

UNITED STATES DEPARTMENT OF LABOR  
OFFICE OF ADMINISTRATIVE LAW JUDGES

COLLEEN A. GRAHAM

Complainant,

v.

CREDIT SUISSE SECURITIES (USA) LLC,  
CREDIT SUISSE FIRST BOSTON NEXT  
FUND INC., PALANTIR TECHNOLOGIES  
INC., and SIGNAC LLC

Respondents.

Case No. 2019-SOX-00040

**GOOD FAITH  
MOVING DECLARATION**

**ROBERT D. KRAUS** declares under penalty of perjury as follows:

1. I am a member of the firm of Kraus & Zuchlewski LLP, counsel for Complainant Colleen Graham. I make this declaration on my personal knowledge.
2. Attached as Exhibit A is a true and accurate copy of Complainant Graham's proposed Amended Complaint.
3. Attached as Exhibit B is a true and accurate copy of the first three pages of the Broker Check report for Colleen Graham (CRO# 2944164).
4. Attached as Exhibit C are the Responses and Objections served by respondent Credit Suisse on or about February 17, 2020.
5. Attached as Exhibit D is an email from me dated March 13, 2020.
6. The description of the February 27<sup>th</sup> call among ALJ Timlin and counsel which appears at pgs. 8-9 of the accompanying moving memorandum, is to the best of my recollection.
7. I affirm that I have made a good faith effort to resolve the discovery dispute that underlies this Motion to Compel.

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

Executed this 17<sup>th</sup> day of April 2020.

(b) (6)

ROBERT D. KRAUS

# EXHIBIT A

April \_\_, 2020

**VIA EMAIL AND OVERNIGHT MAIL**

United States Department of Labor  
Office of Administrative Law Judges  
Honorable Theresa C. Timlin  
Administrative Law Judge  
2 Executive Campus, Suite 450  
Cherry Hill, NJ 08002

Re: Amended Complaint of Retaliation

Dear Sir/Madam:

This law firm represents Colleen Graham (“Graham”) and submits this Amended Whistleblower complaint on her behalf against respondents Credit Suisse Securities (USA) LLC (“Credit Suisse”) and Signac LLC (“Signac”) (collectively, “Respondents”) for violations of the Sarbanes-Oxley Act of 2002 (“SOX”) 18 U.S.C. §1514A.

**INTRODUCTION**

Respondents first retaliated against Graham shortly after she refused to participate in conduct that she reasonably believed violated securities laws. Graham refused to distort facts related to the recognition of revenue by Signac and affiliated corporate entities, including Credit Suisse. The adverse action began gradually as Credit Suisse started to exclude Graham from certain meetings and communications, made thinly veiled threats of termination, withheld her discretionary bonus for 2016, deprived her of employment opportunities otherwise provided to substantially all of Signac Staff as the company was shuttered.

The initial retaliatory acts began in March and continued thereafter, sharply escalating in early June 2017 after Graham’s counsel claimed unlawful retaliation. Graham was singled out for conduct suffered from others. She was bullied, harassed and intimidated, and made the subject of knowingly false allegations of misconduct, including misconduct that, if true, would violate Swiss law. No less than six different (6) lawyers were called on to harass Graham in a number of different ways, including threatening to cancel substantial amounts of her deferred compensation and to pursue any and all remedies available if she didn’t submit to a host of ever changing, unreasonable demands. Respondents also retaliated by refusing to pay Graham for her valuable equity stake in Signac.

Graham agreed to demand after demand, believing she would assuage the professed concern about alleged unauthorized disclosure of confidential information. After all, Credit Suisse had employed Graham for twenty years in senior compliance functions and had personal knowledge of her impeccable integrity. Respondents knew and appreciated the absence of any improper motive (like competition) or evidence of actual misconduct. Graham was pursued with a singular aggressiveness, yet at the same time no action was taken against others who had used personal email for company business. Nor was any action taken against Signac’s CIO, who suggested that all Signac’s laptops be reformatted so as to destroy all confidential information on them, plainly improper conduct in light of the duty to preserve evidence.

Ultimately, after Graham withstood the pressurized tactics, the CS demands were simply abandoned. The feigned “serious concern” with unauthorized disclosure evaporated just as suddenly as it had appeared after Graham first raised the issue of securities law violations

In or about November 2017, Graham filed an arbitration against Credit Suisse, Signac and others. At issue were various non-employment related claims arising principally under the Signac LLC Agreement and at law, which were subject to compulsory arbitration before JAMS (“JAMS 1”). Relying on sworn testimony from Credit Suisse’s two most senior compliance officers, one also a member of the CS AG Executive Board, Credit Suisse represented that the trader holistic surveillance product that Signac delivered in late Spring 2017 was never viable, thereby leading to the complete dissatisfaction of its sole customer Credit Suisse AG. The compliance officers were emphatic that THS was not being used by Credit Suisse or CSAG as of March 2018. Credit Suisse was in the midst of building its own product as of March 2018, and it only had a “concept” by then.

Lacking a viable THS product and losing CS AG as its sole customer is also offered by Respondents as a defense in this proceeding and would, if true, offer a non-discriminatory reason for taking several of the adverse personnel actions at issue herein, such as refusing to pay Graham a bonus, refusing to re-employ her at Credit Suisse, failing to assign and value to and or pay Graham for or her equity stake in Signac.

### **BACKGROUND**

1. Graham served as Chief Supervisory Officer of Signac<sup>1</sup> and a member of its Board of Managers from on or about February 29, 2016 to on or about July 27, 2017.

2. Prior to Signac, Graham was employed by Credit Suisse for more than twenty years serving in a number of senior level management positions, including heading Compliance for the Americas and acting as the Chief Control Officer of its investment bank. Her employment record was impeccable and she had a stellar reputation for honesty and integrity.

3. Credit Suisse is a company with a class of securities registered under section 12 of the Securities and Exchange Act of 1934 (15 U.S.C. §781) or that is required to file reports under section 15(d) of the SEC Act of 1934, 15 U.S.C §780 (d).

4. Credit Suisse appointed Graham to serve as Signac’s Chief Supervisory Officer and a member of a Signac Board of Managers.

5. Signac is a Delaware Limited Liability Company. Its financial sponsors and principal equity stakeholders were Credit Suisse First Boston Next Fund, Inc., a wholly owned subsidiary of Credit Suisse, and Palantir Technologies, Inc. (“Palantir”), a privately owned technology services company. CSFB and Palantir each owned 50% of the Signac voting rights.

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<sup>1</sup> On or about February 29, 2016, Signac began to conduct its business. Signac was designed to leverage the financial services and trading expertise from Credit Suisse and certain technology made available by Palantir in order to build algorithms and analytics that track behavior to create a global, industry leading solution.

6. Credit Suisse is a wholly owned subsidiary of Credit Suisse AG (“CS AG”), a global investment bank whose American Depositary Receipt shares (“ADRs”) are listed as -----AD

7. CS and CSAG share certain functions, including regulatory and compliance.

8. At all times relevant to this dispute, Lara Warner, was CS AG’s Chief Compliance and Regulatory Affairs Officer (“CCRO”), responsible for all compliance and regulatory affairs globally across all CS AG businesses and functions, including Credit Suisse. Warner was also a member of CS AG Executive Board and a member of the Board of Directors of Signac, with 2 out of 6 votes.

9. James Barkley was the Global Head of Core Compliance Services, the 2<sup>nd</sup> most senior compliance officer. His responsibility also stretched across all CS AG businesses and functions, including Credit Suisse.

10. Signac acted as a “contractor” of Credit Suisse or an affiliate thereof within the meaning of 18 U.S.C. §1514A and the regulations promulgated thereunder, 29 C.F.R. 1980.101 (f) and relevant precedent, and as such is a “covered person” subject to the provisions of SOX. Signac’s sole source of revenue was a contract under which Credit Suisse retained it to develop and provide certain software products, technology solutions, analytics and other services.

11. Graham remains an “employee” of Credit Suisse and is a “covered person” for purposes of SOX protections against retaliation because the relevant regulations define an “employee” as “an individual presently or formerly working for a covered person.” 29 C.F.R. 1980.101 (f) and (g). Credit Suisse continues to hold substantial amounts of Graham’s deferred compensation.

12. Credit Suisse had a designated “Manager” on the Signac Board of Managers, which had exclusive and complete authority to manage and control Signac, subject to the provisions of the Signac LLC Agreement. As one of the Managers of Signac which together undertook the retaliatory actions complained of herein, Credit Suisse is also “covered persons” under the provisions of SOX, including 29 C.F.R. 1980.101(f) and relevant precedent.

### **GRAHAM OBJECTS TO PARTICIPATING IN UNLAWFUL PRACTICES**

13. In or about March 2017, a Signac audit conducted by KPMG concluded that certain Signac revenue could not legally be recognized in calendar year 2016 under then existing software accounting rules; recognition had to be deferred until delivery of certain product, including THS.

14. Credit Suisse expressed strong frustration that it was unable to recognize the revenue in 2016. According to Credit Suisse, the lack of revenue recognition in 2016 would cause a significant loss to be recognized by it. According to Palantir, Signac’s deferral of revenue also impacted it negatively.

15. Credit Suisse, through Warner, complained that Signac was not considering the impact of the Signac accounting on Credit Suisse.

16. Warner advised Graham that the lack of revenue recognition would cause a significant loss to be recognized, and Credit Suisse and Palantir pressured Graham to distort the facts in order to

convince the Signac auditor to allow the revenue recognition in 2016, revenue which was deemed critical to a widely reported potential Palantir IPO.

17. Credit Suisse pressured Graham to adopt the knowingly false position that the product and services developed and rendered by Signac over the prior fourteen months involved only maintenance of, or otherwise solely deployed, Palantir's pre-existing technology and analytics. Graham refused.

18. Credit Suisse and Palantir expressed open frustration at Graham's objecting to their mistaken directions regarding revenue recognition.

19. After Graham objected and refused to distort the facts, Credit Suisse began to retaliate against her, excluding her from relevant communications and meetings, making thinly veiled threats of termination and withholding her discretionary bonus for 2016. These initial retaliatory acts began in March and continued into June 2016. It also terminated Graham's physical and systems access to Credit Suisse on or about May 19, 2017. On or about May 19, 2017, Credit Suisse also withdrew the opportunity to become reemployed with it, an opportunity it extended to substantially Signac employees who previously had been Credit Suisse employees.

#### **GRAHAM OBJECTS TO THE RETALIATION AND THE BULLYING AND HARRASSMENT ESCALATES SHARPLY**

20. On May 23, 2017, Graham's counsel communicated by email with Credit Suisse's counsel, expressing concern that Credit Suisse had made offers of future employment to all appropriate Signac employees except Graham. He expressed an interest in "avoiding retaliatory conduct that would give rise to claims under Sarbanes – Oxley ." (Emphasis supplied)

21. On June 1, 2017, Graham's counsel specifically raised the issue of whether Graham had been discriminated against for having objected to certain accounting treatment that Signac's members, including Credit Suisse, sought to pursue.

22. On June 8, 2017, only three days after Graham raised a claim of actual retaliation, Graham's counsel received a letter alleging that Graham "has violated her ongoing contractual obligations to Signac and Credit Suisse Securities (USA) LLC". The letter expressed "extreme concern" that Graham had "misappropriated Confidential and proprietary information by forwarding such information to her and her husband's personal and non-secure email accounts" (emphasis added).

23. The letter referenced an ongoing "investigation," demanded affidavits attesting that all confidential information had been permanently deleted from electronic devices, and demanded that all "devices and email or other electronic accounts" be submitted for a forensic inspection. Graham was afforded little more than 48 hours to comply.

24. Upon information and belief, Signac and Credit Suisse singled out Graham for an "investigation" although it knew, or would have known if it had conducted a simple inquiry, that other employees had "forwarded" confidential information to personal email accounts. Moreover, Respondents knew that Graham had not engaged in any unauthorized disclosure and had properly used

the information solely for purposes related (a) to her service as a manager as authorized by the relevant agreement; (b) and to ensure she had an opportunity to fulfill her own fiduciary obligations as a member of the Board of Signac; and (c) to preserve evidence in connection with her concerns about possible securities law violations. The false allegations were intended to bully and harass Graham in retaliation for her having (a) raised the issue of securities law violations, and (b) stated her intention to pursue her remedies under SOX.

25. Despite Graham's assurances that she had used the information properly, only for purposes related to her services as a Manager, and to preserve evidence in connection with her personal obligations, and despite having no evidence to the contrary, Respondents pressed on and with a ferocity completely inconsistent with the allegations and the assurances they were receiving from Graham (who had been an extremely well respected senior level compliance officer at Credit Suisse for 20 years).

26. Credit Suisse directly threatened to cancel substantial deferred compensation that she had earned and that Credit Suisse continued to hold. It accused her of breaching her obligations.

27. Respondents demanded invasive forensic inspection of all her and her families' personal electronic devices and email and electronic accounts. Respondents demanded the return of all Signac and Credit Suisse confidential information, including that Graham had shared with counsel for purposes of getting legal advice. Unfounded claims were made that the email transmissions violated Swiss laws, which amounted possibly to allegations of criminal misconduct.

28. Respondents knew that the information they sought to bully Graham into deleting or returning included information directly relevant to her SOX retaliation claims.

29. On or about June 19, 2017, Credit Suisse instructed Graham not to attend or participate in the most significant operational risk industry conference scheduled for the next day. Graham was scheduled to be a panel participant.

30. Graham withstood the barrage of harassing tactics. On June 27<sup>th</sup>, with Respondents unable to secure any evidence that Graham actually had made any unauthorized disclosure and having received sworn affidavits from Graham confirming the same, Credit Suisse, by its counsel, advised that it "presently intends not to cancel Graham's outstanding" deferred compensation awards. However, as part of the ongoing campaign of harassment, Credit Suisse imposed new<sup>2</sup> and often unreasonable conditions on Graham in order to avoid future cancellation.

31. Graham's counsel immediately expressed concern, among other things, that demanding return of a vaguely defined "CS Client Related Information" might interfere with Graham's right to pursue her SOX claims. It was agreed that Graham would attest that she held neither:

- 1) CS Client Identifying Information'. Defined as information that identifies CS clients except to the extent it is already public, thematic or illustrative.
- 2) CS Swiss Data'. Defined as documents that contain CS Swiss business, data or investigations except to the extent not otherwise public, thematic or illustrative.

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<sup>2</sup> Graham had agreed to a forensic examination with reasonable parameters.

32. Credit Suisse continued to falsely allege that Graham had possessed two items of CS Swiss Data, essentially accusing her of violating both Swiss law and her contractual obligations. However, the two items had previously been public and or were thematic, and so did not constitute CS Swiss Data under any reasonable interpretation. Credit Suisse knew well that the items did not constitute CS Swiss Data and was making the allegations to intimidate Graham and deter her from pursuing her retaliation claim under SOX.

33. Graham's counsel offered to allow Credit Suisse's counsel to inspect any materials to confirm that they did not constitute CS Swiss Data or CS Client Identifying Information. Despite the professed "serious concern" surrounding possible legal violations, Credit Suisse elected not to review the documents.

34. With regard to the forensic examination of electronic devices and email accounts, Signac and Credit Suisse agreed that the forensic examiners would only conduct the review and access Graham's devices and email accounts in her attorney's offices. Credit Suisse and Signac expressed their clear desire "to promptly proceed and complete this important investigation.

35. Credit Suisse and Signac subsequently reneged on their agreement to access Graham's devices and email accounts only in her attorney's offices, falsely claiming it wasn't agreed upon. They then completely abandoned their "important investigation

36. In or about July 2017, for a three-day period, Graham was followed by a woman, the intention of which was to harass and intimidate Graham. Among other things, the woman followed Graham to her lawyer's offices and to a job interview. The woman also followed Graham to her home, and surveilled Graham and her family from curbside. The woman wanted to be seen and the intimidating message Credit Suisse intended to send was clear: you, and even your family, cannot escape our reach. Shortly thereafter, upon information and belief, Credit Suisse interfered with a significant employment opportunity that was about to be extended to Graham.

37. Credit Suisse also withheld interest payments due and owing to Graham on her deferred compensation.

#### Credit Suisse Refuses To Pay Graham For Her Signac Equity

38. Credit Suisse further retaliated against Graham by refusing to pay her fair value for her equity stake in Signac, which it was required to do following the termination of her employment.

39. As of March 2017, when the retaliatory acts began, Signac's principal product under development for use by CS AG across all of its businesses, including Credit Suisse, was a trader holistic surveillance tool. The trader holistic surveillance tool was often referred to at Signac (and in the Final Award rendered in JAMS 1) as BRM. However, Barkley found BRM a confusing term and Credit Suisse began to refer to it as THS. The following colloquy took place in JAMS 1:

Q: Now, did you tell your people in core compliance services not to use the term BRM?

A: BRM is a confusing term within the organization. The terminology going forward was to be "trader holistic surveillance".

40. Signac delivered its THS product to CS AG in or about May 2017 and CS AG began to use it.

41. Consistent with Respondent's defense herein, Barkley and Warner testified without equivocation in JAMS I that Signac's THS was not viable; Credit Suisse was not using it and had not appropriated it. Instead, they claimed that CS AG was developing its own THS, but had not done so as of the March 2018 hearing. At that point in time Credit Suisse only had a "concept"

42. Warner testified as follows:

Q I understand you have other business with Palantir, but isn't it true after Signac was shut, part of your business with Palantir concerned trader surveillance?

A We do not have anything going on with trader surveillance as it relates to any Signac product, and we are building it ourselves.

(emphasis supplied) (Ex 25. at 1571:16-24).

43. Warner's sworn testimony was that CS AG was not using Signac's trader holistic surveillance software as of March 12, 2018, but, rather, had abandoned it and begun to build its own "completely different" software.

Q But advanced detection scenarios and the idea behind Signac and its specialist software was described by Urs Rohner as a breakthrough, correct?

A Correct. It was described that way.

Q And you were progressing on this breakthrough, and there was an MVP<sup>3</sup> about to be achieved on the product in May, correct?

A I don't think I can attest to the fact it was about to be achieved.

Q Well, you were told in various status reports that that was - -

A True.

Q - - the timeline?

A That's true.

Q I haven't seen anything where you said we disagree.

A That's true.

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<sup>3</sup> MVP means "Minimal Viable Product".

Q So after May did you abandon this sort of progress towards this breakthrough effort?

A Yes, we chose a different breakthrough effort.

Q That's what you're building now?

A Correct.

Q It's completely different in our testimony?

A It is.

(Id. at 1574:24-1576:5).

44. Warner also was clear with the arbitrator that CS AG was building the completely different trader surveillance software "from scratch"<sup>4</sup>.

A I don't know. I would have to look at them, but I don't think these are the same things as what Signac built. We are obviously building them from scratch.

(Id. at 1592:2-5).

45. As to when the new holistic surveillance tools purportedly built from scratch would be ready, CCRO Warner testified before this Tribunal that it would be sometime later in in 2018.

Q Okay. By the way, when will the next-generation tools be ready to deliver holistic surveillance at the scale required by Credit Suisse?

A Sometime this year. I don't have the exact date, but –

(Id. at 1606:13-19).

46. To the same effect, Warner testified that CS AG only had a concept as of the hearing in March 2018.

Q I understand that, but you said since May of 2017 you started to build your own product?

A Didn't build, but we began thinking about it.

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<sup>4</sup> Although not relevant to the issue of whether the Award should be vacated on grounds of misconduct, CS AG had no right to reverse engineer, discover the source code, modify or adopt Signac's software, and certainly could not do so consistent with the obligations to act in good faith to maximize the value of Signac. (See below at 40 to 45).

Q Think about it. It's still not done, correct?

A When you say "done," what do you mean "done"?

Q You haven't come up with a tool or something like a BRM tool?

A We have a concept around trader — holistic trader surveillance.

(Id. at 1622:20-1623:16).

47. Warner also was clear that as of March 2018, CS AG did not yet have a trader holistic surveillance product:

Q Certainly once they built it, you could have taken it and just used it for a very little cost, correct?

A But I didn't, and that was not what we did. We built it from scratch. You made the point. We don't have a product yet.

(emphasis supplied) (Id. at 1640: 17-23).

48. James Barkley, Global Head Core Compliance Services with responsibilities across all CS AG entities, including Credit Suisse and Signac, also was clear that CS AG had not taken and was not using Signac's software, but rather as of March 8, 2018, was in the process of building its own trader surveillance software:

Q So, now, you developed a different product, is your testimony, that sits on the Foundry platform to surveil traders?

A I do not have a trader holistic surveillance solution at Credit Suisse at this time, to this date.

MR. KRAUS: Could you repeat that answer, please? (Whereupon Answer is Read Back.)

THE REPORTER: "I do not have a trader holistic surveillance solution at Credit Suisse at this time, to this date."

(Id. at 1097:21-1098:15).

49. Elsewhere, but just as clearly, Barkley told the arbitrator that CS AG had no trader holistic surveillance as of March 2018.

Q At this point in time, have you developed a tool to replace the product that Signac had been developing that you were unhappy with?

A As I said, I still do not have a trader holistic surveillance tool that I can use.

(Id. at 1130:16-22).

50. As for the software that CS AG was using to surveil traders after Signac was shut in 2017 through the March 2018 arbitration, Barkley swore that the bank was using only "standard industry tools"<sup>5</sup> which had been in place before he arrived in October 2016.

Q And in the period between when Signac was shut in the end of May and this off-site, at some point in the end of 2017, what tools was core compliance services using to surveil traders?

A I have two tools that I use to surveil trading activity. One is called Actimize. The other one is called SMARTS. Those are the primary tools we use to surveil traders.

Q Actimize and what?

A SMARTS.

Q How long have those tools been in use?

A Those are industry tools, and I don't know how long they have been in use. They are standard industry tools that many firms use.

Q When did you begin to use them, if you know?  
When did CS –

A They were in place before I got to Credit Suisse.

(emphasis supplied) (Id. at 1095:5-1096:3).

51. Barkley testified that the purportedly "new" software supposedly only under development in March 2018 would be known as "trader holistic surveillance".

A I would show you what I would do. I did not have a trader holistic surveillance platform yet. It's under development.<sup>6</sup>

Q And as part of that trader holistic surveillance platform under development, there is a tool under development that focuses on traders as opposed to relationship managers, correct?

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<sup>5</sup> In CEO Thiam's Investor Day, CS AG tells its investors that it "rolled out industry leading tools," including trader holistic surveillance, in the first half of 2017. A standard industry tool by definition cannot also be an industry leading tool. (Ex. D). Warner also gave a presentation regarding THS.

<sup>6</sup> Again, CS AG's Investor Day represents that "Trader Holistic Surveillance" was rolled out in 2017.

A Yes.

Q And there is a dashboard being developed - -

A Yes.

Q -- in connection with the focus -- the tool that focuses on the traders, correct?

A Yes.

Q Now, is there a name for this tool under development, or you don't have a name yet?

A Trader holistic surveillance.

(Id. at 1102. •2-21) (emphasis supplied).

Q So, now, you developed a different product, is your testimony, that sits on the Foundry platform to surveil traders?

A I do not have a trader holistic surveillance solution at Credit Suisse at this time, to this date.

Id. at 1097-98 (emphasis supplied).

Q At this point in time, have you developed a tool to replace the product that Signac had been developing that you were unhappy with?

A As I said, I still do not have a trader holistic surveillance tool that I can use.

Id. at 1130

A I would show you what I would do. I did not have a trader holistic surveillance platform yet. It's under development.

Such was the sworn testimony in JAMS 1 by CS AG's two most senior compliance officers -- CS AG did not have a trader holistic surveillance solution as of March 2018 and was using only standard industry tools. (Such testimony also provides a legitimate business justification for taking some of the adverse personnel actions at issue herein, like refusing to pay Graham a bonus or assigning any value to her Signac equity)

52. But Credit Suisse subsequently admitted that the sworn defense testimony that Signac's THS product was not viable and was no longer being used is 100 % false.

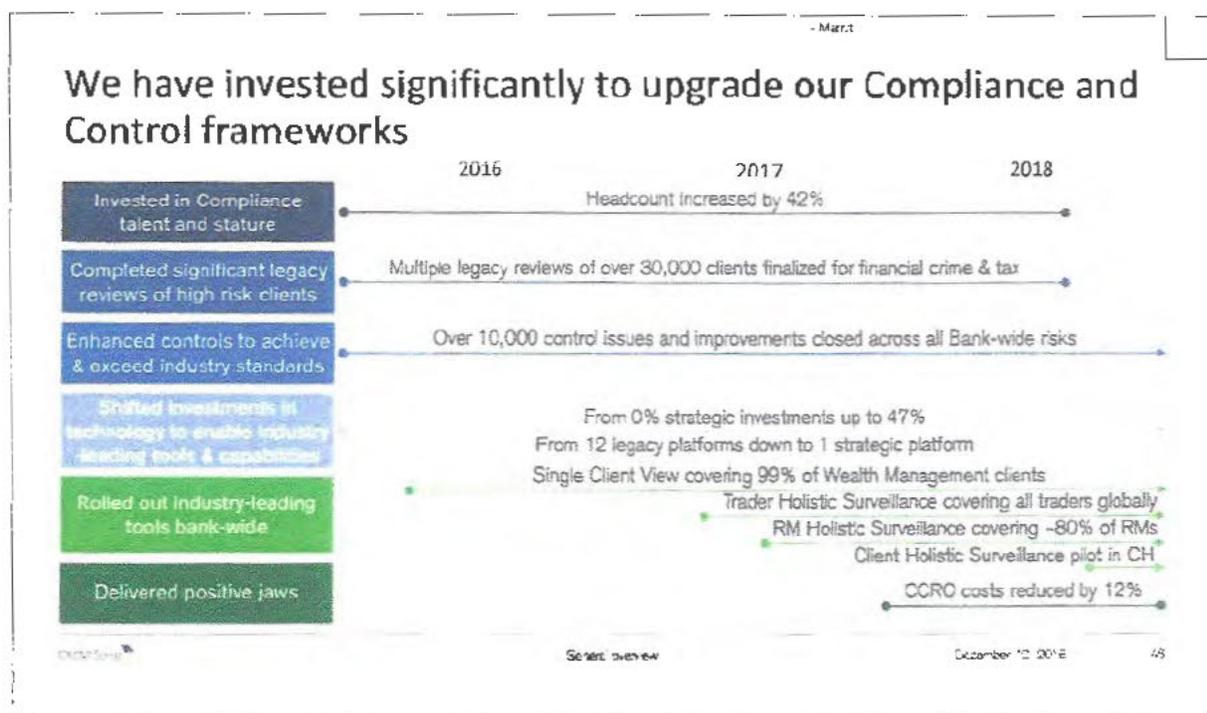
### CS AG's Investor Day

53. Credit Suisse AG's annual Investor Day held in December 2018 admits that the THS product delivered by Signac in or about May 2017 has been used since that date with great

effectiveness and at substantial savings on an annual basis. Critically, both Warner and Barkley swore that Credit Suisse only had a concept as of the March 2018 JAMS 1 hearings and had been using standard industry tools to that point in time.

54. On December 12, 2018, CS AG gave its annual Investor Day presentation in Zurich, Switzerland. It subsequently made corresponding disclosures in securities filings later that month.

55. The Investor Day materials and securities filings include a presentation by CS AG's Chief Executive Officer, Tidjane Thiam in which he presents shareholders with a chart showing that CS AG had "rolled out industry leading tools", including "Trader Holistic Surveillance covering all traders globally" in or about spring/summer 2017.



56. Credit Suisse's Investor Day directly undercuts a key premise of Credit Suisse's defense; specifically, it disproves the claim that THS was not a viable product, leading to the dissatisfaction of Credit Suisse AG, Signac's sole customer, and thereby providing a non-discriminatory justification for many of the adverse personnel actions at issue herein, such as not paying any bonus, not offering continued employment, not valuing the equity and not making any payment on it.

**SARBANES-OXLEY- THE RELEVANT LAW**

Section 806 of SOX protects employees against retaliation where they have provided information to their supervisors that the employees "reasonably believe constitutes a violation of [18 U.S.C.] section 1341 [mail fraud], 1343 [wire fraud], 1344 [bank fraud], or 1348 [securities fraud], any rule or regulation of the Securities and Exchange Commission ["SEC"], or any provision of Federal law relating to fraud against shareholders . . . ." 18 U.S.C.S. § 1514A(a)(1). To invoke the protection of Section 806, an employee "must show by a preponderance of the evidence that (1) [he] engaged in

protected activity; (2) the employer knew of the protected activity; (3) [he] suffered an unfavorable personnel action; and (4) circumstances exist to suggest that the protected activity was a contributing factor to the unfavorable action." *Fraser v. Fiduciary Trust Co. Int'l*, 2009 U.S. Dist. LEXIS 75565, 2009 WL 2601389, at \*4 (S.D.N.Y. Aug. 25, 2009). There is ample evidence showing that Graham meets the four elements required to enjoy the protections of Section 806 of SOX and that Respondents, as "covered persons" under the Regulations promulgated under SOX, 29 C.F.R. 1980.100 *et. seq.*, and relevant case law, retaliated against her in violation of SOX because she had complained about securities law violations. SOX also prohibits a "covered person", like each of Credit Suisse and Signac, from retaliating against employees for seeking to protect their rights under SOX to be free from retaliation. In this case, Credit Suisse sharply escalated, its retaliatory conduct after Graham, through counsel complained that she was being retaliated against for having made complaints protected by SOX and intended to pursue her statutory rights and remedies.

### **RELIEF SOUGHT**

Complainant seeks the following relief:

- A. Reinstatement to a position at Credit Suisse;
- B. Back pay, raises, bonuses, front pay, the reasonable value of her equity in Signac, deferred compensation and interest payments therein, benefits, overtime, reinstatement of seniority and tenure, and other orders and relief necessary to make complainant whole;
- C. An order: (1) requiring respondent to abate and refrain from any further violations of the whistleblower provisions of the Acts; (2) requiring respondent to explicitly rescind any and all policies that restrain or direct employees in connection with reporting of compliance issues; (3) requiring respondent to prohibit harassment of those who engage, or are suspected of engaging in protected activity; and (4) requiring respondent to take prompt and effective action against any reported violations;
- D. An order prohibiting Respondents from disclosing any disparaging information about complainant to prospective employers, or otherwise interfering with any applications he might make in the future;
- E. Compensatory monetary damages in an amount determined to be fair and equitable compensation for complainant's emotional distress and loss of reputation;
- F. Exemplary damages in an amount sufficient to deter Respondents from future violations of the law;
- G. Reasonable attorney fees;
- H. Costs of this proceeding, including reimbursement for deposition fees, travel expenses, and other expenses to collect and produce evidence in this matter;
- I. Order requiring Respondents to issue a notice, and provide copies to all its employees that: (1) the Department of Labor has found that respondent violated the rights of a whistleblower, and ordered that this person be made whole, (2) describes the laws protecting whistleblowers, setting out

the ALJ's orders to respondent as policies of respondent, (3) provides the name and address where complaints of violations may be sent, and (4) informs employees that complaints must be filed within specified time limits after any adverse action;

- J. Pre-judgment interest on all amounts due; and
- K. Such other and further relief as may be just and proper.

Very truly yours,

Kraus & Zuchlewski LLP  
Attorneys for Colleen Graham

By: \_\_\_\_\_  
ROBERT D. KRAUS

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Suite 2534  
New York, NY 10165  
Tel.: 212-869-4646  
Fax.: 212-869-4648

cc: Colleen Graham

# EXHIBIT B

**COLLEEN ANN GRAHAM**  
(COLLEEN ANN ARNOLD, COLLEEN GRAHAM)

CRD#: 2944164

Not currently  
registered as broker

 Previously Registered Broker

**0**  
Disclosures

**11** Years of Experience  
**1** Firm

**2**  
Exams Passed

**0**  
State Licenses

 Examinations 

 **Exam Passed** 

SIE - Securities Industry Essentials Examination Jun 21, 2017

 **Exam Passed** 

Series 14 - Compliance Officer Examination May 31, 2006

 **Broker Registration History**

**Name**

**Location**

06/01/2006 - CREDIT SUISSE SECURITIES (USA) LLC NEW YORK, NY  
06/21/2017 (CRD#:816)



## Additional Information

The content of this summary, and the available detailed report, is governed by FINRA Rule 8312, and is primarily based on information filed on [uniform registration forms](#). Rule 8312, amendments to the rule and notices related to U.S. Securities and Exchange Commission approval orders, can be viewed [here](#).

State regulators are governed by their public records laws (not FINRA Rule 8312), and may provide information not in BrokerCheck, including information no longer required to be reported or updated on uniform registration forms due, for example, to its age or final disposition. You may contact your [state regulator](#) to request this additional information.

Click [here](#) for more information about how to check on an investment professional.

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Individuals who work for broker-dealers - the sales personnel are commonly referred to as brokers.

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# EXHIBIT C

**U.S. DEPARTMENT OF LABOR  
OFFICE OF ADMINISTRATIVE LAW JUDGES**

COLLEEN A. GRAHAM

Complainant,

v.

ALJ No. 2019-SOX-00040

CREDIT SUISSE SECURITIES (USA) LLC,  
CREDIT SUISSE FIRST BOSTON NEXT  
FUND, INC., PALANTIR TECHNOLOGIES,  
INC., and SIGNAC LLC,

Respondents.

**RESPONDENT CREDIT SUISSE SECURITIES (USA) LLC'S RESPONSES AND  
OBJECTIONS TO COMPLAINANT COLLEEN GRAHAM'S  
FIRST REQUEST FOR PRODUCTION OF DOCUMENTS**

Pursuant to 29 C.F.R. § 18.61, Respondent Credit Suisse Securities (USA) LLC ("Credit Suisse") by and through its attorneys, Latham & Watkins LLP, hereby provides the following responses and objections (the "Responses") to Complainant Colleen Graham's First Request for Production Of Documents (the "Requests") in the above-captioned action (the "Action").

The Responses reflect only the current state of the Credit Suisse's knowledge or information regarding the Requests. Credit Suisse reserves the right to supplement or otherwise amend the Responses based on additional information obtained through its investigation or discovery in this Action or for any other reason. Credit Suisse is willing to meet and confer with Complainant to discuss its Responses and the scope of discovery hereunder.

**GENERAL RESPONSES AND OBJECTIONS**

The following General Responses and Objections are incorporated into each Specific Response and Objection below. These General Responses and Objections govern the scope of any

Response made by Credit Suisse to the Requests and are neither waived nor limited by Credit Suisse's Specific Responses and Objections.

1. Defined Terms. For ease of reference, in setting forth its General and Specific Responses and Objections, Credit Suisse shall use the following defined terms:

a. "Burden" shall mean the Request (i) is overly broad and unduly burdensome; (ii) seeks discovery that is unreasonably cumulative or duplicative of other discovery Credit Suisse has offered to search for in response to a Request; and/or (iii) seeks discovery whose burden or expense outweighs its likely benefit under 29 C.F.R. § 18.51(b)(4).

b. "Proportionality" shall mean the Request seeks discovery that is not proportional to the needs of the case under 29 C.F.R. § 18.51(b)(4).

c. "Relevance" shall mean the Request seeks discovery that is not relevant to any party's claim or defense or is otherwise outside the scope of 29 C.F.R. § 18.51(a).

d. "Ambiguity" shall mean the Request (i) is vague and/or ambiguous; (ii) fails to describe the requested documents or categories of documents with reasonable particularity to allow Credit Suisse to search for and identify responsive documents, if any, without speculation or undue burden; (iii) contains terms or phrases that Credit Suisse cannot reasonably interpret or understand; and/or (iv) uses terms that are undefined or fail to distinguish meaningfully between similar (but not identical) terms and phrases used in other Requests.

e. "Privilege" shall mean the attorney-client privilege, the work product doctrine, any joint defense or common interest privilege, or any other applicable privilege, immunity, or similar protection from disclosure.

2. Credit Suisse objects to the Requests to the extent they seek to impose obligations on Credit Suisse that exceed or are different than the obligations imposed by the Code of Federal

Regulations or any applicable law, rule, or order. Subject to the General Responses and Objections, Objections to Instructions, Objections to Definitions, and Specific Responses and Objections (collectively, the “Objections”), Credit Suisse will construe and respond to the Requests consistently with 29 C.F.R. §18.51 and other applicable laws, rules, or orders of the Court, including any protective order agreed to by the parties or entered in this Action (“Protective Order”), and any Scheduling and Discovery Order issued by this Court (collectively, the “Applicable Rules”).

3. Any agreement by Credit Suisse to search for and produce documents will be made in accordance with the Applicable Rules. Credit Suisse objects to the Requests to the extent they purport to require Credit Suisse to search for, identify, retrieve, and produce documents other than as contemplated under the Applicable Rules.

4. Credit Suisse objects to the Requests on the grounds of Burden and Proportionality to the extent they purport to require Credit Suisse to conduct anything other than a reasonable and diligent search for reasonably accessible files from reasonably accessible sources where responsive documents would reasonably be expected to be found. Subject to the Objections, Credit Suisse is willing to produce certain categories of documents in response to the Requests, as set forth in the Specific Responses below, to the extent such documents exist and are identified by a good-faith reasonably tailored search. Any such offer does not indicate that (i) responsive documents exist or will be produced; (ii) the scope of such discovery is proper; or (iii) any of the Requests seek information or documents that are admissible or relevant to the claims, defenses, or subject matter of, or that are reasonably calculated to lead to the discovery of admissible evidence in, this Action. Rather, an offer of production merely indicates Credit Suisse’s offer to undertake a reasonably tailored search for such documents.

5. For purposes of these Responses, “Credit Suisse” refers solely to Credit Suisse Securities (USA) LLC. Credit Suisse objects to the Requests to the extent they seek information or documents outside of its possession, custody or control, including documents within the possession, custody or control of Credit Suisse’s parents, affiliates, or subsidiaries that are separate legal entities and have corporate identities separate and apart from those of Credit Suisse. To the extent the Requests seek such documents or information, Credit Suisse will not produce such documents or information.

6. Credit Suisse objects to the Requests to the extent they seek the production of information or documents protected by Privilege. Credit Suisse will not produce such information or documents. Nothing in these Responses should be construed as a waiver of Privilege. Specific Objections on the ground of Privilege are provided only for emphasis. The absence of a Specific Objection on the ground of Privilege is neither intended, nor should be interpreted, as an indication that Credit Suisse does not object to a Request on the ground of Privilege. If any Privileged document or Privileged information within a document is inadvertently produced, Credit Suisse does not waive or intend to waive any Privilege pertaining to such document or information, or to any other document or information. Nor shall production of such material constitute a waiver of Credit Suisse’s rights under any applicable protective order, confidentiality agreement, and/or any applicable laws and rules, to (i) seek the return of such material or (ii) object to the use of such material at any stage of the Action or in any other proceeding.

