

Litigation



City of Peoria

Office of the City Attorney

8401 W. Monroe Street, Peoria Arizona 85345

Phone: 623-773-7330

Civil/Risk Fax: 623-773-7043

Criminal/Victim's Assistance Fax: 623-773-7323

July 1, 2009

VIA HAND DELIVERY

Gail Styles, OAA
U. S. Equal Employment Opportunity Commission
Phoenix District Office
3300 North Central Avenue, Suite 690
Phoenix, Arizona 85012

Re: Position Statement
Charge No. 540-2009-01435
[REDACTED] City of Peoria

Dear Ms. Styles:

This letter shall serve as the City of Peoria's ("City") position statement with respect to the above referenced Charge of Discrimination (the "Charge"). The Charge was filed with your office on or about May 18, 2009 by [REDACTED], an individual who applied for a Temporary Board (i.e., Election) Worker position with the City in the City Clerk's Office/Department.

At the outset, it should be noted that the City is an equal employment employer. In fact, City supervisors are subject to evaluation and even discipline based on their commitment and actions regarding equal employment opportunities.

In this particular instance, the City treated [REDACTED] fairly and consistently with other applicants, and in no way has the City discriminated against [REDACTED] on the basis of disability. [REDACTED]'s allegations in this Charge are without merit, and the City respectfully suggests that they should be declared unfounded.

1. Description of the City

The City is an Arizona municipal corporation, created by Charter in 1954, that employs in excess of 1,500 employees who perform a wide range of local government services for the public. The City Clerk serves as Clerk to the City Council, keeps the corporate seal, attests official City signatures, files and

records City Council actions and documents. The City Clerk also serves as the Chief Elections Officer for the City and is responsible for conducting all municipal elections. The City Clerk's Office/Department consists of approximately nine (9) full-time job positions allocated among four (4) Divisions: Administration, Public Records and Information, Elections, and Passports. (See City Clerk's Office/Department Organizational Chart, attached as Attachment 1.) The Temporary Board Worker position that [REDACTED] applied for is one of three (3) Board Worker positions for the Primary Elections (August 6, 2008 – August 29, 2008) and one of two (2) Board Worker positions for the General Elections (October 6, 2008 – October 31, 2008).

2. Contact Information

The City's legal address is:

City of Peoria
8401 W. Monroe Street
Peoria, Arizona 85345

The contact information for the person responsible for responding to this Charge is:

Cheryl A. Boswell
Assistant City Attorney
City of Peoria
8401 W. Monroe Street
Peoria, Arizona 85345
(623) 773-7330

3. City's Response to Factual Allegations Listed in Charge

Prior to filing his Charge, [REDACTED] contacted the City several times in writing.

1) The first written communication was on September 8, 2008 requesting the medical records from the City's pre-employment physical. (See [REDACTED] September 8, 2008 Letter, attached as Attachment 2.) The City responded to [REDACTED] on September 29, 2008 and provided him with a redacted copy of the medical records. (See Cheryl Boswell September 29, 2008 Letter, attached as Attachment 3.)

2) The second written communications were dated November 17, 2008 and were letters to four different individuals at the City (i.e., Mary Jo Kief, City Clerk; Debbie Meythaler, Human Resources Specialist; Nancy Fantasia, Benefits Administrator and me), informing the City that the medical records of his

physical were not complete and were incorrect. (See [REDACTED] Four (4) November 17, 2008 Letters, attached as Attachments 4, 5, 6 and 7.) The City responded to [REDACTED] on December 3, 2008 informing him that the City has to rely on the medical records in their current form unless informed differently by the medical professional. (See Cheryl Boswell December 3, 2008 Letter, attached as Attachment 8.)

In his Charge, [REDACTED] submitted a one paragraph Discrimination Statement containing particulars/factual allegations. The City first will respond to each sentence of the factual allegations separately in the order raised in the Charge. Then the City will briefly note other facts relevant to the Charge.

1) "On or about July 22, 2008, I [sic] and co-worker [REDACTED] completed the necessary paperwork/applications to initiate our employment with the Respondent." Agree. [REDACTED] application was dated July 22, 2008.

2) "We were provided employee packets, given entrance badges and introduced to other employees." Partially agree. The City acknowledges that the candidates (i.e., possible employees) were given badges and introduced to other candidates (possible employees), but they would not be eligible to be hired unless and until they successfully completed the pre-employment physical, drug and criminal background screening. It was communicated to the candidates that employment would be contingent upon the candidate's successful completion of a pre-employment physical, drug and criminal background screening, as is required of all City employees. Disagree. [REDACTED] and candidate [REDACTED] were not introduced to "other employees." The candidates were introduced to other candidates (possible employees). (See HR – Debbie Meythaler, July 18, 2008 E-Mail to Mary Jo Kief - Board Workers Job Offers Status, attached as Attachment 9.)

3) "[REDACTED] and I were both informed that we needed to have physicals." Agree. All City employees are required to have a pre-employment physical, drug and criminal background screening. I suspect that Board Workers in the past were not required to get a physical, etc. because in the past they were not City employees, but rather Maricopa County employees. This year Maricopa County who usually provides the workers, informed the City that due to budget cutbacks they would not be able to provide Board Worker employees and the City would have to hire their own Board Worker employees. Maricopa County did however provide the City with a list of names of possible employees. The City used that list (without vetting) and contacted the first names on the list as candidates for Board Worker employees.

4) "Upon the completion of the physicals we were both informed by Respondent that we did not pass and therefore we were no longer hired for the

positions on August 1, 2008." Partially agree. Upon completion of [REDACTED] physical, the Doctor's (i.e., [REDACTED]) recommendation based on an examination of [REDACTED] and information provided by [REDACTED] was that [REDACTED] would only be able to work with certain restrictions (i.e., [REDACTED] should be fine with sedentary work only). (See [REDACTED], attached as Attachment 10.) The restrictions that the Doctor placed on [REDACTED] would not allow a Board Worker to perform the essential (critical) duties/functions of the job for the position of Board Worker. (See Daily Requirements/Duties of a Board Worker for the City of Peoria's Early Voting Satellite Location, attached as Attachment 11.) The City relied on the medical Doctor's expert opinion with reference to the restrictions that were placed on [REDACTED]'s ability to work and in doing so was being a responsible conscientious employer.

The essential functions for the position of a Board Worker cannot be completed from a sedentary position. Board Workers need to be able to lookup (read and search for) every voter on the computerized Registration Records and fill out control slips for every voter which requires constant movement (looking up and down and back and forth) from looking at the monitor, to looking down at the keyboard and the control slips and up at the voter. While looking up every voter on the computerized Registration Records and filling out control slips for every voter is done while sitting down at a desk or table it still requires constant movement. Board Workers also must print a ballot for every voter and bend over and reload the printer with ballot paper. The printer that prints the ballots is approximately forty-four (44) inches by twenty-four (24) inches in size and is located approximately twelve (12) or more feet away from the desk or table where the computer monitor is located. (See Attachment 11.) Board Workers also must carry, setup and take down Monday through Friday approximately eight (8) sandwich board signs (weighing fifteen (15) pounds and standing four (4) feet high and three (3) feet wide) around the City Hall Campus at various locations. (See City of Peoria Municipal Campus Map, attached as Attachment 12.) Carrying, setting up and taking down the sandwich board signs require an individual to bend over at the waist. [REDACTED]'s Doctor's recommendation stated that based on an examination of [REDACTED] and information provided by [REDACTED] he would only be able to work with the restrictions of sedentary work. Movement is needed to perform the essential functions of the job requirements of a Board Worker.

Disagree, that [REDACTED] was told that he was no longer hired for the position because [REDACTED] would not (or could not) be hired prior to a pre-employment physical, drug and criminal background screening. Emphasis added. It was explained to the candidates that employment would be contingent on each applicant successfully completing the pre-employment physical, drug and criminal background screening as is required for all City of Peoria employees.

Therefore, ██████ was never told that he was no longer hired for the position, but rather he was told that he would not be hired since his medical examination stated that he would only be able to work with certain restrictions which were incompatible with the essential functions of the Board Worker position. Emphasis added.

5) "I believe I was discriminated against because of my disability, in violation of the Americans with Disabilities Act of 1990." Disagree. The City was unaware of ██████ having a disability. ██████ did not indicate that he had a disability on his City of Peoria Applicant Profile. (See City of Peoria Employment Applicant Profile, attached as Attachment 13.) In fact, in ██████'s various communications to several City staff members he states that "the doctor is inaccurate to assume I am not capable of hard physical work." (See ██████ ██████ November 17, 2008 Letter, attached as Attachment 14.) By his own account (in his various letters) ██████ did (or does) not believe that he has a disability and stated that he did not have a disability and that such was inaccurate or in error, but in his Charge he states that "I believe I was discriminated against because of my disability, in violation of the Americans with Disabilities Act of 1990." One cannot state that they do not have a disability (i.e., "the doctor is inaccurate to assume I am not capable of hard physical work") then assert when they are not hired, claim a disability - which they had earlier said they did not have.

Other factual information relevant to the Charge includes, by category:

Background of the Position: Board Worker employees that worked at the City's Early Voting Satellite location in the past were Maricopa County employees. But this year, Maricopa County who usually provided the workers, informed the City that due to budget cutbacks they would not be able to provide Board Worker employees and the City would have to hire their own Board Worker employees. The City's Board Worker positions require that Board Workers perform certain physical job specific tasks. (See Attachment 11.) Board Workers receive supervision from the City Clerk who serves as the City's Chief Elections Officer and is responsible for conducting all municipal elections and overseeing the City's Primary and General Election satellite location in Peoria at the City.

Background of the Recruitment: When the City became aware that it would have to hire Board Worker employees this year, the City simply used a list of candidates that was provided by Maricopa County (without vetting) and contacted the first names on the list as candidates for Board Worker employees.

Screening Process: There was not a formal screening or vetting process other than the City's pre-employment physical, drug and criminal background

screening. The City simply contacted the names on the list (provided by Maricopa County). The City needed three (3) Board Workers for the Primary Elections and two (2) Board Workers for the General Elections and selected the names from the list provided by Maricopa County. There was not a City recruitment for the Board Worker positions.

Interview Process: There also were not any formal interviews or an interview process. The City simply contacted the names on the list (provided by Maricopa County) and if the individuals were interested they came in and filled out a City job application and were informed of the City's hiring process (i.e., the pre-employment physical, drug and criminal background screening).

Evaluation of the Candidates/Applicants: There was not an evaluation process of the candidates. If the candidates successfully completed the pre-employment physical (without restrictions which were critical to performing the essential duties/functions of the job of Board Worker), drug and criminal background screening they were hired. (See Board Workers Banner Occupational Health Services Work Status Reports, attached as Attachment 15.)

4. City's Response to Discrimination Statement

██████████ was not hired as a Board Worker because the City was informed by the Doctor who performed a physical on ██████████ and whose recommendation was that ██████████ would only be able to work as a Board Worker with certain restrictions (i.e., ██████████ should be fine with sedentary work only). The Doctor's restrictions prohibited ██████████ from successfully performing essential functions/duties of a Board Worker. However, the restrictions do not appear to render him disable or to qualify as a disability under the Americans with Disabilities Act of 1990 ("ADA"). Simply having a physical impairment (or having had multiple surgeries including double coronary artery bypass and receiving a Doctor's recommendation of sedentary work only) is not enough to trigger the ADA. To have a disability under the ADA, a person must:

- have a physical or mental impairment that substantially limits one or more major life activities
- have a record of being substantially limited, or
- be regarded as being substantially limited.

The Supreme Court established that to qualify under the ADA's definition of disability a claimant (██████████) must prove that he has a physical or mental impairment and that the impairment substantially limits a major life activity. *Mink v. Wal-Mart Stores, Inc.*, 185 F.Supp.2d 659 (2002) (citing *Toyota Motor Manufacturing v. Williams*, 534 U.S. 184, 122 S.Ct. 681 (2002) (citing 42 U.S.C. § 12102(2)(A)). "Major life activities" refer to those activities that are of central

importance to daily life. *Id.* at 663, (citing *Toyota* at 690-91). Major life activities include functions such as "caring for oneself, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning or working." *Id.* (citing *Sutton v. United Airlines, Inc.*, 527 U.S. 471, 480, 119 S.Ct. 2139, 21, (citing CFR §1630.2(i))). "When the major life activity under consideration is that of working, the statutory phrase 'substantially limits' requires ... that the claimant allege that they are unable to work in a broad class of jobs, rather than a specific job." *Id.* (citing *Sutton* at 491). When addressing the major life activity of performing manual tasks, the central inquiry must be whether the claimant (██████████) is unable to perform the variety of tasks central to most people's daily lives, not whether the claimant is unable to perform the tasks associated with the specific job (i.e., of a Board Worker). *Id.* (citing *Toyota* at 692-93).

The facts in this Charge do not offer even a scintilla of evidence that ██████████ is unable to perform the variety of tasks central to most people's daily lives. Simply having a physical restriction placed on your ability to work as a Board Worker is not enough to trigger the ADA. To trigger the ADA a physical or mental impairment must exist that substantially limits one or more major life activities, which ██████████ fails to meet or prove. By his own account (in his various letters) ██████████ did not believe he had a disability and stated that he did not have a disability but that such restrictions placed on his ability to work were inaccurate.

██████████ fails in all aspects of the judicial burden-shifting framework:

1. ██████████ establishes no "prima facie case" of disability discrimination. To establish a prima facie case of disability discrimination requires proof that: (1) he was disabled within the meaning of the ADA, (2) he was qualified for the position, with or without an accommodation, (3) he suffered an adverse employment decision because of his disability, and (4) he was replaced by a non-disabled person. Americans with Disabilities Act of 1990, § *et seq.*, 42 U.S.C. § 12101 *et seq.* ██████████ fails to prove one of the four prongs of a prima facie case of disability discrimination.

2. However, even if a "prima facie case" did exist, the City has met its burden of producing evidence that the successful candidates chosen to be Board Workers were chosen (preferred) for legitimate, non-discriminatory reasons (i.e., there being no restrictions placed on their performing the essential functions of Board Workers). The fact that the City simply hired candidates who successfully completed (without restrictions of essential job function requirements) the pre-employment physical, drug and criminal background screening confirms that the City using the names from the list of candidates that was provided by Maricopa County was legitimate and unbiased.

3. [REDACTED] then also fails to meet his second burden – to show that the City's offered reasons for not selecting him as a Board Worker were a pretext for discrimination and that the reasons for hiring the successful candidates is also a pretext for discrimination. [REDACTED] provides no facts that show a discriminatory motive by anyone at the City and produces no facts that show the City's explanation for not hiring [REDACTED] and its hiring decisions are not credible.

The City has a strong commitment to a policy that does not support discrimination of any form in the workplace. In this instance we have been provided with no evidence that the City or any of its employees has violated this policy in any manner. The City concluded that the hiring process had been fair and that no discrimination had taken place. The City believes that after you review the Charge, you will conclude that [REDACTED]'s discrimination claim has no merit and will dismiss his Charge of discrimination accordingly.

I declare under penalty of perjury that the foregoing is true and correct. If you need additional information to complete your investigation or have any further questions, please do not hesitate to contact me.

Sincerely,

OFFICE OF THE CITY ATTORNEY
CITY OF PEORIA



Cheryl A. Boswell
Assistant City Attorney

cc: - Wynette Reed, Human Resources Director (w/o Attachments)
- Mary Jo Kief, City Clerk (w/o Attachments)

EXHIBIT 1

Office of the City Clerk
Organization Chart
October 2008

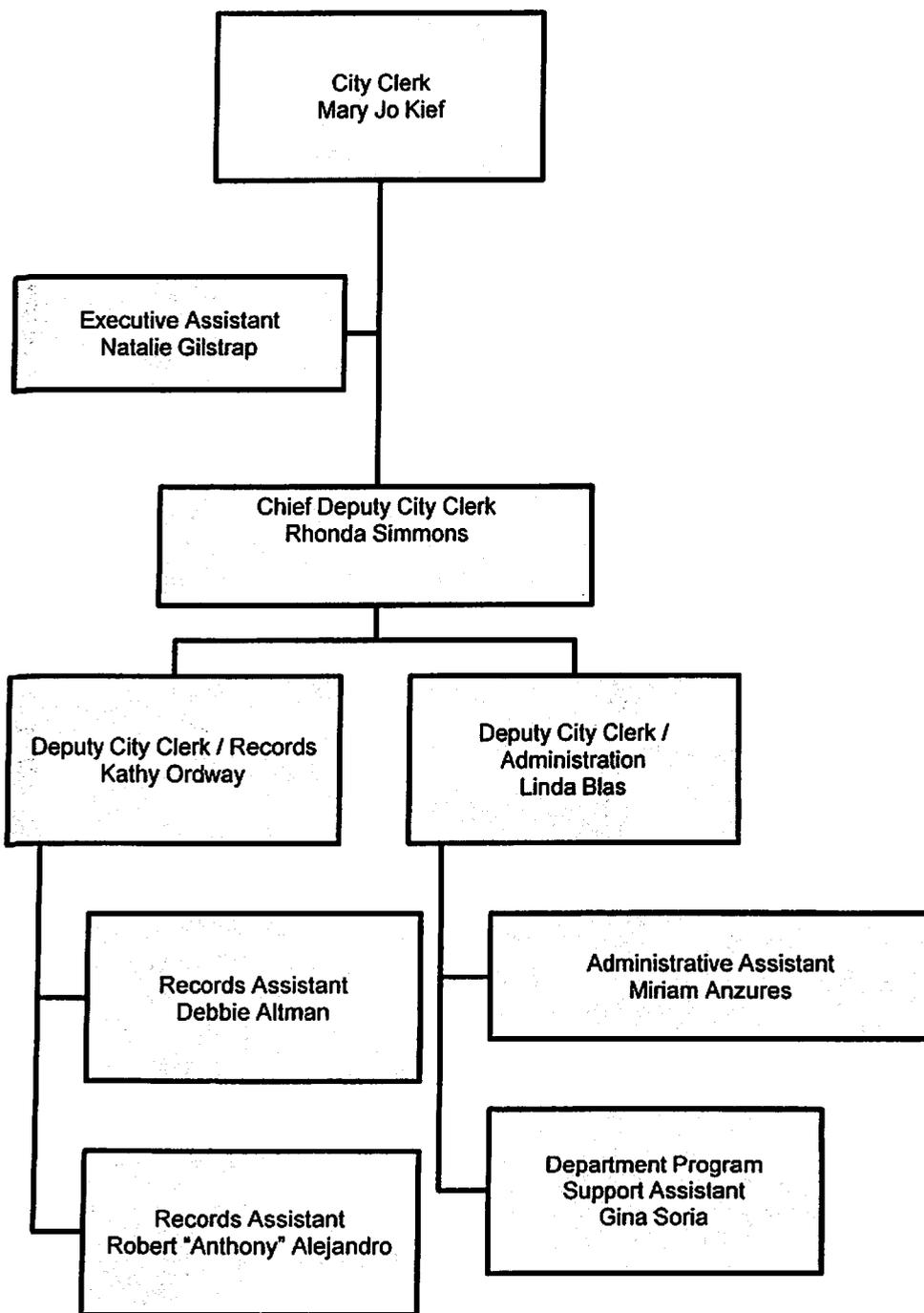


EXHIBIT 2

RECEIVED
SEP - 9 2008
CITY OF PEORIA, ARIZ.

[REDACTED]

September 8, 2008

[REDACTED]

CC: Debbie Meyphaler
City of Peoria Human Resources Dept.
8401 W. Monroe, Suite #110
Peoria, Arizona 85345

Ms. Nancy Fantasia
City of Peoria Human Resources Dept.
8401 W. Monroe, Suite #110
Peoria, Arizona 85345

REQUEST FOR PERSONAL MEDICAL RECORDS

On July 23, I visited the [REDACTED] to receive a physical which the City of Peoria required as part of my application for (Election) Board Worker.

I signed a Release at the [REDACTED] allowing the results of the Physical to be given to the City of Peoria. At that time, I also requested a copy of those medical records be sent to me.

On August 12, I again visited the [REDACTED] and requested a copy of my medical records.

At that time, I also requested an opportunity to correct a failure to communicate with the Doctor administering the physical, which resulted in a demonstrated incorrect report.

To date, I have not received a copy of these records to which I believe I have a legal right. Please let me know if there is a charge to cover photocopying and mailing.

If you believe I am not legally entitled to these records, please inform me of the exact statute or federal law upon which you rely. Otherwise, please forward a copy of my medical records to the address above or call and I will pick them up and pay any copying charges involved.

Thank you.

[REDACTED]

[REDACTED] Applicant
Early Voting Board Worker for the City of Peoria

EXHIBIT 3



City of Peoria

Office of the City Attorney

8401 W. Monroe Street, Peoria Arizona 85345

Phone: 623-773-7330

Civil/Risk Fax: 623-773-7043

Criminal/Victim's Assistance Fax: 623-773-7323

September 29, 2008

VIA U. S. MAIL



Re: Release of City Acquired Medical Records

Dear [REDACTED]:

The City of Peoria ("City") is in receipt of your request for a copy of your medical records from a physical that was requested and paid for by the City. The City takes the position that all such medical records are confidential and are the property of the City's.

While the City understands and acknowledges the public's right to inspect public records, such right is not without qualification. ARIZ. OP. Att'y. GEN. No. 75-721 (1976). Information contained in records may be treated as confidential. *Id.* It has been the City's position that release of information in medical records is confidential and of a nature that it would be against the best interests of the City to permit disclosure of medical records.

However, since the law supports the position that even if portions of a document merit confidentiality, a practical alternative to the complete denial of access would be deleting specific information. *Phoenix Newspapers, Inc. v. Ellis*, 215 Ariz. 268 (App. Div. 2007). The City is taking such approach and providing you with a redacted version of the record.

Sincerely,
OFFICE OF THE CITY ATTORNEY
CITY OF PEORIA

A handwritten signature in black ink, appearing to read "Cheryl A. Boswell".

Cheryl A. Boswell
Assistant City Attorney

cc: - Nancy Fantasia, Human Resources Analyst

CAB:dag

i:\users\lhum.res\medical-records-release.docx
September 26, 2008 s/c dag

EXHIBIT 4

[REDACTED]
[REDACTED]
November 17, 2008

Ms. Mary Jo Kief, City Clerk
City of Peoria
8401 W. Monroe
Peoria, Arizona 85345

On July 22, 2008, [REDACTED] and I completed paperwork and applications for "Election Board Worker." Maricopa County Elections Department highly recommended us to the City of Peoria for Early Voting scheduled to begin August 4, 2008, because we both worked Early Voting in 2006 and were trained, experienced, and highly skilled at that job.

On [REDACTED], we both kept appointments with [REDACTED] for physicals the City required of us each as Election Supervisors. We were there over four hours from 2:05 pm until we finished close to 6:30 pm.

Despite a failure to communicate, the physician who saw me cleared me for sedentary work.

We attended an Early Voting class on July 24 from 9 am to 4 pm held at the County Election Center, where we demonstrated we were fully qualified for the job as Early Election workers. To the best of my knowledge, we were never paid for this training.

Circa August 1, Debbie Meyphaler called to tell me I did not pass my physical and was not hired. Please forward this decision to me in writing and explain in detail why I was not hired.

Explain why Peoria would not hire me for a sedentary position after their doctor gave me clearance. Please give me the name of the person who made the decision and tell me why the person hired in my place was my age or older and in worse physical condition than I, since she had just had back surgery. Please be specific.

Please forward to me the written Job Description for the job of Election Board Worker for which I applied, including its detailed qualifications, requirements, and duties, especially those which require I do other than the sedentary duties for which I was cleared.

Please note, when the doctor reported any inability to do more than sedentary work, it was his assumption based upon [REDACTED]. His diagnosis was not based upon any actual physical tests of my strength or agility. He never even asked me about my present condition or if I ever had a heart attack. I never have had a heart attack. Did he assume I had?

The doctor is inaccurate to assume I am not capable of hard physical work. After [REDACTED] my doctor advised I do a monitored exercise program, including the treadmill, for several months as part of my recovery routine. [REDACTED] for any activity six months after my operation when he stated my full strength was back to that of [REDACTED].

Since then, I have done manual labor which required heavy lifting of well over the 10 lb sedentary limit. I painted two large sheds in April 2007 and installed a cooler on the roof of my house in May 2008. I have moved concrete blocks and shoveled sand. I have pictures to verify these activities.

Recently, I worked several weeks for the Maricopa County Election Department as a Board Worker Trainer. This involved unloading a truck and setting up election equipment for the students to learn including 15 Edge Handicap Voting machines weighing over 38 lbs each. In one picture, I am pushing a rack of 5 Edge Machines up the Handicap Ramp at the Peoria City Council Chambers where several of these classes were conducted.

I just completed 15 days working long hours for the County Elections Department during the Presidential Election as a Trouble Shooter, a Hand Count Auditor at the County Sheriff Facility, and helping process ballots 12 hours a day at the Maricopa County Election Center.

I regularly do physical work, lift heavy objects weighing 40 or 50 lbs, and can do pushups. There was an obvious lack of communication during my exam. I asked to see the doctor for five minutes to correct the record by demonstrating the errors to the doctor so he could correct his assumptions.

The medical clinic office manager seemed more concerned with who would pay for the five minutes than if my records are correct. It is important to me my records are correct and do not contain false information or false conclusions. It was the doctor's error to not get facts and he should correct it. I was not notified the errors were corrected nor been given another appointment to do so. I would appreciate it if you can arrange that this be done. Having a medical record like this on file could be damaging to me.

If the City of Peoria has a policy to not hire workers over a certain age, or for some other reason, for sedentary work, regardless if they are qualified to do the job or cleared by their doctor, please inform me in writing and supply me with a detailed copy of the policy, who approved it, and when.

Please tell me who made the final decision to not hire me and what they noted on my application and in my file as the reason for their decision.

Please supply me with an unredacted photocopy of my application and any notations made about me in my file that is part of my permanent record. I have a right to know what was written about me.

I also have a legal right to a complete copy of any physical examination done of me regardless of who paid for it since it was my body I gave permission to examine and I who signed a release to allow the City of Peoria to receive a copy of it. If there is a law that allows you to refuse to give me a complete copy of my own physical, please provide me with a copy of that statute.

Please supply me the name of the person who has refused to allow the doctor's office to send me a complete unredacted copy and please give me the specific reason or reasons they refused.

Thank you.

[REDACTED], Applicant, 2008 Early Voting Board Worker

EXHIBIT 5

RECEIVED

NOV 20 2008

CITY OF PEORIA, AR

[REDACTED]
[REDACTED]
November 17, 2008

Debbie Meyphaler
City of Peoria Human Resources Dept.
8401 W. Monroe, Suite #110
Peoria, Arizona 85345

On July 22, 2008, [REDACTED] and I completed paperwork and applications for "Election Board Worker." Maricopa County Elections Department highly recommended us to the City of Peoria for Early Voting scheduled to begin August 4, 2008, because we both worked Early Voting in 2006 and were trained, experienced, and highly skilled at that job.

On [REDACTED], we both kept appointments with [REDACTED] for physicals the City required of us each as Election Supervisors. We were there over four hours from 2:05 pm until we finished close to 6:30 pm.

Despite a failure to communicate, the physician who saw me cleared me for sedentary work.

We attended an Early Voting class on July 24 from 9 am to 4 pm held at the County Election Center, where we demonstrated we were fully qualified for the job as Early Election workers. To the best of my knowledge, we were never paid for this training.

Circa August 1, you called to tell me I did not pass my physical and was not hired. Please forward this decision to me in writing and explain in detail why I was not hired.

Explain why Peoria would not hire me for a sedentary position after their doctor gave me clearance. Please give me the name of the person who made the decision and tell me why the person hired in my place was my age or older and in worse physical condition than I, since she had just had back surgery. Please be specific.

Please forward to me the written Job Description for the job of Election Board Worker for which I applied, including its detailed qualifications, requirements, and duties, especially those which require I do other than the sedentary duties for which I was cleared.

Please note, when the doctor reported any inability to do more than sedentary work, it was his assumption based upon [REDACTED]. His diagnosis was not based upon any actual physical tests of my strength or agility. He never even asked me about my present condition or if I ever had a heart attack. I never have had a heart attack. Did he assume I had?

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The medical clinic office manager seemed more concerned with who would pay for the five minutes than if my records are correct. It is important to me my records are correct and do not contain false information or false conclusions. It was the doctor's error to not get facts and he should correct it. I was not notified the errors were corrected nor been given another appointment to do so. I would appreciate it if you can arrange that this be done. Having a medical record like this on file could be damaging to me.

If the City of Peoria has a policy to not hire workers over a certain age, or for some other reason, for sedentary work, regardless if they are qualified to do the job or cleared by their doctor, please inform me in writing and supply me with a detailed copy of the policy, who approved it, and when.

