

**IN THE MATTER OF AN ARBITRATION UNDER
CHAPTER ELEVEN OF THE NORTH AMERICAN FREE TRADE AGREEMENT
AND THE UNCITRAL RULES OF 1976**

BETWEEN:

**WILLIAM RALPH CLAYTON, WILLIAM RICHARD CLAYTON, DOUGLAS
CLAYTON, DANIEL CLAYTON AND BILCON OF DELAWARE, INC.**

Claimants/Investors

AND:

GOVERNMENT OF CANADA

Respondent

WITNESS STATEMENT OF

TOM DOOLEY

December 9, 2016

I. BACKGROUND AND INDUSTRY EXPERIENCE

1. I was born and raised in New Jersey and earned my Bachelor of Arts from Georgetown University in Washington DC in 1974. I worked for Clayton-affiliated companies for over 15 years, most significantly at New York Sand and Stone LLC from 1999 to 2014 as the Sales and Marketing Manager.
2. From 1977 to 1984 I worked in the concrete industry in Texas, first in sales and then as the General Manager of several ready-mix concrete plants. From my work in Texas, I learned a great deal about the concrete industry, including the relationship between the concrete and aggregate industries.
3. In 1977 I was hired into a sales position at a small ready-mix concrete plant in Nacogdoches, Texas which was my first introduction to the ready-mix concrete industry.
4. Ready-mix concrete is manufactured in batching plants according to a set of recipes, and then delivered to sites by truck mounted in-transit mixers. The mixers continuously agitate the concrete until it is poured on site. Nacogdoches was a transit mix location and my work there familiarized me with the production and supply of concrete, including the ingredients integral to the production of concrete. Aggregates such as sand and crushed stone, as well as a paste made of cement (of which the main ingredient is a lime product) and water, are the major components of concrete.
5. Through my work in Nacogdoches I also became familiar with the proportioning of the ingredients of concrete, and how that proportioning affects its strength. The proportioning of these ingredients is based on engineering designs which are used to design a finished concrete product to a higher or lower strength, depending on its use. For example, a sidewalk in front of a house requires a strength of only about 2500 pounds per square inch ("PSI"), which is enough to

accommodate light foot traffic while, at the other end of the spectrum, foundations for bridge abutments require a strength in the range of 8000 PSI.

6. An important factor affecting the strength of concrete is the proportion between the water and cement (the water to cement ratio). The higher the relative water content the lower the strength of the finished concrete.
7. Through my work in Nacogdoches, I also became familiar with the testing required to verify the strength of concrete. Testing was done by pouring the concrete into a cylindrical mold, first by pouring a third of the concrete into the mold, rodding it into place, and then doing the same with the second and third portions of the mold. The mold was then leveled off and stored. Once the concrete had hardened sufficiently it was taken to an independent testing laboratory and crushed by a calibrated machine until it reached a particular level of failure. A PSI for the concrete was then determined based on the force required to reach that level of failure.
8. Because of the reality in Texas of hot summers and cold winters I also became experienced in managing the effect of the elements on concrete, including freezing, thawing and salt resistance. Concrete sets are based on the heat of hydration. By introducing chilled water to our concrete mix in hot weather, we could delay the hydration process for an extended period of time. Similarly, we introduced hot water into mixes in cold weather in order to increase the hydration process and to allow for faster setting.
9. After six months working at Nacogdoches I was transferred to a transit mix plant located in Longview, Texas, another plant owned by my employer. I began working in Longview in a sales capacity, but within six months was promoted to General Manager and ran the business. As General Manager I was responsible for the overall financial review and performance of the plant, as well as sales and the management of approximately 45 employees. I directed the ordering of

materials from our suppliers and managed the materials after they were delivered to the plant.

10. During my time at Longview I gained a great deal of experience in the logistical issues involved with receiving and storing materials at a ready-mix plant. While we sourced sand and cement from local suppliers and had those products delivered by truck, there was no local supply of coarse aggregates in the east Texas region, and we received our coarse aggregates from mines approximately 200 miles away in Chico, Texas. Because of the distance between Chico and Longview we brought these aggregates in by rail, which meant that a good portion of the Longview property was sequestered for inventory. This presented the challenge of balancing the delivery of materials to the site, the maintenance of inventory and delivery of the materials to our customers.
11. Coarse aggregate is produced in various sizes which are often used in different applications. At Longview, for example, we used different sizes of stone, including 3/4 inch for regular capacities and 3/8 inch for tight areas where heavy loads of reinforcement were required. Because concrete has a high compressive strength, but limited tensile strength, reinforcing steel is incorporated into the concrete, adding tensile capacity. As the steel mats used for reinforcing the concrete were, in some cases, only an inch away from each other, the smaller 3/8 inch stone was often used because it was easier to place.
12. I was involved in many different kinds of concrete-related projects during my time in Longview, including residential slabs, highway work and bridge work for the State Department of Transportation. Our most technical work involved a technique called "slipform construction" which involved pouring concrete silos in stages, into forms that moved upward as the concrete was poured. This was highly technical work and involved a high level of quality control.

13. Subsequent to my work at the Longview ready-mix plant I started a trucking company for the same parent company and assumed control of all transportation of sand and cement for the company. After obtaining all of the permits necessary to operate a trucking company, I brokered out over 200 trucks and managed all of the required personnel.
14. After working for almost 7 years in the concrete industry in Texas, I returned to New Jersey where from 1984 - 1987 I managed a data processing business. My responsibilities included managing the logistics of data processing for inventory, as well as establishing and maintaining relationships with independent contractors and dealing with customers.
15. In 1987, I returned to the construction industry as the Sales Manager for a New Jersey company called Duncan Thecker Precast which sold precast concrete structures in New York and New Jersey. Precast concrete is concrete made in a factory setting. Concrete is poured into molds for different applications including infrastructure vessels such as manholes and catch basins used in sanitary and storm/sewer systems.
16. At Duncan Thecker I was responsible for the sale of precast products as well as the aftermarket servicing of those sales. I also assisted with the logistical elements of delivering materials to job sites in a timely fashion which could, at times, present significant challenges. The precast concrete had to be loaded onto trucks, driven a significant distance from the plant, and then unloaded off the trucks, all without undermining the integrity of the product for its intended use.
17. While at Duncan Thecker I also spearheaded the expansion of the company's sales into the New York City market, which required me to become familiar with the New York State Department of Transportation (NYSDOT) standards which we were required to meet.

18. In 1991, I joined the Riverdale Quarry Company (“Riverdale”) which ran the Riverdale Quarry in New Jersey. I ultimately became Riverdale’s Sales Manager. My work at Riverdale gave me my first direct involvement in selling aggregates.
19. The Riverdale Quarry produced approximately [REDACTED] of a granite product which met federally mandated asphalt standards. I was hired by Riverdale principally to expand its sales of aggregate into the [REDACTED] market. The Riverdale Quarry was only 15 miles from the [REDACTED] boundary, and through my connections in [REDACTED] I was able to increase the proportion of Riverdale’s sales going into [REDACTED]
20. There was an asphalt plant on site at the Riverdale Quarry which gave me my first direct involvement in the asphalt industry. In many ways asphalt preparation was similar to the production of concrete, with which I was already familiar, in the sense that materials were mixed together to form a finished product. The major difference was that asphalt could be mixed and then stored for later use, whereas concrete had to be poured within approximately 90 minutes of being mixed.
21. I sold aggregate from the Riverdale Quarry into both the [REDACTED] [REDACTED] and became very familiar with the complexity and cost of transporting aggregate to those markets. There were a number of regulatory permits required for trucks moving materials into [REDACTED] and heavy tolls for transporting material across bridges. We had to double the number of trucks we would normally require in order to meet particular tonnage requirements, due to traffic restrictions. In addition, regulatory limits on the weight of certain trucks required us to use different kinds of trucks [REDACTED] [REDACTED] Transportation of aggregate by truck into [REDACTED] [REDACTED] was expensive and added very significantly to the cost of the product.

22.

[REDACTED]

II. INVOLVEMENT WITH THE CLAYTONS

23. In 1995 the Claytons acquired an interest in the Riverdale Quarry through their affiliated company Amboy Aggregates. This was around the time I also first met John Wall, who would become the Vice President of Riverdale, and who oversaw both the stone quarry and the asphalt production facility. John Wall was a highly experienced expert in operating quarries, and he and I worked closely together for several years. The Claytons subsequently hired John Wall to manage the Whites Point Quarry and to oversee its design and construction.

24. I worked as the Sales Manager for Riverdale until May, 1999. Throughout the time that the Claytons' owned an interest in Riverdale,

[REDACTED]

25.

[REDACTED]

26. My first opportunity to work directly with the Clayton family came at this time, when I accepted an offer of employment from Bill Clayton, Sr. and Richard Rosamilia, the then-President of Amboy Aggregates to become the Sales and Marketing manager for their affiliated company, New York Sand & Stone LLC (NYSS).

III. HISTORY OF NEW YORK SAND & STONE LLC**1. Amboy Aggregates**

27. After I joined NYSS I learned that in 1989 Amboy Aggregates, based in South Amboy, New Jersey, was formed as a joint venture partnership between Clayton Materials and Great Lakes Dredge & Dock Company. Its principal business was to supply natural sand products for use in the production of concrete to the New Jersey market, particularly in northern New Jersey.
28. Amboy Aggregates also maintained a marine terminal at its South Amboy location which was capable of barge loading and unloading and ship unloading. Through its marine capacity, Amboy Aggregates also delivered sand to customers in New York City and Connecticut.
29. Amboy Aggregates did not own a traditional sand mining operation but instead, in a very unique operation, mined sand from the bottom of the ocean. In a contract with the U.S. Army Corps of Engineers, Amboy Aggregates dredged sand from the Ambrose Channel, the main shipping channel serving the New York and New Jersey ports for large ocean vessels. Amboy Aggregates became the largest supplier of sand in New Jersey during the early 1990s. In the mid 1990's the sand dredged from the Ambrose Channel was becoming too fine on its own to meet the required specifications for use as a fine aggregate in Portland cement concrete.
30. To address this quality issue, Amboy Aggregates added a crushed stone product known as grit to the natural sand. Amboy Aggregates initially sourced its grit supply in the New Jersey stone quarry market, but eventually Amboy Aggregates' demand for grit exceeded the supply available in New Jersey quarries.

2. Supply from Bayside and New York Sand & Stone

31. In the late 1990's Amboy Aggregates found an alternate source of supply of grit in Canada – from Atlantic Coast Materials, which operated the Bayside Quarry in New Brunswick (“Bayside”).

32. In May, 1998 Amboy Aggregates and a company known as New York Sand formed NYSS [REDACTED] Amboy Aggregates was given the lead role in managing the new joint venture and in 1999 I was appointed the Sales and Marketing Manager of NYSS.¹

33. During the 1990s, there was a major consolidation of the sources of crushed stone supplying the New York City and Long Island markets and prices for crushed stone began to increase.

34. [REDACTED]

35. [REDACTED]

36. [REDACTED]

¹ Operating Agreement of New York Sand & Stone (*Investors' Schedule of Documents, Tab C1015*).

[REDACTED]

37.

[REDACTED]

38.

[REDACTED]

39.

[REDACTED]

[REDACTED]

40.

[REDACTED]

[REDACTED]

41.

[REDACTED]

42.

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[REDACTED]

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[REDACTED]

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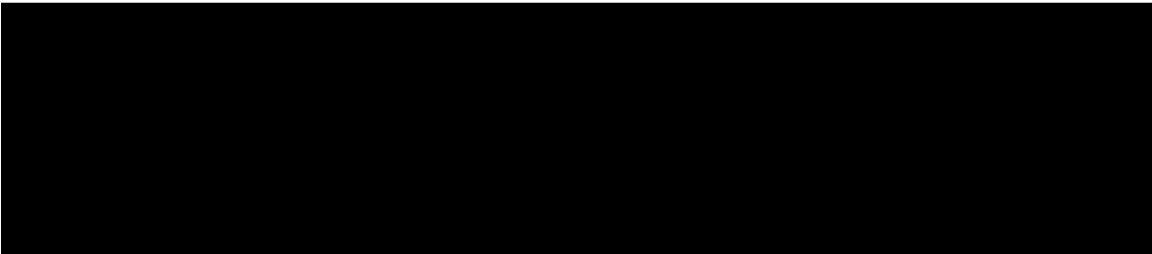
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V. THE WHITES POINT QUARRY

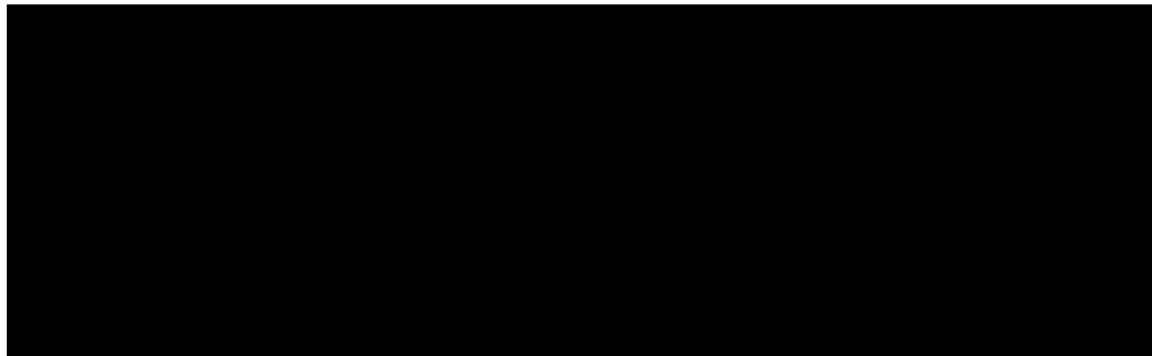
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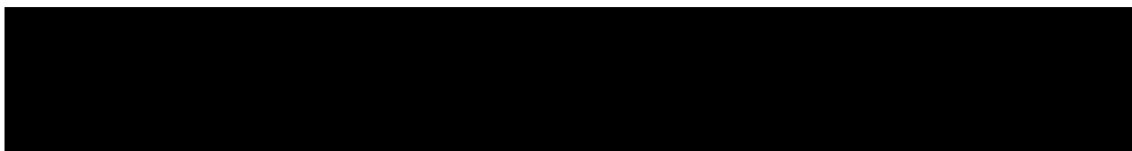
50.



51.



52. Because I had worked with John Wall at the Riverside Quarry and knew of his excellent skills as a quarry manager, 



53.

[REDACTED]

54.

[REDACTED]

IV. DEMAND FOR AGGREGATES INCREASED

[REDACTED]

55.

[REDACTED]

56.

[REDACTED]

⁵ [REDACTED] (*Investors' Schedule of Documents, Tab C1018*).

[REDACTED]

57.

[REDACTED]

2. Construction Projects

58.

[REDACTED]

59.

[REDACTED]

⁶

[REDACTED] (*Investors' Schedule of Documents, Tab C1018*).

60.

[REDACTED]

61.

[REDACTED]

[REDACTED]

62.

[REDACTED]

⁷ [REDACTED] (*Investors' Schedule of Documents, Tab C1018*).

⁸ [REDACTED] (*Investors' Schedule of Documents, Tab C1019*).

[REDACTED]

63.

[REDACTED]

64.

[REDACTED]

[REDACTED]

65.

[REDACTED]

66.

[REDACTED]

⁹

[REDACTED] (*Investors' Schedule of Documents, Tab C1020*).

67.

[REDACTED]

68.

[REDACTED]

69.

[REDACTED]

[REDACTED]

70.

[REDACTED]

71.

[REDACTED]

¹⁰ [REDACTED] (*Investors' Schedule of Documents, Tab C1021*),

[REDACTED] (*Investors' Schedule of Documents, Tab C1022*).

¹¹ [REDACTED] (*Investors' Schedule of Documents, Tab C1018*).

[REDACTED]

72.

[REDACTED]

73.

[REDACTED]

74.

[REDACTED]

¹²

[REDACTED] (*Investors' Schedule of Documents, Tab C1023*).

75.

[REDACTED]

76.

[REDACTED]

77.

[REDACTED]

78.

[REDACTED]

[REDACTED]

79.

[REDACTED]

¹³

[REDACTED] (*Investors' Schedule of Documents, Tab C1024*).

[REDACTED]

80.

[REDACTED]

81.

[REDACTED]

82.

[REDACTED]

83.

[REDACTED]

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88.

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89.

[REDACTED]

90.

[REDACTED]

[REDACTED]

91.

[REDACTED]

92.

[REDACTED]

93.

[REDACTED]

94. I was retained until December 2015 as the Sales Manager of NYSS when I left the Company.

¹⁶ [REDACTED] (Dooley Exhibit 2; *Investors' Schedule of Documents, Tab C1026*).

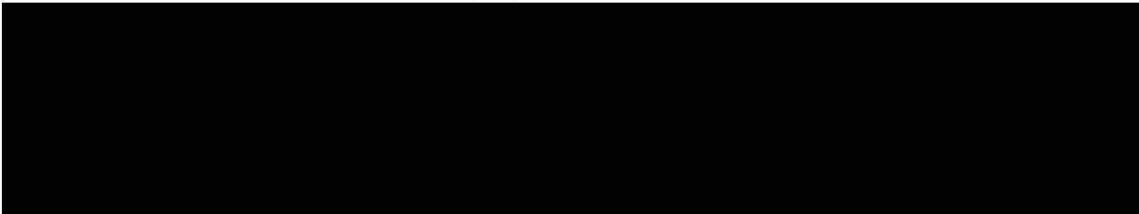
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Dated: December 9, 2016

