IN THE SUPREME COURT FOR STATE OF NEVADA

DEJA VU SHOWGIRLS OF LAS VEGAS, L.L.C., d/b/a *Deja Vu Showgirls*, LITTLE DARLINGS OF LAS VEGAS, L.L.C., d/b/a *Little Darlings*, K-KEL, INC., d/b/a *Spearmint Rhino Gentlemen's Club*, OLYMPUS GARDEN, INC., d/b/a *Olympic Garden*, SHAC, L.L.C. d/b/a *Sapphire*, THE POWER COMPANY, INC., d/b/a *Crazy Horse Too Gentlemen's Club*, D. WESTWOOD, INC., d/b/a *Treasures*, and D.I. FOOD & BEVERAGE OF LAS VEGAS, LLC, d/b/a *Scores*,

Appellants,

vs.

NEVADA DEPARTMENT OF TAXATION, NEVADA TAX COMMISSION, NEVADA STATE BOARD OF EXAMINERS, and MICHELLE JACOBS, in her Official Capacity Only,

Respondents.

Supreme Court Case No. 59752

District Court Case No. A-12-672770

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[1] Because the case below (A554970) and "Case 1" (A533273) were coordinated (Order of August, 4, 2010, App.Apx. 1699-1702) and later consolidated (Order of April 6, 2011, App.Apx. 2638-2640) the relevant documents for both actions are included in an abundance of caution.

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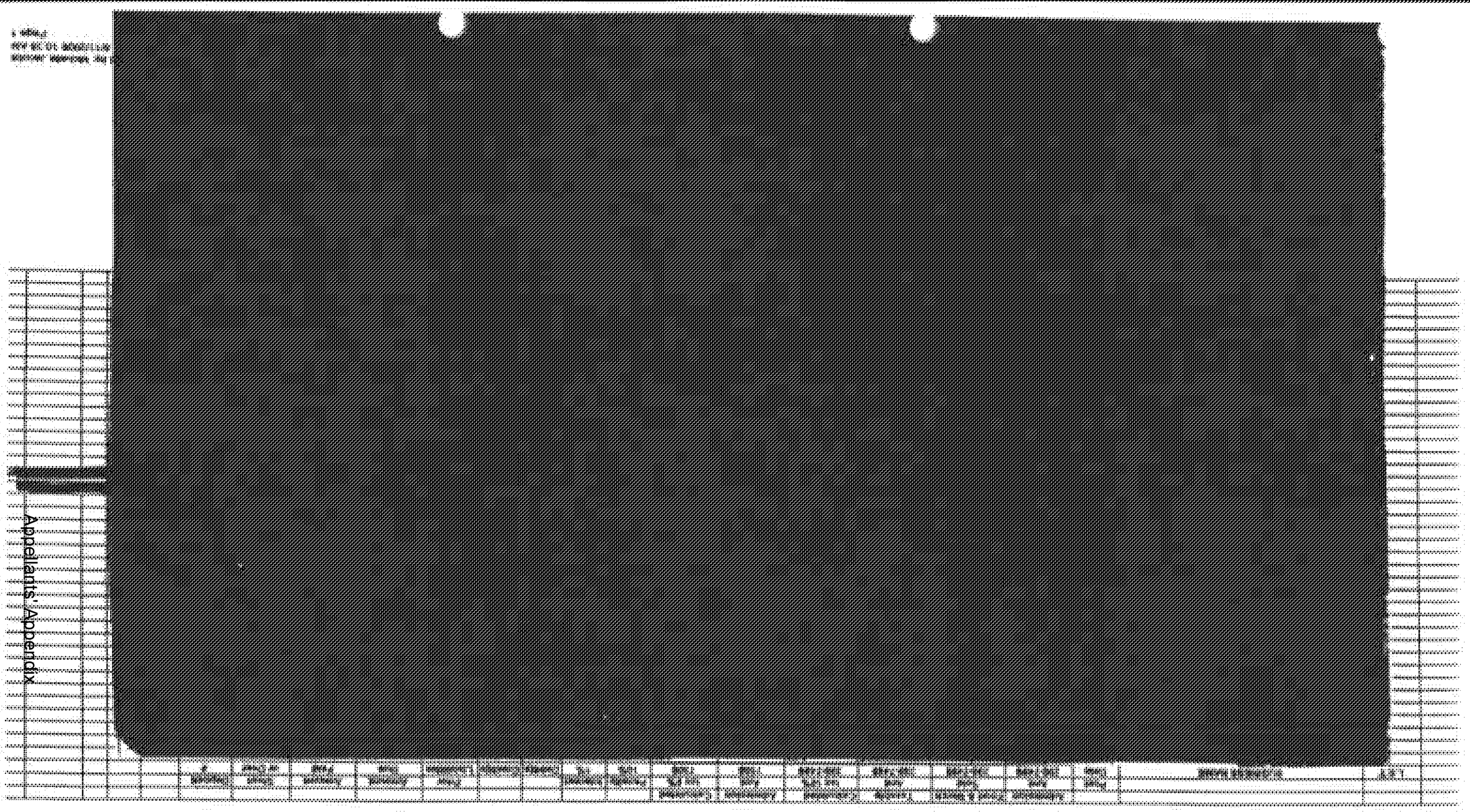
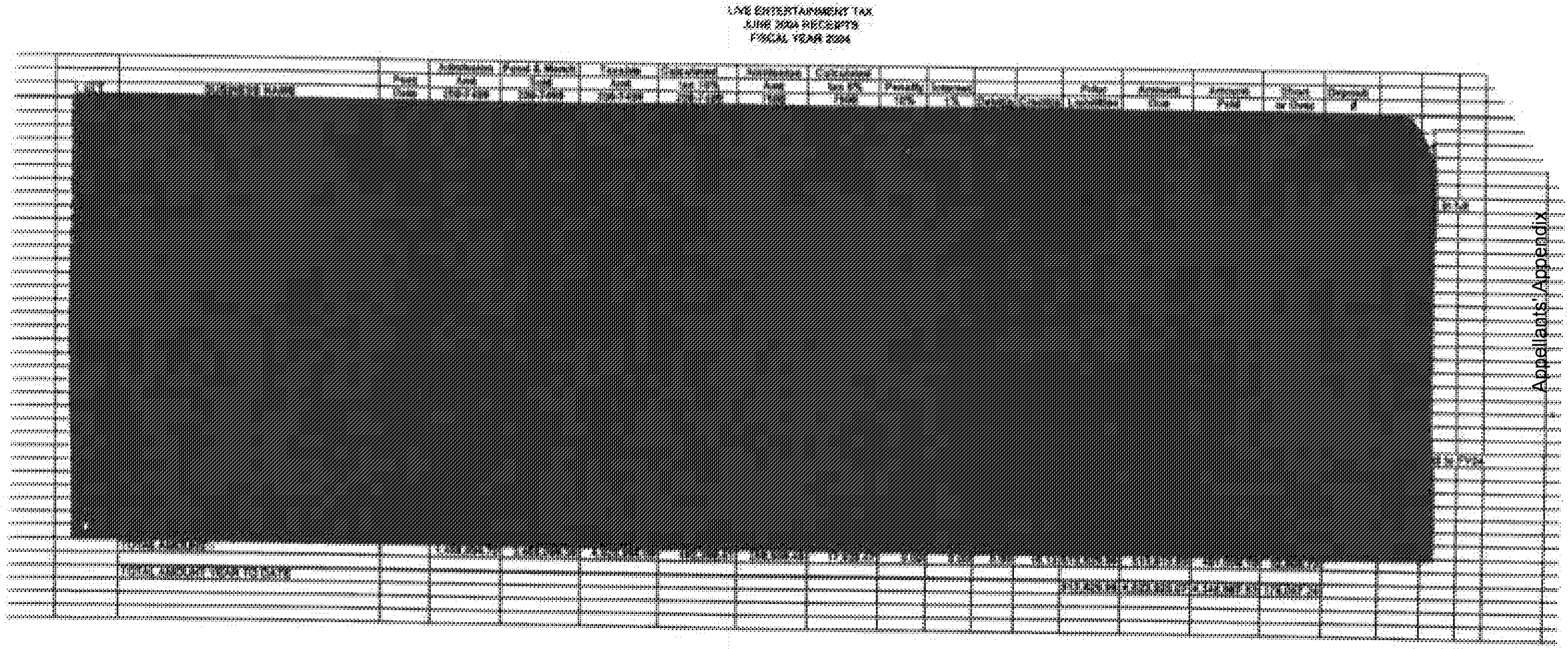
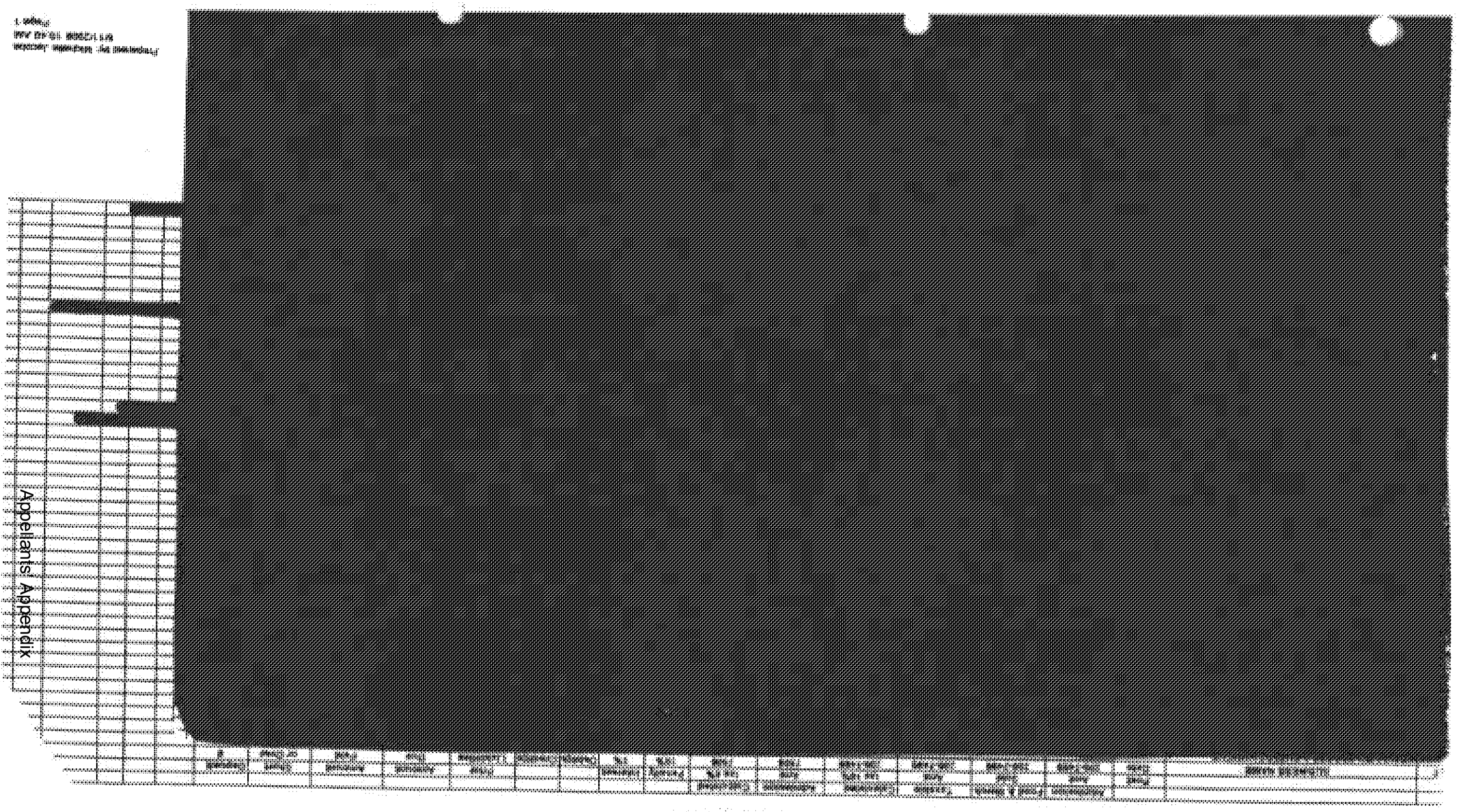
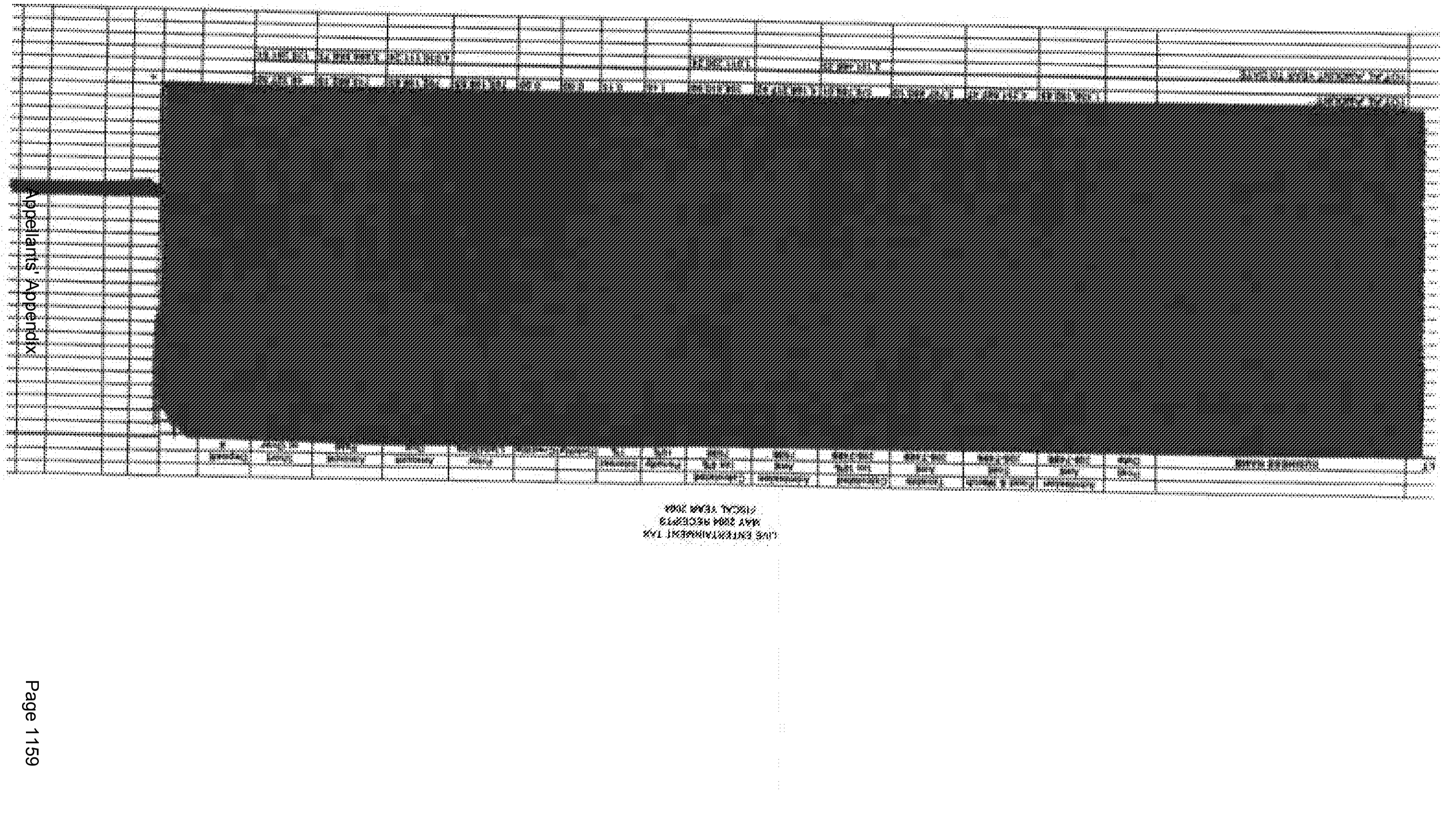
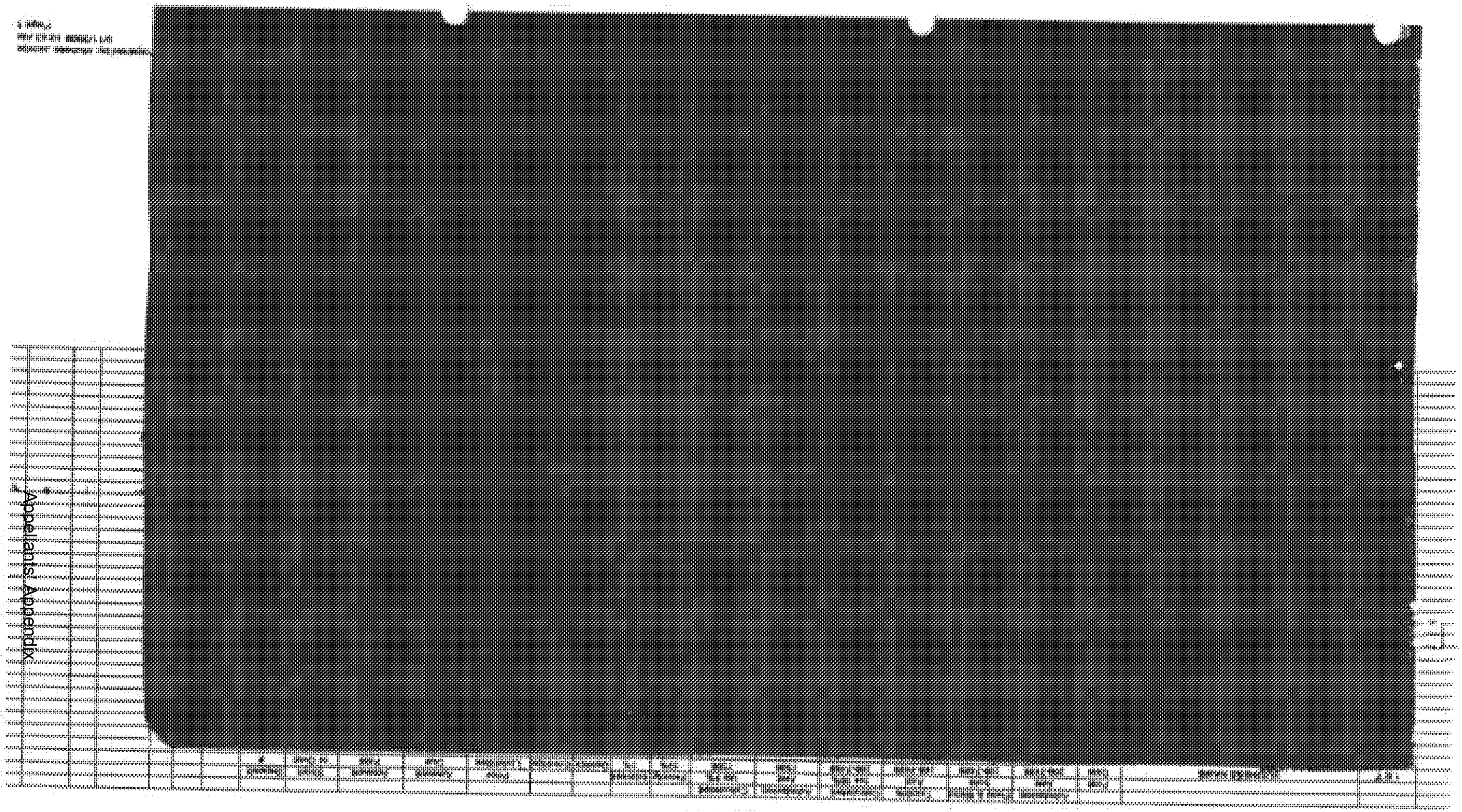
EXHIBIT “D”

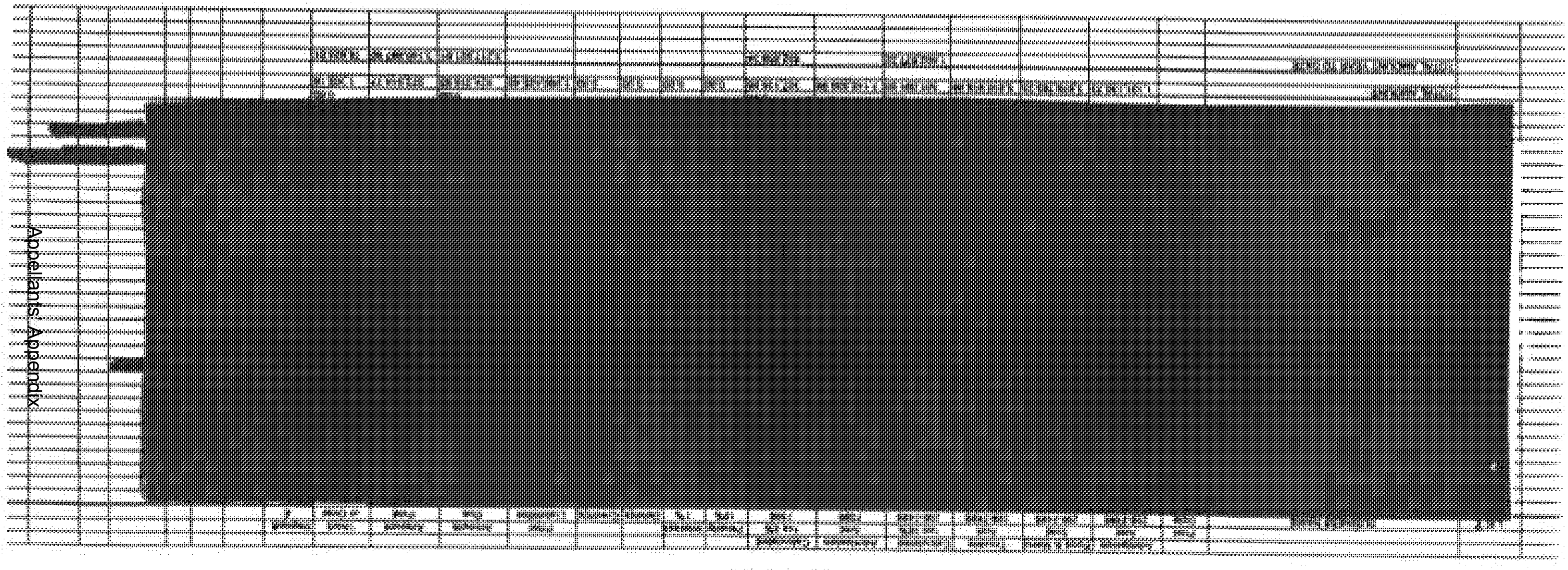


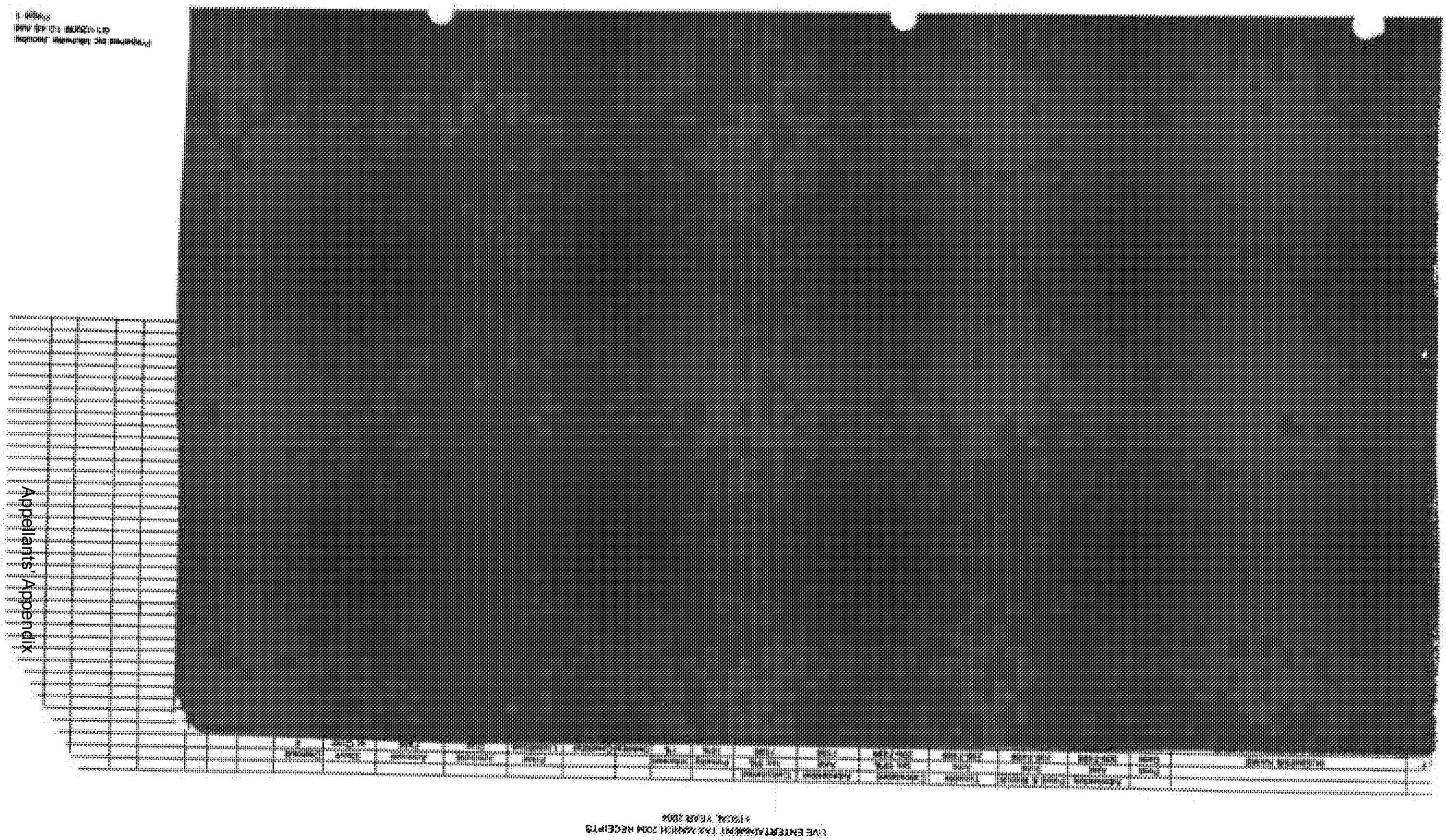


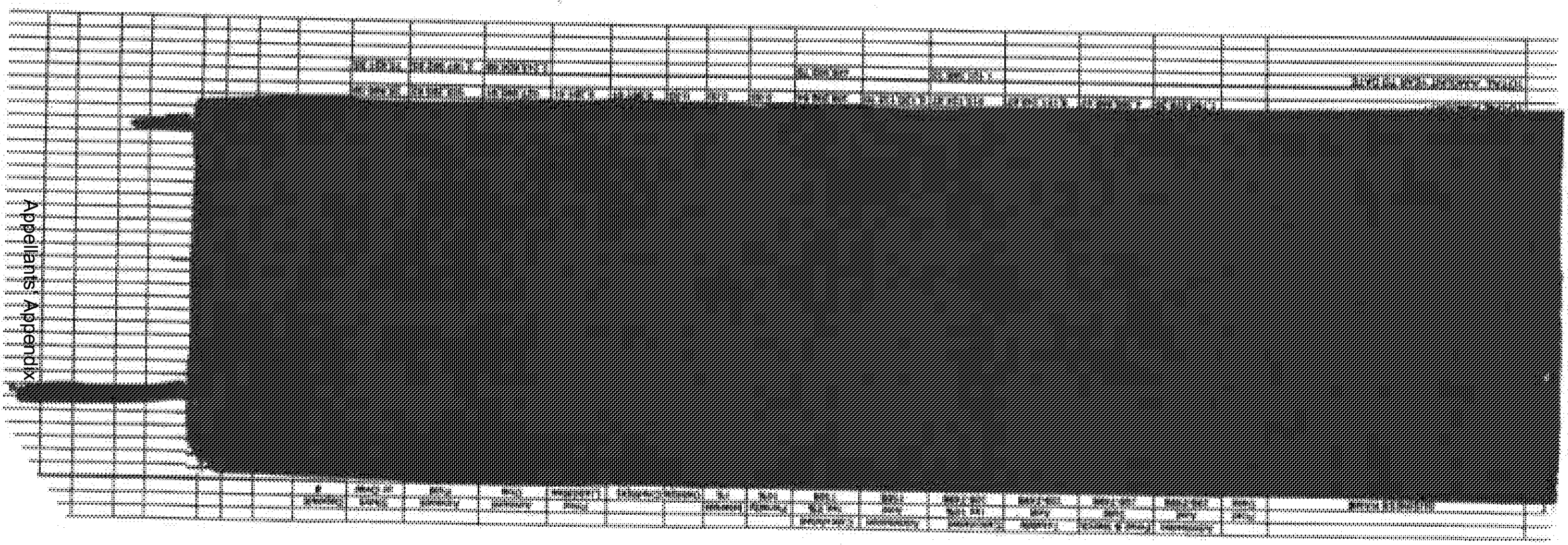


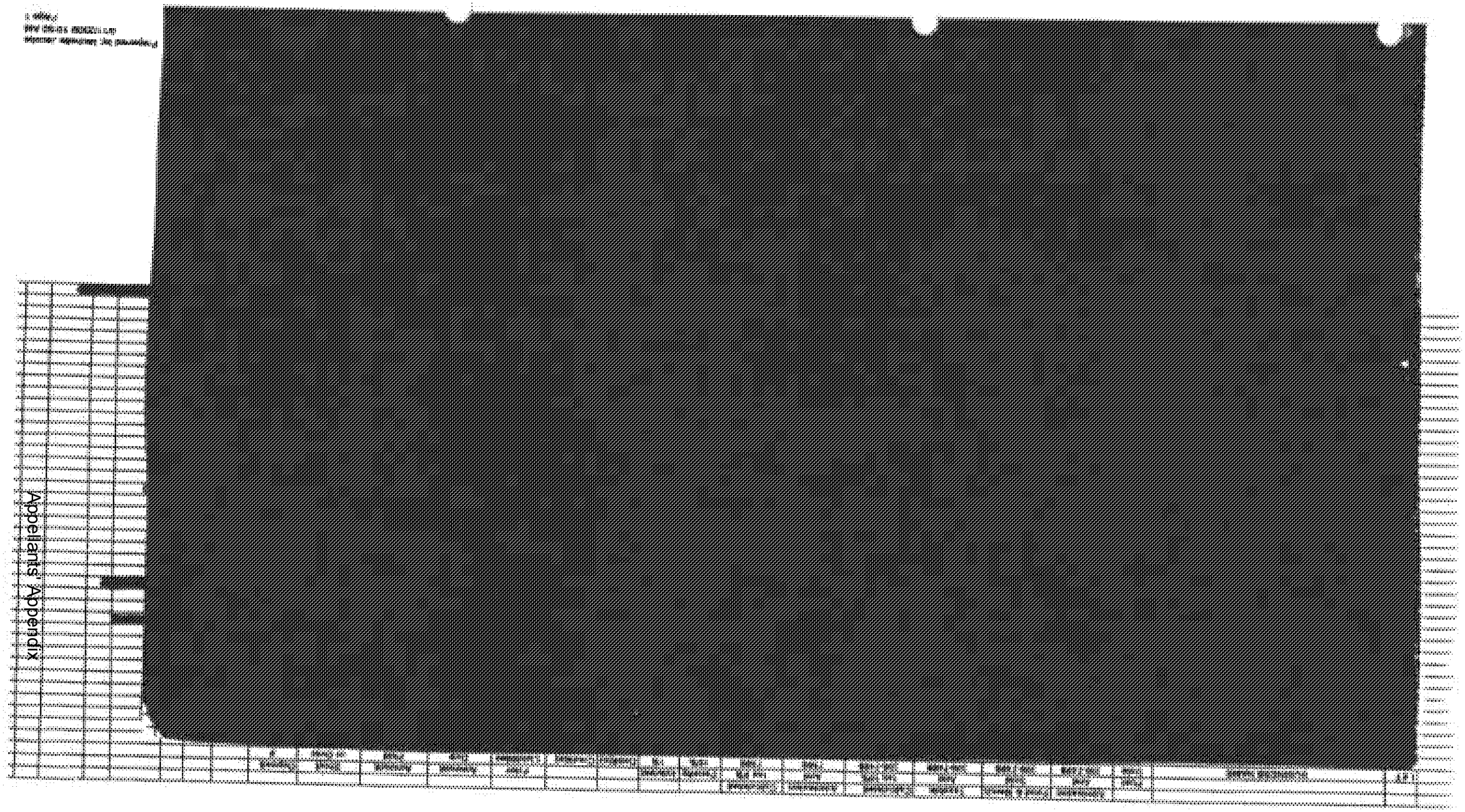












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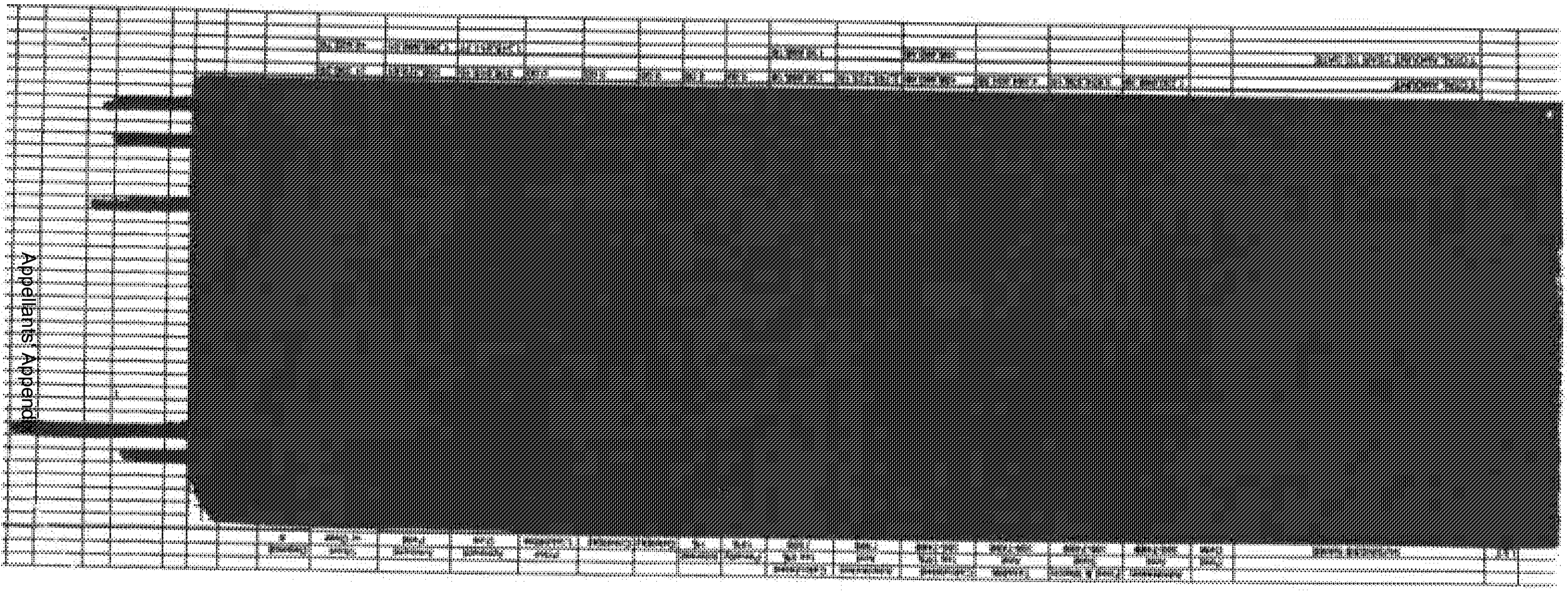

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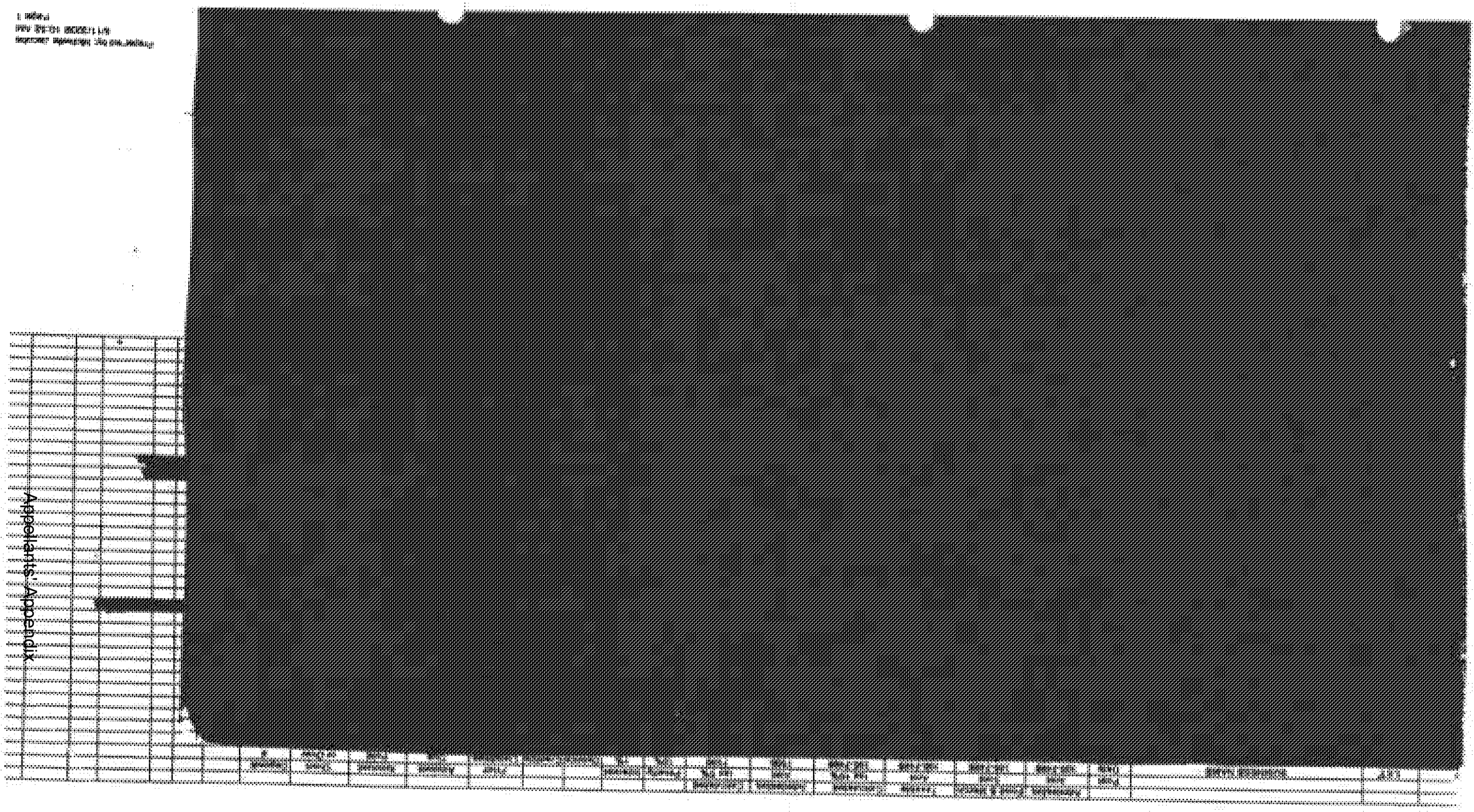