Please tell me who made the final decision to not hire me and what they noted on my application and in my file as the reason for their decision.

Please supply me with an unredacted photocopy of my application and any notations made about me in my file that is part of my permanent record. I have a right to know what was written about me.

I also have a legal right to a complete copy of any physical examination done of me regardless of who paid for it since it was my body I gave permission to examine and I who signed a release to allow the City of Peoria to receive a copy of it. If there is a law that allows you to refuse to give me a complete copy of my own physical, please provide me with a copy of that statute.

Please supply me the name of the person who has refused to allow the doctor's office to send me a complete unredacted copy and please give me the specific reason or reasons they refused.

Thank you.

Applicant, 2008 Early Voting Board Worker

EXHIBIT 6

[REDACTED]
[REDACTED]

November 17, 2008

Ms. Nancy Fantasia
City of Peoria Human Resources Dept.
8401 W. Monroe, Suite #110
Peoria, Arizona 85345

On July 22, 2008, [REDACTED] and I completed paperwork and applications for "Election Board Worker." Maricopa County Elections Department highly recommended us to the City of Peoria for Early Voting scheduled to begin August 4, 2008, because we both worked Early Voting in 2006 and were trained, experienced, and highly skilled at that job.

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We attended an Early Voting class on July 24 from 9 am to 4 pm held at the County Election Center, where we demonstrated we were fully qualified for the job as Early Election workers. To the best of my knowledge, we were never paid for this training.

Circa August 1, Debbie Meyphaler called to tell me I did not pass my physical and was not hired. Please forward this decision to me in writing and explain in detail why I was not hired.

Explain why Peoria would not hire me for a sedentary position after their doctor gave me clearance. Please give me the name of the person who made the decision and tell me why the person hired in my place was my age or older and in worse physical condition than I, since she had just had back surgery. Please be specific.

Please forward to me the written Job Description for the job of Election Board Worker for which I applied, including its detailed qualifications, requirements, and duties, especially those which require I do other than the sedentary duties for which I was cleared.

Please note, when the doctor reported any inability to do more than sedentary work, it was his assumption based upon [REDACTED] His diagnosis was not based upon any actual physical tests of my strength or agility. He never even asked me about my present condition or if I ever had a heart attack. I never have had a heart attack. Did he assume I had?

The doctor is inaccurate to assume I am not capable of hard physical work. [REDACTED] my doctor advised I do a monitored exercise program, including the treadmill, for several months as part of my recovery routine. [REDACTED] cleared me for any activity six months after my operation when he stated my full strength was back to that of before [REDACTED].

Since then, I have done manual labor which required heavy lifting of well over the 10 lb sedentary limit. I painted two large sheds in April 2007 and installed a cooler on the roof of my house in May 2008. I have moved concrete blocks and shoveled sand. I have pictures to verify these activities.

EXHIBIT 7

[REDACTED]
[REDACTED]

November 17, 2008

Cheryl A. Boswell
Assistant City Attorney
8401 W. Monroe
Peoria, Arizona 85345

RE: Your Response re: Release of City Acquired Medical Records

I received the redacted copy of my medical records of my physical paid for by the City of Peoria.

Unfortunately, they are not complete and not sufficient. My medical records are not confidential from me. My doctor will request a complete copy in December. Please be sure she receives a complete unredacted copy.

I find it interesting you redacted the line where the doctor states I am cleared to do sedentary work and therefore cleared to work as an Early Elections Board Worker.

These medical records are incorrect and incomplete due to a failure to communicate. They leave out facts and contain errors which need to be corrected. I offered to meet with the doctor for five minutes to correct them.

I demonstrated to the medical clinic office manager I am in excellent condition and to her dismay did six pushups in her office. The surgeries I mentioned were corrective. The heart surgery was NOT the result of a heart attack. I never suffered a heart attack. The doctor failed to ask anything about my present physical condition.

[REDACTED] my doctor recommended I do a monitored exercise program, including treadmill, for several months as part of the recovery routine. Since then, I have done repair work and manual labor which required heavy lifting of well over the 10 lb sedentary work limit. I have pictures to verify these activities.

I recently worked several weeks for the Maricopa County Election Department as a Board Worker Trainer. This involved setting up election equipment for the students to learn including 15 Edge Handicap Voting machines weighing over 38 lbs each. In one picture, I am pushing a rack of 5 Edge Machines up the Handicap Ramp at the Peoria City Council Chambers where several of these classes were conducted.

I also just completed 15 days working long hours for the County Elections Department as a Trouble Shooter, a Hand Count Auditor at the County Sheriff Facility, and helping process ballots 12 hours a day at the Maricopa County Election Center.

The medical clinic office manager seemed more concerned with who would pay for the five minutes than if my records were correct. My offer still stands. It is important to me my records are correct and do not contain false information or false conclusions. I would appreciate it if you can arrange to get this is done.

[REDACTED]
[REDACTED], Applicant, 2008 Early Voting Board Worker

EXHIBIT 8



City of Peoria

Office of the City Attorney

8401 W. Monroe Street, Peoria Arizona 85345

Phone: 623-773-7330

Civil/Risk Fax: 623-773-7043

Criminal/Victim's Assistance Fax: 623-773-7323

December 3, 2008

VIA U. S. MAIL



Re: Incorrect and Incomplete Records

Dear [REDACTED]:

The City of Peoria ("City") is in receipt of your letters to Mary Jo Kief the City Clerk, Debbie Meythaler and Nancy Fantasia in Human Resources and me.

While it is your position that "the records as written are incorrect and not complete" the City has to rely on the records in their current state unless informed differently by the medical professional, which has not occurred. However, if you desire to have the records "corrected" (amended) you are free to schedule an appointment with the Doctor (at your expense) and provide him sufficient information (evidence) to support any change. Once that occurs, the Doctor will forward any change (amendment) to the City and the City will place such in your file.

Your desire to "correct" (amend) the records is somewhat of a moot issue since you worked for the Maricopa County Elections Department and the City's need for individuals to staff the Early Voting Satellite Location cease to exist, since the election season is over. Should you apply in the future to work another election season for the City, the City would require that you (or any individual) have another physical.

Having the medical records in their current state on file with the City should not be particularly damaging to you since the City generally does not release such information. While the City understands and acknowledges the public's right and your right to inspect public records, such right is not without qualification. ARIZ. OP. Att'y. GEN. No. 75-721 (1976). Information contained in records may be treated as confidential. *Id.* It has been the City's position that release of information in medical records is confidential and of a nature that it would be against the best interests of the City to permit disclosure of medical records. However, since the law supports the position that even if portions of a document merit confidentiality, a practical alternative to the complete denial of

access would be deleting specific information. *Phoenix Newspapers, Inc. v. Ellis*, 215 Ariz. 268 (App. Div. 2007). The City took such an approach and provided you a redacted version of the record. There is no one person who has refused to allow the Doctor's office to send you a copy of medical records which are confidential and are the property of the City, but rather it is the City's policy as mentioned in my previous communication.

The City is an equal employment employer. In fact, City supervisors are subject to evaluation and even discipline based on their commitment and actions regarding equal employment opportunities. So, the statement you made in your letters to Mary Jo Kief, Debbie Meythaler and Nancy Fantasia about the City having "a policy to not hire workers over a certain age, if handicapped..." is untrue and unfounded. The City has a strong commitment to a policy that does not support discrimination of any form.

The U.S. Supreme Court has observed that Senator Hubert Humphrey, while explaining the proponents' understanding of Title VII as it was being debated in the U.S. Senate, stated that the law does not limit the employer's freedom to hire, fire, promote or demote for any reasons--or no reasons--so long as his action is not based on race, age, etc. *United Steelworkers of America v. Weber*, 443 U.S. 193, 237 (1979). In fact, the City makes its hiring decisions based on the information provided to the City at the time and the best applicant for the job with reference to the particular job requirements, individual's experience, etc. The City does not provide the names of a specific individual who made a decision not to hire a person, such is irrelevant. The City made a hiring decision based on available information at the time.

Sincerely,
OFFICE OF THE CITY ATTORNEY
CITY OF PEORIA

Cheryl A. Boswell
Assistant City Attorney

cc: - Mary Jo Kief, City Clerk
- Nancy Fantasia, Human Resources Analyst
- Debbie Meythaler, Human Resources Specialist

CAB:dag

EXHIBIT 9

From: HR - Debbie Meythaler
Sent: Friday, July 18, 2008 10:14 AM
To: Mary Jo Kief; Gina Soria
Subject: Board Workers Job offers status

Hello,

The following candidates have accepted the job offers for Board Workers. The following is some information for your records.

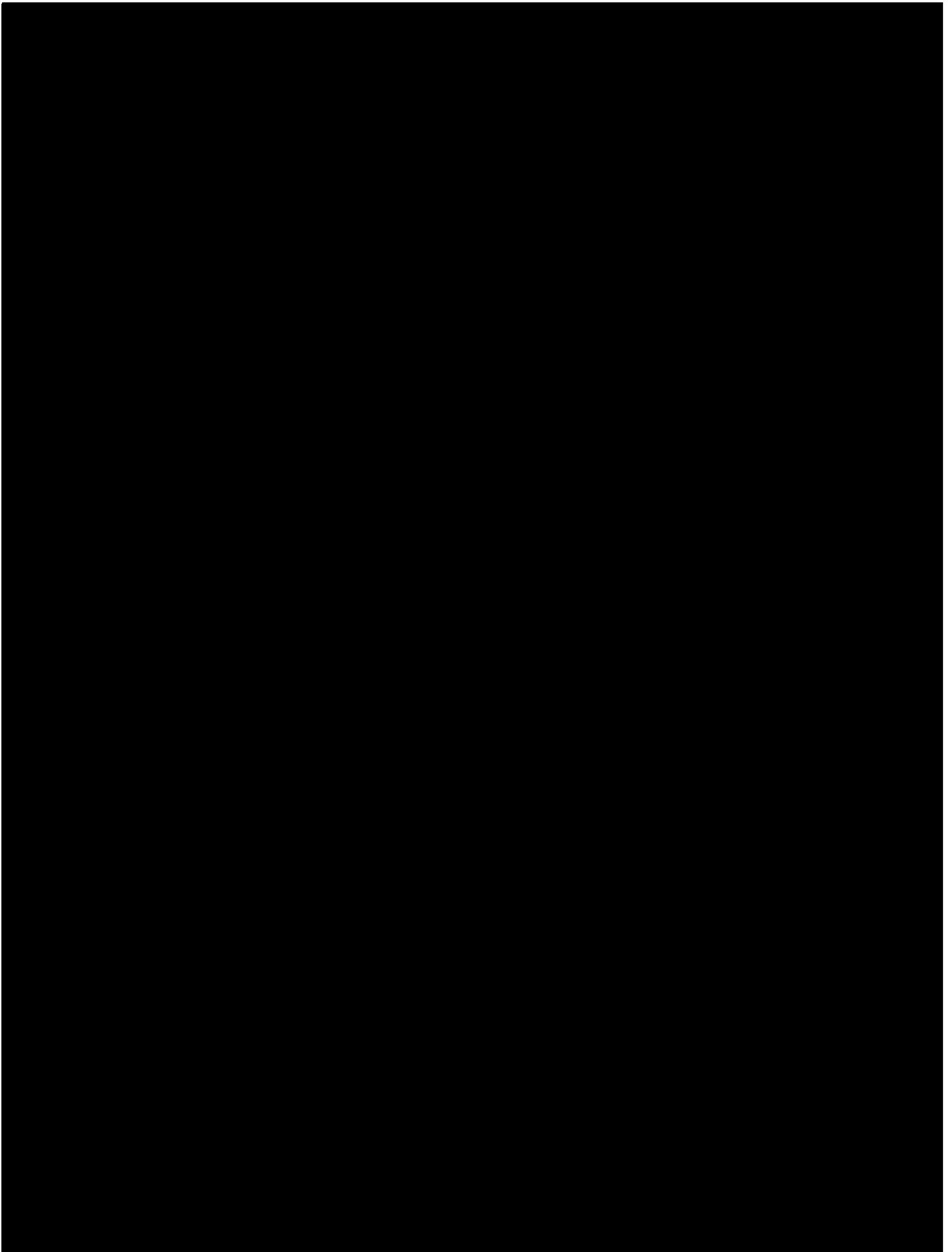
NAMES:	[REDACTED]
POSITION:	Board Worker
RATE:	\$10.00
STARTING DATE:	8/4/08

Starting date for all these candidates will depend on receiving the clearance for the pre-employment physical, drug and criminal background screenings. The candidates are scheduled to sign the new hire paperwork next week. FYI, [REDACTED] declined the job offer.

Please let me know if you have any questions or need additional information.

Make it a great day!
Debbie Meythaler
Human Resources Specialist
City of Peoria

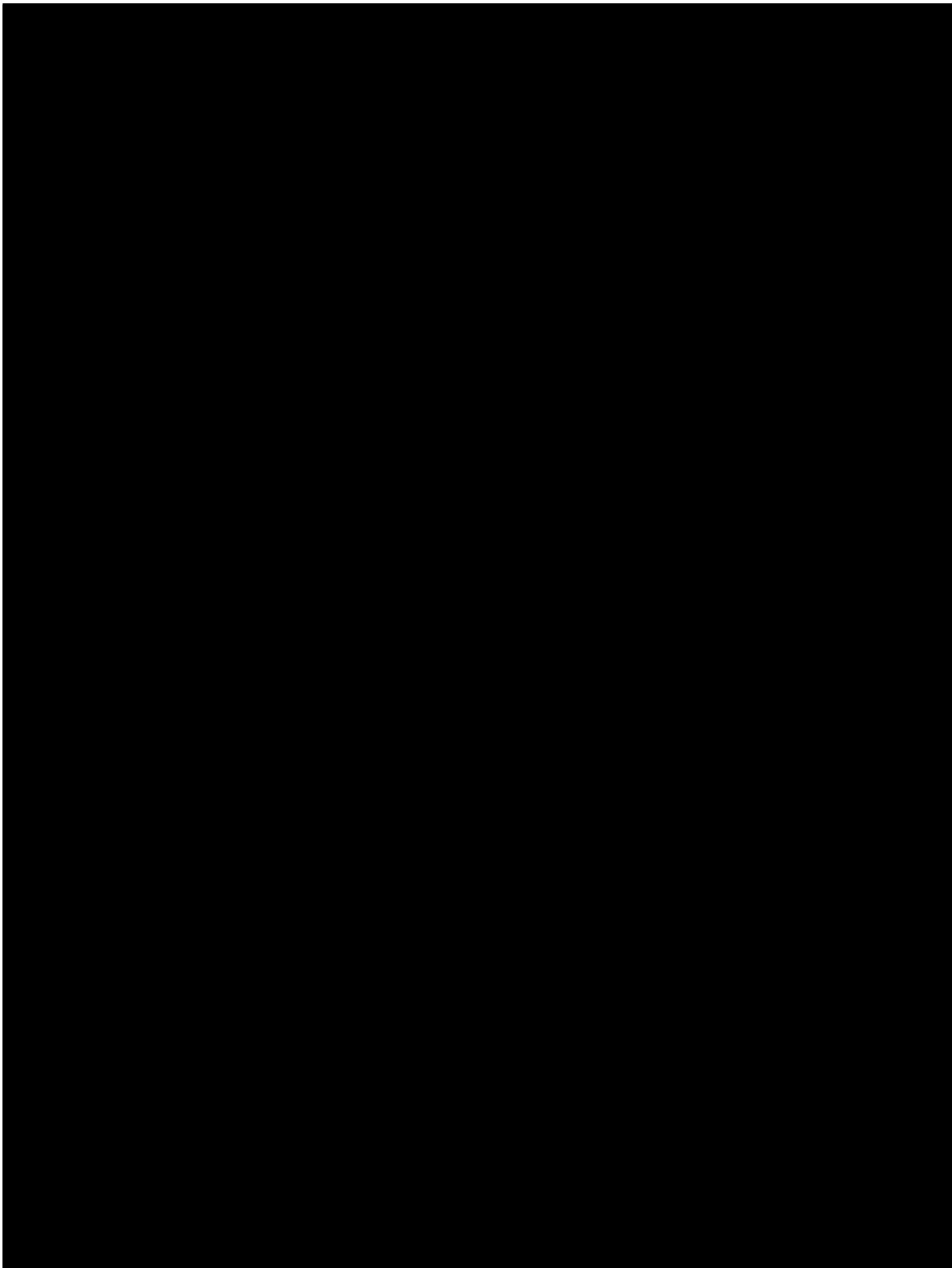
EXHIBIT 10

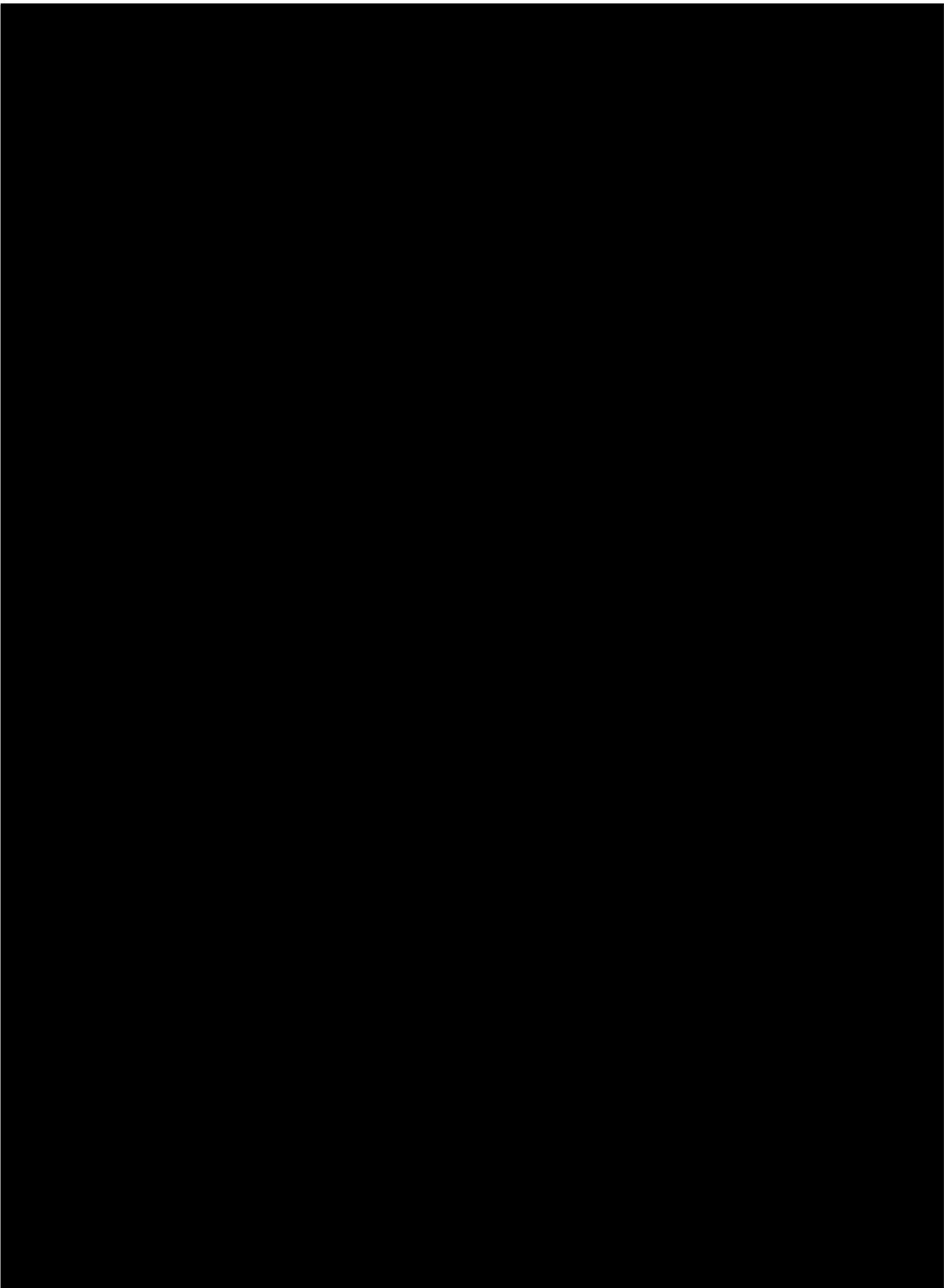


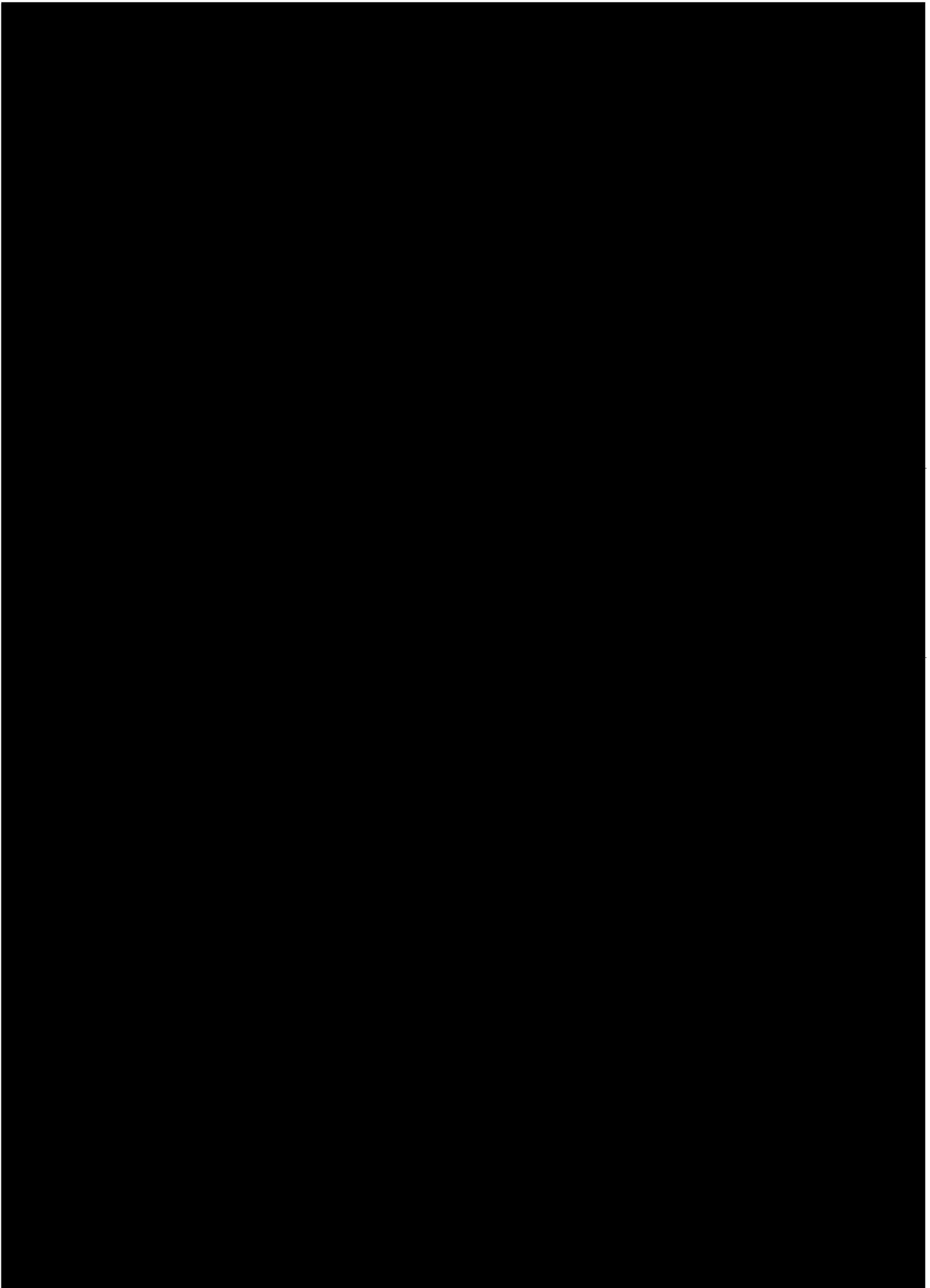
[REDACTED]

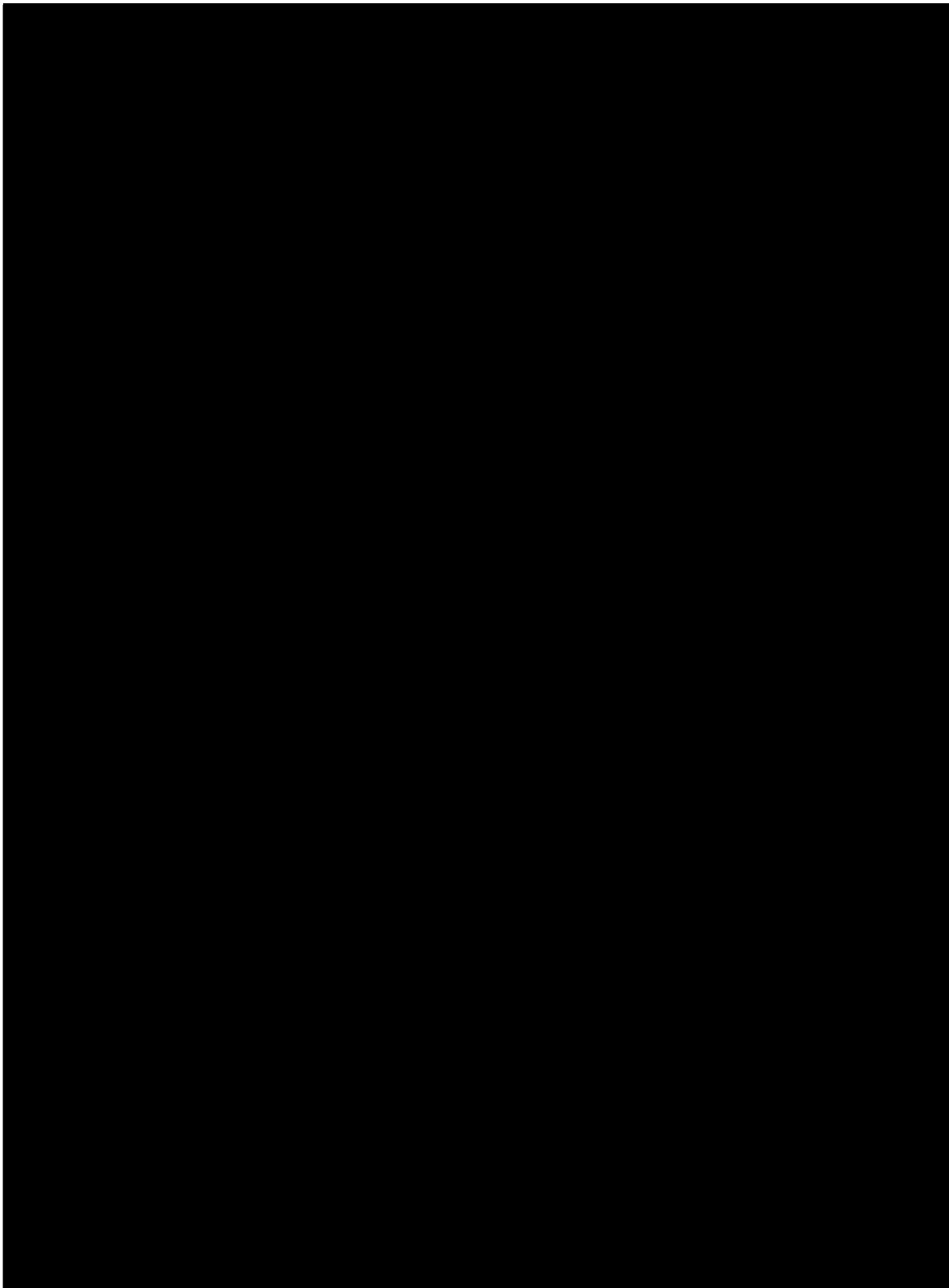
[REDACTED]