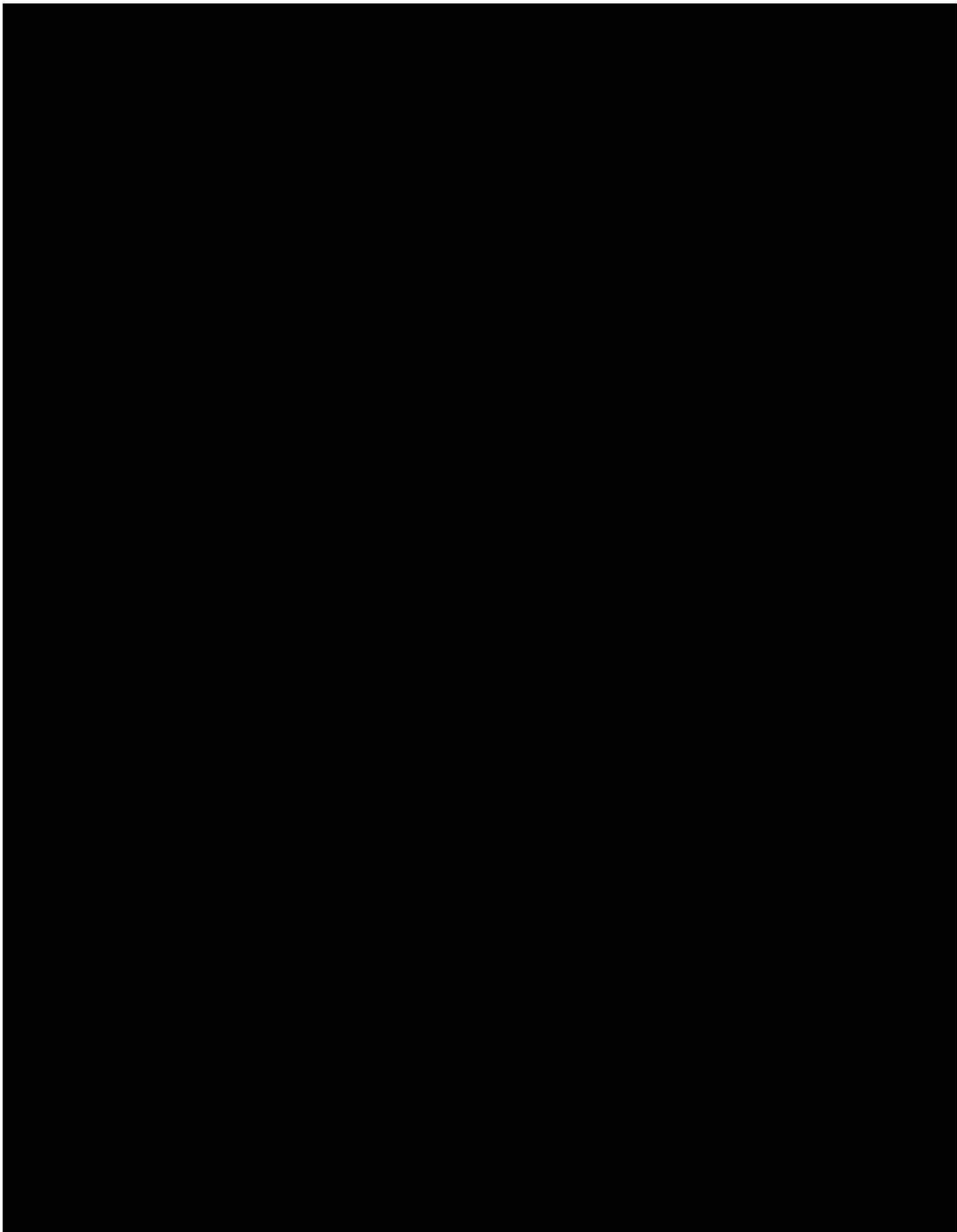


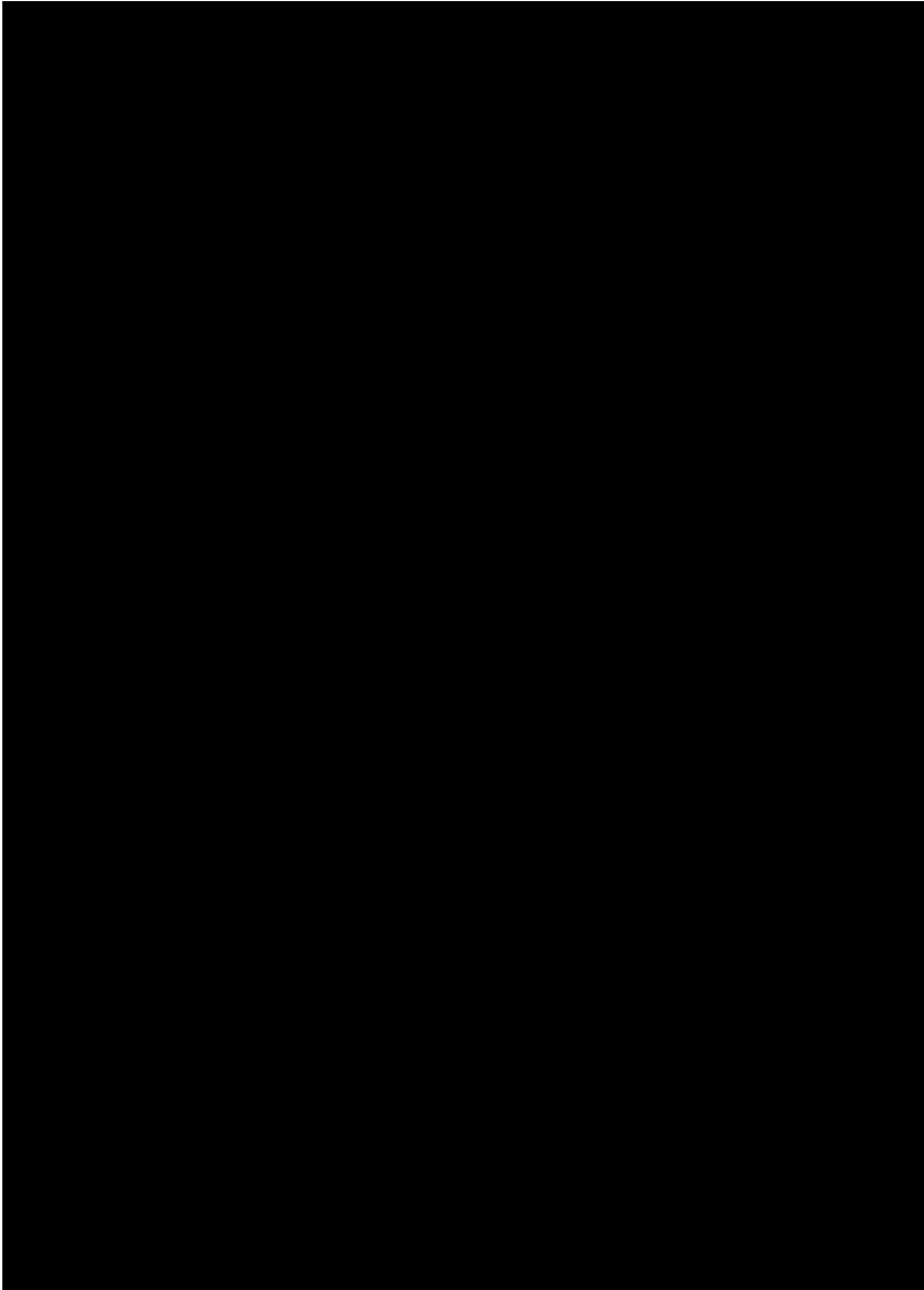
Tom Dooley

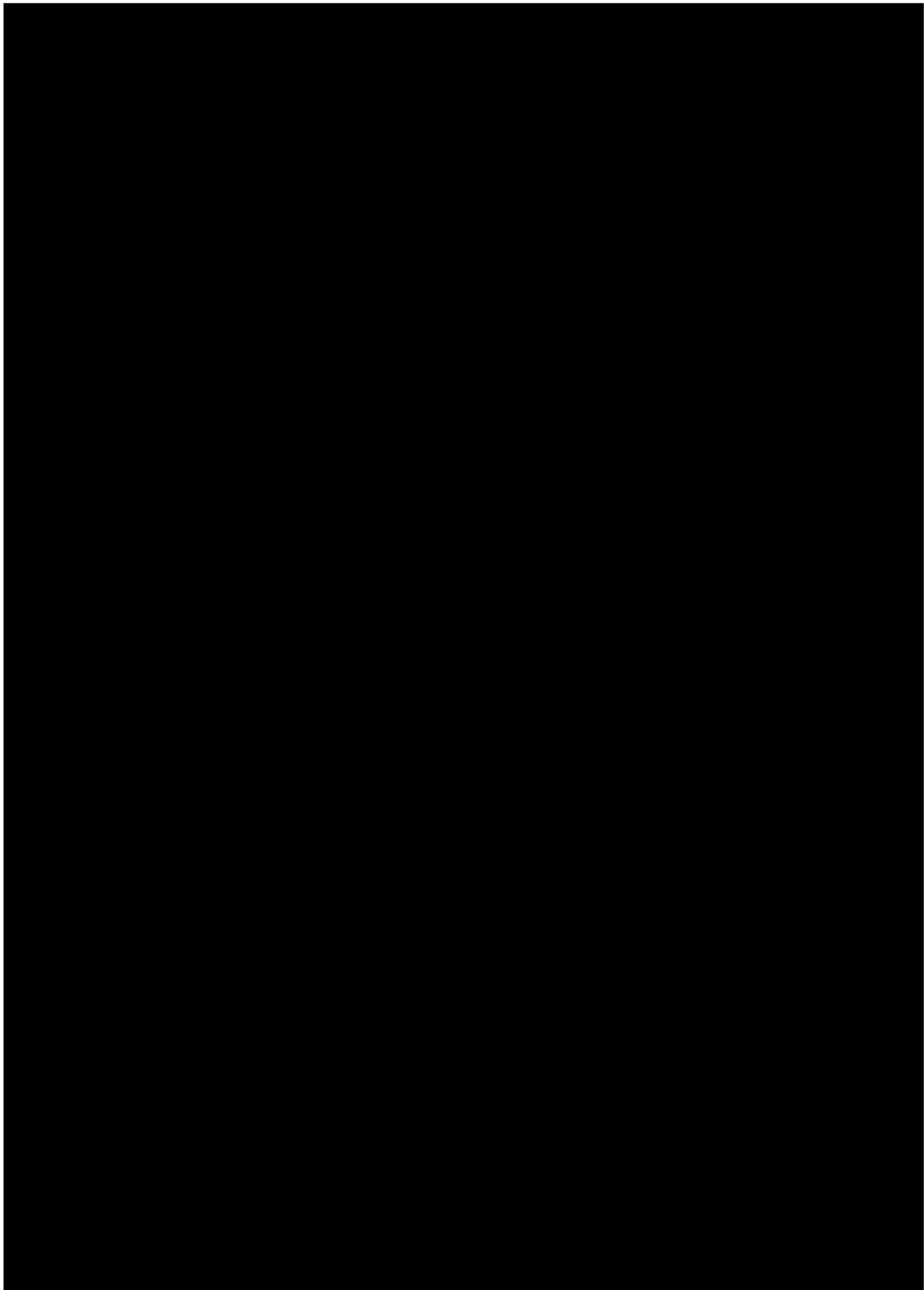
¹⁷ Revenue Matrix Summary, 2011-2015 (Dooley Exhibit 3; *Investors' Schedule of Documents, Tab C1002*).

