
A. Yes.
Q. And you, in fact, did do those things, correct? You said you guys should go to the hospital?
A. Right.
Q. Okay. Was a -- not to get too fine-toothed-comb here, but did you say you need to go or would you like to go to the hospital?

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A. I always ask for want first, do you want to go. And if they say no, then I'm like, well, this is what's happened, this is what I see. In this instance, I advise you do need to go, especially in [redacted] position at that time.
Q. Okay. So it was your -- as an EMT, at least, you made the determination that these three persons that were in the car wreck should have gone to the hospital?
A. Paramedic.
Q. Okay. I'm sorry.
A. EMT and paramedic are two different things.
Q. I'm sorry. I'm sorry. Yes. As a paramedic, you told them you should go to the hospital and they --
A. I told them --
Q. I'm sorry. Go ahead. What did you say?
A. I told Ms. Ashcraft [redacted] needed to go.
Q. What about Ms. Ashcraft herself?
A. She needed to get checked out. But at the time, she wasn't exhibiting any signs or symptoms of any kind of headache, trauma, nothing that would concern me more.
Q. Okay. Okay. Now, when you advised her that you thought she should go to the hospital or that [redacted]

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should go to the hospital, what was her reaction?
A. She said that they were -- that she knew what to look for and that if anything changed, she would call.
Q. Would you have characterized your -- let me back up. Was she adamant about not going or was it, "I got this"?
A. I asked her several times, so I would say adamant 'cause she had the same answer every time.
Q. Okay. Okay. Thank you. I'd like to go back to just to make sure that I have the timeline correct here. Under -- let's see. Exhibit 1.
MR. GASPER: Richard, can you pull up page 4?
THE VIDEOGRAPHER: Which was that?
MR. GASPER: Page 4 of Exhibit 1, please. Okay. Can you zoom in on the top half of that? Make sure you get that timeline in there on the right-hand side. Right there. That's great.
Q. (By Mr. Gasper:) Can you see that, Holly?
A. Yes, sir.
Q. Now, on the right-hand side, there's a column, incident times; do you see that?
A. Okay.
Q. PSAP call at 12:57. PSAP, what does that mean?

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What does that stand for?
A. The way this reads, I'm assuming that's when they called 911. That's the initial call that came in to dispatch.
Q. That is approximately or shortly thereafter, call received, 1257, dispatched 1257. So next after that is en route, 1258. Is that when you guys, you and Zach, got in the truck and headed that direction?
A. Yes, sir.
Q. Okay. And you arrived on the scene at 1303, which is 1:03 nonmilitary time; is that accurate? I couldn't hear you. Could you say that -- affirm that again?
A. Yes. Yes.
Q. Okay. And it says at patient at 1304. I'm assuming that patient is Ms. Ashcraft, correct?
A. If this is her report, yes.
Q. Okay. And then we've got care transferred is blank. 1344, it says depart scene. Now, when it says depart scene, what occurred at the accident scene had already occurred and she had gone downhill and you had gotten her in the truck. And at 1344, at 1:44, you or Zach hit the gas and you were on your way to the hospital; is that correct?
A. I was driving. Yes. That is the time we left

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for the hospital.
Q. Okay. So you were there approximately 41 minutes, from 1:03 to 1:44, correct?
A. Yes, sir.
Q. Okay. Great. Thank you. Let's see.
MR. GASPER: What page am I going to? Okay. Can we pull up page -- we'll start with page 1. Page 1 of Exhibit 1, Richard? The bottom half preferably. Great.
Q. Holly, can you see that? Holly, can you see that? I think maybe we've got some lag here on my Zoom because the video is not showing you guys' faces moving at all. Can you hear me? Okay. Maybe there? Okay. Yeah, Jim is swaying back and forth.
Okay. Can you hear me now, Holly?
A. Can anyone hear me?
THE VIDEOGRAPHER: I am hearing you. She has a lag. I think it's her connection.
Q. (By Mr. Gasper:) On her end. Okay. Holly, can you hear?
A. I can hear him. Yeah, I can hear you.
Q. You can hear me? Okay. Okay. So we're looking at page 1 of your report or, I guess, the incident report. And you see that the flow chart. We went over that earlier, or at least you and Jim went over

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it earlier where it says 1304 ALS assessment?
A. Yes.
Q. Okay. So that 1304 corresponds with the 1304 in the previous timeline that you arrived at the patient, correct?
A. Correct.
Q. Okay. So that was your initial assessment. Then at 1330, at 1:30, six minutes later, you've got a notation there that you talked about previously where the Ms. Ashcraft, her speech was slurred at that particular point; did you see that?
A. Correct. That was my second assessment.
Q. Okay. And that assessment was taken after she was in the house; is that correct?
A. Correct.
Q. Okay. And then at IV, IV. And then at 1348, you've got trauma alert, patient response unchanged, complication none. What does the -- go ahead.
A. If you look at the provider, that is Zach. That is when he took over patient care for her in the back of the truck.
Q. Okay. So you departed the scene at 1344, and then it looks like you ran an IV right after that, Zach did, at 1345. So you were on the road at that particular point, correct?

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A. Correct. I was driving at that point.
Q. Okay. 1350, it says Narcan. Can you tell us what Narcan is?
A. Narcan is an agent that reverse opiates.
Q. Okay. Why was it -- was it given here?
A. It says Zach did it. I wasn't the one who gave it.
Q. Why would it have been given?
A. Initially, it's given for altered mental status in case they're on any kind of opiates.
Q. Okay. Is it a normal protocol to give Narcan? Do you give Narcan at -- whenever there is any change in mental status?
A. Not every time. But again, I wasn't the one who gave it, so I don't know his reasoning behind it.
Q. Okay. Okay. That's fair.
MR. GASPER: Can we go to page -- Richard, can we go to page 2 of the Exhibit 1, please? And if you go down to from the very top, down to, like, where it says ongoing assessment mental status. And then underneath there, you can cut it off. That's fine. We can do that.
Q. Okay. Holly, I want to ask you about at the very top of the HEENT. Initial assessment, it says

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head/face, no abnormalities?
A. Correct.
Q. What would be -- what would you have considered an abnormal?
A. Swelling to the face. Any kind of lacerations. Any deformity.
Q. Okay. You said earlier that you noted the airbag had gone off?
A. That's what the report says, yes.
Q. Okay. Would an airbag have left any injury -- or let me rephrase that. In your experience, when you see an airbag deployed, does it usually leave an injury?
A. Not all the time.
Q. What would we have -- what would you look for or what would you expect to see if an airbag had been deployed?
A. Burns.
Q. Burns?
A. Yes, sir.
Q. Okay. Just from, like, I guess, heat from the air being inflated so quickly?
A. It's the particles that's inside the airbag.
Q. Okay. So it didn't -- did she have evidence that -- of burns on her face?

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A. Not to my recollection.
Q. Okay. Do you -- did you -- but that's not an everyday, every-time occurrence? Sometimes they don't have burns?
A. The airbags don't always cause deformity.
Q. And also, you've got eyes. We talked -- you talked about the eyes. Initially, they were, I guess, fine. Okay. Two millimeters. You suggested that that was a normal, within-range reaction or measurement of the eyes?
A. In light, they constrict. They get smaller in light.
Q. Okay. Okay. What -- in your experience of seeing people under the influence of a controlled substance, does that affect their eyes at all?
A. Under narcotics. Not every drug.
Q. Okay. Like, what type narcotics?
A. Opiates.
Q. Opiates? What do opiates do to a person's eyes?
A. They constrict them, make them smaller, nonreactive.
Q. Okay. Would her measurements have been consistent -- not saying that she was under the influence of opioids. But if she had been, would her eyes have been consistent with that finding?

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A. They would typically be smaller than the two.
Q. So, like, a one or something like that?
A. Correct. Or what we call pinpoint.
Q. Okay. Very good. I'd like to go down to where it says "abdomen" here. It says "general no abnormalities"; is that -- is that correct?
A. Correct.
Q. What -- did you find any evidence that she was -- of seatbelt marks on her body?
A. Not to my recollection, no.
Q. Okay. What --
A. Go ahead.
Q. Were you going to add something?
A. No. Go ahead.
Q. What type of injuries do seatbelts leave on a -- on a person in a motor vehicle accident?
A. Usually red marks.
Q. Red marks, like, across the torso, from the shoulder down to approximately where?
A. So if you're the driver, then it's going to come from this left shoulder, the patient's left shoulder.
Q. Okay.
A. So when you look at it, it looks like your right. So the patient's left shoulder down, then across the abdomen.

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Q. Okay. In a wreck of this magnitude or this size, would you have expected to see seatbelt marks?
A. Usually, yes.
Q. Okay. Was she wearing -- what was she wearing at the time; do you recall?
A. I think it was some kind of -- it wasn't jean shorts. I'm pretty sure it was just, like, what I call basketball shorts kind of fabric and a T-shirt, if I remember correctly.
Q. It was, like, extremely hot out there, so she wasn't wear a sweatshirt or anything along that line, correct?
A. Not that I remember.
Q. So there's no piece of clothing on her top that would have, I guess, absorbed the seatbelt so it wouldn't leave a mark. It was only one thin sheet of cloth across her shoulders, her shirt?
A. If I remember correctly. This was also very long ago.
Q. Okay. Okay. But she did not show any marks that you saw? Did you, like -- well, let me back up. Did you inspect her, like, skin at that area or did you see her bare skin around her shoulder?
A. I did not lift her shirt up, no.
Q. Okay. Did she complain about any pain

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associated with the, you know, seatbelt from being deployed, constricted in the wreck?
A. Not that I remember. And when I palpated her chest, she didn't complain of any pain.
Q. Okay. 'Cause seatbelts can cause injuries that would cause pain, correct?
A. They can cause pain, yes.
MR. GASPER: Okay. Richard, can we go down to the second half of that page, please?
Q. On this particular page, I want to -- this is the ongoing assessment, which we'll look at this page.
A. This is where --
Q. Go ahead.
A. This is where Zach would have taken over possibly.
Q. Okay. So at the assessment time were 1350, which we'll show on the next page, those would have been Zach's notes because you were driving at that point?
A. Correct.
Q. Okay. Let me just ask you a question about this, because you and I have spoken previously to this deposition, correct?
A. Correct.

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Q. And you mentioned at the time that she was scratching her head. Now, I see that there -- under mental status, Zach apparently put that the patient stopped scratching her head and relaxed her arm for me. Can you describe what the head scratching -- what you observed about the head scratching?
A. I don't know that I remember her scratching her head, honestly. But if she was to doing like this, then -- and he asked her to relax, that would mean that she was actually still able to follow commands.
Q. Okay.
A. The only thing I can think of is the reason she was scratching her his is that that was the side of the bleed.
Q. Okay. Okay.
A. Possibly. That's the only thing I could think of.
Q. Okay. So you didn't -- didn't remember her scratching her head at the time?
A. I don't think so 'cause at this -- so basically, when he put her in the back of the truck, like, I basically got back around and then drove off and turned around -- turned around and headed back the other way.
MR. GASPER: Okay. Richard, can we go

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to page 3? And then can you go from the top of the page down through that narrative, stop at the bottom of the narrative? Great.
Q. Okay. Yeah. There at the top, as you can see, it says assessment, 1350. So would that say to you that Zach took those notes?
A. Yes. Because we transported at 1344.
Q. Okay. One thing I wanted to ask you about is also, as you can see under extremities, it says, pulse radial two plus normal. I know that -- I understand that Zach may have been the person that took that note.
But you testified earlier that the pulse was indicative of blood being redirected, I guess, if there was an injury. Can you explain that a little bit further?
A. So anytime -- and it's not necessarily pertinent to a head injury. But anytime -- anytime you have an amount of blood loss, your body will start shunting. So basically, it automatically starts pushing all the blood to the core, the core meaning your heart, your lungs, your kidneys, and your brain to try to keep those main organs alive as long as possible.
And so the more that you are shunting, the less what we call peripheral, which is your hands,

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your fingers, you know, your pulses in the peripheral extremities, they will become weaker.
Q. Okay. But that did not -- at least according to this note, it does not appear that that was -- you or Zach observed that at the time, correct? At this point.
A. At this point, no.
Q. Okay. At this point, you would not have? What was that? Sorry?
A. I said it looks like they're still normal.
Q. Okay. Okay. But also, there is other neurological. It says facial droop, slurred speech, weakness left-sided. Would that be consistent with what you observed as well?
A. I did not show -- it did not show any kind of facial droop, slurred speech, or weakness with me. This was after she had been in the back of the truck.
Q. But she had only been in the back of the truck for six minutes by this point?
A. Six minutes.
Q. Okay. So in the space of that six minutes, she could have developed those -- developed those symptoms?
A. Possibly. And it could change -- so she could have possibly had it inside the house as well. When I

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called for the back-up unit, Zach overheard 'cause he had it -- we both carry a radio.
Q. Okay.
A. And so he knew -- he knew that there was no other unit. So when he come in the back of the house, he said, "We're just going to have to take her." We didn't give her the option to get up and walk.
Q. Okay.
A. With her being not very big and Zach is -- he's adamant heavy -- like, he works out adamantly. So yeah, he's a very strong man. So he just picked her up. Like, he didn't even give her a choice. He just picked her up and carried her.
Q. Okay. And at this point, her refusal to go to the hospital that she signed just went out the window? Like, your decision overrode that decision?
A. Yes. Because -- and the reason why is initially, she had a mental status that was alert, oriented times four, as you see, person, place, time, event. So she knew everything. Like, she's able to carry on a conversation with you and I right now.
Now, she has had a mental status change and it has not been for the better. So she had declined, so now she no longer can make those own decisions.

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Q. Okay. So reiterating what you just said, if someone had told you, Holly, she has a brain bleed going on right when you first encountered her, would anything have led you to believe that?
A. Not at that time. Not when I initially had contact with her. No.
Q. Okay. So she seemed fine. What about when she entered the house and she -- I guess you said maybe she was dehydrated or got tired or something?
A. No. It was really hot outside and she's, again, not a very big lady.
Q. Okay.
A. So with her sweating, you know, and if she really had been vomiting for the last two days, then yeah. She would have been dehydrated.
Q. Right. Right. But nothing at that point would have shown you, Holly, she's got a brain bleed? She just wasn't --
A. No.
Q. Okay. Great.
A. Correct.
Q. Now, if you had known she had a brain bleed, what would you have done?
A. We would have took her right then and there.
Q. Even if she had full mental status and was "I

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don't want to go," you know?
A. It would have been hard if she was alert and oriented as initially when I encountered her. It would have been a lot of begging and pleading on my knees.
Q. Yeah. Sure. Sure.
A. But unfortunately, once she had that turn of mental status, then she can no longer -- she no longer had -- medically no longer had control.
Q. Okay. That's fair. I don't -- and this is more out of curiosity than anything. But is there any way to treat a brain bleed out in the field?
A. No, sir.
Q. You've got to go to the hospital?
A. You have to have a head CT.
Q. Okay. Okay. And again, I know that you're not a doctor. But when you have a call that involves head injury, are you required or advised or suggested to take a patient to a place with a CT scan?
A. It's protocol.
Q. It is protocol? Okay. So from what I understand, the Paris hospital CT scan was not functioning at the time, correct?
A. Correct. And we didn't know that until we were on the way to Paris because they have a radio where

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they can listen to our traffic as well.
Q. Okay.
A. So they overheard us, you know, coming into them and then that's when they got on the radio and said, no, we don't have CT capability.
Q. Okay. Okay. So at that point, you had to divert to Booneville?
A. Correct. Because unfortunately, it was either Dardanelle or Mercy Fort Smith or Booneville. Those were our three closest, and Booneville is the closest.
Q. Right. If there had not been a CT scan available anywhere, what would -- what would you have done? What would -- what would your next best option have been?
A. On a helicopter or take her to Mercy Fort Smith.
Q. Okay. So the option to go to a hospital that did not have a CT scan was just not -- you just couldn't do that? I mean, there wasn't anything you could do without a CT scan?
A. Correct. There is no diagnosis without a CT.
Q. Okay. Okay. Okay.
A. We can suspect all day long.
Q. Sure.
A. But without -- without a head CT, without the imaging, it's like you can suspect a broken arm all

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day long. But until you have that x-ray, you can't get diagnose it.
Q. That's fair. I gotcha. So I want to go back and cover some points that maybe I overlooked. Let's see. We've got a timeline. When you arrived at the scene, I would imagine it was probably a pretty chaotic scene. But do you remember who was there?
A. The police officers or --
Q. Anybody. Yeah. Just -- I assume did you beat the state troopers there?
A. I think we did.
Q. And then?
A. Which is not --
Q. Which is not uncommon?
A. No.
Q. Okay. So you oftentimes are quicker to the scene than law enforcement?
A. I wouldn't say -- state troopers, yes. Sometimes county or city will cover an accident until troopers can get there.
Q. Okay. Okay. Aside from law enforcement and you and Zach and the parties to the wreck, I know that's a lot of people, could you identify any other people that were at the scene?
A. First responders may have been there. They

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typically get dispatched as well with us. The volunteer fire department --
Q. Okay.
A. -- they may have been there. But more than that, there was nobody initially on scene other than us.
Q. Were there any, like, civilians out helping -- helping people clear out the car or helping with -- that might have happened upon the scene? Do you recall seeing anybody like that?
A. Not that I recollect. But when we get on the scene, I know I focus in on the patient.
Q. Okay. Now, can we go back and maybe -- can you again describe the condition of Jackie Ashcraft when you first saw her?
A. When I first initially had encounter with her, she was alert, standing outside behind the car, alert and oriented. She was smoking her cigarette, and her two kids were sitting on the side.
Q. Okay. Any trouble with balance that you could tell?
A. No. She had a normal gait. Her speech wasn't slurred. She was able to carry on a full conversation.
Q. Okay. Did she tell you if any parts of her body were hurt or injured or achy due to the wreck?

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A. No. She was more worried about her kid and making sure she was okay first.
Q. Okay. Okay. And you said that [redacted] the youngest of the girls, was fine. And [redacted] the older of the girls, had a hematoma on the back of her head?
A. That's what the report says, yes.
Q. Okay. And that's a bump or -- I don't want to be too --
A. Yes. It's -- hematoma is a common name for swelling or a bump. And if you -- you know kind of how you bruise on your leg if you hit something. And your head, it kind of swells out.
Q. Okay.
A. If it swells in, then it's more a medical problem.
Q. Okay. So she would have gotten that injury presumably from hitting her head back on the headrest or the seats?
A. That's what I would assume.
Q. Okay. Did she complain about seatbelt injuries or being constricted by a seatbelt?
A. Not to my recollection.
Q. Okay. Did you examine [redacted] head to notice the hematoma?
A. I would have had to have touched it, yes.

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Q. Did you do something similar to Jackie Ashcraft? Did you examine her head at all?
A. I examined her neck, head -- yes, and her head. I didn't see anything.
Q. Okay. Okay. I'm just looking at my notes here. I'm sorry. You've had experience on the job with people that have had head trauma, correct?
A. Yes, I have.
Q. Have you been called out to scenes of traffic accidents such as this one where there was a rear-end collision?
A. Yes, sir.
Q. Is it -- did Ms. Ashcraft display any symptom that would have been inconsistent with what you normally see in these types of injuries or these types of accidents?
A. No, sir.
Q. So nothing struck you as unusual at this point?
A. No, sir.
Q. Okay. So at some point as we discussed, Jackie said she wanted to go into the house, correct?
A. Correct.
Q. Do you remember how many people were in the house?
A. I want to say it was a female, maybe two kids

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'cause when I walked in, the female was sitting, like, right at the kitchen area, standing. And then I want to say there was one or two people on the couch. But other than that, I didn't notice anything else.
Q. People as in children or as adults?
A. As adults, children. Maybe -- there may have been two kids there. But there again, it may have been [redacted] and [redacted] with me.
Q. Okay. I'm just trying to -- so there was one female adult and were there any other adults in there?
A. I honestly cannot be 100 percent sure.
Q. Okay. Okay. Do you know the identity of those people that were in there?
A. I do not.
Q. Do you know how they would have been, if at all, related to Ms. Ashcraft?
A. I do not. I just know that was the house they were going to visit.
Q. Okay. So once you left her on the couch, you exited the house yourself, correct?
A. Correct.
Q. Were there any medical professionals or anybody else that were in the house once you left?
A. No, sir.
Q. Any law enforcement in the house after you left?

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A. No, sir. The only thing -- only person I seen as I was coming out of the house was the red truck that had pulled in which ended up being her dad.
Q. Okay. Actually, I think her father -- okay. Never mind. So the red truck and there was a male in the red truck, correct?
A. (Witness nodding head.)
Q. Okay. I'm not sure if you can answer this or not, but I'm going to go ahead and answer it -- ask it. Considering her condition the next time you saw her 26 minutes later, do you have any estimate as to what time the onset of the serious reaction started?
A. No, sir.
Q. Like, she was X number of minutes along already when they came and got you when she started -- do you have any way of knowing that?
A. No.
Q. Okay. And Jim asked you if you spoke to her and she could communicate with you initially, correct?
A. Correct. Initially, and when I went back into the house, she was still able to nod her head.
Q. Did she say any words to you at that point?
A. Not that I remember.
Q. Okay. Did anyone else say anything to you in there?

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A. Not that I remember. I think her dad was in there by that point, after I got back in.
Q. Okay. But no one said she said she wasn't feeling good and then she did this? Or there was no statement that you can recall?
A. Not that I remember because I honed in on her because me being the original provider to be with her, this was not how I left her.
Q. Okay.
A. So I knew something was going on.
Q. Okay. And then you -- Zach and his muscles picked her up and took her to the ambulance, right?
A. Yeah.
Q. Was -- you said was she alone on the ambulance? Was there another patient or another person in there with her?
A. The DHS worker was in there.
Q. Jennifer Wilkerson? Okay. At some point, Jennifer got out of the ambulance, correct?
A. After we took Ms. Ashcraft in.
Q. Okay. So you were hitting the road and so Jennifer had -- you were just going to leave her at the scene, correct?
A. No. We took her to the hospital as well.
Q. In a different ambulance?

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A. No. In the same ambulance.
Q. Oh, okay. I was confused there. So Ms. Wilkerson and Ms. Ashcraft were both in the ambulance?
A. Yes, sir.
Q. When you went to Paris -- or tried to go to Paris and then went to Booneville?
A. Yes, sir.
Q. Okay. So Ms. Wilkerson, when you got to Booneville, she presumably was checked into the hospital as well, or the ER?
A. Correct. Yes. We checked them both in.
Q. Okay. Did you have any conversations or discussions with Ms. Wilkerson while you were --
A. I did not.
Q. Okay. Zach was in the back with her; you were driving, correct?
A. Right.
Q. Okay. Now, how was Jackie positioned in the ambulance? Was she laying down?
A. She was laying supine on the bench seat.
Q. Supine meaning vertical?
A. On her back. On her back.
Q. Okay. Okay.
A. Sorry.

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Q. And she had an IV in and all that at that point, correct?
A. It looked like Zach redid it, so yes.
Q. Okay. Okay. Now, do you know approximately how long you were in the ambulance, how long it took you to get to Booneville?
A. You would have to pull up the times again.
Q. Okay. I'm sure it's probably written down in these records. I'm sure it's written down in these records. We'll reference those later. So once you got to Booneville, the ER took over and you basically transferred the -- transferred the patients, correct?
A. Yes, sir.
Q. Okay.
A. Because there's a doctor in the ER, so we have to transfer care to them.
MR. GASPER: Jim, can you pull up -- Jim. Richard, can you pull up page 6 of Exhibit 1, please? Next one, I think. There you go.
Q. Holly, do you recognize this page?
A. Yeah. That's our signature page.
Q. Okay. What am I looking at here? Like, specifically section 3, where the signatures are, what -- what does this mean?

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A. That part? So that means I'm the -- like, I signed her patient care report so -- because I was the one who initially had contact with Jennifer -- I mean, with Ms. Ashcraft. Then I was the one who originally started her CPR. Sorry. I went blank for a second. The signature below is the nurse's signature who we give report to.
Q. Dustin Keeter, verbal consent to sign. So Dustin would have been the nurse?
A. Dustin is the nurse.
Q. Okay. This under your signature, it says signed on 6/11, 1633. That would be 4:33, which would be some time later, several hours later than when you arrived?
A. Correct.
Q. When you eventually signed it, you signed it at 4:33?
A. That's when we submitted it and signed it and it was done.
Q. But Ms. Ashcraft was already in the ER by that 4:33?
A. Oh, yes, sir.
Q. You weren't treating her by then?
A. No. We were gone.
Q. Okay. But 1444, which would be 1:44 --

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A. Be 2:44.
Q. That's when they took over? The nurse took over at that point?
A. At 2:44, yes.
Q. So you arrived at the hospital and she -- it was assumed treatment in the hospital at 1:44 -- 2:44? Sorry. Military time just throws me just a little bit. 2:44.
So as we referenced earlier, on page 4, you depart scene at 1344 and arrive, I guess, at 1434. So it took about an hour in the ambulance?
A. I guess so.
Q. Is that fair?
A. If that is what the dispatch time says 'cause when we call on the radio, we call en route to the hospital, dispatch keeps the times. We don't keep the times.
Q. Okay. But does that sound like it would be accurate or close to accurate, about an hour in the ambulance?
A. Give or take, 'cause we had to go over the mountain.
Q. Okay. It wasn't, like, freeway the whole way there?
A. No. No.

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Q. No?
A. No.
Q. Rural Arkansas, right?
A. Yes. There's a -- it's either a lake or river that splits the county in half. So you have a north side and south side. Paris is the north side, which is where we were at and where this took place at, and then the south side is Booneville.
MR. GASPER: Okay. Let's see, Richard, I'm not sure which page this is. It's page 10 maybe, or 11 of Exhibit 1. It says "Logan County EMS 911 dispatch form" at the top. That one. That's the one I'm looking for.
Q. Did you fill this out or is this someone else?
A. No. That is dispatch.
Q. Okay. So you didn't record any of this information?
A. No. That is all the 911 taker. So when you call 911, our dispatcher takes all of this. I can explain it to you if you need me to.
Q. Sure. I'd like for you to do that. Specifically, let's start at the top. It says 911, and then what do I see there?
A. So we'll just go from my left where it says

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6/11. Then we'll go to the right.
Q. Okay. Great.
A. 6/11 is the date that it happened. The source of the call is the 911 call. The dispatcher is Hyatt. Unit 1, which we were squad 1. The top right-hand corner, I believe that would be our run number. The 1470. So that's run number for the month. So by the 11th of June, we had already run 1,470 calls that month.
Q. Oh, wow.
A. It's a busy service. It is.
Q. Okay.
A. So squad 1, so we got the call at 1257. She called us at 1257. And we were en route at 1258. We got on scene at 1303. The patient on board, which means we were transporting to the hospital, was 1344.
Q. You would have -- like, that's when you would have, like, left the scene, 1344, right?
A. Correct. Yes. We left the scene at 1344. We got to the hospital at 2:12.
Q. Let me stop you real quick. I just want to make sure, 'cause that Dustin's note says that he took over -- the ER took over at 2:24 as opposed to 2:12. Do you know why there would have been, like, a different of time there?
A. So I know I can tell you what happened when we

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got to the hospital.
Q. Okay.
A. It may clear a lot this time frame. So when we get there, Zach and I take -- so we made Ms. Jennifer get off the stretcher because that's how she rode in on the ambulance. So once she got off the stretcher, she got into the captain's chair and she hung out in the back of the ambulance while we picked Ms. Ashcraft up, put her on the stretcher, and took her into the hospital.
Q. Okay.
A. We did that, Dustin and the ER doc both met us, like, right inside the door.
Q. Okay.
A. And then they allotted to intubate her and then take her to head CT. In the meantime, I don't know if Zach stayed there with them and went back to CT with them, but I went up front to the medical clerk.
Q. Okay.
A. And in the meantime, while they're back there, I was getting my face sheet for Ms. Ashcraft, getting her checked in, you know, giving them the information.
And in the meantime, the father called, and I ended up talking to him because initially, he thought we were going to Paris. He had no idea we

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diverted to Booneville.
Q. Okay.
A. And the hospitals weren't being very cooperative with him.
Q. Okay.
A. So I made him identify who he was by the red truck.
Q. Okay.
A. By the events prior, you know, while we were on scene. So I knew -- personally, I knew who he was.
Q. Okay.
A. I'm pretty sure the hospital got kind of mad at me. But -- and then I'm there for the family and I'm there for the patient. You know, that's --
Q. Sure. Okay.
A. That's what I'm for. So that's where I was. I don't know what Zach did. I don't know what happened in the back. So it's very possible that once they intubated her, Zach went to CT with them and then come back 'cause if I'm not mistaken, CT takes about 20 minutes.
Q. Okay.
A. And then he could put his signature then.
Q. Okay. So he would have -- okay. So you signed it over at a much later time. But you believe that

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Zach did not fully turn the patient over until 1444?
A. So it's kind of a -- I don't know legally how you guys would portray it. But once we hit those hospital doors and that patient gets on that hospital bed, regardless of the signatures, that is their patient.
Q. Okay. Okay. So --
A. So once the doctor intubated her, that's all on them.
Q. Okay.
A. That is the hospital's patient.
Q. Okay. So it may just be kind of an administrative delay to get the signature from Dustin?
A. Correct. Because I know when I have critical patients like that, I don't make the nurse stop to interrupt care to sign my paper.
Q. Okay.
A. Especially if they're going straight to CT, I would wait until after CT. And then Booneville is such a small hospital that we had an agreement with them, and Paris as well, that if they needed an extra set of hands, paramedics would go start IVs, you know, do things to help them.
Q. Okay. Okay. Great. I'm sorry to interrupt you there. So we've got 1412, so maybe that's a more

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accurate range of time when the hospital took over as opposed to 1440. What does the 1507 mean there?
A. That is the time we got back to in service.
Q. Okay. You had completed your business and you were ready to be redirected to another call?
A. Correct.
Q. Okay. What's these other numbers mean underneath -- a little further down that chart?
A. Where? Under squad 1 where it says 5:17?
Q. Yes.
A. That could be a first responder. That could be -- that's an additional resource that's dispatched sooner.
Q. Okay.
A. I do not know what the one under it, where it says NS re -- I don't know what that stands for. But LC9 is county officers. Logan County officer 9 and who responded.
Q. Like a sheriff's deputy or something like that?
A. Correct.
Q. Okay. Moving on down to the mutual aid, air or ground. What's -- I'm assuming this has to do with the helicopter?
A. Okay. So there's, like, a gray box cutting off half of that. But yes, the helicopter was at 1359, if

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they're available. And they got a 25-minute ETA. So that means while we were en route to the hospital, probably right as Paris diverted us, we called to see if the helicopter was available.
Q. Helicopter to go to Booneville or to go to --
A. No, sir. To a higher level of care.
Q. Like Fort Smith?
A. Or Washington Regional.
Q. Okay.
A. Because by that time frame, she would have been -- she could have been flown to Washington Regional, where there is actually neurosurgery.
Q. But that wasn't necessarily your call, was it?
A. No, sir. No, sir. We -- so how we work ground-wise is -- 'cause we know Booneville and Paris are the lowest level of hospitals there are.
Q. Okay.
A. But by protocol, we had to take her to the closest head CT, which after Paris diverted would have been Booneville.
Q. Okay.
A. In the meantime, we always like to call for the helicopter because being a rural area, sometimes it's better and faster. Sometimes. Not all the time.
Q. Okay.

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A. So this initial definitive, she needed a head CT as quick as possible. So by putting her on that helicopter, it would have delayed the head CT.
Q. Okay.
A. Does that make sense?
Q. Yeah. No, it does. Thank you. Okay. Next to that 25, it says Subiaco. What does that mean?
A. Fire department, first responders? Is that where you are looking at?
Q. Yes. Yes, ma'am.
A. That would be that area. That's the area that it happened in.
Q. Okay. The mileage, what, is that your mileage in the truck?
A. Yes. That is the beginning mileage for us.
Q. So beginning mileage for when you were called to the scene or when you left the scene?
A. I want to say that they do it as we were leaving. So when I call dispatch, I'm like, you know, I'm headed en route to the hospital, beginning mileage is this.
Q. Okay. Okay.
A. And when I get to the hospital, my ending mileage is this.
Q. Okay. So the beginning mileage is when you've

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got the patient in the truck and you are leaving?
A. Correct.
Q. So the ending mileage would be when you got to Booneville?
A. Correct.
Q. So that's 25.4 miles? Is that -- does that sound about right?
A. Sure. I'd have to get my phone to get a calculator out.
Q. That's fine. Then it says patient's name unknown. I guess you knew who the patient was but unknown at the time to dispatch?
A. Correct.
Q. Okay.
A. And this is at the time of the call too. So a lot of this is taken so it may -- she may not have known at that time either.
Q. Okay. Caller's name. What does that mean?
A. That's whoever called it in.
Q. Tray, I guess, Low? Is that is -- that is that --
A. I don't know. I have no idea.
Q. Okay.
A. No idea.
Q. But whoever called it, the time next to it would

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presumably be that person's contact number?
A. Presumably.
Q. Okay. October. Over there to the right-hand side, it says destination/transport code. Can you tell us what that means?
A. That is -- and forgive me. I'm not -- it's been two years since I worked there.
Q. Sure. Sure.
A. And every ambulance service is different, how they run their code 1s and code 2, 3, which is how emergent is it. Hers, we would have ran this with lights and sirens to the hospital.
Q. Okay.
A. And then it says changed/diverted to, changed to 706, which means we were going to Booneville.
Q. Okay. Gotcha.
A. 706 is Paris.
Q. Okay. Going down to notes, do you know what the -- it looks like kind of shorthand of abbreviations. Can you decipher any of that for us?
A. It looks like Troop H was en route at 1300. I don't know what 10-96 means. We don't use 10 codes. So I don't know what this "2-Code 11 needed per lc9" that would be a dispatch question. That would be their -- their thing.

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Q. All right.
A. I don't know who was 10-22 at 14 -- oh, I do know. That would be Mercy Life Flight. So we requested them at 1359. They had a 25-minute ETA, and we canceled them at 1406.
Q. Okay. Okay. Gotcha.
A. Yeah. So between -- so as requesting at 1359 to 1406, we went back and forth with dispatch, you know, seeing what their ETA was, if they're available, that kind of thing. So at 1406, we would have been six minutes outside of the hospital at Booneville.
MR. GASPER: Okay. Richard, can you pull up -- I think it might be the next page. It's got "ADH" at the top. There.
A. Okay. That's --
Q. Yes. Go ahead, please.
A. Oh, that is a paper PCR report that we fill out on the patient.
Q. Okay.
A. We are required to give it to them -- to the hospital upon our arrival. This particular form was filled out by Zach and I both. I'm pretty sure I was the one who signed it though.
Q. Okay.
A. The gray box at the bottom is kind of covering

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it.
Q. Okay. Can you just kind of take a quick look at this and see if there's anything on this particular piece of paper that we haven't already covered?
A. Not really -- there we go. No. I mean, other than the trauma band, which is how Arkansas tracks all of their traumas. Even if you just stumped your toe and went to the hospital by ambulance, you would get a trauma band.
Q. Okay.
A. So -- so that particular number is how they identify patients. They don't use name, date of birth, nothing like that.
Q. Go ahead.
A. I'm sorry.
Q. I don't want to interrupt you. I'm sorry. Go ahead.
A. Oh, the ATCC, which is Arkansas Trauma Comm, they were contacted because of the trauma alert. And she was obviously in the wreck, so she is a trauma alert. That's what that means in that bottom box.
Q. What time -- is this noted, like, 1447 what time you signed this; is that right?
A. That -- yeah. That would be the time that everything --

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Q. That you filled out the form?
A. Right. Well, yeah. That we got it all completed, because this is not a priority that we do when we have a critical patient.
Q. Okay. Gotcha.
A. Yeah. We treat them first and fill out the form later.
Q. I am approaching the end here, but let me just make sure I've got everything. I'm going to bounce around a little bit here.
So whenever the youngest girl said that her mom, Jackie, had been vomiting and -- for two days, did she elaborate on that at all?
A. No, sir.
Q. She has the flu or something along that line?
A. She didn't elaborate.
Q. Okay. A couple more questions. So you -- Jackie was in the house for about 26 minutes without you or any law enforcement being there that you know of; is that correct?
A. I didn't see law enforcement pull up, so I don't know what time they got --
Q. Okay. Then you. You didn't see her for about 26 minutes?
A. Correct.

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Q. Do you have any idea what occurred during that particular time period?
A. No, sir.
Q. Okay. Is it possible that something could have happened in the house that caused her head injury?
A. I mean, anything is possible. I can't contest --
Q. If she had got up to go use the bathroom and slipped on the floor and hit her head on the sink or on the toilet, would that have --
MR. JACKSON: Let me make an objection. Let me know when you're finished. I am going to make an objection and then you'll answer the question. Okay, Holly?
I didn't mean to cut you off just because of the Zoom and everything. So go ahead and finish your question, Brent.
Q. (By Mr. Gasper:) Could something have happened in the house or -- resulting from a slip and fall that would have caused a head injury at this time?
MR. JACKSON: Object to the form of the question in that it calls for speculation by the witness. Ms. Newman, you can answer as best as you can.
A. Well, I just want to clarify, you're asking me

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if, theoretically, she slipped and fell in the bathroom and hit her head, would it cause her to bleed?
Q. (By Mr. Gasper:) Yeah. Or could it have caused her to bleed?
A. It could have, but --
Q. Okay.
A. If she would have hit her head on the sink or something, she would have had some kind of swelling, laceration, or something to the back of wherever she would have hit, there would have been some kind of trauma.
Q. Okay.
A. If she had hit hard to make her bleed.
Q. Okay. But she was in a car wreck that caused it to bleed, correct, but there wasn't any mark?
A. I didn't say that it caused her to bleed because that is a million dollar question.
Q. Oh, okay.
A. I cannot answer.
Q. Okay. That's fair. But nothing you saw was inconsistent -- like if I said Holly, we actually had a video camera in there and here's what happened. She slipped and fell hit her head on a table. Was there anything that would be inconsistent with that

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statement that you saw or that you know of?
A. Like, repeat in a different --
Q. Okay. I'm sorry. Knowing what you know or what you saw and observed that day, if proof had later come out that she did, in fact, slip, you know, hit her head in a manner that caused the bleed, would you say that couldn't have happened? Was there anything inconsistent? That couldn't have happened because of X, Y, or Z, or I saw X, Y, or Z first? Is there anything inconsistent with that statement?
A. No, because I didn't see her -- I didn't see her.
Q. Right. There was a 26-minute gap and you don't really know what happened?
A. Right. No. I do not.
Q. If someone had slapped her very hard on the back of the head, could that have caused something of injury of this sort?
A. I don't feel like a slap would. I think it had to be more force than just a slap.
Q. Like a closed fist?
A. Again, you're asking questions that I --
Q. No. No. I understand you're not a doctor. Just based upon your --
A. No, I'm not.

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Q. Based upon your experience out in the field, responding to calls of MVAs or domestic situations, could, you know, injuries of this sort, could they be caused by, you know, a slap or a hit or another -- a book being hit in the back of the head?
A. Medically, there's always a possibility it could cause. Is it likely? No.
Q. Okay.
A. If she was -- and I would be -- I would feel comfortable saying if she was hit at the time that I was not there, then she would have some kind of swelling, some kind of deformity that Zach would have seen when he reassessed her when he got in the back of that ambulance.
Q. Okay. So you think that any injury that -- if she had sustained an injury in the house, it would have left marks or evidence of some sort?
A. I would feel comfortable saying yes.
Q. Okay. But the same amount of force that caused -- or that may have caused a brain bleed, that they're alleging caused the brain bleed, in a car did not leave a mark, correct?
A. Well, no. Because it was the contre -- the coup-contrecoup inside her brain that would have caused -- if the force -- the amount of force that the

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car hit her in the back --
Q. Right. Okay.
A. -- is different. So if you take a baseball bat, a book, you know, something of that sort and hit somebody in the back of the head, that's a more direct to the skull.
Q. Okay.
A. There is not -- there's force in a MVA when you're rear-ended, there's more force that causes the inside of the brain to do the coup-contrecoup. Does that make sense?
Q. No. I follow you. Sure. Sure. But you still -- something that would have occurred inside the house you don't believe could have caused that type of an injury?
A. I don't believe, no. Not without having another physical evidence.
Q. Okay. But if there were evidence, nothing is inconsistent with the fact that maybe that occurred if, like, other evidence had showed up or was there?
A. What -- if you're saying -- if, theoretically, you're saying there's other evidence to say, hey, maybe possibly she got hit inside the house, then I would -- I would not argue with that.
Q. Okay.

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A. Okay.
Q. Okay. Are you familiar with shaken baby syndrome?
A. I mean, it's -- yeah. It's where you shake --
Q. You cause a head injury in a child, correct?
A. You can.
Q. Yeah. Okay. So could she have been shaken really hard to have her head bob back and forth? Is that -- is there anything inconsistent with that that you would have seen?
A. There' nothing inconsistent, no.
Q. Okay.
A. Because that doesn't leave marks.
Q. Okay. Last questions I want to ask, you are just -- based on your own perception. Like, did this incident, your whole response to it, what you observed and your involvement in this, does this leave you with any questions? Like, that's curious or something like that, did it leave you with any kind of lingering question or issue?
A. What do you mean by that? Like --
Q. You certainly responded as a professional, as a professional medical provider?
A. Correct.
Q. And you've been on these calls for hundreds and

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thousands of times, correct?
A. Correct.
Q. And you've probably seen stuff that Jim or I couldn't even imagine.
A. Some of it, yes.
Q. Yeah. Does this incident stand out at all? Is there something that when you think about this, you think I have to say that doesn't seem right, that doesn't sit right, or that just doesn't make sense? Is there anything that is evident here to you?
A. No.
Q. So it seems just pretty -- like a routine call?
A. Pretty much. Unfortunately, she ended up having a head bleed that costed her her life.
Q. Okay. So it did not leave any question to you that you felt you -- that went unanswered in your brain to you?
A. No.
MR. GASPER: Okay. Well, Holly, I really appreciate you taking the time to meet with us today. I know Jim probably has some follow-up questions. And I apologize also if I went longer than maybe I suspected, but I wanted to make sure I was thorough. I am going to pass the witness.

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I believe Jim has some questions for you. Thanks.

FURTHER EXAMINATION

BY MR. JACKSON:

Q. Holly, I know we've been going for a little bit. I've just got a couple of follow-up questions. Okay?

A. We just need to get it done real quick, though. Kids called an hour ago, so they're outside waiting on me.

Q. I am going to be real quick.

A. My kids and my husband.

Q. Okay. So my records are showing that your -- some of these things on the timing. My records show that you left at 1:44 and arrived at Booneville at 2:12. And that would be 28 minutes. Do you have any reason to disagree with that, if that's what's shown on page 4 of 9 of your Logan County EMS records?

A. No, sir. Because it takes us about 30 minutes or so to get over that mountain, 'cause it's not a straight shot.

Q. Right. And then when you talk about 1304, you went through -- that's when you do your initial -- is that when your -- that's when you start your initial assessment of Ms. Ashcraft and her children?

A. Yes.

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Q. And that takes -- I would assume that takes several minutes to do, and then you walk with her across the street into the house. You see her and then you advise her one more time if there's any more issues with [redacted] please let somebody know. So really, 1304 is when you started. You don't know for sure the time that you left the house; is that correct?

A. That's correct.

Q. And just 'cause of the cutout, I think you said that is correct, yes?

A. Yes. That is correct.

Q. Okay. And you don't know what time Trooper Ray, who came to the van and notified you that there's an issue, you don't know what time he arrived into the house and interacted with Ms. Ashcraft and realized that she needed a paramedic's care immediately; is that correct?

A. That is correct. You would be able to get that time, should be able to get that time from his report.

Q. And then he would have -- okay. You just know what time the second assessment began of when you were able to get out of the ambulance and go inside and see her, that's your -- that's when you start that second assessment at -- of Ms. Ashcraft, correct?

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A. Correct.

Q. Okay. And then one little thing. Earlier, when you were -- when Mr. Gasper was asking you about Ms. Ashcraft's refusal for [redacted] there was -- there was a phrase adamant or I've got this.

And when I tell my teenagers to take out the trash and I may have to do it a couple of times, I may be adamant in that perhaps my voice drops. I stop what I'm doing. I'm staring at them to know that there's some punishment coming if they don't finally respond to their father, or was it more of repeated, hey, it's okay, I've got this?

I just want to make sure we understand or the record shows Ms. Ashcraft's demeanor to you during your initial assessment interaction regarding [redacted] and Ms. Ashcraft.

A. Her demeanor never changed. I used the word "adamant" because she consistently said the same thing over and over. She was never -- she never got aggressive. She never got frustrated. She just kept the same demeanor. She was like, "No. I understand."

Q. I just want -- that's what I thought. I just wanted to make sure. Okay.

A. Yes.

MR. JACKSON: I think we'll let you

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get -- I'm finished. I think Mr. Gasper May have one more follow-up question.

FURTHER EXAMINATION

BY MR. GASPER:

Q. Just that you were about to say something at the very end there, Holly. You wanted to add -- it sounded like you were not quite finished with your answer to that question, or not?

A. No. Her demeanor never changed.

Q. Pardon me?

A. Her demeanor never changed.

Q. I was making sure that we didn't get you cut off and you wanted to add something.

MR. GASPER: No, I do not have anything further. Again, thank you so much for taking your time today.

THE WITNESS: You're welcome.

MR. JACKSON: Thank you, Ms. Newman. I know it took a lot longer than what we thought, so thank you very much.

THE WITNESS: Thank you.

THE VIDEOGRAPHER: This concludes the video deposition of Holly Newman. The time is 12:07 p.m. We are now off the record.

(The deposition was concluded at 12:07 p.m.)

REPORTER CERTIFICATION

I, TAMMIE L. FOREMAN, Certified Court Reporter for the State of Arkansas, do hereby certify to the following:

1) that on 07/31/2023, the witness, HOLLY NEWMAN, was duly sworn by me prior to the taking of testimony as to the truth of the matters attested to and contained therein;

2) that the foregoing pages contain and are a true and correct transcription of the proceedings as reported verbatim by me via realtime stenography to the best of my ability and transcribed at or under my direction and supervision, and subject to appropriate changes submitted by witness, if any, during his/her requested reading and signing of this deposition according to the Arkansas Rules of Civil Procedure;

3) that I am neither counsel for, related to, nor employed by any of the parties to the action in which this proceeding was taken; and that I am not a relative or employee of any attorney employed by the parties hereto;

4) that I am not financially interested or otherwise interested in the outcome of this action that affects or has substantial tendency to affect impartiality or requires me to relinquish control of



an original or copies of a deposition transcript before it is certified, or that requires me to provide any service not made available to all parties to the action; and

5) that I have no contract with the parties, attorneys, or persons with an interest in the action; and that I am not knowingly identified on a preferred provider list, whether written or oral, for any litigant, insurance company, or third-party administrator involved in this matter;

6) that signature of the witness is waived.

This transcript is prepared at request of counsel for CLAIMANT, and all fees are billed directly to them in compliance with Arkansas Board of Court Reporter Examiners Regulations Section 19.

Witness my hand and seal this 19th of August, 2023.

_____

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**ARKANSAS STATE CLAIMS COMMISSION**

**HALEY HUDSON, SPECIAL ADMINISTRATRIX OF THE ESTATE OF JACQUELINE LYNN ASHCRAFT, DECEASED, AND HALEY HUDSON AS PERMANENT LEGAL GUARDIAN OF [redacted] A MINOR CHILD** — **CLAIMANT**

**VS.** **CC NO. 230641**

**ARKANSAS DEPARTMENT OF HUMAN SERVICES** — **RESPONDENT**

**DR. RALPH SCOTT'S TRIAL EXHIBITS**

Respectfully submitted,

BY: /s/ *Jim Jackson*

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**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the above and foregoing Dr Ralph Scott's Trial Binder was served on the following counsel of record by email on August 22, 2024:

Mr. Vincent France
Assistant Deputy Chief Counsel
Arkansas Department of Human Services
P.O. Box 1437
Little Rock, AR 72203-1437

*/s/ Jim R. Jackson*.
Jim R. Jackson

**EXHIBIT 10**

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# ECONOMIC AND FINANCIAL CONSULTING GROUP, INC.

[redacted]

March 20, 2023

Mr. Jim Jackson
Attorney at Law
Jackson Law Firm
700 West Broadway Street, Suite 2
North Little Rock, AR 72114-5528

RE: **Estate of Jacqueline Lynn Ashcraft**

Dear Mr. Jackson:

At your request, I have performed calculations concerning the value of the loss of life of Jacqueline Lynn Ashcraft (Ashcraft) in connection with the wrongful death lawsuit resulting from her death on June 12, 2021. I am also providing data concerning the statistical value of life utilized by government agencies in cost/benefit studies. In addition to loss of life damages, I have also calculated the value of the household services that Ashcraft would have provided for her surviving children and the cost of raising her surviving children that will now be incurred by her surviving sister and brother-in-law. My computations are discussed in detail below.

**LOSS OF LIFE**

Running through the history of economic thought, there has been a general consensus that the monetary value of life can, *at a minimum*, be determined by the present value of projected lifetime compensation. Present value represents the amount of money that would be needed at a point in time so that with appropriate financial investments a flow of lifetime compensation could be duplicated. The present value of projected lifetime compensation is commonly called "human capital" in economic literature. Conceptually, human capital is identically equal to the concept of "earning capacity" that appears in tort litigation. The present value of projected lifetime compensation can be simultaneously interpreted as a measure of the loss of life suffered by the decedent because it represents the loss of human capital or earning capacity that would

have provided the basis for lifetime personal expenditures and also a societal loss because of the elimination of the decedent's productive efforts from which society would have derived benefit. It should be stressed that the valuation of human capital is identical to computations of lost earning capacity which arise in personal injury litigation and can be calculated with equal precision. As stated above, this approach should be construed as yielding a *minimum* measure of the value of life because it focuses exclusively on lifetime earnings and ignores many other aspects of the value of life. Given these comments, a starting point for my analysis of loss of life would entail a consideration of the present value of the income flows that could have been potentially generated by Ashcraft had she remained alive. This component of loss of life as well as the residual value of life in excess of earning capacity is discussed below.

Present Value of Potential Lifetime Earnings

The evaluation of the present value of Ashcraft's potential lifetime earnings, which represents her human capital, entails a consideration of the income flows that she could have generated had she remained alive. Although Ashcraft was not working at the time of her death, I have conservatively assumed that she had an earning capacity at least equal to annualized minimum wage earnings, $22,880.00 per year. In assigning a value to these income flows, a distinction should be made between past and projected future magnitudes. Past potential earnings are not discounted; however future potential earnings should be discounted and converted into present value terms. Past earnings are calculated in accordance with equation (1), below:

(1) Past Earnings = (Base Income)(Time Interval Between Date of Death and Current Date)

In the present instance base income is assumed to be $22,880.00 per year based on annualized minimum wage earnings. As discussed above, this figure is a minimal measure of Ashcraft's earning capacity at the time of her death. The time interval amounts to 1.77 years. Performing the computation indicated by equation (1), based on the assumptions above, yields a past value of income amounting to **$40,494.47**.

The present value of future income, which represents Ashcraft's human capital or earning capacity, is calculated by projecting her base income over her remaining work life expectancy and discounting in accordance with equation (2), below:

$$\text{(2) Present Value of Future Income} = \sum_{t=1}^{T} \text{Base income}/(1+r)^t$$

where T = work life expectancy, which is alternatively assumed to be 4.86 additional years, Scenario (1), or 15.15 additional years, Scenario (2). Scenario (1) is based on Ashcraft's statistical work life expectancy based on Gary R. Skoog, James E. Ciecka, and Kurt V. Krueger: "The Markov Process Model of Years to Final Separation From the Labor Force 2012-2017: Extended Tables of Central

Tendency, Shape, Percentile Points, and Bootstrap Standard Errors", *Journal of Forensic Economics* 28(1-2), 2019 (based on her inactive status at the time of her death). Scenario (2) is based on an assumed retirement at age 67.

Base Income = $22,880.00 per year as discussed above.

r = discount factor used to convert future magnitudes into present value terms. For computational purposes, I have assumed r to be equal to 2.5% to reflect the real rate of return (interest minus inflation) on inflation indexed government bonds. These bonds would be a financial instrument almost perfectly suited to protecting against the effects of future inflation.

Performing the calculation indicated by equation (2), based on the assumptions above, yields a present value of projected future income in the range **$103,465.39** to **$285,597.80**. Adding the values of past and projected future income yields an earning capacity in the range **$143,959.86** to **$326,092.27**. This range should be interpreted as a measure Ashcraft's human capital or earning capacity. My computations are presented on a year-by year basis in the attached Table (1).

Fringe Benefits

For computational purposes, fringe benefits are assumed to amount to 30.0% of income. This figure is based on data contained in the United States Department of Labor publication: *Employer Costs for Employee Compensation – September 2022* which indicates that fringe benefits, net of paid vacation and time off, on average amount to 30.0% of income for civilian employees in the United States. Applying this percentage to the present value of potential lifetime earnings, calculated above, yields fringe benefit valuations in the range **$43,187.96** to **$97,827.68**. Fringe benefit losses can be computed on a year-by-year basis by multiplying the figures in Table (1) by the assumed fringe benefit percentage.

Adding the values of projected income and fringe benefits yields a total valuation in the range **$187,147.82** to **$423,919.95**. This range should be interpreted as a measure Ashcraft's human capital or earning capacity.

Residual Value of Life in Excess of Earning Capacity

As discussed above, the present value of lifetime earnings would represent a minimum valuation of the loss of life because it focuses exclusively on productivity and ignores other aspects of the value of life. Many of life's joys, pleasures and services, which are independent of earning capacity and are generally considered to be "priceless", have been lost as a result of Ashcraft's death. Consequently, my figures should not be interpreted as capturing the total value of loss of life but rather those aspects of loss of life that are readily quantifiable. In the attached Table (5), I have noted that additional figures for the residual value of life are to be determined by the jury. I have provided information on Ashcraft's statistical life expectancy, 33.60 additional years at the

time of her death based on the Center for Disease Control publication: *United States Life Tables, 2019*, to assist the jury in this determination. I have also provided computations, summarized in the attached Table (6), in which future residual value of life figures can be reduced to present value. Reducing future amounts to present value is consistent with the methodology advocated by the United States Government, Office of Management and Budget (OMB) in *Circular A-4*, September 17, 2003, in which guidelines for incorporating statistical value of life into cost/benefit analysis are established. This approach provides a more fairly determined measure of damages for defendants determined to be liable. The methodology encompassed in my computations could be utilized for any annual value determined by the jury.

Since the jury will be instructed and charged to arrive at a figure for loss of life damages, I have researched this issue and can assist the jury by providing for their consideration the value that government agencies place on the statistical value of life. The attached documents, published by the United States Department of Transportation (DOT) and the Environmental Protection Agency (EPA), suggest statistical values of life amounting to $11,705,859.00 and $10,742,297.00, respectively. The DOT and EPA valuations have been adjusted to the current price level. United States Census Bureau data documents a median age across the United States population amounting to 37.2 years. Life expectancy, based on this age, amounts to 43.3 additional years. Dividing the statistical values of life identified above by remaining life expectancy, yields average annual evaluations of $278,711.00 and $255,769.00 for DOT and EPA statistical values of life, respectively. The OMB, as well as other government agencies, have suggested guidelines and endorsed statistical values of life for various cost/benefit analyses that have been performed. Total and implicit annual statistical values of life for these government studies, adjusted to current price levels, are presented in the attached Table (4). I additionally attach recent *Wall Street Journal* and *New York Times* articles on this topic.

In summary, Ashcraft's loss of life would be worth at least **$187,147.82** to **$423,919.95**, the present value of her expected lifetime earnings or human capital. Losses associated with the residual value of life should be considered in addition to this amount in order to arrive at a more accurate valuation of the loss of life suffered by Ashcraft.

Lost Household Services

Because of her death, Ashcraft is no longer able to provide for her family the services she previously performed. I have assumed a value for these services amounting to $13,154.33 per year based on Expectancy Data, *The Dollar Value of the Day: 2020 Dollar Valuation* (Table 333). Calculating past and projected future losses in accordance with the methodology explained above yields loss amounts of **$23,281.36** and **$66,443.92**, respectively. Future losses are projected over the next 5.47 additional years based on the remaining time interval until Ashcraft's youngest child will reach age 18. Adding past and projected future losses yields a total loss of household services amounting to **$89,725.28.** My computations are presented on a year-by-year basis in the attached Table (2).

Cost of Raising Surviving Children

The attached Tables (3) and (4) present the annual costs, present value, and cumulative present value of the costs associated with raising Ashcraft's surviving children [redacted] and [redacted] respectively, to age 18. Annual cost figures are based on the United States Department of Agriculture Study: *Expenditures on Children by Families, 2015*. The figures presented in that study are adjusted to 2021 price levels in accordance with historical inflation rates over the period since 2015. Present values are calculated in accordance with the methodology explained above. The present values of total expenses amount to **$61,866.43** and **$28,971.49** for [redacted] respectively. My computations are presented on a year-by-year basis in the attached Tables (3) and (4), respectively.

Please be advised that my calculations do not address the costs of college or vocational education for Ashcraft's children.

My computations of economic loss are summarized in the attached tables.

This report reflects information and opinions as of the date of the report and may be amended if additional data or information becomes available. If I can be of further service in this matter, please do not hesitate to contact me.

Yours very truly,

Ralph D. Scott, Jr.

RALPH D. SCOTT, JR., Ph.D.

TABLE 1

ESTATE OF JACQUELINE LYNN ASHCRAFT
CALCULATION OF HUMAN CAPITAL / EARNING CAPACITY

| Year | Base Income | Year Fraction | Lost Earnings | Present Value Factor | Economic Loss | Cumulative Economic Loss |
|---|---|---|---|---|---|---|
| PAST: | | | | | | |
| 2021 | 22,880.00 | 0.5562 | 12,725.04 | 1.0000 | 12,725.04 | 12,725.04 |
| 2022 | 22,880.00 | 1.0000 | 22,880.00 | 1.0000 | 22,880.00 | 35,605.04 |
| 2023 | 22,880.00 | 0.2137 | 4,889.42 | 1.0000 | 4,889.42 | 40,494.47 |
| Total | | 1.7699 | 40,494.47 | | 40,494.47 | 40,494.47 |
| FUTURE: | | | | | | |
| 2023/24 | 22,880.00 | 1.0000 | 22,880.00 | 0.9756 | 22,321.95 | 22,321.95 |
| 2024/25 | 22,880.00 | 1.0000 | 22,880.00 | 0.9518 | 21,777.51 | 44,099.46 |
| 2025/26 | 22,880.00 | 1.0000 | 22,880.00 | 0.9286 | 21,246.35 | 65,345.82 |
| 2026/27 | 22,880.00 | 1.0000 | 22,880.00 | 0.9060 | 20,728.15 | 86,073.97 |
| 2027/28 | 22,880.00 | 0.8600 | 19,676.80 | 0.8839 | 17,391.42 | 103,465.39 |
| Total (Scenario 1) | | 4.8600 | 111,196.80 | | 103,465.39 | 103,465.39 |
| 2027/28 | 22,880.00 | 1.0000 | 22,880.00 | 0.8839 | 20,222.59 | 106,296.56 |
| 2028/29 | 22,880.00 | 1.0000 | 22,880.00 | 0.8623 | 19,729.35 | 126,025.91 |
| 2029/30 | 22,880.00 | 1.0000 | 22,880.00 | 0.8413 | 19,248.15 | 145,274.06 |
| 2030/31 | 22,880.00 | 1.0000 | 22,880.00 | 0.8207 | 18,778.68 | 164,052.74 |
| 2031/32 | 22,880.00 | 1.0000 | 22,880.00 | 0.8007 | 18,320.66 | 182,373.40 |
| 2032/33 | 22,880.00 | 1.0000 | 22,880.00 | 0.7812 | 17,873.82 | 200,247.22 |
| 2023/24 | 22,880.00 | 1.0000 | 22,880.00 | 0.7621 | 17,437.87 | 217,685.10 |
| 2024/25 | 22,880.00 | 1.0000 | 22,880.00 | 0.7436 | 17,012.56 | 234,697.65 |
| 2025/26 | 22,880.00 | 1.0000 | 22,880.00 | 0.7254 | 16,597.62 | 251,295.27 |
| 2026/27 | 22,880.00 | 1.0000 | 22,880.00 | 0.7077 | 16,192.80 | 267,488.07 |
| 2027/28 | 22,880.00 | 1.0000 | 22,880.00 | 0.6905 | 15,797.85 | 283,285.92 |
| 2028/29 | 22,880.00 | 0.1500 | 3,432.00 | 0.6736 | 2,311.88 | 285,597.80 |
| Total (Scenario 2) | | 15.1500 | $ 346,632.00 | | $ 285,597.80 | 285,597.80 |

**TOTAL HUMAN CAPITAL / EARNING CAPACITY (SCENARIO 1) $ 143,959.86**

**TOTAL HUMAN CAPITAL / EARNING CAPACITY (SCENARIO 2) $ 326,092.27**

TABLE 2

ESTATE OF JACQUELINE LYNN ASHCRAFT
CALCULATION OF LOST HOUSEHOLD SERVICES

| Year | Base Annual Value | Year Fraction | Annual Loss | Present Value Factor | Economic Loss | Cumulative Economic Loss |
|---|---|---|---|---|---|---|
| PAST: | | | | | | |
| 2021 | $ 13,154.33 | 0.5562 | $ 7,315.97 | 1.0000 | $ 7,315.97 | $ 7,315.97 |
| 2022 | 13,154.33 | 1.0000 | 13,154.33 | 1.0000 | 13,154.33 | 20,470.29 |
| 2023 | 13,154.33 | 0.2137 | 2,811.06 | 1.0000 | 2,811.06 | 23,281.36 |
| Total | | 1.7699 | 23,281.36 | | 23,281.36 | 23,281.36 |
| FUTURE: | | | | | | |
| 2023/24 | 13,154.33 | 1.0000 | 13,154.33 | 0.9756 | 12,833.49 | 12,833.49 |
| 2024/25 | 13,154.33 | 1.0000 | 13,154.33 | 0.9518 | 12,520.48 | 25,353.97 |
| 2025/26 | 13,154.33 | 1.0000 | 13,154.33 | 0.9286 | 12,215.10 | 37,569.07 |
| 2026/27 | 13,154.33 | 1.0000 | 13,154.33 | 0.9060 | 11,917.17 | 49,486.24 |
| 2027/28 | 13,154.33 | 1.0000 | 13,154.33 | 0.8839 | 11,626.51 | 61,112.74 |
| 2028/29 | 13,154.33 | 0.4700 | 6,182.53 | 0.8623 | 5,331.18 | 66,443.92 |
| Total | | 5.4700 | 71,954.16 | | 66,443.92 | 66,443.92 |
| TOTAL LOST HOUSEHOLD SERVICES | | | | | | $ 89,725.28 |

TABLE 3

ESTATE OF JACQUELINE LYNN ASHCRAFT
COST TO RAISE [redacted]

| Age | Base Annual Expense | Year Fraction | Projected Expense | Present Value Factor | Present Value | Cumulative Present Value |
|---|---|---|---|---|---|---|
| PAST: | | | | | | |
| 10 | $ 8,516.08 | 0.2466 | $ 2,099.86 | 1.0000 | $ 2,099.86 | $ 2,099.86 |
| 11 | 8,516.08 | 1.0000 | 8,516.08 | 1.0000 | 8,516.08 | 10,615.93 |
| 12 | 9,015.45 | 0.5233 | 4,717.67 | 1.0000 | 4,717.67 | 15,333.61 |
| Total | | 1.7699 | 15,333.61 | | 15,333.61 | 15,333.61 |
| FUTURE: | | | | | | |
| 12 | 9,015.45 | 1.0000 | 9,015.45 | 0.9756 | 8,795.56 | 8,795.56 |
| 13 | 9,015.45 | 1.0000 | 9,015.45 | 0.9518 | 8,581.04 | 17,376.60 |
| 14 | 9,180.33 | 1.0000 | 9,180.33 | 0.9286 | 8,524.85 | 25,901.45 |
| 15 | 9,398.90 | 1.0000 | 9,398.90 | 0.9060 | 8,514.94 | 34,416.39 |
| 16 | 9,398.90 | 1.0000 | 9,398.90 | 0.8839 | 8,307.26 | 42,723.64 |
| 17 | 9,398.90 | 0.4700 | 4,417.48 | 0.8623 | 3,809.18 | 46,532.83 |
| Total | | 5.4700 | $ 50,426.51 | | $ 46,532.83 | $ 46,532.83 |

**TOTAL EXPENSE (PRESENT VALUE)** $ 61,866.43

TABLE 4

ESTATE OF JACQUELINE LYNN ASHCRAFT
COST TO RAISE [redacted]

| Age | Base Annual Expense | Year Fraction | Projected Expense | Present Value Factor | Present Value | Cumulative Present Value |
|---|---|---|---|---|---|---|
| PAST: | | | | | | |
| 14 | $ 8,654.83 | 0.2767 | $ 2,394.90 | 1.0000 | $ 2,394.90 | $ 2,394.90 |
| 15 | 9,034.93 | 1.0000 | 9,034.93 | 1.0000 | 9,034.93 | 11,429.83 |
| 16 | 9,034.93 | 0.4932 | 4,455.58 | 1.0000 | 4,455.58 | 15,885.41 |
| Total | | 1.7699 | 15,885.41 | | 15,885.41 | 15,885.41 |
| FUTURE: | | | | | | |
| 16 | 9,015.45 | 1.0000 | 9,015.45 | 0.9756 | 8,795.56 | 8,795.56 |
| 17 | 9,015.45 | 0.5000 | 4,507.73 | 0.9518 | 4,290.52 | 13,086.08 |
| Total | | 1.5000 | $ 13,523.18 | | $ 13,086.08 | $ 13,086.08 |

**TOTAL EXPENSE (PRESENT VALUE)** **$ 28,971.49**

TABLE 5

ESTATE OF JACQUELINE LYNN ASHCRAFT
SUMMARY OF ECONOMIC LOSS

| | Scenario 1 | Scenario 2 |
|---|---|---|
| **LOSS OF LIFE** | | |
| **HUMAN CAPITAL** | | |
| Earning Capacity | | |
| Past | $ 40,494.47 | $ 40,494.47 |
| Projected Future | 103,465.39 | 285,597.80 |
| Total | 143,959.86 | 326,092.27 |
| Fringe Benefits | | |
| Past | 12,148.34 | 12,148.34 |
| Projected Future | 31,039.62 | 85,679.34 |
| Total | 43,187.96 | 97,827.68 |
| Total Human Capital | 187,147.82 | 423,919.95 |
| **RESIDUAL VALUE OF LIFE IN EXCESS OF EARNING CAPACITY** | To Be Determined | |
| _____ (Annual Value) X 33.6 (Life Expectancy) = | | |
| **TOTAL LOSS OF LIFE** | $ 187,147.82 + | $ 423,919.95 + |
| **LOST HOUSEHOLD SERVICES** | | |
| Past | 23,281.36 | 23,281.36 |
| Projected Future | 66,443.92 | 66,443.92 |
| Total | 89,725.28 | 89,725.28 |
| **COSTS OF RAISING SURVIVING CHILDRTEN** [redacted] | | |
| | 61,866.43 | 61,866.43 |
| | 28,971.49 | 28,971.49 |
| Total | 90,837.92 | 90,837.92 |
| **TOTAL ECONOMIC LOSS** | $ 367,711.02 + | $ 604,483.16 + |

TABLE 6

ESTATE OF JACQUELINE LYNN ASHCRAFT
SUMMARY OF ECONOMIC LOSS

| | Scenario 1 | Scenario 2 |
|---|---|---|
| **LOSS OF LIFE** | | |
| **HUMAN CAPITAL** | | |
| Lost Earning Capacity | | |
| Past | $ 40,494.47 | $ 40,494.47 |
| Projected Future | 103,465.39 | 285,597.80 |
| Total | 143,959.86 | 326,092.27 |
| Fringe Benefits | | |
| Past | 12,148.34 | 12,148.34 |
| Projected Future | 31,039.62 | 85,679.34 |
| Total | 43,187.96 | 97,827.68 |
| Total Human Capital | 187,147.82 | 423,919.95 |
| **RESIDUAL VALUE OF LIFE IN EXCESS OF EARNING CAPACITY** | To Be Determined | |
| _____ X 33.6 X 0.7006 = | | |
| Annual Value / Life Expectancy / Present Value Factor | | |
| **TOTAL LOSS OF LIFE** | 187,147.82 + | 423,919.95 + |
| **LOST HOUSEHOLD SERVICES** | | |
| Past | 23,281.36 | 23,281.36 |
| Projected Future | 66,443.92 | 66,443.92 |
| Total | 89,725.28 | 89,725.28 |
| **COSTS OF RAISING SURVIVING CHILDRTEN** | | |
| [redacted] | 61,866.43 | 61,866.43 |
| | 28,971.49 | 28,971.49 |
| Total | 90,837.92 | 90,837.92 |
| **TOTAL ECONOMIC LOSS** | $ 187,147.82 + | $ 423,919.95 + |

**Departmental Guidance**

**Treatment of the Value of Preventing Fatalities and Injuries in Preparing Economic Analyses**

**March 2021**

This guidance describes the Department of Transportation's recommended methodology for calculating the value of a statistical life (VSL) and applying it in analyses that assess the economic benefits of preventing fatalities. It also establishes policies for assigning comparable values to the prevention of injuries.

