

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



In the Matter of)

Benco Dental Supply Co.)
a corporation,)

Henry Schein, Inc.,)
a corporation, and)

Patterson Companies, Inc.,)
a corporation,)

Respondents.)

PUBLIC

DOCKET NO. 9379

**NON-PARTY SMILE SOURCE, LP'S
MOTION FOR *IN CAMERA* TREATMENT**

Pursuant to Rule 3.45(b) of the Federal Trade Commission's Rules of Practice, 16 C.F.R. § 3.45(b), Smile Source, LP ("Smile Source"), a non-party in this matter, respectfully moves this Court for *in camera* treatment of the competitively-sensitive, confidential business documents described in the chart below. Smile Source produced these documents, among other materials, in response to three subpoenas deuces tecum received in this matter: two from the FTC, on May 8, 2017 and April 5, 2018, and one from Respondents Benco Dental Supply Co., Henry Schein, Inc., and Patterson Companies, Inc. on May 25, 2018. Current and former Smile Source executives also provided sworn testimony pursuant to subpoena ad testificandums from the FTC and Respondents, which testimony includes intrusive discussion of Smile Source confidential business information.

Smile Source produced this information first under confidentiality protections afforded by the Federal Trade Commission Act, and later, under the protective order issued in the above-

captioned matter (“Protective Order”). Portions of the documents demanded and produced contain some of Smile Source’s most valued confidential information. Disclosure of such information would cause Smile Source substantial harm. As described in greater detail below, Smile Source spends a great deal of effort protecting the confidentiality of the specified information in the ordinary course of business. Further, in each production, Smile Source took the necessary precautions to prevent the specified information from being shared outside of a limited number of identified individuals.

The Federal Trade Commission (“FTC”) and respondents Benco Dental Supply Co., Henry Schein, Inc., and Patterson Companies, Inc. (collectively, “Respondents”) have now respectively notified Smile Source that they intend to introduce several dozen Smile Source documents into evidence at the administrative trial in this matter. *See* Letter from the Federal Trade Commission dated September 17, 2018 (attached as Exhibit A); Letter from the Respondents dated September 17, 2018 (attached as Exhibit B).

Smile Source has undertaken a careful, document-by-document review to evaluate the need for *in camera* treatment. All of the information for which Smile Source is seeking *in camera* treatment constitutes competitively sensitive information (as defined below), and if such information were to become part of the public record, Smile Source would be significantly harmed in its ability to compete in the dental practice support industry. For the reasons discussed herein, Smile Source requests that this Court afford its competitively sensitive information *in camera* treatment. Additionally, Smile Source requests that the information afforded *in camera* treatment only be made accessible to the individuals designated in the Protective Order. In support of this Motion, Smile Source relies on the Declaration of Curtis J. Domingue, Jr. (“Domingue Declaration”), attached as Exhibit C, which provides additional details on the information for

which Smile Source is seeking *in camera* treatment. Because the minimum period of time varies for which each respective document is entitled to *in camera* treatment, Exhibit C separately describes the period of time requested for each document.

I. Description of Confidential Documents Containing Competitively Sensitive Information

Smile Source seeks *in camera* treatment for all or part of the following documents, copies of which are attached as the following exhibits:

- Exhibit D – Complete Redaction Requested,
- Exhibit E-1 – Partial Redactions Requested (Redactions Not Applied), and
- Exhibit E-2 – Partial Redactions Requested (Redactions Applied).¹

Exhibit No.	Description	Beginning Bates	End Bates	Information Category ²
Exhibit D – Complete Redaction Requested				
CX0294	Primary Vendor Agreement between Smile Source LLC and Henry Schein	CX0294-001	CX0294-006	1, 2
CX4128	Duplicate of CX0294	FTC-SS-0038066	FTC-SS-0038071	1, 2
CX4099	Letter from: Brian Brady to Trevor Maurer attaching executed Primary Vendor Agreement between Henry Schein and Smile Source, with exhibits. CX4099 also includes Amendment to Primary Vendor Agreement	SS-00003427	SS-00003435	1, 2
CX4098	Agreement between Smile Source LLC and Burkhart Dental Supply Dental Supply	FTC-SS-0009398	FTC-SS-0009398	1, 2
CX4203	Agreement between Darby and Smile Source	FTC-SS-0012831	FTC-SS-0012851	1, 2

¹ Exhibit D contains complete documents for which Smile Source seeks to have the court grant *in camera* treatment. Exhibit E-1 contains the documents for which Smile Source seeks *in camera* treatment for selected portions, with annotations identifying the information to be afforded *in camera* treatment. To aid the Court, Exhibit E-2 contains redacted versions of the documents that are attached to Exhibit E-1. Exhibit E-2 will be placed on the public record.

² As described in greater detail below, Smile Source is requesting *in camera* treatment for three categories of information: (1) sales, pricing, rebates/discounts, and member feedback; (2) vendor bidding processes, negotiations, and terms; and (3) strategic business plans.

Exhibit No.	Description	Beginning Bates	End Bates	Information Category²
CX4206	Duplicate of CX4203	FTC-SmileSource0013017	FTC-SmileSource0013037	1, 2
RX2087	Duplicate of CX4203	FTC-SmileSource 0013017	FTC-SmileSource 0013037	1, 2
CX4205	Member-Proprietary Smile Source Benefit Sheet	FTC-SmileSource 0003109	FTC-SmileSource 0003109	1, 2
CX4125	Confidential List of Detailed Smile Source Member Discounts	FTC-SS-0003653	FTC-SS-0003657	1, 2
CX4207	Smile Source Vendor List and Description of Members-Only Benefits	FTC-SmileSource 0019493	FTC-SmileSource 0019499	1, 2, 3
CX4209	Smile Source Signature Dental Care 2017 Rebate Opportunities	FTC-SmileSource 0040370	FTC-SmileSource 0040374	1, 2, 3
CX4450	SSLP Members Detail Report 2017-06-22 [excel native spreadsheets are numbered SS-00000001 - SS-00000055]	CX4450-001	CX4450-001	1, 2
CX0295	Email from: Phil Boatright to: Eric Grimes subject: "RE: BayView Dental / Smile Source / Henry Schein"	CX0295-001	CX0295-002	1, 2
CX4097	Document: Smile Source 2016 Member Survey	SS-00002749	SS-00002798	1, 3
CX4100	Presentation by Smile Source: "What is Smile Source" (.pdf file)	FTC-SS-0009058	FTC-SS-0009058	1, 2, 3
CX4101	Smile Source Presentation: "Group Resources and Collaboration for the Independent Dentist"	FTC-SS-0037764	FTC-SS-0037764	1, 2, 3
RX2084	"What is Smile Source?" Powerpoint presentation	FTC-SmileSource 0010344	FTC-SmileSource 0010344	1, 2, 3
CX0296	Email from: Trevor Maurer to: Chuck Cohen subject: "Re: Grey Market"	CX0296-001	CX0296-003	1, 3
CX4204	Duplicate of CX0296	FTC-SmileSource 0000013	FTC-SmileSource 0000015	1, 3
RX2085	Email from S. Walsh to T. Maurer re: Darby Agreement	FTC-SmileSource 0012080	FTC-SmileSource 0012082	2
RX2086	Unsigned, draft agreement between Darby and Smile Source	FTC-SmileSource 0012922	FTC-SmileSource 0012935	1, 2, 3
RX2088	Email from Trevor Mauer to David Howlett re Darby	FTC-SmileSource 0017699	FTC-SmileSource 0017700	1, 2
CX0291	Emails between Tim Sullivan and Trevor Maurer subject:	CX0291-001	CX0291-002	1, 2, 3

Exhibit No.	Description	Beginning Bates	End Bates	Information Category²
	"Re: Thinking thru my presentation"			
CX4208	Partial duplicate of CX0291	FTC-SmileSource 0039806	FTC-SmileSource 0039807	1, 2, 3
RX2082	Email from A. Goldsmith to J. Ritsema re: KC Burkhart Comparison	FTC-SmileSource 0005829	FTC-SmileSource 0005830	1, 2, 3
CX4200	Email from: Jerry Ritsema to: Trevor Maurer and Andy Goldsmith subject: "FW: Dr. Grubb" attachment: Dr.Grubb.xlsx (attachment not included)	FTC-SmileSource 0002026	FTC-SmileSource 0002027	1, 2
CX4202	Email from: Andy Goldsmith to: Jerry Ritsema subject: "Freight Charges"	FTC-SmileSource 0005388	FTC-SmileSource 0005388	1, 2, 3
RX2083	Email from A. Goldsmith to T. Nickerson, M. Oliver, K. Thonas, A. Clendenin, K. Cooley, A. Allen, and S. Lusk re: Smile Source Follow Up	FTC-SmileSource 0008465	FTC-SmileSource 0008465	2, 3
RX2090	Email from Tim Sullivan to Andy Goldsmith re meeting at Midwinter with Smile Source	FTC-SmileSource 0036397	FTC-SmileSource 0036399	1, 2, 3
RX2091	Email from T. Maurer to M. Mlotek re Smile Source Decision	FTC-SmileSource 0039516	FTC-SmileSource 0039519	2, 3
RX2092	Email from Trevor Maurer to Tim Sullivan re Smile Source	FTC-SmileSource 0039765	FTC-SmileSource 0039765	2, 3
Exhibit E-1 – Partial Redaction Requested				
CX8019	Deposition of Tracy Moody transcript	CX8019-001	CX8019-039	1, 2, 3
RX3034	Duplicate of CX8019	CX8019-001	CX8019-039	1, 2, 3
RX2952	Trevor Maurer Deposition Transcript	NA	NA	1, 2, 3
CX0322	Trevor Maurer Investigational Hearing Transcript	CX0322-001	CX0322-093	1, 2, 3
RX2989	Duplicate of CX0322	CX0322-001	CX0322-093	1, 2, 3
CX8039	Andrew Goldsmith Deposition Transcript	CX8039-001	CX8039-101	1, 2, 3
RX3051	Duplicate of CX8039	CX8039-001	CX8039-101	1, 2, 3

II. Smile Source's Competitively Sensitive Information is Secret, Material to Smile Source's Business and the Disclosure of Such Information Would Result in Serious Injury to Smile Source

In camera treatment of material is appropriate when its “public disclosure will likely result in clearly defined, serious injury to the person, partnership, or corporation requesting” such treatment. 16 C.F.R. § 3.45(b). This Commission has found that “the likely loss of business advantages is a good example of a ‘clearly defined, serious injury.’” *In re Dura Lube Corp.*, 1999 F.T.C. LEXIS 255 at *7 (Dec. 23, 1999).

To show serious injury, the party requesting *in camera* treatment must also demonstrate that the documents are secret and that they are material to the business. *In re General Foods Corp.*, 95 F.T.C. 352, 355 (1980). In this context, Courts generally attempt “to protect confidential business information from unnecessary airing.” *H.P. Hood & Sons, Inc.*, 58 F.T.C. 1184, 1188 (1961). In considering both secrecy and materiality, the Court has considered six factors to be informative: (1) the extent to which the information is known outside of the business; (2) the extent to which it is known by employees and others involved in the business; (3) the extent of measures taken to guard the secrecy of the information; (4) the value of the information to the business and its competitors; (5) the amount of effort or money expended in developing the information; and (6) the ease or difficulty with which the information could be acquired or duplicated by others. *In re Bristol-Myers Co.*, 90 F.T.C. 455, 456-457 (1977).

Smile Source is requesting *in camera* treatment for three categories of information: (1) sales, pricing, rebates/discounts, and member feedback, (2) vendor bidding processes, negotiations, and terms, and (3) strategic business plans (together, “Competitively Sensitive Information”). This Competitively Sensitive Information includes: vendor-specific pricing, rebates, and discounts; membership fee arrangement; customer-specific marketing; business

strategies relating to vendor negotiations and strategic partner planning; and business growth and retention strategies. Smile Source's Competitively Sensitive Information is exactly the type of information for which the Commission has traditionally afforded *in camera* treatment. *See, e.g., The Matter of Champion Spark Plug Company*, 1982 LEXIS 85 (April 5, 1982) (finding that "there is ample support for granting in camera treatment for sales data of a type not normally disclosed."). Smile Source protects this information in the ordinary course of business, and requires each prospective Smile Source member to sign a non-disclosure agreement prior to gaining access to detailed member benefits. Domingue Decl. ¶ 5. Disclosing such information to the public would significantly harm Smile Source's carefully and thoughtfully crafted, unique business model.

Publishing Competitively Sensitive Information will result in the loss of a business advantage to Smile Source. Making supplier pricing and terms information public would undermine Smile Source's ability to negotiate favorable terms with its suppliers or prospective suppliers; it would also give a business advantage to Smile Source's potential competitors by allowing them to more effectively target Smile Source's members. *See id.* ¶ 7. Smile Source would lose significant business advantage if Smile Source vendors and potential vendors learned of the current pricing and supply terms negotiated by Smile Source. *See Id.* Further, publishing Smile Source's strategic business plans would equip others in the dental support space with the information necessary to preempt and impede Smile Source's business model and member support system, carefully crafted based on information gathered over more than a decade. *See id.* ¶ 8.

Smile Source's Competitively Sensitive Information is secret because Smile Source maintains the confidentiality of such information by not disclosing such information outside of Smile Source or, in some instances, narrowly disclosing certain information to Smile Source members or targets who have agreed to a non-disclosure agreement, or to vendors who are under

confidentiality obligations. For example, Smile Source jealously guards its franchise fee structure and terms of membership, as well as vendor pricing and terms and business strategies (including the evolution of vendor relationships, member and prospective member relationships, and best practices from lessons learned in the course of operating the business). It employs non-disclosure agreements with its members and confidentiality provisions in its vendor contracts to ensure the safeguarding of this critical business information. *See id.* ¶¶ 5, 6, 8.

Smile Source's efforts to maintain the secrecy of the Competitively Sensitive Information extended to this matter and the underlying investigation conducted by the FTC. When Smile Source produced the Competitively Sensitive Information, it took steps to maintain its confidentiality by requesting confidential treatment by designating the documents as "Confidential" pursuant to the Protective Order in this matter, the purpose of which is to protect "the interests of parties and third parties ... against improper use and disclosure of confidential information submitted or produced in connection with this matter." *See* Protective Order (Feb. 13, 2018), at 2. The sworn testimony of its current and former executives was likewise so designated. This Court previously supported the continued careful protection of Smile Source's confidential information, by rejecting efforts from one of the respondents in this matter to modify the Protective Order to allow decimation of that confidential information to inside counsel of respondent. Domingue Decl. ¶ 12; Order Denying Respondent Henry Schein, Inc.'s Motion to Amend the Protective Order (June 15, 2018).

The Competitively Sensitive Information is also material to Smile Source's business, the disclosure of which to its members, vendors, and others in the dental support industry would be exceedingly detrimental to Smile Source. As explained above, publishing Smile Source's Competitively Sensitive Information will result in Smile Source losing business advantages to its

vendors, who can use the information to negotiate purchasing terms to Smile Source's (and ultimately, it's members') detriment, and potential competitors, who can use the information to disrupt Smile Source's strategic business plans. Additionally, Smile Source spends a significant amount of time and internal resources on compiling and tracking internal sales data and using that data to develop highly-confidential business strategies. Decl. ¶ 10. Smile Source also invests significant resources in using data to develop strategies designed to enhance the quality of its offerings. It would be highly prejudicial to Smile Source to allow its customers and potential competitors to capitalize on these efforts and use Smile Source's data to its detriment. *Id.* Because of the highly confidential nature of the information and its materiality to Smile Source's business, *in camera* treatment of Smile Source's Competitively Sensitive Information is appropriate.

Finally, Smile Source's status as a non-party is relevant to the treatment of its information. The FTC has held that "[t]here can be no question that the confidential records of businesses involved in Commission proceedings should be protected insofar as possible." *H.P. Hood & Sons*, 58 F.T.C. at 1186. This is especially so in the case of a non-party, which deserves "special solicitude" in its request for *in camera* treatment for its confidential business information. *See In re Kaiser Aluminum & Chem. Corp.*, 103 F.T.C. 500, 500 (1984) ("As a policy matter, extensions of confidential or *in camera* treatment in appropriate cases involving third party bystanders encourages cooperation with future adjudicative discovery requests."). Smile Source's non-party status therefore weighs in favor of granting *in camera* treatment to the Confidential Documents.

III. The Competitively Sensitive Information will Remain Sensitive Over Time and Thus, Permanent *In Camera* Treatment is Justified

Given the highly sensitive nature of the Competitively Sensitive Information, Smile Source requests that it be given *in camera* treatment indefinitely, or in certain instances as noted on Exhibit C, for a minimum of 3 or 5 years. For the reasons described below, both categories of

information—sales, pricing, rebates/discounts, and member feedback, and strategic business plans—are “likely to remain sensitive or become more sensitive with the passage of time” such that the need for confidentiality is not likely to decrease over time. *In re Dura Lube Corp.*, 1999 F.T.C. LEXIS at *7-8.

As described above, and set forth in the Domingue Declaration, maintaining the confidentiality of sales, pricing, rebates/discounts, and member feedback is key to Smile Source’s ability to effectively negotiate with customers and compete against competitors. Domingue Dec. ¶ 9. Even if some of the information is older than three years, pricing information and sales data can be used to reverse engineer Smile Source’s existing pricing and negotiation strategies, and to refine third party business strategies through the inclusion of actual data about Smile Source’s business. *Id.* Smile Source’s strategic business plans will also remain relevant for the foreseeable future, as research and development projects are considered and implemented years in advance of those projects bearing fruit. *Id.* Further, while particular prices may no longer be worthy of *in camera* treatment, Smile Source’s Competitively Sensitive Information contains information that could allow a competitor to learn the process by which Smile Source sets prices and negotiations, which continues to be secret and material today. *Id.* Additionally, Smile Source’s strategic business plans regarding which customers and markets to target would allow competitors to correct or replace long-term assumptions regarding Smile Source’s business strategies, to the detriment of Smile Source. *Id.* There is also a risk of “mosaic” disclosure of information, where various pieces of information can be combined to gain a business advantage over Smile Source. *Id.* The number of Smile Source documents appearing on the FTC’s and Respondents exhibit lists, and the depth to which Respondents and the FTC have pried into Smile Source’s proprietary and confidential operations in connection with this matter, have placed Smile Source in the tenuous and extremely

uncomfortable position of having its most valuable and protected information at the mercy of others, and all over a matter in which Smile Source is a disinterested non-party bystander.

Smile Source therefore requests that these documents receive *in camera* treatment indefinitely, or, at a minimum, for the amount of time shown for each document in Exhibit C.

Complaint Counsel and Respondents have also given notice that they intend to introduce deposition and/or informational hearing transcripts from Smile Source President and CEO Trevor Mauer, Smile Source co-founder Tracy Moody, and former Smile Source President Andrew Goldsmith, in which these representatives candidly discuss the strategic issues described above, as well as discussion of personal information. For the portions of each transcript Smile Source is requesting *in camera* treatment, Smile Source has provided proposed redactions as part of Exhibits E. For the same reasons discussed above, Smile Source requests that the redacted portions of these documents receive *in camera* treatment indefinitely.

V. Conclusion

For the reasons set forth above, Smile Source respectfully requests that this Court grant *in camera* treatment for the Competitively Sensitive Information indefinitely, or, at a minimum, for the period of time identified in Exhibit C, and permit only those individuals identified in the Protective Order to access such information.

Dated: September 26, 2018

Respectfully submitted,
/s/ Darren S. Tucker
Crystal Stapley

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ATTORNEYS FOR SMILE SOURCE, LP

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

In the Matter of

Benco Dental Supply Co.
a corporation,

Henry Schein, Inc.,
a corporation, and

Patterson Companies, Inc.,
a corporation,

Respondents.

IN CAMERA

DOCKET NO. 9379

[PROPOSED] ORDER

Upon consideration of Non-Party Smile Source, LP's ("Smile Source's") Motion for *In Camera* Treatment, it is HEREBY ORDERED that the following documents are to be provided permanent *in camera* treatment from the date of this Order, as redacted or in their entirety, as applicable, and that such documents, or portions thereof, shall be treated as "Confidential," pursuant to the Protective Order.

Exhibit No.	Description	Beginning Bates	End Bates
Exhibit D – Complete Redaction Requested			
CX0294	Primary Vendor Agreement between Smile Source LLC and Henry Schein	CX0294-001	CX0294-006
CX4128	Duplicate of CX0294	FTC-SS-0038066	FTC-SS-0038071
CX4099	Letter from: Brian Brady to Trevor Maurer (8/25/2017) attaching executed Primary Vendor Agreement between Henry Schein and Smile	SS-00003427	SS-00003435

Exhibit No.	Description	Beginning Bates	End Bates
	Source, with exhibits. CX4099 also includes Amendment to Primary Vendor Agreement, signed 11/29/2017		
CX4098	Agreement between Smile Source LLC and Burkhart Dental Supply Dental Supply	FTC-SS-0009398	FTC-SS-0009398
CX4203	Agreement between Darby and Smile Source	FTC-SS-0012831	FTC-SS-0012851
CX4206	Duplicate of CX4203	FTC-SmileSource0013017	FTC-SmileSource0013037
RX2087	Duplicate of CX4203	FTC-SmileSource 0013017	FTC-SmileSource 0013037
CX4205	Member-Proprietary Smile Source Benefit Sheet	FTC-SmileSource 0003109	FTC-SmileSource 0003109
CX4125	Confidential List of Detailed Smile Source Member Discounts	FTC-SS-0003653	FTC-SS-0003657
CX4207	Smile Source Vendor List and Description of Members-Only Benefits	FTC-SmileSource 0019493	FTC-SmileSource 0019499
CX4209	Smile Source Signature Dental Care 2017 Rebate Opportunities	FTC-SmileSource 0040370	FTC-SmileSource 0040374
CX4450	SSLP Members Detail Report 2017-06-22 [excel native spreadsheets are numbered SS-00000001 - SS-00000055]	CX4450-001	CX4450-001
CX0295	Email from: Phil Boatright to: Eric Grimes subject: "RE: BayView Dental / Smile Source / Henry Schein"	CX0295-001	CX0295-002
CX4097	Document: Smile Source 2016 Member Survey	SS-00002749	SS-00002798
CX4100	Presentation by Smile Source: "What is Smile Source" (.pdf file)	FTC-SS-0009058	FTC-SS-0009058
CX4101	Smile Source Presentation: "Group Resources and Collaboration for the Independent Dentist"	FTC-SS-0037764	FTC-SS-0037764
RX2084	"What is Smile Source?" Powerpoint presentation	FTC-SmileSource 0010344	FTC-SmileSource 0010344
CX0296	Email from: Trevor Maurer to: Chuck Cohen subject: "Re: Grey Market"	CX0296-001	CX0296-003

Exhibit No.	Description	Beginning Bates	End Bates
CX4204	Duplicate of CX0296	FTC-SmileSource 0000013	FTC-SmileSource 0000015
RX2085	Email from S. Walsh to T. Maurer re: Darby Agreement	FTC-SmileSource 0012080	FTC-SmileSource 0012082
RX2086	Unsigned, draft agreement between Darby and Smile Source	FTC-SmileSource 0012922	FTC-SmileSource 0012935
RX2088	Email from Trevor Mauer to David Howlett re Darby	FTC-SmileSource 0017699	FTC-SmileSource 0017700
CX0291	Emails between Tim Sullivan and Trevor Maurer subject: "Re: Thinking thru my presentation"	CX0291-001	CX0291-002
CX4208	Partial duplicate of CX0291	FTC-SmileSource 0039806	FTC-SmileSource 0039807
RX2082	Email from A. Goldsmith to J. Ritsema re: KC Burkhart Comparison	FTC-SmileSource 0005829	FTC-SmileSource 0005830
CX4200	Email from: Jerry Ritsema to: Trevor Maurer and Andy Goldsmith subject: "FW: Dr. Grubb" attachment: Dr.Grubb.xlsx (attachment not included)	FTC-SmileSource 0002026	FTC-SmileSource 0002027
CX4202	Email from: Andy Goldsmith to: Jerry Ritsema subject: "Freight Charges"	FTC-SmileSource 0005388	FTC-SmileSource 0005388
RX2083	Email from A. Goldsmith to T. Nickerson, M. Oliver, K. Thonas, A. Clendenin, K. Cooley, A. Allen, and S. Lusk re: Smile Source Follow Up	FTC-SmileSource 0008465	FTC-SmileSource 0008465
RX2090	Email from Tim Sullivan to Andy Goldsmith re meeting at Midwinter with Smile Source	FTC-SmileSource 0036397	FTC-SmileSource 0036399
RX2091	Email from T. Mauer to M. Mlotek re Smile Source Decision	FTC-SmileSource 0039516	FTC-SmileSource 0039519
RX2092	Email from Trevor Maurer to Tim Sullivan re Smile Source	FTC-SmileSource 0039765	FTC-SmileSource 0039765
Exhibit E-1 – Partial Redaction Requested			
CX8019	Deposition of Tracy Moody transcript	CX8019-001	CX8019-039
RX3034	Duplicate of CX8019	CX8019-001	CX8019-039
RX2952	Trevor Maurer Deposition Transcript	NA	NA
CX0322	Trevor Maurer Investigational Hearing Transcript	CX0322-001	CX0322-093

Exhibit No.	Description	Beginning Bates	End Bates
RX2989	Duplicate of CX0322	CX0322-001	CX0322-093
CX8039	Andrew Goldsmith Deposition Transcript	CX8039-001	CX8039-101
RX3051	Duplicate of CX8039	CX8039-001	CX8039-101

ORDERED:

D. Michael Chappell
Chief Administrative Law Judge

Date: _____

EXHIBIT A



UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

Bureau of Competition
Western Regional Office

September 17, 2018

VIA EMAIL TRANSMISSION

Smile Source
c/o Crystal Stapley, Esq.
Vinson & Elkins
2200 Pennsylvania Avenue, NW
Washington, DC 20037
cstapley@velaw.com

RE: *In the Matter of Benco Dental Inc., et al., Docket No. 9379*

Dear Ms. Stapley:

By this letter we are providing formal notice, pursuant to Rule 3.45(b) of the Commission's Rules of Practice, 16 C.F.R. § 3.45(b), that Complaint Counsel intends to offer the documents and testimony referenced in the enclosed Attachment A into evidence in the administrative trial in the above-captioned matter. For your convenience, a copy of the documents and testimony will be sent to you in a separate email with an FTP link.

The administrative trial is scheduled to begin on October 16, 2018. All exhibits admitted into evidence become part of the public record unless Administrative Law Judge D. Michael Chappell grants *in camera* status (i.e., non-public/confidential).

For documents or testimony that include sensitive or confidential information that you do not want on the public record, you must file a motion seeking *in camera* status or other confidentiality protections pursuant to 16 C.F.R. §§ 3.45 and 4.10(g). Judge Chappell may order that materials, whether admitted or rejected as evidence, be placed *in camera* only after finding that their public disclosure will likely result in a clearly-defined, serious injury to the person, partnership, or corporation requesting *in camera* treatment.

Motions for *in camera* treatment for evidence to be introduced at trial must meet the strict standards set forth in 16 C.F.R. § 3.45 and explained in *In re 1-800 Contacts, Inc.*, 2017 FTC LEXIS 55 (April 4, 2017); *In re Jerk, LLC*, 2015 FTC LEXIS 39 (Feb. 23, 2015); *In re Basic Research, Inc.*, 2006 FTC LEXIS 14 (Jan. 25, 2006). Motions also must be supported by a declaration or affidavit by a person qualified to explain the confidential nature of the material. *In re 1-800 Contacts, Inc.*, 2017 FTC LEXIS 55 (April 4, 2017); *In re North Texas Specialty Physicians*, 2004 FTC LEXIS 66 (Apr. 23, 2004). For your convenience, we included, as links in the cover email, an example of a third-party motion (and the accompanying declaration or affidavit) for *in camera* treatment that was filed and granted in an FTC administrative

proceeding. If you choose to move for *in camera* treatment, you must provide a copy of the document(s) for which you seek such treatment to the Administrative Law Judge. Also, you or your representative will need to file a Notice of Appearance in the administrative proceeding. For more information regarding filing documents in adjudicative proceedings, please see <https://www.ftc.gov/faq/ftc-info/file-documents-adjudicative-proceedings>.

Please be aware that under the current Scheduling Order **the deadline for filing motions seeking *in camera* treatment is September 26, 2018**. A copy of the March 14, 2018 Scheduling Order can be found at <https://www.ftc.gov/enforcement/cases-proceedings/151-0190/bencoscheinpatterson-matter>.

Additionally, in lieu of a deposition on the admissibility of the documents listed in Attachment A, we ask that you sign and return the attached declaration regarding the admissibility of these documents. Please return the signed declaration to my attention by September 28, 2018.

If you have any questions, please feel free to contact me at (415) 848-5124.

Sincerely,

/s/ Karen Goff

Karen Goff

Counsel Supporting the Complaint

Attachment

Attachment A

Exhibit No.	Full Name	Date	BegBates	EndBates
CX0291	Email from: Tim Sullivan to: Trevor Maurer subject: ["Re: Thinking thru my presentation"]	4/20/2017	CX0291-001	CX0291-002
CX0294	Contract between Smile Source LLC and Henry Schein	3/1/2017	CX0294-001	CX0294-006
CX0295	Email from: Phil Boatright to: Eric Grimes subject: ["RE: BayView Dental / Smile Source / Henry Schein"]	3/16/2017	CX0295-001	CX0295-002
CX0296	Email from: Trevor Maurer to: Chuck Cohen subject: [" Re: Grey Market"]	10/22/2014	CX0296-001	CX0296-003
CX0322	Trevor Maurer Investigational Hearing Transcript and exhibits	7/28/2017	CX0322-001	CX0322-093
CX4095	Email from:tom Richardson to todd Nickerson, Jerry Ritesma, Gary Kirkus subject: ["Atlanta Dental & Smile Source Follow Up"]	11/15/2012	FTC-SS-0008276	FTC-SS-0008276
CX4096	Email from:tmaurer@smilesources.com to Cheryl Ellis subject: ["Accepted: HSD & Smile Source Meeting"]	1/13/2014	FTC-SS-0037267	FTC-SS-0037267
CX4097	Document: Smile Source 2016 Member Survey	??/??/16	SS-00002749	SS-00002798
CX4098	Document: Agreement between Smile Source LLC and Burkhart Dental Supply Dental Supply	??/??/17	FTC-SS-0009398	FTC-SS-0009398
CX4099	Letter from:Brian Brady to Trevor Maurer	8/25/2017	SS-00003427	SS-00003435
CX4100	Presentation by Smile Source: ["What is Smile Source"]	TBD	FTC-SS-0009058	FTC-SS-0009058
CX4101	Presentation by Smile Source: ["Group Resources and Collaboration for the Independent Dentist"]	TBD	FTC-SS-0037764	FTC-SS-0037764
CX4102	Document: Q&A: Dental Networking	TBD	SS-00000179	SS-00000179
CX4123	Email from:Jamie Cassidy to Asim Hasnie, Trevor Maurer, Del Husted subject: ["Cost Analysis - 37111261600 - Patel"]	5/29/2018	FTC-SS-0000001	FTC-SS-0000002
CX4125	Document: Smile Source	TBD	FTC-SS-0003653	FTC-SS-0003657
CX4128	Primary Vendor Agreement between Henry Henry Schein, Inc. and Smile Source	3/1/2017	FTC-SS-0038066	FTC-SS-0038071
CX4199	Email from:Jerry Ritsema to: Andy Goldsmith and Trevor Maurer subject: ["Dr Varadi testimonial letter" attachment: [4332 001.pdf] (attachment not included)	3/11/2014	FTC-SmileSource 0000285	FTC-SmileSource 0000285
CX4200	Email from: Jerry Ritsema to: Trevor Maurer and Andy Goldsmith subject: ["FW: Dr. Grubb" attachment: [Dr.Grubb.xlsx] (attachment included)	2/3/2014	FTC-SmileSource 0002026	FTC-SmileSource 0002027
CX4201	Email from: Jerry Ritsema to: Trevor Maurer and Andy Goldsmith subject: ["Kudos to tom"]	5/21/2014	FTC-SmileSource 0002075	FTC-SmileSource 0002075
CX4202	Email from: Andy Goldsmith to: Jerry Ritsema subject: ["Freight Charges"]	3/20/2014	FTC-SmileSource 0005388	FTC-SmileSource 0005388
CX4203	Agreement between Darby and Smile Source	7/21/2014	FTC-SS-0012831	FTC-SS-0012851
CX4204	Email from: Trevor Maurer to: Chuck Cohen subject: ["Re: Grey Market"]	10/22/2014	FTC-SmileSource 0000013	FTC-SmileSource 0000015
CX4205	Smile Source Advertisement	TBD	FTC-SmileSource 0003109	FTC-SmileSource 0003109
CX4206	Agreement between Darby and Smile Source	7/21/2014	FTC-SmileSource0013017	FTC-SmileSource0013037
CX4207	Smile Source Vendor List	TBD	FTC-SmileSource 0019493	FTC-SmileSource 0019499
CX4208	Email from: Trevor Maurer to: Tim Sullivan subject: ["RE:Thinking thru my presentation"]	4/20/2017	FTC-SmileSource 0039806	FTC-SmileSource 0039807

Exhibit No.	Full Name	Date	BegBates	EndBates
CX4209	Smile Source Signature Dental Care 2017 Rebate Opportunities	??/??/17	FTC-SmileSource 0040370	FTC-SmileSource 0040374
CX4450	SSLP Members Detail Report 2017-06-22; SS-00000001 - SS-00000055	TBD	CX4450-001	CX4450-001
CX8019	Deposition of Tracy Moody transcript	7/11/2018	CX8019-001	CX8019-039

EXHIBIT B



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September 17, 2018

VIA E-MAIL & FED-EX

Smile Source, LP
c/o Darren Tucker, Esq.
Vinson & Elkins LLP
2200 Pennsylvania Avenue NW
Suite 400 West
Washington D.C. 20037-1701

Re: *In the Matter of Benco Dental Supply Co, Henry Schein, Inc. and Patterson Companies, Inc.* (FTC Docket No. 9379)

Dear Mr. Tucker,

By this letter, we are providing formal notice, pursuant to Rule 3.45(b) of the Federal Trade Commission's Rules of Practice, 16 C.F.R. § 3.45(b), that Benco Dental Supply Company, Henry Schein, Inc., and Patterson Companies, Inc. intend to offer the documents and/or testimony referenced in the enclosed Attachment A into evidence in the administrative trial in the above-captioned matter. The administrative trial is scheduled to begin on October 16, 2018. All exhibits admitted into evidence become part of the public record unless *in camera* status is granted by Administrative Law Judge D. Michael Chappell.

For documents or testimony which include sensitive or confidential information that you do not want on the public record, you must file a motion seeking *in camera* status or other confidentiality protections pursuant to 16 C.F.R. §§ 3.45, 4.10(g). Judge Chappell may order that materials, whether admitted or rejected as evidence, be placed *in camera* only after finding that their public disclosure will likely result in a clearly defined, serious injury to the person, partnership, or corporation requesting *in camera* treatment.

Motions for *in camera* treatment for evidence to be introduced at trial must meet the strict standards set forth in 16 C.F.R. § 3.45 and explained in *In re 1-800 Contacts, Inc.*, 2017 FTC LEXIS 55 (April 4, 2017); *In re Jerk, LLC*, 2015 FTC LEXIS (Feb. 23, 2015); *In re Basic Research, Inc.*, 2006 FTC LEXIS 14 (Jan. 25, 2006). Motions also must be supported by a declaration or affidavit by a person qualified to explain the confidential nature of the documents. *In re 1-800 Contacts, Inc.*, 2017 FTC LEXIS 55 (April 4, 2017); *In re North Texas Specialty Physicians*, 2004 FTC LEXIS 66 (April 23, 2004). Each party or non-party that files a motion for

September 17, 2018

Page 2

in camera treatment shall provide one copy of the documents for which in camera treatment is sought to the Administrative Law Judge. For your convenience, a copy of the documents and testimony will be provided to you via secure file share.

Please be aware that under the current Scheduling Order of March 14, 2018, the deadline for filing motions seeking *in camera* status is September 26, 2018. A copy of the Scheduling Order can be found at <https://www.ftc.gov/system/files/documents/cases/d09379order590015.pdf>.

If you have any questions, please feel free to contact me at (202) 416-6890.

Sincerely,

A handwritten signature in black ink, appearing to read 'JPM', with a large, sweeping loop at the end.

John P. McDonald

September 17, 2018

Page 3

Smile Source Attachment A

RX Number	Description	Date	Beg Bates	End Bates
RX2082	Email from A. Goldsmith to J. Ritsema re: KC Burkhart Comparison	2/27/2014	FTC-SmileSource 0005829	FTC-SmileSource 0005830
RX2083	Email from A. Goldsmith to T. Nickerson, M. Oliver, K. Thonas, A. Clendenin, K. Cooley, A. Allen, and S. Lusk re: Smile Source Follow Up	1/13/2012	FTC-SmileSource 0008465	FTC-SmileSource 0008465
RX2084	"What is Smile Source?" Powerpoint presentation	9/9/2011	FTC-SmileSource 0010344	FTC-SmileSource 0010344
RX2085	Email from S. Walsh to T. Maurer re: Darby Agreement with SmileSource-Darby Agreement (6/1/14) attached	5/29/2014	FTC-SmileSource 0012080	FTC-SmileSource 0012080
RX2086	Agreement between Darby and Smile Source	2014	FTC-SmileSource 0012922	FTC-SmileSource 0012935
RX2087	Smile Source / Darby Dental agreement	7/21/2014	FTC-SmileSource 0013017	FTC-SmileSource0013037
RX2088	Email from Trevor Mauer to David Howlett re Darby	9/17/2014	FTC-SmileSource 0017699	FTC-SmileSource 0017700
RX2089	Email from Carol Pampel to T. Nickerson Re Meeting at CMW with Tim Sullivan	2/15/2012	FTC-SmileSource 0036394	FTC-SmileSource 0036394
RX2090	Email from Tim Sullivan to Andy Goldsmith re meeting at Midwinter with Smile Source	2/9/2012	FTC-SmileSource 0036397	FTC-SmileSource 0036399
RX2091	Email from T. Mauer to M. Mlotek re Smile Source Decision	2/8/2017	FTC-SmileSource 0039516	FTC-SmileSource 0039519
RX2092	Email from Trevor Maurer to Tim Sullivan re Smile	1/12/2016	FTC-SmileSource	FTC-SmileSource

September 17, 2018

Page 4

	Source		0039765	0039765
RX2093	Smile Source Franchise Disclosure Statement	4/3/2018	FTC-SmileSource 0040761	FTC-SmileSource 0040761
RX2094	Smile Source Franchise Agreement	4/11/2017	FTC-SmileSource 0043189	FTC-SmileSource 0043189
RX2952	Trevor Maurer Deposition Transcript	8/9/2018	NA	NA
RX2989	Trevor Maurer IH Deposition Transcript	7/28/2017	CX0322-001	CX0322-093
RX3034	Tracy Moody Deposition Transcript	7/11/2018	CX8019-001	CX8019-039
RX3051	Andrew Goldsmith Deposition Transcript	7/30/2018	CX8039-001	CX8039-101

EXHIBIT C

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

In the Matter of

**Benco Dental Supply Co.
a corporation,**

**Henry Schein, Inc.,
a corporation, and**

**Patterson Companies, Inc.,
a corporation,**

Respondents.

PUBLIC

DOCKET NO. 9379

**DECLARATION OF CURTIS J. DOMINGUE, JR. IN SUPPORT OF NON-PARTY
SMILE SOURCE, LP'S MOTION FOR *IN CAMERA* TREATMENT**

I, Curtis J. Domingue, Jr., hereby declare as follows:

1. I am in-house counsel for Smile Source, LP ("Smile Source"). I make this declaration in support of Non-Party Smile Source, LP's Motion for *In Camera* Treatment (the "Motion"). I have personal knowledge of the matters stated herein.

2. Complaint Counsel and Benco Dental Supply Co., Henry Schein, Inc., and Patterson Companies, Inc. (collectively, "Respondents") have informed Smile Source that they intend to offer into evidence at the administrative trial in the above-captioned matter a selection of documents that Smile Source produced in response to subpoenas. Smile Source is seeking *in camera* treatment for portions of those confidential business documents that contain

sensitive and highly confidential business information (the “Competitively Sensitive Information”).

3. I have reviewed and am familiar with the documents, transcripts and other information that Smile Source produced in this proceeding and the underlying Federal Trade Commission investigation. Given my position at Smile Source, I am familiar with the types of information contained in the materials at issue and their significance to Smile Source. Based on my review of such information, my knowledge of Smile Source’s business, and my familiarity with the confidentiality protection afforded these types of information by Smile Source, I submit that the disclosure of the Competitively Sensitive Information contained in these materials to the public and to competitors, members, and/or vendors of Smile Source would cause serious competitive injury to Smile Source.

4. Based on my review, the Competitively Sensitive Information that the parties are proposing to introduce in this matter fall into three categories: (1) **sales data, pricing, rebates/discounts, and member feedback**, (2) **vendor bidding processes, negotiations, and terms**, and (3) **strategic business plans**. Each of these categories of documents contain secret and highly material Smile Source information, as summarized on the following chart:

Exhibit No.	Description	Beginning Bates	End Bates	Confidential Information Includes	Length of Requested Protection	Information Category
Exhibit D – Complete Redaction Requested						
CX0294	Primary Vendor Agreement between Smile Source LLC and Henry Schein	CX0294-001	CX0294-006	Current Primary Vendor Agreement. Contains confidential terms, including pricing and discount information; has confidentiality clause (Ex. A, para. 7)	Indefinite (or, alternatively, until 3 years after termination of the Primary Vendor Agreement, which termination date is not yet ascertainable)	1, 2
CX4128	Duplicate of CX0294	FTC-SS-0038066	FTC-SS-0038071			
CX4099	Letter from: Brian Brady to Trevor Maurer attaching executed Primary Vendor Agreement between Henry Schein and Smile Source, with exhibits. CX4099 also includes Amendment to Primary Vendor Agreement	SS-00003427	SS-00003435	Largely duplicative of CX0294, with additional contract exhibit B and Amendment	Indefinite (or, alternatively, until 3 years after termination of the Primary Vendor Agreement, which termination date is not yet ascertainable)	1, 2
CX4098	Agreement between Smile Source LLC and Burkhardt Dental Supply Dental Supply	FTC-SS-0009398	FTC-SS-0009398	Currently effective vendor agreement, which contains highly confidential pricing, discount, and rebate information. Agreement has indefinite confidentiality clause (Section 14, para G.)	Indefinite	1, 2
CX4203	Agreement between Darby and Smile Source	FTC-SS-0012831	FTC-SS-0012851	Current agreement between Darby and Smile Source; establishes confidential terms for business relationship, including pricing and discount information; has confidentiality clause (Section 3).	Indefinite	1, 2
CX4206	Duplicate of CX4203	FTC-SmileSource0013017	FTC-SmileSource0013037			
RX2087	Duplicate of CX4203	FTC-SmileSource0013017	FTC-SmileSource0013037			
CX4205	Member-Proprietary Smile Source Benefit Sheet	FTC-SmileSource0003109	FTC-SmileSource0003109	This document is only made available to members who have signed the nondisclosure agreement.	Indefinite	1, 2
CX4125	Confidential List of Detailed Smile Source Member Discounts	FTC-SS-0003653	FTC-SS-0003657	List of companies providing discounted services and products for Smile Source members, including description of confidential membership benefits and discounts. Prospective members must sign nondisclosure agreement prior to viewing this list.	Indefinite	1, 2
CX4207	Smile Source Vendor List and Description of Members-Only Benefits	FTC-SmileSource0019493	FTC-SmileSource0019499	Confidential list of Smile Source vendors; provided to Smile Source members subject to Non-Disclosure Agreement. Provides business confidential identities of vendors and rebate participants	Indefinite	1, 2, 3
CX4209	Smile Source Signature Dental Care 2017 Rebate Opportunities	FTC-SmileSource0040370	FTC-SmileSource0040374	Contains confidential and proprietary vendor rebate information, including vendor names and rebate amounts and criteria; clearly labeled that distribution is violation of nondisclosure clause in franchise agreement.	Indefinite	1, 2, 3

Exhibit No.	Description	Beginning Bates	End Bates	Confidential Information Includes	Length of Requested Protection	Information Category
CX4450	SSLP Members Detail Report 2017-06-22 [excel native spreadsheets are numbered SS-00000001 - SS-00000055]	CX4450-001	CX4450-001	Highly confidential database of member information, including, membership status, key date information, purchase volumes and items, and other highly proprietary information.	Indefinite	1, 2
CX0295	Email from: Phil Boatright to: Eric Grimes subject: "RE: BayView Dental / Smile Source / Henry Schein"	CX0295-001	CX0295-002	Private discussion of confidential terms of negotiations and pricing, including troubleshooting	Indefinite	1, 2
CX4097	Document: Smile Source 2016 Member Survey	SS-00002749	SS-00002798	Highly proprietary Smile Source internal survey results of its members, including preferences. Survey data could be used by competitors; reveals customer metrics, business plans, company advantages and disadvantages, etc.	Indefinite	1, 3
CX4100	Presentation by Smile Source: "What is Smile Source" (.pdf file)	FTC-SS-0009058	FTC-SS-0009058	Proprietary and confidential prospective member presentation reveals business strategy, marketing strategy, vendors, average financial impact for Smile Source members	Indefinite	1, 2, 3
CX4101	Presentation by Smile Source: "Group Resources and Collaboration for the Independent Dentist"	FTC-SS-0037764	FTC-SS-0037764	Proprietary and confidential prospective member presentation reveals business strategy, marketing strategy, vendors, average financial impact for Smile Source members	Indefinite	1, 2, 3
RX2084	"What is Smile Source?" Powerpoint presentation	FTC-SmileSource 0010344	FTC-SmileSource 0010344	Presentation that contains confidential business information such as discounts, rebates, marketing strategy, including reference to highly confidential Smile Source franchise fee amount	Indefinite	1, 2, 3
CX0296	Email from: Trevor Maurer to: Chuck Cohen subject: "Re: Grey Market"	CX0296-001	CX0296-003	Private business discussions attempting to resolve issues pertaining to use of / disparagement of Smile Source reputation	5 years	1, 3
CX4204	Duplicate of CX0296	FTC-SmileSource 0000013	FTC-SmileSource 0000015			
RX2085	Email from S. Walsh to T. Maurer re: Darby Agreement	FTC-SmileSource 0012080	FTC-SmileSource 0012082	Contains confidential negotiation terms between Smile Source and Darby, including pricing and discounts	Indefinite	2
RX2086	Unsigned, draft agreement between Darby and Smile Source	FTC-SmileSource 0012922	FTC-SmileSource 0012935	Unsigned, draft agreement between Darby and Smile Source, containing draft negotiations of terms of vendor agreement.	Indefinite	1, 2, 3
RX2088	Email from Trevor Mauer to David Howlett re Darby	FTC-SmileSource 0017699	FTC-SmileSource 0017700	Reflects confidential details of pricing and concern raised by Smile Source prospective member to Smile Source	5 years	1, 2
CX0291	Emails between Tim Sullivan and Trevor Maurer subject: "Re: Thinking thru my presentation"	CX0291-001	CX0291-002	Private discussion of confidential business model research, including proprietary results of member retention research reflecting trade secrets	Indefinite	1, 2, 3
CX4208	Partial duplicate of CX0291	FTC-SmileSource 0039806	FTC-SmileSource 0039807			

Exhibit No.	Description	Beginning Bates	End Bates	Confidential Information Includes	Length of Requested Protection	Information Category
RX2082	Email from A. Goldsmith to J. Ritsema re: KC Burkhart Comparison	FTC-SmileSource 0005829	FTC-SmileSource 0005830	Discussion of proprietary pricing, discounts, and rebates; contains customer-specific discussion	Indefinite	1, 2, 3
CX4200	Email from: Jerry Ritsema to: Trevor Maurer and Andy Goldsmith subject: "FW: Dr. Grubb" attachment: Dr.Grubb.xlsx (attachment not included)	FTC-SmileSource 0002026	FTC-SmileSource 0002027	Detailed discussion involving details of Smile Source member pricing and rebates	Indefinite	1, 2
CX4202	Email from: Andy Goldsmith to: Jerry Ritsema subject: "Freight Charges"	FTC-SmileSource 0005388	FTC-SmileSource 0005388	Confidential discussion of the need to revise an aspect of proprietary business and pricing strategy.	Indefinite	1, 2, 3
RX2083	Email from A. Goldsmith to T. Nickerson, M. Oliver, K. Thonas, A. Clendenin, K. Cooley, A. Allen, and S. Lusk re: Smile Source Follow Up	FTC-SmileSource 0008465	FTC-SmileSource 0008465	Confidential strategy discussion, references potential customer names and discussion of partnership with Burkhart	Indefinite	2, 3
RX2090	Email from Tim Sullivan to Andy Goldsmith re meeting at Midwinter with Smile Source	FTC-SmileSource 0036397	FTC-SmileSource 0036399	Reflects confidential business strategy of Smile Source.	Indefinite	1, 2, 3
RX2091	Email from T. Mauer to M. Mlotek re Smile Source Decision	FTC-SmileSource 0039516	FTC-SmileSource 0039519	Discussion of business decision and rationale to change to national dealer	5 years	2, 3
RX2092	Email from Trevor Maurer to Tim Sullivan re Smile Source	FTC-SmileSource 0039765	FTC-SmileSource 0039765	Reveals business strategy and timing of vendor negotiations	3 years	2, 3
Exhibit E-1 – Partial Redaction Requested						
CX8019	Deposition of Tracy Moody transcript	CX8019-001	CX8019-039	Pervasive discussion of Smile Source confidential business dealings and trade secrets, by co-founder of Smile Source. Includes, but not limited to, discussion of confidential business model, confidential business negotiations, and proprietary pricing structure.	Indefinite	1, 2, 3
RX3034	Duplicate of CX8019	CX8019-001	CX8019-039			
RX2952	Trevor Maurer Deposition Transcript	NA	NA	Pervasive discussion of Smile Source confidential business dealings and trade secrets, by current President and CEO of Smile Source. Includes, but not limited to, discussion of confidential business model, confidential business negotiations, and proprietary pricing structure. Also discusses private personal/medical information of a former employee.	Indefinite	1, 2, 3
CX0322	Trevor Maurer Investigational Hearing Transcript	CX0322-001	CX0322-093	Pervasive discussion of Smile Source confidential business dealings and trade secrets, by current President and CEO of Smile Source. Includes, but not limited to, discussion of confidential business model, confidential business negotiations, and proprietary pricing structure.	Indefinite	1, 2, 3
RX2989	Duplicate of CX0322	CX0322-001	CX0322-093			

Exhibit No.	Description	Beginning Bates	End Bates	Confidential Information Includes	Length of Requested Protection	Information Category
CX8039	Andrew Goldsmith Deposition Transcript	CX8039-001	CX8039-101	Pervasive discussion of Smile Source confidential business dealings and trade secrets, by former President of Smile Source. Includes, but not limited to, discussion of confidential business model, confidential business negotiations, and proprietary pricing structure.	Indefinite	1, 2, 3
RX3051	Duplicate of CX8039	CX8039-001	CX8039-101			

Sales Data, Pricing, Rebates/Discounts, and Member Feedback

5. As detailed in this chart, Exhibits CX0291, CX0294, CX0295, CX0296, CX0322, CX4097, CX4098, CX4099, CX4100, CX4101, CX4125, CX4128, CX4200, CX4202, CX4203, CX4204, CX4205, CX4206, CX4207, CX4208, CX4209, CX4450, CX8019, CX8039, RX2082, RX2084, RX2086, RX2087, RX2088, RX2090, RX2952, RX2989, RX3034, RX3051 contain detailed information such as Smile Source proprietary pricing and negotiated rebate/discount models, highly proprietary Smile Source franchise information (including membership fee structure and related financial data), and detailed market research and member feedback. This data is not publicly reported; Smile Source keeps this information in strict confidence. Prospective Smile Source members must sign non-disclosure agreements before gaining access to pricing and discount information falling within this category (*see, e.g.*, CX4207, CX4209). Many of these documents also contain detailed statistics or other feedback gathered from Smile Source members regarding member satisfaction, preferences, and experiences (*see, e.g.*, CX4097). If made public, Smile Source's competitors could leverage the sales and pricing data as well as the member feedback to gain a competitive advantage by recreating the Smile Source model using Smile Source's own proprietary data as the framework.

Vendor Bidding Processes, Negotiations, and Terms

6. Exhibits CX0291, CX0294, CX0295, CX0322, CX4098, CX4099, CX4100, CX4101, CX4125, CX4128, CX4200, CX4202, CX4203, CX4205, CX4206, CX4207, CX4208, CX4209, CX4450, CX8019, CX8039, RX2082, RX2083, RX2084, RX2085, RX2086, RX2087, RX2088, RX2090, RX2091, RX2092, RX2952, RX2989, RX3034,

RX3051 contain confidential information about Smile Source's vendor bidding processes, negotiations, and negotiated vendor terms. The Smile Source vendor contracts contain negotiated confidentiality clauses (*see, e.g.*, CX0294, CX4098, and CX4203), and Smile Source restricts detailed access to this information to members who have agreed to a non-disclosure agreement.

7. Publishing Competitively Sensitive Information will result in the loss of a business advantage to Smile Source. Making supplier pricing and terms information public would undermine Smile Source's ability to negotiate favorable terms with its suppliers or prospective suppliers; it would also give a business advantage to Smile Source's potential competitors by allowing them to more effectively target Smile Source's members. Smile Source would lose significant business advantage if Smile Source's current vendors and potential vendors learned of the current pricing and supply terms negotiated by Smile Source with other vendors.

Strategic Business Plans

8. Exhibits CX0291, CX0296, CX0322, CX4097, CX4100, CX4101, CX4202, CX4204, CX4207, CX4208, CX4209, CX8019, CX8039, RX2082, RX2083, RX2084, RX2086, RX2090, RX2091, RX2092, RX2952, RX2989, RX3034, RX3051 reference Smile Source's strategic business plans. These include, but are not limited to: detailed discussions with Smile Source members, provided pursuant to a nondisclosure agreement, explaining the Smile Source member purchasing model and details about the financial incentives provided (*see, e.g.*, CX4207; CX4209); and comprehensive explanations of the Smile Source model and franchise structure (*see, e.g.*, CX2084) and need for changes to its business model (CX4202). The information in these documents provides the road map for replicating Smile Source's carefully crafted business model. Publishing Smile Source's strategic business plans would

equip others in the dental support space with the information necessary to preempt and impede Smile Source's business model and member support system, carefully crafted based on information gathered over more than a decade.

9. Maintaining the confidentiality of sales, pricing, rebates/discounts, and member feedback is key to Smile Source's ability to effectively negotiate with customers and suppliers and compete against other service providers. Even if some of the information is older than three years, pricing information and sales data can be used to reverse engineer Smile Source's existing pricing and negotiation strategies, and to refine third party business strategies through the inclusion of data about Smile Source's business. Smile Source's strategic business plans will also remain relevant for the foreseeable future, as many projects are considered and implemented years in advance of bearing fruit. Further, while particular prices may no longer be worthy of *in camera* treatment, Smile Source's Competitively Sensitive Information contains information that could allow a competitor to learn the process by which Smile Source negotiates prices and discounts, which continues to be secret and material today. Additionally, Smile Source's strategic business plans regarding which customers and markets to target would allow competitors to correct or replace long-term assumptions regarding Smile Source's business strategies, to the detriment of Smile Source. There is also a risk of "mosaic" disclosure of information, where various pieces of information can be combined to gain a business advantage over Smile Source.

10. Additionally, Smile Source spends a significant amount of time and resources on compiling and tracking its Competitively Sensitive Information and would be highly prejudiced if it were to be disclosed publicly. For example, management spends significant hours each month analyzing sales data, costs, and customer feedback to inform business

strategy decisions. Further, in the hands of competitors, the information Smile Source has produced, even some of the information that is somewhat older, could be valuable and used to the detriment of Smile Source. For example, even older pricing information and sales data can be used to inform the range of vendor discounts, and even older information regarding Smile Source's business model goes to the very essence of Smile Source's trade secrets and can be used as a blueprint for a material portion of Smile Source's business model.

11. Also, if this information were to be made known to competitors or vendors, they would learn Smile Source's negotiation tactics and methodologies. Competitors or vendors with some assumptions about Smile Source's strategies could correct or update their assumptions using this information. This would be extremely detrimental to Smile Source.

12. Smile Source's efforts to maintain the secrecy of the Competitively Sensitive Information extended to this matter and the underlying investigation conducted by the FTC. When Smile Source produced the Competitively Sensitive Information, it took steps to maintain its confidentiality by requesting confidential treatment by designating the documents as "Confidential" pursuant to the Protective Order in this matter. The sworn testimony of its current and former executives was likewise so designated. This Court previously supported the continued careful protection of Smile Source's confidential information, by rejecting efforts from one of the respondents in this matter to modify the Protective Order to allow decimation of that confidential information to inside counsel of respondent.

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

Executed September 26, 2018.

s/ Curtis J. Domingue, Jr.
Curtis J. Domingue, Jr.

EXHIBIT D

Hearing Exhibits Nos. CX0291 (partial duplicate CX4208), CX0294 (duplicate CX4128), CX0295, CX0296 (duplicate CX4204), CX4097, CX4098, CX4099, CX4100, CX4101, CX4125, CX4200, CX4202, CX4203 (duplicates CX4206 & RX2087), CX4205, CX4207, CX4209, CX4450, RX2082, RX2083, RX2084, RX2085, RX2086, RX2088, RX2090, RX2091, RX2092

COMPLETE REDACTION REQUESTED

REDACTED

EXHIBIT E-1
Hearing Exhibits Nos. CX0322 (duplicate RX2989),
CX8019 (duplicate RX3034), CX8039 (duplicate
RX3051), RX2952

PARTIAL REDACTIONS REQUESTED (Redactions
Not Applied)

REDACTED

EXHIBIT E-2
Hearing Exhibits Nos. CX0322 (duplicate RX2989),
CX8019 (duplicate RX3034), CX8039 (duplicate
RX3051), RX2952

PARTIAL REDACTIONS REQUESTED (Redactions
Applied)

EXHIBIT CX0322
(and duplicate RX2989)

In the Matter of:

Henry Schein Dental

July 28, 2017
Trevor Maurer

Condensed Transcript with Word Index

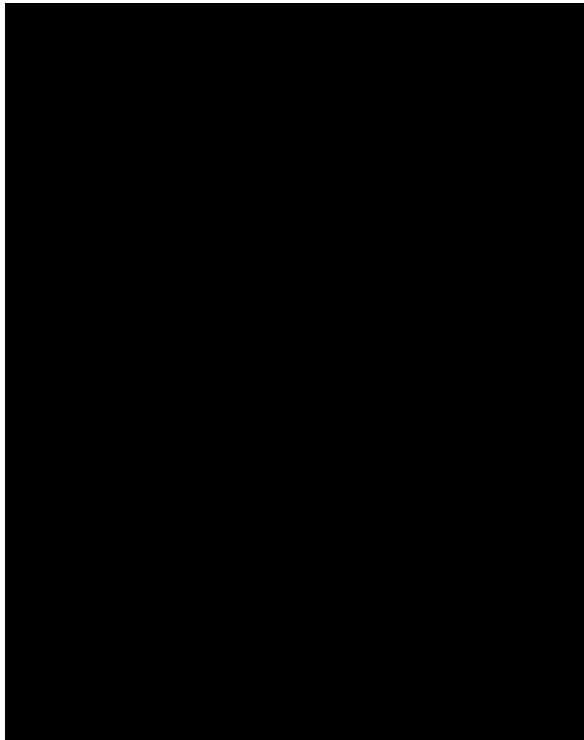
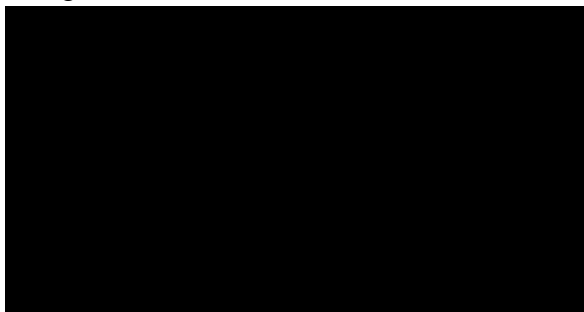


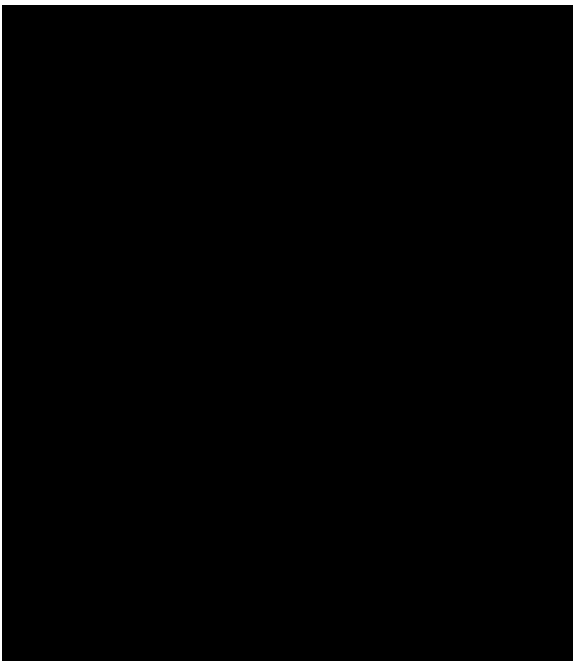
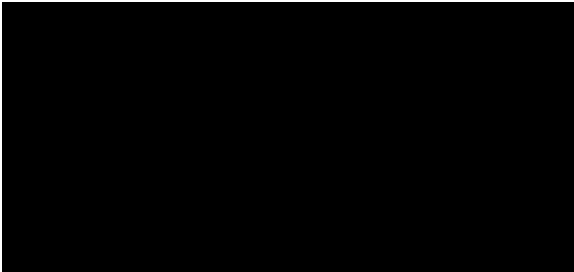
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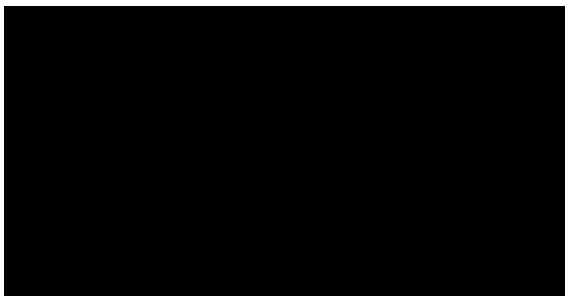
1	FEDERAL TRADE COMMISSION	1	APPEARANCES:
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3	HENRY SCHEIN, INC.)	3	ON BEHALF OF THE FEDERAL TRADE
4	PATTERSON COMPANIES,) Matter No.	4	COMMISSION:
5	INC., and BENCO DENTAL) 1510190	5	Federal Trade Commission, ESQ.
6	SUPPLY COMPANY,)	6	BY: KAREN GOFF, ESQ.
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9	INVESTIGATIONAL HEARING	9	San Francisco, CA 94103
10	OF TREVOR MAURER	10	415-848-5100
11		11	
12	Volume I	12	ON BEHALF OF THE WITNESS:
13	Washington, D.C.	13	VINSON & ELKINS LLP
14	Friday, July 28, 2017	14	BY: NEIL W. IMUS, ESQ.
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2		4	INDEX
1		1	
2		2	
3		3	WITNESS: EXAMINATION:
4		4	Trevor Maurer..... 6
5		5	
6		6	EXHIBITS
7		7	NUMBER: PAGE MARKED:
8	The Investigational Hearing of Trevor	8	331: Subpoena 6
9	Maurer, held at the offices of Vinson &	9	332: 4/20/17 e-mail 36
10	Elkins LLP, 2200 Pennsylvania Avenue, N.W.,	10	333: Smile Source web site
11	Washington, D.C., commencing at 10:28 a.m.,	11	Documents 72
12	on Friday, July 28, 2017, before Karen	12	334: 2017 3M Oral Care
13	Brynteson, Registered Professional Reporter,	13	Rebate Program document 78
14	Registered Merit Reporter, Certified Realtime	14	335: Primary Vendor
15	Reporter, Fellow of the Academy of Reporters.	15	Agreement 126
16		16	336: 3/16/17 3-mail from
17		17	Boatright to Grimes 141
18		18	337: 10/22/14 e-mail from
19		19	Maurer to Cohen 149
20		20	338: 12/30/13 e-mail from
21		21	Maurer to Misiak 157
22		22	
23		23	
24		24	
25		25	


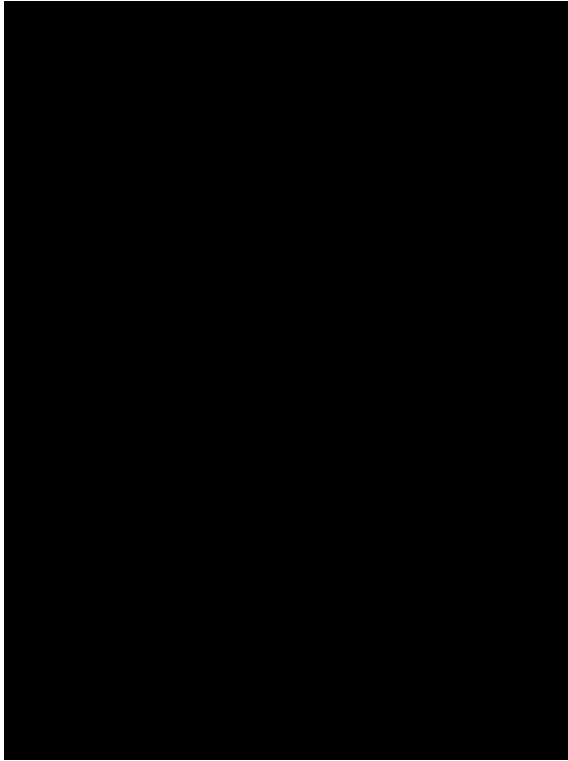
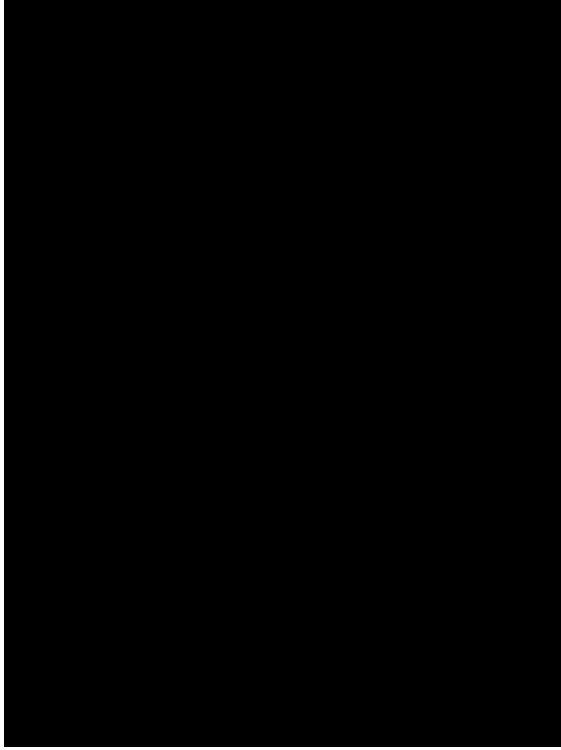
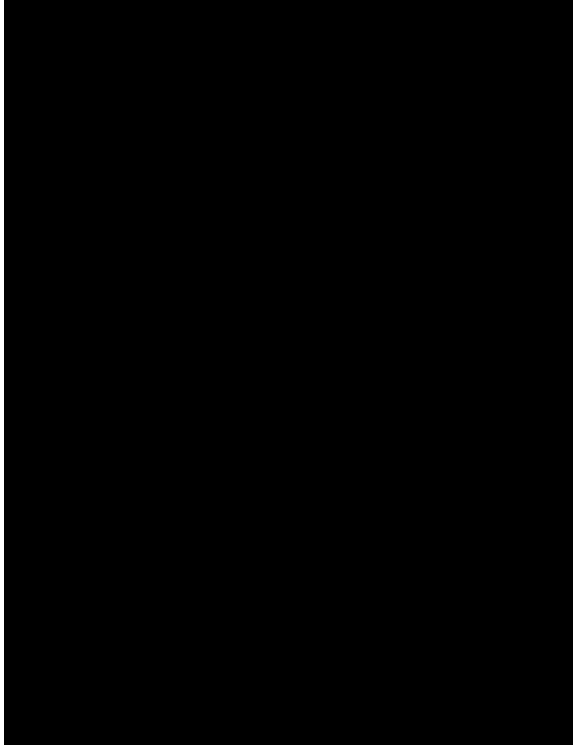
<p style="text-align: right;">5</p> <p>1 PROCEEDINGS 2 (10:28 a.m.) 3 Whereupon-- 4 TREVOR MAURER, 5 having been first duly sworn, was 6 examined and testified as follows: 7 EXAMINATION BY COUNSEL FOR 8 THE FEDERAL TRADE COMMISSION 9 BY MS. GOFF: 10 Q. Good morning, Mr. Maurer. Thank you 11 very much for being here today. My name is 12 Karen Goff. I'm an attorney for the Federal 13 Trade Commission. And we met off the record. 14 Today's proceeding is called an 15 investigational hearing. And it is just a 16 way to formalize the interview process. 17 It is conducted pursuant to the 18 Federal Trade Commission's rules. And it is 19 being conducted as part of the Federal Trade 20 Commission's investigation in Matter Number 21 151-0190. 22 For the record, would counsel please 23 state your appearance? 24 MR. IMUS: Neil Imus with Vinson & 25 Elkins on behalf of Smile Source.</p>	<p style="text-align: right;">7</p> <p>1 A. Yes. 2 Q. How many times? 3 A. Once. 4 Q. Okay. I understand that you have 5 given sworn testimony before, but I will just 6 go over a couple ground rules for today. 7 A. Sure, yeah. 8 Q. First, I will be asking you a series 9 of questions and you will tell me the 10 answers. As you can see, the court reporter 11 is recording all that we say here today. 12 Because she can only record our 13 words, please be sure to answer each question 14 with a verbal response as you have been doing 15 so far. 16 Please don't nod your head or shake 17 your head. Do you understand? 18 A. Yes. 19 Q. Thank you. It is also helpful if you 20 allow me to finish my question before you 21 answer. And I will try not to interrupt you 22 as well, since the court reporter can only 23 take down one of us speaking at a time. 24 Do you understand? 25 A. Yes.</p>
<p style="text-align: right;">6</p> <p>1 MS. GOFF: And are you also 2 representing the witness today? 3 MR. IMUS: I am. 4 MS. GOFF: Thank you. 5 BY MS. GOFF: 6 Q. Mr. Maurer, you are appearing today 7 pursuant to a subpoena issued by the Federal 8 Trade Commission. Is that your 9 understanding? 10 A. Yes. 11 Q. Okay. I will hand you Exhibit 331. 12 (Exhibit 331 was marked for 13 identification.) 14 MS. GOFF: It looks like you already 15 have a copy, right, counsel? 16 MR. IMUS: I do. Thank you. 17 MS. GOFF: Thank you. 18 BY MS. GOFF: 19 Q. Do you understand that this is the 20 subpoena compelling your testimony today? 21 A. I believe so, yeah. 22 Q. Okay. Thank you. 23 A. I am new to this, so yes. 24 Q. Have you ever given sworn testimony 25 before?</p>	<p style="text-align: right;">8</p> <p>1 Q. If at any time you don't understand a 2 question, you can ask me to rephrase my 3 question and I will do my best to do so. 4 A. Okay. 5 Q. If you need a break at any time, 6 please let me know and we can take one. If 7 there is a question pending, I may ask you to 8 answer the question before we take a break, 9 but otherwise if you ever need a break, let 10 me know. Okay? 11 A. Okay. 12 Q. Is there any reason why you cannot 13 provide complete and truthful testimony 14 today? 15 A. No. 16 Q. Mr. Maurer, you are employed by Smile 17 Source; is that correct? 18 A. Yes. 19 Q. What is your current title? 20 A. President and CEO. 21 Q. How long have you been with Smile 22 Source? 23 A. Since late 2012, November 2012. 24 Q. Okay. And how did you come to join 25 Smile Source?</p>

<p style="text-align: right;">9</p> <p>1 A. I was working for their sister 2 company, Vision Source. 3 Q. Okay. What are your general duties 4 and responsibilities as president and CEO? 5 A. To steward the organization to a 6 successful business venture. 7 Q. Are you in charge of establishing and 8 maintaining relationships with vendors? 9 A. I have a director of vendor 10 relations. 11 Q. Okay. 12 A. So I would say they would primarily. 13 Q. Do you oversee that? 14 A. I oversee the company, yes. 15 Q. So you oversee the person, the 16 director of vendor relations? 17 A. Yes. 18 Q. And then do you have any interaction 19 with Smile Source members as part of your 20 duties and responsibilities? 21 A. Frequent. 22 Q. And can you just give me a sense for 23 what your day to day looks like at Smile 24 Source? 25 A. Well, what does my day to day look</p>	<p style="text-align: right;">11</p> <p>1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25</p> 
<p style="text-align: right;">10</p> <p>1 like? I have a lot of meetings with my 2 leadership team and their various 3 responsibilities in terms of assessing where 4 they are against plan and what is important 5 resources they need to achieve goals for the 6 plan period. 7 Q. Okay. And so you mentioned your 8 leadership team. I don't need the names of 9 everyone on your leadership team, but just 10 can you give me a general sense for what 11 types of roles individuals on your leadership 12 team have? 13 A. Certainly. Vendor relations, 14 marketing, membership, accounting, finance, 15 legal, IT. 16 17 18 19 20 21 22 23 24 25</p> 	<p style="text-align: right;">12</p> <p>1 Q. Thank you. Prior to joining Smile 2 Source, you worked for Vision Source; is that 3 correct? 4 A. Correct. 5 Q. How long did you work there? 6 A. I would say two and a half years. 7 Q. Okay. And was -- is your position at 8 Smile Source the first time that you have 9 worked in the dental industry or have you had 10 any other positions -- 11 A. As an employee or any other 12 relations? 13 Q. No, worked in the dental industry as 14 an employee. 15 A. Yes. 16 Q. Okay. So total years in the dental 17 industry would be around four and a half or 18 five; is that correct? 19 A. Yes. 20 Q. Yes. Thank you. 21 I'd like to talk a little bit about 22 Smile Source's business. What is Smile 23 Source? 24 A. Smile Source is a franchisor that 25 promotes independent dentists, independent</p>

<p style="text-align: right;">13</p> <p>1 dentistry.</p> <p>2 Q. You said franchise org?</p> <p>3 A. Franchisor. We sell the franchise.</p> <p>4 We're a franchise company, franchisor, one</p> <p>5 word.</p> <p>6 Q. Thank you. What do you mean by</p> <p>7 "promotes independent dentists"?</p> <p>8 A. We help them be more successful. The</p> <p>9 web site slogan is group practice resources</p> <p>10 for the independent dentist.</p> <p>11 Q. Okay. And how does Smile Source help</p> <p>12 independent dentists be more successful?</p> <p>13 A. Four ways. Way Number 1 is marketing</p> <p>14 support. Number 2 is providing continuing</p> <p>15 education. Number 3 is best practice</p> <p>16 sharing. And Number 4 is through our</p> <p>17 cooperative buying program.</p> <p>18 Q. Thank you. And what is an</p> <p>19 independent dentist? Can you define that in</p> <p>20 your own words?</p> <p>21 A. Sure. It is a dentist that owns the</p> <p>22 practice. It is not an employee. It is not</p> <p>23 a contractor. They own the practice.</p> <p>24 Q. Okay. And are independent dentists</p> <p>25 that are served by Smile Source typically</p>	<p style="text-align: right;">15</p> <p>1 Q. Is Mr. Goldsmith still with Smile</p> <p>2 Source?</p> <p>3 A. No.</p> <p>4 </p> <p>5</p> <p>6</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>
<p style="text-align: right;">14</p> <p>1 smaller dental practices, one or two</p> <p>2 dentists?</p> <p>3 A. When you say smaller, you mean</p> <p>4 employees or do you mean revenue?</p> <p>5 Q. I mean employees. Thank you for that</p> <p>6 clarification.</p> <p>7 A. Yes.</p> <p>8 Q. Do you know when Smile Source was</p> <p>9 first founded or formed?</p> <p>10 A. Articles of Incorporation were in</p> <p>11 2006. First employee was hired in 2010.</p> <p>12 Q. What happened from 2006 to 2010, if</p> <p>13 you know?</p> <p>14 A. Nothing that I know of. An idea was</p> <p>15 put on the shelf, I believe. I don't know.</p> <p>16 I wasn't there.</p> <p>17 Q. Okay. And who was the head of Smile</p> <p>18 Source before you became the president and</p> <p>19 CEO?</p> <p>20 A. Before I became, it was Dr. Andy</p> <p>21 Goldsmith.</p> <p>22 Q. And what was his title, do you know?</p> <p>23 A. It was president. And then when I</p> <p>24 joined it was changed to chief dental</p> <p>25 officer.</p>	<p style="text-align: right;">16</p> <p>1 </p> <p>2</p> <p>3</p> <p>4</p> <p>5</p> <p>6</p> <p>7</p> <p>8</p> <p>9</p> <p>10 Was Mr. Goldsmith the founder of</p> <p>11 Smile Source?</p> <p>12 A. I don't know if I should correct you</p> <p>13 or not, but it was Dr. Goldsmith, if that is</p> <p>14 important. I don't know. He is not.</p> <p>15 Q. Was there a founder?</p> <p>16 A. It was founded by Vision Source</p> <p>17 Corporation, Chairman Len Ellisor, Doctor of</p> <p>18 Optometry.</p> <p>19 Q. Thank you. And do you have an</p> <p>20 understanding of why Smile Source was formed</p> <p>21 or founded by the individual that you just</p> <p>22 named?</p> <p>23 A. Sure. Dr. Len Ellisor?</p> <p>24 Q. Thank you.</p> <p>25 A. No problem. Vision Source is a</p>

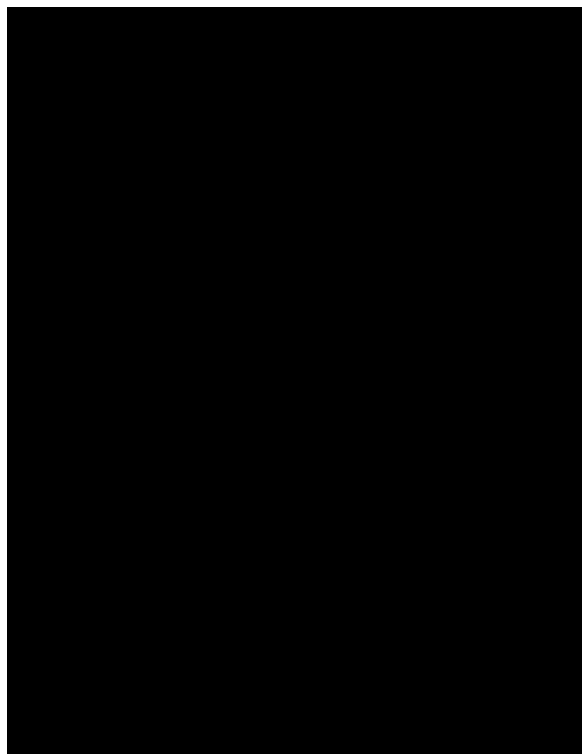
<p style="text-align: right;">17</p> <p>1 successful model. One in five optometrists 2 is a member. A group of dentists approached 3 Vision Source and asked if Vision Source 4 would help them. This was all told to me 5 verbally through the years. I wasn't at the 6 meeting. This is the legend that was passed 7 down. 8 Q. And who told you this legend? 9 A. Everyone in the office. I could name 10 100 people. It is just kind of known. 11 Q. Okay. Was it a specific group of 12 dentists that approached? 13 A. It is a group of dentists led by John 14 Wallitschek in Phoenix, Arizona. 15 Q. Thank you. Does -- am I correct that 16 Smile Source has members? 17 A. Yes. 18 Q. And are those members dentists? 19 A. All of them. 20 Q. Earlier you gave me four ways that 21 Smile Source promotes independent dentists. 22 I would just like to walk through those. 23 So the first one you mentioned was 24 marketing support. 25 A. Um-hum.</p>	<p style="text-align: right;">19</p> <p>1 minimum is if they want to have them once a 2 month, that's fine. It is probably a bit 3 annoying for people, but it is their choice. 4 Q. Whose choice? 5 A. The local leader, whoever runs, 6 organizes that meeting. We call them an 7 administrator. 8  9 Q. Then the fourth way that Smile Source 10 promotes independent dentists, you said, was 11 co-op buying program. 12 A. Yes. 13 Q. What is that? 14 A. It is where we will line up vendors 15 for our members, so discounts or rebates for 16 them to use. 17 18 19 20 21 22 23 24 25</p>
<p style="text-align: right;">18</p> <p>1 Q. What does that entail? 2 A. So we have a Marketing Department of 3 two people and various vendors and agencies 4 that we use. And we give our members access 5 to them to help them market their practice. 6 Our franchise is based on a 7 percentage of collections, so the more 8 successful they are, the more successful we 9 are. 10 Q. Okay. And then continuing education, 11 are those courses for dentists? 12 A. On-line and in-person courses. 13 Q. And best practice sharing, what is 14 that? 15 A. So when we have local regional 16 meetings, we will have a topic. It might be 17 we will stick to marketing, how to attract 18 new patients. And the doctors will talk 19 about their most successful method that they 20 have used. And they will critique each other 21 and give each other ideas. 22 Q. How frequently does Smile Source have 23 local regional meetings? 24 A. Once a quarter at minimum in the 42 25 markets that we serve. The reason I say at</p>	<p style="text-align: right;">20</p> <p>1 Q. And is that discounts or rebates on 2 dental supplies? 3 A. Yes, dental supplies, anything 4 related to an office, could be boxes and 5 paper, could be gloves and crowns. 6 Q. Could it also be dental equipment? 7 A. Yes. 8 Q. And what types of vendors does Smile 9 Source line up; distributors, manufacturers? 10 Both? 11 A. Yeah, both. 12 Q. What are the dental distributors to 13 you? 14 A. A dental distributor is someone that 15 resells a manufacturer's product to a 16 dentist, such as the ones you mentioned 17 earlier. 18 Q. Did I mention some earlier? 19 A. I think you mentioned this or did you 20 not say the name Schein, Patterson, Benco, or 21 did you refer to the document? 22 Q. You are referring to -- 23 A. I would calm those dental 24 distributors. 25 Q. Thank you. You are referring to the</p>

<p>21</p> <p>1 names of three companies that are listed on 2 the subpoena? 3 A. Yes. 4 Q. So Schein, Patterson, and Benco you 5 would consider to be dental distributors? 6 A. Um-hum. 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25</p>	<p>23</p> <p>1 Smile Source's success today? 2 A. Yes, Smile Source is successful. 3 Q. You mentioned that Smile Source 4 promotes independent dentists. Have you 5 heard anyone at Smile Source say or did you 6 ever say that one of the goals of Smile 7 Source is to preserve or protect independent 8 dentistry? 9 A. Yes. 10 Q. And what does that mean? 11 A. What does preserve and protect 12 independent dentistry mean? 13 Q. Yes. 14 A. It means enabling these independent 15 dentists to succeed in business and exist. 16 Q. Is there a reason why independent 17 dentists have -- maybe face challenges or 18 have trouble succeeding in business? 19 A. If you look at most medical segments, 20 they have gone by the wayside. Your local 21 pharmacy has gone to national pharmacies. 22 Your local optometrist has likely gone to 23 national vision retailers. 24 Your doctor is probably an employee, 25 not a practice owner. Yes. They face major</p>
<p>22</p> <p>1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25</p>	<p>24</p> <p>1 headwinds. 2 Q. So in other segments there are few 3 independent doctors or optometrists, but it 4 is still something that exists in the dental 5 industry; is that correct? 6 A. Yes, yes. 7 Q. Okay. And what challenges do 8 independent dentists face? 9 A. They face retail challenges of 10 fast-growing, well-funded, national dental 11 service organizations, called DSOs, or chains 12 or corporate dentistry. You can call them 13 whatever you like. They call themselves 14 something different. 15 They face rising costs. They face 16 reduced insurance reimbursements. And they 17 don't have the ability to succeed in the four 18 areas I mentioned earlier, that Smile Source 19 works, as well as an independent, as well as 20 those large groups do because they have a 21 Marketing Department, a CE department, a best 22 practice sharing through their marketing and 23 they have, you know, certainly buying power 24 with hundreds of locations. 25 Q. Okay. So does Smile Source try to</p>

<div>25</div> <div>1 help independent dentists compete with these</div> <div>2 corporate dentists?</div> <div>3 A. Group practice resources for</div> <div>4 independent dentists, exactly.</div> <div>5 Q. Okay. So I guess when you say group</div> <div>6 practice resources, what did you mean by</div> <div>7 that?</div> <div>8 A. We provide them marketing. We</div> <div>9 provide them the four areas that I mentioned.</div> <div>10 Q. And those are the areas that</div> <div>11 corporate dentistry would also have?</div> <div>12 A. Yes.</div> <div>13 </div> <div>14</div> <div>15</div> <div>16</div> <div>17</div> <div>18</div> <div>19</div> <div>20</div> <div>21</div> <div>22</div> <div>23</div> <div>24</div> <div>25</div>	<div>27</div> <div>1 </div> <div>2</div> <div>3</div> <div>4</div> <div>5</div> <div>6</div> <div>7</div> <div>8</div> <div>9</div> <div>10</div> <div>11</div> <div>12</div> <div>13</div> <div>14</div> <div>15</div> <div>16</div> <div>17</div> <div>18</div> <div>19</div> <div>20</div> <div>21</div> <div>22</div> <div>23</div> <div>24</div> <div>25</div>
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that dentists are going to work together that the way the industry is shaping, and they are either going to do it because they have to or they want to.

Q. What do you mean by dentists are going to work together?

A. So they are going to groups out of school because they have 400,000 dollars in debt and they have to, and they are an employee or they are working in a group, or they are joining Smile Source, for instance, because it makes them more competitive and gives them a better sense of long-term survival.

Q. Okay. And how does Smile Source make dentists more competitive?

A. Through the four business practices I mentioned earlier, which I am happy to go through.

Q. That's all right.

A. Okay.

Q. We discussed earlier some of the challenges that independent dentists are facing today and you gave me some examples. Is -- I don't think you mentioned dental

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Q. Have you spoken with member dentists who have been happy with their membership at Smile Source?

A. Yes.

Q. And what have those dentists told you about why they have been happy?

A. They are reinvigorated with dentistry. They felt like they were alone, and now they have a group that they can feel like they are a part of and learn from.

Q. Okay.

A. It is a very isolated business.

Q. So from your experience in the dental industry, do you have an understanding of whether dentists are interested in joining Smile Source or groups like Smile Source?

A. Is your question on an individual basis when I meet them or as a whole as a marketplace?

Q. As a marketplace.

A. As a marketplace, it is my belief

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insurance.

Do you have a sense for whether dental insurance has impacted independent dentists at all?

A. I actually did state that. I stated that they are facing declining rates of reimbursement. I didn't say the word insurance, so maybe that didn't resonate but, yes, they are facing declining reimbursement rates or if you look at the time value of money, inflation, the same reimbursement rates that they have had for 20 years, which would be in effect a decline.

Q. Do you have an understanding for why reimbursement rates are declining, other than time value of money issue?

A. It would just be an opinion.

Q. Could I get your opinion?

A. Sure. I think that the dental insurance business is competitive. And they would like -- the dental insurance companies would like to make money. And as they are able to charge clients less, they want to reimburse less because that is directly related to their profits.

33

1 Q. Thank you.

2 A. Sure.

3 [REDACTED]

4 [REDACTED]

5 [REDACTED]

6 [REDACTED]

7 [REDACTED]

8 [REDACTED]

9 [REDACTED]

10 [REDACTED]

11 [REDACTED]

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17 [REDACTED]

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19 [REDACTED]

20 [REDACTED]

21 [REDACTED]

22 [REDACTED]

23 [REDACTED]

24 [REDACTED]

25 [REDACTED]

35

1 [REDACTED]

2 Q. And how long has Smile Source been

3 doing annual member surveys?

4 A. Since I have been here, so at least

5 since the summer of 2013. It is usually a

6 summer survey.

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 Q. So was the last time -- when was the

23 last time one of these annual surveys was

24 conducted?

25 A. Last summer.

34

1 [REDACTED]

2 [REDACTED]

3 [REDACTED]

4 [REDACTED]

5 [REDACTED]

6 [REDACTED]

7 [REDACTED]

8 [REDACTED]

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23 Q. Okay. I ask you mark this as 332.

24 (Exhibit 332 was marked for

25 identification.)

<div>37</div> <div>1 BY MS. GOFF:</div> <div>2 Q. Mr. Maurer, the court reporter handed</div> <div>3 you what has been marked as Exhibit 332.</div> <div>4 A. Sure.</div> <div>5 Q. This was a document produced to us by</div> <div>6 your counsel. It was not produced with a</div> <div>7 Bates stamp, but it is an e-mail, it appears</div> <div>8 to be an e-mail from Tim Sullivan to you</div> <div>9 dated April 20th, 2017. Subject: RE:</div> <div>10 Thinking through my presentation.</div> <div>11 Have you had a chance to review the</div> <div>12 e-mail?</div> <div>13 A. Yes.</div> <div>14 Q. Do you recognize this e-mail?</div> <div>15 A. I do.</div> <div>16 Q. Was this a conversation between you</div> <div>17 and Mr. Tim Sullivan?</div> <div>18 A. Yes.</div> <div>19 Q. Who is Tim Sullivan?</div> <div>20 A. He is president of the U.S. dental</div> <div>21 segment, I guess, of Henry Schein.</div> <div>22 [REDACTED]</div> <div>23 [REDACTED]</div> <div>24 [REDACTED]</div> <div>25 [REDACTED]</div>	<div>39</div> <div>1 [REDACTED]</div> <div>2 [REDACTED]</div> <div>3 [REDACTED]</div> <div>4 [REDACTED]</div> <div>5 [REDACTED]</div> <div>6 [REDACTED]</div> <div>7 [REDACTED]</div> <div>8 [REDACTED]</div> <div>9 [REDACTED]</div> <div>10 [REDACTED]</div> <div>11 [REDACTED]</div> <div>12 [REDACTED]</div> <div>13 [REDACTED]</div> <div>14 [REDACTED]</div> <div>15 [REDACTED]</div> <div>16 [REDACTED]</div> <div>17 [REDACTED]</div> <div>18 [REDACTED]</div> <div>19 [REDACTED]</div> <div>20 [REDACTED]</div> <div>21 [REDACTED]</div> <div>22 [REDACTED]</div> <div>23 [REDACTED]</div> <div>24 [REDACTED]</div> <div>25 [REDACTED]</div>
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Maurer

Henry Schein Dental

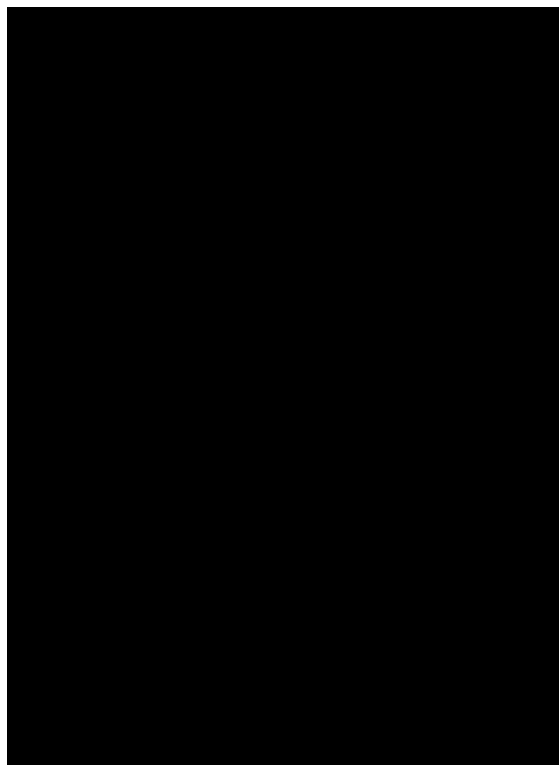
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11 (Pages 41 to 44)

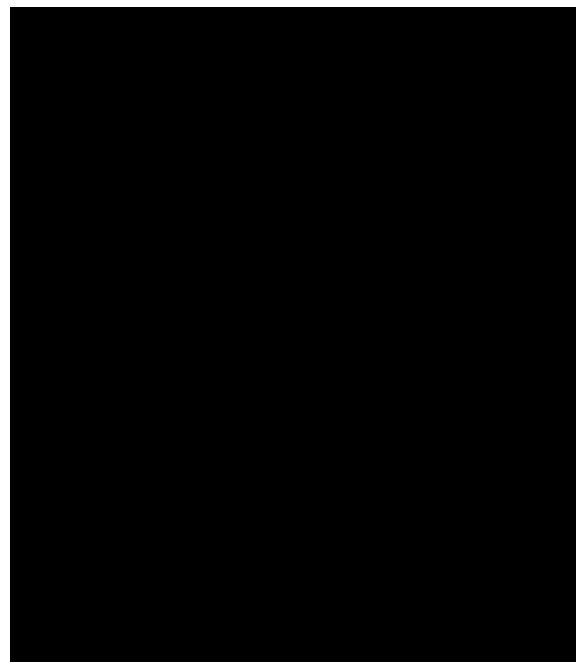
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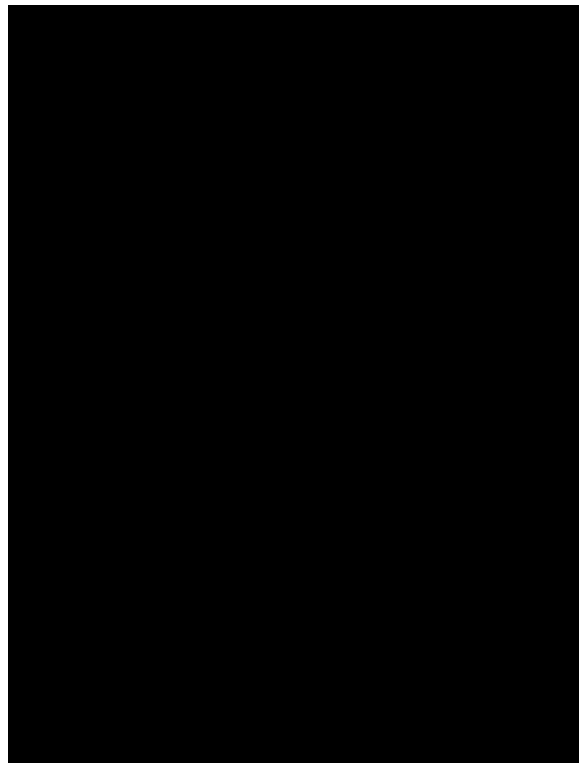
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**Do you have an understanding of
whether dentists typically save money by
joining Smile Source?**

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1 A. Yes.
2 **Q. What is your understanding?**
3 A. That they do.

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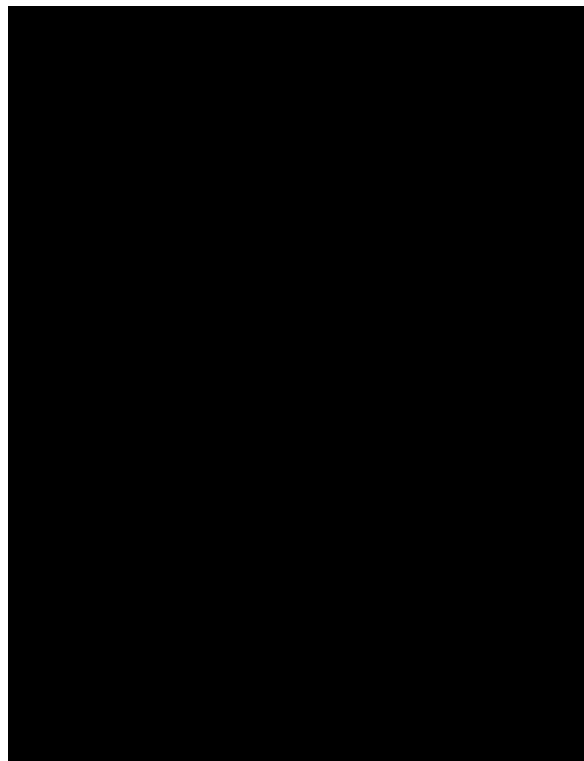
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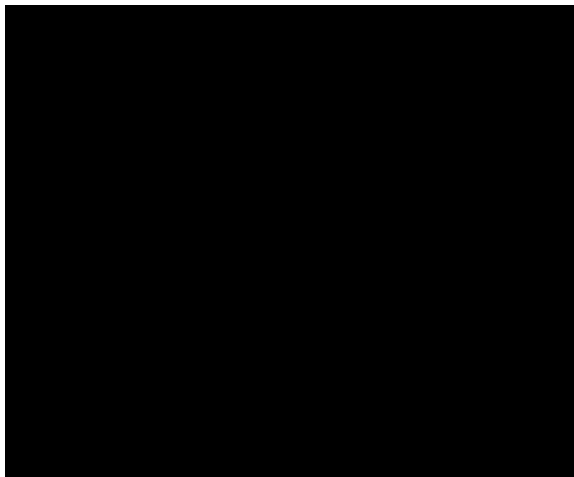
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Q. I think we have been going about an hour. We can take a break now or keep going. I am starting a new topic.

A. I'm good for now. I am probably half an hour from a need for a break.

Q. Okay.

A. But you never know when the last glass of water hits.

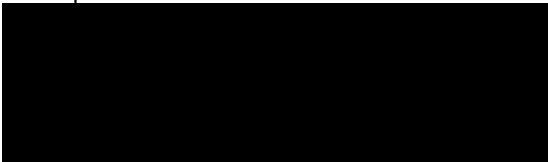
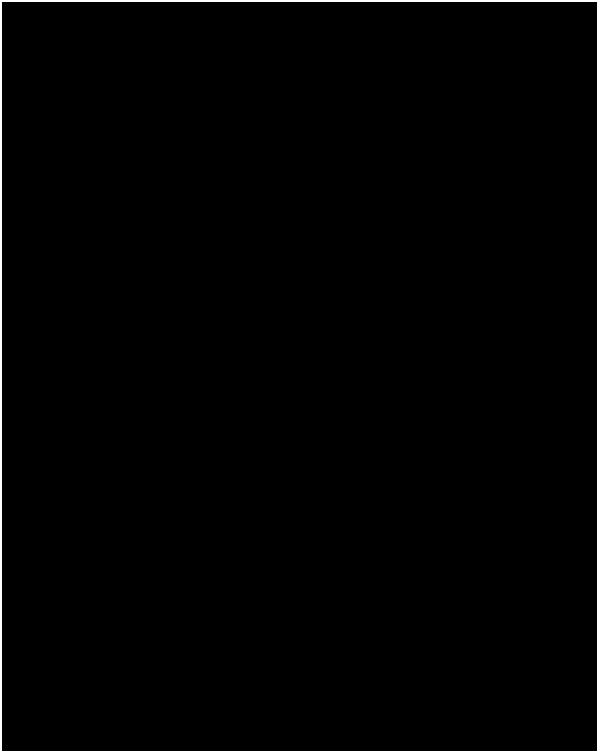


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Q. Okay. Who is in charge of vendor

<p>53</p> <p>1 partner -- vendor relations? 2 A. The person? 3 Q. Yes. 4 A. Tom Allmon for a whopping two weeks. 5 He was just promoted to that spot. 6 Q. Okay. And who was it prior to Tom 7 Allmon? 8 A. For a year it was Jeff Guidie. 9 Q. What about before that? 10 A. Dr. Goldsmith. And then in the gap 11 between Dr. Goldsmith and Jeff Guidie, it was 12 me. 13 Q. Okay. So -- 14 A. Jennifer Crass is the manager of the 15 department. She has all the details, but I 16 was involved in many member meetings for 17 sure. 18 Q. So when was that gap after 19 Dr. Goldsmith and before Jeff Guidie? 20 A. Jeff Guidie started -- let's see, it 21 is 2017 now, May of '16. So from May of '16 22 backwards two years to the termination, I 23 couldn't remember that exact date, do you 24 remember? 25 Q. Okay. Right. You said it was either</p>	<p>55</p> <p>1 A. Um-hum. 2 Q. Does distributor and dental dealer 3 mean the same thing to you? 4 A. To me, yeah. 5 Q. Would you also call those suppliers? 6 A. Yes. 7 Q. And is that distinct from 8 manufacturers? 9 A. Yes. 10 Q. Okay. So, yeah, dental dealers, how 11 many of the 20 to 22 vendors are dental 12 dealers? 13 A. Five. 14 Q. Can you name those for me? 15 A. Henry Schein, Darby Dental, Burkhardt, 16 Atlanta Dental, Nashville Dental. 17 Q. And the other 15 or so large vendors, 18 what type of vendors are those? 19 A. Labs, manufacturers, marketing 20 companies. 21  22 23 24 25</p>
<p>54</p> <p>1 late 2014 or late 2015? 2 A. Yeah. 3 Q. And then how involved are you today 4 with vendor relations? 5 A. I'd say I'm involved, especially with 6 the big ones. The smaller, smaller ones, I 7 am not at all. But the larger ones that are 8 important to us and are members, I'd say I 9 have a relationship with. 10 Q. And which ones are those, the larger 11 ones that are important to you and your 12 members? 13 A. There is 20 to 22 vendors that at our 14 annual meeting, I would be involved directly 15 with. 16 Q. Are those the larger, important 17 vendors, 20 to 22 larger important vendors? 18 A. Yeah. 19 Q. How many of those vendors are 20 distributors? 21 A. Like dental dealers? 22 Q. Yeah. Why don't we define our terms. 23 So earlier we talked about distributors, and 24 you mentioned Schein, Patterson, and Benco as 25 examples.</p>	<p>56</p> <p>1  2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25</p>

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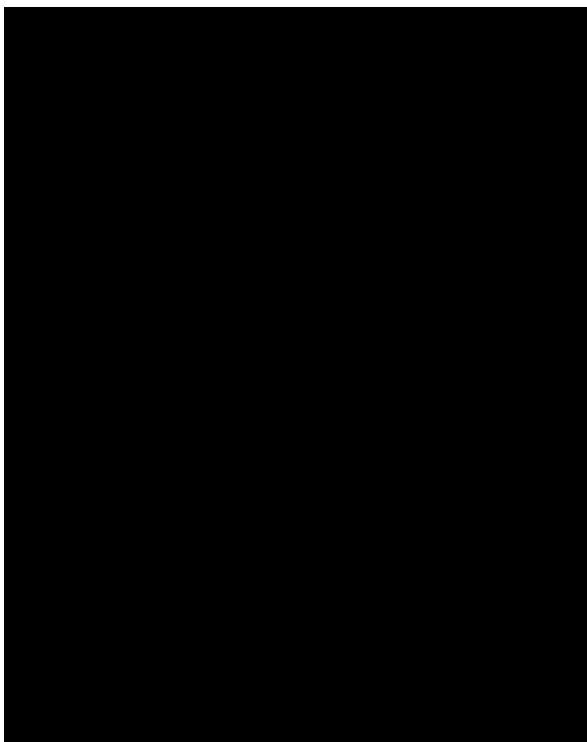
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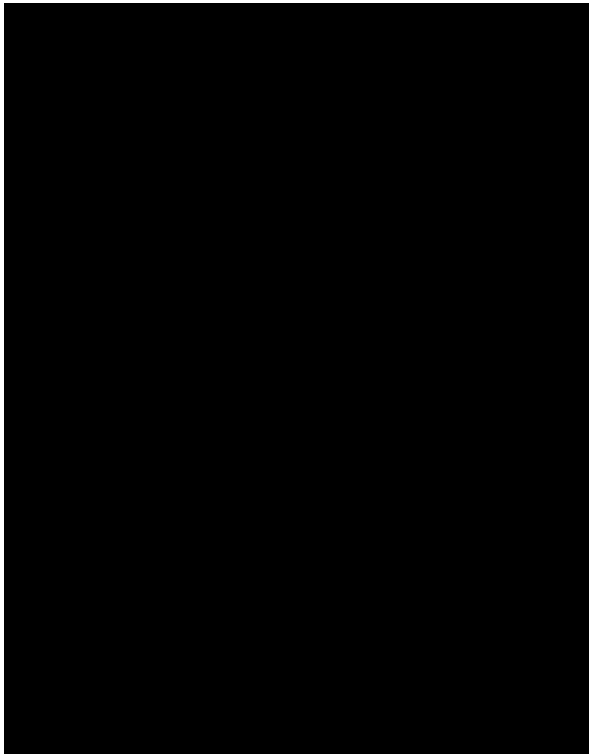
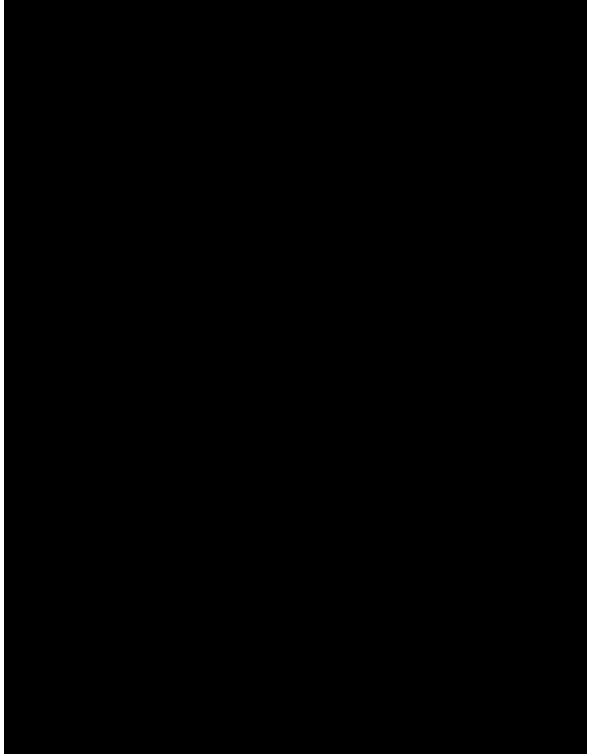
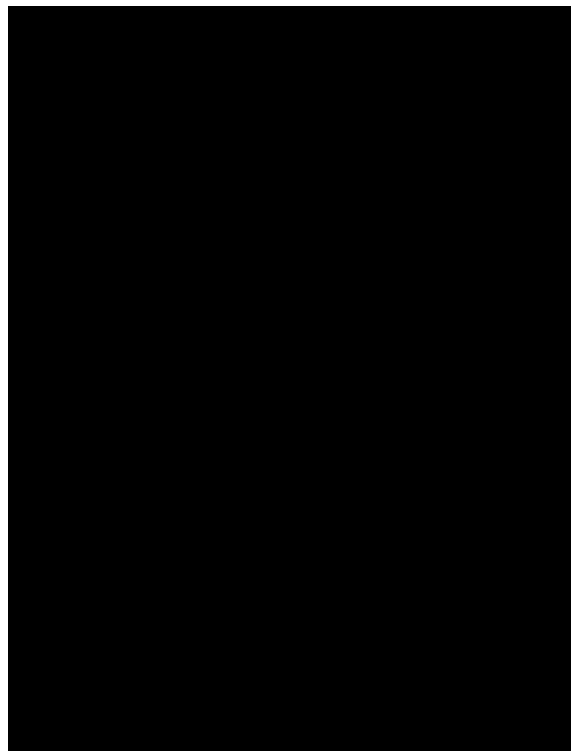
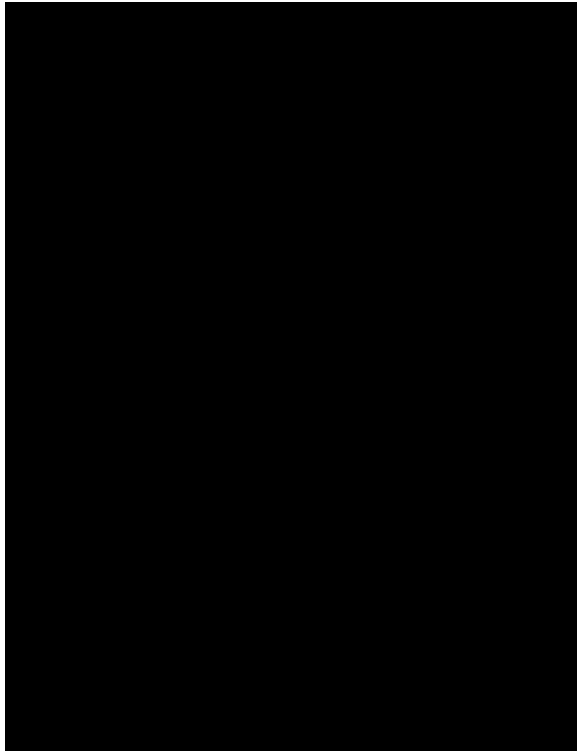
1 **Q. Thanks.**
2 A. Sure.
3 **Q. Are Schein, Patterson, and Benco the**
4 **top three dental distributors in terms of**
5 **national sales?**
6 A. I think so. I would agree to that.
7 **Q. Do you have an understanding of what**
8 **the term full-service dental distributor**
9 **means?**
10 A. To me it means a rep in the field and
11 someone that can install service equipment.
12 **Q. All right. And are Schein,**
13 **Patterson, and Benco full-service**
14 **distributors?**
15 A. In my opinion.
16 **Q. What about Burkhardt?**
17 A. The same.
18 **Q. Darby?**
19 A. No.
20 **Q. Is Darby on-line?**
21 A. And telesales.
22 **Q. What about Nashville?**
23 A. Nashville and Atlanta, I would both
24 consider full-service.
25 **Q. And then what about in terms of**

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<p>1 location, do you agree Schein is a national</p> <p>2 full-service distributor?</p> <p>3 A. Um-hum.</p> <p>4 Q. And Burkhart is regional?</p> <p>5 A. Yes.</p> <p>6 Q. And national --</p> <p>7 A. Based on where they have their reps</p> <p>8 and service techs, but I know they sell</p> <p>9 everywhere.</p> <p>10 Q. Right. So Burkhart is a regional, in</p> <p>11 terms of the full service?</p> <p>12 A. Yes, for sure, yes. So is Nashville,</p> <p>13 Atlanta.</p> <p>14 [REDACTED]</p> <p>15 [REDACTED]</p> <p>16 [REDACTED]</p> <p>17 [REDACTED]</p> <p>18 [REDACTED]</p> <p>19 [REDACTED]</p> <p>20 [REDACTED]</p> <p>21 [REDACTED]</p> <p>22 [REDACTED]</p> <p>23 [REDACTED]</p> <p>24 [REDACTED]</p> <p>25 [REDACTED]</p>	<p>1 [REDACTED]</p> <p>2 [REDACTED]</p> <p>3 [REDACTED]</p> <p>4 [REDACTED]</p> <p>5 [REDACTED]</p> <p>6 [REDACTED]</p> <p>7 [REDACTED]</p> <p>8 [REDACTED]</p> <p>9 [REDACTED]</p> <p>10 [REDACTED]</p> <p>11 [REDACTED]</p> <p>12 [REDACTED]</p> <p>13 [REDACTED]</p> <p>14 [REDACTED]</p> <p>15 [REDACTED]</p> <p>16 [REDACTED]</p> <p>17 [REDACTED]</p> <p>18 [REDACTED]</p> <p>19 [REDACTED]</p> <p>20 [REDACTED]</p> <p>21 [REDACTED]</p> <p>22 [REDACTED]</p> <p>23 [REDACTED]</p> <p>24 [REDACTED]</p> <p>25 [REDACTED]</p>
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Maurer

Henry Schein Dental

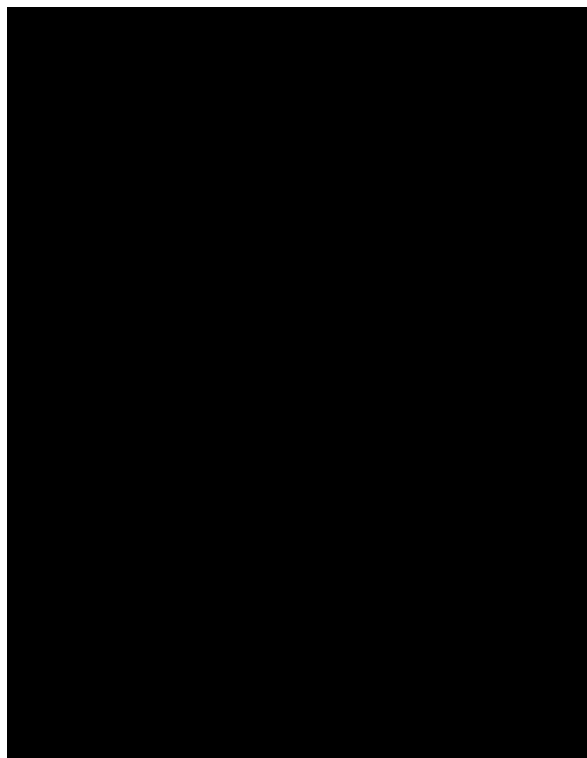
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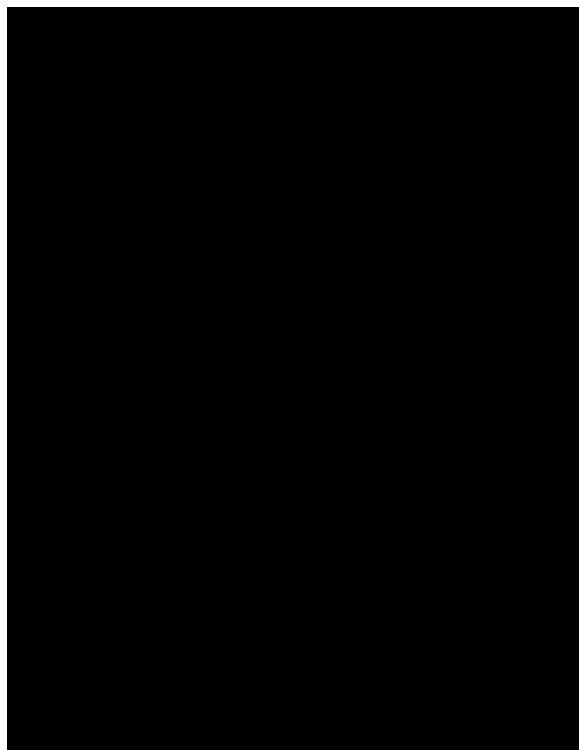
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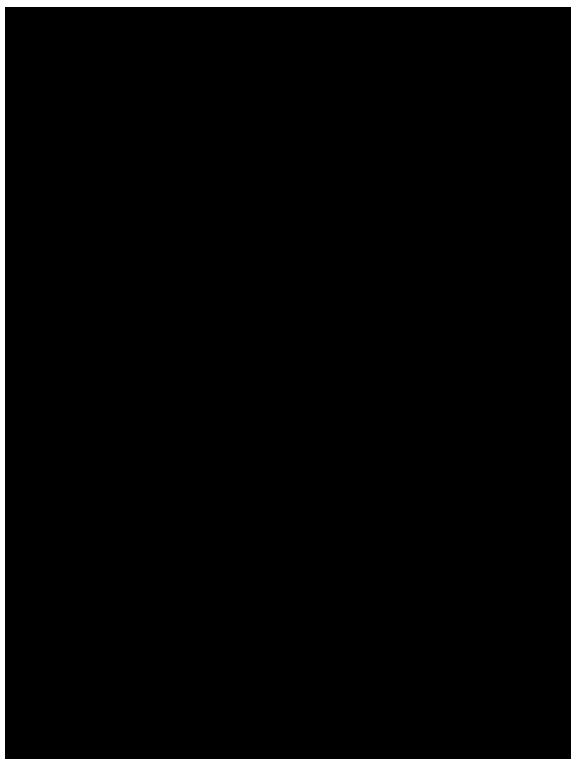
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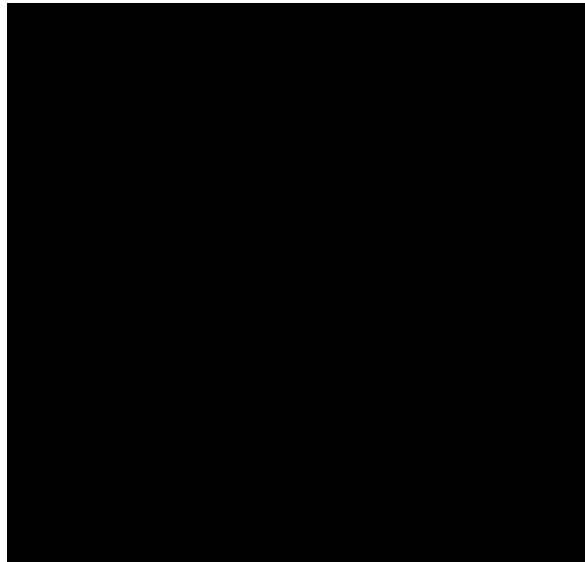
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identification.)

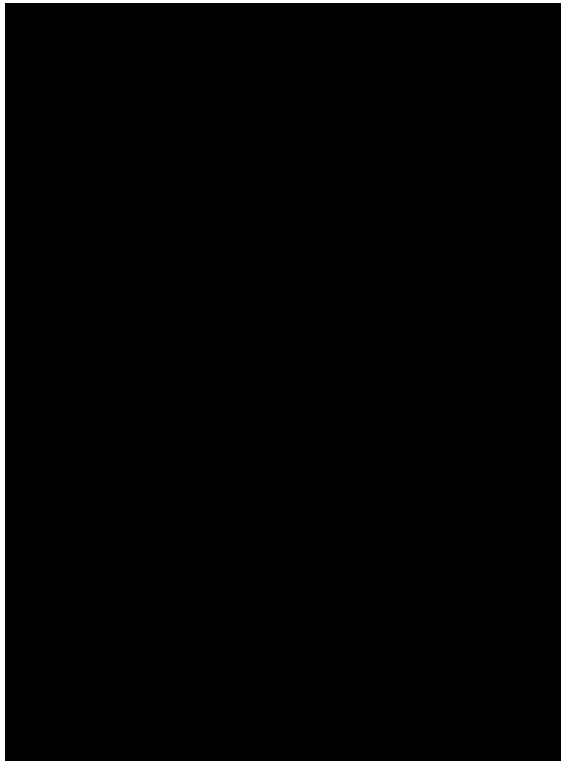
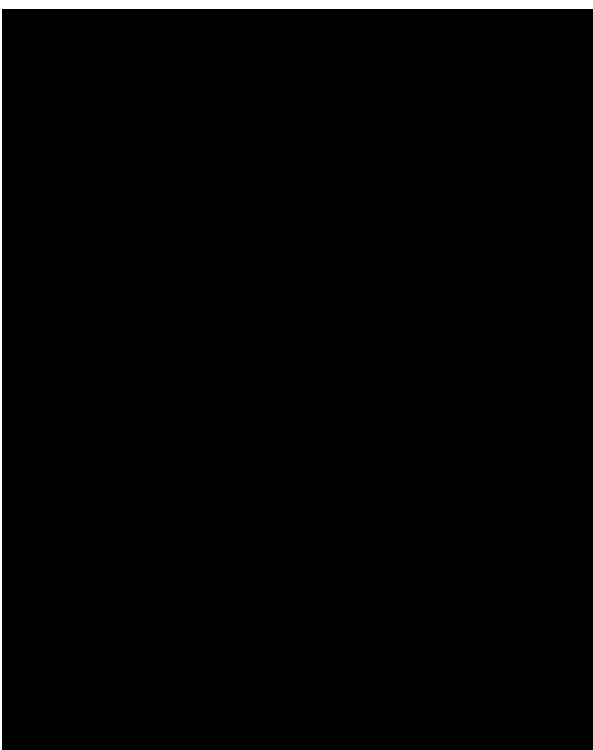
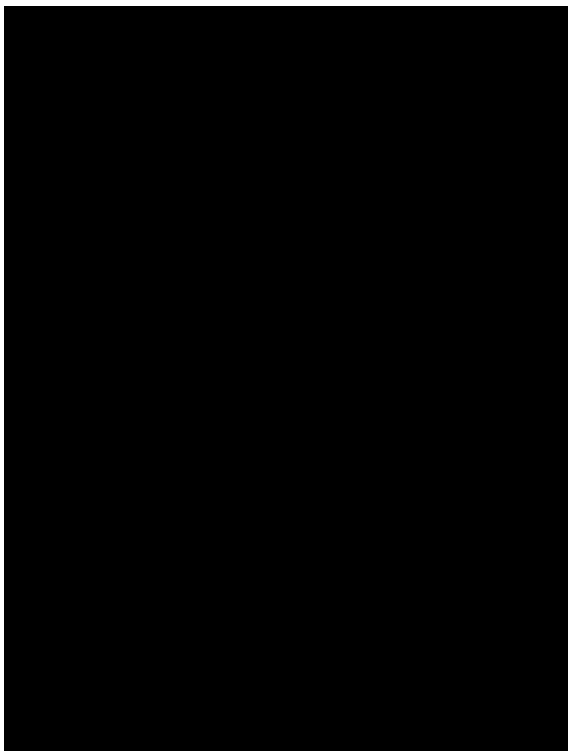
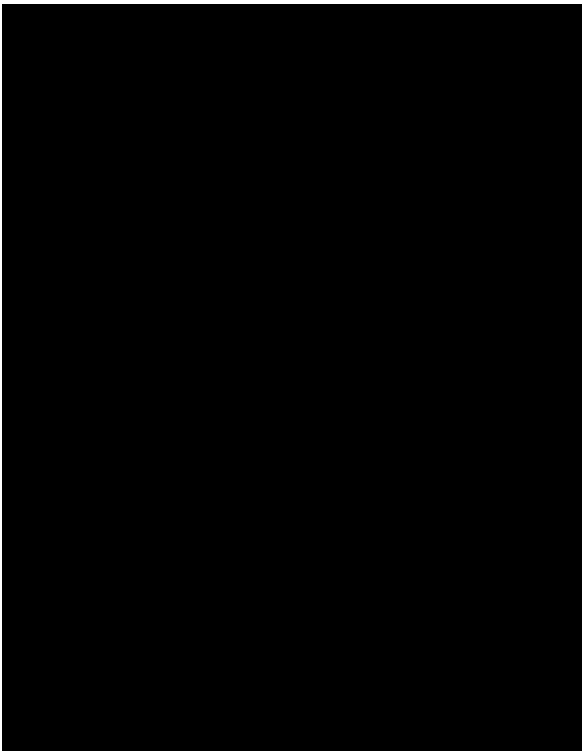
BY MS. GOFF:

**Q. So the court reporter handed you what
has been marked as Exhibit 333, which is a
document produced by your counsel to us.**

Maurer

Henry Schein Dental

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19 (Pages 73 to 76)

Maurer

Henry Schein Dental

7/28/2017

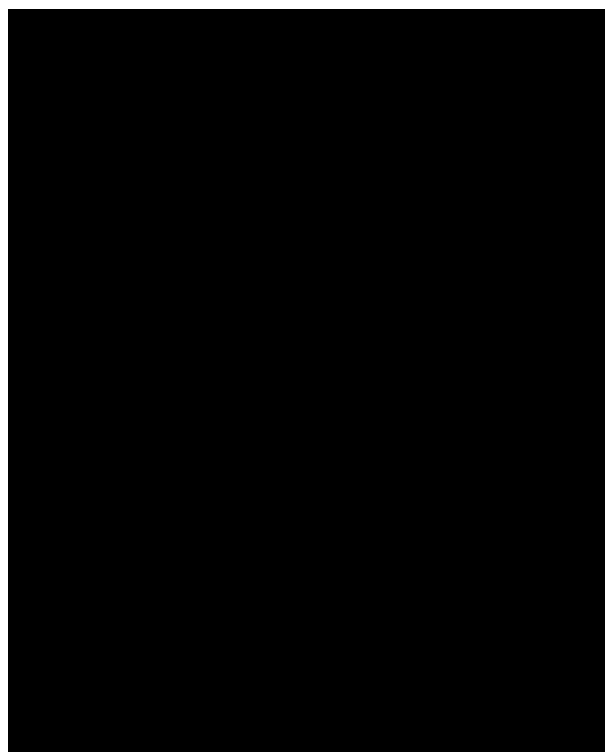
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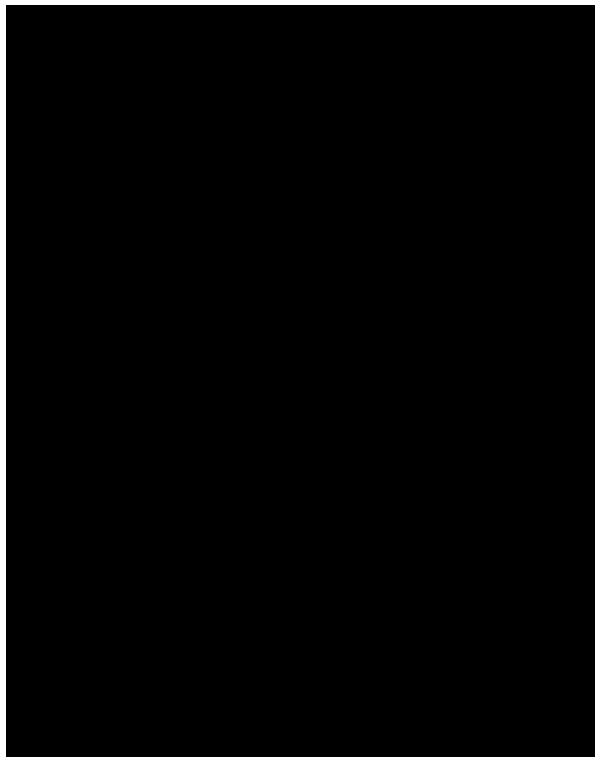
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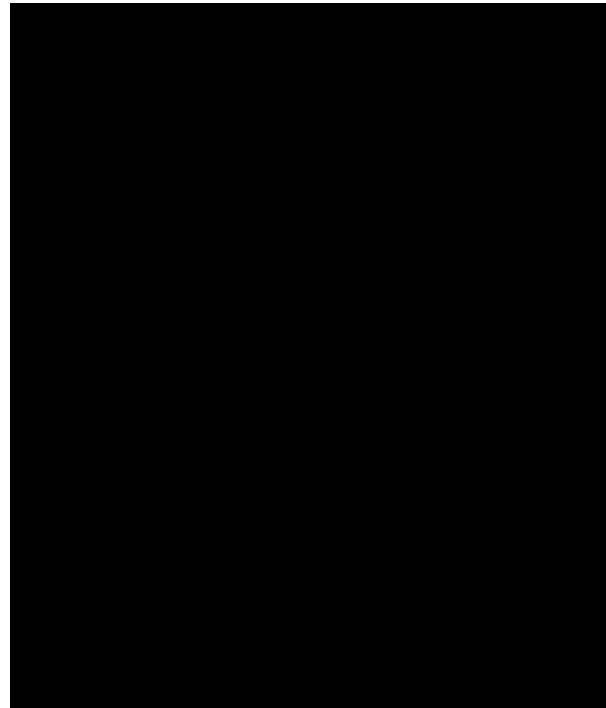
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Q. Do you have a general familiarity

20 (Pages 77 to 80)

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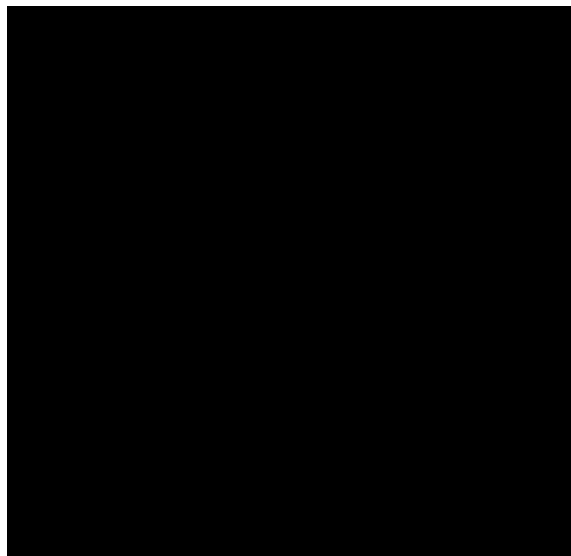


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that are similar to Smile Source that are out there for dentists to join?