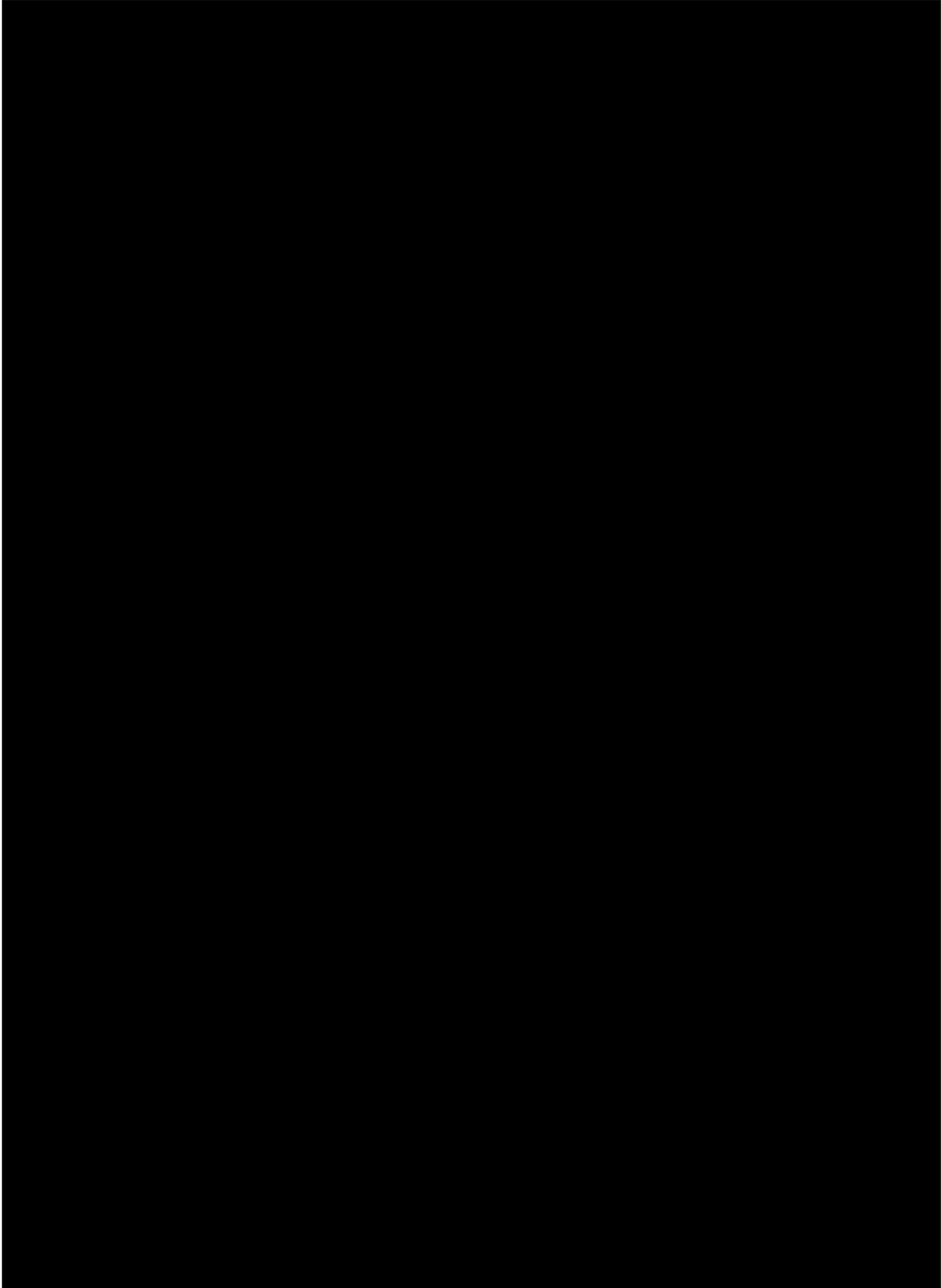
EXHIBIT 1

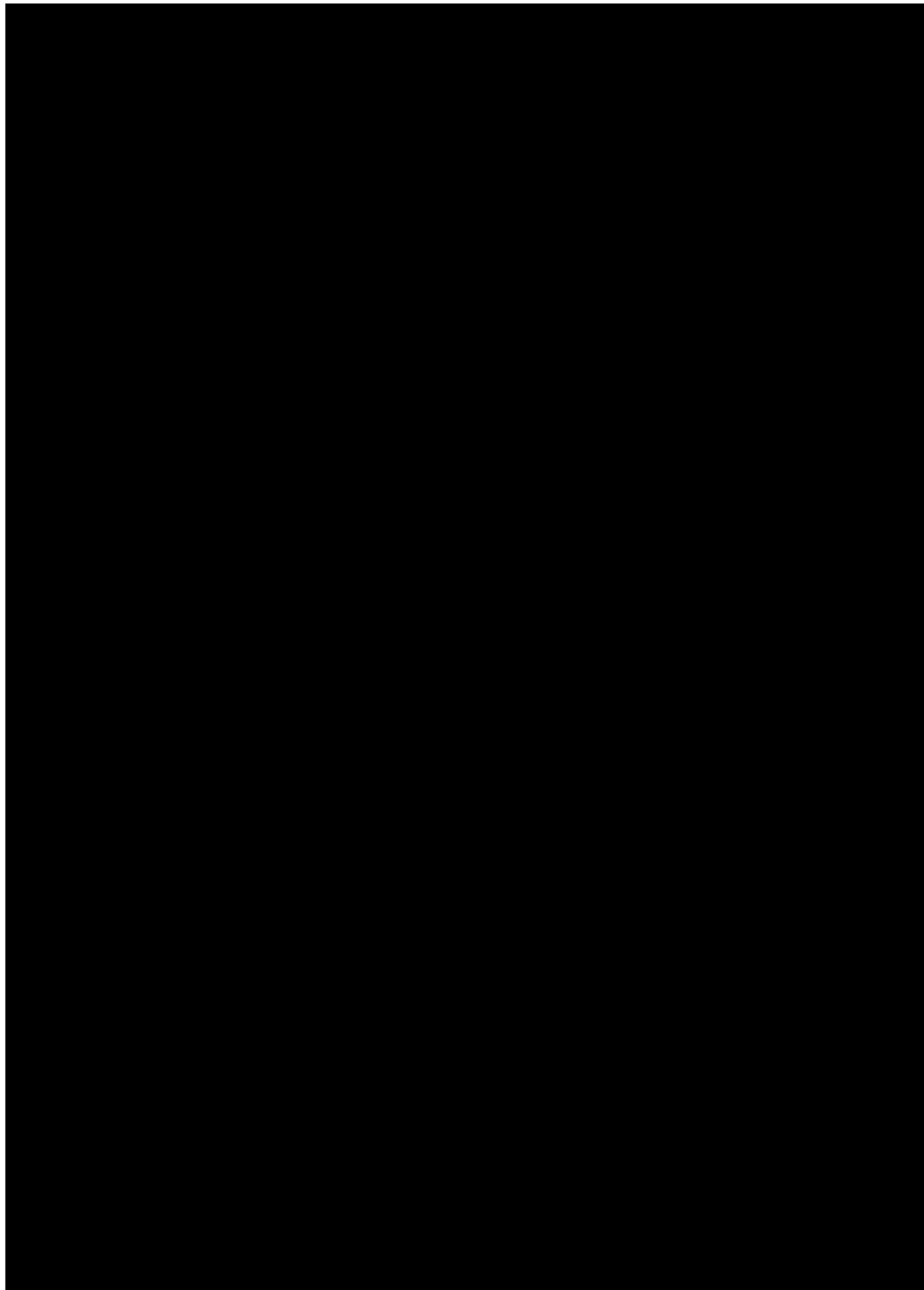
WITNESS STATEMENT OF TOM DOOLEY

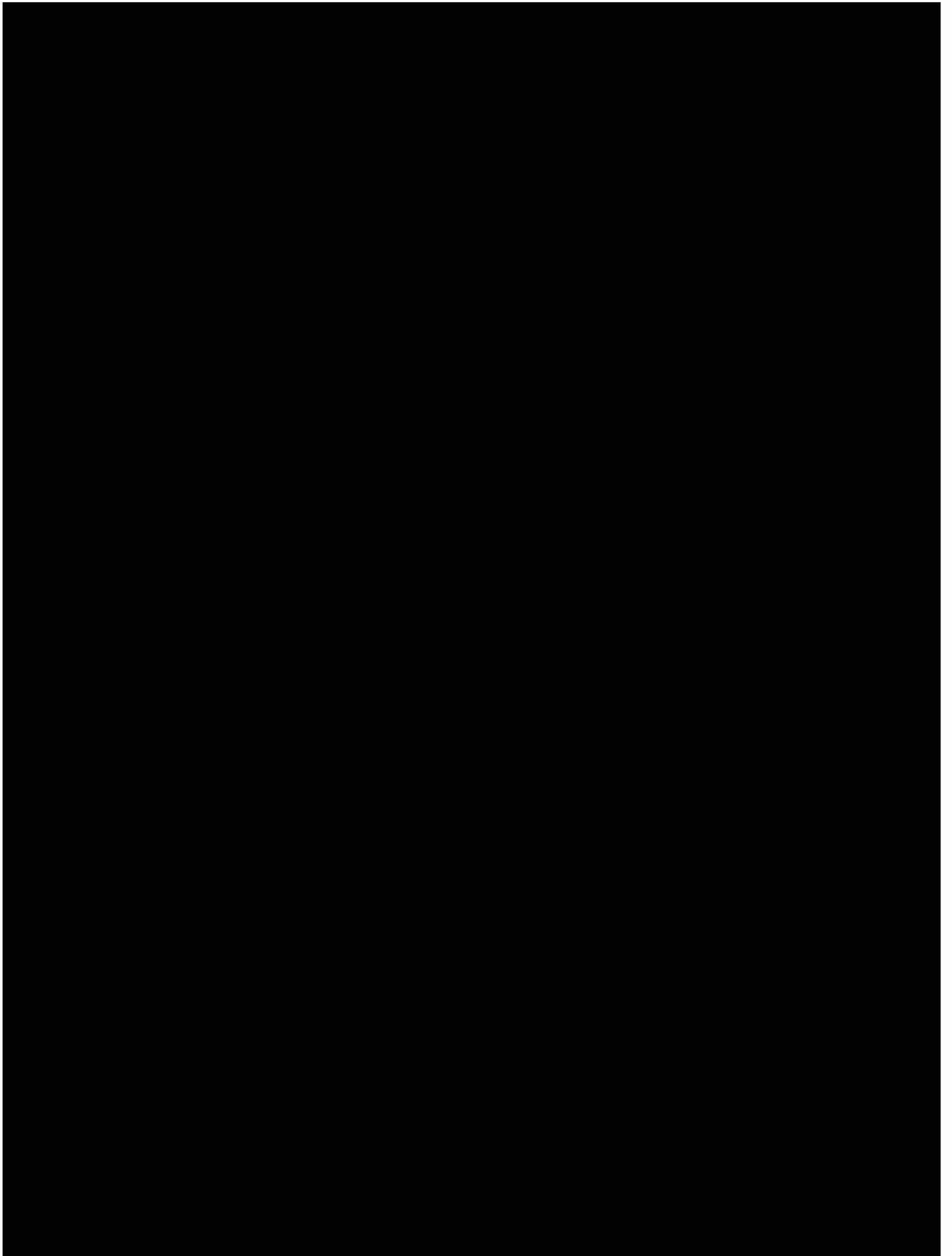


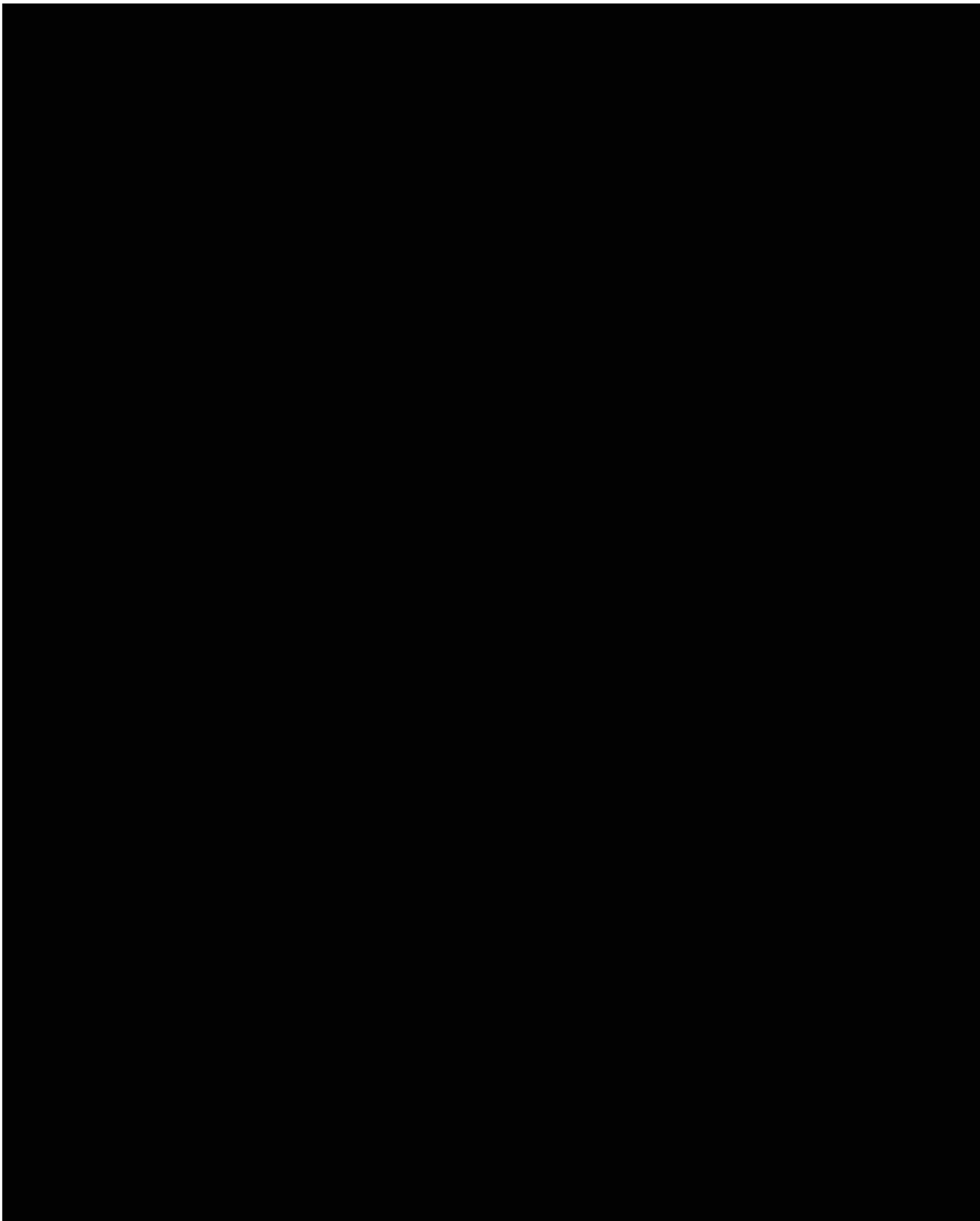


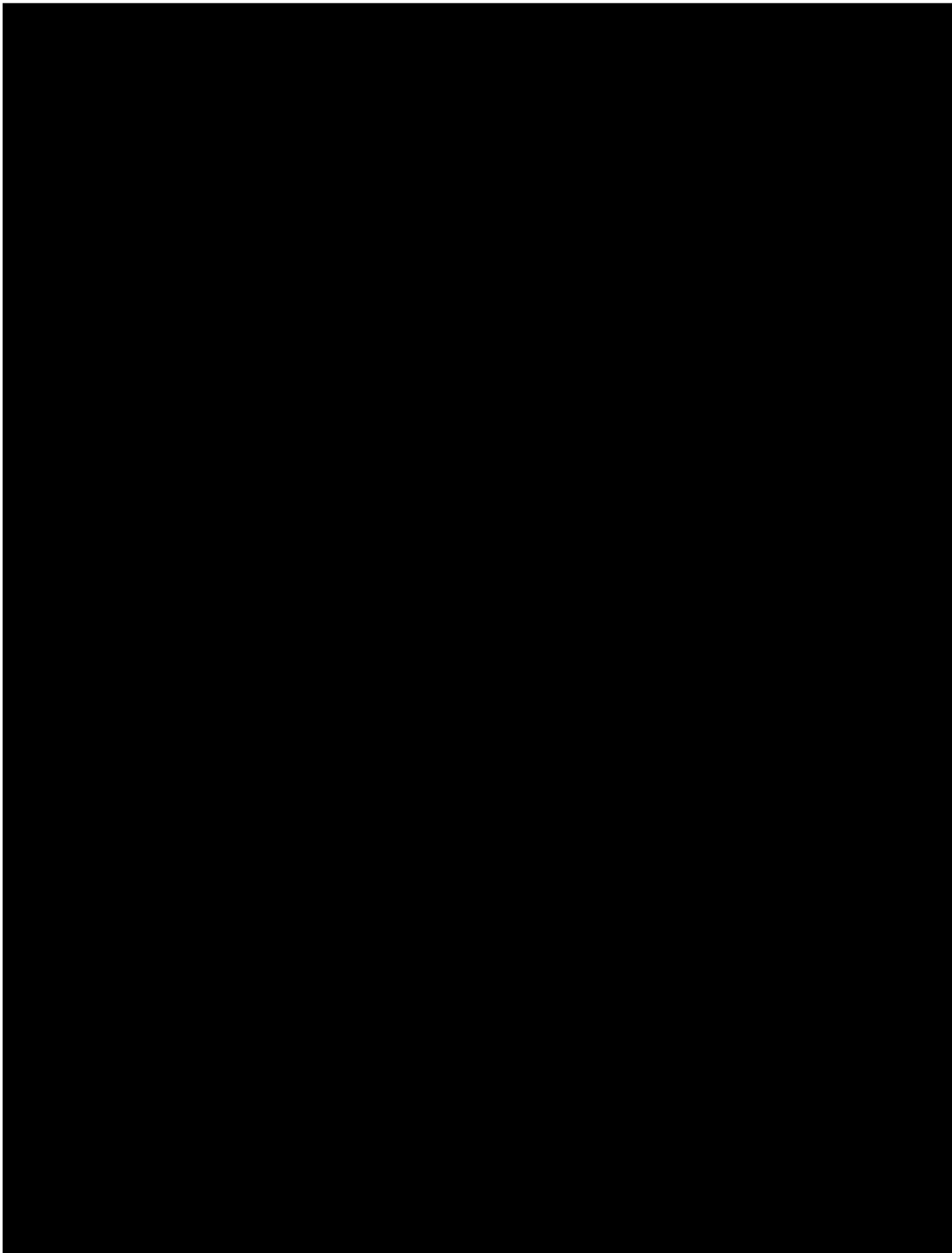


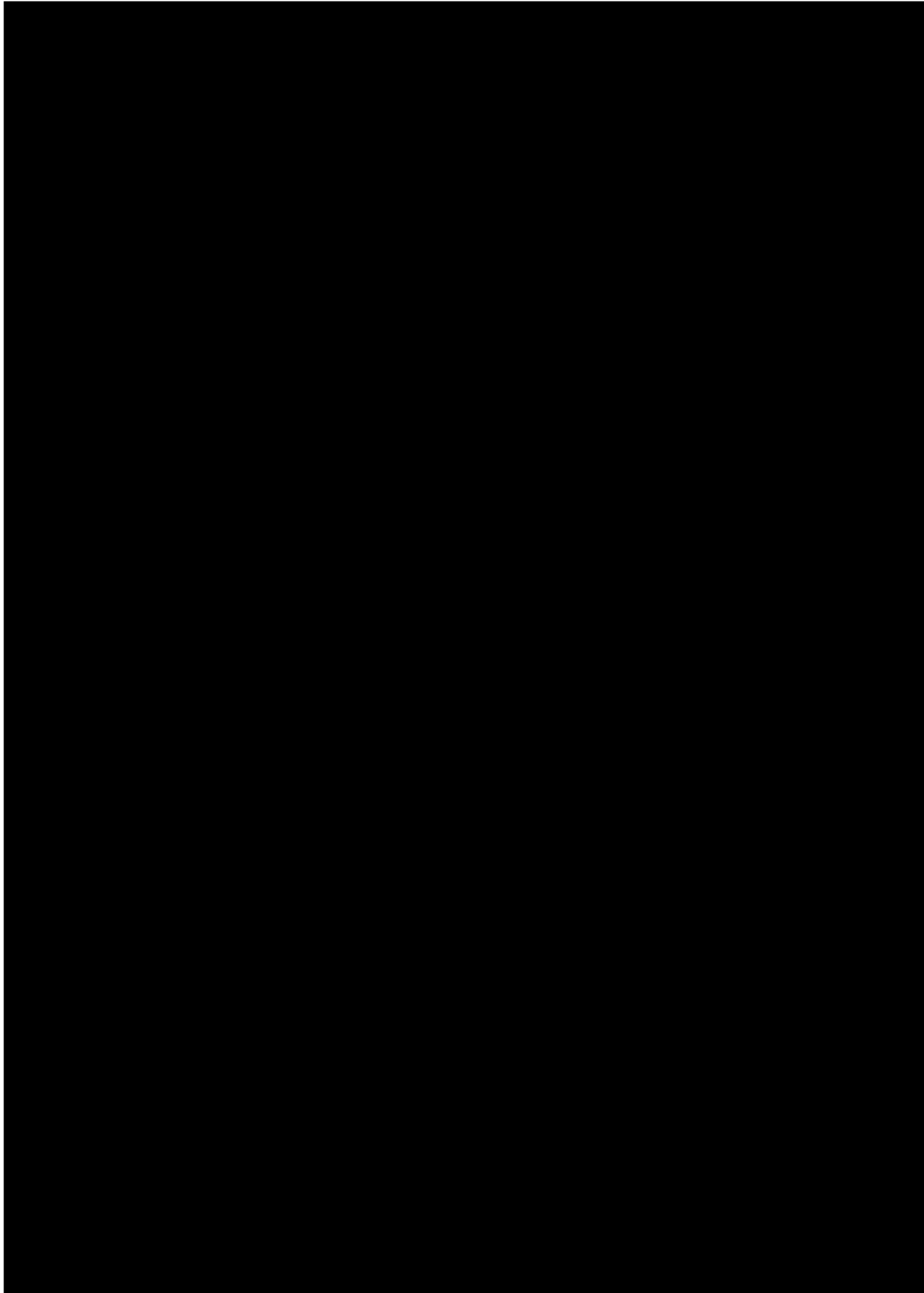


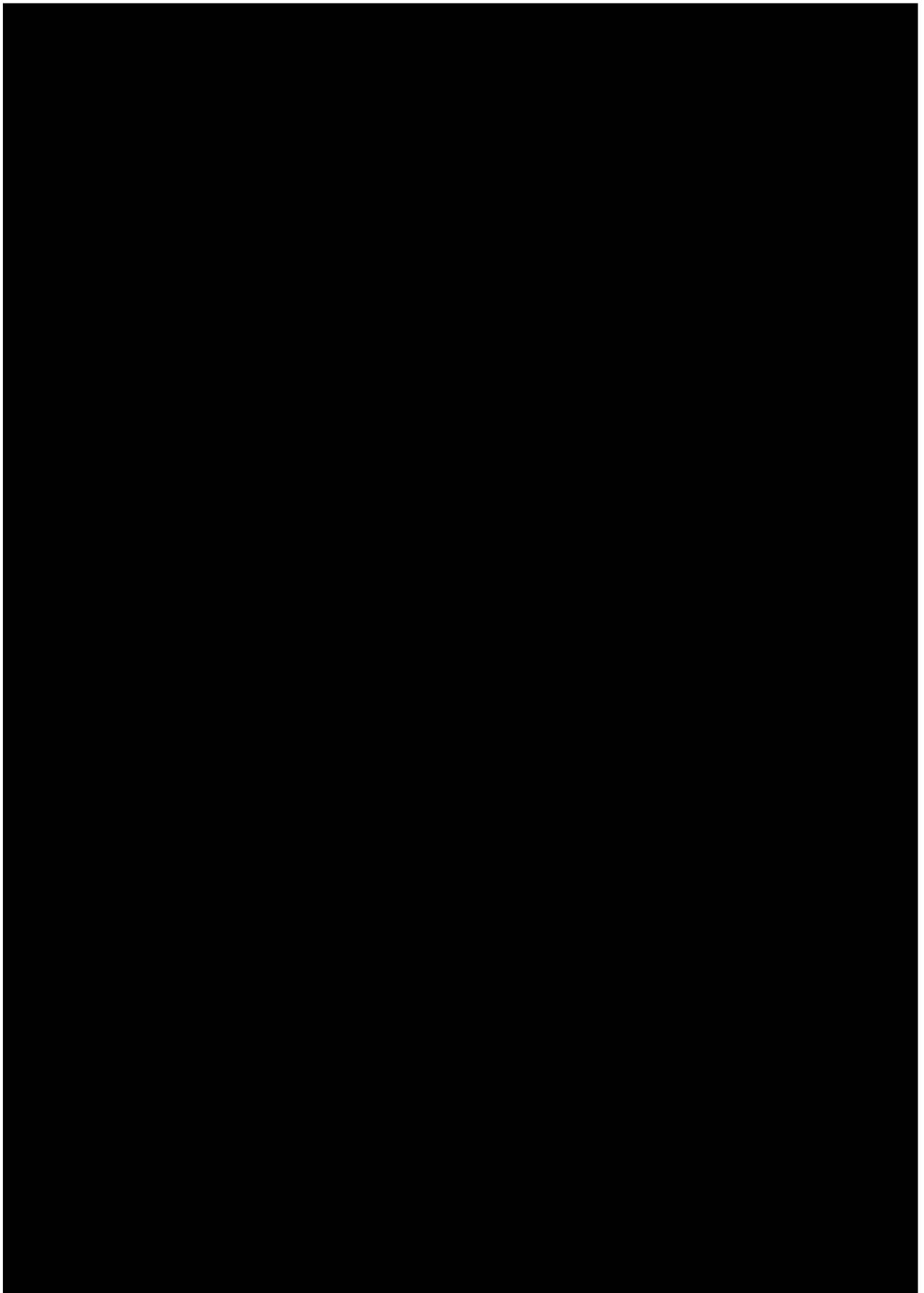


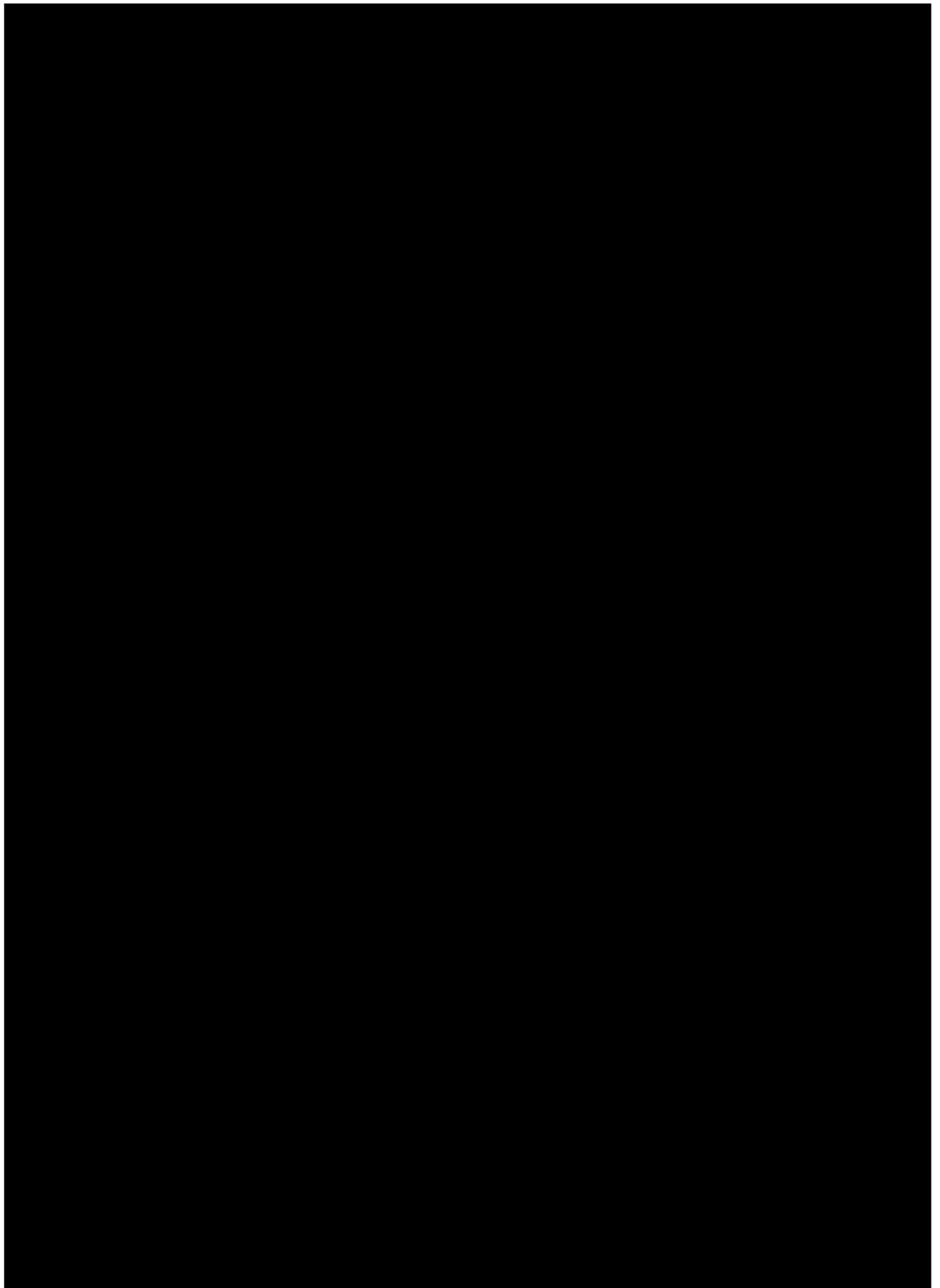


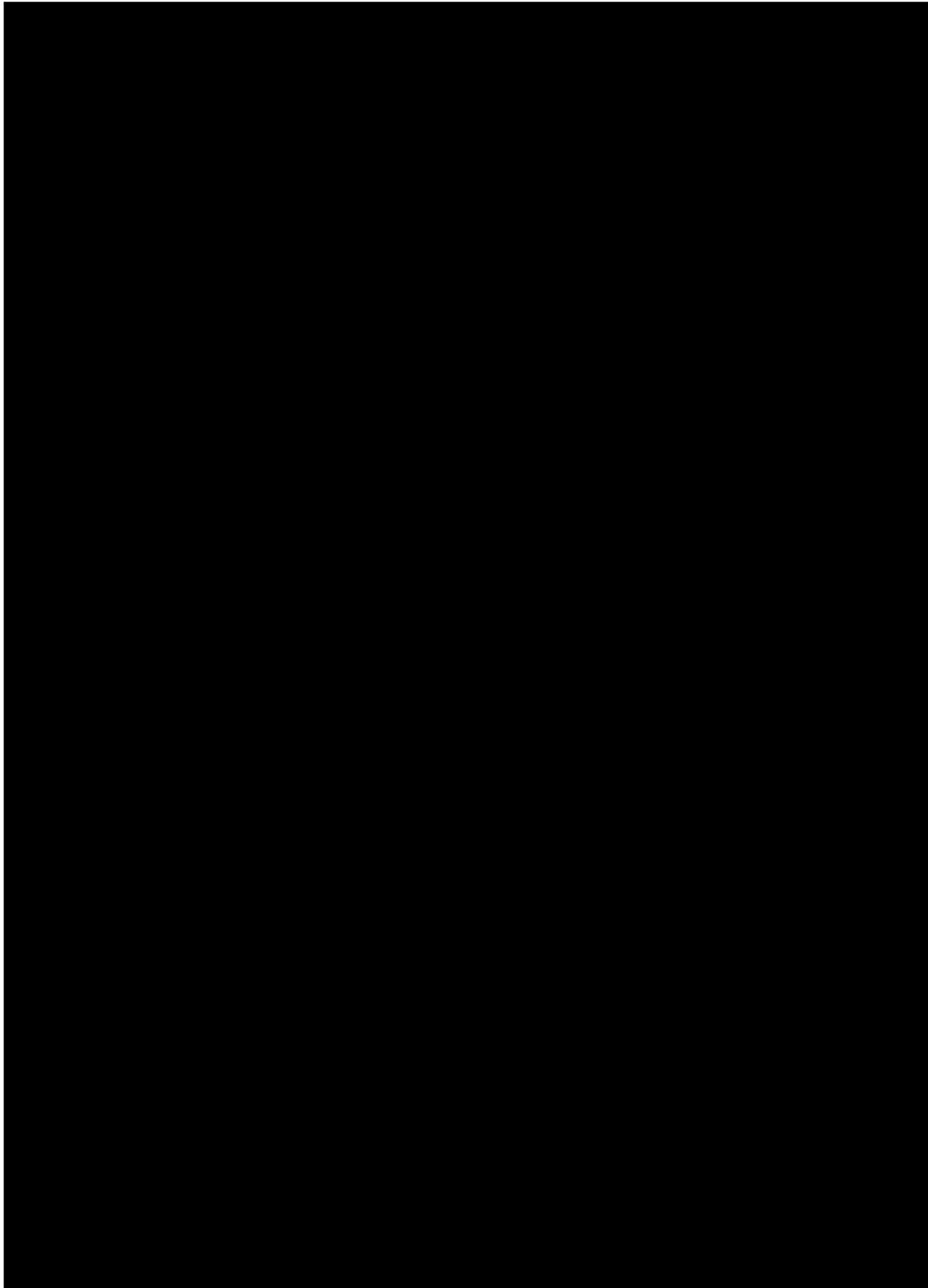