## Background

Prevention of injury, illness, and loss of life is a significant factor in many private economic decisions, including job choices and consumer product purchases. When government makes direct investments or controls external market impacts by regulation, it also pursues these benefits, often while also imposing costs on society. The Office of the Secretary of Transportation and other DOT administrations are required by Executive Order 13563, Executive Order 12866, Executive Order 12893, OMB Circular A-4, and DOT Order 2100.5 to evaluate in monetary terms the costs and benefits of their regulations, investments, and administrative actions, in order to demonstrate the faithful execution of their responsibilities to the public. Since 1993, the Office of the Secretary of Transportation has periodically reviewed the published research on the value of safety and updated guidance for all administrations. The benefit of preventing a fatality is measured by what is conventionally called the Value of a Statistical Life, defined as the additional cost that individuals would be willing to bear for improvements in safety (that is, reductions in risks) that, in the aggregate, reduce the expected number of fatalities by one. This conventional terminology has often provoked misunderstanding on the part of both the public and decision-makers. What is involved is not the valuation of life as such, but the valuation of reductions in risks. While new terms have been proposed to avoid misunderstanding, we will maintain the common usage of the research literature and OMB Circular A-4 in referring to VSL.

Most regulatory actions involve the reduction of risks of low probability (as in, for example, a one-in-10,000 annual chance of dying in an automobile crash). For these low-probability risks, we shall assume that the willingness to pay to avoid the risk of a fatal injury increases proportionately with growing risk. That is, when an individual is willing to pay $1,000 to reduce the annual risk of death by one in 10,000, she is said to have a VSL of $10 million. The assumption of a linear relationship between risk and willingness to pay therefore implies that she would be willing to pay $2,000 to reduce risk by two in 10,000 or $5,000 to reduce risk by five in 10,000. The assumption of a linear relationship between risk and willingness to pay (WTP) breaks down when the annual WTP becomes a substantial portion of annual income, so the assumption of a constant VSL is not appropriate for substantially larger risks.

When first applied to benefit-cost analysis in the 1960s and 1970s, the value of saving a life was measured by the potential victim's expected earnings, measuring the additional product society might have lost. These lost earnings were widely believed to understate the real costs of loss of

life, because the value that we place on the continued life of our family and friends is not based entirely, or even principally, on their earning capacity. In recent decades, studies based on estimates of individuals' willingness to pay for improved safety have become widespread, and offer a way of measuring the value of reduced risk in a more comprehensive way. These estimates of the individual's value of safety are then treated as the ratio of the individual marginal utility of safety to the marginal utility of wealth. These estimates of the individual values of changes in safety can then be aggregated to produce estimates of social benefits of changes in safety, which can then be compared with the costs of these changes.

Studies estimating the willingness to pay for safety fall into two categories. Some analyze subjects' responses in real markets, and are referred to as revealed preference (RP) studies, while others analyze subjects' responses in hypothetical markets, and are described as stated preference (SP) studies. Revealed preference studies in turn can be divided into studies based on consumer purchase decisions and studies based on employment decisions (usually referred to as hedonic wage studies). Even in revealed preference studies, safety is not purchased directly, so the value that consumers place upon it cannot be measured directly. Instead, the value of safety can be inferred from market decisions that people make in which safety is one factor in their decisions. In the case of consumer purchase decisions, since goods and services usually display multiple attributes, and are purchased for a variety of reasons, there is no guarantee that safety will be the conclusive factor in any purchasing decision (note that even products like bicycle helmets, which are purchased primarily for safety, also vary in style, comfort, and durability). Similarly, in employment decisions, safety is one of many considerations in the decision of which job offer to accept. Statistical techniques must therefore be used to identify the relative influence of price (or wage), safety, and other qualitative characteristics of the product or job on the consumer's or worker's decision on which product to buy or which job to accept.

An additional complication in RP studies is that, even if the real risks confronted by individuals can be estimated accurately by the analyst, the consumer or employee may not estimate these risks accurately. It is possible for individuals, through lack of relevant information or limited ability to analyze risks, to assign an excessively low or high probability to fatal risks. Alternatively, detailed familiarity with the hazards they face and their own skills may allow individuals to form more accurate estimates of risk at, for example, a particular job-site than those derived by researchers, which inevitably are based on more aggregate data.

In the SP approach, market alternatives incorporating hypothetical risks are presented to test subjects, who respond with what they believe would be their choices. Answers to hypothetical questions may provide helpful information, but they remain hypothetical. Although great pains are usually taken to communicate probabilities and measure the subjects' understanding, there is no assurance that individuals' predictions of their own behavior would be observed in practice. Against this weakness, the SP method can evaluate many more alternatives than those for which market data are available, and it can guarantee that risks are described objectively to subjects. With indefinitely large potential variations in cost and risk and no uncontrolled variation in any other dimension, some of the objections to RP models are obviated. Despite procedural safeguards, however, SP studies have not proven consistently successful in estimating measures of WTP that increase proportionally with greater risks.

RP studies involving decisions to buy and/or use various consumer products have focused on decisions such as buying cars with better safety equipment, wearing seat belts or helmets, or buying and installing smoke detectors. These studies often lack a continuum of price-risk opportunities, so that the price paid for a safety feature (such as a bicycle helmet) does not necessarily represent the value that the consumer places on the improvement in safety that the helmet provides. In the case of decisions to use a product (like a seatbelt) rather than to buy the product, the "price" paid by the consumer must be inferred from the amount of time and degree of inconvenience involved in using the product, rather than the directly observable price of buying the product. The necessity of making these inferences introduces possible sources of error. Studies of purchases of automobiles probably are less subject to these problems than studies of other consumer decisions, because the price of the safety equipment is directly observable, and there are usually a variety of more or less expensive safety features that provide more of a range of price-risk trade-offs for consumers to make.

While there are many examples of SP studies and RP studies involving consumer product purchases, the most widely cited body of research comprises hedonic wage studies, which estimate the wage differential that employers must pay workers to accept riskier jobs, taking other factors into account. Besides the problem of identifying and quantifying these factors, researchers must have a reliable source of data on fatality and injury risks and also assume that workers' psychological risk assessment conforms to the objective data. The accuracy of hedonic wage studies has improved over the last decade with the availability of more complete data from the Bureau of Labor Statistics' (BLS) Census of Fatal Occupational Injuries (CFOI), supported by advances in econometric modeling, including the use of panel data from the Panel Study of Income Dynamics (PSID). The CFOI data are, first of all, a complete census of occupational fatalities, rather than a sample, so they allow more robust statistical estimation. Second, they classify occupational fatalities by both industry and occupation, allowing variations in fatalities across both dimensions to be compared with corresponding variations in wage rates. Some of the new studies use panel data to analyze the behavior of workers who switch from one job to another, where the analysis can safely assume that any trade-off between wage levels and risk reflects the preferences of a single individual, and not differences in preferences among individuals.

VSL estimates are based on studies of groups of individuals that are covered by the study, but those VSL estimates are then applied to other groups of individuals who were not the subjects of the original studies. This process is called benefit transfer. One issue that has arisen in studies of VSL is whether this benefit transfer process should be applied broadly over the general population of people that are affected by a rulemaking, or whether VSL should be estimated for particular subgroups, such as workers in particular industries, and people of particular ages, races, and genders. Advances in data and econometric techniques have allowed specialized estimates of VSL for these population subgroups. Safety regulations issued by the Department of Transportation typically affect a broad cross-section of people, rather than more narrowly defined subgroups. For that, and other policy reasons, we do not consider variations in VSL among different population groups in this guidance.

## Principles and policies of this guidance

This guidance for the conduct of Department of Transportation analyses is a synthesis of empirical estimates, practical adaptations, and social policies. We continue to explore new empirical literature as it appears and to give further consideration to the policy resolutions embodied in this guidance. Although our current approach is unchanged from previous guidance, the numbers and their sources are new, consistent with OMB guidance in Circular A-4 and with the use of the best available evidence. The methods we adopt are:

1. Prevention of an expected fatality is assigned a single, nationwide value in each year, regardless of the age, income, or other distinct characteristics of the affected population, the mode of travel, or the nature of the risk. When Departmental actions have distinct impacts on infants, disabled passengers, or the elderly, no adjustment to VSL should be made, but analysts should call the attention of decision-makers to the special character of the beneficiaries.
2. Analyses conducted by DOT operating administrations should adjust the VSL to the base year used in the analysis by applying the methodology described in this guidance to account for changes in prices and real income levels.
3. Sensitivity analyses applying alternative high and low safety benefit estimates should use a range of VSLs, as described in the section below on recognizing uncertainty.

## 2008 VSL Guidance Update

In Circular A-4 (2003), the Office of Management and Budget endorsed VSL values between $1 million and $10 million, drawing on two then recently completed VSL meta-analyses.[1] The basis for our 2008 guidance comprised five studies, four of which were meta-analyses that synthesized many primary studies, identifying their sources of variation and estimating the most likely common parameters. These studies were written by Ted R. Miller;[2] Ikuho Kochi, Bryan Hubbell, and Randall Kramer;[3] W. Kip Viscusi;[4] Janusz R. Mrozek and Laura O. Taylor;[5] and W. Kip Viscusi and Joseph Aldy.[6] They narrowed VSL estimates to the $2 million to $7 million range in dollar values of the original data, between 1995 and 2000 (about $3 million to $9 million at current prices). Miller and Viscusi and Aldy also estimated income elasticities for VSL (the percent increase in VSL per one percent increase in income). Miller's estimates were close to 1.0, while Viscusi and Aldy estimated the elasticity to be between 0.5 and 0.6. DOT

[1] Viscusi, W. K. and J.E. Aldy (2003). "The Value of a Statistical Life: A Critical Review of Market Estimates Throughout the World." *Journal of Risk and Uncertainty*, 27(1): 5-76; and Mrozek, J.R. and L. O. Taylor (2002). "What Determines the Value of a Life? A Meta-Analysis." *Journal of Policy Analysis and Management*. 21(2).
[2] Miller, T. R. (2000). "Variations between Countries in Values of Statistical Life." *Journal of Transport Economics and Policy*. 34(2): 169-188. http://www.bath.ac.uk/e-journals/jtep/pdf/Volume_34_Part_2_169-188.pdf
[3] Kochi, I., B. Hubbell, and R. Kramer (2006). "An Empirical Bayes Approach to Combining and Comparing Estimates of the Value of a Statistical Life for Environmental Policy Analysis." *Environmental and Resource Economics.* 34(3): 385-406.
[4] Viscusi, W. K. (2004). "The Value of Life: Estimates with Risks by Occupation and Industry." *Economic Inquiry.* 42(1): 29-48.
[5] Mrozek, J. R., and L. O. Taylor (2002). "What Determines the Value of Life? A Meta-Analysis." *Journal of Policy Analysis and Management.* 21(2).
[6] Viscusi, W. K. and J. E. Aldy (2003). "The Value of a Statistical Life: A Critical Review of Market Estimates Throughout the World." *Journal of Risk and Uncertainty*. 27(1): 5-76.

used the Viscusi and Aldy elasticity estimate (averaged to 0.55), along with the Wages and Salaries component of the Employer Cost for Employee Compensation, as well as price levels represented by the Consumer Price Index, to project these estimates to a 2007 VSL estimate of $5.8 million.

**2013 VSL Guidance Update**

Since these studies were published, the credibility of these meta-analyses has been qualified by recognition of weaknesses in the data used by the earlier primary studies whose results are synthesized in the meta-analyses. We now believe that the most recent primary research, using improved data (particularly the CFOI data discussed above) and specifications, provides more reliable results. This conclusion is based in part on the advice of a panel of expert economists that we convened to advise us on this issue. The panel consisted of Maureen Cropper (University of Maryland), Alan Krupnick (Resources for the Future), Al McGartland (Environmental Protection Agency), Lisa Robinson (independent consultant), and W. Kip Viscusi (Vanderbilt University). The Panel unanimously concluded that we should base our guidance only on hedonic wage studies completed within the past 10 years that made use of the CFOI database and used appropriate econometric techniques.

A white paper prepared for the U.S. Environmental Protection Agency (EPA) in 2010 identified eight hedonic wage studies using the CFOI data;[7] we also identified seven additional studies, including five published since the EPA White Paper was issued (see Table 1). Some of these studies focus on estimating VSL values for narrowly defined economic, demographic, or occupational categories, or use inappropriate econometric techniques, resulting in implausibly high VSL estimates. We therefore focused on nine studies that we think are useful for informing an appropriate estimate of VSL. There is broad agreement among researchers that these newer hedonic wage studies provide an improved basis for policy-making.[8]

The 15 hedonic wage studies we have identified that make use of the CFOI database to estimate VSL are listed in Table 1. Some of these studies do not estimate an overall "full-sample" VSL, instead estimating VSL values only for specific categories of people. Some of the studies, as the authors themselves sometimes acknowledge, arrive at implausibly high values of VSL, because of econometric specifications which appear to bias the results, or because of a focus on a narrowly-defined occupational group. Moreover, these papers generally offer multiple model specifications, and it is often not clear (even to the authors) which specification most accurately represents the actual VSL. We have generally chosen the specification that the author seems to believe is best. In cases where the author does not express a clear preference, we have had to average estimates based on alternative models within the paper to get a representative estimate for the paper as a whole.

[7] U.S. Environmental Protection Agency (2010), *Valuing Mortality Risk Reductions for Environmental Policy: A White Paper (Review Draft)*. Prepared by the National Center for Environmental Economics for consultation with the Science Advisory Board – Environmental Economics Advisory Committee.

[8] A current survey of theoretical and empirical research on VSL may be found in: Cropper, M., J.K. Hammitt, and L.A. Robinson (2011). "Valuing Mortality Risk Reductions: Progress and Challenges." *Annual Review of Resource Economics.* 3: 313-336.
http://www.annualreviews.org/doi/abs/10.1146/annurev.resource.012809.103949

**Table 1: VSL Studies Using CFOI Database**

(VSLs in millions of dollars)

| | Study | Year of Study $ | VSL in Study-Year $ | VSL in 2012$ | Comments |
|---|---|---|---|---|---|
| 1. | Viscusi (2003) * | 1997 | $14.185M | $21.65M | Implausibly high; industry-only risk measure |
| 2. | Leeth and Ruser (2003) * | 2002 | $7.04M | $8.90M | Occupation-only risk measure |
| 3. | Viscusi (2004) | 1997 | $4.7M | $7.17M | Industry/occupation risk measure |
| 4. | Kniesner and Viscusi (2005) | 1997 | $4.74M | $7.23M | Industry/occupation risk measure |
| 5. | Kniesner *et al*. (2006) * | 1997 | $23.70M | $36.17M | Implausibly high; industry/occupation risk measure |
| 6. | Viscusi and Aldy (2007) * | 2000 | | | Industry-only risk measure; no full-sample VSL estimate |
| 7. | Aldy and Viscusi (2008) * | 2000 | | | Industry-only risk measure, no full-sample VSL estimate |
| 8. | Evans and Smith (2008) | 2000 | $9.6M | $12.84M | Industry-only risk measure |
| 9. | Viscusi and Hersch (2008) | 2000 | $7.37M | $9.86M | Industry-only risk measure |
| 10. | Evans and Schaur (2010) | 1998 | $6.7M | $9.85M | Industry-only risk measure |
| 11. | Hersch and Viscusi (2010) | 2003 | $6.8M | $8.43M | Industry/occupation risk measure |
| 12. | Kniesner *et al*. (2010) | 2001 | $7.55M | $9.76M | Industry/occupation risk measure |
| 13. | Kochi and Taylor (2011)* | 2004 | | | VSL estimated only for occupational drivers |
| 14. | Scotton and Taylor (2011) | 1997 | $5.27M | $8.04M | Industry/occupation risk measure; VSL is mean of estimates from three preferred specifications |
| 15. | Kniesner *et al*. (2012) | 2001 | $4M - $10M | $5.17M - $12.93M | Industry/occupation risk measure; mean VSL estimate is $9.05M |

* Studies shown in grayed-out rows were not used in determining the VSL Guidance value.

We found that nine of these studies provided usable estimates of VSL for a broad cross-section of the population.[9] We excluded Viscusi (2003) and Kniesner *et al*. (2006) on the grounds that their estimates of VSL were implausibly high (Viscusi acknowledges that the estimated VSLs in his study are very high). We excluded Leeth and Ruser (2003) because it used only variations in occupation for estimating variation in risk (the occupational classifications are generally regarded as less accurate than the industry classifications). We excluded Viscusi and Aldy (2007) and Aldy and Viscusi (2008) because they did not estimate overall "full-sample" VSLs (they focused instead on estimating VSLs for various subgroups). We excluded Kochi and Taylor (2011) because it estimated VSL only for a narrow occupational group (occupational drivers). For Scotton and Taylor (2011) and Kniesner *et al*. (2012) we calculated average values for VSL from what appeared to be the preferred model specifications. For our 2013 guidance update, we adopted the average of the VSLs estimated in the remaining nine studies, updated to 2012 dollars (based both on changes in the price level and changes in real incomes from the year for which the VSL was originally estimated), which yielded a recommended value of $9.1 million.

**Adjustments for Inflation and Real Income Growth**

In order to apply the VSL in analyses using a base year beyond the original base year of 2012, the value should be adjusted for inflation and real incomes over the intervening years. Specifically, the formula to be used is:

$$VSL_T = VSL_0 * (P_T / P_0) * (I_T / I_0)^{\varepsilon}$$

where

0 = Original Base Year
T = Current Base Year
$P_t$ = Price Index in Year t
$I_t$ = Real Incomes in Year t
$\varepsilon$ = Income Elasticity of VSL

[9] These include Viscusi (2004) [cited in footnote 4]; Viscusi, W.K. and J. Hersch (2008). "The Mortality Cost to Smokers." *Journal of Health Economics*. 27: 943-958; Evans, M.F. and G. Schaur (2010). "A Quantile Estimation Approach to Identify Income and Age Variation in the Value of a Statistical Life." *Journal of Environmental Economics and Management*. 59: 260-270; Hersch, J. and W.K. Viscusi (2010). "Immigrant Status and the Value of Statistical Life." *Journal of Human Resources*. 45(3): 749-77; Scotton, C.R. and L.O. Taylor. "Valuing Risk Reductions: Incorporating Risk Heterogrneity into a Revealed Preference Framework." *Resource and Energy Economics*. 33 and Kochi, I and L.O. Taylor (2011). "Risk Heterogeneity and the Value of Reducing Fatal Risks: Further Market-Based Evidence." *Journal of Benefit-Cost Analysis*. 2(3): 381-397; Kniesner, T.J. and W.K. Viscusi (2005). "Value of a Statistical Life: Relative Position vs. Relative Age." *AEA Papers and Proceedings*. 95(2): 142-146; Evans, M.F. and V.K. Smith (2008). "Complementarity and the Measurement of Individual Risk Tradeoffs: Accounting for Quantity and Quality of Life Effects." National Bureau of Economic Research Working Paper 13722; Kniesner, T.J., W.K. Viscusi, and J.P. Ziliak (2010). "Policy Relevant Heterogeneity in the Value of Statistical Life: New Evidence from Panel Data Quantile Regressions." *Journal of Risk and Uncertainty*. 40: 15-31; and Kniesner, T.J., W.K. Viscusi, C. Woock, and J.P. Ziliak (2012). "The Value of a Statistical; Life: Evidence from Panel Data." *Review of Economics and Statistics*. 94(1): 74-87.

Inflation. The Consumer Price Index for All Urban Consumers (CPI-U)[10] should be used to adjust for inflation over time, as this price index is deemed to be representative of changes in the value of money that would be considered by a typical worker making decisions corresponding to his income level.

Real Incomes. The index recommended for use to measure real income growth as it affects VSL is the Median Usual Weekly Earnings (MUWE), in constant (1982-84) dollars, derived by BLS from the Current Population Survey.[11] This series is more appropriate than the Wages and Salaries component of the Employment Cost Index (ECI), which was used prior to the 2013 guidance revision, because the ECI applies fixed weights to employment categories, while the weekly earnings series uses a median employment cost for wage and salary workers over the age of 16. A median value is preferred because it should better reflect the factors influencing a typical traveler affected by DOT actions (very high incomes would cause an increase in the mean, but not affect the median). In contrast to a median, an average value over all income levels might be unduly sensitive to factors that are less prevalent among actual travelers. Similarly, we do not take into account changes in non-wage income, on the grounds that this non-wage income is not likely to be significant for the average person affected by our rules.

Income Elasticity. The VSL literature is generally in agreement that VSL increases with real incomes, but the exact rate at which it does so is subject to some debate. In our 2011 guidance, we cited research by Viscusi and Aldy (2003) that estimated the elasticity of VSL with respect to increases in real income as being between 0.5 and 0.6 (i.e., a one-percent increase in real income results in an increase in VSL of 0.5 to 0.6 percent). We accordingly increased VSL by 0.55 percent for every one-percent increase in real income. More recent research by Kniesner, Viscusi, and Ziliak (2010) has derived more refined income elasticity estimates ranging from 2.24 at low incomes to 1.23 at high incomes, with an overall figure of 1.44.[12] An alternative specification yielded an overall elasticity of 1.32. Similarly, Costa and Kahn (2004) estimated the income-elasticity of VSL to be between 1.5 and 1.6.[13] These empirical results are consistent with theoretical arguments suggesting that the income-elasticity of VSL should be greater than 1.0.[14]

In view of the large increase in the income elasticity of VSL that would be suggested by these empirical results, and because the literature seems somewhat unsettled, we decided in our 2013 guidance update to increase our suggested income-elasticity figure only to 1.0. While this figure is lower than the elasticity estimates of Kniesner *et al.* and Costa and Kahn, it is higher

[10] BLS Series CUUR0000SA0. Available at https://data.bls.gov/timeseries/CUUR0000SA0
[11] BLS Series LEU0252881600. Available at https://data.bls.gov/timeseries/LEU0252881600
[12] Kniesner, T.J., W.K. Viscusi, and J.P. Ziliak (2010). "Policy Relevant Heterogeneity in the Value of Statistical Life: New Evidence from Panel Data Quantile Regressions." *Journal of Risk and Uncertainty*. 40(1):15–31.
[13] Costa, D.L. and M.E. Kahn (2004). "Changes in the Value of Life, 1940-1980." *Journal of Risk and Uncertainty*. 29(2): 159-180.
[14] Eeckhoudt, L.R. and J.K. Hammitt (2001). "Background Risks and the Value of a Statistical Life." *Journal of Risk and Uncertainty*. 23(3): 261-279; Kaplow, L. (2005). "The Value of a Statistical Life and the Coefficient of Relative Risk Aversion." *Journal of Risk and Uncertainty*, 31(1); Murphy, K.M. and R.H. Topel (2006). "The Value of Health and Longevity." *Journal of Political Economy*. 114(5): 871-904; and Hammitt, J.K. and L.A. Robinson (2011). "The Income Elasticity of the Value per Statistical Life: Transferring Estimates between High and Low Income Populations." *Journal of Benefit-Cost Analysis*. 2(1): 1-27.

than that of Viscusi and Aldy, the basis for our previous guidance. It is difficult to state with confidence whether a cross-sectional income elasticity (such as those estimated in these empirical analyses), representing the difference in sensitivity to fatality risks between low-income and high-income workers in a given population, corresponds to a longitudinal elasticity, representing the way in which VSL is affected by growth in income over time for an overall population. Consequently, this guidance adopts this more moderate figure, pending more comprehensive documentation.

**Value of Preventing Injuries**

Nonfatal injuries are far more common than fatalities and vary widely in severity, as well as probability. In principle, the resulting losses in quality of life, including both pain and suffering and reduced income, should be estimated by potential victims' WTP for personal safety. While estimates of WTP to avoid injury are available, often as part of a broader analysis of factors influencing VSL, these estimates are generally only available for an average injury resulting in a lost workday, and not for a range of injuries varying in severity. Because detailed WTP estimates covering the entire range of potential disabilities are unobtainable, we use an alternative standardized method to interpolate values of expected outcomes, scaled in proportion to VSL. Each type of accidental injury is rated (in terms of severity and duration) on a scale of quality-adjusted life years (QALYs), in comparison with the alternative of perfect health. These scores are grouped, according to the Maximum Abbreviated Injury Scale (MAIS), yielding coefficients that can be applied to VSL to assign each injury class a value corresponding to a fraction of a fatality.

In our 2011 guidance, the values of preventing injuries were updated by new estimates from a study by Spicer and Miller.[15]The measure adopted was the quality-adjusted percentage of remaining life lost for median utility weights, based on QALY research considered "best," as presented in Table 9 of the cited study. The rate at which disability is discounted over a victim's lifespan causes these percentages to vary slightly, and the study shows estimates for 0, 3, 4, 7, and 10 percent discount rates. These differences are minor in comparison with other sources of variation and uncertainty, which we recognize by sensitivity analysis. Since OMB recommends the use of alternative discount rates of 3 and 7 percent, we present the scale corresponding to an intermediate rate of 4 percent for use in all analyses. The fractions shown should be multiplied by the current VSL to obtain the values of preventing injuries of the types affected by the government action being analyzed.

Note that these factors represent an average disutility of all injuries sustained by persons with a given MAIS. Although injured persons normally have multiple injuries, only one disutility factor should be applied to each injured person. For example, if the analyst were seeking to estimate the value for an injured person whose highest-level injury was rated "Serious" (MAIS 3), he or she would multiply the Fraction of VSL for a serious injury (0.105) by the VSL to calculate the value of the serious injury.

[15] Rebecca S. Spicer and Ted R. Miller. "Final Report to the National Highway Traffic Safety Administration: Uncertainty Analysis of Quality Adjusted Life Years Lost." Pacific Institute for Research and Evaluation. February 5, 2010. https://www.transportation.gov/office-policy/transportation-policy/uncertainty-analysis-quality-adjusted-life-years-lost.

**Table 2: Relative Disutility Factors by Injury Severity Level (MAIS)**

| MAIS Level | Severity | Fraction of VSL |
|---|---|---|
| MAIS 1 | Minor | 0.003 |
| MAIS 2 | Moderate | 0.047 |
| MAIS 3 | Serious | 0.105 |
| MAIS 4 | Severe | 0.266 |
| MAIS 5 | Critical | 0.593 |
| MAIS 6 | Unsurvivable | 1.000 |

These factors have two direct applications in analyses. The first application is as a basis for establishing the value of preventing nonfatal injuries in benefit-cost analysis. The total value of preventing injuries and fatalities can be combined with the value of other economic benefits not measured by VSLs, and then compared to costs to determine either a benefit/cost ratio or an estimate of net benefits.

The second application stems from the requirement in OMB Circular A-4 that evaluations of major regulations for which safety is the primary outcome include cost-effectiveness analysis, in which the cost of a government action is compared with a non-monetary measure of benefit. The values in the above table may be used to translate nonfatal injuries into fatality equivalents which, when added to fatalities, can be divided into costs to determine the cost per equivalent fatality. This ratio may also be seen as a "break-even" VSL, the value that would have to be assumed if benefits of a proposed action were to equal its costs. It would illustrate whether the costs of the action can be justified by a VSL that is well within the accepted range or, instead, would require a VSL approaching the upper limit of plausibility. Because the values assigned to prevention of injuries and fatalities are derived in part by using different methodologies, it is useful to understand their relative importance in drawing conclusions. Consequently, in analyses where benefits from reducing both injuries and fatalities are present, the estimated values of injuries and fatalities prevented should be stated separately, as well as in the aggregate.

**Recognizing Uncertainty**

Regulatory and investment decisions must be made by officials informed of the limitations of their information. The values we adopt here do not establish a threshold dividing justifiable from unjustifiable actions; they only suggest a region where officials making these decisions can have relatively greater or lesser confidence that their decisions will generate positive net benefits. To convey the sensitivity of this confidence to changes in assumptions, OMB Circular A-4 and Departmental policy require analysts to prepare estimates using alternative values. We have previously encouraged the use of probabilistic methods such as Monte Carlo analysis to synthesize the many uncertain quantities determining net benefits.

While the individual estimates of VSL reported in the studies cited above are often accompanied by estimates of confidence intervals, we do not, at this time, have any reliable method for estimating the overall probability distribution of the average VSL that we have calculated from these various studies. Consequently, alternative VSL values can only illustrate the conclusions that would result if the true VSL actually equaled the higher or lower alternative values. Analysts should not imply a known probability that the true VSL would exceed or fall short of either the primary VSL figure or the alternative values used for sensitivity analysis. Kniesner *et al*. (2012) suggest that a reasonable range of values for VSL is between $4 million and $10 million (in 2001 dollars), or about $5.2 million to $12.9 million when escalated to 2012 dollars. This range of values includes all the estimates from the eight other studies on which this guidance is based, and are approximately 40 percent higher and lower than the recommended 2012 base year VSL of $9.1 million. Thus, for illustrative purposes, analysts may wish to calculate high and low alternative estimates of the values of fatalities and injuries prevented by using alternative VSLs that are 40 percent above or below the base value used in the analysis.

This guidance and other relevant documents will be posted on the Office of Transportation Policy website, https://www.transportation.gov/policy/transportation-policy/economy. Questions should be addressed to Darren Timothy, Chief Economist, at (202) 366-4051, or darren.timothy@dot.gov.

MEMORANDUM TO: SECRETARIAL OFFICERS
MODAL ADMINISTRATORS

From: John Putnam
Acting General Counsel

Christopher Coes
Acting Assistant Secretary for Transportation Policy

Subject: Guidance on the Treatment of the Economic Value of a Statistical Life (VSL) in U.S. Department of Transportation Analyses – 2021 Update

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Departmental guidance on valuing the reduction of fatalities and injuries by regulations or investments has been published periodically by the Office of the Secretary since 1993. We issued a comprehensive update to our guidance in 2013, and indicated at that time that we planned to issue annual updates to adjust for changes in prices and real incomes in the intervening years.

With this update of the Department's VSL guidance (attached as a separate document to this memorandum), we have removed references to specific monetary values beyond the 2012 values used in the 2013 comprehensive update. Instead, going forward, analysts should apply the methodology described in the guidance to calculate the VSL, including by applying values for inflation and changes in real income using the data series specified in the guidance. The Office of the Secretary will also continue to provide the corresponding adjusted values to the DOT Modal Administrations as the relevant price and income data for the previous year become available. The VSL guidance document will only be updated when more significant changes are made to the methodology used to calculate the value of reducing fatalities and injuries.

Based on the methodology adopted in the 2013 guidance, price and real income changes since 2012 yield a current **VSL estimate of $11.6 million for analyses using a base year of 2020**. Values for years prior to 2020 are also shown in the table below:

**Current and Prior Year VSL**

| Value (million $) | Base year |
|---|---|
| 11.6 | 2020 |
| 10.9 | 2019 |
| 10.5 | 2018 |
| 10.2 | 2017 |
| 9.9 | 2016 |
| 9.6 | 2015 |
| 9.4 | 2014 |
| 9.2 | 2013 |
| 9.1 | 2012 |

This memorandum, as well as the updated VSL guidance and other relevant documents, will be posted on the Office of Transportation Policy website, http://www.dot.gov/policy/transportation-policy/economy , and on the General Counsel's regulatory information website, http://www.transportation.gov/regulations. Questions should be addressed to Darren Timothy, Chief Economist, at (202) 366-4051 or darren.timothy@dot.gov.

cc: Regulations officers and liaison officers

**BEFORE THE ARKANSAS STATE CLAIMS COMMISSION**

**DEBBIE BROWN, AS ADMINISTRATRIX OF THE ESTATE OF CHRIS BROWN, AND JOE BROWN** **CLAIMANT**

**V.** **CLAIM NO. 200809**

**ARKANSAS DEPARTMENT OF TRANSPORTATION** **RESPONDENT**

# ORDER

Now before the Arkansas State Claims Commission (the "Claims Commission") is the claim of Debbie Brown, as Administratrix of the Estate of Chris Brown, and Joe Brown (collectively referred to herein as the "Claimant") against the Arkansas Department of Transportation (the "Respondent"). At the hearing held August 19, 2022, Claimant was represented by Brandon Lacy and Megan Henry. Trella Sparks and Amanda Andrews appeared on behalf of Respondent.

## Procedural History, Prehearing Matters, and Witness Testimony

1. Claimant filed this claim against Respondent on February 10, 2020, seeking $2,000,000.00 in damages related to the March 13, 2019, death of Chris Brown (the "Decedent"). The Decedent passed away following a single-vehicle rollover accident on State Highway 316 North ("Highway 316"). Claimant alleged in the complaint that the accident occurred because Highway 316 was flooded due to issues with the ditch next to the roadway.

2. Respondent filed an Answer denying liability.

3. The Claims Commission previously entered two orders in this claim: (1) a March 25, 2022, order granting Respondent's motion to substitute counsel; and (2) a May 13, 2022, order granting Respondent's motion to continue the hearing until August 19, 2022; denying Claimant's

motion to exclude expert testimony of Stan Andrews and Dr. Chandra Thorbole; and providing a scheduling order for the parties.

4. At the beginning of the hearing, the Claims Commission considered Claimant's prehearing motion to exclude Respondent's Exhibit No. 4. However, Claimant's counsel confirmed that he was withdrawing the motion. As such, the motion was dismissed as moot.

5. At the beginning of the hearing, the Claims Commission considered Claimant's prehearing motion to exclude the expert opinion by Dr. Chandra Thorbole, which was disclosed outside of the time frame permitted in the scheduling order. Dr. Thorbole's opinion related to whether the Decedent would have survived the crash had he been wearing his seatbelt. Claimant argued that Dr. Thorbole is not a medical doctor and that his opinion is based on statistics, not specific facts in this claim. Respondent argued that, in March 2022, Respondent was still trying to get an unredacted copy of the coroner's report and that Dr. Thorbole supplemented his findings following receipt of the unredacted report. Respondent also argued that, as a biomechanical engineer with significant medical training, Dr. Thorbole can determine to a degree of biomechanical certainty whether the roof intrusion would have injured the Decedent or would have contributed to his death. The Claims Commission found that, while the attorneys representing Respondent at the hearing were not involved prior to March 2022, Respondent had already been given significant latitude with regard to Respondent's untimely expert witness disclosures. The Claims Commission also found that Dr. Thorbole's new opinion was disclosed after the extended time set for Claimant to identify any rebuttal witnesses, such that it would have been highly prejudicial to Claimant to allow Dr. Thorbole to testify regarding this untimely disclosed opinion. As such, the Claims Commission unanimously voted to GRANT Claimant's motion to exclude

testimony related to Dr. Thorbole's opinion regarding whether the Decedent would have survived the accident if he had been wearing his seatbelt.

6. At the beginning of the hearing, Respondent orally moved to exclude photos of the Decedent following the accident. Claimant's counsel agreed that he did not plan to introduce the photos (which were listed as Claimant's Exhibit No. 20). As such, the Claims Commission dismissed the motion as moot.

7. At the beginning of the hearing, the Claims Commission considered Claimant's motion to exclude certain opinion testimony of Stan Andrews and advised the parties that Mr. Andrews' testimony will be given the weight deemed appropriate by the Claims Commission, if not outright rejected.

8. At the beginning of the hearing, the Claims Commission considered Respondent's motion to exclude the affidavit of Tina Morrow. The Claims Commission found that Respondent's motion was mooted by Ms. Morrow's appearance at the hearing.

9. At the beginning of the hearing, the Claims Commission considered Respondent's motion to exclude Dr. Ralph Scott's use of VSL data. Claimant's counsel stated that the VSL tables would be removed from Dr. Scott's report and that a revised report would be circulated to Respondent and the Claims Commission, which Respondent agreed mooted its motion.

10. The Claims Commission admitted Respondent's Exhibit Nos. 1–5 (without Dr. Thorbole's supplemental report in Respondent's Exhibit No. 3) without objection, aside from Claimant's standing objection to Mr. Andrews' report. The Claims Commission admitted Claimant's Exhibit Nos. 1–19 and 21 without objection.[1]

11. The parties agreed to rely upon the pretrial briefs in lieu of opening statements.

[1] Claimant's Exhibit No. 20 was not introduced by Claimant, as explained further in Paragraph 6.

12. The witnesses were sworn in by the chair commissioner.

Testimony of Debbie Brown

13. Claimant called Debbie Brown to testify.

14. Mrs. Brown testified that she has lived in Marvell, Arkansas, for 30 years. She is a medical staff coordinator for Helena Regional Medical Center. Mrs. Brown has three children. The Decedent was her youngest child. Mrs. Brown described the Decedent as very studious, a leader in his class, and a volunteer firefighter. He loved to hunt and fish. He had a 4.0 grade point average and was attending Phillips Community College with a plan to become a nurse anesthetist. Claimant's Exhibit No. 6 includes Claimant's transcripts and information about the induction ceremony for his collegiate honor society.

15. Mrs. Brown and her husband have a family farm. The Decedent helped with the farm.

16. Claimant's Exhibit No. 5 is a drone image of the roads involved in the accident. Mrs. Brown pointed out where the accident occurred near the intersection of Highway 316 and County Road 261 (the "Intersection"). Highway 316 runs north-to-south in the image. County Road 261 ("CR 261") runs west-to-east. On March 13, 2019, Mrs. Brown was at home not feeling well. The Decedent had attended classes that day. Mrs. Brown last saw the Decedent before he went to town to the firefighter gathering. After Mr. Brown came home with food from the firefighter gathering, he got a phone call to go to the accident scene.

17. When Mr. and Mrs. Brown got to the accident scene, there were other vehicles there. Water was running down the road. Mrs. Brown was stopped by a firefighter who told her that the Decedent had passed away. Someone took Mrs. Brown back to her vehicle.

18. Claimant's Exhibit No. 1 at 263–264 has photographs that Mrs. Brown took.

19. Claimant's Exhibit No. 14 is a video that Mrs. Brown took, which shows water running down the highway on the night of the accident.

20. The following day, Mrs. Brown went back to the accident scene because it was where the Decedent was last alive. She looked at the accident scene and the debris of what had come out of the Decedent's truck. Mrs. Brown picked up a soda can, fishing lures, a tackle box, a debit card, and a piece of the windshield. Mrs. Brown went back to the accident scene every day afterwards. Someone put a cross up. After the accident, and before Respondent widened the ditch, Mrs. Brown saw the road flood many times. It just took a little bit of rain to cause the road to flood. Claimant's Exhibit No. 2 includes photographs of the road flooded.

21. Mrs. Brown learned that Respondent made repairs to the ditch when she heard an employee of Respondent talking in a restaurant. Claimant's Exhibit No. 4 is a photograph of the ditch being widened. Mrs. Brown has not seen the road flooded as much since the ditch was widened.

22. The Decedent's funeral was held in a gym because the original planned location was not large enough to accommodate all of people attending the funeral.

23. The Decedent was well liked, and he valued his life. Losing the Decedent has changed Mrs. Brown's world. Claimant's Exhibit No. 21 shows the amount of work that Mrs. Brown has missed since the Decedent passed away. She took FMLA leave and used all of her sick leave. Mrs. Brown has gone to grief counseling in Jonesboro and had three days of in-patient treatment in Little Rock. Currently, Mrs. Brown battles depression and noted that it is a "roller coaster."

24. The Decedent was a careful driver. He knew that Mrs. Brown worried, so he would call to let her know when he arrived somewhere. As an example, Mrs. Brown recalled a time where the Decedent called her to say that he was okay after getting caught in a rainstorm.

25. Mrs. Brown noted that it is hard to go to church without the Decedent there.

26. On cross-examination, Mrs. Brown confirmed that she has received $100,000.00 in insurance payouts related to the Decedent's death: (1) $50,000.00 from a fire department policy; (2) $10,000.00 policy from Mrs. Brown's employer; and (3) $40,000.00 accidental death insurance policy from Mrs. Brown's employer. Mrs. Brown said that she is seeking to be reimbursed for the lost wages listed in Claimant's Exhibit No. 21, as well as her medical bills from Bridgeway. In reviewing Claimant's Exhibit No. 5 showing the aerial drone footage of the accident location, Mrs. Brown said that the dark line showed David Carruth's field (the "Carruth Property") draining into the ditch. She stated that the Decedent would have been able to help with the farm for awhile after he started his nurse anesthetist training but acknowledged that, in her deposition, she testified that the nursing program would be very strenuous. On the day of the accident, the Decedent left the house between 7:00–7:30 p.m. It was not raining when he left. The Decedent went to the location where Mr. Brown was cooking, then left to go to a friend's house.

27. Respondent then orally moved to exclude Mrs. Brown's claims for reimbursement of lost wages or medical bills. Claimant's counsel confirmed that Claimant is not seeking those damages. As such, the Claims Commission found that the motion was dismissed as moot.

Testimony of Joe Brown

28. Claimant called Joe Brown to testify.

29. Mr. Brown testified that he has lived in a ten-mile area for his entire life. He has a 700-acre farm. He farms beans and corn and does it pretty much by himself. The Decedent helped

a lot when he had time. His older son, Nathan, has come back from Jonesboro to help with the farm since the Decedent's death.

30. Mr. Brown explained that Claimant's Exhibit No. 7 is a picture of the Decedent with Governor Asa Hutchinson taken after the Decedent sold Governor Hutchinson a t-shirt while the Decedent was volunteering at a festival.

31. On March 13, 2019, Mr. Brown was grilling for three volunteer fire departments. As everyone was heading home, the Decedent drove up to see if there was any food left for Mrs. Brown. Mr. Brown said that he was going home and would take some food to her. The Decedent ate and then said he was going out to the derby car shop. Mr. Brown told him to be careful, and that was the last thing Mr. Brown said to the Decedent.

32. When Mr. Brown arrived at home, he carried some food inside, then he got a phone call from someone telling him that the Decedent had been involved in an accident. Mr. Brown knew at that time that the Decedent had not survived the accident and regrets not telling Mrs. Brown then.

33. When Mr. and Mrs. Brown arrived at the accident scene, he recalls seeing an overturned vehicle, different colored lights, and rescue vehicles. Mr. Brown went to take pictures, but when he realized that his phone was dead, he asked Mrs. Brown to take pictures. Another firefighter saw Mr. Brown running toward the Decedent's vehicle, told him that the Decedent had passed away, and asked Mr. Brown to let the emergency workers do their jobs. Mr. Brown could not do anything to help, so he prayed.

34. Claimant's Exhibit No. 14 shows the water in the roadway. Mr. Brown said that it was over his feet. He was wearing boots, but if he had been wearing dress shoes, the shoes would

have been full of water. The video shows flowing water, not standing water. The water was flowing south.

35. Claimant's Exhibit No. 1 at 302 shows the headlight from the Decedent's vehicle in the water. Mr. Brown noted that you can see the white line of the roadway under the water.

36. Claimant's Exhibit No. 1 at 303 shows the bumper from the Decedent's vehicle near the white line of the roadway. Claimant's Exhibit No. 1 at 298–299 shows the same bumper near the Carruth Property.

37. The following day, Mr. Brown went back to the accident scene with Mrs. Brown to look for anything that belonged to the Decedent, including the Decedent's Apple watch. They found the Decedent's debit card. Items had been carried down the road by the flowing water. There was still standing water the following day.

38. Claimant's Exhibit No. 2 at 372 shows part of the headlight from the Decedent's vehicle. Rocky Ford took the picture. Mr. Brown and others had picked up pieces of the headlight and piled them up in this location. He did not know that those pieces would be used to say that the Decedent was speeding at the time of the accident. Mr. Brown has been back to the accident scene many times.

39. Claimant's Exhibit No. 2 at 238 is a photograph Mr. Brown took of water on the roadway at the accident scene. This photograph shows a truck coming in the same area where the Decedent's accident occurred. He is not sure how much rain had fallen when the photograph was taken, but he stated that one-half inch of rain would bring the water over the highway.

40. Claimant's Exhibit No. 2 at 192 is another photograph taken by Mr. Brown. He noted the sunny skies and the ditch still full of water. Mr. Brown stated that this photograph shows the grass blocking the flow of water and that the water goes across the highway near the sign.

41. Losing the Decedent has been a struggle. It is difficult seeing a truck the same color as the Decedent's vehicle and not having the Decedent available to help on the farm. Before the accident, the Decedent helped a lot on the farm. But in 2019, the farm lost money, which Mr. Brown approximated at $50,000.00. Nathan Brown helped when he could, and Mr. Brown had to hire a couple of guys but could not find good tractor drivers like the Decedent because the good tractor drivers all already had employment. In 2020, the farm did a little better, but 2022 was a "catastrophe."

42. Mr. Brown takes medicine to help with the pain of losing the Decedent. He has been to his family doctor several times, and the family doctor has increased Mr. Brown's dosage. Mr. Brown has not been able to afford counseling.

43. Claimant's Exhibit No. 6 at 1059 is the funeral home invoice for $7,287.47. Mr. Brown testified that he also had a $600.00 gravedigging expense.

44. Claimant's Exhibit No. 16 is the estimate for the Decedent's headstone, although Mr. Brown clarified that the estimate for $11,864.48 has since expired.

45. Mr. Brown stated that the loss of the Decedent is not something you get over. Mr. Brown only has his wife, two of his children, and a sister left. He got to say goodbye to his parents and one of his brothers. The last words that the Decedent heard Mr. Brown say were "be careful." The Decedent would help anyone, and Mr. Brown called him "little man."

46. On cross-examination, Mr. Brown clarified that it was not raining when the Decedent left the cookout because they were sitting on the tailgate. It may have been drizzling. The Decedent was headed to the derby car shop, which is a place that he went three times per week or whenever he had time. The Decedent and others were working on derby cars there. Mr. Brown would help prep the packed dirt for the area, and the Decedent would mow the grass. The Decedent

wanted to build his own derby car. Regarding Claimant's Exhibit No. 5, Mr. Brown is not sure whether CR 261 is at a higher elevation, but CR 261 must drain into the ditch alongside Highway 316. The resting point of the Decedent's vehicle was near the road sign, and the pile of headlight pieces was south of the accident scene. Referring to Claimant's Exhibit No. 1 at 372, Mr. Brown cannot identify which pieces of the headlight were moved to that spot. He noted that other people were there before Mr. Brown arrived. Mr. Brown does not think he would have picked up the pieces of the headlight that were very small. Mr. Brown confirmed that he is not making a claim for damages based upon his farm losses. Mr. Brown does not know if NEA Counseling would have been free or low cost, but he stated that there was always a co-pay. He was focusing on his wife's counseling. Mr. Brown preferred to sit on a tailgate in a field to grieve the Decedent. Regarding Claimant's Exhibit No. 2 at 238, Mr. Brown stated that this photograph was taken after the Decedent's accident, but he does not know exactly when. He noted that the blue truck in the photograph made it through the water without rolling over, but he clarified that this photograph was taken during the day and that the water in the roadway is not visible at night.

47. On redirect, Mr. Brown testified that the Decedent was a careful driver. Mr. Brown took the Decedent to accident scenes with the fire department to show him the consequences of driving recklessly.

48. Upon a question from a commissioner, Mr. Brown confirmed that the Decedent was living at home prior to the accident.

Testimony of Tina Morrow

49. Claimant called Tina Morrow to testify.

50. Ms. Morrow lives in Lexa, Arkansas, and she used to be a bus driver for the school district. She knows who the Decedent was. Ms. Morrow was a bus driver when the accident

occurred. She saw the area of the Intersection flooded prior to the Decedent's accident. Ms. Morrow called Respondent to report the flooding before the accident, but no one did anything to address the flooding until after the Decedent's accident.

51. On cross-examination, Ms. Morrow stated that she does not know who she spoke with when she called Respondent. She told Respondent that there is a ditch beside the road that needs to be dug out because water would stand on the road when the ditch filled up. Ms. Morrow clarified that the flooding occurred near the Intersection. Ms. Morrow lives on CR 261, so she goes through the Intersection daily. She has never had an accident due to the flooding in the roadway. Ms. Morrow only called Respondent once to report the flooding. She does not know anyone who works for Respondent. The flooding happened by the Carruth Property. Ms. Morrow did not send any documentation to Respondent regarding her concerns.

Testimony of Clay Young

52. Claimant called Clay Young to testify.

53. Mr. Young lives in Lexa, Arkansas, on Highway 316. He is familiar with the area of the Decedent's accident. His land (the "Young Property") is northeast of the Intersection. He has owned the Young Property for 31 years and has observed the flooding. Respondent performed repairs on the ditch near the Young Property by digging it out in 2014, but the digging stopped at the end of his property line. Respondent came back to dig out the ditch after the Decedent's accident. After 2014, Mr. Young saw flooding along the Carruth Property. Mr. Young has never talked to anyone at Respondent about the flooding but said that everyone knew it was a problem.

54. On cross-examination, Mr. Young stated that his house sits in the middle of the Young Property. His house is a quarter mile from the Intersection. Respondent has worked on ditch issues around Mr. Young's house and put in a culvert when Mr. Young built his house. CR

261 is the southern border of Mr. Young's farm. He has seen CR 261 drain onto Highway 316. Mr. Young knows James Wallace, who used to work for Respondent, as well as another employee named Tony. Mr. Young had general conversations with Respondent's workers about the flooding, but it has flooded so many years that everyone knew it was a problem. He talked with Respondent about an issue one quarter mile north of the Intersection, and Respondent fixed that issue. He did not talk to Respondent about that Intersection.

Testimony of Lauren Reeves

55. Claimant called Lauren Reeves to testify.

56. Ms. Reeves lives on Highway 316 in Poplar Grove, Arkansas. She has lived there since 2014 and is familiar with the area of the Decedent's accident. Looking at Claimant's Exhibit No. 5, Ms. Reeves lives one mile north of the Intersection. She drives that road all the time and observed flooding before the Decedent's accident.

57. Claimant's Exhibit No. 8 is a video taken by Ms. Reeves on June 1, 2018. She took the video showing the flooded Intersection to show her frustration in trying to get home. Ms. Reeves complained to Respondent about the flooding. She called Respondent in 2016 and later wrote a letter about the continued flooding. Ms. Reeves mailed that letter to Respondent's address on I-49. She never received a follow up call from Respondent, and nothing was done to address the flooding until after the Decedent's accident. Ms. Reeves does not have a copy of the letter that she sent to Respondent.

58. On cross-examination, Ms. Reeves stated that she did not send the video to Respondent. She used the video to show her family and friends the condition of the road. She does not recall the name of the person she spoke with at Respondent's office. Ms. Reeves said that her letter was addressed to Respondent, not to a specific person. She did not follow up on her letter

with another phone call. Ms. Reeves does not know anyone who works for Respondent. CR 261 spills water onto Highway 316. There are a lot of farms on this road, and farms will drain into roadside ditches sometimes.

59. On redirect, Ms. Reeves noted that at the eight-second mark in the video found at Claimant's Exhibit No. 8, the water is flowing from the ditch onto Highway 316. Ms. Reeves called Respondent prior to the Decedent's accident and sent the letter to Respondent after the Decedent's accident.

60. On re-cross, Ms. Reeves confirmed that after the eight-second mark of the video, the water seen at the bottom of the screen is in the ditch.

Testimony of Bernie Auld

61. Claimant called Bernie Auld to testify.

62. Mr. Auld is an expert witness on hydrology issues. Claimant's Exhibit No. 10 is Mr. Auld's curriculum vitae. He has 30–40 years of experience in water safety. He has helped with roadway design for states, including Arkansas, as well as the federal government. Mr. Auld is a professional engineer in Arkansas.

63. In connection with this claim, Mr. Auld reviewed photographs, depositions, and videos. He is familiar with the guidelines for roadways.

64. Mr. Auld stated that Respondent deviated from the applicable standards and guidelines with respect to the Intersection.

65. Claimant's Exhibit No. 11 is a copy of Mr. Auld's presentation. The first slides show the cross-section of the road and ditch. The standard for highway ditches is a minimum of two feet. Respondent is responsible for the maintenance. The minimum culvert size is eighteen inches. One of the slides shows a buildup of grass and other materials preventing drainage from

the roadway. The inset photograph shows water in the roadway even after a rain event because the water is not able to overcome the buildup of grass. Mr. Auld stated that the right-of-way goes up to the power poles in the photographs.

66. The next slide shows how the height of soil and grass built up on the side of the roadway affects how much rain is required for the roadway to be inundated with water. Where the buildup of soil and grass is one inch tall, water will inundate four feet of the roadway. Where the buildup is two and one-half inches tall, water will cover the roadway. Where the buildup is three inches, the roadway will be overtopped by three-eights of an inch of water. The buildup of material evident from the photographs in the slide forces water into the roadway.

67. In discussing a slide showing the "proper standard of care conditions," Mr. Auld explained the importance of maintaining the ditch to ensure positive run-off.

68. Mr. Auld set out one of Respondent's maintenance standards titled "Inspect, Clean and Repair Minor Drainage Structures" (referred to as Function 441) in a slide, noting the following language:

> Emphasis to be placed on regular inspection and cleaning of all minor drainage facilities with repairs and replacement as necessary to prevent catastrophes and emergencies as much as possible. Work may be accomplished more efficiently and skillfully before it is under water, plugged up, or partially washed out.
> …
> Inspection and cleaning will be performed by proceeding along the roadway checking each drainage feature in sequence.
> …
> Inspections should be made during rains to locate trouble spots and insure [sic] that trash doesn't block necessary drainage facilities.

Mr. Auld stated that Respondent did not follow the Function 441 maintenance standard.

69. Mr. Auld set out another of Respondent's maintenance standards titled "Clean and Reshape Ditches" (referred to as Function 442) in a slide, noting the following language:

> Definition[:] Machine Cleaning and reshaping of roadside ditches and other side ditches with excess material loaded, hauled and disposed of.
>
> Guide[:] When normal drainage flow in ditches is obstructed or impeded because of erosion of back slopes, inslopes, ditches or natural channels deposit silt, sand, vegetation and other materials therein, cleaning is required to restore proper drainage pattern.

Mr. Auld stated that Respondent did not follow the Function 442 maintenance standard. When normal drainage flow is obstructed, ditches should be cleaned to restore proper drainage pattern. You should not see standing water in a ditch or water being forced onto the pavement. Mr. Auld stated that whether these maintenance standards were met is easily observable.

70. Another slide shows the ditch filled in, and water forced across the roadway. Without a continuous ditch, there is nowhere for the water to go except the roadway. Once water is in the roadway, Mr. Auld asserted that it is Respondent's job to convey the water in a safe manner. Any water that enters the right-of-way is Respondent's job to handle. The root cause of the drainage issues in this photograph is the obstruction south of the Intersection.

71. Another slide shows the ditch holding water. This demonstrates a lack of maintenance.

72. 'Overtopping' refers to water going over the crest of the road. From the previous slide calculating the amount of roadside buildup necessary to inundate the roadway with water, it is known that the water on the side of the roadway is at least two and one-half inches deep. That is known to a mathematical certainty. In this photograph, there is a significant amount of roadway inundation.

73. Mr. Auld pointed out that the lanes did not have retroreflective lighting. Respondent objected to this testimony but conceded that Mr. Auld discussed this at his deposition. The chair commissioner instructed Claimant's counsel to move on from this point.

74. Another slide shows water "unravelling" the shoulder, which could create a drop-off and cause a driver to lose control of his or her vehicle. Mr. Auld noted that this photograph also shows water present after a rain event.

75. Another slide compares the rainfall recorded by three nearby National Oceanic and Atmospheric Administration (NOAA) rain gauges in Marianna, Helena, and west of Marvell. The average rainfall for those three gauges on March 13, 2019, was 0.02 inches.

76. In another slide, the average of the three NOAA rain gauges would suggest that the roadway at the accident scene would have been overtopped by water twice in February 2019, twice in January 2019, and four times in December 2018.

77. Mr. Auld provided excerpts from Respondent's drainage manual. Section 1-200 states that the gutter should limit the ponding of water so that at least one lane of traffic can travel safely. When this standard cannot be met, Respondent should notify law enforcement and have barricades and signage placed to warn motorists.

78. Mr. Auld included slides on Arkansas's storm water law and the glossary from the drainage manual.

79. Mr. Auld also included the federal Geometric Design Criteria for Non-Freeway Resurfacing, Restoration, and Rehabilitation Projects, which were adopted by Respondent. These guidelines are sometimes referred to as "RRR" or the "Three Rs." The purpose of these guidelines is to "preserve and extend the surface life of existing highways and to enhance safety." Mr. Auld stated that the accident scene does not meet Sections 4.2 (regarding the cross-section of the roadway) or 5.1 (regarding the pavement drop off) of the RRR.

80. Mr. Auld included a photograph from the accident scene, which shows a portion of the Decedent's vehicle in the ditch. He stated that this photograph shows the buildup on the side

of the roadway and water in the roadway from a lack of proper maintenance. Even if Respondent did not have the funding to fix the problem, Respondent had a duty to notify the motoring public with barriers. Had Respondent properly maintained the road, Claimant would not have had to file this claim.

81. Mr. Auld concluded that Respondent failed to comply with the applicable guidelines and standards for the maintenance and drainage of Highway 316 by not maintaining at least one lane of travel and failing to notify the public.

82. On cross-examination, Mr. Auld confirmed that he has not scheduled maintenance for highways. He also confirmed that the Marvell and Helena rain gauges did not register any rain on March 13, 2019. He has not been to the accident site to measure the buildup on the edge of the roadway. He acknowledged that some of the recent work by Respondent was completed by the time he became involved in this matter. Mr. Auld stated that, because of the inundation of the road, he can determine the height of the ridge. It is possible that CR 261 also has drainage issues, and he does not know who maintains that road. Functions 441–442 are maintenance standards, not requirements or directives. There is no maintenance schedule provided. Mr. Auld created the cross-section of the roadway and the ditch. That information was not part of the roadway design plan. Mr. Auld does not know the original design of the road. He is not offering an opinion as the cause of the accident or the cause of the Decedent's death. It is up to the state to determine what road projects are to be designated as RRR projects. Highway 316 has not been approved for such funding to Mr. Auld's knowledge.

83. On redirect, Mr. Auld stated that Respondent took over Highway 316 in the 1970s. There is no dispute that the Decedent's accident was caused by hydroplaning. Mr. Auld's testimony is that there was at least two and one-half inches of water in the roadway because

Respondent failed to maintain the right-of-way or to notify the public of the hazardous condition. If there was a drainage problem with CR 261, Respondent would have to take care of any water that came onto Highway 316 under state guidelines. Respondent objected to Mr. Auld offering a legal opinion, and the Claims Commission sustained Respondent's objection.

84. On re-cross, Mr. Auld confirmed that he did not have the reference for the county road drainage issue with him.

Testimony of Nathan Brown

85. Claimant called Nathan Brown to testify.

86. Mr. Brown has lived in Jonesboro, Arkansas, since 2011. He is married with one child. Mr. Brown was ten years old when the Decedent was born. Mr. Brown and the Decedent became close as the Decedent got older. They talked multiple times each week.

87. On March 13, 2019, Mr. Brown received a phone call from a friend while he was at work telling him to go to the accident scene. As he was coming into Wynne, Arkansas, he received another phone call from his father telling him to slow down because the Decedent had passed away.

88. Mr. Brown has days when he does not want to get out of bed. He said that his work ethic has plummeted and that he cannot take his mind off the loss of the Decedent.

89. Mr. Brown said that his sister is not present at the hearing because she is a school counselor and had to be at work. She was a mother hen to him and to the Decedent. Mr. Brown has observed his sister's grief and stated that she was in counseling for a period of time but prefers dark silence to grieve.

90. Mr. Brown noted that the Decedent was not an average teenager. This accident could have been prevented. The Decedent was an extraordinary kid and honor student. He woke up ready to help people.

91. Respondent declined to cross-examine Mr. Brown.

Testimony of Dr. Ralph Scott

92. Claimant's counsel proffered a revised report by Dr. Ralph Scott to replace Claimant's Exhibit No. 13. Claimant's counsel confirmed that the revised report is restricted to lost earnings and that only Tables 1–2 need to be considered. Respondent stipulated to the admission of the revised report but not to the validity of the revised report.

Testimony of Montae Hernandez

93. Respondent called Trooper Montae Hernandez to testify.

94. Trooper Hernandez works for the Arkansas State Police. As a state trooper, he patrols state highways. In 2019, he was assigned to Troop D covering several counties including Phillips County. He is familiar with the Decedent's accident.

95. When Trooper Hernandez was dispatched to the accident scene, that was the first time he had been on Highway 316. Upon arrival at the scene, he saw a Toyota Tundra in the eastbound ditch. Referring to the accident report, the vehicle was 59 feet south of the Intersection on its side facing the western side of the road. It was raining when he arrived and throughout his investigation.

96. Trooper Hernandez looked at the damage to the vehicle and walked down the south portion of Highway 316, where he saw two separate locations where the vehicle had impacted the ditch.

97. Trooper Hernandez stated that the roadway was covered in water.

98. He saw the Decedent facedown in the water with the vehicle on top of him. The Decedent was not wearing a seatbelt because there was no slack in the seatbelt.

99. In the accident report, Trooper Hernandez provided measurements to show how far the vehicle was off the roadway. He took photographs of the accident scene.

100. On cross-examination, Trooper Hernandez stated that his boots were submerged in the water at some spots. He was on the scene for at least one hour. He saw water flowing in the roadway but cannot recall which direction the water was flowing. Claimant's Exhibit No. 1 at 298 is a photograph taken by Trooper Hernandez. There is a beer bottle visible in the picture, but there is no evidence that the Decedent was drinking, and the toxicology report came back negative. Claimant's Exhibit No. 1 at 299–314 are additional photographs taken by Trooper Hernandez.

Testimony of Robert Gray

101. In Claimant's case-in-chief, Claimant proffered the deposition of Robert Gray, which was received without objection.

102. Respondent called Mr. Gray to testify.

103. Mr. Gray is Respondent's area maintenance supervisor in Phillips County and has served in that role since 2017. He has worked for Respondent in maintenance for 24 years. He is familiar with the accident scene. The topography of CR 261 slopes down toward Highway 316.

104. Mr. Gray stated that farmers can clean out the ditches adjacent to their property, but there is a process involving the farmer putting up a bond. Farmers cannot change the slope of the ditch. To the best of his knowledge, neither David Carruth nor Clay Young ever went through this process.

105. He noted that Respondent is not responsible for water coming from the farms. Highway 316 was not designed by Respondent. It was a county road that Respondent took over at some point.

106. Mr. Gray said that, to his knowledge, no one at his office ever received a call about flooding on Highway 316 prior to the Decedent's accident. His office keeps a record of people that call with complaints.

107. Respondent digs out ditches as needed. There is no set policy. If a landowner complains, or if one of Respondent's employees sees a blockage, the maintenance crew brings out equipment. Mr. Gray is familiar with Functions 441 and 442. There is no time frame for that maintenance.

108. Mr. Gray tries to go down every road in Phillips County at least once per week. He never saw too much grass in the ditches and never saw water overtopping the roadway south of the Intersection.

109. On cross-examination, Mr. Gray said that he is not aware of any standard for measuring the ditches. If water is flowing, the ditch must be deep enough. Mr. Gray acknowledged that Claimant's Exhibit No. 2 at 192 shows standing water and that the ditch is out of compliance. Mr. Gray interprets Functions 441 and 442 as standards that he follows and that are applicable to his job. He does not document when he inspects a roadway, but he does document when he finds a concern. He could look at the GPS to confirm whether he went by this stretch of highway, but he has not done that. Mr. Gray acknowledged that it is his responsibility to fix a problem before it results in a catastrophe whenever possible. Mr. Gray went to the Intersection the day after the accident and did not see any water on the road. "Mopping out" a ditch falls under Function 441, and machining the ditch to reestablish flow falls under Function 442. Respondent reshaped the

ditch ten months after the Decedent's accident. This reshaping was done because of a complaint by Clay Young, not because of the Decedent's accident. When Mr. Gray finds a problem, he talks to the maintenance crew supervisor to schedule a trackhoe. Mr. Gray has never seen flooding in the area of the accident. He has never seen an issue with water coming off of CR 261 onto Highway 316.

110. On redirect, Mr. Gray looked at Claimant's Exhibit No. 2 at 192 and said that the work done on the ditch was done to reshape the entire ditch from CR 261 to the next cross-drain.

Testimony of Matthew Emberton

111. In Claimant's case-in-chief, Claimant proffered the deposition of Matthew Emberton, which was received without objection.

112. Respondent called Mr. Emberton to testify.

113. Mr. Emberton is Respondent's district maintenance engineer for District 1. He has worked for Respondent since 2008 and in maintenance since 2015. District 1 covers multiple counties, including Phillips County. He oversees area maintenance supervisors.

114. Mr. Emberton tries to get over every part of the highway system in his district every two months. Other folks do, as well.

115. Functions 441 and 442 are functions that Respondent performs. There is a maintenance manual, as well. A chart in the back sets out the schedule for Function 441 and 442. Those functions are expected to be performed in March, April, or May. The chart allows crews to build a workplan.

116. Mr. Emberton is familiar with the Intersection. The topography of the highway is relatively straight. There is good visibility.

117. He is not aware of any complaints of water in the roadway near the Intersection. Those complaints are typically fielded at the local level by the area maintenance supervisor. If Mr. Gray had scheduled work to be done, Mr. Emberton would know about it.

118. Mr. Emberton is aware of two phone calls from Ms. Morrow, one of which was regarding the Barton school.

119. CR 261 and adjacent farmland flow into Highway 316.

120. It is quite a process if a farmer wants to clean out the ditches adjacent to his or her land. A formal letter must be issued by Respondent. Depending on circumstances, a farmer may have to have traffic control in place.

121. On cross-examination, Mr. Gray confirmed that for a farmer to clean out the ditches, the farmer must put up a bond, meaning that money is spent upfront. The approval can be as quick as a week, but if it involves a lane closure, it can take longer. Mr. Gray stated that the accident site was on Respondent's right-of-way. Mr. Gray saw videos of water overtopping the road and agreed that Respondent should proactively try to fix problems. He did not personally know about the flooding issue but agreed that if ditches cannot flow, they need to be fixed. Referring to Claimant's Exhibit No. 2 at 192, Mr. Emberton stated that he cannot tell if there is a ditch from the photograph but confirmed that there should be a ditch. He has been unable to find any engineering plans for this section of roadway and could not find any measurements to see if the ditch fits the standards. The buildup seen in Claimant's Exhibit No. 2 at 192 happens over time and prevents proper drainage.

122. On redirect, Mr. Emberton testified that he does not know the design flood stage for Highway 316. If a design flood stage is exceeded, there will be water in the road. Depending on the intensity of the rainfall, it can happen. The design flood stage refers to the maximum that

the ditches, culverts, cross-drains, and side drains are designed to handle. It is not the responsibility of Respondent to keep all water off the road at all times.

123. Upon a question from a commissioner, Mr. Emberton confirmed that efforts are made by Respondent to see the roadways in various weather conditions.

Testimony of Cannon Callicott

124. In Claimant's case-in-chief, Claimant proffered the deposition of Cannon Callicott, which was received without objection.

125. Respondent called Mr. Callicott to testify.

126. Mr. Callicott is Respondent's district engineer for District 1. He has been employed by Respondent for 26 years and has held a variety of engineering positions. His role is largely administrative.

