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XRP II LLC, and Bradley Garlinghouse*

16
17 *Counsel for Lead Plaintiff Bradley Sostack*

18 UNITED STATES DISTRICT COURT
19 NORTHERN DISTRICT OF CALIFORNIA
20 OAKLAND DIVISION

21 In re RIPPLE LABS INC. LITIGATION,

Case No. 18-cv-06753-PJH

22
23 This Document Relates To:
24 ALL ACTIONS

**JOINT ADMINISTRATIVE MOTION
TO CONSIDER WHETHER CASES
SHOULD BE RELATED AND
CONSOLIDATED FOR PRETRIAL
PURPOSES**

(Civil L.R. 3-12 and 7-11)

Judge: Hon. Phyllis J. Hamilton

Pursuant to this Court’s Order, Dkt. 35 at ¶¶ 6-7, as well as Northern District of California Civil Local Rules 3-12(a) and 7-11(a), Defendants Ripple Labs Inc., XRP II, LLC, and Bradley Garlinghouse (collectively “Ripple”) and Lead Plaintiff Bradley Sostack, by and through their undersigned counsel, hereby move the Court to consider whether the recently-filed action, *Bitcoin Manipulation Abatement LLC v. Ripple Labs, Inc.* (hereinafter, “*BMA*”), is related to the putative class action, *In re Ripple Labs Inc. Litig.*, pending before this Court.¹

In order of filing date, the matters submitted for determination under Civil Local Rule 3-12(b) are as follows:

<u>Case Name</u>	<u>Case Number</u>	<u>Filing Date</u>
<i>In re Ripple Labs Inc. Litigation</i>	4:18-cv-6753-PJH	August 5, 2019 ²
<i>Bitcoin Manipulation Abatement LLC v. Ripple Labs, Inc., et. al.</i>	3:20-cv-3022-RS	May 1, 2020

Civil Local Rule 3-12(a) provides that an action is related to another “when (1) [t]he actions concern substantially the same parties, property, transaction or event; and (2) [i]t appears likely that there will be an unduly burdensome duplication of labor and expense or conflicting results if the cases are conducted before different Judges.” These criteria are met here.

To begin, Plaintiff Bitcoin Manipulation Abatement LLC’s Civil Cover Sheet concedes these two cases are related. *See* Civil Cover Sheet, *BMA*, No. 20-cv-3022 (N.D. Cal. May 1, 2020), ECF 1-1. Indeed, Defendants in both actions are identical. Likewise, plaintiff’s allegations in *BMA* suggest that it may be a member of the putative class alleged in this action. *See* Complaint, *Bitcoin Manipulation Abatement LLC v. Ripple Labs, Inc.*, No. 20-cv-3022 (N.D. Cal. May 1, 2020), ECF 1 at ¶ 181 (“Plaintiff . . . purchased XRP securities from Defendants.”). Moreover, the complaint in *BMA* is a near-verbatim copy of the operative First Amended Complaint in this action, and both actions assert the same seven causes of action. Finally, the cases share an identical theory of liability: Ripple allegedly offered, promoted, and sold XRP and were allegedly required to, but did not, register

¹ Per Civil Local Rule 7-11(a), a declaration in support of this Administrative Motion is being concurrently filed.

² Mr. Sostack filed a Consolidated Complaint in this Court on August 5, 2019, Dkt. 63, which superseded three earlier actions filed in 2018 in California Superior Court that had been removed to the Northern District of California, Dkt. 1-1, 2-1.

1 XRP with the SEC.

2 Because this action and *BMA* involve and concern nearly-identical parties, transactions, and
 3 events, it would be inefficient, unduly burdensome, and duplicative to have these cases proceed
 4 before two different judges. Relating these actions serves the interests of justice and furthers judicial
 5 economy.

6 On March 18, 2019, this Court issued an Order Regarding Publication of Notice Pursuant to
 7 the Private Securities Litigation Reform Act, 15 U.S.C. § 77z-1, Briefing Schedule On Motion For
 8 Appointment As Lead Plaintiff, Filing of Lead Plaintiffs' Consolidated Complaint And Defendants'
 9 Response To The Consolidated Complaint ("Order"). Dkt. 35. The Order provides that, once filed,
 10 "[t]he consolidated complaint shall be the operative complaint and shall supersede all complaints
 11 filed in any action consolidated into this Action." *Id.* at ¶ 4. The Court held that "[a]ll related actions
 12 that are subsequently filed in . . . this District shall be consolidated into this action for pretrial
 13 purposes," and then instructed that "[t]he parties shall file an Administrative Motion to Consider
 14 Whether Cases Should be Related pursuant to Civil L.R. 3-12 whenever a case that should be
 15 consolidated into this action is filed in . . . this District." *Id.* at ¶¶ 6-7. Thus, should the Court
 16 determine that these actions are related, it should also order the cases consolidated for pretrial
 17 purposes. *Id.*

18 For the foregoing reasons, Ripple and Mr. Sostack respectfully request that this Court order
 19 that (1) *BMA* is related to this action, and (2) the cases are consolidated for pretrial purposes consistent
 20 with this Court's prior order.

21
 22 Dated: May 11, 2020

Respectfully submitted,

23 By: /s/ Steven G. Sklaver
 24 Steven G. Sklaver
 25 SUSMAN GODFREY L.L.P.
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 SSKlaver@susmangodfrey.com
 26 Counsel for Plaintiff

By: /s/ Damien J. Marshall
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 27 Counsel for Defendants

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13 *Attorneys for Defendants Ripple Labs, Inc.,*
14 *XRP II LLC, and Bradley Garlinghouse*

15 UNITED STATES DISTRICT COURT
16 NORTHERN DISTRICT OF CALIFORNIA
17 OAKLAND DIVISION

18 In re RIPPLE LABS INC. LITIGATION,

Case No. 18-cv-06753-PJH

19
20 This Document Relates To:
21 ALL ACTIONS
22

**DECLARATION OF MAXWELL V.
PRITT IN SUPPORT OF JOINT
ADMINISTRATIVE MOTION TO
CONSIDER WHETHER CASES
SHOULD BE RELATED AND
CONSOLIDATED FOR PRETRIAL
PURPOSES**

DECLARATION OF MAXWELL V. PRITT

I, Maxwell V. Pritt, hereby declare as follows:

1. I am over the age of 18 and am competent to make this declaration. I am a partner at Boies Schiller Flexner LLP, counsel of record for Defendants Ripple Labs Inc., XRP II LLC, and Bradley Garlinghouse in the action entitled *In Re: Ripple Labs Inc. Litigation*, Case No. 4:18-cv-06753-PJH, and a member of the Bar of this Court in good standing. I have personal knowledge of or am informed and believe the facts in this declaration, and they are true and correct to the best of my knowledge and belief. If called on to testify, I could and would testify competently to the following facts.

