

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

In the matter of

H&R BLOCK INC.,
a corporation,

HRB DIGITAL LLC,
a limited liability company, and

HRB TAX GROUP, INC.,
a corporation.

DOCKET NO. 9427

**COMPLAINT COUNSEL'S MOTION *IN LIMINE* REGARDING RESPONDENTS'
OTHER EXPERTS' USE OF DATA FROM RON SCHNELL'S EXPERT REPORT**

In a separate motion *in limine*, Complaint Counsel have requested an order striking the 28 tables (and the associated paragraphs, 79-118 and 124-26) in Section VIII of the Amended Expert Report of Ron Schnell (RX0277) and precluding Respondents from offering testimony by any witness about the data therein. Here, Complaint Counsel respectfully move the Court to enter an order striking the portions of Respondents' other expert reports (and the attachments thereto) that cite to, or rely upon, the Section VIII data, and expressly prohibiting those experts—Christopher Gerardi, Punam Keller, and Itamar Simonson—from testifying about opinions from their reports which have cited to, or relied upon, that data.¹

¹ Gerardi's amended report and attachments have been marked as RX0246-54 (amended report excerpted as Ex. 1). Keller's report has been marked as RX0238 (excerpted as Ex. 2). Simonson's report has been marked as RX0255 (excerpted as Ex. 3).

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Standard. “Motions *in limine* are generally used to ensure evenhanded and expeditious management of trials by eliminating evidence that is clearly inadmissible.” *In re Daniel Chapter One*, 2009 FTC LEXIS 86, at *3 (Apr. 20, 2009) (citation omitted).

Basis for Relief. As explained in Complaint Counsel’s separately filed motion regarding the Schnell Section VIII data, (a) Respondents failed to disclose their possession of this data during fact discovery, and (b) Schnell is not a proper fact witness. Despite having withheld this data from Complaint Counsel, Respondents asked Mr. Gerardi and Professors Keller and Simonson to consider it in forming their opinions, and all three did as requested.

Gerardi testified at deposition that he “rel[ie]d upon certain inputs that Mr. Schnell provided” and “didn’t test [Schnell’s] numbers.” Exh. 4 at 53:5-54:1. He amended his own report on September 6 after Schnell amended his. *Id.* at 48:12-50:4. Gerardi’s amended report and exhibits directly refer to Schnell in 12 places: footnote 32 (in paragraph 42); footnote 44 (in paragraph 47); footnote 48 (in paragraph 56); footnote 49 (in paragraph 57); footnote 51 (in paragraph 60); footnote 72 (in paragraph 94); paragraph 97; footnote 84 (in paragraph 104); paragraph 120; and paragraph 124, as well as in Schedule 3.1 (RX0251), and RX0253 (not attached due to size). *See* Exhs. 1, 5 & RX0253.

Gerardi also testified that he received and relied upon a spreadsheet titled “hrb_ftc_data_with_flags_20240827.xlsx,” which he understood Schnell or someone on Schnell’s team had created. *See* Exh. 4 at 41:9-42:12; *see also* Amended Expert Report of Ron Schnell (RX 0277) at ¶ 106. That spreadsheet has been offered by Respondents, over Complaint Counsel’s objection, as RX0380. Gerardi’s amended report cites that spreadsheet in three instances: footnote 47 (in paragraph 55), footnote 52 (in paragraph 61), and footnote 53 (in paragraph 62). *See* Exh. 1. Gerardi also cites that spreadsheet in the attachments to his report

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labeled Schedule 1 (RX0249), Schedule 2 (RX0250), Schedule 3.1 (RX0251), and Schedule 3.2 (RX0252). *See* Exhs. 5-8. In addition to this spreadsheet (RX0380), Gerardi also cites a “CRA workpaper” for Schedule 1 (RX0249). Respondents now seek to introduce this CRA workpaper as RX0254, but it also incorporates data from Schnell’s `hrb_ftc_data_with_flags_20240827.xlsx`. *See* RX0254, “Data” tab (not attached due to file size).

Professors Keller and Simonson each cite the Schnell Section VIII data once, Keller in footnote 70 (in paragraph 41), *see* Exh. 2, and Simonson in footnote 26 (in paragraph 87), *see* Exh. 3.

If Respondents wished to have Mr. Gerardi and Professors Keller and Simonson cite to, and rely upon, Respondents’ own data, Respondents should have timely disclosed its existence, rather than sneaking it in through Schnell after fact discovery closed. Respondents should not now be permitted to introduce opinions by Gerardi, Keller, and Simonson that cite to, and rely upon, improperly withheld data.

Conclusion: Complaint Counsel respectfully request that the Court enter the attached Order.

Dated: October 3, 2024

Respectfully submitted,

By: s/ Joshua A. Doan
Claire Wack, MD Bar No. 1312190275
Simon Barth, MA Bar No. 706122
Christopher E. Brown, VA Bar No. 72765
Joshua A. Doan, DC Bar No. 490879
Federal Trade Commission
600 Pennsylvania Ave., NW, CC-6316
Washington, DC 20580
(202) 326-2836 / cwack@ftc.gov
(202) 326-3317 / sbarth@ftc.gov
(202) 326-2825 / cbrown3@ftc.gov
(202) 326-3187 / jdoan@ftc.gov

Counsel Supporting the Complaint
Federal Trade Commission

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CONFERENCE STATEMENT

Counsel for the moving party has conferred with opposing counsel in an effort in good faith to resolve by agreement the issues raised by the motion and has been unable to reach such an agreement.

/s/ Joshua A. Doan

Joshua A. Doan

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

In the matter of

H&R BLOCK INC.,
a corporation,

HRB DIGITAL LLC,
a limited liability company, and

HRB TAX GROUP, INC.,
a corporation.

DOCKET NO. 9427

[PROPOSED]
ORDER STRIKING PORTIONS OF GERARDI, KELLER, AND SIMONSON REPORTS
BASED ON SCHNELL SECTION VIII DATA AND PROHIBITING TESTIMONY
ABOUT OPINIONS DISCUSSED THEREIN

On October 3, 2024, Complaint Counsel filed a Motion *in Limine* asking the Court to strike the portions of the expert reports (and attachments thereto) of Christopher Gerardi (RX0246-54), Punam Keller (RX0238), and Itamar Simonson (RX0255) that rely upon Respondents' data first disclosed in Section VIII of Ron Schnell's Amended Expert Report (RX0277), and expressly prohibiting Mr. Gerardi, Prof. Keller, and Prof. Simonson from testifying about opinions for which their reports have cited to, or relied upon, that data. On October 10, 2024, Respondents filed a Response to Complaint Counsel's Motion. Upon consideration of this Motion and the Response thereto, the Motion is hereby **GRANTED**.

It is hereby ordered that the following portions of the Gerardi, Keller, and Simonson expert reports and related exhibits are struck from the record:

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- As to Mr. Gerardi, in RX0246, footnote 32 (and paragraph 42); footnote 44 (and paragraph 47); footnote 47 (and paragraph 55); footnote 48 (and paragraph 56); footnote 49 (and paragraph 57); footnote 51 (and paragraph 60); footnote 52 (and paragraph 61); footnote 53 (and paragraph 62); footnote 72 (and paragraph 94); paragraph 97; footnote 84 (and paragraph 104); paragraph 120; and paragraph 124; as well as RX0249, RX0250, RX0251, RX0252, RX0253, RX0254, and RX0380;
- As to Prof. Keller, footnote 70 (and paragraph 41); and
- As to Prof. Simonson, footnote 26 (and paragraph 87).

It is further ordered that Mr. Gerardi, Prof. Keller, and Prof. Simonson may not testify about the opinions discussed in the struck portions of their reports or exhibits, or any other opinions formed in reliance on data from Section VIII of Ron Schnell's Amended Expert Report.

SO ORDERED.

Dated:

Hon. Jay L. Himes
Administrative Law Judge

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CERTIFICATE OF SERVICE

I hereby certify that on October 3, 2024, I filed the foregoing Complaint Counsel's Motion *in Limine* Regarding Respondents' Other Experts' Use of Data from Ron Schnell's Expert Report electronically using the FTC's E-Filing system, and I caused courtesy copies to be sent via email to:

April Tabor
Office of the Secretary
Federal Trade Commission
600 Pennsylvania Avenue, NW
Suite CC-5610
Washington, DC 20580
ElectronicFilings@ftc.gov

*Secretary of the Commission
Clerk of the Court*

Hon. Jay L. Himes
Administrative Law Judge
Federal Trade Commission
600 Pennsylvania Avenue, NW
Suite H-110
Washington, DC 20580

Administrative Law Judge

I further certify that on October 3, 2024, I caused the foregoing document to be served via email on:

Antonio F. Dias
Erika Whyte
Angela Korge
Jones Day
500 Grant Street, Suite 4500
Pittsburgh, PA 15219
clsnyder@jonesday.com
ktuttle@jonesday.com

Joseph Boylan
Jones Day
555 S. Flower Street
Los Angeles, CA 90071
jboylan@jonesday.com

Courtney L. Snyder
Kasey Tuttle
Jones Day
500 Grant Street, Suite 4500
Pittsburgh, PA 15219
clsnyder@jonesday.com
ktuttle@jonesday.com

Carol A. Hogan
Jones Day
110 North Wacker Drive
Suite 4800
Chicago, IL 60606
chogan@joneday.com

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Hashim M. Mooppan
Jones Day
51 Louisiana Avenue NW
Washington, DC 20001
hmmooppan@jonesday.com

Erin Sindberg Porter
Jones Day
90 South Seventh Street
Suite 4950
Minneapolis, MN 55402
esindbergporter@jonesday.com

Amanda L. Dollinger
Jones Day
250 Vesey Street
New York, NY 10281
adollinger@jonesday.com

*Attorneys for Respondents, H&R Block, Inc.
HRB Digital LLC, and HRB Tax Group, Inc.*

/s/ Joshua A. Doan
Joshua A. Doan

EXHIBIT 1

UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION

IN THE MATTER OF

H&R BLOCK, INC.,
HRB DIGITAL LLC
HRB TAX GROUP, INC.

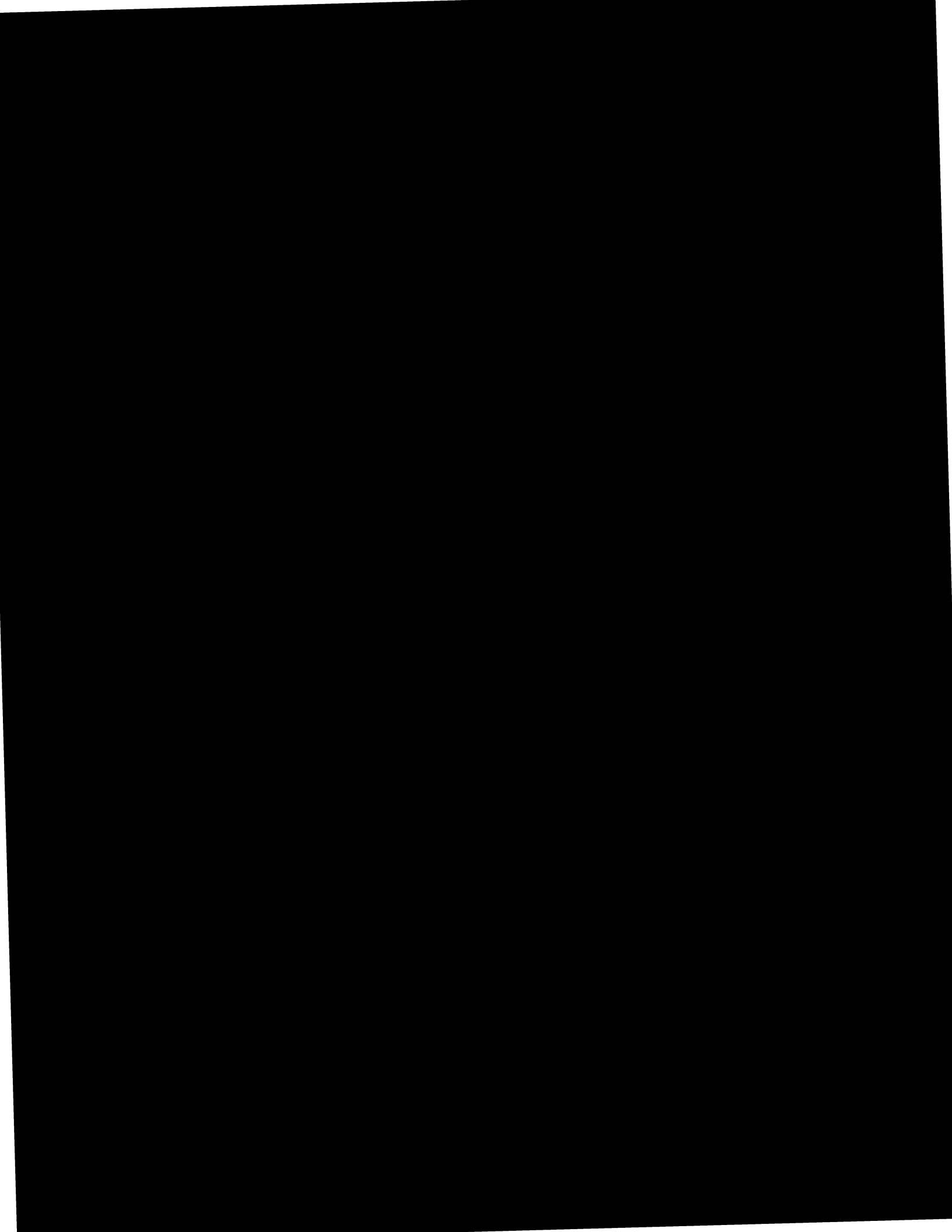
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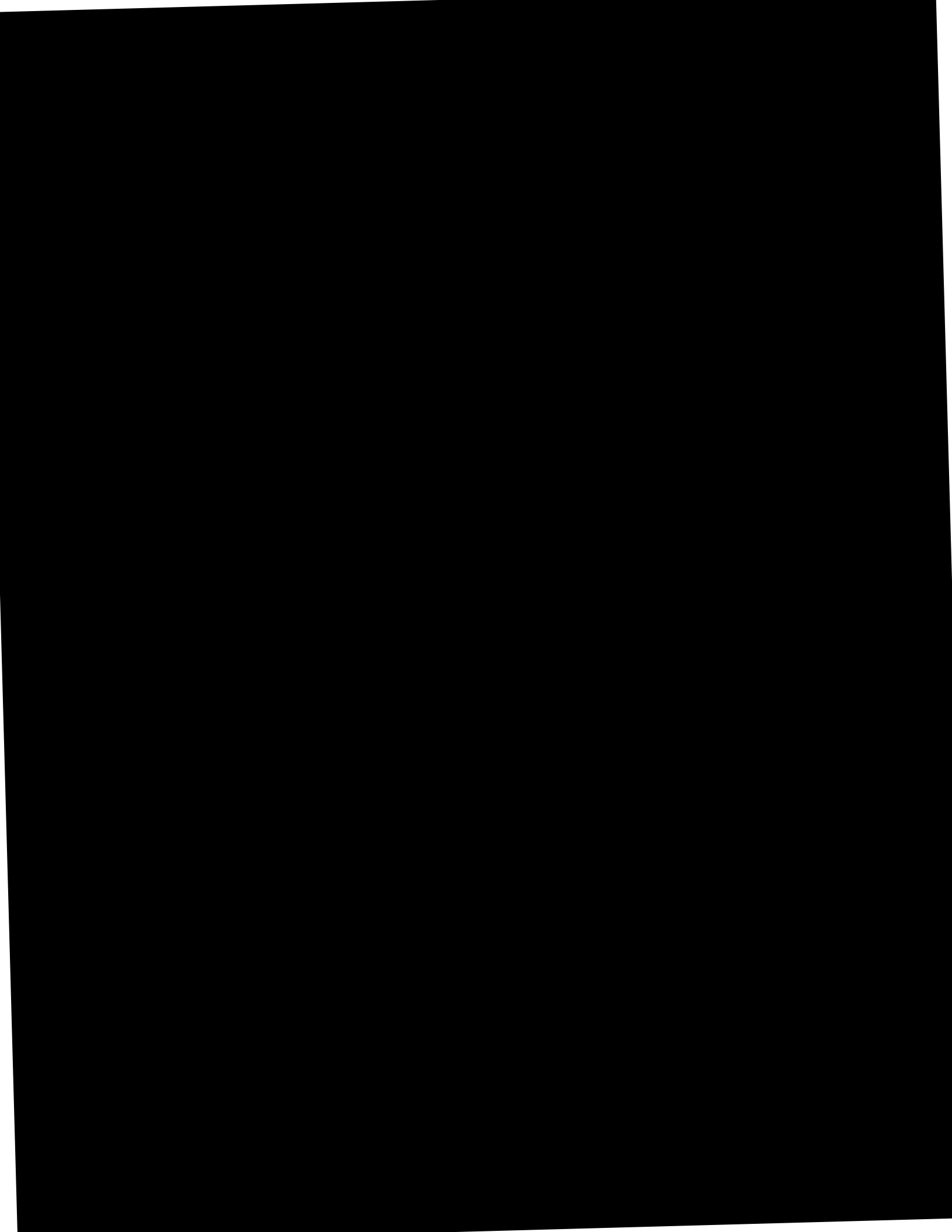
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CHRISTOPHER GERARDI
VICE PRESIDENT
CHARLES RIVER ASSOCIATES