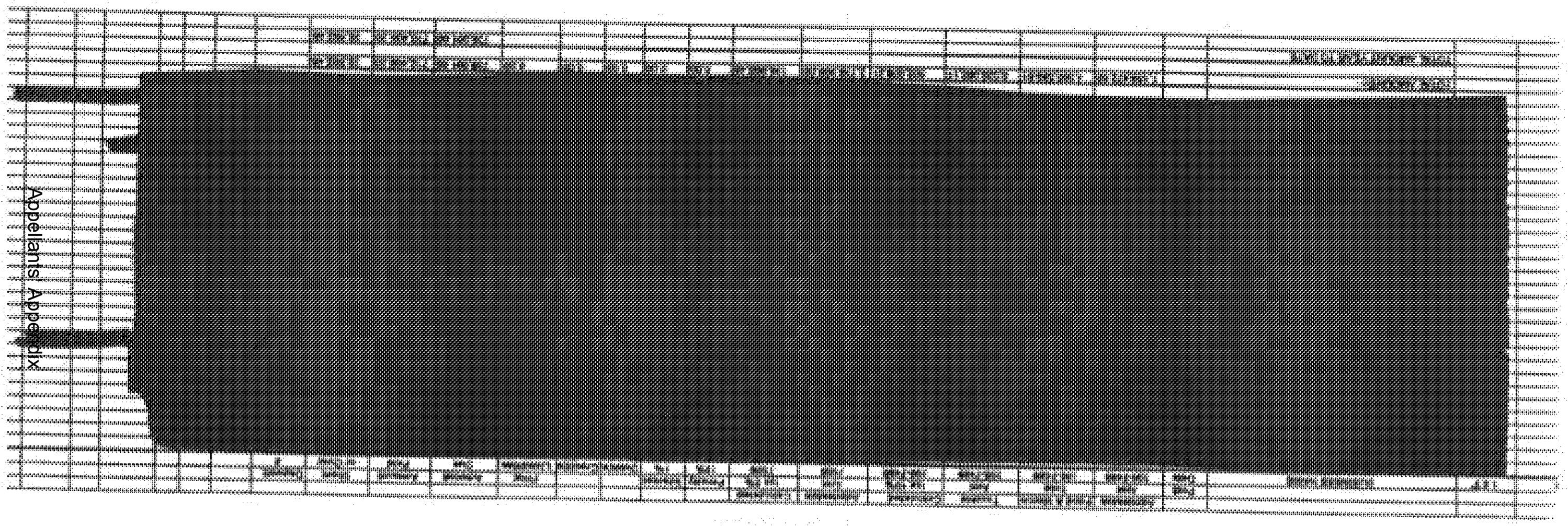

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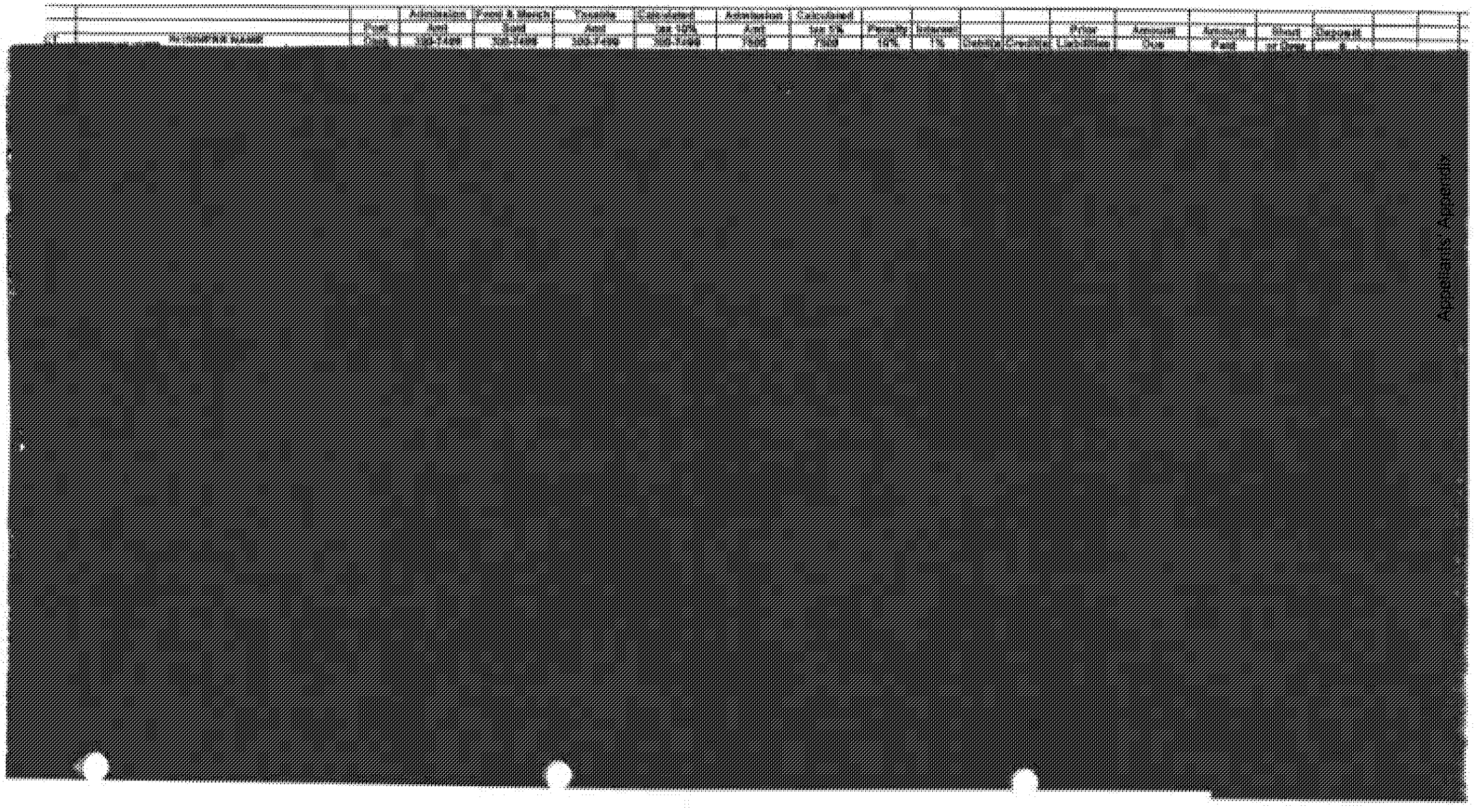

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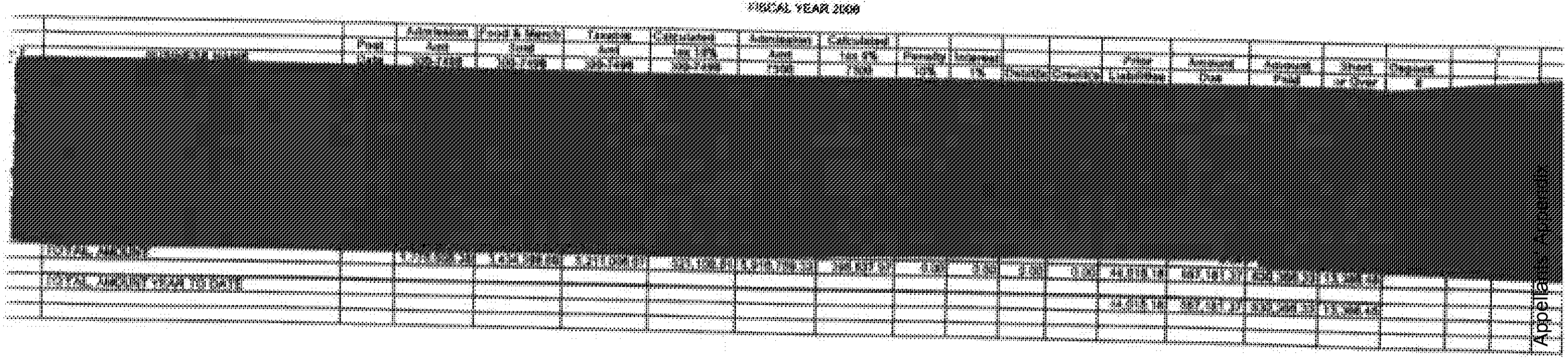

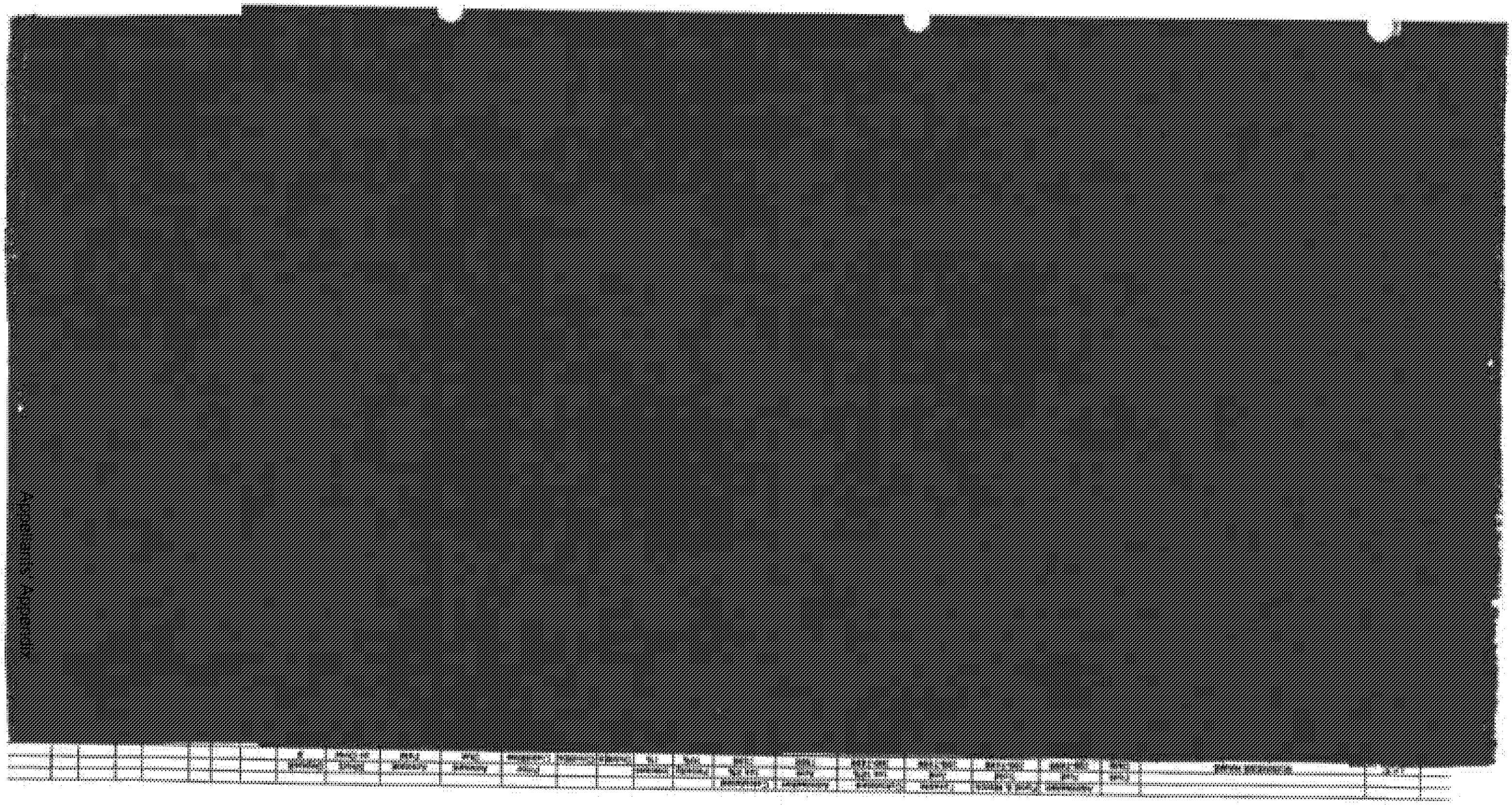

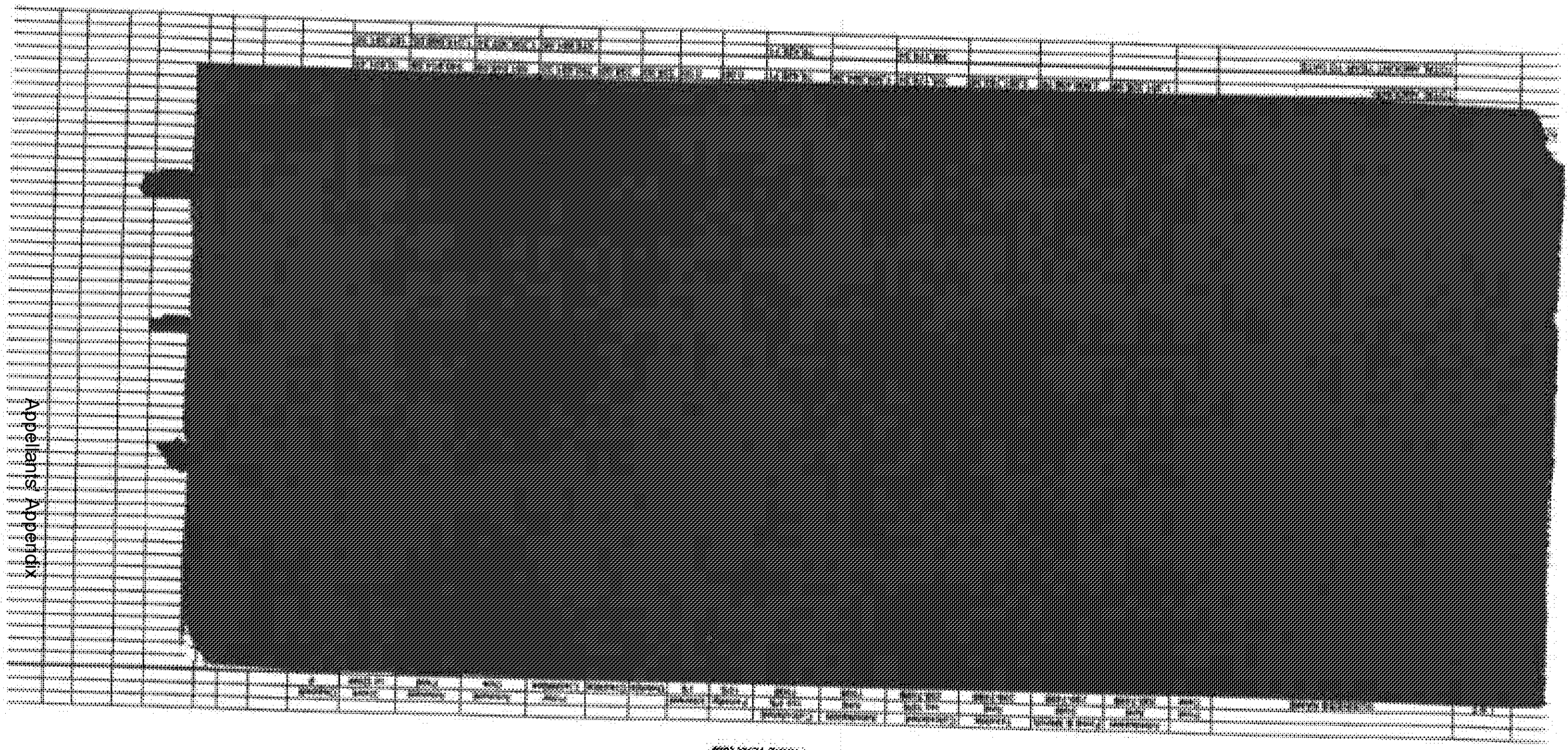

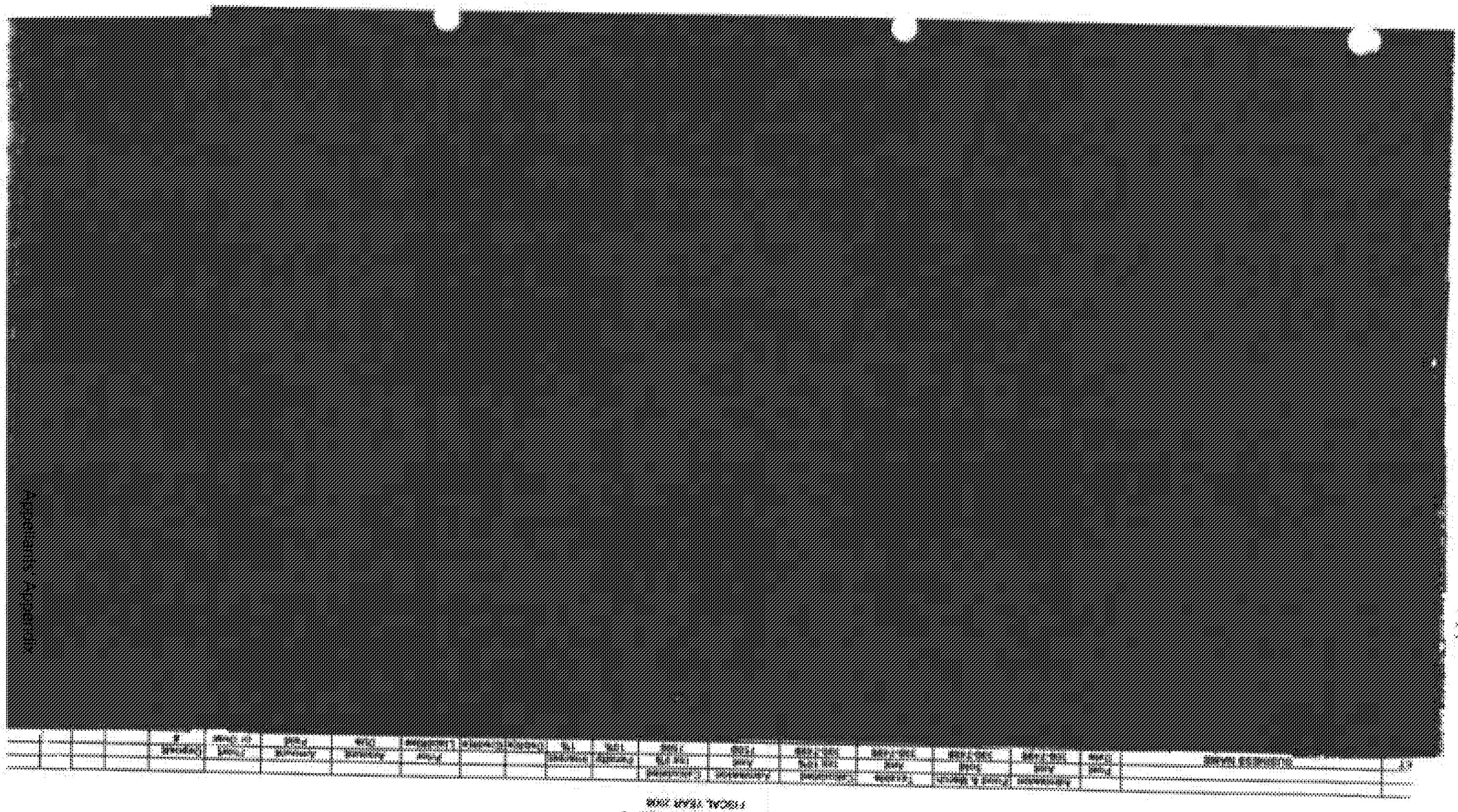

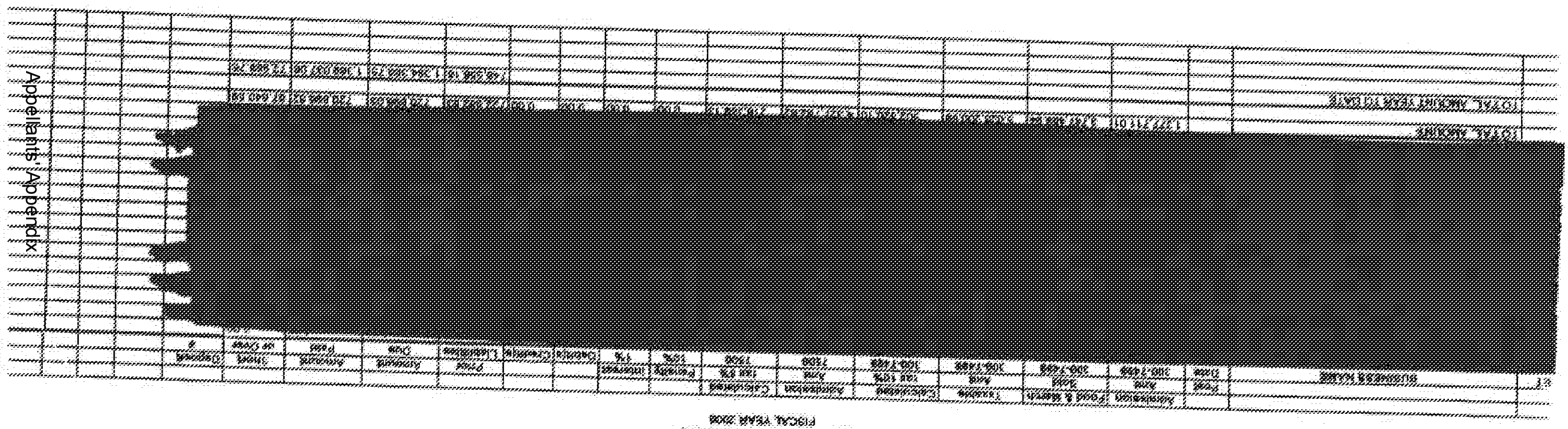

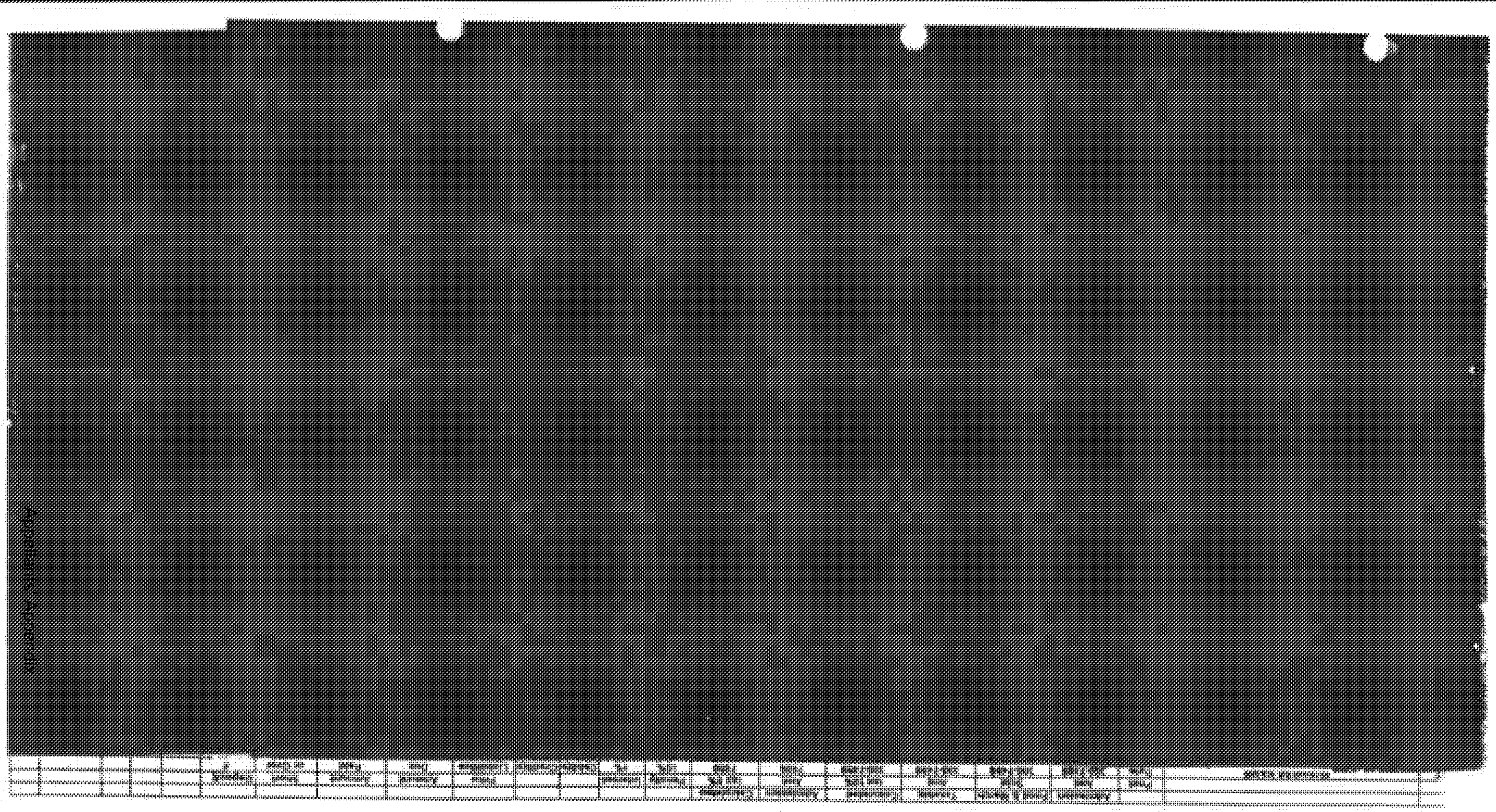

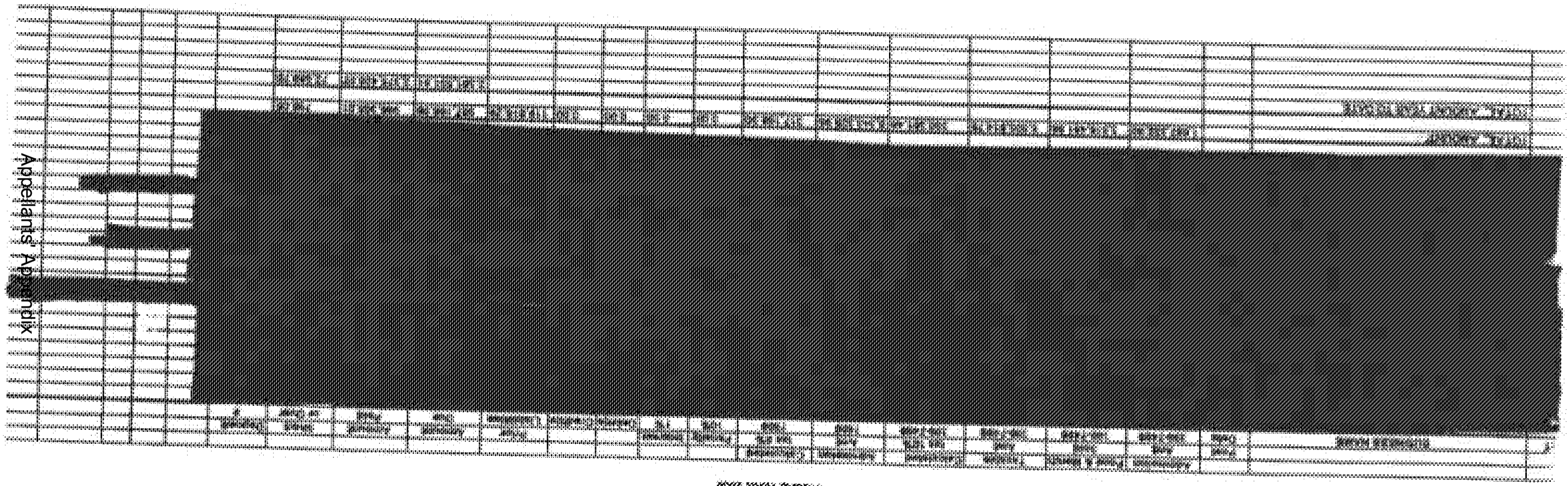

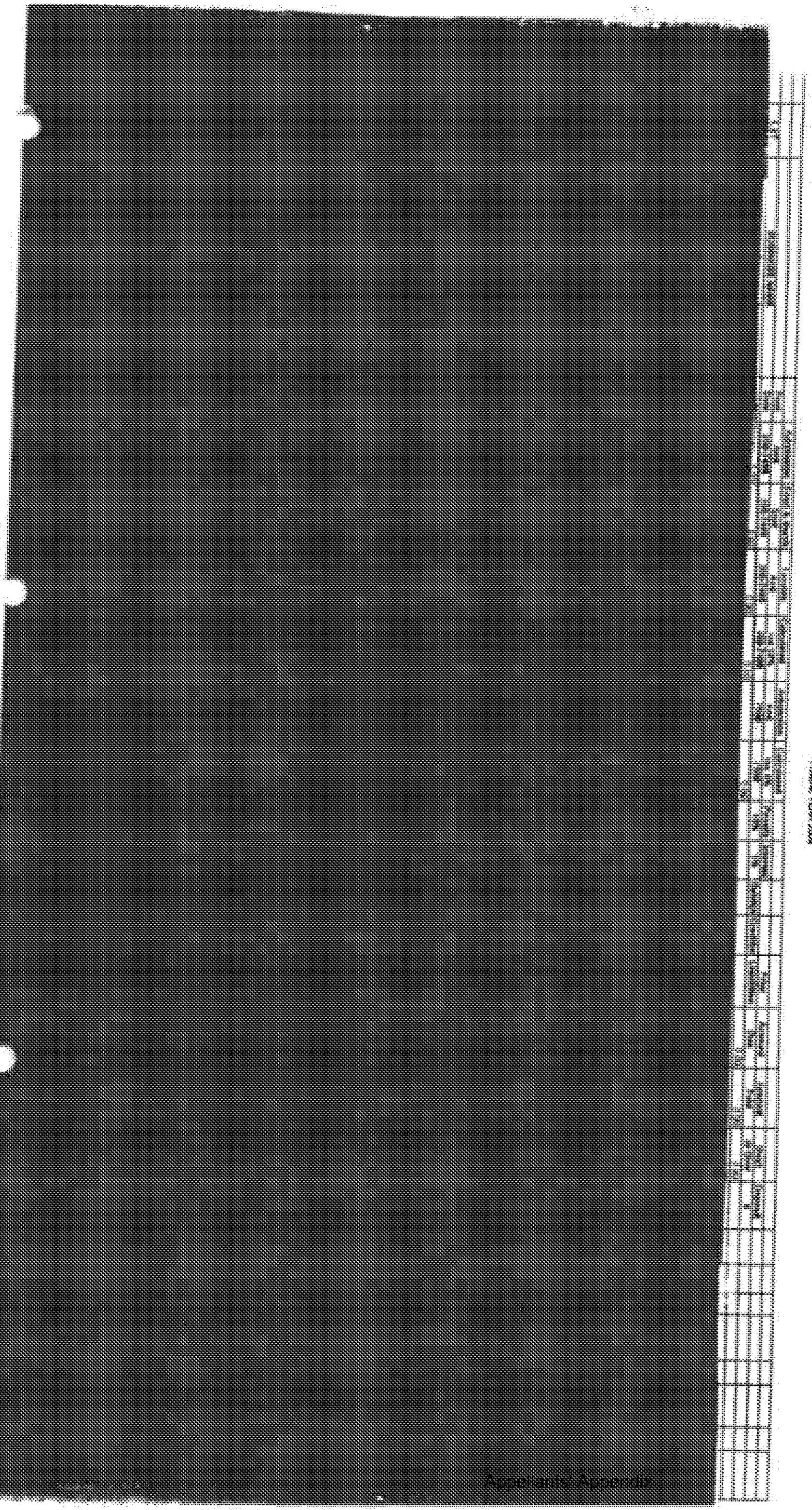

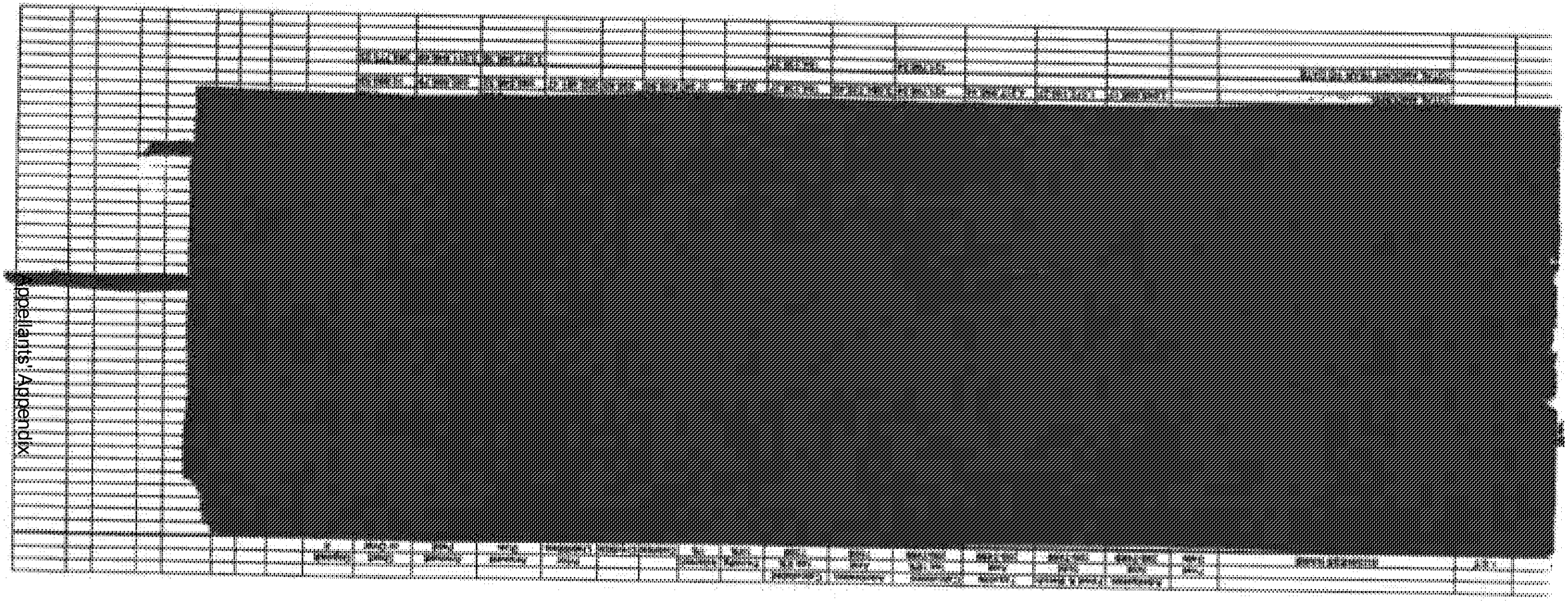

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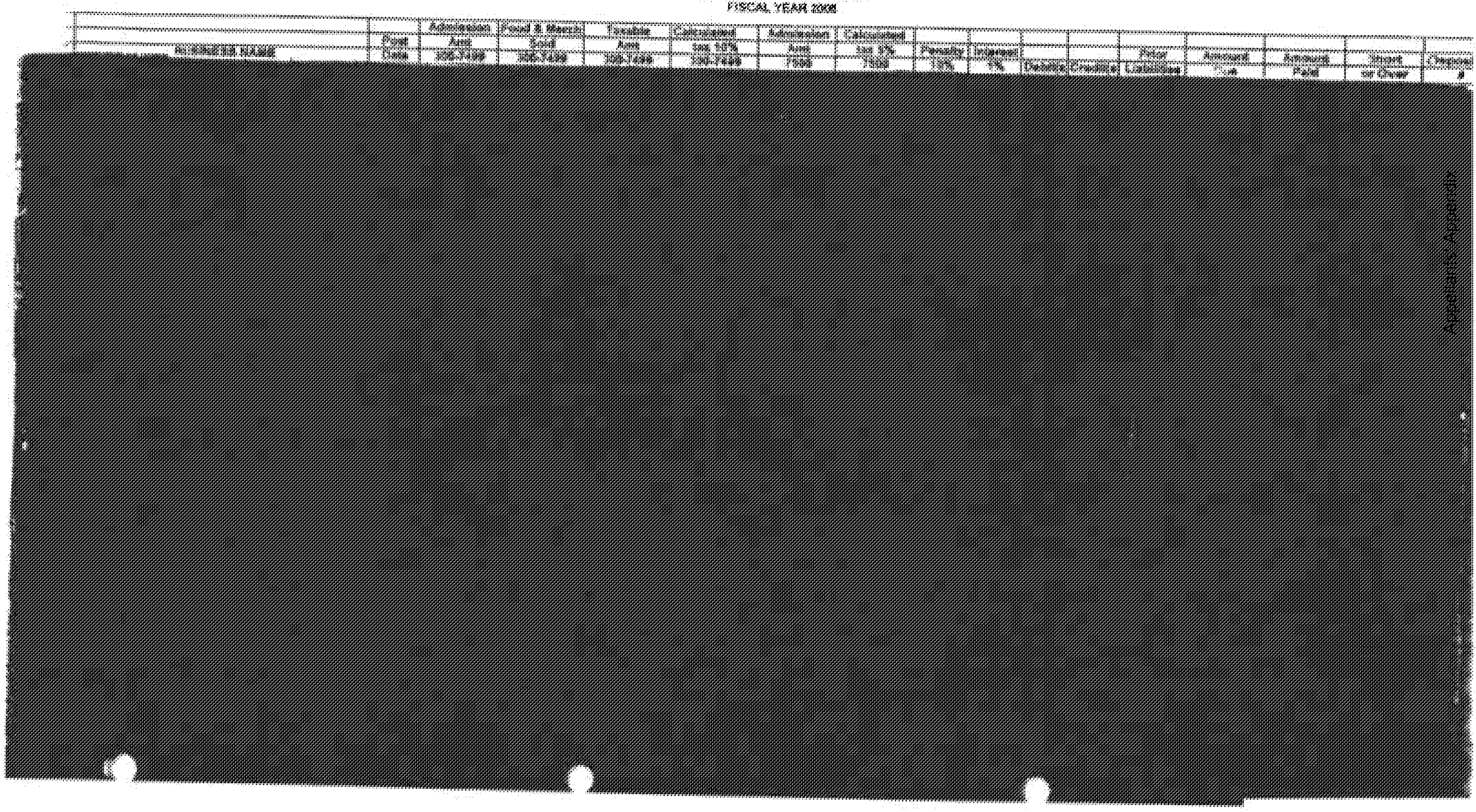

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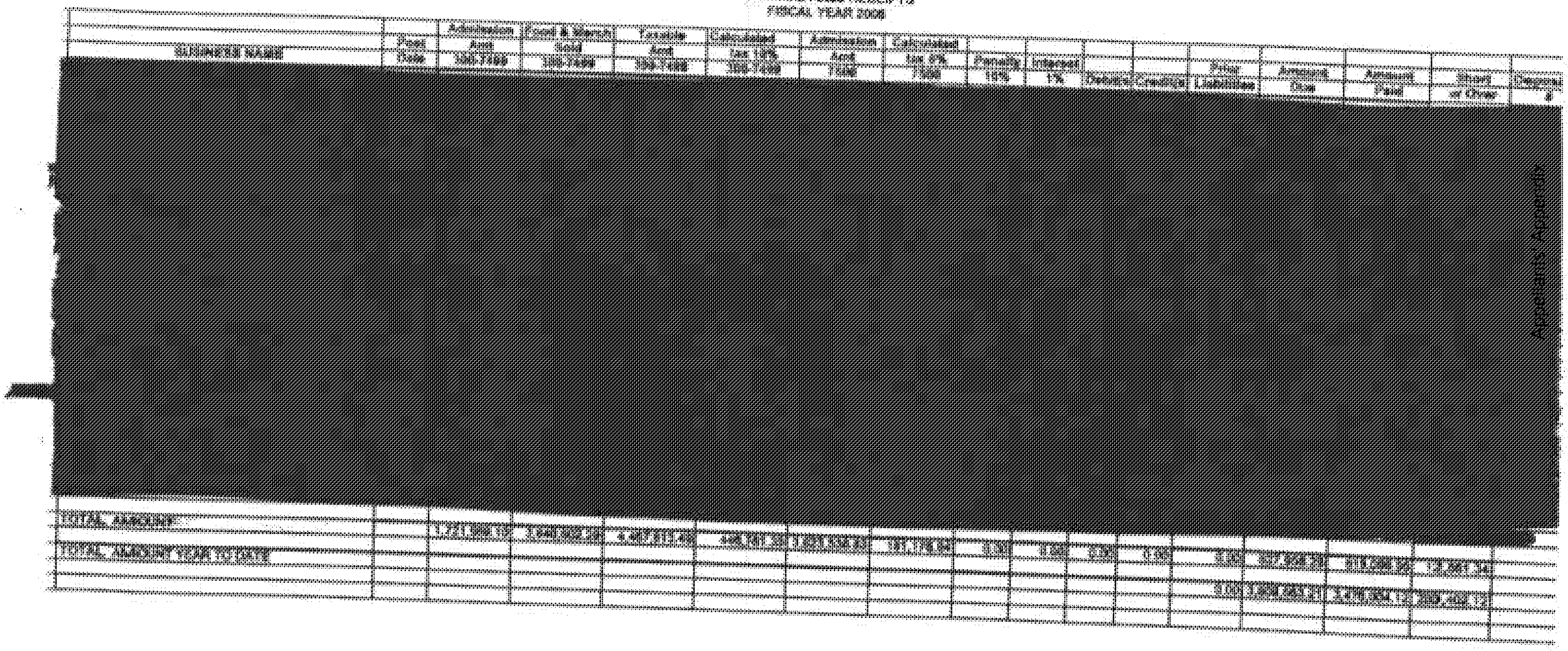