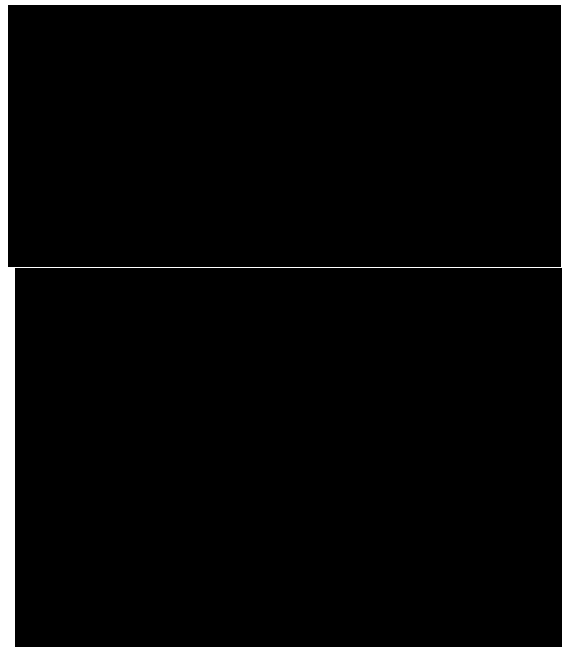
A. I am not aware of any dental franchise.



Q. So you are not aware of any other dental franchises?

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Q. Okay.

A. -- sure.

Q. Are you aware of any organizations

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A. Right.

Q. Where did the name, the term dental franchise come from? Is it something that Smile Source coined?

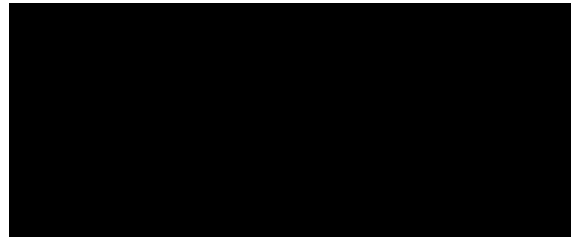
A. I guess we coined it. We're a franchisor and we're in dentistry, so I think dental franchise is, yeah, sure, you could say we coined it.

Q. What is the definition of a franchisor?

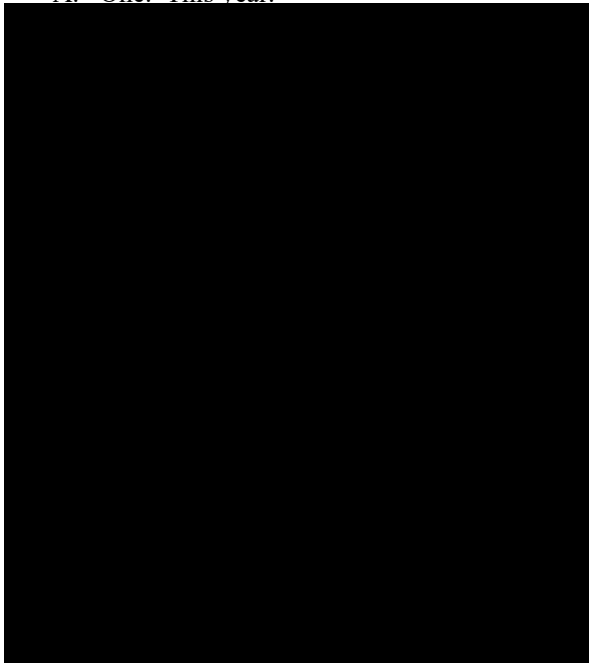

A. The person, the company, I guess, the company that grants the franchise.

Q. But Smile Source doesn't have any role in how the dentists run their business, correct?

A. We can't force them to do anything, no.



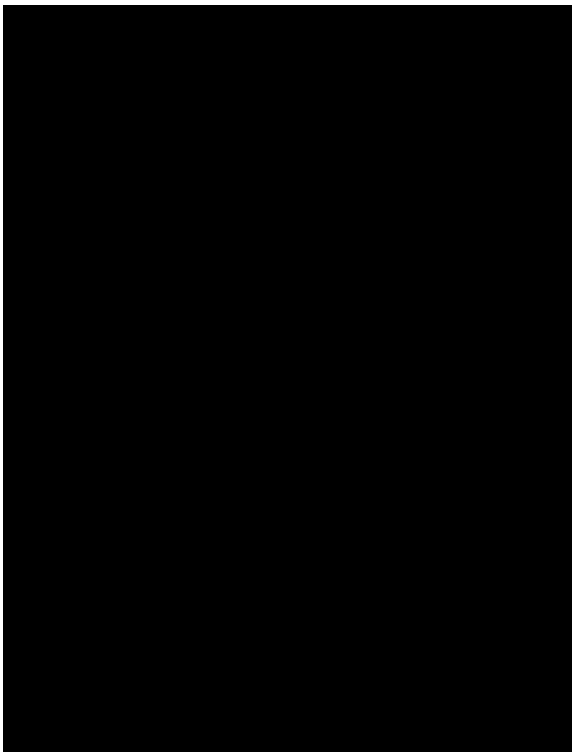
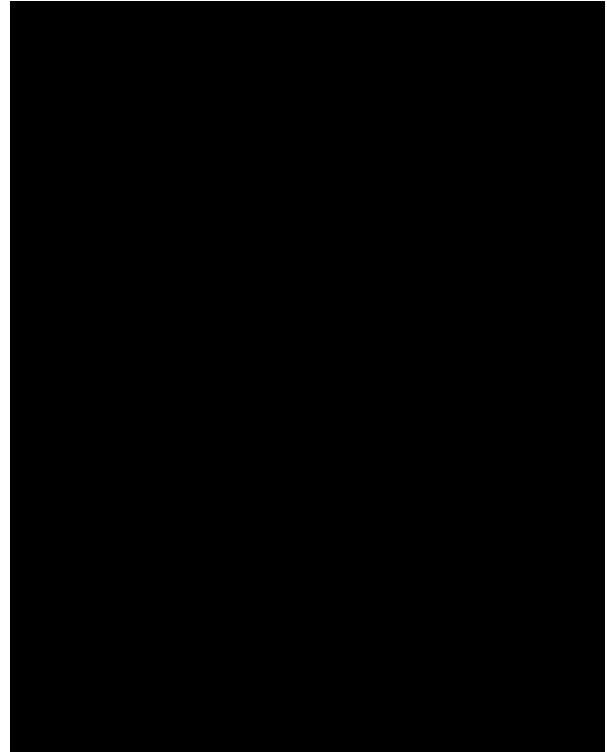
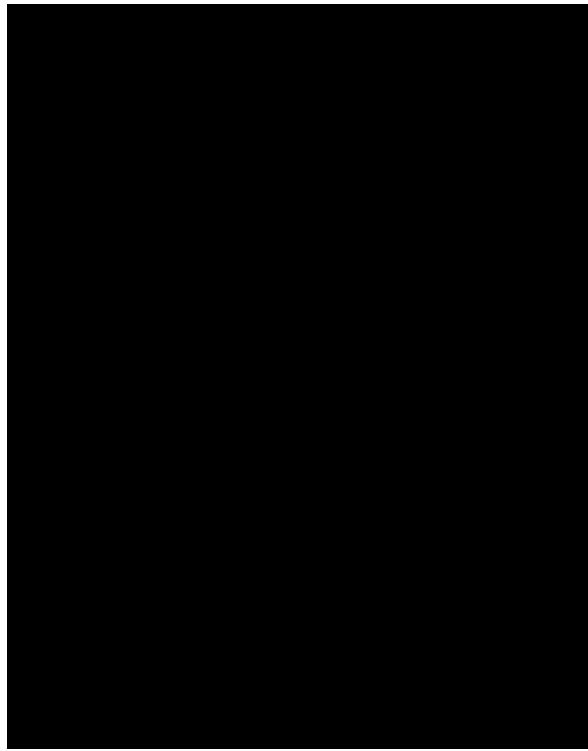
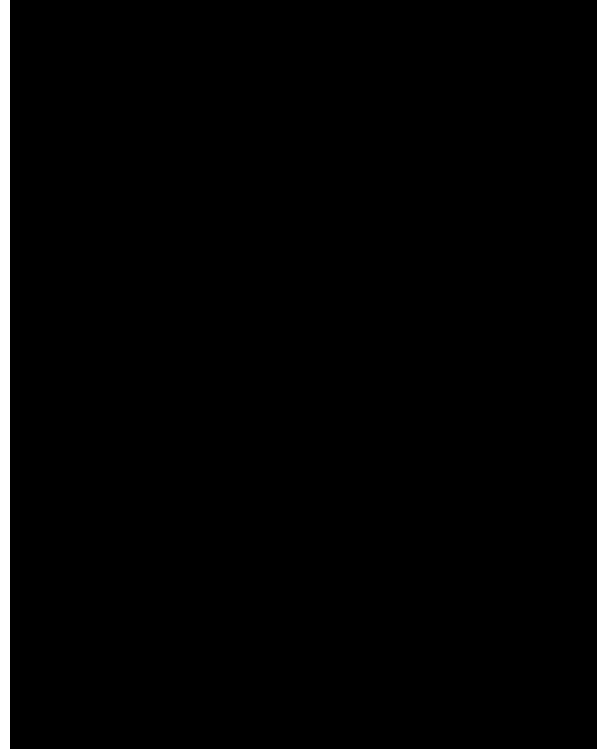
<p>85</p> <p>1 [REDACTED] 2 [REDACTED] 3 [REDACTED] 4 [REDACTED] 5 [REDACTED] 6 [REDACTED] 7 [REDACTED] 8 [REDACTED] 9 [REDACTED] 10 [REDACTED] 11 Q. So have you ever heard of the term 12 buying group? 13 A. Yes. 14 Q. And what does that mean to you? 15 A. To me a buying group is a group that 16 negotiates with sellers, vendors, and offers 17 discounts to their members. And typically 18 they are involved in the transaction where 19 they will invoice the member and then they 20 will pay the vendor. They will get in the 21 middle. They will handle -- they will work 22 in the cash process. 23 And typically a buying group will 24 want every vendor to participate and get a 25 discount from everybody.</p>	<p>87</p> <p>1 have a group buying -- excuse me. Do you 2 consider Smile Source to have a group 3 purchasing organization component? 4 A. I don't. I think it is a little 5 different the way I would define it. 6 Q. Again, why is it different? 7 A. Because if we don't, like a GPO 8 typically takes a percent of sales from every 9 vendor. That's not what we do. Typically in 10 the GPO you are forced to buy there, sign a 11 contract, I will only buy your stuff. And we 12 don't force them to do that. They can buy 13 anything, anywhere they want. 14 Q. Have you heard the term "buying 15 cooperative"? 16 A. There is a group in Utah that I think 17 may be referenced by that, but I think they 18 are called the dental co-op. 19 Q. Okay. But have you heard the term 20 "buying cooperative" in the dental industry 21 as another descriptor for a buying group? 22 A. Not as a descriptor for buying group, 23 I don't think. 24 Q. Okay. Do you think that group 25 purchasing organization has a negative</p>
<p>86</p> <p>1 Q. Do you consider Smile Source to be a 2 buying group? 3 A. No. 4 [REDACTED] 5 [REDACTED] 6 [REDACTED] 7 Q. Is that -- 8 A. But I wouldn't call it a buying 9 group. 10 Q. Why not? 11 A. Because we don't want every vendor 12 and we don't get involved in the order and 13 cash process. 14 Q. Are you familiar with the term group 15 purchasing organization? 16 A. Yes. 17 Q. What does that mean to you? 18 A. To me it is very similar to buying 19 group where they will, again, negotiate 20 discounts for typically hospitals, I would 21 say, in exchange for percent of that 22 transaction, and they will also be involved 23 in the cash process where they will handle 24 the money. 25 Q. And do you consider Smile Source to</p>	<p>88</p> <p>1 connotation in the dental industry? 2 A. To dentists or to who? 3 Q. To -- we can start with dentists, 4 sure. 5 A. I don't think so. There is a guy out 6 of North Carolina that markets himself as a 7 GPO, and he seems proud of it and he is 8 advertising. 9 Q. What about to distributors? 10 A. I guess this would depend if they won 11 the business or not. I don't know. I really 12 couldn't speak for their view of it. 13 Q. Okay. Same question for buying 14 groups, do you think it has a negative 15 connotation in the dental industry, first of 16 all to dentists? 17 A. Not to dentists. 18 Q. Does it have a positive connotation 19 to dentists? 20 A. I would just say not negative. I 21 think it may have a neutral or positive. 22 Q. And do you have an opinion of whether 23 the term buying group has a negative 24 connotation to dental distributors? 25 A. My opinion would be that it would. I</p>

<p style="text-align: right;">89</p> <p>1 don't like the term buying group because it 2 just suggests you don't really do anything, 3 you just discount everybody's product and not 4 much happens. 5 Q. Okay. 6 A. My expression may be going too far 7 but, again, you can't save your way to 8 prosperity. 9 Q. What do you mean? 10 A. Even if I got my supplies for free, I 11 am not going to have a better dental 12 practice. You can give them to me. I still 13 need to be a good dentist. I still need to 14 be able to market. And I need to be able to 15 run the business. 16 Q. And how does that tie back to the 17 term "buying group"? 18 A. So the buying group just all it means 19 to me is saving some money on supplies, which 20 doesn't -- in the end, that's not enough. It 21 is not going to help your practice in my 22 opinion. 23 Q. And what is your opinion based on? 24 A. I don't see how your revenue goes up 25 by saving on what you buy. I don't see that</p>	<p style="text-align: right;">91</p> <p>1 A. Around half. 2 Q. Has Schein ever attended? 3 A. One. This year. 4  5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25</p>
<p style="text-align: right;">90</p> <p>1 formula. 2 Q. Well, if you are paying less for 3 supplies, then that's less leaving the 4 business and more that you get to keep for 5 yourself, right? 6 A. But your income might go up but your 7 revenue won't. 8 Q. Why not? 9 A. Well, how would you get more money on 10 patients because you spent less on supplies? 11 Q. Well, your income would go up. 12 A. Your income, yes, but not your 13 revenue, not your top-line revenue. 14 Q. Okay. You mentioned a couple times 15 the Smile Source exchange. What is that? 16 A. Just our annual doctor meeting. 17 Q. Where is it held? 18 A. It moved. Last year it was 19 Nashville. Year before San Antonio. It is 20 in Anaheim next year, close to you. 21 Q. And what is the purpose of the 22 meeting? 23 A. Continuing education and fellowship. 24 Q. Do some of your vendors attend or 25 advertise at the exchange?</p>	<p style="text-align: right;">92</p> <p>1  2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25</p>

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Henry Schein Dental

7/28/2017

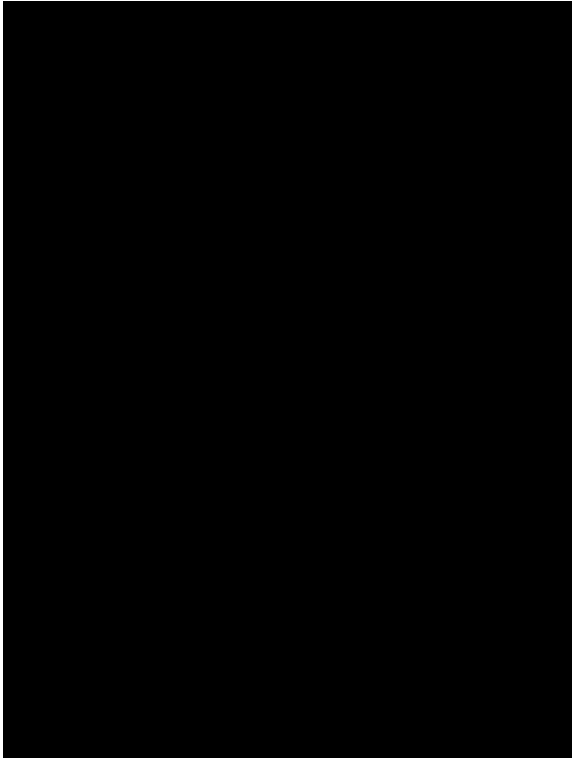
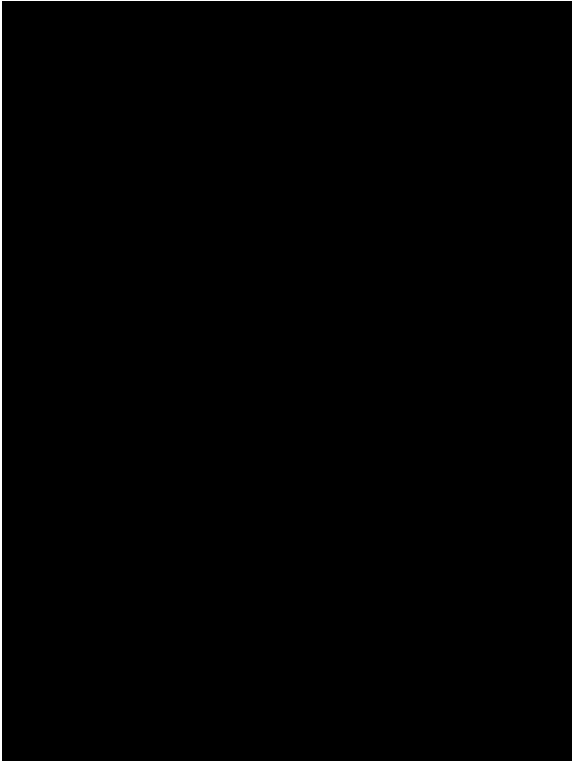
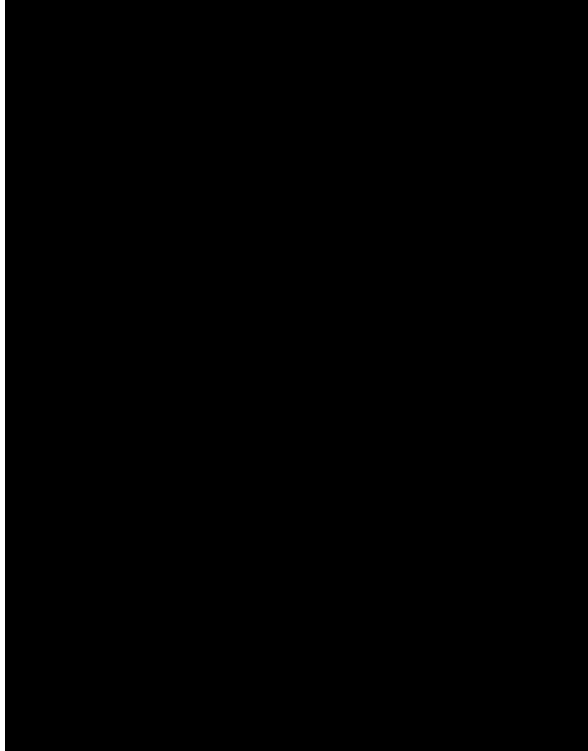
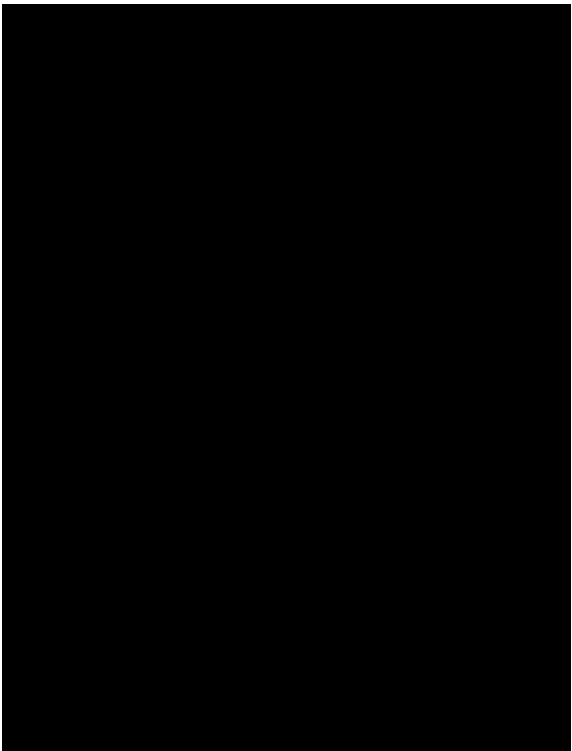
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24 (Pages 93 to 96)

Maurer

Henry Schein Dental

7/28/2017

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25 (Pages 97 to 100)

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Henry Schein Dental

7/28/2017

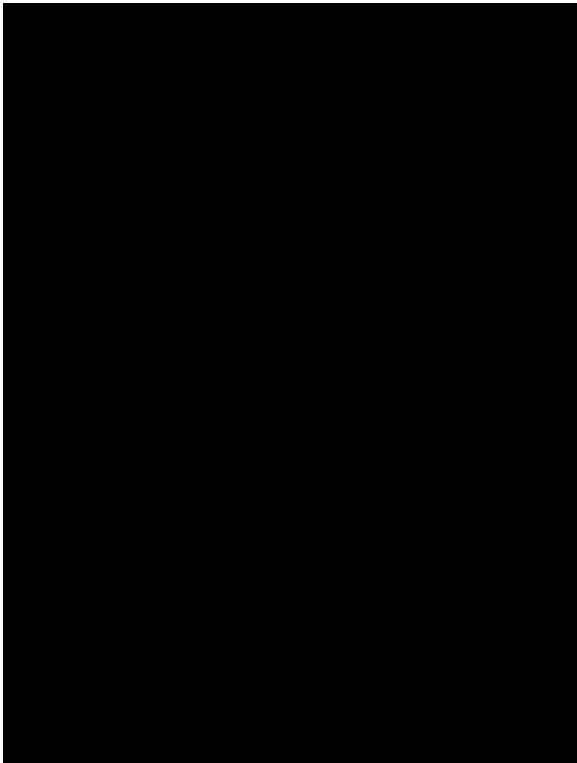
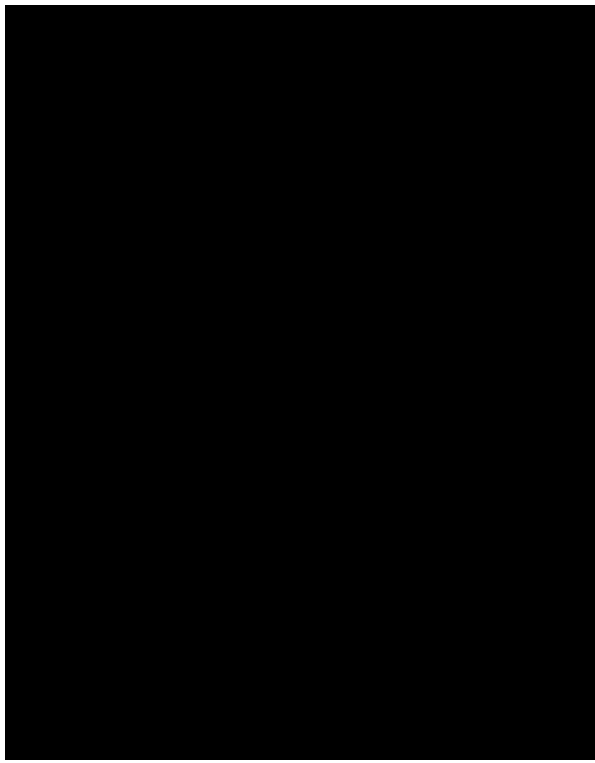
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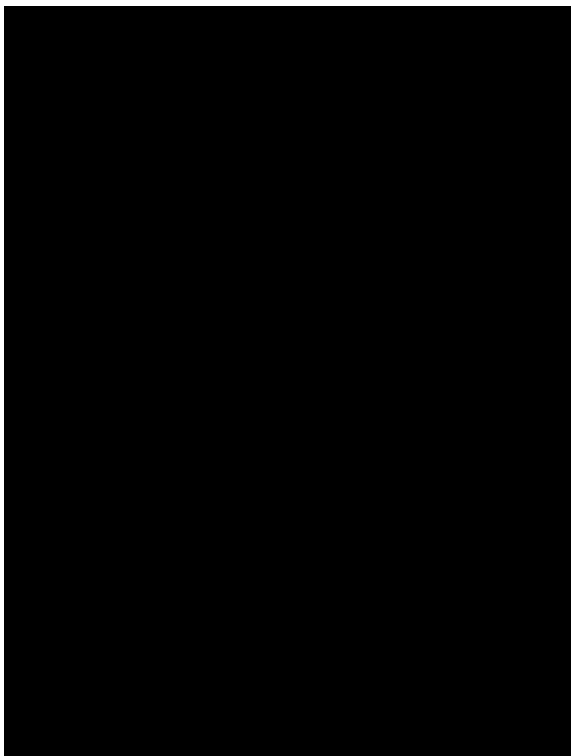

26 (Pages 101 to 104)

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7/28/2017

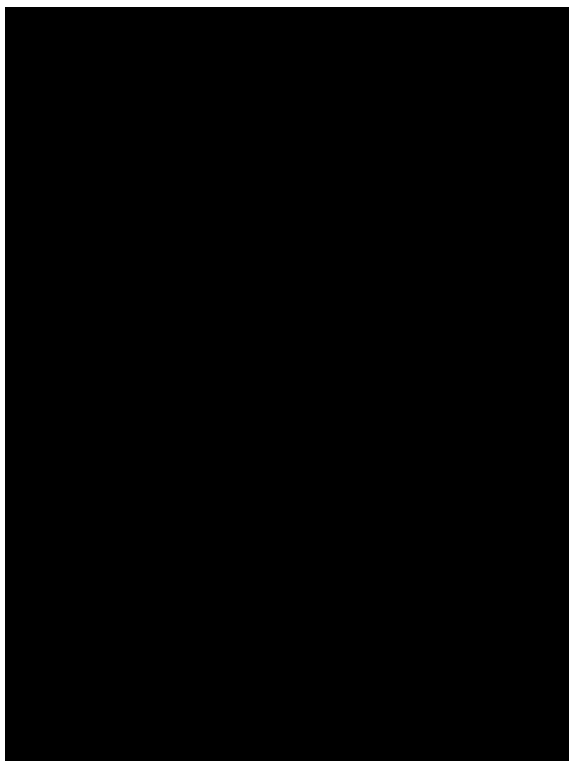
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27 (Pages 105 to 108)

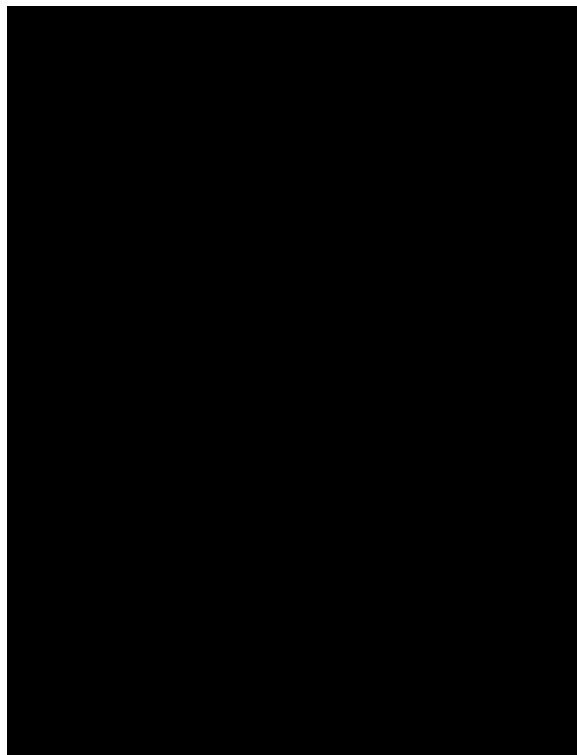
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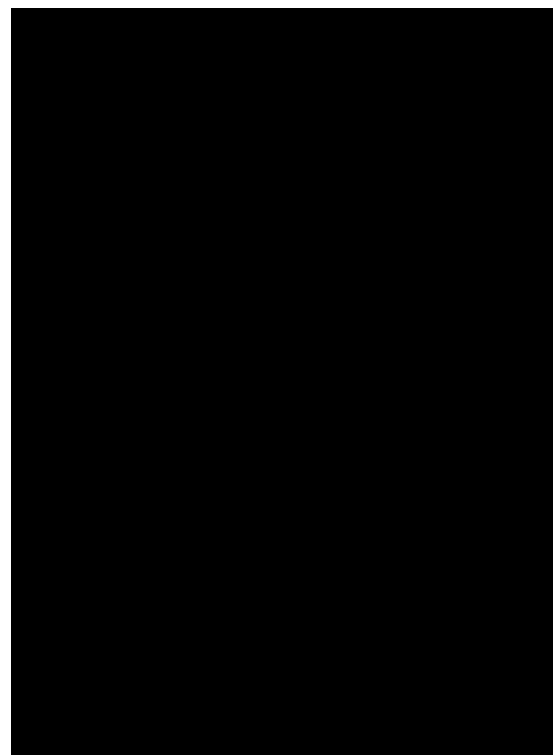
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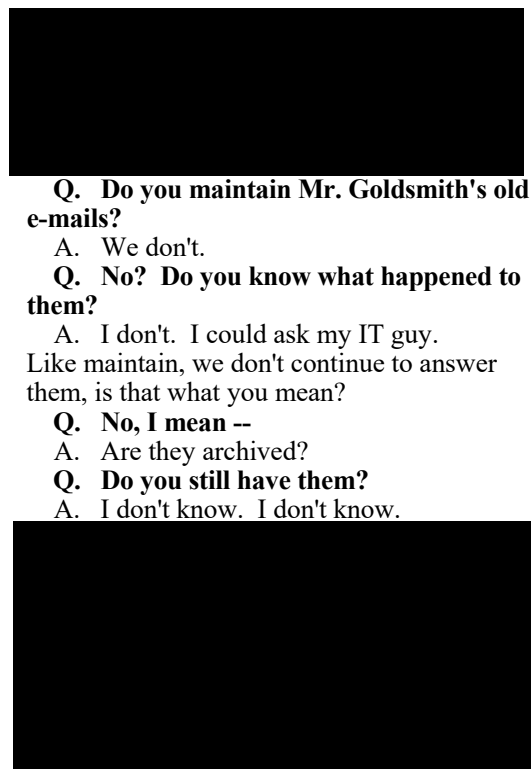
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Q. Do you maintain Mr. Goldsmith's old e-mails?

A. We don't.

Q. No? Do you know what happened to them?

A. I don't. I could ask my IT guy. Like maintain, we don't continue to answer them, is that what you mean?

Q. No, I mean --

A. Are they archived?

Q. Do you still have them?

A. I don't know. I don't know.

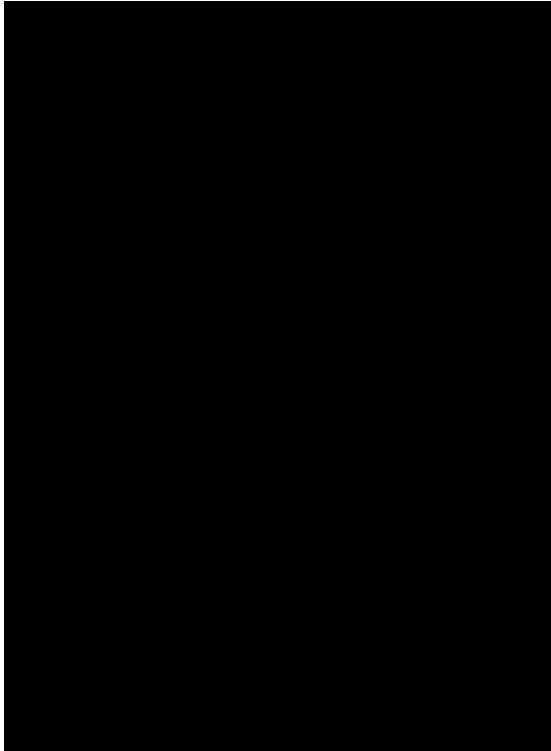
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Henry Schein Dental

7/28/2017

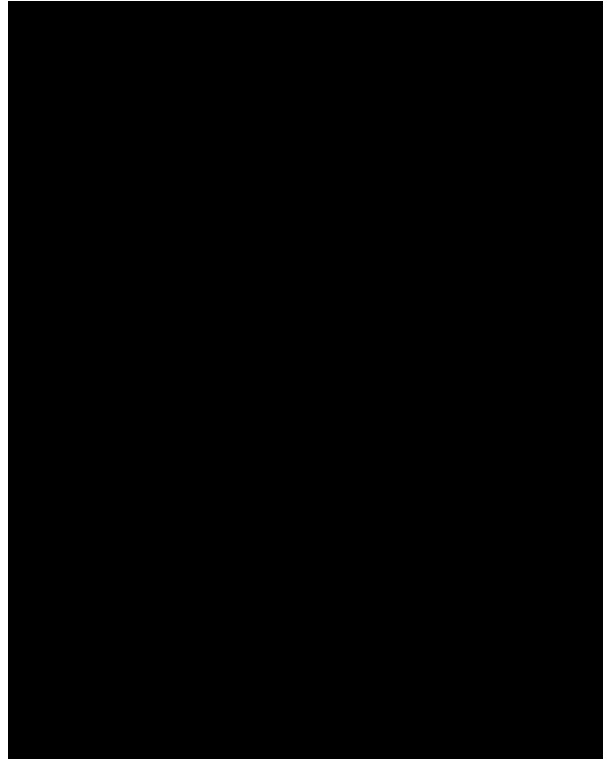
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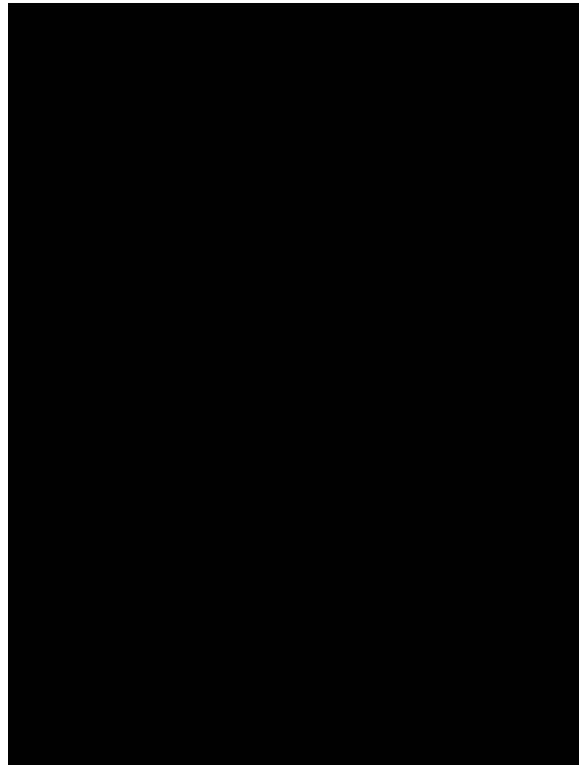
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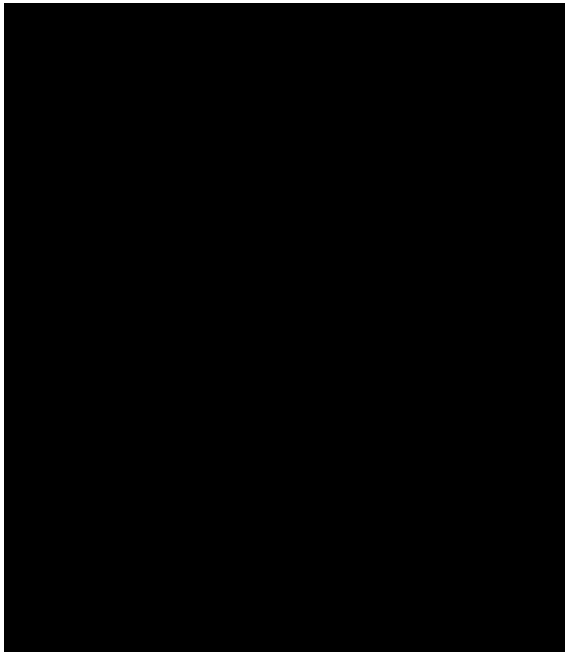
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Q. What is your relationship with Mr. Sullivan?

A. I just was introduced to him through

117

1 Dr. Goldsmith.

2 **Q. When did that introduction get made?**

3 A. I don't recall the exact date, but
4 probably not too long after I started. I am
5 guessing early '13.

6 **Q. How often do you speak to Mr.
7 Sullivan?**

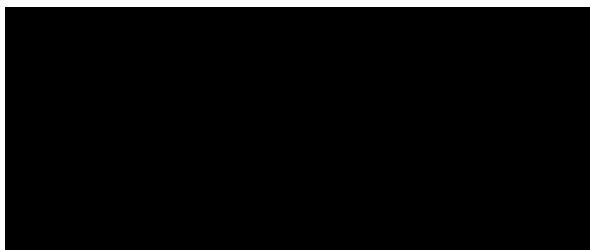
8 A. I haven't spoken to him since -- it
9 has been months now. There is no regular
10 cadence. I guess whenever necessary.

11 **Q. Okay.**

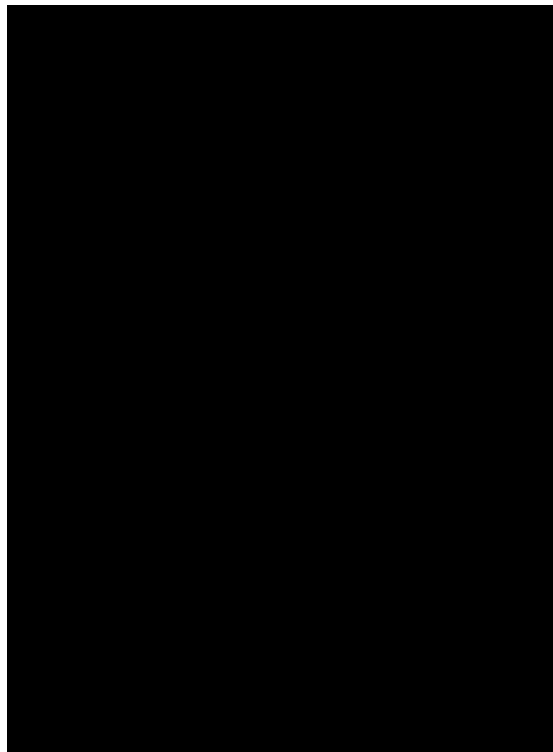
12 A. I know we talked around the Superbowl
13 for sure.

14 **Q. Why do you know that?**

15 A. Because we talked about the Packers
16 and how we're going to beat them. I was in
17 Atlanta.



118



119

1 A. How long until the next break? I
2 need a little water.

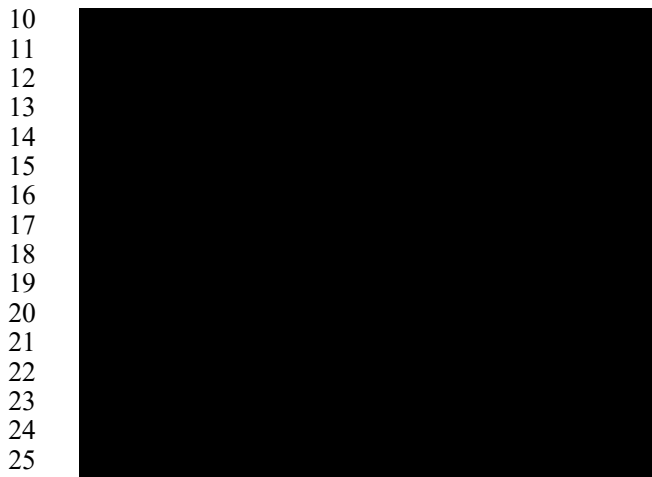
3 MR. IMUS: It is almost 1:00 o'clock.

4 THE WITNESS: Is it really?

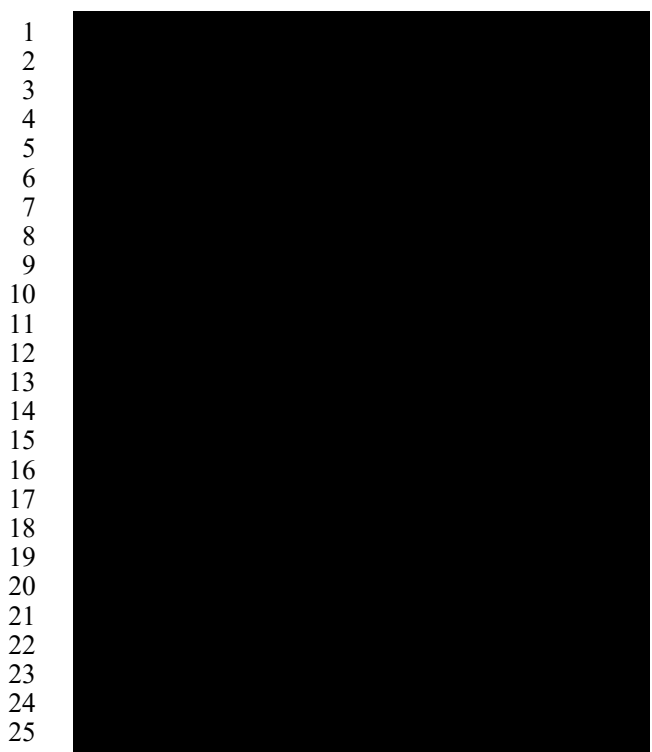
5 (Discussion off the record.)

6 (A recess was taken at 12:54 p.m.,
7 after which the investigational hearing
8 resumed at 1:09 p.m.)

9 BY MS. GOFF:



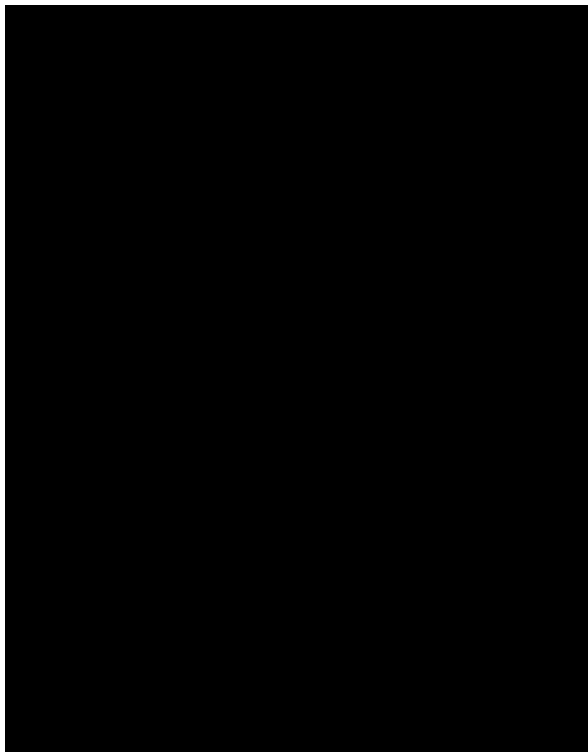
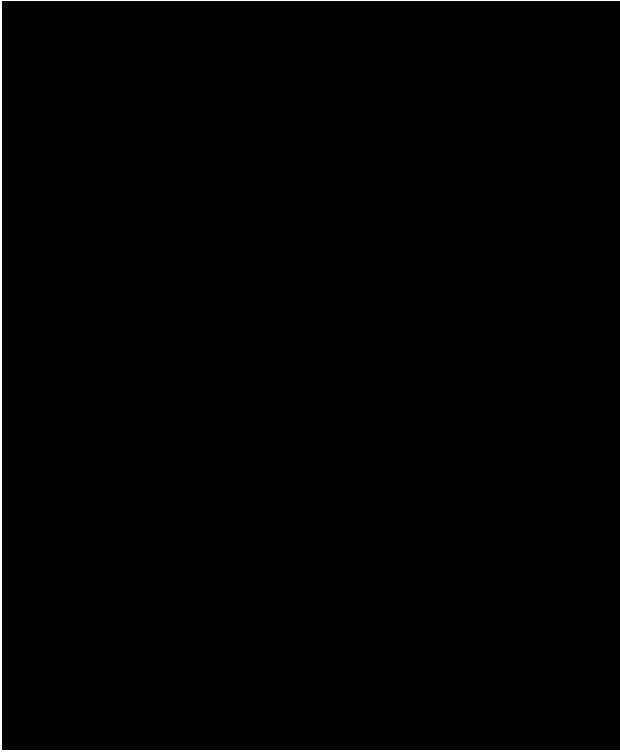
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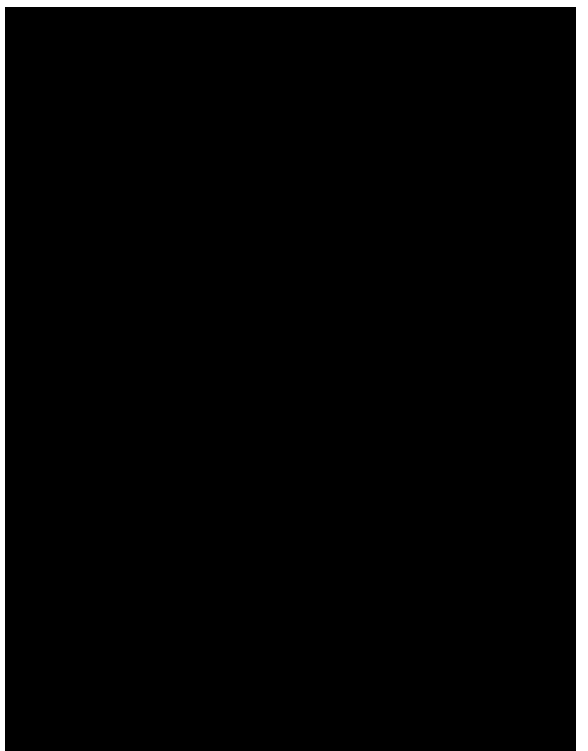



Maurer

Henry Schein Dental

7/28/2017

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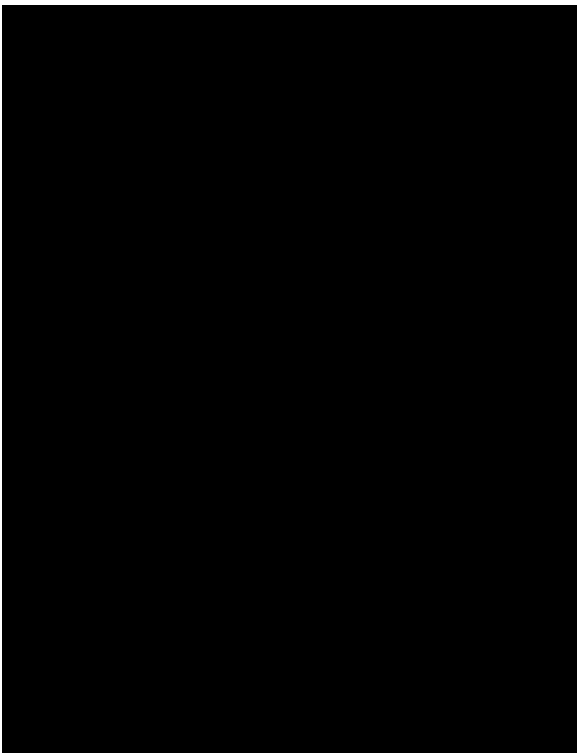
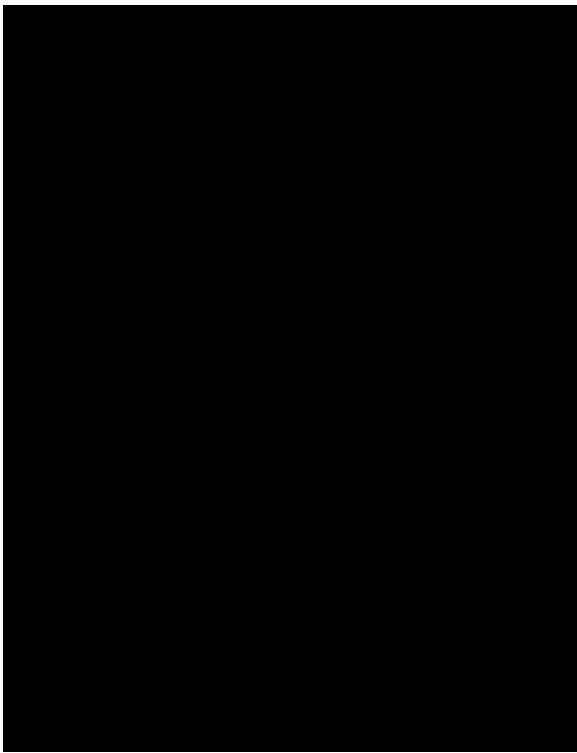
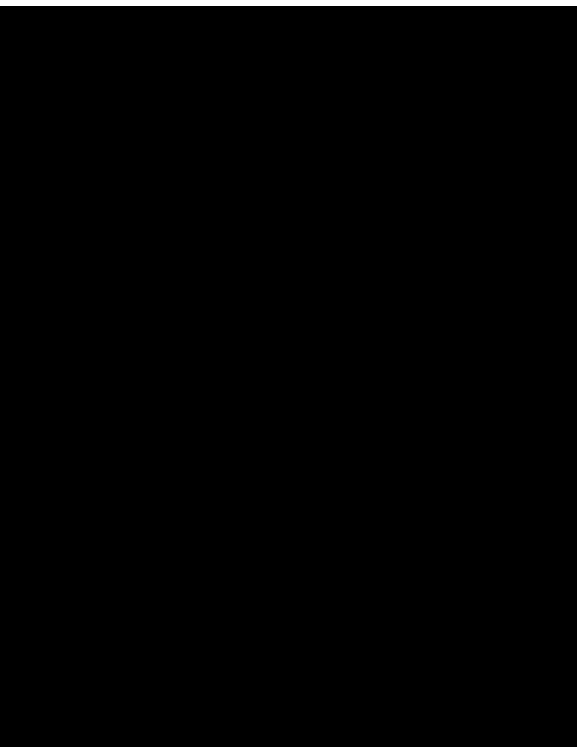
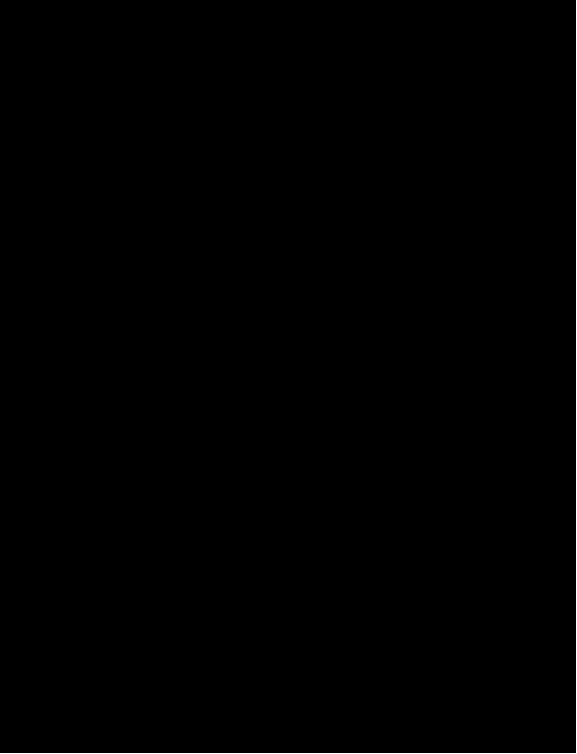
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31 (Pages 121 to 124)

Maurer

Henry Schein Dental

7/28/2017

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32 (Pages 125 to 128)

Maurer

Henry Schein Dental

7/28/2017

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33 (Pages 129 to 132)

Maurer

Henry Schein Dental

7/28/2017

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34 (Pages 133 to 136)

Maurer

Henry Schein Dental

7/28/2017

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35 (Pages 137 to 140)

141

1 [REDACTED]
2 [REDACTED]
3 [REDACTED]
4 [REDACTED]
5 [REDACTED]
6 [REDACTED]
7 **Q. Who is Eric Grimes?**
8 A. Depends on the year.
9 **Q. 2017, March.**
10 A. He is business development for Smile
11 Source in the southeast. He used to work for
12 one of our labs years ago, which is why I
13 asked "depends on the year."
14 **Q. Okay.**
15 A. He didn't change his name.
16 (Exhibit 336 was marked for
17 identification.)
18 BY MS. GOFF:
19 **Q. Okay. So the court reporter handed**
20 **you what has been marked as Exhibit 336. I**
21 **don't think that you are on this e-mail but**
22 **it was produced to us by your counsel.**
23 **It is an e-mail chain between Eric**
24 **Grimes of Smile Source and Phillip Boatright**
25 **of Henry Schein and some others from March**

143

1 [REDACTED]
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3 [REDACTED]
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6 [REDACTED]
7 [REDACTED]
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19 [REDACTED]
20 [REDACTED]
21 [REDACTED]
22 [REDACTED]
23 [REDACTED]
24 [REDACTED]
25 [REDACTED]

142

1 **16th, 2017.**
2 **Take a few minutes to look it over**
3 **and then I just have a question to see if you**
4 **have an understanding of what something**
5 **means.**
6 A. Sure. Okay, I read it.
7 **Q. Okay.**
8 A. I have not seen this before.
9 **Q. You have not seen it before?**
10 A. No, but I have read it.

11 [REDACTED]
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15 [REDACTED]
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18 [REDACTED]
19 [REDACTED]
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22 [REDACTED]
23 [REDACTED]
24 [REDACTED]
25 [REDACTED]

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1 [REDACTED]
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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 **Q. You can put that one aside.**
20 **Okay. I would like to go back to our**
21 **discussion about Benco. I just had a couple**
22 **of follow-up questions about the history**
23 **between Smile Source and Benco.**
24 A. Sure.
25 **Q. So when was the first time that Smile**

145

1 Source, that you are aware of, approached
2 Benco about working with Smile Source?

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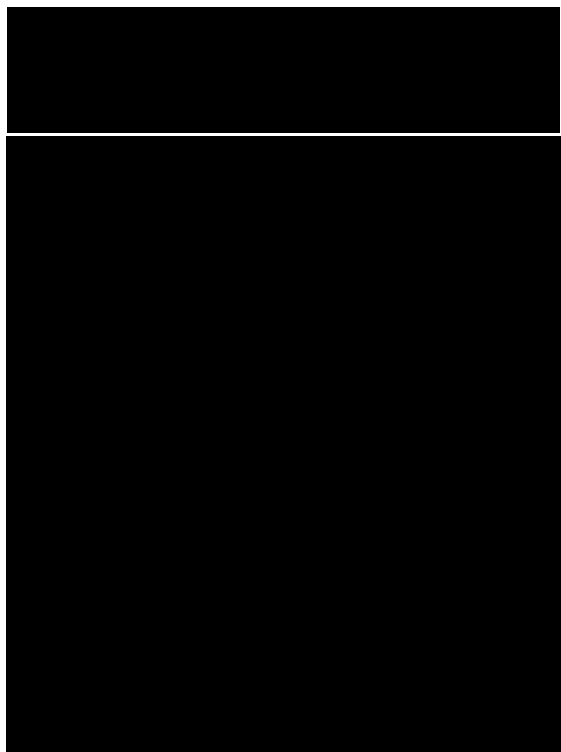
1 know I saw it either in Jeff's office or he
2 sent it to me, one of the two. I recall
3 reading it. And we moved on.

4 **Q. So have you ever heard from Mr. Cohen**
5 **directly or from Jeff about his conversations**
6 **with Mr. Cohen that Benco does not have --**
7 **has a policy of not working with buying**
8 **groups?**

9 A. I don't recall his exact words.
10 Frankly, even if they were really interested
11 and made a proposal, I don't know that it
12 would have gotten past our advisors anyway.
13 They are just too small of a company.

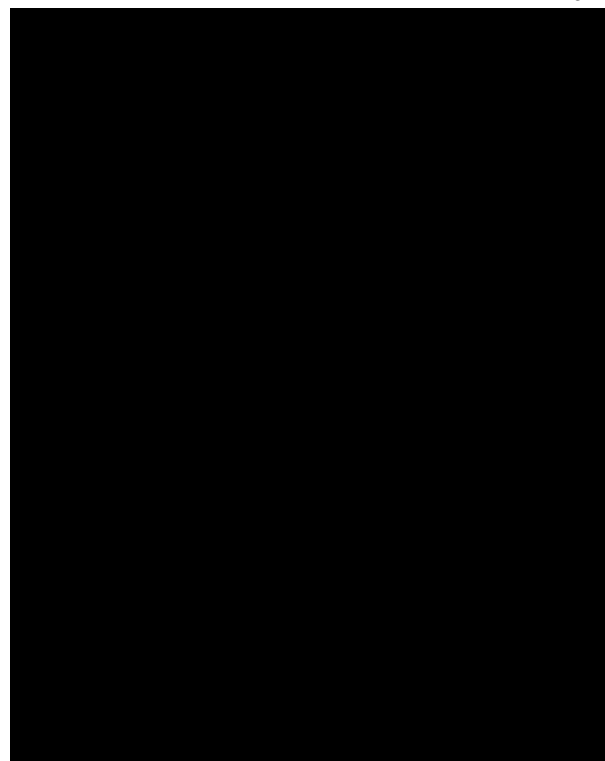
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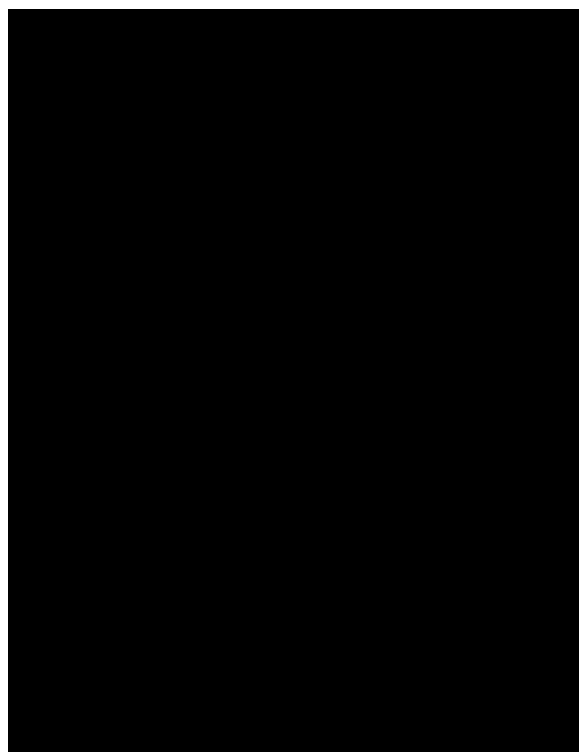
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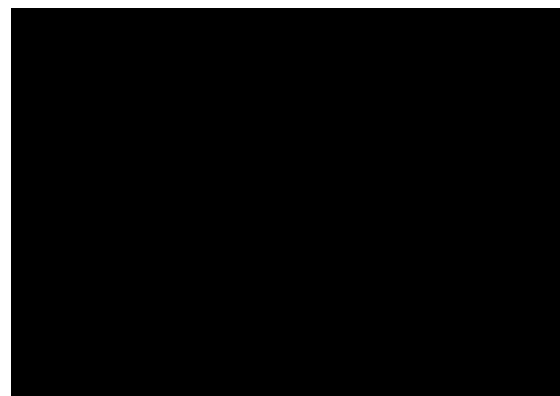
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Q. Do you have a sense whether those were isolated incidences or whether it was a pattern of --

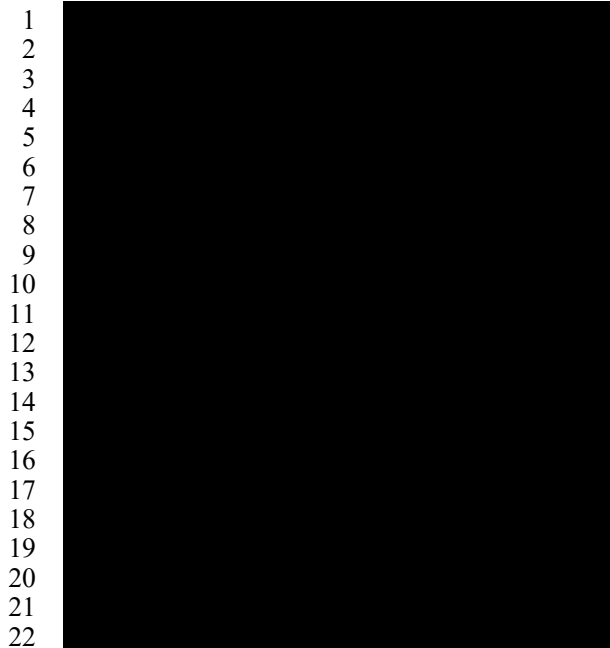
A. I would say very isolated. These reps are pretty independent, in my opinion.

Q. Okay. Thank you. I think we can put that one aside.

A. Okay.

Q. Okay. So I know we have also talked about Patterson, but I wanted to go back, circle back about Patterson and make sure I have the whole history.

153



23 **Q. Neal McFadden?**

24 A. McFadden, their president of special
25 markets, and we just had a discussion on hey,

154

1 why can't I get anywhere with you guys? And
2 I told him the four things we do and I think
3 he thought, again, we were just a discounter,
4 that would hurt their margins and not grow
5 their revenues.

6 And when I explained what we did, as
7 I explained to him earlier today, he said
8 this is interesting, we should talk about it.
9 I talked to him and Tim Rogan and that's how
10 they got interested in having a discussion.
11 And that's why they offered a proposal.

12 **Q. So going back to --**

13 A. I should add one more thing.

14 **Q. Sure, go ahead.**

15 A. Interestingly enough, it had been
16 maybe a month prior they had won the
17 Heartland business, which is their first
18 foray into group practice dentistry. Up
19 until then, they didn't do any dentist
20 groups, no Heartland, no Aspen, no Smile
21 Source.

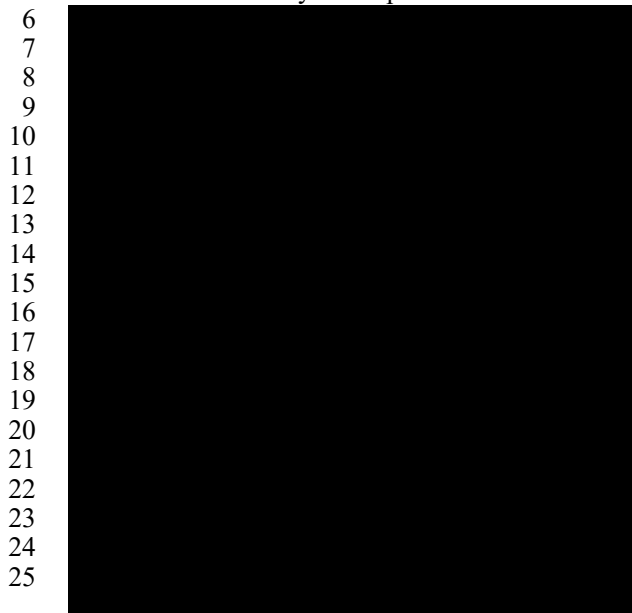
22 Then they went into the Heartland
23 business and gave Neal a job, called
24 president of special markets, and he built
25 that piece. And I think that's why at that

155

1 time they were more interested in speaking
2 with us.

3 **Q. Did they explain that to you?**

4 A. No. They didn't come out and say it
5 in those words. My assumption.



156

1 talk on the phone.

2 **Q. So did you ever have any conversation**
3 **with anyone other than the e-mailing?**

4 A. I think at the trade show I did talk
5 to somebody.

6 **Q. Do you recall who you spoke with?**

7 A. No, whatever regional manager
8 happened to be there.

9 **Q. Okay. And then --**

10 A. Again, remember, we're starting at 32
11 offices and, you know, when I showed up, and
12 so we're kind of insignificant, so I don't
13 know if they even cared.

14 **Q. Okay. And then did there come a**
15 **point when you sort of gave up on reaching**
16 **out to Patterson?**

17 A. I guess not since they submitted a
18 proposal.

19 **Q. Understood. I am trying to get a**
20 **sense of the timeline. So I know they**
21 **submitted a proposal, you guys reached out in**
22 **mid-2016, they submitted a proposal, but from**
23 **the early conversations in 2012 when you**
24 **first started, were you speaking with or**
25 **e-mailing with Patterson regularly each year?**

157

1 A. No, I would say slow drip, like once
2 in a while, no system or process. I would
3 just reach out and say, hey, we would be
4 interested in talking.

5 **Q. But you did that periodically through**
6 **the years?**

7 A. I think so, yeah. I think you would
8 find that in the records.

9 (Exhibit 338 was marked for
10 identification.)

11 BY MS. GOFF:

12 **Q. The court reporter handed you what**
13 **has been marked as Exhibit 338. It is an**
14 **e-mail chain. I redacted some portions of it**
15 **from the top because this e-mail did not come**
16 **from your counsel. It is Bates stamped**
17 **PDCO-00021213 to 214.**

18 And it is an e-mail communication
19 between you and it looks like Dave Misiak and
20 Neal McFadden of Patterson Dental. Do you
21 see that?

22 A. Sorry, forgot you were asking me.
23 Yes.

24 **Q. Okay. And have you had a chance to**
25 **review the e-mail?**

159

158

1 A. I am almost done. Yes.

2 **Q. Do you recognize it?**

3 A. I remember finding it odd that he
4 would meet with me if I were going to be in
5 his town.

160

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5 **Q. Thanks. We can put that one aside.**
6 **Next I would like to talk a little bit about**
7 **Burkhart.**

8 **How long has Smile Source had a**
9 **relationship with Burkhart?**

10 A. As long as I have been here.

11 **Q. Was it negotiated --**

12 A. So late 2012.

13 **Q. Was it -- did you participate in**
14 **negotiating the agreement?**

15 A. No.

16 **Q. It was in existence when you started?**

17 A. Yes. I recall that because one of my
18 first acts that I flew out to Seattle with
19 Dr. Goldsmith and met with a couple of their
20 execs.

21 **Q. And was there some kind of -- turning**
22 **back to Exhibit --**

23 A. I know which one, is that the one you
24 want, colored one?

25 **Q. Exhibit 333.**

Maurer

Henry Schein Dental

7/28/2017

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41 (Pages 161 to 164)

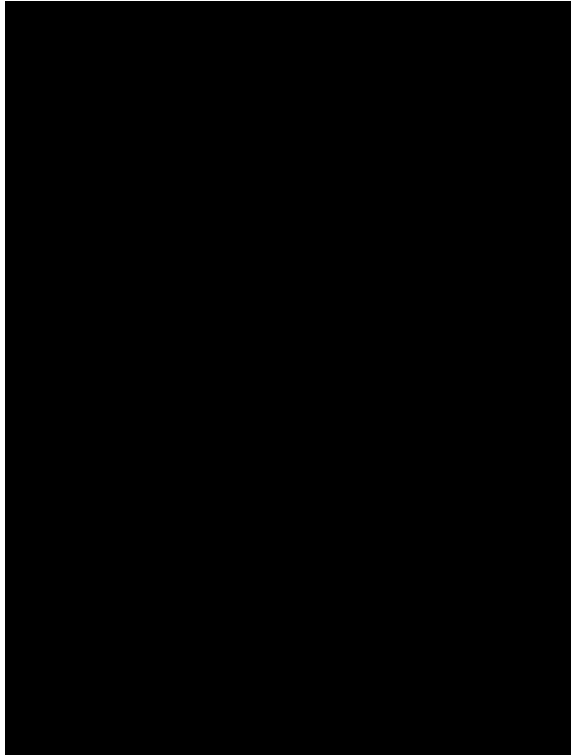
Maurer

Henry Schein Dental

7/28/2017

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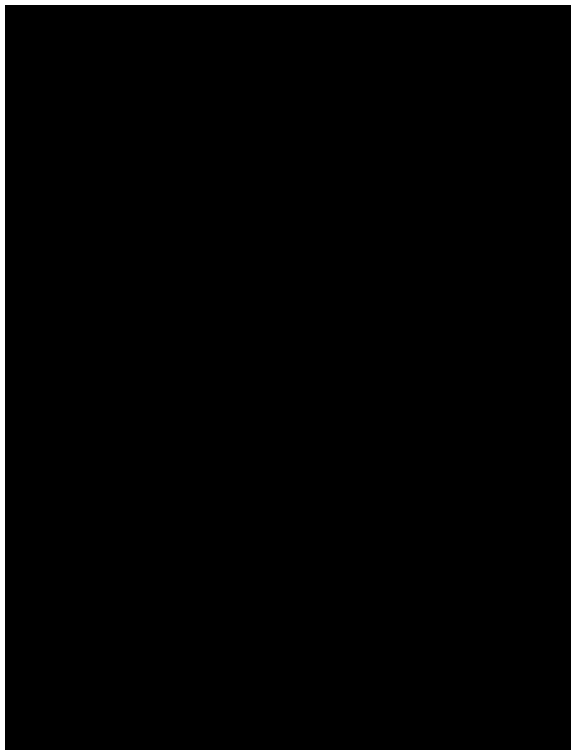
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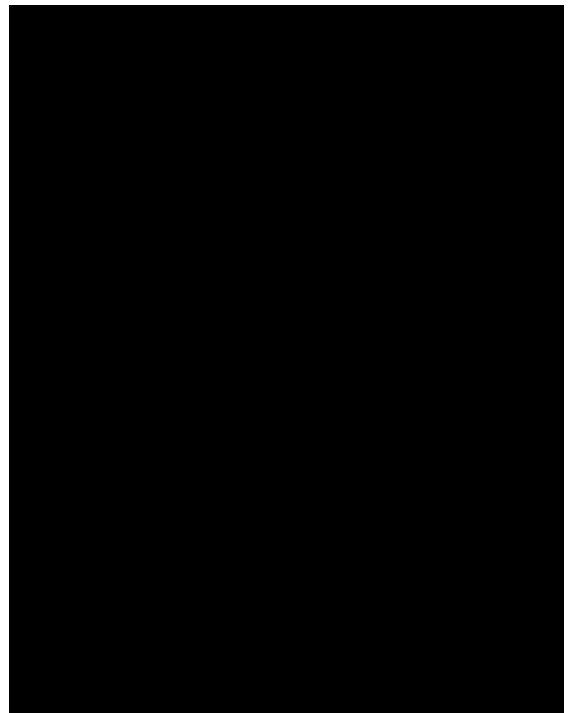
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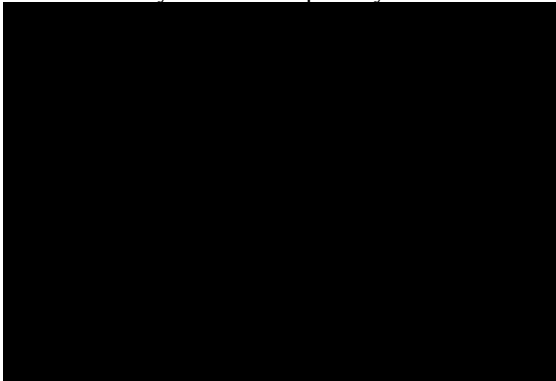


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Q. Do you think group practices are the

<p>169</p> <p>1 future of dentistry?</p> <p>2 A. I think they are growing at a</p> <p>3 tremendous rate, they are the fastest growing</p> <p>4 segment in dentistry. And I think it will</p> <p>5 end up just like optometry and general</p> <p>6 medicine.</p> <p>7 Dentistry, if you look at the last</p> <p>8 hundred years, has followed medicine so I</p> <p>9 don't see why it would stop today.</p> <p>10 </p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23 Q. Right. I just wanted to -- do we</p> <p>24 want to take a break?</p> <p>25 A. I am good, but I can if you would</p>	<p>171</p> <p>1 blueprint for Smile Source?</p> <p>2 A. I would say. Same investors.</p> <p>3 Q. Go ahead.</p> <p>4 A. Same investors. Just Smile spawned</p> <p>5 from Vision, right?</p> <p>6 Q. Right. And do you think there are</p> <p>7 similarities between the dental industry and</p> <p>8 the vision industry?</p> <p>9 A. Yes.</p> <p>10 Q. And what are those similarities?</p> <p>11 A. You have independent businesspeople</p> <p>12 with a healthcare license, you can call it</p> <p>13 medical license if you will, if you want to</p> <p>14 debate whether it is medical or not. They</p> <p>15 have staff issues, they have marketing</p> <p>16 issues, they have insurance issues.</p> <p>17 They buy products, they resell them.</p> <p>18 Very similar.</p> <p>19 Q. Have you noticed any differences in</p> <p>20 the way the vision market and the dental</p> <p>21 market operate that are pertinent to your</p> <p>22 business?</p> <p>23 A. I have. In vision, one-third of</p> <p>24 production is spent on product, glasses,</p> <p>25 frames, contact lenses. In dentistry, it is</p>
<p>170</p> <p>1 like to.</p> <p>2 Q. I want to talk a little bit about</p> <p>3 your experience at Vision Source.</p> <p>4 A. Sure.</p> <p>5 Q. What is Vision Source?</p> <p>6 A. Vision Source is the franchisor that</p> <p>7 promotes independent optometry.</p> <p>8 Q. Is the business model the same --</p> <p>9 A. Yes.</p> <p>10 Q. -- for Vision Source? And what was</p> <p>11 your role when you were at Vision Source?</p> <p>12 A. Business development in the southeast</p> <p>13 region. And then when I went to work at</p> <p>14 Smile, I was put on to the leadership team.</p> <p>15 Vision Source owned Smile Source, so I</p> <p>16 participated in the monthly leadership</p> <p>17 meetings.</p> <p>18 Q. Do you still do that?</p> <p>19 A. We have sold Vision Source in</p> <p>20 September of 2015. So I rent space from</p> <p>21 them. I have a TSA agreement for finance</p> <p>22 accounting, legal, IT and facilities, I guess</p> <p>23 I said facilities in that space twice and</p> <p>24 that's it.</p> <p>25 Q. Okay. And so was Vision Source a</p>	<p>172</p> <p>1 about half of that. Lab, supplies,</p> <p>2 equipment. So they spend less. Dentistry is</p> <p>3 more labor intensive, get a cleaning.</p> <p>4 Q. And any other differences?</p> <p>5 A. Yes. The cost of a lab mistake. If</p> <p>6 you get a bad pair of eyeglasses, so the lab</p> <p>7 that makes these lenses, if I show up and I</p> <p>8 can't see and the stuff got shipped to you,</p> <p>9 your 20-dollar-an-hour optician makes</p> <p>10 adjustments, gets some new lenses and then I</p> <p>11 am happy.</p> <p>12 If I go to the dental office and the</p> <p>13 lab product is a crown that is dental, that's</p> <p>14 a dentist's time, 300 dollars an hour, so the</p> <p>15 cost of a lab mistake is very, very much</p> <p>16 higher.</p> <p>17 So although dental lab and ophthalmic</p> <p>18 lab are the same kind of percent of</p> <p>19 production in terms of how important it is in</p> <p>20 dollars to the practice, for their cost, the</p> <p>21 cost of a mistake is much higher in dentistry</p> <p>22 so much, much higher to switch labs.</p> <p>23 Our job is harder to switch labs in</p> <p>24 dentistry, and coupled by the fact that there</p> <p>25 is 8,000 labs in dentistry, there is arguably</p>

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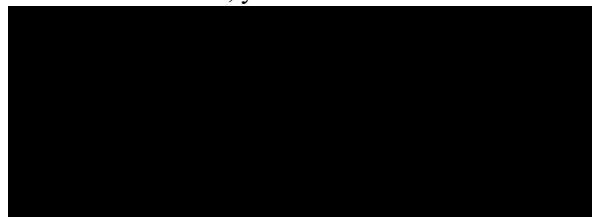
1 20 in optometry.

2 So we're talking to a prospect, the
3 odds are 7,995-to-one that they are not using
4 our lab. It is a little bit different. The
5 saving grace is they all use the same
6 technology, buy the same block, use the same
7 mill. A crown is a crown.

8 **Q. And, okay, any other major**
9 **differences that you have noticed between**
10 **dental and vision?**

11 A. We talked supply costs, supply chain,
12 and marketing is similar. Education is
13 similar. And dentists, I think, overeducate
14 more than optometrists do, just because by
15 the facts if they do 20 hours, they do 40.

16 They are more interested in learning
17 as a generalization. Beyond that, all the
18 same staff issues, yeah. That's about it.



175

1 A. When I left, so --

2 **Q. Approximately.**

3 A. When you say left, you mean when I --

4 **Q. When you switched over to Smile**

5 **Source.**

6 A. So not when I was on the board?
7 Okay. 2200-ish, 500, somewhere in there.

8 **Q. So how would you account for the**
9 **difference in membership? You said that**
10 **there is 22 or 2500 in Vision Source.**

11 A. There is more now. There is 3400
12 now.

13 **Q. Okay. 3400 now. And around 500 or**
14 **so for Smile Source, but there are more**
15 **dentists.**

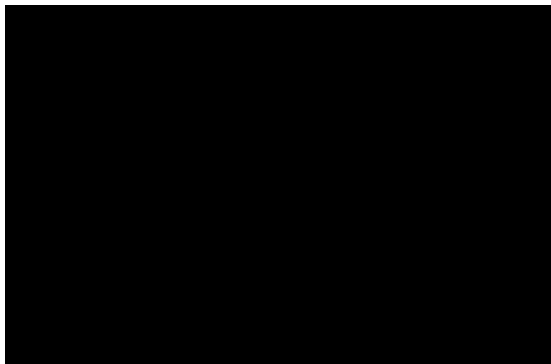
16 A. Right.

17 **Q. So what in your mind is the**
18 **difference? Why are there so many fewer**
19 **dentists than are members of Smile Source?**

20 A. There are more dentists that are
21 members of Smile Source in the history of the
22 launch of the company than optometry. So
23 vision was like that (indicating). Smile was
24 like that (indicating).

25 If you stack the years, just say we

174



13 **Q. And you were -- well, were you**
14 **involved with getting new members to join**
15 **Vision Source?**

16 A. Yeah, yeah, business development,
17 that was my role.

18 **Q. And when was Vision Source first**
19 **started?**

20 A. 1991.

21 **Q. All right. So --**

22 A. By Ellisor, the chairman I mentioned
23 earlier.

24 **Q. So when you left Vision Source, how**
25 **many locations did it have?**

176

1 have been doing this since 2010 and they have
2 been doing it since 1991.

3 **Q. Okay. Do you think that Vision**
4 **Source was beneficial to private practice**
5 **optometry?**

6 A. It is publicly quoted many times as
7 being the salvation of private practice
8 optometry. The University of Houston
9 Optometric School named their wing after
10 Vision Source as a pursuit of the champion of
11 private optometry, so wholeheartedly I would
12 say yes.

13 **Q. And is it your goal at Smile Source**
14 **to do the same on the dentist's side?**

15 A. Every day.

16 **Q. And how did Vision Source save**
17 **private practice vision optometry?**

18 A. Well, it stopped the flow. When it
19 was started, chains were around 50 percent of
20 the market. And now chains are around
21 50 percent of the market. It stopped --
22 corporate optometry stopped growing because
23 in my opinion and our opinion of the
24 executive team, optometrists had an option to
25 be able to compete more effectively to get

<p style="text-align: right;">177</p> <p>1 better marketing, better -- I can repeat the 2 same stuff. 3 Q. Okay. And do you think that Smile 4 Source allows dentists to compete more 5 effectively against the large corporate 6 dentistry? 7 A. Absolutely. Not at the peril of the 8 competitor, but it allows them to run a 9 better practice. I don't want to say 10 anything negative. 11 Q. So do you think that Smile Source has 12 the potential to be as successful as Vision 13 Source was? 14 A. Yes. 15 Q. Okay. You have mentioned a few times 16 that you have attended certain trade shows. 17 Do you regularly attend certain trade shows? 18 A. I would say fairly regularly. 19 Q. Which ones do you go to? 20 A. I definitely go to the Chicago 21 Mid-winter. It is the worst time of year in 22 Chicago, it is February, but it is the best 23 meeting in the industry. All the executives 24 go. 25 So if you want to meet any companies,</p>	<p style="text-align: right;">179</p> <p>1 Q. What is Tom's last name? 2 A. Allmon. 3 Q. And Jennifer's? 4 A. Crass. 5 Q. Okay. Do you ever attend regional 6 trade shows like -- 7 A. Like state ones? 8 Q. State ones. 9 A. Pretty rare. I live in Georgia, I go 10 to the Georgia one. They are pretty small. 11 By attend, we don't exhibit. We just walk 12 around. 13 Q. Yeah. Have you ever been to the 14 Texas Dental Association? 15 A. Yeah, I have, if it is local there, a 16 couple times maybe. 17 Q. Do you know what years? 18 A. Well, I was in Texas, so that was the 19 Texas Association. I went to the Star South 20 in Houston two years ago. That was not TDA. 21 I think I went to the TDA when it was in San 22 Antonio, '14, maybe, if I went. Again, there 23 is just not a lot of our members that go. 24 And the executives of the companies, 25 like the presidents, don't typically go</p>
<p style="text-align: right;">178</p> <p>1 we like to have frequent meetings with our 2 vendors and our CE providers, and that is 3 just a great way to meet them all instead of 4 flying them around the country. So we go to 5 that. 6 ADA is another good one, American 7 Dental Association. It moves around. It is 8 in Atlanta this year, so I won't have to 9 travel. 10 Q. That's nice. 11 A. Just other ones as it makes sense. 12 Like I said, I am coming to CD North, 13 California Dental Association North in 14 August. And the reason I go is we have 15 receptions and our members and local 16 administrators, it is nice to interact with 17 them. 18 And, you know, Tom and Jennifer will 19 go and have vendor meetings. And I will come 20 to some that are important or they need me 21 at. 22 Q. And just for the record, who are Tom 23 and Jennifer? 24 A. Tom is director of vendor relations 25 and Jennifer is the vendor relations manager.</p>	<p style="text-align: right;">180</p> <p>1 because there is 50 of them. They would 2 always be on the road. They go to the 3 nationals. 4 Q. And, again, for the purpose of the 5 Texas Dental Association, to the extent that 6 you went in 2014, why did you go? 7 A. I think it was local. I think it was 8 San Antonio and my son was running there or 9 something like that. He ran track in high 10 school. 11 Q. What do you get out of going to these 12 meetings? 13 A. Again, seeing our members, we will 14 have a reception usually or do something 15 informal at a bar. Just get people together. 16 And if the execs are there from companies, we 17 can do our quarterly updates with our 18 vendors, just on how their education classes 19 are going, how is their marketing going, 20 stuff like that. 21 Q. Okay. Do you do quarterly updates 22 with your vendors? 23 A. We try, yeah. Certainly the top 24 half, top third. 25 Q. And what do those updates consist of?</p>

181

1 [REDACTED]
 2 [REDACTED]
 3 [REDACTED]
 4 [REDACTED]
 5 [REDACTED]
 6 [REDACTED]
 7 **Q. And are those in-person or on the**
 8 **telephone meetings?**
 9 A. Both, yeah.
 10 **Q. And are there any notes taken?**
 11 A. Sometimes. We have a pretty basic
 12 template where we will just dialogue on how
 13 they are doing.
 14 **Q. You have a template of what --**
 15 A. Like a blank sheet that we talk to
 16 you that we need to follow up on, and they
 17 may say: You should come to our national
 18 meeting and talk to our sales reps and
 19 explain how our reps should work with our
 20 members. Okay, contact them later, get the
 21 date.
 22 **Q. And are you personally involved in**
 23 **the quarterly updates?**
 24 A. On and off, yeah. If I am available
 25 and if it is something that they want me to

183

1 [REDACTED]
 2 [REDACTED]
 3 [REDACTED]
 4 [REDACTED]
 5 **Q. Okay. Just for the record, you are**
 6 **referring to Exhibit 336?**
 7 A. Yes, I am, yeah.
 8 **Q. Do you know Matt Woodend, what his**
 9 **role is at Schein?**
 10 A. So he is responsible -- he may have
 11 other responsibilities. I'm sure he does.
 12 He is our primary contact for our members,
 13 our administrators and us as a company for
 14 day-to-day stuff, operations.
 15 **Q. Okay. Are you on the board of any**
 16 **dental industry associations or groups?**
 17 A. No.
 18 **Q. Okay. I would like to take a break.**
 19 A. Nobody has asked me.
 20 **Q. What was that?**
 21 A. Nobody has asked me.
 22 **Q. I would like to take a break now and**
 23 **just review my outline to see if I have any**
 24 **other follow-up, but I think we're close to**
 25 **done.**

182

1 be involved in, for sure.
 2 **Q. Have you done a quarterly update with**
 3 **Schein?**
 4 A. No.
 5 **Q. Not yet?**
 6 A. We have not. We have had some calls
 7 but not in a specific quarterly update
 8 fashion. And I know this past week,
 9 yesterday was our first regularly scheduled
 10 call.
 11 **Q. And who did you have that call with?**
 12 A. So Matt Woodend is their designate to
 13 manage the Smile Source business, I guess,
 14 Tom Allmon. Those are the two. [REDACTED]
 15 [REDACTED]
 16 [REDACTED]
 17 [REDACTED]
 18 [REDACTED]
 19 [REDACTED]
 20 [REDACTED]
 21 [REDACTED]
 22 [REDACTED]
 23 [REDACTED]
 24 [REDACTED]
 25 [REDACTED]

184

1 A. Okay.
 2 (A recess was taken at 2:28 p.m.,
 3 after which the investigational hearing
 4 resumed at 2:38 p.m.)
 5 BY MS. GOFF:
 6 **Q. Has Smile Source ever done any formal**
 7 **or informal analysis of whether dentists are**
 8 **interested in organizations like Smile**
 9 **Source?**
 10 A. Yes, formal. Years ago, before I was
 11 here we did a study.
 12 **Q. What type of study?**
 13 A. A study of the different
 14 organizations and what dentists said they
 15 wanted.
 16 **Q. Okay. So that was before 2012 when**
 17 **you joined Smile Source?**
 18 A. Yes.
 19 **Q. Have you seen the results of that**
 20 **study?**
 21 A. I have.
 22 **Q. What did dentists say that they**
 23 **wanted?**
 24 A. As you can imagine, it is all over
 25 the map with as many dentists as there are.

	185	187	
1	Some just want to show up and work and go	1	
2	home and some want to own a business. And	2	
3	just get some support and some want no	3	
4	support at all. So they want everything.	4	
5	What we -- what we -- the day before	5	
6	I was there and what I see, is there was a	6	
7	need for a Smile Source-type of business that	7	
8	allows the one that wants to own a business,	8	
9	to run the business to get a little bit of	9	
10	help but not take over and tell them what to	10	
11	do.	11	
12	Q. And so did the results of that study	12	
13	influence whether the fact that Smile Source	13	
14	was started?	14	
15	A. I actually think it was -- I know, I	15	
16	know it was done after Smile Source was	16	
17	incorporated. I think it was done early when	17	
18	Smile Source was started because Smile Source	18	
19	was slow to grow.	19	
20		20	
21		21	
22		22	
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25		25	

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1		1	
2		2	
3	Q. And do you have a copy of that study?	3	
4	A. Available somewhere, I could find it,	4	
5	yes.	5	
6	Q. I think I asked a question similar to	6	
7	this, but not this exact question. Does	7	
8	Smile Source maintain records of, reflecting	8	
9	each member's savings through Smile Source?	9	
10	A. We don't keep records.	10	
11		11	
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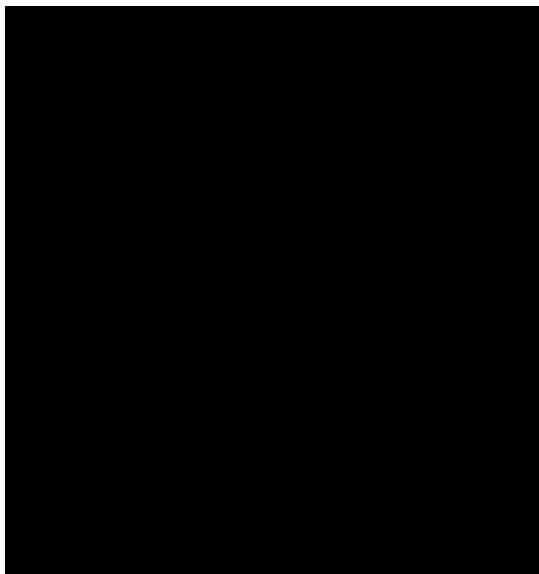
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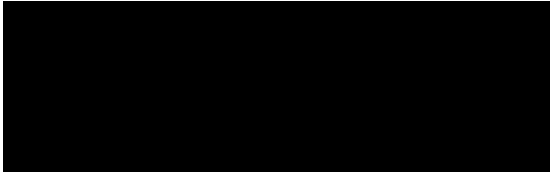
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Q. And between 2013 and the current contract from 2017, did you periodically reach out to Tim Sullivan or anyone else at Schein about partnering?

A. We were friendly, but never asked for a proposal. We were -- we said no, we were

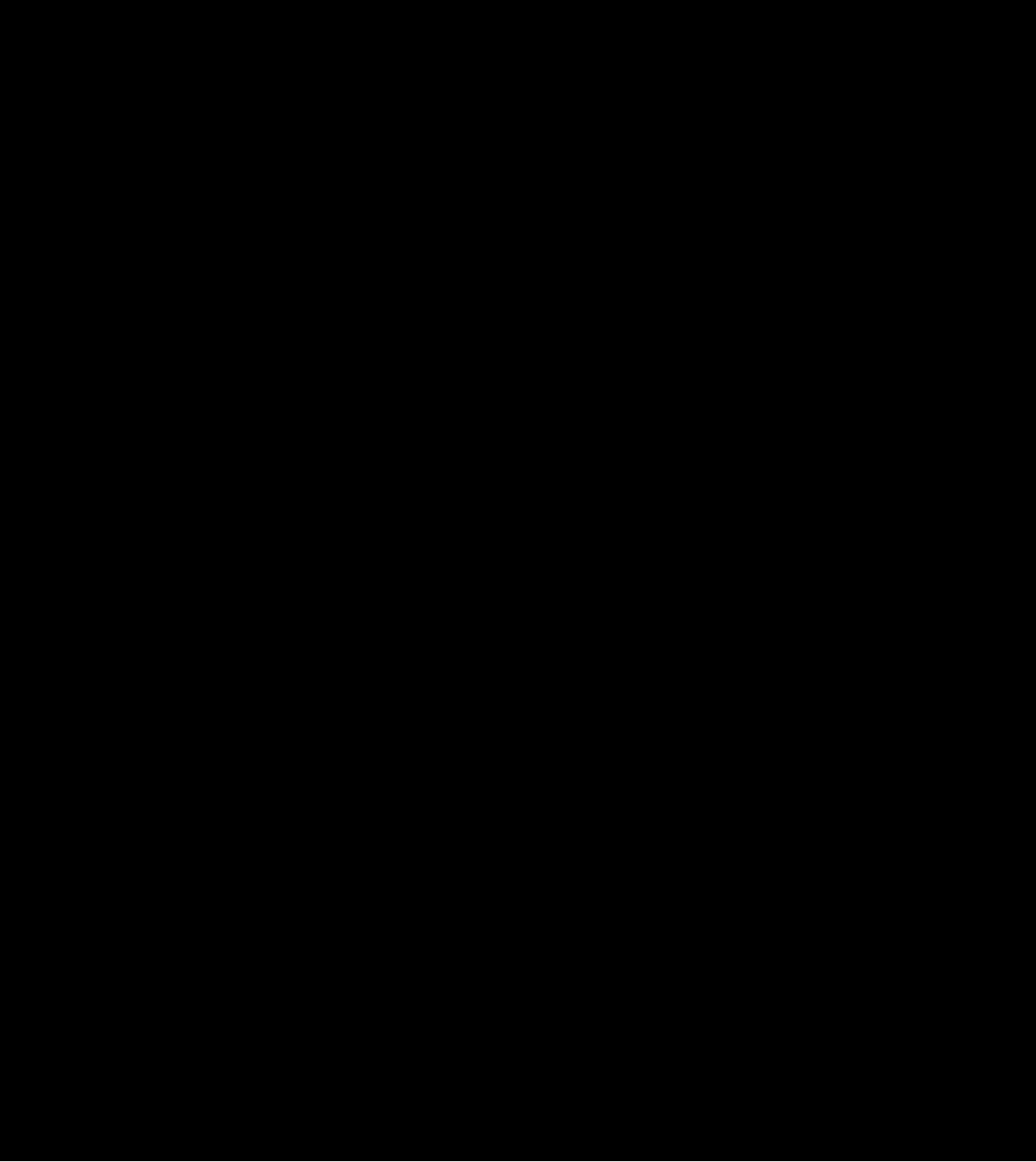
<p>193</p> <p>1 satisfied.</p> <p>2 Q. When you said we said no, we were</p> <p>3 satisfied, you are referring to the 2013</p> <p>4 period when you said no?</p> <p>5 A. Correct, yeah. And then my recent</p> <p>6 comment of satisfied is we never went back to</p> <p>7 them in '14 and '15 and said give us a deal,</p> <p>8 give us a deal, we were good.</p> <p>9 Q. So you may have periodically e-mailed</p> <p>10 with individuals from Schein but you were not</p> <p>11 seeking another deal?</p> <p>12 A. I wouldn't say we were serious.</p> <p>13 Might have been, you know, might have said</p> <p>14 something like: Hey, are we ever going to</p> <p>15 work together? Like whatever, but no serious</p> <p>16 inquiries, let's meet, let's -- we're opening</p> <p>17 back up. We were good. We had other things</p> <p>18 to work on.</p> <p>19 </p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25 Q. Okay. I don't have any further</p>	<p>195</p> <p>1 MS. GOFF: Thank you.</p> <p>2 (Whereupon, at 2:50 p.m., the</p> <p>3 investigational hearing concluded.)</p> <p>4 * * * * *</p> <p>5</p> <p>6 ACKNOWLEDGEMENT OF DEPONENT</p> <p>7</p> <p>8 I, Trevor Maurer, do hereby</p> <p>9 acknowledge I have read and examined the</p> <p>10 foregoing pages of testimony, and the same is</p> <p>11 a true, correct, and complete transcription</p> <p>12 of the testimony given by me, and any changes</p> <p>13 and/or corrections, of any, appear in the</p> <p>14 attached errata sheet signed by me.</p> <p>15</p> <p>16</p> <p>17 <u>DATE</u> <u>TREVOR MAURER</u></p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>
<p>194</p> <p>1 questions, but thank you very, very much for</p> <p>2 coming in today. We really appreciate your</p> <p>3 time. Do you have any follow-up?</p> <p>4 MR. IMUS: Before we go off the</p> <p>5 record, I just wanted to double-check. There</p> <p>6 is a lot of highly sensitive business and</p> <p>7 proprietary information in this. It is my</p> <p>8 understanding this would not be disclosed, it</p> <p>9 is confidential. Is that right?</p> <p>10 MS. GOFF: That's correct.</p> <p>11 MR. IMUS: And if, if this went to a</p> <p>12 proceeding before the Commission or in Court,</p> <p>13 would any of this information be disclosed?</p> <p>14 MS. GOFF: I cannot tell you the</p> <p>15 answer to that question right now on the</p> <p>16 record. I would need to consult with my</p> <p>17 boss, among other people, just to confirm</p> <p>18 that I have the answer correct.</p> <p>19 MR. IMUS: If you could let us know</p> <p>20 and confirm that, that would be great. Or at</p> <p>21 least confirm that we would have an</p> <p>22 opportunity to discuss how this was disclosed</p> <p>23 prior to being disclosed.</p> <p>24 MS. GOFF: Understood.</p> <p>25 MR. IMUS: Thank you.</p>	<p>196</p> <p>1 Certification of Reporter</p> <p>2 DOCKET/FILE NUMBER: 1510190</p> <p>3 CASE TITLE: HENRY SCHEIN</p> <p>4 DATE: July 28, 2017</p> <p>5</p> <p>6 I HEREBY CERTIFY that the</p> <p>7 transcript contained herein is a full and</p> <p>8 accurate transcript of the notes taken by me</p> <p>9 at the hearing on the above cause before the</p> <p>10 FEDERAL TRADE COMMISSION to the best of my</p> <p>11 knowledge and belief.</p> <p>12</p> <p>13</p> <p>14</p> <p>15 DATED: August 4, 2019</p> <p>16</p> <p>17</p> <p>18</p> <p>19 KAREN BRYNTESON,</p> <p>20 RPR, RMR, CRR, FAPR</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>

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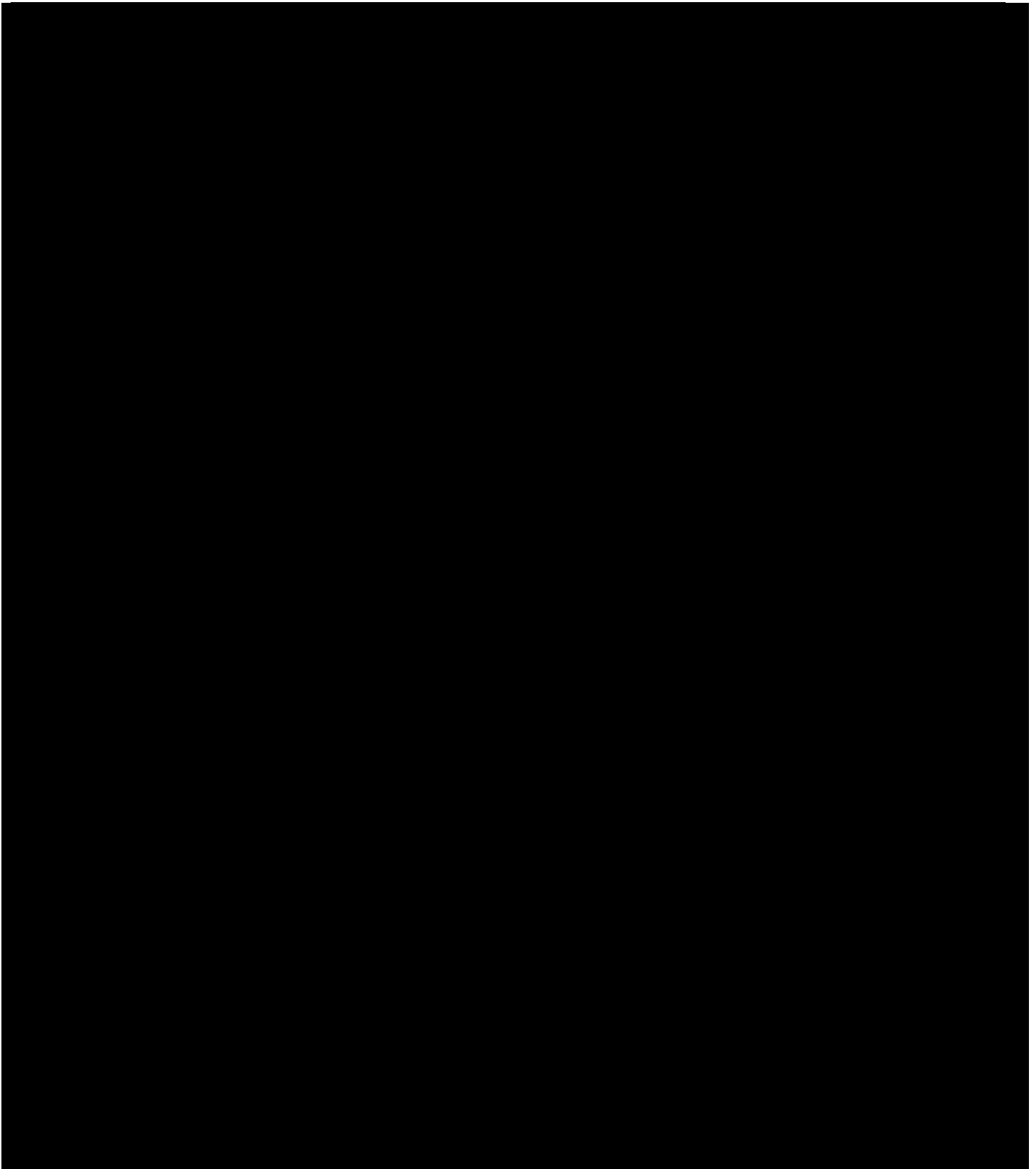


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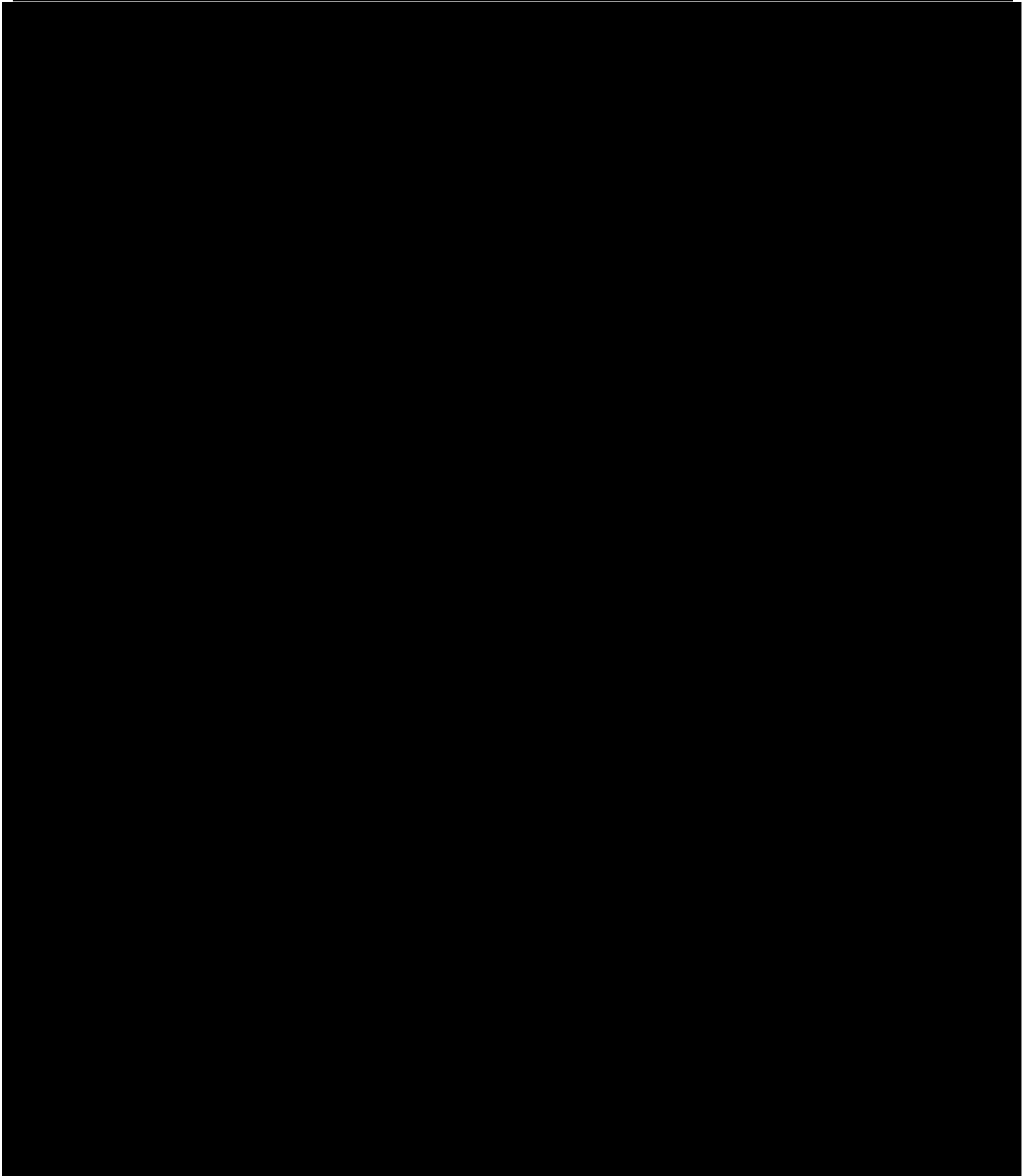


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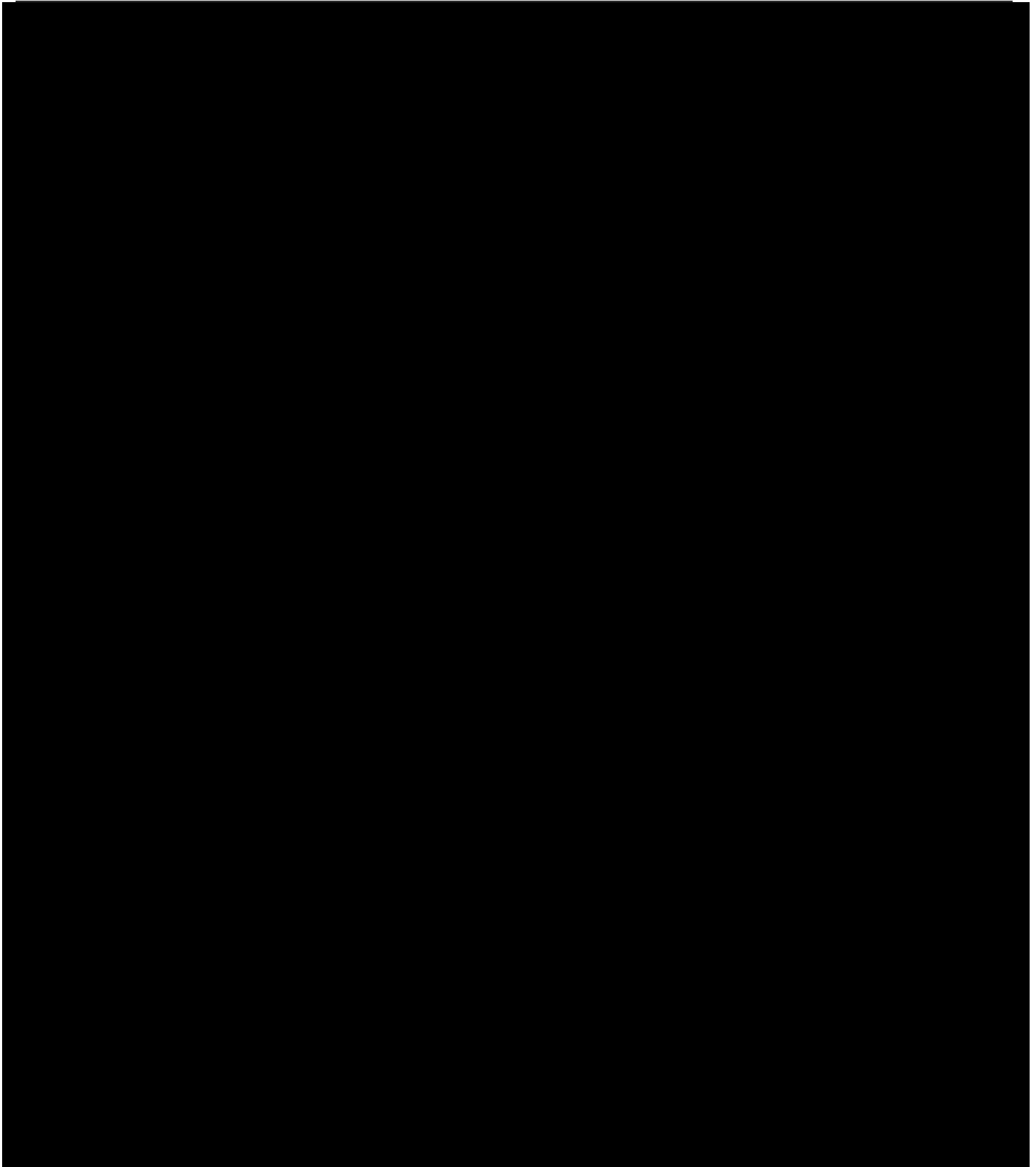


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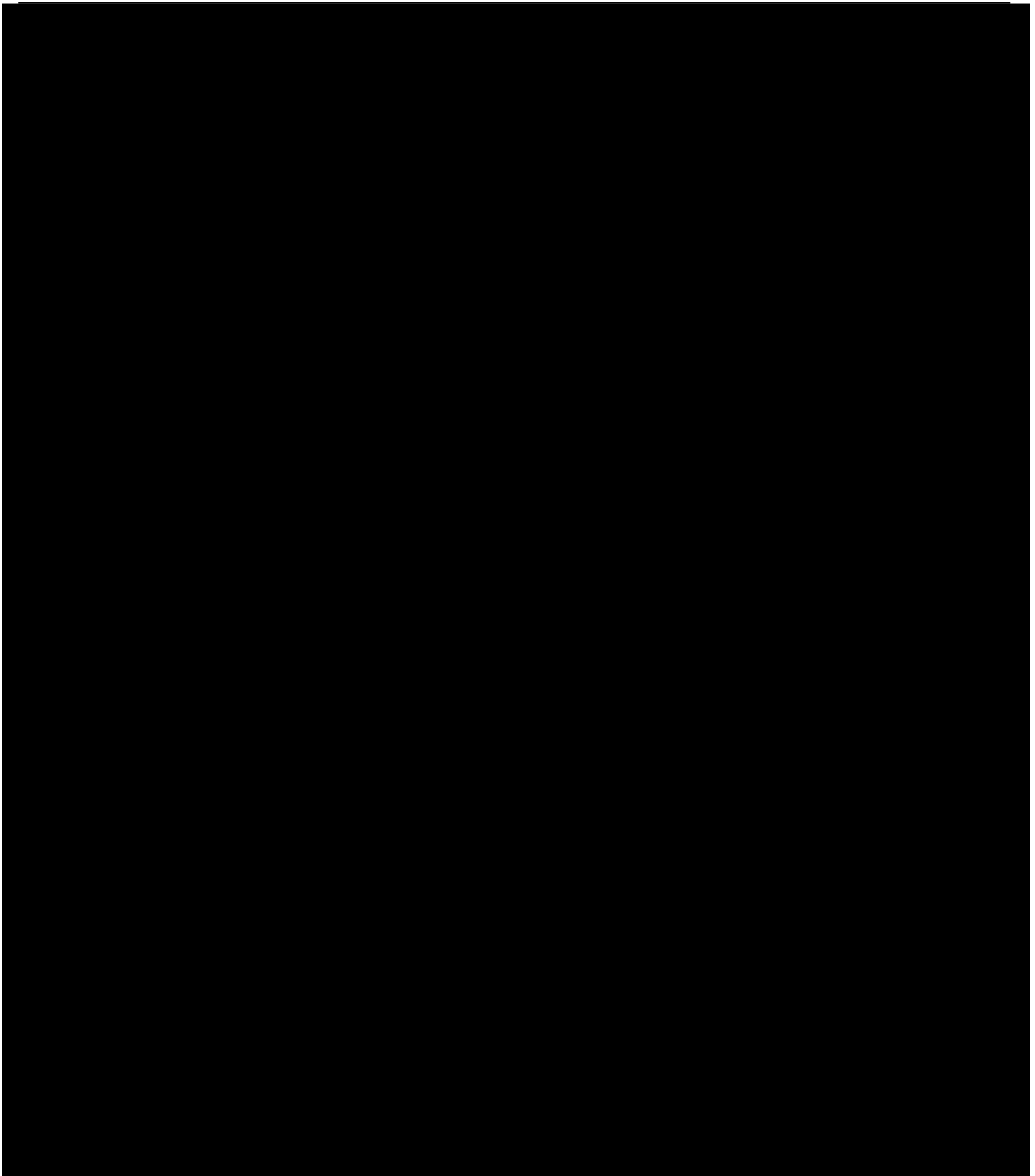


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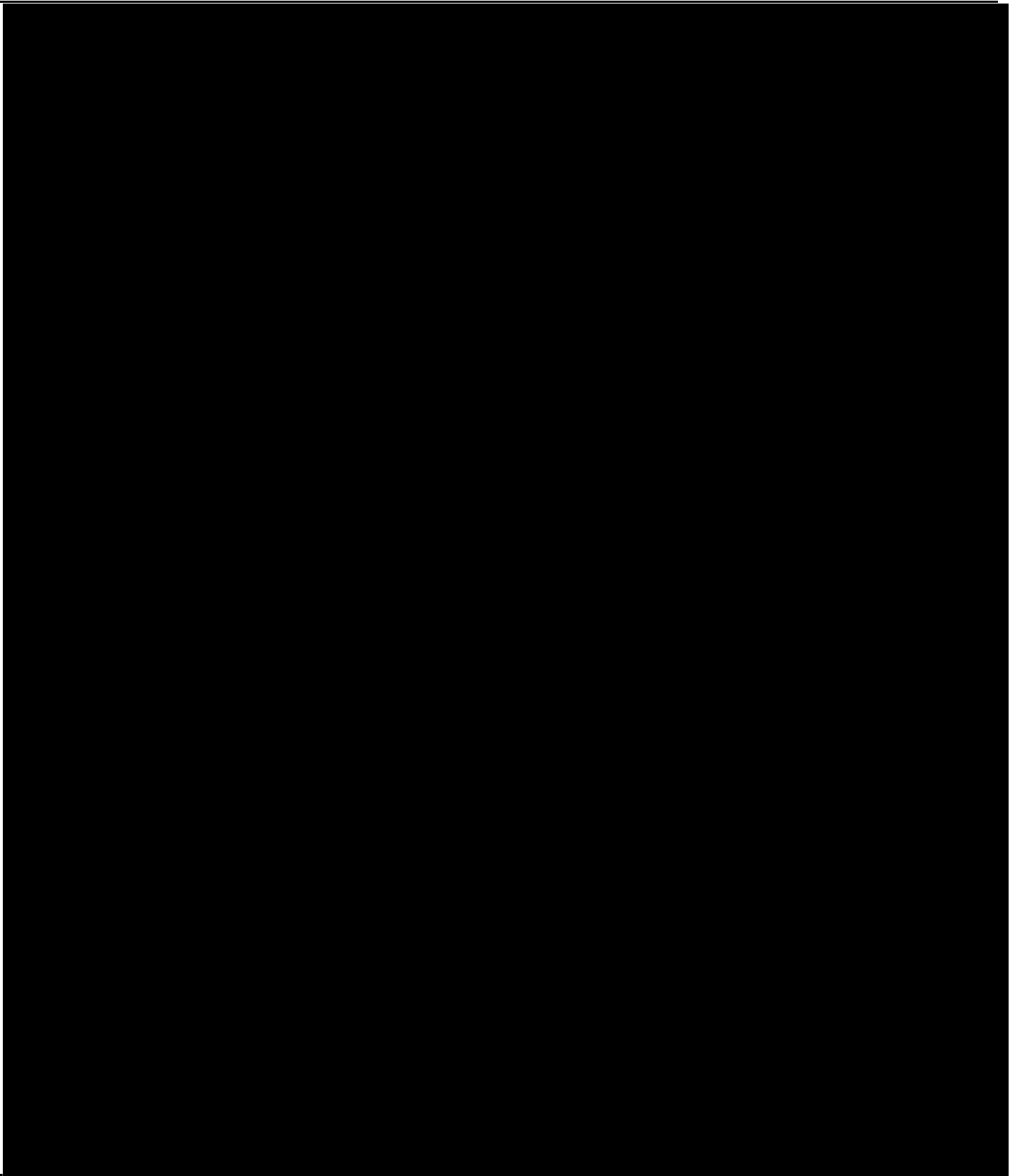


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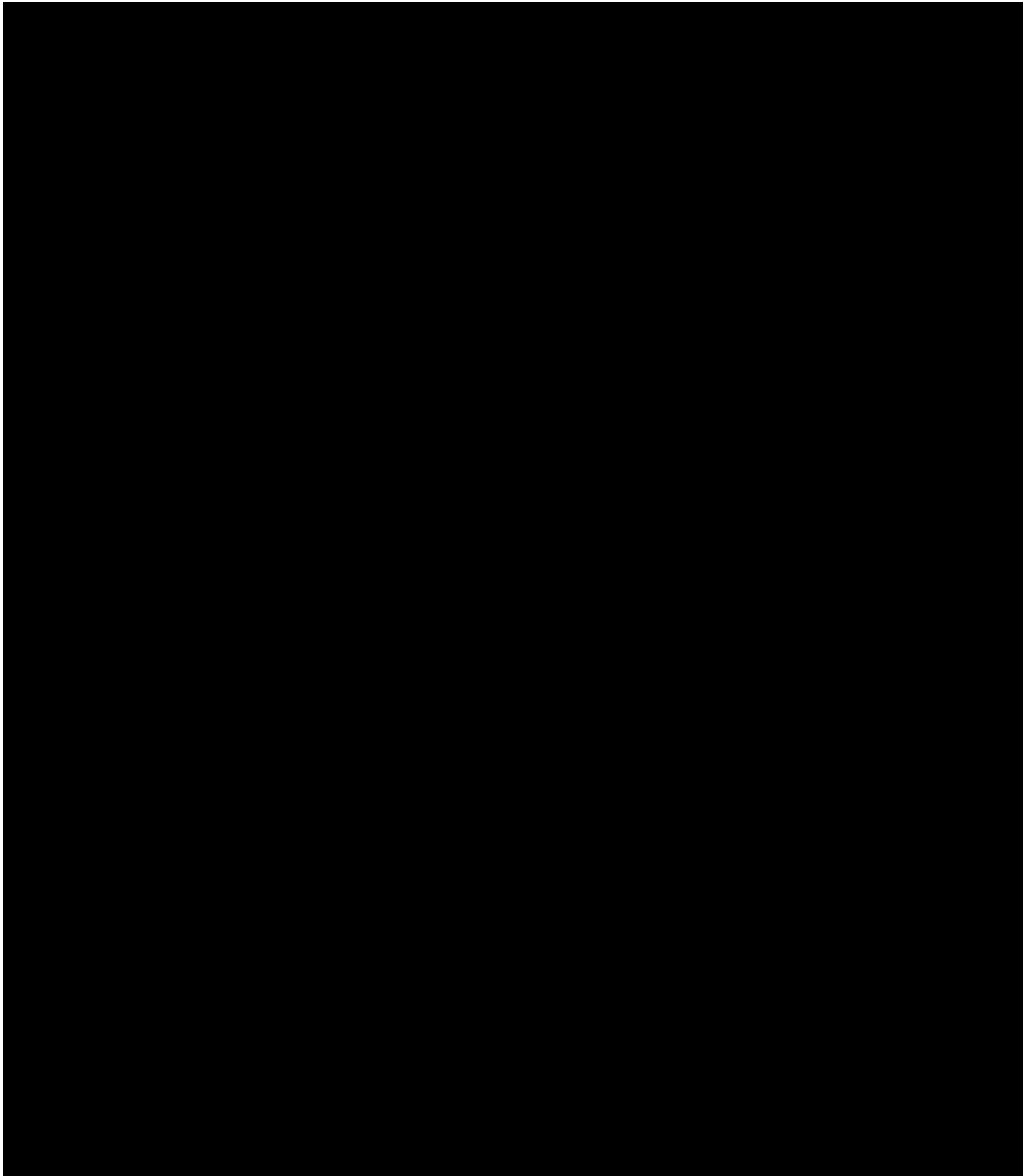


