

IN THE SUPREME COURT OF THE STATE OF NEVADA

KAZUO OKADA,

Petitioner,

vs.

THE EIGHTH JUDICIAL DISTRICT
COURT OF THE STATE OF
NEVADA, IN AND FOR CLARK
COUNTY; THE HONORABLE
ELIZABETH GONZALEZ,
DISTRICT JUDGE, DEPT. 11,

Respondent,

and

WYNN RESORTS, LIMITED,

Real Party in Interest.

Case No. 74519

District Court Case No. A-12-656710-B
Electronically Filed
Dec 01 2017 11:54 a.m.

Elizabeth A. Brown
Clerk of Supreme Court
**SUPPLEMENTAL APPENDIX
IN SUPPORT OF REAL
PARTIES IN INTEREST
KIMMARIE SINATRA AND
WYNN RESORTS, LIMITED'S
ANSWER TO PETITION FOR
WRIT OF PROHIBITION OR
ALTERNATIVELY, MANDAMUS**

VOLUME I

DATED this 1st day of December 2017.

PISANELLI BICE PLLC

By: /s/ Todd L. Bice

James J. Pisanelli, Esq., Bar No. 4027

Todd L. Bice, Esq., Bar No. 4534

Debra L. Spinelli, Esq., Bar No. 9695

400 South 7th Street, Suite 300

Las Vegas, Nevada 89101

Attorneys for Real Parties in Interest

Kimmarie Sinatra and Wynn Resorts, Limited

CHRONOLOGICAL

DOCUMENT	VOL.	PAGE
Elaine P. Wynn's Motion for Leave to File Fifth Amended Counterclaim and Crossclaim on Order Shortening Time dated March 10, 2016	I	RA0001-0212
First Amended Answer of Elaine P. Wynn to Aruze and Universal's Fourth Amended Counterclaim; Fifth Amended Counterclaim and Crossclaim of Elaine P. Wynn	II	RA0213-0285
Elaine P. Wynn's Motion for Leave to File Fifth Amended Counterclaim and Crossclaim on Order Shortening Time (Originally filed under seal on March 10, 2016)	II	RA0286-0311
Elaine P. Wynn's Motion for Leave to File Sixth Amended Counterclaim and Crossclaim	II	RA0312-0331
Order Regarding Motions to Dismiss and Motion to Strike Elaine P. Wynn's Fifth Amended Counterclaim and Cross claims	II	RA0332-0335
Interim Order on Wynn Resorts' Motion for Disqualification	II	RA0336-0340
Notice to Se-Set Hearing on Elaine P. Wynn's Motion for Leave to File Sixth Amended Counterclaim and Crossclaim and Request for Order Shortening Time	II	RA0341-0346
Notice of Entry of Order (Granting Elaine P. Wynn's Motion for Leave to File Sixth Amended Counterclaim and Crossclaim)	II	RA0347-0353
Elaine P. Wynn's Motion to Dismiss Kimmarie Sinatra's Counterclaim and Crossclaim	II	RA0354-0371

ALPHABETICAL

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Order Regarding Motions to Dismiss and Motion to Strike Elaine P. Wynn's Fifth Amended Counterclaim and Cross claims	II	RA0332-0335
Elaine P. Wynn's Motion to Dismiss Kimmarie Sinatra's Counterclaim and Crossclaim	II	RA0354-0371

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of PISANELLI BICE PLLC, and that on this 1st day of December 2017, I electronically filed and served a true and correct copy of the above and foregoing **SUPPLEMENTAL APPENDIX IN SUPPORT OF REAL PARTIES IN INTEREST KIMMARIE SINATRA AND WYNN RESORTS, LIMITED'S ANSWER TO PETITION FOR WRIT OF PROHIBITION OR ALTERNATIVELY MANDAMUS** to the following:

J. Stephen Peek, Esq.
Bryce K. Kunimoto, Esq.
Robert J. Cassity, Esq.
HOLLAND & HART LLP
9555 Hillwood Drive, Second Floor
Las Vegas, NV 89134

Attorneys for Kazuo Okada

J. Randall Jones, Esq.
Mark M. Jones, Esq.
Ian P. McGinn, Esq.
KEMP, JONES & COULTHARD, LLP
3800 Howard Hughes Pkwy, 17th Floor
Las Vegas, NV 89169

David S. Krakoff, Esq.
Benjamin B. Klubes, Esq.
Joseph J. Reilly, Esq.
BUCKLEY SANDLER LLP
1250 – 24th Street NW, Suite 700
Washington, DC 20037

Attorneys for Universal Entertainment Corp.; Aruze USA, Inc.

Donald J. Campbell, Esq.
J. Colby Williams, Esq.
CAMPBELL & WILLIAMS
700 South 7th Street
Las Vegas, NV 89101

Attorneys for Stephen Wynn

William R. Urga, Esq.
JOLLEY URGa WOODBURY
HOLTHUS & ROSE
330 S. Rampart Blvd., Suite 380
Las Vegas, NV 89145

Mark E. Ferrario, Esq.
Tami D. Cowden, Esq.
GREENBERG TRAURIG, LLP
3773 Howard Hughes Parkway, #400
Las Vegas, NV 89169

James M. Cole, Esq.
SIDLEY AUSTIN LLP
1501 K. Street N.W.
Washington, D.C. 20005

Scott D. Stein, Esq.
SIDLEY AUSTIN, LLP
One South Dearborn St.
Chicago, IL 60603

Daniel F. Polsenberg, Esq.
Joel D. Henriod, Esq.
Abraham G. Smith, Esq.
LEWIS ROCA ROTHGERBER
CHRISTIE LLP
3993 Howard Hughes Pkwy, Ste. 600
Las Vegas, NV 89169

Attorneys for Real Party in Interest Elaine Wynn

Steve Morris, Esq.
Rosa Solis-Rainey, Esq.
MORRIS LAW GROUP
411 E. Bonneville Avenue, Suite 360
Las Vegas, NV 89101

Attorneys for Defendants

SERVED VIA HAND-DELIVERY

The Honorable Elizabeth Gonzalez
Eighth Judicial District court, Dept. XI
Regional Justice Center
200 Lewis Avenue
Las Vegas, Nevada 89155

Respondent

/s/ Kimberly Peets
An employee of PISANELLI BICE PLLC

1 **REDV**

WILLIAM R. URGAS, ESQ. #1195

2 Email: wru@juww.com

DAVID J. MALLEY, ESQ. #8171

3 Email: djm@juww.com

JOLLEY URGAS WOODBURY & LITTLE

4 3800 Howard Hughes Parkway, 16th Floor

Las Vegas, NV 89169

5 Telephone: (702) 699-7500

Facsimile: (702) 699-7555

6 JOHN B. QUINN, ESQ. *

7 Email: johnquinn@quinnemanuel.com

MICHAEL T. ZELLER, ESQ. *

8 Email: michaelzeller@quinnemanuel.com

SUSAN R. ESTRICH, ESQ. *

9 Email: susanestrich@quinnemanuel.com

MICHAEL L. FAZIO, ESQ. *

10 Email: michaelfazio@quinnemanuel.com

JENNIFER D. ENGLISH, ESQ. *

11 Email: jenniferenglish@quinnemanuel.com

QUINN EMANUEL URQUHART & SULLIVAN, LLP

12 865 S. Figueroa Street, 10th Floor

Los Angeles, CA 90017

13 Telephone: (213) 443-3000

Facsimile: (213) 443-3100

14 * *pro hac vice admitted*

15 Attorneys for Counterdefendant/Counterclaimant/Cross-claimant

ELAINE P. WYNN

16 **DISTRICT COURT**

17 **CLARK COUNTY, NEVADA**

19 WYNN RESORTS, LIMITED, a Nevada
20 Corporation,

21 Plaintiffs,

22 vs.

23 KAZUO OKADA, an individual; ARUZE
24 USA, INC., a Nevada corporation,
UNIVERSAL ENTERTAINMENT
CORPORATION, a Japanese corporation,

25 Defendants.

26
27 AND ALL RELATED CLAIMS.
28

ELECTRONICALLY SERVED

04/04/2016 05:28:53 PM

CASE NO. A-12-656710-B

Dept. No.: XI

**REDACTED VERSION OF ELAINE P.
WYNN'S MOTION FOR LEAVE TO FILE
FIFTH AMENDED COUNTERCLAIM
AND CROSSCLAIM ON ORDER
SHORTENING TIME (ORIGINALLY
FILED UNDER SEAL ON MARCH 10,
2016)**

ELECTRONIC FILING CASE

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[X] by the Court's ECF System through Wiznet:

Richard A. Wright, Esq.
Wright Stanish & Winckler
300 S. 4th Street, Suite 701
Las Vegas, NV 89101

Attorneys for Kazuo Okada,
Aruze USA, Inc. and Universal Entertainment Corp.

and

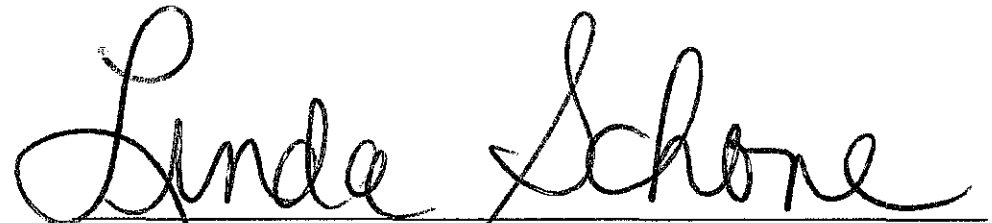
and

1 Robert L. Shapiro, Esq.
Glaser Weil, et al.
2 10250 Constellation Blvd., 19th Floor
Los Angeles, CA 90067

3 Attorneys for Wynn Resorts, Limited
4 Linda Chen, Russell Goldsmith,
Ray R. Irani, Robert J. Miller,
5 John A. Moran, Marc D. Schorr,
Alvin V. Shoemaker, Kimmarie
6 Sinatra, D. Boone Wayson and
Allan Zeman

7 Donald J. Campbell, Esq.
8 J. Colby Williams, Esq.
Campbell & Williams
9 700 S. 7th Street
Las Vegas, Nevada 89101

10 Attorneys for Stephen A. Wynn
11


An Employee of JOLLEY URGAL
WOODBURY & LITTLE

1 MLEV
2 WILLIAM R. URG, ESQ. #1195
3 Email: wru@juww.com
4 DAVID J. MALLEY, ESQ. #8171
5 Email: djm@juww.com
6 JOLLEY URG, WOODBURY & LITTLE
7 3800 Howard Hughes Parkway, 16th Floor
8 Las Vegas, NV 89169
9 Telephone: (702) 699-7500
10 Facsimile: (702) 699-7555
11
12 JOHN B. QUINN, ESQ. *
13 Email: johnquinn@quinnemanuel.com
14 MICHAEL T. ZELLER, ESQ. *
15 Email: michaelzeller@quinnemanuel.com
16 SUSAN R. ESTRICH, ESQ. *
17 Email: susanestrich@quinnemanuel.com
18 MICHAEL L. FAZIO, ESQ. *
19 Email: michaelfazio@quinnemanuel.com
20 JENNIFER D. ENGLISH, ESQ. *
21 Email: jenniferenglish@quinnemanuel.com
22 QUINN EMANUEL URQUHART & SULLIVAN, LLP
23 865 S. Figueroa Street, 10th Floor
24 Los Angeles, CA 90017
25 Telephone: (213) 443-3000
26 Facsimile: (213) 443-3100
27 * *pro hac vice* admitted

15 Attorneys for Counterdefendant/Counterclaimant/Cross-claimant
16 ELAINE P. WYNN

17 DISTRICT COURT
18 CLARK COUNTY, NEVADA

19 WYNN RESORTS, LIMITED, a Nevada
20 Corporation,
21 Plaintiffs,
22 vs.
23 KAZUO OKADA, an individual; ARUZE
24 USA, INC., a Nevada corporation,
25 UNIVERSAL ENTERTAINMENT
26 CORPORATION, a Japanese corporation,
27 Defendants.

27 AND ALL RELATED CLAIMS.

FILED

2016 MAR 10 P 3:01

John B. Quinn
CLERK OF THE COURT

FUS

CASE NO. A-12-656710-B
Dept. No.: XI

ELAINE P. WYNN'S MOTION FOR
LEAVE TO FILE FIFTH AMENDED
COUNTERCLAIM AND CROSSCLAIM
ON ORDER SHORTENING TIME

Hearing Date: 03/22/16

Hearing Time: 8:30a

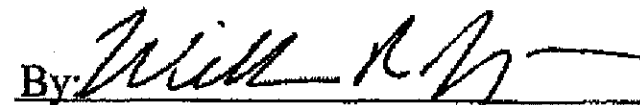
Trial Date: February 6, 2017, 1:30 p.m.

ELECTRONIC FILING CASE

1 Elaine P. Wynn ("Ms. Wynn") moves this Court for leave to amend her Answer to Aruze
2 USA, Inc. and Universal Entertainment Corporation's Fourth Amended Counterclaim in order to
3 assert a Fifth Amended Counterclaim and Crossclaim. This Motion is made and based on the
4 attached Memorandum of Points and Authorities, the Declaration of William R. Urga and all
5 exhibits attached, all pleadings and documents on file, and any oral argument the Court may
6 choose to hear.

7
8
9 Dated: March 10, 2016

JOLLEY URGa WOODBURY & LITTLE

10
11 By: 

WILLIAM R. URGa, ESQ. #1195

Email: wru@juww.com

DAVID J. MALLEY, ESQ. #8171

Email: djm@juww.com

3800 Howard Hughes Parkway, 16th Floor

Las Vegas, Nevada 89169

Telephone: (702) 699-7500

Facsimile: (702) 699-7555

16 QUINN EMANUEL URQUHART &
SULLIVAN, LLP

JOHN B. QUINN, ESQ. *

Email: johnquinn@quinnemanuel.com

MICHAEL T. ZELLER, ESQ. *

Email: michaelzeller@quinnemanuel.com

SUSAN R. ESTRICH, ESQ. *

Email: susanestrich@quinnemanuel.com

MICHAEL L. FAZIO, ESQ. *

Email: michaelfazio@quinnemanuel.com

JENNIFER D. ENGLISH, ESQ. *

Email: jenniferenglish@quinnemanuel.com

865 S. Figueroa Street, 10th Floor

Los Angeles, California 90017

Telephone: (213) 443-3000

Facsimile: (213) 443-3100

**pro hac vice admitted*

25 Attorneys for Counterdefendant/

Counterclaimant/Cross-claimant

26 ELAINE P. WYNN

1 **DECLARATION OF WILLIAM R. URG, ESQ. IN SUPPORT OF ORDER**
2 **SHORTENING TIME**

3 1. I am an attorney licensed to practice law in the State of Nevada. I am a partner of
4 the law firm of Jolley Urg Woodbury & Little, counsel for Elaine P. Wynn in this proceeding.

5 2. I am authorized to make this Declaration and have personal knowledge of the
6 matters set forth herein. Pursuant to EDCR 2.26, I offer this declaration in support of Ms. Wynn's
7 Application for an Order Shortening Time.

8 3. The deadline to seek leave to amend pleadings set forth in the parties' September
9 22, 2014 Stipulated Scheduling Order as well as the Court's November 17, 2014 2nd Amended
10 Business Court Scheduling Order is April 1, 2016, which is also the current initial expert
11 disclosure deadline.

12 4. Given that the case was stayed for one year, and certain depositions were separately
13 stayed for nearly six more months, only three depositions were taken prior to 2016: those of Mr.
14 Okada, James Stern (Wynn Resorts' Vice President of Security), and Toji Takeuchi (the Rule
15 30(b)(6) witness for Aruze USA, Inc.). Only six additional depositions have so far been taken in
16 2016.

17 5. There is a substantial amount of discovery that needs to be completed in this case,
18 including completing the depositions of the Wynn Resorts officers and directors. More than 20
19 depositions are presently scheduled constituting over 40 deposition days, including a week-long
20 trip to Japan next week and a separate week-long trip to Macau tentatively scheduled for August
21 2016, a Rule 30(b)(6) deposition of Wynn Resorts itself, and depositions of Ms. Wynn and Mr.
22 Wynn. In addition, the parties continue to serve written discovery and notice additional
23 depositions on an ongoing basis.

24 6. On February 26, 2016, counsel for Ms. Wynn served a redline version of a form of
25 the proposed amended pleading on counsel for Mr. Wynn and requested that they stipulate to the
26 proposed amendment. They declined to stipulate. On March 9, 2016, counsel for Ms. Wynn
27 circulated a proposed amended pleading on counsel for all parties to this action, and requested that
28 they stipulate to the proposed amendment. Counsel for the Aruze Parties stipulated to the

1 amendment, but counsel for Mr. Wynn declined to stipulate, and counsel for Wynn Resorts and
2 Ms. Sinatra did not respond as of the time of this filing.

3 7. Stephen A. Wynn served his Third Supplemental Disclosures Pursuant to NRCP
4 16.1 on January 19, 2016; the Aruze Parties served a Sixth Request for Production of Documents
5 to Wynn Resorts, Limited on March 1, 2016; and the Wynn parties served their First Request for
6 Production of Documents to Elaine P. Wynn on February 4, 2016.

7 8. Attached hereto as Exhibit A is a true and correct copy of Ms. Wynn's proposed
8 Fifth Amended Counterclaim and Crossclaim.

9 9. Attached hereto as Exhibit B is a true and correct copy of excerpts from the
10 deposition transcript of Robert J. Miller, Vol. III, taken February 11, 2016, and designated Highly
11 Confidential.

12 10. Attached hereto as Exhibit C is a true and correct copy of excerpts from the
13 deposition transcript of D. Boone Wayson, Vols. I & II, taken February 16 & 17, 2016, and
14 designated Highly Confidential.

15 11. Attached hereto as Exhibit D is a true and correct copy of excerpts from the
16 deposition transcript of Dr. Ray R. Irani, Ph.D., Vols. I & II, taken February 23 & 25, 2016, and
17 designated Highly Confidential.

18 12. Attached hereto as Exhibit E is a true and correct copy of a letter from Debra L.
19 Spinelli, Esq. to Michael T. Zeller, Esq., dated March 7, 2016.

20 13. Attached hereto as Exhibit F is a true and correct copy of a letter from Debra L.
21 Spinelli, Esq. to Michael T. Zeller, Esq., dated March 7, 2016.

22 14. Attached hereto as Exhibit G is a true and correct copy of excerpts from the
23 deposition transcript of Alvin V. Shoemaker, Vols. I & II, taken January 28 & 29, 2016, and
24 designated Highly Confidential.

25 15. Having this Motion heard and decided before the conclusion of these depositions is
26 important so that all matters at issue in this case can be fully examined by each of the parties. In
27 open court on March 9, 2016, the Court stated that this Motion could be heard on shortened time
28 and instructed the parties to meet and confer on a date for such hearing. The parties met and

1 conferred, and counsel for Ms. Wynn proposed that this Motion be heard March 22 or 24, 2016.
2 Counsel for Mr. Wynn responded that they would see whether they could make either date.
3 Counsel for Ms. Wynn received no other response.

4 16. Accordingly, Ms. Wynn requests that the Court set this matter for hearing on
5 shortened time, preferably to be heard on March 22 or 24, 2016.

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

7 DATED this 10 th day of March, 2016.

8 
9 William R. Urga, Esq.

10 **ORDER SHORTENING TIME**

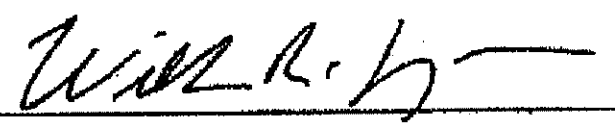
11 GOOD CAUSE APPEARING, it is hereby ordered that the foregoing Motion for Leave to
12 File Fifth Amended Counterclaim and Crossclaim shall be heard on shortened time on the 22nd
13 day of March 2016, at the hour of 8:30 a.m. in Department XI.

14 DATED this 10th day of March 2016.

15 **ELIZABETH GONZALEZ** 
16 DISTRICT COURT JUDGE

17 Submitted by:

18 JOLLEY URGa WOODBURY & LITTLE

19 By: 
20 William R. Urga
21 David J. Malley

22 QUINN EMANUEL URQUHART & SULLIVAN, LLP
23 John B. Quinn
24 Susan R. Estrich
25 Michael T. Zeller
26 Michael L. Fazio
27 Jennifer D. English

28 Attorneys for Counterdefendant, Counterclaimant, and Cross-Claimant
ELAINE P. WYNN

1 MEMORANDUM OF POINTS AND AUTHORITIES

2 Preliminary Statement

3 The Court should grant Elaine Wynn leave to file her proposed amended pleading, which
4 is attached as Exhibit A. The proposed amendment is timely. The parties stipulated, and the
5 Court ordered, that amendments to pleadings may be requested until April 1, 2016. Nevada Rule
6 of Civil Procedure 15(a) provides that leave to amend “shall be freely given when justice so
7 requires.” (emphasis added). As the United States Supreme Court held in interpreting identical
8 Federal Rule of Civil Procedure 15(a), “[i]f the underlying facts or circumstances relied upon by a
9 plaintiff may be a proper subject of relief, [s]he ought to be afforded an opportunity to test h[er]
10 claim on the merits.” *Foman v. Davis*, 371 U.S. 178, 182 (1962).¹ That is all Ms. Wynn seeks.

11 There can be no credible claim of prejudice by Mr. Wynn, Wynn Resorts or Kimmarré
12 Sinatra, the only parties addressed by these amended crossclaims. Discovery is just now getting
13 underway. As Mr. Wynn recently put it, “the bulk of discovery—including the depositions of Mr.
14 Wynn and Ms. Wynn—ha[s] yet to occur in this case.”² As a consequence, each of the cross-
15 defendants will have ample time to take discovery and develop their defenses to the amended
16 pleading. Furthermore, the few depositions that have been taken in recent weeks – consisting
17 mostly of Wynn Resort Directors – revealed new facts that were not previously disclosed to Ms.
18 Wynn. Those depositions revealed that [REDACTED]

19 [REDACTED] Those Director depositions
20 furthermore revealed for the first time that [REDACTED]

21 [REDACTED]
22 [REDACTED]

23 In addition, this same recent Director testimony revealed that [REDACTED]

24
25 ¹ At the time *Foman* was decided, Federal Rule of Civil Procedure 15(a) was identical to
26 Nevada Rule of Civil Procedure 15(a). The federal rule now reads: “The court should freely give
27 leave when justice so requires.” F.R.C.P. 15(a)(2). The change from “shall” to “should” was
28 “intended to be stylistic only.” *Id.* 2007 Advisory Committee Note.

² Reply in Support of Stephen A. Wynn’s Motion to Strike the Jury Demands of Elaine P.
Wynn and Aruze USA, Inc. (Feb. 17, 2016) at 4.

1 [REDACTED]
2 [REDACTED] And while Ms.
3 Wynn did not have access to those facts until the other Directors recently were deposed, no one on
4 Mr. Wynn's side can claim to be surprised by Ms. Wynn's amended allegations: Mr. Wynn and
5 Wynn Resorts are far more familiar with the threat the Company faces from the pattern of
6 misconduct detailed in the amended pleading than Ms. Wynn, a co-founder of Wynn Resorts and a
7 significant shareholder who was ousted from her Director position for asking too many questions
8 about the Company's governance and losing the favor of the controlling shareholder.

9 The deadline for amendment is now less than one month away. Ms. Wynn cannot afford
10 the risk that if she does not amend her pleadings, Mr. Wynn will argue (wrongly) that she is barred
11 by *res judicata* from ever raising her claims. Accordingly, Ms. Wynn now requests leave of Court
12 to try *all* her crossclaims on the merits.

13 Procedural History

14 Complaint, Removal, & Remand. This case was filed on February 19, 2012. Defendants
15 Mr. Okada and the Aruze Parties promptly removed the case to federal court. See Notice of
16 Removal (Mar. 12, 2012). The case was remanded from federal court on June 21, 2012. See
17 Minutes of Court, *Wynn Resorts, Ltd. v. Okada*, No. 2:12-CV-400-LRH-PAL (D. Nev. June 21,
18 2012), ECF No. 102.

19 Department of Justice Investigation and Discovery Stays. Following remand, the
20 Department of Justice moved for a total stay of all discovery while it investigated possible
21 criminal charges against Mr. Okada. See United States of America's Motion to Intervene and for
22 Temporary and Partial Stay of Discovery and for Order Shortening Time (Apr. 5, 2013). This
23 Court granted that motion. See Order Granting United States of America's Motion to Intervene
24 and for Temporary and Partial Stay of Discovery and For Order Shortening Time (July 8, 2013).
25 All discovery was stayed for six months, until November 4, 2013. *Id.* at 3. Ms. Wynn sought
26 partial relief from the Court's stay order, but her motion was denied. See Order Denying Elaine P.
27 Wynn's Motion for Partial Relief From Stay Order (Aug. 20, 2013). This Court then extended the
28 stay for an additional six months, to May 5, 2014. See Order Granting United States of America's

1 Motion for Extension of Temporary Stay of Discovery and for Order Shortening Time (Dec. 26,
2 2013) at 3.

3 The Nevada Supreme Court's Stay Orders. The Nevada Supreme Court ordered a stay of
4 Mr. Okada's deposition from July 1, 2015 to September 9, 2015. See Order Staying Deposition
5 and Directing Answer, *Okada v. Eighth Judicial Dist. Court*, No. 68310 (Jul. 1, 2015); Order
6 Denying Petition for Writ of Prohibition or Mandamus and Vacating Stay, *Okada v. Eighth*
7 *Judicial Dist. Court*, No. 68310, 2015 WL 5313418 (Sept. 9, 2015) (unpublished disposition); see
8 *Okada v. Eighth Judicial Dist. Court*, 131 Nev. Adv. Op. 83, 359 P.3d 1106 (2015) (opinion
9 accompanying order). This Court entered a third stay in this action with regard to discovery
10 against Wynn Resorts on August 14, 2015. See Order Granting Wynn Resorts, Limited's Motion
11 to Stay Pending Petition for Writ of Prohibition on an Order Shortening Time (Aug. 14, 2015) at
12 2. That stay was continued by another stay from the Nevada Supreme Court. See Order Granting
13 Stay and Scheduling Oral Argument, *Wynn Resorts, Ltd. v. Eighth Judicial Dist. Court*, No. 68439
14 (Oct. 1, 2015). The stay was lifted on November 12, 2015. See Order Denying Petition, *Wynn*
15 *Resorts, Ltd. v. Eighth Judicial Dist. Court*, No. 68439, 2015 WL 7193763, (Nov. 12, 2015)
16 (unpublished disposition).

17 Commencement of Discovery. Given that the case was stayed for one year, and certain
18 depositions were separately stayed for nearly six more months, only three depositions were taken
19 prior to 2016: those of Mr. Okada, James Stern (Wynn Resorts' Vice President of Security), and
20 Toji Takeuchi (the Rule 30(b)(6) witness for Aruze USA, Inc.). Urga Decl. ¶ 4.³ Only six
21 additional depositions have so far been taken in 2016. *Id.*

22 There is a substantial amount of discovery that needs to be completed in this case,
23 including completing the depositions of the Wynn Resorts officers and directors. *Id.* ¶ 5. More
24 than 20 depositions are presently scheduled constituting over 40 deposition days, including a
25 week-long trip to Japan next week and a separate week-long trip to Macau tentatively scheduled
26

27 ³ "Urga Decl." means the Declaration of William R. Urga filed concurrently herewith and its
28 exhibits.

1 for August 2016, a Rule 30(b)(6) deposition of Wynn Resorts itself, and depositions of Ms. Wynn
2 and Mr. Wynn. *Id.* In addition, the parties continue to serve written discovery and notice
3 additional depositions on an ongoing basis. *Id.* Ms. Wynn has recently retained new counsel as
4 this action resumes discovery.⁴

5 Ms. Wynn's Proposed Amendment. The underlying legal theories posed by Ms. Wynn's
6 counterclaims are the same as they have always been: does Mr. Wynn have the power to control
7 his ex-wife's shareholdings against her will, based on an Agreement that he fraudulently and in
8 bad faith induced her to sign; that was supposed to apply only to the Wynn-Okada alliance; and
9 that he breached by engineering her ouster from the Board in retaliation for her raising questions
10 about Company controls and the CEO's judgment. The January 2010 Stockholders Agreement
11 has been at the heart of Ms. Wynn's claims, as it is here. Every one of the allegations in this
12 complaint go to the validity of that Agreement or its breach, including its breach by Mr. Wynn in
13 retaliation for Ms. Wynn's questioning his authority and judgment. Ms. Wynn's proposed
14 amended crossclaims involve Mr. Wynn fraudulently inducing Ms. Wynn to enter into that
15 Agreement;⁵ Ms. Wynn's right to the specific performance of Mr. Wynn's contractual duties,
16 under that agreement, to nominate and vote for her in a Director election; additional grounds for
17 invalidating the impermissible restrictions on Ms. Wynn's ability to dispose of any of her Wynn
18 Resorts common stock; additional breaches of contract by Mr. Wynn; breaches of fiduciary duty
19 by Mr. Wynn; and intentional interference with contract and aiding and abetting breach of
20 fiduciary duty claims implicating both Wynn Resorts and its general counsel, Kimmarie Sinatra.

21 Mr. Wynn, Wynn Resorts and Ms. Sinatra Refuse To Stipulate To Amendment. On
22 February 26, 2016 and times thereafter, counsel for Ms. Wynn provided counsel for Mr. Wynn
23 with proposed amended pleadings and requested that they stipulate to the proposed amendment.
24 Uрга Decl. ¶ 6. They declined to stipulate. *Id.* On March 9, 2016, counsel for Ms. Wynn

25
26 ⁴ See, e.g., Motion to Associate Counsel on Order Shortening Time (Michael T. Zeller, Esq.)
(Jan. 25, 2016).

27 ⁵ As used herein, "January 2010 Stockholders Agreement" means the Amended and Restated
28 Stockholders Agreement dated January 6, 2010.

1. circulated a proposed amended pleading on counsel for all parties to this action, and requested that
2 they stipulate to the proposed amendment. *Id.* Counsel for the Aruze Parties stipulated to the
3 amendment, but counsel for Mr. Wynn declined to stipulate, and counsel for Wynn Resorts and
4 Ms. Sinatra did not respond as of the time of this filing. *Id.*

5 Argument

6 **I. NEVADA RULE OF CIVIL PROCEDURE 15(a) SETS A HIGH BAR FOR** 7 **DENYING A PARTY LEAVE TO AMEND.**

8 Nevada Rule of Civil Procedure 15(a) provides that “leave *shall* be freely given when
9 justice so requires.” (emphasis added). This “mandate is to be heeded.” *Foman*, 371 U.S. at 182.
10 Notably, because the Nevada Rules of Civil Procedure are “based in large part upon their federal
11 counterparts,” federal cases interpreting federal Rule 15(a) are “strong persuasive authority.”
12 *Exec. Mgmt., Ltd. v. Ticor Title Ins. Co.*, 118 Nev. 46, 53, 38 P.3d 872, 876 (2002).

13 Courts interpreting federal Rule 15(a) hold that “[w]here there is a lack of prejudice to the
14 opposing party and the amended complaint is obviously not frivolous, or made as a dilatory
15 maneuver in bad faith, it is an abuse of discretion to deny” leave to amend. *Hurn v. Ret. Fund*
16 *Trust of Plumbing, Heating & Piping Indus. of S. Cal.*, 648 F.2d 1252, 1254 (9th Cir. 1981). “The
17 mere fact that [a party] could have moved at an earlier time to amend does not by itself constitute
18 an adequate basis for denying leave to amend.” *Howey v. United States*, 481 F.2d 1187, 1191 (9th
19 Cir. 1973). Accordingly, without a “sufficient justifying reason” for denial, Rule 15 *requires*
20 leave to amend. *King v. Kramer*, 763 F.3d 635, 643 (7th Cir. 2014) (quotation marks omitted); *see*
21 *also City of Miami v. Bank of Am. Corp.*, 800 F.3d 1262, 1286 (11th Cir. 2015) (“Unless a
22 substantial reason exists to deny leave to amend, the discretion of the district court is not broad
23 enough to permit denial.”) (quotation marks and brackets omitted). “[T]he district court may and
24 should liberally allow an amendment to the pleadings if prejudice does not result.” *Schwartz v.*
25 *Schwartz*, 95 Nev. 202, 205, 591 P.2d 1137, 1139 (1979).

26 In addition, Nevada courts have a “general policy to decide cases upon their merits.”
27 *Cohen v. Mirage Resorts, Inc.*, 119 Nev. 1, 23, 62 P.3d 720, 736 (2003). Liberal application of
28 Rule 15(a) “furthers the mandate that the rules of procedure are intended to allow cases to be

1 decided on the merits rather than on mere technicalities.” *Costello v. Carter*, 127 Nev. Adv. Op.
2 36, 254 P.3d 631, 635 (2011). *See Boileau v. Bethlehem Steel Corp.*, 730 F.2d 929, 938 (3d Cir.
3 1984) (“The commentaries on Rule 15 amendments support not only a liberal interpretation of this
4 rule, but specifically address the liberal use of Rule 15 to amend complaints so as to state
5 additional causes of action.”). Here, there is no reason to deny effect to the parties’ stipulation and
6 the Court’s earlier scheduling order that permits amended pleadings until April 1, 2016. This
7 timely motion should be granted.

8 **II. BECAUSE NO PREJUDICE WILL RESULT, THE COURT SHOULD ALLOW**
9 **MS. WYNN’S PROPOSED AMENDMENT.**

10 The proposed amendment will not prejudice any party to this action, which alone is
11 sufficient to grant leave to amend. Absent prejudice, the trial court “may and should liberally
12 allow” the amendment. *Schwartz*, 95 Nev. at 205, 591 P.2d at 1139. Ms. Wynn brings this
13 motion to amend three weeks before the deadline to do so. Given that discovery has only recently
14 commenced in earnest (and indeed the depositions of any Wynn Resorts Directors began only in
15 the past few weeks), the parties will have more than ample opportunity to conduct discovery
16 related to Ms. Wynn’s proposed amendment. In all events, Mr. Wynn, Wynn Resorts and Ms.
17 Sinatra are far more familiar with the matters raised here than they would ever allow the Directors,
18 or Ms. Wynn in particular, to be.

19 **A. The Parties Have Ample Opportunity To Prepare For Trial On Ms. Wynn’s**
20 **Amended Crossclaims.**

21 Mr. Wynn will be hard-pressed to point to a single one of Ms. Wynn’s new allegations as
22 to which he does not have far more access to evidence than she. None should surprise him. In any
23 event, as Mr. Wynn recently observed (on his motion to strike Ms. Wynn’s jury demand), it is
24 “nearly eight months before the September 1, 2016 discovery cut-off date and more than one year
25 before the February 6, 2017 trial date,” and “the bulk of discovery—including the depositions of
26
27
28

1 Mr. Wynn and Ms. Wynn—ha[s] yet to occur in this case.”⁶ As of the filing of this motion, only
2 nine depositions have been taken, and more than 20 are presently scheduled over 40 deposition
3 days, including a week-long trip to Japan next week and a separate week long trip to Macau
4 tentatively scheduled for August 2016, a Rule 30(b)(6) deposition of Wynn Resorts itself, and
5 depositions of Ms. Wynn and Mr. Wynn. Urga Decl. ¶ 5.⁷ The Directors of Wynn Resorts in
6 particular have recently begun to collect and produce documents on their own behalf.⁸

7 The deadline to seek leave to amend pleadings, as set forth in the parties’ September 22,
8 2014 Stipulated Scheduling Order as well as the Court’s November 17, 2014 2nd Amended
9 Business Court Scheduling Order is April 1, 2016, which is also the current initial expert
10 disclosure deadline. Urga Decl. ¶ 3. This deadline was set with discovery in mind: “one hundred
11 twenty (120) days before the discovery cut-off date.” Stipulated Scheduling Order (Sept. 22,
12 2014) at 2. (As Mr. Wynn states, *supra*, the discovery cut-off has since been extended by one
13 month to September 1, 2016.) In so stipulating, the parties agreed upon a sufficient time period to
14 investigate claims pleaded before the deadline.⁹ Accordingly, leave should be granted.

15
16 ⁶ Reply in Support of Stephen A. Wynn’s Motion to Strike the Jury Demands of Elaine P.
17 Wynn and Aruze USA, Inc. (Feb. 17, 2016) at 4.

18 ⁷ In fact, the parties are at this moment in the midst of requesting, collecting, and producing
19 additional documents. For example, Stephen A. Wynn served his Third Supplemental Disclosures
20 Pursuant to NRCF 16.1 on January 19, 2016; the Aruze Parties served a Sixth Request for
21 Production of Documents to Wynn Resorts, Limited on March 1, 2016; and the Wynn parties
22 served their First Request for Production of Documents to Elaine P. Wynn on February 4, 2016.
23 Urga Decl. ¶ 7. To the extent the proposed amendment requires the parties to collect and produce
24 any additional documents, they will be able to do so as part of this ongoing process.

25 ⁸ See, e.g., Urga Decl. Ex. E (Letter from D. Spinelli, Esq. to M. Zeller, Esq. (Mar. 7, 2016))
26 at 2 (“in light of Mr. Shoemaker’s testimony that [REDACTED]
27 [REDACTED]; Urga Decl. Ex. F (Letter from D. Spinelli, Esq. to M. Zeller, Esq. (Mar. 7, 2016))
28 at 2 (“Governor Miller produced responsive documents on and before December 31, 2015”); *id.* at
3 (“Governor Miller supplemented his prior productions . . . on February 18”).

⁹ Notably, both Wynn Resorts and the Aruze Parties previously have requested leave to
amend their pleadings on the ground that there was no prejudice because the parties were (then
and now, given the stays) just beginning discovery in earnest. See Wynn Resorts, Limited’s
Motion for Leave to Amend Second Amended Complaint (Feb. 27, 2013) at 7 (noting that
prejudice is unlikely when “the parties have only recently started document discovery”); Aruze

1 **B. Recently Discovered Facts Also Support the Right to Amend.**

2 Permitting amendment of pleadings to conform to the facts as revealed during discovery is
3 among the most common reasons that courts give for exercising their discretion to allow
4 amendment. *See Whealon v. Strong*, 121 Nev. 662, 665-66, 119 P.3d 1241, 1243-44 (2005)
5 (affirming grant of leave to amend an answer to include dispositive affirmative defenses revealed
6 during discovery). Here, that reason is particularly compelling. Now that discovery has finally
7 begun, startling admissions by Wynn Resorts Directors disclosed new facts giving rise to Ms.
8 Wynn's proposed amendment. Among other things, deposition testimony has begun to reveal [REDACTED]

9 [REDACTED]
10 [REDACTED] Indeed, and based upon
11 the Director testimony obtained thus far, [REDACTED]

12 [REDACTED]
13 [REDACTED]
14 [REDACTED] Notably, deposition testimony by these Directors revealed that [REDACTED]

15 [REDACTED]
16 [REDACTED] Director
17 testimony also confirms [REDACTED]

18 [REDACTED]
19 [REDACTED]
20 **1. Director Robert J. Miller.**

21 In his deposition less than a month ago, Director Robert J. Miller [REDACTED]

22 [REDACTED]
23 [REDACTED]
24 [REDACTED]
25 [REDACTED] Urga Decl. Ex. B (Miller Dep. Tr. Vol. III (Feb. 11, 2016)) at 492:7-19;

26 [REDACTED]
27 USA, Inc. and Universal Entertainment Corp.'s Motion for Leave to File Third Amended
28 Counterclaim (June 12, 2013) at 4 (arguing that "[l]eave is particularly appropriate" when
"[d]iscovery remains in its early stages"). Those statements still remain substantially true today.