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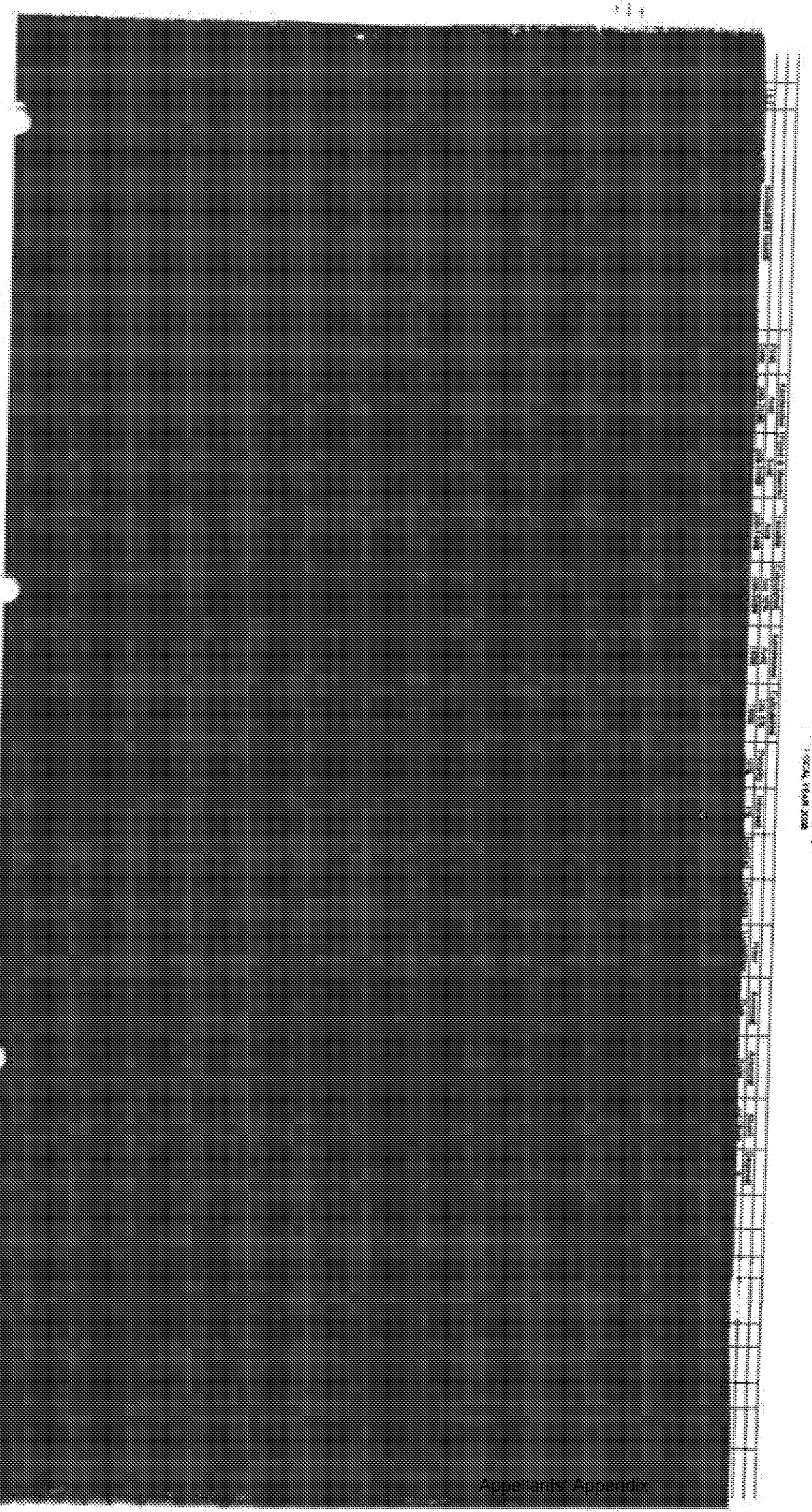
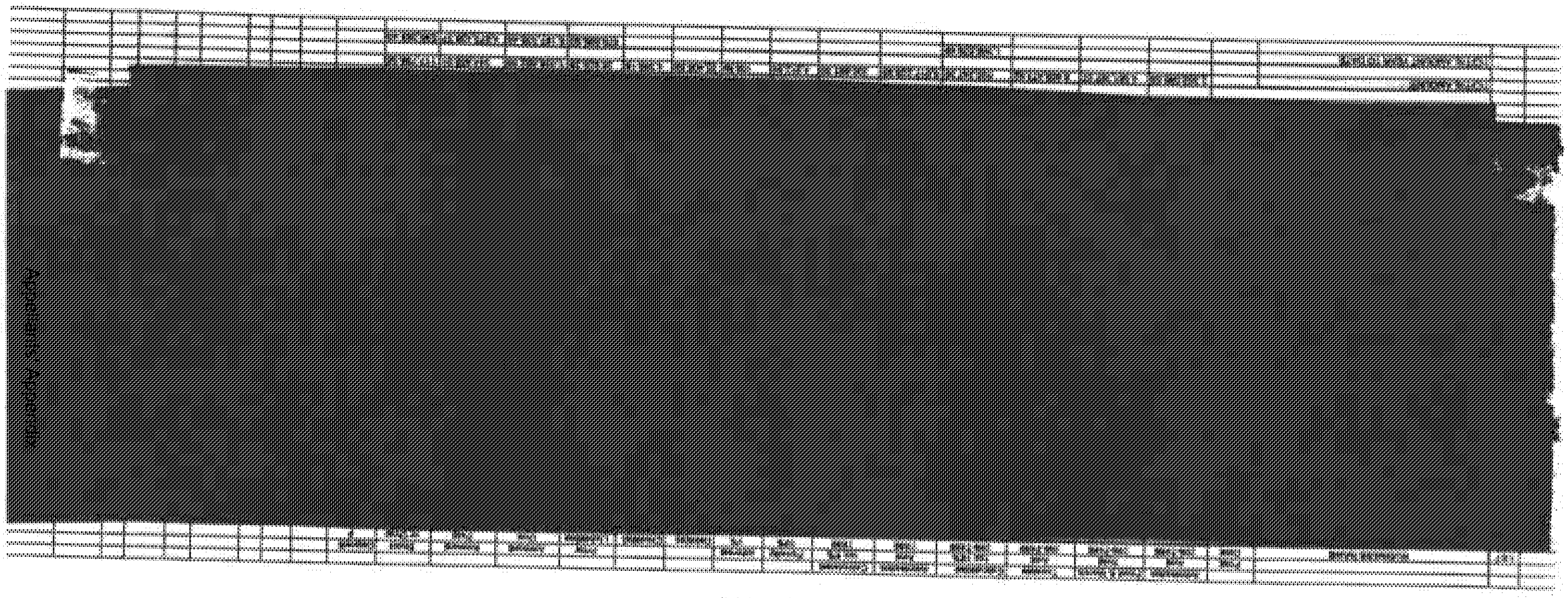
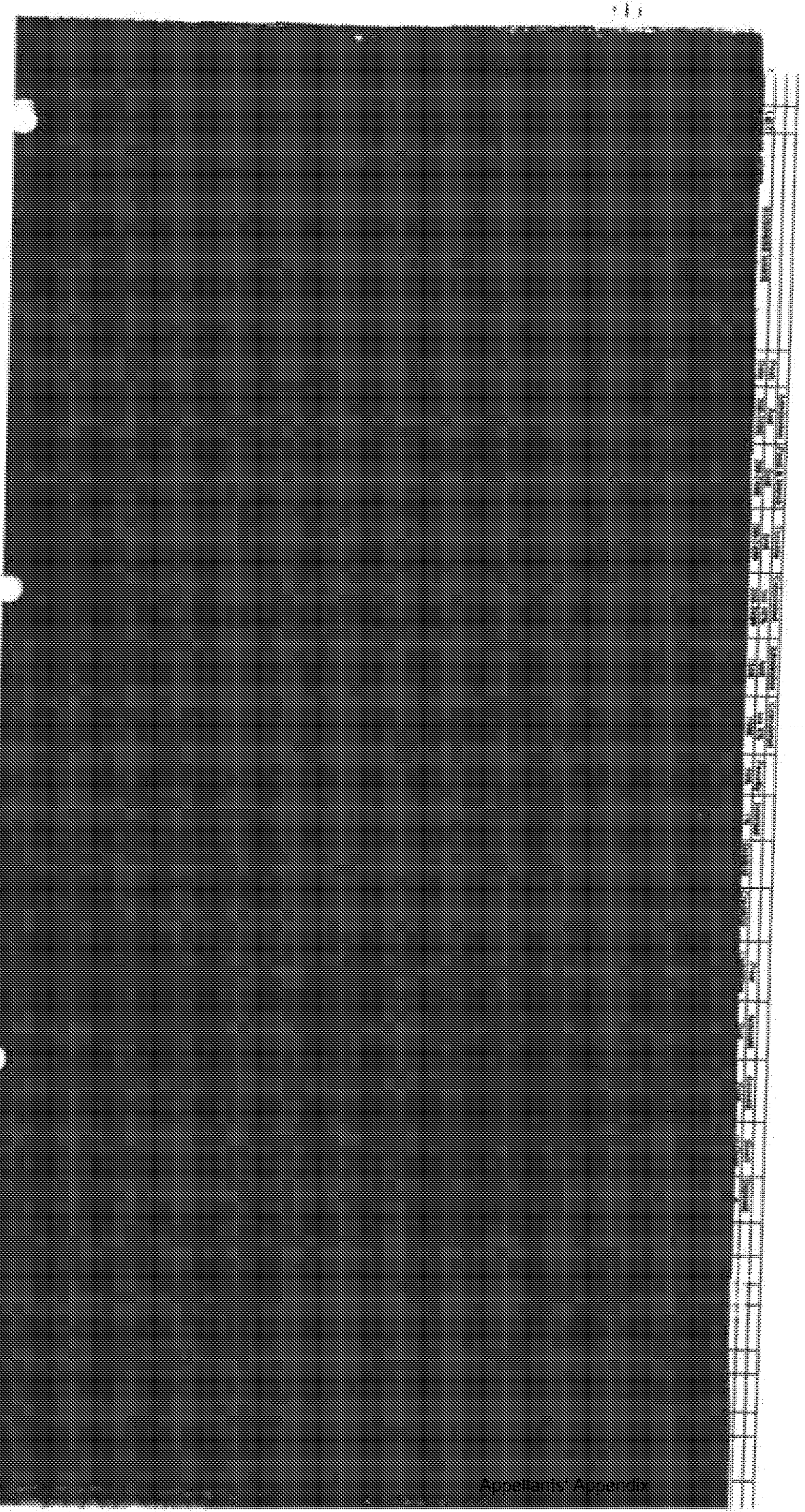
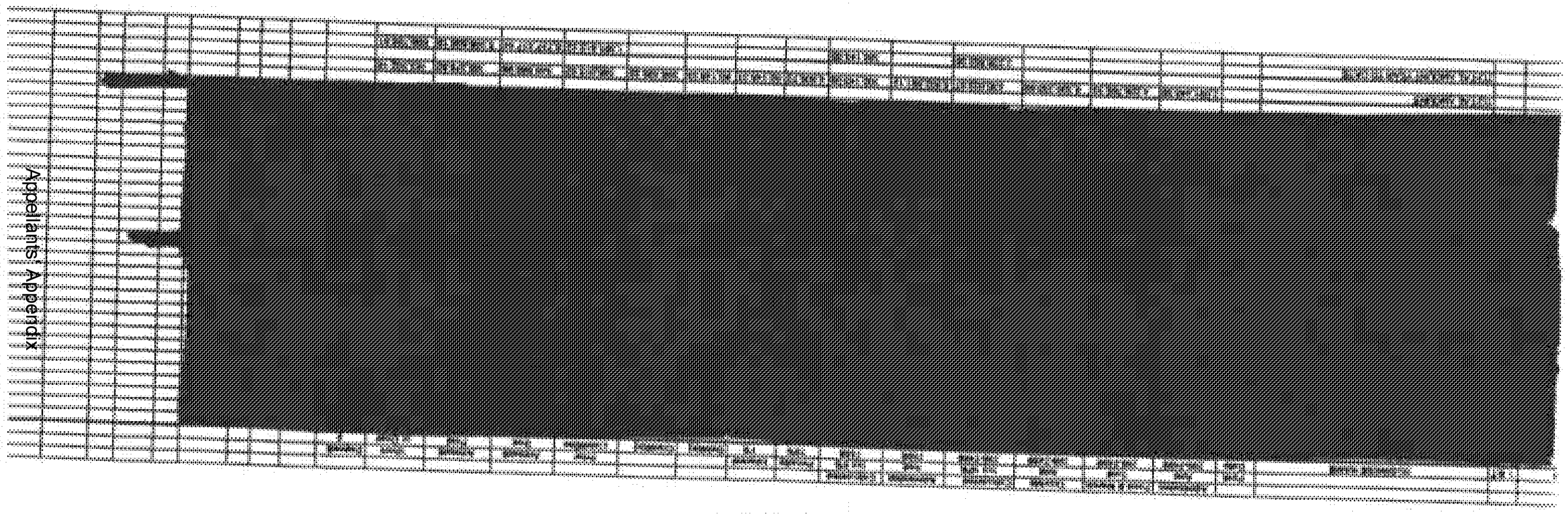
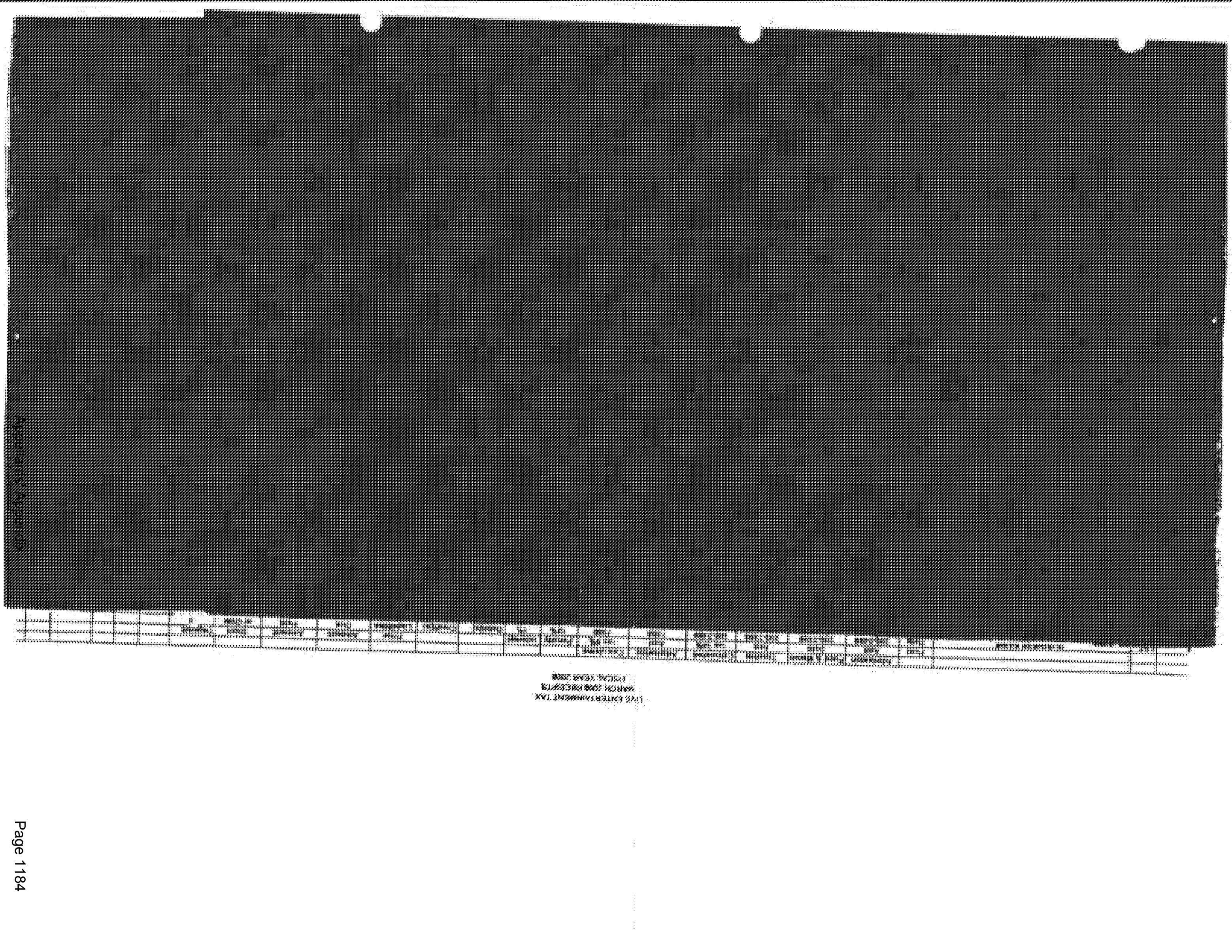
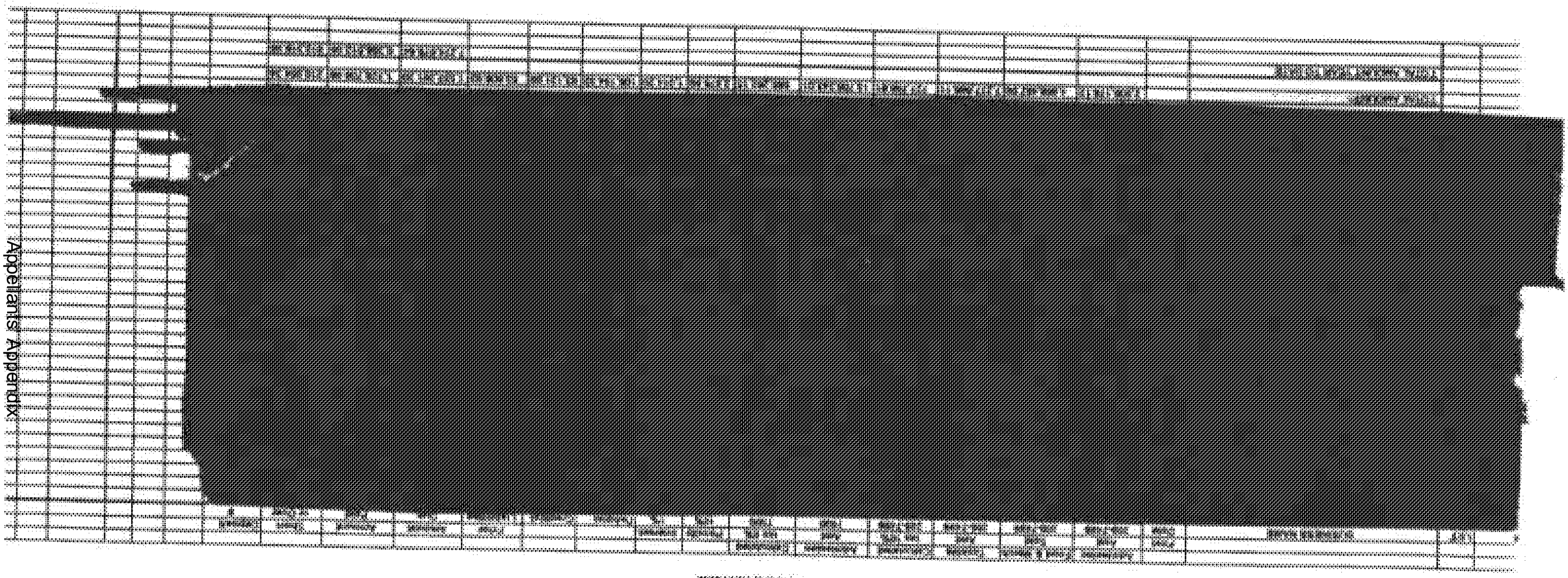