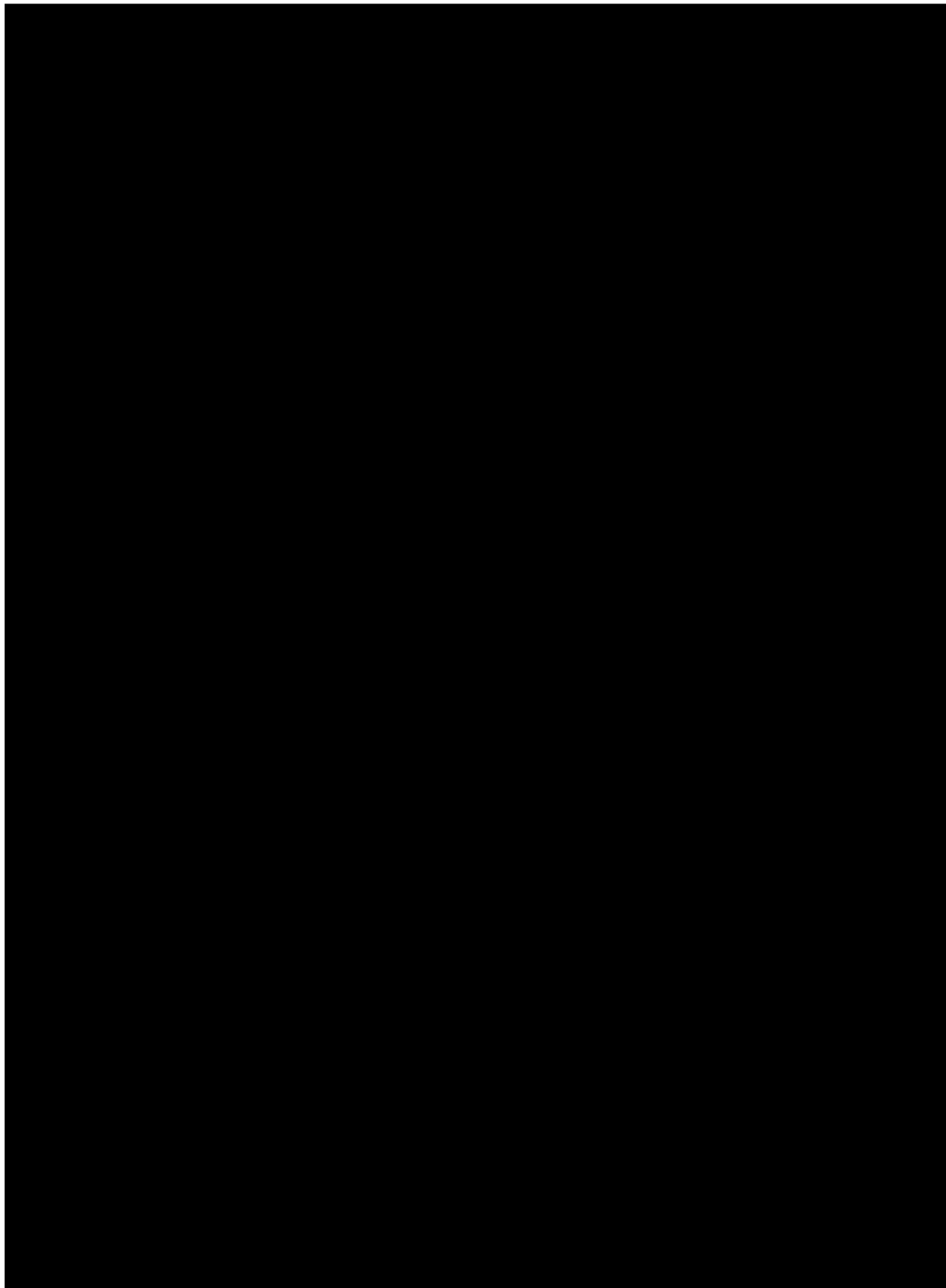


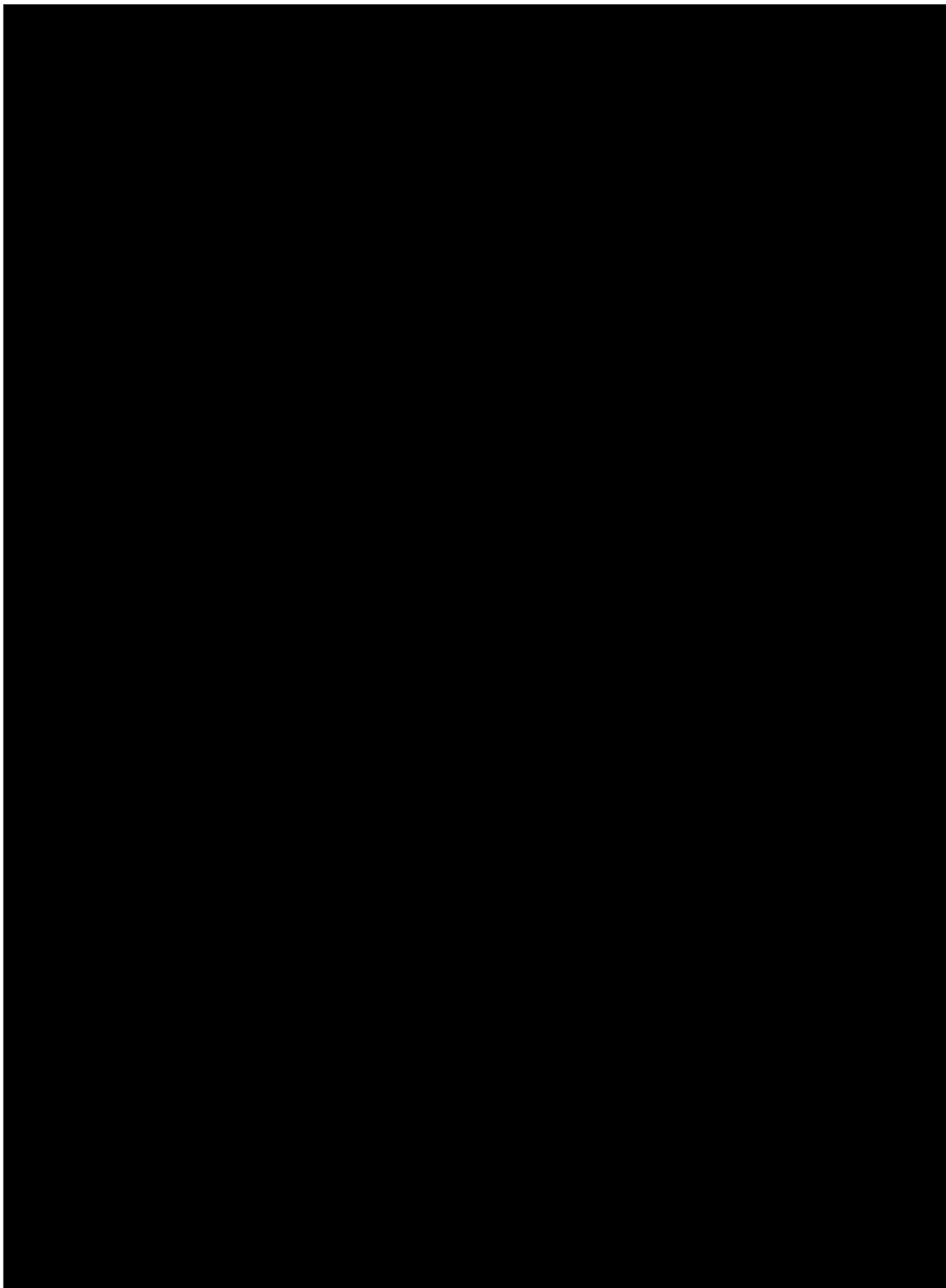


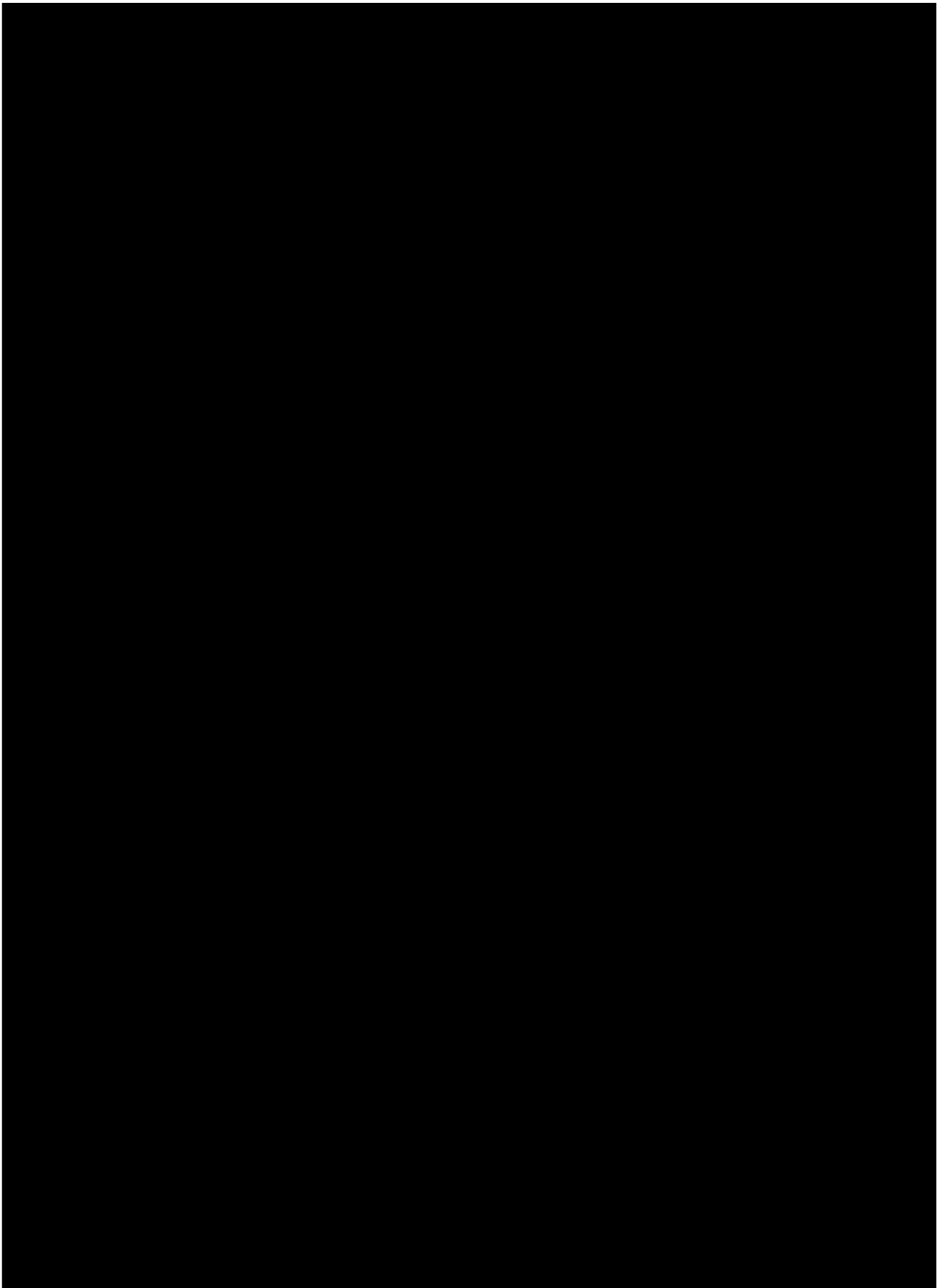












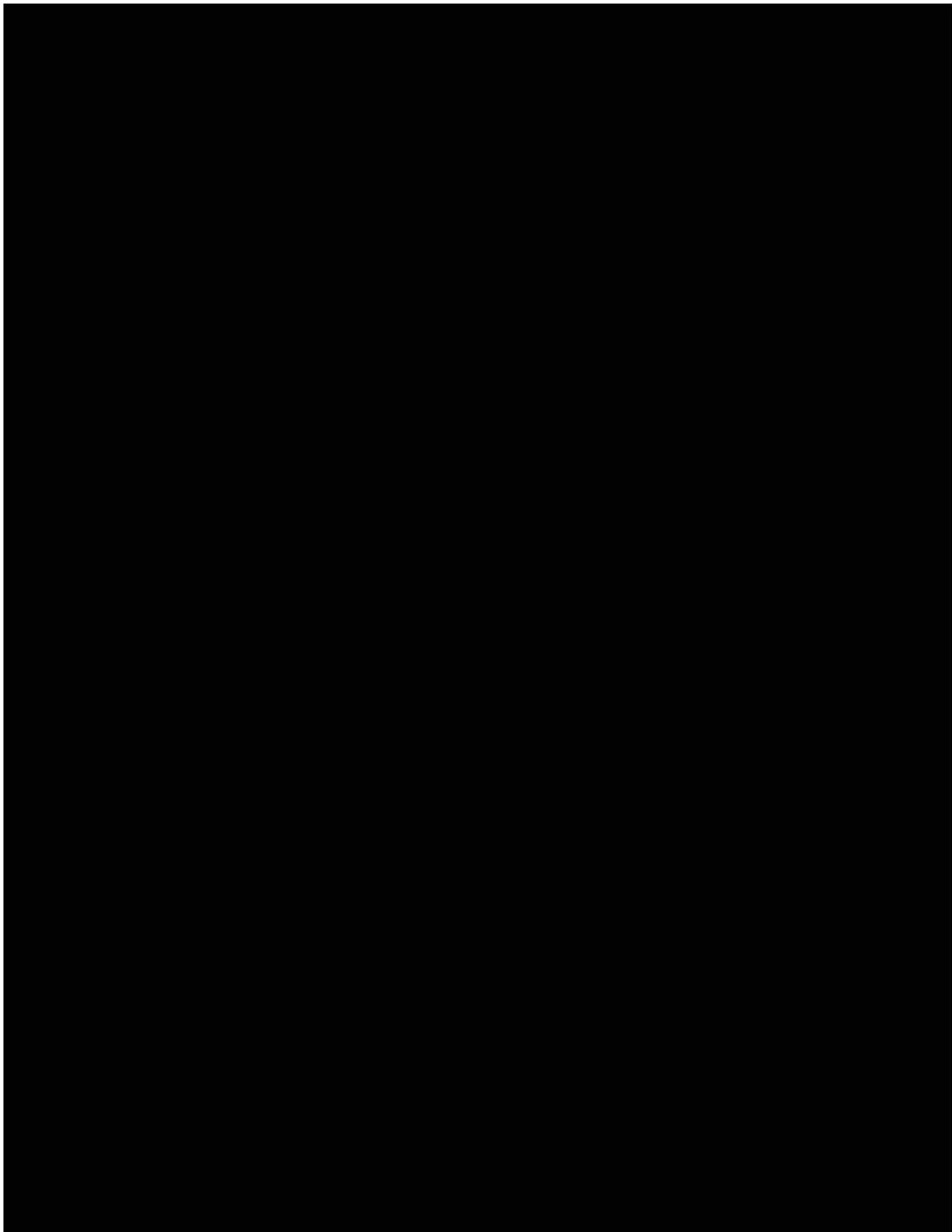
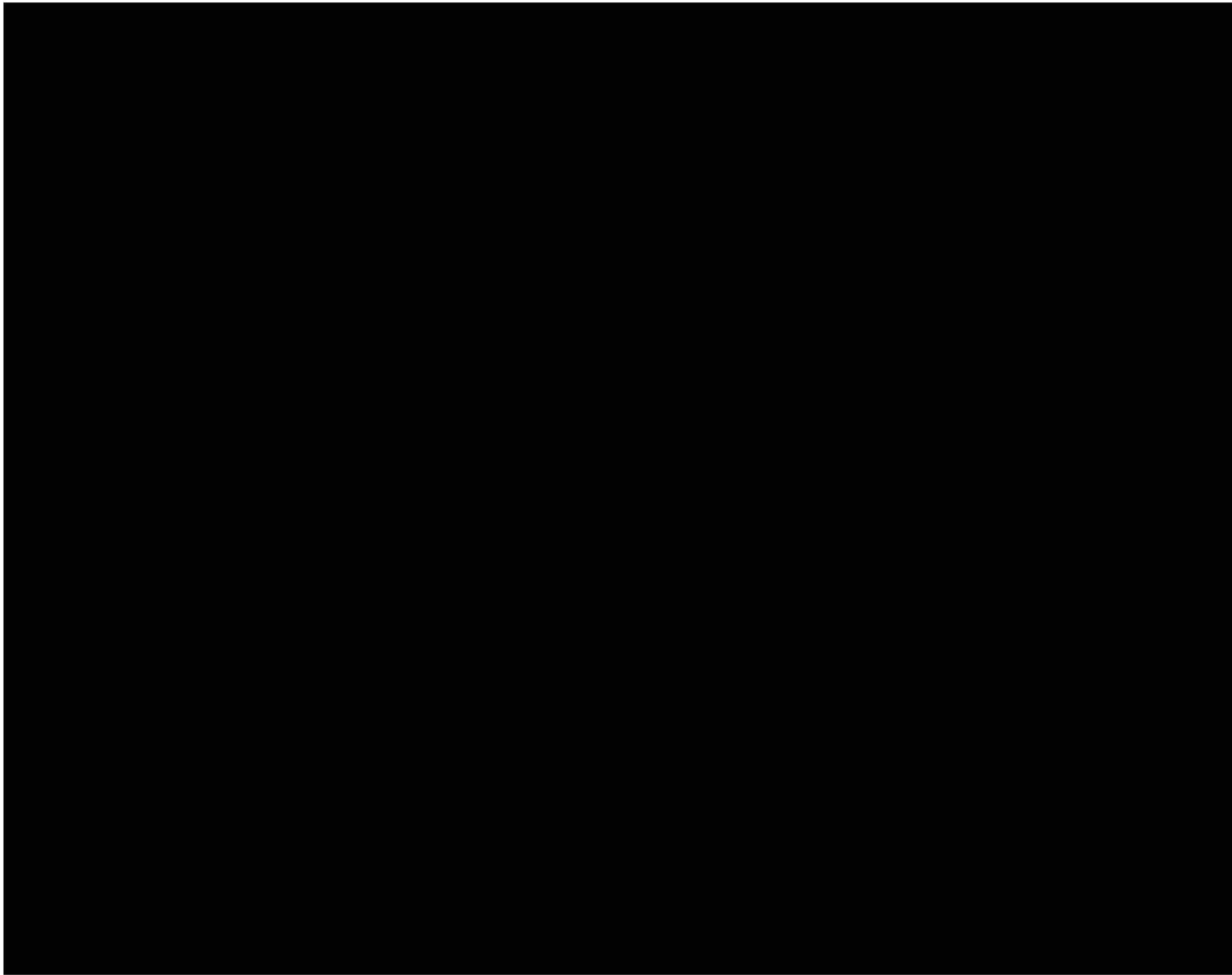
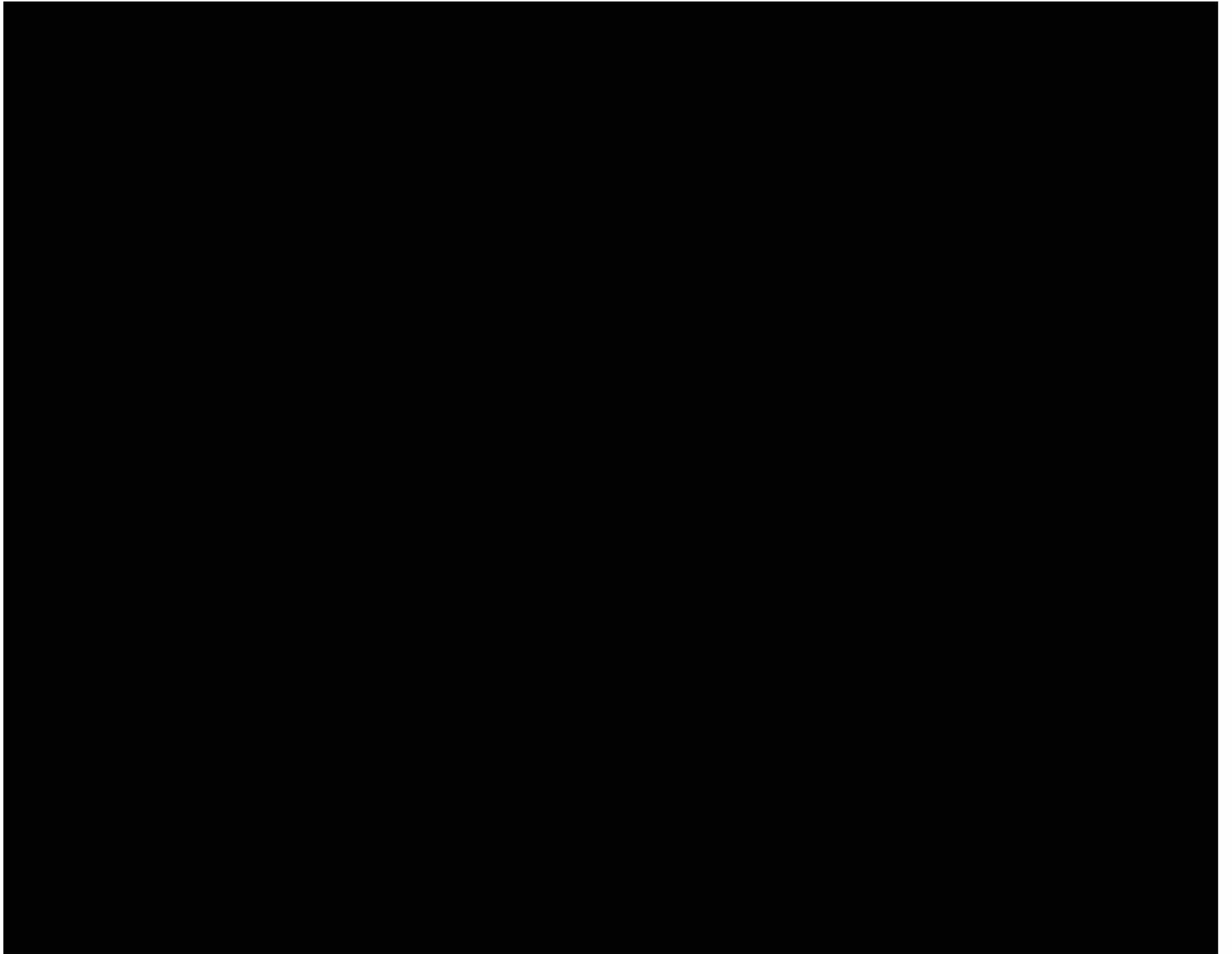


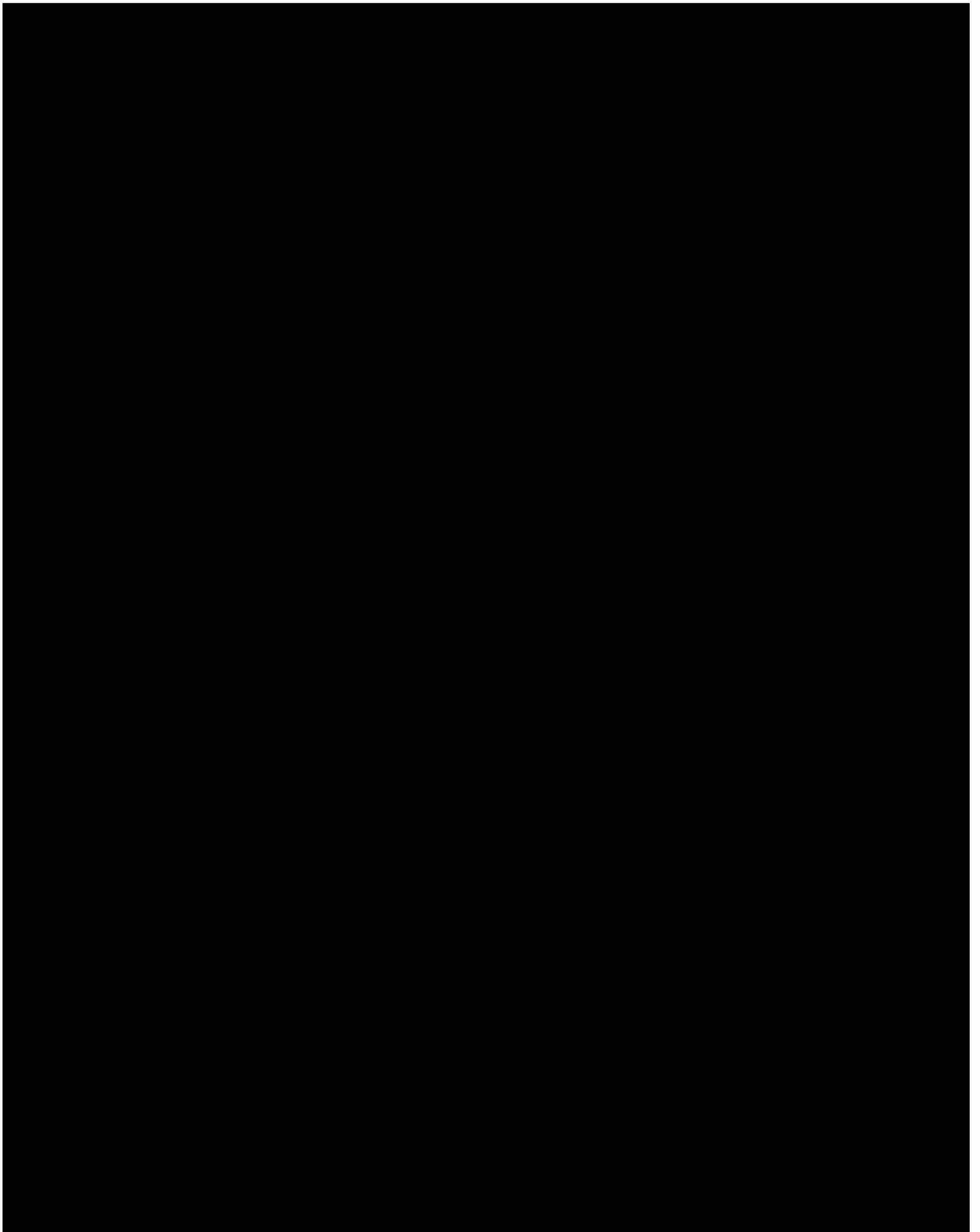
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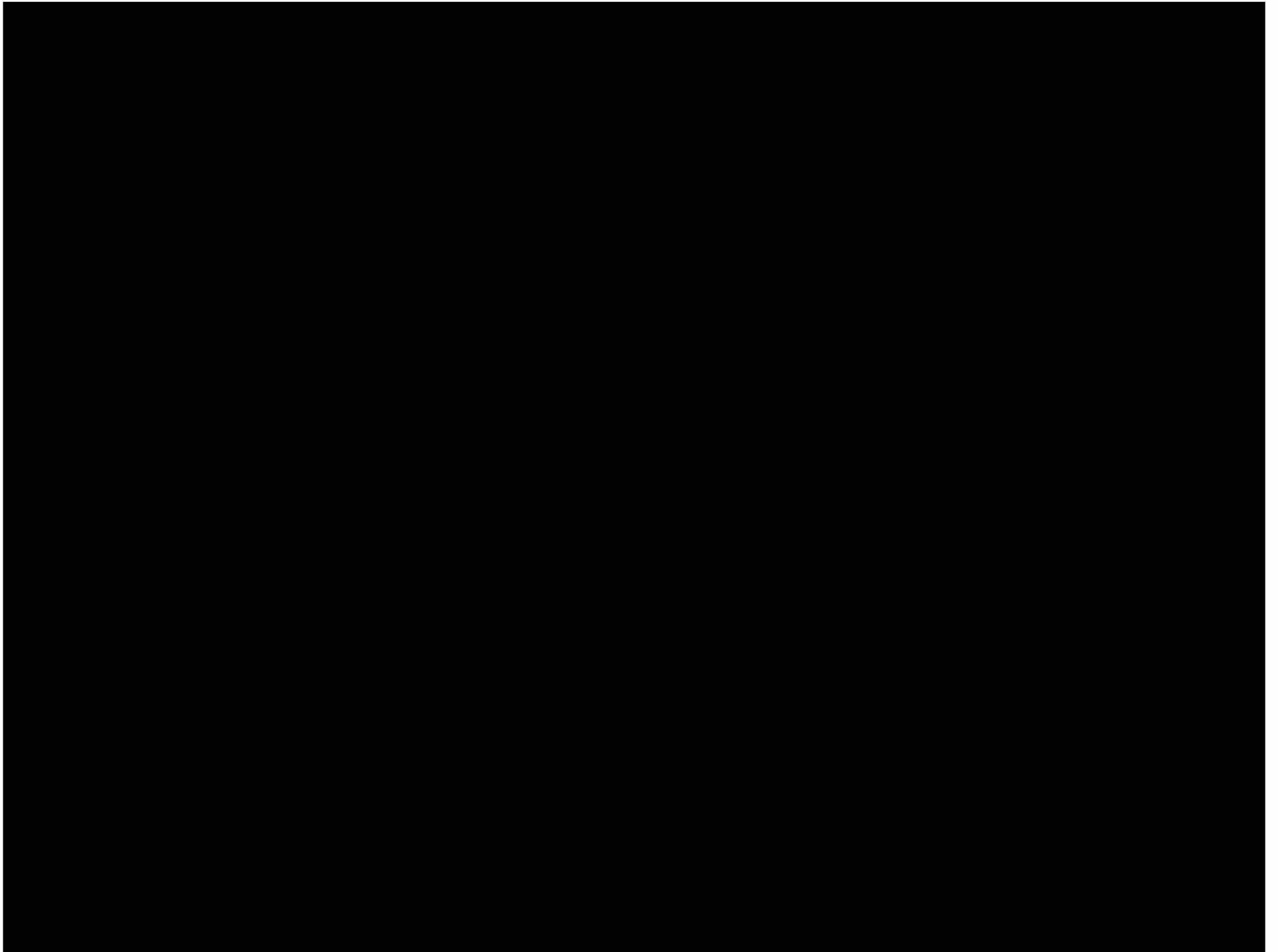
WITNESS STATEMENT OF TOM DOOLEY