1 502:16-503:5. Mr. Miller was asked [REDACTED]
2 [REDACTED]
3 [REDACTED] *Id.* at 492:7-19. [REDACTED]
4 [REDACTED] *See id.*
5 Mr. Miller also noted that [REDACTED]
6 [REDACTED]
7 [REDACTED]. *Id.* at
8 506:15-23. But Mr. Miller conceded that [REDACTED]
9 [REDACTED] *Id.* at 541:5-22. It became clear
10 from Mr. Miller's testimony that [REDACTED]
11 [REDACTED] *Id.* at 486:7-487:6. This new revelation of [REDACTED]
12 [REDACTED]
13 [REDACTED] Notably, and further supporting a
14 tortious interference claim, Mr. Miller also admitted that [REDACTED]
15 [REDACTED]
16 [REDACTED] *Id.* at 457:21-458:3. He additionally conceded that [REDACTED]
17 [REDACTED] (*id.* at 462:20-
18 463:16), [REDACTED]
19 [REDACTED]

20 **2. Director D. Boone Wayson.**

21 The deposition of another Director, D. Boone Wayson, that was taken less than a month
22 ago provided additional new evidence showing [REDACTED]
23 [REDACTED] Mr. Wayson could not recall [REDACTED]
24 [REDACTED] but testified
25 that [REDACTED]
26 [REDACTED] Urga Decl. Ex. C
27 (Wayson Dep. Tr. Vol. II (Feb. 17, 2016)) at 311:11-23; 313:19-314:13; 325:11-16. When asked
28 [REDACTED]

1 [REDACTED]
2 [REDACTED] *Id.* at 314:14-20. He
3 acknowledged that [REDACTED]
4 [REDACTED]
5 [REDACTED]. *Id.* at 312:11-313:18.

6 Mr. Wayson testified [REDACTED]
7 [REDACTED]
8 [REDACTED]. *Id.* at 349:16-24. [REDACTED]
9 [REDACTED]
10 [REDACTED] *Id.* at 352:9-16.

11 Mr. Wayson, like another Director deposed so far, revealed for the first time that [REDACTED]
12 [REDACTED] *Id.* Vol. I
13 (Feb. 16, 2016) at 275:23-276:1 [REDACTED]
14 [REDACTED] *id.* Vol. II (Feb. 17, 2016) at
15 490:21-25 [REDACTED]
16 [REDACTED]
17 [REDACTED] *id.* at 486:8-13 [REDACTED]
18 [REDACTED]

19 Like Mr. Miller, Mr. Wayson [REDACTED]
20 [REDACTED]
21 [REDACTED] *Id.* at 452:6-453:18. As noted
22 above, this new revelation warrants the addition of tortious interference with contract and related
23 claims in Ms. Wynn's proposed amended pleading.

24 **3. Director Alvin V. Shoemaker.**

25 In another new revelation, Alvin Shoemaker testified that [REDACTED]
26 [REDACTED]
27 [REDACTED]
28 [REDACTED]

1 [REDACTED] Urga Decl. Ex. G (Shoemaker Dep. Tr. Vol. II (Jan. 29, 2016)) at 332:16-22; 333:3-8;
2 337:13-19. Mr. Shoemaker's testimony too provides new facts demonstrating [REDACTED]
3 [REDACTED] He also specifically conceded
4 that [REDACTED]
5 [REDACTED] Namely, that [REDACTED]
6 [REDACTED]
7 [REDACTED] *Id.* at 318:9-11, 318:22-319:3, 319:11-12.
8 [REDACTED]
9 [REDACTED]
10 [REDACTED] *Id.* at 322:13-17. He could not provide [REDACTED]
11 [REDACTED]
12 [REDACTED] *Id.* at 335:20-336:3. Mr. Shoemaker was [REDACTED]
13 [REDACTED]
14 [REDACTED] *Id.* at 347:14-17. [REDACTED]
15 [REDACTED] *Id.* at 347:25-348:5.
16 Regarding [REDACTED]
17 [REDACTED] - Mr. Shoemaker admitted that [REDACTED]
18 [REDACTED]
19 [REDACTED]
20 [REDACTED] *Id.* at 379:14-19. [REDACTED]
21 [REDACTED] *Id.* at 379:22-
22 24.
23 Additionally, Mr. Shoemaker, like the other Directors deposed thus far, [REDACTED]
24 [REDACTED] Mr. Shoemaker
25 [REDACTED] *Id.* at 349:2-25. Mr.
26 Shoemaker is, however, aware that [REDACTED] Mr. Schorr
27 currently is consulting for Wynn Resorts in Macau. *Id.* at 350:12-22.
28

1 4. Director Ray R. Irani.

2 Dr. Irani similarly [REDACTED]

3 [REDACTED]
4 [REDACTED] Urga Decl. Ex. D (Irani Dep. Tr. Vol. II (Feb.
5 25, 2016)) at 196:24-197:21, 198:12-21, 199:6-17. [REDACTED]

6 [REDACTED]. *Id.* at 235:3-5.

7 Though Dr. Irani testified that [REDACTED]

8 [REDACTED]
9 [REDACTED] *Id.* at

10 239:23-240:6. Dr. Irani, [REDACTED]

11 [REDACTED]
12 [REDACTED] *Id.* at 226:20-227:7. He admitted that [REDACTED]

13 [REDACTED]
14 [REDACTED] *Id.* at 227:8-24. And Dr. Irani, like the other Directors, [REDACTED]

15 [REDACTED] *Id.* Vol. I (Feb. 23, 2016) at 160:6-9 [REDACTED]

16 [REDACTED]
17 [REDACTED]; *id.* Vol. II (Feb. 25, 2016) at 214:19-215:1 [REDACTED]

18 [REDACTED]
19 [REDACTED] Lastly, Dr.

20 Irani [REDACTED]

21 [REDACTED] *Id.* Vol. II (Feb. 23, 2016) at 136:12-18.

22 Each of these recently discovered facts support Ms. Wynn's amended crossclaims. In
23 addition to supporting Ms. Wynn's twelfth amended crossclaim against Mr. Wynn for breach of
24 fiduciary duty, Ex. A ¶¶ 144-50, and her thirteenth amended crossclaim against Ms. Sinatra and
25 Wynn Resorts for aiding and abetting that breach, *id.* ¶¶ 151-55, [REDACTED]

26 [REDACTED]
27 [REDACTED] also gives rise to Ms. Wynn's eighth amended crossclaim for Mr.

28 Wynn's breach of the January 2010 Stockholders Agreement, *id.* ¶¶ 116-27, and her eleventh

1 amended crossclaim against Wynn Resorts and Ms. Sinatra for intentionally interfering with the
2 January 2010 Stockholders Agreement, *id.* ¶¶ 138-43.

3 Ms. Wynn also adds a crossclaim arising from Wynn Resorts' decision to cancel Aruze's
4 shares once redeemed rather than vote them, as they were required to do under the January 2010
5 Shareholders Agreement, in favor of Ms. Wynn. *See* Ex. A ¶¶ 140-41. This testimony gives rise
6 to and/or supports Ms. Wynn's fifth amended crossclaim for discharge through failure of
7 consideration or performance, Ex. A ¶¶ 90-96, her tenth amended crossclaim against Stephen
8 Wynn for specific performance, *id.* ¶¶ 134-37, and her eleventh amended crossclaim against Wynn
9 Resorts and Kimmarie Sinatra for intentional interference with contractual relations, *id.* ¶¶ 138-43.

10 Discovery will surely shed further light on these issues. The documents produced to date,
11 especially Board documents, are curiously sparse and silent as to many of the issues raised here.
12 That may turn out to be additional evidence of [REDACTED]

13 [REDACTED]
14 [REDACTED]
15 [REDACTED]

16 [REDACTED] Leave to amend is "particularly" appropriate "when important evidence was solely in
17 the possession of one party," as is clearly the case here. *Nutton v. Sunset Station, Inc.*, 131 Nev.
18 Adv. Op. 34, 357 P.3d 966, 970 (2015).

19 C. Leave To Amend To Plead Alternative Legal Theories Related To The Core
20 Issues In The Case Serves The Interests Of Justice.

21 Leave to amend to "state an alternative theory of recovery" is in the interests of justice,
22 because parties "ought to be afforded an opportunity to test [their] claim[s] on the merits."
23 *Foman*, 371 U.S. at 182. Rule 15(a)'s purpose is most "obviously" served by permitting
24 additional causes of action "arising out of the same occurrence as that set forth in the original
25 pleading, thereby insuring that the defendant knew of the action's commencement and of its nature
26 in time to avoid any prejudice to his defense on the merits." *Davis v. Piper Aircraft Corp.*, 615
27 F.2d 606, 614 (4th Cir. 1980). Indeed, both Wynn Resorts and the Aruze Parties successfully
28 sought leave to amend their pleadings on precisely this basis. *See* Aruze USA, Inc. and Universal

1 Entertainment Corp.'s Motion for Leave to File Third Amended Counterclaim (June 12, 2013) at 4
2 (noting that "[l]eave is particularly appropriate" for amendments which "add[] causes of action
3 and legal bases based on the same core facts"); Wynn Resorts, Limited's Motion for Leave to
4 Amend Second Amended Complaint (Feb. 27, 2013) at 6 (requesting leave to file an amended
5 pleading that "clarifies Wynn Resorts' claim for breach of fiduciary duty by refocusing it on Mr.
6 Okada's wrongful conduct").¹⁰

7 Here, Ms. Wynn seeks leave to add alternative legal theories arising from facts already
8 pled. Her prior pleadings directly challenged the enforceability of the January 2010 Stockholders
9 Agreement on the grounds that it has been frustrated, discharged, or breached, and that it is
10 unenforceable. See Fourth Amended Counterclaim and Crossclaim of Elaine P. Wynn (Aug. 28,
11 2015) (hereinafter 4AXC) ¶¶ 69-105. Ms. Wynn now seeks to amend her crossclaims to include
12 additional legal theories attacking the enforceability of the January 2010 Stockholders Agreement.

13 First, Ms. Wynn's third amended crossclaim that the January 2010 Stockholders
14 Agreement is an illegal forfeiture challenges the enforceability of the January 2010 Stockholders
15 Agreement on public policy grounds. Ex. A. ¶¶ 79-83. Ms. Wynn previously pled that "[a]n
16 actual controversy exists among Ms. Wynn, Mr. Wynn, and Aruze with respect to the validity
17 and/or enforceability of the January 2010 Stockholders Agreement." 4AXC ¶ 79. This amended
18 crossclaim presents an alternative legal theory arising from facts already pled.

19 Second, Ms. Wynn adds crossclaims challenging the January 2010 Stockholders
20 Agreement on the ground that it lacks the elements of an enforceable contract: her fourth amended
21 crossclaim for rescission due to unilateral mistake, Ex. A. ¶¶ 84-89, and her sixth amended
22 crossclaim that the January 2010 Stockholders Agreement was procured by fraud, *id.* ¶¶ 97-110.
23 (Mr. Okada has already pleaded that the January 2010 Stockholders Agreement was induced by
24 fraud. See Fourth Amended Counterclaim of Aruze USA, Inc. and Universal Entertainment Corp.
25

26 ¹⁰ No one opposed these requests for leave to amend, although the Aruze Parties later
27 characterized Wynn Resorts' amendment as "fundamentally chang[ing] its story" regarding the
28 2012 redemption. Aruze USA, Inc. and Universal Entertainment Corp.'s Motion for Leave to File
Third Amended Counterclaim (June 12, 2013) at 4.

1 (Nov. 26, 2013) ¶¶ 293-308.) Ms. Wynn should be allowed to challenge enforceability on the
2 additional legal ground that it does not meet the required elements of a contract, especially since
3 proving that the contract is enforceable would already require negating these grounds. *See*
4 *Certified Fire Prot. Inc. v. Precision Constr.*, 128 Nev. Adv. Op. 35, 283 P.3d 250, 255 (2012)
5 (“Basic contract principles require, for an enforceable contract, an offer and acceptance, meeting
6 of the minds, and consideration.”).

7 Finally, Ms. Wynn adds crossclaims arising from Wynn Resorts’ redemption and
8 cancellation of Aruze’s shares: her eleventh amended crossclaim against Wynn Resorts and Ms.
9 Sinatra for intentional interference with the January 2010 Stockholders Agreement, Ex. A ¶¶ 138-
10 43, and her tenth amended crossclaim against Mr. Wynn for specific performance, *id.* ¶¶ 134-37.
11 Mr. Okada, for his part, has alleged claims challenging the validity of that redemption. *See* Fourth
12 Amended Counterclaim of Aruze USA, Inc. and Universal Entertainment Corp. (Nov. 26, 2013)
13 ¶¶ 179-87. The legal effect of the redemption are already at issue, and these additional legal
14 theories should be adjudicated as part of that inquiry. All claims and defenses related to the
15 January 2010 Stockholders Agreement should be tried on the merits, and leave should be granted
16 to plead Ms. Wynn’s additional crossclaims.

17 **D. Ms. Wynn Brings This Motion In Good Faith And Without Undue Delay.**

18 Leave to amend should be freely given unless there is evidence of “undue delay, bad faith
19 or dilatory motive on the part of the movant.” *Foman*, 371 U.S. at 182. There is no such evidence
20 here.

21 To the contrary and, as detailed above, Ms. Wynn sought to prevent this case from
22 evolving into one in which these additional crossclaims would ever need to be litigated. And, at
23 least some of Ms. Wynn’s amended crossclaims depend on recent depositions that were stayed as
24 part of the multiple discovery stays in this case. The proposed amendment is brought in good
25 faith, in advance of the stipulated deadline to amend, and will not prejudice any party. There is no
26 reason to deny leave to amend.

1 Conclusion

2 Ms. Wynn respectfully requests that she be granted leave to plead her additional
3 crossclaims.
4

5 Dated: March 10, 2016

JOLLEY URGa WOODBURY & LITTLE

6
7 By William R. Urga

8 WILLIAM R. URGa, ESQ. #1195
Email: wru@juwww.com
9 DAVID J. MALLEY, ESQ. #8171
Email: djm@juwww.com
10 3800 Howard Hughes Parkway, 16th Floor
Las Vegas, Nevada 89169
11 Telephone: (702) 699-7500
Facsimile: (702) 699-7555

12 QUINN EMANUEL URQUHART &
13 SULLIVAN, LLP
JOHN B. QUINN, ESQ. *
Email: johnquinn@quinnemanuel.com
14 MICHAEL T. ZELLER, ESQ. *
Email: michaelzeller@quinnemanuel.com
15 SUSAN R. ESTRICH, ESQ. *
Email: susanestrich@quinnemanuel.com
16 MICHAEL L. FAZIO, ESQ. *
Email: michaelfazio@quinnemanuel.com
17 JENNIFER D. ENGLISH, ESQ. *
Email: jenniferenglish@quinnemanuel.com
18 865 S. Figueroa Street, 10th Floor
Los Angeles, California 90017
19 Telephone: (213) 443-3000
20 Facsimile: (213) 443-3100
*pro hac vice admitted

21 Attorneys for Counterdefendant/
22 Counterclaimant/Cross-claimant
23 ELAINE P. WYNN
24
25
26
27
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CERTIFICATE OF SERVICE

I hereby certify that on the 10th day of March, 2016, I caused the foregoing ELAINE P. WYNN'S MOTION FOR LEAVE TO FILE FIFTH AMENDED COUNTERCLAIM AND CROSSCLAIM ON ORDER SHORTENING TIME to be served as follows:

☒ by the Court's ECF System through Wiznet:

Bryce K. Kunimoto, Esq.
Brian G. Anderson, Esq.
J. Stephen Peek, Esq.
Robert J. Cassity, Esq.
Holland & Hart LLP
9555 Hillwood Drive, Second Floor
Las Vegas, Nevada 89134

Richard A. Wright, Esq.
Wright Stanish & Winckler
300 S. 4th Street, Suite 701
Las Vegas, NV 89101

Benjamin B. Klubes, Esq.
Joseph J. Reilly, Esq.
Buckley Sandler LLP
1250 24th Street NW, Suite 700
Washington, DC 20037

Attorneys for Kazuo Okada,
Aruze USA, Inc. and Universal Entertainment Corp.

James J. Pisanelli, Esq.
Todd L. Bice, Esq.
Debra Spinelli, Esq.
Jarrod L. Rickard, Esq.
Pisanelli Bice, LLC
400 S. Seventh Street, Suite 300
Las Vegas, Nevada 89101

and

Paul K. Rowe, Esq.
Grant R. Mainland, Esq.
Bradley R. Wilson, Esq.
Wachtell, Lipton, Rosen & Katz
51 West 52nd Street
New York, NY 10019

and

///

1 Robert L. Shapiro, Esq.
2 Glaser Weil, et al.
3 10250 Constellation Blvd., 19th Floor
4 Los Angeles, CA 90067

5 Attorneys for Wynn Resorts, Limited
6 Linda Chen, Russell Goldsmith,
7 Ray R. Irani, Robert J. Miller,
8 John A. Moran, Marc D. Schorr,
9 Alvin V. Shoemaker, Kimmarie
10 Sinatra, D. Boone Wayson and
11 Allan Zeman

12 Donald J. Campbell, Esq.
13 J. Colby Williams, Esq.
14 Campbell & Williams
15 700 S. 7th Street
16 Las Vegas, Nevada 89101

17 Attorneys for Stephen A. Wynn
18
19
20
21
22
23
24
25
26
27
28

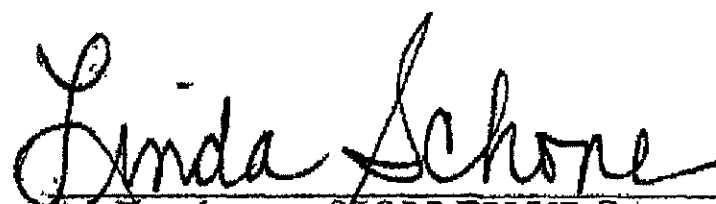

An Employee of JOLLEY URGAL
WOODBURY & LITTLE

EXHIBIT A

1 CCAN
William R. Urga, Esq. # 1195
2 Email: wru@juww.com
David J. Malley, Esq. #8171
3 Email: djm@juww.com
JOLLEY URGa WOODBURY & LITTLE
4 3800 Howard Hughes Parkway, 16th Floor
Las Vegas, NV 89169
5 Telephone: (702) 699-7500
Facsimile: (702) 699-7555
6
John B. Quinn, Esq.*
7 Email: johnquinn@quinnemanuel.com
Susan R. Estrich, Esq.*
8 Email: susanestrich@quinnemanuel.com
Michael T. Zeller, Esq.*
9 Email: michaelzeller@quinnemanuel.com
Michael L. Fazio, Esq.*
10 Email: michaelfazio@quinnemanuel.com
QUINN EMANUEL URQUHART & SULLIVAN, LLP
11 865 South Figueroa Street, 10th Floor
Los Angeles, CA 90017
12 Telephone: (213) 443-3000
Facsimile: (213) 443-3100
13 * *pro hac vice admitted*
Attorneys for Counterdefendant/Counterclaimant/Crossclaimant
14 ELAINE P. WYNN

**DISTRICT COURT
CLARK COUNTY, NEVADA**

16 WYNN RESORTS, LIMITED, a Nevada
17 Corporation,

18 Plaintiffs,

19 vs.

20 KAZUO OKADA, an individual, ARUZE
USA, Inc., a Nevada corporation,
21 UNIVERSAL ENTERTAINMENT
CORPORATION, a Japanese corporation,

22 Defendants.

24 ARUZE USA, INC., a Nevada corporation,
UNIVERSAL ENTERTAINMENT
25 CORPORATION, a Japanese corporation,

26 Counterclaimants.

27 vs.

28 WYNN RESORTS, LIMITED, a Nevada

CASE NO. A-12-656710-B

DEPT. NO: XI

ELECTRONIC FILING CASE

**FIRST AMENDED ANSWER OF ELAINE
P. WYNN TO ARUZE AND
UNIVERSAL'S FOURTH AMENDED
COUNTERCLAIM; FIFTH AMENDED
COUNTERCLAIM AND CROSSCLAIM
OF ELAINE P. WYNN**

Date:

Time:

Courtroom:

Complaint Filed:

Trial Date: None Set

1 Corporation, STEPHEN A. WYNN, an
individual, KIMMARIE SINATRA, an
2 individual, LINDA CHEN, an individual, RAY
R. IRANI, an individual, RUSSELL
3 GOLDSMITH, an individual, ROBERT J.
MILLER, an individual, JOHN A. MORAN, an
4 individual, MARC D. SCHORR, an individual,
ALVIN V. SHOEMAKER, an individual, D.
5 BOONE WAYSON, an individual, ELAINE P.
WYNN, an individual, ALLAN ZEMAN, an
6 individual,

7 Counterdefendants.

8 ELAINE P. WYNN, an individual,

9 Counterclaimant and
10 Crossclaimant,

11 vs.

12 STEPHEN A. WYNN, an individual, WYNN
RESORTS, LIMITED, a Nevada Corporation,
13 KIMMARIE SINATRA, an individual,

14 Crossdefendants,

15 ARUZE USA, INC., a Nevada Corporation,

16 Counterdefendant.

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1 ANSWER

2 Elaine P. Wynn hereby answers the Fourth Amended Counterclaim of Defendants and
3 Counterclaimants Aruze USA, Inc. ("Aruze" or "Aruze USA") and Universal Entertainment
4 Corporation ("Universal") (collectively, "Counterclaimants") in the above-captioned action.

5 Ms. Wynn denies all allegations in the headings (which are quoted here verbatim though
6 they are denied), tables, and photographs of the Fourth Amended Counterclaim, in part because she
7 lacks information sufficient to form a belief as to their truth.

8 Ms. Wynn is not required to respond, and does not respond, to the allegations that were not
9 asserted against her, including: Count V by Aruze USA against Wynn Resorts (paragraphs
10 210-219); Count VII by Aruze USA against Wynn Resorts (paragraphs 233-237); Count VIII by
11 Aruze USA against Wynn Resorts (paragraphs 238-245); Count IX by Aruze USA against Wynn
12 Resorts, Steve Wynn, and Kimmarie Sinatra (paragraphs 246-256); Count X by Aruze USA against
13 Wynn Resorts, Steve Wynn, and Kimmarie Sinatra (paragraphs 257-268); Count XI by Aruze USA
14 against Steve Wynn and Kimmarie Sinatra (paragraphs 269-282); Count XII by Aruze USA against
15 Wynn Resorts, Steve Wynn, and Kimmarie Sinatra (paragraphs 283-292); Count XIII by Aruze
16 USA against Steve Wynn (paragraphs 293-308); Count XIV by Aruze USA against Steve Wynn
17 (paragraphs 309-324); Count XV by Aruze USA against Steve Wynn (paragraphs 325-334); Count
18 XVI by Aruze USA against Steve Wynn (paragraphs 335-345); Count XVII by Aruze USA against
19 Steve Wynn (paragraphs 346-355); Count XVIII by Aruze USA against Wynn Resorts, Linda Chen,
20 Russel Goldsmith, Ray R. Irani, Robert J. Miller, John A. Moran, Marc D. Schorr, Alvin V.
21 Shoemaker, Boone Wayson, and Allan Zeman (paragraphs 356-364); Count XIX by Aruze USA
22 against Wynn Resorts (paragraphs 365-372).

23 As to the allegations against Ms. Wynn set forth in enumerated paragraphs in the Fourth
24 Amended Counterclaim, Ms. Wynn responds in correspondingly numbered paragraphs as follows:

25 JURISDICTION AND VENUE

26 1. Ms. Wynn admits that the Court has jurisdiction and that venue is proper in this
27 Court. Except as expressly admitted, Ms. Wynn denies the allegations of paragraph 1, in part
28 because she lacks information sufficient to form a belief as to their truth.

1 2. Ms. Wynn admits that this matter is properly designated as a business matter and
2 assigned to the Business Docket under EDCR 1.61(a). Ms. Wynn denies that any business tort was
3 committed.

NATURE OF THE ACTION

3. On information and belief, Ms. Wynn admits that Wynn Resorts filed a complaint against Aruze USA shortly after the Board voted to redeem Aruze's stock at a meeting that took place on February 18, 2012. Ms. Wynn lacks information sufficient to form a belief as to the truth of the allegation that Wynn Resorts understood Aruze USA would sue upon being sued and denies that allegation on that basis. Ms. Wynn admits the allegations of footnote 1. Except as expressly admitted or otherwise denied, Ms. Wynn denies the allegations of paragraph 3.

11 4. Ms. Wynn admits that Wynn Resorts redeemed Aruze USA's shares at an
12 approximately 30% discount to the market price in exchange for a promissory note of around \$1.9
13 billion to be paid in 10 years. On information and belief, Ms. Wynn admits that Wynn Resorts'
14 complaint was filed on February 19, 2012. Except as expressly admitted, Ms. Wynn denies the
15 allegations of paragraph 4, in part because she lacks information sufficient to form a belief as to their
16 truth.

17 5. The allegations contained in paragraph 5 are legal conclusions which require no
18 response. In the event these conclusions can be deemed allegations of fact, Ms. Wynn denies the
19 allegations of paragraph 5.

6. Ms. Wynn avers that she entered into the Amended and Restated Stockholders Agreement dated January 6, 2010 ("January 2010 Stockholders Agreement") with Mr. Wynn and Aruze USA. Ms. Wynn avers that the Stockholders Agreement dated April 11, 2002 ("April 2002 Stockholders Agreement") and the January 2010 Stockholders Agreement speak for themselves and that the quoted excerpts of those agreements have been taken out of context, and denies any allegations inconsistent with the April 2002 Stockholders Agreement and January 2010 Stockholders Agreement. Ms. Wynn avers that the Articles of Incorporation speak for themselves, and denies any allegations inconsistent with the Articles of Incorporation. On information and belief, Ms. Wynn denies that Mr. Wynn unilaterally amended the Articles of Incorporation without

1 Aruze's consent. Ms. Wynn denies that the right of redemption does not apply to Aruze USA's
2 shares of Wynn Resorts stock, and further denies that the Stockholders Agreement precludes
3 redemption of Aruze USA's stock. The remainder of the allegations contained in paragraph 6 are
4 legal conclusions which require no response. In the event these conclusions can be deemed
5 allegations of fact, Ms. Wynn denies the remaining allegations of paragraph 6.

6 7. Ms. Wynn denies the allegations of paragraph 7.

7 8. Ms. Wynn denies the allegation that there was no legitimate factual or legal basis to
8 invoke the redemption provision. Ms. Wynn further denies the allegations of paragraph 8, in part
9 because she lacks information sufficient to form a belief as to their truth.

10 9. Ms. Wynn denies the allegations of paragraph 9.

11 10. Ms. Wynn denies the allegations of paragraph 10.

12 11. Ms. Wynn denies the allegations of paragraph 11.

13 12. The allegations contained in paragraph 12 are legal conclusions which require no
14 response. In the event these conclusions can be deemed allegations of fact, Ms. Wynn denies the
15 allegations of paragraph 12.

16 **PARTIES**

17 13. Ms. Wynn denies that Aruze is currently a stockholder of Wynn Resorts. Except as
18 expressly denied, on information and belief, Ms. Wynn admits the allegations of paragraph 13.

19 14. On information and belief, Ms. Wynn admits the allegations of paragraph 14.

20 15. Ms. Wynn admits the allegations of paragraph 15.

21 16. Ms. Wynn admits that Stephen A. Wynn is the Chairman of the Board and Chief
22 Executive Officer of Wynn Resorts. Ms. Wynn admits that Stephen A. Wynn is a resident of
23 Nevada. Except as expressly admitted, Ms. Wynn lacks information sufficient to form a belief as to
24 the truth of the allegations of paragraph 16, and denies the allegations on that basis.

25 17. Ms. Wynn admits that Kimmarie Sinatra is the General Counsel, Secretary, and a
26 Senior Vice President of Wynn Resorts. Except as expressly admitted, Ms. Wynn lacks information
27 sufficient to form a belief as to the truth of the allegations of paragraph 17, and denies the allegations
28 on that basis.

1 18. Ms. Wynn admits that she is a director of Wynn Resorts and is Stephen Wynn's
2 ex-spouse. Ms. Wynn admits that she is a resident of Nevada. On information and belief, Ms.
3 Wynn admits that she owns 9,742,150 shares of Wynn Resorts stock as of March 1, 2012.

4 19. Ms. Wynn admits that Linda Chen was a director of Wynn Resorts. Except as
5 expressly admitted, Ms. Wynn lacks information sufficient to form a belief as to the truth of the
6 allegations of paragraph 19, and denies the allegations on that basis.

7 20. Ms. Wynn admits that Ray R. Irani is a director of Wynn Resorts. Except as
8 expressly admitted, Ms. Wynn lacks information sufficient to form a belief as to the truth of the
9 allegations of paragraph 20, and denies the allegations on that basis.

10 21. Ms. Wynn admits that Russell Goldsmith was a director of Wynn Resorts. Except as
11 expressly admitted, Ms. Wynn lacks information sufficient to form a belief as to the truth of the
12 allegations of paragraph 21, and denies the allegations on that basis.

13 22. Ms. Wynn admits that Robert J. Miller is a director and Chair of the Gaming
14 Compliance Committee of Wynn Resorts. Except as expressly admitted, Ms. Wynn lacks
15 information sufficient to form a belief as to the truth of the allegations of paragraph 22, and denies
16 the allegations on that basis.

17 23. Ms. Wynn admits that John A. Moran is a director of Wynn Resorts. Except as
18 expressly admitted, Ms. Wynn lacks information sufficient to form a belief as to the truth of the
19 allegations of paragraph 23, and denies the allegations on that basis.

20 24. Ms. Wynn admits that Marc D. Schorr was a director and Chief Operating Officer of
21 Wynn Resorts, and that Mr. Schorr had stepped down from the Board. Except as expressly
22 admitted, Ms. Wynn lacks information sufficient to form a belief as to the truth of the allegations of
23 paragraph 24, and denies the allegations on that basis.

24 25. Ms. Wynn admits that Alvin V. Shoemaker is a director of Wynn Resorts. Except as
25 expressly admitted, Ms. Wynn lacks information sufficient to form a belief as to the truth of the
26 allegations of paragraph 25, and denies the allegations on that basis.

1 26. Ms. Wynn admits that D. Boone Wayson is a director of Wynn Resorts. Except as
2 expressly admitted, Ms. Wynn lacks information sufficient to form a belief as to the truth of the
3 allegations of paragraph 26, and denies the allegations on that basis.

4 27. Ms. Wynn admits that Allan Zeman was a director of Wynn Resorts. Except as
5 expressly admitted, Ms. Wynn lacks information sufficient to form a belief as to the truth of the
6 allegations of paragraph 27, and denies the allegations on that basis.

7 **GENERAL ALLEGATIONS**

8 **I. Kazuo Okada and Steve Wynn Launch Wynn Resorts**

9 **A. Turned Out By Mirage Resorts, Steve Wynn Turns to Kazuo Okada to Finance**
10 **the New Wynn Project**

11 28. Ms. Wynn admits that Mr. Wynn developed Mirage Resorts, Inc., which owned and
12 operated the Mirage, Treasure Island, and the Bellagio, and that Mr. Wynn ceased being Chief
13 Executive Officer after Mirage Resorts, Inc. merged with MGM Grand, Inc. Except as expressly
14 admitted, Ms. Wynn lacks information sufficient to form a belief as to the truth of the allegations of
15 paragraph 28, and on that basis denies the allegations.

16 29. Ms. Wynn admits that Mr. Wynn purchased the Desert Inn casino and planned to
17 build a new casino on that site, and that he contacted Mr. Okada about funding. Except as expressly
18 admitted, Ms. Wynn lacks information sufficient to form a belief as to the truth of the allegations of
19 paragraph 29, and on that basis denies the allegations.

20 30. Ms. Wynn lacks information sufficient to form a belief as to the truth of the
21 allegations of paragraph 30, and on that basis denies the allegations.

22 31. Ms. Wynn admits that Valvino Lamore, LLC ("Valvino") was a Nevada limited
23 liability company used to develop the Desert Inn project. Ms. Wynn admits that Aruze USA
24 contributed \$260 million to Valvino in October 2000. Except as expressly admitted, Ms. Wynn
25 denies the allegations of paragraph 31, in part because Ms. Wynn lacks information sufficient to
26 form a belief as to the truth of those allegations.

1 32. Ms. Wynn admits that Aruze USA contributed \$120 million to Valvino in April
2 2002. Except as expressly admitted, Ms. Wynn lacks information sufficient to form a belief as to the
3 truth of the allegations of paragraph 32, and on that basis denies those allegations.

4 **B. The Stockholders Agreement**

5 33. Ms. Wynn admits on information and belief that in 2002 steps were taken in
6 anticipation of Wynn Resorts going public. Except as expressly admitted, Ms. Wynn lacks
7 information sufficient to form a belief as to the truth of the allegations of paragraph 33, and on that
8 basis denies those allegations.

9 34. Ms. Wynn admits that Mr. Wynn, Aruze USA, and Baron Asset Fund entered into
10 the April 2002 Stockholders Agreement dated April 11, 2002. Ms. Wynn admits that the April 2002
11 Stockholders Agreement purported to establish certain restrictions on the sale of stock the
12 signatories were to receive in "NewCo." Ms. Wynn admits that NewCo was a predecessor to Wynn
13 Resorts. Except as expressly admitted, Ms. Wynn lacks information sufficient to form a belief as to
14 the truth of the allegations of paragraph 34, and on that basis denies those allegations.

15 35. Ms. Wynn avers that the April 2002 Stockholders Agreement speaks for itself, and
16 denies any allegation inconsistent with that agreement.

17 36. Ms. Wynn avers that the April 2002 Stockholders Agreement speaks for itself and
18 that the quoted excerpts of that agreement have been taken out of context, and denies any allegation
19 inconsistent with that agreement. Ms. Wynn avers that the January 2010 Stockholders Agreement
20 speaks for itself, and denies any allegation inconsistent with that agreement.

21 37. Ms. Wynn admits that the April 2002 Stockholders Agreement purported to establish
22 certain restrictions on the transfer of shares of Wynn Resorts common stock held by the parties to
23 that agreement. Ms. Wynn avers that Wynn Resorts share certificates speak for themselves, and
24 denies any allegation inconsistent with the share certificates. Except as expressly admitted, Ms.
25 Wynn lacks information sufficient to form a belief as to the truth of the allegations of paragraph 37,
26 and on that basis denies those allegations.

27 38. Ms. Wynn denies that the Stockholders Agreement removed Aruze USA from the
28 purview of later-adopted redemption provisions in Wynn Resorts' Articles of Incorporation. Ms.

1 Wynn avers that the April 2002 Stockholders Agreement speaks for itself, and denies any allegation
2 inconsistent with that agreement. Ms. Wynn further lacks information sufficient to form a belief as
3 to the truth of the remaining allegations of paragraph 38, and on that basis denies those allegations.

4 39. Ms. Wynn avers that the April 2002 Stockholders Agreement speaks for itself, and
5 denies any allegation inconsistent with that agreement. Ms. Wynn further lacks information
6 sufficient to form a belief as to the truth of the remaining allegations of paragraph 39, and on that
7 basis denies those allegations. In addition, the allegations contained in the last sentence of
8 paragraph 39 are legal conclusions which require no response. In the event those conclusions can be
9 deemed allegations of fact, Ms. Wynn denies the allegations of the last sentence of paragraph 39.

10 **C. Wynn Resorts' Original Articles of Incorporation**

11 40. Ms. Wynn lacks information sufficient to form a belief as to the truth of the
12 allegations of paragraph 40, and on that basis denies those allegations.

13 41. Ms. Wynn lacks information sufficient to form a belief as to the truth of the
14 allegations of paragraph 41, and on that basis denies those allegations.

15 **D. The Contribution Agreement**

16 42. On information and belief, Ms. Wynn admits that the Valvino interests were
17 converted to interests in the new Wynn Resorts entity, and that Aruze USA had contributed
18 approximately \$380 million for its Valvino interests. Except as expressly admitted, Ms. Wynn lacks
19 information sufficient to form a belief as to the truth of the allegations of paragraph 42, and on that
20 basis denies those allegations.

21 43. On information and belief, Ms. Wynn avers that Wynn Resorts' public filings
22 include a document that purports to be a Contribution Agreement among Mr. Wynn, Aruze, Baron
23 Asset Fund, Kenneth R. Wynn Family Trust, and Wynn Resorts, the contents of which speak for
24 itself. Except as expressly averred, Ms. Wynn lacks information sufficient to form a belief as to the
25 truth of the allegations of paragraph 43, and on that basis denies those allegations.

26 44. Ms. Wynn avers that the Contribution Agreement speaks for itself and denies any
27 allegation inconsistent with the Contribution Agreement. Except as expressly averred, Ms. Wynn
28

1 lacks information sufficient to form a belief as to the truth of the allegations in paragraph 44, and on
2 that basis denies those allegations.

3 **E. After Securing Aruze USA's Contribution, Steve Wynn Unilaterally Amends**
4 **the Articles of Incorporation**

5 45. Ms. Wynn admits that the Articles of Incorporation contain a provision that allows
6 Wynn Resorts to redeem stock under certain circumstances, and that Wynn Resorts and Mr. Wynn
7 applied that provision to Aruze's stock in 2012. On information and belief, Ms. Wynn denies that
8 Mr. Wynn added the redemption provision unilaterally without Aruze's consent. Except as
9 expressly admitted, Ms. Wynn lacks information sufficient to form a belief as to the truth of the
10 allegations of paragraph 45, and on that basis denies those allegations.

11 46. Ms. Wynn avers that the April 2002 Stockholders Agreement and the Contribution
12 Agreement speak for themselves, and denies any allegation inconsistent with those agreements. Ms.
13 Wynn lacks information sufficient to form a belief as to the truth of the additional allegations of
14 paragraph 46, and on that basis denies those allegations.

15 47. Ms. Wynn admits that the Articles of Incorporation of Wynn Resorts includes a
16 provision that provides for redemption of stock held by unsuitable persons. Ms. Wynn avers that the
17 Articles of Incorporation speaks for itself and denies any allegation inconsistent with the Articles.
18 On information and belief, Ms. Wynn denies that Mr. Wynn added the redemption provision
19 unilaterally without Aruze's consent. Except as expressly admitted, denied, or averred, Ms. Wynn
20 lacks information sufficient to form a belief as to the truth of the allegations of paragraph 47, and on
21 that basis denies those allegations.

22 48. Ms. Wynn avers that the April 2002 Stockholders Agreement and the Contribution
23 Agreement speak for themselves, and denies any allegation inconsistent with those agreements. The
24 remaining allegations of paragraph 48 are legal conclusions which require no response. To the
25 extent the remaining allegations can be deemed allegations of fact, Ms. Wynn denies them in part
26 because she lacks information sufficient to form a belief as to their truth.

27 49. Ms. Wynn avers that the Stockholders Agreement speaks for itself, and denies any
28 allegation inconsistent with that agreement. Ms. Wynn denies that she, Mr. Wynn, Wynn Resorts,

1 and Wynn Resorts' individual directors "improperly applied" the redemption provision to Aruze's
2 shares of Wynn Resorts stock in February 2012. Ms. Wynn also denies that by voting to redeem
3 Aruze's shares of Wynn Resorts stock, she and Mr. Wynn breached, and that Wynn Resorts and the
4 individual directors interfered with, the Stockholders Agreement. On information and belief, Ms.
5 Wynn denies that Aruze was not and could not have been aware that the redemption provision could
6 potentially be applied to Aruze. Ms. Wynn further denies the other allegations of paragraph 49, in
7 part because she lacks information sufficient to form a belief as to their truth.

8 50. Ms. Wynn admits that in February 2012, Wynn Resorts redeemed Aruze's stock for a
9 note of approximately \$1.936 billion, which reflected a discount of around 30% to the trading price.
10 The remainder of the allegations contained in paragraph 50 are legal conclusions which require no
11 response, and in the event they can be deemed allegations of fact, Ms. Wynn denies them.