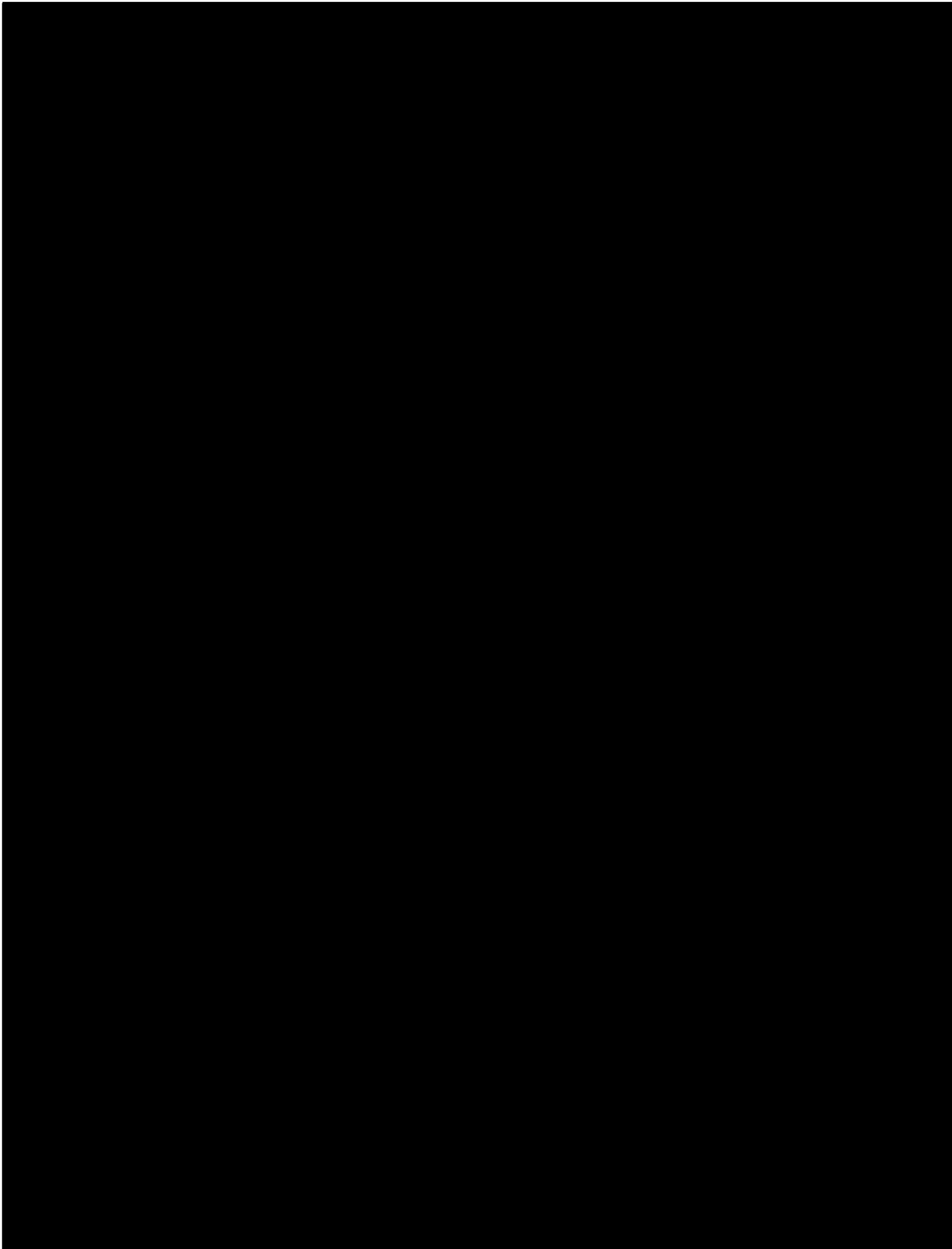
[REDACTED]

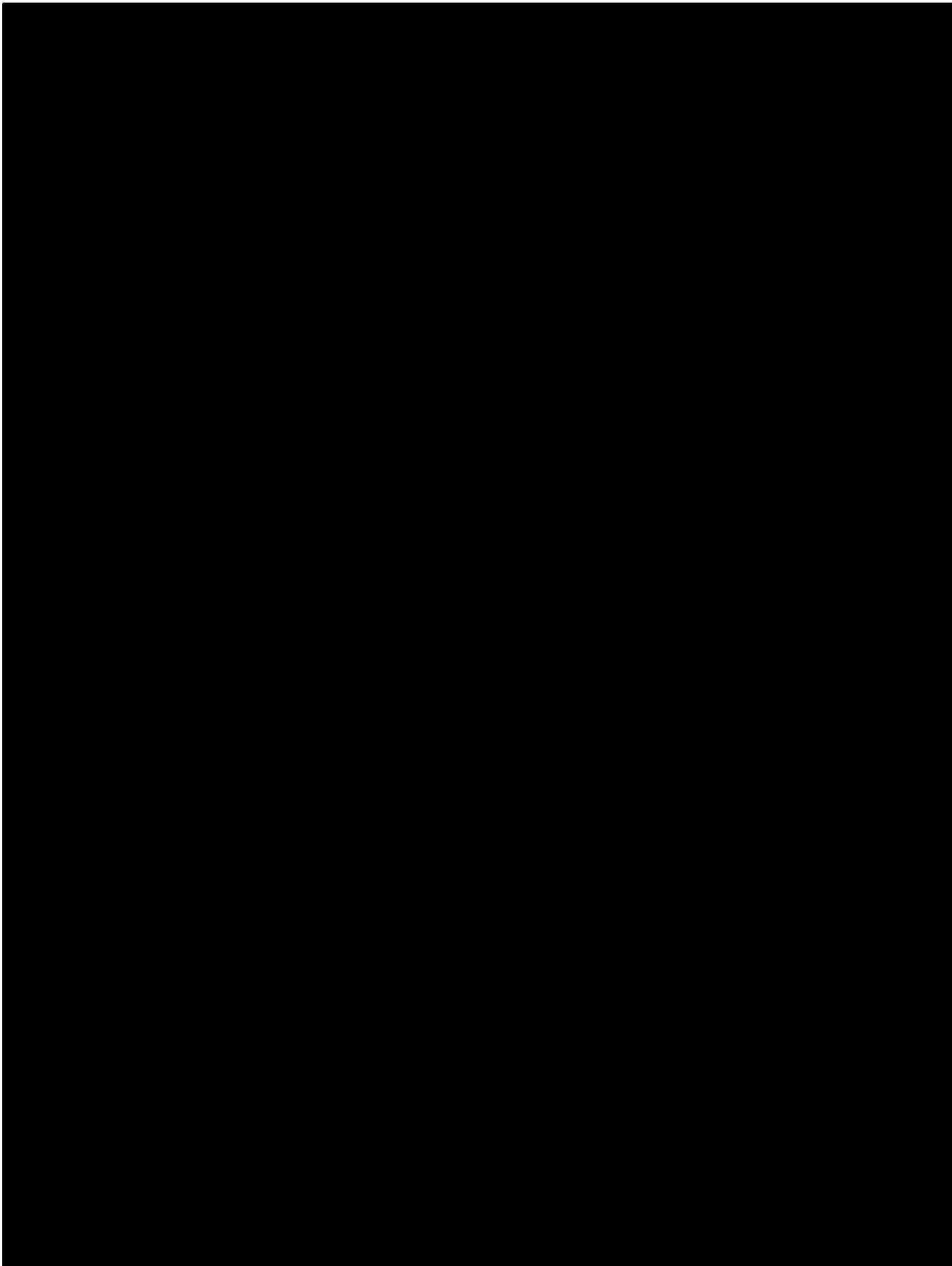


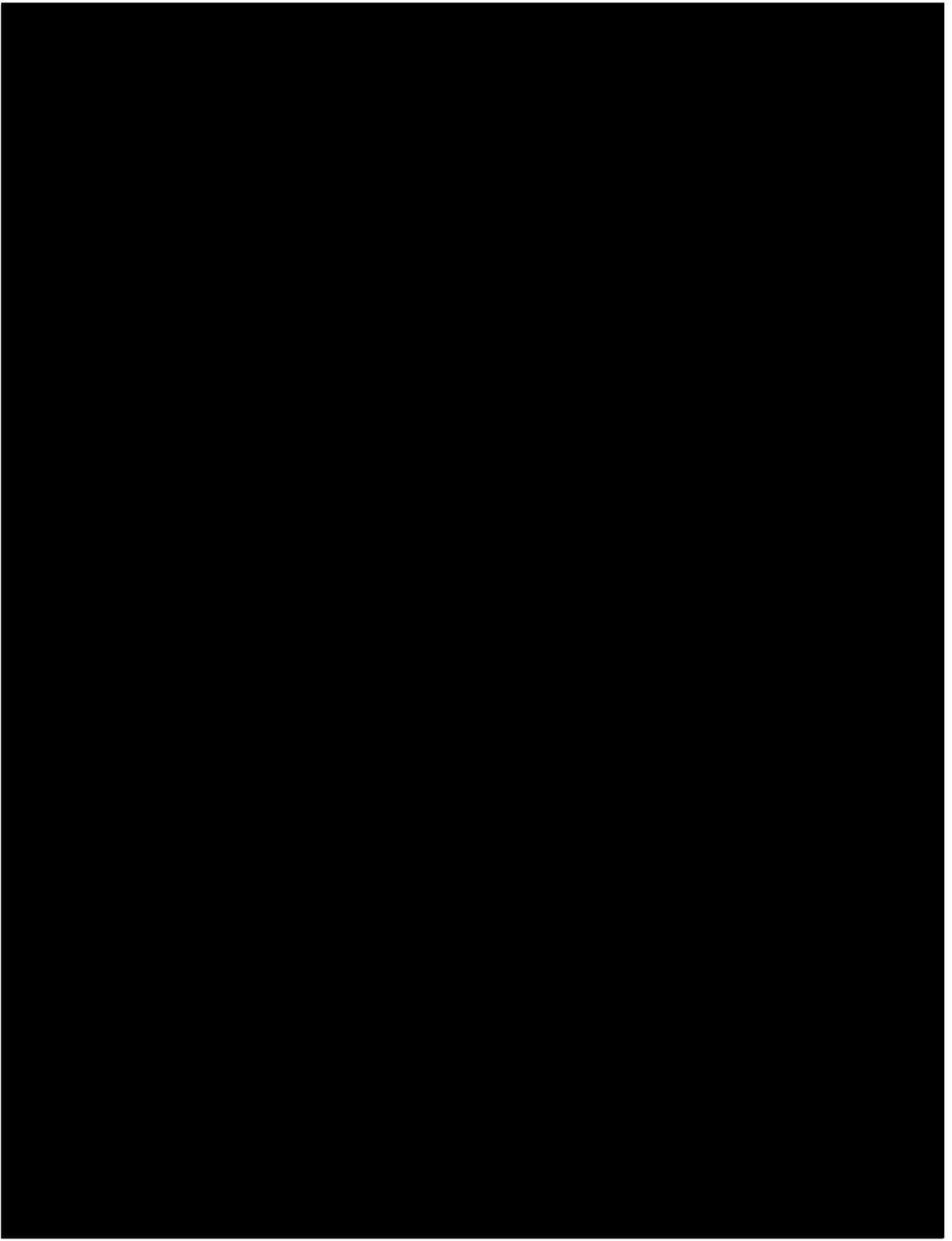


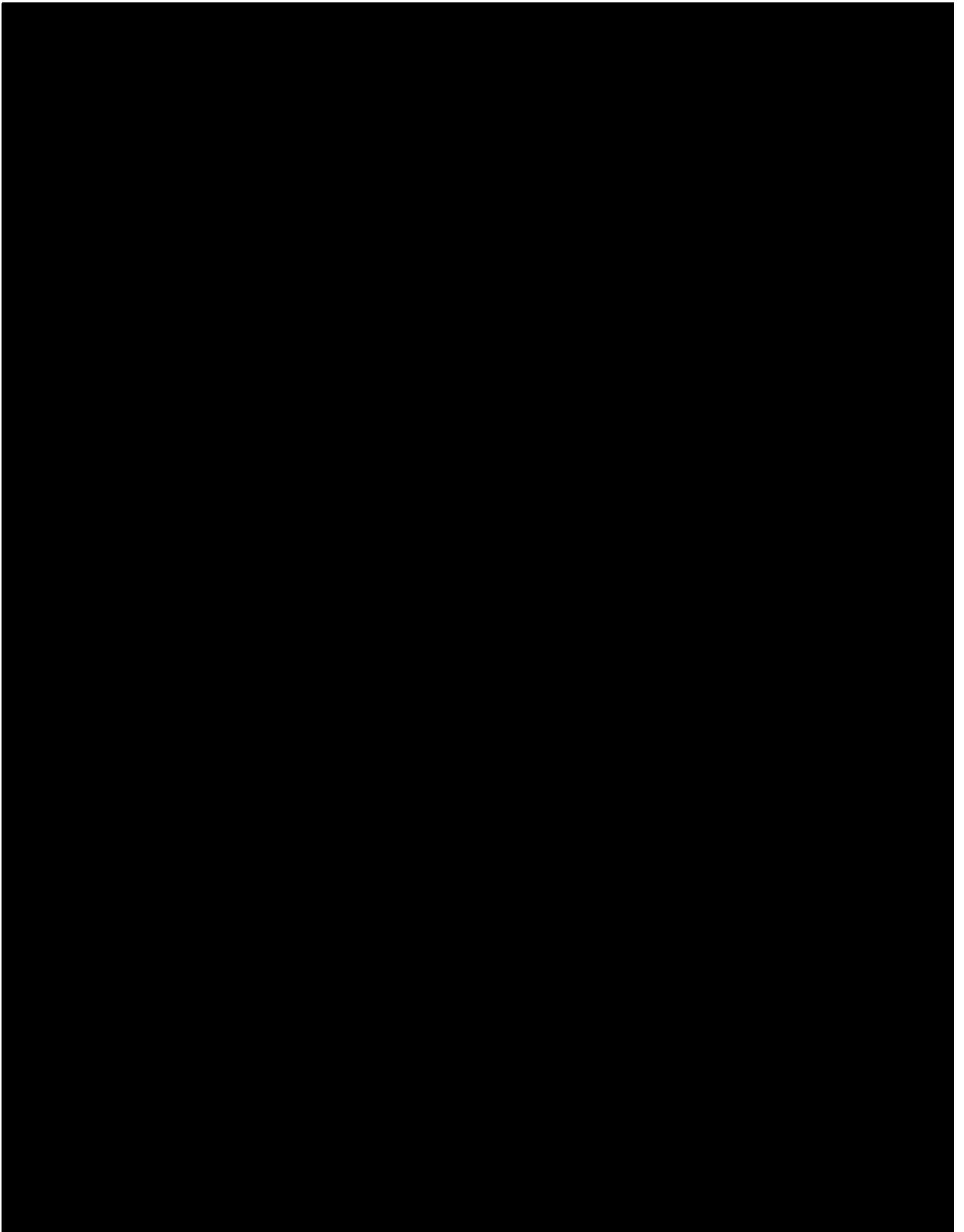












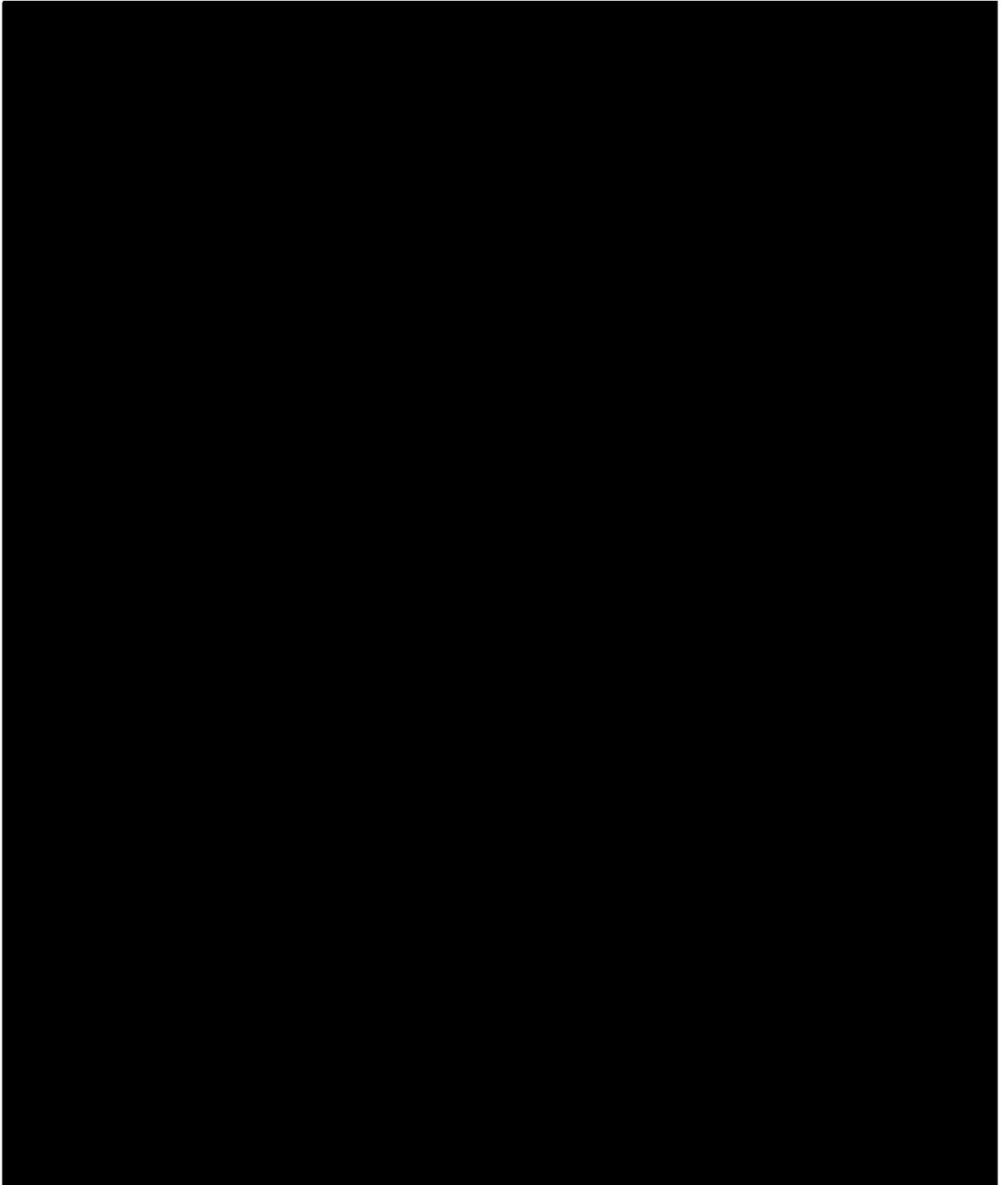


EXHIBIT 11

Daily Requirements/Duties of a Board Worker for the City of Peoria's Early Voting Satellite Location

Primary: August 6, 2008 – August 29, 2008

General: October 6, 2008 – October 31, 2008

Please note the early voting site was open during summer months with temperatures ranging from 105-116 degrees for the primary and 95-107 degrees for the general. The temperatures directly impacted the execution of the tasks listed below.

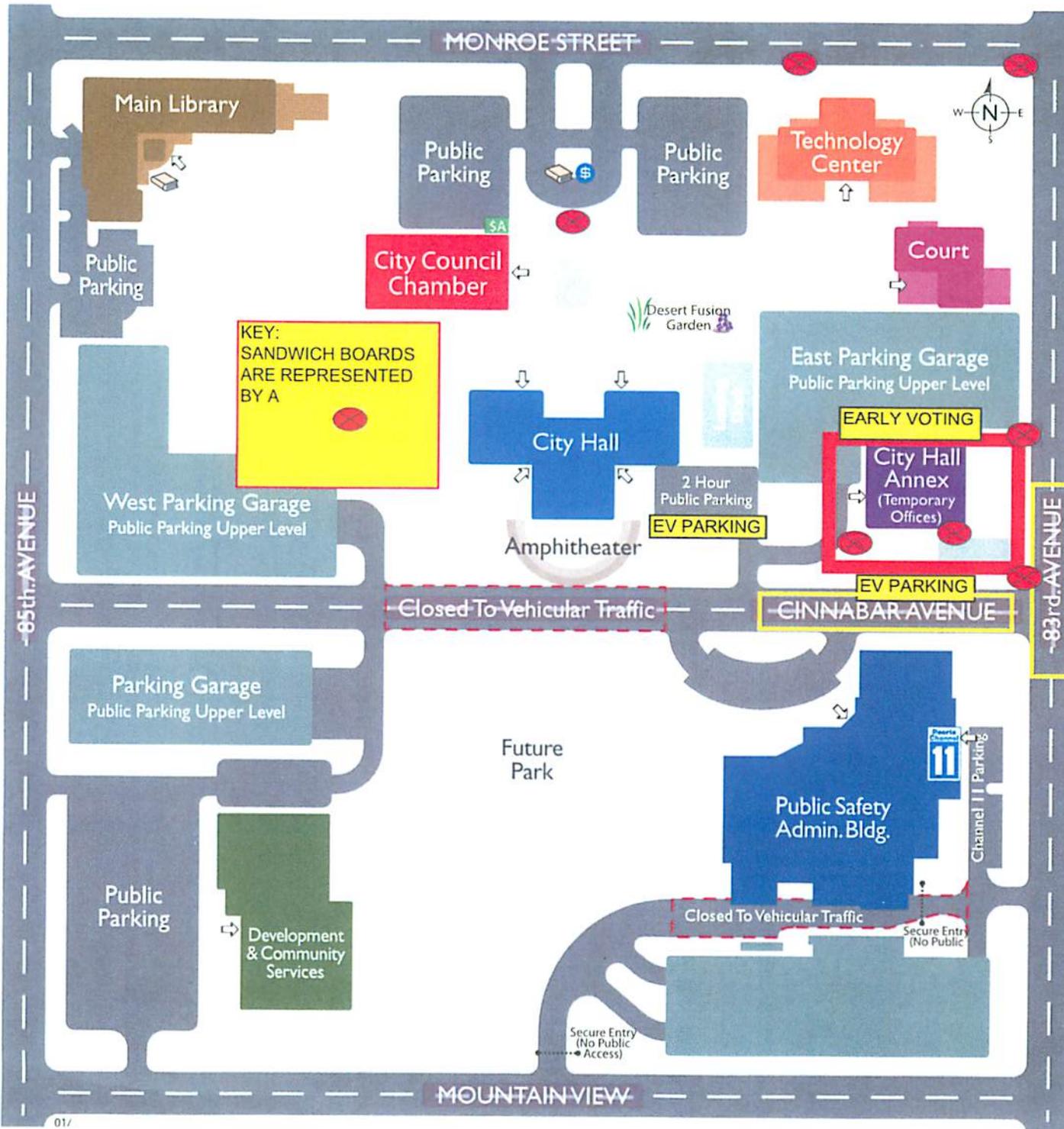
Setup and Take down:

1. Carry/setup/position/take down approximately 8 sandwich boards (weighing approx. 15 lbs. each, standing 4 ft. high and 3 ft. wide) around City Hall Campus (see map).
 - This task involved heavy lifting of awkward-shaped sandwich boards and carrying said boards an approximate 1 mile radius around the campus. Most strenuous task.
2. Carry/setup/position/take down numerous signs in addition to the sandwich boards around City Hall.
 - This task involved extensive walking, bending and reaching.
3. Carry and handle several supply boxes weighing up to approx. 35 lbs.
4. Carry and handle up to five ballot boxes weighing up to approx. 50 lbs. and are approx. 2 ft. wide and 1 ½ ft. high.
 - This task involved carrying full ballot boxes approx. ¼ mile.

Miscellaneous:

1. Extensive computer work/typing/writing/reading/speaking:
 - This task involved constantly alternating from a sitting position to a standing position to a bending position while assisting voters.
2. Printing tasks involved constant standing with repetitive bending motions while assisting voters.
3. Escorting voters to their cars/providing directions.
 - This task involved moderate walking.
4. Rearrange furniture to accommodate traffic flow. This task involved moderate lifting and bending.
5. Assisting voters waiting in lines up to ½ mile long.
 - This task involved constant walking and standing.
6. Take down all early voting equipment on the last day.
 - This task involved extensive bending, reaching and heavy lifting.
7. Work hours ranged from 7:30 a.m. to 10:30 p.m.

EXHIBIT 12



City of Peoria Municipal Campus
 8401 W. Monroe St., Peoria AZ 85345
 Information: (623) 773-7000
 www.peoriaaz.gov

City Council Chamber 8401 W. Monroe St.

City Hall 8401 W. Monroe St.

First Floor

- Information Counter
- City Clerk (Passports)
- Customer Service (Utility Billing & Setup)
- Economic Development
- Human Resources
- Pine Conference Room

Second Floor

- Budget
- City Attorney

Third Floor

- Mayor
- City Council
- City Manager
- Communications & Public Affairs

City Hall Annex 8314 W. Cinnabar Ave.

- Purchasing
- Special Events

Court 10100 N. 83rd Ave.

Development & Community Services 9875 N. 85th Ave.

First Floor

- Community Services
- Parks and Recreation
- Community Development
- Building Safety & Permits
- Neighborhood Services (Code Compliance)
- Planning & Zoning
- Engineering

Second Floor

- Public Works
- Utilities

Library 8463 W. Monroe St.

Public Safety Admin. 8351 W. Cinnabar Ave.

- Police
- Fire Administration
- Peoria Channel 11
- Peoria Conference Room

Technology Center 8343 W. Monroe St.

- Information Technology

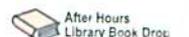
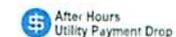


EXHIBIT 13

TO ALL APPLICANTS: The City of Peoria is an Affirmative Action/Equal Opportunity/ Reasonable Accommodation Employer. The information that you provide on this profile is used for statistical purposes in complying with record keeping requirements of the Federal Government to assure equal employment opportunity in the City's hiring practices. This profile will be filed separately from your application and will not be used to discriminate in any way in the employment process. Although completion of this profile is not mandatory, your assistance will help us to study and improve our recruitment policies. THANK YOU.

CITY OF PEORIA APPLICANT PROFILE

TITLE OF POSITION APPLIED FOR: Board Worker

TODAY'S DATE: 07-22-08

[REDACTED]

LAST NAME: [REDACTED] FIRST NAME: [REDACTED] INITIAL: [REDACTED]

ADDRESS: [REDACTED] CITY/STATE: [REDACTED] ZIP: [REDACTED]

GENDER: 1. FEMALE 2. MALE

AGE: [REDACTED]

Ethnic Group	Where did you hear about this vacancy?
(Please check all that apply and circle the category you consider to be your primary race/ethnicity)	(Please check only ONE of the options)
1. <input checked="" type="checkbox"/> White	1. <input type="checkbox"/> Peoria Website
2. <input type="checkbox"/> Hispanic/Latino	2. <input type="checkbox"/> Peoria Job Hotline
3. <input type="checkbox"/> Black/African American	3. <input type="checkbox"/> City Employee
4. <input checked="" type="checkbox"/> American Indian/ Alaska Native	4. <input type="checkbox"/> Walk-In
5. <input type="checkbox"/> Native Hawaiian/ Other Pacific Islander	5. <input type="checkbox"/> Newspaper: _____
6. <input type="checkbox"/> Asian	6. <input type="checkbox"/> Job Fair: _____
7. <input type="checkbox"/> Prefer not to specify	7. <input type="checkbox"/> Professional Publication or Web-site: _____
	8. <input checked="" type="checkbox"/> Other: <u>MCED</u>

Preference Points:

Some applicants may qualify for employment preference points in accordance with Arizona Revised Statue 38-492. Please refer to 'Preference Points Information' on the back page of this application to determine whether you qualify. If you determine that you meet the requirements for any of the listed categories, please check the appropriate option(s) below.

Note: Appropriate supporting documentation is required within five working days from the closing date of the position you are applying for. Documentation may be submitted via fax at (623) 773-7149, U.S. Mail, or in person at the Human Resources Office, 8401 West Monroe Street, Peoria, AZ 85345. Please reference the Job Title and Job Posting number on your supporting documents.

Veteran Disabled Veteran Spouse or Surviving Spouse of a Veteran Person with a Disability

EXHIBIT 14

[REDACTED]

November 17, 2008

Ms. Mary Jo Kief, City Clerk
City of Peoria
8401 W. Monroe
Peoria, Arizona 85345

On July 22, 2008, [REDACTED] and I completed paperwork and applications for "Election Board Worker." Maricopa County Elections Department highly recommended us to the City of Peoria for Early Voting scheduled to begin August 4, 2008, because we both worked Early Voting in 2006 and were trained, experienced, and highly skilled at that job.

On [REDACTED] we both kept appointments with [REDACTED] for physicals the City required of us each as Election Supervisors. We were there over four hours from 2:05 pm until we finished close to 6:30 pm.

Despite a failure to communicate, the physician who saw me cleared me for sedentary work.

We attended an Early Voting class on July 24 from 9 am to 4 pm held at the County Election Center, where we demonstrated we were fully qualified for the job as Early Election workers. To the best of my knowledge, we were never paid for this training.

Circa August 1, Debbie Meyphaler called to tell me I did not pass my physical and was not hired. Please forward this decision to me in writing and explain in detail why I was not hired.

Explain why Peoria would not hire me for a sedentary position after their doctor gave me clearance. Please give me the name of the person who made the decision and tell me why the person hired in my place was my age or older and in worse physical condition than I, since she had just had back surgery. Please be specific.

Please forward to me the written Job Description for the job of Election Board Worker for which I applied, including its detailed qualifications, requirements, and duties, especially those which require I do other than the sedentary duties for which I was cleared.

