

~~UNCLASSIFIED//FOR OFFICIAL USE ONLY~~
MILITARY COMMISSIONS TRIAL JUDICIARY
GUANTANAMO BAY, CUBA

UNITED STATES OF AMERICA

v.

KHALID SHAIKH MOHAMMAD, WALID
MUHAMMAD SALIH MUBARAK BIN
'ATTASH, RAMZI BIN AL SHIBH, ALI
ABDUL-AZIZ ALI, MUSTAFA AHMED
ADAM AL HAWSAWI

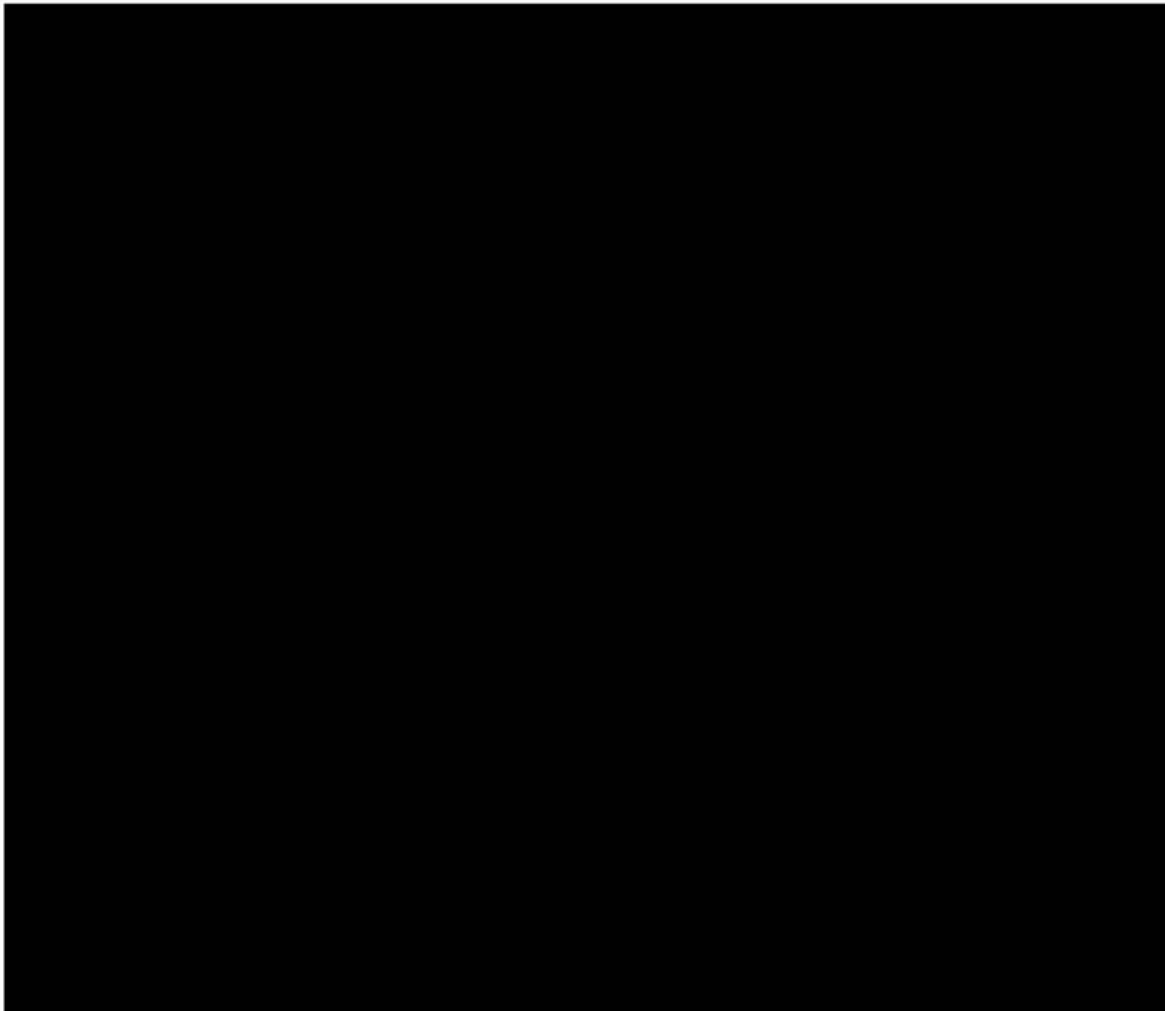
~~(U)~~ AE524HHH (AAA)