12 **F. Wynn Resorts Goes Public**

13 51. Ms. Wynn admits that Mr. Okada became a board member of Wynn Resorts in
14 October 2002. Ms. Wynn admits that the LLC interests of Valvino were contributed to Wynn
15 Resorts in September 2002. Except as expressly admitted, Ms. Wynn lacks information sufficient to
16 form a belief as to the truth of the allegations of paragraph 51, and on that basis denies those
17 allegations.

18 52. On information and belief, Ms. Wynn admits that on October 25, 2002, Wynn
19 Resorts conducted an initial public offering on NASDAQ at \$13 per share, and that shortly
20 thereafter, Mr. Okada became Vice Chairman of Wynn Resorts' Board of Directors. On
21 information and belief, Ms. Wynn further admits that Aruze made an additional investment in or
22 provided further funding to Wynn Resorts. Except as expressly admitted, Ms. Wynn lacks
23 information sufficient to form a belief as to the truth of the allegations of paragraph 52, and on that
24 basis denies those allegations.

25 53. Ms. Wynn admits that Wynn Las Vegas, Wynn Macau, Encore Las Vegas, and
26 Encore Macau have been successful. On information and belief, Ms. Wynn admits that Mr. Okada
27 has contributed financially to the casinos' success. Except as expressly admitted, Ms. Wynn lacks
28

1 information sufficient to form a belief as to the truth of the allegations of paragraph 53, and on that
2 basis denies those allegations.

3 54. Ms. Wynn admits the allegations of paragraph 54.

4 **G. The Close and Trusting Relationship of Steve Wynn and Kazuo Okada**

5 55. On information and belief, Ms. Wynn admits that Mr. Wynn considered Mr. Okada a
6 close friend and a partner. Except as expressly admitted, Ms. Wynn lacks information sufficient to
7 form a belief as to the truth of the allegations of paragraph 55, and on that basis denies those
8 allegations.

9 56. Ms. Wynn lacks information sufficient to form a belief as to the truth of the
10 allegations of paragraph 56, and on that basis denies those allegations.

11 57. Ms. Wynn lacks information sufficient to form a belief as to the truth of the
12 allegations of paragraph 57, and on that basis denies those allegations.

13 58. On information and belief, Ms. Wynn avers that, in 2006, Mr. Wynn asked Mr.
14 Okada and Aruze to enter into an Amendment to the April 2002 Stockholders Agreement. Ms.
15 Wynn avers that the Amendment dated November 8, 2006 ("2006 Amendment") speaks for itself,
16 and denies any allegation inconsistent with that amendment. Except as expressly averred, Ms.
17 Wynn lacks information sufficient to form a belief as to the truth of the allegations of paragraph 58,
18 and on that basis denies those allegations.

19 59. Ms. Wynn lacks information sufficient to form a belief as to the truth of the
20 allegations of paragraph 59, and on that basis denies those allegations.

21 **II. Universal Discloses and Ultimately Pursues Foreign Development Projects**

22 **A. In 2007, Universal Fully Discloses to Wynn Resorts Its Interest In Pursuing a**
23 **Casino Project in the Philippines**

24 60. On information and belief, Ms. Wynn avers that Mr. Okada has been involved with
25 business efforts in the Philippines since around 2008. Except as expressly averred, Ms. Wynn lacks
26 information sufficient to form a belief as to the truth of the allegations of paragraph 60, and on that
27 basis denies those allegations.

28

1 61. Ms. Wynn lacks information sufficient to form a belief as to the truth of the
2 allegations of paragraph 61, and on that basis denies those allegations.

3 62. Ms. Wynn lacks information sufficient to form a belief as to the truth of the
4 allegations of paragraph 62, and on that basis denies those allegations.

5 63. Ms. Wynn lacks information sufficient to form a belief as to the truth of the
6 allegations of paragraph 63, and on that basis denies those allegations.

7 64. Ms. Wynn lacks information sufficient to form a belief as to the truth of the
8 allegations of paragraph 64, and on that basis denies those allegations.

9 65. Ms. Wynn lacks information sufficient to form a belief as to the truth of the
10 allegations of paragraph 65, and on that basis denies those allegations.

11 66. Ms. Wynn lacks information sufficient to form a belief as to the truth of the
12 allegations of paragraph 66, and on that basis denies those allegations.

13 67. Ms. Wynn lacks information sufficient to form a belief as to the truth of the
14 allegations of paragraph 67, and on that basis denies those allegations.

15 **B. With the Blessing of Wynn Resorts, Universal Commits Significant Funds and**
16 **Energy to the Philippine Project**

17 68. On information and belief, Ms. Wynn admits that Universal and/or its affiliates went
18 about acquiring land in the Philippines for a planned casino. Except as expressly admitted, Ms.
19 Wynn lacks information sufficient to form a belief as to the truth of the allegations of paragraph 68,
20 and on that basis denies those allegations.

21 69. On information and belief, Ms. Wynn admits that an entity or entities affiliated with
22 Universal or Mr. Okada purchased land near Manila Bay. On information and belief, Ms. Wynn
23 denies that Universal complied with the laws of the Philippines regarding citizenship for
24 landholding. Except as expressly admitted, Ms. Wynn lacks information sufficient to form a belief
25 as to the truth of the allegations of paragraph 69, and on that basis denies those allegations.

26 70. Ms. Wynn lacks information sufficient to form a belief as to the truth of the
27 allegations of paragraph 70, and on that basis denies those allegations.
28

1 **C. Steve Wynn and Elaine Wynn Divorce**

2 71. Ms. Wynn admits that she and Mr. Wynn began divorce proceedings in March 2009.
3 Ms. Wynn admits that by early 2010, Ms. Wynn and Mr. Wynn had reached an agreement regarding
4 division of their community assets, including the Wynn Resorts stock then held in Mr. Wynn's
5 name. On information and belief, Ms. Wynn admits that Aruze was Wynn Resorts' largest
6 shareholder after the division of assets between Mr. Wynn and Ms. Wynn. Except as expressly
7 admitted, Ms. Wynn denies the allegations of paragraph 71, in part because she lacks information
8 sufficient to form a belief as to the truth of the allegations.

9 72. Ms. Wynn admits that she, Mr. Wynn, and Aruze entered into the January 2010
10 Stockholders Agreement. Ms. Wynn avers that the January 2010 Stockholders Agreement speaks
11 for itself, and denies any allegation inconsistent with that agreement. Except as expressly admitted
12 or averred, Ms. Wynn denies the allegations in paragraph 72, because she lacks information
13 sufficient to form a belief as to the truth of the allegations.

14 73. Ms. Wynn avers that the January 2010 Stockholders Agreement speaks for itself, and
15 denies any allegation inconsistent with that agreement. Except as expressly averred, Ms. Wynn
16 denies the allegations of paragraph 73, because she lacks information sufficient to form a belief as to
17 the truth of the allegations.

18 74. Ms. Wynn avers that the January 2010 Stockholders Agreement speaks for itself, and
19 denies any allegation inconsistent with that agreement. Except as expressly averred, Ms. Wynn
20 denies the allegations of paragraph 74, because she lacks information sufficient to form a belief as to
21 the truth of the allegations.

22 75. Ms. Wynn lacks information sufficient to form a belief as to the truth of the
23 allegations of paragraph 75, and on that basis denies those allegations.

24 **D. Steve Wynn and Kazuo Okada Visit the Philippines in 2010, as Wynn Resorts**
25 **Considers Involvement with the Philippine Project**

26 76. Ms. Wynn lacks information sufficient to form a belief as to the truth of the
27 allegations of paragraph 76, and on that basis denies those allegations.

1 77. Ms. Wynn lacks information sufficient to form a belief as to the truth of the
2 allegations of paragraph 77, and on that basis denies those allegations.

3 78. Ms. Wynn lacks information sufficient to form a belief as to the truth of the
4 allegations of paragraph 78, and on that basis denies those allegations.

5 E. **Over Kazuo Okada's Objection, Wynn Resorts Makes an Unprecedented \$135**
6 **Million Donation for Wynn Macau**

7 79. Ms. Wynn denies that the duration of Wynn Resorts' donation to Macau is
8 "suspiciou[s]." On information and belief, Ms. Wynn admits the other allegations of paragraph 79.

9 80. Ms. Wynn admits that Mr. Okada, in his capacity as a Wynn Resorts director, voted
10 against the donation to the University of Macau Development Foundation. Ms. Wynn admits that
11 Mr. Okada raised objections to the size and the term of the donation. Except as expressly admitted,
12 Ms. Wynn denies the allegations of paragraph 80.

13 81. Ms. Wynn lacks information sufficient to form a belief as to the truth of and therefore
14 denies the allegation that the alleged fact is "[n]otabl[e]," and avers that she believes she was
15 unaware of the alleged fact at the time. Ms. Wynn admits that the head of Macau's government is
16 also the chancellor of the University of Macau. Ms. Wynn lacks sufficient information to form a
17 belief as to whether that individual has "ultimate oversight of gaming matters," and therefore denies
18 that allegation. Ms. Wynn avers that Wynn Resorts' SEC filings speak for themselves and deny any
19 allegation regarding the contents of those filings that is inconsistent with the filings themselves.
20 Except as expressly admitted and averred, Ms. Wynn lacks information sufficient to form a belief as
21 to the truth of the allegations of paragraph 81, and on that basis denies those allegations.

22 82. Ms. Wynn admits that Wynn Resorts received a legal opinion that sanctioned the
23 donation to the University of Macau Development Foundation. Except as expressly admitted, Ms.
24 Wynn lacks information sufficient to form a belief as to the truth of the allegations of paragraph 82,
25 and on that basis denies those allegations.

26 83. On information and belief, Ms. Wynn admits that Wynn Resorts has received a letter
27 from the Securities Exchange Commission regarding its Macau donation and that the SEC has made
28 inquiries. On information and belief, Ms. Wynn avers that a regional office of the SEC has notified

1 Wynn Resorts that the investigation had been completed with the office not intending to recommend
2 any enforcement action against Wynn Resorts. Except as expressly admitted, Ms. Wynn lacks
3 information sufficient to form a belief as to the truth of the allegations of paragraph 83, and on that
4 basis denies those allegations.

5 **F. Steve Wynn and Kimmarie Sinatra Fraudulently Promise Kazuo Okada**
6 **Financing for the Philippine Project**

7 84. Ms. Wynn admits that Mr. Wynn married his current wife in or around April 2011.
8 On information and belief, Ms. Wynn avers that Mr. Wynn contacted Mr. Okada regarding a
9 potential sale of Ms. Wynn's stock. Except as expressly admitted or averred, Ms. Wynn lacks
10 information sufficient to form a belief as to the truth of the allegations of paragraph 84, and on that
11 basis denies those allegations.

12 85. On information and belief, Ms. Wynn admits that, sometime in 2011, Mr. Wynn
13 asked Mr. Okada to consent to a transfer of Ms. Wynn's shares. Except as expressly admitted, Ms.
14 Wynn lacks information sufficient to form a belief as to the truth of the allegations of paragraph 85,
15 and on that basis denies those allegations.

16 86. On information and belief, Ms. Wynn admits that Mr. Okada was amenable to
17 allowing Ms. Wynn to transfer her stock. Except as expressly admitted, Ms. Wynn lacks
18 information sufficient to form a belief as to the truth of the allegations of paragraph 86, and on that
19 basis denies those allegations.

20 87. Ms. Wynn lacks information sufficient to form a belief as to the truth of the
21 allegations of paragraph 87, and on that basis denies those allegations.

22 88. Ms. Wynn lacks information sufficient to form a belief as to the truth of the
23 allegations of paragraph 88, and on that basis denies those allegations.

24 89. Ms. Wynn denies the allegations of paragraph 89, in part because she lacks
25 information sufficient to form a belief as to their truth.

26 90. Ms. Wynn lacks information sufficient to form a belief as to the truth of the
27 allegations of paragraph 90, and on that basis denies those allegations.

28

1 91. On information and belief, Ms. Wynn admits that Mr. Okada signed a waiver and
2 consent granting her the option to transfer her stock. Except as expressly admitted, Ms. Wynn lacks
3 information sufficient to form a belief as to the truth of the allegations of paragraph 91, and on that
4 basis denies those allegations.

5 92. On information and belief, Ms. Wynn admits that Mr. Okada signed a waiver and
6 consent granting her the option to transfer her stock. Except as expressly admitted, Ms. Wynn lacks
7 information sufficient to form a belief as to the truth of the allegations of paragraph 92, and on that
8 basis denies those allegations.

9 93. Ms. Wynn admits that Wynn Resorts has SOX compliance policies. Except as
10 expressly admitted, Ms. Wynn lacks information sufficient to form a belief as to the truth of the
11 allegations of paragraph 93, and on that basis denies those allegations.

12 94. Ms. Wynn lacks information sufficient to form a belief as to the truth of the
13 allegations of paragraph 94, and on that basis denies those allegations.

14 95. On information and belief, Ms. Wynn admits that Aruze stated that it would allow
15 her to transfer her shares. Except as expressly admitted, Ms. Wynn lacks information sufficient to
16 form a belief as to the truth of the allegations of paragraph 95, and on that basis denies those
17 allegations.

18 96. Ms. Wynn lacks information sufficient to form a belief as to the truth of the
19 allegations of paragraph 96, and on that basis denies those allegations.

20 97. Ms. Wynn lacks information sufficient to form a belief as to the truth of the
21 allegations of paragraph 97, and on that basis denies those allegations.

22 98. Ms. Wynn lacks information sufficient to form a belief as to the truth of the
23 allegations of paragraph 98, and on that basis denies those allegations.

24 99. Ms. Wynn admits that Bob Miller is a member of Wynn Resorts' Compliance
25 Committee. Except as expressly admitted, Ms. Wynn denies the allegations of paragraph 99, in part
26 because she lacks information sufficient to form a belief as to the truth of the allegations of
27 paragraph 99.

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1 **G. The Chair of Universal's and Aruze Gaming America's Compliance**
2 **Committee Resigns**

3 100. Ms. Wynn admits that Mr. Schreck has a long-standing relationship with Mr. Wynn
4 and acted as a lawyer for Mr. Wynn or Wynn Resorts, that Mr. Schreck worked for Mr. Okada
5 and/or entities affiliated with Mr. Okada, and that Mr. Schreck eventually left his position with Mr.
6 Okada. Except as expressly admitted, Ms. Wynn lacks information sufficient to form a belief as to
7 the truth of the allegations of paragraph 100, and on that basis denies those allegations.

8 101. Ms. Wynn lacks information sufficient to form a belief as to the truth of the
9 allegations of paragraph 101, and on that basis denies those allegations.

10 102. Ms. Wynn admits that Mr. Schreck's law firm acted as counsel for Wynn Resorts in
11 the Nevada state court action regarding Mr. Okada's document inspection demand. Except as
12 expressly admitted, Ms. Wynn denies the allegations of paragraph 102, in part because she lacks
13 information sufficient to form a belief as to the truth of those allegations.

14 **III. Steve Wynn Directs Wynn Resorts to Conduct a Pretextual Investigation for the**
15 **Purpose of Redeeming Aruze USA's Shares**

16 **A. Wynn Resorts Seeks Kazuo Okada's Resignation and Threatens Redemption in**
17 **an Attempt to Secure a Personal Benefit for Steve Wynn**

18 103. Ms. Wynn lacks information sufficient to form a belief as to the truth of the
19 allegations of paragraph 103, and on that basis denies those allegations.

20 104. Ms. Wynn lacks information sufficient to form a belief as to the truth of the
21 allegations of paragraph 104, and on that basis denies those allegations.

22 105. Ms. Wynn lacks information sufficient to form a belief as to the truth of the
23 allegations of paragraph 105, and on that basis denies those allegations.

24 106. Ms. Wynn lacks information sufficient to form a belief as to the truth of the
25 allegations of paragraph 106, and on that basis denies those allegations.

26 107. Ms. Wynn lacks information sufficient to form a belief as to the truth of the
27 allegations of paragraph 107, and on that basis denies those allegations.

1 108. Ms. Wynn lacks information sufficient to form a belief as to the truth of the
2 allegations of paragraph 108, and on that basis denies those allegations.

3 109. Ms. Wynn lacks information sufficient to form a belief as to the truth of the
4 allegations of paragraph 109, and on that basis denies those allegations.

5 110. Ms. Wynn lacks information sufficient to form a belief as to the truth of the
6 allegations of paragraph 110, and on that basis denies those allegations.

7 **B. Steve Wynn and Kim Sinatra Try to Intimidate and Threaten Kazuo Okada,**
8 **While Hiding Supposed Evidence of Wrongdoing**

9 111. Ms. Wynn lacks information sufficient to form a belief as to the truth of the
10 allegations of paragraph 111, and on that basis denies those allegations.

11 112. Ms. Wynn lacks information sufficient to form a belief as to the truth of the
12 allegations of paragraph 112, and on that basis denies those allegations.

13 113. Ms. Wynn lacks information sufficient to form a belief as to the truth of the
14 allegations of paragraph 113, and on that basis denies those allegations.

15 114. Ms. Wynn lacks information sufficient to form a belief as to the truth of the
16 allegations of paragraph 114, and on that basis denies those allegations.

17 115. Ms. Wynn lacks information sufficient to form a belief as to what "characterizations"
18 Mr. Wynn made, and on that basis denies that allegation. On information and belief, Ms. Wynn
19 denies the additional allegations of paragraph 115.

20 116. Ms. Wynn lacks information sufficient to form a belief as to the truth of the
21 allegations of paragraph 116, and on that basis denies those allegations.

22 117. Ms. Wynn lacks information sufficient to form a belief as to the truth of the
23 allegations of paragraph 117, and on that basis denies those allegations.

24 **C. A Letter From Steve Wynn's Outside Lawyer Confirms that, While Wynn**
25 **Resorts Had Already Determined the Outcome, a Pretextual "Investigation"**
26 **Was Only Just Starting**

27 118. Ms. Wynn lacks information sufficient to form a belief as to the truth of the
28 allegations of paragraph 118, and on that basis denies those allegations.

1 119. Ms. Wynn lacks information sufficient to form a belief as to the truth of the
2 allegations of paragraph 119, and on that basis denies those allegations.

3 **D. Wynn Resorts Refuses to Allow Kazuo Okada and Aruze USA to Review Any**
4 **Supposed "Evidence"**

5 120. Ms. Wynn denies the allegations of paragraph 120, in part because Ms. Wynn lacks
6 information sufficient to form a belief as to the truth of the allegations.

7 **E. The Board Summarily Removes Kazuo Okada As Vice-Chairman**

8 121. Ms. Wynn admits that Mr. Miller and/or others made an oral presentation regarding
9 Mr. Okada's activities at a meeting on or around November 1, 2011. Ms. Wynn avers that Mr.
10 Okada participated in the meeting. Except as expressly admitted or averred, Ms. Wynn lacks
11 information sufficient to form a belief as to the truth of the allegations of paragraph 121, and on that
12 basis denies those allegations.

13 122. Ms. Wynn admits that the Compliance Committee retained Freeh Sporkin &
14 Sullivan LLP ("Free Sporkin") to conduct an investigation with respect to Mr. Okada's activities
15 overseas. Ms. Wynn admits that the Board voted to eliminate the position of Vice Chairman and
16 accepted the Compliance Committee's retention of Freeh Sporkin. Except as expressly admitted,
17 Ms. Wynn denies the allegations of paragraph 122.

18 **F. Kazuo Okada Seeks More Information Regarding Wynn Macau**

19 123. On information and belief, Ms. Wynn admits that Mr. Okada has filed an action in
20 Nevada state court to seek access to Wynn Resort's records. Ms. Wynn denies that any actions by
21 the Board were "highly suspicious." Except as expressly admitted or denied, Ms. Wynn lacks
22 information sufficient to form a belief as to the truth of the allegations of paragraph 123, and on that
23 basis denies those allegations.

24 **G. Aruze USA Nominates Directors, But Steve Wynn Refuses to Endorse Them**
25 **Despite His Obligation to Do So**

26 124. Ms. Wynn denies the allegation that Mr. Wynn "refused" Aruze's request to endorse
27 its slate of directors, but avers on information and belief that written communications in response to
28 Aruze declined to take a position on the slate and said the subject would be addressed later; she

1 further avers that Mr. Wynn indicated at the time behind the scenes that he had no intention of
2 supporting the Aruze slate and did not endorse it. Except as expressly denied or averred, Ms. Wynn
3 admits the allegations of paragraph 124.

4 **H. The Freeh Investigation Proceeds Without Seeking Any Input From Kazuo**
5 **Okada**

6 125. Ms. Wynn lacks information sufficient to form a belief as to the truth of the
7 allegations of paragraph 125, and on that basis denies those allegations.

8 126. Ms. Wynn lacks information sufficient to form a belief as to the truth of the
9 allegations of paragraph 126, and on that basis denies those allegations.

10 127. Ms. Wynn lacks information sufficient to form a belief as to the truth of the
11 allegations of paragraph 127, and on that basis denies those allegations.

12 128. Ms. Wynn lacks information sufficient to form a belief as to the truth of the
13 allegations of paragraph 128, and on that basis denies those allegations.

14 **I. Freeh Sporkin Refuses to Provide Meaningful Information Regarding the**
15 **Investigation to Kazuo Okada**

16 129. Ms. Wynn lacks information sufficient to form a belief as to the truth of the
17 allegations of paragraph 129, and on that basis denies those allegations.

18 130. Ms. Wynn lacks information sufficient to form a belief as to the truth of the
19 allegations of paragraph 130, and on that basis denies those allegations.

20 131. Ms. Wynn lacks information sufficient to form a belief as to the truth of the
21 allegations of paragraph 131, and on that basis denies those allegations.

22 **J. Kazuo Okada Voluntarily Sits For A Full-Day Interview With Freeh Sporkin**

23 132. On information and belief, Ms. Wynn admits that Mr. Okada sat for an interview
24 with Mr. Freeh on February 15, 2012. Except as expressly admitted, Ms. Wynn lacks information
25 sufficient to form a belief as to the truth of the allegations of paragraph 132, and on that basis denies
26 those allegations.

27 133. On information and belief, Ms. Wynn admits that Mr. Freeh asked Mr. Okada about
28 expenses paid by Universal and/or its agents or affiliates for lodging and meals at Wynn Resorts

1 properties, and about compliance with Philippine landownership requirements. Except as expressly
2 admitted, Ms. Wynn lacks information sufficient to form a belief as to the truth of the allegations of
3 paragraph 133, and on that basis denies those allegations.

4 134. Ms. Wynn lacks information sufficient to form a belief as to the truth of the
5 allegations of paragraph 134, and on that basis denies those allegations.

6 **K. Wynn Resorts Allows No Opportunity for A Reasonable Response**

7 135. Ms. Wynn lacks information sufficient to form a belief as to the truth of the
8 allegations of paragraph 135, and on that basis denies those allegations.

9 136. Ms. Wynn avers that the Second Amended Complaint filed by Wynn Resorts speaks
10 for itself and denies any allegation inconsistent with the Second Amended Complaint.

11 137. Ms. Wynn lacks information sufficient to form a belief as to the truth of the
12 allegations of paragraph 137, and on that basis denies those allegations.

13 138. Ms. Wynn lacks information sufficient to form a belief as to the truth of the
14 allegations of paragraph 138, and on that basis denies those allegations.

15 139. Ms. Wynn lacks information sufficient to form a belief as to the truth of the
16 allegations of paragraph 139, and on that basis denies those allegations.

17 140. Ms. Wynn lacks information sufficient to form a belief as to the truth of the
18 allegations of paragraph 140, and on that basis denies those allegations.

19 141. Ms. Wynn lacks information sufficient to form a belief as to the truth of the
20 allegations of paragraph 141, and on that basis denies those allegations.

21 142. Ms. Wynn lacks information sufficient to form a belief as to the truth of the
22 allegations of paragraph 142, and on that basis denies those allegations.

23 143. Ms. Wynn admits that the Board voted to redeem Aruze's shares, at a valuation that
24 reflected a discount to the trading price, on the day the directors received the Freeh Sporkin report.
25 Except as expressly admitted, Ms. Wynn denies the allegations of paragraph 143, in part because
26 she lacks information sufficient to form a belief as to their truth.

27 144. Ms. Wynn denies the allegations of paragraph 144, in part because she lacks
28 information sufficient to form a belief as to their truth.

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1 151. Ms. Wynn lacks information sufficient to form a belief as to the truth of the
2 allegations of paragraph 151, and on that basis denies those allegations.

3 152. Ms. Wynn admits that Mr. Wynn yelled at Mr. Okada's counsel when he introduced
4 himself. Ms. Wynn admits that Mr. Wynn said that Mr. Okada's counsel should not be present. Ms.
5 Wynn admits that Mr. Okada was told that he needed to enter into a nondisclosure agreement in
6 order to receive a copy of the Freeh Sporkin report. Ms. Wynn admits that Mr. Okada did not agree
7 to enter into a nondisclosure agreement. Except as expressly admitted, Ms. Wynn denies the
8 allegations of paragraph 152, in part because she lacks information sufficient to form a belief as to
9 their truth.

10 153. On information and belief, My Wynn admits that a copy of the Freeh Sporkin report
11 is attached to Wynn Resorts' Complaint. Except as expressly admitted, Ms. Wynn lacks
12 information sufficient to form a belief as to the truth of the allegations of paragraph 153, and on that
13 basis denies those allegations.

14 154. Ms. Wynn admits that there were translation problems during the Board meeting.
15 Ms. Wynn admits that Mr. Okada requested that the translation be provided sequentially rather than
16 simultaneously, and that the request was denied. Except as expressly admitted, Ms. Wynn lacks
17 information sufficient to form a belief as to the truth of the allegations of paragraph 154, and on that
18 basis denies those allegations.

19 155. Ms. Wynn admits that Mr. Freeh made a presentation in English. Ms. Wynn admits
20 that after Mr. Freeh completed his presentation, the Board asked if Mr. Okada had any questions.
21 Ms. Wynn admits that Mr. Okada asked the Board to delay making any resolutions. Except as
22 expressly admitted, Ms. Wynn denies the allegations of paragraph 155, in part because she lacks
23 information sufficient to form a belief as to their truth.

24 156. Ms. Wynn avers that there were technical difficulties during the Board meeting. Ms.
25 Wynn admits that the connection with Mr. Okada was lost at some point during the meeting, and
26 that no other contact was made with Mr. Okada. Except as expressly admitted or averred, Ms.
27 Wynn denies the allegations of paragraph 156, in part because she lacks information sufficient to
28 form a belief as to their truth.

1 157. Ms. Wynn admits that Wynn Resorts gave Aruze notice that Aruze's stock was
2 redeemed for a note of approximately \$1.936 billion, which reflected a discount of around 30% to
3 the trading price. Except as expressly admitted, Ms. Wynn lacks information sufficient to form a
4 belief as to the truth of the allegations of paragraph 157, and on that basis denies those allegations.

5 158. Ms. Wynn lacks information sufficient to form a belief as to the truth of the
6 allegations of paragraph 158, and on that basis denies those allegations.

7 159. Ms. Wynn admits that Wynn Resorts filed a complaint that attached a copy of the
8 report without exhibits but is without information sufficient to form a belief about the timing and
9 form of the filing and on that basis denies those allegations of paragraph 159.

10 160. Ms. Wynn lacks information sufficient to form a belief as to the truth of the
11 allegations of paragraph 160, and on that basis denies those allegations.

12 **C. Aruze USA Disputes That Redemption Has Occurred**

13 161. Ms. Wynn admits that the redemption has taken place, and that Wynn Resorts has so
14 stated. Ms. Wynn admits that Aruze disputes the validity of the redemption. Except as expressly
15 admitted, Ms. Wynn denies the allegations of paragraph 161.

16 **D. The Board Redeems on False Premises**

17 162. Ms. Wynn avers that Aruze is bound by the redemption provision, and admits that
18 Aruze disputes that it is bound by the redemption provision. Ms. Wynn avers that the Articles of
19 Incorporation speak for themselves, and denies any allegation inconsistent with the Articles of
20 Incorporation.

21 163. Ms. Wynn avers that the Articles of Incorporation speak for themselves, and denies
22 any allegation inconsistent with the Articles of Incorporation. On information and belief, Ms. Wynn
23 admits that Aruze had been found previously to be "suitable" by the Nevada Gaming Commission
24 as a shareholder of Wynn Resorts and that she did not understand the redemption to be based on a
25 finding of unsuitability by a gaming authority. Except as expressly admitted, Ms. Wynn lacks
26 information sufficient to form a belief as to the truth of the allegations of paragraph 163, and denies
27 the allegations on that basis.

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1 164. Ms. Wynn avers that the Articles of Incorporation speak for themselves, and denies
2 any allegation inconsistent with the Articles of Incorporation. On information and belief, Ms. Wynn
3 admits that Wynn Resorts and its affiliates have not lost, and have not been threatened by a gaming
4 authority with the loss of, a gaming license, and that she did not understand the redemption to be
5 based on such a loss or threatened loss. Except as expressly admitted, Ms. Wynn lacks information
6 sufficient to form a belief as to the truth of the allegations of paragraph 164, and denies the
7 allegations on that basis.

8 165. Ms. Wynn avers that the Articles of Incorporation speak for themselves, and denies
9 any allegation inconsistent with the Articles of Incorporation. Except as expressly averred, Ms.
10 Wynn lacks information sufficient to form a belief as to the truth of the allegations of paragraph 165,
11 and denies those allegations on that basis.

12 166. Ms. Wynn denies the allegations of paragraph 166, in part because she lacks
13 information sufficient to form a belief as to their truth.

14 **E. Even if Aruze USA Were Subject to the Redemption Provision (Which it is not),**
15 **the Wynn Parties are Still Liable for Breaching and/or Tortiously Interfering**
16 **with the Stockholders Agreement and Amended Stockholders Agreement**

17 167. Ms. Wynn avers that the April 2002 Stockholders Agreement and the January 2010
18 Stockholders Agreement speak for themselves, and denies any allegation inconsistent with those
19 agreements. Ms. Wynn avers that the Articles of Incorporation speak for themselves, and denies
20 any allegation inconsistent with the Articles of Incorporation. On information and belief, Ms. Wynn
21 denies that Mr. Wynn unilaterally amended the Articles of Incorporation without Aruze's consent.
22 Except as expressly averred or otherwise denied, Ms. Wynn denies the remaining allegations of
23 paragraph 167.

1 **F. Even if Aruze USA Was Subject to the Redemption Provision (Which it is Not),**
2 **the Unilateral Blanket 30% Discount that Wynn Resorts Applied to the Stock**
3 **Is Erroneous and the Promissory Note is Unconscionably Vague, Ambiguous,**
4 **and Oppressive**

5 168. Ms. Wynn admits that Wynn Resorts issued a promissory note in the amount of
6 approximately \$1.9 billion. On information and belief, Ms. Wynn admits that the price reflected an
7 approximately 30% discount to the trading price of Wynn Resorts stock on NASDAQ at or around
8 the time of the redemption. On information and belief, Ms. Wynn admits that Wynn Resorts issued
9 a press release on February 19, 2011 regarding the redemption. Ms. Wynn avers that the press
10 release speaks for itself, and denies any allegation inconsistent with the press release. Ms. Wynn
11 denies that the Stockholders Agreement precludes the redemption of Aruze's stock. Ms. Wynn
12 denies that she and Mr. Wynn breached the Stockholders Agreement by voting to redeem Aruze's
13 shares of Wynn Resorts stock. Ms. Wynn admits that some of the purported contractual transfer
14 restrictions could be found to constitute unreasonable restraints on alienability. Ms. Wynn denies
15 that contractual transfer restrictions could not "legitimately impact" the value of Aruze's shares at
16 the time the redemption occurred. Except as expressly admitted, averred, or otherwise denied, Ms.
17 Wynn lacks information sufficient to form a belief as to the truth of the allegations of paragraph 168,
18 and denies those allegations on that basis.

19 169. Ms. Wynn avers that the press release speaks for itself, and denies any allegation
20 inconsistent with the press release. On information and belief, Ms. Wynn denies that Mr. Wynn
21 unilaterally added the redemption provision to the Articles of Incorporation without Aruze's
22 consent. Except as expressly averred or denied, Ms. Wynn lacks information sufficient to form a
23 belief as to the truth of the allegations of paragraph 169, and on that basis denies those allegations.

24 170. Ms. Wynn admits that the Board of Wynn Resorts considered a valuation opinion
25 from Moelis & Company. Ms. Wynn admits that Moelis & Company had done business with Wynn
26 Resorts in the past. Except as expressly admitted, Ms. Wynn denies the allegations of paragraph
27 170.

28

1 171. Ms. Wynn admits that Mr. Wynn has a long-standing professional relationship with
2 Mr. Moelis. Except as expressly admitted, Ms. Wynn denies the allegations of paragraph 171, in
3 part because she lacks information sufficient to form a belief as to their truth.

4 172. On information and belief, Ms. Wynn admits that Moelis & Company opined that a
5 30% discount was appropriate. Ms. Wynn avers that the Stockholders Agreement speaks for itself,
6 and denies any allegation inconsistent with the Stockholders Agreement. Except as expressly
7 admitted or averred, Ms. Wynn denies the allegations of paragraph 172, in part because she lacks
8 information sufficient to form a belief as to their truth.

9 173. Ms. Wynn admits that the \$1.936 billion promissory note issued to Aruze bears 2%
10 interest per annum and is subordinate to other Wynn Resorts debt obligations as set forth in the
11 promissory note.' Ms. Wynn avers that the promissory note speaks for itself and denies any
12 allegation inconsistent with the promissory note. Ms. Wynn avers that the Articles of Incorporation
13 speak for themselves, and denies any allegation inconsistent with the Articles of Incorporation. Ms.
14 Wynn admits that Wynn Resorts issued notes in March 2012 with principal amount of
15 approximately \$900 million and bearing interest at 5.375%. Ms. Wynn avers that Mr. Okada did not
16 participate in the Board's discussion of the terms of the promissory note during the Board meeting
17 of February 18, 2012. Except as expressly admitted or averred, Ms. Wynn denies the allegations of
18 paragraph 173, in part because she lacks information sufficient to form a belief as to their truth.

19 **G. The Timing of the Redemption Demonstrates that Wynn Resorts Redeemed**
20 **Aruze USA's Shares Based on Material, Non-Public Information that Was Not**
21 **Incorporated Into the Redemption Price**

22 174. On information and belief, Ms. Wynn admits the allegations of paragraph 174.

23 175. Ms. Wynn avers that the Form 8-K speaks for itself and denies any allegation
24 inconsistent with that document.

25 176. Ms. Wynn lacks information sufficient to form a belief as to the truth of the
26 allegations of paragraph 176, and denies those allegations on that basis.

27 177. Ms. Wynn avers that the Form 8-K speaks for itself and denies any allegation
28 inconsistent with that document.

1 178. Ms. Wynn denies the allegations of paragraph 177, in part because she lacks
2 information sufficient to form a belief as to their truth.

3 **CLAIMS FOR RELIEF**

4 **COUNT I**

5 **Declaratory Relief**

6 **(By Aruze USA and Universal Against Wynn Resorts and the Wynn Directors)**

7 179. Ms. Wynn reasserts her responses to paragraphs 4 through 178 above, as if fully set
8 forth below.

9 180. Ms. Wynn admits that Aruze and Universal are purportedly seeking a judicial
10 declaration. Ms. Wynn denies that the declaration Aruze and Universal seek is appropriate. Except
11 as expressly admitted, Ms. Wynn denies the allegations of paragraph 180.

12 181. Ms. Wynn admits that Aruze and Universal are purportedly seeking a judicial
13 declaration. Ms. Wynn denies that the declaration Aruze and Universal seek is appropriate. Except
14 as expressly admitted, Ms. Wynn denies the allegations of paragraph 181.

15 182. Ms. Wynn admits that Aruze and Universal are purportedly seeking a judicial
16 declaration. Ms. Wynn denies that the declaration Aruze and Universal seek is appropriate. Except
17 as expressly admitted, Ms. Wynn denies the allegations of paragraph 182.

18 183. Ms. Wynn admits that Aruze and Universal are purportedly seeking a judicial
19 declaration. Ms. Wynn denies that the declaration Aruze and Universal seek is appropriate. Except
20 as expressly admitted, Ms. Wynn denies the allegations of paragraph 183.

21 184. Ms. Wynn admits that Aruze and Universal are purportedly seeking a judicial
22 declaration. Ms. Wynn admits that the valuation opinion Mr. Moelis presented to the Board did not
23 consider whether the transfer restrictions were valid as to Aruze. Ms. Wynn denies that the
24 declaration Aruze and Universal seek is appropriate. Ms. Wynn denies that she and Mr. Wynn
25 breached the Stockholders Agreement by voting for the redemption of Aruze's shares of Wynn
26 Resorts stock. Except as expressly admitted and otherwise denied, Ms. Wynn denies the allegations
27 of paragraph 184, in part because she lacks information sufficient to form a belief as to their truth.

28

1 185. The allegations of paragraph 185 are legal conclusions that do not require a response.
2 In any event, Ms. Wynn denies those allegations to the extent they constitute allegations of fact, on
3 the ground that she lacks information sufficient to form a belief as to their truth.

4 186. Ms. Wynn admits that an actual controversy exists between the parties, and that the
5 dispute is ripe for adjudication. Ms. Wynn denies that Wynn Resorts acted unlawfully when it
6 redeemed Aruze's stock.

7 187. Ms. Wynn denies the allegations of paragraph 187.

COUNT II

Permanent Prohibitory Injunction

10 (By Aruze USA Against Wynn Resorts and the Wynn Directors)

11 188. Ms. Wynn reasserts her responses to paragraphs 4 through 178 above, as if fully set
12 forth below.

13 189. Ms. Wynn admits that Aruze is purportedly seeking a permanent injunction. Except
14 as expressly admitted, Ms. Wynn denies the allegations of paragraph 189.

15 || 190. Ms. Wynn denies the allegations of paragraph 190.

16 191. Ms. Wynn denies the allegations of paragraph 191.

17 192. Ms. Wynn denies the allegations of paragraph 192.

18 193. The allegations of paragraph 193 are legal conclusions that do not require a response.
19 In any event, Ms. Wynn denies those allegations to the extent they constitute allegations of fact, on
20 the ground that she lacks information sufficient to form a belief as to their truth.

21 || 194. Ms. Wynn denies the allegations of paragraph 194.

COUNT III

Permanent Mandatory Injunction

24 (By Aruze USA Against Wynn Resorts and the Wynn Directors)

25 195. Ms. Wynn reasserts her responses to paragraphs 4 through 178 above, as if fully set
26 forth below.

27 196. Ms. Wynn admits that Aruze is purportedly seeking a permanent injunction. Except
28 as expressly admitted, Ms. Wynn denies the allegations of paragraph 196.

1 197. Ms. Wynn denies the allegations of paragraph 197.

2 198. Ms. Wynn denies the allegations of paragraph 198.

3 199. Ms. Wynn denies the allegations of paragraph 199.

4 200. Ms. Wynn admits that Aruze is purportedly seeking damages. Except as expressly
5 admitted, Ms. Wynn denies the allegations of paragraph 200.

6 201. The allegations of paragraph 201 are legal conclusions that do not require a response.
7 In any event, Ms. Wynn denies those allegations to the extent they constitute allegations of fact, on
8 the ground that she lacks information sufficient to form a belief as to their truth.

9 202. Ms. Wynn denies the allegations of paragraph 202.

10 **COUNT IV**

11 **Breach of Contract in Connection with Wynn Resorts' Involuntary Redemption**

12 **(By Aruze USA Against Steve Wynn and Elaine Wynn)**

13 203. Ms. Wynn reasserts her responses to paragraphs 4 through 178 above, as if fully set
14 forth below.

15 204. Ms. Wynn avers that the April 2002 Stockholders Agreement and the January 2010
16 Stockholders Agreement speak for themselves, and denies any allegations inconsistent with those
17 agreements.