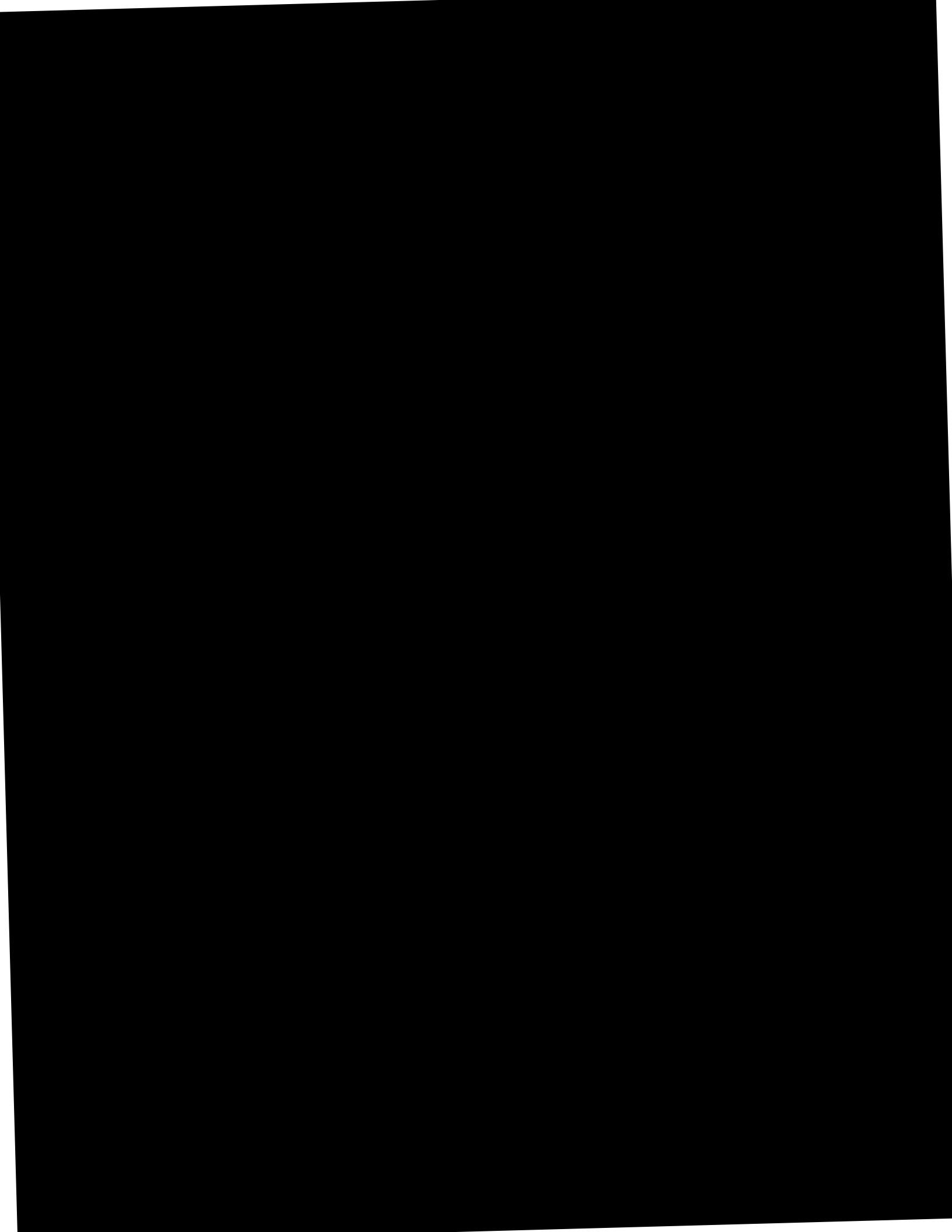
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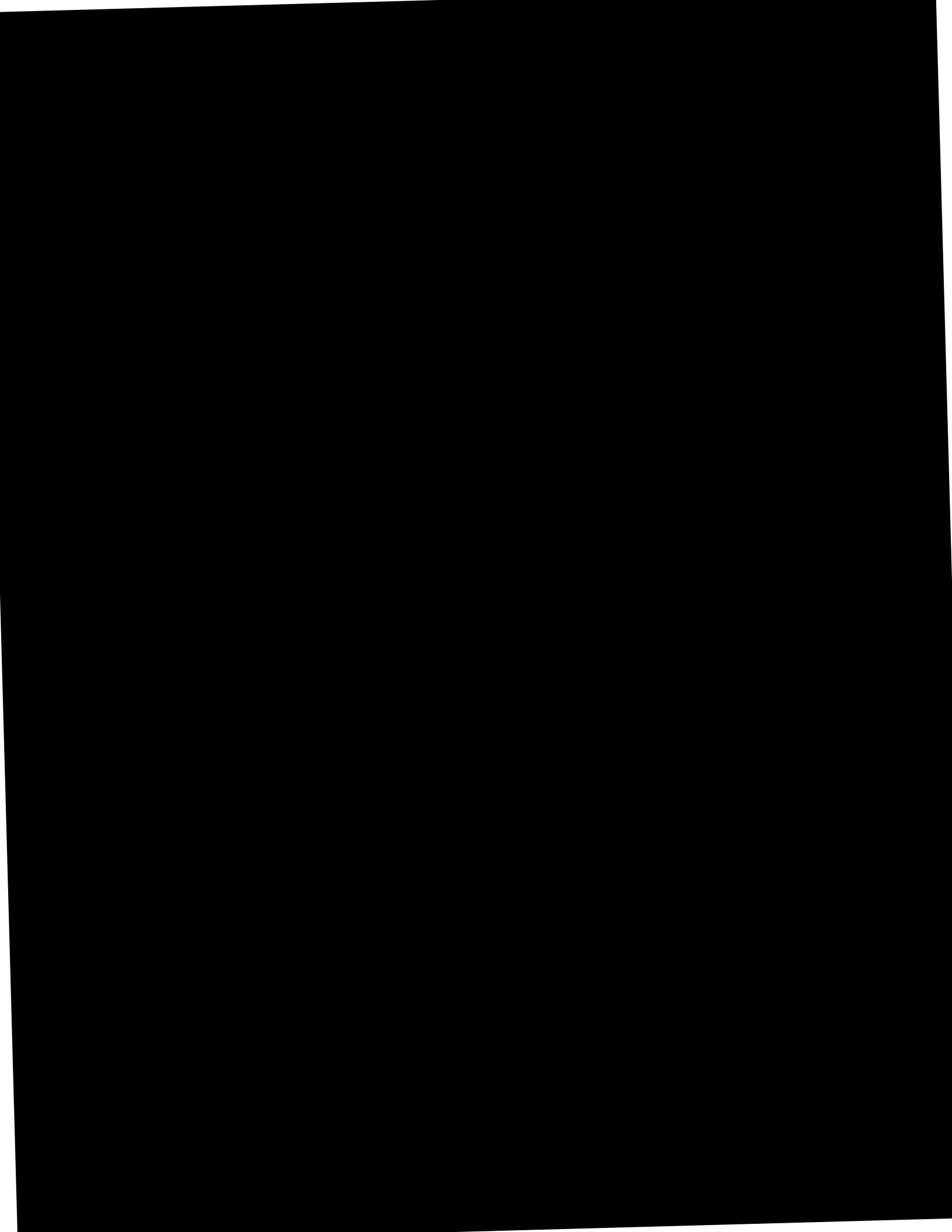
NON-PUBLIC & CONFIDENTIAL – FTC DOCKET NO. 9427

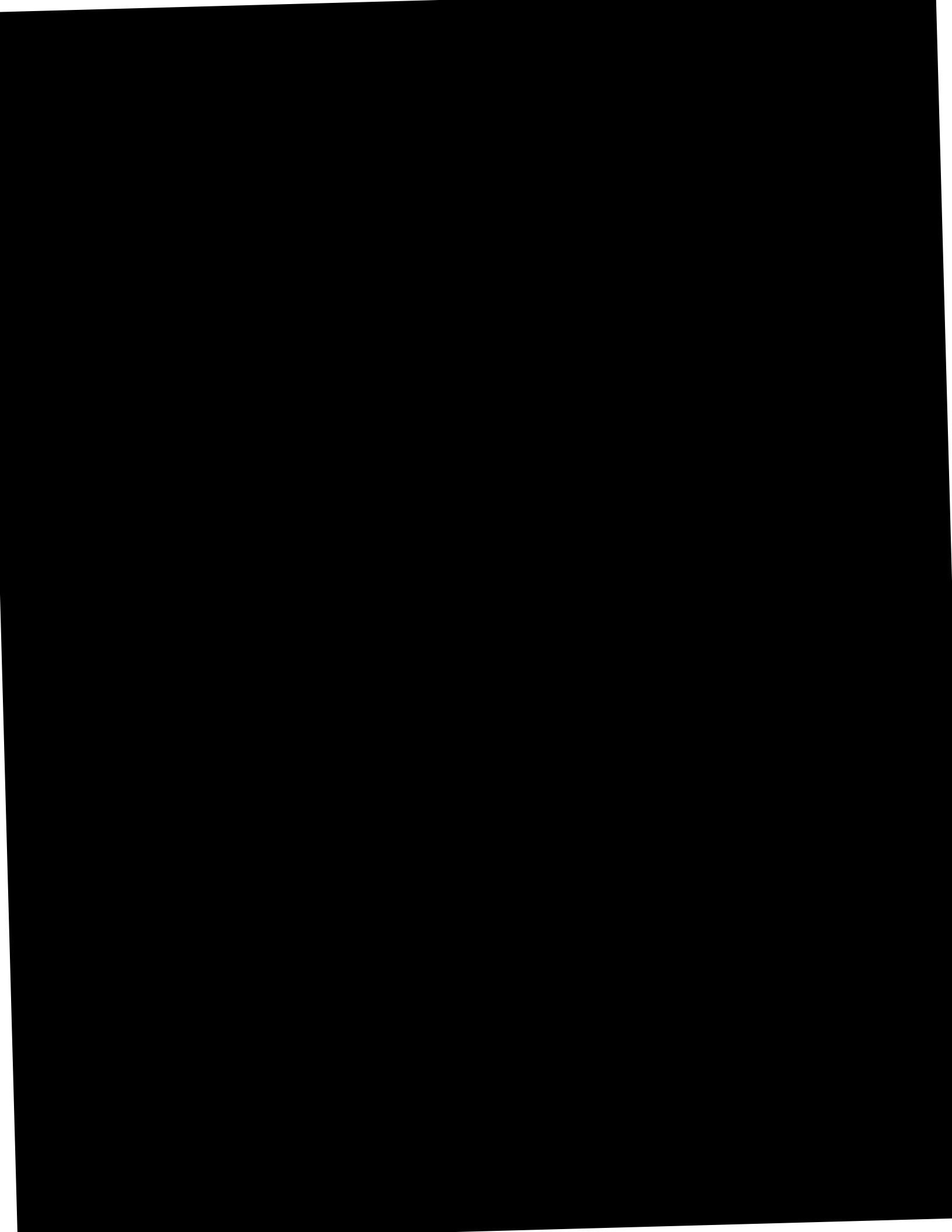
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01

