

UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION
OFFICE OF ADMINISTRATIVE LAW JUDGES



In the Matter of _____
Tronox Limited et al. _____

Docket No. 9377

**NON-PARTY ISHIHARA CORPORATION (U.S.A.)’S MOTION FOR
IN CAMERA TREATMENT OF PROPOSED EVIDENCE**

Ishihara Corporation (U.S.A.) (“ICUSA”) is not a party to the above-captioned matter. Pursuant to Rule 3.45 of the Federal Trade Commission’s Rules of Practice, 16 C.F.R. § 3.45(b), ICUSA respectfully requests that this Court grant *in camera* treatment of several documents that Complaint Counsel and Tronox Limited (“Tronox”) have designated for inclusion into evidence in the administrative trial of this matter. ICUSA produced these documents in response to subpoenas in this matter for both Complaint Counsel and Tronox. ICUSA seeks *in camera* treatment for the following documents:

Complete Non-Disclosure *in camera* treatment is sought for the following documents, attached hereto as Exhibits B, C, and D:

Exhibit No.	Beg. Bates Label	End Bates Label
PX3049	ISH 0001	ISH 0001
PX3050	ISH 0002	ISH 0002
PX3051	ISH 0003	ISH 0003

Partial Non-Disclosure *in camera* treatment is sought for the following document, a list of the redactions is included below and highlighted in attached Exhibit E:

Exhibit No.	Beg. Bates Label	End Bates Label
PX7028	PX7028-001	PX7028-061

The excerpts that ICUSA requests *in camera* treatment are as follows:

13:1 - 14:11; 15:1-3, 11, 18-22; 16:3; 17:22-24; 20:10-17; 21:9-15; 23:7-18; 24:5 – 25:5; 25:11-18; 26:24 – 28:11; 28:17 – 30:13; 37:17 - 38:9; 41:17; 44:9, 11, 15 – 45:13; 45:20- 46:20; 47:10 – 48:6; 48:13, 25 – 49:7; 49:13 – 50:8; 50:10; 52:2; 53:5-12, 15; 54:3, 11, 15, 21; 55:4, 7-8, 10, 17; 56:11-15; 57:11-15; 58:7-9; 60:5-6, 10-16; 65:16-17; 67:16-22; 68:3-23; 71:1-5; 73:4-12; 75:6 – 77:14; 83:20-21, 24 – 84:1; 84:15-21, 23, 25; 85:6, 8-11; 87:1, 5-9, 15-21, 23; 88:1-8, 12 – 89:16; 89:25 - 90:25; 94:10-11, 13-14, 16, 23-24; 95:1-2, 8-10, 19 – 96:10; 96:16-18; 98:14-22; 99:3, 4-6, 8-11, 13, 16-20, 25; 100:1, 4 – 101:12; 101:23-24; 102:1-8; 103:2-3, 12, 14-15, 18-20; 104:6-7, 12-13, 18, 22-24; 106:11-15; 107:20-21, 24; 108:3,7-8, 12-17, 21-25; 109:13-14; 110:10-11, 23 – 112:9; 113:24 - 114:25; 115:20-25; 116:1 - 117:5; 118:4, 10-11; 119:24 – 122:17; 128:5-7, 18-22; 131:23 – 133:10; 134:8-22; 135:1-3, 9-25; 136:2-3, 5, 8-22; 137:6 – 139:8; 139:10-13, 22 – 140:8; 140:24-25; 141:2; 142:2-8, 12-15; 144:23 – 146:6; 147:1-6; 149:1-4; 150:4, 12-15; 151:2 – 153:2; PX7028-042, 108, 135, 135; PX7028-043-060.

Consistent with Rule 3.45(e), ICUSA has conspicuously marked the above excerpts by highlighting the relevant text. ICUSA will provide a redacted version of Exhibit E (PX7028) within five business days of this motion. The Declaration of Marvin Hosokawa in support of this motion is attached as Exhibit A.

ICUSA’S CONFIDENTIAL DOCUMENTS QUALIFY FOR *IN CAMERA* TREATMENT UNDER THE FEDERAL TRADE COMMISSION’S RULES OF PRACTICE

ICUSA’s documents are entitled to *in camera* treatment under the standards set out in 16 C.F.R. § 3.45(b). That section provides for *in camera* treatment of certain business-related information where public disclosure of the document in question “will result in a clearly defined, serious injury to the . . . corporation requesting *in camera* treatment.” *Id.* The requisite showing can be made by establishing that the document or information in question is “sufficiently secret and sufficiently material to the applicant’s business that disclosure would result in serious

competitive injury.” *In re Dura Lube Corp.*, 1999 F.T.C. LEXIS 255, *6 (Dec. 23, 1999) (quoting *General Foods Corp.*, 95 FTC 352, 355 (1980)). In this context, “the courts have generally attempted to protect confidential business information from unnecessary airing.” *H.P. Hood & Sons, Inc.*, 58 F.T.C. 1184, 1188 (1961).

Previous cases have identified six factors to be weighed in determining whether the documents in question are sufficiently secret and sufficiently material that disclosure would result in serious competitive injury:

(1) the extent to which the information is known outside of the applicant’s business; (2) the extent to which the information is known by employees and others involved in the applicant’s business; (3) the extent of measures taken by the applicant to guard the secrecy of the information; (4) the value of the information to the applicant and its competitors; (5) the amount of effort or money expended by the applicant in developing the information; and (6) the ease or difficulty with which the information could be properly acquired or duplicated by others.

Dura Lube, 1999 F.T.C. LEXIS 255 at *6-*7 (quoting *Bristol-Myers Co.*, 90 F.T.C. 455, 456 (1977)).

PUBLIC DISCLOSURE OF ICUSA’S CONFIDENTIAL INFORMATION WOULD RESULT IN SERIOUS COMPETITIVE INJURY TO ICUSA

ICUSA’s documents meet the standards for secrecy and materiality necessary to justify *in camera* treatment. Documents PX3049, PX3050, and PX3051 (attached hereto as Exhibits B, C, and D, respectively), contain confidential sales and customer information of ICUSA which was compiled in response to subpoenas issued by both Complainant and Respondents in this action and designated “Confidential” under the terms of the Protective Order. The deposition transcript of ICUSA’s Vice President of Marketing (PX7028, attached hereto as Exhibit E) contains numerous confidential insights into the operations and strategies of ICUSA and its affiliates. ICUSA has requested that only specific transcript excerpts be kept confidential, as listed above and marked in highlighting in the attached Exhibit E.

A. ICUSA Has Preserved the Secrecy of the Documents and Information in Question

ICUSA has taken significant measures to protect the confidentiality of its information. Such information, which is included in Exhibits B, C, D, and throughout E, is only disclosed to a limited number of ICUSA employees and a narrow set of employees at ICUSA's parent company, Ishihara Sangyo Kaisha Ltd. ("ISK"). Exhibit A, Hosokawa Decl. at 3. The information is not disclosed, nor otherwise known, outside of ICUSA or ISK except where, in limited circumstances, disclosure is necessary to engage in contract negotiations with third parties. (*Id.*). The measures adopted by ICUSA to maintain the confidentiality of its information would make it extremely difficult for its competitors or other third parties to obtain access to or duplicate the information contained in the documents at issue. *Id.*

B. Disclosure of the Information Contained in the Documents in Question Would Result in Serious Competitive Injury to ICUSA.

Exhibits B, C, and D contain sensitive sales and customer information, while Exhibit E contains sensitive confidential information about ICUSA's operations, customers, competitive situation, costs, pricing, sales, and production relating titanium dioxide. (Exhibit A, Hosokawa Decl. ¶ at 4). The deposition transcript (Exhibit E) also contains sensitive information reflecting ICUSA's views on competition and its position in the titanium dioxide market. *Id.* The information in Exhibit E includes the identity of ICUSA's customers, its specific sales techniques and contracting methods, its sales volume sales, production capacity, and details about how ICUSA competes for sales. ICUSA has listed the excerpts in Exhibit E that contain confidential information above and marked the excerpts with highlighting in Exhibit E. Consistent with prior cases, ICUSA has designated only "specific excerpts reflecting confidential information." *In re ECM BioFilms, Inc.*, 2014 FTC LEXIS 189, *9-10 (F.T.C. July 23, 2014).

All of the information for which ICUSA seeks *in camera* protection is highly confidential and commercially sensitive. *Id.* Disclosure of this information would reveal valuable information regarding ICUSA's business operations and strategies in the sale of titanium dioxide, such as information on how pricing decisions are made and how ICUSA competes for sales in the market. *Id.* Disclosure of this information would severely jeopardize ICUSA's ability to negotiate effectively sales of titanium dioxide and could otherwise result in serious damage to ICUSA in the marketplace. *Id.*

C. The Likelihood of Serious Competitive Harm to ICUSA Outweighs the Public Interest in Disclosure of the Documents in Question.

ICUSA deserves "special solicitude" as a non-party to this matter requesting *in camera* treatment for its confidential business information. *In the Matter of Kaiser Aluminum & Chemical Corp.*, 103 F.T.C. 500, 500 (1984) (order directing *in camera* treatment for five-year-old sales statistics of non-parties). Affording *in camera* treatment to the information of non-parties, for reasonable time periods, encourages non-parties such as ICUSA to cooperate with future discovery requests in adjudicative proceedings. *Id.* ICUSA has cooperated with the discovery demands in this case by compiling the information sought by the parties and testifying freely at its deposition. Moreover, "public understanding of this proceeding does not depend on access to" ICUSA's highly confidential information. *Id.* The balance of interests clearly favors *in camera* protection for Exhibits B, C, and D, and partial *in camera* protection for Exhibit E.

D. Protection for ICUSA's Confidential Information Should Extend For 5 Years.

The nature of the highly confidential information contained in Exhibits B, C, D, and Exhibit E warrants lasting protection. Information contained in the documents, including but not limited to, information identifying the customers with whom ICUSA has arrangements for the sale of titanium dioxide, as well as information about ICUSA's sales, costs, supply, and outlook

on the marketplace, is vital to ICUSA's competitive position and business strategy. Accordingly, ICUSA respectfully requests that for Exhibits B, C, and D, be afforded *in camera* protection, and Exhibit E be afforded partial *in camera* protection, for a period of five years.

Respectfully submitted,

 /s/ Joseph A. Meckes
Joseph A. Meckes

Attorney for Ishihara Corporation (U.S.A.)

CERTIFICATE OF SERVICE

The undersigned hereby certifies under penalty of perjury that the following is true and correct. On May 4, 2018, I caused to be served the following documents through the Federal Trade Commission's electronic filing system.

- NON-PARTY ISHIHARA CORPORATION (U.S.A.)'S MOTION FOR IN CAMERA TREATMENT OF PROPOSED EVIDENCE (PUBLIC VERSION)
- NOTICE OF APPEARANCE
- [PROPOSED] ORDER

Courtesy copies have been provided to:

The Office of the Secretary:

(via electronic mail)

Office of the Secretary

Federal Trade Commission

The Office of the Administrative Law Judge

(via electronic mail)

The Honorable D. Michael Chappell

Chief Administrative Law Judge

/s/ Joseph A. Meckes

Joseph A. Meckes

Attorney for Ishihara Corporation (U.S.A.)

STATEMENT REGARDING MEET AND CONFER

The undersigned certifies that counsel for Non-party Ishihara Corporation (U.S.A.) (“ICUSA”) notified counsel for the Federal Trade Commission and counsel for Tronox Limited on April 27, 2018 that it would be seeking complete *in camera* treatment for Exhibits PX3049, PX3050, PX3051, and shared with counsel for both parties the redacted version of PX7028 for which ICUSA was going to seek partial *in camera* treatment. Counsel for the Federal Trade Commission and counsel for Tronox Limited indicated that they would not object to ICUSA’s motion.

Dated: May 4, 2018

 /s/ Joseph A. Meckes
Joseph A. Meckes

Attorney for Ishihara Corporation (U.S.A.)

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
OFFICE OF ADMINISTRATIVE LAW JUDGES

In the Matter of)	
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)	
Tronox Limited et al.)	Docket No. 9377
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PROPOSED ORDER

On May 1, 2018, Non-Party Ishihara Corporation (U.S.A.) (“ICUSA”) filed a motion for *in camera* treatment of confidential business information contained in various documents that have been identified by Complaint Counsel and Tronox Limited as potential exhibits.

IT IS HEREBY ORDERED that ICUSA’s Motion is GRANTED. The information set forth in ICUSA’s exhibits numbered as Exhibits B, C, and D will be subject to *in camera* treatment, and Exhibit E will be subject to partial *in camera* treatment, under 16 C.F.R. § 3.45 and will be kept confidential and not placed on the public record of this proceeding for a period of five years.

- Exhibit B: PX3049.
- Exhibit C: PX3050.
- Exhibit D: PX3051.
- Exhibit E: PX7028, redacted

IT IS FURTHER ORDERED that a redacted version of PX7028, as supplied by ICUSA, will be the version of PX7028 on the public record of this proceeding.

IT IS FURTHER ORDERED that only authorized Federal Trade Commission personnel, and court personnel concerned with judicial review may have access to the above-referenced information, provided that I, the commission, and reviewing courts may disclose such *in camera* information to the extent necessary for the proper disposition of the proceeding.

ORDERED: _____
D. Michael Chappell
Administrative Law Judge

DATED: _____

EXHIBIT A

Declaration of Marvin Hosokawa

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
OFFICE OF ADMINISTRATIVE LAW JUDGES

In the Matter of)
)
)
 Tronox Limited et al.) Docket No. 9377
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**DECLARATION OF MARVIN HOSOKAWA IN SUPPORT OF NON-PARTY
ISHIHARA CORPORATION (USA)'S MOTION FOR *IN CAMERA* TREATMENT OF
PROPOSED EVIDENCE**

I, Marvin Hosokawa, declare as follows:

1. I am currently President and CEO of Ishihara Corporation (U.S.A.) ("ICUSA"). I have reviewed and am familiar with the documents ICUSA produced in the above-captioned matter in response to subpoenas for the same content from both the Federal Trade Commission and Tronox Limited.

2. I have reviewed the documents for which ICUSA seeks *in camera* treatment. As President and CEO of ICUSA, I am familiar with the confidential information contained in the documents at issue. Based upon my review of the documents, my knowledge of ICUSA's business, and my familiarity with the confidentiality protections afforded this type of information by ICUSA, it is my belief that disclosure of these documents would cause serious competitive injury to ICUSA.

[PUBLIC VERSION]

3. ICUSA has taken significant measures to protect the confidentiality of its information. The information contained in Exhibits B, C, D, and E is only disclosed to a limited number of ICUSA employees and a limited number of employees from its Japanese parent company, Ishihara Sangyo Kaisha, Ltd. (“ISK”). The information is not disclosed, nor otherwise known, outside of ICUSA and ISK except where the information relates to or arises from a confidential business relationship with a third party. The measures adopted by ICUSA to maintain the confidentiality of its information would make it extremely difficult for its competitors or other third parties to obtain access to or duplicate the information contained in the documents at issue.

4. Exhibits B, C, and D are charts showing our sales figures and customer lists for certain products. The excerpts in Exhibit E contain the various confidential business information: ICUSA’s product capabilities in the United States, its sales strategy and outlook in the United States and North America, including its sales breakdown by region and sales channels, how sales contracts are negotiated and the type of agreements and contracting practices it uses with customers; ICUSA’s customer names and relationships, the types of purchases made by customers with ICUSA, how and why ICUSA has won or lost customers in the United States and to whom such sales were won or lost; who ICUSA considers its primary competition for each customer and/or product type; ICUSA’s operational details, including its relative size, number of employees, its employees roles and responsibilities, the cost structure of its business, and its pricing and contracting processes; and ICUSA’s supply information based on its knowledge of the production details of its parent, ISK, including the capacities of its facilities, supply and demand constraints, the titanium dioxide production abilities and capacity at each facility relative to ICUSA’s overall demand. All of this information is confidential and

[PUBLIC VERSION]

commercially sensitive. Disclosure of this information would reveal valuable information regarding ICUSA's business operations and strategies for the sale of titanium dioxide, as well as could be used to determine the pricing and other competitively sensitive terms of ICUSA's arrangements for the sale of titanium dioxide. Disclosure of this information would severely jeopardize ICUSA's ability to negotiate effectively for the sale of titanium dioxide and could otherwise result in serious damage to ICUSA in the marketplace.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on April 30, 2018.



Marvin Hosokawa

EXHIBIT B

PX3049

(Confidential - Not Included in the Public Version)

EXHIBIT C

PX3050

(Confidential - Not Included in the Public Version)

EXHIBIT D

PX3051

(Confidential - Not Included in the Public Version)

EXHIBIT E

PX7028

(Confidential – Redactions in the Public Version)

In the Matter of:
Tronox and Cristal

March 21, 2018
David Duenwald

Condensed Transcript with Word Index



For The Record, Inc.
(301) 870-8025 - www.ftrinc.net - (800) 921-5555

1

1 UNITED STATES OF AMERICA
 2 FEDERAL TRADE COMMISSION
 3 OFFICE OF THE ADMINISTRATIVE LAW JUDGE
 4
 5 TRONOX LIMITED, a Corporation,
 6 and File No.
 7 CRISTAL USA, INC., a Corporation. D09377
 8 _____/
 9
 10
 11 CONTAINS HIGHLY CONFIDENTIAL TESTIMONY
 12 Videotaped Deposition of
 13 DAVID DUENWALD
 14 Volume 1 (Pages 1 - 157)
 15 Wednesday, March 21, 2018
 16
 17
 18 Reported by:
 LEIGH ANN OROZCO, CSR No. 7607
 19
 20
 21
 22
 23
 24
 25

3

1 APPEARANCES (Continued)
 2 Also Present:
 3 Kasey T. Ingram, General Counsel and Chief
 Compliance Officer
 4 ISK Americas Incorporated
 5 Ken Reeser, Videographer
 6
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1 APPEARANCES
 2
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 24
 25

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1 I N D E X
 2
 3 WITNESS EXAMINATION PAGE
 4 DAVID DUENWALD BY MR. PRUITT 8, 146
 5 BY MR. EDMONDSON 80, 150
 6
 7 --o0o--
 8 EXHIBITS
 9 DEPOSITION OF DAVID DUENWALD
 10 Wednesday, March 21, 2018
 11 EXHIBITS DESCRIPTION PAGE
 12 Ex 1 Document entitled "TiO2
 Pigment Annual Review, A
 13 Review of 2014"; 156 pages
 14 Ex 2 Document entitled "TiO2
 Pigment Annual Review";
 15 253 pages
 16 Ex 3 Ishihara Corporation (USA) 33
 Summary of Sales of Selected
 TiO2 Grades 2015, Bates ISH
 17 0001, CONFIDENTIAL FTC DOCKET
 No. 9377; 1 page
 18 Ex 4 Ishihara Corporation (USA) 33
 Summary of Sales of Selected
 TiO2 Grades 2016, Bates ISH
 19 0002, CONFIDENTIAL FTC DOCKET
 No. 9377; 1 page
 20 Ex 5 Ishihara Corporation (USA) 33
 Summary of Sales of Selected
 TiO2 Grades 2017, Bates ISH
 21 0003, CONFIDENTIAL FTC DOCKET
 No. 9377; 1 page
 22
 23
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5

1 EXHIBITS (Continued)
 2 DEPOSITION OF DAVID DUENWALD
 3 Wednesday, March 21, 2018
 4
 5 Exhibit Description Page
 6 Ex 6 Fibre2Fashion.com print story 73
 dated 8/13/13; 1 page
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1 275 Battery Street, Suite 2600, San Francisco,
 2 California, and was noticed by Andrew Pruitt of
 3 Kirkland & Ellis.
 4 The court reporter today is Leigh Ann Orozco
 5 of For The Record.
 6 Counsel, please identify yourselves and
 7 state whom you represent.
 8 MR. PRUITT: Andrew Pruitt, Kirkland &
 9 Ellis, for Tronox.
 10 MR. HONG: Don Hong from Kirkland & Ellis
 11 for Tronox Limited.
 12 MR. EDMONDSON: Eric Edmondson, Federal
 13 Trade Commission.
 14 MR. TENG: Albert Teng from Arnold & Porter
 15 on behalf of the Cristal respondents.
 16 MR. INGRAM: Kasey Ingram, general counsel
 17 of Ishihara Corporation USA.
 18 MR. MECKES: Joe Meckes, Squire Patton
 19 Boggs, for the witness.
 20 THE VIDEOGRAPHER: Thank you.
 21 If there are no stipulations, the reporter
 22 may administer the affirmation.
 23 THE REPORTER: Mr. Duenwald, would you raise
 24 your right hand, please?
 25 Do you solemnly state that the testimony you

6

1 BE IT REMEMBERED that on Wednesday, March 21,
 2 2018, commencing at the hour of 9:05 a m., in the LAW
 3 OFFICES OF SQUIRE PATTON BOGGS, LLP, 275 Battery
 4 Street, Suite 2600, San Francisco, California, before
 5 me, LEIGH ANN OROZCO, a Certified Shorthand Reporter
 6 in and for the State of California, personally
 7 appeared
 8 DAVID DUENWALD,
 9 called as a witness herein, who, having been duly
 10 sworn, was thereupon examined and testified as
 11 hereinafter set forth.
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 13 --o0o--
 14 THE VIDEOGRAPHER: Good morning. This is
 15 the beginning of DVD Number 1 of Volume 1 in the
 16 deposition of David Duenwald in the matter of Tronox
 17 Limited versus Cristal USA Inc. in the US Federal
 18 Trade Commission, Office of the Administrative Law
 19 Judge, File Number D09377.
 20 Today's date is March 21st, 2018. The time
 21 is 9:05 a m.
 22 The videographer today is Ken Reeser
 23 representing For The Record, Inc., 10760 Demarr Road,
 24 White Plains, Maryland.
 25 This deposition is taking place at

8

1 are about to give in this matter will be the truth,
 2 the whole truth, and nothing but the truth, so help
 3 you God?
 4 THE WITNESS: Yes.
 5 THE REPORTER: Thank you.
 6 EXAMINATION
 7 BY MR. PRUITT:
 8 **Q. Good morning, Mr. Duenwald.**
 9 A. Good morning.
 10 **Q. Could you please state and spell your full**
 11 **name for the record?**
 12 A. Yeah, David Duenwald. And D-a-v-i-d
 13 D-u-e-n-w-a-l-d.
 14 **Q. Okay. Thank you.**
 15 **Have you ever given a deposition before?**
 16 A. This is the first one.
 17 **Q. All right. So we will cover some ground**
 18 **rules. You may have already heard some of this from**
 19 **your attorneys, but you understand that today I'll be**
 20 **asking you questions and you have to give verbal**
 21 **responses?**
 22 A. Yes.
 23 **Q. If you don't understand my question, will**
 24 **you please let me know?**
 25 A. Yes, I will.

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1 **Q. Do you understand you can take a break**
 2 **anytime today as long as there is not a question**
 3 **pending?**
 4 A. Yes.
 5 **Q. And of course you understand you are under**
 6 **oath today?**
 7 A. Yes, I do.
 8 **Q. Is there any reason why you cannot give**
 9 **full, accurate and truthful testimony today?**
 10 A. No.
 11 **Q. All right. Your employer is Ishihara**
 12 **Corporation USA; is that right?**
 13 A. That's right.
 14 **Q. Does it go by ICUSA?**
 15 A. ICUSA.
 16 **Q. ICUSA.**
 17 A. Or Ishihara.
 18 **Q. So if I want to refer to ICUSA, should I use**
 19 **that term or should I say something else?**
 20 A. Ishihara might be easier to get out,
 21 depending on your Japanese familiarity.
 22 THE VIDEOGRAPHER: Mr. Duenwald, could I
 23 have you move your water bottle to one side or the
 24 other?
 25 MR. MECKES: And if it helps, Andrew, if you

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1 want to refer to the parent company, you can call
 2 them ISK.
 3 **Q. BY MR. PRUITT: That works for me if that**
 4 **works for you.**
 5 A. Yeah, that's how we usually refer to it.
 6 ISK is the whole entity, I guess, of the parent and
 7 subsidiaries.
 8 **Q. Okay. Now, if I want to refer to the parent**
 9 **and the subsidiaries collectively, what term should I**
 10 **use?**
 11 A. ISK Group, probably, if that sounds good to
 12 you.
 13 **Q. Okay. And you will understand that to refer**
 14 **to ISK and ICUSA and the other subsidiaries?**
 15 A. Yes.
 16 **Q. Tell you what. That's probably going to**
 17 **confuse me now.**
 18 A. I was going to say maybe if you use ISK
 19 Japan for our parent company, ISK Group for the whole
 20 mob of us, and Ishihara for our US subsidiary. I
 21 guess that's what I'm used to.
 22 **Q. Okay. Here is what I'll propose. I would**
 23 **like to use the term Ishihara to refer to the whole**
 24 **group collectively, ISK for the Japanese parent and**
 25 **ICUSA for the US subsidiary. Can we agree on that?**

11

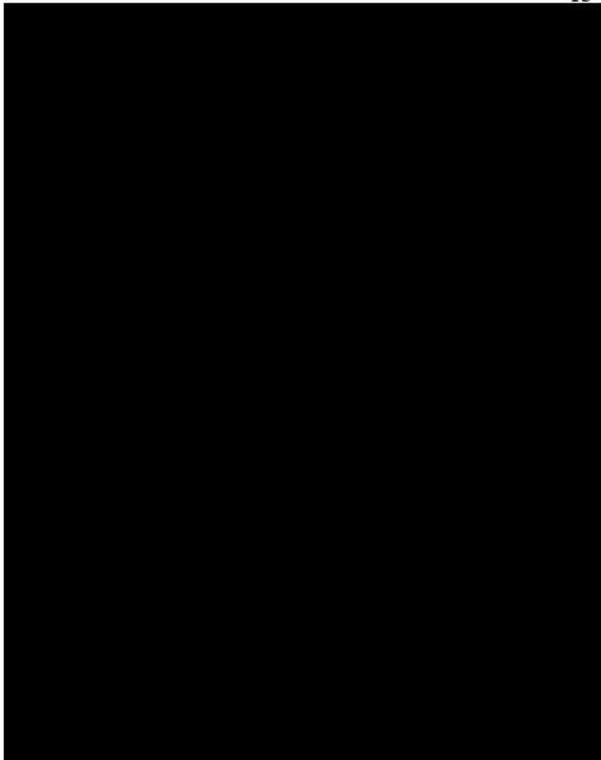
1 A. Yeah, I'll try to keep it in mind. There
 2 may be some confusion. When I hear Ishihara,
 3 sometimes I'm thinking of only our own subsidiary
 4 here. But I'll try to keep it in mind. If you can
 5 remind me too if I get off.
 6 MR. MECKES: We'll do our best.
 7 **Q. BY MR. PRUITT: Yeah, we'll do our best.**
 8 A. Okay, thanks.
 9 **Q. And of course if at any point you are**
 10 **confused, please let me know and I will be happy to**
 11 **clarify.**
 12 A. Okay, thanks.
 13 **Q. Okay. Mr. Duenwald, you are currently the**
 14 **vice president of marketing at ICUSA; is that right?**
 15 A. That's correct.
 16 **Q. You have been at ICUSA for almost 33 years?**
 17 A. Yes, that's right.
 18 **Q. Have you held any other positions during**
 19 **your time at ICUSA?**
 20 A. Different titles, but I have had the same
 21 job basically for the 33 years.
 22 **Q. And what have been your responsibilities**
 23 **over that period?**
 24 A. Sales of Ishihara's pigment products in
 25 North America.

12

1 **Q. And what do you mean by sales?**
 2 A. Exchanging goods for money. I don't know
 3 what you mean exactly.
 4 **Q. Sure. What I mean is what do you mean your**
 5 **responsibilities are with respect to sales?**
 6 A. Oh, I see. I call on customers and make
 7 arrangements for basically general agreements for
 8 supply of titanium dioxide to customers in mostly the
 9 United States. Some outside the United States but
 10 all of North America.
 11 **Q. Okay. So then your job responsibilities are**
 12 **with respect to sales limited to North America; is**
 13 **that right?**
 14 A. Yes, that's correct.
 15 **Q. And as part of your responsibilities, do you**
 16 **know where the TiO2 that you arrange for sales, where**
 17 **it is coming from?**
 18 A. Yes, I do.
 19 **Q. And of course you know where the customer is**
 20 **located who purchases the TiO2?**
 21 A. Yes.
 22 **Q. And when you say North America, I**
 23 **understand -- are you referring to United States plus**
 24 **Canada?**
 25 A. Yes, that's pretty much it.

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[REDACTED]

Q. Okay. Does ICUSA exclusively sell to end users of TiO2 or do you also sell to other distributors of TiO2?

A. We sometimes sell to distributors also.

Q. Approximately how many of your purchasers are customers versus distributors?

A. If you look at tonnage, doing the math, just -- less [REDACTED] would say, routinely would go to distributors.

Q. Okay. And do you at ICUSA know ultimately where that TiO2 that is sold to a distributor ends up?

A. Not always, but in most cases, yes. If it is significant, then I would know. I'd say maybe [REDACTED]

[REDACTED]

Q. -- of total sales in the United --

A. Of TiO2 sales.

Q. Let me just get my question out just for the

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[REDACTED]

Q. And which subsidiary is that?

A. It is ISK Biocides. I believe that is the name.

MR. INGRAM: It is actually ISK Biosciences that she does the work for, not Biocides.

MR. PRUITT: Okay. I heard "cides."

MR. INGRAM: He said that.

THE WITNESS: That's what I thought it was.

MR. INGRAM: It's confusing. Cides is in Memphis, but the work is for Biosciences, which is in Cleveland.

MR. PRUITT: Okay. Thank you.