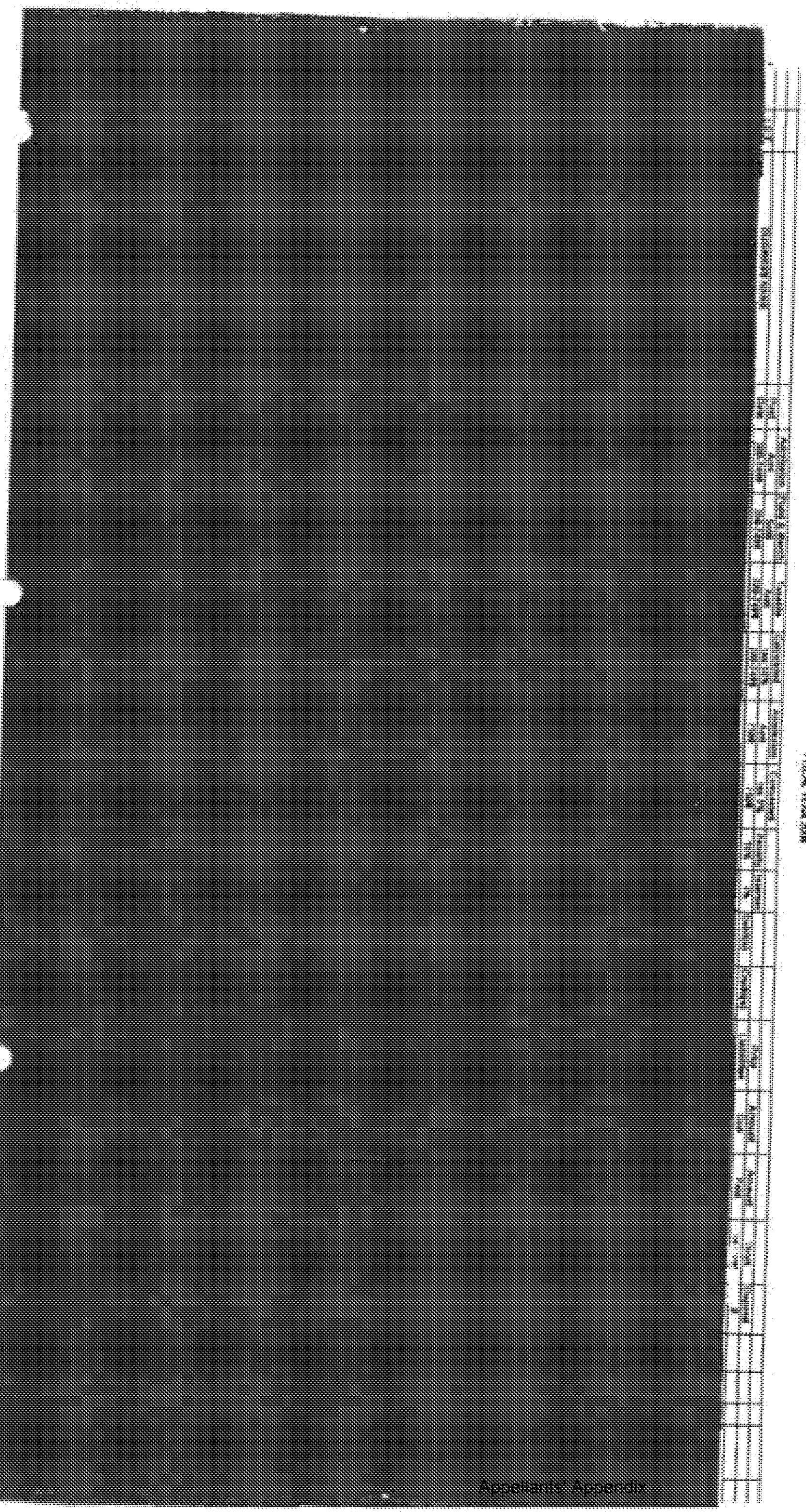




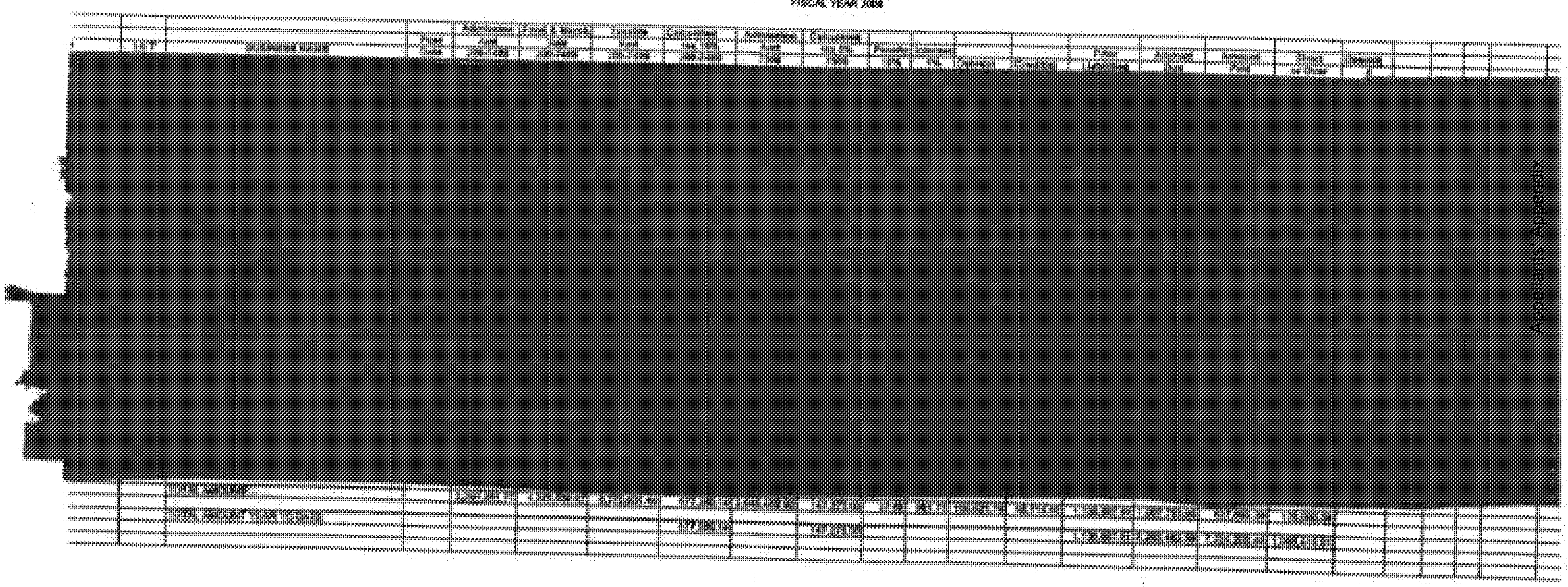


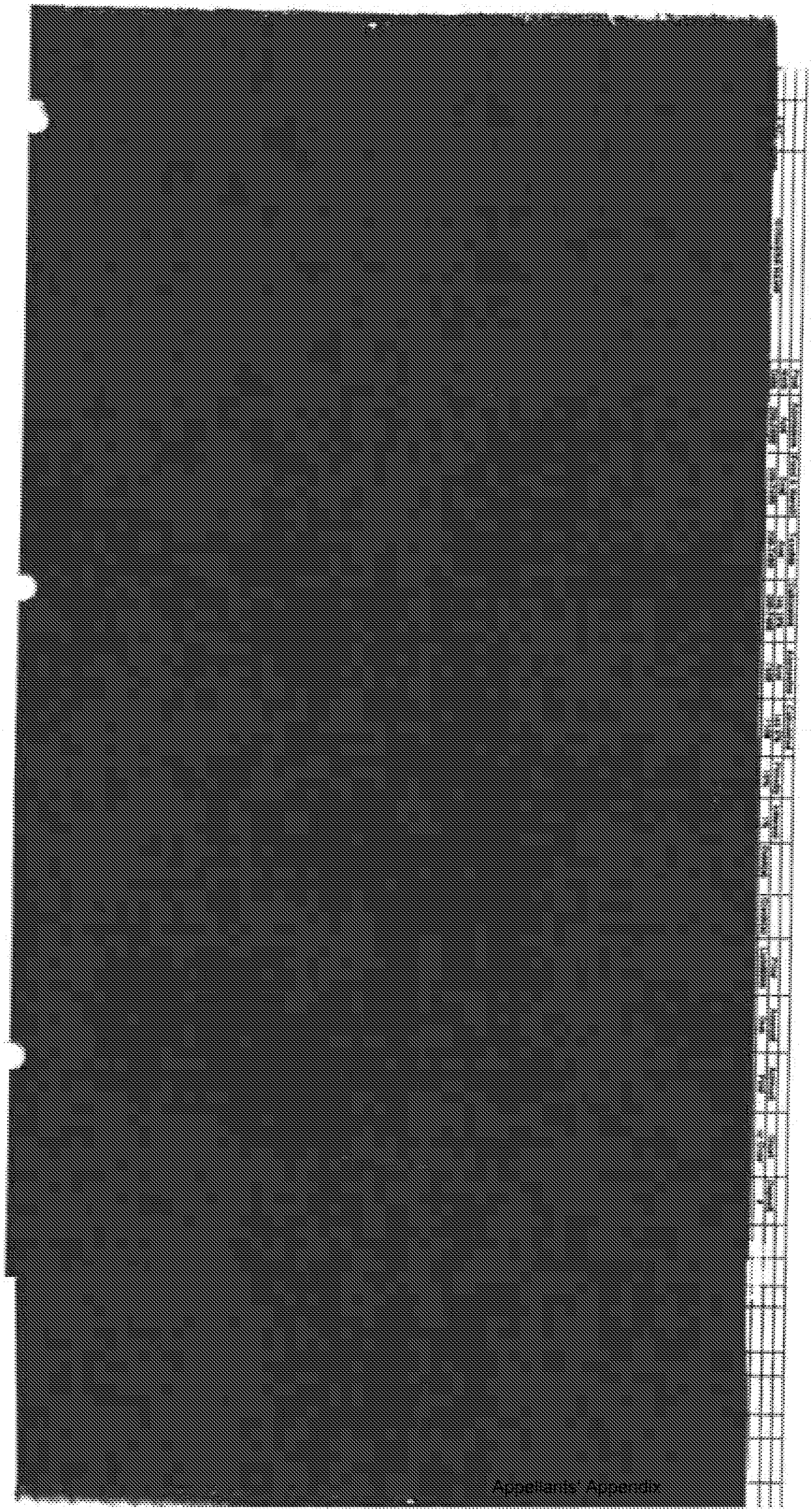


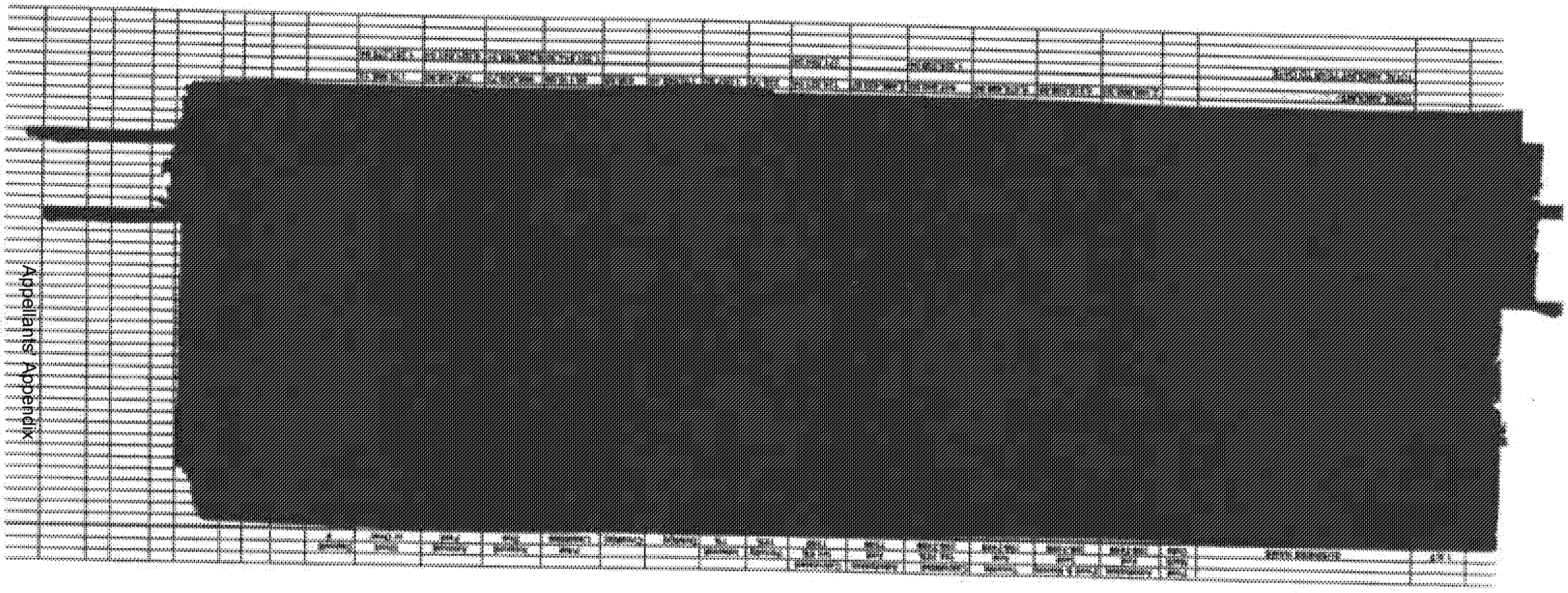


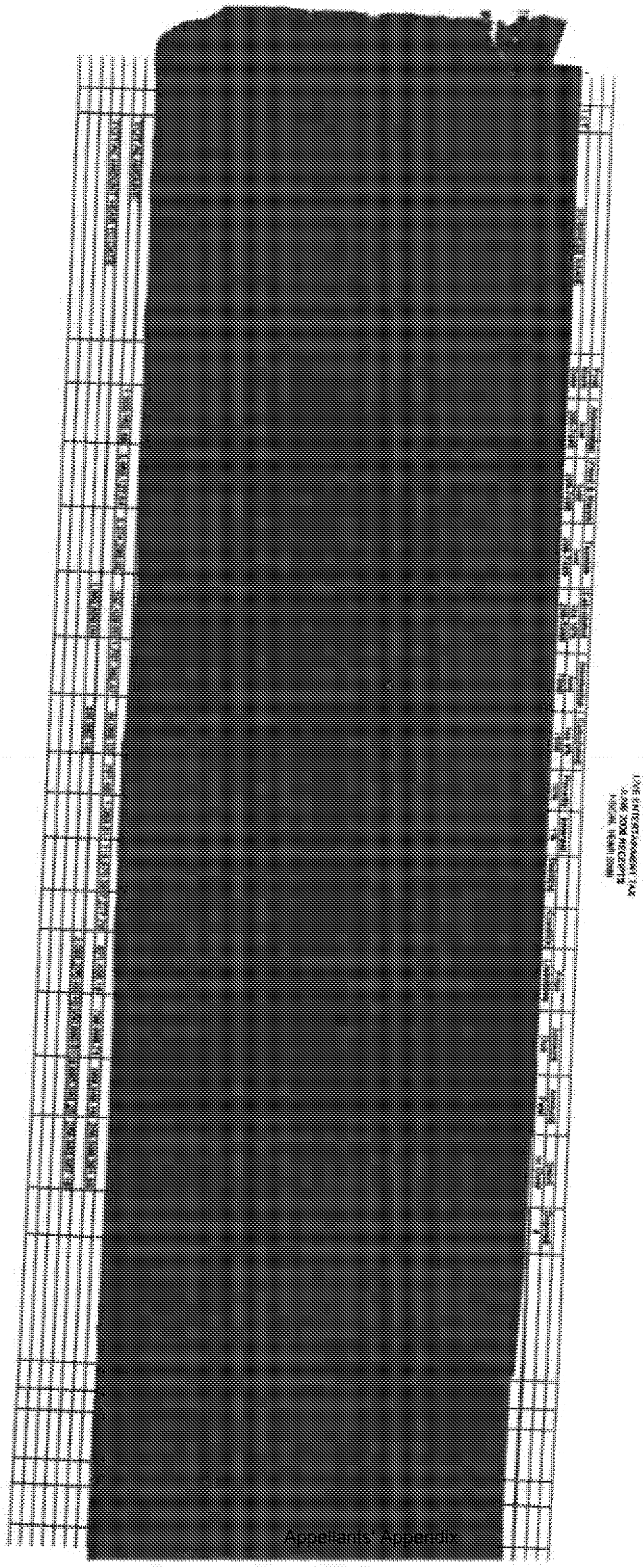


LIVE ENTERTAINMENT TAX
UPPER DARBY RECEIPTS
FISCAL YEAR 2008



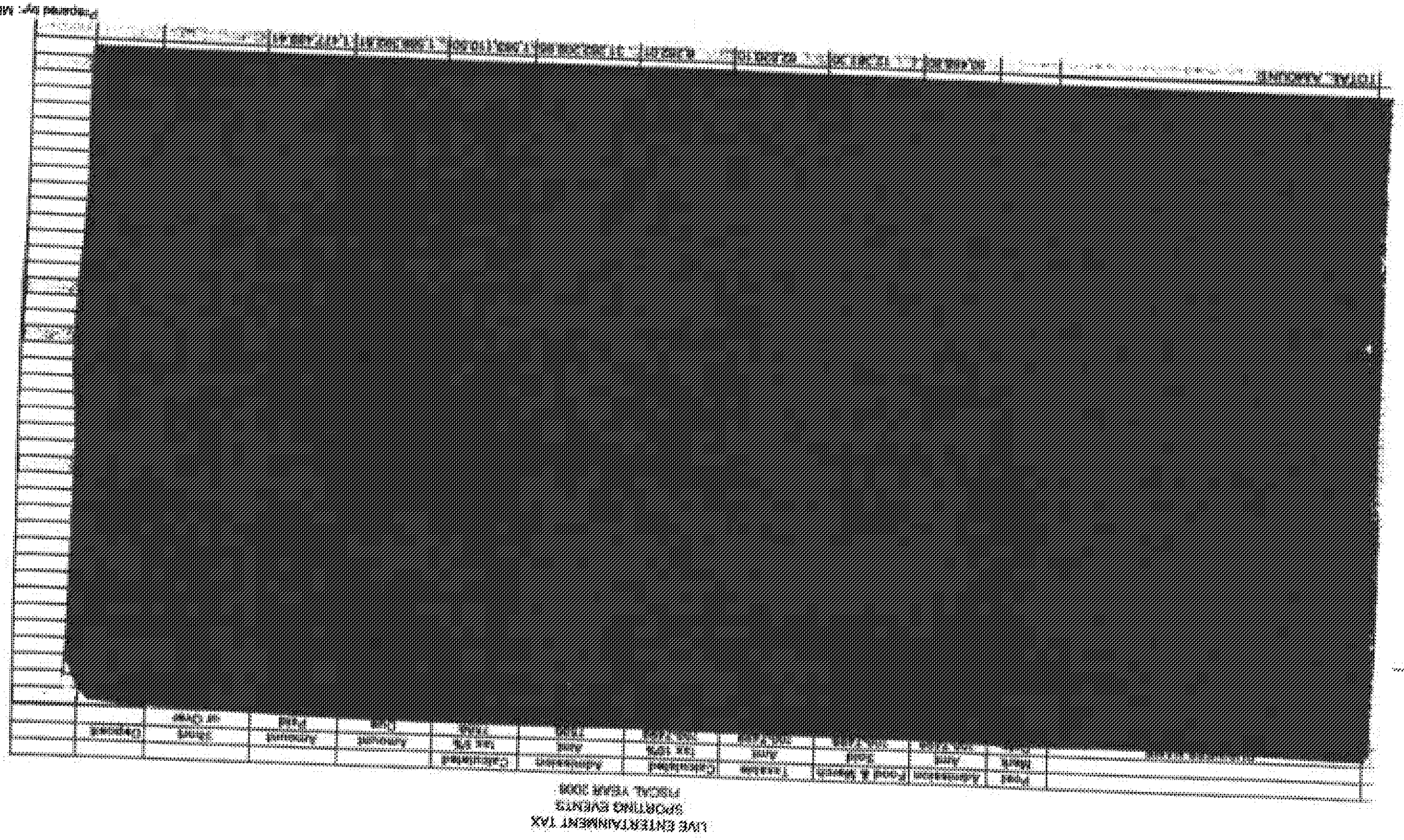




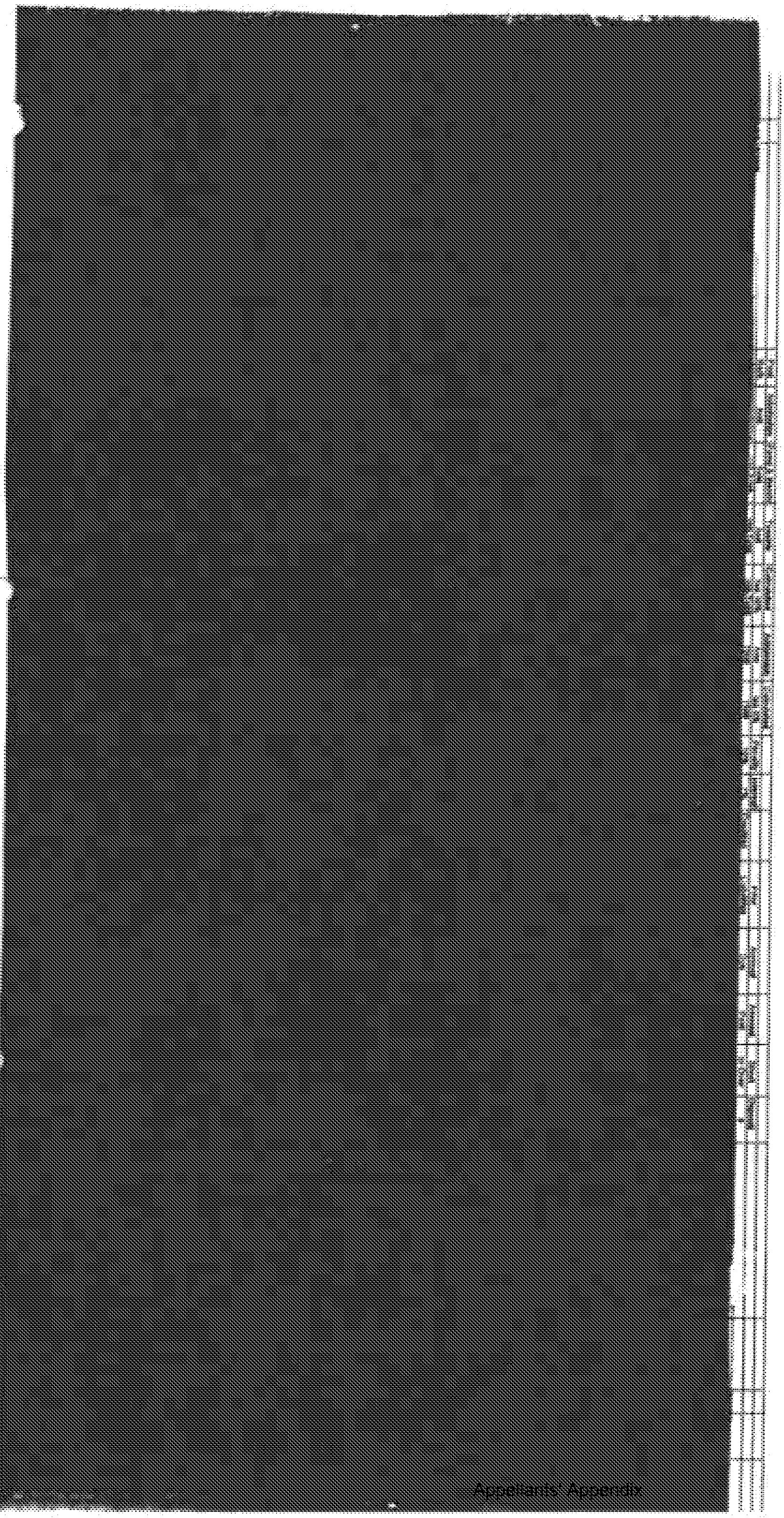


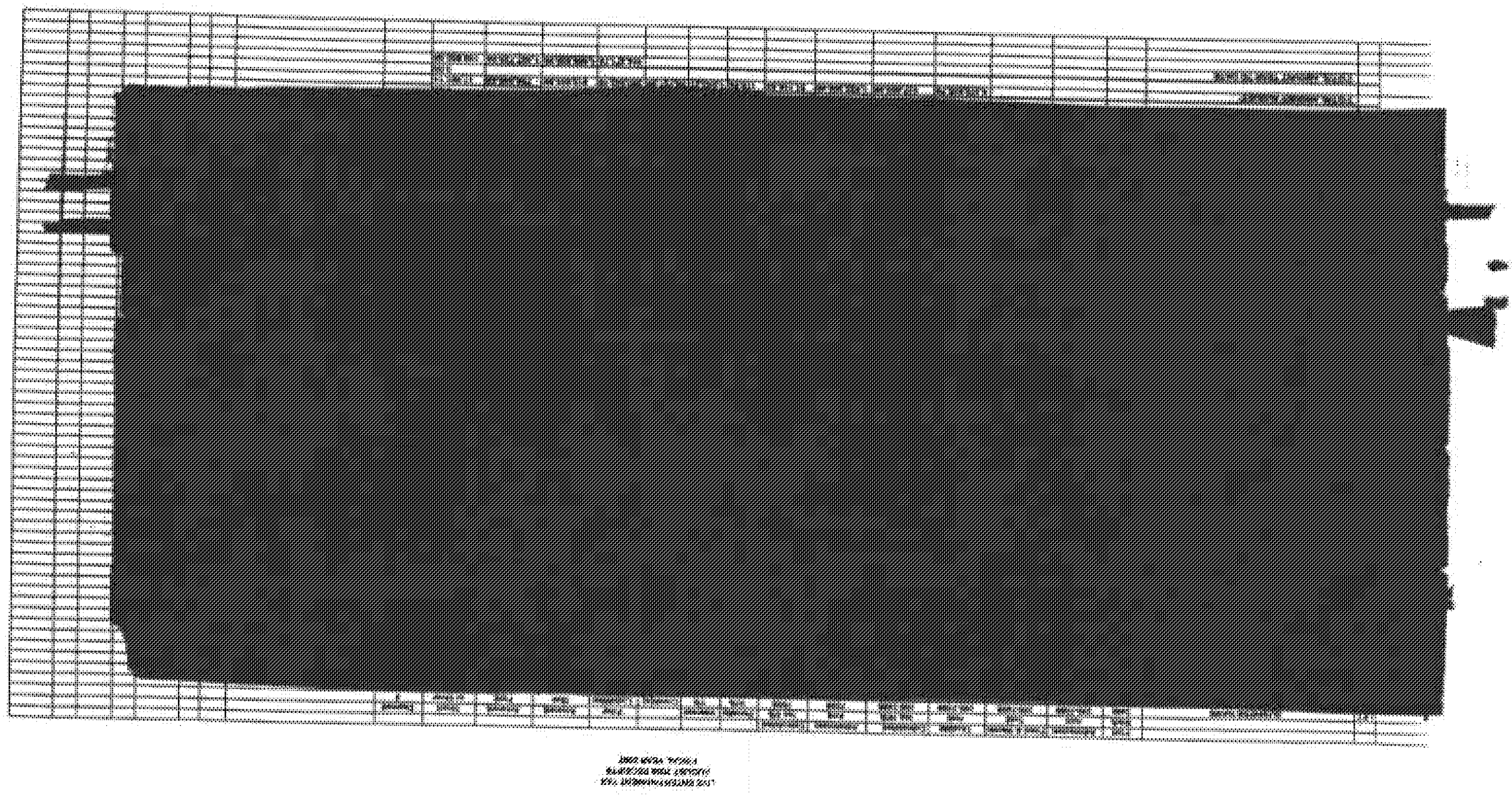
LIVE ENTERTAINMENT TAX
SPORTING EVENTS
FISCAL YEAR 2008

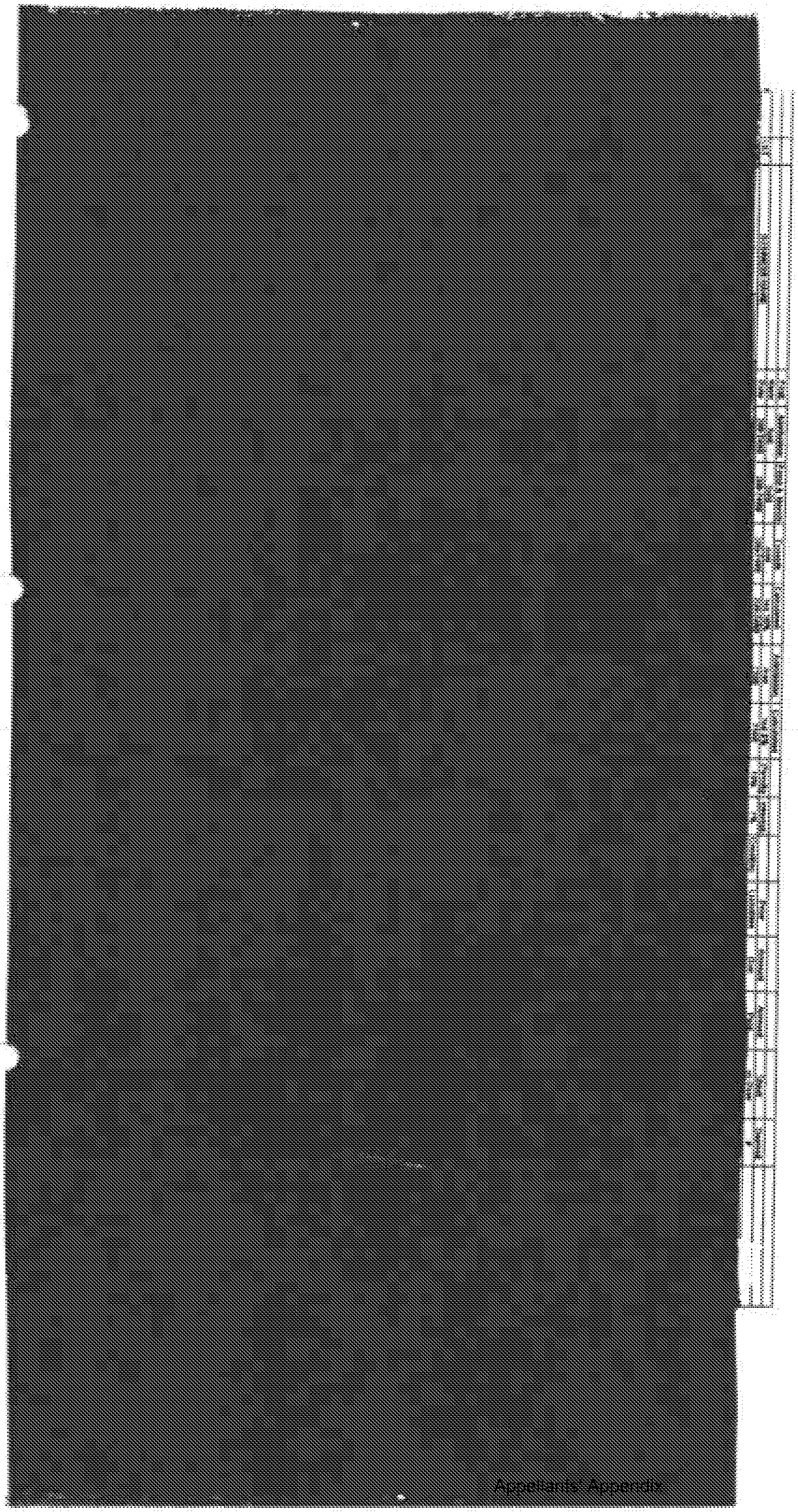
	Paid	Admissions	Paid to March	Taxable	Calculated	Admissions	Calculated					
	Month	June	2007	June	tax 10%	June	tax 6%	Amount	Amount	Short	Prepaid	
All Rights Reserved	Tax	330,740.00	330,740.00	330,740.00	330,740.00	Paid	Paid	Due	Paid	or Over		

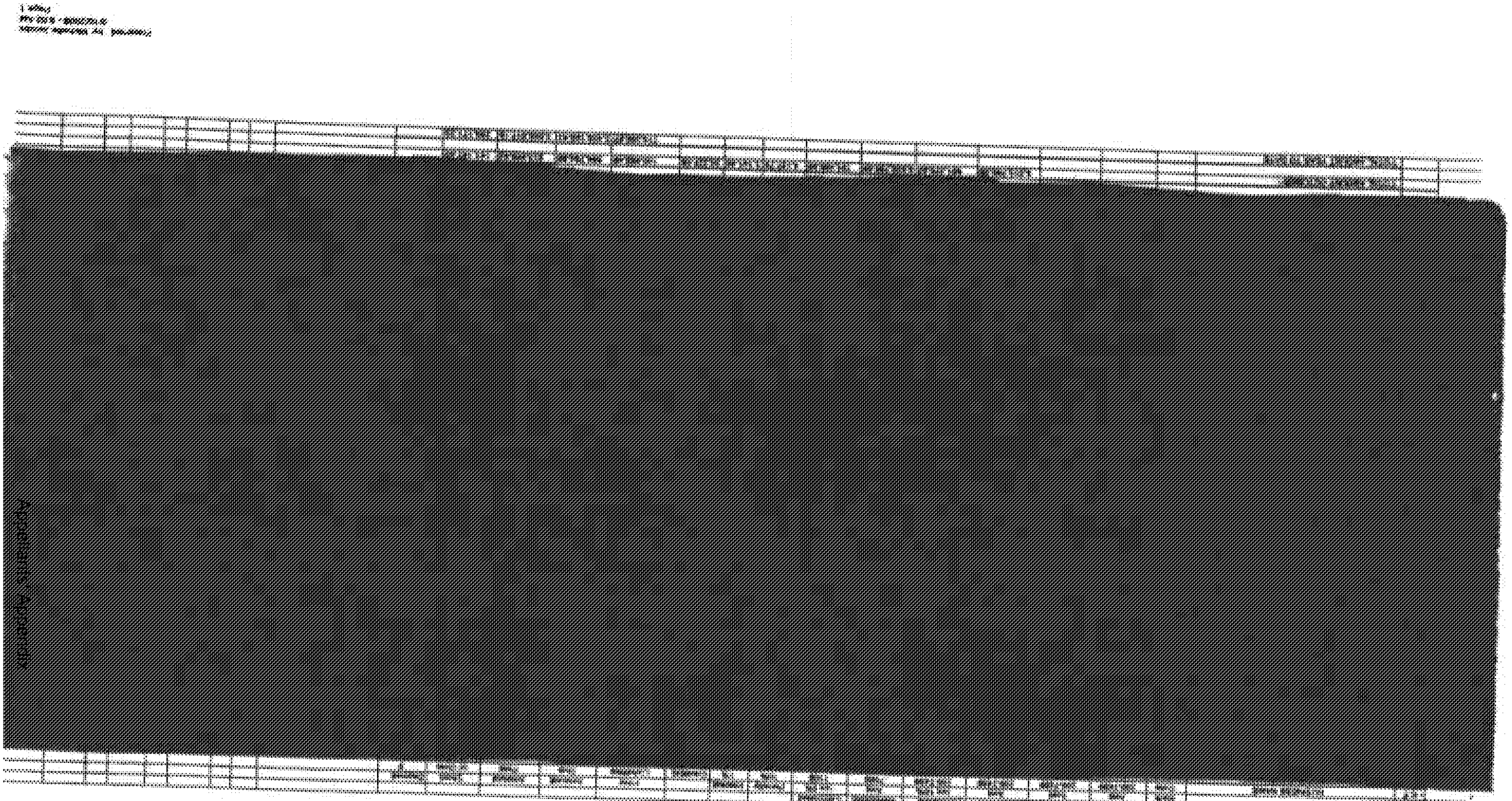


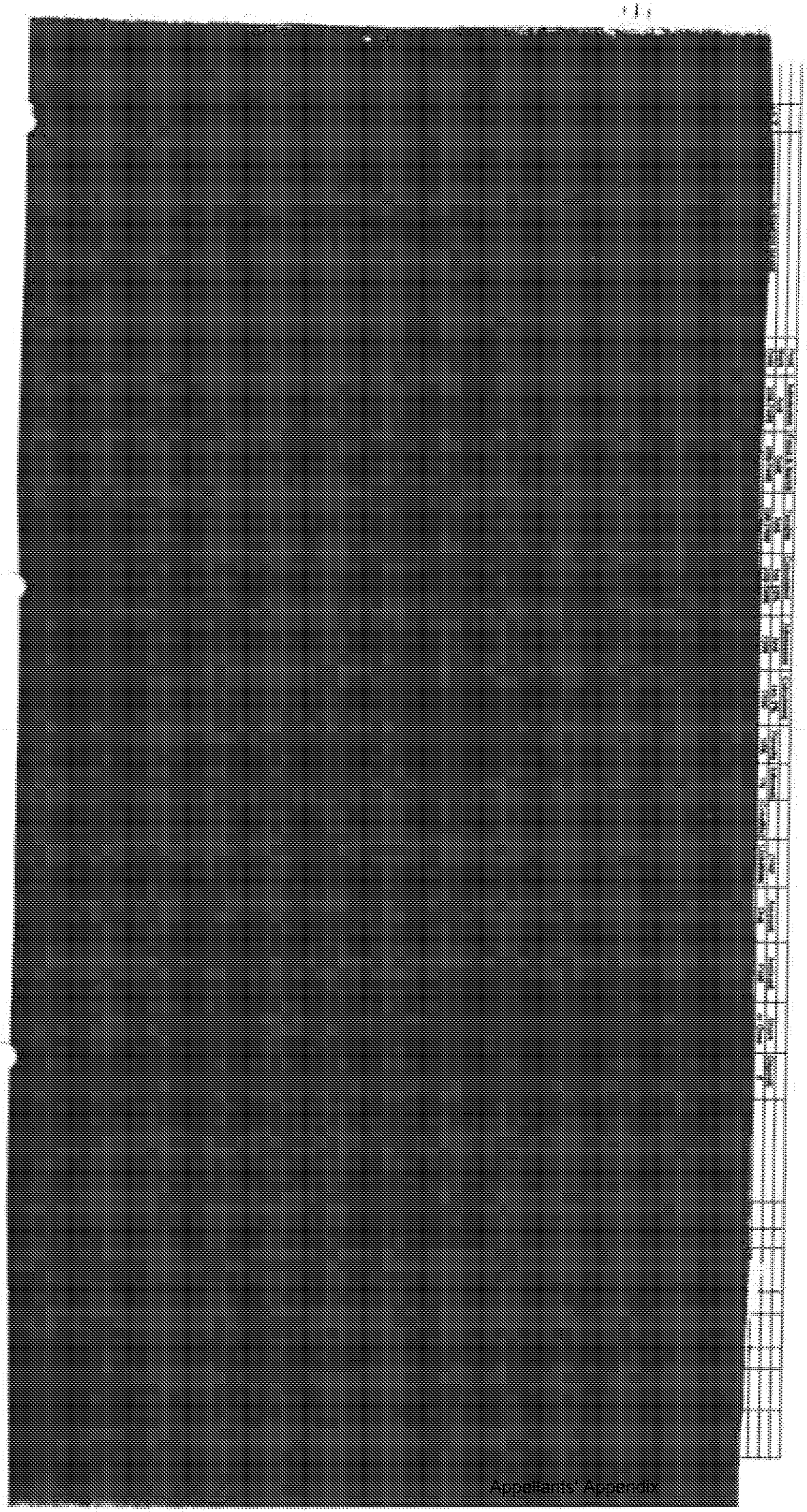
LIVE ENTERTAINMENT TAX
SPORTING EVENTS
FISCAL YEAR 2008

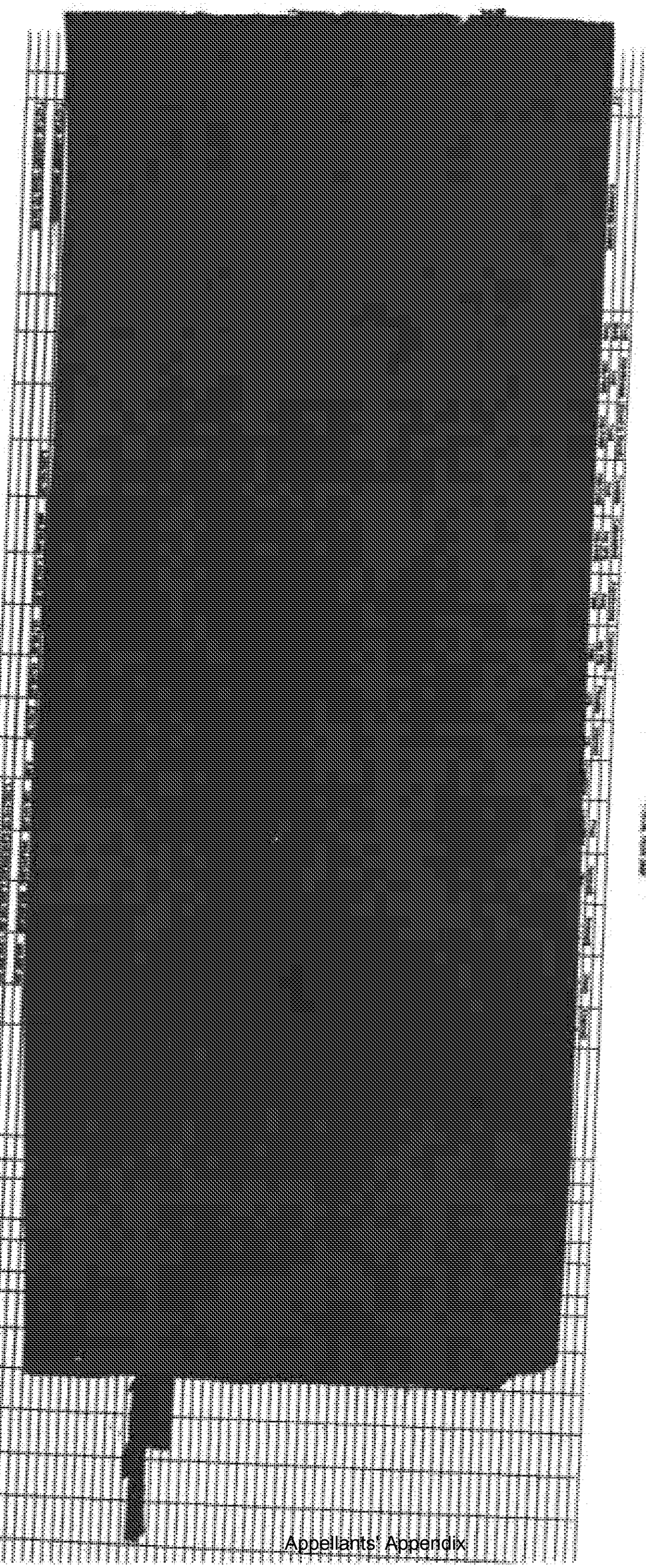


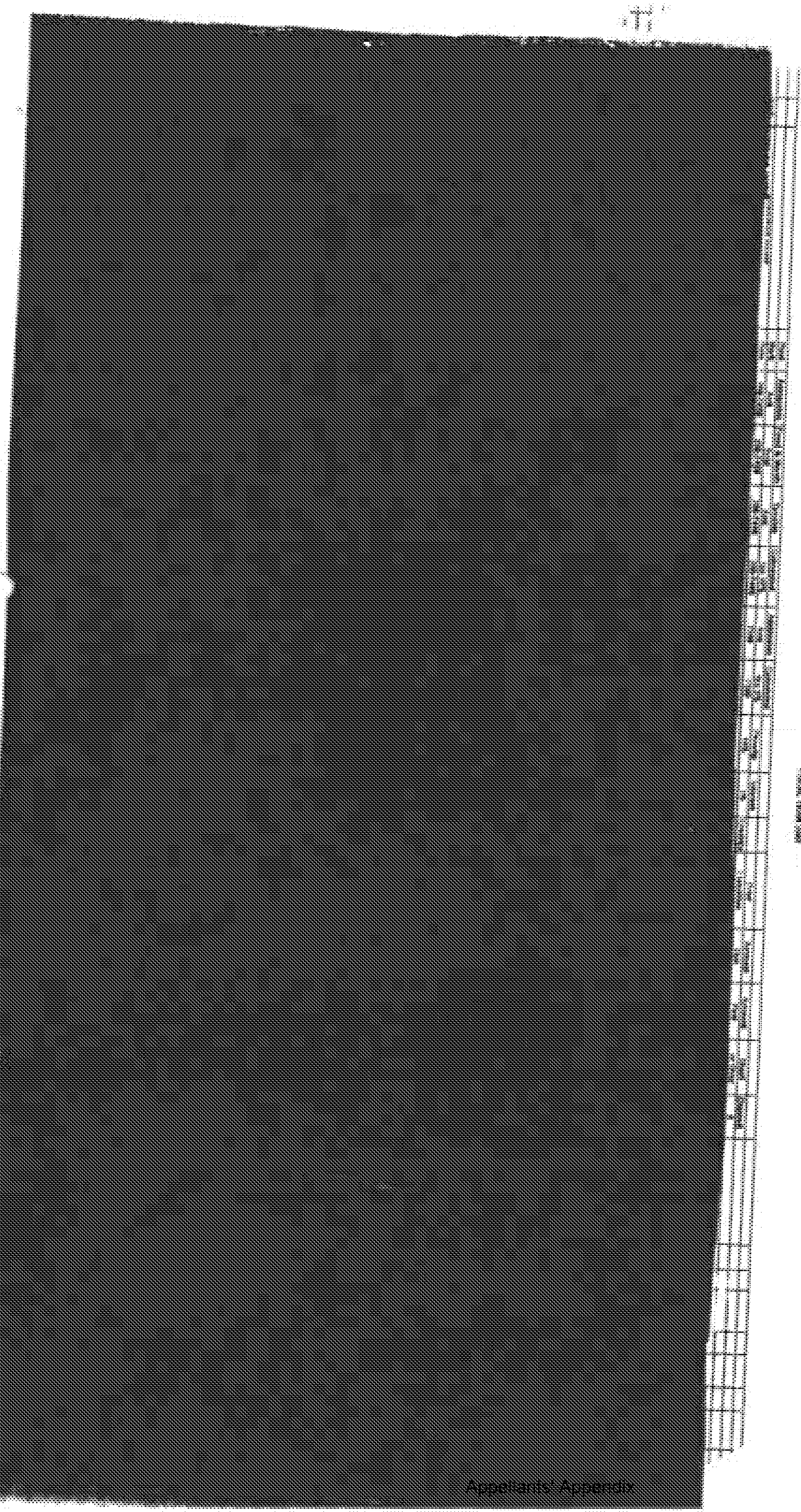


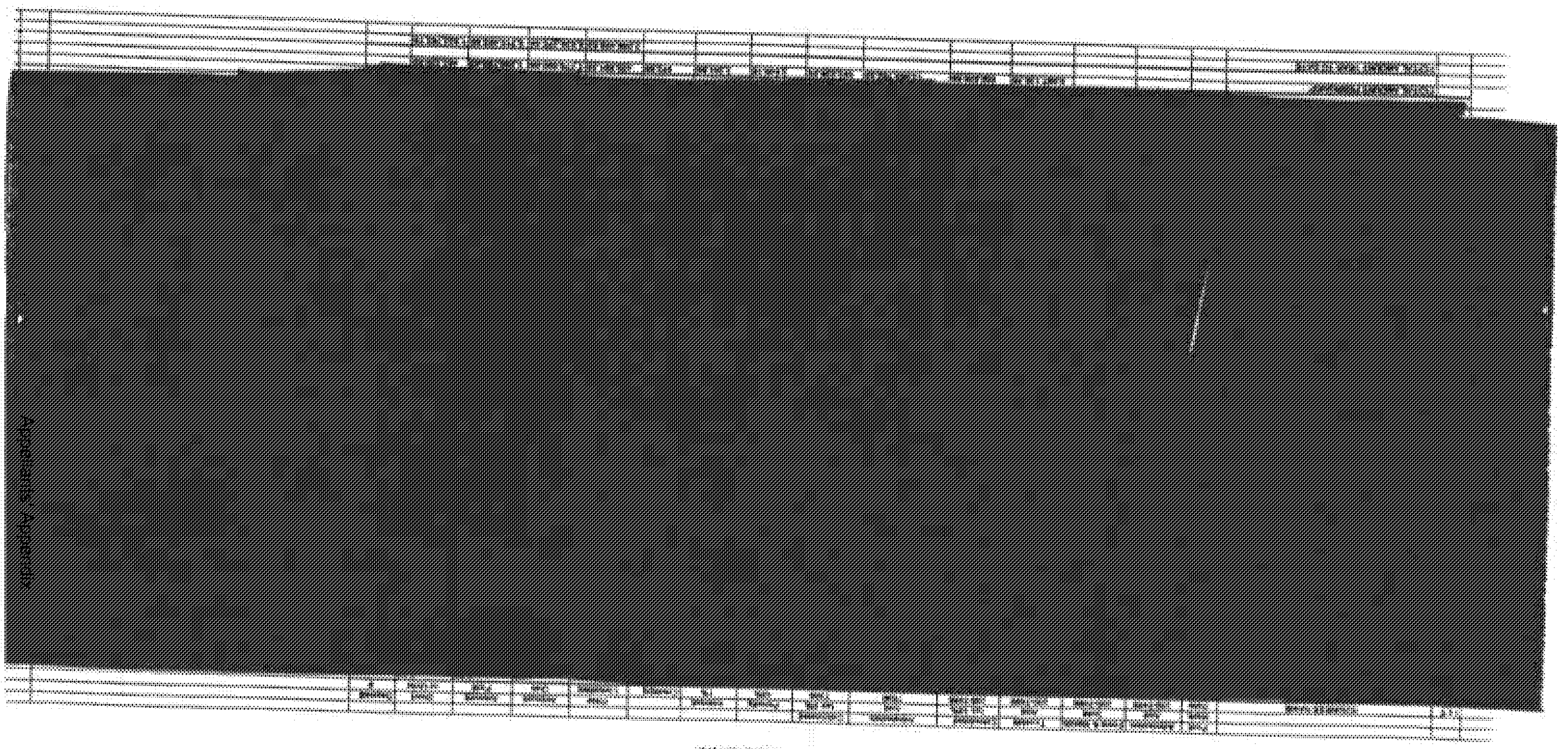


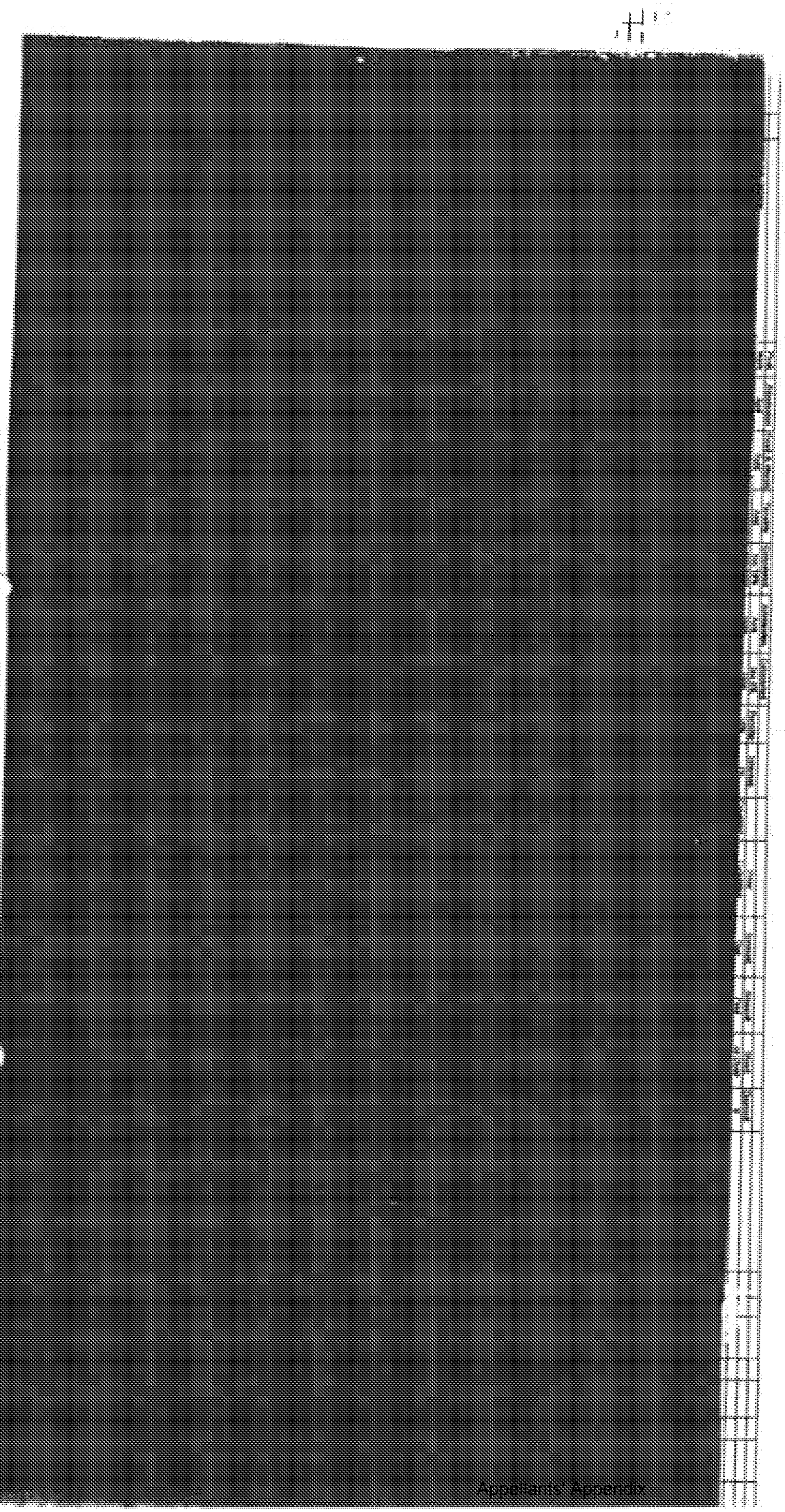


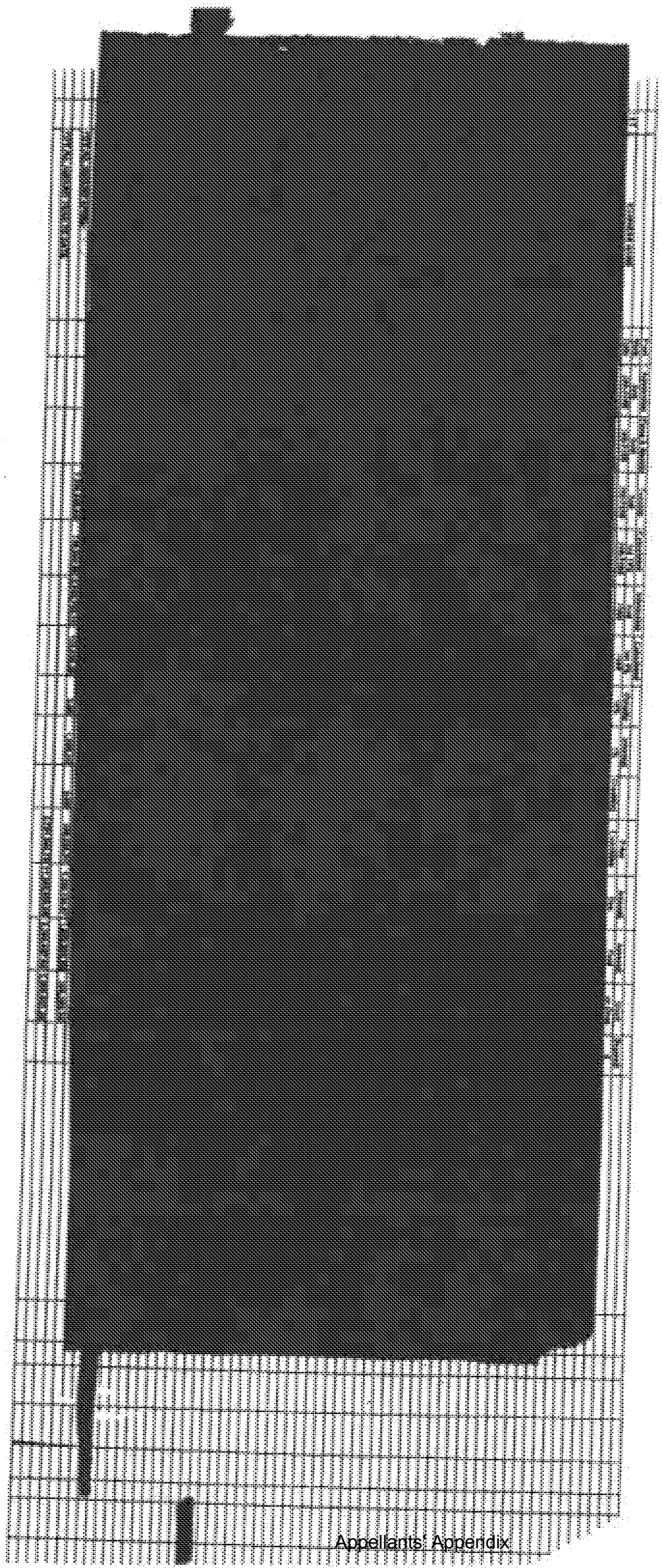


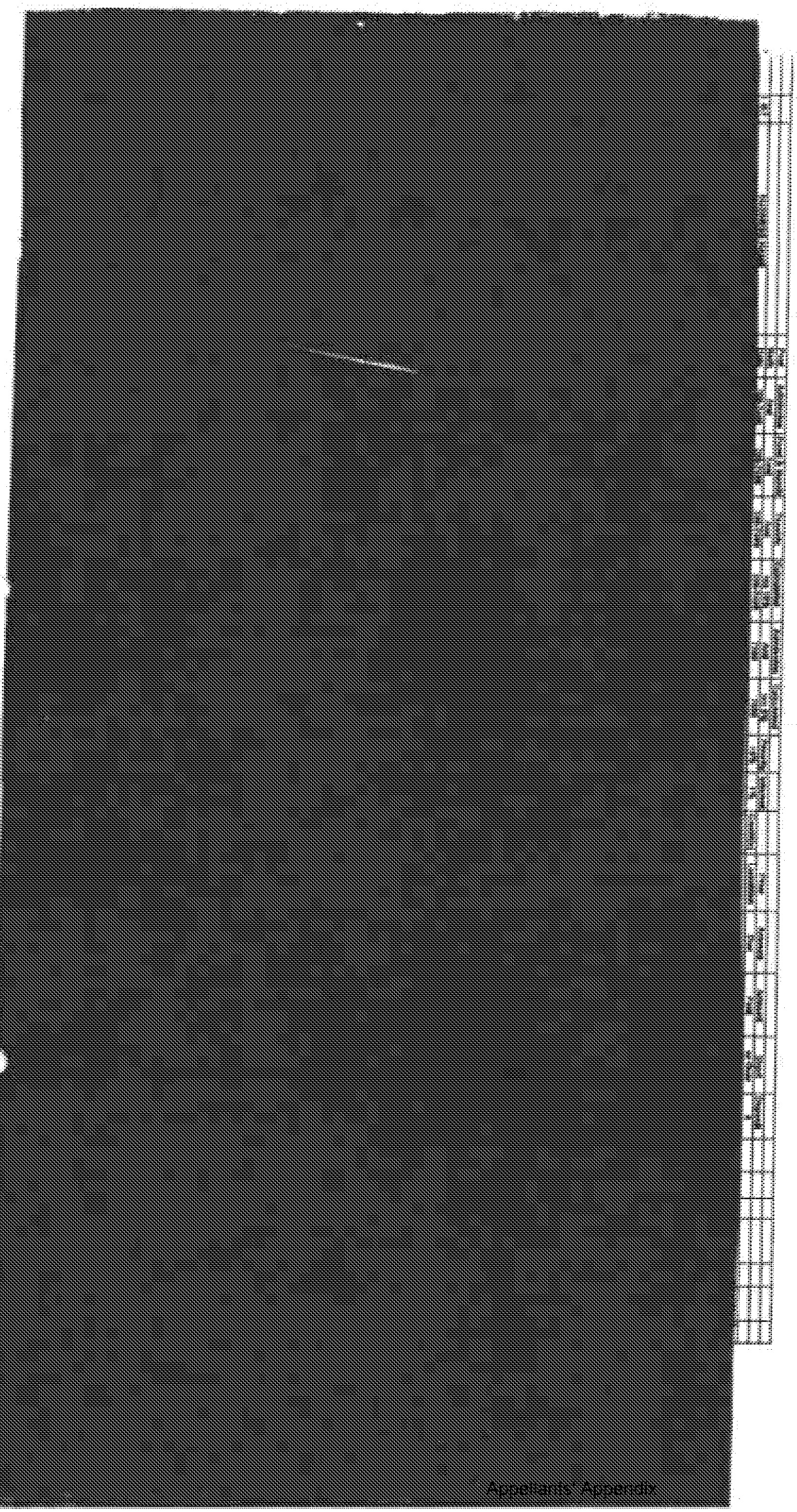


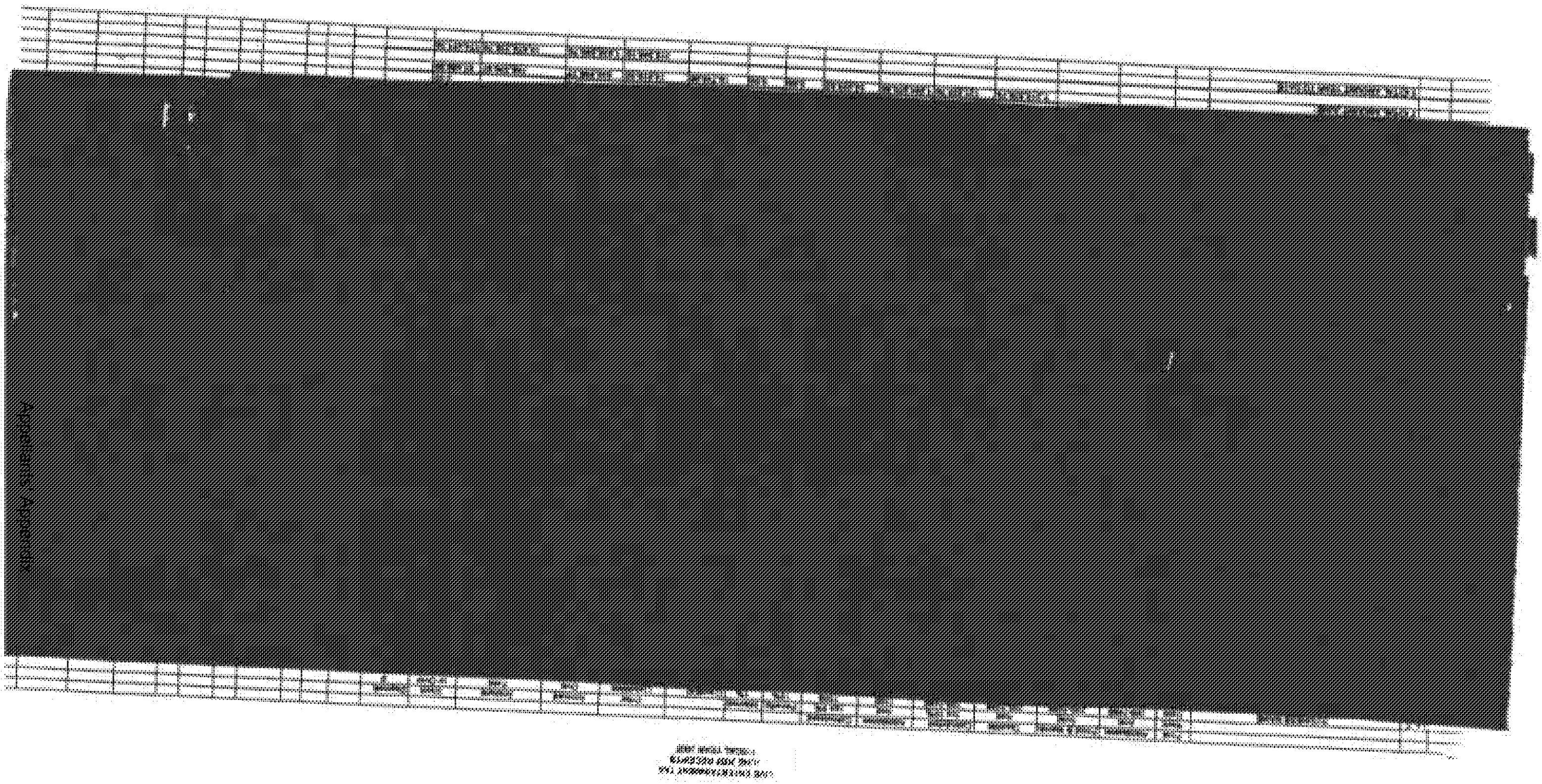












NEVADA DEPARTMENT OF TAXATION
LIVE ENTERTAINMENT TAX
FISCAL YEAR 2008

Business Name Under TSID	TID #	Loc #	PED 7/07	PED 8/07	PED 9/07	PED 10/07	PED 11/07	PED 12/07	Subtotal
[redacted]									