Please note, when the doctor reported any inability to do more than sedentary work, it was his assumption based upon elective and corrective surgeries I had, including a [REDACTED]. His diagnosis was not based upon any actual physical tests of my strength or agility. He never even asked me about my present condition or if I ever had a heart attack. I never have had a heart attack. Did he assume I had?

The doctor is inaccurate to assume I am not capable of hard physical work. After [REDACTED], my doctor advised I do a monitored exercise program, including the treadmill, for several months as part of my recovery routine. Even my [REDACTED] cleared me for any activity six months after my operation when he stated my full strength was back to that of [REDACTED]

Since then, I have done manual labor which required heavy lifting of well over the 10 lb sedentary limit. I painted two large sheds in April 2007 and installed a cooler on the roof of my house in May 2008. I have moved concrete blocks and shoveled sand. I have pictures to verify these activities.

Recently, I worked several weeks for the Maricopa County Election Department as a Board Worker Trainer. This involved unloading a truck and setting up election equipment for the students to learn including 15 Edge Handicap Voting machines weighing over 38 lbs each. In one picture, I am pushing a rack of 5 Edge Machines up the Handicap Ramp at the Peoria City Council Chambers where several of these classes were conducted.

I just completed 15 days working long hours for the County Elections Department during the Presidential Election as a Trouble Shooter, a Hand Count Auditor at the County Sheriff Facility, and helping process ballots 12 hours a day at the Maricopa County Election Center.

I regularly do physical work, lift heavy objects weighing 40 or 50 lbs, and can do pushups. There was an obvious lack of communication during my exam. I asked to see the doctor for five minutes to correct the record by demonstrating the errors to the doctor so he could correct his assumptions.

The medical clinic office manager seemed more concerned with who would pay for the five minutes than if my records are correct. It is important to me my records are correct and do not contain false information or false conclusions. It was the doctor's error to not get facts and he should correct it. I was not notified the errors were corrected nor been given another appointment to do so. I would appreciate it if you can arrange that this be done. Having a medical record like this on file could be damaging to me.

If the City of Peoria has a policy to not hire workers over a certain age, or for some other reason, for sedentary work, regardless if they are qualified to do the job or cleared by their doctor, please inform me in writing and supply me with a detailed copy of the policy, who approved it, and when.

Please tell me who made the final decision to not hire me and what they noted on my application and in my file as the reason for their decision.

Please supply me with an unredacted photocopy of my application and any notations made about me in my file that is part of my permanent record. I have a right to know what was written about me.

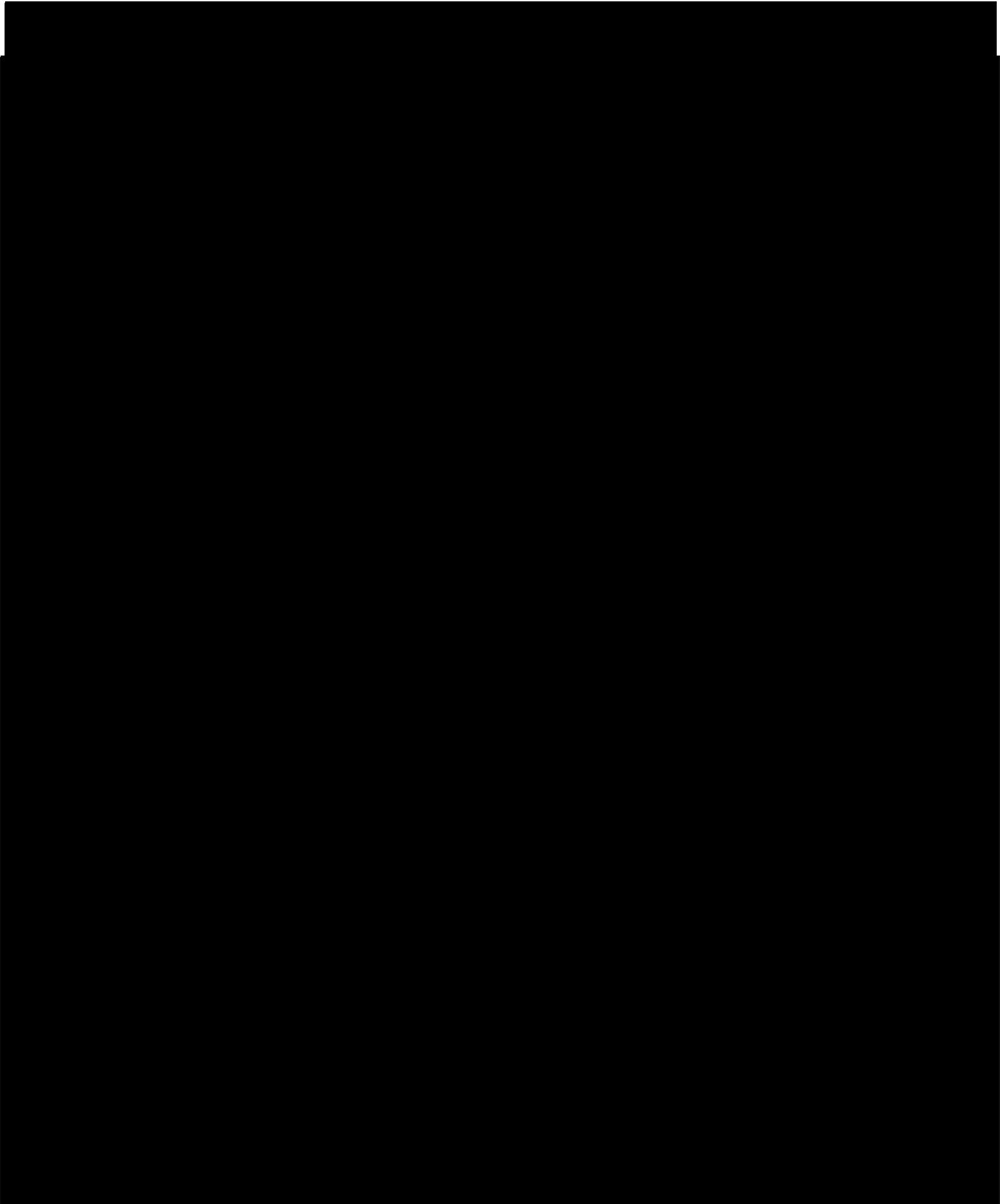
I also have a legal right to a complete copy of any physical examination done of me regardless of who paid for it since it was my body I gave permission to examine and I who signed a release to allow the City of Peoria to receive a copy of it. If there is a law that allows you to refuse to give me a complete copy of my own physical, please provide me with a copy of that statute.

Please supply me the name of the person who has refused to allow the doctor's office to send me a complete unredacted copy and please give me the specific reason or reasons they refused.

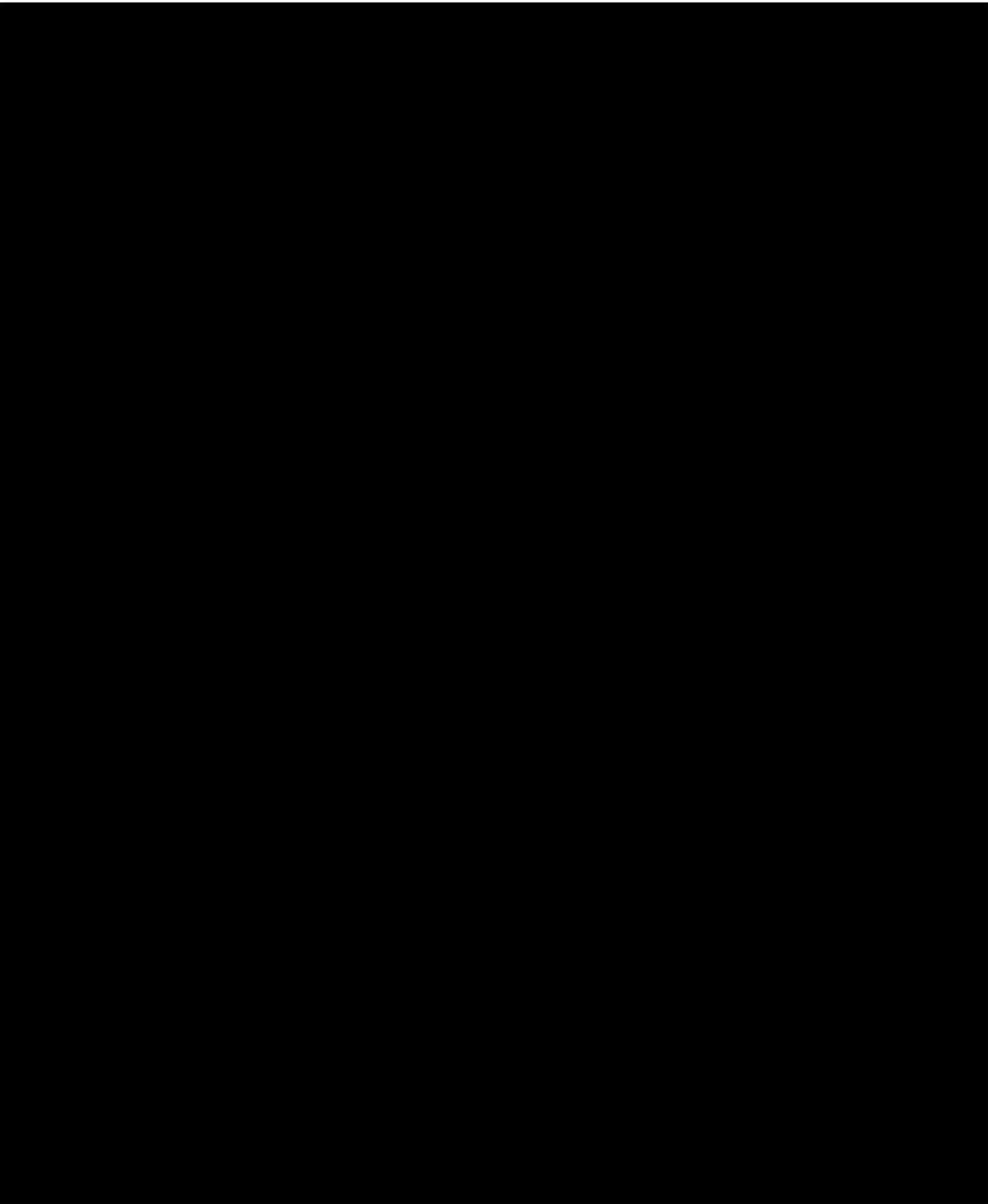
Thank you.

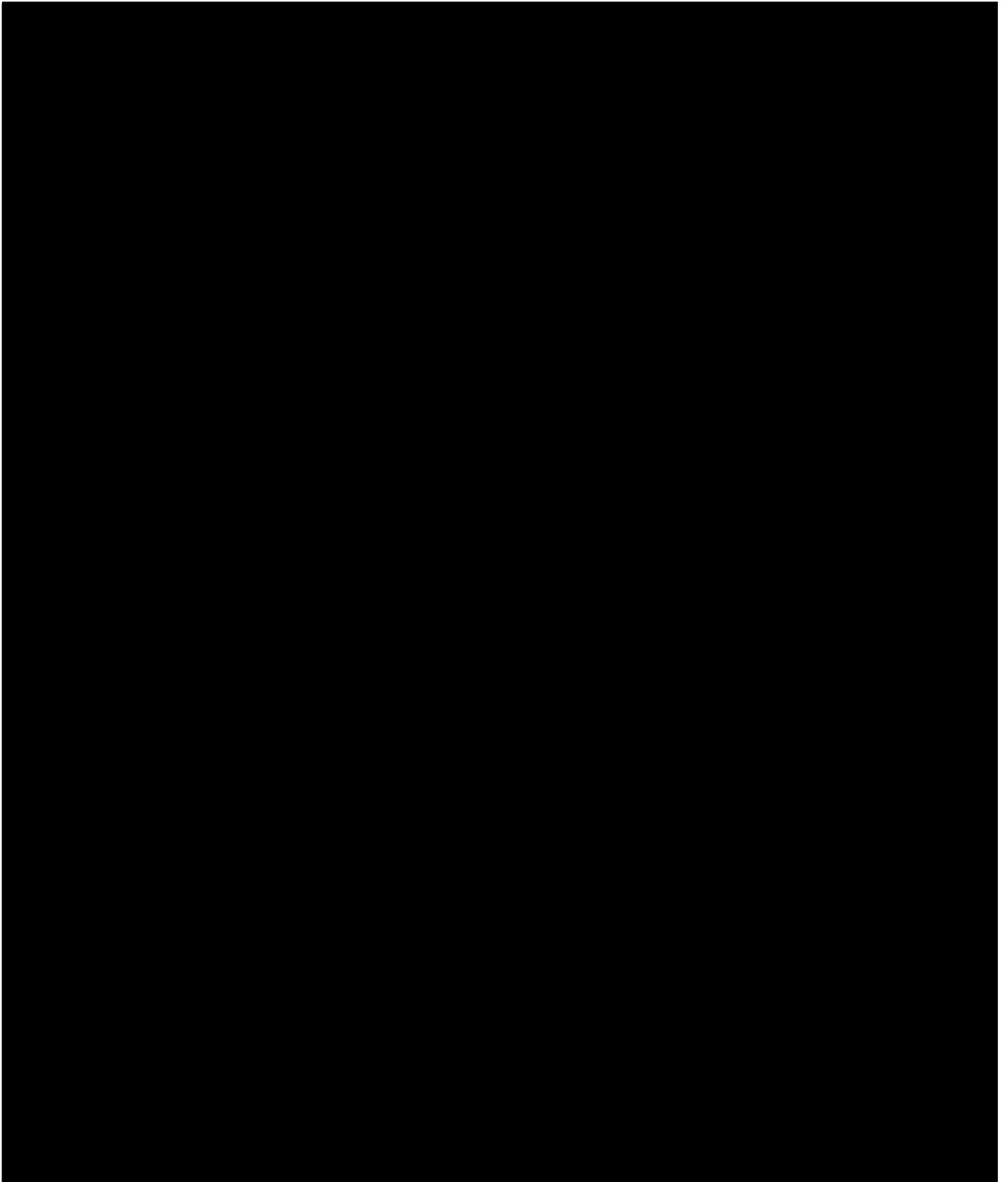
[REDACTED]
[REDACTED], Applicant, 2008 Early Voting Board Worker

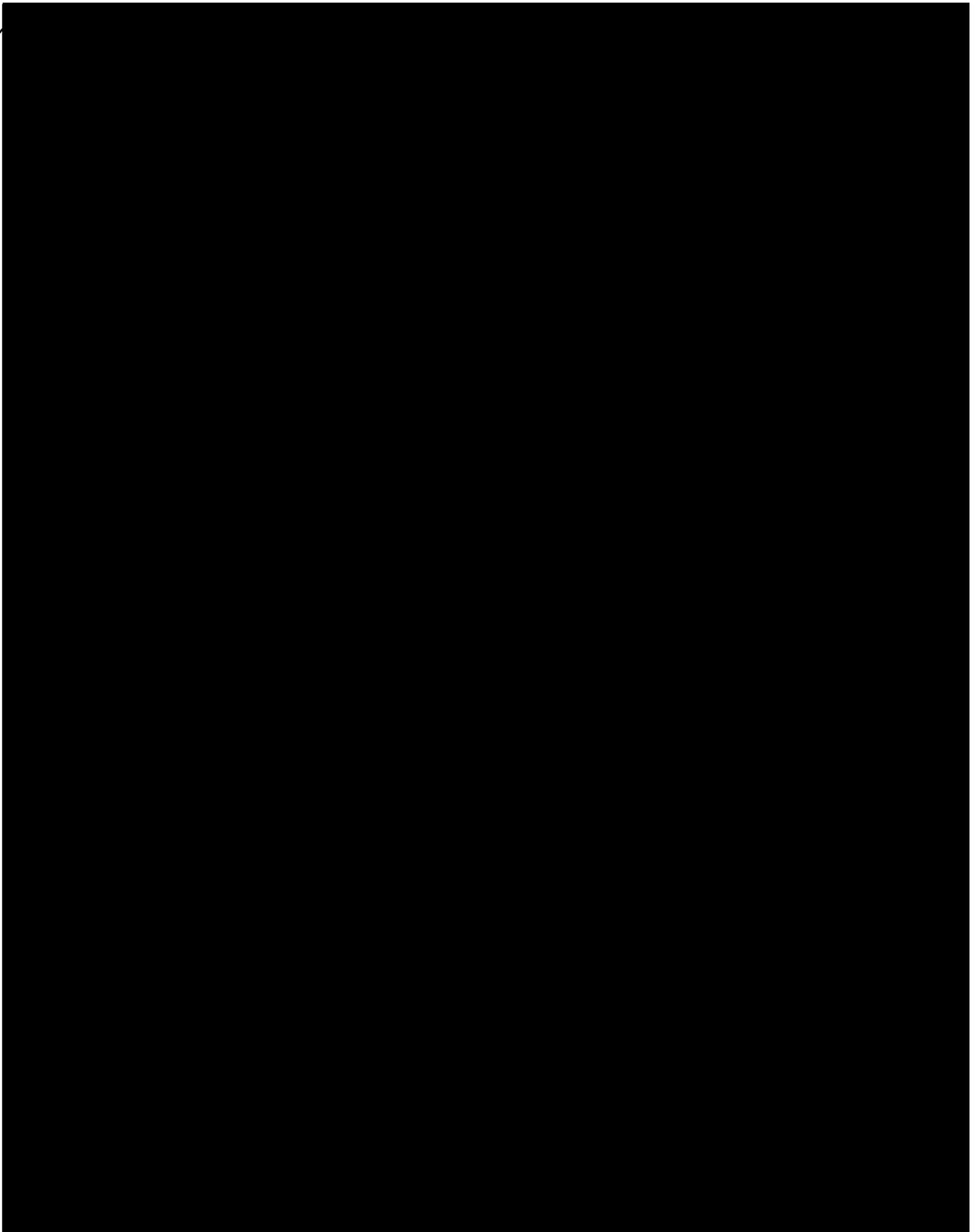
EXHIBIT 15



1









City of Peoria

Office of the City Attorney

8401 W. Monroe Street, Peoria Arizona 85345

Phone: 623-773-7330

Civil/Risk Fax: 623-773-7043

Criminal/Victim's Assistance Fax: 623-773-7323

July 1, 2009

VIA HAND DELIVERY

Gail Styles, OAA
U. S. Equal Employment Opportunity Commission
Phoenix District Office
3300 North Central Avenue, Suite 690
Phoenix, Arizona 85012

Re: Position Statement
Charge No. 540-2009-02921
[REDACTED]/City of Peoria

Dear Ms. Styles:

This letter shall serve as the City of Peoria's ("City") position statement with respect to the above referenced Charge of Discrimination (the "Charge"). The Charge was filed with your office on or about May 18, 2009 by [REDACTED], an individual who applied for a Temporary Board (i.e., Election) Worker position with the City in the City Clerk's Office/Department.

At the outset, it should be noted that the City is an equal employment employer. In fact, City supervisors are subject to evaluation and even discipline based on their commitment and actions regarding equal employment opportunities.

In this particular instance, the City treated [REDACTED] fairly and consistently with other applicants, and in no way has the City discriminated against [REDACTED] on the basis of disability. [REDACTED] allegations in this Charge are without merit, and the City respectfully suggests that they should be declared unfounded.

1. Description of the City

The City is an Arizona municipal corporation, created by Charter in 1954, that employs in excess of 1,500 employees who perform a wide range of local government services for the public. The City Clerk serves as Clerk to the City Council, keeps the corporate seal, attests official City signatures, files and

records City Council actions and documents. The City Clerk also serves as the Chief Elections Officer for the City and is responsible for conducting all municipal elections. The City Clerk's Office/Department consists of approximately nine (9) full-time job positions allocated among four (4) Divisions: Administration, Public Records and Information, Elections, and Passports. (See City Clerk's Office/Department Organizational Chart, attached as Attachment 1.) The Temporary Board Worker position that [REDACTED] applied for is one of three (3) Board Worker positions for the Primary Elections (August 6, 2008 – August 29, 2008) and one of two (2) Board Worker positions for the General Elections (October 6, 2008 – October 31, 2008).

2. Contact Information

The City's legal address is:

City of Peoria
8401 W. Monroe Street
Peoria, Arizona 85345

The contact information for the person responsible for responding to this Charge is:

Cheryl A. Boswell
Assistant City Attorney
City of Peoria
8401 W. Monroe Street
Peoria, Arizona 85345
(623) 773-7330

3. City's Response to Factual Allegations Listed in Charge

Prior to filing her Charge, [REDACTED] contacted the City several times in writing.

1) The first written communication was on September 8, 2008 requesting the medical records from the City's pre-employment physical. (See [REDACTED] September 8, 2008 Letter, attached as Attachment 2.) The City responded to [REDACTED] on September 29, 2008 and provided her with a redacted copy of the medical records. (See Cheryl Boswell September 29, 2008 Letter, attached as Attachment 3.)

2) The second written communications were dated November 17, 2008 and were letters to four different individuals at the City (i.e., Mary Jo Kief, City Clerk; Debbie Meythaler, Human Resources Specialist; Nancy Fantasia, Benefits Administrator and me), informing the City that the medical records of her

physical were not complete and were incorrect. (See [REDACTED] Four (4) November 17, 2008 Letters, attached as Attachments 4, 5, 6 and 7.) The City responded to [REDACTED] on December 3, 2008 informing her that the City has to rely on the medical records in their current form unless informed differently by the medical professional. (See Cheryl Boswell December 3, 2008 Letter, attached as Attachment 8.)

In her Charge, [REDACTED] submitted a one paragraph Discrimination Statement containing particulars/factual allegations. The City first will respond to each sentence of the factual allegations separately in the order raised in the Charge. Then the City will briefly note other facts relevant to the Charge.

1) "On or about July 22, 2008, I [sic] and co-worker [REDACTED] completed the necessary paperwork/applications to initiate our employment with the Respondent." Agree. [REDACTED] application was dated July 22, 2008.

2) "We were provided employee packets, given entrance badges and introduced to other employees." Partially agree. The City acknowledges that the candidates (i.e., possible employees) were given badges and introduced to other candidates (possible employees), but they would not be eligible to be hired unless and until they successfully completed the pre-employment physical, drug and criminal background screening. It was communicated to the candidates that employment would be contingent upon the candidate's successful completion of a pre-employment physical, drug and criminal background screening, as is required of all City employees. Disagree. [REDACTED] and candidate [REDACTED] were not introduced to "other employees." The candidates were introduced to other candidates (possible employees). (See HR – Debbie Meythaler, July 18, 2008 E-Mail to Mary Jo Kief - Board Workers Job Offers Status, attached as Attachment 9.)

3) "[REDACTED] and I were both informed that we needed to have physicals." Agree. All City employees are required to have a pre-employment physical, drug and criminal background screening. I suspect that Board Workers in the past were not required to get a physical, etc. because in the past they were not City employees, but rather Maricopa County employees. This year Maricopa County who usually provides the workers, informed the City that due to budget cutbacks they would not be able to provide Board Worker employees and the City would have to hire their own Board Worker employees. Maricopa County did however provide the City with a list of names of possible employees. The City used that list (without vetting) and contacted the first names on the list as candidates for Board Worker employees.

4) "Upon the completion of the physicals we were both informed by Respondent that we did not pass and therefore we were no longer hired for the

positions on August 1, 2008." Partially agree. Upon completion of [REDACTED] physical, the Doctor's (i.e., [REDACTED]) recommendation based on an examination of [REDACTED] and information provided by [REDACTED] was that [REDACTED] would only be able to work with certain restrictions (i.e., no bending (at waist) and no flexion (downward looking) of neck). (See [REDACTED], attached as Attachment 10.) The restrictions that the Doctor placed on [REDACTED] would not allow a Board Worker to perform the essential (critical) duties/functions of the job for the position of Board Worker. (See Daily Requirements/Duties of a Board Worker for the City of Peoria's Early Voting Satellite Location, attached as Attachment 11.) The City relied on the medical Doctor's expert opinion with reference to the restrictions that were placed on [REDACTED] ability to work and in doing so was being a responsible conscientious employer.

The essential functions for the position of a Board Worker cannot be completed from a sedentary position. Board Workers need to be able to lookup (read and search for) every voter on the computerized Registration Records and fill out control slips for every voter which requires constant movement (looking up and down and back and forth) from looking at the monitor, to looking down at the keyboard and the control slips and up at the voter. While looking up every voter on the computerized Registration Records and filling out control slips for every voter is done while sitting down at a desk or table it still requires constant flexion (downward looking) of the neck. Board Workers also must print a ballot for every voter and bend over and reload the printer with ballot paper. The printer that prints the ballots is approximately forty-four (44) inches by twenty-four (24) inches in size and is located approximately twelve (12) or more feet away from the desk or table where the computer monitor is located. (See Attachment 11.) Board Workers also must carry, setup and take down Monday through Friday approximately eight (8) sandwich board signs (weighing fifteen (15) pounds and standing four (4) feet high and three (3) feet wide) around the City Hall Campus at various locations. (See City of Peoria Municipal Campus Map, attached as Attachment 12.) Carrying, setting up and taking down the sandwich board signs require an individual to bend over at the waist. [REDACTED] Doctor's recommendation stated that based on an examination of [REDACTED] and information provided by [REDACTED] she would only be able to work with the restrictions of no bending (at waist) and no flexion (downward looking) of neck. Bending at the waist and neck flexion (downward looking) is needed to perform the essential functions of the job requirements of a Board Worker.

Disagree, that [REDACTED] was told that she was no longer hired for the position because [REDACTED] would not (or could not) be hired prior to a pre-employment physical, drug and criminal background screening. Emphasis added. It was explained to the candidates that employment would be contingent on each applicant successfully completing the pre-employment physical, drug and

criminal background screening as is required for all City of Peoria employees. Therefore, ██████████ was never told that she was no longer hired for the position, but rather she was told that she would not be hired since her medical examination stated that she would only be able to work with certain restrictions which were incompatible with the essential functions of the Board Worker position. Emphasis added.

5) "I believe I was discriminated against because of my disability, in violation of the Americans with Disabilities Act of 1990." Disagree. The City was unaware of ██████████ having a disability. ██████████ did not indicate that she had a disability on her City of Peoria Applicant Profile. (See City of Peoria Employment Applicant Profile, attached as Attachment 13.) In fact, in ██████████ various communications to several City staff members she refers to her "alleged handicap" and "two other alleged handicaps the doctor reported on my ██████████ physical." (See ██████████ November 17, 2008 Letter, attached as Attachment 14.) By her own account (in her various letters) ██████████ did (or does) not believe that she has a disability and stated that she did not have a disability and that such was incorrect, in error, or was alleged, but in her Charge she states that "I believe I was discriminated against because of my disability, in violation of the Americans with Disabilities Act of 1990." One cannot state that they do not have a disability (i.e., "alleged handicap" and "two other alleged handicaps the doctor reported on my ██████████ physical") then assert when they are not hired, claim a disability - which they had earlier said they did not have.

Additionally, one cannot claim disability discrimination against the City for not hiring them because of their disability and also assert that the City hired a "person in my place [that] was older and more disabled than I" for the same position. (See Attachment 14.)

Other factual information relevant to the Charge includes, by category:

Background of the Position: Board Worker employees that worked at the City's Early Voting Satellite location in the past were Maricopa County employees. But this year, Maricopa County who usually provided the workers, informed the City that due to budget cutbacks they would not be able to provide Board Worker employees and the City would have to hire their own Board Worker employees. The City's Board Worker positions require that Board Workers perform certain job specific tasks. (See Attachment 11.) Board Workers receive supervision from the City Clerk who serves as the City's Chief Elections Officer and is responsible for conducting all municipal elections and overseeing the City's Primary and General Election satellite location in Peoria at the City.

Background of the Recruitment: When the City became aware that it would have to hire Board Worker employees this year, the City simply used a list of candidates that was provided by Maricopa County (without vetting) and contacted the first names on the list as candidates for Board Worker employees.

Screening Process: There was not a formal screening or vetting process other than the City's pre-employment physical, drug and criminal background screening. The City simply contacted the names on the list (provided by Maricopa County). The City needed three (3) Board Workers for the Primary Elections and two (2) Board Workers for the General Elections and selected the names from the list provided by Maricopa County. There was not a City recruitment for the Board Worker positions.

Interview Process: There also were not any formal interviews or an interview process. The City simply contacted the names on the list (provided by Maricopa County) and if the individuals were interested they came in and filled out a City job application and were informed of the City's hiring process (i.e., the pre-employment physical, drug and criminal background screening).

Evaluation of the Candidates/Applicants: There was not an evaluation process of the candidates. If the candidates successfully completed the pre-employment physical (without restrictions which were critical to performing the essential duties/functions of the job of Board Worker), drug and criminal background screening they were hired. (See Board Workers Banner Occupational Health Services Work Status Reports, attached as Attachment 15.)