Q. Who at ICUSA has responsibility for setting the sales price of the TiO2 that it sells?

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record to be clear.

A. Sure.

Q. You are saying [REDACTED] of ICUSA's total sales of TiO2 in North America, approximately, are to distributors?

A. I think that is right.

Q. Okay. And I think you touched on my next question, which was does ICUSA exclusively sell TiO2 in North America?

A. Are there other companies that also sell TiO2 for Ishihara? Is that the question?

Q. No. My question is does ICUSA sell any other product in North America?

A. Okay. We sell only Ishihara TiO2 in North America, that's correct.

Q. Okay. So TiO2, that's also exclusively from Ishihara?

A. From IS- -- yeah, from ISK. I guess I'm getting confused already here, but yes.

Q. But from that group?

A. That's right.

Q. Okay. Now, are there other ISK subsidiaries in North America that sell something other than TiO2?

A. Yes, there are.

Q. Okay. Can you explain that, please?

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1 A. And I'm not so familiar with the other
 2 companies of ISK subsidiaries here. But we have
 3 generally a biosciences business, which is primarily
 4 pesticide/crop protection, I think is the current
 5 term, and related products. And I think that is most
 6 of the other sales in North America would be related
 7 to crop protection chemicals.
 8 **Q. Okay. And today all of the TiO2 that ICUSA**
 9 **sells in North America is produced in Japan; is that**
 10 **right?**
 11 A. That's correct.
 12 **Q. Does ICUSA compete with other suppliers in**
 13 **North America?**
 14 A. Yes.
 15 **Q. Who are those suppliers?**
 16 MR. EDMONDSON: Objection. Vague as to
 17 what's being supplied.
 18 MR. PRUITT: Can you hear him?
 19 THE REPORTER: Yes.
 20 THE WITNESS: Do I answer?
 21 **Q. BY MR. PRUITT: Yes, you still answer.**
 22 [REDACTED]
 23 [REDACTED]
 24 [REDACTED]
 25 [REDACTED]

1 They may have small offices in India, but
 2 I'm not even sure. I think the main offices would be
 3 those: Korea, Taiwan, Singapore and US. And I
 4 believe in Shanghai, they have someone also.
 5 **Q. Okay. And are those subsidiaries involved**
 6 **in the business of selling or distributing TiO2?**
 7 A. Yes.
 8 **Q. And would that be TiO2 exclusively produced**
 9 **by ISK?**
 10 A. I'm not a hundred percent sure for the
 11 subsidiaries. I would think so, based on my
 12 understanding. But I'm not involved much with those
 13 businesses.
 14 **Q. Okay. Is ISK a global producer of TiO2?**
 15 MR. INGRAM: Objection. Vague as to the
 16 term "global."
 17 THE WITNESS: I'm not sure. Certainly they
 18 have sales in a number of foreign countries. So
 19 under that definition, yes.
 20 **Q. BY MR. PRUITT: Do you know how many**
 21 **continents ISK sells its TiO2 in?**
 22 A. I believe they sell in North America,
 23 Europe, Asia, Australia, Africa.
 24 **Q. When you say Asia, would that include**
 25 **Asia-Pacific?**

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1 A. And also some importers also, probably, of a
 2 variety.
 3 **Q. Who would those be?**
 4 A. I'm not even sure of the names. A number
 5 from China that are sold through brokers. It seems
 6 like with the acquisitions recently. That's all I
 7 can think of right now of importers.
 8 **Q. Do you know where these brokers are located?**
 9 A. No, I really don't.
 10 **Q. All right. And of course you understand I'm**
 11 **referring to TiO2?**
 12 A. Yes.
 13 **Q. Now, I understand ICUSA is a wholly owned**
 14 **subsidiary of ISK; is that right?**
 15 A. That's right.
 16 **Q. To your knowledge, does ISK have other**
 17 **subsidiaries that operate outside North America?**
 18 A. Yes, they do.
 19 **Q. What are those, to your knowledge?**
 20 A. The ones that I'm familiar with are in
 21 Taiwan, ISK Taiwan. There is an ISK Korean office.
 22 I'm not sure what the name is. There is an
 23 international office in Singapore. And that's all I
 24 can think of right now. I think that -- are the main
 25 ones.

1 A. Yes.
 2 **Q. ISK is the largest TiO2 producer in Japan, I**
 3 **understand; is that right?**
 4 A. That is my understanding also.
 5 **Q. Does ICUSA operate wholly and independently**
 6 **of ISK?**
 7 A. We work together with ISK.
 8 **Q. Okay. Can you maybe just explain what that**
 9 **relationship is?**
 10 [REDACTED]
 11 [REDACTED]
 12 [REDACTED]
 13 [REDACTED]
 14 [REDACTED]
 15 [REDACTED]
 16 [REDACTED]
 17 [REDACTED]
 18 MR. EDMONDSON: Objection. Foundation.
 19 Leading.
 20 THE WITNESS: Yes, I would say that's
 21 probably so.
 22 **Q. BY MR. PRUITT: And the same for the other**
 23 **subsidiaries of ISK?**
 24 A. To the best of my understanding.
 25 MR. EDMONDSON: Objection. Foundation.

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1 THE WITNESS: To the best of my
 2 understanding, yes.
 3 Q. BY MR. PRUITT: For ICUSA, how does that
 4 work? How do you -- how is it determined how much
 5 volume is shipped to ICUSA to be distributed in North
 6 America?
 7 MR. EDMONDSON: Objection. Vague as to the
 8 term "volume."



16 MR. EDMONDSON: Objection.
 17 Q. BY MR. PRUITT: Who do you report to,
 18 Mr. Duenwald?
 19 A. Marvin Hosokawa, the president of ICUSA.
 20 Q. And do you know who he reports to?
 21 A. No, not exactly. ISK generally, but I --
 22 specifically, there's probably quite a few people
 23 that he would say.
 24 THE REPORTER: Exhibit 1 marked for
 25 identification.

1 Yokkaichi plant?
 2 A. Yokkaichi, yes.
 3 Q. Yokkaichi?
 4 A. Yes.
 5 Q. That is an ISK TiO2 plant in Japan, right?
 6 A. Yes.



19 Yokkaichi plant, correct?
 20 A. Yes, that's correct.
 21 Q. There is also a reference on this page to
 22 plants at Hiratsuka and Kobe?
 23 A. Yes.
 24 Q. Does ISK still own the Hiratsuka and Kobe
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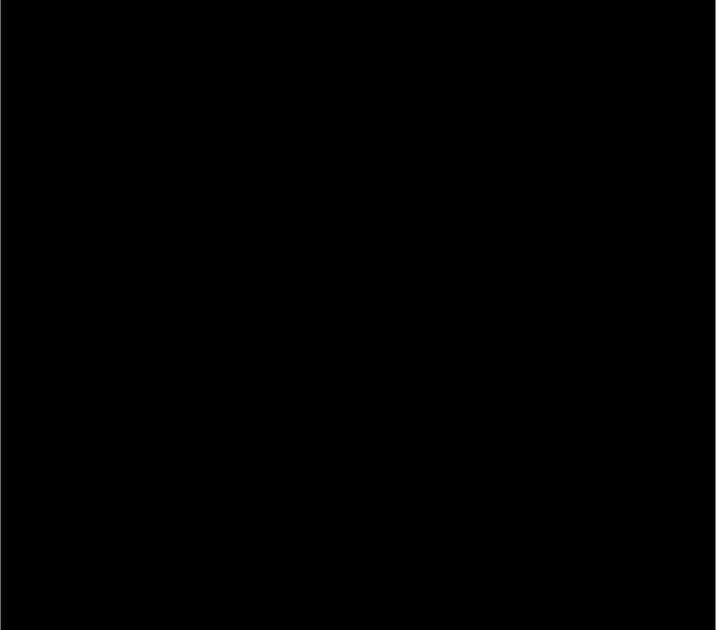
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1 Q. BY MR. PRUITT: All right, Mr. Duenwald.
 2 I'm handing you what we just marked as Exhibit 1 to
 3 your deposition. Take a moment to review this
 4 document.
 5 My first question, though, is do you
 6 recognize this as a report generated by TZMI?
 7 MR. EDMONDSON: Objection. Leading.
 8 THE WITNESS: I can see that that is what is
 9 on the title page.

10 Q. BY MR. PRUITT: Are you familiar with TZMI?
 11 A. Yes, vaguely. I know they do these kinds of
 12 reports.
 13 Q. Is ICUSA a subscriber to TZMI's data or
 14 reports?
 15 A. ICUSA is not.
 16 Q. Do you know if ISK is?
 17 A. I don't know if they are or not.
 18 Q. Does ICUSA consume TZMI data or reports in
 19 any form?
 20 A. Not that I'm aware of.
 21 Q. Okay. I want to direct your attention to
 22 page 110.
 23 A. Okay.
 24 Q. And feel free to review this page, but my
 25 first question is I see a reference to -- oh, the

1 plants?
 2 A. Yes.
 3 Q. What kind of plants are these? What kind of
 4 TiO2 do they produce?



1 [REDACTED]
2 [REDACTED]
3 [REDACTED]
4 [REDACTED]
5 [REDACTED]

6 Q. Did you tell me whether Fuji Titanium is
7 still a wholly owned subsidiary of ISK?

8 A. Yes, it is.

9 Q. They are?

10 A. Yes.

11 [REDACTED]
12 [REDACTED]
13 [REDACTED]
14 [REDACTED]
15 [REDACTED]
16 [REDACTED]
17 [REDACTED]
18 [REDACTED]

19 Q. The next sentence reads: ISK produces a
20 full line of TiO2 grades for coatings, inks, plastic
21 and paper applications and is the primary market
22 leader in Japan.

23 A. Yes.

24 Q. Did I read that correctly?

25 A. Yes, that's true.

1 annual review for 2011?

2 A. Yes.

3 MR. EDMONDSON: Objection. Foundation.
4 Leading.

5 THE WITNESS: That is what it says on the
6 cover sheet.

7 Q. BY MR. PRUITT: So let me direct your
8 attention to page 207, please.

9 A. Yes.

10 Q. The very first paragraph of page 207 reads:
11 ISK remains the leading supplier of high-quality
12 products in the Asia-Pacific region. However, it is
13 now facing much more intense competition from newer
14 pigment plants in China, Australia, Malaysia and
15 Taiwan.

16 Did I read that correctly?

17 A. Yes, you did.

18 Q. Is that an accurate statement?

19 A. Yes.

20 MR. EDMONDSON: Objection. Foundation.
21 Calls for speculation.

22 Q. BY MR. PRUITT: Okay. Let me direct you to
23 the third paragraph on this page.

24 [REDACTED]
25 [REDACTED]

1 Q. Is that true?

2 A. Yes, I believe that is true.

3 Q. It says here that the company does not
4 report volumes of TiO2 produced or sold. Is that
5 true?

6 A. I was not aware of that, but I...

7 Q. You were saying you don't have knowledge?

8 A. I don't know one way or the other.

9 MR. MECKES: Don't speculate.

10 Q. BY MR. PRUITT: Yeah, to be clear, I was
11 asking -- and I'm going to be asking for your
12 knowledge today in the deposition.

13 A. I understand.

14 Q. Okay. Let me hand you another document.
15 You can set this one aside. And you will want to
16 keep them in a single stack for Leigh Ann at the end
17 of the day.

18 THE REPORTER: Exhibit 2 marked for
19 identification.

20 Q. BY MR. PRUITT: All right. We have handed
21 you what we have marked as Exhibit 2. This is
22 another TZMI report. Is this a report that you
23 recognize?

24 A. It is the first time I've seen it.

25 Q. Does it appear to be a TZMI TiO2 pigment

1 [REDACTED]
2 [REDACTED]
3 [REDACTED]
4 [REDACTED]
5 [REDACTED]
6 [REDACTED]
7 [REDACTED]
8 [REDACTED]
9 [REDACTED]
10 [REDACTED]
11 [REDACTED]

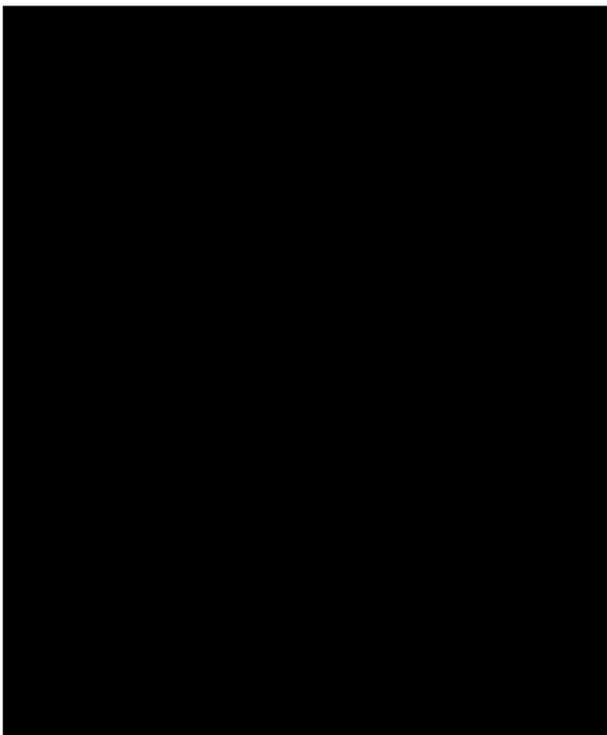
12 MR. EDMONDSON: Objection. Foundation.

13 Q. BY MR. PRUITT: I'm sorry, I couldn't hear
14 you.

15 A. Yes.

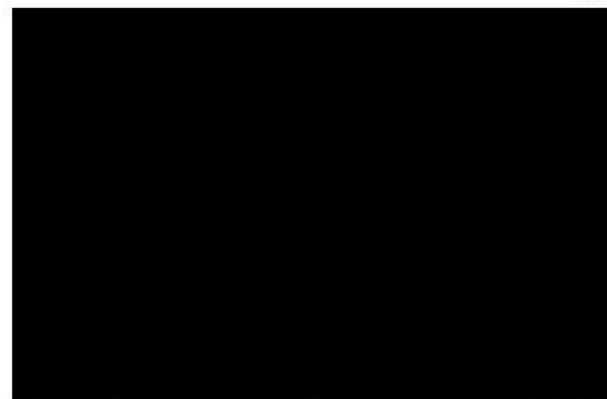
16 Q. And what do you know about that agreement?
17 [REDACTED]
18 [REDACTED]
19 [REDACTED]
20 [REDACTED]
21 [REDACTED]
22 [REDACTED]
23 [REDACTED]
24 [REDACTED]
25 [REDACTED]

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1 **Q. And I don't want to get into any --**
2 MR. MECKES: Don't disclose anything that we
3 talked about.
4 **Q. BY MR. PRUITT: Yeah, I'm not asking for the**
5 **substance of any of your communications. Just**
6 **generally what you did to prepare.**
7 A. So we discussed the subpoena and likely
8 procedures today.
9 **Q. Okay. And you are aware that ICUSA received**
10 **a subpoena both for your testimony but also for the**
11 **production of some documents?**
12 A. Yes.
13 **Q. And in response, ICUSA did produce**
14 **documents?**
15 A. We did, yes.
16 **Q. Were you involved in the process of pulling**
17 **those documents together?**
18 A. No, I really wasn't.
19 **Q. Do you know who was?**
20 A. Not exactly. I would just be guessing, I
21 guess.
22 **Q. To your knowledge, ICUSA produced all**
23 **relevant and responsive documents to that subpoena?**
24 A. Yes.
25 MR. MECKES: I'm going to object to the form

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14 **Q. And when you say "we," do you mean ICUSA?**
15 A. ICUSA, that's right, a subsidiary.
16 **Q. Okay. You can set that one aside.**
17 **Now, Mr. Duenwald, we didn't cover this up**
18 **front, but you understand today that you are**
19 **testifying as a representative for ICUSA?**
20 A. Yes, I do.
21 MR. EDMONDSON: Objection. Foundation.
22 **Q. BY MR. PRUITT: What did you do today --**
23 **what did you do to prepare for your testimony today?**
24 A. I read through the subpoena that we received
25 and then discussed it with -- with Mr. Meckes.

1 of that question. I think we kind of engaged in a
2 back-and-forth with other folks at Kirkland & Ellis,
3 and there was a limited series of communications
4 limiting the scope of the subpoena. And I think that
5 I'll represent to you that we produced the documents
6 that were within the scope of that limited subpoena.
7 MR. PRUITT: Sure. We'll say subject to
8 obviously what we negotiated with counsel in terms of
9 limiting the scope.
10 MR. MECKES: Fair enough.
11 **Q. BY MR. PRUITT: But to your knowledge, all**
12 **the documents subject to that caveat were produced?**
13 A. Yes.
14 MR. EDMONDSON: Objection. Foundation.
15 Leading.
16 MR. MECKES: And just to be clear, what we
17 produced was -- we actually created a document or
18 series of documents setting forth certain information
19 about customers and volumes of sales, et cetera.
20 MR. PRUITT: Right. Well I'm going to show
21 him those documents and I'll want to see what he can
22 speak to about that.
23 MR. MECKES: Fair enough. And if this is a
24 good time, I'll object -- not object. I'll designate
25 this testimony as confidential under the protective

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1 order.
 2 MR. PRUITT: Anytime is a good time for that
 3 indeed. As long as you say it, is all.
 4 No objection to that, by the way.
 5 THE REPORTER: Attorneys' eyes only or --
 6 MR. MECKES: I think there's one level of
 7 confidentiality in this -- in this matter.
 8 MR. PRUITT: We'll just say subject to the
 9 terms of the protective order that is set forth in
 10 the case. Are you fine with that?
 11 MR. MECKES: To the extent there is any
 12 change in the protective order such that it becomes a
 13 two-level, we would be designated as highly
 14 confidential, yes.
 15 MR. PRUITT: Okay. We are going to mark
 16 three exhibits and hand you those exhibits. And they
 17 will be --
 18 THE REPORTER: 3 through 5.
 19 MR. PRUITT: -- 3, 4 and 5.
 20 THE REPORTER: Exhibits 3, 4 and 5 marked
 21 for identification.
 22 MR. EDMONDSON: Just to be clear, ISH 0001
 23 is Exhibit 3 to this deposition?
 24 MR. PRUITT: That's correct.
 25 MR. EDMONDSON: And then ISH 0002 is

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1 Exhibit 4 to this deposition?
 2 MR. PRUITT: That's right.
 3 MR. EDMONDSON: And then ISH 0003 would be
 4 Exhibit 5 to this deposition.
 5 MR. PRUITT: That's right.
 6 MR. EDMONDSON: Thank you.
 7 MR. PRUITT: You are stealing my thunder,
 8 Eric.
 9 **Q. I was going to ask you, have we put in front**
 10 **of you Exhibits 3, 4 and 5 that are bearing the Bates**
 11 **ISH 0001, ISH 0002 and ISH 0003 respectively?**
 12 A. Yes.
 13 **Q. Do you recognize these documents?**
 14 A. Yes, I do.
 15 **Q. What are they?**
 16 A. These are a list of our TiO2 sales of
 17 certain grades over a three-year period year by year.
 18 **Q. Okay. ISH 0001 is for 2015?**
 19 A. Yes, that's right.
 20 **Q. 0002 is for 2016?**
 21 A. Yes.
 22 **Q. 0003 is for 2017?**
 23 A. Yes.
 24 **Q. You said certain grades. What do you mean**
 25 **by that?**

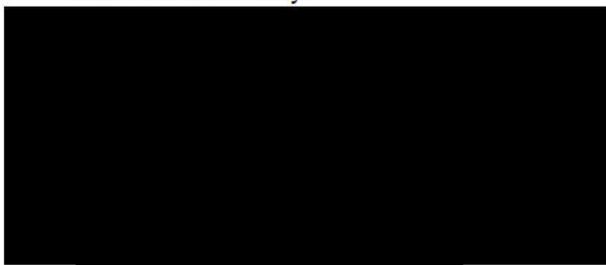
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1 A. The grades that are listed there, CR-50,
 2 CR-50-2, et cetera. This is a list of our sales of
 3 those grades.
 4 **Q. Okay. Well, with respect to Exhibit 3, were**
 5 **there other grades of TiO2 that ICUSA sold in 2015**
 6 **that are not reflected on this exhibit?**
 7 A. There are other TiO2 grades, yes, that we
 8 sold that are not part of this.
 9 **Q. To your knowledge, what are those grades?**
 10 A. It would be hard for me to list all of them.
 11 Generally speaking, they would be the sulfate grades
 12 that we sell.
 13 **Q. Okay.**
 14 A. Sulfate process grades.
 15 **Q. And why were the sulfate process grades**
 16 **excluded from this list?**
 17 A. I don't know why not.
 18 MR. MECKES: Well --
 19 THE WITNESS: Perhaps they weren't asked
 20 for.
 21 MR. MECKES: I'll put into the record that
 22 we had an exchange with Mr. Avallone of your office,
 23 and he identified specific grades that Tronox was
 24 interested in here.
 25 **Q. BY MR. PRUITT: So then the grades that are**

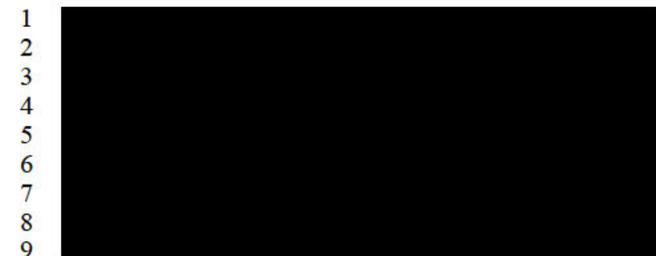
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1 **listed here are, to your understanding, those that**
 2 **were specifically requested?**
 3 MR. MECKES: Just to move things along, I'll
 4 try to explain.
 5 So Mr. Avallone sent us a list of grades.
 6 These are the grades. This isn't all of the grades
 7 that he listed because the grades that -- these are
 8 the only grades that he listed that were actually
 9 sold.
 10 So to the extent a grade was listed by
 11 Mr. Avallone and it is not shown on this list, it was
 12 not sold during the relevant time period. So in
 13 other words, if there is another grade that is on his
 14 list and it is not shown here, then from -- you know,
 15 say in Exhibit 3 in 2015, ICUSA did not sell that
 16 grade.
 17 **Q. BY MR. PRUITT: Okay. Well, I'm going to**
 18 **ask sort of the converse of that.**
 19 **Are there any grades -- and this is, I**
 20 **guess, a question for both of you. Are there any**
 21 **grades of TiO2 that were sold in 2015 that were not**
 22 **listed?**
 23 A. Yes, that's true.
 24 **Q. Okay. And that --**
 25 A. TiO2.

1 Q. -- were not asked for by Mr. Avallone?
 2 A. That's true, yes.
 3 Q. Okay. To your knowledge --
 4 A. I guess I can't say -- I don't know what he
 5 asked for, I should say.
 6 MR. MECKES: Right.
 7 THE WITNESS: We do have other grades.
 8 MR. MECKES: I mean if it is of interest,
 9 during the break I can get the e-mail. But I don't
 10 think you are --
 11 MR. PRUITT: No, I don't need the e-mail.
 12 But let me just try to get his knowledge of just the
 13 other sulfate grades, and we'll ignore, for purposes
 14 of my questions, what may or may not have been asked
 15 for by my colleague.
 16 THE WITNESS: Okay.



1 Q. And I see here below the grades a box
 2 entitled "Customer" and what looks like a list of
 3 customers; is that right?
 4 A. Yes.
 5 Q. Are these all the customers that would have
 6 been sold the grades listed on the page?
 7 A. I believe that's true but --
 8 MR. MECKES: Object to the form.
 9 THE WITNESS: -- it's hard for me -- I
 10 didn't go through the -- our sales list myself. But
 11 it looks like that might be what it is.
 12 Q. BY MR. PRUITT: Okay. And the sulfate TiO2
 13 grades that you just listed, would those have been
 14 sold to these customers or to some other group of
 15 customers?
 16 A. Some were sold to these customers and some
 17 were sold to other customers as well.
 18 Q. Okay. And if you don't mind, to your
 19 knowledge, could you list some of the other customers
 20 that are not on this page on these exhibits that
 21 those sulfate TiO2 grades would have been sold to?
 22 A. Yes, I can. I'm not sure -- I guess -- just
 23 trying not to violate the confidence of the customers
 24 that we have. But certainly I know that information.
 25 Q. Sure. And that's partly why everything is



10 Q. Okay. Thank you.
 11 All the grades you just listed, those are
 12 sulfate grades?
 13 A. Those are sulfate-process grades.
 14 Q. And those are sold in North America?
 15 A. Yes.
 16 Q. Okay. I'm going to ask you the same
 17 question, if you don't mind, for 2016 and 2017.
 18 A. Yes, it looks like it is the same grades
 19 that are covered by the -- in the sales that are
 20 listed here, just a select number of chloride grades
 21 and sulfate grades are not listed. So, in those
 22 years also we sold those same grades I mentioned, the
 23 sulfate-process grades.
 24 Q. Okay. Thank you. In North America?
 25 A. Yes, in North America.

1 subject to confidentiality. So, subject to any
 2 objections from your counsel --
 3 MR. MECKES: Well, the only question that I
 4 would have is -- and maybe we need to take a break
 5 and confer about this -- is whether or not there
 6 might be an NDA with the customer such that notice
 7 would have to be given before disclosing.
 8 THE WITNESS: Yeah, that would be hard for
 9 me to even remember whether -- if we have any, they
 10 would be -- have been made a long time ago and out of
 11 my thinking right now. It's possible.
 12 MR. PRUITT: Well subject to objections on
 13 the basis of attorney-client privilege or something
 14 like that, I don't think there is going to be any
 15 basis for him not to disclose that during the
 16 deposition.
 17 MR. MECKES: Well, I think there is
 18 because -- we don't need to argue about it, but maybe
 19 you can -- maybe you can move to the next line of
 20 questioning, and he and I can talk during the break
 21 and then we can decide what we are going to do.
 22 MR. PRUITT: Okay.
 23 Q. Well, before I move on, let me just ask you,
 24 are there any customers not on this list to whom you
 25 sold those sulfate TiO2 grades who you know are not

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1 **subject to any nondisclosure agreements or**
 2 **confidentiality agreements that you can disclose**
 3 **today?**
 4 A. That would be hard for me to say. Like I
 5 say, I really don't know which ones we have those
 6 kinds of agreements with. And especially because
 7 sometimes -- I just -- I'm not a lawyer, but I know
 8 there are purchase contracts and things that they
 9 send to us with language that I don't even understand
 10 on the back of them. And I'm just not sure what that
 11 says or what kind of weight it has.
 12 **Q. Understood.**
 13 **Can you tell me approximately how many**
 14 **customers at least would have been purchasing that**
 15 **sulfate TiO2?**
 16 A. Pretty -- mostly a guess. I would say
 17 probably -- [REDACTED].
 18 **Q. And they would be located in North America?**
 19 A. Yes.
 20 **Q. Are any of the customers that are listed**
 21 **here on this exhibit, to your knowledge, subject to**
 22 **these nondisclosure or confidentiality agreements**
 23 **that you are referring to?**
 24 A. I just don't know which of our customers
 25 would be subject to those agreements.

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1 **Q. Okay. But it is possible that these**
 2 **customers would also be subject to that?**
 3 A. Possible. Yes, it's possible.
 4 MR. PRUITT: Okay. Well, do you want to
 5 take a break now?
 6 MR. MECKES: Sure. Seems like as good a
 7 time as any.
 8 THE VIDEOGRAPHER: Don't forget your
 9 microphones, please.
 10 The time is 9:55 a.m. We are off the
 11 record.
 12 (Recess taken.)
 13 THE VIDEOGRAPHER: The time is 10:09 a.m.
 14 We are back on the record.
 15 **Q. BY MR. PRUITT: Okay. Mr. Duenwald, I**
 16 **understand you have a comment or correction you**
 17 **wanted to make to prior testimony; is that right?**
 18 A. Yes. On the ownership of Ishihara
 19 Corporation USA, we are a hundred percent owned by
 20 ISK Americas. And ISK Americas is one hundred
 21 percent owned by ISK Japan.
 22 **Q. Okay. Is ISK Americas just a holding**
 23 **company?**
 24 A. I don't know how to comment on ISK Americas.
 25 MR. MECKES: Tell him what you know.