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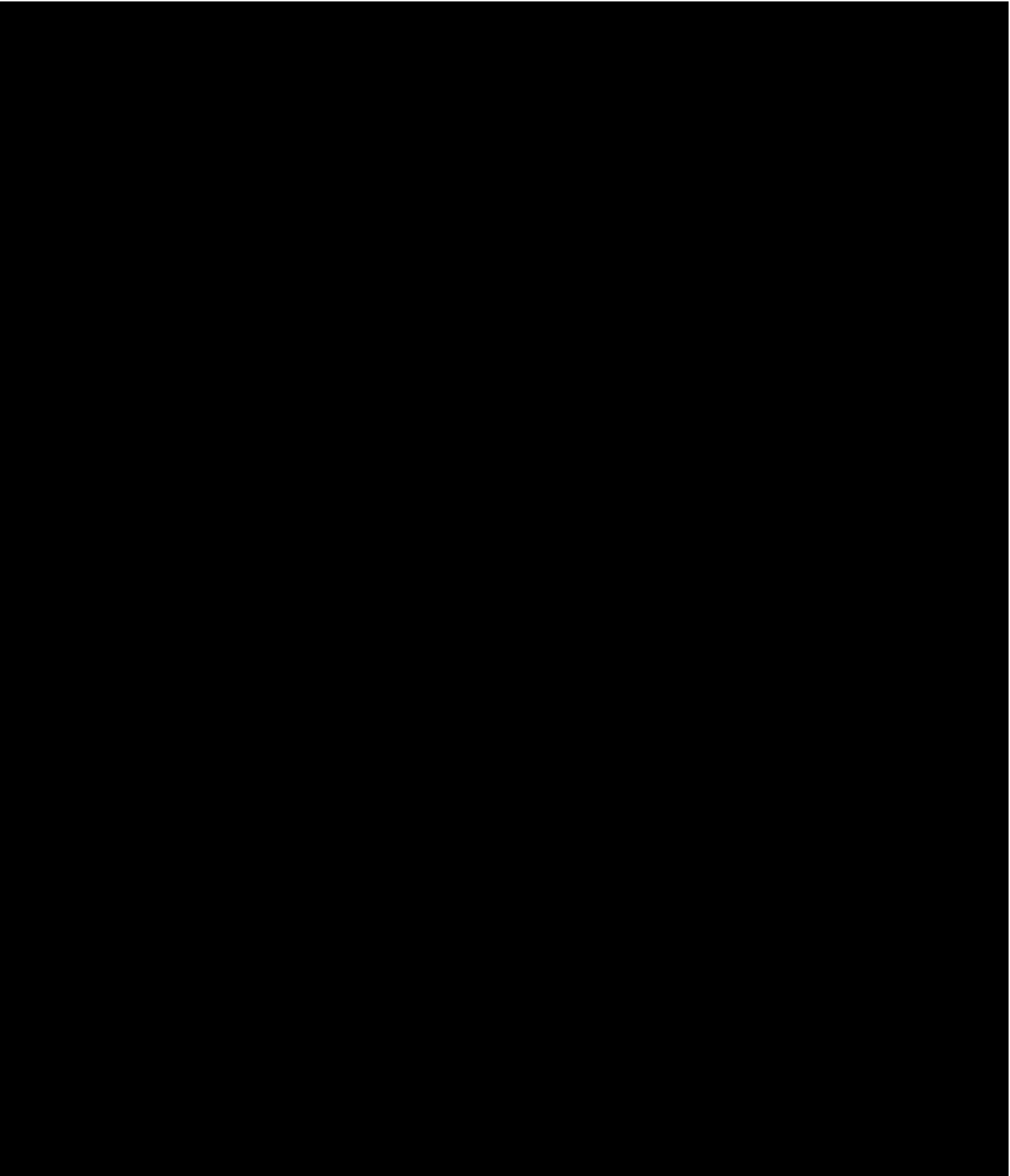


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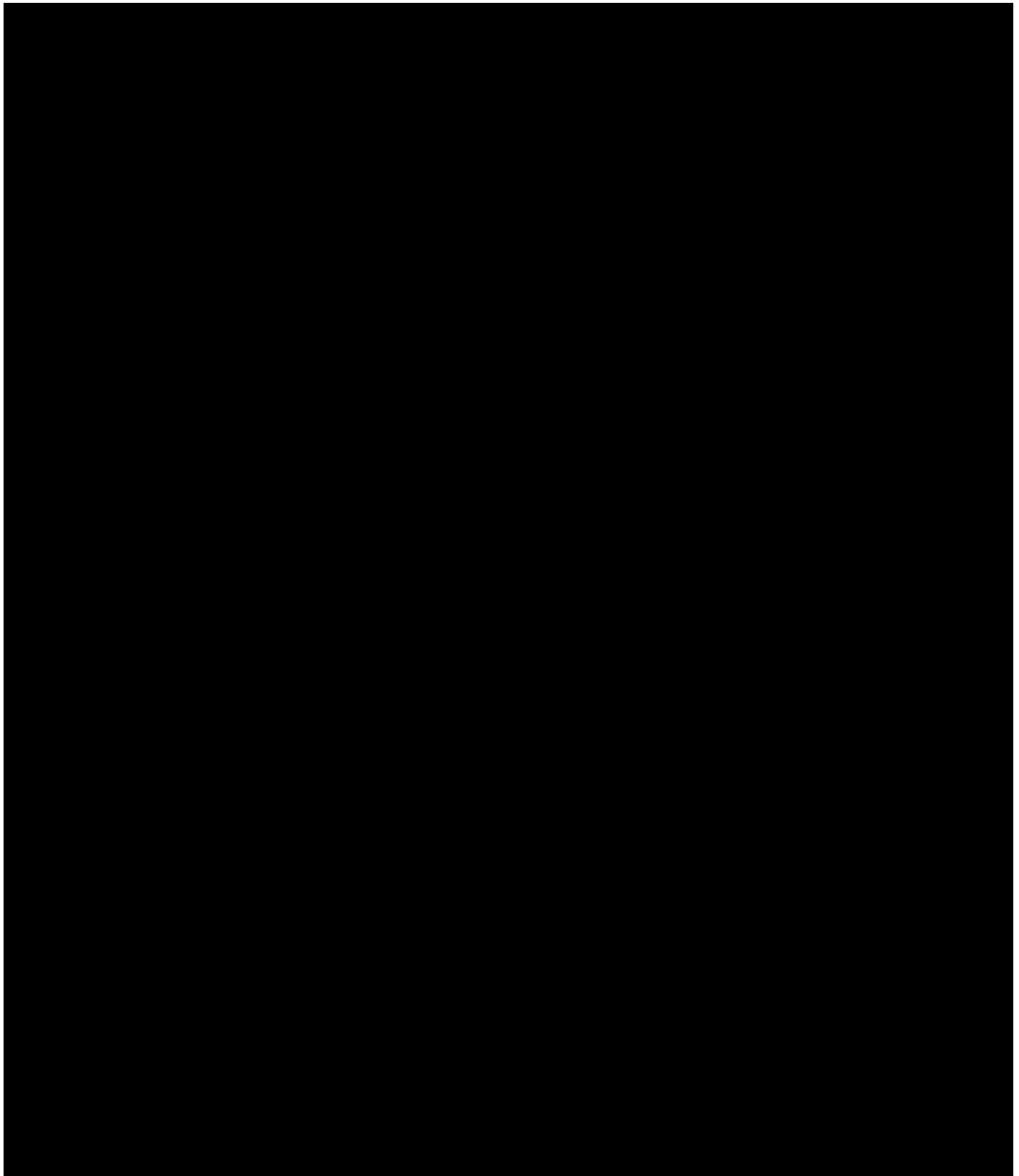


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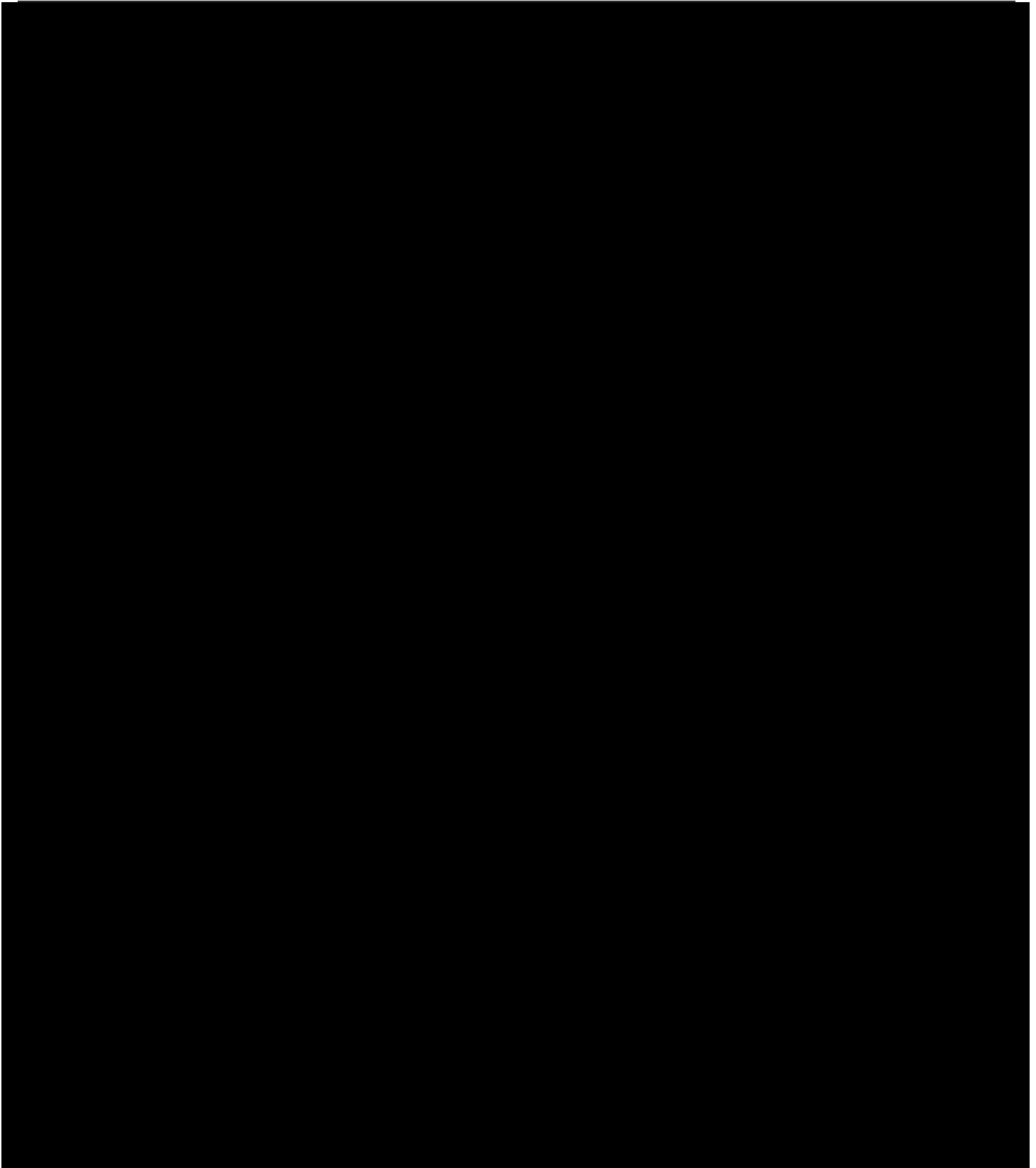


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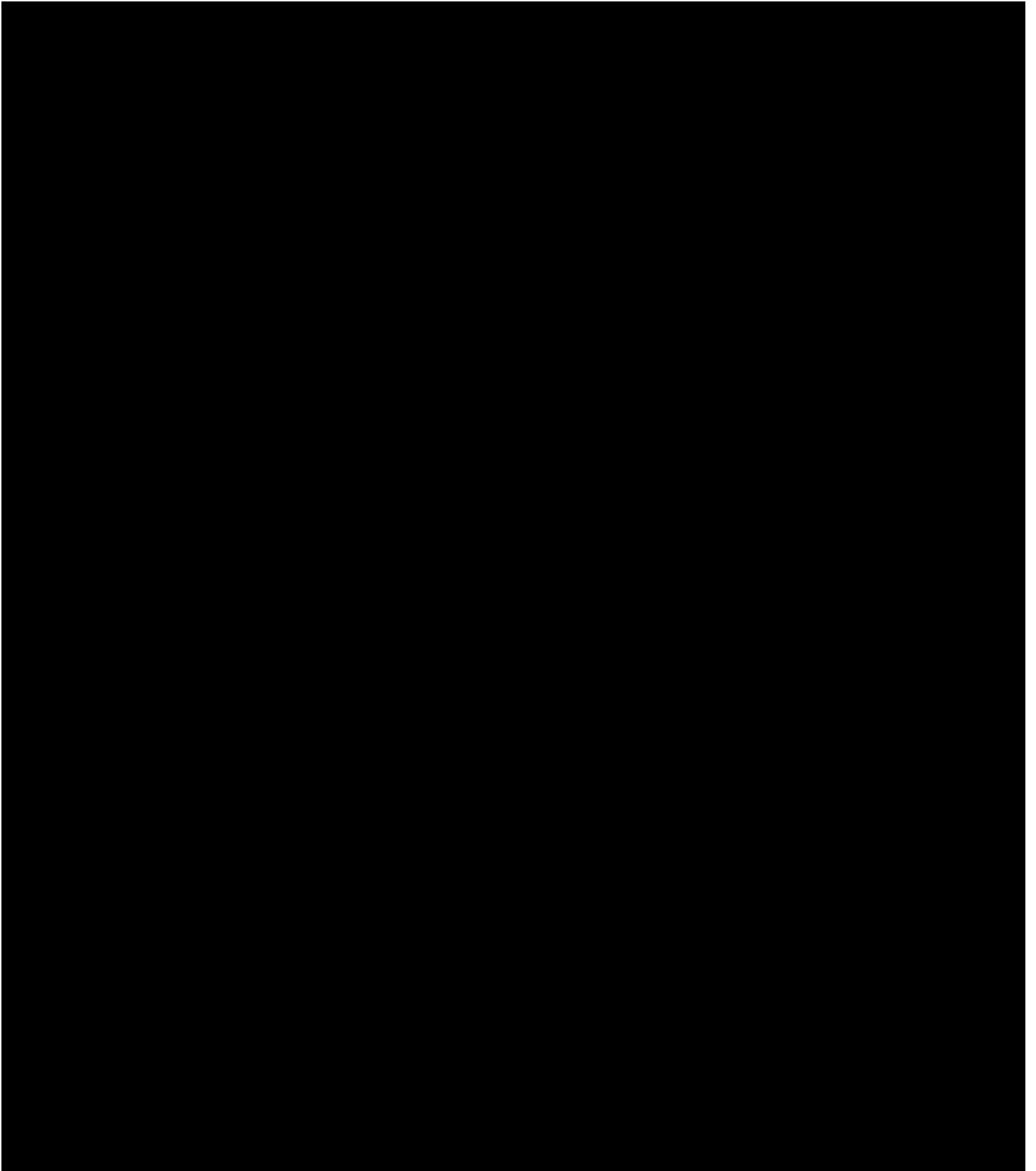


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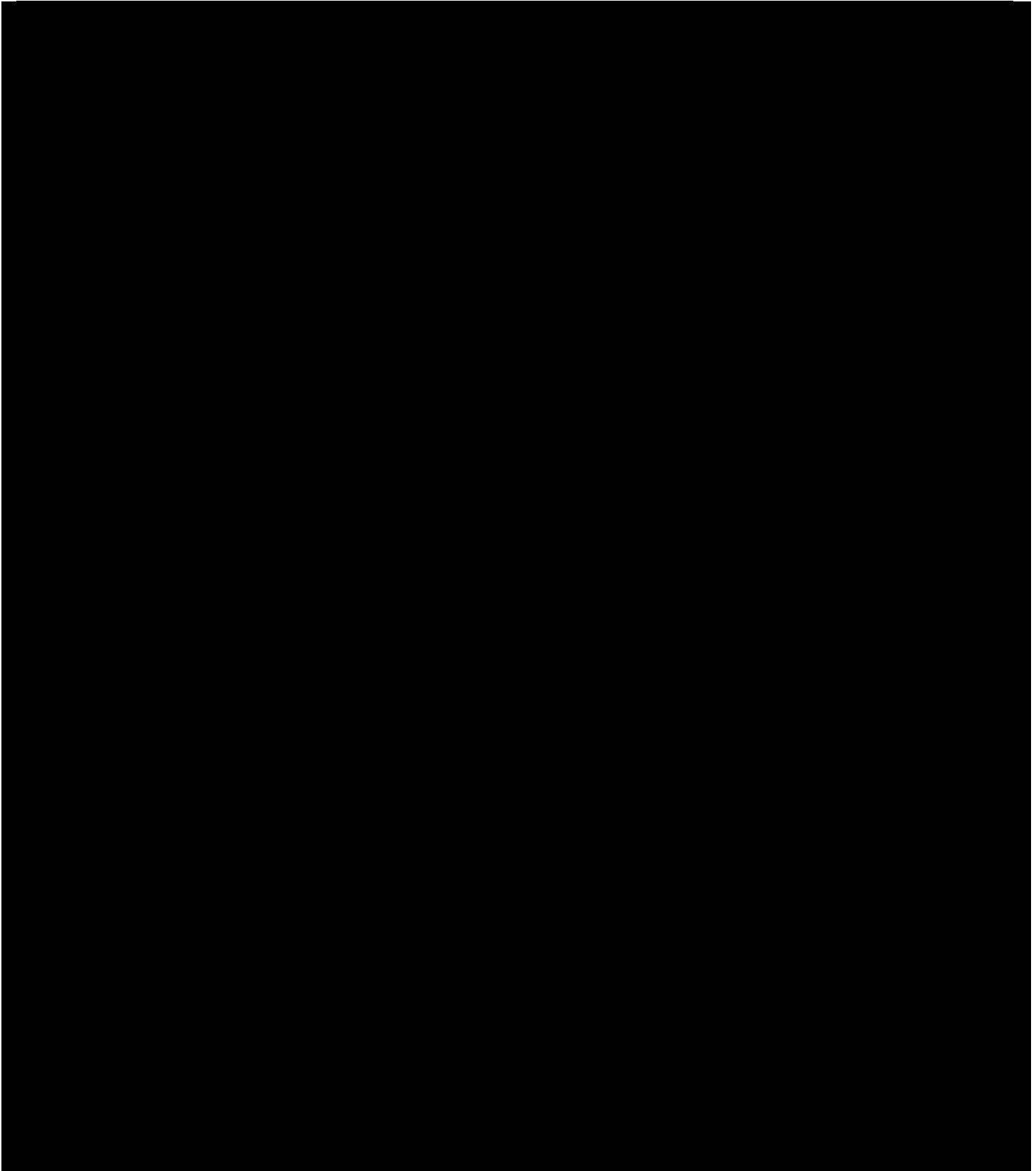


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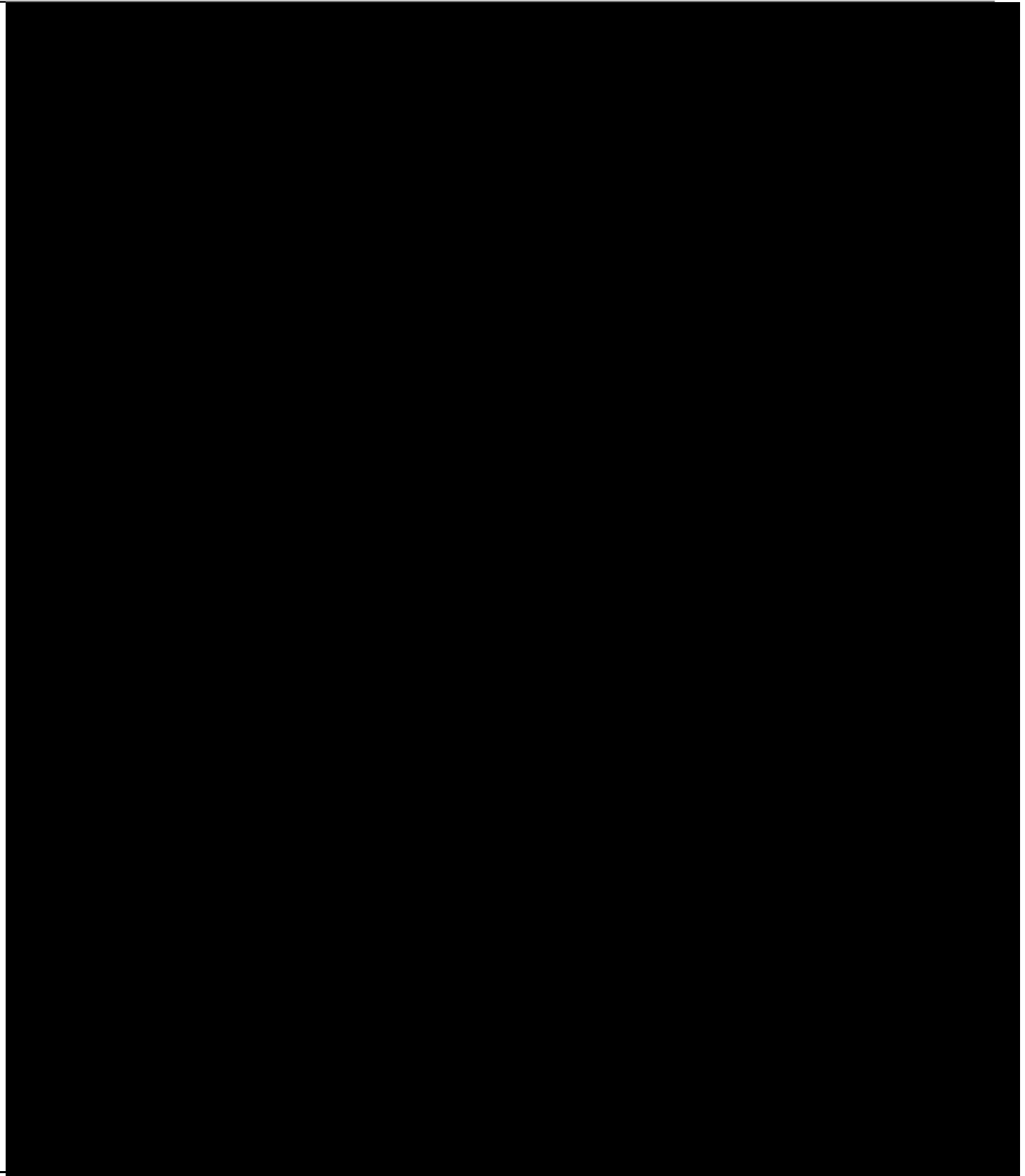


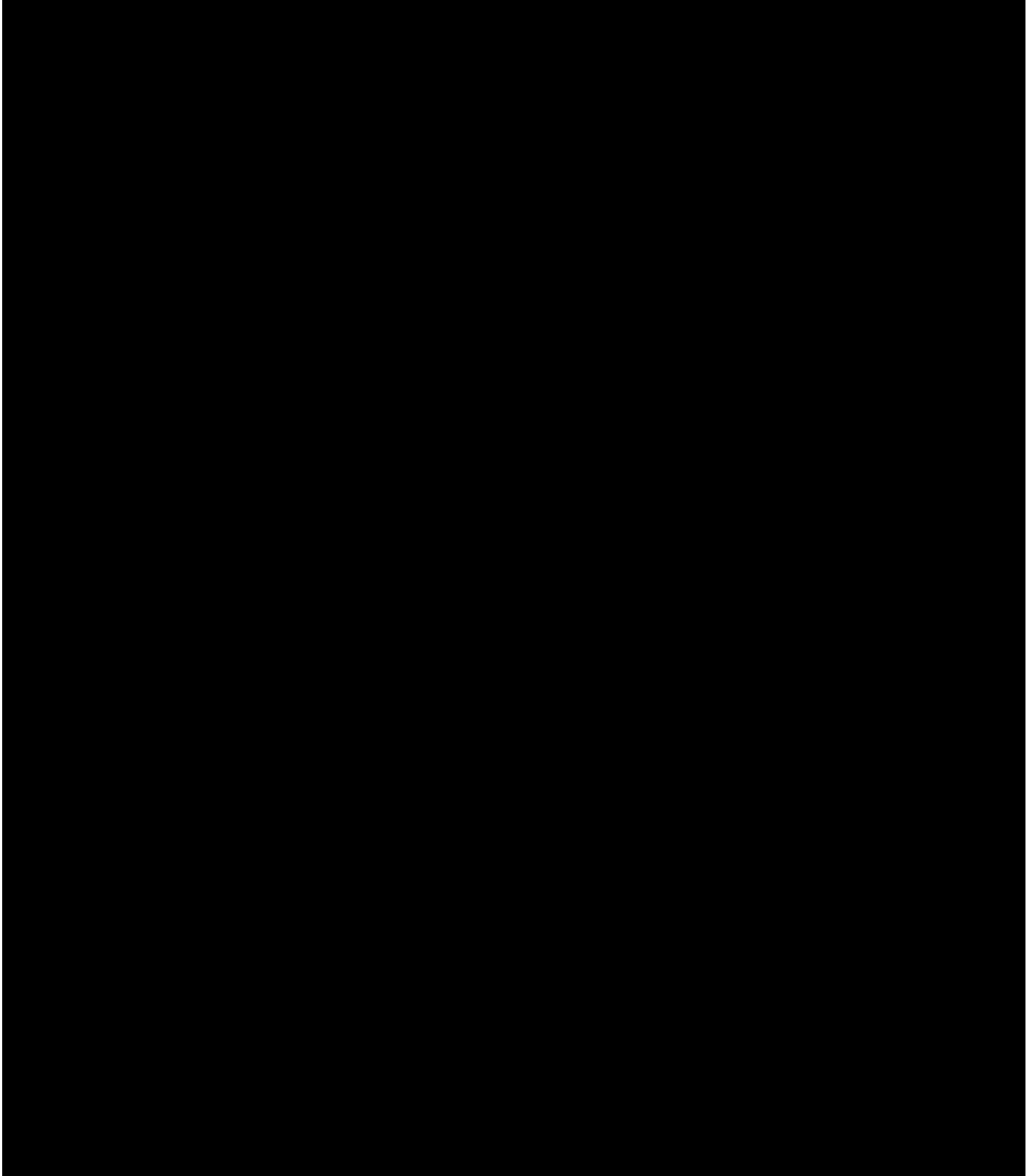
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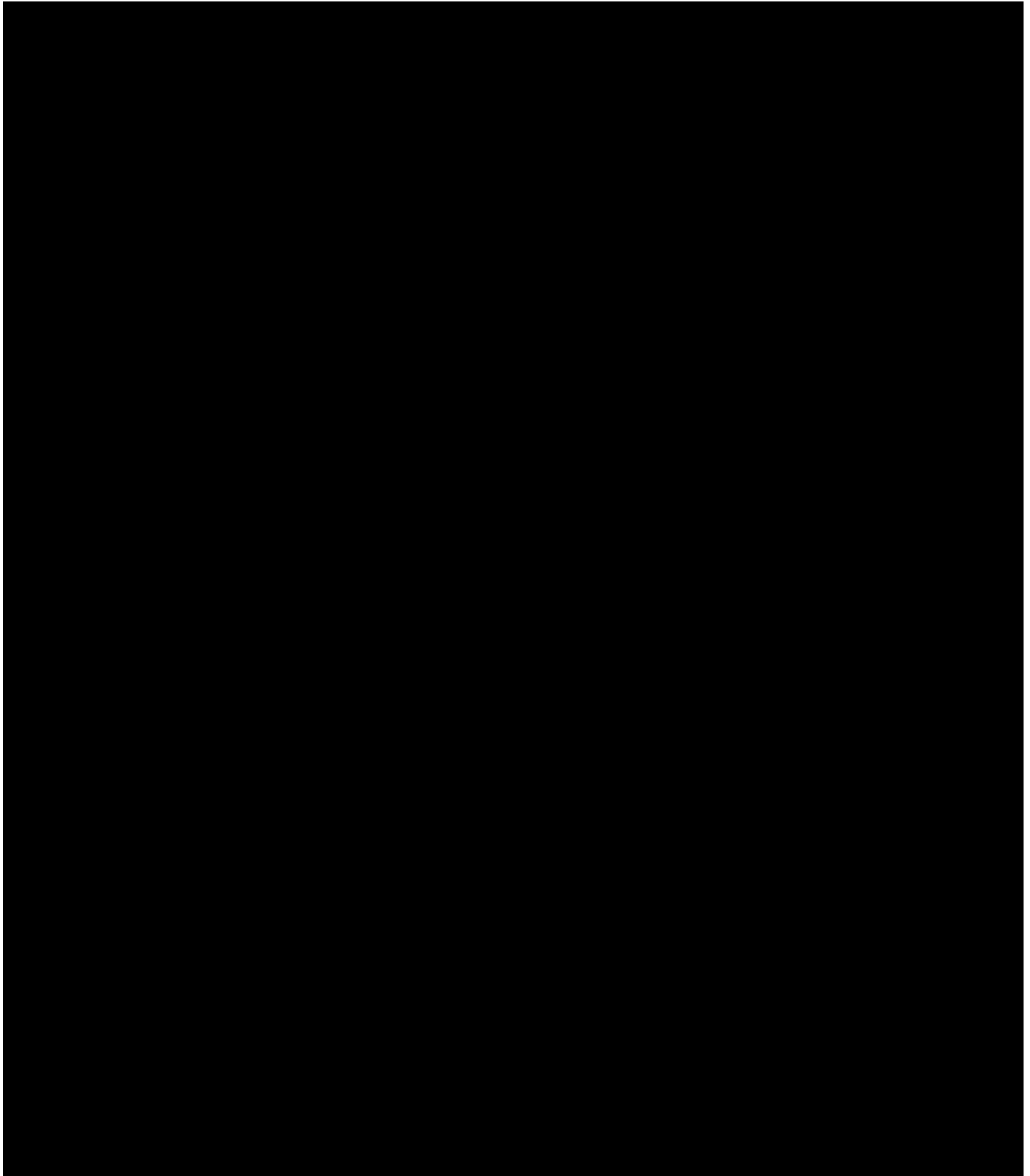
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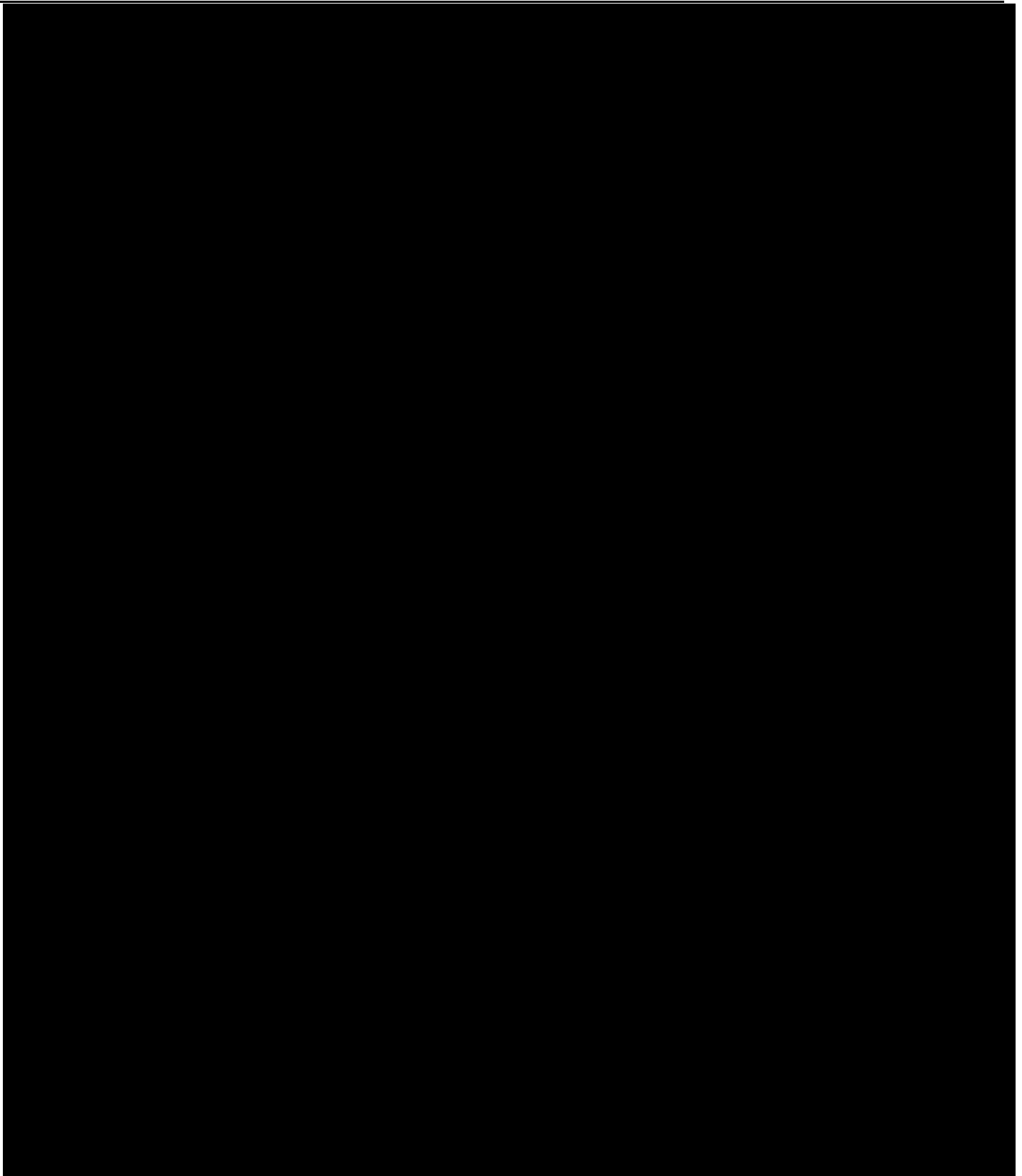


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7/28/2017

[213]



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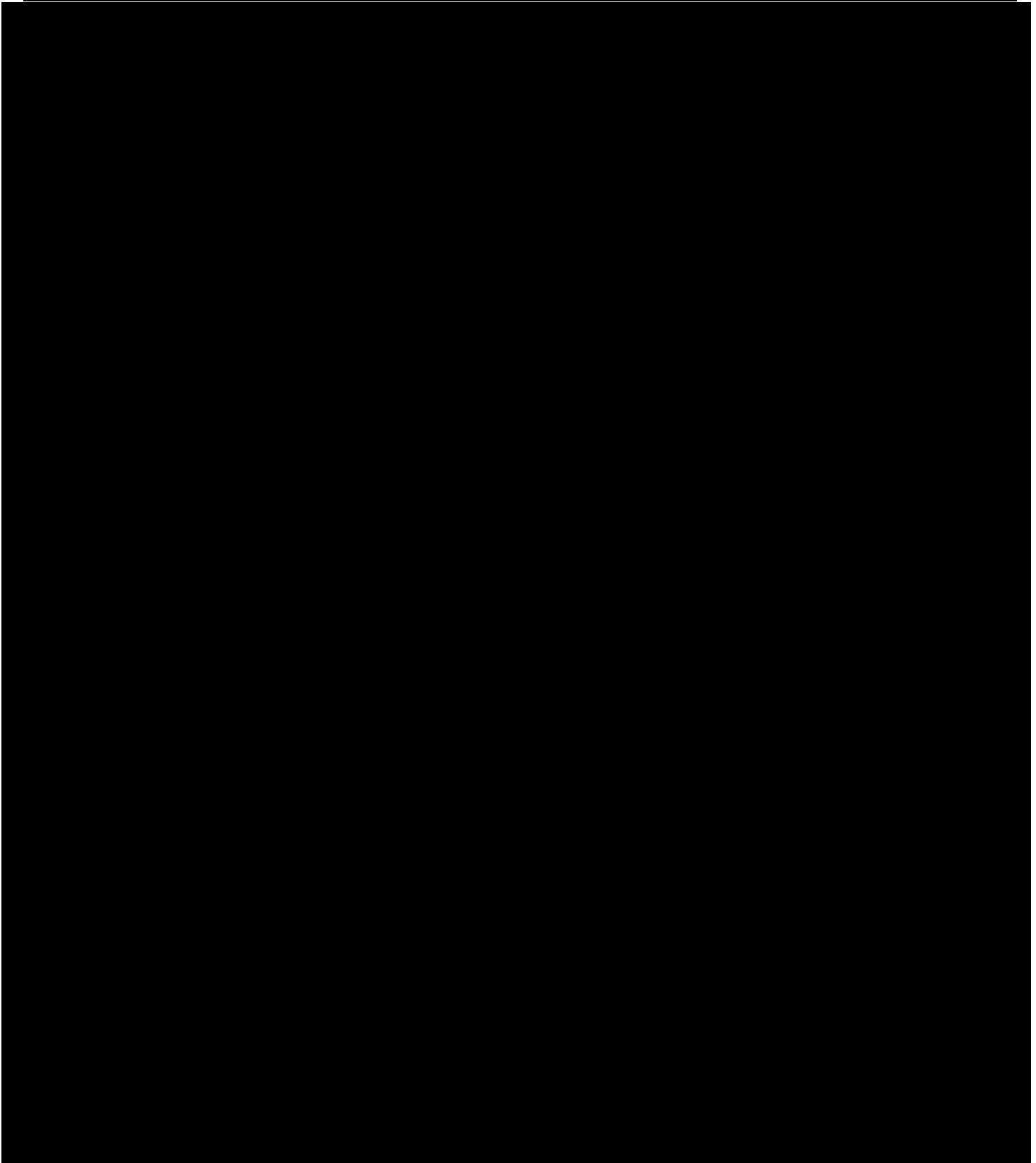
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7/28/2017

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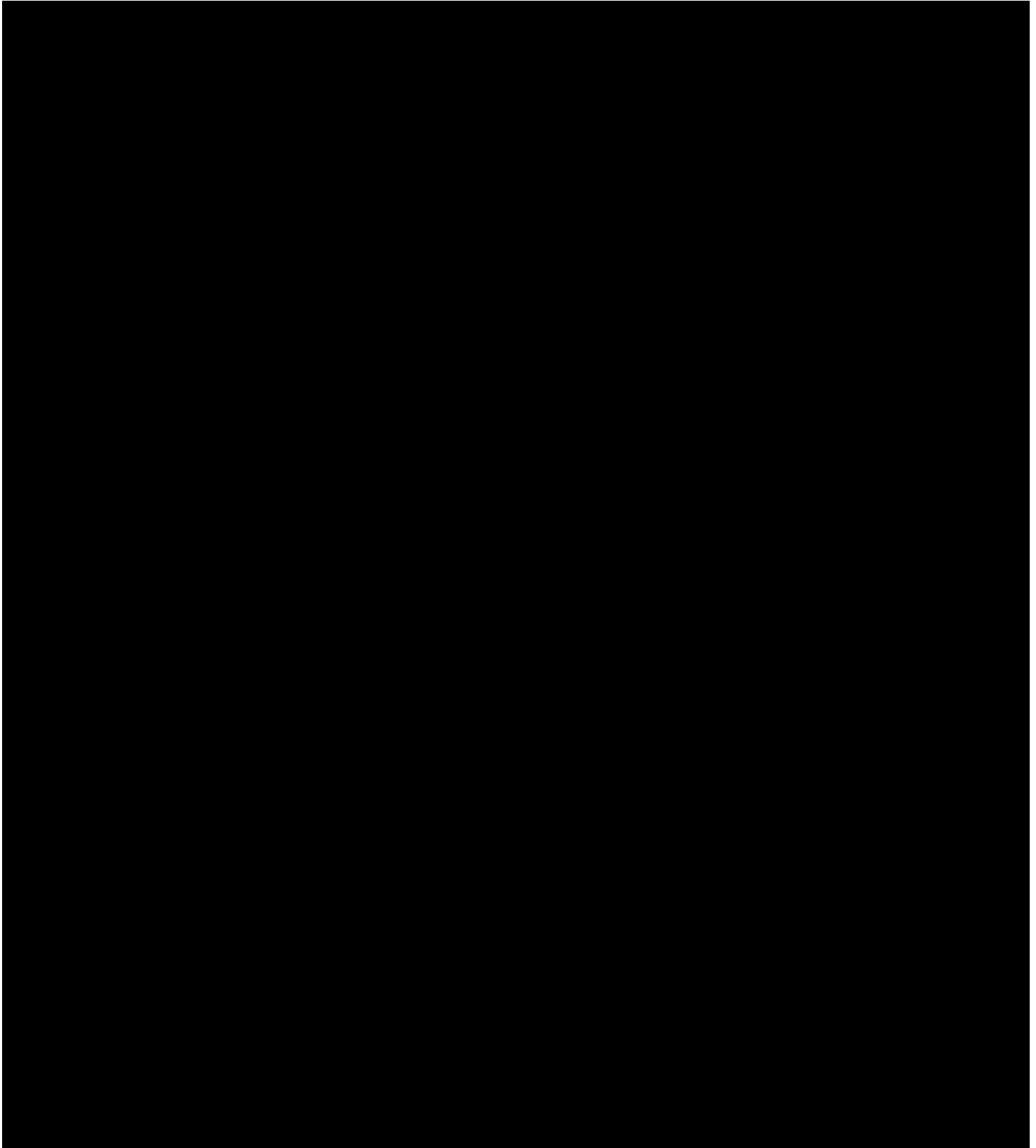


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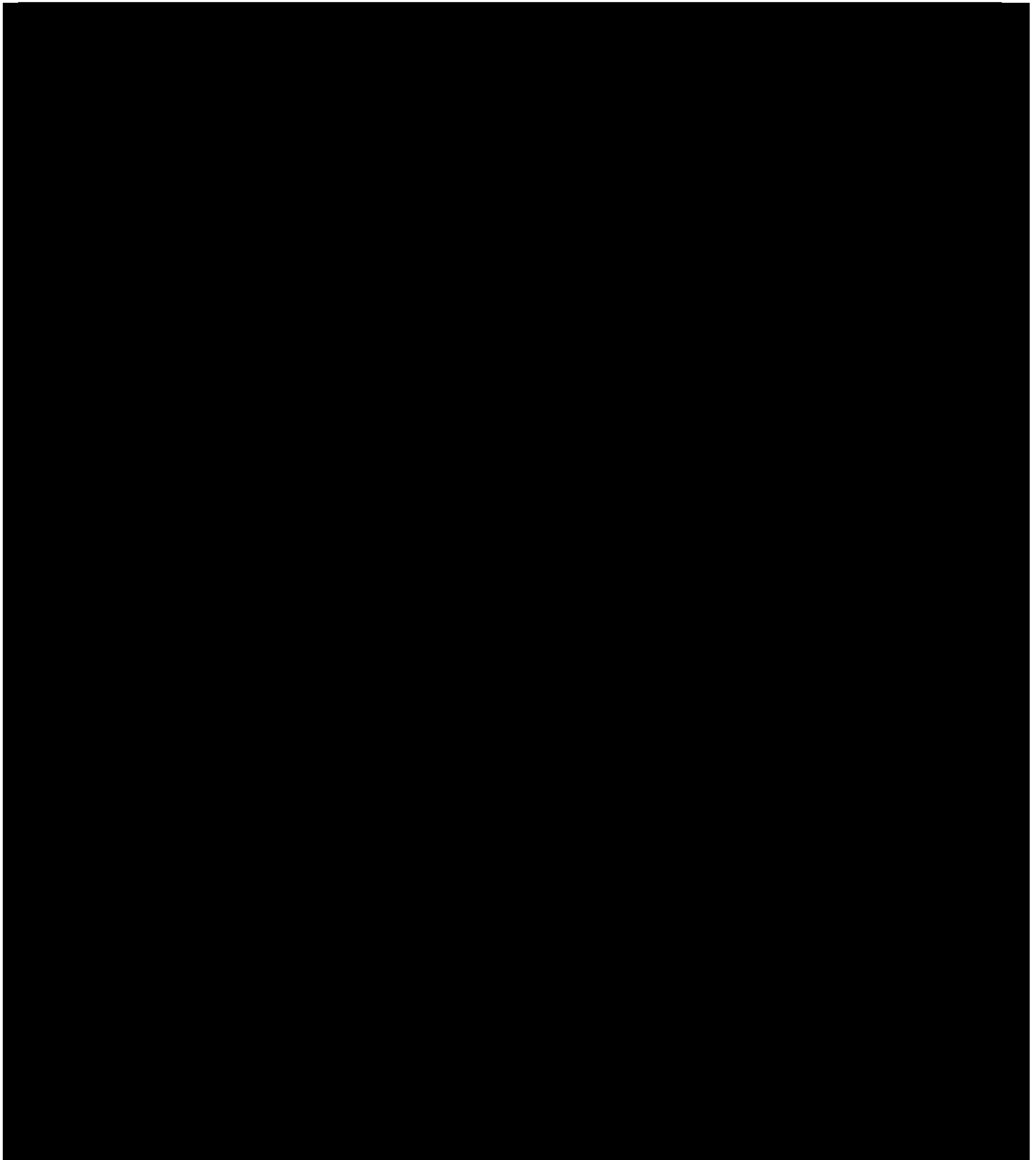


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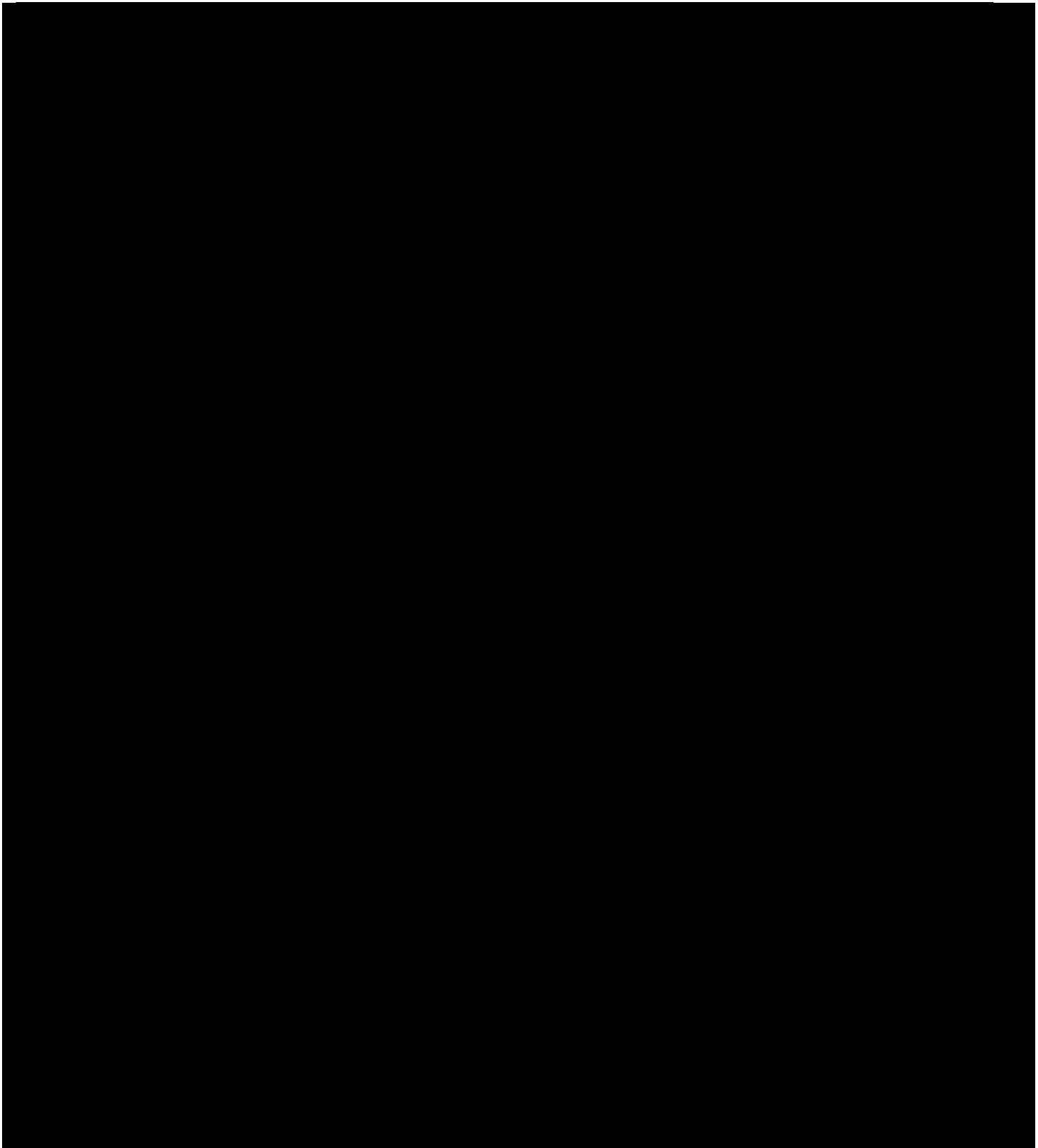


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Henry Schein Dental

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[218]



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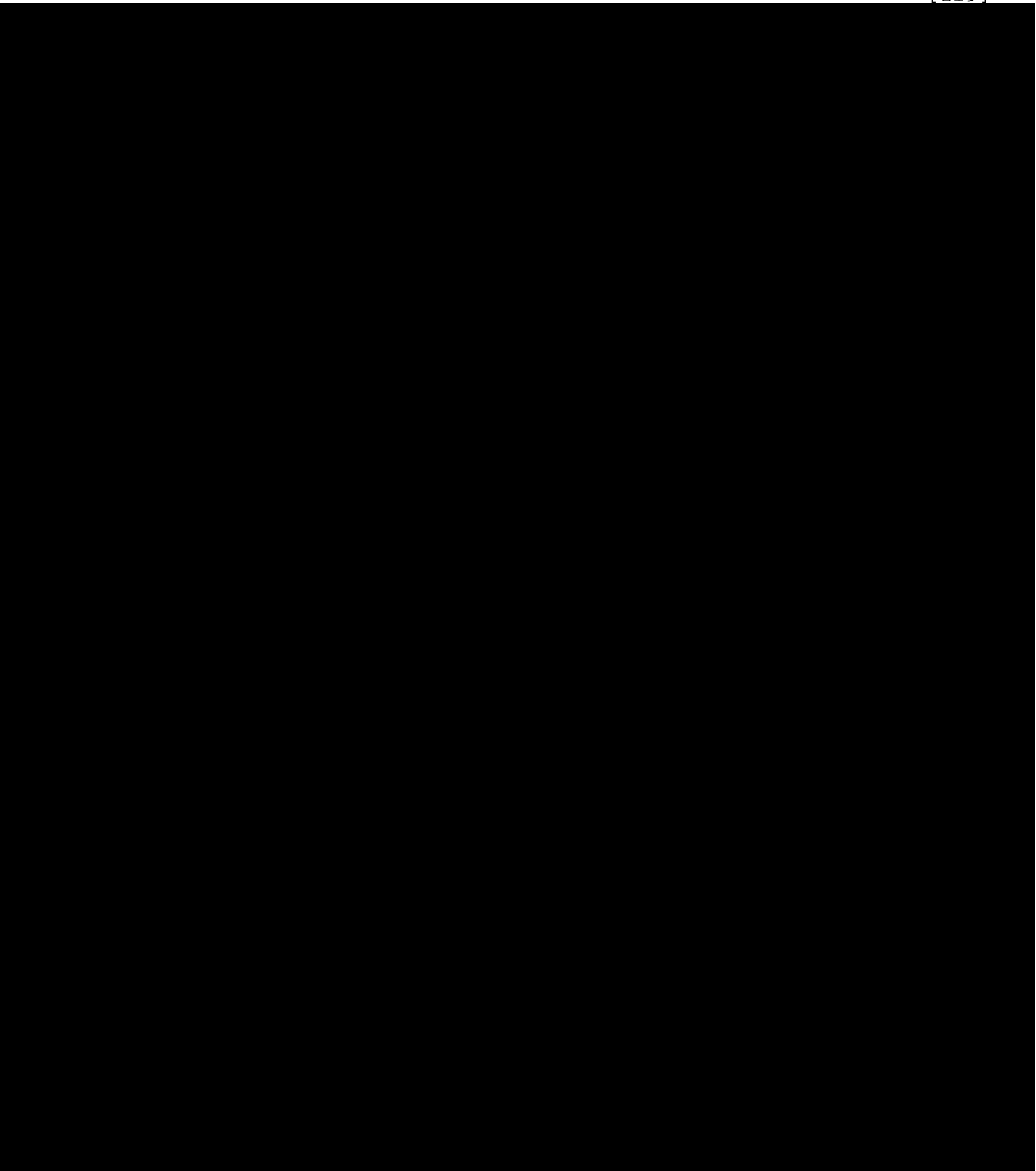


EXHIBIT CX8019
(and duplicate RX3034)

1 UNITED STATES OF AMERICA
2 BEFORE THE FEDERAL TRADE COMMISSION
3 OFFICE OF ADMINISTRATIVE LAW JUDGES
4

5 In the Matter of)
)
6 BENCO DENTAL SUPPLY CO., a)
corporation,) Docket No. DO9379
7)
)
8 HENRY SCHEIN, INC., a)
corporation, and,)
9)
PATTERSON COMPANIES, INC.,)
10 a corporation.)
)

11
12
13 ** CONFIDENTIAL PURSUANT TO PROTECTIVE ORDER **
14

15 DEPOSITION OF
16 TRACY MOODY
17 Los Angeles, California
18 Wednesday, July 11, 2018
19
20
21

22 Reported by:

23 LISA MOSKOWITZ, CSR 10816, RPR, CRR, CLR,
24 NCRA Realtime Systems Administrator
25 JOB NO. 144370

<p style="text-align: right;">Page 2</p> <p>1 2 3 4 5 July 11, 2018 6 9:00 a.m. 7 8 9 Deposition of TRACY MOODY, held at 10 the offices of Locke Lord, LLP, 300 South 11 Grand Avenue, Suite 2600, Los Angeles, 12 California, before Lisa Moskowitz, 13 California CSR 10816, RPR, CRR, CLR, NCRA 14 Realtime Systems Administrator. 15 16 17 18 19 20 21 22 23 24 25</p>	<p style="text-align: right;">Page 3</p> <p>1 APPEARANCES: 2 3 4 FEDERAL TRADE COMMISSION 5 600 Pennsylvania Avenue, NW 6 Washington, DC 20058 7 BY: ASHLEY MASTERS, ESQ. 8 BY: JASMINE ROSNER, ESQ. (Via telephone) 9 10 BRIGGS AND MORGAN 11 Attorneys for Patterson Companies, Inc. 12 2200 IDS Center 13 80 South 8th Street 14 Minneapolis, Minnesota 55402 15 BY: JAMES LONG, ESQ. 16 17 BUCHANAN INGERSOLL & ROONEY 18 Attorneys for Benco Dental Supply Co. 19 Two Liberty Place 20 50 South 16th Street 21 Philadelphia, Pennsylvania 19102 22 BY: CARRIE AMEZCUA, ESQ. (Via telephone) 23 24 25</p>
<p style="text-align: right;">Page 4</p> <p>1 APPEARANCES (Cont'd): 2 3 LOCKE LORD 4 Attorneys for Henry Schein, Inc. 5 600 Congress Avenue 6 Austin, Texas 78701 7 BY: LAUREN FINCHER, ESQ. (Via telephone) 8 9 VINSON & ELKINS 10 Attorneys for Smile Source and the Deponent 11 2200 Pennsylvania Avenue, NW 12 Washington, DC 20037 13 BY: CRYSTAL STAPLEY, ESQ. 14 15 16 17 18 19 20 21 22 23 24 25</p>	<p style="text-align: right;">Page 5</p> <p>1 LOS ANGELES, WEDNESDAY, JULY 11, 2018 2 9:00 A.M. 3 4 TRACY MOODY, 5 called as a witness, having been duly sworn, was 6 examined and testified as follows: 7 8 EXAMINATION 9 BY MR. LONG: 10 Q. Good morning, Mr. Moody. 11 A. Good morning. 12 Q. As you know, I'm Jim Long. I 13 represent one of the respondents in this 14 matter, Patterson Dental. 15 Could you state, for the record, 16 your name and address? 17 A. Tracy Moody. [REDACTED] 18 [REDACTED] 19 Q. Have you had your deposition taken 20 before? 21 A. I have not. 22 Q. I'll go over some of the ground 23 rules with you. I'm going to ask you a 24 series of questions. It is important that 25 you hear the entire question that I ask you</p>

Page 6

1 so that you answer what I'm asking.

2 So if you can wait until I am done
3 and then give me your answer, and I will
4 also do my best to wait until you're
5 finished with your answer to ask you the
6 next question.

7 I also have a little bit of a frog
8 in my throat today; so if you don't hear
9 something, or you don't understand something
10 that I say, or if you don't understand how
11 I'm using a word in a certain context, let
12 me know, and I'll either speak up or I'll
13 rephrase the question so that you and I are
14 on the same page as to you answering what I
15 am trying to ask.

16 Sound good?

17 A. Sounds good.

18 Q. You need to give audible responses,
19 which you've started out doing. If, at any
20 point in time, you need a break, just let me
21 know. I won't break when there's a question
22 pending, but other than that, I'll do my
23 best to let you take a break when you're
24 ready because I want you to be comfortable
25 and ready to go.

Page 8

1 Q. Was that yesterday as well?

2 A. No.

3 Q. The only counsel you spoke to
4 yesterday was your counsel?

5 A. Correct.

6 Q. When have you spoken with counsel
7 for the FTC? And if it's more than one
8 time, just give me a chronology, and then
9 I'll go through each.

10 A. First time was about six weeks ago,
11 best I can remember. And the last time was
12 Monday -- this past Monday.

13 Q. Were those both telephone
14 conversations?

15 A. They were.

16 Q. Those are the only two times you've
17 spoken with counsel for the FTC?

18 A. Yes.

19 Q. Six weeks ago, how did that call
20 come about?

21 A. They just contacted me and wanted
22 to speak to me.

23 Q. Do you know who contacted you or do
24 you recall who contacted you?

25 A. I don't remember the names. I

Page 7

1 Is there any reason today that you
2 can't give accurate answers to the questions
3 to the extent you know the answers that I'm
4 going to ask?

5 A. No.

6 Q. All right. Did you do anything to
7 prepare for this deposition?

8 A. No.

9 Q. Did you speak with counsel --
10 you're represented by counsel here today?

11 A. Yeah. I spoke with counsel and I
12 spoke with the FTC, but I haven't done any
13 preparation.

14 Q. When did you speak with counsel?
15 And I don't want to get into the substance.
16 I just want to find out when you spoke --

17 A. Last time was yesterday.

18 Q. How long was that for?

19 A. 20 minutes.

20 Q. Did you look at documents?

21 A. I did not.

22 Q. You mentioned that you spoke with
23 counsel for the FTC. Was that Ms. Masters?

24 A. I'm not sure what her name was. I
25 just talked to her on the phone.

Page 9

1 didn't write them down.

2 Q. Was it a male, female, or both?

3 A. Female.

4 Q. Do you know whether it was
5 Ms. Masters, who's sitting here?

6 A. Yes.

7 Q. Okay. It was?

8 A. Yes.

9 Q. Okay. How long did that phone call
10 last for?

11 A. 30 minutes.

12 Q. Did counsel for the FTC explain to
13 you why they wanted to speak with you?

14 A. Yes.

15 Q. And what did they tell you?

16 A. They just said that there was a
17 pending suit against three different
18 distributors, and they just needed some --
19 you know, some information from me. You
20 know, my input, I guess.

21 Q. And did you provide your input?

22 A. I did.

23 Q. What input did you provide in that
24 call six weeks ago?

25 A. I just answered questions they

Page 10	Page 11
<p>1 asked me. A ton of questions.</p> <p>2 Q. As you sit here today, can you</p> <p>3 recall the substance of what you told</p> <p>4 Ms. Masters on the phone six weeks ago?</p> <p>5 A. Not specifically.</p> <p>6 Q. Can you tell me generally?</p> <p>7 A. Just, you know, my involvement with</p> <p>8 Smile Source relative to the three parties</p> <p>9 in the suit.</p> <p>10 Q. And I will ask you more detailed</p> <p>11 questions about that when we get a little</p> <p>12 farther into this. Other than that general</p> <p>13 description, any other general description</p> <p>14 of what you told Ms. Masters six weeks ago</p> <p>15 or does that cover it?</p> <p>16 A. That covers it.</p> <p>17 Q. Then you spoke with her this</p> <p>18 past -- when you say this past Monday, do</p> <p>19 you mean two days ago?</p> <p>20 A. Correct.</p> <p>21 Q. Was that also on the phone?</p> <p>22 A. Yes.</p> <p>23 Q. How long was that call?</p> <p>24 A. 20 minutes. 30 minutes.</p> <p>25 Q. Was anyone else on the call other</p>	<p>1 than Ms. Masters, to your knowledge?</p> <p>2 A. Just Crystal.</p> <p>3 Q. Okay.</p> <p>4 A. And one other attorney from your</p> <p>5 office, Darren.</p> <p>6 Q. Okay. What was discussed in the</p> <p>7 call on Monday?</p> <p>8 A. Just kind of reiterated some of the</p> <p>9 things we had talked about before, and</p> <p>10 talked about today. You know, me coming</p> <p>11 and, you know, answering your questions.</p> <p>12 Q. All right. Any other substance</p> <p>13 that was discussed on Monday other than what</p> <p>14 you told me about from the call six weeks</p> <p>15 ago?</p> <p>16 A. Only my correspondence, if you</p> <p>17 will, between the three parties.</p> <p>18 Q. Okay. Did you look at documents on</p> <p>19 that call Monday?</p> <p>20 A. I did not, no.</p> <p>21 Q. Did you look at documents on the</p> <p>22 call six weeks ago?</p> <p>23 A. No. I've looked at no documents.</p> <p>24 Q. All right. And I take it you</p> <p>25 haven't seen the complaint in this case?</p>
Page 12	Page 13
<p>1 A. No.</p> <p>2 Q. You're not being compensated for</p> <p>3 your time here today, are you?</p> <p>4 A. No.</p> <p>5 Q. Sorry. I had to ask.</p> <p>6 And you've never communicated with</p> <p>7 me about this case?</p> <p>8 A. Correct. I've not.</p> <p>9 Q. We've never met before?</p> <p>10 A. Correct.</p> <p>11 Q. And, to your knowledge, you've</p> <p>12 never communicated with any counsel for</p> <p>13 Patterson about this case?</p> <p>14 A. No, I have not.</p> <p>15 Q. And you haven't communicated with</p> <p>16 any employees of Patterson about this case?</p> <p>17 A. Never, to my knowledge.</p> <p>18 Q. And I will ask the same questions</p> <p>19 for the other two respondents. Have you</p> <p>20 communicated with any attorney for Henry</p> <p>21 Schein about this case?</p> <p>22 A. No.</p> <p>23 Q. Have you communicated with any</p> <p>24 employees of Henry Schein about this case?</p> <p>25 A. No.</p>	<p>1 Q. Have you communicated with any</p> <p>2 attorneys for Benco about this case?</p> <p>3 A. No.</p> <p>4 Q. Have you communicated with any</p> <p>5 employees of Benco about this case?</p> <p>6 A. No.</p> <p>7 Q. Good. We got through all that.</p> <p>8 I think I'm about to state the</p> <p>9 obvious, but my purpose of taking this</p> <p>10 deposition is to learn what information you</p> <p>11 have that might be relevant to this case.</p> <p>12 And I'm going to try to do that that as</p> <p>13 quickly and expeditiously as I can.</p> <p>14 Are you aware you're on complaint</p> <p>15 counsel's supplemental preliminary witness</p> <p>16 list?</p> <p>17 A. No.</p> <p>18 Q. You've not been told that?</p> <p>19 A. I have not.</p> <p>20 Q. Do you have any plans to testify at</p> <p>21 the trial in this matter in Washington,</p> <p>22 D.C., this fall?</p> <p>23 A. No.</p> <p>24 Q. And you haven't been asked to</p> <p>25 testify?</p>

Page 14	Page 15
<p>1 A. No.</p> <p>2 Q. Okay. You said that you had not</p> <p>3 seen the complaint.</p> <p>4 Do you have an understanding of the</p> <p>5 allegations in the complaint against the</p> <p>6 three respondents?</p> <p>7 A. I think so.</p> <p>8 Q. Tell me what your understanding is.</p> <p>9 A. Just that there's a suit against</p> <p>10 three of the distributors for collusion, you</p> <p>11 know, of some sort. That's about the extent</p> <p>12 of it. I've just been asked to answer</p> <p>13 questions.</p> <p>14 Q. Are you currently employed?</p> <p>15 A. I am not.</p> <p>16 Q. You say that with a smile on your</p> <p>17 face. Are you retired?</p> <p>18 A. I am.</p> <p>19 Q. And when did you retire?</p> <p>20 A. End of 2012.</p> <p>21 Q. Have you had any responsibilities</p> <p>22 with Smile Source since your retirement?</p> <p>23 A. No.</p> <p>24 Q. Just briefly, give me an education</p> <p>25 chronology, please.</p>	<p>1 A. In terms of the --</p> <p>2 Q. Graduated from high school in what</p> <p>3 year? Do you have any education after that?</p> <p>4 A. I graduated from high school in</p> <p>5 '78. I graduated from college in '82 from</p> <p>6 the University of Georgia. Worked in</p> <p>7 banking for seven or eight years. I worked</p> <p>8 the pharmaceutical business with Alcon for</p> <p>9 13 years, joined Vision Source in 2000 for</p> <p>10 12 or 13 years, and then retired.</p> <p>11 Q. What was your degree in from the</p> <p>12 University of Georgia?</p> <p>13 A. Economics.</p> <p>14 Q. Do you have any experience in the</p> <p>15 dental industry?</p> <p>16 A. Not prior to Smile Source.</p> <p>17 Q. And we'll get into your experience</p> <p>18 with Smile Source shortly. But other than</p> <p>19 experience with Smile Source in the dental</p> <p>20 industry, anything else?</p> <p>21 A. No.</p> <p>22 Q. Okay. So you joined Vision Source</p> <p>23 in 2000?</p> <p>24 A. Correct.</p> <p>25 Q. Vision Source was already an</p>
Page 16	Page 17
<p>1 up-and-running entity by then; correct?</p> <p>2 A. It was.</p> <p>3 Q. Did Vision Source start in 1992?</p> <p>4 A. '1.</p> <p>5 Q. 1991. What is Vision Source?</p> <p>6 A. It's an optometric network,</p> <p>7 franchise.</p> <p>8 Q. So it is a franchise that's</p> <p>9 registered in the states that it needs to be</p> <p>10 registered in?</p> <p>11 A. Yes.</p> <p>12 MS. MASTERS: Objection.</p> <p>13 MR. LONG: What's the objection to?</p> <p>14 What's the basis?</p> <p>15 MS. MASTERS: Compound. I'm sorry.</p> <p>16 BY MR. LONG:</p> <p>17 Q. Do you know how many franchises</p> <p>18 Vision Source had when you started in 2000?</p> <p>19 A. 207.</p> <p>20 Q. According to Smile Source's 2014</p> <p>21 FDD, Vision Source had just under 3,000</p> <p>22 franchises at the end of 2013.</p> <p>23 Does that sound right to you?</p> <p>24 A. Yeah.</p> <p>25 Q. When you joined Vision Source, what</p>	<p>1 was your position?</p> <p>2 A. I was in charge of -- vice</p> <p>3 president of growth and development, to</p> <p>4 expand the network.</p> <p>5 Q. Would calling that franchise sales</p> <p>6 be an accurate characterization?</p> <p>7 MS. MASTERS: Objection. Form.</p> <p>8 THE WITNESS: I started -- I --</p> <p>9 just network sales.</p> <p>10 BY MR. LONG:</p> <p>11 Q. What do you mean by "network</p> <p>12 sales"?</p> <p>13 A. We're expanding across the country</p> <p>14 in optometric network.</p> <p>15 Q. But Vision Source sold franchises?</p> <p>16 A. Correct.</p> <p>17 MS. MASTERS: Objection. Leading.</p> <p>18 BY MR. LONG:</p> <p>19 Q. I should have gone over this to</p> <p>20 begin with. Counsel may make objections. I</p> <p>21 may choose to rephrase, based upon the</p> <p>22 objection.</p> <p>23 In this case, I'm not going to</p> <p>24 rephrase. Once counsel makes an objection,</p> <p>25 you can go ahead and answer unless your</p>

Page 18

1 counsel turns to you and says, "Don't
2 answer."

3 All right? So --

4 MS. STAPLEY: While we are on a
5 little interruption.

6 MR. LONG: Yes.

7 MS. STAPLEY: Some background
8 questions on Vision Source are perfectly
9 fine, but he's here to talk about Smile
10 Source, and I represent Smile Source and
11 the witness today. So too much into
12 Vision Source can start crossing some
13 lines.

14 MR. LONG: I'll ask counsel for --
15 I'll ask complaint counsel: Do you not
16 plan to elicit any information
17 concerning Vision Source? Because if
18 you don't, then I don't need to go into
19 it.

20 MS. MASTERS: We do plan to talk
21 about Vision Source, but we will try to
22 do it within the boundaries of counsel's
23 discussion.

24 MR. LONG: Then I need to ask
25 Vision Source questions.

Page 19

1 MS. STAPLEY: Sure. You've not
2 crossed any lines yet. I just wanted
3 to -- it depends where you're going and
4 how much --

5 BY MR. LONG:

6 Q. Right now, Mr. Moody, I'm just
7 trying to understand what you did when you
8 started with Vision Source, and what I'm
9 trying to understand is were you the person
10 responsible at Vision Source beginning in
11 2000 for the process of selling franchises
12 to prospective new franchisees?

13 MS. MASTERS: Objection. Form.

14 MS. STAPLEY: You can answer.

15 THE WITNESS: One of the people.

16 BY MR. LONG:

17 Q. Were you the lead person?

18 A. Yes.

19 Q. You were familiar, then, with
20 requirements under the franchise disclosure
21 laws?

22 A. Sure.

23 Q. That was part of your job. All
24 right.

25 Did your job duties change from

Page 20

1 2000 until when you retired at the end of
2 2012?

3 A. Yes.

4 Q. Describe to me how that -- those
5 changes occurred.

6 A. In '05, I moved to COO.

7 Q. Of Vision Source?

8 A. Yes.

9 Q. Very generally, what were your
10 duties as COO?

11 A. Manage the whole company.

12 Q. By the way, since you joined in
13 2000, you were not a co-founder -- strike
14 that. I'll ask that later.

15 After you became COO in 2005, did
16 your duties change again?

17 A. Last six months I was there, I was
18 president and chief growth officer.

19 Q. And what did that entail?

20 A. Essentially the same thing.

21 Q. Okay.

22 A. Just was a title thing.

23 Q. Did you ever have any formal role
24 with Smile Source?

25 A. I was on the founding team.

Page 21

1 Q. What do you mean by "founding
2 team"?

3 A. We had a group of dentists come to
4 us that wanted to get into -- basically copy
5 the Vision Source model. We didn't have any
6 dental experience, and so we partnered with
7 a guy who had like a dozen locations who
8 became our president who essentially managed
9 that business. It wasn't our area of
10 expertise.

11 Q. Who led the group of dentists that
12 came to you to copy Vision Source?

13 A. John Wallitschek. He became our
14 president.

15 Q. And Mr. Wallitschek had a practice
16 or practices in Arizona?

17 A. Correct.

18 Q. What was the size of this group of
19 dentists that he led?

20 A. He had a dozen locations. That's
21 all I remember.

22 Q. Okay. Are you aware of that
23 Mr. Wallitschek ceased being a Vision --
24 Smile Source franchisee in 2014?

25 MS. MASTERS: Objection. Assumes

Page 22

1 facts not in evidence.

2 THE WITNESS: I don't have a
3 recollection of anything in 2014.

4 BY MR. LONG:

5 Q. All right. Who else was on the
6 founding team?

7 A. Glen Ellisor and John Wallitschek.
8 Initially there was a guy named Gary. I
9 can't even remember Gary's last name. He
10 was another dentist. He was a partner of
11 John's. He was not active.

12 Q. What, if anything, did you do as a
13 member of the founding team?

14 A. Just supported them. They managed
15 the entire business. I did talk to some
16 dentists and explained the Vision Source
17 model and what Smile Source could be.

18 That was pretty much the extent of
19 it. I was running US and Canada Vision.

20 Q. You were running the U.S. and
21 Canadian operation of Vision Source?

22 A. Yeah.

23 Q. That's what took up your time?

24 A. Correct.

25 Q. Other than explaining the Vision

Page 23

1 Source model to some dentists between 2006
2 and the end of 2012, did you have any other
3 duties or responsibilities for Smile Source?

4 A. I sat in on some meetings when they
5 were in the office, but I was not involved
6 in the day-to-day operations, or that kind
7 of thing.

8 Q. In the FDDs I've seen -- strike
9 that.

10 Are you familiar with the Smile
11 Source FDDs for the period from 2006 to
12 2012?

13 A. Is that the disclosures?

14 MS. MASTERS: Objection.

15 BY MR. LONG:

16 Q. Franchise disclosure document is
17 what I'm referring to as an FDD.

18 MS. MASTERS: Objection to form.

19 THE WITNESS: I'm familiar with
20 them, but our counsel -- our legal
21 counsel distributed those.

22 BY MR. LONG:

23 Q. Are you aware that Glen Ellisor was
24 described in the FDDs as the founder of
25 Smile Source?

Page 24

1 MS. MASTERS: Objection. Form.

2 THE WITNESS: No recollection. I
3 mean, I don't . . .

4 BY MR. LONG:

5 Q. Would you agree that Glen Ellisor
6 was the founder of Smile Source?

7 MS. MASTERS: Objection. Form.

8 MS. STAPLEY: Asked and answered.

9 THE WITNESS: I'm sorry? He was
10 one of the founders. I guess it's just
11 a matter of -- I mean, he was the
12 founder of Vision Source; so maybe that
13 was the way it was written up. I mean,
14 I was involved with the meetings and
15 considered myself a co-founder, so . . .

16 BY MR. LONG:

17 Q. Do you recall whether, at any point
18 in time, you were ever listed in the Smile
19 Source FDDs as management personnel under
20 item 1?

21 A. Yeah, I think I was.

22 Q. Do you recall when?

23 A. Probably acting COO.

24 Q. At any point in time, were you a
25 director of Smile Source?

Page 25

1 A. I don't know.

2 Q. Are you familiar with the Smile
3 Source advisory board?

4 A. No.

5 Q. Did Trevor Mauer join Smile Source
6 at any time you were retiring from Vision
7 Source?

8 A. About that time.

9 Q. Did you have any duties or
10 responsibilities for Smile Source attempting
11 to negotiate discounts or contracts with
12 manufacturers of dental products?

13 A. I was involved in some of the
14 meetings, but our management team did that.
15 I mean, when they were in the office,
16 mainly.

17 Q. So you might attend a meeting that
18 Smile Source management had with a
19 manufacturer of dental products, but that
20 wasn't your responsibility?

21 MS. MASTERS: Objection. Form.
22 Mischaracterizes testimony.

23 MS. STAPLEY: You can answer.

24 THE WITNESS: Yeah, I attend some.
25 Mainly in the office, which I was

<p style="text-align: right;">Page 26</p> <p>1 already in.</p> <p>2 BY MR. LONG:</p> <p>3 Q. And in what role did you attend?</p> <p>4 A. Same thing. It was -- if I talked</p> <p>5 to dentists, kind of to explain to any</p> <p>6 vendor the Vision Source story and why it</p> <p>7 makes sense to partner with us.</p> <p>8 Q. But you never were the person</p> <p>9 responsible at Smile Source for negotiating</p> <p>10 with manufacturers?</p> <p>11 MS. MASTERS: Objection. Leading.</p> <p>12 THE WITNESS: No.</p> <p>13 BY MR. LONG:</p> <p>14 Q. Were you ever the person at Smile</p> <p>15 Source responsible for negotiating with</p> <p>16 distributors?</p> <p>17 A. Uh-uh.</p> <p>18 Q. That's a no?</p> <p>19 A. I'm sorry. No.</p> <p>20 Q. That's all right.</p> <p>21 Did you ever attend any -- strike</p> <p>22 that.</p> <p>23 Did you ever have communications</p> <p>24 with any distributors of dental products, on</p> <p>25 behalf of Smile Source?</p>	<p style="text-align: right;">Page 27</p> <p>1 A. Outside of the meetings, it went</p> <p>2 through our personnel. Other personnel.</p> <p>3 Q. Do you recall ever attending a</p> <p>4 meeting with Patterson Dental?</p> <p>5 A. Never.</p> <p>6 Q. Did you ever have communications</p> <p>7 with Patterson Dental?</p> <p>8 A. No.</p> <p>9 Q. Are you aware of any meetings that</p> <p>10 a representative of Smile Source had with</p> <p>11 Patterson Dental?</p> <p>12 A. No.</p> <p>13 Q. Are you aware of any communications</p> <p>14 that a representative of Smile Source had</p> <p>15 with Patterson Dental?</p> <p>16 A. No. I mean, I know they reached</p> <p>17 out to them, but when I was there, it just</p> <p>18 didn't happen. Phone calls, trying to set</p> <p>19 up meetings, but that's it. We had no</p> <p>20 relationship with Patterson.</p> <p>21 Q. Do you have any personal knowledge</p> <p>22 of the content of --</p> <p>23 A. I did not.</p> <p>24 Q. I'm sorry. I need to ask a whole</p> <p>25 question, just so we have a record. I know</p>
<p style="text-align: right;">Page 28</p> <p>1 you know what I'm going to ask.</p> <p>2 Do you have any personal</p> <p>3 knowledge of the content of any of these</p> <p>4 phone calls or meetings that you just</p> <p>5 referred to?</p> <p>6 A. No.</p> <p>7 Q. Do you have an understanding --</p> <p>8 strike that.</p> <p>9 Have you heard the term "buying</p> <p>10 group" used in the dental business?</p> <p>11 A. Yes.</p> <p>12 Q. And in what context?</p> <p>13 A. That groups might purchase</p> <p>14 together. That's about it.</p> <p>15 Q. Did Smile Source have a Smile</p> <p>16 Source system?</p> <p>17 MS. MASTERS: Objection. Vague.</p> <p>18 MS. STAPLEY: Could you clarify? I</p> <p>19 agree. Objection. Vague.</p> <p>20 THE WITNESS: I don't know. What</p> <p>21 do you mean?</p> <p>22 BY MR. LONG:</p> <p>23 Q. Let me ask it this way: In the</p> <p>24 Smile Source FDDs with which you were</p> <p>25 familiar, did the Smile Source describe</p>	<p style="text-align: right;">Page 29</p> <p>1 itself as having a Smile Source system?</p> <p>2 A. I don't recall the word "system."</p> <p>3 Q. I wasn't thinking. I only have two</p> <p>4 copies of documents, so if you can share</p> <p>5 with the witness.</p> <p>6 MS. STAPLEY: Sure.</p> <p>7 (Exhibit Number 1 was marked</p> <p>8 for identification.)</p> <p>9 BY MR. LONG:</p> <p>10 Q. Mr. Moody, I'm going to hand your</p> <p>11 counsel and you what I've marked as</p> <p>12 Exhibit 1.</p> <p>13 This is -- purports to be the</p> <p>14 July 2, 2014, FDD filed with the State of</p> <p>15 Minnesota on behalf of Smile Source. It's</p> <p>16 Bates-numbered PDCO00147772 through 147922.</p> <p>17 Mr. Moody, your counsel has put</p> <p>18 Exhibit Number 1 in front of you. You can</p> <p>19 take as much time or as little time as you</p> <p>20 want to look at it. I'm just going to ask</p> <p>21 you a couple questions about it.</p> <p>22 A. Okay.</p> <p>23 Q. Have you seen any of the 2014 FDDs</p> <p>24 for Smile Source?</p> <p>25 A. No.</p>

Page 30

1 Q. Would you have seen 2012 FDDs for
2 Smile Source before your retirement?

3 A. I would.

4 Q. If you then would look at page --
5 well, you would find item 1 of the FDD.
6 Page 1. The long number is 147786, but it's
7 item 1 of the FDD.

8 A. Uh-huh.

9 Q. All right. I'm looking at the
10 bottom third with the description the Smile
11 Source franchise.

12 A. Uh-huh.

13 Q. If you would read to yourself just
14 that paragraph that begins, "We have a
15 distinct system," and let me know when
16 you've read that.

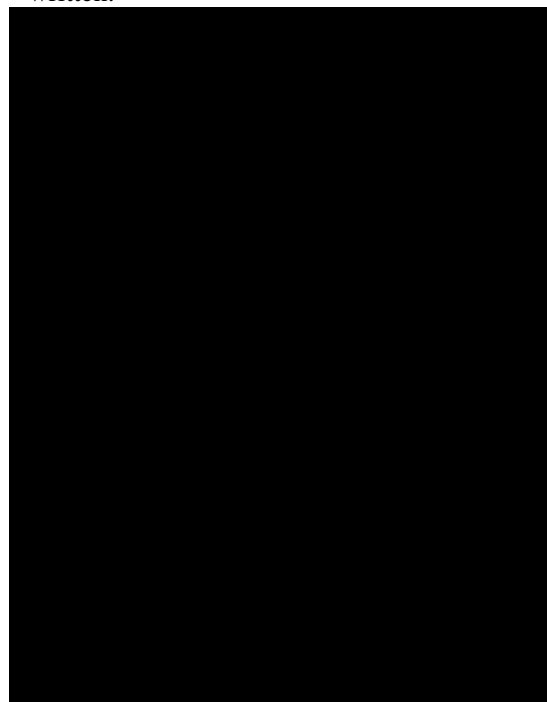
17 A. Okay.

18 Q. Is the paragraph in item 1 under
19 the heading, "The Smile Source franchise,"
20 that begins, quote, "We have a distinct
21 system," is that the description that you're
22 familiar with from the prior FDDs?

23 A. The whole sentence is, but I would
24 not -- distinctive system, I wouldn't have
25 pulled that out. But yeah, we use the same

Page 31

1 model we used in Vision. We talk to people
2 and explain the story. This is the way it's
3 written.



Page 32



1 Q. Going back to the term "buying
2 group." In your understanding of the term

Page 33

1 "buying group," that does not necessarily
2 include an entity that provides all the
3 services that Smile Source would provide?

4 A. Yes, correct.

5 Q. Smile Source viewed itself
6 differently than some generic buying group;
7 is that correct?

8 MS. MASTERS: Objection. Form.

9 THE WITNESS: Yes.

10 BY MR. LONG:

11 Q. With respect to dental buying
12 groups, in general, did you ever study them?

13 A. No.

14 Q. Did you ever investigate what
15 different types of buying groups were in the
16 market?

17 A. No.

18 Q. To the extent you had any
19 understanding of buying groups in the dental
20 industry, that understanding would stop with
21 when you retired the end of 2012?

22 A. Absolutely.

23 Q. Haven't been out researching buying
24 groups since you retired?

25 A. I have not.

Page 34

1 Q. Nor did you research buying groups
2 when you were at Vision Source with respect
3 to dental?

4 MS. MASTERS: Objection. Form.

5 THE WITNESS: Correct.

6 BY MR. LONG:

7 Q. When you left Vision Source the end
8 of 2012, Smile Source had approximately 58
9 franchises?

10 MS. MASTERS: Objection. Form.

11 THE WITNESS: I don't remember the
12 number.

13 BY MR. LONG:

14 Q. I'll just see if I can refresh your
15 recollection. If you look at page 21, item
16 20 of Exhibit 1, the copy isn't very good of
17 the titles of the chart on the bottom half,
18 but do you see at the end of 2013, the FDD
19 at least provides there were 58?

20 A. I can't really tell what that is.
21 It's blocked out at the top. I'm not sure
22 what the 145 is. Oh, yeah. I see it. I
23 was looking at the next line. I gotcha. I
24 still can't read what it is. It's blocked
25 out. I see the number you're talking about.

Page 36

1 A. That's correct.

2 Q. -- help you see that in Exhibit 1
3 it represents 58 franchises at the end of
4 2012?

5 A. I just didn't remember the number.

6 MS. STAPLEY: So the record is
7 clear, Mr. Moody has testified he left
8 at the end of 2012. As I'm looking at
9 Exhibit 1, this shows for years 2011
10 through 2013. I read it to mean that
11 58 -- the 58 --

12 MR. LONG: And I misspoke. I meant
13 to say 2012. I apologize.

14 MS. STAPLEY: So does --

15 BY MR. LONG:

16 Q. So the question is: Now that I've
17 shown you column headings that are legible,
18 does it appear to you that the 2014 FDD,
19 which is Exhibit 1, indicates that at the
20 end of 2012, there were -- at the end of
21 2012, there were 58 franchises?

22 A. This is the beginning of '13, end
23 of '12.

24 MS. STAPLEY: Thank you.

25 ///

Page 35

1 Q. I'm not going to mark this because
2 you would have -- well, I'm going to show
3 you the 2018 Smile Source FDD. I'm not
4 going to mark it.

5 The only reason I'm showing you is
6 this is the one color copy I've got, and I
7 think it may help you understand what the
8 heading of the column above the 58 is.

9 MS. MASTERS: Counsel, where did
10 you get the document, just so we have
11 clarification of what the document is.

12 MR. LONG: I'm sorry. This was
13 produced by Smile Source. It's SS57
14 through 178. If you all need to look at
15 it, I'm just trying to fix the fact that
16 the 2014 FDD, you can't read the title
17 in the column. That's all I'm trying to
18 do here.

19 BY MR. LONG:

20 Q. So I'm pointing your attention to
21 the column that says, "Outlets at the start
22 of the year," "Outlets at the end of the
23 year."

24 A. Right. Okay. That's it.

25 Q. Does that then --

Page 37

1 BY MR. LONG:

2 Q. And I need you to answer that
3 question.

4 A. Yes.

5 Q. Does that accord with what you
6 remember, or you don't have --

7 A. I just don't recall.

8 Q. Other than sitting in a few
9 meetings if they were in the offices, you
10 don't have any knowledge of Smile Source's
11 experience in negotiating with
12 manufacturers; correct?

13 A. Yeah. Most of the meetings were in
14 the office because there's not that many. I
15 mean, I sat in on the meetings, but we had
16 people that managed it.

17 Q. Okay. Did Vision Source and Smile
18 Source have a common central office?

19 A. Uh-huh. Yes.

20 Q. Where was that located?

21 A. Houston, Texas.

22 Q. What meetings in which Smile Source
23 negotiated with manufacturers do you recall
24 attending?

25 A. The only one I attended was -- with

Page 38

1 distributors was -- is that what you said?
 2 Q. No, this was manufacturers. I'll
 3 get to distributors in a minute.
 4 A. I don't even remember any
 5 manufacturers by name.
 6 Q. As you sit here today, do you
 7 recall the substance of any of the meetings
 8 with manufacturers that you attended?
 9 A. Distributors --
 10 Q. I'm sorry. I was asking again
 11 manufacturers.
 12 A. Manufacturers? I mean, no. I just
 13 didn't deal with that.
 14 Q. Did you attend meetings with
 15 distributors?
 16 A. Yes.
 17 Q. What distributors do you recall
 18 meeting with?
 19 A. Only Schein.
 20 Q. Schein. Do you recall when -- was
 21 it one meeting or more than one meeting?
 22 A. They had a local guy; so he was in
 23 the office. A number of meetings, but
 24 again, our people handled it. I would just
 25 see him in the office.

Page 40

1 BY MR. LONG:
 2 Q. Okay. Do you have any direct
 3 knowledge that would support the allegation
 4 that Benco, Schein, and Patterson conspired
 5 to refuse to offer discounted prices or
 6 otherwise negotiate with buying groups?
 7 MS. MASTERS: Objection to form.
 8 THE WITNESS: No.
 9 BY MR. LONG:
 10 Q. Do you have any direct knowledge
 11 relating to an allegation that Benco,
 12 Schein, and Patterson executives agreed not
 13 to provide discounts to or otherwise
 14 contract with buying groups composed of
 15 independent dentists?
 16 MS. MASTERS: Objection to form.
 17 THE WITNESS: No.
 18 BY MR. LONG:
 19 Q. Do you have any direct knowledge
 20 that Benco, Schein, and Patterson entered
 21 into an agreement to refuse to provide
 22 discounts to, or compete for the business of
 23 buying groups?
 24 MS. MASTERS: Objection to form.
 25 THE WITNESS: Can you repeat that?

Page 39

1 Q. Who is the local guy you recall?
 2 A. Rick Heysquierdo -- Rick, Mexican
 3 guy.
 4 Q. Rick Heysquierdo, with an H?
 5 A. Yeah.
 6 MR. LONG: I'll help you with
 7 spelling on that later.
 8 BY MR. LONG:
 9 Q. With respect to buying groups in
 10 general, you wouldn't have any basis to
 11 testify about the benefits of buying groups,
 12 in general, to individual dentists, would
 13 you?
 14 MS. MASTERS: Objection to form.
 15 Leading, vague.
 16 THE WITNESS: No.
 17 BY MR. LONG:
 18 Q. And you would not have any basis to
 19 testify concerning the demand for buying
 20 groups, in general, among independent
 21 dentists?
 22 MS. MASTERS: Same objection.
 23 THE WITNESS: I don't really
 24 understand that. Can you rephrase it?
 25 I just don't know about buying groups.

Page 41

1 BY MR. LONG:
 2 Q. Do you have any knowledge that
 3 Benco, Schein, and Patterson entered into an
 4 agreement to refuse to provide discounts to
 5 or compete for the business of buying
 6 groups?
 7 A. No.
 8 MS. MASTERS: Same objection.
 9 BY MR. LONG:
 10 Q. I promised you that I would try to
 11 be expeditious. I'm going to pass the
 12 witness at this point. I'll reserve my
 13 ability to ask follow-up questions based
 14 upon any examination that Ms. Masters may
 15 ask of you, but that's what I needed to
 16 cover from my perspective. I appreciate
 17 your time thus far.
 18 I do want to note on the record and
 19 this was confirmed by Kelly Ortiz in an
 20 email on July 9 that documents have been
 21 produced by Smile Source to the FTC several
 22 months ago that still have not been sent to
 23 the respondents in the case.
 24 I'm assuming any document you use
 25 is something that has been provided to us,

Page 42	Page 43
<p>1 but I would put that reservation on the 2 record. With that, I will pass the witness. 3 MR. LONG: Carrie or Lauren, do you 4 have anything at this time? 5 MS. FINCHER: I think I'll reserve 6 my time till the end, but I would 7 welcome a bathroom break. 8 MS. AMEZCUA: I'll reserve my time 9 as well, and I'll second the bathroom 10 break. 11 (Recess taken from 9:47 a.m. to 12 10:02 a.m.) 13 14 EXAMINATION 15 BY MS. MASTERS: 16 Q. Mr. Moody, Mr. Long gave you some 17 instructions this morning. You understand 18 that we're still following those same 19 instructions? 20 A. Yes. 21 Q. And you understand you're still 22 under oath? 23 A. Yes. 24 MR. LONG: And we were just going 25 to put on the record that an objection</p>	<p>1 by one of respondents' counsel is good 2 for all the respondents. 3 MS. MASTERS: We agree. 4 MR. LONG: Thank you. 5 BY MS. MASTERS: 6 Q. Mr. Long covered some of your time 7 with Vision Source, and as I heard, you 8 worked with Vision Source 12 to 13 years? 9 A. Yes. 10 Q. Beginning in 2000, and you left at 11 the end of 2012? 12 A. Correct. 13 Q. I want to understand a little bit 14 more about Vision Source. How did Vision 15 Source measure its membership? 16 A. I mean, I guess the largest form of 17 measurement was number of locations. We had 18 like goals every year to grow a certain 19 amount. So you get a number of locations. 20 It increases your -- revenues increase 21 because you help those practices grow. 22 Those are the two main ones. Number of 23 locations and top line revenue. 24 Q. So locations is distinct from the 25 number of optometrists?</p>
Page 44	Page 45
<p>1 A. Correct. 2 Q. Do you know how many locations 3 Vision Source had in its network around 1991 4 when it started? 5 A. It started from scratch. Zero. 6 Q. Okay. When you joined Vision 7 Source, do you know how many locations 8 Vision Source had? 9 A. 207. 10 Q. When you left Vision Source, do you 11 know how many locations Vision Source had? 12 A. I don't remember. 13 Q. To the best of your recollection? 14 A. Over 2000. I don't know the 15 number. 16 Q. Okay. And as I heard you say, the 17 Vision Source model was what Smile Source 18 carried forward for dentists? 19 MR. LONG: Objection. Leading. 20 THE WITNESS: They wanted to mimic 21 the model, build the network. A private 22 practice. 23 BY MS. MASTERS: 24 Q. So what were the benefits that 25 Vision Source could provide to optometrists?</p>	<p>1 A. Cost of good savings, marketing, 2 cohesiveness and expertise, and practice 3 management assistance to help them grow 4 their top line, their business. 5 Q. Can you describe for me what cost 6 of goods savings were? 7 A. Essentially anything they would buy 8 from business products to eye care products, 9 equipment, frames, glasses, contacts. 10 Essentially anything you buy in an office, 11 we would have -- over time, we would 12 continue to build the portfolio to save you 13 money. 14 Q. How did Vision Source save 15 optometrists money? 16 A. Volume, volume discounts, because 17 our group grew so you have more leverage 18 with the vendors. 19 Q. What was practice management? What 20 was that benefit for optometrists? 21 A. For example, billing and coding and 22 insurance. If you're not really good at 23 doing that, that's a whole new revenue 24 stream for you. You might be better at 25 optical sales, selling frames and that kind</p>

Page 46

1 of thing. And your medical practice doesn't
2 exist.

3 So you join us, and we show you how
4 to do that and you grow your business. It
5 can work the other way. You know, you're
6 not good at the frame side, but you're good
7 at the medical. We help you on the frame
8 sales side. We get you in the network and
9 save you money and show you how to create
10 new revenue streams.

11 Q. Okay. Was one of your
12 responsibilities with Vision Source to
13 oversee vendor relationships?

14 A. Yeah. I had a guy who did that,
15 but, yeah, he reported to me.

16 Q. Did you attend meetings with
17 vendors as part of your responsibilities for
18 Vision Source?

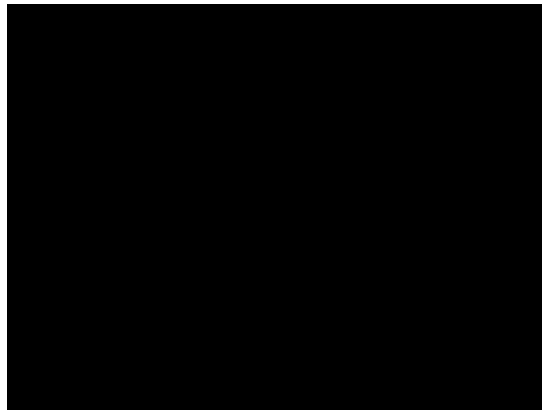
19 A. Sure.

20 Q. Did you negotiate the discounts
21 with vendors for Vision Source members?

22 A. I participated, but they were
23 responsible for it, these individuals.

24 Q. Can you describe, generally, what
25 the kinds of discounts were that Vision

Page 47



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14 Q. Again, generally, can you give me a
15 sense of how Vision Source was able to
16 negotiate those discounts with vendors?

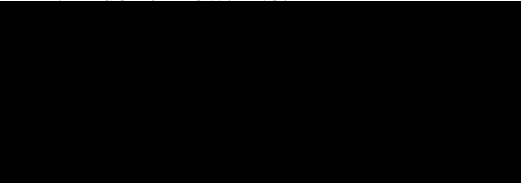
17 A. It's collective buying. Purchasing
18 actually, not buying. Collective
19 purchasing. We didn't have programs with
20 everybody; so when people would join us, it
21 behooved them, if they're going to use the
22 franchise fee, to use our suppliers. We
23 really referred to them as vendors.

24 Q. Okay. As part of your
25 responsibilities, did you have any insight

Page 48

1 into how much optometrists spent on supplies
2 as a portion of their revenues?

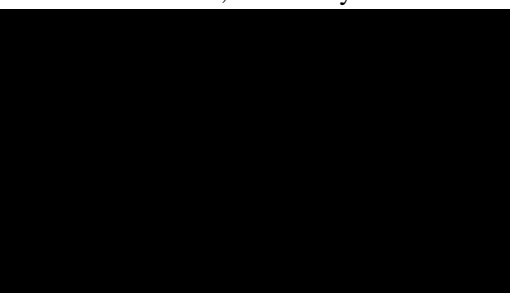
3 A. I don't know. No.



10 BY MS. MASTERS:

11 Q. Did you have responsibility to grow
12 the membership of Vision Source?

13 A. I had a person for that, too, but
14 my roles changed. I started off doing that.
15 And then as I ascended through the company,
16 I had a VP of sales, essentially.



Page 49

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15 Q. And the three pillars were cost of
16 savings, practice management, and what was?

17 A. Marketing.

18 Q. Marketing. Thank you.

19 Can you explain to me how marketing
20 was a benefit for Vision Source members?

21 A. Yeah, just truly just efficiencies.
22 You know, like in Houston when it first
23 started, each individual guy was having to
24 do their own marketing; they're having to
25 pay all of the costs for development and
everything involved in marketing.

There were 12 guys in Houston that
were strategically placed around town and
enjoy the efficiencies of the investment
spin, the marketing spin. That's how the
model was created in Houston in '91 and
other people saw it and that's how it grew.

Q. Do you know how many optometrists
locations were in the United States when you
left Vision Source?

A. I do not know the number.

Q. Do you know the percentage of

Page 50

1 optometrists who were Vision Source members
2 in the United States when you left?

3 A. I don't know.

4 Q. Are you still involved with Vision
5 Source in any way today?

6 A. No.

7 Q. So then, moving forward to Smile
8 Source, why did you, as one of the founders,
9 start Smile Source?

10 MR. LONG: Object to the form.

11 THE WITNESS: Because it was an
12 operational thing and I ran U.S. I ran
13 Canada. I just made a small piece of
14 time, but we had the other dentists, as
15 I spoke about this morning, that came to
16 us with already, you know, a dozen
17 locations, already had volume, kind of
18 going back to the initial way Vision
19 Source started.

20 So we didn't have to recreate the
21 wheel. It wasn't in Texas, but it was
22 in Arizona. Those guys came to us.
23 They were already buying for 12 offices.
24 They already were marketing and they
25 were sharing their practice management,

Page 51

1 and so it gave us a stronghold to start
2 with, versus starting like we did with
3 Houston in Vision and add one at a time.

4 BY MS. MASTERS:

5 Q. Did you previously consider
6 starting a group like Vision Source in the
7 dental industry?

8 A. No. They came to us.

9 Q. Had other dentists come to Vision
10 Source --

11 A. Yes.

12 Q. -- prior to --

13 A. Before those guys, yes. We just
14 didn't do it because, you know, our bread
15 and butter was optometry and we were in the
16 U.S. We started Canada. We didn't have the
17 expertise, but we felt that these guys had
18 12 locations. They were humming along
19 pretty good; so we partnered with them.

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Page 54

1 Q. How so?

2 A. We had the funds to get going.

3 Q. Did Vision Source provide personnel
4 to support Smile Source?

5 A. Only like myself and people that
6 would, you know, volunteer time. Myself and
7 Glen and John McCall, who was my vendor guy.
8 He helped a little bit. But we were mainly
9 telling the Vision Source story on what
10 Smile Source could become.

11 And Wallitschek and other people
12 that we hired within the Smile Source
13 organization were managing the day to day.

14 Essentially, it was a tertiary
15 business for us, that we hoped that would
16 prosper with those guys.

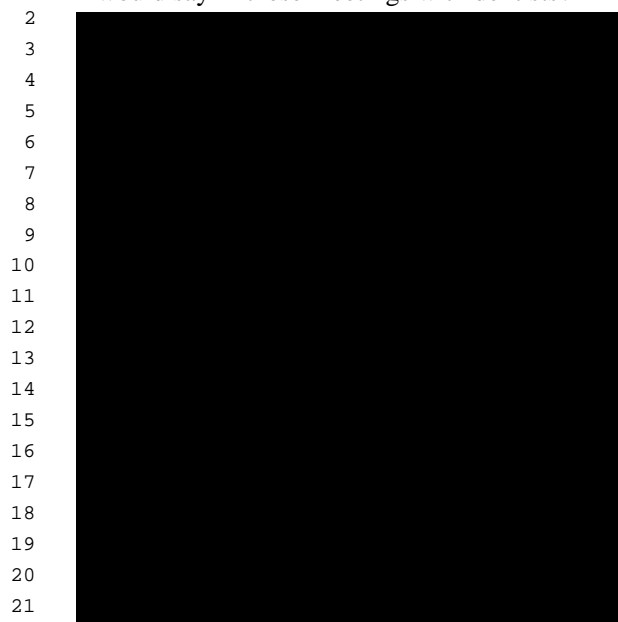
17 Q. Did you have responsibility to grow
18 the membership of Smile Source?

19 A. I sat in on meetings, but that was
20 John's responsibility, to do it all. In
21 terms of telling the Vision Source story and
22 painting the picture of what it could be in
23 dental, yes. I didn't have a quota or
24 anything like that.

25 Q. Can you give us an idea of what you

Page 55

1 would say in these meetings with dentists?



22 Q. Was there anyone at Smile Source
23 whose role specifically was to grow
24 membership?

25 A. Later there was.

Page 56

1 Q. While you were there?

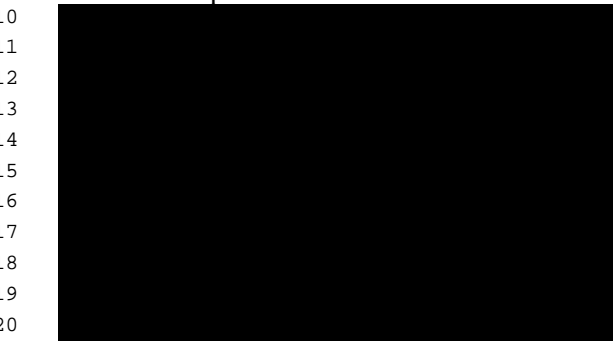
2 A. While I was there, yeah.

3 Q. Who was that?

4 A. Todd Nickerson.

5 Q. Did Mr. Nickerson report to you?

6 A. He did. John as well. He was in
7 our office. John lived in Arizona. So I
8 would spend time with him primarily on the
9 membership side.



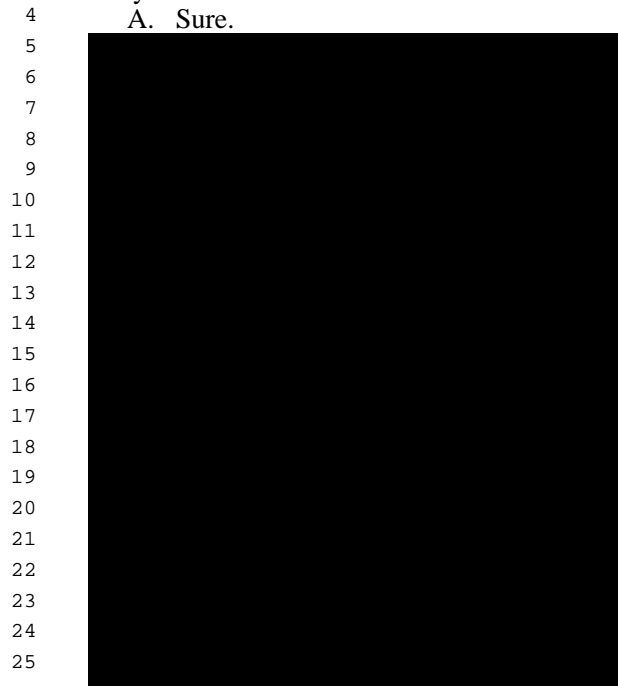
21 Q. How often did you meet with
22 dentists on behalf of Smile Source?

23 A. I mean, it varied. Sometimes once
24 a month. Sometimes twice a month. It's
25 hard to get people together because it was

Page 57

1 so new.

2 Q. Did dentists talk to you about what
3 they needed from Smile Source?



Page 58

1 BY MS. MASTERS:

2 Q. Can you recall any of the names of
3 the distributors that dentists were using?

4 A. They were using -- the only ones I
5 can remember probably -- well, ones involved
6 in the suit. So Schein, Patterson, Benco,
7 and Burkhardt. I think there's more, but
8 those are the only ones I know.

9 Q. When you say that they -- I
10 apologize. I don't have this in front of
11 me. I think you mentioned that dentists had
12 someone they preferred using. Was that
13 correct?

14 A. Uh-huh.

15 Q. What did you mean by having
16 somebody they preferred to use?

17 A. Relationship. It had a lot to do
18 with their sales representative. Some of
19 the sales representatives worked with these
20 guys for ten years or more. They were
21 getting their supplies from them almost --
22 in many cases, 100 percent or close to it,
23 on the distributor side.

24 Q. Did dentists tell you why they used
25 distributors?

Page 60

1 A. Just follow-up. You know, things
2 go wrong, things don't get shipped, invoiced
3 wrong, they fix it. Just basically general
4 maintenance.
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Page 59

1 A. Yeah, it's the only place to get
2 supplies.

3 MR. LONG: Objection.

4 THE WITNESS: The way I understand
5 it, it's just a big warehouse. They
6 pretty much all have the same thing. So
7 it comes down to what price you're
8 getting and your representative.

9 As I said earlier, optometry has
10 300 different agreements whereas -- I
11 don't know the exact number, but it's a
12 whole lot smaller number across the
13 board for dental supplies, labs, those
14 kinds of things.

15 BY MS. MASTERS:

16 Q. Do you know why dentists were using
17 Schein, Patterson, Benco, and Burkhardt for
18 distributors?

19 MR. LONG: Objection. Foundation.

20 THE WITNESS: Because they got good
21 service, and they liked the reps. It
22 would be their general response.

23 BY MS. MASTERS:

24 Q. What did dentists tell you
25 constituted good service from distributors?

Page 61

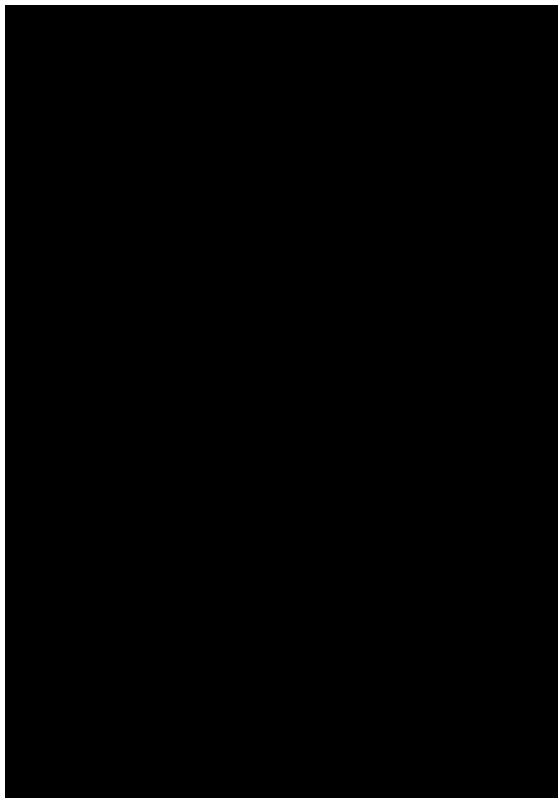
1 BY MS. MASTERS:

2 Q. I think you mentioned -- was Smile
3 Source attempting to demonstrate the savings
4 that it could bring?

5 A. Uh-huh.
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Q. Okay. When did Smile Source first begin -- let me strike that.

When did Smile Source's relationship with Schein begin?

A. I don't remember the day -- I mean, the year. We -- I don't remember.

Q. Earlier, I think you mentioned that someone from Smile Source had contact with someone from Patterson.

MR. LONG: Objection. Misstates.

BY MS. MASTERS:

Q. What do you recall about --

MR. LONG: Object to the form.

THE WITNESS: We were starting -- they were the suppliers and so phone calls were made and that kind of thing.

And then like I said, the ones we had the meetings with -- meeting with, I should say, was Schein. We had no business; so we were not on anybody's radar. That was kind of where we had to tell the story.

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BY MS. MASTERS:

Q. Do you know why Smile Source attempted to talk with Patterson?

MR. LONG: Object to the form.

THE WITNESS: Just because they were one of the suppliers. The top three or four suppliers were reached out to and then Schein was more amenable to what we were starting with, with the Arizona practices, as well as the vision that we were wanting to achieve in dentistry.

BY MS. MASTERS:

Q. When you say "Schein was more amenable," was Patterson amenable to working with Smile Source at all?

MR. LONG: Objection. Foundation.

THE WITNESS: I never met with Patterson, never talked with them.

BY MS. MASTERS:

Q. Did Smile Source talk with any other dental supply distributors while you were with Smile Source?

MR. LONG: Object to the form.

THE WITNESS: Yeah, years later,

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Burkhart. I don't know the timeline of it, but it was years later.

BY MS. MASTERS:

Q. So you can't recall exactly when?

A. No.

Q. Did Smile Source ever have discussions with Benco for discounts?

A. Not to my knowledge.

Q. Do you know whether Smile Source ever discussed distribution with online distributors?

A. I don't know.

Q. Do you recall Smile Source discussing distribution with any regional distributors?

A. No.

MS. MASTERS: Can we take a quick break?

MS. STAPLEY: Sure.

(Recess taken from 10:29 a.m. to 10:35 a.m.)

BY MS. MASTERS:

Q. Mr. Moody, I apologize. I don't have your transcript in front of me. But I thought you'd said you had a hard time

Page 66

1 getting meetings with distributors because
2 Smile Source was new.

3 Is that a fair representation?

4 A. New and other than, you know, the
5 new locations, the ones that John brought,
6 yeah.

7 Q. You also mentioned that Smile
8 Source wanted to grow its membership. Is
9 that accurate?

10 A. Correct.

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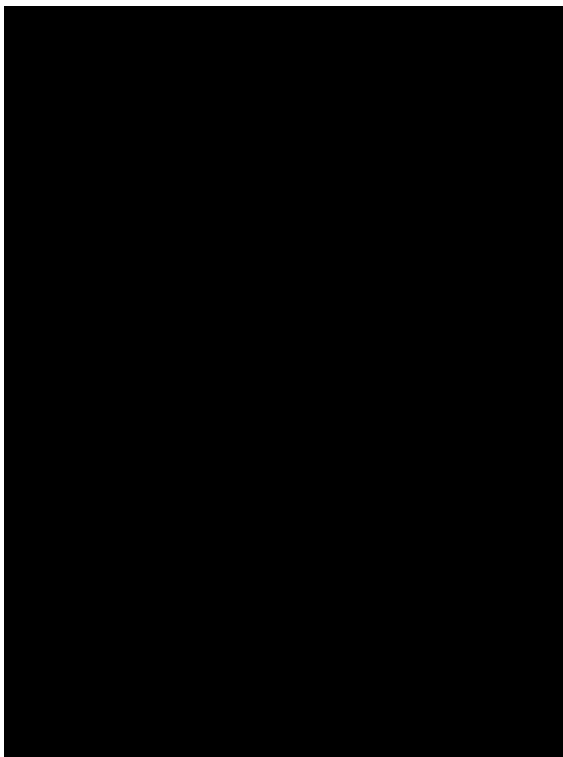
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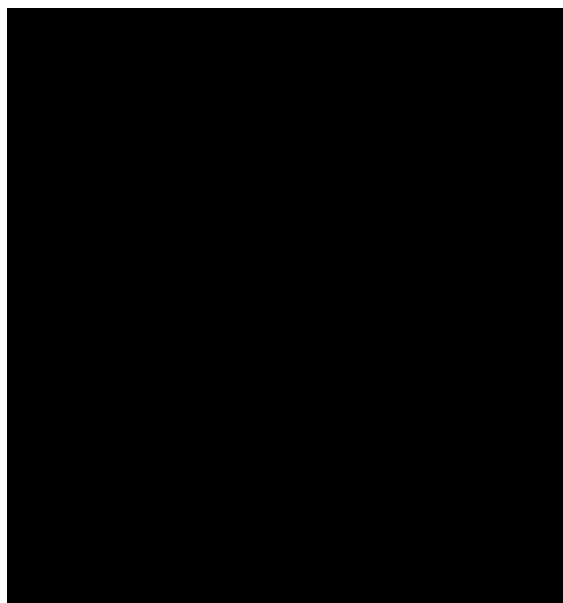
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Q. Earlier you talked about how when Smile Source started, there were about a dozen offices; is that correct?

A. Uh-huh, yes.

Q. To your knowledge, were any of those offices already Schein customers?

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A. I don't recall.

Q. To your knowledge, did any of those offices purchase from distributors other than Schein?

MR. LONG: Objection. Foundation.

THE WITNESS: I don't know. I don't know who they purchased from.

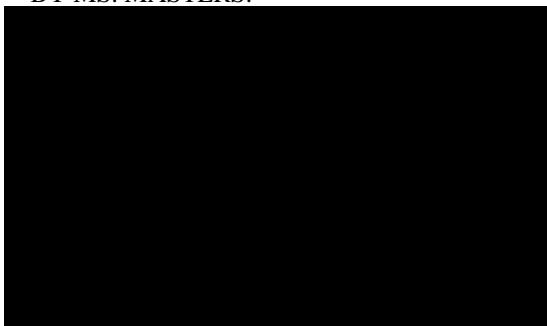
BY MS. MASTERS:

Q. To your knowledge, how many of those members purchased with Schein after becoming Smile Source members?

A. I don't know.

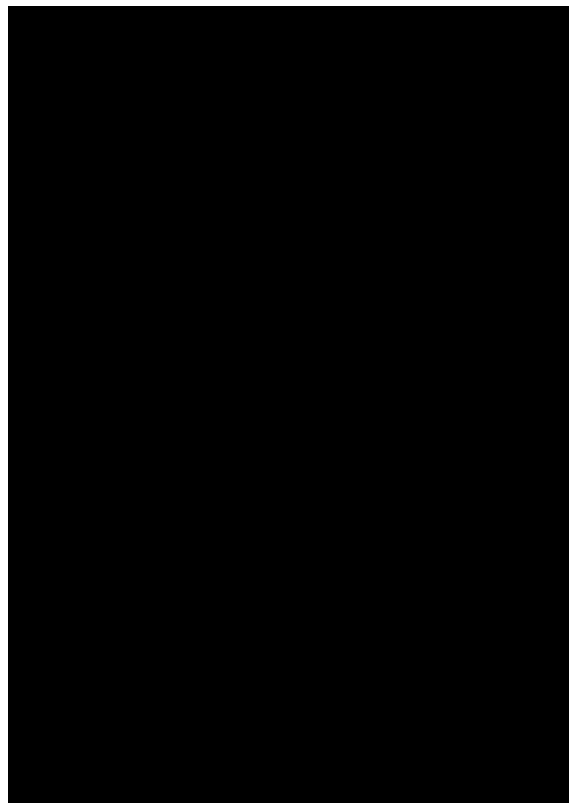
RESPONDENTS COUNSEL: Object to the form. Foundation.

BY MS. MASTERS:



Page 73

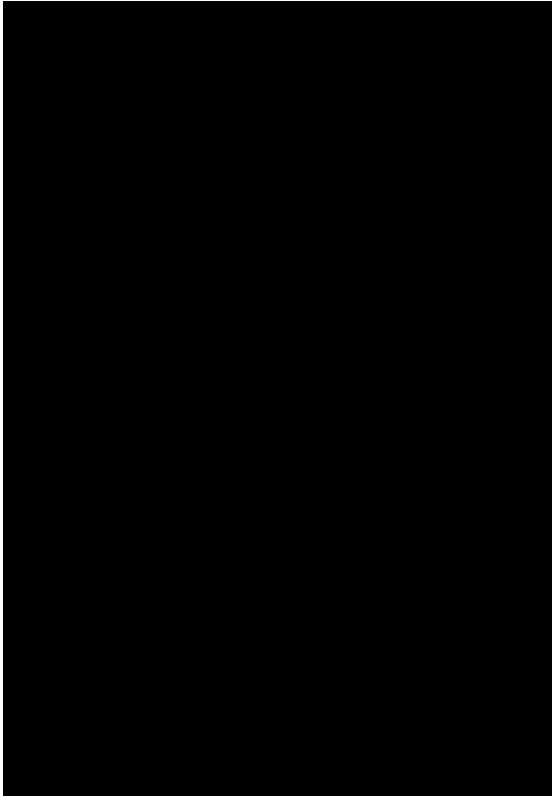
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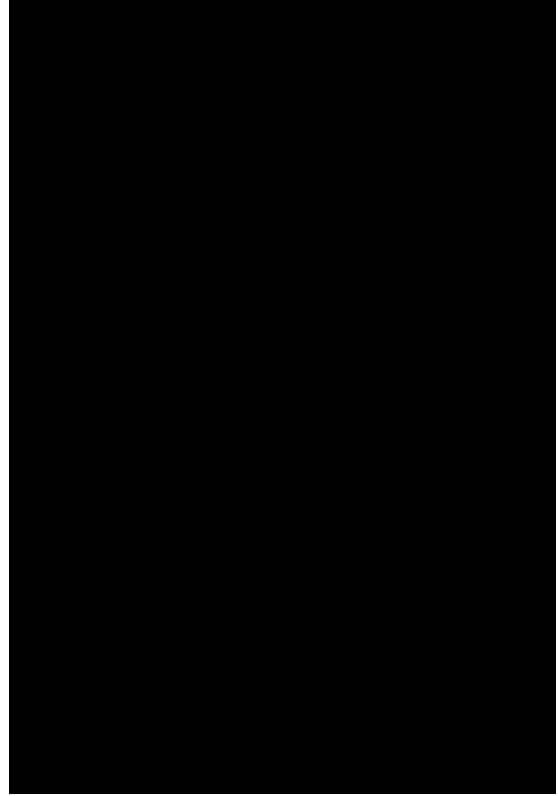
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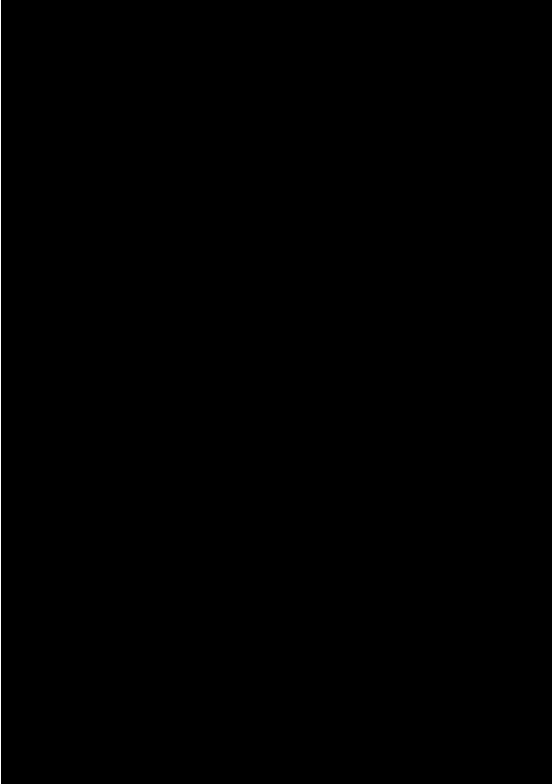
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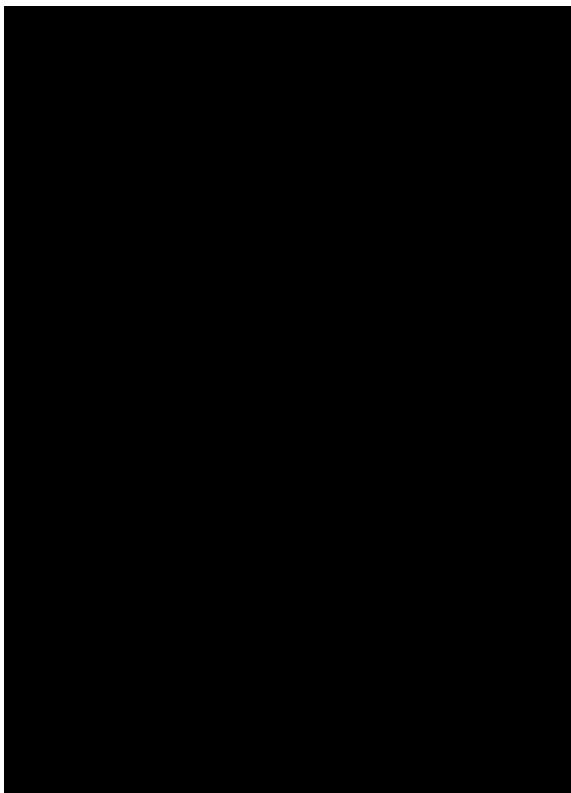
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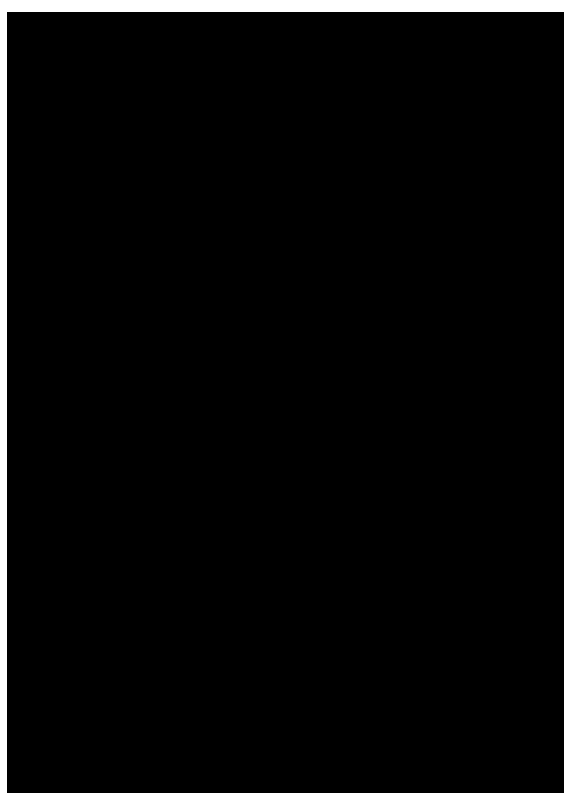
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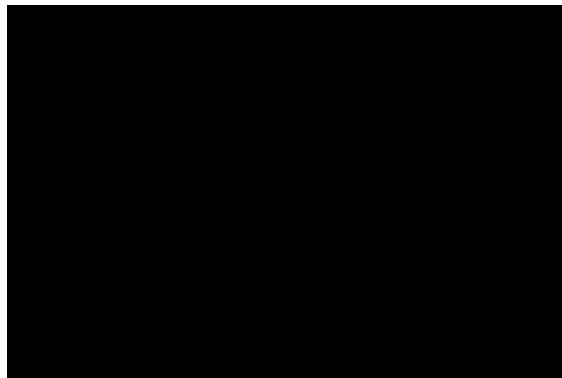
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Q. The meeting at Schein's headquarters, do you know who from Smile Source attended that meeting?

