

**IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF WISCONSIN
MILWAUKEE DIVISION**

ANDREW L. COLBORN,

Plaintiff,

vs.

**NETFLIX, INC.; CHROME MEDIA LLC,
F/K/A SYNTHESIS FILMS, LLC; LAURA
RICCIARDI; AND MOIRA DEMOS,**

Defendants.

Civil No.: 19-CV-484

DECLARATION OF KEVIN L. VICK

I, Kevin L. Vick, under penalty of perjury and subject to 28 U.S.C. § 1746, declare as follows:

1. I am one of the attorneys for Defendants Laura Ricciardi, Moira Demos and Chrome Media LLC (collectively the “Producer Defendants”) in the above-captioned action. I have personal knowledge of the matters set forth in this declaration. I make this declaration in support of the Defendants Joint Civil L.R. 7(H) Expedited Non-Dispositive Motion for Order Allowing Defendants to Depose Plaintiff For 14 Hours Collectively (the “Expedited Non-Dispositive Motion”).

2. Attached as Exhibit 1 is a true and correct copy of pertinent portions of the transcript of the deposition of non-party Brenda Schuler, including the following excerpts:

- a. Pages 166-67 of the deposition transcript contain testimony regarding Plaintiff forwarding Ms. Schuler his communications with Attorney Michael Griesbach during his representation for this litigation;

- b. Pages 283-86 of the deposition transcript contain testimony regarding paper documents and discs containing evidence that Plaintiff provided to Ms. Schuler;
- c. Page 309-11 of the deposition transcript contain testimony regarding Ms. Schuler contributing edits to the Complaint and not considering whether attorney-client privilege was an issue;
- d. Pages 316-18 of the deposition transcript contain testimony regarding Ms. Schuler's concerns about "get[ting her] stuff to be privileged" when she was assisting with the litigation on a volunteer basis but not a paid employee;
- e. Pages 318-21 of the deposition transcript contain testimony regarding conversations between Plaintiff and Ms. Schuler regarding her not having an official role on the legal team but confirming her continued involvement and role drafting the initial Complaint; and
- f. Pages 341-348 of the deposition transcript contain testimony regarding
[REDACTED]
[REDACTED]
[REDACTED].

3. Counsel for all parties conferred but were unable to come to an agreement regarding the number of hours to depose Plaintiff Andrew Colborn. Attached as Exhibit 2 is a true and correct copy of the meet and confer email correspondence regarding Plaintiff's deposition. In addition, during a conference call between counsel for all parties held on June 16, 2022, counsel for the Producer Defendants explained that Defendants would soon file an

Expedited Non-Dispositive Motion with the Court in light of the parties' inability to informally resolve the issue of the appropriate length of Mr. Colborn's deposition.

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

Dated: June 24, 2022

Respectfully submitted,

/s/ Kevin L. Vick
Kevin L. Vick

27424073.2

EXHIBIT 1

In The Matter Of:

*Andrew Colborn v
Netflix, Inc., et al.*

*Brenda Schuler
May 20, 2022
Confidential*

*Colleen Reed Reporting LLC
P.O. Box 293
Milwaukee, Wisconsin 53201
www.colleenreed.com*

Original File 052022brendaschulerfwx.txt

Min-U-Script® with Word Index

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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF WISCONSIN

ANDREW COLBORN,
Plaintiff, CIVIL ACTION NO. 19-CV-0484
-vs-
NETFLIX, INC., ET AL, ***CONFIDENTIAL***
Defendants.

DEPOSITION OF: BRENDA SCHULER
DATE: May 20, 2022
TIME: 8:39 a.m. to 4:57 p.m.
LOCATION: Godfrey & Kahn, S.C.
833 East Michigan Street
Suite 1800
Milwaukee, Wisconsin 53202
REPORTED BY: Janet D. Larsen, RPR

1 A P P E A R A N C E S

2

3 SCHOTT BUBLITZ & ENGEL S.C., by
4 APRIL ROCKSTEAD BARKER, ATTORNEY AT LAW
5 640 West Moreland Boulevard
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7 abarker@sbe-law.com
8 appeared via Zoom videoconference on
9 behalf of the Plaintiff.

7 BALLARD SPAHR LLP, BY
8 LEITA WALKER, ATTORNEY AT LAW
9 2000 IDS Center
10 80 South 8th Street
11 Minneapolis, Minnesota 55402
12 walkerl@ballardspahr.com
13 appeared on behalf of Netflix, Inc.

11 BALLARD SPAHR LLP, BY
12 ISABELLA SALOMAO NASCIMENTO
13 ATTORNEY AT LAW
14 2000 IDS Center
15 80 South 8th Street
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17 salomaonascimentoi@ballardspahr.com
18 appeared via Zoom videoconference on
19 behalf of Netflix, Inc.

16 BALLARD SPAHR LLP, by
17 EMILY S. PARSONS, ATTORNEY AT LAW
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19 Washington, DC 20006-1157
20 parsonse@ballardspahr.com
21 appeared via Zoom videoconference on
22 behalf of Netflix, Inc.

20 JASSY VICK CAROLAN LLP, by
21 MEGHAN E. FENZEL, ATTORNEY AT LAW
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25

1 ANNIGIAN RYAN LLP, by
2 NICHOLAS A. KURTZ, ATTORNEY AT LAW
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4 Claremont, California 91711
5 nk@arllp.com
6 appeared on behalf of the Witness.

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ALSO PRESENT VIA ZOOM VIDEOCONFERENCE:
Maira Demos
Laura Ricciardi

1 Do you see all that?

2 A. I do.

3 Q. Do you remember getting an email from Mr. Colborn
4 in reference to what he says here, about Judge
5 Pamela Pepper?

6 A. My recollection isn't great on it, but I believe
7 it was something regarding, like, her history on a
8 website or something. Did you get the email. I
9 don't remember exactly what it was.

10 Q. Are you willing to run a search for the name
11 Pamela Pepper and send us any email you have about
12 her?

13 A. Possibly.

14 Q. And Mr. Colborn says, I will forward what Mike
15 sent me about her.

16 Do you see that?

17 A. Yes, m-hm.

18 Q. And so he's forwarding you a communication that he
19 had with -- Mike Griesbach -- I'll withdraw that.

20 My first question is Mike is a reference
21 to Mike Griesbach; correct?

22 A. Yes.

23 MS. BARKER: Object as to foundation.

24 Q. So he was forwarding you a privileged
25 communication he had with his attorney,

1 Mr. Griesbach; correct?

2 MS. BARKER: Same objection.

3 A. I don't know, I don't know how privilege works.
4 I'm sorry. I don't know if he was just sharing
5 something he didn't care if it was privileged or
6 not or if all attorney-client is privileged for
7 anything. I don't know. But, yes, he forwarded
8 an email from Mike Griesbach.

9 Q. Okay. And he said, just between you and me, tho,
10 and what was your understanding of why he said
11 that?

12 MS. BARKER: Object as to foundation.

13 A. Not to share with anyone.

14 Q. Did he ever tell you to not tell Mr. Griesbach
15 that he was sharing communications with you?

16 A. Maybe, maybe. I don't, I can't think of anything
17 offhand but maybe. He could have said, don't
18 share this with Mike. I, I don't know.

19 (Exhibit [2028](#) marked for identification)

20 Q. The court reporter just handed you Exhibit [2028](#).
21 Again, these are text messages between you and
22 Mr. Colborn; correct?

23 A. Yes.

24 Q. And the exhibit begins at Bates No. 8990, but I'll
25 direct you to three pages in, 8992.

1 how much they support our decision to do this, and
2 the pastor told me we will all be in his prayers.
3 Thought you would like to know that, Brenda.

4 Did I read that correctly?

5 A. Yes.

6 Q. And you say, Aww. Thanks so much. That is
7 wonderful to hear. And he says, You betcha. Nice
8 to have the support of a church, and people seem
9 to be happy about what we are doing.

10 Did I read that correctly?

11 A. Yes.

12 Q. And so, like, he had the support of his law
13 enforcement community, Mr. Colborn had the support
14 of his church community; correct?

15 A. Yes, his church, yes.

16 Q. Oh, you can hang on to that actually --

17 A. Okay.

18 Q. -- for just one more minute.

19 I'll take that back. I'm going to hand
20 you another exhibit.

21 (Exhibit [2051](#) marked for identification)

22 Q. So the court reporter has handed you Exhibit [2051](#).
23 These are texts, and really they're, well, they're
24 texts with some photographs from Mr. Colborn to
25 you; correct?

1 A. Correct. Yes.

2 Q. And at the top on Bates No. 5126 he says, This is
3 what I have for you, and he sends you a picture of
4 a box with some files in it, it looks like; is
5 that correct?