127. Highway 316 has been a state highway since 1974. In the 1960s and 1970s, there were a lot of unimproved county roads that were made part of the state highway system because the state had more money for road improvements. There is a difference between an 'inherited' county road and a road built by Respondent. Inherited county roads are not brought up to current standards using maintenance funds because bringing a road up to current standards is considered a rebuild.

128. When Respondent designs a ditch on a highway, the side drains and ditches are designed for a 'two-year-storm.' If the road is inherited, the ditch is just shaped and fit to what is there.

129. If the ditch is not sufficient, Mr. Callicott stated that water could overtop the road.

130. Counties maintain county roads. Respondent has no responsibility or maintenance rights for county roads. If the county road is a gravel road, the county will grade the road.

131. There are a variety of ways for Respondent to receive complaints, including telephone calls to one of Respondent's offices, notification by law enforcement, and the reporting option through Respondent's website. There may also be options through social media. As much as possible, the local offices handle maintenance issues. Mr. Gray could handle pothole repairs or tree issues. If a ditch needed to be regraded, though, a trackhoe would be scheduled through the district.

132. Each office handles complaints with its own system. The records available might depend on the way the complaint comes into the office. If there is a flooding complaint, Respondent sends folks out to verify and to put up signs and barricades.

133. The district did not receive any road issue reports the night of the Decedent's accident. That same night, however, Lee County had two reports.

134. Mr. Callicott has seen water running into the right-of-way from farms. Grading and crop choice can all affect water coming into the ditches, although not typically to the extent seen in this situation.

135. There was some ditch work completed on Highway 316 before Mr. Callicott started in his position. Some additional work was done recently.

136. 'Mopping out' means cleaning out the drain. This is usually minimal. Usually, a 'mop out' is triggered by complaints by the public. A mop out is done by a district maintenance crew. Minor work with a backhoe can be done by a county crew.

137. RRR projects came about in the late 1980s and 1990s. When Respondent constructs a roadway, it must meet those standards in order to get the funding.

138. Mr. Callicott is not aware of any complaint from flooding on Highway 316.

139. In the videos showing the accident scene, the water is moving, so that indicates drainage because the water is going somewhere. The water is not leaving the roadway as quickly as everyone would like. There is more flow than there is capacity to drain.

140. Respondent must use maintenance funds to maintain the capacity of a highway when it was built, meaning a two-year storm.

141. On cross-examination, Mr. Callicott stated that the flowing water makes sense given the topography of the Intersection. Highway 316 is not an RRR project because acquisition of the highway happened prior to the start of the RRR program in the 1980s. Highway 316 cannot become an RRR project until Respondent reconstructs the highway. Mr. Callicott is not testifying that Respondent has no responsibility for an inherited highway until the highway is rebuilt. He does not know the particular design for Highway 316. The intensity of the rainfall matters more than the amount of rain. The ditch at issue here met the two-year storm requirement. This requirement means that, on average, a two-year storm will exceed the capacity of the ditch. Referring to Claimant's Exhibit No. 2 at 192, this ditch would meet a two-year design storm, although it does show water ponding south of the Intersection. Claimant's Exhibit No. 2 at 106 is another two-year rain event, as is Claimant's Exhibit No. 2 at 116. However, Claimant's Exhibit No. 2 at 116 has water pooling south of the Intersection that must be from CR 261. Claimant's Exhibit No. 2 at 112 shows water going over the road where the deeper part of the ditch ends. Claimant's Exhibit No. 3 is dated June 2014 and shows work being performed north of the Intersection on the Young Property. If someone reported an issue to one of the people working for Mr. Gray, it would not necessarily get back to Mr. Gray. People are prone to hyperbole, such as saying that a certain road is the worst in the state. If Mr. Young told workers about the flooding, those workers do not have to report every complaint to their supervisor. That is not a requirement

in the personnel manual. Mr. Callicott has no evidence regarding whether Ms. Morrow or Mr. Young were or were not telling the truth.

142. On redirect, Mr. Callicott stated that CR 261 goes uphill from Highway 316. On the aerial picture, you can see drainage coming from the Carruth Property. The mop out of the ditch adjacent to the Young Property was not continued south of the Intersection because it was beyond the scope of the complaint received by Respondent, and Respondent did not want to disturb the vegetation (a ditch with no vegetation will wash out).

143. On re-cross, Mr. Callicott testified that he is not sure of the date of the work done on the Carruth Property. He knows that it was regraded based on the Google Earth images.

Testimony of Stan Andrews

144. Respondent called Stan Andrews to testify.

145. Mr. Andrews is an accident reconstructionist. He has a bachelor's degree in biological and agricultural engineering and a master's degree in engineering. He has worked mostly in the field of mechanical engineering. Mr. Andrews worked at Tyson for seven years designing and building equipment. He has been working in the field of accident reconstruction for 22 years.

146. Mr. Andrews did a reconstruction of the Decedent's accident. He visited the accident scene, did a laser scan of the scene and the Decedent's vehicle, inspected the vehicle, and documented the condition and impact marks. An investigation done four weeks after the accident resulted in photographs, drone imagery, and a scan of the area that Mr. Andrews was able to view. He also reviewed the police report, the accident scene photographs, and the aerial photo taken by Rocky Ford.

147. Referring to his reconstruction report, found at Respondent's Exhibit No. 2, Mr. Andrews testified that the Decedent was traveling 53–60 miles per hour when he left the roadway and 49-54 miles per hour during the rollover. The Decedent's vehicle rolled over three and three-quarter times. The tires on the Decedent's vehicle were inadequate for the existing conditions. The Decedent was traveling too fast for the existing conditions. The Decedent was trapped underneath the vehicle when it came to rest. The Decedent drove through the water-covered roadway for some time before losing control, so he had warning about the water and, if he had slowed down, could have avoided the accident.

148. It is common for an accident reconstructionist to rely on photographs taken by other people because it is rare for an accident reconstructionist to get to the accident scene right after the accident occurs.

149. Referring to Respondent's Exhibit No. 2 at p. 11, Mr. Andrews testified that he worked backwards based on where the vehicle came to rest. He personally looked at the scratch marks on the vehicle. Mr. Ford had highlighted the headlight debris in his photographs, so Mr. Andrews could calculate based on that point. The headlights are important for the calculation. At 50 feet per rollover and three and three-quarter rolls, the vehicle traveled roughly 180 feet. With or without the headlight debris, the rollover distance is within nine feet of error. Looking at the photographs found in Respondent's Exhibit No. 2 at p. 7, Mr. Andrews is comfortable relying on the pile of headlight debris as a point of impact because of the tiny pieces embedded in the ground, which are typical of what he would expect to see.

150. 'Yaw' refers to a vehicle rotating but the direction of travel staying the same. You see 'yaw marks' when this happened. The yaw marks, in addition to the rollover distance, allow Mr. Andrews to calculate the speed of the vehicle.

151. The speed limit for this stretch of road was 55 miles per hour. The Decedent was traveling 53–60 miles per hour.

152. Looking at the tires on the Decedent's vehicle, the lack of tread depth was a contributing factor to the accident. The minimum tread depth means that hydroplaning and a loss of control is more likely. The tires on the front of the vehicle were better than the tires on the back.

153. On cross-examination, Mr. Andrews confirmed that he is not a professional engineer. He is not licensed in Arkansas or other states. He is being paid by Respondent to be here ($31,659.00 had been billed prior to Mr. Andrews' attendance at the hearing). The crash data recorder was not required to be accessible to the public for a 2004 Toyota Tundra. Mr. Ford tried to download that information but could not get it. Toyota does not make that information available voluntarily. Mr. Andrews looked at the vehicle's resting point, headlights, and scratch marks. Without the headlight location, the speed range would be slightly faster. The headlight location adds accuracy to his calculation. The scratch marks show the number of rolls. In this case, the Decedent's vehicle had four types of scratches. There were lots of people at the accident scene, and, by walking around, those people could have compressed debris into the ground. Water was flowing north to south, but the headlight debris pile is consistent with where Mr. Andrews would expect it to be. Mr. Andrews conceded that people moved the bumper, but he does not think that people moved the tiny pieces of the headlight. Any scratches on the vehicle from the recovery process would be squiggly and would not run from front to back. When the road surface is wet, you do not get yaw marks as distinct as when the road surface is dry. If the Decedent went through the water for 300 feet and was still going 53–60 miles per hour when he left the roadway, his initial speed would have been astronomical. If there was no water on the roadway, the Decedent would

not have hydroplaned, and if he did not hydroplane, then he would not have lost control of his vehicle.

154. On redirect, Mr. Andrews testified that if the Decedent was traveling below 45 miles per hour, it is a lot less likely that he would have hydroplaned, especially if he had good tread on his tires.

Testimony of Dr. Chandra Thorbole

155. Respondent called Dr. Chandra Thorbole to testify.

156. Dr. Thorbole has a doctorate degree in engineering with an emphasis in crash dynamics and biomechanics. He analyzes accidents and how people are injured. Most of his work is directed at helping manufacturers prevent certain types of injuries.

157. Dr. Thorbole was hired by Respondent to do a biomechanical analysis of the accident and to determine whether the Decedent was wearing his seatbelt at the time of the accident. He inspected the vehicle, including the seatbelt hardware.

158. The Decedent's ejection kinematics caused him to be thrown in front of the rolling vehicle, such that the vehicle landed on the Decedent. The ejection portal was the driver's side window. The Decedent was ejected with a lot of energy. The ejection is the cause of his death.

159. The roof intrusion into the passenger space of the vehicle likely occurred after the Decedent was ejected.

160. The Decedent's vehicle did not have rollover-activated belt pretensioner or a curtain airbag.

161. All of Dr. Thorbole's opinions were given to a reasonable degree of biomechanical certainty.

162. On cross-examination, Dr. Thorbole confirmed that he relied upon Mr. Andrews' conclusions for the vehicle motion. If there was no rollover, there would be no roof intrusion. If there was no rollover, there would be no ejection.

Testimony of David Carruth

163. Claimant called David Carruth as a rebuttal witness.

164. Mr. Carruth is a lawyer in Clarendon, Arkansas. He manages his family's farm, which is owned by the Carruth Family Trust.

165. He has observed flooding on Highway 316 in the area of the Intersection.

166. Respondent took over Highway 316 in the early 1970s. Mr. Carruth remembers Respondent doing some work on the ditches next to the Young Property, which caused flooding by the Intersection. There was a lot of complaining. Mr. Carruth stated that his father said he was going to tell Respondent about the flooding in the early 1990s. Mr. Carruth went to the local office in 2015 or 2016 to complain about the flooding. The water was bad because the ditch had not been cleaned out.

167. Following this accident, Respondent did a lot of work on this highway.

168. Regarding the issue of runoff from the Carruth Property, Mr. Carruth stated that every highway in Arkansas has property adjoining that highway. When the Carruth Property was converted into tillable land in the late 1970s, Mr. Carruth's family allowed trees to grow up along the border and put hay bales there to stop the erosion and the water running off the property. However, Respondent took out that vegetation.

169. Mr. Carruth's tenant has done a lot of work to stop the runoff since Respondent removed that vegetation five or six years ago.

170. On cross-examination, Mr. Carruth stated that he has not seen water flowing down CR 261 because the ditches on the county road are very deep. He does not recall who he spoke with at the Respondent's local office when he complained about the flooding. He described the person as a white male approximately 50 years old. Mr. Carruth clarified that Respondent cleared the vegetation on the Carruth Property's side of the ditch embankment in probably 2013 or 2014.

Closing Arguments

171. Claimant argued that pursuant to Ark. Code Ann. § 27-67-207, Respondent has a duty to keep the state highways in good repair. There is no exception to this statute for inherited roads. Under the negligence standard, the evidence shows that Respondent knew or should have known about the flooding on Highway 316. Witnesses who have no interest in this claim testified that they notified Respondent of the flooding. Mr. Young and Mr. Carruth testified that Respondent's own actions caused the problem or made it worse. Respondent's employees provided explanations but not legal excuses why Respondent did not satisfy its statutory duty with respect to Highway 316. Even if Respondent's employees did not see the flooded road, they could have seen the standing water in the ditch on the sunny days. Respondent did not provide an expert to rebut Claimant's hydrology expert, Mr. Auld. Regarding the issue of comparative fault, Respondent's accident reconstruction testified that the Decedent was going 53–60 miles per hour, which is not speeding when the speed limit is 55 miles per hour. Mr. Andrews' analysis is not believable because of the astronomical speed the Decedent would have had to be traveling if the Decedent was going 53–60 miles per hour after traveling through 300 feet of water. The damages in this claim are twofold, as the Decedent's estate can recoup damage for loss of life and lost wages and the beneficiaries can recover for mental anguish. Dr. Scott's report gives a framework and

guidelines for evaluating lost wages. Claimant's damage claim is very conservative considering Dr. Scott's report.

172. Respondent argued that the question is whether it knew or should have known of the flooding near the Intersection. The specific location matters because of the topography. Respondent's employees testified that they did not violate any specific written standards. Per Mr. Callicott, Respondent's responsibility is to keep the ditches where they can handle a two-year storm. Respondent inherited Highway 316, and the maintenance funds do not include road improvements. The work done in 2014 by Respondent did not and could not have caused flooding. There was a lot of other testimony about other sources of water not in Respondent's control. Mr. Andrews talked about the issue of causation, including the fact that the Decedent's tires were in poor repair and that the Decedent should have been going ten miles per hour under the speed limit due to the rain. Dr. Thorbole testified that the cause of death was the Decedent's ejection from the vehicle. The Decedent knew this road and should have been on the lookout. The stretch of Highway 316 is a straight road, so the water should have been visible. The Claims Commission is charged with apportioning fault and damages. If the Decedent was 51 percent at fault, then Claimant cannot recover. If the Decedent was less than 51 percent at fault, then the damages must be weighed. Insurance payments received by Claimant should be put on Respondent's side of the apportionment of damages.

173. In rebuttal, Claimant argued that while Mr. Callicott said that the ditch met the design requirements, he also said that each picture of water on the road must be showing a two-year storm. Claimant also argued that the Decedent was not speeding.

**Relevant Statutes and Caselaw**

174. The elements of a negligence claim are duty, breach of duty, and damages proximately caused by the breach. *See Union Pac. R. Co. v. Sharp*, 330 Ark. 174, 180, 952 S.W.2d 658, 661 (1997).

175. Ark. Code Ann. § 27-67-101 provides that the "the policy of the state [is] to . . . repair, maintain, and control all the public roads in this state comprising state highways. . . ." (emphasis added).

176. Ark. Code Ann. § 27-67-207 provides, in pertinent part:

> (a) As used in this chapter, unless the context otherwise requires, "maintenance" means the constant making of all repairs necessary to preserve a smooth surface on the roads and to keep the bridges and culverts in a safe condition and shall include drainage work, the building of bridges and culverts, and the making of cuts and fills as the commission deems necessary to accomplish these purposes.
>
> (b) It shall be the duty of the State Highway Commission to begin as soon as practicable and continue the maintenance of all roads that are properly designated as state highways, to the end that every part of the state highways shall be properly, fairly, and equitably maintained and kept in repair.
>
> (c) So far as practicable, maintenance and repair shall be according to what is known as the patrol system. Laborers as are deemed necessary may be employed and kept continually on the roads, with the force, equipment, and materials that are necessary to perform the work.

(emphasis added).

**Findings of Fact and Conclusions of Law**

Based upon a review of the pleadings, testimony, evidence, and the law of the State of Arkansas, the Claims Commission unanimously finds as follows:

177. The Claims Commission has jurisdiction to hear this claim pursuant to Ark. Code Ann. § 19-10-204.

178. The Claims Commission finds that Claimant's claim is based upon Respondent's alleged negligent maintenance of Highway 316 and its drainage system.

179. The Claims Commission finds that, pursuant to Ark. Code Ann. §§ 27-67-101 and 27-67-207(b), Respondent had a duty to maintain Highway 316 and its drainage system.

180. The Claims Commission finds that Respondent knew or should have known of the flooding problem on Highway 316. Based on the evidence presented by Claimant, including the testimony of Ms. Morrow, Mr. Young, Ms. Reeves, and Mr. Carruth, complaints had been made to Respondent about flooding in the very location that this incident occurred.[2] The Claims Commission notes that Ms. Morrow, Mr. Young, Ms. Reeves, and Mr. Carruth have nothing to gain from the outcome of this claim, and there was otherwise no evidence of bias on their part. Moreover, the Claims Commission finds the numerous photographs and videos presented by Claimant showing Highway 316 flooded or the ditch overgrown and/or the ditch full of water to be significant in light of Respondent's witnesses' testimony regarding the frequency that Highway 316 was traveled looking for road issues. The Claims Commission finds that the standard that Respondent consistently argues should apply to Respondent in claims for potholes or other hazardous road conditions should apply to the instant claim as well. *See, e.g.*, *Nwanonyiri v. Ark. Dept. of Transportation*, Claim No. 220326. As such, where Respondent had prior knowledge of a hazardous road condition and failed to remedy it within a reasonable amount of time, Respondent is liable for the damages that occur from that condition.

[2] The Claims Commission notes its concern with Respondent's practice of allowing each local office to determine its own system of cataloguing reported complaints, given Respondent's position in this claim regarding notice despite the testimony of multiple witnesses.

181. The Claims Commission notes an incompatibility with Respondent's simultaneous arguments that the Decedent had traveled that road previously, such that he should have known to travel cautiously, and that Respondent's employees were unaware of the problem on Highway 316 despite checking that road every week (as Mr. Gray stated) and every two months (as Mr. Emberton stated that he and others did, as well).

182. However, pursuant to Ark. Code Ann. § 16-64-122, the Claims Commission must also consider the fault of the Decedent. The plain language of Ark. Code Ann. § 16-64-122 states that it applies to "… all actions for damages for … wrongful death … in which recovery is predicated upon fault." (emphasis added). The Arkansas Court of Appeals discussed the applicability of the "broad language" in this statute in *Bishop v. Tariq*, 2011 Ark. App. 445, 384 S.W.3d 659. In the instant claim, while there was no evidence presented that the Decedent was speeding,[3] it is undisputed that the Decedent was not wearing his seatbelt at the time of the accident. The Claims Commission also finds that the condition of Decedent's rear tires was a factor in the accident. Additionally, based on Mr. Brown's testimony regarding the number of times that the Decedent traveled in this area, the Claims Commission finds that the Decedent was familiar with this roadway.

183. As such, the Claims Commission assigns fault as follows:

(a) Decedent: 35%

(b) Respondent: 65%

[3] While the Claims Commission notes some concerns with Mr. Andrews' calculations and conclusions, the Claims Commission finds it significant that Respondent's own expert witness calculated the Decedent's speed at 53–60 miles per hour in a 55 mile per hour zone.

184. As for damages, the Claims Commission must consider the damages for the Decedent's estate as well as the mental anguish damages for the Decedent's wrongful death beneficiaries (his parents and siblings).

185. Regarding the Decedent's estate, the Claims Commission finds that the estate is entitled to recover the funeral expenses for the Decedent ($7,287.47), as well as the burial costs ($600.00) and headstone ($11,864.48), for a total of $19,751.95. Additionally, considering the persuasive testimony of the Decedent's family members regarding how the Decedent valued his life, the Claims Commission finds that the damages associated with the Decedent's loss of life are $2,500,000.00. The Claims Commission finds that this number is consistent with the conclusions of Dr. Scott regarding the Decedent's lost earning capacity (which ranged from $1.52 million to over $3 million given various scenarios), which were admitted in revised form without objection. As such, the Claims Commission finds that the Decedent's estate's total damages are $2,519,751.95, of which Respondent is liable for 65 percent, equaling $1,637,838.77. The Claims Commission further finds that the $100,000 in insurance proceeds recovered by Claimant should be subtracted from the award, for a total award to the Decedent's estate of $1,537,838.77.

186. The Claims Commission finds that the testimony about the help the Decedent would have been able to provide on the family farm to be too speculative and declines to make an award for such damages.

187. Regarding the Decedent's parents, the Claims Commission finds the testimony presented by Debbie Brown and Joe Brown regarding the mental anguish experienced following the Decedent's death to be moving and persuasive. As such, the Claims Commission finds that Debbie Brown and Joe Brown should be each awarded mental anguish damages of $300,000.00, of which Respondent is liable for 65%, equaling $195,000.00 to each.

188. Regarding the Decedent's siblings, the Claims Commission finds the testimony presented by Nathan Brown regarding the mental anguish experienced by him and his sister, Samantha Brown, to be moving and persuasive. As such, the Claims Commission finds that Nathan Brown and Samantha Brown should be each awarded mental anguish damages of $50,000.00, of which Respondent is liable for 65%, equaling $32,500 to each.

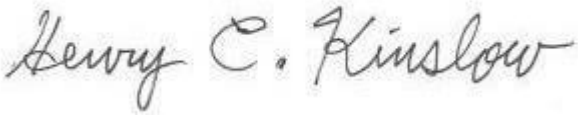
**Conclusion**

189. The Claims Commission AWARDS the Estate of Chris Brown a total of $1,537,838.77. The Claims Commission further AWARDS Debbie Brown and Joe Brown $195,000.00 each and Nathan Brown and Samantha Brown $32,500.00 each. Pursuant to Ark. Code Ann. § 19-10-215(b), the Claims Commission refers this total award of $1,992,838.77 to the General Assembly for review, approval, and, if approved, placement on an appropriations bill.

IT IS SO ORDERED.



ARKANSAS STATE CLAIMS COMMISSION
Courtney Baird



ARKANSAS STATE CLAIMS COMMISSION
Henry Kinslow



ARKANSAS STATE CLAIMS COMMISSION
Paul Morris, Chair

DATE: November 10, 2022

**Notice(s) which may apply to your claim**

**(1)** A party has forty (40) days from the date of this Order to file a Motion for Reconsideration or a Notice of Appeal with the Claims Commission. Ark. Code Ann. § 19-10-211(a)(1). If a Motion for Reconsideration is denied, that party then has twenty (20) days from the date of the denial of the Motion for Reconsideration to file a Notice of Appeal with the Claims Commission. Ark. Code Ann. § 19-10-211(a)(1)(B)(ii). A decision of the Claims Commission may only be appealed to the General Assembly. Ark. Code Ann. § 19-10-211(a)(3).

**(2)** If a Claimant is awarded less than $15,000.00 by the Claims Commission at hearing, that claim is held forty (40) days from the date of disposition before payment will be processed. *See* Ark. Code Ann. § 19-10-211(a). Note: This does not apply to agency admissions of liability and negotiated settlement agreements.

**(3)** Awards or negotiated settlement agreements of $15,000.00 or more are referred to the General Assembly for approval and authorization to pay. Ark. Code Ann. § 19-10-215(b).

| | |
|---|---|
| **IN THE CIRCUIT COURT OF POPE COUNTY, ARKANSAS** | ) |
| | ) |
| **TIMOTHY MURDOCH, in his capacity as Special Administrator to the Estate of Julie LeFevre, deceased** | ) |
| | ) |
| **PLAINTIFF** | ) |
| | ) |
| **v. CASE NO. 58CV-18-638** | ) |
| | ) |
| **PHILLIP COWGER, and SHARON BARNETT, in her capacity as Special Administrator of the ESTATE OF PHILLIP COWGER, Deceased** | ) |
| **DEFENDANT** | ) |

FILED
2019 JUL 10 AM 10:36
RACHEL L. BERTLING
POPE COUNTY CIRCUIT CLERK
BY: S

**JUDGMENT**

On this 8 JUL day of ~~June~~ July, 2019, came on the Plaintiff, Timothy Murdoch, is his capacity as Special Administrator to the Estate of Julie LeFevre, deceased, by counsel, Hall and Taylor Law Partners, PLLC, upon the Complaint, and the Court, upon consideration of the evidence presented, FINDS, ORDERS, ADJUDGES, AND DECREES THE FOLLOWING:

1. Timothy Murdoch is the duly appointed Special Administrator to the Estate of Julie LeFevre, deceased.

2. Sharon Barnett is the duly appointed Special Administrator of the Estate of Phillip Cowger, deceased.

3. The Defendants were duly served with process in this matter, notice of this hearing and have otherwise failed and refused to appear and defend this matter.

4. Plaintiff made an oral motion for default judgment. A judgment of default on all issues of liability is proper in this action. Plaintiff is hereby granted a judgment of the issue of liability on each basis requested in the Complaint.

5. A hearing was conducted on the issue of damages.

6. The decedent, Julie LeFevre, died leaving three minor children, a surviving spouse and both her parents. The Court finds that these persons are the statutory beneficiaries of the decedent.

7. The decedent's parents were provided with notice of this hearing and have declined to appear herein. The decedent's parents filed for record an Assignment of Interest of any rights herein to the decedent's children.

8. The minor children and the surviving spouse appeared herein by and through counsel to wit: James Dunham (attorney for Scott Greathouse, court appointed guardian of the [redacted]

[redacted]), Allen Laws (counsel for Kile LeFevre) and John Peel (counsel for court appointed guardian Ron Campbell and his minor child, [redacted] Counsel for the statutory beneficiaries announced that they reached an agreement as to the division of any future proceeds received by and between the statutory beneficiaries of Decedent.

9. According to the agreement announced by counsel, any proceeds from this judgment are to be allocated as follows:

| | |
|---|---|
| Minor children of Scott Greathouse: | 56% |
| Minor child of Ron Campbell: | 28% |
| Kile LeFevre: | 16% |
| | ======= |
| Total: | 100%. |

6. After a hearing, upon consideration of the evidence before the Court, Plaintiff is hereby awarded the following compensatory damages:

| | |
|---|---|
| Funeral Expenses: | $11,557.00 |
| Lost Earnings: | $991,705.00 |
| Lost of Life and Enjoyment of Life: | $9,700,000.00 |
| Conscious Pain and Suffering: | $2,000,000.00 |
| Mental Anguish of Survivors: | $4,000.000.00 |

==========

Total: $16,703,262.00

7. Upon consideration of the evidence, the Court awards punitive damages in the amount of $3,000,000.00. The clear and convincing evidence in support of this finding includes, but is not limited to, the following:

a) The pilot, Phillip Cowger, was a commercially rated pilot who departed from Russellville, Arkansas, having last checked the weather forecast at 5:18 a.m. prior to a 7:54 a.m. departure. Testimony from another commercial pilot indicated that a safe and aware pilot should constantly check the weather up to the point of departure. The evidence indicated that visibility on the day of the crash was decreasing. The weather was an obvious and dangerous factor for flying on the day of the fatal crash.

b) The pilot, Phillip Cowger, previously failed a simulator course whereby the instructor concluded that he had "instrument saturation issues". The NTSB found the cause of this crash was "pilot error" caused by "workload management" and "aircraft control." The prior simulator issues which the pilot, Phillip

Cowger, encountered were very similar to the cause of the crash in this instance. Therefore, it was a reckless disregard for the safety of the decedent when the pilot ignored his own limitation under the circumstances of the case.

c) A commercial pilot with similar experience to the pilot, Phillip Cowger, was scheduled to depart the same morning in a similar aircraft (also with passengers) but declined to depart due to the danger involved caused by the weather and the type of aircraft he was piloting.

d) On the date of the accident, winds were calm and the pilot, Phillip Cowger, could have chosen to take off to the southwest, where terrain was low for several miles, instead of taking off towards the northeast, where there was elevated terrain one mile away that the aircraft ultimately struck. The far safer alternative was to take off to the southwest instead of the northeast. Had Phillip Cowger done so, it is extremly unlikely the crash would have occurred.

e) The pilot, Phillip Cowger, had been prescribed drugs that cause fatigue, muscle weakness, dizziness, blurred vision and

other side effects which impact his ability to safely fly the aircraft. A pilot has a duty to always be aware of the drugs he takes and the side effects of those drugs as they may impact his ability to safely fly an aircraft; as well as a duty not to undertake risks to his passengers while so medicated.

f) Every pilot has a duty and is charged with control of his aircraft, and the ultimate responsibility for the decision to depart is with the pilot.

g) Each pilot must enter into a risk assessment prior to departure considering the weather, his own past experiences, his health, the side effects of any medications, the type and abilities of the aircraft and other factors.

h) Every pilot must take every action necessary to decrease or minimize, or eliminate the risk to his or her passengers.

i) The pilot, Phillip Cowger, was a commercial pilot that was being compensated for his flight time.

j) The aircraft being piloted during the crash was a "cadillac" aircraft, and the avionics equipment in the aircraft were above average.

k) the NTSB report indicated that the aircraft was in good mechanical condition and there were no defects in the aircraft which contributed to the cause of the crash.

Based upon the testimony and other evidence before the Court, the Court finds that the pilot in command of the aircraft, Phillip Cowger, knew or should have known, in light of the surrounding circumstances, that the dangers posed to his passengers from his decision to depart would naturally and probably result in injuries to his passengers, but in reckless disregard of those risks and the likely consequences he continued to depart, which resulted in the damages to the decedent.

8. The Court hereby awards judgment in the total amount of $19,703,262.09.

9. Pursuant to Ark. Code Ann. Section 16-66-221, the judgment debtor is hereby ordered, within 45 days of the entry of this judgment, to prepare a schedule, verified by affidavit, of all of his other property both real and personal, including moneys, bank accounts, rights, credits, and choses in action held by himself or herself or others for him or her and specify the particular property which he or she claims as exempt under the provisions of the Arkansas law. The judgment debtor shall file the schedule with the Clerk of this Court within 45 days of the entry of this Judgment.

IT IS SO ORDERED.

Dennis C. Sutterfield
JUDGE DENNIS SUTTERFIELD
POPE COUNTY CIRCUIT JUDGE
July 8, 2019
DATE

Prepared by:
Randy Hall ABA # 89093
415 North McKinely Suite 1000
Little Rock AR 72205

ELECTRONICALLY
FILED
MAY 10 2021
TIME:
CASE #:

**IN THE CIRCUIT COURT OF PULAKSI COUNTY, ARKANSAS**
**17TH DIVISION**

**JENNIFER DANIELS, Individually and as Administratix of the ESTATE OF JALEN FAULKNER, deceased** — **PLAINTIFFS**

**VS.** **NO. 60CV-18-6611**

**DISCOUNT ZONE, INC. d/b/a WOODROW DISCOUNT STORE; SHAREEF NAJI QUATTOM; CALVIN C. STEPHENS; JOHN DOES 1-3; and JOHN DOE ENTITIES 1-3** — **DEFENDANT**

**ORDER**

On this 10th day of May, 2021, came on the Plaintiff, Jennifer Daniels, in her capacity as Special Administratrix to the Estate of Jalen Faulkner, deceased, by counsel, Denise Reid Hoggard, of RAINWATER, HOLT & SEXTON, P.A., upon the Complaint, and the Cout, upon consideration of the evidence presented, FINDS, ORDERS, ADJUDGES, AND DECREES THE FOLLOWING:

1. The Defendants were duly served with process in this matter, and failed and refused to appear and defend this matter.

2. A default judgment granting Plaintiff judgment on the issue of liability on each basis requested in the Complaint was entered on April 13, 2021 by this Court.

3. The Defendants were duly served with notice of this hearing.

4. A hearing was conducted on the issue of damages.

5. The decedent, Jalen Faulkner, died at the age of 18, leaving no surviving children, both his parents and three half-brothers and one half-sister. The Court finds that these persons are statutory beneficiaries of the decedent.

6. After a hearing, upon consideration of the evidence before the Court, Plaintiff is hereby awarded the following compensatory damages:

a) Funeral Expenses: $5,000

b) Lost earnings: $3,353,880.43

c) Loss of Life and Enjoyment of Life: $10,311,579

d) Conscious Pain and Suffering: $1,000,000

e) Medical Expenses: $15,269.08

f) Mental Anguish of Survivors: $4,000,000

TOTAL: $18,685,728.51

7. The Court hereby awards judgment in the total amount of $18,685,728.51.

8. Pursuant to Ark. Code Ann. Section 16-66-221, the judgment debtor is hereby ordered, within 45 days of the entry of this judgment, to prepare a scheduled, verified by Affidavit of all property both real and personal, including moneys, bank accounts, rights, credits, and choses in action held by or for Defendants and specify the particular property which they claim as exempt under the provisions of Arkansas law. The judgment debtor shall file the

schedule with the Clerk of this Court within 45 days of the entry of this judgment.

IT IS SO ORDERED.

HONORABLE MACKIE PIERCE

May 10, 2021

Prepared by:

Denise Hoggard (ABN 84072)
RAINWATER, HOLT & SEXTON, P.A.
P.O. Box 17250
801 Technology Drive
Little Rock, AR 72223
Telephone (501) 868-2500
Telefax (501) 868-2505
Email: hoggard@rainfirm.com

# RALPH D. SCOTT, JR., Ph.D.



Professor of Economics
Department of Economics and Business
Hendrix College
Conway, Arkansas 72032
(501) 450-1306 (voice and fax)

President
Economic and Financial
Consulting Group, Inc.
Conway, Arkansas 72034

## EDUCATION

Ph.D., Tulane University School of Economics, New Orleans, Louisiana (1983)

B.A., Hendrix College, Conway, Arkansas (1973)
Major in Economics and Business

## ECONOMIC BACKGROUND

Primary Area of Interest: Macroeconomics, Monetary Theory

Field Examinations: Taken and passed in Microeconomics, Macroeconomics, Mathematical Economics, Statistics, International Economics, Monetary Theory and Econometrics

Dissertation Title: *Rational Expectations, Aggregate Supply and Fiscal Policy*

In my dissertation, I integrated fiscal parameters into the Lucas-Rapping theory of labor supply to obtain a theory of aggregate supply in which the effectiveness of fiscal policy could be analyzed. In addition I developed and estimated an empirical model for the aggregate economy incorporating developments in expectational theory into supply and demand side relationships to analyze the effectiveness of fiscal policy within a broader context.

## TEACHING EXPERIENCE

Professor of Economics (tenured), Hendrix College, Conway, Arkansas
1979 to present

Instructor, Tulane University, New Orleans, Louisiana, Summer 1978-
Spring 1979

Instructor, St. Mary's Dominican College, New Orleans, Louisiana, Fall
1977-Summer 1978

Current Teaching Responsibilities: I teach several sections of introductory level Microeconomics and Macroeconomics as well as upper level theory courses in Microeconomics, Macroeconomics, Money Banking and Credit and International Economics. I have also taught courses and directed independent study projects in Mathematical Economics, Finance, Monetary Theory, and Investment Analysis.

## CONSULTING EXPERIENCE

Consultation in economic and financial matters is conducted through the Economic and Financial Consulting Group, Inc., of which I am a principal. Over the past 37 years, I have developed extensive experience in personal injury and wrongful death lawsuits. I have been called on by defense as well as plaintiff attorneys in this regard and have been qualified as an expert witness in Federal, State and Local Courts in Arkansas and adjacent states.

Additional consulting expertise entails business and franchise evaluations. My qualifications also extend to statistical and econometric analysis, as well as financial analysis.

List of deposition and courtroom testimony, client list and professional references available upon request.

## SEMINARS AND PUBLICATIONS

*Evaluation of Damages in Personal Injury Lawsuits*, presented in conjunction with the Professional Education Systems, Inc.'s seminar and subsequent publication: *How to Evaluate and Settle Personal Injury Claims in Arkansas, November 1989*.

*The Role of the Economist in Personal Injury Lawsuits*, seminar presented to the Pulaski County Bar Association, Little Rock, Arkansas, October 1989.

Presentation to CLE seminar on recent developments in the evaluation of economic loss in personal injury lawsuits. Little Rock, Arkansas, April 1999.

SJR8 Some Economic Implications (*Arkansas Lawyer* – Summer 2017)

**PERSONAL**

Married to Robin M. Scott and father of Ralph D. Scott, III and Kathryn Elise Scott.

# ECONOMIC AND FINANCIAL CONSULTING GROUP, INC.

[redacted]

February 20, 2023

Mr. Jim Jackson
Attorney at Law
Jackson Law Firm
700 West Broadway Street, Suite 2
North Little Rock, AR 72114-5528

RE: **Estate of Jacqueline Lynn Ashraft**

**STATEMENT**

| | |
|---|---|
| Economic Consultation: 3.5 hours @ $300 | $1,050.00 |

Federal ID# 71-0684271

# Estimated Expenses

## Estimated Necessary Expenses for an Academic Year

Estimates of necessary expenses listed below are for the 2022-23 academic year for a typical undergraduate student taking 30 credit hours per academic year at the University of Arkansas.

| Name | Undergraduate Resident | Undergraduate Non-Resident |
|---|---|---|
| Tuition* | $7,666.00 | $25,420.00 |
| University Fees** | $1,990.00 | $1,990.00 |
| Books | $1,100.00 | $1,100.00 |
| Personal Expenses | $2,938.00 | $2,938.00 |
| Transportation | $2,238.00 | $2,238.00 |
| Room*** | $7,968.00 | $7,968.00 |
| Board*** | $4,400.00 | $4,400.00 |
| TOTAL**** | $28,300.00 | $46,054.00 |

* The standard undergraduate in-state tuition rate is $255.51 per credit hour. Students enrolled in College of Business courses are charged $339.83 per credit hour in-state tuition. Students in the School of Architecture and Design are charged $287.45 per credit hour in-state tuition. Students enrolled in College of Engineering courses are charged $302.40 per credit hour in-state tuition. Nursing students are charged $302.04 per credit hour in-state tuition.

** University fees per year include the following student-initiated and student-approved fees:

- Student Activity fee calculated at $2.78/credit hour — $83.40
- Student Health fee, calculated at $7.47/credit hour — $230.70
- Media fee, calculated at $0.90/credit hour — $27.00
- Transit fee, calculated at $3.15/credit hour — $101.40
- Network Infrastructure and Data Systems fee at $11.10/credit hour — $333.00
- Facilities Fee, calculated at $20.35/credit hour — $655.50
- College of Arts and Sciences Fee at $14.41/credit hour — $432.30
- Library Fee, calculated at $3.41/credit hour — $124.80

*** Weighted average expenses for living in a residence hall, double occupancy, with an unlimited meal plan. Actual room and board fees vary.

**** Budget amounts were adjusted for rounding to accommodate UAConnect budgetary rules.

When paying tuition, room and board, and associated fees, anticipated financial aid for a current semester may be deducted when it is listed as anticipated aid on the student's account. Students receiving financial aid are strongly encouraged to have sufficient personal funds available to purchase books and to meet necessary expenses for at least one month at the start of school as some aid funds may not be available for disbursement.

The latest information regarding costs and other aspects of university life may be obtained by calling or writing the Office of Admissions, 200 Hunt Hall, University of Arkansas, Fayetteville, AR 72701. In Arkansas call 1-800-377-8632; from outside of Arkansas call 479-575-5346.

**EXHIBIT 11**

Mercy

7301 Rogers Avenue
Fort Smith, AR 72903

# Affidavit of Custodian of Health Information Services

I, **Brenda Bourg, RHIA** am the Custodian of Records for **Mercy Hospital Fort Smith**.

The attached records of Jacquelin Ashcraft ( 202 pages(s)) are kept in the regular course of hospital's business and it is the regular practice for our employees or representatives with knowledge of the act, event, condition, opinion, or diagnosis, recorded to make the record or to transmit information thereof to be included in such record; and the record was made at or near the time or reasonably soon thereafter.

The copy of the medical records provided with this Affidavit are exact duplicates of all records requested.

The Affiant states that the facts and matters contained and set forth in this Affidavit are true and correct to the best of his/her knowledge, information and belief.

Brenda Bourg
Signature of the Affiant

4-11-2023
Date

STATE OF ARKANSAS
COUNTY OF SEBASTIAN

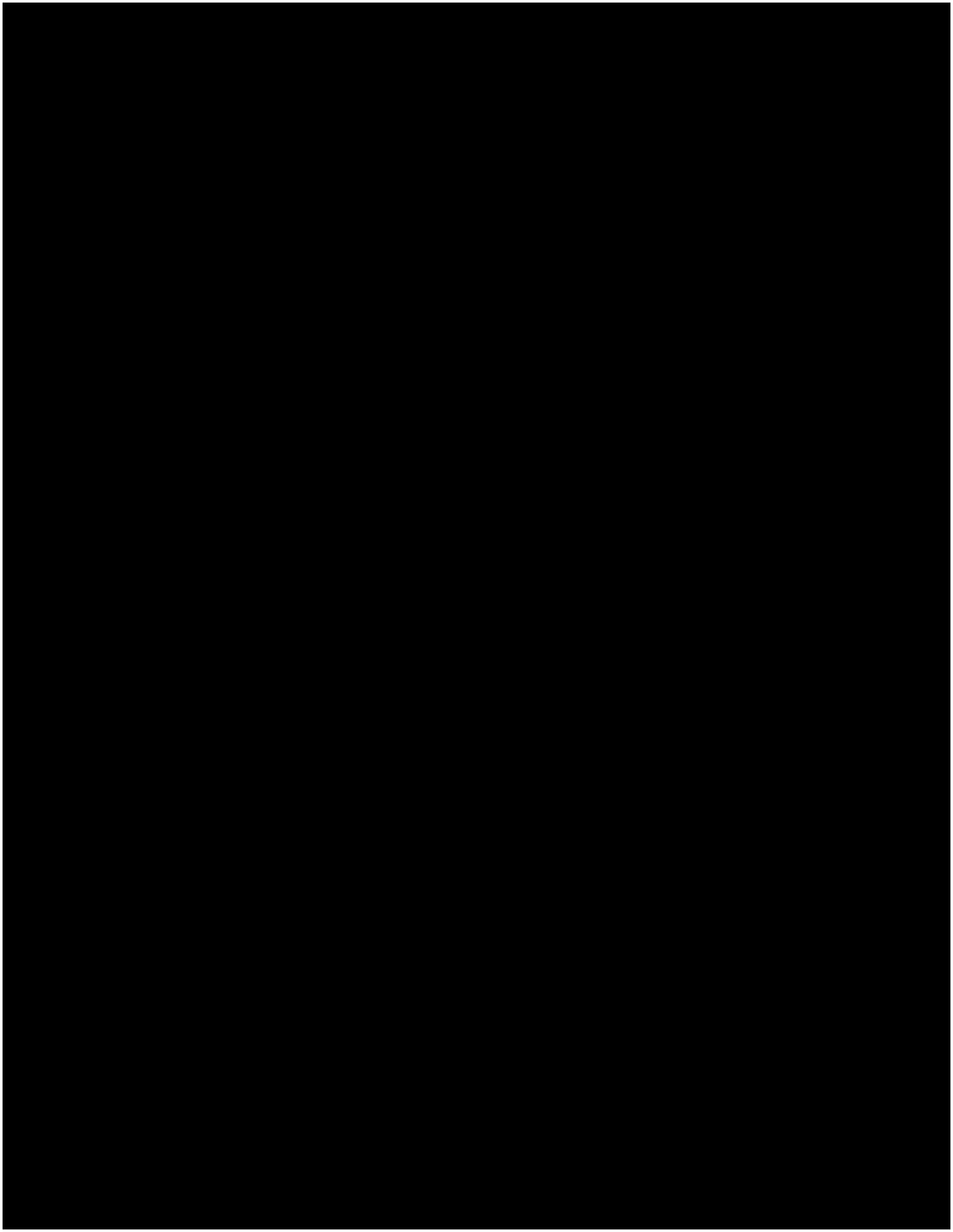
SUBSCRIBED AND SWORN TO before me this 11th day of April, 2023

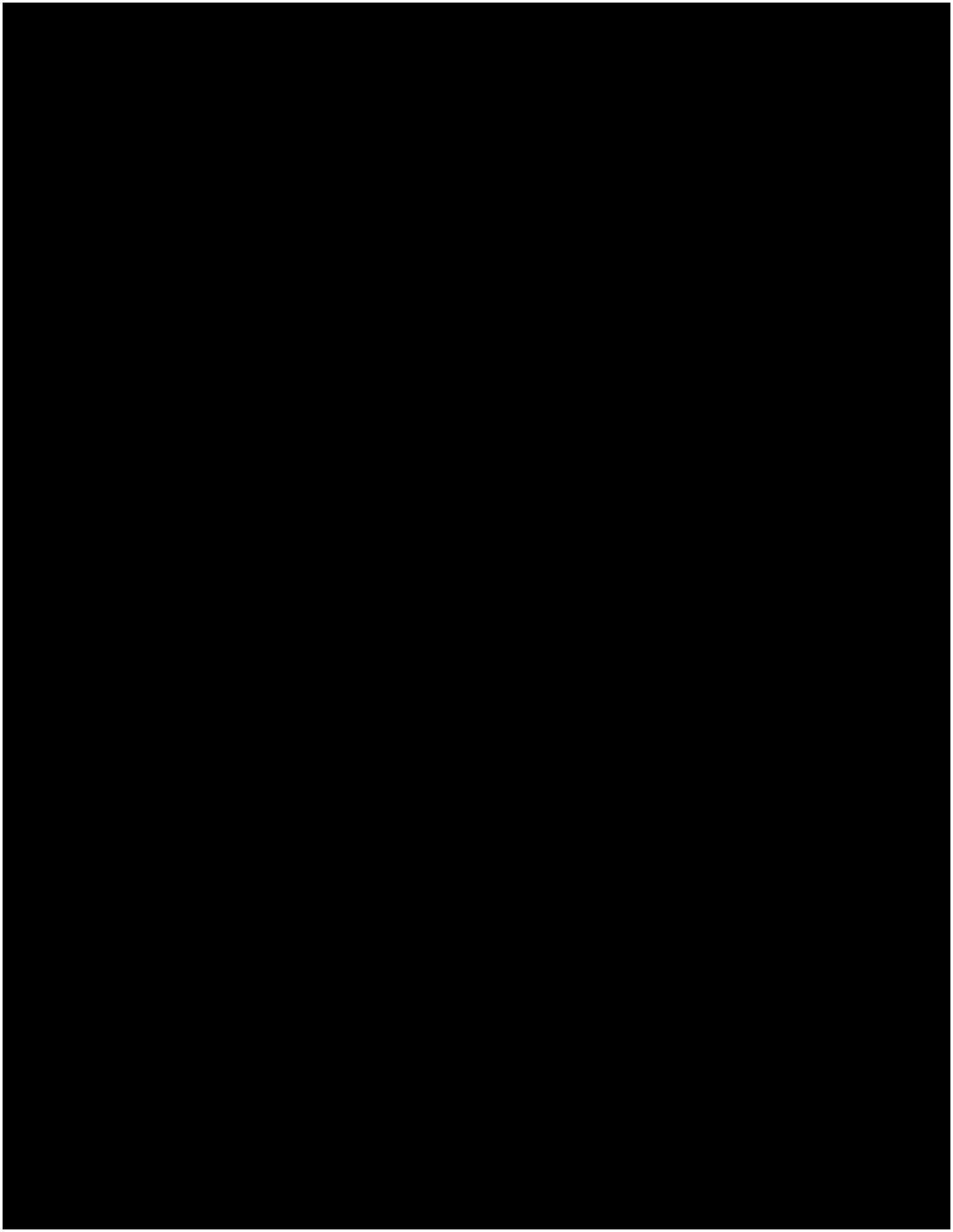
MY COMMISSION EXPIRES:
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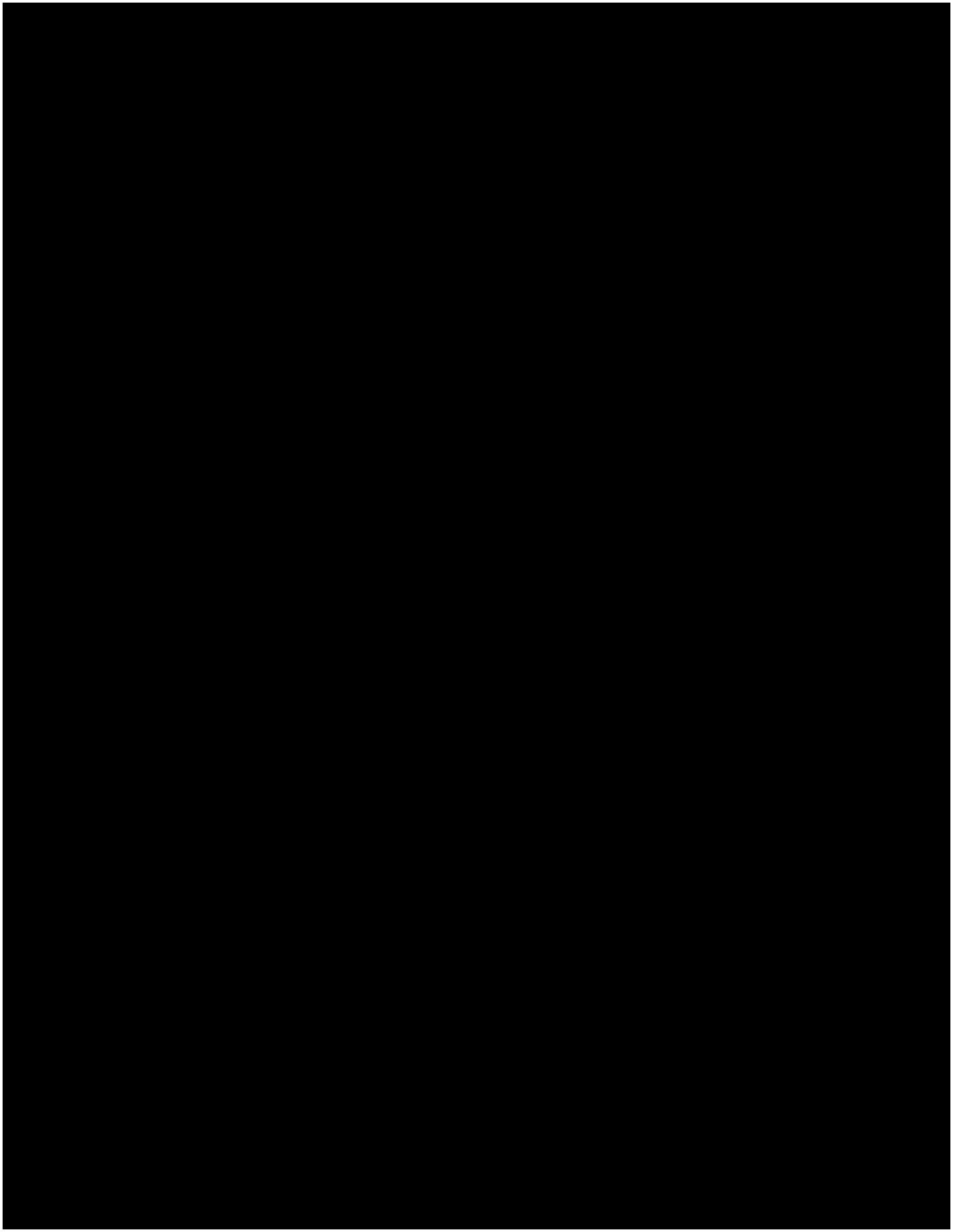
Sandra Huggins
Notary Public

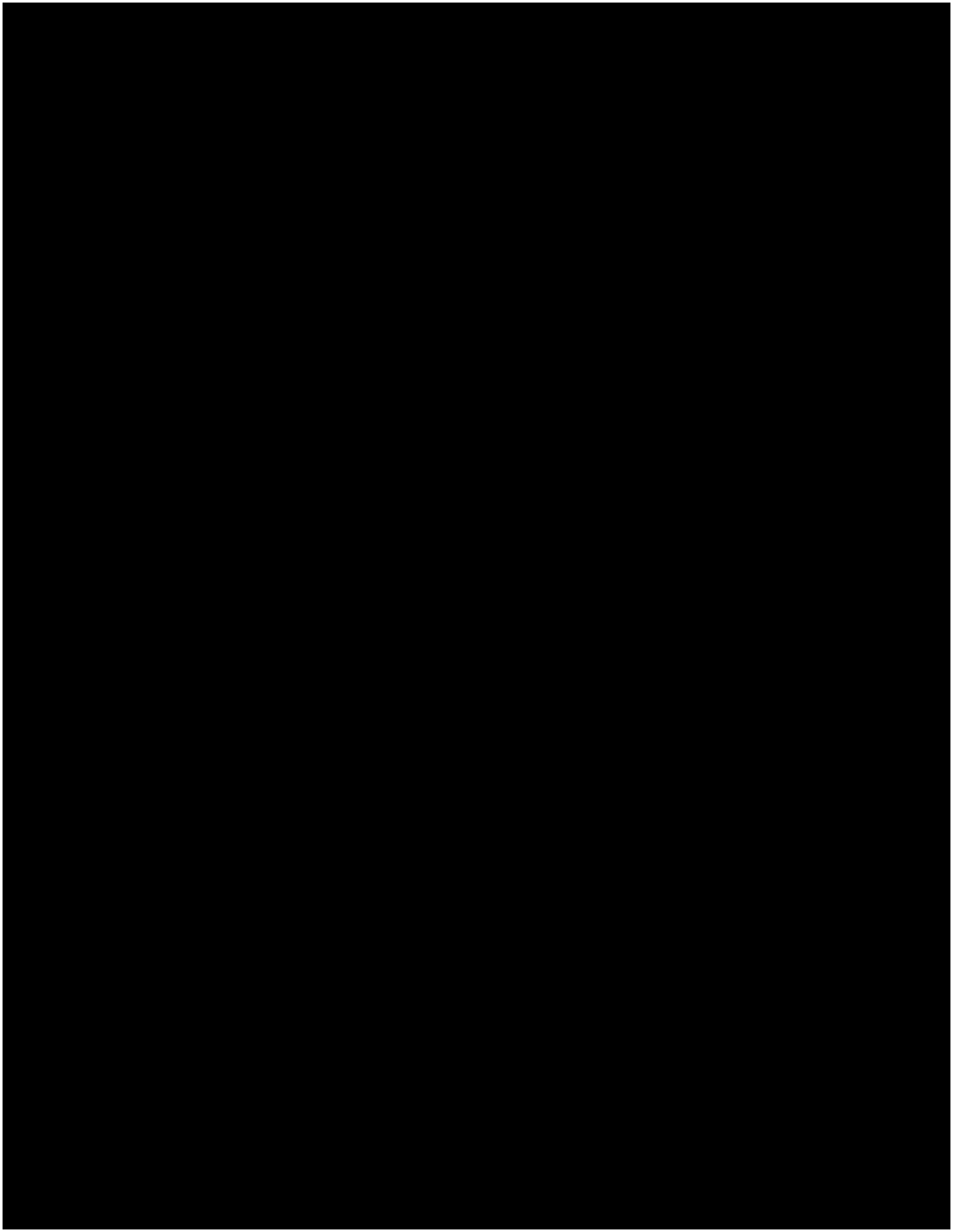
SANDRA HUGGINS Comm. Exp. 04-04-24 NOTARY PUBLIC Comm. No. 12398071 SEBASTIAN COUNTY, ARKANSAS

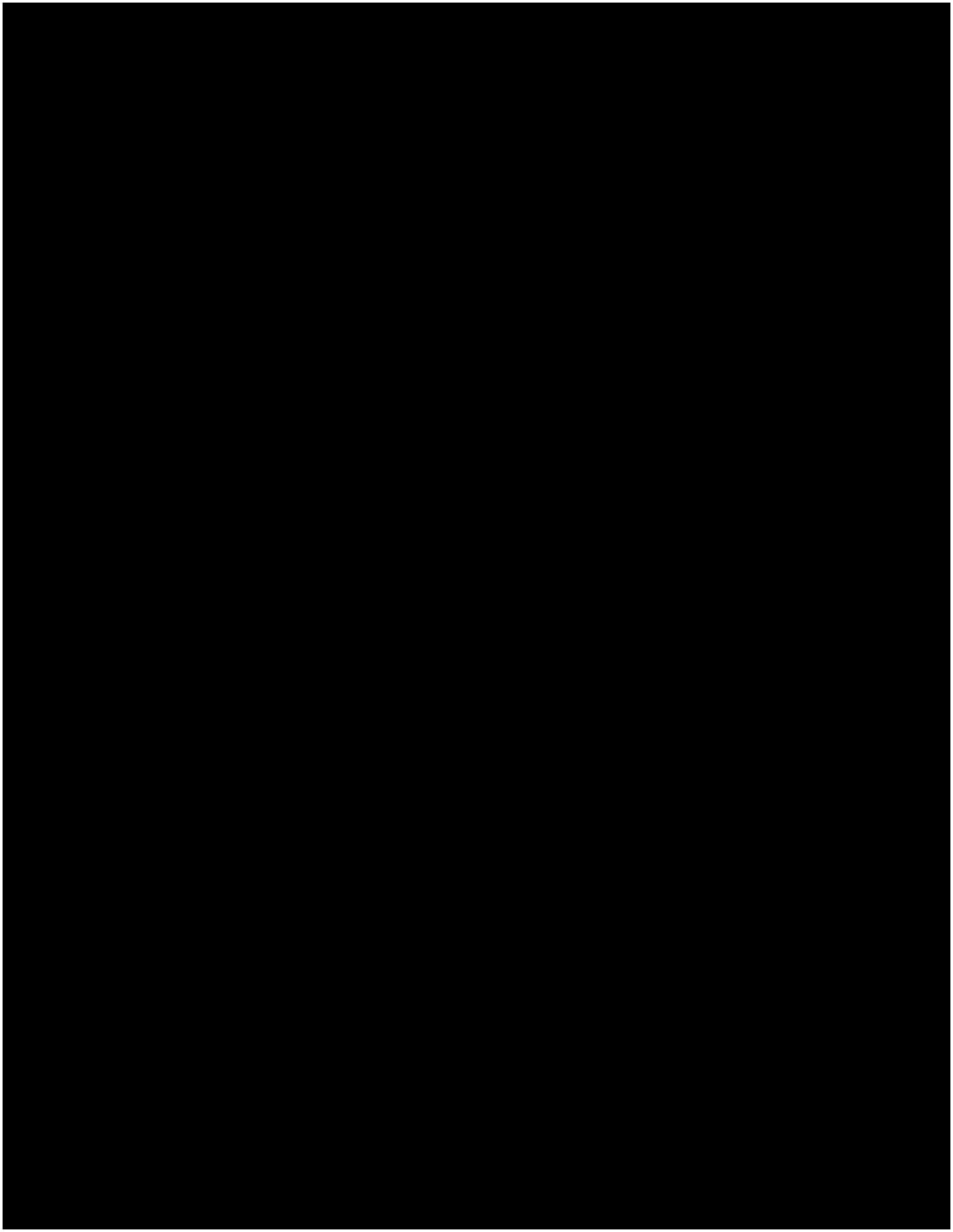
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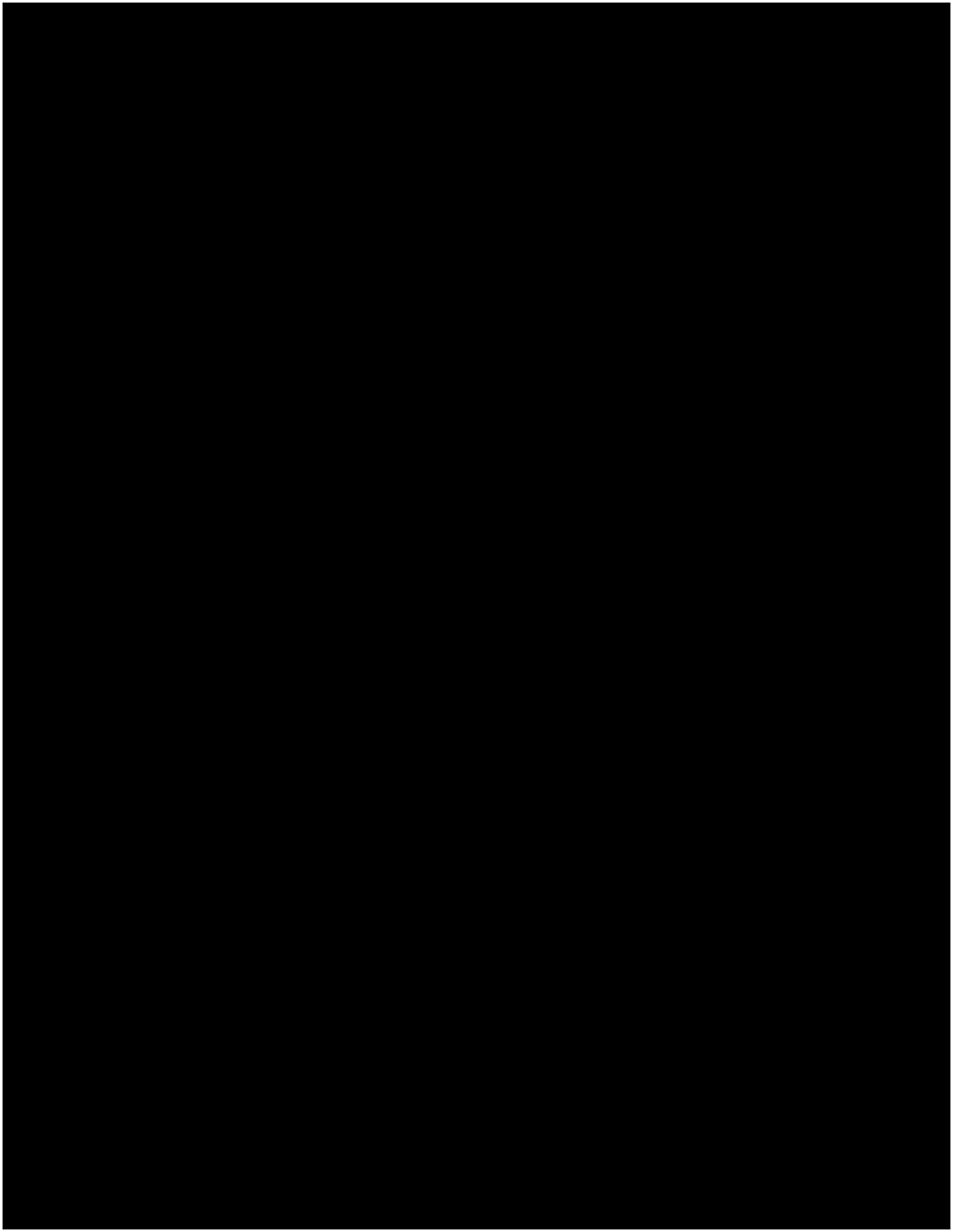