18 205. Ms. Wynn avers that the April 2002 Stockholders Agreement and the January 2010
19 Stockholders Agreement speak for themselves and that the quoted excerpts of those agreements
20 have been taken out of context, and denies any allegations inconsistent with those agreements. Ms.
21 Wynn denies that those agreements prohibit the redemption of Aruze' s stock.

22 206. Ms. Wynn denies the allegations of paragraph 206.

23 207. The allegations of paragraph 207 are legal conclusions that do not require a response.
24 In any event, Ms. Wynn denies those allegations to the extent they constitute allegations of fact, on
25 the ground that she lacks information sufficient to form a belief as to their truth.

26 208. The allegations of paragraph 208 are legal conclusions that do not require a response.
27 In any event, Ms. Wynn denies those allegations to the extent they constitute allegations of fact, on
28 the ground that she lacks information sufficient to form a belief as to their truth.

1 209. Ms. Wynn denies the allegations of paragraph 209.

2 **COUNT VI**

3 **Breach of Fiduciary Duty**

4 **(By Aruze USA Against the Wynn Directors)**

5 220. Ms. Wynn reasserts her responses to paragraphs 4 through 178 above, as if fully set
6 forth below.

7 221. The allegations of paragraph 221 are legal conclusions that do not require a response.

8 222. The allegations of paragraph 222 are legal conclusions that do not require a response.

9 223. Ms. Wynn avers that the Articles of Incorporation speak for themselves, and denies
10 any allegations inconsistent with the Articles of Incorporation.

11 224. Ms. Wynn denies the allegations of paragraph 224.

12 225. Ms. Wynn denies the allegations of paragraph 225.

13 226. Ms. Wynn denies the allegations of paragraph 226.

14 227. Ms. Wynn denies the allegations of paragraph 227.

15 228. Ms. Wynn denies the allegations of paragraph 228.

16 229. Ms. Wynn denies the allegations of paragraph 229.

17 230. Ms. Wynn denies the allegations of paragraph 230.

18 231. The allegations of paragraph 231 are legal conclusions that do not require a response.

19 In any event, Ms. Wynn denies those allegations to the extent they constitute allegations of fact, on
20 the ground that she lacks information sufficient to form a belief as to their truth.

21 232. Ms. Wynn denies the allegations of paragraph 232.

22 **AFFIRMATIVE DEFENSES**

23 Ms. Wynn asserts the following affirmative defenses:

24 **FIRST AFFIRMATIVE DEFENSE**

25 **(Failure to State a Claim)**

26 Each of Counterclaimants' claims against Ms. Wynn fails to state a claim upon which relief
27 can be granted.

1 **SECOND AFFIRMATIVE DEFENSE**

2 **(Unclean Hands)**

3 Counterclaimants' claims against Ms. Wynn are barred in whole or in part due to their
4 unclean hands, including but not limited to their conduct and the conduct of their affiliates in the
5 Philippines and Korea.

6 **THIRD AFFIRMATIVE DEFENSE**

7 **(Estoppel)**

8 Counterclaimants' claims against Ms. Wynn are barred in whole or in part by the doctrine of
9 estoppel.

10 **FOURTH AFFIRMATIVE DEFENSE**

11 **(Laches)**

12 Counterclaimants' claims against Ms. Wynn are barred in whole or in part by the doctrine of
13 laches.

14 **FIFTH AFFIRMATIVE DEFENSE**

15 **(Waiver)**

16 Counterclaimants' claims against Ms. Wynn are barred in whole or in part by the doctrine of
17 waiver.

18 **SIXTH AFFIRMATIVE DEFENSE**

19 **(Election of Remedies)**

20 Counterclaimants' claims against Ms. Wynn are barred in whole or in part by the doctrine of
21 election of remedies, because *inter alia* Counterclaimants seek inconsistent remedies with respect to
22 the Stockholders' Agreement.

23 **SEVENTH AFFIRMATIVE DEFENSE**

24 **(Limitation on Liability)**

25 Counterclaimants' claims against Ms. Wynn are barred in whole or in part because Ms.
26 Wynn's liability, if any, is limited by Wynn Resorts' Articles of Incorporation, Bylaws, and Nevada
27 law, including N.R.S. § 78.138.

1 **EIGHTH AFFIRMATIVE DEFENSE**

2 **(Authorization by Articles of Incorporation)**

3 Counterclaimants' claims against Ms. Wynn are barred in whole or in part because Ms.
4 Wynn's actions are authorized by and comport with Wynn Resorts' Articles of Incorporation,
5 Bylaws, and Nevada law.

6 **NINTH AFFIRMATIVE DEFENSE**

7 **(Ratification)**

8 Counterclaimants' claims against Ms. Wynn are barred in whole or in part because
9 Counterclaimants and Mr. Okada ratified the Counterdefendants' actions, including amendments to
10 the Articles of the Incorporation.

11 **TENTH AFFIRMATIVE DEFENSE**

12 **(Statute of Limitations)**

13 Counterclaimants' claims against Ms. Wynn are barred in whole or in part by the applicable
14 statute(s) of limitations.

15 **ELEVENTH AFFIRMATIVE DEFENSE**

16 **(Adequate Remedy at Law)**

17 Counterclaimants' claims for injunctive relief against Ms. Wynn are barred in whole or in
18 part by the availability of adequate remedies at law.

19 **TWELFTH AFFIRMATIVE DEFENSE**

20 **(Consent)**

21 Counterclaimants' claims are barred in whole or in part because Mr. Okada consented to the
22 Counterdefendant's actions, including amendments to the Articles of Incorporation.

23 **THIRTEENTH AFFIRMATIVE DEFENSE**

24 **(Privilege)**

25 The alleged acts or omissions of Ms. Wynn that allegedly give rise to liability herein, if any
26 such acts or omissions occurred, were legally privileged and cannot give rise to any liability on the
27 part of Ms. Wynn.

28

1 **FOURTEENTH AFFIRMATIVE DEFENSE**

2 **(Justification)**

3 The alleged acts and omissions of Ms. Wynn that allegedly give rise to liability herein, if any
4 such acts or omissions occurred, were legally justified and cannot give rise to any liability on the
5 part of Ms. Wynn.

6 **FIFTEENTH AFFIRMATIVE DEFENSE**

7 **(Lack of Standing)**

8 Counterclaimants' claims against Ms. Wynn are barred in whole or in part because they lack
9 standing to assert some or all of their claims.

10 **SIXTEENTH AFFIRMATIVE DEFENSE**

11 **(Release and Indemnification)**

12 Counterclaimants claims against Ms. Wynn are barred in whole or in part because
13 Counterclaimants are required under the Articles of Incorporation to indemnify and hold harmless
14 Wynn Resorts for any losses, including attorney's fees, resulting from their conduct.

15 **SEVENTEENTH AFFIRMATIVE DEFENSE**

16 **(Contributory Negligence)**

17 Counterclaimants' claims against Ms. Wynn are barred in whole or in part by their and Mr.
18 Okada's own actions, omissions, negligence, and/or malfeasance.

19 **EIGHTEENTH AFFIRMATIVE DEFENSE**

20 **(Comparative Negligence)**

21 Counterclaimants' claims against Ms. Wynn are barred in whole or in part because
22 Counterclaimants' damages, if any, were caused by Counterclaimants' and Mr. Okada's own
23 negligence, and such negligence was greater than any negligence, which is expressly denied, on the
24 part of Ms. Wynn.

25 **NINETEENTH AFFIRMATIVE DEFENSE**

26 **(Res Judicata)**

27 Counterclaimants' claims against Ms. Wynn are barred in whole or in part by the doctrine of
28 res judicata.

1 **TWENTIETH AFFIRMATIVE DEFENSE**

2 **(Collateral Estoppel)**

3 Counterclaimants' claims against Ms. Wynn are barred in whole or in part by the doctrine of
4 collateral estoppel.

5 **RESERVATION**

6 Ms. Wynn reserves the right to amend her answer to plead additional affirmative defenses as
7 they become known and appropriate during the course of this litigation.

8 **JURY DEMAND**

9 Ms. Wynn demands trial by jury on all issues so triable.

10 WHEREFORE, Ms. Wynn prays that judgment be entered as follows:

- 11 1. that Counterclaimants take nothing from Ms. Wynn by virtue of their Fourth
12 Amended Counterclaim;
13 2. that the Fourth Amended Counterclaim and each purported cause of action set forth
14 therein against Ms. Wynn be dismissed with prejudice;
15 3. that Ms. Wynn be awarded her costs and reasonable attorney' s fees incurred herein
16 as allowed by law; and
17 4. for such further relief is deemed just and equitable.
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1 **FIFTH AMENDED COUNTERCLAIM AND CROSSCLAIM**

2 **I. Introduction**

3 1. With these crossclaims, Elaine P. Wynn seeks a declaration that the January 2010
4 Stockholders Agreement, which purports to prohibit her from selling shares that she owns absent the
5 permission of her ex-husband Stephen Wynn, is invalid and unenforceable as a matter of law. She
6 also seeks damages for Mr. Wynn's breach of his obligations under the January 2010 Stockholders
7 Agreement, including for his failure to support her renomination and reelection to the Board of
8 Directors, and for Wynn Resorts' tortious interference with that contract. Furthermore, and in the
9 alternative, to the extent that the January 2010 Stockholders Agreement is deemed valid and
10 enforceable, Ms. Wynn seeks specific performance ordering Mr. Wynn to comply with his
11 contractual obligations, as explicitly required by the January 2010 Stockholders Agreement.

12 2. Ms. Wynn raises these issues reluctantly: she had hoped, for the sake of her family
13 and of the Company she helped to build, that the issues plaguing the operation of Wynn Resorts and
14 the reckless risk-taking of its Chairman and CEO Mr. Wynn could be addressed through proper
15 corporate processes and channels. They cannot be. Mr. Wynn has intentionally kept the Wynn
16 Resorts Board in the dark and has turned the General Counsel of the Company into his
17 co-conspirator. He has engaged in reckless, risk-taking behavior, leaving himself vulnerable to
18 allegations of serious wrongdoing – that he made a multi-million dollar payment and used Company
19 resources to silence and that he did not properly disclose to the Board of Directors. This and other
20 such decisions have left the directors and the Company vulnerable to potential liability and
21 regulatory exposure.

22 3. Every time Elaine Wynn sought information, as a director should, she confronted a
23 "tone at the top" that punished inquiry, even by her, a major shareholder, director and co-founder of
24 Wynn Resorts. Mr. Wynn operates the Company without the effective checks and balances that the
25 law requires, beginning with independent and effective Board members. Ms. Wynn and her fellow
26 Board members were intentionally fed misinformation by Mr. Wynn and Kimmarie Sinatra, the
27 Company's General Counsel, a process that depended on the deficiencies in the internal controls and
28 their intentional circumvention with regard to the decisions of the Chairman and CEO. Although

1 bound by the January 2010 Stockholders Agreement to support Elaine Wynn's director candidacy,
2 Mr. Wynn instead engineered her removal from the Board in retaliation for her challenging his
3 decisions and questioning his judgment. Ms. Wynn cannot sit by idly and accept punishment for
4 doing what is right and daring even to inquire about Mr. Wynn's reckless operation of the Company.

5 4. The ostensible purpose of the January 2010 Stockholders Agreement was to place
6 restrictions on the stock held by Mr. Okada (through his company, Aruze USA, Inc.) to preserve the
7 Wynn-Okada alliance and avoid the kind of takeover that the Wynns faced at the Mirage. Mr. Wynn
8 induced Ms. Wynn to sign the January 2010 Stockholders Agreement by a series of false
9 representations, both professional and personal, including that the purpose was to restrict Mr.
10 Okada, not her, and that she would serve on the Board for at least as long as the restrictions applied
11 so that she could protect her stock in the Company, which is Ms. Wynn's largest asset.

12 5. Now that the shares held by Mr. Okada's company have been redeemed, the
13 ostensible purpose of the January 2010 Stockholders Agreement has been frustrated. If the purpose
14 was indeed to impose limits on Mr. Okada, as Mr. Wynn and his counsel maintained, then there is
15 no legitimate basis for continuing to enforce the Agreement's restrictions on Ms. Wynn's shares.

16 6. As is now clear, Mr. Wynn is misusing the January 2010 Stockholders Agreement to
17 exert full and perpetual control over his former wife's life and legacy. A contract restricting
18 alienability in perpetuity is unreasonable and unlawful. In this case, Ms. Wynn's agreement was
19 also fraudulently induced. Ms. Wynn entered into the Agreement reasonably believing that Mr.
20 Wynn would of course provide for their family. Mr. Wynn actively promoted that impression and
21 misrepresented his intentions. Only later did Mr. Wynn share with his daughters through
22 conversations that they, and their families, should expect only Ms. Wynn to provide support and any
23 inheritance, and that he did not plan to include them in his will. At the same time as he has been
24 delivering this message to his daughters, Mr. Wynn has refused Ms. Wynn's requests to enter into
25 the kind of responsible joint estate planning that would provide a legacy for their family and also for
26 the community; if he has a will or other instrument that provides for his family, he has refused to
27 acknowledge it or reveal any of its terms so that Ms. Wynn can reasonably plan her own estate. By
28 refusing to allow Ms. Wynn to sell or transfer her stock, Mr. Wynn would force their daughters to

1 liquidate most of or all of Ms. Wynn's other assets to pay estate tax on stock that they cannot sell
2 either. In her own lifetime, Ms. Wynn, who is a committed philanthropist, is further denied the right
3 to spend what is hers in support of the causes she passionately believes in. To the extent that the
4 January 2010 Stockholders Agreement imposes restrictions on the sale of Ms. Wynn's shares, it is
5 unreasonable and constitutes an unenforceable, perpetual and unlawful restraint on alienability.

6 7. If the January 2010 Stockholders Agreement is found to have any continuing validity
7 (and it should not be), Mr. Wynn materially breached that Agreement. Ms. Wynn agreed to
8 restrictions on her stock to help her partner of 41 years and the father of her children maintain the
9 alliance with, and the restrictions on, Mr. Okada. Mr. Wynn in turn agreed that Ms. Wynn would be
10 able to oversee and protect her interests as a major investor and shareholder with a seat on the Board.
11 Among other things, Mr. Wynn was obligated to endorse and support Ms. Wynn's nomination and
12 election for director of Wynn Resorts, which he failed to do.

13 8. Neither Mr. Wynn nor Ms. Sinatra made any effort to hide their antipathy for Ms.
14 Wynn's insistence on carrying out her duties as a director. For her part, Ms. Wynn became
15 increasingly concerned about the pattern of reckless risk-taking by the Chairman and CEO,
16 unconstrained by proper internal controls; the "tone at the top" that discouraged any challenge to
17 Mr. Wynn; the fact that Mr. Wynn and Ms. Sinatra decided what would and would not be disclosed
18 to the Board; and the fact that they made decisions based not on what was best for the shareholders,
19 but what was best for management, specifically the Chairman and CEO. No other plausible
20 explanation could justify the decision to keep secret from the Board and other Company counsel
21 besides Ms. Sinatra the fact that the Chairman and CEO had engaged in alleged misconduct on
22 Company property against at least one Company employee serious enough to warrant a multimillion
23 dollar payment and thereby to expose the Company and other directors to liability without their
24 knowledge or consent.

25 9. The Wynn Board may be the most compliant board of any major public company. In
26 only three instances in the history of the Company has a director voted against Mr. Wynn's position
27 on any issue. The only time Mr. Wynn's purported position has ever been "defeated" was when it
28 came to electing Ms. Wynn to the Board of Directors in 2015. She is a near 10 percent shareholder.

1 If her name were not "Wynn," and if she did not know as much as she does and had not raised proper
2 questions about the management of the Company, she would of course have a seat on the Board.
3 Although Mr. Wynn formally voiced that he was voting the shares he controlled in Ms. Wynn's
4 favor, he engineered the Nominating Committee's recommendation to reduce the Board's size and
5 not to renominate Ms. Wynn and the Board's decision to follow that recommendation. Ms. Wynn is
6 the only director in the Company's history who was involuntarily "retired." She is the only director
7 to seek renomination and not to receive it. Dogged by a campaign that "Steve wanted her off" – a
8 campaign Mr. Wynn and his co-conspirators devised and executed – Ms. Wynn no longer sits on the
9 Board; Mr. Wynn maintains complete voting control over her stock; and the vast bulk of her stock is
10 totally restricted from transfer, including to the point that she cannot protect herself or provide for a
11 reasonable estate plan for the benefit of her children. Elaine Wynn is a sophisticated business
12 woman. This is not the agreement she made. She sought to protect the Company and her family and
13 to do no harm to her children's father. It is impossible to draw any conclusion other than that Mr.
14 Wynn intentionally sought to do just the opposite.

15 **II. Case Designation**

16 10. This matter is properly designated as a business court matter and assigned to the
17 Business Docket under EDCR 1.61(a) as the claims alleged herein are based on or will require
18 decision under Chapter 78 of the Nevada Revised Statutes or other similar statutes, and arise from a
19 stockholder's right to engage in the purchase or sale of the stock of a business.

20 **III. The Parties**

21 11. Counterdefendant, counterclaimant, and crossclaimant Elaine P. Wynn is and was, at
22 all relevant times, a citizen of Nevada.

23 12. Counterdefendant and crossdefendant Stephen A. Wynn is and was, at all relevant
24 times, a citizen of Nevada.

25 13. Counterdefendant and crossdefendant Kimmarie Sinatra is and was, at all relevant
26 times, a citizen of Nevada.

27 14. Plaintiff, counterdefendant, and crossdefendant Wynn Resorts Limited ("Wynn
28 Resorts") is a company organized and existing under the laws of Nevada.

1 15. Defendant, counterclaimant, and counterdefendant Aruze USA, Inc. ("Aruze") is a
2 company organized and existing under the laws of Nevada. On information and belief, Aruze is and
3 was controlled by Kazuo Okada at all relevant times, and is the entity Mr. Okada used to hold shares
4 in Wynn Resorts.

5 **IV. General Allegations**

6 16. Elaine Wynn married Stephen Wynn in 1963, when they were both 21. They
7 divorced in 1986, and remarried in 1991. They divorced again eighteen years later, in 2010.

8 17. Ms. Wynn made major contributions to the success of Wynn Resorts. She worked
9 tirelessly to turn visions into reality, to help create the unique ambiance and experience that have
10 made Wynn Resorts so successful. Mr. Wynn never contested, at the time of divorce, that Ms.
11 Wynn was entitled to 50 percent of the stock in Wynn Resorts.

12 18. Between 1977 and 2000, Ms. Wynn served as a director of Mirage Resorts.

13 19. Ms. Wynn served as a director of Wynn Resorts from October 2002 until April 2015.

14 **A. Creation of Wynn Resorts**

15 20. In 2000, Mr. Wynn purchased the Desert Inn in Las Vegas. The Desert Inn site
16 eventually was rebuilt as Wynn Resorts. The entity Mr. Wynn used to hold the Desert Inn property
17 was the Nevada limited liability company Valvino Lamore, LLC ("Valvino"), which Mr. Wynn
18 formed in April 2000.

19 21. Mr. Wynn turned to Mr. Okada to help finance this new project. In October 2000,
20 Aruze contributed \$260 million to Valvino and became a member of Valvino.

21 22. In April 2002, Aruze contributed a further \$120 million to Valvino.

22 23. As of April 2002, Mr. Wynn and Aruze each held a 47.5 percent interest in Valvino.
23 Baron Asset Fund ("Baron"), a Massachusetts business trust, held a 5 percent interest in Valvino.

24 24. Mr. Wynn, Aruze and Baron agreed to contribute their interests in Valvino to a new
25 entity, to be named Wynn Resorts. On April 11, 2002, Mr. Wynn, Aruze, and Baron executed a
26 Stockholders Agreement (the "April 2002 Stockholders Agreement") with respect to their shares in
27 the new entity.
28

1 25. Mr. Wynn became Wynn Resorts' Chairman and Chief Executive Officer in June
2 2002.

3 26. In October 2002, Ms. Wynn became a director, Mr. Okada became Vice Chairman,
4 and Wynn Resorts conducted an initial public offering of Wynn Resorts stock (ticker symbol
5 WYNN) on the NASDAQ exchange.

6 **B. The 2002 and 2006 Stockholders Agreements**

7 27. In 2002 and 2006, the stockholders executed two agreements intended to ensure that
8 their unified voting strength would be used to keep control in the hands of the Wynn-Okada alliance.
9 A third agreement was signed in 2010 after the Wynns divorced.

10 28. Section 2(a) of the April 2002 Stockholders Agreement sets forth a voting agreement
11 between Mr. Wynn and Aruze. Section 2(a) provides that Mr. Wynn would designate a majority of
12 all nominees to the Board of Wynn Resorts; Aruze would designate a minority slate of directors; and
13 Mr. Wynn and Aruze would vote the shares held by them to elect the designated nominees.

14 29. Section 9 of the April 2002 Stockholders Agreement set forth a
15 right-of-first-refusal restriction on the transfer of stock by Mr. Wynn, Aruze and Baron. Generally,
16 Section 9 provided that each contracting party who wished to sell stock must, with certain
17 exceptions, provide notice of the proposed terms of sale to the other parties to the agreement, and
18 that each other party would have the right to purchase the offered shares according to certain
19 procedures.

20 30. Section 4 of the April 2002 Stockholders Agreement stated that "Shares may not be
21 transferred or sold by any Stockholder unless the transferee (including a Permitted Transferee) both
22 executes and agrees to be bound by this Agreement."

23 31. On March 15, 2005, Wynn Resorts stated in its Form 10-K filing that "Mr. Wynn and
24 Aruze USA, Inc. each own approximately 25% of our outstanding common stock. As a result, Mr.
25 Wynn and Aruze USA, Inc., to the extent they vote their shares in a similar manner, effectively are
26 able to control all matters requiring our stockholders' approval, including the approval of significant
27 corporate transactions."

28 32. In the same Form 10-K, Wynn Resorts further stated: "Mr. Wynn and Aruze USA,

1 Inc., together with Baron Asset Fund, have entered into a stockholders' agreement. Under the
2 stockholders' agreement, Mr. Wynn and Aruze USA, Inc., have agreed to vote their shares of our
3 common stock for a slate of directors, a majority of which will be designated by Mr. Wynn, of which
4 at least two will be independent directors, and the remaining members of which will be designated
5 by Aruze USA, Inc. As a result of this voting agreement, Mr. Wynn, as a practical matter, controls
6 the slate of directors to be elected to our board of directors."

7 33. In or about 2006, Mr. Wynn asked Mr. Okada to agree to further restrictions on
8 Aruze's ability to sell Wynn Resorts stock. On November 8, 2006, Mr. Wynn and Aruze executed
9 an Amendment to Stockholders Agreement ("2006 Amendment").

10 34. The 2006 Amendment added the following: "Mutual Restriction on Sale of Shares.
11 Neither [Mr.] Wynn nor Aruze (nor any of their respective Permitted Transferees) shall Transfer, or
12 permit any of their respective Affiliates to Transfer, any Shares Beneficially Owned by such Person
13 without the prior written consent of both [Mr.] Wynn and Aruze." This type of restriction on stock
14 transfers is known as a consent restriction and purported to apply to all shares subject to the
15 agreement.

16 **C. Division of the Wynn Shares**

17 35. Elaine and Stephen Wynn finalized their divorce in 2010 after having been married
18 for a total of 41 years. Under Nevada law, Ms. Wynn was entitled to an equal division of
19 community assets, including their Wynn Resorts stock.

20 36. Mr. Wynn insisted that he could not transfer shares to Ms. Wynn unless she signed
21 the January 2010 Stockholders Agreement. Mr. Wynn and his lawyers represented to Ms. Wynn
22 that because the shares to be divided between Mr. Wynn and Ms. Wynn were subject to the 2002 and
23 2006 Agreements, Ms. Wynn had no choice but to be added as a party to the pre-existing
24 Stockholders Agreement and to execute the Irrevocable Proxy in order to maintain the restrictions
25 on Mr. Okada; that the purpose of the restrictions was to restrict *Mr. Okada's* transfer of his shares,
26 not Ms. Wynn's; that if she did not agree to the same restrictions that applied to Mr. Okada, Mr.
27 Okada would seize that as an opportunity to reopen negotiations; and that Mr. Okada's doing so
28

1 could undermine their joint control of Wynn Resorts and potentially diminish the value of their
2 holdings.

3 37. Mr. Wynn also led Ms. Wynn to believe that he would engage in responsible joint
4 estate planning with Ms. Wynn to provide a legacy for their family and also for the community.
5 These representations were false.

6 38. Mr. Wynn also made certain business commitments to Ms. Wynn, who now
7 separately held nearly 10 percent of the stock in the Company: that is, like any such large
8 stakeholder, and particularly one restricted from freely selling the vast majority of her stake, she was
9 entitled to serve, and he committed to her serving, on the Board of Directors.

10 39. In reliance on the representations made to her by Mr. Wynn and his counsel, Ms.
11 Wynn signed the January 2010 Stockholders Agreement, as described further below.

12 **D. The January 2010 Stockholders Agreement**

13 40. On January 6, 2010, Mr. Wynn and Ms. Wynn, on the one hand, and Mr. Okada's
14 company Aruze, on the other hand, signed the Amended and Restated Stockholders Agreement
15 ("January 2010 Stockholders Agreement"). As represented to Ms. Wynn, the purpose of the
16 January 2010 Stockholders Agreement was to ensure that Mr. Okada did not transfer his shares
17 without the permission of Mr. Wynn and Ms. Wynn.

18 41. Section 2(a) of the January 2010 Stockholders Agreement provides as follows:

19 Voting Agreement. On any and all matters relating to the election of directors of
20 Wynn (including the filling of any vacancies), the Designated Stockholders each
21 agree to vote all Shares held by them and subject to the terms of this Agreement (or
22 the holders thereof shall consent pursuant to an action by written consent of the
holders of capital stock of Wynn) in a manner so as to elect to Wynn's Board of
Directors each of the nominees contained on each and every slate of directors
endorsed by [Mr. Wynn].

23 [Mr. Wynn] agrees to include [Ms. Wynn] as one of his endorsed nominees so long
24 as she is not "unable to serve" or "unfit to serve." As used herein, "unable to serve"
25 shall mean medically incapacitated so as to be unable to serve as a director, and
26 "unfit to serve" shall mean a violation of rules and laws so as to prohibit one from
27 serving as a director of a public company engaged in the gaming business. In the
event of a disagreement between [Mr. Wynn] and [Ms. Wynn] regarding these
matters, determination of either of the preceding conditions shall be made and
confirmed by an independent third party to be jointly selected by [Mr. Wynn] and
[Ms. Wynn].

1 [Mr. Wynn] also agrees to endorse a slate of directors that includes nominees
2 approved by Aruze and to vote [Mr. Wynn's] and [Ms. Wynn's] Shares in favor of
3 such directors so long as such slate results in a majority of all directors at all time
4 being director candidates endorsed by [Mr. Wynn].

5 42. The Irrevocable Proxy, attached as Exhibit A to the January 2010 Stockholders
6 Agreement and executed by both Ms. Wynn and Aruze, grants Mr. Wynn voting rights to all shares
7 subject to the Agreement and provides that such proxy is to be exercised "for the election of
8 directors as more specifically provided and in a manner consistent with this Agreement."

9 43. Section 2(b) of the January 2010 Stockholders Agreement provides that, with certain
10 exceptions, "none of [Ms. Wynn], [Mr. Wynn,] or Aruze (nor any of their respective Permitted
11 Transferees) shall Transfer, or permit any of their respective Affiliates to Transfer, any Shares
12 Beneficially Owned by such Person without the prior written consent of each of the others." The
13 restrictions of Section 2(b) contain no time limitation.

14 44. Section 4 of the January 2010 Stockholders Agreement states that "[s]hares may not
15 be transferred or sold by the Designated Stockholder unless the transferee (including a Permitted
16 Transferee) both executes and agrees to be bound by both this Agreement and the Proxy." The
17 restrictions of Section 4 contain no time limitation and provide that any transferee must be bound by
18 the restrictions in the agreement.

19 45. Section 9 of the January 2010 Stockholders Agreement provides for a
20 right-of-first-refusal restriction on stock transfers. Generally, Section 9 provides that each party
21 who wishes to sell stock must, with certain exceptions, provide notice of the proposed terms of sale
22 to the other parties to the Agreement, and that each other party will then have the right to purchase
23 the offered shares according to a specified procedure. The restrictions of Section 9 contain no time
24 limitation and provide that the transferee must be bound by the restrictions in the agreement.

25 46. Section 14(b) of the January 2010 Stockholders Agreement requires that the stock
26 certificates bear the "following restrictive legend" that includes: "ANY PERSON ACCEPTING
27 ANY INTEREST IN SUCH SHARES SHALL BE DEEMED TO HAVE AGREED TO AND
28 SHALL BECOME BOUND BY ALL THE PROVISIONS OF THE STOCKHOLDERS
AGREEMENT."

1 47. Section 14(c) of the January 2010 Stockholders Agreement provides that “[a]ny
2 transfer or sale of any Shares in violation of this Agreement shall be null and void *ab initio*.”

3 E. Wynn Resorts Redemption of Aruze’s Stock

4 48. On or about October 29, 2011, Wynn Resorts’ Compliance Committee retained
5 Louis Freeh, former Director of the Federal Bureau of Investigation, to investigate Mr. Okada’s
6 activities overseas, including his activities in the Philippines.

7 49. On February 18, 2012, Mr. Freeh made a presentation to the Board of Wynn Resorts
8 regarding Mr. Okada’s overseas activities. Based on Mr. Freeh’s presentation, the Board of Wynn
9 Resorts adopted a resolution finding Aruze, Mr. Okada, and Universal Entertainment Corporation to
10 be Unsuitable Persons under Wynn Resorts’ Second Amended and Restated Articles of
11 Incorporation (“Articles”). The Board caused Wynn Resorts to redeem Aruze’s shares in Wynn
12 Resorts.

13 50. With the redemption of Mr. Okada’s interest, the purpose and intent of the January
14 2010 Stockholders Agreement fails. Mr. Wynn does not need Ms. Wynn’s shares to protect him
15 from Mr. Okada. The risk posed by Mr. Okada and his shareholdings simply does not exist in light
16 of the redemption. The January 2010 Stockholders Agreement was never intended to give Mr.
17 Wynn a perpetual unlimited “get out of jail free” card, guaranteeing Ms. Wynn’s support against
18 any and all comers. This was an agreement with its roots – and its execution – in the Wynn-Okada
19 alliance. With Mr. Okada out of the picture, the January 2010 Stockholders Agreement no longer
20 serves its purpose and is invalid and unenforceable.

21 F. Mr. Wynn’s Abandonment of His Promises to Ms. Wynn and Pattern of
22 Reckless Behavior

23 51. Working very long days, and trusting that (whatever Mr. Wynn might do in his
24 personal life) Mr. Wynn would not put the Company they had co-founded and so painstakingly
25 worked to build at risk, Ms. Wynn cannot say with any certainty when Mr. Wynn’s reckless
26 risk-taking began or accelerated. But beginning at the time of her divorce, and for obvious reasons,
27 Ms. Wynn began examining the extent to which Mr. Wynn was withholding information from the
28 Board on critical issues and using a public company to fund his lavish lifestyle and personal politics.

1 Mr. Wynn, along with Ms. Sinatra, effectively undermined the role and proper decision-making
2 authority of the Board by withholding information from or affirmatively misleading the Board,
3 including on matters that indisputably should have been reported by the Board, and by retaliating
4 against Ms. Wynn for raising proper inquiries into the conduct of the Company, including by Mr.
5 Wynn.

6 52. Among other things, Ms. Wynn learned that Mr. Wynn, using the services of a
7 private criminal defense attorney and a private gaming attorney, had previously made a multimillion
8 dollar payment after apparently being threatened with allegations of serious misconduct occurring
9 on Company property against a Wynn Resorts employee. When Ms. Wynn made inquiries of Ms.
10 Sinatra, the Company's General Counsel, Ms. Sinatra stated that Mr. Wynn had decided that the
11 matter should not be disclosed to the Board or other Company counsel – even though Mr. Wynn, as
12 the Chairman and CEO of a public company, had exposed himself to sufficiently serious allegations
13 of wrongdoing that he had been forced to pay millions of dollars and had used Company resources
14 to conceal the allegations.

15 53. Ms. Wynn also learned, from Mr. Wynn himself, that his prior representations to her
16 about providing for their family – misrepresentations made to secure her signature on the January
17 2010 Stockholders Agreement – and all the assumptions upon which they were based were a sham.
18 Mr. Wynn has rebuffed her efforts even to discuss what would be an appropriate approach to
19 balancing the legacy they leave for their family with the responsibility Ms. Wynn has long felt to
20 give back to the community. Mr. Wynn has now repeatedly confirmed to both Ms. Wynn and their
21 two children that the children should look to Ms. Wynn, and only Ms. Wynn, for support and that he
22 has no intention of including them in any significant way in his will or otherwise. He has refused
23 Ms. Wynn's requests that they meet together to discuss estate planning for the benefit of their family
24 and their foundation, leaving no doubt that he knew at the time he secured her signature on the
25 January 2010 Stockholders Agreement that he would never do so. Even if Mr. Wynn has created a
26 will or other mechanism to provide for his family, he has refused to acknowledge it or reveal any of
27 its terms so that Ms. Wynn can reasonably plan her own estate.
28

1 54. Ms. Wynn also learned that Mr. Wynn's judgment as to the promotion and retention
2 of senior officials of the Company was dangerously flawed, with potentially serious implications for
3 the Company, its directors and its gaming licenses. Mr. Wynn surrounded himself with senior
4 management many of whom, it has emerged, were elevated more for their loyalty than their integrity
5 and ability. For example, for many years, Marc D. Schorr, Mr. Wynn's hand-picked selection for
6 Chief Operating Officer ("COO") of Wynn Resorts in 2001, was one of Mr. Wynn's closest
7 associates. When Ms. Wynn objected to Mr. Schorr's election to the Board because of questions
8 about his ethics, Mr. Wynn and Ms. Sinatra rebuffed her and retaliated against her. As it turned out,
9 Ms. Wynn's concerns were well-founded, but Mr. Wynn misled the Board about the reason for Mr.
10 Schorr's sudden decision to retire.

11 55. Mr. Schorr's misconduct came to light due to the actions of a former casino operator
12 named Tim Poster, who was as close to Mr. Schorr as Mr. Schorr was to Mr. Wynn. Mr. Poster
13 initially was hired to explore potential business opportunities for Wynn Resorts in internet
14 gambling; when Mr. Wynn decided not to pursue that direction, he assigned Mr. Poster to a
15 prominent position in casino marketing. Shortly thereafter, Mr. Wynn personally chose and
16 announced Mr. Poster's promotion to COO of Wynn Las Vegas. But before Mr. Poster could even
17 begin to assume his full duties, Mr. Wynn was forced to accept his resignation when it was revealed
18 that Mr. Poster was under investigation for participating in illegal gambling. The Nevada Gaming
19 Control Board subsequently rejected Mr. Poster's application for preliminary findings of suitability
20 based on this and other misconduct.

21 56. Mr. Schorr's and Mr. Poster's well-known pattern of joint betting activity then raised
22 concerns about whether Mr. Schorr might have participated in similar, illegal activities. Within
23 weeks, Mr. Wynn announced to the Board that Mr. Schorr, despite having recently received a
24 contract extension and additional compensation at Mr. Wynn's direction, had now decided to resign
25 voluntarily because he was ready to retire. This same claim was made in SEC filings. In its
26 subsequent SEC Form 8-K filed March 27, 2013, and echoing Mr. Wynn's misrepresentation to the
27 Board, Wynn Resorts falsely and deceptively reported that Mr. Schorr's departure from Wynn
28 Resorts was the result of Mr. Schorr's notice to the Company of his "his intention to retire." In fact,

1 Mr. Schorr was terminated by Mr. Wynn because of his participation in illegal gambling, something
2 every gaming executive knows will not be tolerated by authorities. Even after these events, Mr.
3 Wynn again hired Mr. Schorr as a paid consultant for Wynn Resorts. When Ms. Wynn voiced her
4 concerns about Mr. Schorr's retention as a consultant, she again was made to feel her concerns were
5 baseless. When she brought her concerns to the attention of other senior management, Mr. Schorr's
6 consultancy was suspended – but since then Mr. Schorr has again been engaged by Wynn Resorts to
7 consult periodically.

8 57. Both Wynn Resorts and Mr. Wynn entertain lavishly, which is common in the
9 gaming industry. The dollar volume of such entertaining, not to mention the costs of a fleet of jets,
10 and the overlap between what is personal and what should be a business expense, demand effective
11 internal controls including careful review by the Audit Committee. Mr. Wynn misused Company
12 resources to support his legendary lifestyle. There was no effective protocol, or at least none
13 approved by the Board, to oversee entertainment and travel expenditures, and Ms. Wynn's inquiries
14 were rebuffed. On information and belief, on no occasion did the Audit Committee of the Board
15 ever investigate or even conduct an in-depth review of the Company's internal controls governing
16 such large expenditures; certainly, no such reports have been produced, and there is evidence of
17 regular shredding of audit committee materials and notes. The tone at the top of senior
18 management, in particular Mr. Wynn and Ms. Sinatra, was to discourage even Board members from
19 questioning the unilateral apportionment decisions of Mr. Wynn. Again, Ms. Wynn's efforts to act
20 as a truly independent director were stonewalled: she was specifically barred from sitting in on a
21 meeting of the Audit Committee.

22 58. The knowledge that dissent was not tolerated at the Board level means that it was not
23 tolerated anywhere. Mr. Wynn and Ms. Sinatra intentionally created a tone at the top that was not
24 and is not conducive to proper functioning of internal controls. This is true as well with respect to
25 Mr. Wynn's increasing profile in partisan politics, conveyed in media interviews that were often
26 conducted on Company property. As an individual, Mr. Wynn is free to support whatever party or
27 candidate he chooses, whether or not that serves the Company's interest. But acting as Chairman
28 and CEO, and using Company resources, he is responsible to the Board and ultimately to the

1 shareholders; the issue is not whether Stephen Wynn supports the Republican Party, but whether it
2 is in the best interests of the Company to take sides in partisan politics. Ms. Wynn expressed her
3 concerns to Company counsel, which likewise were rebuffed. At least one other director, on
4 information and belief, expressed similar concerns. Nevertheless, the issue was never raised at the
5 Board level, and Mr. Wynn has only increased the Company's partisan profile to the detriment of
6 the Company.

7 59. Mr. Wynn has exerted, and continues to exert, control over his Board, including by
8 exercising control over their access to information and by retaliating against Ms. Wynn for her
9 proper inquiries into Company matters, as described previously. All Wynn Resorts directors who
10 have ever served on the Board have been, without exception, selected by Mr. Wynn. In only three
11 instances in the history of the Company – with one of them being Ms. Wynn's renomination (where
12 the board was following Mr. Wynn's signals but not his vote) and the other two being lone
13 dissenting votes from Ms. Wynn on one occasion and Mr. Okada on the other – has a director voted
14 against Mr. Wynn's intentions at any time or on any subject.

15 **G. Mr. Wynn's Disregard of His Agreement and of His Repeated Assurances to**
16 **Engineer Elaine Wynn's Removal from the Board of the Company She Built**

17 60. On information and belief, Mr. Wynn and Ms. Sinatra, including by using the
18 Nominating and Governance Committee, engineered the 2015 removal of Elaine Wynn from the
19 Board of the Company she co-founded, worked tirelessly to create, and in which she owns a
20 significant shareholder stake. Doing so violated both the written and oral agreements between the
21 Wynns. It was Ms. Wynn's punishment for asking too many questions that Mr. Wynn and Ms.
22 Sinatra did not want to answer. Mr. Wynn no longer wanted Ms. Wynn's participation, despite his
23 obligations under the January 2010 Stockholders Agreement and even as he insisted on his absolute
24 right to control her property.