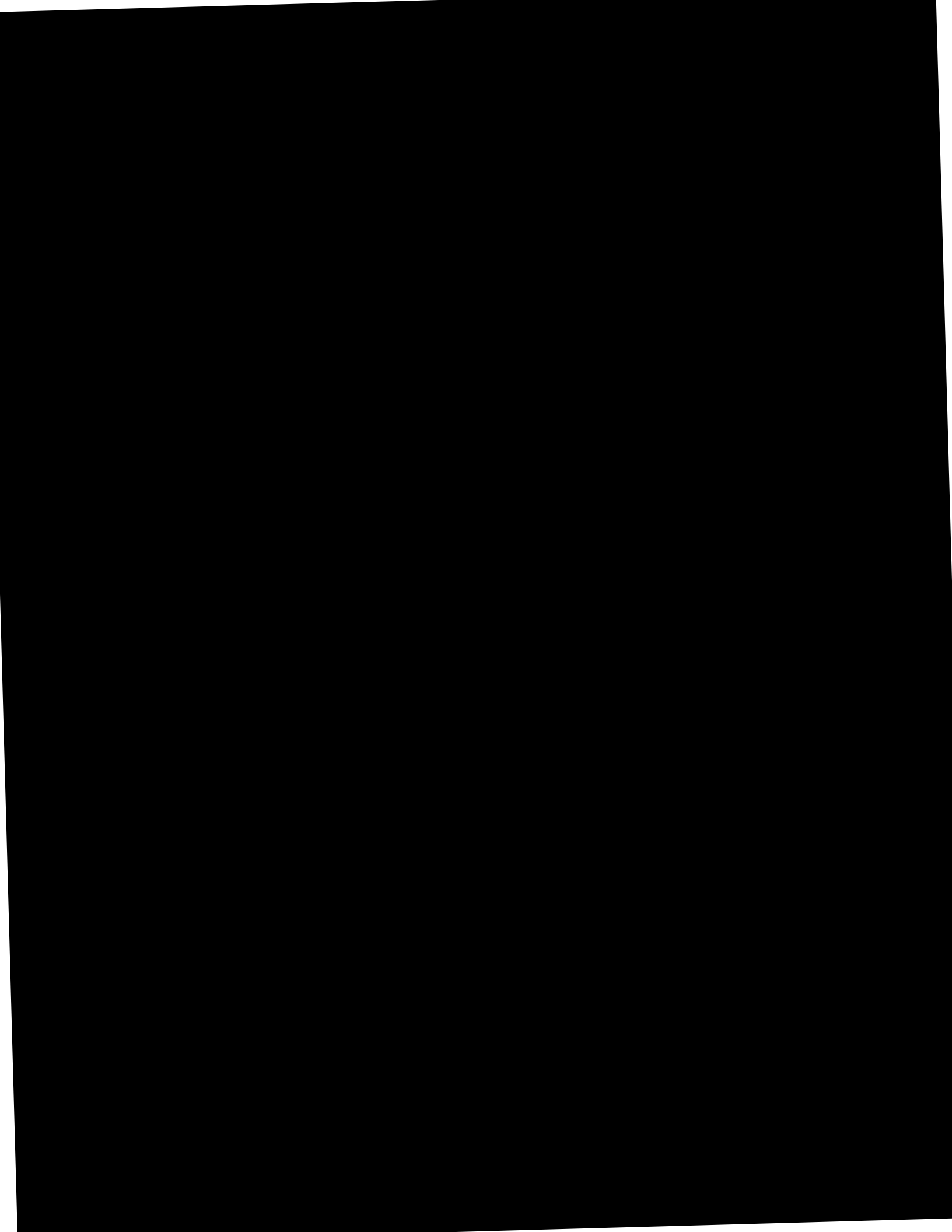


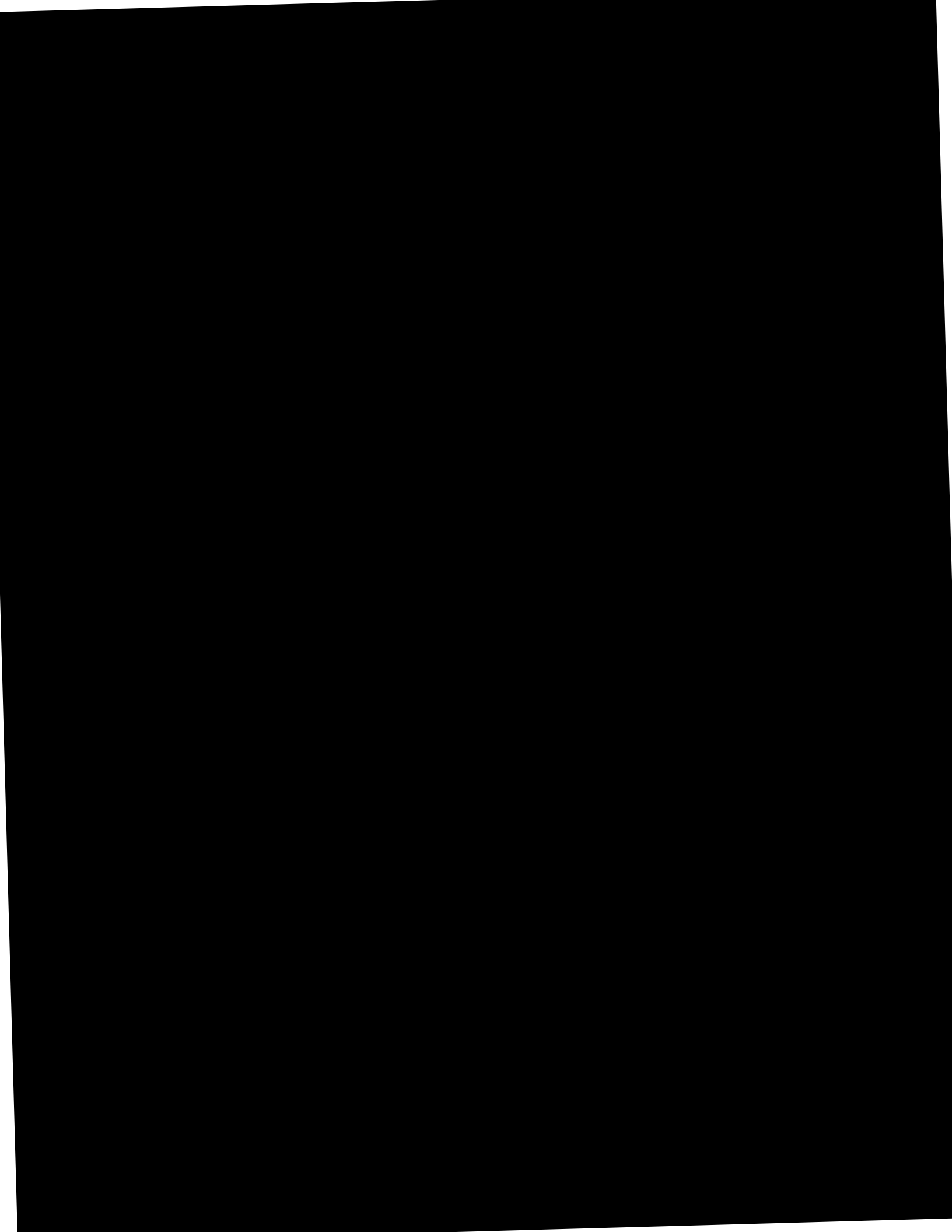


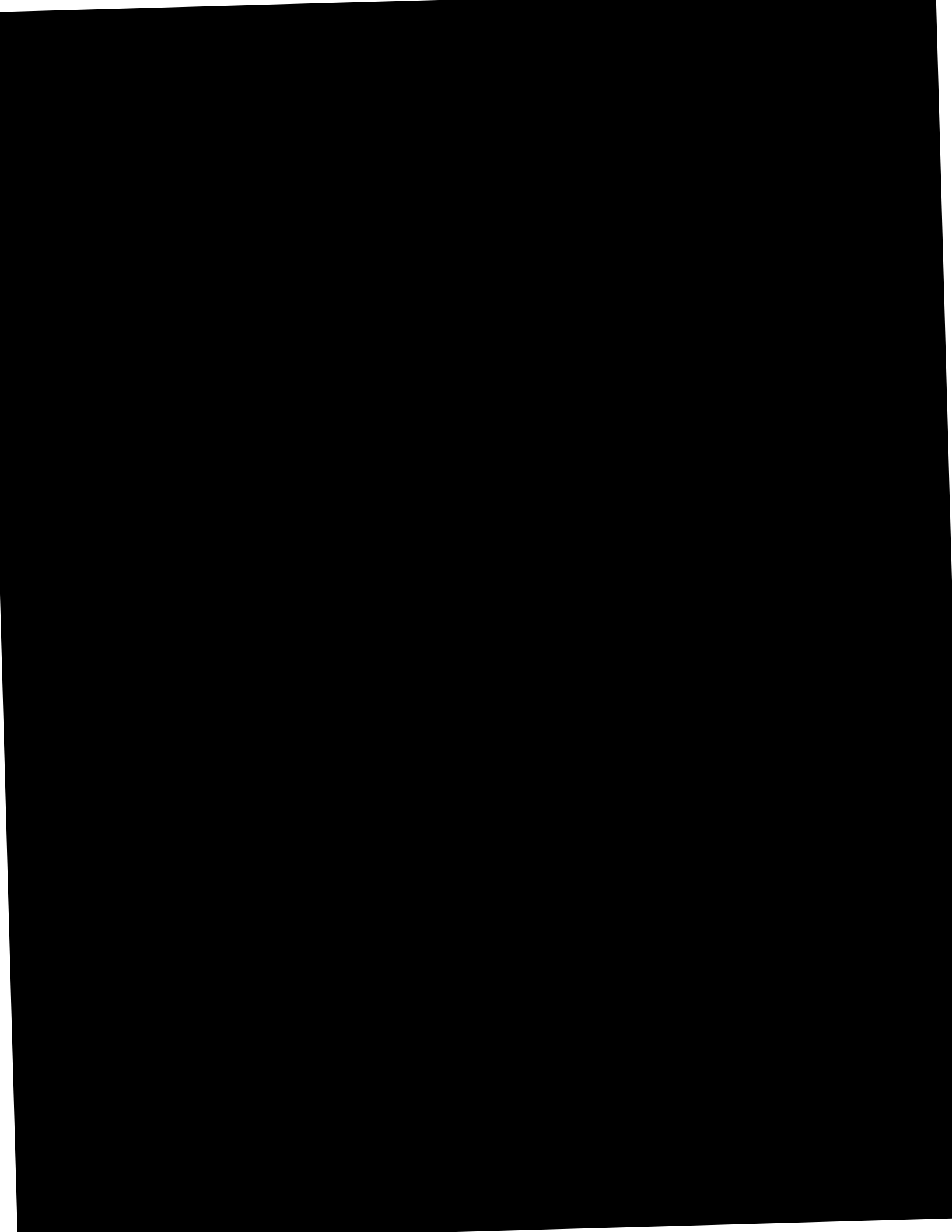


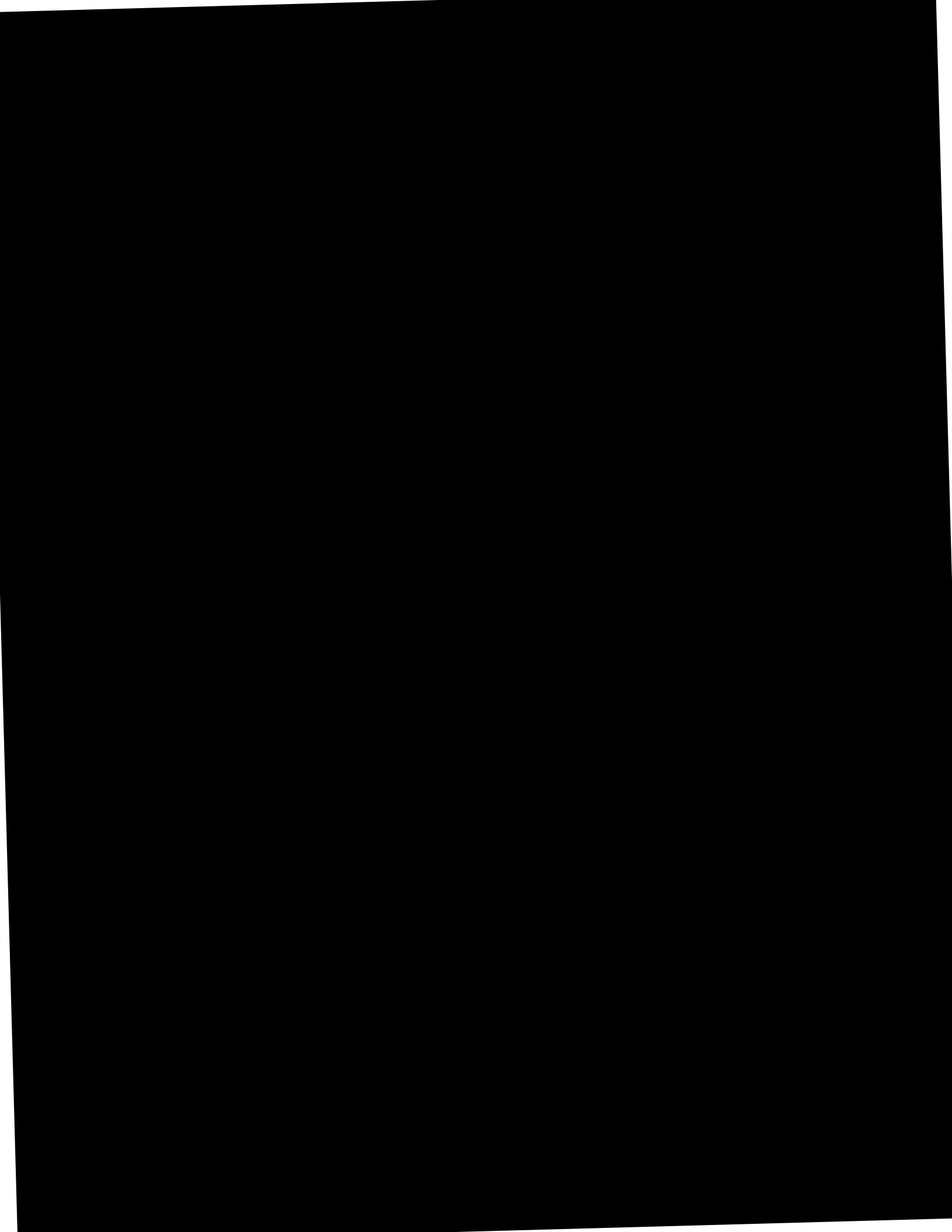


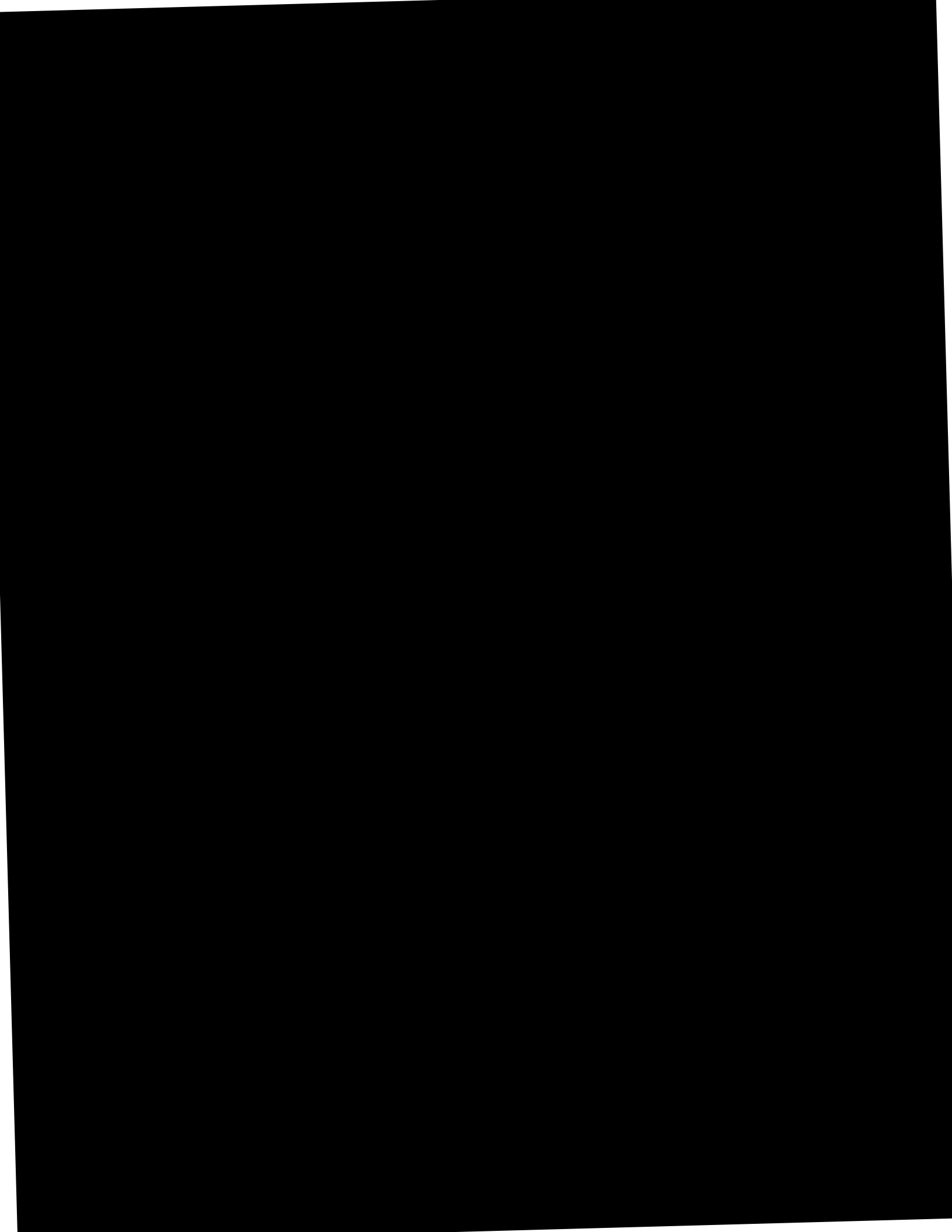


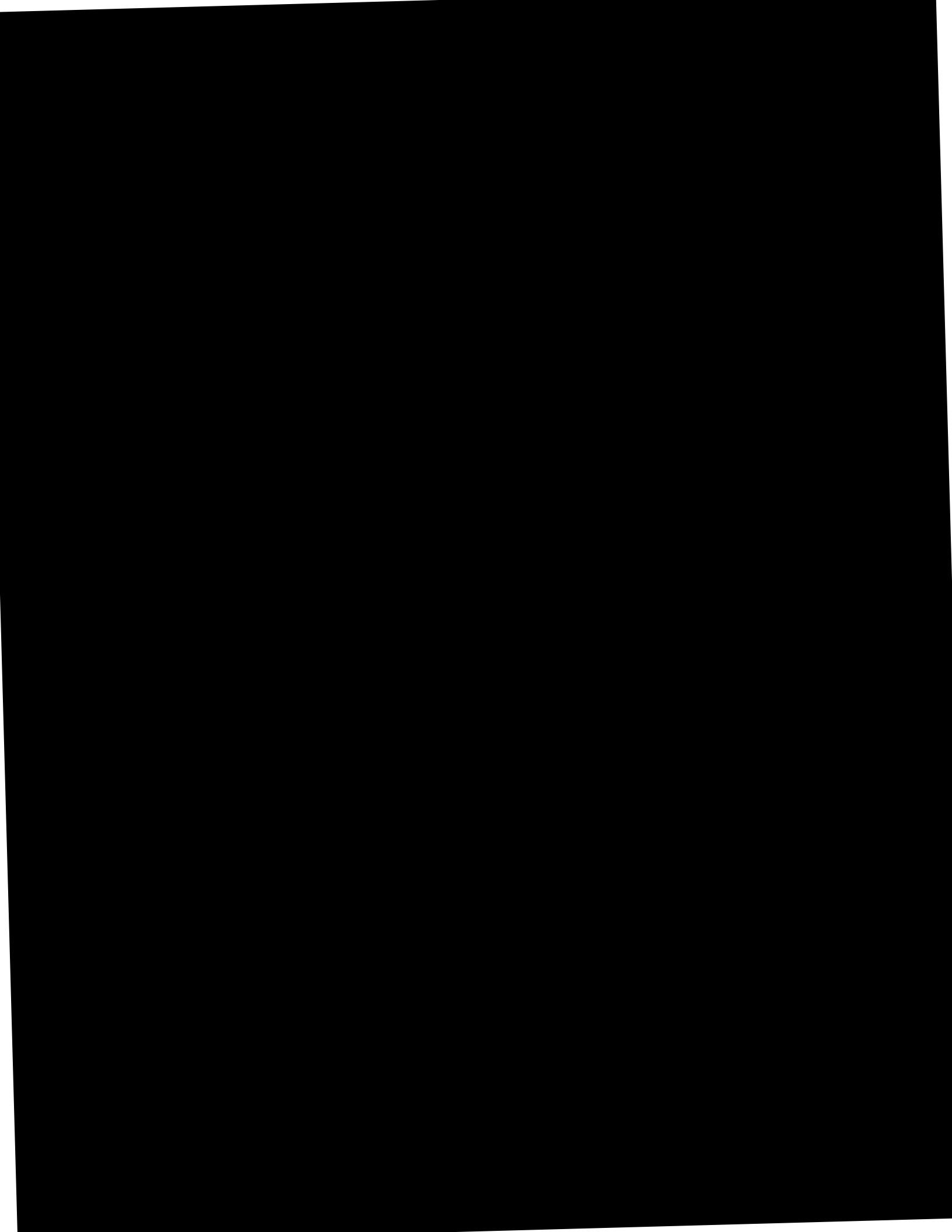


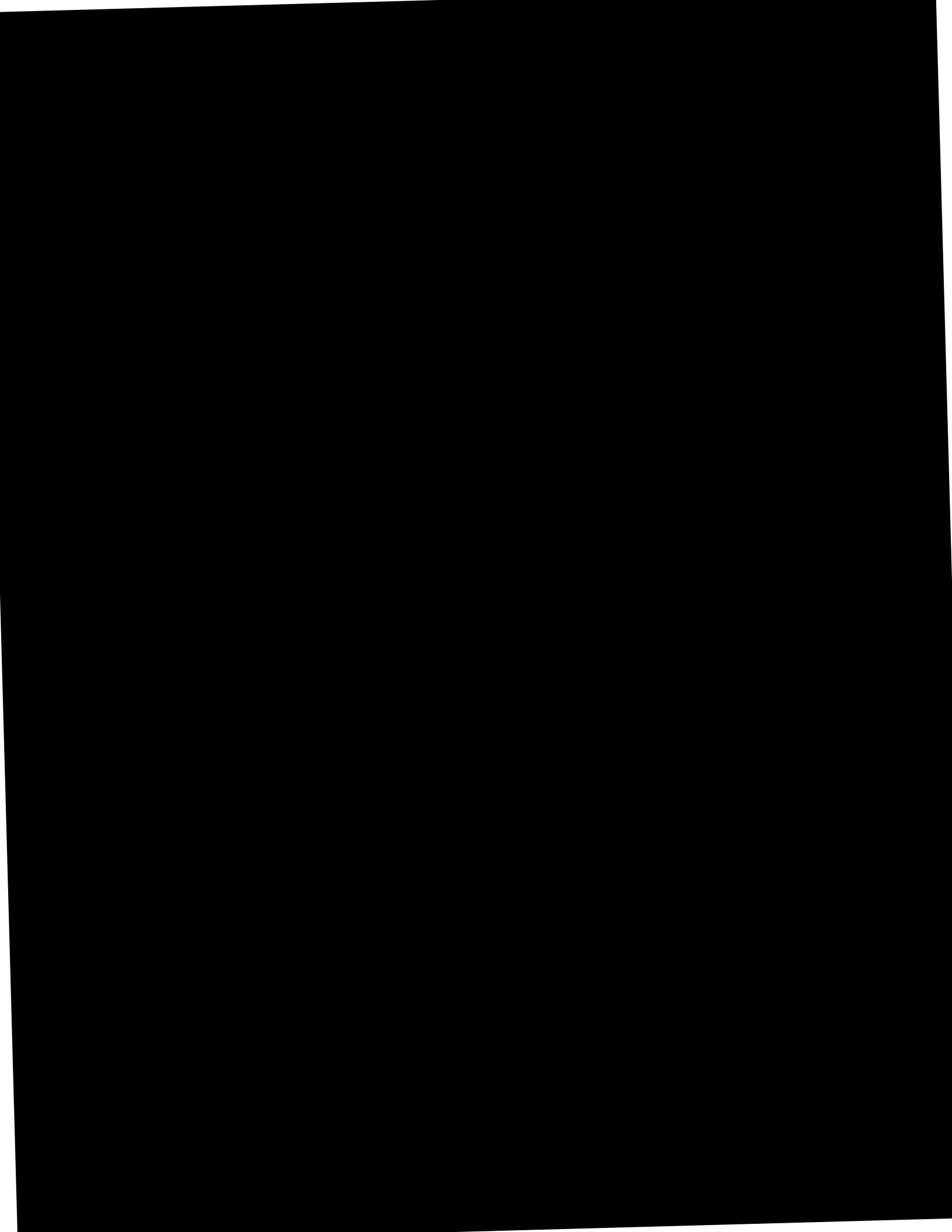


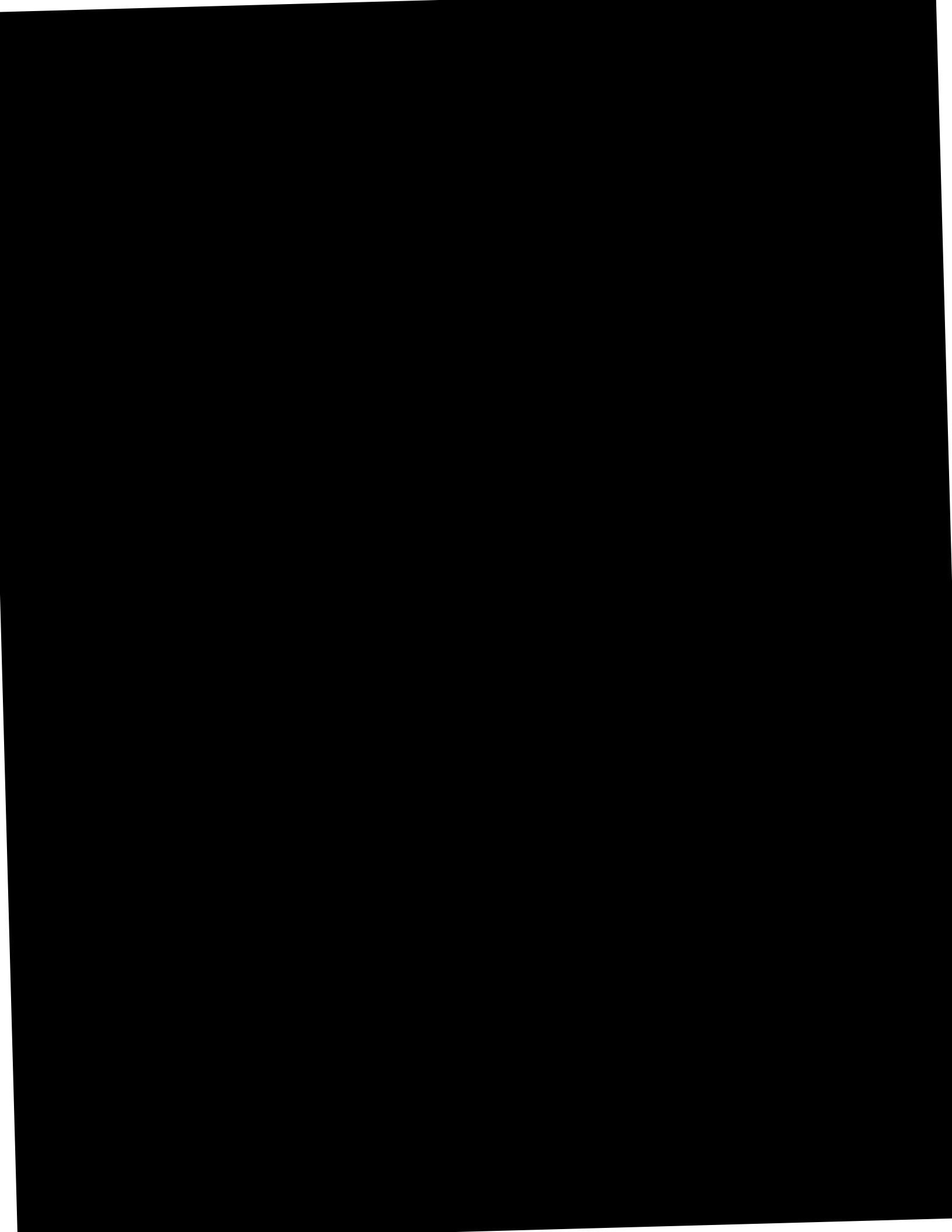