2. I submit this declaration as required under Civil Local Rules 3-12(b) and 7-11 in support of the Joint Administrative Motion to Consider Whether Cases Should Be Related and Consolidated for Pretrial Purposes (the “Joint Motion”).

3. Counsel for Lead Plaintiff in *In Re: Ripple Labs Inc. Litigation* stipulated to the Joint Motion.

4. Counsel for Plaintiff in *Bitcoin Manipulation Abatement LLC v. Ripple Labs, Inc., et al.*, Case No. 3:20-cv-03022-RS (N.D. Cal.), did not stipulate to the Joint Motion, and thus Counsel for Defendants were unable to obtain a stipulation signed by all affected parties or their counsel under Civil Local Rules 7-11(a) and 7-12. Attached as **Exhibit A** is a true and corrected copy of correspondence between counsel for Defendants and counsel for Plaintiff in the related action, dated May 8, 2020.

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

Executed on May 11, 2020, in San Francisco, California.

/s/ Maxwell V. Pritt
Maxwell V. Pritt

EXHIBIT A
[REDACTED]

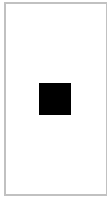
From: [Pavel Pogodin, Ph.D., Esq.](#)
To: [Menno Goedman](#)
Cc: [Maxwell Pritt](#); [Damien Marshall](#)
Subject: Re: DRAFT Complaint Against Ripple Labs et al. for Unregistered Sale of Securities
Date: Friday, May 8, 2020 10:50:32 AM

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Menno,

I was hoping to see some cases where a class action was consolidated with a non-class action. You did not send me any. Without such authority, I'm hesitant to stipulate. Looks like you first need to file an Administrative Motion to Consider Whether Cases Should be Related under Civ.L.R. 3-12(b), see Paragraph 7 of Judge Hamilton's order. It will be judge's decision if the cases are related enough to warrant consolidation. Again, without seeing a single case where it was done, I'm unwilling to stipulate.

Best Regards,



Pavel Pogodin, Ph.D., Esq.

Attorney At Law*
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On Thu, May 7, 2020 at 11:05 AM Menno Goedman <mgoedman@bsfllp.com> wrote:

Pavel,

We appreciate your prompt response.

Our authority for the motion is Judge Hamilton's PSLRA order in *In re Ripple Labs*, which states that "all related actions that are subsequently filed in . . . this District shall be consolidated into this action for pretrial purposes." Her order then requires the parties to file an administrative motion to effectuate the same. I am attaching the order for your reference.

The Civil Cover Sheet in *BMA v. Ripple* states that this case is related to *In re Ripple Labs*.

Please let us know if you stipulate. Otherwise we will support the motion by declaration, as permitted under Local Rule 7-11(a). Thanks very much.

Best,

Menno

Menno Goedman

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From: Pavel Pogodin, Ph.D., Esq. [mailto:pp@consensuslaw.io]

Sent: Thursday, May 7, 2020 4:08 AM

To: Menno Goedman <mgoedman@bsfillp.com>

Cc: Maxwell Pritt <mpritt@bsfillp.com>; Damien Marshall <dmarshall@bsfillp.com>

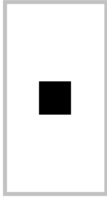
Subject: Re: DRAFT Complaint Against Ripple Labs et al. for Unregistered Sale of Securities

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Menno,

In view of the fact that your other case is a class action and this case is not, and further in view of the fact that my client intends to opt out of any class action settlement, I see limited procedural advantages in consolidating the two cases for pre-trial proceedings. On the other hand, I'm trying to approach your proposal with an open mind. Can you cite a few cases wherein a class action was consolidated with a non-class action? I want to see what the judges said in ordering consolidation. If it sounds convincing, I may stipulate to consolidation after review of the case law that you will provide. Thus, please send me a few (at least 2-3) convincing precedents wherein a judge ordered a consolidation of a class action with a non-class action ASAP and I'll try to respond to you by the end of the day (Thursday).

Best Regards,



Pavel Pogodin, Ph.D., Esq.

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On Wed, May 6, 2020 at 4:26 PM Menno Goedman <mgoedman@bsflp.com> wrote:

Pavel,

As noted, we intend to file an administrative motion to relate and consolidate for pretrial purposes BMA's action with the ongoing putative class action pending before Judge Hamilton (18-cv-6753). As required by Local Rule 7-11, I write to see if BMA will stipulate to relation and consolidation. If so, we will prepare for your review and e-signature a draft stipulation.

We will file on Friday. Thanks very much.