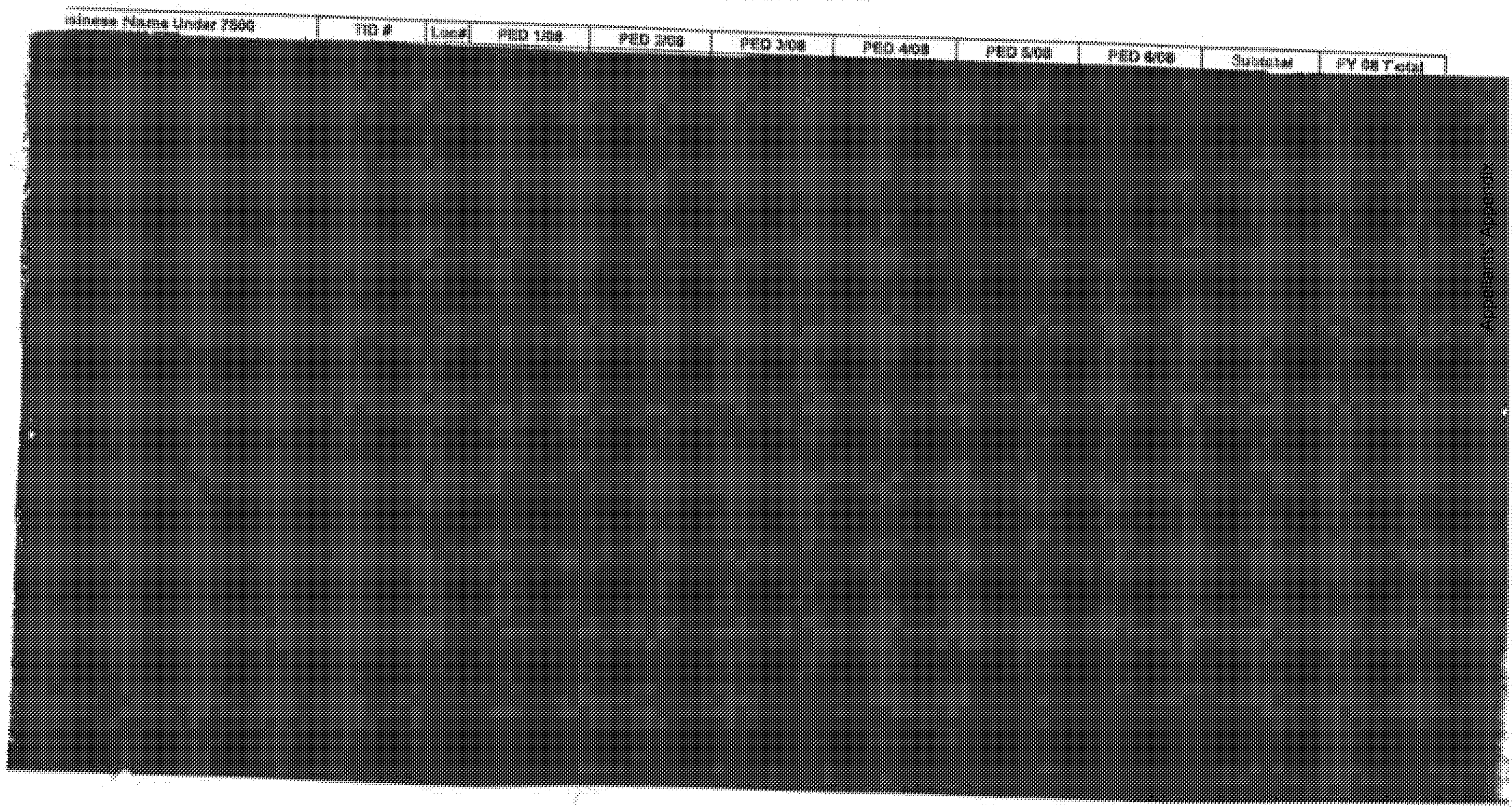
...DEPARTMENT OF TAXATION
LIVE ENTERTAINMENT TAX
FISCAL YEAR 2008

Business Name Under 7500	TID #	Loc #	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	Subtotal
TOTAL UNDER 7500			$107,794.30	$807,757.80	$629,744.23	$678,030.60	$642,627.70	$617,275.32	

NEVADA DEPARTMENT OF TAXATION
LIVE ENTERTAINMENT TAX
FISCAL YEAR 2008

Business Name 7500 or more	TID #	Loc#	PED 707	PED 807	PED 907	PED 1007	PED 1107	PED 1207	Subtotal
TOTAL OVER 7500			393,314.34	3164,840.57	3120,466.32	$225,004.16	$98,434.32	$2,708.03	
TOTAL DEPOSITS			$600,199.64	$972,238.47	$748,240.58	$903,983.07	$709,459.62	$636,094.24	

NEVADA DEPARTMENT OF TAXATION
LIVE ENTERTAINMENT TAX
FISCAL YEAR 20XX



NEVADA DEPARTMENT OF TAXATION
LIVE ENTERTAINMENT TAX
FISCAL YEAR 2008

Business Name Under 7500	TID #	Local#	PED 1.0%	PED 2.0%	PED 3.0%	PED 4.0%	PED 5.0%	PED 6.0%	Subtotal	FY 08 Total
TOTAL UNDER 7500			$628,524.67	$724,374.09	$775,895.40	$946,064.73	$980,547.39	$771,898.48	$4,809,304.66	

NEVADA DEPARTMENT OF TAXATION
LIVE ENTERTAINMENT TAX
FISCAL YEAR 2008

Ordinance Name 7500 or more	TID #	Level	PED 1001	PED 2001	PED 3001	PED 4001	PED 5001	PED 6001	Subtotal	FY 08 Total
TOTAL OVER 7500			$35,661.26	$68,378.46	$126,312.69	$139,845.04	$130,919.24	$36,189.17	$937,457.60	
TOTAL DEPOSIT			$864,375.67	$702,752.45	$924,268.28	$901,910.67	$1,081,497.53	$812,097.79	$5,436,702.39	
									TOTAL DEPOSITS FY 08	$10,188,829.45

Agenda Appendix

EXHIBIT “E”

GENERAL FUND REVENUES - ECONOMIC FORUM DECEMBER 1, 2008 FORECAST
ACTUAL: FY 2005 THROUGH FY 2008 AND FORECAST: FY 2009 THROUGH FY 2011
ECONOMIC FORUM'S FORECAST FOR FY 2009, FY 2010, AND FY 2011 APPROVED AT THE DECEMBER 1, 2008 MEETING

December 1, 2008 - 4:00 PM

	FY 2005 ACTUAL	% Change	FY 2006 ACTUAL	% Change	FY 2007 ACTUAL	% Change	FY 2008 ACTUAL (a)	% Change	DECEMBER 1, 2008 ECONOMIC FORUM FORECAST FY 2009	% Change	FY 2010	% Change	FY 2011	% Change
TAXES														
TOTAL PROPERTY TAXES	$16,449,908	-2.2%	$18,861,885	16.5%	$27,998,778	48.9%	$39,131,075	39.8%	$33,600,000	-14.1%	$34,700,000	3.3%	$36,600,000	5.5%
TOTAL SALES AND USE TAXES	$813,695,364	16.6%	$1,005,054,348	10.0%	$1,020,762,102	1.6%	$885,739,728	-3.4%	$830,951,000	-6.2%	$853,000,000	2.7%	$882,735,000	3.5%
TOTAL GAMING TAXES	$346,609,422	4.9%	$438,094,298	11.9%	$858,640,751	2.5%	$803,998,125	-6.4%	$715,272,700	-11.0%	$737,000,000	3.0%	$767,472,000	4.1%
CASINO-RELATED TAXES	$107,994,537	20.9%	$117,698,288	8.9%	$139,483,632	13.1%	$131,820,291	-5.5%	$135,927,000	3.1%	$142,000,000	4.5%	$147,256,000	3.7%
INSURANCE PREMIUM TAX	$215,948,979	11.1%	$238,827,886	10.6%	$260,080,159	8.9%	$257,397,984	-1.0%	$252,822,400	-1.8%	$259,000,000	2.4%	$263,438,000	1.7%
LIQUOR TAX (b)	$36,490,874	2.5%	$37,347,392	2.3%	$38,911,094	4.2%	$39,434,616	1.3%	$39,278,000	-0.4%	$39,900,000	1.6%	$40,810,000	2.3%
CIGARETTE TAX (b)	$113,282,864	-8.1%	$116,883,248	3.2%	$113,077,937	-3.4%	$110,418,288	-2.3%	$100,837,000	-8.7%	$101,329,000	0.5%	$102,339,000	1.0%
OTHER TOBACCO TAX (b)	$7,567,607	0.1%	$8,178,980	8.1%	$8,841,761	8.1%	$8,840,880	0.0%	$8,929,000	1.0%	$9,057,000	1.4%	$9,212,000	1.7%
INSURANCE PREMIUM TAX	$5,000,000		$5,000,000		$5,000,000		$5,000,000		$5,000,000		$5,400,000	8.0%	$5,800,000	7.4%
BUSINESS LICENSE FEE (BLF) (NOTE 1)	$14,488,315	22.2%	$21,897,055	51.2%	$19,697,653	-10.0%	$19,599,380	-0.5%	$19,883,000	1.4%	$18,617,000	-6.4%	$19,814,000	6.4%
BUSINESS LICENSE TAX (NOTE 2)	$1,297,353	-68.2%	$431,888	-66.7%	$238,468	-44.8%	$13,960	-94.1%	$10,000	-28.4%	$7,500	-25.0%	$5,600	-25.3%
MOBILE HOME PRIVILEGE TAX														
REAL PROPERTY TRANSFER TAX	$269,348,179	40.5%	$232,780,812	-13.6%	$257,432,283	10.6%	$263,902,126	2.5%	$264,203,000	0.1%	$266,725,000	1.0%	$268,733,000	0.8%
SLOT MACHINE TAX	$21,978,336	56.3%	$22,492,110	2.3%	$21,520,318	-4.3%	$20,688,287	-3.9%	$18,666,000	-9.8%	$17,974,000	-3.7%	$18,686,000	4.0%
SHORT TERM RENTAL TAX	$3,084,456	104.5%	$2,818,218	-8.6%	$3,028,987	7.5%	$3,142,868	3.8%	$3,216,000	2.4%	$3,278,000	1.9%	$3,313,000	1.1%
MEAL PREPARATION TAX	$168,730,974	68.0%	$184,641,508	9.4%	$181,374,861	-1.8%	$885,997,799	388.4%	$999,440,000	12.8%	$1,020,000,000	2.1%	$22,160,000	1.2%
TOTAL TAXES	$1,969,647,366	15.1%	$2,256,806,508	14.6%	$2,956,116,822	31.0%	$3,270,904,188	10.6%	$2,555,269,100	-21.9%	$2,615,796,500	2.4%	$1,657,522,600	-36.6%
LICENSES														
BUSINESS LICENSES	$31,356,621	7.4%	$32,536,529	3.8%	$33,708,513	3.6%	$34,509,714	2.4%	$35,228,000	2.1%	$36,967,000	4.9%	$38,766,000	4.9%
LIQUOR LICENSES	$969,880	0.9%	$958,974	-1.1%	$913,218	-4.8%	$489,056	-46.4%	$468,200	-4.3%	$441,000	-5.8%	$412,000	-6.6%
CABLE TV FRANCHISE FEES	$44,132,084	11.7%	$101,139,686	29.2%	$98,238,881	-2.9%	$106,988,282	1.3%	$96,580,000	-9.7%	$97,075,000	0.5%	$97,721,000	0.7%
OTHER LICENSES	$274,132	8.6%	$386,182	-10.2%	$248,124	3.2%	$217,403	-12.7%	$208,520	-7.6%	$213,643	5.7%	$275,000	6.1%
ANIMAL LICENSES	$38,200	-68.1%	$18,000	-3.7%	$18,300	1.7%	$18,200	2.9%	$16,000	-14.3%	$16,000		$16,000	
TOTAL NON-BUSINESS LICENSES	$2,638,035	-1.9%	$3,187,643	20.9%	$3,160,660	-0.2%	$2,884,716	-8.7%	$2,795,300	-3.1%	$2,791,580	-0.1%	$2,875,550	3.0%
TOTAL LICENSES	$3,382,447	9.2%	$3,945,779	16.6%	$3,643,724	-7.7%	$3,104,947	-14.8%	$3,019,820	-2.7%	$3,020,580	0.0%	$3,290,550	8.9%
	$101,853,399	10.7%	$139,738,853	37.2%	$134,128,323	-4.0%	$121,877,809	-9.1%	$118,386,200	-2.9%	$119,514,580	1.0%	$123,238,240	3.1%
FEES AND CHARGES														
TOTAL STATE/COUNTY FEES (NOTE 3)	$645,362	11.3%	$801,994	24.3%	$690,077	-14.0%	$678,552	-1.7%	$3,038,900	348.0%	$3,038,900	0.0%	$3,070,400	1.0%
CHARGES FOR SERVICES	$308,019	1.3%	$311,946	1.3%	$391,646	25.5%	$391,111	-0.1%	$201,200	-48.6%	$201,200	0.0%	$200,500	-0.3%
COURT ADMINISTRATIVE FEES	$1,612,866	2.6%	$1,386,728	-14.0%	$1,445,950	4.3%	$1,536,161	6.2%	$1,572,400	2.4%	$1,636,700	4.1%	$1,688,900	3.2%
LICENSE FEES	$378,039	7.7%	$1,370,887	262.6%	$862,643	-37.1%	$2,143,186	148.4%	$1,300,000	-39.3%	$1,300,000	0.0%	$688,000	-47.1%
TOTAL REAL ESTATE FEES					$9,000		$12,000	33.3%	$16,000	33.3%	$17,000	6.3%		
PLANNING FEES	$1,448,136	13.2%	$1,482,874	16.9%	$1,268,557	-14.4%	$887,188	-30.1%	$772,000	-13.0%	$765,000	-0.9%	$18,000	5.9%
ENGINEERING FEES	$28,793,014	4.5%	$36,858,712	28.0%	$39,606,850	7.5%	$26,782,180	0.0%	$28,000,000	4.6%	$28,700,000	2.5%	$780,550	1.8%
BUILDING PERMIT FEES	$122,519	11.6%	$690,076	463.2%	$586,862	-15.1%	$483,335	-17.6%	$450,000	-6.9%	$475,000	5.6%	$30,135,000	5.0%
PLAN CHECK FEES	$2,073,432	22.3%	$2,269,185	9.4%	$2,165,724	-4.6%	$2,272,980	4.9%	$1,700,000	-25.2%	$1,700,000		$475,000	
ZONING FEES	$208,303	-4.9%	$185,680	-10.9%	$218,388	17.6%	$329,335	50.8%	$225,200	-31.6%	$230,900	2.5%	$1,700,000	
OTHER FEES AND CHARGES	$464,159	65.2%	$1,266,520	182.9%	$2,631,518	107.7%	$4,400,636	67.2%	$3,952,700	-10.2%	$4,000,000	1.2%	$238,300	3.7%
TOTAL FEES AND CHARGES	$33,670,885	6.2%	$46,356,235	37.7%	$49,868,173	10.1%	$40,981,433	-17.8%	$38,299,000	-6.5%	$41,060,600	7.2%	$2,323,200	11.2%
USE OF MONEY AND PROPERTY													$38,386,600	3.0%
INTEREST INCOME (NOTE 4)	$2,109,078	-6.5%	$2,200,862	4.3%	$2,635,765	32.0%	$5,145,659	77.7%	$4,018,543	-21.9%	$1,839,900	-54.2%	$1,145,006	-37.8%
RENTS AND ROYALTIES	$10,312		$10,864	1.4%	$10,912	0.4%	$10,912		$10,912		$10,912		$9,186	-12.8%
TOTAL USE OF MONEY AND PROPERTY	$2,119,390	666.2%	$2,211,726	4.4%	$2,646,677	19.7%	$5,156,571	94.8%	$4,029,455	-21.9%	$1,850,812	-54.1%	$1,154,192	-37.6%
	$10,736,368	141.2%	$36,144,604	236.6%	$44,915,782	24.3%	$98,336,249	119.0%	$10,913,900	-88.9%	$13,543,277	24.1%	$132,078,200	875.2%
					$53,832,668	19.8%	$83,482,711	55.1%	$20,940,855	-74.9%	$21,394,177	2.2%	$133,214,381	522.7%
OTHER REVENUE														
SALE OF REAL/PERSONAL PROPERTY	$800,000		$800,000		$300,000		$300,000		$340,000		$340,000		$340,000	
MISC. CASH AND NON-CASH REVENUE	$1,428,335	58.6%	$3,934,336	175.4%	$5,031,931	27.9%	$2,383,309	-52.6%	$938,800	-60.6%	$944,000	0.6%	$953,500	0.9%
CONTRIBUTIONS FROM OTHER FUNDS	$9,624,189	-0.9%	$10,858,763	8.7%	$10,855,487	0.0%	$7,839,988	-31.7%	$7,144,500	-8.9%	$7,144,500	0.0%	$7,144,500	0.0%
PETROLEUM DEVELOPMENT REVENUES	$562,201	4.3%	$680,469	21.0%	$678,363	-0.3%		-100.0%						
MISC. NON-OPERATING REVENUES	$2,748,113	3.0%	$22,288,588	12.4%	$21,464,527	-3.7%	$49,178,534	108.2%	$26,000,000	-47.1%	$26,000,000	0.0%	$34,363,000	32.2%
TOTAL OTHER REVENUE	$15,162,838	3.3%	$37,562,156	18.2%	$38,860,707	3.5%	$59,401,702	52.9%	$34,383,300	-42.1%	$34,227,000	-0.5%	$43,261,000	26.4%
TOTAL GENERAL FUND REVENUE	$2,134,283,311	11.1%	$2,538,621,559	11.3%	$3,135,262,403	23.5%	$3,559,425,650	13.5%	$2,773,378,165	-22.1%	$2,849,209,672	2.7%	$2,023,151,321	-29.0%

EXHIBIT “F”

AFFIDAVIT OF BLAKE A. DOERR

STATE OF NEVADA)
)
County of Clark)

BLAKE A. DOERR, being first duly sworn, deposes and says as follows:

1. Blake A. Doerr is licensed to practice law in the state of Nevada and is employed with the State of Nevada as Deputy Attorney General;
2. Upon receiving the Plaintiffs request for written discovery, I immediately contacted the Plaintiff's attorney, Mr. Matthew Hoffer and requested an extension of time to produce the requested discovery because the Plaintiff's request was extremely large and because the requests had been served just thirty days prior to the close of discovery.
3. Shortly thereafter, Mr. Hoffer contacted me and requested that the Department of Taxation stipulate to a continuation of discovery and a continuation of the trial date because Mr. Shafer was going to need to have a surgical procedure which would prevent him from traveling to Nevada to take depositions.
4. Mr. Hoffer and I agreed to the extension for production of the discovery (until July 3, 2009) and the continuation of the discovery dates and the trial. This was memorialized in the Stipulation and Order for Extension of Time to Complete Discovery (First Request).
5. Prior to July 3, 2009, I contacted Mr. Hoffer and again requested an extension of time to produce the requested documents. Mr. Hoffer agreed and expressed his concern that he needed the opportunity to review all of the documents before conducting any depositions. I assured Mr. Hoffer that I would allow him every leniency in conducting the depositions, that I would consider the original notice of depositions as the timely notice, that I would produce additional witnesses for depositions if upon review of the documents, he determined that other witnesses may have relevant information because he had allowed me every leniency in providing the documents.

Attorney General's Office
555 E. Washington, Suite 3900
Las Vegas, NV 89101

6. Upon receiving the documents, Mr. Hoffer contacted me and communicated to me that he was disappointed with the extent of redaction that the documents contained.

7. Several phone calls took place between Mr. Hoffer and me before the Motion to Compel was filed.

8. In one of those conversations, Mr. Hoffer asked if it would be possible to enter into Protective Order whereby his firm would be allowed to review the unredacted documents but not provide them to his clients. After consultation with my client, I determined that the law does not provide for such a disclosure and advised Mr. Hoffer accordingly.

9. In another conversation, Mr. Hoffer and I discussed my position that I could not produce the unredacted documents without a court order. Mr. Hoffer expressed his concern about discovery concluding before he could thoroughly review the documents and take the appropriate depositions. Given the fact that Mr. Hoffer had been agreeable with me throughout these proceedings, I agreed to stipulate to continuing the close of discovery and trial date for the second time so that he could bring the instant Motion to Compel.

10. Since the original request for Production of Documents, Mr. Hoffer and I communicated regularly on the status of the production. The communications always ended up in an agreement and any request for extension on my behalf was always granted. In exchange, I expressed many times that I would do everything in my power to provide additional documents and provide for deposition of any relevant witnesses.

11. In the final conversation before this Motion was filed, Mr. Hoffer pointed out to me a document which contained the name of an employee of the Department which had been redacted. I agreed that the name should not have been redacted. Mr. Hoffer and I agreed that he would review the production thoroughly and that he would provide me with a list of what he believed should not have been redacted and I agreed to review his request and produce anything which was not privileged but had been inadvertently redacted. Mr. Hoffer never communicated with me after that time.

FURTHER AFFIANT SAYETH NAUGHT

Attorney General's Office
555 E. Washington, Suite 3900
Las Vegas, NV 89101

Dated this 19th Day of October, 2009.

Blake A. Doerr

SUBSCRIBED AND SWORN

To before me this 19th day of October, 2009.

KAREN K. PLETT
Notary Public State of Nevada
No. 07-1414-1
My appt. exp. Jan. 11, 2011

Notary Public

Attorney General's Office
555 E. Washington, Suite 2900
Las Vegas, NV 89101

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Co-Counsel for Plaintiffs
**Admitted Pro Hac Vice*

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DISTRICT COURT

CLARK COUNTY, NEVADA

DEJA VU SHOWGIRLS OF LAS VEGAS, L.L.C., d/b/a *Deja Vu Showgirls*, LITTLE DARLINGS OF LAS VEGAS, L.L.C., d/b/a *Little Darlings,* K-KEL, INC., d/b/a *Spearmint Rhino Gentlemen's Club,* OLYMPUS GARDEN, INC., d/b/a *Olympic Garden,* SHAC, L.L.C. d/b/a *Sapphire*, THE POWER COMPANY, INC., d/b/a *Crazy Horse Too Gentlemen's Club,* D. WESTWOOD, INC., d/b/a *Treasures*, and D.I. FOOD & BEVERAGE OF LAS VEGAS, LLC, d/b/a *Scores,*

Plaintiffs,

vs.

NEVADA DEPARTMENT OF TAXATION, NEVADA TAX COMMISSION, NEVADA STATE BOARD OF EXAMINERS, and MICHELLE JACOBS, in her Official Capacity Only,

Defendants.

Case No.: A533273
Dept. No.: IX

PLAINTIFFS' REPLY TO DEFENDANTS' OPPOSITION TO MOTION TO COMPEL DISCOVERY OF DEFENDANTS AND PLAINTIFFS' OPPOSITION TO DEFENDANTS' COUNTER MOTION TO STRIKE

BEFORE THE DISCOVERY COMMISSIONER

Date of Hearing: November 13, 2009
Time of Hearing: 9:30 a.m.

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MEMORANDUM OF POINTS AND AUTHORITIES

I. DEFENDANTS DID NOT ADEQUATELY RESPOND TO PLAINTIFFS' REQUEST FOR DOCUMENTS.

Initially, Plaintiffs wish to point out that Defendants' arguments regarding the timing of the discovery requests, and that some of the information requested by Plaintiffs was available online, are irrelevant to Plaintiffs' motion to compel Defendants to produce relevant responses to discovery requests.

The requests cited on pages 5-6 of Defendants' Opposition go to the heart of Plaintiffs' argument that the LET is unconstitutional, and most certainly are "reasonably calculated to lead to the discovery of admissible evidence." This was the reason for the discussion of Plaintiffs' constitutional challenges on pages 5-10 of the Motion to Compel, which Defendants seek to strike. Plaintiffs do not want the Discovery Commissioner to decide the merits of the case, but want the Discovery Commissioner to understand the reasons why Plaintiffs contend the LET is unconstitutional and how the requested discovery is not only relevant, but central to that argument.

In order to demonstrate that the LET is unconstitutionally applied to establishments that present adult entertainment, Plaintiffs have to be able to demonstrate what types of businesses are paying what portion of the LET. The very nature of Plaintiffs' argument requires that information to be disclosed by the Defendants.

If there is some way to avoid disclosing the actual reports and returns, but yet allow Plaintiffs to see which types of entities are paying which portion of the LET, Plaintiffs would not require to see actual returns. Further, Plaintiffs do not require information such as actual general tax returns, trade secrets, taxpayer identification numbers, or actual amounts of moneys received by individual businesses. In order to show that the LET is, in fact, disproportionately

paid by constitutionally protected adult entertainment businesses, this information must be disclosed by the Defendants. Merely un-redacting some of the charts that contain this information may serve this purpose.

Defendants make the ridiculous assertion that "many of the documents requested were available from Plaintiffs themselves, as there are eight gentlemen's club Plaintiffs who should have filed LET tax returns for many years. While the Department is prohibited from divulging taxpayer information, the Plaintiffs are free to share their LET tax information with each other." Opposition, p. 6. Of course, the Plaintiffs know how much LET they paid over the years, and have provided that information to their counsel, why would they seek that information from Defendants? Once again, the Defendants are missing the point. Plaintiffs wish to show that they are not the only adult entertainment establishments paying the LET, and that the majority of the non-gaming LET is being paid by those adult entertainment establishments in violation of the Constitution.

Further, it is absurd for the Department to argue that because Chapter 368A does not contain a provision that discusses a protective order, that one cannot be entered into in this case. If every protective order had to be specifically provided for in a statute or regulation, very little, if any, information could ever be discoverable in any case involving sensitive information. It is not as if Plaintiffs are requesting individual social security numbers, residential or family information, or trade secrets, all of which can be discoverable under protective orders.

A. <u>IT IS POSSIBLE FOR DEFENDANTS TO PROVIDE THE INFORMATION, PLAINTIFFS SEEK.</u>

Defendants try to use *Tidvall v. Eighth Judicial District Court*, 91 Nev. 520, 525, 539 P.2d 456, 459 (1975) to bolster their contention that they are statutorily prohibited from

revealing the requested information, but fail to acknowledge that the statute in that case did not provide for any exceptions, unlike Chapter 368A. *See* Plaintiffs' Motion to Compel, p. 15-17. In fact, the Defendants acknowledge and cite to the exceptions on page 8-9 of their Opposition, but claim that the "statute is not a privilege statute which the Department may invoke, or the taxpayer may waive; it is a statutory prohibition which cannot be violated." That is all well and good, but the LET contains express exceptions, which Plaintiffs contend apply to this particular case. Motion to Compel, pp. 16-18. As Plaintiffs have already established, these lawsuits fall under the exception in NRS 368A.180(2)(a), as they are actions pursuant to the provisions of Chapter 368A, and the documents are directly involved in the action or proceeding. *See* discussion in Section II, *infra*.

Further, the exception which Defendants actually rely on in their Privilege Log (Def. Ex. A), NRS 368A.180(2)(c), instead of the general privilege, does not limit Defendants in the manner they claim. Opposition, p. 8. Defendants certainly could prepare statistical information showing what ***types*** of businesses pay how much of the LET without identifying the actual individual (or even really the business name) or the documents used in obtaining the statistical information. That is the exactly the type of disclosure the statute appears to exclude from the general privilege.

Defendants' reliance on NRS 372.750 (Opposition, p. 9), is inapplicable as it involves sales and use taxes, and not taxes on constitutionally protected expression. The United States Supreme Court has upheld a "***generally applicable*** sales and use tax," which "applies neutrally to ***all*** retail sales of tangible personal property," finding that:

> We have here something quite different, for example, from a tax on the income of one who engages in religious activities or a tax on property used or employed in connection with those activities . . . a preacher is not 'free from all financial burdens of government,

> including taxes on income or property' and, 'like other citizens, may be subject to *general* taxation.

Jimmy Swaggart Ministries v. Board of Equalization, 493 U.S. 378, 386-387, 389 (1990) (emphasis in original). The LET is not a generally applicable sales and use tax such as the kind of tax subject to NRS 372.750, it is a ***limited*** tax which is solely restricted to expression protected by the First Amendment.

Additionally, Defendants' citation to the general federal taxpayer confidentiality statute is not persuasive. Certainly, there is a general presumption of confidentiality of taxpayer information. However, Defendants would have this Commissioner believe that not one single document containing taxpayer information has ever been used in any type of litigation in the history of this country. That is the purpose of protective orders. If the information is relevant to the proceeding, which it certainly is here, it should be disclosed, and if confidentiality is an issue, an appropriate protective order will maintain the confidentiality of the information contained therein. Plaintiffs are more than willing to stipulate to the entry of such a protective order.

Defendants attempt to rely on NRS 49.025 to justify their failure to fully respond to discovery requests. Opposition, pp. 10-11. As Plaintiffs mentioned in their initial motion, under NRS 49.025, a "public officer or agency to whom a return or report is required by law to be made has a privilege to refuse to disclose the return or report ***if the law requiring it to be made so provides***." Here, the law requiring the report to be made is Chapter 368A, which does provide that certain documents are privileged and confidential, but also contains specific exceptions under which the information requested could have been disclosed. *See* NRS 368A.180(a) and (c).

Regardless, Defendants only asserted the privilege under NRS 49.025 in regards to the documents disclosed in Exhibits L and S, which contained the LET Tax received from 2004-2008 and the LET tax information for LCB, respectively. Therefore, it cannot be asserted for the documents excluded or redacted in Exhibits A, E, G, H, I, J, K, M, N, R, T, EE, FF and II.

The discussion of the general attorney-client privileges (Opposition, p. 11-12) is misplaced, as Plaintiffs are not seeking confidential communications between the Department and Commission, and the Attorneys General who represent them. Nor did Plaintiffs object to the documents excluded or redacted pursuant to attorney-client privilege, which was only asserted regarding the documents disclosed in Exhibits Y, EE, and FF, which contained public notices. These privileges also cannot be asserted for the documents listed above.

B. PLAINTIFFS ARE NOT REQUESTING THE DEFENDANTS TO ACT OUTSIDE THEIR STATUTES AND/OR REGULATIONS.

Defendants' argument on page 13-14 of their Opposition, regarding the threat of repercussions to Plaintiffs is completely inappropriate to the instant motion regarding discovery and should be struck in its entirety. Defendants claim (Opposition, p. 14) that they made an effort to be accommodating, which is laughable. Defendants redacted any information that could possibly prove Plaintiffs' contention that the LET is aimed unconstitutionally at adult entertainment establishments, who pay the majority of the non-gaming portion of the LET. At the very least, Defendants could have provided the type of business without even giving the specific taxypayer identity, and could have given the yearly amounts of LET paid by each business entity without disclosing actual tax documents, but they did not even do that.

C. THE DEFENDANTS' DISCOVERY RESPONSES DO NOT COMPLY WITH THE NEVADA RULES OF CIVIL PROCEDURE

The Defendants argue on pages 14 - 17 of their Opposition that Plaintiffs' discovery requests do not comport with NRCP 26(b). These arguments are not applicable to the issues addressed by the instant Motion to Compel.

1. The information Plaintiffs seek is not obtainable from another source

Defendants claim that "a considerable amount of the information requested by the Plaintiffs is available from the Internet, from the Legislative Counsel Bureau, and from the Plaintiffs themselves." Opposition, p. 15. However, the information that is available online is not the information that Plaintiffs wish to compel Defendants to provide. Had information regarding which businesses are paying what portion of the LET been available online, Plaintiffs certainly could have obtained it. Defendants, however, spent a considerable amount of their Opposition arguing that they cannot provide ***ANY*** information on the businesses paying the LET, including simply disclosing what ***type*** of businesses are paying the LET. The breakdown of which types of businesses are paying which portion of the non-gaming LET is not something that can be obtained online.

Again, Defendants' argument that the Plaintiffs could have shared the information regarding their payment of the LET to satisfy their own discovery requests is absurd. Of course, the Plaintiffs' counsel are aware of how much LET each Plaintiff is paying, and their seating capacities. Plaintiffs wish to know how many other businesses are paying the non-gaming portions of the LET, whether or not those businesses present adult entertainment, and which businesses have been exempt from paying the LET. That information obviously cannot

be obtained from the Plaintiffs themselves or from the internet, and Defendants' argument to the contrary should be completely disregarded.

2. The timing of discovery is irrelevant.

Defendants argue that the timing of Plaintiffs' discovery requests somehow excuses their failure to disclose relevant information. Opposition, p. 2. If there was a problem with the timing of the discovery requests, Defendants should have raised that issue when they were served with the requests and not in response to a Motion to Compel. Further, this case has not been without action the entire two and a half years it has been pending. There are three motions pending before the Court, Defendants' motion to dismiss and motion for summary judgment, both of which had the potential to completely dispose of this case, as well as Plaintiffs' motion for preliminary injunction. The timing of the requests have nothing to do with Defendants' refusal to disclose pertinent un-redacted documents, and if Defendants needed more time to fully respond, they only had to ask, as Plaintiffs have obviously been accommodating in the past.

3. Plaintiffs' requests are not unduly burdensome or expensive and are completely necessary to the case.

Next, Defendants allege that the information Plaintiffs have requested is not relevant to the issue of whether the statute is constitutional. Once again, Defendants miss the point. Plaintiffs assert that the LET is facially unconstitutional (and unconstitutional as applied to Plaintiffs) not only because it impermissibly taxes protected expression, but because it is aimed mainly at adult entertainment establishments, by virtue of the exceptions and exemptions contained in Chapter 368A. Plaintiffs set forth their constitutional arguments in their Motion to Compel to assist the Discovery Commissioner in understanding how the requested information is necessary to this case, and will not re-iterate those arguments here. *See* Motion to Compel, pp.

5-10. Review of those arguments shows that obtaining information regarding the exact types of businesses paying the LET, just how much of the overall LET those businesses are paying, which types of businesses have been exempted from paying the LET, and whether the 2005 amendments to the LET were targeted at adult entertainment establishments, are necessary to Plaintiffs' facial ***and*** as applied challenges.

Defendants then attempt to claim that some of their exhibits provide the information requested by the Plaintiffs. Opposition, p. 17. Review of the cited exhibits demonstrates that this is not the case. Defendants' Exhibit H (Exhibit C to their Opposition) is completely redacted except for the categories, therefore Plaintiffs cannot see what portion each business pays of the LET, or if it was simply just a one-time event, as the headings indicate that the list is of a "Business/Event." Furthermore, that information was compiled in March 2005, which is ***before*** the amendments were made to the LET to target adult entertainment clubs, and not any other tax years. Defendants' Exhibit L (Exhibit D to their Opposition) is completely redacted except for the total cumulative amount of LET paid by all businesses for that year. That information is useless unless Plaintiffs are able to determine what types of businesses paid what portion of that total amount. Additionally, Exhibit L is missing data for 2003, July-December 2004, January-June 2005, and 2008, something that Defendants did not address. Finally, Defendants claim that Exhibit O (Exhibit E to their Opposition) provided the information Plaintiffs requested, when that is not true. Exhibit O contained an analysis of all types of taxes paid to the State of Nevada from 2005 through 2008 (as well as a forecast for future years), and the only information regarding the LET is simply the total amount of LET that was paid to the State in that particular year, and the percent of increase/decrease from the prior years. That is completely irrelevant to the issue of what portion of the LET was paid by

what businesses, and does not include any information for 2003 or 2004. It does not matter that Defendants have disclosed to Plaintiffs the total amount of LET paid in any given year, or that Plaintiffs know how much LET they each paid, their constitutional challenges involve just what percent of the LET is paid by adult entertainment establishments for each tax year, and what types of establishments have been exempt from paying the LET.

4. Defendants did not respond to requests for information for all years

Defendants respond to Plaintiffs' contention that information was not provided for all of the tax years (2003 – 2008) by making this odd assertion: "The requests for production were forwarded to the Department, and although it may appear that much of the information provided was related to 2004, this is the information that was provided." Opposition, p. 18. The list of documents produced by Defendants set forth on page 18, lines 4-16, of their Opposition does not provide the information that appears to be missing from the disclosures discussed in Plaintiffs' motion (p. 14). Regardless, the majority of those documents Defendants claim are responsive for the other tax years are redacted to the point of non-responsiveness.

There was more than one discussion between Mr. Doerr and Mr. Hoffer, and several emails. There was more discussed than just the one redacted signature as evidenced by Mr. Hoffer's affidavit and the attached email chain. *See* Exhibit 1 hereto. Regardless, the topic of conversations and/or emails has no bearing on the fact that the Defendants failed to produce documents for every tax year requested. If, for some reason, documents existed for only one or two tax years, and were not prepared for other tax years, that explanation could have been included in Defendants' discovery responses.