25 61. Renomination was routine at Wynn Resorts until February 24, 2015, when the
26 Nominating and Corporate Governance Committee of Wynn Resorts voted to recommend that Ms.
27 Wynn not be renominated to the Board, recommending instead that the size of the Board be
28 decreased by one and that only directors J. Edward Virtue and John J. Hagenbuch be renominated.

1 62. On February 26, 2015, the Board of Wynn Resorts voted in favor of reducing the size
2 of the Board by one, the one being Ms. Wynn. Although Mr. Wynn professed to vote formally
3 against this act of expulsion, he made it clear that the only reason he did not vote with the directors
4 he had hand-selected and guided was because he was contractually obligated to vote otherwise. The
5 message was lost on no one. Mr. Wynn carried the day. Based on false and pretextual justifications,
6 the Nominating Committee recommended against the renomination of Ms. Wynn as director, and
7 the Board controlled by Mr. Wynn ratified that recommendation.

8 63. Although Ms. Wynn then attempted to solicit proxies, the effort was doomed. Mr.
9 Wynn failed to take reasonable steps during the ensuing proxy contest to communicate to
10 shareholders any endorsement of Ms. Wynn's candidacy. To the contrary, he undermined support
11 for Ms. Wynn. For example, after Mr. Wynn stated in a televised interview on April 15, 2015 that
12 he did not agree with the Board's decision not to renominate Ms. Wynn, Ms. Wynn issued a press
13 release thanking him for his endorsement. Rather than leave it at that, Wynn Resorts quickly issued
14 a press release stating that Mr. Wynn's comments should not be misconstrued and that he had great
15 respect for the care the Board took in making its decisions. Or, as the AP reported on April 17,
16 2015, Mr. Wynn was not in fact endorsing Ms. Wynn.

17 64. Mr. Wynn and Ms. Sinatra wanted Ms. Wynn expelled from the Board in retaliation
18 for her proper inquiries into Company activities, including without limitation those involving Mr.
19 Wynn as described above. Indeed, in the entire history of the Company, Ms. Wynn was the only
20 director who wanted to stay on the Board who was not renominated and reelected.

21 **V. Claims for Relief**

22 **FIRST CAUSE OF ACTION**

23 **DECLARATORY RELIEF**

24 **(Discharge and/or Rescission for Frustration of Purpose)**

25 65. Ms. Wynn re-alleges the allegations set forth in paragraphs 1 to 64 above.

26 66. An actual controversy exists among Ms. Wynn, Mr. Wynn, and Aruze with respect to
27 the validity and/or enforceability of the January 2010 Stockholders Agreement. The controversy is
28 ripe for adjudication.

1 67. The redemption of Aruze's stock has frustrated the purpose of the January 2010
2 Stockholders Agreement and its predecessor agreements (*i.e.*, the April 2002 Stockholders
3 Agreement and the 2006 Amendment).

4 68. The stated purpose of the January 2010 Stockholders Agreement was for Aruze to
5 support and avoid undermining Mr. Wynn's position as controlling shareholder and to support the
6 existing alliance and agreement between Mr. Wynn and Mr. Okada—an alliance and agreement
7 predicated on the substantial holding of Wynn Resorts stock by Mr. Okada's company Aruze. On
8 information and belief, all parties to the agreement understood this was the purpose of the January
9 2010 Stockholders Agreement and its predecessor agreements.

10 69. Following the redemption of Aruze's shares, Mr. Okada (through Aruze) no longer
11 holds Wynn Resorts stock, and there is no longer a need for an alliance between Mr. Okada's and
12 Mr. Wynn's stockholdings. Therefore, the purpose of the January 2010 Stockholders Agreement
13 and its predecessor agreements has been eliminated.

14 70. In light of the above, performance by other parties of the January 2010 Stockholders
15 Agreement has become valueless for Ms. Wynn and the purpose of all parties has been defeated.

16 71. Ms. Wynn bore no fault for the events that gave rise to the unforeseeable Aruze
17 redemption. She did nothing in her capacity as a director or otherwise that was a but for cause of the
18 redemption. Nor did she take any action with respect to the redemption as a result of any purpose or
19 desire to affect the obligations of any parties under any stockholders agreement; any actions she
20 took in that regard resulted from the discharge of her fiduciary duties in the best interests of the
21 corporation.

22 72. Accordingly, Ms. Wynn seeks a declaration that all of Ms. Wynn's contractual duties
23 under the January 2010 Stockholders Agreement are discharged or, alternatively, that the January
24 2010 Stockholders Agreement is subject to rescission and is rescinded.

25 **SECOND CAUSE OF ACTION**

26 **DECLARATORY RELIEF**

27 **(Unreasonable Restraint on Alienability in Violation of Public Policy)**

28 73. Ms. Wynn re-alleges the allegations set forth in paragraphs 1 to 64 above.

1 74. An actual controversy exists among Ms. Wynn, Mr. Wynn, and Aruze with respect to
2 the validity and/or enforceability of the January 2010 Stockholders Agreement. The controversy is
3 ripe for adjudication.

4 75. The January 2010 Stockholders Agreement contains unreasonable and onerous
5 restrictions on the alienability of Ms. Wynn's stock, including without limitation:

6 (a) Section (2)(b), which provides that, with certain exceptions, "none of [Ms.
7 Wynn], [Mr. Wynn,] or Aruze (nor any of their respective Permitted Transferees) shall Transfer, or
8 permit any of their respective Affiliates to Transfer, any Shares Beneficially Owned by such Person
9 without the prior written consent of each of the others." This provision continued the consent
10 restriction agreed to by Mr. Wynn and Mr. Okada's company Aruze in the 2006 Amendment.

11 (b) Section 4, which states that: "Shares may not be transferred or sold by the
12 Designated Stockholder unless the transferee . . . both executes and agrees to be bound by" the
13 January 2010 Stockholders Agreement.

14 76. The restrictions are an unlawful and unenforceable restraint on alienation. There are
15 no temporal limits to the material restrictions. They purport to burden the shares in perpetuity by
16 tying up the shares and preventing Ms. Wynn or her estate from disposing of the shares during her
17 lifetime and beyond. The restrictions are unenforceable as they unduly interfere with the
18 alienability of Ms. Wynn's shares.

19 77. The restrictions are independently unlawful and unenforceable pursuant to statute,
20 including without limitation pursuant to NRS 78.355, which provides that proxies are not effective
21 for a term of more than 7 years, and pursuant to NRS 78.365, which provides that voting agreements
22 are not effective for a term of more than 15 years.

23 78. For these reasons, Ms. Wynn seeks a declaration that the restrictions are
24 unenforceable as an unreasonable restraint on alienation in violation of public policy and statute.

25 **THIRD CAUSE OF ACTION**

26 **DECLARATORY RELIEF**

27 **(Forfeiture)**

28 79. Ms. Wynn re-alleges the allegations set forth in paragraphs 1 to 64 above.

1 80. An actual controversy exists among Ms. Wynn, Mr. Wynn, and Aruze with respect to
2 the validity and/or enforceability of the January 2010 Stockholders Agreement. The controversy is
3 ripe for adjudication.

4 81. The restrictions set forth in the January 2010 Stockholders agreement are invalid as
5 effecting an unlawful forfeiture. They purport unduly to restrict, and indeed to prevent altogether
6 absent the inevitably withheld consent of an ex-husband, Ms. Wynn's ability to dispose of her
7 shares of Wynn Resorts common stock during her lifetime and beyond.

8 82. Mr. Wynn continues to contend that the restrictions are valid and that Ms. Wynn's
9 ability to sell the vast majority of her shares does not exist absent his consent.

10 83. The practical effect of the restrictions is that Ms. Wynn is unable to sell her shares of
11 common stock in Wynn Resorts. Accordingly, Ms. Wynn seeks a declaration that the restrictions
12 are unenforceable as an unlawful forfeiture in violation of public policy.

13 **FOURTH CAUSE OF ACTION**

14 **DECLARATORY RELIEF**

15 **(Unilateral Mistake)**

16 84. Ms. Wynn re-alleges the allegations set forth in paragraphs 1 to 64 above.

17 85. An actual controversy exists among Ms. Wynn, Mr. Wynn, and Aruze with respect to
18 the validity and/or enforceability of the January 2010 Stockholders Agreement. The controversy is
19 ripe for adjudication.

20 86. At the time the parties entered into the January 2010 Stockholders Agreement, Ms.
21 Wynn made a mistake as to fundamental assumptions on which she agreed to the restrictions set
22 forth therein. Specifically, the fundamental assumptions about which Ms. Wynn was mistaken were
23 that: (1) Mr. Wynn would provide for their children as part of his estate planning and otherwise; and
24 (2) the purpose of the January 2010 Stockholders Agreement was to restrict the transfer of Mr.
25 Okada's shares, thereby ensuring Mr. Wynn's continued control of the Company, and not to
26 independently to restrict Ms. Wynn's ability to transfer the vast majority of her shares if Mr. Okada
27 was no longer a party to the January 2010 Stockholders Agreement.

87. These mistaken fundamental assumptions made by Ms. Wynn had a material effect on the agreed exchange of performances that is adverse to Ms. Wynn. Ms. Wynn did not knowingly bear the risk of this mistake.

88. Mr. Wynn knew of Ms. Wynn's mistake — namely because he had assured her repeatedly that he had the intention of providing for their children's interests, whereas in reality he had no such intent, and because Mr. Wynn represented to Ms. Wynn that the purpose of the January 2010 Stockholders Agreement was to restrict Mr. Okada's shares, not hers. Mr. Wynn's fault caused Ms. Wynn's mistake.

89. Accordingly, Ms. Wynn seeks a declaration that the restrictions in the January 2010 Stockholders Agreement are voidable by Ms. Wynn so that she can transfer her shares, including without limitation to provide for her children.

FIFTH CAUSE OF ACTION

DECLARATORY RELIEF

(Discharge and/or Rescission for Failures of Consideration or Performance)

90. Ms. Wynn re-alleges the allegations set forth in paragraphs 1 to 64 above.

91. An actual controversy exists among Ms. Wynn, Mr. Wynn, and Aruze with respect to the validity and/or enforceability of the January 2010 Stockholders Agreement. The controversy is ripe for adjudication.

92. At the time the parties entered into the January 2010 Stockholders Agreement, Ms. Wynn was in the process of divorcing Mr. Wynn and was entitled to ownership of the shares of Wynn Resorts common stock that were transferred to her under the agreement pursuant to the community property laws of the State of Nevada.

93. In exchange for Ms. Wynn's performance of the continuing covenants of the January 2010 Stockholders Agreement, Ms. Wynn was supposed to receive as valuable consideration the performance agreed to by the other Designated Stockholders – including Aruze's continuing performance and Mr. Wynn acting to ensure the renomination and reelection of Ms. Wynn to the Wynn Resorts Board. Ms. Wynn would never have agreed to enter the voting agreement, execute the Irrevocable Proxy in favor of Mr. Wynn, and agree to restrictions on the sale or transfer of the

1 vast majority of her shares of Wynn Resorts common stock without Aruze's participation and
2 without Mr. Wynn's contractual agreement that he would endorse and support Ms. Wynn's
3 nomination and election as director, which he failed to do.

4 94. The failures of other Designated Stockholders to perform their continuing
5 obligations under the January 2010 Stockholders Agreement had a material effect on the agreed
6 exchange of performances that is adverse to Ms. Wynn and resulted in the unilateral imposition of
7 burdensome covenants on Ms. Wynn without any corresponding, bargained-for, and beneficial
8 covenants being performed by the other Designated Stockholders. The failures of consideration or
9 performance include, without limitation, Mr. Wynn's, Aruze's, and Wynn Resorts' (as Aruze's
10 successor) failures to comply with their continuing contractual obligations under the January 2010
11 Stockholders Agreement.

12 95. Ms. Wynn is under no continuing obligation to perform her covenants under the
13 January 2010 Stockholders Agreement because failures of consideration excuse her performance.
14 The failures of other Designated Stockholders to perform concerned matters of prime importance.
15 Ms. Wynn would not have entered into the January 2010 Stockholders Agreement if she had
16 expected or contemplated such failures.

17 96. Accordingly, Ms. Wynn seeks a declaration that her contractual duties under the
18 January 2010 Stockholders Agreement are discharged or, alternatively, that the January 2010
19 Stockholders Agreement is subject to rescission and is rescinded.

20 **SIXTH CAUSE OF ACTION**

21 **FRAUDULENT INDUCEMENT**

22 **(Against Stephen Wynn)**

23 97. Ms. Wynn re-alleges the allegations set forth in paragraphs 1 to 64 above.

24 98. An actual controversy exists among Ms. Wynn, Mr. Wynn, and Aruze with respect to
25 the validity and/or enforceability of the January 2010 Stockholders Agreement. The controversy is
26 ripe for adjudication.

27 99. Prior to and during the course of negotiation and execution of the January 2010
28 Stockholders Agreement, Mr. Wynn led Ms. Wynn to believe that he would jointly provide for their

1 children and concealed from Ms. Wynn the fact that he had no intention of leaving anything of value
2 to their children upon his passing, and that their children would actually be required to obtain all
3 future financial support from Ms. Wynn. Mr. Wynn also led Ms. Wynn to believe that the purpose
4 of the January 2010 Stockholders Agreement was to restrict Mr. Okada's (Aruze's) shares, but
5 concealed from Ms. Wynn that the actual purpose of the January 2010 Stockholders Agreement
6 was, in fact, to ensure Mr. Wynn's control of Ms. Wynn's shares.

7 100. Mr. Wynn's materially misleading statements and material omissions, combined
8 with the restrictions prohibiting alienability of Ms. Wynn's shares of Wynn Resorts common stock
9 as set forth in the January 2010 Stockholders Agreement, mean that upon Ms. Wynn's death, their
10 children will have no testamentary support because the restrictions make it impossible for Ms.
11 Wynn to leave their children any material sum. More specifically, Ms. Wynn's estate will owe
12 substantial inheritance tax on Ms. Wynn's shares of Wynn Resorts common stock—stock that even
13 her children cannot sell because of the purported continuing effect of the restrictions. Such tax will
14 need to be funded from the other assets of Ms. Wynn's estate, thereby depleting virtually the entirety
15 of her estate.

16 101. In forming the January 2010 Stockholders Agreement, Mr. Wynn had a duty to be
17 candid with Ms. Wynn and to disclose to Ms. Wynn material facts known or accessible only to him
18 because such facts were uniquely known to him. Mr. Wynn knew that the facts regarding his true
19 intentions relating to the children were not known to or reasonably discoverable by Ms. Wynn. Mr.
20 Wynn also knew the facts relating to his actual intent in inducing Ms. Wynn to enter into the January
21 2010 Stockholders Agreement – to control Ms. Wynn's shares – were not known to or reasonably
22 discoverable by Ms. Wynn.

23 102. Ms. Wynn would not have entered into the January 2010 Stockholders Agreement
24 containing restrictions that, in effect, limited her ability properly to plan her testamentary estate if
25 she had known that Mr. Wynn had no intention of providing for their children upon his death, and
26 that Ms. Wynn would be the sole source of future financial support for their children. Ms. Wynn
27 also would not have entered into the January 2010 Stockholders Agreement if she had known that
28

1 Mr. Wynn's true purpose of inducing her to enter into the agreement was to ensure Mr. Wynn's full
2 and perpetual control over Ms. Wynn's shares.

3 103. Mr. Wynn misled Ms. Wynn and concealed these material facts from Ms. Wynn with
4 the intent to induce her to enter into the January 2010 Stockholders Agreement.

5 104. In addition, Mr. Wynn made a further affirmative misrepresentation of material fact
6 to Ms. Wynn with the intention of inducing her to enter into the January 2010 Stockholders
7 Agreement. Specifically, during negotiation of the January 2010 Stockholders Agreement, Mr.
8 Wynn made an oral representation to Ms. Wynn that he would use his control of Wynn Resorts to
9 assure that she would continue to be a director of the Company. This representation was false.

10 105. At the time Mr. Wynn made this representation to Ms. Wynn, he had knowledge of
11 and believed that the representation was false because Mr. Wynn intended all along to remove Ms.
12 Wynn from the Board in retaliation for, among other things, her having raised questions about Mr.
13 Wynn's risk-taking and Mr. Wynn's misconduct.

14 106. Mr. Wynn's false representations to Ms. Wynn were made with the intention to
15 induce her to enter into and to consent to the January 2010 Stockholders Agreement.

16 107. Ms. Wynn justifiably relied upon Mr. Wynn's misrepresentations and material
17 omissions in entering into the January 2010 Stockholders Agreement.

18 108. Mr. Wynn willfully and knowingly acted to damage Ms. Wynn's interests. He did so
19 with malice, oppression, and fraud, and in conscious disregard of Ms. Wynn's rights.

20 109. As a result of Mr. Wynn's intentional misrepresentations and material omissions,
21 Ms. Wynn has been damaged in an amount to be proved at trial. Ms. Wynn is entitled to an award of
22 said damages, as well as an award of punitive damages.

23 110. In addition to compensatory and punitive damages, Ms. Wynn seeks a declaration
24 that the January 2010 Stockholders Agreement was procured by fraud and therefore is voidable.

25 **SEVENTH CAUSE OF ACTION**

26 **DECLARATORY RELIEF**

27 **(Discharge by Aruze)**

28 111. Ms. Wynn re-alleges the allegations set forth in paragraphs 1 to 64 above.

112. An actual controversy exists among Ms. Wynn, Mr. Wynn, and Aruze with respect to the validity and/or enforceability of the January 2010 Stockholders Agreement. The controversy is ripe for adjudication.

113. In this action, Aruze has filed claims against Mr. Wynn (Counts XV and XVI of Aruze's Fourth Amended Counterclaim) alleging breach of contract and seeking to be excused and discharged from any further performance of its obligations with respect to the January 2010 Stockholders Agreement. In those claims, Aruze asserts that the purpose of the January 2010 Stockholders Agreement has been frustrated.

114. The stated purpose of the January 2010 Stockholders Agreement was to support the existing alliance and agreement between Mr. Wynn and Mr. Okada—an alliance and agreement predicated on the substantial holding of Wynn Resorts stock by Mr. Okada's company, Aruze. On information and belief, all parties to the agreement understood this was the purpose of the January 2010 Stockholders Agreement and its predecessor agreements.

115. If Aruze successfully obtains a discharge of its obligations under the January 2010 Stockholders Agreement and is no longer bound thereby, then Ms. Wynn seeks a corresponding declaration that her duties under the January 2010 Stockholders Agreement are likewise discharged or, alternatively, that the January 2010 Stockholders Agreement is subject to rescission and is rescinded.

EIGHTH CAUSE OF ACTION

BREACH OF CONTRACT

(Against Stephen Wynn)

116. Ms. Wynn re-alleges the allegations set forth in paragraphs 1 to 64 above.

117. Ms. Wynn alleges that Mr. Wynn breached the January 2010 Stockholders Agreement in two respects: by violating his obligations under the voting agreement contained in section 2(a) and under the consent restriction contained in section 2(b).

118. Mr. Wynn's obligation to "include [Ms. Wynn] as one of his endorsed nominees" required him to "endors[e]" Ms. Wynn's candidacy, before the Board of Directors and its relevant committees in their deliberations concerning her renomination and before the shareholders in the

1 contested proxy contest. This endorsement obligation required that he take reasonable affirmative
2 steps to persuade the Board, the relevant Board committees, and the shareholders that she be
3 renominated and reelected and to secure her renomination and reelection. It further prohibited him
4 from taking steps to undermine her candidacy.

5 119. Because Mr. Wynn controlled the Board of Wynn Resorts, Mr. Wynn's promises to
6 support and endorse Ms. Wynn amounted to assurances that she would, at a minimum, continue to
7 be nominated as a director of the Company. The reason Ms. Wynn agreed to permit Mr. Wynn to
8 vote her stock to elect Mr. Wynn's nominees pursuant to Section 2(a) of the January 2010
9 Stockholders Agreement was because of these assurances that Ms. Wynn would be included in the
10 endorsed nominees and would remain a director.

11 120. Mr. Wynn failed to endorse Ms. Wynn and failed to take reasonable steps to
12 persuade the Nominating Committee and the members of the Board to renominate Ms. Wynn. To
13 the contrary, on information and belief, Mr. Wynn communicated to the Nominating Committee and
14 the members of the Board directly or indirectly that he did not want her to continue on the Board.
15 Once Mr. Wynn conveyed his desire to have Ms. Wynn ousted from the Board, the other Board
16 members supported his decision as they have nearly every other decision in the history of the
17 Company. The other Board members never would have acted not to renominate and not to reelect
18 Ms. Wynn without Mr. Wynn's approval.

19 121. At the Board meeting in which Ms. Wynn's renomination was considered, Mr. Wynn
20 failed to make a motion to include Ms. Wynn as a nominee. Further, when he voted against the
21 motion to shrink the size of the Board, he expressly stated that he was doing so only because he was
22 contractually obligated to support Ms. Wynn's candidacy. This conveyed that Mr. Wynn was not
23 genuinely endorsing her candidacy. Mr. Wynn's lack of support for Ms. Wynn, which on
24 information and belief Mr. Wynn had also previously conveyed to other Board members, caused
25 those other members to exclude Ms. Wynn from the Board.

26 122. Mr. Wynn, Ms. Sinatra, and Wynn Resorts generated transparently false and
27 pretextual reasons for not renominating Ms. Wynn to the Board. These reasons included things like
28 Ms. Wynn's demeanor and body language at Board meetings – reasons that were not communicated

1 to Ms. Wynn but were asserted for the first time only after Ms. Wynn filed claims based on her
2 improper ouster from the Board. The Directors' reliance on these demonstrably false – and
3 after-the-fact – justifications shows that they were not exercising any independent judgment, or any
4 judgment at all, but were merely doing Mr. Wynn's bidding.

5 123. In addition, Mr. Wynn's decision to vote for Mr. Hagenbuch and against Mr. Virtue
6 was not made on the merits of the two candidates but was part of a calculated effort to maximize the
7 success of the effort not to reelect Ms. Wynn at the shareholders' meeting. As Mr. Wynn and his
8 advisors correctly predicted, Mr. Virtue secured more votes than Mr. Hagenbuch, so Mr. Wynn's
9 support for the weaker candidate was deliberately calculated to increase Mr. Hagenbuch's chances
10 of defeating Ms. Wynn.

11 124. Mr. Wynn breached the January 2010 Stockholders Agreement by undertaking the
12 foregoing measures to oust Ms. Wynn from the Board.

13 125. These actions in breach of Mr. Wynn's contractual obligations were material
14 breaches of the January 2010 Stockholders Agreement and are sufficient to excuse Ms. Wynn from
15 any future performance of obligations purportedly imposed on her under the January 2010
16 Stockholders Agreement.

17 126. As a result of Mr. Wynn's material breaches of the January 2010 Stockholders
18 Agreement, Ms. Wynn has been damaged in an amount to be proved at trial. Ms. Wynn is entitled to
19 an award of said damages.

20 127. In addition to compensatory damages, Ms. Wynn seeks a declaration that her
21 contractual duties under the January 2010 Stockholders Agreement are discharged or, alternatively,
22 that the January 2010 Stockholders Agreement is subject to rescission and is rescinded.

23 **NINTH CAUSE OF ACTION**

24 **BREACH OF THE IMPLIED COVENANT OF GOOD FAITH AND FAIR DEALING**

25 (Against Stephen Wynn)

26 128. Ms. Wynn re-alleges the allegations set forth in paragraphs 1 to 64 and paragraphs
27 116 to 127 above.

1 129. The January 2010 Stockholders Agreement contained an implied covenant of good
2 faith and fair dealing that required Mr. Wynn not to do anything to undermine or injure Ms. Wynn's
3 right to receive the benefits of the contract, namely, her renomination and reelection to the Board of
4 Directors.

5 130. Mr. Wynn's conduct alleged above was unfaithful to the purpose of the January 2010
6 Stockholders Agreement and Ms. Wynn's justified expectations and, as a result, breached the
7 implied covenant of good faith and fair dealing.

8 131. Mr. Wynn's actions in breach of the implied covenant of good faith and fair dealing
9 were material and sufficient to excuse Ms. Wynn from any future performance of obligations
10 purported to be imposed on her under the January 2010 Stockholders Agreement.

11 132. As a result of Mr. Wynn's breaches of the implied covenant of good faith and fair
12 dealing, Ms. Wynn has been damaged in an amount to be proved at trial. Ms. Wynn is entitled to an
13 award of said damages.

14 133. In addition to compensatory damages, Ms. Wynn seeks a declaration that her
15 contractual duties under the January 2010 Stockholders Agreement are discharged or, alternatively,
16 that the January 2010 Stockholders Agreement is subject to rescission and is rescinded.

17 **TENTH CAUSE OF ACTION**

18 **SPECIFIC PERFORMANCE**

19 **(Against Stephen Wynn)**

20 134. Ms. Wynn re-alleges the allegations set forth in paragraphs 1 to 64 above.

21 135. Ms. Wynn has fully performed and has complied with all material obligations of the
22 January 2010 Stockholders Agreement.

23 136. Section (g) of the January 2010 Stockholders Agreement entitled "Specific
24 Performance" provides that "a breach by any party hereto of any covenants or agreements contained
25 in this Agreement will cause the other parties hereto to sustain damages for which they would not
26 have an adequate remedy at law for money damages, and therefore . . . the parties shall be entitled to
27 the remedy of specific performance." This remedy is consistent with the unique character and
28 nature of a director position on the Wynn Resorts Board of Directors. The wrongful loss of Ms.

1 Wynn's director position cannot be duplicated or replaced in any fashion except by ordering Mr.
2 Wynn to comply with his obligations to Ms. Wynn in a new director election.

3 137. Ms. Wynn requests an order compelling Mr. Wynn to comply with the January 2010
4 Stockholders Agreement, including without limitation his obligations to assure the nomination and
5 election of Ms. Wynn to the Board of Directors.

6 **ELEVENTH CAUSE OF ACTION**

7 **INTENTIONAL INTERFERENCE WITH CONTRACTUAL RELATIONS**

8 **(Against Kimmarie Sinatra and Wynn Resorts)**

9 138. Ms. Wynn re-alleges the allegations set forth in paragraphs 1 to 64 above.

10 139. Ms. Sinatra and Wynn Resorts knew of the January 2010 Stockholders Agreement,
11 including Ms. Wynn's rights to nomination and election to the Wynn Resorts Board of Directors.
12 Despite their knowledge of these contractual rights, Ms. Sinatra and Wynn Resorts took actions with
13 the intent to disrupt and frustrate performance of the January 2010 Stockholders Agreement.

14 140. Ms. Sinatra and Wynn Resorts intentionally interfered with the January 2010
15 Stockholders Agreement by interfering with Mr. Wynn's obligation to renominate and reelect Ms.
16 Wynn to the Board of Directors, including without limitation by inventing pretextual reasons for
17 Ms. Wynn not to continue as a director and by cancelling the redeemed shares held by Mr. Okada.
18 Had the shares not been cancelled, they would have been voted in Ms. Wynn's favor.

19 141. The foregoing actions were intentionally taken by Ms. Sinatra and Wynn Resorts to
20 interfere with Ms. Wynn's rights under the January 2010 Stockholders Agreement.

21 142. Ms. Sinatra and Wynn Resorts willfully and knowingly acted to damage Ms. Wynn's
22 interests. They did so with malice, oppression, and fraud, and in conscious disregard of Ms. Wynn's
23 rights.

24 143. As a result of Ms. Sinatra's and Wynn Resorts' intentional interference with the
25 January 2010 Stockholders Agreement, Ms. Wynn has been damaged in an amount to be proved at
26 trial. Ms. Wynn is entitled to an award of said damages, as well as an award of punitive damages.

1 **TWELFTH CAUSE OF ACTION**

2 **BREACH OF FIDUCIARY DUTY**

3 **(Against Stephen Wynn)**

4 144. Ms. Wynn re-alleges the allegations set forth in paragraphs 1 to 64 above.

5 145. At all relevant times, Mr. Wynn was a controlling shareholder of Wynn Resorts, as
6 he exercised actual control over Wynn Resorts by dominating its affairs, including but not limited to
7 the corporate decision-making process of Wynn Resorts and the process of nominating and electing
8 directors. Mr. Wynn had, and continues to have, such voting and managerial power that, as a
9 practical matter, he is no differently situated than if he had actual majority shareholder voting
10 control.

11 146. Mr. Wynn's position is that the purported corporate purpose underlying the January
12 2010 Stockholders Agreement is to ensure that Mr. Wynn retains control over Wynn Resorts.

13 147. Mr. Wynn, as a director and controlling shareholder of Wynn Resorts, owed
14 fiduciary duties to Ms. Wynn, a fellow director and minority shareholder of Wynn Resorts.

15 148. Mr. Wynn breached his fiduciary duties to Ms. Wynn by taking actions to eliminate
16 her voice in the management of Wynn Resorts and to dilute her role as a minority shareholder by
17 making sure that Ms. Wynn was ousted from the Board. Mr. Wynn, along with Ms. Sinatra and
18 Wynn Resorts, flouted Mr. Wynn's obligations under the January 2010 Stockholders Agreement
19 including without limitation by generating transparently false, pretextual, and post hoc reasons for
20 not renominating Ms. Wynn to the Board and thereby ensured that she would not be reelected.

21 149. Mr. Wynn willfully and knowingly acted to damage Ms. Wynn's interests by
22 eliminating her minority shareholder's voice in the management of Wynn Resorts. He did so with
23 malice, oppression, and fraud, and in conscious disregard of Ms. Wynn's rights.

24 150. As a result of Mr. Wynn's breaches of fiduciary duty, Ms. Wynn has been damaged
25 in an amount to be proved at trial. Ms. Wynn is entitled to an award of said damages, as well as an
26 award of punitive damages.

1 **THIRTEENTH CAUSE OF ACTION**

2 **AIDING AND ABETTING BREACH OF FIDUCIARY DUTY**

3 (Against Kimmarric Sinatra and Wynn Resorts)

4 151. Ms. Wynn re-alleges the allegations set forth in paragraphs 1 to 64 and paragraphs
5 144 to 150 above.

6 152. Mr. Wynn breached his fiduciary duties, as set forth in paragraph 148 above.

7 153. Ms. Sinatra and Wynn Resorts knowingly participated in and substantially assisted
8 Mr. Wynn's breaches of fiduciary duties owed to Ms. Wynn as explained above.

9 154. Ms. Sinatra and Wynn Resorts willfully and knowingly acted to damage Ms. Wynn's
10 interests. They did so with malice, oppression, and fraud, and in conscious disregard of Ms. Wynn's
11 rights.

12 155. As a result of Ms. Sinatra's and Wynn Resorts' aiding and abetting of Mr. Wynn's
13 breaches of fiduciary duty, Ms. Wynn has been damaged in an amount to be proved at trial. Ms.
14 Wynn is entitled to an award of said damages, as well as an award of punitive damages.

15 **FOURTEENTH CAUSE OF ACTION**

16 **PERMANENT INJUNCTIVE RELIEF**

17 156. Ms. Wynn re-alleges the allegations set forth in paragraphs 1 to 64 above.

18 157. To enforce the judicial declarations Ms. Wynn seeks in paragraphs 65 to 133 and to
19 secure her rights declared thereunder, Ms. Wynn further seeks an injunction that enjoins Mr. Wynn
20 from instructing Wynn Resorts not to register shares sold or transferred by or otherwise prevent the
21 Transfer, as defined in the January 2010 Stockholders Agreement, of shares by Ms. Wynn, and that
22 provides such other injunctive relief against Mr. Wynn and/or Aruze that the Court deems necessary
23 and appropriate to enforce the declaratory relief granted.

24 **DEMAND FOR JURY TRIAL**

25 Ms. Wynn hereby demands trial by jury pursuant to Nevada Rule of Civil Procedure 38(b).

26 **PRAYER FOR RELIEF**

27 WHEREFORE, Ms. Wynn demands judgment against Mr. Wynn, Wynn Resorts, Aruze,
28 and Ms. Sinatra as follows:

- 1 1. A declaration that Ms. Wynn's contractual duties under the January 2010
2 Stockholders Agreement are discharged or, alternatively, that the January 2010 Stockholders
3 Agreement is subject to rescission and is rescinded because the redemption of Aruze's stock
4 frustrated the principal purpose of the January 2010 Stockholders Agreement and its predecessor
5 agreements (*i.e.*, the April 2002 Stockholders Agreement and the 2006 Amendment);
- 6 2. A declaration that the restrictions on alienability as set forth in paragraph 75 above
7 are unenforceable as an unreasonable restraint on alienation in violation of public policy and
8 statutes;
- 9 3. A declaration that that the restrictions are unenforceable as an unlawful forfeiture in
10 violation of public policy;
- 11 4. A declaration that the restrictions are voidable by Ms. Wynn because she made a
12 unilateral mistake (known to Mr. Wynn) as to a fundamental assumption, or assumptions based on
13 which she agreed to the restrictions;
- 14 5. A declaration that that Ms. Wynn's contractual duties under the January 2010
15 Stockholders Agreement are discharged or, alternatively, that the January 2010 Stockholders
16 Agreement is subject to rescission and is rescinded because of failures of consideration and/or
17 performance;
- 18 6. Judgment in favor of Ms. Wynn and against Mr. Wynn based on Mr. Wynn's
19 fraudulent inducement and a declaration that the restrictions are voidable by Ms. Wynn because Mr.
20 Wynn made false representations to Ms. Wynn with the intention to induce her to enter into and to
21 consent to the formation of the January 2010 Stockholders Agreement;
- 22 7. If Aruze successfully obtains a discharge of its obligations under the January 2010
23 Stockholders Agreement, a declaration that Ms. Wynn's contractual duties under the January 2010
24 Stockholders Agreement are discharged or, alternatively, that the January 2010 Stockholders
25 Agreement is subject to rescission and is rescinded;
- 26 8. Judgment in favor of Ms. Wynn and against Mr. Wynn based upon Mr. Wynn's
27 breaches of contract, and a declaration that Ms. Wynn's contractual duties under the January 2010
28 Stockholders Agreement are discharged or, alternatively, that the January 2010 Stockholders

1 Agreement is subject to rescission and is rescinded because Mr. Wynn materially breached the
2 agreement;

3 9. Judgment in favor of Ms. Wynn and against Mr. Wynn based upon Mr. Wynn's
4 breach of the implied covenant of good faith and fair dealing, and a declaration that Ms. Wynn's
5 contractual duties under the January 2010 Stockholders Agreement are discharged or, alternatively,
6 that the January 2010 Stockholders Agreement is subject to rescission and is rescinded because Mr.
7 Wynn materially breached the implied covenant of good faith and fair dealing;

8 10. An order compelling Mr. Wynn to comply with the January 2010 Stockholders
9 Agreement, including without limitation his obligations to assure the nomination and election of
10 Ms. Wynn to the Board of Directors;

11 11. Judgment in favor of Ms. Wynn and against Ms. Sinatra and Wynn Resorts based on
12 Ms. Sinatra's and Wynn Resorts' intentional interference with the January 2010 Stockholders
13 Agreement;

14 12. Judgment in favor of Ms. Wynn and against Mr. Wynn based on Mr. Wynn's
15 breaches of fiduciary duty;

16 13. Judgment in favor of Ms. Wynn and against Ms. Sinatra and Wynn Resorts based on
17 Ms. Sinatra's and Wynn Resorts' aiding and abetting of Mr. Wynn's breaches of fiduciary duty;

18 14. Preliminary and/or permanent injunctions as the Court deems necessary and
19 appropriate to enforce the declarations prayed for, including an injunction that prohibits Mr. Wynn
20 from instructing Wynn Resorts not to register shares sold or transferred by or otherwise to prevent
21 the Transfer, as defined in the January 2010 Stockholders Agreement, of shares by Ms. Wynn, as
22 well as such other injunctive relief against Mr. Wynn and/or Aruze that the Court deems necessary
23 and appropriate;

24 15. For compensatory damages in an amount to be proved at trial;

25 16. For punitive and exemplary damages in a sum sufficient to punish Mr. Wynn, Wynn
26 Resorts, and Ms. Sinatra, and to deter similar wrongdoing by others; and

27 17. Costs of suit and such other relief as the Court deems just and proper.
28

1 Dated: March 10, 2016

JOLLEY URGAL WOODBURY & LITTLE

2

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By

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WILLIAM R. URGAL, ESQ. # 1195

Email: wru@juwww.com

5

DAVID J. MALLEY, ESQ. #8171

Email: djm@juwww.com

6

3800 Howard Hughes Parkway, 16th Floor

Las Vegas, Nevada 89169

7

Telephone: (702) 699-7500

Facsimile: (702) 699-7555

8

QUINN EMANUEL URQUHART &

SULLIVAN, LLP

9

JOHN B. QUINN, ESQ.*

EMAIL: johnquinn@quinnemanuel.com

10

MICHAEL T. ZELLER, ESQ.*

EMAIL: michaelzeller@quinnemanuel.com

11

MICHAEL L. FAZIO, ESQ.*

EMAIL: michaelfazio@quinnemanuel.com

12

865 South Figueroa St., 10th Floor

Los Angeles, California 90017-2543

13

Telephone: (213) 443-3000

Facsimile: (213) 443-3100

14

**Pro hac vice admitted*

15

Attorneys for Counterdefendant/

Counterclaimant/Cross-claimant

ELAINE P. WYNN

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CERTIFICATE OF SERVICE

I hereby certify that on the 10th day of March, 2016, I caused the foregoing FIRST AMENDED ANSWER OF ELAINE P. WYNN TO ARUZE AND UNIVERSAL'S FOURTH AMENDED COUNTERCLAIM; FIFTH AMENDED COUNTERCLAIM AND CROSSCLAIM OF ELAINE P. WYNN to be served as follows:

[X] by the Court's ECF System through Wiznet:

Bryce K. Kunimoto, Esq.
Brian G. Anderson, Esq.
J. Stephen Peek, Esq.
Robert J. Cassity, Esq.
Holland & Hart LLP
9555 Hillwood Drive, Second Floor
Las Vegas, Nevada 89134

Benjamin B. Klubes, Esq.
Joseph J. Reilly, Esq.
Buckley Sandler LLP
1250 24th Street NW, Suite 700
Washington, DC 20037

Attorneys for Kazuo Okada,
Aruze USA, Inc. and Universal Entertainment Corp.

James J. Pisanelli, Esq.
Todd L. Bice, Esq.
Debra Spinelli, Esq.
Jarrod L. Rickard, Esq.
Pisanelli Bice, LLC
400 S. Seventh Street, Suite 300
Las Vegas, Nevada 89101

and

Paul K. Rowe, Esq.
Grant R. Mainland, Esq.
Bradley R. Wilson, Esq.
Wachtell, Lipton, Rosen & Katz
51 West 52nd Street
New York, NY 10019

and

Robert L. Shapiro, Esq.
Glaser Weil, et al.
10250 Constellation Blvd., 19th Floor
Los Angeles, CA 90067

1 Attorneys for Wynn Resorts, Limited
Linda Chen, Russell Goldsmith,
2 Ray R. Irani, Robert J. Miller,
John A. Moran, Marc D. Schorr,
3 Alvin V. Shoemaker, Kimmarie
Sinatra, D. Boone Wayson and
4 Allan Zeman

5 Donald J. Campbell, Esq.
Campbell & Williams
6 700 S. 7th Street
Las Vegas, Nevada 89101
7 Attorneys for Stephen A. Wynn

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9
10
11 An Employee of JOLLEY URGAL
WOODBURY & LITTLE
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EXHIBIT B

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DISTRICT COURT	
CLARK COUNTY, NEVADA	
WYNN RESORTS, LIMITED, a Nevada corporation,)
Plaintiff,)
vs.) Case No.
) A-12-656710-B
) Dept. No. XI
KAZUO OKADA, an individual;)
ARUZE USA, INC., a Nevada)
corporation; and UNIVERSAL)
ENTERTAINMENT CORP., a)
Japanese corporation,)
Defendants.)
<hr/>	
AND ALL RELATED CLAIMS)
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VIDEOTAPED DEPOSITION OF ROBERT J. MILLER

VOLUME III

(Pages 438 to 627)

Taken at the Law Offices of:
Holland & Hart
9555 Hillwood Drive, Second Floor
Las Vegas, Nevada 89134

Thursday, February 11, 2016

9:13 a.m.