6 A. Correct, yes.

7 Q. And this was coming in June of 2018; right?

8 A. Yes.

9 Q. And what was in that box?

10 A. That was the file that he had previously given to
11 a prior attorney that he gave to me. It was the
12 CDs that we were talking about earlier, the 27,
13 his personnel report. Oh, his personnel -- It was
14 everything pretty much from Manitowoc County
15 regarding his personnel report, complaints he had
16 received, or I don't want to say complaints,
17 emails he had received that we talked about
18 earlier. What else was in there. It was
19 everything related to him personally that he had
20 given to a prior attorney that he had hoped would
21 take his case.

22 Q. Do you know that attorney's name?

23 A. No, no.

24 Q. And he or she decided not to take Mr. Colborn's
25 case?

1 A. I don't know if, I don't know the situation,
2 honestly. I don't know what it was.

3 Q. He never talked to you about why that attorney
4 said no?

5 A. Maybe. I don't remember if he, what he said about
6 it. I just knew that she wasn't taking it,
7 whoever it was. Might have been a prior -- I
8 thought she worked for, he knew her through his
9 job somehow, I thought.

10 Q. Have you given us the documents in that box in the
11 picture?

12 A. That's the ones we talked about earlier with all
13 of the complaints and the personnel reports.

14 Q. So all the ten?

15 A. Yes, yes.

16 Q. It's a pretty small box. Does seeing it again
17 make you more willing to give us everything?

18 A. I think everything in it you're either going to
19 either have or it's the ten complaints because
20 this is what was given to his lawyers. I don't
21 have this box anymore, so it's, it's -- I did give
22 you the personnel report, I believe.

23 Q. So you don't have this box anymore?

24 A. No, no. Nor, nor this.

25 Q. Okay. But you think you gave us everything

1 that -- I mean did you make a copy of everything
2 that was in the box before you gave it to his
3 lawyers?

4 A. I scanned a lot of it, and I also had the wave
5 files of the CDs with the calls.

6 Q. Okay. And so you think you have given all of that
7 to us?

8 A. Everything that I copied or put on-line, yes.

9 Q. Okay. On the next page, there's another photo of
10 a file in, like, a plastic folder.

11 Do you see that?

12 A. Yes. Yes.

13 Q. And what was that?

14 A. I just want to see what this one is. Since
15 release of Making a Murderer -- Oh, okay. This
16 is, these are formal incident reports, the top one
17 anyway, incident reports that came in, whether it
18 be, like, the bomb threats that they received. He
19 had a couple interactions with people threatening
20 him. So there were more of the incident reports.
21 I know there was a lot of emails between one or
22 two parties that just went back and forth, back
23 and forth, and I believe there were several copies
24 of the same one that seemed like a big stack
25 because I remember kind of sorting it. The CD is

1 A. Right.

2 Q. Which phone call again? Say it again for me.

3 A. Sure. That '95, '96 phone call that Andy received
4 and transferred --

5 Q. Got it.

6 A. -- to a detective.

7 Q. Yeah.

8 A. Mike was under the impression, I believe, somehow,
9 some way that Kusche actually received a call, and
10 I caught that in the Complaint, and I said, I
11 don't think that's, I never heard that, where is
12 that from.

13 Q. Mike was under that impression because Kusche
14 might have told him that?

15 A. No. I don't know how Mike was under the
16 impression. I have no idea.

17 Q. Just a mistake?

18 A. Right.

19 Q. We'll move on.

20 I'm going to hand you two exhibits at
21 once. This will be [2063](#), this will be [2064](#).

22 (Exhibits [2063](#) and [2064](#) marked for
23 identification)

24 A. All right.

25 Q. If you could look at [2063](#) first. This is an email

1 Mr. Colborn sent to you on December 7th, 2018.

2 A. Yes.

3 Q. And it forwards an email he got from his attorney,
4 Mr. Griesbach; correct?

5 A. Correct.

6 Q. And it's a partial draft of the Complaint about a
7 week before it was filed; correct?

8 A. Correct.

9 Q. And this is, we've seen text messages between you
10 and Mr. Colborn about your edits, but this is the
11 email where he actually sent the thing to you;
12 correct?

13 A. That's what it looks like, yes.

14 Q. And then Exhibit [2064](#) is a similar email where
15 Mr. Griesbach had sent a second section of the
16 Complaint, draft Complaint, to Mr. Colborn, and
17 then Mr. Colborn sent it to you; correct?

18 A. Right. The second part, correct.

19 Q. Did you have any concerns as all this was
20 happening about Mr. Colborn preserving
21 attorney-client privilege?

22 A. No, because I wasn't aware of any of that. I mean
23 I even was working with Mike researching in the
24 book and I felt like things that a legal assistant
25 would almost do. So, no, I didn't even know that,

1 to be honest, that that would be an issue, and I
2 didn't even think about it since, because Mike did
3 know I was checking it. I, I didn't remember that
4 Andy sent it to me first.

5 Q. So at some point Mr. Griesbach found out. He
6 maybe didn't know on December 7th; correct?

7 A. Very soon after.

8 Q. Okay. Let's mark this as Exhibit [2065](#), and I'll
9 give you just a minute or two to, to review [2065](#).
10 And I'm going to be pointing you to -- Well, I'll
11 give you a chance to review it, but then I just
12 want to confirm that these are text messages
13 between you and Andy Colborn talking about edits
14 to the Complaint.

15 (Exhibit [2065](#) marked for identification)

16 A. All right. Let me take a look here. How far did
17 you want me to read? I'm sorry.

18 Q. Well, let me ask you this. This was all sent on
19 December 16th, 2018; correct, December 16th, 2018?

20 A. Correct.

21 Q. And this is just a couple days before the
22 Complaint was to be filed; correct?

23 A. I believe one day, actually, one, one or two,
24 yes.

25 Q. And you're in this text message chain going back

1 between you and Mr. Colborn; correct?

2 A. Yes.

3 Q. And I'll direct you to page Bates No. 7072.

4 A. Okay.

5 Q. We don't have to read this. This is a big, long
6 text.

7 A. I know. Who is this? Him to me? Me to him.

8 Q. You to Mr. Colborn. Let me read the first couple
9 lines.

10 A. Okay.

11 Q. And just to set the stage, this is January 6,
12 2019, right after the Complaint was filed;
13 correct?

14 A. Correct.

15 Q. So you say, Mike is on the other line with him
16 now. He called while I was chatting with him.
17 I'm glad he did because of the attorney work
18 product, and I'm not, quote, officially working,
19 quote, for Mike. I'll have to ask him how we get
20 my stuff to be privileged. Anyway, period. And
21 then you go on to talk about this character named
22 Rocky Lapomarto. But my question is, it seems
23 maybe to have occurred to you at this point there
24 are some privilege and attorney work product
25 issues?

1 A. Yes.

2 Q. And you were expressing, I don't know if it's
3 concern or maybe curiosity about that?

4 A. Right after -- Yes, yes, that's what it appears
5 definitely.

6 Q. And did you ever ask Mike, quote, how we get my
7 stuff to be privileged, as you say there in the
8 text message?

9 A. My recollection, I don't know if this, when this
10 was, but, yes, I remember sharing information,
11 again, up until April and the group took over,
12 just saying how I don't want my things to be
13 public, okay. I wasn't, I don't think I
14 necessarily, necessarily was thinking anything
15 about his stuff not being privileged by including
16 me. I was more worried about my stuff becoming
17 public that I was sharing with him.

18 Q. Okay. And did you ever get an answer from
19 Mr. Griesbach about that?

20 A. If I recall correctly, I believe he said, just put
21 attorney-client privilege on it or something
22 because I was not officially in a paid capacity
23 working for him, more of a -- I don't know what I
24 was.

25 Q. A volunteer?

1 A. I wasn't officially working for him, but I was
2 certainly helping him.

3 Q. Got it.

4 MS. WALKER: Let's mark this as [2069](#).

5 (Exhibit [2069](#) marked for identification)

6 Q. [2069](#) is another text exchange between you and
7 Mr. Colborn; correct?

8 A. Yes, m-hm.

9 Q. And this is now a couple months after the lawsuit
10 was filed in February 8th of 2019.

11 Do you see that?

12 A. February, yes, I do.

13 Q. And you say to Mr. Colborn, Hey, are you around?
14 He says, Yeah, I'm at home. What's up? And you
15 say, Oh, no biggy. Mike left me a message about
16 the meeting and sounds like I can't help at all.

17 Do you see that?

18 A. Yes.

19 Q. And you say, I don't want to be deposed, but I
20 said if they wanted me to sign something that I
21 can help with no pay, I'd be happy to. But they
22 don't think it's a good idea. It's all good. Was
23 just going to fill you in if Mike hadn't yet.

24 Do you see that?

25 A. Yes.

1 Q. And tell me about the message he left or the
2 conversation you had about why you were no longer
3 able to help with the case.