~~(U)~~ Mr. al Baluchi's Motion to Compel
Production of Witnesses Whose Testimony is
Relevant and Necessary to Address the
Legality of Protective Order #4 in
AE524RR(AAA Sup) and AE524TT(RBS
Sup).

~~(U)~~ 1 March 2019

I. ~~(U)~~ Timeliness: This motion is timely filed pursuant to Military Commissions Trial
Judiciary Rule of Court 3.7.c.(1) and Rule for Military Commission 905(b).

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4. ~~(U)~~ Burden of Proof: Mr. al Baluchi must demonstrate by a preponderance of the evidence that the requested relief is warranted.³

5. ~~(U)~~ Facts:

~~(U)~~ Mr. al Baluchi adopts the facts detailed in AE524RR(AAA Sup).

²

³ ~~(U)~~ R.M.C. 905(c)(1)-(2).

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~~UNCLASSIFIED//FOR OFFICIAL USE ONLY~~6. ~~(U)~~ Argument:

~~(U)~~ Without receiving testimony from the requested witnesses, the military commission cannot fairly rule on the question of whether Protective Order #4 allows the government to unlawfully intrude on defense investigation and prevent defense interviews with critical witnesses.

~~(U)~~ The Military Commissions Act provides that “[d]efense counsel in a military commission . . . shall have a reasonable opportunity to obtain witnesses and other evidence . . . comparable to the opportunity available to a criminal defendant in a court of the United States under article III of the Constitution.”⁴ Under the Rules for Military Commissions, the defense “is entitled to the production of any available witness whose testimony on a matter in issue on the merits or an interlocutory question would be relevant and necessary.”⁵ In Mr. al Baluchi’s request to the government for witness production, he described the necessity and relevance of the requested witnesses to the pending questions surrounding the function of Protective Order #4.⁶ Disclosures by some UFI witnesses have directly contradicted the government’s representations regarding Protective Order #4, and raised serious questions about the results summarized in FD-302s produced to the defense. The requested witnesses not only have firsthand knowledge of the interactions with dozens of UFI witnesses leading to refusals to meet with the defense and/or strict limitations on defense interviews, but will also testify regarding the transfer of information from the initial interactions with the UFI witnesses, through the CIA’s Office of General Counsel, to

⁴ ~~(U)~~ 10 U.S.C. § 949j.

⁵ ~~(U)~~ R.M.C. 703(b)(1).

⁶ ~~(U)~~ See Attachment B, Defense Request for Witness Production, AE524RR(AAA Sup) and AE524TT(RBS Sup).

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the prosecution team making representations to the military commission about the witness protocol under Protective Order #4. Mr. al Baluchi incorporates the descriptions in his witness request by reference here.

(S) In order for Protective Order #4 to function even in its extraordinarily limiting capacity, the military commission has been required to accept at face value the government's representations regarding the circumstances under which request for interviews with the UFI witnesses are made, and to convey the responses of the UFI witnesses fully and accurately. The government's representations regarding the positions of the UFI witnesses have been inconsistent and misleading; the contradictions between the government's representations and the witnesses' statements are partly due to either information being modified before trial counsel receive it, or factual modifications made by trial counsel in the process of litigation. The military commission cannot properly decide the pending questions regarding Protective Order #4 without examination of the long chain of officials directly enforcing its witness protocol. Accordingly, the witnesses requested by Mr. al Baluchi should be produced.

7. (S) **Oral Argument:** Mr. al Baluchi respectfully requests oral argument.

8. (S) **Certificate of Conference:** The government opposes this motion in accordance with the position stated in its response to the underlying discovery request.⁷

⁷ Attachment C at p. 2.