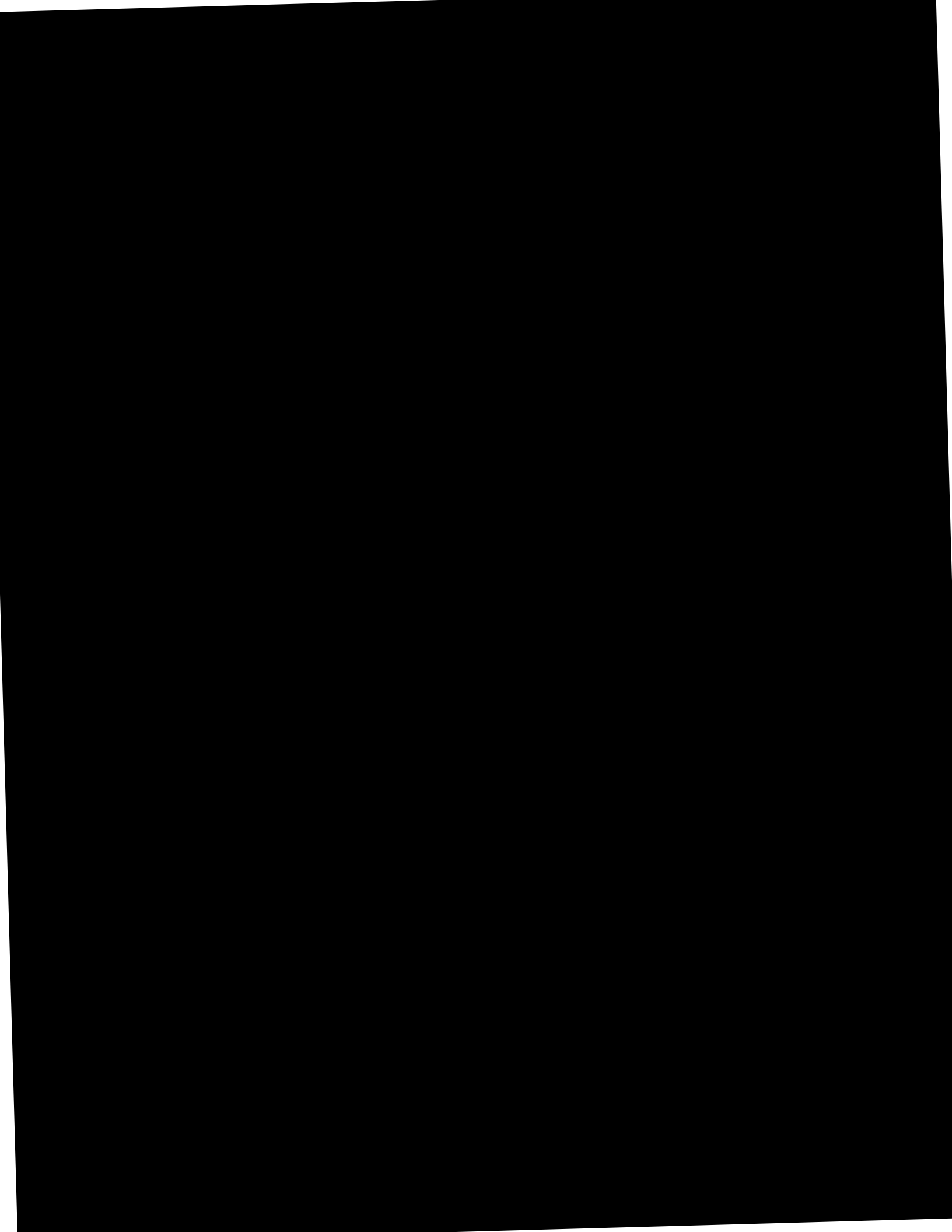


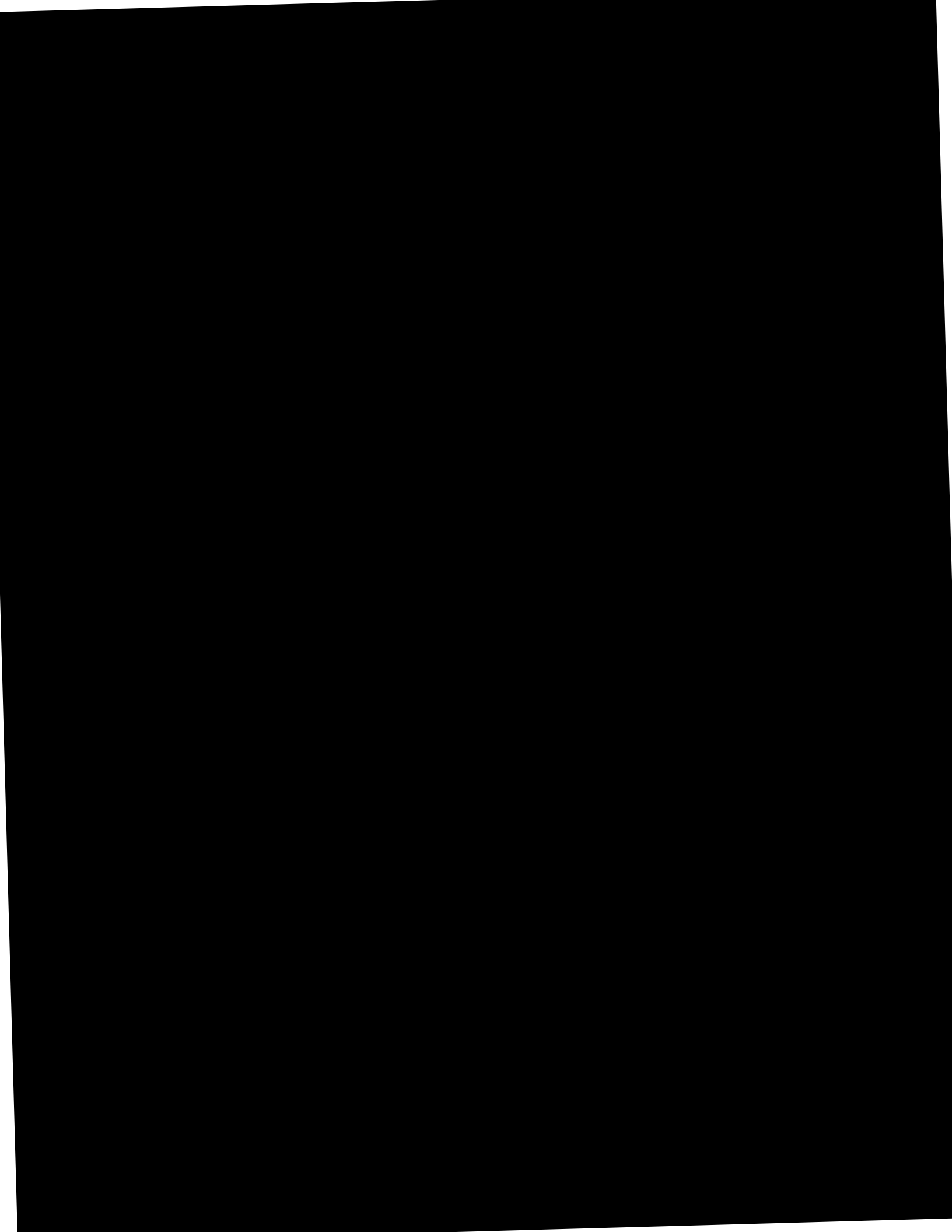


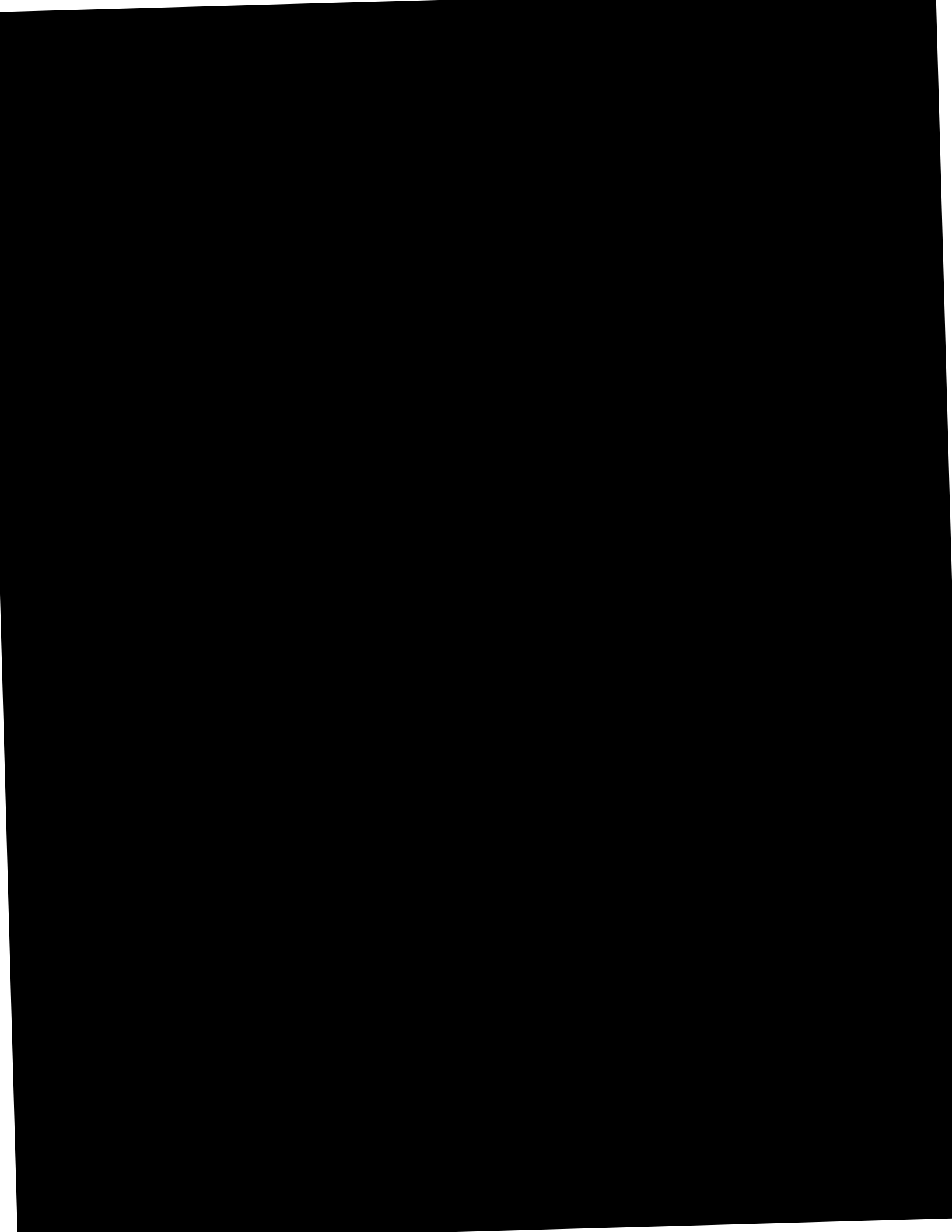


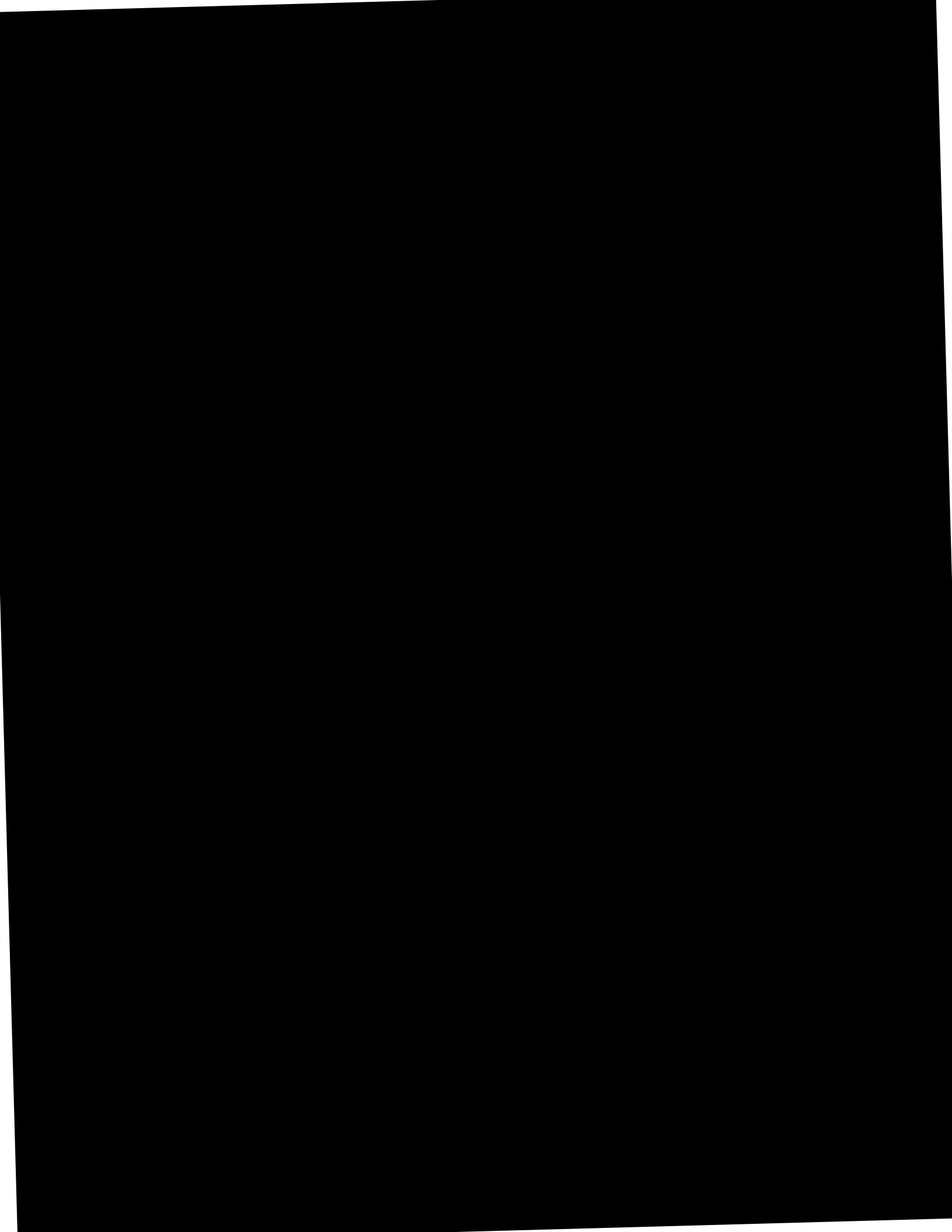


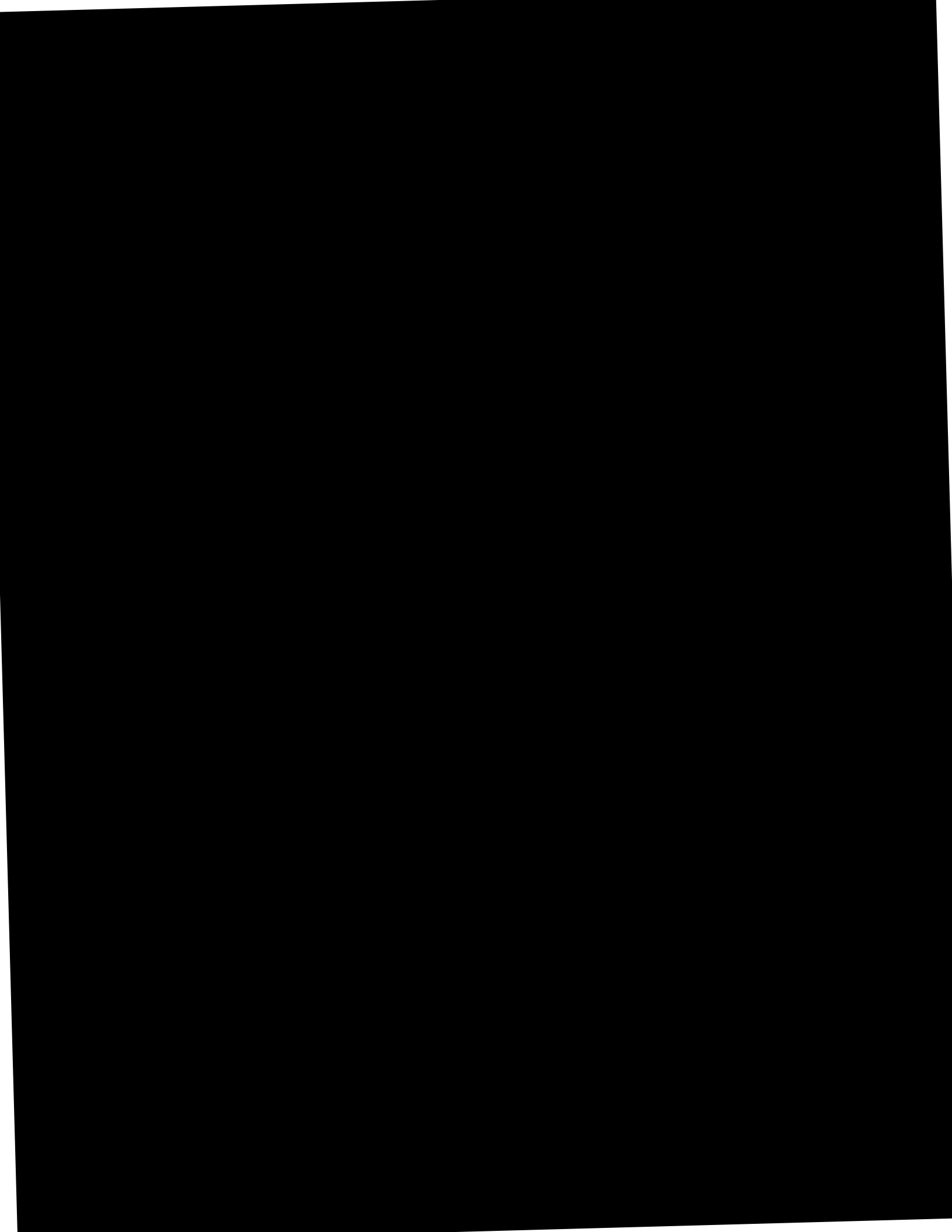


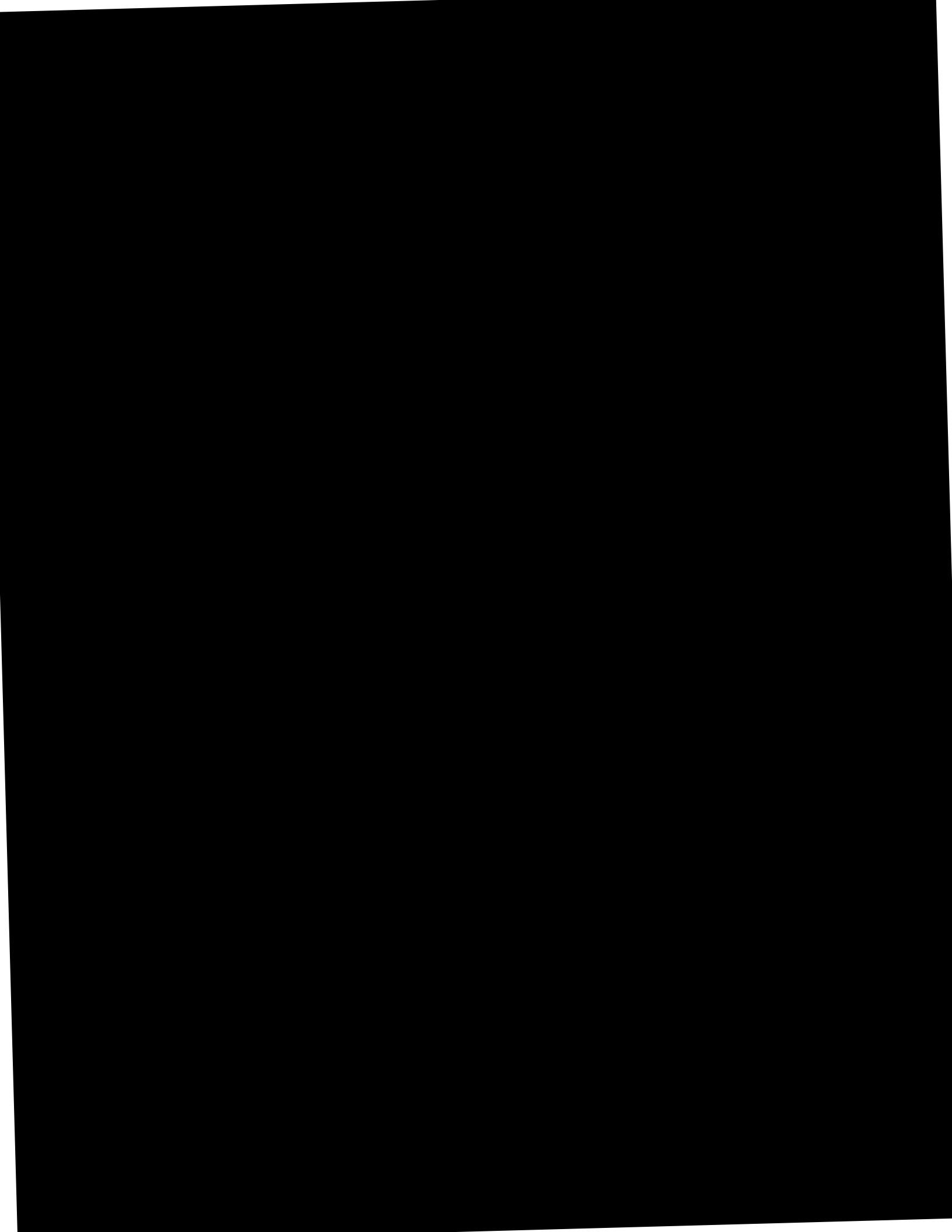


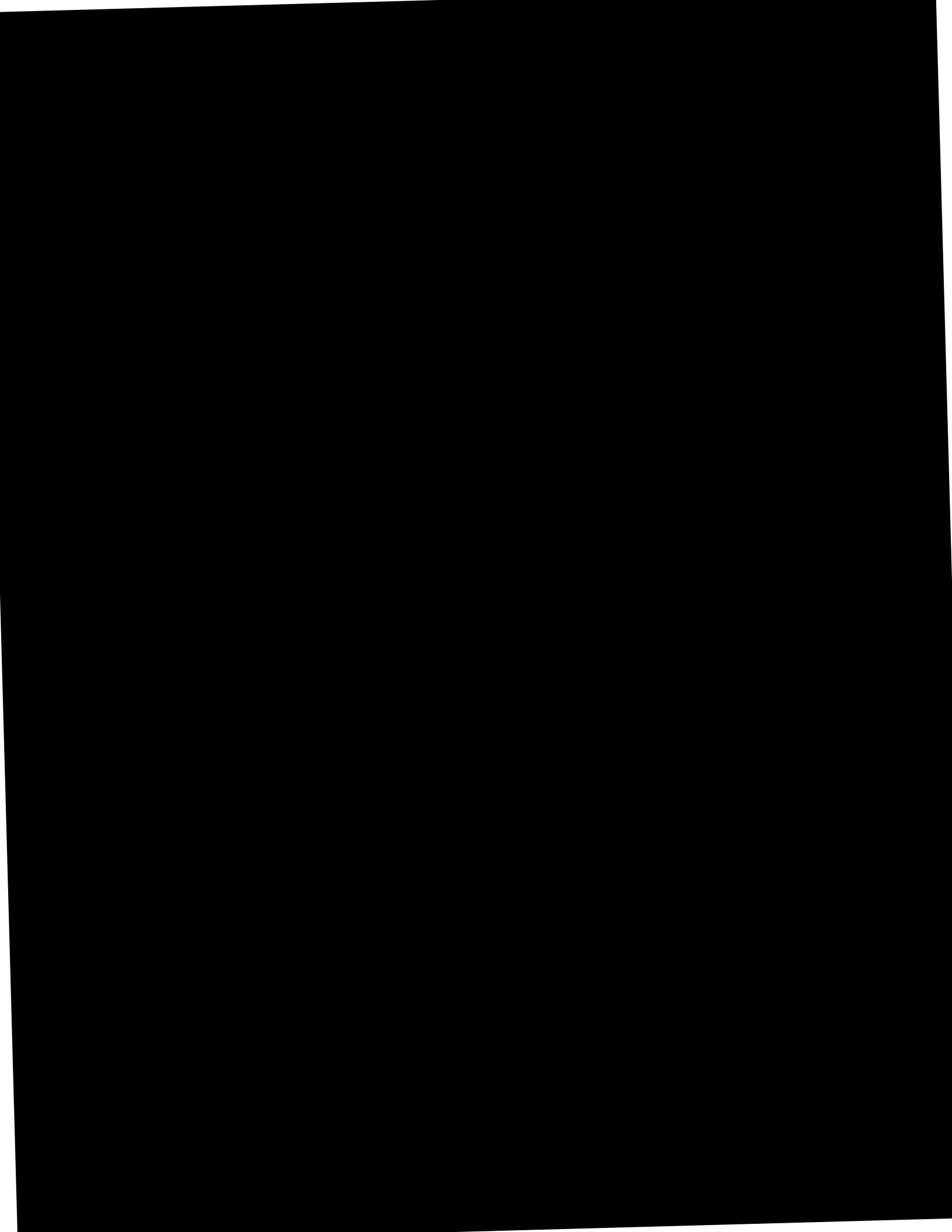


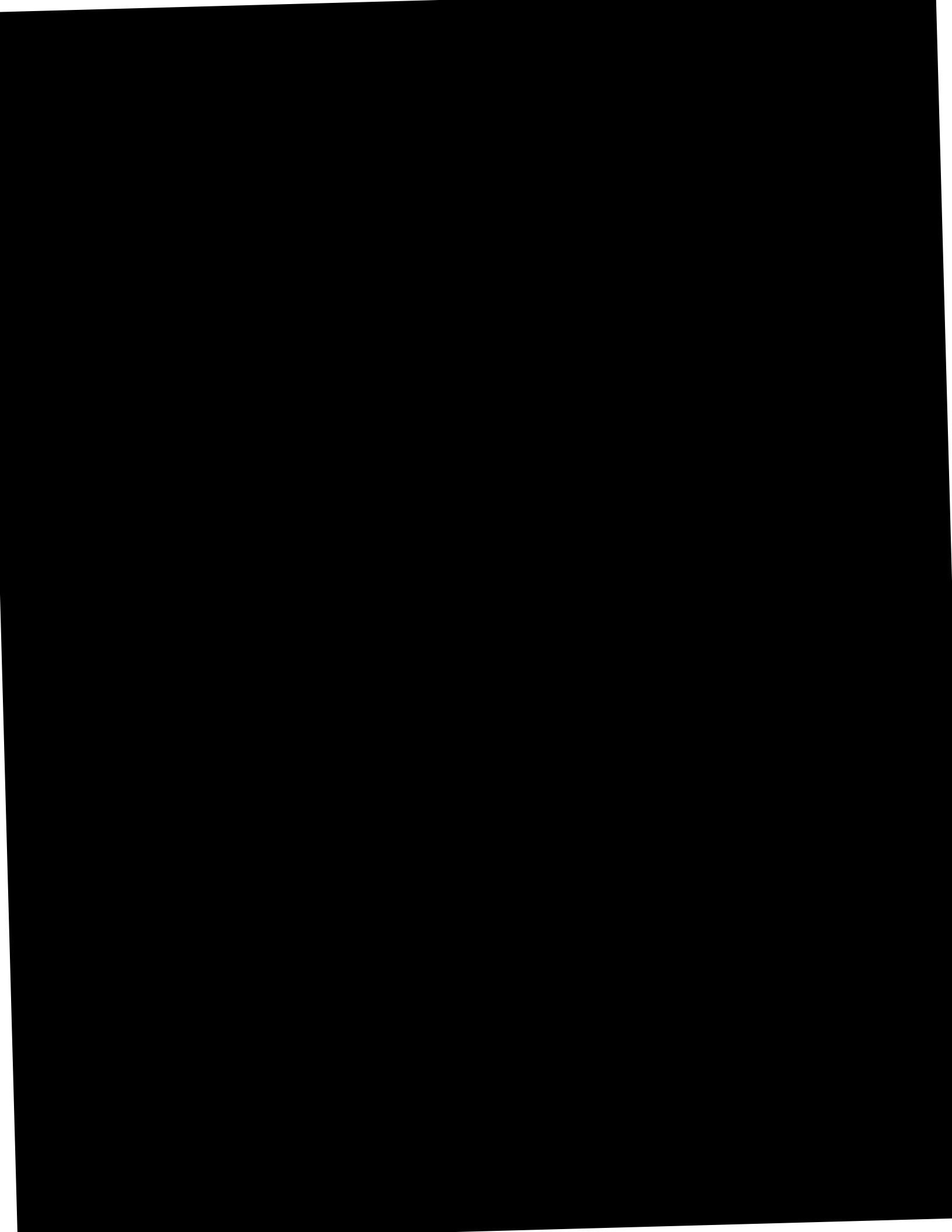