4 A. Sure. As you can probably tell, prior to the
5 Complaint being filed, I was a big part of helping
6 the research aspect of it, so I think that was
7 always kind of the plan. I wasn't doing much with
8 transition at that point, if, hardly anything. So
9 when April and the group came on and took it on,
10 they obviously have their own resources. I wasn't
11 an employee of Mike's. Officially I couldn't
12 really bring any value to them. I had hoped I
13 could because I wanted to be part of that. And
14 it, it just wasn't, I wasn't able to do that. And
15 for obvious reasons, they have their own staff.
16 I'm not an attorney, so he was just letting me
17 know that I really couldn't know anything, be a
18 part of anything, see anything, so it was kind of
19 I think where the big cutoff was where we, I
20 handed it off and had to step back quite a bit.

21 Q. Mr. Colborn seems fairly disappointed by that. He
22 says in the next text message, Mike hadn't
23 mentioned that. I was really hoping you could be
24 involved, although I certainly see why they
25 wouldn't want to be deposed. Can you still give

1 info to Debra and will you still be willing to?

2 Do you see that?

3 A. I do, yes.

4 Q. And, in fact, what happened is that Mr. Colborn
5 did continue to keep you in the loop on this
6 lawsuit off and on; correct?

7 MS. BARKER: Object. Foundation.

8 A. I think -- Not to the same degree had I stayed on
9 with him, obviously. But, yeah, I mean he, he
10 told me periodic things so, sure, sure, more as a
11 friend than a resource person.

12 Q. The info he references giving to Debra --

13 A. Yes.

14 Q. -- what was that, and did you give it to her?

15 A. I did, and I, I did include those in discovery. I
16 was handing off all of my research documents that
17 I felt would be applicable in the Complaint that I
18 had used to check the Complaint, so I was
19 basically just getting her up to speed on the
20 background of the case, their investigator.

21 Q. Did you have a conversation with her --

22 A. I did, yes.

23 Q. -- to orient --

24 A. I met with her.

25 Q. You did.

1 A. Yes.

2 Q. Okay. Did you ever draft any exhibit to any
3 Complaint like a comparison, a list of defamatory
4 statements or a comparison of trial testimony to
5 what was in Making a Murderer?

6 A. In the first Complaint, yes, I did. The second
7 Complaint, unless they used something from the
8 first Complaint, I had nothing to do with the
9 second when, again, I don't know what you call it,
10 the Amended Complaint, when April and George came
11 on. The first one, yes. The first one, yes, I
12 know I had an exhibit in there.

13 MS. WALKER: Mark this as Exhibit [2070](#).

14 (Exhibit [2070](#) marked for identification)

15 Q. So this is an email string with a lot of signature
16 block.

17 A. Right.

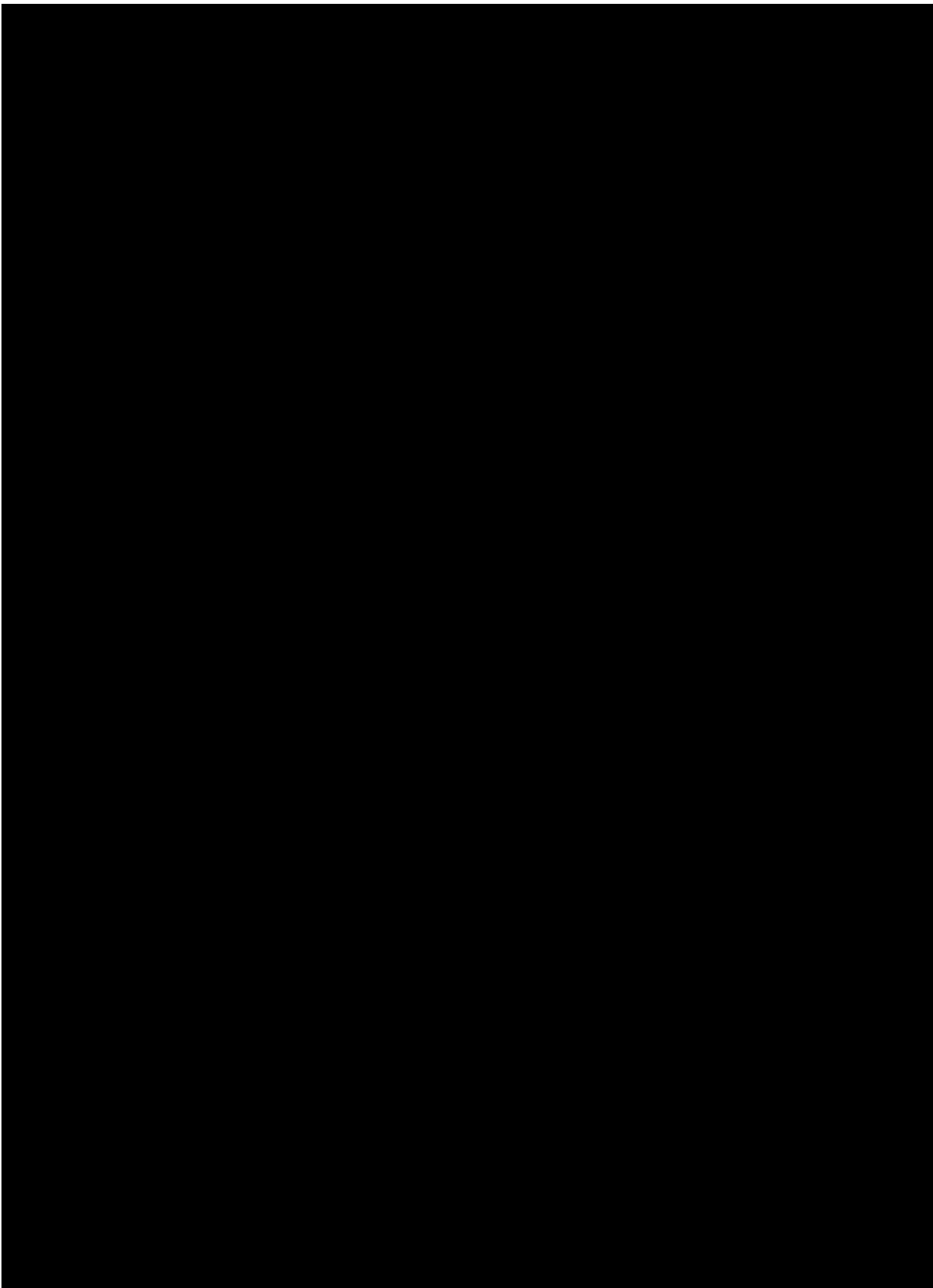
18 Q. Stuff we can ignore at the end, but if you flip
19 backwards from that, the first real email at the
20 bottom of the chain is from Deb Bursik to you
21 asking if there's a piece of paper regarding the
22 dispatch call Mr. Colborn received.

23 Do you see that on January 16th, 2019?

24 A. What page are you on?

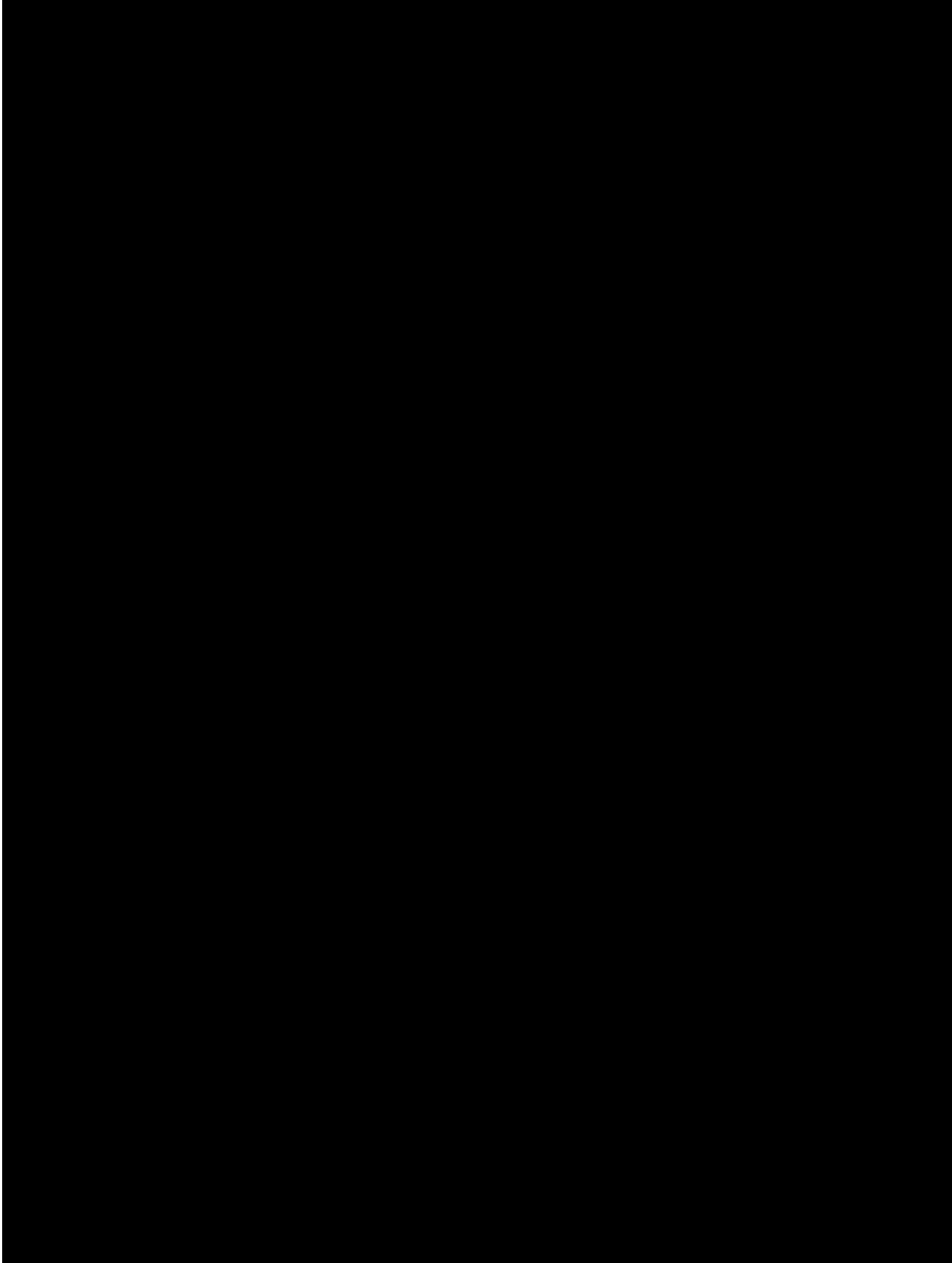
25 Q. I'm on the 2829.