A. Myself, John Wallitschek, and Glen Ellis.

Q. Do you know who from Schein attended that meeting?

A. I think just -- I can't remember. I know Tim Sullivan was there. I can't remember if they had anybody else there or not. I think that was his name. Whoever the president was or were.

Q. Can you tell me any more about the

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discussions that you had at that meeting?

A. That was a long time ago. That was the gist of it. Very cordial. We just kind of told them the vision and addressed the invoicing.

And I think we were starting to grow a little bit; so he wanted to get a better understanding of us. So we went there. Short meeting and left.

Q. Were there any other meetings that you can recall with anyone from Schein?

A. Only the local rep who was in the office a lot, but it was just more pleasantries in the hall, kind of thing. I didn't work on the detail of it.



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[REDACTED]

BY MS. MASTERS:

Q. Did Schein continue to be the distributor for Smile Source members while you were still at Smile Source?

A. There was a -- it switched to Burkhart, but I don't remember when it was.

Q. Was it closer to the time that you left Smile Source?

A. It was closer. But I have no -- I don't remember the time.

Q. When you say that there was a switch to Burkhart, did Smile Source terminate its relationship with --

A. Just transitioned out of it, to Burkhart.

Q. Do you recall anything else about how Smile Source transitioned out of the relationship?

A. No, just picked a --
RESPONDENTS COUNSEL: Object to the

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A. In my mind, they were smaller. They were more regional. They had partners in other areas. They said they could grow with us if we needed that, and that's kind of how I left it.

Q. You say more regional. Do you have a sense of where Burkhart had service?

A. The northwest. Really, the western part of the country was their strong suit, best I can remember.

Q. How did that compare to where Smile Source had offices at the time?

A. Most of it was kind of western. We had a few offices in Atlanta, but they serviced them. I don't remember where we were then, but it was predominantly west.

Q. Did you have a role in negotiating the agreement with Burkhart?

A. I did not.

Q. In general, do you know what the agreement with Burkhart provided for?

A. No. Do you know -- let me scratch that.

Q. Did Burkhart ever tell you why they were willing to work with Smile Source?

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form.

THE WITNESS: Just made an announcement that our preferred distributor partner was Burkhart.

BY MS. MASTERS:

[REDACTED]

BY MS. MASTERS:

Q. Earlier you identified the top three. And if I recall, they were Schein, Benco, and Patterson; is that correct?

A. Uh-huh.

Q. You did not identify Burkhart among those. Why not?

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[REDACTED]

BY MS. MASTERS:

Q. It's correct you're aware that Burkhart told that to people at Smile Source but not yourself?

A. Uh-huh.

MR. LONG: Object to the form.

THE WITNESS: Yeah, I don't even know who runs Burkhart.

BY MS. MASTERS:

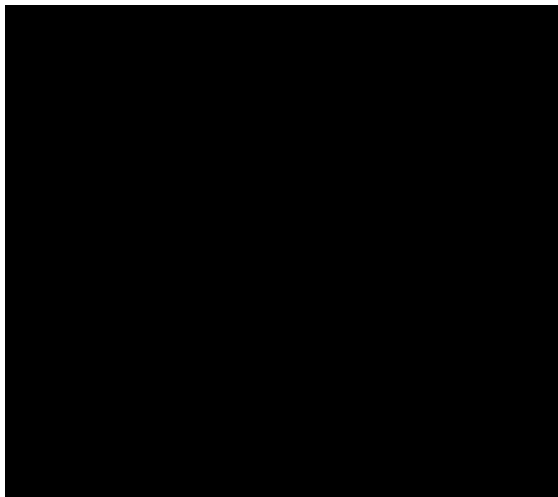
Q. Do you have any relationship with, or any familiarity with the relationship with Burkhart?

A. No. I mean, we had -- by the time we transferred to Burkhart, we had much larger staff. I just didn't really deal with it.

[REDACTED]

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When you left Smile Source, how many dentists were members?

MR. LONG: Object to the form.

THE WITNESS: I don't know.

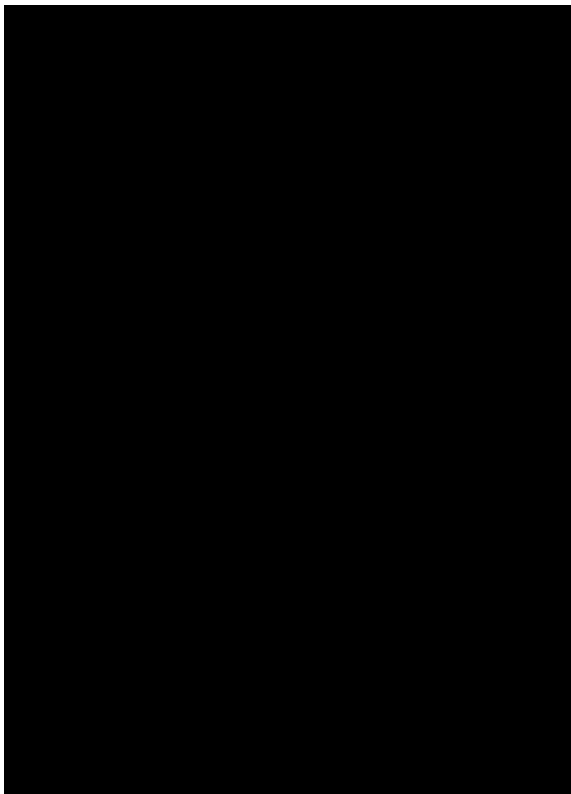
BY MS. MASTERS:

Q. Did Smile Source grow in number of locations while you were with Smile Source?

A. Uh-huh. Do you want the number of locations or number of dentists?

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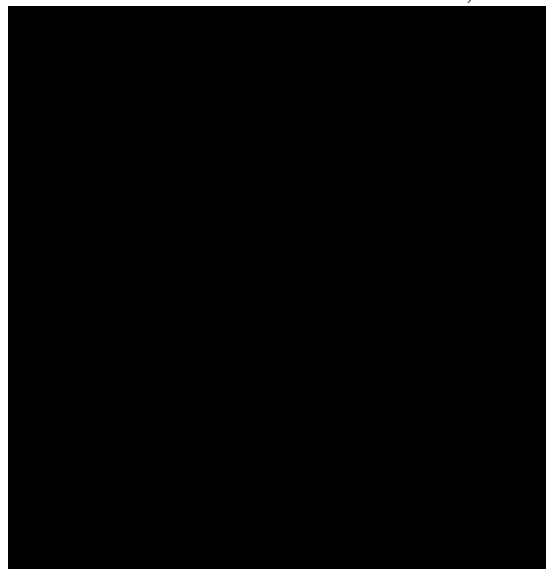
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Q. If you know, either.

A. Based on this morning, I know there was 58. But other than that, I would not have known.

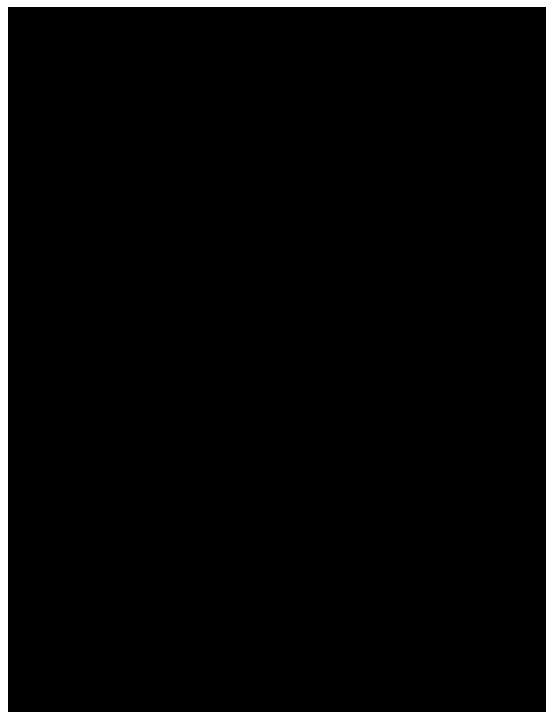
Q. That's dentists?

A. That's practices. Some of them had two or three dentists in them. I mean, the



Page 89

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Q. Okay. I think that's it for my questions for now. I do want to reserve the

Page 90

1 remainder of our time.

2 MR. LONG: Do the folks on the
3 phone have any questions?

4 MS. FINCHER: Yes, this is Lauren
5 Fincher. I have a few questions.

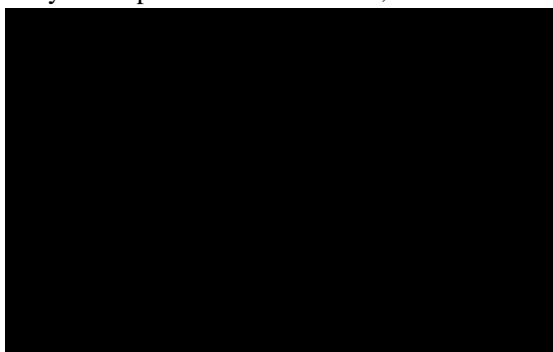
6
7 EXAMINATION

8 BY MS. FINCHER:

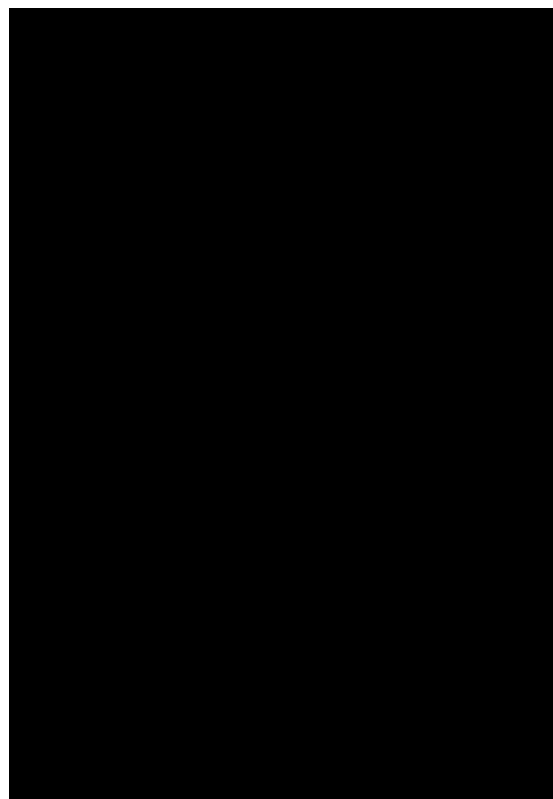
9 Q. Hi, Mr. Moody. My name is Lauren
10 Fincher. I represent Henry Schein. Can you
11 hear me okay?

12 A. I can. How are you?

13 Q. I'm doing well. Thank you. I'll
14 try to keep this short and sweet, too.



Page 91



Page 92



21 BY MS. FINCHER:

22 Q. And other -- let me ask you this:
23 Were you the primary person at Smile Source
24 who was responsible for the relationship
25 with Henry Schein?

Page 93

1 A. No, I was not. John Wallitschek
2 who's -- he's a dentist. He's the guy that
3 we spoke about in Arizona. He was the
4 president of the company from, you know, the
5 get-go.

6 And that was his -- one of his
7 responsibilities because he understood, you
8 know, because he had 12 offices, what people
9 were buying, how it worked, et cetera. It
10 was essentially a start-up; so he wore a
11 bunch of hats.

12 Q. So is it fair to say, Mr. Moody,
13 that you were not in charge of the
14 day-to-day relationship between Smile Source
15 and Henry Schein?

16 A. Yes, it is.

17 MS. MASTERS: Object to form.

18 THE WITNESS: It was one of my
19 responsibilities. It was just a
20 tertiary business for us. The reason we
21 partnered with those guys is so they
22 could run the business.

23 BY MS. FINCHER:

24 Q. Okay. No further questions from
25 me. Thank you.

Page 94

1 A. Thank you.
 2 MR. LONG: Carrie, do you have
 3 anything?
 4 MS. AMEZCUA: I have no questions.
 5 Thank you.
 6

7 FURTHER EXAMINATION
 8 BY MR. LONG:

9 Q. I just wanted to clear up one
 10 thing. When generally was, if you recall,
 11 the contract signed with Schein that you've
 12 been talking about?

13 A. Maybe 2007. I don't remember.

14 Q. Okay. At the point in time prior
 15 to signing that contract, you don't have any
 16 personal knowledge of contacts that Smile
 17 Source had with Patterson, do you?

18 A. I do not.

19 MR. LONG: Those are all the
 20 questions I have for you.

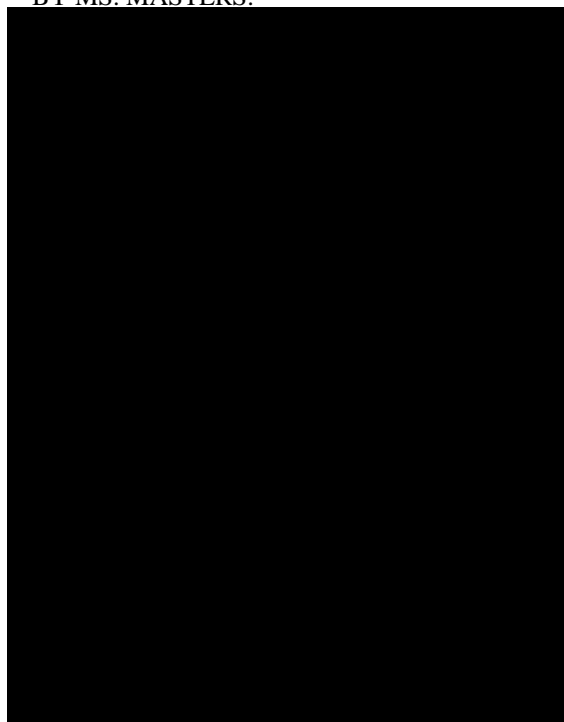
21 THE WITNESS: Thank you.

22 MS. MASTERS: Can I just take a
 23 quick break.

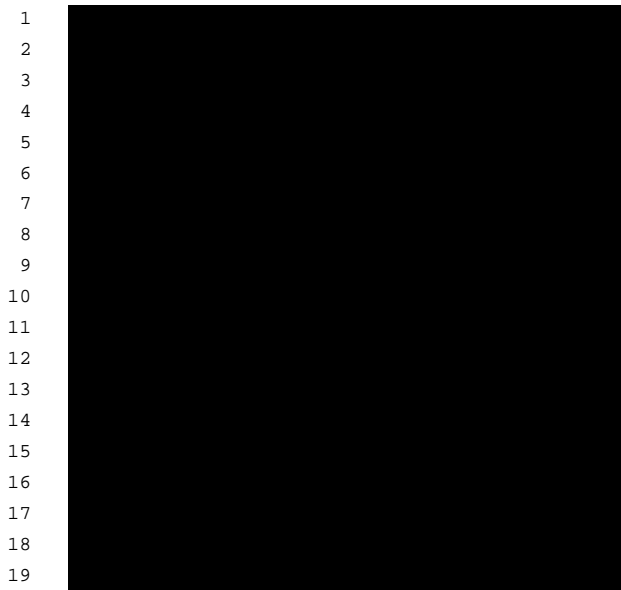
24 (Recess taken from 11:05 a.m.
 25 to 11:10 a.m.)

Page 95

1 FURTHER EXAMINATION
 2 BY MS. MASTERS:



Page 96



20 Q. Okay. I think that's it for me. I
 21 want to thank you very much for your time.

22 MR. LONG: I have nothing. Don't
 23 look at me.

24 MS. STAPLEY: Before we go off the
 25 record, we talked about some proprietary

Page 97

1 business information of Smile Source; so
 2 I'd like to make sure this is designated
 3 as confidential under the protective
 4 order.

5 MS. MASTERS: Absolutely.

6 MR. LONG: And what I would ask is
 7 we figure out the parts of it because
 8 the protective order restricts going to
 9 in-house counsel.

10 I think there's parts of this
 11 deposition that should be able to go to
 12 folks other than outside counsel.

13 MS. STAPLEY: Okay.

14 MR. LONG: But I understand there
 15 are portions that you have got
 16 confidentiality concerns on.

17 MS. STAPLEY: In the interim --

18 MR. LONG: In the interim, it's
 19 labeled confidential. There's no doubt
 20 about that.

21 MS. STAPLEY: Thank you.

22 MS. MASTERS: Thank you.

23 (Testimony continues on the
 24 following page in order to
 25 include jurat.)

1 MR. LONG: Thanks for your time,
2 Mr. Moody.
3 (Time noted: 11:12 a.m.)
4
5
6
7
8
9
10
11

12 _____
13 Tracy Moody
14

15 Subscribed and sworn to before me
16 this _____ day of _____, 2018.
17
18

19 _____
20 (Notary Public)
21

22 My Commission expires: _____
23
24
25

1 CERTIFICATE
2 STATE OF CALIFORNIA:
3

4 I, LISA MOSKOWITZ, CSR, RPR, CRR, CLR,
5 NCRA Realtime Systems Administrator,
6 Certified Shorthand Reporter, do hereby
7 certify:
8

9 That the witness whose deposition is
10 hereinbefore set forth was duly sworn, and
11 that such deposition is a true record of the
12 testimony given by such witness.

13 I further certify that I am not related
14 to any of the parties to this action by
15 blood or marriage, and that I am in no way
16 interested in the outcome of this matter.

17 IN WITNESS WHEREOF, I have hereunto set
18 my hand this 16th day of July, 2018.
19
20

21 _____
22 LISA MOSKOWITZ, CSR 10816, RPR, CRR, CLR
23 NCRA Realtime Systems Administrator
24
25

1 ----- I N D E X -----
2 WITNESS: EXAMINATION PAGE
3 TRACY MOODY

4 Mr. Long 5, 94
5 Ms. Masters 42, 95
6 Ms. Fincher 90
7
8
9

10 ----- E X H I B I T S -----
11 NUMBER MARKED
12 Exhibit 1 Franchise Disclosure 29
13 Document
14
15
16
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22
23
24
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1 NAME OF CASE:
2

3 DATE OF DEPOSITION:
4

5 NAME OF WITNESS:
6

7 Reason Codes:
8

1. To clarify the record.
2. To conform to the facts.
3. To correct transcription errors.

9 Page _____ Line _____ Reason _____
10

11 From _____ to _____
12

13 Page _____ Line _____ Reason _____
14

15 From _____ to _____
16

17 Page _____ Line _____ Reason _____
18

19 From _____ to _____
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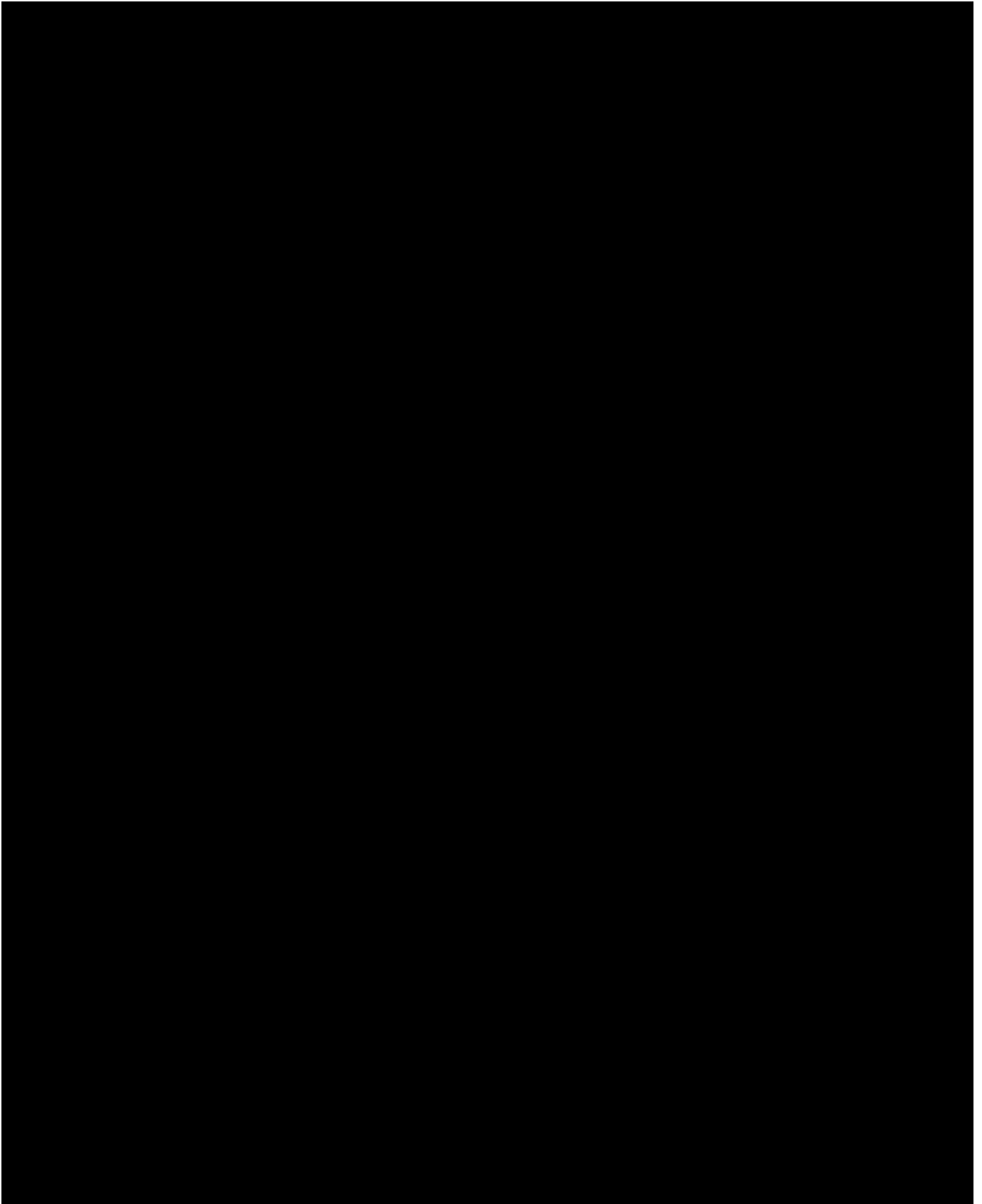
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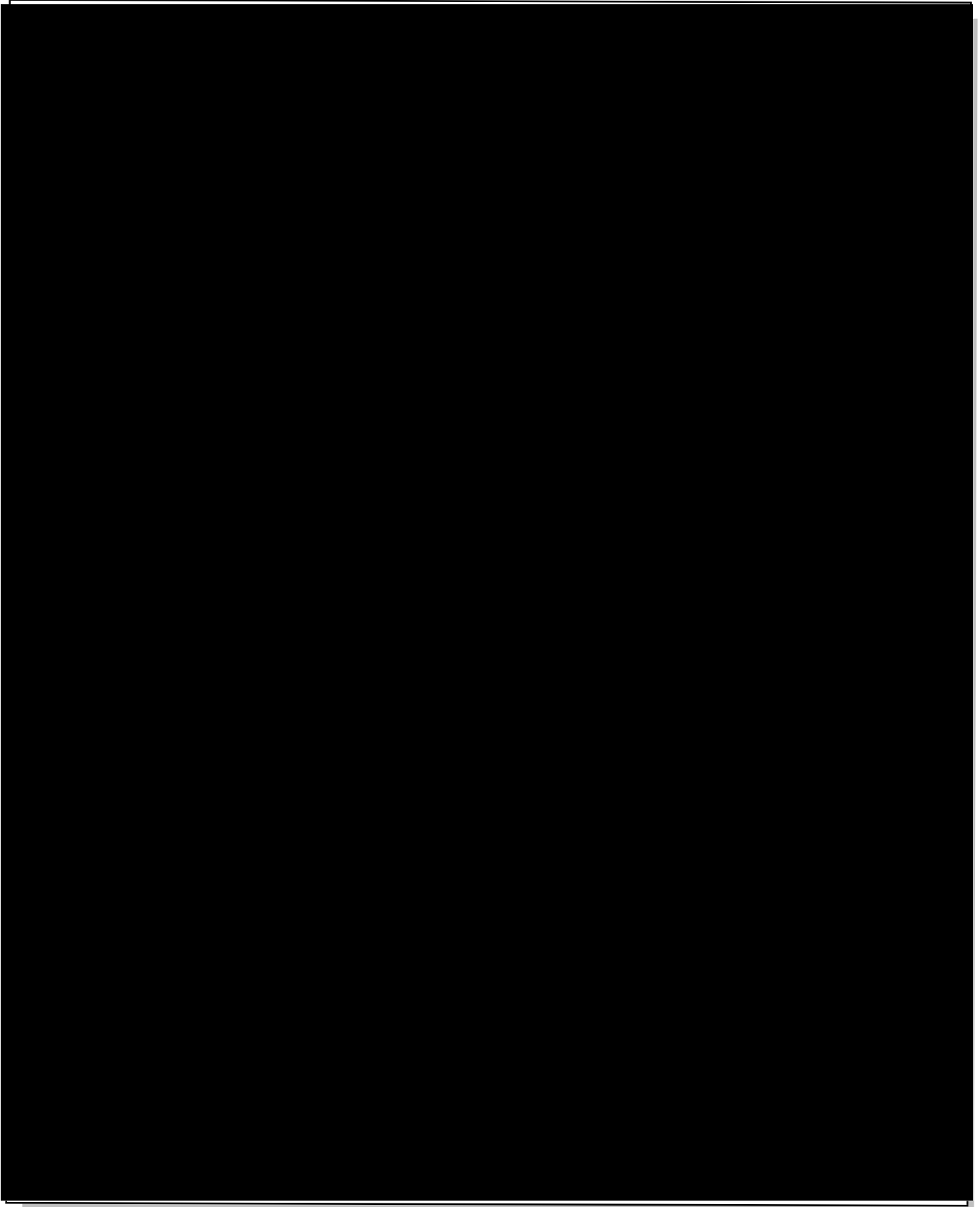
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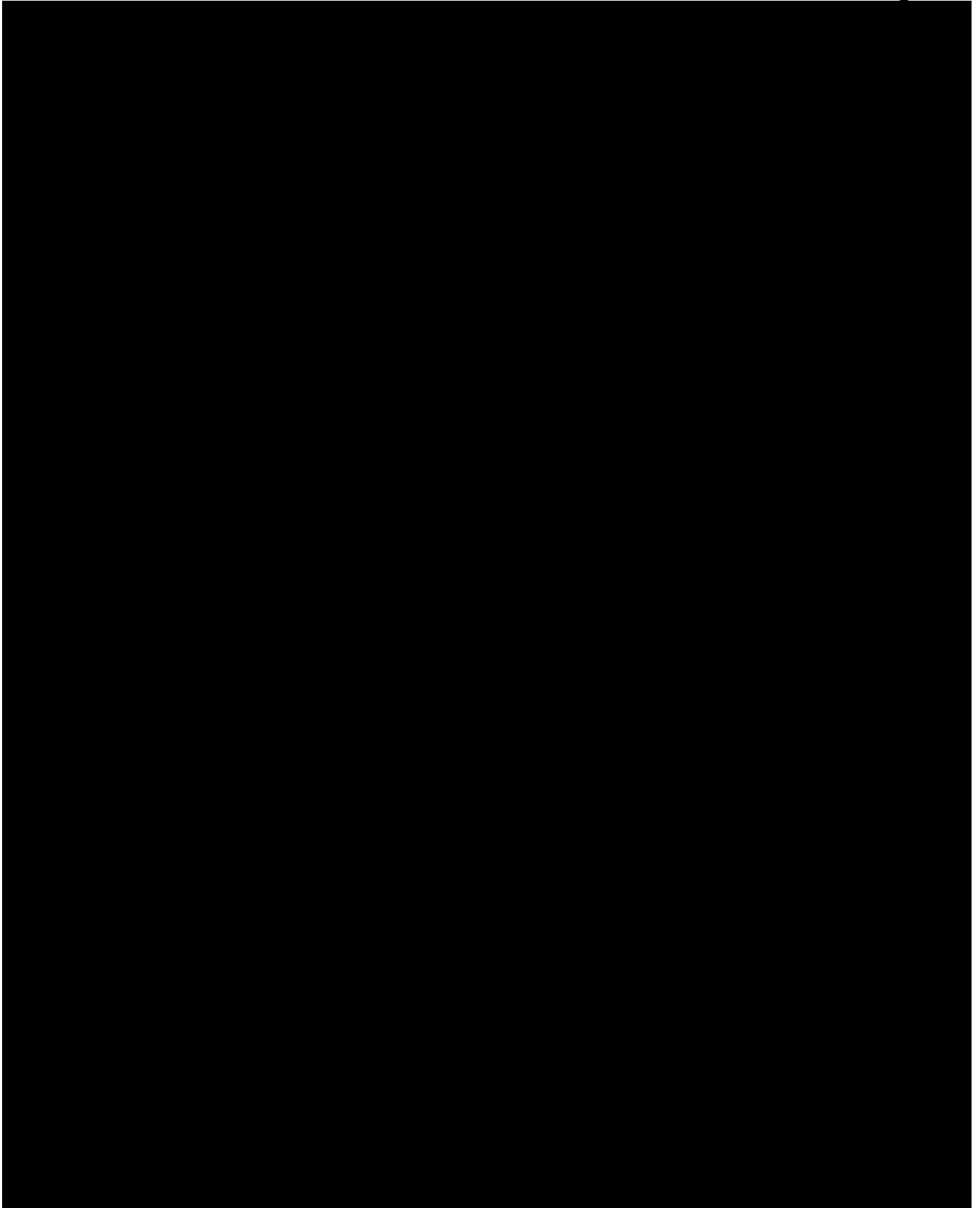
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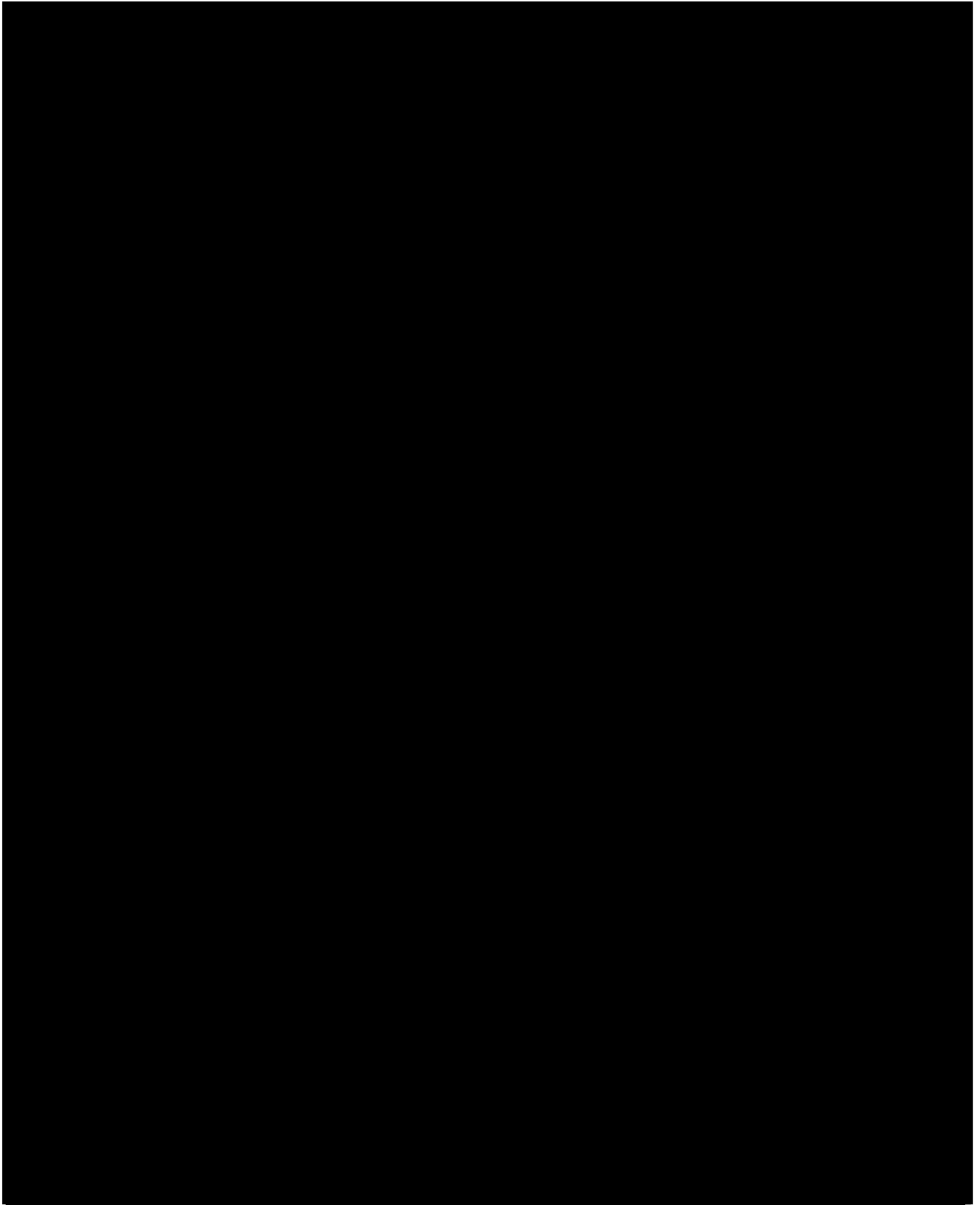
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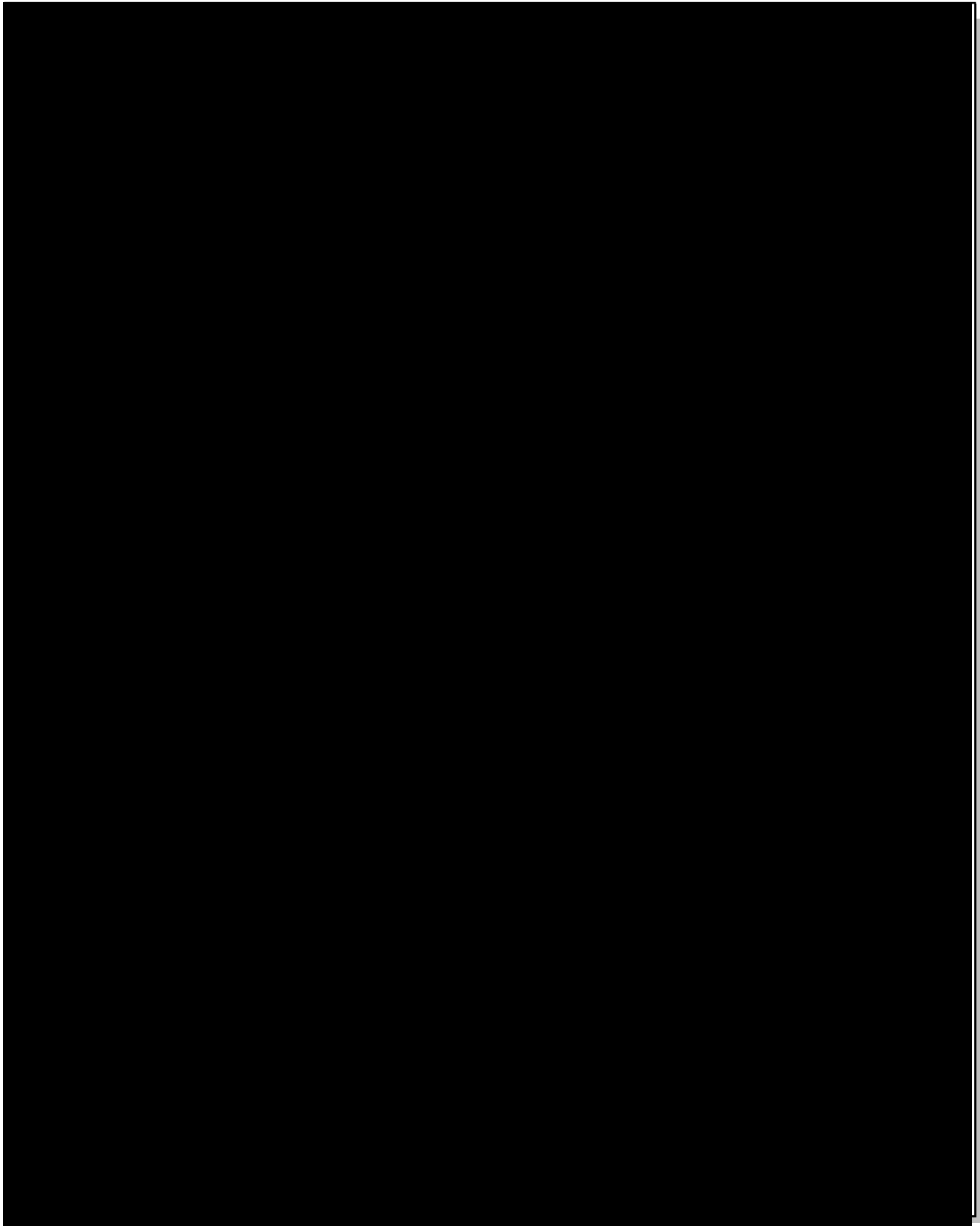
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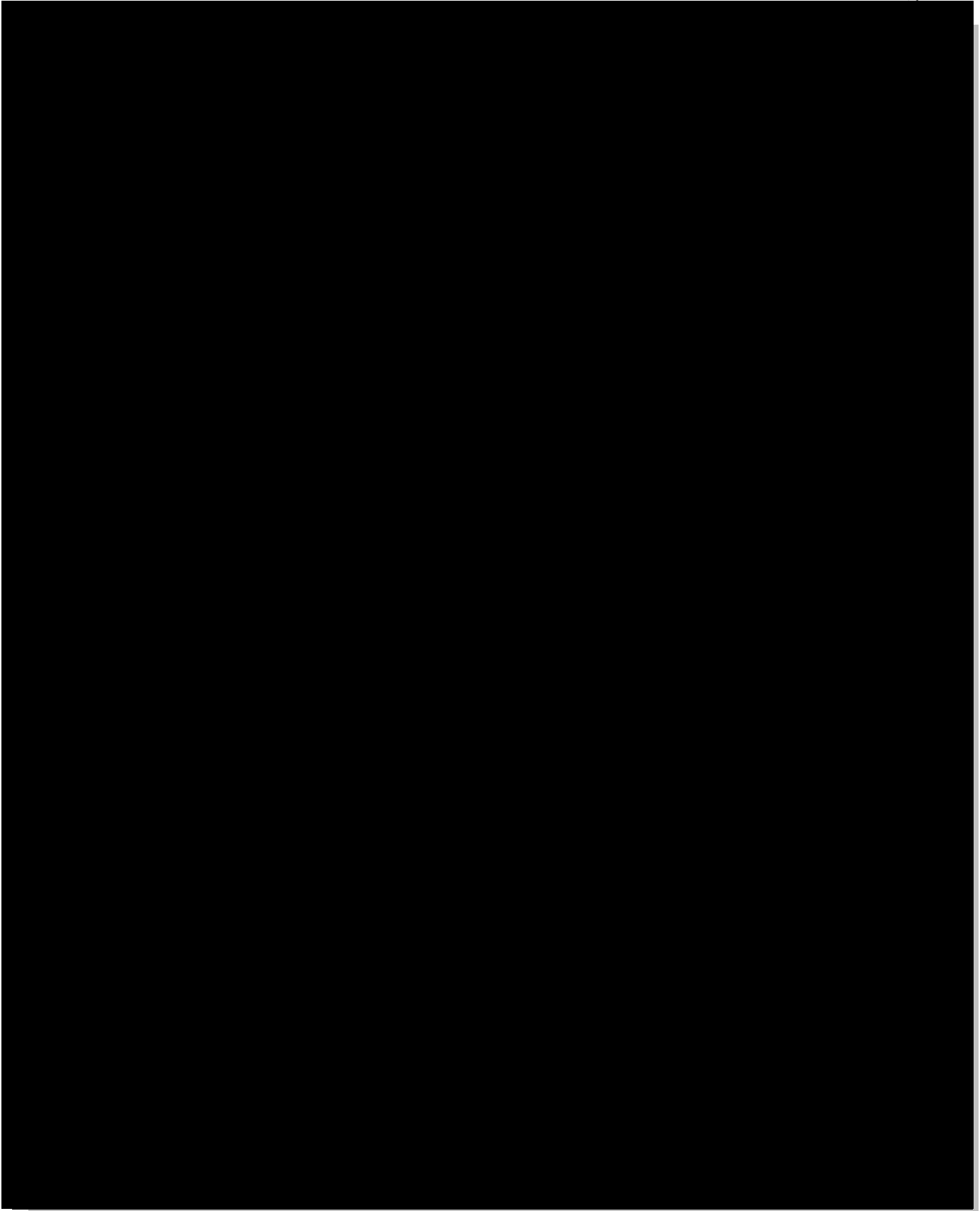
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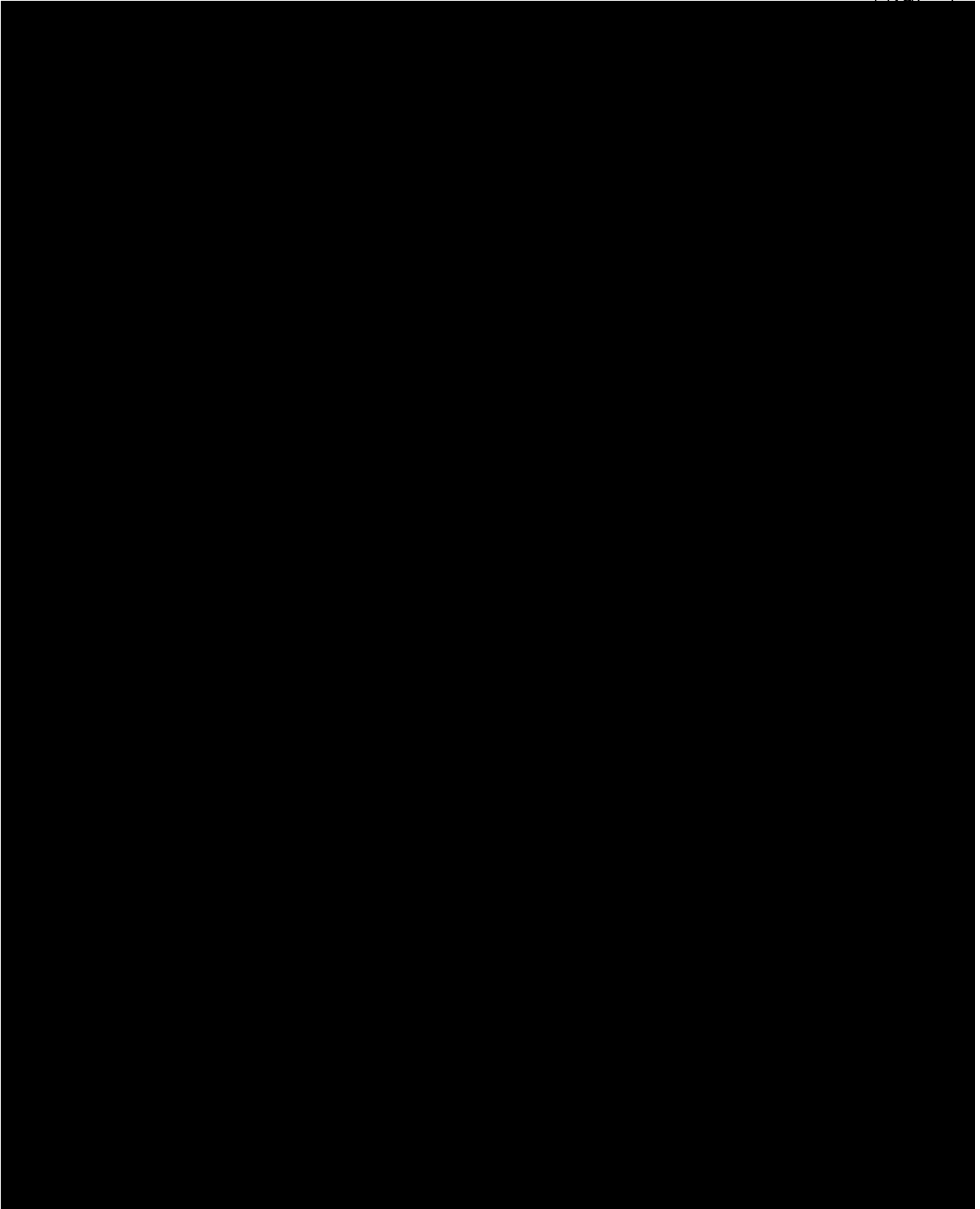
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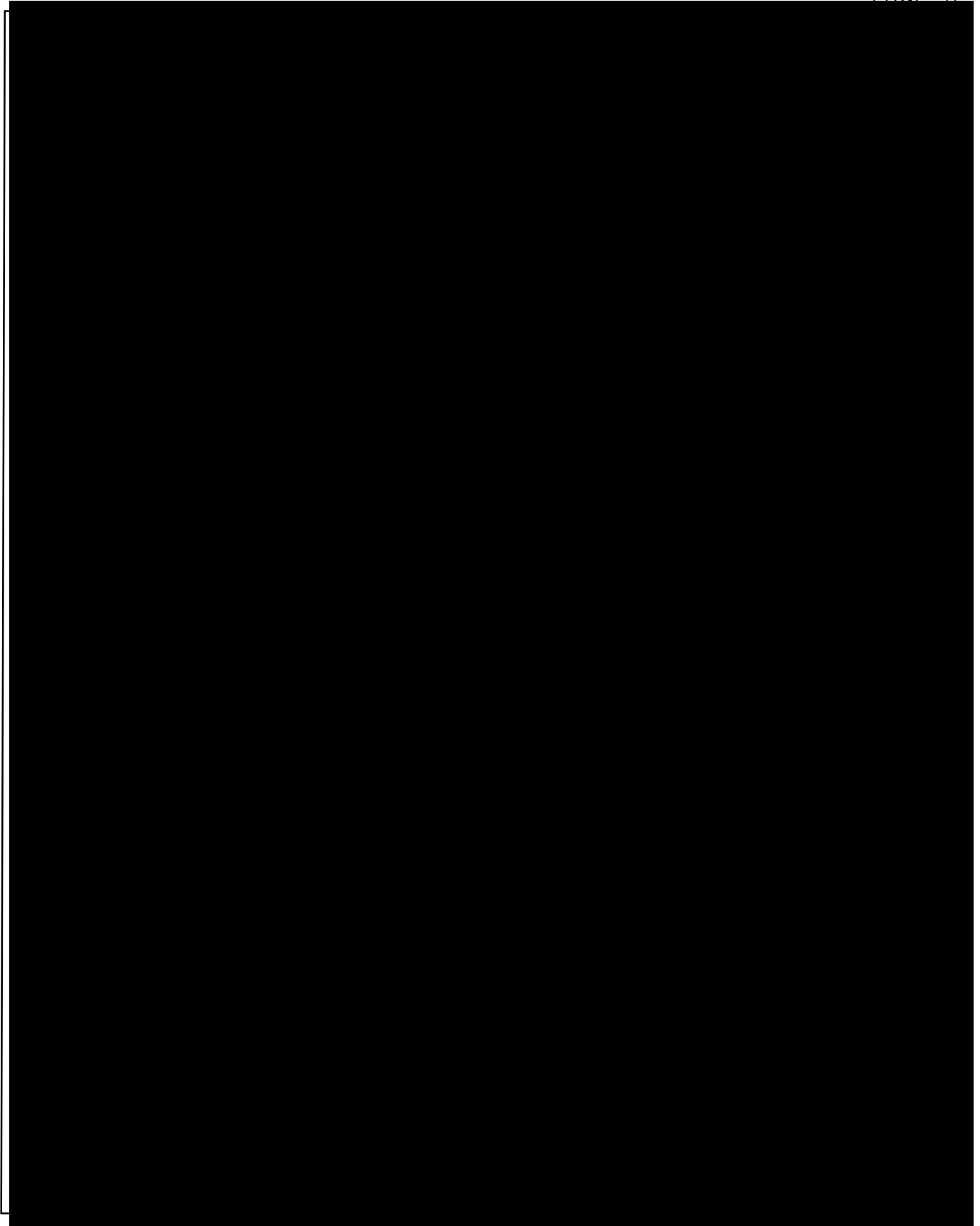
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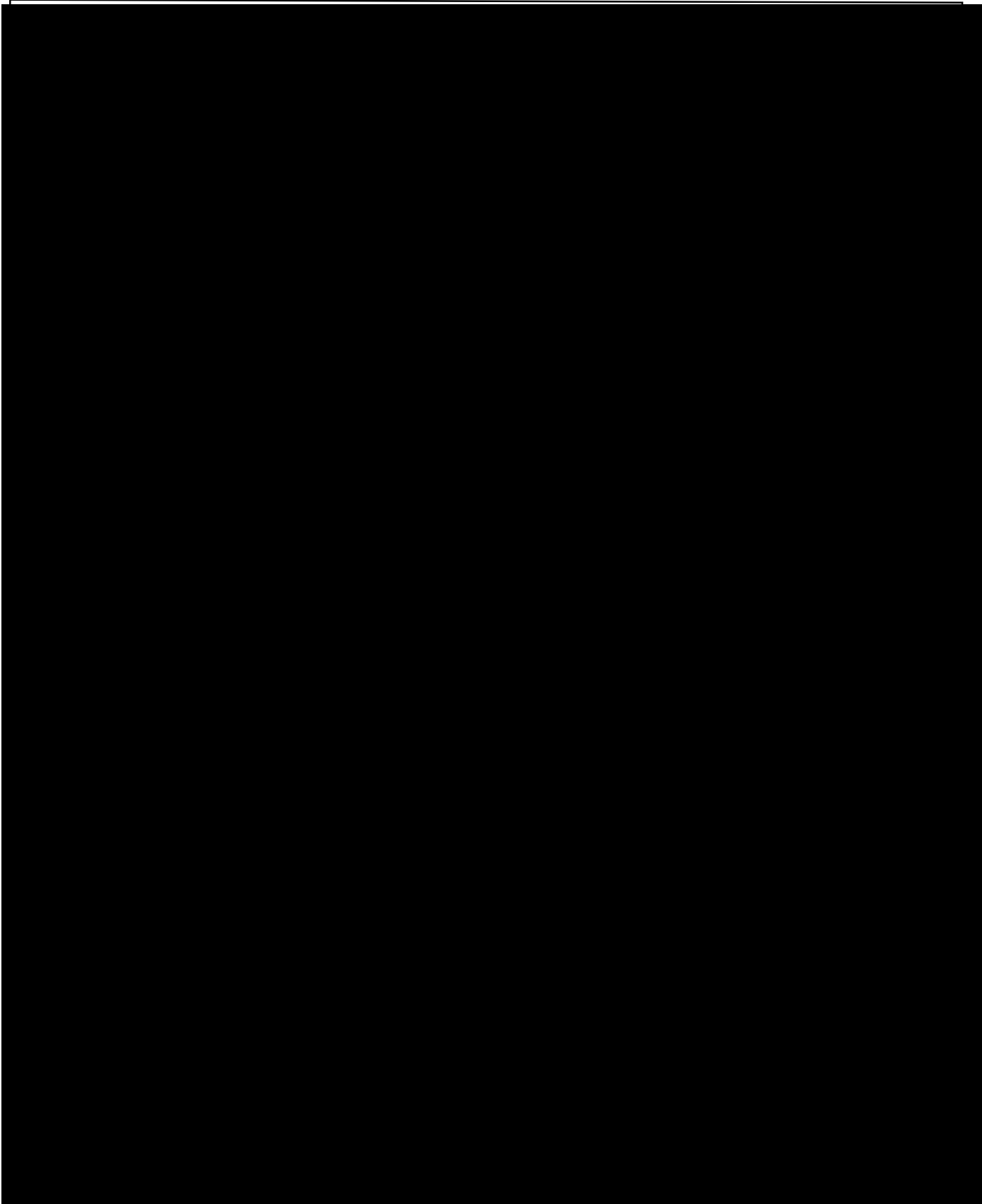
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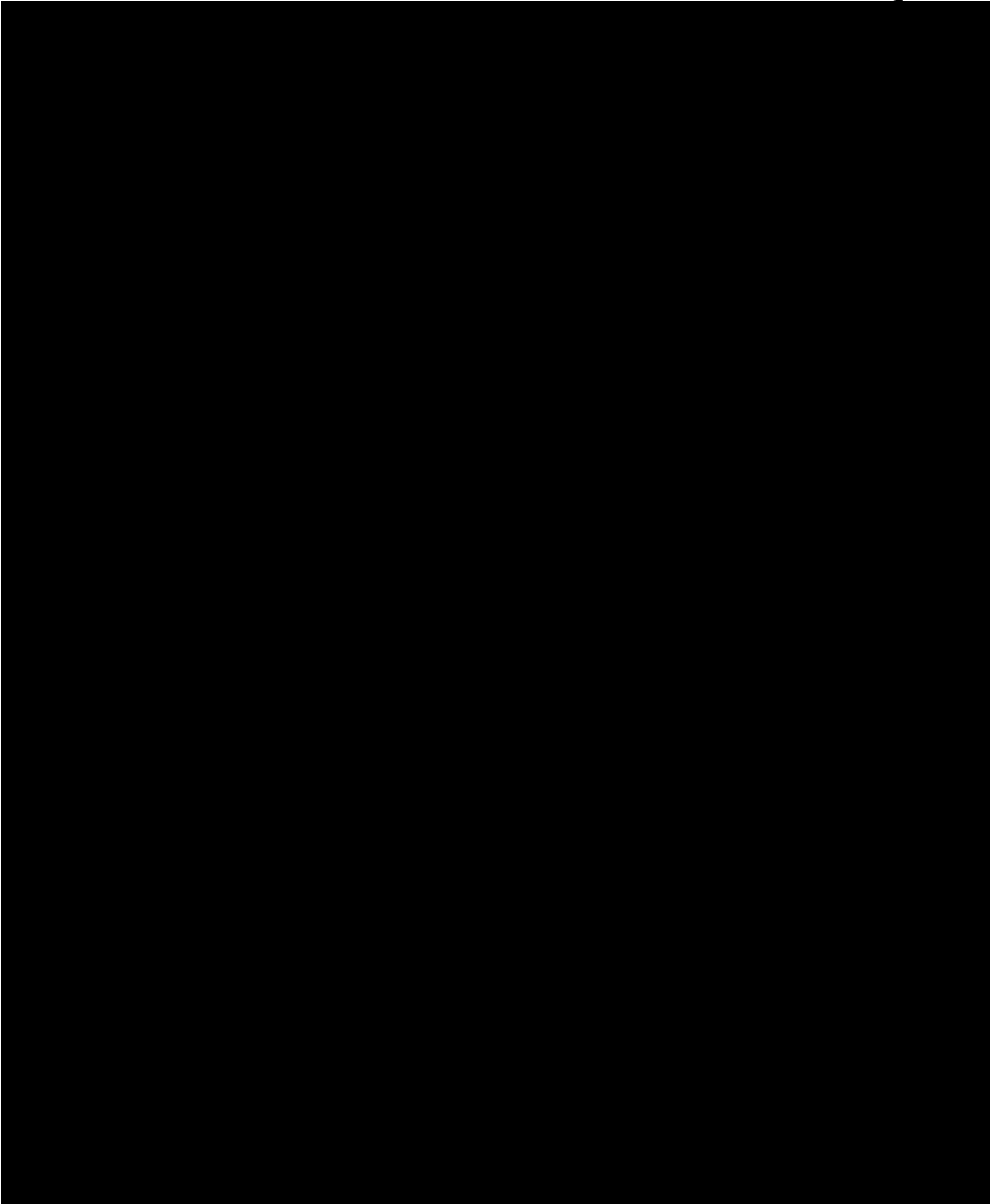
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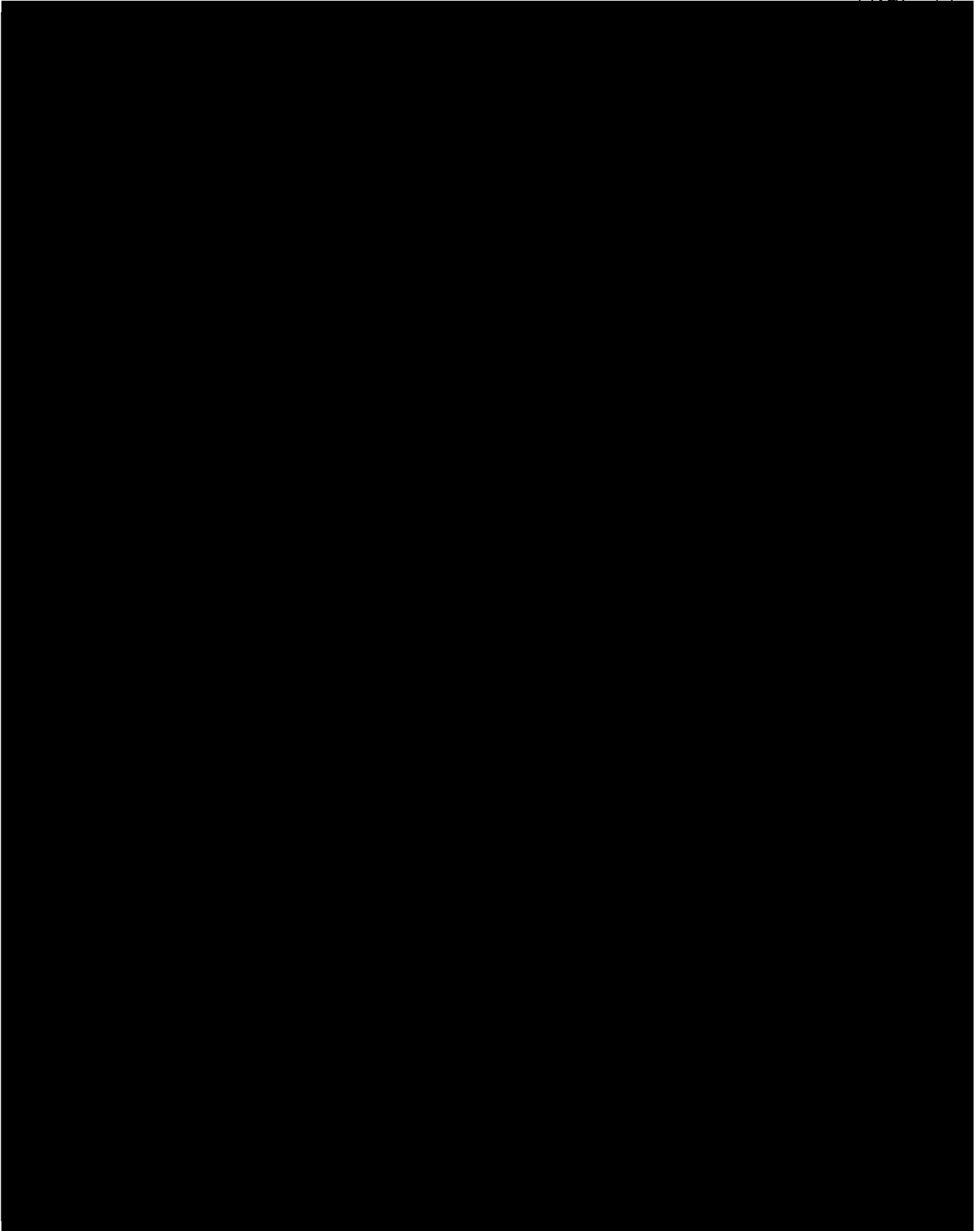
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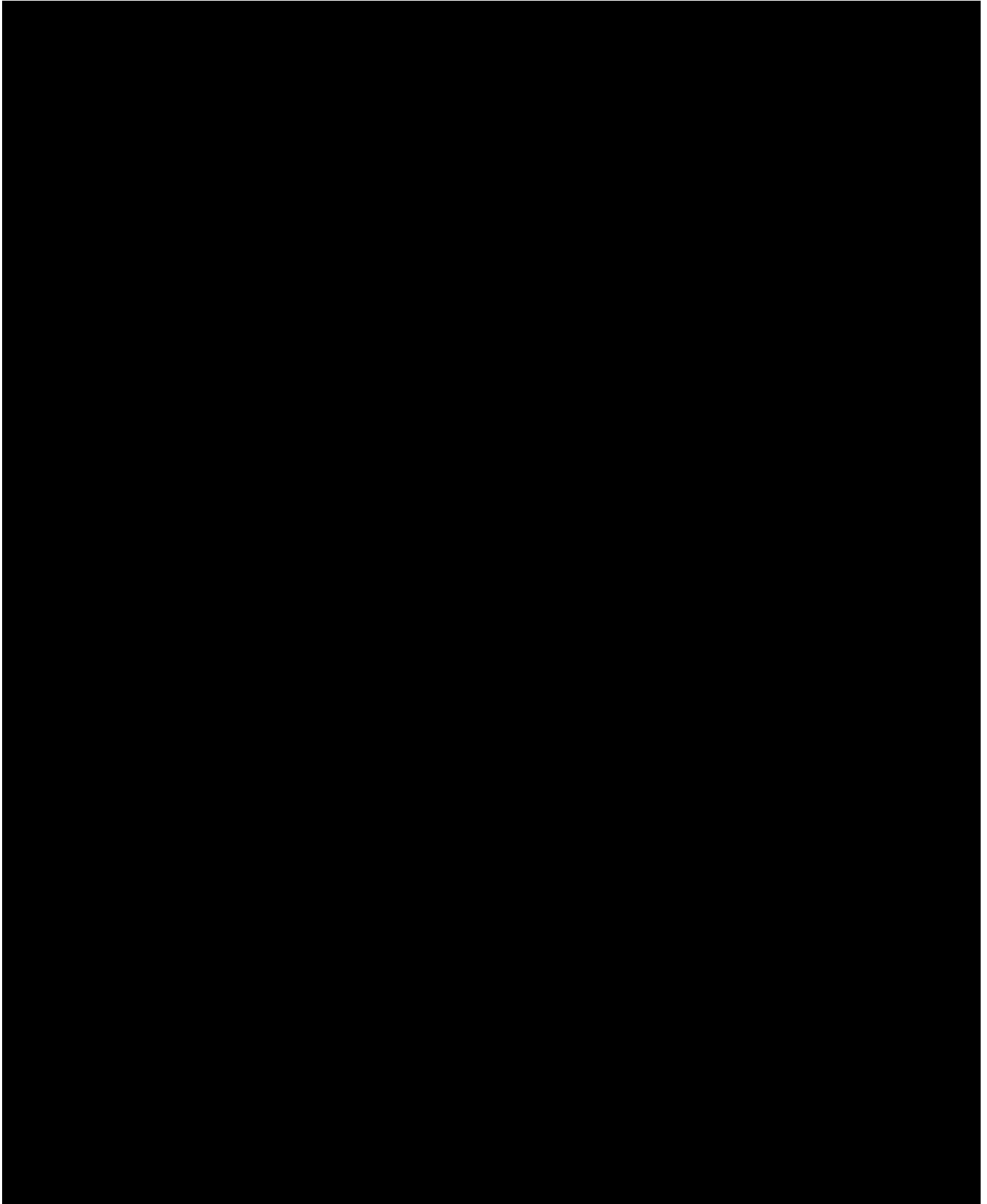
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Page 11



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Page 13

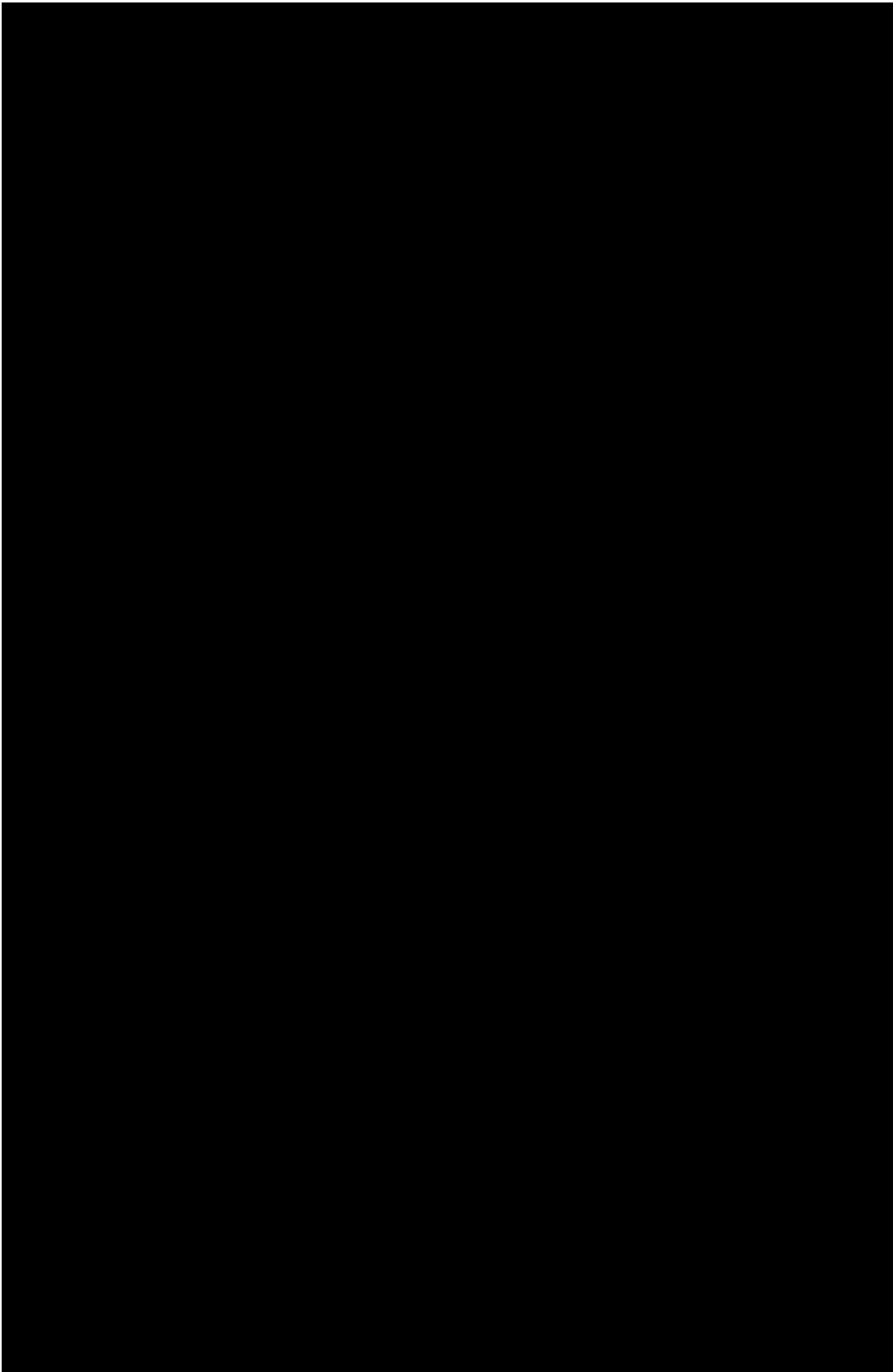


EXHIBIT CX8039
(and duplicate RX3051)

CONFIDENTIAL

Page 1

1 UNITED STATES OF AMERICA
2 BEFORE THE FEDERAL TRADE COMMISSION

3 ---oOo---

4
5 In the Matter of

6 BENCO DENTAL SUPPLY CO.,
a corporation,

7 HENRY SCHEIN, INC.,
8 a corporation, and

Docket No. 9379

9 PATTERSON COMPANIES, INC.,
a corporation

10 _____/

11
12
13 CONFIDENTIAL

14
15
16 DEPOSITION OF ANDREW GOLDSMITH, D.D.S.

17 SAN FRANCISCO, CALIFORNIA

18 MONDAY, JULY 30, 2018

19
20
21
22 BY: ANDREA M. IGNACIO, CSR, RPR, CRR, CCRR, CLR ~

23 CSR LICENSE NO. 9830

24 JOB NO. 145365

CONFIDENTIAL

<p style="text-align: right;">Page 2</p> <p>1 UNITED STATES OF AMERICA 2 BEFORE THE FEDERAL TRADE COMMISSION 3 ---oOo---</p> <p>4</p> <p>5 In the Matter of 6 BENCO DENTAL SUPPLY CO., 7 a corporation,</p> <p>8 HENRY SCHEIN, INC., Docket No. 9379 9 a corporation, and 10 PATTERSON COMPANIES, INC., 11 a corporation 12 _____/</p> <p>13</p> <p>14 Deposition of Andrew Goldsmith, D.D.S., 15 taken on behalf of Henry Schein, Inc., on Monday, 16 July 30, 2018, at Locke Lord, 101 Montgomery 17 Street, San Francisco, California, beginning 18 8:44 a.m., and ending at 3:12 p.m., Pursuant to 19 Notice, and before me, ANDREA M. IGNACIO, CSR, RPR, 20 CRR, CLR ~ License No. 9830. 21 22 23 24 25</p>	<p style="text-align: right;">Page 3</p> <p>1 A P P E A R A N C E S: 2 3 4</p> <p>5 FOR THE FEDERAL TRADE COMMISSION: 6 FEDERAL TRADE COMMISSION 7 By: LIN KAHN, Esq. 8 KAREN GOFF, Esq. 9 901 Market Street 10 San Francisco, CA 94103 11 12</p> <p>13</p> <p>14 FOR HENRY SCHEIN, INC.: 15 PROSKAUER ROSE 16 By: COLIN KASS, Esq. 17 1001 Pennsylvania Avenue Northwest 18 Washington, DC 20004 19 20 21 22 23 24 25</p>
<p style="text-align: right;">Page 4</p> <p>1 A P P E A R A N C E S: (Cont.) 2 3 4</p> <p>5 FOR BENCO DENTAL SUPPLY COMPANY: 6 BUCHANAN INGERSOLL & ROONEY 7 By: KENNETH RACOWSKI, Esq. 8 Two Liberty Place 9 50 South 16th Street 10 Philadelphia, PA 19102 11 12</p> <p>13</p> <p>14 FOR PATTERSON COMPANIES, INC.: 15 BAKER BOTTS 16 By: WILLIAM LAVERY, Esq. (Via telecon) 17 1299 Pennsylvania Avenue Northwest 18 Washington, DC 20004 19 20 ---oOo--- 21 22 23 24 25</p>	<p style="text-align: right;">Page 5</p> <p>1 SAN FRANCISCO, CALIFORNIA 2 MONDAY, JULY 30, 2018 3 8:44 A.M. 4</p> <p>5</p> <p>6</p> <p>7 ANDREW GOLDSMITH, 8 having been sworn as a witness 9 by the Certified Shorthand Reporter, 10 testified as follows: 11</p> <p>12 EXAMINATION</p> <p>13 BY MR. KASS:</p> <p>14 Q Good morning, Dr. Goldsmith. 15 A Good morning. 16 Q Can you please state your name for the 17 record? 18 A Andrew Goldsmith. 19 Q And where do you reside? 20 A Houston, Texas. 21 Q And what's your current occupation? 22 A Dentist. 23 Q And at some point you were employed by Smile 24 Source? 25 A Correct.</p>

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Page 6	Page 7
<p>1 Q When was that?</p> <p>2 A 2011 to 2015.</p> <p>3 Q And what was your position when you joined</p> <p>4 Smile Source?</p> <p>5 A I -- initially, I was president.</p> <p>6 Q And who did you report to, if anyone, at</p> <p>7 Smile Source?</p> <p>8 A I reported to Glenn Ellisor.</p> <p>9 Q Who is that?</p> <p>10 A He was the CEO.</p> <p>11 Q Did he remain CEO throughout your tenure?</p> <p>12 A Throughout my tenure, yes.</p> <p>13 Q Okay. And where were your offices?</p> <p>14 A Kingwood, Texas.</p> <p>15 Q Is that where Smile Source is based?</p> <p>16 A Yes.</p> <p>17 Q When you joined Smile Source in 2011, how</p> <p>18 many member practices did Smile Source have?</p> <p>19 A Roughly, 20.</p> <p>20 Q And when did you leave Smile Source?</p> <p>21 A January 2015.</p> <p>22 Q Okay. And how many practices did Smile</p> <p>23 Source have when you left?</p> <p>24 A Over 200. I don't recall the exact number.</p> <p>25 Q So Smile Source went from approximately 20</p>	<p>1 member practices to over 200 practices in the four</p> <p>2 years that you were --</p> <p>3 A Yes.</p> <p>4 Q -- at Smile Source?</p> <p>5 MS. KAHN: Objection; form.</p> <p>6 MR. KASS: Okay.</p> <p>7 Q And what was your position prior to joining</p> <p>8 Smile Source? What was your occupation?</p> <p>9 A Dentist.</p> <p>10 Q Okay. Did you have any other roles, other</p> <p>11 than dentist?</p> <p>12 So you --</p> <p>13 A I don't understand the question.</p> <p>14 Q So you were a dentist, and then you became</p> <p>15 president of Smile Source.</p> <p>16 Did you have any other -- I mean, that --</p> <p>17 that seems like a little bit of a disconnect. So I'm</p> <p>18 trying to understand what -- what -- what your</p> <p>19 qualifications were, what roles you had --</p> <p>20 A Got you.</p> <p>21 Q -- leading up to becoming president --</p> <p>22 MS. KAHN: Objection --</p> <p>23 MR. KASS: Q. -- of Smile Source.</p> <p>24 MS. KAHN: Objection; form.</p> <p>25 THE WITNESS: I was -- I was also a business</p>
Page 8	Page 9
<p>1 owner and had multiple businesses.</p> <p>2 MR. KASS: Okay.</p> <p>3 Q And what types of businesses were those?</p> <p>4 A I owned a barbershop, and I also owned -- or</p> <p>5 started a financial services company.</p> <p>6 Q What was the nature of the financial services</p> <p>7 company?</p> <p>8 A Life insurance.</p> <p>9 Q And how did you -- how did you become</p> <p>10 involved with Smile Source?</p> <p>11 Did you apply?</p> <p>12 Did you -- did --</p> <p>13 MS. KAHN: Objection; form.</p> <p>14 THE WITNESS: My dental practice was a member</p> <p>15 practice of Smile Source.</p> <p>16 MR. KASS: Okay.</p> <p>17 Q And did your member prac- -- your dental</p> <p>18 practice, did that have any leadership roles within</p> <p>19 Smile Source at the time?</p> <p>20 A It did not.</p> <p>21 MS. KAHN: Objection; form.</p> <p>22 MR. KASS: Q. What -- what drew you towards</p> <p>23 taking a position at Smile Source?</p> <p>24 A It was a great opportunity at the time.</p> <p>25 Q Okay. Okay.</p>	<p>1 When you joined Smile Source, were you --</p> <p>2 were there any particular goals that you had in mind</p> <p>3 for the -- for the organization?</p> <p>4 A To continue to grow the organization as large</p> <p>5 as possible.</p> <p>6 Q And was that -- was that a goal that you came</p> <p>7 up with, or did you reach that goal in consultation</p> <p>8 with Glenn Ellisor, or anybody else?</p> <p>9 A I believe it was in consultation with other</p> <p>10 people.</p> <p>11 Q Who -- who are these other people?</p> <p>12 A I'd say Glenn Ellisor, as well as our Board</p> <p>13 of Directors.</p> <p>14 Q Who was on the Board of Directors at the time</p> <p>15 that you joined Smile Source?</p> <p>16 A Glenn Ellisor. I don't recall all the names.</p> <p>17 Jeff Fronterhouse. I don't recall all the names.</p> <p>18 Q Okay. And so you said you joined as</p> <p>19 president of Smile Source in 2011.</p> <p>20 How long did you hold that position?</p> <p>21 A I don't recall exactly. I believe it was</p> <p>22 roughly two years.</p> <p>23 Q Okay. And then what was your position</p> <p>24 after -- so that would have brought you to about 2013?</p> <p>25 Is that about right?</p>

3 (Pages 6 to 9)

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Page 10

Page 11

1 A Correct.
 2 Q Okay. In 2013, what was your position at
 3 Smile Source?
 4 A Chief dental officer.
 5 Q And what were your responsibilities as chief
 6 dental officer?
 7 A Pretty extensive. We were still a small
 8 company, so I wore multiple hats. So I was in charge
 9 of vendor relations. I was in charge of education for
 10 the members. I was in charge of our annual meeting,
 11 vendor support.
 12 Q Okay. Any other responsibilities that you
 13 can think of as chief dental officer of Smile Source?
 14 A I reported directly to the CEO. I had to --
 15 I gave weekly reports, monitored dental practice
 16 revenues, dental practice expenditures. I was sort of
 17 a watchdog for all the dental practices.
 18 Q What do you mean by "a watchdog for all the
 19 dental practices"?
 20 A One of my responsibilities was making sure
 21 that they were in compliance with federal laws, state
 22 laws. [REDACTED]
 23 [REDACTED]
 24 [REDACTED]
 25 [REDACTED]

1 [REDACTED]
 2 [REDACTED]
 3 [REDACTED]
 4 [REDACTED]
 5 [REDACTED]
 6 [REDACTED]
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Page 13

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 12 [REDACTED]
 13 [REDACTED]
 14 [REDACTED]
 15 [REDACTED]
 16 [REDACTED]
 17 MR. KASS: Okay. I'm going to hand you what
 18 I'm marking as Exhibit 1.
 19 (Document marked Exhibit 1
 20 for identification.)
 21 THE WITNESS: Thank you.
 22 MR. KASS: Okay.
 23 Q Let me know when you've had a chance to read
 24 it.
 25 A (Witness reading document.)

1 MS. KAHN: Counsel, do you want to
 2 de-designate the "Confidentiality" designation on
 3 here, since Dr. Goldsmith is not on this e-mail?
 4 MR. KASS: Well, he's referenced in this
 5 e-mail.
 6 MS. KAHN: Right.
 7 But per the -- per the protective order, you
 8 can only show him documents if it's not confidential
 9 or if he received it. So your call on what you want
 10 to do there.
 11 MR. KASS: First, I'll ask the witness if
 12 he's seen this -- this document before.
 13 THE WITNESS: I have not seen this document
 14 before.
 15 MR. KASS: Okay. Okay.
 16 Q So who is -- so you said Glenn -- Glenn
 17 Ellisor, he's the CEO?
 18 A Correct.
 19 MS. KAHN: Counsel, let me just interject.
 20 Are you going to de-designate?
 21 MR. KASS: I'll -- we can -- you can send a
 22 letter offline, and we can adjust that at that time.
 23 MS. KAHN: Okay. So just for the record,
 24 it's a violation of the protective order.
 25 MR. KASS: I -- I disagree with that. This

4 (Pages 10 to 13)

CONFIDENTIAL

Page 14	Page 15
<p>1 is a Henry Schein document, and I'm perfectly allowed 2 to show him a Henry Schein document if I choose. 3 MS. KAHN: Yeah, you're allowed to 4 de-designate, if you choose. 5 MR. KASS: Well, I'm allowed to show him a 6 document if I choose. That's -- so that's what I'm 7 going to do. 8 Q This -- so this is a doc- -- an e-mail from 9 Glenn Ellisor. 10 Who is Glenn Ellisor? 11 A At the time, he was CEO of Smile Source. 12 Q Okay. And who is Tim Sullivan? 13 A The president of Henry Schein Dental. 14 Q Have you ever met with Tim Sullivan? 15 A Yes. 16 Q How many times have you met with Tim 17 Sullivan? 18 MS. KAHN: Objection; form. 19 THE WITNESS: I don't recall exactly. I 20 believe twice. 21 MR. KASS: Okay. 22 Q When was the first time you met with him? 23 A I believe the first time I met with him was 24 in Milwaukee, 2014. 25 Q And the second time you met with him?</p>	<p>1 A I believe it was at a Greater New York Dental 2 Meeting, probably the same year. 3 Q Okay. So you -- you didn't meet with him in 4 the 2011 -- 2000 time -- 2012 time frame? 5 MS. KAHN: Objection; vague. 6 THE WITNESS: I don't recall exactly. 7 MR. KASS: Okay. 8 Q This e-mail also CCs John Chatham. 9 Do you -- do you know who he is? 10 A Yes, I do. 11 Q Who is he? 12 A He's a vice president at Henry Schein, but 13 I'm not sure of his position. 14 Q And have you -- have you met him personally? 15 A Yes. 16 Q How many times have you met him? 17 A Probably, if I recall correctly, four times. 18 Q Okay. When was the first time you met him? 19 A 2011. 20 Q What time? When in 2011? 21 A It was at an American Dental Association 22 meeting. 23 Q And was that before you became president of 24 Smile Source or after? 25 A After.</p>
Page 16	Page 17
<p>1 Q Okay. And what did you talk about then? 2 A It was more of an introduction. We talked a 3 little bit about the -- the vision and the plan to 4 grow Smile Source. I remember Mr. Chatham giving us 5 sales reports and sort of -- really just sort of 6 discussing the -- the partnership in light detail. 7 Nothing of substance. 8 Q How long was that meeting? 9 A Roughly an hour. 10 Q And that took place at an ADA meeting? 11 A Yes. 12 Q Okay. And then when was the next time you 13 met John Chatham? 14 A I don't recall. 15 Q Okay. Was it -- can you give me some sort of 16 time frame? 17 Was it 2011? 2012? '13? '14? 18 MS. KAHN: Objection; form; calls for 19 speculation. 20 THE WITNESS: Yeah, I don't recall exactly. 21 I would say it probably was at least a year later. 22 MR. KASS: Okay. 23 Q Was Henry Schein an approved vendor at the 24 time that you met Mr. Chatham -- 25 A Yes.</p>	<p>1 Q -- for the second time? 2 MS. KAHN: Objection; form; vague; calls for 3 speculation. 4 THE WITNESS: I don't recall. 5 MR. KASS: Okay. 6 Q And then when was the third time that you met 7 him? 8 A I would have to say it was probably when I 9 went to Milwaukee and also saw Tim Sullivan. 10 Q And that would have been in 2014 at some 11 point? 12 A Yes. 13 Q Okay. And when was the fourth time you met 14 him? 15 Or did you meet him again after the -- 16 A Yeah, I -- I saw him at another meeting. I 17 don't recall exactly where. 18 Q Okay. And when was it? Do you recall when 19 that was? 20 A No, I do not. 21 Q Okay. Now, the second paragraph of the 22 e-mail says: 23 "Our new president, Dr. Andrew Goldsmith, 24 recently sold his practice in Colorado, and along with 25 his family, moved to Texas in early August to join our</p>

CONFIDENTIAL

Page 18	Page 19
<p>1 executive team in Kingwood." 2 Do you see that? 3 A Yes. 4 Q So did you join Smile Source sometime in 5 August of 2011? 6 A I joined -- yes, I joined the executive team, 7 yeah. 8 Q Okay. And did you join as president when 9 you -- when it says "joined our executive team"? 10 A Yes. 11 Q It was -- so in August of 2011, that's when 12 you joined Smile -- Smile Source as president? 13 A Yes. 14 Q Okay. In the paragraph above, it says -- in 15 the fifth sentence, it says: 16 [REDACTED] 17 [REDACTED] 18 [REDACTED] 19 [REDACTED] 20 [REDACTED] 21 [REDACTED] 22 [REDACTED] 23 [REDACTED] 24 [REDACTED] 25 [REDACTED]</p>	<p>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]</p>
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CONFIDENTIAL

Page 22	Page 23
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7 (Pages 22 to 25)

CONFIDENTIAL

Page 26	Page 27
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8 (Pages 26 to 29)

CONFIDENTIAL

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9 (Pages 30 to 33)

CONFIDENTIAL

Page 34

1 following this e-mail?

2 MS. KAHN: Objection; form.

3 MR. KASS: Q. Or did you arrange to meet
4 with him?

5 MS. KAHN: Objection; form; foundation.

6 The witness has not seen this document
7 before.

8 THE WITNESS: After -- yeah, after 2000 --
9 after September 1st, 2011, which is indicated on the
10 e-mail, after that date, yes, I did meet with John
11 Chatham.

12 MR. KASS: Okay.

13 Q And at that meeting with John Chatham that --
14 you said you met with him at the ADA meeting in 2011.

15 Was that a prearranged meeting?

16 A As best I can recall, yes.

17 Q And did you ask for that meeting, or did he
18 ask for that meeting?

19 A I do not recall.

Page 35

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6 Q Okay. Did you have any discussions about the
7 relationship between Henry Schein and Smile Source?

8 A I don't recall.

9 Q Okay. So other -- putting aside -- so at
10 that meeting, you don't recall any discussions
11 involving the relationship between Smile Source and
12 Henry Schein --

13 MS. KAHN: Object --

14 MR. KASS: Q. -- is that right?

15 MS. KAHN: Objection; vague.

16 THE WITNESS: I -- I don't recall the -- the
17 content or the --

18 MR. KASS: Okay.

19 THE WITNESS: -- substance.

20 MR. KASS: Q. Do you recall any further
21 subsequent discussions -- well, let me step back.
22 Was that the first substantive discussion
23 that you had with somebody from Henry Schein, about
24 the relationship between Smile Source and Henry
25 Schein?

Page 36

1 MS. KAHN: Objection; vague.

2 THE WITNESS: It was the first discussion I
3 had live with anyone from Henry Schein.

4 MR. KASS: Okay.

5 Q You had some telephone conversations before
6 that?

7 A I do not recall.

8 Q Okay. Do you recall anything substantive
9 that you discussed, prior to your meeting with John
10 Chatham at the ADA in 2011?

11 MS. KAHN: Objection; vague.

12 THE WITNESS: I do not recall.

13 MR. KASS: Okay.

14 Q So after you met with John Chatham at the ADA
15 in 2011, did you have further conversations with Henry
16 Schein?

17 A Yes.

18 Q Okay. And in 2011 -- further conversations
19 in 2011?

20 A Yes.

21 Q Okay. And who did you have those
22 conversations with?

23 A There was another person that we had
24 conversations with. I don't remember his name. It
25 wasn't John. John was sort of the -- the director of

Page 37

1 the program. But I don't remember exactly who it was
2 that we were talking to.

3 Q Could it have been Kevin Burniston?

4 A That sounds familiar.

5 Q Okay. And do you recall what you and Ken --
6 or you and this other person from Henry Schein --
7 well, let me -- let me step back.

8 Was it Kevin Burniston?

9 So if I say Kevin Burniston, is that who it
10 was, or do you still have uncertainty as to who it
11 was?

12 A The name sounds familiar. I don't recall
13 extensive conversations, primarily because when I
14 initially started at Smile Source, I was trying to get
15 my arms around the whole business model and what we
16 were doing. So some of these initial conversations
17 that occurred in this time frame were with -- between
18 other people on our team.

19 Q Okay. So you had -- so who else at Smile
20 Source was having conversations with people at Henry
21 Schein about the relationship between Smile Source and
22 Schein?

23 MS. KAHN: Objection; vague.

24 THE WITNESS: I don't recall exactly who was
25 having conversations with them. Based on the e-mail

10 (Pages 34 to 37)

CONFIDENTIAL

<p style="text-align: right;">Page 38</p> <p>1 that you shared with me, I'd say Glenn Ellisor was one 2 of them. And I believe also, possibly Todd Nickerson 3 was having some conversations as well. 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]</p>	<p style="text-align: right;">Page 39</p> <p>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]</p>
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CONFIDENTIAL

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12 (Pages 42 to 45)

CONFIDENTIAL

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13 (Pages 46 to 49)

CONFIDENTIAL

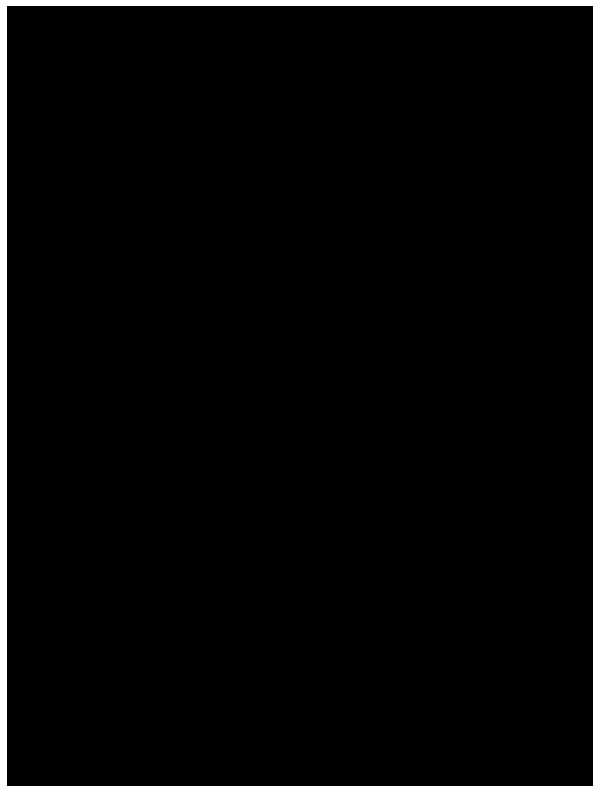
<p>Page 50</p> <div>1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25</div> <div></div>	<p>Page 51</p> <div>1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25</div> <div></div>
<p>Page 52</p> <div>1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25</div> <div></div>	<p>Page 53</p> <div>1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25</div> <div></div>

14 (Pages 50 to 53)

CONFIDENTIAL

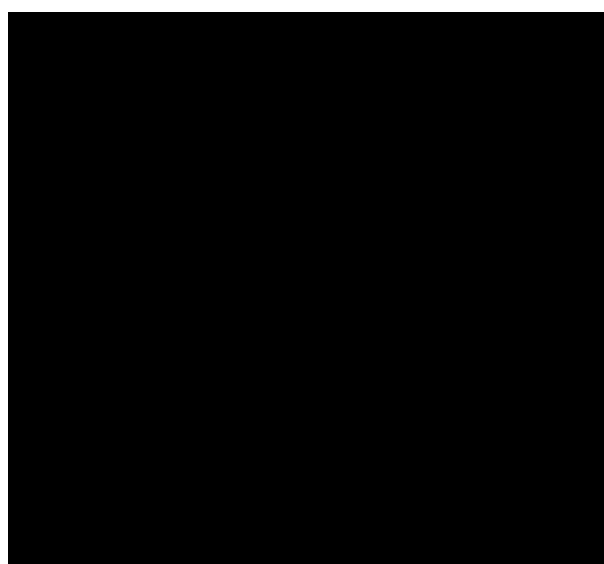
Page 54

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Page 55

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MR. KASS: Okay. I'll hand you what will be marked as Exhibit No. 2.

(Document marked Exhibit 2 for identification.)

MR. KASS: Q. Just let me know when you've had a chance to read it.

A (Witness reading document.)

Page 56

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Okay. I've had a chance to read it.

MS. KAHN: Counsel, are there portions of a Smile Source document that have been redacted?

I see a signature block at the top, but no e-mail has been redacted.

MR. KASS: I don't believe -- I don't -- oh. No.

MS. KAHN: Okay. So the signature block on the top there, is there substance of an e-mail --

MR. KASS: Oh, I'm sorry.

MS. KAHN: It just seems like there may be a Smile Source e-mail that's not redacted or that's redacted.

MR. KASS: Yeah, it's not -- it's not clear to me.

Q But in any event, I'm going to -- I'm going to ask you about the portion of the e-mail that you wrote.

MS. KAHN: Okay. Counsel, can I just ask, for the record, what portions are redacted and why they were redacted?

MR. KASS: The document is Bates numbered BDS-FTC00094241. You're free to look that up at your convenience.

Q I'll -- I'll -- Dr. Goldsmith, I'll direct

Page 57

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your attention to the e-mail that -- that you wrote on September 26, 2011.

Is this an e-mail that you wrote?

MS. KAHN: Okay. I just want to lodge an objection to the document. I'm not sure what's been redacted. I don't know if the witness is looking at a full version of the document with respect to the portions that he's seen. That's my objection.

MR. KASS: Q. You can answer.

A Based on what I see, this would be an e-mail that I wrote.

Q Okay. And you wrote this e-mail in September 26, 2011; is that right?

A Based on the document, yes.

Q Okay. So this is about a month after you joined Smile Source?

A Yes.

Q And in this e-mail, you're writing an e-mail to institutions@benco.com.

Do you see that?

A Yes.

Q Okay. And so this is an e-mail that you wrote to Benco?

A Yes.

Q And you're introducing yourself as president

15 (Pages 54 to 57)

CONFIDENTIAL

Page 58

1 of a group called Smile Source?

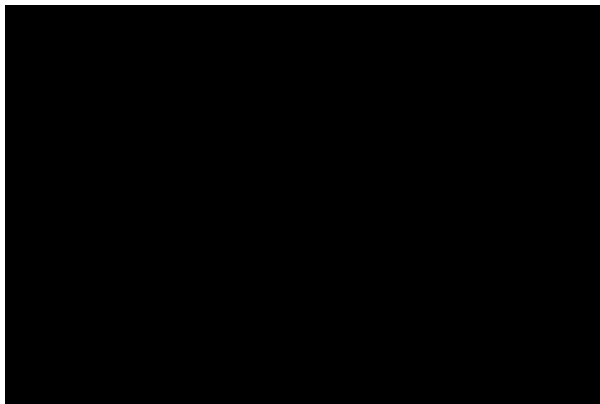
2 A Yes.

3 Q And you say:

4 "We currently use Henry Schein for our
5 services, but wanted to see what sort of relationship
6 could be established with Benco."

7 Do you see that?

8 A Yes.



22 MR. KASS: Okay.

23 Q So within a month of joining Smile Source,
24 you had decided that you were going to look for an
25 alternate source to Henry Schein?

Page 59

1 MS. KAHN: Objection; form; misstates
2 testimony; assumes facts not in evidence;
3 argumentative.

4 THE WITNESS: Based on what the e-mail says,
5 it says that I was looking for what sort of
6 relationship could be established with Benco.

7 MR. KASS: Right.

8 Q My question was: Within a month of joining
9 Smile Source, you had decided that you were going to
10 look for an alternative source to Henry Schein; isn't
11 that right?

12 MS. KAHN: Objection to form; misstates
13 testimony; assumes facts not in evidence;
14 argumentative.

15 THE WITNESS: Based on the e-mail, it says
16 that I wanted to see what sort of relationship could
17 be established with Benco.

18 MR. KASS: Okay. I understand you're reading
19 from the -- the e-mail.

20 Q And now I'm asking you a question: Do you
21 recall that one of the things that you were deciding
22 to do, within a month of joining Smile Source, was to
23 find an alternative source to Henry Schein?

24 MS. KAHN: Objection; asked and answered;
25 same objections as earlier.

Page 60

1 THE WITNESS: I believe I was trying to see
2 if there was a relationship that could be established
3 with Benco.

4 MR. KASS: Q. Had you already decided that
5 you wanted to find some alternative to Henry Schein?

6 MS. KAHN: Objection; form; asked and
7 answered.

8 THE WITNESS: I was looking to see if there
9 was a relationship that could be established with
10 Benco.

11 MR. KASS: Okay.

12 Q Now, in that one-month period, between the
13 time that you joined Smile Source and the time that
14 you're sending this e-mail to Benco, looking for a
15 relationship with Benco, what had you done to
16 investigate the relationship that Smile Source had
17 already had with Smile Source [sic]?

18 MS. KAHN: Objection; form; vague.

19 THE WITNESS: I'm sorry. Repeat the
20 question.

21 MR. KASS: Yeah.

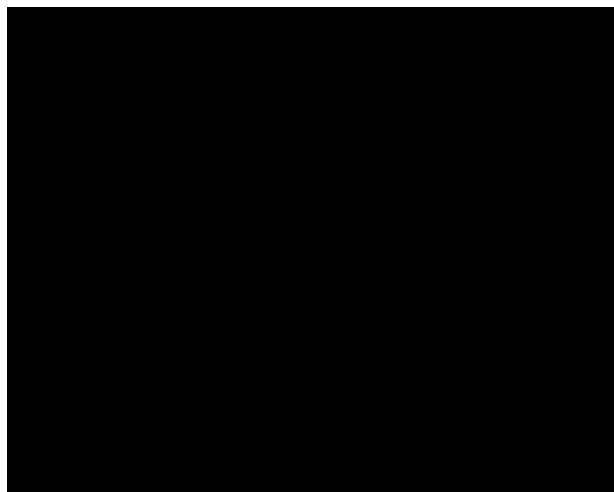
22 Q In the one-month period, between the time
23 that you joined Smile Source and the time that you
24 sent this e-mail to Benco on September 26, 2011, what
25 had you done to investigate the relationship between

Page 61

1 Smile Source and Henry Schein?

2 MS. KAHN: Objection; vague.

3 THE WITNESS: I don't recall exactly. It --
4 and I don't recall what initiated this.



21 MR. KASS: Okay.

22 Q Who else were you -- what other distributors
23 were you looking at at this time?

24 MS. KAHN: Objection; vague.

25 THE WITNESS: At the time, I was looking to

16 (Pages 58 to 61)

CONFIDENTIAL

<p style="text-align: right;">Page 62</p> <p>1 establish relationships with other -- with anyone I 2 could. 3 MR. KASS: Okay. 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]</p>	<p style="text-align: right;">Page 63</p> <p>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]</p>
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17 (Pages 62 to 65)

CONFIDENTIAL

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18 (Pages 66 to 69)

CONFIDENTIAL

Page 70

Page 71

MS. KAHN: Counsel, we've been going for over an hour. Can we take a break, please?

MR. KASS: Sure.

(Recess taken.)

(Document marked Exhibit 3 for identification.)

MR. KASS: Q. Dr. Goldsmith, did you have discussions with either Ms. Kahn or Ms. Goff during the break?

A Yes.

Q And what did you talk about?

A Ms. Kahn said to me -- I believe what she said to me was, Karen and I are going to meet in a room for ten minutes. Please feel free to wander

around here for a few minutes.

Q So you didn't discuss the substance of your testimony or the deposition?

A Correct.

Q Did you talk to either Ms. Kahn or Ms. Goff, or anyone from the FTC, prior to this deposition, other than with respect to scheduling it?

A Yes.

Q Okay. When did you talk to -- well, let me step back.

Did you talk to Ms. Kahn or Ms. Goff about your deposition prior to the deposition, other than with respect to scheduling?

A Yes.

Q Okay. When did you have that discuss -- those discussions?

A I've had a couple of phone conversations, two, maybe three, and I met yesterday with Ms. Kahn to discuss the deposition.

Q How long did you meet yesterday with Ms. Kahn?

A Roughly an hour and a half, maybe, or maybe two hours.

Q And did you review any documents?

A Yes.

Page 72

Page 73

Q What documents did you review?

A Some e-mails that were either sent from me or involved me.

Q Okay. Do you recall what -- any of those e-mails?

A Do I recall any of them?

Q Yeah. What did they say?

A They were communications. I don't recall the exact content.

Q Do you recall who those e-mails were with?

A There was an e-mail between myself and Tim Sullivan. There was an e-mail -- gosh, I don't remember all -- I mean, there was -- I don't know. There was maybe 20 documents. I don't remember exactly -- or 20 e-mails.

Q Did you practice your testimony here today?

A No.

Q Did she ask you questions, and did you provide answers?

A No.

Q Okay. Did she explain to you what the FTC's theory of the case was?

A I was provided a copy of the -- I think it's called the complaint.

Q Okay. What else did you discuss with

Ms. Kahn?

A Just what to expect, as far as format of the deposition.

Q When she showed you these e-mails, what did she say about them?

A Nothing. She just provided the documents to me.

Q So she just handed you e-mails and said, Here you are. You might get questions about them?

MS. KAHN: Objection; form.

THE WITNESS: She provided me with a folder that had a couple of -- a few tabs in it, and it had e-mails. And she said, I just want to give you the opportunity to refresh your memory of some e-mails that have been provided as documents in this case.

MR. KASS: Q. But you didn't talk about the substance of those e-mails with her?

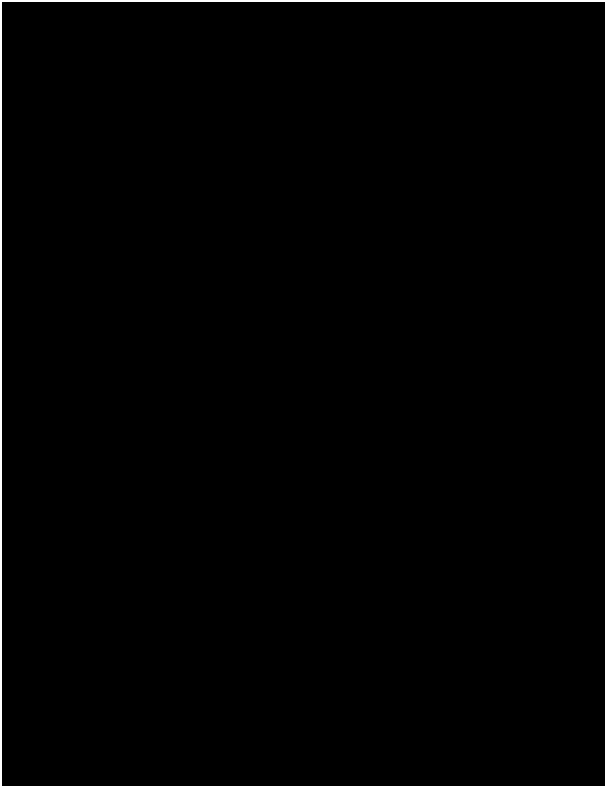
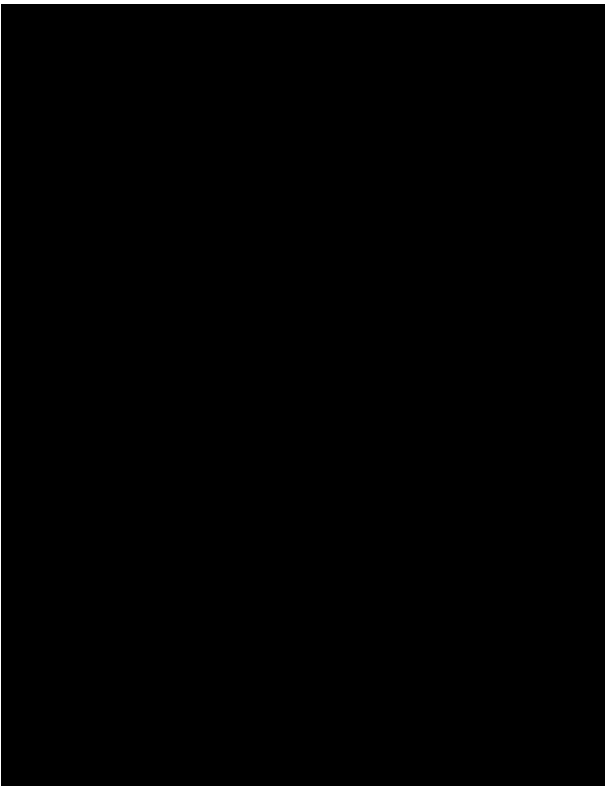
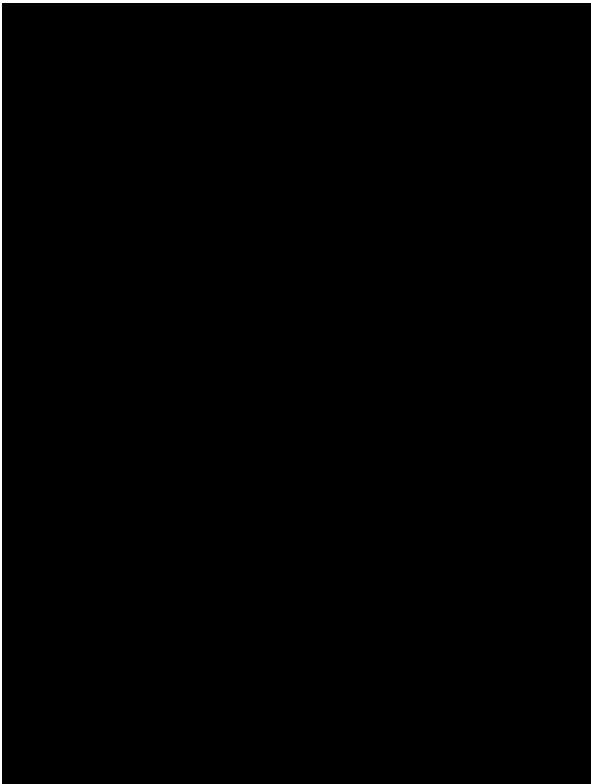
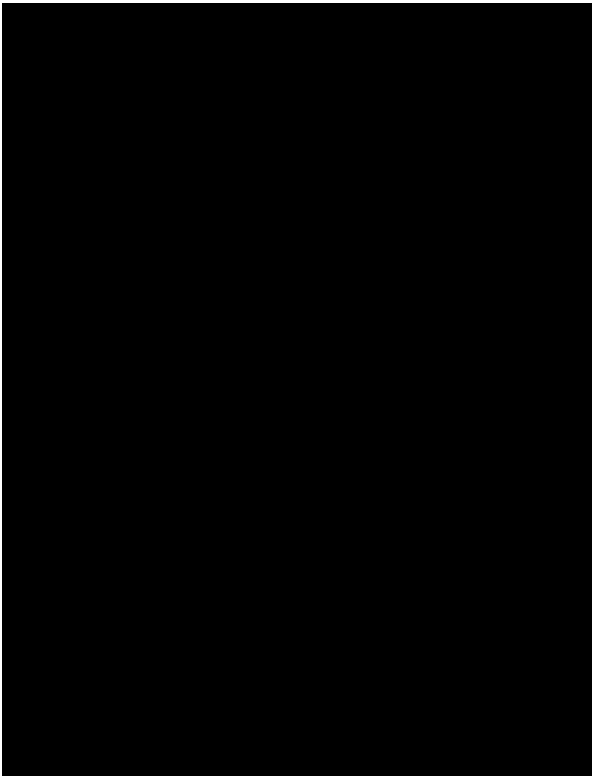
A We went through -- we read through the documents and -- or I read through the documents. As I read through them, she asked me if I had any questions about them. That was pretty much --

Q Okay.

A -- what happened.

19 (Pages 70 to 73)

CONFIDENTIAL

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TSG Reporting - Worldwide - 877-702-9580

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TSG Reporting - Worldwide - 877-702-9580

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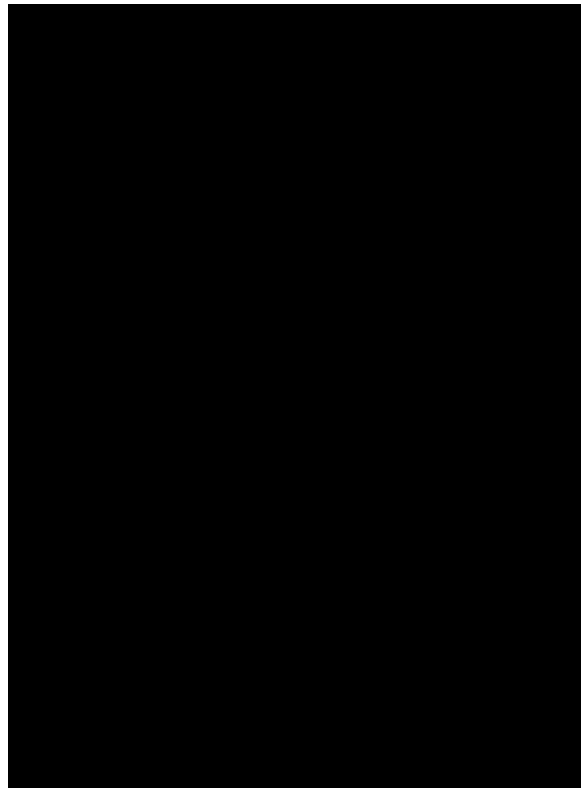
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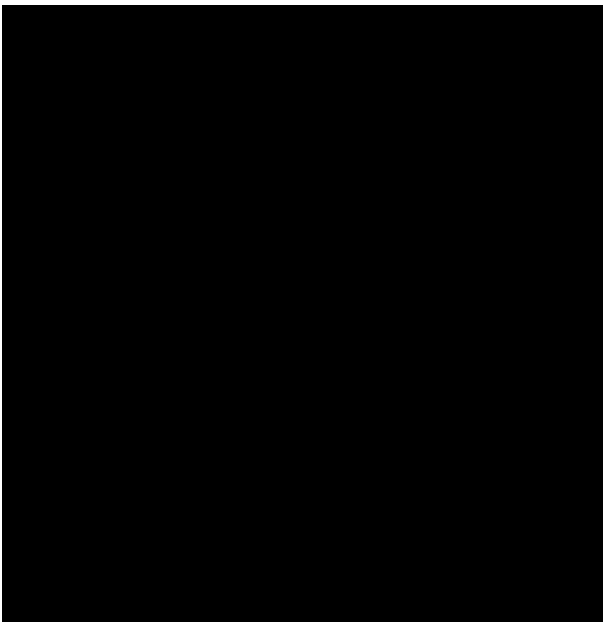
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21 Q So in September -- back to -- taking up where
22 we were before the break, in September of 2011 you
23 reached out to Benco.

24 Do you recall what Benco's response was?

25 A I -- I recall that we sort of hit a brick

Page 85

1 wall with Benco.
2 Q Okay. And if you'd turn to Exhibit No. 3,
3 and tell me when you've had a chance to look at that.
4 A (Witness reading document.)
5 Okay.
6 Q Okay. So in the e-mail on the top of what's
7 Bates numbered '724, the third page, I believe --
8 A (Witness complies.)
9 Okay.
10 Q -- that's an e-mail from you to Patrick Ryan?
11 A Yes.
12 Q Okay. And Patrick Ryan, to your
13 understanding, was at Benco at the time?
14 A Yes.
15 Q Okay. And you're following up on Patrick
16 Ryan's e-mail to you, which is in response to your
17 initial reach-out, which we looked at in Exhibit 2; is
18 that right?
19 A Yes.
20 Q Okay. And this is dated September 30th,
21 2011, and you say you:
22 "Need a new distributor that can give us
23 great pricing and service that we can grow with, and
24 build a long-term relationship with."
25 Do you see that?

22 (Pages 82 to 85)

CONFIDENTIAL

Page 86

1 A Yes.
2 Q At the time, did you believe that Benco's
3 smaller size was a benefit to Smile Source?
4 MS. KAHN: Objection; form; assumes facts not
5 in evidence.
6 THE WITNESS: One of our intentions at Smile
7 Source was to grow. We felt strongly that, based on
8 the footprint and the model that Vision Source had
9 established, that we could potentially have the same
10 number of locations, or more, throughout the United
11 States.
12 And so, as a result, we were looking for a
13 distributor that had a national footprint that would
14 be able to provide distribution for all of our
15 offices.
16 MR. KASS: Okay.
17 Q What -- what was attractive to Benco?
18 MS. KAHN: Objection; form.
19 MR. KASS: Let me -- let me rephrase that.
20 Q What was attractive about Benco that made you
21 want to reach out to them?
22 A I think partially what we were attracted to
23 about Benco is that it's a privately held, family-run
24 company, that had good values and was respected in the
25 industry.

Page 88

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Page 87

1 Q And did you think that, by partnering with a
2 company like Benco, that they would have -- there
3 would be a mutual incentive to grow business?
4 MS. KAHN: Objection; form.
5 THE WITNESS: I don't understand your
6 question.
7 MR. KASS: Yeah, let me step back for a
8 second.
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Page 89

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23 (Pages 86 to 89)

CONFIDENTIAL

Page 90	Page 91
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Page 92	Page 93
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24 (Pages 90 to 93)

TSG Reporting - Worldwide - 877-702-9580

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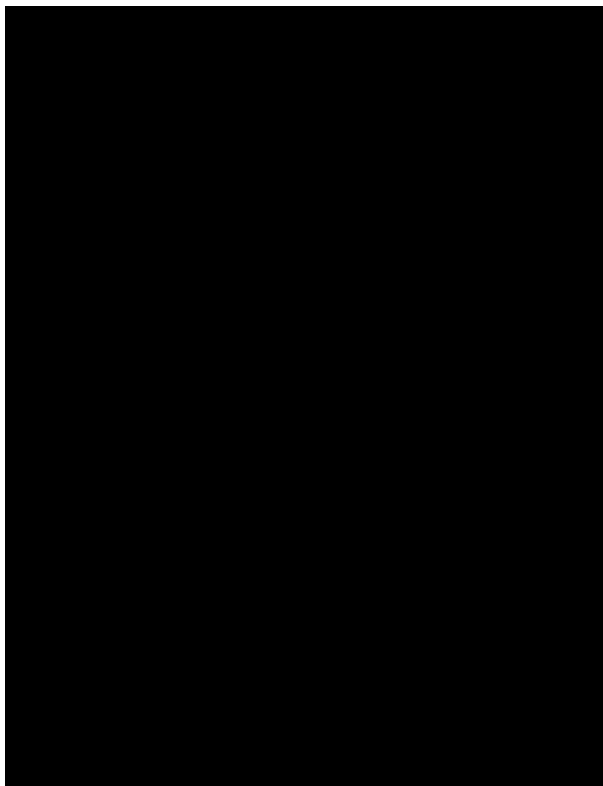
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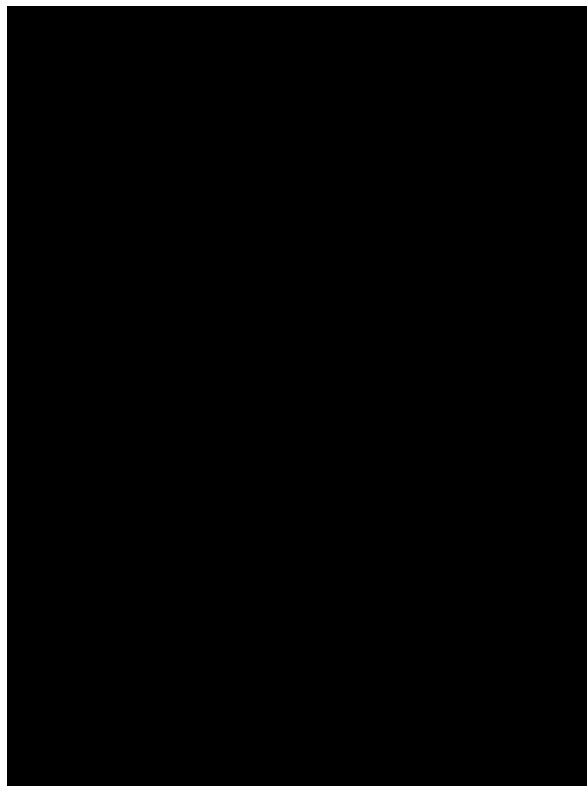
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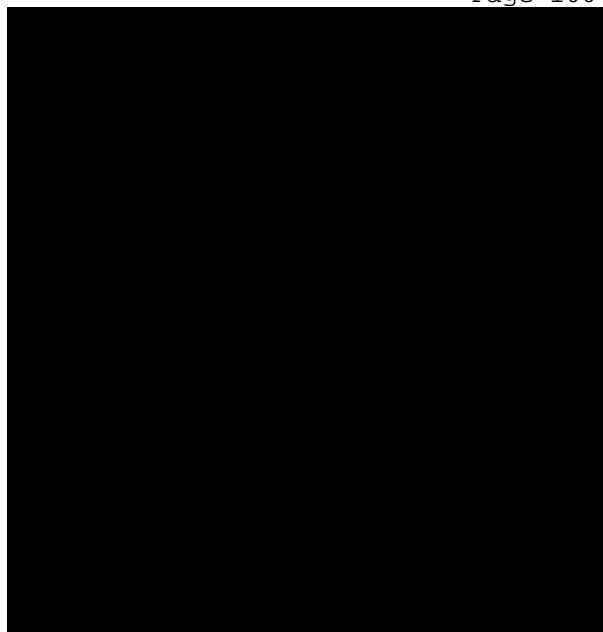
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Page 100

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Q And the response that you get back after some back-and-forth exchanges with Benco is that Benco is not interested; is that right?

A Yes.

Q Okay. At the time, did you take this e-mail

Page 101

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to mean that Benco had a policy of not working with buying groups?

MS. KAHN: Objection; form; calls for speculation.

THE WITNESS: The e-mail says that Benco does not participate in group purchasing organizations.

MR. KASS: Okay.

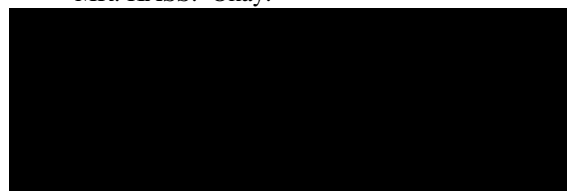
Q And did you take that to understand that -- did you take that to mean that, at this time, Benco had a policy or practice of not working with buying groups?

MS. KAHN: Objection; calls for speculation; lack of foundation.

The e-mail from Benco -- the document speaks for itself.

THE WITNESS: What I took from it was that Benco does not participate in group purchasing organizations.

MR. KASS: Okay.

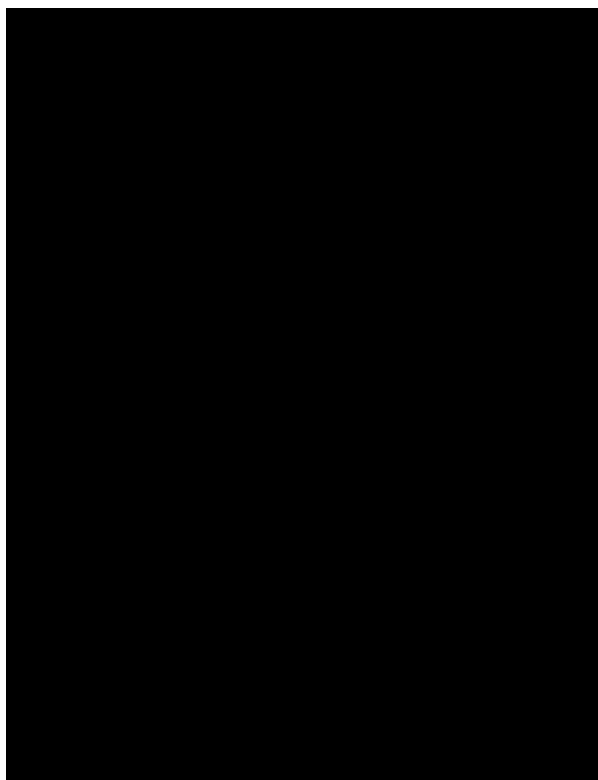


26 (Pages 98 to 101)

CONFIDENTIAL

Page 102

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Page 103

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MR. KASS: Okay. Let me hand you what's marked as Exhibit No. 4.
(Document marked Exhibit 4 for identification.)
MR. KASS: Q. Let me know when you're ready to talk about this.
A (Witness reading document.)
Okay.
Q Now, was this one of the e-mails that complaint counsel showed you at -- in preparing you for your testimony here today?
A I don't remember seeing this e-mail.
Q Okay. So the bottom e-mail is from Todd Nickerson to a number of Burkhart employees, as well as yourself and csblaylock@sbcglobal.net.
Do you see that?
A Yes.
Q Who is C.S. Blaylock?
A He was one of our growth and development members. He was an employee of Smile Source.

Page 104

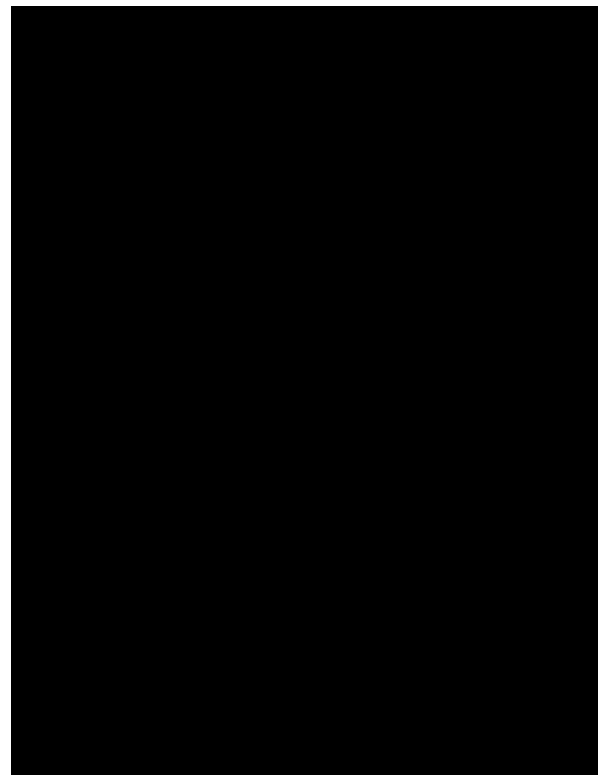
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Q So he was an employee of Smile Source. He was not one of the investor-owners of Smile Source?
A Correct.
Q Okay. And who was Todd Nickerson?
A He was the director of business development.
Q Okay. And this is dated January 13th, 2012, and you're -- you're effectively announcing the new relationship; is that fair?
MS. KAHN: Objection; misstates testimony -- misstates document.
THE WITNESS: I don't believe we had made any official announcement yet.
MR. KASS: Okay.
Q But by this point, you had -- January 13th, 2012. By this point, you had now decided that you were moving forward with a new partnership with Burkhart in place of Henry Schein Dental; fair?
MS. KAHN: Objection; form; misstates prior testimony.
THE WITNESS: I believe that, at this point, we had decided we were working with Burkhart, yes.



Page 105

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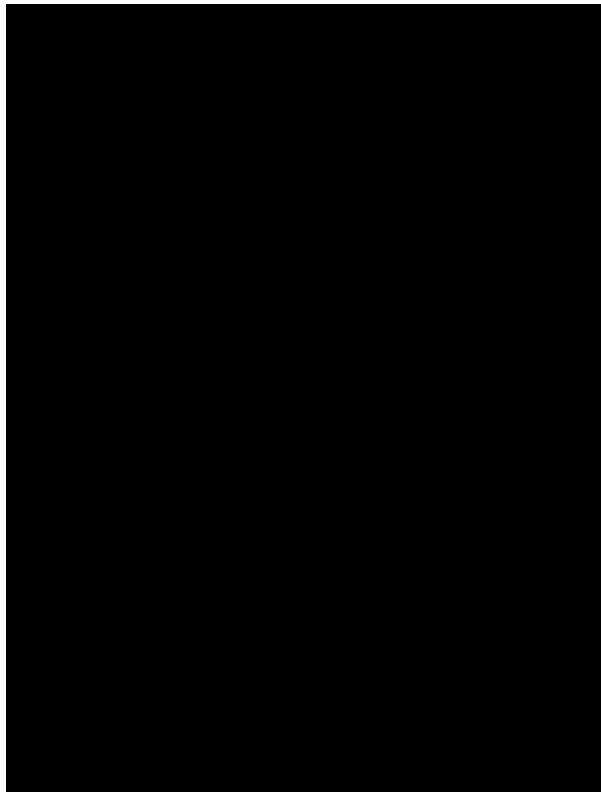


27 (Pages 102 to 105)

CONFIDENTIAL

Page 106

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Page 107

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Q Now, do you recall whether you delivered the message to Henry Schein, that you were terminating them before or after this e-mail of January 13, 2012?