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9. ~~(U)~~ Attachments:

- A. ~~(U)~~ Certificate of Service.
- B. ~~(U)~~ 14 February 2019 Defense Request for Witness Production, AE524RR(AAA Sup) and AE524TT(RBS Sup).
- C. ~~(U)~~ 28 February 2019 Memorandum for Defense Counsel for Mr. Ali.

~~(U)~~ Very Respectfully,

//s//
JAMES G. CONNELL, III
Learned Counsel

//s//
STERLING R. THOMAS
Lt Col, USAF
Defense Counsel

//s//
ALKA PRADHAN
Defense Counsel

//s//
BENJAMIN R. FARLEY
Defense Counsel

//s//
MARK E. ANDREU
Capt, USAF
Defense Counsel

~~(U)~~ Counsel for Mr. al Baluchi

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~~(U)~~ Attachment A

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~~(U)~~ CERTIFICATE OF SERVICE

~~(U)~~ I certify that on the 1st day of March, 2019, I electronically filed the foregoing document with the Clerk of the Court and served the foregoing on all counsel of record by email.

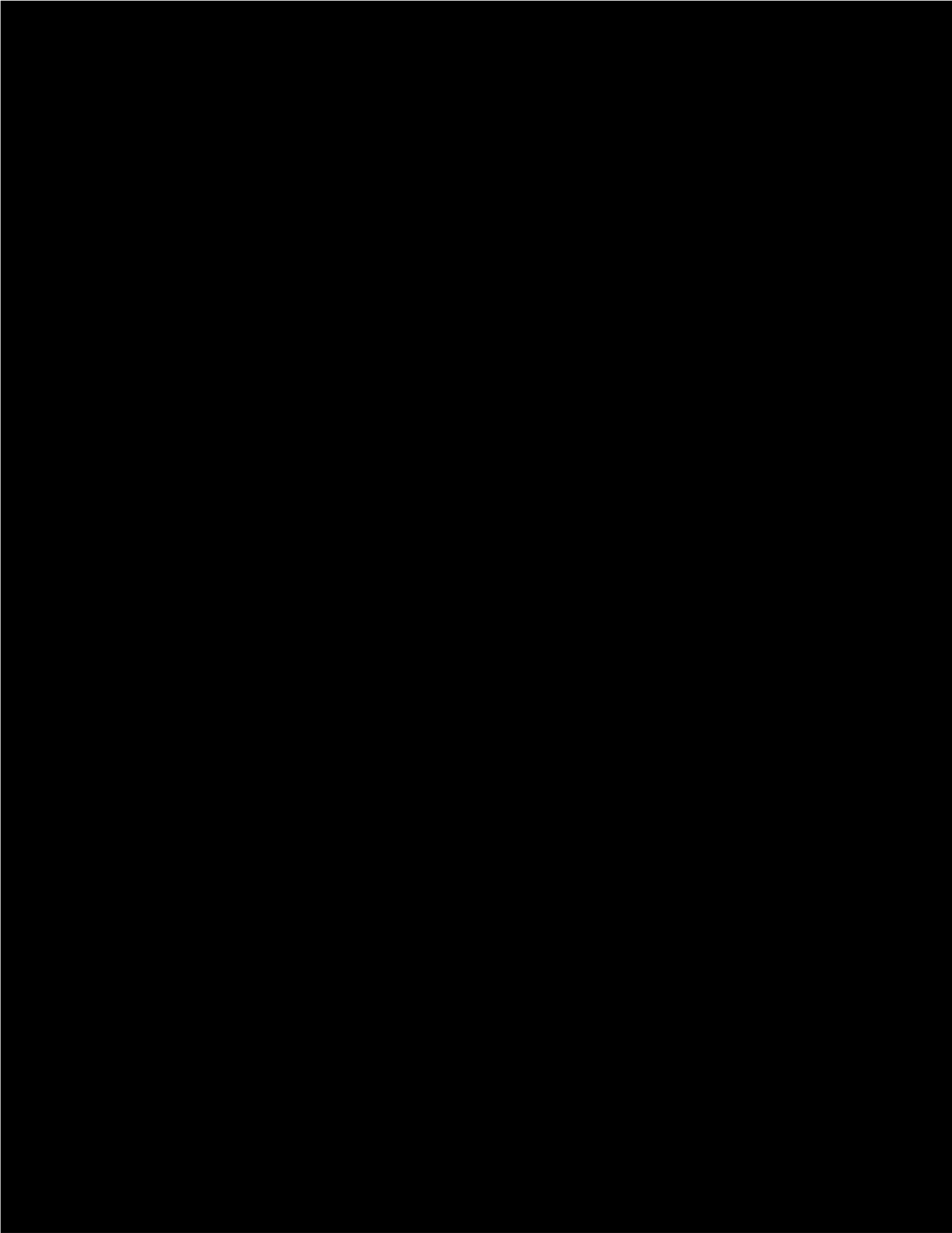
~~(U)~~ //s//
JAMES G. CONNELL, III
Learned Counsel