Reported By: Gale Salerno, RMR, CCR No. 542

Job No. J0247350



Exhibit B

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1 APPEARANCES:

2 For Wynn Resorts, Limited; Linda Chen; Russell
3 Goldsmith; Ray. R. Irani; Robert J. Miller; John A.
4 Moran; Marc D. Schorr; Alvin V. Shoemaker; Kimmarrise
Sinatra; D. Boone Wayson, and Allan Zeman:

5 JAMES J. PISANELLI, ESQUIRE
6 DEBRA L. SPINELLI, ESQUIRE
7 Pisanelli Bice, PLLC
8 400 South Seventh Street, Suite 300
9 Las Vegas, Nevada 89101
10 (702) 214-2100
11 jjp@pisanellibice.com
12 dls@pisanellibice.com
13 kap@pisanellibice.com

14 ** and **

15 ROBERT SHAPIRO, ESQUIRE
16 Glaser Weil Fink Howard Avchen & Shapiro
17 10250 Constellation Boulevard, 19th Floor
18 Los Angeles, California 90067
19 (310) 553-3000

20 For Elaine Wynn:

21 JOHN B. QUINN, ESQUIRE
22 MICHAEL T. ZELLER, ESQUIRE
23 Quinn Emanuel
24 865 South Figueroa Street, 10th Floor
25 Los Angeles, California 90017
(213) 443-3000
johnquinn@quinnemanuel.com
michaelzeller@quinnemanuel.com



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1 For Mr. Kazuo Okada, Aruze USA, Inc., and Universal
2 Entertainment Corp.:

3 ANDREW R. LOUIS, ESQUIRE
4 LESLIE L. MEREDITH, ESQUIRE
5 Buckley Sandler, LLP
6 1250 24th Street NW, Suite 700
7 Washington, D.C. 20037
8 (202) 349-8000
9 lmeredith@buckleysandler.com
10 alouis@buckleysandler.com

11 ** and **

12 BRYCE K. KUNIMOTO, ESQUIRE
13 Holland & Hart
14 9555 Hillwood Drive, Second Floor
15 Las Vegas, Nevada 89134
16 (702) 669-4600
17 bkunimoto@hollandhart.com

18 For Stephen A. Wynn:

19 J. COLBY WILLIAMS, ESQUIRE
20 DONALD J. CAMPBELL, ESQUIRE
21 Campbell & Williams
22 700 South Seventh Street
23 Las Vegas, Nevada 89101
24 (702) 382-5222
25 jcw@campbellandwilliams.com
djc@campbellandwilliams.com

Also Present:

MR. ANDREW JONES, Videographer
KIM SINATRA, ESQUIRE, Wynn Resorts



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1 [REDACTED] [REDACTED]
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[REDACTED]

[REDACTED]

BY MR. QUINN:

Q. Yesterday you gave me a list of the people who you had spoken to regarding the shareholders agreement. I would now like to ask you about some of those people.

A. All right.

Q. And I would like to begin with Mr. Wynn.

[REDACTED]

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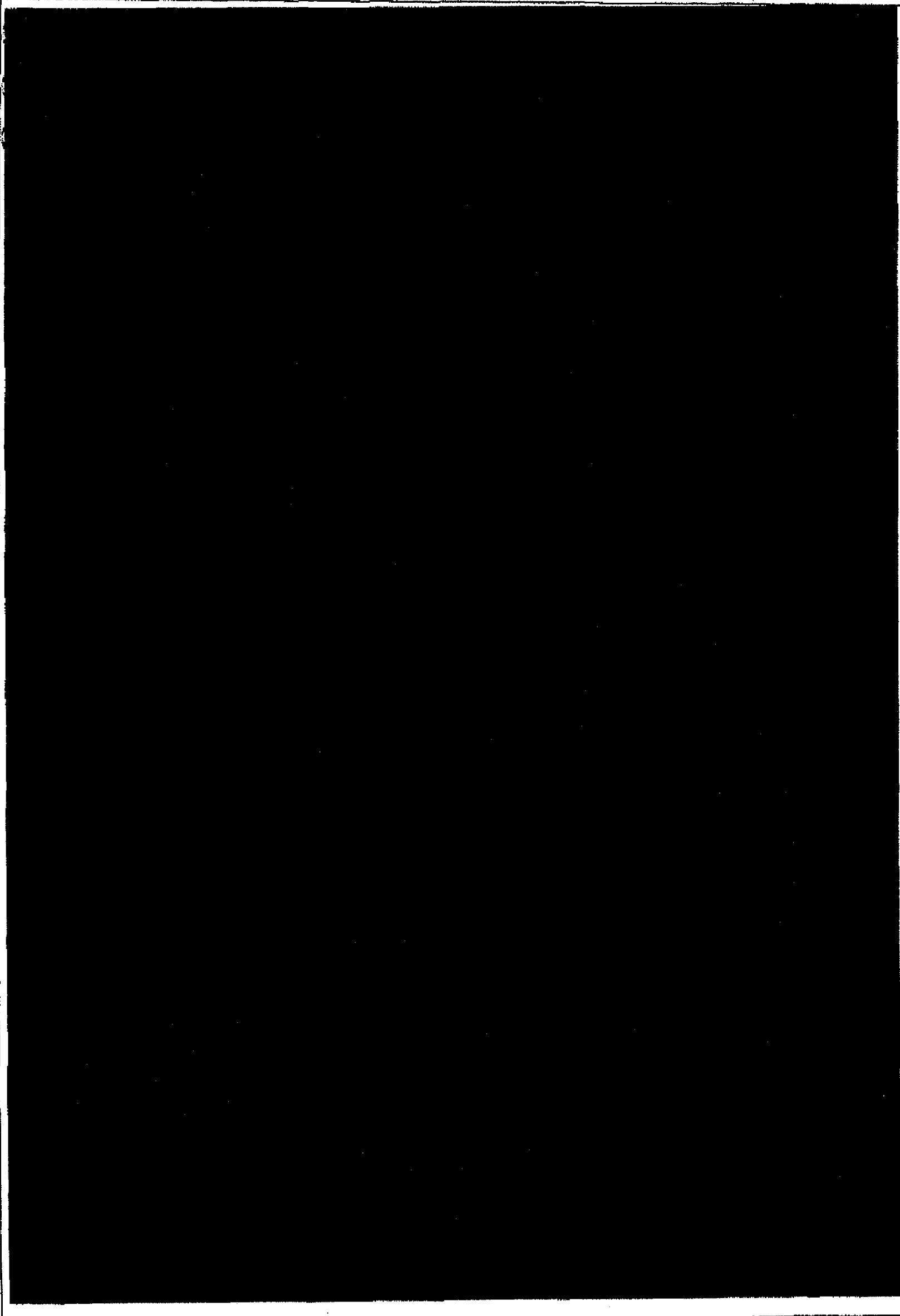


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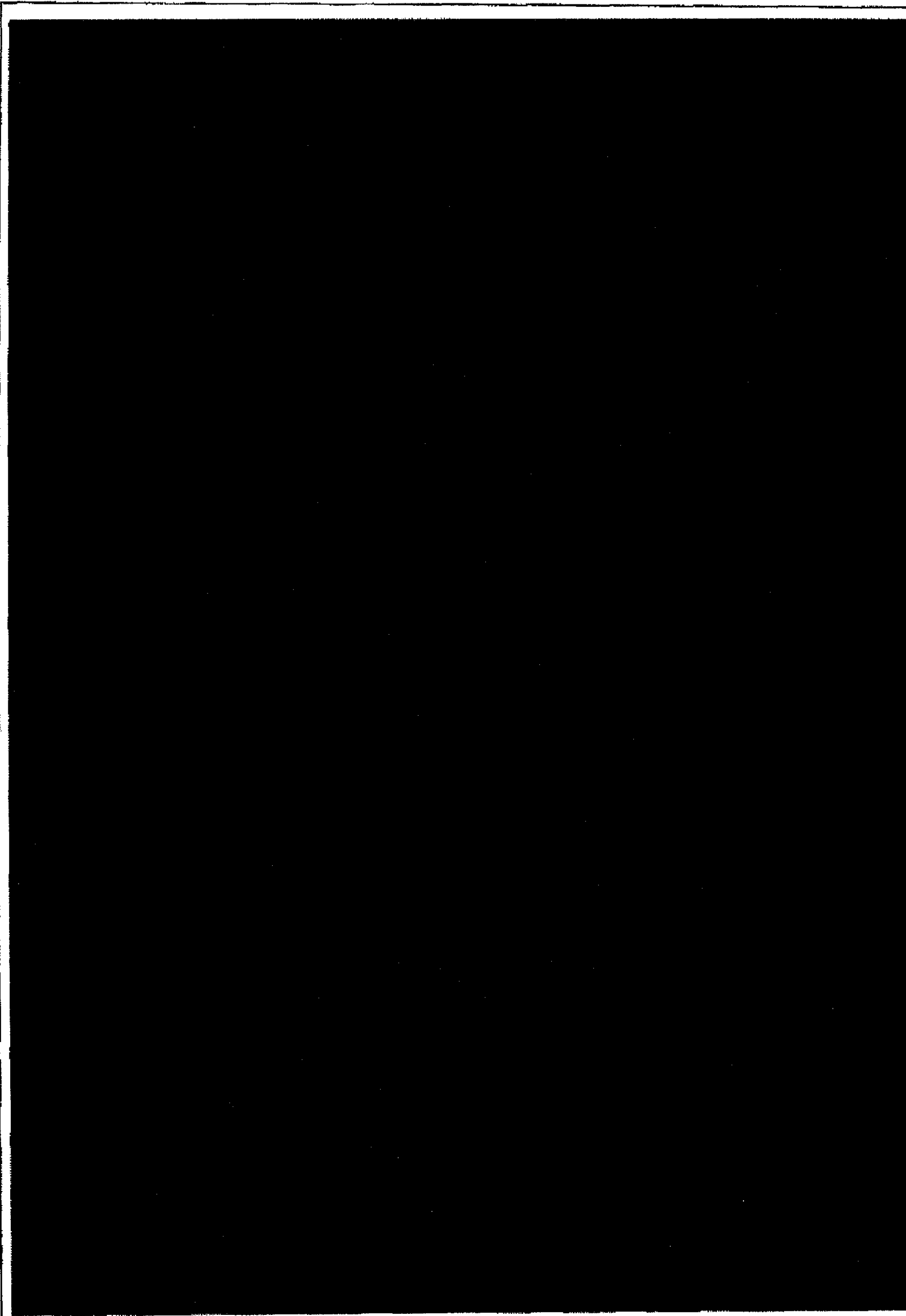


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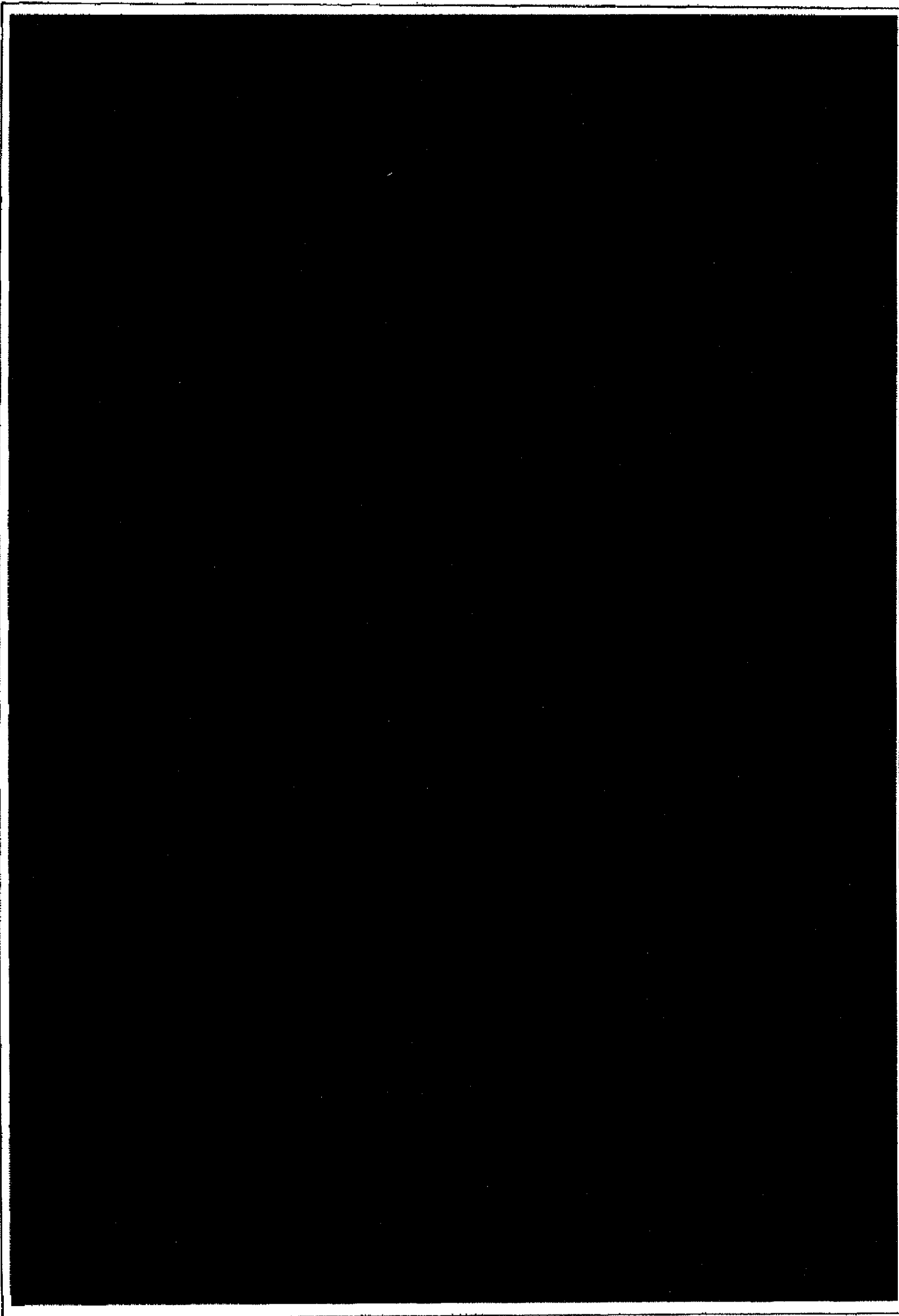
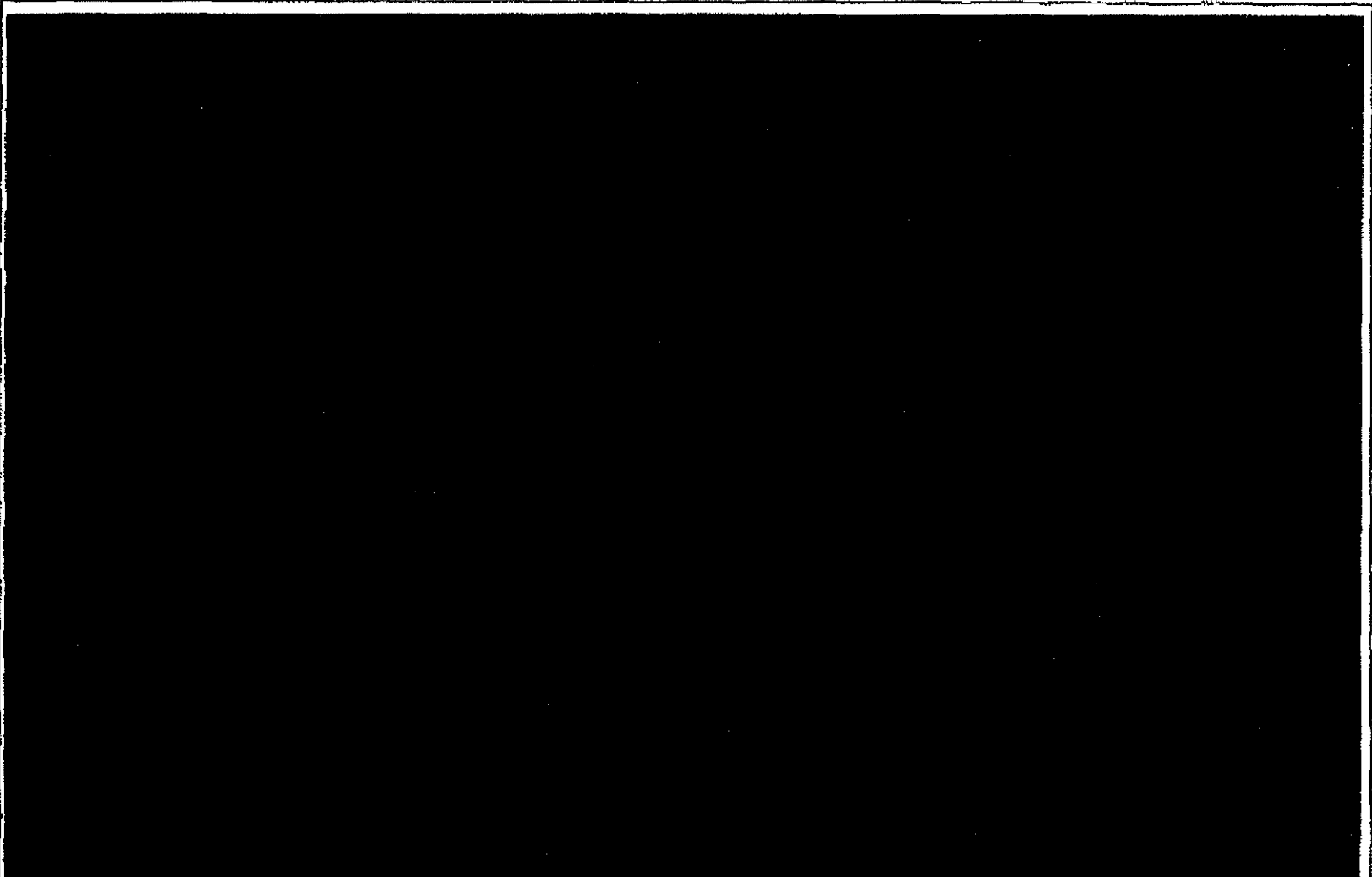


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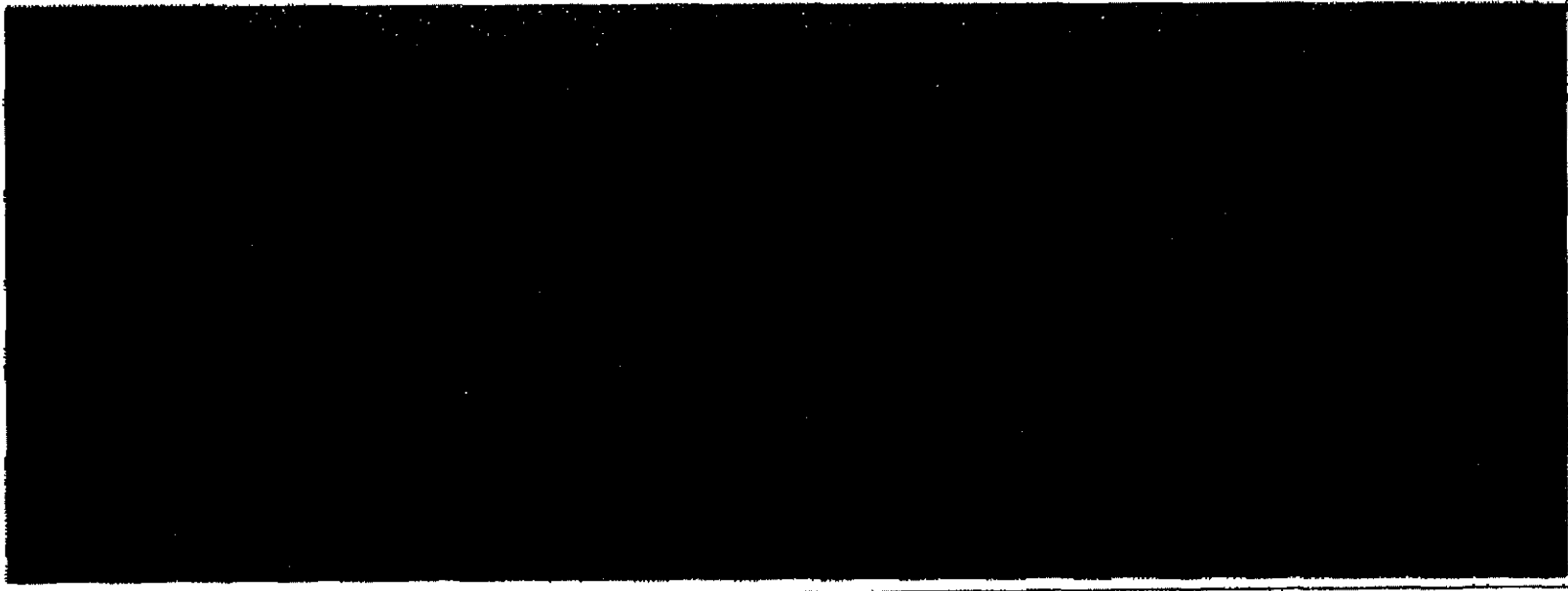
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MR. QUINN: Counsel, maybe you'll want us to ask this of your colleague when she comes, but there's reference in some of the documents we've got to a nominating committee packet that I don't believe we have, and we would really like to have that.

MR. PISANELLI: We'll wait until she shows up.

BY MR. QUINN:



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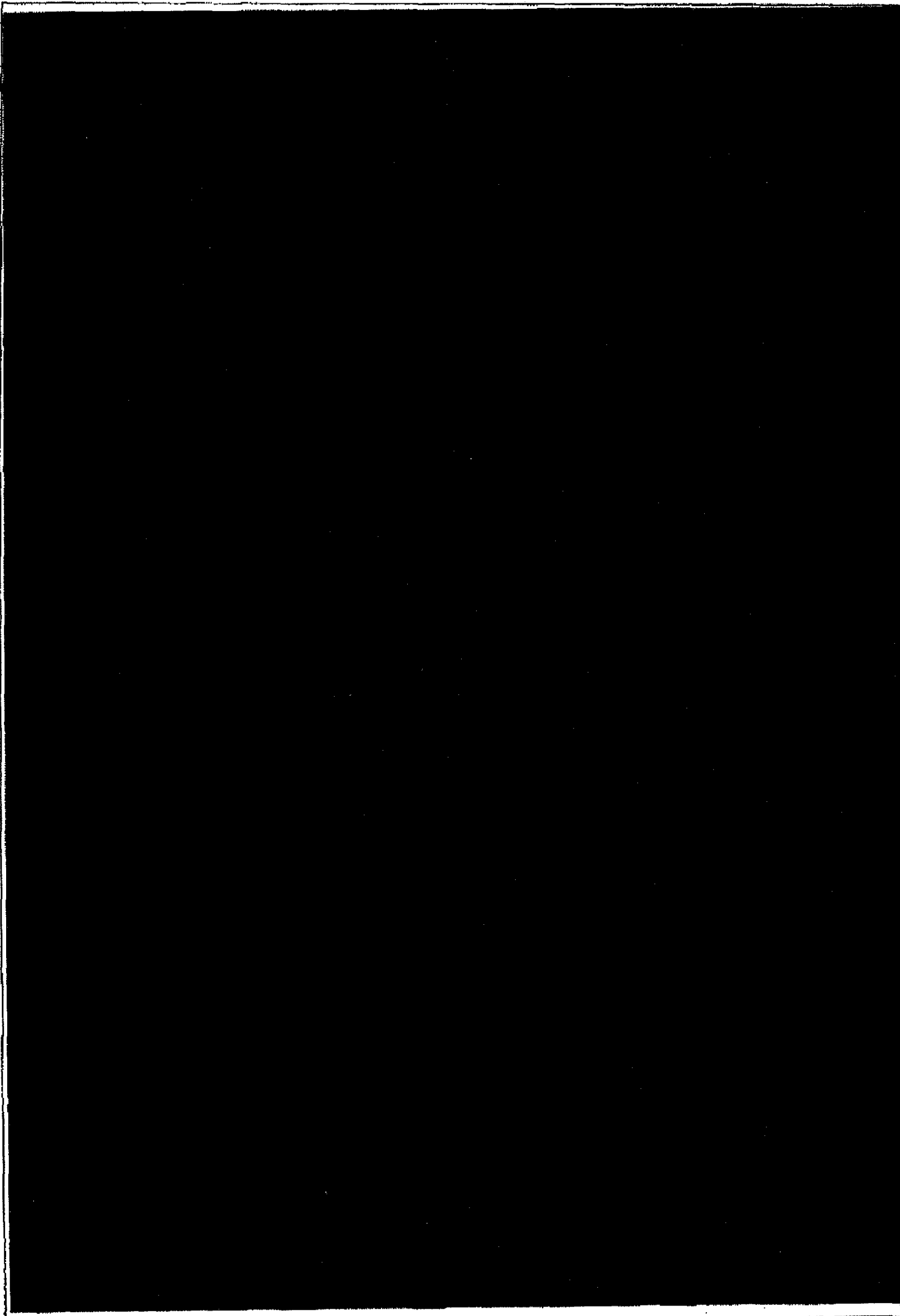


Exhibit B

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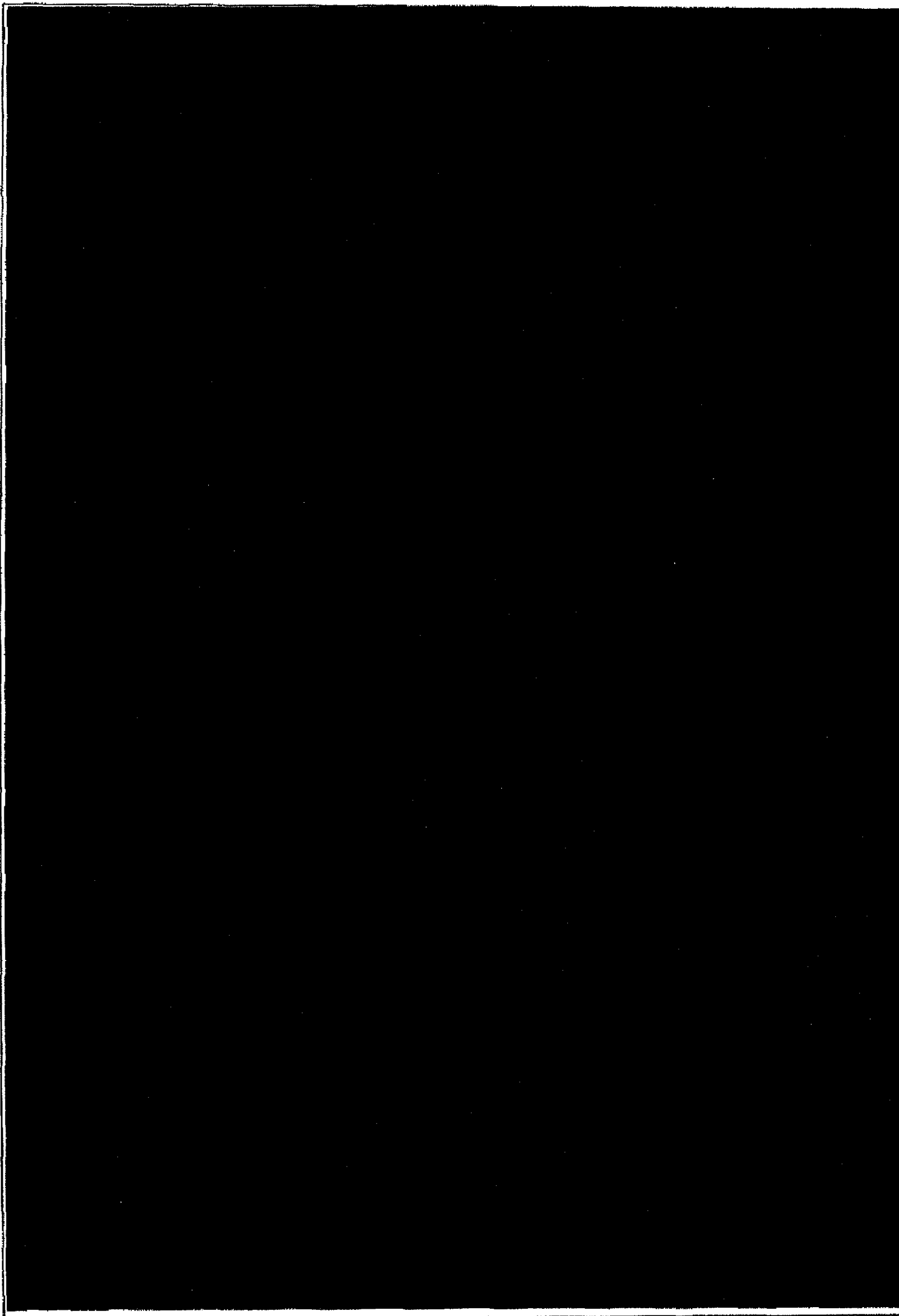


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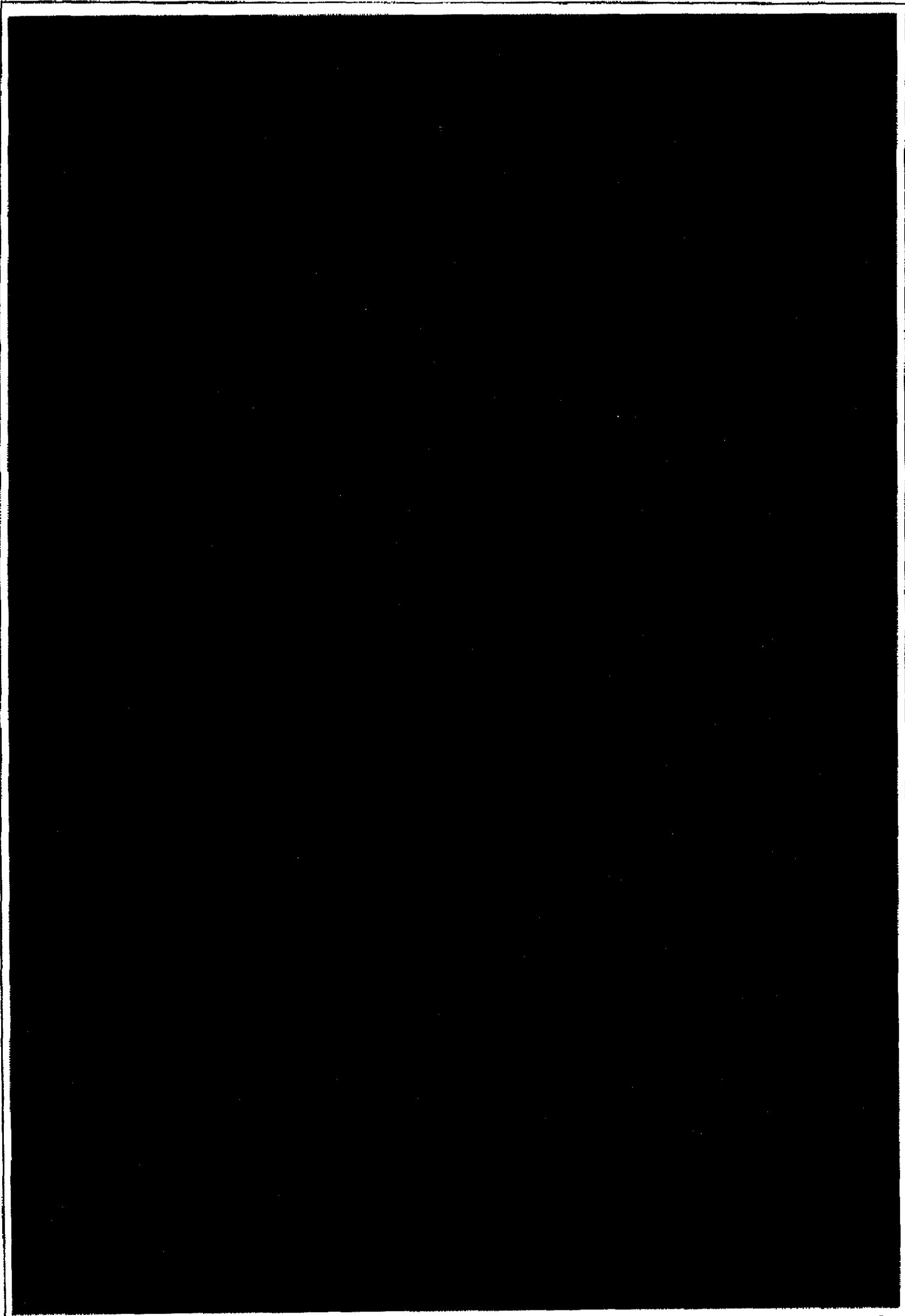


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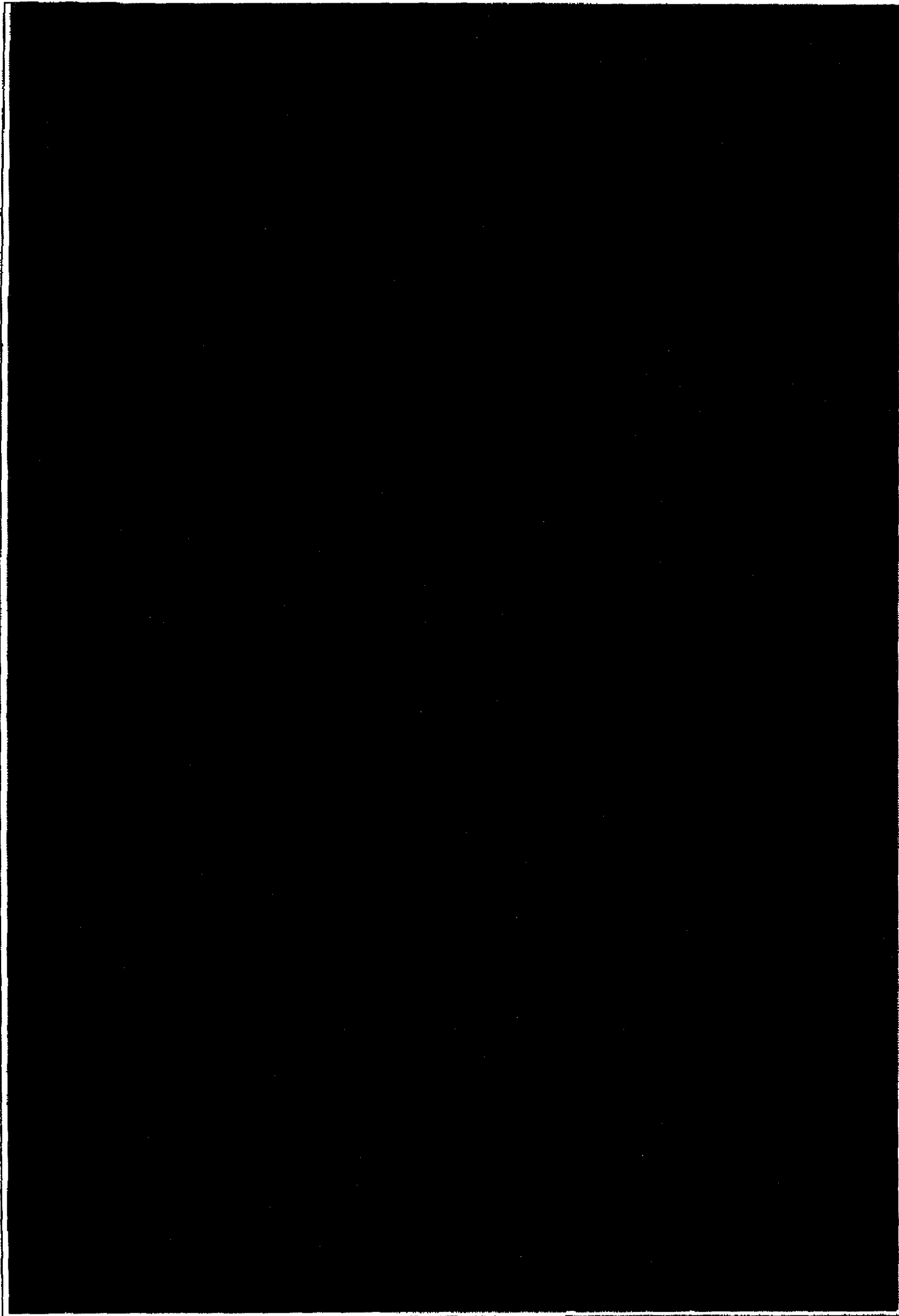


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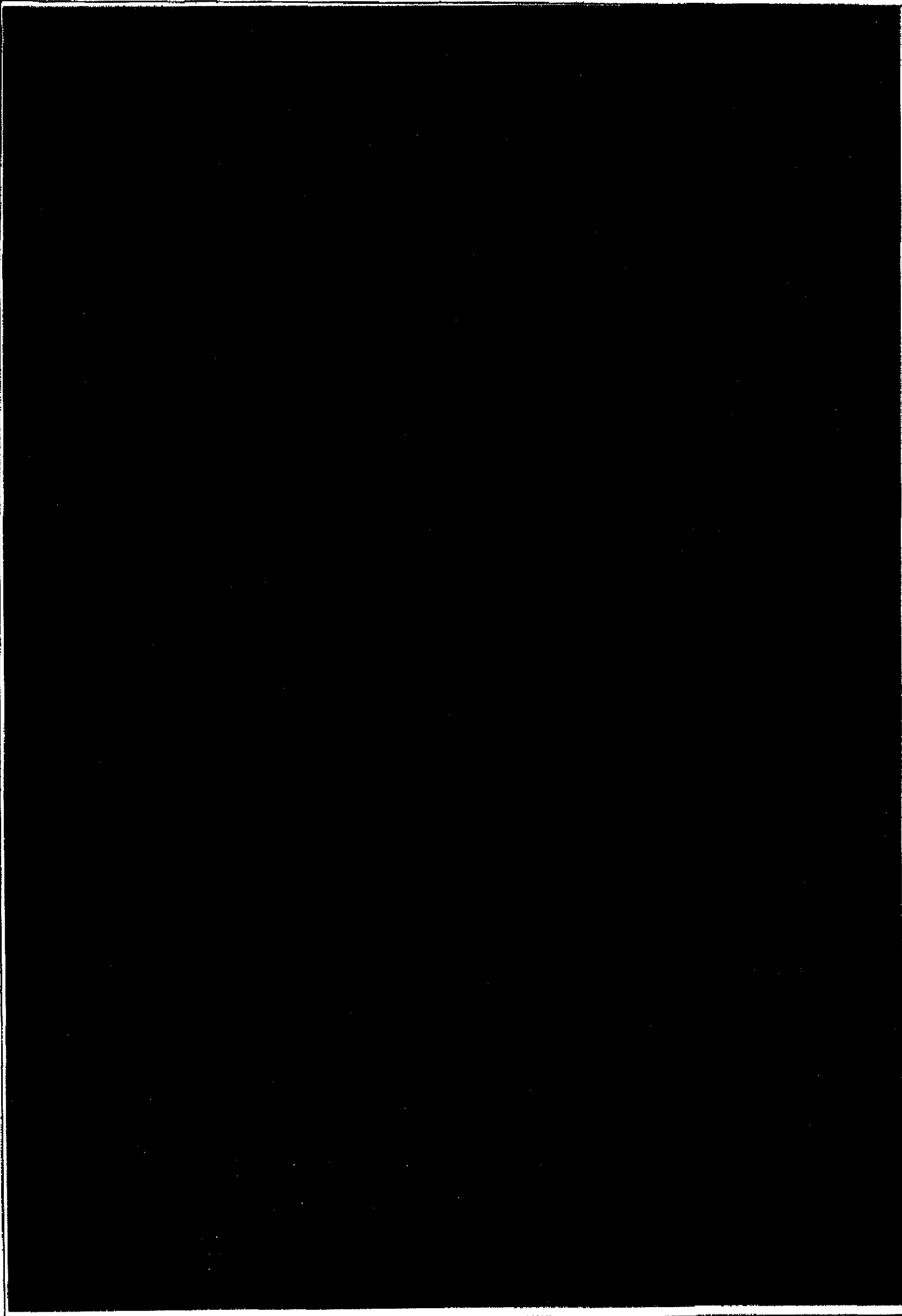