43

1 THE WITNESS: It's a parent company in
 2 Cleveland, Ohio.
 3 **Q. BY MR. PRUITT: Sorry. Do you know if they**
 4 **have any business activities or operations in the**
 5 **United States?**
 6 A. My best understanding is that is also the
 7 parent company of the other US subsidiary companies.
 8 **Q. Okay. But do you know if they themselves**
 9 **have any --**
 10 A. ISK Americas?
 11 **Q. Correct. If they have any business**
 12 **operations or activities themselves in the United**
 13 **States, sales distribution?**
 14 A. I believe a holding company would be my best
 15 understanding of the role of ISK Americas, yes.
 16 **Q. Okay. I appreciate that clarification. And**
 17 **if at any other time during the day you realize you**
 18 **need to make a comment or clarification for the**
 19 **record, of course feel free to do that at any time.**
 20 A. Okay. Thank you.
 21 **Q. Now, turning your attention back to**
 22 **Exhibit 3. To clarify, is it your understanding that**
 23 **Exhibits 3, 4 and 5 were created based on information**
 24 **maintained in the ordinary course of business by**
 25 **ICUSA?**

44

1 A. Yes.
 2 **Q. And do you recall before the break I was**
 3 **asking you about some of the purchasers of the**
 4 **sulfate TiO2 grades that were not listed on these**
 5 **exhibits?**
 6 A. Yes.
 7 **Q. Can you identify who those purchasers are?**
 8 A. Yes, I will try to recall who they are. I
 9 know that [REDACTED] purchases sulfate grades as well
 10 as -- sulfate grades as well as chloride grades.
 11 [REDACTED]
 12 **Q. And I'm sorry to interrupt, but just for the**
 13 **benefit of Leigh Ann, would you mind spelling some of**
 14 **these companies when you say them?**
 15 [REDACTED]
 16 [REDACTED]
 17 [REDACTED]
 18 [REDACTED]
 19 [REDACTED]
 20 [REDACTED]
 21 [REDACTED]
 22 [REDACTED]
 23 [REDACTED]
 24 [REDACTED]
 25 [REDACTED]

45

1 [REDACTED]

2 [REDACTED]

3 [REDACTED]

4 [REDACTED]

5 [REDACTED]

6 [REDACTED]

7 [REDACTED]

8 [REDACTED]

9 [REDACTED]

10 [REDACTED]

11 [REDACTED]

12 [REDACTED]

13 [REDACTED]

14 **Q. Okay. Thank you.**

15 **These are all North American purchasers of**

16 **sulfide TiO2 grades from ICUSA, correct?**

17 **A. Yes, that's correct.**

18 **Q. Do you know if each of these also purchased**

19 **chloride TiO2 grades from ICUSA?**

20 [REDACTED]

21 [REDACTED]

22 [REDACTED]

23 [REDACTED]

24 [REDACTED]

25 [REDACTED]

47

1 **A. The grades listed are all chloride-process**

2 **grades.**

3 **Q. And that's true for Exhibit 3, 4 and 5?**

4 **A. For 3, 4 and 5, yes, that's true.**

5 **Q. It says here on the realtime sulfide. Can**

6 **you clarify the grades listed on Exhibits 3, 4 and 5**

7 **are all chloride or all --**

8 **A. They are all chloride-process.**

9 **Q. Okay. Thank you.**

10 [REDACTED]

11 [REDACTED]

12 [REDACTED]

13 [REDACTED]

14 [REDACTED]

15 [REDACTED]

16 [REDACTED]

17 [REDACTED]

18 [REDACTED]

19 [REDACTED]

20 [REDACTED]

21 [REDACTED]

22 [REDACTED]

23 [REDACTED]

24 [REDACTED]

25 [REDACTED]

46

1 [REDACTED]

2 [REDACTED]

3 [REDACTED]

4 [REDACTED]

5 [REDACTED]

6 [REDACTED]

7 [REDACTED]

8 [REDACTED]

9 [REDACTED]

10 [REDACTED]

11 [REDACTED]

12 [REDACTED]

13 [REDACTED]

14 [REDACTED]

15 [REDACTED]

16 [REDACTED]

17 [REDACTED]

18 [REDACTED]

19 [REDACTED]

20 [REDACTED]

21 **Q. Okay. And I believe you may have said this**

22 **earlier, but for the grades that are listed on**

23 **Exhibits 3, 4 and 5, are those exclusively chloride**

24 **grades or any of those sulfide grades -- sulfate**

25 **grades?**

48

1 [REDACTED]

2 [REDACTED]

3 [REDACTED]

4 [REDACTED]

5 [REDACTED]

6 [REDACTED]

7 **MR. MECKES: Object to the form of that**

8 **question.**

9 **THE WITNESS: I just -- I would need to look**

10 **at the numbers, I think, to be able to tell you what**

11 **the percentage would be.**

12 **Q. BY MR. PRUITT: Okay. But there are**

13 **approximately [REDACTED] companies -- excuse me -- customers**

14 **listed here?**

15 **A. Yeah. Some of them very small. And of**

16 **course some of them buy much larger volume. So that**

17 **is why if you look at the total volume of what we**

18 **sell to a hundred percent customers where we have a**

19 **hundred percent share, I'd just have to look at our**

20 **numbers and then I could make a calculation. But it**

21 **is hard for me to do it off the top of my head.**

22 **Q. Understood. But just to the best of your**

23 **knowledge, you are saying that for Exhibits 3, 4 and**

24 **5, of the customers listed on those exhibits**

25 **approximately [REDACTED]**

1 [REDACTED]
 2 [REDACTED]
 3 [REDACTED]
 4 [REDACTED]
 5 [REDACTED]
 6 [REDACTED]
 7 [REDACTED]

8 **Q. BY MR. PRUITT:** Okay. Now for the customers
 9 that are not listed on Exhibits 3, 4 and 5 that you
 10 just listed on the records for us who purchase
 11 sulfate TiO2 from ICUSA, who do you compete with for
 12 that business?

13 [REDACTED]
 14 [REDACTED]
 15 [REDACTED]
 16 [REDACTED]
 17 [REDACTED]
 18 [REDACTED]
 19 [REDACTED]
 20 [REDACTED]
 21 [REDACTED]
 22 [REDACTED]
 23 [REDACTED]
 24 [REDACTED]
 25 [REDACTED]

1 sales and dollar sales. Do you see that?
 2 A. Yes.

3 **Q. What is that table?**
 4 A. Just a list of sales in short tons and in
 5 dollars by month for those grades.

6 **Q. What are short tons?**
 7 A. 2,000 pounds.

8 **Q. Do you know how that would translate to a
 9 metric ton?**

10 A. Yes, it would be -- but I don't have the
 11 number in my head -- around 0.9.

12 **Q. Around 0.9?**
 13 A. 0.9 metric tons would be approximately a
 14 short ton, yes.

15 **Q. Okay.**
 16 A. I should have that number down by now but
 17 calculators have erased it from my memory.

18 **Q. Fair enough. And of course dollar sales
 19 would be US dollar?**

20 A. Yes, US dollars, yes.

21 **Q. It looks like you break out the short ton
 22 sales and dollar sales per month for each year and
 23 also provide a grand total for each year; is that
 24 right?**

25 A. Yes, that's right.

1 [REDACTED]
 2 [REDACTED]
 3 [REDACTED]
 4 [REDACTED]
 5 [REDACTED]
 6 [REDACTED]
 7 [REDACTED]

8 **Q. And just for the record, I have that you
 9 have listed [REDACTED] those companies. Does that sound
 10 right to you?**

11 A. I am surprised I listed that many, but yeah,
 12 I'll take your word for it.

13 **Q. Does that sound right to you?**

14 A. Sounds right to me.

15 **Q. I believe you said that was not an
 16 exhaustive list; is that right?**

17 A. That's right.

18 **Q. Do you know approximately how many other
 19 companies that there may have been that you can't
 20 recall the names?**

21 A. Probably there is a handful, like four or
 22 five.

23 **Q. Okay. Now, I see here that there is a table
 24 on Exhibits 3, 4 and 5 with the columns month, ST
 25**

1 **Q. So ICUSA total sales in dollars in 2015 were
 2 [REDACTED] is that right?**

3 A. Yes, that's right. For those grades.

4 **Q. Okay. Right. For those grades.**

5 **Do you happen to know approximately what
 6 your total sales in dollars would be for all TiO2
 7 sold by ICUSA in 2015?**

8 A. It would be a guess. I --
 9 MR. MECKES: Don't guess.

10 THE WITNESS: -- should know more about
 11 this, but I really don't know.

12 **Q. BY MR. PRUITT: And would the same answer be
 13 true for 2016 and 2017?**

14 A. That's right, yes. I wouldn't want to
 15 guess. I don't routinely keep much track of exactly
 16 what the total sales were.

17 **Q. Okay. But you keep that information at
 18 ICUSA?**

19 A. We do have that information, yes.

20 **Q. Can I ask why you use short ton units as
 21 opposed to metric tons?**

22 A. Because most of our sales in North America
 23 are in 50-pound bags, and so it works out to even
 24 numbers then.

25 **Q. Okay. And is that dry powder?**

1 A. Yes, mostly. Yes. In fact, all of them are
2 dry powder.

3 Q. Where is all of the TiO2 sold by ICUSA
4 imported to?

5 [REDACTED]
6 [REDACTED]
7 [REDACTED]
8 [REDACTED]
9 [REDACTED]
10 [REDACTED]
11 [REDACTED]
12 [REDACTED]

13 Q. Okay. I want to ask you to take a look at
14 both Exhibit 4 and Exhibit 5.

15 Do you see that [REDACTED] is a customer in
16 2017 but it is not a customer in 2016?

17 A. Yes.

18 Q. Do you know why that is?

19 A. Yes, I do.

20 Q. Why is that?

21 A. There is a new grade that they are
22 interested in and we -- they weren't interested in it
23 prior to 2017.

24 Q. What grade is that?

25 A. It's PFC-105.

1 Q. Okay. But to your knowledge, it is true
2 that they were a customer in 2016 but not 2017?

3 A. I just -- like I say, I don't have much
4 recollection of [REDACTED]. They have not been a major
5 customer during the time I have been at Ishihara.
6 They most likely purchased a very small quantity.

7 Q. Okay. I see the same thing for [REDACTED]
8 [REDACTED] is that right? That they are a customer
9 in 2016 but not 2017?

10 A. Yes, [REDACTED] -- in fact, they have
11 changed their name and I can't remember what their
12 new name is either. But, yes, I believe they
13 purchased some sample quantities for testing and it
14 didn't -- we didn't get a major relationship, major
15 commercial relationship.

16 Q. Okay. And then finally I see the same thing
17 for [REDACTED]. They are a customer in 2016 but
18 not 2017; is that right?

19 A. I think they are in 2017 also.

20 Q. Oh, you're right. Okay. They are listed in
21 both.

22 A. Yeah, they are there each year.

23 Q. Okay. Mr. Duenwald, do you have any
24 knowledge of any of your TiO2 customers switching to
25 other suppliers at any time?

1 Q. Is that a sulfate or chloride grade?

2 A. That's a chloride grade.

3 Q. I see also that [REDACTED]
4 is a customer in 2017 but not a customer in 2016; is
5 that right?

6 A. Yes, that's right.

7 Q. Do you know why that is?

8 A. And it is the same reason. They are also
9 interested in PFC-105 and that is a recent
10 development.

11 Q. Okay. I see that [REDACTED]
12 was a customer in 2016 but not a customer in 2017; is
13 that right?

14 A. Yes, according to this. I was trying to
15 remember [REDACTED] customer -- [REDACTED] products does
16 not -- I do not recall even any relationship with
17 them. I am -- although I don't know, I would assume
18 that must be a very small sale. And I may not have
19 even been involved.

20 I do remember -- I do have a folder that
21 says [REDACTED] on it, and I remember going through my
22 files wondering, What is that company, why do I have
23 that file? And so I really can't recall. But maybe
24 they have got a sample and purchased a bag or
25 something as a larger sample.

1 A. Yes.

2 Q. Approximately how many of your customers
3 have switched to other suppliers?

4 A. Customers that we no longer sell to among
5 those that are still our customers or --

6 Q. And, in fact, I'm asking you either way. So
7 customers that have either switched from another
8 supplier to ICUSA or customers that have switched
9 from ICUSA to another supplier.

10 MR. EDMONDSON: Objection. Compound.
11 THE WITNESS: Yes, certainly there are both.
12 It is hard for me to put a number on it. But it
13 happens frequently.

14 Q. BY MR. PRUITT: Okay. And why does it
15 happen frequently?

16 A. Because of -- sometimes because of pricing,
17 sometimes because of quality, sometimes changes in
18 business, sometimes plant shutdowns or movement of
19 production from one site to another. I can think of
20 a number of cases.

21 Q. Is this true for customers who purchased
22 both chloride- and sulfate-grade TiO2?

23 A. Yes.

24 MR. EDMONDSON: I'll object to that last
25 question as leading.

1 MR. PRUITT: As what now?
 2 MR. EDMONDSON: Leading.
 3 MR. PRUITT: Okay.
 4 You can hear him?
 5 THE REPORTER: I can hear him.
 6 **Q. BY MR. PRUITT: Do customers who switch from**
 7 **ICUSA to other suppliers give you notice of that?**
 8 A. Not always but usually.
 9 **Q. When they give you notice, what do you do?**
 10 MR. EDMONDSON: Objection. Vague.
 11 [REDACTED]
 12 [REDACTED]
 13 [REDACTED]
 14 [REDACTED]
 15 [REDACTED]
 16 **Q. BY MR. PRUITT: You will try to accommodate**
 17 **whatever it is that they are seeking to --**
 18 A. Sometimes that's true.
 19 **Q. For you to retain the volume?**
 20 A. Sometimes we are not able to and sometimes
 21 it is an issue that we are not really able to
 22 address.
 23 **Q. Okay. When customers switch from other**
 24 **suppliers to ICUSA, generally how does that work?**
 25 A. Usually it is, I guess, in -- either a

1 to maintain level of sales.
 2 **Q. Which of your competitors do you consider**
 3 **the most aggressive in terms of competition?**
 4 A. I would say if -- different aspects. I
 5 think on product quality and it would also depend on
 6 some extent the industry that we were looking at, all
 7 of the competitors, especially the US suppliers
 8 are -- I have the highest respect for. I think they
 9 are all very high-quality materials and they are
 10 usually very responsive on pricing and so it is -- I
 11 guess that's probably why earlier I said it is a very
 12 competitive market and that's what makes it
 13 competitive. I think they are very -- they are very
 14 good companies that we compete against.
 15 **Q. And just to be clear, you said it depends on**
 16 **some extent the industry that we are looking at. Are**
 17 **you referring to the end-use application of the TiO2**
 18 **product?**
 19 A. Yes.
 20 **Q. Okay. What about the Chinese, are you**
 21 **competitive with the Chinese?**
 22 MR. EDMONDSON: Objection. Vague as to the
 23 term "the Chinese."
 24 THE WITNESS: Generally speaking with the
 25 Chinese material, yes, I would say we have to be

1 question of product quality or service or pricing.
 2 Depending on really the time and what our -- I think
 3 what our situation is, whether we are looking for
 4 additional volumes or not.
 5 **Q. Okay. And typically do customers reach out**
 6 **to you or do you reach out to customers?**
 7 [REDACTED]
 8 [REDACTED]
 9 [REDACTED]
 10 **Q. And do you actively seek out business in**
 11 **that sense?**
 12 A. Yes. Yes, we do.
 13 **Q. Is that true for both your chloride and**
 14 **sulfate TiO2 products?**
 15 A. Yes, it is.
 16 **Q. In your experience, is the TiO2 industry**
 17 **highly competitive?**
 18 A. Yes, it is.
 19 MR. EDMONDSON: Objection. Vague as to the
 20 term "foundation" and vague as to the term
 21 "competitive."
 22 **Q. BY MR. PRUITT: Can you describe that for**
 23 **me, please?**
 24 A. That I think there is a lot of -- you have
 25 to compete both on price and product quality in order

1 somewhat competitive with the Chinese, yes.
 2 **Q. BY MR. PRUITT: Which Chinese TiO2 company**
 3 **is most aggressive in terms of competition in your**
 4 **experience?**
 5 [REDACTED]
 6 [REDACTED]
 7 **Q. And why are they, in your experience -- or I**
 8 **should say how are they most aggressive in terms of**
 9 **competition?**
 10 [REDACTED]
 11 [REDACTED]
 12 [REDACTED]
 13 [REDACTED]
 14 [REDACTED]
 15 [REDACTED]
 16 [REDACTED]
 17 **Q. Are you seeing an increasing presence of**
 18 **Chinese TiO2 supply in the United States?**
 19 A. Yes.
 20 MR. EDMONDSON: Objection. Vague as to the
 21 term "increasing presence," and foundation.
 22 **Q. BY MR. PRUITT: Is that true for both**
 23 **chloride and sulfate TiO2?**
 24 A. Yes, it is.
 25 **Q. Are you seeing increasing quality of Chinese**

61

1 **TiO2 being imported into the United States?**
 2 A. Yes, I'm seeing that as well.
 3 MR. EDMONDSON: Objection. Vague as to the
 4 term "quality."
 5 **Q. BY MR. PRUITT: Are the Chinese TiO2**
 6 **producers becoming increasingly competitive with**
 7 **ICUSA over time?**
 8 MR. EDMONDSON: Objection. Leading.
 9 Foundation.
 10 THE WITNESS: I would say they are getting
 11 to be stronger competitors, yes. Especially looking
 12 over the past ten years, I think they are -- they are
 13 stronger -- they have stronger positions now than
 14 they did last year, the year before, yes. So I would
 15 say each year they are probably getting stronger.
 16 **Q. BY MR. PRUITT: Are you increasingly losing**
 17 **customers who are switching over to Chinese**
 18 **producers?**
 19 MR. EDMONDSON: Objection. Leading.
 20 Foundation.
 21 THE WITNESS: No, I don't think -- it hasn't
 22 been a major problem for us in the recent past, I
 23 would say. A couple of years ago I think there were
 24 some cases where we lost some volume to Chinese
 25 suppliers because of dramatically lower prices that

62

1 were being offered.
 2 **Q. BY MR. PRUITT: In your experience are you**
 3 **seeing the Chinese TiO2 producers compete with the**
 4 **other suppliers of TiO2 in North America?**
 5 MR. EDMONDSON: Objection. Foundation.
 6 THE WITNESS: Yes, I think they are getting
 7 to be more competitive and we are seeing them I think
 8 in -- add more customers.
 9 **Q. BY MR. PRUITT: And what does that look like**
 10 **that it is getting more competitive?**
 11 A. That I think there are more technical
 12 directors, for example, I talk with who have tested
 13 Chinese grades, I'm hearing more reports that certain
 14 grades have been approved, and I'm hearing from
 15 purchasing managers that they received offers for --
 16 that have been of interest they are pursuing.
 17 **Q. Is price one of the factors as to why**
 18 **Chinese TiO2 producers are becoming more competitive**
 19 **in North America?**
 20 A. Yes, I think it is.
 21 **Q. What role does quality of Chinese TiO2**
 22 **product play in your experience?**
 23 A. It's a -- it's a major factor. Price and
 24 quality are both major factors.
 25 **Q. And how is quality a major factor?**

63

1 A. That if -- in some cases even if the price
 2 is lower, they may need to use a larger volume of the
 3 Chinese product in order to get the same results, get
 4 the same appearance as what you would get with a
 5 grade from a US supplier of Ishihara, I think, or
 6 say -- basically performance, I guess. That there
 7 are various performance characteristics that aren't
 8 easy to disperse or durability or kinds of things
 9 that TiO2 customers are looking to improve.
 10 **Q. Okay. I want to switch gears a little bit**
 11 **and ask you about customers that switch between**
 12 **chloride and sulfate TiO2 products.**
 13 A. Sure.
 14 **Q. Are you aware of customers that do in fact**
 15 **switch between chloride and sulfate TiO2 products?**
 16 A. Yes, I am.
 17 **Q. How common is that?**
 18 A. It's not real common but it is not uncommon
 19 either. It's -- I think -- certainly it happens. I
 20 would say it is not very common but it does happen.
 21 **Q. To your knowledge what drives that?**
 22 A. Either -- depends again. It is complicated
 23 reasons that customers make supply decisions or which
 24 suppliers to purchase from. But I would say
 25 sometimes it is based on quality, sometimes it is

64

1 based on price, sometimes it is based on shortages of
 2 product that are not available for one reason or
 3 another.
 4 **Q. Is it your understanding that generally a**
 5 **customer who purchases TiO2 has to approve or**
 6 **formulate their product to be able to take either a**
 7 **chloride or a sulfate TiO2?**
 8 MR. EDMONDSON: Objection. Foundation.
 9 Leading.
 10 THE WITNESS: I'm not sure I understand that
 11 question. Do you mean do they need specifically some
 12 applications would require chloride only, some
 13 require sulfate?
 14 MR. EDMONDSON: Objection. Nonresponsive.
 15 Move to strike.
 16 **Q. BY MR. PRUITT: That's not quite what I'm**
 17 **asking. What I'm saying is a customer purchases a**
 18 **particular grade of TiO2, right, and it's typically**
 19 **used in one of their products; is that right?**
 20 A. Yes.
 21 **Q. And what I'm asking is does that particular**
 22 **product have to be formulated to accept a particular**
 23 **grade of TiO2?**
 24 A. Oh, okay. Sometimes -- let me put it this
 25 way. There are some products if they are formulated

1 with a particular chloride grade, for example, it
2 would be -- it would require a change in the
3 formulation for them to use a sulfate grade and vice
4 versa.

5 **Q. Okay. So I'll refer to those as**
6 **reformulations.**

7 A. Okay.

8 **Q. Are you aware of any of your customers who**
9 **reformulate their product to accept either chloride**
10 **or sulfate TiO2?**

11 A. Yes, I am.

12 **Q. How common is that?**

13 A. It happens. Yeah, it's not uncommon.

14 **Q. How many of your customers do that to your**
15 **knowledge?**

16 [REDACTED]

17
18
19 **in your experience?**

20 A. I would say -- I need to think about it a
21 minute just because of the -- I think -- I would say
22 probably more common because of the fact that supply
23 situation currently is rather tight, and so in order
24 to take advantage of more purchasing opportunities, I
25 think that there may be more consideration of

1 TiO2 suppliers. Smaller customers, I would say
2 that's where it is probably -- you see more often
3 that they rely on a single source.

4 **Q. For the larger customers that do have**
5 **multiple TiO2 suppliers, do you see that -- in your**
6 **experience is that a source of leverage that they use**
7 **over suppliers?**

8 A. Yes, I think it is.

9 **Q. How so?**

10 A. They can -- if they receive a favorable
11 price from one supplier, they will let you know and
12 expect you to meet that price.

13 **Q. Will they threaten to reduce volume from you**
14 **to increase volume to another supplier?**

15 A. That certainly happens, yes.

16 [REDACTED]

17
18
19
20
21
22
23 **Q. And is ICUSA ever on the other side of that**
24 **equation where you are using your -- you are being --**
25 **strike that -- where a customer is using ICUSA as**

1 changing formulations to accept either a sulfate or a
2 chloride grade.

3 **Q. In your experience does that give customers**
4 **leverage over suppliers in that they can switch to**
5 **other suppliers?**

6 MR. EDMONDSON: Objection. Leading.
7 Foundation. Vague as to the term "leverage."

8 THE WITNESS: Yes, I would say that it does
9 give customers more power negotiating if they can use
10 both types.

11 **Q. BY MR. PRUITT: Now, just generally in the**
12 **TiO2 industry, is it your experience that customers**
13 **do have significant leverage over suppliers?**

14 A. Oh, yes, I think they do.

15 **Q. Why is that?**

16 A. Because of the purchase volumes that they
17 control.

18 **Q. And what do you mean by that?**

19 A. We need the volume, we need to sell, and the
20 customers are the ones who are in control of that
21 decision of who they purchase from, how much they
22 purchase.

23 **Q. In your experience do customers generally**
24 **have multiple TiO2 suppliers?**

25 A. Larger customers generally have multiple

1 **leverage over another supplier? Do you understand**
2 **that?**

3 [REDACTED]

24 **Q. Okay. Switching gears again slightly.**
25 **Let's talk about the applications for the TiO2**

69

71

1 products that ICUSA sells. Can you give me an
 2 overview, what types of end uses and applications are
 3 the TiO2 products that you sell used for?
 4 A. Yeah. Paint and coatings, inks, plastics.
 5 That pretty much covers most -- I guess some kinds of
 6 concrete coloring. Coloring of various materials.
 7 Q. Are your chloride TiO2 products used in the
 8 paint and coatings industry?
 9 A. Yes, they are.
 10 Q. Are your sulfate TiO2 products used in the
 11 paint and coatings industry?
 12 A. Yes, they are.
 13 Q. Are your chloride TiO2 products used in the
 14 plastics industry?
 15 A. Yes.
 16 Q. What about your sulfate TiO2 products?
 17 A. Sulfate also, yes.
 18 Q. And then for inks, is that just sulfate?
 19 A. Both chloride and sulfate.
 20 Q. It is both?
 21 A. Yes.
 22 Q. Okay. Do your customers have specific
 23 requirements for TiO2 packaging, how it is packaged?
 24 A. Some of them do, some are more flexible.
 25 Q. Okay. And the ones that do, what do they

1 [REDACTED]
 2 [REDACTED]
 3 [REDACTED]
 4 [REDACTED]
 5 [REDACTED]
 6 Q. Mr. Duenwald, do you know of any customers
 7 that blend sulfate TiO2 with chloride TiO2 in their
 8 products?
 9 A. I don't think I do, no. I can't think of a
 10 case.
 11 Q. Mr. Duenwald, would you agree that the TiO2
 12 industry is cyclical?
 13 MR. EDMONDSON: Objection.
 14 THE WITNESS: Yes.
 15 MR. EDMONDSON: Leading. Foundation. Vague
 16 as to the term "cyclical."
 17 Q. BY MR. PRUITT: Can you describe that,
 18 please?
 19 A. There are times when product is in short
 20 supply, and it is more of a seller's market, and
 21 there are others times when there is an oversupply
 22 and it is a buyer's market.
 23 Q. And does it cycle between seller's markets
 24 and buyer's markets?
 25 A. Yes.

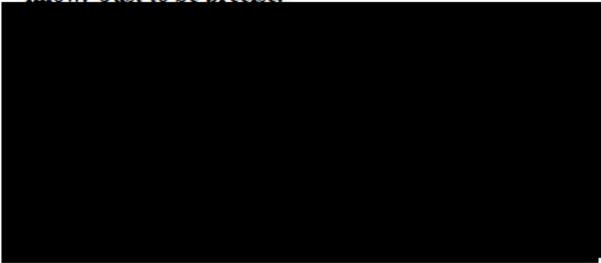
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1 require?
 2 A. There are some that require 50-pound bags or
 3 25-kg bags, smaller bags, and there are some who
 4 require semi-bulk containers.
 5 MR. PRUITT: Leigh Ann, my realtime --
 6 THE REPORTER: Can we pause for a second?
 7 MR. PRUITT: Sure.
 8 (Pause in proceedings.)
 9 Q. BY MR. PRUITT: Do any of your customers
 10 have specific requirements for either dry TiO2
 11 packaging or in slurry form?
 12 A. Yes. Yes, some of them do.
 13 Q. And what are those requirements?
 14 A. I'm not sure what you mean. Which
 15 applications you mean or?
 16 Q. No, I mean --
 17 MR. EDMONDSON: Objection. Nonresponsive.
 18 Q. BY MR. PRUITT: No, what I'm asking is can
 19 you just describe to me the customers that have
 20 particular preferences, what preference do they have?
 21 A. The -- for slurry systems, that's usually
 22 larger paint companies, and for dry it's probably
 23 every other application and also smaller users for
 24 paint and coatings.
 25 Q. Does ICUSA create the slurry?

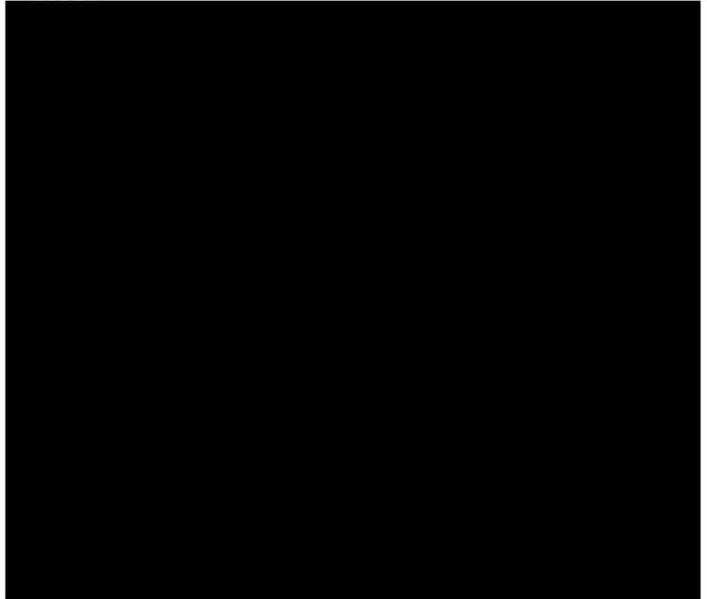
1 MR. EDMONDSON: Objection. Leading.
 2 THE WITNESS: I think it does. I guess
 3 maybe from a seller's perspective it seems to be a
 4 buyer's market more of the time. But it might just
 5 be my way of looking at it.
 6 Q. BY MR. PRUITT: It might just be your
 7 perspective?
 8 A. Exactly.
 9 Q. Approximately how long are these cycles?
 10 A. That is what I was thinking. I think that
 11 the cycles where there is short supply tend to be
 12 relatively short, at least two or three years, but
 13 there have been fairly long periods where there has
 14 been an oversupply that has been more of a buyer's
 15 market I think. So that's where I guess I'm thinking
 16 the number of years I have been in the industries,
 17 certainly there have been more years that it has been
 18 a buyer's market than a seller's market.
 19 Q. And do you see this happening on a global
 20 basis?
 21 A. Yes, I do.
 22 Q. Where are we currently in the cycle, if you
 23 know?
 24 MR. EDMONDSON: Objection. Calls for
 25 speculation.