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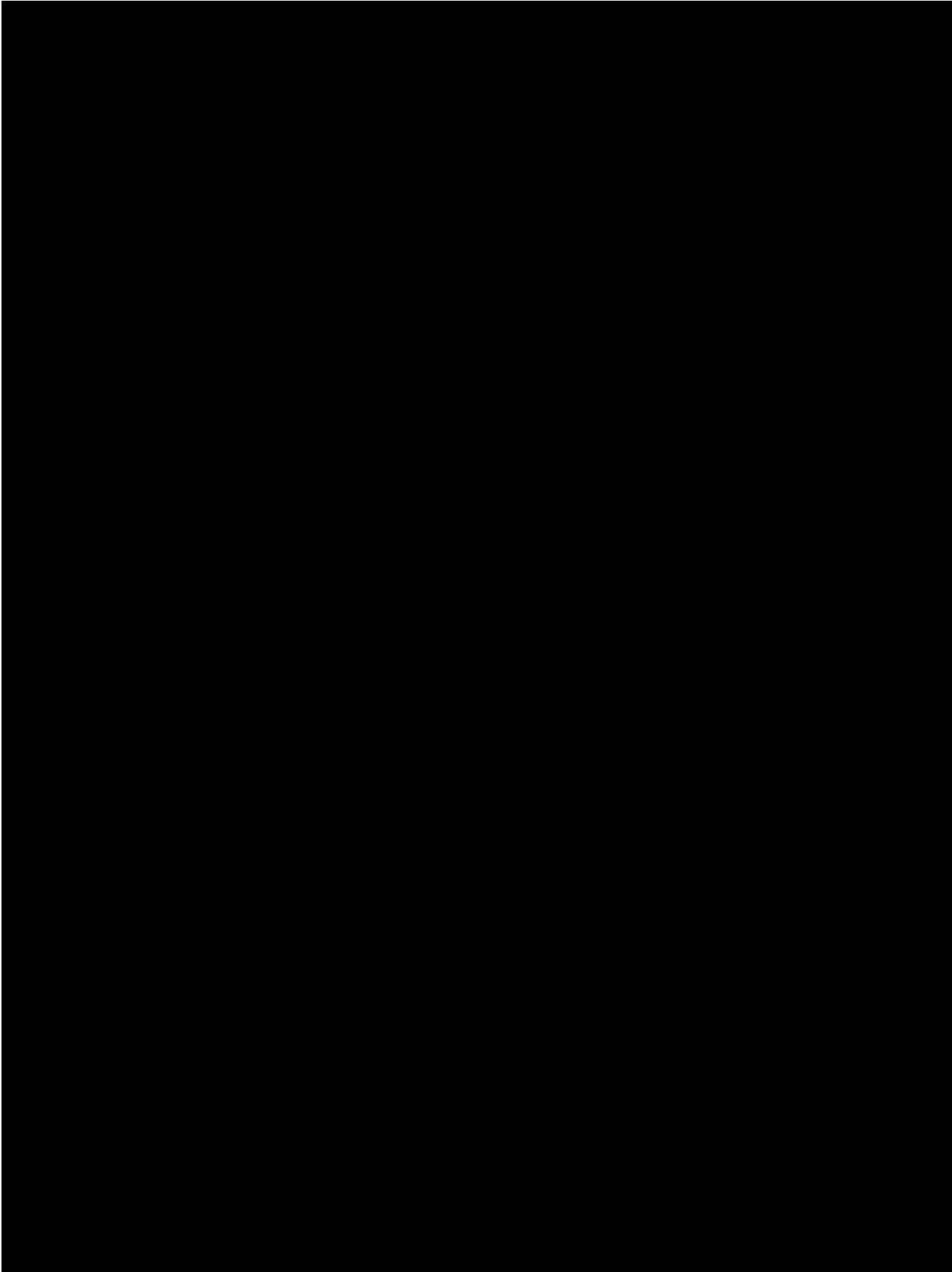
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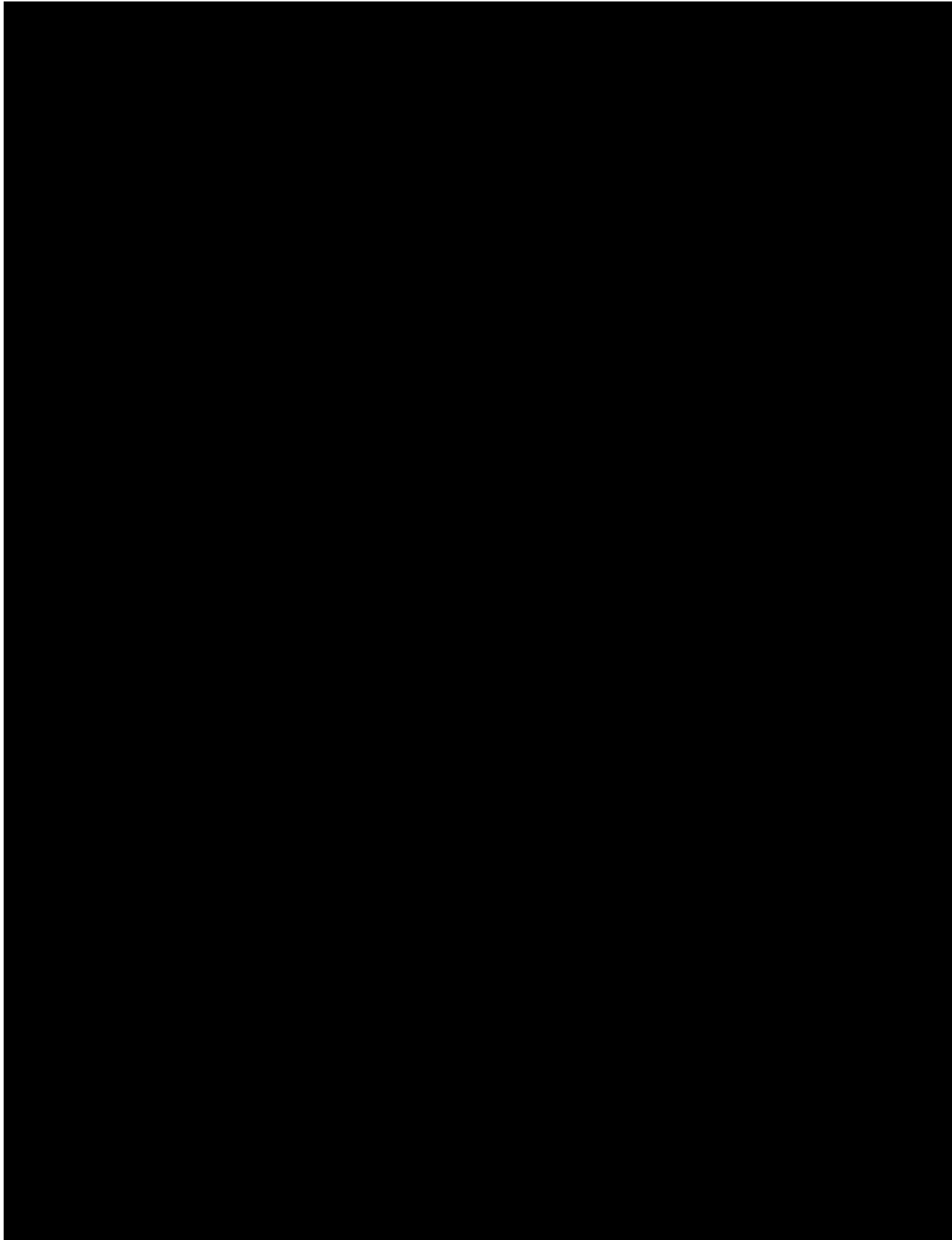
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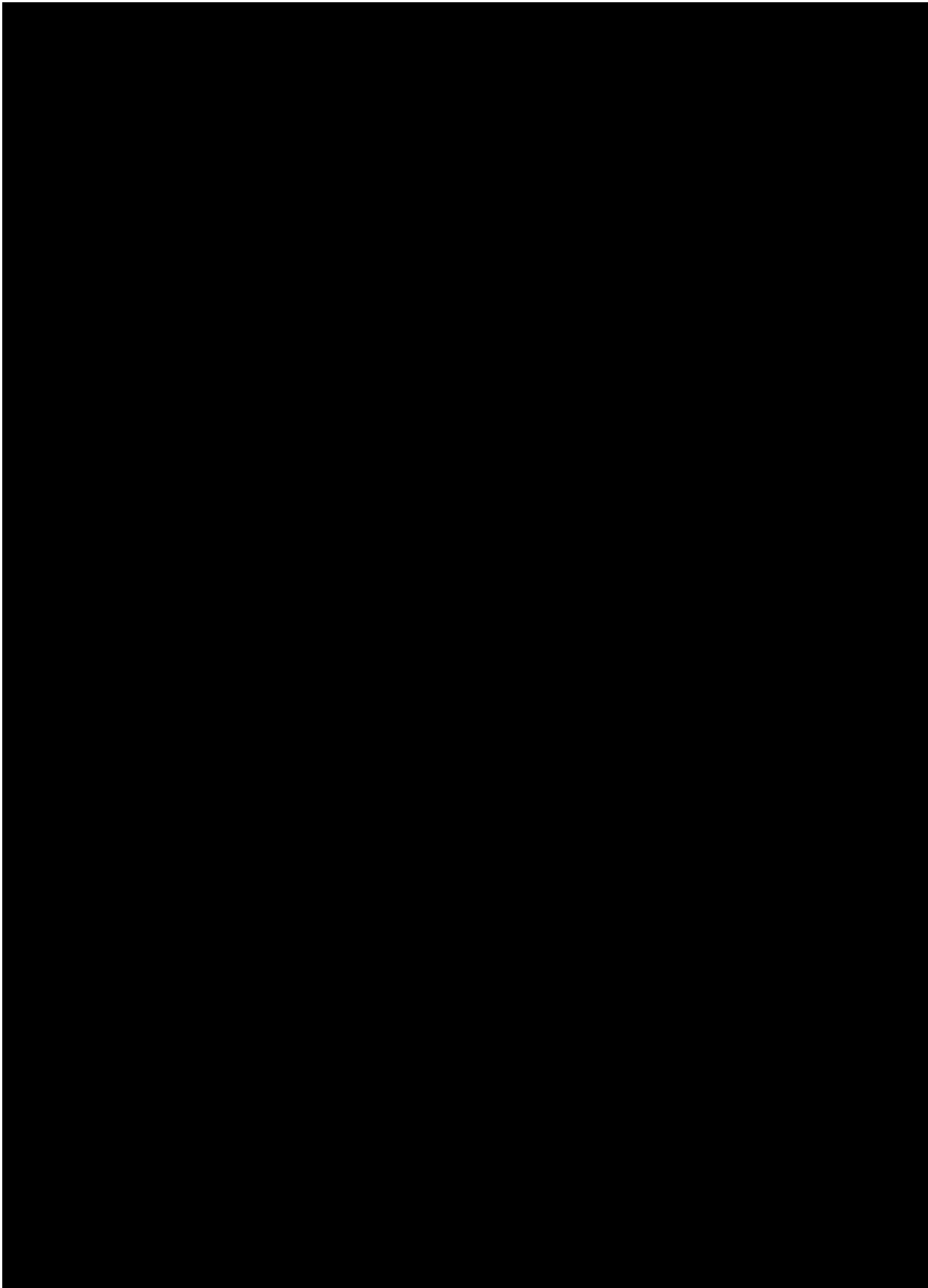