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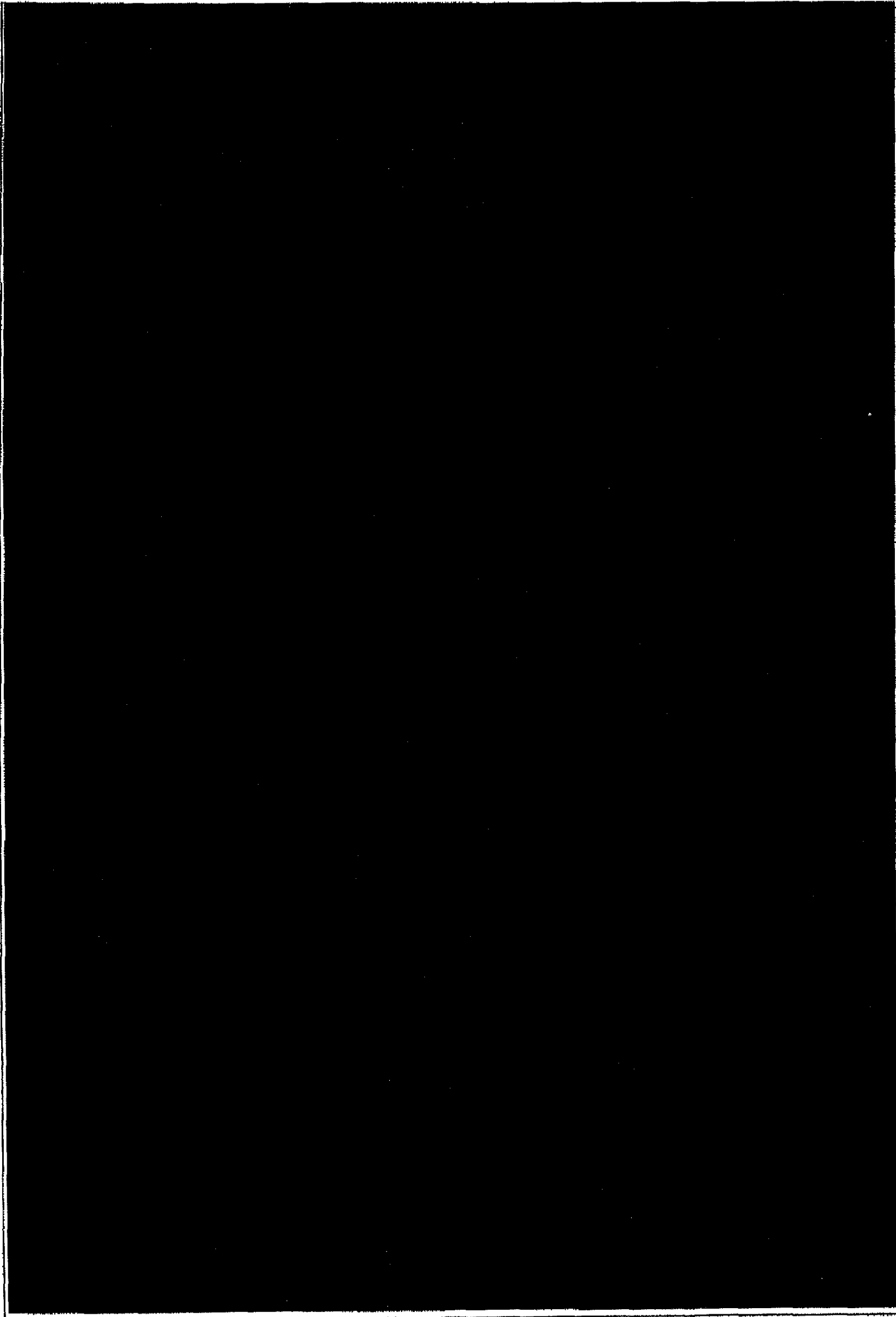


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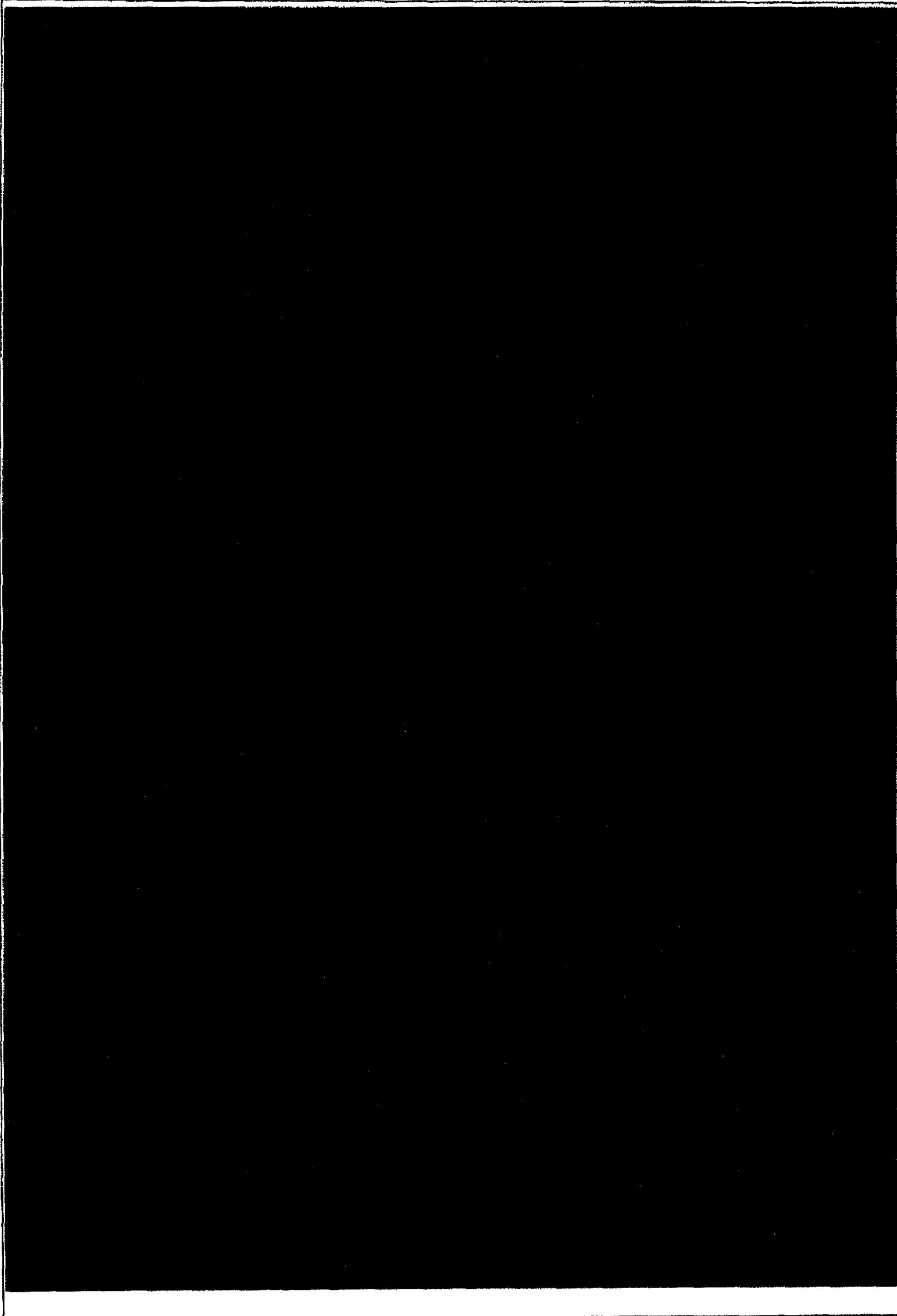


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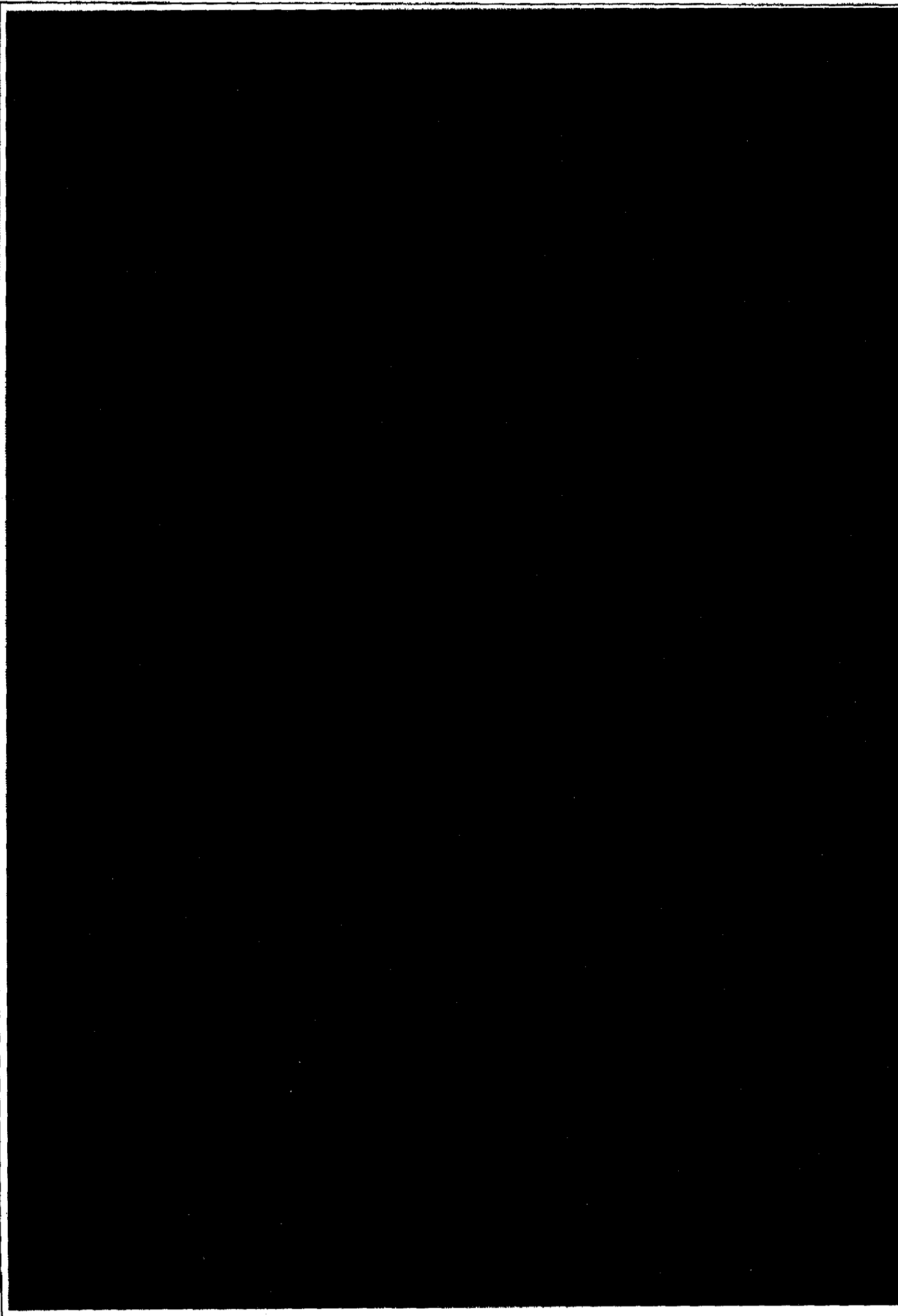


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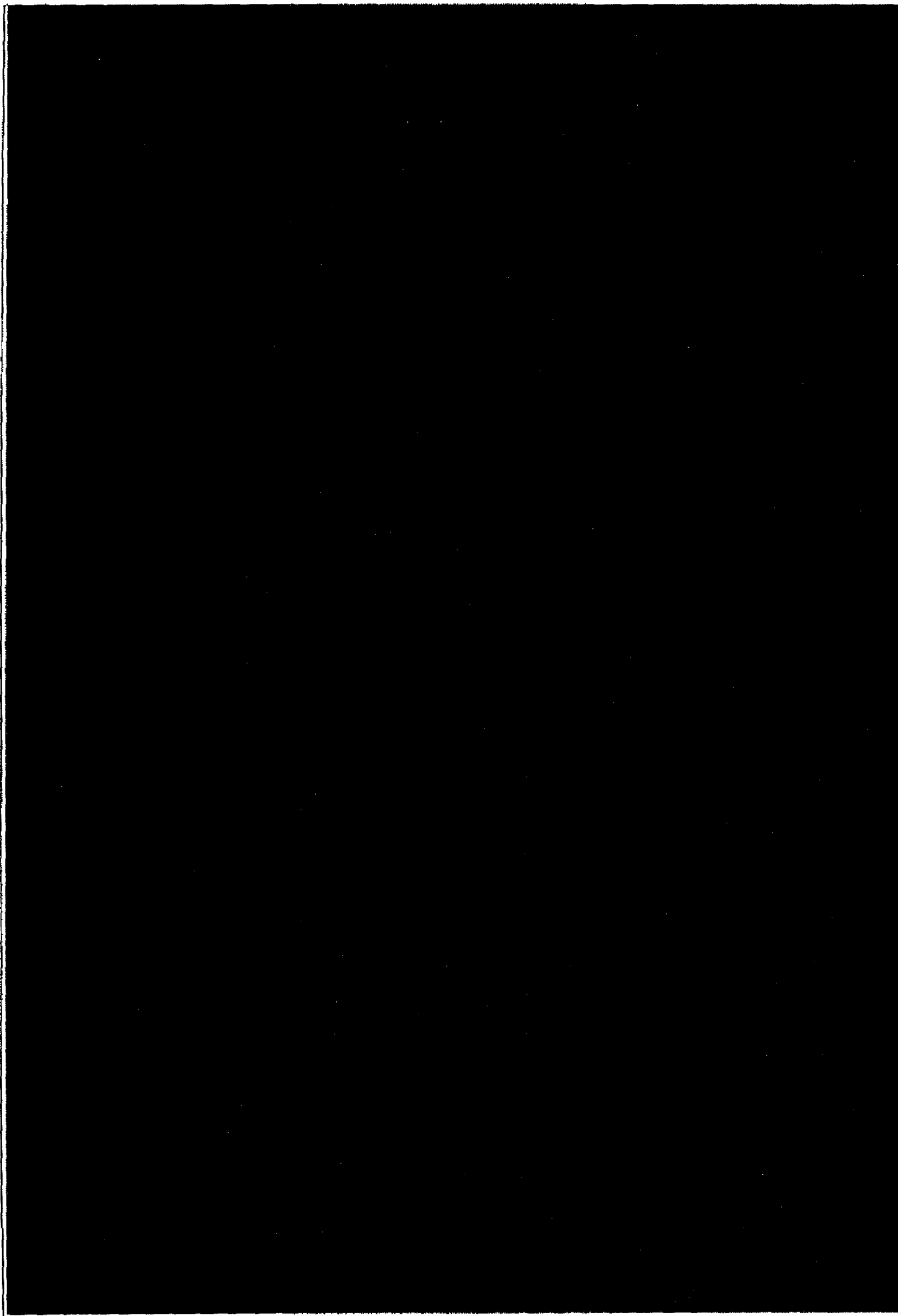


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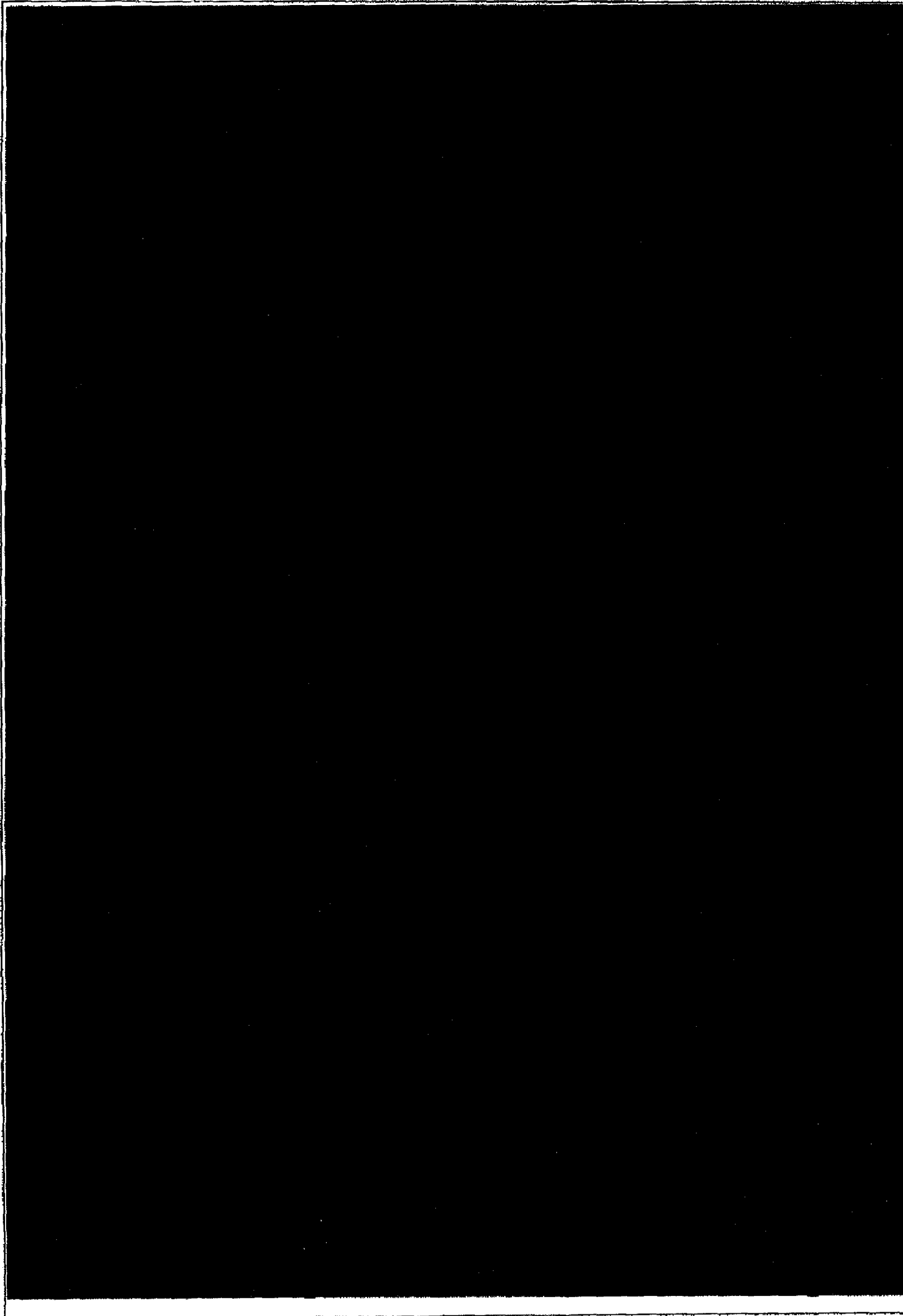


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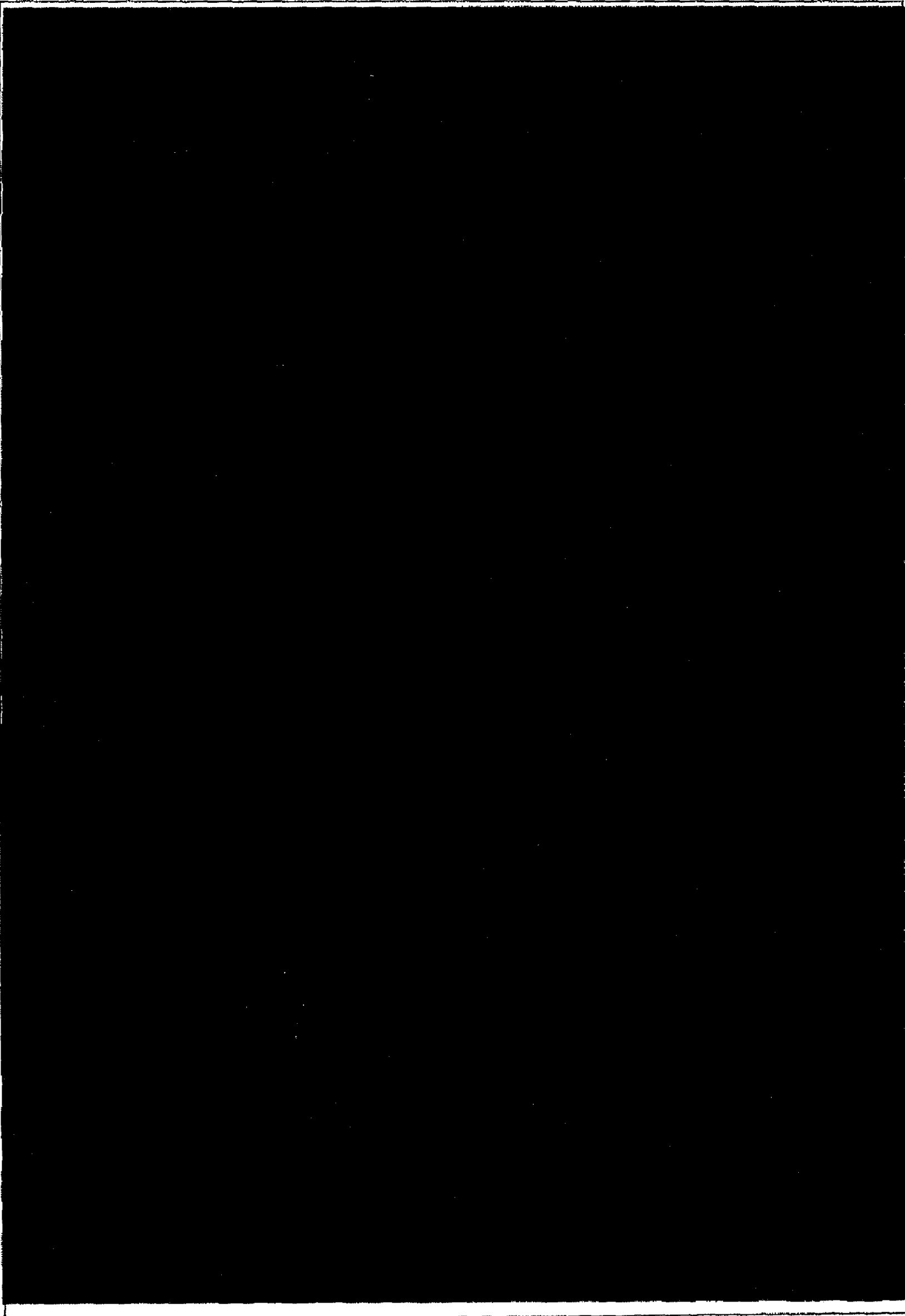


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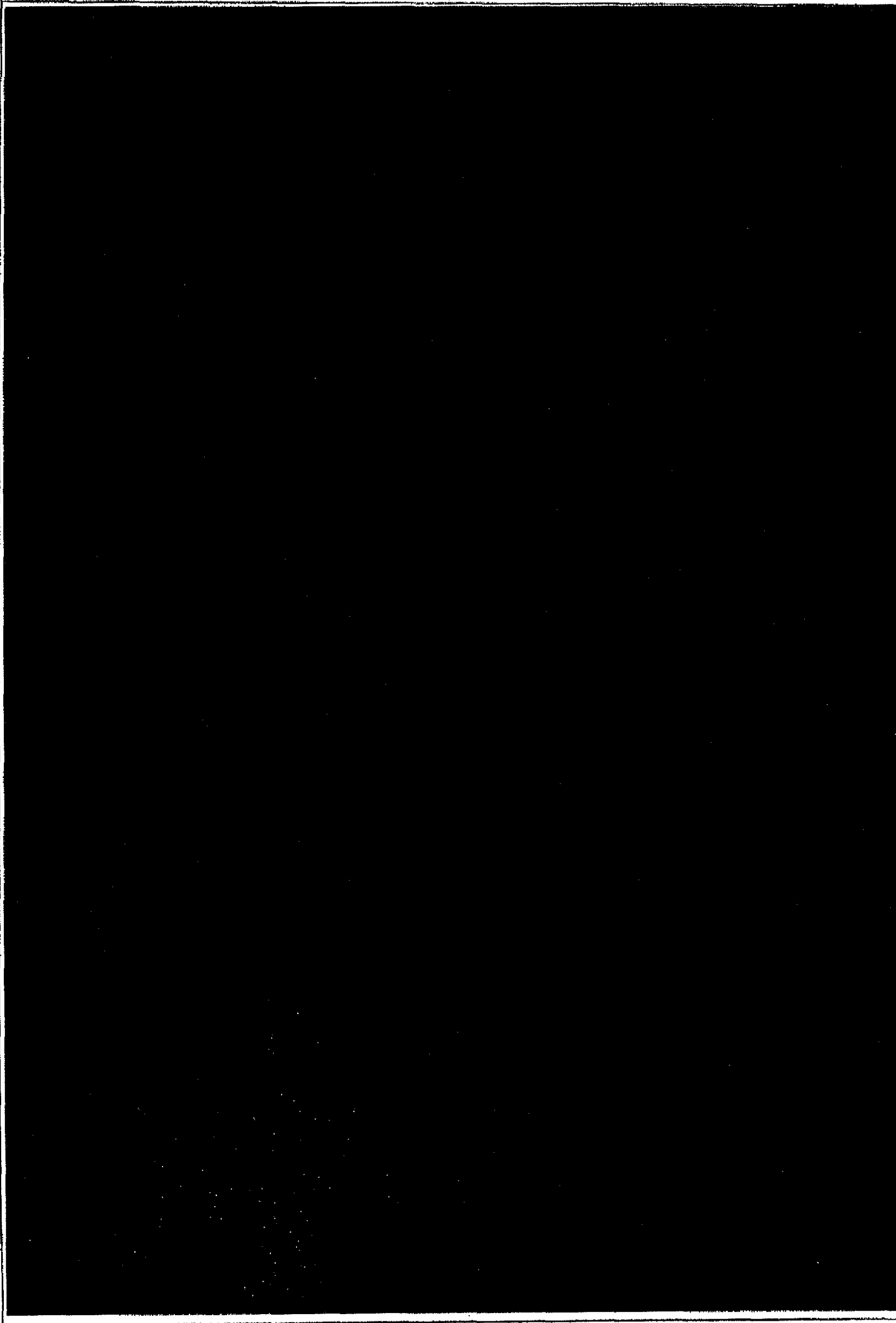


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MR. PISANELLI: Counsel, what's your plan for breaks? We've had a standing agreement with all counsel on the case as a courtesy to the witnesses and the reporters to break around every hour so.

MR. QUINN: That's fine.

MR. PISANELLI: Whenever you want to is fine with us.

MR. QUINN: Well, I mean, can I just get the list? And then we'll come back and delve into it after.

BY MR. QUINN:



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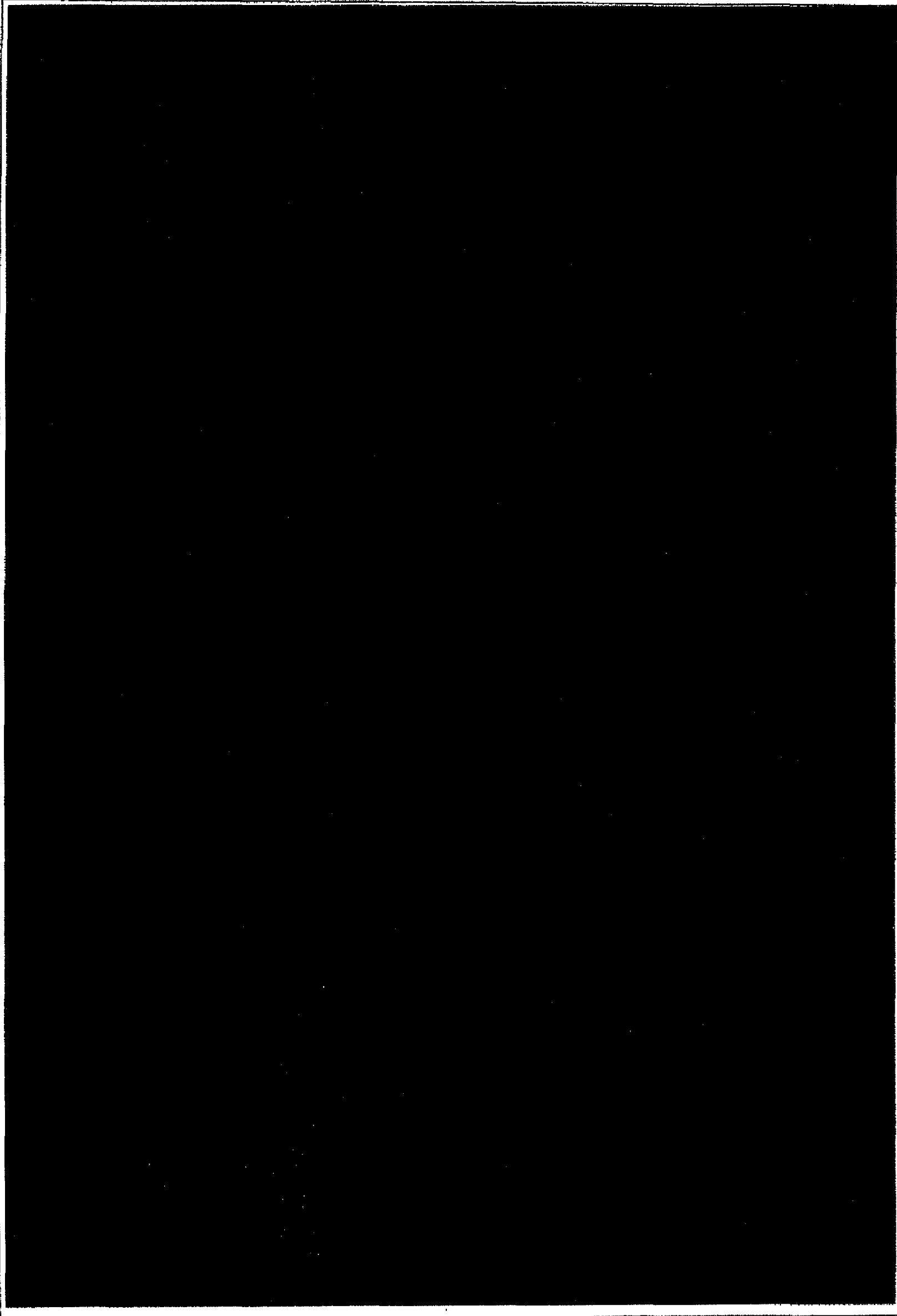
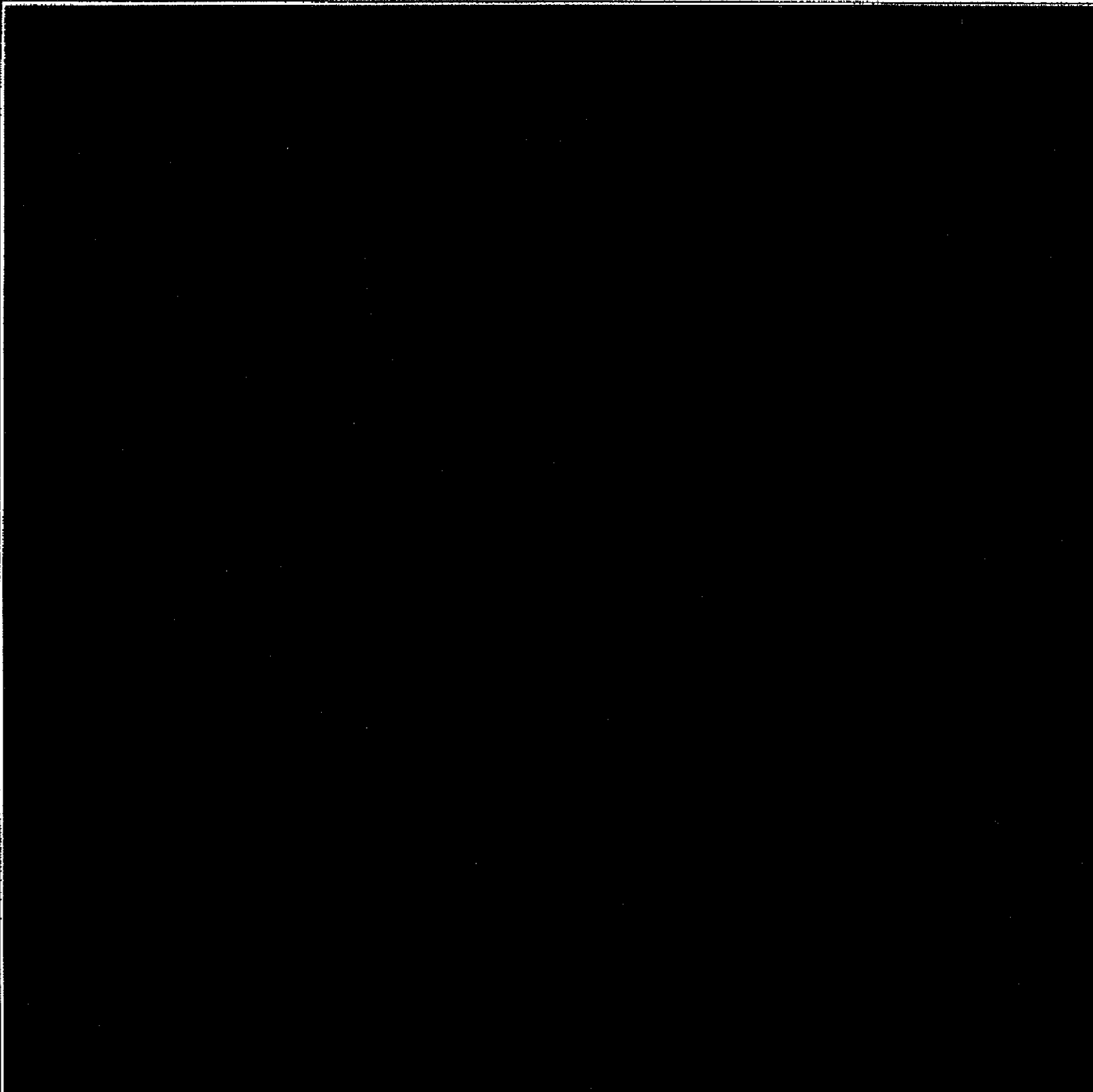


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MR. QUINN: Okay, let's take a break.

THE VIDEOGRAPHER: We are off the record at
10:35.

(A recess was taken from 10:35 a.m.
to 10:51 a.m.)

THE VIDEOGRAPHER: We are back on the
record at 10:51.