1 THE WITNESS: It's a good question.
 2 **Q. BY MR. PRUITT: Well, it can if I say you**
 3 **know. Just to be precise.**

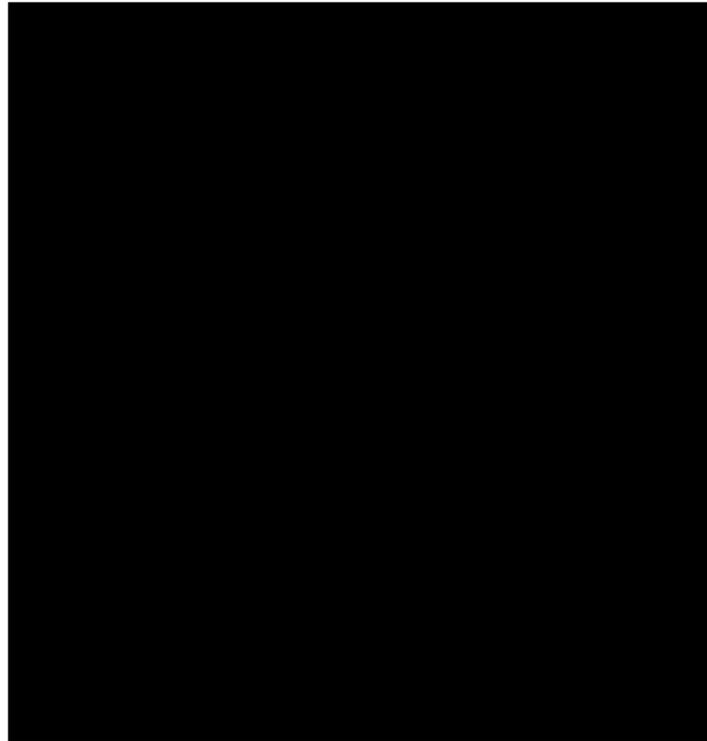


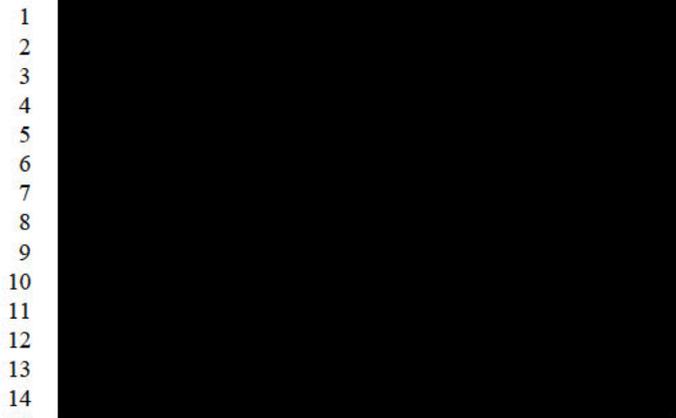
13 **Q. Okay. I'm going to show you another**
 14 **exhibit.**
 15 THE REPORTER: Exhibit 6 marked for
 16 identification.
 17 MR. MECKES: You can set them aside.
 18 **Q. BY MR. PRUITT: Okay. Mr. Duenwald, I have**
 19 **handed you a document we have marked as Exhibit 6.**
 20 **And does this appear to you to be a news report dated**
 21 **August 13, 2013, entitled "Ishihara Sangyo to close**
 22 **Singapore titanium dioxide plant"?**
 23 MR. EDMONDSON: Objection. Leading. The
 24 document speaks for itself.
 25 THE WITNESS: Yes, that's what it is.

1 time.
 2 **Q. Okay. You can set that one aside.**
 3 **And I apologize if I asked you this earlier,**
 4 **but who at ICUSA or ISK sets the sales prices of**
 5 **TiO2?**



1 **Q. BY MR. PRUITT: Okay. And in August 2013,**
 2 **ISK announced it would close its TiO2 plant in**
 3 **Singapore; is that right?**
 4 A. Yes, it is.
 5 **Q. Do you know why ISK closed that plant?**
 6 A. It wasn't profitable.
 7 **Q. And what do you mean by that?**
 8 A. We couldn't make money on the material. We
 9 couldn't sell the material we were producing there at
 10 a profit.
 11 **Q. Why was that? Was it due to costs? What**
 12 **reasons were there?**
 13 A. I think a lot of it was because of costs.
 14 As I recall at that time the ore cost was
 15 skyrocketing, and that was one part of it. I think
 16 also just the costs of operating in Singapore are
 17 high, and it was just prohibitive for, I think, a
 18 number of reasons. One major reason was the ore
 19 cost.
 20 **Q. And were broader market conditions a factor**
 21 **in this as well?**
 22 A. Yes, I'm sure they were, yes.
 23 **Q. At the time was it a buyer's market or a**
 24 **seller's market?**
 25 A. I believe it was buyer's market at that





16 **ICUSA had any communications with the FTC regarding the Tronox-Cristal acquisition?**
 17
 18 A. Yes, we have. I have.
 19 **Q. Okay. Can you describe those communications, please?**
 20
 21 A. About a year ago I received a phone call
 22 from the FTC and they scheduled -- we scheduled it
 23 together -- a phone call between their office and our
 24 office in San Francisco.
 25 **Q. And did you take that phone call?**

1 **process, any other communications with the FTC?**
 2 A. I don't recall any other communications
 3 regarding this Tronox-Cristal merger. I think that
 4 is the extent of what I can remember.
 5 MR. PRUITT: Thank you, sir. So I'm going
 6 to reserve the balance of my time subject to whatever
 7 questioning from the other side of the table.
 8 MR. EDMONDSON: Okay.
 9 MR. PRUITT: And I think we are almost done
 10 with the tape so we should probably --
 11 MR. MECKES: Let's take a break.
 12 THE VIDEOGRAPHER: Don't forget your
 13 microphones, please.
 14 This is the end of Video Number 1 of Volume
 15 1 of the deposition of David Duenwald on March 21st,
 16 2018.
 17 The time is 11:07 a.m.
 18 We are off the record.
 19 (Recess taken.)
 20 THE VIDEOGRAPHER: This is the beginning of
 21 Video Number 2 of Volume 1 of the deposition of David
 22 Duenwald on March 21st, 2018.
 23 The time is 11:18 a.m.
 24 We are back on the record.
 25 ///

1 A. Yes, I sent it.
 2 **Q. And what did they ask you about?**
 3 A. They asked about our understanding of the
 4 market, what kinds of applications we sold. It is
 5 hard to remember exactly. I spend so much of my time
 6 talking about TiO2 it is hard to remember one
 7 conversation. But fairly typical kind of
 8 conversation on TiO2 markets, applications, market
 9 conditions, competition.
 10 **Q. Did anyone at the FTC ask you to submit a
 11 sworn statement or affidavit regarding the
 12 acquisition?**
 13 A. I don't believe -- I don't remember anything
 14 like that.
 15 **Q. Did you offer to do so?**
 16 A. No, I don't believe I did.
 17 **Q. How long did that call last?**
 18 A. I think it was probably 30 minutes to
 19 60 minutes.
 20 **Q. Any other communications with the FTC
 21 regarding the acquisition?**
 22 A. Since then I think I received a call about a
 23 month ago to inform us that we would be receiving the
 24 subpoena.
 25 **Q. Okay. And then other than the subpoena**

1 EXAMINATION
 2 BY MR. EDMONDSON:
 3 **Q. Good morning, Mr. Duenwald. My name is Eric
 4 Edmondson. I'm an attorney with the Federal Trade
 5 Commission. We are the complainant in this case. Or
 6 I represent the complainant in this case.**
 7 **So, I will do my best not to ask questions
 8 or cover ground that has already been covered by
 9 defense counsel, but -- or Respondents' counsel in
 10 this case, but please bear with me if I -- if some of
 11 my questions are repetitive.**
 12 **Complainant counsel asked you whether you
 13 spoke with anyone about this deposition before
 14 appearing here today?**
 15 MR. PRUITT: Object to form.
 16 **Q. BY MR. EDMONDSON: Do you recall that?**
 17 A. I don't recall the questions.
 18 **Q. I'll just ask you. Have you spoken with
 19 anyone about this deposition?**
 20 A. I have spoken with the two people here
 21 beside me and in our office with Marvin Hosokawa.
 22 And I suppose almost everyone in the office was aware
 23 that I'm coming to do the deposition today.
 24 **Q. And for the record, you referred to --**
 25 A. Our general counsel at Ishihara and also Joe

81

83

1 Meckes of Squire Patton Boggs, I believe.
 2 **Q. Wonderful. And did you meet with Mr. Meckes**
 3 **prior to this deposition?**
 4 A. Yes, I did.
 5 **Q. How many times did you meet with Mr. Meckes?**
 6 A. We met yesterday afternoon and then we spoke
 7 once by phone for about an hour a couple of weeks
 8 ago.
 9 **Q. Was anyone else present when you met with**
 10 **Mr. Meckes yesterday afternoon?**
 11 A. It was just Kasey Ingram and department
 12 counsel for Ishihara was also there.
 13 **Q. Have you reviewed any documents or materials**
 14 **in preparation for this deposition?**
 15 MR. MECKES: And you can answer that yes or
 16 no.
 17 THE WITNESS: Yes.
 18 **Q. BY MR. EDMONDSON: Who gave you those**
 19 **documents?**
 20 A. Some -- well, the subpoena we viewed and
 21 the --
 22 MR. MECKES: The question is who gave you
 23 the documents. Don't tell him what documents you
 24 looked at.
 25 THE WITNESS: The documents that I received.

1 **about this case?**
 2 MR. PRUITT: Object to form. Are you asking
 3 for a legal conclusion?
 4 MR. EDMONDSON: No. He is not a lawyer.
 5 MR. PRUITT: Object to form.
 6 **Q. BY MR. EDMONDSON: You can answer.**
 7 A. I have thought about it, and I have talked
 8 with customers about it, and I can see -- it is a
 9 complicated industry, and I think that it is hard to
 10 know, I guess, what the -- I guess I'm thinking how
 11 would it affect market conditions. And I think it is
 12 complicated and it would be hard to know exactly how
 13 it would affect market conditions. So I guess in
 14 that sense I thought about it and I haven't really
 15 come to any conclusions.
 16 **Q. So you said you have spoken with customers**
 17 **about the proposed transaction of Tronox and Cristal?**
 18 A. Yes.
 19 **Q. And which customers have you spoken with?**
 20 A. Last week I was in the [REDACTED] so I spoke
 21 with customers there. [REDACTED] I know
 22 was one of them.
 23 **Q. Did you speak with anyone in particular at**
 24 **[REDACTED]**
 25 A. [REDACTED]

82

84

1 MR. MECKES: The question was who showed you
 2 the documents.
 3 THE WITNESS: Okay. Well, actually, the
 4 documents I received, I think, initially from the
 5 FTC, I think, sent me by e-mail, and that is probably
 6 the first time I saw them.
 7 **Q. BY MR. EDMONDSON: So the documents you are**
 8 **referring to is the subpoena requesting your**
 9 **appearance here?**
 10 A. Yes.
 11 **Q. To appear today here as a witness in this**
 12 **case?**
 13 A. Yes.
 14 **Q. Okay. Have you read the complaint in this**
 15 **case?**
 16 A. Yes, I have.
 17 **Q. Do you -- what do you understand the issues**
 18 **in this case to be?**
 19 A. My understanding is the -- well, and I'm not
 20 sure how much I know from this and how much from
 21 other places. My understanding is that the FTC is
 22 objecting to the merger because it would concentrate
 23 too much of the production capacity with one source,
 24 with one supplier.
 25 **Q. Do you personally have an opinion or --**

1 **Q. Did [REDACTED] have an opinion on the**
 2 **merger?**
 3 A. I'm sure he did but he didn't really go into
 4 it. I had told him I think that we had been
 5 contacted by the FTC for information, and he said
 6 that he had also been contacted I think by -- I'm not
 7 sure, but he said that he had also been asked for his
 8 opinion on it. But we didn't really discuss the
 9 merits of the merger.
 10 **Q. Have you spoken with other customers about**
 11 **the merger?**
 12 A. Yes.
 13 **Q. And I think you have mentioned another**
 14 **customer's name?**
 15 [REDACTED]
 16 [REDACTED]
 17 [REDACTED]
 18 [REDACTED]
 19 [REDACTED]
 20 [REDACTED]
 21 **Q. And who did you speak with at [REDACTED] at the**
 22 **merger?**
 23 A. [REDACTED]
 24 **Q. And what was -- what discussion did you have**
 25 **with [REDACTED] about the merger?**

85

1 A. He had a stronger opinion. He thought that
 2 it would be helpful for supply that if the merger was
 3 allowed to proceed.
 4 **Q. And who else -- what other customers have**
 5 **you spoken with about the merger?**
 6 A. [REDACTED] So the
 7 topic came up there because of my conversation
 8 earlier with [REDACTED].
 9 **Q. Who did you speak with at [REDACTED]**
 10 A. [REDACTED].
 11 **Q. Did [REDACTED] have an opinion about the**
 12 **merger?**
 13 A. I don't think he was even very much aware of
 14 it. He wasn't too familiar with TiO2 markets. He
 15 has rather recently been put in the position of
 16 operations manager there.
 17 **Q. Okay. Did you speak with any other**
 18 **customers about the proposed merger?**
 19 A. I can't think of any offhand. It has been
 20 almost a year, I guess, since this was proposed. So
 21 there probably have been cases where it has come up
 22 but it probably wasn't a major topic of conversation.
 23 **Q. But it is discussed --**
 24 A. It is discussed in the same way as I think
 25 there is a lot of consolidation I think in the

86

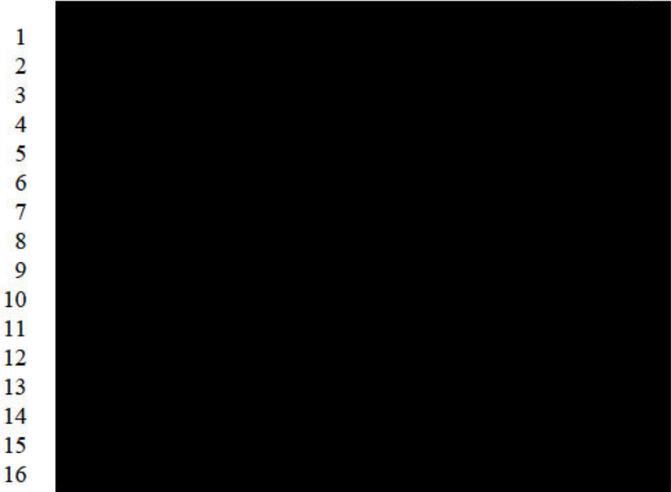
1 industries, both I think the paint and coating
 2 industries, for example, plastics industry. There
 3 has been a lot of acquisitions, and I think in that
 4 sense it kind of came up that there seems to be a
 5 trend toward consolidation. Just US business
 6 generally.
 7 **Q. Now, you testified a few minutes ago that**
 8 **you were contacted by the FTC about a year ago and**
 9 **that you sat for a telephone interview?**
 10 A. Yes.
 11 **Q. And do you recall that that interview took**
 12 **place on May 23rd of 2017?**
 13 A. I don't recall the exact date, but that
 14 certainly is possible.
 15 **Q. And you weren't the only Ishihara or ICUSA**
 16 **employee on that call, were you?**
 17 A. No, I wasn't.
 18 **Q. Marvin Hosokawa was also on that call,**
 19 **wasn't he?**
 20 A. Yes, he was.
 21 **Q. And Kasey Ingram was also present on that**
 22 **call?**
 23 A. Yes, he was also.
 24 **Q. Okay. Now in that call, do you recall that**
 25 **either you or one of our colleagues told the FTC**

87

1 **staff that ICUSA sells about [REDACTED] in the**
 2 **US annually?**
 3 A. That's likely. That's what I understand our
 4 volume to be.
 5 [REDACTED]
 6 [REDACTED]
 7 [REDACTED]
 8 [REDACTED]
 9 [REDACTED]
 10 **Q. Do you have an understanding of how much**
 11 **TiO2, both sulfate and chloride, is sold annually in**
 12 **North America?**
 13 A. A general idea, yes.
 14 **Q. And what is your understanding?**
 15 [REDACTED]
 16 [REDACTED]
 17 [REDACTED]
 18 [REDACTED]
 19 [REDACTED]
 20 [REDACTED]
 21 [REDACTED]
 22 **Q. Okay. So ICUSA, is it fair to say, sells**
 23 **about -- accounts for about [REDACTED] of all**
 24 **TiO2 sales in North America?**
 25 A. That sounds about right, yes.

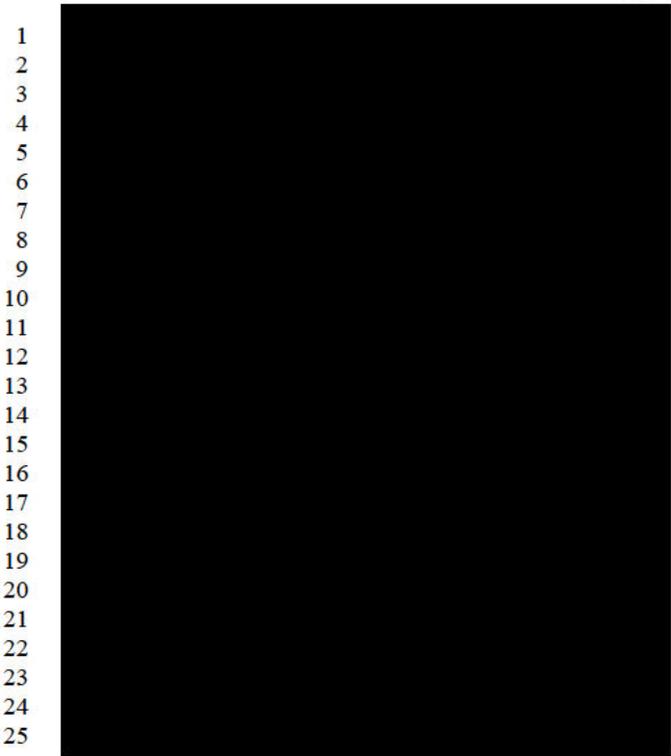
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1 [REDACTED]
 2 [REDACTED]
 3 [REDACTED]
 4 [REDACTED]
 5 [REDACTED]
 6 [REDACTED]
 7 [REDACTED]
 8 [REDACTED]
 9 **Q. BY MR. EDMONDSON: Now, you testified**
 10 **earlier today that ICUSA sells only dry TiO2?**
 11 A. Yes.
 12 [REDACTED]
 13 [REDACTED]
 14 [REDACTED]
 15 [REDACTED]
 16 [REDACTED]
 17 [REDACTED]
 18 [REDACTED]
 19 [REDACTED]
 20 [REDACTED]
 21 [REDACTED]
 22 [REDACTED]
 23 [REDACTED]
 24 [REDACTED]
 25 [REDACTED]



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17 there other expenses involved in importing TiO2 into
18 the US from foreign plants?
19 A. There is a tariff.
20 Q. And what is that tariff?
21 A. It has usually been 6 percent. So that is
22 my best understanding.
23 THE VIDEOGRAPHER: Counsel, can I have you
24 bring your microphone up real high? Thank you.
25 Q. BY MR. EDMONDSON: [REDACTED]

1 Q. Are you familiar with the term superdurable
2 with respect to TiO2?
3 A. We use that term, yes.
4 Q. What does superdurable mean?
5 A. Within TiO2 one of the properties the
6 customers look for is durability, which usually
7 refers to resistance to UV weathering; basically, how
8 well it stands up to sunlight. Sunlight tends to
9 cause color changes and chalking in TiO2 container
10 things. So super -- so there are durable grades that
11 are -- that show better performance in exterior
12 outdoor applications under sunlight, and they are
13 pretty well established. And if you can make an
14 improvement on those durable grades, that is what we
15 refer to as superdurable. So kind of an extra
16 durable.
17 Q. Could you provide an example of exterior
18 outdoor applications that you need a superdurable
19 grade TiO2?
20 A. Yes, I think -- well, just exterior paints
21 for buildings of any kind, that they will last longer
22 if you have a durable form of TiO2 in the coating.
23 Q. Would you commonly call those types of
24 paints architectural coatings?
25 A. Yes. Yeah, architectural coatings. And



1 within that same group I suppose what US would refer
2 to as coil coatings, kind of pre-coated metal. And a
3 lot of that is used for metal siding for buildings.
4 And again, one of the properties is that it has to
5 withstand years of exposure to sunlight without
6 degrading.
7 Q. What happens when a TiO2 degrades under
8 sunlight?
9 MR. PRUITT: Object to form.
10 THE WITNESS: There is color change and loss
11 of gloss and sometimes chalking.
12 Q. BY MR. EDMONDSON: And what is chalking?
13 A. Chalking is when the coating, the coating
14 film, the paint film becomes like chalk.
15 Q. So if the TiO2 -- is it fair to say if the
16 TiO2 in an outdoor paint breaks down quickly under
17 sunlight, that it requires -- that the building has
18 to be repainted more quickly?
19 A. Yes, that's true.
20 MR. PRUITT: Object to form.
21 Q. BY MR. EDMONDSON: I would like to talk to
22 you a little bit about -- or I have questions about
23 end uses for the ICUSA TiO2 here in the -- that is
24 sold here in the US; okay?
25 A. Uh-huh.

1 Q. I want to first talk about the coatings,
 2 types of coatings that ICUSA products are used in.
 3 First of all, are you familiar with the term
 4 "high-gloss interior"?
 5 A. Yes.
 6 Q. And what does that mean to you?
 7 A. Glossy kind of paint that would be used
 8 probably more for trim because it would be blinding
 9 if it was on the entire wall. Kind of the shiny,
 10 reflective-like coating.
 11 Q. And what -- if you can think of it offhand,
 12 what grades of Ishihara TiO2 would typically be sold
 13 for interior high-gloss paints?
 14 A. It would be CR-50-2 would be the big one.
 15 Q. That's the major one. And is -- there is
 16 also CR-50?
 17 A. Yes, CR-50 is very similar to CR-50-2.
 18 Q. What is the difference?
 19 A. 50-2 has additional treatment with a poly Al
 20 which provides better dispersion which usually
 21 improves gloss a little bit. So I think 50-2 is
 22 usually better for gloss but both of them could be
 23 used.
 24 Q. So CR -- CR-50 -- 50 and 50-2 are both
 25 chloride TiO2?

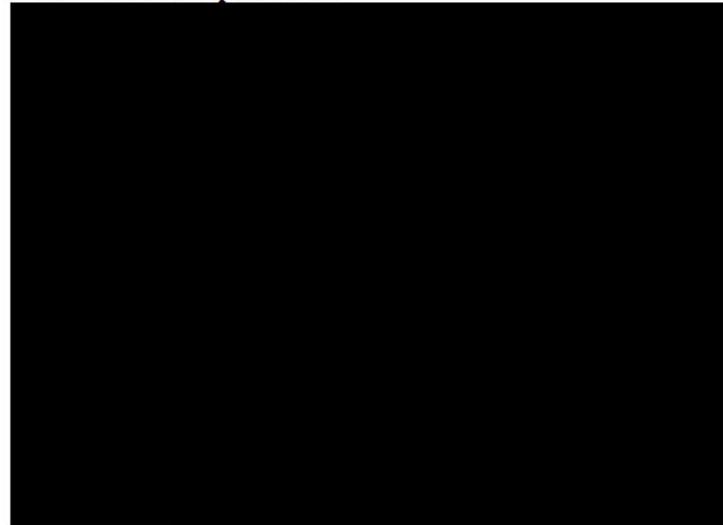
1 A. Yes, they are.
 2 Q. You can't make those grades with sulfate --
 3 with the sulfate process, can you?
 4 MR. PRUITT: Object to form.
 5 THE WITNESS: They would be -- we couldn't
 6 make an equivalent grade. There would be
 7 differences.
 8 Q. BY MR. EDMONDSON: Okay. And which of your
 9 customers buy the CR-50 and CR-50-2 grades?
 10 A. [REDACTED]
 11 [REDACTED].
 12 Q. Can you recall offhand roughly how much
 13 product TiO2 you sell in these grades to [REDACTED]
 14 [REDACTED]?
 15 A. I'd have to check to be sure. I would guess
 16 maybe [REDACTED] our TiO2 is probably that
 17 type.
 18 Q. For interior high-gloss paints?
 19 A. At least usage of CR-50 and 50-2. I'm not
 20 sure what all the applications would be. There is a
 21 number of applications where they could use those.
 22 One of the main ones would be interior high gloss.
 23 Q. Do you recall the names of the [REDACTED]
 24 [REDACTED] purchase this
 25 product?

1 A. I know [REDACTED] would be one, [REDACTED]
 2 [REDACTED] would be one, [REDACTED] would be one. It is hard to
 3 know. I have to think.
 4 Q. Would you characterize these customers as
 5 selling a high-end product?
 6 MR. PRUITT: Object to form.
 7 THE WITNESS: Yes, I think so, yes.
 8 Q. BY MR. EDMONDSON: [REDACTED]
 9 [REDACTED]
 10 A. [REDACTED]
 11 Q. Their product isn't aimed at the low end of
 12 the paint -- of the interior high-gloss paint market,
 13 is it?
 14 A. I would say no, they certainly wouldn't
 15 categorize it that way.
 16 Q. Okay. So, they care about quality?
 17 A. Yes.
 18 MR. PRUITT: Object to form. Foundation.
 19 [REDACTED]
 20 [REDACTED]
 21 [REDACTED]
 22 [REDACTED]
 23 [REDACTED]
 24 [REDACTED]
 25 [REDACTED]

1 [REDACTED]
 2 [REDACTED]
 3 [REDACTED]
 4 [REDACTED]
 5 [REDACTED]
 6 [REDACTED]
 7 [REDACTED]
 8 [REDACTED]
 9 [REDACTED]
 10 [REDACTED]
 11 Q. I wanted to ask you, if you can think of the
 12 manufacturers that ICUSA competes with in selling its
 13 CR-50 and 50-2 products to manufacturers of interior
 14 high-gloss paints. Which manufacturers are your
 15 principal competitors?
 16 [REDACTED]
 17 [REDACTED]
 18 [REDACTED]
 19 Q. Are you aware whether Lomon Billions has any
 20 product that is competitive with CR-50-2 and CR-50
 21 for -- in this market for interior high-gloss paints?
 22 A. I'm not familiar enough with their grades to
 23 be able to say.
 24 Q. So your testimony is you are not aware that
 25 they have any business in the US -- for this end use?

1 A. For interior high gloss?
 2 **Q. High gloss.**
 3 MR. PRUITT: Object to form. Misstates.
 4 THE WITNESS: Yeah, I'm not familiar with
 5 any specific sales they have of that type of product.
 6 Yes, that's right.
 7 **Q. BY MR. EDMONDSON: Are you aware of any**
 8 **Chinese TiO2 manufacturers that are selling pigment**
 9 **to -- in the US to manufacturers of interior**
 10 **high-gloss paint?**
 11 A. I can't say that I have any specific
 12 information about that. No, I don't.
 13 **Q. Okay. And then moving to another category**
 14 **of coating. There is something called**
 15 **interior/exterior high-gloss medium outdoor**
 16 **durability. Does that category ring a bell?**
 17 A. I can understand what it would be, I think,
 18 from your description, yes.
 19 **Q. And what category of coatings would that**
 20 **encompass?**
 21 A. I think probably interior, exterior. So
 22 companies -- probably smaller companies especially
 23 that want to keep one grade and inventory instead of
 24 having multiple grades. If they can find one grade
 25 that can be used for multiple purposes, then they can

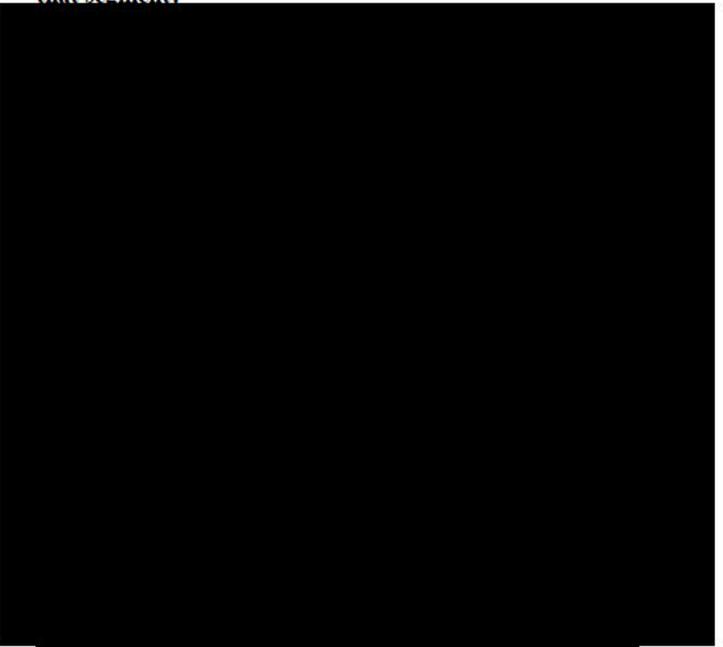
1 **back and ask, what percentage of your total sales of**
 2 **TiO2 are made up of CR-57?**



21 **Q. Can you think of any of who the customers**
 22 **are that purchase R-980 for use in interior/exterior**
 23 **high gloss, you know, medium outdoor durability**
 24 **paints?**
 25 A. Yeah, I would say [redacted] and

1 reduce the number of grades they have to keep.
 2 **Q. And does ICUSA have grades that are**
 3 **well-suited for -- grades of TiO2 that are**
 4 **well-suited for that type of paint?**
 5 A. Yes, we do.
 6 **Q. And what grades are those?**
 7 A. CR-57 is designed in that way, and I think
 8 R-980 also is.
 9 **Q. R-980?**
 10 A. Yes, is a sulfate grade that we supply that
 11 is considered -- I think we refer to universal grade
 12 could be used for exterior or interior.
 13 **Q. There is also a grade CR Super 70?**
 14 [redacted]
 15 [redacted]
 16 [redacted]
 17 [redacted]
 18 [redacted]
 19 [redacted]
 20 [redacted]
 21 [redacted]
 22 [redacted]
 23 **Q. Okay.**
 24 A. Might have been the name.
 25 **Q. So what percentage of your -- let me step**

1 [redacted]
 2 **Q. And who are your principal competitors in**
 3 **that segment?**



1 [REDACTED]
 2 [REDACTED]
 3 [REDACTED]
 4 [REDACTED]
 5 [REDACTED]
 6 [REDACTED]
 7 [REDACTED]
 8 [REDACTED]
 9 [REDACTED]
 10 [REDACTED]
 11 [REDACTED]
 12 [REDACTED]
 13 [REDACTED]
 14 A. We did, yes.
 15 Q. When did you lose that business?
 16 A. I think it was probably two years ago.
 17 Q. And when did you win the business back?
 18 A. About a year ago.
 19 Q. Okay. And do you remember the name of the
 20 customer that you understood to have purchased, for a
 21 limited period of time, the Chinese competitor to
 22 R-980?
 23 A. [REDACTED]
 24 Q. [REDACTED] you did say that.
 25 Okay. And how much volume did you lose?