D. DEFENDANTS FAILED TO OPPOSE PLAINTIFFS' ARGUMENT REGARDING SEVERAL DISCOVERY DEFICIENCIES.

On page 13 of their Motion to Compel, Plaintiffs stated that Defendants failed to provide information and/or documents regarding entities, persons, businesses, or classes that have requested to be exempt from the LET, and that Defendants referenced a non-existent Exhibit AAA. Defendants did not address these assertions in their Opposition, therefore an order should be issued compelling Defendants to provide that information and/or documents. Further, there should be no problem disclosing which entities were granted exemptions from the LET as those entities did not submit any reports and/or returns regarding the LET, and could not be covered under the provisions (erroneously) relied upon by Defendants.

II. DEFENDANTS DID NOT FULLY RESPOND TO PLAINTIFFS' INTERROGATORIES

Defendants assert the same statutes, NRS 368A.180 and NRS 49.025, to support their refusal to provide the relevant answers to Plaintiffs' interrogatories. Opposition, p. 19-23. Further, Defendants summarily claim that the exceptions specifically provided for in NRS 368A.180(2)(a) are inapplicable to this case.

However, the cases relied upon by the Defendants only serve to support Plaintiffs' position. In *Shell Petroleum, Inc. v. United States*, 47 Fed.Cl. 812 (2000), the Court examined the interpretation of the term "directly related" under 26 U.S.C. § 6103, noting that "the statute itself does not require that the taxpayer requesting discovery be 'directly related' to the taxpayer whose returns are being sought." *Id.* at 816.

The Court in *Shell* recognized that in order to interpret the meaning of "directly related," the intent of the legislature in enacting the statute must be examined, and held that § 6103 was enacted to prevent "use of information contained in tax returns for purposes of political

advantage and intimidation." *Id.* at 817-818. Further, the Court found that the exception was enacted to permit the development of "evidence pertaining directly to the tax liability of a taxpayer." *Id.* at 818.

In applying its definition of the exception, the Court held that *in camera* disclosure of the information was permitted to determine its applicability to the case:

> There is no evidence whatsoever that the Plaintiff is seeking the information for political gain. Rather, it appears that the Plaintiff is seeking third party taxpayer information that may assist it in resolving an issue in this case. Hence, disclosure of the Section 43 certificates to the Plaintiff would not interfere with the animating purpose of the statute: to prevent misconduct in the political realm.

Shell, 47 Fed.Cl. at 818. The other case cited by Defendants also acknowledges this interpretation, holding that the "tax return's contents must be germane to an element of the claim, not simply be used to impeach a witness' credibility, and must apply to the specific taxpayer's liability, not analogous third parties'. We find *Shell Petroleum*'s reasoning persuasive and agree that these criteria are appropriate." *United States v. The Northern Trust Company*, 210 F.Supp.2d 955, 957-958 (N.D.Ill 2001).

In the case at bar, the breakdown of what types of businesses are paying what portion of the LET for each tax year, is not only germane to an element of Plaintiffs' claim, but goes right to the heart of Plaintiffs' contention that the LET is an unconstitutional tax, in that Plaintiffs are paying the majority of the non-gaming portion of the LET, and that the exemptions contained in Chapter 368A render the LET unconstitutional for being targeted specifically at the content of constitutionally protected entertainment. Whether or not Plaintiffs are liable to pay the LET is at issue here and the information sought is directly applicable. Plaintiffs are not seeking this information to impeach a witness or for political gain, they simply want to demonstrate that they are not liable to pay an unconstitutional tax.

Further, *Shell* supports Plaintiffs' offer to stipulate to the entry of a protective order that would preclude the individual Plaintiffs from seeing the tax documents of their theoretical competitors, which Defendants claim is not an option (Opposition, pp. 6-7). In response to the concerns of one of the companies whose tax documents were going to be reviewed by the Court and possibly disclosed to a competitor, the Court in *Shell* held, "there is no reason why, at least in theory, disclosure could not be limited under seal or protective order to the Plaintiff's counsel." *Id.* at 820.

The Defendants next claim that the Nevada exception is more narrow and requires ***the third party*** to be directly "involved" to overcome the confidentiality and privilege provision. Opposition, p. 22. The exception actually states that no confidentiality issue or privilege exists if the "***testimony or the records, files or information, or the facts shown thereby***, are directly involved in the action or proceeding." NRS 368A.180(2)(a) (emphasis added). The ***taxpayer*** does not have to be "directly involved," but rather the information, or - - more crucial to this claim - - the facts shown thereby, have to be directly involved in the action. Plaintiffs have demonstrated why they are seeking this information and how it is central to their claims, and clearly falls under this exception.

Defendants' claim that Plaintiffs relied on *Tidvall* to show that the banking information is somehow more confidential than taxpayer information is not entirely accurate. Opposition, pp. 22-23. Plaintiffs cited *Tidvall* to show that because there was an absolute privilege without any exceptions, there was no choice regarding the disclosure, which is different than Chapter 368A, which has several exceptions contained within its confidentiality provision. Defendants fail to acknowledge that the privilege contained in Chapter 368A is not absolute as it was in *Tidvall* because the Legislature provided for these exceptions in Chapter 368A which apply to this

lawsuit. Plaintiffs are not looking to view the general tax returns for each business paying the LET, nor confidential business information, they only seek to know how much LET an establishment has paid each tax year so it can be compared to the total LET paid to the State of Nevada, and what type of business the entity conducts to see if it presents sexually oriented entertainment. This information that Plaintiffs seek falls under both the "directly involved" exception in NRS 368A.180(a) and the statistical information exception in NRS 368A.180(c).

Finally, if Defendants are going to persist in claiming that the title of "live entertainment tax examiner" does not exist within the Department of Taxation (Opposition, p. 20), perhaps a change needs to be made to the LET forms (attached as Exhibit 6 to Plaintiffs' Motion to Compel), which clearly identify such an individual by that specific title.

III. SANCTIONS ARE APPROPRIATE

Plaintiffs rely on their request for sanctions and attorneys' fees in their Motion to Compel (p. 21-22). However, Defendants' accusation that Plaintiffs did not meet and confer in good faith prior to the filing of this Motion to Compel is inaccurate. Several telephonic conferences were held and emails were exchanged regarding this Motion, as set forth in the Affidavit of Matthew J. Hoffer, attached hereto as Exhibit 1. Further, Defendants refused to produce information that was clearly subject to the exceptions contained in NRS 368A.180(2)(a) and (c), despite being notified by Plaintiffs of those exceptions.

IV. DEFENDANTS MISCONSTRUE PLAINTIFFS' MOTION TO STRIKE.

Defendants completely misrepresented Plaintiffs' motion to strike, claiming that Plaintiffs are seeking to strike Exhibits A and B to the Department's Opposition to Plaintiffs' Motion for Preliminary Injunction. Opposition, pp. 25-26. Contrary to Defendants' assertion,

Plaintiffs requested that if the Defendants are not compelled to produce the disputed information, the Court should "strike those ***portions of Defendants' Opposition*** to Plaintiffs' Motion for Preliminary injunction ***relying on***" Exhibits A and B thereto. Motion to Compel, p. 21. Plaintiffs did not request the Court to strike those ***exhibits***, or the information contained in those exhibits, they simply wanted the data that the State used to compile the documents contained in those exhibits. If, however, the Defendants were not going to produce that data, and this Court was not going to order the Defendants to produce the requested documents, Plaintiffs felt that legal precedent and fairness dictated that the Defendants should not be able to make an argument based on documents that they refuse to substantiate.

V. DEFENDANTS' MOTION TO STRIKE IS UNNECESSARY.

Obviously, the Plaintiffs did not include the discussion regarding their constitutional challenges to the LET in their Motion to Compel in order for the Discovery Commissioner to decide the ***merits*** of those arguments. Defendants' assertion to the contrary is absurd. Since the Discovery Commissioner has not seen any of the various pleadings that have been submitted in this litigation since its inception (motions to dismiss, for summary judgment, and for preliminary injunction), Plaintiffs wished to provide a summary of their constitutional challenge so that the Discovery Commissioner can better understand why the Plaintiffs are entitled to the information they seek by way of their Motion to Compel. Plaintiffs request that Defendants' motion to strike be denied as Plaintiffs did not offer that briefing for the purpose asserted by the Defendants, and most certainly were not seeking a decision on the merits from the Discovery Commissioner.

VI. CONCLUSION

For the above reasons, and the reasons contained in their initial Motion to Compel, Plaintiffs seek from this Honorable Court an order:

(1) Compelling the Department to immediately submit to the Plaintiffs, within ten (10) days of the entry of this Court's order, the Department's answers to the challenge interrogatories, and to produce within that same time all the un-redacted items and documents requested, all without objection;

(2) Denying Defendants' motion to strike page 5 line 12 through page 10, line 7 of Plaintiffs' Memorandum of Points and Authorities in support of their Motion to Compel;

(3) Sanctioning the Department for failing to comply with discovery, by awarding Plaintiffs their costs and attorney fees for having filed this motion; and, in addition and alternatively,

///

///

///

(4) Striking the portion of Defendants' Opposition to Plaintiffs' Motion for Preliminary Injunction that relies upon information the Department now refuses to produce (attached to the Department's Opposition as Exhibits A and B)

DATED this 5th day of November, 2009.

Respectfully submitted,

BY: _____

WILLIAM H. BROWN, ESQ.
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SULLIVAN BROWN
330 South Third Street, Ste. 860
Las Vegas, NV 89101
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3800 Capital City Blvd., Suite #2
Lansing, Michigan 48906-2110
Co-Counsel for Plaintiffs
**Admitted Pro Hac Vice*

CERTIFICATE OF SERVICE

I hereby certify that on the 5th day of November, 2009, the foregoing **PLAINTIFFS' REPLY TO DEFENDANTS' OPPOSITION TO MOTION TO COMPEL DISCOVERY OF DEFENDANTS AND PLAINTIFFS' OPPOSITION TO DEFENDANTS' COUNTER MOTION TO STRIKE** was served on the party(ies) by faxing a copy and mailing of same in the United States mail, postage prepaid thereon, addressed as follows:

Catherine Cortez Masto
Attorney General
David J. Pope
Sr. Deputy Attorney General
Blake A. Doerr
Deputy Attorney General
555 E. Washington Ave., Suite 3900
Las Vegas, NV 89101
Facsimile: (702) 486-3420
Attorneys for the Nevada Defendants

an employee of SULLIVAN BROWN

EXHIBIT 1

AFFIDAVIT OF MATTHEW J. HOFFER

STATE OF MICHIGAN)
) ss.
COUNTY OF CLINTON)

MATTHEW J. HOFFER, being first duly sworn, deposes and says as follows:

1. Attached as Exhibit A hereto is a true and accurate copy of the email chain exchanged between Blake Doerr, counsel for Defendants in this action, and myself, as referenced in my affidavit of September 30, 2009.

2. On or about September 1, 2009, I had a telephone conversation with Mr. Doerr regarding Plaintiffs' impending motion to compel discovery. During that conversation I identified two curious redactions in Defendants' discovery disclosures. The redactions identified were the name of the "Revenue Officer III" in documents DV000195 and DV000198. I asked why this information was redacted, as it might identify persons with knowledge of information relevant to Plaintiffs' claim and whom Plaintiffs might wish to depose. Mr. Doerr could not recall at that time specifically why that information was redacted.

3. Mr. Doerr and I then generally agreed that to the extent that I could identify similar redactions, we would attempt to resolve those redactions. However, based on my subsequent review of the documents, I did not identify similar redactions, where the name of a person unmistakably identified as an agent or employee of the Defendants was redacted, so I did not pursue the matter further.

4. It was never discussed that resolving these few minor redactions would in any way delay or prevent the filing of Plaintiffs' impending motion to compel. To the contrary, it was made clear to me by Mr. Doerr that, absent a court order, the Defendants would not be

producing any information regarding other taxpayers, even including aggregate/statistical information regarding taxes paid. This was my understanding of Mr. Doerr's email of August 21, 2009 (attached as Exhibit A).

5. It is my understanding that the last paragraph on page 4 of Defendants' Opposition is regarding a conversation between Mr. Doerr and I. During that conversation I explained to Mr. Doerr that Plaintiffs were willing to enter into a protective order to shield the requested taxpayer information from the public and from our clients. This is a sentiment that I also expressed in my emails of August 19, 2009, and August 21, 2009 (attached as Exhibit A). It is in this context that I expressed my understanding of the Defendants' concern regarding the confidentiality of taxpayer information. I further expressed that I believed that an appropriately fashioned protective order could ***resolve*** the Defendants' concern. To the extent that Defendants' Opposition tries to characterize my efforts to resolve the discovery dispute by use of a protective order as expressing merit in Defendants' position that the requested records are privileged absolutely, that characterization is completely false.

FURTHER AFFIANT SAYETH NAUGHT.

DATED this 4th day of November, 2009.

MATTHEW J. HOFFER

SUBSRIBED and SWORN to before me this 4TH day of November, 2009.

Barbara S. Adkins, Notary Public
Clinton County Michigan
My Commission Expires: 1/31/2013

EXHIBIT 1a

Matthew J. Hoffer

From: "Blake A. Doerr" <BDoerr@ag.nv.gov>
To: "Matthew J. Hoffer" <mhoffer@acd.net>
Cc: "David J. Pope" <DPope@ag.nv.gov>
Sent: Friday, August 21, 2009 4:13 PM
Subject: RE: DV Showgirls et al. v. Nev. Dept. Taxation et al.

Matt,
I have appreciated your cooperation through this matter and it is my hope that you believe that I am cooperating with you. When we began accumulating the documents, I believed that we would be able to provide you with the names of the LET taxpayers and with aggregate/statistical information. However, I was certain that we could not provide you (as privileged) with any specific information as to what a specific Taxpayer paid in a specific period—such as the requested returns. I apologize if some conversation I had with you may have led you to believe something else. In reviewing the privilege statutes, however, I changed my opinion to believe that I could not provide you with any names of Taxpayers. In fact, disclosure of confidential taxpayer information, including names, is a specifically enumerated crime.
I discussed your proposal regarding a protective order with my colleagues and we are of the opinion that neither we, nor our client has any authority to grant such a request.
That is why I told you that the only way that we can produce the privileged information to you is through a court order. I also pointed out to you that there are some local rules which you may not be familiar with that you must follow in seeking such an order—I would again direct you to your local counsel if you want to proceed with seeking such an order.
We have been willing to accommodate your discovery and scheduling requests and you have in turn provided us with similar accommodations and we will continue to do so.
I look forward to hearing from you regarding the depositions.
Blake

From: Matthew J. Hoffer [mailto:mhoffer@acd.net]
Sent: Friday, August 21, 2009 6:13 AM
To: Blake A. Doerr
Cc: Andrea Pritzlaff; Brad Shafer
Subject: Re: DV Showgirls et al. v. Nev. Dept. Taxation et al.

Blake,

Yes, the depositions are then cancelled.

Am I correct in taking your correspondence below to mean that your understanding is that an appropriately fashioned protective order (screening the information from the public and our client) would not satisfy the Department's obligations under the statutes you reference?

It is unfortunate that neither side identified or raised this issue earlier.

I will get back to you shortly regarding the dates.

Thank you for your attention.

Regards,

Matt

> ----- Original Message -----
> **From:** Blake A. Doerr
> **To:** Matthew J. Hoffer
> **Cc:** David J. Pope
> **Sent:** Thursday, August 20, 2009 7:01 PM
> **Subject:** RE: DV Showgirls et al. v. Nev. Dept. Taxation et al.

Matt,
I provided you with the Nevada Statutes containing the privileges that we have asserted in the production of documents. Please understand that the redacted documents which were produced are not what I am "refusing" to provide, rather it is what I believe the statutes deem to be privileged and/or confidential. The same statutes do not allow the Department's employees to discuss information which they have learned from the files of the Department. So to the extent that any testimony would relate to the name of a specific taxpayer and any amounts paid by a specific taxpayer, it is our intention to assert the same privileges at deposition.
Absent a court order, we believe we are required to assert the privileges. If you wish to seek to compel the production of the documents, you may want to ask your local counsel on the local procedures for doing this.
We are agreeable to moving the dates but all of us are only available on the 23 and 24—our combined availability the rest of those dates is scattered—and I have a hearing in Las Vegas on the 28 and 29—which would only give us one day on tbe 30 and I am afraid we would not finish. Can you confirm that you do not want to have the depositions as currently scheduled so that I can tell everyone and cancel my travel arrangements?
Thanks,
Blake

From: Matthew J. Hoffer [mailto:mhoffer@acd.net]
Sent: Wednesday, August 19, 2009 9:58 AM
To: Blake A. Doerr
Cc: Andrea Pritzlaff; Brad Shafer
Subject: DV Showgirls et al. v. Nev. Dept. Taxation et al.

Blake,

I have received your responses to our discovery requests.

From the materials I have reviewed so far, it appears that the Department refuses to produce specific information regarding the payors of the LET and the amounts that they have paid.

At their depositions, will the deponents also be refusing to provide this same information or answer questions specifically regarding the amounts paid and identity of the payors of the LET.

Is it possible that the Department will produce this information subject to an appropriate protective order shielding the documents from disclosure either to the public or our clients.
All such documents could then be filed under seal.

Regardless, it looks as though we will need to postpone the depositions once again. Is it possible these could take place September 22-25th or 29-30th?

Please respond at your earliest opportunity, especially regarding the depositions.

Regards,

Matt Hoffer

Matthew J. Hoffer
Attorney at Law
Shafer & Associates, P.C.
3800 Capital City Boulevard, Suite 2

Lansing, MI 48906

DISTRICT COURT
CLARK COUNTY, NEVADA

Other Civil Filing	COURT MINUTES	November 13, 2009

06A533273 Little Darlings Of Las Vegas LLC, K-Kel Inc, et al
vs
Nevada Dept Of Taxation, Olympus Garden Inc, et al

November 13, 2009	**9:30 AM**	**All Pending Motions**	**Plaintiffs' Motion to Compel Discovery of Defendants.....Defendants' Opposition to Plaintiffs' Motion to Compel Discovery of Defendants and Counter Motion to Strike**

HEARD BY: Bulla, Bonnie **COURTROOM:** RJC Level 5 Hearing Room

COURT CLERK: Jennifer Lott; Sylvia Courtney
RECORDER:
REPORTER:

PARTIES PRESENT:

Brown, William H.	Attorney for Plaintiffs
Doerr, Blake A.	Attorney for Defendants Michelle Jacobs, Nevada State Board of Examiners & Nevada Tax Commission
Pope, David J.	Attorney for Defendants Michelle Jacobs, Nevada State Board of Examiners & Nevada Tax Commission

JOURNAL ENTRIES

- Ms. Vivian Roskowsky, Esquire, present for State of Nevada Defts and B. Shafer, Esquire, appearing pro hac vice for Plaintiffs. Colloquy re: categories of information maintained by State and how best to comply with request for discovery. Commissioner noted there is no undue burden upon the State in producing the information requested by identifying the percentage of LET tax paid by adult entertainment groups; taxpayer plaintiffs will be required to sign authorizations for release of tax records in order to protect other information and the State. Defts' counsel withdrew Defts' Counter Motion to Strike. COMMISSIONER RECOMMENDED, Pltfs' Motion to Compel Discovery GRANTED IN PART; Mr. Brown prepare Recommendation and identify specific Interrogatories to which Defts must respond in producing the information requested in the format as discussed at the hearing; Defts' counsel approve form and content; parties to arrange conference call if necessary.

ORIGINAL

FILED
DEC - 1 2009
CLERK OF COURT

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DISTRICT COURT

CLARK COUNTY, NEVADA

DÉJÀ VU SHOWGIRLS OF LAS VEGAS, LLC, et al.,

Plaintiff/s,

vs.

NEVADA DEPARTMENT OF TAXATION NEVADA TAX COMMISSION, et al.,

Defendant/s.

CASE NO.: A533273
DEPT NO.: IX

SECOND AMENDED ORDER SETTING CIVIL NON-JURY TRIAL

IT IS HEREBY ORDERED THAT:

A. The above-entitled case is set to be tried on a FIVE-week stack to begin, **TUESDAY, MAY 24, 2010** at **10:30 AM.**

B. A Pre-Trial Conference with the designated attorney and/or parties in proper person will be held **ONLY UPON REQUEST.**

C. A calendar call will be held on **MAY 13, 2010** at **9:15 AM.**

Parties must have the following ready for trial:

(1) All exhibits marked by counsel for identification purposes;

(2) Typed exhibit lists with all stipulated exhibits marked as admitted;

(3) Original depositions;

(4) A list of equipment needed for trial; and

(5) Courtesy copies of legal briefs on trial issues.

06A533273
549239

D. Pre-Trial Memorandums must be filed by **MAY 14, 2010** with courtesy copy delivered to Dept. IX. All parties, (Attorneys and parties in proper person) **MUST** comply with **ALL REQUIREMENTS** of **EDCR 2.67**.

E. All discovery deadlines, deadlines for filing dispositive motions and motion to amend the pleadings or add parties are controlled by the previously issued Scheduling Order.

F. All other pre-trial motions, including motions in Limine, must be in writing and set for hearing no later than **MAY 11, 2010.**

G. Any pre-trial motion **MUST** be filed by 5:00 PM on **APRIL 12, 2010**;

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CLERK OF THE COURT

JENNIFER P. TOGLIATTI
DISTRICT JUDGE
DEPARTMENT NINE
LAS VEGAS, NEVADA 89155

Oppositions are to be filed by 5:00 PM **APRIL 22, 2010**; Replies thereto are to be filed by 5:00 PM **MAY 4, 2010**. **Orders shortening time will not be signed except in extreme emergencies. (Request for trial continuance is not an emergency.)**

H. **Failure of the designated trial attorney or any party appearing in proper person to appear for any court appearances or to comply with this Order shall result in any of the following: (1) dismissal of the action; (2) default judgment; (3) monetary sanctions; (4) vacation of trial date; and/or any other appropriate remedy or sanction.**

Counsel is required to advise the Court immediately when the case settles or is otherwise resolved prior to trial. **A stipulation which terminates a case by dismissal must also indicate whether a Scheduling Order has been filed and, if a trial date has been set, the date of that trial. A copy should be given to Chambers.**

DATED: this 9th day of October, 2009

Jennifer P. Togliatti

JENNIFER P. TOGLIATTI
DISTRICT JUDGE

CERTIFICATE OF MAILING

I hereby certify that on date filed, I mailed to the following proper persons or placed a copy of this Order in the attorneys' folder(s) in the Clerk's Office of the following:

William H. Brown, Esq. – SULLIVAN BROWN

Bradley J. Shafer, Esq. – SHAFER & ASSOCIATES

Blake A. Doerr, Esq. – DEPUTY ATTORNEY GENERAL

Rose Najera

ROSE NAJERA
Judicial Executive Assistant

A533273

JENNIFER P. TOGLIATTI
DISTRICT JUDGE
DEPARTMENT NINE
LAS VEGAS, NEVADA 89155

ORIGINAL

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DISTRICT COURT

CLARK COUNTY, NEVADA

FILED
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CLERK OF COURT

DÉJÀ VU SHOWGIRLS OF LAS VEGAS, LLC, et al.,

Plaintiff/s,

vs.

NEVADA DEPARTMENT OF TAXATION
NEVADA TAX COMMISSION, et al.,

Defendant/s.

CASE NO.: A554970
DEPT NO.: IX

08A554970
549243

SECOND AMENDED ORDER SETTING CIVIL NON-JURY TRIAL

IT IS HEREBY ORDERED THAT:

A. The above-entitled case is set to be tried on a FIVE-week stack to begin, **TUESDAY, MAY 24, 2010** at **10:30 AM.**

B. A Pre-Trial Conference with the designated attorney and/or parties in proper person will be held **ONLY UPON REQUEST.**

C. A calendar call will be held on **MAY 13, 2010** at **9:15 AM.**

Parties must have the following ready for trial:

(1) All exhibits marked by counsel for identification purposes;

(2) Typed exhibit lists with all stipulated exhibits marked as admitted;

(3) Original depositions;

(4) A list of equipment needed for trial; and

(5) Courtesy copies of legal briefs on trial issues.

D. Pre-Trial Memorandums must be filed by **MAY 14, 2010** with courtesy copy delivered to Dept. IX. All parties, (Attorneys and parties in proper person) **MUST** comply with **ALL REQUIREMENTS** of **EDCR 2.67**.

E. All discovery deadlines, deadlines for filing dispositive motions and motion to amend the pleadings or add parties are controlled by the previously issued Scheduling Order.

F. All other pre-trial motions, including motions in Limine, must be in writing and set for hearing no later than **MAY 11, 2010.**

G. Any pre-trial motion **MUST** be filed by 5:00 PM on **APRIL 12, 2010**;

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DEPARTMENT NINE
LAS VEGAS, NEVADA 89155

2

Oppositions are to be filed by 5:00 PM **APRIL 22, 2010**; Replies thereto are to be filed by 5:00 PM **MAY 4, 2010**. **Orders shortening time will not be signed except in extreme emergencies. (Request for trial continuance is not an emergency.)**

H. **Failure of the designated trial attorney or any party appearing in proper person to appear for any court appearances or to comply with this Order shall result in any of the following: (1) dismissal of the action; (2) default judgment; (3) monetary sanctions; (4) vacation of trial date; and/or any other appropriate remedy or sanction.**

Counsel is required to advise the Court immediately when the case settles or is otherwise resolved prior to trial. **A stipulation which terminates a case by dismissal must also indicate whether a Scheduling Order has been filed and, if a trial date has been set, the date of that trial. A copy should be given to Chambers.**

DATED: this 9th day of October, 2009

Jennifer P. Togliatti

JENNIFER P. TOGLIATTI
DISTRICT JUDGE

CERTIFICATE OF MAILING

I hereby certify that on date filed, I mailed to the following proper persons or placed a copy of this Order in the attorneys' folder(s) in the Clerk's Office of the following:

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Bradley J. Shafer, Esq. – SHAFER & ASSOCIATES

Blake A. Doerr, Esq. – DEPUTY ATTORNEY GENERAL

Rose Najera

ROSE NAJERA
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A533273

ODCR
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Co-Counsel for Plaintiffs
**Admitted Pro Hac Vice*

DISTRICT COURT

CLARK COUNTY, NEVADA

DEJA VU SHOWGIRLS OF LAS VEGAS, L.L.C., d/b/a *Deja Vu Showgirls*, LITTLE DARLINGS OF LAS VEGAS, L.L.C., d/b/a *Little Darlings*, K-KEL, INC., d/b/a *Spearmint Rhino Gentlemen's Club*, OLYMPUS GARDEN, INC., d/b/a *Olympic Garden*, SHAC, L.L.C. d/b/a *Sapphire*, THE POWER COMPANY, INC., d/b/a *Crazy Horse Too Gentlemen's Club*, D. WESTWOOD, INC., d/b/a *Treasures*, and D.I. FOOD & BEVERAGE OF LAS VEGAS, LLC, d/b/a *Scores*,

Plaintiffs,

vs.

NEVADA DEPARTMENT OF TAXATION, NEVADA TAX COMMISSION, NEVADA STATE BOARD OF EXAMINERS, and MICHELLE JACOBS, in her Official Capacity Only,

Defendants.

Case No.: A533273
Dept. No.: IX

PLAINTIFFS' OBJECTION TO THE DISCOVERY COMMISSIONER'S REPORT AND RECOMMENDATION REGARDING PLAINTIFFS' MOTION TO COMPEL DISCOVERY OF DEFENDANTS

COME NOW Plaintiffs, by and through their attorneys of record, William H. Brown, Esq. of the law firm of SULLIVAN BROWN, and Bradley J. Shafer, Esq. of the law firm of SHAFER & ASSOCIATES, P.C., and hereby submit their Objection to the Discovery Commissioner's Report and Recommendations dated in this matter on February 22, 2010. This Objection is made and based on the pleading papers on file herein, and any oral argument made at the hearing in this matter.

DATED this 3rd day of March, 2010.

Respectfully submitted,

BY: William Brown

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Co-Counsel for Plaintiffs
**Admitted Pro Hac Vice*

MEMORANDUM OF POINTS AND AUTHORITIES

I.
BACKGROUND

A. PLAINTIFFS' LAWSUIT.

Plaintiffs operate commercial entertainment establishments in Las Vegas offering live performance dance entertainment to the consenting adult public. Verified Complaint for Declaratory and Injunctive Relief, Damages, and Attorney Fees and Costs ("Complaint") at ¶¶ 27-34. The entertainment presented by the Plaintiffs constitutes speech and expression, as well as a form of assembly, protected by the First and Fourteenth Amendments to the United States Constitution,[1] as well as by Art. I, §§ 9 and 10 of the Nevada Constitution.[2] Complaint ¶ 36.

On December 19, 2006, Plaintiffs sued Defendants, arguing the Live Entertainment Tax ("LET" or the "tax") as mandated by NRS Chapter 368A ("Chapter 368A") is both illegal and unconstitutional because it unconstitutionally taxes expression protected by the Nevada and

---

[1] Because the Federal Constitution represents the "floor" level of protections that can be afforded under the State Constitution (*see S.O.C., Inc. v. Mirage Casino-Hotel*, 117 Nev. 403, 414, 23 P.3d 243 (2001)), the federal case law cited herein is applicable to Plaintiffs' Nevada constitutional challenges as well.

[2] Exotic dancing, in the form of clothed, "topless," and even fully nude entertainment, falls within the scope of the liberties, including the right to free expressive association, afforded by the First Amendment. *See, e.g., Barnes v. Glen Theatre, Inc.*, 501 U.S. 560, 565(1991) (nude dancing receives protections under the Constitution); *City of Erie v. Pap's A.M.*, 529 U.S. 277, 289 (2000) (same); *Schad v. Borough of Mt. Ephraim*, 452 U.S. 61, 65-66 (1981) ("Nor may an entertainment program be prohibited solely because it displays the nude human figure. '[N]udity alone' does not place otherwise protected material outside the mantle of the First Amendment. . . . Furthermore, . . . nude dancing is not without its First Amendment protections form official regulation"); and *Deja Vu of Nashville, Inc. v. Metropolitan Government of Nashville and Davidson County*, 274 F.3d 377, 396 (6th Cir. 2001), *citing* Roberts v. United States Jaycees, 468 U.S. 609, 622 (1984) (Court held that "the First Amendment protects the entertainers and audience members' right to free expressive association. They are certainly engaged in a 'collective effort on behalf of shared goals.'").

United States Constitution. In addition and alternatively, Plaintiffs argued they are specifically exempted from paying the LET pursuant to the statutory exemptions and/or the exceptions in NRS 368A.200(5)(a). Complaint ¶¶ 38-39, 53. Further, Plaintiffs argued, as the LET is unconstitutional, Plaintiffs are not required to pay it and are also entitled to refunds for the amounts paid to date.

Nevertheless, under threats of criminal prosecution and the imposition of fines and other penalties against them, Plaintiffs have all, beginning at various times, paid the LET mandated by Chapter 368A. Complaint ¶ 38.

Plaintiffs' specific legal challenges to the LET are summarized below.

B. PLAINTIFFS' SPECIFIC LEGAL CHALLENGES.

As a preliminary matter, it is unconstitutional to directly tax First Amendment protected activities; as the Supreme Court has noted:

> It is one thing to impose a tax on the income or property of a preacher, it is quite another thing to exact a tax from him for the privilege of delivering a sermon. The tax imposed [here] is a flat license tax, the payment of which is a condition of the exercise of these constitutional privileges. ***The power to tax the exercise of a privilege is the power to control or suppress its enjoyment.***"

Murdock v. Commonwealth of Pennsylvania, 319 U.S. 105, 112 (1943) (emphasis and clarification added).Stated somewhat differently:

> A power to tax differentially, as opposed to a power to tax generally, gives a government a powerful weapon against the taxpayer selected. ***When the State imposes a generally applicable tax, there is little cause for concern. We need not fear that a government will destroy a selected group of taxpayers by burdensome taxation if it must impose the same burden on the rest of its constituency.***
>
> * * *
>
> Further, ***differential treatment***, unless justified by some special characteristic of the press, suggests that the goal of the regulation is not unrelated to suppression of expression, and such a goal is ***presumptively unconstitutional***.

Minneapolis Star and Tribune Co. v. Minnesota Commissioner of Revenue, 460 U.S. 575, 585 (1983) (emphasis added).

The reason for this is simple:

> ***We note that the general applicability of any burdensome tax law helps to ensure that it will be met with widespread opposition. When such a law applies only to a single constituency, however, it is insulated from this political constraint.***

Leathers v. Medlock, 499 U.S. 439, 445 (1991) (emphasis added).

Generally, a tax may violate the First Amendment three ways: (1) by directly taxing First Amendment freedoms; (2) by targeting a narrowly defined group of speakers; or (3) by taxing speech based on content.

First, a direct tax specifically on First Amendment freedoms is unconstitutional.

> ***Freedom of speech***, freedom of the press, freedom of religion are available to all, not merely to those who can pay their own way . . . . ***[I]t could hardly be denied that a tax laid specifically on the exercise of those freedoms would be unconstitutional.***

Murdock, 319 U.S. at 108, 111 (emphasis added).

Second, a tax that targets a narrowly defined group of speakers is unconstitutional; as set forth by the Supreme Court:

> A tax is also suspect if it targets a small group of speakers.
>
> * * *
>
> The danger from a scheme that targets a small number of speakers is the danger of censorship; a tax on a small number of speakers runs the risk of affecting only a limited range of views. The risk is similar to that from a content-based regulation: It will distort the market for ideas.

Leathers, 499 U.S. at 447-448.

Third, a content-based tax is unconstitutional. *Leathers*, 499 U.S at 447 ("Finally, for reasons that are obvious, a tax will trigger heightened scrutiny under the First Amendment if it discriminates on the basis of the content of taxpayer speech").

Here, the LET violates the First Amendment for all three of these reasons[3]; but the information Plaintiffs requested from the Department via discovery focused on the second and third reasons (i.e., targeting adult entertainment establishments; and being a content-based tax, respectively).

1. The LET Is An Impermissible Content-Based Tax.

With respect to being an impermissible content-based tax, the LET is a direct tax upon protected expression, and only upon one form of entertainment (applying only to that which is "live"). Moreover, it does not even tax that particular mode of expression in a unified and even fashion, as a wide variety of "live entertainment" is specifically and statutorily exempted from the scope of the tax based upon the *content* of that entertainment.

Initially, the definition of "live entertainment" itself contains numerous exceptions. It ***excludes***, without limitation, certain specific activities (e.g., instrumental or vocal music, occasional performances, performers who stroll continuously throughout the facility, performances which enhance the theme of the establishment or attract patrons to the areas of the performances, broadcasts of live entertainment, entertainment by patrons, animal behaviors, and performances that provide ambience to the facility). N.R.S. § 368A.090(b).

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[3] The LET is unconstitutional under the first test in that it is a tax "laid specifically on the exercise of [First Amendment] freedoms" (i.e., live entertainment). *Murdock*, 319 U.S. at 108 (clarification added). In regard to the second test, the large number of exemptions from the LET demonstrate that the tax targets a "narrowly defined group of speakers," as will be demonstrated by the discussion of the third test below.

Chapter 368A also contains seventeen categories of exceptions to the LET (e.g., live entertainment that the State is prohibited from taxing under the Constitution, laws or treaties of the United States or the Nevada Constitution, boxing, minor league baseball, or NASCAR events, trade show entertainment, performances by musicians who move through the audience, entertainment provided at shopping malls and amusement rides, outdoor concerts, or entertainment in restaurants which serves as ambience). NRS § 368A.200(5).

These exceptions/exemptions determine whether an entity or individual is subject to the tax based upon the content of the live entertainment; as such, the LET is a content-based tax and is subject to strict constitutional scrutiny.

In other words, these exceptions/exemptions have been gerrymandered in such a fashion to ensure that, with the exception of casino entertainment (which was already subject to tax pursuant to the prior casino entertainment tax), virtually the only remaining live entertainment that is subject to the tax is adult entertainment. And, if a facial reading of the LET leaves any doubt it was specifically intended to tax live adult entertainment, reviewing the legislative history clearly demonstrates such facial targeting.

2. The LET Impermissibly Targets Adult Entertainment Establishments.

It is constitutionally impermissible to apply a tax on protected expression in such a discriminatory, content-based manner. Where a tax was "not evenly applied to all magazines" and treated "some magazines less favorably than others" the Supreme Court held:

> Indeed, this case involves a more disturbing use of selective taxation than *Minneapolis Star*, because the basis on which Arkansas differentiates between magazines is particularly repugnant to First Amendment principles: ***a magazine's tax status depends entirely on its content.*** Above all else, the First Amendment means the government has no power to restrict ***expression*** because of its message, its ideas, its subject matter, or its content. . . . Regulations which permit the Government to discriminate on the basis of the content of the message cannot be tolerated under the First Amendment.

Arkansas Writers Project, 481 U.S. at 229 (citations omitted, emphasis in original and added).

Likewise, in December 2007, in *Pooh-Bah Enterprises, Inc. v. County of Cook et al.*, 378 Ill.App.3d 268, 317 Ill.Dec. 384, 881 N.E.2d 552 (2007), the Illinois Court of Appeals invalidated a similar tax aimed at adult entertainment based upon this very issue.

There, Chicago had adopted a "fine arts" or "small venue" exception to its tax, although that exclusion did not include "adult entertainment." 881 N.E.2d at 559-560. Like the LET here, the Chicago tax contained exceptions that exempted "favored" amusement from the tax. In a unanimous decision, the court of appeals declared Chicago's broadly worded "amusement" tax to be unconstitutional on its face. That is the case here.

More recently, in **Combs v. Texas Entertainment Association**, 287 S.W.3d 852 (Tex.App. 2009), the Court of Appeals of Texas found a tax against imposed on businesses that offer live, nude entertainment in the presence of alcohol to be unconstitutional. There, the court found that the tax was an unconstitutional content-based tax, holding:

> A selective taxation scheme in which an entity's tax status depends entirely on the content of its speech is "particularly repugnant to First Amendment principles." **Arkansas Writers' Project**, 481 U.S. at 229, 107 S.Ct. 1722. As a result, differential taxation based on content is subject to strict scrutiny. **Id.** at 231. A taxing statute is content-based if it "singles out income derived from expressive activity for a burden the State places on no other income, and it is directed only at works with a specified content." **Simon & Schuster, Inc. v. Members of N.Y. State Crime Victims Bd.**, 502 U.S. 105, 106, 112 S.Ct. 501, 116 L.Ed.2d 476 (1991).

Id. at 860. In **Combs**, there were other types of live nude entertainment that were not subject to the tax, such as the kind presented in comedy shows or theaters, and the court there held that:

> These examples reveal that the SOB tax is not imposed on all incidents where live nude entertainment occurs in the presence of alcohol, but only in those situations

> in which the taxing authority – the Comptroller – determines, after examining the content of the expression, that it represents the "essence" of live nude entertainment. This type of differential taxation based on content is precisely the type of restriction warranting strict scrutiny in **Arkansas Writers' Project**, **Minneapolis Star**, and **Simon & Schuster**.

Id. This mirrors the situation at issue here, where other businesses where live entertainment is presented are not taxed under the LET based on the content of the entertainment presented.

Here, the LET exempts a wide variety of "favored" live entertainment, but applies to adult entertainment. This demonstrates a preference for certain messages and speakers and in doing so makes the LET content-based and therefore subject to strict scrutiny. Further, under *Pooh-Bah* this sort of favoritism is fatal to a tax on live entertainment. 881 N.E.2d at 560.

Further, the United States Supreme Court has noted that

> [e]xemptions from an otherwise legitimate regulation of a medium of speech may be noteworthy for a reason quite apart from the risk of view point and content discrimination: They may diminish the credibility of the government's rationale for restricting speech in the first place.
>
> *City of Ladue v. Gilleo*, 512 U.S. 43, 52 (1994).

There, the court found an ordinance banning outdoor signs unconstitutional as being impermissibly content-based because the law included a variety of exceptions of signs that were nevertheless permitted.[4]

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[4] *See also*, *Church of Lukumi v. Hialeah*, 508 U.S. 520, 535-540 (1993) (Court found that exemptions to three city ordinances banning the killing of animals rendered the laws to be content-based, and therefore unconstitutional, as being directed at those practicing the Santeria religion, and that the "pattern of exemptions parallels the pattern of narrow prohibitions. Each contributes to the gerrymander); and *U.S. v. Eichman*, 495 U.S. 310, 317-19 (1990) (Court found the facially neutral Flag Protection Act content-based and therefore unconstitutional because although it prohibited burning of the flag, it exempted the burning of a "worn or soiled" flag as a means of disposal. The exception was an act "traditionally associated with patriotic respect for the flag," and demonstrated content targeting by preferring patriotic rather than disrespectful acts upon a flag).