Best,
Menno

Menno Goedman

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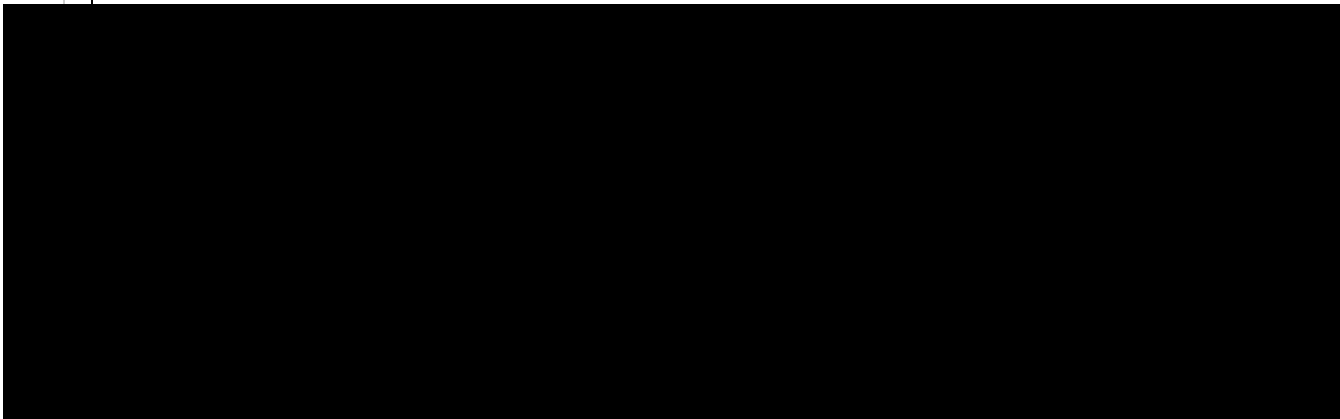
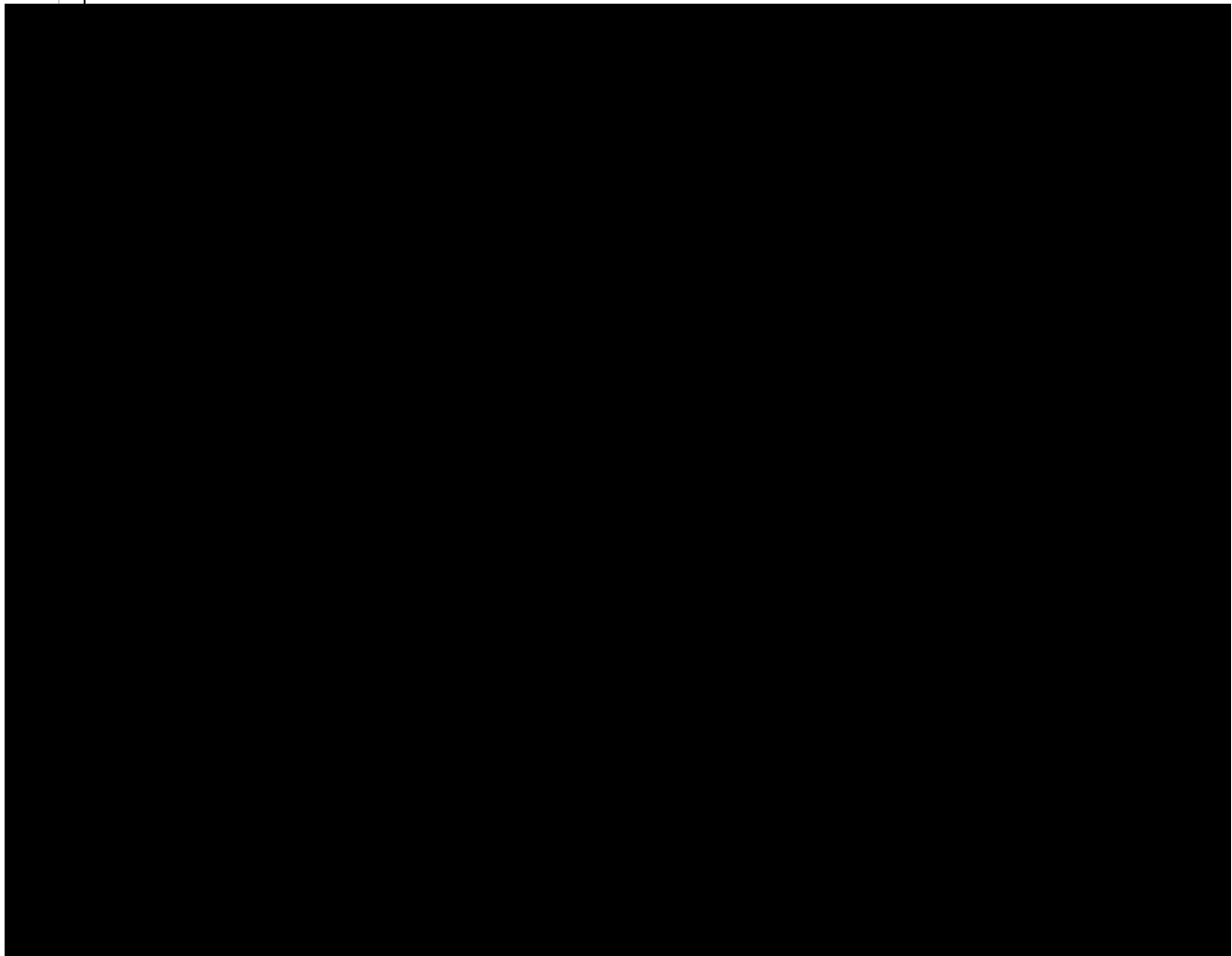
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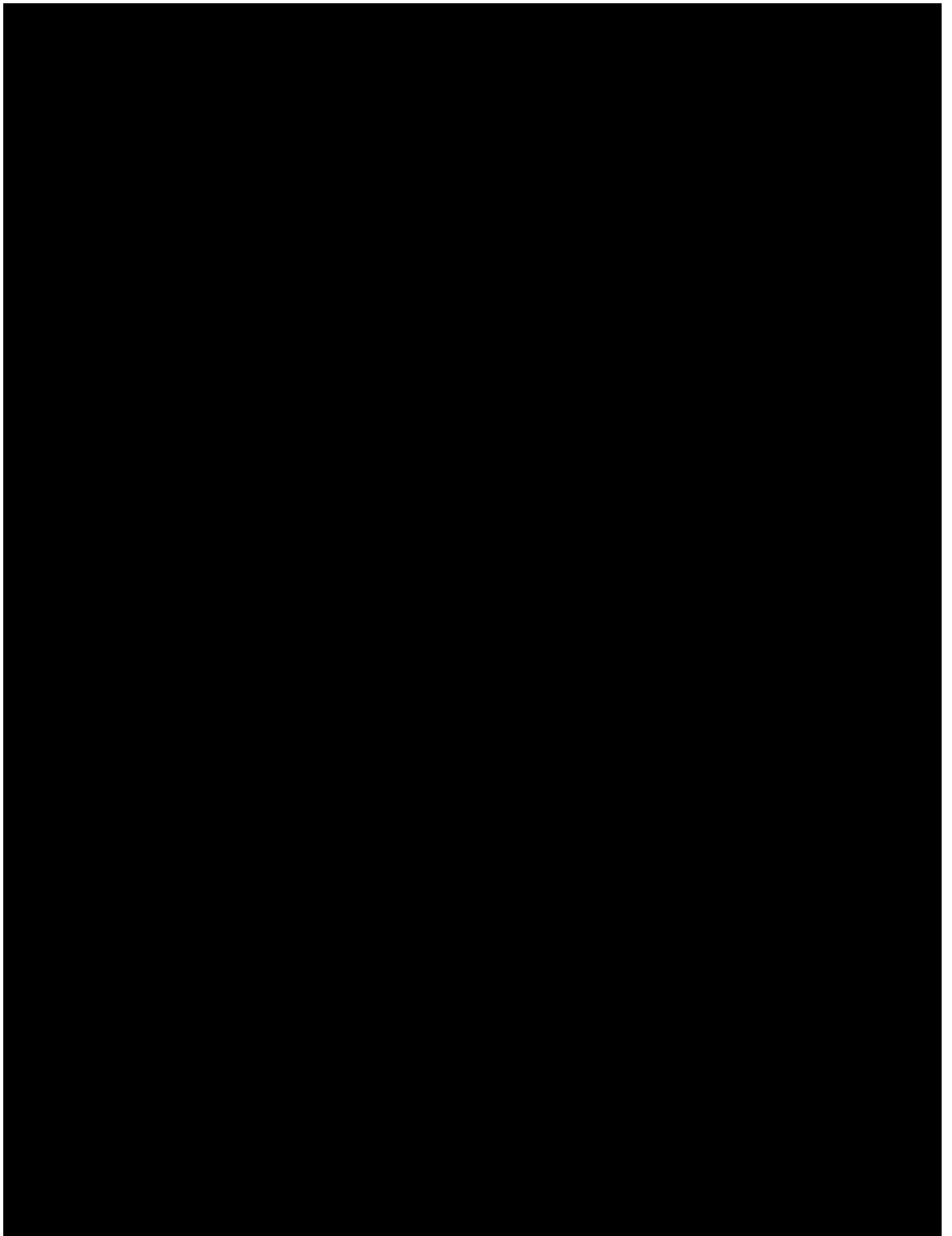
Sent: Monday, May 4, 2020 3:57 PM