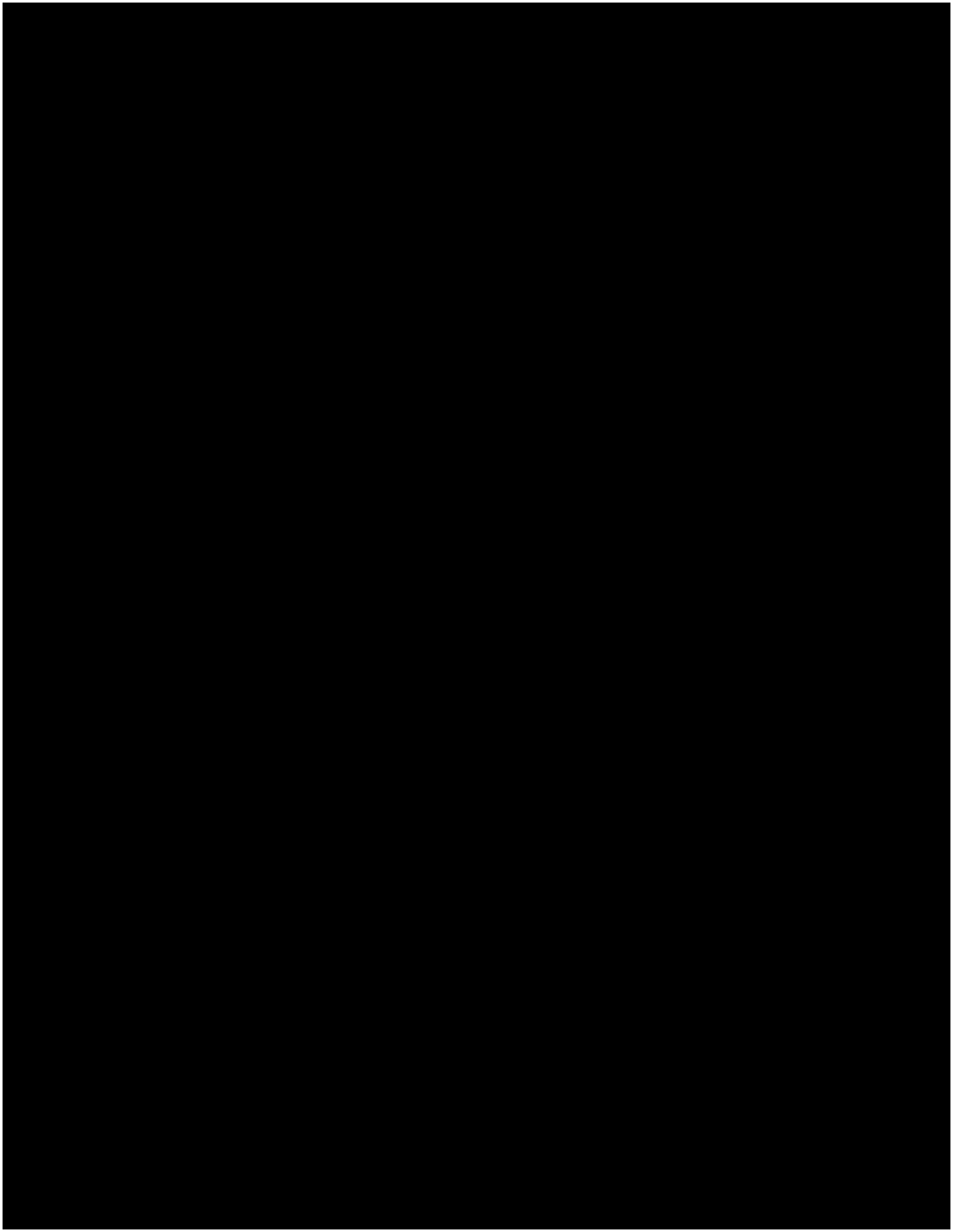


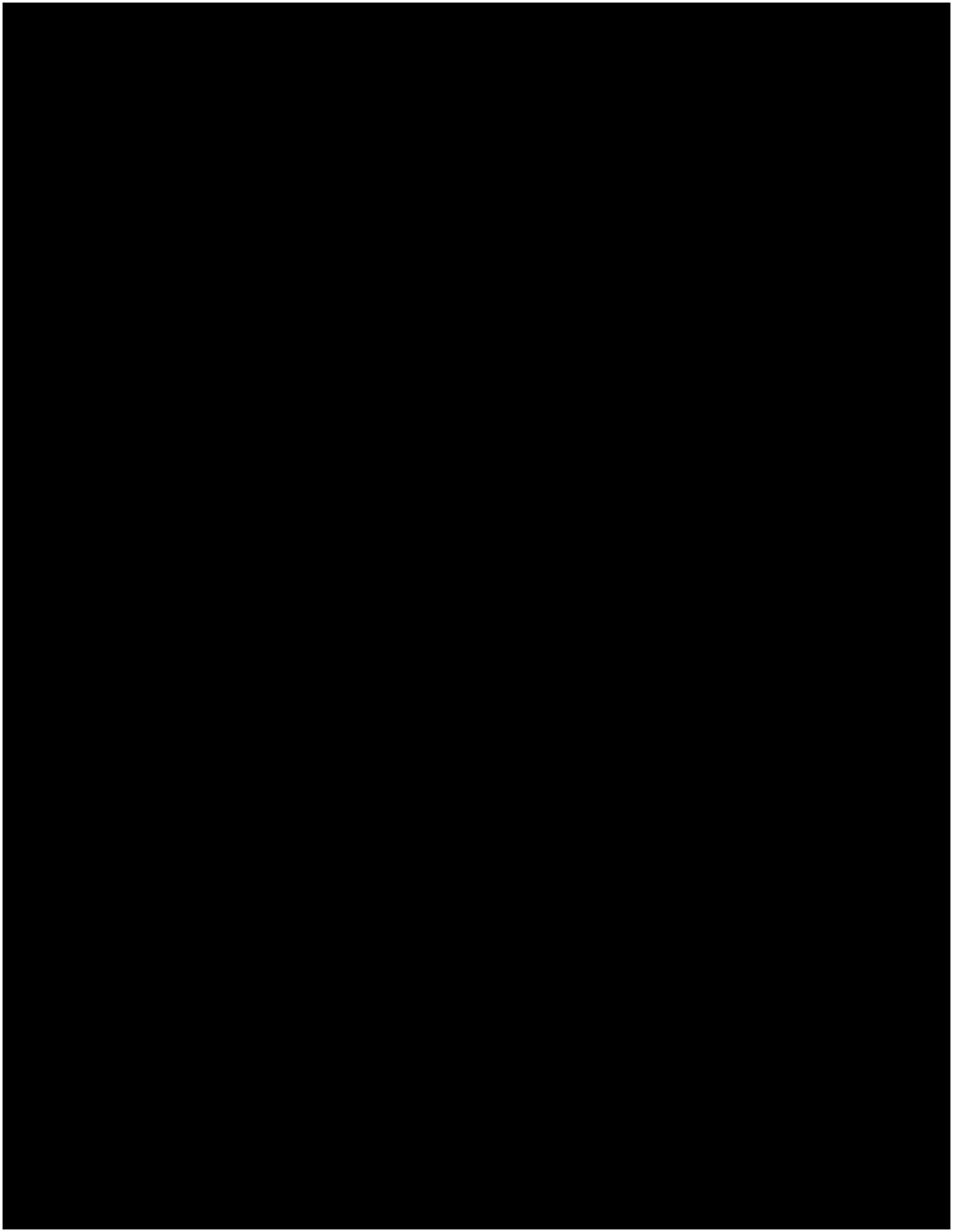


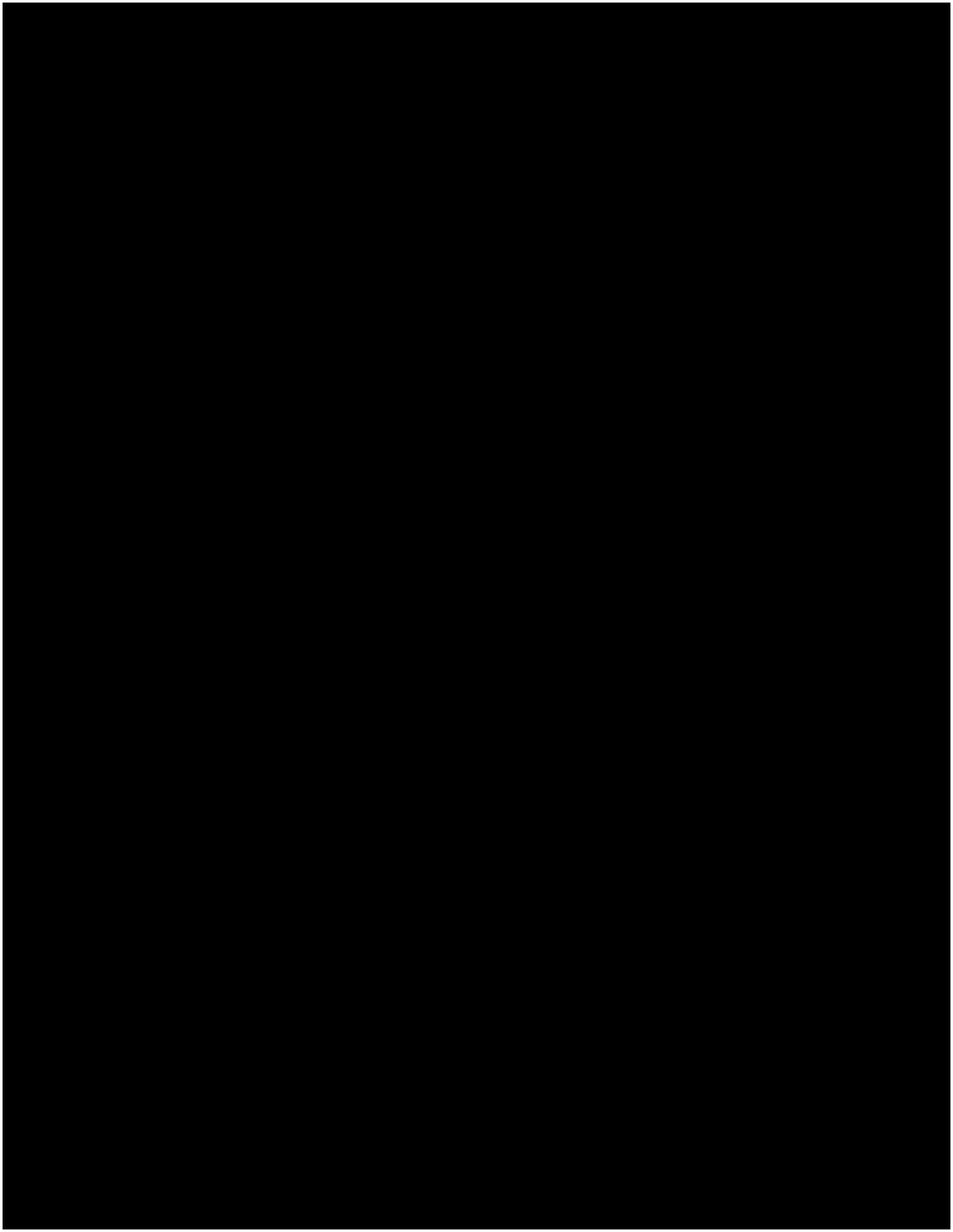


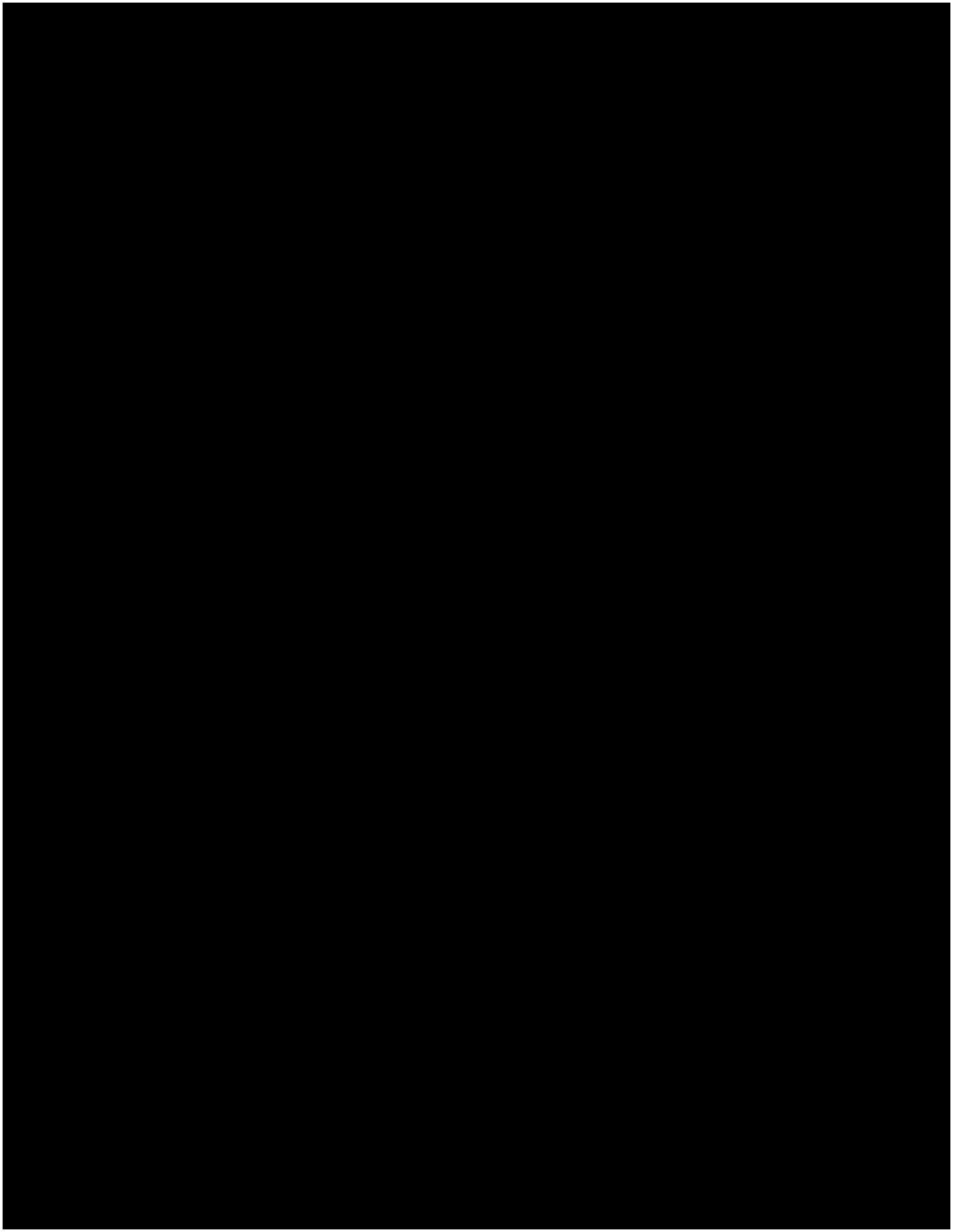


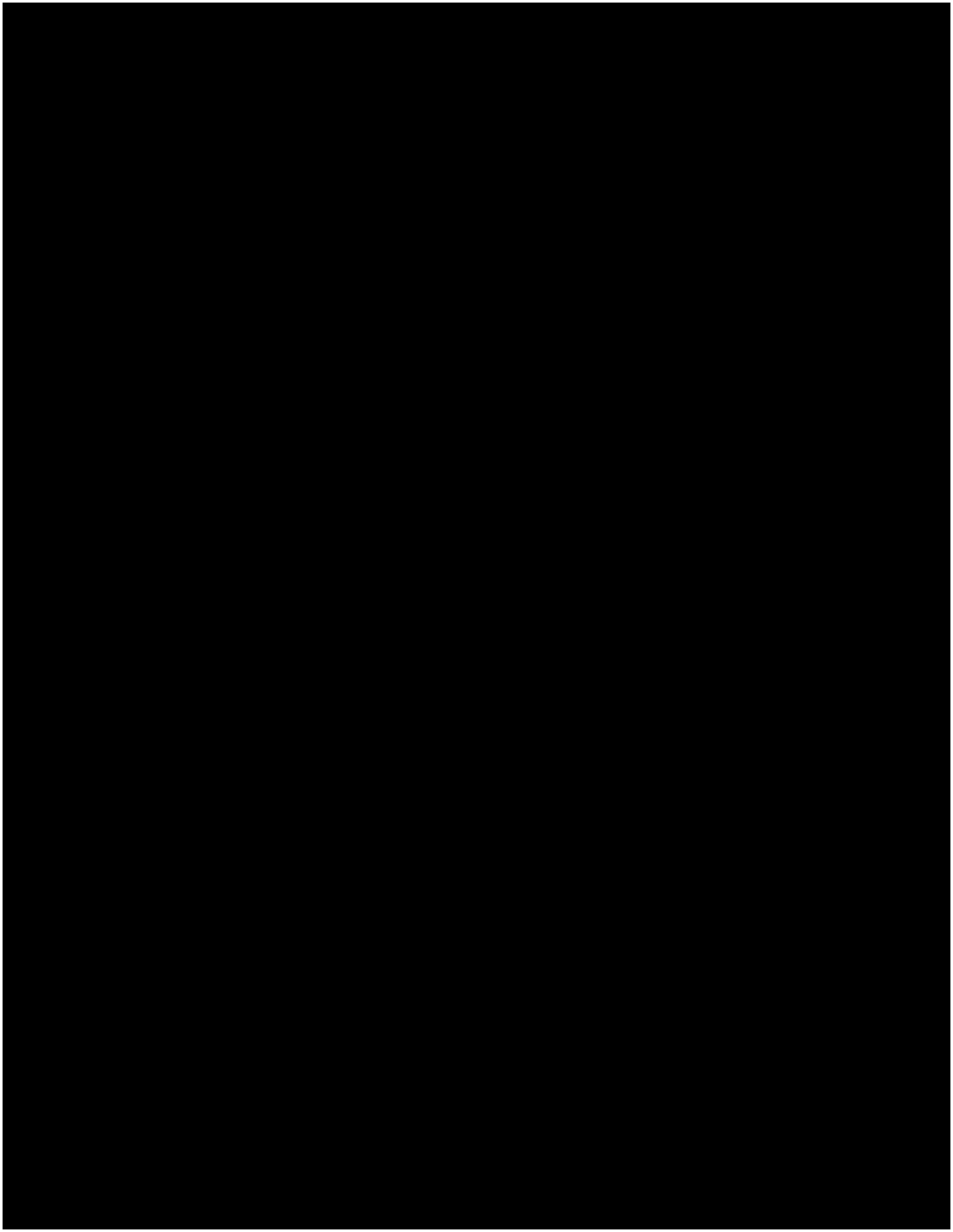


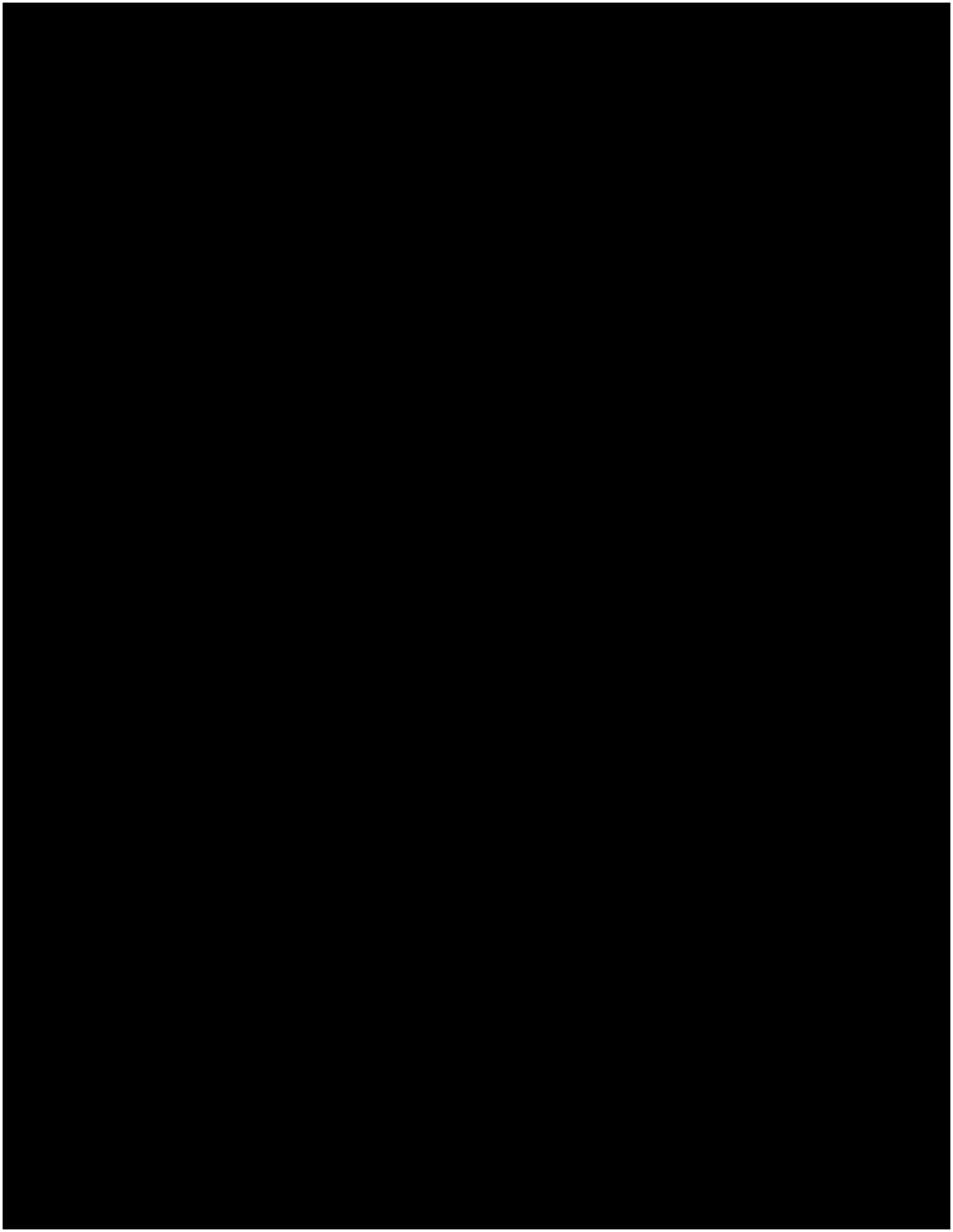


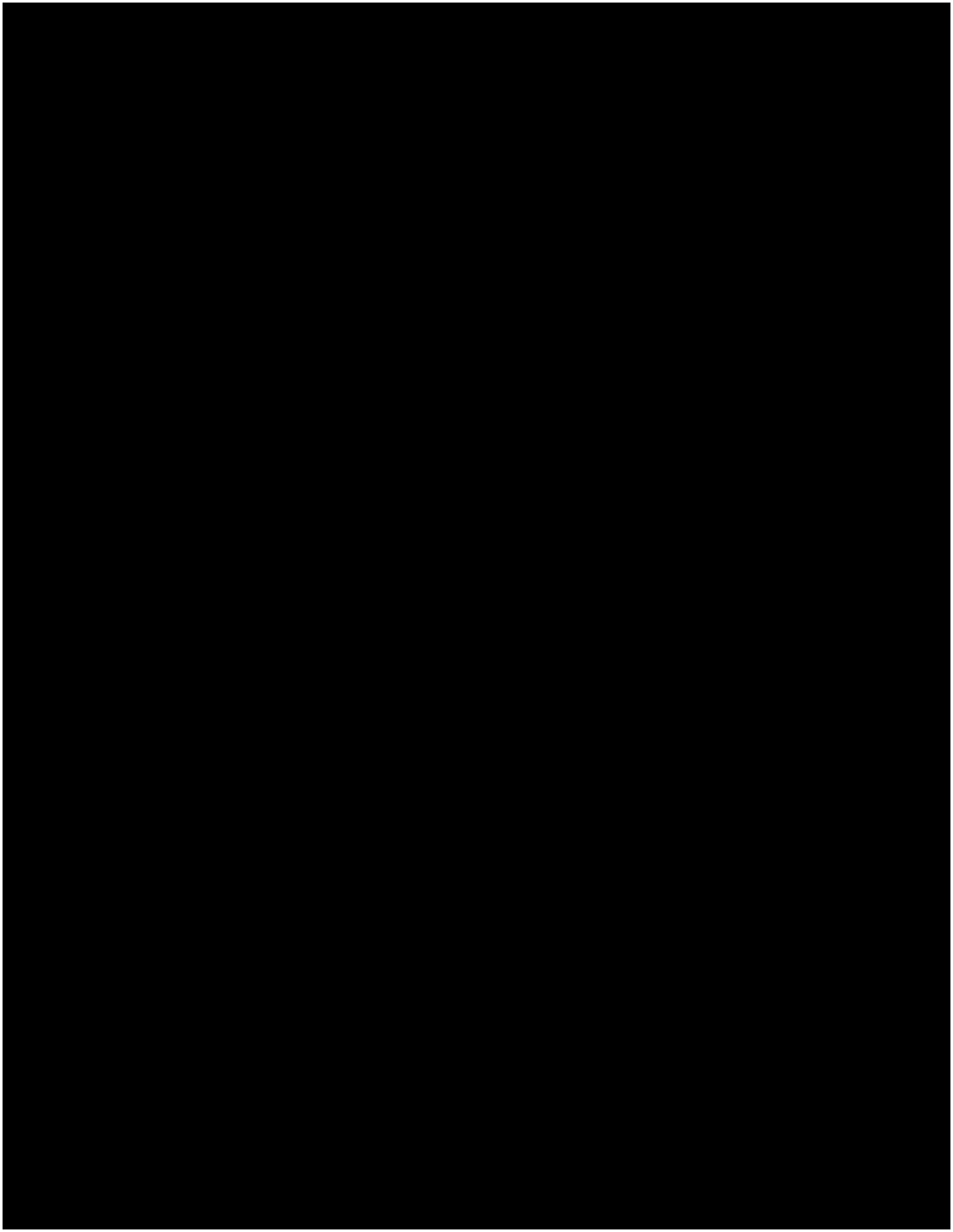


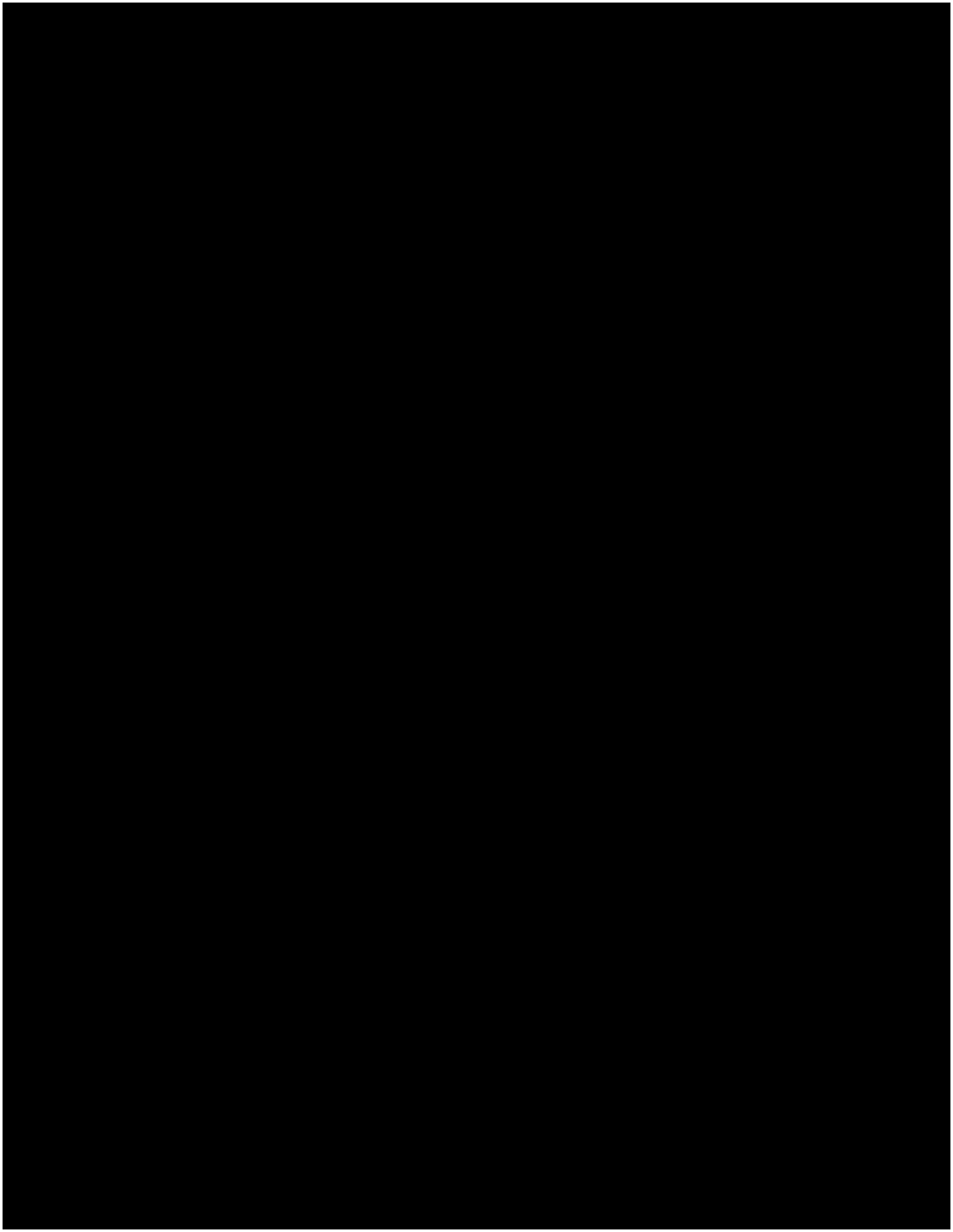


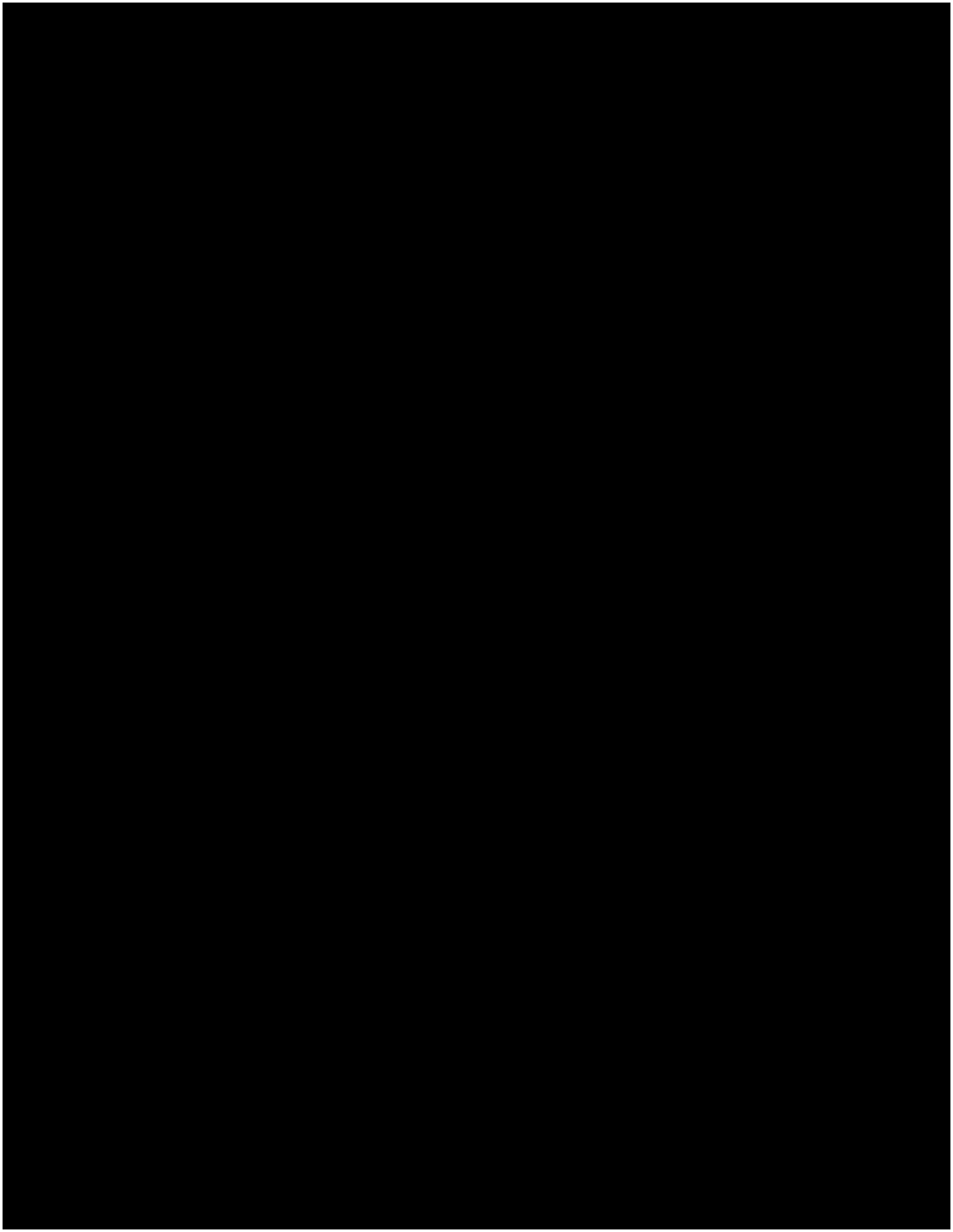


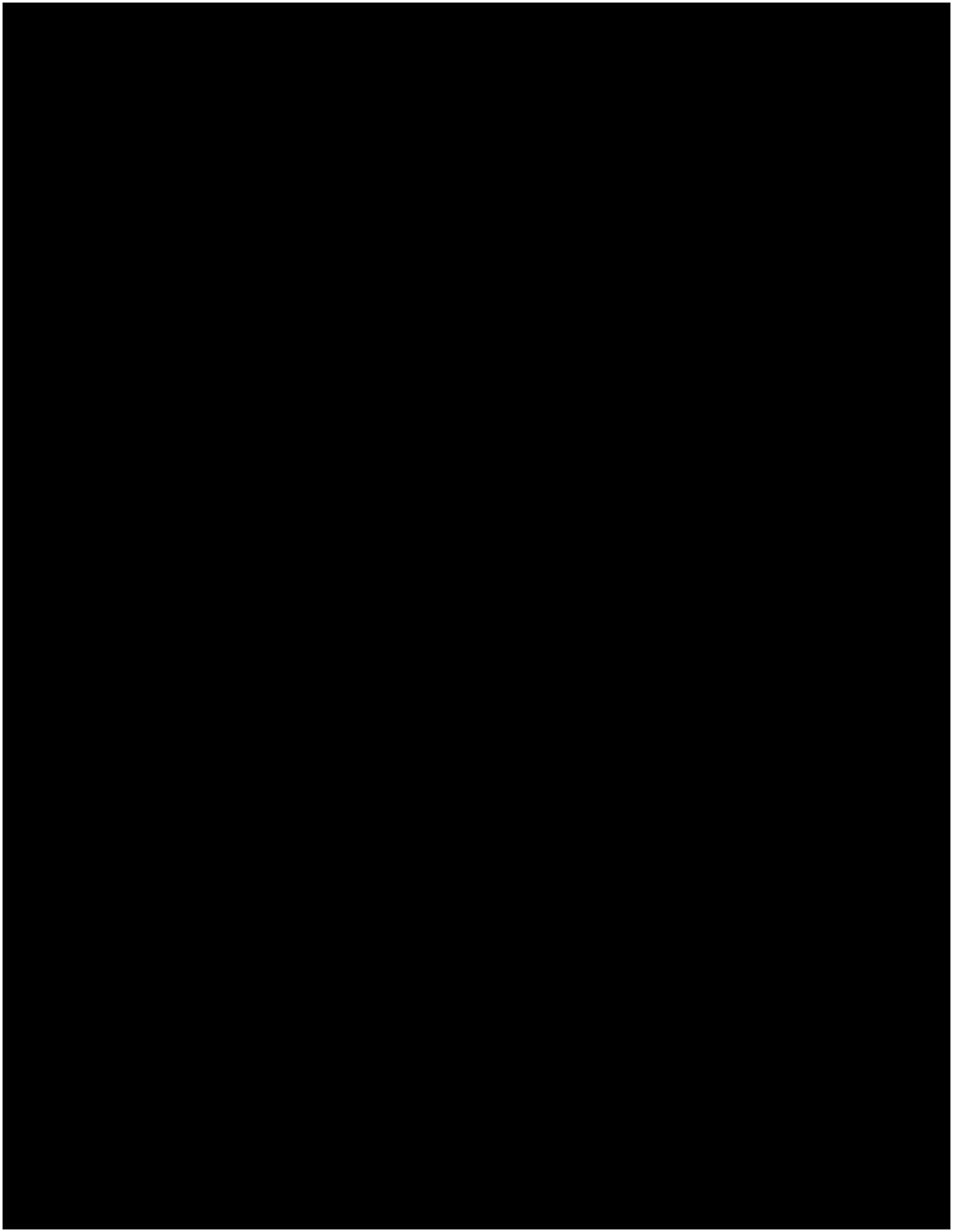


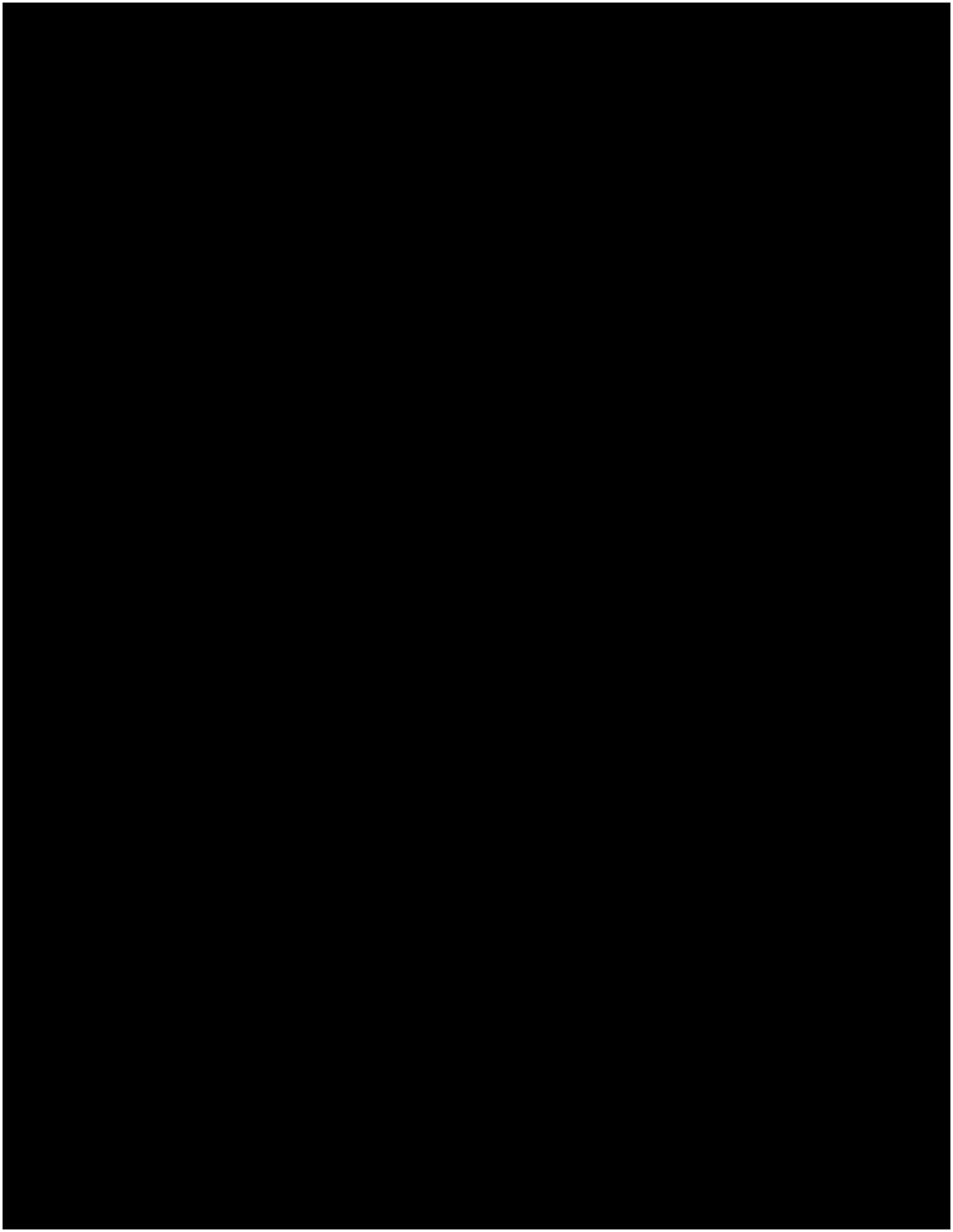


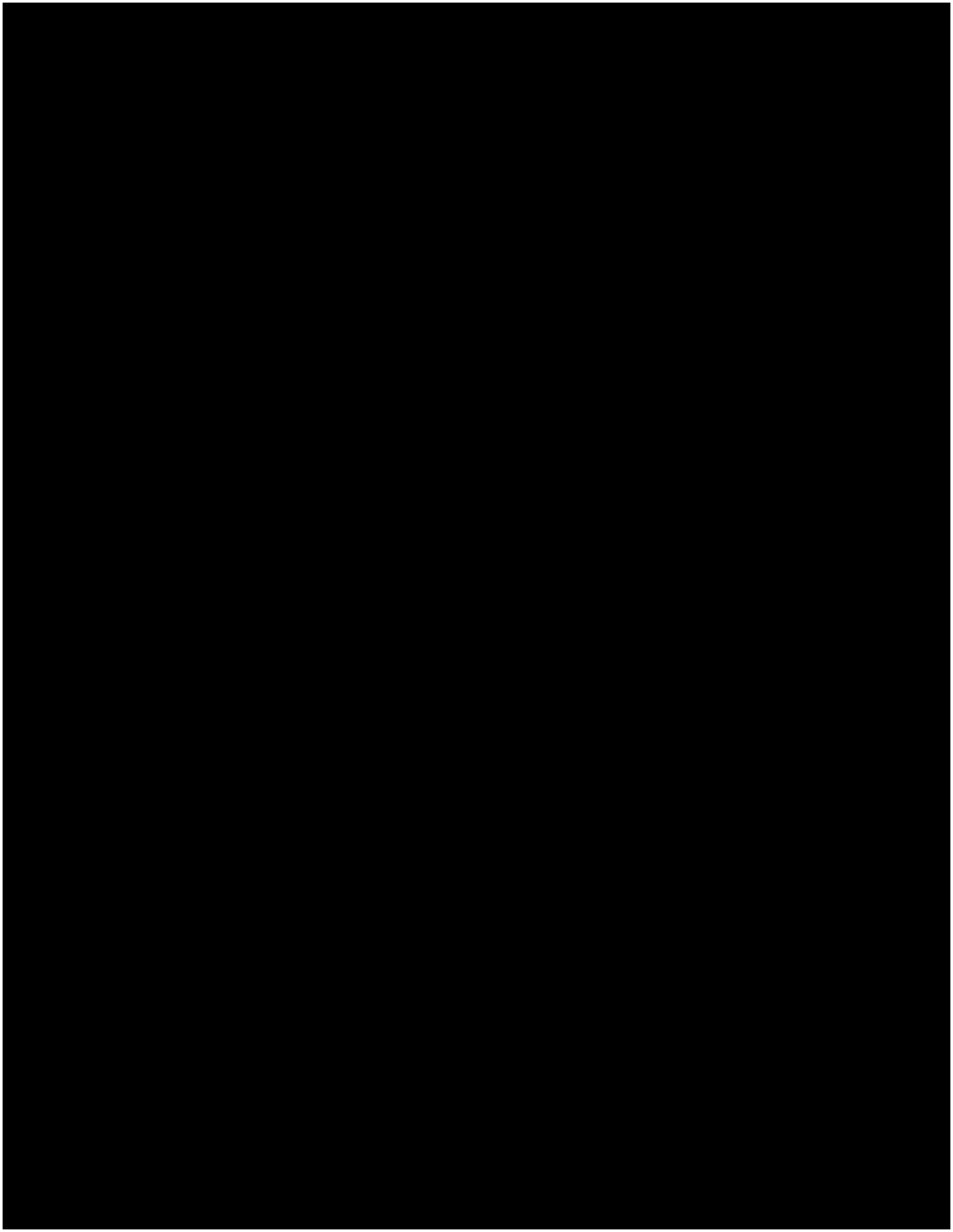


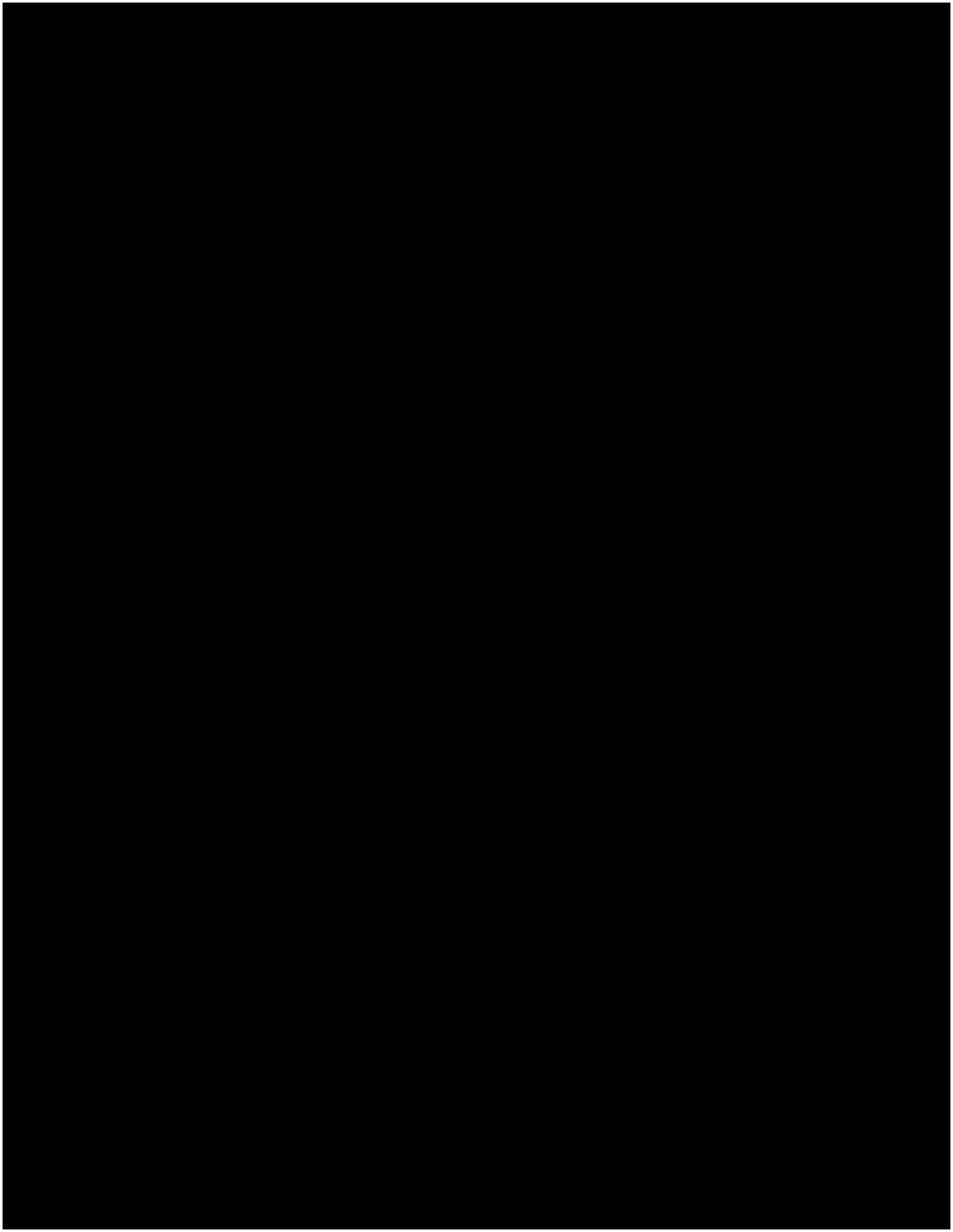


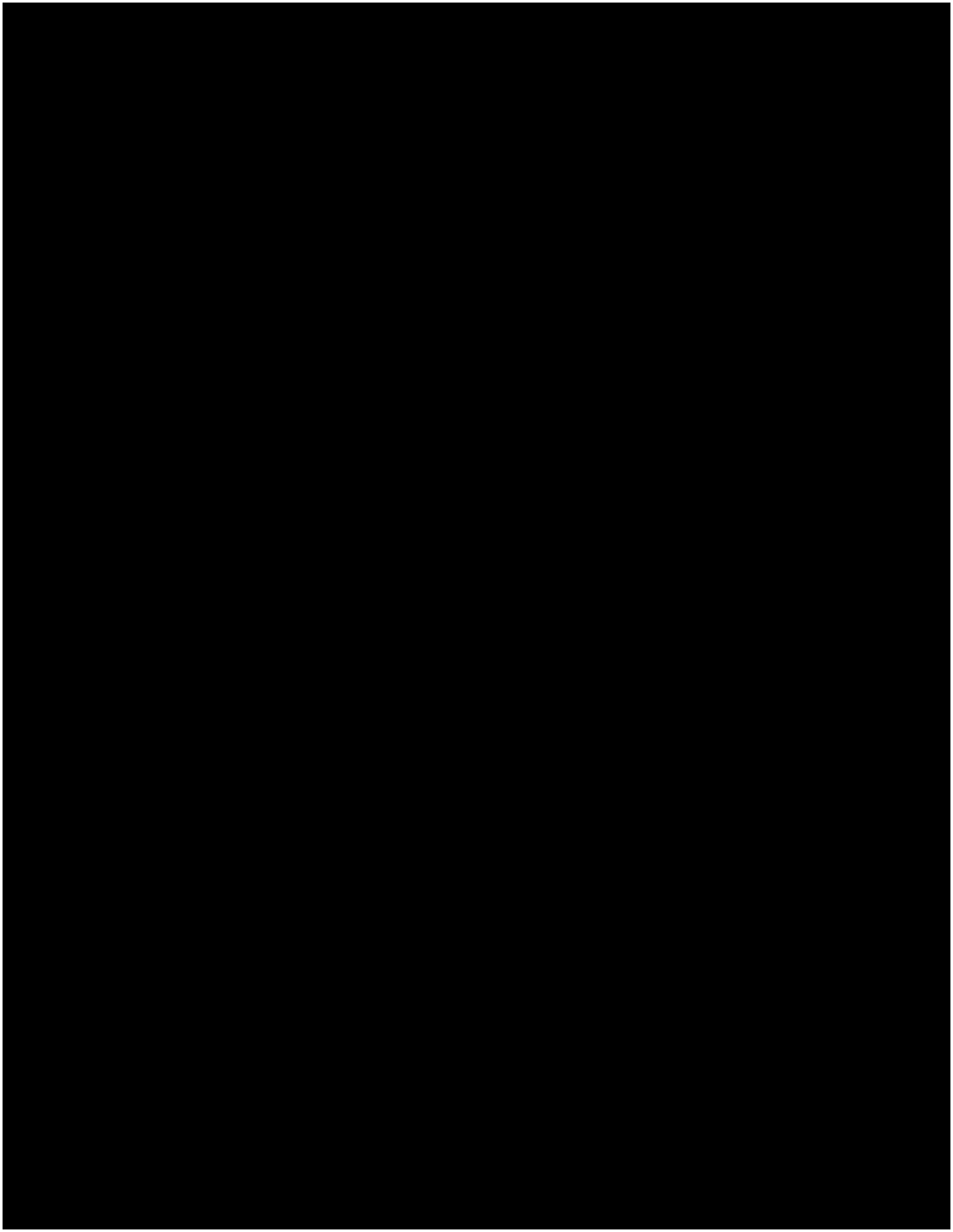


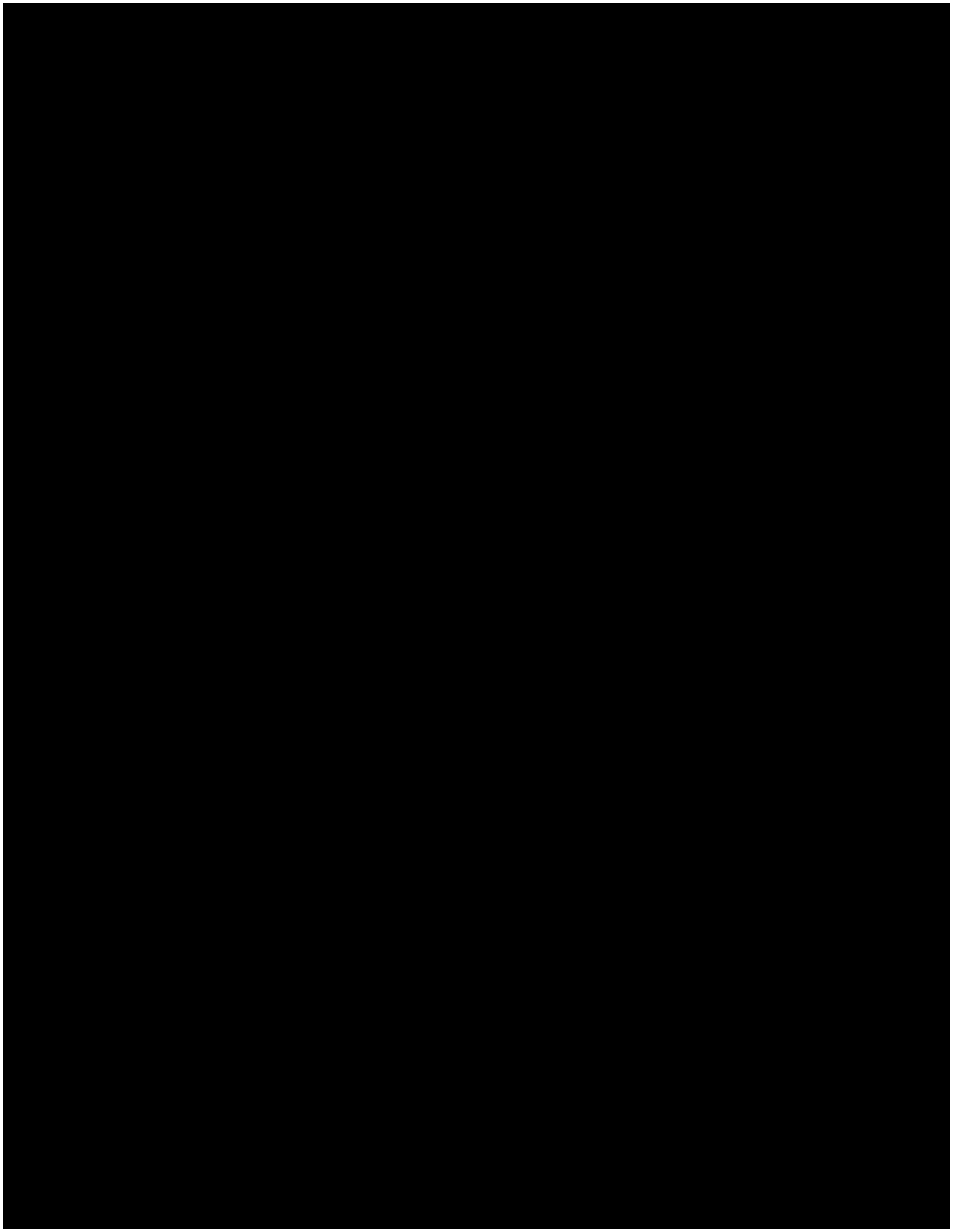


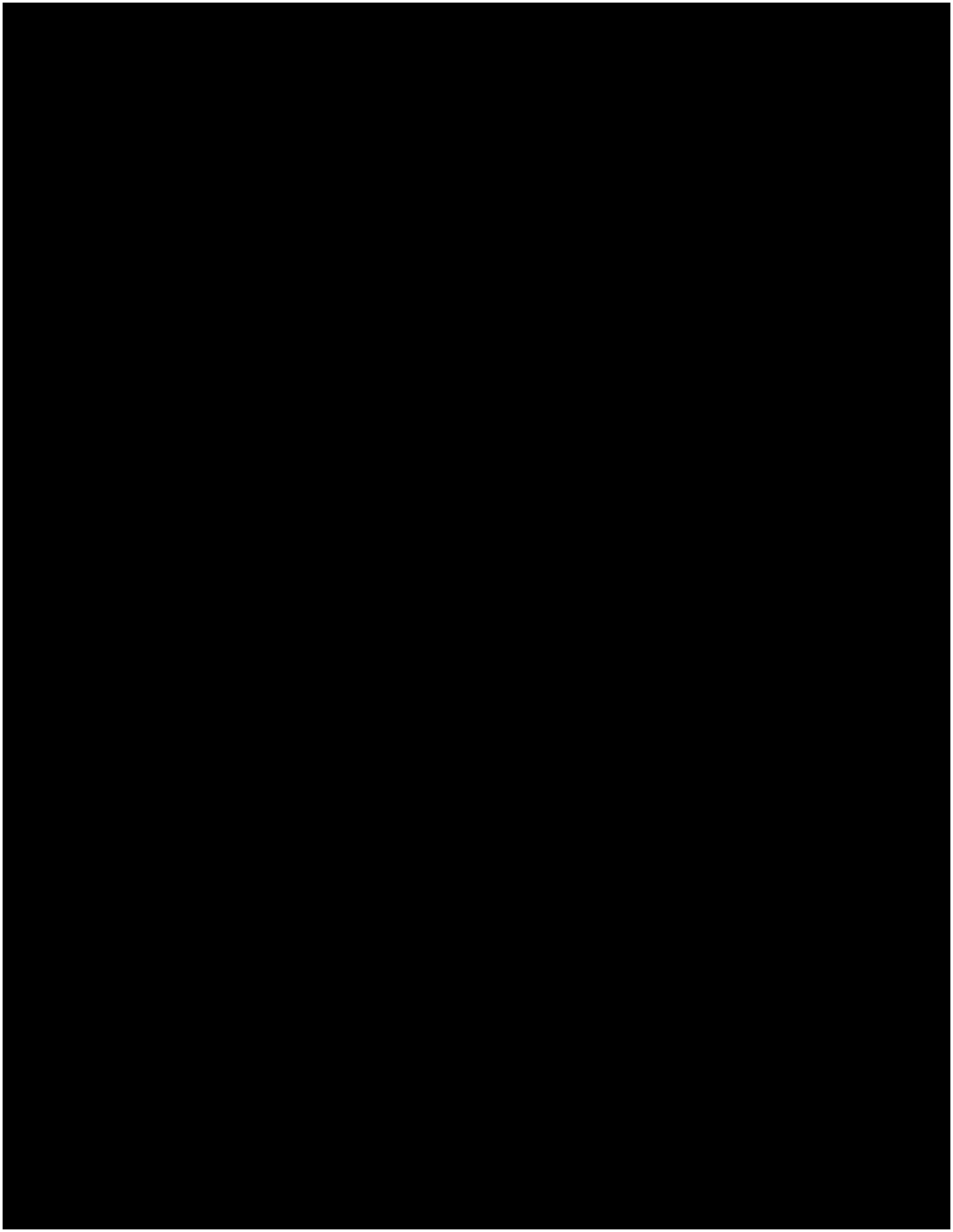


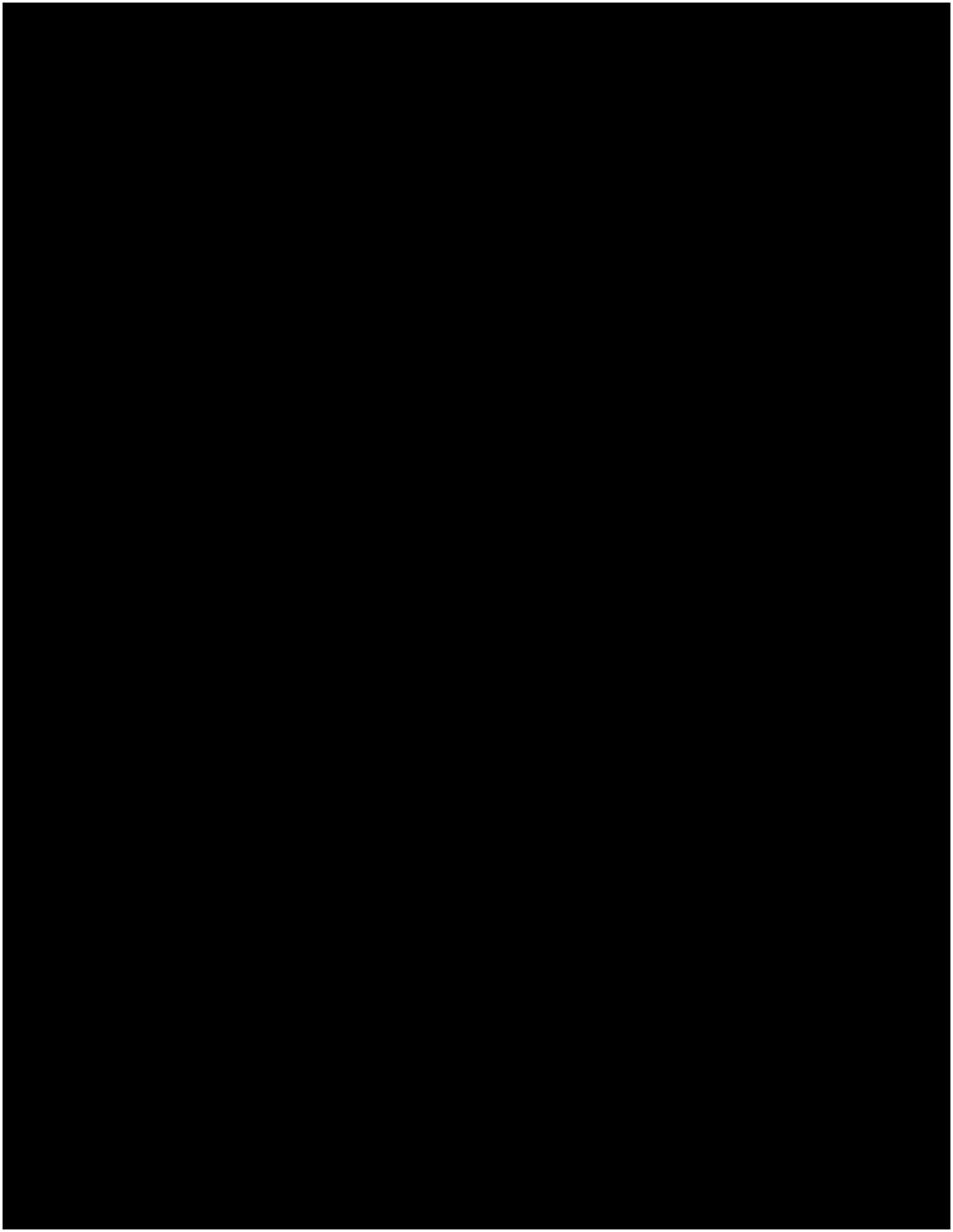


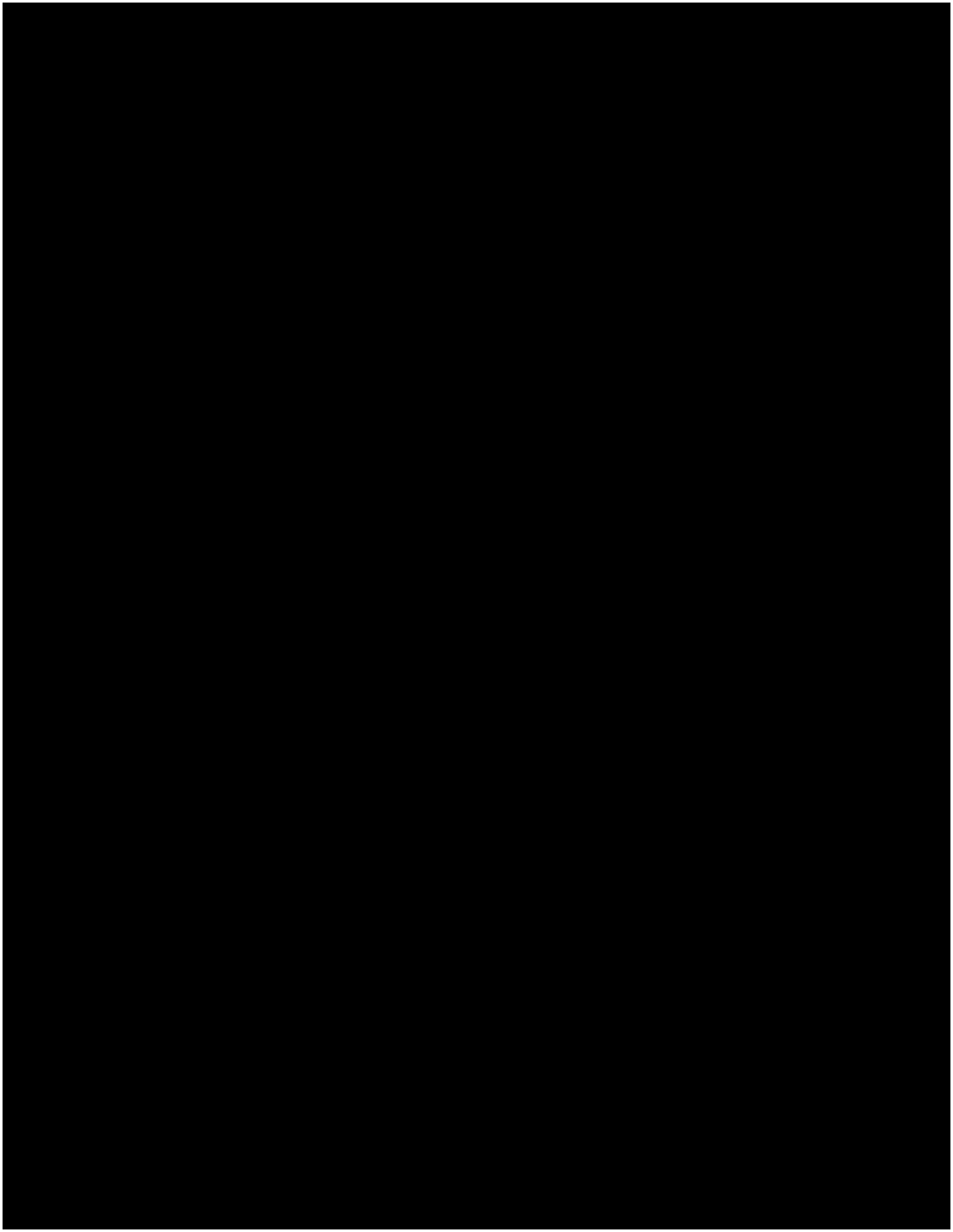


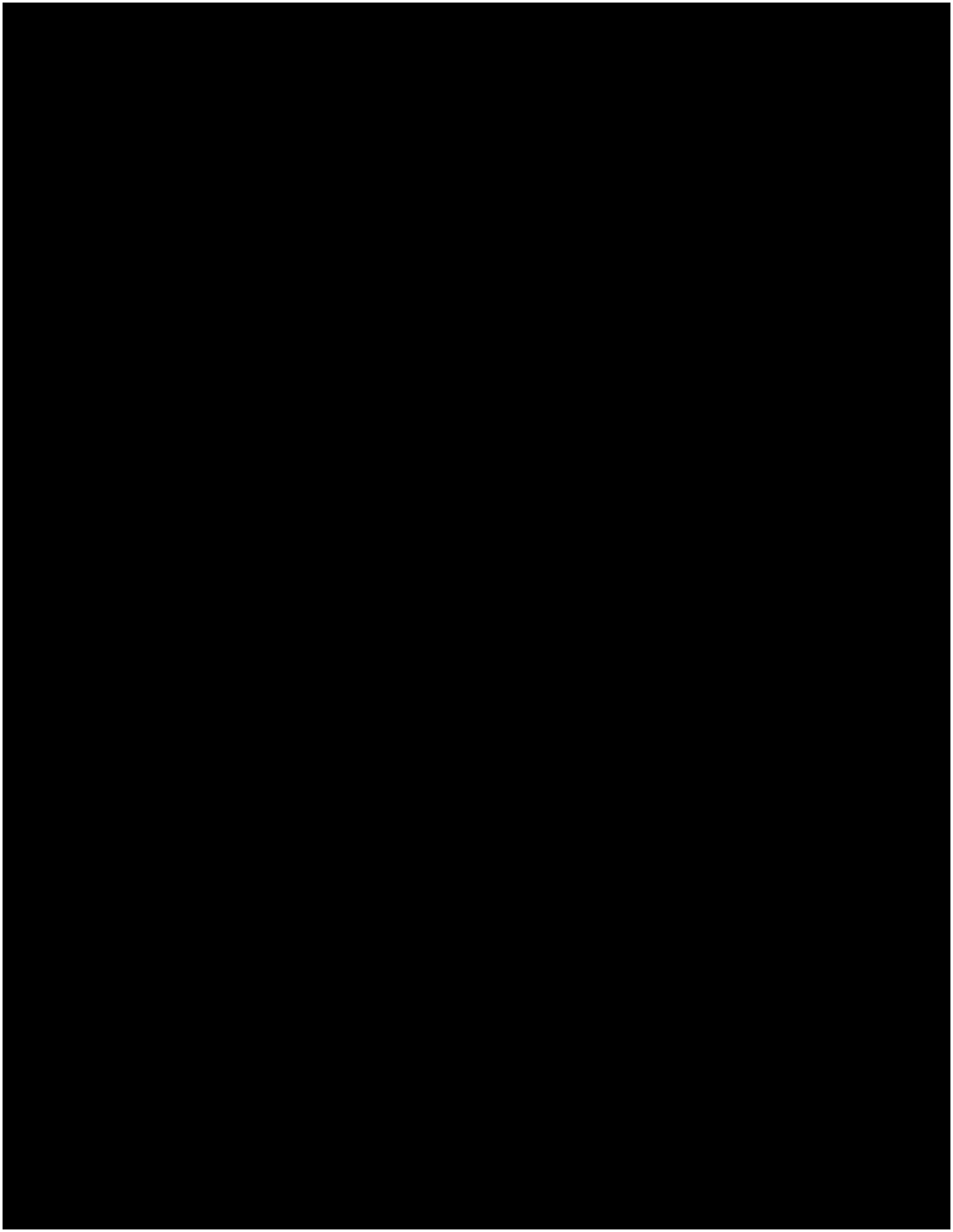


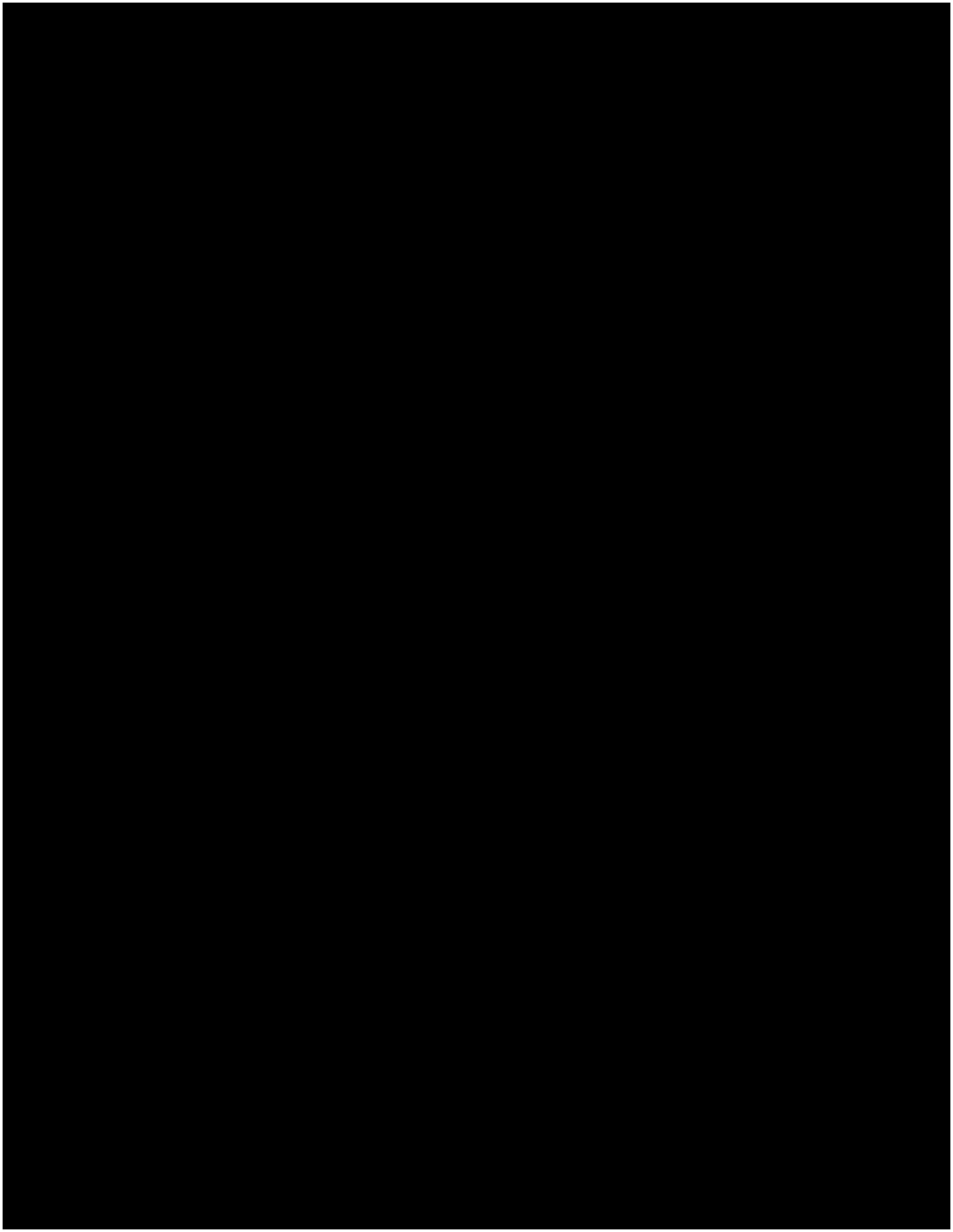


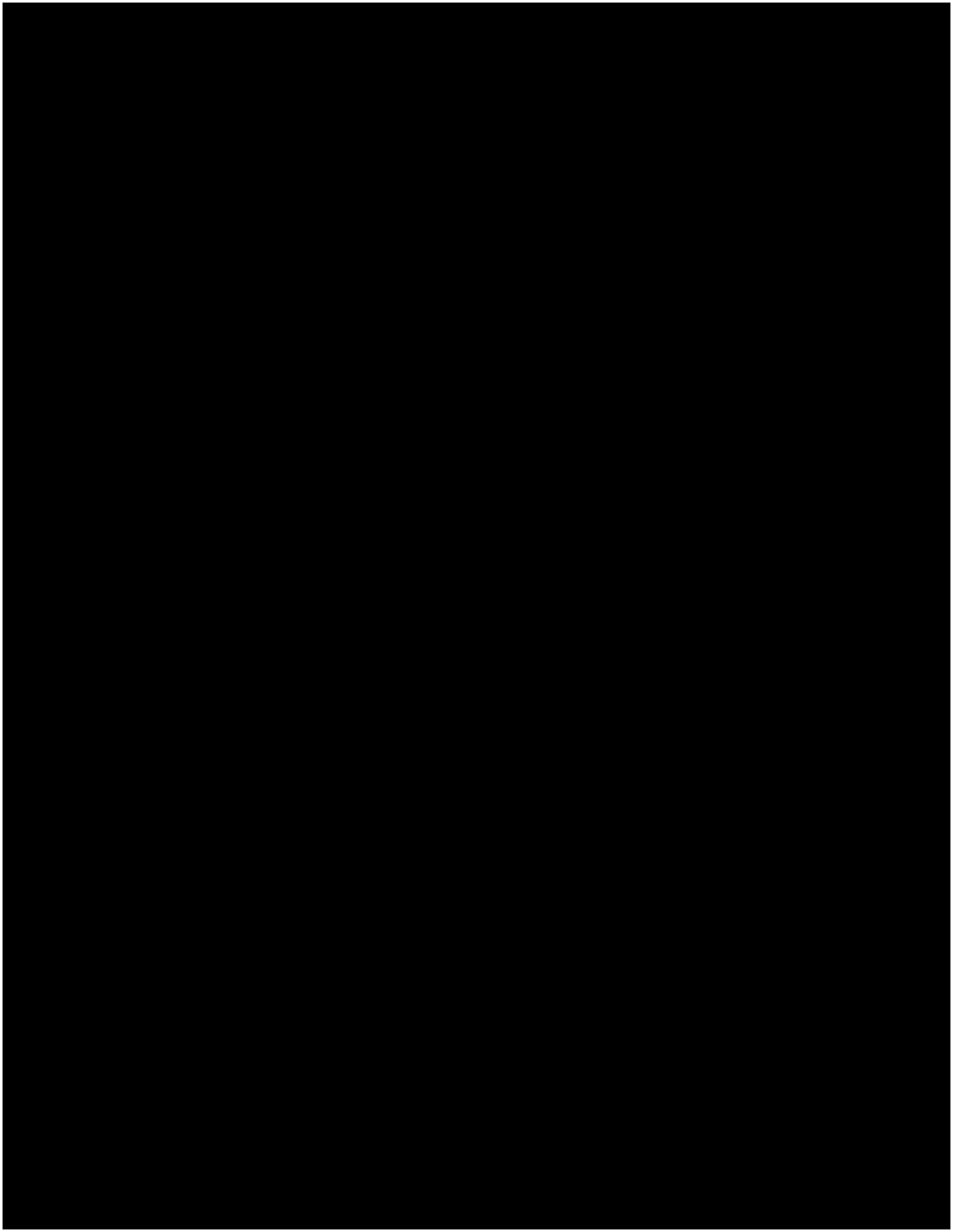


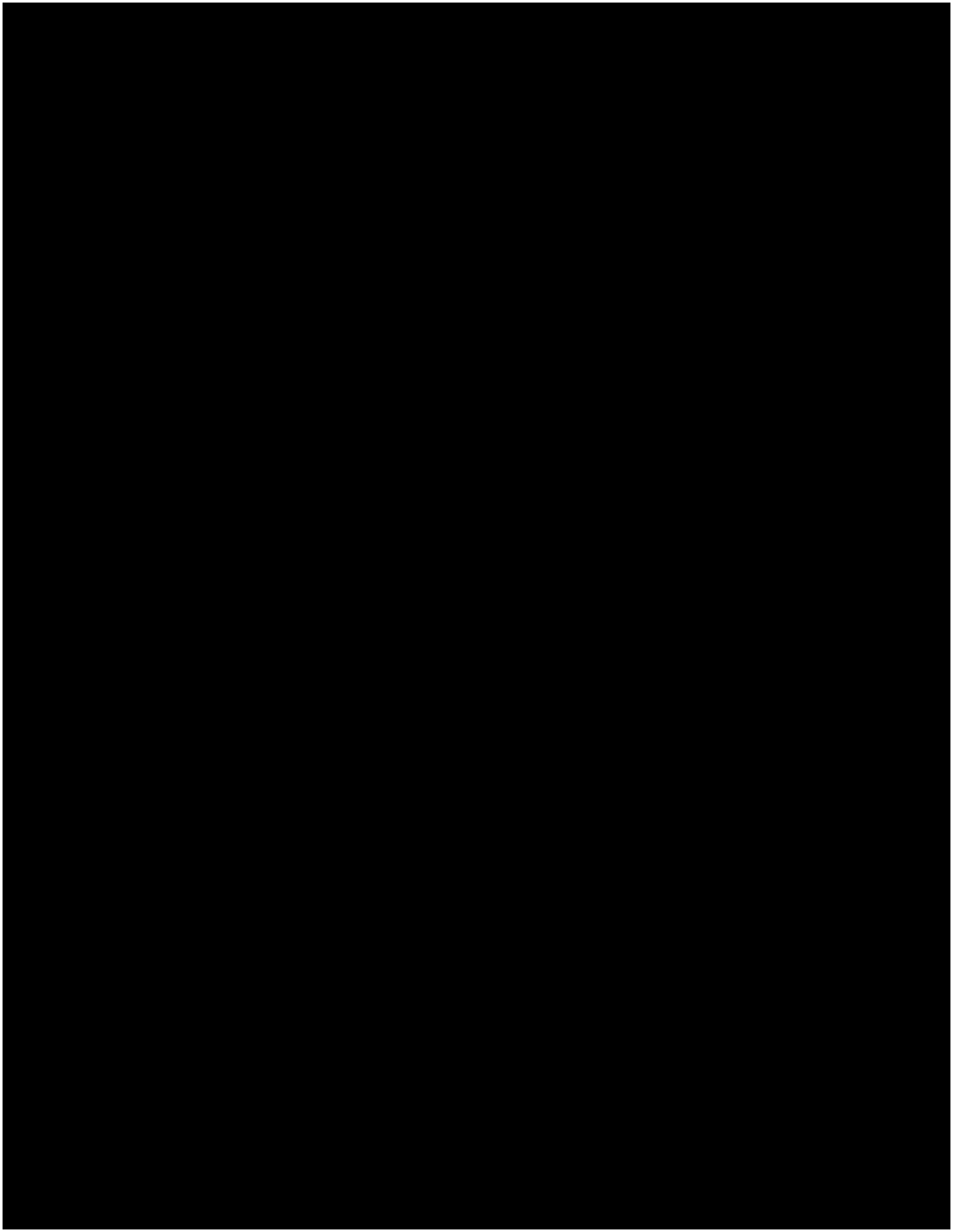


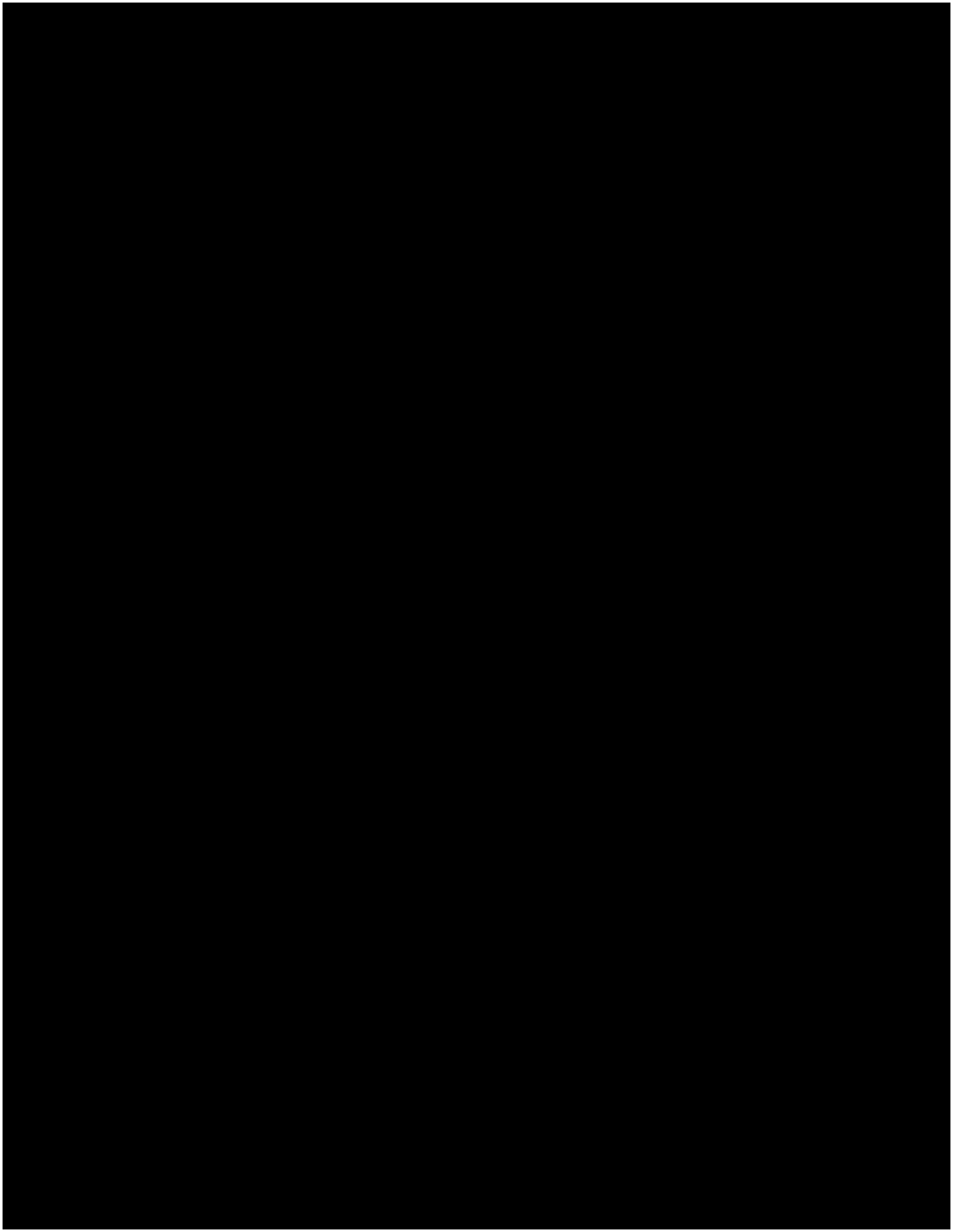


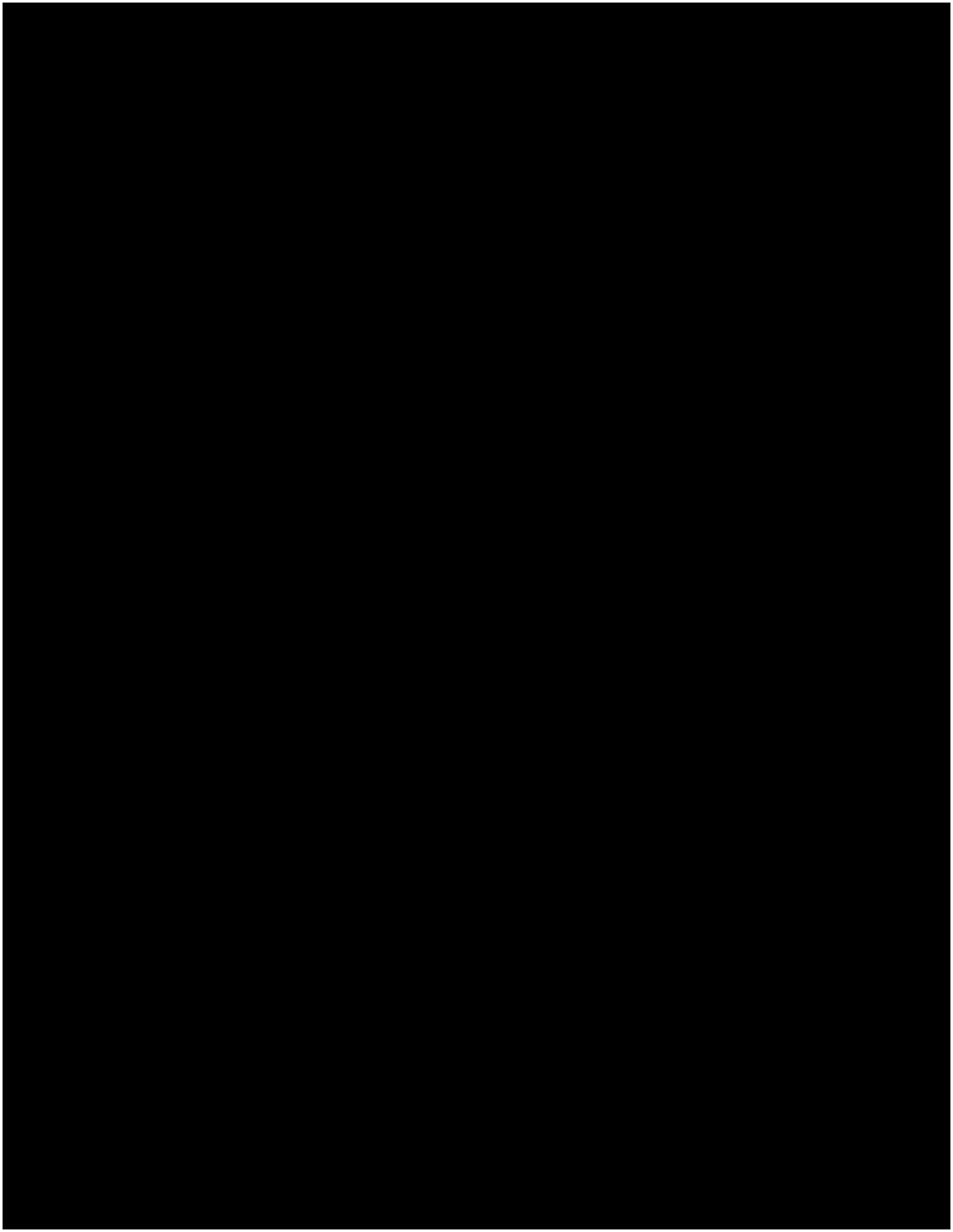


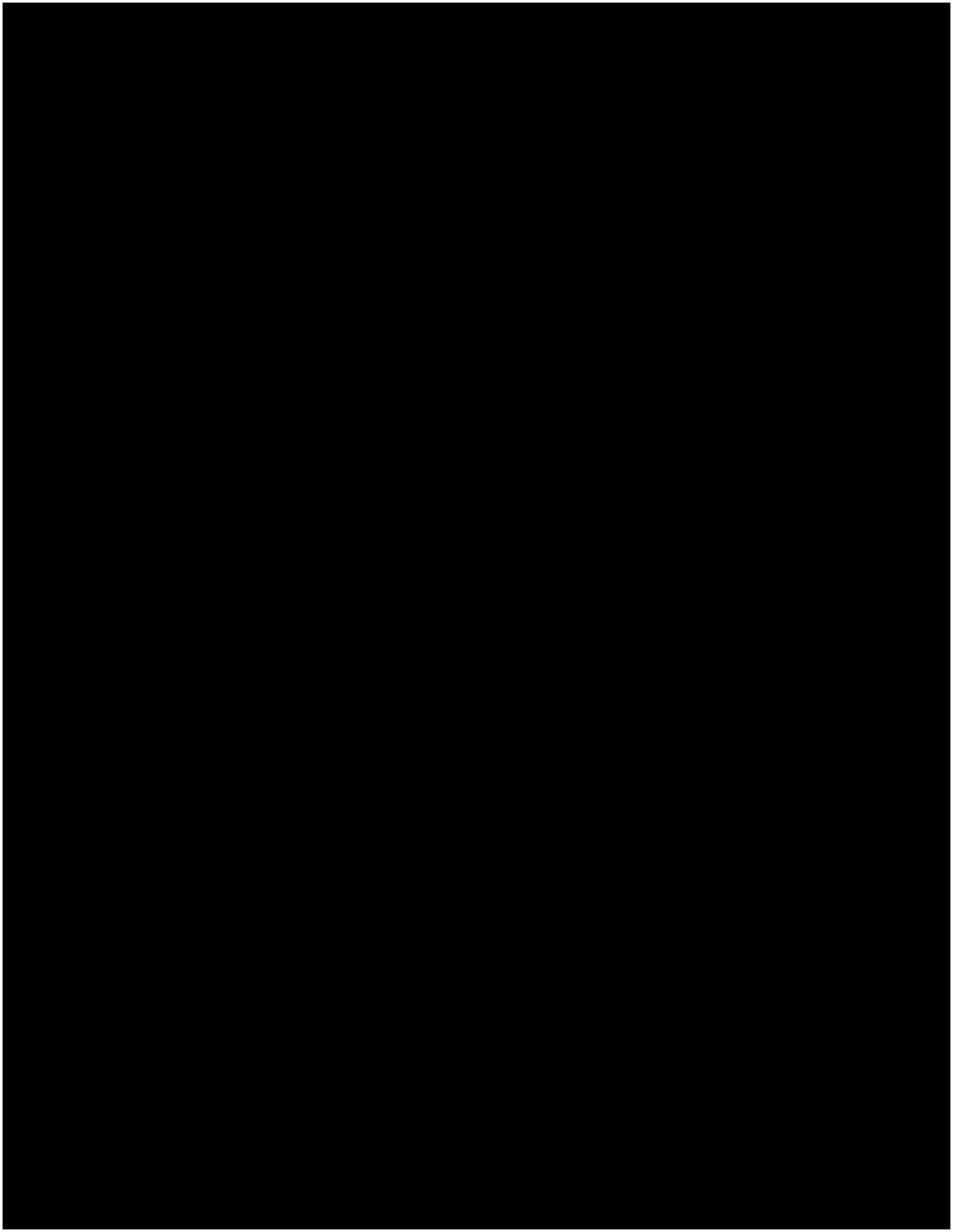


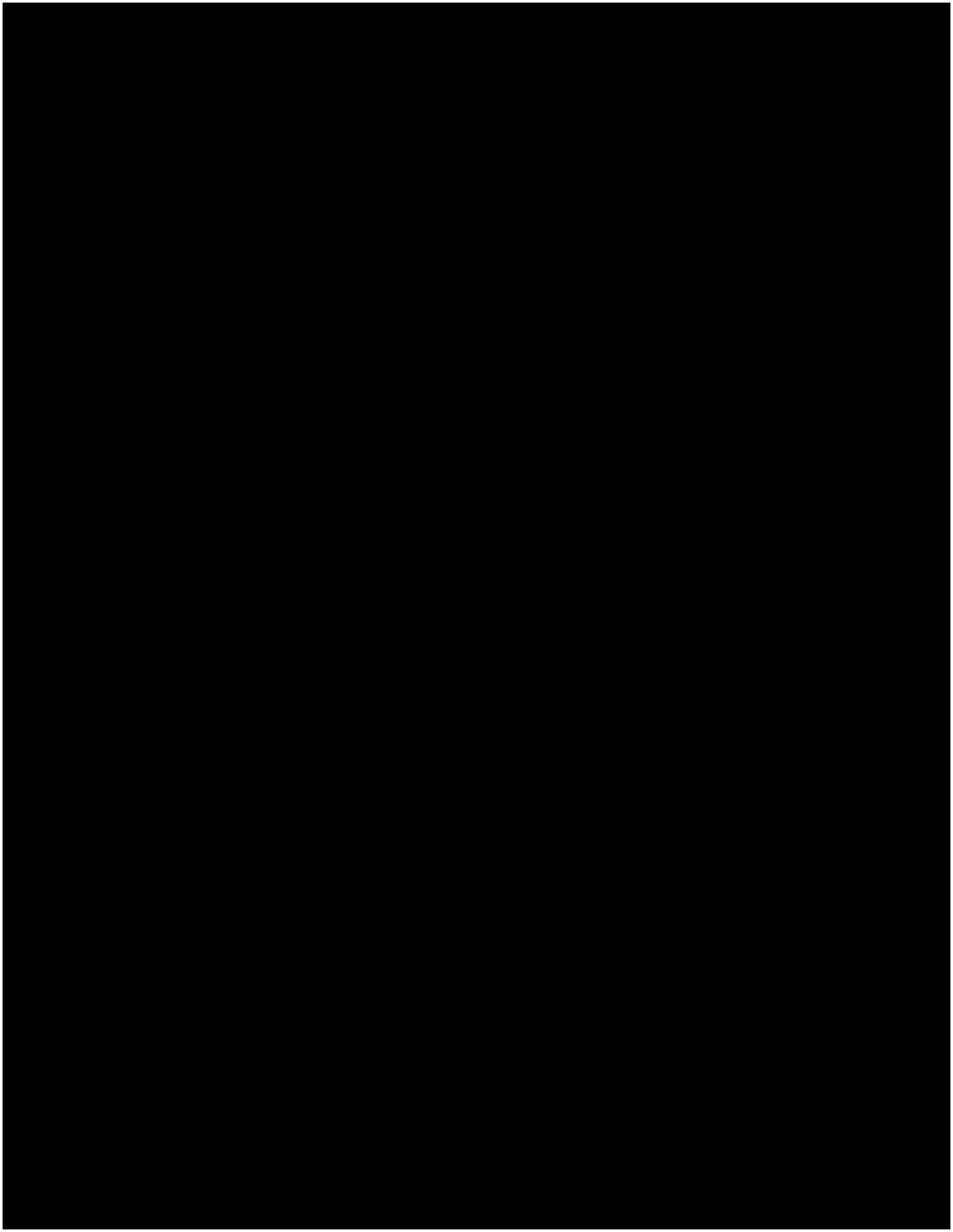


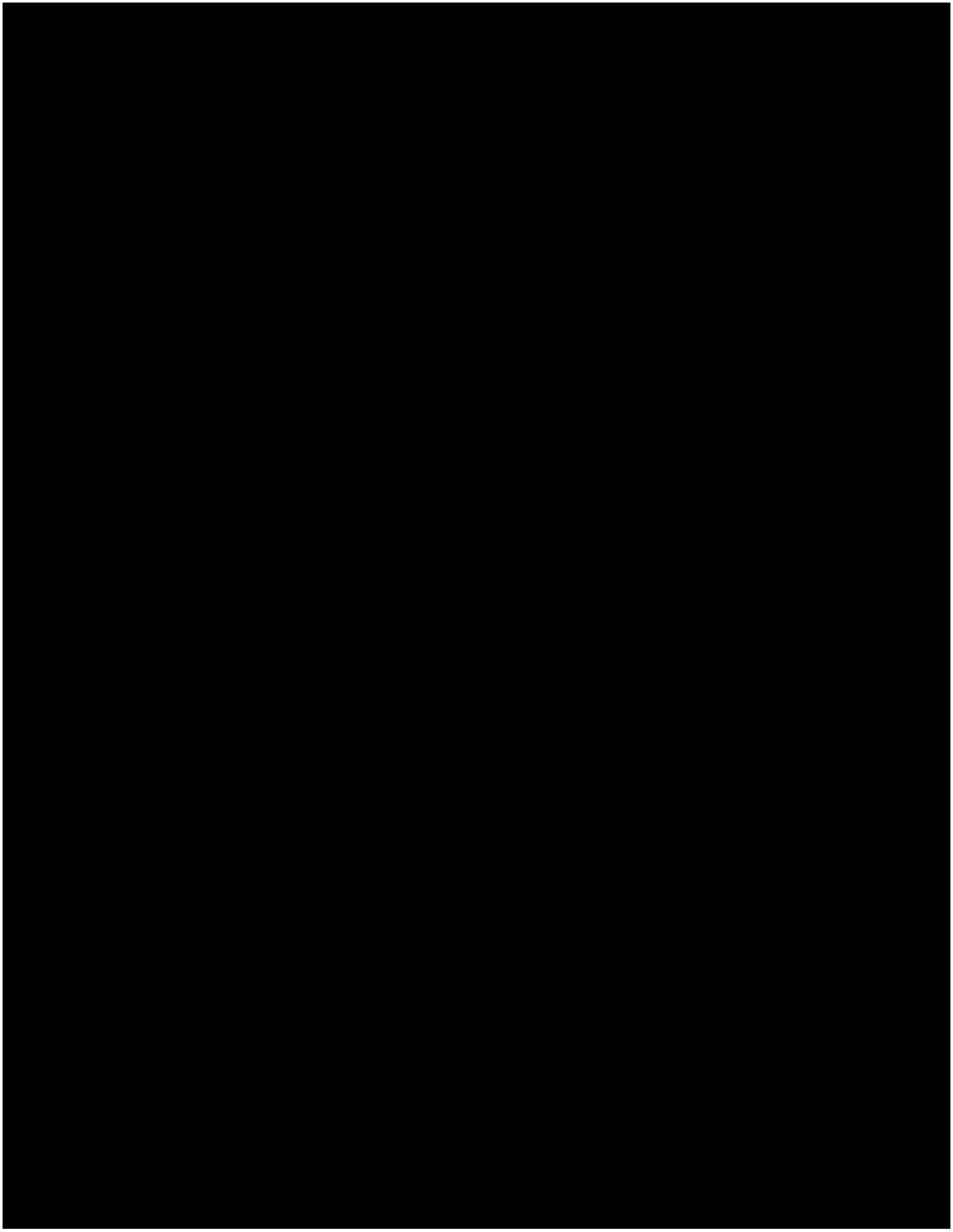


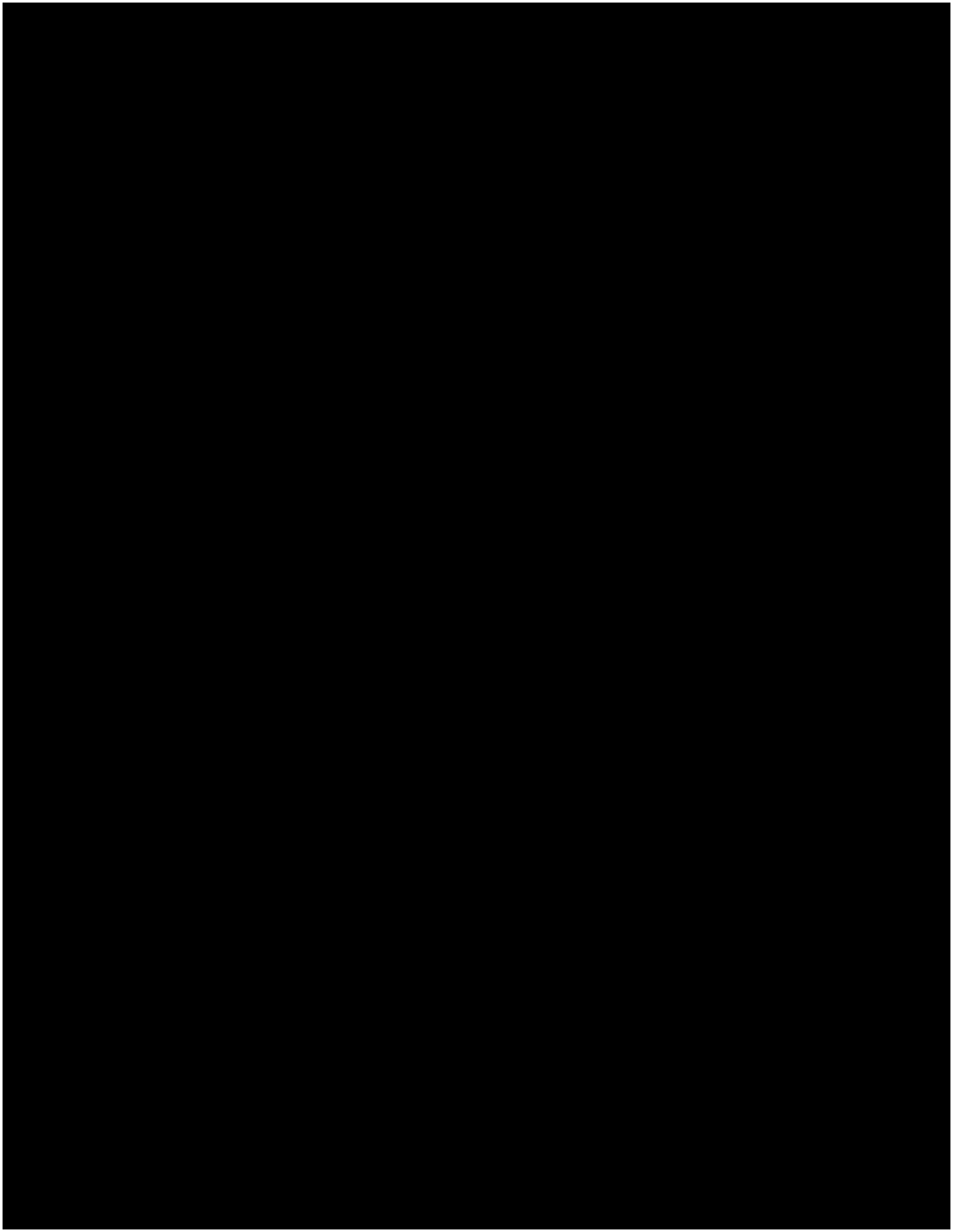


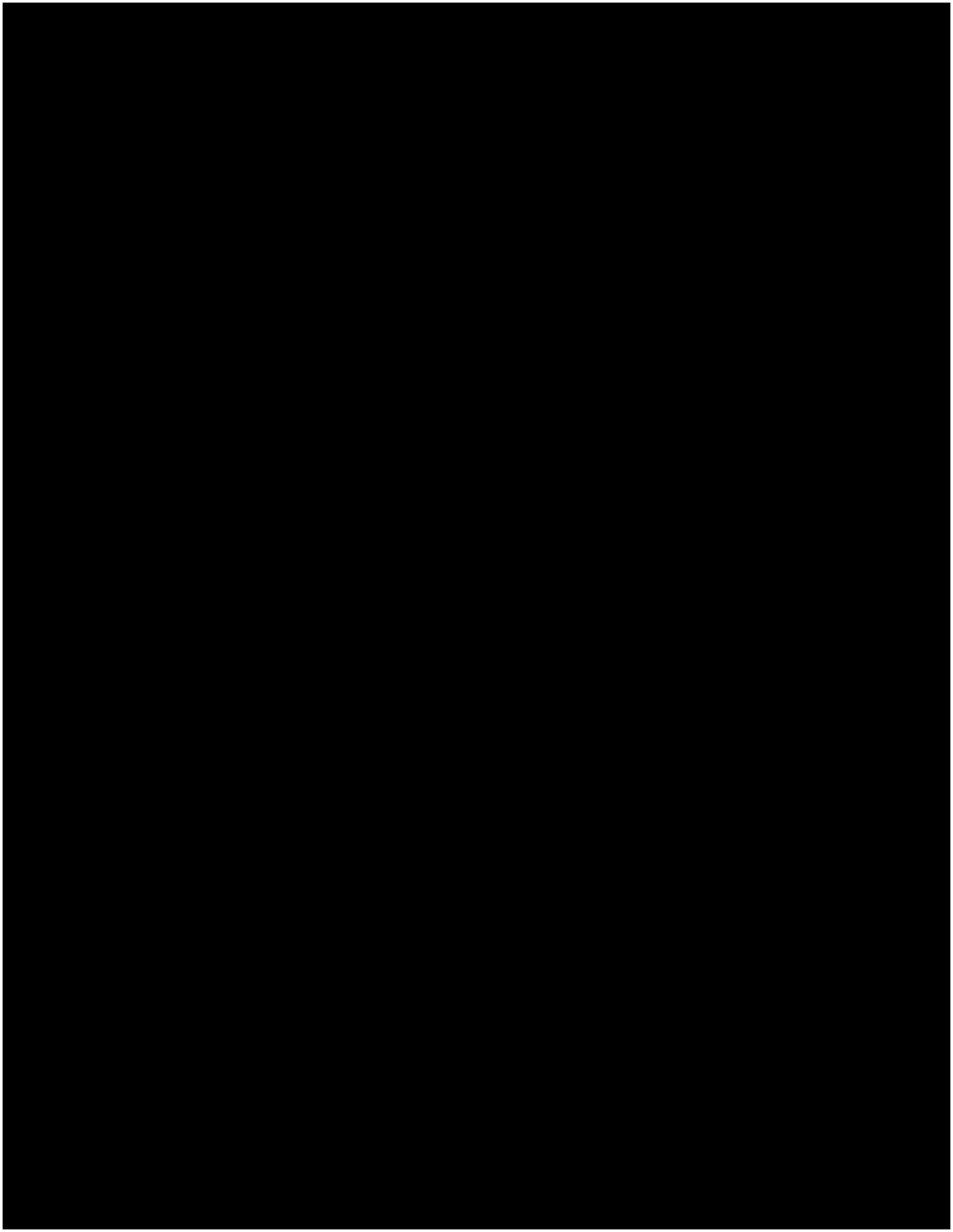


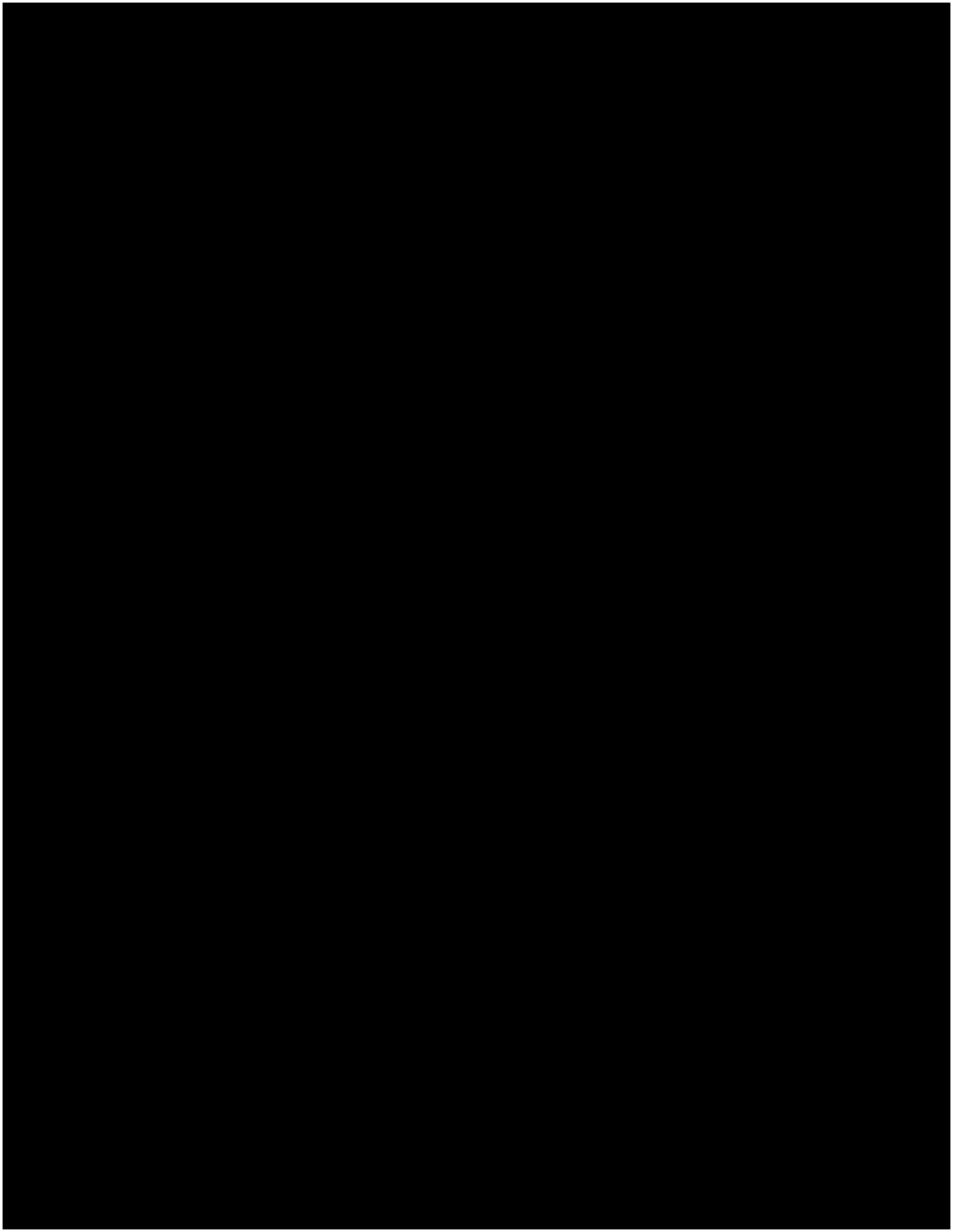


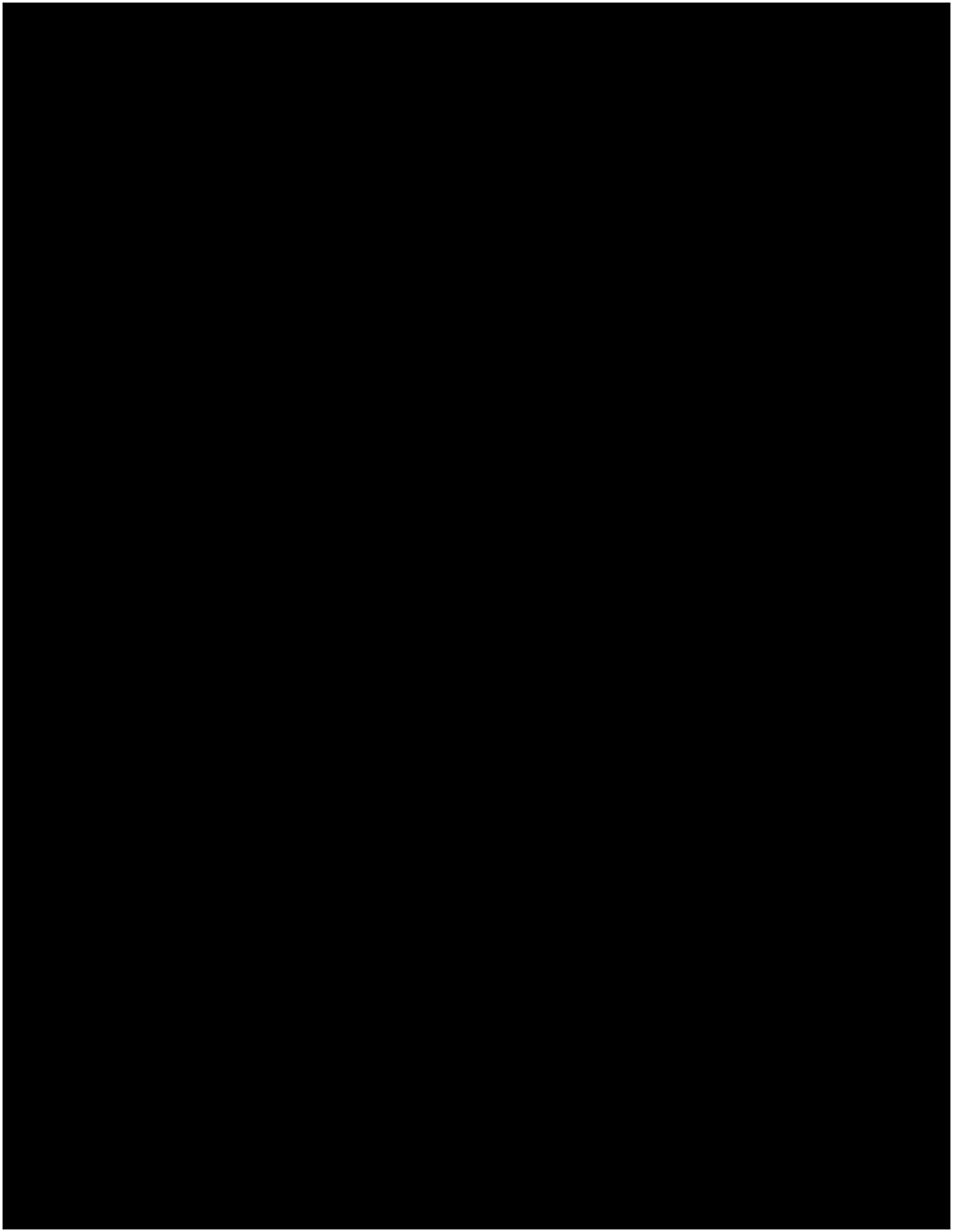


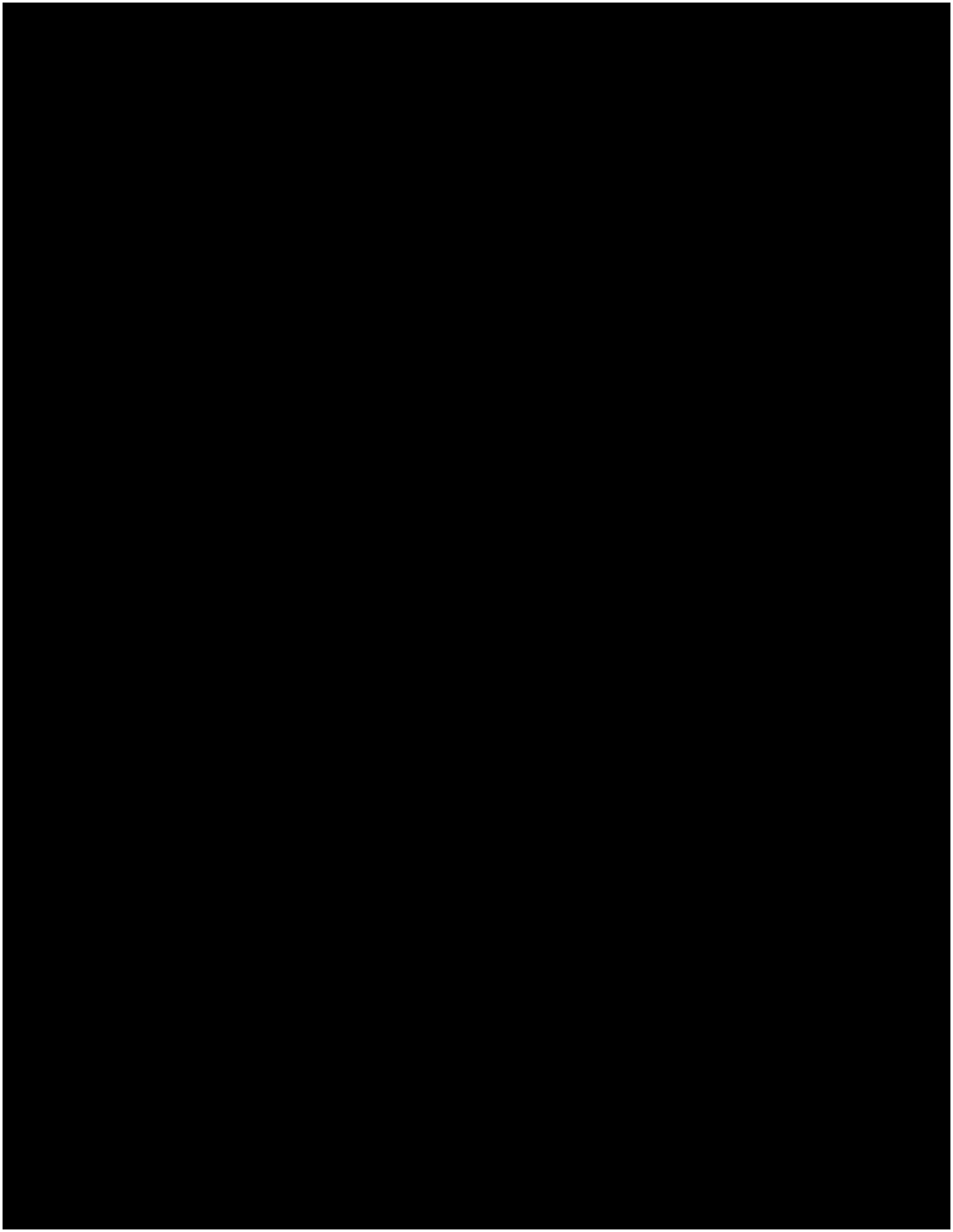


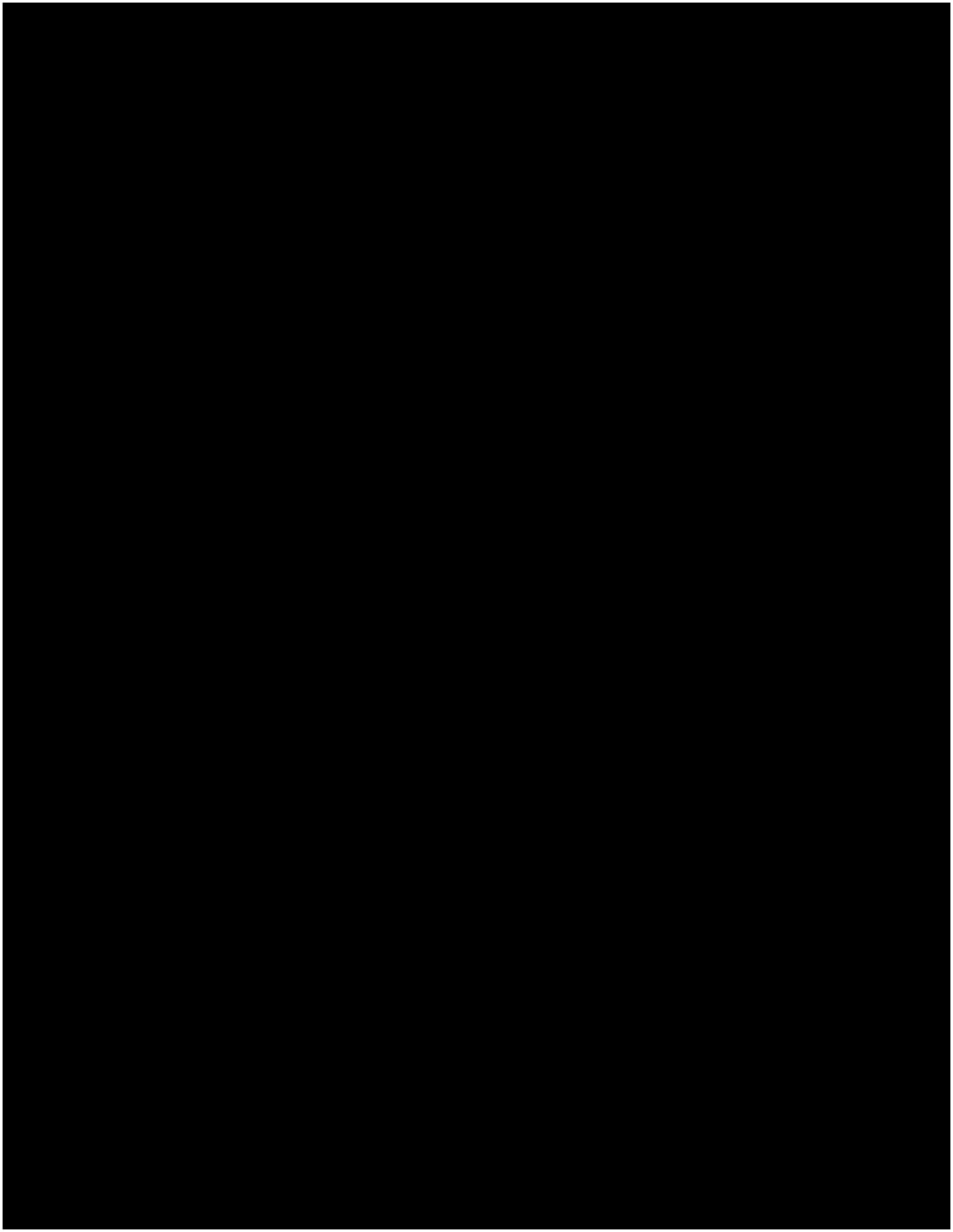












**ARKANSAS STATE CLAIMS COMMISSION**

**HALEY HUDSON, SPECIAL ADMINISTRATRIX OF THE ESTATE OF JACQUELINE LYNN ASHCRAFT, DECEASED, AND HALEY HUDSON AS PERMANENT LEGAL GUARDIAN OF [redacted], A MINOR CHILD** — **CLAIMANT**

**VS.** **CC NO. 230641**

**ARKANSAS DEPARTMENT OF HUMAN SERVICES** — **RESPONDENT**

## DEPOSITION EXCERPTS OF HOLLY NEWMAN

Holly Newman is a paramedic who provided initial assessment to Jacqueline Ashcraft and [redacted] [redacted]

**Newman, Holly, (Pages 9:6 to 12:24)**

Page 9

Q. And where did you park your ambulance?

A. If I remember correctly, we pulled up slightly passed the DHS car because as Zach was looking at it, he went to her. And then I looked up and seen Ms. Ashcraft and the two kids above us. So we were parked in between them two still facing towards Subiaco.

Q. And then tell me -- tell us what you did when you arrived on the scene and you get out. Walk us through what -- your interaction with Ms. Ashcraft and her children.

A. So I walked up to Ms. Ashcraft and her children once Zach went to the other patient. I noticed that the two children were sitting on the ground and

Ms. Ashcraft was standing up. She was smoking a cigarette at that time.

So initially, as I do every parent, I look at her, I make sure she's okay because all of them are breathing. So neither one of them needed my attention more than the other at that time.

Page 10

So I talked to Ms. Ashcraft and said, hey, you know, can I check out your children, get permission from her because they are minors. She said yes, that's fine. So I turn my attention to the children.

One was completely, utterly fine. She was talking and everything, answering all questions. And the other one had some slight repetitive questioning, which showed signs of possible concussion. So I talked to Ms. Ashcraft and her both back and forth.

Initially, she didn't want the children to go to the hospital, despite the efforts that I very much wanted them to. In our line of work, we can't physically take a child from a parent unless it's a true life threat. At that time, a concussion, it could be borderline, but it was not -- she was not considered a life threat because she had her own airway. She was able to talk. She was not showing signs of lack of oxygen. You know, she wasn't

obviously bleeding everywhere. That would have turned into something else.

Q. Did you -- were you able to physically examine her head and her skull to see if she had any contusions or abrasions?

A. And she had none that I seen.

Page 11

Q. And if I represent to you that that child's name is [redacted] would that be consistent with your recollection?

A. I'm pretty sure, and I think her sister was named Haley?

Q. [redacted]

A. [redacted] Okay.

Q. And [redacted] was the sister -- I'll represent to you [redacted] was the sister that did not have any issues. And so what -- what did you do next -- what did you find on -- when you did the physical examination of [redacted]

A. To my recollection, I didn't find anything. There was no what we call depressed skull fracture, which would be, like, an indention in the back of her head. There was no tenderness, nothing. She just had the repetitive questioning. As we sat there with her, she started regaining her memory more and more as well.

Q. And that's a good sign, correct?
A. Yes. That's a very good sign.
Q. And then what did you turn your -- who did you turn your attention to next?
A. Ms. Ashcraft. She told us that they were actually trying to go to the house, that they

Page 12

happened -- that happened to be across the road. And it was a very hot day. And so between the conversation and her not -- adamantly not wanting the kids to go to the hospital, she signed a refusal form for them both. If I remember correctly, there was one done on [redacted] There should also be one done on Haley as well.

So she told me that she wanted to go across the road. So at that time, Zach didn't need my help with the other patient. He had all of that under control. So since they weren't going to go with us, I walked them across the road and into that house.

She walked just fine. Ms. Ashcraft, all of them had a steady gait. She sat herself on the couch along with the kids. And then the lady in there, I distinctly told the lady, I said, "If anything changes, come and get me" because at this point, nobody, to my recollection, had even checked on the -- the 18-wheeler.

20 Q. The tractor trailer driver?
21 A. Yes. So then that was in the back of my mind
22 was, like, well, at least somebody needs to go lay
23 eyes on him. And so that's -- after I took them to
24 the house, that's where I went.

**Newman, Holly, (Page 17:4 to 17:12)**

page 17

4 Q. And so my question is, tell us what the time --
5 at the time and what your description is on that flow
6 chart prepared by you for Jacqueline Ashcraft.
7 A. That 1304 ALS assessment, patient is alert and
8 oriented times four, which means down at the bottom,
9 the initial assessment, oriented to person, place,
10 time, event. She was walking around the car. She --
11 patient's response unchanged, successful;
12 complication, none.

**Newman, Holly, (Pages 18:6 to 19:21)**

Page 18

6 Q. All right. Under the category HEENT, tell us --
7 explain to us what that means.
8 A. Head, eyes, ears, nose, and throat.
9 Q. Thank you. And explain to us what you observed
10 about her head and face.
11 A. There was no abnormalities. Her pupils were
12 equal. The neck --

Q. Let me stop you right there. Her pupils being equal, what does that mean to you as a paramedic?
A. That means that there's nothing going on in her head at that time that I can tell. Again, I don't have x-ray. I don't have CT. But on the physical outside findings, that's something we look for. If they're unequal, that means something is going on.
Q. And I notice you have a measurement next to the eyes of the size of the pupils.
A. Yes.
Q. And what is that measurement?
A. That's two millimeters. That means they're on the smaller side.

Page 19

Q. And that's what you would expect for somebody who is out in the sun?
A. Yes, sir.
Q. And that's normal or -- of someone -- that's what you would expect for them to have or what you would hope to have is the same size pupils and for them to be small or constricted; is that right?
A. Well, I wouldn't say constricted. Constricted are really a lot smaller, kind of almost pinpoint. That would suggest other things. But you do want them on the smaller side out in the sun in that they're not --

Q. Oh, sorry. Go ahead.
A. No. Go ahead.
Q. Is two to four millimeters normal for a patient?
A. Yes, sir.
Q. Nothing there gave you any pause for concern when you observed her eyes?
A. Not at that time, no.
Q. During that initial assessment?
A. Correct.

**Newman, Holly, (Pages 23:16 to 25:13)**

Page 23

Q. Okay. And then what happens next?
A. So I climbed in the back of the ambulance to make sure he needed -- if he needed any assistance. And about that time, a state trooper knocked on the door, knocked on the back of the ambulance and said, hey, y'all are needed inside the house.

And I looked at Zach and I said, "Well, I'll go," since I had initial contact and he was with his patient. So I walked back in the house to go reassess Ms. Ashcraft.

Page 24

Q. And what did you find when you walked back into the house to reassess Ms. Ashcraft?
A. I found that she was laying her head on -- I cannot recall the person who she was laying or sitting

next to. But she was not responding the way she was initially when I had left her. She was still able to respond to me, but it was not like she was.

Q. And what -- so what did -- as a paramedic, what do you do?

A. Well, initially, I thought she may have been dehydrated because it wasn't necessarily the coldest in that house either. So I started a IV on her, called for another unit.

And then that's when I was informed that we didn't have another unit. My partner come back in there and said, "Hey, we're it. We're going to have to take her as well." So there's nobody else. Everybody else was on calls. And I said okay. So my partner, he just picked her up and started carrying her.

Q. And where does Paramedic Marry take her to?

A. To the ambulance, the back of the ambulance, and laid her on the bench seat.

Q. And then what happens next on the transport?

A. I get in the driver's seat and we drive to the

Page 25