MS. KAHN: Objection; form.

THE WITNESS: I don't recall the exact date.

MR. KASS: Q. But it would have been around this time frame of January 2012?

MS. KAHN: Objection; form.

THE WITNESS: Speculatively, it would have been around that time frame.

MR. KASS: Okay.

Q And did you deliver that message?

MS. KAHN: Objection; form.

THE WITNESS: I do not recall.

MR. KASS: Q. So you don't recall who delivered the message to -- to Henry Schein, that they were being terminated by Smile Source?

MS. KAHN: Objection; form.

THE WITNESS: That is correct. I do not recall.

MR. KASS: Okay.

Q Do you know who the message was provided to? Who at Henry Schein was given the message?

MS. KAHN: Objection; form; lack of foundation.

Page 108

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THE WITNESS: I do not recall.

MR. KASS: Okay. I'll hand you what's been marked Exhibit 5.

(Document marked Exhibit 5 for identification.)

THE WITNESS: Thank you.

MR. KASS: Q. And tell me when you're ready to talk about this document.

A (Witness reading document.) Okay.

Q Was this one of the e-mails that Ms. Kahn showed you in preparation for your testimony here today?

A Yes, I believe so.

Q Okay. And is it your testimony that you had no substantive communications about this e-mail?

A There were no questions or substantive discussions about it, no. It was shown to me.

Q So it was shown to you, but you did not have a conversation about this e-mail; is that right?

A Not that I recall.

Q Okay. Okay.

So this is an e-mail exchange that you had with Tim Sullivan in early February 2011, shortly after you terminated Schein as your distributor

Page 109

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partner; is that right?

A Yes.

MS. KAHN: Objection; form.

MR. KASS: Q. And this e-mail relates to an e-mail that Richard Abrams sent to his field sales consultant Dan Gleissner at Schein; right?

A Yes.

Q Do you know Mr. Abrams or Dr. Abrams?

A Yes.

Q Okay. Who is Dr. Abrams?

A Dr. Abrams was the administrator for Colorado for Smile Source.

Q Okay. Was he part of the decision-making process with respect to the decision to terminate Schein as the distributor partner for Smile Source?

MS. KAHN: Objection; form.

THE WITNESS: Not that I recall.

MR. KASS: Okay.

Q Did -- was he privy to the analysis of invoices that you had done with respect to Henry Schein discounts?

MS. KAHN: Objection; form.

THE WITNESS: Not that I recall.

MR. KASS: Q. Was he involved in the decision to partner with Burkhart?

28 (Pages 106 to 109)

CONFIDENTIAL

<p style="text-align: right;">Page 110</p> <p>1 A Not that I recall. 2 Q Okay. Did you have discussions with 3 Dr. Abrams about the decision to terminate Henry 4 Schein or to partner with Burkhardt? 5 MS. KAHN: Objection; form. 6 THE WITNESS: I don't recall. 7 MR. KASS: Okay. 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25</p>	<p style="text-align: right;">Page 111</p> <p>1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25</p>
<p style="text-align: right;">Page 112</p> <p>1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25</p>	<p style="text-align: right;">Page 113</p> <p>1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25</p>

29 (Pages 110 to 113)

CONFIDENTIAL

Page 114	Page 115
1	1
2	2
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Page 116	Page 117
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30 (Pages 114 to 117)

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CONFIDENTIAL

<p>Page 118</p> <div><div>1</div><div>2</div><div>3</div><div>4</div><div>5</div><div>6</div><div>7</div><div>8</div><div>9</div><div>10</div><div>11</div><div>12</div><div>13</div><div>14</div><div>15</div><div>16</div><div>17</div><div>18</div><div>19</div><div>20</div><div>21</div><div>22</div><div>23</div><div>24</div><div>25</div></div>	<p>Page 119</p> <div><div>1</div><div>2</div><div>3</div><div>4</div><div>5</div><div>6</div><div>7</div><div>8</div><div>9</div><div>10</div><div>11</div><div>12</div><div>13</div><div>14</div><div>15</div><div>16</div><div>17</div><div>18</div><div>19</div><div>20</div><div>21</div><div>22</div><div>23</div><div>24</div><div>25</div></div>
<p>Page 120</p> <div><div>1</div><div>2</div><div>3</div><div>4</div><div>5</div><div>6</div><div>7</div><div>8</div><div>9</div><div>10</div><div>11</div><div>12</div><div>13</div><div>14</div><div>15</div><div>16</div><div>17</div><div>18</div><div>19</div><div>20</div><div>21</div><div>22</div><div>23</div><div>24</div><div>25</div></div>	<p>Page 121</p> <div><div>1</div><div>2</div><div>3</div><div>4</div><div>5</div><div>6</div><div>7</div><div>8</div><div>9</div><div>10</div><div>11</div><div>12</div><div>13</div><div>14</div><div>15</div><div>16</div><div>17</div><div>18</div><div>19</div><div>20</div><div>21</div><div>22</div><div>23</div><div>24</div><div>25</div></div>

31 (Pages 118 to 121)

CONFIDENTIAL

Page 122

Page 123

Q Now, in late 2013, did you reach out to Patterson to try to establish a new distributor relationship for Smile Source?

A I recall reaching out to Patterson, yes.

Q Okay. And you did that in late 2013?

MS. KAHN: Objection; form.

THE WITNESS: I don't recall the time frame exactly. My guess would -- closest estimate would be yes.

MR. KASS: Okay.

Q And why did you reach out to Patterson?

A As our Smile Source membership continued to grow, we then started to outgrow the footprint or the service area of Burkhart Dental Supply Company. We went back to our original concern, is that we needed somebody with a national footprint.

MR. KASS: Okay. Let me hand you Exhibit 6. (Document marked Exhibit 6 for identification.)

MR. KASS: Okay.

Q And just let me know when you're ready to talk about this.

A (Witness reading document.)

Okay.

Q So this is an e-mail string between you and Patterson Dental.

A Okay.

Q And the last -- first-in-time e-mail, which

Page 124

Page 125

is on Bates No. '163.00002, second page, is an e-mail from you to Neal McFadden?

A Yes.

Q And it's dated September 30th, 2013; right?

A Yes.

Q And you are introducing yourself to Mr. McFadden, and you say:

"We currently work with Burkhart and have a great relationship with them. Unfortunately, they do not have a national footprint, and we have grown rapidly. We have added 87 locations in the last ten months."

Do you see that?

A Yes.

Q Okay. Now, most of the members that you were serving at this time, they were still within the Burkhart regions?

A Yes.

Q Okay. So the 87 that you -- that had joined in the prior ten months, how much of those were within the Burkhart regions?

MS. KAHN: Objection; form.

THE WITNESS: I don't recall exactly.

MR. KASS: Q. Was it almost all of them?

MS. KAHN: Objection; form; asked and

answered.

THE WITNESS: To the best of my recollection, I would say that a majority of our growth occurred in the Burkhart service area, yes.

MR. KASS: Q. And Patterson -- in response to this e-mail, Patterson takes a meeting with you?

A Yes.

Q Okay. And you follow up on November 19th with -- in an e-mail to Neal McFadden and David Misiak at Patterson; is that right?

A Yes.

Q And you're just checking in on where you are with the relationship; right?

A Yes.

Q At the time, were you talking about potentially replacing Burkhart?

MS. KAHN: Objection; form.

THE WITNESS: No. We were looking to increase -- add additional presence so that we could supply our members outside of the Burkhart region.

MR. KASS: Okay.

Q And David Misiak responds:

"We are currently not interested, but will keep the strategy and Smile Source on the idea board." Do you see that?

32 (Pages 122 to 125)

CONFIDENTIAL

Page 126	Page 127
<p>1 A Yes.</p> <p>2 Q Okay. And so at this point, you understood</p> <p>3 that Patterson was not interested in working with</p> <p>4 Smile Source?</p> <p>5 MS. KAHN: Objection; form; foundation. The</p> <p>6 document speaks for itself.</p> <p>7 THE WITNESS: Yes.</p> <p>8 MR. KASS: Okay.</p> <p>9 Q But that is a different reaction than the one</p> <p>10 that you had received with Schein, that we had looked</p> <p>11 at earlier, and that you -- well, let me step back.</p> <p>12 Step back.</p> <p>13 That was different than the reaction that you</p> <p>14 had gotten from Henry Schein --</p> <p>15 MS. KAHN: Objection --</p> <p>16 MR. KASS: Q. -- that they were interested</p> <p>17 in working with you; correct?</p> <p>18 MS. KAHN: Objection -- objection; form; lack</p> <p>19 of foundation; calls for speculation.</p> <p>20 THE WITNESS: It says:</p> <p>21 "We are currently not interested."</p> <p>22 Yes, that is a different response than the</p> <p>23 previous response that we looked at. I think they're</p> <p>24 different --</p> <p>25 MR. KASS: Okay.</p>	<p>1 THE WITNESS: -- responses.</p> <p>2 MR. KASS: Okay.</p> <p>3 Q And in fact, there is a difference in the</p> <p>4 response that Henry Schein had provided than either</p> <p>5 Patterson or Benco had provided in terms of</p> <p>6 willingness to work with Smile Source; correct?</p> <p>7 MS. KAHN: Objection; form; lack of</p> <p>8 foundation.</p> <p>9 THE WITNESS: We were previously working with</p> <p>10 Henry Schein, and they changed our arrangement. So</p> <p>11 while I think -- I can only speculate at this time. I</p> <p>12 don't know that they were interested in working with</p> <p>13 us at the level that we wanted them to.</p> <p>14 MR. KASS: Okay. Okay.</p> <p>15 Q So at this time, you -- in September,</p> <p>16 October, November of 2013, you understood that Benco</p> <p>17 wasn't willing to enter into a relationship with Smile</p> <p>18 Source, and you understood that Patterson wasn't</p> <p>19 interested in entertaining a relationship with Smile</p> <p>20 Source.</p> <p>21 But with respect to Schein, you did</p> <p>22 understand that they were, in fact, willing to enter</p> <p>23 into discussions and enter into a relationship with</p> <p>24 Henry -- with Smile Source; is that right?</p> <p>25 MS. KAHN: Objection; form; compound;</p>
Page 128	Page 129
<p>1 misstates prior testimony; lack of foundation.</p> <p>2 THE WITNESS: I can only refer to the</p> <p>3 previous e-mail or -- from Tim Sullivan.</p> <p>4 MR. KASS: Okay. Well, maybe this will</p> <p>5 refresh your recollection.</p> <p>6 Let me hand you what's marked as Exhibit</p> <p>7 No. 7.</p> <p>8 (Document marked Exhibit 7</p> <p>9 for identification.)</p> <p>10 MR. KASS: Q. Let me know when you're ready</p> <p>11 to talk about this document.</p> <p>12 A (Witness reading document.)</p> <p>13 Okay.</p> <p>14 Q Okay. So now, on the same day that Patterson</p> <p>15 tells you they are not interested in working with you,</p> <p>16 you send an e-mail to Tim Sullivan.</p> <p>17 Do you see that?</p> <p>18 A Yes, I do.</p> <p>19 Q And you ask him whether he foresees any</p> <p>20 possibility of "us doing business together"; right?</p> <p>21 A Yes.</p> <p>22 Q So now, about -- a little less than two years</p> <p>23 after you terminate Henry Schein, you're asking if</p> <p>24 Henry Schein is willing to do business with Smile</p> <p>25 Source; right?</p>	<p>1 A Yes.</p> <p>2 MS. KAHN: Objection; form.</p> <p>3 MR. KASS: Okay.</p> <p>4 THE WITNESS: Sorry.</p> <p>5 MR. KASS: Q. And the response you get back</p> <p>6 six minutes later is:</p> <p>7 "Yes, absolutely. We would like to discuss</p> <p>8 further."</p> <p>9 Right?</p> <p>10 MS. KAHN: Objection; form. The document</p> <p>11 speaks for itself.</p> <p>12 THE WITNESS: Yes.</p> <p>13 MR. KASS: Okay.</p> <p>14 Q And so you understood, at this time, that</p> <p>15 unlike a Patterson or a Benco, Henry Schein was</p> <p>16 willing to work with Smile Source?</p> <p>17 MS. KAHN: Objection; form; lack of</p> <p>18 foundation.</p> <p>19 THE WITNESS: It says yes, we absolutely</p> <p>20 would like to discuss further.</p> <p>21 MR. KASS: All right.</p> <p>22 Q And then he says:</p> <p>23 "I think we need more than a few minutes</p> <p>24 together on a convention floor."</p> <p>25 Right?</p>

CONFIDENTIAL

Page 130	Page 131
<p>1 A Yes.</p> <p>2 Q So he's taking this pretty seriously. He</p> <p>3 wants to sit down with you and have an extended</p> <p>4 discussion about this; right?</p> <p>5 MS. KAHN: Objection; form; mischaracterizes</p> <p>6 the evidence; assumes facts not in evidence; lack of</p> <p>7 foundation; argumentative.</p> <p>8 THE WITNESS: It -- all I can assume is that</p> <p>9 he wanted more than a few minutes on the convention</p> <p>10 floor.</p> <p>11 MR. KASS: Q. Well, he says:</p> <p>12 "I think we could use a couple of hours</p> <p>13 discussing the details."</p> <p>14 Right?</p> <p>15 MS. KAHN: Objection; argumentative; form;</p> <p>16 lack of foundation. The document speaks for itself.</p> <p>17 THE WITNESS: Yes, it says "a couple of</p> <p>18 hours."</p> <p>19 MR. KASS: Okay.</p> <p>20 Q And so you understood -- you took this e-mail</p> <p>21 message to say, This is great. Tim Sullivan is very</p> <p>22 interested in working with Smile Source. He wants to</p> <p>23 set up a meeting. We can talk about it for a couple</p> <p>24 of hours to work out the details; right?</p> <p>25 That's what you want -- that's what you took</p>	<p>1 from this message?</p> <p>2 MS. KAHN: Objection; argumentative; form;</p> <p>3 lack of foundation.</p> <p>4 THE WITNESS: I -- my response is on there.</p> <p>5 Let's throw out some dates, and we were looking at</p> <p>6 December.</p> <p>7 MR. KASS: Q. You thought it was excellent?</p> <p>8 A Excellent.</p> <p>9 Q You thought it was excellent?</p> <p>10 A (Witness nods head.)</p> <p>11 MS. KAHN: Objection. The document --</p> <p>12 MR. KASS: Okay.</p> <p>13 MS. KAHN: -- speaks for itself;</p> <p>14 argumentative.</p> <p>15 MR. KASS: Q. And so here, you then -- Tim</p> <p>16 Sullivan then goes on and says:</p> <p>17 "I am confident that there is something here</p> <p>18 for us to partner on together."</p> <p>19 Right?</p> <p>20 So he's looking to partner with you?</p> <p>21 MS. KAHN: Objection; lack of foundation.</p> <p>22 The document speaks for itself.</p> <p>23 THE WITNESS: Yes, it says that.</p> <p>24 MR. KASS: Okay.</p> <p>25 Q Now, was this reaction, where Tim Sullivan</p>
Page 132	Page 133
<p>1 says he's absolutely interested in discussing a</p> <p>2 potential partnership, proposed an in-person meeting,</p> <p>3 wanted to devote hours to working through the details,</p> <p>4 and was confident that there was something for the</p> <p>5 two companies to partner on together, different than</p> <p>6 the reactions you had received from Patterson and</p> <p>7 Benco?</p> <p>8 MS. KAHN: Objection; form; mischaracterizes</p> <p>9 evidence; assumes facts not in evidence; asked and</p> <p>10 answered; lack of foundation.</p> <p>11 THE WITNESS: The response is -- it</p> <p>12 represents a different tone than what we had received</p> <p>13 from the other companies.</p> <p>14 MR. KASS: Okay.</p> <p>15 Q Now, at Mr. Sullivan's suggestion, did you,</p> <p>16 in fact, arrange a meeting?</p> <p>17 A Yes.</p> <p>18 Q And -- and you did, in fact, meet; right?</p> <p>19 A Yes.</p> <p>20 Q Where did you meet?</p> <p>21 A In -- at the Henry Schein in Milwaukee.</p> <p>22 Q Okay. So Henry Schein invited you to their</p> <p>23 headquarters, and you went up to Milwaukee to meet</p> <p>24 with Mr. Sullivan and others; right?</p> <p>25 MS. KAHN: Objection; form.</p>	<p>1 THE WITNESS: Yes.</p> <p>2 MR. KASS: Q. And who else was there besides</p> <p>3 Mr. Sullivan?</p> <p>4 A John Chatham.</p> <p>5 Q Okay. And so you met with Tim Sullivan, John</p> <p>6 Chatham.</p> <p>7 Anybody else?</p> <p>8 A Trevor Maurer.</p> <p>9 Q Okay. So it was you and Trevor Maurer on the</p> <p>10 Smile Source side, and Tim Sullivan and John Chatham</p> <p>11 on the Schein side; is that right?</p> <p>12 A Yes.</p> <p>13 Q Was there anybody else?</p> <p>14 A Not that I recall.</p> <p>15 Q Okay. And what was Trevor Maurer's position</p> <p>16 at the time?</p> <p>17 A Trevor Maurer was the president.</p> <p>18 Q Okay. And so, by this point, you were chief</p> <p>19 dental officer; is that right?</p> <p>20 A Correct.</p> <p>21 Q Okay. And what did you discuss at this</p> <p>22 meeting in Milwaukee?</p> <p>23 Was it West Allis?</p> <p>24 A Yes.</p> <p>25 Q What did you discuss in the meeting in</p>

CONFIDENTIAL

Page 134

1 West Allis with Henry Schein in -- and was it late
2 2013?

3 MS. KAHN: Objection; form.

4 MR. KASS: Q. Or was it early 2014?

5 A To the best of my recollection, I believe it
6 was -- I don't recall. It was either late 2013 or
7 early 2014.

8 Q Okay. And so, when you met in West Allis --
9 met Henry Schein in West Allis, what did you discuss?

10 A I don't recall exactly. I remember John
11 Chatham primarily speaking and talking -- going
12 through a slide deck presentation.

13 MR. KASS: I'm going to show this document to
14 you, just for purposes of determining whether you've
15 seen this before. And if you have, I'll ask you to
16 review it, and if you haven't, you can give it back to
17 me; okay?

18 Let me mark it as -- do you want this marked
19 as an exhibit or not?

20 It's up to you. Here's a copy for you.

21 MS. KAHN: Is there a Bates number on this?

22 MR. KASS: You know, I don't know.

23 MS. KAHN: You can ask the witness if he's
24 seen it.

25 MR. KASS: Yeah.

Page 135

1 Q Why don't you let me know if this is the
2 presentation.

3 MS. KAHN: Just for the record, there is no
4 Bates number on this document.

5 Counsel, can you represent a Bates number for
6 this?

7 MR. KASS: No.

8 MS. KAHN: No?

9 MR. KASS: No.

10 THE WITNESS: This looks familiar.

11 MR. KASS: Okay. So I'll mark it as
12 Exhibit 7.

13 THE REPORTER: 8.

14 MR. KASS: 8.

15 MS. KAHN: Counsel, is there a version --

16 THE REPORTER: One moment, please. I'm
17 marking.

18 (Document marked Exhibit 8
19 for identification.)

20 MR. KASS: The version I have doesn't have a
21 Bates number. I don't -- I'm not sure why. I think
22 it's been produced. I just don't remember.

23 MS. KAHN: You can't -- you don't know for
24 certain whether this was produced?

25 MR. KASS: I assume it was. But I -- I don't

Page 136

1 see a Bates number on it, so...

2 Q Okay. So let me know -- so you -- have you
3 had a chance to look at this?

4 A No, sir.

5 Q Okay.

6 A (Witness reading document.)

7 Okay.

8 Q Okay. So this was the presentation that
9 Henry Schein provided to you?

10 MS. KAHN: Objection; lack of foundation.

11 You haven't established this is the exact
12 document that he had seen previously.

13 THE WITNESS: It looks very familiar to me.

14 MR. KASS: Okay.

15 Q And so Schein, at some point, did make a
16 proposal to Smile Source; is that right?

17 MS. KAHN: Objection; form.

18 THE WITNESS: Yes.

Page 137

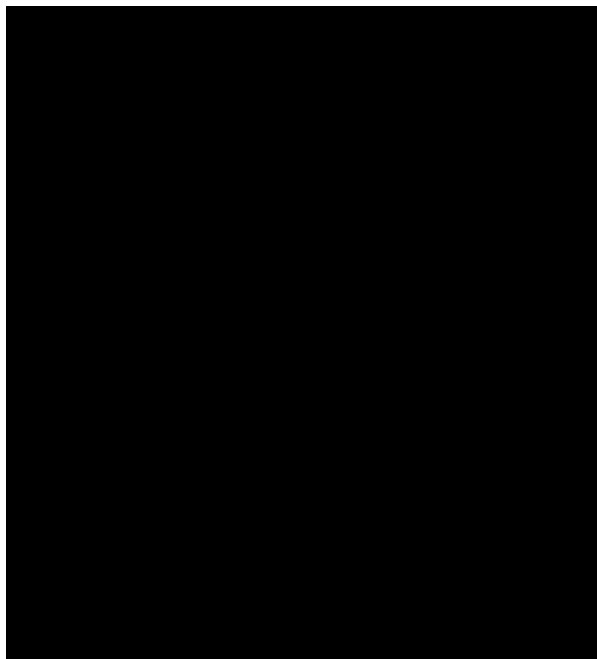


35 (Pages 134 to 137)

CONFIDENTIAL

Page 138

Page 139



MR. KASS: Okay.

Q How was this proposal communicated to you?

MS. KAHN: Objection; form; assumes facts not in evidence.

THE WITNESS: I don't recall exactly.

MR. KASS: Okay.

Q Do you recall discussing the proposal with Henry Schein?

MS. KAHN: Objection; form; vague.

THE WITNESS: I remember discussing the presentation when we were at that meeting in West Allis.

MR. KASS: Okay.

Q Do you also recall having a discussion with Trevor Maurer -- let me strike that.

Do you recall taking a call with Trevor Maurer at a restaurant, where Schein walked through the details of this proposal?

That is, there was a call, and you and Trevor were at a restaurant, where you were discussing this proposal?

MS. KAHN: Objection; vague; form; assumes facts not in evidence.

THE WITNESS: Sorry. Yeah, I don't recall exactly.

MR. KASS: Okay.

Q In any event, you received this proposal.

Did you evaluate the terms of the proposal?

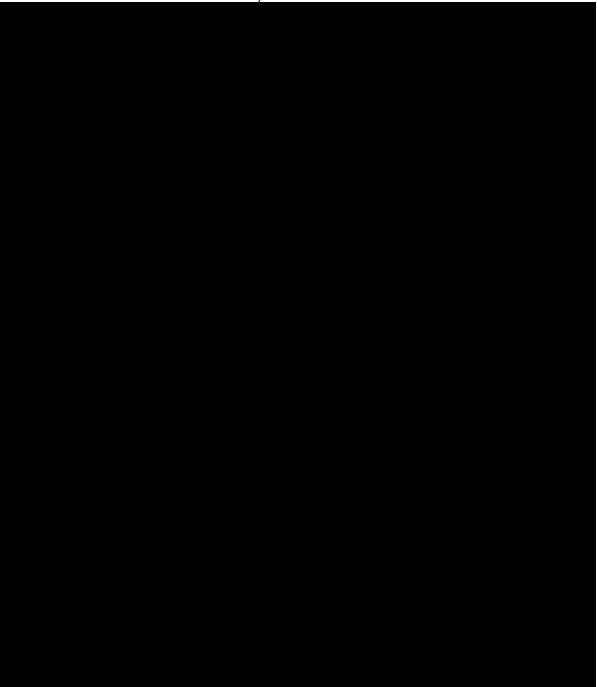
MS. KAHN: Objection; form; vague.

Page 140

Page 141

THE WITNESS: We evaluated the terms of every proposal.

MR. KASS: Okay.



36 (Pages 138 to 141)

CONFIDENTIAL

Page 142

Page 143

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8 [REDACTED]
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10 [REDACTED]
11 [REDACTED]
12 Q Okay. And you did not accept Schein's offer;
13 is that right?
14 MS. KAHN: Objection; form.
15 THE WITNESS: I don't believe we accepted the
16 offer.
17 MR. KASS: Okay.
18 Q And you -- you conveyed that fact to John
19 Chatham?
20 A I believe so.
21 Q Okay. And around this same time, you were
22 having discussions with Darby; is that right?
23 A I was not directly having discussions with
24 Darby.
25 Q Who was having discussions with Darby?

1 A Trevor Maurer.
2 Q Why weren't you involved in the discussions
3 with Darby?
4 A Trevor Maurer had -- had been the one that
5 initiated the relationship, and had already
6 established a relationship. So he became the point
7 man, so to speak.
8 Q Was he the one that decided that it was time
9 to either displace Burkhart or add a new distributor
10 in addition to Burkhart?
11 MS. KAHN: Objection; form; assumes facts not
12 in evidence.
13 THE WITNESS: We knew from the very beginning
14 we needed a distributor with a national footprint.
15 MR. KASS: Okay.
16 [REDACTED]
17 [REDACTED]
18 [REDACTED]
19 [REDACTED]
20 [REDACTED]
21 [REDACTED]
22 MR. KASS: Okay.
23 Q Is that consistent with your recollection,
24 though?
25 MS. KAHN: Objection; form; asked and

Page 144

Page 145

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37 (Pages 142 to 145)

CONFIDENTIAL

Page 146

Page 147

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21 MR. KASS: Q. Were there people on the
22 advisory board, or others at Smile Source, that were
23 in favor of accepting Schein's offer?

24 A I don't recall the details of that exactly.

25 Q So there may have been. You just don't

1 recall?

2 A I don't recall the details of that --
3 surrounding that.

4 Q So it certainly wasn't a unanimous decision
5 to -- to go with Darby over Henry Schein?

6 MS. KAHN: Objection; argumentative;
7 misstates prior testimony.

8 THE WITNESS: I don't recall the details of
9 the discussions.

10 MR. KASS: Okay.

11 Q So after you -- and did you personally
12 deliver the message to John Chatham that you were
13 likely to go with Darby?

14 MS. KAHN: Objection; misstates prior
15 testimony.

16 THE WITNESS: Yeah, I just don't recall that
17 conversation occurring.

18 MR. KASS: Q. Do you recall that, after you
19 delivered that message -- well, let me strike that.

20 You don't recall, one way or the other,
21 whether you delivered the message to Schein that you
22 were likely to go with Darby?

23 MS. KAHN: Objection; asked and answered.

24 THE WITNESS: I don't recall at this time.

25 MR. KASS: Okay.

Page 148

Page 149

1 Q Do you recall who delivered that message?

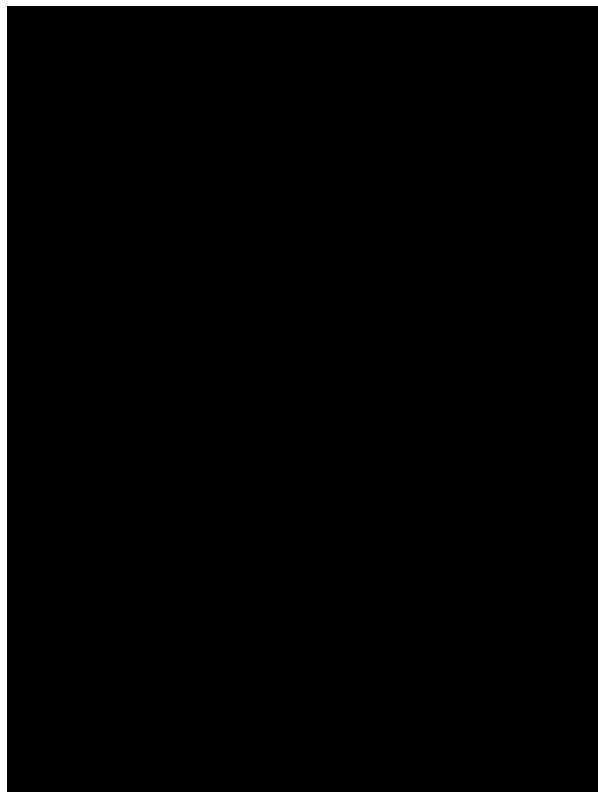
2 A I do not recall.
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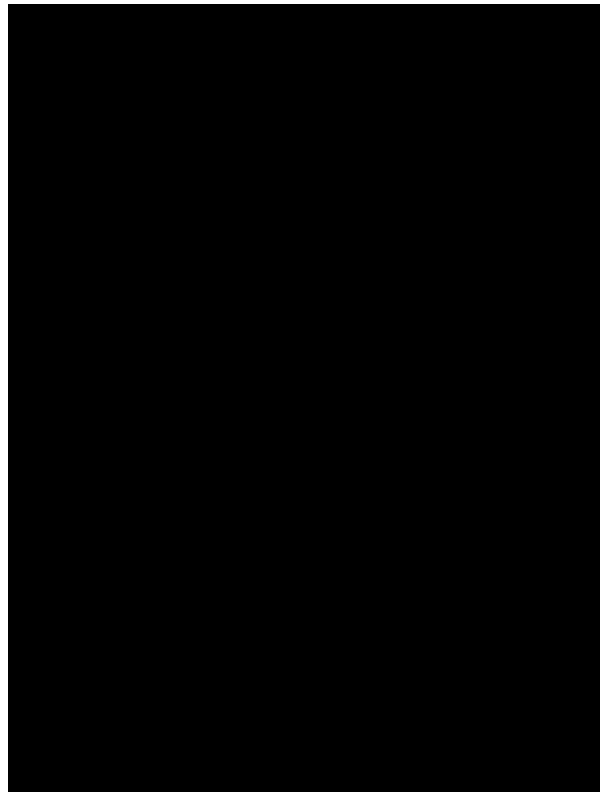
Page 150

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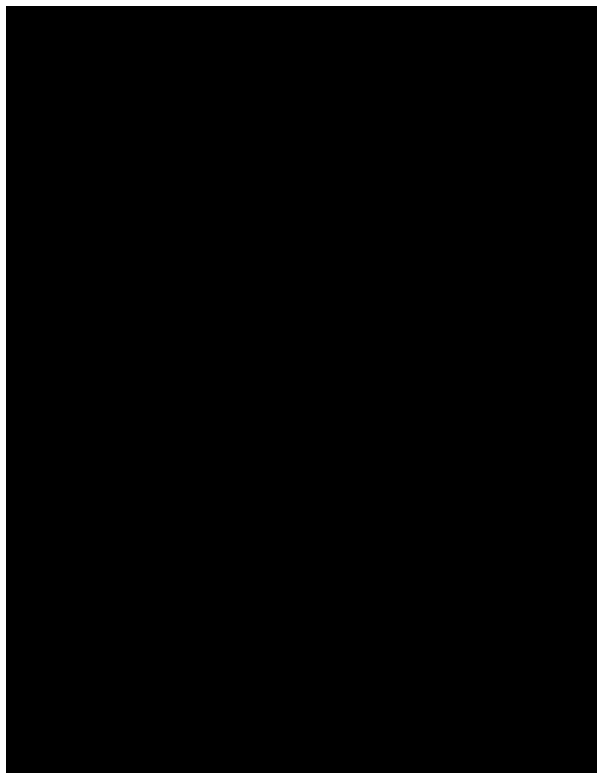
Page 151

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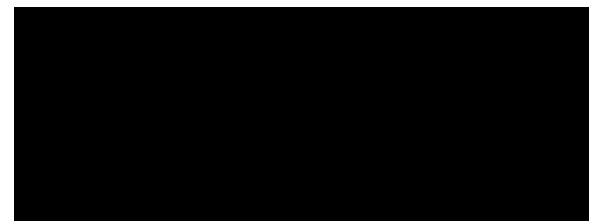
Page 152

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Page 153

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MR. KASS: Okay. Let me hand you the next exhibit.

(Document marked Exhibit 10 for identification.)

MR. KASS: Q. Handing you what's been marked as Exhibit 10.

A Thank you.

Q This is an e-mail string, dated October 6, 2017, between you and the FTC; is that right?

A Yes.

Q This -- the first-in-time e-mail is dated September 29th, 2017, from Ms. Goff?

A Yes.

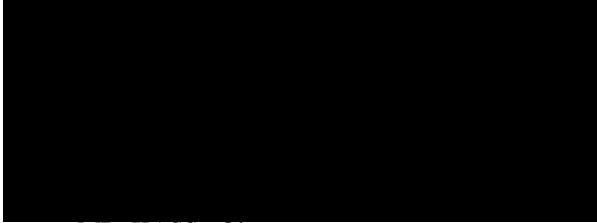
Q And Ms. Goff states she's an attorney with the Federal Trade Commission?

A Yes.

Q She informed you that the FTC is conducting a nonpublic investigation?

39 (Pages 150 to 153)

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<p style="text-align: right;">Page 154</p> <p>1 A Yes.</p> <p>2 Q And did you have a subsequent call with</p> <p>3 Ms. Goff?</p> <p>4 A As far as I recall, yes.</p> <p>5 Q Was -- was there anyone else who participated</p> <p>6 in this call, other than yourself and Ms. Goff?</p> <p>7 A I don't recall.</p> <p>8 Q So you don't recall whether Ms. Goff had</p> <p>9 other people from the FTC on the line?</p> <p>10 A Not exactly. I don't recall.</p> <p>11 Q Okay. Was this the only call you had with</p> <p>12 anybody from the FTC, putting aside your preparation</p> <p>13 for this deposition?</p> <p>14 A This was not the only call.</p> <p>15 Q Okay. How many calls did you have, putting</p> <p>16 aside preparation for the depo- -- deposition?</p> <p>17 A Three or four.</p> <p>18 Q Okay. And when did those calls occur?</p> <p>19 A Sometime between this call and -- and this</p> <p>20 week.</p> <p>21 Q Okay. And what did you tell Ms. Goff</p> <p>22 during -- or the FTC during these calls?</p> <p>23 MS. KAHN: Objection; form; overbroad.</p> <p>24 THE WITNESS: I don't recall the content of</p> <p>25 these calls.</p>	<p style="text-align: right;">Page 155</p> <p>1 MR. KASS: Okay.</p> <p>2 Q Was everything you told the FTC consistent</p> <p>3 with what you testified here today?</p> <p>4 MS. KAHN: Objection, aside from the</p> <p>5 mischaracterizations with counsel.</p> <p>6 THE WITNESS: Yes.</p> <p>7 MR. KASS: Q. Did you explain that Schein</p> <p>8 was the vendor for Smile Source when you first started</p> <p>9 working for Smile Source?</p> <p>10 A I'm --</p> <p>11 MS. KAHN: Objection; form.</p> <p>12 THE WITNESS: I'm -- best of my recollection,</p> <p>13 yes.</p> <p>14 MR. KASS: Q. And did you tell her that</p> <p>15 Smile Source made this decision to terminate Henry</p> <p>16 Schein?</p> <p>17 MS. KAHN: Objection; form.</p> <p>18 THE WITNESS: I'm sorry. Please repeat the</p> <p>19 question.</p> <p>20 MR. KASS: Q. Did you tell Ms. Goff, or</p> <p>21 anybody at the FTC, that Smile Source had made the</p> <p>22 decision to terminate Henry Schein in or around</p> <p>23 January of 2012?</p> <p>24 MS. KAHN: Objection; form.</p> <p>25 THE WITNESS: To the best of my recollection,</p>
<p style="text-align: right;">Page 156</p> <p>1 I probably said that.</p> <p>2 MR. KASS: Okay.</p> <p>3 Q Did you tell her, or anybody from the FTC,</p> <p>4 that you reached out to Schein in late 2013 to try to</p> <p>5 reestablish a relationship with Schein?</p> <p>6 MS. KAHN: Objection; form.</p> <p>7 THE WITNESS: I don't recall.</p> <p>8 MR. KASS: Okay.</p> <p>9 Q Did you tell her that Schein was interested</p> <p>10 in working -- in reestablishing a relationship with</p> <p>11 Smile Source and, in fact, presented a proposal to</p> <p>12 Smile -- to Henry -- to Smile Source?</p> <p>13 MS. KAHN: Objection; form.</p> <p>14 THE WITNESS: I don't recall.</p> <p>15 MR. KASS: Q. You may have told her that,</p> <p>16 but you just don't recall?</p> <p>17 MS. KAHN: Objection; form; asked and</p> <p>18 answered.</p> <p>19 THE WITNESS: Yeah, I don't recall.</p> <p>20 MR. KASS: Okay.</p> <p>21 Q But in fact, that is what happened. Schein</p> <p>22 was interested in working with Smile Source and did,</p> <p>23 in fact, present a proposal to Smile Source --</p> <p>24 MS. KAHN: Objection --</p> <p>25 MR. KASS: Q. -- correct?</p>	<p style="text-align: right;">Page 157</p> <p>1 MS. KAHN: Objection; form; mischaracterizes</p> <p>2 the evidence; misstates prior testimony.</p> <p>3 THE WITNESS: Henry Schein did present a</p> <p>4 proposal to Smile Source.</p> <p>5 MR. KASS: Okay.</p> <p>6 </p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13 MR. KASS: Okay.</p> <p>14 Q You could have said that, but you don't</p> <p>15 recall one way or the other?</p> <p>16 MS. KAHN: Objection; mischaracterizing the</p> <p>17 testimony.</p> <p>18 THE WITNESS: I don't recall the content of</p> <p>19 the conversation.</p> <p>20 MR. KASS: Okay.</p> <p>21 (Document marked Exhibit 11</p> <p>22 for identification.)</p> <p>23 MR. KASS: I'll hand you Exhibit 11. This is</p> <p>24 the complaint in this matter.</p> <p>25 Q Have you seen this before?</p>

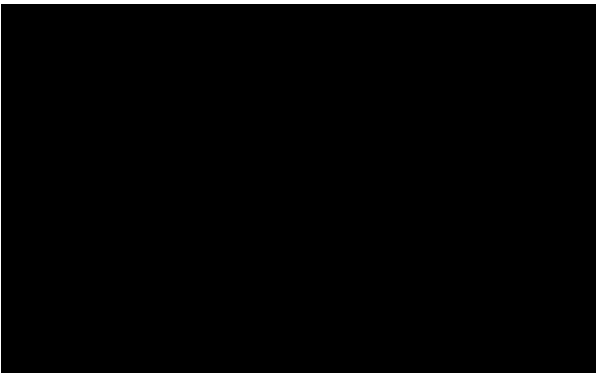
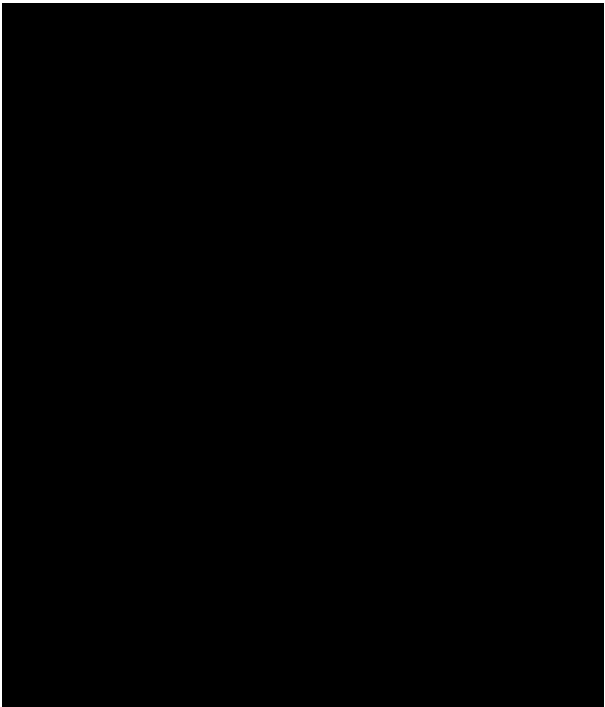
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Page 158	Page 159
<p>1 A I've seen that. I haven't read through it 2 completely. 3 Q Have you read portions of it? 4 A Maybe just briefly. 5 Q Okay. Did you read portions of it in 6 connection with your discussions with the FTC, or did 7 you do it on your own? 8 A No, I did not read that -- I didn't read the 9 portion -- 10 Q So the portions of this complaint that you 11 previously looked at, did you do that in connection 12 with your discussions with the FTC, or did you do that 13 on your own? 14 A No. I did that -- I was -- I was shown this 15 document yesterday. I did not read it yesterday. 16 Q Okay. 17 A I -- I looked at it online, or I remember at 18 some point seeing it. 19 Q So previously, you looked at it online on 20 your own, and then you were also shown it yesterday, 21 as part of your preparation for this case? 22 MS. KAHN: Objection; form. 23 THE WITNESS: Whatever it is online, and 24 which I think is just maybe the first part. I went to 25 the FTC website.</p>	<p>1 MR. KASS: Okay. 2 Q If you'd turn to paragraph 57. 3 A (Witness complies.) 4 Q It says: 5 "On October 1, 2013, Benco's Ryan called his 6 counterpart at Schein, Randy Foley. During this call, 7 Ryan reaffirmed Benco commitment against buying 8 groups, and informed Foley that Benco would not bid on 9 the buying group Smile Source. Neither distributor 10 bid on Smile Source in 2013." 11 Do you see that? 12 A Yes. 13 Q Okay. Do you know Randy Foley? 14 A The name does not ring a bell. 15 Q Okay. So was he involved in discussions 16 Schein had with Smile Source in 2013 and early 2014, 17 to your knowledge? 18 A Not to my knowledge. 19 Q Okay. Would you agree that you reached out 20 to Schein in -- later in 2013, after Patterson had 21 expressed no interest in working with Smile Source? 22 MS. KAHN: Objection; form. 23 THE WITNESS: Based on the e-mails that you 24 showed me earlier, I believe it was -- that's correct. 25 MR. KASS: Q. And the response back was</p>
Page 160	Page 161
<p>1 Schein was, in fact, absolutely interested in 2 discussing working with Smile Source and finding ways 3 to partner together; right? 4 MS. KAHN: Objection; mischaracterizes the 5 evidence. 6 THE WITNESS: Henry Schein Dental was not 7 Henry Schein Special Markets. 8 MR. KASS: Q. And in fact, Henry Schein did 9 submit a proposal for Smile Source's business in early 10 2014; right? 11 MS. KAHN: Objection; form; misstates the 12 testimony. 13 THE WITNESS: Henry Schein did present a 14 proposal. 15 MR. KASS: Q. And the proposal that Schein 16 submitted was part of the bid process that Smile 17 Source established beginning in -- in late 2013; 18 right? 19 MS. KAHN: Objection; form; mischaracterizes 20 the evidence. 21 THE WITNESS: Henry Schein submitted a 22 proposal, based on our request for a meeting. 23 MR. KASS: Okay. 24 Q And that was as part of the bid process that 25 you initiated in late 2013. The bid actually came in</p>	<p>1 2014; correct? 2 MS. KAHN: Object -- 3 MR. KASS: Q. Or the proposal came in 2014; 4 correct? 5 MS. KAHN: Objection; mischaracterizes the 6 evidence. 7 THE WITNESS: We didn't have an official bid 8 process. 9 MR. KASS: Okay. 10 Q But to the extent there was a proposal, it 11 was part of a process that you had initiated in late 12 2013, with the actual proposal coming in in early 13 2014; right? 14 MS. KAHN: Objection; form; misstates prior 15 testimony; asked and answered. 16 THE WITNESS: Henry Schein submitted a 17 proposal, based on a meeting that we had requested to 18 have with them. 19 MR. KASS: And my -- my -- my question really 20 goes to timing. 21 Q This was a process that you had initiated in 22 late 2013, and the proposal came in early 2014 -- 23 MS. KAHN: Object -- 24 MR. KASS: Q. -- correct? 25 MS. KAHN: Objection; vague.</p>

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<p style="text-align: right;">Page 162</p> <p>1 You're using the word "process." The witness 2 has testified that there was no bid process. 3 MR. KASS: I would appreciate if you didn't 4 engage in speaking objections. You know it's wrong. 5 I don't understand why you're doing it. But you know 6 it's wrong, so I'd ask again that you curtail it. 7 Q You can answer the question. 8 A The initial e-mail to request setting up a 9 meeting was in 2013. Initially, the meeting was -- 10 was supposed to occur in 2013. It was rescheduled. 11 And the meeting then occurred in 2014, where we were 12 given a proposal from Henry Schein. 13 Q And it was re- -- it was -- the initial 14 meeting in 2013 was rescheduled at Smile Source's 15 request? 16 A Yes. 17 Q Okay. And you would agree with me that, at 18 no time, did Schein say that it was declining to 19 submit a bid, declining to submit a proposal, or was 20 unwilling to work with Smile Source? 21 MS. KAHN: Objection; form. 22 THE WITNESS: Correct. They weren't willing 23 to work with us in the capacity that we were 24 interested in them working with us. 25 MR. KASS: Okay.</p>	<p style="text-align: right;">Page 163</p> <p>1 Q I understand that you ultimately did not 2 accept the proposal. 3 But again, you would agree with me that, at 4 no time, did Schein say that it was declining to 5 submit a bid, declining to submit a proposal, or was 6 unwilling to work with Smile Source? 7 MS. KAHN: Objection; form; asked and 8 answered. 9 He just provided you an answer to that. 10 THE WITNESS: They submitted us an offer that 11 we didn't accept. There is a reason we did not accept 12 that offer. 13 MR. KASS: I'd like an answer to my question, 14 not one that you wish I had asked. 15 Q My question was: You -- you agree that at no 16 time did Schein say that it was declining to submit a 17 bid, declined to -- declining to submit a proposal, or 18 was unwilling to work with Smile Source? 19 MS. KAHN: Objection; form; asked and 20 answered. 21 THE WITNESS: Henry Schein did submit an 22 offer and a proposal. 23 MR. KASS: Q. So the answer to my question 24 is "yes"? 25 MS. KAHN: Objection --</p>
<p style="text-align: right;">Page 164</p> <p>1 MR. KASS: Q. At no time did Schein say that 2 it was declining to submit a bit, declining to submit 3 a proposal, or unwilling to work with Smile Source? 4 MS. KAHN: Objection. 5 Now you're -- Counsel, you're trying to put 6 words into the witness' mouth. He's already answered 7 that question. 8 THE WITNESS: Henry Schein submitted a 9 proposal in 2014. 10 MR. KASS: Okay. 11 Q Is there a reason why you can't answer my 12 question with a "yes"? 13 MS. KAHN: Objection. 14 Counsel -- 15 THE WITNESS: Can you restate the question in 16 a way that I can answer it in a yes or no? 17 MR. KASS: Sure. 18 THE WITNESS: A question that's easy to 19 understand? 20 MR. KASS: Sure. 21 Q It's a simple yes-or-no question. 22 A Okay. 23 Q At no time did Schein say that it was 24 declining to submit a bit, declining to submit a 25 proposal, or unwilling to work with Smile Source?</p>	<p style="text-align: right;">Page 165</p> <p>1 MS. KAHN: Objection; form; misstates prior 2 testimony; asked and answered. 3 THE WITNESS: Yes. 4 MR. KASS: Okay. 5 Q Now, you would agree then that exhibit -- 6 exhibit -- 7 Was it 11? 8 THE REPORTER: Yes. 9 MR. KASS: Q. Exhibit 11, paragraph 57, 10 where it says "neither distributor bid on Smile Source 11 in 2013" is either false or misleading? 12 MS. KAHN: Objection; mischaracterizing the 13 document; mischaracterizing prior testimony. 14 THE WITNESS: This is a conversation that 15 occurred between two people, one person of which I 16 don't even know, and I was not a part of this 17 conversation. 18 MR. KASS: Yeah. 19 Q I'm -- I'm focusing on the last sentence of 20 paragraph 57 that says neither distributor, referring 21 to Benco and Schein, bid on Smile Source in 2013. 22 And you would agree that that is a false or 23 misleading statement, in light of the fact that Schein 24 did, in fact, submit a bid in response to the bid 25 process that you established in 2013, and that bid</p>

CONFIDENTIAL

<p style="text-align: right;">Page 166</p> <p>1 came in in 2014?</p> <p>2 MS. KAHN: Same objections; mischaracterizing</p> <p>3 the testimony; mischaracterizing the document; lack of</p> <p>4 foundation; asked and answered.</p> <p>5 THE WITNESS: Based on your previous</p> <p>6 question, and your document titled Exhibit No. 8, it</p> <p>7 says 2/13/2014.</p> <p>8 MR. KASS: Right.</p> <p>9 THE WITNESS: So that's the date of proposal.</p> <p>10 MR. KASS: Q. You would -- you would agree</p> <p>11 that this sentence is, at a minimum, misleading?</p> <p>12 MS. KAHN: Objection; form; foundation;</p> <p>13 relevance.</p> <p>14 You're asking the witness to characterize</p> <p>15 something as misleading.</p> <p>16 THE WITNESS: I -- I wasn't a part of this</p> <p>17 discussion.</p> <p>18 MR. KASS: Q. Well, is that something that</p> <p>19 you would write, neither distributor bid on Smile</p> <p>20 Source in 2013?</p> <p>21 Is that consistent with your understanding?</p> <p>22 Do you think that that's a full and complete</p> <p>23 statement?</p> <p>24 That's not misleading?</p> <p>25 MS. KAHN: Objection; asked and answered.</p>	<p style="text-align: right;">Page 167</p> <p>1 Counsel, you're trying to put words into the</p> <p>2 witness' mouth.</p> <p>3 MR. KASS: Q. You can answer.</p> <p>4 A All I can tell you is, that this proposal is</p> <p>5 dated 2/13/2014.</p> <p>6 </p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18 MS. KAHN: Objection.</p> <p>19 Counsel, nobody has lied.</p> <p>20 MR. KASS: So -- well, that's what you say,</p> <p>21 but it looks like a lie to me.</p> <p>22 Q So my question is --</p> <p>23 MS. KAHN: Counsel, the witness is not here</p> <p>24 to testify to this.</p> <p>25 MR. KASS: Q. -- would you agree -- would</p>
<p style="text-align: right;">Page 168</p> <p>1 you agree that neither distributor bid on Smile Source</p> <p>2 in 2013 is a misleading statement?</p> <p>3 MS. KAHN: Objection; form; asked and</p> <p>4 answered.</p> <p>5 You're mischaracterizing all of the evidence</p> <p>6 of this case.</p> <p>7 MR. KASS: Q. You can answer.</p> <p>8 A Sir, I -- I don't even know who Randy Foley</p> <p>9 is.</p> <p>10 Q Right.</p> <p>11 A Ryan is, I think, in reference to one of the</p> <p>12 people in one of the e-mails. This bid is dated</p> <p>13 2/13/2014. I was not privy of this statement.</p> <p>14 MR. KASS: Okay. Can we go off the record</p> <p>15 for a minute?</p> <p>16 (Lunch break taken at 12:17 p.m.)</p> <p>17 ---oOo---</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p style="text-align: right;">Page 169</p> <p>1 AFTERNOON SESSION</p> <p>2 1:05 P.M.</p> <p>3 </p> <p>4</p> <p>5</p> <p>6</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>

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<p>Page 172</p> <div><div>1</div><div>2</div><div>3</div><div>4</div><div>5</div><div>6</div><div>7</div><div>8</div><div>9</div><div>10</div><div>11</div><div>12</div><div>13</div><div>14</div><div>15</div><div>16</div><div>17</div><div>18</div><div>19</div><div>20</div><div>21</div><div>22</div><div>23</div><div>24</div><div>25</div></div>	<p>Page 173</p> <div><div>1</div><div>2</div><div>3</div><div>4</div><div>5</div><div>6</div><div>7</div><div>8</div><div>9</div><div>10</div><div>11</div><div>12</div><div>13</div><div>14</div><div>15</div><div>16</div><div>17</div><div>18</div><div>19</div><div>20</div><div>21</div><div>22</div><div>23</div><div>24</div><div>25</div></div>

44 (Pages 170 to 173)

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45 (Pages 174 to 177)

CONFIDENTIAL

Page 178	Page 179
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Page 180	Page 181
<p>1 [REDACTED]</p> <p>2 [REDACTED]</p> <p>3 [REDACTED]</p> <p>4 [REDACTED]</p> <p>5 [REDACTED]</p> <p>6 [REDACTED]</p> <p>7 [REDACTED]</p> <p>8 [REDACTED]</p> <p>9 Let me hand you Exhibit 13.</p> <p>10 (Document marked Exhibit 13</p> <p>11 for identification.)</p> <p>12 MR. KASS: Okay.</p> <p>13 Q So this is an e-mail string between you and</p> <p>14 Patrick Ryan; is that right?</p> <p>15 A Yes.</p> <p>16 Q Okay. And you write -- on the second page,</p> <p>17 you write -- I'm sorry. Yeah. On the second page --</p> <p>18 at the bottom of the second page, you write to an</p> <p>19 e-mail called "institutions."</p> <p>20 Do you see that?</p> <p>21 A Yes.</p> <p>22 Q And that's sort of the -- that's sort of a</p> <p>23 Benco e-mail address?</p> <p>24 A Yes.</p> <p>25 Q Okay. And you write:</p>	<p>1 "I am president of Smile Source. We</p> <p>2 currently have 40 locations, but are joining with our</p> <p>3 parent company, Vision Source, with 2,500 locations</p> <p>4 and are about to expand."</p> <p>5 Do you see that?</p> <p>6 A Yes.</p> <p>7 [REDACTED]</p> <p>8 [REDACTED]</p> <p>9 [REDACTED]</p> <p>10 [REDACTED]</p> <p>11 [REDACTED]</p> <p>12 [REDACTED]</p> <p>13 [REDACTED]</p> <p>14 [REDACTED]</p> <p>15 [REDACTED]</p> <p>16 [REDACTED]</p> <p>17 [REDACTED]</p> <p>18 [REDACTED]</p> <p>19 [REDACTED]</p> <p>20 [REDACTED]</p> <p>21 [REDACTED]</p> <p>22 [REDACTED]</p> <p>23 [REDACTED]</p> <p>24 [REDACTED]</p> <p>25 [REDACTED]</p>

46 (Pages 178 to 181)

CONFIDENTIAL

Page 182	Page 183
<p>1 MS. KAHN: Objection --</p> <p>2 MR. KASS: Q. Is that right?</p> <p>3 MS. KAHN: Objection; misstates testimony.</p> <p>4 He hasn't said that was his only member on</p> <p>5 the East Coast.</p> <p>6 MR. KASS: Ms. Kahn, you know that's not</p> <p>7 proper. You know that's not right. You know that;</p> <p>8 right? Do you know that? Do you know that? Do you</p> <p>9 know that?</p> <p>10 MS. KAHN: If you want to put something on</p> <p>11 the record, please feel free to do it.</p> <p>12 MR. KASS: I just did. Do you know that? Do</p> <p>13 you know that --</p> <p>14 MS. KAHN: I --</p> <p>15 MR. KASS: -- your speaking objections are</p> <p>16 improper?</p> <p>17 MS. KAHN: I have lodged my objections.</p> <p>18 MR. KASS: No, because I'd like to understand</p> <p>19 so that if I have to raise this, I'd like to at least</p> <p>20 know whether you have an excuse for your speaking</p> <p>21 objections.</p> <p>22 MS. KAHN: I think my objections are proper.</p> <p>23 MR. KASS: Okay.</p> <p>24 Q You can answer the question.</p> <p>25 A It says one of our members in Maryland. I</p>	<p>1 don't recall. We were growing so quickly that I don't</p> <p>2 remember where we had members and where we didn't.</p> <p>3 [REDACTED]</p> <p>4 [REDACTED]</p> <p>5 [REDACTED]</p> <p>6 [REDACTED]</p> <p>7 [REDACTED]</p> <p>8 [REDACTED]</p> <p>9 [REDACTED]</p> <p>10 [REDACTED]</p> <p>11 [REDACTED]</p> <p>12 [REDACTED]</p> <p>13 [REDACTED]</p> <p>14 [REDACTED]</p> <p>15 [REDACTED]</p> <p>16 [REDACTED]</p> <p>17 [REDACTED]</p> <p>18 [REDACTED]</p> <p>19 [REDACTED]</p> <p>20 [REDACTED]</p> <p>21 [REDACTED]</p> <p>22 [REDACTED]</p> <p>23 [REDACTED]</p> <p>24 [REDACTED]</p> <p>25 [REDACTED]</p>
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CONFIDENTIAL

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<p style="text-align: right;">Page 188</p> <p>1 EXAMINATION 2 BY MS. KAHN: 3 Q All right. 4 Dr. Goldsmith, I'm going to ask you some 5 questions. I represent complaint counsel. I'm with 6 the FTC. 7 At some point in time in 2012, Smile Source 8 switched distributors from Schein to Burkhart; 9 correct? 10 A Yes. 11 Q Okay. And prior to the change in the 12 distributor, did you believe that Smile Source's 13 arrangement with Schein was working out well for Smile 14 Source members? 15 MR. KASS: Objection; form. 16 THE WITNESS: Yes. 17 [REDACTED] 18 [REDACTED] 19 [REDACTED] 20 [REDACTED] 21 [REDACTED] 22 [REDACTED] 23 [REDACTED] 24 [REDACTED] 25 [REDACTED]</p>	<p style="text-align: right;">Page 189</p> <p>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]</p>

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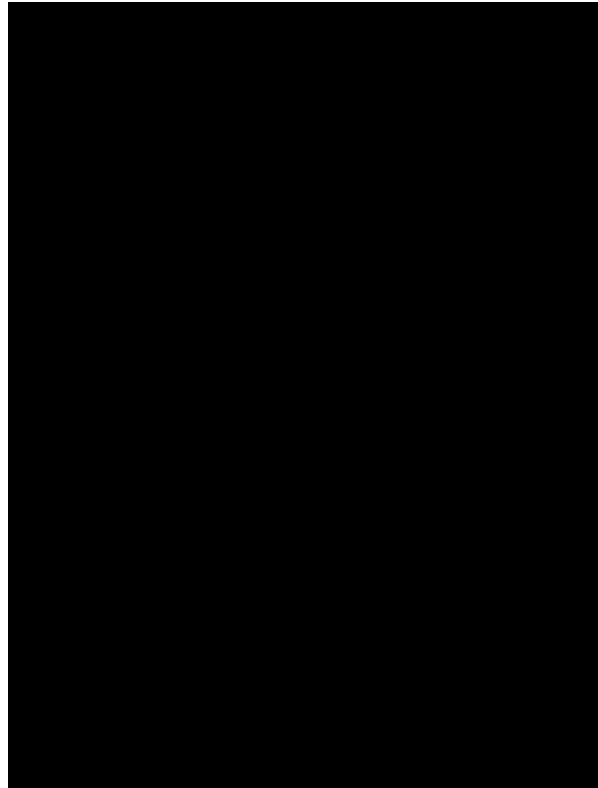
Page 190

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Page 191

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Page 192

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MS. KAHN: Q. Is Burkhart, in your understanding, a regional or a -- or a national full-service distributor?

A In my understanding, they're a regional distributor.

Q In your understanding, did Burkhart have a national footprint at the point in time when Smile Source switched to Burkhart?

A My understanding is at the time, they did not have a national footprint.

Q Would Smile Source have preferred to stay with a national full-service distributor?

MR. KASS: Objection; form.

THE WITNESS: Yes.

MS. KAHN: Q. And after switching to Burkhart, did you believe that Smile Source would need someday again a national full-service distributor?

MR. KASS: Objection; form.

THE WITNESS: Yeah, I believe I already said that. Yes.

MS. KAHN: Q. After the relationship between Smile Source and Schein ended, did you communicate with people from Schein from time to time?

A Yes.

Q And was that an attempt to keep the door open

Page 193

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as -- in the hopes of potentially working with Schein again someday?

MR. KASS: Objection; leading.

THE WITNESS: The -- the objection was to be sure that we did not burn bridges, so to speak, and recognizing that the dental industry is pretty small, and we -- we wanted to always keep doors open.

MS. KAHN: Q. I think you -- oh.

A Sorry.

Q Apologies. I think you said "objection."

Do you mean "objective"?

A Objective, yes.

Q When you started at Smile Source, did you go into the organization with the intention of ending the Schein relationship?

A No.

Q Did you try to make the relationship with Schein work?

MR. KASS: Objection; form.

THE WITNESS: I believe so, yes.

MS. KAHN: Q. Can you flip back at Exhibit 5, which we looked at earlier?

A (Witness complies.)

Q Do you have Exhibit 5 in front of you?

A Yes.

49 (Pages 190 to 193)

CONFIDENTIAL

Page 194

1 Q Do you want to take another minute to
2 reacquaint yourself with the document?

3 A No. It's okay. I'm prepared.

4 MS. KAHN: Counsel, do you know if --

5 MR. KASS: Yes. I'm trying to get it.

6 What's the date of the document?

7 MS. KAHN: February 9, 2012.

8 MR. KASS: Okay. Thanks.

9 MS. KAHN: Q. Exhibit 5 includes e-mails
10 between you and Mr. Tim Sullivan; correct?

11 A Yes.

12 [REDACTED]

13 [REDACTED]

14 [REDACTED]

15 [REDACTED]

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15 [REDACTED]

16 MS. KAHN: Q. Earlier, we looked at a Schein
17 presentation.

18 Do you recall that?

19 Actually, we can pull it up. Exhibit 8.

20 Do you need a minute?

21 A No.

22 [REDACTED]

23 [REDACTED]

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Page 196

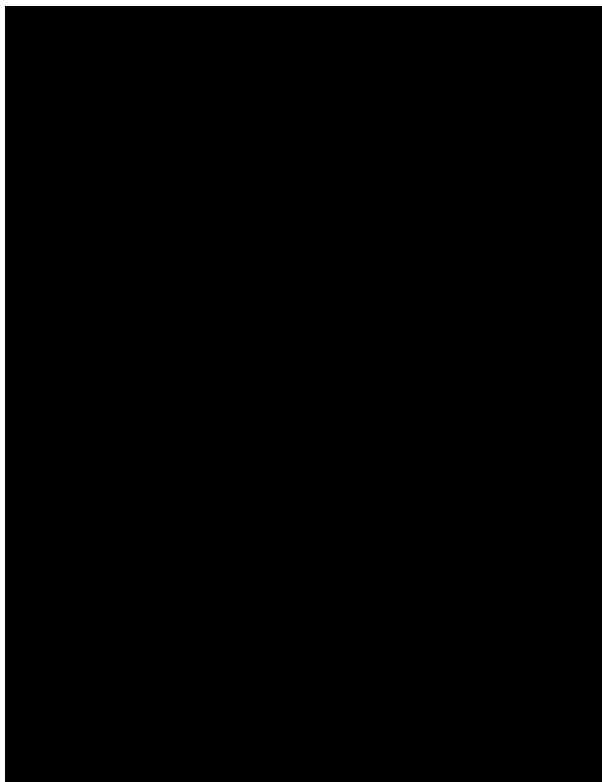
Page 197

50 (Pages 194 to 197)

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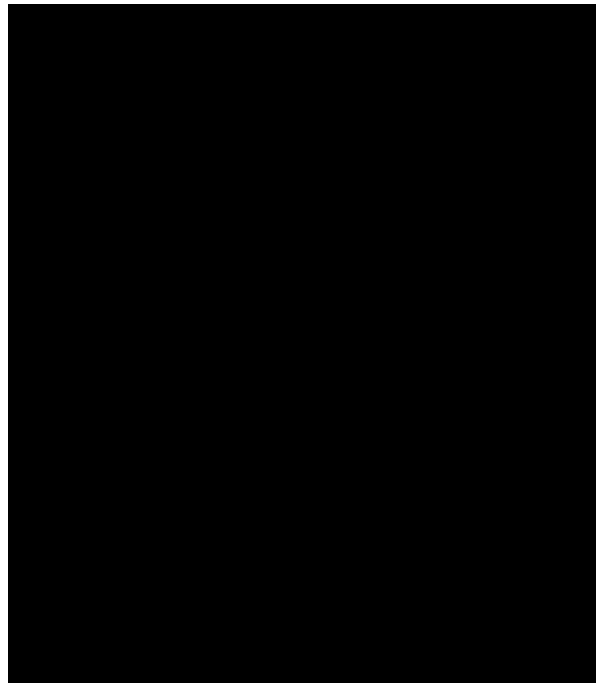
Page 198

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Page 199

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MS. KAHN: You can put that document aside.
THE WITNESS: (Complies.)
MS. KAHN: Q. In your understanding, is

Page 200

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Darby a full-service distributor?

A Yes and no. I wouldn't put Darby in the same category as a -- as a Henry Schein, as far as full service. Darby has -- it's primarily online. They have contracts with service reps, but they don't work necessarily directly for Darby. So I wouldn't call them a full-service dealer.

Q In 2014, was it your understanding -- well, strike that.

In 2014, did you believe that Darby had sales representatives?

MR. KASS: Objection; form; foundation.

THE WITNESS: My understanding was that Darby had primarily in-house sales reps.

MS. KAHN: Q. When you say "in-house sales reps," what do you mean?

A People who worked at Darby headquarters, and took orders over the phone and via the Internet.

Q But no sales reps that would go out to the offices -- dental offices?

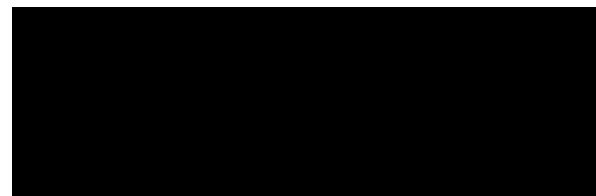
A Yeah, my understanding was that Darby did not have field sales reps that went to dental offices.

Q Did you understand that your -- strike that.



Page 201

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MS. KAHN: Q. At some point, did Smile Source start working with Nashville Dental?

A Yes.

Q At some point, did Smile Source work with Atlanta Dental?

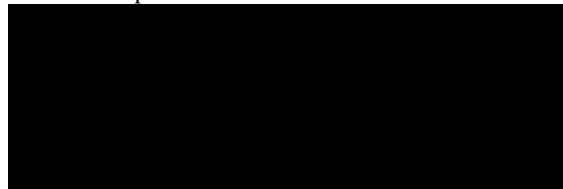
A Yes.

Q Do you recall the timing of when Smile Source started working with Nashville Dental?

A I don't recall exactly. If I were to guess, it was in 2012 at some point.

Q Is that based on actual knowledge, or is that speculation?

A It's speculation.



51 (Pages 198 to 201)

CONFIDENTIAL

<p>Page 202</p> <div><div>1</div><div>2</div><div>3</div><div>4</div><div>5</div><div>6</div><div>7</div><div>8</div><div>9</div><div>10</div><div>11</div><div>12</div><div>13</div><div>14</div><div>15</div><div>16</div><div>17</div><div>18</div><div>19</div><div>20</div><div>21</div><div>22</div><div>23</div><div>24</div><div>25</div></div>	<p>Page 203</p> <div><div>1</div><div>2</div><div>3</div><div>4</div><div>5</div><div>6</div><div>7</div><div>8</div><div>9</div><div>10</div><div>11</div><div>12</div><div>13</div><div>14</div><div>15</div><div>16</div><div>17</div><div>18</div><div>19</div><div>20</div><div>21</div><div>22</div><div>23</div><div>24</div><div>25</div></div>
<p>Page 204</p> <div><div>1</div><div>2</div><div>3</div><div>4</div><div>5</div><div>6</div><div>7</div><div>8</div><div>9</div><div>10</div><div>11</div><div>12</div><div>13</div><div>14</div><div>15</div><div>16</div><div>17</div><div>18</div><div>19</div><div>20</div><div>21</div><div>22</div><div>23</div><div>24</div><div>25</div></div>	<p>Page 205</p> <div><div>1</div><div>2</div><div>3</div><div>4</div><div>5</div><div>6</div><div>7</div><div>8</div><div>9</div><div>10</div><div>11</div><div>12</div><div>13</div><div>14</div><div>15</div><div>16</div><div>17</div><div>18</div><div>19</div><div>20</div><div>21</div><div>22</div><div>23</div><div>24</div><div>25</div></div>

52 (Pages 202 to 205)

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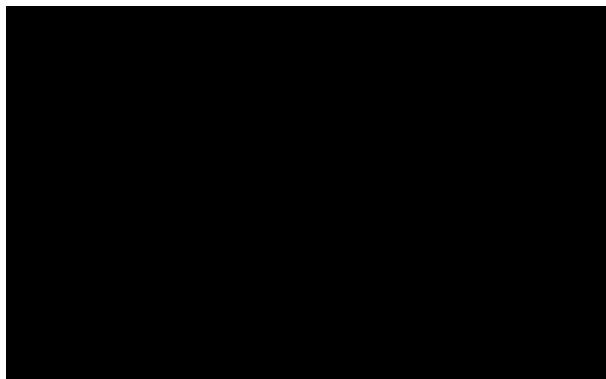
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Page 206

Page 207

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Q Did Smile Source's membership count grow under your leadership at Smile Source?

A Yes.

Q From what to what?

A From roughly ten to 20 locations to over 200.

Q Was there growth in different regions across the country under your leadership?

A Yes.

MS. KAHN: Can we go off the record?

MR. KASS: Yes.

(Recess taken.)

MS. KAHN: I have no further questions.

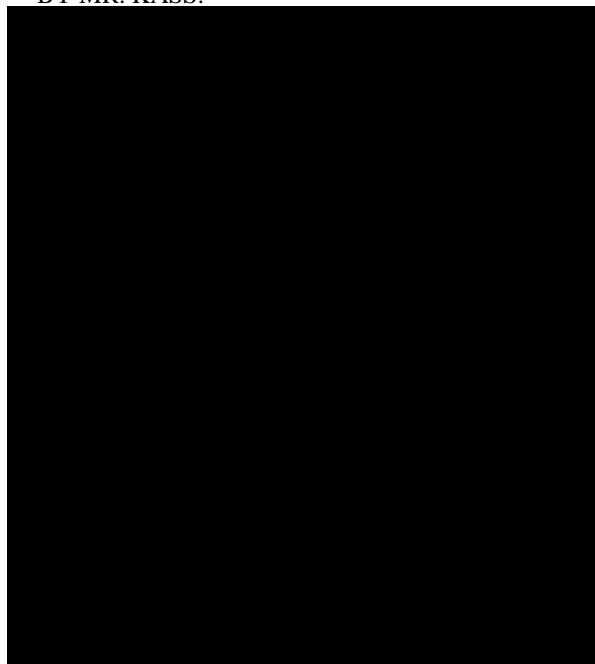
I'll pass it to Colin, but I may follow up on

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any questions you ask.

FURTHER EXAMINATION

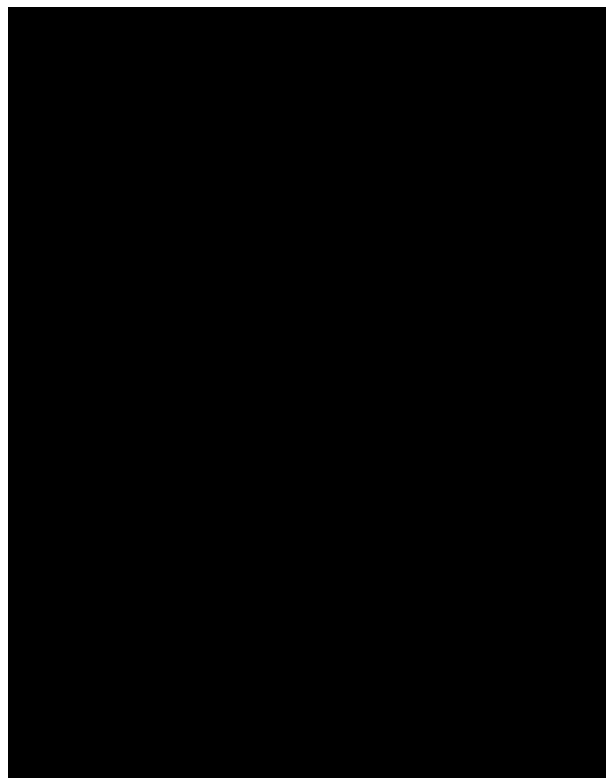
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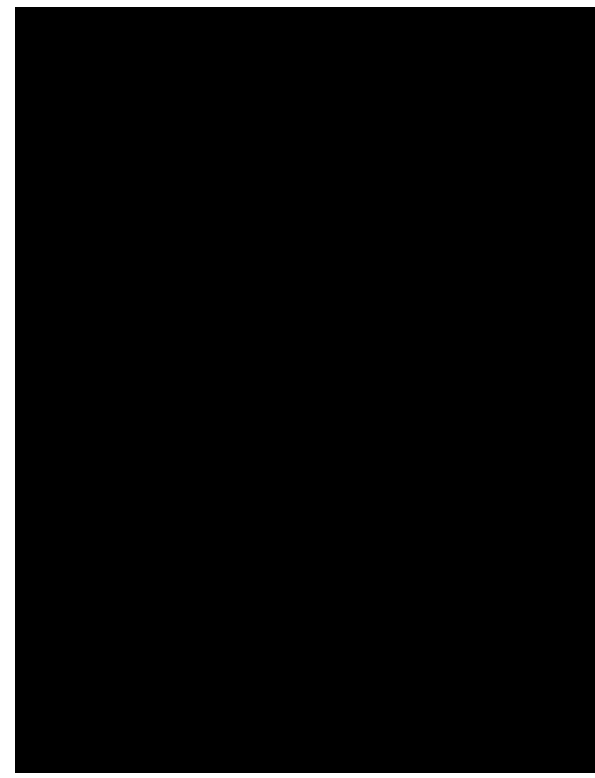
Page 208

Page 209

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53 (Pages 206 to 209)

CONFIDENTIAL

<p style="text-align: right;">Page 210</p> <p>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]</p>	<p style="text-align: right;">Page 211</p> <p>1 speculation. 2 THE WITNESS: My understanding at the time, 3 was that we had a Smile Source login and password. 4 MR. KASS: Okay. 5 Q So you had a Smile Source login and password 6 that you would go to, and you would compare the 7 pricing that members paid versus the pricing that was 8 on the Smile Source Henry Schein website; is that 9 right? 10 MS. KAHN: Objection; form. 11 THE WITNESS: That is not right. 12 MR. KASS: Okay. 13 Q Well, you said you had a Smile Source -- 14 strike that. 15 You said you had a Smile Source login and 16 password that reflected pricing that was available to 17 Smile Source through Special Markets; fair? 18 MS. KAHN: Objection; form. 19 THE WITNESS: We had access to -- we had 20 access to the Henry Schein website, and we had access 21 to the Henry Schein Special Markets website, and we 22 had access to the member practices invoices. 23 MR. KASS: Okay. 24 Q And the pricing that you were talking about, 25 the Special Markets pricing, was that on the Henry</p>
<p style="text-align: right;">Page 212</p> <p>1 Schein Special Markets website? 2 A Yes. 3 Q Okay. And did you have a login and password 4 that enabled you to access pricing on the Henry Schein 5 Special Markets website? 6 A Yes. 7 Q Okay. And were you able to access the Henry 8 Schein Special Markets website with pricing throughout 9 the entire time that Smile Source did business with 10 Henry Schein? 11 MS. KAHN: Objection; form; foundation. 12 THE WITNESS: I don't recall if we had -- I 13 don't recall when we lost access to the Special 14 Markets website. 15 MR. KASS: Q. Do you recall losing access to 16 the Smile -- strike that. 17 Do you recall losing access to the Special 18 Markets website prior to your termination of Henry 19 Schein Dental? 20 MS. KAHN: Objection; form. 21 THE WITNESS: I recall losing access to the 22 Henry Schein Special Markets website. I don't recall 23 when that was. 24 MR. KASS: Okay. 25 Q And it's possible that it occurred after you</p>	<p style="text-align: right;">Page 213</p> <p>1 terminated Henry Schein? 2 MS. KAHN: Objection; form; foundation; asked 3 and answered. 4 THE WITNESS: I believe it was before then. 5 MR. KASS: Okay. 6 Q Well, we looked at this other e-mail. It was 7 Exhibit 12, where you reference the Henry Schein 8 Special Markets website. 9 Do you see that? 10 A Yes. 11 Q And this was an analysis that you did of a 12 member's pricing, relative to the pricing that was 13 available on the Henry Schein Special Markets website? 14 A Yes. 15 Q And this was dated March 5th, 2012? 16 A Yes. 17 Q And this was after you terminated Henry 18 Schein? 19 MS. KAHN: Objection; form. 20 THE WITNESS: Yes. 21 MR. KASS: Q. And so, at least as of 22 March 5th, 2012, after you terminated Henry Schein, 23 you still had access to the special -- Henry Schein 24 Special Markets website; true? 25 MS. KAHN: Objection; form.</p>

CONFIDENTIAL

Page 214

1 THE WITNESS: Yes, we still had access to the
2 website.

3 MR. KASS: Okay.

4 Q So now, back to my original question is:
5 Throughout the entire Henry -- relationship with Henry
6 Schein, you had access to pricing that was made
7 available through the Henry Schein Special Markets
8 website; true?

9 MS. KAHN: Objection; form; foundation; vague
10 as to time.

11 THE WITNESS: No.

12 MR. KASS: Okay.

13 Q So you -- well, let me --

14 A We had access to the website.

15 Q You had access to the website. Okay.

16 So let me rephrase the question.

17 Throughout the entire relationship with Henry
18 Schein, you had access to the pricing information that
19 was made available through the Henry Schein Special
20 Markets website; true?

21 MS. KAHN: Objection; form; foundation.

22 THE WITNESS: True.

23 MR. KASS: Q. Did anybody from Henry Schein
24 ever tell you that the pricing that was available
25 through the Henry Schein Special Markets website, that

Page 215

1 you had access to through the login and password that
2 you were provided, was no longer going to be honored?

3 MS. KAHN: Objection; form.

4 THE WITNESS: I don't recall.

5 MR. KASS: Q. And as you sit here today, you
6 are not testifying that somebody at Henry Schein told
7 you that the pricing that was available through the
8 Henry Schein Special Markets website was no longer
9 available to Henry Schein -- to Smile Source members?

10 MS. KAHN: Objection; form; asked and
11 answered.

12 He's already said, he doesn't recall.

13 THE WITNESS: Not that I recall.

14 MR. KASS: Okay.

15 Q Now, you said that you had done an analysis
16 of pricing of particular members' invoices?

17 A Yes.

18 Q And you said that there were discrepancies
19 between the pricing that some members had received
20 versus the pricing that was available on the Henry
21 Schein Special Markets website?

22 A Yes.

23 Q Was -- was every invoice that you looked at
24 inconsistent with the pricing that was available on
25 the Henry Schein Special Markets website, or was this

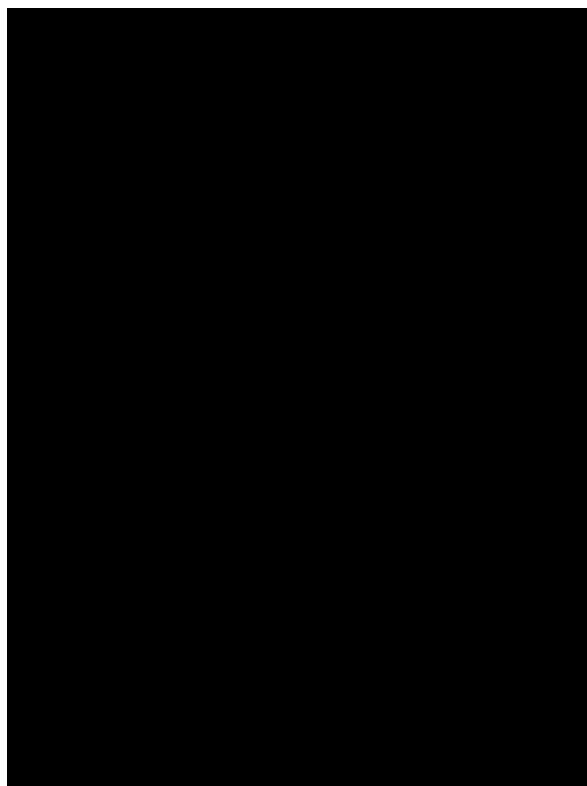
Page 216

Page 217

CONFIDENTIAL

Page 218

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Page 219

1 differences, and turn it over to Henry Schein and ask,
2 Hey, what's going on?
3 MS. KAHN: Objection; argumentative; form;
4 vague.
5 THE WITNESS: I don't recall if we approached
6 Henry Schein on that or not.
7 MR. KASS: Q. So this was a big issue for
8 you. You were really concerned. You thought that
9 there was differences in pricing. You thought that
10 Schein wasn't honoring their prices. And yet you
11 don't even recall if you even raised the issue with
12 Schein; is that right?
13 MS. KAHN: Objection; form; argumentative;
14 misstates prior testimony.
15 THE WITNESS: Can you restate the question,
16 please?
17 MR. KASS: Yeah.
18 Q You were -- this was a big issue for you.
19 You were really concerned. You thought that there
20 were differences in pricing. You thought Schein
21 wasn't honoring the pricing that they had agreed to.
22 And yet you don't recall whether you even raised the
23 issue with Schein; is that right?
24 MS. KAHN: Objection; argumentative; form.
25 THE WITNESS: Can you state the question in a

Page 220

1 different way, please?
2 MR. KASS: No. That's my question.
3 MS. KAHN: Objection; form.
4 THE WITNESS: I don't understand the
5 question.
6 MR. KASS: Okay.
7 Q So you can't answer the question?
8 MS. KAHN: Objection; form; argumentative.
9 Counsel, the witness has asked you to clarify
10 the question.
11 MR. KASS: Q. Can you answer the question?
12 A Can you restate the question, please?
13 Q That was my question.
14 A What's your question? Is your question, do I
15 understand the question?
16 MR. KASS: Can I have the court --
17 THE WITNESS: No, I don't understand the
18 question.
19 MR. KASS: Can I have the court reporter read
20 back my question?
21 (Whereupon, record read by the Reporter as
22 follows:
23 "Question: You were -- this was a big issue
24 for you. You were really concerned. You
25 thought that there were differences in

Page 221

1 pricing. You thought Schein wasn't honoring
2 the pricing that they had agreed to. And
3 yet you don't recall whether you even raised
4 the issue with Schein; is that right?")
5 MS. KAHN: Same objections; argumentative;
6 leading; vague.
7 THE WITNESS: I don't recall if I raised the
8 issue with Schein.
9 MR. KASS: Okay.
10 Q Now, you were asked about whether you were
11 getting the benefit of Schein's field sales reps, and
12 you said no.
13 Do you recall that?
14 A Yes, I recall that.
15 Q Okay. The reality was that Schein's --
16 Schein had assigned field sales reps to Smile Source
17 members; right?
18 MS. KAHN: Objection; form.
19 THE WITNESS: Not necessarily.
20 MR. KASS: Okay.
21 Q So did you identify members that had not had
22 field sales reps assigned to them?
23 A I don't recall exactly, but there was an
24 issue there.
25 Q Okay. Well, I'm asking whether or not you

56 (Pages 218 to 221)

CONFIDENTIAL

Page 222	Page 223
<p>1 had identified, for Schein, any members that had not 2 been assigned a field sales rep? 3 MS. KAHN: Objection; form. 4 THE WITNESS: I don't recall identifying with 5 Schein whether or not somebody had or had not. 6 MR. KASS: Okay. 7 Q So, to your understanding, as a general 8 matter, Schein had, in fact, assigned field sales reps 9 to each member of Smile Source? 10 MS. KAHN: Objection; form. 11 THE WITNESS: I believe that there were field 12 sales reps assigned to members, yes. 13 MR. KASS: Okay. 14 Q And you're not aware of any direction 15 provided by Henry Schein corporate for field sales 16 reps not to engage with Smile Source members or 17 service Smile Source members? 18 MS. KAHN: Objection; form; lack of 19 foundation. 20 THE WITNESS: Yeah, I'm not aware of that. 21 MR. KASS: Okay. 22 Q And to your understanding, the field sales 23 reps that were assigned to Smile Source members were, 24 in fact, doing their job? 25 MS. KAHN: Objection; form; lack of</p>	<p>1 foundation; vague. 2 THE WITNESS: I don't know what their job 3 descriptions are, per se, but I don't believe they 4 were delivering full value to our members. 5 MR. KASS: Okay. 6 Q You thought that they weren't incented well 7 enough to -- you know, to -- to serve Smile Source 8 members. That was your problem? 9 MS. KAHN: Objection; misstates testimony; 10 assumes facts not in evidence. 11 THE WITNESS: That's -- that's speculation. 12 I -- I don't know what they were thinking. 13 MR. KASS: Okay. 14 Q Well, you understood, right, because you ran 15 into the same issue with Burkhart, that field sales 16 reps were earning less on Smile Source members than 17 they were earning on their other accounts, for the 18 most part; right? 19 MS. KAHN: Objection; misstates prior 20 testimony; mischaracterizes the evidence. 21 THE WITNESS: My understanding was that they 22 were possibly being compensated less. But I don't 23 know what the compensation model is for Henry Schein, 24 and their field sales reps. 25 MR. KASS: Q. You understood that they were</p>
Page 224	Page 225
<p>1 compensated less because the gross margin on serving a 2 Smile Source account was less than the gross margin on 3 serving a non-Smile Source account -- 4 MS. KAHN: Objection; form. 5 MR. KASS: Q. -- right? 6 MS. KAHN: Lack of foundation. 7 THE WITNESS: Yeah, I don't know what the 8 compensation structure is for Henry Schein. 9 MR. KASS: Q. Well, that was your 10 understanding. Your understanding was that field 11 sales reps were earning less because the prices that 12 Smile Source was getting was less, so the commissions 13 were less? 14 MS. KAHN: Objection; form; lack of 15 foundation. 16 THE WITNESS: It -- that was speculation. 17 MR. KASS: Q. But it was your speculation. 18 That's what you believed at the time? 19 MS. KAHN: Objection; asked and answered. 20 THE WITNESS: Yes, that was my speculation. 21 MR. KASS: Okay. 22 Q Did you offer to make Henry Schein's field 23 sales reps whole? 24 MS. KAHN: Objection; form; mischaracterizes 25 the evidence; vague as to "whole."</p>	<p>1 THE WITNESS: I don't recall that. 2 MR. KASS: Okay. 3 Q Did you ever offer to make Burkhart's sales 4 reps whole? 5 MS. KAHN: Same objections. 6 THE WITNESS: I don't recall that. 7 MR. KASS: Let me hand -- hand you what's 8 been marked as Exhibit 14. 9 (Document marked Exhibit 14 10 for identification.) 11 MR. KASS: Q. This is an e-mail from you to 12 a Jerry Ritsema on July 16th, 2013. 13 Do you see that? 14 A Yes. 15 Q And this is an e-mail that you sent; right? 16 A Yes. 17 Q And Jerry Ritsema is at Burkhart? 18 A Yes. 19 Q Okay. And here, you're addressing customer 20 service issues that you had encountered with Burkhart; 21 right? 22 MS. KAHN: Objection; form. 23 Can we have a minute to read the document? 24 Can you give the witness a minute to read the 25 document?</p>

CONFIDENTIAL

<p style="text-align: right;">Page 226</p> <p>1 MR. KASS: Q. If you need more time. 2 A Thanks. 3 (Witness reading document.) 4 Okay. 5 Q And here, you're addressing customer service 6 issues that you had encountered with Burkhart; is that 7 right? 8 A Yes. 9 Q Okay. And this is an e-mail dated July 16, 10 2013; right? 11 A Yes. 12 Q So this is within seven months of bringing 13 Burkhart on board; right? 14 MS. KAHN: Objection; form. 15 This is 2013. 16 MR. KASS: Oh, okay. Okay. 17 Q So this is about a year and a half after; 18 correct? 19 A Yes. 20 Q Okay. And you note that this is not the 21 first such complaint that you've had with Burkhart 22 customer service; is that right? 23 MS. KAHN: Objection; form. 24 THE WITNESS: According to this, it says, at 25 least on two other occasions, yes.</p>	<p style="text-align: right;">Page 227</p> <p>1 MR. KASS: Okay. 2 Q And you start out by saying: 3 "I think once we get the reps whole, I think 4 things will change." 5 Do you see that? 6 A Yes. 7 Q What do you mean by "once we get the reps 8 whole"? 9 A I -- I think that was in reference to the 10 fact that they were getting -- they were being paid 11 less on these accounts than they would otherwise be 12 paid on a normal account. 13 Q Okay. And so you had some discussions with 14 Burkhart about how to increase the compensation for 15 Burkhart reps when working on Smile Source accounts; 16 is that right? 17 MS. KAHN: Objection; form. 18 THE WITNESS: I don't recall that exactly. 19 I remember the concept we were working with 20 them on was that they would eventually have more 21 accounts, which in turn would make up for their loss 22 of compensation by increase in volume. 23 MR. KASS: Q. Well, it goes on, and you say: 24 "But they also have to keep in mind that, in 25 some, and hopefully many, cases, they will be getting</p>
<p style="text-align: right;">Page 228</p> <p>1 new clients that they otherwise did not have." 2 Do you see that? 3 A Yes. 4 Q So there were actually two different things. 5 One was getting the reps whole, and the other was that 6 there would be a benefit if they were able to get new 7 clients; right? 8 MS. KAHN: Objection; form; misstates 9 testimony; mischaracterizes the document. 10 THE WITNESS: It's -- it says, but also or 11 however, they -- but they: 12 "Have to keep in mind that in some, and 13 hopefully many, cases, they will be getting new 14 clients that they otherwise did not have." 15 So thereby getting more clients, it would 16 increase their volume, and their commission would then 17 be back to where it was. 18 MR. KASS: Q. My question was whether, in 19 addition to that dynamic, where if they got more 20 customers, it may make up for a loss on the customers 21 they did have, was there also some discussion about 22 trying to increase the compensation for Burkhart reps 23 when they're working on Smile Source -- 24 MS. KAHN: Objection -- 25 MR. KASS: Q. -- accounts?</p>	<p style="text-align: right;">Page 229</p> <p>1 MS. KAHN: Objection; asked and answered. 2 THE WITNESS: I -- as far as I can recall, 3 it's in reference to increasing their volume, getting 4 them more clients. That would then make them whole. 5 MR. KASS: Q. Did you promise to give 6 Burkhart any -- let me strike that. 7 Did you promise to give each Burkhart rep 8 additional Smile Source accounts beyond the ones that 9 they had? 10 MS. KAHN: Objection; form; vague. 11 THE WITNESS: I don't recall that. 12 MR. KASS: Okay. 13 Q Did you guarantee that any field sales rep 14 for Burkhart would earn more money by servicing Smile 15 Source accounts than by not servicing Smile Source 16 accounts? 17 MS. KAHN: Objection; form; vague as to 18 "guarantee." 19 THE WITNESS: I -- yeah, I don't recall that. 20 MR. KASS: Okay. 21 Q Now, this shows that you were not getting 22 the -- the benefit of Burkhart's field sales reps at 23 this time; is that right? 24 MS. KAHN: Objection; form; mischaracterizes 25 the evidence.</p>

CONFIDENTIAL

<p style="text-align: right;">Page 230</p> <p>1 THE WITNESS: This was -- according to this 2 e-mail, this was the third such story I had heard. 3 MR. KASS: Okay. 4 Q Well, how many stores did you hear for 5 Schein? 6 MS. KAHN: Objection; form. 7 MR. KASS: Q. More than -- more than this? 8 MS. KAHN: Objection; form. 9 THE WITNESS: I -- I don't recall. 10 MR. KASS: Okay. 11 Q So, in the same sense that you feel like you 12 weren't getting the full benefit of Schein's field 13 sales reps, you also felt you weren't getting the full 14 benefit of Burkhart field sales reps because of this 15 dynamic, that they were earning less money on 16 serving -- serving Smile Source accounts than they 17 were serving -- than they were getting from servicing 18 non-Smile Source accounts? 19 MS. KAHN: Objection; misstates prior 20 testimony; mischaracterizes the evidence. 21 THE WITNESS: I -- I don't understand the 22 question. 23 MR. KASS: Yeah. 24 Q Isn't it -- so when you said -- you testified 25 that Smile Source accounts were not getting the</p>	<p style="text-align: right;">Page 231</p> <p>1 benefit of Schein's field sales reps; right? 2 That's what you testified to? 3 A I believe so. 4 Q Okay. Now, using the same definition of 5 getting the benefit of a field sales rep, isn't it 6 true that you were also not getting the benefit of 7 Burkhart's field sales reps? 8 MS. KAHN: Objection; misstates testimony; 9 mischaracterizes the evidence; asked and answered. 10 THE WITNESS: This was -- this was a problem 11 that, according to this e-mail, was the third story 12 that I -- had come to my attention. 13 MR. KASS: Okay. 14 THE WITNESS: So I brought it to their 15 attention. 16 MR. KASS: Q. And how many instances were 17 there of getting similar e-mails about Schein sales 18 reps? 19 MS. KAHN: Objection; form; asked and 20 answered. 21 THE WITNESS: I don't recall. 22 MR. KASS: Okay. 23 Q So sitting here today, do you have any basis 24 for saying that Schein sales reps provided less 25 service than Burkhart sales reps?</p>
<p style="text-align: right;">Page 232</p> <p>1 MS. KAHN: Objection; form; argumentative. 2 THE WITNESS: I don't recall saying that 3 comparison -- stating that comparison. 4 MR. KASS: Okay. 5 Q So it is not your testimony that Schein sales 6 reps provided less service than Burkhart sales reps? 7 MS. KAHN: Objection; form; vague. 8 At this point, I think you're confusing the 9 witness. 10 THE WITNESS: My only point is that this was 11 the third time I had heard this story about service 12 complications with Burkhart. 13 MR. KASS: I'm not asking that. So I'm 14 asking a different question. 15 Q Are you testifying here today, that Schein 16 service reps provided less service than Burkhart's 17 sales reps? 18 MS. KAHN: Objection; foundation; misstates 19 prior testimony. 20 THE WITNESS: That's not my testimony. 21 MR. KASS: Q. Now, you testified that you 22 tried to make the relationship with Schein work? 23 A I believe so. 24 Q Okay. What did you do to make the 25 relationship with Schein work?</p>	<p style="text-align: right;">Page 233</p> <p>1 A I don't recall specifics. 2 Q Okay. The reality is, within three months of 3 you joining Smile Source, you terminated Schein; is 4 that right? 5 MS. KAHN: Objection; form; argumentative; 6 misstates prior testimony. 7 THE WITNESS: According to the timeline, yes. 8 MR. KASS: Okay. 9 Q And what did you do in those three months to 10 make the relationship with Schein work? 11 A I don't recall exactly. 12 Q Okay. Do you recall anything that you did? 13 MS. KAHN: Objection; asked and answered. 14 MR. KASS: Q. Do you recall anything that 15 you did? 16 A Yes. 17 Q Okay. What did you do? 18 A Anything that I did? 19 I went to work every day. 20 Q No. Did you recall anything that you did to 21 try to make the relationship with Schein work during 22 those three months? 23 MS. KAHN: Objection; asked and answered. 24 THE WITNESS: I believe that there were some 25 phone calls that were involved. I believe that there</p>

CONFIDENTIAL

Page 234	Page 235
<p>1 were some e-mails that were involved. I believe there 2 was a meeting that occurred with John Chatham. So I 3 believe that there were some efforts that were made to 4 make that relationship work. 5 MR. KASS: Okay. 6 Q And then, if you'd turn to Exhibit 5. 7 A (Witness complies.) 8 Q Okay. This is your e-mail, dated 9 February 9th, 2012. You note that you parted on very 10 good terms; right? 11 A Yes. 12 MS. KAHN: Objection; form. 13 MR. KASS: Q. Right? 14 A Yes. 15 Q And you note that Tim Sullivan had tried to 16 support Smile Source, as did John Chatham; right? 17 MS. KAHN: Objection; form. 18 THE WITNESS: Yes. 19 MR. KASS: Okay. 20 Q So it's fair to say that as you tried to make 21 the Schein relationship work, so did Schein. Schein 22 tried to make the Smile Source relationship work; 23 fair? 24 MS. KAHN: Objection; form; calls for 25 speculation; lack of foundation.</p>	<p>1 THE WITNESS: In our estimation, they were 2 not trying to make the relationship work. 3 MR. KASS: Q. Well, you say: 4 "John has been supportive, as well, and 5 willing to work with us when it didn't make sense." 6 Right? 7 MS. KAHN: Objection; form. 8 THE WITNESS: That -- and that's in reference 9 to when Smile Source was first starting. We were a 10 start-up company, and they were willing to work with 11 us and offer Special Markets pricing. 12 MR. KASS: Okay. 13 Q You wrote: 14 "Tim and John, your belief in Smile Source 15 has helped us deliver our value proposition, and we 16 are truly grateful for your support." 17 Do you see that? 18 A Yes, I see that. 19 Q Okay. So you're saying Tim and John 20 supported Smile Source; right? 21 MS. KAHN: Objection; form; misstates prior 22 testimony. 23 THE WITNESS: Yes. This is in reference to 24 them offering us Special Markets pricing at a time 25 when we were barely a group.</p>
Page 236	Page 237
<p>1 MR. KASS: Okay. 2 Q Now, you were asked about whether this e-mail 3 was your effort to salvage a potential future 4 relationship with Schein, and prevent burning of 5 bridges; right? 6 Do you recall that? 7 A I don't recall it the way you stated it. 8 Q Okay. Do you recall being asked whether this 9 e-mail reflected your attempt to -- to avoid burning 10 bridges? 11 A Yes. 12 Q Okay. And you said it was; right? 13 A Yes. 14 Q Okay. Now, is it your testimony that you 15 misstate, mischaracterize, or lie with respect to 16 anything in this e-mail, in your effort to avoid 17 burning bridges? 18 MS. KAHN: Objection; misstates prior 19 testimony; argumentative. 20 You're abusing the witness. 21 THE WITNESS: I don't understand what you 22 mean by "lying." 23 MR. KASS: Q. Well, that's my question: Is 24 it your testimony that you misstated anything, 25 mischaracterized anything, or said anything untruthful</p>	<p>1 in your attempt to avoid burning bridges? 2 MS. KAHN: Same objections, and it's 3 compound. 4 THE WITNESS: You'll have to restate the 5 question a different way, so I can understand what 6 you're asking. 7 MR. KASS: Q. Did you misstate anything in 8 your e-mail, Exhibit 5? 9 MS. KAHN: Objection; form. 10 THE WITNESS: I do not believe so. 11 MR. KASS: Q. Did you -- okay. 12 So as far as you're aware, Exhibit 5 13 reflects -- the statements in Exhibit 5 are all 14 truthful and accurate; fair? 15 MS. KAHN: Objection; form. 16 THE WITNESS: I believe so. 17 MR. KASS: Okay. 18 Q You were -- if you'd turn to Exhibit 8. 19 A (Witness complies.) 20 Q This is the presentation that contains 21 Schein's first proposal? 22 A Yeah. 23 Q Okay. You -- you testified on -- when I 24 first asked you, you used the words "light and 25 fluffy." And later, you said that was a poor choice</p>

CONFIDENTIAL

<p style="text-align: right;">Page 238</p> <p>1 of words.</p> <p>2 Do you recall that?</p> <p>3 MS. KAHN: Objection; form.</p> <p>4 THE WITNESS: Yes, I recall that.</p> <p>5 MR. KASS: Okay.</p> <p>6 Q And then you were asked, in a leading</p> <p>7 question by Ms. Kahn, about whether this document</p> <p>8 reflected a proposal that was light and fluffy, and</p> <p>9 you said yes.</p> <p>10 Do you recall that?</p> <p>11 MS. KAHN: Objection; form.</p> <p>12 I simply referred to the prior testimony.</p> <p>13 THE WITNESS: Yes, I recall that.</p> <p>14 MR. KASS: Okay.</p> <p>15 Q And you said that the proposal was light</p> <p>16 because the discounts were not as large as you had</p> <p>17 hoped that they would be; right?</p> <p>18 MS. KAHN: Objection; form; misstates prior</p> <p>19 testimony.</p> <p>20 [REDACTED]</p> <p>21 [REDACTED]</p> <p>22 [REDACTED]</p> <p>23 [REDACTED]</p> <p>24 [REDACTED]</p> <p>25 [REDACTED]</p>	<p style="text-align: right;">Page 239</p> <p>1 [REDACTED]</p> <p>2 [REDACTED]</p> <p>3 [REDACTED]</p> <p>4 [REDACTED]</p> <p>5 [REDACTED]</p> <p>6 [REDACTED]</p> <p>7 [REDACTED]</p> <p>8 [REDACTED]</p> <p>9 [REDACTED]</p> <p>10 [REDACTED]</p> <p>11 MS. KAHN: Objection; form; mischaracterizes</p> <p>12 prior testimony; argumentative.</p> <p>13 [REDACTED]</p> <p>14 [REDACTED]</p> <p>15 MR. KASS: I'm going to move to strike your</p> <p>16 statement.</p> <p>17 And I'd like the court reporter to mark this</p> <p>18 passage so that I can raise it with the court.</p> <p>19 Q You can go ahead and answer the question.</p> <p>20 A The -- the proposal from Burkhart was</p> <p>21 slightly more complicated, because it involved</p> <p>22 inventory management as well, thereby lowering supply</p> <p>23 percentages of our members, which was our ultimate</p> <p>24 goal.</p> <p>25 So it was -- it was different. So they were</p>
<p style="text-align: right;">Page 240</p> <p>1 at -- it's not comparing apples to apples between the</p> <p>2 two proposals.</p> <p>3 [REDACTED]</p> <p>4 [REDACTED]</p> <p>5 [REDACTED]</p> <p>6 A I don't recall.</p> <p>7 Q Okay. And you're not testifying -- well, let</p> <p>8 me strike that.</p> <p>9 You're not testifying that the discounts that</p> <p>10 Burkhart was offering were greater than the discount</p> <p>11 that Schein was offering; right?</p> <p>12 MS. KAHN: Objection; asked and answered</p> <p>13 previously; mischaracterizes prior testimony.</p> <p>14 THE WITNESS: Restate the question. Sorry.</p> <p>15 MR. KASS: Q. You're not testifying that the</p> <p>16 discounts Burkhart offered was any greater than the</p> <p>17 discount that Schein was proposing in this Exhibit 8?</p> <p>18 MS. KAHN: Objection; form.</p> <p>19 THE WITNESS: I don't recall exactly what the</p> <p>20 discount was that we received from Burkhart. I know</p> <p>21 that it was convincing enough that it was -- our</p> <p>22 members received a greater benefit.</p> <p>23 MR. KASS: Okay.</p> <p>24 Q And the benefit that you're talking about was</p> <p>25 inventory management?</p>	<p style="text-align: right;">Page 241</p> <p>1 [REDACTED]</p> <p>2 [REDACTED]</p> <p>3 [REDACTED]</p> <p>4 [REDACTED]</p> <p>5 [REDACTED]</p> <p>6 [REDACTED]</p> <p>7 [REDACTED]</p> <p>8 [REDACTED]</p> <p>9 [REDACTED]</p> <p>10 [REDACTED]</p> <p>11 [REDACTED]</p> <p>12 [REDACTED]</p> <p>13 [REDACTED]</p> <p>14 [REDACTED]</p> <p>15 [REDACTED]</p> <p>16 [REDACTED]</p> <p>17 [REDACTED]</p> <p>18 [REDACTED]</p> <p>19 [REDACTED]</p> <p>20 [REDACTED]</p> <p>21 [REDACTED]</p> <p>22 [REDACTED]</p> <p>23 [REDACTED]</p> <p>24 [REDACTED]</p> <p>25 [REDACTED]</p>

CONFIDENTIAL

<p>Page 242</p> <div><div>1</div><div>2</div><div>3</div><div>4</div><div>5</div><div>6</div><div>7</div><div>8</div><div>9</div><div>10</div><div>11</div><div>12</div><div>13</div><div>14</div><div>15</div><div>16</div><div>17</div><div>18</div><div>19</div><div>20</div><div>21</div><div>22</div><div>23</div><div>24</div><div>25</div></div>	<p>Page 243</p> <div><div>1</div><div>2</div><div>3</div><div>4</div><div>5</div><div>6</div><div>7</div><div>8</div><div>9</div><div>10</div><div>11</div><div>12</div><div>13</div><div>14</div><div>15</div><div>16</div><div>17</div><div>18</div><div>19</div><div>20</div><div>21</div><div>22</div><div>23</div><div>24</div><div>25</div></div>
<p>Page 244</p> <div><div>1</div><div>2</div><div>3</div><div>4</div><div>5</div><div>6</div><div>7</div><div>8</div><div>9</div><div>10</div><div>11</div><div>12</div><div>13</div><div>14</div><div>15</div><div>16</div><div>17</div><div>18</div><div>19</div><div>20</div><div>21</div><div>22</div><div>23</div><div>24</div><div>25</div></div>	<p>Page 245</p> <div><div>1</div><div>2</div><div>3</div><div>4</div><div>5</div><div>6</div><div>7</div><div>8</div><div>9</div><div>10</div><div>11</div><div>12</div><div>13</div><div>14</div><div>15</div><div>16</div><div>17</div><div>18</div><div>19</div><div>20</div><div>21</div><div>22</div><div>23</div><div>24</div><div>25</div></div>

62 (Pages 242 to 245)

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CONFIDENTIAL

<p>Page 246</p> <div><div>1</div><div>2</div><div>3</div><div>4</div><div>5</div><div>6</div><div>7</div><div>8</div><div>9</div><div>10</div><div>11</div><div>12</div><div>13</div><div>14</div><div>15</div><div>16</div><div>17</div><div>18</div><div>19</div><div>20</div><div>21</div><div>22</div><div>23</div><div>24</div><div>25</div></div>	<p>Page 247</p> <div><div>1</div><div>2</div><div>3</div><div>4</div><div>5</div><div>6</div><div>7</div><div>8</div><div>9</div><div>10</div><div>11</div><div>12</div><div>13</div><div>14</div><div>15</div><div>16</div><div>17</div><div>18</div><div>19</div><div>20</div><div>21</div><div>22</div><div>23</div><div>24</div><div>25</div></div>
<p>Page 248</p> <div><div>1</div><div>2</div><div>3</div><div>4</div><div>5</div><div>6</div><div>7</div><div>8</div><div>9</div><div>10</div><div>11</div><div>12</div><div>13</div><div>14</div><div>15</div><div>16</div><div>17</div><div>18</div><div>19</div><div>20</div><div>21</div><div>22</div><div>23</div><div>24</div><div>25</div></div>	<p>Page 249</p> <div><div>1</div><div>2</div><div>3</div><div>4</div><div>5</div><div>6</div><div>7</div><div>8</div><div>9</div><div>10</div><div>11</div><div>12</div><div>13</div><div>14</div><div>15</div><div>16</div><div>17</div><div>18</div><div>19</div><div>20</div><div>21</div><div>22</div><div>23</div><div>24</div><div>25</div></div>

63 (Pages 246 to 249)

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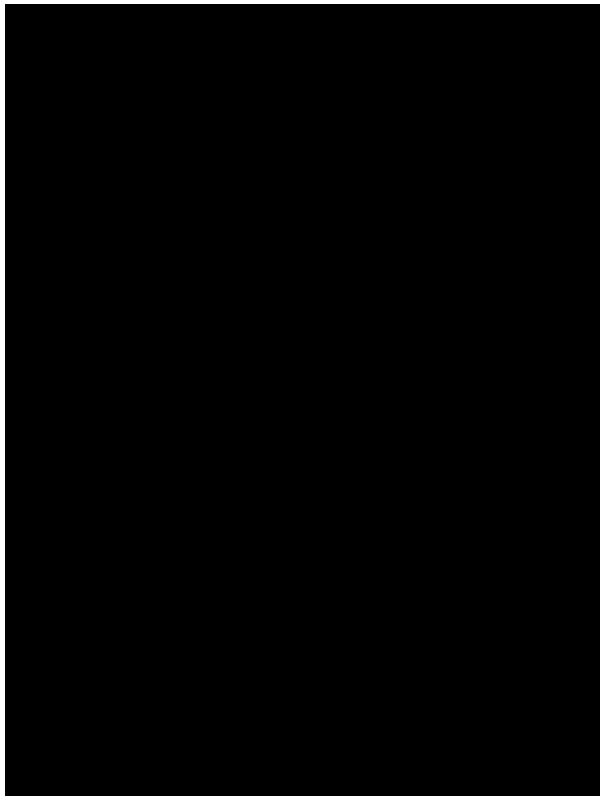
CONFIDENTIAL

<p style="text-align: right;">Page 250</p> <p>1 MR. KASS: Take it back a step.</p> <p>2 Q You testified earlier, I believe, that</p> <p>3 discounts are pervasive in the dental industry; right?</p> <p>4 MS. KAHN: Objection; form.</p> <p>5 THE WITNESS: Yes.</p> <p>6 MR. KASS: Q. So whether you're a member of</p> <p>7 Smile Source, or you're not a member of Smile Source,</p> <p>8 you're likely to receive discounts; right?</p> <p>9 MS. KAHN: Objection; form.</p> <p>10 THE WITNESS: At times.</p> <p>11 MR. KASS: Okay.</p> <p>12 Q And the discounts that you receive, can we</p> <p>13 call that the net price -- the final net price that</p> <p>14 you pay?</p> <p>15 A Sure.</p> <p>16 [REDACTED]</p> <p>17 [REDACTED]</p> <p>18 [REDACTED]</p> <p>19 [REDACTED]</p> <p>20 [REDACTED]</p> <p>21 [REDACTED]</p> <p>22 [REDACTED]</p> <p>23 [REDACTED]</p> <p>24 [REDACTED]</p> <p>25 [REDACTED]</p>	<p style="text-align: right;">Page 251</p> <p>1 [REDACTED]</p> <p>2 [REDACTED]</p> <p>3 [REDACTED]</p> <p>4 [REDACTED]</p> <p>5 [REDACTED]</p> <p>6 [REDACTED]</p> <p>7 [REDACTED]</p> <p>8 [REDACTED]</p> <p>9 [REDACTED]</p> <p>10 [REDACTED]</p> <p>11 [REDACTED]</p> <p>12 [REDACTED]</p> <p>13 [REDACTED]</p> <p>14 [REDACTED]</p> <p>15 [REDACTED]</p> <p>16 [REDACTED]</p> <p>17 [REDACTED]</p> <p>18 [REDACTED]</p> <p>19 [REDACTED]</p> <p>20 [REDACTED]</p> <p>21 [REDACTED]</p> <p>22 [REDACTED]</p> <p>23 [REDACTED]</p> <p>24 [REDACTED]</p> <p>25 [REDACTED]</p>
<p style="text-align: right;">Page 252</p> <p>1 [REDACTED]</p> <p>2 [REDACTED]</p> <p>3 [REDACTED]</p> <p>4 [REDACTED]</p> <p>5 [REDACTED]</p> <p>6 [REDACTED]</p> <p>7 [REDACTED]</p> <p>8 [REDACTED]</p> <p>9 [REDACTED]</p> <p>10 [REDACTED]</p> <p>11 [REDACTED]</p> <p>12 [REDACTED]</p> <p>13 [REDACTED]</p> <p>14 [REDACTED]</p> <p>15 [REDACTED]</p> <p>16 [REDACTED]</p> <p>17 [REDACTED]</p> <p>18 [REDACTED]</p> <p>19 [REDACTED]</p> <p>20 [REDACTED]</p> <p>21 [REDACTED]</p> <p>22 [REDACTED]</p> <p>23 [REDACTED]</p> <p>24 [REDACTED]</p> <p>25 [REDACTED]</p>	<p style="text-align: right;">Page 253</p> <p>1 [REDACTED]</p> <p>2 [REDACTED]</p> <p>3 [REDACTED]</p> <p>4 [REDACTED]</p> <p>5 [REDACTED]</p> <p>6 [REDACTED]</p> <p>7 [REDACTED]</p> <p>8 [REDACTED]</p> <p>9 [REDACTED]</p> <p>10 [REDACTED]</p> <p>11 [REDACTED]</p> <p>12 [REDACTED]</p> <p>13 [REDACTED]</p> <p>14 [REDACTED]</p> <p>15 [REDACTED]</p> <p>16 [REDACTED]</p> <p>17 [REDACTED]</p> <p>18 [REDACTED]</p> <p>19 [REDACTED]</p> <p>20 [REDACTED]</p> <p>21 [REDACTED]</p> <p>22 [REDACTED]</p> <p>23 [REDACTED]</p> <p>24 [REDACTED]</p> <p>25 [REDACTED]</p>

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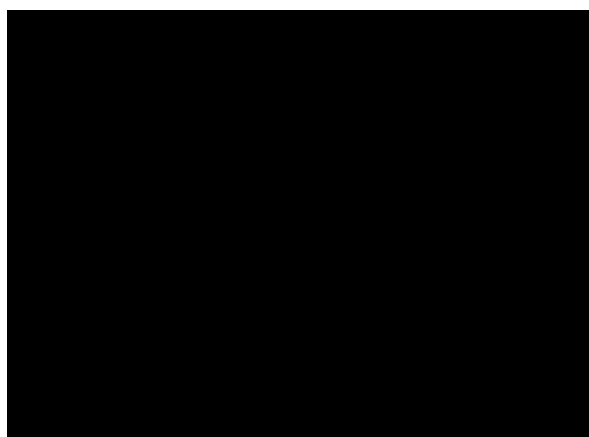
Page 254

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Page 255

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MR. KASS: Okay. I think that's all I have.

MS. KAHN: Okay. Can we go off the record?
(Recess taken.)

FURTHER EXAMINATION

BY MS. KAHN:

Q All right.

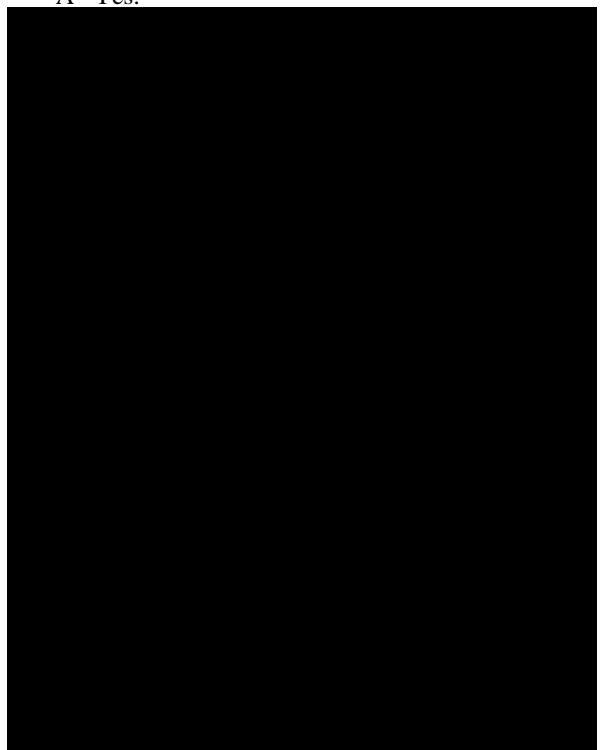
Let me -- back on Exhibit 8, we had talked
extensively about the discounts numbers on slide 9 of
Exhibit 8.

Do you recall that?

Page 256

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A Yes.



Page 257

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MS. KAHN: No further questions.

MR. KASS: Okay. I have a few.

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65 (Pages 254 to 257)

CONFIDENTIAL

Page 258

1 FURTHER EXAMINATION
2 BY MR. KASS:
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Page 259

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Page 260

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Page 261

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MR. KASS: No further questions.

MS. KAHN: Nothing from me.

THE REPORTER: Mr. Lavery?

MR. LAVERY: Yeah, just a few questions.

EXAMINATION

BY MR. LAVERY:

Q Dr. Goldsmith, my name is Will Lavery, and I represent Patterson.

Could you turn to Exhibit 6, please, the document with the Bates stamp PDCO00021163. Just let me know when you're ready.

A I don't believe I have Exhibit 6.

MS. KAHN: That's strange. I think it's this one.

MR. KASS: Yeah.

MS. KAHN: Sort it out later.

THE WITNESS: Yeah. Okay.

(Complies.)

Okay.

MR. LAVERY: Q. Dr. Goldsmith, on the bottom of page 2, that's an e-mail from you to Neal McFadden

66 (Pages 258 to 261)

CONFIDENTIAL

Page 262	Page 263
<p>1 on September 30th, 2013; correct?</p> <p>2 A Correct.</p> <p>3 Q And you're asking him if you can have a</p> <p>4 conversation about the possibility of a partnership;</p> <p>5 correct?</p> <p>6 A Correct.</p> <p>7 Q And prior to sending that e-mail, you had</p> <p>8 never met Neal McFadden; correct?</p> <p>9 A Correct.</p> <p>10 Q And a little over an hour later, Mr. McFadden</p> <p>11 responds and says that he would love to talk to you --</p> <p>12 with you about Smile Source; right?</p> <p>13 MS. KAHN: Objection; form.</p> <p>14 THE WITNESS: Correct.</p> <p>15 MR. LAVERY: Q. And after that, you had an</p> <p>16 in-person meeting with both Dave Misiak and Neal</p> <p>17 McFadden; correct?</p> <p>18 MS. KAHN: Objection; form.</p> <p>19 THE WITNESS: Correct.</p> <p>20 MR. LAVERY: Q. Where was that meeting?</p> <p>21 A In St. Paul.</p> <p>22 Q And that meeting lasted a couple of hours;</p> <p>23 correct?</p> <p>24 MS. KAHN: Objection; form.</p> <p>25 THE WITNESS: I don't recall how long it</p>	<p>1 lasted.</p> <p>2 MR. LAVERY: Q. And that, at that meeting,</p> <p>3 did they tell you that they were not interested?</p> <p>4 MS. KAHN: Objection; form; vague.</p> <p>5 THE WITNESS: I do not recall.</p> <p>6 MR. LAVERY: Q. In fact, Mr. Misiak didn't</p> <p>7 inform you that they weren't interested until</p> <p>8 November 20th, 2013; correct?</p> <p>9 MS. KAHN: Objection; form.</p> <p>10 THE WITNESS: Yes.</p> <p>11 MR. LAVERY: Q. Dr. Goldsmith, you said that</p> <p>12 you met with FTC lawyers for about an hour and a half</p> <p>13 yesterday; is that right?</p> <p>14 A Yes.</p> <p>15 Q Who did you meet with?</p> <p>16 A Ms. Kahn.</p> <p>17 Q Anyone else?</p> <p>18 A No.</p> <p>19 Q And how many documents did you review?</p> <p>20 MS. KAHN: Objection; asked and answered.</p> <p>21 THE WITNESS: I don't recall exactly. It was</p> <p>22 roughly 20.</p> <p>23 MR. LAVERY: Roughly 20; okay.</p> <p>24 Q Did Ms. Kahn tell you that those were</p> <p>25 documents that we were likely to ask questions about?</p>
Page 264	Page 265
<p>1 A I don't recall exactly how she presented</p> <p>2 them, except that they were items that were included</p> <p>3 as documents that were included in the case, or as</p> <p>4 exhibits. I don't recall the terminology she used.</p> <p>5 Q She told you they were documents or exhibits</p> <p>6 included in the case?</p> <p>7 MS. KAHN: Objection; form.</p> <p>8 THE WITNESS: Yeah, I don't recall exactly</p> <p>9 what terminology she used.</p> <p>10 MR. LAVERY: Q. What did you understand that</p> <p>11 to mean?</p> <p>12 MS. KAHN: Objection; form.</p> <p>13 THE WITNESS: They were e-mails or</p> <p>14 conversations that occurred, that were relevant to the</p> <p>15 case.</p> <p>16 MR. LAVERY: Q. Relevant in what way?</p> <p>17 MS. KAHN: Objection; form.</p> <p>18 THE WITNESS: Relevant in that they somehow</p> <p>19 involved me.</p> <p>20 MR. LAVERY: Q. You personally, or Smile</p> <p>21 Source?</p> <p>22 MS. KAHN: Objection.</p> <p>23 THE WITNESS: Smile Source.</p> <p>24 MR. LAVERY: Q. Did Ms. Kahn give you advice</p> <p>25 on how to answer questions from respondent's counsel?</p>	<p>1 A No, she did not.</p> <p>2 Q She didn't give you any guidance whatsoever</p> <p>3 on how to answer questions?</p> <p>4 A No, she did not.</p> <p>5 Q Did she tell you how to handle objections?</p> <p>6 A No, she did not.</p> <p>7 Q Dr. Goldsmith, are you aware that you're on</p> <p>8 the FTC's preliminary witness list?</p> <p>9 A I've been informed of that, yes.</p> <p>10 Q When were you informed of that?</p> <p>11 A I don't recall exactly. Within the last</p> <p>12 year.</p> <p>13 Q Within the last year?</p> <p>14 A Well, with -- within whenever this complaint</p> <p>15 was filed. So I -- since then.</p> <p>16 Q Were you informed that you would be a witness</p> <p>17 in this case before or after the complaint was filed?</p> <p>18 A After.</p> <p>19 Q What's your understanding of what you're</p> <p>20 going to testify about?</p> <p>21 MS. KAHN: Objection; form.</p> <p>22 THE WITNESS: That I'm going to be questioned</p> <p>23 about the relationship that Smile Source had with</p> <p>24 Henry Schein and Patterson and Benco.</p> <p>25 MR. LAVERY: Q. And did the FTC tell you</p>

CONFIDENTIAL

Page 266

1 that you should expect to be called as a witness in
2 Washington, D.C., later this fall?

3 A I was informed that that was a possibility.

4 Q And who informed you of that?

5 A I believe it was Ms. Kahn.

6 Q Dr. Goldsmith, you live in Texas; right?

7 A That is correct.

8 Q The FTC paid for your trip to San Francisco
9 for the deposition today; correct?

10 MS. KAHN: Objection; form.

11 THE WITNESS: That is correct.

12 MR. LAVERY: That's all I have. Thank you,
13 sir.

14 MS. KAHN: I just have a few questions to
15 follow up on that.

FURTHER EXAMINATION

16 BY MS. KAHN:

17 Q Dr. Goldsmith, do you recall a meeting with
18 Mr. Misiak at Patterson?

19 A Yes.

20 Q And at that meeting, was your -- strike that.
21 What was the purpose of you meeting with
22 Mr. Misiak?
23

24 A To discuss the possibility of working with
25

Page 267

1 Patterson.

2 Q What was his response to you?

3 A At that meeting or after?

4 Q At the meeting.

5 A I think it was fairly vague. It was
6 collegial and friend -- friendly, but it was very
7 vague. They were going to discuss possibilities and
8 get back to us.

9 MS. KAHN: Nothing further from me.

10 MR. RACOWSKI: I don't have any questions.

11 MR. KASS: Nothing further from me.

12 (WHEREUPON, the deposition ended
13 at 3:12 p.m.)

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ANDREW GOLDSMITH, D.D.S.

Subscribed and sworn to before me
this ____ day of _____, 20__.