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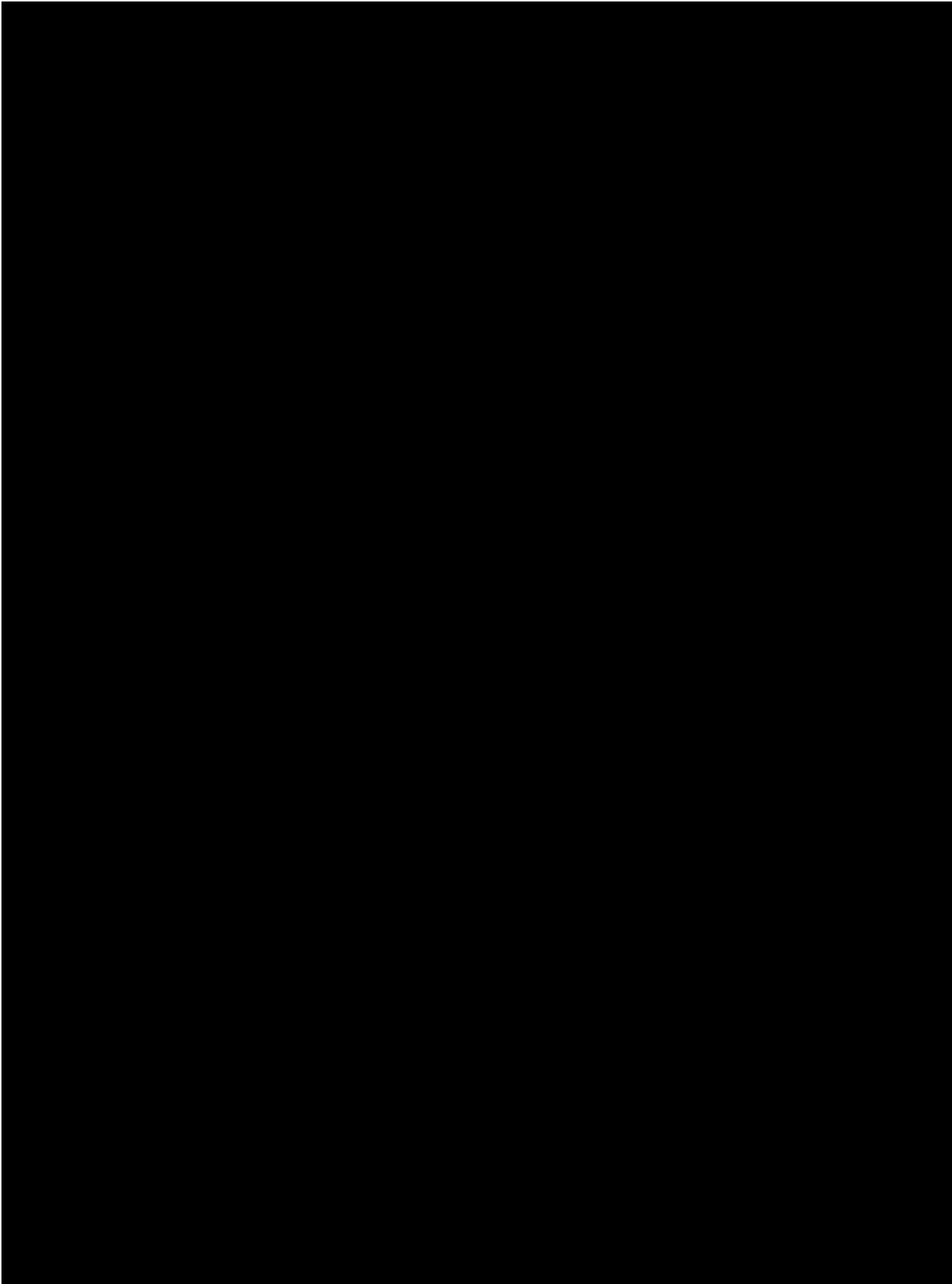
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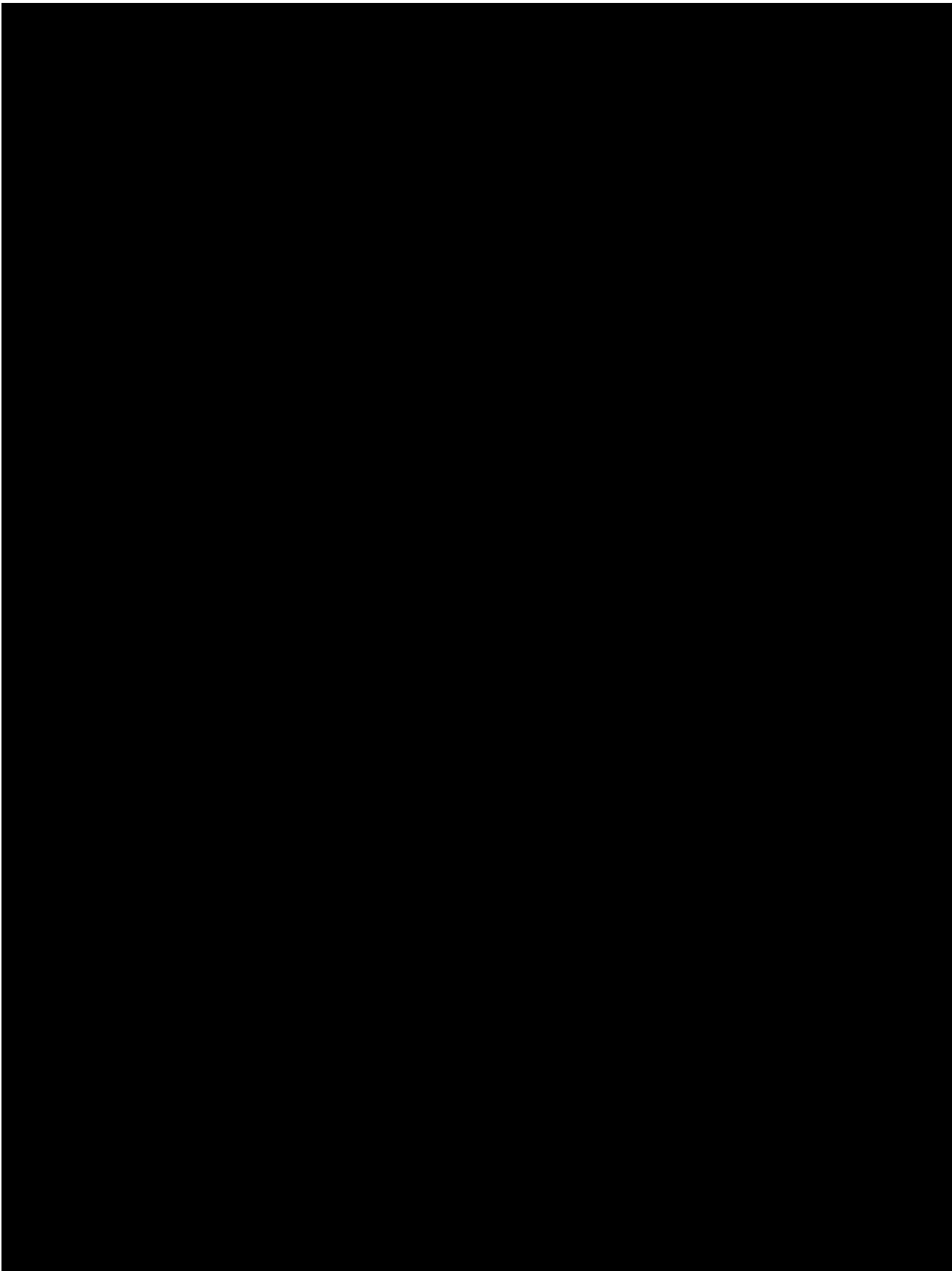
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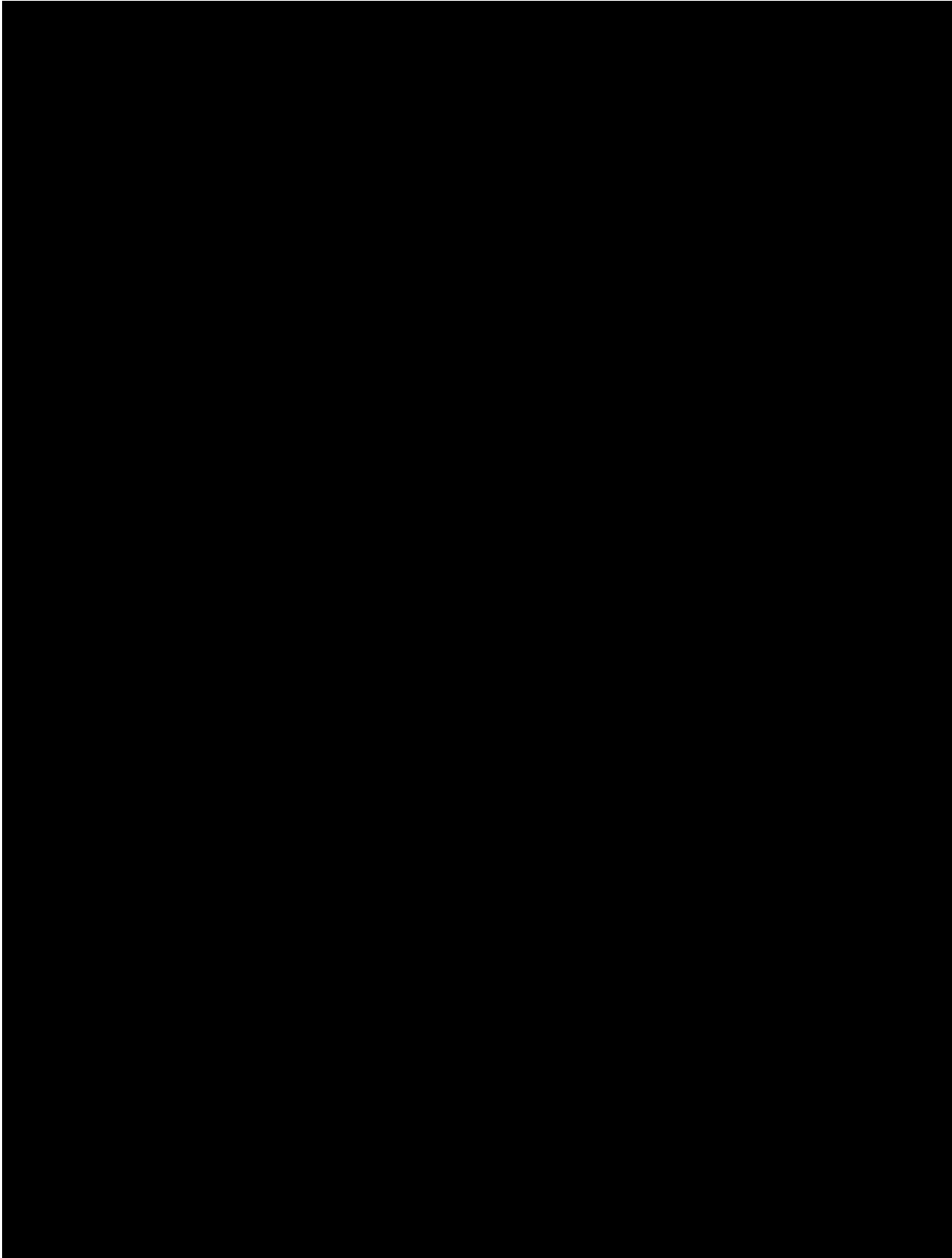
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Colleen Reed Reporting LLC
414.322.3621