7. Credit Suisse objects to the Requests to the extent they seek information or documents that are privileged or protected from disclosure by any domestic or foreign banking privileges, laws, or regulations. Credit Suisse further objects to the Requests to the extent they seek the production of information or documents that are protected from disclosure by any state,

federal, or foreign law or prohibition, including, but not limited to, data protection directives under European Union, English law or Swiss law, duties of confidentiality imposed by European Commission rules and policy, and other protections and limitations on discovery that should be afforded deference under principles of international comity. To the extent the Requests seek such documents or information, Credit Suisse will not produce such documents or information.

8. Credit Suisse objects to the Requests to the extent they seek information that is confidential, proprietary, commercially, or competitively sensitive to Credit Suisse and/or to its affiliates, employees, clients, customers, counterparties, customers' or counterparties' current or former officers, directors, or employees, or any third parties to whom Credit Suisse owes any duty of confidentiality. To the extent any such material is responsive to the Requests, Credit Suisse will only produce such material to the extent the parties agree to, or the Court enters, a protective order governing the disclosure and use of such material in this Action.

9. Credit Suisse objects to the Requests to the extent they seek production of information or documents protected from disclosure by any protective order, confidentiality agreement, nondisclosure agreement, or similar restriction on the use or dissemination of information or documents.

10. Credit Suisse objects on the grounds of Burden and Proportionality to Requests that seek "all" documents in a specified category where a subset of documents would be sufficient to provide the pertinent information.

11. Credit Suisse objects to the Requests on the grounds of Burden and Proportionality to the extent they seek information or documents that are publicly available, already in Complainant's possession, available from sources to which Complainant has access, or are

otherwise available through more convenient, more efficient, less burdensome, or less expensive means.

12. Credit Suisse objects to the Requests to the extent they are argumentative, lack foundation, are predicated on subjective or legal conclusions or arguments, assume facts, seek to define terms or characterize evidence, contain inaccurate, incomplete, or misleading descriptions, or otherwise make, assume, or incorporate assertions that are disputed or erroneous. None of the Responses shall be construed as an admission, legal conclusion, or agreement with or acquiescence to any statement in, or any assumption underlying, the Requests.

13. Credit Suisse objects to the Requests on the ground of Ambiguity. Unless otherwise noted, where possible, Credit Suisse has made reasonable assumptions as to Complainant's intended meaning and has responded accordingly, while preserving its objection as to Ambiguity.

14. Credit Suisse objects to the Requests on the grounds of Burden, Proportionality, and Relevance to the extent they seek discovery that is not within the scope of Credit Suisse's alleged conduct in this Action, as limited by the Court's January 16, 2020 Order, as of the date of the Responses or any subsequent date. Credit Suisse reserves the right to amend these Responses following any Court order that affects the nature or scope of appropriate discovery.

15. Credit Suisse objects to the Requests to the extent they seek documents that are not within Credit Suisse's possession, custody, or control as of the date of these Responses, or that are not maintained in the ordinary course of business. Credit Suisse will not produce such documents nor create documents in response to any of the Requests.

16. The Responses are made in good faith after an inquiry within the timeframe accorded by the Applicable Rules and are based on the information available to Credit Suisse as

of the date of the Responses, which may be incomplete, and are provided without prejudice to Credit Suisse's right to alter, supplement, amend, or otherwise modify these Responses in light of additional facts revealed through subsequent inquiry and investigation. Credit Suisse reserves its right to (i) further object to the Requests; (ii) object to the use or admissibility of any information or documents provided in response to the Requests, in any proceeding in this Action or any other action; (iii) object on any basis permitted by law to any other Request involving or relating to the subject matter of these Responses; (iv) alter, amend, or supplement its responses to the Requests; and (v) use or rely on, at any time, including trial, subsequently discovered information omitted from the Responses as a result of mistake, error, oversight, or inadvertence.

### **OBJECTIONS TO INSTRUCTIONS**

1. Credit Suisse objects to the Instructions on the grounds of Burden and Proportionality to the extent they purport to impose on obligations that exceed those imposed by the Applicable Rules, including anything more than a reasonable search for responsive information. As noted above, any agreement by Credit Suisse to produce documents in response to a Request merely indicates its offer to undertake a good-faith reasonably tailored search.

2. Credit Suisse objects to Instructions A and J to the extent they seek to impose obligations that are different than or beyond those required by 29 C.F.R. § 18.53. Credit Suisse objects to the unlimited and perpetual supplementation of Credit Suisse's productions on the grounds of Burden and Proportionality. Credit Suisse will supplement its Responses only as required by 29 C.F.R. § 18.53.

3. Credit Suisse objects to Instructions C–J on the grounds of Burden and Proportionality to the extent they purport to impose burdens and obligations that exceed or are

different than those imposed by the Applicable Rules. Credit Suisse will only produce documents as required and in the format required by the Applicable Rules.

4. Credit Suisse objects to Instructions A and J on the ground of Relevance to the extent they purport to request documents from a continuing time period irrelevant to the allegations of the Complaint. As noted in the General Objections, all offers of production will be limited to good faith reasonably tailored searches, including to an appropriate time period limitation (“Relevant Time Period”), which may differ depending on the Request, custodian, and/or central repository to be searched. Credit Suisse is prepared to meet and confer with Complainant regarding the Relevant Time Period applicable to each Request. Credit Suisse further objects to Instructions A and J on the grounds of Burden, Relevance, and Proportionality to the extent they seek information or documents that are newly created or received after the commencement of this Action or receipt of the Requests.

#### **OBJECTIONS TO DEFINITIONS**

1. Unless specified otherwise, Credit Suisse does not adopt Complainant’s purported definitions of words and phrases. Credit Suisse objects to the “Definitions” stated in the Requests to the extent they are susceptible to more than one distinct interpretation or are inconsistent with the ordinary and customary meaning of such words and phrases or the Applicable Rules governing the permissible scope of discovery.

2. Credit Suisse objects to the Definitions on the ground of Privilege to the extent they purport to require the production or disclosure of any document or information subject to a claim of Privilege.

3. Credit Suisse objects to the Definition of “possession, custody, or control” on the ground of Ambiguity to the extent it fails to define what constitutes a “right to secure.” Credit

Suisse will construe this to mean that a document is within its “possession, custody or control” when Credit Suisse has the legal right to demand and receive documents from another Person.

### **SPECIFIC RESPONSES AND OBJECTIONS**

#### **Request No. 1**

Signac’s financial statements in for [sic] 2016, 2017, 2018, 2019, and all related work papers.

#### **Response to Request No. 1**

Credit Suisse objects to this Request on the grounds of Relevance. Credit Suisse further objects to this Request on the grounds of Burden and Proportionality. Credit Suisse further objects to this Request to the extent it seeks documents outside of its possession, custody, or control. Credit Suisse further object to this Request because it seeks documents and information that are in Complainant’s possession or available from other sources to which Complainant has access, or otherwise available through more convenient, more efficient, less burdensome, or less expensive means. Credit Suisse further objects to the phrases “financial statements” and “related work papers” on the ground of Ambiguity.

Subject to these specific Objections and the General Objections above, Credit Suisse will produce the Signac financial statements in its possession, custody, or control to the extent it can locate such documents after a reasonable search.

#### **Request No. 2**

The “dashboard” for the Trader Holistic Surveillance software referred to on Ex. A (“THS”) on the day it was “rolled out” and on the first day of every three-month period thereafter.

#### **Response to Request No. 2**

Credit Suisse objects to this Request on the grounds of Relevance. This Request does not pertain in any way to the claims pled in this Action. Credit Suisse further objects to this Request

on the grounds of Burden and Proportionality. Credit Suisse further object to the phrases “dashboard,” “Trader Holistic Surveillance,” and “rolled out” on the ground of Ambiguity. Credit Suisse will not produce any documents responsive to this Request.

**Request No. 3**

The video presentation of THS showcased at the December 12, 2018 CS AG Investor Day (see Ex. B).

**Response to Request No. 3**

Credit Suisse objects to this Request on the grounds of Relevance. This Request does not pertain in any way to the claims pled in this Action. Credit Suisse further objects to the phrase “video presentation” on the ground of Ambiguity. Credit Suisse further objects to this Request because it seeks documents and information that are publicly available, in Complainant’s possession, available from other sources to which Complainant has access, or otherwise available through more convenient, more efficient, less burdensome, or less expensive means. Credit Suisse will not produce any documents responsive to this Request.

**Request No. 4**

Graham’s personnel file and all performance evaluations while at Signac and Credit Suisse.

**Response to Request No. 4**

Credit Suisse objects to this Request on the grounds of Relevance, Burden, Proportionality, and Privilege. Credit Suisse further objects to the phrases “personnel file” and “performance evaluations” on the ground of Ambiguity. Credit Suisse further object to this Request to the extent it seeks any “personnel file” or “performance evaluation” from Signac, as such documents and information are outside of Credit Suisse’s possession, custody or control. To the extent this Request seeks any “personnel file” or “performance evaluation” for Ms. Graham from her previous

employment at Credit Suisse, such documents have no bearing on this Action. Credit Suisse will not produce any documents responsive to this Request.

**Request No. 5**

All calendar entries for meetings or calls concerning Signac from March 1 2017 - July 2019 that included Lara Warner or James Barkley.

**Response to Request No. 5**

Credit Suisse objects to this Request on the grounds of Relevance, Burden, Proportionality, and Privilege. Credit Suisse further objects to this Request because it seeks documents and information that are publicly available, in Complainant's possession, available from other sources to which Complainant has access, or otherwise available through more convenient, more efficient, less burdensome, or less expensive means.

Subject to these specific Objections and the General Objections above, Credit Suisse is willing to meet and confer regarding the scope of this Request.

**Request No. 6**

All communications concerning Graham's attendance at an Operational Risk Conference in June 2017.

**Response to Request No. 6**

Credit Suisse objects to this Request on the grounds of Relevance, Burden, and Proportionality. Credit Suisse further objects to this Request because it seeks documents and information that are publicly available, in Complainant's possession, available from other sources to which Complainant has access, or otherwise available through more convenient, more efficient, less burdensome, or less expensive means.

Subject to these specific Objections, Credit Suisse will produce responsive, non-privileged documents in its possession, custody, or control to the extent it can locate such documents after a reasonable search.

**Request No. 7**

All project plans, presentations and reporting regarding the development of THS on or after July 1, 2017.

**Response to Request No. 7**

Credit Suisse objects to this Request on the grounds of Relevance. This Request does not pertain in any way to the claims pled in this Action. Credit Suisse further objects to this Request on the grounds of Burden and Proportionality. Credit Suisse further objects to the phrases “project plans,” “reporting,” and “development” on the ground of Ambiguity. Credit Suisse further objects to this Request to the extent it seeks documents outside of its possession, custody, or control. Credit Suisse will not produce any documents responsive to this Request.

**Request No. 8**

The investigative file or files concerning Graham's allegations of misconduct.

**Response to Request No. 8**

Credit Suisse objects to this Request on the grounds of Relevance, Burden, Proportionality, and Privilege. Credit Suisse further objects to the phrase “misconduct” on the ground of Ambiguity, and to the extent it expresses, seeks, or assumes a legal conclusion or expert opinion.

Subject to these specific Objections, Credit Suisse will produce responsive, non-privileged documents in its possession, custody, or control to the extent it can locate such documents after a reasonable search.

### **Request No. 9**

All email communications in the period beginning March 1, 2017 and continuing through the hearing in this matter, concerning Signac or Graham that were sent by or to any of the following: Tidjane Thiam, Alex Karp, Lara Warner, James Barkley, Matt Long.

### **Response to Request No. 9**

Credit Suisse objects to this Request on the grounds of Relevance, Burden, Proportionality, and Privilege. Credit Suisse further objects to this Request to the extent it seeks documents outside of its possession, custody, or control. Credit Suisse further object to this Request because it seeks documents and information that are in Complainant's possession. Credit Suisse further objects to the Request to the extent it seeks documents "beginning March 1, 2017 and continuing through the hearing in this matter." Such a Request is overbroad on its face.

Subject to these specific Objections and the General Objections above, Credit Suisse is willing to meet and confer regarding the scope of this Request.

### **Request No. 10**

All documentations and communications in the period beginning March 1, 2017 and continuing through the hearing in this matter, concerning the following matters:

- a. the recognition of revenue by Signac;
- b. meetings with the Federal Reserve Bank, the Swiss Financial Market Supervisory Authority, and or the United States Securities and Exchange Commission, regarding THS;
- c. the decision to wind-down Signac;
- d. determining whether either CS AG might utilize any Signac's products;
- e. the valuation of Signac;
- f. maintenance or other services rendered by Palantir in connection with THS;
- g. the development and roll out of the THS software identified in the chart attached as Ex A;
- h. approvals for and or diligence regarding December 12 Investor Day statements in Exs A and B related to THS, including but not limited to its having been "rolled out" in 2017;
- i. Graham's 2016 Performance Bonus; and
- j. Employment of Graham on or after April 2017.

**Response to Request No. 10**

Credit Suisse objects to this Request on the grounds of Relevance, Burden, Proportionality, and Privilege. To the extent this Request seeks any documents regarding “THS,” such documents do not pertain in any way to the claims pled in this Action. Credit Suisse further objects to this Request to the extent it seeks documents outside of its possession, custody, or control. Credit Suisse further object to this Request because it seeks documents and information that are in Complainant’s possession. Credit Suisse further objects to the phrases “might utilize,” “maintenance,” “development and roll out,” and “Performance Bonus” on the ground of Ambiguity. Credit Suisse further objects to the Request to the extent it seeks documents “beginning March 1, 2017 and continuing through the hearing in this matter.” Such a Request is overbroad on its face.

Subject to these Objections, Credit Suisse will produce non-privileged documents in its possession, custody, or control from March 1, 2017 through August 1, 2017, that are responsive to Requests 10(a), (c), (i), and (j) to the extent it can locate such documents after a reasonable search.

Dated: February 17, 2020

Respectfully submitted,

/s/ Kuan Huang  
LATHAM & WATKINS LLP  
Joseph Serino, Jr.  
Kuan Huang  
Nathan Taylor  
885 Third Avenue  
New York, New York 10022  
Telephone: (212) 906-1200

*Attorneys for Respondent Credit Suisse  
Securities (USA) LLC*

# EXHIBIT D

⏪ Reply all ▾ 🗑 Delete 🚫 Junk 🚫 Block ...

## Re: Graham motion exhibits

**From:** Robert Kraus <rk@kzlaw.net>  
**Sent:** Friday, March 13, 2020 5:12 PM  
**To:** Colleen Graham (b) (6) [REDACTED]  
**Subject:** Fwd: Graham v Credit Suisse AG et al - Signac Discovery Objections and Responses

These should have been served ages ago

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**From:** Lockinger, Joseph D <jlockinger@cooley.com>  
**Sent:** Friday, March 13, 2020 4:22:56 PM  
**To:** Robert Kraus <rk@kzlaw.net>  
**Cc:** Fulton, Jim <FULTONJF@cooley.com>  
**Subject:** Graham v Credit Suisse AG et al - Signac Discovery Objections and Responses

Robert,

Attached are the responses and objections for Respondent Signac LLC to the document requests Complainant previously served in this action. Please feel free to contact us, if you wish to discuss anything contained therein.

Regards,  
Joe

**Joseph D. Lockinger**

Cooley LLP  
55 Hudson Yards  
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+1 212 479 6275 fax  
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UNITED STATES DEPARTMENT OF LABOR  
OFFICE OF ADMINISTRATIVE LAW JUDGES

-----X  
COLLEEN A. GRAHAM, :  
  
Complainant, :  
v. :  
CREDIT SUISSE SECURITIES (USA) LLC, :  
and SIGNAC LLC :  
  
Respondents. :  
-----X

Case No. 2019-SOX-00040

**CLAIMANT’S MEMORANDUM OF LAW IN SUPPORT  
OF MOTION TO COMPEL AND FOR LEAVE TO AMEND**

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## INTRODUCTION AND RELIEF SOUGHT

The Rules governing proceedings before the United States Department of Labor, Office of Administrative Law Judges, are designed to secure the just, speedy, and inexpensive determination of every proceeding. 29 C.F.R. §18.10. Respondents' continued refusal to produce any responsive documents is plainly intended to thwart that purpose. Respondents know well that the Rules forbid a party from withholding responsive documents without first moving for a protective order. And to the extent that Respondents were unfamiliar with the Rules, plainly inexcusable in itself, this Tribunal invited Respondents on two separate occasions -- the first on September 5<sup>th</sup> -- to submit a motion for a protective order. But Respondents, interested only in delay and burdening claimant with needless expense, willfully thumbed their nose at this Tribunal and its Rules. As set forth below, Graham's motion to compel should be granted and production ordered immediately, in addition to awarding other appropriate relief.<sup>1</sup>

Graham also seeks leave to amend her complaint. Leave should be granted to allow Graham to provide more information about her claims and Respondents' defenses, information which was not available at the time of her initial complaint. The information includes sworn arbitration testimony from Credit Suisse's two most senior compliance officers (one of whom also was a Signac Board Member) and public disclosures by Credit Suisse and its then Chief Executive Officer. These hardly objectionable binding admissions bear directly on whether Signac, under Graham's leadership, produced a viable trader holistic surveillance software product which was then used, and continues to be used, by both Credit Suisse AG and its subsidiaries, including Respondent Credit Suisse, to detect and deter misconduct by its greater than one thousand traders around the world (hereinafter, "THS"). The issue is critical because if

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<sup>1</sup> The good faith certification of Claimant's counsel, required by 29 C.F. R. §18.57(d)(2), accompanies this motion. "Ex." refers to the exhibits attached to the Certification.

THS was not viable and not used, as Respondents claim, then they can at least offer a business justification for some of the adverse actions at issue herein, such as not paying a bonus to Graham, not paying her severance, not valuing Signac or its THS software, and not paying Graham anything on account of her Signac equity. On the other hand, if THS was viable and was/is being used by Credit Suisse, then the proffered defense is plainly pretextual.

### **Factual Background**

This matter arises under the employee protection provisions of Section 806 of the Corporate and Criminal Fraud Accountability Act of 2002, Title VII of the Sarbanes Oxley Act of 2002, 18 U.S.C. §1514A.

Graham's complaint was originally filed with OSHA in November 2017. It alleges that Credit Suisse began to retaliate unlawfully shortly after Graham refused to participate in conduct that she believed violated securities laws. She alleged that Credit Suisse, alone or in concert, retaliated against her by taking a number of adverse personnel actions, including failing to pay her a bonus on account of 2016; depriving her of employment opportunities; harassing her with false claims of misconduct; bully and intimidating by openly surveilling her and her family; threatening to forfeit substantial amounts of Credit Suisse deferred compensation she held; and refusing to value and or pay her for her equity stake in Signac. A copy of Graham's proposed Amended Complaint is attached as Ex. "A" to the accompanying Certification.

Credit Suisse filed its answer on or about on or about December 20, 2017. Among other things Credit Suisse claimed that Signac's trader holistic surveillance software product ("THS") never became a viable product. As a result, Signac's sole customer, Credit Suisse AG, became

completely dissatisfied<sup>2</sup> and elected not to use the product. Id. Credit Suisse is a wholly owned subsidiary of Credit Suisse AG.

Even though Signac paid Graham during the period it directly employed her, Credit Suisse continued to hold her securities licenses and listed itself as her employer on her registrations. Ex. “B”. Credit Suisse also maintained Graham’s company email address.

OALJ’s Initial Prehearing Order and Notice of Hearing in this matter is dated June 19, 2019 (“PHO”)<sup>3</sup>. Among other topics, the PHO contains a section entitled “The consequences of a Failure to Comply”. In relevant part, it states:

Failure to comply with the provisions of this prehearing Order may result in the imposition of sanctions including but not limited to the following: the exclusion of evidence, the dismissal of the claim, the entry of a default judgment or the removal of the offending representative from the case.

On August 2, 2019, Graham served a 10 item discovery request on Signac and Credit Suisse. (the Requests are included as part of Credit Suisse’s Responses and Objections attached hereto as Ex. “C”). One group of related requests sought documents concerning Credit Suisse’s claim that Signac’s THS was never viable and it had not continued to use it after in or about May 2017, when Signac was shuttered. Id., Nos. 2, 3, 7 and 10(b)(d)(e)(f)(g) and (h). Graham also sought her personnel file from Credit Suisse. Ex. “C”.

Graham also served Credit Suisse with a notice to take the deposition of Lara Warner (“Warner”), the Chief Compliance and Regulatory Affairs Officer (“CCRO”) for Credit Suisse AG. As CCRO, Warner was responsible for all compliance and regulatory matters for Credit

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<sup>2</sup> Although not dispositive, the purported lack of commercial viability and dissatisfaction of the sole customer CS AG, at least offers a legitimate business justification for several of the adverse personal actions at issue, such as failure to pay a bonus, withdrawal of an offer of employment, refusal to pay Graham’s equity stake.

<sup>3</sup> Because of the recently ordered 50 page limit on attachments, copies of Orders in this matter have not been appended to the accompanying Moving Decl., and reference is respectfully made to the docket for copies thereof.

Suisse AG globally across all business and functions, including Respondent Credit Suisse.

Warner also served as a member of the Board of Directors of Signac.

On July 31, 2019 Respondents moved for a Stay of Discovery and for Dismissal or Summary Decision. On September 5<sup>th</sup>, ALJ Timlin conducted a pre-hearing conference call following the submission of Respondents' motions. During the call, Judge Timlin asked Credit Suisse if it might need a Protective Order ("PO"). Credit Suisse declined to move however, citing a professed concern that Judge Timlin already had a "number of motions in her hands already". See Final Determination: Notice of Intent to Disclose, dated November 20, 2019, at pg. 5. During the same period, Respondents began to receive numerous letters "from OALJ notifying them of three, separate pending FOIA requests" to release the submissions on the pending motions, which Respondents claimed were confidential and exempt from disclosure. Id.

On September 12<sup>th</sup>, 2019, Judge Timlin issued a stay of discovery pending the outcome of the motions for summary decision. The Order recites in relevant part that "the joint motions to Stay are GRANTED pending the outcome of the Motions for Summary Decision."

On November 20<sup>th</sup>, this court issued its Final Determination and Notice of Intent to Disclose all the responsive documents within 10 business days, unless the Respondents were to file a "reverse FOIA" suit preventing disclosure. Respondents elected NOT to file a reverse FOIA suit. See Final Determination, supra. The Final Determination addressed Respondents' failure to move for a PO, noting as follows:

Respondents were still within their rights to file a protective order at any time. They took no action to do so, despite their receipt of numerous letters from OALJ notifying them of three separate pending FOIA requests for these documents, and OALJ's willingness to hear their responses before issuing this Exemption 4 determination letter.

Id., at pg. 5. The Final Determination continued by noting that,

Judge Timlin not only raised the issue of protective orders with the parties, see page 12 of the transcript, but also told the parties to “make the appropriate motions... Sooner rather than later,” page 13 of the transcript. Respondents still did not seek a protective order.

Id. Because Respondents never received an assurance of privacy from the presiding ALJ, they could not establish that the file should be exempt from disclosure. (Id., at pg. 6).

On January 16, 2020, this court issued an order granting in part and denying in part the motions for dismissal or summary decision. Since the motion was denied with regard to Credit Suisse and Signac, the stay of discovery was automatically lifted, thereby requiring Responses and Objections and responsive documents on or by February 17, 2020. The Order also directed the parties to present the Court with hearing dates by January 26<sup>th</sup>. See Order with Issue Date January 16, 2020.

Credit Suisse served Responses and Objections on February 17, 2020. Ex. “C”. Credit Suisse refused to produce any documents without Graham agreeing to a protective order, which Graham refused to do. Credit Suisse failed to interpose any motion for a protective order. In addition to withholding all documents on the grounds of confidentiality, Credit Suisse also refused to produce documents related to THS or Graham’s personnel file on the grounds of relevance (among other objections). Ex. “C”.

On February 27<sup>th</sup>, Judge Timlin held a telephonic conference to address scheduling issues caused by Respondents’ refusal to produce documents. Among other things, Judge Timlin noted that under the Rules a party may not withhold documents without making a motion for protective order. ALJ Timlin expressed surprise that Respondents had not moved for a PO earlier in September, when the issue first arose. Reference also was made to the Final Determination that the public is entitled to access to the OALJ files in this matter. Credit Suisse was again invited to make a motion for a Protective Order, but none was forthcoming. Moving Decl. at 6.

On March 3<sup>rd</sup>, Signac purported to serve Responses and Objections. Graham rejected the attempted service as an untimely nullity (Ex. “D”).

### DISCUSSION

1) Respondents Willfully flout The Rules by Withholding Discovery

A) Signac Failed to Timely Serve Responses and Objections

The September 12<sup>th</sup> Order stayed discovery pending the outcomes of the dismissal motions. The dismissal motions were decided adverse to Signac and Credit Suisse on January 16, 2020. Accordingly, under 29 C.F.R.18.61(b)(2), Responses and Objections were due within 30 days, or on or by February 17, 2020. Signac failed to serve any discovery responses by that date. Even with a telephonic conference subsequently noticed by the ALJ Timlin in connection with the pending discovery and related scheduling dispute, no Responses and Objections were forthcoming from Signac, nor did it ask for an extension or move for a protective order. In fact, Signac did not bestir itself to even attempt to serve Responses and Objections until March 3<sup>rd</sup>, more than three (3) weeks after they were due.

Under 29 C.F.R. 18.57(b) – (d), the consequences of a party’s failure to obey a discovery order, as Signac has done with regard to the PHO, includes compelling the discovery at issue, limiting the offending party from using information at the hearing, or striking defenses in whole or in part. Because it has no excuse for breaching the Rules by failing to serve its Responses or Objections and related documents, Signac should be compelled to serve responsive documents in its custody possession or control without regard to any objections, and be precluded from using the documents and information therein to oppose Graham’s claims. It should also have its defenses stricken in so far as they relate to the requested documents.

B) Credit Suisse Cannot Unilaterally Withhold Responsive Documents without Moving for a Protective Order

Credit Suisse timely served Responses and Objections but refused to produce any responsive documents on the grounds of confidentiality. But, as Credit Suisse knows, under 29 C.F.R. 18.57(d)(2), the failure to respond to a document request “is not excused on the grounds that the discovery sought was objectionable, unless the party failing to act has a pending motion for a protective order under 18.52(a).” Not only is there a Rule directly on point requiring the submission of a motion before withholding discovery, but Credit Suisse was invited, if not urged, by Judge Timlin on two separate occasions to interpose such a motion. Apparently, Credit Suisse has decided simply to ignore the Rules, as well as this Tribunal’s specific admonitions. Credit Suisse’s continued wrongful withholding of responsive documents seeks to make a mockery of this tribunal and prejudices Graham’s rights to receive a just and speedy hearing.

C) THS Related Documents and Graham’s Personnel File Are Directly Relevant

In addition to its blanket withholding of documents on the grounds of confidentiality, Credit Suisse refuses to produce (i) any THS related documents and (ii) Graham’s Credit Suisse personnel file on the grounds of relevance. Credit Suisse raises relevancy objections with regard to all of Graham’s request for documents related to THS. There are five: Request No. 2 (THS dashboard) No. 3 (Investor Day Video Presentation); No. 7 (THS Development plans) and Nos.10 (b) and (d) – (h)<sup>4</sup>(collectively, the “THS Discovery”).

The THS Discovery relates directly to Respondents’ professed justification for taking a number of the adverse employment actions at issue, such as failing to pay Graham either (i) the

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<sup>4</sup> Documents regarding: 10(b)(communications with regulators about THS); 10(d)(decision making process re use of Signac products); 10(e)(Signac’s valuation); 10(f)(maintenance services for THS); 10(g)(roll-out of THS as shown in Investor Day chart); and 10(h)approvals and diligence for the Investor statements about THS.

(\$810,000) bonus due her on account of 2016 performance, or (ii) the value of her equity stake in Signac. Credit Suisse's proffered justification for these disputed personnel actions is that THS was not viable and not used because the sole customer was dissatisfied. The THS Discovery bears directly on the veracity of the Credit Suisse assertions. No party can advance a defense and then deny its adversary discovery bearing directly on the truth of that defense. That self-evident proposition is particularly true in this case, where the sworn testimony from JAMS 1 and Credit Suisse's Investor Day already casts doubt on the Credit Suisse defense. Credit Suisse's relevancy objection is not even colorable and it should be ordered to produce the THS Discovery immediately.

Next, in a rarity among statutory employment disputes, Credit Suisse refuses to produce Graham's personnel file. Credit Suisse objects to producing Grahams' personnel file claiming that since she was last directly employed at Signac her Credit Suisse personnel file is irrelevant. Ex "C", pgs. 10-11. The argument fails for a number of reasons.

Although Signac was the direct employer of Graham during the relevant period, Credit Suisse continued to hold Graham's securities licenses through June 2017 (Ex. "B")<sup>5</sup>. Holding a securities license for an associated person carries with it the important legal obligation to keep certain personnel records, particularly if there was an investigation into potential criminal misconduct. *Id.* Here, Graham alleges that Credit Suisse conducted a trumped-up investigation into extremely serious allegations of misconduct, including of a criminal nature. Under 17 C.F.R. 240.17a-3(a)(12), a broker-dealer has a fundamental obligation to maintain records related to associated persons for whom it holds a license, including information regarding the person's employment and disciplinary history. Credit Suisse cannot accuse Graham of terrible

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<sup>5</sup> Credit Suisse also maintained Graham's company email address.

wrongdoing, purport to conduct an investigation, hold her securities licenses, and then withhold her personnel file when litigation ensues. That makes no sense whatsoever.

Moreover, Credit Suisse claims to have made Graham an offer of employment, which then didn't materialize purportedly because of her inaction. Graham claims any offer was withdrawn, if ever made, when she refused to abandon her objections to the attempt to violate securities laws. Why Credit Suisse may have made the offer in the first instance, assuming it actually made it, and then why it didn't materialize is relevant to the claims and defenses herein. Graham's Complaint also alleges that Credit Suisse harassed her by threatening to take her Credit Suisse deferred compensation. The personnel file is obviously relevant to that claim as well. Under the circumstances, an order should be entered requiring Credit Suisse to produce Graham's personnel file.

2) Leave to Amend Should Be Granted

Motions to amend a complaint are to be freely granted. See Martens v. Berkshire Hathaway, Inc., ARB No. 09-025, 2011 WL 2614301 (June 16, 2011) ("ALJ should freely grant parties the opportunity to amend their initial filings to provide more information about their complaint.") Here, Graham is entitled to provide more information based on statements made by Credit Suisse since the date of her initial filing, including sworn testimony and SEC filings that bear directly on the claims and defenses herein. The information tends to show that Credit Suisse's defense that THS was not viable and not used is pretextual. Respondents' binding admissions are plainly additive to her complaint and should be allowed.

CONCLUSION

For the foregoing reasons, complainant's motion should be granted and an order entered compelling production of the requested discovery and granting leave for graham to serve and file her proposed Amended Complaint.

Dated: New York, New York  
April 17, 2020

KRAUS & ZUCILEWSKI LLP

(b) (6)



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**IN THE U.S. DEPARTMENT OF LABOR  
OFFICE OF ADMINISTRATIVE LAW JUDGES**

**COLLEEN A. GRAHAM,**

**Complainant,**

**v.**

**CREDIT SUISSE SECURITIES, ET AL.,**

**Respondents.**

**Case No. 2019-SOX-00040**

**SIGNAC'S OPPOSITION TO GRAHAM'S MOTION TO COMPEL AND FOR LEAVE  
TO AMEND, AND CROSS-MOTION TO EXTEND SIGNAC'S TIME TO RESPOND**

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## INTRODUCTION

Complainant's Motion to Compel and For Leave to Amend ("Graham's Motion") against Credit Suisse Securities (USA) LLC ("Credit Suisse") and Signac LLC ("Signac") should be denied in its entirety, and Signac's Cross-Motion to Extend Time to Respond should be granted. While Complainant focuses on the delay in her receipt of Signac's responses to Complainant's Requests for Production ("RFPs"), she neglects to tell the Court that Signac has already produced *nearly fifty-three thousand pages of documents* covering the topics set forth in the RFPs at issue during the arbitration proceeding following the end of Complainant's employment with Signac. Indeed, Signac's prior, extensive document productions largely obviate the issues raised concerning discovery in Graham's Motion.

In addition, Complainant has not even bothered to argue (nor can she) that she has been prejudiced by the delay in the receipt of Signac's responses to the RFPs, despite her seeking a number of extraordinary remedies, including striking Signac's defenses related to the requested documents. Instead, Complainant focuses her motion entirely on the mere fact that Signac's responses to the RFPs were served approximately three weeks after the new deadline following the decision on the motion to dismiss, which – given Signac's prior extensive productions of documents and information and the lack of any prejudice to Complainant – provides no support for the relief Complainant seeks from this Court.

Signac was a joint venture formed by, among others, Credit Suisse in 2016 to build, test, and market a product to help financial institutions identify rogue traders. Signac is now a dissolved entity. It has no employees or business operations – just lawyers managing the wind-down of the business. Signac has long ago produced all documents relevant to Complainant's claims in its possession. Complainant makes no effort to explain why she needs more documents from Signac in order to fairly litigate the case. Indeed, Complainant did not even attempt to schedule a meet-

and-confer with Signac’s counsel to discuss what, if any, additional documents she was seeking here before initiating this discovery dispute process. Given Signac’s short and excusable delay, and the lack of prejudice to Complainant, the Court should deny Graham’s Motion in its entirety and grant Signac’s cross-motion to extend its time to respond to the RFPs.

## **BACKGROUND**

As set forth below, Signac joins in certain arguments made in Credit Suisse’ Opposition to Complainant’s Motion to Compel and for Leave to Amend (the “CS Opposition”), and in Credit Suisse’ Cross Motion for Entry of Confidentiality Order (the “CS Cross-Motion”), and requests that the Court deny Graham’s Motion in its entirety and grant the Signac Cross-Motion and the CS Cross-Motion.

During the JAMS arbitration captioned *Graham, et al. v. Palantir Technologies Inc., et al.*, JAMS NO. 1425025009, that was previously completed, concerning, among other things, the Complainant’s employment by Signac and the termination of that employment, Signac produced **fifty-two thousand eight hundred and eighty-two (52,882)** pages of documents related to the Complainant’s employment with Signac. *See* Declaration of MaryBeth Shreiner, dated May 1, 2020 (“Shreiner Decl.”), ¶ 2. Signac made this production to Complainant on January 31, 2018. *See* Shreiner Decl., ¶ 3.

Despite this extremely comprehensive prior production of documents, on August 2, 2019, Complainant served broad RFPs seeking further discovery from each of the Respondents. On September 12, 2019, based on a motions filed by Respondents, a stay was put in place for all discovery pending a decision on the motions for summary decision and the motions to dismiss. On January 16, 2020, a decision was issued on the motions for summary decision and motions to dismiss, and the deadline to respond to the RFPs was set as February 17, 2020.

Given that it is no longer operating as a company, during the course of this litigation, Signac and its counsel have largely followed the lead of the joint venture partners, including Credit Suisse, to avoid unnecessary duplicative attorneys' fees in this matter. On January 30, 2020, the parties collectively discussed discovery deadlines and Signac and Credit Suisse made clear to Complainant that no additional documents would be produced prior to entry of a protective order. *See* Declaration of Joseph Lockinger, dated May 1, 2020 ("Lockinger Decl."), ¶ 2. Following this conversation, and based on the belief that a motion for a protective order was forthcoming in place of initial responses to the RFPs, Signac did not respond to the RFPs on the February 17, 2020 deadline. Lockinger Decl., ¶ 3. During the scheduling call with the Court on February 27, 2020, it was made clear to counsel for Signac that Credit Suisse had responded to the RFPs by interposing responses and objection, despite not having made a motion for a protective order. Lockinger Decl., ¶ 4. As such, on March 13, 2020, Signac interposed its own Responses and Objections (the "Responses") to the RFPs. Lockinger Decl., ¶ 5.

## ARGUMENT

### **I. Signac's Late Responses to the RFPs are the Result of Excusable Neglect and the Deadline Should Now Be Extended.**

Signac served on Complainant its Responses on March 13, 2020, approximately three weeks after the February 17, 2020 deadline. Signac requests that the Court formally extend its time to interpose its Responses under 29 C.F.R. §18.32(b)(2) from February 17, 2020, until March 13, 2020, based on excusable neglect resulting in Signac's delayed filing of its Responses. "When an act may or must be done within a specified time, the judge may, for good cause, extend the time ... [o]n motion made after the time has expired if the party failed to act because of excusable neglect." 29 C.F.R. §18.32(b)(2). The test for determining whether excusable neglect has been established is (i) the danger of prejudice to the other party, (ii) the length of delay and its potential

impact on judicial proceedings, (iii) the reason for the delay, and (iv) whether the movant acted in good faith. *Pioneer Investment Servs. Co. v. Brunswick Assoc. Ltd. P'ship*, 507 U.S. 380, 395 (1993); *see also Iopa v. Saltchuk-Young Bros., Ltd.*, 916 F.3d 1298, 1301 (9th Cir. 2019) (applying the excusable neglect test from *Pioneer* to 29 C.F.R. §18.32(b)(2)).

Applying these factors here dictates that the Court should find excusable neglect and extend Signac's time to respond pursuant to 29 C.F.R. §18.32(b)(2) from February 17, 2020, until March 13, 2020 – the date on which Signac served its Responses on Complainant.

First, there is no danger of prejudice to Complainant in granting Signac's requested extension. None has even been alleged in Graham's Motion. Complainant already has Signac's Responses. In addition, as mentioned, Signac has already produced nearly fifty-three thousand pages of documents related to the claims asserted by Complainant and it is unclear what else would be produced based on these RFPs, if anything. Further, there is currently an order from the Office of Administrative Law Judges ("OALJ") imposing a stay of all procedural deadlines in this case (the "Tolling and Suspension Order") meaning that mere delay would not represent any prejudice.<sup>1</sup>

Second, given the current stay on all procedural deadlines based on the Tolling and Suspension Order and the significant time until the discovery is scheduled to close, the approximately three week delay in responding to the RFPs will have no impact on discovery in this proceeding.