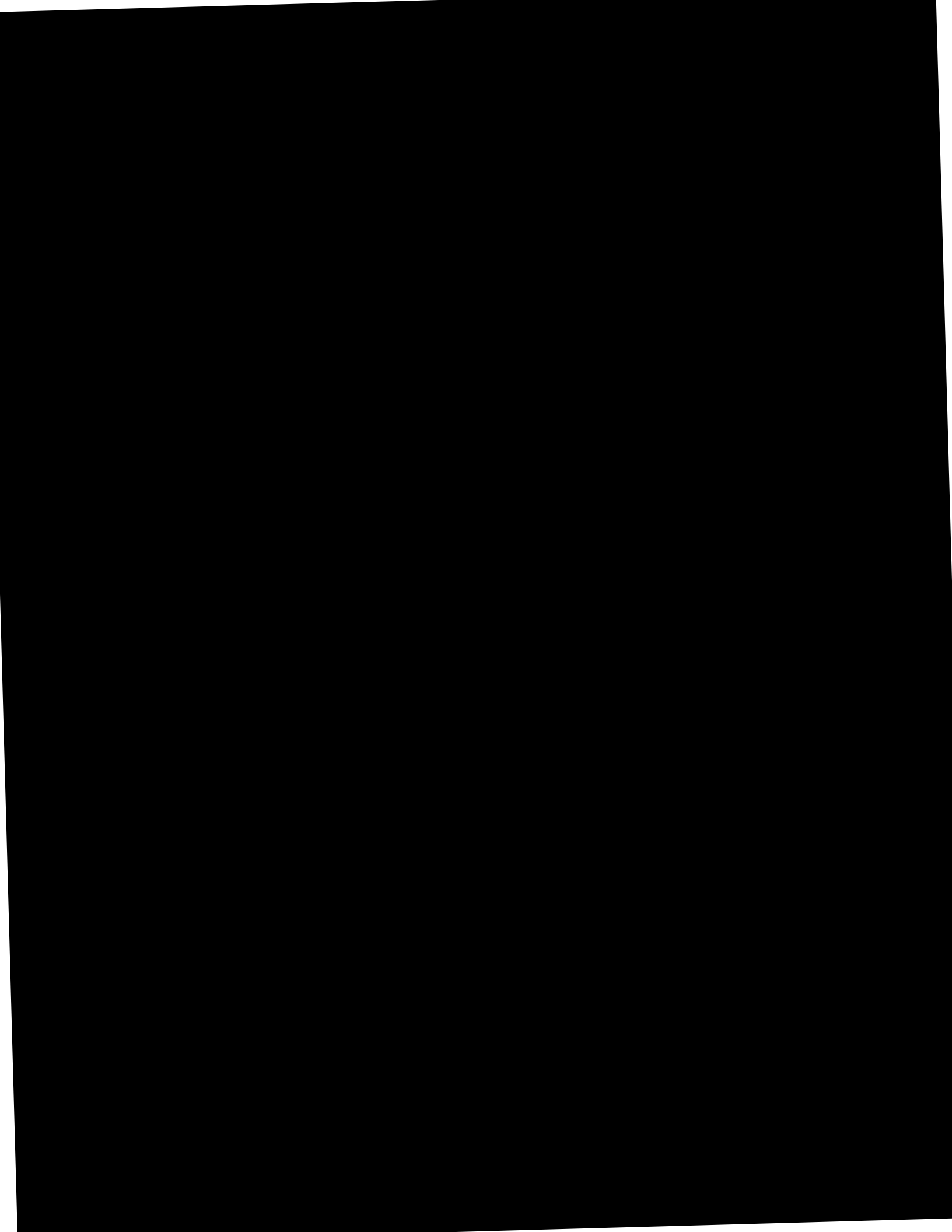












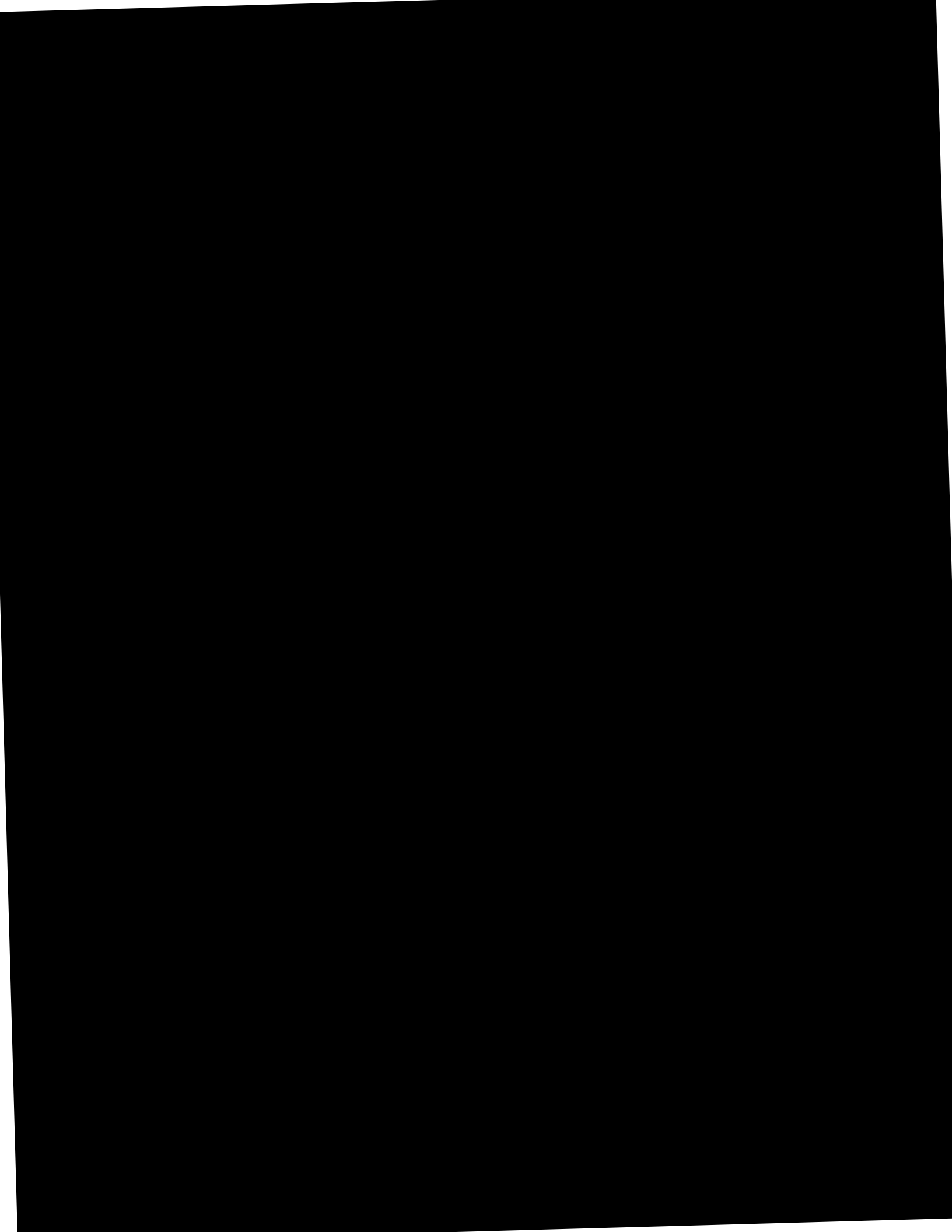


EXHIBIT 2

NONPUBLIC AND CONFIDENTIAL

**UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION**

In the Matter of:

H&R BLOCK INC., a corporation,

HRB DIGITAL LLC, a limited liability
company, and

HRB TAX GROUP, INC., a corporation.

Docket No. 9427