hospital. On the way there, Paris told us that their CT scanner was down, so our closest to divert to unfortunately was Booneville, which was clear across to the other side of the county.

Q. And what is -- are you -- what is Ms. Ashcraft's condition while you're in transport? Are you communicating with Medic Marry, or do you know?
A. We are a little bit back and forth. We're talking about the possibilities and what was going on. He had restarted an IV because mine got pulled out. So other than that, I don't know what kind of treatment. I'd have to look back at the report to see if he did any kind of treatment.

**Newman, Holly, (Page 27:12 to 27:18)**

27

Q. And she's the driver. Airbag deployment, does it tell us what you found on the airbags?
A. Front deployment.
Q. Okay. And then safety devices, what did you find on the safety devices?
A. She had shoulder and lap belt, which means the normal seatbelt.

**Newman, Holly, (Page 28:5 to 28:12)**

Page 28

Q. And what was Ms. Ashcraft's condition when you got to the emergency room at Booneville?
A. When I opened up the back doors, she was still responding to that command. I'm pretty sure she still

had motor function. I don't think she was talking clearly, but I did see her nod her head into a question we had asked her. So I knew she was still responding to him.

**Newman, Holly, (Pages 30:20 to 31:14)**

Page 30

Q. And you went through on your initial assessment of [redacted] you talked about it earlier. One of the things you mentioned is that she had, I believe you called it, repetitive questioning. What is -- do you remember what her questions were or what they were?

Page 31

A. I know she kept asking what happened. She didn't remember -- I think the last thing she remembered, I think they had went to McDonald's and she had a McDonald's cup. She just kept asking what happened and that she didn't remember anything.

Q. And then as far as looking at her head, I know -- and the HEENT, it states there was a hematoma to the back of her head, no deformity noted. Is that, like, a hematoma I think of as a -- tell us what a hematoma is.

A. It's swelling. It's a swelling in the head -- on the outside of the head.

13 Q. And then her eyes, were they normal?
14 A. Yes. They were three millimeters.

**Newman, Holly, (Pages 32:3 to 33:4)**

Page 32

3 in the narrative of your assessment, it
4 states that "Mom holds up finger for her to see." And
5 is that the mother holding up two fingers or three
6 fingers and saying how many fingers are you seeing?
7 A. Yes, sir. So with head trauma, that's the
8 unequal pupils and blurred investigation and vomiting
9 are signs of progressive head injuries. So I had
10 mom -- not like right here, but in the peripheral
11 part, hold up two fingers and she was able to identify
12 both correctly on each side.
13 Q. And was Jacqueline Ashcraft able to assist you
14 in holding up the fingers and doing what you were
15 asking her to do?
16 A. Yes, sir.
17 Q. And so both Jacqueline Ashcraft and [redacted]
18 were able to follow your commands and appeared normal
19 after this accident; is that correct?
20 A. After my initial assessment.
21 Q. After your assessment. Yes. Okay. And then
22 you were able to consult with Ms. Ashcraft to tell her
23 what to look for and what to do if [redacted] had

24 experienced any of these issues such as vomiting,
25 nausea, blurred vision; is that correct?

Page 33

1 A. Severe headache. Yes.
2 Q. Okay. And Ms. Ashcraft seemed to understand and
3 be able to appreciate and respond to you appropriately?
4 A. Yes, sir.

**Newman, Holly, (Pages 34:23 to 35:19)**

34

23 Q. And what does coup-contrecoup mean to somebody
24 that is a paramedic, somebody who responds to motor
25 vehicle accidents?

Page 35

1 A. That means that the patient's brain -- so our
2 brain doesn't touch the skull at all times. It is
3 slightly smaller than our skull. So it happens in
4 rear-end collisions.
5 So when we get hit in the back of the
6 head, the brain comes up, hits the front of the skull,
7 and then hits the back of the skull and it kind of
8 just plays bouncy ball.
9 Q. And do you have any criticism of Ms. Ashcraft or
10 any of her medical decisions that she made during that
11 initial assessment?
12 A. What do you mean criticisms?
13 Q. In that she was belligerent, refusing to take

your advice, anything like that?
A. No. She was very nice, very understanding, very "Okay. I will. I understand."
Q. Did she appear to be a normal mother of two teenage daughters who are out going to see somebody on a -- on an afternoon?

**Newman, Holly, (Pages 48:6 to 49:3)**

Page 48

We talked -- you talked about the eyes. Initially, they were, I guess, fine. Okay. Two millimeters. You suggested that that was a normal, within-range reaction or measurement of the eyes?
A. In light, they constrict. They get smaller in light.
Q. Okay. Okay. What -- in your experience of seeing people under the influence of a controlled substance, does that affect their eyes at all?
A. Under narcotics. Not every drug.
Q. Okay. Like, what type narcotics?
A. Opiates.
Q. Opiates? What do opiates do to a person's eyes?
A. They constrict them, make them smaller, nonreactive.
Q. Okay. Would her measurements have been consistent -- not saying that she was under the

24 influence of opioids. But if she had been, would her
25 eyes have been consistent with that finding?

Page 49

1 A. They would typically be smaller than the two.
2 Q. So, like, a one or something like that?
3 A. Correct. Or what we call pinpoint.

**Newman, Holly, (Pages 60:13 to 61:19)**

Page 60

13 Q. Okay. Now, can we go back and maybe -- can you
14 again describe the condition of Jackie Ashcraft when
15 you first saw her?
16 A. When I first initially had encounter with her,
17 she was alert, standing outside behind the car, alert
18 and oriented. She was smoking her cigarette, and her
19 two kids were sitting on the side.
20 Q. Okay. Any trouble with balance that you could
21 tell?
22 A. No. She had a normal gait. Her speech wasn't
23 slurred. She was able to carry on a full conversation.
24 Q. Okay. Did she tell you if any parts of her body
25 were hurt or injured or achy due to the wreck?

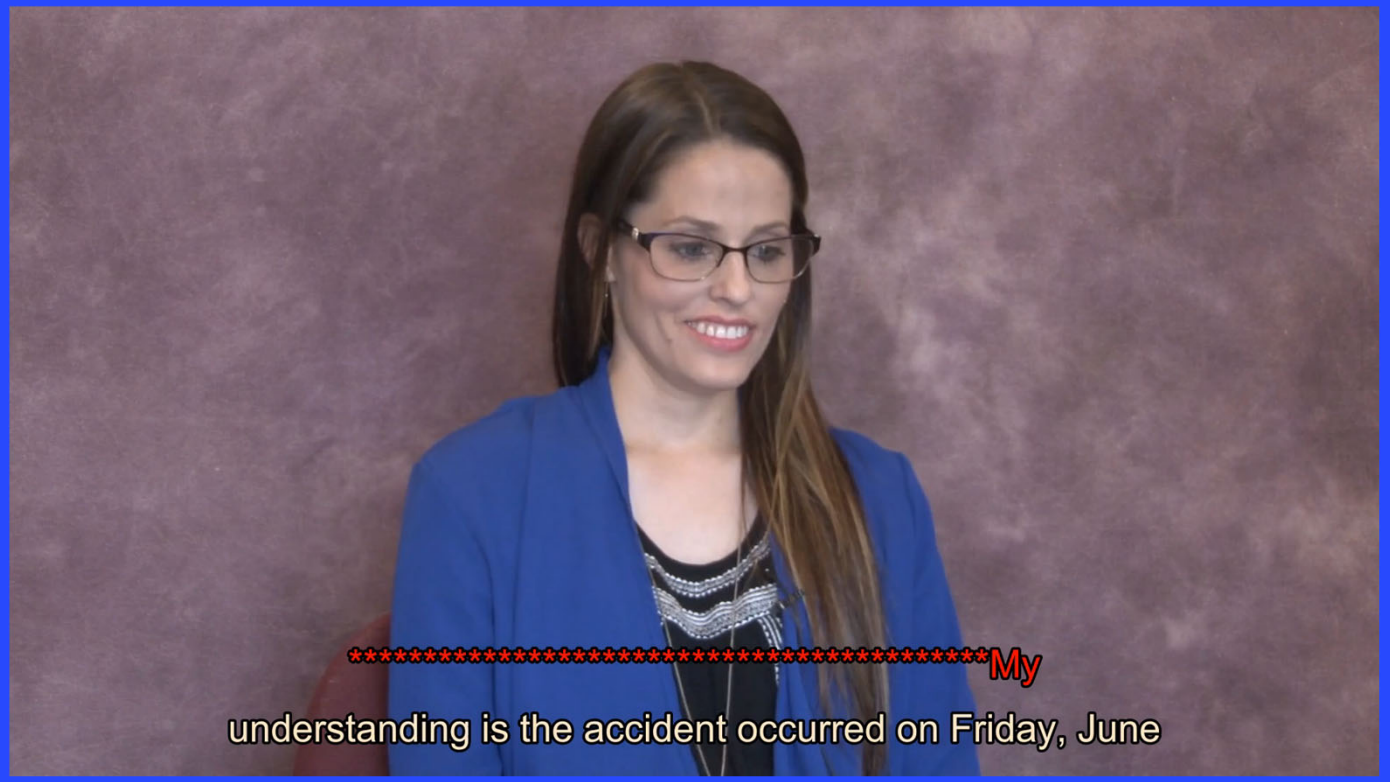
Page 61

1 A. No. She was more worried about her kid and
2 making sure she was okay first.
3 Q. Okay. Okay. And you said that [redacted] the
4 youngest of the girls, was fine. And [redacted] the older

of the girls, had a hematoma on the back of her head?
A. That's what the report says, yes.
Q. Okay. And that's a bump or -- I don't want to be too --
A. Yes. It's -- hematoma is a common name for swelling or a bump. And if you -- you know kind of how you bruise on your leg if you hit something. And your head, it kind of swells out.
Q. Okay.
A. If it swells in, then it's more a medical problem.
Q. Okay. So she would have gotten that injury presumably from hitting her head back on the headrest or the seats?
A. That's what I would assume.

# Jennifer Wilkerson Deposition Excerpts

# Jennifer Wilkerson



- Page 9, line 3 through page 19, Line 20
- Page 22, line 10 through  page 26, line 17
- Page 43, Line 21 through Page 44, Line 20
- Page 122, Line 16 through Page 124, Line 13.
- Page 60 line 13 through page 62 line 8, which includes Exhibit 8 of her deposition;
- Page 108, lines 10 through 16.
- Page 83 line 24 through page 86 line 23

**IN THE ARKANSAS STATE CLAIMS COMMISSION**

**HALEY HUDSON, INDIVIDUALLY
HALEY HUDSON, SPECIAL ADMINISTRATRIX OF
THE ESTATE OF JAQUELINE LYNN ASHCRAFT,
DECEASED, AND HALEY HUDSON, AS PERMANENT
LEGAL GUARDIAN OF [redacted]
[redacted] MINOR CHILDREN** **CLAIMANTS**

**vs.** **CC No. 230641**

**ARKANSAS DEPARTMENT OF
HUMAN SERVICES** **RESPONDENT**

**RESPONDENT'S RESPONSE IN OPPOSITION TO
CLAIMANTS' OBJECTION TO RESPONDENT'S EXHIBIT 13**

COMES NOW, Respondent, Arkansas Department of Human Services, by and through its attorney, Vincent P. France Deputy Chief Counsel for the Arkansas Department of Human Services, and for its Response in Opposition to Claimants' Objection to Respondent's Exhibit 13, states the following:

To begin, DHS agrees with Claimants' position that the toxicology report of Jacqueline Ashcraft is irrelevant for the purposes of liability. Furthermore, DHS does not plan on presenting the toxicology report for such a purpose. Rather, DHS intends to use the toxicology report of Ms. Ashcraft to refute and/or mitigate the prospect of damages, if the Commission finds in favor of the Claimants. In a case involving a motor vehicle accident and the consideration of the appellant's life expectancy, the Arkansas Supreme Court found that evidence of the appellant's habit of consuming alcohol was relevant and admissible to the jury. *Oxford v. Hamilton*, 297 Ark. 512, 515, 763 S.W.2d 83, 85 (1989). The Arkansas Supreme Court explained that "[g]iven the fact that evidence of the appellant's habits was useful and ***even necessary*** to assist the jury in determining his life expectancy." *Id*. (emphasis added). Additionally, in *Burnett v. Fowler*, a medical malpractice case, the Arkansas Supreme Court noted that the plaintiff's use of marijuana was

relevant regarding damages that were based upon the plaintiff's future employability and life expectancy. 315 Ark. 646, 650, 869 S.W.2d 694, 697 (1994). In fact, the Arkansas Supreme Court has historically allowed evidence of drug and alcohol use to be used to provide the fact-finder with an accurate picture of a plaintiff's damages. In *Biddle v. Riley*, 118 Ark. 206, 219, 176 S.W. 134, 138 (1915), the Arkansas Supreme Court held that "it was not improper to present to the jury proof of the plaintiff's … habits of sobriety and industry, for the purpose of drawing a picture before the jury of the earning capacity of which he had been permanently deprived."