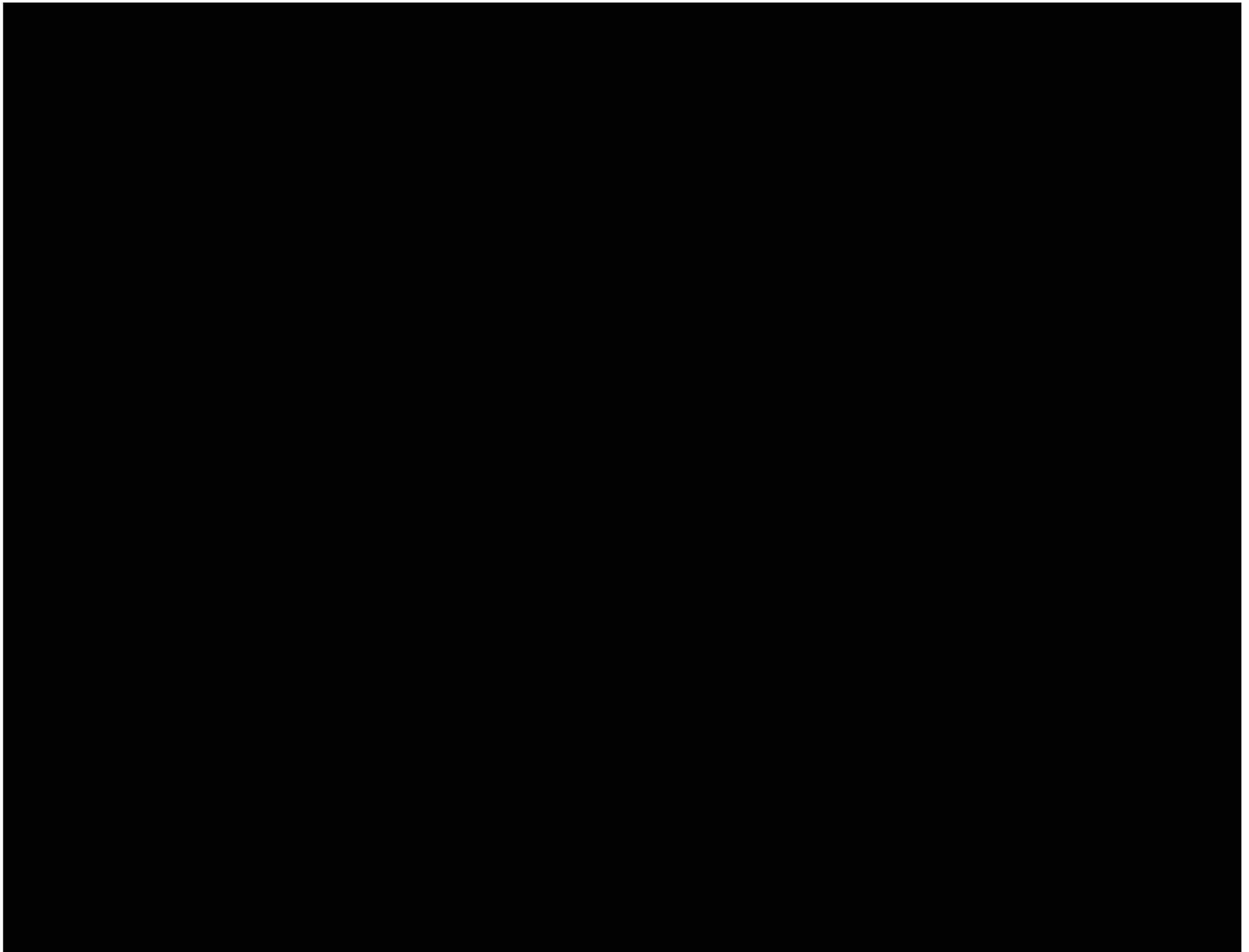


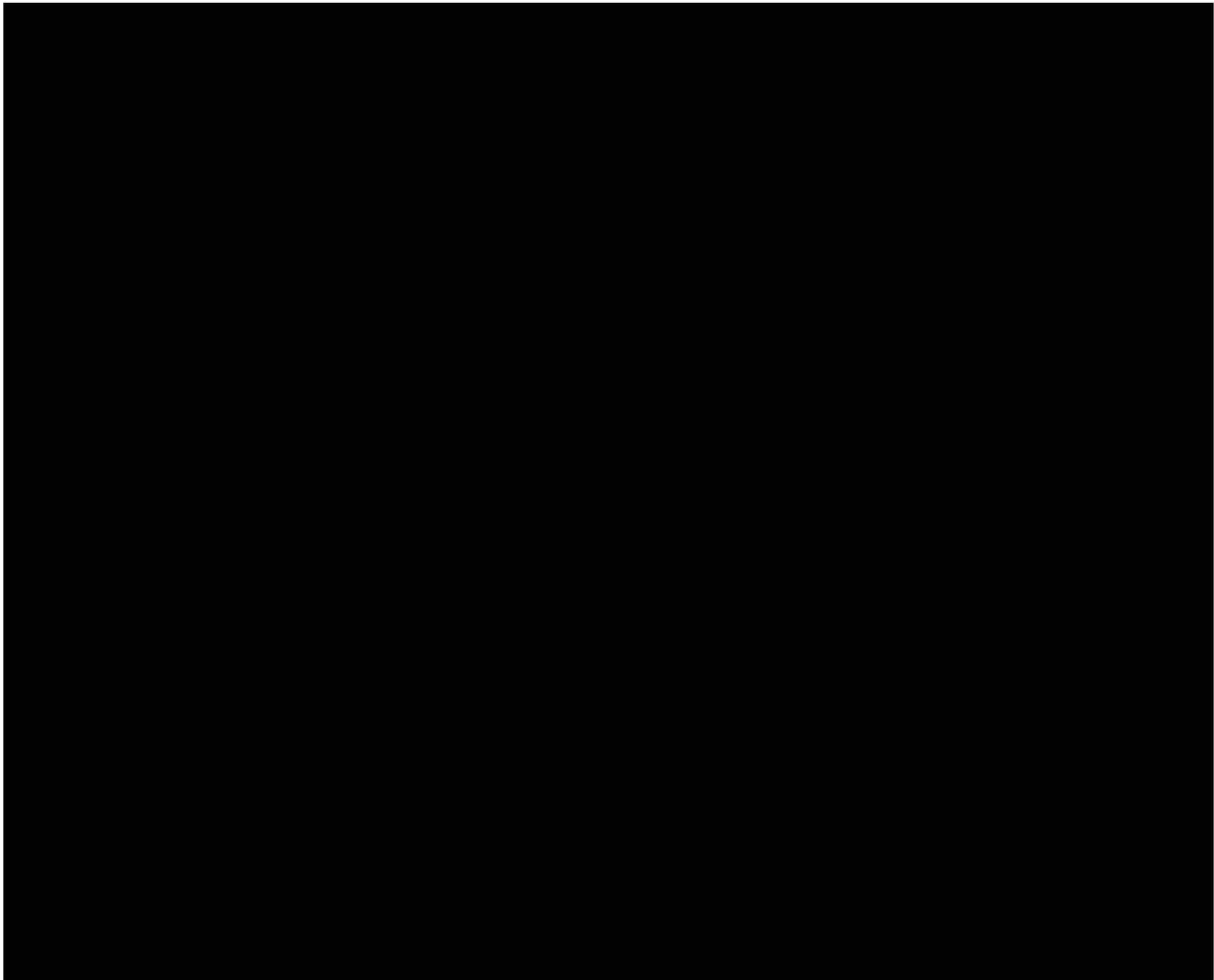


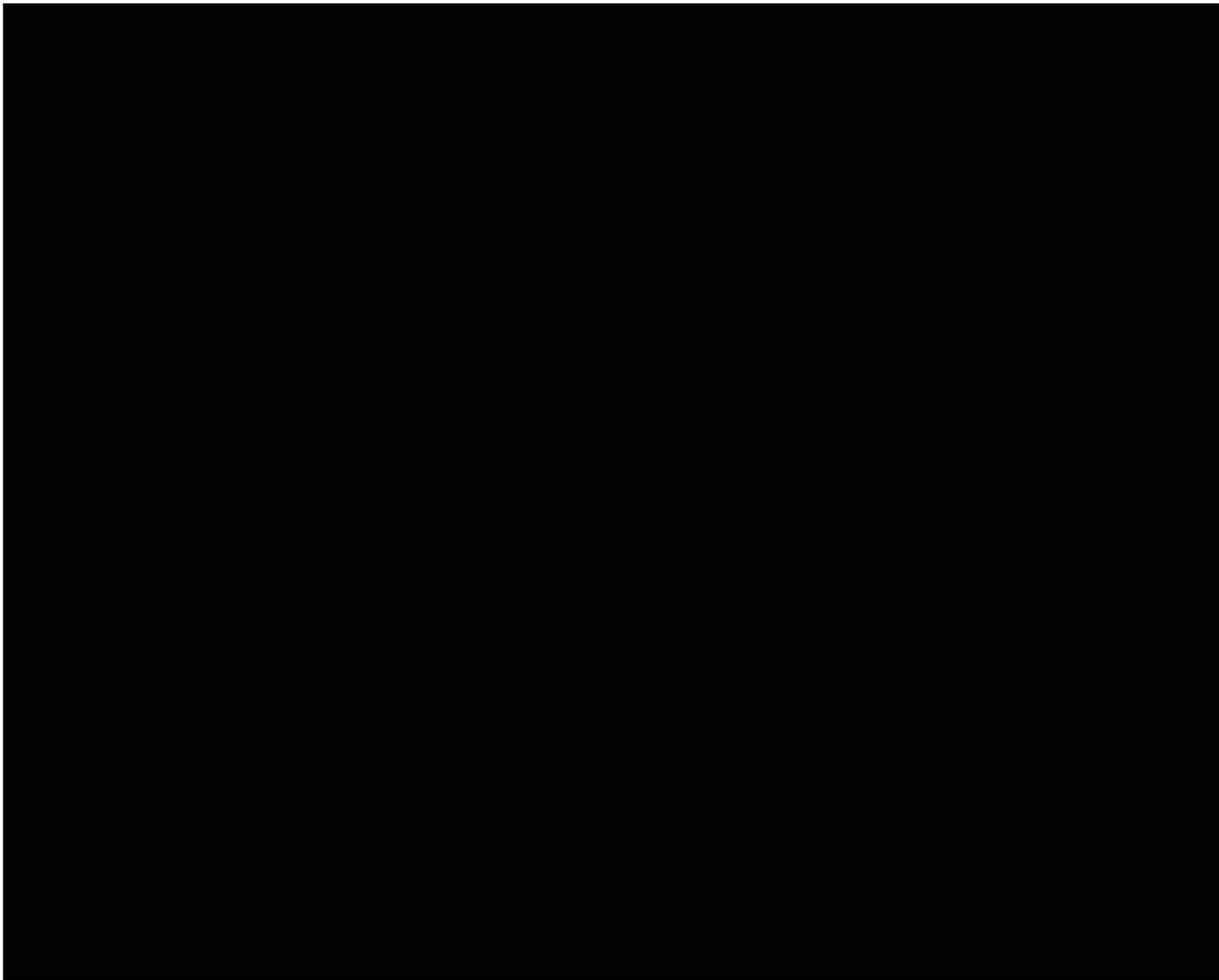


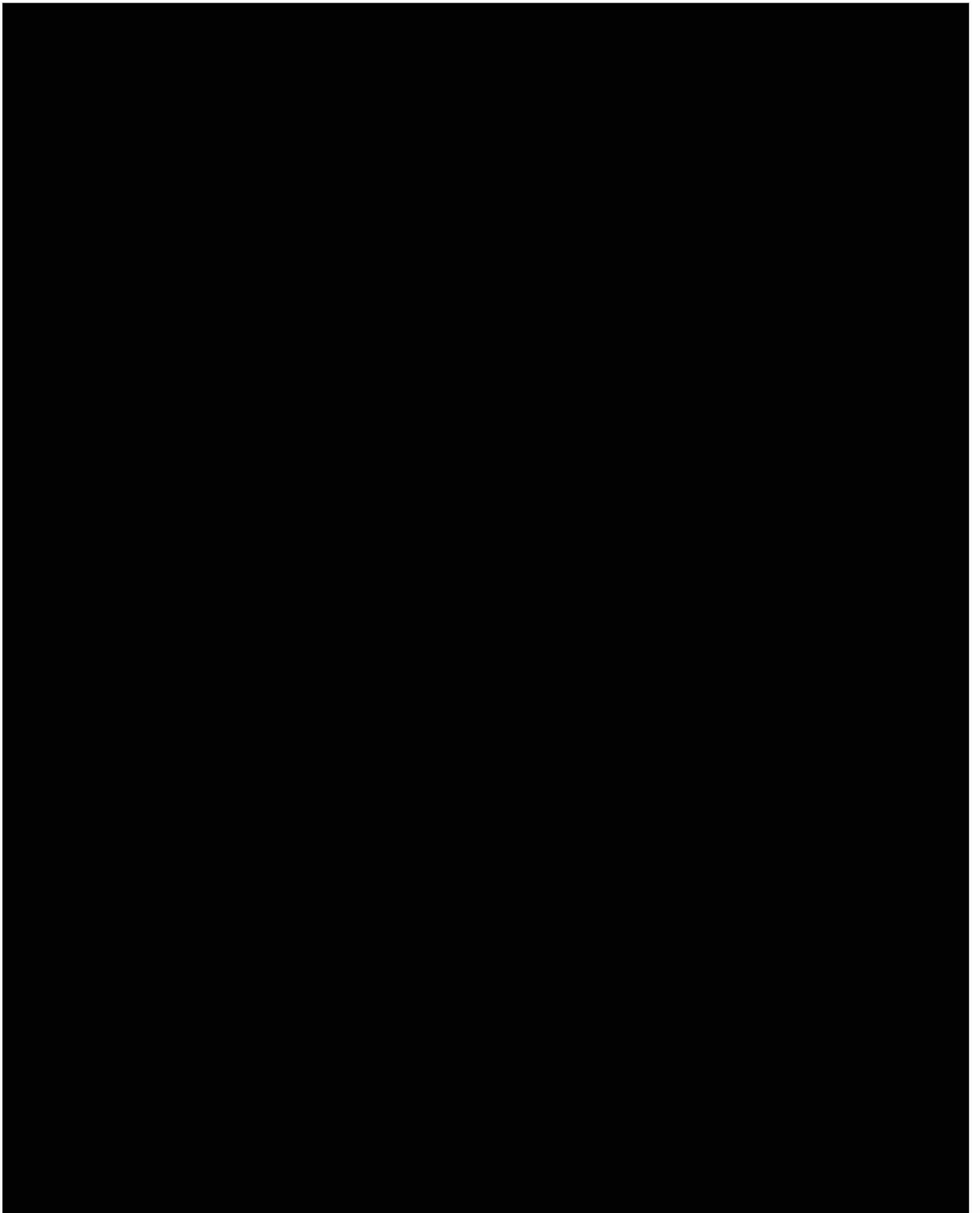


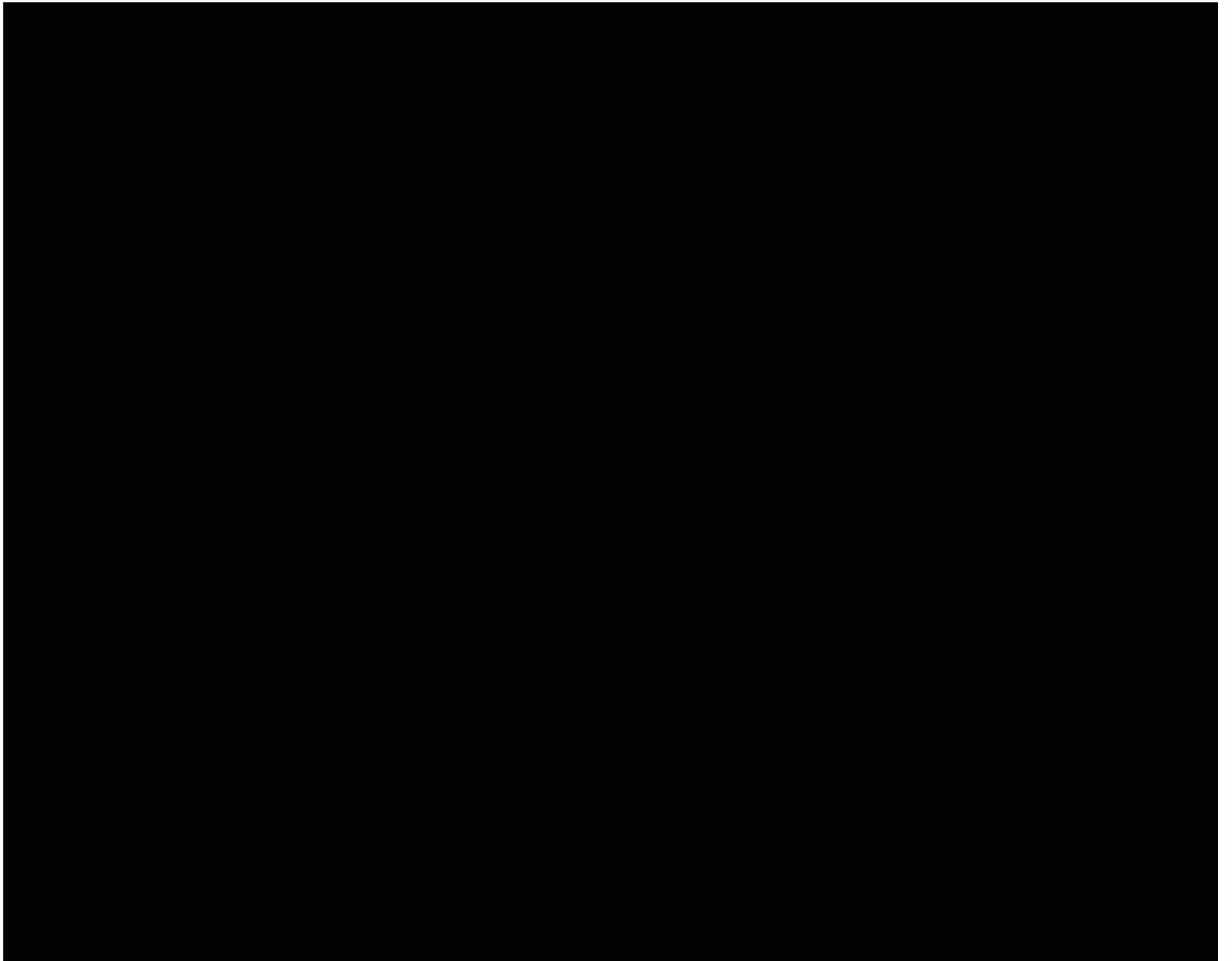


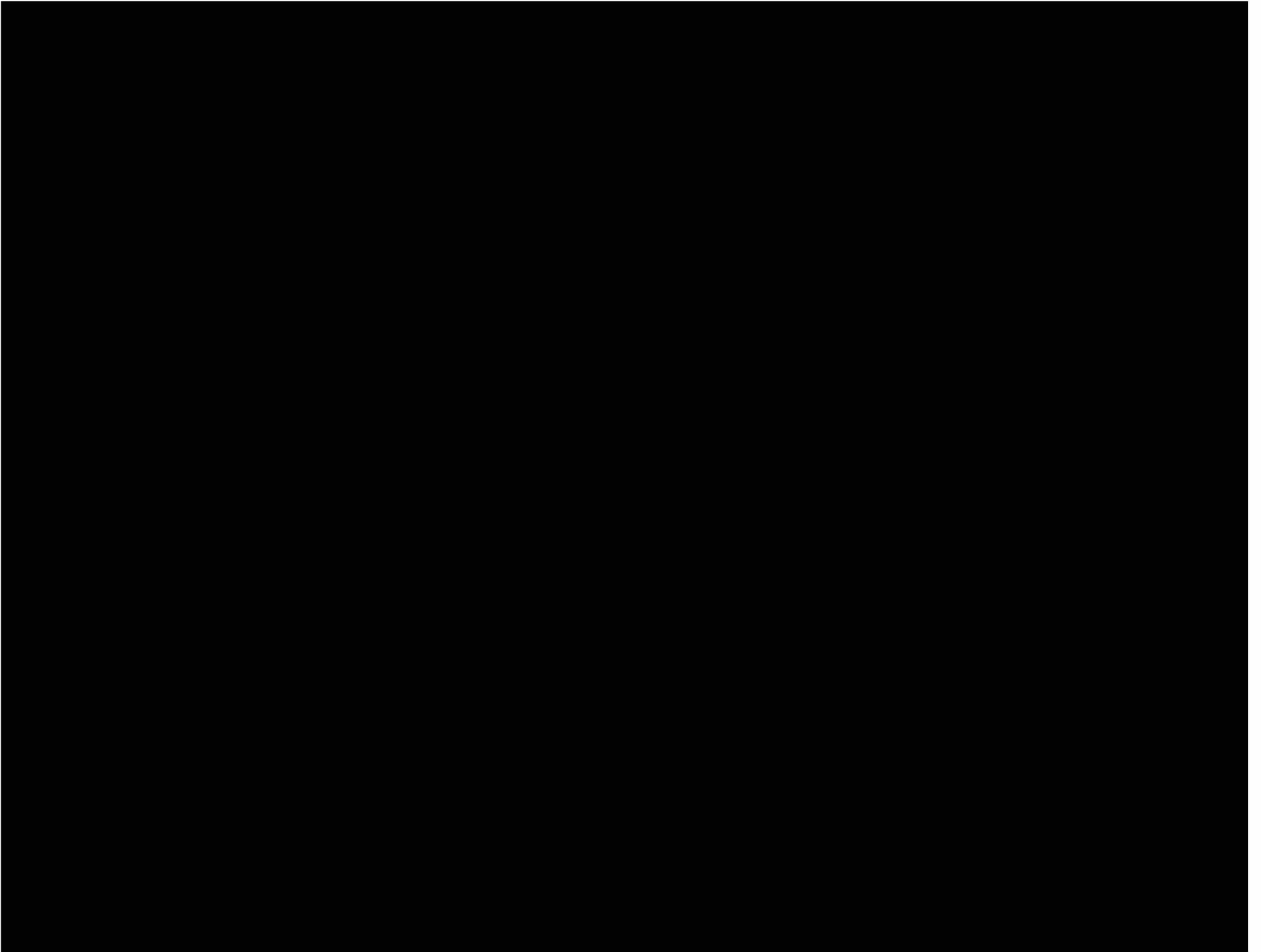


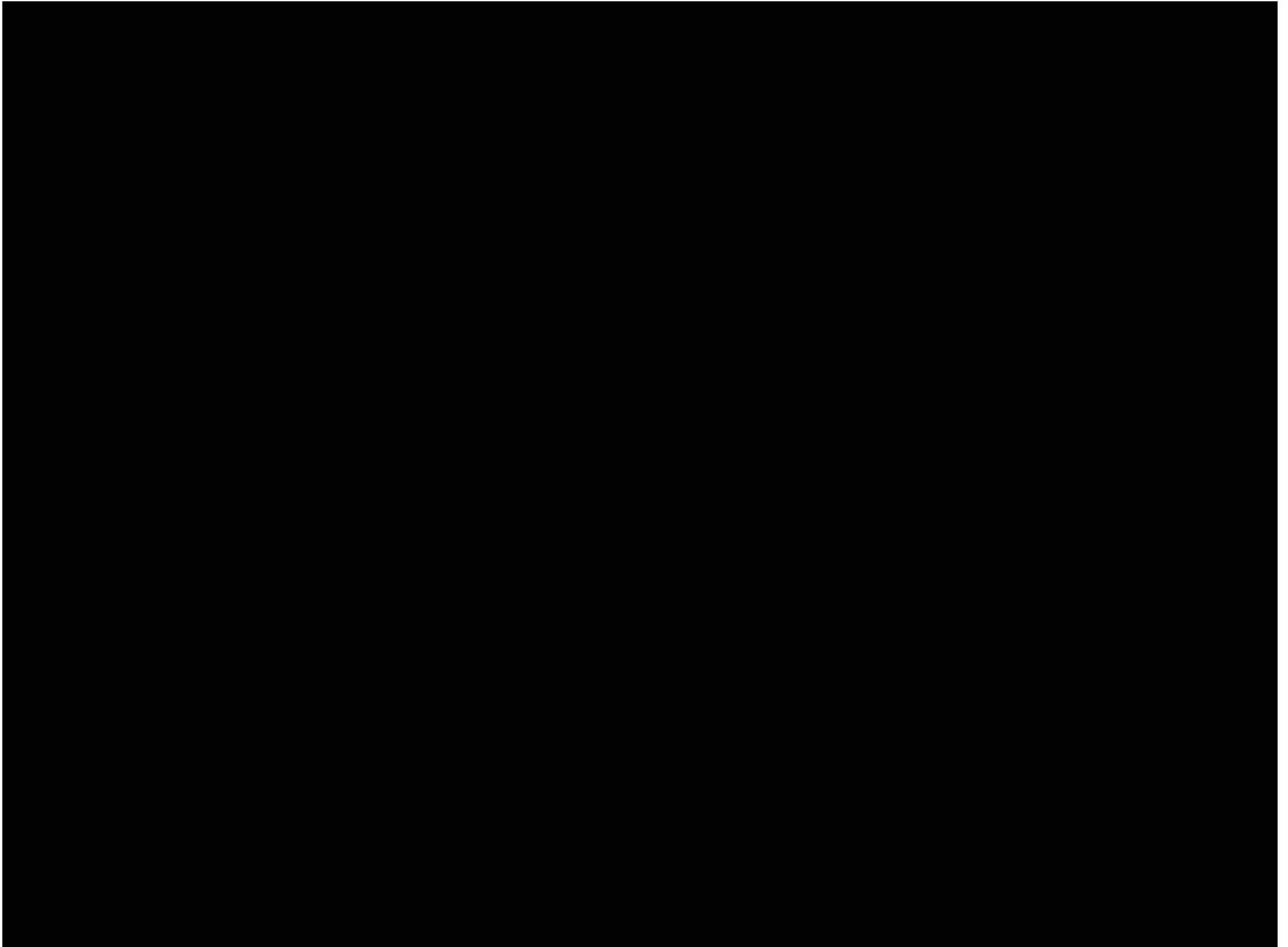