Third, there is a justifiable reason for the delay. As is set forth above, Signac is now a dissolved entity. Given that it is no longer operating as a company, during the course of this

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<sup>1</sup> On March 23, 2020, the OALJ ordered that all procedural deadlines in cases currently pending before the OALJ were suspended until May 15, 2020, due to the COVID-19 national emergency. On April 10, 2020, the suspension of procedural deadlines was extended until June 1, 2020, and further modified to set forth that the new deadline would be determined by the date on which the period of tolling ends ("Supplemental Order").

litigation, Signac and its counsel have largely followed the lead of the joint venture partners, including Credit Suisse, to avoid unnecessary duplicative attorneys' fees in this matter. Signac interposed its own Responses to the RFPs on March 13, 2002, just a few weeks after the deadline and as soon as it reasonably could after learning that Credit Suisse had also served responses and objections rather than filing a motion for a protective order.

Finally, as mentioned, Complainant did not even attempt to schedule a meet-and-confer with Signac's counsel to discuss what, if any, additional documents she was seeking here before initiating this discovery dispute process. Signac interposed the Responses to the RFPs as soon as it became clear that placeholder objections were appropriate while a Protective Order was still pending.

**II. Even if the Cross-Motion for an Extension is not Granted, the Relief Sought by Complainant under 29 CFR § 18.57 Should be Denied.**

Even if Signac's time to respond to the RFPs is not extended, Graham's Motion seeking sanctions against Signac under 29 C.F.R. § 18.57 should be denied in its entirety.

First, Graham's Motion seeking sanctions against Signac under 29 C.F.R. § 18.57(b) for failure to comply with a judge's discovery order is meritless. Specifically, 29 C.F.R. § 18.57(b)(1) states that if "a party . . . fails to obey an order to provide or permit discovery . . . the judge may issue further just orders." Complainant has not identified any such order that Signac has failed to comply with by providing its Responses to the RFPs after the deadline. Complainant's assertion that Signac's service of the Responses after the deadline represents a failure to comply with the Initial Prehearing Order and Notice of Hearing, dated June 19, 2019 (the "Prehearing Order") is misplaced. In fact, the Prehearing Order only states that the parties must complete all discovery **at least 40 days prior to the date of the evidentiary hearing**, which is currently scheduled for August 3, 2020. As such, the Prehearing Order's current deadline of June 24, 2020 is still

approximately seven weeks from the date of this opposition. In addition, given the OALJ's current Tolling and Suspension Order, it is likely that the new deadline to complete discovery would be ninety-three days after the tolling period ends on June 1, 2020, which would be September 2, 2020.<sup>2</sup> As such, Complainant has ample time to complete whatever additional discovery she needs and Signac has not failed to comply with the Prehearing Order. Complainant's unsupported assertion to the contrary is entirely frivolous.

Second, Graham's Motion seeking sanctions against Signac under 29 C.F.R. § 18.57(c) for failure to disclose, to supplement an earlier response, or to admit is misplaced here. The C.F.R. Section cited by Complainant concerns failures to provide information or witnesses in disclosures or additional disclosures under 29 C.F.R. § 18.50 (initial disclosures, disclosures of expert testimony, prehearing disclosures, and the form of disclosures) and 29 C.F.R. § 18.53 (supplemental disclosures), or to admit when request under 29 C.F.R. § 18.63 (request for admission). Here, Complainant's RFPs sought production of documents under 29 C.F.R. § 18.61 (production of documents), which is not covered by any part of 29 C.F.R. § 18.57(c).

Finally, Graham's Motion seeking sanctions against Signac under 29 C.F.R. § 1857(d) is also misplaced as Responses have already been provided to the RFPs and Complainant has not been prejudiced by the slight delay in receiving these Responses, especially given both the extensive discovery already provided and the Tolling and Suspension Order. More importantly, Complainant has failed to satisfy the requirements set forth in 29 C.F.R. § 1857(d)(1)(ii) to bring this motion for sanctions as the movant must be able to certify she has "in good faith conferred or attempted to confer with the party failing to act in an effort to obtain the answer or response without the judge's action." As previously noted, Complainant has not even attempted to schedule a meet-

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<sup>2</sup> See footnote 2 of the Supplemental Order.

and-confer with Signac's counsel to discuss what, if any, additional documents she was seeking here before initiating this discovery dispute process. While Complainant's "Good Faith Moving Declaration" sets forth that she made a good faith effort to resolve the discovery dispute it provides no actual details concerning these purported efforts. And no such details exist. As a result, Complainant's application for sanctions under 29 C.F.R. § 1857(d) should be denied for failure to meet the necessary pre-requisites set forth in 29 C.F.R. § 1857(d)(1)(ii).

Even if the Court were to consider this motion for sanctions, none should be granted in this case. Courts analyzing the appropriateness of awarding discovery sanctions generally consider the following factors: "(1) the willfulness of the non-compliant party or the reason for non-compliance; (2) the efficacy of lesser sanctions; (3) the duration of the period of noncompliance[;] and (4) whether the non-compliant party had been warned of the consequences of non-compliance. *Agiwal v. Mid Island Mortg. Corp.*, 555 F.3d 298, 302 (2d Cir. 2009). In addition to the four *Agiwal* factors, courts also regularly consider the extent of any prejudice to the party moving for sanctions. *See e.g., Trilegiant Corp. v Sitel Corp.*, 275 FRD 428, 434 (S.D.N.Y. 2011) (declining to impose sanctions where the delay was not willful and any prejudice to party seeking sanctions was mitigated by an extension of the existing discovery deadline). As set forth above, the primary reason for Signac's failure to timely respond is that it is a dissolved entity that has already produced the documents that were in its possession prior to dissolution. Further, the delay in its Responses to the RFPs was short (approximately three weeks), there have been no prior warnings or issues concerning Signac related to discovery, and there is no prejudice to Complainant based on this short delay.

Given all of the above, Graham's Motion seeking sanctions against Signac under 29 C.F.R. § 18.57 should be denied in its entirety.

**III. Complainant's Motion for Leave to Amend Should Be Denied For The Reasons Articulated in the Credit Suisse Opposition.**

As is set forth in the CS Opposition, the Complainant's proposed amendments should all be denied. Signac joins in the CS Opposition on the points set forth therein and incorporates by reference all relevant factual and legal recitations provided.

**IV. A Protective Order Should Be Issued For the Reasons Articulated in the Credit Suisse Cross-Motion.**

As is set forth in the CS Cross-Motion, the Respondents have requested that Complainant agree to enter a routine protective order on multiple prior occasions and have been refused. Signac hereby incorporates by reference all relevant factual and legal recitations provided in the CS Cross-Motion and respectfully joins in the request for a protective order as articulated therein.

**CONCLUSION**

For the foregoing reasons and those set forth in the CS Opposition and CS Cross-Motion, Respondent Signac respectfully requests that the Court: (1) extend Signac's time to respond to the RFPs, (2) deny Graham's Motion in its entirety as it pertains to Signac, (3) enter a protective order substantially in the form set forth in Exhibit H of the CS Cross-Motion to protect confidential information exchanged during these proceedings.

May 1, 2020

/s/ Elizabeth Inglis

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*Attorney for Respondent*  
Signac LLC

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on August 12, 2019, the original and a copy of the **SIGNAC'S OPPOSITION TO GRAHAM'S MOTION TO COMPEL AND FOR LEAVE TO AMEND, AND CROSS-MOTION TO EXTEND SIGNAC'S TIME TO RESPOND** was filed by e-mail on the following:

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**IN THE U.S. DEPARTMENT OF LABOR  
OFFICE OF ADMINISTRATIVE LAW JUDGES**

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**COLLEEN A. GRAHAM,**

**Case No. 2019-SOX-00040**

**Complainant,**

**DECLARATION OF JOSEPH D.  
LOCKINGER**

**v.**

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**CREDIT SUISSE SECURITIES, ET AL.,  
Respondents.**

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I, Joseph D. Lockinger, declare as follows:

1. I am an associate at the law firm Cooley LLP, counsel to Signac LLC (“Signac”) and respectfully submit this Declaration in support of Respondent Signac’s Opposition to Graham’s Motion to Compel and For Leave to Amend and Cross-Motion to Extend Signac’s Time to Respond. I have personal knowledge of the facts set forth herein.

2. On January 30, 2020, the parties collectively discussed discovery deadlines and Signac and Credit Suisse Securities (USA) LLC (“Credit Suisse”) made clear to Complainant that no additional documents would be produced until a protective order was put in place. A copy of this e-mail correspondence is annexed hereto as Exhibit 1.

3. Following this conversation, and based on the belief that a motion for a protective order was forthcoming in place of initial responses to the RFPs, Signac did not respond to the RFPs on the February 17, 2020 deadline.

4. During the scheduling call with the Court on February 27, 2020, it was made clear to counsel for Signac that Credit Suisse had responded to the RFPs, by interposing responses and objection, despite not having made a motion for a protective order.

5. As such, on March 13, 2020, Signac interposed its own Responses and Objections (the “Responses”) to the RFPs. A copy of the Responses and the e-mail sending them to Complainant is annexed hereto as Exhibit 2.

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

Dated: May 1, 2020  
Clarksville, Tennessee

/s/ Joseph D. Lockinger  
Joseph D. Lockinger  
COOLEY LLP  
55 Hudson Yards  
New York, NY 10001-2157  
Telephone: (212) 479-6736  
jlockinger@cooley.com

# EXHIBIT 1

## Lockinger, Joseph D

---

**From:** Robert Kraus <rk@kzlaw.net>  
**Sent:** Thursday, January 30, 2020 7:27 PM  
**To:** Lockinger, Joseph D; 'Kuan.Huang@lw.com'  
**Cc:** Joseph.Serino@lw.com; Fulton, Jim; Zuckerman, Steven A; Shannon.McLaughlin@lw.com; Nathan.Taylor@lw.com  
**Subject:** RE: Graham F2019-884165

**[External]**

---

Gentlemen,

The last two weeks in April are not acceptable for a number of reasons. I also do not agree to a protective order, nor do I think there is much chance the Court will issue one.

Under the circumstances, I suggest we write to Judge Timlin and request a pre-hearing conference at her earliest convenience. I am out tomorrow but we should confer beginning of next week regarding witnesses, discovery, and any other relevant issues. Let me know what works for a conference call.

In terms of the date defendants document responses are due, it looks like it is February 17<sup>th</sup>, not the 14<sup>th</sup>. I am operating under the assumption that responsive documents also will be made available simultaneously and in accordance with 29 C.F.R. sect. 18.61 (b)(2)(v). Please correct me if I'm mistaken. And since that date is a little more than two full weeks away, I suggest you interpose your motion for a protective order immediately.

I also asked whether you have any objections to the requests, which you have now had for months. In connection with setting any schedule, the parties and the Court obviously need to consider if you have objections and if so what they are. I renew my request.

Given my schedule and the parties apparent differences on a number of issues, I suggest hearing dates the first two weeks in June.

Thank you

Robert

Robert Kraus  
Kraus & Zuchlewski LLP  
One Grand Central Place  
Suite 2534  
New York, N.Y. 10165  
Ph. 212.869.4646  
m. 917.705.3297

---

**From:** Lockinger, Joseph D <jlockinger@cooley.com>  
**Sent:** Thursday, January 30, 2020 6:21 PM  
**To:** 'Kuan.Huang@lw.com' <Kuan.Huang@lw.com>; Robert Kraus <rk@kzlaw.net>  
**Cc:** Joseph.Serino@lw.com; Fulton, Jim <FULTONJF@cooley.com>; Zuckerman, Steven A <szuckerman@cooley.com>; Shannon.McLaughlin@lw.com; Nathan.Taylor@lw.com  
**Subject:** RE: Graham F2019-884165

Robert,

For Signac (going forward), please copy Jim Fulton, Steve Zuckerman (both cc'd), and myself.

The hearing dates proposed by Credit Suisse Securities work for Signac as well. Signac agrees with the necessity of a protective order and joins in the request.

Regards,

**Joseph D. Lockinger**

Cooley LLP  
55 Hudson Yards  
New York, NY 10001-2157  
+1 212 479 6736 office  
+1 212 479 6275 fax  
[jlockinger@cooley.com](mailto:jlockinger@cooley.com)

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---

**From:** [Kuan.Huang@lw.com](mailto:Kuan.Huang@lw.com) <[Kuan.Huang@lw.com](mailto:Kuan.Huang@lw.com)>  
**Sent:** Thursday, January 30, 2020 6:00 PM  
**To:** [rk@kzlaw.net](mailto:rk@kzlaw.net)  
**Cc:** [Joseph.Serino@lw.com](mailto:Joseph.Serino@lw.com); Lockinger, Joseph D <[jlockinger@cooley.com](mailto:jlockinger@cooley.com)>; Fulton, Jim <[FULTONJF@cooley.com](mailto:FULTONJF@cooley.com)>; Zuckerman, Steven A <[szuckerman@cooley.com](mailto:szuckerman@cooley.com)>; [Shannon.McLaughlin@lw.com](mailto:Shannon.McLaughlin@lw.com); [Nathan.Taylor@lw.com](mailto:Nathan.Taylor@lw.com)  
**Subject:** RE: Graham F2019-884165

**[External]**

---

Robert,

I called you and left a voicemail. Please copy me, Nate Taylor, and Shannon McLaughlin (cc'd) on all emails about this matter.

As for potential hearing dates, Credit Suisse Securities proposes the last two weeks in April 2020. Let us know your position on these dates. We don't think the hearing will take more than 5 days total.

With regard to discovery, we'll serve responses and objections to your discovery requests shortly. It's not clear to us where the February 14<sup>th</sup> deadline in your email comes from, but we are happy to discuss a workable schedule for any discovery that needs to be done prior to the hearing. Before we can produce any additional documents, however, we request that the remaining parties enter a standard protective order. We are happy to take the pen on that and put one together. Let us know your position on this as well.

Thanks,

**Kuan Huang**

**LATHAM & WATKINS LLP**

885 Third Avenue | New York, NY 10022-4834

D: +1.212.906.1254

---

**From:** Robert Kraus <[rk@kzlaw.net](mailto:rk@kzlaw.net)>

**Sent:** Monday, January 27, 2020 4:15 PM

**To:** Lockinger, Joseph D <[jlockinger@cooley.com](mailto:jlockinger@cooley.com)>; [joseph.serino@lw.com](mailto:joseph.serino@lw.com)

**Subject:** RE: Graham F2019-884165

**[External]**

---

Gentlemen,

Following up on Judge Timlin's January 16<sup>th</sup> Order requiring that we advise of proposed dates for the hearing, please let me know how many days you will require for your defense. My best estimate is that it will take two days for direct on Claimant's case in chief.

Please also consider that the stay on discovery was lifted with the Order and so Respondents' documents are due February 14<sup>th</sup>.

I assume timely document production will not be an issue. However, since it relates to proposing hearing dates, please let me know if I'm mistaken.

We need to propose hearing dates by C.O.B. Friday.

Thanks,

Robert

Robert Kraus  
Kraus & Zuchlewski LLP  
One Grand Central Place  
Suite 2534  
New York, N.Y. 10165  
Ph. 212.869.4646  
m. 917.705.3297

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# EXHIBIT 2

## Lockinger, Joseph D

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**From:** Lockinger, Joseph D  
**Sent:** Friday, March 13, 2020 4:23 PM  
**To:** 'Robert Kraus'  
**Cc:** Fulton, Jim  
**Subject:** Graham v Credit Suisse AG et al - Signac Discovery Objections and Responses  
**Attachments:** Graham v. Credit Suisse, et al. - Signac LLC Responses and Objections (3.13.20) (Copy).pdf; Graham v. Credit Suisse, et al. - Signac LLC Responses and Objections (3.13.20)(Original).pdf

Robert,

Attached are the responses and objections for Respondent Signac LLC to the document requests Complainant previously served in this action. Please feel free to contact us, if you wish to discuss anything contained therein.

Regards,  
Joe

**Joseph D. Lockinger**

Cooley LLP  
55 Hudson Yards  
New York, NY 10001-2157  
+1 212 479 6736 office  
+1 212 479 6275 fax  
[jlockinger@cooley.com](mailto:jlockinger@cooley.com)

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**U.S. DEPARTMENT OF LABOR  
OFFICE OF ADMINISTRATIVE LAW JUDGES**

COLLEEN A. GRAHAM,

Complainant,

v.

CREDIT SUISSE SECURITIES (USA) LLC,  
CREDIT SUISSE FIRST BOSTON NEXT  
FUND, INC., PALANTIR  
TECHNOLOGIES, INC., and SIGNAC LLC,

Respondents.

ALJ No. 2019-SOX-00040

**RESPONDENT SIGNAC LLC'S RESPONSES AND OBJECTIONS TO  
COMPLAINANT COLLEEN GRAHAM'S  
FIRST REQUEST FOR PRODUCTION OF DOCUMENTS**

Pursuant to 29 C.F.R. § 18.61, Respondent Signac LLC ("Signac") by and through its attorneys, Cooley LLP, hereby provides the following responses and objections (the "Responses") to Complainant Colleen Graham's First Request for Production Of Documents (the "Requests") in the above-captioned action (the "Action").

The Responses reflect only the current state of Signac's knowledge or information regarding the Requests. Signac reserves the right to supplement or otherwise amend the Responses based on additional information obtained through its investigation or discovery in this Action or for any other reason. Signac is willing to meet and confer with Complainant to discuss its Responses and the scope of discovery hereunder.

**GENERAL RESPONSES AND OBJECTIONS**

The following General Responses and Objections are incorporated into each Specific Response and Objection below. These General Responses and Objections govern the scope of any

Response made by Signac to the Requests and are neither waived nor limited by Signac's Specific Responses and Objections.

1. Defined Terms. For ease of reference, in setting forth its General and Specific Responses and Objections, Signac shall use the following defined terms:

a. "Burden" shall mean the Request (i) is overly broad and unduly burdensome; (ii) seeks discovery that is unreasonably cumulative or duplicative of other discovery Signac has offered to search for in response to a Request; and/or (iii) seeks discovery whose burden or expense outweighs its likely benefit under 29 C.F.R. § 18.51(b)(4).

b. "Proportionality" shall mean the Request seeks discovery that is not proportional to the needs of the case under 29 C.F.R. § 18.51(b)(4).

c. "Relevance" shall mean the Request seeks discovery that is not relevant to any party's claim or defense or is otherwise outside the scope of 29 C.F.R. § 18.51(a).

d. "Ambiguity" shall mean the Request (i) is vague and/or ambiguous; (ii) fails to describe the requested documents or categories of documents with reasonable particularity to allow Signac to search for and identify responsive documents, if any, without speculation or undue burden; (iii) contains terms or phrases that Signac cannot reasonably interpret or understand; and/or (iv) uses terms that are undefined or fail to distinguish meaningfully between similar (but not identical) terms and phrases used in other Requests.

e. "Privilege" shall mean the attorney-client privilege, the work product doctrine, any joint defense or common interest privilege, or any other applicable privilege, immunity, or similar protection from disclosure.

2. Signac objects to the Requests to the extent they seek to impose obligations on Signac that exceed or are different than the obligations imposed by the Code of Federal

Regulations or any applicable law, rule, or order. Subject to the General Responses and Objections, Objections to Instructions, Objections to Definitions, and Specific Responses and Objections (collectively, the “Objections”), Signac will construe and respond to the Requests consistently with 29 C.F.R. §18.51 and other applicable laws, rules, or orders of the Court, including any protective order agreed to by the parties or entered in this Action (“Protective Order”), and any Scheduling and Discovery Order issued by this Court (collectively, the “Applicable Rules”).

3. Any agreement by Signac to search for and produce documents will be made in accordance with the Applicable Rules. Signac objects to the Requests to the extent they purport to require Signac to search for, identify, retrieve, and produce documents other than as contemplated under the Applicable Rules.

4. Signac objects to the Requests on the grounds of Burden and Proportionality to the extent they purport to require Signac to conduct anything other than a reasonable and diligent search for reasonably accessible files from reasonably accessible sources where responsive documents would reasonably be expected to be found. Subject to the Objections, Signac is willing to produce certain categories of documents in response to the Requests, as set forth in the Specific Responses below, to the extent such documents exist and are identified by a good-faith reasonably tailored search. Any such offer does not indicate that (i) responsive documents exist or will be produced; (ii) the scope of such discovery is proper; or (iii) any of the Requests seek information or documents that are admissible or relevant to the claims, defenses, or subject matter of, or that are reasonably calculated to lead to the discovery of admissible evidence in, this Action. Rather, an offer of production merely indicates Signac’s offer to undertake a reasonably tailored search for such documents.

5. For purposes of these Responses, “Signac” refers solely to Signac LLC. Signac objects to the Requests to the extent they seek information or documents outside of its possession, custody or control, including documents within the possession, custody or control of Signac’s parents, affiliates, or subsidiaries that are separate legal entities and have corporate identities separate and apart from those of Signac. To the extent the Requests seek such documents or information, Signac will not produce such documents or information.

6. Signac objects to the Requests to the extent they seek the production of information or documents protected by Privilege. Signac will not produce such information or documents. Nothing in these Responses should be construed as a waiver of Privilege. Specific Objections on the ground of Privilege are provided only for emphasis. The absence of a Specific Objection on the ground of Privilege is neither intended, nor should be interpreted, as an indication that Signac does not object to a Request on the ground of Privilege. If any Privileged document or Privileged information within a document is inadvertently produced, Signac does not waive or intend to waive any Privilege pertaining to such document or information, or to any other document or information. Nor shall production of such material constitute a waiver of Signac’s rights under any applicable protective order, confidentiality agreement, and/or any applicable laws and rules, to (i) seek the return of such material or (ii) object to the use of such material at any stage of the Action or in any other proceeding.

7. Signac objects to the Requests to the extent they seek information or documents that are privileged or protected from disclosure by any domestic or foreign banking privileges, laws, or regulations. Signac further objects to the Requests to the extent they seek the production of information or documents that are protected from disclosure by any state, federal, or foreign law or prohibition, including, but not limited to, data protection directives under European Union,

English law or Swiss law, duties of confidentiality imposed by European Commission rules and policy, and other protections and limitations on discovery that should be afforded deference under principles of international comity. To the extent the Requests seek such documents or information, Signac will not produce such documents or information.

8. Signac objects to the Requests to the extent they seek information that is confidential, proprietary, commercially, or competitively sensitive to Signac and/or to its affiliates, employees, clients, customers, counterparties, customers' or counterparties' current or former officers, directors, or employees, or any third parties to whom Signac owes any duty of confidentiality. To the extent any such material is responsive to the Requests, Signac will only produce such material to the extent the parties agree to, or the Court enters, a protective order governing the disclosure and use of such material in this Action.

9. Signac objects to the Requests to the extent they seek production of information or documents protected from disclosure by any protective order, confidentiality agreement, nondisclosure agreement, or similar restriction on the use or dissemination of information or documents.

10. Signac objects on the grounds of Burden and Proportionality to Requests that seek "all" documents in a specified category where a subset of documents would be sufficient to provide the pertinent information.

11. Signac objects to the Requests on the grounds of Burden and Proportionality to the extent they seek information or documents that are publicly available, already in Complainant's possession, available from sources to which Complainant has access, or are otherwise available through more convenient, more efficient, less burdensome, or less expensive means.

12. Signac objects to the Requests to the extent they are argumentative, lack foundation, are predicated on subjective or legal conclusions or arguments, assume facts, seek to define terms or characterize evidence, contain inaccurate, incomplete, or misleading descriptions, or otherwise make, assume, or incorporate assertions that are disputed or erroneous. None of the Responses shall be construed as an admission, legal conclusion, or agreement with or acquiescence to any statement in, or any assumption underlying, the Requests.

13. Signac objects to the Requests on the ground of Ambiguity. Unless otherwise noted, where possible, Signac has made reasonable assumptions as to Complainant's intended meaning and has responded accordingly, while preserving its objection as to Ambiguity.

14. Signac objects to the Requests on the grounds of Burden, Proportionality, and Relevance to the extent they seek discovery that is not within the scope of Signac's alleged conduct in this Action, as of the date of the Responses or any subsequent date. Signac reserves the right to amend these Responses following any Court order that affects the nature or scope of appropriate discovery.

15. Signac objects to the Requests to the extent they seek documents that are not within Signac's possession, custody, or control as of the date of these Responses, or that are not maintained in the ordinary course of business. Signac will not produce such documents nor create documents in response to any of the Requests.

16. The Responses are made in good faith and are based on the information available to Signac as of the date of the Responses, which may be incomplete, and are provided without prejudice to Signac's right to alter, supplement, amend, or otherwise modify these Responses in light of additional facts revealed through subsequent inquiry and investigation. Signac reserves its right to (i) further object to the Requests; (ii) object to the use or admissibility of any information

or documents provided in response to the Requests, in any proceeding in this Action or any other action; (iii) object on any basis permitted by law to any other Request involving or relating to the subject matter of these Responses; (iv) alter, amend, or supplement its responses to the Requests; and (v) use or rely on, at any time, including trial, subsequently discovered information omitted from the Responses as a result of mistake, error, oversight, or inadvertence.

### **OBJECTIONS TO INSTRUCTIONS**

1. Signac objects to the Instructions on the grounds of Burden and Proportionality to the extent they purport to impose obligations that exceed those imposed by the Applicable Rules, including anything more than a reasonable search for responsive information. As noted above, any agreement by Signac to produce documents in response to a Request merely indicates its offer to undertake a good-faith reasonably tailored search.

2. Signac objects to Instructions A and J to the extent they seek to impose obligations that are different than or beyond those required by 29 C.F.R. § 18.53. Signac objects to the unlimited and perpetual supplementation of Signac's productions on the grounds of Burden and Proportionality. Signac will supplement its Responses only as required by 29 C.F.R. § 18.53.

3. Signac objects to Instructions C–J on the grounds of Burden and Proportionality to the extent they purport to impose burdens and obligations that exceed or are different than those imposed by the Applicable Rules. Signac will only produce documents as required and in the format required by the Applicable Rules.

4. Signac objects to Instructions A and J on the ground of Relevance to the extent they purport to request documents from a continuing time period irrelevant to the allegations of the Complaint. As noted in the General Objections, all offers of production will be limited to good faith reasonably tailored searches, including to an appropriate time period limitation (“Relevant Time Period”), which may differ depending on the Request, custodian, and/or central repository

to be searched. Signac is prepared to meet and confer with Complainant regarding the Relevant Time Period applicable to each Request. Signac further objects to Instructions A and J on the grounds of Burden, Relevance, and Proportionality to the extent they seek information or documents that are newly created or received after the commencement of this Action or receipt of the Requests.

### **OBJECTIONS TO DEFINITIONS**

5. Unless specified otherwise, Signac does not adopt Complainant's purported definitions of words and phrases. Signac objects to the "Definitions" stated in the Requests to the extent they are susceptible to more than one distinct interpretation or are inconsistent with the ordinary and customary meaning of such words and phrases or the Applicable Rules governing the permissible scope of discovery.

6. Signac objects to the Definitions on the ground of Privilege to the extent they purport to require the production or disclosure of any document or information subject to a claim of Privilege.

7. Signac objects to the Definition of "possession, custody, or control" on the ground of Ambiguity to the extent it fails to define what constitutes a "right to secure." Signac will construe this to mean that a document is within its "possession, custody or control" when Signac has the legal right to demand and receive documents from another Person.

### **SPECIFIC RESPONSES AND OBJECTIONS**

#### **Request No. 1:**

Signac's financial statements in for [sic] 2016, 2017, 2018, 2019, and all related work papers.

#### **Response to Request No. 1:**

Signac objects to this Request on the grounds of Relevance. Signac further objects to this

Request on the grounds of Burden and Proportionality. Signac further objects to this Request because it seeks documents and information that are in Complainant's possession or available from other sources to which Complainant has access, or otherwise available through more convenient, more efficient, less burdensome, or less expensive means. Signac further objects to the phrases "financial statements" and "related work papers" on the ground of Ambiguity.

Subject to these Objections, Signac will produce the financial statements for the years in question.

**Request No. 2:**

The "dashboard" for the Trader Holistic Surveillance software referred to on Ex. A ("THS") on the day it was "rolled out" and on the first day of every three-month period thereafter.

**Response to Request No. 2:**

Signac objects to this Request on the grounds of Relevance. This Request does not pertain in any way to the claims pled in this Action. Signac further objects to this Request on the grounds of Burden and Proportionality. Signac further object to the phrases "dashboard," "Trader Holistic Surveillance," and "rolled out" on the ground of Ambiguity. Signac further objects to this Request, which involves another organization's presentation, because it seeks documents outside of Signac's possession, custody, or control. Signac will not produce any documents responsive to this Request.

**Request No. 3:**

The video presentation of THS showcased at the December 12, 2018 CS AG Investor Day (see Ex. B).

**Response to Request No. 3:**

Signac objects to this Request on the grounds of Relevance. This Request does not pertain in any way to the claims pled in this Action. Signac further objects to the phrase "video

presentation” on the ground of Ambiguity. Signac further objects to this Request because it seeks documents and information that are publicly available, in Complainant’s possession, available from other sources to which Complainant has access, or otherwise available through more convenient, more efficient, less burdensome, or less expensive means. Signac further objects to this Request, which involves another organization’s presentation, because it seeks documents outside of Signac’s possession, custody, or control. Signac will not produce any documents responsive to this Request.

**Request No. 4:**

Graham’s personnel file and all performance evaluations while at Signac and Credit Suisse.

**Response to Request No. 4:**

Signac objects to this Request on the grounds of Relevance, Burden, Proportionality, and Privilege. Signac further objects to the phrases “personnel file” and “performance evaluations” on the ground of Ambiguity. To the extent this Request seeks any “personnel file” documents for Ms. Graham from her employment at Credit Suisse or Signac, such documents have no bearing on this Action. Signac also objects to this Request, which seeks documents related to Ms. Graham’s employment at another organization, to the extent it seeks documents outside of Signac’s possession, custody, or control.

Subject to these Objections, Signac will produce any performance evaluations that exist from her employment with Signac to the extent it can locate such documents after a reasonable search.

**Request No. 5:**

All calendar entries for meetings or calls concerning Signac from March 1 2017 - July 2019 that included Lara Warner or James Barkley.

**Response to Request No. 5:**

Signac objects to this Request on the grounds of Relevance, Burden, Proportionality, and Privilege. Signac further objects to this Request because it seeks documents and information that are publicly available, in Complainant's possession, available from other sources to which Complainant has access, or otherwise available through more convenient, more efficient, less burdensome, or less expensive means. Signac further objects to this Request to the extent it seeks documents not within Signac's possession, custody, or control.

Subject to these Objections, Signac is willing to meet and confer regarding the scope of this Request.

**Request No. 6:**

All communications concerning Graham's attendance at an Operational Risk Conference in June 2017.

**Response to Request No. 6:**

Signac objects to this Request on the grounds of Relevance, Burden, and Proportionality. Signac further objects to this Request because it seeks documents and information that are publicly available, in Complainant's possession, available from other sources to which Complainant has access, or otherwise available through more convenient, more efficient, less burdensome, or less expensive means.

Subject to these Objections, Signac will produce responsive, non-privileged documents in its possession, custody, or control to the extent it can locate such documents after a reasonable search.

**Request No. 7:**

All project plans, presentations and reporting regarding the development of THS on or after July 1, 2017.

**Response to Request No. 7:**

Signac objects to this Request on the grounds of Relevance. This Request does not pertain in any way to the claims pled in this Action. Signac further objects to this Request on the grounds of Burden and Proportionality. Signac further objects to the phrases “project plans,” “reporting,” and “development” on the ground of Ambiguity. Signac further objects to this Request to the extent it seeks documents outside of Signac’s possession, custody, or control. Signac will not produce any documents responsive to this Request.

**Request No. 8:**

The investigative file or files concerning Graham's allegations of misconduct.

**Response to Request No. 8:**

Signac objects to this Request on the grounds of Relevance, Burden, Proportionality, and Privilege. Signac further objects to the phrase “misconduct” on the ground of Ambiguity, and to the extent it expresses, seeks, or assumes a legal conclusion or expert opinion.

Subject to these Objections, Signac will produce responsive, non-privileged documents in its possession, custody, or control to the extent it can locate such documents after a reasonable search.

**Request No. 9:**

All email communications in the period beginning March 1, 2017 and continuing through the hearing in this matter, concerning Signac or Graham that were sent by or to any of the following: Tidjane Thiam, Alex Karp, Lara Warner, James Barkley, Matt Long.

**Response to Request No. 9:**

Signac objects to this Request on the grounds of Relevance, Burden, Proportionality, and Privilege. Signac further objects to this Request because it seeks documents and information that are in Complainant’s possession. Signac further objects to the Request to the extent it seeks

documents “beginning March 1, 2017 and continuing through the hearing in this matter.” Such a Request is overbroad on its face. Signac also objects to this Request to the extent it seeks documents outside of Signac’s possession, custody, or control.

Subject to these Objections, Signac is willing to meet and confer regarding the scope of this Request.

**Request No. 10:**

All documentations and communications in the period beginning March 1, 2017 and continuing through the hearing in this matter, concerning the following matters:

- a. the recognition of revenue by Signac;
- b. meetings with the Federal Reserve Bank, the Swiss Financial Market Supervisory Authority, and or the United States Securities and Exchange Commission, regarding THS;
- c. the decision to wind-down Signac;
- d. determining whether either CS AG might utilize any Signac’s products;
- e. the valuation of Signac;
- f. maintenance or other services rendered by Palantir in connection with THS;
- g. the development and roll out of the THS software identified in the chart attached as Ex A;
- h. approvals for and or diligence regarding December 12 Investor Day statements in Exs A and B related to THS, including but not limited to its having been “rolled out” in 2017;
- i. Graham's 2016 Performance Bonus; and
- j. Employment of Graham on or after April 2017.

**Response to Request No. 10:**

Signac objects to this Request on the grounds of Relevance, Burden, Proportionality, and Privilege. To the extent this Request seeks any documents regarding “THS,” such documents do not pertain in any way to the claims pled in this Action. Signac further objects to this Request to the extent it seeks documents outside of Signac’s possession, custody, or control. Signac further objects to this Request because it seeks documents and information that are in Complainant’s possession. Signac further objects to the phrases “might utilize,” “maintenance,” “development and roll out,” and “Performance Bonus” on the ground of Ambiguity. Signac further objects to the

Request to the extent it seeks documents “beginning March 1, 2017 and continuing through the hearing in this matter.” Such a Request is overbroad on its face.

Subject to these Objections, Signac will produce non-privileged documents in its possession, custody, or control from March 1, 2017 through August 1, 2017, that are responsive to Requests 10(a), (c), (i), and (j) to the extent it can locate such documents after a reasonable search.

Dated: March 13, 2020

Respectfully submitted,

/s/ Joseph D. Lockinger

Cooley LLP

Joseph D. Lockinger

55 Hudson Yards

New York, NY 10001

P: (212) 479-6736

F: (212) 479-6275

jlockinger@cooley.com

*Attorneys for Respondent Signac LLC*

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that on March 13, 2020, the original and a copy of Respondent Signac LLC's Responses and Objections to Complainant Colleen Graham's First Request for Production of Documents was served by electronic mail on the following:

Robert D. Kraus, Esq.  
rk@kzlaw.net  
KRAUS & ZUCHLEWSKI LLP  
One Grand Central Place  
60 East 42nd Street, Suite 2534  
New York, NY 10165

By: /s/ Joseph D. Lockinger

**IN THE U.S. DEPARTMENT OF LABOR  
OFFICE OF ADMINISTRATIVE LAW JUDGES**

---

**COLLEEN A. GRAHAM,**

**Case No. 2019-SOX-00040**

**Complainant,**

**DECLARATION OF MARYBETH  
SHREINER**

**v.**

---

**CREDIT SUISSE SECURITIES, ET AL.,  
Respondents.**

---

I, MaryBeth Shreiner, declare as follows:

1. I am an associate at the law firm Cooley LLP, counsel to Signac LLC (“Signac”) and respectfully submit this Declaration in support of Respondent Signac’s Opposition to Graham’s Motion to Compel and For Leave to Amend, and Cross-Motion to Extend Signac’s Time to Respond. I have personal knowledge of the facts set forth herein.

2. On January 31, 2018, I sent to Complainant’s counsel an e-mail attaching a letter regarding Signac’s production of documents in the JAMS arbitration captioned *Graham, et al. vs. Palantir Technologies Inc., et al.*, JAMS No. 1425025009. A copy of this e-mail correspondence is annexed hereto as Exhibit 1.

3. After sending the e-mail annexed hereto as Exhibit 1, on January 31, 2018 I sent a second e-mail to Complainant’s counsel producing documents on behalf of Signac through a file transfer site which contained 7,647 documents, comprised of 52,882 pages Bates labeled SI\_00000001 - SI\_00052882. A copy of this e-mail correspondence is annexed hereto as Exhibit

2.

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

Dated: May 1, 2020  
Arlington, Virginia

/s/ MaryBeth Shreiner  
MaryBeth Shreiner  
COOLEY LLP  
Reston Town Center  
11951 Freedom Drive  
Reston, VA 20190-5640  
Telephone: (703) 456-8169  
mshreiner@cooley.com

225160044

# EXHIBIT 1

## Lockinger, Joseph D

---

**From:** Shreiner, MaryBeth  
**Sent:** Wednesday, January 31, 2018 4:26 PM  
**To:** rk@kzlaw.net  
**Cc:** Fulton, Jim; dg@kzlaw.net  
**Subject:** Signac Production  
**Attachments:** 2018.01.31 - Letter to Robert Kraus Esq\_.pdf

Robert,

Please see the attached letter regarding Signac's production of documents.