4. City's Response to Discrimination Statement

██████████ was not hired as a Board Worker because the City was informed by the Doctor who performed a physical on ██████████ and whose recommendation was that ██████████ would only be able to work as a Board Worker with certain restrictions (i.e., no bending (at waist) and no flexion (downward looking) of neck). The Doctor's restrictions prohibited ██████████ from successfully performing essential functions/duties of a Board Worker (i.e., no bending (at waist) and no flexion (downward looking) of neck). However, the restrictions do not appear to render her disable or to qualify as a disability under the Americans with Disabilities Act of 1990 ("ADA"). Simply having a physical impairment (i.e., no bending (at waist) and no flexion (downward looking) of neck) is not enough to trigger the ADA. To have a disability under the ADA, a person must:

- have a physical or mental impairment that substantially limits one or more major life activities
- have a record of being substantially limited, or

- be regarded as being substantially limited.

The Supreme Court established that to qualify under the ADA's definition of disability a claimant (██████████) must prove that she has a physical or mental impairment and that the impairment substantially limits a major life activity. *Mink v. Wal-Mart Stores, Inc.*, 185 F.Supp.2d 659 (2002) (citing *Toyota Motor Manufacturing v. Williams*, 534 U.S. 184, 122 S.Ct. 681 (2002) (citing 42 U.S.C. § 12102(2)(A)). "Major life activities" refer to those activities that are of central importance to daily life. *Id.* at 663, (citing *Toyota* at 690-91). Major life activities include functions such as "caring for oneself, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning or working." *Id.* (citing *Sutton v. United Airlines, Inc.*, 527 U.S. 471, 480, 119 S.Ct. 2139, 21, (citing CFR §1630.2(i))). "When the major life activity under consideration is that of working, the statutory phrase 'substantially limits' requires ... that the claimant allege that they are unable to work in a broad class of jobs, rather than a specific job." *Id.* (citing *Sutton* at 491). When addressing the major life activity of performing manual tasks, the central inquiry must be whether the claimant (██████████) is unable to perform the variety of tasks central to most people's daily lives, not whether the claimant is unable to perform the tasks associated with the specific job (i.e., of a Board Worker). *Id.* (citing *Toyota* at 692-93).

The facts in this Charge do not offer even a scintilla of evidence that ██████████ is unable to perform the variety of tasks central to most people's daily lives. Simply having a physical restriction placed on your ability to work as a Board Worker is not enough to trigger the ADA. To trigger the ADA a physical or mental impairment must exist that substantially limits one or more major life activities, which ██████████ fails to meet or prove. In fact, in referring to her restrictions ██████████ used the words "alleged handicap," she states that:

The [physical] records as written are incorrect and not complete. They are the result of a failure to communicate, have left out facts, and contain errors which need to be corrected.

I offered to meet with the doctor for five minutes to correct them. I demonstrated to the clinic office manager I can bend my head to look down and I can touch the floor next to my toes with my knees remaining straight, therefore able to bend down. Also, the request for me to 'squat' was dangerous and could have caused me very serious injury had I done it the way the doctor requested.

(See Attachment 7.) By her own account (in her various letters) ██████████ did not believe she had a disability and stated that she did not have a disability but that such restrictions placed on her ability to work were incorrect, in error, or were alleged.

██████████ fails in all aspects of the judicial burden-shifting framework:

1. ██████████ establishes no "prima facie case" of disability discrimination. To establish a prima facie case of disability discrimination requires proof that: (1) she was disabled within the meaning of the ADA, (2) she was qualified for the position, with or without an accommodation, (3) she suffered an adverse employment decision because of her disability, and (4) she was replaced by a non-disabled person. Americans with Disabilities Act of 1990, § *et seq.*, 42 U.S.C. § 12101 *et seq.* ██████████ fails to prove one of the four prongs of a prima facie case of disability discrimination. Moreover, with reference to the fourth prong (that she was replaced by a non-disabled person) ██████████ asserts in her November 17, 2008 Letter (to Mary Jo Kief) that the City hired a "person in my place [that] was older and more disabled than I" for the same position. (See Attachment 14.)

2. However, even if a "prima facie case" did exist, the City has met its burden of producing evidence that the successful candidates chosen to be Board Workers were chosen (preferred) for legitimate, non-discriminatory reasons (i.e., there being no restrictions placed on their performing the essential functions of Board Workers). The fact that the City simply hired candidates who successfully completed (without restrictions of essential job function requirements) the pre-employment physical, drug and criminal background screening confirms that the City using the names from the list of candidates that was provided by Maricopa County was legitimate and unbiased.

3. ██████████ then also fails to meet her second burden – to show that the City's offered reasons for not selecting her as a Board Worker were a pretext for discrimination and that the reasons for hiring the successful candidates is also a pretext for discrimination. ██████████ provides no facts that show a discriminatory motive by anyone at the City and produces no facts that show the City's explanation for not hiring ██████████ and its hiring decisions are not credible.

The City has a strong commitment to a policy that does not support discrimination of any form in the workplace. In this instance we have been provided with no evidence that the City or any of its employees has violated this policy in any manner. The City concluded that the hiring process had been fair and that no discrimination had taken place. The City believes that after you review the Charge, you will conclude that ██████████ discrimination claim has no merit and will dismiss her Charge of discrimination accordingly.

I declare under penalty of perjury that the foregoing is true and correct. If you need additional information to complete your investigation or have any further questions, please do not hesitate to contact me.

Sincerely,

OFFICE OF THE CITY ATTORNEY
CITY OF PEORIA



Cheryl A. Boswell
Assistant City Attorney

cc: - Wynette Reed, Human Resources Director (w/o Attachments)
- Mary Jo Kief, City Clerk (w/o Attachments)

EXHIBIT 1

Office of the City Clerk
Organization Chart
October 2008

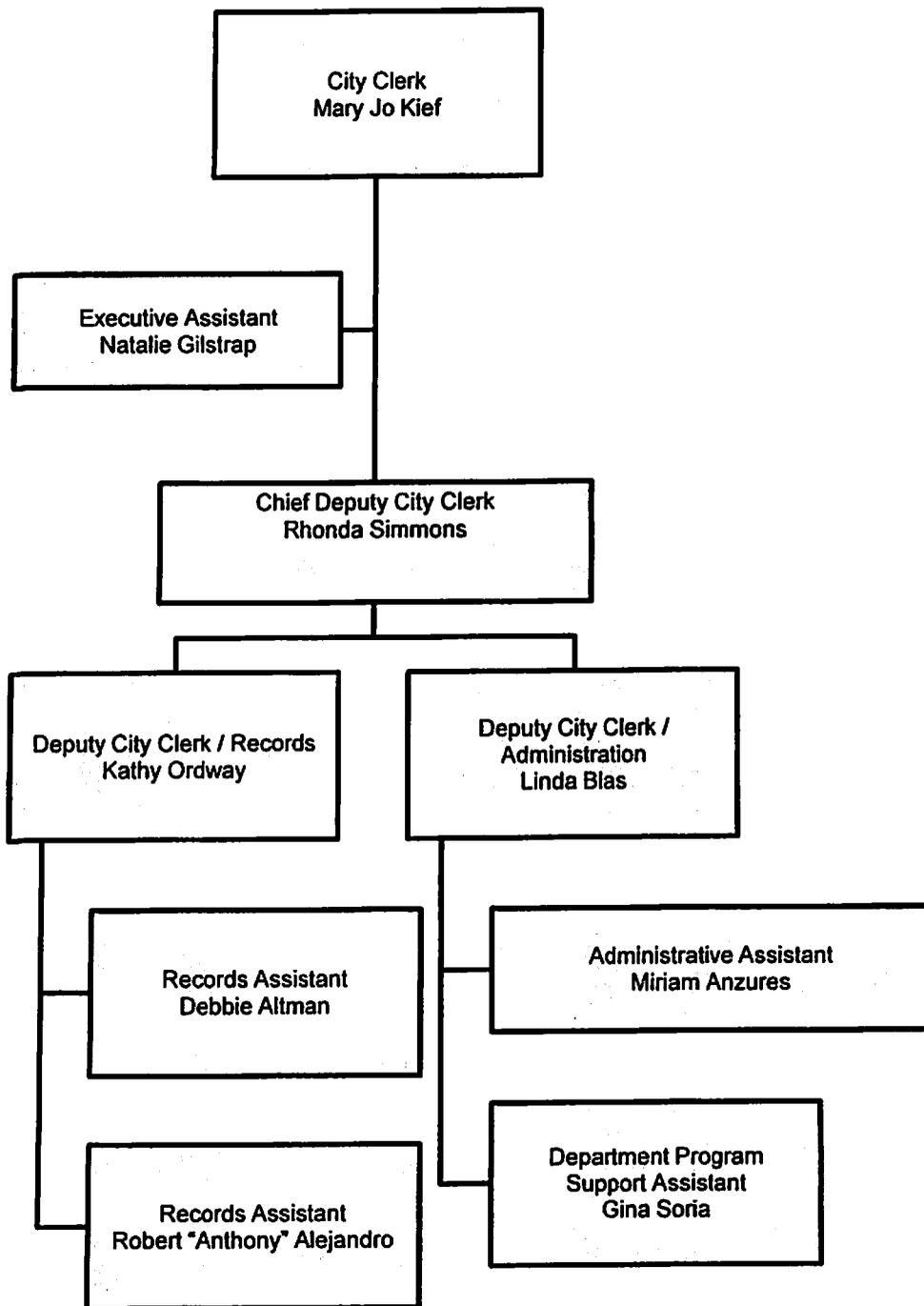


EXHIBIT 2

RECEIVED
SEP 9 2008
CITY OF PEORIA, AR

September 8, 2008

CC: Debbie Meyphaler
City of Peoria Human Resources Dept.
8401 W. Monroe, Suite #110
Peoria, Arizona 85345

Ms. Nancy Fantasia
City of Peoria Human Resources Dept.
8401 W. Monroe, Suite #110
Peoria, Arizona 85345

REQUEST FOR PERSONAL MEDICAL RECORDS

On [REDACTED] I visited the [REDACTED] to receive a physical which the City of Peoria required as part of my application for (Election) Board Worker.

I signed a Release at the [REDACTED] allowing the results of the Physical to be given to the City of Peoria. At that time, I also requested a copy of those medical records be sent to me.

On August 12, I again visited the [REDACTED] and requested a copy of my medical records.

At that time, I also requested an opportunity to correct a failure to communicate with the Doctor administering the physical, which resulted in a demonstrated incorrect report.

To date, I have not received a copy of these records to which I believe I have a legal right. Please let me know if there is a charge to cover photocopying and mailing.

If you believe I am not legally entitled to these records, please inform me of the exact statute or federal law upon which you rely. Otherwise, please forward a copy of my medical records to the address above or call and I will pick them up and pay any copying charges involved.

Thank you.

[REDACTED]
[REDACTED] Applicant
Early Voting Board Worker for the City of Peoria

EXHIBIT 3

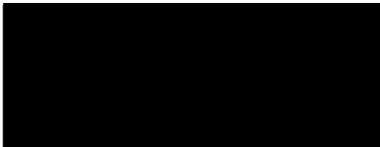


City of Peoria

Office of the City Attorney
8401 W. Monroe Street, Peoria Arizona 85345
Phone: 623-773-7330
Civil/Risk Fax: 623-773-7043
Criminal/Victim's Assistance Fax: 623-773-7323

September 29, 2008

VIA U. S. MAIL



Re: Release of City Acquired Medical Records

Dear [REDACTED]:

The City of Peoria ("City") is in receipt of your request for a copy of your medical records from a physical that was requested and paid for by the City. The City takes the position that all such medical records are confidential and are the property of the City's.

While the City understands and acknowledges the public's right to inspect public records, such right is not without qualification. ARIZ. OP. Att'y. GEN. No. 75-721 (1976). Information contained in records may be treated as confidential. *Id.* It has been the City's position that release of information in medical records is confidential and of a nature that it would be against the best interests of the City to permit disclosure of medical records.

However, since the law supports the position that even if portions of a document merit confidentiality, a practical alternative to the complete denial of access would be deleting specific information. *Phoenix Newspapers, Inc. v. Ellis*, 215 Ariz. 268 (App. Div. 2007). The City is taking such approach and providing you with a redacted version of the record.

Sincerely,
OFFICE OF THE CITY ATTORNEY
CITY OF PEORIA

A handwritten signature in black ink, appearing to read "Cheryl A. Boswell".

Cheryl A. Boswell
Assistant City Attorney

cc: - Nancy Fantasia, Human Resources Analyst

CAB:dag

i:\uscra\hum.rcs\medical records release-2.docx
September 26, 2008 s/c dag

EXHIBIT 4

[REDACTED]

November 17, 2008

Ms. Mary Jo Kief, City Clerk
City of Peoria
8401 W. Monroe
Peoria, Arizona 85345

On July 22, 2008, [REDACTED] and I completed paperwork and applications for "Election Board Worker" for the City Clerk. We were highly recommended by the Maricopa County Elections Department to the City of Peoria for Early Voting scheduled to begin August 4, 2008, because we both worked Early Voting in 2006 and were trained, experienced, and highly skilled at that job.

On [REDACTED] we both kept appointments with [REDACTED] for physicals the City required of us each as Election Supervisors. We were there over four hours from 2:05 pm until we finished after 6 pm.

Despite a failure to communicate, the physician who saw me cleared me for sedentary work.

We attended an Early Voting class on July 24 from 9 am to 4 pm held at the County Election Center, where we demonstrated we were fully qualified for the job as Early Election workers. To the best of my knowledge, we were never paid for this training.

Circa August 1, Debbie Meyphaler called to tell me I was not hired because I did not pass my physical. Please forward this complete decision to me in writing and explain in detail why I was not hired.

Please give me the name of the person who made the decision and tell me why the person hired in my place was older and more disabled than I. Please be specific.

Please forward to me the written Job Description for the job for which I applied, including its detailed qualifications, requirements, and duties, especially those which require I "squat."

Explain why the City of Peoria was not able to accommodate my alleged handicap when the doctor reported I was "only capable" of "squatting" 45%, especially since every other employer I ever had provided a chair and desk for computer work and rest rooms rather than a space behind a tree in the back of the building to "squat" to relieve one's self.

The two other alleged handicaps the doctor reported on my physical, inability to look down or to bend down are both false. I looked down in front of him. If the doctor had asked, I could have bent down to touch the floor with my finger tips with my knees straight, as I did for the clinic office manager. I can also lift heavy objects and do pushups. There was an obvious failure to communicate during the exam.

[REDACTED], November 17, 2008

Page 2 of 2

I asked to see the doctor for five minutes to correct the record by demonstrating the errors to the doctor. I was not notified the errors were corrected nor been given an opportunity to meet with him.

The conditions under which the doctor asked me to "squat" were very precarious. His request could have caused me to severely injure to my shoulder, knees, and/or derriere, perhaps even my wrist or elbow breaking a fall. The examination table he told me to hold onto was so extremely slippery my hand kept sliding off and it was too high for me to lean or brace myself on it.

Further, if I squatted the way the doctor asked me to with my knees in front of me, placing my full weight at the time of 180 lbs on my knees without using a chair to support part of my weight, I could have damaged my knees so severely I may have required surgery, which may not have repaired my knees to 100% again. His request for me to not squat correctly was very dangerous.

I was also shocked he asked me to "squat" while wearing a hospital type exam gown and just my under pants. I was very self conscious about keeping my knees together to keep the hem of the gown from rising over my knees. The only reason I tried to comply and did not refuse was that I did not want the City of Peoria to think I was uncooperative.

If the City of Peoria has a policy to not hire workers over a certain age, if handicapped, or for some other reason, regardless if they are qualified to do the job, please inform me in writing and supply me with a detailed copy of the policy, who approved it, and when.

Please tell me who made the final decision to not hire me and what they noted on my application and in my file as the reason for their decision. Please supply me with an unredacted photocopy of my application and any notations made about me in my file that is part of my permanent record. I have a right to know what was written about me.

I also have a legal right to a complete unredacted copy of any physical examination done of me regardless of who paid for it. After all, it was my body I gave permission to examine and I who signed a release to allow the City of Peoria to receive a copy of it. If there is a law that allows you to refuse to give me a complete copy of my own physical, please provide me with a copy of it.

Please supply me the name of the person who has refused to allow the doctor's office to send me a copy and please give me the specific reason or reasons they refused.

Thank you. \

[REDACTED]
[REDACTED] Applicant, 2008 Early Voting Board Worker

EXHIBIT 5

RECEIVED

NOV 20 2008

CITY OF PEORIA/HR

November 17, 2008

Debbie Meyphaler
City of Peoria Human Resources Dept.
8401 W. Monroe, Suite #110
Peoria, Arizona 85345

On July 22, 2008, [REDACTED] and I completed paperwork and applications for "Election Board Worker." We were highly recommended by the Maricopa County Elections Department to the City of Peoria for Early Voting scheduled to begin August 4, 2008, because we both worked Early Voting in 2006 and were trained, experienced, and highly skilled at that job.

On [REDACTED] we both kept appointments with [REDACTED] for physicals the City required of us each as Election Supervisors. We were there over four hours from 2:05 pm until we finished after 6 pm.

Despite a failure to communicate, the physician who saw me cleared me for sedentary work.

We attended an Early Voting class on July 24 from 9 am to 4 pm held at the County Election Center, where we demonstrated we were fully qualified for the job as Early Election workers. To the best of my knowledge, we were never paid for this training.

Circa August 1, you called to tell me I was not hired because I did not pass my physical. Please forward this complete decision to me in writing and explain in detail why I was not hired. Please give me the name of the person who made the decision and tell me why the person hired in my place was older and more disabled than I. Please be specific.

Please forward to me the written Job Description for the job for which I applied, including its detailed qualifications, requirements, and duties, especially those which require I "squat."

Explain why the City of Peoria was not able to accommodate my alleged handicap when the doctor reported I was "only capable" of "squatting" 45%, especially since every other employer I ever had provided a chair and desk for computer work and rest rooms rather than a space behind a tree in the back of the building to "squat" to relieve one's self.

The two other alleged handicaps the doctor reported on my physical, inability to look down or to bend down are both false. I looked down in front of him. If the doctor had asked, I could have bent down to touch the floor with my finger tips with my knees straight, as I did for the clinic office manager. I can also lift heavy objects and do pushups. There was an obvious failure to communicate during the exam.

I asked to see the doctor for five minutes to correct the record by demonstrating the errors to the doctor. I was not notified the errors were corrected nor been given an opportunity to meet with him.

[REDACTED], November 17, 2008

Page 2 of 2

The conditions under which the doctor asked me to "squat" were very precarious. His request could have caused me to severely injure to my shoulder, knees, and/or derriere, perhaps even my wrist or elbow breaking a fall. The examination table he told me to hold onto was so extremely slippery my hand kept sliding off and it was too high for me to lean or brace myself on it.

Further, if I squatted the way the doctor asked me to with my knees in front of me, placing my full weight at the time of 180 lbs on my knees without using a chair to support part of my weight, I could have damaged my knees so severely I may have required surgery, which may not have repaired my knees to 100% again. His request for me to not squat correctly was very dangerous.

I was also shocked he asked me to "squat" while wearing a hospital type exam gown and just my under pants. I was very self conscious about keeping my knees together to keep the hem of the gown from rising over my knees. The only reason I tried to comply and did not refuse was that I did not want the City of Peoria to think I was uncooperative.

If the City of Peoria has a policy to not hire workers over a certain age, if handicapped, or for some other reason, regardless if they are qualified to do the job, please inform me in writing and supply me with a detailed copy of the policy, who approved it, and when.

Please tell me who made the final decision to not hire me and what they noted on my application and in my file as the reason for their decision.

Please supply me with an unredacted photocopy of my application and any notations made about me in my file that is part of my permanent record. I have a right to know what was written about me.

I also have a legal right to a complete unredacted copy of any physical examination done of me regardless of who paid for it. After all, it was my body I gave permission to examine and I who signed a release to allow the City of Peoria to receive a copy of it. If there is a law that allows you to refuse to give me a complete copy of my own physical, please provide me with a copy of it.

Please supply me the name of the person who has refused to allow the doctor's office to send me a copy and please give me the specific reason or reasons they refused.

Thank you

[REDACTED]
[REDACTED], Applicant, 2008 Early Voting Board Worker

EXHIBIT 6

RECEIVED

NOV 20 2008

CITY OF PEORIA/HR

[REDACTED]

November 17, 2008

Ms. Nancy Fantasia
City of Peoria Human Resources Dept.
8401 W. Monroe, Suite #110
Peoria, Arizona 85345

On July 22, 2008, [REDACTED] and I completed paperwork and applications for "Election Board Worker." We were highly recommended by the Maricopa County Elections Department to the City of Peoria for Early Voting scheduled to begin August 4, 2008, because we both worked Early Voting in 2006 and were trained, experienced, and highly skilled at that job.

On [REDACTED] we both kept appointments with [REDACTED] [REDACTED], for physicals the City required of us each as Election Supervisors. We were there over four hours from 2:05 pm until we finished after 6 pm.

Despite a failure to communicate, the physician who saw me cleared me for sedentary work.

We attended an Early Voting class on July 24 from 9 am to 4 pm held at the County Election Center, where we demonstrated we were fully qualified for the job as Early Election workers. To the best of my knowledge, we were never paid for this training.

Circa August 1, Debbie Meyphaler called to tell me I was not hired because I did not pass my physical. Please forward this complete decision to me in writing and explain in detail why I was not hired.

Please give me the name of the person who made the decision and tell me why the person hired in my place was older and more disabled than I. Please be specific.

Please forward to me the written Job Description for the job for which I applied, including its detailed qualifications, requirements, and duties, especially those which require I "squat."

Explain why the City of Peoria was not able to accommodate my alleged handicap when the doctor reported I was "only capable" of "squatting" 45%, especially since every other employer I ever had provided a chair and desk for computer work and rest rooms rather than a space behind a tree in the back of the building to "squat" to relieve one's self.

The two other alleged handicaps the doctor reported on my physical, inability to look down or to bend down are both false. I looked down in front of him. If the doctor had asked, I could have bent down to touch the floor with my finger tips with my knees straight, as I did for the clinic office manager. I can also lift heavy objects and do pushups. There was an obvious failure to communicate during the exam.

[REDACTED] November 17, 2008

Page 2 of 2

I asked to see the doctor for five minutes to correct the record by demonstrating the errors to the doctor. I was not notified the errors were corrected nor been given an opportunity to meet with him.

The conditions under which the doctor asked me to "squat" were very precarious. His request could have caused me to severely injure to my shoulder, knees, and/or derriere, perhaps even my wrist or elbow breaking a fall. The examination table he told me to hold onto was so extremely slippery my hand kept sliding off and it was too high for me to lean or brace myself on it.

Further, if I squatted the way the doctor asked me to with my knees in front of me, placing my full weight at the time of 180 lbs on my knees without using a chair to support part of my weight, I could have damaged my knees so severely I may have required surgery, which may not have repaired my knees to 100% again. His request for me to not squat correctly was very dangerous.

I was also shocked he asked me to "squat" while wearing a hospital type exam gown and just my under pants. I was very self conscious about keeping my knees together to keep the hem of the gown from rising over my knees. The only reason I tried to comply and did not refuse was that I did not want the City of Peoria to think I was uncooperative.

If the City of Peoria has a policy to not hire workers over a certain age, if handicapped, or for some other reason, regardless if they are qualified to do the job, please inform me in writing and supply me with a detailed copy of the policy, who approved it, and when.

Please tell me who made the final decision to not hire me and what they noted on my application and in my file as the reason for their decision. Please supply me with an unredacted photocopy of my application and any notations made about me in my file that is part of my permanent record. I have a right to know what was written about me.

I also have a legal right to a complete unredacted copy of any physical examination done of me regardless of who paid for it. After all, it was my body I gave permission to examine and I who signed a release to allow the City of Peoria to receive a copy of it. If there is a law that allows you to refuse to give me a complete copy of my own physical, please provide me with a copy of it.

Please supply me the name of the person who has refused to allow the doctor's office to send me a copy and please give me the specific reason or reasons they refused.

Thank you.

[REDACTED]
[REDACTED], Applicant, 2008 Early Voting Board Worker

EXHIBIT 7

[REDACTED]

November 17, 2008

Cheryl A. Boswell
Assistant City Attorney
8401 W. Monroe
Peoria, Arizona 85345

RE: Your Response re: Release of City Acquired Medical Records

I received the redacted copy of my medical records of my physical paid for by the City of Peoria.

Unfortunately, they are not complete and therefore not sufficient. My medical records are not confidential to me. My doctor will request a complete copy in December. I am sure you will see she receives a complete unredacted copy.

I find it interesting you redacted the line in which the doctor cleared me to do sedentary work and therefore work as an Early Elections Board Worker. Please explain why you redacted that line.

The records as written are incorrect and not complete. They are the result of a failure to communicate, have left out facts, and contain errors which need to be corrected.

I offered to meet with the doctor for five minutes to correct them. I demonstrated to the clinic office manager I can bend my head to look down and I can touch the floor next to my toes with my knees remaining straight, therefore able to bend down. Also, the request for me to "squat" was dangerous and could have caused me very serious injury had I done it the way the doctor requested.

The office manager seemed more concerned with who would pay for the five minutes than if my records were correct or a dangerous situation corrected. My offer still stands. It is important to me my records are correct and do not contain false information. I would appreciate it if you can arrange this to be done.

I apologize for not answering sooner, but I just completed 15 days working long hours for the County Elections Department as a Trouble Shooter November 1 through 4, as a Hand Count Auditor at the Maricopa County Sheriff Facility November 5 through 7, and helping process ballots 10 to 12 hours a day from the afternoon of November 7 through November 15 at the Maricopa County Election Center.

[REDACTED]

[REDACTED] Applicant, 2008 Early Voting Board Worker

EXHIBIT 8



City of Peoria

Office of the City Attorney

8401 W. Monroe Street, Peoria Arizona 85345

Phone: 623-773-7330

Civil/Risk Fax: 623-773-7043

Criminal/Victim's Assistance Fax: 623-773-7323

December 3, 2008

VIA U. S. MAIL



Re: Incorrect and Incomplete Records

Dear [REDACTED]:

The City of Peoria ("City") is in receipt of your letters to Mary Jo Kief the City Clerk, Debbie Meythaler and Nancy Fantasia in Human Resources and me.

While it is your position that "the records as written are incorrect and not complete" the City has to rely on the records in their current state unless informed differently by the medical professional, which has not occurred. However, if you desire to have the records "corrected" (amended) you are free to schedule an appointment with the Doctor (at your expense) and provide him sufficient information (evidence) to support any change. Once that occurs, the Doctor will forward any change (amendment) to the City and the City will place such in your file.

Your desire to "correct" (amend) the records is somewhat of a moot issue since you worked for the Maricopa County Elections Department and the City's need for individuals to staff the Early Voting Satellite Location cease to exist, since the election season is over. Should you apply in the future to work another election season for the City, the City would require that you (or any individual) have another physical.

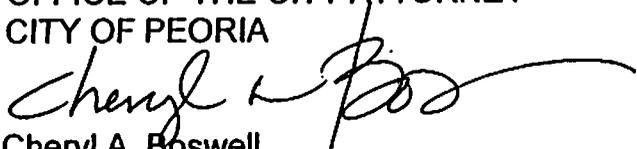
Having the medical records in their current state on file with the City should not be particularly damaging to you since the City generally does not release such information. While the City understands and acknowledges the public's right and your right to inspect public records, such right is not without qualification. ARIZ. OP. Att'y. GEN. No. 75-721 (1976). Information contained in records may be treated as confidential. *Id.* It has been the City's position that release of information in medical records is confidential and of a nature that it would be against the best interests of the City to permit disclosure of medical records. However, since the law supports the position that even if portions of a document merit confidentiality, a practical alternative to the complete denial of

access would be deleting specific information. *Phoenix Newspapers, Inc. v. Ellis*, 215 Ariz. 268 (App. Div. 2007). The City took such an approach and provided you a redacted version of the record. There is no one person who has refused to allow the Doctor's office to send you a copy of medical records which are confidential and are the property of the City, but rather it is the City's policy as mentioned in my previous communication.

The City is an equal employment employer. In fact, City supervisors are subject to evaluation and even discipline based on their commitment and actions regarding equal employment opportunities. So, the statement you made in your letters to Mary Jo Kief, Debbie Meythaler and Nancy Fantasia about the City having "a policy to not hire workers over a certain age, if handicapped..." is untrue and unfounded. The City has a strong commitment to a policy that does not support discrimination of any form.