1 Q. BY MR. EDMONDSON: What about CR-80?
 2 [REDACTED]
 3 [REDACTED]
 4 Q. What about CR-97?
 5 A. CR-97 is a specific kind of automotive
 6 coatings grade, and so that is a specific end use
 7 there. But for automotive exterior.
 8 Q. Okay. So we are looking -- so with respect
 9 to CR-90-2, how much volume does ICUSA sell of that
 10 product in the US?
 11 A. Probably -- I would say probably at least
 12 [REDACTED].
 13 Q. And who do you sell that product to?
 14 A. A company called [REDACTED] is a large user.
 15 [REDACTED].
 16 Q. And who are the -- who is the principal
 17 competition for that grade, CR-90-2?
 18 [REDACTED]
 19 [REDACTED]
 20 [REDACTED]
 21 [REDACTED]
 22 with customers purchasing a competing -- a product
 23 that competes with CR-90-2 from a Chinese supplier?
 24 MR. PRUITT: Object to form.
 25 THE WITNESS: No, not yet. I have recently

1 [REDACTED]
 2 [REDACTED]
 3 [REDACTED]
 4 [REDACTED]
 5 [REDACTED]
 6 [REDACTED]
 7 [REDACTED]
 8 [REDACTED]
 9 Q. BY MR. EDMONDSON: Okay. Then moving on to
 10 the next type of coating is interior/exterior gloss
 11 or flat high outdoor durability. Can you think of
 12 products that fit that description?
 13 A. Interior/exterior flat or gloss?
 14 Q. Yeah, high outdoor durability.
 15 A. Just as a general durability. Yes, uh-huh.
 16 Q. And what type of paint would that be?
 17 A. Either exterior architectural paint, or as I
 18 said earlier, precoated metal kind of -- US is
 19 usually just called coil coatings.
 20 Q. What products does ICUSA market that would
 21 be suitable for that application?
 22 A. CR-90-2.
 23 Q. Okay.
 24 MR. PRUITT: I'll object to form on the last
 25 question.

1 heard that there have been some approvals of some
 2 Chinese grades.
 3 Q. BY MR. EDMONDSON: So you have heard there
 4 have been approvals of Chinese grades. From who did
 5 you hear these approvals?
 6 A. From our -- [REDACTED]
 7 [REDACTED], and I heard that they had approved these
 8 grades, at least on a technical basis, but that they
 9 hadn't been purchasing them yet commercially.
 10 Q. Can you tell me who you heard this news
 11 from?
 12 A. The technical director at [REDACTED]
 13 [REDACTED].
 14 Q. So this is information that you have
 15 secondhand from a customer?
 16 A. Well --
 17 MR. PRUITT: Object to form.
 18 THE WITNESS: -- [REDACTED] is the one
 19 who does the approval. So he has run the tests and
 20 determined that they are -- you know, that it is a
 21 workable grade.
 22 Q. BY MR. EDMONDSON: Did [REDACTED]
 23 indicate, or anyone else at [REDACTED], whether they
 24 were -- [REDACTED] was considering replacing ICUSA as
 25 a supplier with a Chinese-supplied product?

1 A. He didn't indicate anything like that. But
 2 he just said that the quality has gotten better
 3 because in the past he had tested their grades and
 4 they were -- he didn't approve them, but that in this
 5 last conversation we had he said they had been
 6 approved.
 7 **Q. The next grade of -- or application of**
 8 **coating that we are looking at is exterior gloss or**
 9 **flat, highest outdoor durability. What types of**
 10 **paints would that cover?**
 11 A. Yeah, then we are getting into some more
 12 rarified atmosphere, I guess. So it depends on
 13 how -- I think that -- in my experience, I think
 14 there is a Chemours grade TS 6200 that I think is
 15 seen as a -- one of the premier grades there. And
 16 then from our side, we have PFC-105. And that is the
 17 main one that we are promoting for -- the same as we
 18 said earlier on superdurable. I think that is
 19 probably the same.
 20 **Q. This is an example of a superdurable grade?**
 21 A. Yes.
 22 **Q. Do you have any hint of competition from**
 23 **Chinese suppliers in this superdurable grade?**
 24 A. No, we don't.
 25 MR. PRUITT: Object to form.

1 most common use there. And then also -- which is the
 2 chloride type. And then on the sulfate type we have
 3 PF-736.
 4 **Q. Do you sell CR-57 for use in glossy inks?**
 5 A. I don't think so.
 6 **Q. Okay.**
 7 A. I can't think of anywhere we do.
 8 **Q. What about CR-50-2?**
 9 A. CR-50-2 is sometimes used; for some reason
 10 that I'm not clear on ink companies prefer CR-50 to
 11 CR-50-2. Paint companies tend to prefer CR-50-2 to
 12 CR-50. But I think it has to do with some oil
 13 absorption properties. But I'm not a chemist or
 14 formulator, so I'm not sure exactly why that is.
 15 But, yeah, because of that, I think most of
 16 the ink companies that are using that type of
 17 material buy CR-50.
 18 **Q. Do you have any idea how much PF-736 ICUSA**
 19 **sells in the US for use in manufacturing glossy inks?**
 20 A. Yeah, we probably sell -- [REDACTED]
 21 [REDACTED] per month, I would say.
 22 **Q. And how much of the CR-50 do you sell for**
 23 **use in glossy inks?**
 24 A. [REDACTED]
 25 per month.

1 **Q. BY MR. EDMONDSON: And then looking at flat**
 2 **emulsion paints or dry hide paints. What does that**
 3 **mean to you?**
 4 MR. PRUITT: Object to form.
 5 THE WITNESS: Typical kind of wall paints, I
 6 think, that -- where the main property is opacity or
 7 hiding the surface that the paint is covering.
 8 **Q. BY MR. EDMONDSON: Does Ishihara have any**
 9 **grades that you sell that -- in the US market that go**
 10 **into those products?**
 11 [REDACTED]
 12 [REDACTED]
 13 [REDACTED]
 14 [REDACTED]
 15 [REDACTED]
 16 **Q. Okay. So moving on to inks, another area of**
 17 **application. What does a glossy ink look like? What**
 18 **sort of products are we talking about there?**
 19 A. Probably packaging inks.
 20 **Q. Like what sort of package, if you can think**
 21 **of anything?**
 22 A. Like a can of soda or something like that.
 23 **Q. What grades, if any, does ICUSA market in**
 24 **the US that go into gloss inks?**
 25 A. I think -- I think CR-50 is probably the

1 **Q. What customers purchase the CR-50 for use in**
 2 **glossy inks?**
 3 A. [REDACTED] purchases both CR-50 and
 4 PF-736.
 5 **Q. Are they the only customers purchasing --**
 6 A. They are the largest one. We also have some
 7 smaller customers. [REDACTED] also purchases PF-736.
 8 **Q. Now, turning to [REDACTED] You said that**
 9 **they purchase both the CR-50 and the PF-736?**
 10 A. Yes.
 11 **Q. In roughly what quantities?**
 12 [REDACTED]
 13 [REDACTED]
 14 [REDACTED]
 15 [REDACTED]
 16 [REDACTED]
 17 [REDACTED]
 18 [REDACTED]
 19 the sulfate grade and some of the chloride grade
 20 instead of all one or the other?
 21 [REDACTED]
 22 [REDACTED]
 23 [REDACTED]
 24 [REDACTED]
 25 [REDACTED]

109

1 **Q. But they still use the -- despite the fact**
 2 **that the chloride is more expensive, they still use**
 3 **the chloride?**
 4 A. Yes, that's true.
 5 **Q. And is that because it -- they need the**
 6 **chloride for specific formulations?**
 7 MR. PRUITT: Object to form.
 8 THE WITNESS: I believe there are probably
 9 properties that the CR-50 have that has that they
 10 cannot get with the PF-736. Yes, I think that is
 11 true.
 12 **Q. BY MR. EDMONDSON: So is it fair to say that**
 13 **the sulfate grade PF-736 is at least for [REDACTED]**
 14 **[REDACTED] is not perfectly interchangeable with the**
 15 **chloride CR-50 grade?**
 16 MR. PRUITT: Object to form.
 17 THE WITNESS: Yes, I think so. They would
 18 have to make changes in the formulation to
 19 accommodate one or the other, I think.
 20 **Q. BY MR. EDMONDSON: And then looking at**
 21 **the -- another category which is labeled matte**
 22 **reverse printing or flexographic, does that ring a**
 23 **bell for you?**
 24 A. Yeah, I guess the flexographic kind of --
 25 type of printing. And I think there is also kind of

110

1 a reverse I think lamination type, which I think are
 2 not necessarily the same, but we have -- we have a
 3 grade for lamination inks and there are a number of
 4 grades that can be used for flexographic-type
 5 printing.
 6 **Q. Do you have customers in the US that**
 7 **purchase those grades?**
 8 A. Yes.
 9 **Q. And which customers are those?**
 10 [REDACTED]
 11 [REDACTED]
 12 **Q. And which grades are they purchasing for?**
 13 A. PF-736, PF-742, and CR-50. And then we have
 14 a new grade that we are just promoting. It is
 15 PFR-209. Just to throw more numbers and letters out
 16 there.
 17 **Q. Is PFR-209 a sulfate grade?**
 18 A. It is a sulfate grade. And it is for
 19 laminate applications.
 20 **Q. Now, looking at your competition for those**
 21 **inks in the ink segment, who are your principal**
 22 **competitors?**
 23 [REDACTED]
 24 [REDACTED]
 25 [REDACTED]

111

1 [REDACTED]
 2 [REDACTED]
 3 [REDACTED]
 4 [REDACTED]
 5 [REDACTED]
 6 [REDACTED]
 7 [REDACTED]
 8 [REDACTED]
 9 [REDACTED]
 10 [REDACTED]
 11 [REDACTED]
 12 [REDACTED]
 13 [REDACTED]
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 17 [REDACTED]
 18 [REDACTED]
 19 [REDACTED]
 20 [REDACTED]
 21 [REDACTED]
 22 [REDACTED]
 23 [REDACTED]
 24 [REDACTED]
 25 [REDACTED]

112

1 [REDACTED]
 2 [REDACTED]
 3 [REDACTED]
 4 [REDACTED]
 5 [REDACTED]
 6 [REDACTED]
 7 [REDACTED]
 8 [REDACTED]
 9 [REDACTED]
 10 **Q. Okay. So moving on to plastics. We have a**
 11 **subcategory, if you want to call it that, of**
 12 **polyethylene/polypropylene masterbatch.**
 13 A. That's an area -- yeah, I -- yeah, I'm
 14 familiar, yes.
 15 **Q. Does ICUSA have a product -- actually,**
 16 **strike that.**
 17 **Let me -- what -- what sort of products on**
 18 **the market that we -- that -- would we typically see**
 19 **that would fall in the -- under the category**
 20 **polyethylene or polypropylene masterbatch?**
 21 A. I think because of the way TiO2 products are
 22 designed, one of the main attributes is opacity. And
 23 because in plastics it's a little bit complicated,
 24 probably beyond my own kin here, but there is a
 25 pigment volume concentration that is optimal.

113

115

1 There's -- let me put it this way. There is a
2 pigment size that is optimal for various
3 pigment-loading concentrations, I guess.

4 And so if you have a very high-loading -- a
5 lot of pigment, counterintuitively, I think a larger
6 particle size is more efficient. With larger
7 particles you can use less TiO2 to get the same
8 degree of high.

9 So then for paint and coatings, generally a
10 so-called medium-size particle size is optimal, and
11 for plastic it's a smaller particle size.

12 So I think the main thing that the grade
13 that would be designed for those applications in
14 polypropylene, polyethylene, kind of general use
15 plastics would be the smaller particle size. The
16 difference isn't very big. It's -- medium being
17 about 0.25 microns, small about 0.21 or so, large
18 being probably like 0.28 or 0.29.

19 **Q. What grades does --**

20 A. For us it would be the CR-60 or CR-60-2.

21 **Q. And how much of the CR-60 and CR-60-2 does**
22 **ICUSA sell for use in polyethylene or polypropylene**
23 **masterbatch?**

24 [REDACTED]
25 [REDACTED]

1 **Q. Okay. And looking at the plastic category,**
2 **blown film or cast film --**

3 **(Reporter interruption.)**

4 **Q. BY MR. EDMONDSON: Blown film or cast film,**
5 **does that ring a bell?**

6 A. I don't know so much about that particular
7 application.

8 **Q. So you're not aware that any -- any --**

9 A. I wouldn't know of any specialty grades for
10 that. I would just assume it is probably typical
11 plastic grades because I think the pigment volume
12 concentration in those kinds of products would be
13 similar. And so I think it would also be, for us at
14 least, CR-60-2 type.

15 **Q. And would CR-60-2 also apply to flexible PVC**
16 **or plastisol?**

17 A. Yes.

18 **Q. And which customers purchase CR-60-2 for**
19 **flexible PVC or plastisol?**

20 [REDACTED]
21 [REDACTED]
22 [REDACTED]
23 [REDACTED]
24 [REDACTED]
25 [REDACTED]

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1 [REDACTED]
2 [REDACTED]
3 [REDACTED]
4 [REDACTED]
5 [REDACTED]
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18 [REDACTED]
19 [REDACTED]
20 [REDACTED]
21 [REDACTED]
22 [REDACTED]
23 [REDACTED]
24 [REDACTED]
25 [REDACTED]

117

119

1 [REDACTED]

2 [REDACTED]

3 [REDACTED]

4 [REDACTED]

5 [REDACTED]

6 [REDACTED]

7 **Q. So you don't know. Okay.**

8 **In looking at the subcategory called PVC or**

9 **PL high outdoor durability, what does that mean to**

10 **you?**

11 A. I suppose siding applications or window/door

12 profiles that need exterior weathering properties to

13 be able to stand up to sunlight, similar to what we

14 were talking about with respect to coatings for

15 exterior applications.

16 **Q. Does that require a high-quality TiO2?**

17 A. Yes.

18 MR. PRUITT: Object to form.

19 **Q. BY MR. EDMONDSON: So that would typically**

20 **call for one of your superdurable grades?**

21 A. Durable grades anyway, yeah. Probably not

22 superdurable.

23 **Q. What -- what grade numbers would you --**

24 A. We would recommend CR-90-2.

25 **Q. Who do you sell CR-90-2 to?**

1 I was just checking where you are in your outline.

2 If you've got another hour to go, maybe we can break

3 for lunch.

4 MR. EDMONDSON: Yeah, I have definitely

5 another hour. I would respectfully suggest if you

6 want to break, now would be a good time.

7 MR. INGRAM: That is cutting close to our --

8 MR. MECKES: We had hoped to get out of here

9 by 1:30. Do you think that's possible?

10 MR. EDMONDSON: I don't think so. I've got

11 some more things to go through.

12 MR. INGRAM: Can we go off the record real

13 quick? I don't know if we need this recorded.

14 THE VIDEOGRAPHER: The time is 12:20 p m.

15 We are off the record.

16 (Recess taken.)

17 THE VIDEOGRAPHER: The time is 12:28 p m.

18 We are back on the record.

19 **Q. BY MR. EDMONDSON: Mr. Duenwald, I believe**

20 **you testified earlier that you are responsible for**

21 **pricing of the TiO2 product sold in the United**

22 **States?**

23 A. Yes.

24 [REDACTED]

25 [REDACTED]

118

120

1 A. For plastic applications, currently -- we

2 don't have any for that specific plastic application,

3 I don't think. We do sell -- there is a company

4 [REDACTED], which uses it for something

5 similar. I don't think it's PVC exactly, but it's

6 similar. Rubber application that has exterior

7 weathering.

8 **Q. Who are -- what manufacturers offer grades**

9 **that are competitive with ICUSA's CR-90-2 and CR-90?**

10 [REDACTED]

11 [REDACTED]

12 **Q. Are there any Chinese manufacturers that are**

13 **marketing a grade that is truly competitive?**

14 A. I'm not aware of it, but there may be. This

15 is an area where they probably have a lot of

16 interest, I think, just because I think there is --

17 there must be similar applications in China. But I'm

18 not aware of them.

19 **Q. You are not aware of any specific --**

20 A. That's right, I'm not aware.

21 **Q. So moving on to paper. Do you sell any TiO2**

22 **grades for use in any paper products?**

23 A. I don't think we are involved at all in

24 paper applications.

25 MR. MECKES: Can I interrupt for a second?

1 [REDACTED]

2 [REDACTED]

3 [REDACTED]

4 [REDACTED]

5 [REDACTED]

6 [REDACTED]

7 [REDACTED]

8 [REDACTED]

9 [REDACTED]

10 [REDACTED]

11 [REDACTED]

12 [REDACTED]

13 [REDACTED]

14 [REDACTED]

15 [REDACTED]

16 [REDACTED]

17 [REDACTED]

18 [REDACTED]

19 [REDACTED]

20 [REDACTED]

21 [REDACTED]

22 [REDACTED]

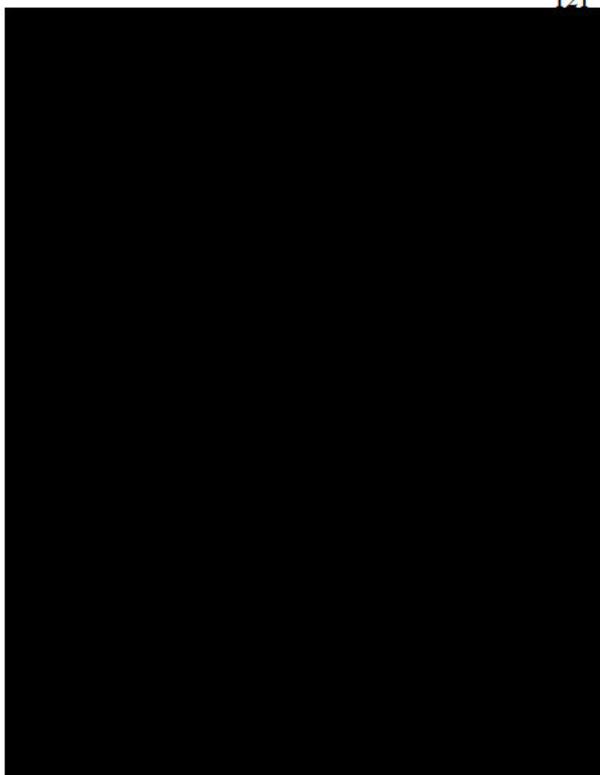
23 [REDACTED]

24 [REDACTED]

25 [REDACTED]

121

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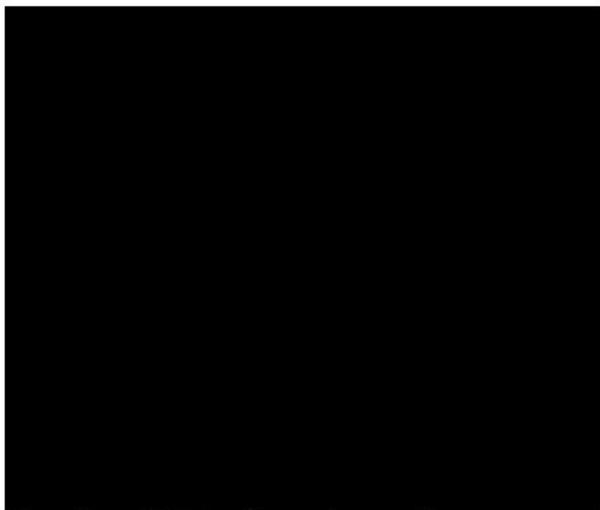


123

1 A. Yes, that's correct.
2 **Q. Okay. Were these exhibits -- were the data**
3 **in these exhibits generated from a database to your**
4 **knowledge?**
5 A. Based on our sales records anyway.
6 **Q. What form do those sales records take?**
7 A. I'm not in the accounting group, so I'm not
8 sure exactly how to describe them.
9 **Q. Is it like in an Excel --**
10 A. Probably.
11 **Q. -- spreadsheet?**
12 A. I think it is an Excel spreadsheet, yeah.
13 **Q. So some sort of database program?**
14 A. I suppose, yeah. I'm not sure how to
15 categorize, I guess, what a database program would be
16 compared to anything else but...
17 **Q. Do you know where the data in these exhibits**
18 **comes from?**
19 A. Well, I think, yeah, we track our sales and
20 then we have some record kept in computer files of
21 some kind, and then I think then she can -- our
22 accountant can draw from those files and create these
23 kinds of documents.
24 **Q. So that is -- ICUSA's accountant?**
25 A. Yes.

122

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18 **Q. I would like to ask you a few questions**
19 **about Exhibits 3, 4 and 5. I think they are in the**
20 **pile in front of you.**
21 MR. MECKES: Those are mine, but they are
22 fine. I know what is in them.
23 **Q. BY MR. EDMONDSON: And we heard from your**
24 **counsel earlier today that these exhibits were**
25 **generated to respond to a subpoena sent by Tronox?**

124

1 **Q. And what is her name?**
2 A. Michelle Chaiyakul.
3 THE REPORTER: Will you help me with a
4 spelling on that?
5 THE WITNESS: It is C-h-a-i-y-a-k-u-l.
6 THE REPORTER: Common spelling.
7 THE WITNESS: Just like it sounds.
8 **Q. BY MR. EDMONDSON: Did you talk with**
9 **Ms. Chaiyakul --**
10 A. Chaiyakul.
11 **Q. -- about how she generated these exhibits?**
12 A. No, I didn't.
13 **Q. So you don't know what steps she took to**
14 **create these Exhibits 3, 4 and 5?**
15 A. No, I was traveling when the response was
16 prepared.
17 **Q. So you don't know if Ms. Chaiyakul**
18 **inadvertently left out any information from these**
19 **exhibits that was called for by the subpoena?**
20 A. I didn't -- I didn't check them in any great
21 detail. They seem reasonable.
22 **Q. So I wanted to ask you about questions you**
23 **received based on Exhibit 2, which is this TZMI**
24 **report titled -- that is mine -- titled TiO2 Pigment**
25 **Annual Review.**

125

1 A. Yes.
 2 MR. PRUITT: I'm going to reach over here,
 3 if that is all right.
 4 MR. EDMONDSON: Yeah, these are yours.
 5 Definitely.
 6 MR. PRUITT: Thank you.
 7 Q. BY MR. EDMONDSON: Tronox counsel asked you
 8 some questions about page 207 of the exhibit.
 9 A. Okay.
 10 MR. PRUITT: 2015?
 11 Q. BY MR. EDMONDSON: Yeah, it is this TZMI --
 12 A. 2011.
 13 MR. PRUITT: Okay. 2011.
 14 Q. BY MR. EDMONDSON: Start right there.
 15 Now, first I just want to confirm, you
 16 don't -- or ICUSA doesn't subscribe to TZMI's
 17 reports?
 18 A. No, we don't.
 19 Q. Do you ever receive those in the ordinary
 20 course of business?
 21 A. No, we don't.
 22 Q. So you don't typically review --
 23 A. That's correct.
 24 Q. Okay. And just to be clear, your -- prior
 25 to working for ICUSA, had you -- did you have any

126

1 experience in the TiO2 industry?
 2 A. No, I didn't.
 3 Q. So your entire experience in TiO2 sales is
 4 working for ICUSA?
 5 A. Yes.
 6 Q. So you know your company's position in the
 7 TiO2 market, right?
 8 A. Right.
 9 Q. But beyond that --
 10 A. My experience is all with Ishihara.
 11 Q. It is just with Ishihara.
 12 You don't have experiences in analysis of
 13 the TiO2 market as a whole?
 14 A. That's correct.
 15 Q. And any information you have on sales by
 16 competitors to your company comes from sources
 17 outside the -- your company, right?
 18 MR. PRUITT: Object to form.
 19 THE WITNESS: I'm not sure --
 20 Q. BY MR. EDMONDSON: Let me rephrase. We'll
 21 move on.
 22 You have testified earlier that you only
 23 call on customers in North America; is that correct?
 24 A. Yes, that's correct.
 25 Q. You don't call on any customers in Asia?

127

1 A. No, I don't.
 2 Q. You don't call on any customers in
 3 Australia?
 4 A. No.
 5 Q. Okay. Do you recall earlier today that you
 6 agreed with -- or counsel asked you if you agreed
 7 with the statement on the first paragraph, page 207,
 8 that ISK is now facing much more intense competition
 9 from newer pigment plants in China, Australia,
 10 Malaysia and Taiwan?
 11 A. Yes.
 12 Q. And you agreed with that statement?
 13 A. I did, yes.
 14 Q. But you don't do any business in that part
 15 of the world?
 16 A. I don't, no.
 17 Q. So --
 18 MR. PRUITT: Object to form. Misstates.
 19 Q. BY MR. EDMONDSON: You don't have any
 20 personal experience with selling in that region?
 21 A. That's correct, I don't.
 22 MR. PRUITT: Object to form. Misstates.
 23 Q. BY MR. EDMONDSON: And you don't have
 24 responsibility for -- or personal knowledge of how
 25 ISK's business is doing in that part of the world, do

128

1 you?
 2 A. That's right, I don't.
 3 MR. PRUITT: Object to form.
 4 Q. BY MR. EDMONDSON: And counsel for Tronox
 5 asked you questions about [REDACTED]
 6 [REDACTED]
 7 [REDACTED]
 8 A. Yes.
 9 Q. And you provided some testimony about what
 10 you understood the nature of that agreement to be?
 11 A. Yes.
 12 Q. It was a licensing agreement of sorts?
 13 A. Yes.
 14 Q. But the information you have you got from,
 15 you said, engineers with ISK?
 16 A. Yes. It is hard to know I guess since it is
 17 kind of old history, but since I have been with the
 18 company I have been aware [REDACTED]
 19 [REDACTED]
 20 [REDACTED]
 21 [REDACTED]
 22 So I have talked with them.
 23 Q. And where are those engineers based?
 24 A. In Yokkaichi.
 25 Q. They are Japanese?

129

1 A. Japanese, yes.
 2 Q. So if we wanted to know the details of that
 3 agreement, we would need to talk to the engineers in
 4 Yokkaichi?
 5 A. That's probably true. In 1969 there
 6 probably aren't a lot of them left.
 7 Q. Okay. I would like you to take a look at
 8 Exhibit 1, please, which is a TZMI report titled TiO2
 9 Pigment Annual Review, a Review of 2014.
 10 Now I have got a couple of quick questions
 11 about something written on page 7 of the document.
 12 A. 70?
 13 Q. 7.
 14 A. 7. Okay.
 15 Q. Specifically, paragraph 4, Section 2.5 which
 16 is titled Overview of the market in 2014.
 17 A. Okay.
 18 Q. It -- this paragraph begins as follows: All
 19 feedstock costs were declining throughout most of
 20 2014, but sulfate ilmenite in the China market
 21 decreased more than other products, allowing the
 22 Chinese producers to lower costs and export products
 23 to markets where there was a value in use arbitrage.
 24 Do you see that sentence?
 25 A. Yes.

130

1 Q. Now, you spoke or testified earlier that
 2 Chinese producers had a cost advantage with their
 3 sulfur --
 4 A. Sulfate process.
 5 Q. Yeah, sulfate-process TiO2. Do you recall
 6 that?
 7 A. I don't recall talking about it, but I don't
 8 know. I think they probably do though, yes.
 9 Q. They did in -- was it your experience that
 10 Chinese producers in 2014 had cost advantage in
 11 sulfate-process TiO2?
 12 MR. PRUITT: Object to form.
 13 Mischaracterizes.
 14 THE WITNESS: Yes, I think that -- I think
 15 they do. I really don't -- I'm not an expert on
 16 those things so it is hard for me to say
 17 definitively. But my understanding, I guess, based
 18 on what I heard was that they did, yes.
 19 Q. BY MR. EDMONDSON: Have you heard that the
 20 cost of ilmenite in China has increased dramatically
 21 since 2014?
 22 A. I have heard that, yes.
 23 Q. And where have you heard that from?
 24 A. Journal reports, I guess. Trade journal
 25 reports.

131

1 Q. And is it your understanding that that
 2 dramatic increase in the price of ilmenite in China
 3 has left Chinese producers without the same cost
 4 advantage that they had in 2014?
 5 A. I have heard that, yes.
 6 MR. PRUITT: Object to form.
 7 Q. BY MR. EDMONDSON: And you testified earlier
 8 that ISK had a -- used to have a TiO2 plant in
 9 Singapore?
 10 A. Yes.
 11 Q. But that that was shut down in 2014?
 12 A. 2013.
 13 Q. 2013. And you said it was shut down because
 14 of high costs?
 15 A. Yes.
 16 Q. And I think you used the phrase high costs
 17 in Singapore?
 18 A. Yes.
 19 Q. Is Singapore particularly high-cost in
 20 comparison --
 21 A. I believe so, yeah. I haven't worked at the
 22 plant, but yeah, I believe so.
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MR. PRUITT: Object to form. Calls for speculation. Foundation.