I will send the link and login info in an email to follow. The Signac zip file also has a password: #=JUsp8feb6v

Best regards,  
MaryBeth

**MaryBeth W. Shreiner**

Cooley LLP  
1299 Pennsylvania Avenue, NW • Suite 700  
(enter from 12th and E Streets)  
Washington, DC 20004-2400  
Direct: +1 202 728 7038 • Fax: +1 202 842 7899  
Email: [mshreiner@cooley.com](mailto:mshreiner@cooley.com)  
Bio: [www.cooley.com/mshreiner](http://www.cooley.com/mshreiner) • [www.cooley.com](http://www.cooley.com)



MaryBeth W. Shreiner  
+1 202 728 7038  
mshreiner@cooley.com

Via Email

January 31, 2018

Robert Kraus, Esq.  
Kraus & Zuchlewski LLP  
One Grand Central Place  
60 East 42nd Street  
New York, NY 10165

Re: *Graham, et al. vs. Palantir Technologies Inc., et al.*, JAMS No. 1425025009

Dear Robert:

Pursuant to the Stipulated Protective Order, we write to inform you that, in accordance with Section 14.7 of the Second Amended and Restated Limited Liability Company Agreement of Signac, LLC, and in response to Claimant's request of December 22, 2017, Respondent Signac, LLC ("Signac") is providing Claimant with "copies of all relevant documents" responsive to Claimant's request and proportional to the needs of the case that could be located upon a reasonable search by January 31, 2018. Please be advised that Signac's production is subject to the following limitations:

- Signac is not producing documents that are protected from disclosure by the attorney-client privilege, joint-defense privilege, the work-product doctrine, or any other applicable privilege or immunity.
- Signac reserves the right to demand the return of any privileged documents inadvertently produced.

Sincerely,



MaryBeth W. Shreiner

Cc: J. Fulton, Esq.  
D. Gustafson, Esq.

# EXHIBIT 2

## Lockinger, Joseph D

---

**From:** Shreiner, MaryBeth  
**Sent:** Wednesday, January 31, 2018 4:27 PM  
**To:** rk@kzlaw.net  
**Cc:** Fulton, Jim; dg@kzlaw.net  
**Subject:** Signac Production

Robert,

To follow my previous email, here is the link to Signac's production of documents: <https://ftp.discovia.com>

Here is your login information:

Username: Kraus\_Zuchlewski

Password:

Best regards,  
MaryBeth

**MaryBeth W. Shreiner**

Cooley LLP

1299 Pennsylvania Avenue, NW • Suite 700

(enter from 12th and E Streets)

Washington, DC 20004-2400

Direct: +1 202 728 7038 • Fax: +1 202 842 7899

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Bio: [www.cooley.com/mshreiner](http://www.cooley.com/mshreiner) • [www.cooley.com](http://www.cooley.com)

**U.S. DEPARTMENT OF LABOR  
OFFICE OF ADMINISTRATIVE LAW JUDGES**

COLLEEN A. GRAHAM

COMPLAINANT,

v.

CREDIT SUISSE SECURITIES (USA) LLC  
and SIGNAC LLC,

Respondents.

ALJ No. 2019-SOX-00040

**RESPONDENT CREDIT SUISSE SECURITIES (USA) LLC'S OPPOSITION TO  
COMPLAINANT'S MOTION TO COMPEL AND FOR LEAVE TO AMEND,  
AND CROSS MOTION FOR ENTRY OF CONFIDENTIALITY ORDER**

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## PRELIMINARY STATEMENT

On March 19, 2020, the Office of Administrative Law Judges (“OALJ”) served a notice upon all parties that all procedural deadlines in this action were suspended through May 15, 2020 due to complications relating to COVID-19. Thereafter, on April 10, 2020, the OALJ sent a follow-up notice extending the suspension of all such deadlines through June 1, 2020. Yet, on April 17, 2020, Complainant Colleen Graham—without any effort whatsoever to first meet and confer with Respondent Credit Suisse Securities (USA) LLC (“Credit Suisse”)—filed the instant Motion, seeking, among other things, an order (1) granting her leave to amend her Complaint in this action (for the first time in two-and-a-half years) to assert “new” allegations that she has already litigated, and lost, in two other proceedings; (2) compelling Credit Suisse to produce reams of irrelevant, but highly sensitive, documents concerning a proprietary tool named “THS” that has nothing to do with this case; and (3) claiming that Credit Suisse has “flouted” a discovery rule that has no application whatsoever in these circumstances. There is no legal basis for Complainant to seek any of the relief demanded in her Motion. To the extent the Court is even addressing motions at this time, the Court should deny Complainant’s motion in full and Credit Suisse respectfully cross-moves for entry of a brief protective order providing, among other things, that materials exchanged in discovery between the parties to this action and marked “confidential” may be used only in connection with the litigation of this dispute and may not be disclosed to third parties.

### **I. COMPLAINANT’S MOTION FOR LEAVE TO AMEND IS UNTIMELY, IMPROPER, AND SHOULD BE DENIED.**

The applicable Rules in these proceedings do not provide any specific guidance on amendments of pleadings.<sup>1</sup> Those Rules make clear, however, that the “Federal Rules of Civil

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<sup>1</sup> The only rule on this topic is 29 CFR § 18.36, which states only that administrative law judges “may allow parties to amend and supplement their filings” after referral of a case to the OALJ, but provides no further guidance on what should, or should not, be allowed or what standard should be used.

Procedure (FRCP) apply in any situation not provided for or controlled by these rules . . . .” 29 CFR § 18.10. Under Federal Rule 15, a court should “freely give” leave to amend “when justice so requires.” Fed. R. Civ. P. 15(a)(2). Applying this rule, the Second Circuit has held that “motions to amend should generally be denied in instances of futility, undue delay, bad faith or dilatory motive . . . or undue prejudice to the non-moving party.” *Burch v. Pioneer Credit Recovery, Inc.*, 551 F.3d 122, 126 (2d Cir. 2008). Here, Complainant’s proposed amendments should all be denied each of these reasons.

**First**, there has been substantial “undue delay.” Complainant did not seek leave to amend her Complaint until April 17, 2020—more than *two years and five months* after her original Complaint in this action was filed. The only explanation Complainant offers is that certain “information” relating to the amendments “was not available at the time of her initial complaint.” (Mot. at 4.) But the vast majority of the “information” referenced in her proposed amendments is hearing testimony from the JAMS arbitration between Complainant and Credit Suisse, Palantir and Signac from March 2018. (Ex. A, Proposed Amendments ¶¶ 39-51.) The remaining “information” is a single “Investor Day” slide presentation that Credit Suisse AG, a non-party to this proceeding, presented on December 12, 2018. (*Id.* ¶¶ 53-56.) Thus, by December 2018, Complainant had all of the “information” she needed to seek the amendments in question. Yet, Complainant still waited another *492 days* before seeking leave to amend. In the interim, Complainant has allowed significant milestones in this case to pass—including the Secretary of Labor’s dismissal of her claims in April 2019, the referral of her Complaint to the OALJ in June 2019, and the Court’s ruling on the parties’ motions for summary decision in January 2020. There is no excuse for such delay. *See Trezza v. NRG Energy, Inc.*, No. 06CIV11509PKCDF, 2008 WL

540094, at \*6 (S.D.N.Y. Feb. 28, 2008) (denying leave to amend where amendment was based on facts and party “was aware of those facts prior to and throughout the course of this litigation”).

**Second**, Complainant’s belated request to amend the Complaint appears to be little more than an improper attempt to relitigate claims that she has already asserted, and lost, in two separate proceedings. Indeed, all of the “new” allegations at issue are, in actuality, old allegations relating to her claim that Credit Suisse and Palantir misappropriated a trader surveillance software tool created by Signac (known as “BRM”) and, specifically, her claim that a separate surveillance software tool developed independently by Credit Suisse, “Trader Holistic Surveillance” (known as “THS”), was based on “BRM.” Complainant already raised, litigated, and lost these very claims in two separate legal proceedings. The first proceeding was the JAMS arbitration, in which the Tribunal specifically addressed, and rejected, Complainant’s claims regarding the “misappropriation” of Signac’s technology in its Final Award. (Huang Decl. at Ex. 1, JAMS Award.<sup>2</sup>) The second proceeding was an action she filed in New York Supreme Court in March 2019 to vacate the Final Award. (See Huang Decl. at Ex. 2, Petition to Vacate.) In that proceeding, Complainant made the *exact same allegations* that she is now attempting to add to her Complaint here. This includes citing the exact same pages and lines of JAMS arbitration testimony, as well as the exact same December 2018 “Investor Day” presentation. (Compare Ex. A, Proposed Amendments ¶¶ 42-46, 55 with Huang Decl. at Ex. 2, Petition to Vacate ¶¶ 29-39, 47.) In fact, the “new” allegations in the proposed amendments were lifted almost verbatim from her prior Petition to Vacate (including the same typos):

<b>Petition to Vacate (NY State Court)</b>	<b>Proposed Amendments (This Action)</b>
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<sup>2</sup> All references to “Huang Decl.” are to the Declaration of Kuangyan Huang in Opposition to Complainant’s Motion to Compel and for Leave to Amend, filed May 1, 2020.

<p>¶ 31: [REDACTED]</p>	<p>¶ 44: “Warner also was clear with the arbitrator that CS AG was building the completely different trader surveillance software ‘from scratch.’”</p>
<p>¶ 32: [REDACTED]</p>	<p>¶ 45: “As to when the new holistic surveillance tools purportedly built from scratch would be ready, CCRO Warner testified before this Tribunal that it would be <i>sometime later in in 2018</i>.”<sup>3</sup></p>

Thus, there can be no dispute that Complainant had all of the information she needed to try and include such allegations in this case by the time she filed the New York action in March 2019. She did not do so at that time. Instead, she played a tactical game of “wait and see,” delaying any amendment of her Complaint here until after the New York court had ruled on those claims. And that is exactly what happened. On May 14, 2019, the New York court denied Complainant’s request to vacate the Final Award and, in so doing, specifically rejected her claim that these portions of the JAMS arbitration transcript and the 2018 Investor Day Presentation supported any inference that Credit Suisse misappropriated Signac technology or that “THS” belonged to Signac. (Huang Decl. at Ex. 3, NY Court Tr. Excerpts at 33:22-34:11; 48:5-25; 58:2-18.) Nearly a year later, Complainant now seeks to once again insert the same allegations here and, in so doing, take a third bite at the apple. Such an amendment is not just “dilatatory,” it is in “bad faith” and is barred by both the doctrines of claim and issue preclusion and, thus, is also “futile” as a matter of law. *See Burch*, 551 F.3d at 126.

**Finally**, allowing Complainant to add the proposed new claims and allegations to this case would be highly prejudicial to Respondents. This action relates solely to Complainant’s Sarbanes-Oxley whistleblower retaliation claims, which arise only from the alleged retaliation she suffered

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<sup>3</sup> The examples above are only two of the allegations in common. A full list of such matching allegations is attached hereto as Exhibit B.

after she purportedly refused to “distort the facts” in conversations with Signac’s auditor, KPMG, in early-to-mid 2017. (Compl.) Permitting allegations regarding “THS” and the alleged misappropriation of Signac’s technology to be added to this case would necessarily require the Court to rule on matters outside of its authority, including claims outside of the SOX whistleblower framework that OSHA did not investigate below. *See Bechtel v. Admin. Review Bd., U.S. Dep’t of Labor*, 710 F.3d 443, 450 (2d Cir. 2013) (upholding underlying dismissal of claim by ALJ where “the ALJ dismissed this claim, determining that she had no authority to consider a claim that OSHA had not investigated”).

## **II. COMPLAINANT’S REQUESTS FOR “THS RELATED DOCUMENTS” SEEK ONLY IRRELEVANT INFORMATION AND SHOULD BE DENIED.**

Complainant also seeks to compel the production of all “THS related documents” sought in her discovery requests. (Mot. at 10-12.) Complainant offers no explanation for why such documents are relevant except the claim that such discovery “relates directly to Respondents’ professed justification” for “failing to pay Graham either (i) the (\$810,000) bonus due [sic] her on account of 2016 performance, or (ii) the value of her equity stake in Signac” that “THS was not viable and not used because the sole customer was dissatisfied.” (*Id.* at 10-11.) This fails.

Neither Credit Suisse nor Signac—the only remaining Respondents—has ever offered “THS” as a “justification” for anything they, or anyone else, did in this case. Indeed, Credit Suisse’s Response to the Complaint makes no reference to “THS.” (Credit Suisse Response.) Nor does “THS” appear in Complainant’s original Complaint, or either of the two supplemental “declarations” Claimant filed with OSHA below. There is no reason it would. “THS” is shorthand for “Trader Holistic Surveillance”—a proprietary trader monitoring software solution created internally at, and by, Credit Suisse. “THS” has nothing to do with the surveillance tool that Signac was developing, “BRM.” Complainant knows “THS” has nothing to do with Signac. The specific

difference between “THS” and “BRM,” and whether “THS” had anything to do with Signac, were the subjects of extensive testimony in the JAMS arbitration referenced above. Nevertheless, she now once again conflates “THS” with “BRM” and has demanded all manner of documents relating to “THS.” But the fact of the matter is that such discovery does not relate in any way to Signac, much less the early 2017 KPMG audit of Signac that is at the center of the specific whistleblower-retaliation claims Complainant has actually pled in this action.

Complainant’s request for “THS related documents” is all the more improper given that such documents are likely to contain highly proprietary and sensitive information belonging to Credit Suisse, including non-public information regarding the development, design, and operation of THS, and information that relates to individual Credit Suisse traders, employees, accounts and customers. Complainant not only knows these sensitivities; she appears to be trying to take advantage of them here. To be sure, Complainant has made it clear that she will *not* agree to enter into any form of protective confidentiality agreement in this case despite having voluntarily entered such an agreement in the JAMS arbitration. It appears that Complainant’s true intent is to thrust Credit Suisse’s documents into the public domain—something she has attempted to do in the past.<sup>4</sup> Absent the entry of some protective confidentiality order, the Court should deny Complainant’s motion to compel “THS related documents” in full.

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<sup>4</sup> In the New York Supreme Court proceeding, Complainant moved to seal those proceedings in their entirety. After her sealing motion was granted, Complainant then uploaded hundreds of documents that were unrelated to her Petition to Vacate that she had obtained from the JAMS arbitration—including a large volume of documents belonging to Credit Suisse and Palantir that had specifically been labeled “Confidential”—to the court’s sealed docket over the course of several weeks. Thereafter, Complainant moved to “unseal” the very docket she had sealed—a series of actions the New York court denounced as “[REDACTED]” (Huang Decl. at Ex. 3, NY Court Tr. Excerpts at 25:12-16.)

**III. COMPLAINANT’S CLAIM THAT CREDIT SUISSE WITHHELD DOCUMENTS IN VIOLATION OF 29 CFR § 18.57 IS WRONG AS A MATTER OF LAW.**

In a single, throwaway paragraph, Complainant argues that Credit Suisse has improperly “withheld” documents because Credit Suisse did not affirmatively move for a “protective order” under 29 CFR § 18.57(d)(2). (Mot. at 10.) This rests on a fundamental misreading that rule, which states: “A failure described in paragraph (d)(1)(i) of this section is not excused on the ground that the discovery sought was objectionable, unless the party failing to act has a pending motion for a protective order under § 18.52(a).” *Id.* But there are only two “failures” set forth in 29 CFR § 18.57(d)(1) to which this rule applies. The first, set forth in § 18.57(d)(1)(A), occurs when a party “fails, after being served with proper notice, to appear for that person’s deposition.” No deposition notices have been served, let alone disregarded. The second, set forth in § 18.57(d)(1)(B), occurs when a party, “after being properly served with interrogatories under § 18.60 or a request for inspection under § 18.61, *fails to serve its answers, objections, or written response.*” *Id.* (emphasis added). Credit Suisse also has not failed to “serve its answers, objections, or written response” to Complainant’s discovery requests. Quite to the contrary, and as Complainant concedes in her Motion, “Credit Suisse timely served Responses and Objections.” (Mot. at 10.) Having timely served such objections, Credit Suisse has no affirmative obligation under 29 CFR § 18.57(d)(2) to also seek a “protective order” to prohibit production of the objected-to material. Such a reading would mean that all discovery requests—no matter how improper—are self-executing even if timely objections are served. This would obviate the need for such objections, as well as all of 29 CFR § 18.57(a), which governs motions to compel.

**IV. THE COURT SHOULD ENTER A PROTECTIVE ORDER PROTECTING ANY “CONFIDENTIAL” INFORMATION PRODUCED BY THE PARTIES.**

Credit Suisse’s prior references to the need for a “protective order” were not references to orders to prohibit the production of discovery, as contemplated by 29 CFR § 18.57(d)(2). Rather,

Credit Suisse’s prior references were, instead, references to the need for a routine protective order meant to protect potentially confidential information that the parties do exchange from improper disclosure or use outside of these proceedings. ALJs have the power to order the parties to enter such orders. *See Massell v. Tenn. Valley Auth.*, OALJ 2019-ERA-00010, slip op. at 1 (OALJ Nov. 27, 2019). Specifically, 29 C.F.R. § 18.52 provides that this Court may, for “good cause,” issue an order “[r]equiring that a trade secret or other confidential research, development, or commercial information not be revealed or be revealed only in a specified way.” 29 C.F.R. § 18.52(a)(7). Such confidentiality orders are “routinely granted in litigation” and hearings. *Bassett v. Boeing Co.*, OALJ No. 2018-AIR-00027, slip op. at 1 (OALJ Nov. 9, 2018).<sup>5</sup> And courts in this Office have recognized that such orders provide discovery materials with “reasonable protection” and “fall[] squarely within the provisions of 29 C.F.R. § 18.52.” *Id.*

Given Complainant’s refusal to enter into any joint confidentiality agreement here, which itself raises troubling concerns as to Complainant’s intent, Credit Suisse requests that the Court enter a routine protective order substantially in the form attached hereto as Exhibit C that (a) permits all parties, Complainant and Respondents, to mark information and documents exchanged in discovery as “confidential,” and (b) provides that “confidential” documents shall be used only for purposes of the prosecution and defense of claims asserted in this action. Any restrictions imposed or protections afforded by such an order would apply equally to all parties. And the entry of such an order would in no way prejudice any party’s ability to seek discovery or use discovery materials in this action. Indeed, Credit Suisse does not seek a protective order to withhold

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<sup>5</sup> 29 C.F.R. § 18.85 also grants authority, upon motion or on its own, for the Court to “issue orders to protect against undue disclosure” or “order any material that is in the record to be sealed from public access.” 29 C.F.R. § 18.85; *see also Graham v. Credit Suisse Securities, et al.*, 2019-SOX-00040, Initial Prehearing Order and Notice of Hearing (OSHA June 19, 2019); *see also* 5 U.S.C. § 552(b)(4) (exempting “trade secrets and commercial or financial information obtained from a person and privileged or confidential” from the information that is required to be made publicly available through FOIA requests).

documents from discovery on the basis of confidentiality. Rather, Credit Suisse seeks a protective order merely to ensure that sensitive materials exchanged between the parties in connection with these proceedings do not wind up on Page Six of the New York Post or some other public medium. ALJs have repeatedly recognized that the use of such protective orders are reasonable measures to balances the need for discovery with the need to protect confidential and sensitive information from damaging public disclosure. *See, e.g., Katzel v. Am. Int'l Grp., Inc.*, OALD No. 2019-SOX-00014, slip op. at 1–2 (OALJ Oct. 16, 2019) (entering similar protective order); *see also Meek v. BNSF Railway Co.*, 2019-FRS-00070, slip op. at 2–4, 7 (OALJ Jan. 29, 2020); *Esparza et al. v. Am. Airlines, Inc.*, OALJ No. 2019-AIR-00015-17, slip. op. at 1–3 (OALJ June 25, 2019) (same); *Bassett v. Boeing Co.*, OALJ No. 2018-AIR-00027, slip op. at 2–6 (OALJ Nov. 9, 2018) (same); *Aiken v. CSX Transp., Inc.*, OALJ 8018-FRS-00031, slip op. at 1–3 (OALJ Oct. 30, 2018) (same).

### **CONCLUSION**

For the foregoing reasons, Respondent Credit Suisse respectfully requests that the Court (1) deny Claimants' Motion in its entirety as it pertains to Respondent Credit Suisse and (2) enter a protective order substantially in the form set forth in Exhibit C to protect confidential information exchanged during these proceedings.

Dated: May 1, 2020

Respectfully submitted,

/s/ Kuangyan Huang  
LATHAM & WATKINS LLP  
Joseph Serino, Jr.  
Kuangyan Huang  
Nathan Taylor  
885 Third Avenue  
New York, New York 10022  
Telephone: (212) 906-1200

*Attorneys for Respondent Credit Suisse  
Securities (USA) LLC*

**Exhibit A**

**Proposed Amendments**

~~November 17~~ April,  
~~2017~~ 2020

**VIA EMAIL AND OVERNIGHT MAIL**

United States Department of Labor  
Office of Administrative Law Judges  
Honorable Theresa C. Timlin  
Administrative Law Judge  
2 Executive Campus, Suite 450  
~~Occupational Safety and Health Administration~~  
~~Federal Building~~  
~~201 Varick Street, Room 670~~  
~~New York, New York 10014~~  
Cherry Hill, NJ 08002

Re: Amended Complaint of Retaliation

Dear Sir/Madam:

~~We represent~~ This law firm represents Colleen Graham (“Graham”) and ~~submit this whistleblower submits this Amended Whistleblower~~ complaint on her behalf against respondents Credit Suisse Securities (USA) LLC (“Credit Suisse”), ~~Credit Suisse First Boston Next Fund Inc. (“CSFB”), Palantir Technologies Inc. (“Palantir”),~~ and Signac LLC (“Signac”) (collectively, “Respondents”) for violations of the Sarbanes-Oxley Act of 2002 (“SOX”) 18 U.S.C. §1514A.

**INTRODUCTION**

Respondents first ~~began to retaliate~~ retaliated against Graham shortly after she refused to participate in conduct ~~by Credit Suisse and Palantir~~ that she reasonably believed violated securities laws. Graham refused to distort facts related to the recognition of revenue by Signac, and affiliated corporate entities, including Credit Suisse ~~and Palantir, revenue which would have been deemed critical for Palantir relating to its widely rumored intention to go public.~~ The adverse action began gradually as Credit Suisse ~~and Palantir~~ started to exclude Graham from certain meetings and communications, made thinly veiled threats of termination, withheld her discretionary bonus for 2016, ~~and~~ deprived her of employment opportunities otherwise provided to substantially all of Signac Staff as the company was ~~unwound~~ shuttered.

The initial retaliatory acts began in March and continued ~~into June 2017. Then, when Graham’s counsel asserted unlawful retaliation thereafter, sharply escalating~~ in early June 2017, ~~Credit Suisse and Palantir immediately and sharply escalated their abusive conduct after Graham’s counsel claimed unlawful retaliation.~~ Graham was singled out for conduct suffered from others. She was bullied, harassed and intimidated, and made the subject of knowingly false allegations of misconduct, including misconduct that, if true, would violate

Swiss law. No less than six different (6) lawyers were called on to harass Graham in a number of different ways, including threatening to cancel substantial amounts of her deferred compensation and to pursue any and all remedies available if she didn't submit to a host of ever changing, unreasonable demands. Respondents also ~~refused to value Graham's~~ retaliated by refusing to pay Graham for her valuable equity, ~~although required to do so~~ stake in Signac.

Graham agreed to demand after demand, believing she would assuage the professed concern about alleged unauthorized disclosure of confidential information. After all, Credit Suisse had employed Graham for twenty years in senior compliance functions and had personal knowledge of her impeccable integrity. Respondents knew and appreciated the absence of any improper motive (like competition), or evidence of actual misconduct. ~~Nonetheless,~~ Graham was pursued with a singular aggressiveness, yet at the same time no action was taken against others who had used personal email for company business. Nor was any action taken against ~~Palantir's designated representative, serving as~~ Signac's CIO, who suggested that all Signac's laptops be reformatted so as to destroy all confidential information on them, ~~which was~~ plainly improper conduct in light of the duty to preserve evidence.

Ultimately, after Graham withstood the pressurized tactics, the CS demands were simply abandoned. The feigned "serious concern" with unauthorized disclosure evaporated just as suddenly as it had appeared after ~~she had~~ Graham first raised the issue of securities law violations.<sup>†</sup>

In or about November 2017, Graham filed an arbitration against Credit Suisse, Signac and others. At issue were various non-employment related claims arising principally under the Signac LLC Agreement and at law, which were subject to compulsory arbitration before JAMS ("JAMS 1"). Relying on sworn testimony from Credit Suisse's two most senior compliance officers, one also a member of the CS AG Executive Board, Credit Suisse represented that the trader holistic surveillance product that Signac delivered in late Spring 2017 was never viable, thereby leading to the complete dissatisfaction of its sole customer Credit Suisse AG. The compliance officers were emphatic that THS was not being used by Credit Suisse or CSAG as of March 2018. Credit Suisse was in the midst of building its own product as of March 2018, and it only had a "concept" by then.

Lacking a viable THS product and losing CS AG as its sole customer is also offered by Respondents as a defense in this proceeding and would, if true, offer a non-discriminatory reason for taking several of the adverse personnel actions at issue herein, such as refusing to pay Graham a bonus, refusing to re-employ her at Credit Suisse, failing to assign and value to and or pay Graham for or her equity stake in Signac.

## BACKGROUND

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<sup>†</sup>~~This complaint does not purport to recite all of the facts and circumstances relevant to this matter and the governing agreements contain expansive confidentiality provisions. Graham is fearful that Credit Suisse may object, however unreasonable it is, to additional disclosure.~~

1. Graham served as Chief Supervisory Officer of Signac<sup>21</sup> and a member of its Board of Managers from on or about February 29, 2016 to on or about July 27, 2017.

2. Prior to Signac, Graham was employed by Credit Suisse for more than twenty years serving in a number of senior level management positions, including heading Compliance for the Americas and acting as the Chief Control Officer of its investment bank. Her employment record was impeccable and she had a stellar reputation for honesty and integrity.

3. Credit Suisse is a company with a class of securities registered under section 12 of the Securities and Exchange Act of 1934 (15 U.S.C. §781) or that is required to file reports under section 15(d) of the SEC Act of 1934, 15 U.S.C §780 (d).

4. Credit Suisse ~~and Palantir~~ appointed Graham to serve as Signac's Chief Supervisory Officer and a member of a Signac Board of Managers.

5. Signac is a Delaware Limited Liability Company. Its financial sponsors and principal equity stakeholders were CSFB Credit Suisse First Boston Next Fund, Inc., a wholly owned subsidiary of Credit Suisse, and Palantir Technologies, Inc. ("Palantir"), a privately owned technology services company. CSFB and Palantir each owned 50% of the Signac voting rights.

6. ~~CSFB Credit Suisse~~ is a wholly owned subsidiary of Credit Suisse ~~and its financial information is included in the financial statements of Credit Suisse, within the meaning of 18 U.S.C. §1514 A(a)(1).~~ AG ("CS AG"), a global investment bank whose American Depositary Receipt shares ("ADRs") are listed as -----AD

7. CS and CSAG share certain functions, including regulatory and compliance.

8. At all times relevant to this dispute, Lara Warner, was CS AG's Chief Compliance and Regulatory Affairs Officer ("CCRO"), responsible for all compliance and regulatory affairs globally across all CS AG businesses and functions, including Credit Suisse. Warner was also a member of CS AG Executive Board and a member of the Board of Directors of Signac, with 2 out of 6 votes.

9. James Barkley was the Global Head of Core Compliance Services, the 2<sup>nd</sup> most senior compliance officer. His responsibility also stretched across all CS AG businesses and functions, including Credit Suisse.

10. ~~7.~~ Signac acted as a "contractor" of Credit Suisse or an affiliate thereof within the meaning of 18 U.S.C. §1514A and the regulations promulgated thereunder, 29 C.F.R. 1980.101 (f) and relevant precedent, and as such is a "covered person" subject to the provisions of SOX.

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<sup>21</sup> On or about February 29, 2016, Signac began to conduct its business. Signac was designed to leverage the financial services and trading expertise from Credit Suisse and certain technology made available by Palantir in order to build algorithms and analytics that track behavior to create a global, industry leading solution.

Signac's sole source of revenue was a contract under which Credit Suisse retained it to develop and provide certain software products, technology solutions, analytics and other services.

11. ~~8.~~ Graham remains an "employee" of Credit Suisse and is a "covered person" for purposes of SOX protections against retaliation because the relevant regulations define an "employee" as "an individual presently or formerly working for a covered person." 29 C.F.R. 1980.101 (f) and (g). Credit Suisse continues to hold substantial amounts of Graham's deferred compensation.

~~9. Palantir is currently a private corporation headquartered in Palo Alto, California. Palantir is a technology company that engages in the business of big data analysis. Although currently private, there has been much speculation in the financial and technology trade press that Palantir is planning an IPO of its stock, with reports speculating that it may receive a valuation of as much as Twenty Billion Dollars. Dr. Alex Karp is Palantir's CEO. Intellectual and other property rights derived from the products developed and owned by Signac are material to that valuation.~~

12. ~~10. Palantir and~~ Credit Suisse ~~each~~ had a designated "Manager" on the Signac Board of Managers, which had exclusive and complete authority to manage and control Signac, subject to the provisions of the Signac LLC Agreement. As one of the Managers of Signac, ~~who~~ which together undertook the retaliatory actions complained of herein, ~~Palantir and~~ Credit Suisse ~~are~~ is a also "covered persons" under the provisions of SOX, including 29 C.F.R. 1980.101(f) and relevant precedent.

#### GRAHAM OBJECTS TO PARTICIPATING IN UNLAWFUL PRACTICES

13. ~~11.~~ In or about March 2017, a Signac audit conducted by KPMG concluded that certain Signac revenue could not legally be recognized in calendar year 2016 under then existing software accounting rules; recognition had to be deferred until delivery of certain product, including THS.

14. ~~12.~~ Credit Suisse expressed strong frustration that it was unable to recognize the revenue in 2016. According to Credit Suisse, the lack of revenue recognition in 2016 would cause a significant loss to be recognized by it. According to Palantir, Signac's deferral of revenue also impacted it negatively.

15. ~~13.~~ Credit Suisse, through ~~a member of its' Executive Board~~ Warner, complained that Signac was not considering the impact of the Signac accounting on Credit Suisse. ~~Similarly, a representative of Palantir's CEO complained among other things about the lack of alignment of interest between Signac and Palantir.~~

16. ~~14. The Credit Suisse Executive Board Member Warner~~ advised Graham that the lack of revenue recognition would cause a significant loss to be recognized, and Credit Suisse and Palantir pressured Graham to distort the facts in order to convince the Signac auditor to allow the revenue recognition in 2016, revenue which was deemed critical to a widely reported potential Palantir IPO.

17. ~~15. Palantir and~~ Credit Suisse ~~pressed~~pressured Graham to adopt the knowingly false position that the product and services developed and rendered by Signac over the prior fourteen months involved only maintenance of, or otherwise solely deployed, ~~Palantir~~Palantir's pre-existing technology and analytics. Graham refused.

18. ~~16.~~ Credit Suisse and Palantir expressed open frustration at Graham's objecting to their mistaken directions regarding revenue recognition.

19. ~~17.~~ After Graham objected and refused to distort the facts, Credit Suisse ~~and Palantir~~ began to retaliate against her, excluding her from relevant communications and meetings, making thinly veiled threats of termination and withholding her discretionary bonus for 2016. These initial retaliatory acts began in March and continued into June 2016. It also terminated Graham's physical and systems access to Credit Suisse on or about May 19, 2017. On or about May 19, 2017, Credit Suisse also withdrew the opportunity to become reemployed with ~~Credit Suisse~~it, an opportunity it extended to substantially ~~all of the former Signac employees who previously had been~~ Credit Suisse employees ~~and other appropriate Signac employees~~.

#### **GRAHAM OBJECTS TO THE RETALIATION AND THE BULLYING AND HARRASSMENT ESCALATES SHARPLY**

20. ~~18.~~ On May 23, 2017, Graham's counsel communicated by email with Credit Suisse's counsel, expressing concern that Credit Suisse had made offers of future employment to all appropriate Signac employees except Graham. He expressed ~~a shared~~an interest in "avoiding retaliatory conduct that would give rise to claims under Sarbanes – Oxley ~~..~~“" (Emphasis supplied)

21. ~~19.~~ On June 1, 2017, Graham's counsel specifically raised the issue of whether Graham had been discriminated against for having objected to certain accounting treatment that Signac's members, including Credit Suisse, sought to pursue.

22. ~~20.~~ On June 8, 2017, only three days after Graham ~~had~~ raised a claim of actual retaliation, Graham's counsel received a letter alleging that Graham "has violated her ongoing contractual obligations to Signac and Credit Suisse Securities (USA) LLC". The letter expressed "extreme concern" that Graham had "misappropriated Confidential and proprietary information by forwarding such information to her and her husband's personal and non-secure email accounts" (emphasis added).

23. ~~21.~~ The letter referenced an ongoing "investigation," demanded affidavits attesting that all confidential information had been permanently deleted from electronic devices, and demanded that all "devices and email or other electronic accounts" be submitted for a forensic inspection. Graham was afforded little more than 48 hours to comply.

**24.** ~~22.~~ Upon information and belief, Signac ~~at the direction of~~ and Credit Suisse ~~and Palantir~~, singled out Graham for an “investigation” although it knew, or would have known if it had conducted a simple inquiry, that other employees had “forwarded” confidential information to personal email accounts. Moreover, Respondents knew that Graham had not engaged in any unauthorized disclosure and had properly used the information solely for purposes related **(a)** to her service as a manager as authorized by the relevant agreement; **(b) and** to ensure she had an opportunity to fulfill her own fiduciary obligations as a member of the Board of Signac; and **(c)** to preserve evidence in connection with her concerns about possible securities law violations. The false allegations were intended to bully and harass Graham in retaliation for her having (a) raised the issue of securities law violations, and (b) stated her intention to pursue her remedies under SOX.

**25.** ~~23.~~ Despite Graham’s assurances that she had used the information properly, only for purposes related to her services as a Manager, and to preserve evidence in connection with her personal obligations, and despite having no evidence to the contrary, Respondents pressed on and with a ferocity completely inconsistent with the allegations and the assurances they were receiving from Graham (who had been an extremely well respected senior level compliance officer at Credit Suisse for 20 years).

**26.** Credit Suisse directly threatened to cancel substantial deferred compensation that she had earned and that Credit Suisse continued to hold. It accused her of breaching her obligations;           

**27.** Respondents demanded invasive forensic inspection of all her and her families’ personal electronic devices and email and electronic accounts. Respondents demanded the return of all Signac and Credit Suisse confidential information, including that Graham had shared with counsel for purposes of getting legal advice. Unfounded claims were made that the email transmissions violated Swiss laws, which amounted possibly to allegations of criminal misconduct.

**28.** **Respondents knew that the information they sought to bully Graham into deleting or returning included information directly relevant to her SOX retaliation claims.**

**29.** ~~24.~~ On or about June 19, 2017, Credit Suisse ~~and Palantir~~ instructed Graham not to attend or participate in the most significant operational risk industry conference scheduled for the next day. Graham was scheduled to be a panel participant.

**30.** ~~25.~~ Graham withstood the barrage of harassing tactics. On June 27th, with Respondents unable to secure any evidence that Graham actually had made any unauthorized disclosure and having received sworn affidavits from Graham confirming the same, Credit Suisse, by its counsel, advised that it “presently intends not to cancel Graham’s outstanding” deferred compensation awards. However, as part of the ongoing campaign of harassment, Credit Suisse imposed new<sup>32</sup> and often unreasonable conditions on Graham in order to avoid future cancellation.

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<sup>32</sup> Graham had agreed to a forensic examination with reasonable parameters.

31. ~~26.~~ Graham's counsel immediately expressed concern, among other things, that demanding return of a vaguely defined "CS Client Related Information" might interfere with Graham's right to pursue her SOX claims. It was agreed that Graham would attest that she held neither:

- 1) ~~'CS Client Identifying Information'~~. Defined as information that identifies CS clients except to the extent it is already public, thematic or illustrative.
- 2) ~~'CS Swiss Data'~~. Defined as documents that contain CS Swiss business, data or investigations except to the extent not otherwise public, thematic or illustrative.

32. ~~27.~~ Credit Suisse continued to falsely allege that Graham had possessed two items of CS Swiss Data, essentially accusing her of violating both Swiss law and her contractual obligations. However, the two items had previously been public and or were thematic, and so did not constitute CS Swiss Data under any reasonable interpretation. Credit Suisse knew well that the items did not constitute CS Swiss Data and was making the allegations to intimidate Graham and deter her from pursuing her retaliation claim under SOX.

33. ~~28.~~ Graham's counsel offered to allow Credit Suisse's counsel to inspect any materials to confirm that they did not constitute CS Swiss Data or CS Client Identifying Information. Despite the professed "serious concern" surrounding possible legal violations, Credit Suisse elected not to review the documents.

34. ~~29.~~ With regard to the forensic examination of electronic devices and email accounts, Signac and Credit Suisse agreed that the forensic examiners would only conduct the review and access Graham's devices and email accounts in her attorney's offices. Credit Suisse and Signac expressed their clear desire "to promptly proceed and complete this important investigation."

35. ~~30.~~ Credit Suisse and Signac subsequently reneged on their agreement to access Graham's devices and email accounts only in her attorney's offices, falsely claiming it wasn't agreed upon. They then completely abandoned their "important investigation."

36. ~~31.~~ In or about July 2017, for a three-day period, Graham ~~believes she~~ was followed by a woman, the intention of which was to harass and intimidate Graham. ~~The woman Graham believes, followed her to an interview at a financial institution, that is an investor in Palantir.~~ Among other things, the woman followed Graham to her lawyer's offices and to a job interview. The woman also followed Graham to her home, and surveilled Graham and her family from curbside. The woman wanted to be seen and the intimidating message Credit Suisse intended to send was clear: you, and even your family, cannot escape our reach. Shortly thereafter, upon information and belief, Credit Suisse ~~and Palantir~~ interfered with a significant employment opportunity ~~being~~ that was about to be extended to Graham ~~by the financial institution.~~

37. ~~32.~~ Credit Suisse also ~~has~~ withheld interest payments due and owing to Graham on her deferred compensation.

## Credit Suisse Refuses To Pay Graham For Her Signac Equity

38. ~~33. Credit Suisse and Palantir also refused to value Graham's valuable equity, although required to do so by the definitive documents, further retaliated against Graham by refusing to pay her fair value for her equity stake in Signac, which it was required to do following the termination of her employment.~~

39. As of March 2017, when the retaliatory acts began, Signac's principal product under development for use by CS AG across all of its businesses, including Credit Suisse, was a trader holistic surveillance tool. The trader holistic surveillance tool was often referred to at Signac (and in the Final Award rendered in JAMS 1) as BRM. However, Barkley found BRM a confusing term and Credit Suisse began to refer to it as THS. The following colloquy took place in JAMS 1:

Q: Now, did you tell your people in core compliance services not to use the term BRM?

A: BRM is a confusing term within the organization. The terminology going forward was to be "trader holistic surveillance".