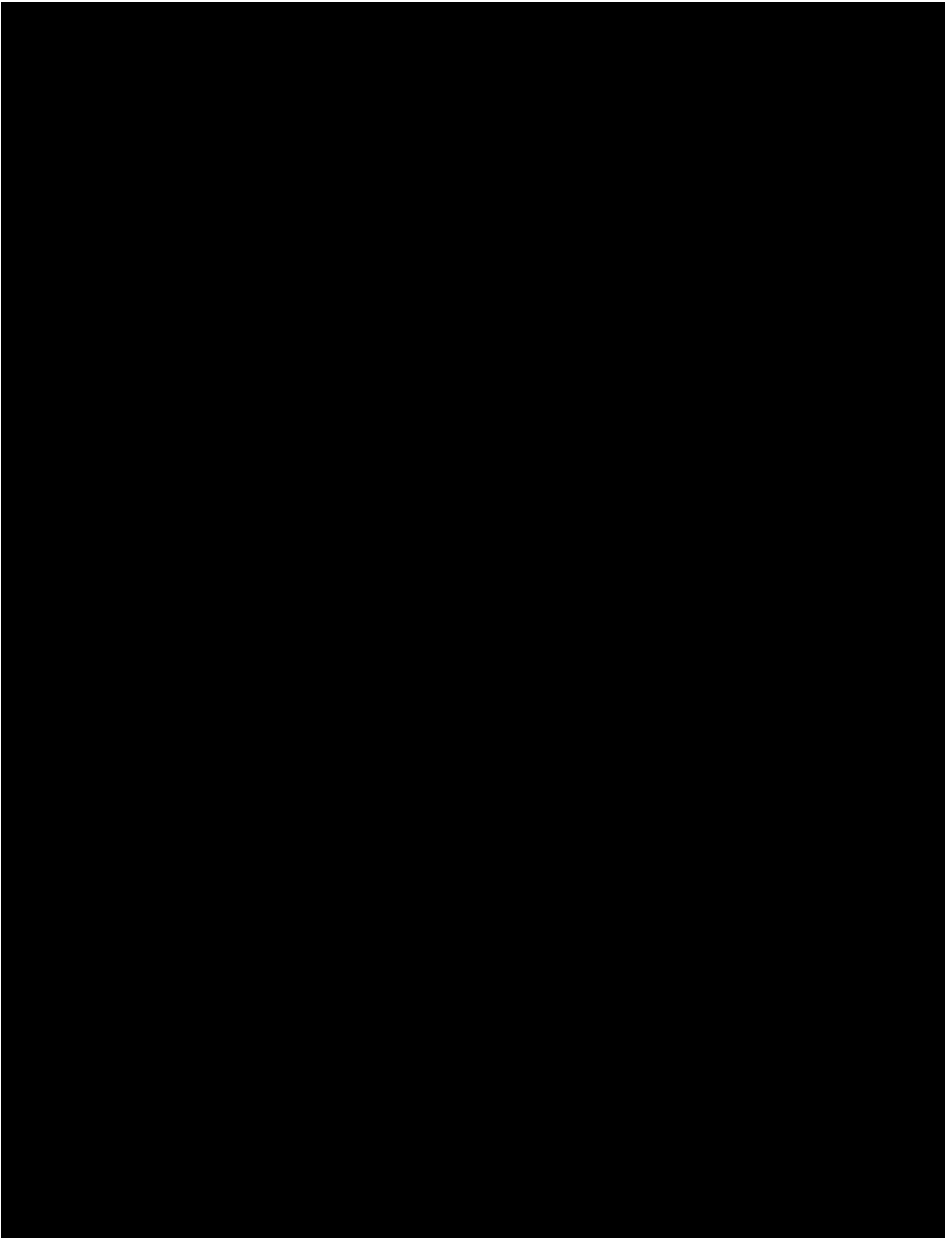
To: Menno Goedman <mgoedman@bsfllp.com>

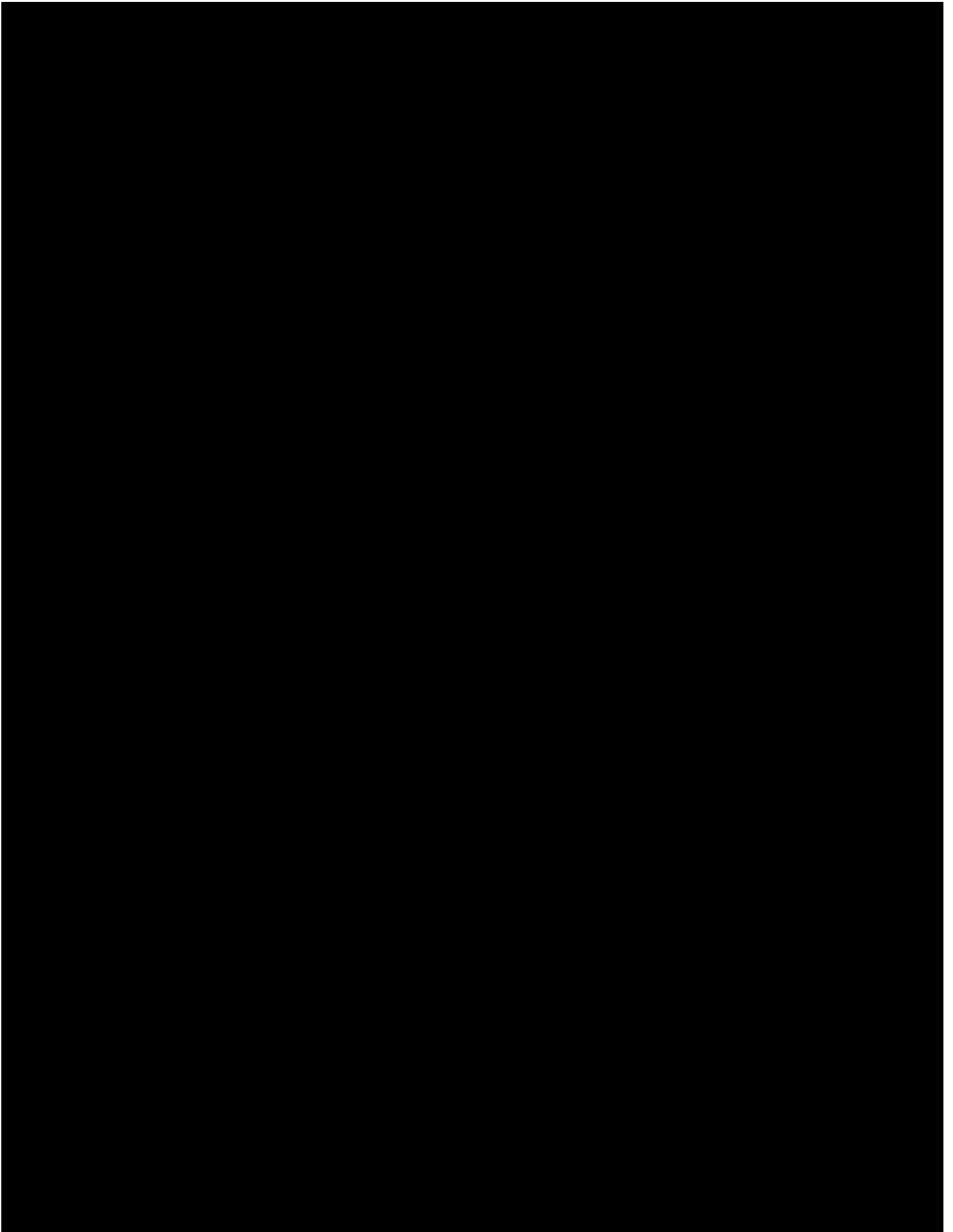
Cc: Maxwell Pritt <mpritt@bsfllp.com>; Damien Marshall <dmarshall@bsfllp.com>