1 ERRATA SHEET

2

3 Deponent: Brenda Schuler

4 Date: 5-20-22

5 Case: Andrew Colborn v Netflix, Inc., et al

6

7 Page 14 Line 11-12 Change part. to contract Reason clarification8 Page 39 Line 26 Change 2013 to 2014 Reason clarification9 Page 40 Line 5 Change 2019 to 2020 Reason my error10 Page 47 Line 22-23 Change Jan to March Reason my error11 Page 48 Line 15 Change Mike to Lenk Reason Reporter error12 Page 49 Line 20 Change within a month to several months Reason my error13 Page 80 Line 1 Change lamb blasted to lambasted Reason Reporter error14 Page 43 Line 12 Change 2005 to 2007 Reason Attorney error15 Page 48 Line 14 Change About him to Reason my error16 Page 287 Line 1 Change Don't to do Reason my error17 Page 169 Line 17a Change see below Reason context

18 Page ___ Line ___ Change ___ Reason ___

19 Page ___ Line ___ Change ___ Reason ___

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414.322.3621

In regard to 17 above, the question by Ms Walker was taken out of context. She did not reference that my text, "we should shoot all liberal law professors" was in response to an attached article titled something to the effect of "UC Professor thinks all cops should be killed."

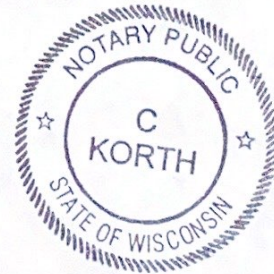
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SIGNATURE PAGE

I, Brenda Schuler, do hereby certify that I have read the foregoing transcript of proceedings, taken the 20th day of May, 2022, and the same is true and correct, except for the list of corrections, if any, noted on the errata sheet.