40. Signac delivered its THS product to CS AG in or about May 2017 and CS AG began to use it.

41. Consistent with Respondent's defense herein, Barkley and Warner testified without equivocation in JAMS I that Signac's TI-IS was not viable; Credit Suisse was not using it and had not appropriated it. Instead, they claimed that CS AG was developing its own TITS, but had not done so as of the March 2018 hearing. At that point in time Credit Suisse only had a "concept"

42. Warner testified as follows:

Q I understand you have other business with Palantir, but isn't it true after Signac was shut, part of your business with Palantir concerned trader surveillance?

A We do not have anything going on with trader surveillance as it relates to any Signac product, and we are building it ourselves.

(emphasis supplied) (Ex 25, at 1571:16-24).

43. Warner's sworn testimony was that CS AG was not using Signac's trader holistic surveillance software as of March 12, 2018, but, rather, had abandoned it and begun to build its own "completely different" software.

Q But advanced detection scenarios and the idea behind Signac and its specialist software was described by Urs Rohner as a breakthrough, correct?

A Correct. It was described that way.

Q And you were progressing on this breakthrough, and there was an MVP<sup>3</sup> about to be achieved on the product in May, correct?

A I don't think I can attest to the fact it was about to be achieved.

Q Well, you were told in various status reports that that was - -

A True.

Q - - the timeline?

A That's true.

Q I haven't seen anything where you said we disagree.

A That's true.

Q So after May did you abandon this sort of progress towards this breakthrough effort?

A Yes, we chose a different breakthrough effort.

Q That's what you're building now?

A Correct.

Q It's completely different in our testimony?

A It is.

(Id. at 1574:24-1576:5).

44. Warner also was clear with the arbitrator that CS AG was building the completely different trader surveillance software "from scratch"<sup>4</sup>.

A I don't know. I would have to look at them, but I don't think these are the same things as what Signac built. We are obviously building them from scratch.

(Id. at 1592:2-5).

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<sup>3</sup> MVP means "Minimal Viable Product".

<sup>4</sup> Although not relevant to the issue of whether the Award should be vacated on grounds of misconduct, CS AG had no right to reverse engineer, discover the source code, modify or adopt Signac's software, and certainly could not do so consistent with the obligations to act in good faith to maximize the value of Signac. (See below at 40 to 45).

45. As to when the new holistic surveillance tools purportedly built from scratch would be ready, CCRO Warner testified before this Tribunal that it would be sometime later in in 2018.

Q Okay. By the way, when will the next-generation tools be ready to deliver holistic surveillance at the scale required by Credit Suisse?

A Sometime this year. I don't have the exact date, but –

(Id. at 1606:13-19).

46. To the same effect, Warner testified that CS AG only had a concept as of the hearing in March 2018.

Q I understand that, but you said since May of 2017 you started to build your own product?

A Didn't build, but we began thinking about it.

Q Think about it. It's still not done, correct?

A When you say "done," what do you mean "done"?

Q You haven't come up with a tool or something like a BRM tool?

A We have a concept around trader — holistic trader surveillance.

(Id. at 1622:20-1623:16).

47. Warner also was clear that as of March 2018, CS AG did not yet have a trader holistic surveillance product:

Q Certainly once they built it, you could have taken it and just used it for a very little cost, correct?

A But I didn't, and that was not what we did. We built it from scratch- You made the point. We don't have a product yet.

(emphasis supplied) (Id. at 1640: 17-23).

48. James Barkley, Global Head Core Compliance Services with responsibilities across all CS AG entities, including Credit Suisse and Signac, also was clear that CS AG had not taken and was not using Signac's software, but rather as of March 8, 2018, was in the process of building its own trader surveillance software:

Q So, now, you developed a different product, is your testimony, that sits on the Foundry platform to surveil traders?

A I do not have a trader holistic surveillance solution at Credit Suisse at this time, to this date.

MR. KRAUS: Could you repeat that answer, please? (Whereupon Answer is Read Back.)

THE REPORTER: “I do not have a trader holistic surveillance solution at Credit Suisse at this time, to this date.”

(Id. at 1097:21-1098:15).

49. Elsewhere, but just as clearly, Barkley told the arbitrator that CS AG had no trader holistic surveillance as of March 2018.

Q At this point in time, have you developed a tool to replace the product that Signac had been developing that you were unhappy with?

A As I said, I still do not have a trader holistic surveillance tool that I can use.

(Id. at 1130:16-22).

50. As for the software that CS AG was using to surveil traders after Signac was shut in 2017 through the March 2018 arbitration, Barkley swore that the bank was using only “standard industry tools<sup>5</sup>” which had been in place before he arrived in October 2016.

Q And in the period between when Signac was shut in the end of May and this off-site, at some point in the end of 2017, what tools was core compliance services using to surveil traders?

A I have two tools that I use to surveil trading activity. One is called Actimize. The other one is called SMARTS. Those are the primary tools we use to surveil traders.

Q Actimize and what?  
A SMARTS.

Q How long have those tools been in use?

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<sup>5</sup> In CEO Thiam’s investor Day, CS AG tells its investors that it “rolled out industry leading tools,” including trader holistic surveillance, in the first half of 2017. A standard industry tool by definition cannot also be an industry leading tool. (Ex. D). Warner also gave a presentation regarding THS.

A Those are industry tools, and I don't know how long they have been in use. They are standard industry tools that many firms use.

Q When did you begin to use them, if you know?  
When did CS —

A They were in place before I got to Credit Suisse.

(emphasis supplied) (Id. at 1095:5-1096:4)

51. Barkley testified that the purportedly “new” software supposedly only under development in March 2018 would be known as “trader holistic surveillance”.

A I would show you what I would do. I did not have a trader holistic surveillance platform yet. It's under development.<sup>6</sup>

Q And as part of that trader holistic surveillance platform under development, there is a tool under development that focuses on traders as opposed to relationship managers, correct?

A Yes.

Q And there is a dashboard being developed - -

A Yes.

Q -- in connection with the focus -- the tool that focuses on the traders, correct?

A Yes.

Q Now, is there a name for this tool under development or you don't have a name yet?

A Trader holistic surveillance.

(Id. at 1102..2-21) (emphasis supplied).

Q So, now, you developed a different product, is your testimony, that sits on the Foundry platform to surveil traders?

A I do not have a trader holistic surveillance solution at Credit Suisse at this time, to this date.

Id. at 1097-98 (emphasis supplied).

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<sup>6</sup> Again, CS AG's investor Day represents that “Trader Holistic Surveillance” was rolled out in 2017.

Q At this point in time, have you developed a tool to replace the product that Signac had been developing that you were unhappy with?

A As I said, I still do not have a trader holistic surveillance tool that I can use.

Id. at 1130

A I would show you what I would do. I did not have a trader holistic surveillance platform yet. It's under development.

Such was the sworn testimony in JAMS 1 by CS AG's two most senior compliance officers - CS AG did not have a trader holistic surveillance solution as of March 2018 and was using only standard industry tools. (Such testimony also provides a legitimate business justification for taking some of the adverse personnel actions at issue herein, like reusing to pay Graham a bonus or assigning any value to her Signac equity)

52. But Credit Suisse subsequently admitted that the sworn defense testimony that Signac's THS product was not viable and was no longer being used is 100 % false.

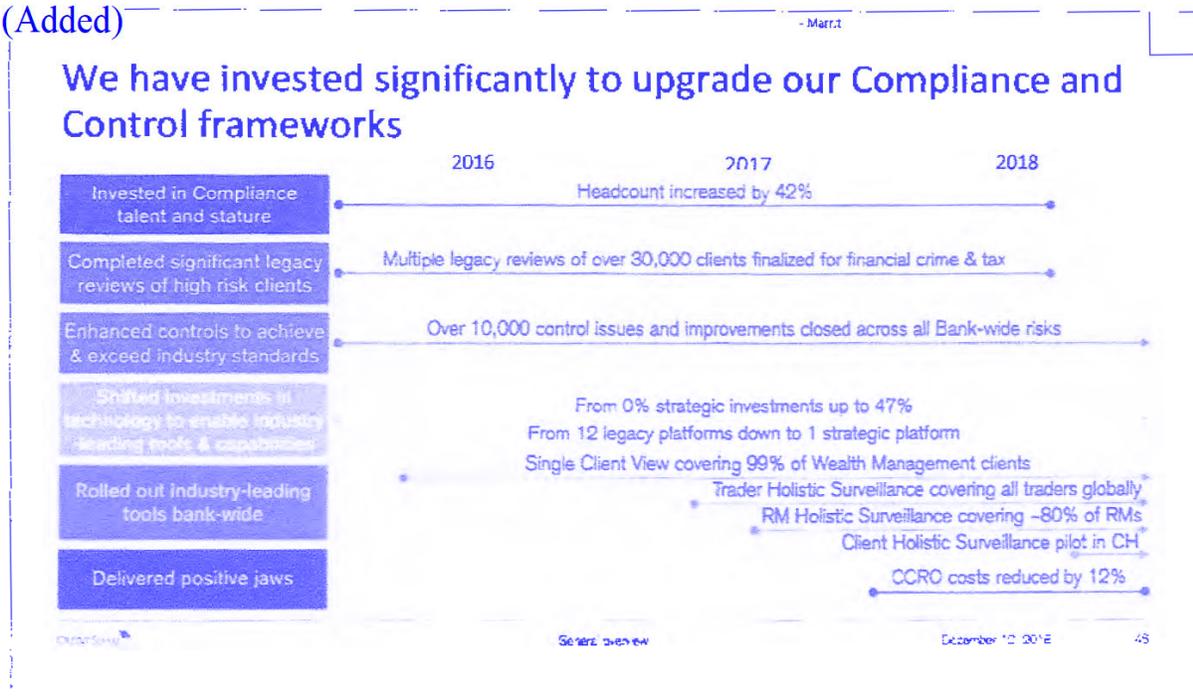
CS AG's Investor Day

53. Credit Suisse AG's annual Investor Day held in December 2018 admits that the THS product delivered by Signac in or about May 2017 has been used since that date with great effectiveness and at substantial savings on an annual basis. Critically, both Warner and Barkley swore that Credit Suisse only had a concept as of the March 2018 JAMS I hearings and had been using standard industry tools to that point in time.

54. On December 12, 2018, CS AG gave its annual Investor Day presentation in Zurich, Switzerland. It subsequently made corresponding disclosures in securities filings later that month.

55. The Investor Day materials and securities filings include a presentation by CS AG's Chief Executive Officer, Tidjane Thiam in which he presents shareholders with a chart showing that CS AG had "rolled out industry leading tools", including "Trader Holistic Surveillance covering all traders globally" in or about spring/summer 2017.

(Added)



**56. Credit Suisse’s Investor Day directly undercuts a key premise of Credit Suisse’s defense; specifically, it disproves the claim that TI-IS was not a viable product, leading to the dissatisfaction of Credit Suisse AG, Signac’s sole customer, and thereby providing a nondiscriminatory justification for many of the adverse personnel actions at issue herein, such as not paying any bonus, not offering continued employment, not valuing the equity and not making any payment on it.**

### **SARBANES-OXLEY- THE RELEVANT LAW**

Section 806 of SOX protects employees against retaliation where they have provided information to their supervisors that the employees “reasonably believe constitutes a violation of [18 U.S.C.] section 1341 [mail fraud], 1343 [wire fraud], 1344 [bank fraud], or 1348 [securities fraud], any rule or regulation of the Securities and Exchange Commission [“SEC”], or any provision of Federal law relating to fraud against shareholders . . .” 18 U.S.C.S. § 1514A(a)(J). To invoke the protection of Section 806, an employee “must show by a preponderance of the evidence that (1) [he] engaged in protected activity; (2) the employer knew of the protected activity; (3) [he] suffered an unfavorable personnel action; and (4) circumstances exist to suggest that the protected activity was a contributing factor to the unfavorable action.” *Fraser v.*

*Fiduciary Trust Co. Int'l*, 2009 U.S. Dist. LEXIS 75565, 2009 WL 2601389, at \*4 (S.D.N.Y. Aug. 25, 2009). There is ample evidence showing that Graham meets the four elements required to enjoy the protections of Section 806 of SOX and that Respondents, as “covered persons” under the Regulations promulgated under SOX, 29 C.F.R. 1980.100 *et. seq.*, and relevant case law, retaliated against her in violation of SOX because she had complained about securities law violations. SOX also prohibits a “covered person”, like each of Credit Suisse, *and* Signac ~~and Palantir~~, from retaliating against employees for seeking to protect their rights under SOX to be free from retaliation. In this case, Credit Suisse sharply escalated, its retaliatory conduct after Graham, through counsel complained that she was being retaliated against for having made complaints protected by SOX and intended to pursue her statutory rights and remedies.

### **RELIEF SOUGHT**

Complainant seeks the following relief:

- A. Reinstatement to a position at Credit Suisse;
- B. Back pay, raises, bonuses, front pay, the reasonable value of her equity in Signac, deferred compensation and interest payments therein, benefits, overtime, reinstatement of seniority and tenure, and other orders and relief necessary to make complainant whole;
- C. An order: (1) requiring respondent to abate and refrain from any further violations of the whistleblower provisions of the Acts; (2) requiring respondent to explicitly rescind any and all policies that restrain or direct employees in connection with reporting of compliance issues; (3) requiring respondent to prohibit harassment of those who engage, or are suspected of engaging in protected activity; and (4) requiring respondent to take prompt and effective action against any reported violations;
- D. An order prohibiting Respondents from disclosing any disparaging information about complainant to prospective employers, or otherwise interfering with any applications he might make in the future;
- E. Compensatory monetary damages in an amount determined to be fair and equitable compensation for complainant’s emotional distress and loss of reputation;
- F. Exemplary damages in an amount sufficient to deter Respondents from future violations of the law;
- G. Reasonable attorney fees;
- H. Costs of this proceeding, including reimbursement for deposition fees, travel expenses, and other expenses to collect and produce evidence in this matter;
- I. Order requiring Respondents to issue a notice, and provide copies to all its employees that: (1) the Department of Labor has found that respondent violated the rights of a whistleblower, and ordered that this person be made whole, (2) describes the laws protecting whistleblowers, setting out the ALJ’s orders to respondent as policies of respondent, (3) provides

the name and address where complaints of violations may be sent, and (4) informs employees that complaints must be filed within specified time limits after any adverse action;

- J. Pre-judgment interest on all amounts due; and
- K. Such other and further relief as may be just and proper.

Very truly yours,  
Kraus & Zuchlewski LLP  
Attorneys for Colleen Graham

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cc: Colleen Graham

**Exhibit B**

**Comparison Between Proposed Amendments and Petition to Vacate**

Petition to Vacate (NY State Court)	Proposed Amendments (This Action)
¶ 30: [REDACTED]	¶ 43: “Warner’s sworn testimony was that CS AG was not using Signac's trader holistic surveillance software as of March 12, 2018, but, rather, had abandoned it and begun to build its own ‘completely different’ software.”
¶ 31: [REDACTED]	¶ 44: “Warner also was clear with the arbitrator that CS AG was building the completely different trader surveillance software ‘from scratch.’”
¶ 32: [REDACTED]	¶ 45: “As to when the new holistic surveillance tools purportedly built from scratch would be ready, CCRO Warner testified before this Tribunal that it would be <i>sometime later in in 2018.</i> ”
¶ 33: [REDACTED]	¶ 46: “. . . Warner testified that CS AG only had a concept as of the hearing in March 2018.”
¶ 34: [REDACTED]	¶ 47: “Warner also was clear that as of March 2018, CS AG did not yet have a trader holistic surveillance product.”
¶ 35: [REDACTED]	¶ 48: “James Barkley . . . was clear that CS AG had not taken and was not using Signac's software, but rather as of March 8, 2018, was in the process of building its own trader surveillance software
¶ 37: [REDACTED]	¶ 49: “Elsewhere, but just as clearly, Barkley told the arbitrator that CS AG had no trader holistic surveillance as of March 2018.”
¶ 38: [REDACTED]	¶ 50: “As for the software that CS AG was using to surveil traders after Signac was shut in 2017 through the March 2018 arbitration, Barkley swore that the bank was using only ‘standard industry tools’ which had been in place before he arrived in October 2016.”
¶ 39: [REDACTED]	¶ 51: “Barkley testified that the purportedly ‘new’ software supposedly only under development in March 2018 would be known as ‘trader holistic surveillance.’”

**Exhibit C**

**Proposed Confidentiality Agreement**

**U.S. DEPARTMENT OF LABOR  
OFFICE OF ADMINISTRATIVE LAW JUDGES**

COLLEEN A. GRAHAM

Complainant,

v.

CREDIT SUISSE SECURITIES (USA) LLC  
and SIGNAC LLC,

Respondents.

ALJ No. 2019-SOX-00040

**[PROPOSED] PROTECTIVE ORDER**

The Court finds that Complainant and Respondents (collectively, the “Parties”) in the above-captioned matter (the “Action”) will be producing confidential and sensitive information, the disclosure of which would reasonably be expected to cause substantial competitive harm and/or implicate the privacy rights of the Parties or of third parties. This Protective Order is intended to advance discovery in this Action and to protect each Party’s confidential and sensitive information.

THEREFORE, IT IS HEREBY ORDERED:

1. Each Party may designate as “Confidential” any documents and things that it produces in connection with this Action by stamping or otherwise affixing the word “CONFIDENTIAL” upon the documents and things so designated (the “Confidential Material”). A document or thing, or a part thereof, shall be designated as Confidential Material for good cause, including, but not limited to:

- (a) proprietary or confidential trade secrets, or financial, accounting, technical, research, development, marketing, planning, or otherwise commercially sensitive information not readily available to the public;

- (b) information related to the privacy interests of a Party, their employees, customers, or other specific third party;
- (c) information that all Parties agree in writing to treat as Confidential Material, and
- (d) information found to be Confidential Material after appropriate review by the Court.

2. If a Party objects to the designation of Confidential Materials, that Party shall give written notice of such objection to the other Party and shall continue to treat such material as Confidential Material until otherwise agreed or ordered. Counsel for the Parties shall confer to resolve any such objections. If no resolution is reached, the objecting Party may apply to the Court under seal for a ruling whether the material in question should be treated as Confidential Material under this Protective Order.

3. Confidential Material shall be used by the Parties solely for the purpose of this Action and shall not be used, directly or indirectly, for any other purpose or in any other proceeding or matter. Notwithstanding this provision, this Protective Order shall not limit a Party from using or disclosing its own Confidential Materials for any purpose or in any other action or proceeding.

4. Confidential Material shall be maintained safely and securely, and shall be reasonably safeguarded from disclosure by the Parties, their employees, representatives, and/or agents.

5. Confidential Material shall not be produced, disclosed, or otherwise disseminated, to any person or entity except those persons and entities specifically identified in the following subparagraphs:

- (a) The Parties, including their employees, representatives, and agents who are necessarily involved in this matter;

- (b) Counsel of record for each Party, including their employees, representatives, and agents who are necessarily involved in this matter;
- (c) Employees, representatives, and agents of the U.S. Department of Labor, Office of Administrative Law Judges;
- (d) Any experts, consultants, and independent contractors acting on behalf of the Parties in connection with this matter, so long as such experts, consultants, and independent contractors are provided with a copy of and agree to be bound by this Protective Order by signing the “Agreement to be Bound by Protective Order” (the “Agreement”) attached hereto as Exhibit A;
- (e) Any person that a Party believes in good faith to be a potential fact witness in this Action, provided such person is provided with a copy of and agrees to be bound by this Protective Order by signing the Agreement attached hereto as Exhibit A;
- (f) Any person or entity as may be required by law, order of any court of competent jurisdiction, or any governmental agency, or regulatory authority.

6. (a) If a Party is called upon to disclose Confidential Material, directly or indirectly, to any person or entity pursuant to subparagraph 5(f) of this Protective Order, the Party so called upon shall promptly (and prior to any disclosure) notify the producing Party’s counsel in writing of the proposed disclosure and specify the name, employment, and/or affiliation and address of the person or entity seeking disclosure and describe with specificity the documents, things, and/or information being sought.

(b) If a Party objects to the disclosure under subparagraph 6(a), the objecting Party shall, within twenty (20) days, provide written notice of such objection to the Party called upon to disclose the documents and things. If the dispute cannot be promptly resolved, the objecting Party

may apply to the court or tribunal that issued the demand, subpoena, order, or other legal process seeking the disclosure of the Confidential Materials and establish the basis for any ruling sought. There shall be no disclosure pending such resolution.

7. If a Party wishes to file Confidential Material with the Court, such material shall be (a) with the consent of the producing Party, filed only as a redacted copy, (b) provided solely for *in camera* review, or (c) submitted in an envelope bearing a statement in substantially the following form: “THIS DOCUMENT CONTAINS CONFIDENTIAL MATERIAL SUBJECT TO A PROTECTIVE ORDER.”

8. At least thirty (30) days prior to the date of the final hearing in this Action, the Parties shall confer and submit a proposed plan to the Court setting forth the procedures for the use of any Confidential Material at the formal hearing.

9. A Party’s inadvertent production of documents or things without a designation as Confidential shall not be deemed to waive a Party’s right to later designate those documents or things as Confidential Material. Documents or things later designated as Confidential Material by the producing Party shall be treated as Confidential Material from the date such written notice of the designation is provided to the receiving Party.

10. A Party’s inadvertent production of documents or things that would otherwise be protected from disclosure by any privilege, immunity, or doctrine of law, shall not be construed as a waiver of any such privilege, immunity, or doctrine. Any such Action Material that is inadvertently produced shall, after written notice by or to the Party receiving the privileged documents, be promptly returned to the producing Party, and no copies or records shall be kept by the receiving Party.

11. The terms of this Protective Order shall continue beyond the conclusion of this Action. Within sixty (60) days of the conclusion of this Action, including any appeal, each Party shall return or destroy all Confidential Materials, including any reproductions, except that counsel for a Party is entitled to retain an archival copy of all documents, including pleadings, motion papers, hearing and deposition transcripts, legal memoranda, correspondence, deposition and hearing exhibits, expert reports, attorney work product, and consultant and expert work product. Any such archival copies that contain or constitute Confidential Material remain subject to this Protective Order.

12. A breach of this Protective Order shall subject the producing Party to substantial and irreparable harm, the nature and extent of which is not readily quantifiable, entitling the producing Party to obtain injunctive relief, seek damages, and/or apply for other relief or further protective orders before a court or tribunal of competent jurisdiction.

13. This Protective Order shall have no bearing upon and shall not affect the relevancy, authenticity, and/or admissibility of any documents and things or information contained therein.

14. Nothing herein is intended to reflect the position of a Party on the admissibility of any documents or things or to constitute a waiver of any evidentiary objections.

\* \* \*

Dated: \_\_\_\_\_, 2020

---

KRAUS & ZUCHLEWSKI LLP  
Robert D. Kraus, Esq.  
Desiree J. Gustafson, Esq.  
60 East 42nd Street, Suite 2534  
New York, New York 10165  
Telephone: (212) 869-4646  
*Attorneys for Complainant Colleen Graham*

Dated: \_\_\_\_\_, 2020

---

LATHAM & WATKINS LLP  
Joseph Serino, Jr.  
Kuangyan Huang  
Nathan Taylor  
885 Third Avenue  
New York, New York 10022  
Telephone: (212) 906-1200  
*Attorneys for Respondents Credit Suisse  
Securities (USA) LLC and Credit Suisse  
First Boston Next Fund, Inc.*

Dated: \_\_\_\_\_, 2020

---

KIRKLAND & ELLIS LLP  
Devora W. Allon, P.C.  
Jay P. Lefkowitz, P.C.  
Thomas S. Burnett  
601 Lexington Avenue  
New York, New York 10022  
Telephone: (212) 446-4800  
*Attorneys for Respondent Palantir  
Technologies, Inc.*

Dated: \_\_\_\_\_, 2020

---

COOLEY LLP  
Elizabeth Lewis  
Elizabeth Inglis  
Joseph Lockinger  
55 Hudson Yards  
New York, New York 10001  
Telephone: (212) 479-6736  
*Attorneys for Respondent Signac LLC*

\* \* \*

IT IS SO ORDERED:

Dated: \_\_\_\_\_, 2020

---

**THERESA C. TIMLIN**  
Administrative Law Judge

**EXHIBIT A**

**AGREEMENT TO BE BOUND BY PROTECTIVE ORDER**

I, \_\_\_\_\_, hereby state:

I have received and read a copy of the Protective Order entered into in this Action, and I hereby agree to be bound by its terms.

I understand that I am to retain all copies of any Confidential Material (as defined in the Protective Order) in a secure manner and that all copies are to remain in my custody or control until the completion of my duties in this Action, whereupon I will return to Party's counsel all copies of Confidential Material provided to me as well as all writings prepared by me containing any Confidential Material.

I will not disclose or divulge any Confidential Material to persons other than those specifically authorized by the Protective Order, and I will not copy or use any Confidential Material except solely in connection with this Action.

I further agree to voluntarily submit myself to the jurisdiction of the Court should proceedings be initiated in this Action for the resolution of any dispute which might arise in connection with my compliance with the terms of this Protective Order.

Dated: \_\_\_\_\_

Signature: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

**U.S. DEPARTMENT OF LABOR  
OFFICE OF ADMINISTRATIVE LAW JUDGES**

COLLEEN A. GRAHAM

COMPLAINANT,

v.

CREDIT SUISSE SECURITIES (USA) LLC  
and SIGNAC LLC,

Respondents.

ALJ No. 2019-SOX-00040

**DECLARATION OF KUAN HUANG IN OPPOSITION TO  
COMPLAINANT'S MOTION TO COMPEL AND FOR LEAVE TO AMEND**

I, Kuangyan Huang, declare as follows:

1. I am an attorney at Latham & Watkins LLP, counsel for Respondent Credit Suisse Securities (USA) LLC. This declaration is based on my personal knowledge.
2. Attached as Exhibit 1 is a true and accurate copy of the JAMS Final Award entered In the Matter of the Arbitration Between Colleen Graham and Credit Suisse First Boston Next Fund, Inc., Palantir Technologies, Inc., and Signac, LLC.
3. Attached as Exhibit 2 is a true and accurate copy of excerpts from Colleen Graham's Notice of Petition filed with the Supreme Court of the State of New York on March 8, 2019.
4. Attached as Exhibit 3 is a true and copy of excerpts from the transcript of a hearing before the Supreme Court of the State of New York on June 6, 2019.

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

Dated: May 1, 2020

/s/ Kuangyan Huang  
Kuangyan Huang

LATHAM & WATKINS LLP  
885 Third Avenue  
New York, New York 10022  
Telephone: (212) 906-1200  
Facsimile: (212) 751-4864

*Attorneys for Respondent Credit  
Suisse Securities (USA) LLC*

**Exhibit 1**

**JAMS Final Award**

**JAMS Reference No. 1425025009**

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**In the Matter of the Arbitration Between**

**COLLEEN GRAHAM, individually and  
derivatively on behalf of SIGNAC, LLC,**

**Claimant,**

**and**

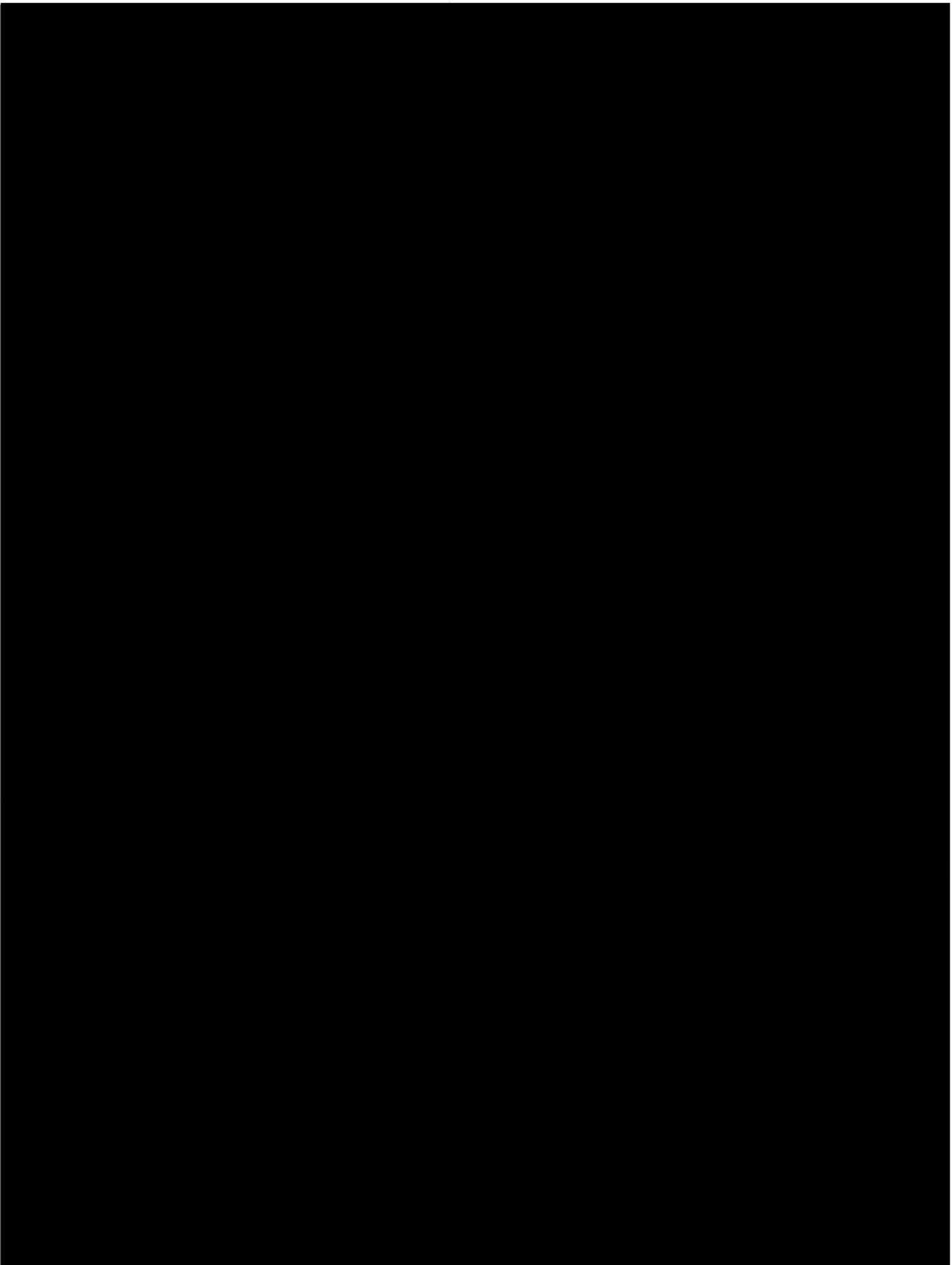
**CREDIT SUISSE FIRST BOSTON  
NEXT FUND, INC., PALANTIR  
TECHNOLOGIES, INC., and SIGNAC,  
LLC,**

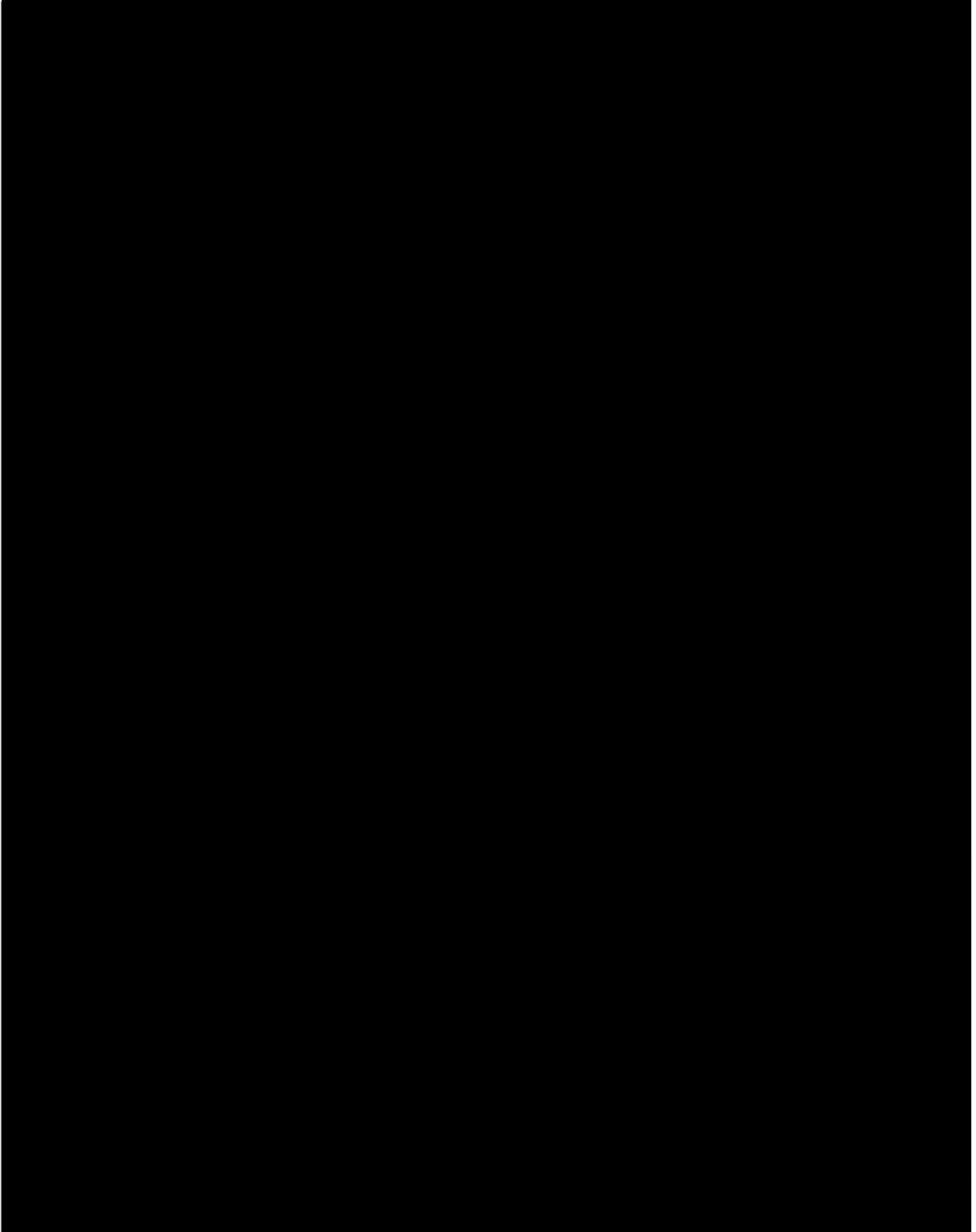
**Respondents.**

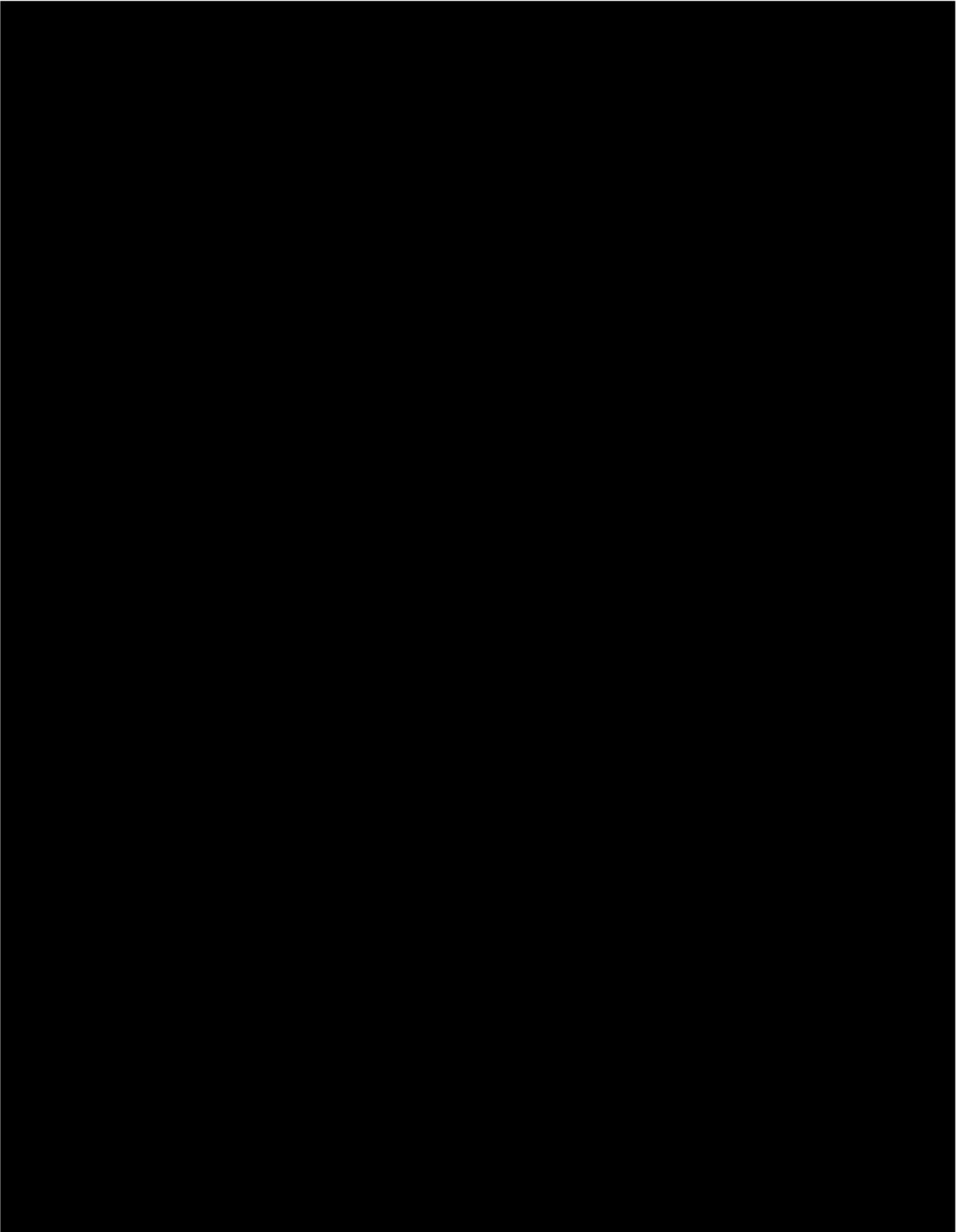
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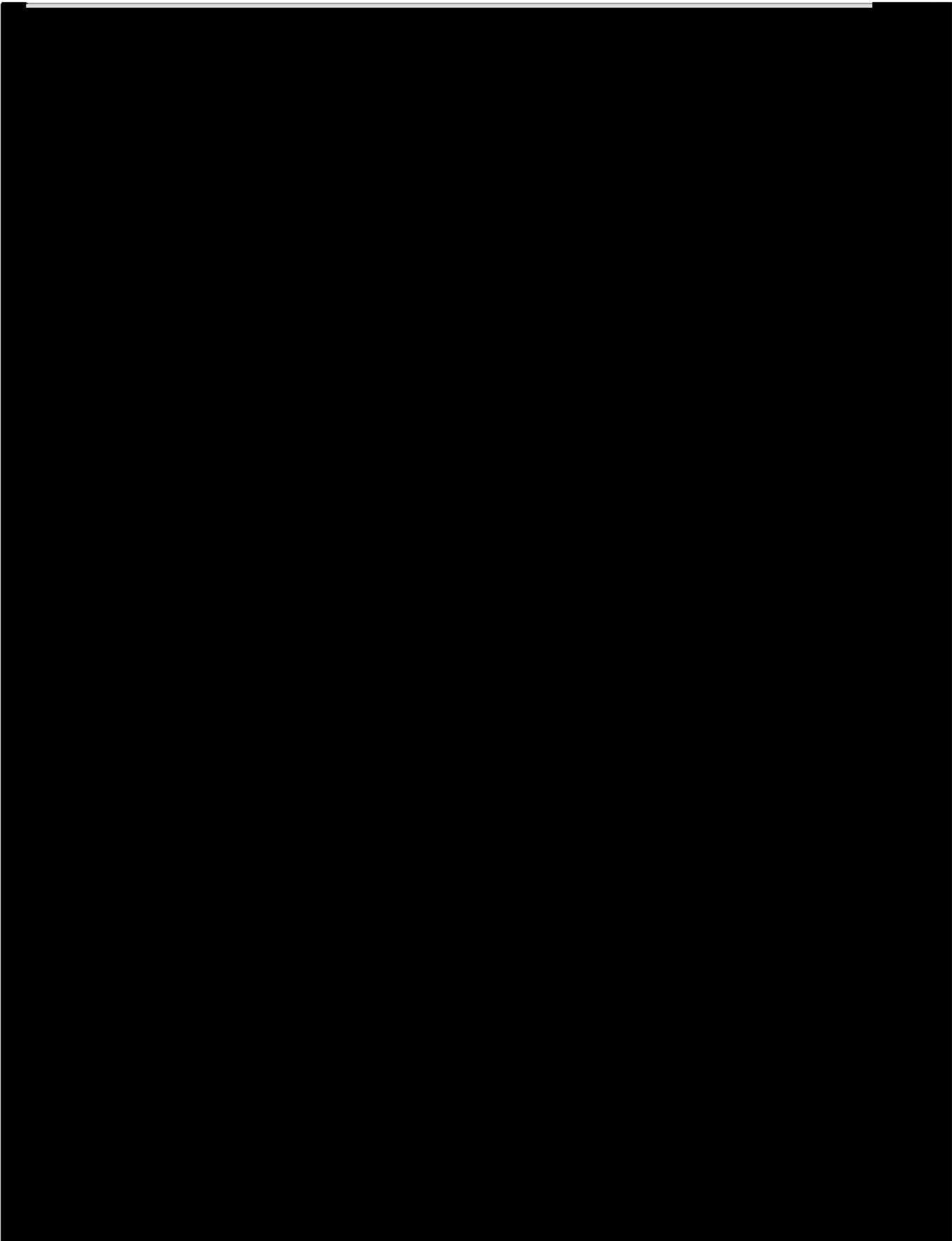
**Final Award**