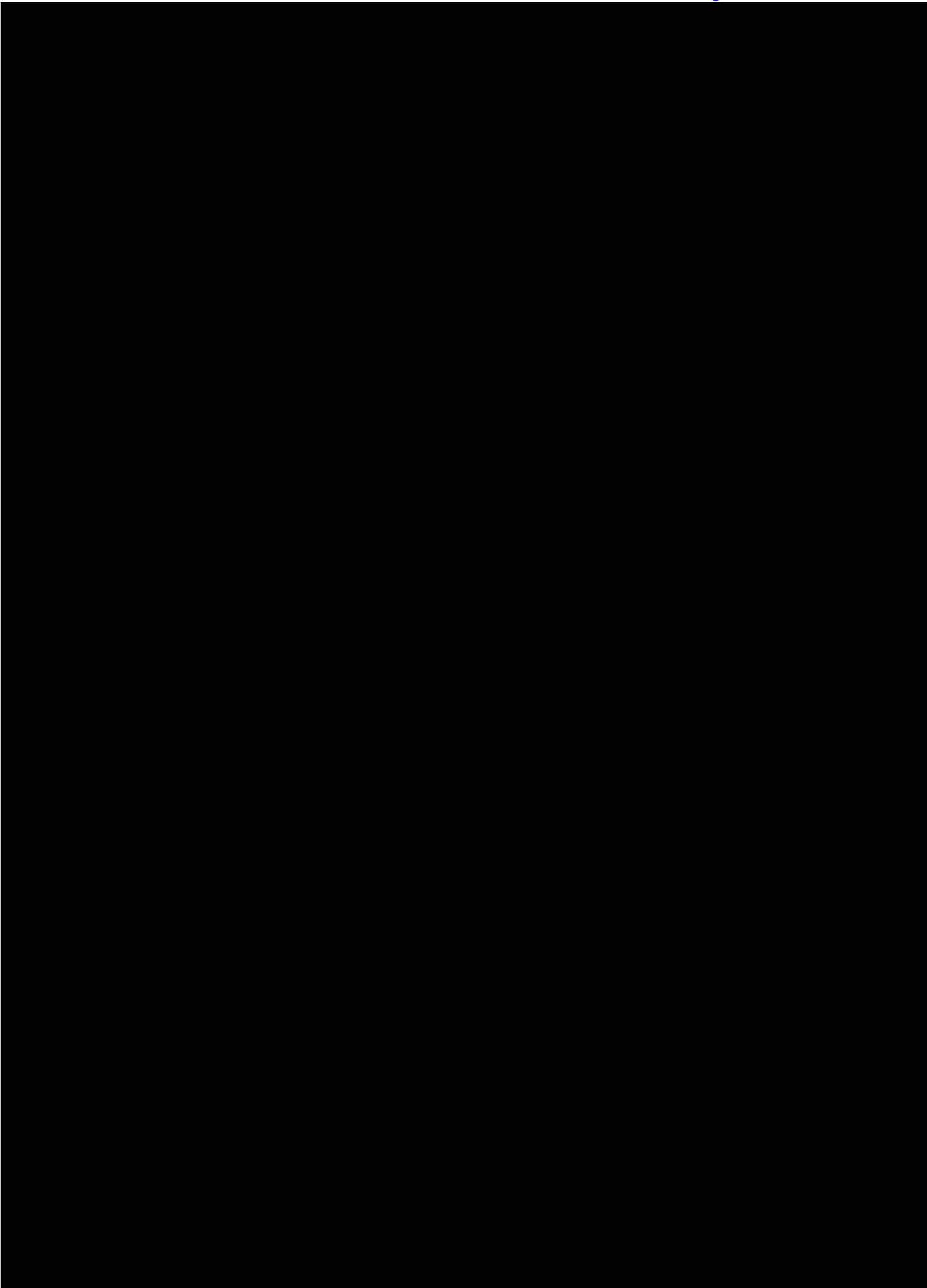
Subject: Re: DRAFT Complaint Against Ripple Labs et al. for Unregistered Sale of Securities