NOTARY PUBLIC

Page 268

I N D E X

1 WITNESS: Andrew Goldsmith, D.D.S.
2

EXAMINATION PAGE

3 Mr. Kass 5, 207, 258

4 Ms. Kahn 188, 255, 266

5 Mr. Lavery 261
6

E X H I B I T S

EXHIBIT PAGE

7 Exhibit 1 9-1-11 E-mail, Subject: Smile 12

8 Source Update, Bates

9 Henry Schein-000183494 - '95

10 Exhibit 2 9-26-11 E-mail, Subject: Group 55

11 Sales, Bates BDS-FT-00094241 - '42

12 Exhibit 3 9-30-11 E-mail, Subject: Benco, 70

13 Bates BDS-FTC00016722 - '25

14 Exhibit 4 1-13-12 E-mail, Subject: Smile 103

15 Source Follow Up, Bates

16 FTC-SmileSource0006465

17 Exhibit 5 2-9-12 E-mail, Subject: Meeting 108

18 at Midwinter w/ Smile Source,

19 Bates FTC-SmileSource-0036397
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Page 269

E X H I B I T S (Cont.)

EXHIBIT PAGE

3 Exhibit 6 11-20-13 E-mail, Subject: Smile 123

4 Source, Bates PDCO00021163 -

5 '00003

6 Exhibit 7 11-20-13 E-mail, Subject: Smile 128

7 Source, Bates Henry Schein-000184041

8 Exhibit 8 Partnership Proposal Revised 135

9 2/13/14

10 Exhibit 9 Agreement, Bates 150

11 FTC-SmileSource0013017

12 Exhibit 10 10-6-17 E-mail, Subject: Federal 153

13 Trade Commission Interview Inquiry

14 Bates FTC-PROD-001608 - 610

15 Exhibit 11 Complaint 157

16 Exhibit 12 3-5-12 E-mail, Subject: 170

17 Dr. Bittner, Bates

18 FTC-SmileSource0008163

19 Exhibit 13 7-25-12 E-mail, Subject: Your 180

20 email, Bates BDS-FTC00016856 - '58

21 Exhibit 14 7-16-13 E-mail, Subject: Share 225

22 some thoughts, Bates BDCID0015638

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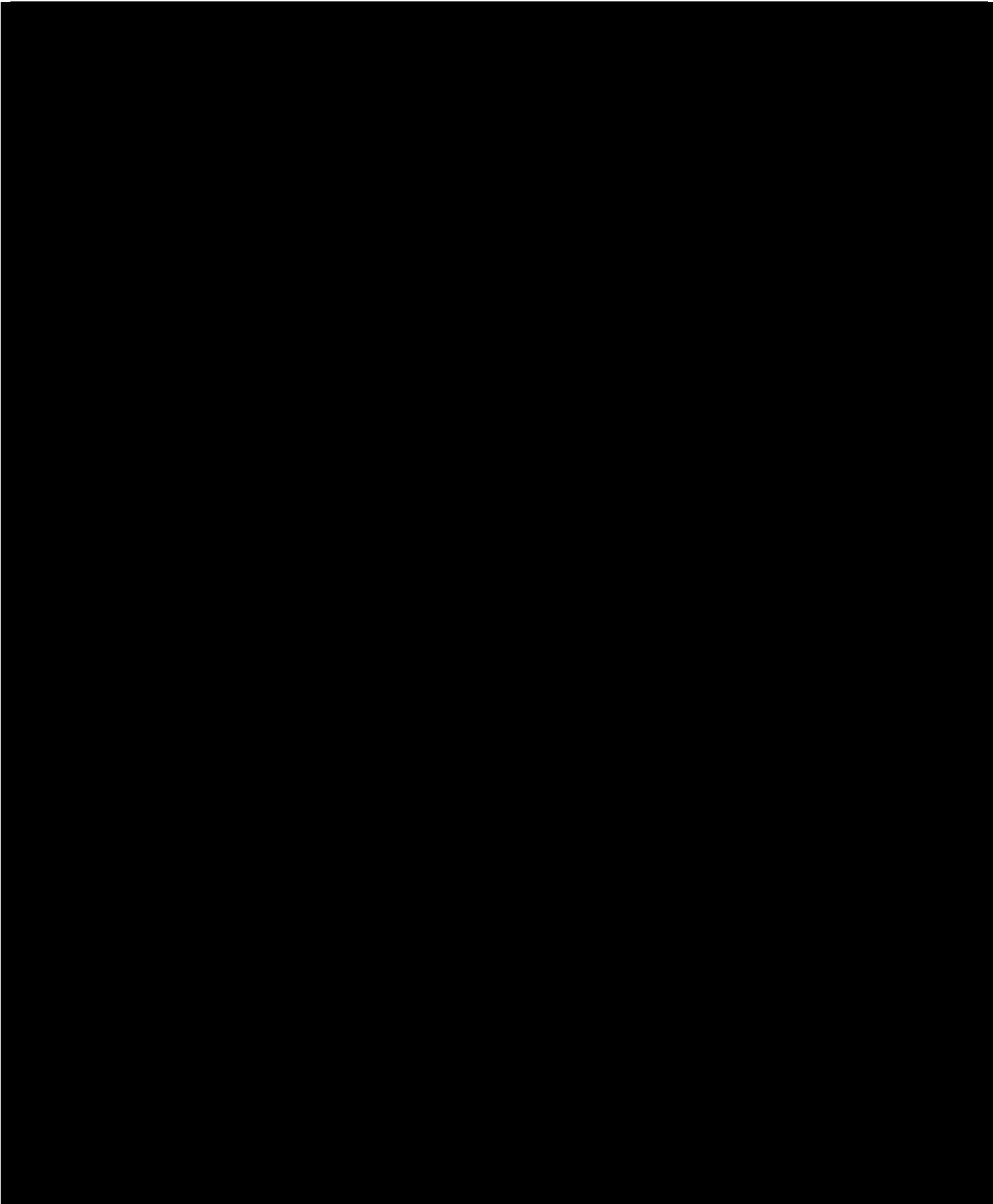
68 (Pages 266 to 269)

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Page 270		Page 271	
1	NAME OF CASE:	1	CERTIFICATE OF REPORTER
2	DATE OF DEPOSITION:	2	
3	NAME OF WITNESS:	3	I, ANDREA M. IGNACIO, hereby certify that the
4	Reason Codes:	4	witness in the foregoing deposition was by me duly
5	1. To clarify the record.	5	sworn to tell the truth, the whole truth, and nothing
6	2. To conform to the facts.	6	but the truth in the within-entitled cause;
7	3. To correct transcription errors.	7	That said deposition was taken in shorthand
8	Page _____ Line _____ Reason _____	8	by me, a disinterested person, at the time and place
9	From _____ to _____	9	therein stated, and that the testimony of the said
10	Page _____ Line _____ Reason _____	10	witness was thereafter reduced to typewriting, by
11	From _____ to _____	11	computer, under my direction and supervision;
12	Page _____ Line _____ Reason _____	12	That before completion of the deposition,
13	From _____ to _____	13	review of the transcript [] was [x] was not
14	Page _____ Line _____ Reason _____	14	requested. If requested, any changes made by the
15	From _____ to _____	15	deponent (and provided to the reporter) during the
16	Page _____ Line _____ Reason _____	16	period allowed are appended hereto.
17	From _____ to _____	17	I further certify that I am not of counsel or
18	Page _____ Line _____ Reason _____	18	attorney for either or any of the parties to the said
19	From _____ to _____	19	deposition, nor in any way interested in the event of
20	Page _____ Line _____ Reason _____	20	this cause, and that I am not related to any of the
21	From _____ to _____	21	parties thereto.
22	Page _____ Line _____ Reason _____	22	Dated: July 31, 2018
23	From _____ to _____	23	_____
24	_____	24	ANDREA M. IGNACIO, RPR, CRR, CCRR, CLR, CSR No. 9830
25		25	

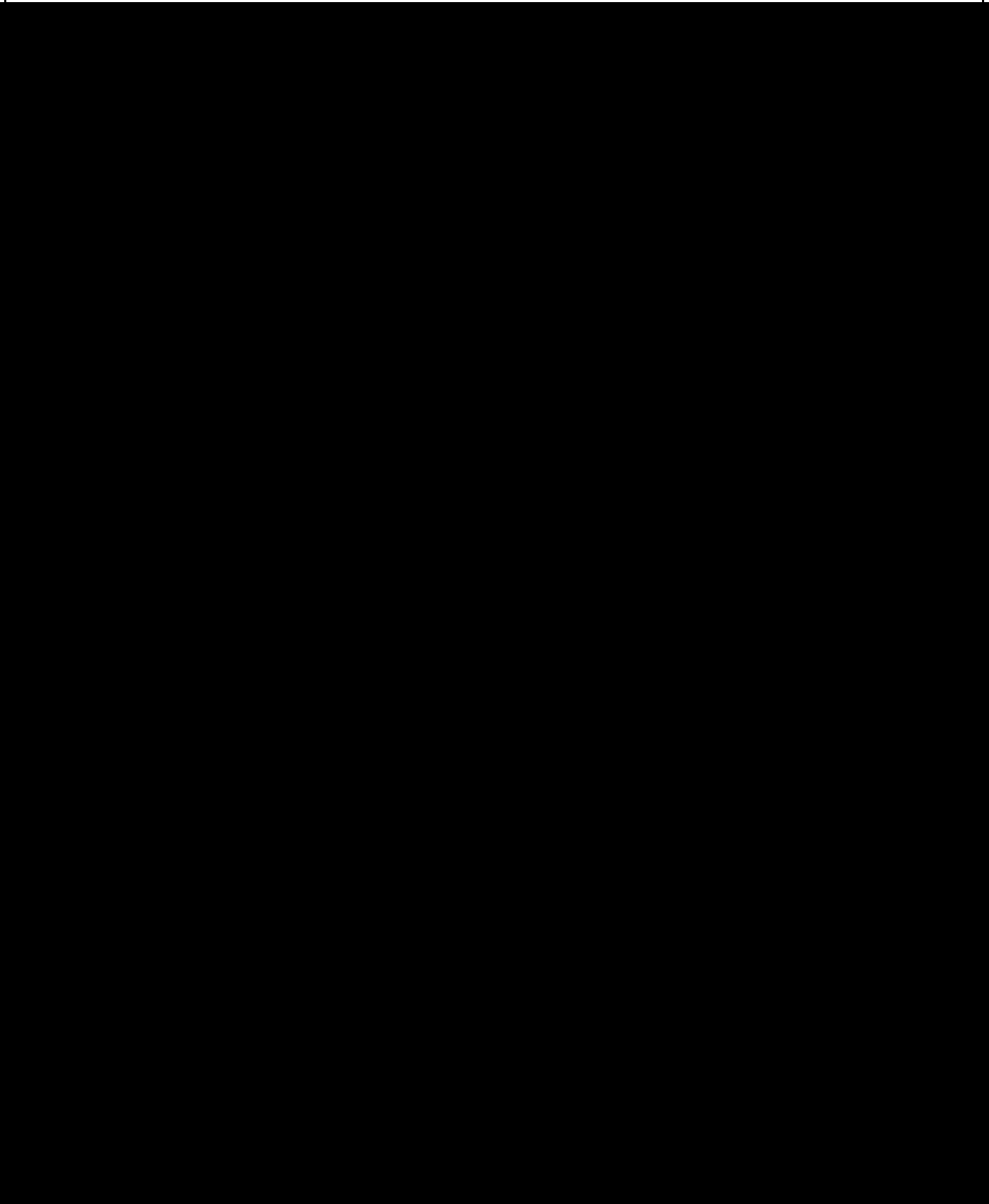
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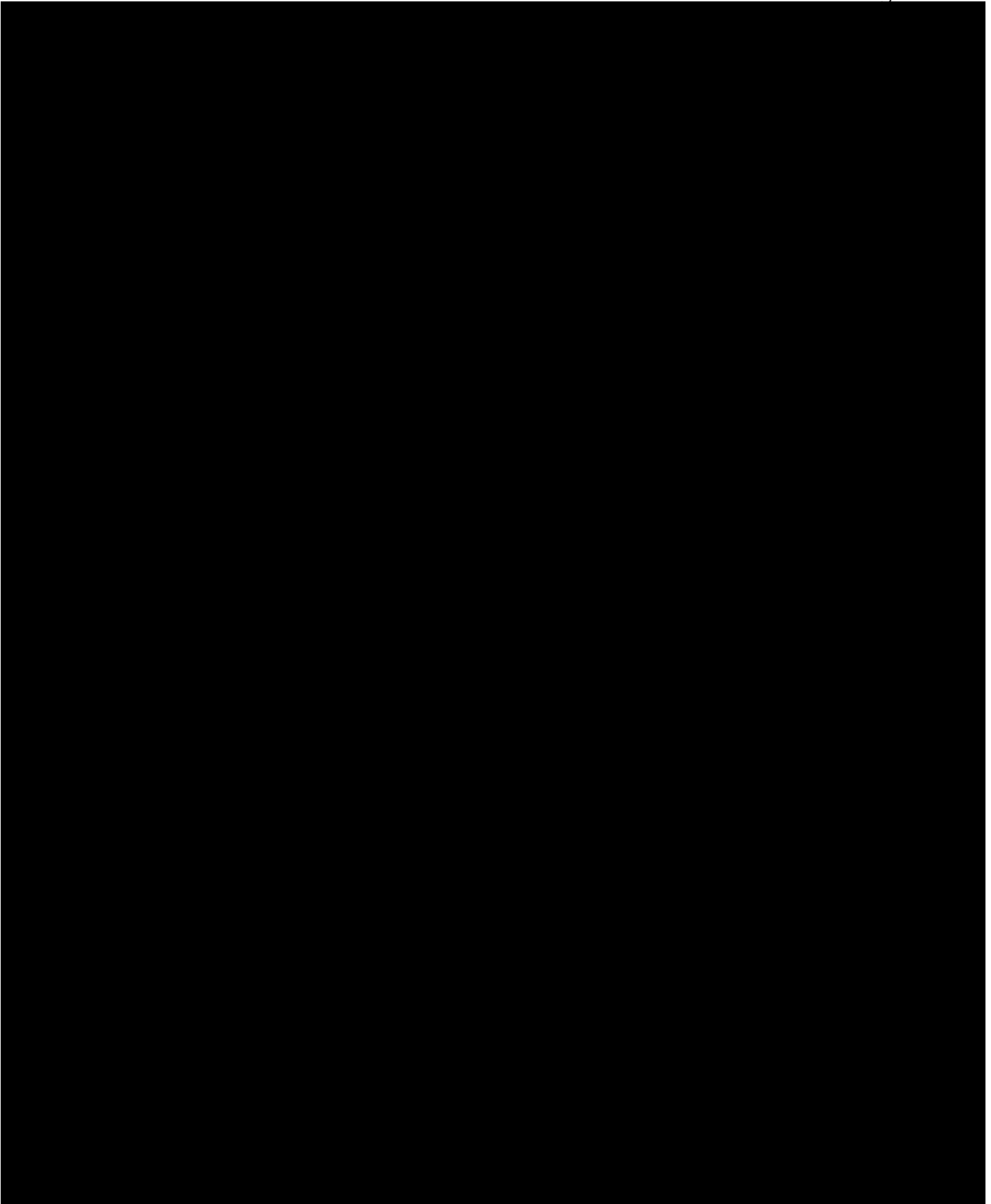
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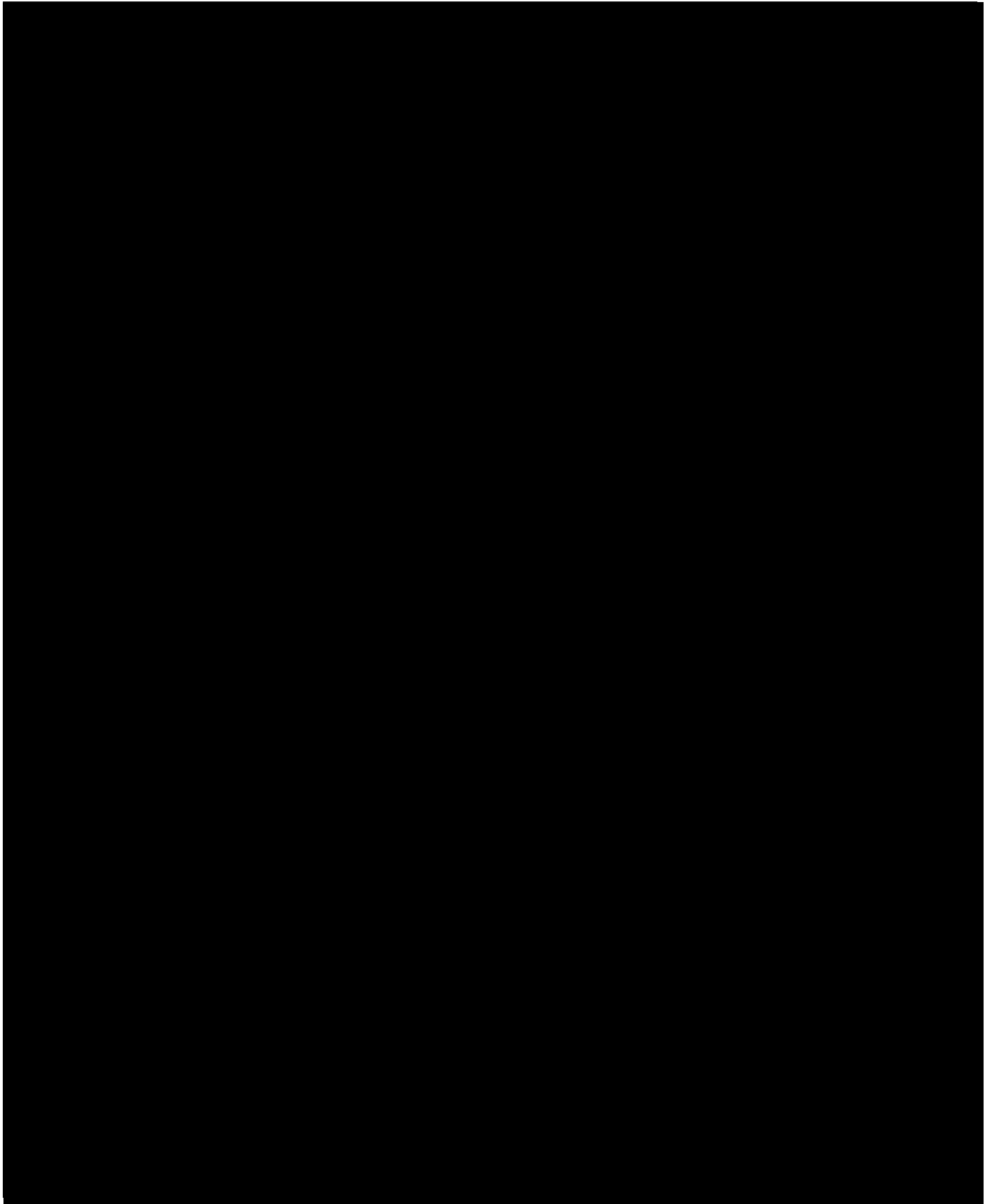
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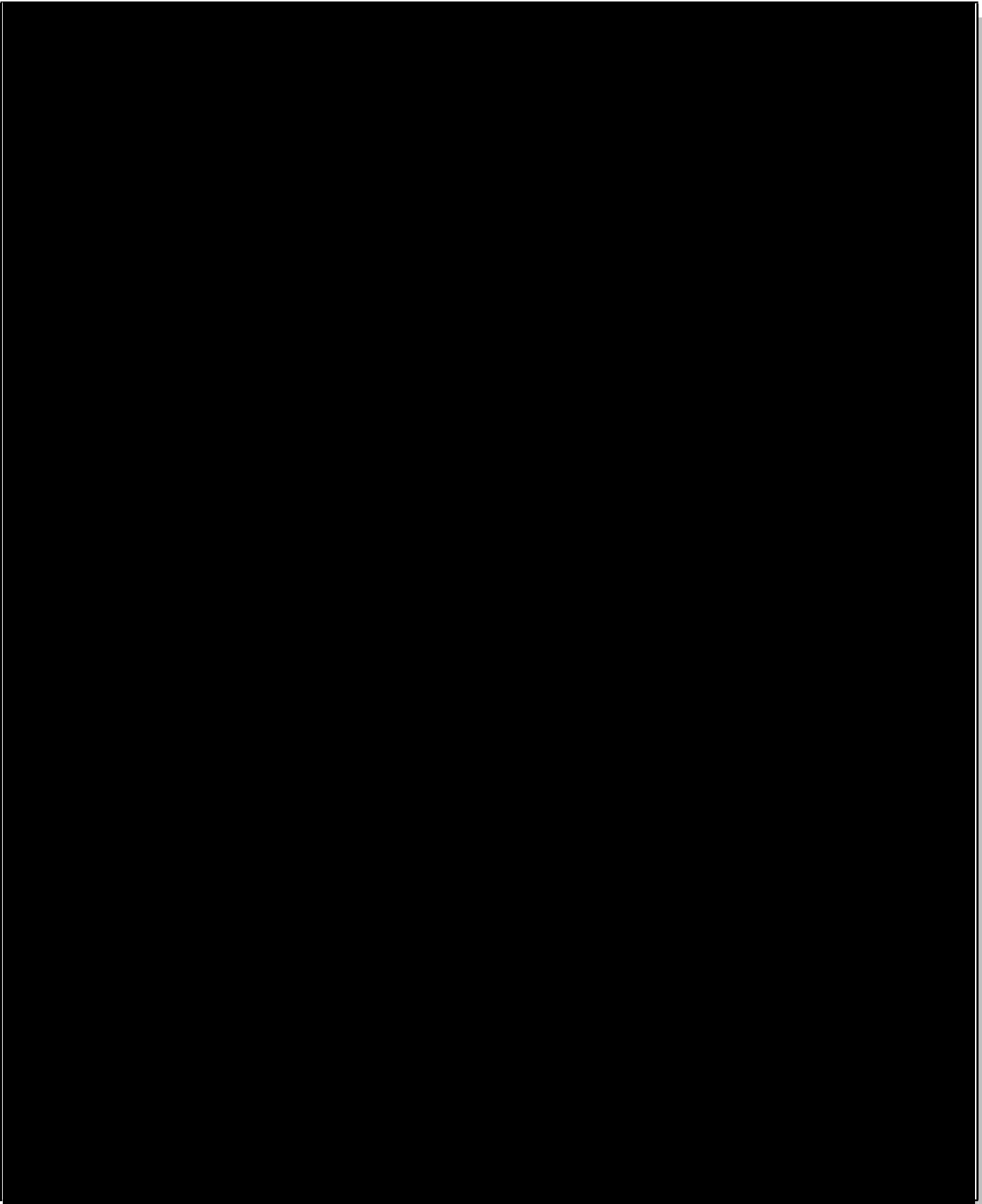
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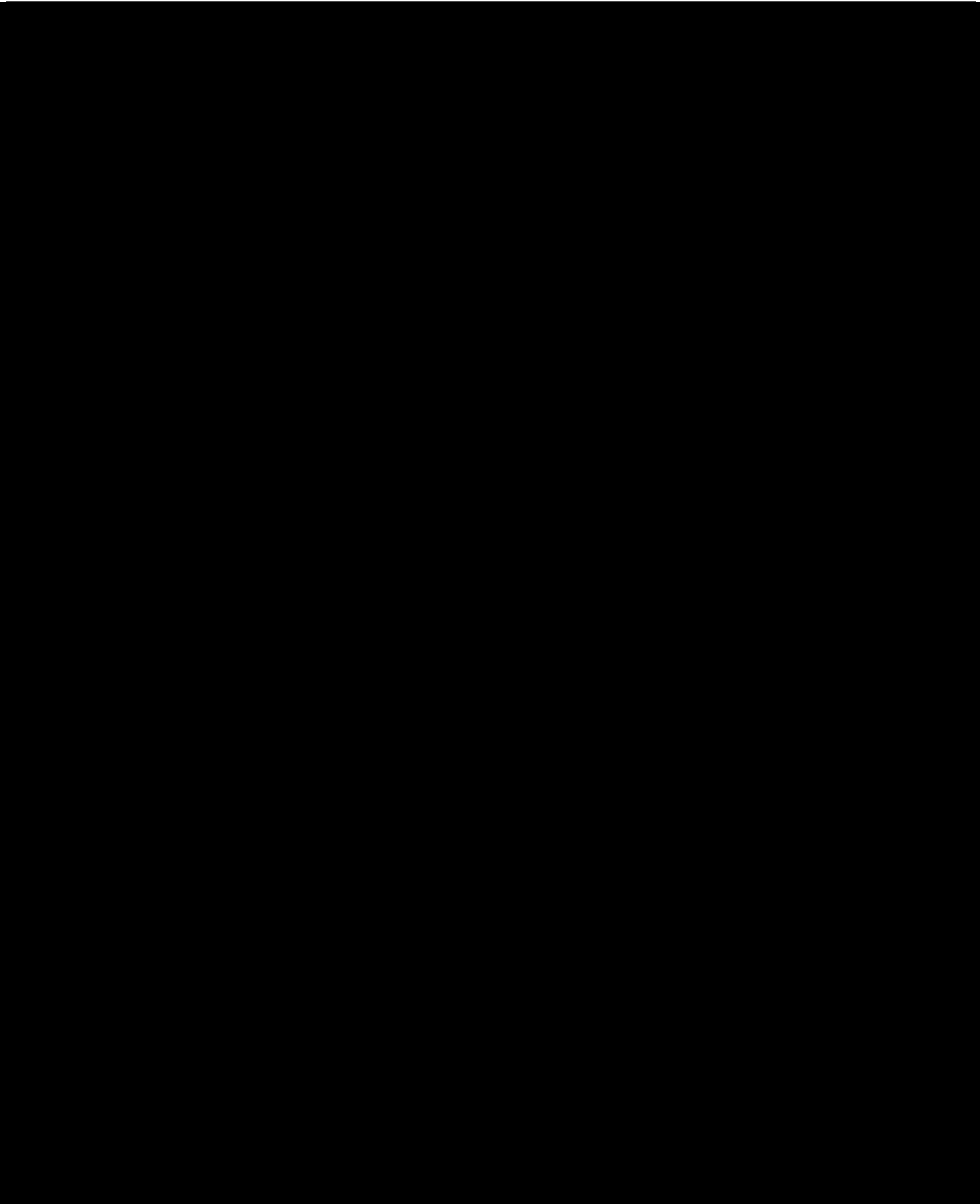
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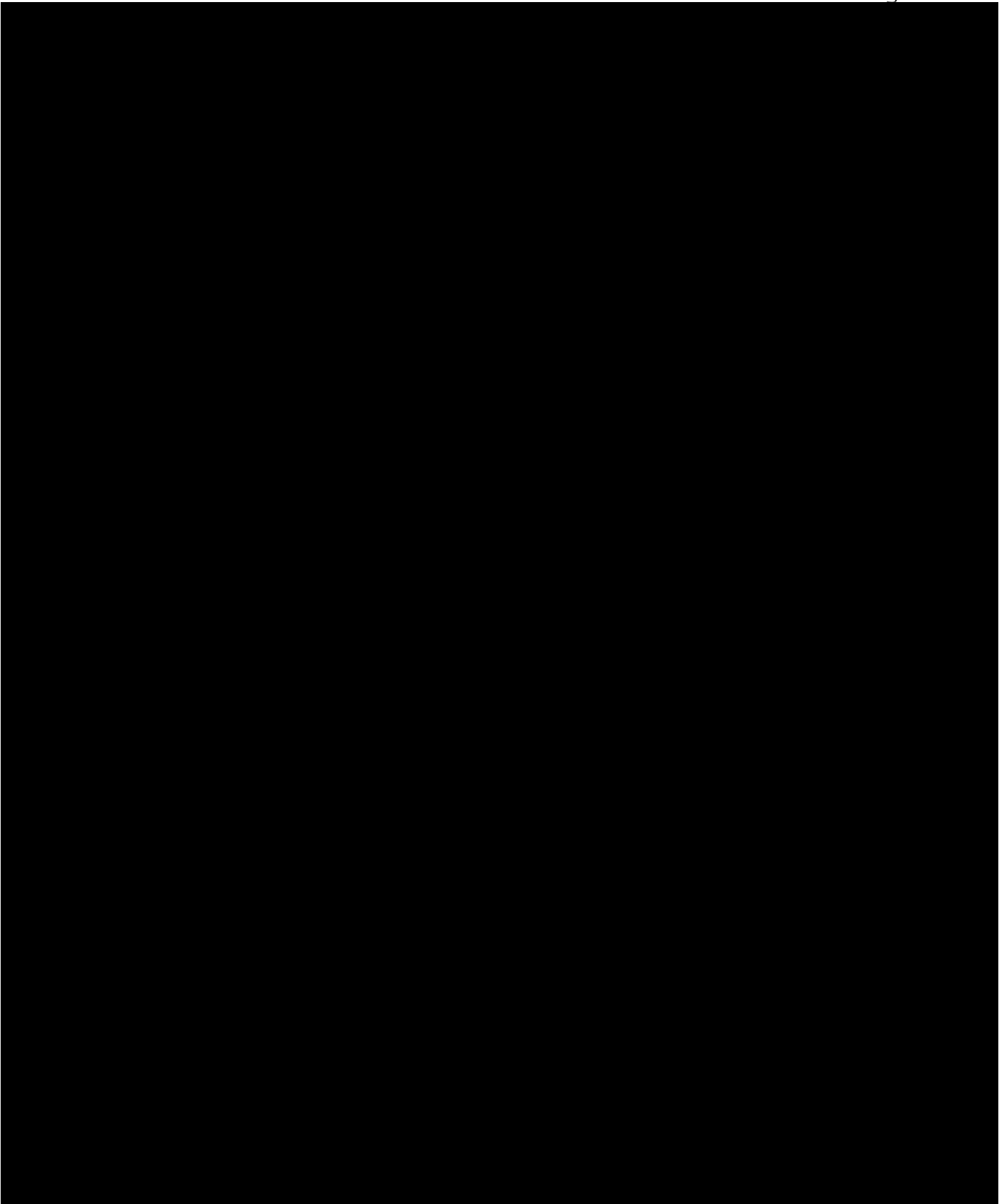
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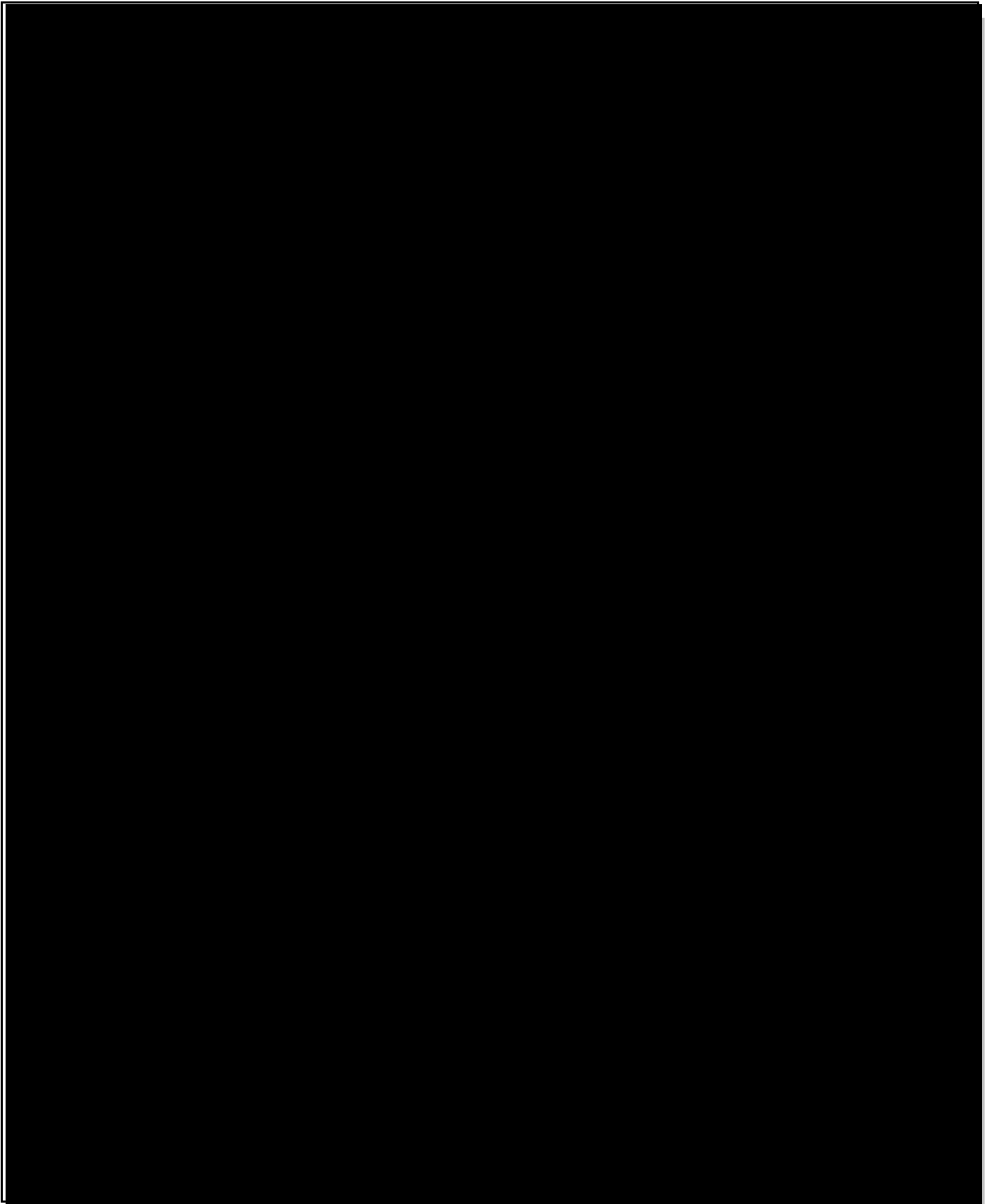
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Page 278



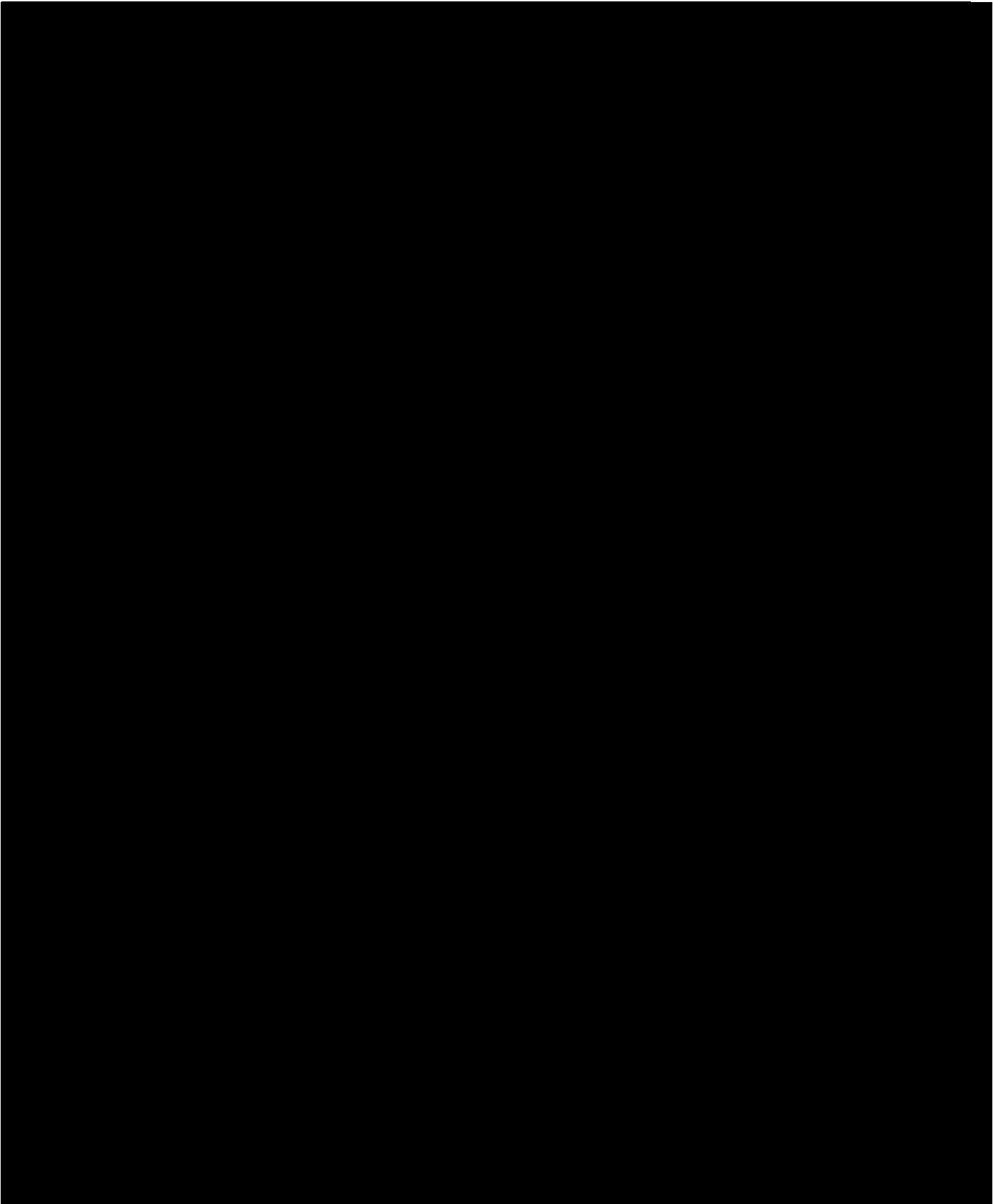
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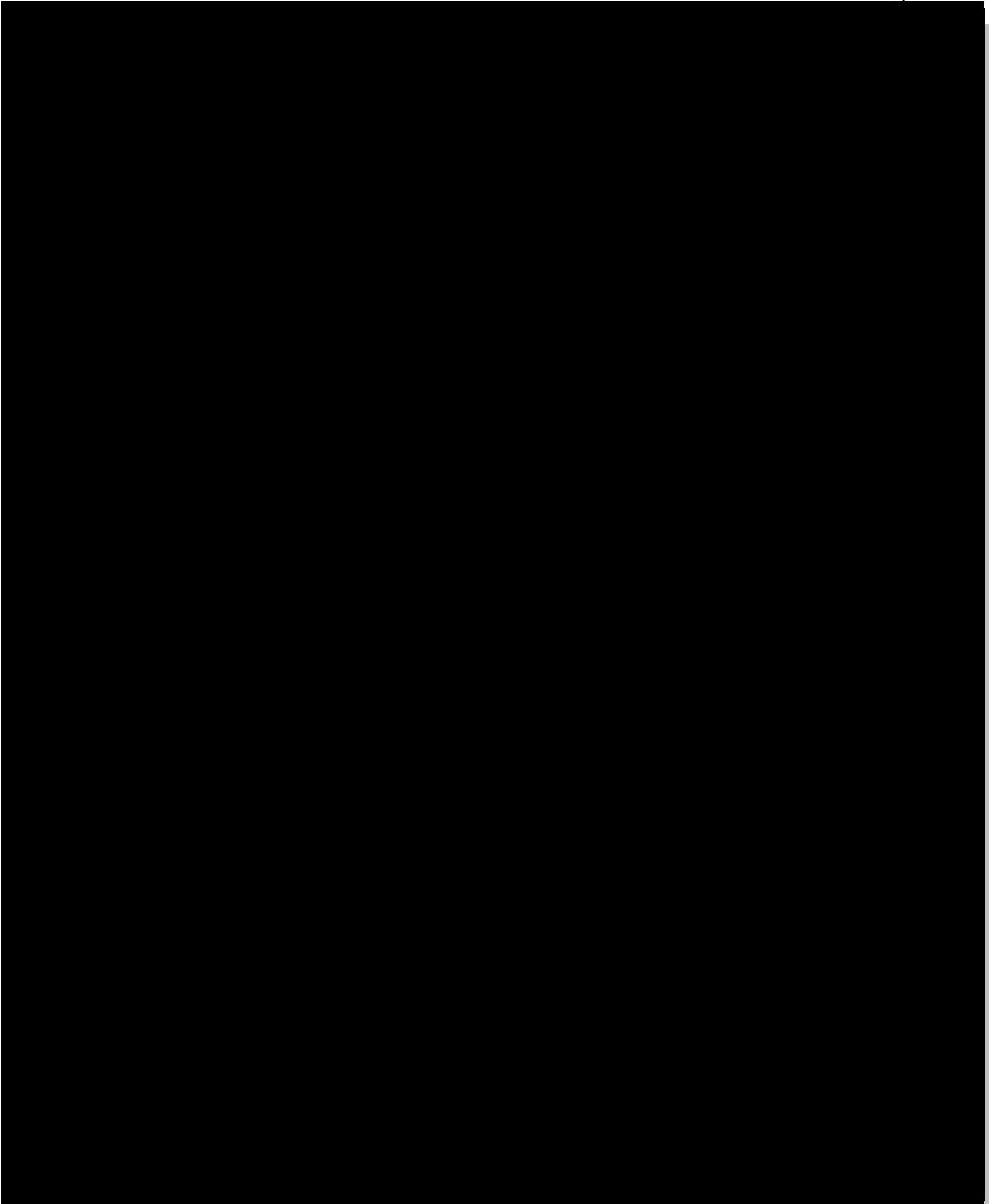
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Page 280



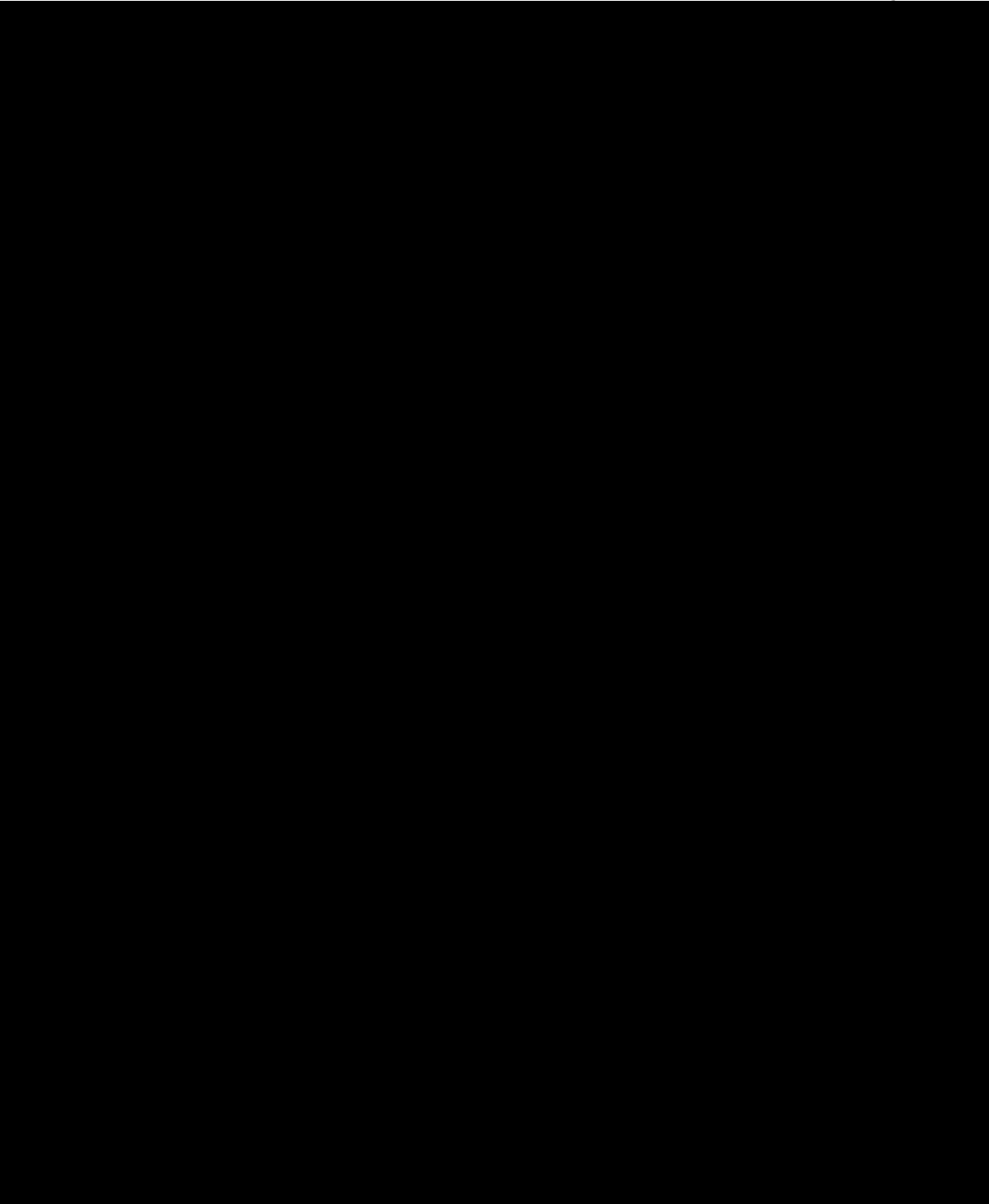
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Page 281



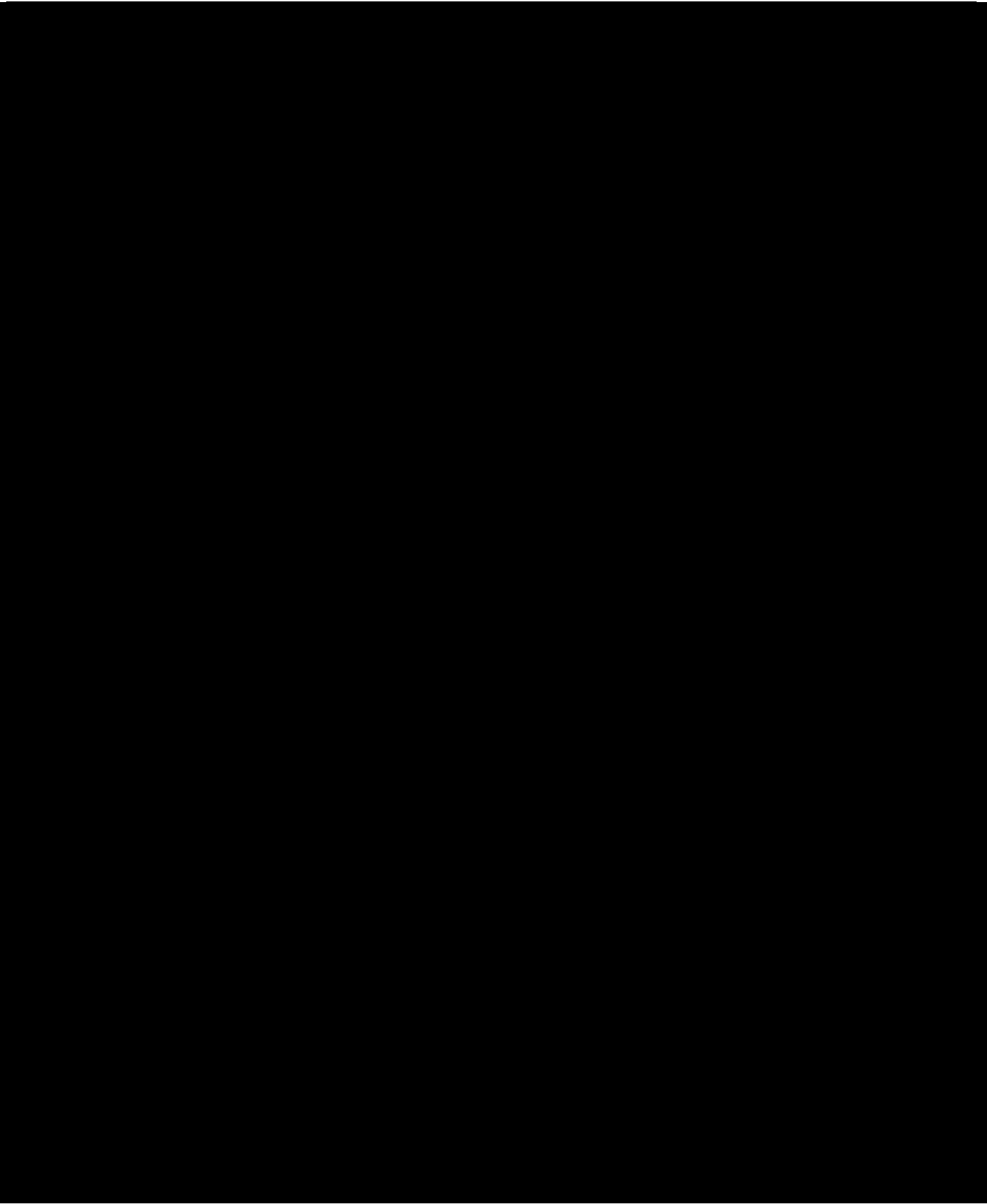
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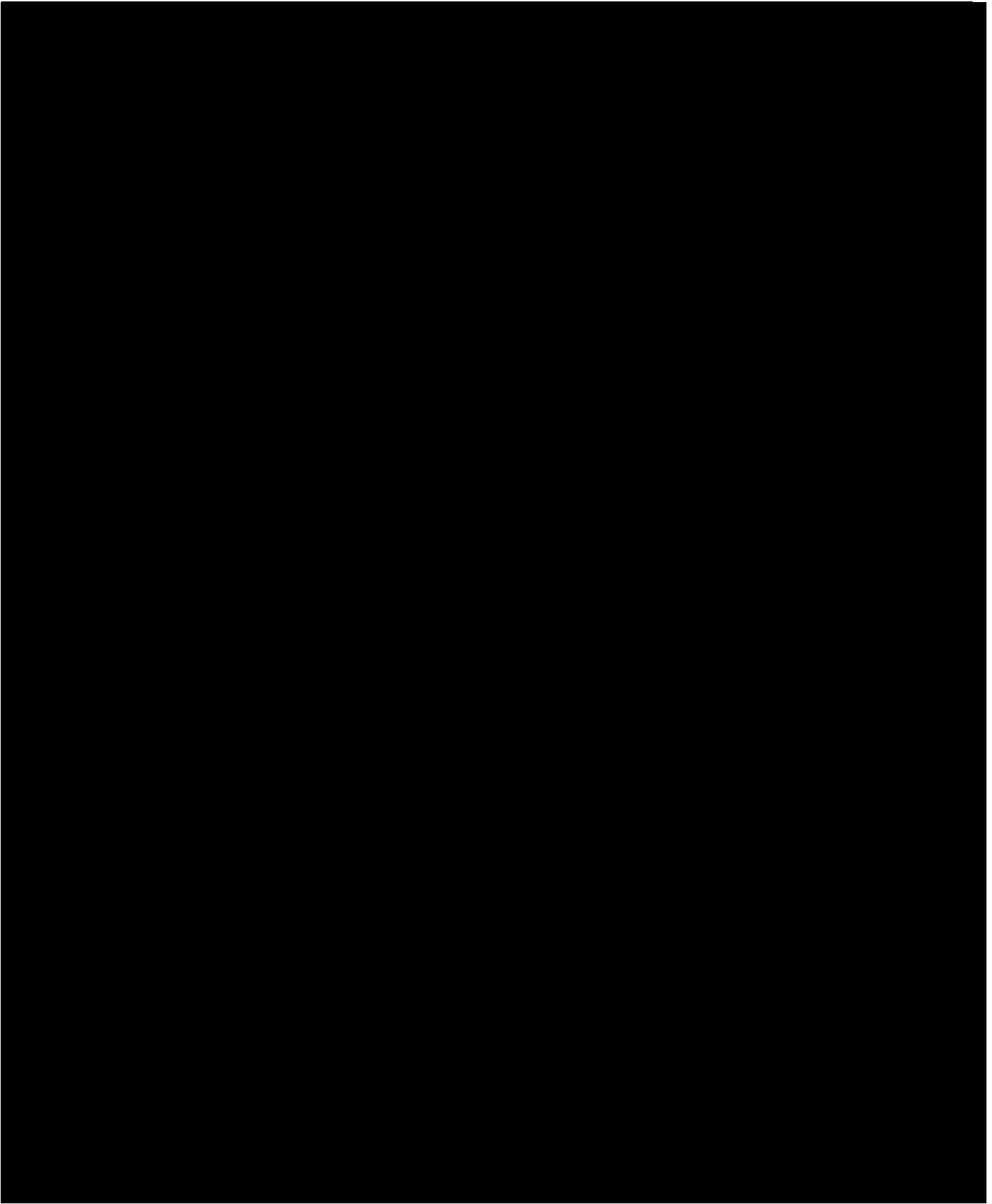
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Page 283



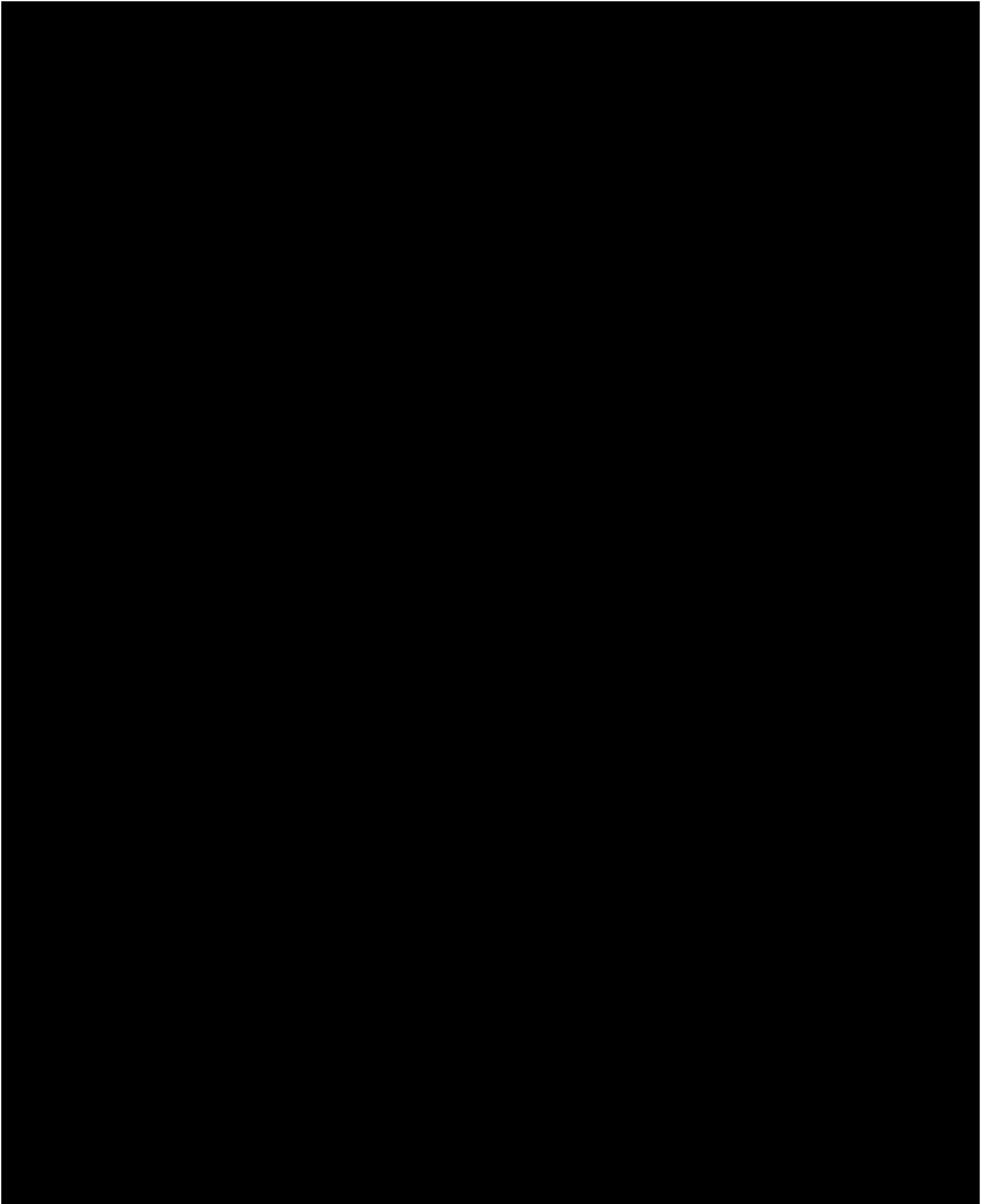
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Page 284



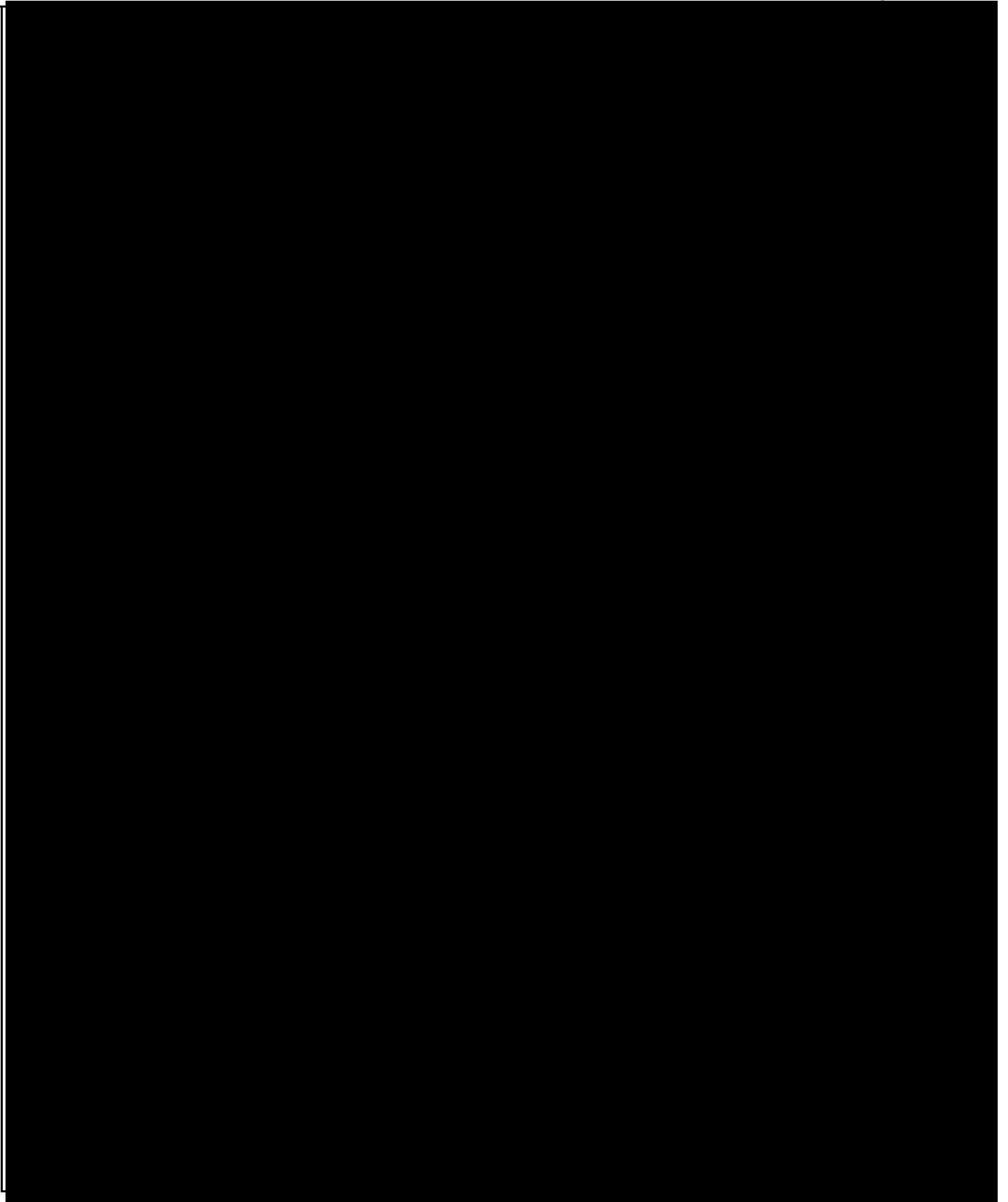
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Page 285



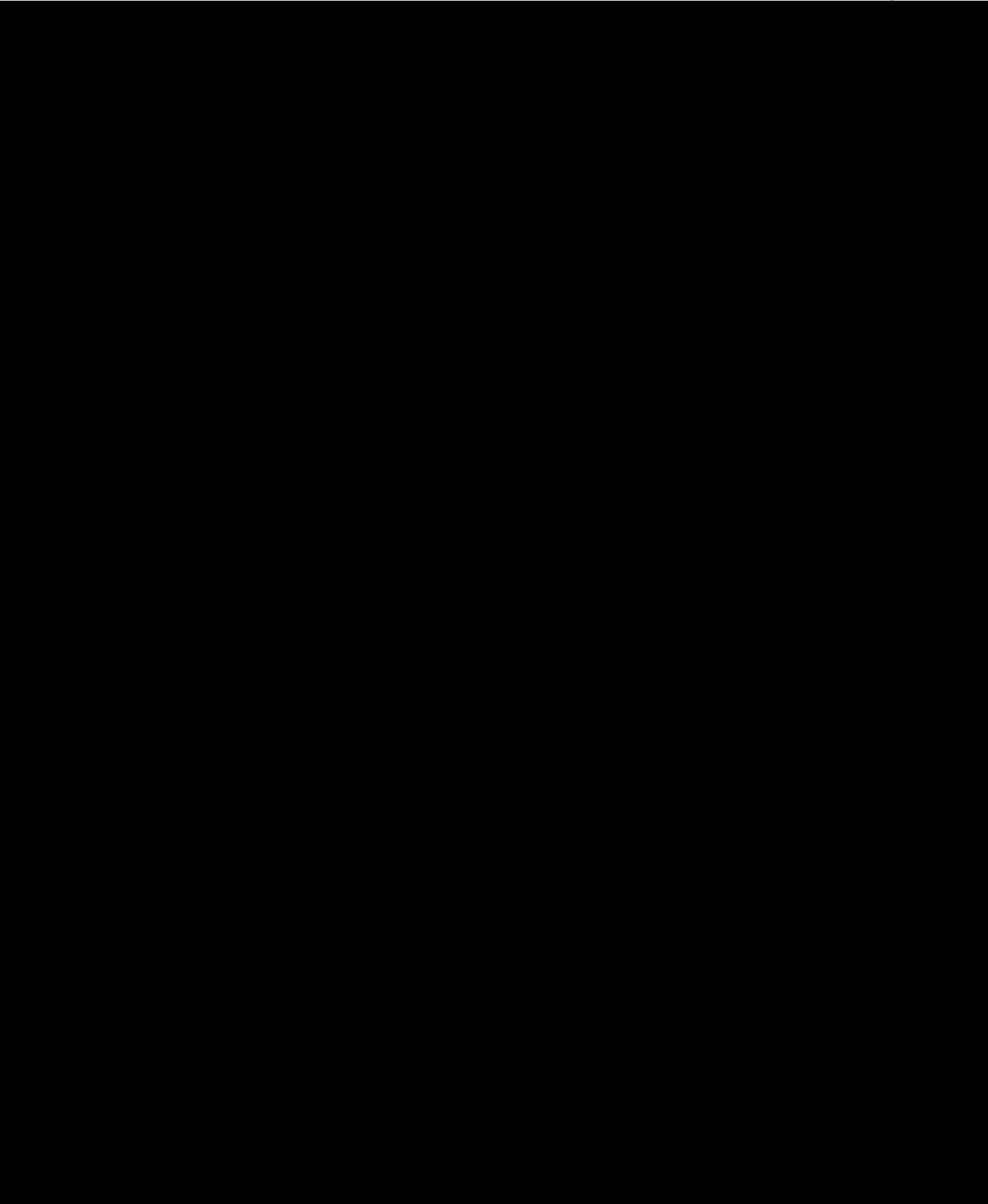
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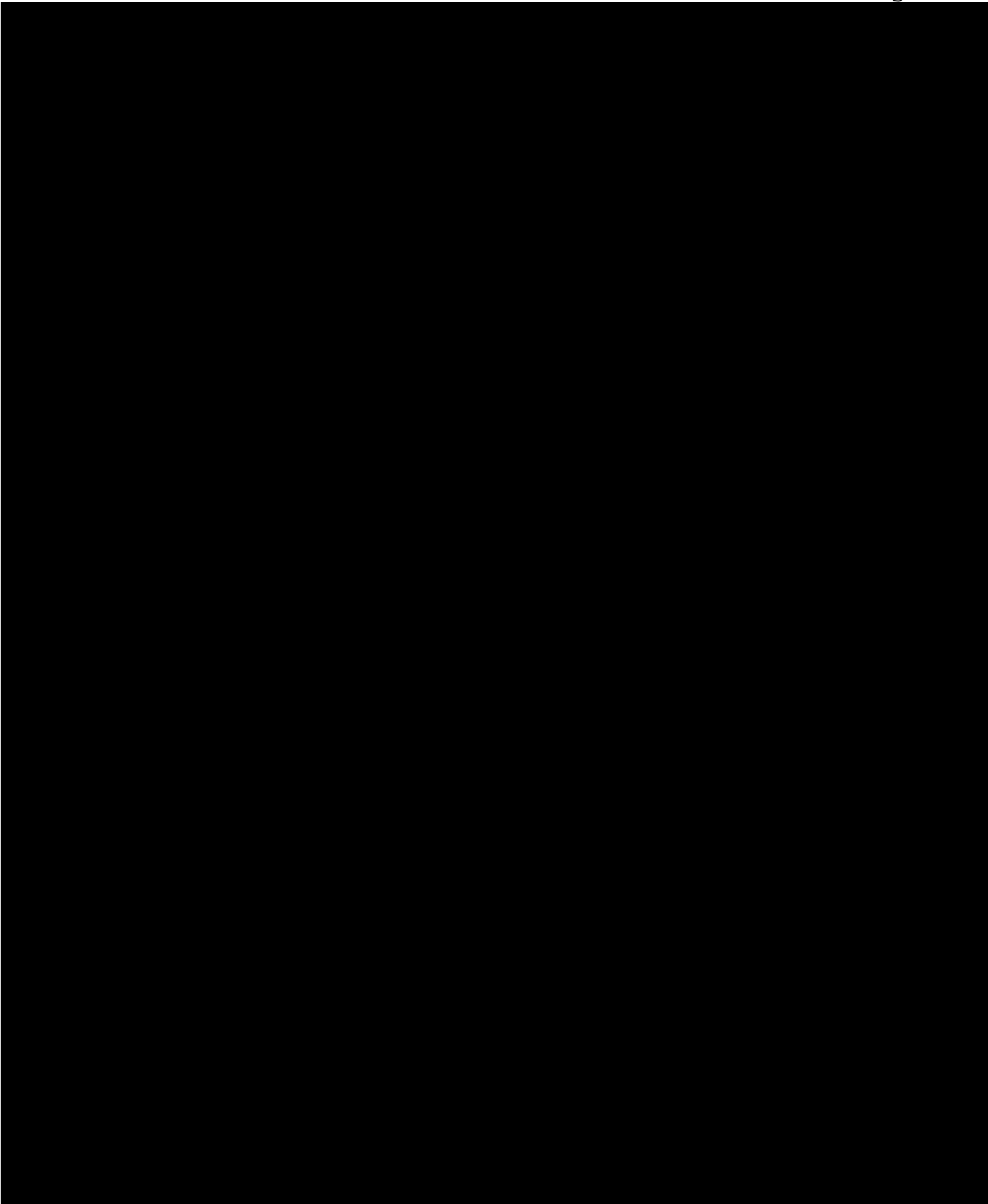
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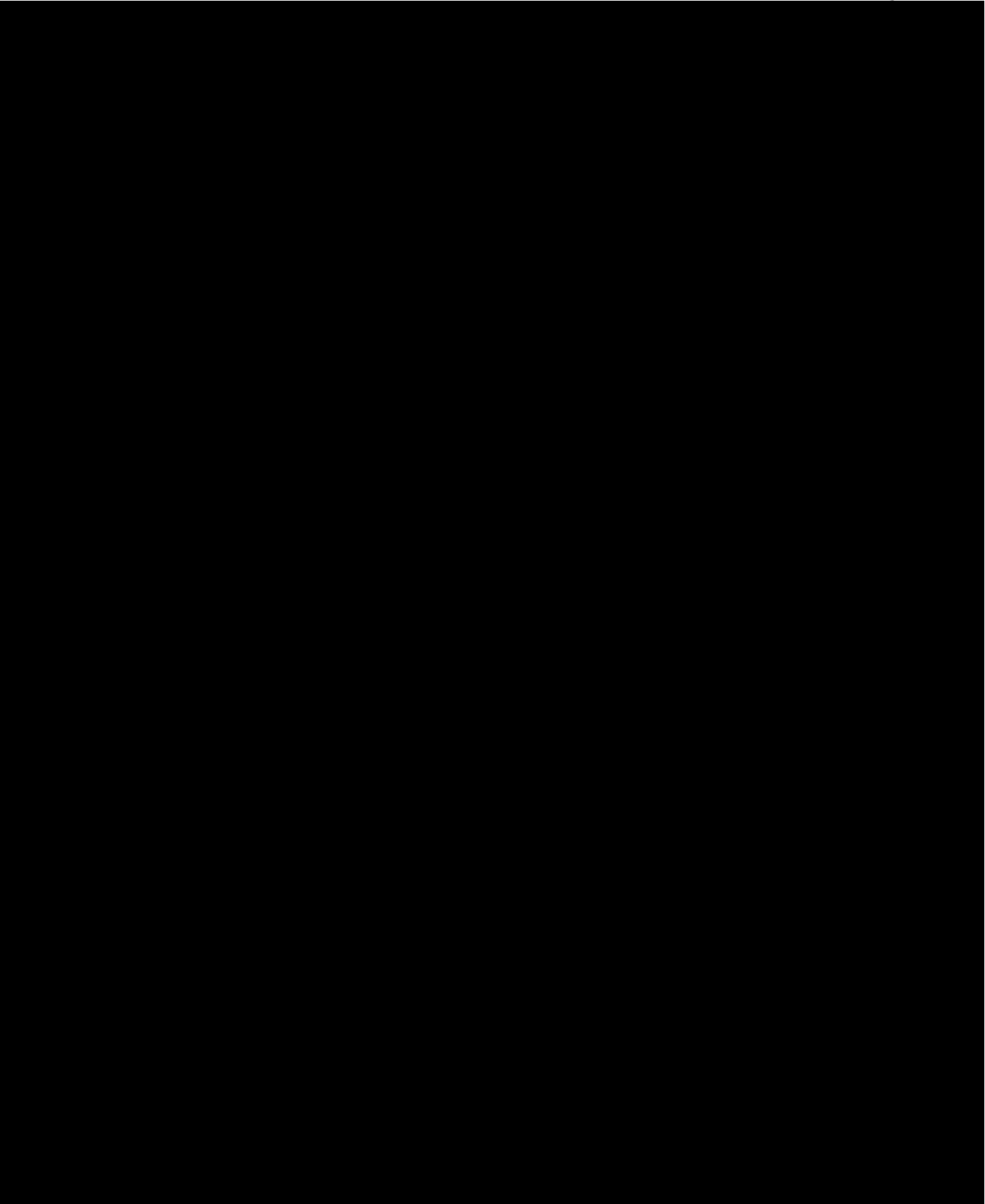
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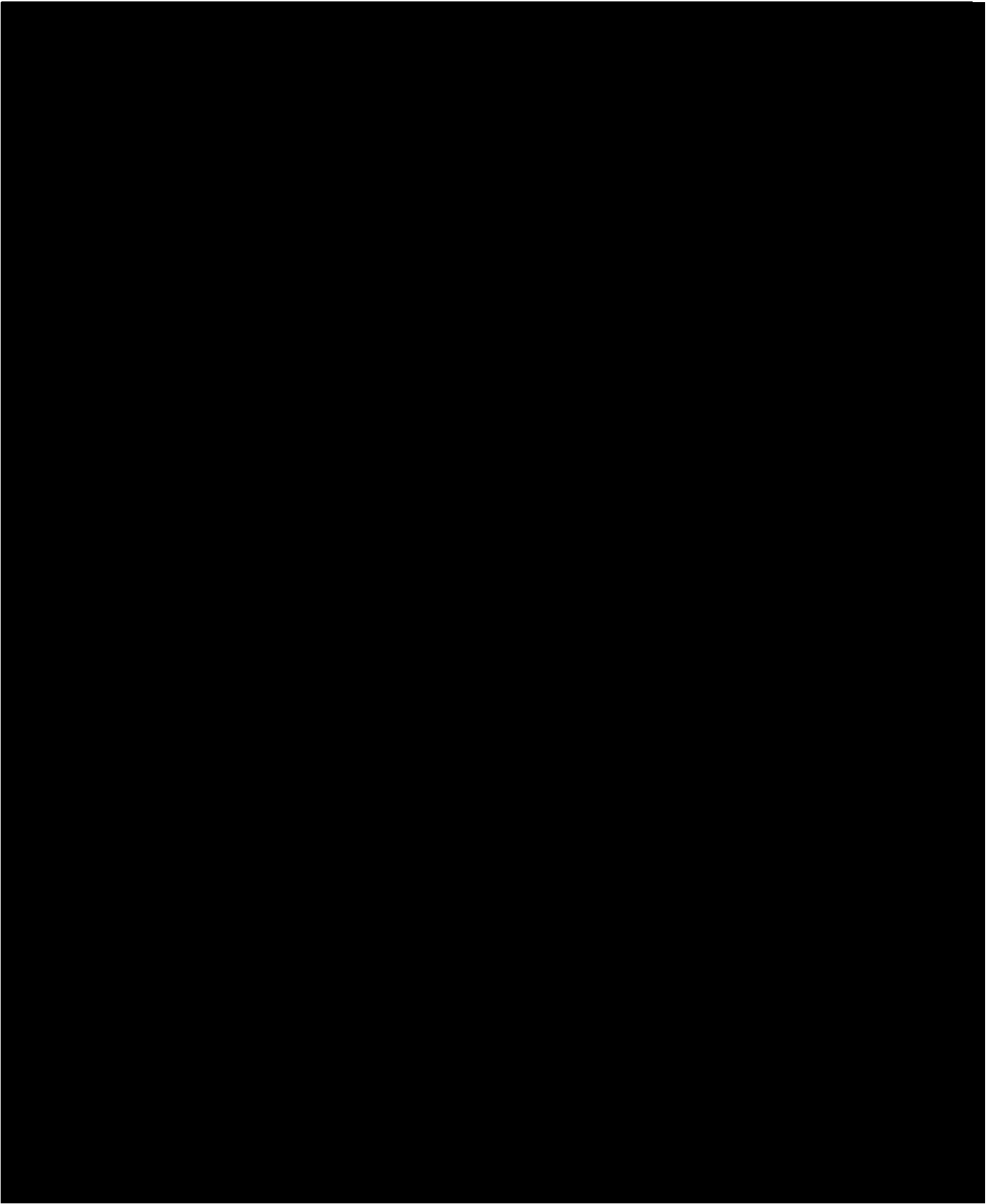
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Page 289



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Page 290



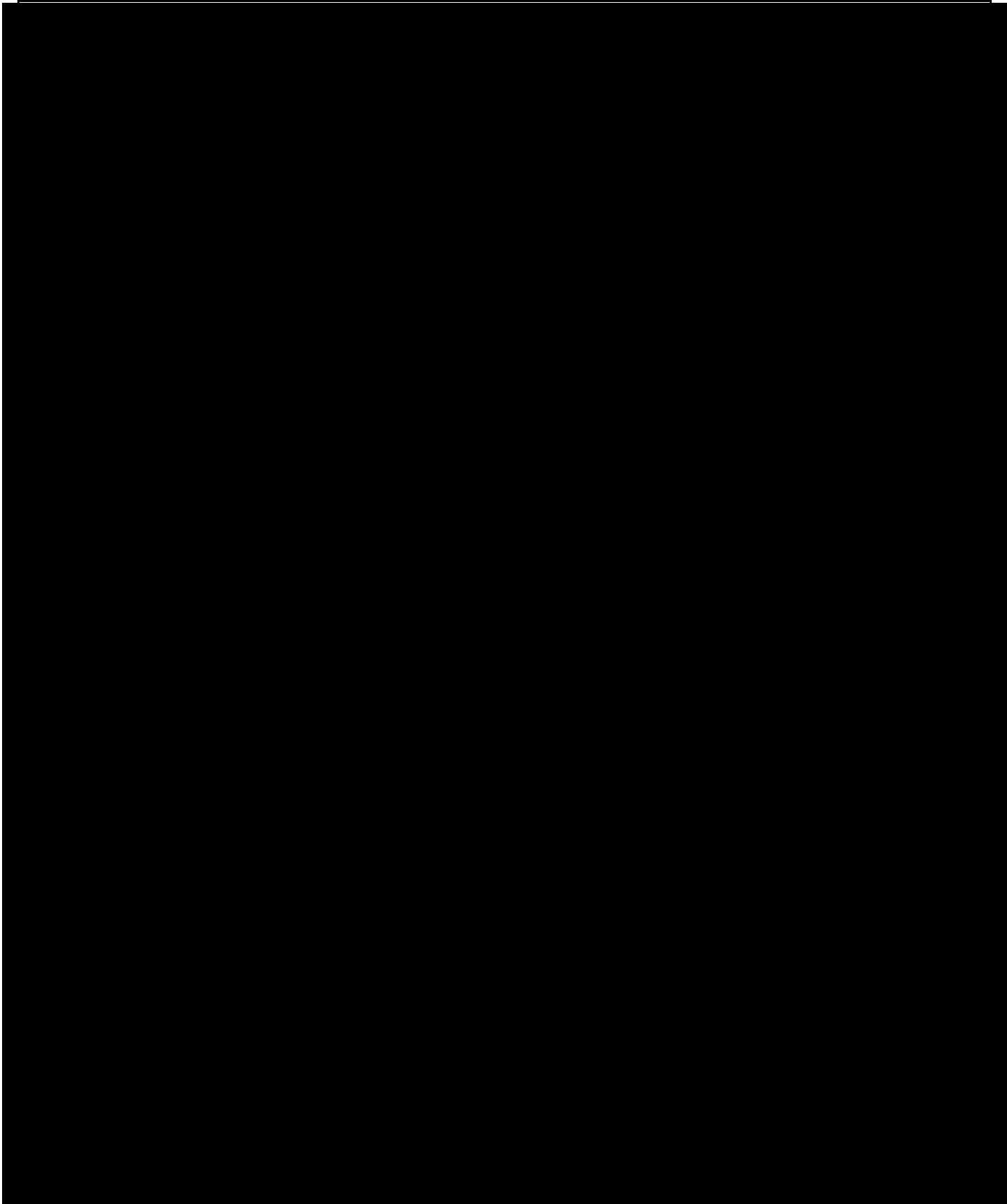
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Page 291



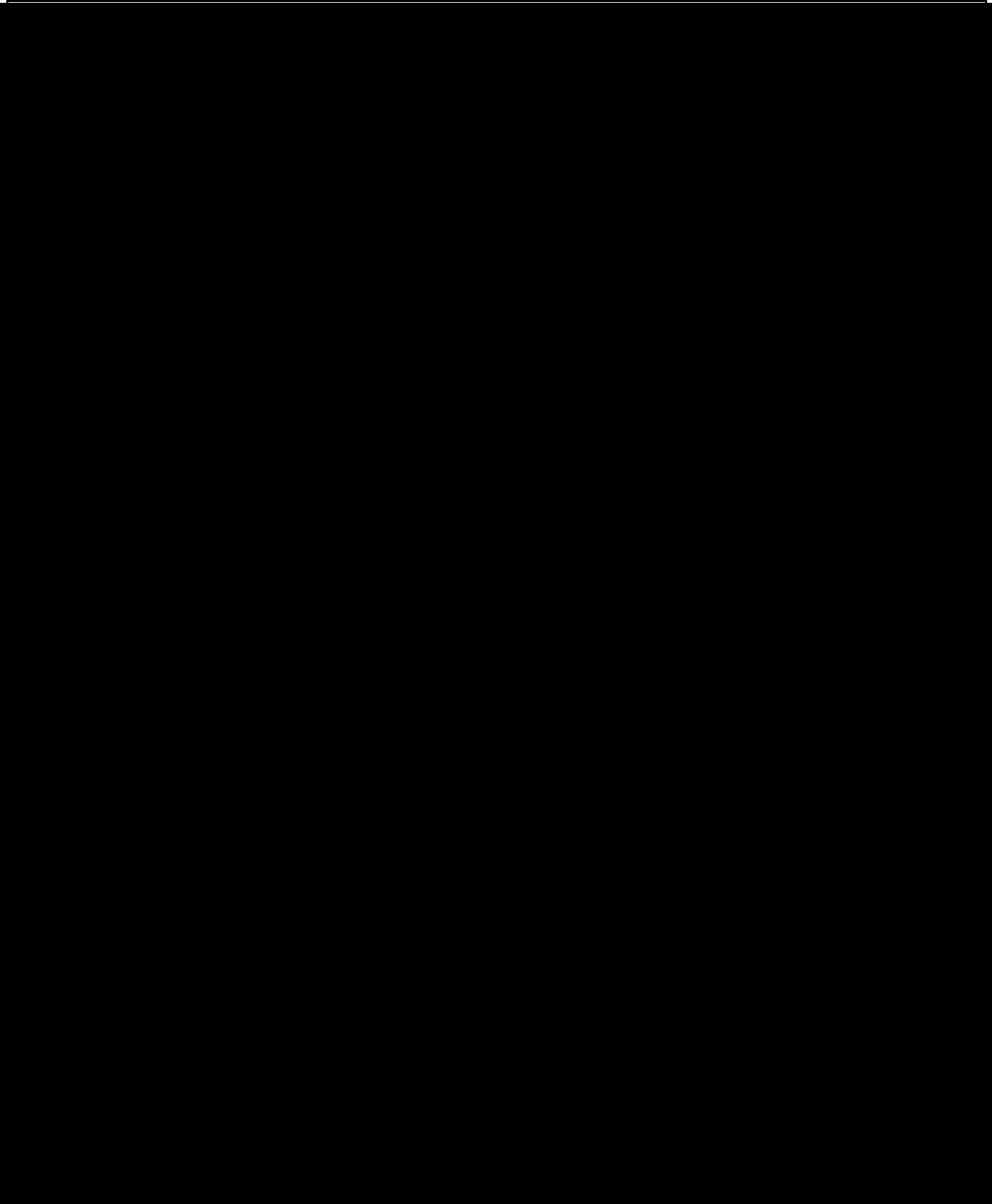
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Page 292



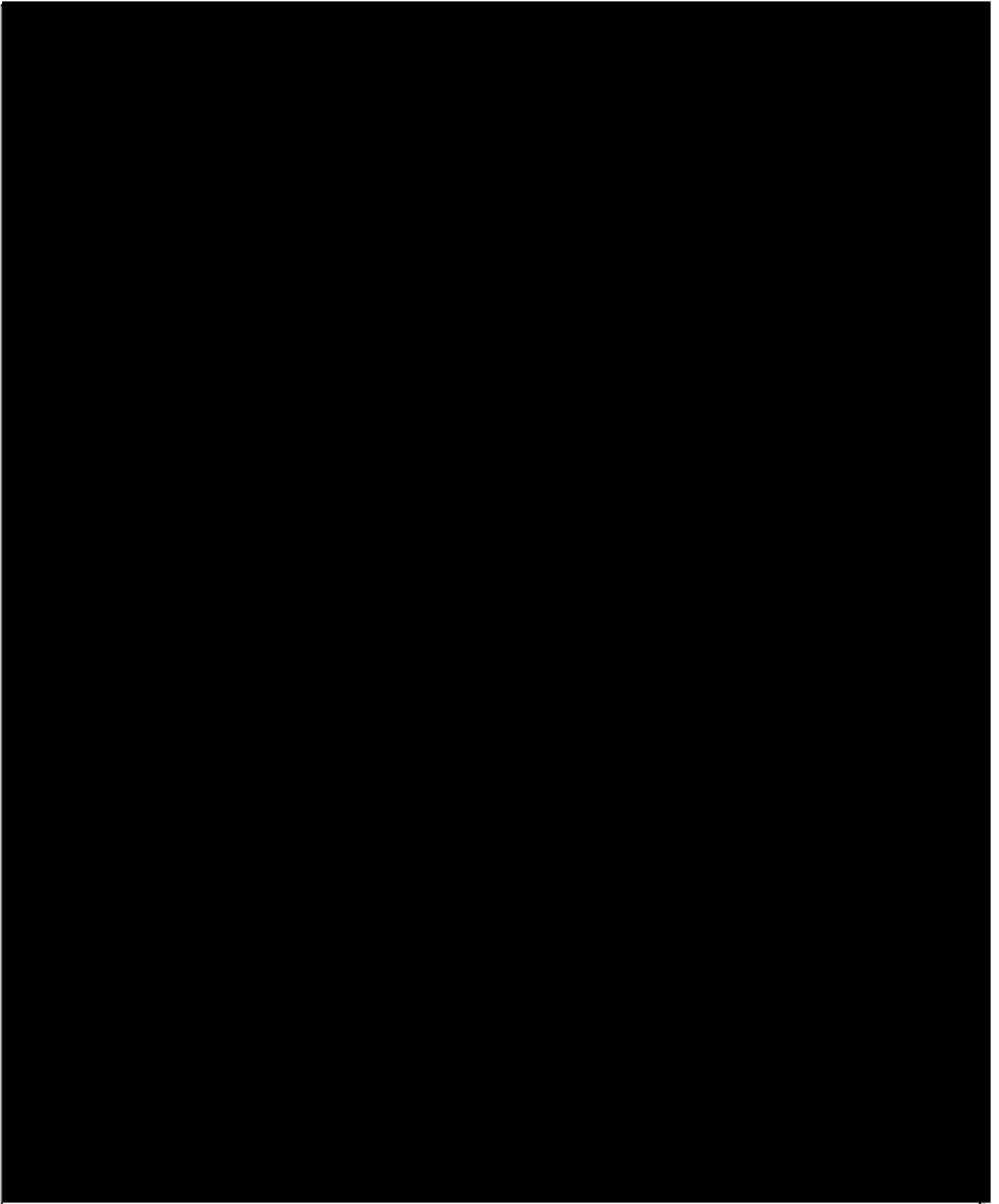
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Page 293



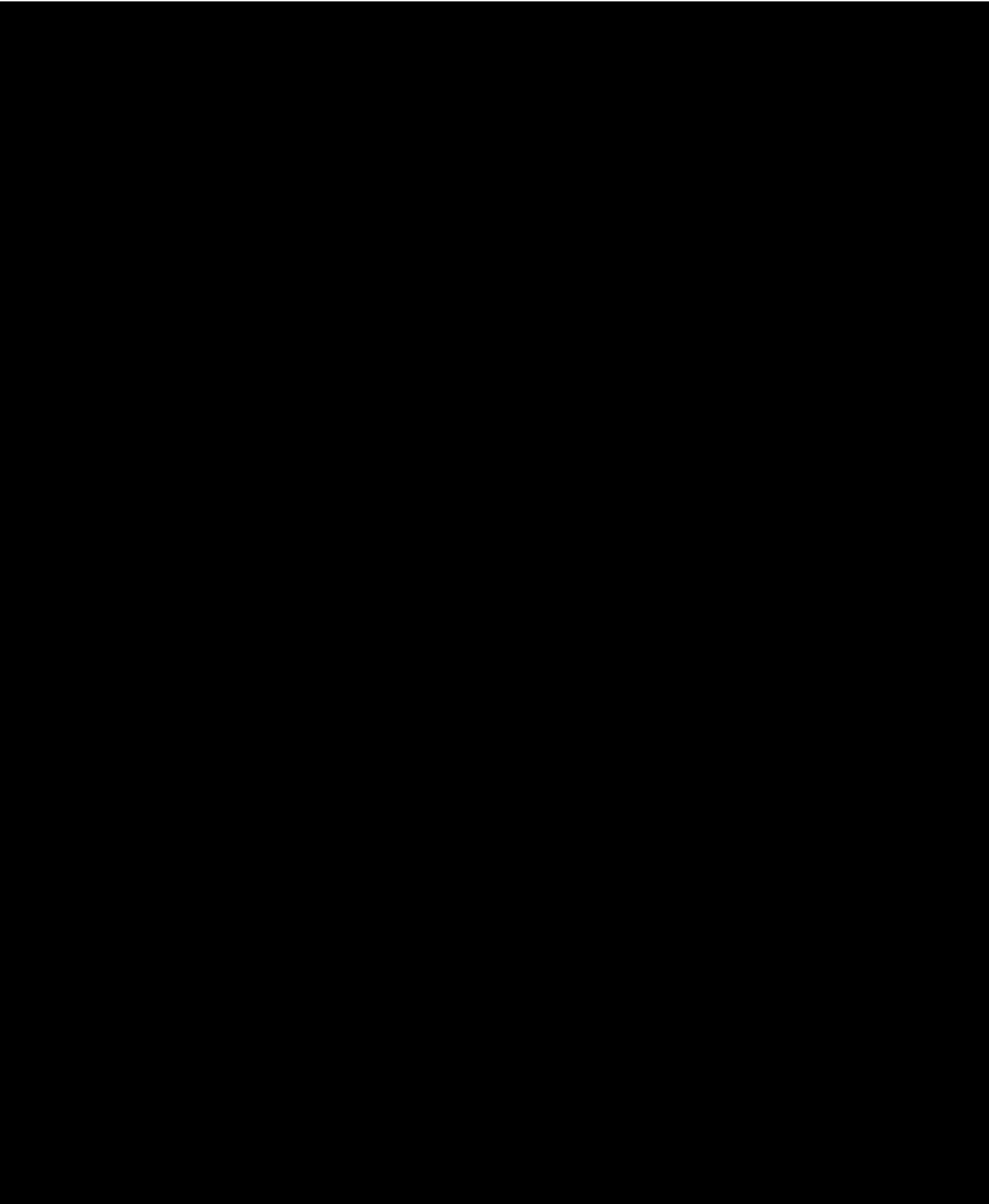
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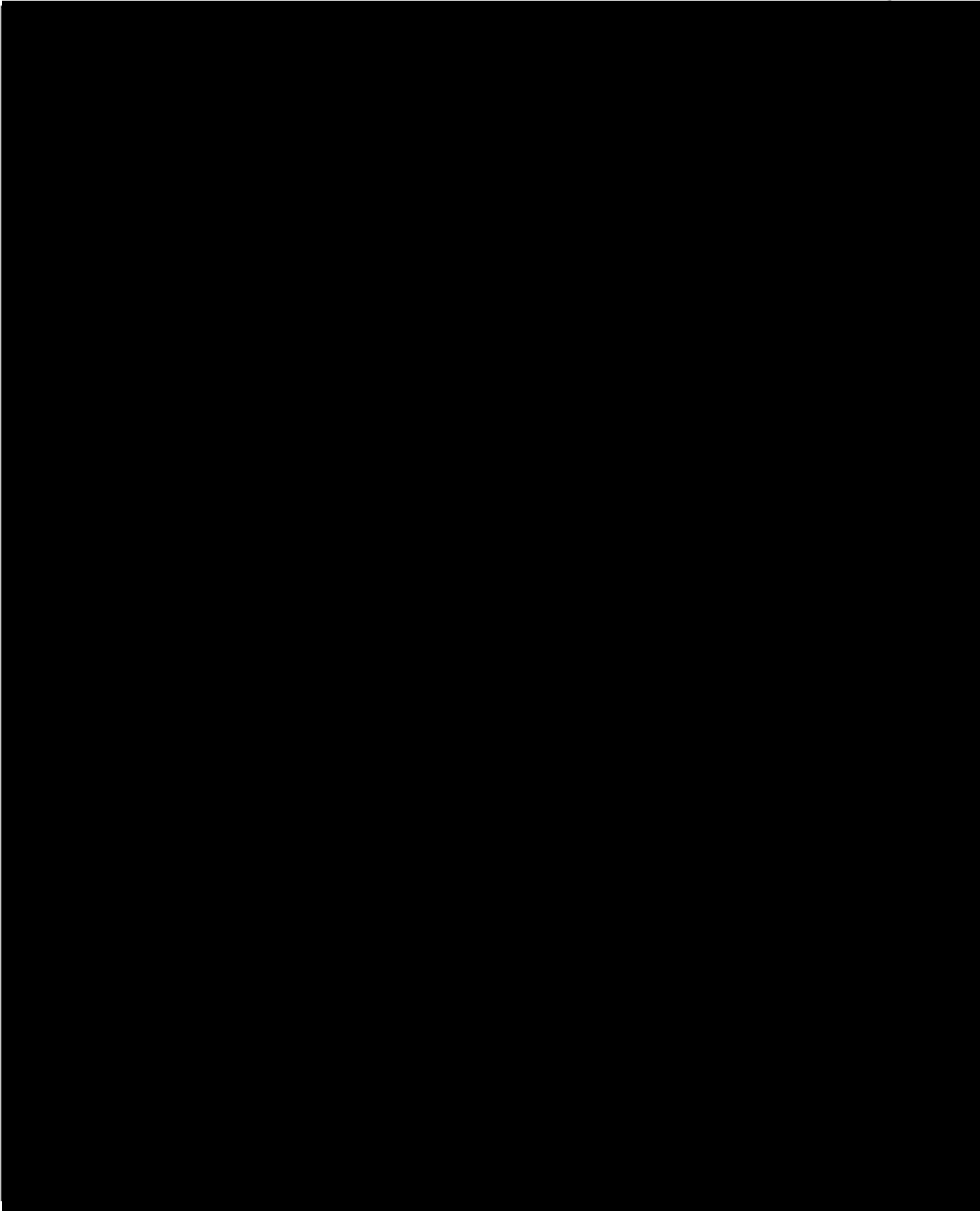
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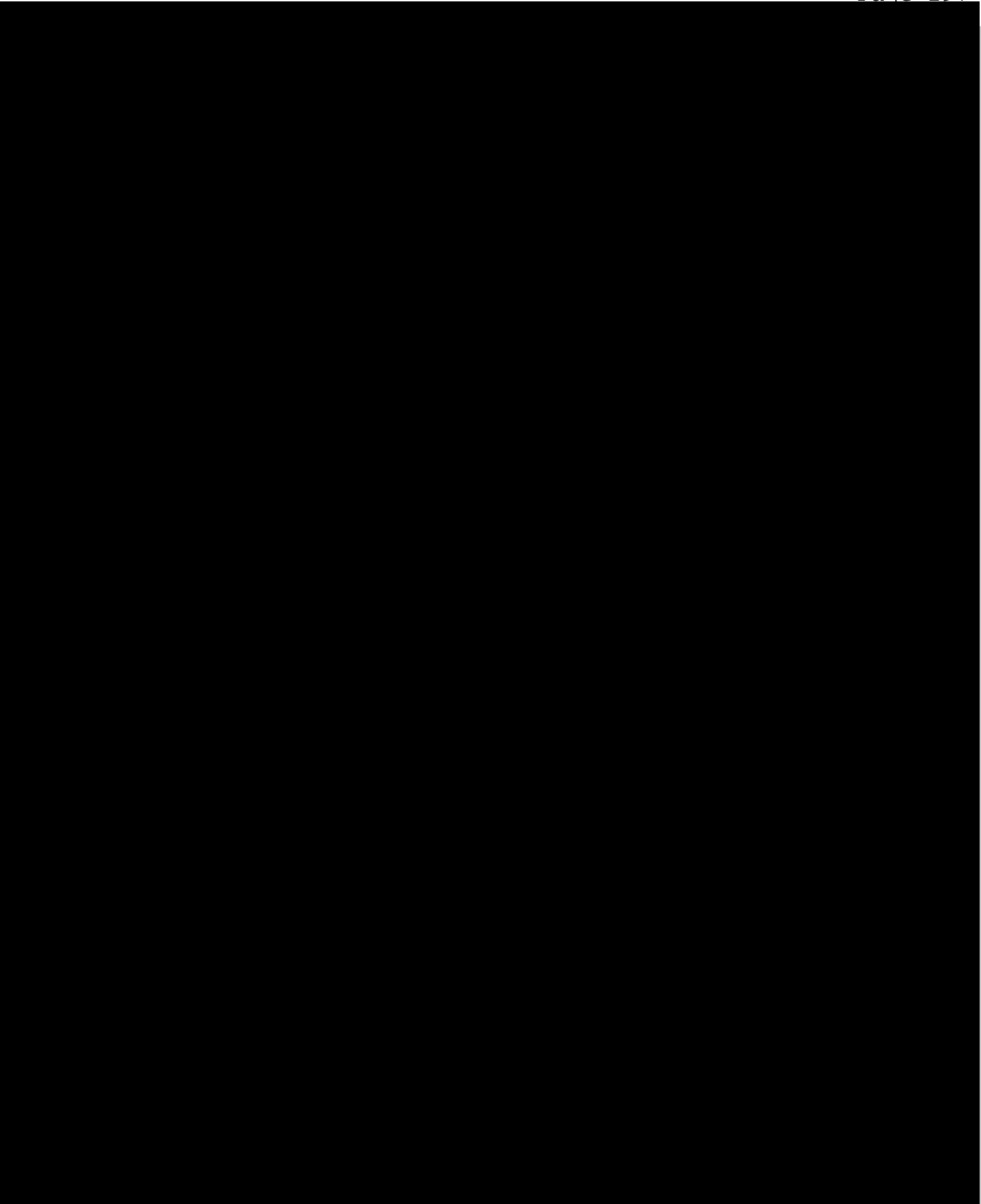
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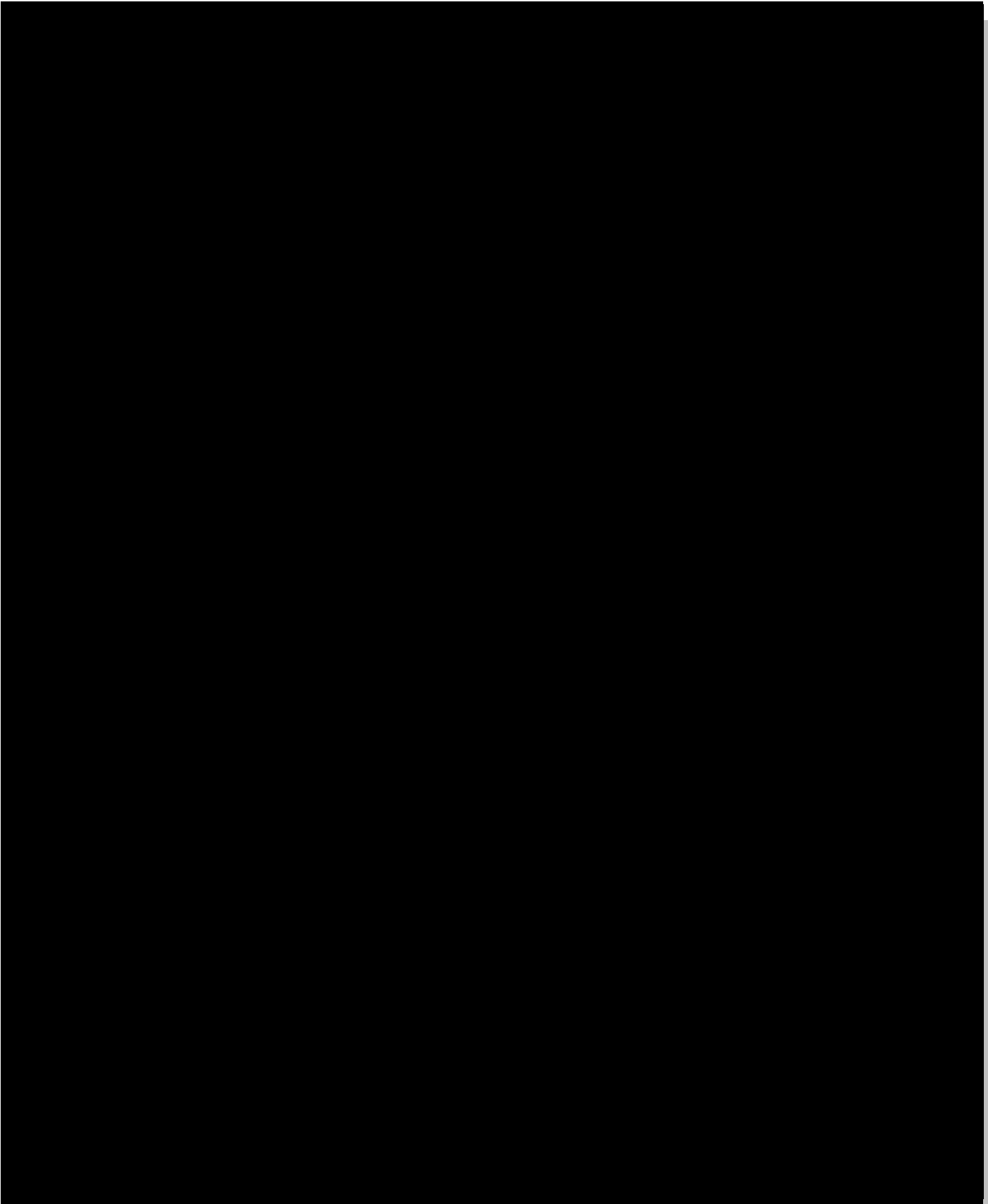
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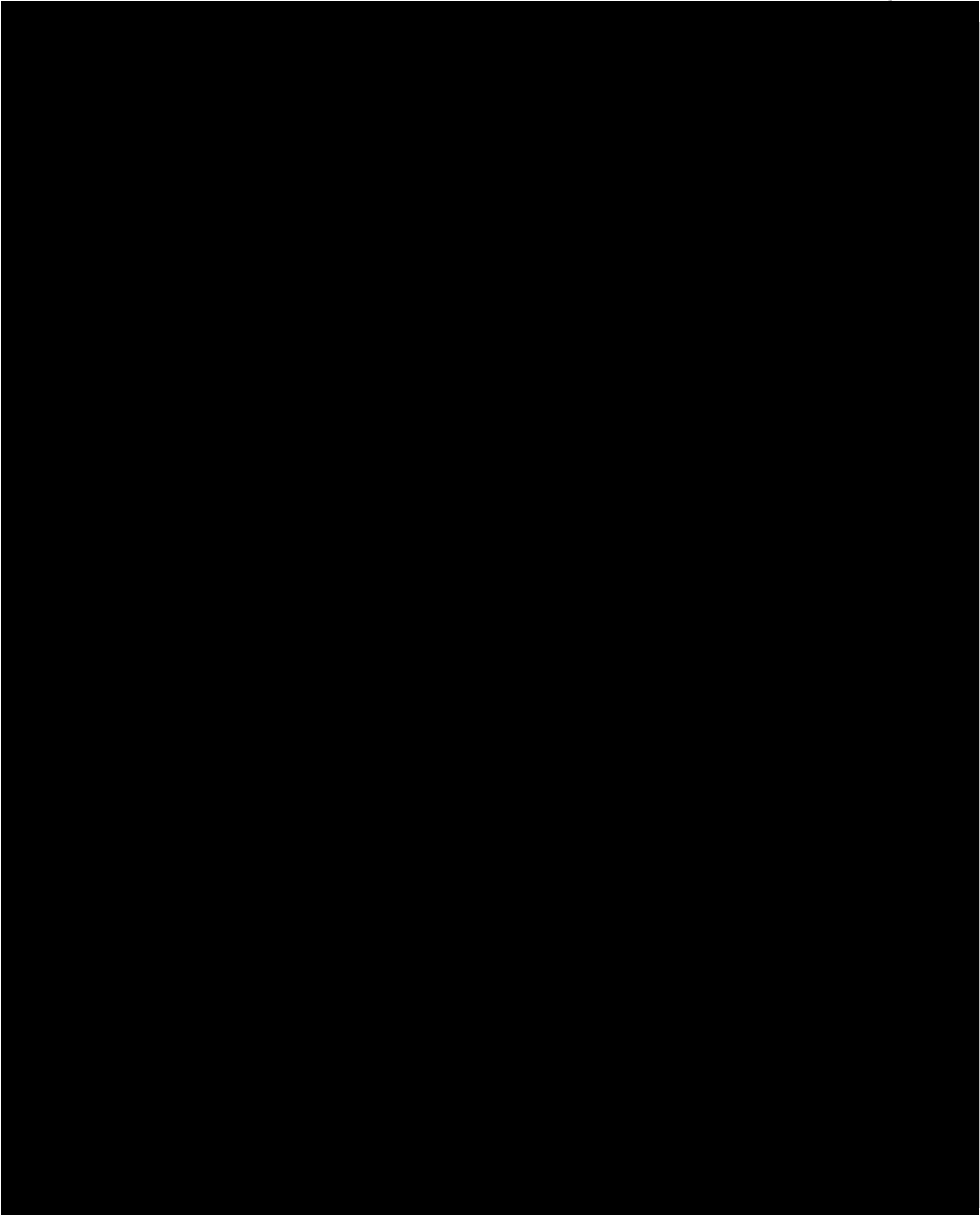
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Page 298



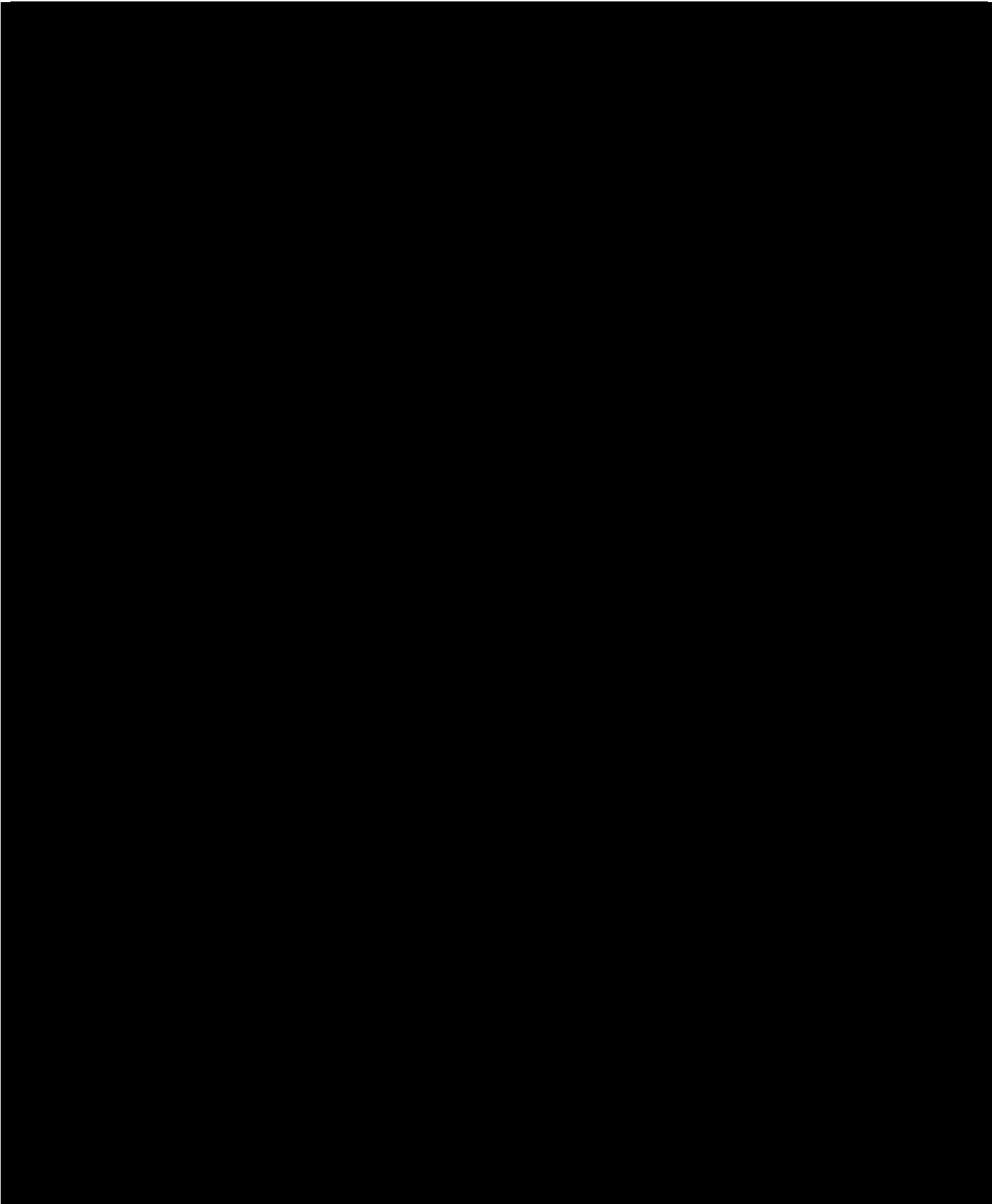
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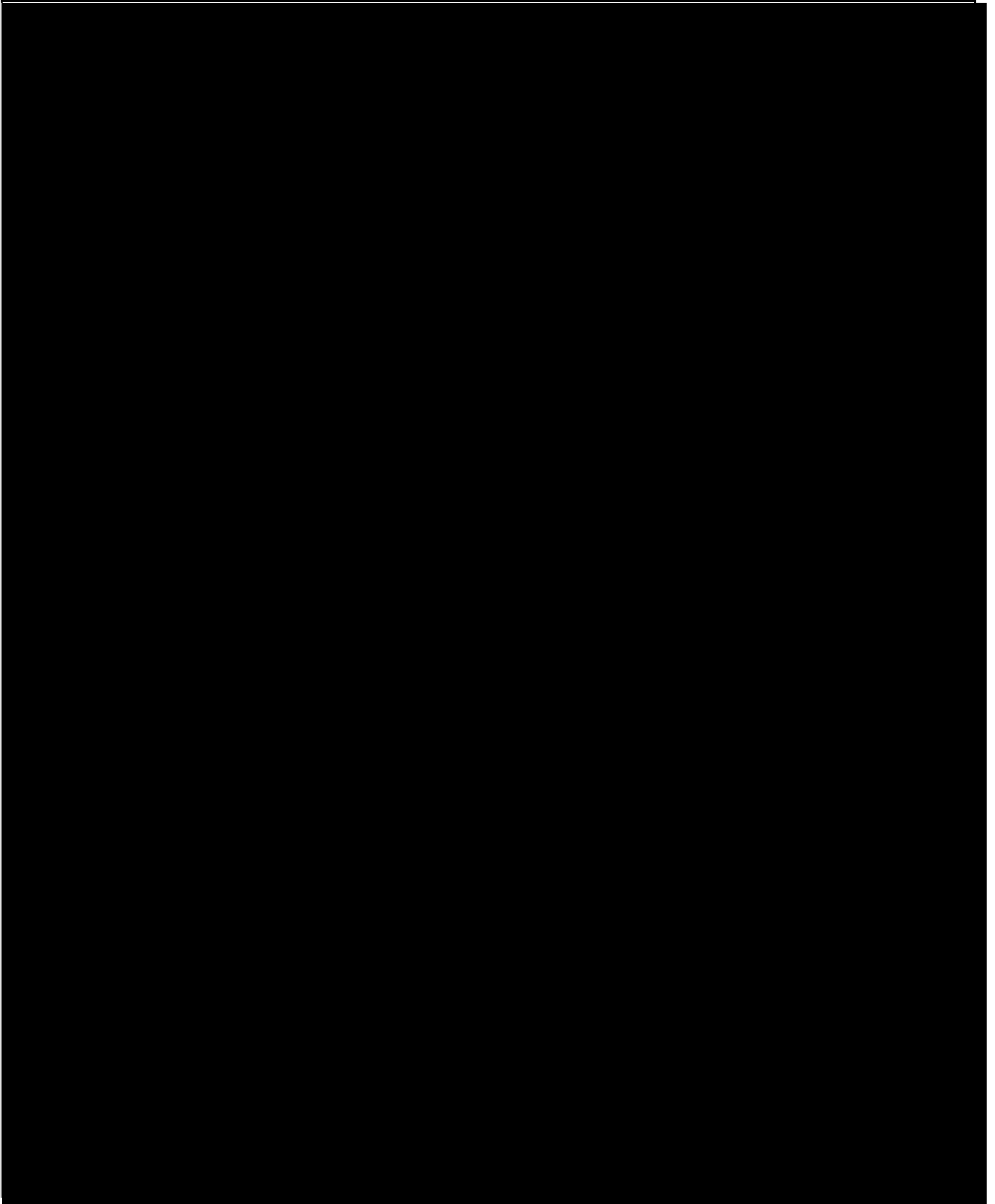
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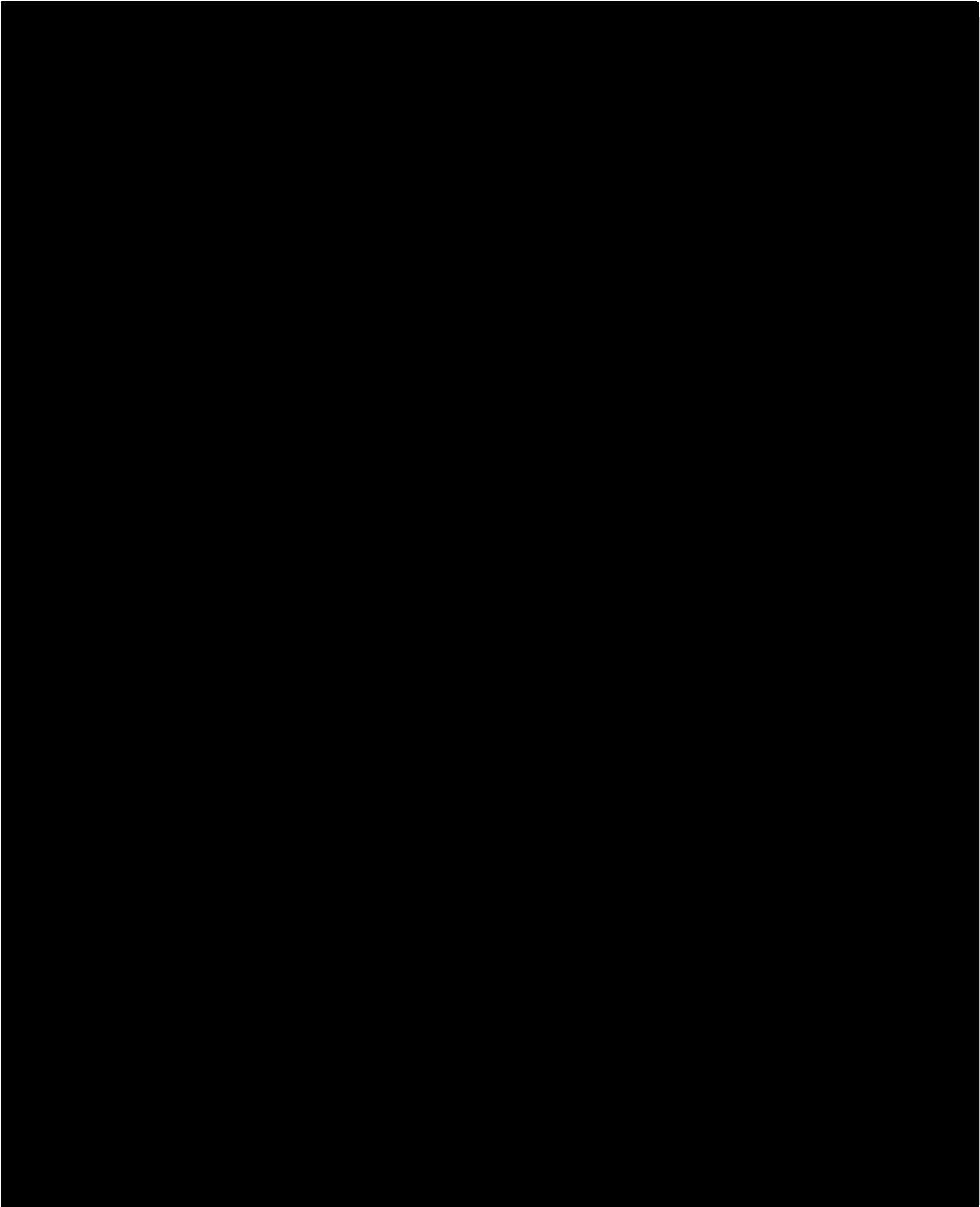
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Page 302



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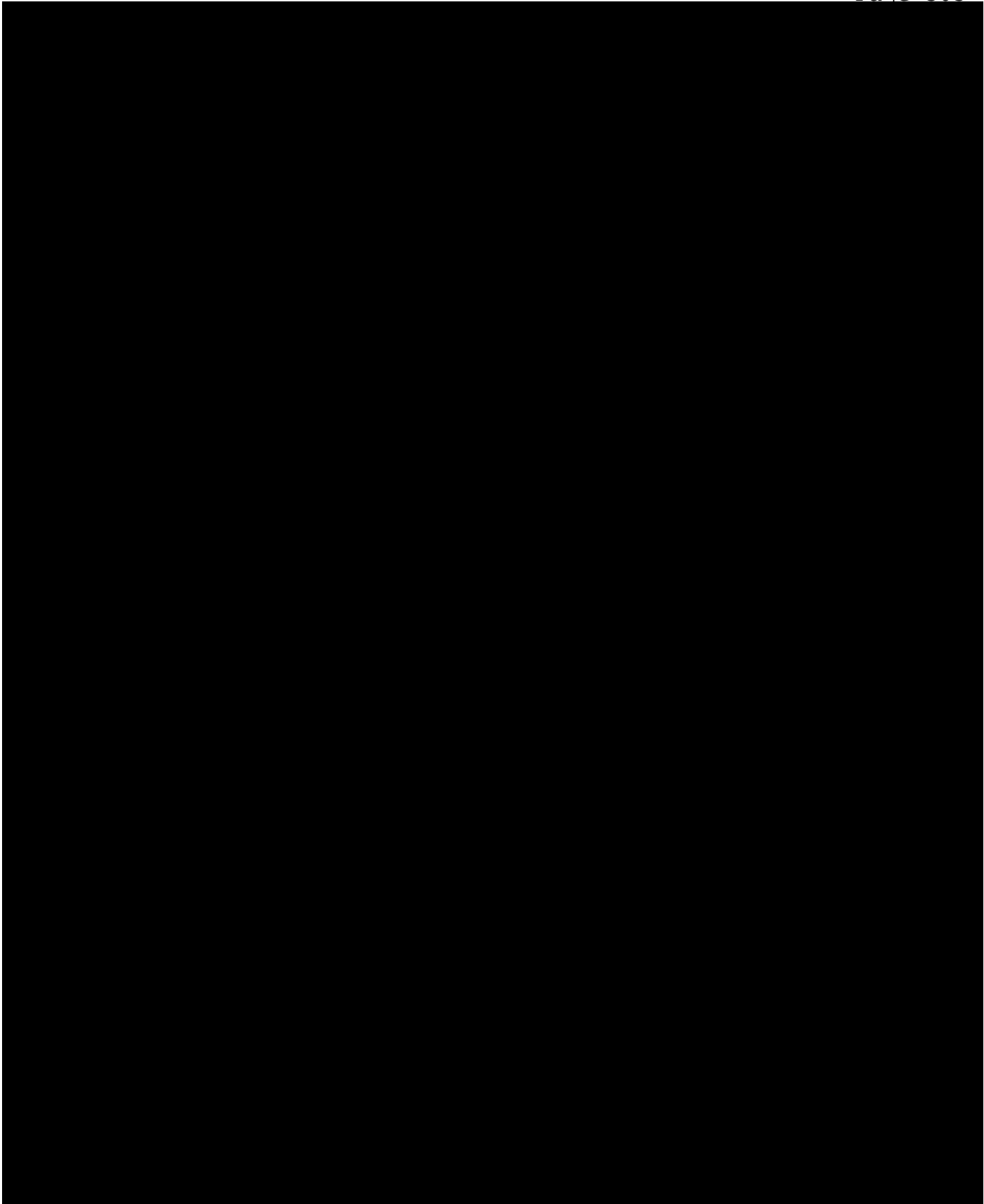


EXHIBIT RX2952

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Page 1

1 UNITED STATES OF AMERICA
2 BEFORE THE FEDERAL TRADE COMMISSION

3 Docket No. D09379

4 _____
5 IN THE MATTER OF:
6 BENCO DENTAL INC., et al.
7 _____

8
9
10 ***** HIGHLY CONFIDENTIAL *****
11
12

13 DEPOSITION OF
14 TREVOR MAURER

15 Atlanta, Georgia

16 Thursday, August 9, 2018
17
18
19
20
21
22
23

24 Reported By: Michelle M. Boudreaux, RPR

25 Job No: 145712

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Page 2

August 9, 2018
9:05 a.m.

Deposition of TREVOR MAURER, held at the
offices of Locke Lord LLP, Terminus 200,
Suite 1200, 3333 Piedmont Road NE, Atlanta,
Georgia, pursuant to Agreement before
Michelle M. Boudreaux, a Registered
Professional Reporter in the State of
Georgia.

Page 3

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Page 4

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Page 5

TREVOR MAURER,

being first duly sworn, was examined and testified as
follows:

EXAMINATION

BY MR. LONG:

Q Please state your name and address for the
record.

A Trevor Maurer. [REDACTED]

Q Mr. Maurer, we met earlier. My name is Jim
Long. I represent Patterson in this matter. I'm going
to be asking you a series of questions this morning.
You have been deposed previously in connection with the
investigation. Have you been deposed other than that?

A I think that was just an interview, wasn't
it? Was I deposed? Can I ask --

Q You had an investigational hearing, and I'm
going to show it to you in a minute.

A Oh, so you know what it is. All right.
Yeah.

Q So my question is: Have you been deposed
other than --

A No.