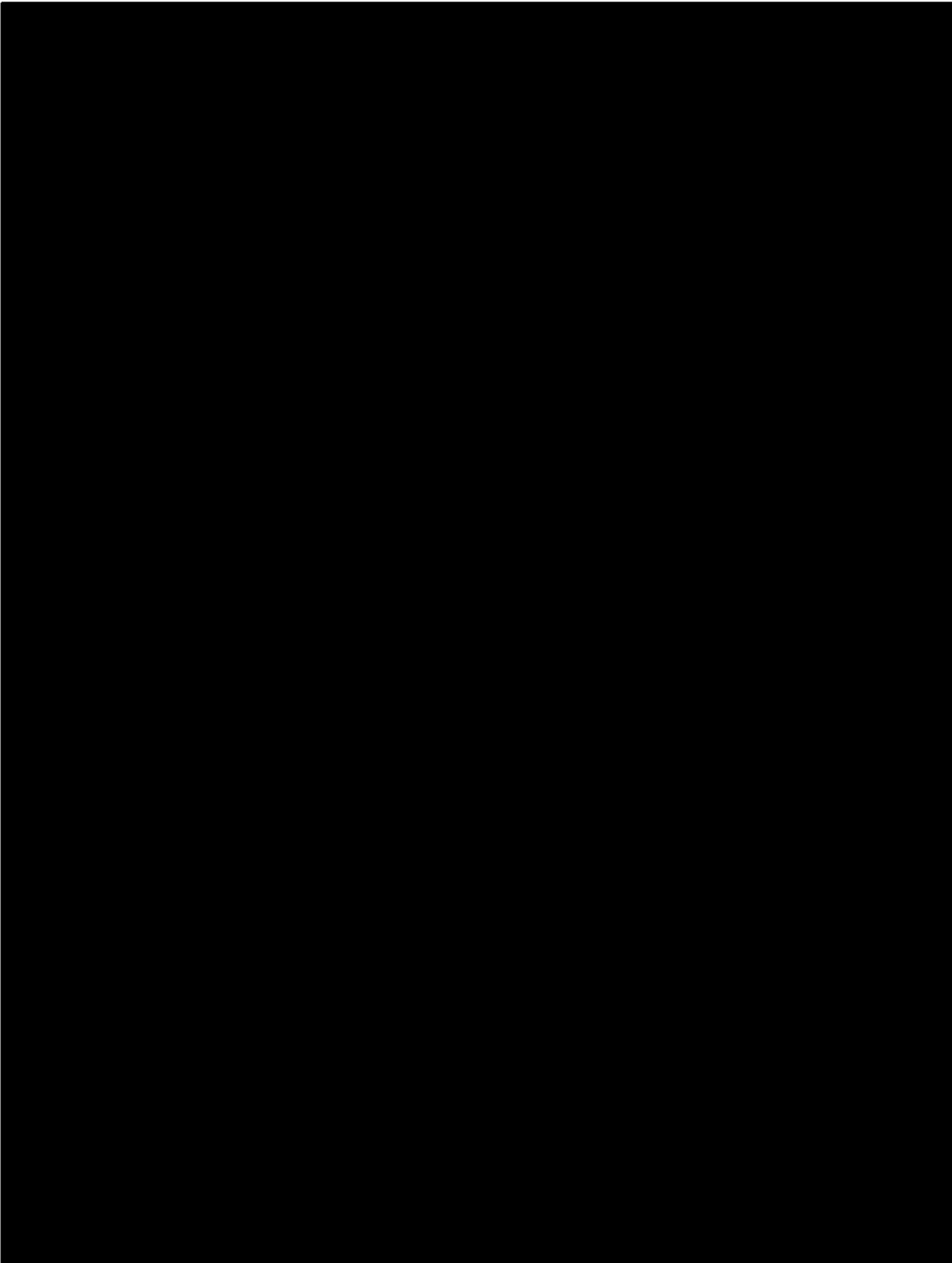


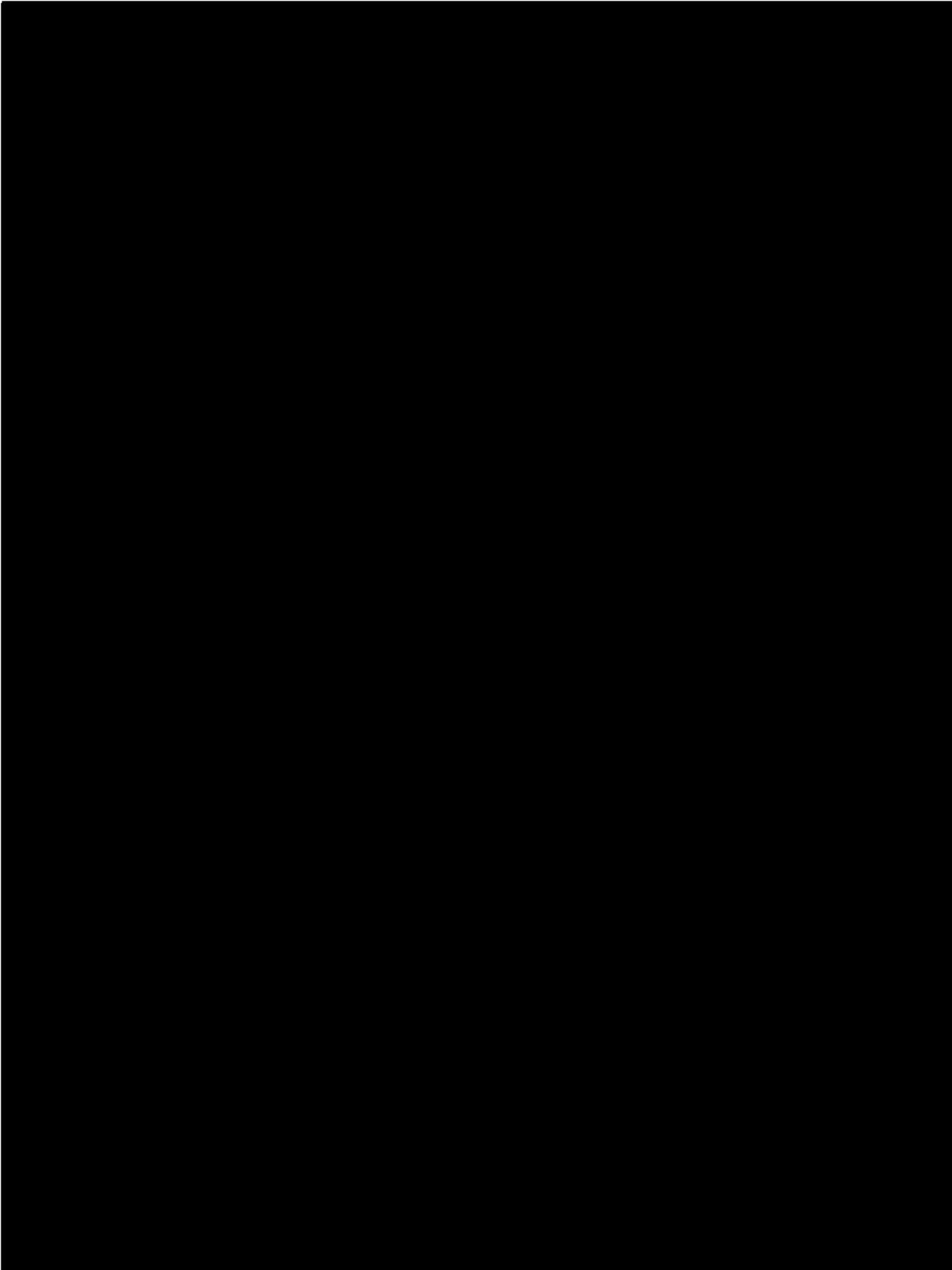


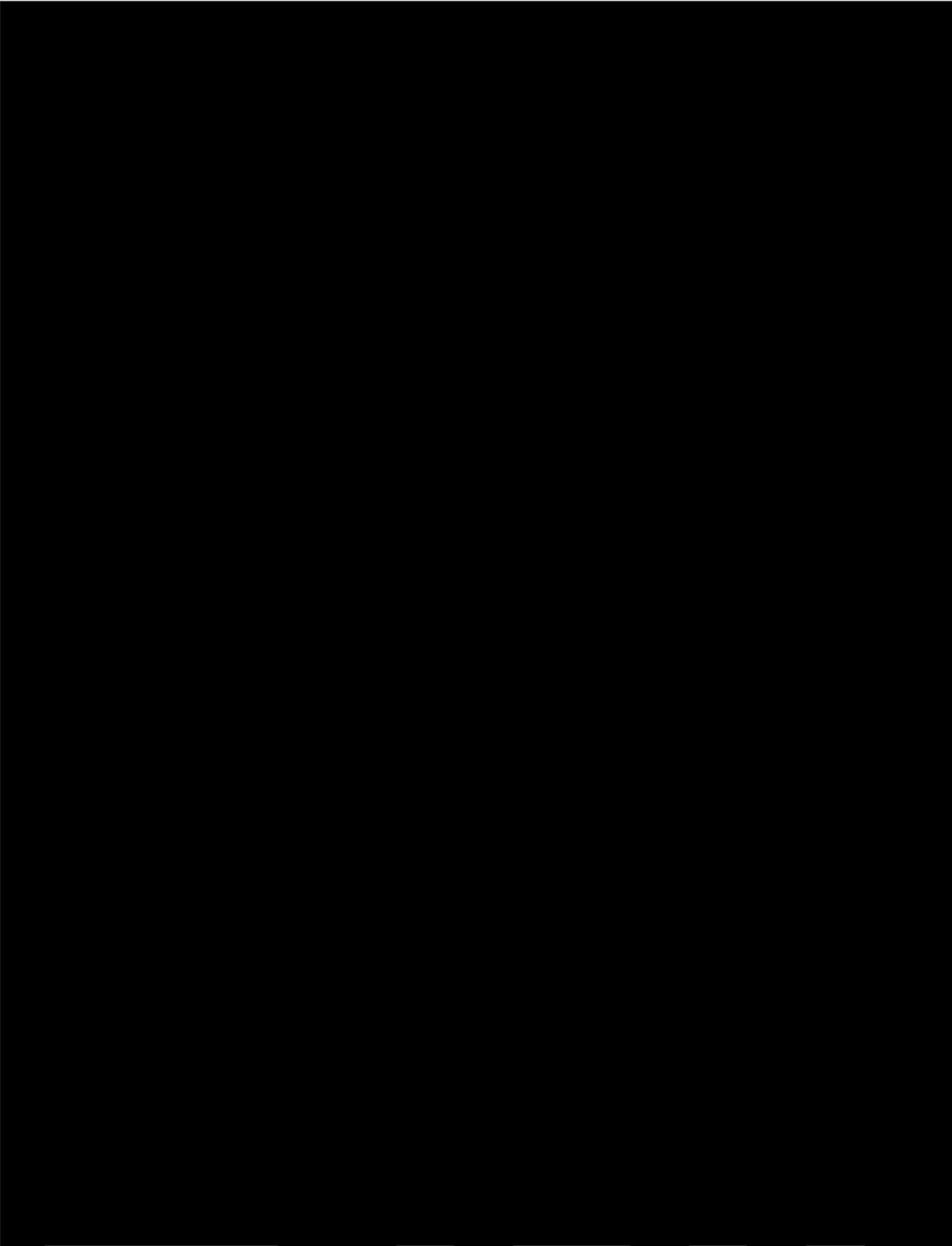


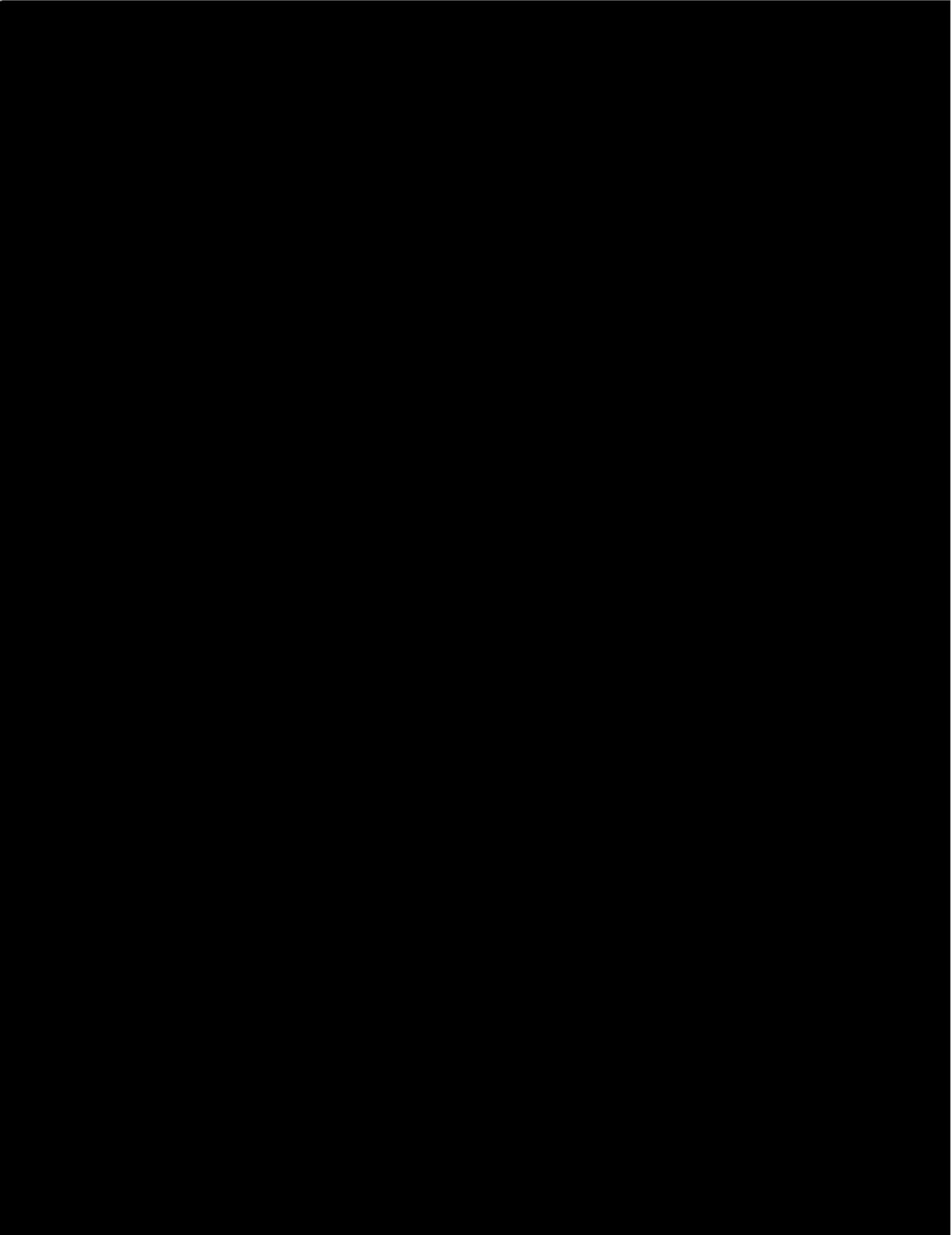


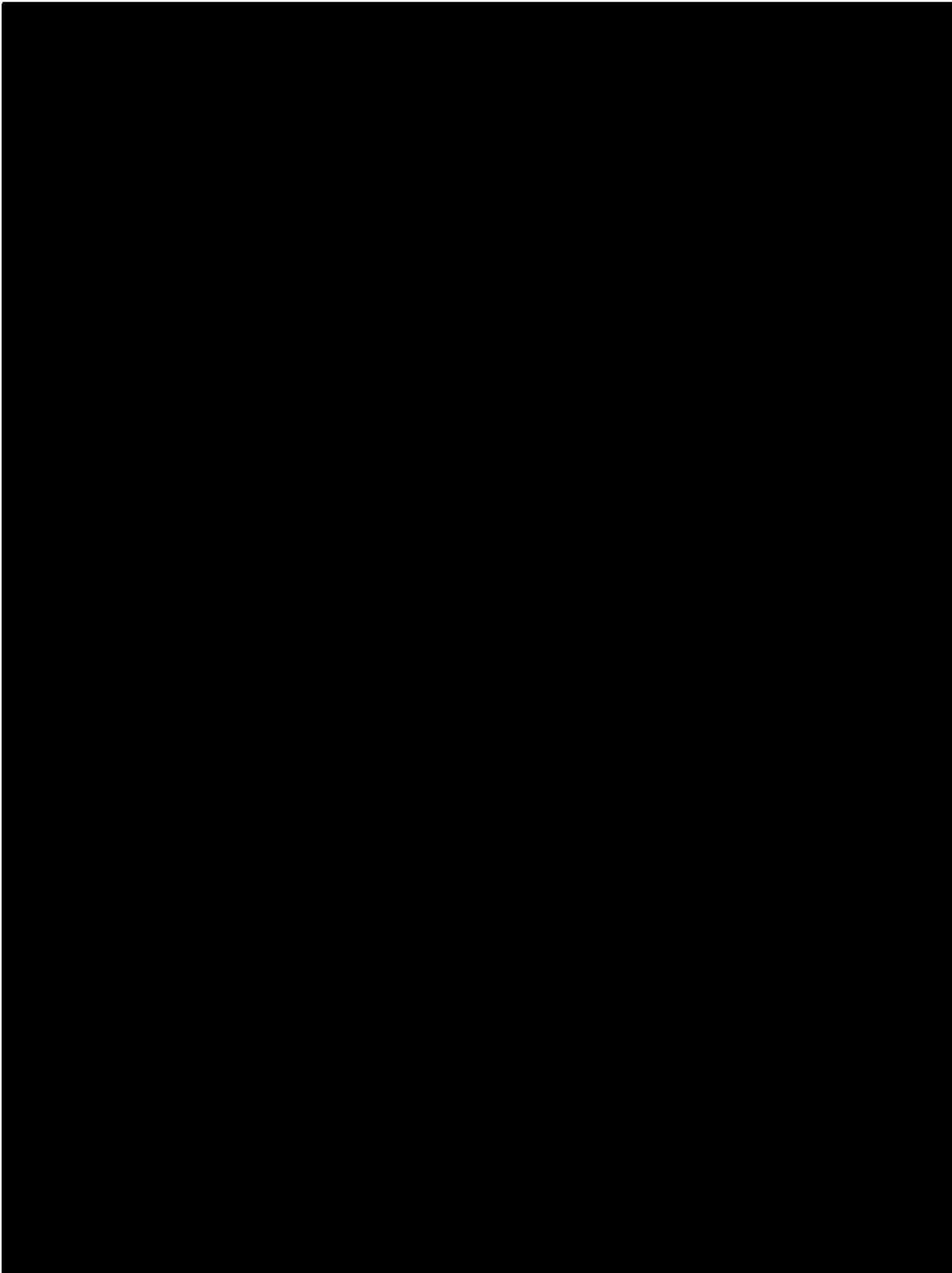


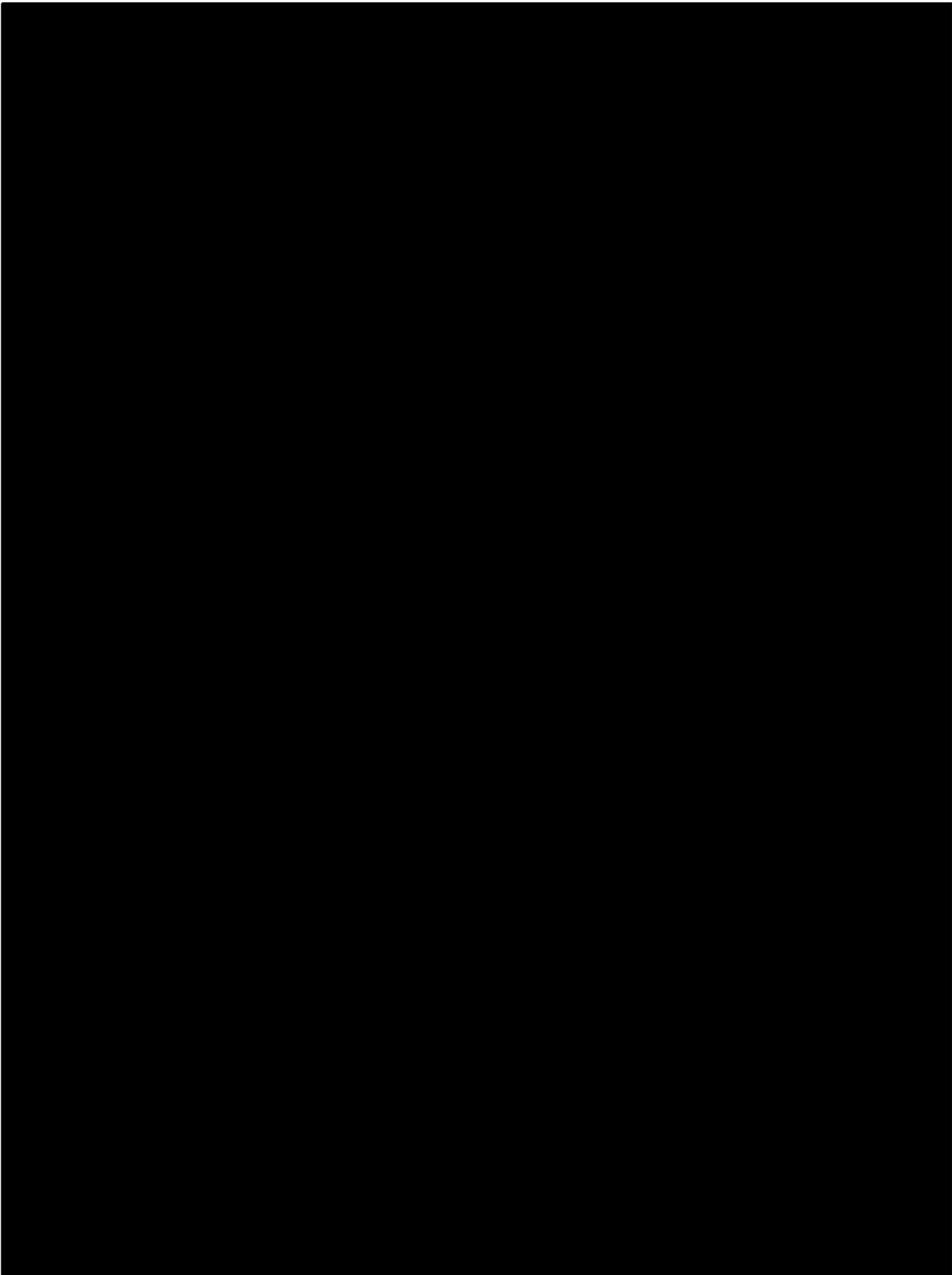


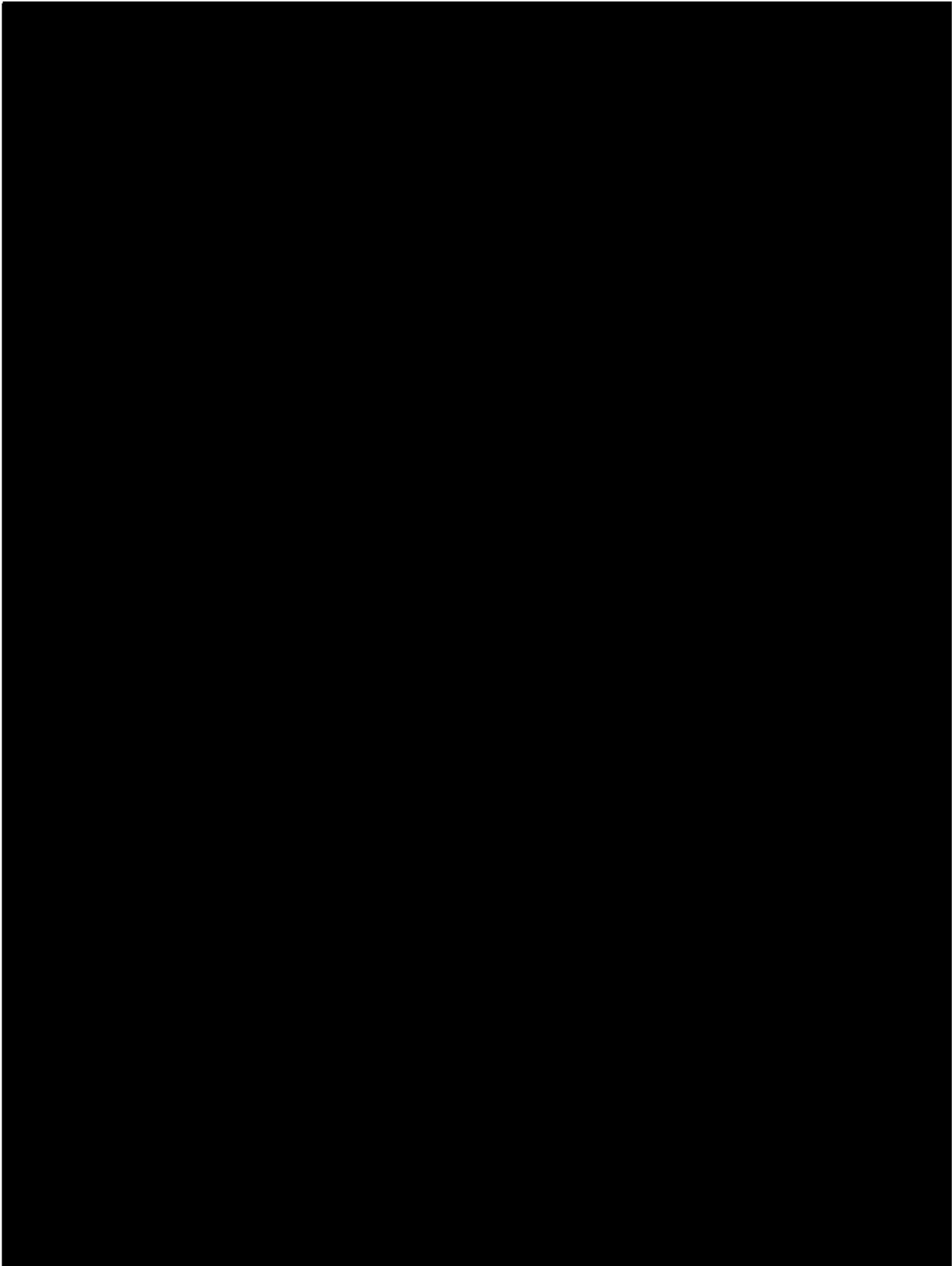


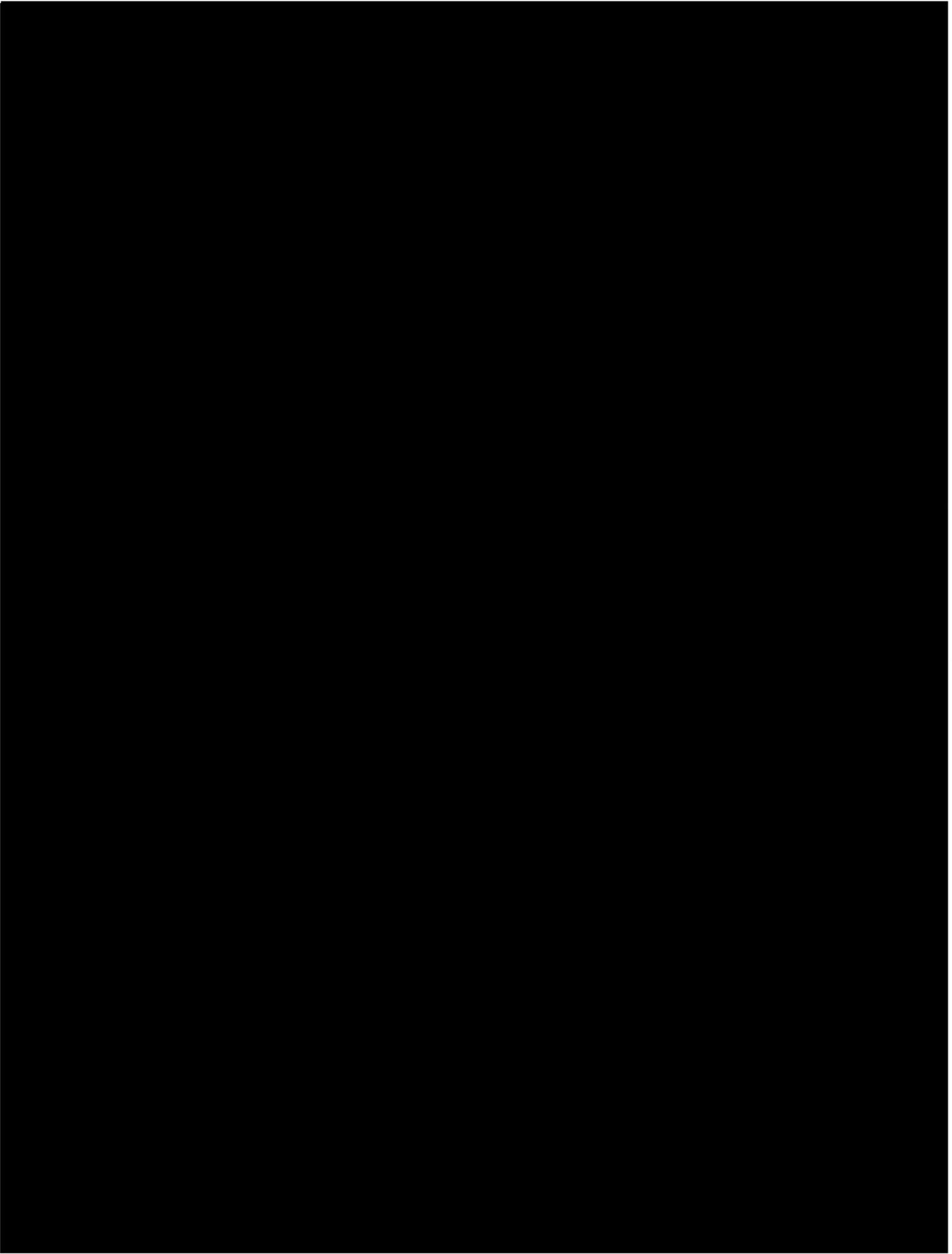


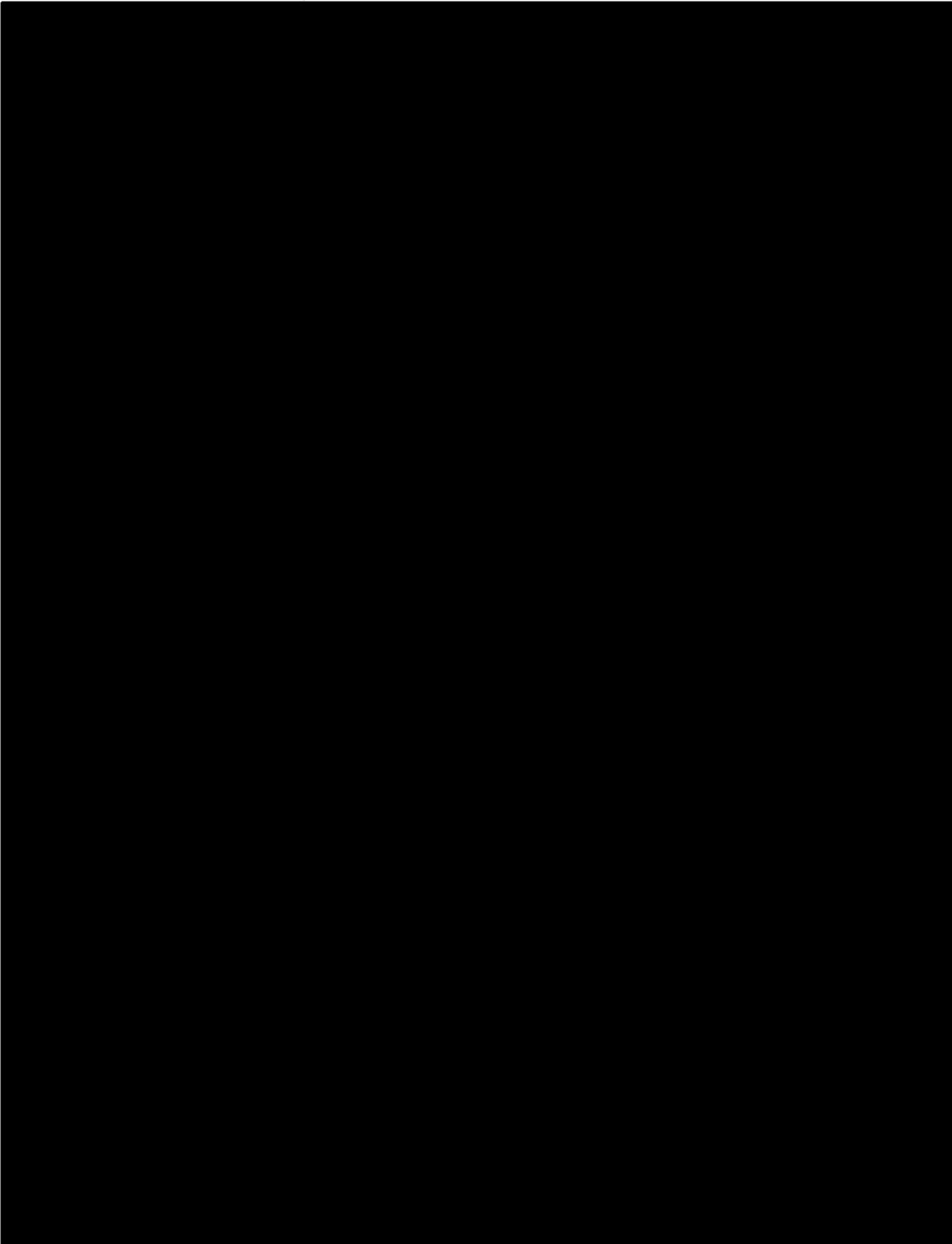


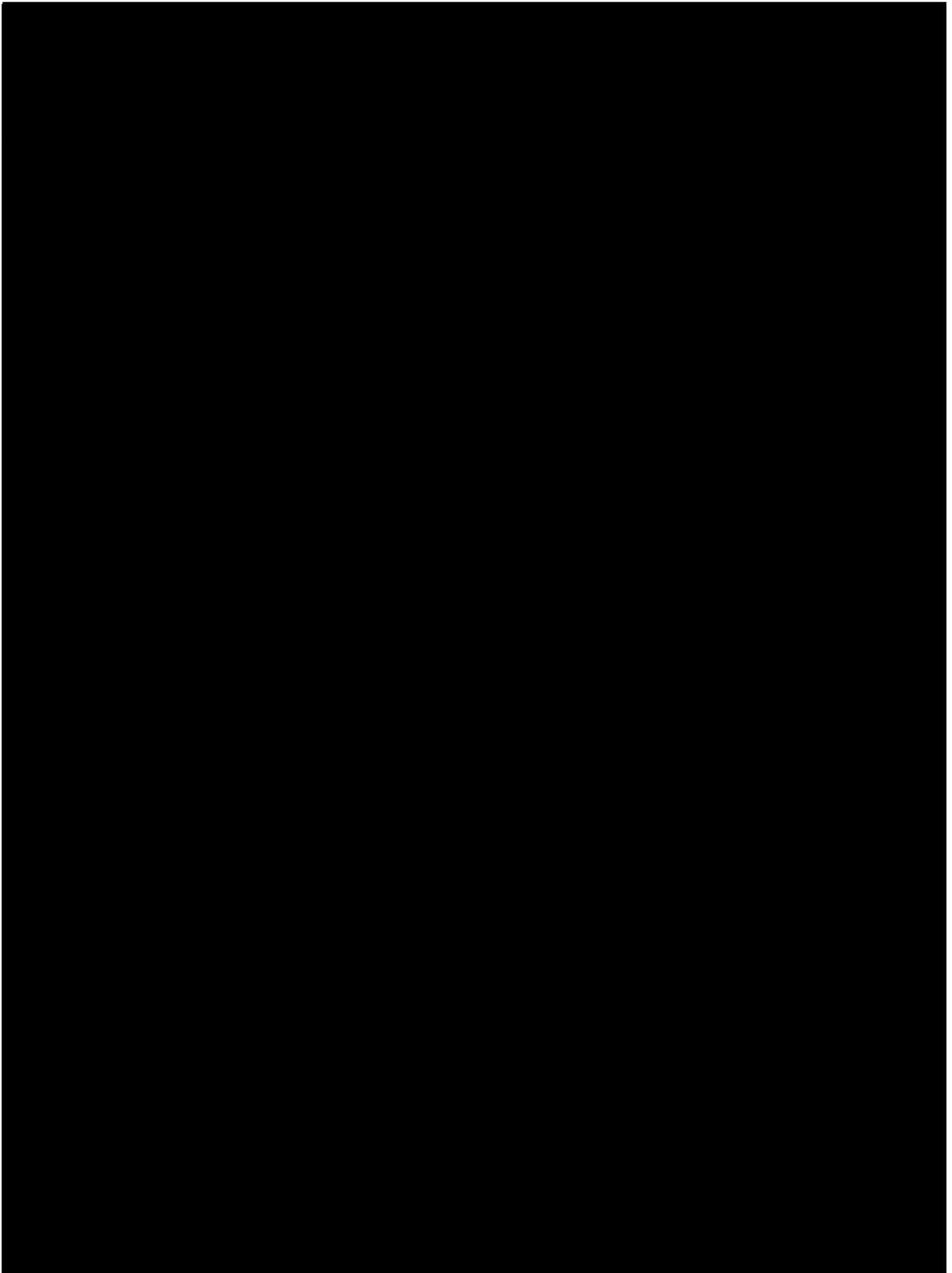


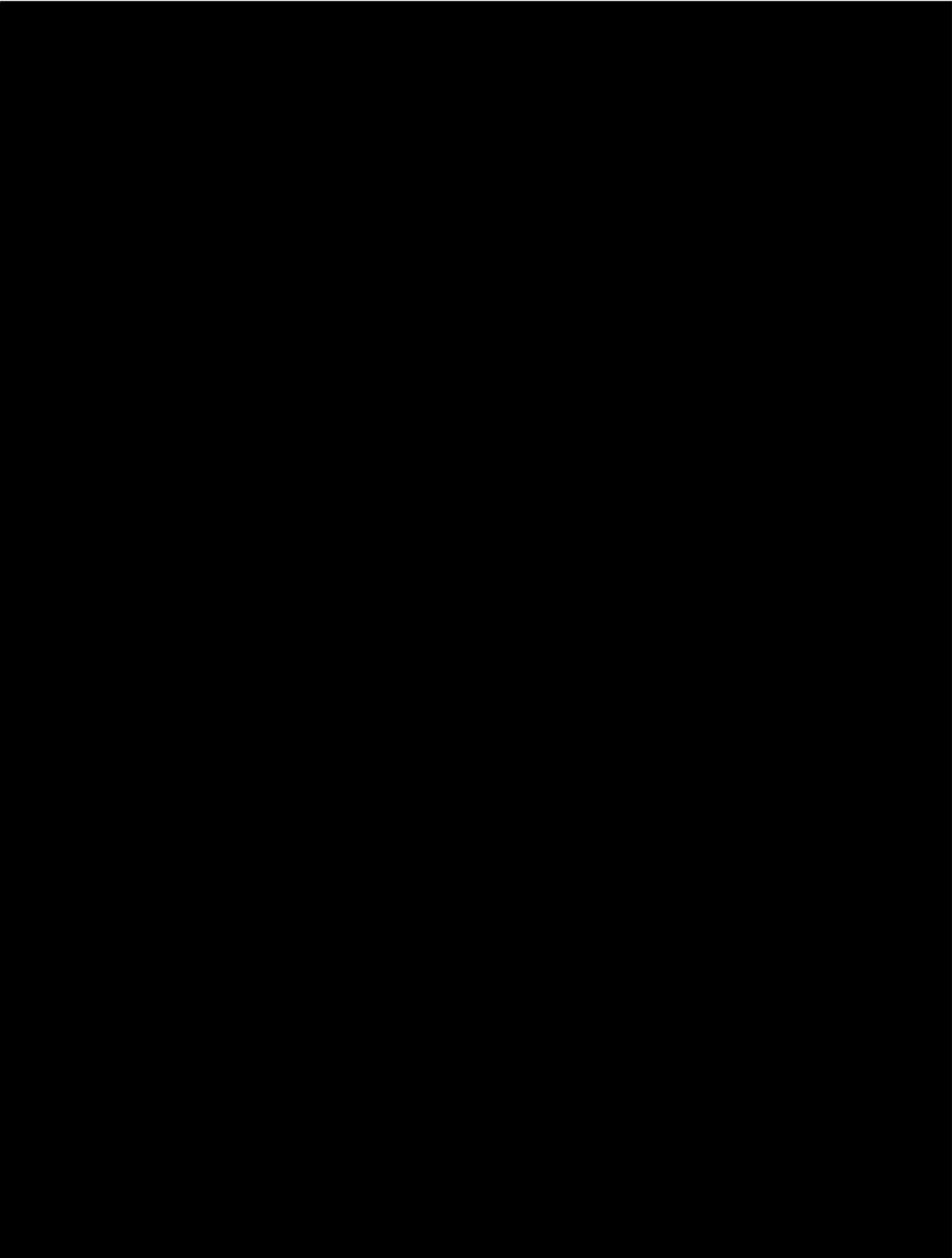


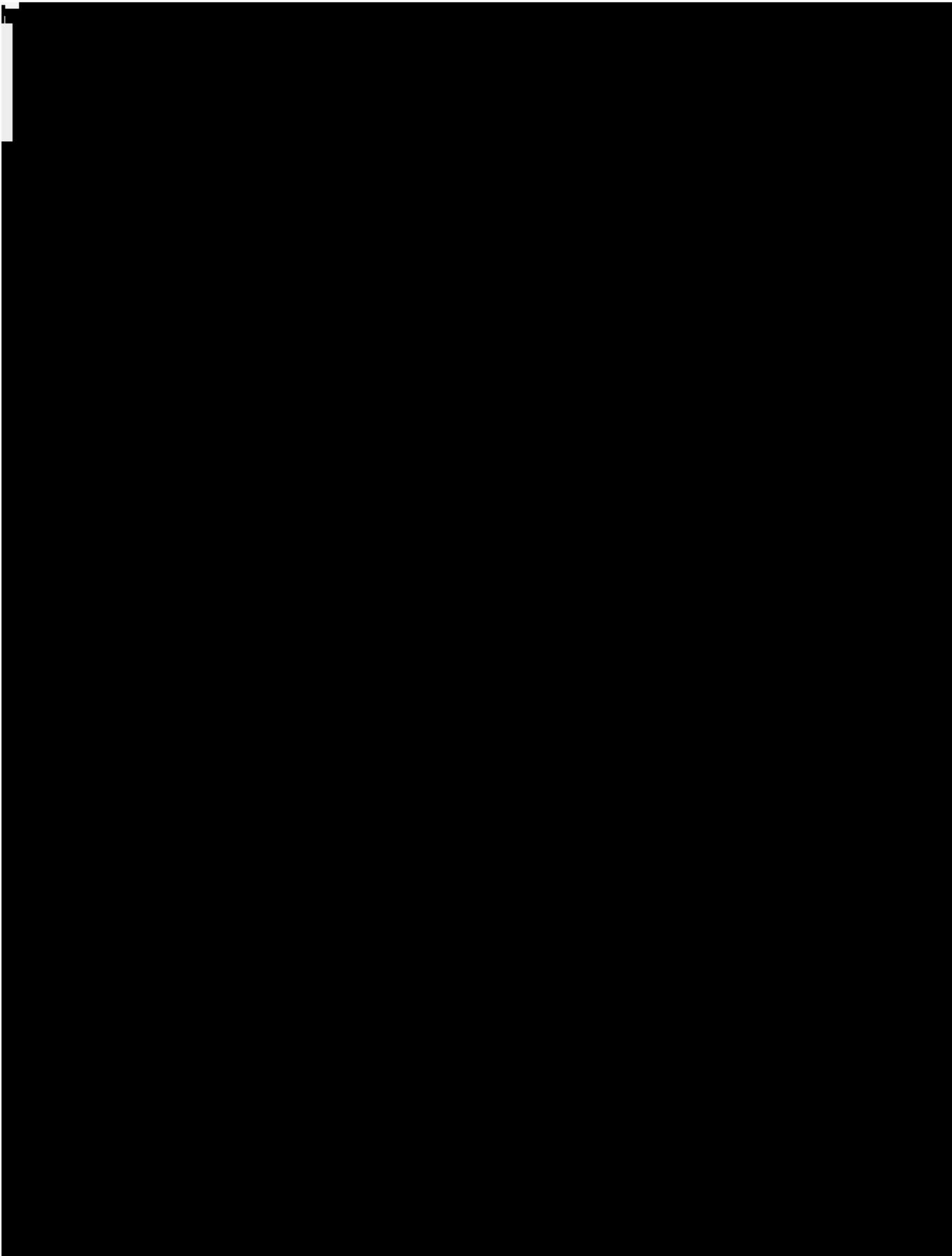


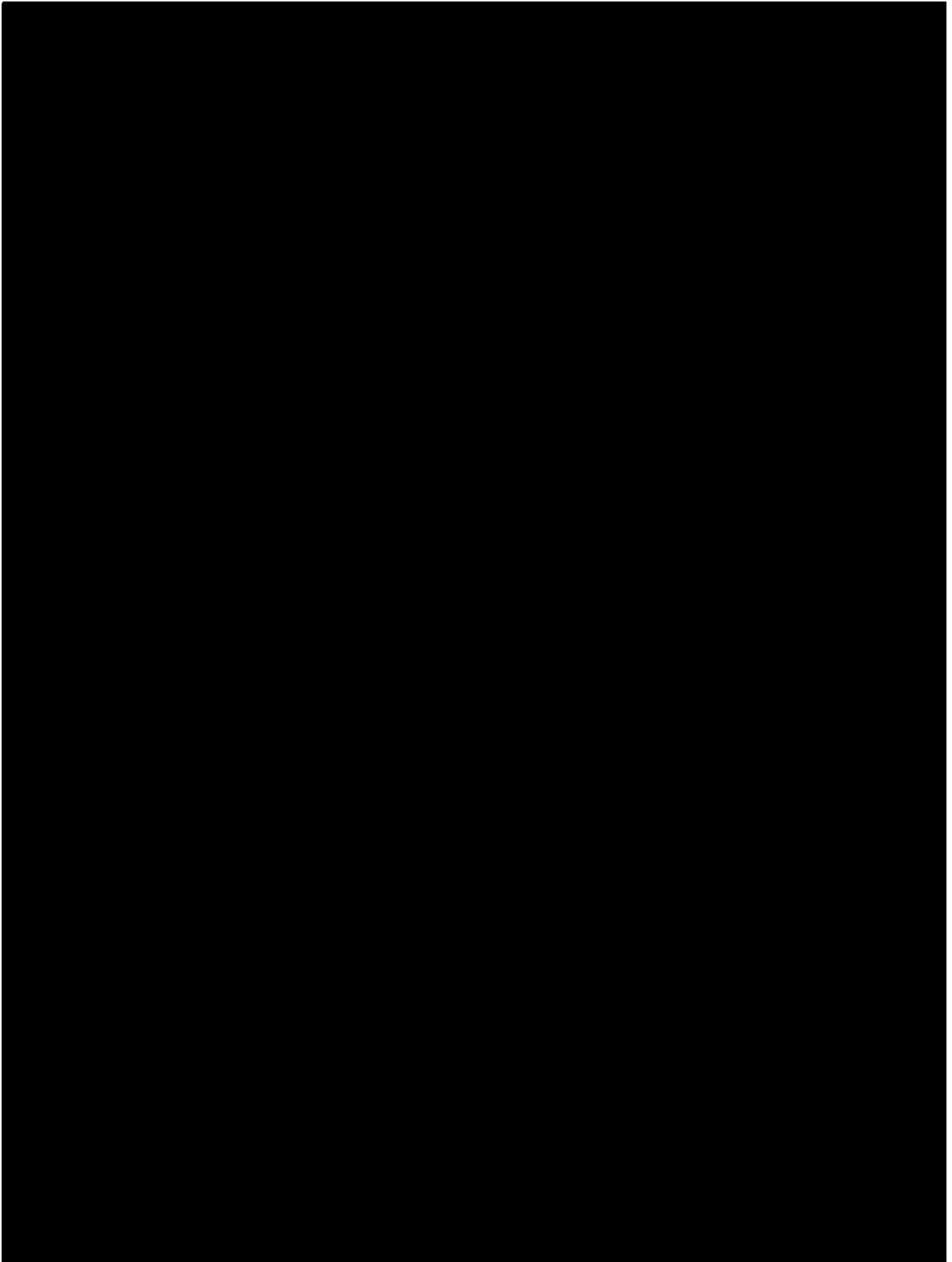


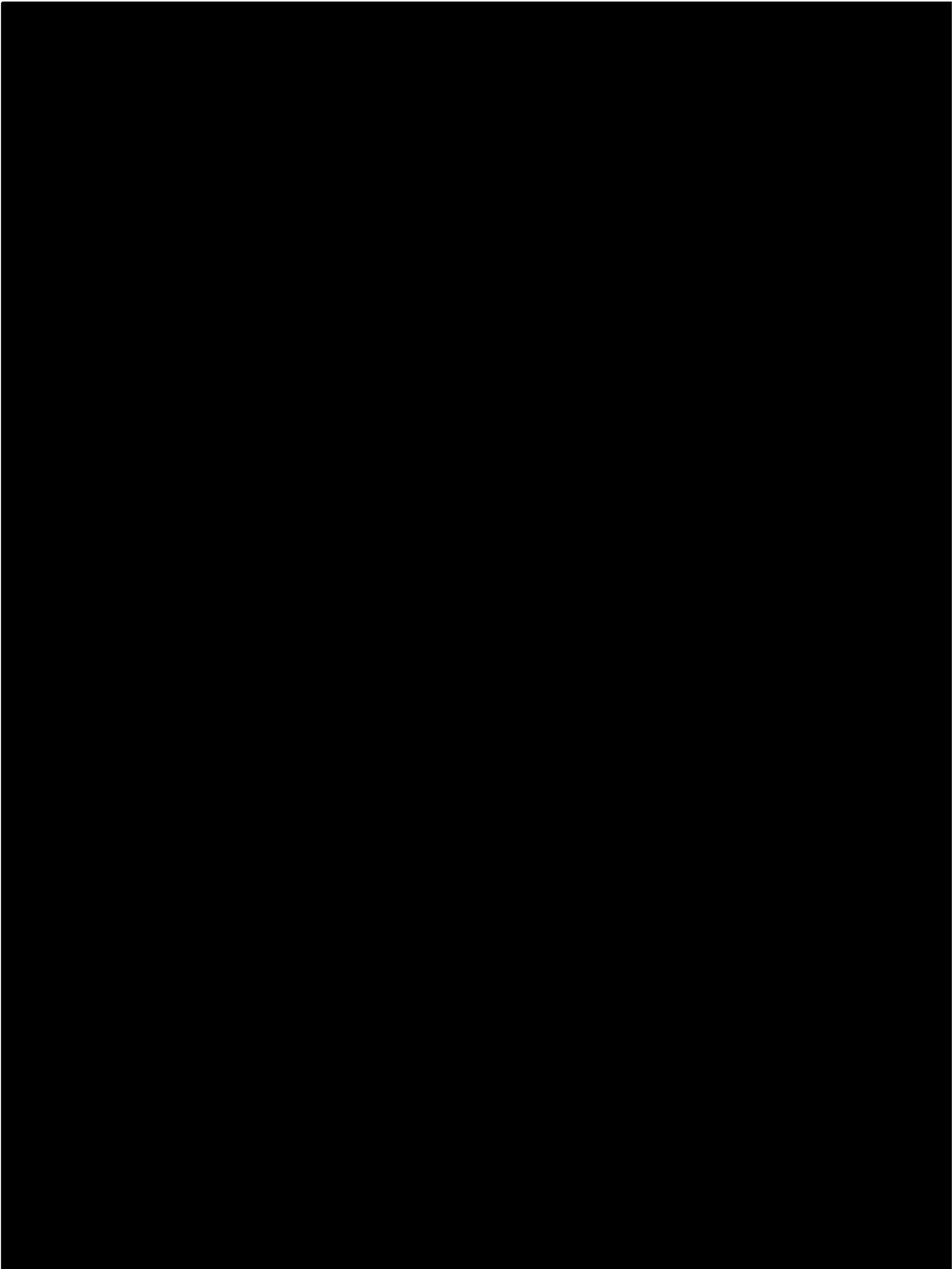


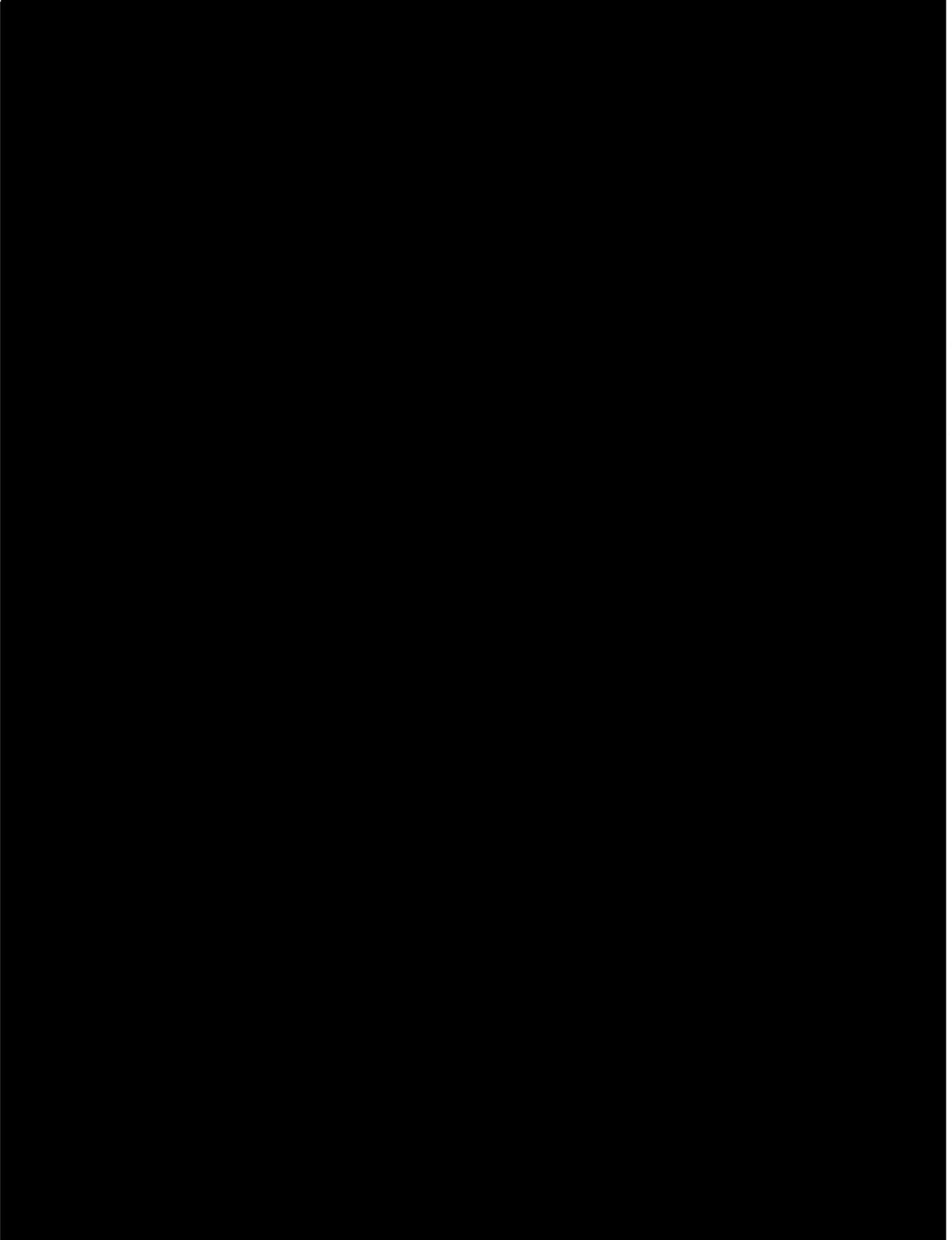


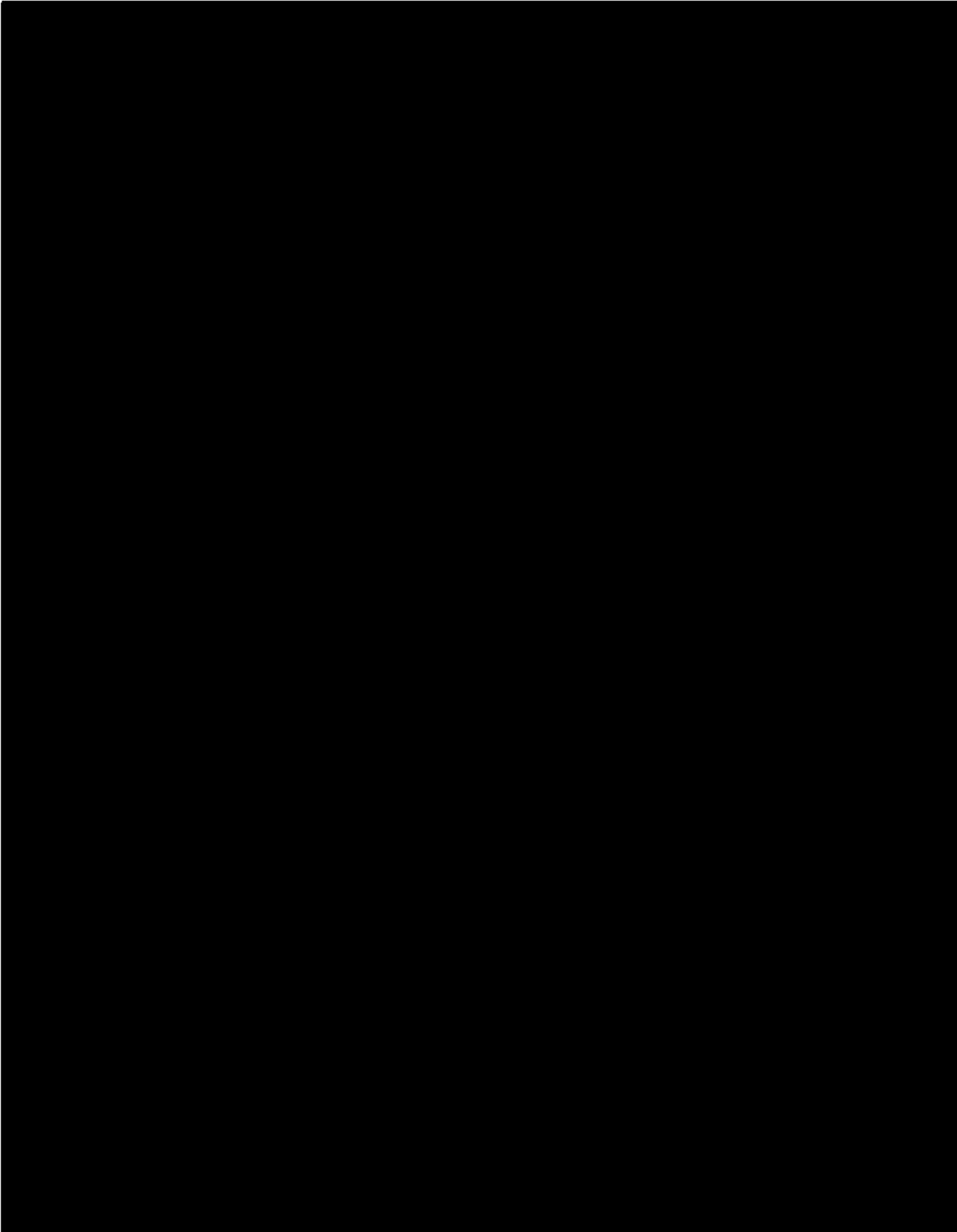


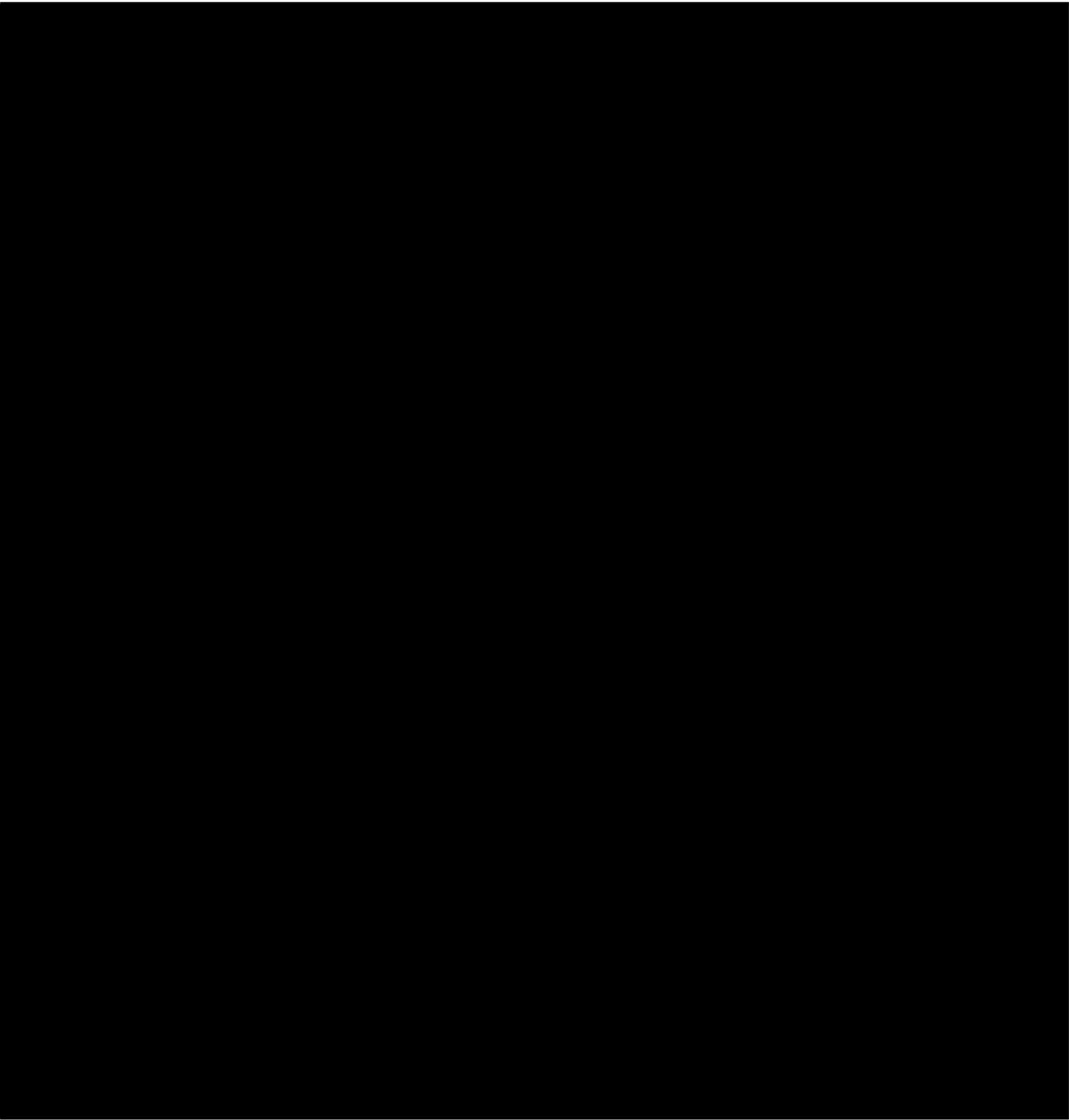












(b) (6)  


Michael D. Young  
Arbitrator

DATED: June 8, 2018  
New York, New York

State of New York  
County of New York

I, Michael D. Young, do hereby affirm upon my oath as Arbitrator, that I am the individual described in, and who executed, this instrument which is my FINAL AWARD in this matter.

Date: June 8, 2018  
New York, New York

(b) (6)

\_\_\_\_\_  
Michael D. Young  
Arbitrator

**PROOF OF SERVICE BY EMAIL & U.S. MAIL**

Re: Graham, Colleen, et al. vs. Palantir Technologies, Inc., et al.  
Reference No. 1425025009

I, Vickie Johnston, not a party to the within action, hereby declare that on June 8, 2018, I served the attached Final Award on the parties in the within action by Email and by depositing true copies thereof enclosed in sealed envelopes with postage thereon fully prepaid, in the United States Mail, at New York, NEW YORK, addressed as follows:

Robert Kraus Esq.  
Kraus & Zuchlewski LLP  
60 East 42nd Street, Suite 2534  
New York, NY 10165  
Phone: 212-869-4646  
rk@kzlaw.net  
Parties Represented:  
Colleen Graham

Jay P. Lefkowitz Esq.  
Kirkland & Ellis LLP  
601 Lexington Ave.  
New York, NY 10022  
Phone: 212-446-4800  
lefkowitz@kirkland.com  
Parties Represented:  
Palantir Technologies

Joseph Serino Jr. Esq.  
Latham & Watkins LLP  
885 Third Ave.  
Suite 1000  
New York, NY 10022-4068  
Phone: 212-906-1200  
joseph.serino@lw.com  
Parties Represented:  
Credit Suisse First Boston Next Fund, Inc.

Jim Fulton Esq.  
Cooley LLP  
The Grace Building  
1114 Avenue of the Americas  
New York, NY 10036-7798  