In the claim-at-hand, DHS plans to submit Exhibit 13, the toxicology report of Jacqueline Ashcraft, to the Arkansas State Claims Commission for the purposes of arguing damages. Specifically, the toxicology report is relevant to show that Jacqueline Ashcraft had a habit of using drugs that would have caused a decrease to her earnings capacity, impacted her future employability, and lessened her life expectancy. *See Oxford*, 297 Ark. at 515, 763 S.W.2d at 85. Thus, the toxicology report is relevant under Ark. R. Evid. 401, admissible in accordance with Ark. R. Evid. 402, and is not unfairly prejudicial under Ark. R. Evid. 403. Accordingly, DHS should be allowed to introduce the toxicology report of Jacqueline Ashcraft to rebut any claims for damages by her estate especially regarding her earnings capacity and her life expectancy.

WHEREFORE, DHS respectfully requests that Claimants' Objection to Respondent's Exhibit 13 be denied and overruled, along with any other just and proper relief to which it is entitled.

Respectfully submitted,

By: */s/ Vincent P. France*

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**CERTIFICATE OF SERVICE**

I, Vincent P. France, hereby certify that on September 18, 2024, I electronically filed the foregoing with the Arkansas State Claims Commission by emailing it to asccpleadings@arkansas.gov and by sending a copy to Claimant's attorney Jim Jackson via email as indicated below.

Jim Jackson
Jim@JimJacksonatty.com

*/s/ Vincent P. France*
Vincent P. France

**ARKANSAS STATE CLAIMS COMMISSION**

| | |
|---|---|
| **HALEY HUDSON, SPECIAL ADMINISTRATRIX OF THE ESTATE OF JACQUELINE LYNN ASHCRAFT, DECEASED, AND HALEY HUDSON AS PERMANENT LEGAL GUARDIAN OF [redacted], A MINOR CHILD** | **CLAIMANT** |
| **VS.** | **CC NO. 230641** |
| **ARKANSAS DEPARTMENT OF HUMAN SERVICES** | **RESPONDENT** |

## *JENNIFER WILKERSON'S TESTIMONY*

The following are verbatim excerpts from Jennifer Wilkerson's deposition. These excerpts follow the video testimony that will be presented. The testimony is found at the following:

- Page 9, line 3 through page 19, Line 20
- Page 22, line 10 through page 26, line 17
- Page 43, Line 21 through Page 44, Line 20
- Page 122, Line 16 through Page 124, Line 13.
- Page 60 line 13 through page 62 line 8, which includes Exhibit 8 of her deposition;
- Page 108, lines 10 through 16.
- Page 83 line 24 through page 86 line 23

**Wilkerson, Jennifer, (Pages 9:3 to 19:19)**

. . . . . My understanding is the accident occurred on Friday, June 11th, 2021. Does that sound correct to you?

A. Yes.

Q. And what was your job description for DHS? Do you recall the title? Does the phrase "program assistant" mean anything to you?

A. Yes. Yes. Yes.

Q. What is a -- when did you start working for the Arkansas Department of Human Services?

A. I think it was exactly -- I got in the wreck exactly two weeks since I had started. So, you know, the date?

Q. And we need for you -- if you don't know something, just say I don't know, so you don't have to ask your mom or anything. This is not like school, where an answer of "I don't know" gets you an F.

A. Yeah.

Q. Here, if you don't know, you don't know. Okay?

A. I know I've sent you -- I've talked to you, so I've sent you that. I just don't remember the exact dates. That was two years ago.

Q. Certainly. So I looked back at the calendar.

It looks like Memorial Day was on Monday, the 31st, and that maybe you may have started on June 1st?

A. Yes.

Q. And then the accident happened on Friday, June 11th?

A. Correct.

Q. Was this your first time to leave Paris to go on a child visit?

A. Yes.

Q. Okay. Just briefly explain what -- what your understanding of what you were supposed to do on that afternoon. What was your responsibility?

A. Well, I was supposed to go on an eight and a half hour, I guess, trip to go pick up a child. I don't have a child, so I don't even know how to use a car seat or anything like that.

I had never -- I didn't have a gas card. I guess you have to have -- I didn't even know all the procedures yet 'cause I was -- I had no training or anything like that. So it was just -- I mean, to go and pick up the kid and then bring them back to Clarksville -- well, it changed so much 'cause I -- and it wasn't planned out. Okay?

So it was the night -- the night before, I was with Brandy Ezell, and she had told me to be



there -- it was going to be at night, and -- or be there at 8:00 in the morning.

Q. At the office?

A. Yes.

Q. At the Logan County DHS office?

A. Yes.

Q. Okay.

A. And I was going to leave then. Then before I even left the parking lot, it was don't come in till 9:00. And there was no set hour, set time that I was supposed to leave.

And I'm pretty sure the policy -- I mean, I didn't know anything I was supposed to be doing. I know I was sent with no gas card so if I had ran out of gas, I had to call Brandy because she used hers to put gas in there.

Q. Did she help you fill up the car on the morning of -- that Friday morning?

A. Yes. She -- that was the first time I had ever been in that car, 'cause they drive their private vehicles, personal vehicles everywhere. And so

they -- we went to see -- so she could show me then for the first time, and my number didn't work.

Q. Was this at Casey's Fuel Station?

A. Yes, it was at Casey's. So she used her number



and filled the car up, and then we went back. And at that time, I should have already left, I mean, if you're going to do the math and all that. And that's what I've been trying to say all morning, you know, 'cause I like to plan, you know. Why are you going to send someone that doesn't even know what they're doing?

And I -- that was the first job I had in a long time. I was -- you know, and they knew that. And that is not really what they told me my job description was when I -- in the interview.

Q. So did you and -- I'll call her, Brandy, Ms. Ezell. Did you and Ms. Ezell come up with a map for your directions of where you were to go?

A. I didn't even have the person's phone number. I had, I guess, an address. And we didn't do that until after the gas.

Q. You didn't -- you got the address after you got the fuel?

A. Yeah. On what time to leave, 'cause there was another lady that was going to Fayetteville and to get another kid. And I was going to go -- I was supposed to go to Beebe and get a kid. And then it was for a 30-minute visit in the middle.

Q. Was the other lady who left to Fayetteville, was



she working in the Paris office?

A. Yes. Yes. And she had told me she didn't -- she didn't know what time that she was going to -- the kid had counseling or something like that, and that she didn't know. And then I'm, like, trying to tell Brandy, you know, well, she -- I need to know what time to leave, like, all morning. And then -- so either way, a professional to me is, you would have had -- I should have left, like, in time for -- if I ran out of gas or -- so yeah. I don't know.

Q. What's the name of the lady that went to Fayetteville; do you recall?

A. I would know if I heard it. I can't remember.

Q. Okay. That's fine. So --

A. And then -- but it changed from first it was meet at -- we were supposed to meet in Russellville or -- yeah, in Russellville; then it went to

Clarksville.
Q. Okay. Did you or Brandy Ezell print out anything on paper to show you your route?
A. No.
Q. How did you know what route to take to go to Beebe?
A. I didn't really. She got on map -- one of the map things and I was supposed to go by that.

14

Q. And so I have a map on my telephone, Google Maps, and I use that. Is that what you are talking about?
A. That's not what I -- what we were using -- what she used.
Q. Was it on a handheld device or was it on a computer that's --
A. No. It was --
Q. -- desktop?
A. Well, I didn't have a State phone yet, so I had my personal iPhone. And she was using hers, so...
Q. How -- what -- what device or object map were you going to use to get to Beebe? Was it the map on your iPhone?
A. Yes. That's what I was supposed to use.

Q. Okay. And did you type in the address of your destination and put search and find a route? Is that how it worked at the time?
A. That's -- Brandy did that. Brandy did that.
Q. On your phone or her phone?
A. On -- well, on -- I guess on hers and then I had -- I did it on mine.
Q. All right. Ms. Ezell testified that she and Ms. Feemster left about 12:07 p.m. on Friday from the DHS office, and that was about the same time that you

Page 15

were getting ready to leave or maybe you were leaving at the same time. Does that sound correct?
A. Can you repeat that?
Q. Sure. Ms. Ezell testified that she and Pamela Feemster went to lunch at 12:07 on Friday, June 11th; and that at approximately that same time, you were either in the parking lot or going to the parking lot getting ready to leave to go. Does that sound correct?
A. I don't know what's -- they were not in the parking lot with me 'cause we had just got back from the gas -- getting gas at that time. And so we got gas and then she's like, "Okay. You need to go." It

was not planned ahead of time.
Q. Okay. And so then after y'all get back, I assume -- you say you got back, you went back from Casey's back to the DHS office?
A. Correct.
Q. And Ms. Ezell was riding with you to Casey's and back in that car, correct?
A. Correct.
Q. And y'all had -- and had you driven the State car to Casey's?
A. I didn't drive it; she drove it.
Q. Okay. So then when she gets out of -- tell me,

Page 16

when you pull back in, kind of what happens next kind of up to the wreck. Okay?
A. Okay. So when I got to the DHS office?
Q. Yes. Back from Casey's.
A. Okay.
Q. And is Brandy driving back from Casey's to the DHS office?
A. Yes. She drove the whole -- she drove that whole time.
Q. You were the front seat passenger, correct?
A. Yes.

Q. Okay.
A. Okay. So we got back there, and then we went inside and my -- the concession was, you know, my card didn't work. Okay. And she said, well, not to use my personal -- my own gas money on any -- I think I would have ran out of gas on a eight and a half our trip. But -- so I was nervous about that. And -- but then that's when she did the directions.
Q. On her phone?
A. Yeah. Well, she called -- she called that other lady and asked to talk to her 'cause I tried to tell her that -- what she told me. And Brandy is not -- wasn't even my supervisor, for one.
And she was -- I had been going with

Page 17

Brandy, like, every day to do her visits, like, in her personal car on her visits. And she smoked in her car. I guess that's why they don't take -- they want to use their personal vehicles because you can smoke in your vehicle. You can go -- they go and eat during their sessions and leave early and stuff like that.
Q. Okay. So I'd like for us to focus on --
A. Yeah.
Q. -- what happened on Friday.

A. Okay.
Q. You and Ms. Ezell returned from Casey's to the DHS parking lot, correct?
A. Yes. And then --
Q. You're in the passenger's seat, correct?
A. Uh-huh.
Q. You go inside with Ms. Ezell, correct?
A. Yes.
Q. Tell me what happens next.
A. Okay. That's when she figures out on the maps, when I needed to leave, and it was I needed to leave then because I needed to leave earlier than that really.

And so I left, and I had called in some food at Dari-Delite because I knew that's what she does, and this is a eight-hour trip with no -- no gas

Page 18

already. And then I was driving, and that's when -- okay.
Q. So I want to stop you before you --
A. Oh, yeah. Okay. So I went -- okay.
Q. So you went to Dari-Delite?
A. Yes. Pick up, just, something to eat because I hadn't had anything.

Q. Okay.
A. And that's what I thought -- I mean, Brandy, that's -- if I was -- she was training me. I mean, that was what I --
Q. Did you go inside and sit down and eat or was it a drive-through? I don't know how that works at Dari-Delite.
A. You can do either way.
Q. What did you do?
A. I went and picked it up. I went in and got it.
Q. Okay. After the accident occurred, do you remember who came to the accident scene?
A. Like, Brandy?
Q. (Nodding head.)
A. Brandy and Pam.
Q. Yes. Who else? Who did you call and who came to the accident scene? Those are two separate questions, so let me back up. Did you call anyone?

Page 19

A. I called Brandy.
Q. And what did you tell her?
A. That I'd just got in a car accident.
Q. Okay. And then who else did you call after that?

A. I called my boyfriend at that time. He's not my boyfriend anymore.
Q. And then --
A. And then I called my mom.
MR. GASPER: Can we -- can we get a name?
Q. (By Mr. Jackson:) Yeah. What's the name of your boyfriend?
A. Ex-boyfriend.
Q. Ex-boyfriend, I mean.
A. Scott Thomas Lindstrom.
Q. Okay. And did all -- did you call -- do you remember calling anybody else other than those three?
A. I called my mom.

**Wilkerson, Jennifer, (Pages 22:10 to 26:17)**

Page 22

Q. Do you remember giving -- the week after the accident, do you recall -- do you know who -- do you recall the name Kristen Shelton?
A. Yes.
Q. Who is she?
A. I've never -- I don't think I've ever met her. But I got an email. I guess -- I think that was from her.
Q. And --

A. And I -- I had actually broke my back in that car accident.
Q. I didn't understand you. Can you --
A. I broke my back in that car accident.
Q. On June 11th, 2021?
A. Yes.
Q. Okay.

Page 23

A. But they didn't do anything -- anything then, so I didn't know for two months that my back was broke. And I was in so much pain that they made me come in to work just to do that thing, and I didn't even know what it was.

(Exhibit 3 marked for identification.)

Q. I am going to hand you a document. We'll mark it as Exhibit Number 3 to your deposition. Is that what you are talking about?
A. Yes.
Q. Okay. So this is part of where we need to make a record. That document is -- looks like an email from Kristen Shelton to you that was printed out, 10 questions, and then there's handwritten responses under each question. Is that your handwritten -- handwriting?
A. Yes.
Q. And is that your statement that you gave to DHS

as to what happened?
A. I guess -- I guess so. I didn't know what it was. I just got -- I wasn't explaining anything. Pam just said, "Fill it out."
Q. Will you look over --
A. Yes.
Q. Can you just take a moment and look over the



questions and your answers before we --
A. Yeah.
Q. Take your time.
A. A lot of the answers are -- I was -- I was confused.
Q. I tell you what, why don't you silently read the questions and then read your answers, and then I'll ask you and then you can elaborate. Okay?
A. Okay. Number 1 --
Q. No, I want you to read all 10 of them, please.
A. Oh. I've read over this a -- quite a bit of times, so I kind of know what my answers are and --
Q. And those --
A. Yeah.
Q. -- are -- you've had a moment to look over this?
A. Yes.
Q. Is that what happened?
A. No.

Q. Okay. Go -- so let's start with question -- your answer to number 1.

A. Well, the question, for one, I wasn't assigned to pick up a child in Beebe at 2:00 p.m. I was assigned -- I think you have to be assigned -- from the policy, it said -- for one, I had no training. It had to be documented, and you have to have gas card to



train. So if it was assigned at 2:00 p.m., and it takes -- every map, every different thing, it doesn't say 100 -- or an hour and 57 minutes.

So when I got on my thing, I mean, I didn't have a scheduled time. And I don't think I would have made it there by 2:00. And why would you have someone get there just at -- on -- on the wreck, you know, at that time instead of early, especially after I didn't have no gas.

Q. Okay. Your answer to question number 1 is, "I did not have a scheduled time. This was my first time going anywhere myself."

A. Okay.

Q. Well, is that correct?

A. It was not my first time going anywhere by myself. It was my first, like, actual, you know, going somewhere, like, a distance. Like, I went in my personal car to Booneville and met someone there and I

was never alone, so -- and is that --
Q. So --
A. But it was my first, you know --
Q. Was this your first time to go in a State car by yourself?
A. Yes.
Q. Question number 5, "While you were driving, what

Page 26

happened to cause the accident?" Do you see that question?
A. Yes.
Q. Do you see your answer?
A. Yes.
Q. Is there anything else that you recall about -- that you would like to add to your response to question number 5?
A. I still don't know what happened. It's, like, she was idling. And so if I was driving the speed limit, which I'm pretty sure that I had my thingy -- cruise on, so I know I was driving the speed limit, lower than the speed limit.

And there was -- and, you know, so if I was going that -- it's, like, she was -- I didn't know if she was stopped. And then -- and traffic -- I mean, I just don't know what happened at all.

**Wilkerson, Jennifer, (Pages 43:21 to 44:20)**

Page 43

Q. Okay. What happened after you gave the handwritten statement to Kristen Shelton the following week -- now I'm moving to the following week. After you gave the handwritten statement to Ms. Shelton, were you fired that day?

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A. No. I didn't go to -- I was in so much pain, I didn't go to work Monday or Tuesday. And they -- she told me that I had to come in.

Q. On Wednesday?

A. Yeah. And just to do that. And I didn't know what that -- I don't know -- didn't have -- don't know who Kristen Shelton is. I didn't know what that was or anything.

And, you know, no one -- no one talked to me there. It was just, like -- so I was just, you know -- it's like I had already kind of knew the way they acted.

Q. So were you terminated that day?

A. No, I was not.

Q. When were you discharged?

A. I was terminated, I believe, that -- the Friday.

Q. Two days later?

A. Yeah. That I didn't go to work the Monday and Tuesday. So I worked Wednesday, Thursday, and got terminated Friday.

**Wilkerson, Jennifer, (Pages 122:15 to 124:13)**

Page 122

BY MR. JACKSON:
Q. Did you still have your meal with you from the Dari-Delite?
A. No.
Q. Did you eat your meal at -- where did you eat the meal?
A. I think I did have -- actually, I -- I think I had some coffee in there. I had my drink in there.
Q. So where did you eat? Where did you eat your meal from the Dari-Delite?
A. I'm trying to recall. I ate -- I guess I ate

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it -- it was when I went in and then I threw it away there.
Q. So you went inside and sat at a booth or a table?
A. No. I went inside to pick up my meal, like I said earlier.
Q. Okay.
A. So instead of waiting through the drive-through.
Q. Okay.
A. And I went ahead and ate it. I didn't sit down at the booth 'cause I didn't get very much to eat.
Q. So you -- just -- I'm not trying to be difficult, but just to help me understand. So you went in, you would have had a sack or something? You would have picked it up and gone back to your car and eaten?

A. Well, Scott was there. He knew that I was going to be there, so he was there. It was not -- that was not planned. And that's -- that's how it --
Q. What was the meal? Was it a hamburger? What -- I heard you say coffee.
A. Yeah. A hamburger.
Q. Okay. And by the time of the wreck, had you eaten the hamburger or thrown it away?
A. Yeah. I had already ate it.

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Q. Okay. Where were you physically when you ate -- when you consumed the hamburger?
A. At the Dari-Delite.
Q. Were you at a booth or at a table or in the parking lot?
A. I was in the -- standing inside.
Q. Okay. So you just went in and ate your hamburger standing there inside the Dari-Delite?
A. Yeah. That's kind of how it is around here.
Q. Okay. So that's why you looked at me odd when I asked you if you were sitting at a booth. You were standing?
A. Yeah.

**Wilkerson, Jennifer, (Pages 60:13 to 62:8)**

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Q. Were you under the influence of any illegal narcotics at the time of the accident?
A. [redacted]

17 A. [redacted]

19 MR. GASPER: How do you spell that?

20 THE WITNESS: [redacted]

21 MR. GASPER: [redacted]

22 THE WITNESS: [redacted]

23 MR. GASPER: Thank you.

24 A. [redacted]

4 MR. GASPER: Did or did not?

5 THE WITNESS: I mean, he said I did,

6 but --

7 [redacted]

11 (Exhibit 8 marked for identification.)

12 Q. I want to hand you what we'll mark as Exhibit

13 Number 8.

14 MR. GASPER: I've seen it.

15 Q. (By Mr. Jackson:) And have you seen that

16 document before?

17 A. No.

18 [redacted]

21 [redacted]

[redacted]

**Wilkerson, Jennifer, (Page 108:10 to 108:16)**

Page 108

10 [redacted]

[redacted]

**Wilkerson, Jennifer, (Pages 83:24 to 86:23)**

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24 Q. No? Okay. But Ernie was your lawyer in the
25 past and you consulted him about this. But it had

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1 nothing to do with Mr Jackson; Ernie is a completely

different lawyer doing his own little thing?
A. Well, I went to him actually for the wreck to begin with.
Q. Okay.
A. And paid for -- he's, like, basically, you're paying me for a peace of mind.
Q. Okay.
A. And he had -- he told me that there -- it was -- the police report said she was stopped in the middle of the road.
Q. And --
A. So if she was just stopped in the middle of the road, why would you stop in the middle of the road with no blinkers?
Q. Okay. That's a good question. We're going to come to that. But as far as Ernie goes --
A. So yeah. Then I get this affidavit.
Q. This is, like, years later or --
A. No. This affidavit -- or yeah. It's been two years.
Q. Since the wreck?
A. Yeah.
Q. So you talked to Ernie back then?
A. Yes.

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Q. Okay.
A. And there was a, I guess, DHS lawyer is who he dealt with then.
Q. It's possible. Yeah, I know that there were some insurance issues. Maybe that was it.

A. Yes. Yes.
Q. Okay.
A. And so he was -- I called him about this and made an appointment and went in there, went and talked to him. And he had said, "Are you ready for this to stop?" He said --
Q. He said this to you or you said this to him?
A. He said this to me. And, you know, I mean, yeah, I'm ready for it to -- this nightmare to stop.
Q. Okay.
A. But I don't know what he's exactly talking about, 'cause he's not here.
Q. "He" being who is not here?
A. Ernie.
Q. Okay. Okay. Wait. I'm confused.
A. Because Ernie has been my lawyer on the -- for the wreck.
Q. Uh-huh.
A. I mean, it's on the --
Q. Who said, "Are you ready for this to stop?"

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A. Ernie.
Q. Okay.
A. He said, "When you mess with people like Brandy Ezell," I don't know what that means.
Q. Okay.
A. But he didn't really say anything.
Q. So you told him about the affidavit and --
A. Yeah. She took -- he took copies of it.
Q. Okay.

A. And then Jim apparently went down to his office and talked to his secretary.
Q. Okay.
A. And he called me and told me to go to Ernie's office and sign that.
Q. Okay. Jim told you to go to Ernie's office?
A. Yes.
Q. Okay. Okay.
A. Yes. And, well, for one, why would I go there to sign it because I had it?
Q. Okay.
A. And Ernie is my lawyer.
Q. Uh-huh.
A. He should be telling me.

**ARKANSAS STATE CLAIMS COMMISSION**

**HALEY HUDSON, SPECIAL ADMINISTRATRIX OF THE ESTATE OF JACQUELINE LYNN ASHCRAFT, DECEASED, AND HALEY HUDSON AS PERMANENT LEGAL GUARDIAN OF [redacted], A MINOR CHILD** — **CLAIMANT**

**VS.** — **CC NO. 230641**

**ARKANSAS DEPARTMENT OF HUMAN SERVICES** — **RESPONDENT**

**CLAIMANT'S OBJECTION TO RESPONDENT'S EXHIBIT 13**

The claimant stipulates the admissibility of respondent's Exhibit numbers 1 through 12. However, the claimant objects to the introduction of Exhibit 13, which is the toxicology report for Jacqueline Ashcraft. It is standard practice for the Arkansas State Police to obtain urine samples from all parties involved in a fatal motor vehicle collision. Both Jennifer Wilkerson and Jacqueline Ashcraft's toxicology reports tested positive for methamphetamine.

Liability in this case has already been determined, making the toxicology reports for both drivers irrelevant. Even if liability were still at issue, the toxicology reports do not indicate whether or not either driver was legally intoxicated at the time of the collision.

Under Rule 402 of the Arkansas Rules of Evidence, irrelevant evidence is inadmissible: "Evidence which is not relevant is not admissible." Furthermore, Rule 403 of the Arkansas Rules of Evidence allows for the exclusion of relevant evidence if its probative value is substantially outweighed by the danger of unfair prejudice, confusion, or waste of time: "Although relevant, evidence may be excluded if its probative value is substantially

outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence."

The toxicology reports are not relevant, as they do not assist in understanding the issue of liability. The only purpose of attempting to introduce Ashcraft's toxicology report is to cause prejudice to the claim and lead to needless embarrassment for her family.

Even if deemed relevant, the test results are prejudicial and confusing. No employee from the Arkansas Crime Lab is identified as a witness to elaborate on the two toxicology reports. Therefore, it is unknown if the results were

- "False positives"
- The half-life of the drug,
- Of the substance detected could be a by-product of a prescription drug such as Adderall which is a mixture of dextroamphetamine and amphetamine.

Most importantly, there is no testimony that Ashcraft was impaired. There has been no testimony that Ashcraft was driving erratically or under the influence. Paramedic Holly Newman provided testimony that Ashcraft appeared normal following the collision. Ashcraft responded appropriately to questions and her pupils dilated to the normal range, suggesting she was not under the influence of an opiate. Paramedic Newman testified that Ashcraft did not have "Pin Prick" pupils, which are a tell-tale sign that a person is under the influence of an opiate.

The Arkansas Supreme Court, in *Wade v. Grace*, 321 Ark. 482, 902 S.W.2d 785 (1995), asserted that evidence of alcohol or drug usage must demonstrate legal intoxication or impairment to be admissible. In *Wade v. Grace*, *supra*, the Arkansas Supreme Court considered a boating accident where the plaintiff sought to introduce evidence of alcohol use on the part of another boat driver, Grace. The alcohol usage evidence consisted of:

1. Seeing "six beer cans in the water immediately after the accident,"
2. Grace admitting to Game and Fish Officer Hatch that "he had one beer,"
3. Game and Fish Officer Hatch's testimony that he could smell a "medium" odor of alcohol,
4. Game and Fish Officer Rowlett's testimony that Rowlett could smell a "moderate" odor of alcohol.

With these facts, the Arkansas Supreme Court recognized, "the mere fact of drinking intoxicating liquor is not admissible, being unfairly prejudicial, unless it reasonably establishes a degree of intoxication which proves unfitness to drive." *Wade v. Grace*, 321 Ark. at 489. The Supreme Court also affirmed trial Court's exclusion of the beer cans based on the trial judge's assessment that jurors would be unfairly prejudiced by such testimony.

In the case *City of Little Rock v. Cameron*, 320 Ark. 444, 897 S.W.2d 562 (1995), the court concluded that mere evidence of alcohol consumption is not sufficient to establish negligence unless it shows intoxication affecting behavior and causing the plaintiff's injuries. The City's evidence suggesting that Defendant was negligent because of alcohol use consisted of:

1. Before the accident, Defendant had left Bobbisox Lounge where he admittedly drank alcoholic beverages;
2. Defendant was unaware of contact between the two vehicles; and
3. LRPD Officer Howard gave Defendant a portable breathalyzer which revealed a blood alcohol level of .05 percent.

There the Court stated at page 448, 449:

> The mere fact that Cameron had been drinking alcoholic beverages is not sufficient evidence of negligence, standing alone, for this claim, to withstand a directed verdict. Cameron was not legally intoxicated based on his percentage of blood/alcohol content. See Ark. Code Ann. § 5-65-103(b) (Repl. 1994), But even had he been intoxicated, a distinguished treatise on torts concludes that the fact of intoxication is not negligence in itself, but it must be shown to have caused the actor's behavior to have deviated from that of a reasonable person and to have caused the Plaintiff's injuries. *See Prosser and Keaton on Torts* § 32, pp. 178-179 (5th Ed. 1984); see also *Restatement (Second) of Torts* § 283C, Comment D. In this vein, we have stated that

> voluntary intoxication may be a factor to be considered by the trier of fact in determining negligence. *Jernigan v. Cash*, 298 Ark. 347, 767 S.W.2d 517 (1989).
>
> We can readily agree with Officer Howard that drinking alcoholic beverages may impair one's ability to drive. Here, though, there was no evidence that Cameron was intoxicated or otherwise impaired at the time of the accident or that his liquor consumption either evidenced a lack of reasonable care on Cameron's part or caused the wreck in any way. In sum, we agree that the City's proof does not give rise to an inference of negligence but only to conjecture and speculation. See *Sanford v. Ziegler*, 312 Ark. 524, 851 S.W.2d 418 (1993). The trial court did not err in granting the directed verdict.

Similarly, the Eighth Circuit was faced with a test that allegedly showed the existence of cocaine in a defendant in *Simco v. Ellis*, 393 F.3d 929 (8th Cir. 2002). In that case, a plaintiff proffered blood test evidence that the plaintiff contended showed that the defendant driver had ingested cocaine on the morning of the accident. The trial court noted that the test was incomplete and further that there was no evidence that the driver was intoxicated or impaired at the time of the accident and that "the mere mention of cocaine would inflame the jury and be extremely prejudicial to the defendants." *Id*. at 933. The Eighth Circuit affirmed the decision of the trial judge.

CONCLUSION

Given the fact that liability is not an issue and the lack of evidence on the validity or reliability of the toxicology reports, and the absence of any indication that Ms. Ashcraft was impaired, the introduction of these reports would be irrelevant, inflammatory and prejudicial. Therefore, the toxicology reports for Ashcraft should be excluded.

Respectfully submitted,

BY: */s/ Jim R. Jackson*

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**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the above and foregoing Objection was served on September 17, 2024, on the following counsel of record by electronic service, E-Mail, to:

Mr. Vincent France
Assistant Deputy Chief Counsel
Arkansas Department of Human Services
P.O. Box 1437
Little Rock, AR 72203-1437

*/s/ Jim R. Jackson* .
Jim R. Jackson

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902 S.W.2d 785
321 Ark. 482
Barbara WADE and Charles Wade,
Appellants,
v.
Geoffrey P. GRACE and Greer Grace,
Appellees.
No. 95-102.
Supreme Court of Arkansas.
July 17, 1995.

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[321 Ark. 484] James F. Swindou, Little Rock, for appellant.

Overton S. Anderson, Little Rock, for appellees.

ROAF, Justice.

This case arises from a boating accident which occurred on Lake Hamilton. Appellants Barbara Wade and Charles Wade filed an action to recover for injuries sustained as a result of the accident. The jury returned a verdict in favor of the appellees, Geoffrey and Greer Grace. We affirm.

On the evening of May 23, 1992, Barbara Wade was operating a party barge owned by her and her husband, Charles. Mrs. Janet Cameron was a passenger on the party barge. At approximately 10:00 p.m., the party barge was involved in a collision with a ski boat operated by Geoffrey Phillip Grace and owned by his stepmother, Greer Grace. Geoffrey Grace was seventeen years old at the time of the accident, and seven other teenagers were riding in the boat.

Janet Cameron and her husband, Chester Cameron, brought suit against Geoffrey and Greer Grace. Geoffrey and Greer Grace answered the Camerons' complaint, filed a counterclaim against the Camerons, and filed a third-party complaint against Barbara and Charles Wade. Subsequently, the Wades filed a third-party counterclaim against Geoffrey and Greer Grace. The Wades principally asserted that Geoffrey Grace was operating the ski boat in a negligent manner. The Wades' claims against the Graces, which are the subject of this appeal, were the sole claims tried to the jury. The record reflects that the remaining claims were dismissed with prejudice.

The appellants raise four points on appeal: (1) the trial court wrongly excluded testimony and law regarding good boating practices on Lake Hamilton; (2) the trial court wrongly excluded evidence that the minors involved were in possession of alcohol and were drinking alcohol at the time of the accident; (3) the trial court improperly restricted Officer Richard Rowlett from [321 Ark. 485] giving expert testimony with regard to deformation of light filaments; and (4) appellants were wrongly denied the opportunity to put on expert testimony through John Bentley either in their case-in-chief or in rebuttal of appellees' expert witness.

I. Good Boating Practices

Robert Charlesworth, the Marine Patrol Supervisor with the Garland County Police Department and an investigating officer on the scene of the accident, was called as a witness by the appellants. Officer Charlesworth testified that the purpose of navigation lights is to alert other boaters of the position of your boat. He stated the red lens is on the left side of a boat, the green lens is on the right side, and the white light is commonly called the stern (rear of boat) or anchor light.

Officer Charlesworth testified that if you are approaching a boat and see the red light,

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that boat has the right-of-way. Counsel for the appellees objected to the testimony on the basis that it was improper for the witness to inform the jury which boat had the right-of-way. Counsel for the appellants asserted the witness was simply testifying to "general boating practice" on the lake and how you know to go to the right, or toward

the stern of the boat that is approaching when the red light is displayed. The trial court sustained the appellees' objection.

On appeal, the appellants assert the trial court erred in excluding the testimony because appellants were simply attempting to establish the "rules of the road" for good boating practice, which are not as familiar to all jurors as the rules of the road for automobiles. The appellants rely upon Parker v. Price, 241 Ark. 940, 411 S.W.2d 12 (1967), where the appellant asserted the jury should have been instructed that the standard of care imposed on a boat operator is the exercise of "due diligence and maritime skill" rather than simply ordinary care. In affirming the circuit court's decision, we noted that the appellant's requested instruction was simply another way of stating the operator should act as a reasonably careful person would act under the circumstances. Further, we commented:

In the case at bar, the trial court properly permitted two witnesses of considerable experience with watercraft to testify concerning facts constituting good or poor seamanship. [321 Ark. 486] They were also permitted to give opinion testimony based on hypothetical questions.

Thus, the jury had for its consideration testimony going to the main issue--whether the boats in question were operated with reasonable care under all the circumstances, including, but not limited to, maritime skill.

In the instant case, the appellants place significance on our statement regarding the testimony concerning good or poor seamanship.

Arkansas Rule of Evidence 702 provides expert testimony may be admissible if such specialized knowledge will aid the trier of fact in understanding the evidence or in determining a fact in issue. Williams v. Ingram, 320 Ark. 615, 899 S.W.2d 454 (1995). Whether a witness may give expert testimony rests largely within the sound discretion of the trial court, and that determination will not be reversed absent an abuse of discretion. Id. On appeal, the appellant must demonstrate that the trial court has abused its discretion. Id.

In Williams, supra, the appellant asserted the trial court erred in excluding testimony from a maritime and marine safety expert regarding the requisite standard of care and the danger of river currents. In affirming the decision of the trial court, we concluded that nothing in the expert's deposition indicated that the knowledge he displayed was so specialized that it was beyond the ability of the trier of fact to understand and draw its own conclusions. We noted the potential dangers of the Arkansas River's currents were not beyond the comprehension of the jury.

In the instant case, the appellants have failed to establish that the trial court abused its discretion. The appellants simply assert the officer would testify regarding the general boating practices on Lake Hamilton. At one point, counsel for the appellants even stated the testimony would simply confirm "what everybody uses as ordinary care." Further, counsel for the appellants asserted the officer's testimony was not "even really an opinion ... that's what you do on the lake." Thus, there is no indication that the witness had specialized knowledge that went beyond the general knowledge of an average person. Even assuming Charlesworth was not testifying as an expert, it is within the [321 Ark. 487] discretion of the trial court to limit the testimony of witnesses and that decision will not be reversed absent a manifest abuse of that discretion. Garner v. Kees, 312 Ark. 251, 848 S.W.2d 423 (1993).

Further, it is the duty of the judge to review the evidence presented, decide what the applicable law is, and instruct the jury. Whitlock v. Smith, 297 Ark. 399, 762 S.W.2d 782 (1989); See also Montgomery v. Butler, 309 Ark. 491, 834 S.W.2d 148 (1992). The jury was instructed that there was in force a statute which provided "every motorboat shall have a light sufficient to make the



fastcase

motorboat's presence and location [known] to any and all other vessels when in operation during the hours of darkness." See Ark.Code Ann. § 27-101-203(a)(2) (Repl.1994). The jury was further instructed that "the boat must have a red light on the left side of the bow, a green light on the right side with a horizon--a white horizon light aft." Because the judge should instruct the jury regarding the applicable law, the officer was properly prohibited from testifying as to the "rules of the lake" and who had the right-of-way.

The appellants further assert the trial court erred in refusing to instruct the jury regarding the federal law on navigable waters. Counsel for the appellants did argue that federal law applied; however, the appellants' requested jury instructions are not in the abstract or the record. It is well established that a party cannot complain about the failure to give an instruction when he did not proffer the instruction. ARCP Rule 51; Quinney v. Pittman, 320 Ark. 177, 895 S.W.2d 538 (1995). Further, we have said that the proffered instruction must be included in the record and in the abstract to enable the appellate court to consider it. Mings v. State, 318 Ark. 201, 884 S.W.2d 596 (1994). Consequently, we will not address this issue.

II. Evidence of Intoxication

At trial, counsel for the appellants sought to admit evidence that Geoffrey Grace was intoxicated at the time of the collision. Counsel for the appellants asserted there were six beer cans in the water immediately after the accident, and counsel for the appellees stated Geoffrey Grace would testify he had one beer. In addition, the appellants proffered the testimony of Officer Paul Hatch of the Arkansas Game and Fish Commission, who inspected the Grace boat on the night of the accident. Officer Hatch stated [321 Ark. 488] that he observed Geoffrey Grace and smelled alcohol. He described the smell as a medium odor--"not heavy and not light or not excessive." However, Hatch observed Grace walk and speak, and he could not say that Grace was under the influence of alcohol. The appellants also proffered the testimony of Officer Richard Rowlett of the Arkansas Game and Fish Commission. Officer Rowlett testified he smelled the odor of intoxicants on Geoffrey Grace. Rowlett described the level as moderate, and he testified he did not observe any other evidence of intoxication.

The trial court stated the evidence regarding alcohol was not admissible unless there was some evidence that Geoffrey Grace was in fact intoxicated, and the trial court concluded there was no such evidence. The court found that even the testimony regarding beer cans found in the water was inadmissible because it was prejudicial. Further, the court concluded the fact that the teenagers may have been drinking underage had nothing to do with whether they were intoxicated or negligent.

We have stated that voluntary intoxication may be a factor to be considered by the trier of fact in determining negligence. City of Little Rock v. Cameron, 320 Ark. 444, 897 S.W.2d 562 (1995). Further, Ark.Code Ann. § 27-101-202(7) (Repl.1994) provides no person shall operate any motorboat while intoxicated. However, Arkansas Rule of Evidence 403 allows a trial court to exclude relevant evidence if its probative value is substantially outweighed by the danger of unfair prejudice or possibility of confusion of issues. The balancing of probative value against prejudice is a matter left to the sound discretion of the trial judge and his decision on such a matter will not be reversed absent a manifest abuse of discretion. Gipson v. Garrison, 308 Ark. 344, 824 S.W.2d 829 (1992).

We hold the appellants have failed to establish that the trial court abused its discretion. The trial court found there was simply no evidence that Geoffrey Grace was intoxicated, and, as to beer cans both in the water and on the party barge, the trial court noted that "we have jurors that when they hear the word beer cans, it's all over for either side. And I don't admit those unless there's evidence of intoxication."

It has been stated that courts are divided as to whether, in traffic accident cases, evidence that

one of the motorists had [321 Ark. 489] recently consumed an alcoholic beverage should be admitted in the absence of evidence that it

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rendered him or her unfit to drive. Clifford S. Fishman, Jones on Evidence: Civil and Criminal § 11:15 (7th ed. 1994). In Fisher v. Dye, 386 Pa. 141, 125 A.2d 472 (1956), the Supreme Court of Pennsylvania recognized that "while proof of intoxication is relevant where reckless or careless driving of an automobile is the matter at issue, the mere fact of drinking intoxicating liquor is not admissible, being unfairly prejudicial, unless it reasonably establishes a degree of intoxication which provides unfitness to drive." See also Hannon v. City of Philadelphia, 138 Pa.Cmwlth. 166, 587 A.2d 845 (1991). Further, it is within the discretion of a trial court to refuse to admit evidence that a driver ejected from his vehicle after an accident an open whiskey bottle because it could be determined that the marginal probative value of such evidence was substantially outweighed by the possibility of unfair prejudice. Gardner v. Smith's Transfer Corp., 610 F.2d 810, 5 Fed.Evid.Rep. 67 (4th Cir.1979).

III. Testimony of Officer Rowlett

One issue contested at trial was whether the white light on the aft of the party barge (stern/anchor light) was on at the time of the collision. The appellants sought to present the testimony of Officer Rowlett, one of the investigating officers, who was trained in filament deformation. The appellees contended Rowlett should not be allowed to testify that he examined the filaments in the white bulb from the party barge and, in his opinion, the light was on at the time of the collision. The appellees asserted they did not learn of Rowlett's testimony until the opening statement by counsel for appellants and the failure to disclose was a violation of ARCP Rule 26 regarding discovery.

In response to an interrogatory requesting the names of persons who would offer opinions, expert or otherwise, the Wades stated that other than physicians who were expected to testify regarding medical treatment, "no other expert witnesses have yet to be determined." The response further stated that "Lay witnesses are expected to testify as to their observations which may include some opinions based upon observations or mixed questions of opinion or observation." The trial judge commented that "this is not the way to try a lawsuit," and he determined the fair thing was to only allow Rowlett to testify as to what he observed [321 Ark. 490] when he made his investigation. The trial court held that Rowlett could not give an opinion as to whether the light was on or off.

At trial, Rowlett testified he attended a school regarding the investigation of boating accidents. Officer Rowlett testified he observed the aft light and retained the bulb; he stated "the light is deformed." At an in camera hearing, counsel for the appellants proffered additional testimony from Officer Rowlett. Rowlett stated that the bulb was deformed or distorted, and such deformation indicated the bulb was on at the time of the collision.

Although Rowlett was listed as a witness, he was not disclosed as an expert. Counsel for the appellants stated he visited with the officer the day before the trial and found that the officer was in possession of the bulb recovered from the accident. The appellants principally assert that the disclosure of Rowlett as a witness was sufficient, and that according to Banks v. Jackson, 312 Ark. 232, 848 S.W.2d 408 (1993), there must be "at least a passive concealment before any imposition of a sanction." Further, the appellants submit the appellees presented no reason for their failure to depose Officer Rowlett.

Arkansas Rule of Civil Procedure 26(e)(1) provides:

A party is under a duty to seasonably supplement his response with respect to any questions directly addressed to ... the identity and location of each person expected to be called as a witness at trial, and in the case of expert witnesses, the subject

matter on which he is expected to testify, and the substance of his testimony.

Further, we have stated that a trial court has broad discretion in matters pertaining to discovery, and that discretion will not be second-guessed by the appellate court absent an abuse of discretion that is prejudicial to the appealing party. Banks, supra; Morris v.

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Cullipher, 306 Ark. 646, 816 S.W.2d 878 (1991).

As to the requirement of a concealment, the Banks case addressed a violation of ARCP Rule 26(e)(2)(B). Rule 26(e)(2)(B) provides a party is under a duty to seasonably amend a prior response if he obtains information which would make the prior response, though correct when made, no longer true and the circumstances are such that a failure to amend the response [321 Ark. 491] is in substance a knowing concealment. There is no requirement that the trial court make a finding of concealment under Rule 26(e)(1).

Under the circumstances, we cannot say the trial court abused its discretion by allowing the witness to testify as to his observations and prohibiting him from providing his opinion regarding whether the light was on at the time of the collision.

IV. Testimony of John Bentley

The appellants sought to present the testimony of John Bentley, an expert in accident reconstruction. Once again, the appellees objected to such testimony based upon a failure to respond to discovery requests. The trial of this matter began on July 12, 1994. At an in camera hearing, it was determined that the counsel for the appellees received a letter on June 21, 1994, stating that Bentley might be used as an expert witness to rebut the testimony of Lonnie Buie, an accident expert expected to be called as a witness by the Graces. Counsel for the appellees asserted that the week before the trial the appellees asked for the opportunity to take Bentley's deposition, but he was out of town. Mr. Bentley's deposition was taken the night before the trial.

Counsel for the appellants stated he was hired "last Tuesday to try this lawsuit" and "we invited John [Bentley] as soon as we could." The trial court concluded it was unfair to wait until the day before trial and provide an expert in this type of case. The trial court commented that it had become a fad for plaintiff's lawyers to "hire an expert and call him a consultant and play a game until right up before trial." Subsequently, the appellants attempted to present the testimony of Bentley in rebuttal of the testimony of Lonnie Buie.

Lonnie Buie, Jr., an electrical engineer, testified that based upon the lack of deformation of the filament within the bulb, it was his opinion the white stern light on the party barge was not on at the time of the collision. Buie stated that a heated filament is more pliable, and tests have established that on impact, if the light is on, it will elongate. During cross-examination by counsel for the appellants, Buie testified that if a bulb filament is deformed, then it was on at the time of the accident. Buie further stated that when the ski boat hit the canopy of the party [321 Ark. 492] barge, the element of the light would have deformed had it been on. The appellants asserted that the testimony of Bentley would rebut the testimony of Lonnie Buie with respect to whether the force applied to the canopy was sufficient to deform the bulb.

First, the appellants assert that the appellees knew nineteen days before trial that Bentley would be called as an expert witness, and the appellees did in fact take Bentley's deposition. The appellants rely upon Banks v. Jackson, supra, where we noted that last-minute depositions are not unique in trial preparation. In Banks, however, we simply held the trial court's decision allowing the testimony was not an abuse of discretion. The trial court has broad discretion in matters pertaining to discovery. Id. Also, the opposing party in Banks was informed of the substance of the testimony which would be offered by the expert, including his opinions.

Second, rebuttal testimony must rebut the testimony advanced by the other side and should not consist of testimony which might have been advanced as proof in chief. Phillips v. McAuley, 297 Ark. 563, 764 S.W.2d 424 (1989). The exclusion of testimony offered on rebuttal is within the discretion of the trial court. See Wilkins v. El Dorado & Wesson R.R., 282 Ark. 236, 668 S.W.2d 6 (1984).

More significantly, the appellants did not make a proffer of the testimony which Mr. Bentley would have presented. Counsel for appellants simply asserted that Bentley's testimony would rebut the testimony

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of Lonnie Buie. It is well established that in order to challenge a ruling excluding evidence, an appellant must proffer the excluded evidence so we can review the trial court's decision, unless the substance of the evidence is apparent from the context. A.R.E.Rule 103(a)(2); Davis v. State, 319 Ark. 460, 892 S.W.2d 472 (1995). In the instant case, there was no proffer and the substance of the answer is not apparent. There is no way of even knowing if Mr. Bentley's testimony would have been inconsistent with Mr. Buie's testimony. Accordingly, this argument is not preserved for review.

Affirmed.

HOLT, C.J., and BROWN, J., concur.

DUDLEY, J., not participating.

[321 Ark. 493] BROWN, Justice, concurring.

I concur in the result but believe the trial court used the wrong standard in excluding all evidence of alcohol consumption by appellee Geoffrey Philip Grace in this case. However, because the correct standard was not argued to the trial court, I cannot say that the court abused its discretion in excluding the evidence.

This case appears to raise an issue which this court has not addressed directly in the past. The circuit court excluded evidence of Grace's consumption on the basis that it was not relevant "unless there's evidence of intoxication." Without intoxication, the court concluded that evidence of mere consumption of alcohol would be too prejudicial. I disagree that a person must be drunk or legally intoxicated for proof of alcohol consumption to be relevant. Rather, the proper test is that alcohol consumption is relevant when accompanied by other evidence of impairment. See Clement v. Consolidated Rail Corp., 130 F.R.D. 530 (D.N.J.1990); Kaeo v. Davis, 68 Haw. 447, 719 P.2d 387 (1986).

In Kaeo v. Davis, supra, the Hawaii Supreme Court vacated a judgment in favor of the defendant, who was driving the car with the injured party as a passenger, and remanded for a new trial when the trial court had excluded evidence of the driver's drinking. The driver had consumed "several beers" that afternoon before the accident at dusk. The trial court in Kaeo had concluded, similar to the instant case, that any evidence of drinking regardless of the amount would raise undue prejudice against the driver. The Supreme Court concluded that this analysis was error and constituted an abuse of discretion:

Granted, the evidence of drinking was prejudicial. Still, evidence with a capacity for unfair prejudice cannot be equated with testimony simply adverse to the opposing party; for evidence is only material if it is prejudicial in some relevant respect. 1 J. Weinstein and M. Berger, Evidence p 403 (1985) (citation omitted). We are not willing to assume "any indication of drinking" is so unfair to the drinking driver that the opposing party must be denied his right to have relevant and material evidence considered by the trier of fact. Nor are we willing to concede the trial juries, with guidance from the trial court, are incapable of rendering objective fact determinations in trials of negligence actions in which drinking is involved.

[321 Ark. 494] The judge's ruling of inadmissibility, it appears, was influenced by

representations that in pre-trial depositions Miss Kido and Samuel Taupo testified Davis was sober prior to the accident and the investigating officer detected none of the tell-tale signs of drunkenness when he questioned Davis at the accident scene. These, however, were matters that could have been offered instead for assessment by the trier of fact along with the evidence of drinking by the driver. The trial judge's decision not to permit the jury to hear such evidence was an abuse of discretion amounting to error, and we cannot say it had no effect upon the outcome of the trial. Since our conclusion compels a retrial of the action, we proceed to the issue raised by the plaintiff in her cross-appeal.

Kaeo, 719 P.2d at 392.

The Supreme Court in Kaeo did state that had the driving of the car been wholly beyond criticism, the trial court's ruling would have been correct. But there was evidence of speeding and the driver's taking his eyes off the road while attempting to round a

Page 793

curve. The Supreme Court observed that there was enough from which the jury could conclude that the driver was impaired in his ability to perceive the damages with clarity, make decisions with prudence, and operate the vehicle with the skill and caution required by law.

It is clear that mere alcohol consumption by itself cannot be equated to unfitness to drive. City of Little Rock v. Cameron, 320 Ark. 444, 897 S.W.2d 562 (1995); Clement v. Consolidated Rail Corp., supra. But when coupled with other evidence of impairment and unfitness to drive, such as erratic driving, it is relevant. Jones v. Freese, 743 S.W.2d 454 (Mo.App.1987); McCall v. Liberty, 248 Ark. 618, 453 S.W.2d 24 (1970). That is what we have in the matter before us.

The circumstances of this case were that it occurred at about 10:00 p.m. Eight teenage boys were in a ski boat operated by Grace on Lake Hamilton. Grace was 17 at the time and admitted to drinking one beer before the accident. According to two investigatory officers, Grace was not intoxicated but had a "moderate" or "medium" smell of alcohol about him at some point after the collision. There were six empty beer cans around the [321 Ark. 495] scene of the accident. Grace at some time after the collision tested at .04 blood/alcohol content on a field breathalyzer test, according to the proffered testimony of Officer Richard Rowlett, but admittedly field breathalyzer tests are of questionable probative value. The complaint by the Wades alleged that the ski boat was speeding and that the driver had failed to keep a proper lookout. Grace admitted to driving 30 miles per hour. The Wades' theory of the case was that the ski boat attempted to pass the party barge on the wrong side.

To be sure, the central issue in this case was whether the party barge had the appropriate lighting. But any impairment of the driver, due to alcohol consumption, coupled with allegations of speeding was an appropriate matter for the jury to weigh.

I am fearful that this case will be precedent for the proposition that only proof of legal intoxication is relevant in a negligence case involving reckless driving of cars or boats. That should not be the law. Nevertheless, because our trial courts are granted great discretion in this area, and because the correct standard was not argued to the trial court and, indeed, was not argued on appeal, I cannot say that the trial court abused its discretion.

HOLT, C.J., joins in this concurrence.

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897 S.W.2d 562
320 Ark. 444
CITY OF LITTLE ROCK, Appellant,
v.
Kevin Scott CAMERON, Appellee.
No. 94-1334.
Supreme Court of Arkansas.
May 8, 1995.

Page 563

[320 Ark. 445] Thomas M. Carpenter, Anthony W. Black, Little Rock, for appellant.

Sarah Presson, Julia L. Busfield, Little Rock, for appellee.

BROWN, Justice.

This case involves an appeal from a grant of a directed verdict in favor of the appellee, Kevin Scott Cameron. The City of Little Rock, as appellant, contends that the trial court erred in its ruling. We do not agree and affirm.

At approximately midnight on March 5, 1992, Cameron left the Bobbisox Lounge at the Holiday Inn by the Little Rock Airport. He had been drinking alcoholic beverages. He went to a Waffle House across the street and left there at about 2:00 a.m. He drove into downtown Little Rock. It was raining. At the intersection of West Markham and McKinley, his car struck a traffic [320 Ark. 446] signal pole and destroyed it. The City sued Cameron for negligence and for damages in the amount of $4,562.70 for the destruction of the pole.

At the resulting jury trial, the City called Officer Linda Barron as a witness. Officer Barron testified that she was the investigating officer and that two vehicles were involved in the accident: Cameron's 1987 Ford Taurus and a 1989 G.M.C. pickup driven by Othlea Patterson. Officer Barron testified that she smelled alcohol on Cameron's breath. She stated that Cameron told her that the pickup truck had entered his lane and that he had swerved to miss it and struck the pole. She noted that Cameron's vehicle had hit the pickup but stated that Cameron was unaware of this at the time. No citations were issued to the driver of either vehicle, and the police officer's accident report noted no contributing causes for the wreck.

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Officer Roy Howard of the Little Rock Police Department testified that he administered a portable breathalyzer test to Cameron at the scene and that Cameron tested for a blood/alcohol level of .05 percent. He stated that he did not believe that Cameron was "impaired to an extreme point," though he did state he believed that drinking alcoholic beverages does impair one's ability to drive.

The City rested its case after providing proof of its damages. Cameron moved for a directed verdict, and it was granted.

The City urges on appeal that the trial court erred in granting Cameron's motion for directed verdict. In determining the correctness of the trial court's ruling, we view the evidence in the light most favorable to the party against whom the verdict is sought and give it the highest probative value, taking into account all reasonable inferences deducible from it. Bice v. Hartford Acc. & Indem. Co., 300 Ark. 122, 777 S.W.2d 213 (1989). A motion for directed verdict should be granted only if the evidence so viewed would be so insubstantial as to require a jury verdict for the party to be set aside. Id.; Campbell Soup Co. v. Gates, 319 Ark. 54, 889 S.W.2d 750 (1994). Evidence is insubstantial when it is not of sufficient force or character to compel a conclusion one way or the other or if it does not force a conclusion to pass beyond suspicion or conjecture. See Allred v. [320 Ark. 447] Demuth, 319 Ark. 62, 890 S.W.2d 578 (1994); Moore v. State, 315 Ark. 131, 864 S.W.2d 863 (1993).

In the case before us, the trial court found that there was insufficient evidence to support a claim of negligence. To establish a prima facie case in tort, a plaintiff must show that damages

were sustained, that the defendant was negligent, and that such negligence was a proximate cause of the damages. Arkansas Kraft v. Cottrell, 313 Ark. 465, 855 S.W.2d 333 (1993). We reiterated our definition of negligence in Cottrell:

Negligence is the failure to do something which a reasonably careful person would do. A negligent act arises from a situation where an ordinarily prudent person in the same situation would foresee such an appreciable risk of harm to others that he would not act or at least would act in a more careful manner. White River Rural Water Dist. v. Moon, 310 Ark. 624, 839 S.W.2d 211 (1992).

313 Ark. at 470, 855 S.W.2d at 337. While a party can establish negligence by direct or circumstantial evidence, he cannot rely upon inferences based on conjecture or speculation. Id.

The mere fact that Cameron had been drinking alcoholic beverages is not sufficient evidence of negligence, standing alone, for this claim, to withstand a directed verdict. Cameron was not legally intoxicated based on his percentage of blood/alcohol content. See Ark.Code Ann. § 5-65-103(b) (Repl.1994). But even had he been intoxicated, a distinguished treatise on torts concludes that the fact of intoxication is not negligence in itself, but it must be shown to have caused the actor's behavior to have deviated from that of a reasonable person and to have caused the plaintiff's injuries. See Prosser and Keaton on Torts § 32, pp. 178-179 (5th Ed.1984); see also Restatement (Second) of Torts § 283C, Comment D. In this vein, we have stated that voluntary intoxication may be a factor to be considered by the trier of fact in determining negligence. Jernigan v. Cash, 298 Ark. 347, 767 S.W.2d 517 (1989).

We can readily agree with Officer Howard that drinking alcoholic beverages may impair one's ability to drive. Here, though, there was no evidence that Cameron was intoxicated or otherwise impaired at the time of the accident or that his liquor [320 Ark. 448] consumption either evidenced a lack of reasonable care on Cameron's part or caused the wreck in any way. In sum, we agree that the City's proof does not give rise to an inference of negligence but only to conjecture and speculation. See Sanford v. Ziegler, 312 Ark. 524, 851 S.W.2d 418 (1993). The trial court did not err in granting the directed verdict.

Affirmed.

GLAZE and CORBIN, JJ., dissent.

CORBIN, Justice, dissenting.

I dissent.

The case should have been submitted to the jury for decision. The facts of the appellee's

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drinking mixed with a collision with another vehicle he did not know he hit and his collision with a traffic light pole should have been submitted to the jury to resolve whether he was negligent in the operation of his vehicle. One does not have to be intoxicated under a legal definition of 0.10% before having his mental and reaction time slowed down by the drink. See Stephens v. State, 320 Ark. 426, 898 S.W.2d 435 (1995). When all of this is coupled with rain slicked streets, it would be a proper issue for a jury to draw upon their individual experiences to determine if, under all of these conditions, negligence existed. I would reverse and remand for trial.

GLAZE, J., joins in this dissent.

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303 F.3d 929

Geraldine SIMCO, Administratrix of the Estate of Doris M. Smith, Deceased; Patti Lynn Bradley; Dan David Bradley, Appellees/Cross-Appellants,

v.

Willie R. ELLIS, doing business as Ellis Trucking; Andrew L. McCalpin, Appellants/Cross-Appellees.

No. 01-2095.

No. 01-2167.

United States Court of Appeals, Eighth Circuit.

Submitted: May 13, 2002.

Filed: September 17, 2002.

Rehearing and Rehearing En Banc Denied: October 23, 2002.

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D. Keith Fortner, Little Rock, AR, for appellants/cross-appellees, McCalpin and Ellis.

James Melvin Dunn, Fort Smith, AR, for appellees/cross-appellants, Dan and Patti Bradley.

Ronald W. Metcalf, Fort Smith, AR, for appellee/cross-appellant, Geraldine Simco.

Before BOWMAN and BYE, Circuit Judges, and NANGLE,[1] District Judge.

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BOWMAN, Circuit Judge.

In this negligence case, Willie R. Ellis, doing business as Ellis Trucking, and Andrew McCalpin appeal from the judgment of the District Court[2] in favor of plaintiffs Geraldine Simco, administratrix of the estate of Doris Smith, and Patti Lynn Bradley and her husband, Dan David Bradley. Simco cross appeals, raising an evidentiary issue. We affirm.

On a March morning in 1999, a tractor-trailer flat-bed truck loaded with lumber and driven by McCalpin[3] overturned on a rain-soaked Arkansas state highway as the truck approached the second part of a sharp downhill s-curve. The truck and its load slid across the center line and smashed into a pickup truck driven by Doris Smith, who had pulled her truck over to the guardrail in an attempt to avoid the collision. Smith was killed and her passenger, Patti Bradley, was injured. In October 1999, the plaintiffs brought a state-court lawsuit, which was timely removed to the District Court, against Ellis, the owner of the truck and McCalpin's employer at the time of the accident, and against McCalpin, alleging that McCalpin's negligence was the cause of the accident.

At the end of a three-day trial, the jury found for the defendants on the question of McCalpin's negligence. The District Court granted the plaintiffs' motion for a new trial "solely on the grounds that the verdict was against the great weight of the evidence." *Simco v. Ellis,* No. 99-2194, Memorandum & Order at 5 (W.D.Ark. July 21, 2000) (granting motion for new trial). After a second trial, a different jury awarded $60,000 to Smith's estate, $225,000 to Patti Bradley, and $25,000 to Dan Bradley. McCalpin appeals, challenging the District Court's decision to grant a new trial and raising several issues related to the second trial. In a cross appeal, Simco challenges the exclusion of evidence relating to a drug test performed on a blood sample taken from McCalpin shortly after the accident.

We will reverse a district court's decision to grant a motion for a new trial only if it reflects a clear abuse of the court's broad discretion. *Walzer v. St. Joseph State Hosp.,* 231 F.3d 1108, 1111 (8th Cir.2000). We do require from the district court, however, an articulation of the basis for granting the motion "to permit meaningful review of its decision." *Children's Broad. Corp. v. Walt Disney Co.,* 245 F.3d 1008, 1017 (8th Cir.2001). Here, the District Court in its order granting a new trial carefully laid out the evidence that was before the jury and clearly spelled out the reasons for granting the motion. Recognizing the import of a decision to abrogate a jury verdict, the court

nevertheless concluded that such a course of action was warranted in this case. We agree.

The transcript of the first trial included the following evidence. McCalpin was twenty-one years old and had been licensed as a truck driver for a few months at the time of the accident. He had never before driven a load for a long distance unaccompanied by his boss, and when he left Port Gibson, Mississippi, the evening before the accident, he was unfamiliar with the roads he was to take to his final destination, Kansas City, Missouri. In fact, McCalpin missed the turnoff to a route

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that would have avoided altogether the perilous stretch of road where the accident occurred. McCalpin was accompanied on the trip by his brother and a younger cousin.

The scene of the accident was an s-curve on old highway 71 near Mountainburg, Arkansas. Because of a steep hill, there were two lanes southbound, one of which served as a lane for vehicles to use in order to pass slower-moving traffic ascending the hill. There was only one northbound lane. The weather shortly after 8 a.m. on March 8, 1999, was cloudy and rainy. As McCalpin's northbound truck approached the first part of the curve, it was traveling at a speed exceeding the recommended twenty miles per hour, despite the signs and flashing lights posted along the highway warning of the approaching dangerous curves and steep descent. McCalpin testified that he was blinded by a flash of light (although the length of time this visual impairment lasted is unclear) as he approached the first curve, yet he continued to drive without attempting to slow down. McCalpin lost control of the truck, and it turned over and slid across the center line into the southbound pickup truck driven by Doris Smith, which she had pulled over as far from the tractor-trailer as she could when she first saw it approaching, as McCalpin's truck already had crossed the center line and was tipped up on its left wheels.

The court advised the jury of the duty incumbent upon drivers of motor vehicles on the roads in Arkansas to keep a lookout, to keep their vehicles under control, and to drive at a reasonable and prudent speed under the circumstances, and the jury was instructed that the failure to conform to these rules was negligence. *See* Instruction No. 14 (Common Law Rules of Road). Negligence also was defined for the jurors as "the failure to do something which a reasonably careful person would do, or the doing of something which a reasonably careful person would not do, under circumstances similar to those shown by the evidence in this case." Instruction No. 15 (Negligence-Definition). The jury was further instructed that it is negligence to fail to exercise ordinary care — "how a reasonably careful person would act under [the] circumstances." Instruction No. 16 (Ordinary Care).

Notwithstanding this evidence and these instructions, the first jury to hear the evidence in the case determined that McCalpin was not negligent. The District Court, in its review of the record upon the plaintiffs' motion for new trial, determined that "all of the evidence presented indicated that the accident was caused by McCalpin's negligence.... [I]t was a miscarriage of justice for the jury to conclude that the defendants were not at fault in causing the fatal crash or that the accident was unavoidable." Simco, No. 99-2194, Memorandum & Order at 5 (granting motion for new trial). The court granted the motion, and McCalpin contends that decision was an abuse of the court's discretion.

Ironically, McCalpin faults the District Court for relying solely on his, McCalpin's, description of events that day, while ignoring the supposedly contrary testimony of his passengers. According to McCalpin, his own sworn testimony was "implausible," and the passengers' versions were "much more logical." Br. of Appellant at 50. But when a district court is considering a new trial motion on the grounds that the verdict is against the great weight of the evidence, the court "is entitled to interpret the evidence and judge the credibility of witnesses" for itself. *Van Steenburgh*

*v. Rival Co.,* 171 F.3d 1155, 1160 (8th Cir.1999). This is not a case where the court has "usurp[ed] the role of the jury by granting a new trial simply because it believes other inferences

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and conclusions are more reasonable." *Id.* Instead, the District Court reviewed the evidence and determined that Doris Smith and Patti Bradley had no responsibility for the accident and that the accident was not unavoidable in the absence of McCalpin's negligence — negligence that was readily apparent from the uncontroverted evidence at trial. There is ample record support for these conclusions. The District Court did not abuse its discretion in deciding that a new trial was required to avoid a miscarriage of justice in this case.

McCalpin's remaining issues on appeal arise from the second trial, where the jury found for the plaintiffs and awarded damages. First, McCalpin contends there was insufficient evidence to submit to the jury the issues of Bradley's permanency of injury, her future pain and suffering, her future medical expenses, and her future lost earnings and Smith's conscious pain and suffering. Because he failed to raise these sufficiency issues in his motions under Federal Rule of Civil Procedure 50(b), we review only for plain error, *see Broadus v. O.K. Indus., Inc.,* 238 F.3d 990, 991 (8th Cir.2001) (per curiam), and find none. Likewise, McCalpin's claim that the verdict was excessive as to the Bradleys was not raised in post-trial motions and so is subject to review only for plain error. *See Loehr v. Walton,* 242 F.3d 834, 837 (8th Cir.2001). Under the plain-error standard of review, we will reverse only if the amount of damages is so disproportionate that it would be a miscarriage of justice to affirm it. *See id.* The $250,000 in damages awarded to the Bradleys does not meet that standard.

McCalpin also claims that the submission of punitive damages (which the jury declined to award) was error because there was insufficient evidence to merit such an instruction. But even if the District Court abused its discretion in giving the instruction, a question we need not decide, any error was harmless and the defendants cannot show otherwise. *See Warren v. Prejean,* 301 F.3d 893, 899-900 (8th Cir. 2002).

Finally, McCalpin argues that the District Court should not have permitted Arkansas State Trooper Brian Davis, who investigated the accident, to testify on certain matters because he was not qualified as an expert. Davis's testimony had to do with his observations at the scene of the accident and his conclusions drawn from those observations as to a possible load shift and the speed of the truck before the accident. It is not entirely clear to us that all the testimony in question was that of an expert. But to the extent the evidence is properly classified as expert testimony, we do not think the District Court abused its discretion in allowing Davis to testify as he did. *See Lloyd v. Am. Airlines, Inc. (In re Air Crash at Little Rock Ark., on June 1, 1999*), 291 F.3d 503, 509 (8th Cir.2002) (standard of review), *petition for cert. filed,* ___ U.S. ___, ___ S.Ct. ___, ___ L.Ed2d ___ (2002).

In her cross appeal, Simco challenges the District Court's decision to exclude blood-test evidence that she claims shows McCalpin had ingested cocaine on the morning of the accident. After a lengthy hearing on McCalpin's motion in limine, filed before the first trial, the District Court concluded that the drug test was incomplete and the inference to be drawn from it — that McCalpin had used cocaine the morning of the accident — therefore was unreliable. Further, the court noted there was no evidence that McCalpin was intoxicated or impaired at the time of the accident and "the mere mention of cocaine would inflame the jury and be extremely prejudicial to the defendants." *Simco v. Ellis,* No. 99-CV-2194, Order at 3 (W.D. Ark. June 1, 2000) (granting defendants' motion in limine), *reconsideration*

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*denied, Simco v. Ellis,* No. 99-CV-2194 (W.D.Ark. Mar. 22, 2001). We see no clear abuse of

discretion in the District Court's carefully considered order. *See Stafne v. Unicare Homes,* 266 F.3d 771, 776 (8th Cir.2001) (standard of review).

The District Court is affirmed in all respects.

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Notes:

1. The Honorable John F. Nangle, United States District Judge for the Eastern District of Missouri, sitting by designation.

2. The Honorable Robert T. Dawson, United States District Judge for the Western District of Arkansas.

3. Following the lead of the parties and the District Court in this case, we will generally refer to the defendants collectively as McCalpin. It should be clear from the context when we are referring to McCalpin individually as the driver of the truck in question.

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**[redacted] Statement:**

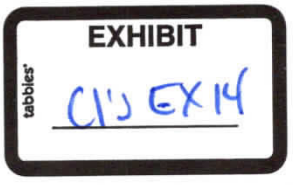
I was 10 when my mom died. My life changed forever that day. One minute everything was normal, and the next my mom was being put in an ambulance and the next time I would see her would be in a hospital bed where she couldn't talk to me. [redacted] and I lived with our mom. She was the only person that we could depend on to take care of us and make us happy and feel comfortable with starting a new school. The day of the wreck I didn't know what was going on, everything happened so fast. I knew something wasn't right when my aunt Lisa told [redacted] and I that "mama was going to pass away and we needed to go to the hospital" I was so sad, I didn't know what was going to happen without my mom. We met my brothers and sister at the hospital, the whole night seemed like a blur. There were so many people who came to see her and check on us, some of them i didnt even know. Since then, my sister has been the one who we live with and she is the one who takes care of us.

Growing up without my mom is so hard. I was starting 5th grade then, and now I'm in 8th grade. She didn't get to see me be a cheerleader, basketball player, softball player, or be a homecoming maid. She isn't here to celebrate my accomplishments or good grades. It's hard to think that she is never going to come back. When all of my friends talk about going shopping with their mom, or that their mom is going to come and watch them do things, I don't get to say that. I have to say My sister is going shopping with me or my sister will be here. I love Haley, but it's not the same. I feel like I am the odd one because I don't have a mom.