The U.S. Supreme Court has observed that Senator Hubert Humphrey, while explaining the proponents' understanding of Title VII as it was being debated in the U.S. Senate, stated that the law does not limit the employer's freedom to hire, fire, promote or demote for any reasons--or no reasons--so long as his action is not based on race, age, etc. *United Steelworkers of America v. Weber*, 443 U.S. 193, 237 (1979). In fact, the City makes its hiring decisions based on the information provided to the City at the time and the best applicant for the job with reference to the particular job requirements, individual's experience, etc. The City does not provide the names of a specific individual who made a decision not to hire a person, such is irrelevant. The City made a hiring decision based on available information at the time.

Sincerely,
OFFICE OF THE CITY ATTORNEY
CITY OF PEORIA


Cheryl A. Boswell
Assistant City Attorney

cc: - Mary Jo Kief, City Clerk
- Nancy Fantasia, Human Resources Analyst
- Debbie Meythaler, Human Resources Specialist

CAB:dag

EXHIBIT 9

From: HR - Debbie Meythaler
Sent: Friday, July 18, 2008 10:14 AM
To: Mary Jo Kief; Gina Soria
Subject: Board Workers Job offers status

Hello,

The following candidates have accepted the job offers for Board Workers. The following is some information for your records.

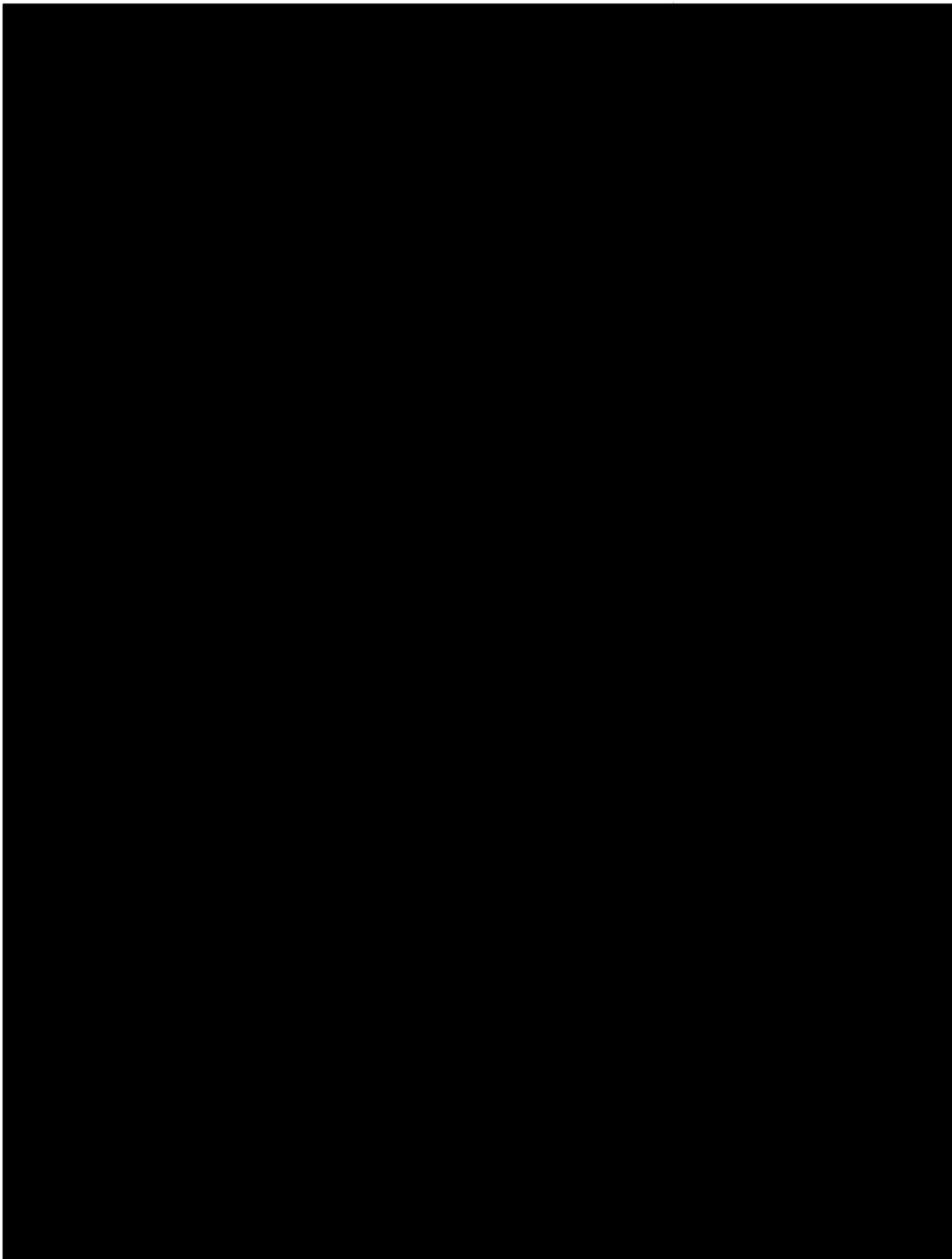
NAMES:	[REDACTED]
POSITION:	Board Worker
RATE:	\$10.00
STARTING DATE:	8/4/08

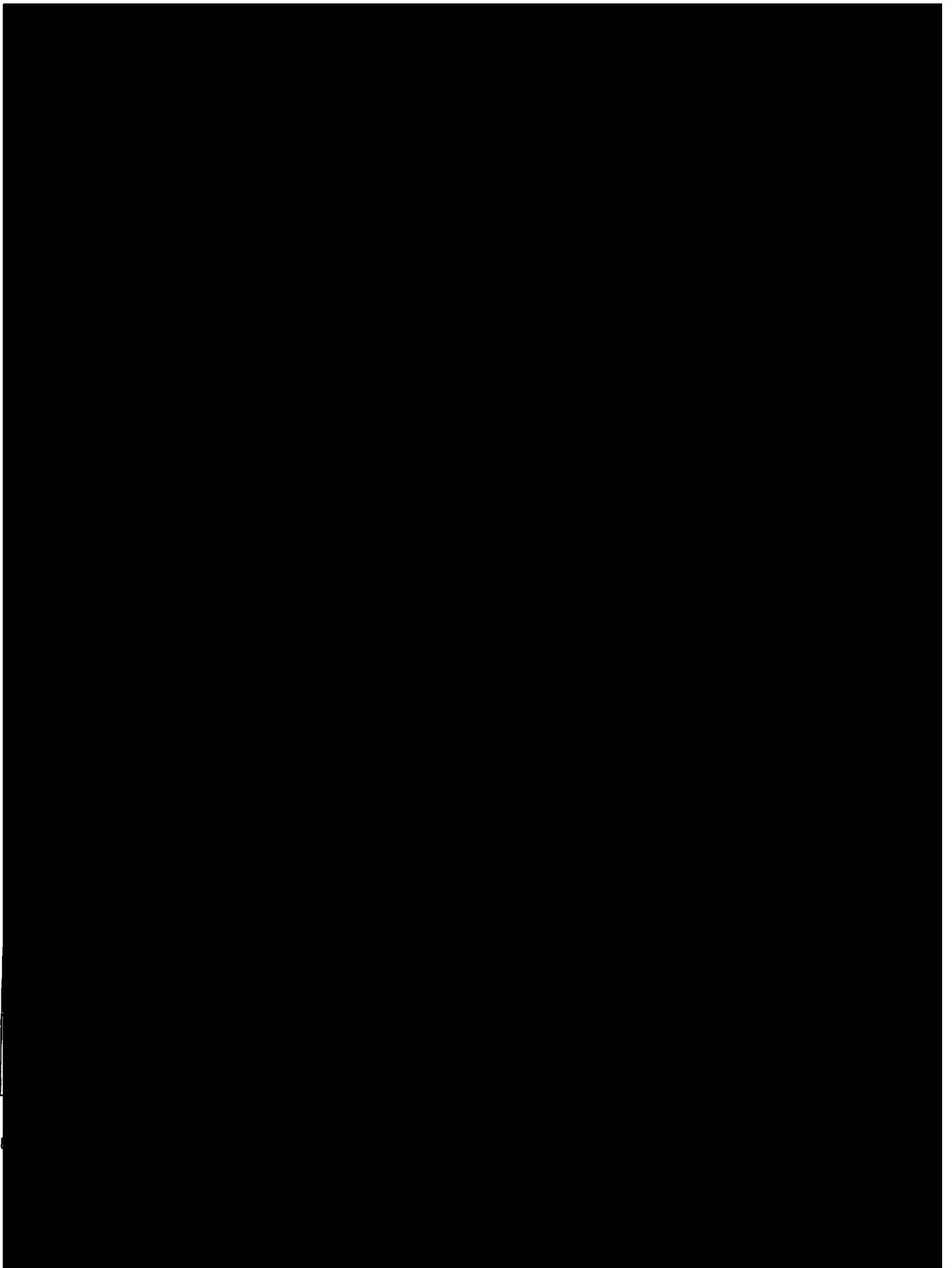
Starting date for all these candidates will depend on receiving the clearance for the pre-employment physical, drug and criminal background screenings. The candidates are scheduled the sign the new hire paperwork next week. FYI, [REDACTED] declined the job offer.

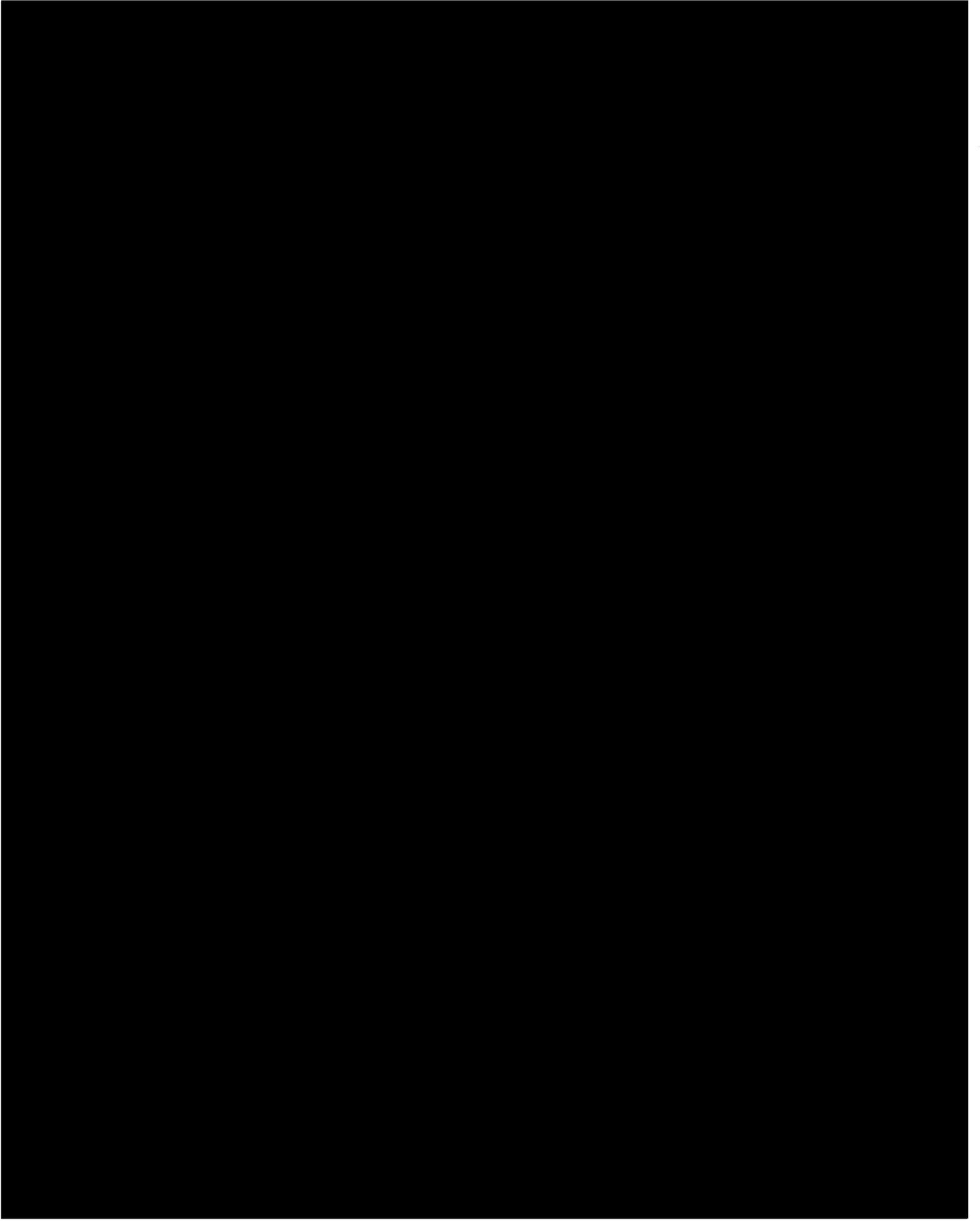
Please let me know if you have any questions or need additional information.

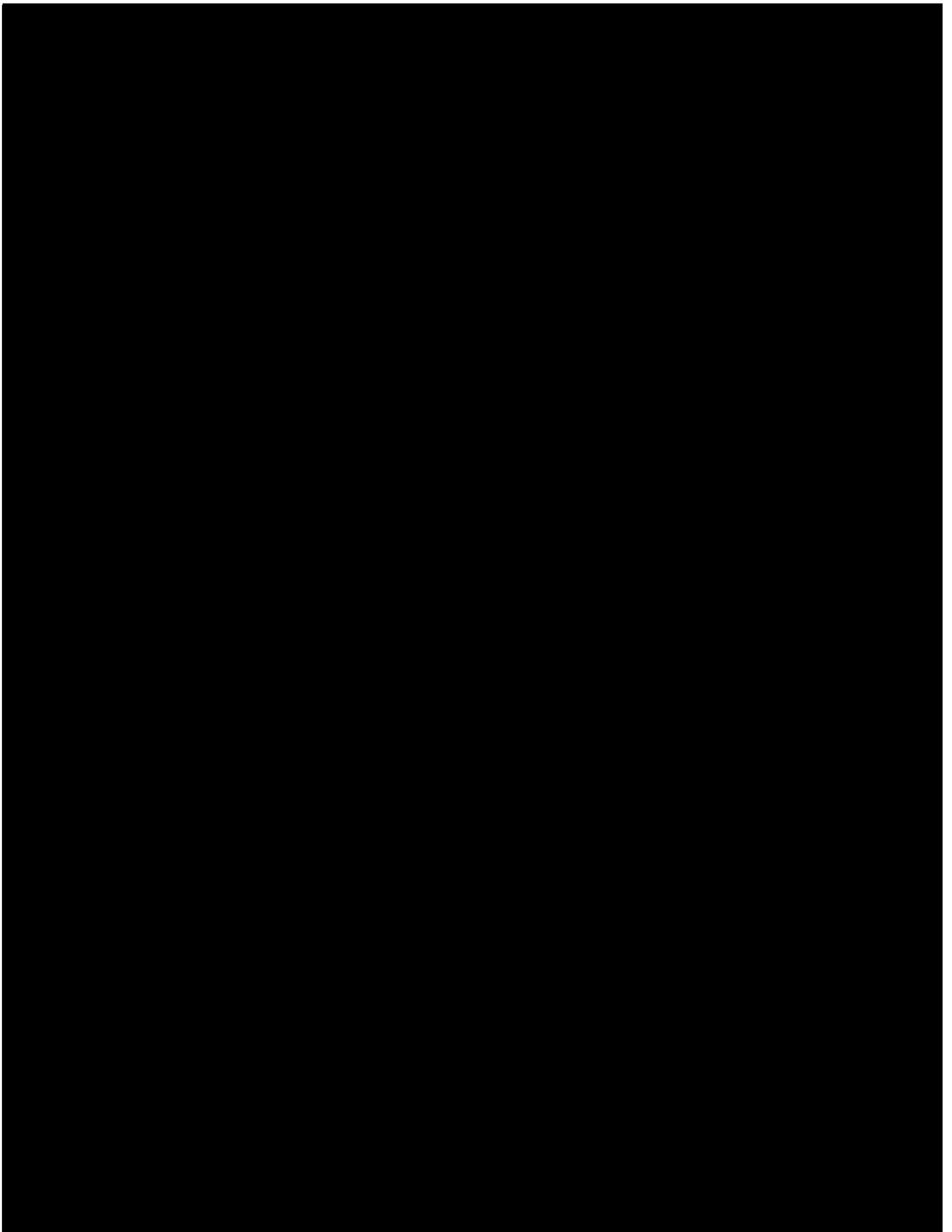
Make it a great day!
 Debbie Meythaler
 Human Resources Specialist
 City of Peoria