Dated this 24th day of May, 2022
Deponent Signature Brenda Schuler

Subscribed and sworn to before me this 24 day of JUNE, 2022 in OUTAGAMIE County
State of WISCONSIN
My commission expires: 12-4-23
Notary Public Printed Name: CKORTH
Notary Public Signature CKORTH



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1 STATE OF WISCONSIN)
2 MILWAUKEE COUNTY)

3 I, JANET D. LARSEN, a Notary Public in
4 and for the State of Wisconsin, do hereby certify that
5 the deposition of BRENDA SCHULER was taken before me
6 under and pursuant to the Federal Rules of Civil
7 Procedure on the 20th day of May, 2022.

8 That before said witness testified,
9 she was first duly sworn by me to testify the truth.

10 That I am not a relative or employee or
11 attorney or counsel of any of the parties, or a
12 relative or employee of such attorney or counsel, or
13 financially interested directly or indirectly in this
14 action.

15 That the foregoing pages are a true and
16 correct transcription of my original shorthand notes
17 taken at said time and place.

18
19 Dated this 24th day of May, 2022
20 at Milwaukee, Wisconsin.

21 _____
22 JANET DONALDSON LARSEN
23 REGISTERED PROFESSIONAL REPORTER
24 NOTARY PUBLIC, STATE OF WISCONSIN
25 MY COMMISSION EXPIRES 1-22-26

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EXHIBIT 2

Kevin Vick

From: George Burnett <GB@lcojlaw.com> on behalf of George Burnett
Sent: Wednesday, June 8, 2022 7:37 AM
To: Kevin Vick
Cc: Walker, Leita; April Barker; Michael Griesbach; Jean-Paul Jassy; Meghan Fenzel; Parsons, Emmy; Salomao Nascimento, Isabella; Kelley, Matthew E.; Friedman, James
Subject: Re: Plaintiff's deposition
Attachments: image003.jpg; image005.jpg; image006.jpg

Thanks. Will look for the motion. Perhaps we can agree to shorten briefing schedule to give the court more time to address before 7/28

Sent from my iPhone

On Jun 7, 2022, at 11:20 PM, Kevin Vick <kvick@jassyvick.com> wrote:

George,

While I appreciate your responding, we cannot accept your proposal as it would leave things uncertain, risk delaying the case, and jeopardize our clients' ability to fairly defend themselves against Mr. Colborn's lawsuit. Mr. Colborn has chosen to sue numerous defendants, and the defendants are entitled to a reasonable opportunity to depose Mr. Colborn, which will take a significant amount of time given the scope of the issues in the case as explained in my prior emails.

Moreover, as a practical matter, in order to prepare for Mr. Colborn's deposition, defendants need to know in advance that they will have sufficient time to question Mr. Colborn. We cannot leave things entirely in the hands of Mr. Colborn's counsel to unilaterally decide whether defendants receive additional time beyond seven hours. Nor would we want to complicate the existing case schedule by having to initiate motion practice in August if a disagreement as to the appropriate amount of time arose at Mr. Colborn's deposition on July 28. As a result, we intend to file a motion with Judge Ludwig and we will request an order permitting defendants 14 hours collectively to depose Mr. Colborn.

Best,

Kevin



Kevin L. Vick

Jassy Vick Carolan LLP | 310-870-7048 | kvick@jassyvick.com

355 S. Grand Ave., Suite 2450 | Los Angeles, CA 90071

jassyvick.com

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From: George Burnett <GB@lcojlaw.com>

Sent: Monday, June 6, 2022 9:04 AM

To: 'Kevin Vick' <kvick@jassyvick.com>

Cc: Walker, Leita <WalkerL@ballardspahr.com>; April Barker <abarker@sbe-law.com>; Michael Griesbach <attymgriesbach@gmail.com>; Jean-Paul Jassy <jpjassy@jassyvick.com>; Meghan Fenzel <mfenzel@jassyvick.com>; Parsons, Emmy <parsonse@ballardspahr.com>; Salomao Nascimento, Isabella <salomaonascimento@ballardspahr.com>; Kelley, Matthew E. <KelleyM@ballardspahr.com>; Friedman, James <JFriedman@gklaw.com>

Subject: RE: Plaintiff's deposition

Kevin—Thank-you for the response and I apologize for the slight delay in responding as I was focused on briefing a dispositive motion in another case. We continue to disagree over the need for additional time to question Mr. Colborn and regardless I think 14 hours of questioning is extravagant. I have a few thoughts and a possible compromise. First, you list eight areas of substantive questioning, but three involve areas which Colborn would have no meaningful information about. He has no personal insight into the defendants actual malice or intentions to harm him and I very much doubt the Court would permit his opinions about another's state of mind on those subjects at trial. So too with the statements other people, including Mr. Avery's lawyers, made at trial. Those can be confirmed by transcript and film and Colborn did not attend large parts of the trial. Questioning on these subjects should therefore be short.

Second, you refer to the complaint and its length and complexity. But the complaint was drafted by lawyers and like many other witnesses Colborn is a witness who can testify only about facts that he knows. He will not know facts pertinent to every aspect of the complaint. Other witnesses furnish that information. You are certainly free to question as you see fit but going through a voluminous complaint may not yield the information you seek.

Third, You mention the length of interrogatory answers and the volume of documents produced in discovery. We responded at length because many questions called for narratives, thus we provided them. Some questions were the type usually seen in deposition so I would hope any lengthy answers would inform and perhaps shorten rather than lengthen questioning. As for documents, most have no relevance and we too dealt with a large volume of documents you and Leita produced but still kept within the rule.

Fourth, both April and I adhered to the seven hour rule in our questioning. We did so even as several witnesses often gave lengthy, seemingly rehearsed, and non-responsive answers to pointed and direct questions. We had a choice to make under the rule—dwell on the question, spend valuable time debating with the witness with no certain hope of getting a direct answer or move on to ensure that all topics we planned to cover were covered in questioning. We often chose the latter for the sake of time. I doubt you will encounter a similar problem with Colborn who in my experience speaks directly and straightforward. However the same rule should apply to both sides.

Fifth, you mention that we sued multiple defendants, yet this case has been pending for about two years and the defendants have presented a joint and unified front. I recall no cross-claims and I would be surprised if a joint defense agreement did not exist between them.

Sixth, you already have the benefit of previous trial and deposition testimony from Mr. Colborn so that again should abbreviate questioning.

There are other points to make but those should be enough to explain our view.

However, I have a possible compromise. We both must forecast about questions and answers we have not heard, a task which makes predicting whether seven hours of questioning will be adequate to learn the critical facts that Mr. Colborn knows more difficult. I suggest we keep both dates on the calendar, If the questioning is efficient and non-duplicative as you promise, I will permit questioning beyond seven hours because I understand Judge Ludwig will allow you enough time to discover what Mr. Colborn knows. On the other hand, perhaps the questioning is completed in the allotted time and the whole issue becomes academic. There are three added advantages: we will have a better idea about what we are dealing with after questioning begins and we will not need to presently trouble Judge Ludwig with the same uncertain situation we now face. If we disagree on July 27 about the need for further time your option to bring a motion on the subject remains. Please consider and advise. Thanks. GB

PS. You mention exploring waiver of the attorney client privilege. As I think I mentioned some time ago in a meet and confer conference, I think the privilege is waived to the extent that Colborn revealed otherwise privileged communications to third parties but communications not revealed remain privileged. Let me know if you and Leita agree as we should get this worked out before testimony so as to avoid, if possible, instructing this witness not to answer questions and future motion practice.

From: Kevin Vick [<mailto:kvick@jassylvick.com>]

Sent: Wednesday, June 1, 2022 4:44 PM

To: George Burnett <GB@lcojlaw.com>

Cc: Walker, Leita <WalkerL@ballardspahr.com>; April Barker <abarker@sbe-law.com>; Michael Griesbach <attymgriesbach@gmail.com>; Jean-Paul Jassy <jpjassy@jassylvick.com>; Meghan Fenzel <mfenzel@jassylvick.com>; Parsons, Emmy <parsonse@ballardspahr.com>; Salomao Nascimento, Isabella <salomaonascimento@ballardspahr.com>; Kelley, Matthew E. <KelleyM@ballardspahr.com>; Friedman, James <JFriedman@gklaw.com>

Subject: RE: Plaintiff's deposition

George,

To further answer your question, I'll note that Mr. Colborn's operative Second Amended Complaint is 56 pages long and relates to events occurring over the course of more than two decades. At a bare minimum, we need to address at his deposition the elements of his claims and certain related issues, including:

- The range of allegedly materially false statements on which Mr. Colborn's Second Amended Complaint is premised.
- Underlying facts related to such statements.
- The extent to which such statements were made by Steven Avery's attorneys at his trial for the murder of Teresa Halbach, and were widely reported by the media prior to *Making a Murderer*.
- Actual malice and Mr. Colborn's contentions regarding same.
- The full scope of damages that Mr. Colborn claims to have suffered, including, e.g., reputational damage, emotional distress, etc.
- Proximate causation of any such claimed damages.
- Alleged intent to cause emotional distress.