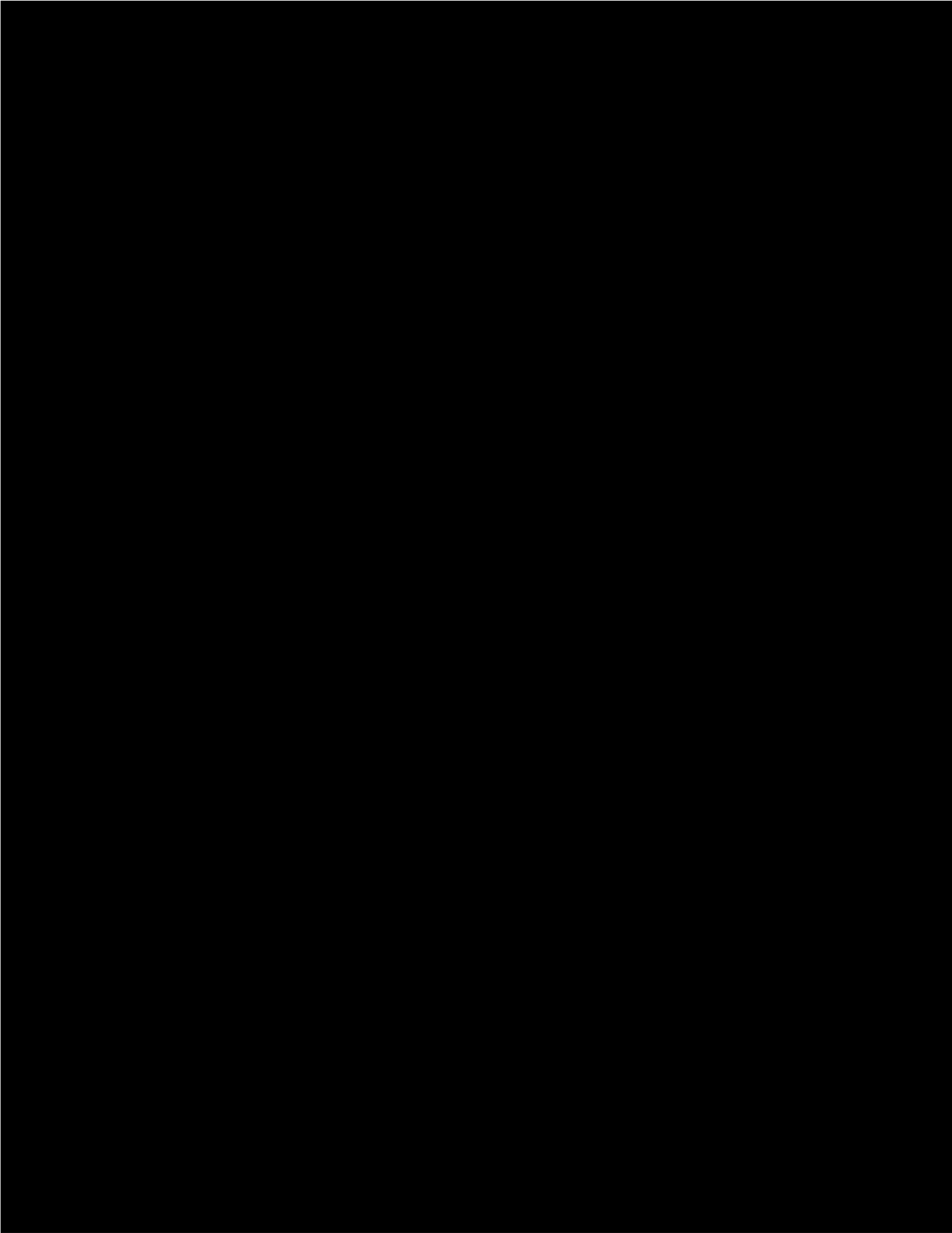
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