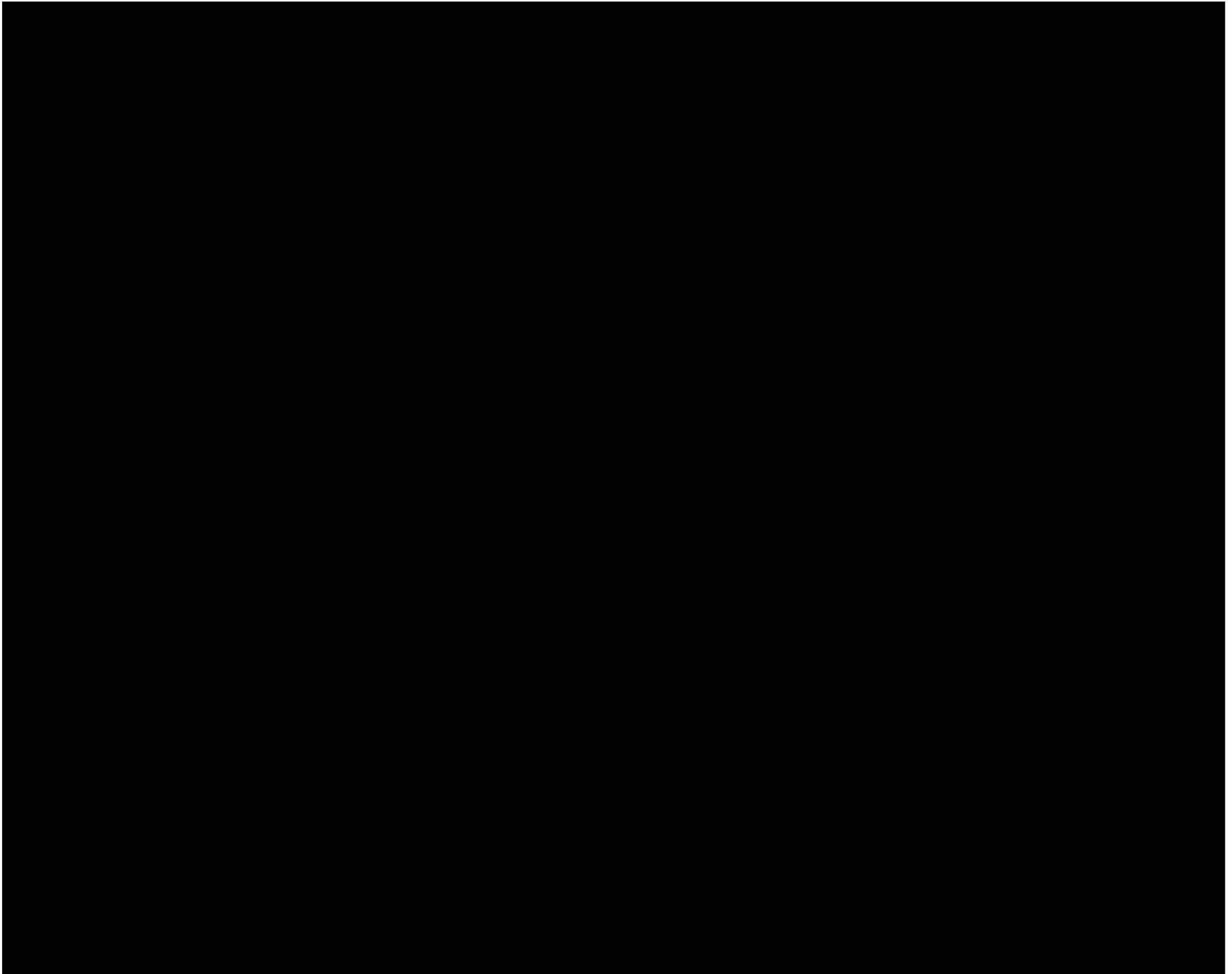




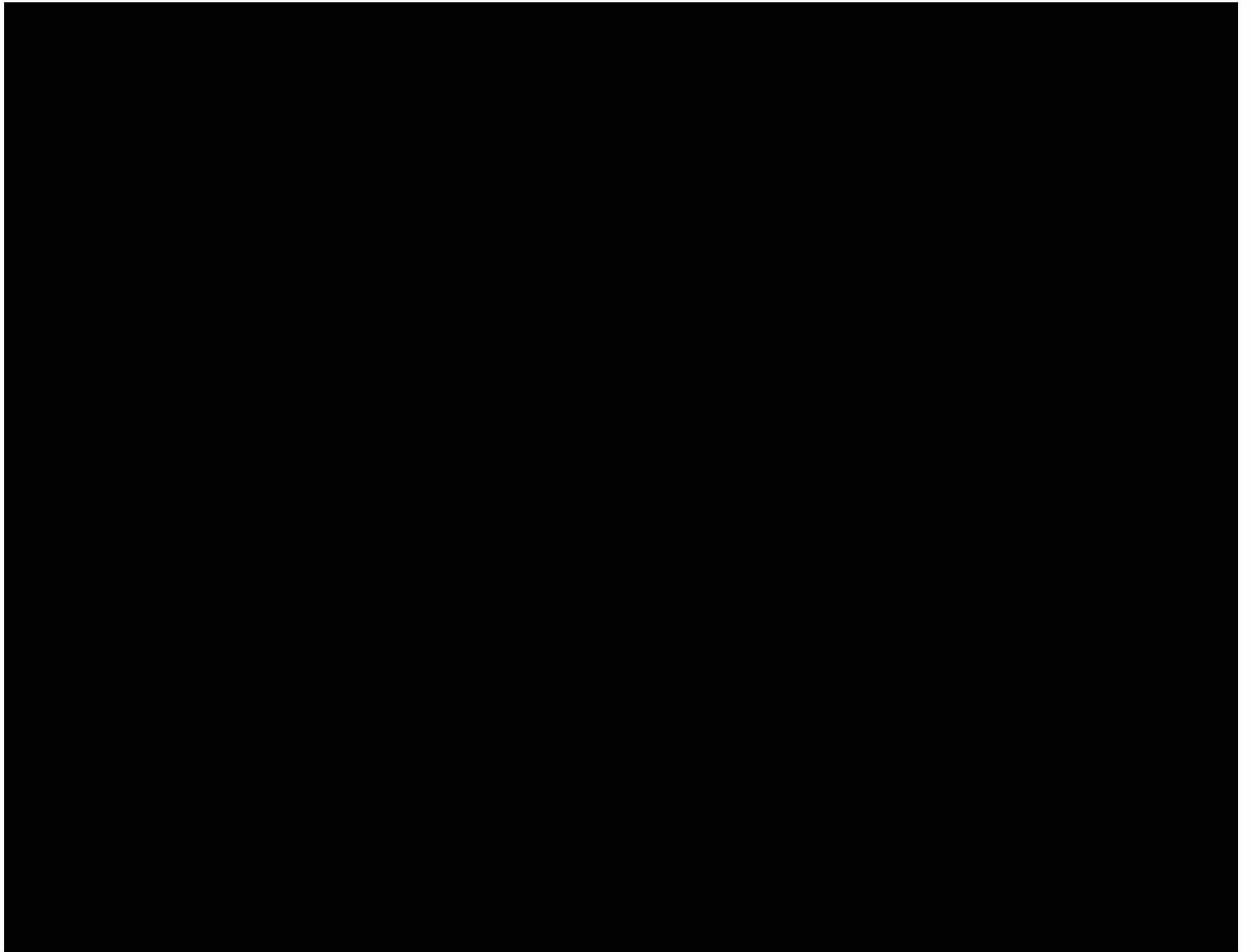


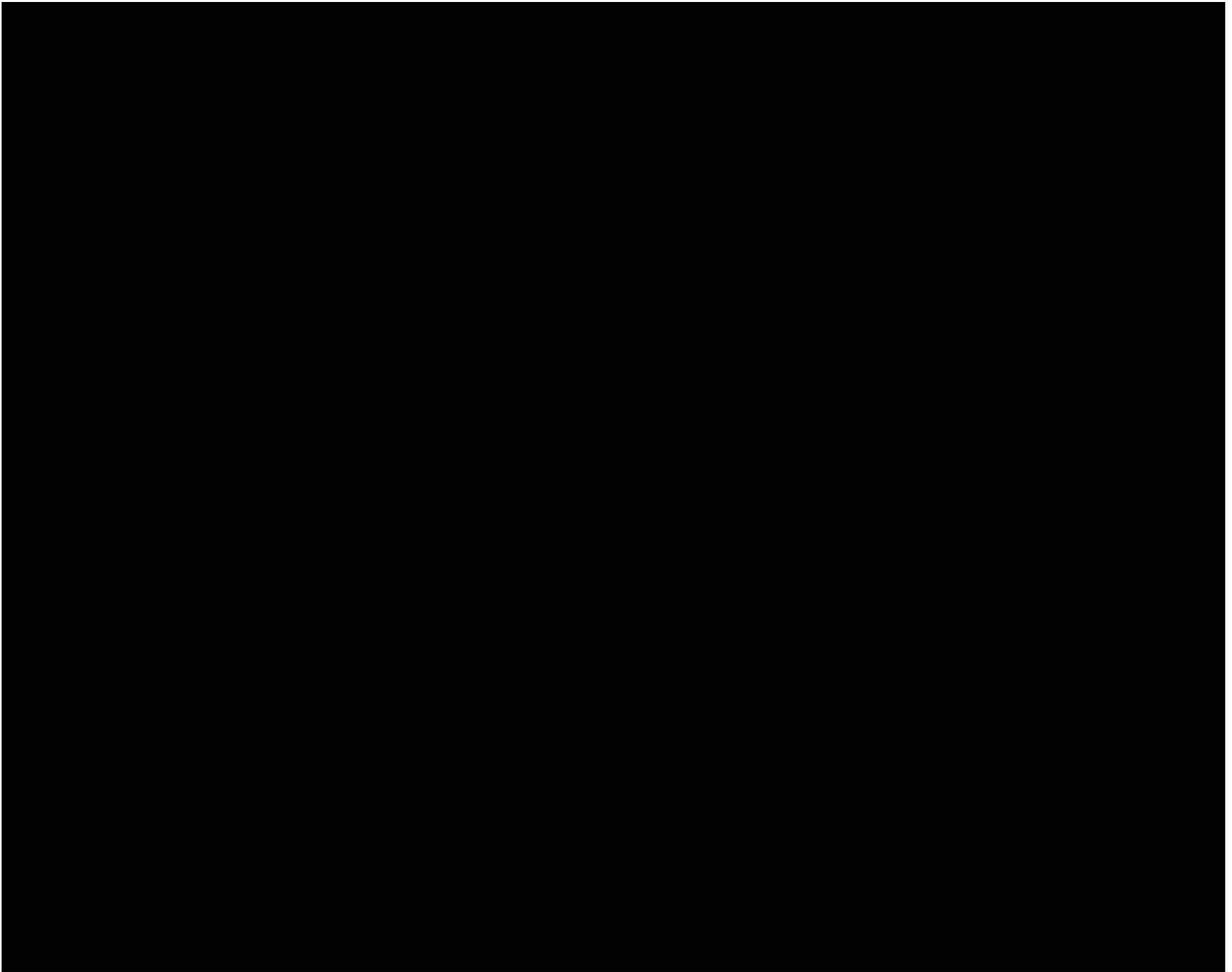


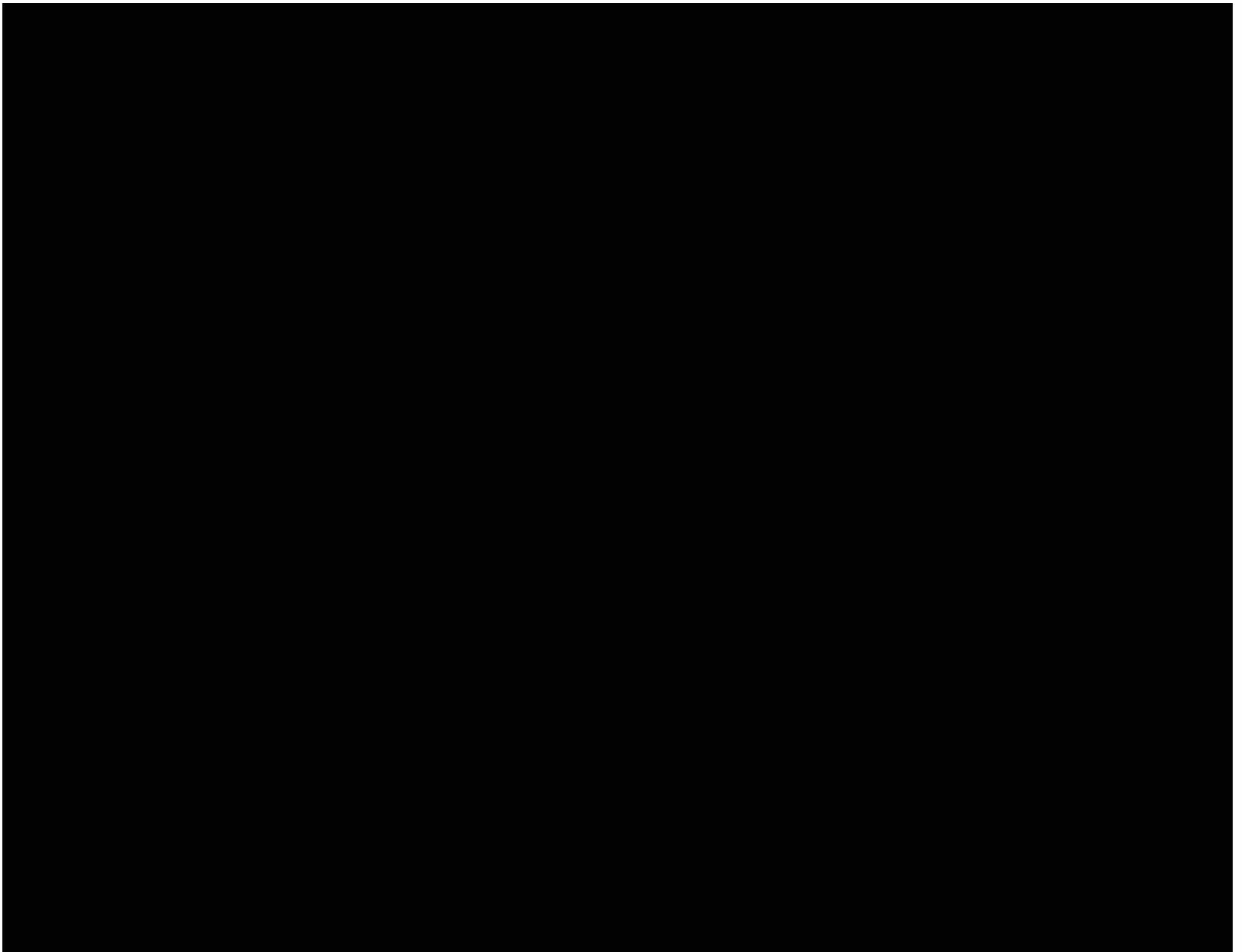




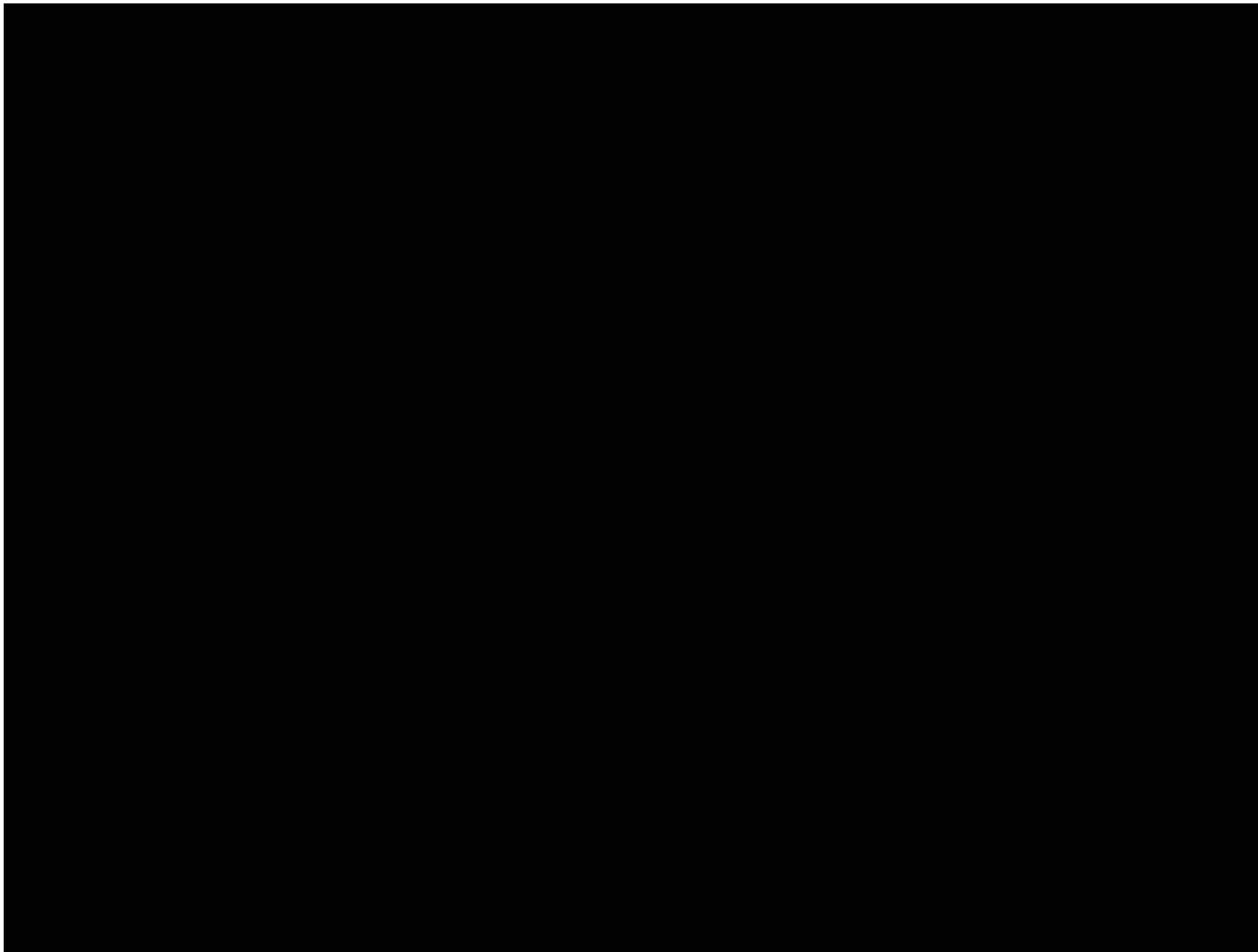


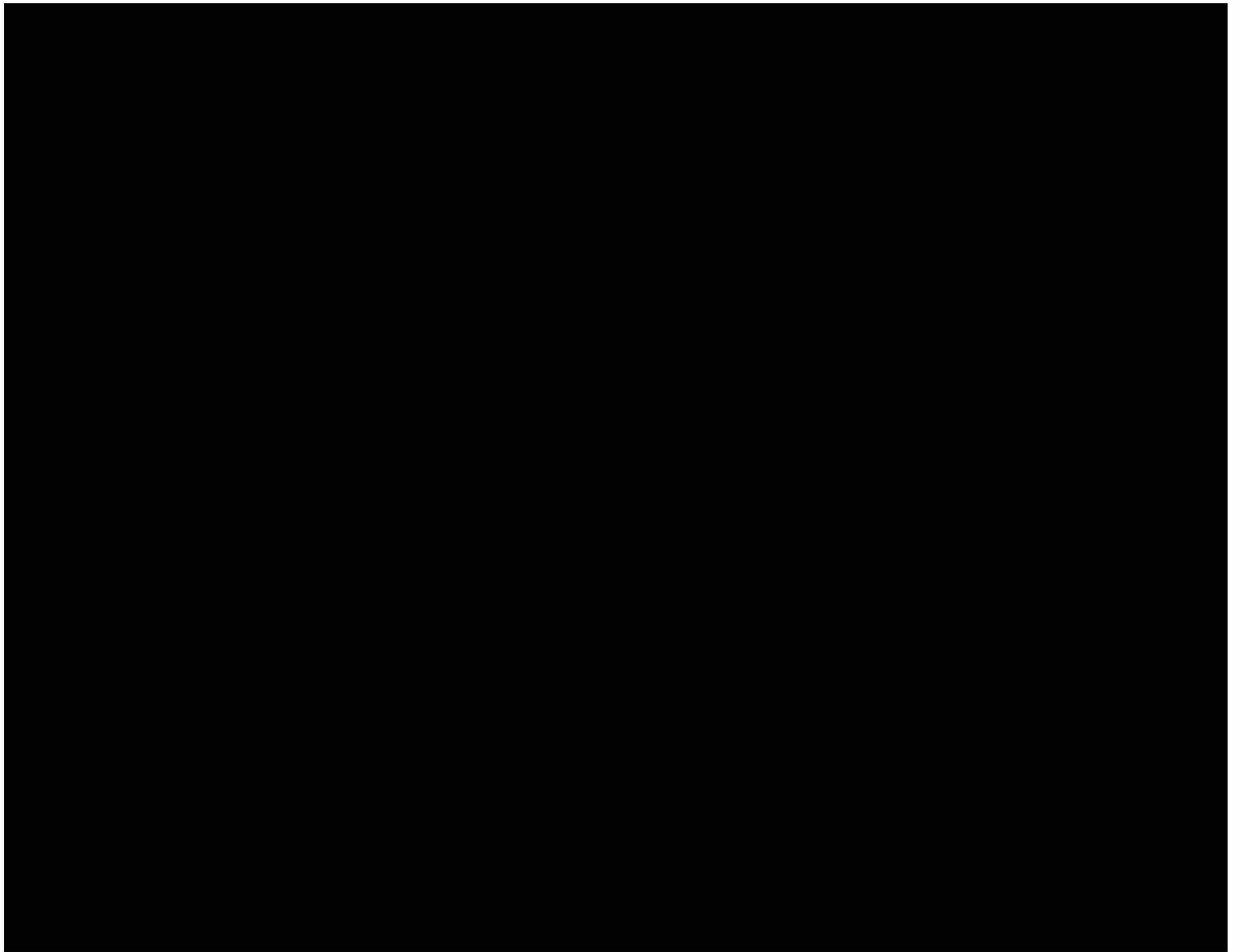