**[redacted] Statement:**

Losing my mom at the age of 14 was one of the most traumatizing things to ever happen to me. I have no memory of my mom on the day of the wreck, all I know is how that day went based on what my siblings have told me. My mom was my best friend. We didn't know a lot of people in Paris other than family, but we had each other and life was perfect in my eyes. I have no memory of the wreck itself or even going to the hospital afterwards, the only thing i know about that day is waking up at my aunt lisa's house and being told i needed to go take a shower so we could go see my mom for the last time.

I don't remember the ride to fort smith but i do remember walking into the hospital room and seeing my 3 older siblings bawling their eyes out while my mom lay on the hospital bed with tubes all over her. I was 14 at the time and I'll be turning 18 in 6 days. I have done so many things in these 3 and a half years that she has had to miss such as Basketball, Softball, being on the bowling team, traveling to different colleges, going to Washington, being a homecoming maid, going to prom, starting high school, the list goes on and on. Not only has she missed important events, she will also miss things in



future such as graduation, going to college, having a career, getting married and starting a family of my own. Growing up without my mom has been one of the hardest things I will ever have to do. It's not fair that I don't get to have a sisterly relationship with my big sister because she has stepped more into the parental role. I will forever be grateful for Haley for taking on that role but she's not my mom and I'll never have my mom back.

**[redacted] Statement for her head injury:**

Not only has the accident affected me mentally and emotionally but it has also affected me physically. Since the day of the [redacted]

**Haley's Statement:**

June 11, 2021 was the last time I heard my moms voice. The last thing she said to me was "I'll call you when I get back from taking Ny home" Unfortunately, she never made that phone call back to me because she never made it back home. I called her though, over 50 times begging her to answer and praying that the only reason she wasn't answering was because she was getting checked out by EMS or something.

I live almost 4 hours away from Fort Smith, So i called my brothers and told them they needed to go to the hospital to be with our mom. After they arrived at the hospital, the doctor told them the horrific news that our mom wasn't going to survive. That phone call they made to me from that hospital room was the worst phone call I've ever received. I'll never forget it. I screamed so loud and fell to the floor, I was numb. Even though I was 29 years old at the time I felt like a little kid just wanting my mom to come and pick me up and tell me everything was going to be alright.

When i made it to my moms bedside I didn't want to be the one who made all the decisions, I didn't want to let go, and neither did the other 29 people who drove across the state of arkansas just to tell my mom they loved her and say their final goodbyes.

June 12th, 2021 at 1234 am, my mom took her last breath.

My mom was my best friend, I called her so many times throughout the day. If I was happy, mad, sad, or just needed to talk, I called her because she knew exactly what to

say. There were times I would call her just to be on the phone with her because I missed her so much. Our mom was all we ever had growing up, She raised us to be strong, respectful, independent individuals all by herself being a single parent. We never could have imagined that not even 2 weeks after her 50th birthday we would be planning her funeral.

3 and a half years later, my two minor sisters who were with her in the accident are growing up to be beautiful young ladies and I've gotten to witness it first hand because July of 2021 I got permanent guardianship over them. I also have a family of my own, a fiance and two little girls, so taking on the role of not only a big sister but also a parent to [redacted] and [redacted] has been hard on all of us to say the least. Before the accident my sisters lived in a cute little apartment with my mom and my daughters had their own room, their own space. But now that is no longer an option because my house is too small for everyone to have their own space. Before the accident my daughters didn't have to share me with anyone and now my time and attention are divided between 4 kids. I've had to purchase a new vehicle just so we could all fit when we go places. Going from a family of 4 to a family of 6 has been difficult. Our grocery bill has increased, we now buy school clothes and supplies for 4 kids, not just 2. We are always busy. We are still grieving, with every big moment that happens in my sister life such as sports, homecoming, prom, birthdays, and graduation this year we always take a moment to cry bc the woman who was always our biggest cheerleader and our biggest supporter can't be here to witness all the great things they accomplish. She doesn't get to see her last 2 babies grow into adults. She doesn't get to watch and enjoy her 7 grandchildren grow up, she doesn't get to see her nieces and nephews become great parents. My mom was supposed to be here with all of us for a very long time and that was taken from us.

I don't regret taking in my sisters one bit, but I would be lying if I said it was easy. Living without our mom in general is hard, but taking on the responsibility of two other kids while we are all still grieving is extremely hard. Everything I do, I do for them. I try to give them the best life they can have. They still needed their mom to finish raising them and they were robbed of that. At the ages of 10 and 14 they had to witness their mom laying in a hospital bed with tubes all on her and had to tell her goodbye for the last time. We talk about our mom all the time, we always look at pictures of her. But the hurt doesn't go away, the hole in our hearts is still there. But I am doing my best to raise my sisters the same way our mom raised us, to be strong, respectful, independent individuals.

Talking about my mom is very hard for me. I was one of the reasons she moved to Paris in the first place. Her and I were always very close, so when I moved to Paris it wasn't very long after that her and my little sisters moved to paris. There wasn't a day that would go by where we didn't see or at least talk to each other. Walking to that hospital room on June 11, 2021 was gut wrenching. I have never seen my mom like that. I sat by her side and watched my aunts and uncles cry over their sister, and watched my grandma tell her daughter that she loved her a million times. I sat and watched all of my siblings, including myself break down so many times because we knew that there was nothing we could do to save her. I watched as my mom took her last breath and that is something that will be burned into my memory forever. My mom was my backbone, and I miss her so much. Time doesn't make it any easier, I wish I could call her, I wish all of this was a nightmare, I wish that after all of this was said and done that she could just come back. But that's not going to happen. We have to live everyday without her, we have to live with hurt and sadness instead of our loving and caring mom. I just miss her so much.



When my mom died, a huge piece of me died. My mom was the only person I could ever count on. On June 11, 2021.. 30 mins after I got off work, my sister Haley called to tell me to get to fort smith because my mom had been in a car accident and that's where they transported her. I was never expecting for the doctor to tell me that she was unconscious and surgery wasn't an option because the bleeding in her brain was too bad. I was the one who had to make the phone calls to the rest of the family, and that alone was heartbreaking. Saying goodbye to my mom for the last time is a memory that will haunt me forever. Not only was my mom the best mom but she was one of my best friends, biggest supporter, and always just a phone call away. Since she passed, grief gets the best of me on most days. It has caused my wife and I to separate because people who haven't lost their mom don't really understand the cloud of sadness that seems to follow you around. Losing my mom is something that i can't begin to put into words, everything i do, i do it to make her proud.

Mark Hudson

**From:** Kathryn Irby
**To:** Jim Jackson; Vincent France
**Cc:** Daiquiri Carter; Martha Cox
**Subject:** ORDER: Hudson v. DHS, Claim No. 230641
**Date:** Monday, March 31, 2025 11:21:00 AM
**Attachments:** [redacted] order.pdf

Jim and Vincent, please see attached order entered by the Commission.

Thanks,
Kathryn Irby

**Kathryn Irby**
**Arkansas State Claims Commission**
101 East Capitol Avenue, Suite 410
Little Rock, Arkansas 72201
(501) 682-2822

**BEFORE THE ARKANSAS STATE CLAIMS COMMISSION**

**HALEY HUDSON, SPECIAL ADMINISTRATRIX OF THE ESTATE OF JACQUELINE LYNN ASHCRAFT, DECEASED, AND HALEY HUDSON, PERMANENT LEGAL GUARDIAN OF [redacted], A MINOR CHILD** **CLAIMANT**

**V.** **CLAIM NO. 230641**

**ARKANSAS DEPARTMENT OF HUMAN SERVICES** **RESPONDENT**

**AMENDED AND SUBSTITUTED ORDER**

Now before the Arkansas State Claims Commission (the "Commission") is the claim filed by Haley Hudson, Special Administratrix of the Estate of Jacqueline Lynn Ashcraft, deceased, and Haley Hudson, Permanent Legal Guardian of [redacted], a Minor Child (collectively referred to as the "Claimant") against the Arkansas Department of Human Services (the "Respondent"). At the hearing held on September 19, 2024, Jim Jackson appeared on Claimant's behalf, and Vincent France and Nicholas Langham appeared on behalf of Respondent.

As detailed below, the Commission finds Jennifer Wilkerson to be acting in the course and scope of her employment with Respondent at the time of the accident, such that Respondent is liable for the accident that resulted in the death of Jacquelyn Lynn Ashcraft (the "Decedent") and injured [redacted]. The Commission awards a total of $851,500.00 to the Decedent's estate and $1,500,00.00 to the Decedent's wrongful death beneficiaries, for a total award of $2,351,500.00.

**Procedural History, Prehearing Matters, and Witness Testimony**

1. Claimant filed the instant claim seeking damages after Jacqueline Lynn Ashcraft (the "Decedent") died following a motor vehicle accident with a vehicle owned by Respondent

and operated by its (now former) employee, Jennifer Wilkerson. The Decedent's minor children, [redacted], were in the Decedent's vehicle when the accident occurred.

2. In response to Respondent's motion to cure a defective complaint and for a more definite statement, Claimant amended the claim to address the issues raised in Respondent's motion. Following a hearing, the Commission entered an order on February 13, 2023, denying Respondent's motion as moot and directing Respondent to answer the amended complaint.

3. Respondent thereafter filed an answer denying liability.

4. Respondent filed a motion to dismiss, which was subsequently withdrawn.

5. Claimant filed an unopposed motion to nonsuit any individual claim by Ms. Hudson for bodily injury, which was granted by the Commission in a July 21, 2023, order.

6. Respondent filed a motion to compel related to Claimant's discovery responses, a motion to sever, and a motion to hold the claim in abeyance, all of which were denied by the Commission on August 14, 2023, following a hearing.

7. Claimant filed a motion to withdraw its requests for admission, which was granted by the Commission in its August 14, 2023, order.

8. Respondent filed a motion to quash, which was subsequently withdrawn.

9. Respondent filed a motion to compel regarding Claimant's discovery responses, which was subsequently withdrawn.

10. Respondent filed a motion to substitute counsel, which was granted by the Commission at the May 9, 2024, motions hearing.

11. Claimant filed a second amended complaint, and Respondent filed an answer denying liability.

12. Claimant filed a motion for partial summary judgment on the issue of liability. Respondent file a response in opposition to the motion.[1] Respondent filed a cross-motion for summary judgment on the issue of liability, and the cross-motion was fully briefed by the parties. In keeping with Respondent's agreement that Ms. Wilkerson was acting in a negligent manner at the time of the accident,[2] the Commission granted Claimant's motion for partial summary judgment and found in an order entered July 25, 2024, that Ms. Wilkerson was driving negligently at the time of the accident. The Commission also denied Respondent's cross-motion, finding that a presumption exists under Arkansas law that Ms. Wilkerson was acting within the scope of her employment when she was driving a vehicle owned by Respondent at the time of the accident[3] and that fact questions remain about whether Respondent had rebutted that presumption.

13. Respondent filed a motion to stay discovery, which the Commission denied as moot based on the Commission's denial of Respondent's cross-motion for summary judgment.

[1] Respondent also filed (1) a motion to strike Claimant's motion for partial summary judgment or, alternatively, motion for extension of time to respond to the motion and (2) a motion for expedited ruling. On July 21, 2023, the Commission entered an order memorializing the parties' decision to reschedule the hearing on Claimant's motion for partial summary judgment and to extend the parties' briefing schedule on the motion; finding that the motion for extension and motion for expedited ruling was mooted by the parties' agreement; and declining to rule on Respondent's motion to strike. After Respondent filed another motion for extension of time to respond to Claimant's motion for partial summary judgment, the Commission entered an order on October 6, 2023, granting Respondent an extension.

[2] Respondent argued that Ms. Wilkerson's driving was negligent and specifically that Ms. Wilkerson could have been charged with negligent homicide. *See* Respondent's brief in support of cross-motion for summary judgment at p. 8. At the May 9, 2024, motions hearing, Respondent also "confirmed its agreement that Ms. Wilkerson's negligence caused the accident," as recorded in the Commission's July 25, 2024, order.

[3] *Nipper v. Brandon Co.*, 262 Ark. 17, 21, 553 S.W.2d 27, 29 (1977) ("When a plaintiff proves that a regular employee driving an employer's vehicle is involved in an accident, there exists a presumption of fact which must be overcome by the defendant-employer").

14. At the beginning of the hearing, the parties confirmed the submission of the following depositions in lieu of live testimony:

- Submitted by Claimant:
  - Christopher Bell, M.D.
  - Holly Newman

- Submitted by Respondent:
  - Brandy Ezell
  - Jennifer Wilkerson

15. At the beginning of the hearing, the Commission admitted the following exhibits without objection:

- Claimant's Exhibit Nos. 1–5, 9–10, and 12–13; and
- Respondent's Exhibit Nos. 1–13.[4]

16. The Commission confirmed that it had received a joint stipulation of facts by the parties.

17. Both parties presented opening statements.

18. Following the submission of testimony, both parties presented closing arguments.

Testimony of Christopher Bell, M.D.

19. Claimant introduced the deposition testimony of Dr. Christopher Bell in lieu of live testimony.

20. After being sworn in, Dr. Bell stated that the Decedent was his patient on June 11–12, 2021. The Decedent was transferred to Mercy Hospital in Fort Smith for "[i]ntraparenchymal hemorrhage of brain." Dr. Bell agreed that, prior to him taking over the Decedent's care, the physician who first examined the Decedent upon arrival determined that the Decedent's injury was not survivable and that the Decedent was to receive comfort measures only.

[4] Regarding Claimant's objection to Respondent's Exhibit No. 13, Claimant agreed to rest on the briefing of the objection, such that the Commission could receive the exhibit and give the exhibit the weight to which it is entitled.

21. Dr. Bell agreed that the Decedent's immediate cause of death on her death certificate was "[i]ntracranial [h]emorrhage." He did not disagree with the cause of death.

Testimony of Holly Newman

22. Claimant introduced the deposition testimony of Holly Newman in lieu of live testimony.

23. After being sworn in, Ms. Newman testified that she is a paramedic. She became a paramedic in 2016. She has been an EMT or a paramedic for ten years.

24. When she arrived at the scene of the accident, Ms. Newman went over to the Decedent and her children. The Decedent was smoking a cigarette when Ms. Newman saw her. The children were sitting on the ground. Ms. Newman asked the Decedent for permission to check over the children because the children were minors, and the Decedent agreed. The Decedent did not complain about any injury to Ms. Newman and was more worried about having her children checked for injuries. Ms. Newman determined that one child ([redacted] was fine and that the other ([redacted] showed signs of a possible concussion. Ms. Newman recalled that [redacted] kept asking what had happened. There was swelling on the back of her head.

25. The Decedent wanted to go to the house across the road. She signed forms refusing to allow the children to go to the hospital. Ms. Newman walked with the Decedent and the children across the road and into the house. Ms. Newman told the woman in the house to come get her if anything changed with regard to the Decedent or the children.

26. Ms. Newman reviewed and described the records of her assessment of the Decedent, including her pupils, chest, abdomen, pulse, and capillary refill. Ms. Newman stated that the diagnostic assessments all came back normal.

27. After Ms. Newman went back to the scene to assist the other paramedic, a state trooper told Ms. Newman that she was needed back in the house. At that point, the Decedent was

still able to respond but not like she previously had. Ms. Newman started an IV and another paramedic carried the Decedent back to the ambulance. When the ambulance got to the emergency room at Booneville, Ms. Newman saw the Decedent nod her head in response to a question.

28. The Paris hospital did not have a working CT, so the paramedics had to take the Decedent to the next closest hospital with a working CT, which was Booneville.

Testimony of Ralph Scott, Ph.D.

29. Claimant called Dr. Ralph Scott to testify. After being sworn in, Dr. Scott testified that he is an economics professor at Hendrix College. He also works as an economic consultant and presents testimony on economic issues in personal injury cases.

30. In the instant claim, Dr. Scott calculated damages related to the death of the Decedent.[5] These damages include loss of earning capacity, lost household services, and the cost of raising the Decedent's surviving minor children. These damages do not include a valuation of the Decedent's loss of life aside from the quantifiable aspects.

31. Dr. Scott testified that the Decedent's remaining life expectancy at the time of her death was 33.6 years. Dr. Scott calculated the loss of the Decedent's earning capacity, with fringe benefits, ranged from $187,147.82 and $423,919.95. Dr. Scott clarified that lost earning capacity refers to the opportunity to earn.

32. Dr. Scott testified that the term "household services" includes the services that the Decedent would have provided to her household and to her daughters between the date of her death and the Decedent's youngest child reaching the age of eighteen. Dr. Scott calculated the loss of these services at $89,725.28.

[5] Claimant's Exhibit 10 is Dr. Scott's expert report. This report contains his calculations and explanations.

33. Dr. Scott testified as to the cost of raising the Decedent's two minor children and noted that his calculations do not include the cost of travel sports that the two minor children participate in or the cost of college. Dr. Scott calculated the cost of raising [redacted] to be $61,866.43 and the cost of raising [redacted] to be $28,971.49.

34. Dr. Scott testified that the total economic loss related to the death of Decedent ranged from $367,711.02 and $604,483.16.

35. Dr. Scott testified that an average person's non-economic value of life per year is $278,711. He clarified that this number could be adjusted up or down based upon the testimony. Dr. Scott provided equations in Tables 5 and 6 in his report to allow the Commission to calculate the non-economic value of the Decedent's life. Dr. Scott testified that this yearly value was in keeping with Judge Timothy Brooks' decision in *Kolpek v. United States*, United States District Court for the Western District of Arkansas, Case No. 5:21-CV-05116.

36. On cross-examination, Dr. Scott stated that he reviewed the Decedent's age and date of birth. He knew that she was not working at the time of her death. Dr. Scott typically uses a questionnaire to elicit information about a decedent. He does not believe that he had an employment history when he made these calculations. Since the Decedent was not working at the time of her death, Dr. Scott's earning capacity computation did not include a loss of financial support to the Decedent's two minor children. Dr. Scott agreed that his calculations are based upon assumptions. The US Life Tables were used to calculate the Decedent's remaining life expectancy. Dr. Scott did not look for life expectancy data specific to the State of Arkansas. Dr. Scott did not consider whether the Decedent was a smoker and testified that he does not have the expertise to evaluate any comorbidities. Regarding the Decedent's lost earning capacity, Dr. Scott testified that he provided a conservative measure of what the Decedent could have earned. He also testified that this measure is not speculative. Dr. Scott stated that, under the Affordable Care

Act, there are more full-time jobs paying minimum wage that offer fringe benefits. Dr. Scott clarified that lost household services represented the loss of unpaid services that the Decedent provided to her household. Regarding the cost of raising the minor children, Dr. Scott testified that the costs in his report were based on a single parent household. Dr. Scott did not review tax returns in this case because the Decedent was not employed at the time of her death. He noted that if a person exits the labor force to raise children with the intent to go back to work at some point in the future, past performance would not be the best indicator of future performance.

Testimony of Haley Hudson

37. Claimant called Haley Hudson to testify. After being sworn in, Ms. Hudson testified that she is 32 years old and that the Decedent was her mother. She was 29 years old when the Decedent died. Ms. Hudson currently lives in Wynne, Arkansas, with her fiancé, two daughters, as well as [redacted] and [redacted]

38. Before the accident, Ms. Hudson worked at Stallings Aircraft Propeller. She had a great relationship with her mom and her two sisters. Ms. Hudson testified that she talked to and texted with the Decedent multiple times per day.

39. When the Decedent separated from [redacted] and [redacted] father, the Decedent moved in with Ms. Hudson. The Decedent later moved to Paris, Arkansas, with [redacted] and [redacted] about two years before the accident.

40. Ms. Hudson testified that the Decedent previously worked at gas stations, restaurants, a Family Dollar, grocery stores, and a factory making gas caps. The Decedent liked to spend her time with her family, including grandchildren. Ms. Hudson observed the Decedent being a loving mother to [redacted] and [redacted] Ms. Hudson stated that the Decedent got them out of a terrible situation with [redacted] and [redacted] father and brought them to Wynne. The Decedent

sent pictures of Paris, Arkansas, to Ms. Hudson and wanted Ms. Hudson and her family to move there.

41. Ms. Hudson testified that the family gathered before the accident to celebrate the Decedent's birthday.

42. Ms. Hudson observed [redacted] and [redacted] flourishing after they moved to Paris. They had friends and were enjoying life with the Decedent.

43. On June 11, 2021, Ms. Hudson spoke with the Decedent several times. Ms. Hudson's daughter had a state softball tournament in Benton, and the Decedent was going to come watch her play. The Decedent seemed especially excited about the tournament because Ms. Hudson had played softball when she was younger. The Decedent told Ms. Hudson that she would call her back after the Decedent took Ms. Hudson's cousin's son home.

44. Ms. Hudson learned about the accident while she was at work. She received a telephone call from the Decedent's mother. Ms. Hudson learned that the Decedent was being taken to the hospital because she had answered some questions as though she might have amnesia. Ms. Hudson got another call from her aunt telling her to pack a bag and to go to Fort Smith because the Decedent was not going to make it. Ms. Hudson called her brothers and told them to go check on the Decedent. Ms. Hudson's brothers called and told her that there was nothing to be done. Ms. Hudson's employer flew her to Fort Smith on his plane. Her brother (and the Decedent's son), Cody Ashcraft, met her and drove her to the hospital.

45. Ms. Hudson and her two younger brothers were at the hospital with the Decedent. [redacted] and [redacted] came up to the hospital after [redacted] had been checked out for her concussion. The doctors asked Ms. Hudson for directions regarding the Decedent's end-of-life instructions. Only four people were permitted in the hospital room at one time, so the people present when the

Decedent died were Ms. Hudson, Cody Ashcraft, Ms. Hudson's aunt, and Ms. Hudson's grandmother.

46. Ms. Hudson made the funeral home arrangements and paid the funeral costs in the amount of $1,195.95, plus another amount for the urn. She estimated this additional amount to be $250–$350.

47. Ms. Hudson became the permanent legal guardian of [redacted] and [redacted] and enrolled them in school in the [redacted]. [redacted] did not like moving from the Paris schools to the [redacted] because Paris offered more sports and because she was thriving in the Paris schools. [redacted] was also thriving in her art class in Paris and loved living there. Moving back to [redacted] was difficult for both girls.

48. Regarding [redacted] injuries, Ms. Hudson understood that [redacted] was sitting in the middle of the backseat during the accident and hit her head and passed out during the accident. Ms. Hudson has taken [redacted] to several doctors for the headaches that she suffers from, including a neurologist. [redacted] was diagnosed with a traumatic brain injury and prescribed migraine medicine for her. Ms. Hudson noted that the migraine medicine does not appear to help. Out of every seven days, Kadey [redacted] three to four headaches. [redacted] has missed school and missed games due to her headaches. She prefers to stay in darkness to help the headaches. [redacted] did not have headaches prior to the accident. Right after the accident, [redacted] did not sleep well and had frequent nightmares.

49. Regarding [redacted] Ms. Hudson testified that [redacted] does not like to talk about the accident or the loss of the Decedent.

50. Ms. Hudson and her fiancé are responsible for school clothes, school pictures, and all expenses for [redacted] and [redacted] Ms. Hudson's relationship with [redacted] and [redacted] has changed because she is now a mother to them, not a sister.

51. Ms. Hudson has taken both girls shopping for dresses for homecoming court, and she testified how difficult it was for both girls to hear their mother's name when they walked onto the field.

52. Ms. Hudson testified that [redacted] has been accepted to Arkansas State University and North Arkansas College. [redacted] wants to attend the University Arkansas. Ms. Hudson did not know the exact cost of attending the University of Arkansas.

53. Ms. Hudson stated that she brought this claim to help her sisters and to make sure that they are okay. She testified that raising her sisters is hard but that she could not have let them go to foster care.

54. Regarding Ms. Hudson's brother, Mark Hudson, Ms. Hudson stated that grief is hard. She has seen him lose his job and separate from his wife due to grief. She testified that losing the Decedent has caused him a lot of pain.

55. Regarding Ms. Hudson's brother, Cody Ashcraft, Ms. Hudson stated that he was with her in the hospital room when the Decedent died.

56. Ms. Hudson read a statement that she prepared detailing her sorrow about the loss of the Decedent and her recollection of the date of the accident.[6]

57. Ms. Hudson stated that she is no longer working because of the demands on her time with her sisters' therapy appointments.

58. On cross-examination, Ms. Hudson testified that the Decedent dropped out of high school to help her mother pay the bills, and Ms. Hudson does not know whether the Decedent got her GED certificate. Ms. Hudson estimated that the Decedent smoked one-half pack of cigarettes per day. When the Decedent lived with Ms. Hudson, the Decedent worked at a restaurant and at

[6] This statement was admitted without objection as part of Claimant's Exhibit No. 14.

Family Dollar. Ms. Hudson does not receive child support from [redacted] and [redacted] father and has not pursued child support from him. The girls receive Social Security survivor benefits. Before the Decedent moved in with Ms. Hudson, Ms. Hudson suspected that the Decedent had used drugs. Because [redacted] and [redacted] father is a drug user, Ms. Hudson insisted that the Decedent take drug tests during the two to two and one-half years that the Decedent lived with Ms. Hudson. When the Decedent first moved to Paris, the Decedent lived with [redacted] and [redacted] in a camper on some family land for a short time. The Decedent worked at a grocery store in Paris but left because some items were stolen from her and because the deli was closing due to Covid. The Decedent received food stamps. The Decedent worked for a neighbor's housecleaning business to pay her rent at the apartment.

Testimony of Garrett Andrews, Psy.D.

59. Claimant called Dr. Garrett Andrews to testify.[7] After being sworn in, Dr. Andrews testified that he works at Arkansas Neuropsychology Behavioral Health. Dr. Andrews has a clinical psychology degree and is board-certified in neuropsychology.[8]

60. Neuropsychology is the evaluation of neurocognition and how the brain functions.

61. Dr. Andrews' standard retaining agreement is $5,500 for a forensic neuropsychological evaluation.

62. Dr. Andrews evaluated [redacted] on April 4, 2023. As part of the evaluation, Dr. Andrews reviewed [redacted] developmental and medical history, and [redacted] was interviewed for a patient history. After gathering that information, [redacted] brain was tested for attention,

[7] Claimant also submitted Dr. Andrews' deposition transcript with the results of [redacted] forensic neuropsychological evaluation attached as an exhibit.

[8] Per Dr. Andrews' curriculum vitae, he earned a doctorate in psychology in 2005.

processing speed, memory, learning, visual-spatial perception, and problem solving. [redacted] was also tested for behavioral and emotional function.

63. Dr. Andrews' evaluation was designed to determine whether [redacted] had suffered a traumatic brain injury and how [redacted] is functioning after the accident.

64. Referring to his May 31, 2023, report following [redacted] evaluation, Dr. Andrews testified that [redacted] neurocognitive data was mostly within normal limits. However, [redacted] emotional testing showed significant mood dysfunction, as well as issues with survivor guilt, self-confidence, anxiety, and suicidal ideation. Dr. Andrews concluded that [redacted] has developed PTSD and has a mild traumatic brain injury. There are treatments for PTSD, but triggers can always cause issues. Dr. Andrews expects that Kadey will have PTSD for her entire life. A trigger can cause a patient with PTSD to have an "over response." He testified that [redacted] PTSD is still active and is not currently in remission.

65. Dr. Andrews stated that his opinions are within a reasonable degree of medical certainty.

66. On cross-examination, Dr. Andrews testified that treatment of the mental health issues would help the physical issues that [redacted] is experiencing. Regarding the headaches that [redacted] is experiencing, Dr. Andrews reiterated his recommendations that the headaches may improve with physical therapy and if her sleep issues can be addressed.

67. Upon a question from Commissioner Graves, Dr. Andrews stated that he recommended usage of an SSRI medication, which is a selective serotonin reuptake inhibitor. An SSRI is an antidepressant medication. There are several medications that fall into that category. Lexapro is a good medication for anxiety and depression and is usually well tolerated. With adolescents, these medications are typically prescribed in connection with therapy to make sure that someone is talking to the adolescent frequently to look out for any increase in suicidal risk.

SSRIs do not impact fertility but should not be taken while pregnant or breastfeeding. However, postpartum women who have taken SSRIs may need to be extra cautious about postpartum depression issues.

68. Upon a question from Commissioner Graves, Dr. Andrews stated that treating PTSD usually requires twelve weeks of therapy and at least one year of an SSRI. After that initial twelve weeks of therapy, the patient can usually move to monthly therapy sessions.

Testimony of Cody Ashcraft

69. Claimant called one of the Decedent's sons, Cody Ashcraft, to testify. After being sworn in, Mr. Ashcraft stated that he currently lives in Northwest Arkansas. He currently works at Butterball. He does not disagree with any part of Ms. Hudson's testimony.

70. Mr. Ashcraft said that a lot of people said that he was the Decedent's favorite. He said that the Decedent was his favorite. Mr. Ashcraft could not count on his father, but he could count on the Decedent.

71. Mr. Ashcraft testified that he blames himself for the wreck because if he had not moved to Paris, he did not think that that the Decedent would have moved there. He stated that he stopped living and started surviving after the Decedent's death. He stated that the day in the hospital was the worst day of his life.

72. Mr. Ashcraft described the Decedent as selfless and said that she tried to make everyone around her happy.

73. When asked about [redacted] and [redacted] Mr. Ashcraft said that he has seen them cry and knows that they have been in therapy. He knows that he should seek out therapy, but he has not.

74. Claimant submitted a statement written by Mr. Ashcraft detailing his relationship with the Decedent and describing how the loss of the Decedent has impacted his life.[9]

75. Upon a question from Commissioner Graves as to whether Mr. Ashcraft has the financial means to obtain therapy, Mr. Ashcraft stated that he did not.

Testimony of Mark Hudson

76. Claimant called one of the Decedent's sons, Mark Hudson, to testify. After being sworn in, Mr. Hudson stated that he is 30 years old. He lives with his brother. He developed depression after the Decedent's death and lost his job and separated from his wife as a result. Mr. Hudson stated that he was married for two and one-half years. He has biological children and stepchildren.

77. Mr. Hudson stated that the Decedent was always there for him.

78. Mr. Hudson stated that he does not have the financial means to obtain therapy.

79. Claimant submitted a statement written by Mr. Hudson detailing his relationship with the Decedent and describing how the loss of the Decedent has impacted his life.[10]

Testimony of [redacted]

80. Claimant called [redacted] to testify. After being sworn in, [redacted] testified that she is 17 years old and a senior in high school.

81. [redacted] testified that her life was great when she lived in Paris. She played basketball, softball, and volleyball. The Paris School District is much better than the [redacted]. She did not want to go to the [redacted].

[9] This statement was admitted without objection as part of Claimant's Exhibit No. 14.

[10] This statement was admitted without objection as part of Claimant's Exhibit No. 14.

82. [redacted] testified that all four of the girls in Ms. Hudson's house ([redacted] and Ms. Hudson's two daughters) are very active.

83. [redacted] stated that she does not sleep well and has constant headaches. She does not know the specific requirements of her health insurance to receive therapy.

84. [redacted] read a statement about how her head injury has affected her life and the treatment that she has sought for the headaches. Claimant later submitted a copy of the statement, along with another statement about how the loss of the Decedent has impacted [redacted] life.[11]

85. On cross-examination, [redacted] testified that the Decedent did not always have full-time employment when they lived in Paris.

86. Upon a question from Chairman Morris, [redacted] stated that she is planning to get her driver's license soon.

87. Upon a question from Commissioner Graves as to [redacted] career aspirations, [redacted] stated that she wants to study radiology.

Testimony of [redacted]

88. Claimant called [redacted] to testify. After being sworn in, [redacted] testified that she is in eighth grade. She wants to be a teacher or an orthodontist. She stated that she has all As and Bs and that she is the most outgoing person in her family.

89. Claimant submitted a statement written by [redacted] detailing her relationship with the Decedent and describing how the loss of the Decedent has impacted [redacted] life.[12]

[11] This statement was admitted without objection as part of Claimant's Exhibit No. 14.

[12] This statement was admitted without objection as part of Claimant's Exhibit No. 14.

Testimony of Jennifer Wilkerson

90. Respondent played a selection of video deposition clips of Jennifer Wilkerson. Respondent also submitted Ms. Wilkerson's entire deposition transcript in lieu of live testimony. After being sworn in, Ms. Wilkerson stated that he was hired by Respondent to be a program assistant.[13]

91. She had been working for Respondent for approximately two weeks when the accident happened.[14] When asked for her understanding of her job responsibilities on the afternoon of the accident, Ms. Wilkerson stated:[15]

> Well, I was supposed to go on an eight and a half hour, I guess, trip to go pick up a child. I don't have a child, so I don't even know how to use a car seat or anything like that. I had never – I didn't have a gas card. I guess you have to have – I didn't even know all the procedures yet 'cause I was – I had no training or anything like that. So it was just – I mean, to go and pick up the kid and then bring them back to Clarksville . . . and it wasn't planned out.

This trip was Ms. Wilkerson's first time to go in a state car by herself.[16] The night before the accident, Brandy Ezell told Ms. Wilkerson to be at Respondent's Logan County office at 8:00 a.m. the following morning.[17] Before Ms. Wilkerson left the parking lot, Ms. Ezell changed her arrival time to 9:00 a.m. Ms. Wilkerson stated that "there was no set hour, set time that I was supposed to leave."[18]

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[13] Wilkerson deposition transcript at p. 9.

[14] *Id*. at p. 9–10.

[15] *Id*. at p. 10.

[16] *Id*. at p. 25.

[17] *Id*. at p. 10–11.

[18] Wilkerson deposition transcript at p. 11.

92. Ms. Ezell helped Ms. Wilkerson fill Ms. Wilkerson's state vehicle with gasoline because Ms. Wilkerson's gas card did not work.[19] After Ms. Ezell completed the gas stop, she drove Ms. Wilkerson back to the office in the state vehicle, gave Ms. Wilkerson an address of where she was supposed to go, and told her to go.[20]

93. Ms. Wilkerson called in some food at a restaurant called Dairy Delite because she knew she was beginning an eight-hour trip.[21] She went in, picked up the food, and ate with her then-boyfriend, who was also at the Dairy Delite.[22]

94. After the accident, Ms. Wilkerson called Ms. Ezell to tell her, and then she called her then-boyfriend.[23] Ms. Ezell, Pamela Feemster, and Ms. Wilkerson's then-boyfriend came to the scene of the accident.[24] Ms. Wilkerson guessed that Ms. Ezell was screaming at her because her vehicle came to its final resting place turned around and pointing back toward Paris, Arkansas.[25]

95. Ms. Wilkerson broke her back in the accident.[26] She was diagnosed with a compression fracture of her T11 vertebra two months after the accident.[27]

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[19] *Id*. at p. 11–12.

[20] *Id*. at p. 12, 15.

[21] *Id*. at p. 17–18.

[22] *Id*. at p. 18, 102–03, 122-23.

[23] Wilkerson deposition transcript at p. 18–19.

[24] *Id*. at p. 18, 102.

[25] *Id*. at p. 33–34.

[26] *Id*. at p. 22.

[27] *Id*. at p. 48–49.

96. Ms. Wilkerson had prescriptions for Adderall, Zoloft, Xanax, Klonopin, Lamictal, blood pressure medicine, and naproxen and was taking these medications on the day of the accident.[28]

97. Kristen Shelton, an employee of Respondent, sent Ms. Wilkerson an email with ten questions that Ms. Wilkerson responded to by printing and writing the answers to Ms. Shelton's questions.[29]

98. Ms. Wilkerson testified that she was terminated by Respondent the Friday following the accident.[30]

Testimony of Brandy Ezell

99. Respondent introduced the deposition testimony of Brandy Ezell in lieu of live testimony.

100. After being sworn in, Ms. Ezell testified that she has been employed at Respondent's Logan County office since January 2019.[31] Ms. Ezell is a family service worker specialist, which she described as a "foster care case worker."[32]

101. Ms. Wilkerson was a coworker of Ms. Ezell.[33] Ms. Ezell understood Ms. Wilkerson's job as a program assistant to include helping with family visits and teaching parenting classes.[34]

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[28] Wilkerson deposition transcript at p. 60–62, 109–14.

[29] *Id*. at p. 23

[30] *Id*. at p. 44.

[31] Ezell deposition transcript at p. 5.

[32] *Id*. at p. 6.

[33] *Id*.

[34] *Id*. at p. 6–7.

102. Ms. Ezell testified that, on the day of the accident, Ms. Wilkerson was going to take a state vehicle to do a sibling visit by herself for the first time.[35] That visit would involve Ms. Wilkerson picking up one sibling in Beebe and meeting another worker with the other sibling in Clarksville at 4:00 p.m.[36] Following the sibling visit, the two workers would return the siblings to their placements and then go home.[37]

103. Ms. Ezell went with Ms. Wilkerson to put gasoline in the state vehicle because Ms. Wilkerson's personnel number was not in the system yet.[38] Ms. Ezell also showed Ms. Wilkerson how to do the logbook in the state vehicle.[39]

104. Ms. Ezell testified that she told Ms. Wilkerson to leave around noon or 12:15 p.m. to get the child in Beebe at 2:00 p.m. and to be in Clarksville by 4:00 p.m.[40] Ms. Ezell saw Ms. Wilkerson leave Respondent's office parking lot at 12:07 p.m. and remembers the time because she is used to providing exact times in her job.[41]

105. After Ms. Ezell returned from lunch with Ms. Feemster, Ms. Ezell received a telephone call from Ms. Wilkerson at 12:55 p.m. stating that Ms. Wilkerson had been in an

[35] *Id*. at p. 7–8.

[36] Ezell deposition transcript at p. 7–8.

[37] *Id*. at p. 9.

[38] *Id*. at p. 7–8.

[39] *Id* at p. 8.

[40] *Id*. at p. 9–10.

[41] Ezell deposition transcript at p. 10–11.

accident.[42] Ms. Ezell was expecting Ms. Wilkerson to say that she was in Dardanelle or Pottsville at that time and was surprised to learn that Ms. Wilkerson was still in Paris.[43]

106. When Ms. Ezell and Ms. Feemster arrived at the accident scene, an ambulance was there.[44] Ms. Ezell testified that Ms. Wilkerson appeared upset but did not have any visible injuries.[45] Ms. Wilkerson told Ms. Ezell that Ms. Wilkerson had stopped at the Dairy Delite to get something to drink.[46] Ms. Wilkerson's then-boyfriend came to the accident scene and got Ms. Wilkerson's purse and belongings out of the state vehicle.[47]

107. Ms. Ezell testified that Ms. Feemster asked the state trooper at the accident scene if he was going to do a drug screen on Ms. Wilkerson, and the state trooper said that he usually would not.[48] Ms. Ezell and Ms. Feemster went to the Booneville hospital, but the hospital was locked down due to an altercation between Ms. Wilkerson's then-boyfriend and another person.[49]

Testimony of Pamela Feemster

108. Respondent called Pamela Feemster to testify. After being sworn in, Ms. Feemster testified that she is Respondent's family service supervisor for Logan County. She has worked for Respondent for approximately fifteen years. She supervises other employees, including

[42] *Id*. at p. 12, 30–31.

[43] *Id*. at p. 12.

[44] *Id*. at p. 13.

[45] *Id*. at p. 13–14.

[46] Ezell deposition transcript at p. 12, 15–16.

[47] *Id*. at p. 20–22.

[48] *Id*. at p. 19.

[49] *Id*. at p. 19.

program assistants, and hires new employees. Program assistants help the family service workers, including with family visits, parenting classes, and transportation.

109. Respondent is a drug-free workplace, and new employees are required to pass a drug test before being hired. Ms. Feemster recommended Ms. Wilkerson for hire and sent Ms. Wilkerson's file to Ms. Feemster's supervisor and then to the central office for a background check.

110. Referring to Respondent's Exhibit No. 1, Ms. Feemster testified that this document includes Respondent's personnel hire packet checklist for the hire of Ms. Wilkerson.[50] As stated on the form, Ms. Wilkerson's hire date was May 30, 2021, and her official start date was June 1, 2021. This form also shows that Ms. Wilkerson signed off on Form DHS-1956 regarding the notice of the preemployment drug test.[51] At the time of hire, Ms. Wilkerson testified negative for amphetamines, cocaine, extended opioids, marijuana, and phencyclidine.[52] If Ms. Wilkerson started taking medicine that could show up as amphetamines on a drug test, she should have reported that to Respondent. Ms. Feemster testified that Ms. Wilkerson completed and signed the vehicle safety form regarding her obligations while operating a state vehicle.[53]

111. Ms. Feemster testified that an eight and one-half hour day is not unusual for someone in Ms. Wilkerson's position. Ms. Feemster explained that during Ms. Wilkerson's interview.

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[50] Respondent's Exhibit No. 1 at Exhibit A at p. 5.

[51] A copy of the preemployment drug test notice can be found at Respondent's Exhibit No. 1 at Exhibit A at p. 9–10.

[52] A copy of the preemployment drug test results can be found at Respondent's Exhibit No. 1 at Exhibit A at p. 11.

[53] A copy of this form can be found at Respondent's Exhibit No. 1 at Exhibit A at p. 21.

112. Ms. Feemster was Ms. Wilkerson's direct supervisor while employed by Respondent. Ms. Ezell did a lot of Ms. Wilkerson's training because Ms. Wilkerson was shadowing Ms. Ezell.

113. Referring to Respondent's Exhibit No. 10, Ms. Feemster testified that this document is part of Respondent's policies regarding employees driving state vehicles.

114. Ms. Wilkerson was informed on June 10, 2021, that she would need to go to Beebe to facilitate the sibling visit the next day. On June 11, 2021, Ms. Feemster had Ms. Ezell accompany Ms. Wilkerson to the gas station to see if Ms. Wilkerson's personnel number was working. Ms. Wilkerson was supposed to pick up the child in Beebe around 2:00 p.m.

115. Ms. Feemster saw Ms. Wilkerson leaving around noon when Ms. Feemster and Ms. Ezell were leaving for lunch.

116. Ms. Feemster learned about the accident when Ms. Wilkerson called Ms. Ezell around 12:50-12:55 p.m. Ms. Feemster and Ms. Ezell were still sitting in the vehicle following lunch when Ms. Ezell received the telephone call. They immediately left the office and went to the accident scene. It took about ten minutes to get to the accident scene.

117. Ms. Feemster was concerned about the location of the accident because Ms. Wilkerson had left the office nearly an hour before and had only made it a few miles outside of Paris.

118. Ms. Feemster testified that a program assistant does not have a typical 8:00 a.m. to 5:00 p.m. job. A program assistant finds out what needs to happen that day and then makes her schedule for the day. There is no set time for lunch.

119. When Ms. Feemster arrived on the accident scene, she saw a lot of pieces of vehicles. Ms. Ezell ran up to the accident scene. Ms. Feemster noticed Ms. Wilkerson's then-boyfriend getting a purse and a bag out of the state vehicle and walking off.

120. Ms. Feemster called her direct supervisor, Kristen Shelton, while at the accident scene. Ms. Feemster asked Ms. Shelton about drug testing Ms. Wilkerson because she learned at the accident scene the identity of Ms. Wilkerson's then-boyfriend, who has a history of drug abuse. Ms. Feemster talked to a Paris city officer at the accident scene and learned that Ms. Wilkerson had a history of arrests involving substance abuse. Had Ms. Feemster known of these arrests, which did not appear on the criminal background check, that would have affected Ms. Feemster's decision whether to hire Ms. Wilkerson.

121. Ms. Feemster received a text message from Ms. Wilkerson later that day advising that Ms. Wilkerson had taken an Adderall for narcolepsy and wanted to try it out to see if she was going to ask her doctor for a prescription.

122. Referring to Respondent's Exhibit No. 5, which includes emails regarding Ms. Wilkerson's termination, Ms. Feemster stated that she sent an email to Ms. Wilkerson on June 16, 2021, asking for a statement regarding the incident. Ms. Feemster testified that this was her first factfinding investigation. In response, Ms. Wilkerson stated that she was going to Beebe to pick up a child for a sibling visit in Clarksville. Ms. Wilkerson stated that she was supposed to pick up the child in Beebe at 2:00 p.m.

123. The decision to terminate Ms. Wilkerson was ultimately the decision of Ms. Shelton, although Ms. Feemster supported the decision because Ms. Wilkerson was using substances and apparently speeding in violation of Respondent's policies. Ms. Feemster noted that Ms. Wilkerson had only worked for Respondent for eleven days and was already showing these behaviors.

124. Claimant declined to cross-examine Ms. Feemster.

Testimony of Kristen Shelton

125. Respondent called Kristen Shelton to testify. After being sworn in, Ms. Shelton testified that she is Respondent's program administrator. In that role, her responsibilities include supervising the county supervisors. She has been employed by Respondent over 24 years.

126. Ms. Shelton is the supervisor of Ms. Feemster.

127. Ms. Shelton testified that Ms. Wilkerson began working for Respondent on June 1, 2021, as a program assistant. Ms. Shelton agreed with Ms. Feemster's description of the job responsibilities for a program assistant. Ms. Shelton agreed with Ms. Feemster that a program assistant may have a day that lasts eight and one-half hours. Ms. Shelton testified that the bulk of a program assistant's job involves transportation.

128. Ms. Shelton stated that program assistants have to take a lunch break when there is a break in the schedule. Ms. Shelton suggested that when Ms. Wilkerson met the other worker, Ms. Wilkerson could have taken a lunch break while the sibling visit was taking place.

129. Ms. Feemster notified Ms. Shelton of the accident. Ms. Feemster told Ms. Shelton that the state vehicle was damaged, perhaps totaled, that Ms. Wilkerson may have been speeding, and that Ms. Wilkerson's then-boyfriend was present at the scene.

130. Referring to Respondent's Exhibit No. 5, Ms. Shelton testified that the exhibit includes an email that Ms. Shelton sent on June 11, 2021, to her supervisor's supervisor to notify her of the accident.[54] Ms. Shelton guessed that her supervisor must have been out of the office that day, which is why she emailed her supervisor's supervisor. In that email, Ms. Shelton asked if Respondent could drug test Ms. Wilkerson if the state police were not going to conduct a drug screen. Ms. Shelton received a response stating that Respondent could request a drug screen.

[54] A copy of these emails can be found at Respondent's Exhibit No. 5 at bates p. 408–09.

131. Ms. Shelton conducted a factfinding investigation after the accident and notified Ms. Wilkerson about the investigation. Ms. Shelton sent questions to Ms. Wilkerson to answer and sent some additional follow-up questions after receiving Ms. Wilkerson's responses.[55] In the initial set of questions, Ms. Wilkerson stated that she used to take Adderall for narcolepsy and was deciding if she wanted it to be prescribed by her doctor.[56] Ms. Shelton also had the preliminary statement that Ms. Wilkerson sent to Ms. Feemster.[57] Ms. Shelton asked Ms. Feemster for information about how Ms. Wilkerson had been prepared for her June 11, 2021, trip to Beebe, and Ms. Feemster and Ms. Ezell separately responded with the details about the address for the pickup in Beebe, the process for refilling the state vehicle, and the analysis of determining the meeting point in Clarksville.[58]

132. Ms. Shelton made the decision to terminate Ms. Wilkerson. Ms. Shelton noted that Ms. Wilkerson was still a probationary employee, had failed to leave when instructed, was speeding in a state vehicle, had totaled a state vehicle, and was taking medication without a prescription. Ms. Shelton testified that Respondent's Exhibit No. 6 is the termination notice for Ms. Wilkerson.

133. Ms. Shelton is familiar with the location of the accident. If Ms. Wilkerson left Respondent's Logan County office at 12:07 p.m., she should have been on the other side of Russellville at the time of the accident. Ms. Shelton testified that she feels like Ms. Wilkerson

[55] These emails can be found at Respondent's Exhibit No. 5 at bates p. 422–26.

[56] *See id*. at Question No. 9.

[57] This email can be found at Respondent's Exhibit No. 5 at bates p. 419.

[58] This email can be found at Respondent's Exhibit No. 5 at bates p. 420–21.

was acting outside the scope of her job duties.[59] Ms. Shelton testified that she did not receive notification of the results of Ms. Wilkerson's drug test.

134. On cross-examination, Ms. Shelton agreed that the route Ms. Wilkerson was traveling was the most direct route from Paris to Beebe. Ms. Shelton stated that she did not believe that Respondent had a policy about whether employees could eat in state vehicles.

135. Upon a question from Chairman Morris, Ms. Shelton testified that Ms. Wilkerson could have taken her lunch break at 3:30 p.m. or 4:00 p.m. when the sibling visit was taking place.

136. Upon a question from Chairman Morris as to whether Respondent had a policy about distracted driving, Ms. Shelton stated that Respondent's vehicle safety program requires employees to follow traffic laws.

137. Upon a question from Chairman Morris as to whether Ms. Wilkerson would have been terminated if the sibling visit occurred thirty minutes later than planned, Ms. Shelton stated that Ms. Wilkerson would not likely have been terminated if that was the only issue.

**Relevant Statutes and Caselaw**

138. The elements of a negligence claim are duty, breach of duty, and damages proximately caused by the breach. *See Union Pac. R. Co. v. Sharp,* 330 Ark. 174, 180, 952 S.W.2d 658, 661 (1997).

139. Arkansas' wrongful death statute is found in Ark. Code Ann. § 16-62-102, which provides, in pertinent part:

> (a)(1) Whenever the death of a person . . . is caused by a wrongful act, neglect, or default and the act, neglect, or default would have entitled the party injured to maintain an action and recover damages in respect thereof if death had not ensued, then and in every such case, the person or company or corporation that would have been liable if death had not ensued shall be liable to an action for damages,

[59] Ms. Shelton provided this testimony after Claimant's objection was overruled by the Commission. Chairman Morris noted that the decision as to whether Ms. Wilkerson was acting outside the scope of her employment was one for the Commission, as trier of fact, to make.

> notwithstanding the death of the person . . . and although the death may have been caused under such circumstances as amount in law to a felony.
> . . .
> (b) Every action shall be brought by and in the name of the personal representative of the deceased person. If there is no personal representative, then the action shall be brought by the heirs at law of the deceased person.
>
> (c)(1) Every action authorized by this section shall be commenced within three (3) years after the death of the person alleged to have been wrongfully killed . . .
>
> (d) The beneficiaries of the action created in this section are:
> (1) The surviving spouse, children, father, mother, brothers, and sisters of the deceased person;
> (2) Persons, regardless of age, standing in loco parentis to the deceased; and
> (3) Persons, regardless of age, to whom the deceased stood in loco parentis at any time during the life of the deceased.
> . . .
> (f)(1) The jury or the court, in cases tried without a jury, may fix such damages as will be fair and just compensation for pecuniary injuries, including a spouse's loss of the services and companionship of a deceased spouse and any mental anguish resulting from the death to the surviving spouse and beneficiaries of the deceased.
> (2) When mental anguish is claimed as a measure of damages under this section, mental anguish will include grief normally associated with the loss of a loved one.
> (g) The judge of the court in which the claim or cause of action for wrongful death is tried . . . by judgment or order and upon the evidence presented during trial or in connection with any submission for approval of a compromise settlement, shall fix the share of each beneficiary, and distribution shall be made accordingly. . . .
> (i) It is not the responsibility of the personal representative of a deceased person to locate anyone in loco parentis who is not known to the personal representative to be in loco parentis to the deceased person.

140. The Arkansas Supreme Court held in *Nipper v. Brandon Co.* that "[w]hen a regular employee is driving a vehicle owned by the employer, and an accident occurs, there is a presumption of fact that the employee is acting within the scope of his employment."[60] The *Nipper* Court also held that this presumption of fact imposes "the burden of overcoming this presumption"

[60] 262 Ark. 17, 21, 553 S.W.2d 27, 29 (1977).

on the party "against whom the presumption is directed."[61] As such, Respondent bears the burden of rebutting this presumption.

**Findings of Fact and Conclusions of Law**

Based upon a review of the claim file, the testimony and evidence presented by the parties, and the law of the State of Arkansas, the Commission finds as follows:

141. The Commission has jurisdiction over this claim pursuant to Ark. Code Ann. § 19-10-204.

142. In keeping with Respondent's agreement, the Commission previously found in its July 25, 2024, order, that Ms. Wilkerson was driving negligently at the time of the accident. As such, this was not at issue in this hearing.

143. However, at issue was whether Ms. Wilkerson was acting within the scope of her employment at the time of the accident. The Commission advised the parties in its July 25, 2024, order, of the presumption under Arkansas law that Ms. Wilkerson was acting within the scope of her employment and that there are questions about whether Respondent had rebutted that presumption.

144. The Commission finds that the testimony and evidence presented by Respondent did not rebut the presumption, such that Ms. Wilkerson was acting within the scope of her employment at the time of the accident. This finding is based on the following factors:

- Respondent provided a vehicle for Ms. Wilkerson's use on June 11, 2021;
- Respondent's employee, Ms. Ezell, directed Ms. Wilkerson to travel to Beebe to pick up a child, and Ms. Wilkerson was traveling the most direct route to Beebe when the accident occurred;

[61] *Id*.

- Respondent's employee, Ms. Ezell, directed Ms. Wilkerson to depart Respondent's Logan County office at noon or 12:15 p.m. (and Ms. Wilkerson left at 12:07 p.m. per Ms. Ezell);
- Respondent did not set a lunch break for its program assistants, like Ms. Wilkerson, and instead expected them to determine the appropriate time for lunch breaks each day;
- Respondent's employees had scheduled the sibling visit for an approximate time on the afternoon of June 11, 2021, and Ms. Shelton testified that had the visit occurred somewhat after its scheduled time, that alone would not have been cause for Ms. Wilkerson's termination; and
- Respondent conducted its own drug test of Ms. Wilkerson following the accident.

145. The Commission specifically disagrees with Respondent that *Davis v. Kukar*[62] supports Respondent's defense in this claim. In *Davis*, the owner of a vehicle was sued after his employee got into an accident, and the Arkansas Supreme Court determined that the case "hinge[d]" upon the question of whether the driver was engaged in the business of his employer "at the time of the accident."[63] In *Davis*, the accident occurred before the driver had resumed the task that his employer had given him. In the instant claim, the accident occurred when Ms. Wilkerson was on her way to Beebe to pick up a child as part of her employment. As the Arkansas Supreme Court stated in *Davis*:[64]

[62] 235 Ark. 139, 357 S.W.2d 275 (1962). This case was cited by Respondent in its prehearing brief.

[63] 235 Ark. 139, 142, 357 S.W.2d 275, 577 (1962) (emphasis added).

[64] *Id*. (emphasis added).

> The law of respondeat superior is well settled. The doctrine of respondeat superior rests upon the proposition that in doing the acts out of which the accident arose, the servant was representing the master at the time and engaged in his business. It is conceded that the doctrine cannot be invoked unless, at the time of the negligent act causing the injury, the servant was engaged in performing a service for the master or [an act] incidental thereto. It is generally stated by textwriters and in judicial decisions that the test of the liability of the master for his servant[']s acts is whether the latter was at the time acting within the scope of his employment. The phrase 'in the scope of his employment or authority,' when used relative to the acts of the servant, means while engaged in the service of his master or while about his master's business. It is not synonymous with 'during the period covered by his employment.'

This analysis of the doctrine of respondeat superior defines the relevant point of time as the time when the accident occurred. It is undisputed that at the time of the accident, Ms. Wilkerson was on a direct route to Beebe.

146. Likewise, the Commission finds that *Healey v. Cockrill*[65] does not support Respondent's position, as it involved an employee who had "complete[ly] abandon[ed]" his employer's business and was acting wholly for his own purposes when an accident happened. Unlike the driver in *Healey*, Ms. Wilkerson was underway on her journey to Beebe, as directed by Respondent, when the accident occurred.

147. The Commission finds that Respondent's defense appears to mostly rest on the fact that Ms. Wilkerson's stop at Dairy Delite changed the timeline of her afternoon by some number of minutes, such that anything that occurred after her stop at Dairy Delite (including the accident) must be outside the course and scope of her employment. This is not the conclusion of the Arkansas Supreme Court in *Davis* or *Healey*, and the Commission rejects Respondent's argument as an unreasonable limitation of the doctrine of respondeat superior and not supported by Arkansas law.

[65] 133 Ark. 327, 202 S.W. 229 (1918). This case was cited by Respondent in its prehearing brief.

148. The Commission finds that even if Ms. Wilkerson's stop at Dairy Delite (which, significantly, occurred at lunch time and during which she ate lunch) constituted a deviation from her employer-directed task, the deviation was reasonable (given the time of day, the fact that the Dairy Delite was directly on her way to Beebe,[66] and the discretion allowed to Ms. Wilkerson to determine her lunch break) and was a slight deviation not affecting whether Ms. Wilkerson was acting in the course and scope of her employment. Ms. Wilkerson testified that she ate a hamburger standing up at the Dairy Delite. The Commission is unpersuaded that the presence of Ms. Wilkerson's then-boyfriend at the Dairy Delite transforms her lunch stop into something more than eating a hamburger while standing up in a restaurant.

149. The Commission notes that if the accident had occurred while Ms. Wilkerson was deviating from or returning to her path to Beebe, that would have perhaps presented a thornier issue regarding whether she was acting within the scope of employment, but that was not the case here.

150. The Commission also finds that Respondent's arguments regarding Ms. Wilkerson's speed at the time of the collision do not rebut the presumption that she was acting in the course and scope of her employment at the time of the accident. As the Arkansas Supreme Court found in *Campbell Baking Co. v. Clark*, the employer of a driver who is speeding is liable for the injuries that result from an accident caused by the driver.[67]

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[66] Claimant attached maps to its response to Respondent's cross-motion for summary judgment showing the path from Respondent's Logan County office to Beebe. These maps also showed the location of the Dairy Delite, which was right on Ms. Wilkerson's path.

[67] 175 Ark. 899, 1 S.W.2d 35, 35–36 (1927). In *Clark*, a truck driver collided with another vehicle while traveling his "regular route at a reckless rate of speed." *Id*. The Arkansas Supreme Court found the truck driver to be acting in the course and scope of his employment despite the fact that the truck driver was also towing another vehicle as a favor to someone other than his employer when the accident happened. *Id*. Because the driver was still driving his regular route, the Arkansas Supreme Court found that the exception to liability discussed in *Healey* was not applicable because the driver had not "turned completely aside from his employer's business to attend to business entirely his own." *Id*.

151. As for damages, the Commission must consider the damages for the Decedent's estate as well as the mental anguish damages for the Decedent's wrongful death beneficiaries (her children).

152. Regarding the Decedent's estate, the Commission finds that the estate is entitled to recover the $1,500.00 in funeral expenses for the Decedent. Additionally, considering the persuasive testimony of the Decedent's family members regarding how the Decedent valued her life, the Commission finds that the damages associated with the Decedent's loss of life are $1,000,000.00. The Commission finds that this number is consistent with Dr. Scott's calculations, as well as Judge Brooks' decision in *Kolpek v. United States,* United States District Court for the Western District of Arkansas, Case No. 5:21-CV-05116. As such, the Commission finds that the Decedent's estate's total damages are $1,001,500.00. The Commission further finds that the $150,000 in insurance proceeds recovered by Claimant from Respondent's liability insurer should be subtracted from the award, for a total award to the Decedent's estate of $851,500.00.

153. Regarding Mark Hudson and Cody Ashcraft, the Commission finds the testimony presented regarding the mental anguish experienced following the Decedent's death to be moving and persuasive, especially the emotional testimony presented by both brothers regarding their strong ties with Decedent prior to her death and the issues that both have experienced following her death. As such, the Commission finds that Mark Hudson and Cody Ashcraft should be awarded mental anguish damages of $125,000.00 each.

154. Regarding Haley Hudson, [redacted] and [redacted] Commission finds the testimony presented regarding the mental anguish experienced following the Decedent's death to be moving and persuasive. The testimony presented by the Decedent's three daughters evidenced a remarkably close, meaningful relationship between the daughters and the Decedent and the painful, continual repercussions in the daughters' lives regarding the loss of the Decedent. As

such, the Commission finds that Haley Hudson, [redacted] and [redacted] should be awarded mental anguish damages of $250,000.00 each.

155. Regarding the personal injury claim of [redacted] the Commission finds the testimony of Dr. Andrews regarding the future medical expenses that she will incur, as well as the lifelong nature of her PTSD diagnosis, to be persuasive and unrebutted, as Respondent put on no evidence to the contrary, let alone expert testimony. As such, the Commission finds that [redacted] should be awarded damages related to this separate claim in the amount of $500,000.00.

**Conclusion**

156. The Commission AWARDS the Estate of Jacquelyn Lynn Ashcraft a total of $851,500.00. The Commission further AWARDS Mark Hudson and Cody Ashcraft $125,000.00 each and Haley Hudson, [redacted] and [redacted] $250,000.00 each. The Commission also awards [redacted] $500,000.00 for her separate personal injury claim. Pursuant to Ark. Code Ann. § 19-10-215(b), the Claims Commission refers this total award of $2,351,500.00 to the General Assembly for review, approval, and, if approved, placement on an appropriations bill.

IT IS SO ORDERED.



ARKANSAS STATE CLAIMS COMMISSION
Solomon Graves



ARKANSAS STATE CLAIMS COMMISSION
Dee Holcomb



ARKANSAS STATE CLAIMS COMMISSION
Paul Morris, Chair

DATE: March 31, 2025

**Notice(s) which may apply to your claim**

**(1)** A party has forty (40) days from transmission of this Order to file a Motion for Reconsideration or a Notice of Appeal with the Claims Commission. Ark. Code Ann. § 19-10-211(a)(1). If a Motion for Reconsideration is denied, that party then has twenty (20) days from transmission of the denial of the Motion for Reconsideration to file a Notice of Appeal with the Claims Commission. Ark. Code Ann. § 19-10-211(a)(1)(B)(ii). A decision of the Claims Commission may only be appealed to the General Assembly. Ark. Code Ann. § 19-10-211(a)(3).

**(2)** If a Claimant is awarded less than $15,000.00 by the Claims Commission at hearing, that claim is held forty (40) days from the date of disposition before payment will be processed. *See* Ark. Code Ann. § 19-10-211(a). Note: This does not apply to agency admissions of liability and negotiated settlement agreements.

**(3)** Awards or negotiated settlement agreements of $15,000.00 or more are referred to the General Assembly for approval and authorization to pay. Ark. Code Ann. § 19-10-215(b).

**From:** Kathryn Irby
**To:** Jim Jackson
**Cc:** Vincent France; Daiquiri Carter; Martha Cox
**Subject:** AMENDED AND SUBSTITUTED ORDER: Hudson v. DHS, Claim No. 230641
**Date:** Monday, March 31, 2025 1:53:00 PM
**Attachments:** Hudson v. DHS, 230641 - amended and substituted order.pdf

Jim and Vincent, please see attached amended and substituted order, which was entered to address the discrepancies between the amounts listed in Paragraphs 153 and 154 and the Conclusion section.

Please let me know if there are any questions.

Thanks,
Kathryn Irby

**Kathryn Irby**
**Arkansas State Claims Commission**
101 East Capitol Avenue, Suite 410
Little Rock, Arkansas 72201
(501) 682-2822

**From:** Jim Jackson <jim@jimjacksonatty.com>
**Sent:** Monday, March 31, 2025 1:03 PM
**To:** Kathryn Irby <kathryn.irby@arkansas.gov>
**Cc:** Vincent France <Vincent.P.France@dhs.arkansas.gov>; Daiquiri Carter <Daiquiri.Carter@dhs.arkansas.gov>; Martha Cox <mcox@jimjacksonatty.com>
**Subject:** Re: ORDER: Hudson v. DHS, Claim No. 230641

Kathryn
Thank you for your hard work in drafting this well written Order.
I will forward it to the family this afternoon.
I'm in mediation at the moment.
Jim

Jim Jackson
Attorney at Law
700 West Broadway St: Suite 2
North Little Rock, AR 72114
(501) 823-3610

On Mar 31, 2025, at 11:21 AM, Kathryn Irby <kathryn.irby@arkansas.gov> wrote:

Jim and Vincent, please see attached order entered by the Commission.

Thanks,
Kathryn Irby

**Kathryn Irby**
**Arkansas State Claims Commission**
101 East Capitol Avenue, Suite 410
Little Rock, Arkansas 72201
(501) 682-2822

<Hudson v. DHS, 230641 -- order.pdf>

**From:** Jim Jackson
**To:** Kathryn Irby
**Cc:** Vincent France; Daiquiri Carter; Martha Cox
**Subject:** Re: AMENDED AND SUBSTITUTED ORDER: Hudson v. DHS, Claim No. 230641
**Date:** Monday, March 31, 2025 4:29:26 PM

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Kathryn
Thank you very much for clarifying.
I will let the Ashcraft family know of the correction.
Jim

Jim Jackson
Attorney at Law
700 West Broadway St: Suite 2
North Little Rock, AR 72114
(501) 823-3610

On Mar 31, 2025, at 1:53 PM, Kathryn Irby <kathryn.irby@arkansas.gov> wrote:

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Kathryn Irby

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**Subject:** Re: ORDER: Hudson v. DHS, Claim No. 230641

Kathryn

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I will forward it to the family this afternoon.
I'm in mediation at the moment.
Jim

Jim Jackson
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North Little Rock, AR 72114
(501) 823-3610

> On Mar 31, 2025, at 11:21 AM, Kathryn Irby <kathryn.irby@arkansas.gov> wrote:
>
> Jim and Vincent, please see attached order entered by the Commission.
>
> Thanks,
> Kathryn Irby
>
> **Kathryn Irby**
> **Arkansas State Claims Commission**
> 101 East Capitol Avenue, Suite 410
> Little Rock, Arkansas 72201
> (501) 682-2822
>
> <Hudson v. DHS, 230641 -- order.pdf>

<Hudson v. DHS, 230641 -- amended and substituted order.pdf>

**From:** Kathryn Irby
**To:** Jim Jackson
**Cc:** Vincent France; Daiquiri Carter; Martha Cox
**Subject:** RE: AMENDED AND SUBSTITUTED ORDER: Hudson v. DHS, Claim No. 230641
**Date:** Wednesday, April 2, 2025 12:13:00 PM

Jim, at the end of the 40 days referenced in the text box at the end of the order, I will send the entire claim file to the Legislature. If this award is approved by the Legislature sometime this year, it will be included on the appropriation bill that comes out of the 2026 fiscal session (there won't be time for it to be included on the 2025 appropriation bill).

I will copy you on my email to the Bureau of Legislative Research when this claim file is sent over, so you'll know it's been sent. I expect it will be sent around the middle of May. If you have not seen anything from me by May 15, please feel free to follow up.

Thanks,
Kathryn

---

**From:** Jim Jackson <jim@jimjacksonatty.com>
**Sent:** Tuesday, April 1, 2025 2:31 PM
**To:** Kathryn Irby <kathryn.irby@arkansas.gov>
**Cc:** Vincent France <Vincent.P.France@dhs.arkansas.gov>; Daiquiri Carter <Daiquiri.Carter@dhs.arkansas.gov>; Martha Cox <mcox@jimjacksonatty.com>
**Subject:** RE: AMENDED AND SUBSTITUTED ORDER: Hudson v. DHS, Claim No. 230641

Kathryn,
I visited with my clients yesterday in Wynne.
They did not have any questions.
Will this Amended Order be forwarded to the Legislative Subcommittee on Claims?
Thank you,
Jim

---

**From:** Kathryn Irby <kathryn.irby@arkansas.gov>
**Sent:** Monday, March 31, 2025 1:54 PM
**To:** Jim Jackson <jim@jimjacksonatty.com>
**Cc:** Vincent France <Vincent.P.France@dhs.arkansas.gov>; Daiquiri Carter <Daiquiri.Carter@dhs.arkansas.gov>; Martha Cox <mcox@jimjacksonatty.com>
**Subject:** AMENDED AND SUBSTITUTED ORDER: Hudson v. DHS, Claim No. 230641

Jim and Vincent, please see attached amended and substituted order, which was entered to address the discrepancies between the amounts listed in Paragraphs 153 and 154 and the Conclusion section.

Please let me know if there are any questions.