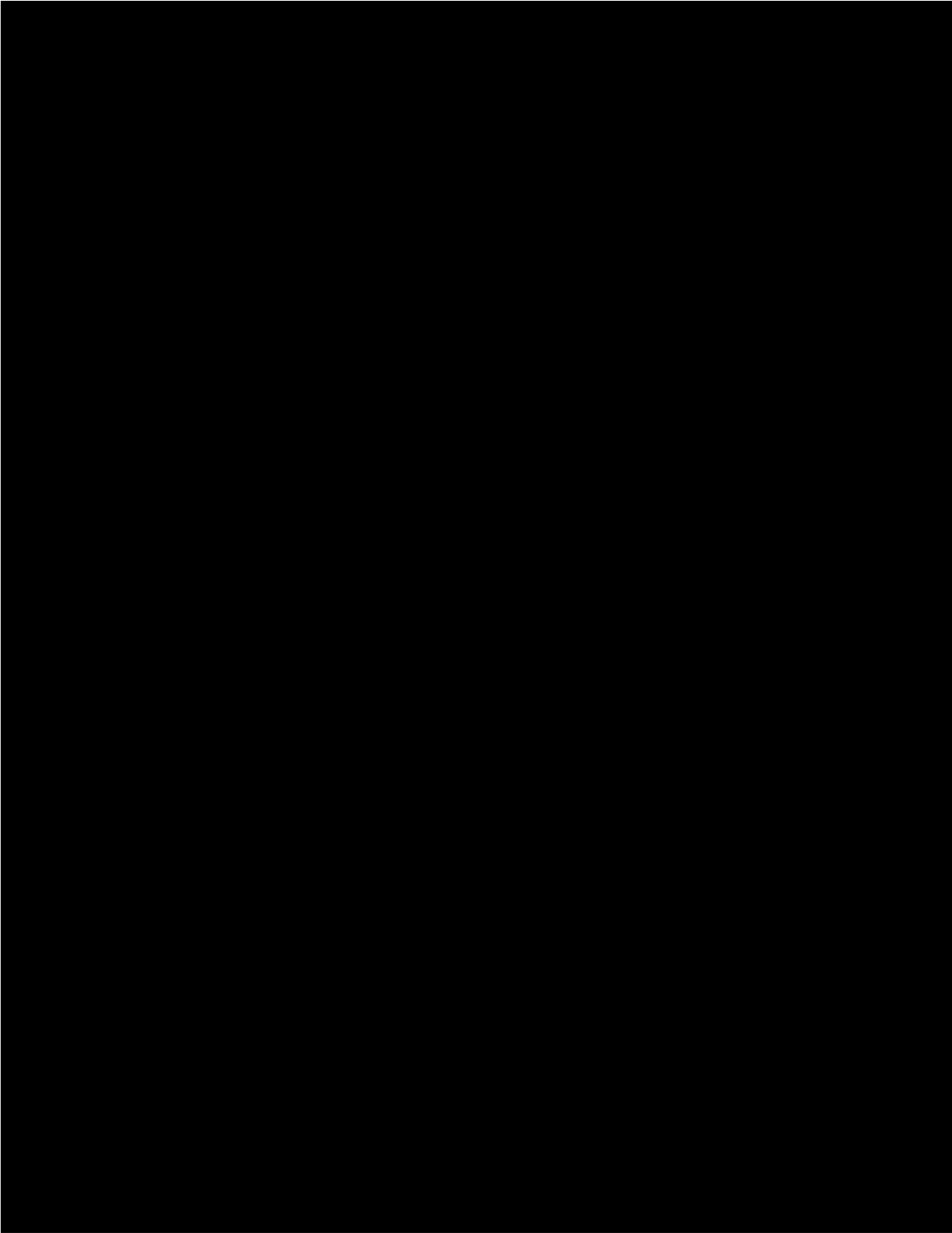
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~~(S)~~ Attachment B