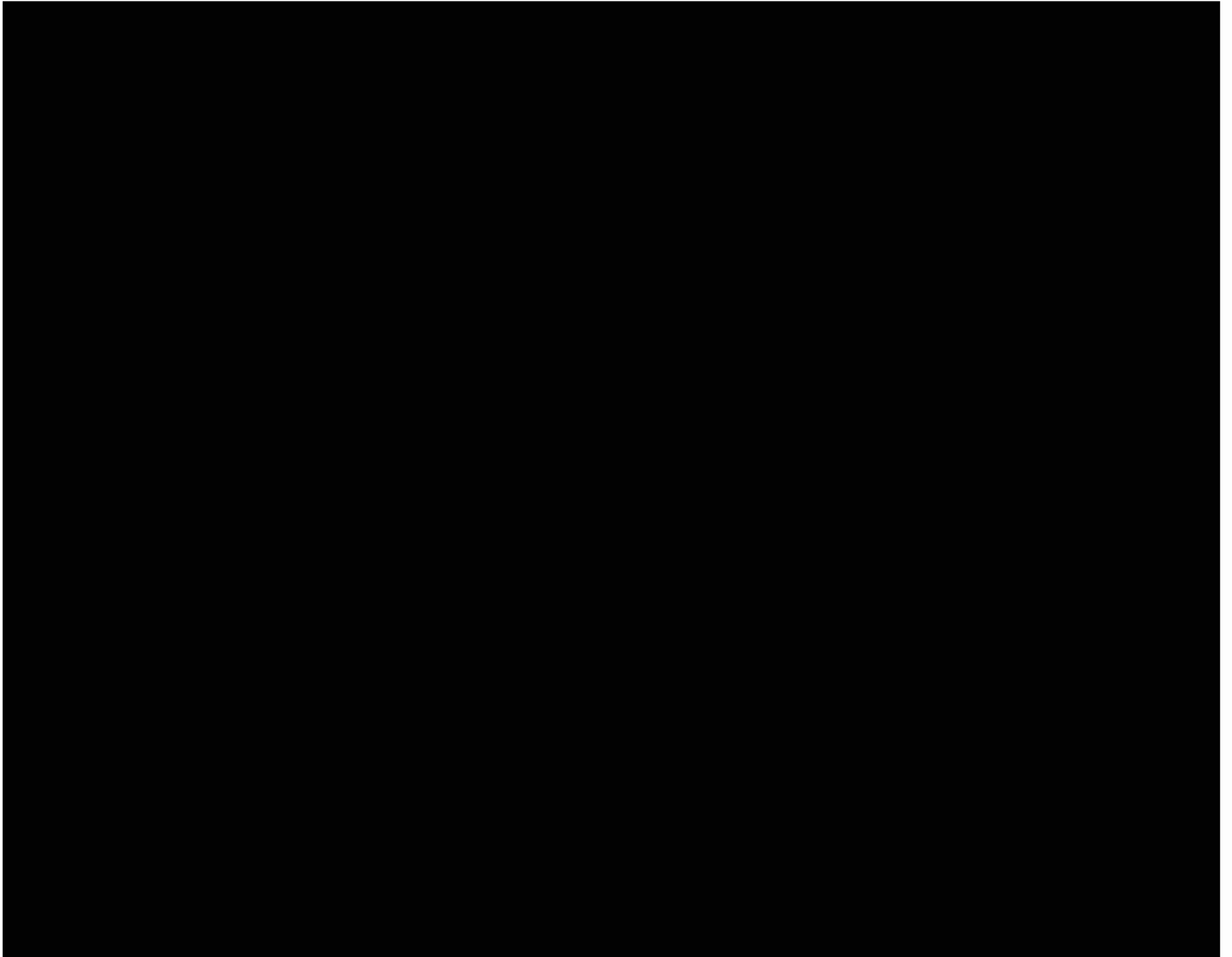


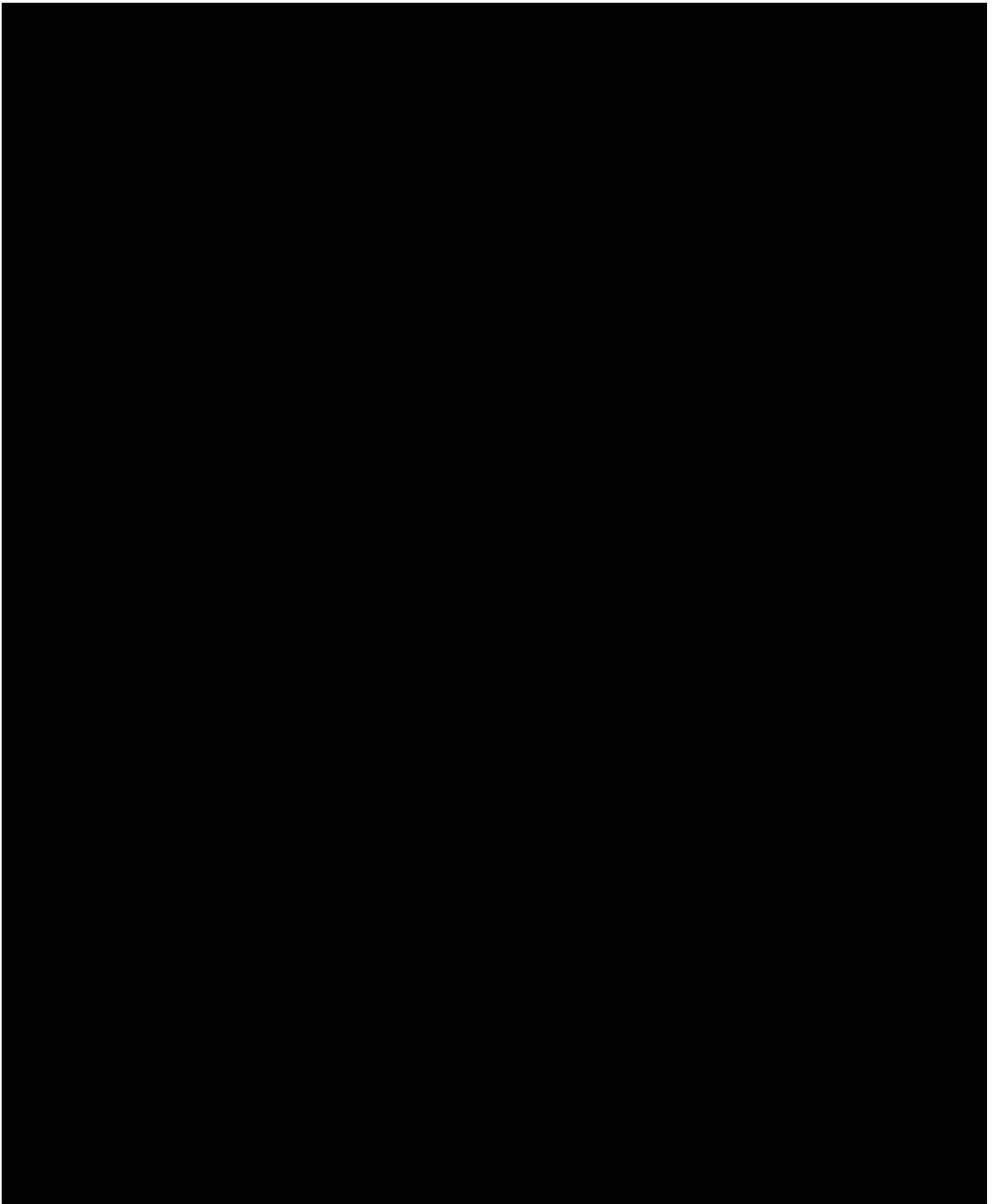


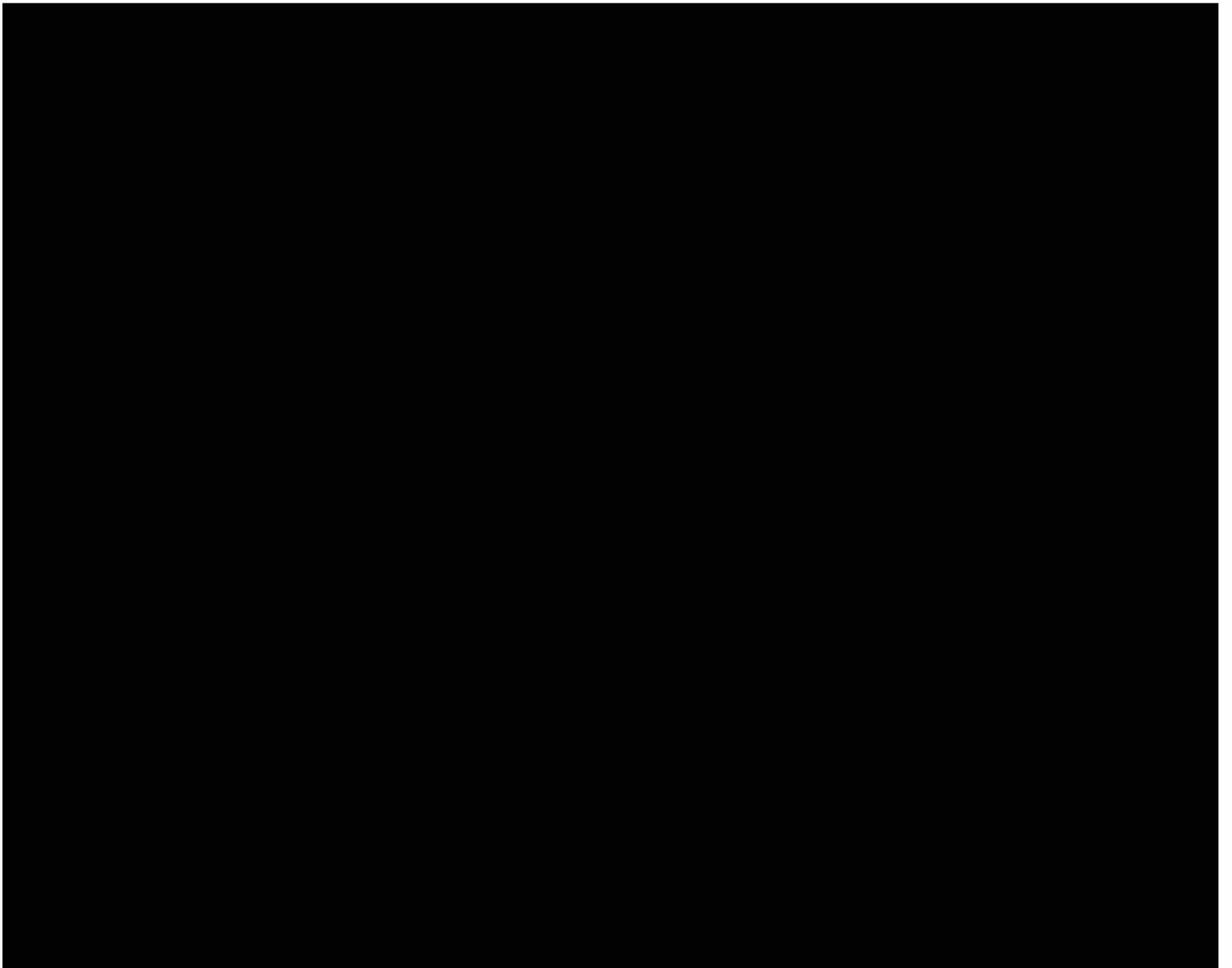


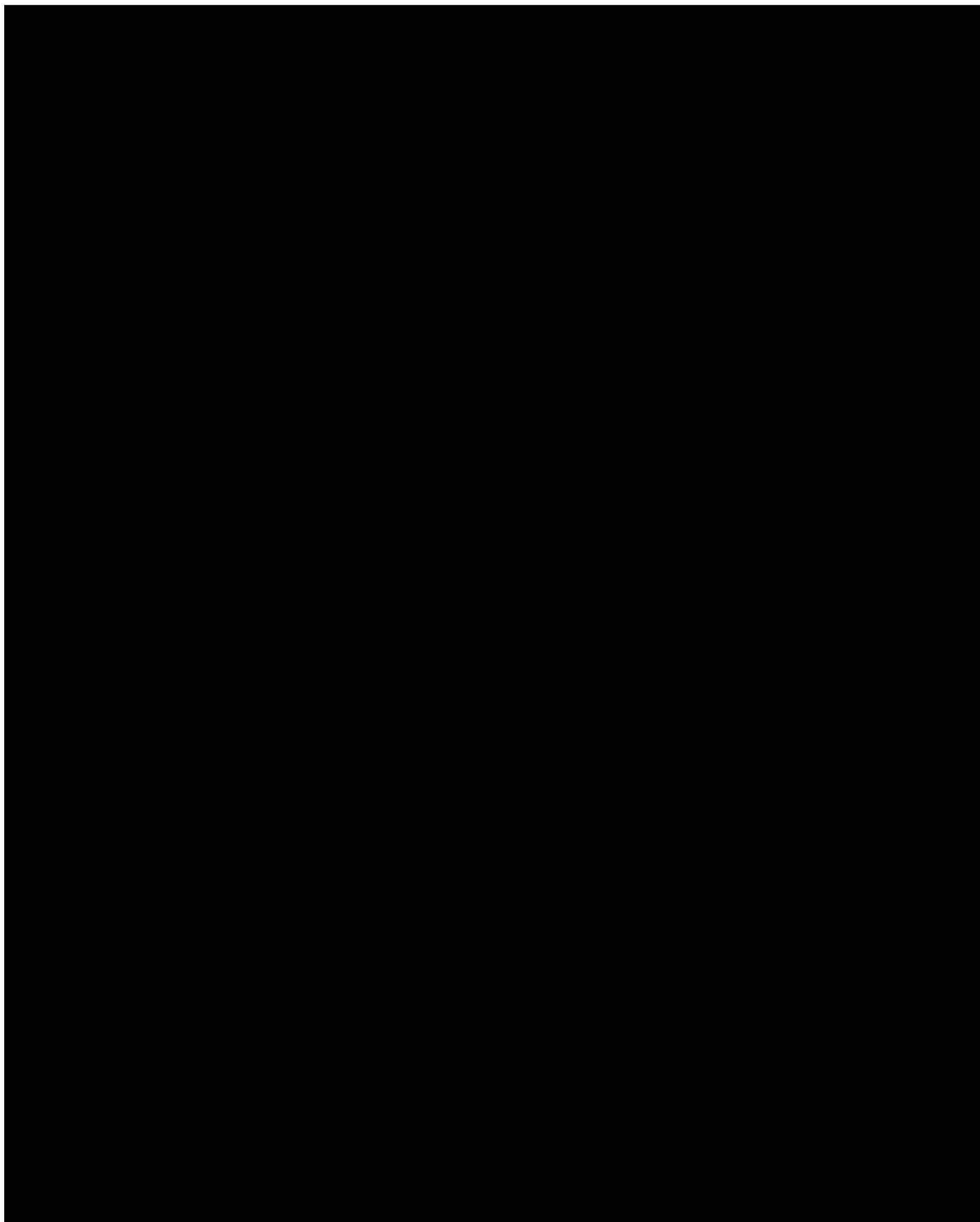


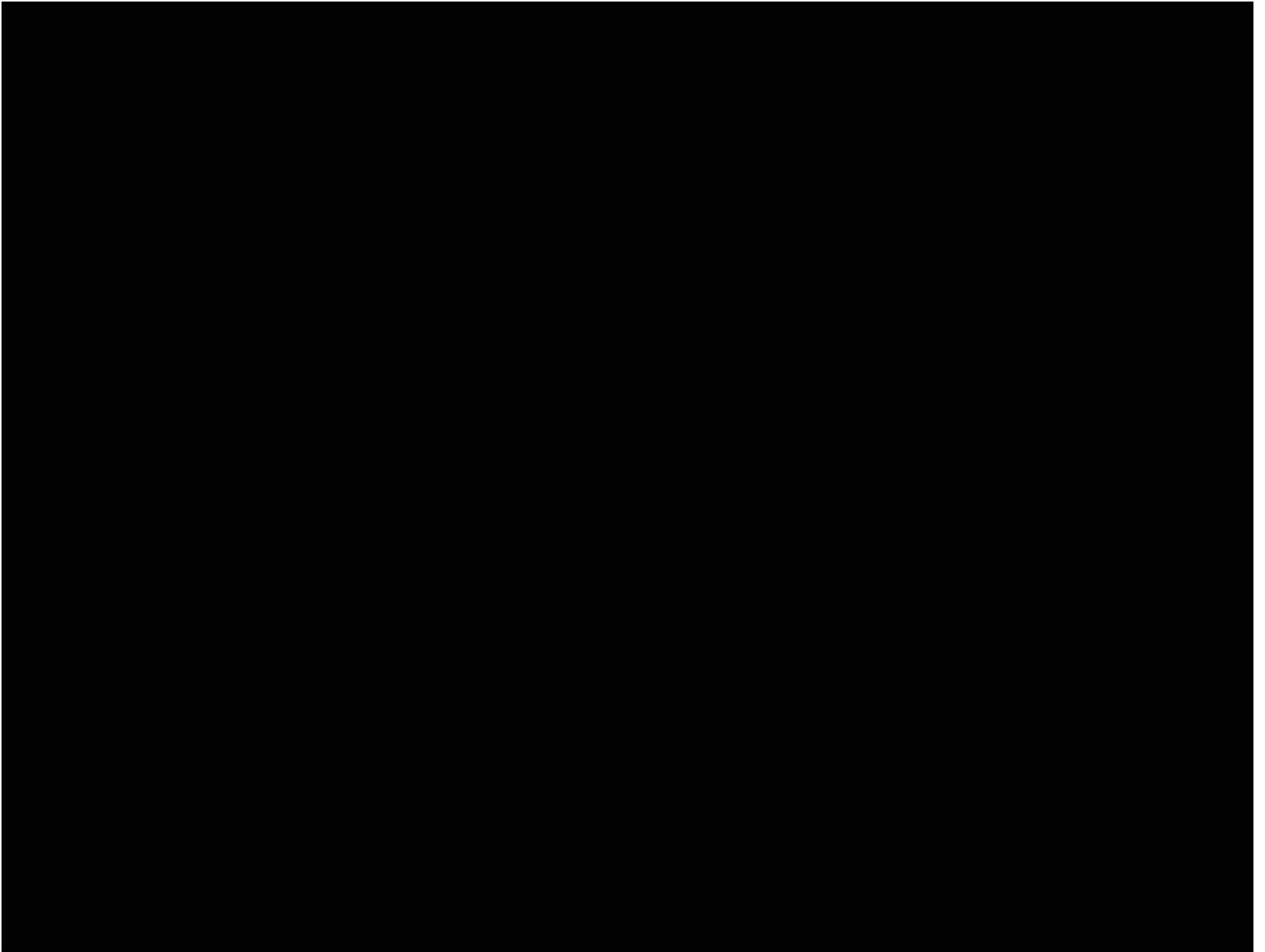


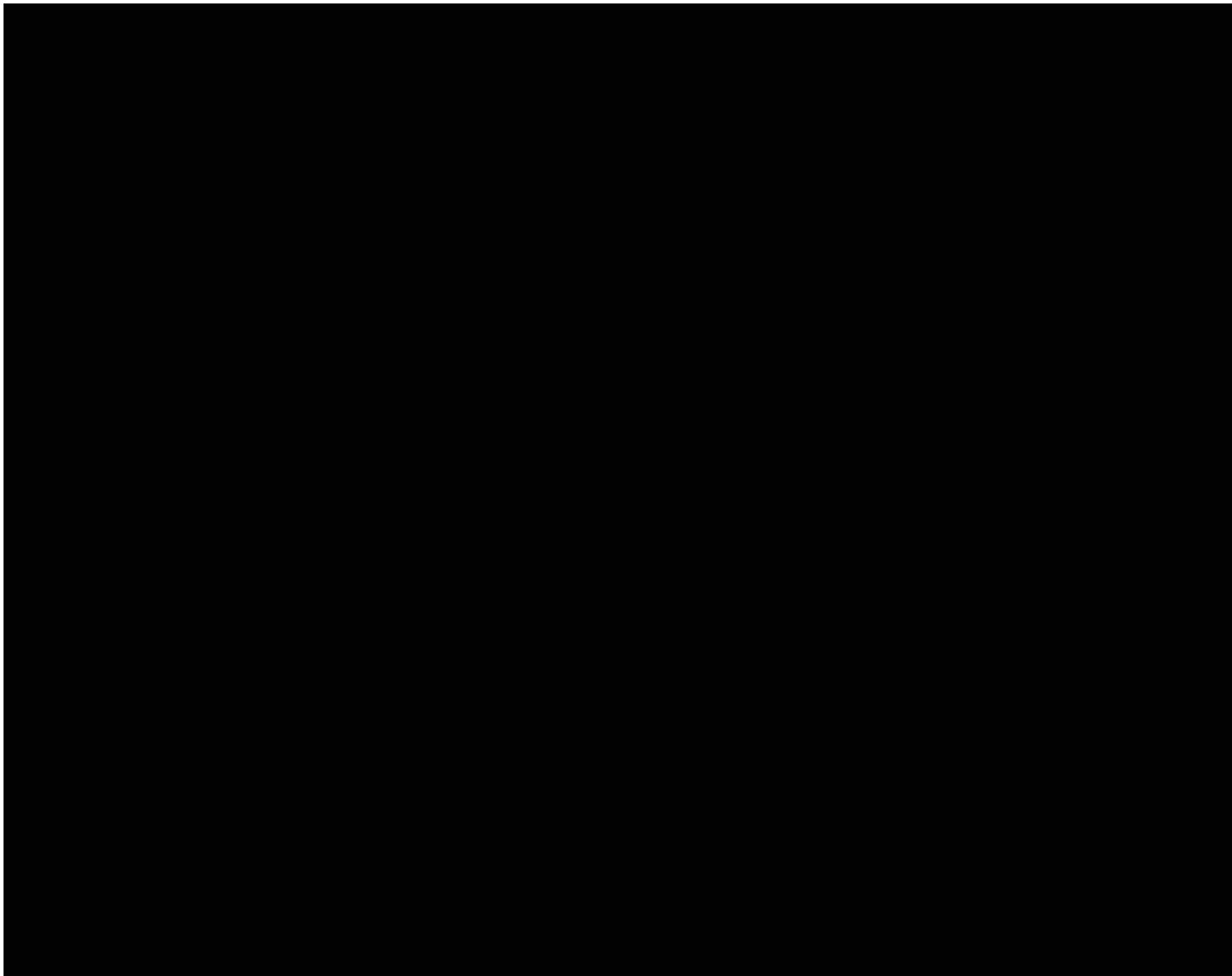


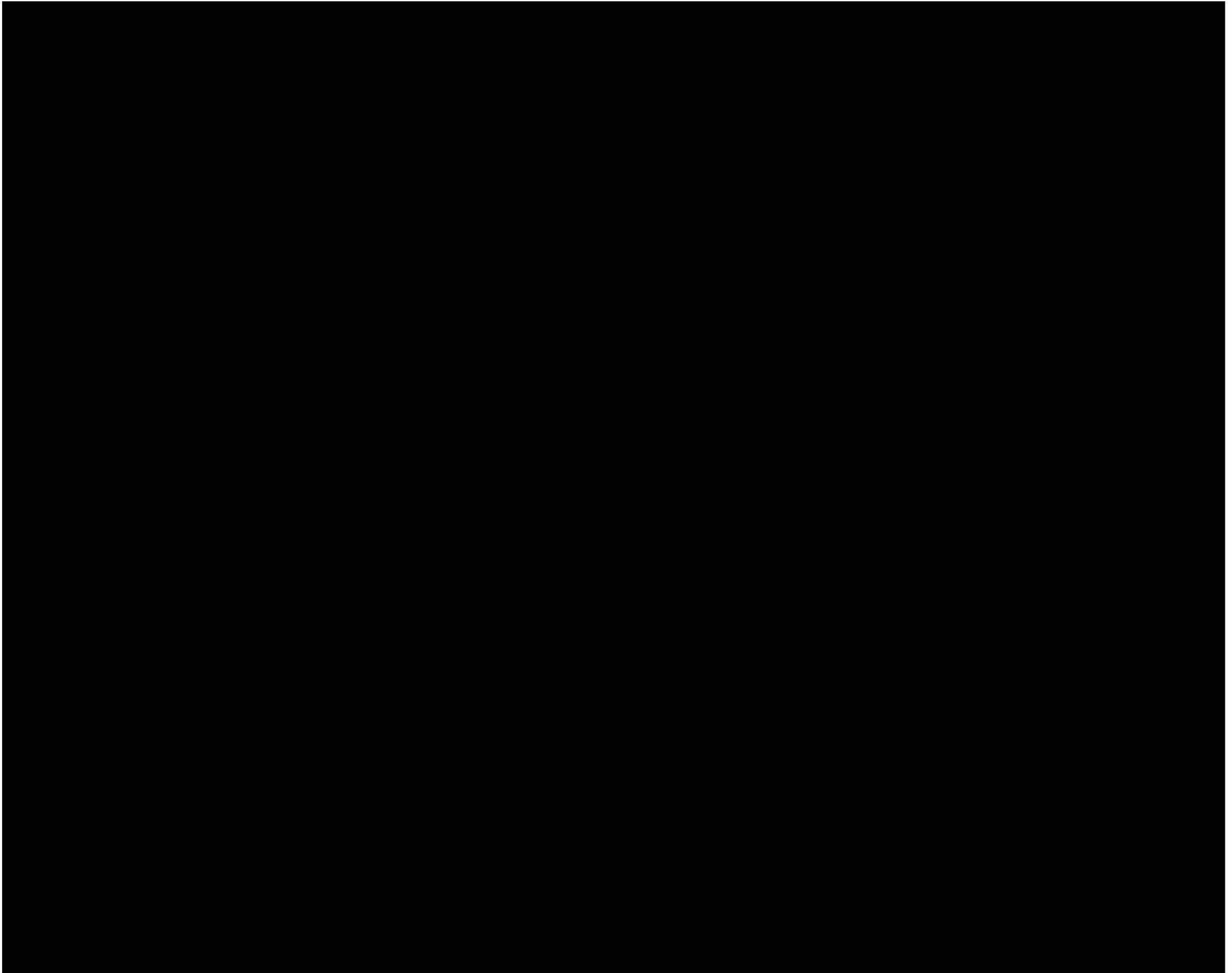