Q. BY MR. EDMONDSON: You talked earlier about having customers switch away from ICUSA in the past?

A. Yes.

Q. And I am trying to recall what -- you didn't provide specific examples of customers that switched, did you?

A. I don't --

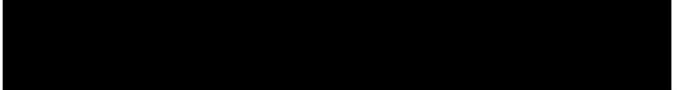
MR. PRUITT: Object to form.

THE WITNESS: -- recall that I did.

Q. BY MR. EDMONDSON: I wonder if you could give me a list of customers that in the last five years have switched away from ICUSA -- product supplied by ICUSA to product supplied by some other

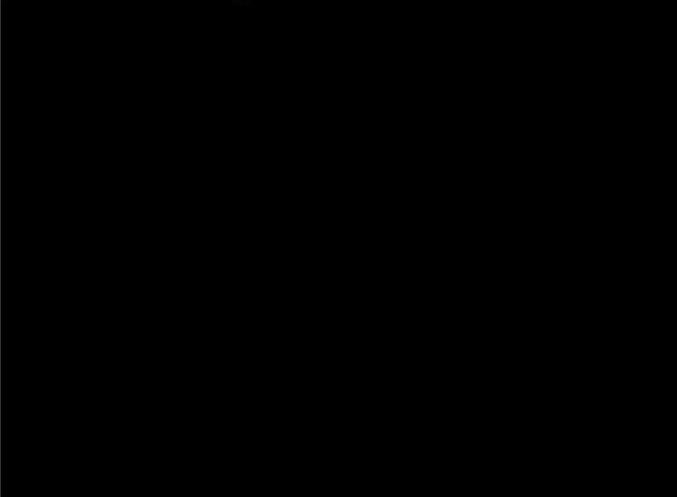
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Q. As we sit here today you can't identify a single customer that you lost business -- that switched to another supplier based on price; is that fair to say?

MR. PRUITT: Object to form. Misstates.



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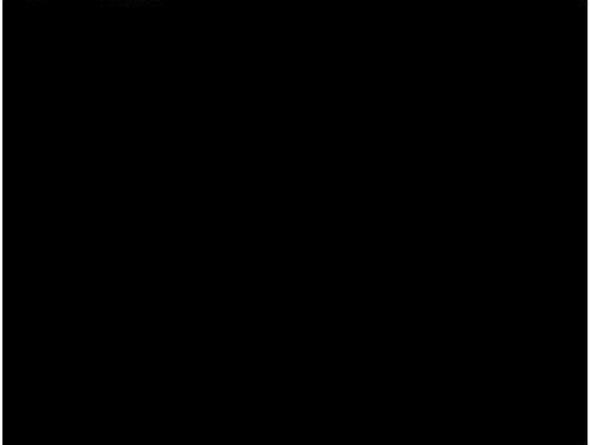
company?

A. By any other company? Chinese companies only?

Q. Well just by any other company, let's start.

A. In the last five years? So we go back to, I guess, when our Singapore plant closed.

Q. Okay



Q. Okay.

A. Those are the easiest ones for me to think

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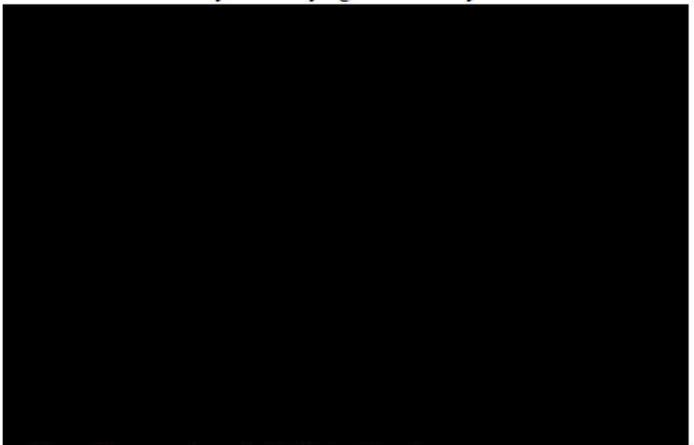
MR. PRUITT: Object to form.

Q. BY MR. EDMONDSON: 


A. No, we haven't yet.

Q. Do you know what company   **--**

A. No, I don't. I have never been able to understand who they were buying from exactly.



Q. Now, you have talked about customers switching between chloride and sulfate TiO2 earlier today. Do you remember that?

137

1 A. Yes.
2 Q. You said that some customers have created --
3 you know, reformulated their products so they can
4 switch to lower-cost sulfate?

5 A. Yes.

6 [REDACTED]
7 [REDACTED]
8 [REDACTED]
9 [REDACTED]
10 [REDACTED]
11 [REDACTED]
12 [REDACTED]
13 [REDACTED]
14 [REDACTED]
15 [REDACTED]
16 [REDACTED]
17 [REDACTED]
18 [REDACTED]
19 [REDACTED]
20 [REDACTED]
21 [REDACTED]
22 [REDACTED]
23 [REDACTED]
24 [REDACTED]
25 [REDACTED]

139

1 [REDACTED]
2 [REDACTED]
3 [REDACTED]
4 [REDACTED]
5 [REDACTED]
6 [REDACTED]
7 [REDACTED]
8 [REDACTED]

9 switched to?

10 [REDACTED]
11 [REDACTED]
12 [REDACTED]
13 [REDACTED]

14 Q. You don't know how much -- what the
15 company --

16 A. What the volumes were or anything like that.

17 Q. Do you know if they are still even
18 purchasing from the Chinese companies?

19 A. I know they are still purchasing from a
20 Chinese company. I don't know if it is the same one
21 or not.

22 [REDACTED]
23 [REDACTED]
24 [REDACTED]
25 [REDACTED]

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1 [REDACTED]
2 [REDACTED]
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6 [REDACTED]
7 [REDACTED]
8 [REDACTED]

9 A. Yes.

10 MR. PRUITT: Object to form. And that is
11 for that combined question. Looks like two different
12 questions.

13 Q. BY MR. EDMONDSON: So he is objecting that
14 it is a compound question.

15 MR. PRUITT: No, not compound. Not only
16 compound.

17 Q. BY MR. EDMONDSON: Just wanted to work out
18 the definition of a short ton. You said is
19 2,000 pounds?

20 A. Yes.

21 Q. And metric ton is 2,000 --

22 A. 2,204, yes.

23 Q. -- 204?

24 [REDACTED]
25 [REDACTED]

141

143

1 2016 from a Chinese supplier?
 2 A. I don't know -- no, I think -- [REDACTED] -- I
 3 don't have a real recollection of that company at
 4 all, and that is why I said if they bought something
 5 it wasn't enough for me to even remember it. So it
 6 was probably a sample.
 7 Q. You testified that you agreed with Tronox
 8 counsel's statement that the TiO2 industry is
 9 competitive; is that accurate?
 10 A. Yes.
 11 Q. But you also testified that the industry is
 12 consolidating?
 13 A. Yes.
 14 Q. So there are fewer competitors to have to
 15 worry about; is that accurate?
 16 A. There are fewer competitors out there, I
 17 would say that is true from when I started to where
 18 we are today, yes.
 19 Q. And if the proposed acquisition of Cristal
 20 by Tronox goes through, that would be one fewer
 21 company that ICUSA has to compete against in the US,
 22 right?
 23 MR. PRUITT: Object to form. Foundation.
 24 Calls for speculation.
 25 THE WITNESS: There would be.

1 Q. And they will have to pay the duty?
 2 A. Yes, that's right.
 3 Q. And that duty could go up if the
 4 administration chooses to raise the duty; is that
 5 accurate?
 6 A. That is a possibility.
 7 MR. PRUITT: Object to form.
 8 MR. EDMONDSON: I wonder if we can take a
 9 brief break? I can see if I can wrap questions up.
 10 MR. MECKES: Sure.
 11 MR. EDMONDSON: Try to get us out of here by
 12 1:30.
 13 THE VIDEOGRAPHER: Don't forget your
 14 microphones, please.
 15 This is the end of Video Number 2 of Volume
 16 1 of the deposition of David Duenwald on March 21st,
 17 2018.
 18 The time is 1:03 p m.
 19 We are off the record.
 20 (Recess taken.)
 21 THE VIDEOGRAPHER: This is the beginning of
 22 Video Number 3 of Volume 1 of the deposition of David
 23 Duenwald on March 21st, 2018.
 24 The time is 1:10 p m.
 25 We are back on the record.

142

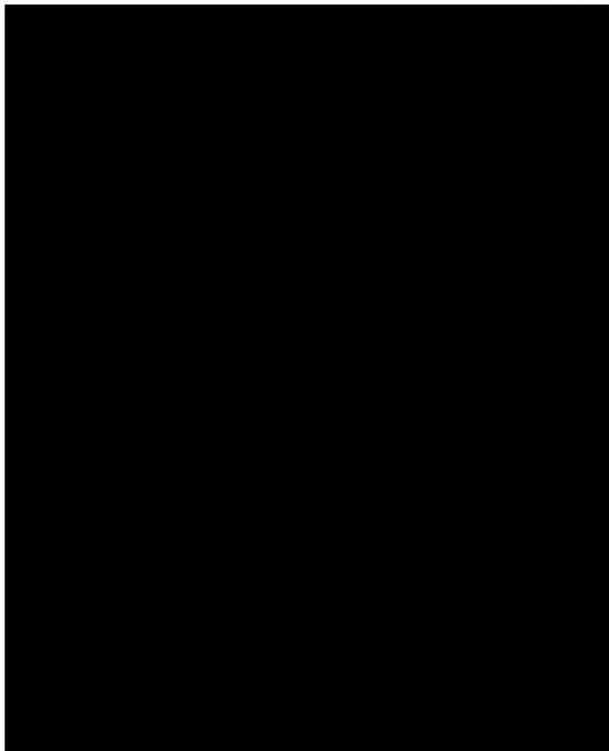
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1 [REDACTED]
 2 [REDACTED]
 3 [REDACTED]
 4 [REDACTED]
 5 [REDACTED]
 6 [REDACTED]
 7 [REDACTED]
 8 [REDACTED]
 9 A. That --
 10 Q. -- that you are aware of?
 11 A. (Nods head.)
 12 [REDACTED]
 13 [REDACTED]
 14 [REDACTED]
 15 [REDACTED]
 16 MR. PRUITT: Object to form. Misstates.
 17 Q. BY MR. EDMONDSON: And Lomon Billions
 18 produces all of its TiO2 overseas; is that accurate?
 19 A. Yes.
 20 Q. So it has to ship its product to the US just
 21 as ISK ships its product to ICUSA?
 22 A. Yes, that's true.
 23 Q. And so Lomon Billions is incurring shipping
 24 costs?
 25 A. Yes.

1 Q. BY MR. EDMONDSON: So I just wanted to
 2 confirm a couple of things about customers' ability
 3 to switch between chloride and sulfate TiO2.
 4 Is it fair to say that customers for major
 5 applications have difficulty switching between
 6 sulfate and chloride grades?
 7 A. I would say yes.
 8 MR. PRUITT: Object to form.
 9 THE WITNESS: That is probably true.
 10 Q. BY MR. EDMONDSON: And by major applications
 11 that would be -- that would be applications that
 12 manufacturers sell based primarily on color
 13 properties?
 14 A. Yes.
 15 Q. Like paints?
 16 A. Yes.
 17 Q. Okay. And those are the companies that
 18 would have the most trouble reformulating their
 19 product to take sulfate grades, right?
 20 MR. PRUITT: Object to form. Foundation.
 21 THE WITNESS: I would suppose so, yes, based
 22 on my understanding.
 23 [REDACTED]
 24 [REDACTED]
 25 [REDACTED]

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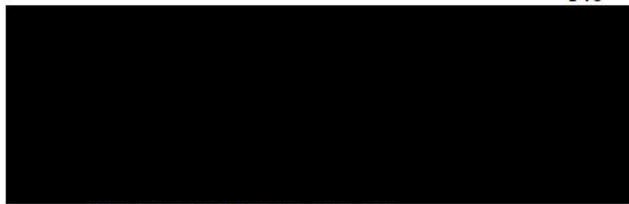
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A. Yes.
Q. Did he explain what he meant by that?
A. Yes, he did.
Q. What was that?
A. He said that because one of the plants in Saudi Arabia is based on the same KMCC technology that Tronox would be in a better position to run that plant at full capacity and he said that the -- currently it wasn't being run at full capacity.
Q. Okay. Did he say that that would be good for his business?
A. Yes.
Q. Do you recall testifying earlier that the TiO2 industry is highly competitive?
A. Yes.
Q. And is that true even for what Mr. Edmondson referred to as the fringe of the market that ICUSA participates in?
A. Yes, I think it is.

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MR. EDMONDSON: I don't have any more questions at this time.
MR. PRUITT: Okay. I have got very brief. Can you hear me from here?
MR. MECKES: You probably need the microphone.
THE VIDEOGRAPHER: You got to switch.
MR. PRUITT: All right. I'll move.
MR. MECKES: Otherwise you will hate your video later.
MR. PRUITT: What's that?
MR. MECKES: You get all this great information and then when you try to play it at the trial --
MR. PRUITT: Who says it will be great.
EXAMINATION
BY MR. PRUITT:
Q. Okay. Mr. Duenwald, do you recall earlier testifying about a conversation you had with a

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Q. Do you recall testifying earlier about R-980?
A. Yes.
Q. I believe you referred to that as a universal grade; is that right?
A. Yes.
Q. That's a sulfate product?
A. Yes.
Q. Does that product compete with chloride products?
A. Yes, it does.
Q. Whose?
A. I think with other grades with similar applications for, you know, universal applications to allow customers to reduce inventory.
Q. And is that application the high-gloss interior and exterior architectural paints?
A. It could be. It could be, yes. It is used in a variety of applications, yes.
Q. What about plastics?
A. It is used in plastics also.
Q. Do you recall giving testimony about PF-736?
A. Yes.
Q. That is a sulfate grade?
A. Yes, it is.

149

1 [REDACTED]

2 [REDACTED]

3 [REDACTED]

4 [REDACTED]

5 **Q. Is that ever successful?**

6 A. Yes.

7 **Q. And that product will compete with CR-50?**

8 A. Yes, it can.

9 **Q. Okay. And finally, you referred to a number**

10 **of market and trade journal reports that ICUSA**

11 **reviews; is that right?**

12 A. Yes.

13 **Q. Are those about the TiO2 industry as a**

14 **whole?**

15 A. Yes, usually -- sometimes they have specific

16 statements about particular companies. But yes, I

17 think generally they are directed to TiO2 industry as

18 a whole.

19 **Q. And that's on a global basis?**

20 A. Yes, I believe so.

21 MR. PRUITT: Okay. Thank you. No further

22 questions from me.

23 MR. EDMONDSON: I have got like two minutes

24 of follow-up.

25 ///

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1 [REDACTED]

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4 [REDACTED]

5 [REDACTED]

6 [REDACTED]

7 [REDACTED]

8 [REDACTED]

9 [REDACTED]

10 [REDACTED]

11 [REDACTED]

12 [REDACTED]

13 [REDACTED]

14 [REDACTED]

15 [REDACTED]

16 [REDACTED]

17 [REDACTED]

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19 [REDACTED]

20 [REDACTED]

21 [REDACTED]

22 [REDACTED]

23 [REDACTED]

24 [REDACTED]

25 [REDACTED]

150

1 EXAMINATION

2 BY MR. EDMONDSON:

3 **Q. Mr. Duenwald, you just testified that the**

4 **[REDACTED] executive you spoke with about the proposed**

5 **Tronox acquisition for Cristal said he liked the**

6 **transaction because Tronox would be able to run**

7 **Cristal's TiO2 plant in Saudi Arabia at full**

8 **capacity?**

9 A. Yes.

10 **Q. And the name of this representative again**

11 **is?**

12 [REDACTED]

13 [REDACTED]

14 [REDACTED]

15 [REDACTED]

16 [REDACTED]

17 Tronox about it.

18 **Q. So he was relaying information to you that**

19 **Tronox had provided to him?**

20 A. Yes, that is my understanding.

21 [REDACTED]

22 [REDACTED]

23 [REDACTED]

24 [REDACTED]

25 [REDACTED]

152

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4 [REDACTED]

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7 [REDACTED]

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11 [REDACTED]

12 [REDACTED]

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16 [REDACTED]

17 [REDACTED]

18 [REDACTED]

19 [REDACTED]

20 [REDACTED]

21 [REDACTED]

22 [REDACTED]

23 [REDACTED]

24 [REDACTED]

25 [REDACTED]

1 [REDACTED]

2 [REDACTED]

3 MR. EDMONDSON: No further questions.

4 MR. HONG: I have just got about 20 more

5 minutes. No, I'm kidding. We are all done.

6 THE WITNESS: Okay. Thank you.

7 THE VIDEOGRAPHER: Don't forget your

8 microphones, please.

9 MR. MECKES: We are off the record.

10 THE VIDEOGRAPHER: This is the end of Video

11 Number 3, and this concludes Volume 1 of the

12 deposition of David Duenwald on March 21st, 2018.

13 The original video will be retained by For

14 the Record, Inc.

15 The time is 1:22 p.m.

16 We are off the record.

17 (The deposition concluded at 1:22 p.m.)

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1 DECLARATION UNDER PENALTY OF PERJURY

2

3 Case Name: TRONOX LIMITED, a Corporation and CRISTAL

4 USA, INC., a Corporation

5 Date of Deposition: Wednesday, March 21, 2018

6 Job No: 60176

7

8 I, David Duenwald, hereby certify under

9 penalty of perjury under the laws of the State of

10 California that the foregoing is true and correct.

11 Executed this ____ day of _____,

12 2018, at _____.

13

14 _____

15 DAVID DUENWALD

16

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1 I, the undersigned, a Certified Shorthand

2 Reporter, in and for the State of California, do

3 hereby certify:

4 That the foregoing proceedings were taken

5 before me at the time and place herein set forth;

6 that any witnesses in the foregoing proceedings,

7 prior to testifying, were duly sworn; that a record

8 of the proceedings was made by me using machine

9 shorthand, which was thereafter transcribed under my

10 direction; that the foregoing transcript is a true

11 record of the testimony given.

12 Further, that if the foregoing pertains to the

13 original transcript of a deposition in a federal

14 case, before completion of the proceedings, review of

15 the transcript {XX} was { } was not required.

16 I further certify I am neither financially

17 interested in the action nor a relative or employee

18 of any attorney or party to this action.

19 IN WITNESS WHEREOF, I have this date

20 subscribed my name.

21

22 Dated: 3/23/18

23

24

25 s/Leigh Ann Orozco
LEIGH ANN OROZCO, CSR No. 7607

1 DEPOSITION ERRATA SHEET

2 Case Name: TRONOX LIMITED, a Corporation and CRISTAL

3 USA, INC., a Corporation

4 Name of Witness: David Duenwald

5 Date of Deposition: March 21, 2018

6 Job Number: 60176

7 Reason Codes: 1. To clarify the record.

8 2. To conform to the facts.

9 3. To correct transcription errors.

10 Page ____ Line ____ Reason ____

11 From ____ to ____

12 Page ____ Line ____ Reason ____

13 From ____ to ____

14 Page ____ Line ____ Reason ____

15 From ____ to ____

16 Page ____ Line ____ Reason ____

17 From ____ to ____

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1 DEPOSITION ERRATA SHEET
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 19

20 ___ Subject to the above changes, I certify that
 the transcript is true and correct.
 21 ___ No changes have been made. I certify that the
 transcript is true and correct.

22
 23
 24 _____
 DAVID DUENWALD
 25

CONFIDENTIAL

ERRATA SHEET

Case Name: *In the matter of Tronox Limited et al.*; FTC Docket No. D09377

Witness Name: David Duenwald

Deposition Date: March 21, 2018

Designation: Confidential

<u>PAGE</u>	<u>LINE(S)</u>	<u>CORRECTION</u>	<u>REASON</u>
63	5	Change "of Ishihara" to "or Ishihara"	Transcription error
81	11-12	Change "and department counsel for Ishihara" to "the general counsel for Ishihara"	Transcription error



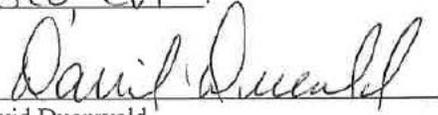
112 24 Change "kin" to "ken" Transcription error

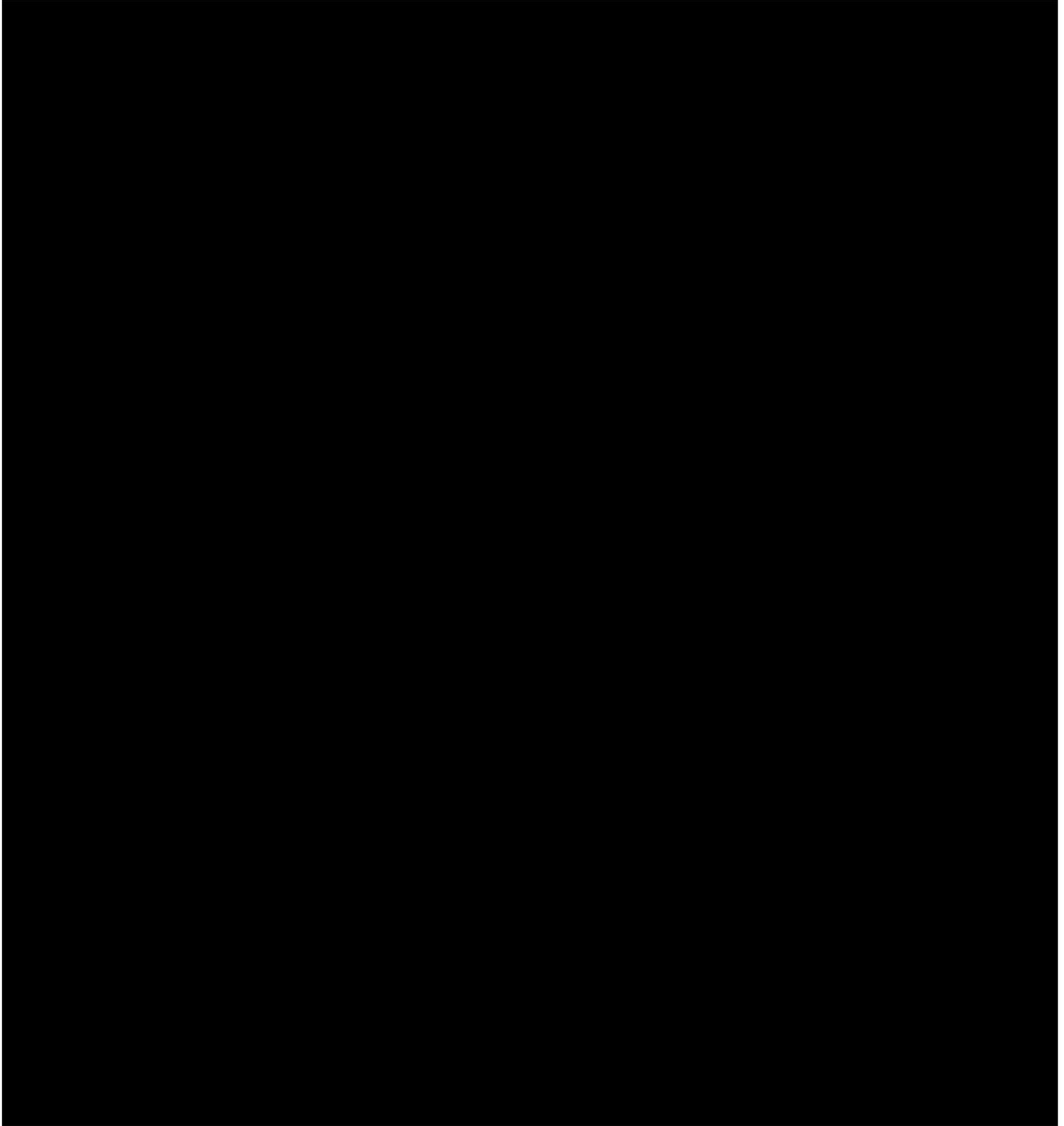
113 8 Change "high" to "hide" Transcription error

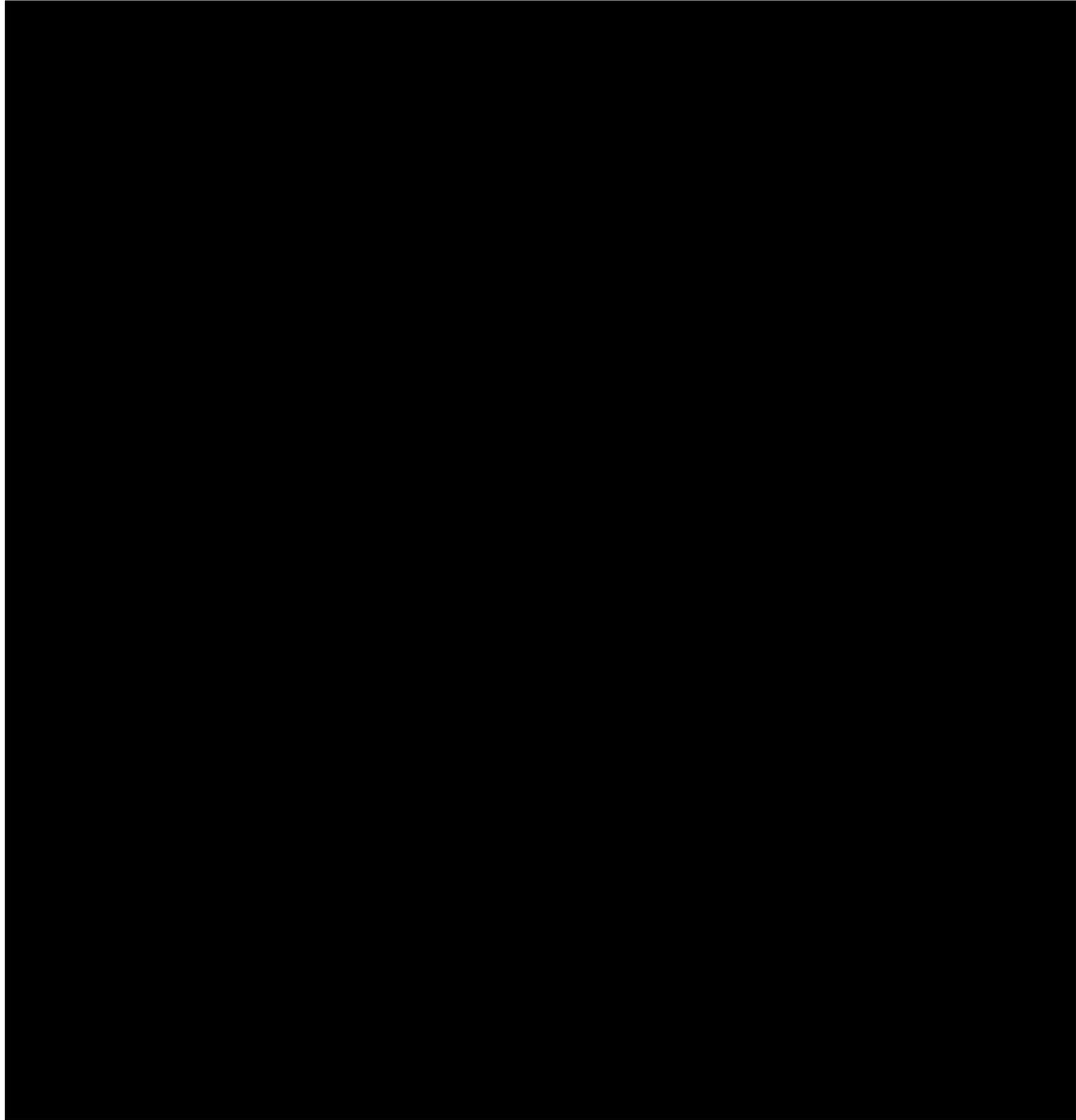


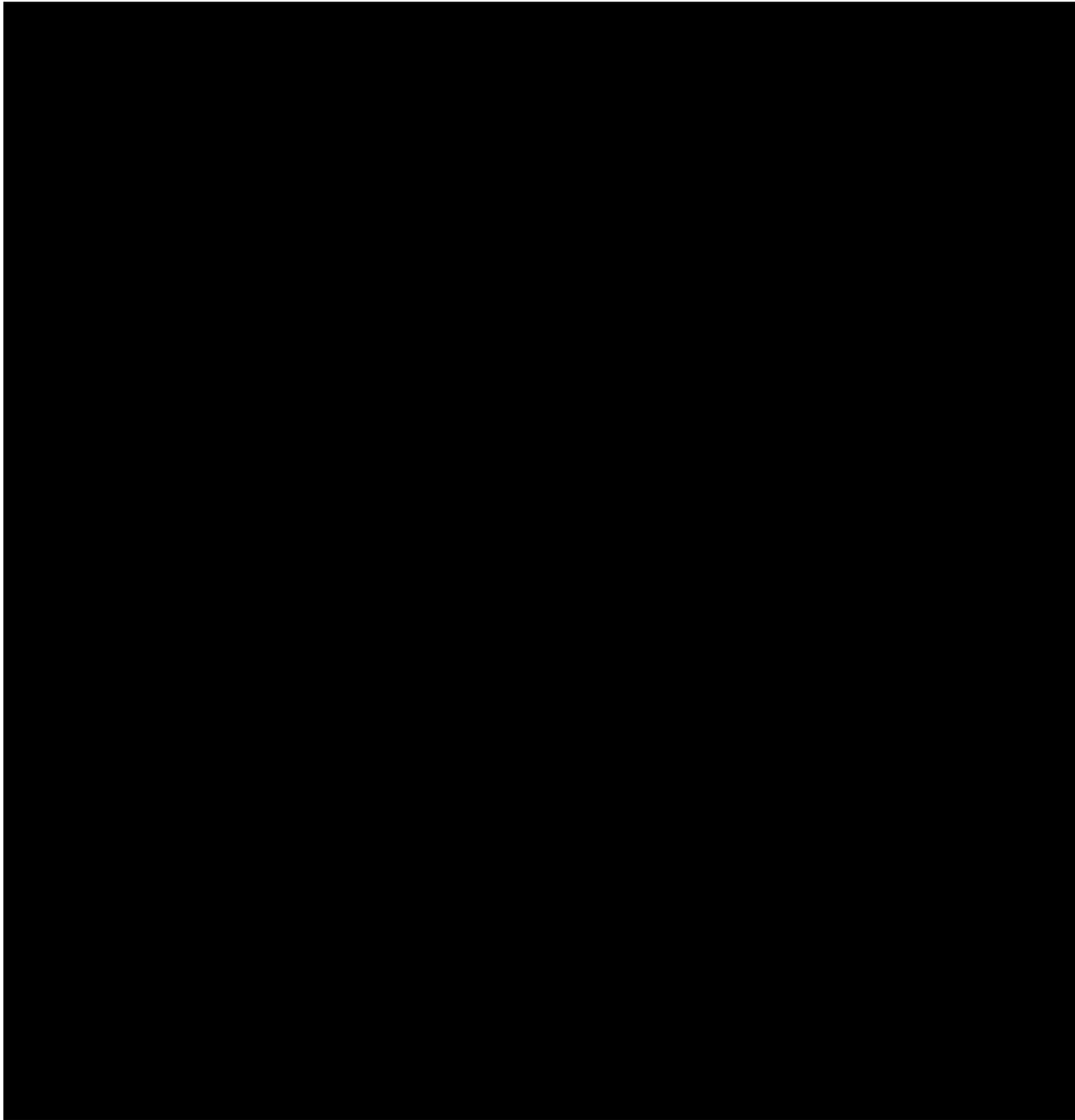
I declare under penalty of perjury that the foregoing is true and correct.