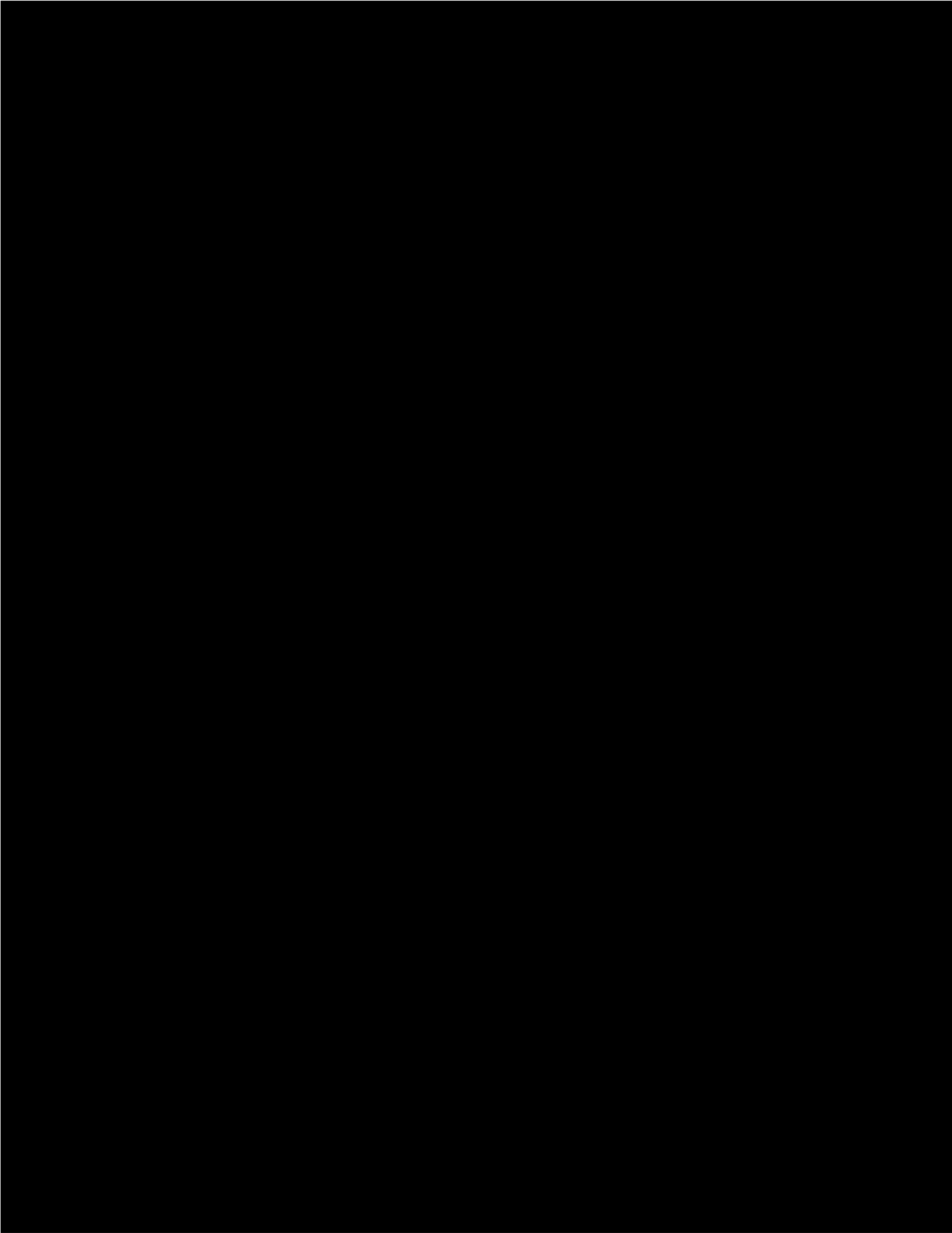
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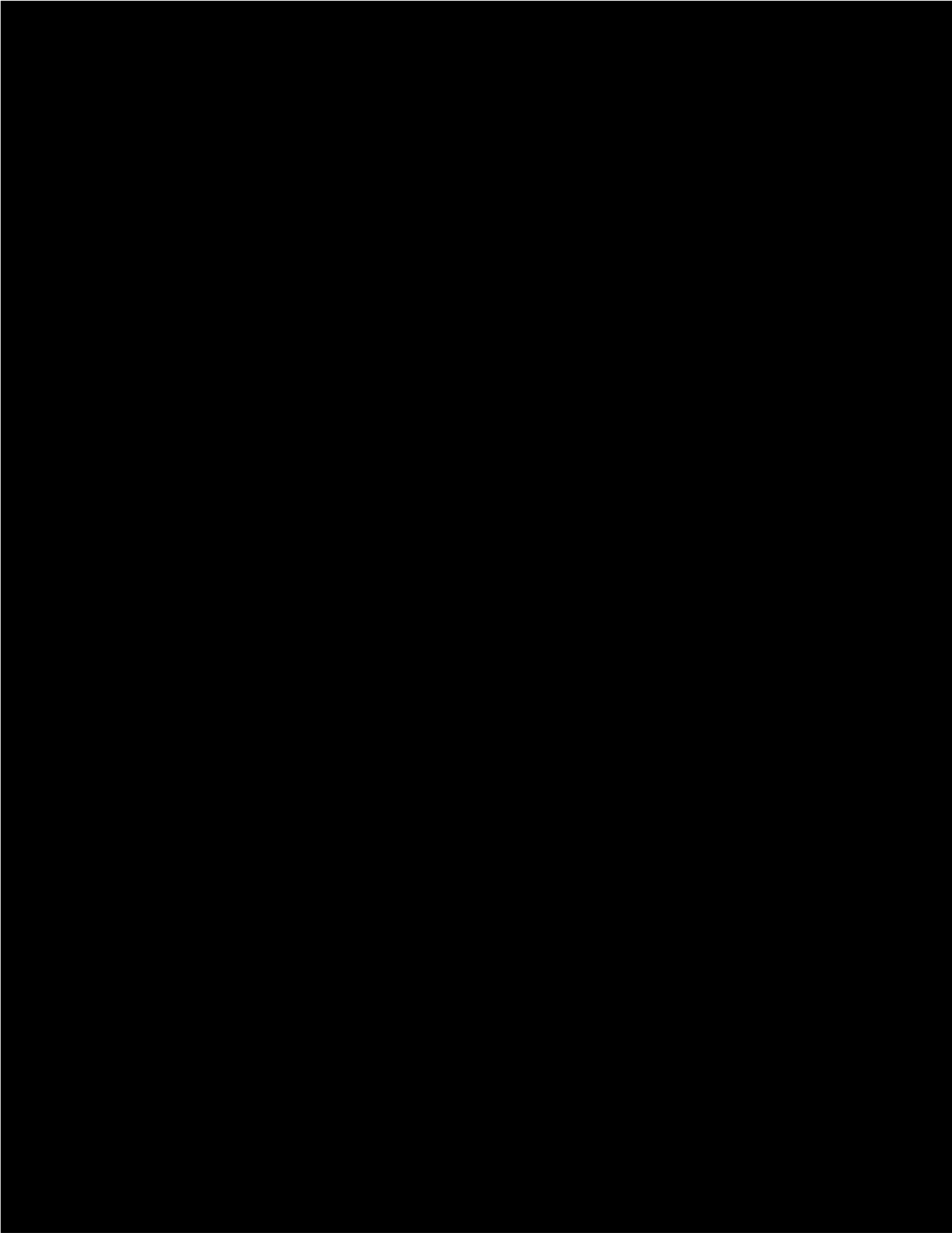
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Attachment C

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