- Mr. Colborn's efforts to mitigate any claimed damages, including the interplay of any such efforts by Mr. Colborn and his involvement with the *Convicting* documentary project.

Besides those obvious subjects, Mr. Colborn's deposition also will need to address certain subjects that have recently come to light in discovery, including violations of the rules surrounding the confidential mediation held before Magistrate Judge Duffin last year and the extent of certain waivers of attorney-client privilege by Mr. Colborn.

Moreover, Mr. Colborn's original and supplemental responses to my clients' interrogatories total approximately 70 pages, and he also served 15 pages of responses to Netflix's separate interrogatories. In addition, Mr. Colborn has produced a significant number of documents in this case, and additional relevant documents have been obtained from third parties such as the Manitowoc County and Calumet County Sheriff's Departments in response to the parties' various document subpoenas. Mr. Colborn also denied virtually every request for admission that was served on him in this case.

In sum, there is a lot to ask Mr. Colborn about. And, unlike the situation with defendants where Plaintiff took four party and/or party-affiliated depositions, there are not multiple people on Plaintiff's side to depose – just Mr. Colborn. We also anticipate showing Mr. Colborn various video clips during his deposition. As the depositions of prior witnesses made clear, that can take time. Indeed, the deposition of non-party Brenda Schuler took nearly seven hours, despite counsel's efforts to be efficient and non-duplicative, and Ms. Schuler obviously had less information than Mr. Colborn.

I do not plan to replicate the questioning covered by Netflix's counsel, and I presume that Netflix counsel does not either. But I do anticipate that we may have follow-up questions to certain lines of questioning from Netflix counsel, and vice-versa. And I anticipate that we'll have lines of questioning that Netflix will not get into, and vice versa. While Netflix counsel and I will, of course, do our best to be efficient and to avoid unnecessary replication, I do not see how Mr. Colborn's deposition questioning could be adequately covered in just 7 hours. That is particularly true given that Mr. Colborn has claimed in discovery that he is entitled to many millions of dollars in damages from my clients individually, who are entitled to a fair opportunity to defend themselves accordingly.

Therefore, we're requesting that Netflix, on the one hand, and Laura Ricciardi, Moira Demos and Chrome Media, on the other hand, each be given one day (or 14 hours total collectively for all defendants) to depose Mr. Colborn, although we will do our best to proceed expeditiously and will not use such time gratuitously. This is reasonable given the scope of Mr. Colborn's claims and the underlying events, the amount of material that needs to be covered at his deposition, and the size of the personal liability Mr. Colborn that seeks to impose upon my clients. *See, e.g., Kimberly-Clark Worldwide, Inc. v. First Quality Baby Products, LLC*, 2011 WL 13077074 at *1 (E.D. Wis. Sept. 21, 2011) (noting that F.R.C.P. Rule 30(d)(1) provides that the seven hour limit is only "presumptive" and "The court must allow additional time consistent with Rule 26(b)(2) if needed to fairly examine the deponent").

Please let us know if you will agree to our request, or whether we will need to seek relief from the Court.

Sincerely,

Kevin



Kevin L. Vick

**Jassy Vick Carolan LLP | 310-870-7048 | kvick@jassyvick.com
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jassyvick.com**

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From: George Burnett <GB@lcojlaw.com>
Sent: Tuesday, May 31, 2022 7:03 PM
To: Kevin Vick <kvick@jassyvick.com>
Cc: Walker, Leita <WalkerL@ballardspahr.com>; April Barker <abarker@sbe-law.com>; Michael Griesbach <attymgriesbach@gmail.com>; Jean-Paul Jassy <jpjassy@jassyvick.com>; Meghan Fenzel <mfenzel@jassyvick.com>; Parsons, Emmy <parsonse@ballardspahr.com>; Salomao Nascimento, Isabella <salomaonascimento@ballardspahr.com>; Kelley, Matthew E. <KelleyM@ballardspahr.com>
Subject: Re: Plaintiff's deposition

Kevin— I don't deny both defendants are entitled to question colborn, or that the matter is significant but I can't tell from your response why seven hours is inadequate. I am willing to listen but right now I can't discern why a day of questioning is too little or for that matter how much extra time you are requesting. Let me know so I can decide whether to oppose the request. Thanks.

Sent from my iPhone

On May 31, 2022, at 8:16 PM, Kevin Vick <kvick@jassyvick.com> wrote:

George,

I'll respond to your question as it was me who indicated that the Defendants would collectively need more than 7 hours to depose Mr. Colborn. Mr. Colborn chose to bring a multi-party lawsuit suing Netflix, Chrome Media, Laura Ricciardi and Moira Demos. And Mr. Colborn seeks to impose liability against and to recover significant damages from each and every one of them. Accordingly, the various defendants and their respective counsel are entitled to sufficient time to depose Mr. Colborn to fairly defend against Mr. Colborn's claims. Mr. Colborn filed a lengthy and detailed Second Amended Complaint with exhibits alleging claims for defamation and infliction of emotional distress and covering events beginning back in the mid-1990s. Defendants are entitled to question Mr. Colborn about the substance of his allegations and the elements of his claims, including, by way of example, the facts underlying his allegations and his claimed damages. Mr. Colborn also has produced documents and served responses to interrogatories that further require detailed questioning at his

deposition. Finally, it should be noted that, in addition to serving voluminous and burdensome written discovery on all Defendants, Mr. Colborn himself took the depositions of four party or party-affiliated witnesses: Ms. Nishimura and Mr. Del Deo from Netflix, plus Ms. Demos and Ms. Ricciardi. By contrast, Defendants are only requesting sufficient time to depose Mr. Colborn to ensure that they receive a fair opportunity to prepare their defenses to Mr. Colborn's lawsuit. Please let us know if you will agree to our request.

Sincerely,

Kevin



Kevin L. Vick

**Jassy Vick Carolan LLP | 310-870-7048 | kvick@jassyvick.com
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From: George Burnett <GB@lcojlaw.com>
Sent: Tuesday, May 31, 2022 1:29 PM
To: Walker, Leita <WalkerL@ballardspahr.com>; April Barker <abarker@sbe-law.com>; Michael Griesbach <attymgriesbach@gmail.com>
Cc: Kevin Vick <kvick@jassyvick.com>; Jean-Paul Jassy <jpjassy@jassyvick.com>; Meghan Fenzel <mfenzel@jassyvick.com>; Parsons, Emmy <parsonse@ballardspahr.com>; Salomao Nascimento, Isabella <salomaonascimento@ballardspahr.com>; Kelley, Matthew E. <KelleyM@ballardspahr.com>
Subject: RE: Plaintiff's deposition

Leita—why will it take more than 7 hours to depose the plaintiff?

From: Walker, Leita <WalkerL@ballardspahr.com>
Sent: Tuesday, May 31, 2022 10:45 AM
To: April Barker <abarker@sbe-law.com>; George Burnett <GB@lcojlaw.com>; Michael Griesbach <attymgriesbach@gmail.com>
Cc: Kevin Vick <kvick@jassyvick.com>; Jean-Paul Jassy <jpjassy@jassyvick.com>; Meghan Fenzel <mfenzel@jassyvick.com>; Parsons, Emmy

<parsonse@ballardspahr.com>; Salomao Nascimento, Isabella
<salomaonascimento@ballardspahr.com>; Kelley, Matthew E.
<KelleyM@ballardspahr.com>

Subject: RE: Plaintiff's deposition

Hello – Hope you all had a nice Memorial Day weekend. Circling back on this as I know summer schedules fill up fast.

Leita

From: Walker, Leita (Minn)

Sent: Thursday, May 26, 2022 4:38 PM

To: 'April Barker' <abarker@sbe-law.com>; 'George Burnett' <GB@lcojlaw.com>;
'Michael Griesbach' <attymgriesbach@gmail.com>

Cc: 'Kevin Vick' <kvick@jassyvick.com>; Jean-Paul Jassy <jpjassy@jassyvick.com>;
Meghan Fenzel <mfenzel@jassyvick.com>; Parsons, Emmy (DC)
<parsonse@ballardspahr.com>; Salomao Nascimento, Isabella (Minn)
<salomaonascimento@ballardspahr.com>; Kelley, Matthew E. (DC)
<KelleyM@ballardspahr.com>

Subject: Plaintiff's deposition

Counsel, How do July 27 and 28 look for Mr. Colborn's deposition? Please let us know and we will get it noticed.

Leita

Leita Walker



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