Phone: 212-479-6000  
fultonjf@cooley.com  
Parties Represented:  
Signac LLC

I declare under penalty of perjury the foregoing to be true and correct. Executed at New York, NEW YORK on June 8, 2018.

(b) (6)

Vickie Johnston  
VJohnston@jamsadr.com

**Exhibit 2**

**Petition to Vacate Excerpts**

SUPREME COURT OF THE STATE OF NEW YORK  
NEW YORK COUNTY

-----X  
COLLEEN GRAHAM,

Petitioner,

-against-

CREDIT SUISSE FIRST BOSTON NEXT FUND INC.,  
PALANTIR TECHNOLOGIES, INC. and SIGNAC LLC,

Respondents.  
-----X

**NOTICE OF PETITION**

Index. No.

Oral Argument Requested

**PLEASE TAKE NOTICE**, that upon the annexed Verified Petition and the exhibits annexed thereto, Petitioner, Colleen Graham ("Graham"), through her attorneys, Kraus & Zuchlewski LLP, will petition this Court, at the Motion Submission Part Courtroom (Room 130); located at 60 Centre Street, New York, New York, on the 7<sup>th</sup> day of April 2019 at 9:30 o'clock in the forenoon, or as soon thereafter as counsel may be heard for an Order, pursuant to CPLR §7511(b)(1)(i):

- a. vacating the arbitrator's award dated June 8, 2018 on the grounds that the rights of Petitioner were prejudiced by fraud and or misconduct in procuring the award;
- b. directing a rehearing of the arbitration by the same JAMS arbitrator who originally heard the matter; and
- c. granting Petitioner such other and further relief as this Court may deem just and proper.

**PLEASE TAKE FURTHER NOTICE** that, pursuant to C.P.L.R. § 403(b), answering papers, if any, shall be served at least seven (7) days before the return date of this petition.

Dated: New York, New York  
March 8, 2019

Respectfully Submitted,

KRAUS & ZUCHLEWSKI LLP

By: /s/ Robert D. Kraus  
Robert D. Kraus  
*Attorneys for Petitioner*  
One Grand Central Place  
60 East 42<sup>nd</sup> Street, Suite 2534  
New York, New York 10165

To:

Joseph Serino, Jr., Esq.  
Latham & Watkins LLP  
885 Third Avenue  
New York, NY 10022-4834

Jay Lefkowitz, Esq.  
Kirkland & Ellis, LLP  
601 Lexington Avenue  
New York, New York 10022

Jim Fulton, Esq.  
Cooley LLP  
1114 Avenue of the Americas  
New York, New York 10036

SUPREME COURT OF THE STATE OF NEW YORK  
NEW YORK COUNTY

-----X  
COLLEEN GRAHAM,

Petitioner,

**VERIFIED PETITION  
TO VACATE**

-against-

Index. No.