Q All right. So I'm going to go through some
basics with you. What's most important is that you and

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Page 6	Page 7
<p>1 I are on the same page with respect to the questions 2 and the answers. So if you could wait until I complete 3 my question, I will then do my best to wait until you 4 complete your answer for me to ask you another one. 5 That way we're not talking on top of each other and 6 that way you hear everything that I'm asking you and I 7 hear everything that you're responding. Does that make 8 sense? 9 A Uh-huh. Yes. 10 Q And you're already on top of you need to give 11 a "yes" or a "no" rather than an "uh-huh" or something 12 like that. You need to give verbal answers. 13 If there's anything in my question that you 14 don't understand, either because you didn't hear it, 15 there's a word I used that you think there might be 16 some confusion over, or my question just to you didn't 17 make sense in plain English, just let me know and I 18 will ask it again and we'll get on the same page. Make 19 sense? 20 A Sounds good, yep. 21 Q Very good. 22 We can take a break basically whenever you 23 would like to take a break. I'll try to move through 24 this, but if you need a break, just let me know. The 25 only caveat to that is that we will not take a break if</p>	<p>1 there's a question pending. 2 A Okay. 3 Q All right. But once you answer the question, 4 you need a break, let me know. 5 You're lawyer or other lawyers may object to 6 a question that I ask, and I may choose to rephrase the 7 question or I may choose just to look at you and wait 8 for you to answer the question. If your lawyer does 9 not instruct you not to answer, you then need to go 10 ahead and answer the question the best you can. All 11 right? 12 A Okay. 13 Q Okay. Have you seen the transcript of your 14 statement to the FTC in the investigational hearings? 15 A Not in its entirety. 16 Q All right. Do you recall that there was 17 testimony taken under oath by the FTC of you in 18 connection with their investigation? 19 A Yes. 20 Q And that occurred in late July in Washington, 21 D.C.? 22 A Yep. 23 Q But you haven't gone back and read any of 24 that? 25 A Not in its entirety. I've seen some</p>
Page 8	Page 9
<p>1 unredacted documents. I don't know if it was related 2 to that or not, but... 3 Q Okay. Is there anything that you recall 4 about your testimony that was inaccurate as you sit 5 here today? 6 A No. 7 Q Did you do anything to prepare for today's 8 deposition? 9 A We met for breakfast. 10 Q And when you say "we" -- 11 A My counsel. 12 Q -- you met with your attorney? 13 A Yeah, Crystal. 14 Q Very good. Anything other than that? 15 A No. 16 Q Have you spoken with any of the attorneys 17 with the Federal Trade Commission other than answering 18 questions in the investigational hearing that I 19 referenced a minute ago? 20 A No. 21 Q So you did not meet with them ahead of time 22 for today's deposition? 23 A No. 24 Q And you did not meet with them ahead of time 25 before the July 28, 2017 investigational hearing?</p>	<p>1 A No. 2 Q Okay. 3 A Well, wait. We had a brief phone call. I 4 don't know who was on it from FTC, but there was a 5 brief phone call before that interview. 6 Q Okay, so -- 7 A Maybe six or eight months. They asked me a 8 few questions and it was about a 20-, 30-minute call 9 prior to that meeting in Washington. 10 Q And was that six to eight months before -- 11 A The Washington meeting. 12 Q -- the Washington meeting? 13 A Yeah. 14 Q Okay. So sometime in late 2016, perhaps? 15 A Something like that, yeah. 16 Q And do you recall who was on? 17 A I don't. 18 Q Do you recall any of the substance of that 19 call? 20 A There was some discussion about the topic 21 today, with the dealers, and there was some questions 22 about the Smile Source business model. 23 Q Do you recall what the discussion about the 24 dealers -- 25 A I don't.</p>

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Page 10

1 Q -- was?
 2 A I don't recall the specifics.
 3 Q Have you talked to anybody else about your
 4 deposition today?
 5 A No.
 6 Q Did you talk to Mr. Goldsmith, Andrew
 7 Goldsmith?
 8 A No.
 9 Q Did you talk to Tracey Moody?
 10 A About today?
 11 Q Yes.
 12 A No.
 13 Q And you and I have never communicated
 14 before --
 15 A Correct.
 16 Q -- this morning?
 17 Are you aware that you are on complaint
 18 counsel's preliminary witness list?
 19 A So to put that in my terms, that's the FTC's
 20 preliminary witness list?
 21 Q Yes.
 22 A So I don't know his exact words, but I knew
 23 it was something like that.
 24 Q Okay. And do you have an understanding that
 25 you will be asked by the FTC to testify at the trial in

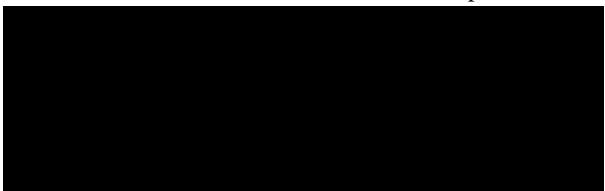
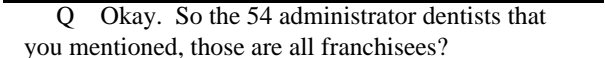

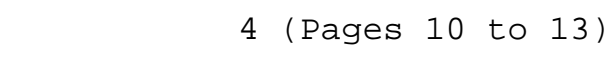
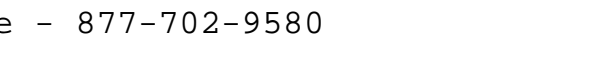

Page 11

1 Washington this fall?
 2 A I don't know that.
 3 Q Okay. Do you intend to appear at the trial?
 4 A I don't know what day it is. I don't know
 5 anything about it, so I can't tell you.
 6 Q All right. Okay, and I think I know the
 7 answer to this, but do you have an understanding of
 8 what testimony the FTC seeks to elicit from you?
 9 A I don't.
 10 Q Okay. You are currently employed?
 11 A Yes.
 12 Q And your position is?
 13 A President and CEO at Smile Source.
 14 Q Just give me a very brief education
 15 chronology, beginning with graduation from high school.
 16 A Of what?
 17 Q Of your education.
 18 A Of my education?
 19 Q Yes.
 20 A You want to know what my education is?
 21 Q I do.
 22 A So I have a bachelor's of commerce from the
 23 University of Saskatchewan, graduated in '93, with a
 24 focus in accounting.
 25 Q Any degrees after that?

Page 12

1 A Uh-uh, no, none.
 2 Q So beginning in 1993, just give me a
 3 chronology of your employment, please?
 4 A Proctor & Gamble, sales and marketing, right
 5 out of school. Then Novartis, sales and marketing, '93
 6 through '03. Then COO and CEO of Eyeweb technology
 7 firm in New York for a little over a year, so that's
 8 around the '03-'04 time. Five years self-employed.
 9 Started a search firm, Maurer and Associates,
 10 in Atlanta. Brings us to around late '09. Then Vision
 11 Source, business development, until December 2012. And
 12 then VP, business development, for Smile Source,
 13 December 2012. And then about a year-ish after that --
 14 I don't know if it was a year or two years, somewhere
 15 in there -- president of Smile Source. And then
 16 September 2015, CEO of Smile Source.
 17 Q Prior to joining Smile Source in December of
 18 2012, did you have experience in the dental industry?
 19 A None. I had placed some people at dental
 20 companies in my search capacity.
 21 Q And while you were at Vision Source, until
 22 you moved to Smile Source, you didn't have any duties
 23 or responsibilities on the Smile Source side?
 24 A No duties or responsibilities, no. I
 25 presented to their sales team once on good sale

Page 13

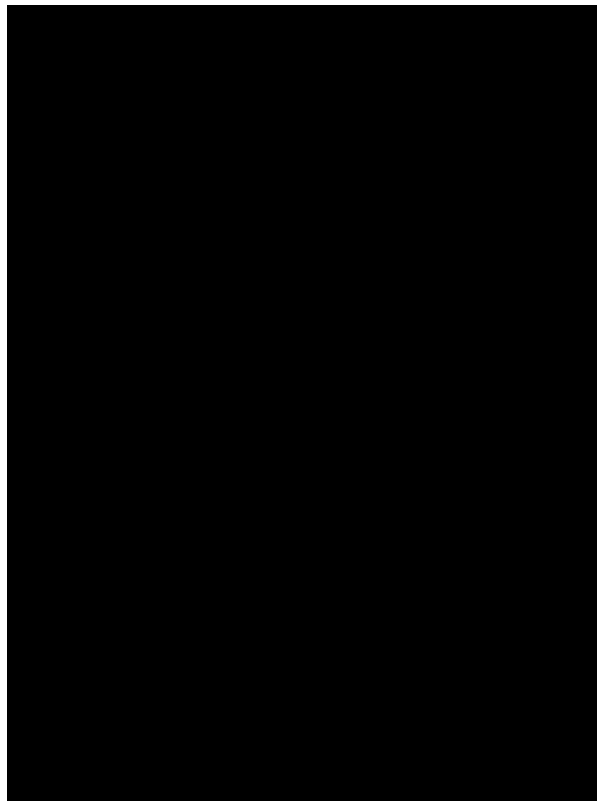
1 processes, but nothing specific to dental.
 2 Q What is the structure of Smile Source?
 3 A Corporate structure, like how is it
 4 incorporated or what people --
 5 Q Just corporate structure. Just corporate
 6 structure, very briefly.
 7 A So there's around 19 employees, including
 8 myself, nine in business development. Reporting to
 9 those nine in business development are 54
 10 administrators, which are practicing dentists. Those
 11 54 administrators that are practicing dentists run
 12 local business groups of local franchise holders.
 13 So as an example, in Atlanta there's, I'd
 14 say, 35 Smile Source practices. They will attend one
 15 of the two groups' quarterly meeting or monthly
 16 meetings, whatever they choose to hold. That's the
 17 structure of the offices and business development.
 18 
 19 
 20 
 21 
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 23 
 24 Q Okay. So the 54 administrator dentists that
 25 you mentioned, those are all franchisees?

4 (Pages 10 to 13)

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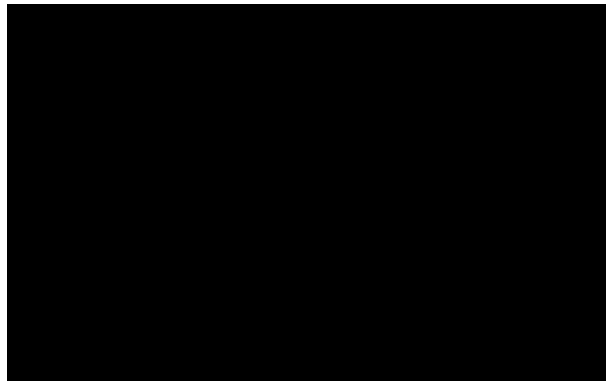
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Page 15

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Q You said there were nine business development individuals. Would a rough title for those people be franchise sales?

A No. So one's a VP of business development and member services, and the title is just business development manager. Their job is franchise sales. It's not reflected in their title. I just want to make sure that's -- I'm answering your question properly.

Q You answered it better than the way I asked it. Business development focuses on selling franchises?

A Yes, 100 percent. They're also, you know, focused on retention as well. They don't like to lose

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anybody, but...



Q Do you oversee the various groups you just described to me of employees at Smile Source?

A Yeah, ultimately I oversee everybody I described to you.

Q Do you have any role in seeking vendors?

A Not directly in my role today, but I have in the past, and I'm very involved in the key partners, key vendors. Well, it varies further onward, but I get involved when I want to.

Q When were you involved in the past? Just tell me the time period and tell me what you did.

A You mentioned Andy Goldsmith earlier. So when he left -- I don't remember exactly when that was; it was late '14 or '15 -- then I assumed that responsibility until Jeff Guidie took the role in April of '16.

Q What's Jeff's last name?

A Guidie, G-U-I-D-I-E.

Q You mentioned key vendors. What do you mean by that?

A Just the ones that are important for our

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doctors, where they use a lot of our products.

Q Are we talking about manufacturers of products?

A Yes.

Q Are we also --

A And dealers and labs, anything they might use that has an impact, significant impact.

Q So key vendors is manufacturers, dealer/distributors, and labs?

A Some or each of them, yeah.

Q I believe you currently have five dealer/distributors. Is that correct?

A Let me do the math. Yes.

Q Darby, Burkhart, Schein, Atlanta Dental, Nashville Dental?

A Yes. You could have just asked me that.

Q Would you consider -- well, I may get objections on form for leading you.

A That's fine.

Q So if it seems a little convoluted, I'm trying to move through it. Really, I am.

Would you consider all five of those dealers key vendors?

A They're different sizes. Regionally, they're key, but Atlanta Dental is not key in Washington.

5 (Pages 14 to 17)

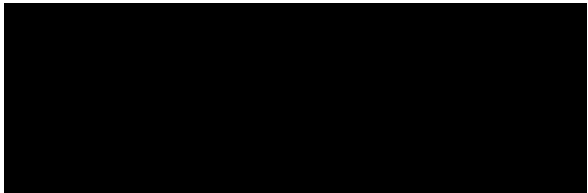
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Page 18

1 Q Yeah, Atlanta and Nashville are regional?
2 A They're regional, sure.
3 Q Okay. Are you familiar with the term "buying
4 group" --
5 A I am.
6 Q -- as used in the dental industry?
7 A I am.
8 Q What -- do you have a definition of "buying
9 group"?
10 A Do I have a definition of "buying group"?
11 Q Yeah.
12 A My definition of a buying group is an entity
13 that offers discounts across most to all vendors in
14 category and does central billing. Doctor orders a
15 product from the vendor, doctor pays the buying group,
16 buying group pays the vendor.
17 Q Do you consider Smile Source to be a buying
18 group?
19 A No.
20 Q Why?
21 A Well, it doesn't meet my criteria.
22 Q Could you explain to me how it does not meet
23 your criteria?
24 A They don't pay us and we don't pay the
25 vendor. We don't have deals across all vendors. We

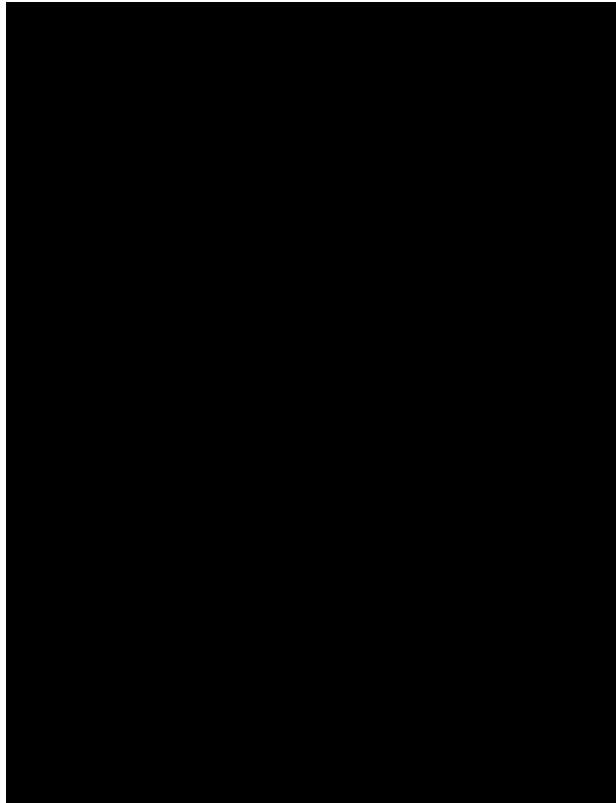
Page 19

1 select partners -- "partners" is the wrong word. We
2 select vendors in each category. So as an example, we
3 don't have all dealers on the formulary, we don't have
4 all manufacturers on the formulary, we don't have all
5 labs on the formulary.
6 So that's a key difference for me for a
7 buying group. Whereas buying group would take a deal
8 from everybody. So to -- if I could go further.
9 Q Go ahead.
10 A So Heartland owns 840 offices and they also
11 have a formulary, and I also don't view them as a
12 buying group.
13 Q Well, Heartland is a -- is Heartland a dental
14 service organization?
15 A Yeah, they own practices.
16 Q You stated that you select partners, so you
17 have limited manufacturers on your formularies; is that
18 correct?
19 A Yes.



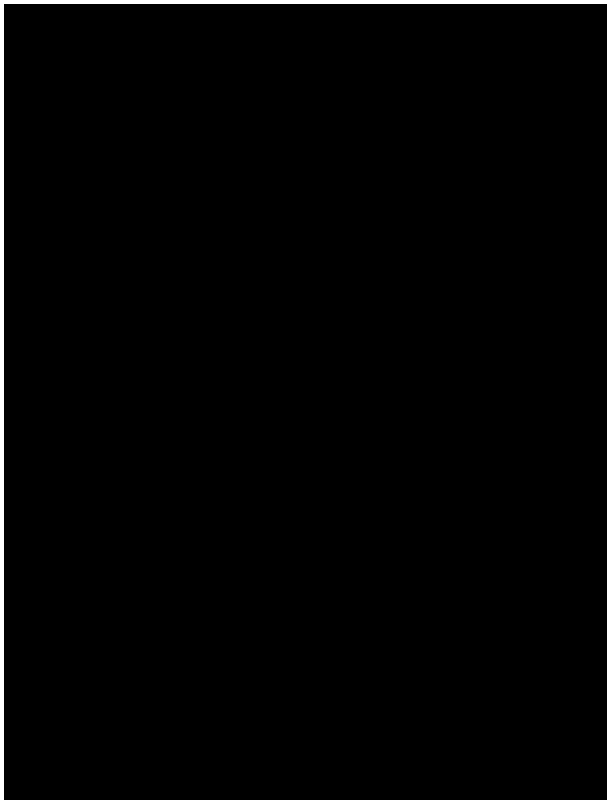
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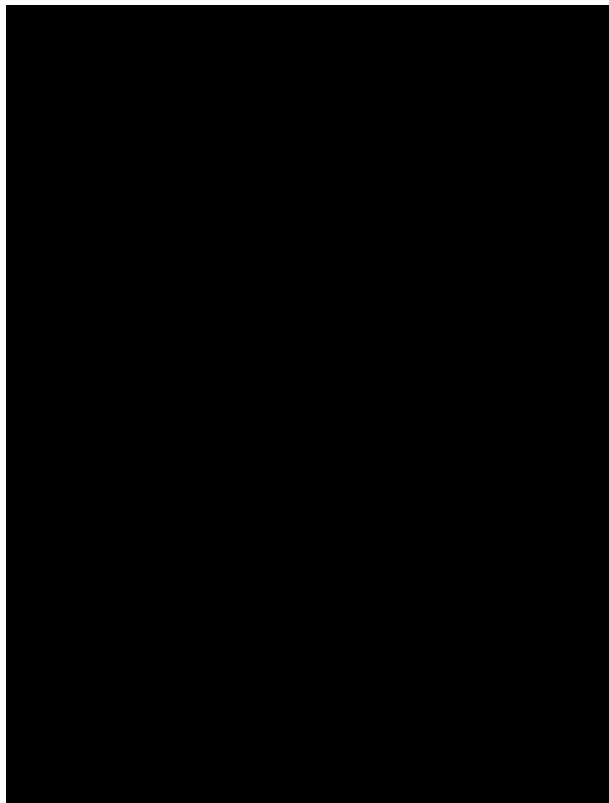


6 (Pages 18 to 21)

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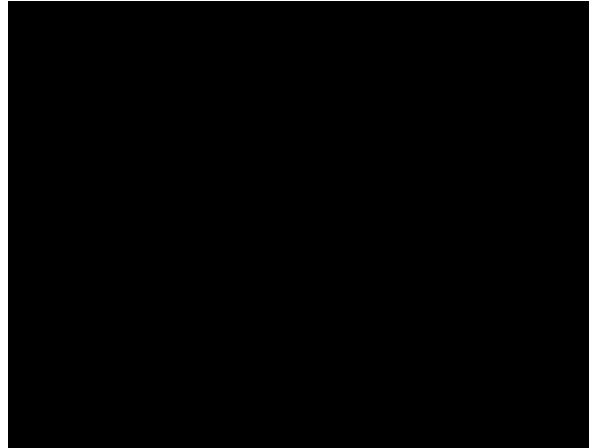
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Q (By Mr. Long) Now, Smile Source is a franchise system?

A Yes.

Q You are familiar with a term "Franchise Disclosure Document," or FDD?

A Yes.

Q Do you have any role in either preparation or review of the Smile Source FDDs?

A So our counsel does, so I would get to see it, yes.

Q Okay. Is it your understanding that an FDD

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needs to be accurate?

A I would think so.

Q And does Smile Source take care to make sure that its FDDs are accurate?

A I believe we do.

Q I am going to mark some FDDs for you and a couple of them we will look at.

(Exhibit 1 marked for identification.)

Q (By Mr. Long) I'm handing you what was marked as Exhibit No. 1. It was also Moody Exhibit No. 1.

What I've handed you is the FDD for the State of Minnesota dated July 2nd, 2014, with the Bates number starting PDCO 147772.

Once you review it, I'm going to ask if you can identify this as the FDD that was in effect in 2014 for Smile Source.

A It looks like it.

Q All right.

(Exhibit 2 marked for identification.)

Q (By Mr. Long) I'm now handing you -- and we'll get to that shortly, but I'm going to go through several and just get them marked.

I'm handing you what's been marked as Maurer Exhibit No. 2, ask that you take a look at that. It

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states that it's a Franchise Disclosure Document dated April 7th, 2015, Bates-numbered PDCO 147923.

After you review the document, my question is: Can you identify this as the 2015 FDD for Smile Source?

A It looks like it is, but I would remind you that I clearly haven't memorized the documents for every year, but it looks like it would be.

Q And all I can do is ask for your best understanding as you look at it.

(Exhibit 3 marked for identification.)

Q (By Mr. Long) I'm handing you what's been marked as --

A It doesn't look like a lunch menu.

Q Yeah, I'm handing you what's been marked as Exhibit 3. This is dated April 6, 2016, marked PDCO 148040.

To the best of your understanding, is this the FDD for Smile Source for 2016?

A Yes.

(Exhibit 4 marked for identification.)

Q (By Mr. Long) I'm handing you what's been marked as Exhibit 4. This document is dated April 3rd, 2017, with the Bates number PDCO 148174.

Can you identify this as the Smile Source FDD

7 (Pages 22 to 25)

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Page 26

1 for 2017?

2 A It looks like it is.

3 (Exhibit 5 marked for identification.)

4 Q (By Mr. Long) And, finally, I'm handing you
5 what's been marked as Exhibit 5, which is dated
6 April 3rd, 2018, with the Bates number SS-57 and on.

7 Can you identify this as the Smile Source FDD
8 for 2018?

9 A It looks like it again.

10 Q All right. Throughout this decade, Smile
11 Source's franchisee base has increased significantly;
12 would you agree with that?

13 A It's increased.

14 Q Okay.

15 A As -- it's probably reflected in the
16 documents that it's increased.

17 Q And if you would look at Exhibit 1, which is
18 the 2014 FDD, and if you would go to page 21 of the
19 document.

20 A Okay.

21 Q Do you see a chart under Item 20 of "Outlets
22 and Franchisee Information"?

23 A I do.

24 Q And does this chart indicate that at the
25 beginning of 2011 there were 21 franchises, and at the

Page 27

1 end of 2011 there were 28?

2 A I can't read the titles, the headings, but
3 I'm sure that's what it is.

4 Q Well, let me then point you, since we have
5 bad copying on what we had got from the State of
6 Minnesota, but your counsel had produced --

7 A Sure.

8 Q -- the FDD for 2018, and that was in color,
9 and so it's easy to read the headings.

10 A Okay.

11 MS. Y'BARBO STAPLEY: For the record,
12 that's Exhibit 5 --

13 MR. LONG: It is Exhibit 5.

14 MS. Y'BARBO STAPLEY: -- that the
15 witness is reviewing.

16 THE WITNESS: Okay.

17 Q (By Mr. Long) So it has different dates, but
18 what I'm showing you is what the headings for the
19 columns were --

20 A So the answer is yes.

21 Q Okay. And then at the end of 2012, there
22 were 58 franchises?

23 A Yes.

24 Q And at the end of 2013, there were 145 Smile
25 Source franchises?

Page 28

1 A Yes.

2 Q And then if you do look at Exhibit 5 --

3 A Page 21 again?

4 Q Page 25 on this one.

5 A Okay.

6 Q At the end of 2015, there were 352
7 franchises?

8 A Yes.

9 Q At the end of 2016, there were 470
10 franchises?

11 A Yes.

12 Q At the end of 2017, there were 562
13 franchises?

14 A Yes.

15 Q Do you have any idea the number of franchises
16 as of, you know, August 1st or thereabouts?

17 A This year?

18 Q 2018.

19 A It's -- I believe it would be 575 or
20 somewhere thereabouts.

21 Q Okay. So for the period of the start of 2012
22 through the end of 2016, Smile Source went from 28
23 franchises to 470 franchises?

24 A Did you say 2016?

25 Q Yes, the end of 2016.

Page 29

1 A Let me pull up your handy page again.

2 Yes.

3 Q And in that period, beginning of 2012 through
4 the end of 2016, Henry Schein was not a
5 dealer/distributor?

6 MS. GOFF: Objection, form.

7 MS. Y'BARBO STAPLEY: You may answer if
8 you know.

9 THE WITNESS: I don't think they were in
10 2012.

11 MR. LONG: Okay.

12 Q (By Mr. Long) There was a point in time in
13 late 2011 or shortly into 2012 where Henry Schein
14 ceased being a distributor/dealer for Smile Source?

15 A I'm aware of that. That was before my time,
16 but I don't know exactly when that ended.

17 Q And during this period of growth from 28 to
18 470 franchises, Benco was not a distributor of Smile
19 Source?

20 A Correct.

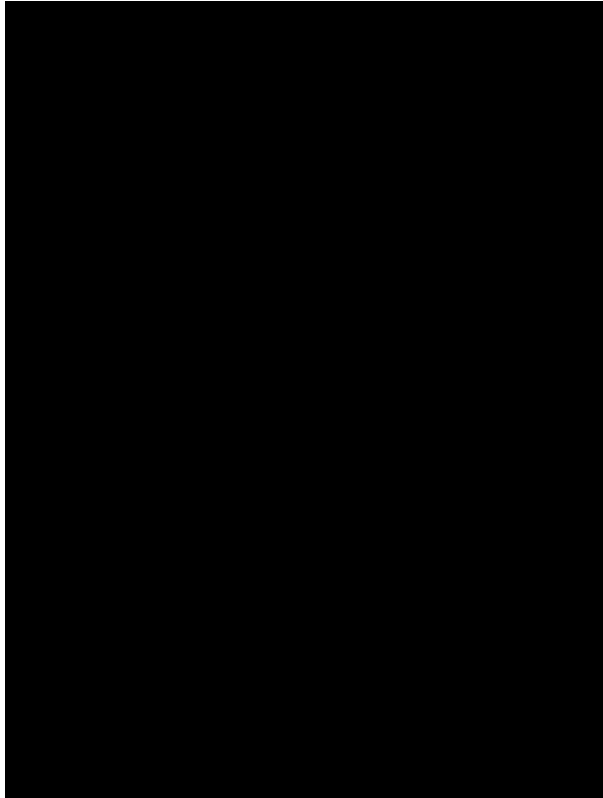
21 Q And during this period of growth from 28
22 franchises to 470, Patterson was not a
23 distributor/dealer?

24 A Correct.

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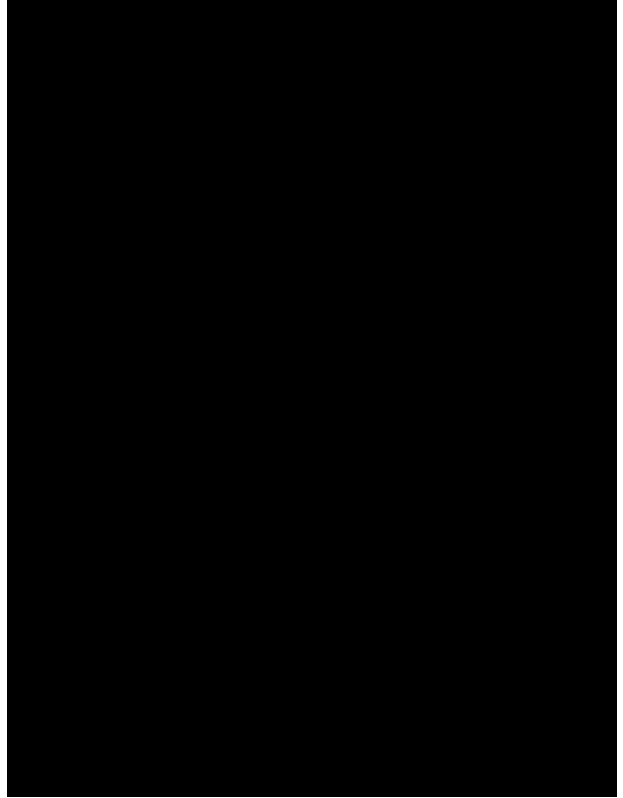
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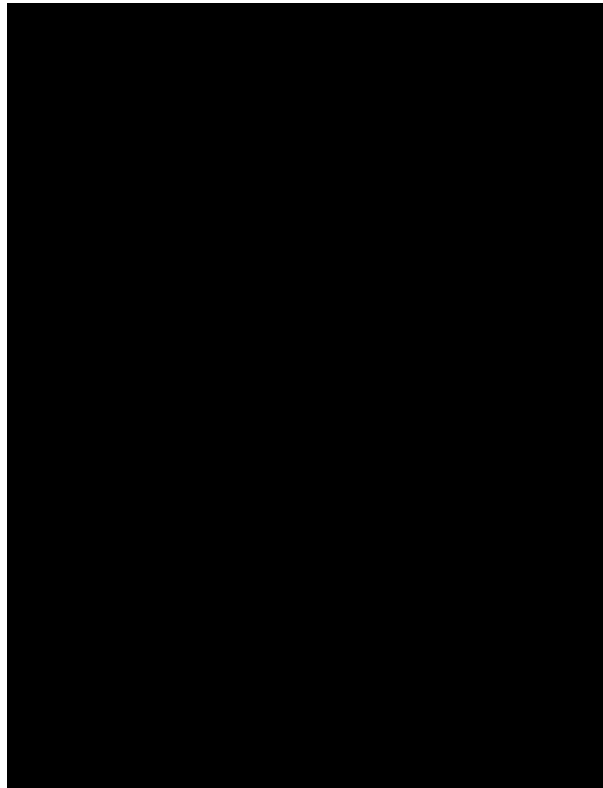
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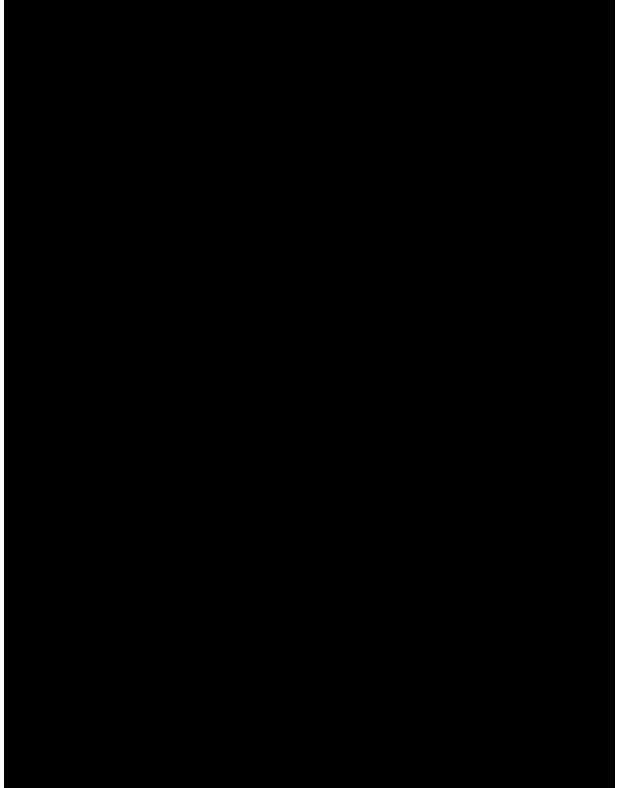
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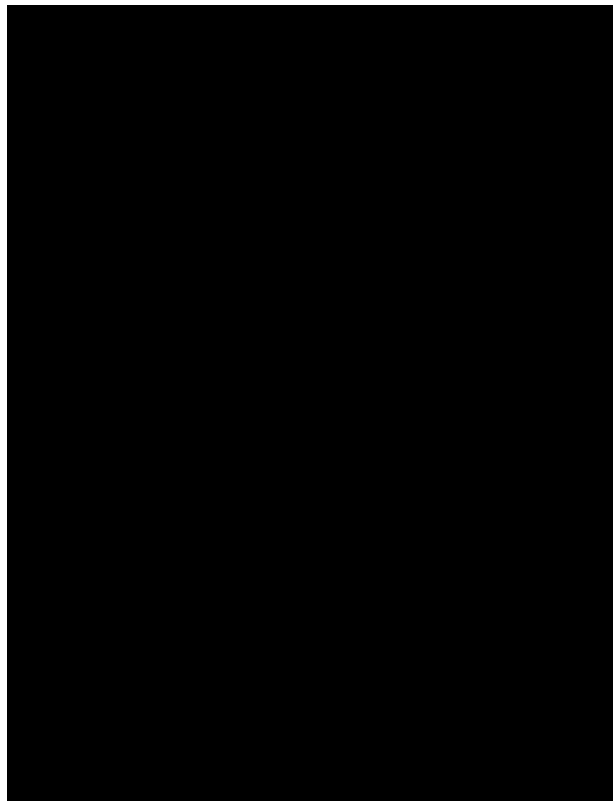


9 (Pages 30 to 33)

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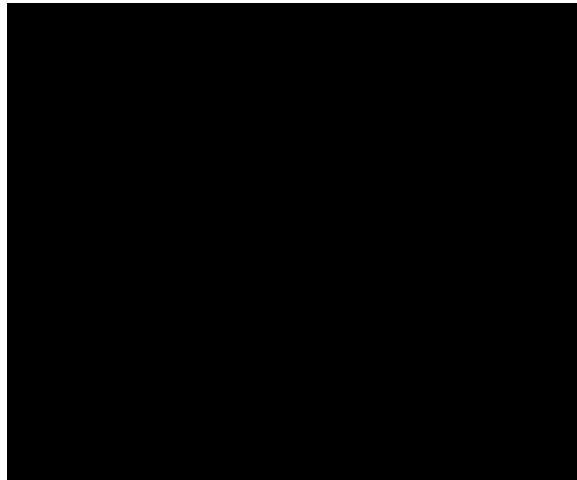
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(Exhibit 6 marked for identification.)

Q (By Mr. Long) I'm handing you what's been marked as Exhibit 6. This is a document that was produced by Smile Source with the Bates number SS-179. Is this a document you can identify for me?

A Sure. Yes.

Q What is it?

A It looks like a document from a trade publication.

Q Do you recall what trade publication?

Page 36

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A I don't. Dentistry something, Today or Economics. I'm not sure which one.

Q Were you interviewed in connection with this page from the trade publication?

A Yep.

Q If you would look at the question that begins at the bottom of the second column. You see "Q: Are there other groups similar to Smile Source in the industry?" Do you see that?

A I do.

Q Your response was, "Dentists might be attracted to Smile Source for the cost savings, but that certainly isn't the reason why they stay." Do you see that?

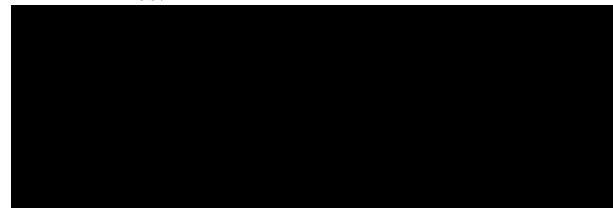
A Uh-huh, yes.

Q And was that an accurate statement by you?

A It was.

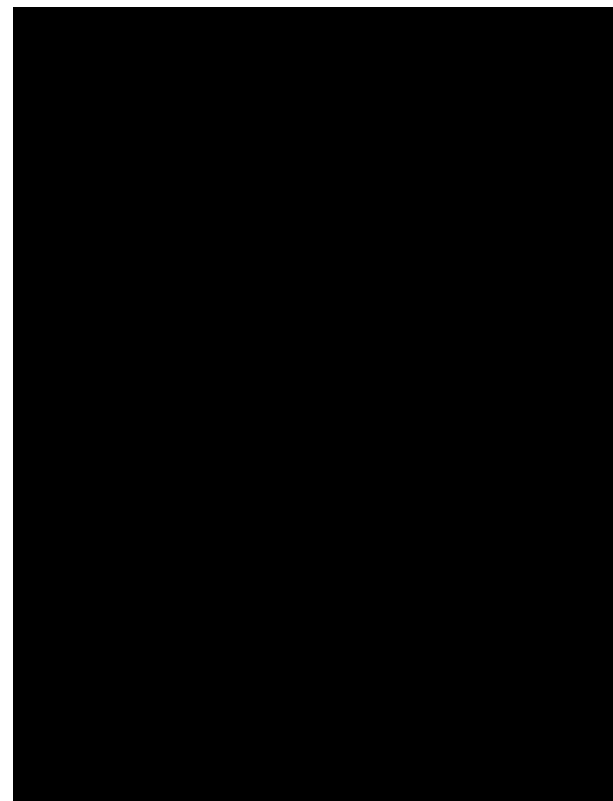
Q And is it still accurate, in your mind?

A Yes.



Page 37

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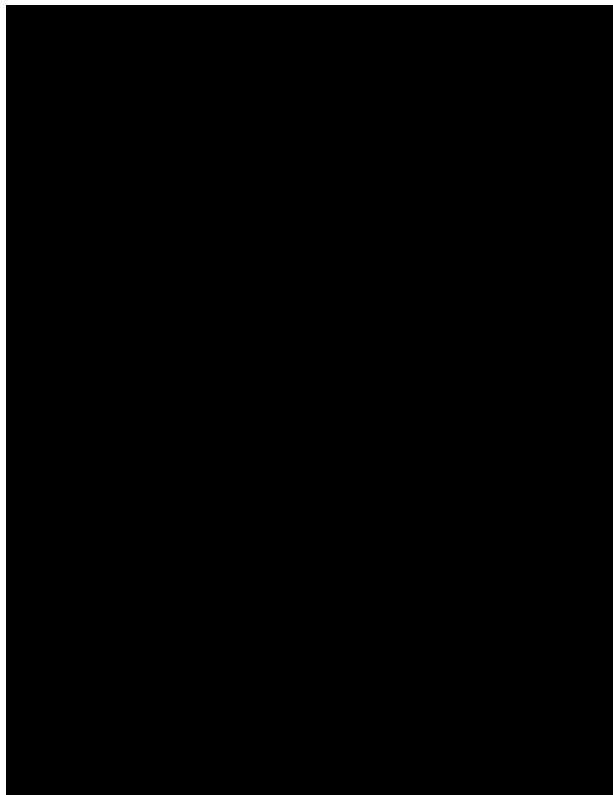


10 (Pages 34 to 37)

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Page 38

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Page 39

1 Q The typical buying group that you described
2 earlier, they don't provide the marketing support, the
3 continuing education, the best practice sharing, do
4 they?
5 MS. GOFF: Objection to form and
6 foundation.
7 THE WITNESS: There are so many, I don't
8 think I could give a blanket answer like
9 that, but not to the extent that we do. I'm
10 not aware of any that do.
11 Q (By Mr. Long) And there are many -- well, a
12 large percentage of the groups that call themselves
13 buying groups just focus on vendor discounts across the
14 board and selling that to prospects, correct?
15 MS. GOFF: Objection to form and
16 foundation.
17 MS. Y'BARBO STAPLEY: If you know, you
18 may answer.
19 THE WITNESS: I don't know. I believe
20 so.
21 MR. LONG: All right.
22 THE WITNESS: Two-minute recess?
23 MR. LONG: Let's take five.
24 (Recess taken.)
25



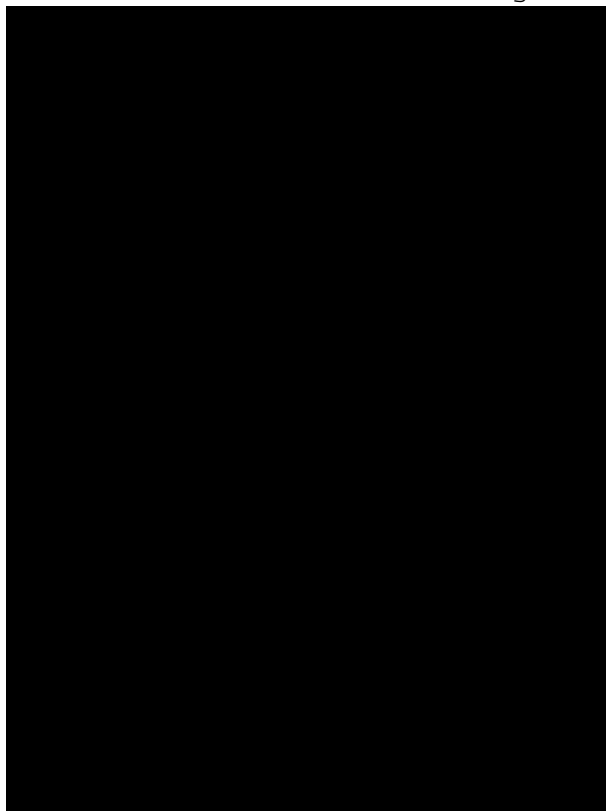
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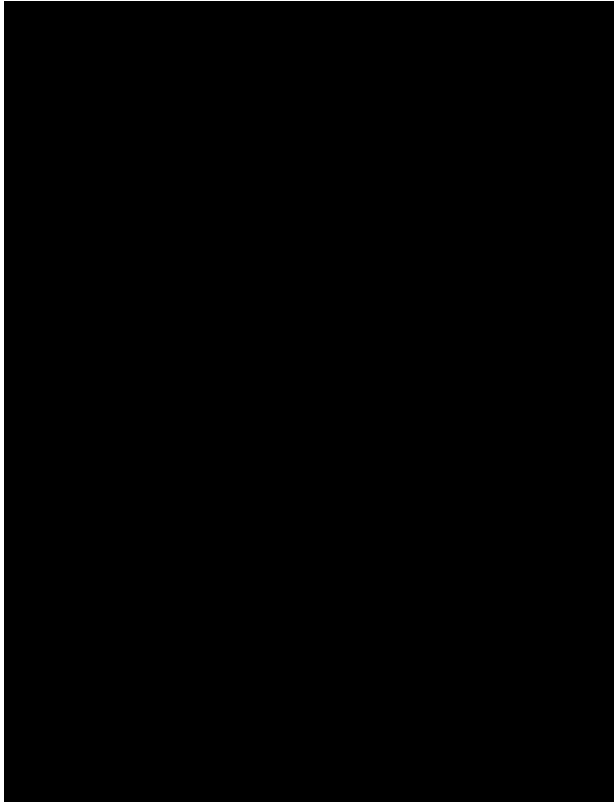


11 (Pages 38 to 41)

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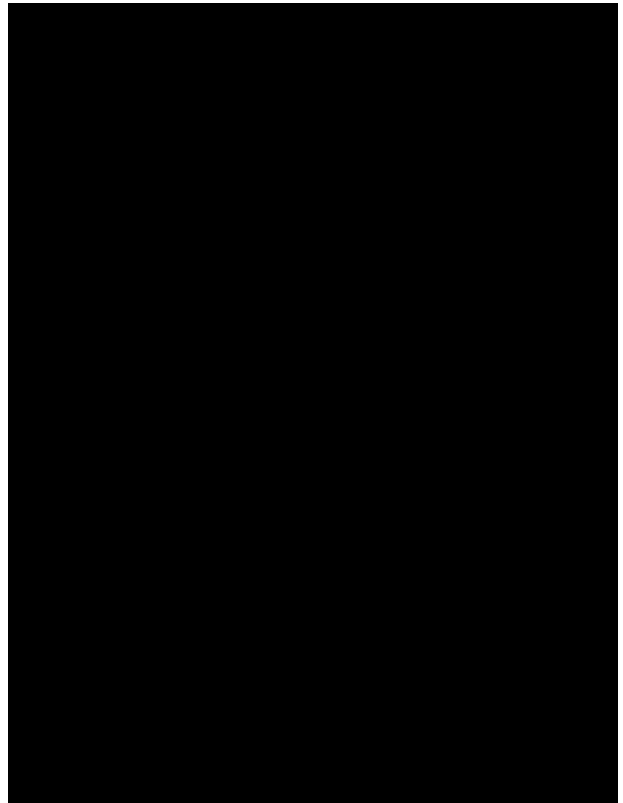
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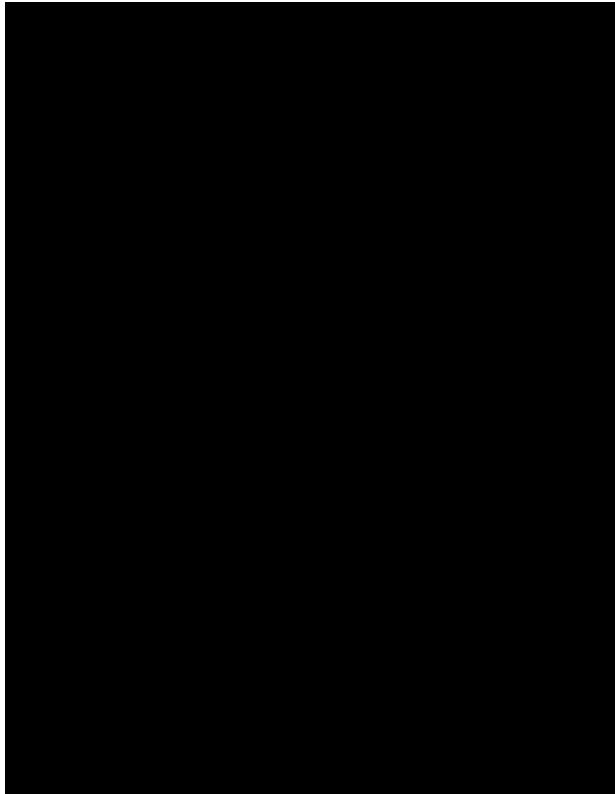
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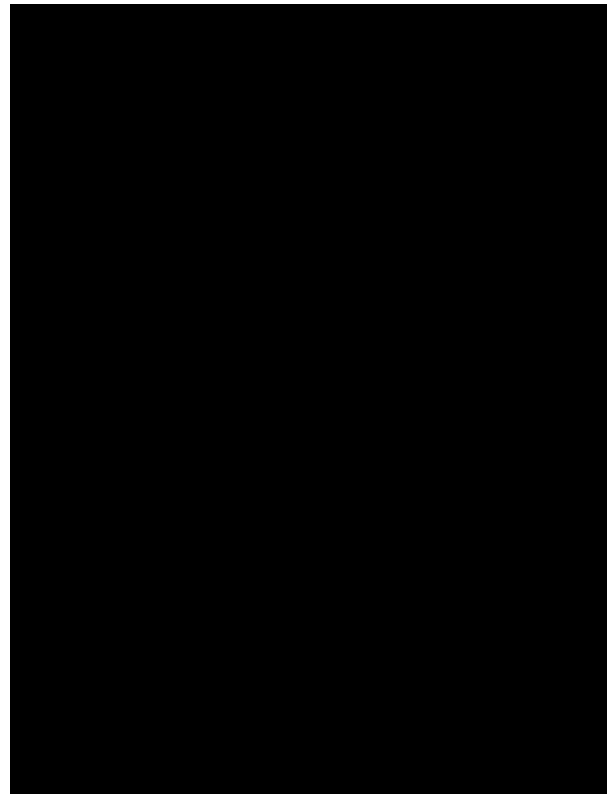
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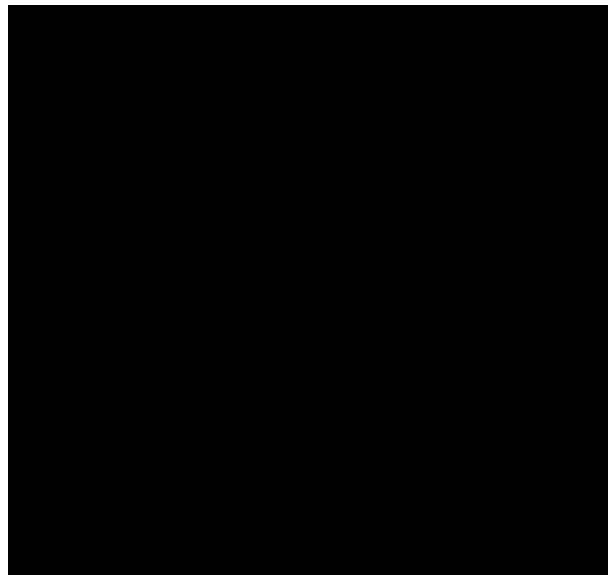
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12 (Pages 42 to 45)

HIGHLY CONFIDENTIAL

Page 46



Q (By Mr. Long) I want to go over the areas that the FTC has indicated that they expect you to testify to at trial. And the first of those is communications with Schein, Patterson, Benco, Burkhart, and other dental distributors. And what I want to focus on is your communications with Patterson, all right?

Page 48

meeting?

A Correct.

Q Do you have any personal knowledge of what occurred at that meeting?

A No.

Q Do you know that Mr. Goldsmith met with Dave Misiak, M-I-S-I-A-K, and Neal McFadden?

MS. GOFF: Objection to form, foundation.

THE WITNESS: I'm not sure exactly who he met with. I know he met.

Q (By Mr. Long) Okay. To find out what happened in that meeting, I would have to talk to Mr. Goldsmith?

A Yes.

(Exhibit 7 marked for identification.)

Q (By Mr. Long) I'm handing you what's been marked as Exhibit 7. This document contains an email from you dated October 10th, 2013 and one dated December 30th, 2013. It's stamped PDCO 21213, and it has -- and can you identify it as such?

A Yes.

Q Okay. Just so you understand, at the top there's a blocked-out portion that says "Redacted," and the reason for that is that this is a document that's

Page 47

A Okay.

Q Has Smile Source approached Patterson while you've been at Smile Source about being a distributor?

A Yes.

Q And at what points did that occur?

A I don't have the specifics, but I know that I -- and I'm sure you have copies -- have sent emails to try to set up meetings or placed phone calls unsuccessfully.

Q Unsuccessfully until 2016?

A Right.

MS. GOFF: Objection to form.

Q (By Mr. Long) In 2016, Patterson did -- going into early 2017, Patterson did attempt to become a Smile Source distributor?

A Yes.

Q Okay. And we'll get there.

Are you aware that in the fall of 2013, Patterson met with Mr. Goldsmith?

MS. GOFF: Objection to form and foundation.

THE WITNESS: I recall that they met. I don't recall when it was. I'll take your word for it.

Q (By Mr. Long) And you were not at that

Page 49

been marked confidential. And so under the protective order, I can only show you confidential material that you would have seen at the time. And the top part is an internal email that you would not have seen to Patterson, and so that's why I have to provide it to you this way.

A Okay.

Q We may see more of those. I just wanted you to understand why it looks like that.

Is the October 10th, 2013 email that you wrote to Mr. Goldsmith, but you cc'd David Misiak on, is that the type of email that you were referring to earlier?

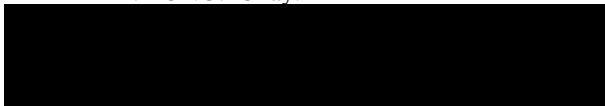
A Yes.

Q And do you believe that the meeting that Mr. Goldsmith had with Patterson occurred in this time period of fall of 2013, or do you not recall?

MS. GOFF: Objection to form and foundation.

THE WITNESS: I don't recall exactly when that was.

MR. LONG: Okay.



13 (Pages 46 to 49)

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Page 50

1 [REDACTED]
 2 [REDACTED]
 3 Q Okay. And when the -- "I never heard back
 4 from you," does that refer to the October 10th email
 5 below it?
 6 A Yes.
 7 Q Looking back at what you now know about
 8 Patterson, do you still find it odd?
 9 MS. GOFF: Objection to form,
 10 foundation.
 11 Q (By Mr. Long) That you had not heard back?
 12 A Yeah.
 13 Q You do?
 14 MS. GOFF: Objection to form. Asked and
 15 answered.
 16 Q (By Mr. Long) Do you recall -- well, strike
 17 that.
 18 At this point in time, in December of 2013,
 19 did Patterson have much experience with groups?
 20 MS. GOFF: Objection to form and
 21 foundation.
 22 Q (By Mr. Long) To your knowledge.
 23 A I don't know.
 24 Q Okay. Do you recall being asked about this
 25 by -- I believe it was Ms. Goff, at your

Page 52

1 A Uh-huh.
 2 Q Do you see at line 15, the transcript reads,
 3 "I don't find it terribly odd now looking back that
 4 they didn't deal with groups and Heartland was the big
 5 first one." Do you see that?
 6 A Yep.
 7 Q Okay. Do you believe that accurately
 8 transcribes what you said at the time?
 9 A I do.
 10 Q And as you sit here today, do you agree with
 11 what you testified to under oath a year ago?
 12 A Yes.
 13 MS. GOFF: I'm sorry, Counsel, but for
 14 the purposes of the record, is this Exhibit
 15 8? Because you mentioned Exhibit 7.
 16 MR. LONG: Exhibit 7 is the -- I believe
 17 the document that I marked today --
 18 MS. GOFF: Did you mark the transcript
 19 Exhibit 8?
 20 MR. LONG: I did. Did I not?
 21 MS. GOFF: I'm sorry to interrupt.
 22 Q (By Mr. Long) So as you sit here today, you
 23 don't find it terribly odd, looking back, because
 24 Patterson wasn't really dealing with groups at that
 25 point?

Page 51

1 investigational hearing?
 2 A About this particular email?
 3 Q Yeah.
 4 A I think so.
 5 (Exhibit 8 marked for identification.)
 6 Q (By Mr. Long) I'm handing you what's been
 7 marked as Exhibit 8.
 8 MR. LONG: And, Counsel, I assume you
 9 folks all have it.
 10 Q (By Mr. Long) This is a transcript --
 11 purports to be a transcript of your July 28th, 2017 IH.
 12 And you told me earlier that you don't believe that you
 13 had read all of it, but that you had read snippets of
 14 it or at least portions.
 15 Just paging through it, do you have any
 16 reason to doubt this is the transcript?
 17 A No.
 18 Q If you would go to page 159 of the
 19 transcript, which is page 40 at the bottom, but it's --
 20 A Oh, yeah.
 21 Q Okay. At page 159 at line 8, there's a
 22 question that relates to this document that we're
 23 looking at right now, Maurer Exhibit 7, and you're
 24 asked, "And so why did you find it odd that Mr. Misiak
 25 didn't respond to you?" Do you see that?

Page 53

1 A Yes.
 2 Q Okay. Do you recall other contacts that you
 3 had with Patterson before 2016 concerning whether they
 4 would be a distributor?
 5 A Not specifics.
 6 Q Okay. Are you aware that at some point
 7 Dentsply Sirona indicated to Patterson that -- well,
 8 strike that.
 9 Is Dentsply Sirona one of your key vendors?
 10 A Yes.
 11 Q Are you aware that at some point in time,
 12 Dentsply Sirona informed Patterson that Smile Source is
 13 a valuable partner and provided value to its members?
 14 MS. GOFF: Objection to form and
 15 foundation.
 16 MR. LONG: I'm asking, "Are you aware,"
 17 and then I'll find out.
 18 MS. GOFF: Same objection.
 19 THE WITNESS: Am I aware that they -- I
 20 don't know what they talked about.
 21 MR. LONG: Okay.
 22 Q (By Mr. Long) You've never heard from either
 23 Dentsply Sirona or somebody at Patterson that a
 24 conversation along those lines occurred?
 25 MS. GOFF: Objection to form.

14 (Pages 50 to 53)

HIGHLY CONFIDENTIAL

Page 54

1 THE WITNESS: Yeah, I don't recall.

2 MR. LONG: Okay

Page 55

Page 56

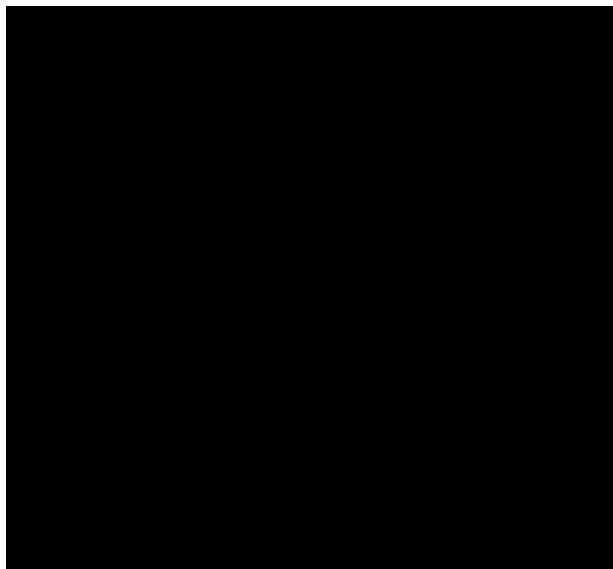
Page 57

15 (Pages 54 to 57)

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Page 58

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MS. GOFF: Objection, form.

MR. LONG: Okay.

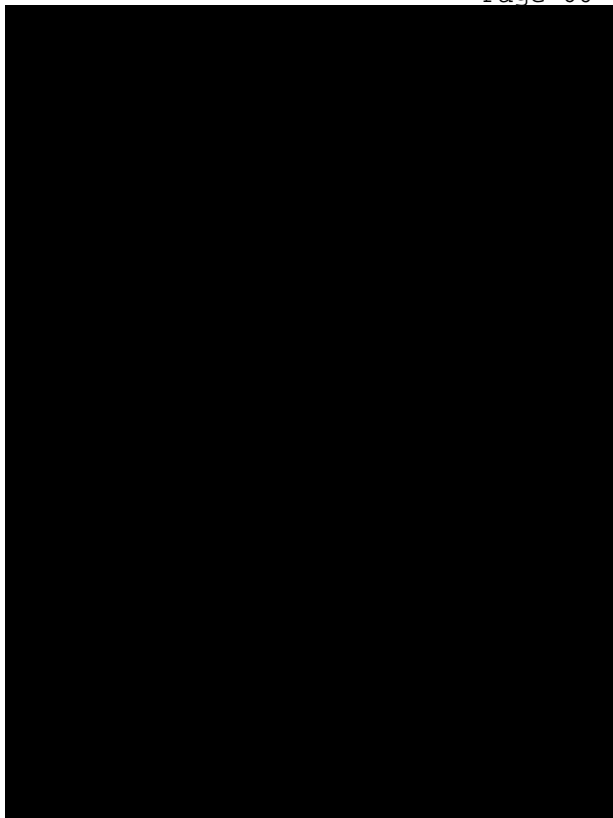
(Exhibit 9 marked for identification.)

Q (By Mr. Long) I'm handing you what's been
marked as Exhibit 9. It's Bates-stamped PDCO 190941.
Can you identify this for me?

A Yes.

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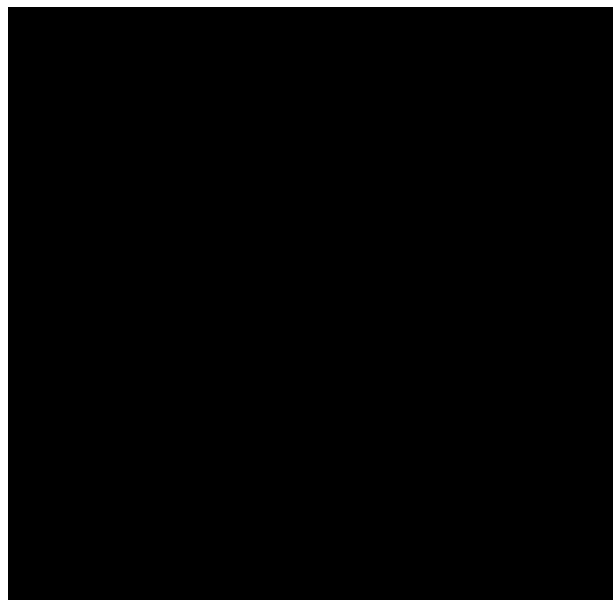
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Q What is it?

A It looks like an NDA and vendor application.

Q And this was sent to Patterson to execute?

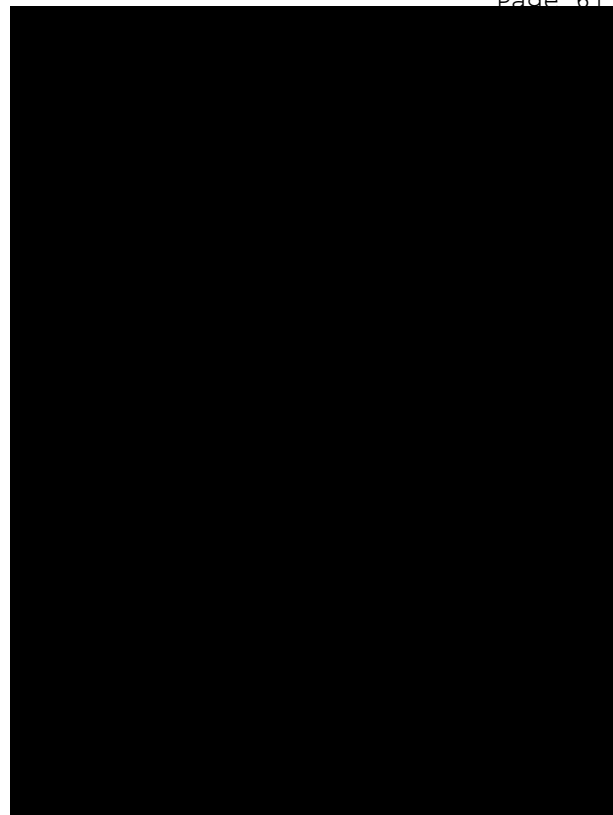
A Yes.



Q Do you recall Patterson made an in-person
presentation to --

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16 (Pages 58 to 61)

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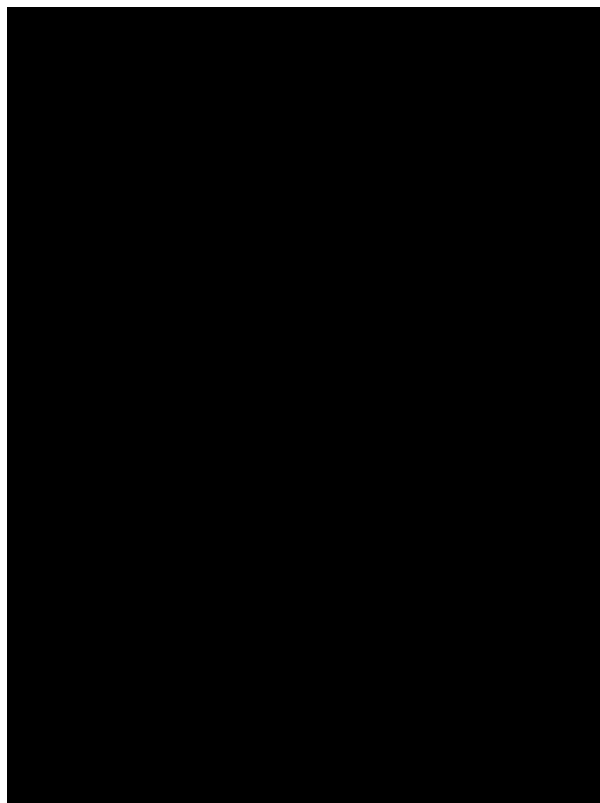
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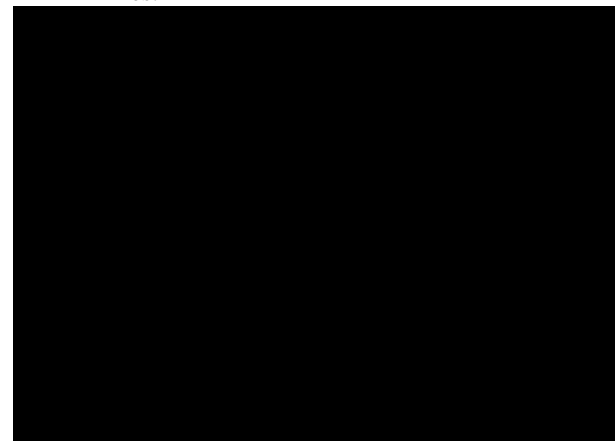


Q Okay. Patterson did not win the recent pitch, correct?

A Correct.

Q Smile Source chose Henry Schein over Patterson?

A Yes.



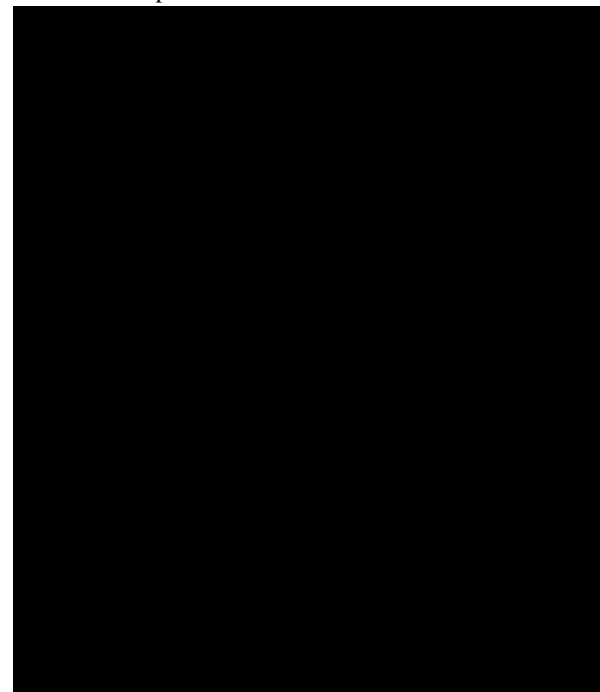
Q Okay. Do you recall communicating the decision to Mr. Rogan?

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A I don't recall the specifics of it.

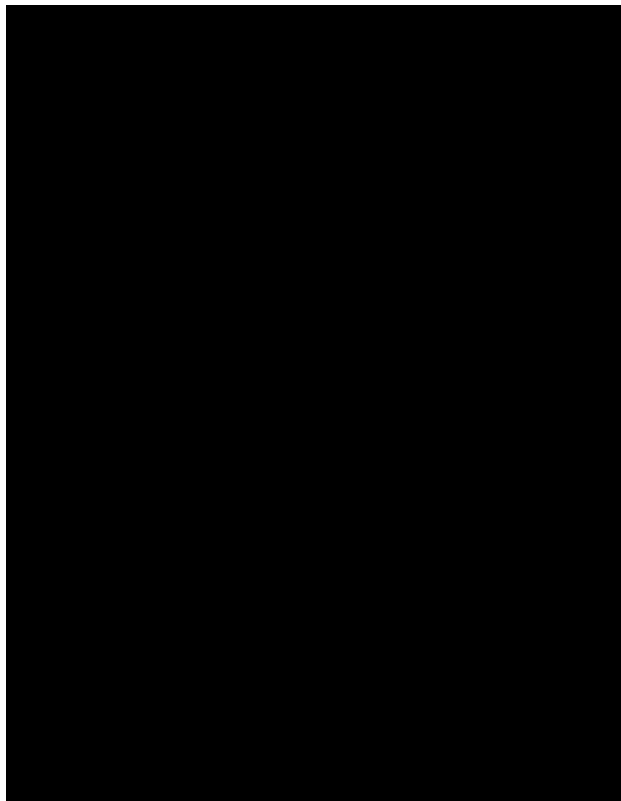
Q Okay. Do you have knowledge of Smile Source's experience at -- strike that.



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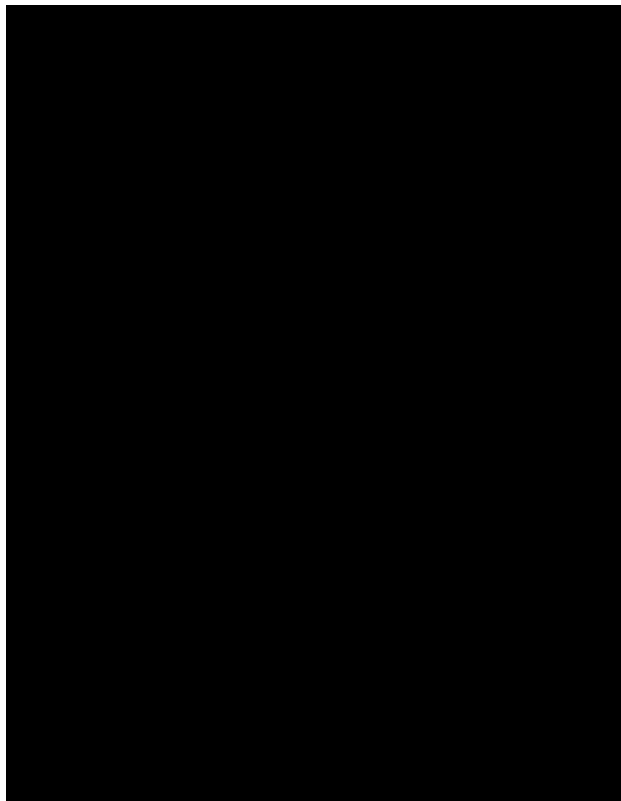
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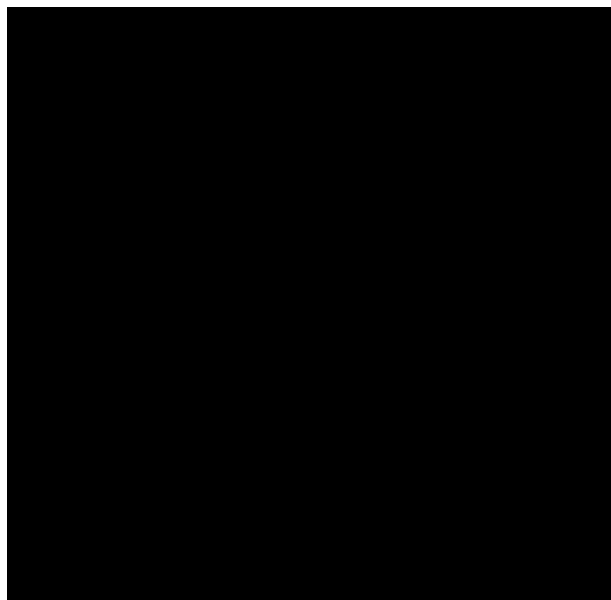
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Q (By Mr. Long) Do you have basis of knowledge to testify concerning the demand for buying groups among independent dentists?

A No.

Q Do you have any direct knowledge supporting the allegation made by the FTC -- well, strike that.

Page 69

1 Have you seen the FTC complaint?
2 A Parts of it.
3 Q Okay. Do you have any direct knowledge
4 supporting the allegation in that FTC complaint that
5 Benco, Schein, and Patterson conspired to refuse to
6 offer discounted prices or otherwise negotiate with
7 buying groups?
8 A No.
9 MS. Y'BARBO STAPLEY: Objection to
10 form.
11 Q (By Mr. Long) Do you have any direct
12 knowledge supporting the allegation in the FTC
13 complaint that Benco, Schein, and Patterson executives
14 agreed not to provide discounts to or otherwise
15 contract with buying groups?
16 MS. GOFF: Objection to form.
17 THE WITNESS: No.
18 Q (By Mr. Long) Do you have any direct
19 knowledge supporting the allegation made in the FTC
20 complaint that Benco, Schein, and Patterson entered
21 into an agreement to refuse to provide discounts to or
22 compete for the business of buying groups for their
23 core customer base of independent dentists?
24 A No.
25 MS. GOFF: Objection to form.

18 (Pages 66 to 69)

HIGHLY CONFIDENTIAL

Page 70	Page 71
<p>1 THE WITNESS: And at a point good for 2 you, I'm going to need a bio break. 3 MR. LONG: Why don't we take the bio 4 break right now. I may not have any more 5 questions, but this will allow me to check to 6 see if I missed something, so let's take a 7 break right now. 8 THE WITNESS: Sure, yeah. 9 (Recess taken.) 10 MR. LONG: Mr. Maurer, those are all the 11 questions I have for you right now. 12 Depending upon what Ms. Goff asks you, I may 13 have some follow-up, but hopefully that's it. 14 THE WITNESS: Okay. 15 MR. LONG: I appreciate your time. 16 THE WITNESS: You're welcome. 17 EXAMINATION 18 BY MR. McDONALD: 19 Q Mr. Maurer, my name is John McDonald, and I 20 represent Henry Schein. I have some questions for you. 21 I'll tell you in advance I'm going to go kind of slow, 22 and the reason for me doing that is I'm going to try to 23 not be repetitive of what Mr. Long has done, and that's 24 going to cause me to kind of take my time and skip 25 through some stuff that I otherwise would have asked</p>	<p>1 you, okay? 2 A Okay. 3 Q Earlier today you gave a definition of 4 "buying group," and can you correct me if I've got it 5 wrong, but I believe you said an entity that offers 6 discounts and does centralized billing. Is that -- 7 A That's what I said. 8 Q Can you give us the names of some buying 9 groups that fit that definition? 10 A Not in dentistry. I don't know what they do 11 in dentistry. I know in my background in vision, 12 that's what buying groups did. 13 Q Okay. I want you to look at Maurer Exhibit 14 1, which is the first franchise document that Mr. Long 15 showed you. 16 A Okay. 17 Q And I'd like you to look at page -- there's a 18 thing that's called Bates numbers on the bottom. Are 19 you familiar with that? 20 A No. 21 Q It says PDCO and it's got a bunch of numbers. 22 A Got it. Sure. 23 Q Look at the one that ends in 7788. It's 24 towards the beginning. 25 A Okay.</p>
Page 72	Page 73
<p>1 Q And actually, beginning on page 7787, it 2 lists "Item 2" and it has "Business Experience" and it 3 lists a bunch of individuals here. 4 A Okay. 5 Q Do you see that? 6 A I do. 7 Q All right. This document is dated March 26, 8 2014. Do you see that? 9 A Yes. 10 Q Okay. Dr. Goldsmith is not listed on this 11 document. 12 MS. GOFF: Objection to form. He is 13 listed. 14 MR. McDONALD: I missed that. Where is 15 he listed? 16 THE WITNESS: Four below Trevor. 17 Q (By Mr. McDonald) Okay, so -- sorry I missed 18 that. So as of March 26, 2014, Dr. Goldsmith was still 19 with Smile Source? 20 A I don't know if that's what this signifies, 21 but -- what was the date you gave me? 22 Q Well, at the bottom of the page, it says, 23 "Revision March 26, 2014." 24 A I don't recall his last day. 25 Q Okay.</p>	<p>1 A I think it was '14 or '15. 2 Q Okay. So then let's look at the next one he 3 marked as Exhibit 2. 4 A Sure. 5 Q This is the one that's April 7th, 2015. 6 A Okay. 7 Q And if you'll look at the same section that 8 begins on -- 9 A 7930? 10 Q Correct. 11 A Am I looking for the absence of 12 Dr. Goldsmith? 13 Q Correct. 14 A Okay. Agreed. 15 Q All right. So would you agree, then, that 16 Dr. Goldsmith left Smile Source sometime between March 17 of 2014 and April of 2015? 18 MS. GOFF: Objection, foundation. 19 THE WITNESS: Yes, somewhere 20 thereabouts. 21 MR. McDONALD: Okay. 22 Q (By Mr. McDonald) And you don't know the 23 specific date? 24 A I don't. I don't recall. It's easy to look 25 up, I'm sure, but I just don't recall.</p>

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Page 74

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A Again, referring to the confidential nature of an individual, I don't want this published.

Q It's not. This is all confidential.

MS. Y'BARBO STAPLEY: Let me officially just go ahead and designate the entire transcript for now as confidential.

MR. McDONALD: It is by our protective order.

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Q And that relationship ended before you started at Smile Source; is that right?

A Right around that time. I don't remember the exact dates, but yeah, I can agree with that.

Q Were you involved in the decision to end the relationship with Henry Schein?

A No.

Q And so you don't have any personal knowledge of the ending of that relationship?

A Not personally, no.

Q If you'll look at Exhibit 8, which is your transcript.

A Okay.

Q And previously you said you've seen portions of this transcript?

A Yes.

Q And what were the circumstances of seeing portions of this transcript?

A I think I saw some redacted stuff online. I don't know if that was this, or maybe it wasn't this.

Q Okay. If you'll look on page 88 of the transcript. That's actually -- if you look at the bottom, it says CX 22-23 [sic].

A Got it, yes.

Q Okay. Are you there?

Page 77

1 A I am.
2 Q And you were asked a question at the bottom
3 of page 88 beginning at line 22: "And do you have an
4 opinion of whether the term buying group has a negative
5 connotation to dental distributors?" Do you see that?
6 A Yes.
7 Q And you say, "My opinion would be that it
8 would. I don't like the term buying group because it
9 just suggests you don't really do anything, you just
10 discount everybody's product and not much happens." Do
11 you see that?
12 A I do.
13 Q And is that your testimony?
14 A Yes.
15 Q And you agree with that today?
16 A Yes.
17 Q You go on to say on page 89 at line 6, "My
18 expression may be going too far but, again, you can't
19 save your way to prosperity."
20 A Correct.
21 Q Do you see that?
22 A I do.
23 Q And you were asked what you meant by that,
24 and you said, "Even if I get my supplies for free, I am
25 not going to have a better dental practice. You can

20 (Pages 74 to 77)

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Page 78

1 give them to me. I still need to be a good dentist. I
2 still need to be able to market. And I need to be able
3 to run the business." Do you see that?

4 A Yes.

5 Q And that's your testimony?

6 A Yes.

7 Q And it's truthful?

8 A Yes.

9 Q And you agree with that today?

10 A I do.

11 Q Is it -- in your opinion, do buying groups
12 help dentists run a better practice?

13 A No.

14 Q And why not?

15 A I don't have any knowledge of them doing
16 anything to help run a better practice.

17 Q What's your knowledge of what buying groups
18 do?

19 MS. GOFF: Objection to form.

20 THE WITNESS: I just see what they
21 publish with, "Buy from us and get a
22 discount."

23 Q (By Mr. McDonald) And is it your testimony
24 that saving money on supplies is not enough?

25 MS. GOFF: Objection to form.

Page 79

1 THE WITNESS: Can you clarify? Not
2 enough to what? Can you clarify your
3 question?

4 MR. McDONALD: Sure.

5 Q (By Mr. McDonald) Let's look at your
6 testimony again.

7 A Yeah.

8 Q I'll try to make this quick. Page 89, line
9 16, and you say -- and the question is, "And how does
10 that tie back to the term 'buying group'?" And you
11 testified, "So the buying group just all it means to me
12 is saving some money on supplies, which doesn't -- in
13 the end, that's not enough. It is not going to help
14 your practice in my opinion."

15 A Okay.

16 Q Is that your accurate testimony?

17 A It is.

18 Q And you believe that today?

19 A Yes.

20 (Exhibit 14 marked for identification.)

21 Q (By Mr. McDonald) Let me show you what I've
22 marked as Exhibit 14.

23 MS. GOFF: Counsel, are you going to
24 dedesignate this as confidential?

25 MR. McDONALD: It's a calendar invite,

Page 80

1 Karen. It was sent to the witness. I don't
2 think I need to dedesignate anything, and I'm
3 not.

4 MS. GOFF: So you would agree that it's
5 not confidential?

6 MR. McDONALD: No, I'm not dedesignating
7 anything. I'm not here to do anything on the
8 record about documents, Karen.

9 Q (By Mr. McDonald) So, Mr. Maurer, you have
10 in front of you Exhibit 14.

11 A Yes.

12 Q And this is a calendar invite that was sent
13 to you for a meeting in January of 2014. Do you see
14 that?

15 A I do.

16 Q And the attendees were Tim Sullivan and John
17 Chatham of Henry Schein and yourself, Dr. John McCall,
18 and Andy Goldsmith on behalf of Smile Source. Do you
19 see that?

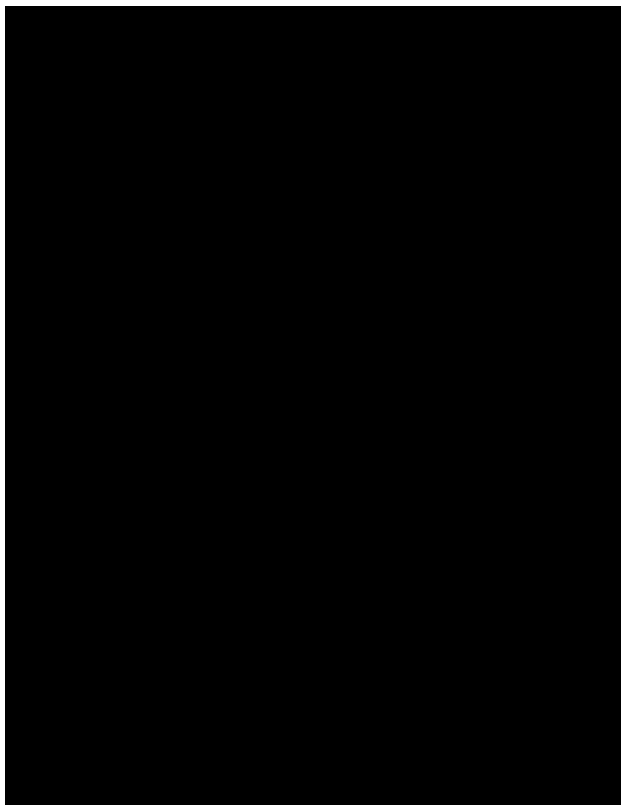
20 A I see that. I don't remember Dr. McCall
21 being there, but I see it, yeah.

Page 81

HIGHLY CONFIDENTIAL

Page 82

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THE WITNESS: Yes.



MS. GOFF: Objection to form.

Q (By Mr. McDonald) Look at page 192 --

MS. GOFF: And foundation.

Q (By Mr. McDonald) Look at page 192 --

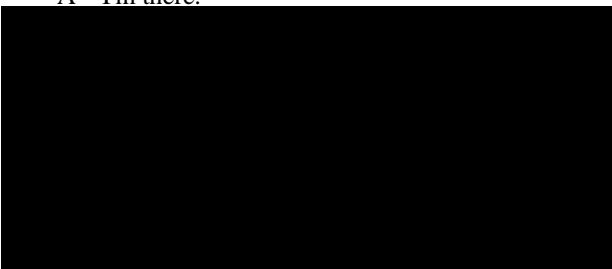
A Back in the interview?

Q Yes.

A Sure.

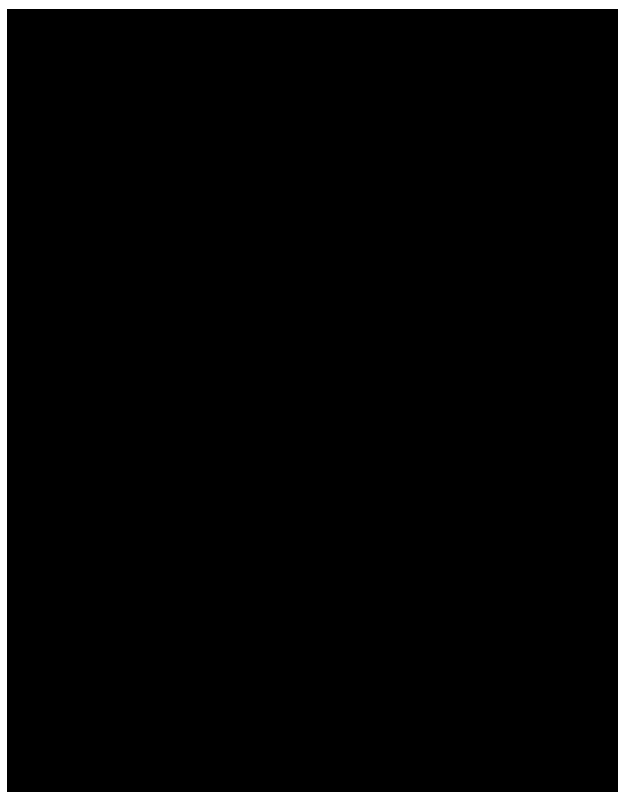
Q We can leave that one out. So if you'll look at Exhibit 8. If you'll look at CX 322-49.

A I'm there.



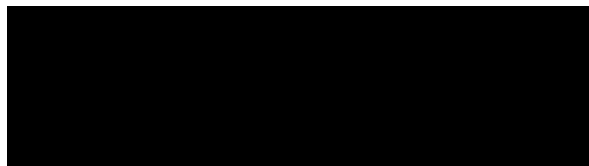
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Q And Henry Schein is a current vendor of Smile Source?

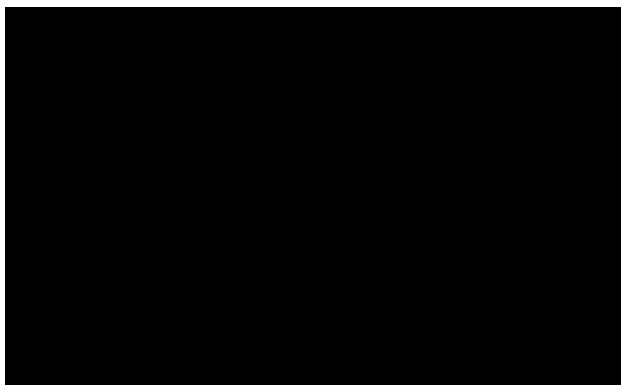
A Yes.

Q If you'll look back at your testimony. Keep that out. If you'll look at Bates number CX 322-25.

A Okay. Go ahead.

Q And look on page 96.

A Sure.



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Page 86

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(Exhibit 15 marked for identification.)

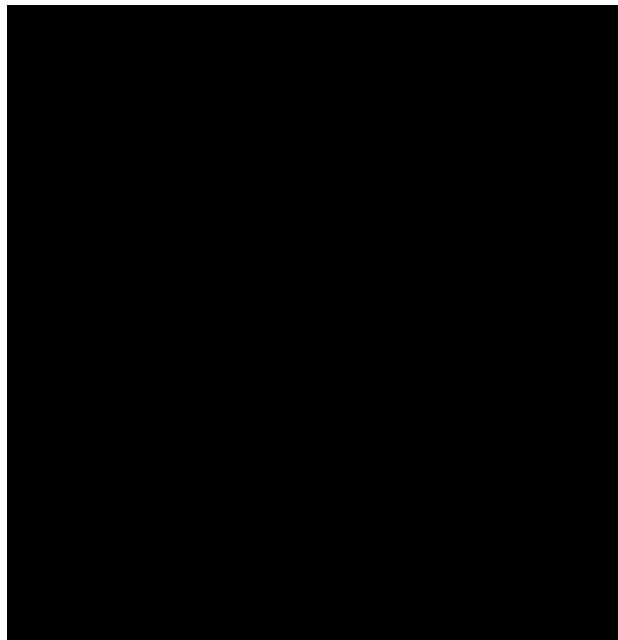
Q (By Mr. McDonald) Let me show you what I've marked as Exhibit 15. Mr. Maurer, I've handed you what's Exhibit 15. This looks like an invite from you to John -- how do you say his name -- or J. Guidie --

23 (Pages 86 to 89)

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Page 90

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Q Okay.

(Exhibit 16 marked for identification.)

Q (By Mr. McDonald) Let me show you what I've marked as Exhibit 16, and what I want to focus on is -- this is an email exchange between you and Mr. Mlotek;

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because I want to point out something in here.

This email says, "My name is Laura Fremont and I'm an attorney with the Federal Trade Commission, in the San Francisco office. I and a few of my colleagues spoke with Trevor Maurer a few weeks ago." Do you see that?

A I do.

Q So does this refresh your recollection that you first spoke with the FTC in November or December of 2016?

MS. GOFF: Objection to form, foundation.

THE WITNESS: Yeah, I don't remember the date, but there was a phone call --

MR. McDONALD: And did you meet with --

THE WITNESS: -- well prior to my trip to DC, which makes sense it's around this date.

MR. McDONALD: Okay.

Q (By Mr. McDonald) And so do you recall speaking with Ms. Fremont?

A I don't recall who it was. It could have been.

Q How many people were on the phone?

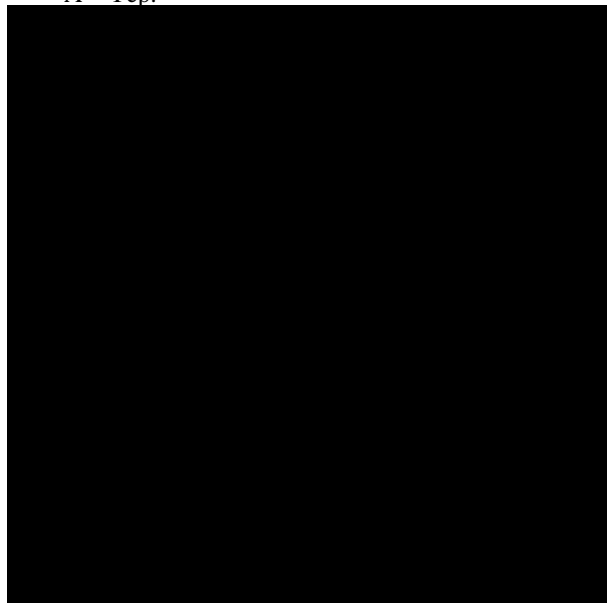
A There was a bunch of lawyers, I want to say

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is that right?

A Yep.



(Exhibit 17 marked for identification.)

Q (By Mr. McDonald) I want to show you what's marked as Exhibit 17. This is an email from Laura Fremont to Andy Goldsmith. And I'm giving this to you

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four or five, but I don't -- I remember there was more people than I expected, but...

Q Was -- and did you have anybody on the phone with you?

A No.

Q Was this phone call out of the blue, or did they set it up?

A It was scheduled. It was scheduled to meet.

Q Did you go over any documents with them?

A No.

Q Did you take notes?

A Not that I recall. I may have scribbled, but I don't know.

Q And after this meeting, the FTC asked for you to give an investigational hearing or interview?

A Yes.

Q And you did that in DC?

A Yes.

Q Did they pay your way to go to DC?

A No.

MS. GOFF: Objection to form.

THE WITNESS: No.

MR. McDONALD: Okay.

Q (By Mr. McDonald) Did they give you any indication of why they wanted to take a formal

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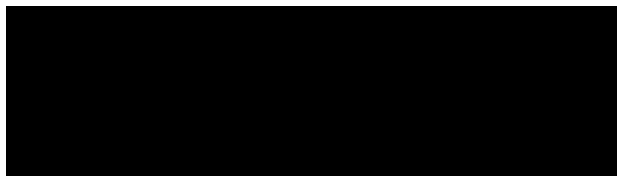
Page 94

1 interview of you?

2 MS. GOFF: Objection to form.

3 THE WITNESS: I don't know if they gave
4 any indication directly to me or to my
5 counsel.

6 Q (By Mr. McDonald) When was the last time you
7 spoke to Mr. Goldsmith?



14 MR. McDONALD: Let's take a break and
15 let me check my notes and talk to my
16 colleagues, and I may be done.

17 THE WITNESS: Sure.
18 (Recess taken.)

19 MR. McDONALD: Mr. Maurer, that's all
20 the questions I have at this time. I reserve
21 my right to ask additional questions after
22 FTC's counsel is done.

23 THE WITNESS: Okay. Thank you.

24 ///

25 ///

Page 95

EXAMINATION

2 BY MR. RACOWSKI:

3 Q Good morning, Mr. Maurer. My name is Ken
4 Racowski. I'm an attorney for Benco Dental. We met
5 earlier today. I have a few questions for you.

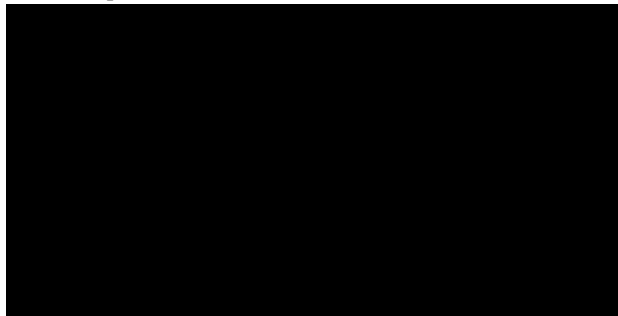
6 A Hello.

7 (Exhibit 18 marked for identification.)

8 Q (By Mr. Racowski) Mr. Maurer, I'm handing
9 you what has been labeled as Exhibit 18. You should
10 take a look at it for a moment.

11 A Okay.

12 Q And before we talk about Exhibit 18, I just
13 want to refer back to your investigational hearing
14 transcript.



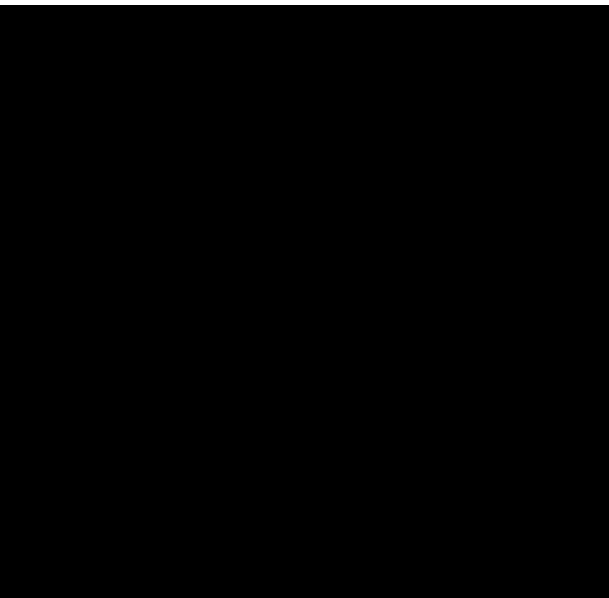
25 Q Okay.

Page 96

1 A He probably had -- I think there was another
2 person with him.

3 Q And your testimony seems to indicate you
4 thought it was 2013, but you might have had the year
5 wrong?

6 A Looks like it was '14.



Page 97

1 Q Are they a manufacturer? Essilor?

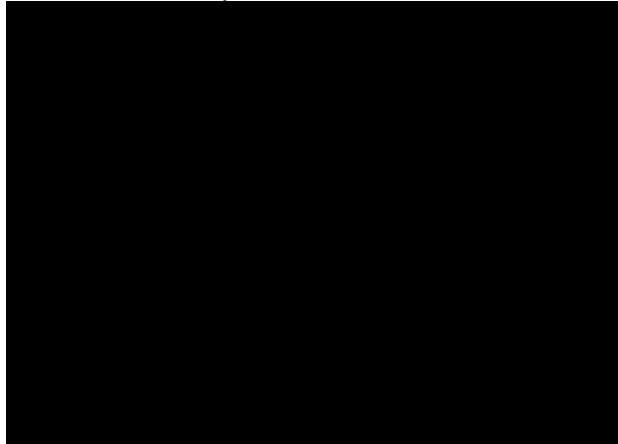
2 A They manufacture ophthalmic lenses for
3 eyeglasses.

4 Q Got it. And if we could just pull out -- I'm
5 not sure what exhibit number it is, but it's the
6 transcript of your investigational hearing testimony,
7 and turn to page 145. So at the bottom, it says
8 CX 322-38.

9 A Thirty-eight?

10 Q Yes.

11 A 145. Okay.

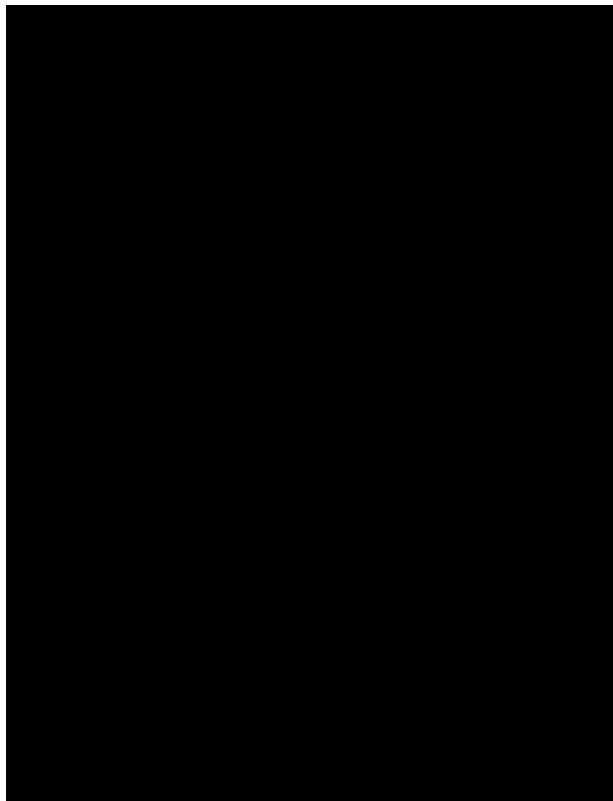


25 (Pages 94 to 97)

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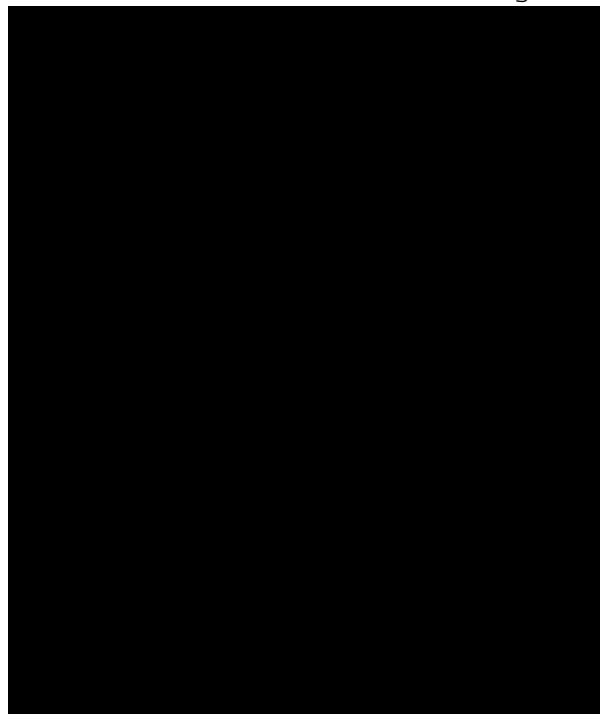
Page 98

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Page 99

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MR. RACOWSKI: Okay, got it.
Q (By Mr. Racowski) A couple of pages later,
on page 147, line 6, you say, "It wasn't really a great

Page 100

1 fit anyway, but they were big enough to talk to." Do
2 you see that?
3 A Let me see.
4 Q It's page 147, lines 6 and 7 and 8.
5 A Okay, let me just go back a little bit and
6 read.
7 Q Sure.
8 A Okay.
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22 A Yes.
23 Q And that was true then?
24 A Yes.
25 Q True today?



Page 101

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A Yes.

26 (Pages 98 to 101)

HIGHLY CONFIDENTIAL

Page 102

MR. RACOWSKI: Mr. Maurer, that's all the questions I have at this time. Thank you for your time.

THE WITNESS: Good. Thanks.

MS. GOFF: Okay, can we go off the record.

(Lunch recess taken.)

EXAMINATION

BY MS. GOFF:

Q Good afternoon, Mr. Maurer. I just have a few questions for you. I know we met at your

Page 103

investigational hearing last year. My name is Karen Goff. I'm counsel for the Federal Trade Commission.

I just wanted to follow up on a question that you answered earlier about your history and job duties at Smile Source.

So when you first started at Smile Source, what was your title?

A Vice president of business development.

Q And was that in November or December of 2012?

A Yes.

Q Okay. And at some point you became the president, is that right, of Smile Source?

A Yes.

Q And when was that?

A It was a year or two, so it was either late '13 or '14. I'd wager on late '14.

Q But sitting here today, you're not sure whether it was late 2013 or late 2014?

A Yeah.

Q And then you said --

A I should have looked at my LinkedIn.

Q So it would be on your LinkedIn page?

A Yeah. Yes.

Q And then you said that you became the CEO in September of 2015; is that right?

Page 104

A Yes.

Q Okay. And prior to November of 2012, you worked at Vision Source?

A Yes.

Q And you were not employed by Smile Source prior to November of 2012?

A Correct.

Q And did Mr. Goldsmith report to you at any point?

A I'm trying to remember the structure. At first, no.

Q And when you became --

A And then --

Q -- president, did Mr. Goldsmith report to you?

A I don't remember if that's when he was no longer with the company or if he reported to me for a while.

Q Okay, so you're not sure whether Mr. Goldsmith ever reported to you?

A Officially. Anecdotally or for the purposes of running the business, though, I would say yes, he did, for about a year. I don't remember what our titles were on the org chart; but, yeah, I'd say for his last -- just say his last year, would be accurate.

Page 105

His title was president; then we changed it to chief dental officer. I think that's how we made that work.

Q Okay. I'm going to hand you a document. It's been pre-marked as Exhibit CX4100. Have you had a chance to review CX4100?

A Correct.

Q Do you know what this document is?

A I don't know if it's an industry council document or a member presentation document. Do you have -- do you know what it is, what it's titled? I just don't remember who the audience was.

Q I only have what you see in front of you.

Does this PowerPoint presentation look familiar to you?

A It looks familiar. I think it was presented to our vendor partners.

Q Okay. And is this something that you would have presented?

A Not in its entirety. My marketing person -- I think this would have been shared across the team.

Q Okay. So you don't know whether you drafted this document?

A I wouldn't have drafted it in its entirety.

Q Okay. Are there particular sections that you

27 (Pages 102 to 105)

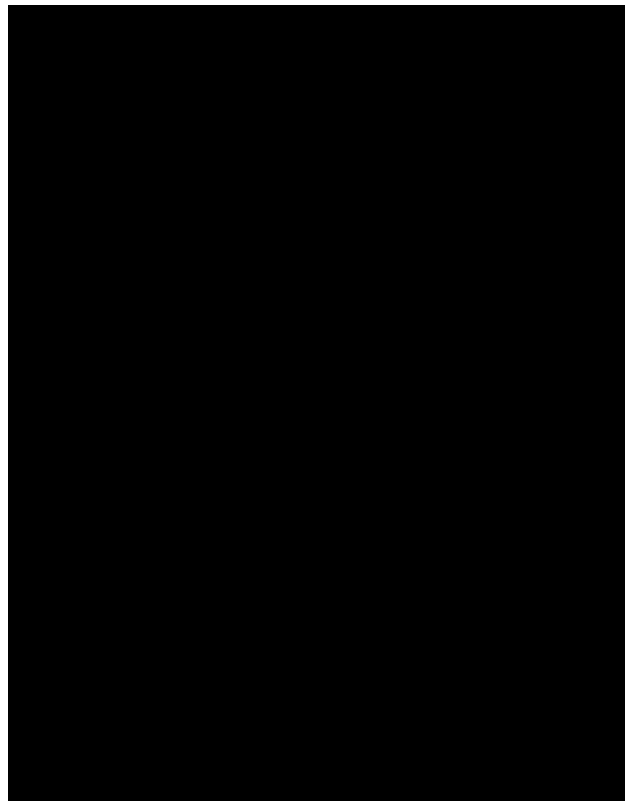
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Page 106	Page 107
<p>1 believe you drafted?</p> <p>2 A I know that I collected the data on pages 4,</p> <p>3 5, 6, and 7. Well, I didn't collect the data. I</p> <p>4 acquired that data. I think ADA did the research.</p> <p>5 Q Okay, so at least --</p> <p>6 A I would have had oversight on pulling it</p> <p>7 together from different people, though.</p> <p>8 Q Okay. So the entire exhibit, 4100, you would</p> <p>9 have had oversight in collecting it and putting it</p> <p>10 together?</p> <p>11 A Yeah.</p> <p>12 Q And --</p> <p>13 A Whether my admin or marketing person or</p> <p>14 somebody built it, I would have directed it.</p> <p>15 Q Okay. And the research on pages 4, 5, 6, and</p> <p>16 7, you believe you personally acquired from the ADA; is</p> <p>17 that right?</p> <p>18 A Yeah. I just remember being in a meeting and</p> <p>19 seeing that and referencing this information as useful.</p> <p>20 Q Okay. And why was this information useful?</p> <p>21 A It kind of explains the trends in dentistry</p> <p>22 and student debts increasing, genders changing. Less</p> <p>23 likely our students want to come out and open a</p> <p>24 practice; they want to go work corporate and get a job.</p> <p>25 Dental income is flat.</p>	<p>1 Q Okay. So you mentioned several things. Is</p> <p>2 there a trend in increasing dental student debt? Is</p> <p>3 that correct?</p> <p>4 A Correct.</p> <p>5 Q And do you have an understanding of that</p> <p>6 separate and apart from this presentation?</p> <p>7 A Anecdotally from students, yes.</p> <p>8 Q And then is there an industry trend that</p> <p>9 independent dentists are earning less?</p> <p>10 A Well, flat, yeah.</p> <p>11 Q It's flat?</p> <p>12 A Pretty flat, yeah.</p> <p>13 Q And do you have an understanding of why that</p> <p>14 is?</p> <p>15 MR. McDONALD: Object to the form.</p> <p>16 THE WITNESS: Answer?</p> <p>17 MS. Y'BARBO STAPLEY: You may.</p> <p>18 THE WITNESS: I think that dentists are</p> <p>19 not retiring as soon as they would have liked</p> <p>20 to after the economic crisis of '08, so there</p> <p>21 are more dentists than they expected. That's</p> <p>22 what I think. That's a widely believed</p> <p>23 thought. It's not exclusive to me by any</p> <p>24 means.</p> <p>25 Q (By Ms. Goff) Are there any other reasons</p>
Page 108	Page 109
<p>1 why dentists' earnings are flat, to your knowledge?</p> <p>2 MR. McDONALD: Object to the form.</p> <p>3 THE WITNESS: I don't think so, no, not</p> <p>4 to my knowledge.</p> <p>5 Q (By Ms. Goff) So it relates solely to more</p> <p>6 dentists in the field?</p> <p>7 A That's what I think.</p> <p>8 Q That's your opinion?</p> <p>9 A Yes.</p> <p>10 Q Okay. And then turning to -- it's at the</p> <p>11 bottom -- CX4100-117 [sic].</p> <p>12 A Okay.</p> <p>13 Q Is this page --</p> <p>14 MR. McDONALD: Hang on, Karen. I'm</p> <p>15 sorry. Dash what?</p> <p>16 MS. GOFF: 117. Sorry, just -- 017.</p> <p>17 Thank you.</p> <p>18 Q (By Ms. Goff) So CX4100-017, are you there?</p> <p>19 A Yep. I blew it up on my -- I took a picture</p> <p>20 of it so I can actually see it.</p> <p>21 Q Wonderful. Thank you.</p> <p>22 A Because I couldn't see it.</p> <p>23 Q So is this a slide that you would have either</p> <p>24 created or directed the creation of?</p> <p>25 A I haven't seen that in years; but, yeah, that</p>	<p>1 would have been used by me. I would have directed that</p> <p>2 or asked them to find that data.</p> <p>3</p> <p>4</p> <p>5</p> <p>6</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>

HIGHLY CONFIDENTIAL

Page 110

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Page 111

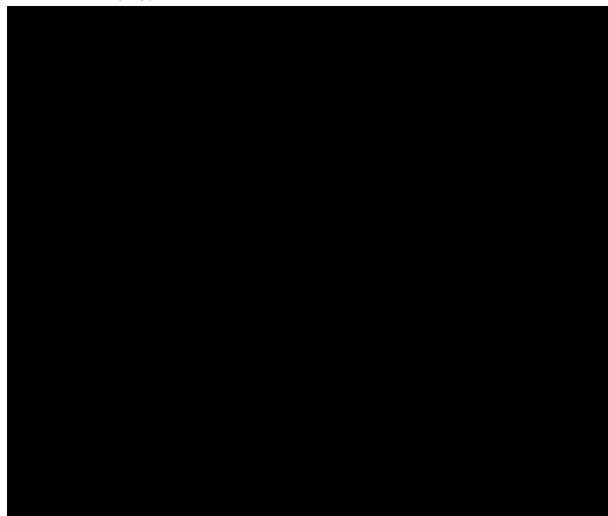
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Q Okay. Okay, just going back to your testimony from earlier today, I believe you testified that Smile Source works with Schein, Darby, Burkhart, Nashville, and Atlanta today; is that correct?

A Yes.

Q In terms of the dental dealers, is that a complete list?

A It is.



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Page 113

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29 (Pages 110 to 113)

HIGHLY CONFIDENTIAL

Page 114

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Page 117

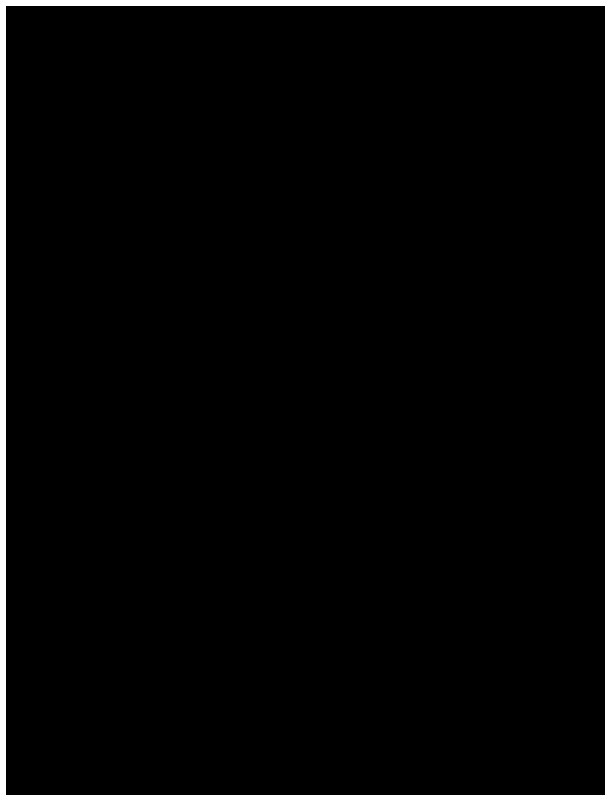
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30 (Pages 114 to 117)

HIGHLY CONFIDENTIAL

Page 118

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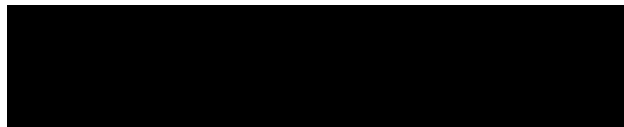
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Page 120

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Q I'm just going to hand you another document.
It has been marked as CX4097. Do you know what this document is?

A This looks like our 2016 member survey.

Q Okay. And are you involved in the preparation of the questions for this member survey?

A I would approve of it before distribution, final draft.

Q Who conducts the survey?

A Our marketing department.

Q And what is the purpose of the survey?

A To better understand our membership and to identify any trends.

Q And then -- okay, so each question has below the question something that says "Answered" and then "Skipped."

Am I correct in understanding that the number of those people that answered would be under the "Answered" section, and then some people might skip a question altogether and so that would be reflected on the document?

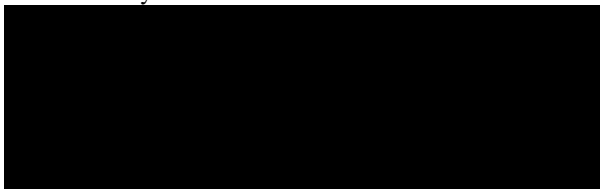
Page 121

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A Yes.

Q Okay. And then turning to page CX4097-006.

A Okay.



One more document, CX4099.

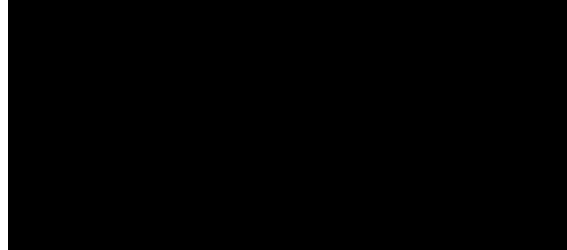
A Okay.

Q And is this the Prime [sic] Vendor Agreement between Schein and Smile Source from 2017?

A It appears so, yes.

Q And I just want to use this document to orient you for a couple of questions.

A Sure.

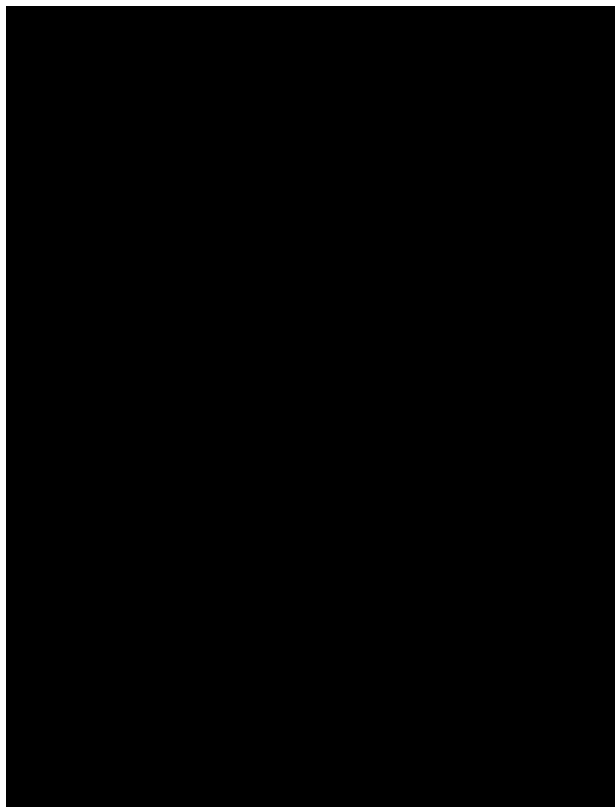


31 (Pages 118 to 121)

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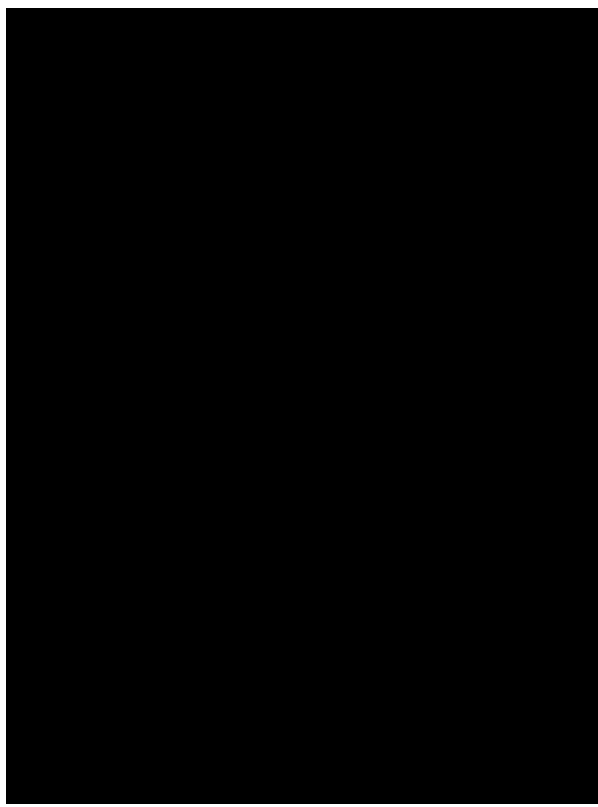
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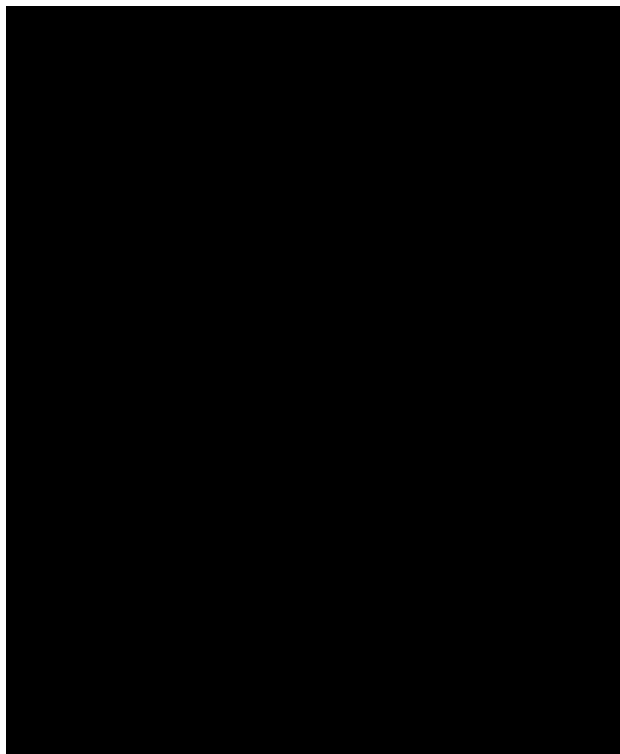
Page 123

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Page 124

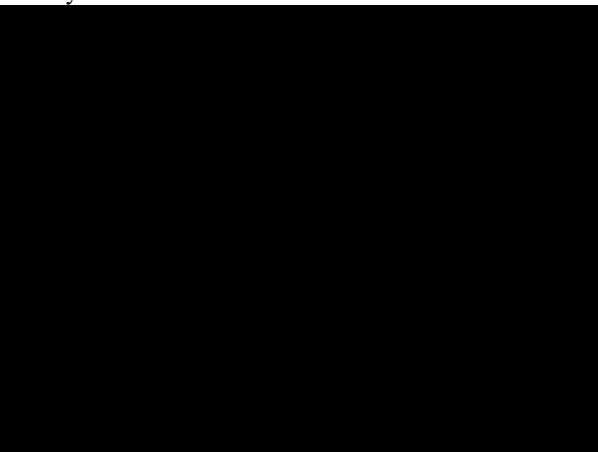
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Q (By Ms. Goff) Okay. I'm handing you another

Page 125

1 document. It's been previously marked CX4104. This
2 is an email between you and Jerry Ritsema of Burkhart
3 Dental with a cc to a few other people. And then I'm
4 going to refer you specifically to the October 5th,
5 2016 email from Jerry to you and others. Do you see
6 that?
7 A Give me the date again. I'm sorry.
8 Q It's October 5th, so it's on the first
9 page --
10 A Oh, 5th. Sorry. I heard 25th. My bad.
11 Okay.



32 (Pages 122 to 125)

HIGHLY CONFIDENTIAL

Page 126

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Page 127

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Page 128

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Page 129

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Q With regard to Burkhart, did Smile Source have an agreement with Burkhart in place when you started at Smile Source?

A I think it was already signed when I started, but the document would prove it.

Q Do you know whether the agreement with Burkhart that was in place when you started was a handshake deal or a written contract?

A I believe it was written.

Q But -- so you think that it was probably in place when you started, but you're not totally sure?

A Right.