Thanks,
Kathryn Irby

**Kathryn Irby**
**Arkansas State Claims Commission**
101 East Capitol Avenue, Suite 410
Little Rock, Arkansas 72201
(501) 682-2822

---

**From:** Jim Jackson <jim@jimjacksonatty.com>
**Sent:** Monday, March 31, 2025 1:03 PM
**To:** Kathryn Irby <kathryn.irby@arkansas.gov>
**Cc:** Vincent France <Vincent.P.France@dhs.arkansas.gov>; Daiquiri Carter <Daiquiri.Carter@dhs.arkansas.gov>; Martha Cox <mcox@jimjacksonatty.com>
**Subject:** Re: ORDER: Hudson v. DHS, Claim No. 230641

Kathryn
Thank you for your hard work in drafting this well written Order.
I will forward it to the family this afternoon.
I'm in mediation at the moment.
Jim

Jim Jackson
Attorney at Law
700 West Broadway St: Suite 2
North Little Rock, AR 72114
(501) 823-3610

> On Mar 31, 2025, at 11:21 AM, Kathryn Irby <kathryn.irby@arkansas.gov> wrote:
>
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>
> Thanks,
> Kathryn Irby
>
> **Kathryn Irby**
> **Arkansas State Claims Commission**

101 East Capitol Avenue, Suite 410
Little Rock, Arkansas 72201
(501) 682-2822

<Hudson v. DHS, 230641 -- order.pdf>

**From:** Vincent France
**To:** ASCC Pleadings; Jim Jackson; Kathryn Irby
**Cc:** Daiquiri Carter; Nicholas Langham
**Subject:** Hudson v. DHS, Claim No. 230641
**Date:** Thursday, May 8, 2025 2:03:53 PM
**Attachments:** [redacted]

---

Please find attached DHS's Motion for Reconsideration of the above-referenced claim.

Sincerely,

**Vincent P. France**
Deputy Chief Counsel for Litigation
Office of Chief Counsel
PO Box 1437, Slot S260
Little Rock, AR 72203-1437
Office Phone: 501-534-4127
Vincent.P.France@dhs.arkansas.gov

**NOTE - This email may contain sensitive or confidential information.**

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**IN THE ARKANSAS STATE CLAIMS COMMISSION**

**HALEY HUDSON, INDIVIDUALLY
HALEY HUDSON, SPECIAL ADMINISTRATRIX OF
THE ESTATE OF JAQUELINE LYNN ASHCRAFT,
DECEASED, AND HALEY HUDSON, AS PERMANENT
LEGAL GUARDIAN OF [redacted]
[redacted] MINOR CHILDREN** **CLAIMANTS**

**vs.** **CC No. 230641**

**ARKANSAS DEPARTMENT OF
HUMAN SERVICES** **RESPONDENT**

## DHS'S MOTION FOR RECONSIDERATION

COMES NOW, Respondent, Arkansas Department of Human Services, by and through its attorney, Vincent P. France, Deputy Chief Counsel for the Arkansas Department of Human Services, and for its Motion for Reconsideration states the following:

## I. INTRODUCTION

The decision by the Arkansas State Claims Commission in the matter-at-hand creates a dangerous precedent that a state agency will be vicariously liable for any illegal, criminal, or other action that is contrary to the agency's policy so long as the state employee commits those acts while on the job, regardless of the nature of the employee's conduct, or the delay caused by such conduct. Thus, the ruling in this matter is contrary to Arkansas law.

More importantly, at the time of the accident, Ms. Wilkerson had only been employed with DHS for ***eleven (11) days***, and she had passed the background checks and pre-employment drug testing. **What more could DHS or any state agency have done?**

The overarching reason that this claim should be reconsidered is that the evidence in this claim does not support the finding that Ms. Wilkerson was within the course and scope of her employment at the time of the accident. First, the evidence shows that Ms. Wilkerson was not

where she should have been when the accident occurred because she had delayed her travel for personal reasons and she had not resumed being within the scope of her employment. Second, the Claims Commission failed to consider that Ms. Wilkerson had ***illegally*** taken amphetamine, which was present in her body at the time of the accident. Third, the facts and circumstances surrounding the accident caused DHS to immediately begin the termination process of Ms. Wilkerson, which included conducting a post-accident drug test; therefore, the decision by DHS to conduct a post accident drug test of Ms. Wilkerson should not have been considered as a factor for finding that Ms. Wilkerson was within the scope of her employment at the time of the accident. Finally, the amount of damages awarded are excessive and the Claims Commission failed to consider how the award will be paid and the impact such an award will have on DHS's abilities to operate and provide for the citizens of Arkansas. Accordingly, DHS respectfully requests that the Commission grants its Motion for Reconsideration.

## II. ARGUMENT

The Arkansas Supreme Court has long held that under the doctrine of *respondeat superior* an employer may be liable for the actions of its employee if the employee was acting within the scope of his or her employment at the time of the alleged incident. *Porter v. Harshfield*, 329 Ark. 130, 137, 948 S.W.2d 83 (1997). The fact that the action occurred during the employment does not automatically mean that the employer is vicariously liable; rather, the action must be proven to have been done to carry out the objective and purpose of the employer's business. *Orkin Exterminating Co. v. Wheeling Pipeline, Inc.*, 263 Ark. 711, 716-17, 567 S.W.2d 117 (1978) (citing *Van Dalsen v. Inman*, 238 Ark. 237, 379 S.W.2d 261 (1964)). "Scope of employment" is not synonymous with "during the period covered by his employment." *Hunter v. First State* Bank, 181 Ark. 907, 908-09, 28 S.W.2d 712 (1930). As the Arkansas Court of Appeals more succinctly stated,

"employers are not always liable for any and all acts that an employee commits while on the job." *Coombs v. J.B. Hunt Transp., Inc.*, 2012 Ark. App. 24, at 8, 388 S.W.3d 456. Accordingly, "[t]he test for whether an employee is acting within the scope of his employment is whether the individual is carrying out the object and purpose of the enterprise." *Cooper Clinic, P.A. v. Barnes*, 366 Ark. 533, 541, 237 S.W.3d 87 (2006).

A. Ms. Wilkerson Had Not Returned to the Scope of Her Employment When the Accident Occurred.

When an employee deviates even temporarily from the route and time elapses, the employee may no longer be within the scope of employment depending on the extent and nature relative to the time, place, and circumstances. *Davis v. Kukar*, 253 Ark. 139, 145, 357 S.W.2d 275 (1962). In finding that the employer was not liable, the Court ruled that during the deviation, the employer is not liable. *Id*. at 146. Additionally, the Court noted that "the mere fact that he is ***returning*** thereto, does not of itself ***reinstate*** the servant, agent or agency in his master's employment and establish the engaging in the master's business so as to subject the master to liability and for damages resulting after the departure and before the return is accomplished as of fact." *Id*. (emphases added).

Reliance on *Nipper v. Brandon Co.*, 262 Ark. 17, 553 S.W.2d 27 (1977) was improper. In *Nipper*, the employee had only been on the personal errand for about five (5) minutes and was about a half mile from the point of deviation. 262 Ark. at 19. Additionally, there is no indication in *Nipper* that the employee was on a tight deadline or that the employee was significantly behind schedule. *Id*. Moreover, in *Nipper*, the Court discusses and approvingly cites to *Davis v. Kukar*, which provides further insight into the proper consideration of whether an employee is within the scope of employment when the employee deviates from their job. In *Davis*, the Court found that an employee who was just forty-five (45) feet away from the point at which the employee deviated

from his route was outside the scope of his employer's business; therefore, as a matter of law the employee was outside the scope of his employment. 235 Ark. at 145. In *Nipper*, when an employee was half mile (approximately 2,640 feet) away from the point of deviation, the court determined that it was a factual question for the jury to determine whether the employee was within the scope of employment. 262 Ark. at 19. Although *Davis* and *Nipper* reach opposite conclusions, the two cases must be read together and reconciled, which can be accomplished by looking at the decision in *Davis*. In *Davis*, the Court mentioned "time" approximately 19 times in the opinion. For example, in determining whether an employee was outside the scope of employment, the Court ruled that "the trier must take into account, not alone the mere fact of deviation, but its extent and nature relatively ***time*** and ***place*** and ***circumstances***." 235 Ark. at 145 (emphases added). The Court also states that "[w]e think that the ***time that elapsed*** between the departure from employment, when Davis, on his own, turned the tractor around and went east across highway 65, and the claimed resumption is a ***significant circumstance***." *Id*. (emphases added). The Court further reasoned that "it was Davis' use of that time on his own business that placed him at the scene of the accident." *Id*. at 146. Accordingly, *Davis and Nipper* are reconciled once time—specifically lapsed time—is considered in determining whether an employee is acting within the scope of employment.

Immediately upon learning that Ms. Wilkerson had been in a motor vehicle accident, Ms. Ezell "was expecting her to be at least be in Dardanelle, Pottsville, somewhere between there by that time." *See* DHS's Hearing Exhibit 8, Ezell Depo. 12:9-12. Dardanelle, Arkansas is approximately 34 miles from the Logan County DHS office and Pottsville is approximately 40 miles from the office. In determining whether an employee deviation placed the employee outside the scope of employment, courts can take judicial notice of a map and the distance between places.

*Van Dalsen v. Inman*, 238 Ark. 237, 239 fn. 1, 379 S.W.2d 261 (1964). Thus, according to the uncontroverted testimony of Ms. Ezell, Ms. Wilkerson was not only almost an hour behind schedule, but also she was at least thirty-one (31) miles from where she should have been when the accident occurred. Absent Ms. Wilkerson's frolic, she would not have been at the scene of the accident at the time it occurred.

More importantly, DHS presented evidence that showed that the facts at-hand are more align with the facts contained in *Davis v. Kukar*, *supra*., in which the Arkansas Supreme Court found that an employee who was just forty-five (45) feet away from the point at which the employee deviated from his route was outside the scope of his employer's business; therefore, as a matter of law the employee was outside the scope of his employment. 235 Ark. at 145. DHS presented evidence that Ms. Wilkerson had sufficiently deviated from her route because she was over 30 miles behind where she should have been when the accident occurred and an hour late. *See Healey v. Cockrill*, 133 Ark. 327, 202 S.W. 299 (1918) ("the relative distance was too great to be called a slight deviation, and the departure from the line of duty was so complete that the connection with the employer's service was completely broken"). Thus, Ms. Wilkerson had not returned to being within the scope of her employment when the accident occurred. *See Davis*, 235 Ark. at 145. Accordingly, DHS should not have been found to be vicariously liable for her actions.

B. <u>Ms. Wilkerson Having Illegally Used Amphetamine Prior to the Accident Is Further Evidence that She Was Beyond the Scope of Her Employment at the Time of the Accident.</u>

DHS is entitled to have this claim reconsidered because the Claims Commission failed to consider that Ms. Wilkerson had ***illegally*** taken amphetamine, which was present in her body at the time of the accident. "The test for whether an employee is acting within the scope of his employment is whether the individual is carrying out the 'object and purpose of the enterprise,' as

opposed to acting exclusively in his own interest." *Cooper Clinic, P.A. v. Barnes*, 366 Ark. 533, 541, 237 S.W.3d 87 (2006)

Moreover, Ms. Wilkerson admitted to taking Adderall—a Schedule II controlled substance[1]—***without a prescription***. *See* DHS's Hearing Exhibit 1, Feemster Affidavit, p. 5 ¶32 and DHS Hearing Exhibit 9, Wilkerson Depo. 23:6-20. Prior to beginning her employment with DHS, Ms. Wilkerson had a clean drug test. *See* DHS's Hearing Exhibit 1, Feemster Affidavit, p. 2 ¶¶ 6-7. Thus, Ms. Wilkerson's actions of drug abuse could not have been expected by DHS; therefore, Ms. Wilkerson was outside the scope of her employment. *See Porter*, 329 Ark. at 137. Interestingly, under the Arkansas Workers' Compensation Act, injuries that occur to an employee who took illegal drugs or used prescription drugs in contravention of physicians' orders are not compensable. Ark. Code Ann. §11-9-102(4)(B)(iv).

Another important consideration is that Ms. Wilkerson—by illegally using drugs—was not carrying out the "object and purpose" of DHS; therefore, she was acting outside the scope of her employment with DHS and DHS cannot be vicariously liable for her actions. *See Cooper Clinic*, 366 Ark. at 541. A primary focus of DHS is on drug and substance abuse treatment and prevention through programs like the one that promotes the use and distribution of Narcan for opioid overdoses and peer recovery programs to just name a few. Thus, when Ms. Wilkerson illegally took a Schedule II controlled substance without at prescription, she was not furthering the "object and purpose" of DHS. *See Porter*, 329 Ark. at 137. Accordingly, as the Arkansas Supreme Court found in *Cooper Clinic, supra*, the Arkansas State Claims Commission should also have found that

[1] According to Arkansas Department of Health regulations, "Schedule II controlled substances are drugs that have a legitimate medical indication, but also have a high potential for abuse that may lead to severe psychological or physical dependence. Included in the list of Schedule II drugs are the stimulants: amphetamines and methamphetamines and their salts and optical isomers (e.g. ***Adderall***, Desoxyn, Dexedrine and Vyvanse)." Rule 7, 060 01 CARR 001.

DHS was not vicariously liable for the actions of Ms. Wilkerson, because she was not furthering the objectives and purposes of DHS at the time of the accident on June 11, 2021. Accordingly, DHS is entitled to have this claim reconsidered because DHS should not have been found to be vicariously liable in this claim.

C. DHS Began the Process of Terminating Ms. Wilkerson Immediately.

DHS presented evidence and testimony showing that the process of terminating Ms. Wilkerson began the day of the accident. Thus, DHS began the process of terminating Ms. Wilkerson almost immediately. According to the evidence, Ms. Wilkerson was not carrying out the object and purpose of DHS at the time of the accident; therefore, she was outside the scope of her employment and DHS cannot be liable. *See Cooper Clinic*, 366 Ark. 533, 237 S.W.3d 87 (2006). As noted above, DHS presented evidence that showed that Ms. Wilkerson had illegal drugs in her system at the time of the accident, which violated DHS policy. Additionally, the evidence showed that Ms. Wilkerson was traveling at least 70 m.p.h. on a highway with a posted speed limit of 55 m.p.h. when the accident occurred. Thus, Ms. Wilkerson was traveling at a criminal rate of speed when the accident occurred. *See* Ark. Code Ann. §27-50-302(7). Driving at a criminal speed is contrary to the object and purpose of DHS; therefore, Ms. Wilkerson was beyond the scope of her employment. Consequently, DHS is not vicariously liable for her actions because DHS could have terminated her for any one of the following reasons: excessive speeding, for her causing a major motor vehicle accident, and for having illegal drugs in her system.

D. The Amount of Damages Awarded Are Excessive.

The amount of damages awarded are excessive and the Claims Commission failed to consider how the award will be paid and the impact such an award will have on DHS's abilities to operate and provide for the citizens of Arkansas. Specifically, the Claims Commission should have

considered Jacqueline Ashcraft's toxicology report in valuing the total amount of loss of life damages. The Arkansas Supreme Court has repeatedly found that drug and alcohol use by an individual is relevant in determining life expectancy and damages. *See Burnett v. Fowler*, 315 Ark. 646, 869 S.W.2d 694 (1994); *Oxford v. Hamilton*, 297 Ark. 512, 763 S.W.2d 83 (1989). According to Ms. Ashcraft's toxicology report, she tested positive for the following: Benzodiazepines, Cannabinoids, Amphetamine, Methamphetamine, Nicotine, Caffeine, and Delta-9 Carboxy THC. *See* DHS's Hearing Exhibit 13. Moreover, Ms. Ashcraft's daughter testified that her mother smoked a half pack of cigarettes per day and that she was drug testing her mother. *See* Amended and Substituted Order, ¶58. Moreover, the amount of compensatory damages for loss of life are excessive because the evidence shows that Ms. Ashcraft had limited work history. *See Id*. Further, Ms. Ashcraft's obituary does not mention any employment and states that she was only a homemaker. *See* Claimant's Hearing Exhibit 5. Consequently, Ms. Ashcraft's drug usage would have lessened her life expectancy, negatively impacted her ability to obtain and maintain gainful employment, and negatively impacted her intra-personal relationships with her children, the damages awarded in this claim were excessive. *See Advocat, Inc. v. Sauer*, 353 Ark. 29, 111 S.W.3d 346 (2003) (the Arkansas Supreme Court found that compensatory damages of $15 million to be excessive and reduced the amount by two-thirds). Accordingly, at a minimum, the amount of damages awarded should be reduced by two-thirds and should only be $800,000.00.

Lastly, awarding $2,351,500.00 is extremely excessive when considering the financial impact such an award would have on DHS. The financial burden of paying the award would fall specifically to the Division of Children and Family Services, which is responsible for child-abuse prevention and protection, foster care, and adoption programs. According to the appropriations bill for the Department of Human Services—Division of Children and Family Services ("DCFS") for

fiscal year 2025-2026, the Arkansas General Assembly only allocated $17,191,660 for DCFS's state maintenance and general operations. *See* Act 889 of the 95th General Assembly (attached hereto). Consequently, an award of $2,351,500.00 would account for almost 14% of state appropriated maintenance and general operation funds to DCFS. The impact such an award will likely cause DCFS to have to cut services elsewhere. Under the public finance laws, when there are insufficient funds available the state agency may be required by the Chief Financial Officer of the State to implement financial reductions. *See* Ark. Code Ann. §19-4-1210(b)(3); *see also* Ark. Code Ann. §19-4-608. Thus, the amount awarded in this case will have a direct adverse impact on DHS's abilities to operate and provide for the citizens of Arkansas. Accordingly, DHS is entitled to have this claim reconsidered because the amount of damages awarded are excessive.

## III. CONCLUSION

WHEREFORE, DHS respectfully requests that the Arkansas State Claims Commission grants its Motion for Reconsideration, thereby vacating its previous decision found in its Amended and Substituted Order, and finds that DHS is not liable under the doctrine of *respondeat superior* and for any other just and proper relief to which it is entitled.

Respectfully submitted,

By: */s/ Vincent P. France*

Vincent P. France, Ark. Bar No. 2010063
Deputy Chief Counsel
Arkansas DHS
P.O. Box 1437, Slot S260
Little Rock, AR 72203
Phone: (501) 534-4127
Email: Vincent.P.France@DHS.Arkansas.gov
*Attorney for Respondent*

**CERTIFICATE OF SERVICE**

I, Vincent P. France, hereby certify that on May 8, 2025, I electronically filed the foregoing with the Arkansas State Claims Commission by emailing it to asccpleadings@arkansas.gov and by sending a copy to Claimant's attorney Jim Jackson via email as indicated below.

Jim Jackson
Jim@JimJacksonatty.com

*/s/ Vincent P. France*
Vincent P. France

**Stricken language would be deleted from and underlined language would be added to present law.**
**Act 889 of the Regular Session**

State of Arkansas
95th General Assembly
Regular Session, 2025

# A Bill

SENATE BILL 35

By: Joint Budget Committee

## For An Act To Be Entitled

AN ACT TO MAKE AN APPROPRIATION FOR PERSONAL SERVICES AND OPERATING EXPENSES FOR THE DEPARTMENT OF HUMAN SERVICES - DIVISION OF CHILDREN AND FAMILY SERVICES FOR THE FISCAL YEAR ENDING JUNE 30, 2026; AND FOR OTHER PURPOSES.

## Subtitle

AN ACT FOR THE DEPARTMENT OF HUMAN SERVICES - DIVISION OF CHILDREN AND FAMILY SERVICES APPROPRIATION FOR THE 2025-2026 FISCAL YEAR.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

SECTION 1. REGULAR SALARIES - OPERATIONS. There is hereby established for the Department of Human Services - Division of Children and Family Services for the 2025-2026 fiscal year, the following maximum number of regular employees.

| Item No. | Class Code | Title | Maximum No. of Employees | Maximum Annual Salary Rate Fiscal Year 2025-2026 |
|---|---|---|---|---|
| (1) | N249N | DHS DIVISION DIRECTOR | 1 | GRADE SE02 |
| (2) | N016N | DHS DEP DIR ADMINISTRATIVE SVCS | 1 | GRADE GS15 |
| (3) | N134N | DHS/DCFS ASSISTANT DIRECTOR | 4 | GRADE GS14 |

| | | | | |
|---|---|---|---|---|
| (4) | N121N | DHS/DCFS DEPUTY DIRECTOR | 2 | GRADE GS14 |
| (5) | G101C | DHS AREA MANAGER | 10 | GRADE GS12 |
| (6) | G027N | DHS RESEARCH ANALYSIS MANAGER | 1 | GRADE GS11 |
| (7) | G100C | DHS COUNTY ADMINISTRATOR III | 2 | GRADE GS10 |
| (8) | E013C | EDUCATION PROGRAM MANAGER | 1 | GRADE GS10 |
| (9) | G099C | DHS PROGRAM ADMINISTRATOR | 19 | GRADE GS09 |
| (10) | M011C | FAMILY SERVICE WORKER COUNTY SUPV | 29 | GRADE GS09 |
| (11) | M016C | DHS FIELD MANAGER | 1 | GRADE GS08 |
| (12) | G152C | DHS PROGRAM MANAGER | 6 | GRADE GS08 |
| (13) | M010C | FAMILY SERVICE WORKER CLINICAL SPEC | 26 | GRADE GS08 |
| (14) | M015C | FAMILY SERVICE WORKER SUPERVISOR | 162 | GRADE GS08 |
| (15) | X062C | QUALITY ASSURANCE COORDINATOR | 2 | GRADE GS08 |
| (16) | E023C | TRAINING PROJECT MANAGER | 1 | GRADE GS08 |
| (17) | R024C | ASSISTANT PERSONNEL MANAGER | 1 | GRADE GS07 |
| (18) | G183C | DHS PROGRAM COORDINATOR | 11 | GRADE GS07 |
| (19) | G267C | DHS PROGRAM ELIGIBILITY ANALYST | 2 | GRADE GS07 |
| (20) | M027C | FAMILY SERVICE WORKER SPECIALIST | 670 | GRADE GS07 |
| (21) | M040C | FAMILY SERVICES PROGRAM COORDINATOR | 1 | GRADE GS07 |
| (22) | X095C | QUALITY ASSURANCE ANALYST | 3 | GRADE GS07 |
| (23) | C037C | ADMINISTRATIVE ANALYST | 16 | GRADE GS06 |
| (24) | G210C | DHS PROGRAM SPECIALIST | 3 | GRADE GS06 |
| (25) | M051C | FAMILY SERVICE WORKER | 40 | GRADE GS06 |
| (26) | M066C | PROGRAM ELIGIBILITY SPECIALIST | 4 | GRADE GS06 |
| (27) | A091C | FISCAL SUPPORT ANALYST | 10 | GRADE GS05 |
| (28) | C056C | ADMINISTRATIVE SPECIALIST III | 26 | GRADE GS04 |
| (29) | L078C | FAMILY SERVICES ASSISTANT | 6 | GRADE GS04 |
| (30) | A098C | FISCAL SUPPORT SPECIALIST | 1 | GRADE GS04 |
| (31) | C046C | LEGAL SUPPORT SPECIALIST | 2 | GRADE GS04 |
| (32) | C073C | ADMINISTRATIVE SPECIALIST II | 1 | GRADE GS03 |
| (33) | M090C | DHS PROGRAM ASSISTANT | 338 | GRADE GS03 |
| (34) | C062C | LOCAL OFFICE ADMINISTRATIVE ASST | 17 | GRADE GS03 |
| | | MAX. NO. OF EMPLOYEES | 1,420 | |

SECTION 2. EXTRA HELP - OPERATIONS. There is hereby authorized, for the Department of Human Services - Division of Children and Family Services for the 2025-2026 fiscal year, the following maximum number of part-time or

temporary employees, to be known as "Extra Help", payable from funds appropriated herein for such purposes: sixty-five (65) temporary or part-time employees, when needed, at rates of pay not to exceed those provided in the Uniform Classification and Compensation Act, or its successor, or this act for the appropriate classification.

SECTION 3. APPROPRIATION - OPERATIONS. There is hereby appropriated, to the Department of Human Services, to be payable from the paying account as determined by the Chief Fiscal Officer of the State, for personal services and operating expenses of the Department of Human Services - Division of Children and Family Services for the fiscal year ending June 30, 2026, the following:

| ITEM NO. | | FISCAL YEAR 2025-2026 |
|---|---|---|
| (01) | REGULAR SALARIES | $62,586,466 |
| (02) | EXTRA HELP | 1,231,570 |
| (03) | PERSONAL SERVICES MATCHING | 27,002,960 |
| (04) | OVERTIME | 5,061,305 |
| (05) | MAINT. & GEN. OPERATION | |
| | (A) OPER. EXPENSE | 17,191,660 |
| | (B) CONF. & TRAVEL | 39,011 |
| | (C) PROF. FEES | 33,236,462 |
| | (D) CAP. OUTLAY | 0 |
| | (E) DATA PROC. | 0 |
| (06) | DATA PROCESSING SERVICES | 1,595,570 |
| | TOTAL AMOUNT APPROPRIATED | $147,945,004 |

SECTION 4. APPROPRIATION - GRANTS - STATE. There is hereby appropriated, to the Department of Human Services, to be payable from the Children and Family Services Fund Account, for grant payments of the Department of Human Services - Division of Children and Family Services - Grants - State for the fiscal year ending June 30, 2026, the following:

| ITEM NO. | FISCAL YEAR 2025-2026 |
|---|---|

| | | |
|---|---|---|
| (01) | FOSTER CARE | $54,006,830 |
| (02) | STATE RESIDENTIAL TREATMENT | 10,647,249 |
| | TOTAL AMOUNT APPROPRIATED | $64,654,079 |

SECTION 5. APPROPRIATION - TANF - FOSTER CARE. There is hereby appropriated, to the Department of Human Services, to be payable from the paying account as determined by the Chief Fiscal Officer of the State, for grant payments of the Department of Human Services - Division of Children and Family Services - TANF - Foster Care for the fiscal year ending June 30, 2026, the following:

| ITEM NO. | | FISCAL YEAR 2025-2026 |
|---|---|---|
| (01) | FOSTER CARE | $102,907,999 |

SECTION 6. APPROPRIATION - CHILD ABUSE AND NEGLECT PREVENTION OPERATIONS. There is hereby appropriated, to the Department of Human Services, to be payable from the Children's Trust Fund, for operating expenses and grants or loans for the development or operation of child abuse prevention programs of the Department of Human Services - Division of Children and Family Services - Child Abuse and Neglect Prevention Board for the fiscal year ending June 30, 2026, the following:

| ITEM NO. | | FISCAL YEAR 2025-2026 |
|---|---|---|
| (01) | MAINT. & GEN. OPERATION | |
| | (A) OPER. EXPENSE | $17,770 |
| | (B) CONF. & TRAVEL | 0 |
| | (C) PROF. FEES | 0 |
| | (D) CAP. OUTLAY | 0 |
| | (E) DATA PROC. | 0 |
| (02) | CHILD ABUSE AND NEGLECT PREVENTION GRANT AND AID/LOANS | 197,029 |
| | TOTAL AMOUNT APPROPRIATED | $214,799 |

SECTION 7. APPROPRIATION - SAFE HARBOR GRANTS. There is hereby

appropriated, to the Department of Human Services, to be payable from the Safe Harbor Fund for Sexually Exploited Children, for grants to Children's Advocacy Centers statewide for services and treatment for sexually exploited children by the Department of Human Services - Division of Children and Family Services - Safe Harbor Grants for the fiscal year ending June 30, 2026, the following:

| ITEM NO. | | FISCAL YEAR 2025-2026 |
|---|---|---|
| (01) | SAFE HARBOR GRANTS | $50,000 |

SECTION 8. COMPLIANCE WITH OTHER LAWS. Disbursement of funds authorized by this act shall be limited to the appropriation for such agency and funds made available by law for the support of such appropriations; and the restrictions of the State Procurement Law, the General Accounting and Budgetary Procedures Law, the Revenue Stabilization Law, the Regular Salary Procedures and Restrictions Act, or their successors, and other fiscal control laws of this State, where applicable, and regulations promulgated by the Department of Finance and Administration, as authorized by law, shall be strictly complied with in disbursement of said funds.

SECTION 9. LEGISLATIVE INTENT. It is the intent of the General Assembly that any funds disbursed under the authority of the appropriations contained in this act shall be in compliance with the stated reasons for which this act was adopted, as evidenced by the Agency Requests, Executive Recommendations and Legislative Recommendations contained in the budget manuals prepared by the Department of Finance and Administration, letters, or summarized oral testimony in the official minutes of the Arkansas Legislative Council or Joint Budget Committee which relate to its passage and adoption.

SECTION 10. EMERGENCY CLAUSE. It is found and determined by the General Assembly, that the Constitution of the State of Arkansas prohibits the appropriation of funds for more than a one (1) year period; that the effectiveness of this Act on July 1, 2025 is essential to the operation of the agency for which the appropriations in this Act are provided, and that in the event of an extension of the legislative session, the delay in the

effective date of this Act beyond July 1, 2025 could work irreparable harm upon the proper administration and provision of essential governmental programs. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after July 1, 2025.

**APPROVED: 4/18/25**

**From:** Jim Jackson
**To:** ASCC Pleadings; Kathryn Irby
**Cc:** Vincent France; Martha Cox; Daiquiri Carter
**Subject:** Haley Hudson v. Arkansas DHS; Claims Comm. No. 230641, DOI: 6/11/2021
**Date:** Friday, May 16, 2025 3:08:48 PM
**Attachments:** [redacted]
[redacted]
[redacted]
[redacted]

---

All,
Please find attached the Claimant's Response to the Respondent's Motion for Reconsideration.
Thank you,
Jim

Jackson Law Firm
700 W. Broadway, Suite 200
North Little Rock, AR 72114
**P** (501) 823-3610
**F** (501) 823-3611

**IN THE ARKANSAS STATE CLAIMS COMMISSION**

**HALEY HUDSON, INDIVIDUALLY**
**HALEY HUDSON, SPECIAL ADMINISTRATRIX OF THE ESTATE OF JAQUELINE LYNN ASHCRAFT, DECEASED, AND HALEY HUDSON, AS PERMANENT LEGAL GUARDIAN OF [redacted] MINOR CHILDREN** **CLAIMANTS**

**vs.** **CC No. 230641**

**ARKANSAS DEPARTMENT OF HUMAN SERVICES** **RESPONDENT**

## RESPONSE TO DHS'S MOTION FOR RECONSIDERATION

COMES NOW, Claimant, by and through her attorney of record, and submits this Response to Respondent's Motion for Reconsideration, stating as follows:

## I. INTRODUCTION

The Arkansas State Claims Commission ("Commission") rendered a thorough, well-reasoned, and legally sound decision in its Amended and Substituted Order dated March 31, 2025, finding Respondent, Arkansas Department of Human Services ("DHS"), vicariously liable for the negligent actions of its employee, Jennifer Wilkerson. Respondent's Motion for Reconsideration does not present new arguments, evidence, or valid legal grounds to challenge the Commission's findings of fact or conclusions of law. Instead, Respondent attempts to rehash previously litigated points and introduces speculative assertions that were adequately addressed by the Commission. Claimants urge the Commission to reject the Motion for Reconsideration and affirm its prior decision.

## II. ARGUMENT

### A. Ms. Wilkerson Was Acting Within the Scope of Her Employment at the Time of the Accident.

The Commission correctly applied Arkansas law governing *respondeat superior,* including the pivotal case of *Nipper v. Brandon Co.*[1] The doctrine provides that when an employee is driving a vehicle owned by their employer, there exists a presumption that the employee is acting within the scope of their employment unless the employer can rebut that presumption. DHS failed to meet its burden of rebutting this presumption during the hearing.

The Commission's decision properly detailed the factors supporting its finding that Ms. Wilkerson was acting within the scope of her employment. These facts included:

- Wilkerson was a full-time Program Assistant for DHS at the time of the wreck.
- DHS provided the state-owned vehicle for Ms. Wilkerson's work-related trip.
- DHS instructed Ms. Wilkerson to pick up a child in Beebe as part of her duties.
- DHS provided Ms. Wilkerson with the route of travel from Paris to Beebe.
- Ms. Wilkerson was traveling the most direct route to Beebe when the accident occurred.
- DHS supervisors acknowledged that Program Assistants, like Ms. Wilkerson, had discretion to determine their appropriate lunch break times during long work-related trips.
- The wreck occurred at 12:50 pm, minutes after she left lunch at Dairy Delite and was driving to Beebe.

Respondent misconstrues the legal precedents that it cites, including *Davis v. Kukar*[2]. Unlike the facts in *Davis*, Ms. Wilkerson was actively traveling for work purposes at the time of the accident. The Commission correctly determined that any slight deviation, such as stopping for lunch at noon at Dairy Delite while on her assigned route, did not sever the connection between her DHS directed purpose and her employment activities. The conclusion

[1] 262 Ark. 17, 553 S.W.2d 27 (1977)
[2] 357 S.W.2d 275, 235 Ark. 139 (1963)

that she remained within the scope of her employment is manifestly supported by the evidence in the record.

Moreover, Respondent's argument that the timeline of Ms. Wilkerson's taking a noon lunch break at Dairy Delite undermines the scope-of-employment finding is without merit. The Commission appropriately considered the testimony regarding the discretionary nature of Program Assistants' schedules, lack of rigid departure timelines, and failure of DHS policies to prohibit modest deviations. The presumption established by *Nipper* remains unrebutted, particularly as Ms. Wilkerson had returned to her direct route to Beebe at the time of the collision.

**B. Negligent Acts Do Not Exclude DHS's Liability Under Respondeat Superior.**

Respondent asserts that Ms. Wilkerson's alleged speeding and improper use of Adderall/amphetamines took her outside the scope of employment. This argument misapprehends the principle of respondeat superior and ignores Arkansas precedent, including *Campbell Baking Co. v. Clark*[3]. The test for liability focuses on whether the employee's actions were performed in furtherance of their employer's business, even if those actions involved negligence. "As we understand the law applicable to cases of this character, although an agent may exceed his authority to the extent even of violating instructions, if, at the time, he is engaged in the business he was employed to perform by his regular employer, his employer would be responsible for injuries resulting from his torts."[4]

The Commission correctly found that Ms. Wilkerson's alleged misconduct—speeding and following too close — constituted instances of negligence. These actions, while improper, occurred during her performance of duties assigned by DHS and do not absolve DHS of vicarious liability. Arkansas courts have repeatedly held that employers are liable for their

[3] 1 S.W.2d 35 (1927)
[4] Id.

employees' negligent acts if committed within the scope of employment. DHS's assertion of drug use as being inconsistent with its policies may provide grounds for disciplinary action but does not meet the legal standard to rebut liability under the doctrine of *respondeat superior*.

**C. DHS's Post-Accident Employment Actions Are Irrelevant to Liability Analysis**.

Respondent contends that the initiation of termination proceedings against Ms. Wilkerson demonstrates that she was acting outside the scope of employment. The Commission appropriately rejected this argument. Liability under *respondeat superior* is determined by an analysis of the employee's actions *at the time of the negligent event*—not subsequent employment actions or employer penalties.

Ms. Wilkerson's speeding, while troubling, were incidental to her task of transporting a child as directed by DHS. Respondent's post-accident termination proceedings do not alter the factual findings regarding scope of employment at the time of the collision. The Commission was correct to exclude any weight for DHS's post-accident actions on this issue.

**D. The Damages Awarded Were Reasonable and Supported by Substantial Evidence.**

Respondent's argument that the damages awarded were excessive is without merit. The Commission meticulously reviewed the evidence presented, including expert testimony and economic calculations, before arriving at the damages awarded to the Decedent's estate and beneficiaries.

Regarding loss of life damages, the Commission considered persuasive testimony from the Decedent's family members about her value to her household, her contributions to her children, and her non-economic value of life. In determining these damages, the Commission relied on Dr. Ralph Scott's expert calculations, which were rooted in accepted methodologies for assessing economic and non-economic damages. The Commission was also guided by

Judge Brooks' ruling in *Kolpek v. United States*, which similarly recognized $278,711 as the average annual non-economic value of life. The one-million-dollar verdict for the Loss of Life element of damages is in line with previous Loss of Life decisions by the Commission and is certainly well below recent wrongful death jury verdicts in Arkansas Circuit Courts.

Regarding mental anguish damages of the decedent's five surviving children, the Commission considered the compelling testimony of the Decedent's beneficiaries, including her children and family members. Their testimony described their close, meaningful relationship with the Decedent and the profound emotional repercussions of her loss. Each beneficiary's verdict was tailored to reflect the evidence presented, and the amounts appropriately reflect fair and just compensation under Ark. Code Ann. § 16-62-102. The total amount of wrongful death damages was $1,851,000 which is certainly justified by the overwhelming proof of damages that was submitted to the Commission.

**E. Damages awarded to [redacted] for her Traumatic Brain Injury**

The Commission rendered a separate verdict of $500,000 to [redacted] for the traumatic brain injury she sustained during the accident. This decision was firmly grounded in medical evidence, the testimony presented, and applicable Arkansas law that supports recovery for long-term injuries and their profound impacts on a claimant's life.

The Commission noted that the medical testimony provided by Dr. Garrett Andrews was "persuasive and unrebutted." Dr. Andrews, a qualified medical expert, testified on the severity of [redacted] traumatic brain injury and its lasting effects on her ability to function and maintain a normal lifestyle. The Commission relied heavily on his detailed evaluation, which outlined the future medical expenses [redacted] will incur as a direct consequence of the injury. The expert predictions regarding lifelong care needs, rehabilitation expenses, and accompanying mental health challenges, particularly the PTSD diagnosis, form the basis for the $500,000 verdict.

Additionally, the Commission appropriately assigned significant weight to the testimony regarding [redacted] inability to perform routine activities and engage fully in education and social interactions as a result of the traumatic brain injury. The long-term impact of these limitations on [redacted] mental and physical development was carefully considered and documented by the Commission.

Notably, the Respondent's Motion for Reconsideration does not challenge this separate verdict. By their omission, the Respondent implicitly acknowledges that [redacted] verdict for her traumatic brain injury is justifiable and supported by substantial evidence. The lack of contention on this point underscores the strength of the testimony and expert evidence backing the Commission's decision.

**F. DHS' Budgetary Constraints**

Furthermore, the Respondent's argument that budgetary constraints should limit its ability to fund the wrongful death verdict is without merit and contradictory in light of the available financial information. The Arkansas Department of Human Services (DHS) oversees an $8 billion annual budget allocated for fulfilling its public responsibilities. Within this substantial budget, the $1,851,000 wrongful death verdict and the $500,000 verdict for [redacted] represents only a minuscule fraction—less than 0.01%—of DHS's yearly expenditures. To assert that this verdict would impose undue financial hardship on DHS undermines the legitimacy of its spending priorities and ignores its obligation to compensate individuals harmed by its negligence.

The Commission also correctly rejected attempts to use speculative administrative impacts to justify altering its ruling. It is imperative to hold DHS accountable when negligence by its employees results in severe injury or loss. These two claims are not just a monetary figure but a reflection of the suffering and long-term challenges this family will face due to DHS's employee's actions. To deny or reduce an already well-calculated verdict

based on vague claims about budgetary constraints would be an unjust dismissal of this family's right to a fair remedy. Upholding this verdict is essential in delivering justice for Jacqueline Ashcraft's family and ensuring accountability for the negligent actions that caused this tragedy.

## III. CONCLUSION

The Commission's Amended and Substituted Order of March 31, 2025, is a thorough, factually supported, and legally sound resolution of this matter. Respondent's Motion for Reconsideration fails to offer any valid basis for reversing the Commission's findings or modifying its wrongful death verdict of $1,851,000 for the wrongful death of Jacqueline Ashcraft. The Respondent does not contest the verdict of $500,000 for the personal injury claim of [redacted]

WHEREFORE, Claimant respectfully requests that the Commission deny Respondent's Motion for Reconsideration in its entirety and affirm its Amended and Substituted Order without modification.

/s/ *Jim Jackson*
Jim R. Jackson
Jackson Law Firm
Jacqueline Lynn Ashcraft, Haley Nicole Hudson, Carley Raye Jones, and Kadey Lynn Jones
700 West Broadway Street, Suite 200,
North Little Rock, AR 72114-5528
(501) 823-3610
AR Bar #: 93-209

CERTIFICATE OF SERVICE

I, certify that on this date, May 16, 2205, consistent with the requirements of Ark. R. Civ. P. 5, a complete copy of the foregoing Claimant's Motion in Response for Reconsideration was filed via email with the Clerk of the Commission and electronically served on all parties of record in this matter, specifically to:

Vincent P France; Esquire
Arkansas Department of Human Services
P.O. Box 1437,
Little Rock, AR 72203-1437

_/s/ *Jim Jackson*_____
Jim Jackson




## Expenditures

Overview | By Agency | By Vendor | By Classification | By Function | Agency Details | Other Transactions

Expenditures by agency

*Select an agency to see the appropriations*

Filter:

| Agency | Expenditure |
|---|---|
| AR DEPT OF HUMAN SERVICES | $8,525,628,247.47 |
| DEPARTMENT OF EDUCATION | $3,901,352,210.12 |
| AR DEPT OF TRANSPORTATION | $2,202,223,888.26 |
| STATEWIDE SHARED SERVICES | $756,956,056.00 |
| DFA - OFC OF ARKANSAS LOTTERY | $196,417,158.77 |
| AR DEPARTMENT OF HEALTH | $193,672,115.58 |
| DEPARTMENT OF HIGHER EDUCATION | $164,303,655.58 |
| DEPARTMENT OF CORRECTION | $134,969,537.46 |
| AR TEACHER RETIREMENT SYSTEM | $125,609,403.15 |
| DEPT OF CORRECTIONS | $109,968,796.88 |

Showing 1 to 10 of 137 entries

Show 10 entries

First Previous 1 2 3 4 5 Next Last



**From:** Vincent France
**To:** ASCC Pleadings; Kathryn Irby; Jim Jackson
**Cc:** Martha Cox; Daiquiri Carter
**Subject:** Haley Hudson v. DHS; Claim No. 230641
**Date:** Tuesday, May 20, 2025 3:26:10 PM
**Attachments:** [redacted].pdf
image001.png
image002.png

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To all,

Please find attached DHS Reply to Claimants' Response to DHS's Motion for Reconsideration.

Sincerely,

**Vincent P. France**
Deputy Chief Counsel for Litigation
Office of Chief Counsel
PO Box 1437, Slot S260
Little Rock, AR 72203-1437
Office Phone: 501-534-4127
Vincent.P.France@dhs.arkansas.gov

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**IN THE ARKANSAS STATE CLAIMS COMMISSION**

**HALEY HUDSON, INDIVIDUALLY
HALEY HUDSON, SPECIAL ADMINISTRATRIX OF
THE ESTATE OF JAQUELINE LYNN ASHCRAFT,
DECEASED, AND HALEY HUDSON, AS PERMANENT
LEGAL GUARDIAN OF [redacted]
[redacted] MINOR CHILDREN** **CLAIMANTS**

**vs.** **CC No. 230641**

**ARKANSAS DEPARTMENT OF
HUMAN SERVICES** **RESPONDENT**

**DHS'S REPLY TO CLAIMANTS' RESPONSE
TO DHS'S MOTION FOR RECONSIDERATION**

COMES NOW, Respondent, Arkansas Department of Human Services, by and through its attorney, Vincent P. France, Deputy Chief Counsel for the Arkansas Department of Human Services, and for Reply to Claimants' Response to its Motion for Reconsideration states the following:

DHS will not belabor the point that it should not be responsible for the actions of newly hired employee—who goes rogue without warning—and who chose to drive at a high rate of speed with drugs in her system and slammed into the rear-end of a vehicle in front of her. Thus, Ms. Wilkerson was acting outside the course and scope of her employment when the accident happened; therefore, DHS should not have been found liable in the claim-at-hand.

Moreover, Claimants in their Response to DHS's Motion for Reconsideration present a legally incorrect argument to the Claims Commission that must be addressed. Claimants wrongfully assert that DHS has a global "$8 billion annual budget allocated for fulfilling its public responsibilities;" therefore, they claim that the amount awarded only equates to "less than 0.01% of DHS's yearly expenditures." *See* Response, p. 6. This argument is contrary to Arkansas law. The Department of Human Services consists of seven separate and unique divisions, plus the

Office of the Secretary, with each having unique programs and responsibilities assigned to them. Ark. Code Ann. §25-10-102. The seven divisions are defined as the following: (1) Division of Aging, Adult, and Behavioral Health Services; (2) Division of Medical Services; (3) Division of Developmental Disabilities Services; (4) Division of County Operations; (5) Division of Youth Services; (6) Division of Children and Family Services; and (7) Division of Provider Services and Quality Assurance. Ark. Code Ann. §25-10-102(a)(1-7). Each of these divisions has its own budget. *See* Ark. Code Ann. §25-10-111. In the most recent legislative session, the 95th General Assembly for the State of Arkansas, the legislature approved and passed the following acts to appropriate funds for each separate entity within DHS:

- Act 890, appropriations for the Division of Aging, Adult, and Behavioral Health Services;
- Act 887, appropriations for the Division of Medical Services;
- Act 888, appropriations for the Division of Developmental Disabilities Services;
- Act 788, appropriations for the Division of County Operations;
- Act 886, appropriations for the Division of Youth Services;
- Act 889, appropriations for the Division of Children and Family Services;
- Act 785, appropriations for the Division of Provider Services and Quality Assurance; and,
- Act 1004, appropriations for the DHS Office of the Secretary.

Moreover, the Arkansas Constitution unequivocally states that "no money shall be paid out of the treasury until the same shall have been appropriated by law; and then only in accordance with said appropriations." Ark. Const. art. 16 §12. If any state agency violates this section, then it may be subject to an illegal exaction claim brought against it pursuant to Ark. Const. art. 16 §13. *See Buonauito v. Gibson*, 2020 Ark. 352, at 5, 609 S.W.3d 381, 385 ("An illegal exaction is…the

expenditure of public funds that is not authorized or which is contrary to law"). Consequently, DHS cannot use funds appropriated for one division to pay for the liabilities of another division.

As a result, the burden of paying the award of $2,351,500.00 rests ***solely*** on the Division of Children and Family Services. As noted by DHS in its Motion for Reconsideration, the Arkansas General Assembly only allocated $17,191,660 for DCFS's state maintenance and general operations. *See* Act 889 of the 95th General Assembly. Consequently, an award of $2,351,500.00 would account for almost 14% of state appropriated maintenance and general operation funds to DCFS. The impact such an award will likely cause DCFS to have to cut services elsewhere. *See* Ark. Code Ann. §19-4-1210(b)(3); *see also* Ark. Code Ann. §19-4-608. Given that DCFS is responsible for child-abuse prevention and protection, foster care, and adoption programs, funds for these programs will have to be diverted to pay the $2,351,500.00 awarded in this matter. Thus, the amount awarded in this case is excessive and will have a direct adverse impact on DHS's abilities to operate and provide for the citizens of Arkansas. Accordingly, DHS is entitled to have this claim reconsidered because the damages awarded are excessive.

WHEREFORE, DHS respectfully requests that the Arkansas State Claims Commission grants its Motion for Reconsideration, thereby vacating its previous decision found in its Amended and Substituted Order, and finds that DHS is not liable under the doctrine of *respondeat superior* or at a minimum significantly reduces the amount of damages awarded in this matter and for any other just and proper relief to which it is entitled.

Respectfully submitted,

By: */s/ Vincent P. France*

Vincent P. France, Ark. Bar No. 2010063
Deputy Chief Counsel
Arkansas DHS
P.O. Box 1437, Slot S260
Little Rock, AR 72203

Phone: (501) 534-4127
Email: Vincent.P.France@DHS.Arkansas.gov
*Attorney for Respondent*

**CERTIFICATE OF SERVICE**

I, Vincent P. France, hereby certify that on May 20, 2025, I electronically filed the foregoing with the Arkansas State Claims Commission by emailing it to asccpleadings@arkansas.gov and by sending a copy to Claimant's attorney Jim Jackson via email as indicated below.

Jim Jackson
Jim@JimJacksonatty.com

*/s/ Vincent P. France*
Vincent P. France

**BEFORE THE ARKANSAS STATE CLAIMS COMMISSION**

**HALEY HUDSON, SPECIAL ADMINISTRATRIX OF THE ESTATE OF JACQUELINE LYNN ASHCRAFT, DECEASED, AND HALEY HUDSON, PERMANENT LEGAL GUARDIAN OF [redacted], A MINOR CHILD** **CLAIMANT**

**V.** **CLAIM NO. 230641**

**ARKANSAS DEPARTMENT OF HUMAN SERVICES** **RESPONDENT**

**ORDER**

Now before the Arkansas State Claims Commission (the "Commission") is the motion filed by the Arkansas Department of Human Services (the "Respondent") seeking reconsideration of the Commission's March 31, 2025, order regarding the claim filed by Haley Hudson, Special Administratrix of the Estate of Jacqueline Lynn Ashcraft, deceased, and Haley Hudson, Permanent Legal Guardian of [redacted], a Minor Child (collectively referred to as the "Claimant").

As detailed below, the Commission denies Respondent's motion as being entirely without merit and contrary to Arkansas law, such that the Commission's March 31, 2025, order remains in effect.

1. This claim was filed by Claimant after Jacquelyn Lynn Ashcraft (the "Decedent") died following an automobile accident with an employee of Respondent, Jennifer Wilkerson. The Decedent's minor child, [redacted], was also injured in the accident.

2. Following extensive discovery by the parties and a claim hearing, the Commission determined that Ms. Wilkerson was acting in the course and scope of her employment with Respondent at the time of the accident, such that Respondent is liable for the accident that resulted

in the death of the Decedent and the injury to [redacted]. The Commission awarded a total of $851,500.00 to the Decedent's estate and $1,500,000 to the Decedent's wrongful death beneficiaries, for a total award of $2,351,500.00.

3. Respondent filed the instant motion, arguing that the Commission erred in awarding damages because (1) Ms. Wilkerson had only been employed by Respondent for eleven days as of the date of the accident and that she had passed the background checks and drug testing; (2) Ms. Wilkerson had not returned to the scope of her employment when the accident occurred; (3) Ms. Wilkerson's positive test result for amphetamines following the accident is evidence that she was beyond the scope of her employment at the time of the accident; (4) Respondent immediately began termination proceedings following the accident; and (5) the Commission's award is excessive in light of Respondent's budget.

4. Claimant filed a response opposing the motion.

5. Respondent filed a reply brief detailing Respondent's budget breakdown.

6. Regarding Respondent's argument about the amount of time that Ms. Wilkerson had been employed by Respondent, the Commission finds in the strongest terms that this fact is wholly irrelevant to the application of the doctrine of respondeat superior. Ms. Wilkerson was either employed by Respondent on June 11, 2021, or she was not—here, it is undisputed that she was.[1] To the extent that Respondent is hinting at an argument that employer liability does not attach until an employee has been employed for a certain amount of time (that apparently exceeds eleven days), the Commission finds that this argument is completely unsupported by Arkansas law. Whether Ms. Wilkerson had been employed by Respondent for eleven minutes, eleven days, or eleven years prior to the accident, it is undisputed that she was an employee of Respondent on

[1] *See* Joint Stipulated Facts submitted by the parties at ¶3 ("On June 1, 2021, Jennifer Wilkerson began working for DHS").

the date of the accident. Moreover, Arkansas law is clear that "[w]hen a regular employee is driving a vehicle owned by the employer, and an accident occurs, there is a presumption of fact that the employee is acting within the scope of his employment."[2]

7. Regarding Respondent's argument that Ms. Wilkerson had not returned to the scope of her employment when the accident occurred, the Commission finds that Respondent continues to misunderstand and/or misconstrue Arkansas law. *Nipper* established the presumption that Ms. Wilkerson was acting within the scope of her employment, as well as the burden upon Respondent to overcome or rebut that presumption.[3] *Davis v. Kukar*[4] clarified that the important point at time to evaluate whether Ms. Wilkerson was acting in the scope of her employment was

[2] *Nipper v. Brandon Co*., 262 Ark. 17, 21, 553 S.W.2d 27, 29 (1977) (emphasis added).

[3] *Id*.

[4] 235 Ark. 139, 357 S.W.2d 275 (1962).

at the time of the accident.[5] In light of the shifting schedule for Ms. Wilkerson's day,[6] the fact that Ms. Wilkerson was embarking on a trip ultimately totaling eight and one half hours,[7] and the lack of information given to Ms. Wilkerson about what she was going to be doing,[8] the Commission found in its March 31, 2025, order that it was reasonable for Ms. Wilkerson to call in a food order on her way out of town, given that (1) it was lunch time; (2) the restaurant was directly on her route from Respondent's Logan County office to Beebe; and (3) Ms. Wilkerson

[5] 235 Ark. 139, 142, 357 S.W.2d 275, 577 (1962). The Arkansas Supreme Court stated that the law of the doctrine of respondeat superior is "well settled," explaining that:

> The doctrine of respondeat superior rests upon the proposition that in doing the acts out of which the accident arose, the servant was representing the master at the time and engaged in his business. It is conceded that the doctrine cannot be invoked unless, at the time of the negligent act causing the injury, the servant was engaged in performing a service for the master or [an act] incidental thereto. It is generally stated by textwriters and in judicial decisions that the test of the liability of the master for his servant[']s acts is whether the latter was at the time acting within the scope of his employment. The phrase 'in the scope of his employment or authority,' when used relative to the acts of the servant, means while engaged in the service of his master or while about his master's business.

(emphasis added).

The *Davis* Court also quoted favorably from an Alabama case where the Alabama Supreme Court determined that an employee who abandoned his or her employment does not resume his employment until he or she "return[s] to the place of such abandonment . . . [to] commence carrying out what he was hired to do." 235 Ark. 139, 146, 357 S.W.2d 275, 279 (1977) (quoting *Bell v. Martin*, 241 Ala. 182, 1 So.2d 906 (1941)).

The portion of the Alabama case quoted by Respondent in its motion is incomplete, as it leaves out the Alabama Supreme Court's emphasis on returning to the *place* of abandonment, as opposed to the time that an employee spent on personal business. That omission is likely due to the (undisputed) fact that Ms. Wilkerson was on the route to Beebe when the accident occurred, such that any deviation of her employment had ended.

[6] Ms. Wilkerson was originally told to arrive at Respondent's Logan County office at 8:00 a.m. by Brandy Ezell, but the time was later changed to 9:00 a.m. Wilkerson Deposition Transcript at p. 10–11.

[7] Ms. Wilkerson testified in her deposition that she was "supposed to go on an eight and a half hour, I guess, trip, to go pick up a child." Wilkerson Deposition Transcript at p. 10.

[8] Ms. Wilkerson testified in her deposition that she did not know how to use a car seat, did not have a gas card, and had no training on what she was supposed to do. Wilkerson Deposition Transcript at p. 10. She testified that "it wasn't planned out." *Id.*

was given discretion to determine her lunch break.[9] Respondent presented no evidence that Brandy Ezell or another employee of Respondent directed Ms. Wilkerson to wait to eat lunch until she had driven to Beebe to pick up one child and driven to Clarksville to allow the child to visit with his or her sibling.[10] It is also undisputed that June 11, 2021, was Ms. Wilkerson's first solo sibling visit.[11] Despite this lack of evidence, Respondent appears to continue to argue that Ms. Wilkerson's actions in stopping to get food at the Dairy Delite were so outrageous that anything that occurred after her stop at the Dairy Delite (including the accident) had to be outside the course and scope of her employment. The Commission rejected this argument in its March 31, 2025, order, as contrary to Arkansas caselaw and as an unreasonable limitation on the doctrine of respondeat superior. Applying the Arkansas Supreme Court's holding in *Richards v. McCall*[12] to the instant claim, if an accident occurs after an employee resumes the performance of duties for an employer, "it is immaterial whether she had just previously to that time performed an errand of her own."[13] Likewise, in the instant claim, to the extent that Ms. Wilkerson's lunch stop constituted a deviation from her employment (and it is questionable, at best, if it did), the Commission finds that Ms. Wilkerson was on the route to Beebe, such that any previous errand is immaterial.

[9] Commission's March 31, 2025, order at ¶ 148. Pamela Feemster testified that there was no set time for lunch. Commission's March 31, 2025, order at ¶ 118.

[10] Kristen Shelton testified that Ms. Wilkerson could have taken a lunch break while the sibling visit was taking place, but there was no testimony that this suggestion was communicated to Ms. Wilkerson. Commission's March 31, 2025, order at ¶ 128.

[11] Ezell Deposition Transcript at p. 7–8.

[12] 187 Ark. 61, 58 S.W.2d 432 (1933).

[13] 187 Ark. 61, 65, 58 S.W.2d 432, 433 (1933) (emphasis added).

8. Regarding Respondent's argument that Ms. Wilkerson's positive test result following the accident meant that she was acting outside the course and scope of her employment, the Commission finds that this argument is without merit. First, Respondent presented absolutely no evidence that controlled substances played any role in the accident, and the Arkansas State Police did not cite Ms. Wilkerson for driving under the influence. Furthermore, Respondent is fortunate that there no such evidence. Far from being the free pass for an employer that Respondent apparently believes it to be, the use of an intoxicant by an employee involved in an automobile accident can result in the enhancement of damages and certainly does not absolve an employer, as argued by Respondent.[14]

9. Regarding Respondent's argument that Respondent terminated Ms. Wilkerson's employment following the accident, the Commission finds that this argument is completely irrelevant to an analysis of respondeat superior.

10. Regarding Respondent's argument that the Commission's award will place constraints on Respondent's budget, the Commission finds that this argument is without merit. Respondent was aware of the amount sought[15] by Claimant upon service of the original complaint on November 17, 2022, as well as the increased amount sought[16] by Claimant in its second amended complaint, which was sent to Respondent on May 18, 2023. Despite this knowledge, Respondent did not introduce any specific, detailed evidence at the hearing regarding

[14] *See J.B. Hunt Transp., Inc. v. Doss*, 320 Ark. 660, 899 S.W.2d 464 (1995) (finding employer liable not only for compensatory damages resulting from an automobile accident but also for punitive damages where employee failed a breathalyzer and smelled of alcohol after accident). The Commission has traditionally been skeptical that it can award punitive damages against a state agency, and this citation is not a suggestion that the Commission's position is changing.

[15] Claimant sought $4,000,000 in its original complaint.

[16] In the second amended complaint, Claimant increased the amount of compensatory damages sought to $5,000,000.

Respondent's budget constraints or financial hardship or how an award in Claimant's favor of any size, let alone 47 percent of the final amount sought, would affect Respondent's budget. Respondent is now asking the Commission to set aside its order based simply on the statements of counsel. To the extent that Respondent is concerned about its budget in light of the award, the Commission notes that the Arkansas General Assembly will review the award and, should it be affirmed, can make budgetary adjustments as it deems necessary.

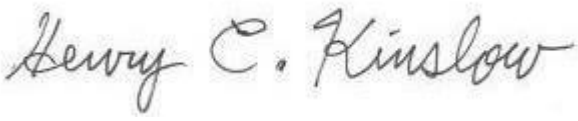
IT IS SO ORDERED.



ARKANSAS STATE CLAIMS COMMISSION
Solomon Graves



ARKANSAS STATE CLAIMS COMMISSION
Dee Holcomb



ARKANSAS STATE CLAIMS COMMISSION
Henry Kinslow, chair



ARKANSAS STATE CLAIMS COMMISSION
Paul Morris

DATE: June 5, 2025

**Notice(s) which may apply to your claim**

**(1)** A party has forty (40) days from transmission of this Order to file a Motion for Reconsideration or a Notice of Appeal with the Claims Commission. Ark. Code Ann. § 19-10-211(a)(1). If a Motion for Reconsideration is denied, that party then has twenty (20) days from transmission of the denial of the Motion for Reconsideration to file a Notice of Appeal with the Claims Commission. Ark. Code Ann. § 19-10-211(a)(1)(B)(ii). A decision of the Claims Commission may only be appealed to the General Assembly. Ark. Code Ann. § 19-10-211(a)(3).

**(2)** If a Claimant is awarded less than $15,000.00 by the Claims Commission at hearing, that claim is held forty (40) days from the date of disposition before payment will be processed. *See* Ark. Code Ann. § 19-10-211(a). Note: This does not apply to agency admissions of liability and negotiated settlement agreements.

**(3)** Awards or negotiated settlement agreements of $15,000.00 or more are referred to the General Assembly for approval and authorization to pay. Ark. Code Ann. § 19-10-215(b).

| | |
|---|---|
| **From:** | Kathryn Irby |
| **To:** | Jim Jackson; Vincent France |
| **Cc:** | Daiquiri Carter; Martha Cox |
| **Subject:** | ORDER: Hudson v. DHS, Claim No. 230641 |
| **Date:** | Thursday, June 5, 2025 9:47:00 AM |
| **Attachments:** | Hudson v. DHS, Claim No. 230641 - order.pdf |

Jim and Vincent, please see attached order entered by the Commission.

Thanks,
Kathryn Irby

**Kathryn Irby**
**Arkansas State Claims Commission**
101 East Capitol Avenue, Suite 410
Little Rock, Arkansas 72201
(501) 682-2822

**From:** Jim Jackson
**To:** Kathryn Irby; Vincent France
**Cc:** Daiquiri Carter; Martha Cox
**Subject:** RE: ORDER: Hudson v. DHS, Claim No. 230641
**Date:** Thursday, June 5, 2025 10:54:43 AM

Kathryn,
I acknowledge receipt of the Commission's detailed analysis and application of Arkansas law in its well-reasoned Order on the Motion for Reconsideration.
Thank you the effort put into crafting such a meticulous order.
I am sure this Order assist the General Assembly when they review this matter.
It is greatly appreciated.
Jim

**From:** Kathryn Irby <Kathryn.Irby@arkansas.gov>
**Sent:** Thursday, June 5, 2025 9:47 AM
**To:** Jim Jackson <jim@jimjacksonatty.com>; Vincent France <Vincent.P.France@dhs.arkansas.gov>
**Cc:** Daiquiri Carter <Daiquiri.Carter@dhs.arkansas.gov>; Martha Cox <mcox@jimjacksonatty.com>
**Subject:** ORDER: Hudson v. DHS, Claim No. 230641

Jim and Vincent, please see attached order entered by the Commission.

Thanks,
Kathryn Irby

**Kathryn Irby**
**Arkansas State Claims Commission**
101 East Capitol Avenue, Suite 410
Little Rock, Arkansas 72201
(501) 682-2822

**From:** Jim Jackson
**To:** Kathryn Irby
**Subject:** Haley Hudson v. Arkansas DHS; ACC No. 230641
**Date:** Thursday, June 5, 2025 2:27:29 PM
**Attachments:** Hudson v. DHS, Claim No. [redacted] Respondent's Motion for Reconsideration.pdf
Opinion & Order - amended and substituted - filed 3-31-2025.pdf

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Kathryn,
Thank you again for circulating the Commission's Order denying the Reconsideration.
I see one technical issue that may need to be addressed regarding the traumatic brain injury claim of [redacted].

Paragraph 2 states that the decedent's wrongful death beneficiaries received a verdict of $1,500,000

I would suggest that paragraph 2 should be amended to read:

"The Commission awarded a total of $851,000 to the Decedent's estate, $1,000,000 to the Decedent's wrongful death beneficiaries and $500,000 for [redacted]' traumatic brain injury claim, for a total award of $2,251,500."

I have attached a copy of the original Opinion & Order for your review.

Jim

**From:** Jim Jackson
**To:** Kathryn Irby
**Cc:** Vincent France
**Subject:** Re: Haley Hudson v. Arkansas DHS; ACC No. 230641
**Date:** Friday, June 6, 2025 8:44:59 AM

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Kathryn,
Thank you for clarifying and helping me understand.
I appreciate your guidance.
This will assist if the Legislative Committee has a question.
Thank you
Jim

Jim Jackson
Attorney at Law
700 West Broadway St: Suite 2
North Little Rock, AR 72114
(501) 823-3610

On Jun 6, 2025, at 8:10 AM, Kathryn Irby <Kathryn.Irby@arkansas.gov> wrote:

Jim,

It appears that Vincent was inadvertently left off of your email yesterday. I am copying him here.

The Commission cannot take action based on an email.

I would note that the summary paragraphs are intended to be just that – summaries. The Conclusion section of the March 31 order (Paragraph 156) correctly and specifically details the Commission's award. Likewise, the June 5 order specifies on page one that "the Commission's March 31, 2025, order remains in effect."

To the extent that you are asking about the math, I believe that $851,500 + $1,000,000 + $500,000 does equal $2,351,500, which is the total amount listed in both orders.

Thanks,
Kathryn Irby

**Kathryn Irby**
**Arkansas State Claims Commission**
101 East Capitol Avenue, Suite 410

Little Rock, Arkansas 72201
(501) 682-2822

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**From:** Jim Jackson <jim@jimjacksonatty.com>
**Sent:** Thursday, June 5, 2025 2:27 PM
**To:** Kathryn Irby <kathryn.irby@arkansas.gov>
**Subject:** Haley Hudson v. Arkansas DHS; ACC No. 230641

Kathryn,
Thank you again for circulating the Commission's Order denying the Reconsideration.
I see one technical issue that may need to be addressed regarding the traumatic brain injury claim of [redacted].

Paragraph 2 states that the decedent's wrongful death beneficiaries received a verdict of $1,500,000

I would suggest that paragraph 2 should be amended to read:

"The Commission awarded a total of $851,000 to the Decedent's estate, $1,000,000 to the Decedent's wrongful death beneficiaries and $500,000 for [redacted] traumatic brain injury claim, for a total award of $2,251,500."

I have attached a copy of the original Opinion & Order for your review.

Jim
<Hudson v. DHS, Claim No. 230641 -- order Denying respondent's Motion for Reconsideration.pdf>
<Opinion & Order - amended and substituted - filed 3-31-2025.pdf>

**From:** Kathryn Irby
**To:** Jim Jackson; Vincent France
**Cc:** Daiquiri Carter; Martha Cox
**Subject:** RE: ORDER: Hudson v. DHS, Claim No. 230641
**Date:** Wednesday, July 16, 2025 12:53:00 PM
**Attachments:** image001.jpg
image002.jpg
image003.jpg

Jim, I will send this claim file to the Legislature soon. That's the next step. I expect to have it prepped and sent by the end of August.

Kathryn Irby

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**From:** Jim Jackson <jim@jimjacksonatty.com>
**Sent:** Tuesday, July 15, 2025 3:25 PM
**To:** Kathryn Irby <Kathryn.Irby@arkansas.gov>; Vincent France <Vincent.P.France@dhs.arkansas.gov>
**Cc:** Daiquiri Carter <Daiquiri.Carter@dhs.arkansas.gov>; Martha Cox <mcox@jimjacksonatty.com>
**Subject:** RE: ORDER: Hudson v. DHS, Claim No. 230641

Kathryn,
Since more than 20 days have lapsed since the Commission denied the respondent's Motion for Reconsideration, what is the next step procedurally?
Thank you for your assistance.
Jim

Jackson Law Firm
700 W. Broadway, Suite 200
North Little Rock, AR 72114
**P** (501) 823-3610
**F** (501) 823-3611

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**From:** Kathryn Irby <Kathryn.Irby@arkansas.gov>
**Sent:** Thursday, June 5, 2025 9:47 AM
**To:** Jim Jackson <jim@jimjacksonatty.com>; Vincent France <Vincent.P.France@dhs.arkansas.gov>
**Cc:** Daiquiri Carter <Daiquiri.Carter@dhs.arkansas.gov>; Martha Cox <mcox@jimjacksonatty.com>
**Subject:** ORDER: Hudson v. DHS, Claim No. 230641

Jim and Vincent, please see attached order entered by the Commission.

Thanks,
Kathryn Irby

**Kathryn Irby**
**Arkansas State Claims Commission**
101 East Capitol Avenue, Suite 410
Little Rock, Arkansas 72201
(501) 682-2822

**From:** Jim Jackson
**To:** Kathryn Irby
**Cc:** Vincent France
**Subject:** Haley Hudson v. Arkansas DHS; ACC No. 230641
**Date:** Wednesday, September 17, 2025 11:37:19 AM
**Attachments:** [redacted]

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Kathryn,
I hope you are doing well.
My client has asked me to inquire regarding the status of this claim being sent to the BLR.
Thank you for your time on this request.
Jim

Jackson Law Firm
700 W. Broadway, Suite 200
North Little Rock, AR 72114
**P** (501) 823-3610
**F** (501) 823-3611