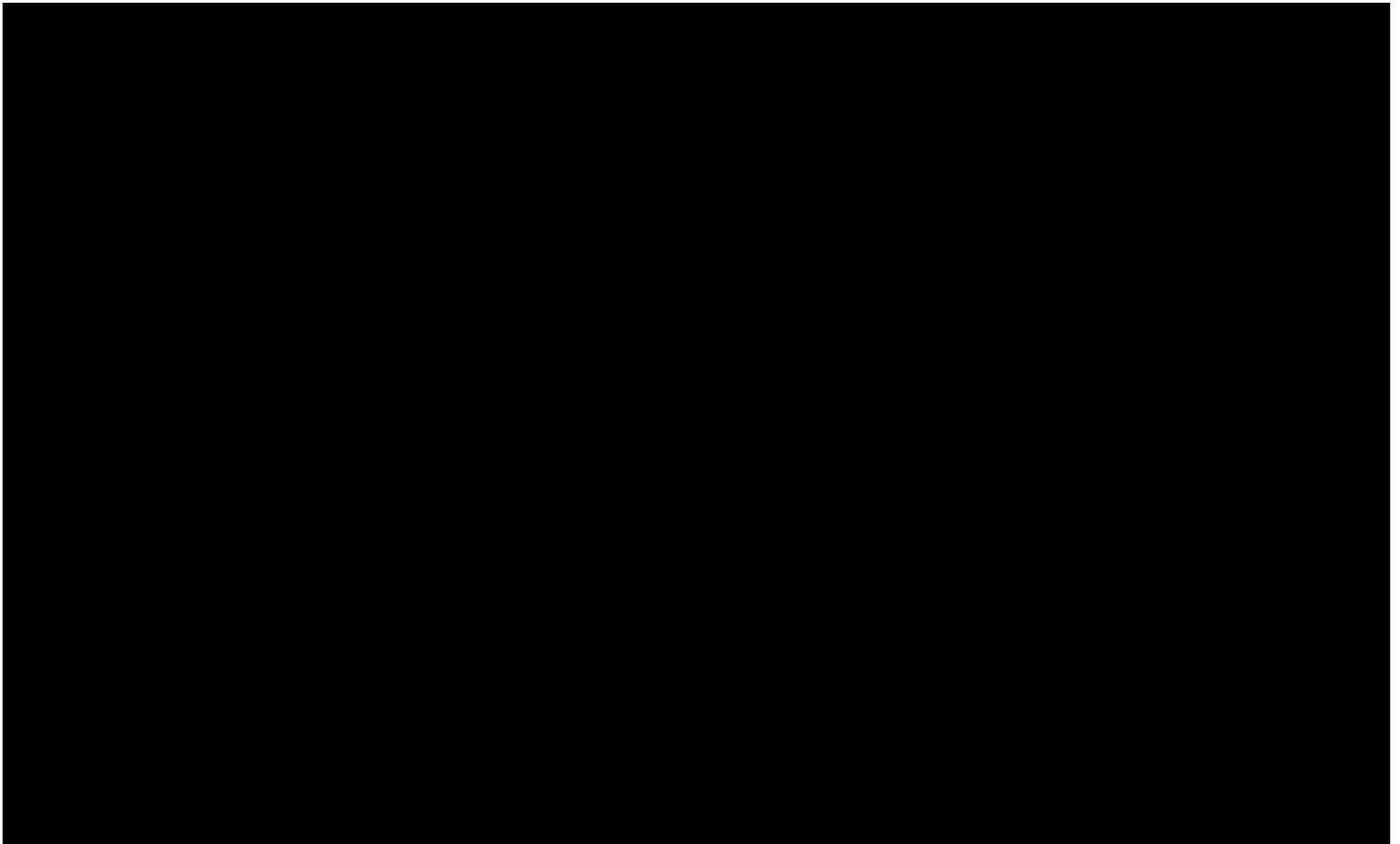
CREDIT SUISSE FIRST BOSTON NEXT FUND INC.,  
PALANTIR TECHNOLOGIES, INC. and SIGNAC LLC,

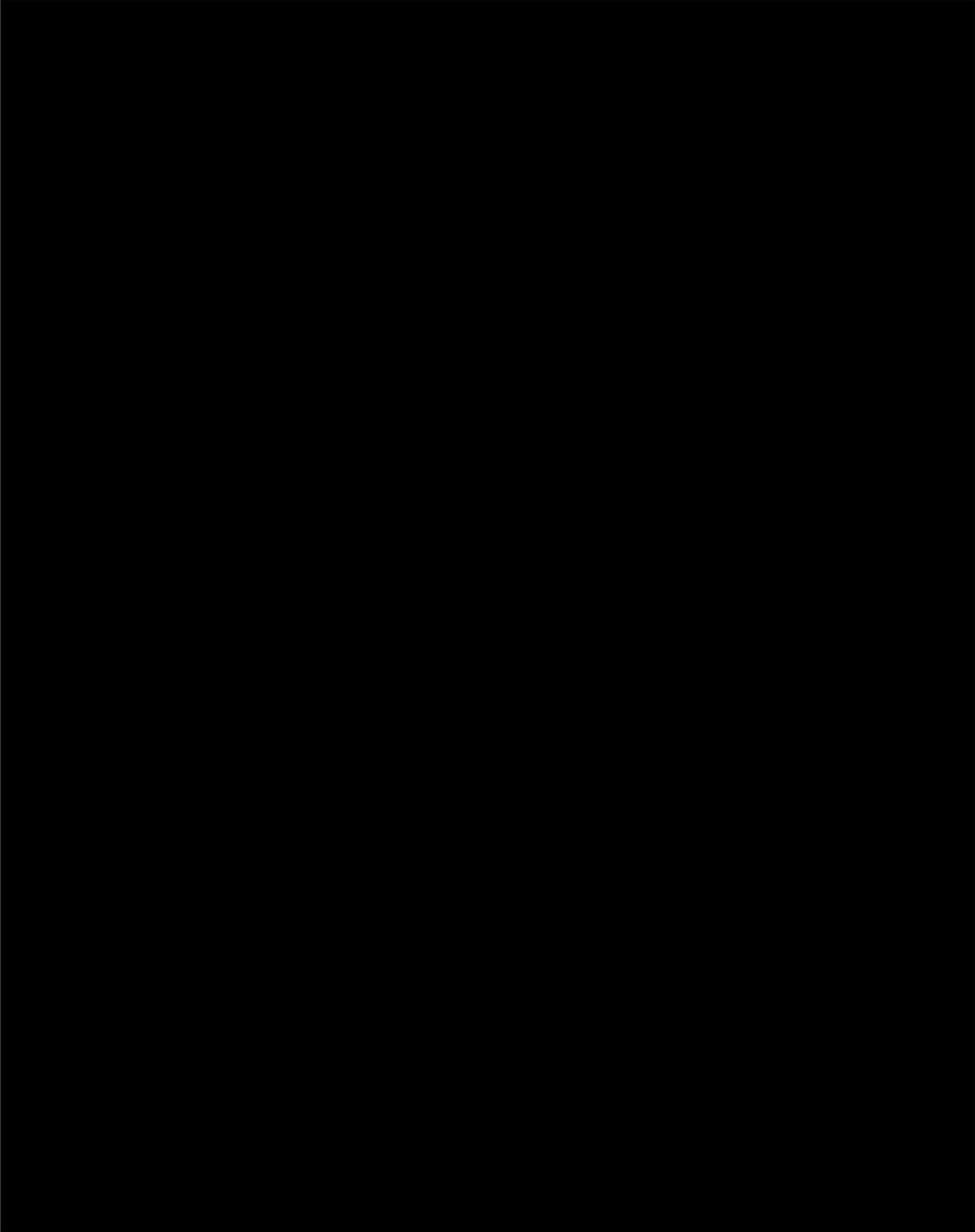
Oral Argument Requested

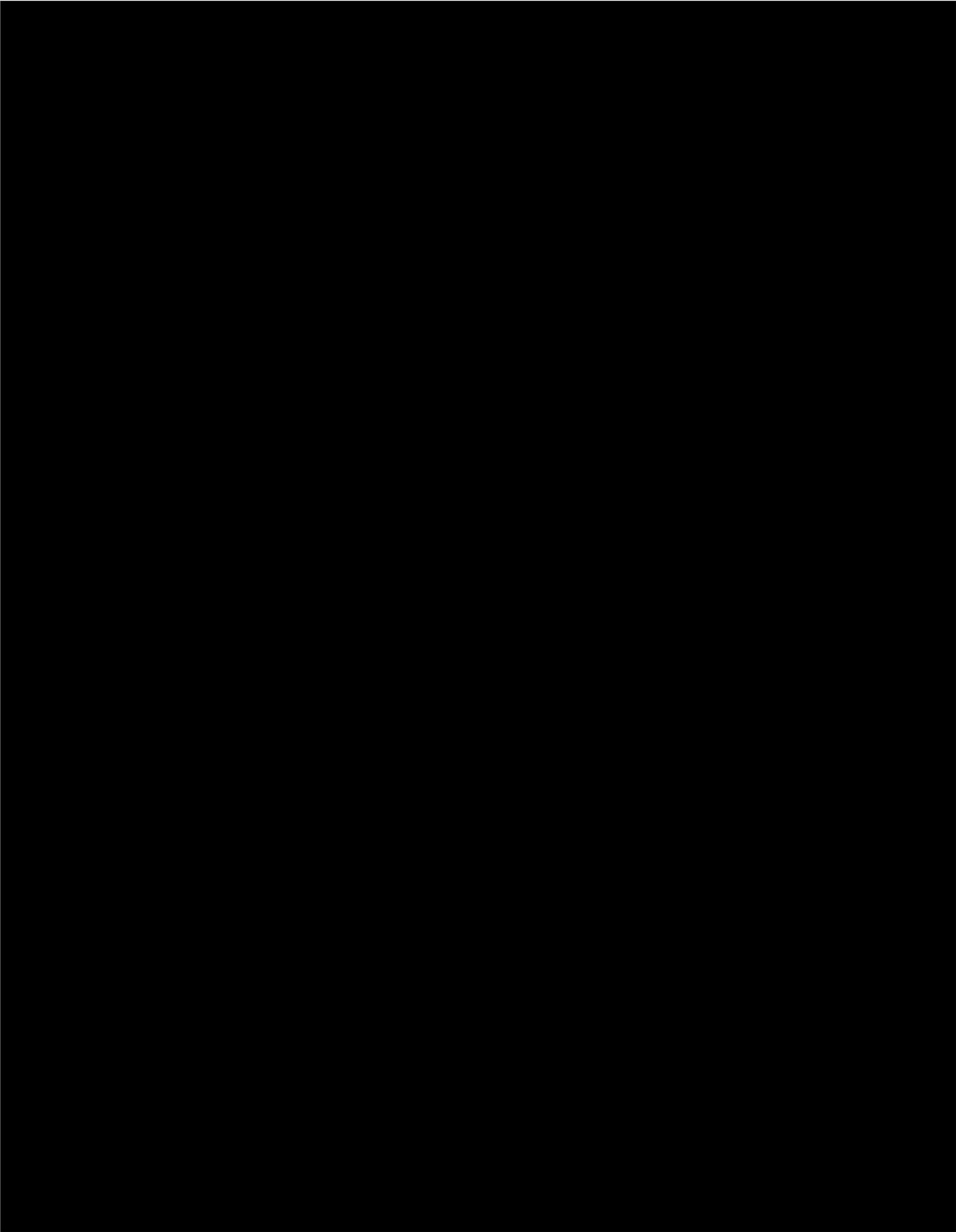
Respondents.

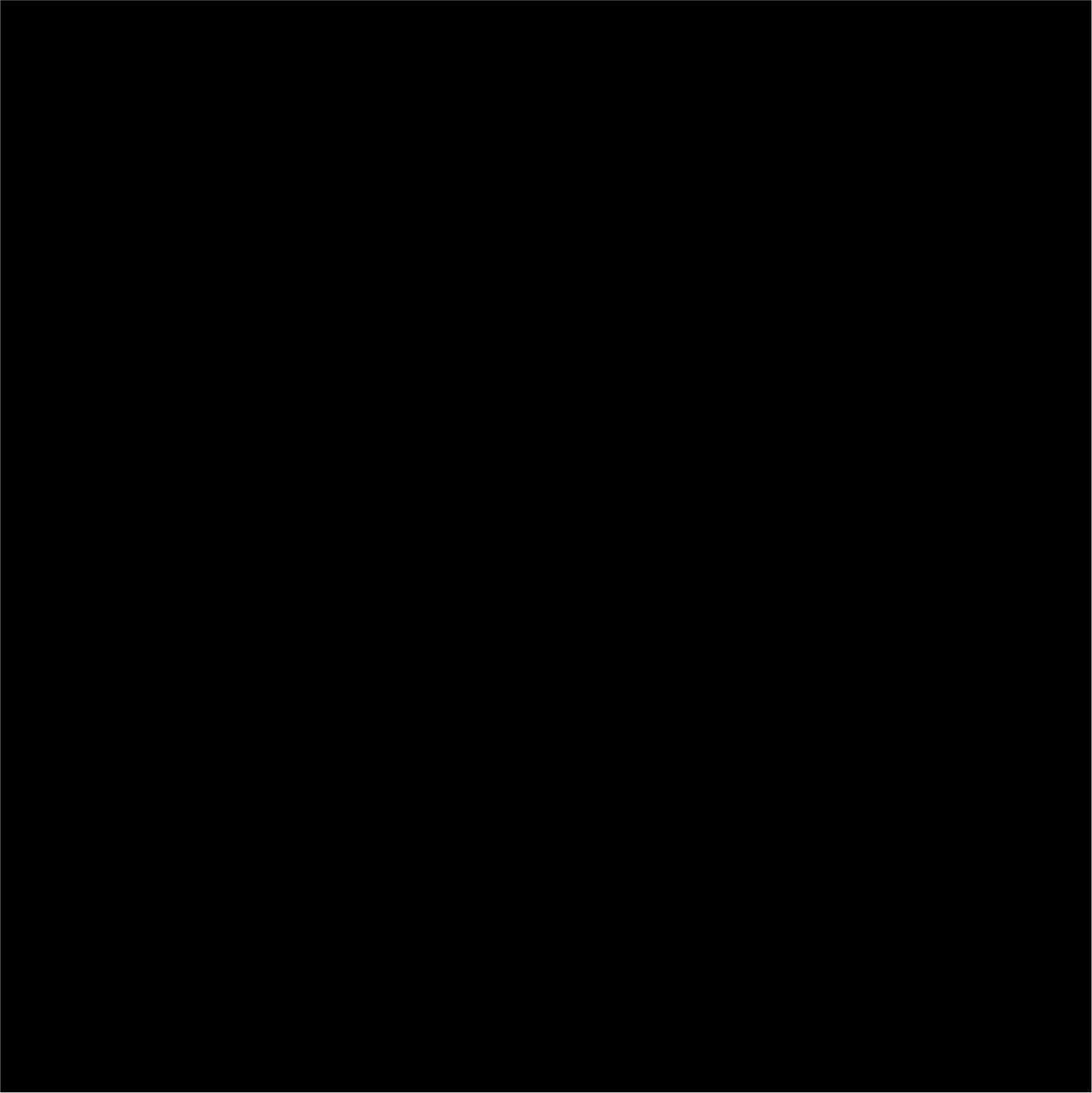
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Petitioner Colleen Graham (“Graham”), by and through her undersigned attorneys, as and for her Verified Petition against Respondents Credit Suisse First Boston Next Fund Inc. (“CS”), Palantir Technologies, Inc. (“Palantir”) and Signac LLC (“Signac”) (collectively, “Respondents”), respectfully alleges as follows:



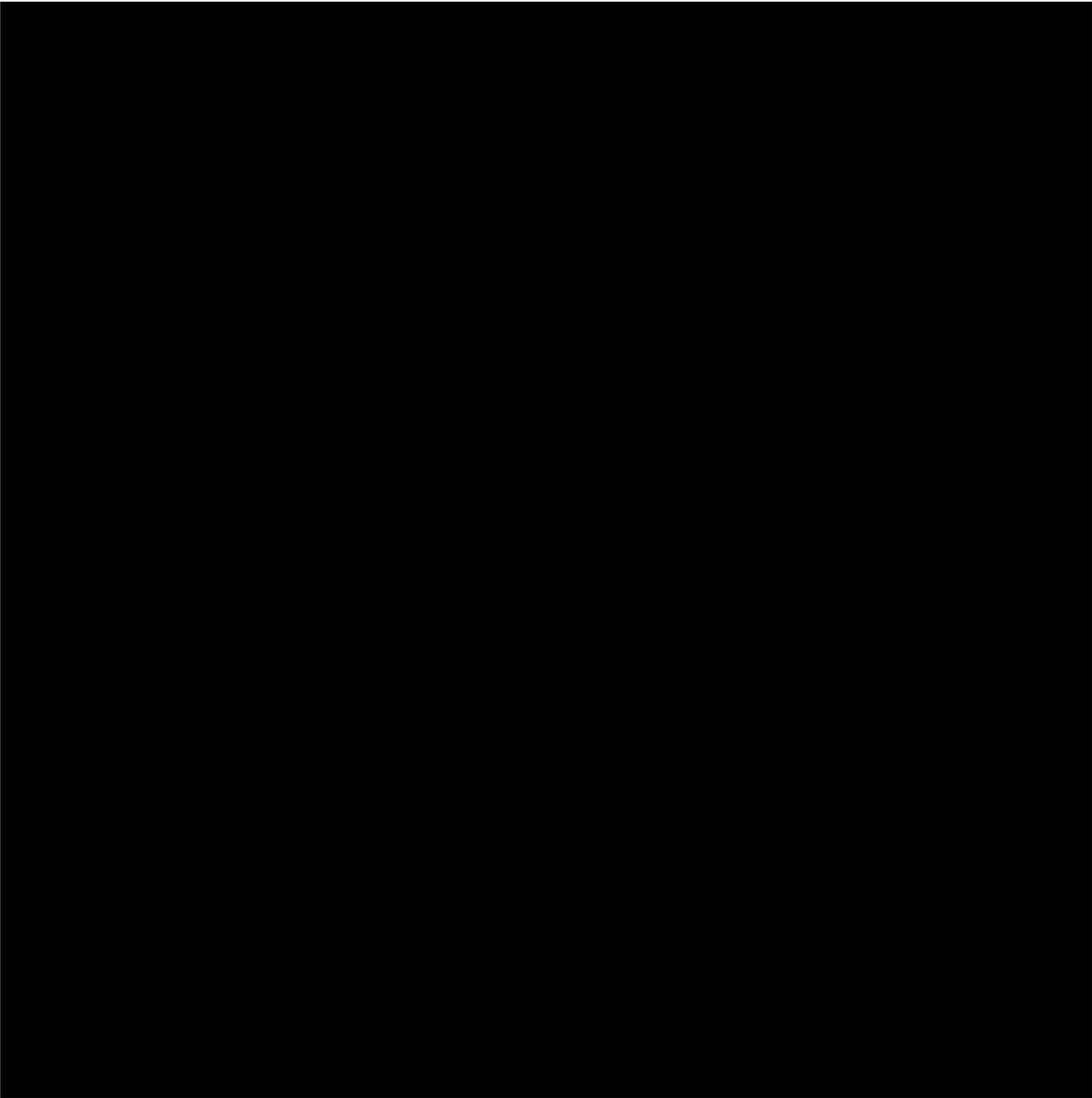


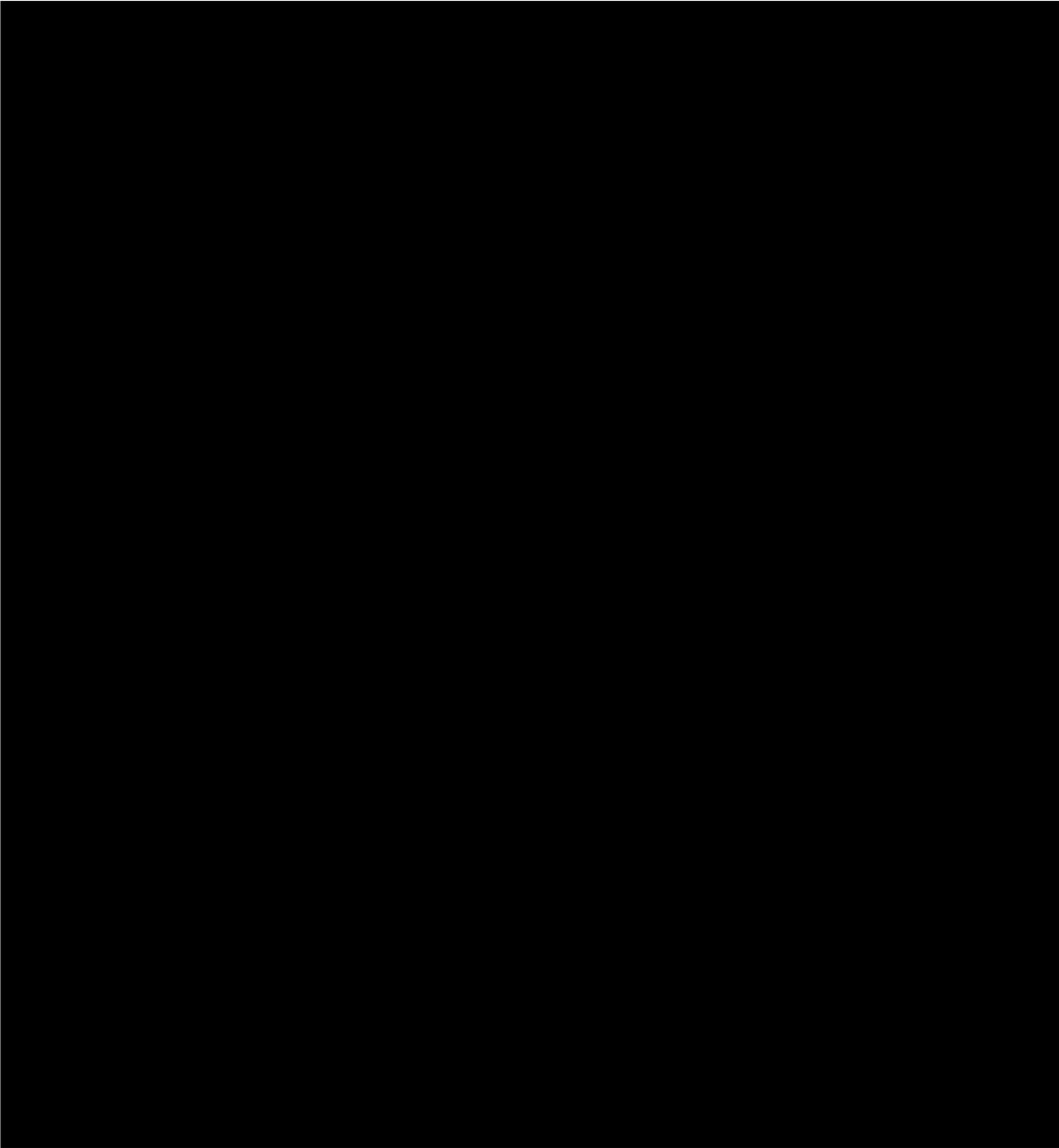


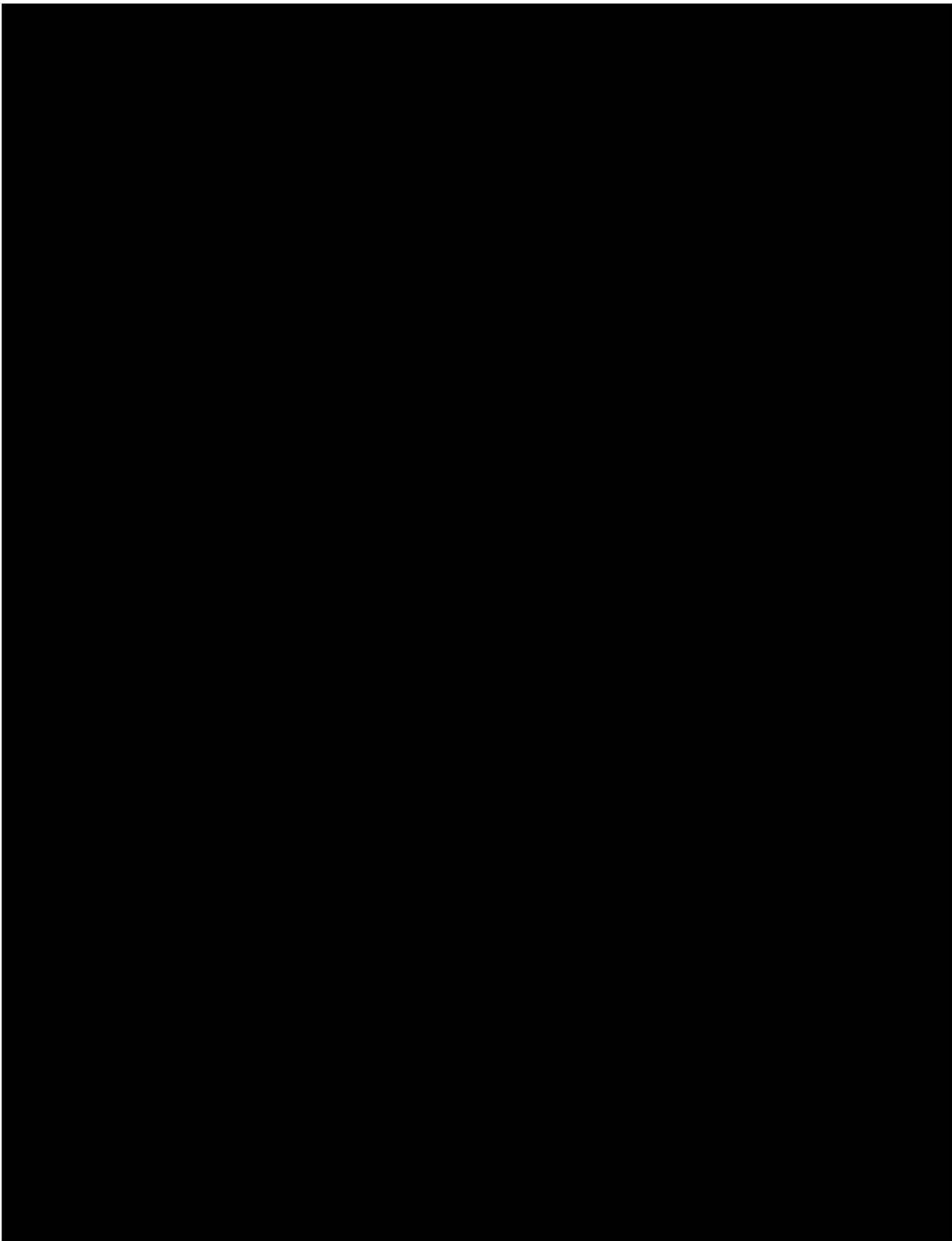












**Exhibit 3**

**New York Court Transcript Excerpts**

1 SUPREME COURT OF THE STATE OF NEW YORK

2 COUNTY OF NEW YORK: TRIAL TERM PART 35

3 ----- X

4 ANONYMOUS,

Petitioner,

- against -

7 ANONYMOUS,

Respondent.

9 ----- X

10 Index No. 651410/2019

\*\*\* SEALED RECORD \*\*\*

11 June 6, 2019  
60 Centre Street  
New York, New York 10007

12 B E F O R E: THE HONORABLE CAROL R. EDMEAD, Justice

13 A P P E A R A N C E S:

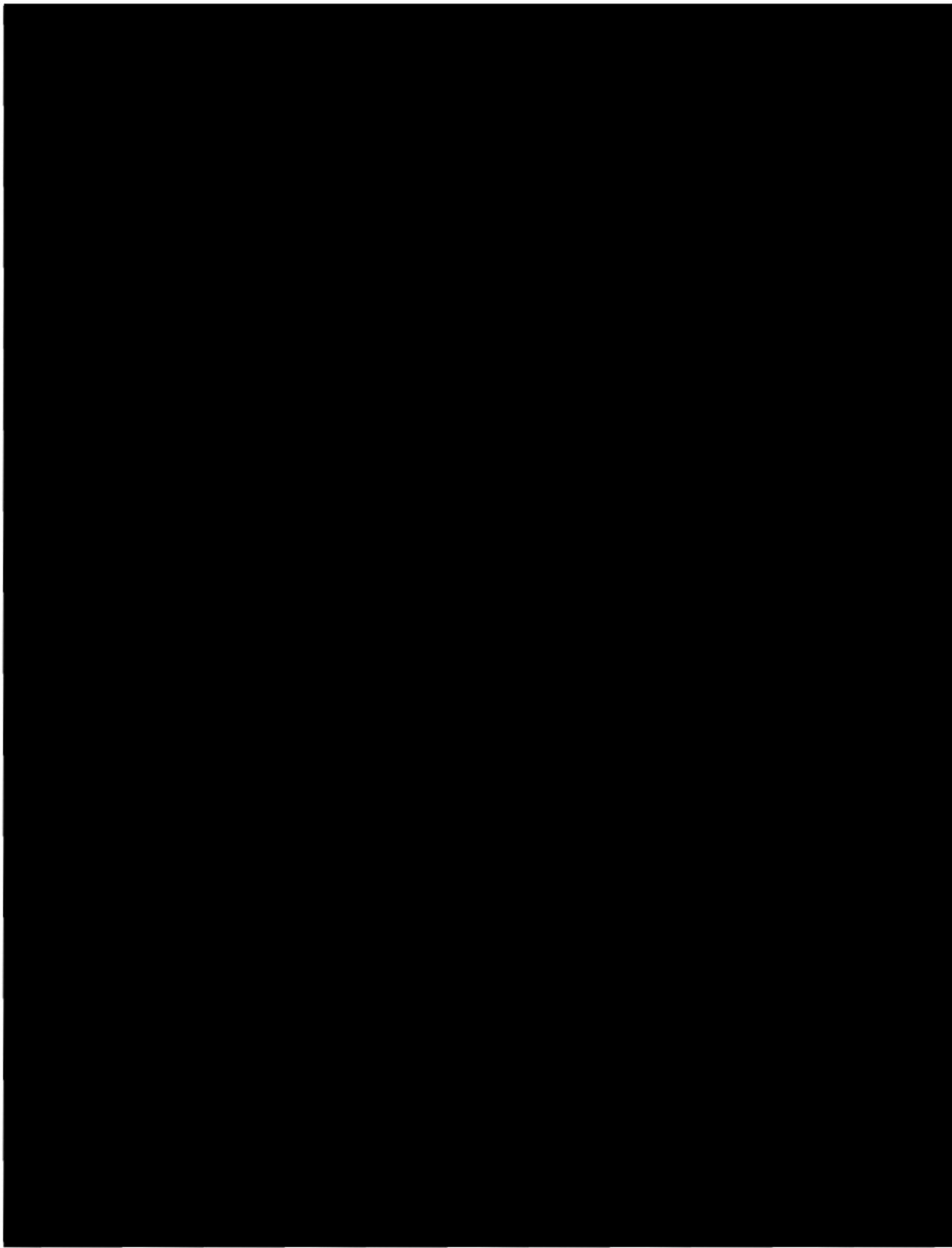
14 KRAUS & ZUCHLEWSKI LLP  
15 Attorneys at Law  
60 East 42nd Street, Suite 2514  
16 New York, New York 10165  
BY: ROBERT KRAUS, ESQ.  
17 DESIREE J. GUSTAFSON, ESQ.

18 LATHAM & WATKINS LLP  
19 Attorneys at Law  
885 Third Avenue  
New York, New York 10022-4834  
20 BY: KUAN HUANG, ESQ.  
JOSEPH SERINO, ESQ.

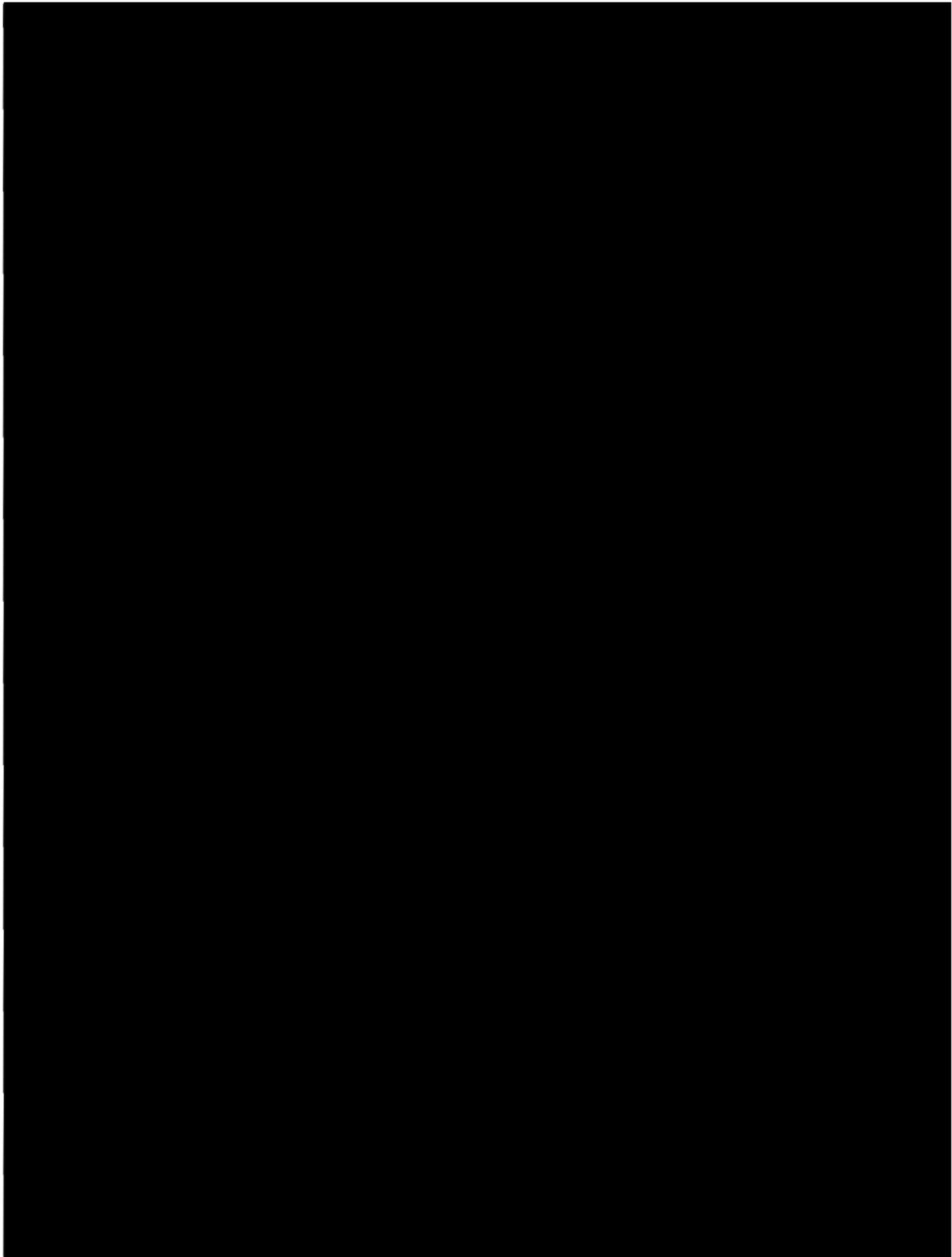
21 KIRKLAND & ELLIS LLP  
22 Attorneys at Law  
601 Lexington Avenue  
23 New York, New York 10022  
BY: JAY LEFKOWITZ, ESQ.

24 Terry-Ann Volberg, CSR, CRR  
25 Official Court Reporter

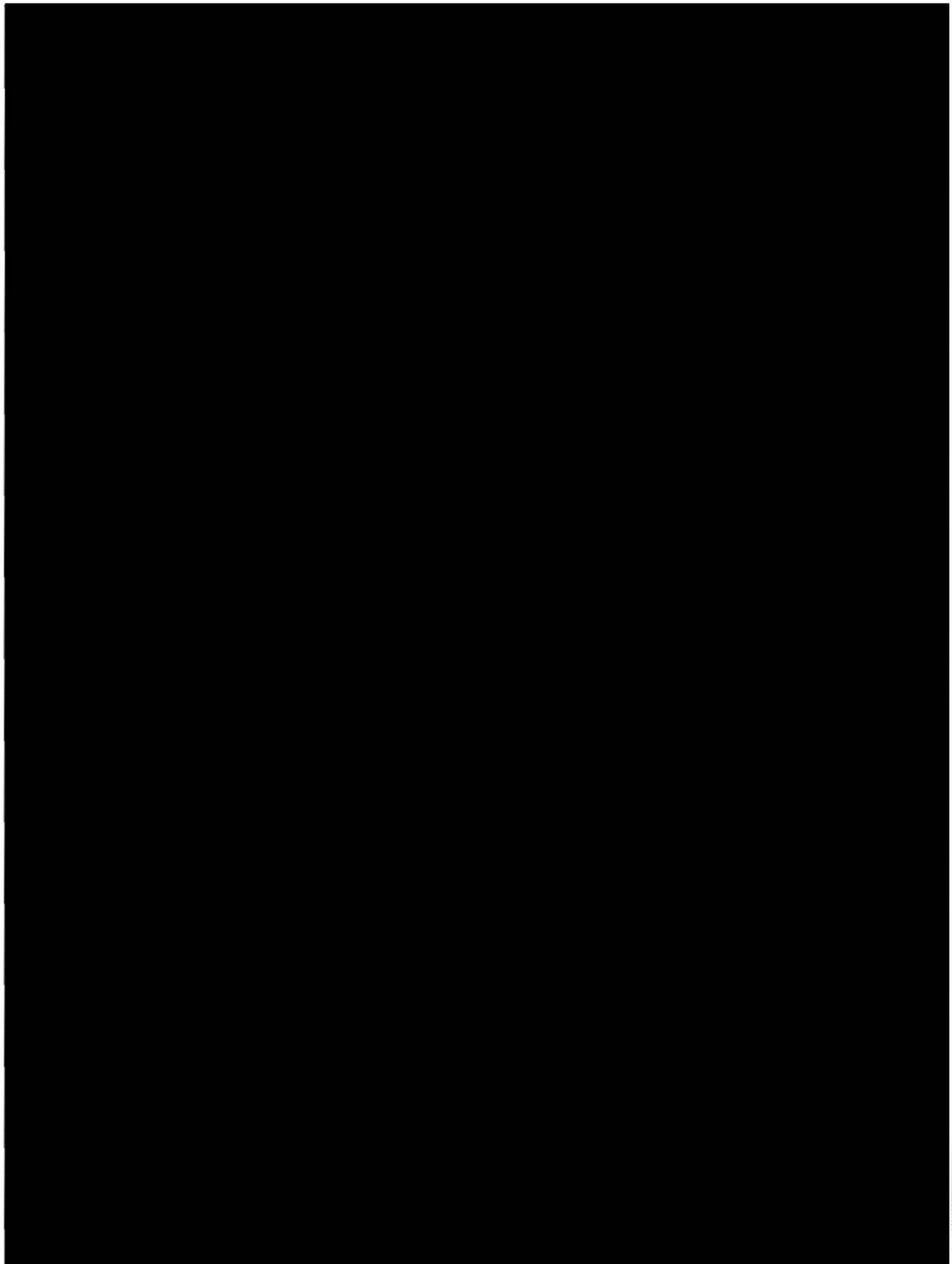
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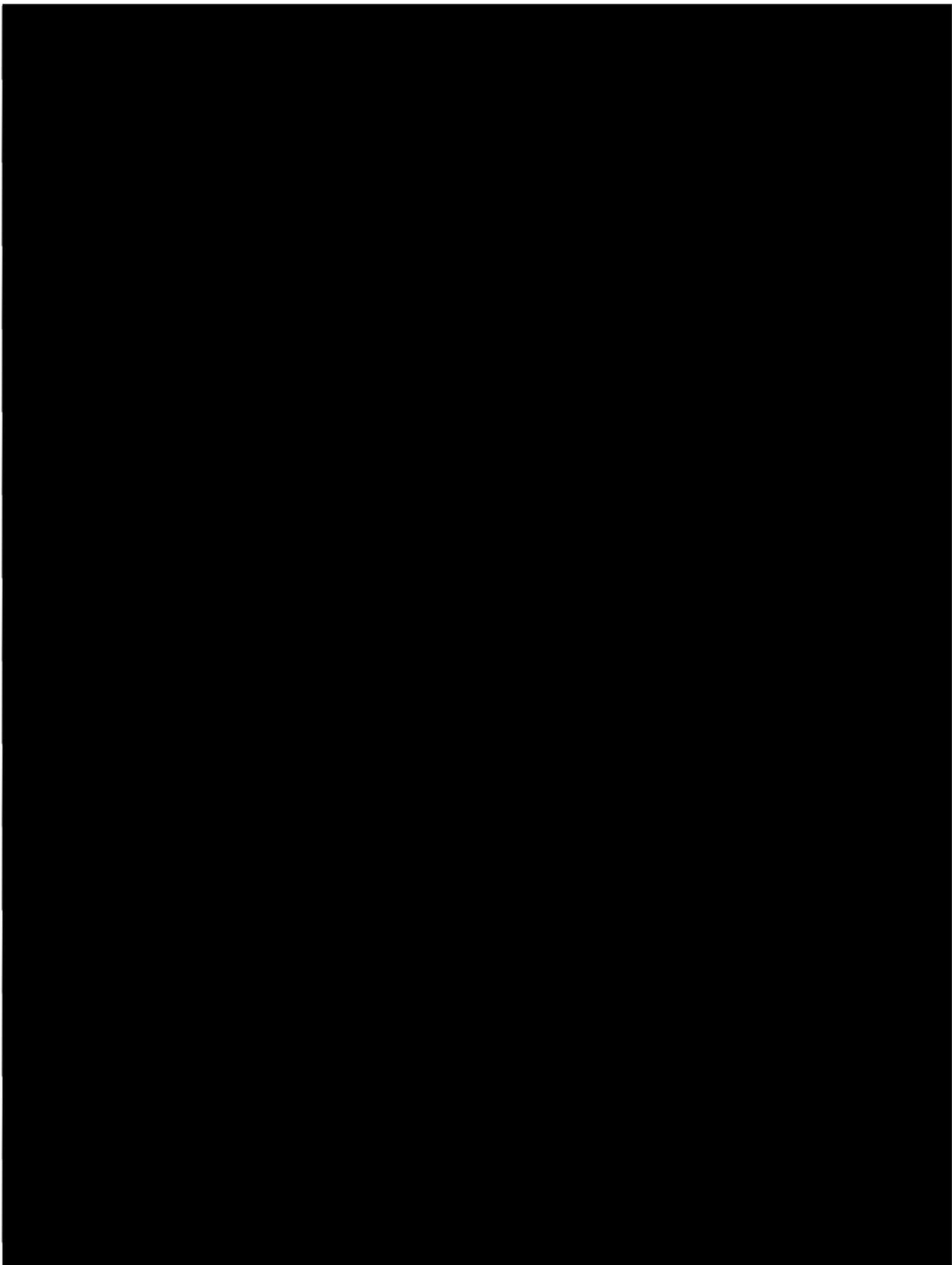
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