33 (Pages 126 to 129)

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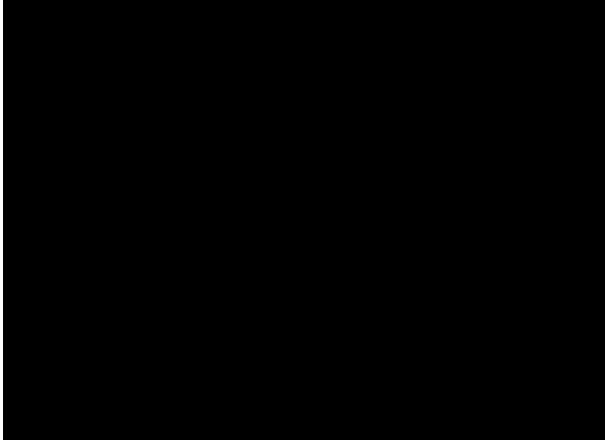
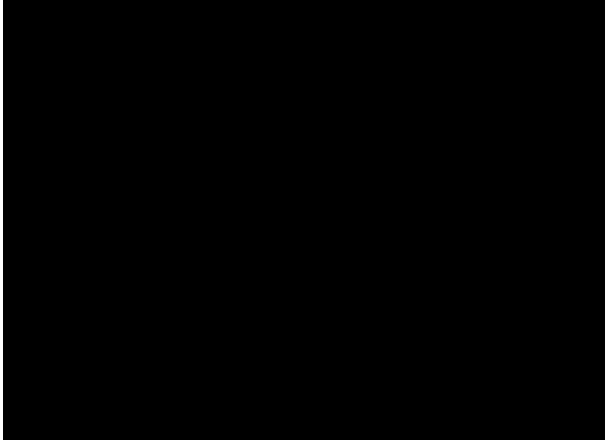
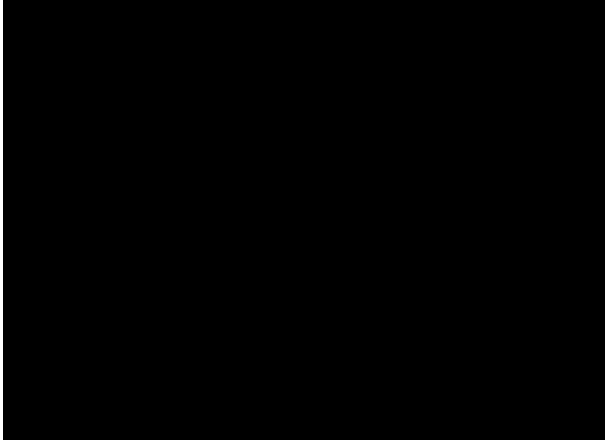
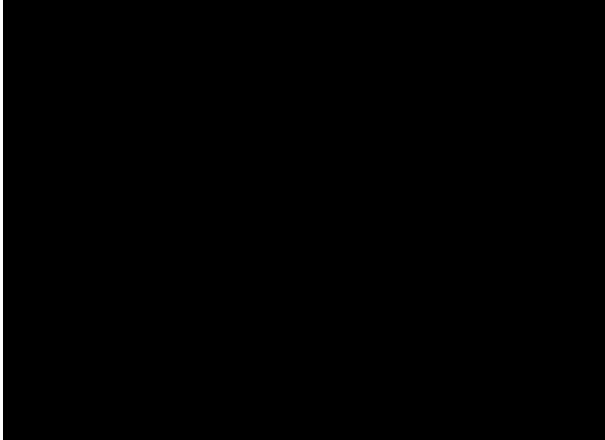
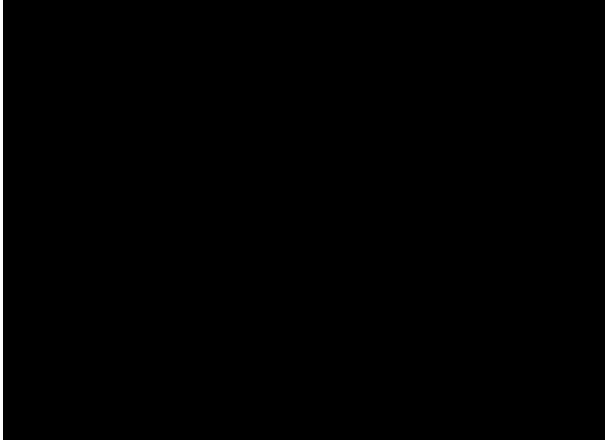
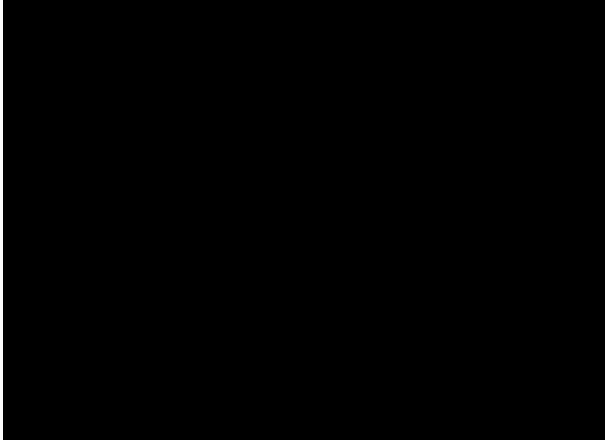
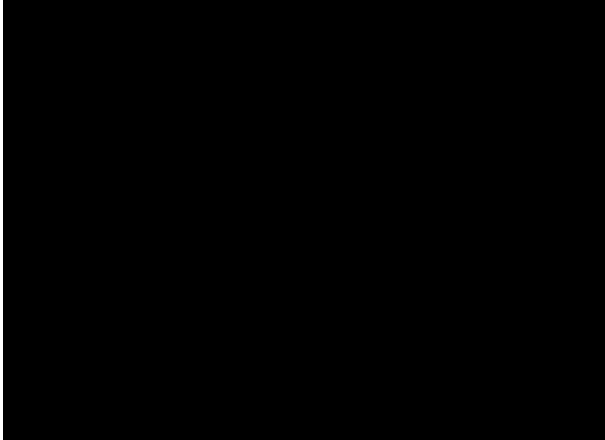
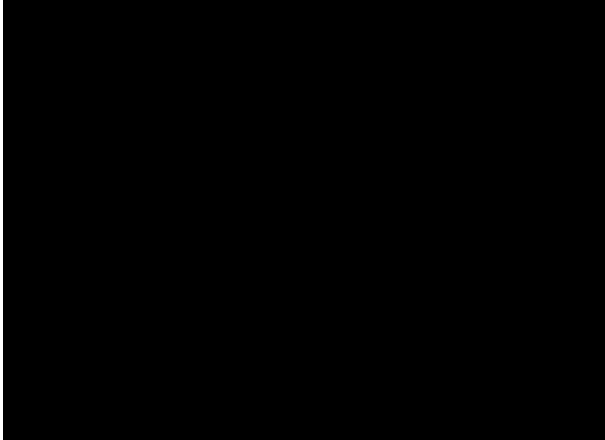
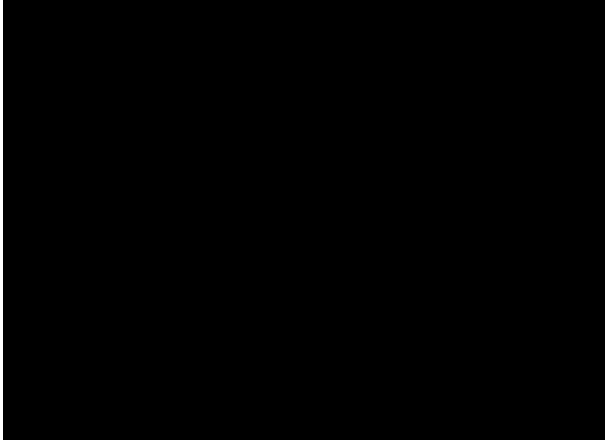
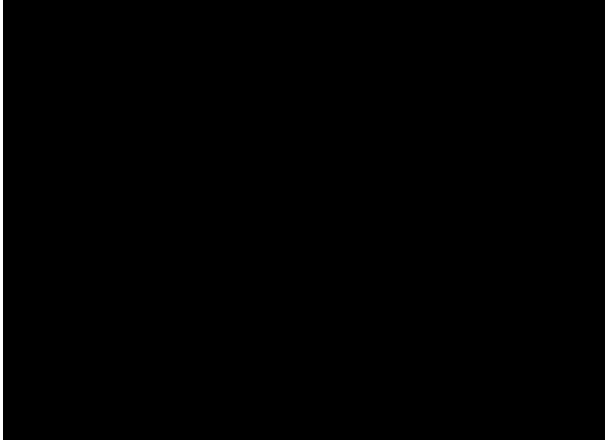
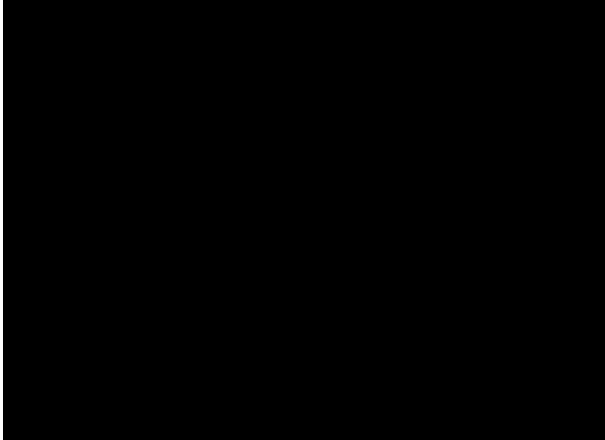
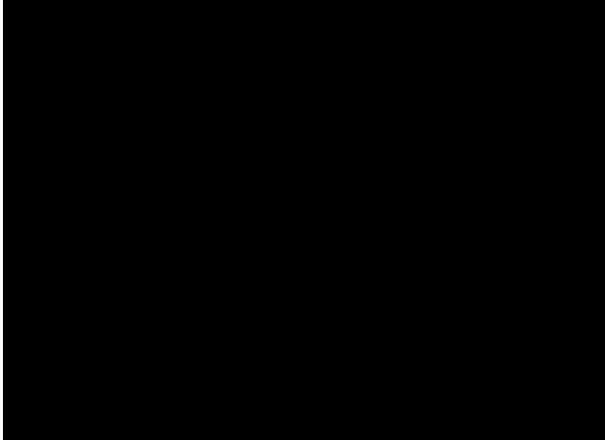
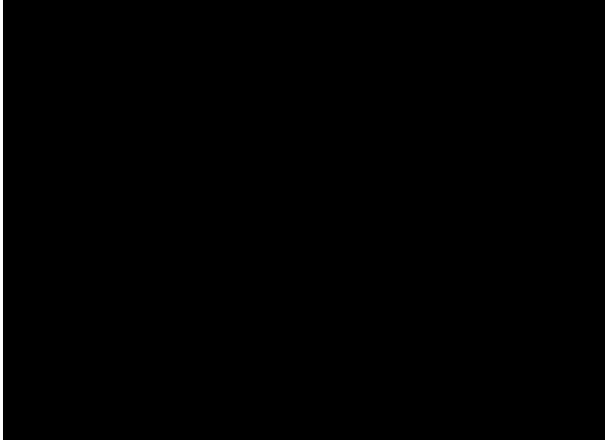
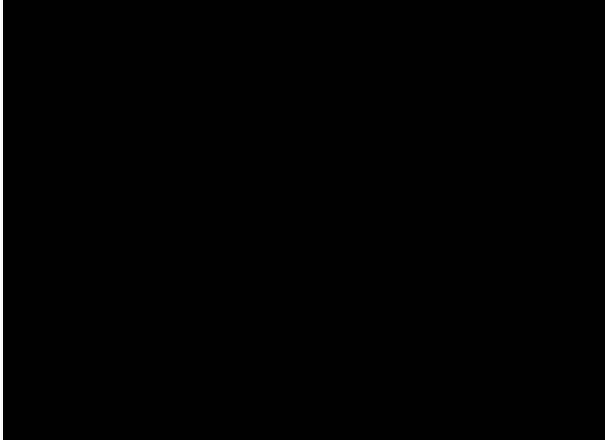
Page 130

1 Q Okay. I want to talk about -- just give me
 2 one second -- Exhibit 14 that Mr. McDonald marked.
 3 MR. McDONALD: Which one is that, Karen?
 4 MS. GOFF: It's the calendar invite.
 5 Q (By Ms. Goff) Okay, so I just want to make
 6 sure that I have your testimony correct.
 7 So at some point you and Mr. Goldsmith went
 8 to Wisconsin to meet with individuals from Schein; is
 9 that right?
 10 A Yes.
 11 Q Okay. And do you believe that it was
 12 sometime around the date of this calendar invite?
 13 A I do.
 14 Q Okay, so sometime in early 2014?
 15 A It was really cold.
 16 Q Okay. You remember it being cold?
 17 A I do.
 18 Q At your investigational hearing, you
 19 testified that you were unsure of the time period, but
 20 it was the winter, and you thought it was either late
 21 2013 or possibly early 2014.
 22 After having looked at documents today, is it
 23 your recollection that it was in 2014?
 24 A It is.
 25 Q And do you recall who from Schein attended

Page 131

1 that meeting?
 2 A There are two listed here that I recall being
 3 in the meeting, and there was another fellow who's name
 4 I don't remember and he was in charge of equipment.
 5 Q But you recall Tim Sullivan and John Chatham
 6 being at that meeting?
 7 A I do.
 8 Q And then do you recall receiving a PowerPoint
 9 presentation at that meeting?
 10 A I don't know if I received it then or
 11 subsequent to the meeting, but I recall their pitch
 12 deck.
 13 Q Gotcha. So you don't recall whether you
 14 received a PowerPoint presentation at that meeting or
 15 if it was later?
 16 A I don't, yeah.
 17 Q But it might have been either one?
 18 MR. McDONALD: Object to the form.
 19 THE WITNESS: I think it was later. I
 20 don't recall.
 21 MS. GOFF: Okay.

Page 132

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 15 Q Okay. I'm handing you what has been marked
 16 as CX4105. And I just want you to let me know if it
 17 looks familiar to you.
 18 A I mean, it doesn't look familiar.
 19 MR. McDONALD: Objection.
 20 MS. GOFF: Your counsel used this
 21 document at a prior deposition and showed it
 22 to a witness at that deposition.
 23 MR. McDONALD: Okay. You don't know
 24 where it came from?
 25 MS. GOFF: He represented that he wasn't

Page 133

1 sure why there wasn't Bates numbers on it.
 2 MR. McDONALD: Okay. For the record,
 3 he's not my counsel.
 4 MS. GOFF: Sorry, your co-counsel. I
 5 don't know what else to call him.
 6 Mr. Kass.
 7 MS. Y'BARBO STAPLEY: Can we go off the
 8 record for just a second.
 9 (Discussion off the record.)
 10 MS. GOFF: We can go back on the
 11 record.
 12 THE WITNESS: Okay. I don't recall this
 13 document, but...
 14 Q (By Ms. Goff) So you don't recall whether
 15 this document was the proposal that you received from
 16 Henry Schein, the deck that you went through?
 17 A I don't.
 18 Q Okay. So it doesn't look familiar to you at
 19 all?
 20 A No.
 21 Q Okay.
 22 A But I'm not saying it's unfamiliar, just I
 23 don't recall that this specific document was the one.
 24 Q Okay. So you don't recall one way or another
 25 whether this was the document that was presented to

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Page 134

1 you?

2 A Right.

3 Q If -- do you have reason to believe that this
4 is not the document that was presented to you?

5 A I don't.

6 MR. LONG: Object to the form.

7 Q (By Ms. Goff) If someone testifies that this
8 is the document that was presented to you, someone else
9 testifies to that, do you have any reason to doubt
10 that?

11 MR. McDONALD: Object to the form.

12 THE WITNESS: No.

13 MS. GOFF: Okay.



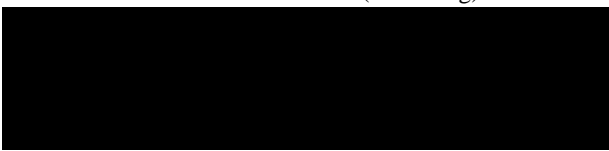
Page 135

15 MS. GOFF: Okay, you can put that one
16 aside. Thank you.

17 (Discussion off the record.)

18 Q (By Ms. Goff) So following the in-person
19 meeting that you had in west Dallas, then what happened
20 after that?

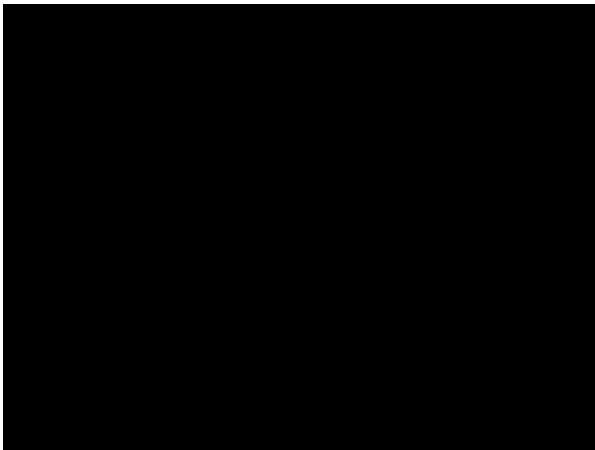
21 A Like when did we do this (indicating)?



Page 136

9 Q And why not?

10 MR. McDONALD: Object to the form.
11 Asked and answered.



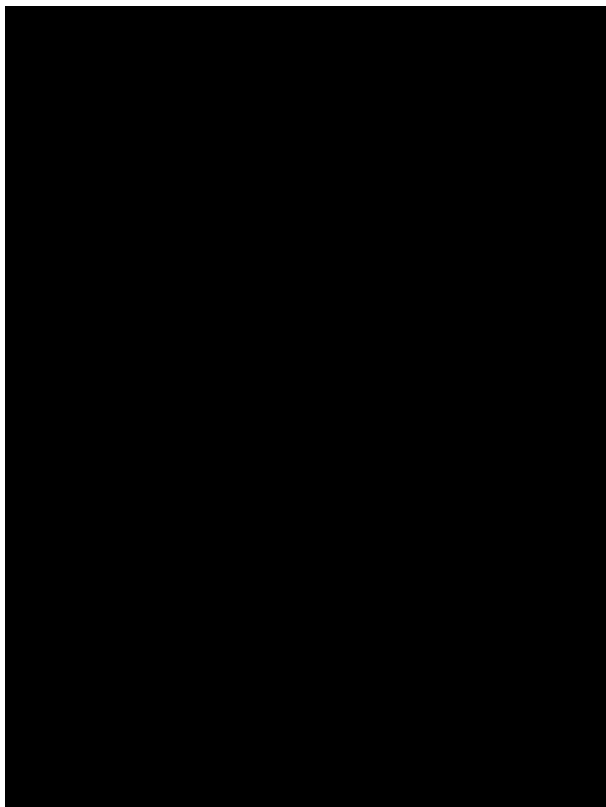
Page 137

35 (Pages 134 to 137)

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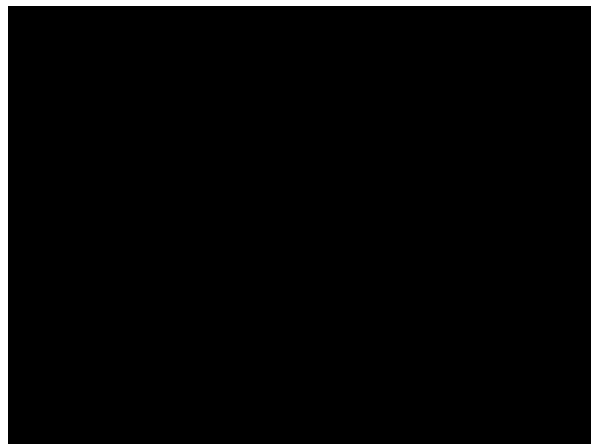
Page 138

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Page 139

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Q Okay. And then just going back to your role at Smile Source, so you said -- I think you testified earlier with Mr. Long that there was a period of time where you acted as -- like a -- the vendor -- the key person at Smile Source to interact with vendors. Do I have that right?

A Yes.

Q And that was sometime after Mr. Goldsmith left and before Mr. Guidie started?

A Yes.

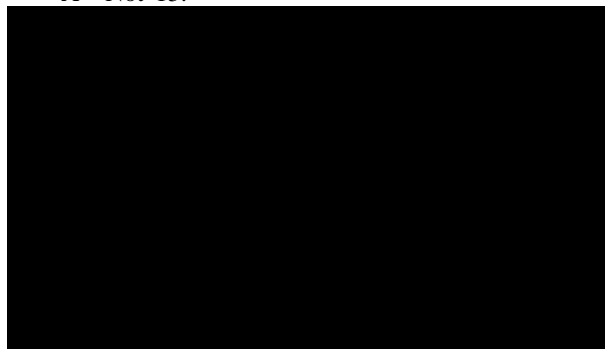
Q Okay. And before Mr. Goldsmith left, was he

Page 140

1 the person that interacted with vendors?
2 A Yes.
3 Q Okay. And so would he be the one to reach
4 out to vendors about agreements or potential agreements
5 with Smile Source?
6 A Yes.
7 Q Okay, but you participated in some meetings?
8 A Yes.
9 Q But it was Mr. Goldsmith's area of
10 responsibility?
11 A Yes.
12 Q Okay. Do you recall that after this 2014
13 meeting with Schein, at some point again -- and I
14 believe you testified about this with Mr. McDonald, but
15 at some point again, Smile Source and Schein started
16 talking again?
17 A (Witness nods head affirmatively.)
18 Q Yes?
19 A Yes. Sorry.
20 Q And do you have an understanding of -- and at
21 that time, was Smile Source hoping to partner with
22 Schein or was Smile Source -- let me retract that. Was
23 Smile Source looking for a national full-service
24 distributor to partner with?
25 MR. McDONALD: Object to the form.

Page 141

1 THE WITNESS: Like when? Immediately
2 after-ish?
3 MS. GOFF: In the 2016 -- or 2015-2016
4 time frame.
5 MR. McDONALD: Object to the form.
6 Overly broad.
7 THE WITNESS: I think 2016, we had more
8 of an interest.
9 MS. GOFF: Okay.
10 Q (By Ms. Goff) And why --
11 A Not '15.



MR. McDONALD: Object to the form.
Q (By Ms. Goff) So at some point, did
individuals from Schein come to Smile Source's

HIGHLY CONFIDENTIAL

Page 142

1 headquarters and get a tour?

2 A Yes.

3 Q And do you recall when that was?

4 A I think it was earlier in the testimony
5 today.

6 Q Okay. So I'll just direct you back to --

7 A Summer of something.

8 Q -- Exhibit 15.

9 A August-ish. What was it? August 30th, 2016.

10 Q So you recall that that was the date when
11 they came to --

12 A I do.

13 Q -- to visit Smile Source?

14 A Yes.

15 Q Is it possible that it was earlier than that?

16 MR. McDONALD: Object to the form.

17 THE WITNESS: It looks like it was
18 scheduled in June, held in August.

19 MS. GOFF: Okay.

20 THE WITNESS: I don't think so.

Page 143

Page 144

10 Q You spoke earlier with Mr. Racowski about --
11 I'm sorry, I'm jumping all over the place. I'm trying
12 to skip to things in my outline that --

13 A Good. No, it's fine.

14 Q -- you covered some of them earlier with
15 counsel.

16 So you spoke about Mr. Cohen referring to
17 Smile Source as a buying group.

18 A Okay.

19 Q Do you recall that?

20 A Yes.

21 Q And did anyone from Schein ever tell you that
22 they believed Smile Source was a buying group?

23 A With the word "ever," I would have to say
24 somebody must have.

25 Q Well, sitting here today, do you have any

Page 145

1 recollection of anyone from Schein telling you that
2 they believe Smile Source was a buying group?

3 A One employee, Darci Wingard.

4 Q Okay. And what did Ms. Wingard say
5 specifically?

6 A I don't know exactly what she said, but it
7 was referring to us as a buying group, which I took
8 exception to.

9 Q Did Ms. Wingard indicate that she did not
10 want to work with Smile Source?

11 A No, she wanted to. I would not allow her to
12 be on the account because she does not understand our
13 business.

14 Q What makes you say she doesn't understand
15 your business?

16 A She thinks we're a buying group.

17 Q Okay.

18 A Or thought during that discussion we were a
19 buying group, so I asked her to be removed from our
20 account. She wasn't on our account, but she was
21 planning to be on it, and I said absolutely not.

22 Q But she said that Smile Source was a buying
23 group, but she still wanted to work with Smile Source?

24 A Yeah.

25 Q Okay. And so just the fact that she said

HIGHLY CONFIDENTIAL

Page 146

1 that Smile Source was a buying group is why you asked
2 for her to be removed?

3 A Yes.

4 Q And did she just say in passing Smile Source
5 was a buying group, or was there some more lengthy
6 discussion about it?

7 A Like three minutes.

8 Q Okay. Did you tell her that you thought that
9 Smile Source was not a buying group?

10 A Yes.

11 Q And what did she say?

12 MR. McDONALD: Object to the form.

13 THE WITNESS: I don't recall a specific
14 discussion, but she said, "Well, you don't
15 own practices," something like that.

16 MS. GOFF: Okay.

17 THE WITNESS: So her frame of reference,
18 in my opinion, was if you don't own the
19 practice, you can't be a group practice.
20 She's free to think what she wants.

21 MS. GOFF: Okay.

22 Q (By Ms. Goff) That if you don't own the
23 practice, then you're a buying group?

24 A Then you can't be a group practice.

25 Q What do you mean by "group practice"?

Page 147

1 A Function as a group.

2 Q Was it --

3 A Best practice sharing, education, marketing.

4 Q Okay. I see.

5 And what about -- did anyone from Patterson
6 tell you that they believed that Smile Source was a
7 buying group?

8 MR. LONG: Objection to form.

9 THE WITNESS: I don't recall that in any
10 specificity.

11 Q (By Ms. Goff) You just don't recall one way
12 or another whether anyone --

13 A No, I don't.

14 MR. LONG: Objection. Asked and
15 answered.

16 Q (By Ms. Goff) And you said that you don't
17 believe that Smile Source is a buying group, correct?

18 A Yes.

19 Q And when we've been talking about buying
20 group today throughout your testimony -- I just want to
21 be clear -- what do you mean by "buying group"?

22 A That their only function is discounting
23 pricing on as many products as possible.

24 Q And you testified earlier about your
25 definition of "buying group," and I believe you said

Page 148

1 that and something about centralized billing. Is that
2 also part of the definition?

3 A Yeah, where they'll collect from the doctor
4 and pay the organization.

5 Q Is that also part of your definition of a
6 buying group?

7 A Part of mine, yes.

8 Q Okay. And so did you ever -- using your
9 definition, did you ever believe that Smile Source was
10 a buying group?

11 A No.

12 Q And did you tell Mr. Cohen at Benco that?

13 A Yes.

14 Q And did you tell Ms. Wingard at Schein that?

15 A Yes.

16 Q Okay. And then at that mid-winter meeting
17 when you met with Mr. Cohen of Benco, and it was in
18 2014 --

19 A Okay.

20 Q -- did you meet with any of the other
21 dealer/vendors, distributor/vendors?

22 A I don't recall if I did or not.

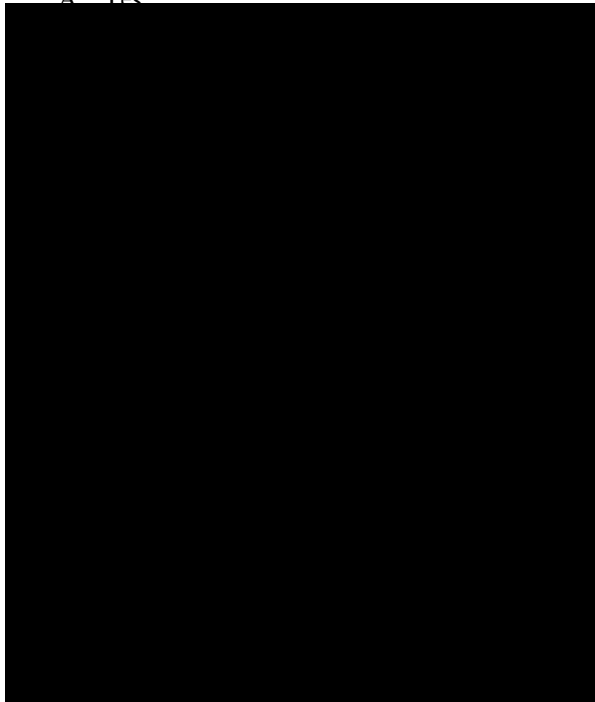
23 Q Turning to Patterson and Patterson's bid in
24 the 2016-2017 period --

25 A Yes.

Page 149

1 Q I guess I'm referring to the documents
2 Mr. Long handed you earlier.

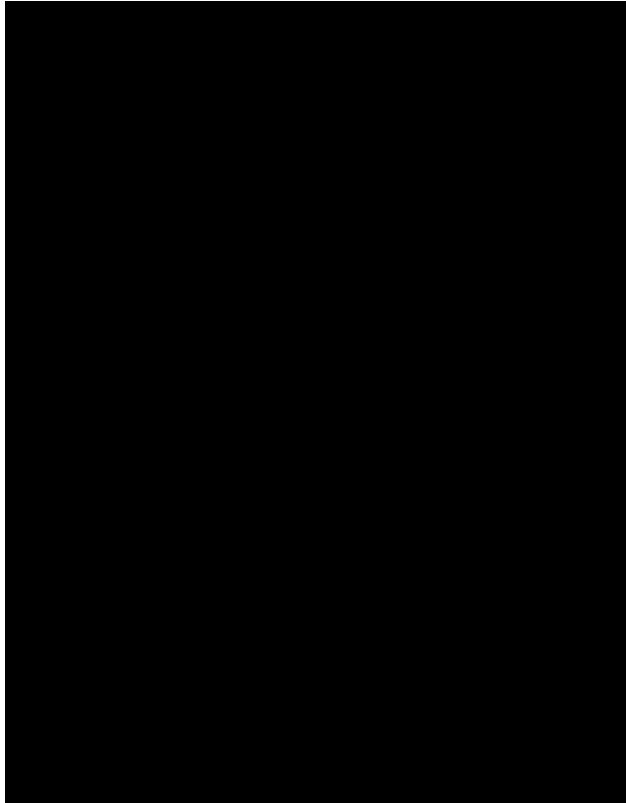
3 A Yes.



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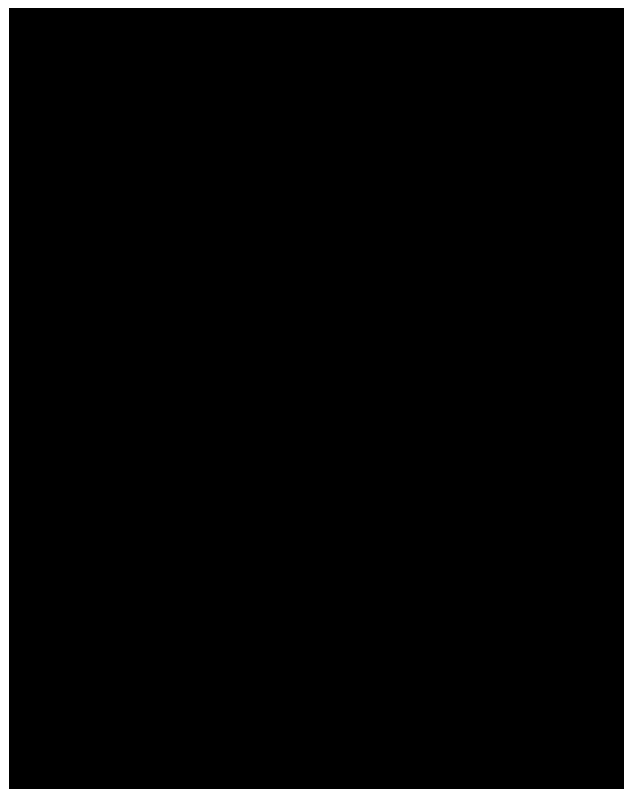
Page 150

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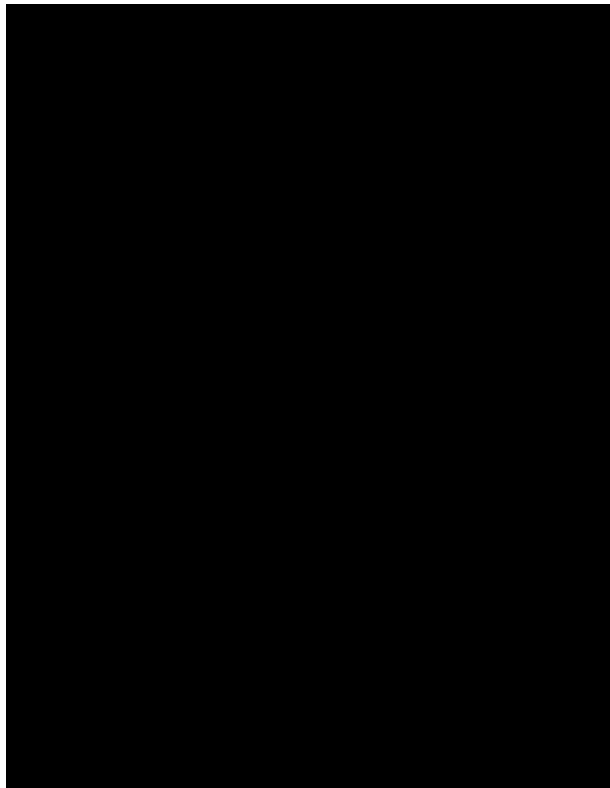
Page 151

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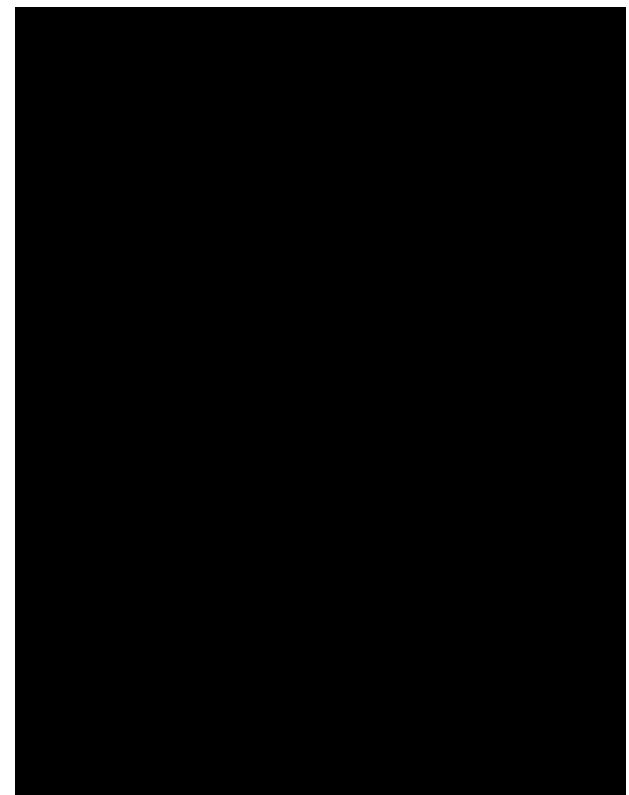
Page 152

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Page 153

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39 (Pages 150 to 153)

HIGHLY CONFIDENTIAL

Page 154

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Page 155

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Page 156

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Page 157

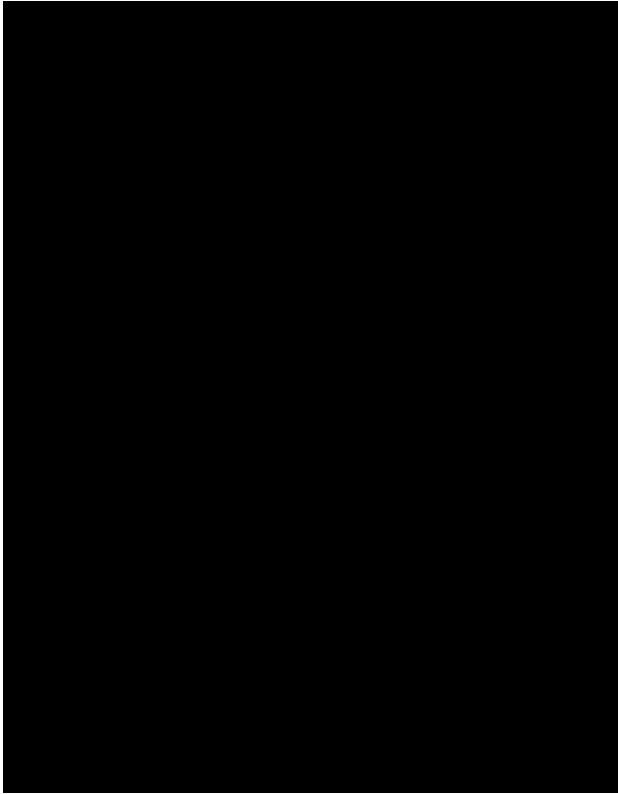
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40 (Pages 154 to 157)

HIGHLY CONFIDENTIAL

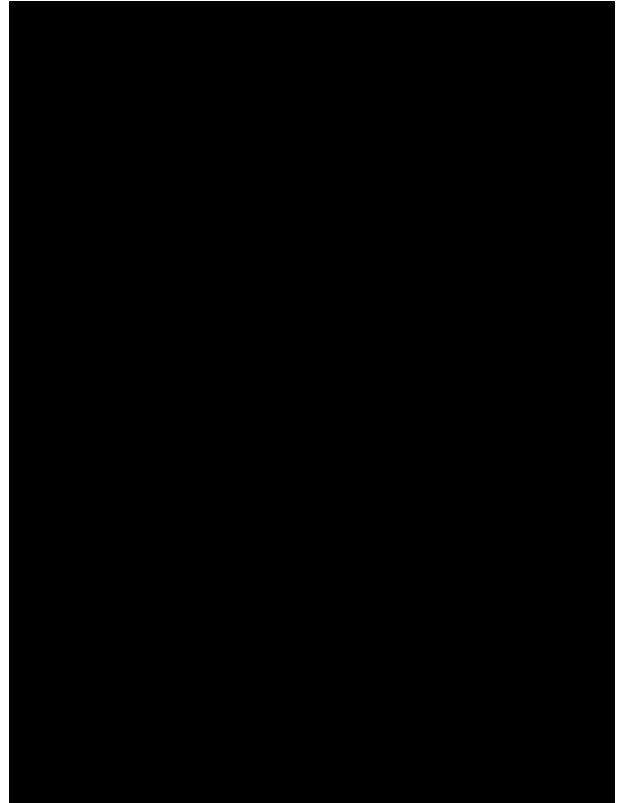
Page 158

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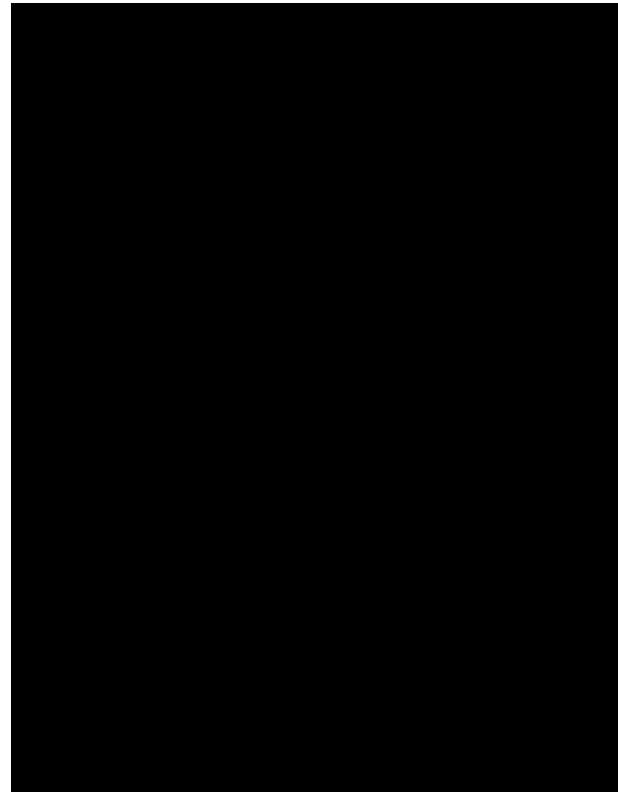
Page 159

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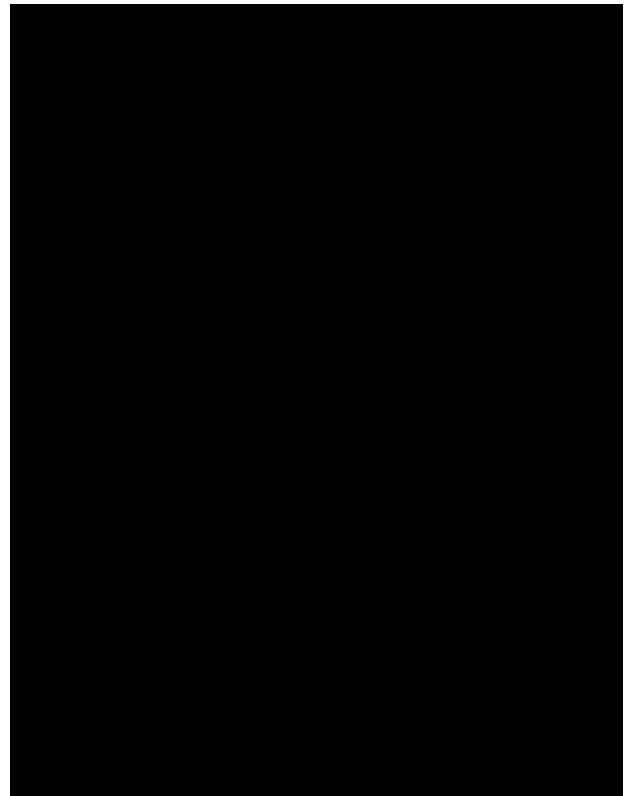
Page 160

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Page 161

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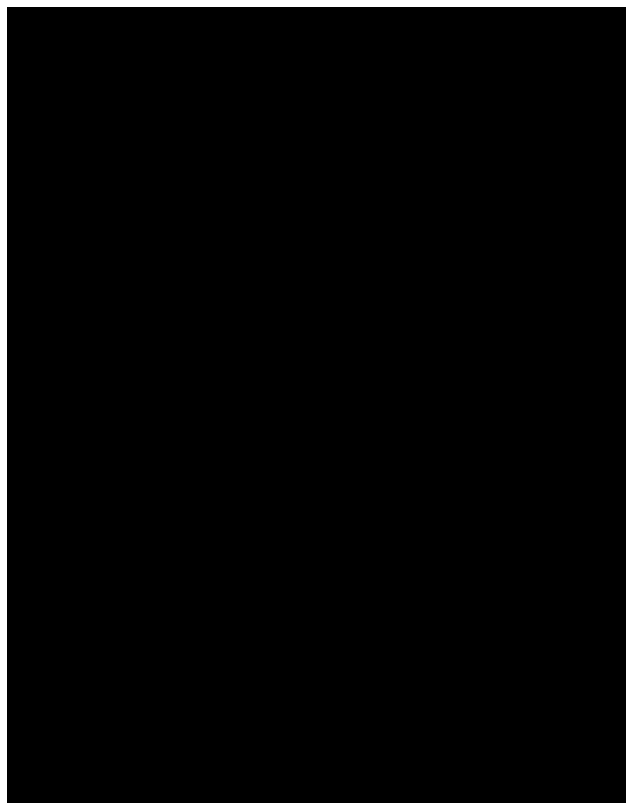


41 (Pages 158 to 161)

HIGHLY CONFIDENTIAL

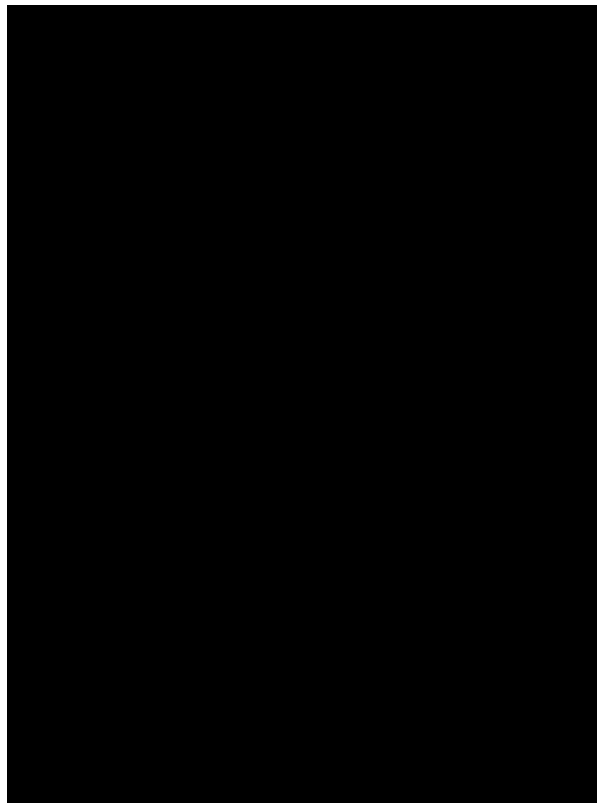
Page 162

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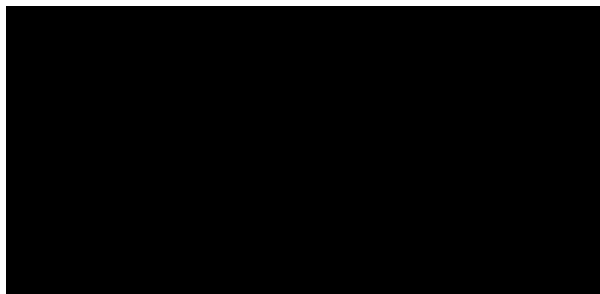
Page 163

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Page 164

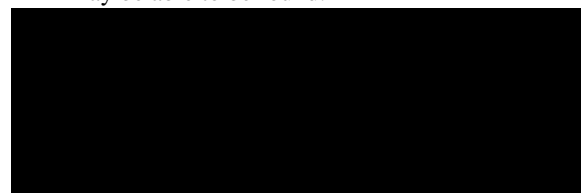
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Q Okay. Do you have an understanding of whether Mr. Goldsmith met or exceeded his annual performance objectives during the years that he worked at Smile Source?

MR. LONG: Object to the form.

THE WITNESS: He would have met or exceeded them every year he worked there except for the last year, but those documents may be able to be found.



Q Okay, but are there -- there are written --

Page 165

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like a written review where there are performance objectives written down somewhere?

A I don't recall.

Q You don't recall either way, okay.

And so when we're talking about whether Mr. Goldsmith met or exceed his performance objectives, did you have specific performance objectives for Mr. Goldsmith when you were his boss?

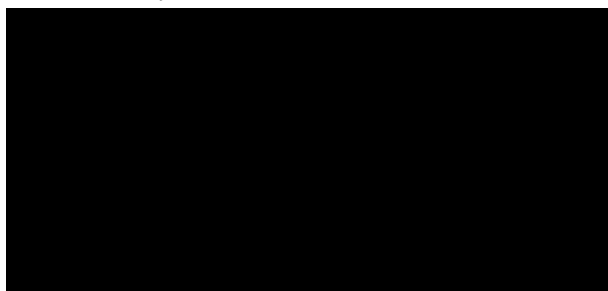
A I don't recall if we had them those years. We have them today.

Q Okay.

A Again, we were a four-person company, so I don't recall.

Q Okay. And what about the last year, do you know whether they were written down?

A I really don't.



42 (Pages 162 to 165)

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Page 166

Q Okay. One more quick question about a document. It's CX4100.

A Do we have it?

Q Yes, you already have it.
(Discussion off the record.)

Q (By Ms. Goff) Turning to page 10 --

A In this slide?

Q Yeah, slide, page 10. It's also CX4100-10.

A Okay.

Q It says, "Dentistry always follows medicine."
Do you see that?

Page 167

A Yes.

Q Do you have an understanding of what that means?

A I do.

Q What does that mean?

A That's a reproduction from, as it states, the Journal of Dental Education, that medicine is a few years ahead of dentistry in terms of the changes to the profession. Specifically, in this case, it's entrepreneur versus employee model.

Q And what do you mean by "entrepreneur versus employee model"?

A The right side of the chart, "Changing Hands," shows medical practice ownership went from 75 down to 35 percent. Hospital-owned practices rose. We see the same thing happening in dentistry today, years later than it happened in medicine.

Q So there are groups that own -- like DSOs, basically --

A Yes.

Q -- are rising?

A Yes.

MS. GOFF: Unfortunately, before I close, I just need to call my co-counsel one more time. I apologize. We can go off the

Page 168

record.

(Recess taken.)

Q (By Ms. Goff) Did you speak with anyone from Schein, Patterson, or Benco about your deposition here today?

A No.

Q Did you speak with anyone from Schein, Patterson, or Benco about the FTC's investigation prior to your investigational hearing last summer?

A No.

Q Have you ever spoken with anyone at Schein, Patterson, or Benco about the FTC's lawsuit or investigation?

A No.

Q And are you -- who's paying for your attorneys to be present at this deposition?

A Smile Source.

Q Okay.

MS. GOFF: I don't have any further questions.

MR. McDONALD: I have no questions.

MR. LONG: I have no questions.

MR. RACOWSKI: And I have no questions.

///

Page 169

MS. GOFF: Thank you very much for coming in.

THE WITNESS: I have no questions.
Thanks.

(Deposition concluded at 2:10 p.m.)

TREVOR MAURER

Subscribed and sworn to before me
this ____ day of _____, 20__.

NOTARY PUBLIC

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Page 170

CERTIFICATE

STATE OF GEORGIA
COUNTY OF COBB

I, MICHELLE M. BOUDREAUX, do hereby certify that TREVOR MAURER, the witness whose deposition is hereinbefore set forth, was duly sworn by me and that such deposition is a true record of the testimony given by such witness.

I further certify that I am not related to any of the parties to this action by blood or marriage and that I am in no way interested in the outcome of this matter.

IN WITNESS WHEREOF, I have hereunto set my hand this 14th day of August 2018.

MICHELLE M. BOUDREAUX, RPR

Page 171

INDEX

EXAMINATIONS

Examination by Mr. Long	5
Examination by Mr. McDonald	70
Examination by Mr. Racowski	95
Examination by Ms. Goff	102

EXHIBITS

Exhibit	Page
Exhibit 1	24
State of Minnesota, Order of Registration, Smile Source, July 2, 2014 (PDCO 00147772...)	
Exhibit 2	24
Franchise Disclosure Document, Smile Source, Issuance Date April 7, 2015 (PDCO 00147923...)	
Exhibit 3	25
Franchise Disclosure Document, Smile Source, Issuance Date April 6, 2016 (PDCO 00148040...)	
Exhibit 4	25
Franchise Disclosure Document, Smile Source, Issuance Date April 3, 2017 (PDCO 00148174...)	
Exhibit 5	26
Franchise Disclosure Document, Smile Source, Issuance Date April 3, 2018 (SS-00000057...)	
Exhibit 6	35
Q&A: Dental Networking (SS-00000179)	
Exhibit 7	48
October/December 2013 email chain (PDCO 00021213...)	

Page 172

INDEX (Cont'd)

Exhibit	Page
Exhibit 8	51
Transcript of July 28, 2018 Investigational Hearing of Trevor Maurer (CX 322-1...)	
Exhibit 9	58
November 29, 2016 email chain with attachment (PDCO 00190941...)	
Exhibit 10	59
December 16, 2016 email with attachment (PDCO 00191977...)	
Exhibit 11	60
Smile Source and Patterson Dental, January 31, 2017 (PDCO 00066513)	
Exhibit 12	62
February 1, 2017 email chain (PDCO 00066506...)	
Exhibit 13	63
February 2017 email chain (PDCO 00175503...)	
Exhibit 14	79
HSD & Smile Source Meeting, 1/22/2014 (Henry Schein-000006586)	
Exhibit 15	89
6/13/2016 email, meeting invite (Henry Schein-000037234...)	
Exhibit 16	90
February 2017 email chain (FTC-SmileSource0039516...)	
Exhibit 17	91
December 8, 2016 email (FTC-PROD-000346)	
Exhibit 18	95
January 29, 2014 email (BDS-FTC00000598)	

Page 173

INDEX (Cont'd)

Exhibit	Page
Exhibit CX4100	105
"What is Smile Source?" (CX4100-001...)	
Exhibit CX4097	120
Smile Source 2016 Member Survey (CX4097-001...)	
Exhibit CX4099	121
August 25, 2017 letter with attachments (CX4099-001...)	
Exhibit CX4104	125
October 2016 email chain (CX4104-001...)	
Exhibit CX4105	132
Smile Source Partnership Proposal, Revised 2/13/14 (CX4105-001...)	

HIGHLY CONFIDENTIAL

Page 174

NAME OF CASE:

DATE OF DEPOSITION:

NAME OF WITNESS:

Reason Codes:

1. To clarify the record.

2. To conform to the facts.

3. To correct transcription errors.

Page _____ Line _____ Reason _____

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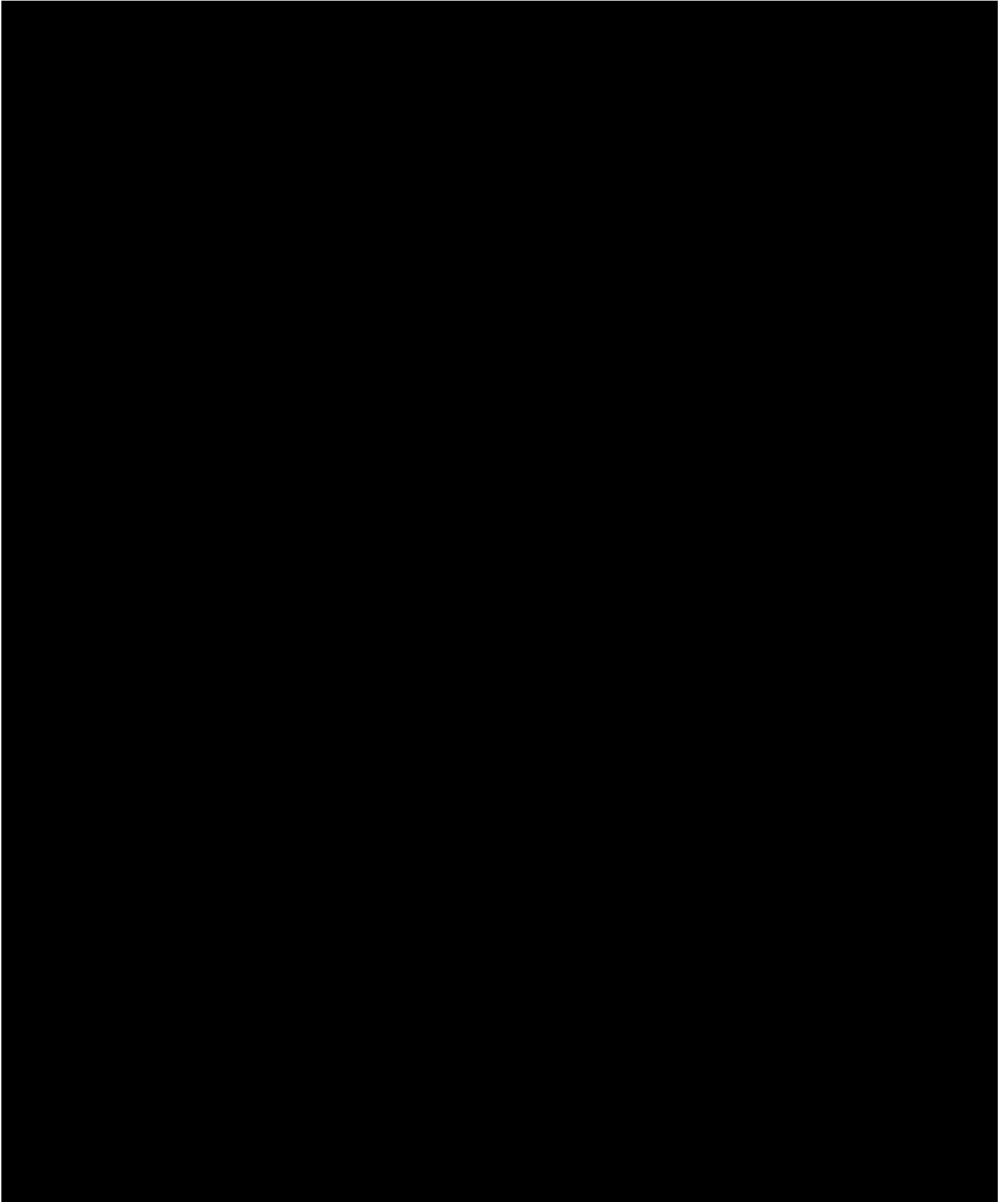
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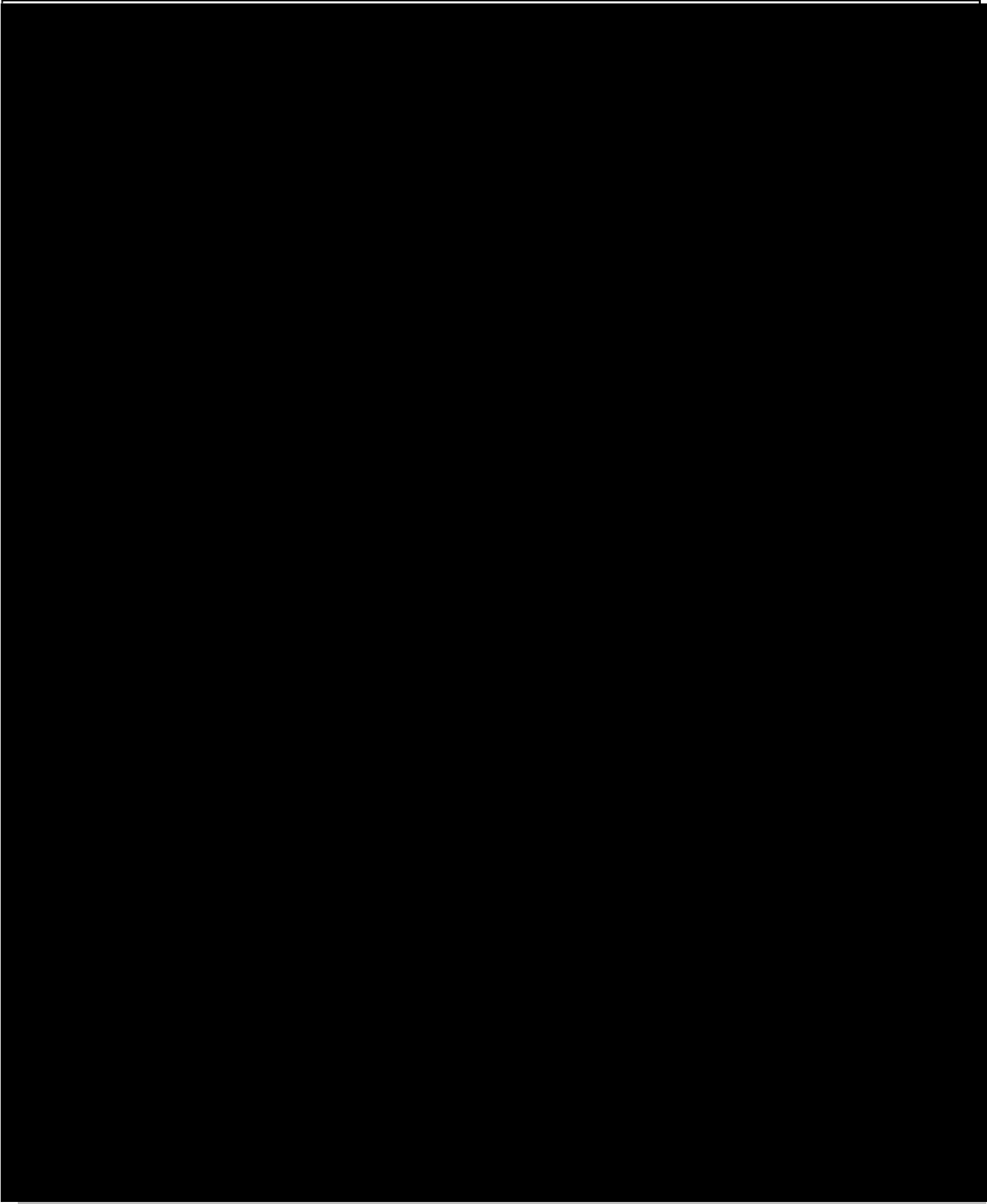
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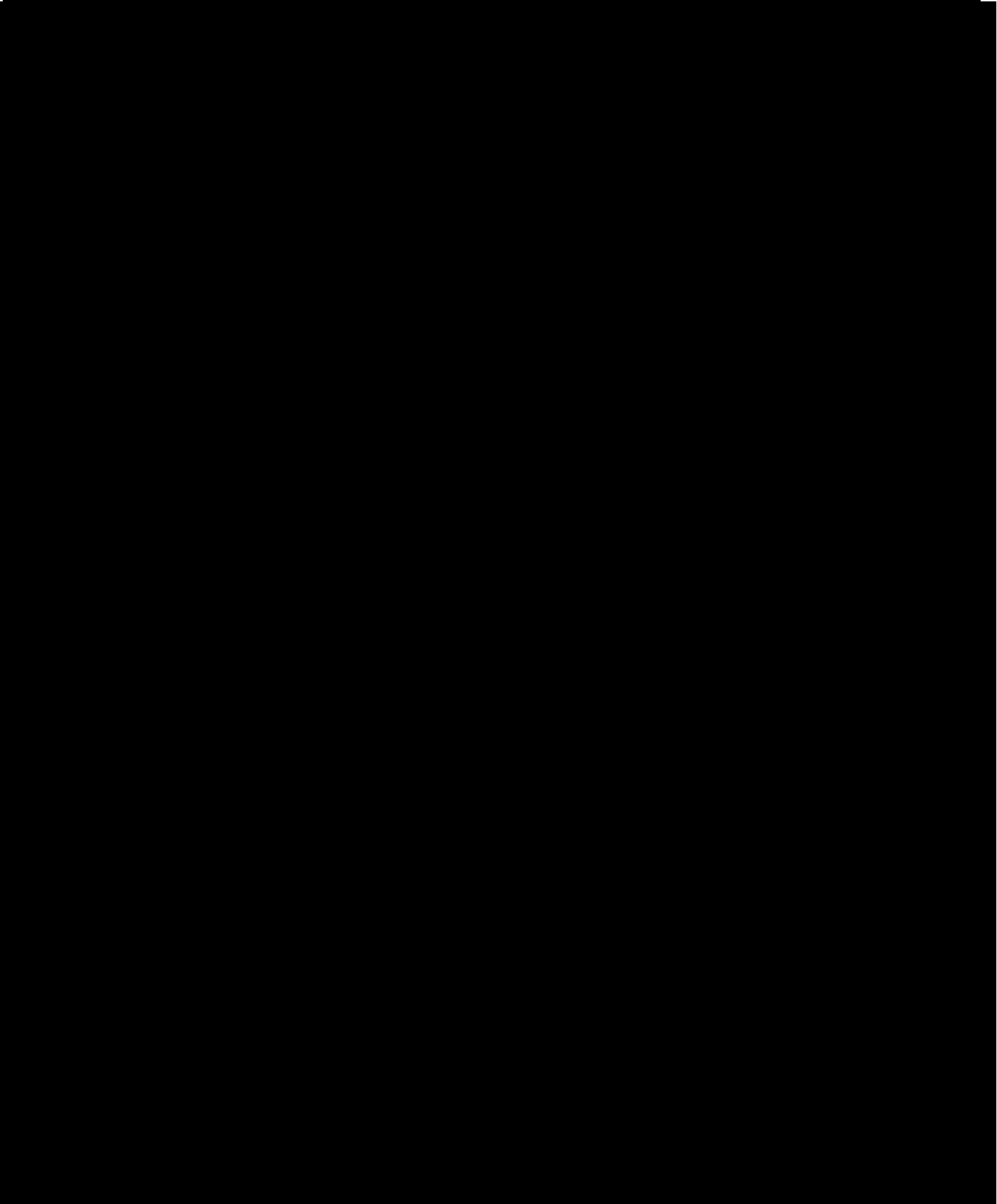
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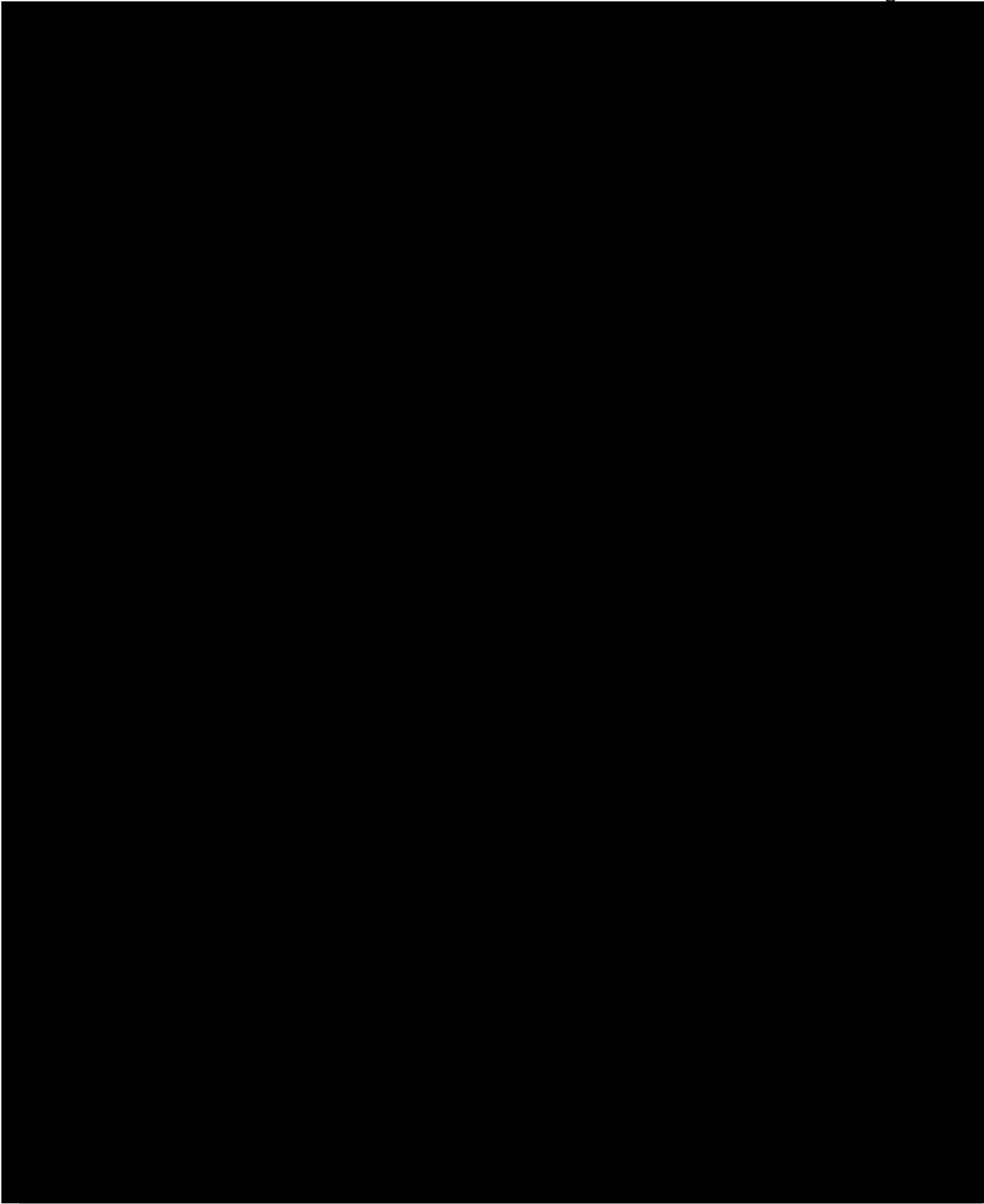
Page _____ Line _____ Reason _____

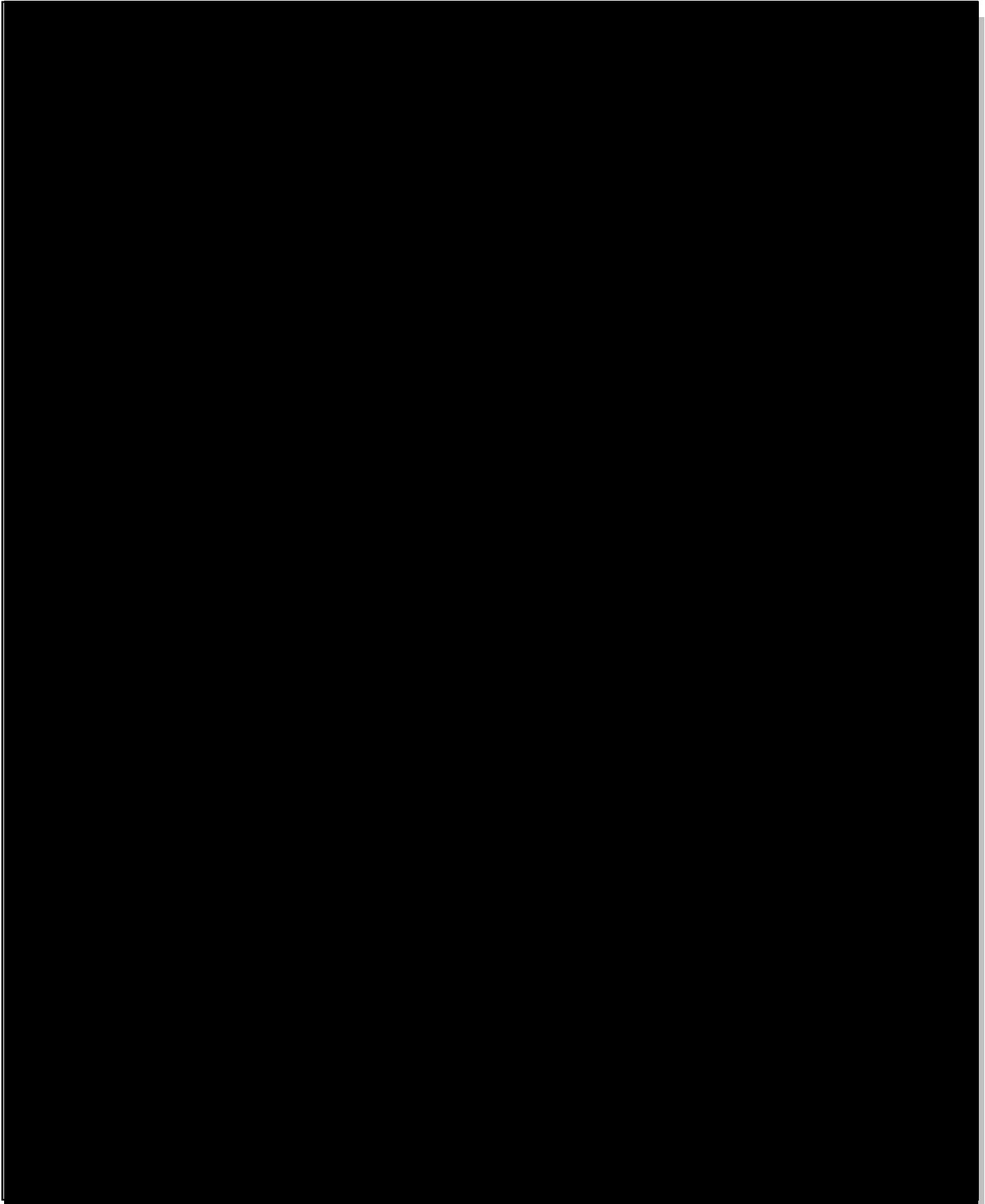
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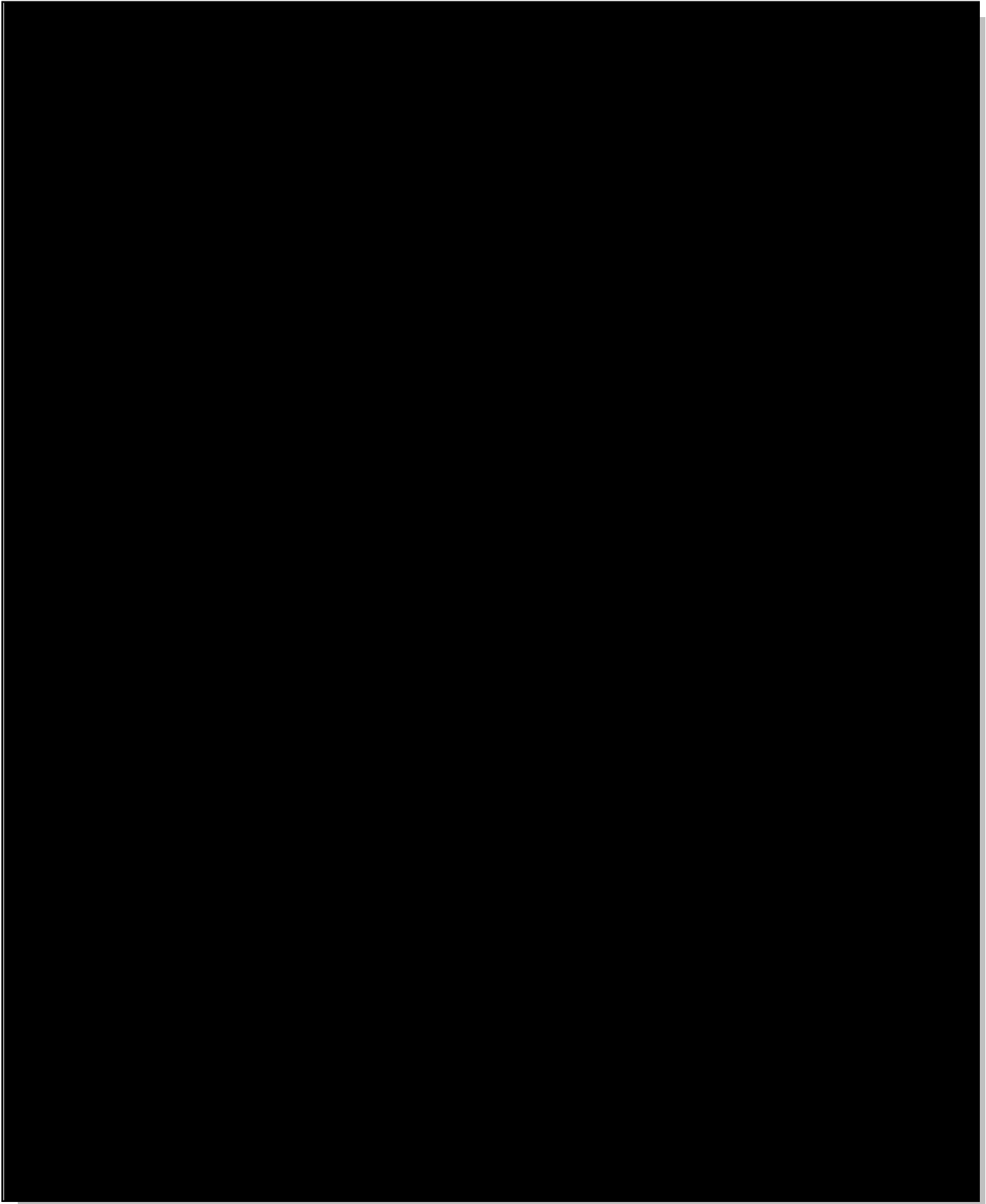


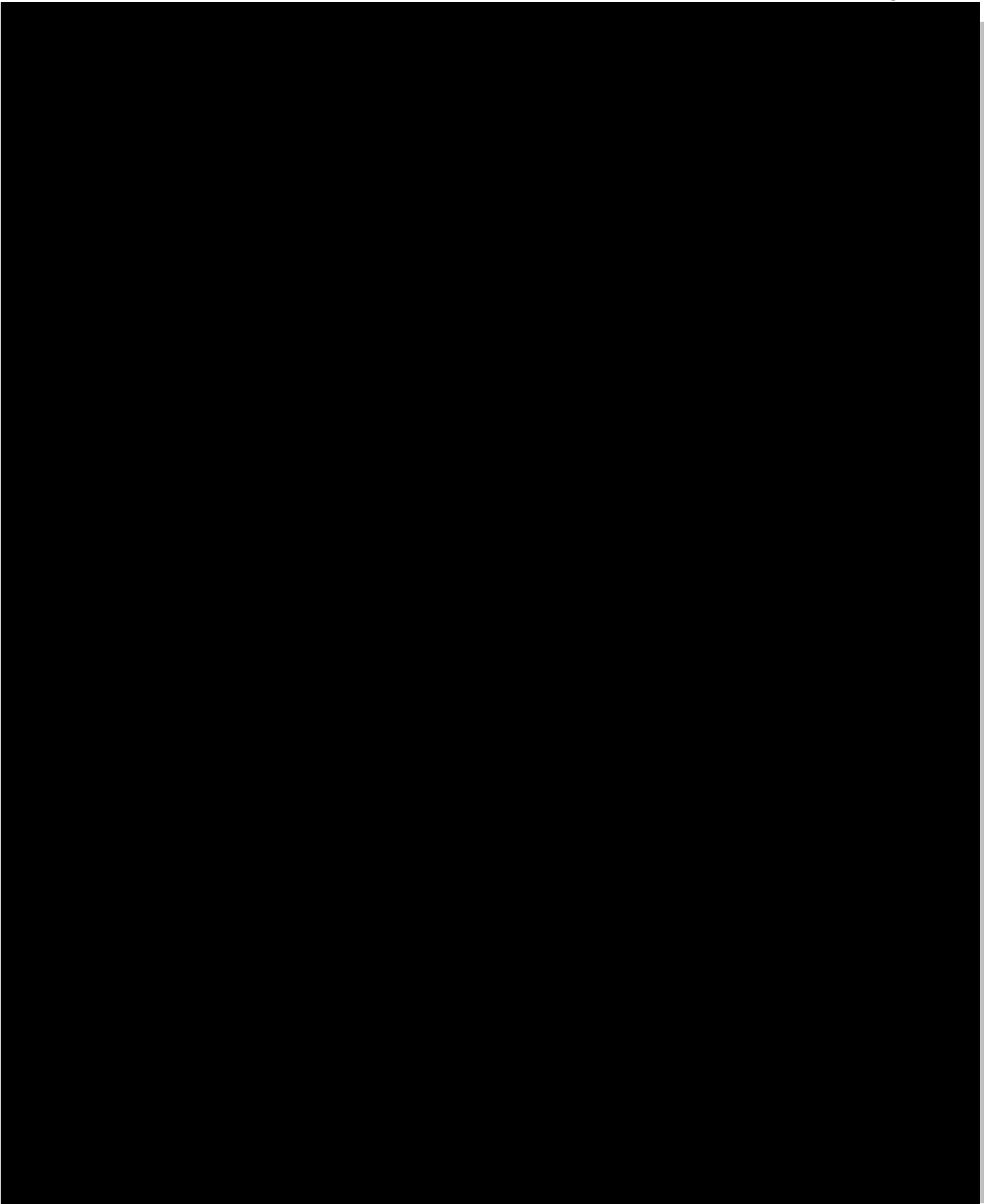


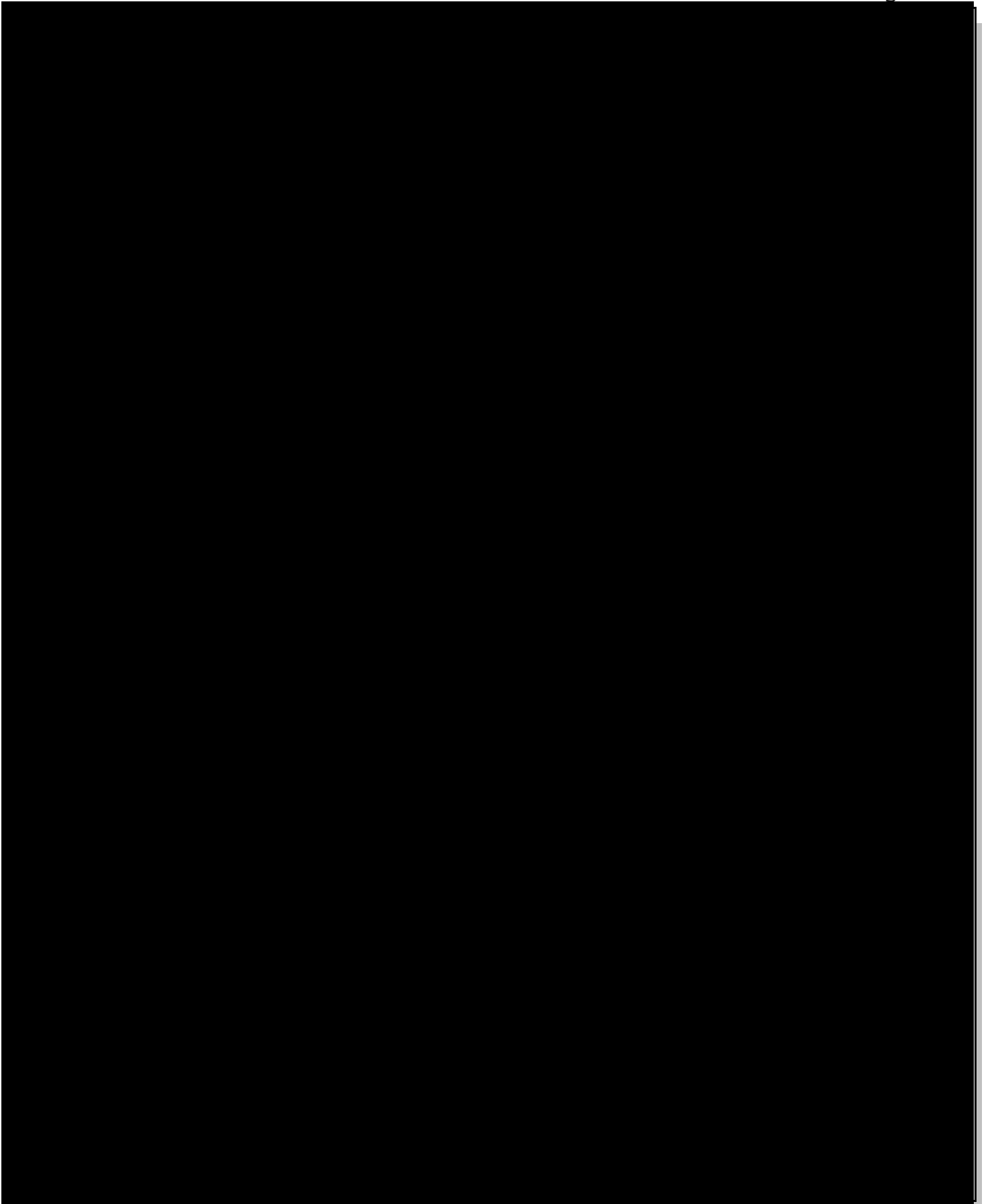


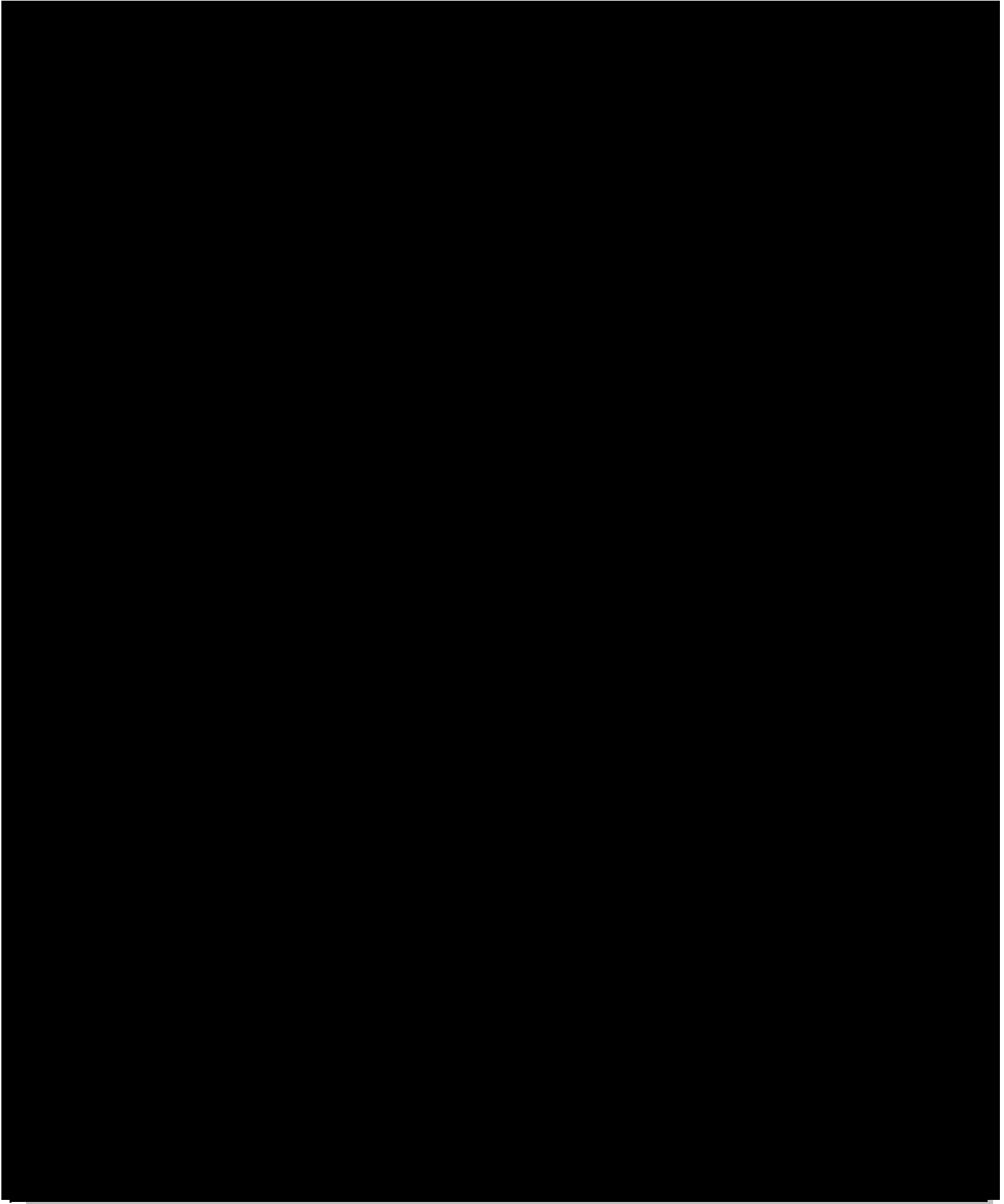


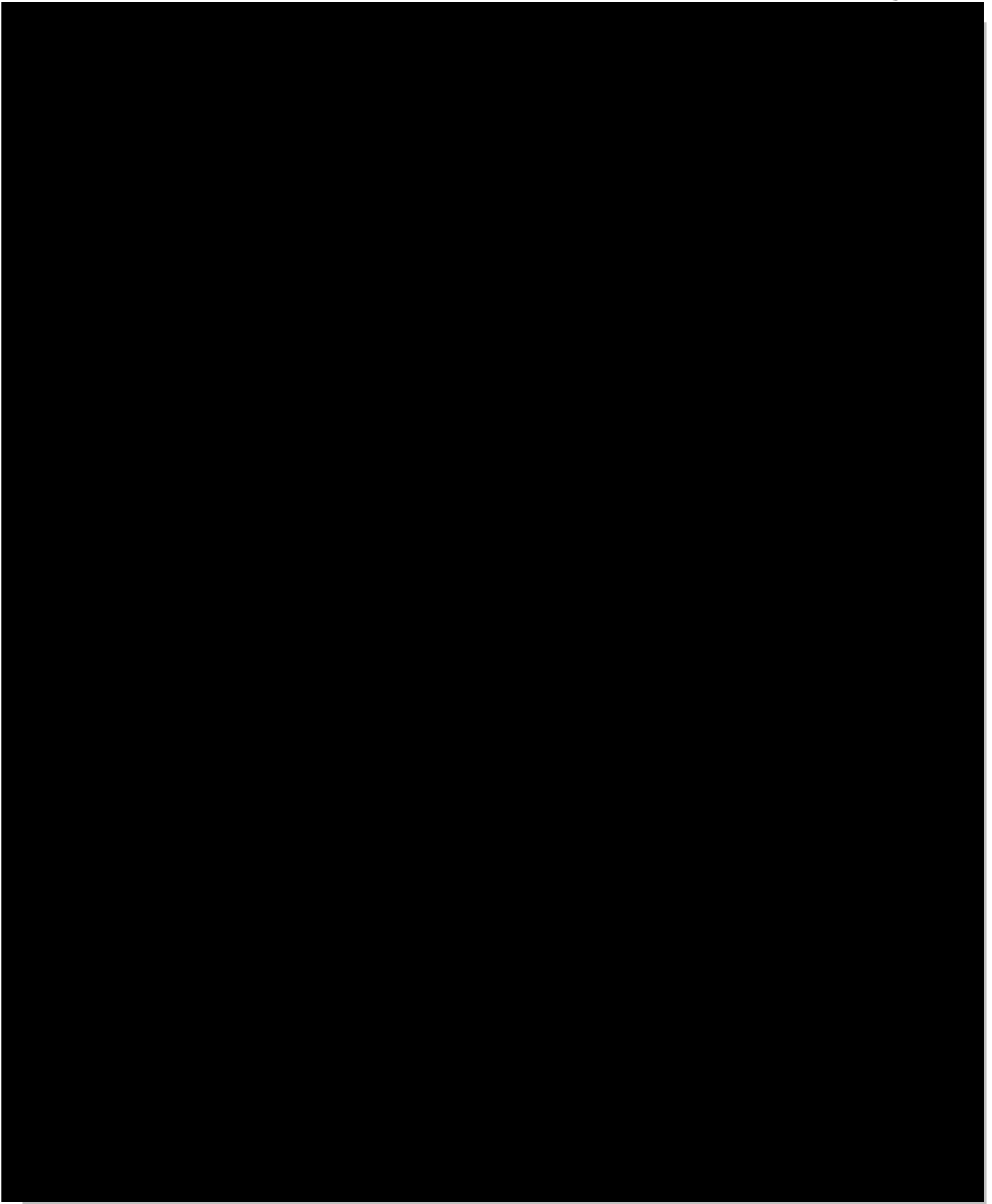




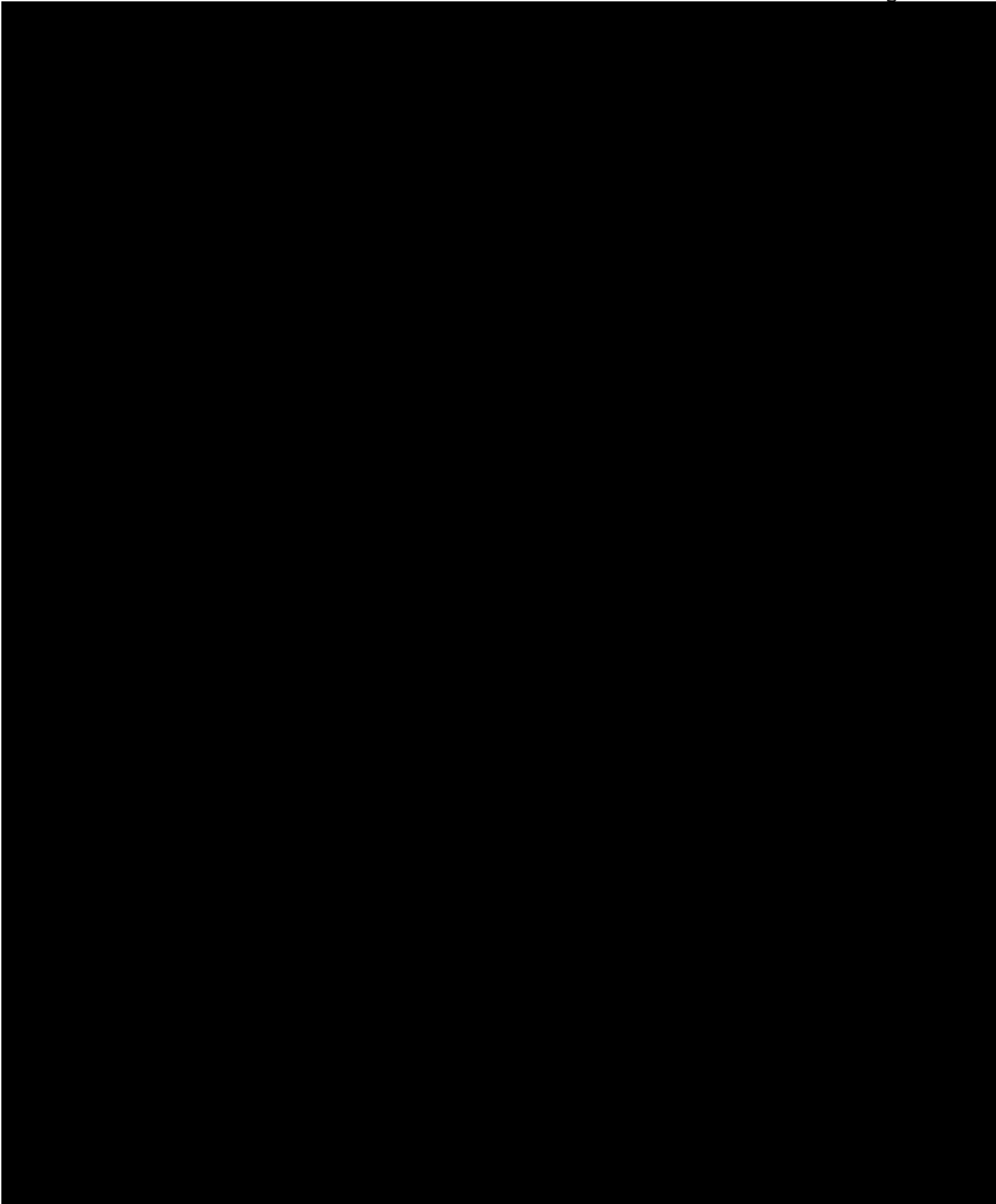


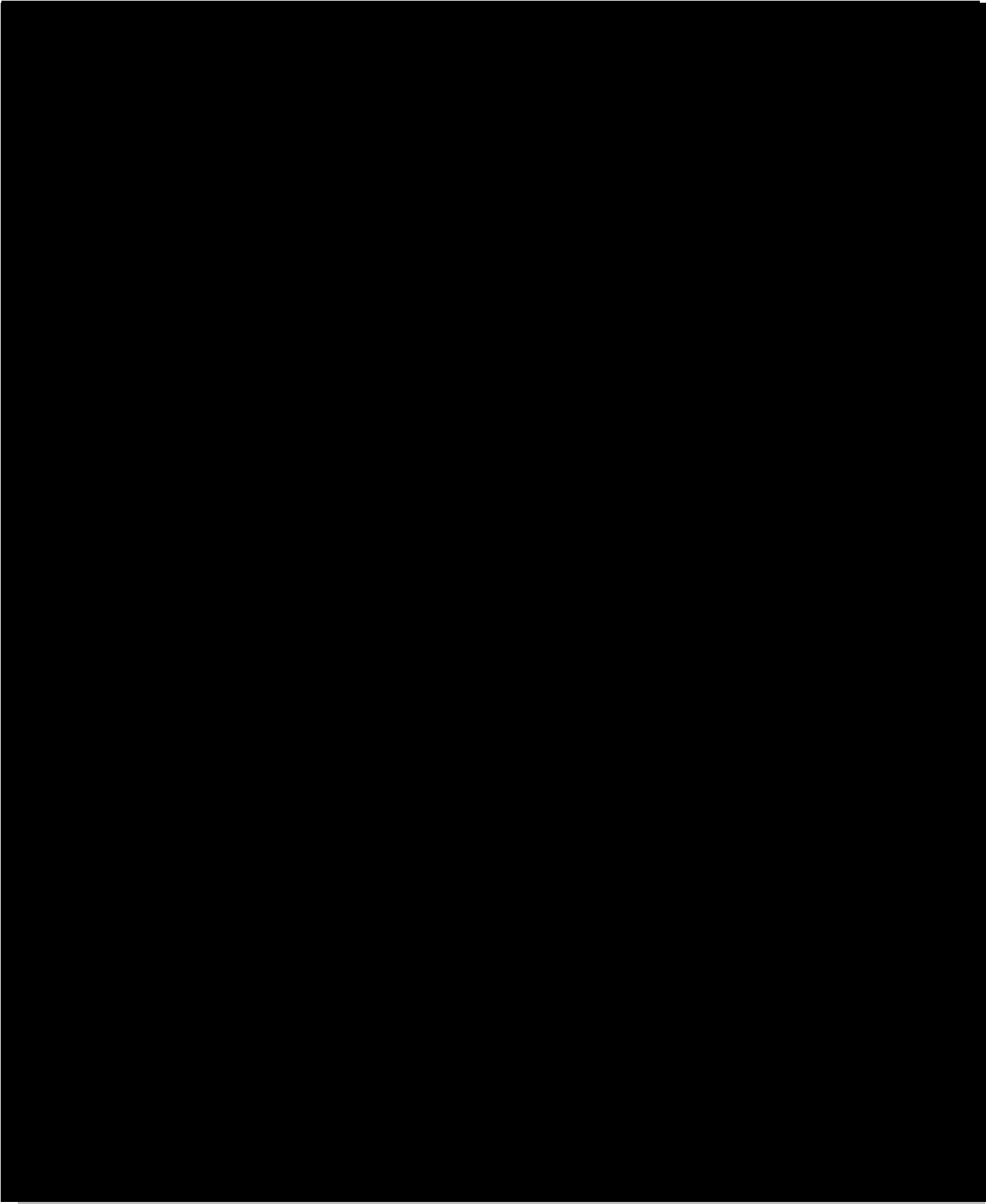


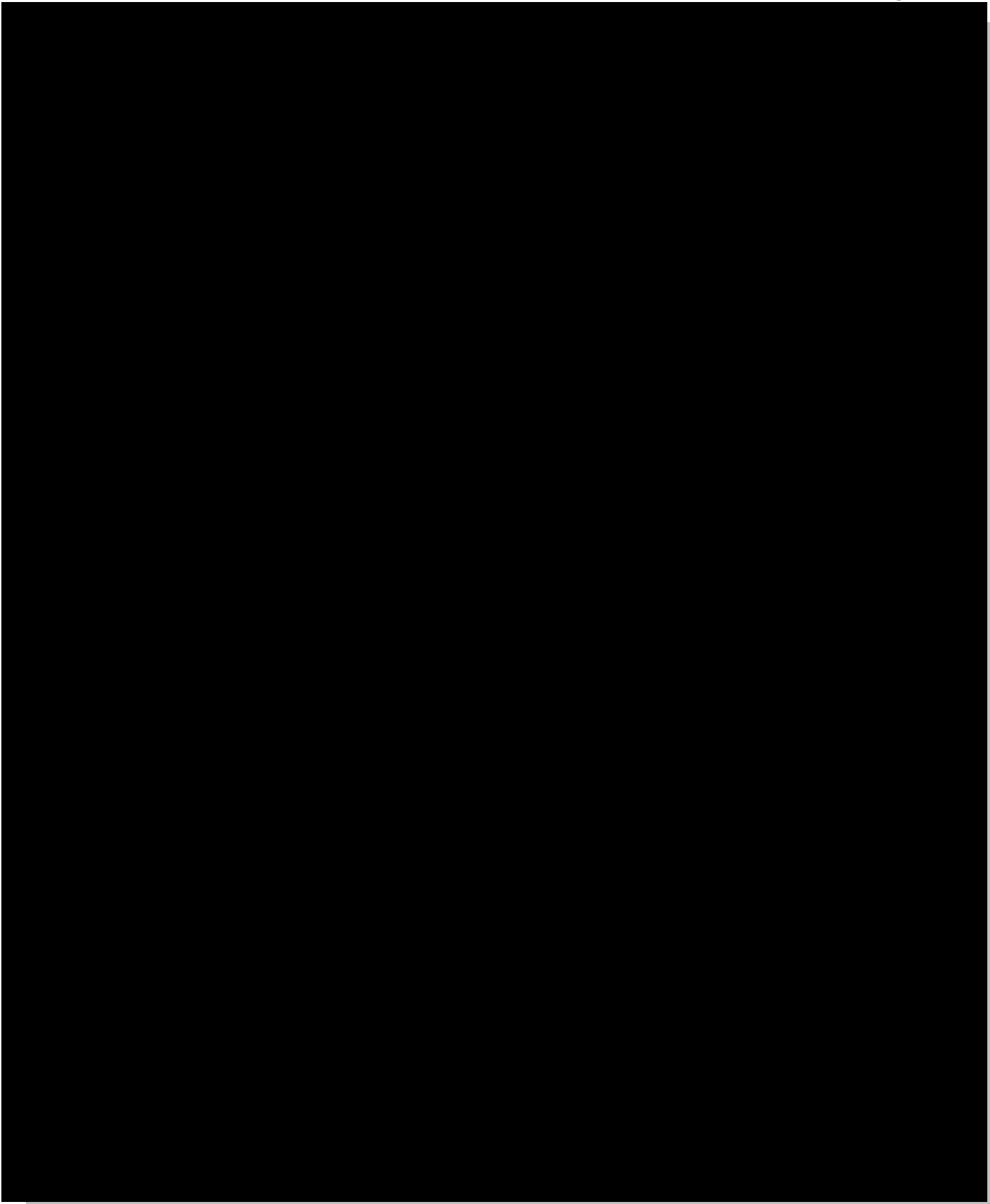


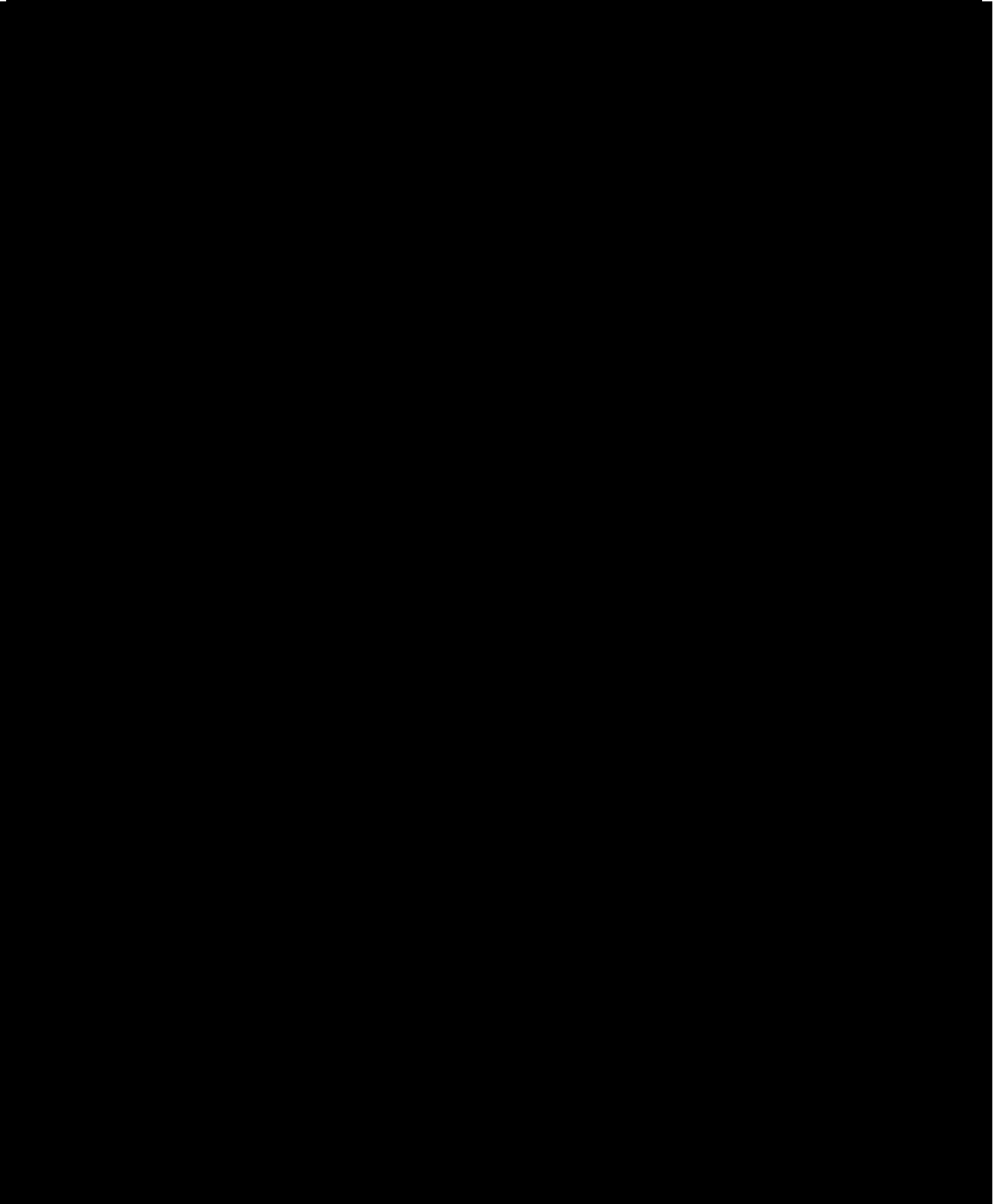


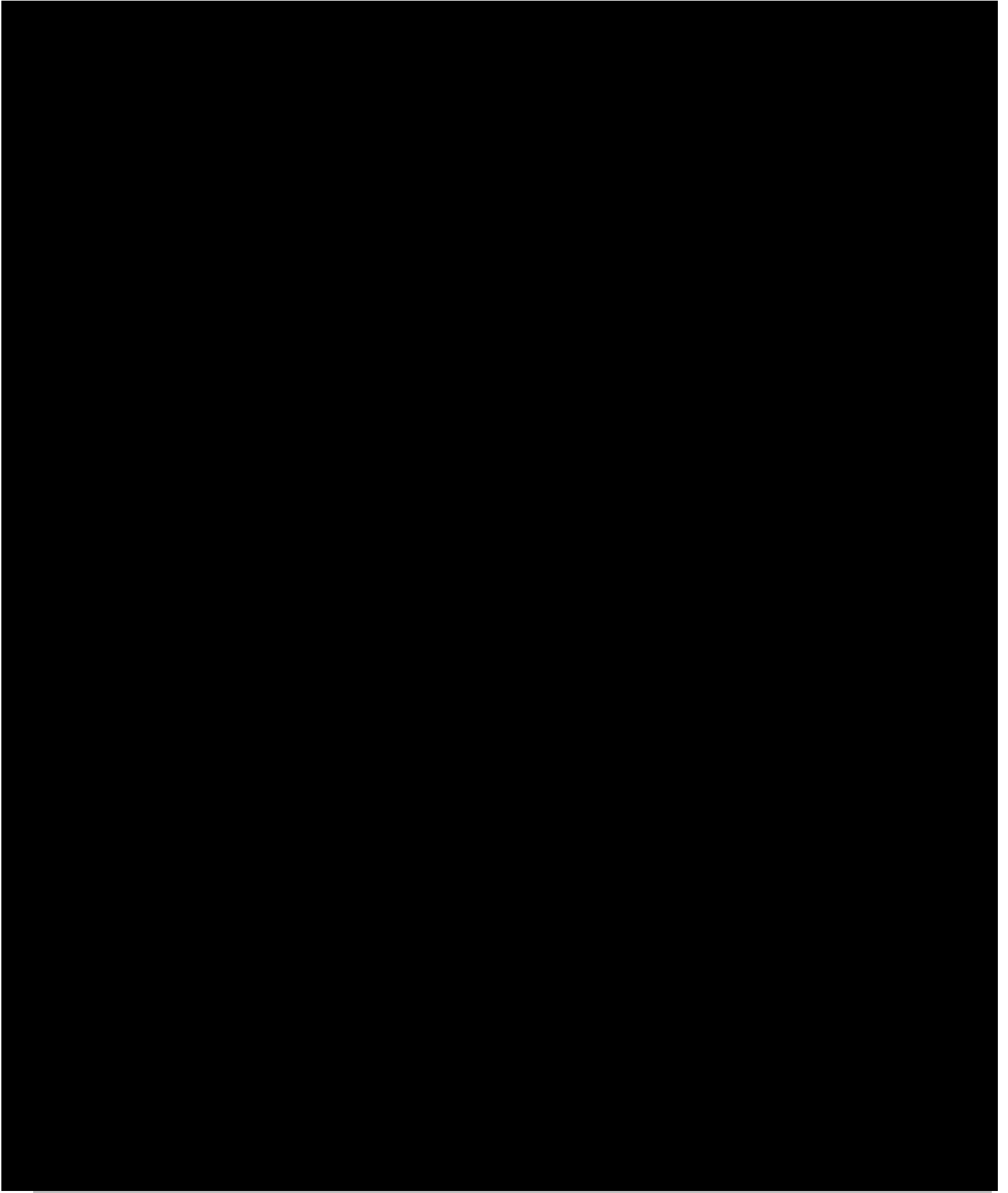


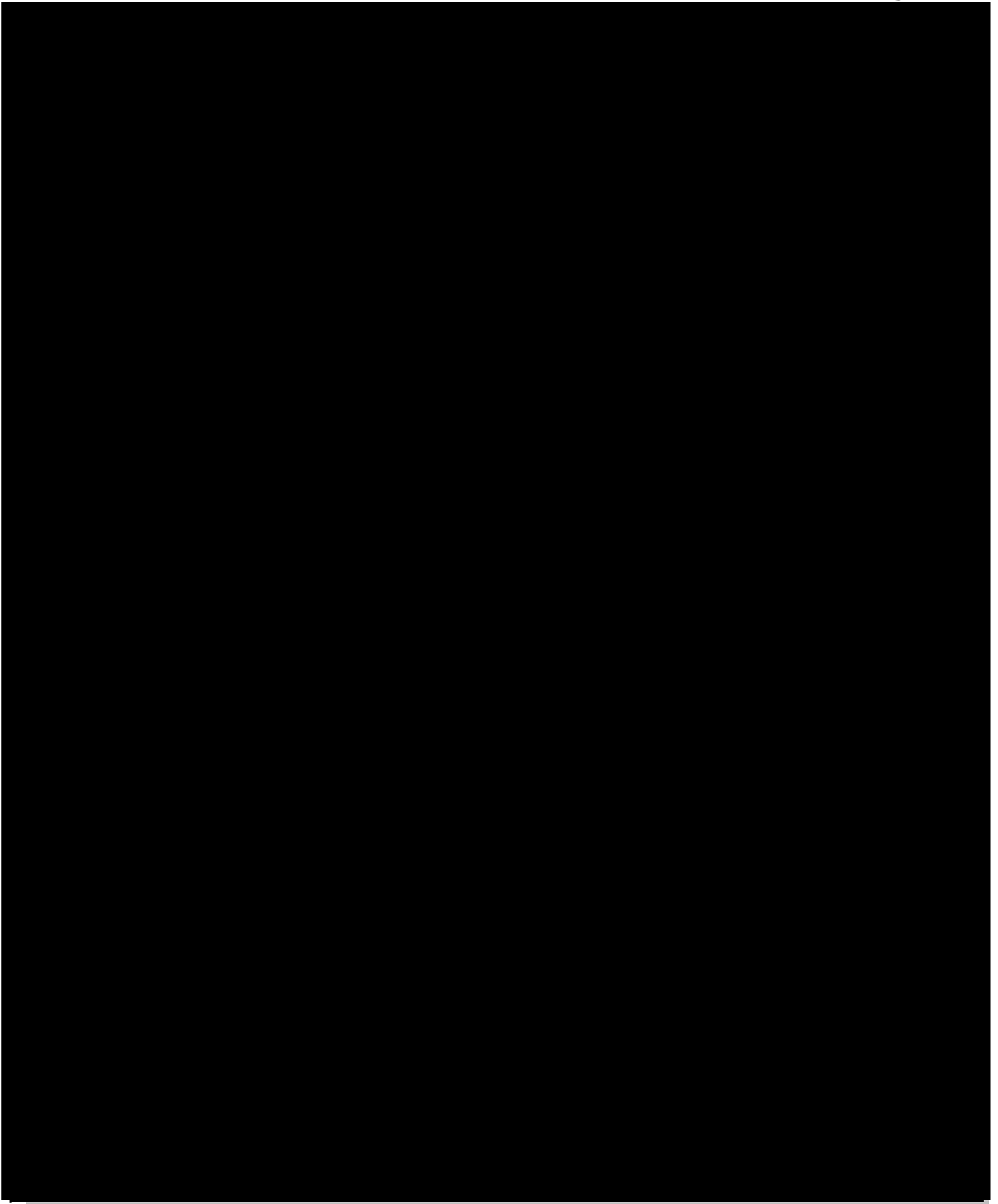


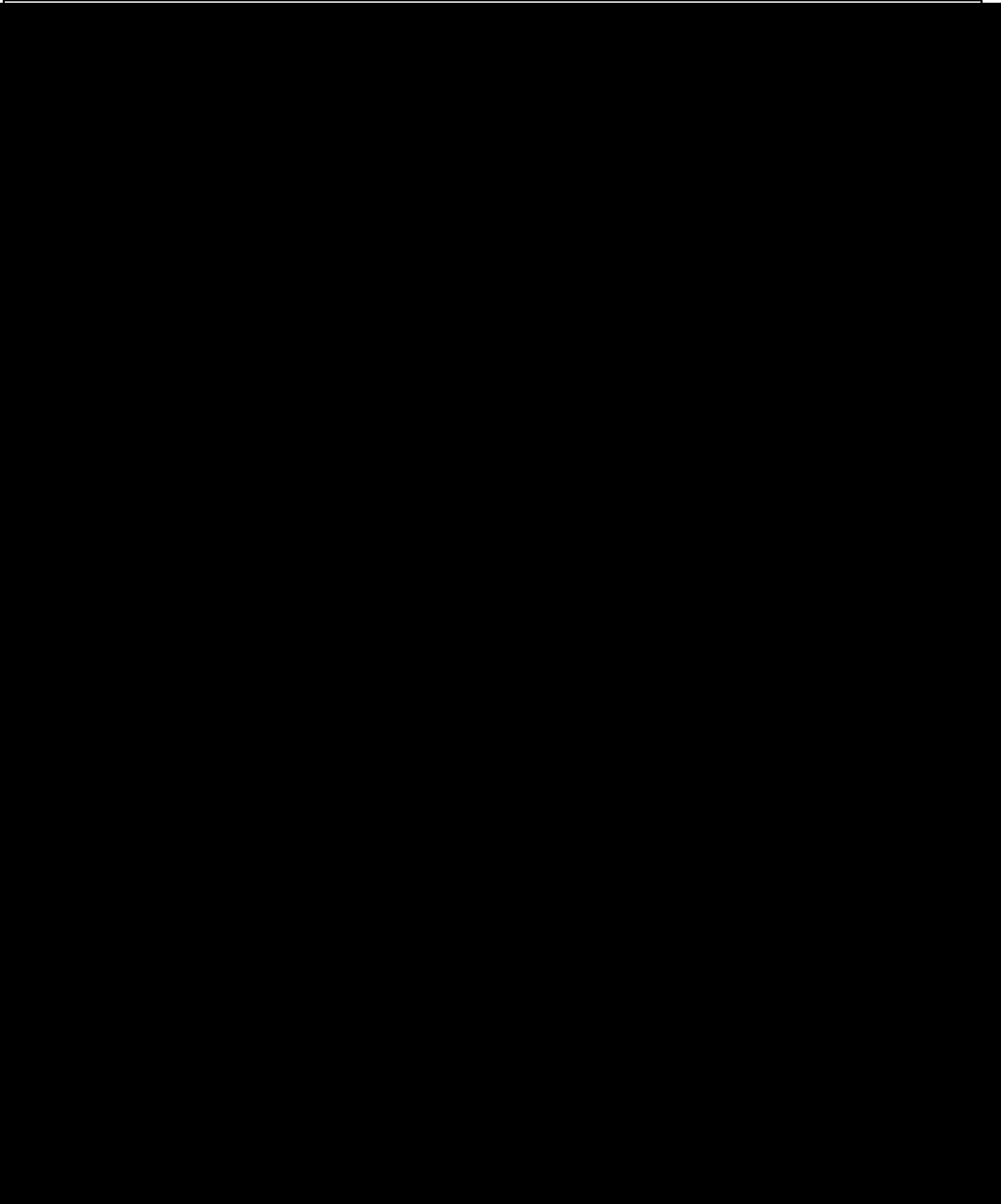


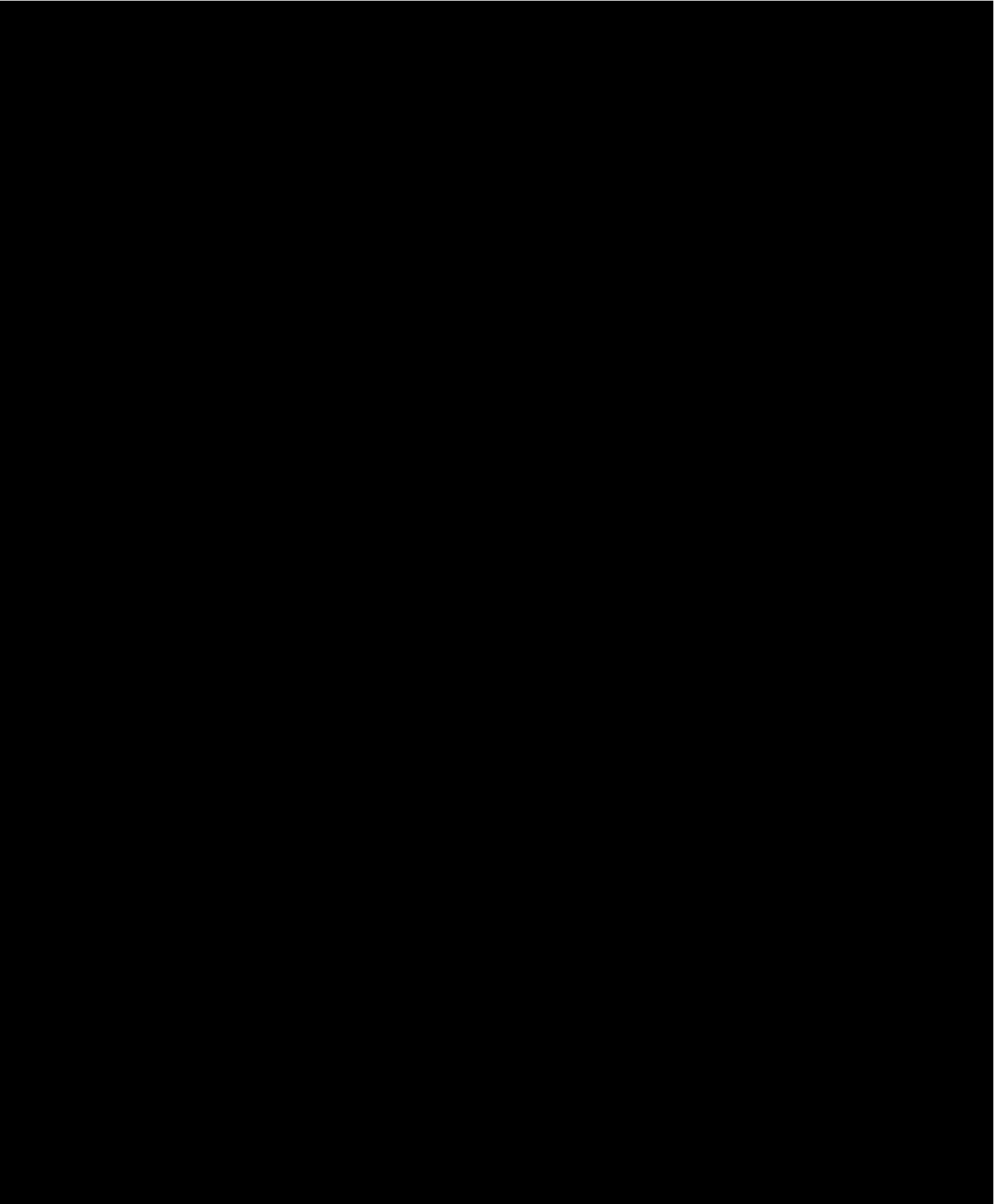


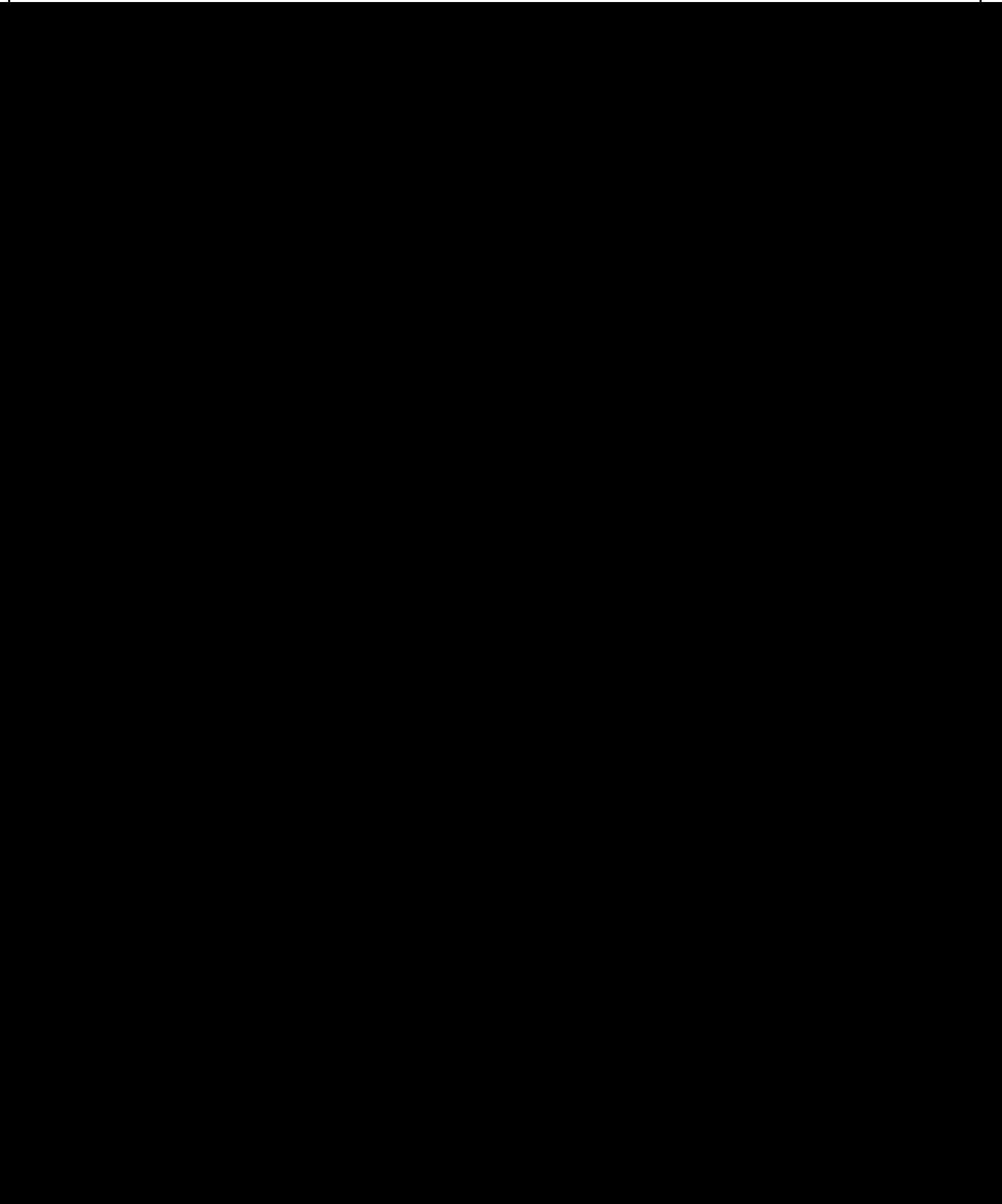


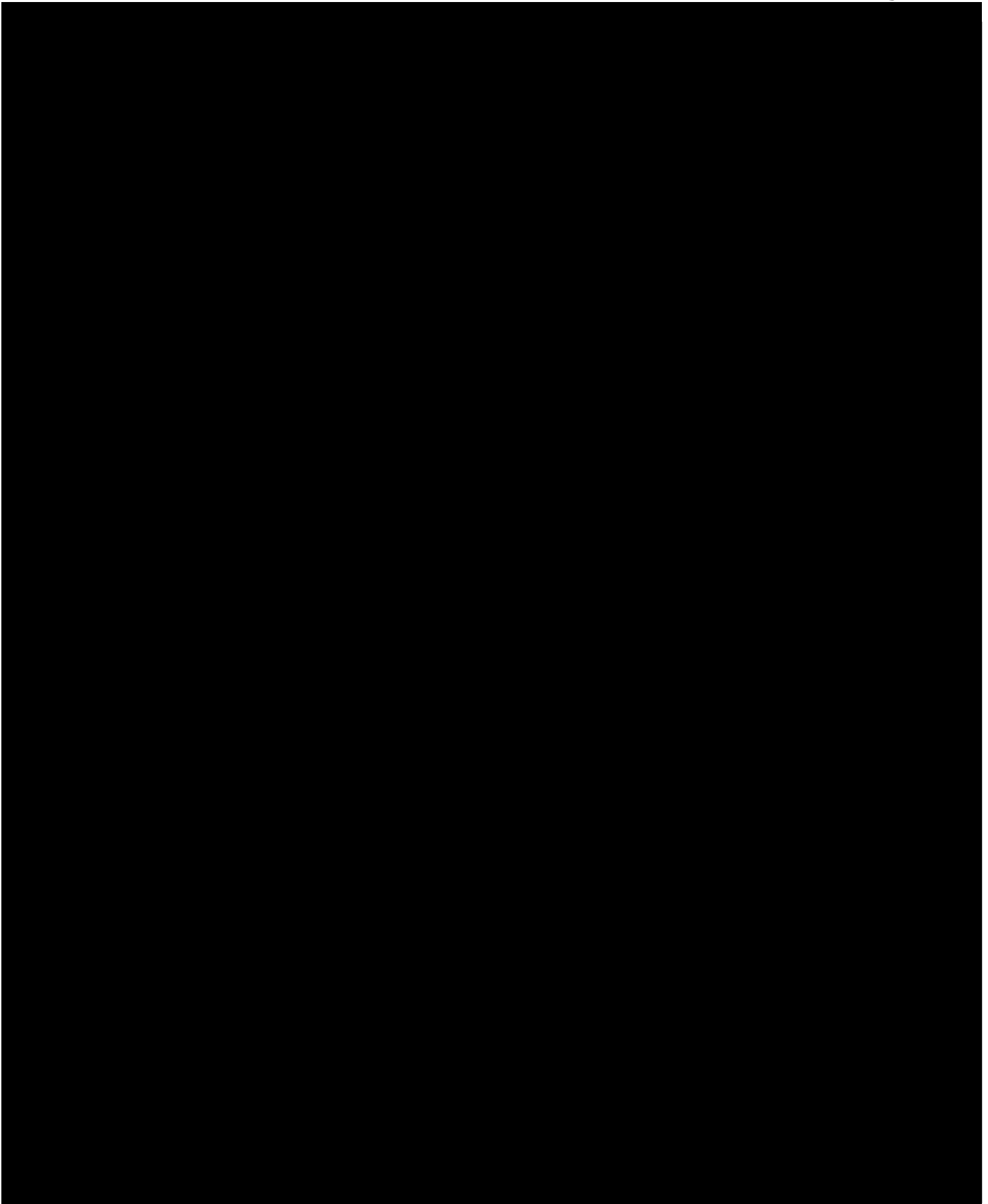


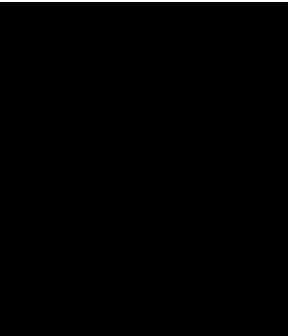










CERTIFICATION OF ELECTRONIC FILING

I certify that the electronic copy sent to the Secretary of the Commission is a true and correct copy of the paper original and that I possess the paper original of the signed document that is available for review by the parties and the adjudicator.

Dated: September 26, 2018

Respectfully submitted,
/s/ Crystal Stapley

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CERTIFICATION OF SERVICE

I HEREBY CERTIFY that on this 26 of September 2018, that I filed the foregoing documents electronically using the FTC's E-Filing System, which will send notification of such filings to:

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The Honorable D. Michael Chappell
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I also hereby certify that I caused a true and correct copy of the foregoing documents to be served upon the following via electronic mail:

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Notice of Electronic Service

I hereby certify that on September 26, 2018, I filed an electronic copy of the foregoing NON-PARTY SMILE SOURCE, LP'S MOTION FOR IN CAMERA TREATMENT (PUBLIC VERSION), with:

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Donald Clark
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I hereby certify that on September 26, 2018, I served via E-Service an electronic copy of the foregoing NON-PARTY SMILE SOURCE, LP'S MOTION FOR IN CAMERA TREATMENT (PUBLIC VERSION), upon:

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I hereby certify that on September 26, 2018, I served via other means, as provided in 4.4(b) of the foregoing NON-PARTY SMILE SOURCE, LP'S MOTION FOR IN CAMERA TREATMENT (PUBLIC VERSION), upon:

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