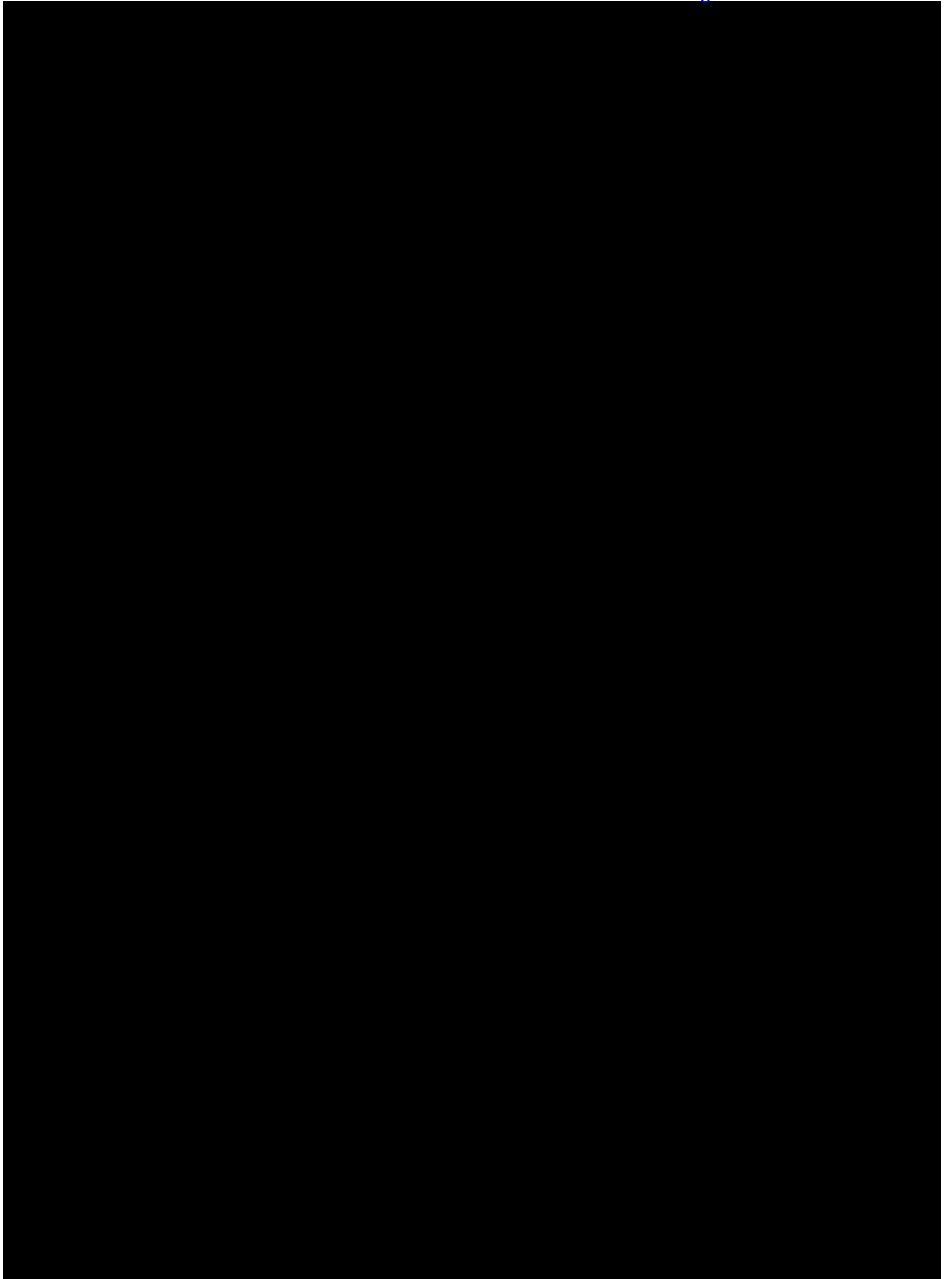


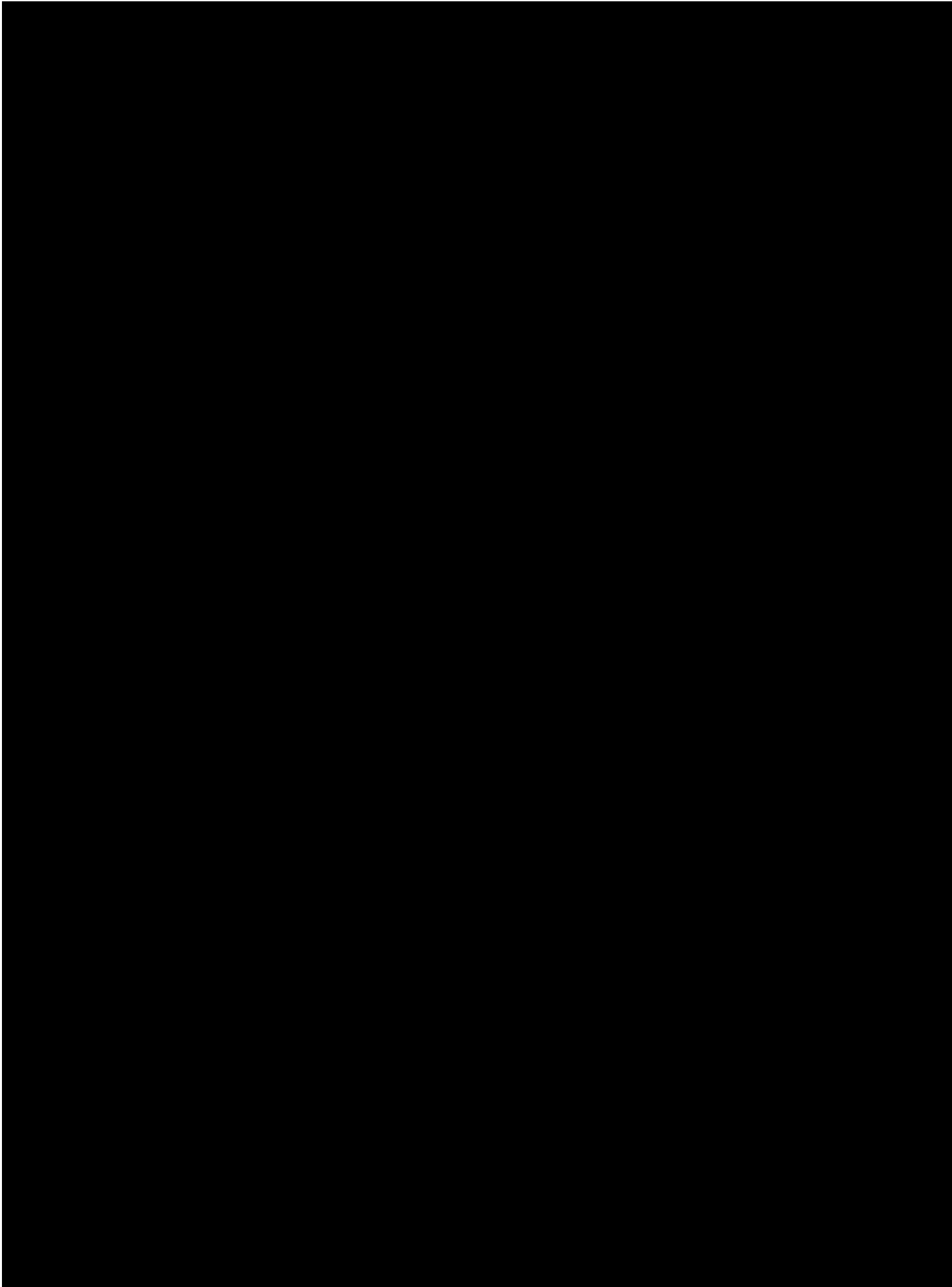


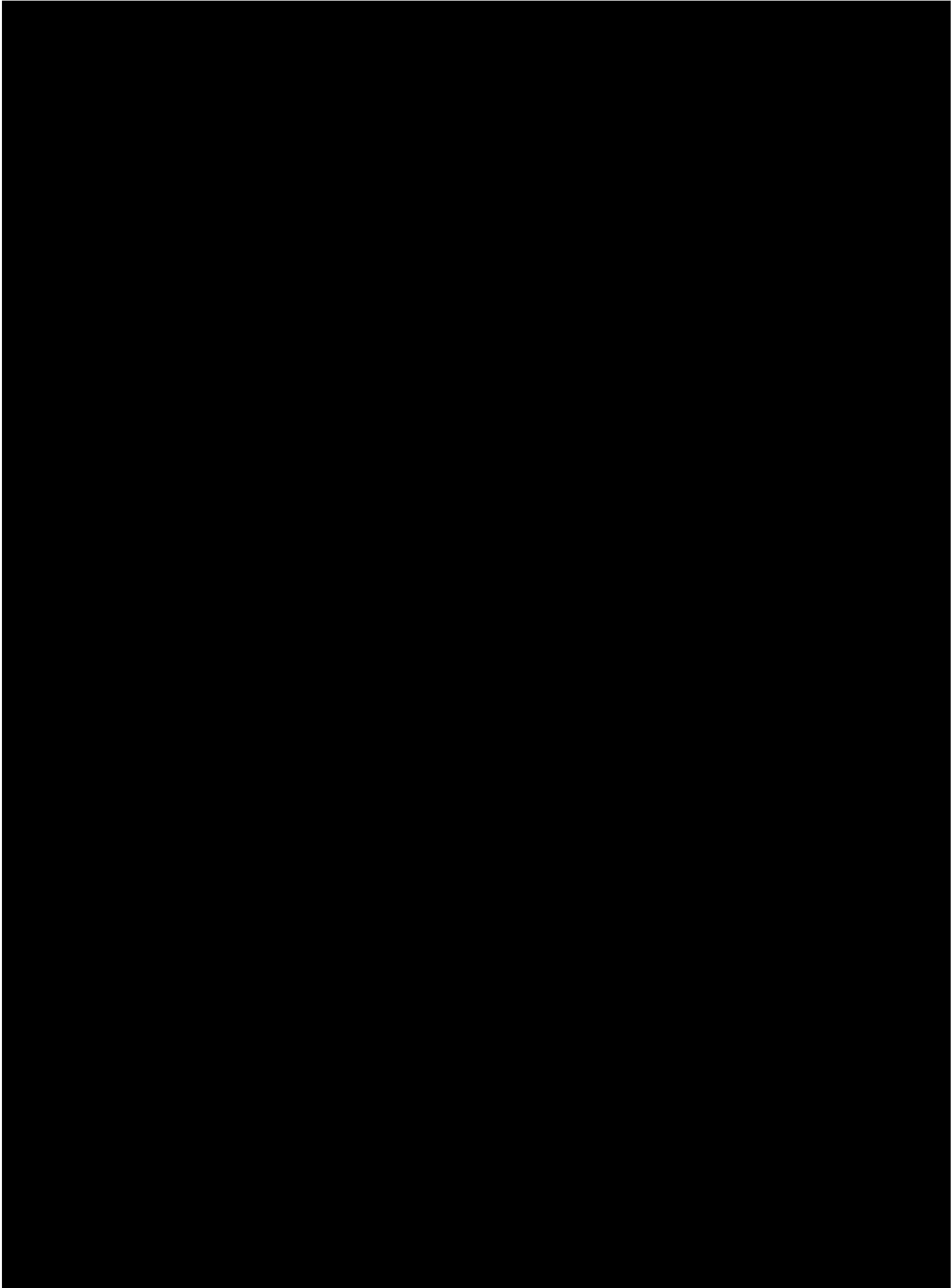


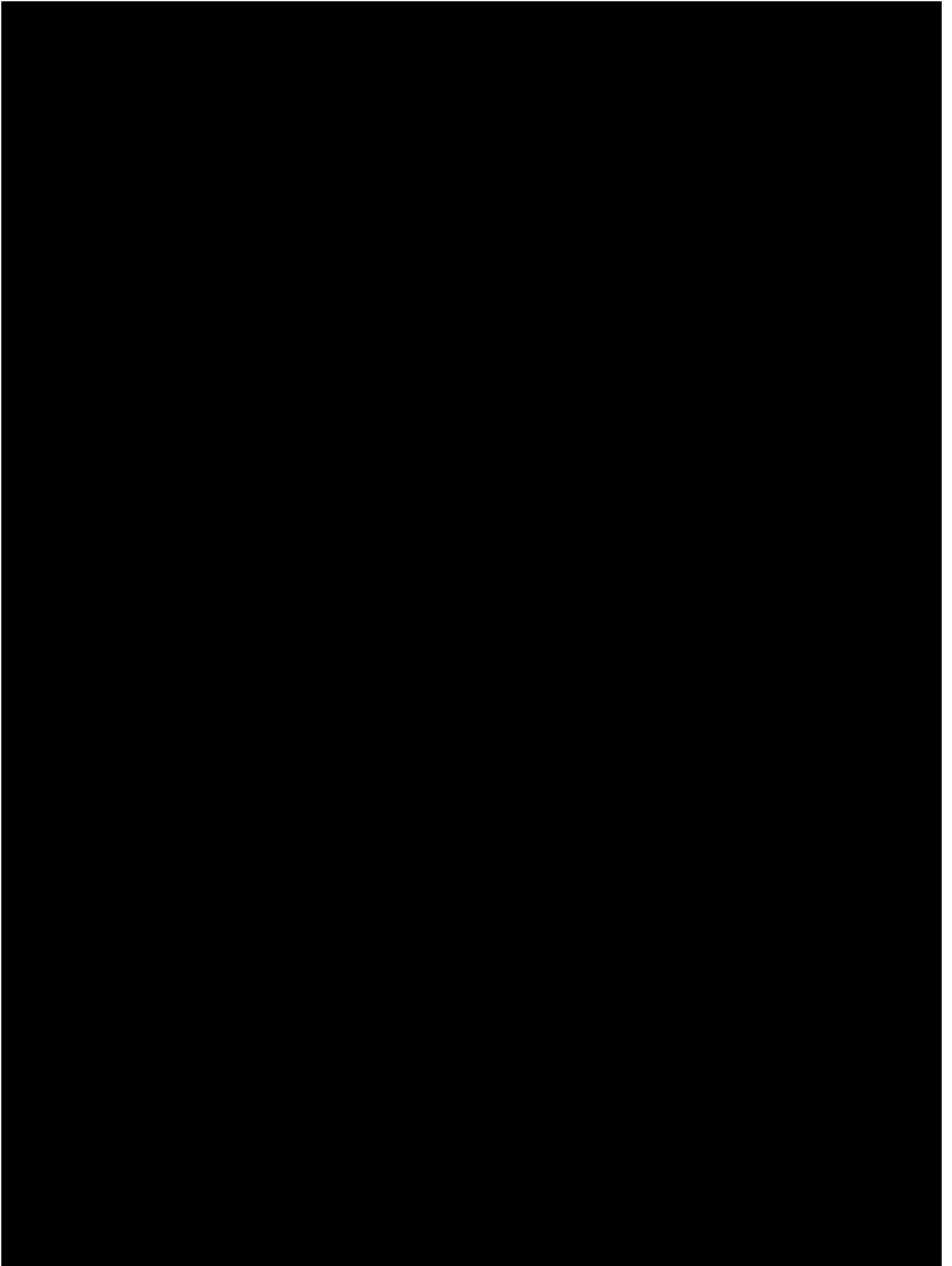


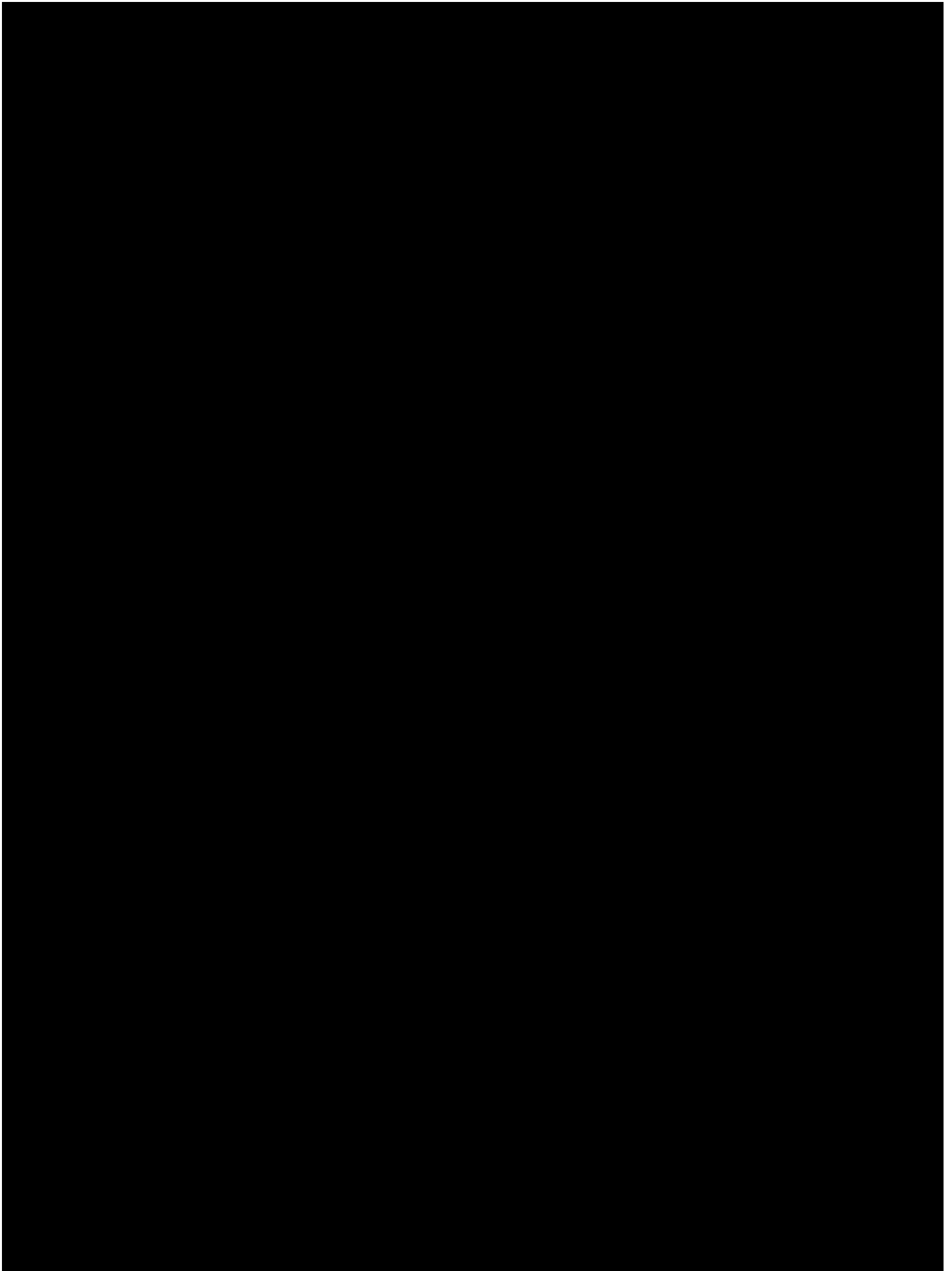














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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

In re RIPPLE LABS INC. LITIGATION,

Case No. 18-cv-06753-PJH

This Document Relates To:
ALL ACTIONS

**[PROPOSED] ORDER GRANTING
JOINT ADMINISTRATIVE MOTION
TO CONSIDER WHETHER CASES
SHOULD BE RELATED AND
CONSOLIDATED FOR PRETRIAL
PURPOSES**

[PROPOSED] ORDER

This matter comes before the Court pursuant to a Joint Administrative Motion to Consider Whether Cases Should be Related and Consolidated for Pretrial Purposes, filed by Lead Plaintiff Bradley Sostack and Defendants Ripple Labs, Inc., XRP II, LLC, and Bradley Garlinghouse under Civil Local Rule 3-12 (the “Motion”). Having considered the Motion, and there appearing to be good cause to grant relief, the Court hereby GRANTS the Motion as follows:

1. The action recently filed in this District and captioned *Bitcoin Manipulation Abatement LLC v. Ripple Labs, Inc., XRP II, LLC and Bradley Garlinghouse*, Case No. 3:20-cv-03022, filed on May 1, 2020, (the “BMA Action”), is hereby related to the instant earlier-filed matter, *In re Ripple Labs Inc. Litig.*, Case No. 4:18-cv-06753;

2. The BMA Action is hereby reassigned to this Court, the Honorable Phyllis J. Hamilton, accordingly; and

3. The cases are consolidated for pretrial purposes consistent with this Court’s prior order.

IT IS SO ORDERED.

Dated: _____

Hon. Phyllis J. Hamilton
United States District Judge