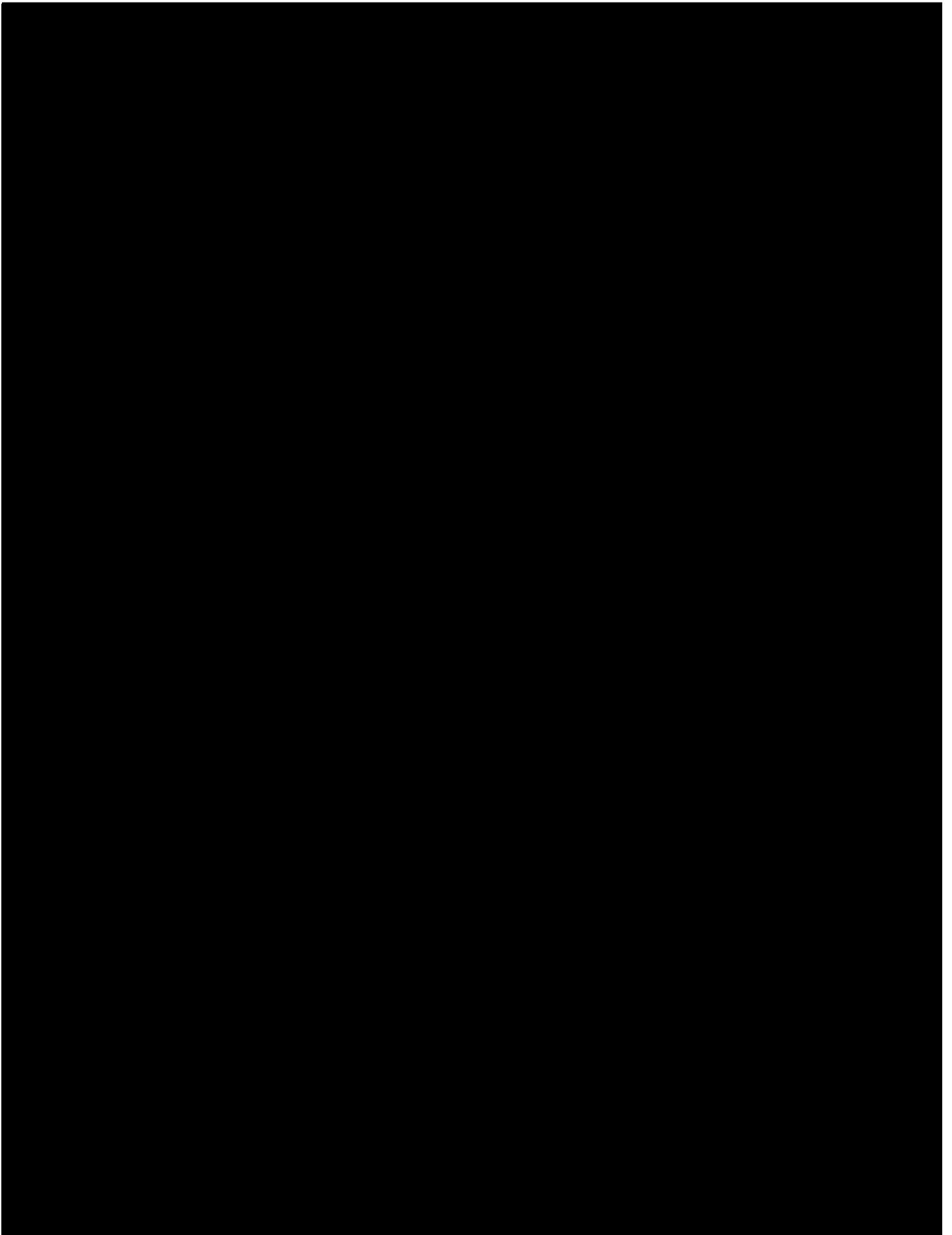
EXHIBIT 10

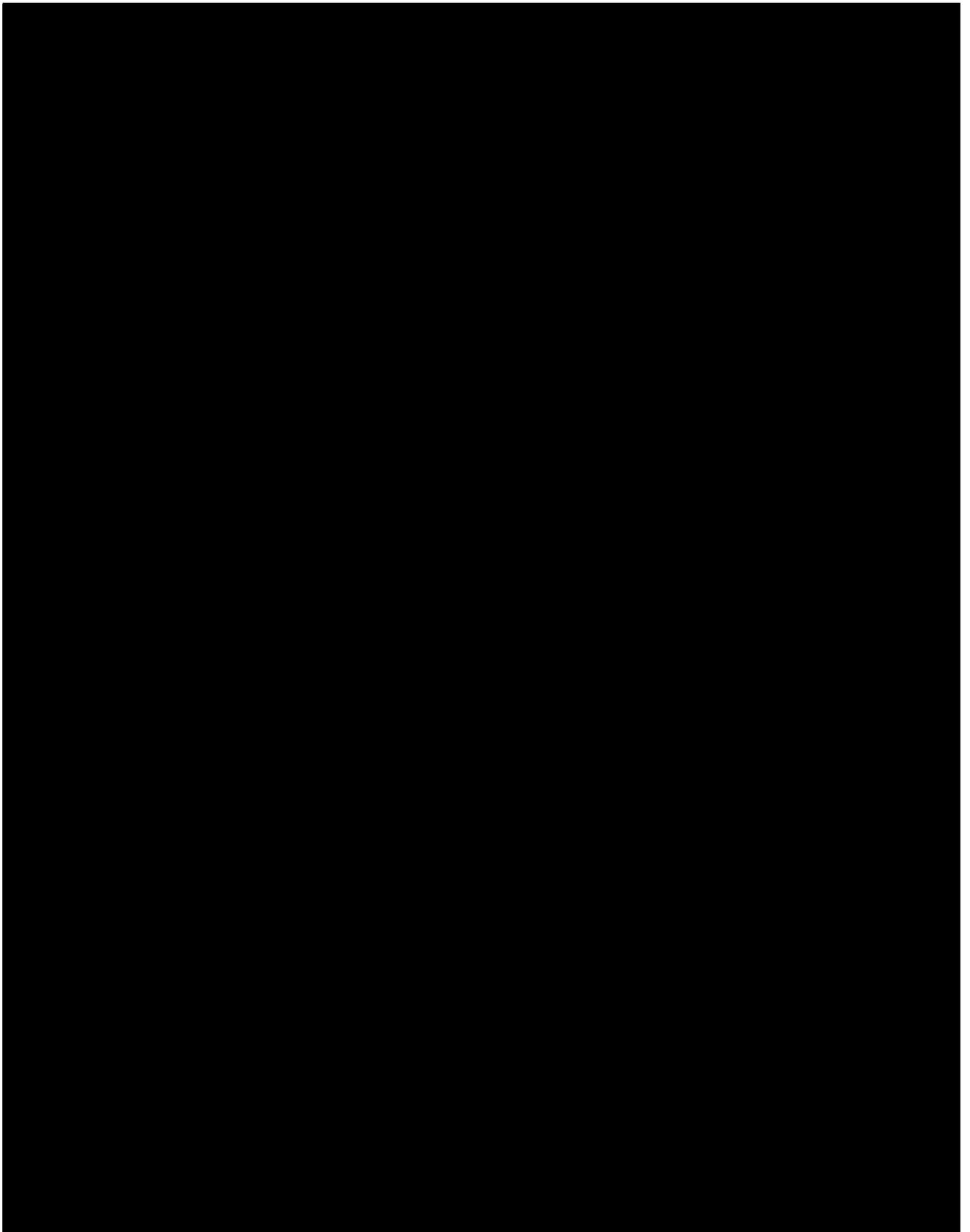


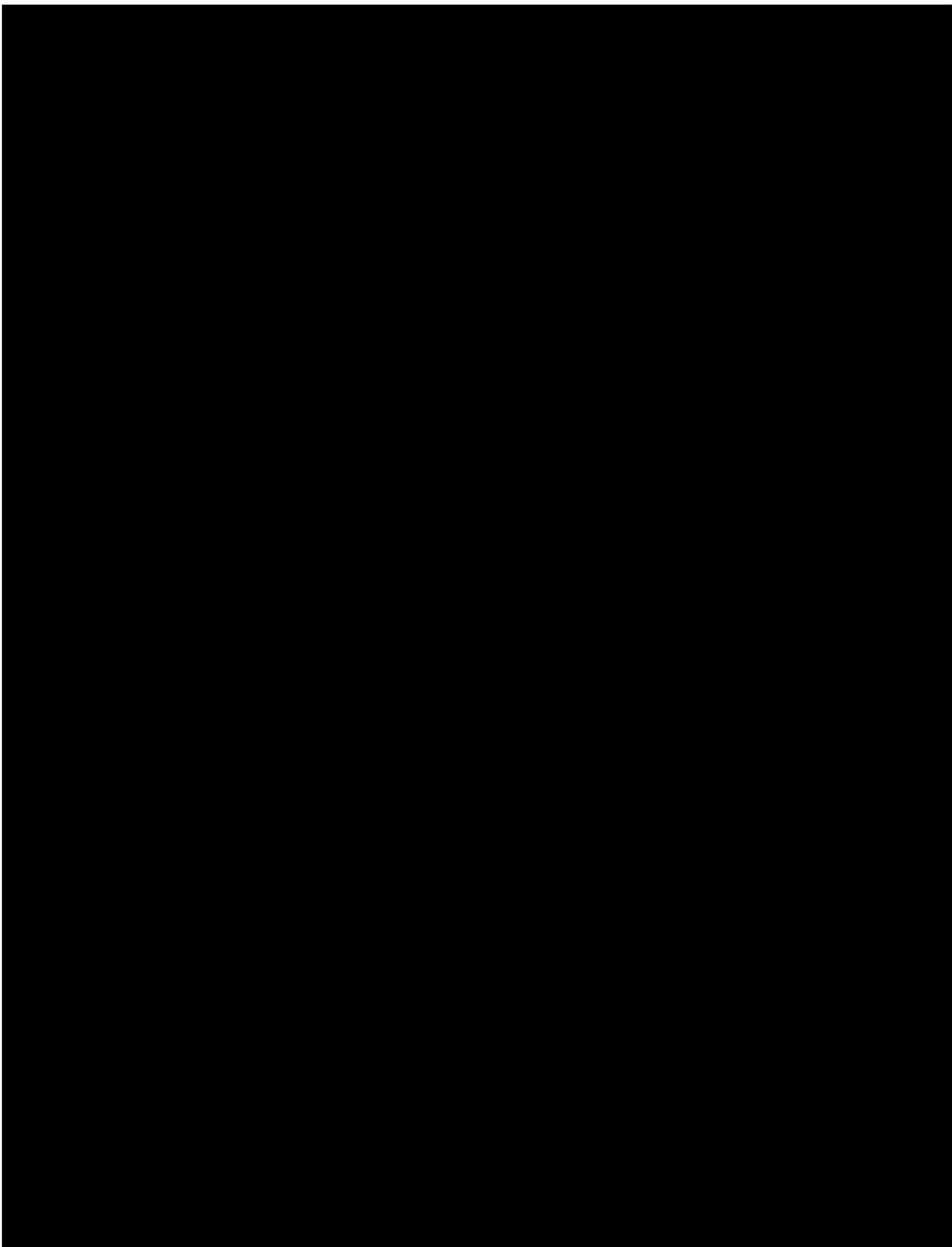


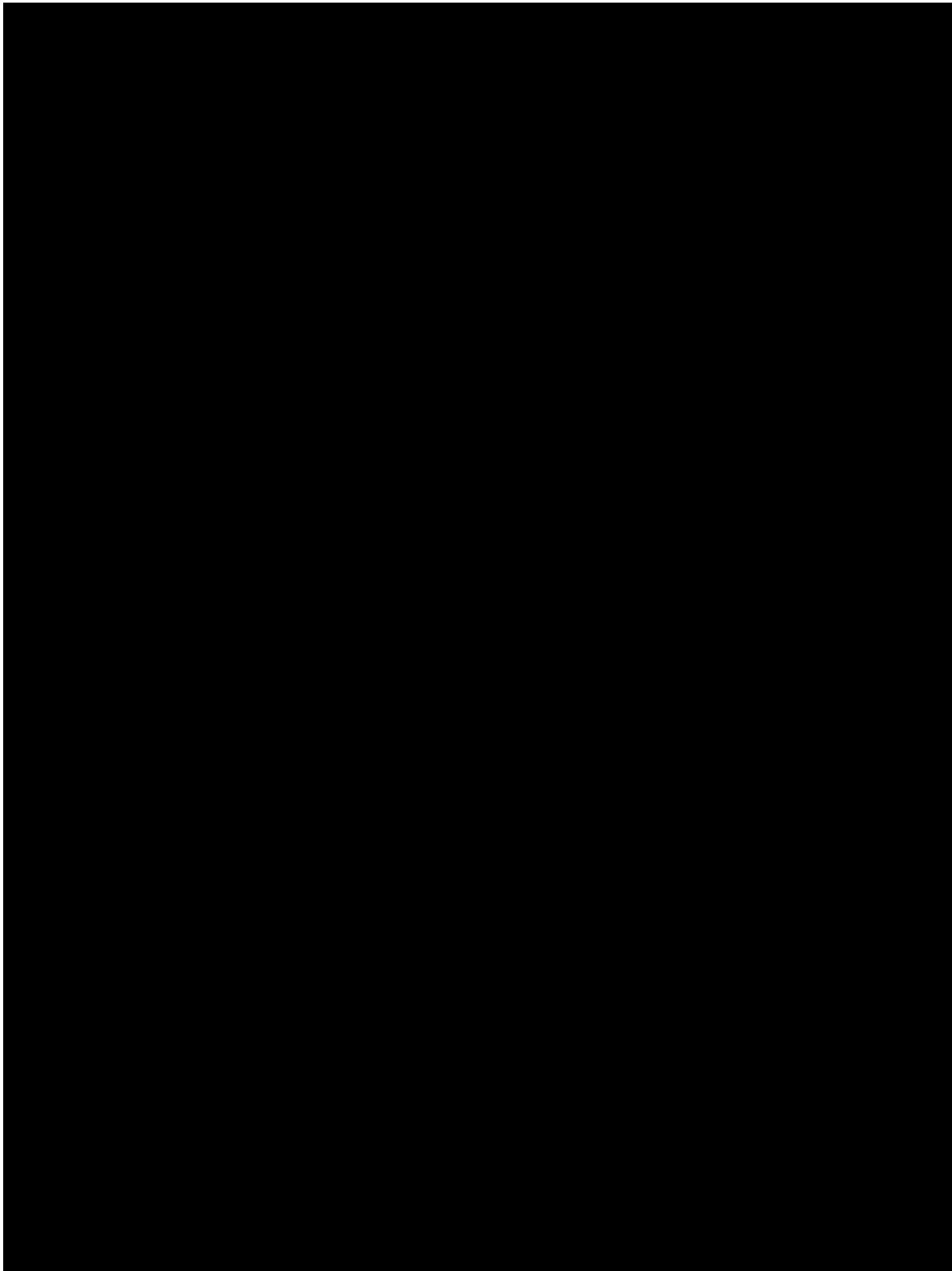


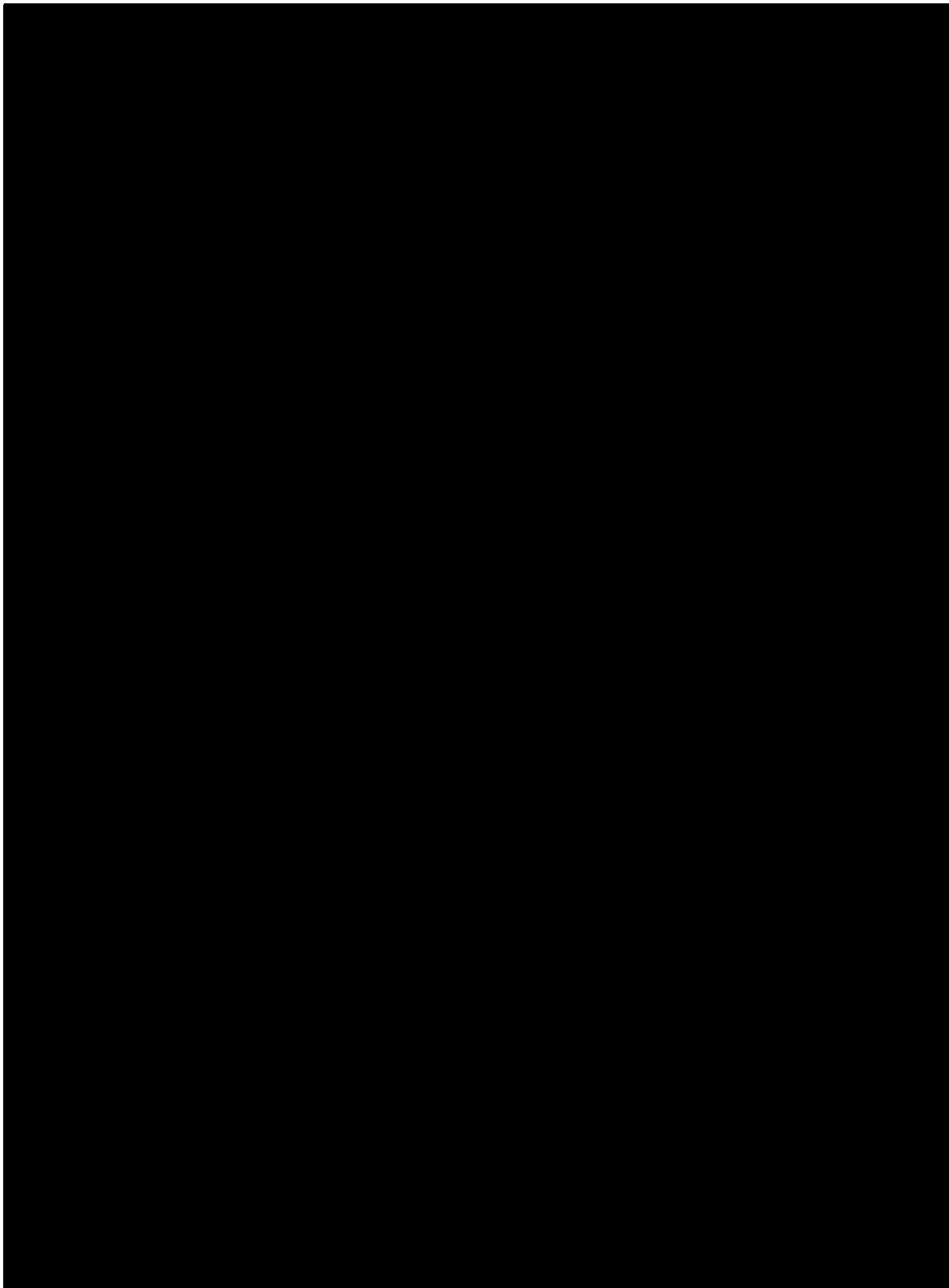


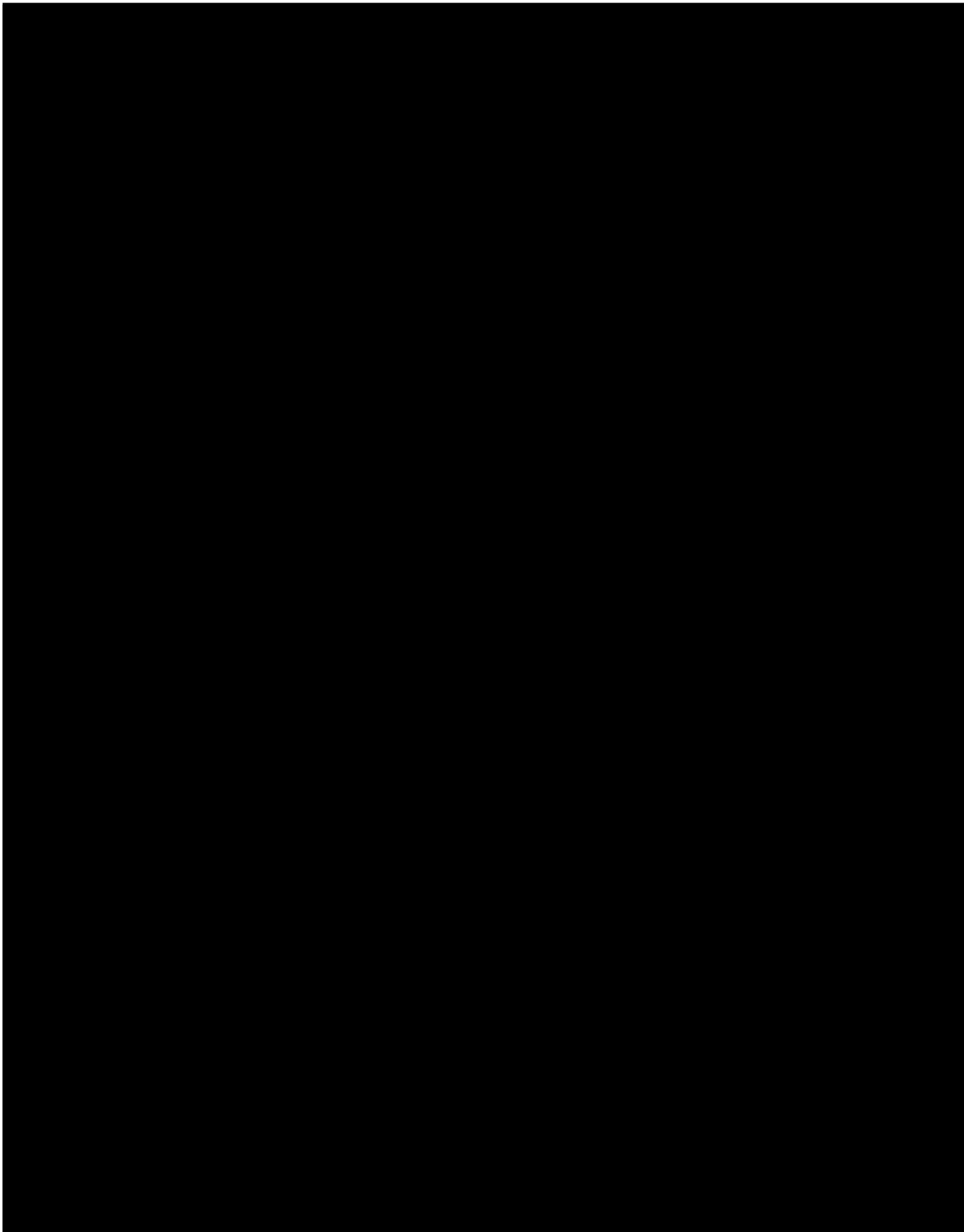


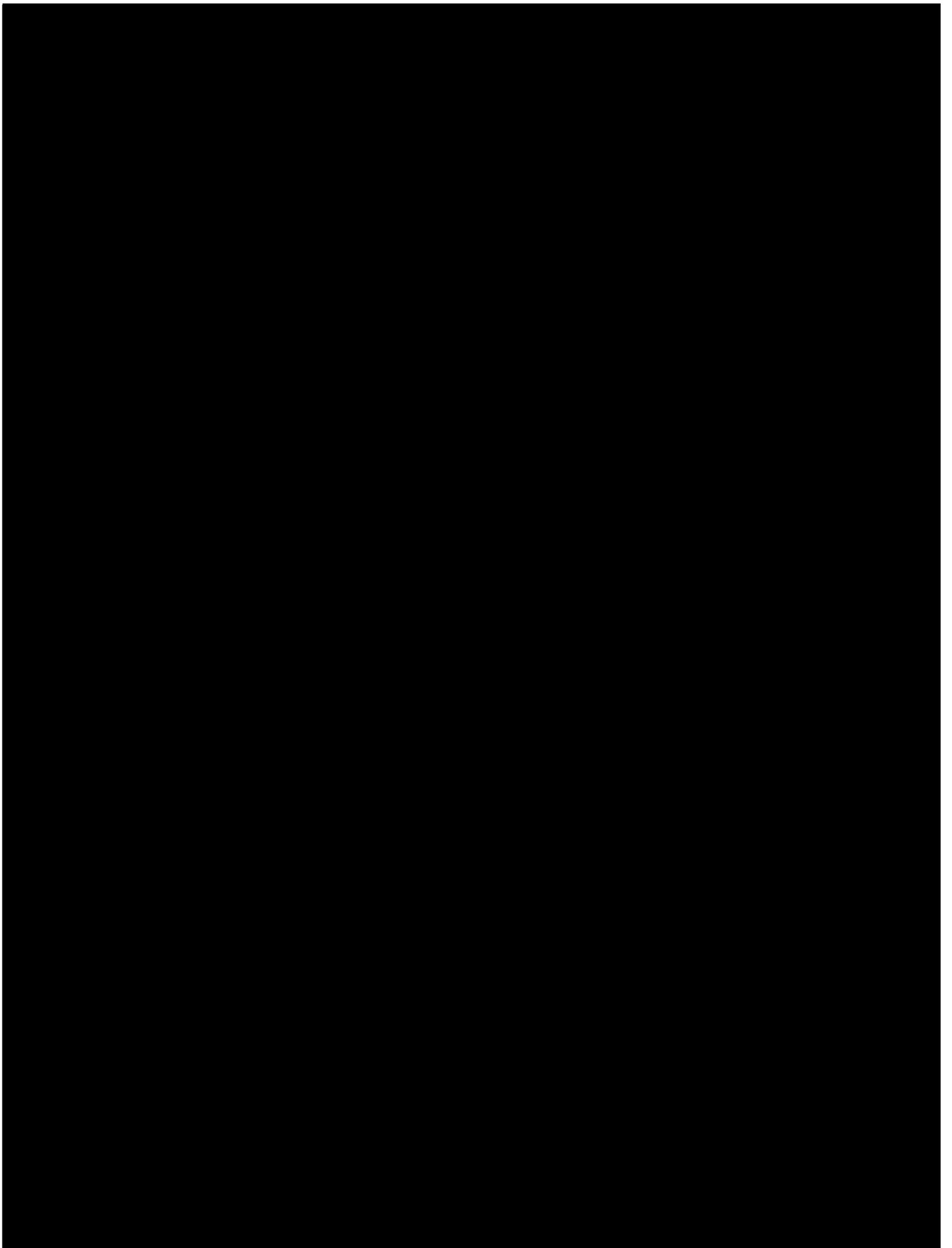


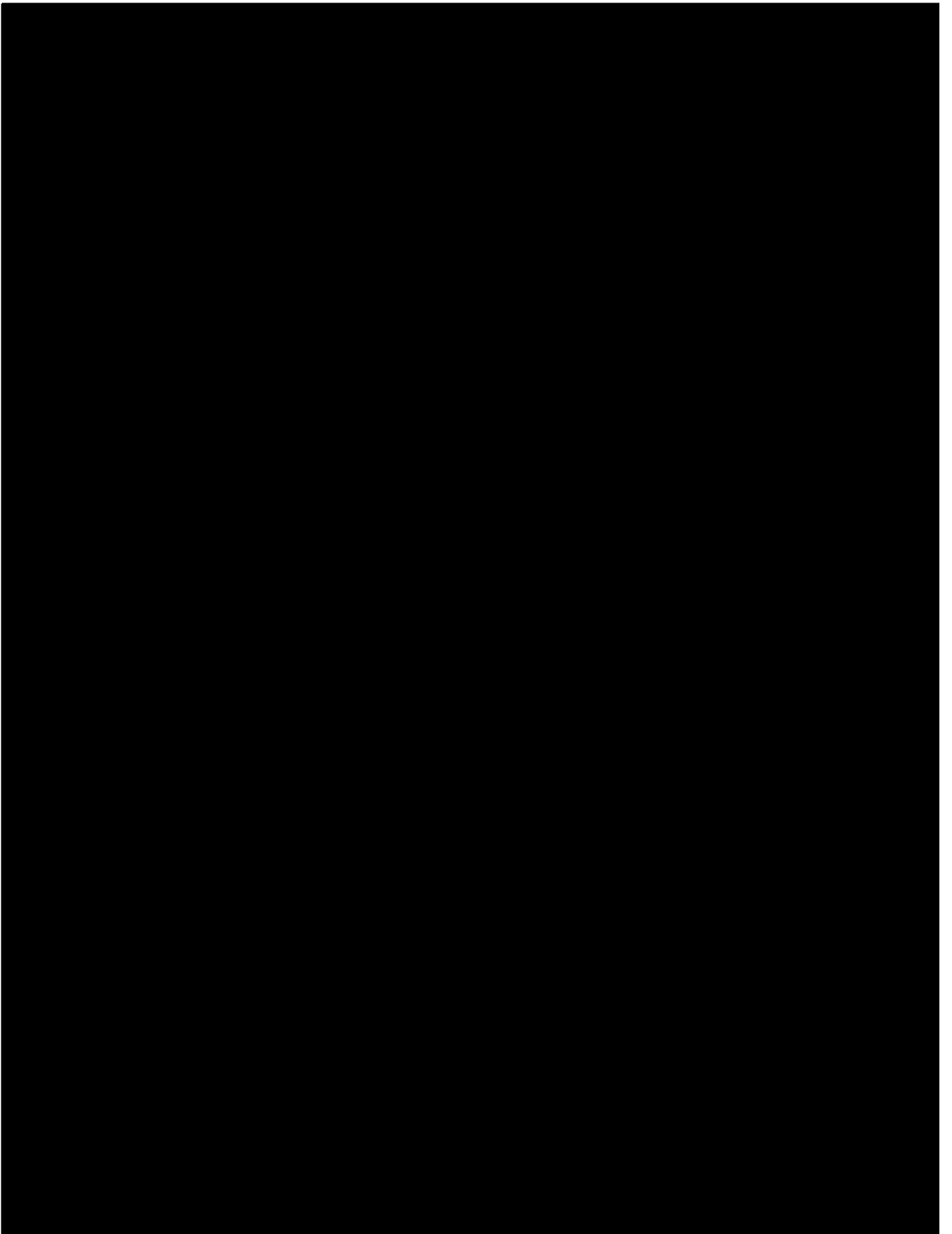


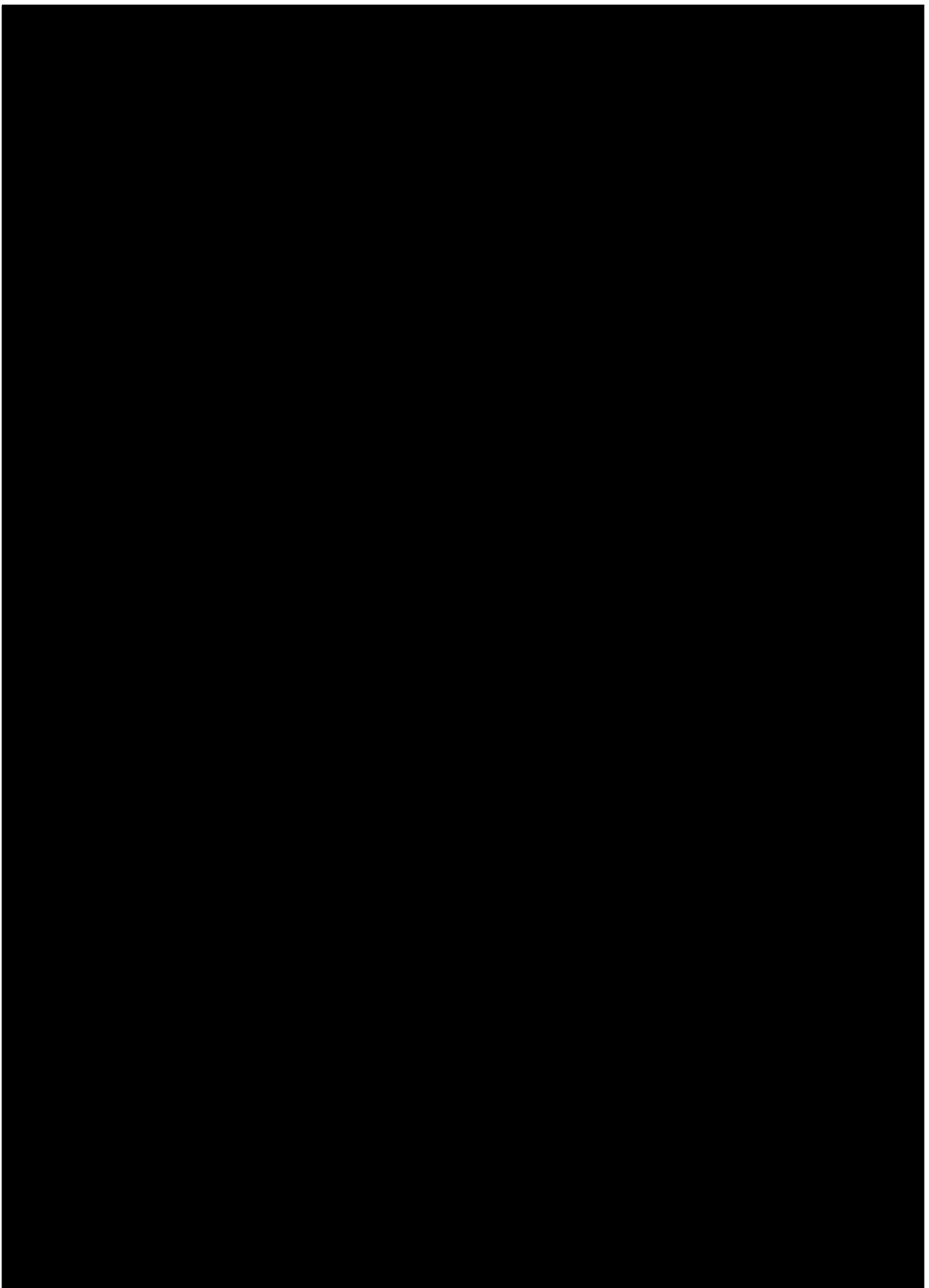












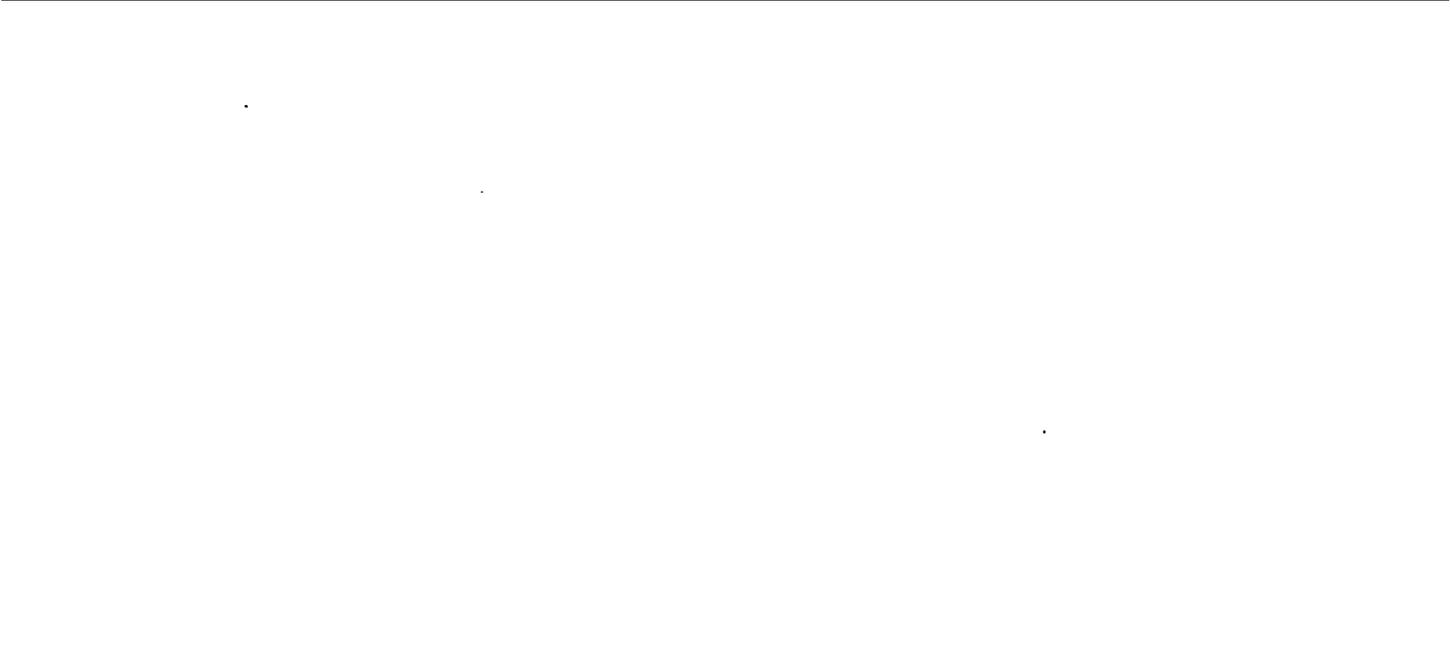
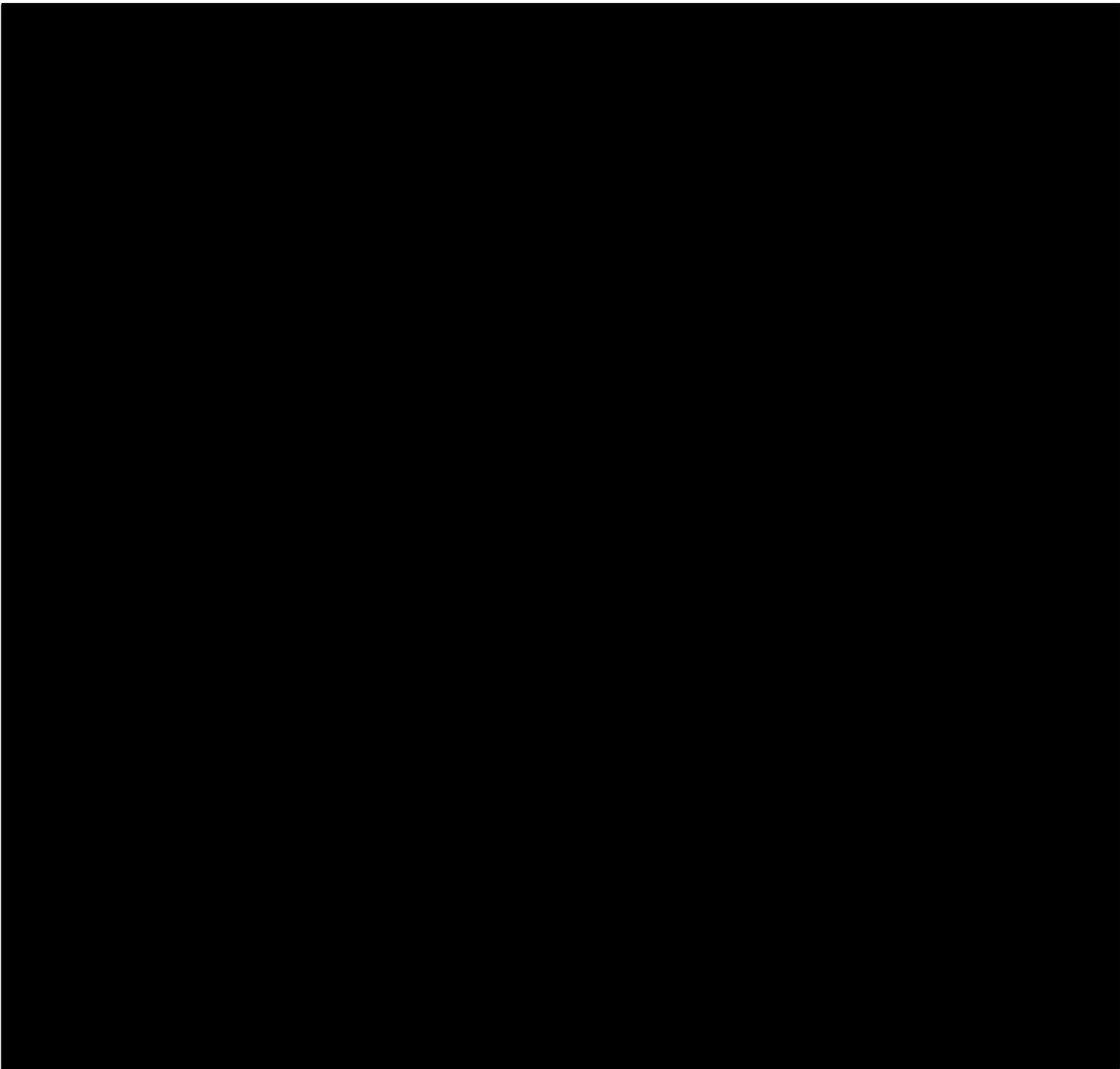


EXHIBIT 11

Daily Requirements/Duties of a Board Worker for the City of Peoria's Early Voting Satellite Location

Primary: August 6, 2008 – August 29, 2008

General: October 6, 2008 – October 31, 2008

Please note the early voting site was open during summer months with temperatures ranging from 105-116 degrees for the primary and 95-107 degrees for the general. The temperatures directly impacted the execution of the tasks listed below.