**EXPERT REPORT OF PUNAM A. KELLER, PH.D.
AUGUST 30, 2024**

EXHIBIT

02

EXHIBIT 3

UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION

In the matter of

H&R BLOCK INC.,
a corporation,

HRB DIGITAL LLC,
a limited liability company, and

HRB TAX GROUP, INC.,
a corporation.

DOCKET NO. 9427

EXPERT REPORT OF ITAMAR SIMONSON

August 30, 2024

EXHIBIT
03

EXHIBIT 4

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In the Matter of:

H&R Block and HRB Tax Group

September 19, 2024
Christopher Gerardi

Condensed Transcript with Word Index



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

EXHIBIT
04

EXHIBIT 5

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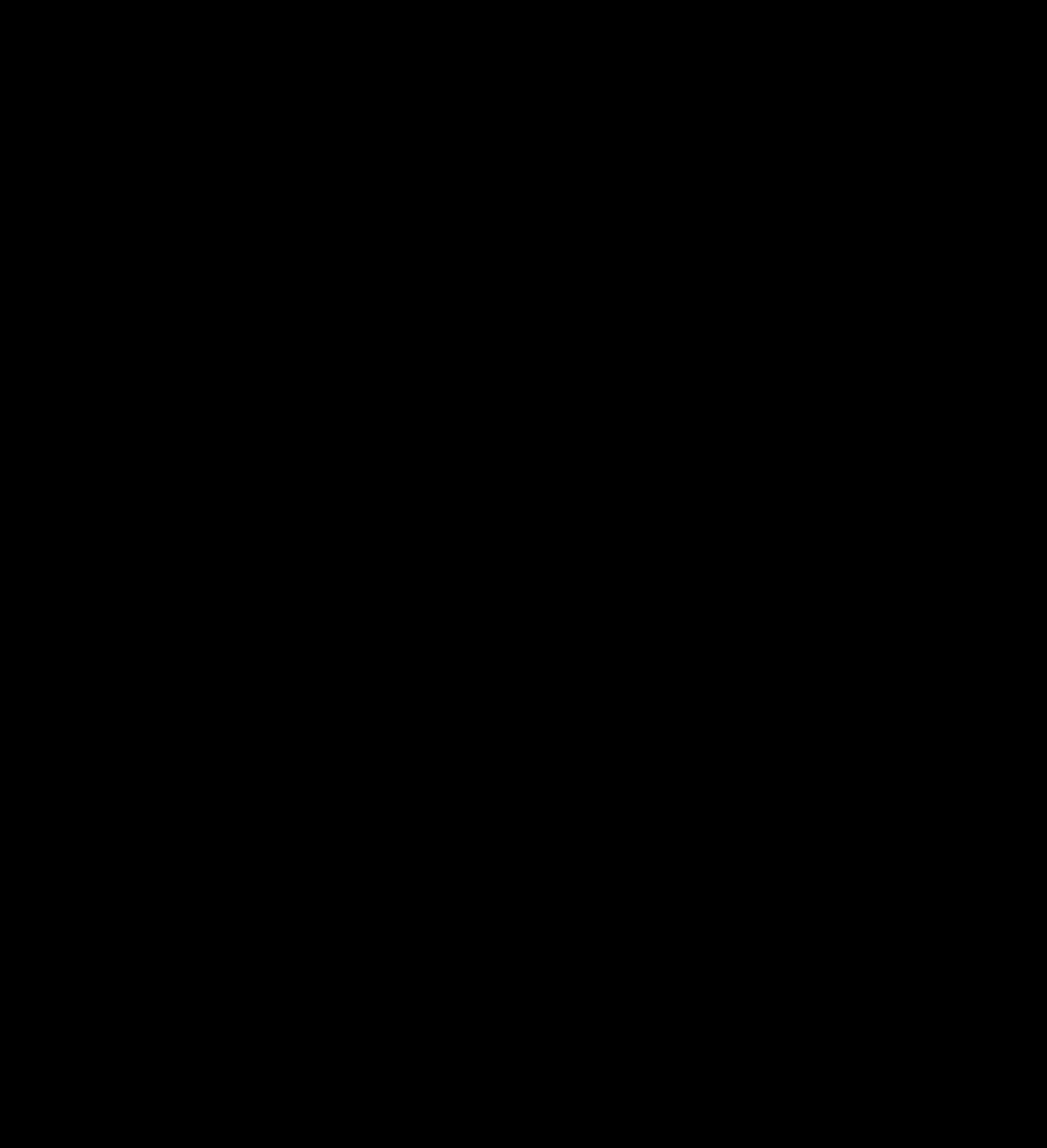