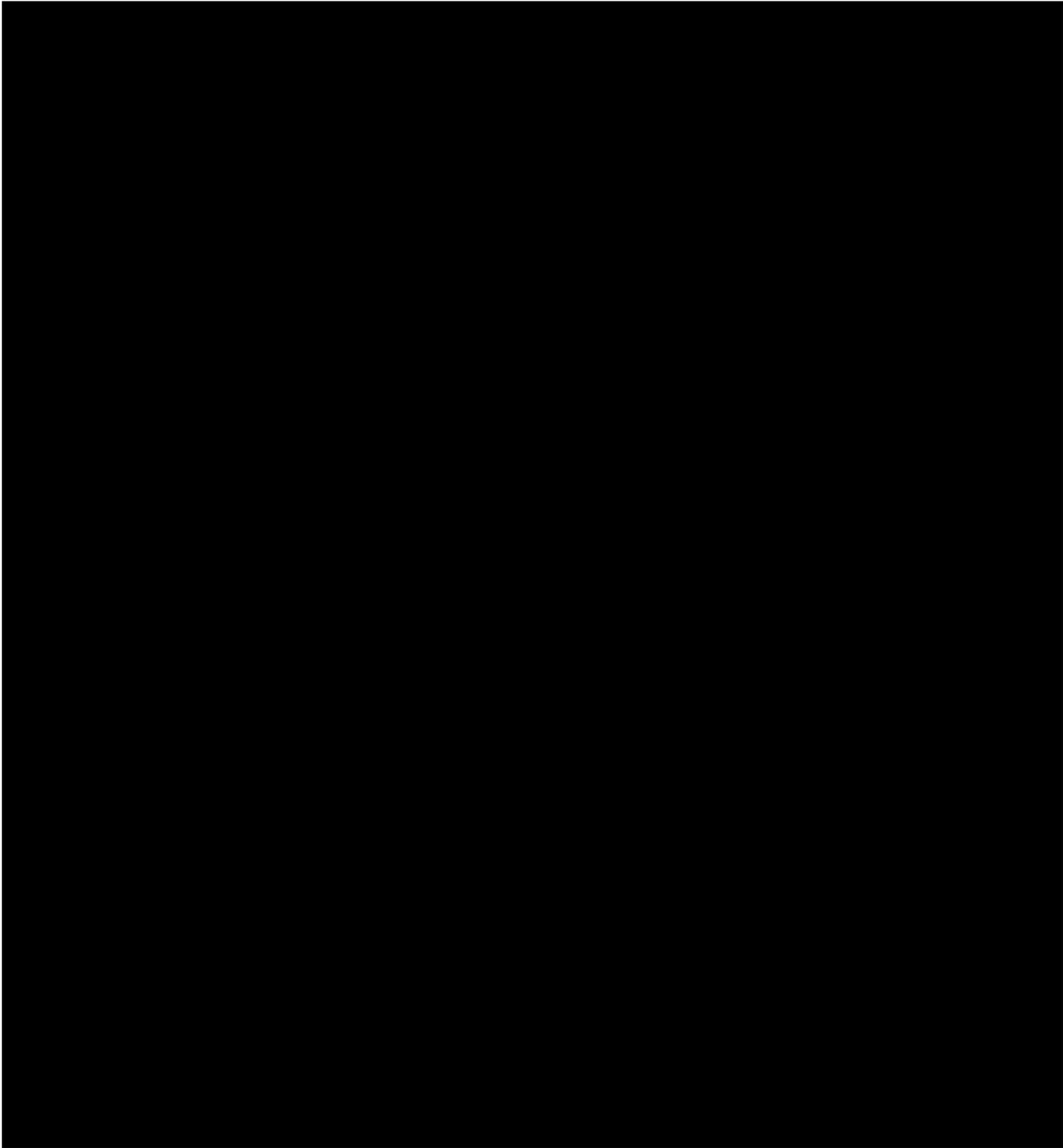
Executed on 3/29, 2018 at San Francisco CA.