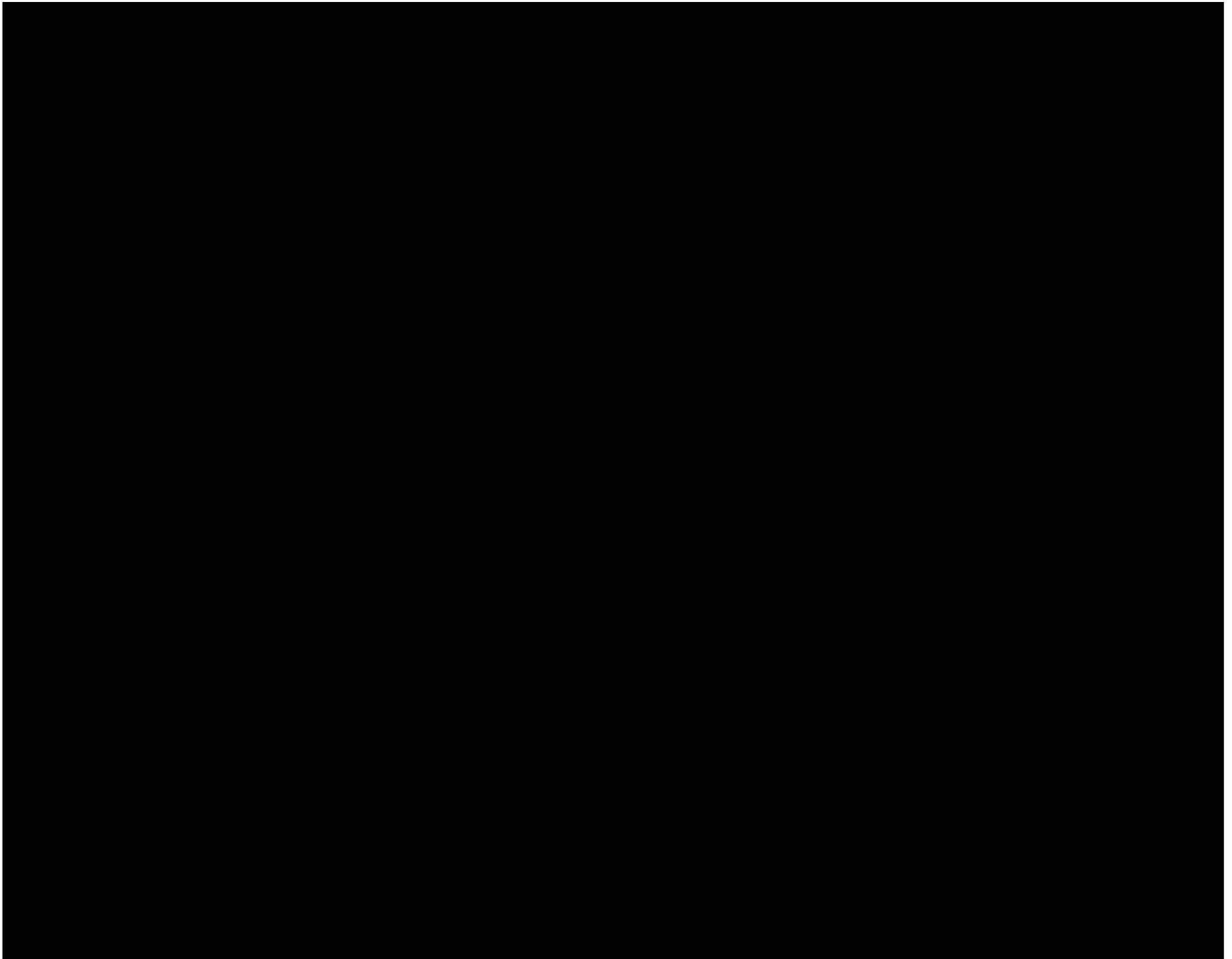


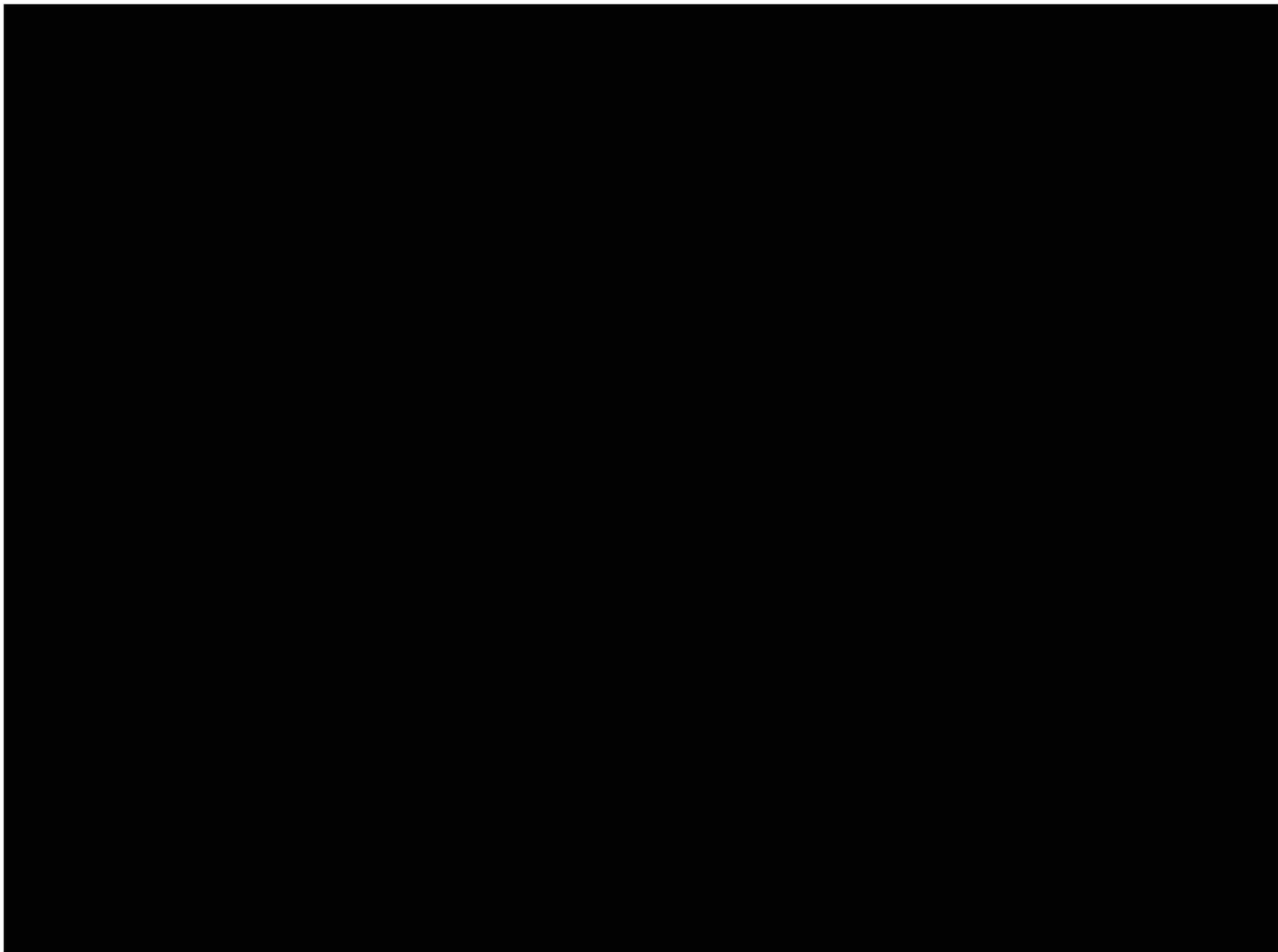


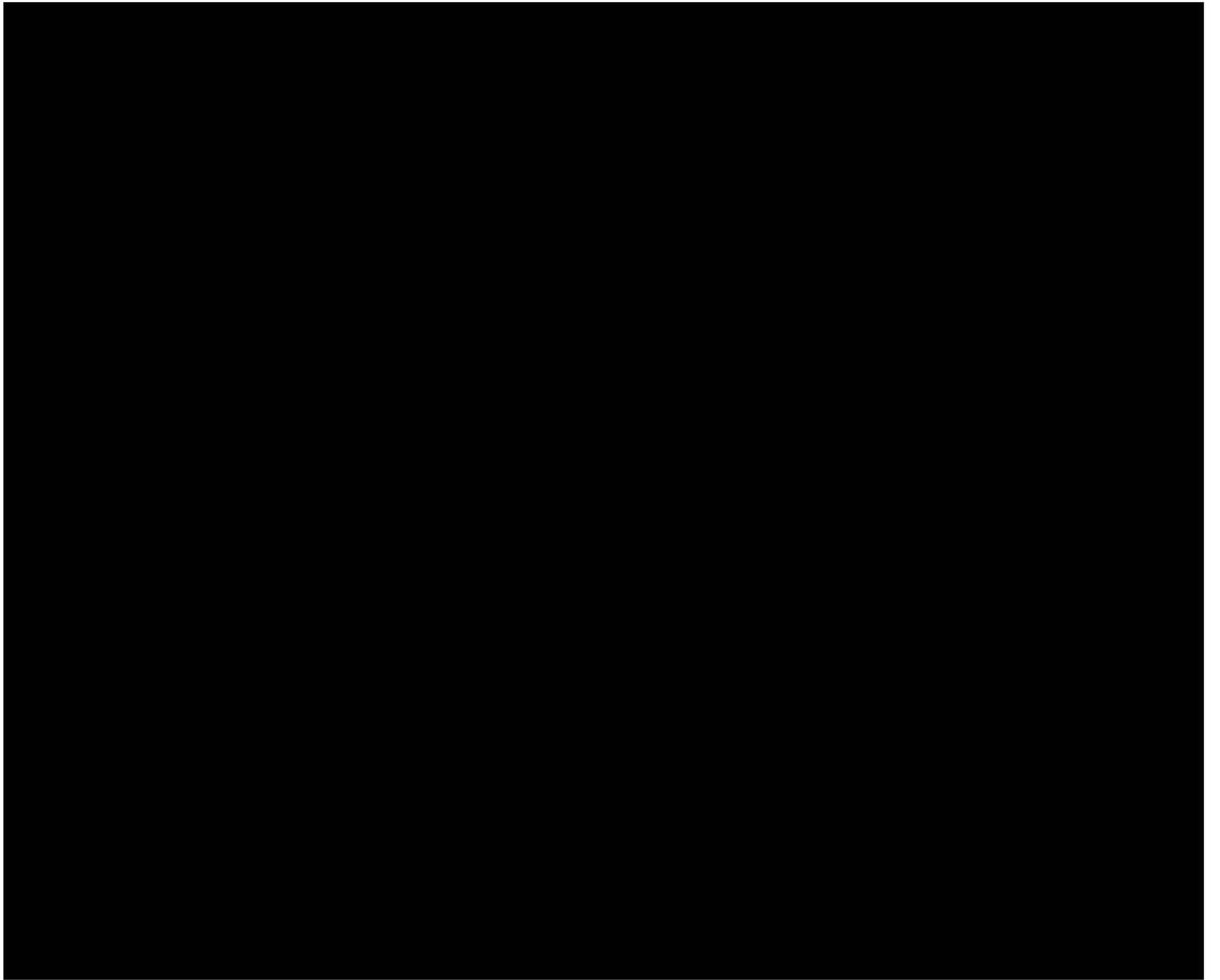












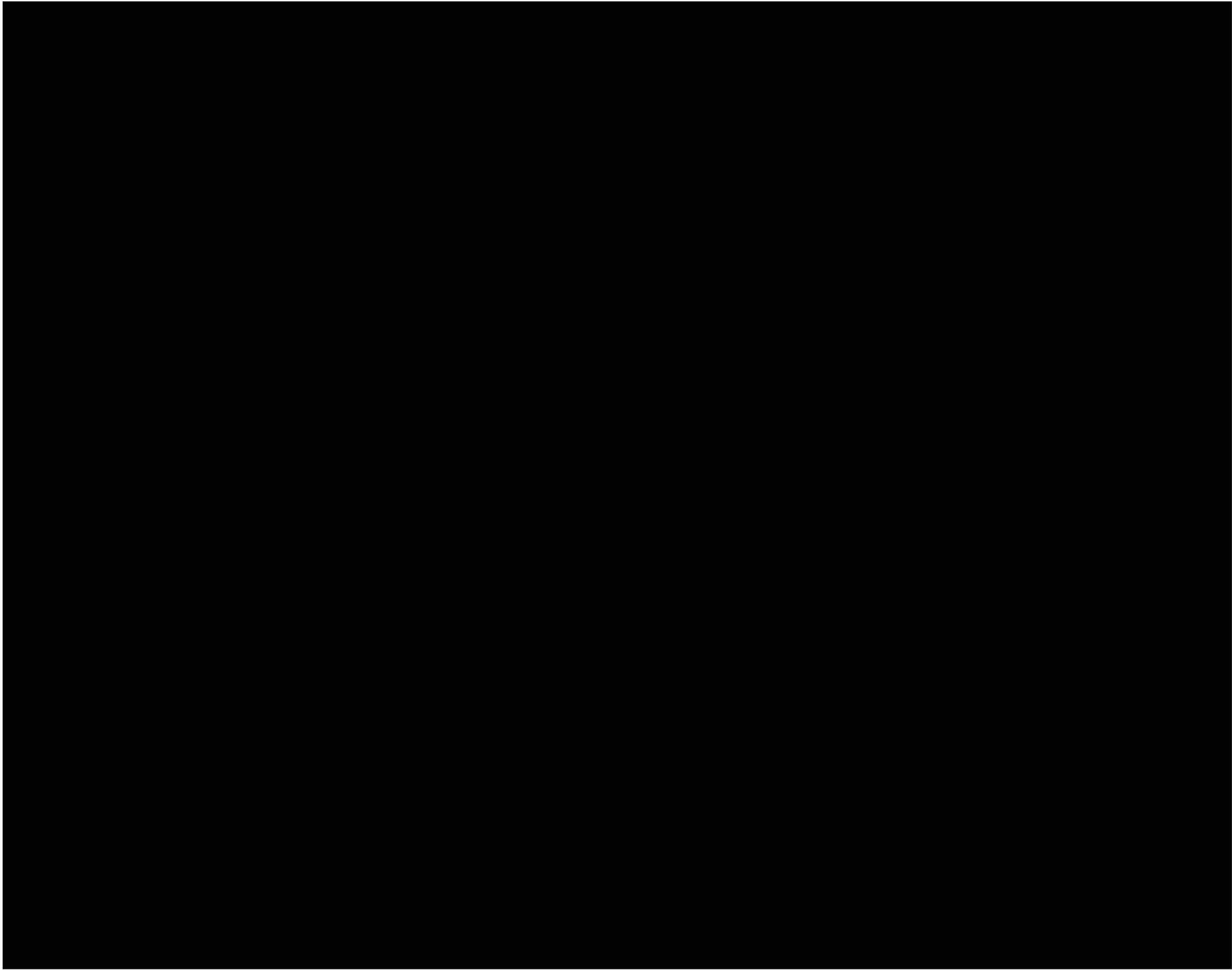


EXHIBIT 3

WITNESS STATEMENT OF TOM DOOLEY

Revenue Matrix Summary, 2011-2015