Setup and Take down:

1. Carry/setup/position/take down approximately 8 sandwich boards (weighing approx. 15 lbs. each, standing 4 ft. high and 3 ft. wide) around City Hall Campus (see map).
 - This task involved heavy lifting of awkward-shaped sandwich boards and carrying said boards an approximate 1 mile radius around the campus. **Most strenuous task.**
2. Carry/setup/position/take down numerous signs in addition to the sandwich boards around City Hall.
 - This task involved extensive walking, bending and reaching.
3. Carry and handle several supply boxes weighing up to approx. 35 lbs.
4. Carry and handle up to five ballot boxes weighing up to approx. 50 lbs. and are approx. 2 ft. wide and 1 ½ ft. high.
 - This task involved carrying full ballot boxes approx. ¼ mile.

Miscellaneous:

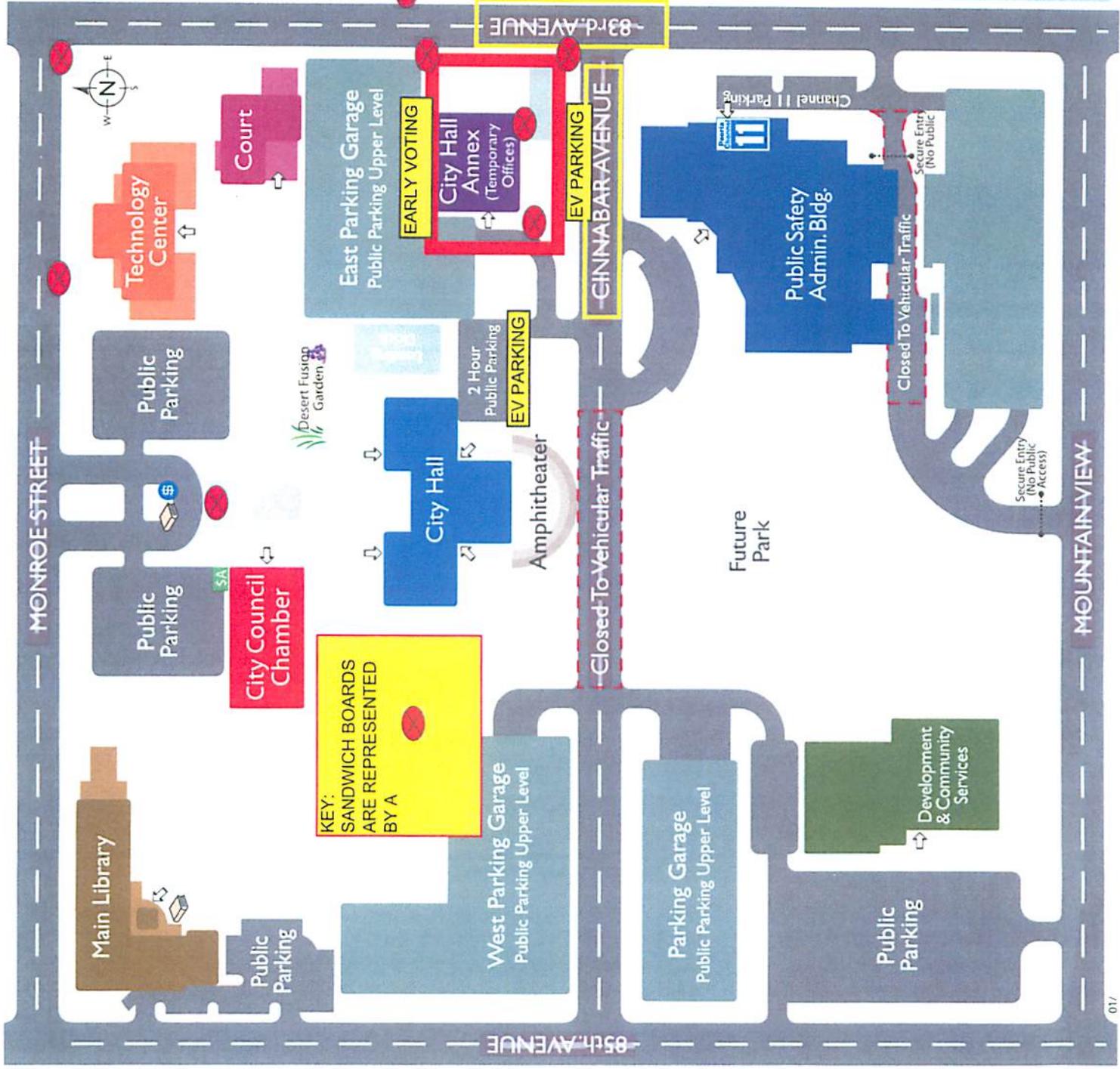
1. Extensive computer work/typing/writing/reading/speaking:
 - This task involved constantly alternating from a sitting position to a standing position to a bending position while assisting voters.
2. Printing tasks involved constant standing with repetitive bending motions while assisting voters.
3. Escorting voters to their cars/providing directions.
 - This task involved moderate walking.
4. Rearrange furniture to accommodate traffic flow. This task involved moderate lifting and bending.
5. Assisting voters waiting in lines up to ½ mile long.
 - This task involved constant walking and standing.
6. Take down all early voting equipment on the last day.
 - This task involved extensive bending, reaching and heavy lifting.
7. Work hours ranged from 7:30 a.m. to 10:30 p.m.

EXHIBIT 12



City of Peoria Municipal Campus
 8401 W. Monroe St., Peoria AZ 85345
 Information: (623) 773-7000
 www.peoriaaz.gov

- City Council Chamber** 8401 W. Monroe St.
- City Hall** 8401 W. Monroe St.
 - First Floor
 - Information Counter
 - City Clerk (Passports)
 - Customer Service (Utility Billing & Setup)
 - Economic Development
 - Human Resources
 - Pine Conference Room
 - Second Floor
 - Budget
 - City Attorney
 - Third Floor
 - Mayor
 - City Council
 - City Manager
 - Communications & Public Affairs
- City Hall Annex** 8314 W. Cinnabar Ave.
 - Purchasing
 - Special Events
- Court** 10100 N. 83rd Ave.
- Development & Community Services** 9871 N. 85th Ave.
 - First Floor
 - Community Services
 - Parks and Recreation
 - Community Development
 - Building Safety & Permits
 - Neighborhood Services (Code Compliance)
 - Planning & Zoning
 - Engineering
 - Second Floor
 - Public Works
 - Utilities
- Library** 8403 W. Monroe St.
- Public Safety Admin.** 8351 W. Cinnabar Ave.
 - Police
 - Fire Administration
 - Peoria Channel 11
 - Peoria Conference Room
- Technology Center** 8343 W. Monroe St.
 - Information Technology



KEY:
 SANDWICH BOARDS
 ARE REPRESENTED
 BY A

EXHIBIT 13

TO ALL APPLICANTS: The City of Peoria is an Affirmative Action/Equal Opportunity/ Reasonable Accommodation Employer. The information that you provide on this profile is used for statistical purposes in complying with record keeping requirements of the Federal Government to assure equal employment opportunity in the City's hiring practices. This profile will be filed separately from your application and will not be used to discriminate in any way in the employment process. Although completion of this profile is not mandatory, your assistance will help us to study and improve our recruitment policies. THANK YOU.

CITY OF PEORIA APPLICANT PROFILE

TITLE OF POSITION APPLIED FOR: Board Worker

TODAY'S DATE: July 22, 2008



LAST NAME [REDACTED] FIRST NAME [REDACTED] INITIAL [REDACTED]

ADDRESS [REDACTED] CITY/STATE [REDACTED] ZIP [REDACTED]

GENDER: 1. FEMALE 2. MALE

AGE: [REDACTED]

Ethnic Group	Where did you hear about this vacancy?
(Please check all that apply and circle the category you consider to be your primary race/ethnicity)	(Please check only ONE of the options)
1. <input checked="" type="checkbox"/> White	1. <input type="checkbox"/> Peoria Website
2. <input type="checkbox"/> Hispanic/Latino	2. <input type="checkbox"/> Peoria Job Hotline
3. <input type="checkbox"/> Black/African American	3. <input type="checkbox"/> City Employee
4. <input type="checkbox"/> American Indian/ Alaska Native	4. <input type="checkbox"/> Walk-In
5. <input type="checkbox"/> Native Hawaiian/ Other Pacific Islander	5. <input type="checkbox"/> Newspaper: _____
6. <input type="checkbox"/> Asian	6. <input type="checkbox"/> Job Fair: _____
7. <input type="checkbox"/> Prefer not to specify	7. <input type="checkbox"/> Professional Publication or Web-site: _____
	8. <input checked="" type="checkbox"/> Other: <u>MCED - Janet</u>

Preference Points:

Some applicants may qualify for employment preference points in accordance with Arizona Revised Statue 38-492. Please refer to 'Preference Points Information' on the back page of this application to determine whether you qualify. If you determine that you meet the requirements for any of the listed categories, please check the appropriate option(s) below.

Note: Appropriate supporting documentation is required within five working days from the closing date of the position you are applying for. Documentation may be submitted via fax at (623) 778-7149, U.S. Mail, or in person at the Human Resources Office, 8401 West Monroe Street, Peoria, AZ 85345. Please reference the Job Title and Job Posting number on your supporting documents.

Veteran Disabled Veteran Spouse or Surviving Spouse of a Veteran Person with a Disability

EXHIBIT 14

[REDACTED]

November 17, 2008

Ms. Mary Jo Kief, City Clerk
City of Peoria
8401 W. Monroe
Peoria, Arizona 85345

On July 22, 2008, [REDACTED] and I completed paperwork and applications for "Election Board Worker" for the City Clerk. We were highly recommended by the Maricopa County Elections Department to the City of Peoria for Early Voting scheduled to begin August 4, 2008, because we both worked Early Voting in 2006 and were trained, experienced, and highly skilled at that job.

On [REDACTED] we both kept appointments with [REDACTED] for physicals the City required of us each as Election Supervisors. We were there over four hours from 2:05 pm until we finished after 6 pm.

Despite a failure to communicate, the physician who saw me cleared me for sedentary work.

We attended an Early Voting class on July 24 from 9 am to 4 pm held at the County Election Center, where we demonstrated we were fully qualified for the job as Early Election workers. To the best of my knowledge, we were never paid for this training.

Circa August 1, Debbie Meyphaler called to tell me I was not hired because I did not pass my physical. Please forward this complete decision to me in writing and explain in detail why I was not hired.

Please give me the name of the person who made the decision and tell me why the person hired in my place was older and more disabled than I. Please be specific.

Please forward to me the written Job Description for the job for which I applied, including its detailed qualifications, requirements, and duties, especially those which require I "squat."

Explain why the City of Peoria was not able to accommodate my alleged handicap when the doctor reported I was "only capable" of "squatting" 45%, especially since every other employer I ever had provided a chair and desk for computer work and rest rooms rather than a space behind a tree in the back of the building to "squat" to relieve one's self.

The two other alleged handicaps the doctor reported on my physical, inability to look down or to bend down are both false. I looked down in front of him. If the doctor had asked, I could have bent down to touch the floor with my finger tips with my knees straight, as I did for the clinic office manager. I can also lift heavy objects and do pushups. There was an obvious failure to communicate during the exam.

I asked to see the doctor for five minutes to correct the record by demonstrating the errors to the doctor. I was not notified the errors were corrected nor been given an opportunity to meet with him.

The conditions under which the doctor asked me to "squat" were very precarious. His request could have caused me to severely injure to my shoulder, knees, and/or derriere, perhaps even my wrist or elbow breaking a fall. The examination table he told me to hold onto was so extremely slippery my hand kept sliding off and it was too high for me to lean or brace myself on it.

Further, if I squatted the way the doctor asked me to with my knees in front of me, placing my full weight at the time of 180 lbs on my knees without using a chair to support part of my weight, I could have damaged my knees so severely I may have required surgery, which may not have repaired my knees to 100% again. His request for me to not squat correctly was very dangerous.

I was also shocked he asked me to "squat" while wearing a hospital type exam gown and just my under pants. I was very self conscious about keeping my knees together to keep the hem of the gown from rising over my knees. The only reason I tried to comply and did not refuse was that I did not want the City of Peoria to think I was uncooperative.

If the City of Peoria has a policy to not hire workers over a certain age, if handicapped, or for some other reason, regardless if they are qualified to do the job, please inform me in writing and supply me with a detailed copy of the policy, who approved it, and when.

Please tell me who made the final decision to not hire me and what they noted on my application and in my file as the reason for their decision. Please supply me with an unredacted photocopy of my application and any notations made about me in my file that is part of my permanent record. I have a right to know what was written about me.

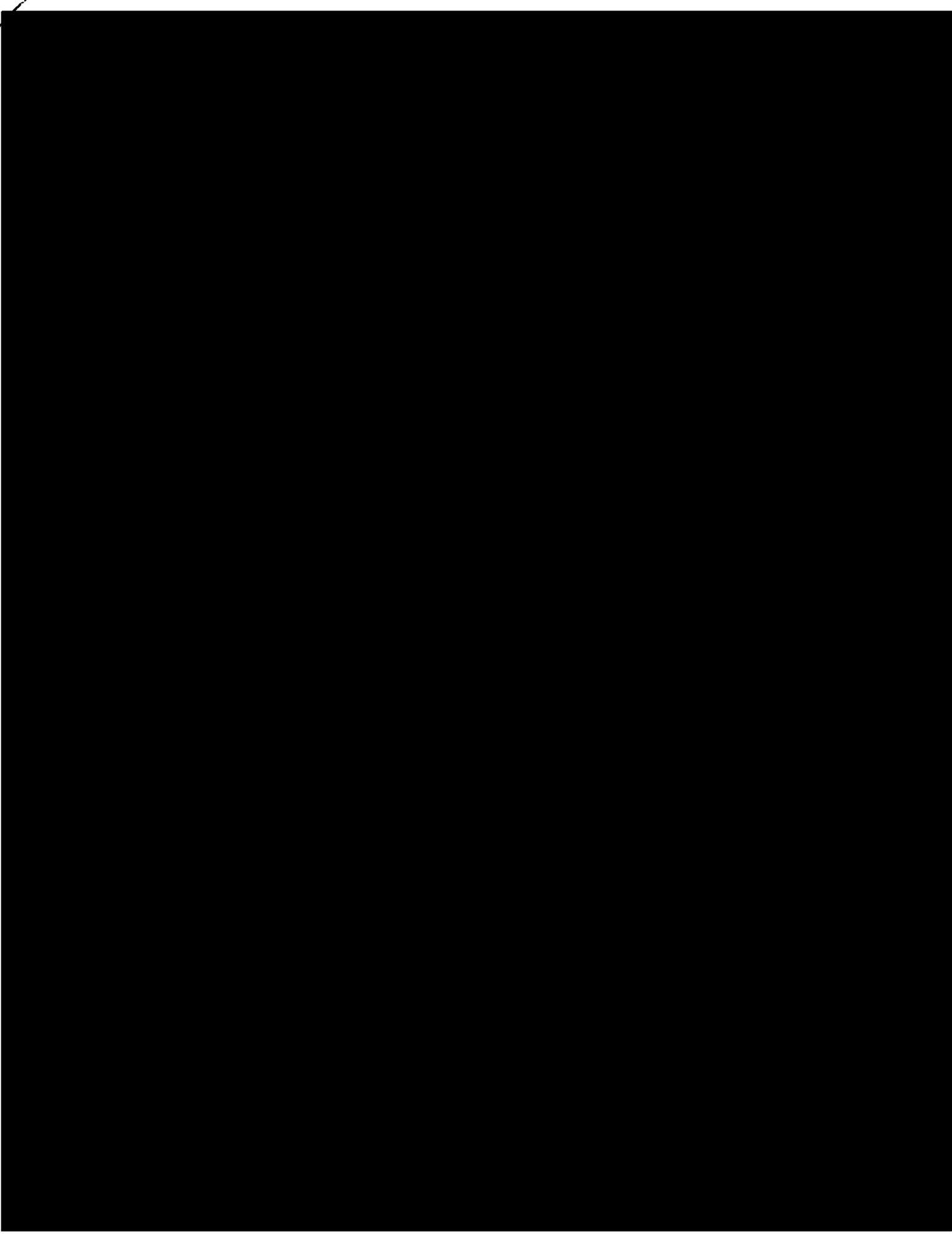
I also have a legal right to a complete unredacted copy of any physical examination done of me regardless of who paid for it. After all, it was my body I gave permission to examine and I who signed a release to allow the City of Peoria to receive a copy of it. If there is a law that allows you to refuse to give me a complete copy of my own physical, please provide me with a copy of it.

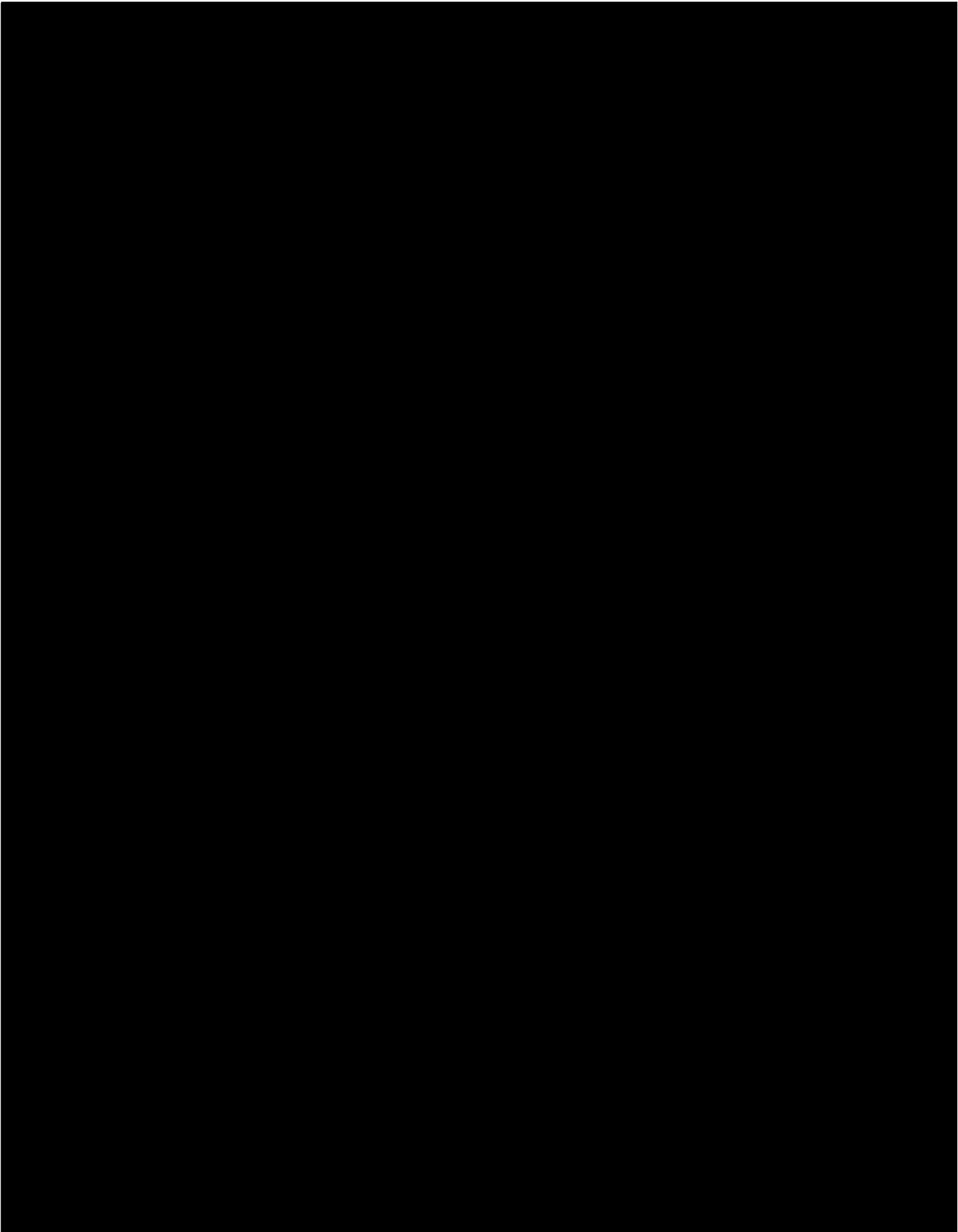
Please supply me the name of the person who has refused to allow the doctor's office to send me a copy and please give me the specific reason or reasons they refused.

Thank you.

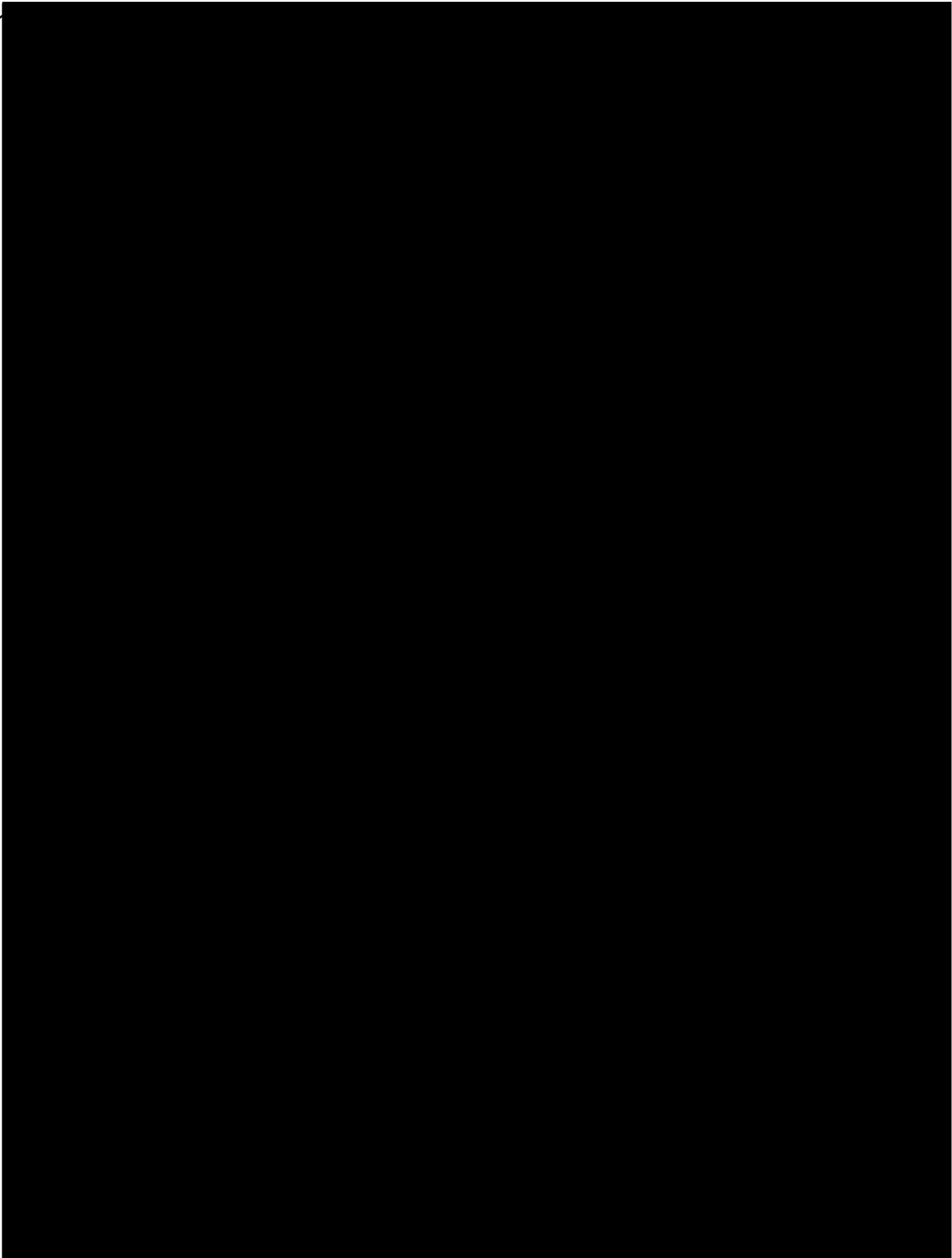
, Applicant, 2008 Early Voting Board Worker

EXHIBIT 15





[Redacted]



U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

DISMISSAL AND NOTICE OF RIGHTS

To: [Redacted]

From: Phoenix District Office
3300 North Central Ave
Suite 690
Phoenix, AZ 85012

On behalf of person(s) aggrieved whose identity is
CONFIDENTIAL (29 CFR §1601.7(a))

EEOC Charge No.	EEOC Representative	Telephone No.
540-2009-02921	Jeremy A. Yubeta, Supervisory Investigator	(602) 640-5028

THE EEOC IS CLOSING ITS FILE ON THIS CHARGE FOR THE FOLLOWING REASON:

- The facts alleged in the charge fail to state a claim under any of the statutes enforced by the EEOC.
- Your allegations did not involve a disability as defined by the Americans With Disabilities Act.
- The Respondent employs less than the required number of employees or is not otherwise covered by the statutes.
- Your charge was not timely filed with EEOC; in other words, you waited too long after the date(s) of the alleged discrimination to file your charge
- The EEOC issues the following determination: Based upon its investigation, the EEOC is unable to conclude that the information obtained establishes violations of the statutes. This does not certify that the respondent is in compliance with the statutes. No finding is made as to any other issues that might be construed as having been raised by this charge.
- The EEOC has adopted the findings of the state or local fair employment practices agency that investigated this charge.
- Other (briefly state)

- NOTICE OF SUIT RIGHTS -

(See the additional information attached to this form.)

Title VII, the Americans with Disabilities Act, and/or the Age Discrimination in Employment Act: This will be the only notice of dismissal and of your right to sue that we will send you. You may file a lawsuit against the respondent(s) under federal law based on this charge in federal or state court. Your lawsuit **must be filed WITHIN 90 DAYS** of your receipt of this notice; or your right to sue based on this charge will be lost. (The time limit for filing suit based on a state claim may be different.)

Equal Pay Act (EPA): EPA suits must be filed in federal or state court within 2 years (3 years for willful violations) of the alleged EPA underpayment. This means that **backpay due for any violations that occurred more than 2 years (3 years) before you file suit may not be collectible.**

On behalf of the Commission
Rayford O. Irvin
Rayford O. Irvin,
Acting District Director

SEP 23 2009

(Date Mailed)

Enclosures(s)

cc: Cheryl A Bowsell
Assistant City Attorney
CITY OF PEORIA
8401 W. Monroe Street
Peoria, AZ 85345

RECEIVED

SEP 24 2009

OFFICE OF THE CITY ATTORNEY
PEORIA, ARIZONA

DISMISSAL AND NOTICE OF RIGHTS

To: 

From: Phoenix District Office
3300 North Central Ave
Suite 690
Phoenix, AZ 85012

On behalf of person(s) aggrieved whose identity is
CONFIDENTIAL (29 CFR §1601.7(a))

EEOC Charge No.	EEOC Representative	Telephone No.
540-2009-01435	Janis L. Richardson, Investigator	(602) 640-5008

THE EEOC IS CLOSING ITS FILE ON THIS CHARGE FOR THE FOLLOWING REASON:

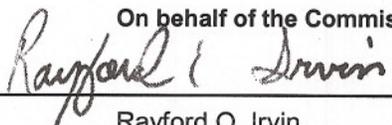
- The facts alleged in the charge fail to state a claim under any of the statutes enforced by the EEOC.
- Your allegations did not involve a disability as defined by the Americans With Disabilities Act.
- The Respondent employs less than the required number of employees or is not otherwise covered by the statutes.
- Your charge was not timely filed with EEOC; in other words, you waited too long after the date(s) of the alleged discrimination to file your charge
- The EEOC issues the following determination: Based upon its investigation, the EEOC is unable to conclude that the information obtained establishes violations of the statutes. This does not certify that the respondent is in compliance with the statutes. No finding is made as to any other issues that might be construed as having been raised by this charge.
- The EEOC has adopted the findings of the state or local fair employment practices agency that investigated this charge.
- Other (briefly state)

- NOTICE OF SUIT RIGHTS -
(See the additional information attached to this form.)

Title VII, the Americans with Disabilities Act, and/or the Age Discrimination in Employment Act: **This will be the only notice of dismissal and of your right to sue that we will send you. You may file a lawsuit against the respondent(s) under federal law based on this charge in federal or state court. Your lawsuit must be filed WITHIN 90 DAYS of your receipt of this notice; or your right to sue based on this charge will be lost. (The time limit for filing suit based on a state claim may be different.)**

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Enclosures(s)

On behalf of the Commission


Rayford O. Irvin,
Acting District Director

SEP 30 2009

(Date Mailed)

cc: Cheryl Boswell – City Attorney
CITY OF PEORIA
8401 W. Monroe Street
Peoria, AZ 85345

RECEIVED
OCT 1 2009
OFFICE OF THE CITY ATTORNEY
PEORIA, ARIZONA