Here, the numerous exemptions reveal that apart from casino entertainment, the LET is in fact targeted principally, if not exclusively, at adult entertainment facilities, which are protected by the First Amendment. Therefore, the LET is content specific; in turn, it is subject to strict scrutiny and it is invalid.

It is against this backdrop of constitutional scrutiny that Plaintiffs sent the Department discovery requests.

3. Plaintiffs' Discovery Requests and the Resulting Dispute.

On March 24, 2009, Plaintiffs served Plaintiffs' First Set of Interrogatories to Defendants (attached as Exhibit 1); on March 26, 2009, Plaintiffs served Plaintiffs' First Request for the Production of Documents and Things to Defendants (attached as Exhibit 2).

On August 17, 2009, ten days before depositions of Defendants' representatives were scheduled to be taken[5], Plaintiffs received the Department's Responses to Plaintiffs' First Set of Interrogatories (attached as Exhibit 3) and Responses to Plaintiffs' First Request for Production of Documents and Things (attached as Exhibit 4). The Department's discovery responses were deficient, and insufficient, as discussed more fully below.

Accordingly, Matthew Hoffer, on behalf of Plaintiff's counsel, held telephone conferences with Blake Doerr, counsel for Defendants, regarding the inadequacy of the discovery responses. In the course of discussions, Plaintiffs' counsel offered to allow responses pursuant to a protective order that would protect business information from the public and even from Plaintiffs themselves, but would allow Plaintiffs' counsel to conduct the necessary analysis to support their claims of unconstitutionality. Still, Defendants' counsel refused to produce the requested responses and documents.

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[5] Depositions of Defendants' representatives were scheduled for August 27 and 28, 2009.

Hence, on September 1, 2009, pursuant to NRCP 37(a)(1), and EDCR 2.34, Matthew Hoffer, of the office of Bradley Shafer, counsel for Plaintiffs, and Blake Doerr, counsel for Defendants, conferred regarding the information not contained in the discovery responses in an attempt to resolve this discovery dispute out of Court. The parties were unable to resolve their differences, thereby necessitating Plaintiffs' Motion to Compel. *See* Exhibit 5 hereto.

Now, Plaintiffs have been forced to incur expenses and costs solely as a result of Defendants' failure to provide adequate discovery and hence, seek appropriate relief from the Court. The Motion to Compel was heard by the Discovery Commissioner on November 13, 2009. A proposed Report and Recommendation was drafted by the parties and the Discovery Commissioner entered the Report and Recommendation (hereinafter simply the "R&R") on February 22, 2010. Exhibit 6 hereto.

The R&R granted in part and denied in part, Plaintiffs' Motion to Compel, only requiring the Defendants to produce a document that contains (for each tax year from 2003 until the present) a list of businesses that paid Live Entertainment Taxes, identified only by category, and the amount of Live Entertainment Tax each category of business paid. The categories are to include, for purposes of illustration only: one time or annual events; sporting events; nightclubs; promoters; performing arts centers; raceways; and gentlemen's clubs. The document should identify whether each business paid the 5% or the 10% Live Entertainment Tax.

The parties believed[6] the Discovery Commissioner further recommended that within ten (10) days of the entry of this Court's order, the Nevada Department of Taxation shall

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[6] Before being submitted, the R&R went back and forth numerous times between the parties and was changed or revised each time as to its content; the content was ultimately approved by both parties. Thus, the R&R as submitted accurately reflects both parties' understanding of the Discovery Commissioner's Recommendation.

provide a document (for each tax year from 2003 until the present) identifying what percentage of the total Live Entertainment Tax collected by the Department of Taxation for that year was paid by gentlemen's clubs presenting adult entertainment, *including* separate percentages for gentlemen's clubs paying the 5% and 10% Live Entertainment Tax.

However, the Discovery Commissioner revised the submitted R&R as it related to information concerning gentlemen's clubs paying 5% and 10% of the LET. The revisions appear to limit/qualify this disclosure by only requiring it if (1) the parties agree; or (2) "[it] is maintained as either a 5% or 10% tax." Specifically, the revisions read that Defendants must disclose this information

> "if agreed to by the parties as this was NOT part of the Recommendations at the hearing. However, the percentage of the LET tax paid by Adult entertainment groups must be disclosed, if this is maintained as either a 5% or 10% tax this information must be disclosed."

For clarity's sake, Plaintiffs requested that Defendants produce a document:

(1) Identifying, for each tax year from 2003 until the present, what percentage of the total LET collected by the Department of Taxation was paid by gentlemen's clubs presenting adult entertainment; and

(2) Disclosing, for each tax year from 2003 until the present, what percentage of gentlemen's clubs pay 5%, and which gentlemen's clubs pay 10%, of the LET.

For purposes of these objections (which in an abundance of caution are filed before clarification can be obtained), Plaintiffs will treat the revised R&R as denying that portion of Plaintiffs' Motion to Compel requesting this information. All other aspects of Plaintiffs' Motion to Compel were denied.

4. Requested Relief.

For the reasons discussed below, Plaintiffs object to the portion of the Report and Recommendation denying the remainder of Plaintiffs' Motion to Compel, and move this Honorable for an order:

(1) Compelling the Department to immediately submit to the Plaintiffs, within ten (10) days of the entry of this Court's order, the Department's answers to the below-described interrogatories, and to produce within that same time all the un-redacted items and documents requested by the below-described requests for production, all without objection;

(2) Sanctioning the Department for failing to comply with discovery, by awarding Plaintiffs their costs and attorney fees for having filed this motion; and, in addition and alternatively,

(3) Striking the portion of Defendants' Opposition to Plaintiffs' Motion for Preliminary Injunction that relies upon information the Department now refuses to produce (attached to the Department's Opposition as Exhibits A and B).

II.
LAW AND ARGUMENT

A. THE DEPARTMENT'S DISCOVERY RESPONSES ARE DEFICIENT.

The Rules of Civil Procedure are designed to permit broad inquiry into any matter relevant to the pending action. *See Hickman v. Taylor*, 329 U.S. 495, 501 (1947). And the Nevada Rules of Civil Procedure allow for the discovery of all evidence which is relevant or which could lead to the discovery of relevant information; NRCP 26(b)(1) reads:

> **Parties may obtain discovery regarding any matter, not privileged, which is relevant** to the subject matter involved in the pending action, whether it relates to the claim or defense of the party seeking discovery or to the claim or defense of any other party, including the existence, description, nature, custody, condition and location of any books, documents, or other tangible things and the identity and location of persons having knowledge of any discoverable matter. It is not ground for objection that the information sought will be inadmissible at the trial if the information sought appears **reasonably calculated to lead to the discovery of admissible evidence.**
>
> NRCP 26(b)(1) (emphasis added).

Here, the Department's discovery responses are deficient in both substance (essential information is redacted) and temporal scope (responses are largely limited to 2004).

1. Substantively, the Department's Responses Are Meaningless Because Nearly All Relevant Information Is Redacted.

Substantively, the Department has so heavily redacted key information from many documents that they are worthless. Specifically, by way of redaction the Department will not identify (1) the name of the businesses paying the LET, (2) the type of live entertainment provided at those establishments, or (3) how much tax those businesses pay. Even the document ordered by the Discovery Commissioner in the R&R only required the business category, and not the type of live entertainment provided at the establishment.

For example,

- the Department's Responses to Interrogatories 1, 2, 3, and 15 refer to documents that are redacted to the point of non-responsiveness (Exhibit 3);
- the Department's Response to Interrogatory 19 is non-responsive because it refuses to identify any entities, persons, businesses, or classes that have requested to be exempt from the LET (Exhibit 3); and
- the Department's Response to Interrogatory 20, references a non-existent Exhibit AAA, and incorporates Response 19 (Exhibit 3).

Also, the Department responded to all of Plaintiffs' 26 Requests for Documents by generally incorporating the entire packet of produced documents, stating, "See Exhibits A-KK." Such a blanket response lacks sufficient specificity to be meaningful.

Under NRCP 34(b),

> A party who produces documents for inspection shall produce them as they are kept in the usual course of business or ***shall organize and*** label them to correspond with the categories in the request.

NRCP 34(b) (Emphasis added).

Separating the documents into exhibits was pointless if the Department was simply going to refer broadly and generally to all the documents in response to every request. Further, as discussed above, many of the documents produced are redacted to the point of non-responsiveness (those documents are Exhibit A, E, G, H, I, J, K, L, M, N, R, S, T, EE[7], FF[8], and II, attached hereto as Exhibit 4.

By redacting virtually all relevant information in the documents produced, the Department has failed to provide responses that are substantive or meaningful. Further, any otherwise meaningful response is nullified by the limited temporal scope.

2. Plaintiffs Requested Information from 2003 to 2008; the Department Primarily Produced Information for 2004.

Each of Plaintiffs' Requests for Documents asked for "any and all documents" since the LET has been in effect (i.e., since 2003). See Exhibit 2. In response, the Department primarily provided information for the tax year 2004 (referring to Exhibits B, E, F, I, S, T, U, and II). See Exhibit 4 hereto.

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[7] Due to the size of this exhibit only Bate Stamp numbers DV000551, 552, 554, 556, 557, 558, 575-581, 584-587, and 604 are attached hereto as they are the redacted documents.

[8] Due to the size of this exhibit, only Bate Stamp numbers DV000660- 662, 667-671, 675, 676, and 678- 680, are attached hereto as they are the redacted documents.

Further, where the Department did provide documents for years other than 2004, the documents were incomplete and/or heavily redacted. For example,

- Exhibits G and J have no dates listed and are heavily redacted;
- Exhibit L, in addition to being completely redacted except for the totals at the bottom, is missing data for 2003, July-December 2004, January-June 2005, and 2008 (although again, the data provided is useless because of the near complete redaction of information);
- Exhibit M contains only data for 2007; and
- Exhibit N appears to only contain (again redacted) data for February and March 2009. Exhibit 4 hereto.

The Department has been administering the LET since its inception in 2003. As such, it presumably possesses data from 2003 to 2008 (as Plaintiffs requested) and not (as the Department responded) for 2004. Yet when Mr. Hoffer spoke with Mr. Doerr regarding this curious omission, Mr. Doerr had no answer and did not offer to produce the missing documents.

Also, beyond failing to meaningfully respond, the Department ostensibly relies upon a privilege that does not apply here.

B. THE LEGISLATURE HAS DETERMINED THE PRIVILEGE THE DEPARTMENT RELIES UPON DOES NOT APPLY TO THIS CASE.

In its privilege log, the Department relies exclusively on NRS 368A.180(2)(C), which it also relies upon in its discovery responses in addition to NRS 49.025. Exhibit 4.

The Department's reliance on these statutes is misplaced.

The privilege under NRS Chapter 368A is expressly *not* applicable to this case because (1) this lawsuit is brought under the provisions of Chapter 368A; and (2) in any event, the

Department may disclose the information in a manner that prevents identification of a particular person or document.

1. The Privilege Is Not Applicable Because this Case Is Brought Pursuant to NRS Chapter 386A.

The Department claims the information Plaintiffs requested is privileged under NRS 49.025 and NRS 368A.180(2)(c). Not so.

The Department's reliance on NRS 49.025 is misplaced because NRS 368A.180 does not render any documents unequivocally privileged and confidential and, in fact, specifically states exceptions—under which this lawsuit falls—permitting the disclosure of tax records and information.

Under NRS 49.025, a "public officer or agency to whom a return or report is required by law to be made has a privilege to refuse to disclose the return or report ***if the law requiring it to be made so provides***." Here, the law requiring the report to be made is Chapter 368A, which does provide that certain documents are privileged and confidential.

However, Chapter 368A also clearly states that documents are *not* subject to that privilege if they are requested during ***any action or proceeding pursuant to the provisions of this chapter and are directly involved in the action or proceeding.*** NRS 368A.180(2)(a) (emphasis supplied).

Here, this exception applies because this lawsuit is an action under Chapter 368A. The complaint specifically seeks declaratory judgment finding that Plaintiffs were exempt under NRS 368A.200(5)(a), and seeking a refund pursuant to NRS 368A.310. Complaint at

12-13, 15. Likewise, the companion case[9] is an actual appeal pursuant to the administrative process provided for in Chapter 368A. Complaint at 1.

Therefore, since the law requiring the payment of the LET does not provide for an absolute privilege, the Department cannot rely upon NRS 49.025 to refuse to provide properly discoverable information. Our Supreme Court's decision in *Tidvall v. Eighth Judicial District Court*, 91 Nev. 520 (1975), supports this conclusion.

In *Tidvall*, a statute granted the superintendent of banks the absolute right to exercise the privilege to keep all information obtained in bank examination reports confidential, without exception; as the court noted:

> The legislature did not empower the superintendent to place whatever information he might deem confidential beyond the reach of a court order. Instead, it has specifically declared all examination reports and all information obtained by the superintendent in conducting examinations of banks to be confidential and privileged information and has given the superintendent the absolute right to exercise the privilege of nondisclosure.
>
> *Id.* at 525.

The court in *Tidvall* cites NRS 49.025, which the Department now relies on. However, in *Tidvall*, unlike here, the underlying statutes (NRS 665.055, 665.065, and 665.075) granted the superintendent a non-discretionary privilege to keep *all* reports confidential.

Here, on the other hand, NRS 368A.180 specifically states that the privilege is ***not*** absolute and sets forth exceptions under which this lawsuit squarely falls, i.e., an action pursuant to Chapter 368A.

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[9] *Deja Vu Showgirls of Las Vegas, LLC, dba Deja Vu Showgirls, et al. v. Nevada Department of Taxation, et al.* (District Court Case No. A554970; Dept. 9).

As such, based on the reasoning in *Tidvall*, and the plain language of NRS 368A.180(2)(a), the legislature has clearly decided the privilege the Department relies upon does not apply to this case.

2. The Privilege Is Also Not Applicable Here Because the Department May Produce Information In Statistical Form Without Identifying Individuals or Documents.

Additionally and alternatively, the Department could have produced the requested information pursuant to a second exception to the privilege, which allows for the production of statistical information. Under NRS 368A.180(2)(c),

> 2. The records and files of the Board and the Department concerning the administration of this chapter are *not* confidential and privileged in the following cases:
> ***
> (c) Publication of statistics so classified as to prevent identification of a particular person or document.
>
> NRS 368A.180(2)(c) (emphasis supplied).

Here, the Department could have produced the requested information in a statistical form that would prevent identification of a particular person or document. That is, the Department could have disclosed the business name, and what type of business, is paying what percentage of the non-gaming portion of the LET, and for which years, without identifying a particular person or document.

Plaintiffs are not asking to see actual tax returns or any confidential business information. They simply wish to know who is paying what portion of the LET and when. Finally, assuming *arguendo* a confidentiality issues exists, a protective order would provide adequate safeguards while allowing discovery.

3. The Protective Order Plaintiffs Offered Would Preserve Confidentiality While Allowing Discovery.

Finally, and although the privilege the Department relies upon is inapplicable, Plaintiffs' counsel even offered to allow the Department to respond pursuant to a stipulated protective order which would permit only the Court and the attorneys to see identifying information (other than the category of establishment) for the payers of the LET. This would prevent even the Plaintiffs from knowing which clubs paid how much money, but would permit Plaintiffs' counsel to prove their contention that the adult entertainment businesses are paying the majority of the LET. However, the Department refused to consider this option. The R&R only addressed this option in the context of obtaining further information regarding the ***Plaintiffs*** and not any other businesses. Of course, the Plaintiffs have access to any information regarding ***their*** LET forms, returns, and payments, they want to know what other types of businesses are paying the LET and which are exempt or have sought to be exempt.

4. Beyond the Exceptions to the Privilege, the Information Is Essential to Plaintiffs' Case.

In sum, there are two clear exceptions to the privilege the Department presumes to rely upon and thus, that privilege is not applicable. It is, however, essential to Plaintiffs' case. The requested information (who, and what type of business, is paying what percentage of the non-gaming portion of the LET, for which years) goes to the heart of Plaintiffs' argument: that the LET is unconstitutionally directed at adult entertainment establishments. Likewise, identifying what types of businesses are exempt from, or subject to, the LET is also essential to prove Plaintiffs' claims.

Yet this is the exact information the Department completely redacted, including the names of businesses, the type of businesses, and the amount of tax paid. Lastly, the Department

redacted the names of employees and consultants on non-privileged communications regarding the LET.

C. THE DEPARTMENT SIMPLY FAILED TO PROVIDE REQUESTED INFORMATION.

Finally, the Department's response to Interrogatory 24, requesting the identity of the "Live Entertainment Tax Examiner," states that "no such title exists in the Department of Taxation." (Exhibit 3, p. 23). Such a title was identified multiple times in LET forms issued by the Department itself (attached as Exhibit 7), along with a phone number.

The Department did not state a reason for failing to disclose the identity of the Live Entertainment Tax Examiner, or for failing to produce the data that existed for the tax years 2003, 2005, 2006, 2007, 2008 and 2009, as set forth in Section IIA(2), above.

Under NRCP 37(a), the Court may issue orders compelling discovery when a party fails to respond to a request for inspection submitted under NRCP 34. *Fire Insurance Exchange v. Zenith Radio Corporation*,103 Nev. 648, 651(1987).

As such, and considering there is no good faith basis for refusing to respond, the Court must now compel the Department's response. Additionally and alternatively, the Court should not allow the Department to rely upon information it now withholds.

D. THE DEPARTMENT CANNOT RELY ON PRIOR ARGUMENTS BASED ON INFORMATION IT NOW REFUSES TO PRODUCE

In Defendants' Opposition to Plaintiffs' Motion for Preliminary Injunction (filed June 23, 2008), Defendants argued that:

> Additionally, the fact that PLAINTIFFS' industry generates more revenue from the tax than any other industry falling under the administration of the Department (n. 4) is simply irrelevant because it is merely a corollary with the number of those types of businesses which have been established in the state compared to other live entertainment establishments – nothing more.
>
> * * *

> n. 4 The LET is one tax administered by the Gaming Control Board and the Department of Taxation. NRS 368A.140. The Gaming Control Board collects the majority of the LET. See Exhibit A.

Defendants' Opposition at 13-14.

In support of this contention, the Department attached a table showing the percentage of non-gaming licensees who paid the LET in 2006. This is the exact information the Department now refuses to produce.

Plaintiffs sought data from the Defendants during discovery to establish not only who is paying the LET, but more importantly who is paying the *non-gaming* portion of the tax, the category under which Plaintiffs fall.

Further, Defendants argued that there was no irreparable harm to Plaintiffs' business because the "LET collections increased in 2005 and 2006 and were forecasted to increase in 2007, 2008 and 2009. See Exhibit B." Defendants' Opposition at 15. Those tables and charts attached as Exhibit B to Defendants' Opposition only showed *total* LET numbers, not broken down by type of establishment, or even into gaming and non-gaming categories.

Our Supreme Court has held that "Under NRCP 37(d), a court may strike a pleading of a party for his failure to answer interrogatories." *Havas v. Bank of Nevada*, 613 Nev. 567, 569-570 (1980). To the extent the Department relied on the unresponsive document production as its answers to Plaintiffs' interrogatories, the Department should not be able to rely on those charts and tables in this litigation if it is not going to produce the underlying data. The Discovery Commissioner did not address this concern in her ruling and subsequent R&R, instead denying the majority of Plaintiffs' Motion to Compel.

Therefore, if the Court is not inclined to compel the Department to produce information it relied upon, it should strike those portions of Defendants' Opposition to Plaintiffs' Motion for Preliminary Injunction relying on those Exhibits.

E. PLAINTIFFS ARE ENTITLED TO ATTORNEY'S FEES AND COSTS FOR HAVING TO BRING THIS MOTION.

If a party refuses to produce discovery or fails to respond to an opposing party's lawful discovery responses, the moving party is entitled to recover costs involved in bringing the motion to compel. Under NRCP 26(g),

> If a certification is made in ***violation of this rule***, the court, upon motion or upon its own initiative, ***shall impose upon the person*** who made the certification, the party on whose behalf the request, response, or objection was made, or both, ***an appropriate sanction***, which may include an order to pay the amount of the reasonable ***expenses incurred*** because of the violation, ***including a reasonable attorney's fee***.
>
> NRCP Rule 26(g) (emphasis added).

Additionally, NRCP 37 and EDCR 2.34 allow for an appropriate sanction when one party must move to compel the other to comply with discovery. The relevant portion of NRCP 37 states:

> If the motion is granted, the court shall, . . . require the party or deponent whose conduct necessitated the motion or the party or attorney advising such conduct or both of them to pay to the moving party the reasonable expenses incurred in obtaining the order, including attorney's fees . . .
>
> NRCP 37(a)(4) (emphasis added).

The relevant provision of EDCR 2.34 states:

> If after request, responding counsel fails to participate in good faith in the conference or to answer discovery, the court may require such counsel to pay to any other party the reasonable expenses, including attorney's fees, caused by the failure.
>
> EDCR 2.34(d) (emphasis added).

Here, Plaintiffs sent lawful discovery demands to the Department and even after discussions and emails with Plaintiffs' counsel the Department refuses to answer the discovery fully, or to produce relevant, non-privileged information or documents. Further, the Department received the discovery requests in March. If it was going to raise these confidentiality issues, it should have done so before August, 10 days before depositions of Defendants' representatives were to be taken.

Since the R&R declined to do so, the Court should impose an appropriate sanction in the form of attorney's fees as compensation for the Department's blatant refusal to produce adequate, timely responses to Plaintiffs' interrogatories and request for production of documents.

III.
CONCLUSION

For all these reasons, Plaintiffs respectfully request that the Report and Recommendation should be amended to by this Honorable Court, and that an order be entered:

(1) Compelling the Department to immediately submit to the Plaintiffs, within ten (10) days of the entry of this Court's order, the Department's answers to the above-described interrogatories, and to produce within that same time all the un-redacted items and documents requested by the above-described requests for production, all without objection;

(2) Sanctioning the Department for failing to comply with discovery, by awarding Plaintiffs their costs and attorney fees for having filed this motion; and, in addition and alternatively,

(3) Striking the portion of Defendants' Opposition to Plaintiffs' Motion for Preliminary Injunction that relies upon information the Department now refuses to produce (attached to the Department's Opposition as Exhibits A and B).

DATED this 3rd day of March, 2010.

Respectfully submitted,

BY: _____

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Exhibit 1

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DISTRICT COURT

CLARK COUNTY, NEVADA

DEJA VU SHOWGIRLS OF LAS VEGAS, L.L.C., d/b/a *Deja Vu Showgirls*, LITTLE DARLINGS OF LAS VEGAS, L.L.C., d/b/a *Little Darlings*, K-KEL, INC., d/b/a *Spearmint Rhino Gentlemen's Club*, OLYMPUS GARDEN, INC., d/b/a *Olympic Garden*, SHAC, L.L.C. d/b/a *Sapphire*, THE POWER COMPANY, INC., d/b/a *Crazy Horse Too Gentlemen's Club*, D. WESTWOOD, INC., d/b/a *Treasures*, and D.I. FOOD & BEVERAGE OF LAS VEGAS, LLC, d/b/a *Scores*	)	**CASE NO. A533273**
Plaintiffs,	)	**DEPT. NO. IX**
v.	)	
NEVADA DEPARTMENT OF TAXATION, NEVADA TAX COMMISSION, NEVADA STATE BOARD OF EXAMINERS, and MICHELLE JACOBS, in her official capacity only,	)	
Defendants.	)	

PLAINTIFFS' FIRST SET OF INTERROGATORIES TO DEFENDANTS

The above-captioned Plaintiffs, by and through counsel and pursuant to Nev.R.Civ.P Rules 26 and 33, request Plaintiff the Nevada Department of Taxation to answer under oath the interrogatories set forth below.

You are request to produce the materials specified below for inspection and copying at [Sullivan Brown to enter date at least 30 days from the date of service].

Definitions and Instructions

A. This First Set of Interrogatories shall be deemed to be continuing in nature, calling for the answers to be changed promptly upon receipt of more and/or different information.

B. As used in these interrogatories, the phrase "Chapter 368A" or the "Live Entertainment Tax" shall refer to Chapter 368A of the Nevada Revised Statutes as referred in Plaintiffs' Complaint.

C. As used in these interrogatories, the phrase "Ten Percent LET" shall refer to the tax imposed by N.R.S. § 368A.200(1)(a).

D. As used in these interrogatories, the phrase "Five Percent LET" shall refer to the tax imposed by N.R.S. § 368A.200(1)(b).

E. As used in interrogatories, the term "Department" shall refer to the Nevada Department of Taxation.

F. As used in these interrogatories, the term "Commission" shall refer to the Nevada Gaming Commission.

G. As used in these interrogatories, the term "Board" shall refer to the State Gaming Control Board.

H. As used in these interrogatories, the term "regulation" shall refer to any regulation promulgated or adopted by either the Department or the Commission pursuant to the provisions of NRS § 368A.140.

I. As used in these interrogatories, the term "business entity" shall have the meaning ascribed to it in NRS § 368A.050.

J. As used in these interrogatories, the term "document" means any writing, letter, opinion, printing, memorandum, report, compilation, survey, summary, evaluation, correspondence, list, directive, study, contract,

agreement, chart, graph, index, data sheet, data processing card or tape, note, entry, telegrams, telefax, advertisement, brochure, circular, tape, record, receipt, invoice, bulletin, paper, book, pamphlet, account, photograph, magazine or newspaper article, records of meetings, conference records, telephone records, records of conversation or any other form of communication, journal, and any other written, typewritten, handwritten, or other graphic matter, any electronic or other recording of any kind or nature, any mechanical or electronic sound or video recordings or transcripts thereof, however produced or reproduced, and all copies or facsimiles of documents by whatever means made.

K. As used in these interrogatories, the phrase "person or persons" shall refer to individuals and not the collective knowledge of any group of persons.

L. As used in these interrogatories, the phrase "relating to" includes referring to, pertaining to, showing, describing, analyzing, containing, having, discussing, or concerning, in any manner or fashion whatsoever.

M. As used in these interrogatories, the term "you" (or "your") shall refer collectively to the above-captioned defendants.

N. If you object to any interrogatory herein on the basis of a claim of privilege, please:

1. State the nature of the privilege(s) asserted; and
2. State in detail the factual basis for the claim(s) of privilege.

O. In each case where you are asked to identify a person, or where the answer to an interrogatory refers to a person, state with respect to each person:

1. His or her name;
2. His or her current last known address and telephone number;
3. His or her occupation, employer and business address at the date of the referenced event or transaction; and
4. His or her present occupation, employer and business address and telephone number.

P. In each case in which you are asked to identify an agency, company, business entity or other organization, state with respect to each agency, company, business entity or other organization:

1. The full name, address and phone number of the entity/organization;
2. The type of entity/organization (e.g., corporation, limited liability company, partnership, sole proprietorship, etc.)

Q. In each case where you are asked to identify a writing or document or where the answer to an interrogatory refers to a writing or document, state with respect to each writing or document:

1. The identity of the person who signed it or over whose name it was issued;
2. The addressee;
3. The nature and substance of the document with sufficient particularity to enable identification;
4. The date of the writing; and
5. The identity of each person who has custody of the writing or any copy.

INTERROGATORIES

1. For each separate tax year from 2003 to present, please identify each and every person or business entity that paid the Live Entertainment Tax during that tax year; whether the entity is subject to the Five Percent LET or the Ten Percent LET; and specify the amount of Live Entertainment Tax paid for such year. In the event that a single entity is subject to both the Five Percent LET and the Ten Percent LET or made payments to both the Department and the Commission, identify each such payment separately.

RESPONSE:

2. Identify each and every person or business entity subject that paid taxes under the original version of the Live Entertainment Tax enacted in 2003, but due to any change(s) in the Live Entertainment Tax, changes or adoption of Live Entertainment Tax Regulations, or due to any Department or Commission policy, was not required to pay the Live Entertainment Tax in any subsequent year. For each person or business entity so identified, also specify the change(s) in law, regulation, or policy that resulted in the person or entity no longer being subject to the Live Entertainment Tax.

RESPONSE:

3. Identify each and every person or business entity not subject to the original version of the Live Entertainment Tax, but due to any change(s) in the changes or adoption of Live Entertainment Tax, Live Entertainment Tax Regulations, or due to

any Department or Commission policy, became subject to the Live Entertainment Tax in any subsequent year. For each person or business entity so identified, also specify the change(s) in law, regulation, or policy that resulted in the person or business entity becoming subject to the Live Entertainment Tax.

RESPONSE:

4. Identify the person or persons most knowledgeable of the introduction, drafting, consideration of, revising, adopting and/or amending the Live Entertainment Tax.

RESPONSE:

5. Identify the person or persons most knowledgeable of the introduction, drafting, consideration of, revising, adopting and/or amending any and all regulations relating to, or promulgated under, the Live Entertainment Tax.

RESPONSE:

6. Identify the person or persons most knowledgeable of the persons and entities who/which have paid the Live Entertainment Tax since the initial adoption of that statute.

RESPONSE:

7. Identify the person or persons most knowledgeable about the persons or business entities meant to be taxed by the Live Entertainment Tax.

RESPONSE:

8. Identify the person or persons most knowledgeable of the purposes for each and every one of the exceptions to the definition of "live entertainment" set forth in NRS § 368A.090. Should you conclude that the person most knowledgeable differs depending on the legislative act, list the person most knowledgeable regarding each legislative act.

RESPONSE:

9. Identify the person or persons most knowledgeable of the purposes for any and all legislative changes to the exceptions to the definition of "live entertainment" set forth in NRS § 368A.090.

RESPONSE:

10. Identify the person or persons most knowledgeable of the purposes for each and every one of the exceptions to the application of the Live Entertainment Tax set

forth in NRS § 368A.200. Should you conclude that the person most knowledgeable differs depending on the legislative act, list the person most knowledgeable regarding each legislative act.

RESPONSE:

11. Identify the person or persons most knowledgeable of the purposes for each and every one of the exceptions to the application of the Live Entertainment Tax or to the definition of "live entertainment" created by any regulation or policy of the Department. Do not duplicate responses to previous interrogatories. In the event that different persons are most knowledgeable regarding different changes, list such individuals separately, together with the changes with regard to which the person is most knowledgeable.

RESPONSE:

12. Identify the person or persons most knowledgeable of the purposes for each and every one of the exceptions to the application of the Live Entertainment Tax or to the definition of "live entertainment" created by any regulation or policy of the Commission. In the event that different persons are most knowledgeable regarding different changes, list such individuals separately, together with the changes with regard to which the person is most knowledgeable.

RESPONSE:

13. Identify the person or persons most knowledgeable regarding the steps by which the proposed "5% across the board" tax on live entertainment was modified to, instead, tax certain live entertainment at the rate of 10%, as provided by NRS § 368A.200(1).

RESPONSE:

14. Identify the person or persons most knowledgeable regarding the purpose(s) of modifying the proposed "5% across the board" tax on live entertainment to, instead, tax certain live entertainment at the rate of 10%, as provided by NRS § 368A.200(1).

RESPONSE:

15. Identify each and every person or business entity that became subject to the Live Entertainment Tax as a result of NRS § 368A.200 being amended: (1) to change the seating capacity or occupancy requirement (presently NRS §§ 368A.200(5)(d) and (e)) from 300 to 200; or (2) to change the language to refer to "maximum occupancy" rather than "maximum seating capacity."

RESPONSE:

16. Identify the person or persons most knowledgeable regarding the purpose(s) of changing the maximum seating capacity/maximum occupancy specified by (presently) NRS §§ 368A.200(5)(d) and (e) from 300 to 200.

RESPONSE:

17. Identify the person or persons most knowledgeable regarding the effect(s) of changing the maximum seating capacity/maximum occupancy specified by (presently) NRS §§ 368A.200(5)(d) and (e) from 300 to 200.

RESPONSE:

18. Identify the person or persons most knowledgeable regarding the purpose(s) of changing the language of (presently) NRS §§ 368A.200(5)(d) and (e) from referring to "maximum seating capacity" to "maximum occupancy."

RESPONSE:

19. Identify any and all persons, business entities, or classes of business entities, who/which have requested to be exempt from the Live Entertainment Tax.

RESPONSE:

20. For each business entity or class of business entities identified in the preceding interrogatory, indicate whether such entity is currently subject to taxation via presently effective version of the Live Entertainment Tax. If the business entity or class of business entities is not subject to the Live Entertainment Tax, identify the change in the Live Entertainment Tax, regulations, and/or administration responsible for the business entity or class of business entities not being presently subject to taxation.

RESPONSE:

21. Identify each and every governmental interest meant to be served by the enactment or operation of the Live Entertainment Tax.

RESPONSE:

22. Identify each and every governmental interest meant to be served by the enactment of each and every one of the exceptions and exemptions to the Live Entertainment Tax.

RESPONSE:

23. Identify each and every person from the State of Nevada whose job responsibilities include administering the collection and payment of the Live Entertainment Tax.

RESPONSE:

24. Identify all persons associated with the Department, Commission, or Board who hold or act under the title "live entertainment tax examiner." Also, identify the person or persons responsible for overseeing the activities of the live entertainment tax examiners.

RESPONSE:

Dated: March 24, 2009

Respectfully Submitted,

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Exhibit 2

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DISTRICT COURT

CLARK COUNTY, NEVADA

DEJA VU SHOWGIRLS OF LAS VEGAS, L.L.C., d/b/a *Deja Vu Showgirls*, LITTLE DARLINGS OF LAS VEGAS, L.L.C., d/b/a *Little Darlings*, K-KEL, INC., d/b/a *Spearmint Rhino Gentlemen's Club*, OLYMPUS GARDEN, INC., d/b/a *Olympic Garden*, SHAC, L.L.C. d/b/a *Sapphire*, THE POWER COMPANY, INC., d/b/a *Crazy Horse Too Gentlemen's Club*, D. WESTWOOD, INC., d/b/a *Treasures*, and D.I. FOOD & BEVERAGE OF LAS VEGAS, LLC, d/b/a *Scores* Plaintiffs, v. NEVADA DEPARTMENT OF TAXATION, NEVADA TAX COMMISSION, NEVADA STATE BOARD OF EXAMINERS, and MICHELLE JACOBS, in her official capacity only, Defendants.	)	CASE NO. A533273 DEPT. NO. IX

PLAINTIFFS' FIRST REQUEST FOR THE PRODUCTION OF DOCUMENTS AND THINGS TO DEFENDANTS

The above-captioned Plaintiffs, by and through counsel and pursuant to Nev.R.Civ.P Rules 26 and 34, request Plaintiff the Nevada Department of Taxation to produce the documents and things on the date, time and place specified herein, and to permit Plaintiffs, its agents, or its attorney to inspect and copy said materials.

You are requested to produce the materials specified below for inspection and copying at Sullivan Brown, LLC, 332 South Jones Boulevard, Las Vegas, Nevada 89107 on or before *April 29, 2009.*

Definitions and Instructions

A. This Request for Production of Documents and Things shall be deemed to be continuing in nature, calling for the prompt production by the listed Plaintiff of any and all documents which come into its actual or constructive possession, trust, care or control at any time in the future, as well as any and all documents now in the actual or constructive possession, trust, care or control of said Plaintiff. The specificity of any request shall not be construed as reducing the scope of any more generalized request.

B. As used in these requests for production of documents and things, the phrase "Chapter 368A" or the "Live Entertainment Tax" shall refer to Chapter 368A of the Nevada Revised Statutes as referred in Plaintiffs' complaint.

C. As used in these requests for production of documents and things, the phrase "Ten Percent LET" shall refer to the tax imposed by N.R.S. § 368A.200(1)(a).

D. As used in these requests for production of documents and things, the phrase "Five Percent LET" shall refer to the tax imposed by N.R.S. § 368A.200(1)(b).

E. As used in these requests for production of documents and things, the term "Department" shall refer to the Nevada Department of Taxation.

F. As used in these requests for production of documents and things, the term "Commission" shall refer to the Nevada Gaming Commission.

G. As used in these requests, the term "Board" shall refer to the State Gaming Control Board.

H. As used in these requests, the term "regulation" shall refer to any regulation promulgated or adopted by either the Department of Taxation or the Commission.

I. As used in these requests, the term "business entity" shall have the meaning ascribed to it in NRS § 368A.050.

J. As used in these requests for production of documents and things, the term "document" means any writing, letter, opinion, printing, memorandum, report, compilation, survey, summary, evaluation, correspondence, list, directive, study, contract, agreement, chart, graph, index, data sheet, data processing card or tape, note, entry, telegrams, telefax, advertisement, brochure, circular, tape, record, receipt, invoice, bulletin, paper, book, pamphlet, account, photograph, magazine or newspaper article, records of meetings, conference records, telephone records, records of conversation or any other form of communication, journal, and any other written, typewritten, handwritten, or other graphic matter, any electronic or other recording of any kind or nature, any mechanical or electronic sound or video recordings or transcripts thereof, however produced or reproduced, and all copies or facsimiles of documents by whatever means made.

K. As used in these requests for production of documents and things, the phrase "person or persons" shall refer to individuals and not the collective knowledge of any group of persons.

L. As used in these requests for production of documents and things, the phrase "relating to" includes referring to, pertaining to, showing, describing, analyzing, containing, having, discussing, or concerning, in any manner or fashion whatsoever.

M. As used in these requests for production of documents and things, the term "you" (or "your") shall refer collectively to the above-captioned defendants.

N. If you object to any request for production of documents and things herein on the basis of a claim of privilege, please:

1. Identify each such document with sufficient particularity as to the author(s)' address(es) or recipient(s)' address(es), and the contents thereof so as to allow the court sufficient information to be able to rule upon any claim of privilege;
2. Identify all persons in possession of each document;
3. State the nature of the privilege(s) asserted; and
4. State in detail the factual basis for the claim(s) of privilege.

O. In each case where you are asked to identify a person in an objection, state with respect to each person:

1. His or her name;
2. His or her current last known address and telephone number;
3. His or her occupation, employer and business address at the date of the referenced event or transaction; and

4. His or her present occupation, employer and business address and telephone number.

DOCUMENTS TO BE PRODUCED

Plaintiffs requests that you produce and make available for inspection and copying, separately in response to each numbered paragraph, the following documents:

1. Any and all documents related to any payments of the ten percent LET.

RESPONSE:

2. Any and all documents related to any payments of the five percent LET.

RESPONSE:

3. Any and all Live Entertainment Tax Returns or similar documents submitted to the Department relating to the payment or anticipated payment of the Ten Percent LET.

RESPONSE:

4. Any and all Live Entertainment Tax Returns or similar documents submitted to the Department relating to the payment or anticipated payment of the Five Percent LET.

RESPONSE:

5. Any and all Live Entertainment Tax Reports or similar documents submitted to the Board or Commission relating to the payment or the anticipated payment of the Ten Percent LET.

RESPONSE:

6. Any and all Live Entertainment Tax Reports or similar documents submitted to the Board or Commission relating to the payment or the anticipated payment of Five Percent LET.

RESPONSE:

7. Any and all Live Entertainment Tax Returns, Live Entertainment Tax Reports, or similar documents relating to any payments of the Live Entertainment Tax.

RESPONSE:

8. Any and all documents listing, memorializing, summarizing, analyzing, or otherwise describing amounts collected pursuant to the Live Entertainment Tax, including but not limited to documents that identify the payees of the Live Entertainment Tax.

RESPONSE:

9. Any and all documents relating to projections of revenue to be generated by, or amounts to be collected pursuant to, the Live Entertainment Tax.

RESPONSE:

10. Any and all documents relating to projections of revenue generated by, or amounts to be collected pursuant to, any proposed live adult entertainment tax. The phrase "live adult entertainment" shall have the meaning ascribed to it by Senate Bill 247 of the year 2005.

RESPONSE:

11. Any and all documents relating to the purpose(s) of introducing, drafting, considering, revising, adopting, and/or amending the Live Entertainment Tax.

RESPONSE:

12. Any and all document relating to the introduction, drafting, consideration, revisions, amendments to, and enactment of the Live Entertainment Tax.

RESPONSE:

13. Any and all documents either submitted to or in any way either considered and/or relied upon by the Nevada Legislature, it committees, subcommittees, employees, analysts, or the like relating to the purpose of introducing, drafting, considering, revising, adopting, and/or amending the Live Entertainment Tax.

RESPONSE:

14. Any and all documents either submitted to or in any way either considered and/or relied upon by the Nevada Legislature, its committees, subcommittees, employees, analysts, or the like relating to the introduction, drafting, considering, revising, adopting and/or amending the Live Entertainment Tax.