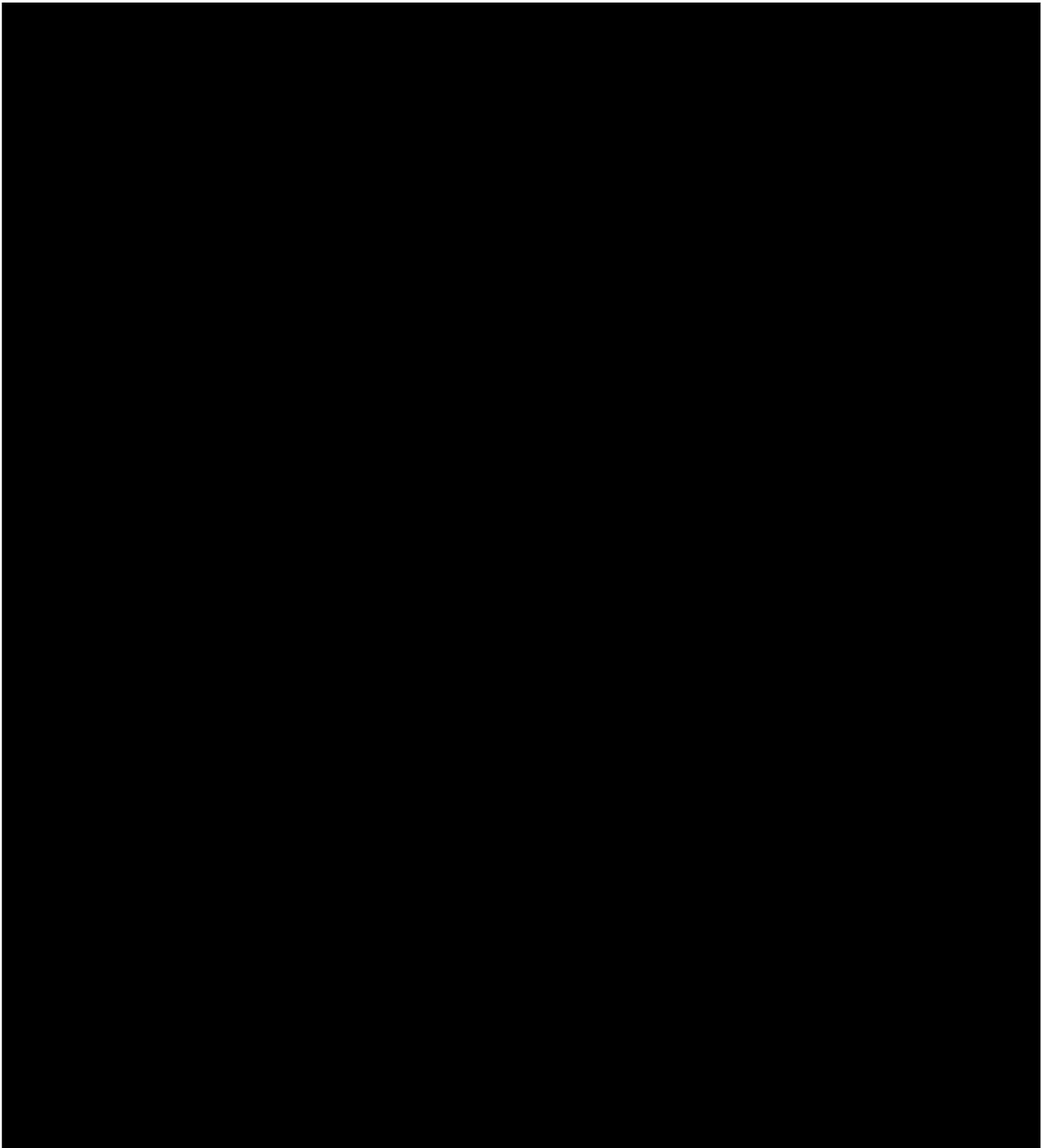

David Duenwald

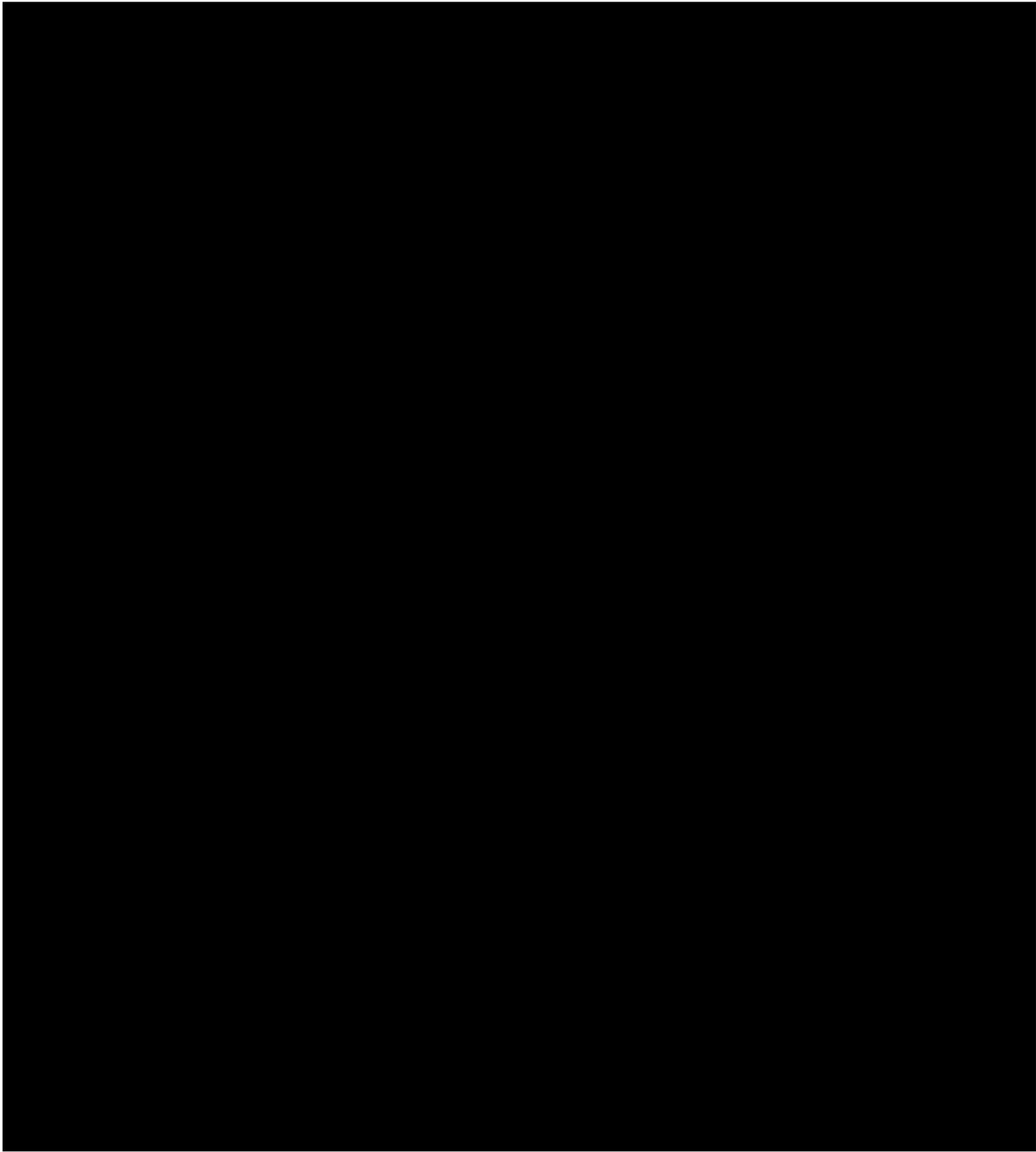


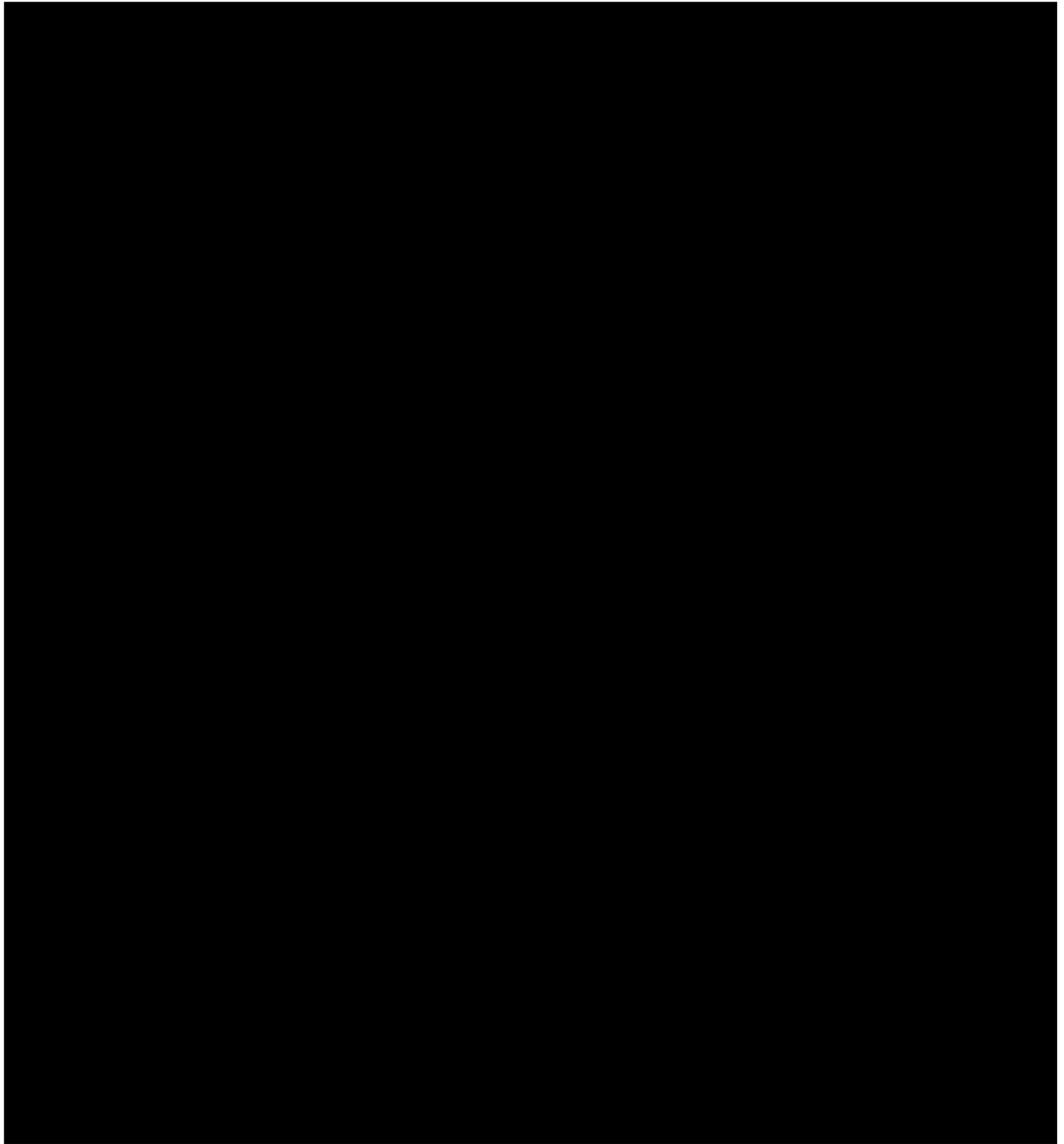


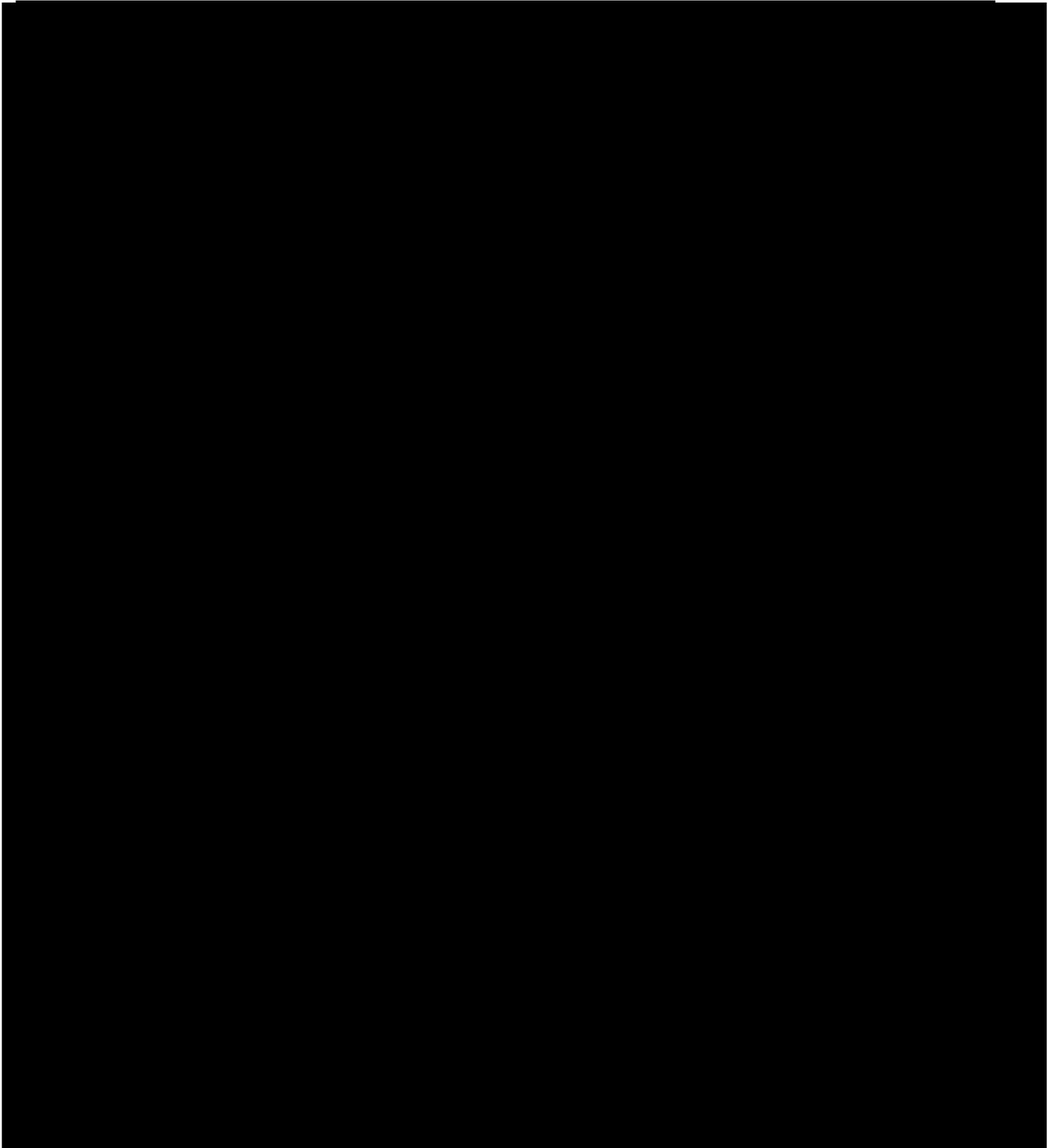


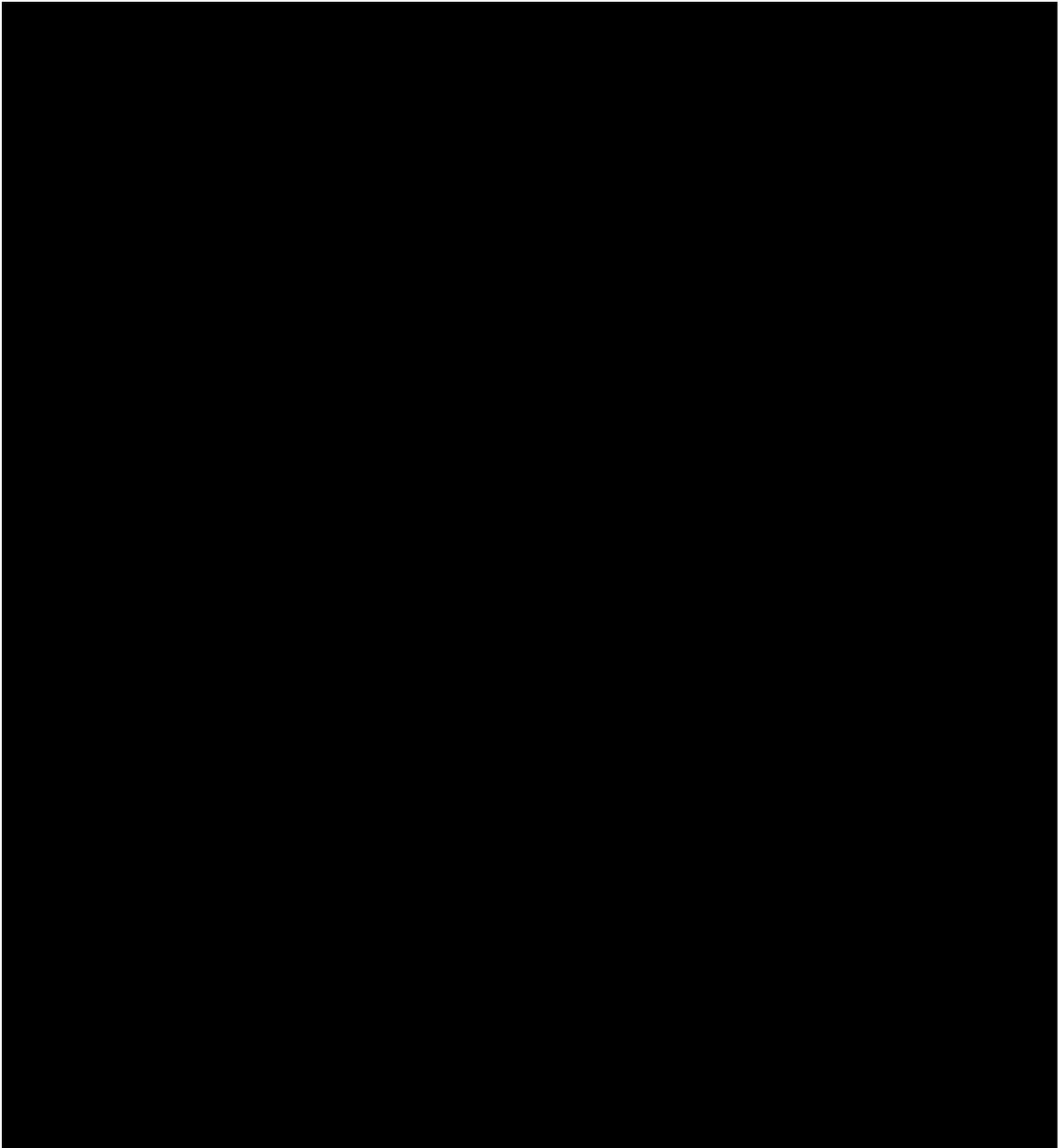


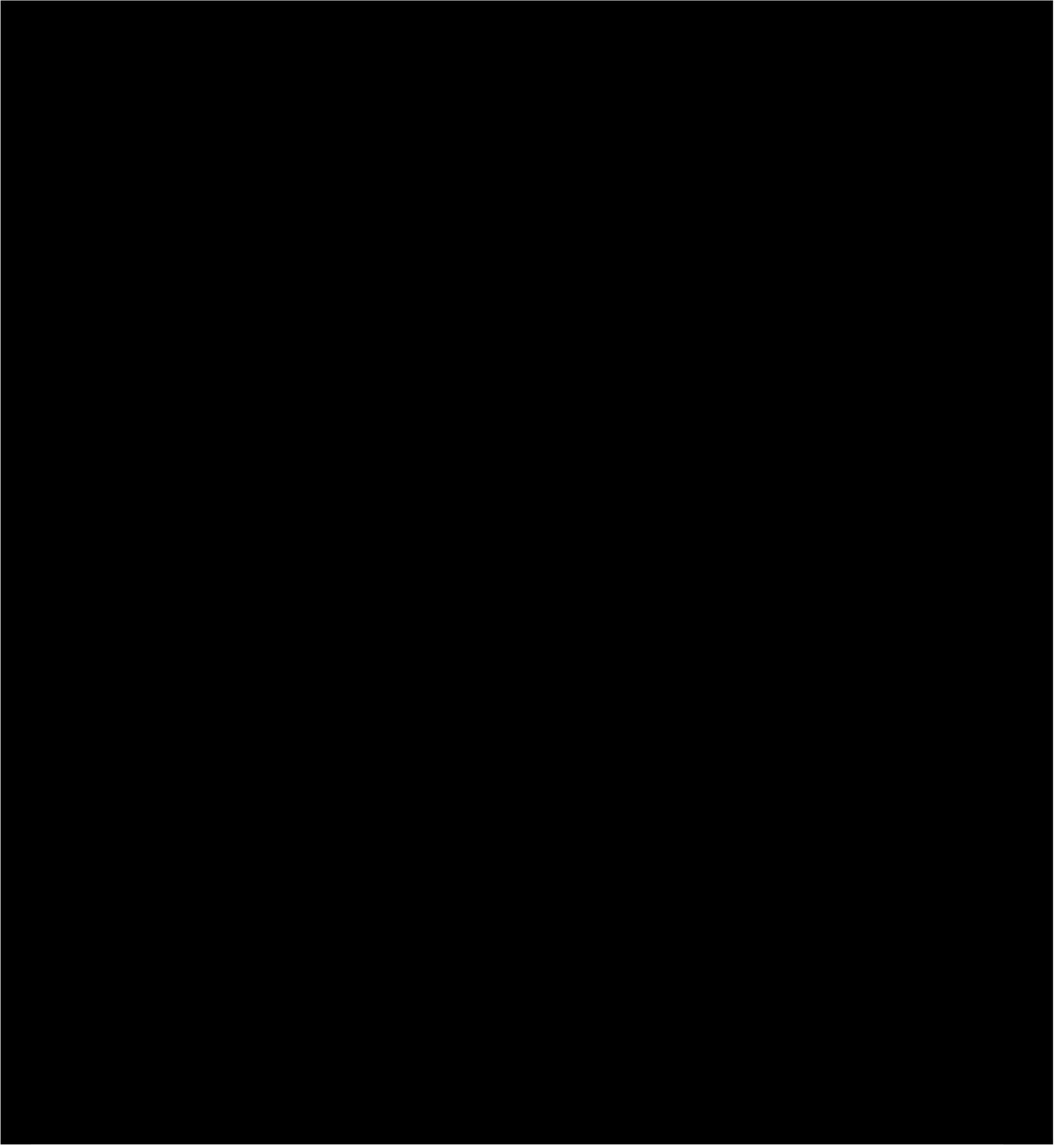


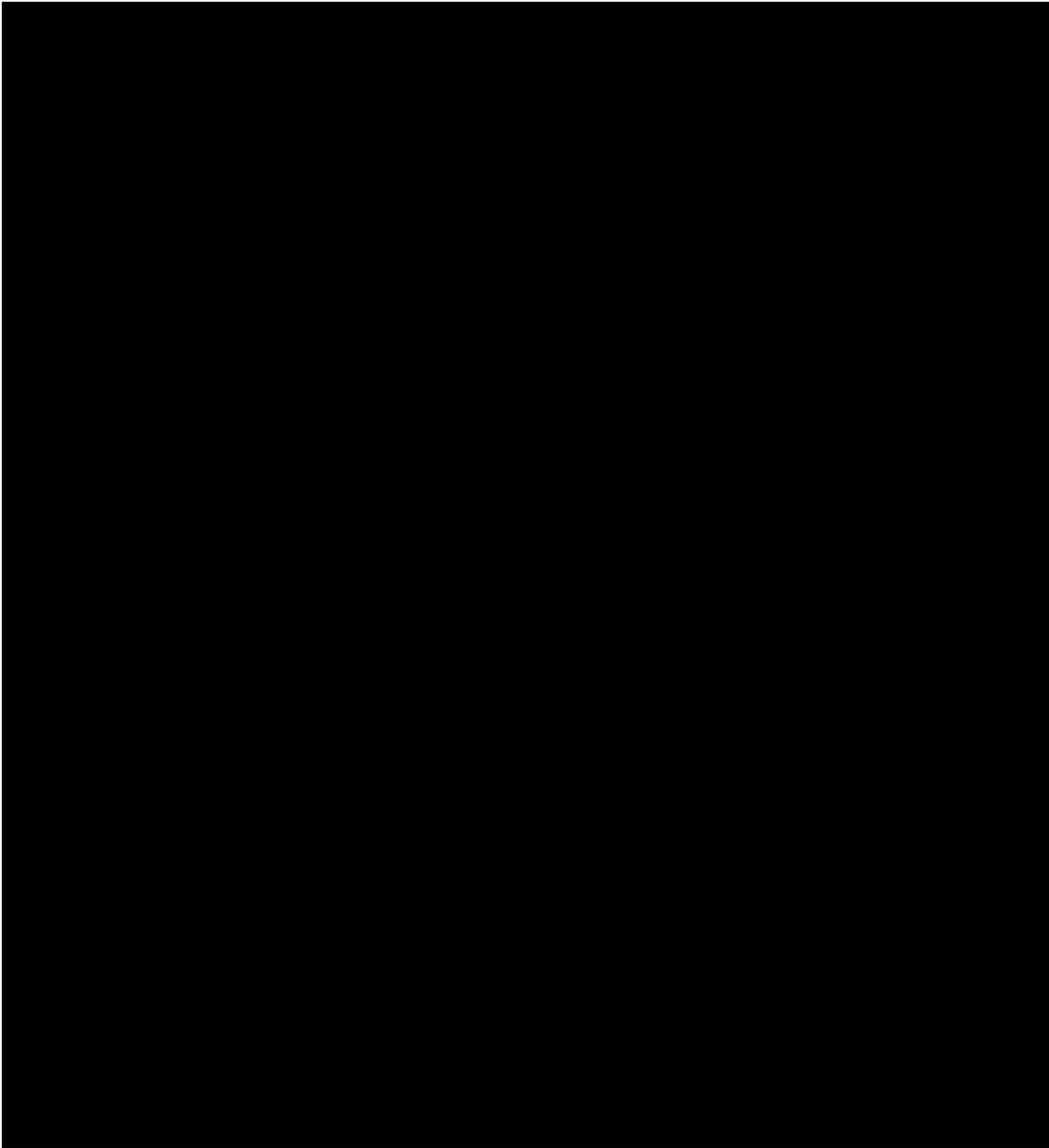


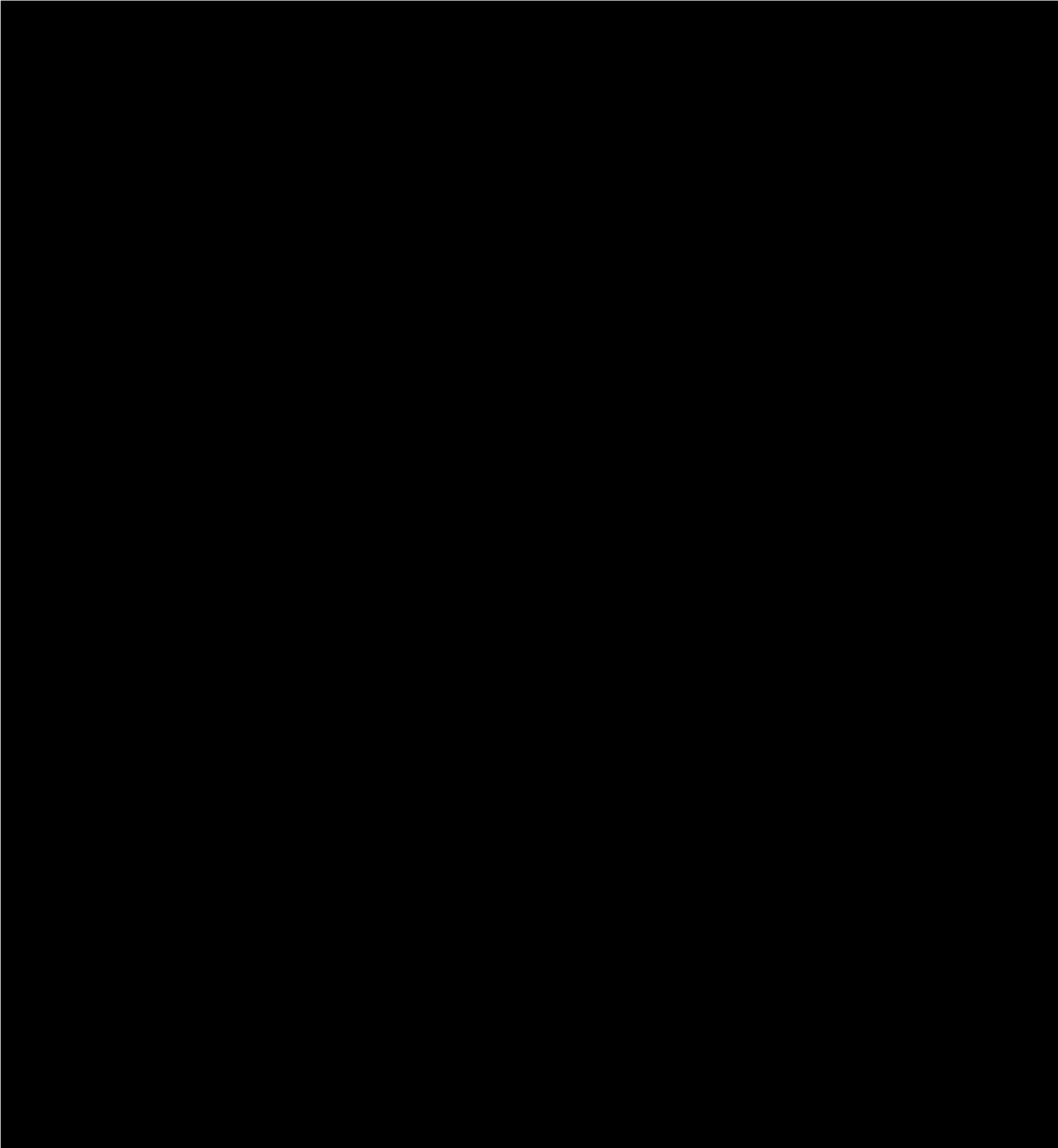


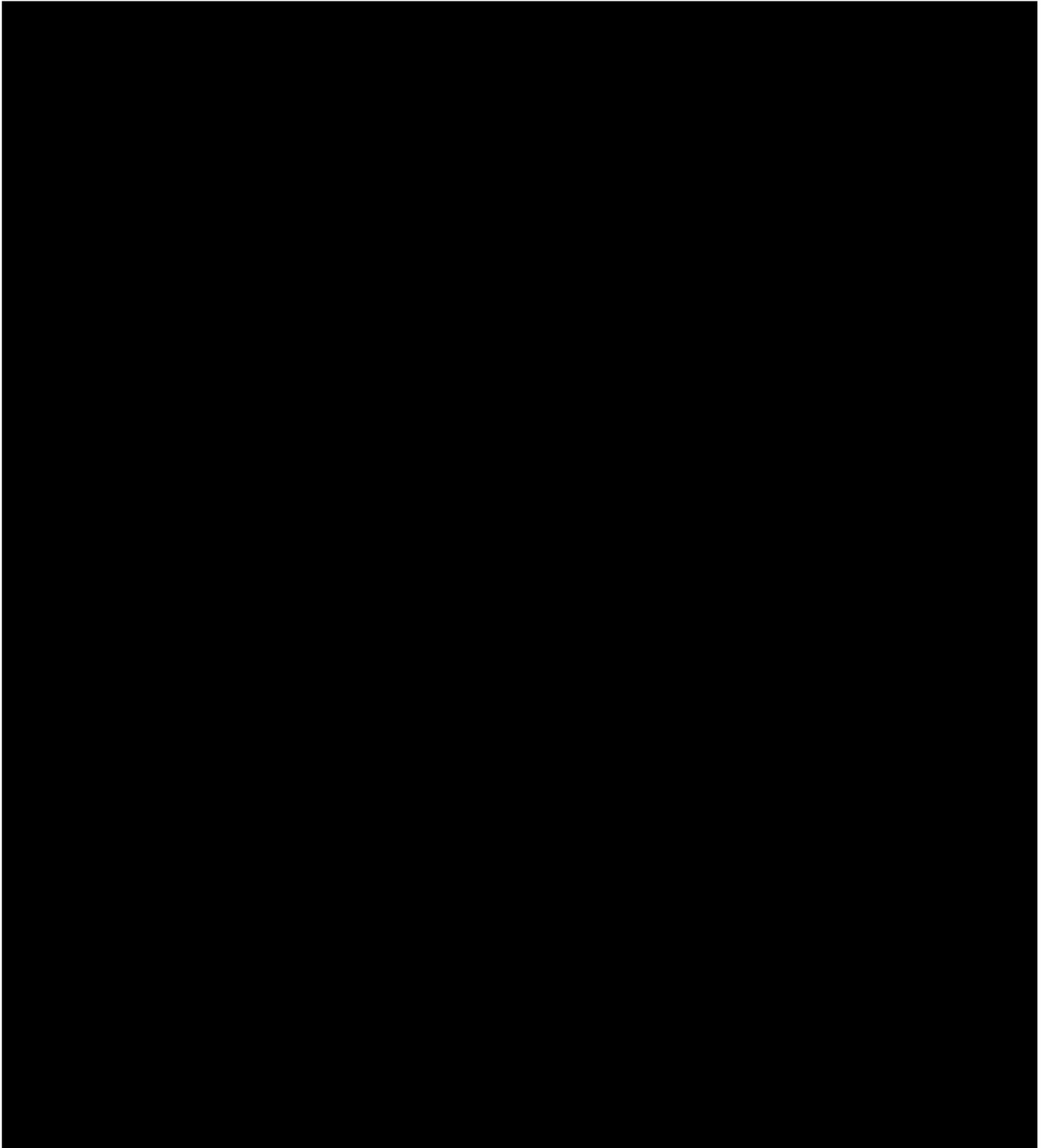


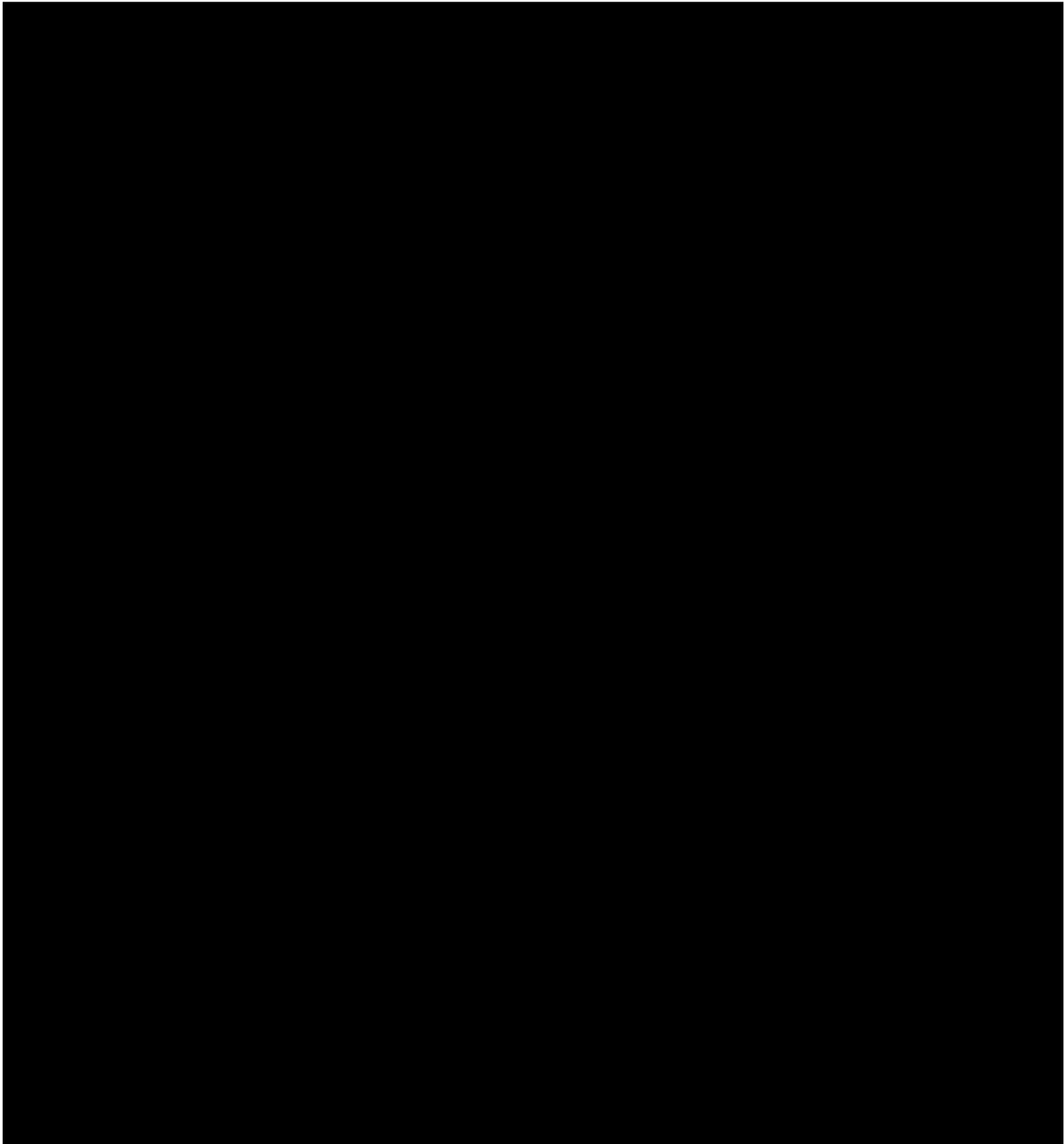


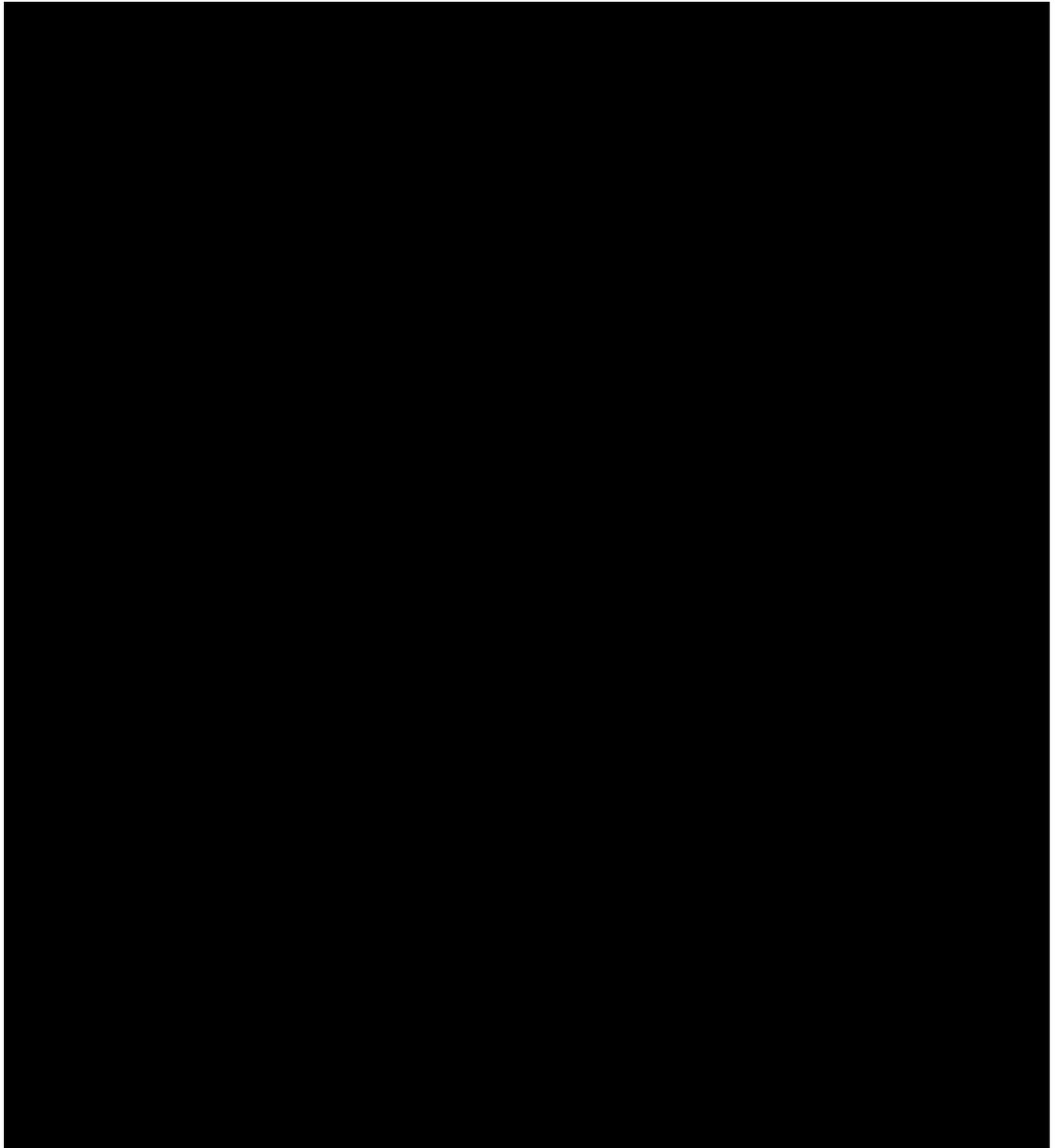


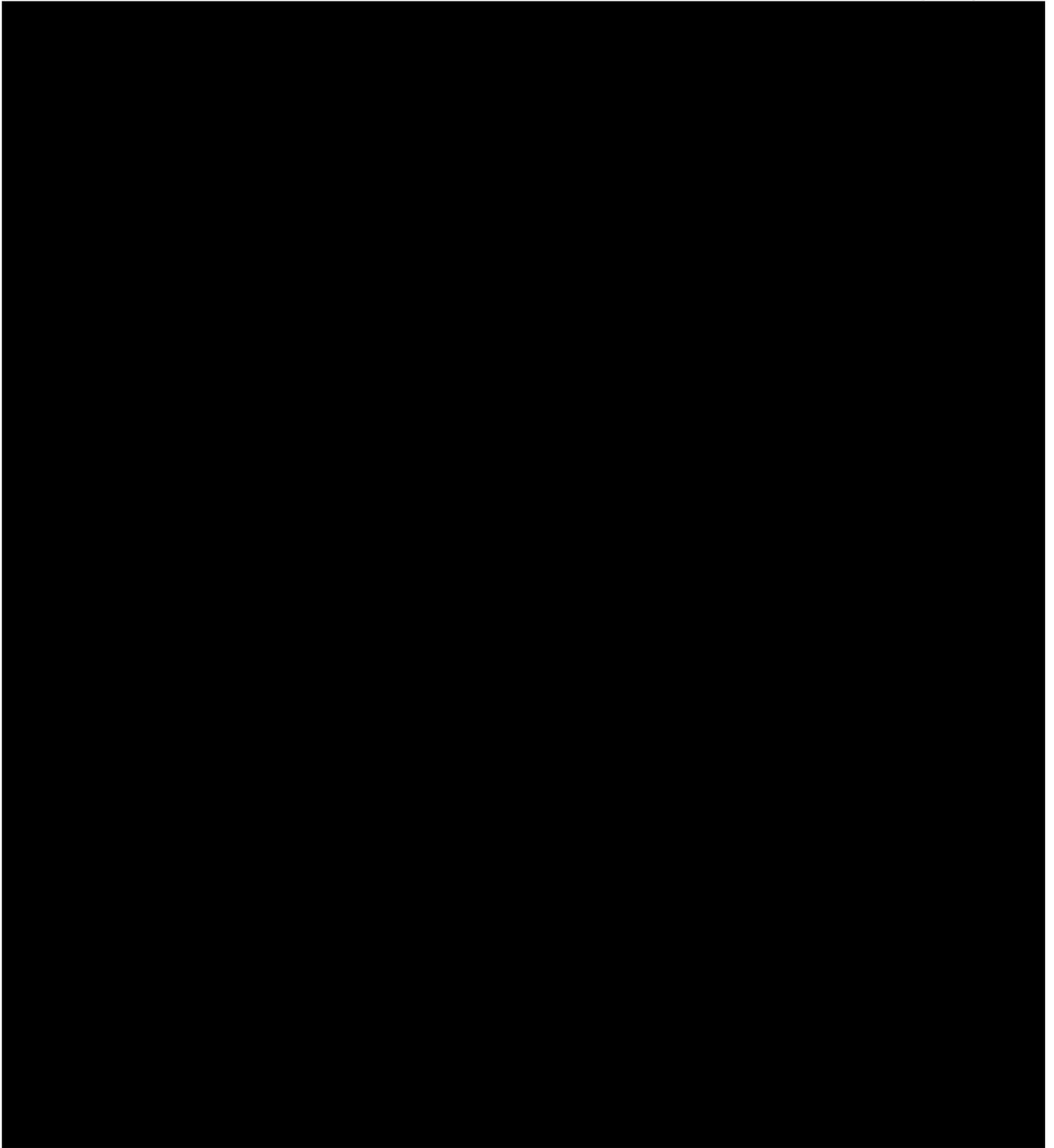


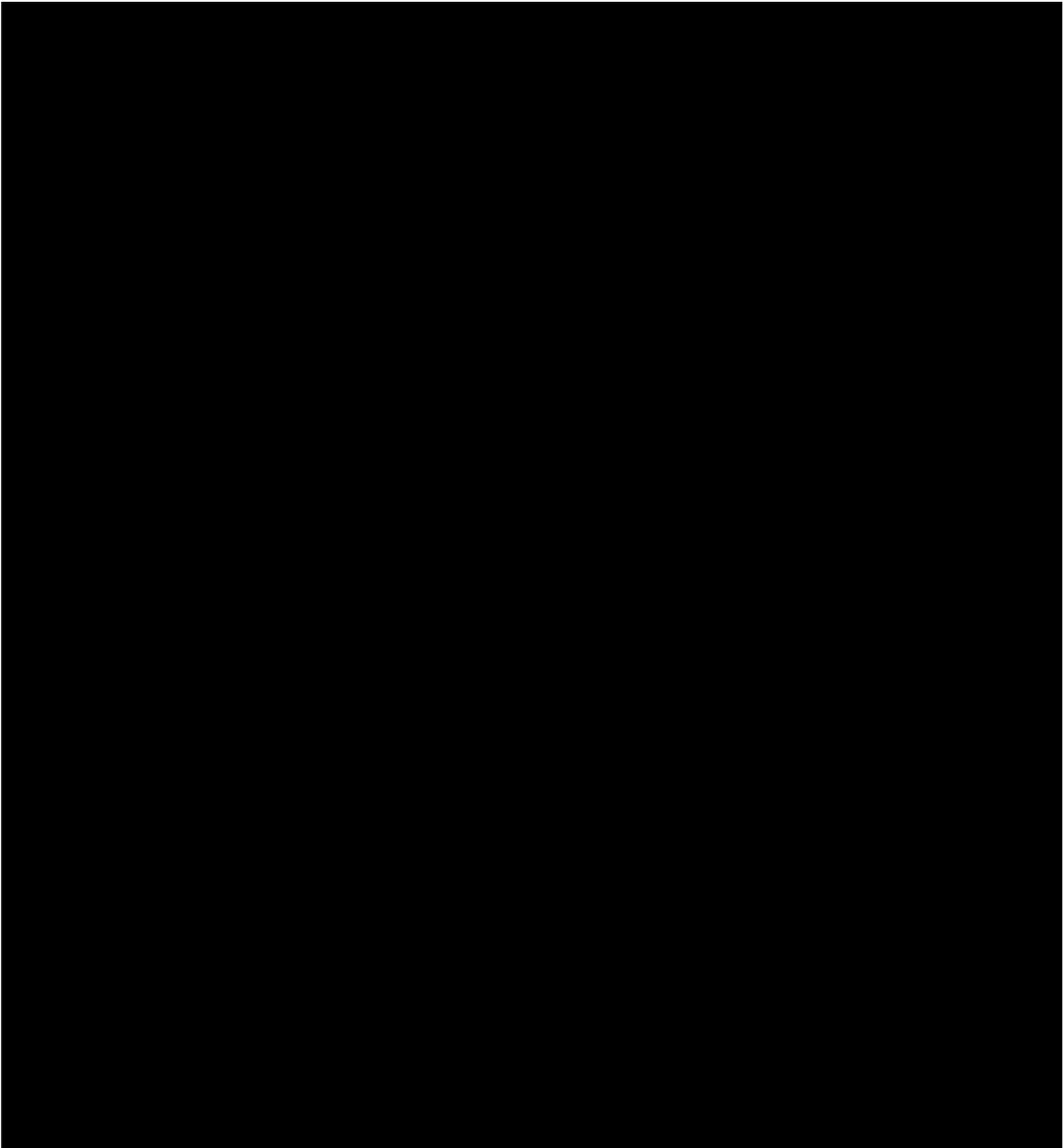


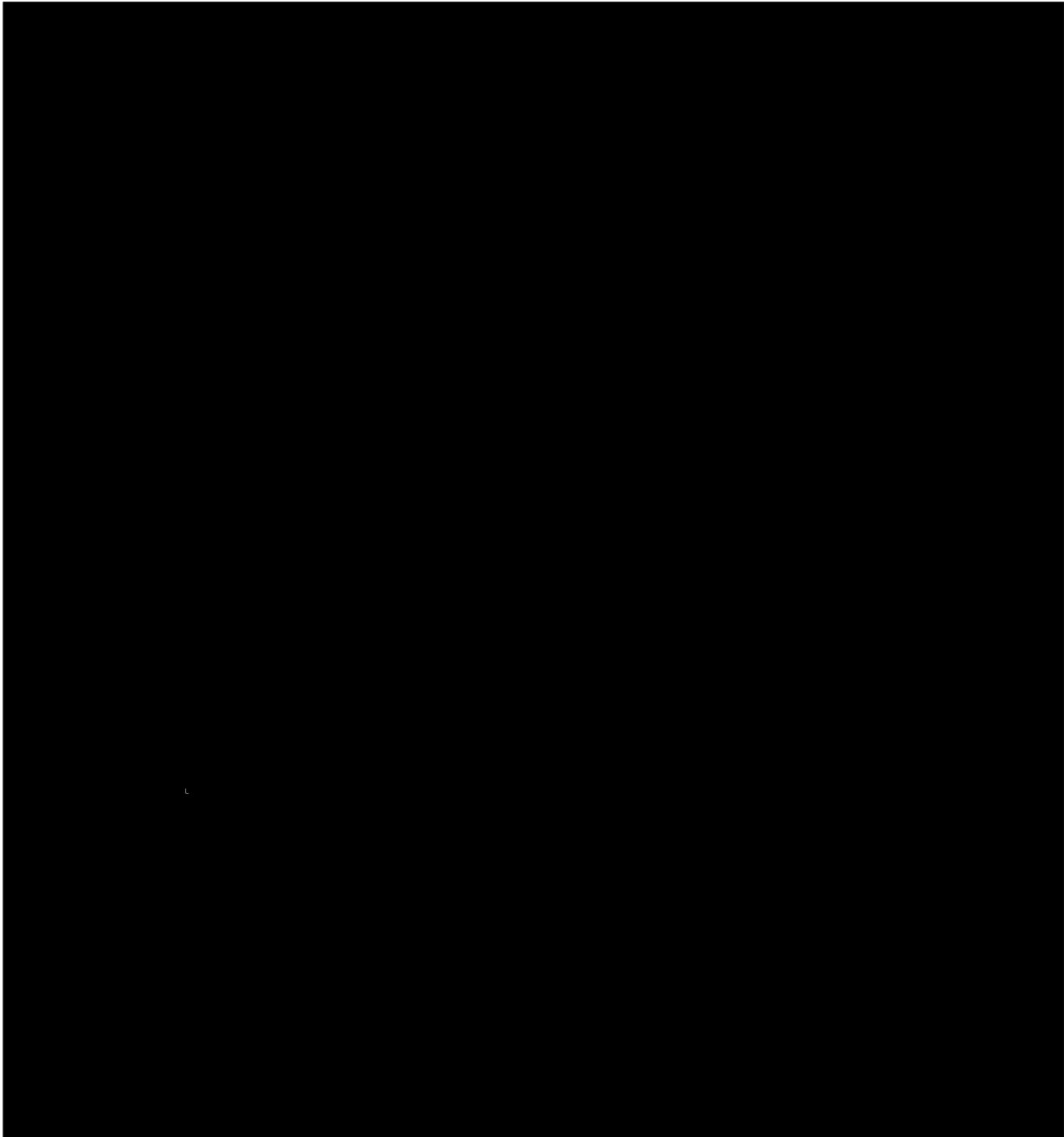












Notice of Electronic Service

I hereby certify that on May 04, 2018, I filed an electronic copy of the foregoing Non-Party Ishihara Corporation (U.S.A.)'s Motion for in Camera Treatment, with:

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Washington, DC, 20580

Donald Clark
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I hereby certify that on May 04, 2018, I served via E-Service an electronic copy of the foregoing Non-Party Ishihara Corporation (U.S.A.)'s Motion for in Camera Treatment, upon:

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