EXHIBIT
05

EXHIBIT 6

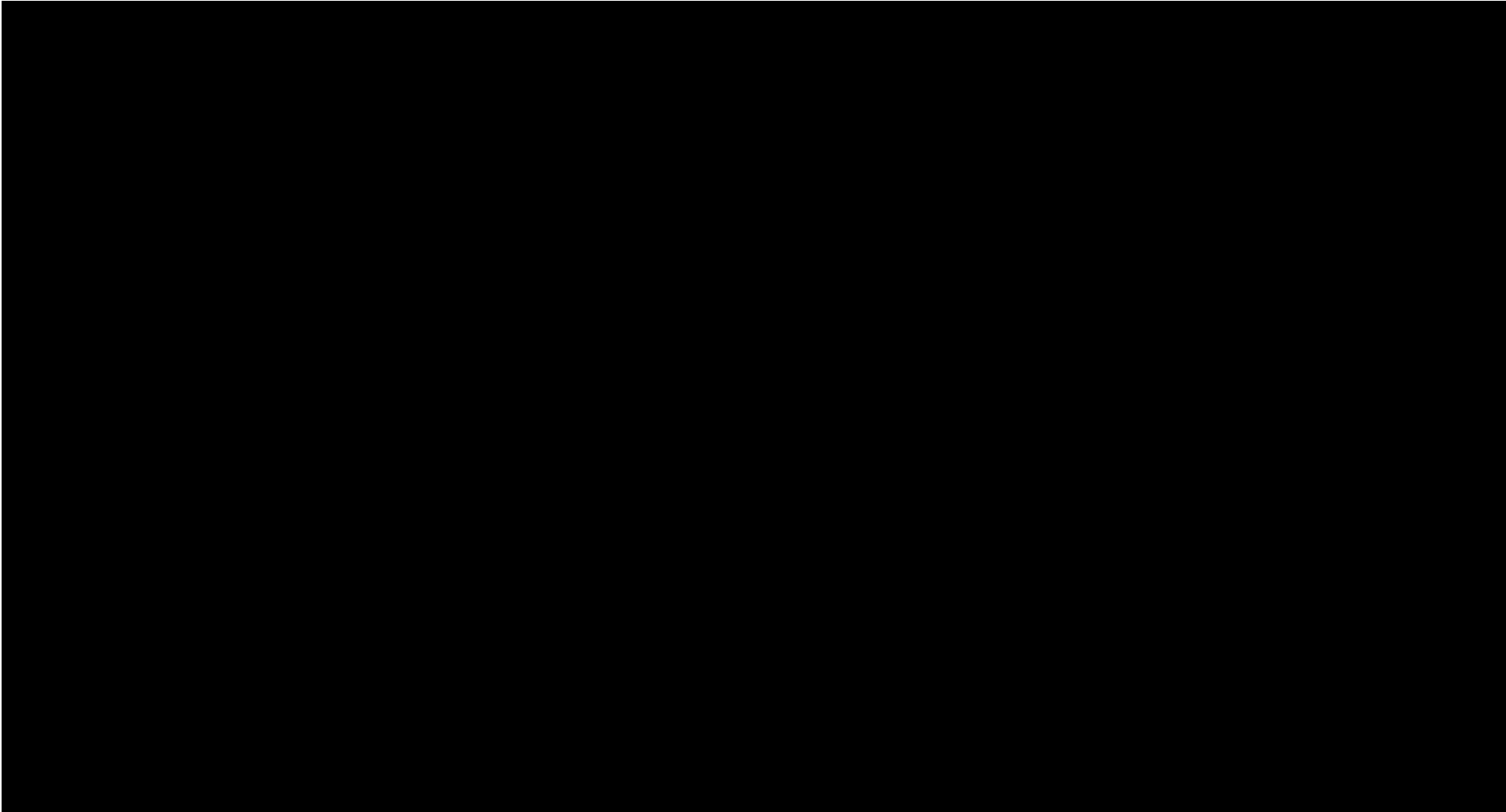
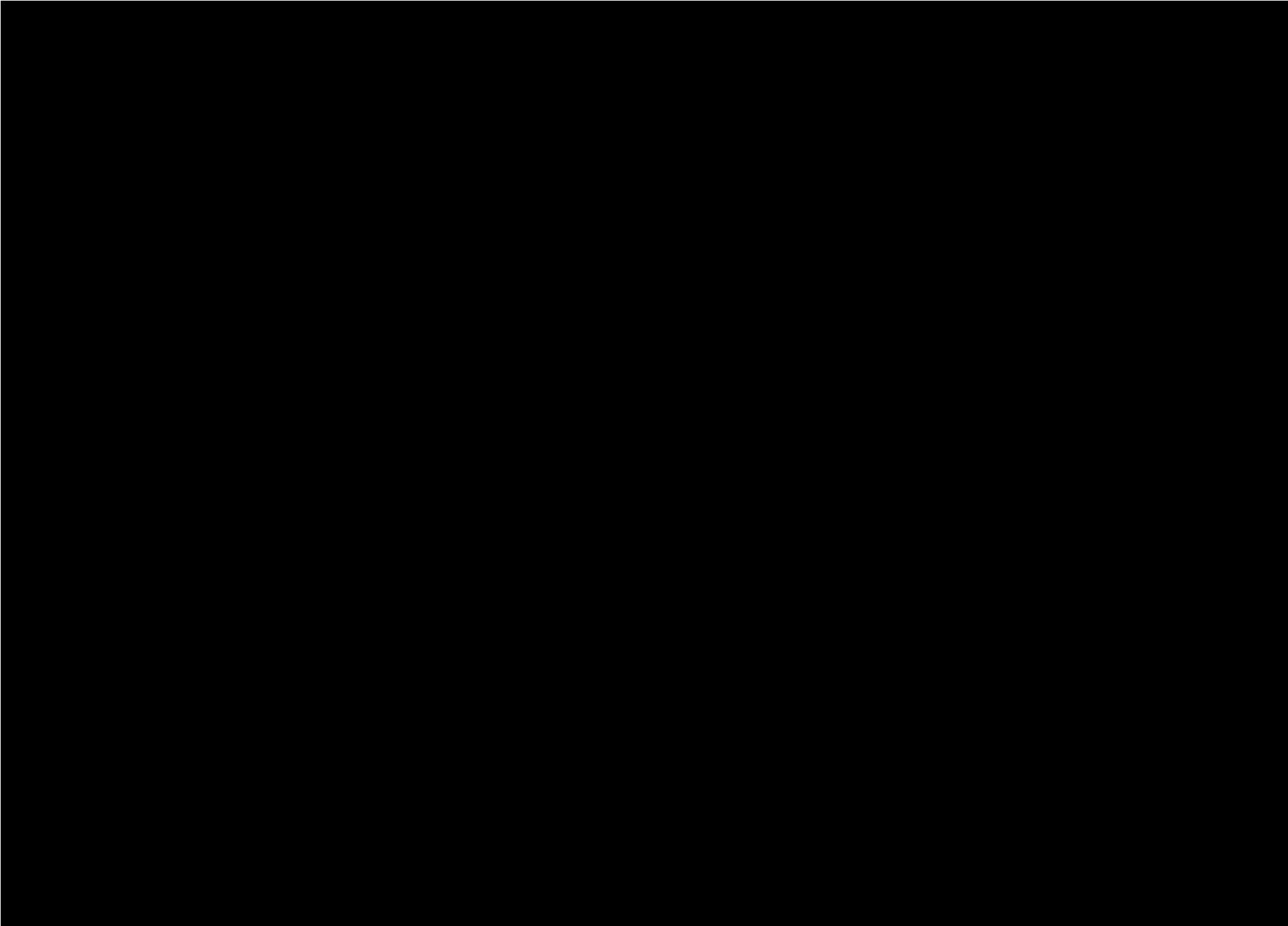


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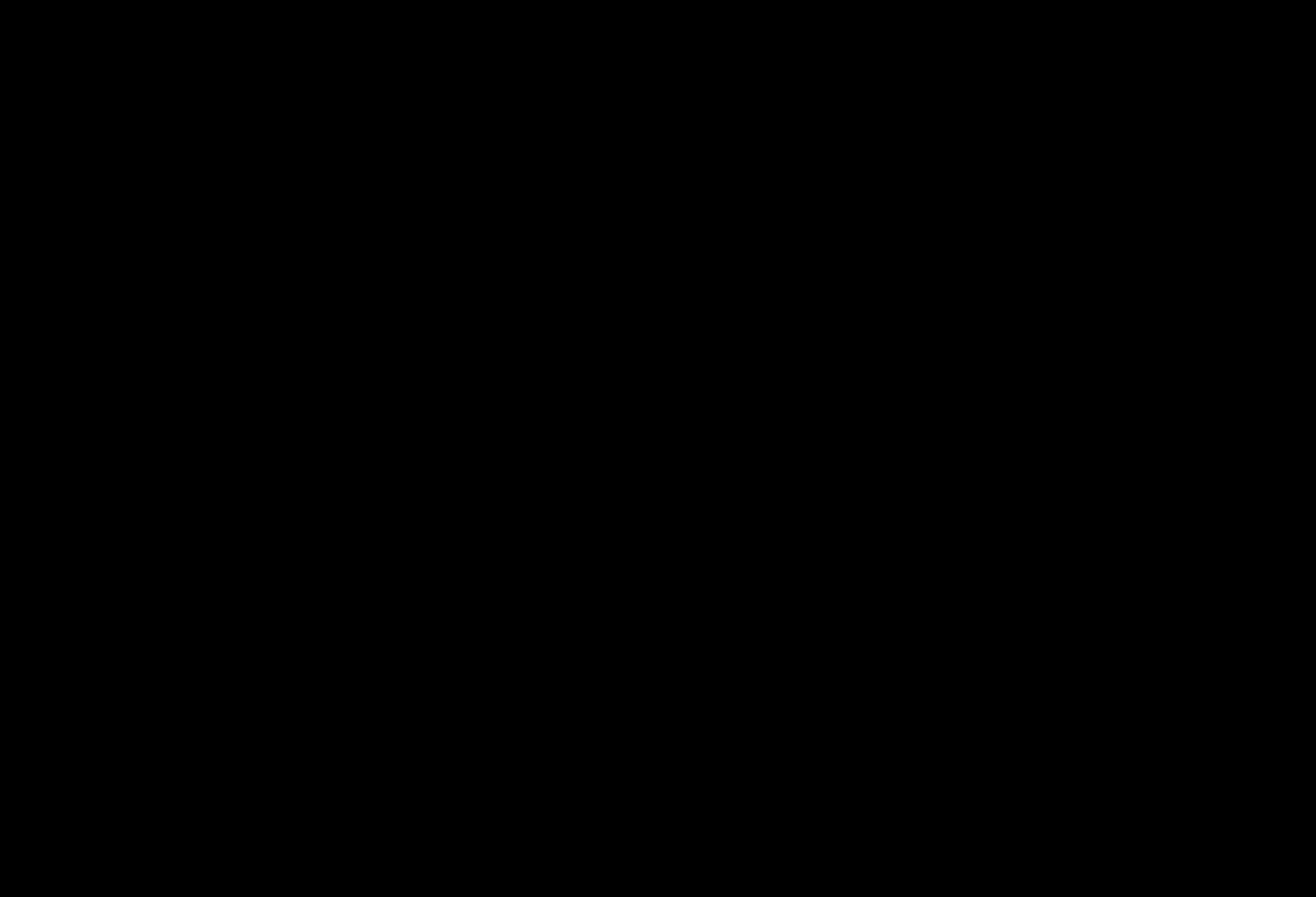


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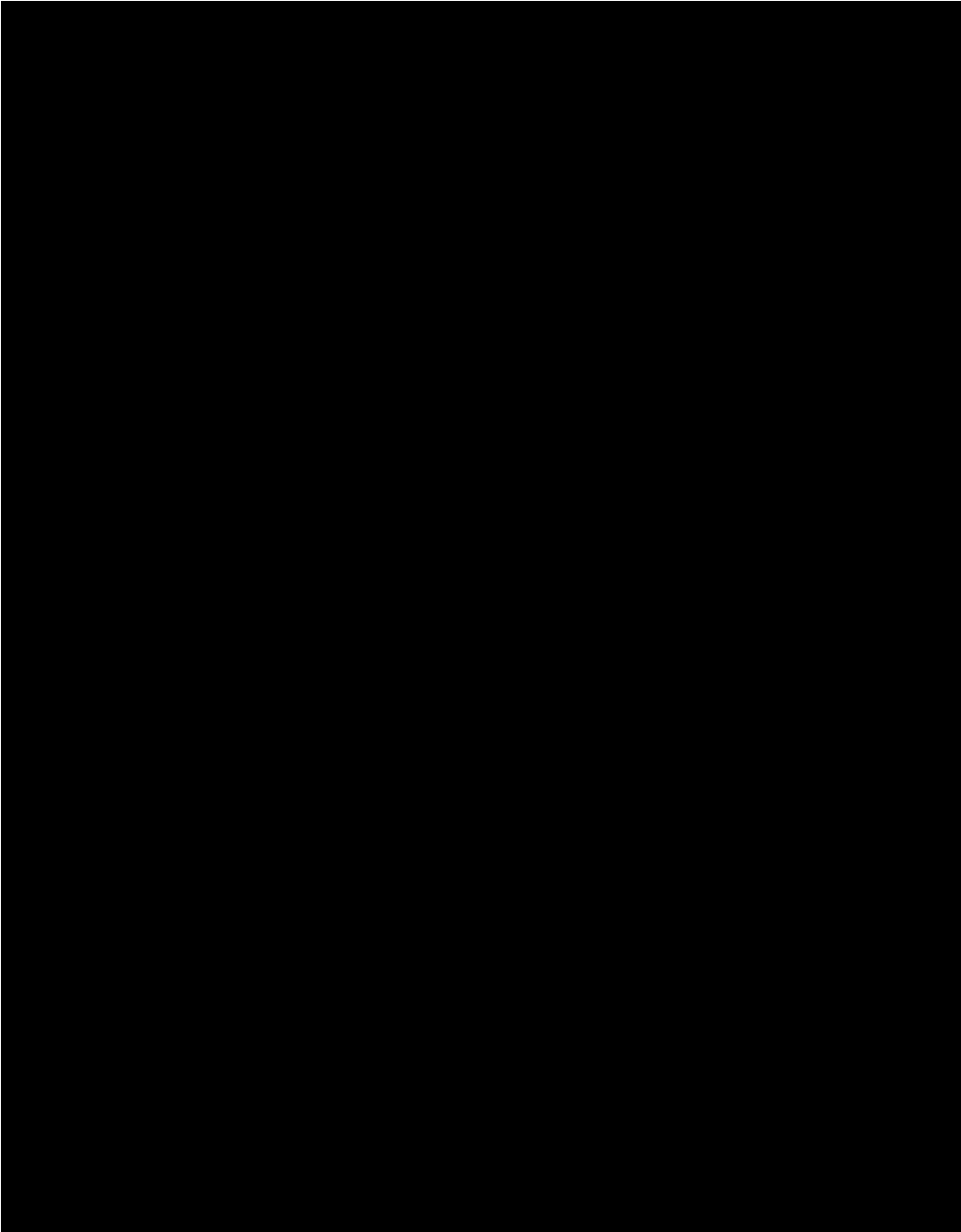


EXHIBIT
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