RESPONSE:

15. Any and all transcripts, audio or video recording, minutes, or other records of any sessions, meetings or hearings of the Nevada Legislature, or its committees or subcommittees relating to the introduction, consideration and enactment of the Live Entertainment Tax.

RESPONSE:

16. Any and all documents either submitted to or in any way either considered and/or relied upon by the Nevada Legislature or its committees or subcommittees relating to the purpose of introducing, drafting, considering, revising, adopting, and/or amending any tax or proposed tax on "live adult entertainment."

RESPONSE:

17. Any and all documents that constitute the legislative history of the Live Entertainment Tax or any amendments thereto.

RESPONSE:

18. Any and all transcripts, audio or video recording, minutes, or other records of any sessions, meetings or hearings of the Nevada Legislature, or its committees or subcommittees

relating to the introduction, consideration and enactment of any tax or proposed tax on "live adult entertainment," including but not limited to Senate Bill 247 of 2005.

RESPONSE:

19. Any and all documents relating to how or whether any provision of Senate Bill 247 or any other proposed tax on "live adult entertainment" were incorporated into the Live Entertainment Tax.

RESPONSE:

20. Any and all documents either submitted to or in any way either considered and/or relied upon by the Department, its employees, or agents relating to the purpose of introducing, drafting, considering, revising, adopting, and/or amending of any rules relating to, or promulgated under, the Live Entertainment Tax.

RESPONSE:

21. Any and all documents either submitted to or in any way either considered and/or relied upon by the Department, its employees, or agents relating to the introduction, drafting, consideration, revision, amendments to, and/or promulgation of any rules relating to, or promulgated under, the Live Entertainment Tax.

RESPONSE:

22. Any and all transcripts, audio or video recording, or other records of any sessions, meetings or hearings of the Department, its employee, or agents relating to the purpose of introducing, drafting, considering, revising, adopting, and/or amending of any rules which created or clarified any exceptions or exemptions to the application of the Live Entertainment Tax.

RESPONSE:

23. Any and all documents relating to any request by or on behalf of any business entity or class of business entities, contending that, taking the opposition that, or inquiring whether, the business entity or class of business entities is/are exempted from the Live Entertainment Tax.

RESPONSE:

24. Any and all documents relating to the procedures by which the Department determines whether a business entity is subject to the Live Entertainment Tax.

RESPONSE:

25. Any and all documents relating to any challenge by any business entity to the applicability of the Live Entertainment Tax or of amounts owned by way of the Live Entertainment Tax.

RESPONSE:

26. Any and all documents relating to the administration of the Live Entertainment Tax or the providing of advice relating to the Live Entertainment tax by any person operating under the title "live entertainment tax examiner."

RESPONSE:

RESPONSE:

Dated: March 26, 2009

Respectfully Submitted,

BRADLEY J. SHAFER
Michigan Bar No. P36604
Shafer & Associates, P.C.
3800 Capital City Blvd., Suite 2
Lansing, Michigan 48906-2110
Telephone: (517) 886-6560
Facsimile: (517) 886-6565
bjshafer@acd.net
Attorneys for Plaintiffs
Admitted Pro Hac Vice

Exhibit 3

INTG
CATHERINE CORTEZ MASTO
Attorney General
Blake A. Doerr, #9001
Deputy Attorney General
David J. Pope, #8617
Sr. Deputy Attorney General
555 E. Washington Avenue, Suite 3900
Las Vegas, Nevada 89101
Ph. (702) 486-3095
Fax: (702) 486-3416
bdoerr@ag.nv.gov
Attorneys for Nevada Department of Taxation

DISTRICT COURT

CLARK COUNTY, NEVADA

DÉJÀ VU SHOWGIRLS OF LAS VEGAS, L.L.C., d/b/a Déjà vu Showgirls, LITTLE DARLINGS OF LAS VEGAS, L.L.C., d/b/a Little Darlings, K-KEL, INC. d/b/a Spearmint Rhino Gentlemen's Club, OLYMPUS GARDEN, INC., d/b/a Olympic Garden, SHAC, L.L.C., d/b/a Sapphire, THE POWER COMPANY, INC., d/b/a Crazy Horse Too Gentlemen's Club, D. WESTWOOD, INC., d/b/a Treasures, and D.I. FOOD & BEVERAGE OF LAS VEGAS, L.L.C., d/b/a Scores

Plaintiffs,

vs.

NEVADA DEPARTMENT OF TAXATION, NEVADA TAX COMMISSION, NEVADA STATE BOARD OF EXAMINERS, and MICHELLE JACOBS, in her official capacity only,

Defendants.

Case No. A533273
Dept No. IX

NEVADA DEPARTMENT OF TAXATION'S RESPONSES TO PLAINTIFFS' FIRST SET OF INTERROGATORIES TO DEFENDANTS

Attorney General's Office
555 E. Washington, Suite 3900
Las Vegas, NV 89101

TO: Plaintiffs; and

TO: Shafer & Associates, P.C., attorney of record for Plaintiffs:

Defendants, NEVADA DEPARTMENT OF TAXATION, NEVADA TAX COMMISSION, NEVADA STATE BOARD OF EXAMINERS and MICHELLE JACOBS by and through its attorney Catherine Cortez Masto, Attorney General, and Blake Doerr, Deputy Attorney General, hereby responds to Plaintiff's First Set of Interrogatories and states as follows:

It should be noted that Responding Party has not fully completed discovery in this action and has not completed preparation for trial. All of the responses contained herein are based only upon such information and documents which are presently available and specifically known to Responding Party. As discovery proceeds, witnesses, facts and evidence may be discovered which are not set forth herein, but which may be responsive to an interrogatory. Therefore, the following responses are given without prejudice to Responding Party's right to supplement the responses upon any subsequently discovered facts or witnesses which it may later recall.

Responding Party further assumes no obligation to voluntarily supplement these responses to reflect witnesses, facts and evidence following the filing of these responses other than provided by Nevada Rule of Civil Procedure 26(e). In addition, because some responses may have been ascertained by its attorneys and investigators, Responding Party may not have personal knowledge of the information from which these responses are derived.

GENERAL OBJECTIONS

1. Responding Party objects to the instructions and directions that accompany the Interrogatories to the extent that such instructions and directions tend to impose a discovery obligation beyond that required by applicable rules of civil procedure, and Responding Party refuses to comply with such instructions and directions to the extent that they attempt to impose a discovery obligation beyond that required by applicable rules of civil procedure.

2. Responding Party objects to the instructions and directions that accompany the Interrogatories to the extent that such instructions and directions call for a response that involves information that compromises attorney work product and/or information that is protected by the attorney/client privilege and/or statutes requiring confidentiality.

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3. Responding Party objects to the Interrogatories to the extent that they utilize the terms "all", "each", or "any" concerning various subjects or events on the grounds that the Interrogatories are overly broad, unduly burdensome, onerous, and request information that is not relevant or which is not likely to lead to the discovery of admissible evidence.

Without waiving any of the foregoing objections, and reserving the right to supplement each and every one of its Responses as discovery continues, Responding Party responds as follows:

INTERROGATORY NUMBER 1

For each separate tax year from 2003 to present, please identify each and every person or business entity that paid the Live Entertainment Tax during that tax year; whether the entity is subject to the Five Percent LET or the Ten Percent LET; and specify the amount of Live Entertainment Tax paid for such year. In the event that a single entity is subject to both the Five Percent LET and the Ten Percent LET or made payments to both the Department and the Commission, identify each such payment separately.

RESPONSE TO INTERROGATORY NUMBER 1

This Responding Party hereby objects to this interrogatory on grounds including, but not limited to, that the interrogatory is compound, overly broad, vague and ambiguous, improperly seeks attorney work product information, requests confidential and/or privileged information pursuant to NRS 40.025 and NRS 368A.180, asks for information which is not reasonably calculated to lead to the discovery of admissible evidence, and is overly burdensome. Without waiving said objections, and while reserving same, and while reserving the right to supplement or amend this response, this Responding Party asserts as follows:

As to the non-objectionable portion of this Interrogatory, see Exhibit "A" to Response to Plaintiffs' First Request for Production, filed concurrently herewith. Discovery is continuing.

INTERROGATORY NUMBER 2

Identify each and every person or business entity subject that paid taxes under the original version of the Live Entertainment Tax enacted in 2003 but due to any changes in the

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Live Entertainment Tax, changes or adoption of Live Entertainment Tax Regulations, or due to any Department or Commission policy, was not required to pay the Live Entertainment Tax in any subsequent year. For each person or business entity so identified, also specify the change(s) in law, regulation, or policy that resulted in the person or entity no longer being subject to the Live Entertainment Tax.

RESPONSE TO INTERROGATORY NUMBER 2

This Responding Party hereby objects to this interrogatory on grounds including, but not limited to, that the interrogatory is compound, overly broad, vague and ambiguous, calls for speculation, improperly seeks attorney work product information, requests information which is confidential and/or privileged pursuant to NRS 49.025 and NRS 368A.180, asks for information which is not reasonably calculated to lead to the discovery of admissible evidence, and is overly burdensome as it would require expensive review of records. The Interrogatory additionally seeks information that is obtainable from another more convenient, less burdensome and less expensive source.

Without waiving said objections, and while reserving same, and while reserving the right to supplement or amend this response, this Responding Party asserts as follows:

As to the non-objectionable portion of this Interrogatory, see Exhibit "A" to Response to Plaintiffs' First Request for Production, filed concurrently herewith. Discovery is continuing.

INTERROGATORY NUMBER 3

Identify each and every person or business entity not subject to the original version of the Live Entertainment Tax, but due to any change(s) in the changes or adoption of Live Entertainment Tax Regulations, or due to any Department or Commission policy, became subject to the Live Entertainment Tax in any subsequent year. For each person or business entity so identified, also specify the change(s) in law, regulation, or policy that resulted in the person or business entity becoming subject to the Live Entertainment Tax.

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RESPONSE TO INTERROGATORY NUMBER 3

This Responding Party hereby objects to this interrogatory on grounds including, but not limited to, that the interrogatory is compound, overly broad, vague and ambiguous, calls for speculation, improperly seeks attorney work product information, requests information which is confidential and/or privileged pursuant to NRS 40.025 and NRS 368A.180, asks for information which is not reasonably calculated to lead to the discovery of admissible evidence, and is overly burdensome as it would require expensive review of records. The Interrogatory additionally seeks information that is obtainable from another more convenient, less burdensome and less expensive source, and information already in the custody and control of the Plaintiffs.

Without waiving said objections, and while reserving same, and while reserving the right to supplement or amend this response, this Responding Party asserts as follows:

As to the non-objectionable portion of this Interrogatory, see Exhibit "A" to Response to Plaintiffs' First Request for Production which contains discoverable information related to the LET tax, filed concurrently herewith. Discovery is continuing.

INTERROGATORY NUMBER 4

Identify the person or persons most knowledgeable of the introduction, drafting, consideration of, revising, adopting and /or amending the Live Entertainment Tax.

RESPONSE TO INTERROGATORY NUMBER 4

This Responding Party hereby objects to this interrogatory on grounds including, but not limited to, that the interrogatory is compound, overly broad, vague and ambiguous, calls for speculation, improperly seeks attorney work product information, requests information which is not reasonably calculated to lead to the discovery of admissible evidence, and is overly burdensome as it would require expensive review of public records which are obtainable from another more convenient, less burdensome and less expensive source.

Without waiving said objections, and while reserving same, and while reserving the

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Las Vegas, NV 89101

right to supplement or amend this response, this Responding Party asserts as follows:

Dino DiCianno
Executive Director
Department of Taxation

As to the non-objectionable portion of this Interrogatory, see public access Legislative History documents at:

http://www.leg.state.nv.us/73rd/Reports/history.cfm?ID=1877

http://www.leg.state.nv.us/73rd/Reports/history.cfm?DocumentType=1&BillNo=554 .

Discovery is continuing.

INTERROGATORY NUMBER 5

Identify the person or persons most knowledgeable of the introduction, drafting, consideration of, revising, adopting and /or amending any and all regulations relating to, or promulgated under, the Live Entertainment Tax.

RESPONSE TO INTERROGATORY NUMBER 5

This Responding Party hereby objects to this interrogatory on grounds including, but not limited to, that the interrogatory is compound, overly broad, vague and ambiguous, calls for speculation, improperly seeks attorney work product information, requests information which is not reasonably calculated to lead to the discovery of admissible evidence, and is overly burdensome as it would require expensive review of public records which are obtainable from another more convenient, less burdensome and less expensive source.

Without waiving said objections, and while reserving same, and while reserving the right to supplement or amend this response, this Responding Party asserts as follows:

Dino DiCianno
Executive Director
Department of Taxation

As to the non-objectionable portion of this Interrogatory, See public access to Legislative History documents at:

http://www.leg.state.nv.us/19thSpecial/Reports/history.cfm?ID=1232 (SB4);

http://www.leg.state.nv.us/19thSpecial/Reports/history.cfm?ID=1234 (SB5).

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http://www.leg.state.nv.us/73rd/Reports/history.cfm?ID=1877 (SB247);

http://www.leg.state.nv.us/73rd/Reports/history.cfm?DocumentType=1&BillNo=554 (AB 544).

See also regulation workshop recordings, attached to Responses to Plaintiffs' Request for Production, Exhibit "AAA".

Discovery is continuing.

INTERROGATORY NUMBER 6

Identify the person or persons most knowledgeable of the persons and entities who/which have paid the Live Entertainment Tax since the initial adoption of that statute.

RESPONSE TO INTERROGATORY NUMBER 6

This Responding Party hereby objects to this interrogatory on grounds including, but not limited to, that the interrogatory is compound, overly broad, vague and ambiguous, calls for speculation, improperly seeks attorney work product information, requests information which is confidential and / or privileged pursuant to NRS 40.025 and NRS 368A.180, asks for information which is not reasonably calculated to lead to the discovery of admissible evidence, and is overly burdensome as it would require expensive review of records. The Interrogatory additionally seeks information that is obtainable from another more convenient, less burdensome and less expensive source, and information already in the custody and control of the Plaintiffs.

Without waiving said objections, and while reserving same, and while reserving the right to supplement or amend this response, this Responding Party asserts as follows:

As to the non-objectionable portion of this Interrogatory, and subject to the prohibitions of NRS 40.025 and NRS 368A.180:

Michelle Jacobs
Tax Examiner II
Department of Taxation

Discovery is continuing.

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Las Vegas, NV 89101

INTERROGATORY NUMBER 7

Identify the person or persons most knowledgeable about the persons or business entities meant to be taxed by the Live Entertainment Tax.

RESPONSE TO INTERROGATORY NUMBER 7

This Responding Party hereby objects to this interrogatory on grounds including, but not limited to, that the interrogatory is compound, overly broad, vague and ambiguous, calls for speculation, improperly seeks attorney work product information, requests information which is not reasonably calculated to lead to the discovery of admissible evidence, and is overly burdensome as it would require expensive review of public records which are obtainable from another more convenient, less burdensome and less expensive source.

Without waiving said objections, and while reserving same, and while reserving the right to supplement or amend this response, and subject to the prohibitions of NRS 40.025 and NRS 368A.180: this Responding Party asserts as follows:

Dino DiCianno
Executive Director
Department of Taxation

As to the non-objectionable portion of this Interrogatory, entities who provide "live entertainment" is defined by NRS 368A.090. *See* Answer to Interrogatory 5. *See* all public access Legislative History documents at:

http://www.leg.state.nv.us/19thSpecial/Reports/history.cfm?ID=1232 (SB4);

http://www.leg.state.nv.us/19thSpecial/Reports/history.cfm?ID=1234 (SB5).

http://www.leg.state.nv.us/73rd/Reports/history.cfm?ID=1877 (SB247);

http://www.leg.state.nv.us/73rd/Reports/history.cfm?DocumentType=1&BillNo=554 (AB 544).

Discovery is continuing.

INTERROGATORY NUMBER 8

Identify the person or persons most knowledgeable of the purposes for each and every one of the exceptions to the definition of "live entertainment" set forth in NRS 368A.090.

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Should you conclude that the person most knowledgeable differs depending on the legislative act, list the person most knowledgeable regarding each legislative act.

RESPONSE TO INTERROGATORY NUMBER 8

This Responding Party hereby objects to this interrogatory on grounds including, but not limited to, that the interrogatory is compound, overly broad, vague and ambiguous, calls for speculation, improperly seeks attorney work product information, requests information which is not reasonably calculated to lead to the discovery of admissible evidence, and is overly burdensome as it would require expensive review of public records which are obtainable from another more convenient, less burdensome and less expensive source.

Without waiving said objections, and while reserving same, and while reserving the right to supplement or amend this response, this Responding Party asserts as follows:

As to the non-objectionable portion of this Interrogatory, subject to the prohibitions of NRS 40.025 and NRS 368A.180:

Michelle Jacobs
Tax Examiner II
Department of Taxation

See all public access Legislative History documents at:

http://www.leg.state.nv.us/19thSpecial/Reports/history.cfm?ID=1232 (SB4);

http://www.leg.state.nv.us/19thSpecial/Reports/history.cfm?ID=1234 (SB5).

http://www.leg.state.nv.us/73rd/Reports/history.cfm?ID=1877 (SB247);

http://www.leg.state.nv.us/73rd/Reports/history.cfm?DocumentType=1&BillNo=554 (AB 544).

Discovery is continuing.

INTERROGATORY NUMBER 9

Identify the person or persons most knowledgeable of the purposes for any and all legislative changes to the exceptions to the definition of "live entertainment" set forth in NRS 368A.090.

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RESPONSE TO INTERROGATORY NUMBER 9

This Responding Party hereby objects to this interrogatory on grounds including, but not limited to, that the interrogatory is compound, overly broad, vague and ambiguous, calls for speculation, improperly seeks attorney work product information, requests information which is not reasonably calculated to lead to the discovery of admissible evidence, and is overly burdensome as it would require expensive review of public records which are obtainable from another more convenient, less burdensome and less expensive source.

Without waiving said objections, and while reserving same, and while reserving the right to supplement or amend this response, this Responding Party asserts as follows

As to the non-objectionable portion of this Interrogatory:

Dino DiCianno
Executive Director
Department of Taxation

The definition for "live entertainment" is contained in NRS 368A.090. See all public access Legislative History documents at:

http://www.leg.state.nv.us/19thSpecial/Reports/history.cfm?ID=1232 (SB4);

http://www.leg.state.nv.us/19thSpecial/Reports/history.cfm?ID=1234 (SB5).

http://www.leg.state.nv.us/73rd/Reports/history.cfm?ID=1877 (SB247);

http://www.leg.state.nv.us/73rd/Reports/history.cfm?DocumentType=1&BillNo=554 (AB 544).

Discovery is continuing.

INTERROGATORY NUMBER 10

Identify the person or persons most knowledgeable of the purposes for each and every one of the exceptions to the application of the Live Entertainment Tax set forth in NRS 368A.200. Should you conclude that the person most knowledgeable differs depending on the legislative act, list the person most knowledgeable regarding each legislative act.

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RESPONSE TO INTERROGATORY NUMBER 10

This Responding Party hereby objects to this interrogatory on grounds including, but not limited to, that the interrogatory is compound, overly broad, vague and ambiguous, calls for speculation, improperly seeks attorney work product information, requests information which is not reasonably calculated to lead to the discovery of admissible evidence, and is overly burdensome as it would require expensive review of public records which are obtainable from another more convenient, less burdensome and less expensive source.

Without waiving said objections, and while reserving same, and while reserving the right to supplement or amend this response, this Responding Party asserts as follows:

As to the non-objectionable portion of this Interrogatory, and subject to the prohibitions of NRS 40.025 and NRS 368A.180:

Michelle Jacobs
Tax Examiner II
Department of Taxation

The entities who provide "live entertainment" are defined in NRS 368A.090. *See* all public access Legislative History documents at:

http://www.leg.state.nv.us/19thSpecial/Reports/history.cfm?ID=1232 (SB4);

http://www.leg.state.nv.us/19thSpecial/Reports/history.cfm?ID=1234 (SB5).

http://www.leg.state.nv.us/73rd/Reports/history.cfm?ID=1877 (SB247);

http://www.leg.state.nv.us/73rd/Reports/history.cfm?DocumentType=1&BillNo=554 (AB 544).

Discovery is continuing.

INTERROGATORY NUMBER 11

Identify the person or persons most knowledgeable of the purposes for each and every one of the exceptions to the application of the Live Entertainment Tax or to the definition of "live entertainment" created by any regulation or policy of the Department. Do not duplicate responses to previous interrogatories. In the event that different persons are most knowledgeable regarding different changes, list such individuals separately together with any

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changes with regard to which the person is most knowledgeable.

RESPONSE TO INTERROGATORY NUMBER 11

This Responding Party hereby objects to this interrogatory on grounds including, but not limited to, that the interrogatory is compound, duplicative, overly broad, vague and ambiguous, calls for speculation, improperly seeks attorney work product information, requests information which is not reasonably calculated to lead to the discovery of admissible evidence, presumes facts not in evidence, presents an incomplete hypothetical, and is overly burdensome as it would require expensive review of public records which are obtainable from another more convenient, less burdensome and less expensive source.

Without waiving said objections, and while reserving same, and while reserving the right to supplement or amend this response, this Responding Party asserts as follows

As to the non-objectionable portion of this Interrogatory, and subject to the prohibitions of NRS 40.025 and NRS 368A.180:

Michelle Jacobs
Tax Examiner II
Department of Taxation

The entities who provide "live entertainment" are defined in NRS 368A.090. See all public access Legislative History documents at:

http://www.leg.state.nv.us/19thSpecial/Reports/history.cfm?ID=1232 (SB4);

http://www.leg.state.nv.us/19thSpecial/Reports/history.cfm?ID=1234 (SB5).

http://www.leg.state.nv.us/73rd/Reports/history.cfm?ID=1877 (SB247);

http://www.leg.state.nv.us/73rd/Reports/history.cfm?DocumentType=1&BillNo=554 (AB 544).

Discovery is continuing.

INTERROGATORY NUMBER 12

Identify the person or persons most knowledgeable of the purposes for each and every one of the exceptions to the application of the Live Entertainment Tax or to the definition of "live entertainment" created by any regulation or policy of the Commission. In the event

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different persons are most knowledgeable regarding different changes, list such individuals separately, together with the changes with regard to which the person is most knowledgeable.

RESPONSE TO INTERROGATORY NUMBER 12

This Responding Party hereby objects to this interrogatory on grounds including, but not limited to, that the interrogatory is compound, duplicative, overly broad, vague and ambiguous, calls for speculation, improperly seeks attorney work product information, requests information which is not reasonably calculated to lead to the discovery of admissible evidence, presumes facts not in evidence, presents an incomplete hypothetical, and is overly burdensome as it would require expensive review of public records which are obtainable from another more convenient, less burdensome and less expensive source.

Without waiving said objections, and while reserving same, and while reserving the right to supplement or amend this response, this Responding Party asserts as follows

As to the non-objectionable portion of this Interrogatory:

Dino DiCianno
Executive Director
Department of Taxation

The entities who provide "live entertainment" are defined in NRS 368A.090. *See* all public access Legislative History documents at:

http://www.leg.state.nv.us/19thSpecial/Reports/history.cfm?ID=1232 (SB4);

http://www.leg.state.nv.us/19thSpecial/Reports/history.cfm?ID=1234 (SB5).

http://www.leg.state.nv.us/73rd/Reports/history.cfm?ID=1877 (SB247);

http://www.leg.state.nv.us/73rd/Reports/history.cfm?DocumentType=1&BillNo=554 (AB 544).

Discovery is continuing.

INTERROGATORY NUMBER 13

Identify the person or persons most knowledgeable regarding the steps by which the proposed "5% across the board" tax on live entertainment was modified to, instead, tax

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certain live entertainment at the rate of 10%, as provided by NRS 368A.200(1).

RESPONSE TO INTERROGATORY NUMBER 13

This Responding Party hereby objects to this interrogatory on grounds including, but not limited to, that the interrogatory is compound, duplicative, overly broad, vague and ambiguous, calls for speculation, improperly seeks attorney work product information, requests information which is not reasonably calculated to lead to the discovery of admissible evidence, presumes facts not in evidence, presents an incomplete hypothetical, and is overly burdensome as it would require expensive review of public records which are obtainable from another more convenient, less burdensome and less expensive source.

Without waiving said objections, and while reserving same, and while reserving the right to supplement or amend this response, this Responding Party asserts as follows:

As to the non-objectionable portion of this Interrogatory:

Dino DiCianno
Executive Director
Department of Taxation

See all public access Legislative History documents at:

http://www.leg.state.nv.us/19thSpecial/Reports/history.cfm?ID=1232 (SB4);

http://www.leg.state.nv.us/19thSpecial/Reports/history.cfm?ID=1234 (SB5).

http://www.leg.state.nv.us/73rd/Reports/history.cfm?ID=1877 (SB247);

http://www.leg.state.nv.us/73rd/Reports/history.cfm?DocumentType=1&BillNo=554 (AB 544).

Discovery is continuing.

INTERROGATORY NUMBER 14

Identify the person or persons most knowledgeable regarding the purpose(s) of modifying the proposed "5% across the board" tax on live entertainment to, instead, tax certain live entertainment at the rate of 10%, as provided by NRS 368A.200(1).

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Las Vegas, NV 89101

RESPONSE TO INTERROGATORY NUMBER 14

This Responding Party hereby objects to this interrogatory on grounds including, but not limited to, that the interrogatory is compound, duplicative, overly broad, vague and ambiguous, calls for speculation, improperly seeks attorney work product information, requests information which is not reasonably calculated to lead to the discovery of admissible evidence, presumes facts not in evidence, presents an incomplete hypothetical, and is overly burdensome as it would require expensive review of public records which are obtainable from another more convenient, less burdensome and less expensive source.

Without waiving said objections, and while reserving same, and while reserving the right to supplement or amend this response, this Responding Party asserts as follows:

As to the non-objectionable portion of this Interrogatory:

Dino DiCianno
Executive Director
Department of Taxation

See all public access Legislative History documents at:

http://www.leg.state.nv.us/19thSpecial/Reports/history.cfm?ID=1232 (SB4);

http://www.leg.state.nv.us/19thSpecial/Reports/history.cfm?ID=1234 (SB5).

http://www.leg.state.nv.us/73rd/Reports/history.cfm?ID=1877 (SB247);

http://www.leg.state.nv.us/73rd/Reports/history.cfm?DocumentType=1&BillNo=554 (AB 544).

Discovery is continuing.

INTERROGATORY NUMBER 15

Identify each and every person or business entity that became subject to the Live Entertainment Tax as a result of NRS 368A.200 being amended" (1) to change the seating or capacity or occupancy requirement (presently NRS 368A.200(5)(d) and (e) from 300 to 200: or (2) to change the language to refer to "maximum occupancy" rather that "maximum seating capacity."

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555 E. Washington, Suite 3900
Las Vegas, NV 89101

RESPONSE TO INTERROGATORY NUMBER 15

This Responding Party hereby objects to this interrogatory on grounds including, but not limited to, that the interrogatory is compound, overly broad, vague and ambiguous, calls for speculation, improperly seeks attorney work product information, requests information which is confidential and privileged pursuant to NRS 49.025 and NRS 368A.180, asks for information which is not reasonably calculated to lead to the discovery of admissible evidence, presumes facts not in evidence, presents an incomplete hypothetical, and is overly burdensome as it would require expensive review of public records which are obtainable from another more convenient, less burdensome and less expensive source, and information that is already in the custody and control of the Plaintiffs.

Without waiving said objections, and while reserving same, and while reserving the right to supplement or amend this response, this Responding Party asserts as follows:

As to the non-objectionable portion of this Interrogatory, *See* **Exhibit "B".**

Discovery is continuing.

INTERROGATORY NUMBER 16

Identify the person or persons most knowledgeable regarding the purpose(s) of changing the maximum seating capacity/maximum occupancy specified by (present) NRS 368A.200(5)(d) and (e) from 300 to 200.

RESPONSE TO INTERROGATORY NUMBER 16

This Responding Party hereby objects to this interrogatory on grounds including, but not limited to, that the interrogatory is overly broad, vague and ambiguous, calls for speculation, improperly seeks attorney work product information, requests information which is not reasonably calculated to lead to the discovery of admissible evidence, presumes facts not in evidence, presents an incomplete hypothetical, and is overly burdensome as it would require expensive review of public records which are obtainable from another more convenient, less burdensome and less expensive source.

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555 E. Washington, Suite 3900
Las Vegas, NV 89101

Without waiving said objections, and while reserving same, and while reserving the right to supplement or amend this response, this Responding Party asserts as follows:

As to the non-objectionable portion of this Interrogatory:

Dino DiCianno
Executive Director
Department of Taxation

See all public access Legislative History documents at:

http://www.leg.state.nv.us/19thSpecial/Reports/history.cfm?ID=1232 (SB4);

http://www.leg.state.nv.us/19thSpecial/Reports/history.cfm?ID=1234 (SB5).

http://www.leg.state.nv.us/73rd/Reports/history.cfm?ID=1877 (SB247);

http://www.leg.state.nv.us/73rd/Reports/history.cfm?DocumentType=1&BillNo=554 (AB 544).

Discovery is continuing.

INTERROGATORY NUMBER 17

Identify the person or persons most knowledgeable regarding the effect(s) of changing the maximum seating capacity/maximum occupancy specified by NRS 368A.200(5)(d) and (e) from 300 to 200.

RESPONSE TO INTERROGATORY NUMBER 17

This Responding Party hereby objects to this interrogatory on grounds including, but not limited to, that the interrogatory is compound, duplicative, overly broad, vague and ambiguous, calls for speculation, improperly seeks attorney work product information, requests information which is not reasonably calculated to lead to the discovery of admissible evidence, presumes facts not in evidence, presents an incomplete hypothetical, asks for an expert opinion, and is overly burdensome as it would require expensive review of public records which are obtainable from another more convenient, less burdensome and less expensive source.

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Las Vegas, NV 89101

Without waiving said objections, and while reserving same, and while reserving the right to supplement or amend this response, this Responding Party asserts as follows:

As to the non-objectionable portion of this Interrogatory:

Dino DiCianno
Executive Director
Department of Taxation

See all public access Legislative History documents at:

http://www.leg.state.nv.us/19thSpecial/Reports/history.cfm?ID=1232 (SB4);

http://www.leg.state.nv.us/19thSpecial/Reports/history.cfm?ID=1234 (SB5).

http://www.leg.state.nv.us/73rd/Reports/history.cfm?ID=1877 (SB247);

http://www.leg.state.nv.us/73rd/Reports/history.cfm?DocumentType=1&BillNo=554 (AB 544).

Discovery is continuing.

INTERROGATORY NUMBER 18

Identify the person or persons most knowledgeable regarding the purpose(s) of changing the language of (presently) NRS 368A.200(5)(d) and (e) from referring to "maximum seating capacity" to "maximum occupancy."

RESPONSE TO INTERROGATORY NUMBER 18

This Responding Party hereby objects to this interrogatory on grounds including, but not limited to, that the interrogatory is compound, duplicative, overly broad, vague and ambiguous, calls for speculation, improperly seeks attorney work product information, requests information which is not reasonably calculated to lead to the discovery of admissible evidence, presumes facts not in evidence, presents an incomplete hypothetical, and is overly burdensome as it would require expensive review of public records which are obtainable from another more convenient, less burdensome and less expensive source.

Without waiving said objections, and while reserving same, and while reserving the right to supplement or amend this response, this Responding Party asserts as follows:

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555 E. Washington, Suite 3900
Las Vegas, NV 89101

As to the non-objectionable portion of this Interrogatory:

Dino DiCianno
Executive Director
Department of Taxation

See all public access Legislative History documents at:

http://www.leg.state.nv.us/73rd/Reports/history.cfm?ID=1877 (SB247);

http://www.leg.state.nv.us/73rd/Reports/history.cfm?DocumentType=1&BillNo=554 (AB 544).

Discovery is continuing.

INTERROGATORY NUMBER 19

Identify any and all persons, business entities, or classes, who/which have requested to be exempt from the Live Entertainment Tax.

RESPONSE TO INTERROGATORY NUMBER 19

This Responding Party hereby objects to this interrogatory on grounds including, but not limited to, that the interrogatory is compound, overly broad, vague and ambiguous, calls for speculation, improperly seeks attorney work product information, requests information which is confidential and privileged pursuant to NRS 368A.180 and NRS 49.025, asks for information which is not reasonably calculated to lead to the discovery of admissible evidence, and is overly burdensome as it would require expensive review of records. The Interrogatory additionally seeks information that is obtainable from another more convenient, less burdensome and less expensive source, and information which is already in the custody and control of the Plaintiffs.

Without waiving said objections, and while reserving same, and while reserving the right to supplement or amend this response, this Responding Party asserts as follows: The information requested is confidential and non-discoverable pursuant to NRS 40.025 and NRS 368A.180.

Discovery is continuing.

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INTERROGATORY NUMBER 20

For each business entity or class of business entities identified in the preceding interrogatory, indicate whether such entity is currently subject to taxation via presently effective version of the Live Entertainment Tax. If the business entity or class of business entities is not subject to the Live Entertainment Tax, identify the change in the Live Entertainment Tax, regulations, and/or administration responsible for the business entity or class of business entities not being presently subject to taxation.

RESPONSE TO INTERROGATORY NUMBER 20

This Responding Party hereby objects to this interrogatory on grounds including, but not limited to, that the interrogatory is compound, overly broad, vague and ambiguous, calls for speculation, improperly seeks attorney work product information, requests information which is confidential and privileged pursuant to NRS 368A.180 and NRS 49.025, asks for information which is not reasonably calculated to lead to the discovery of admissible evidence, and is overly burdensome as it would require expensive review of records. The Interrogatory additionally seeks information that is obtainable from another more convenient, less burdensome and less expensive source, and information which is already in the possession of Plaintiffs.

Without waiving said objections, and while reserving same, and while reserving the right to supplement or amend this response, this Responding Party asserts as follows: See NRS 368A.090. *See also* Exhibit "AAA" to Response to Plaintiffs' Requests for Production and response to Interrogatory 19 above.

INTERROGATORY NUMBER 21

Identify each and every governmental interest meant to be served by the enactment or operation of the Live Entertainment Tax.

RESPONSE TO INTERROGATORY NUMBER 21

This Responding Party hereby objects to this interrogatory on grounds including, but not limited to, that the interrogatory is compound, overly broad, vague and ambiguous, calls

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for speculation, improperly seeks attorney work product information, requests information which is confidential and privileged pursuant to NRS 368A.180 and NRS 49.025, asks for information which is not reasonably calculated to lead to the discovery of admissible evidence, and is overly burdensome as it would require expensive review of records. The Interrogatory additionally seeks information that is obtainable from another more convenient, less burdensome and less expensive source.

Without waiving said objections, and while reserving same, and while reserving the right to supplement or amend this response, this Responding Party asserts as follows:

As to the non-objectionable portion of this Interrogatory, the purpose of the Live Entertainment Tax is to generate revenue for the state. See NRS Chapter 368A, NAC Chapter 368A, *see also* all public access legislative history documents at:

http://www.leg.state.nv.us/19thSpecial/Reports/history.cfm?ID=1232 (SB4);

http://www.leg.state.nv.us/19thSpecial/Reports/history.cfm?ID=1234 (SB5).

http://www.leg.state.nv.us/73rd/Reports/history.cfm?ID=1877 (SB247);

http://www.leg.state.nv.us/73rd/Reports/history.cfm?DocumentType=1&BillNo=554 (AB 544).

Discovery is continuing.

INTERROGATORY NUMBER 22

Identify each and every governmental interest meant to be served by the enactment of each and every one of the exceptions and exemptions to the Live Entertainment Tax.

RESPONSE TO INTERROGATORY NUMBER 22

This Responding Party hereby objects to this interrogatory on grounds including, but not limited to, that the interrogatory is compound, overly broad, vague and ambiguous, calls for speculation, improperly seeks attorney work product information, requests information which is confidential and privileged pursuant to NRS 368A.180, asks for information which is not reasonably calculated to lead to the discovery of admissible evidence, and is overly burdensome as it would require expensive review of records. The Interrogatory additionally

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Las Vegas, NV 89101

seeks information that is obtainable from another more convenient, less burdensome and less expensive source.

Without waiving said objections, and while reserving same, and while reserving the right to supplement or amend this response, this Responding Party asserts as follows:

As to the non-objectionable portion of this Interrogatory, the purpose of the Live Entertainment Tax is to generate revenue for the state. See NRS Chapter 368A, NAC Chapter 368A, *see also* all public access legislative history documents at:

http://www.leg.state.nv.us/19thSpecial/Reports/history.cfm?ID=1232 (SB4);

http://www.leg.state.nv.us/19thSpecial/Reports/history.cfm?ID=1234 (SB5).

http://www.leg.state.nv.us/73rd/Reports/history.cfm?ID=1877 (SB247);

http://www.leg.state.nv.us/73rd/Reports/history.cfm?DocumentType=1&BillNo=554 (AB 544).

Discovery is continuing.

INTERROGATORY NUMBER 23

Identify each and every person from the State of Nevada whose job responsibilities include administering the collection and payment of the Live Entertainment Tax.

RESPONSE TO INTERROGATORY NUMBER 23

This Responding Party hereby objects to this interrogatory on grounds including, but not limited to, that the interrogatory is compound, overly broad, vague and ambiguous, calls for speculation, improperly seeks attorney work product information, requests employee information which is confidential and privileged, asks for information which is not reasonably calculated to lead to the discovery of admissible evidence, and is overly burdensome as it would require expensive review of records. The Interrogatory additionally seeks information that is obtainable from another more convenient, less burdensome and less expensive source.

Without waiving said objections, and while reserving same, and while reserving the right to supplement or amend this response, this Responding Party asserts as follows:

As to the non-objectionable portion of this Interrogatory, all employees of the

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555 E. Washington, Suite 3900
Las Vegas, NV 89101

Department of Taxation may have some responsibility for the administration of the collection and payment of the LET.

Discovery is continuing.

INTERROGATORY NUMBER 24

Identify all persons associated with the department, commission, or Board who hold or act under the title "live entertainment tax examiner." Also, identify the person or persons responsible for overseeing the activities of the live entertainment tax examiners.

RESPONSE TO INTERROGATORY NUMBER 24

This Responding Party hereby objects to this interrogatory on grounds including, but not limited to, that the interrogatory is compound, overly broad, vague and ambiguous, calls for speculation, improperly seeks attorney work product information, requests employee information which is confidential and privileged, asks for information which is not reasonably calculated to lead to the discovery of admissible evidence, and is overly burdensome as it would require expensive review of records.

Without waiving said objections, and while reserving same, and while reserving the right to supplement or amend this response, no such title exists in the Department of Taxation, and all employees of the Department of Taxation may have some responsibility for the administration of the collection and payment of the LET.

DATED THIS 14th day of August, 2009.

CATHERINE CORTEZ MASTO
Attorney General

By: _____
Blake A. Doerr, #9001
Deputy Attorney General
David J. Pope, #8617
Sr. Deputy Attorney General
555 E. Washington Avenue, Suite 3900
Las Vegas, Nevada 89101
Attorneys for Nevada Department of Taxation

Attorney General's Office
555 E. Washington, Suite 3900
Las Vegas, NV 89101

VERIFICATION

STATE OF NEVADA)
) SS
COUNTY OF CLARK)

Dino DiCianno, Executive Director of the Department of Taxation, being first duly sworn, upon oath, deposes and says that he has read the foregoing and knows the contents thereof; that the same is true of his own knowledge, except as to those matters stated thereon upon information and belief; and as to those matters he believes them to be true.

Dated 8/13/09

Dino DiCianno, Executive Director

SUBSCRIBED AND SWORN to before me this 14 day of August, 2009

RUTH E. JONES
NOTARY PUBLIC
STATE OF NEVADA
No.96-4181-3 My Appt. Exp: Aug. 11, 2012

NOTARY PUBLIC in and for said County and State.

CERTIFICATE OF SERVICE

I hereby certify that on the 14th day of August, 2009, the foregoing NEVADA DEPARTMENT OF TAXATION'S RESPONSES TO PLAINTIFF'S FIRST SET OF INTERROGATORIES TO DEFENDANTS was served on the foregoing party by Federal Express, addressed to:

Federal Express Airbill #8601 4135 5818

Bradley J. Shafer
SHAFER & ASSOCIATES, P.C.
3800 Capital City Blvd., Suite #2
Lansing, Michigan 48906-2110
Fax: 517-886-6565

Dated this 14th day of August, 2009

An Employee of the State of Nevada

Attorney General's Office
555 E. Washington, Suite 3900
Las Vegas, NV 89101