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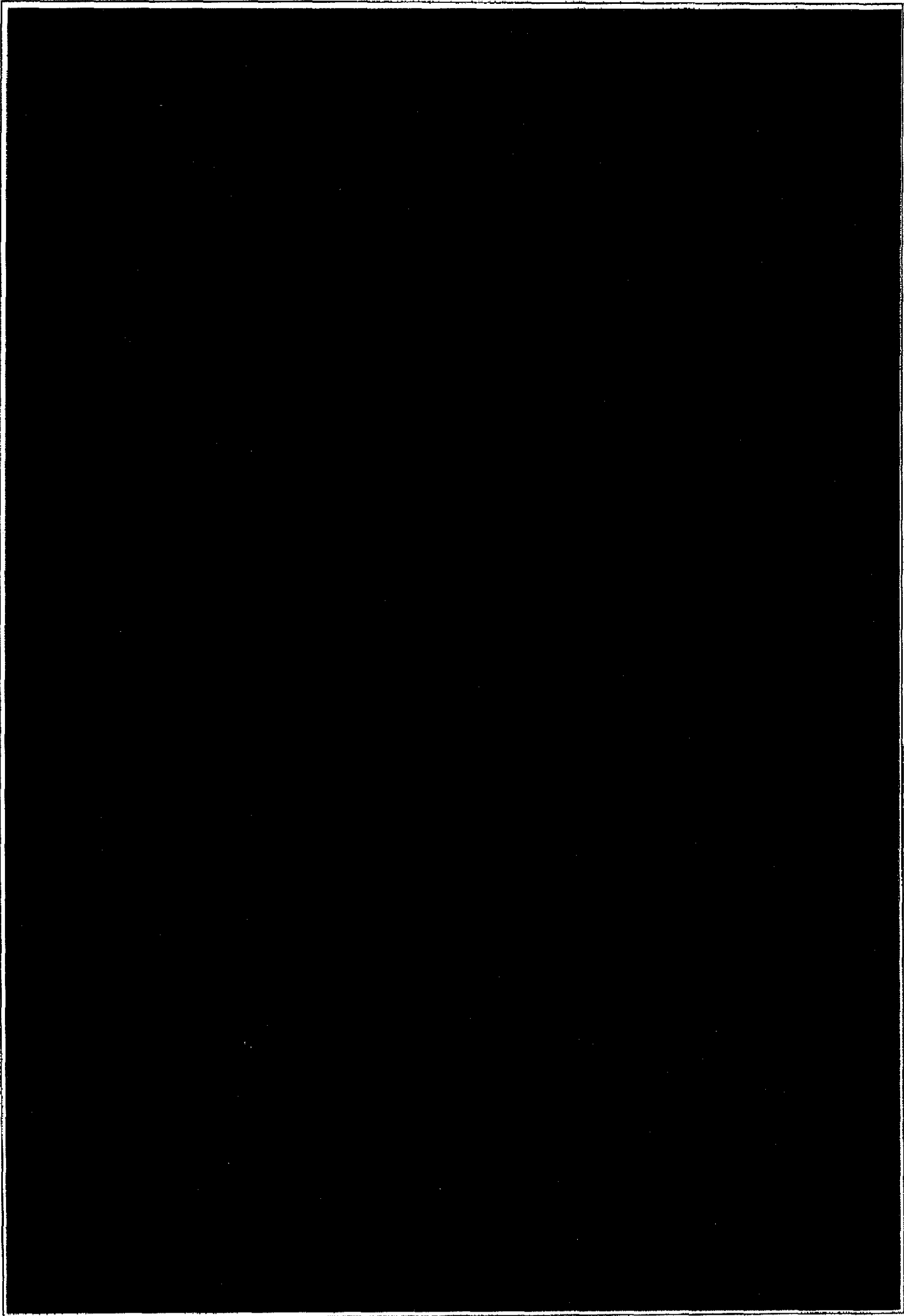


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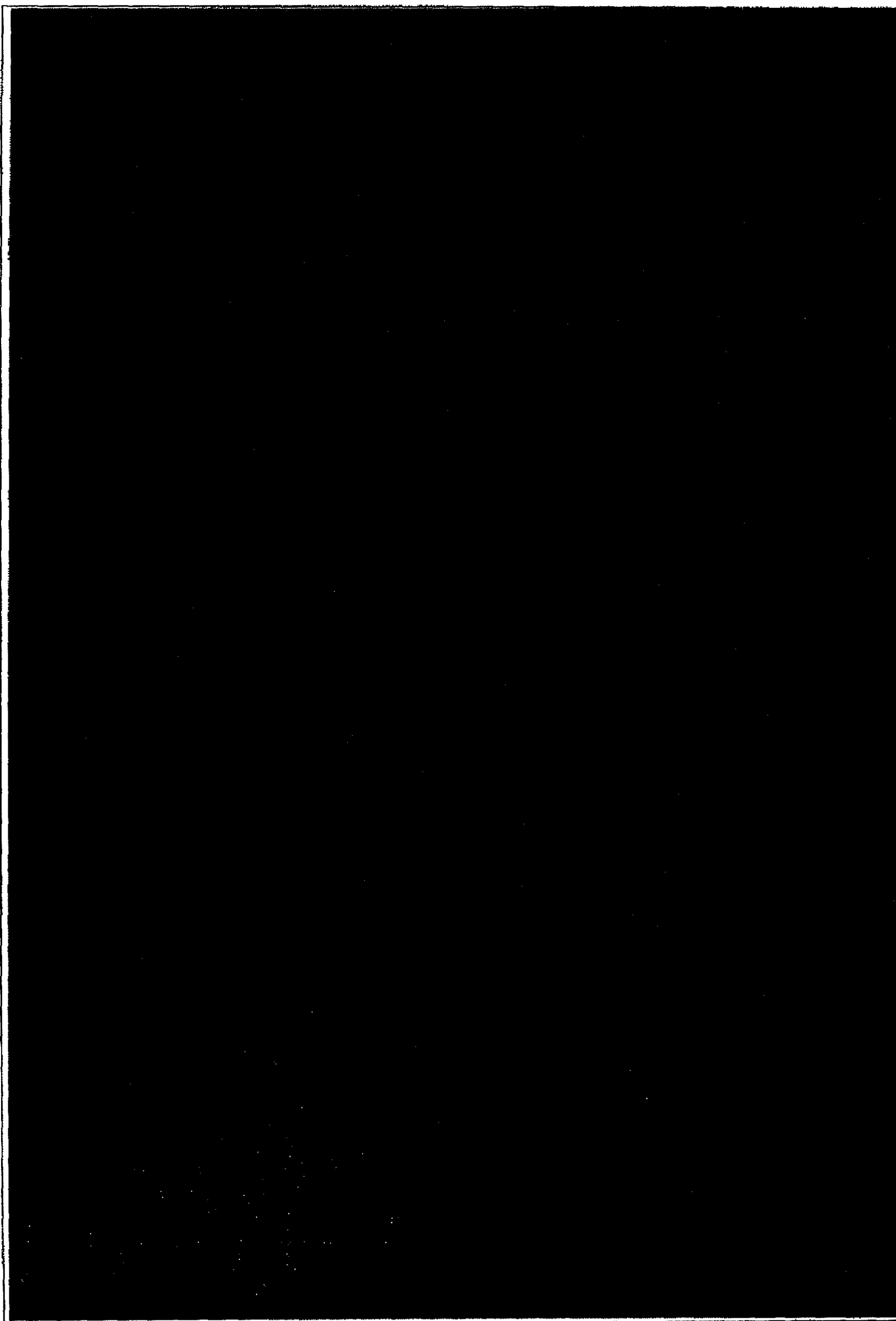


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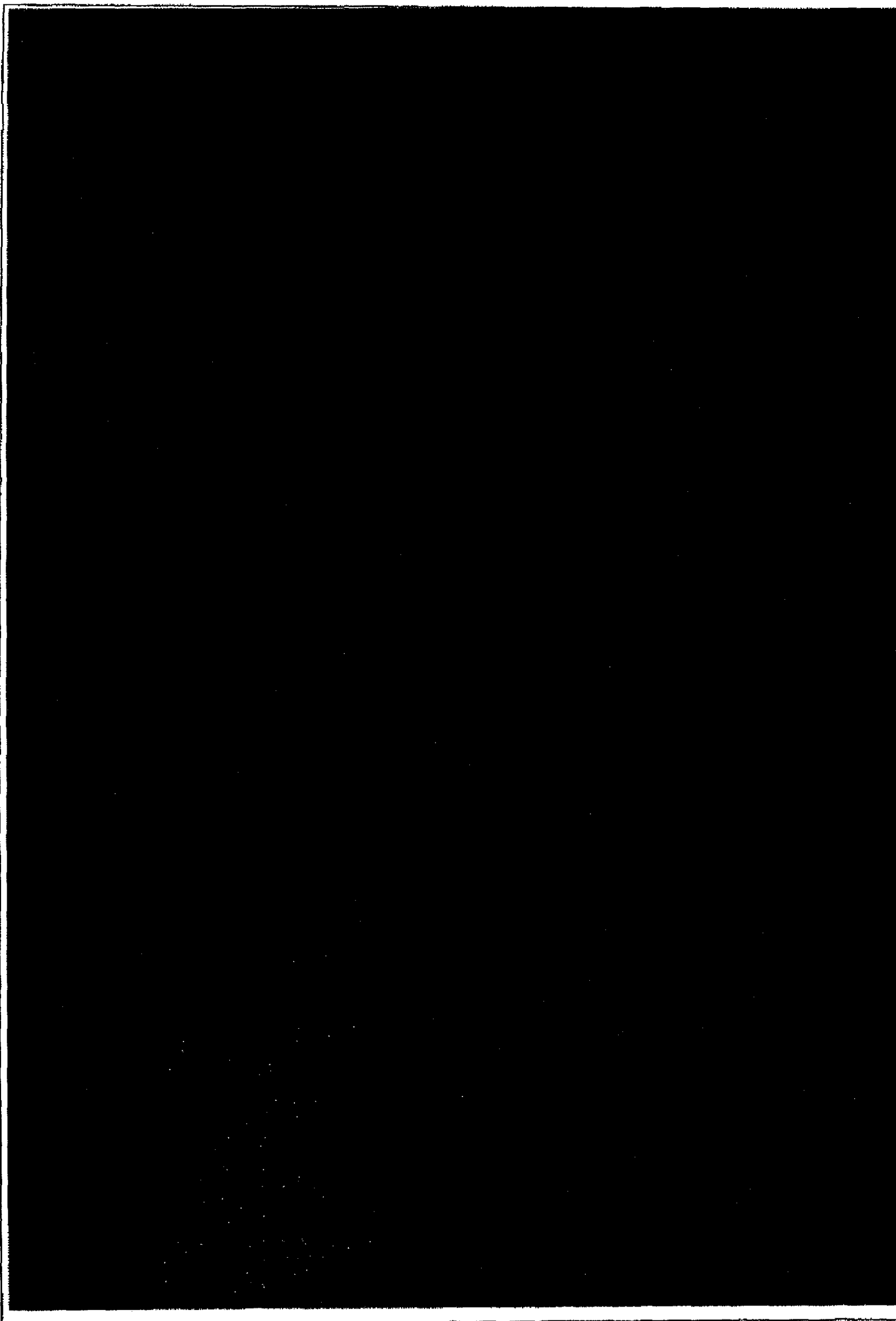


Exhibit B

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CERTIFICATE OF REPORTER

STATE OF NEVADA)
SS:
COUNTY OF CLARK)

I, GALE SALERNO, a certified court
reporter, do hereby certify:

That prior to being examined, the witness
in the foregoing proceedings was by me duly sworn to
testify to the truth, the whole truth, and nothing
but the truth;

That said proceedings were taken before me
at the time and place therein set forth and were
taken down by me in shorthand and thereafter
transcribed into typewriting under my direction and
supervision; and that transcript review was requested
pursuant to NRCP 30(e.)

I further certify that I am neither counsel
for nor related to any party to said proceedings, and
that I am not anywise interested in the outcome
thereof.

IN WITNESS WHEREOF, I have hereunto
subscribed my name this 14th day of
February, 2016.


GALE SALERNO, RMR, CCR #542

EXHIBIT C

In the Matter Of:
WYNN RESORTS VS. OKADA

A-12-656710-B

D. BOONE WAYSON

February 16, 2016

VOL. I

Highly Confidential



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Exhibit C

HIGHLY CONFIDENTIAL FOR 30 DAYS
DISTRICT COURT

CLARK COUNTY, NEVADA

WYNN RESORTS, LIMITED, a
Nevada corporation,

Plaintiff,

vs.

CASE NO. A-12-656710-B
DEPT. NO. XI

KAZUO OKADA, an individual,
ARUZE USA, INC., a Nevada
corporation, and UNIVERSAL
ENTERTAINMENT CORP., a Japanese
corporation,

Defendants.

AND ALL RELATED CLAIMS.

VIDEOTAPED DEPOSITION OF

D. BOONE WAYSON

VOLUME I

Tuesday, February 16, 2016

9:13 a.m.

9555 Hillwood Drive, Second Floor

Las Vegas, Nevada

Judith Payne Kelly, RMR, CCR-539



800.211.DEPO (3376)
EsquireSolutions.com

Exhibit C

APPEARANCES OF COUNSEL

For Wynn Resorts, Limited; Linda Chen; Russell Goldsmith; Ray R. Irani; Robert J. Miller; John A. Moran; Marc D. Schorr; Alvin V. Shoemaker; Kimmarré Sinatra; D. Boone Wayson; and Allan Zeman:

JAMES J. PISANELLI, ESQ.
DEBRA L. SPINELLI, ESQ.
Pisanelli Bice, PLLC
400 South Seventh Street, Suite 300
Las Vegas, Nevada 89101
702.214.2100
jjp@pisanellibice.com
dls@pisanellibice.com

** and **

ROBERT SHAPIRO, ESQ.
Glaser Weil Fink Howard Avchen & Shapiro
10250 Constellation Boulevard, 19th Floor
Los Angeles, California 90067
310.553.3000

For Elaine Wynn:

MICHAEL T. ZELLER, ESQ.
Quinn Emanuel
865 South Figueroa Street, 10th Floor
Los Angeles, California 90017
213.443.3000
michaelzeller@quinnemanuel.com

For Aruze USA, Inc.:

BRYCE K. KUNIMOTO, ESQ.
Holland & Hart
9555 Hillwood Drive, 2nd Floor
Las Vegas, Nevada 89134
702.669.4600
bcassity@hollandhart.com
bkunimoto@hollandandhart.com

** and **



800.211.DEPO (3376)
EsquireSolutions.com

APPEARANCES OF COUNSEL (Continued)

For Aruze USA, Inc.:

BRADLEY A. MARCUS, ESQ.
ADAM MILLER, ESQ.
JOHN TROOST, ESQ.
Buckley Sandler, LLP
1250 24th Street, Suite 700
Washington, D.C. 20037
202.349.8021
bmarcus@buckleysandler.com
amiller@buckleysandler.com
jtroost@buckleysandler.com

For Stephen A. Wynn:

J. COLBY WILLIAMS, ESQ.
Campbell & Williams
700 South Seventh Street
Las Vegas, Nevada 89101
702.382.5222
jcw@campbellandwilliams.com

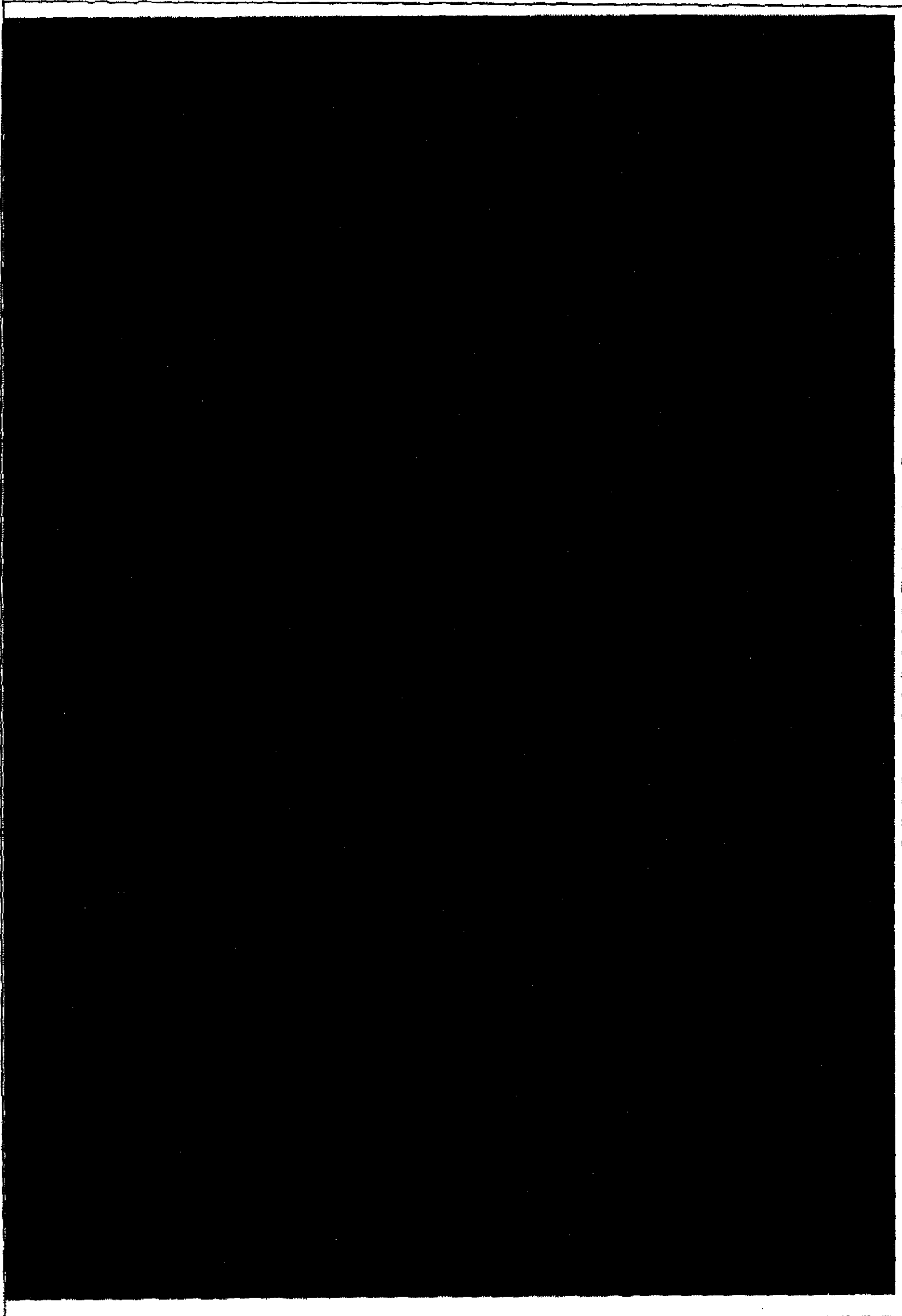
Also Present:

KIM SINATRA, Esq., Wynn Resorts
TOM BURTNEY, Videographer



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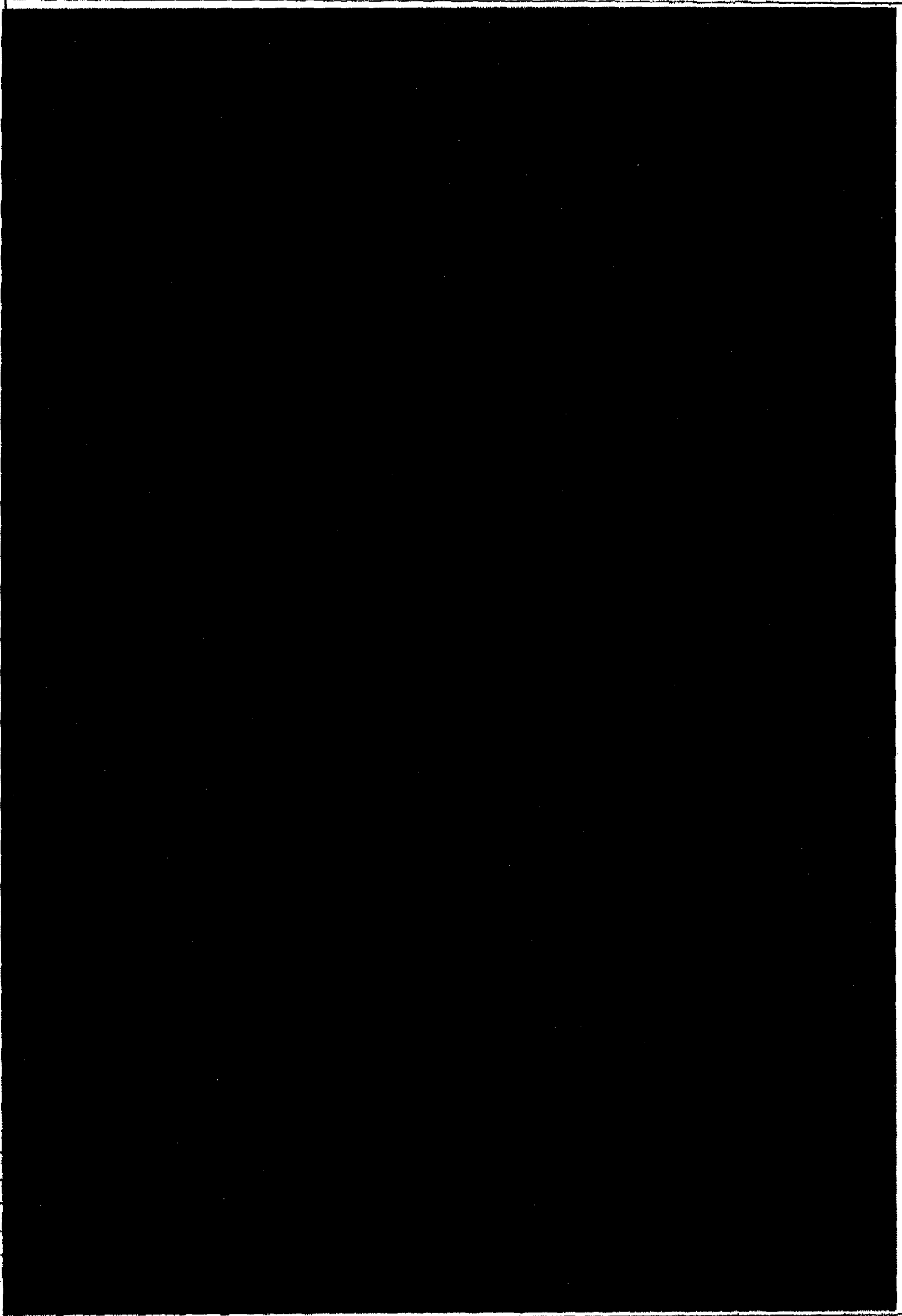
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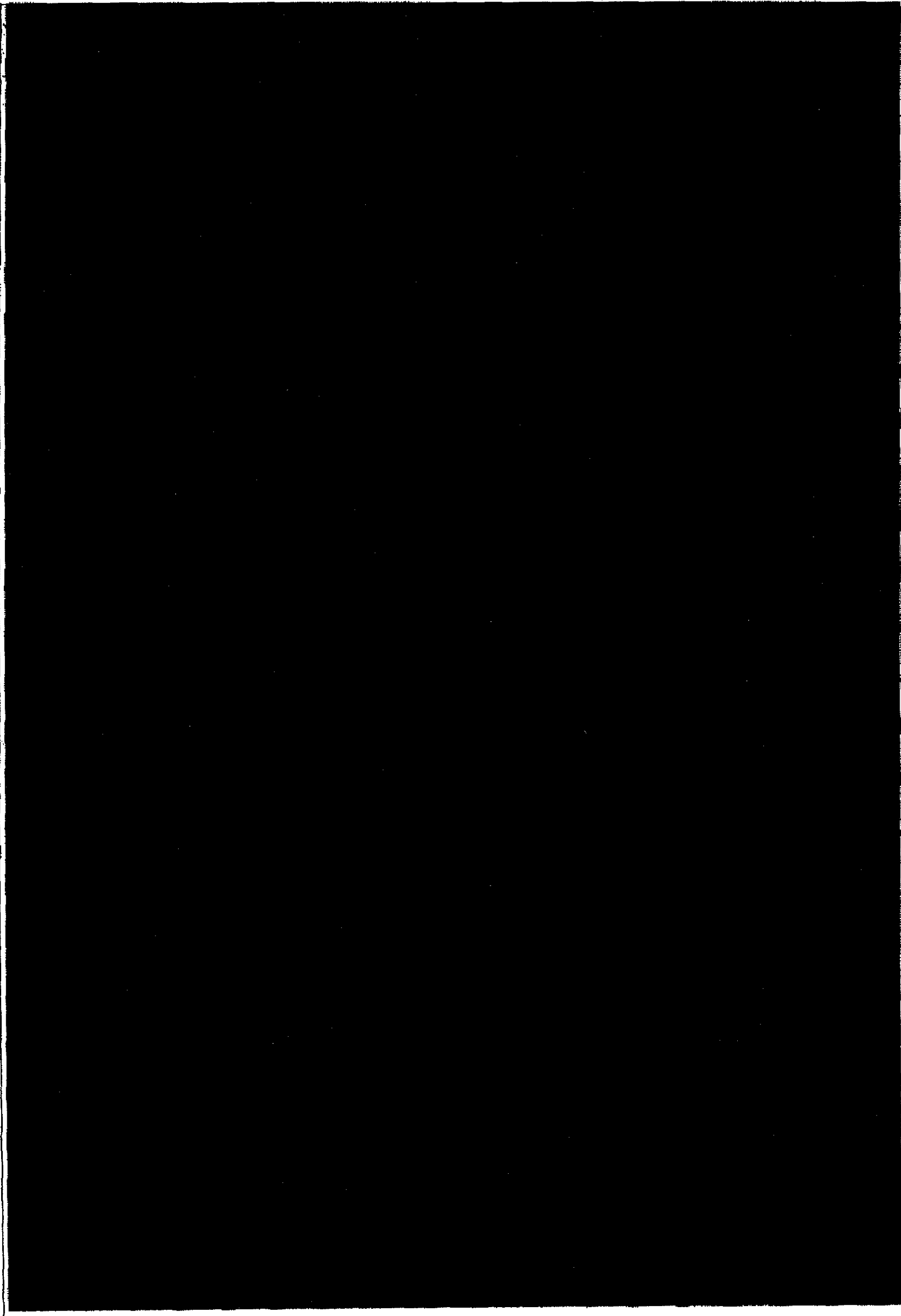
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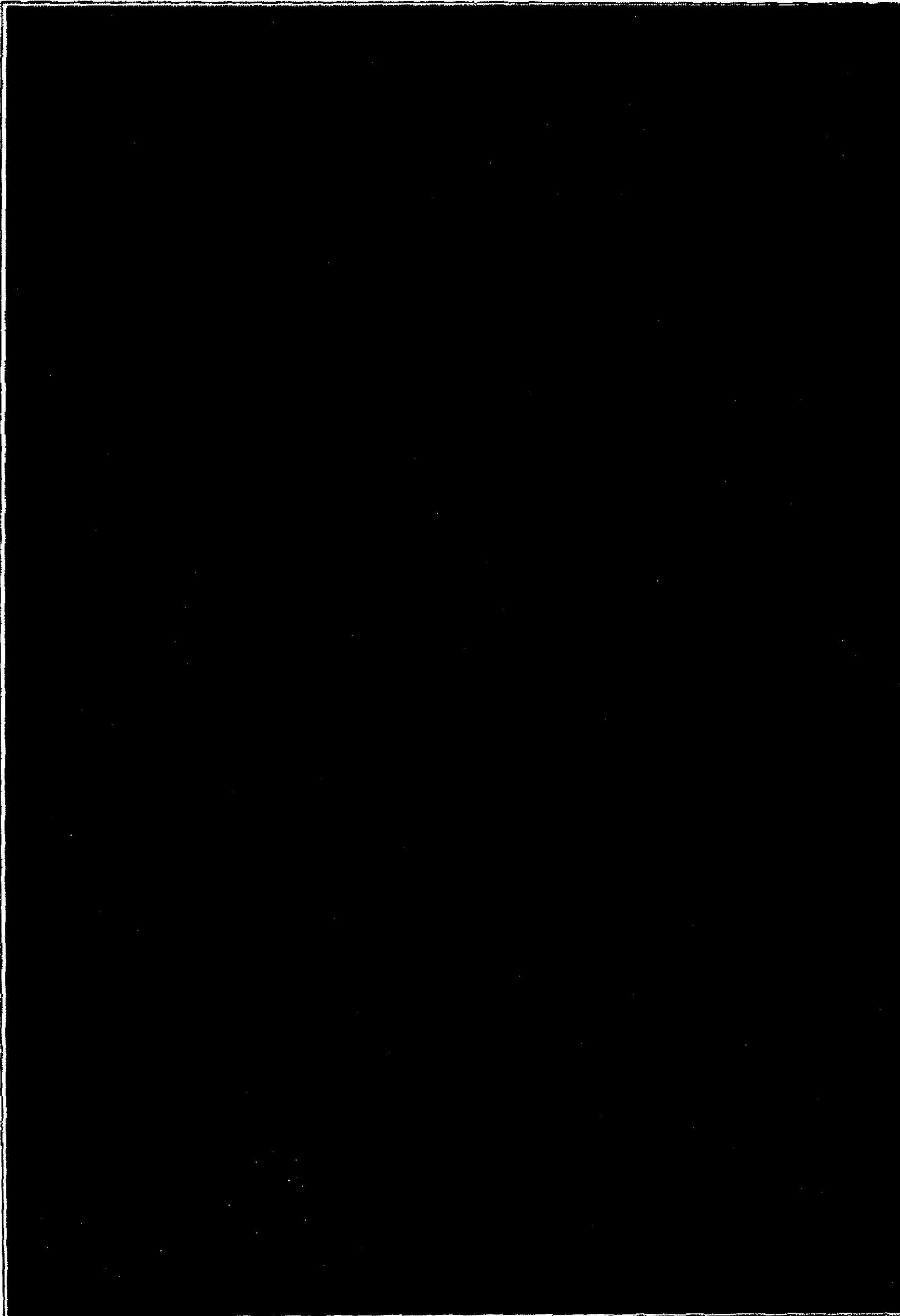
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Exhibit C

CERTIFICATE OF REPORTER

STATE OF NEVADA)
) ss:
COUNTY OF CLARK)

I, Judith Payne Kelly, a Certified Court Reporter licensed by the State of Nevada, do hereby certify that I reported the deposition of D. BOONE WAYSON, commencing on Tuesday, February 16, 2016, at 9:13 a.m.

Prior to being deposed, the witness was duly sworn by me to testify to the truth; and I thereafter transcribed my said shorthand notes into typewriting and that the typewritten transcript is a complete, true and accurate transcription of my said shorthand notes; and that a review of the transcript was requested.

I further certify that I am not a relative, employee or independent contractor of counsel or of any party involved in the proceeding, nor a person financially interested in the proceeding, nor do I have any other relationship that may reasonably cause my impartiality to be questioned.

IN WITNESS WHEREOF, I have set my hand in my office in the County of Clark, State of Nevada, this 22nd day of February, 2016.

Judith Payne Kelly

Judith Payne Kelly, RMR, CCR No. 539



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HIGHLY CONFIDENTIAL FOR 30 DAYS
DISTRICT COURT

CLARK COUNTY, NEVADA

WYNN RESORTS, LIMITED, a
Nevada corporation,

Plaintiff,

vs.

CASE NO. A-12-656710-B
DEPT. NO. XI

KAZUO OKADA, an individual,
ARUZE USA, INC., a Nevada
corporation, and UNIVERSAL
ENTERTAINMENT CORP., a Japanese
corporation,

Defendants.

AND ALL RELATED CLAIMS.

VIDEOTAPED DEPOSITION OF

D. BOONE WAYSON

VOLUME II

Wednesday, February 17, 2016

10:10 a.m.

9555 Hillwood Drive, Second Floor

Las Vegas, Nevada

Judith Payne Kelly, RMR, CCR-539



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APPEARANCES OF COUNSEL

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dls@pisanellibice.com

** and **

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For Elaine Wynn:

MICHAEL T. ZELLER, ESQ.
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865 South Figueroa Street, 10th Floor
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** and **



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EsquireSolutions.com

APPEARANCES OF COUNSEL (Continued)

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ADAM MILLER, ESQ.
JOHN TROOST, ESQ.
Buckley Sandler, LLP
1250 24th Street, Suite 700
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202.349.8021
bmarcus@buckleysandler.com
amiller@buckleysandler.com
jtroost@buckleysandler.com

For Stephen A. Wynn:

J. COLBY WILLIAMS, ESQ.
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Las Vegas, Nevada 89101
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Also Present:

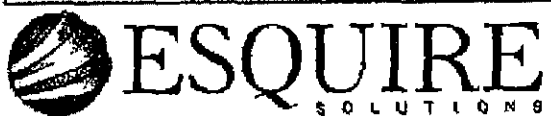
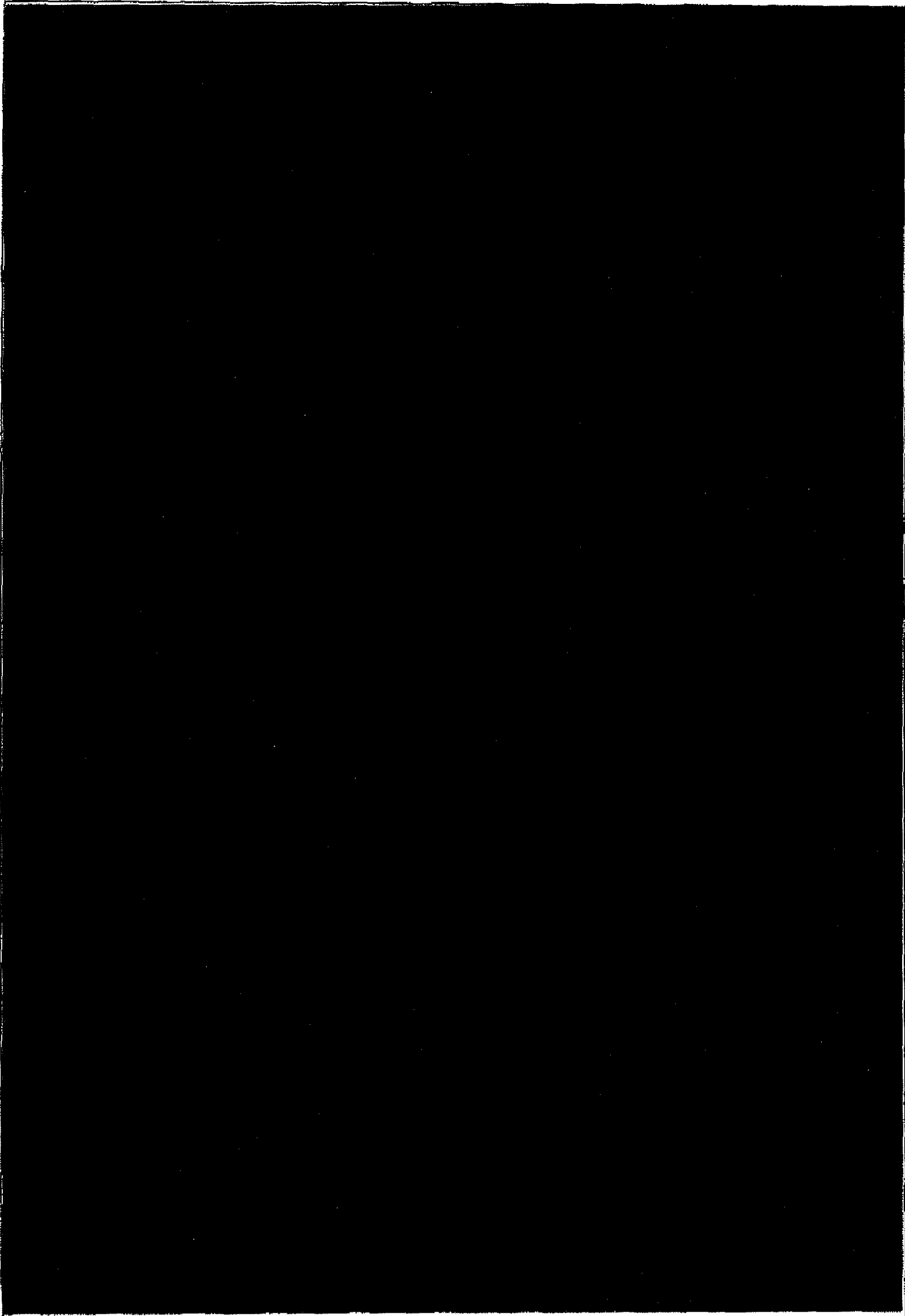
KIM SINATRA, ESQ., WYNN RESORTS
TOM BURTNEY, Videographer



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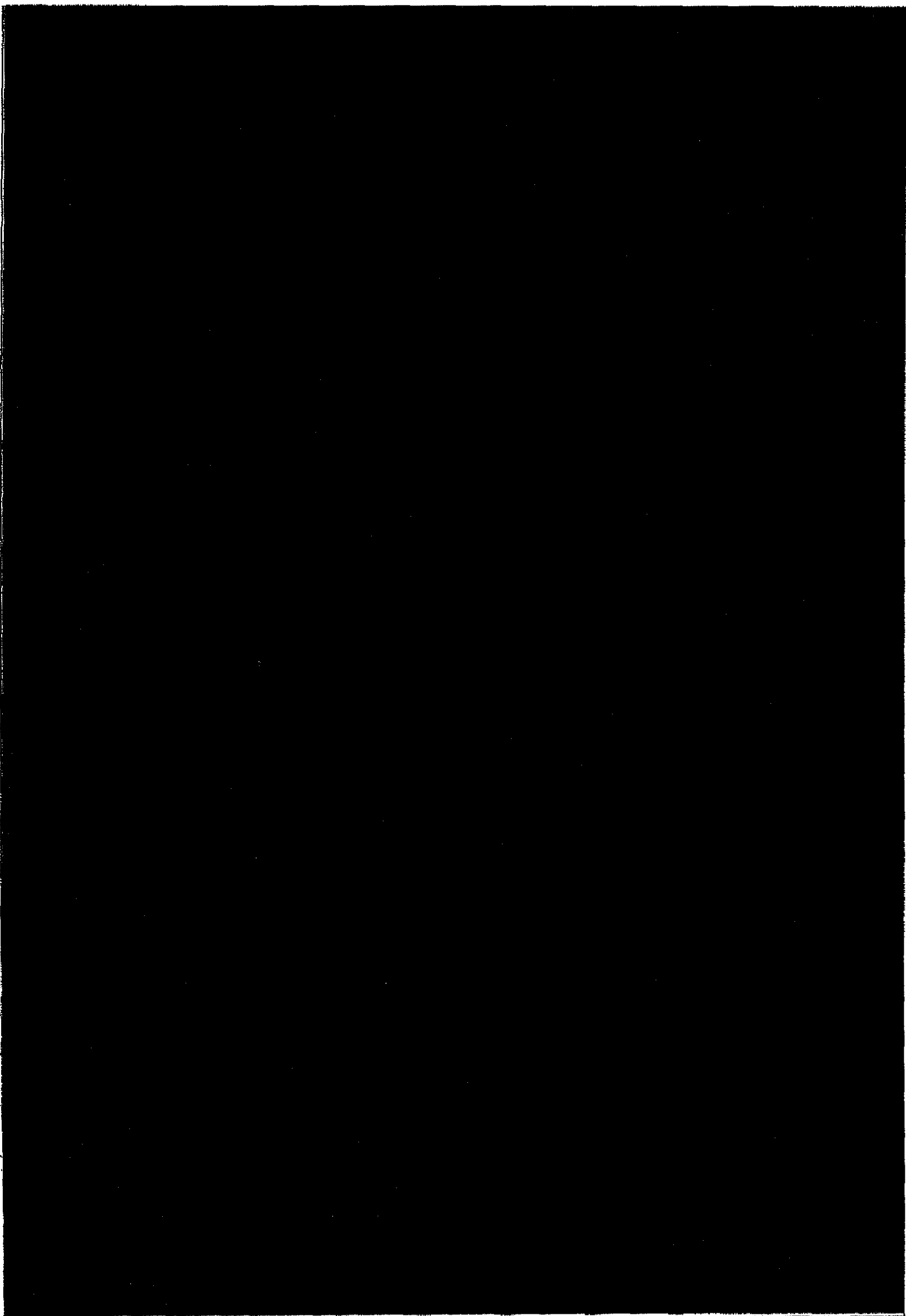
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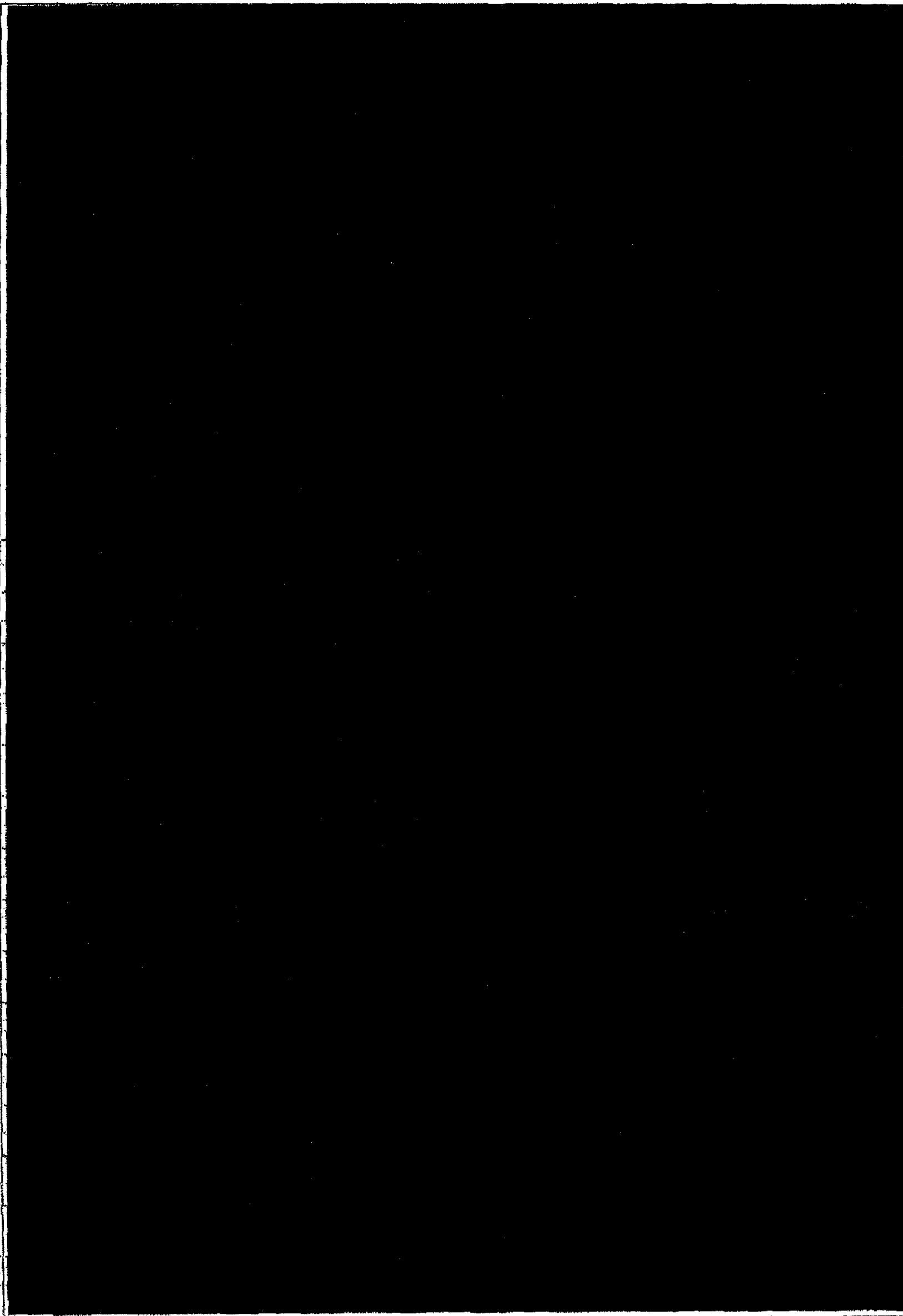
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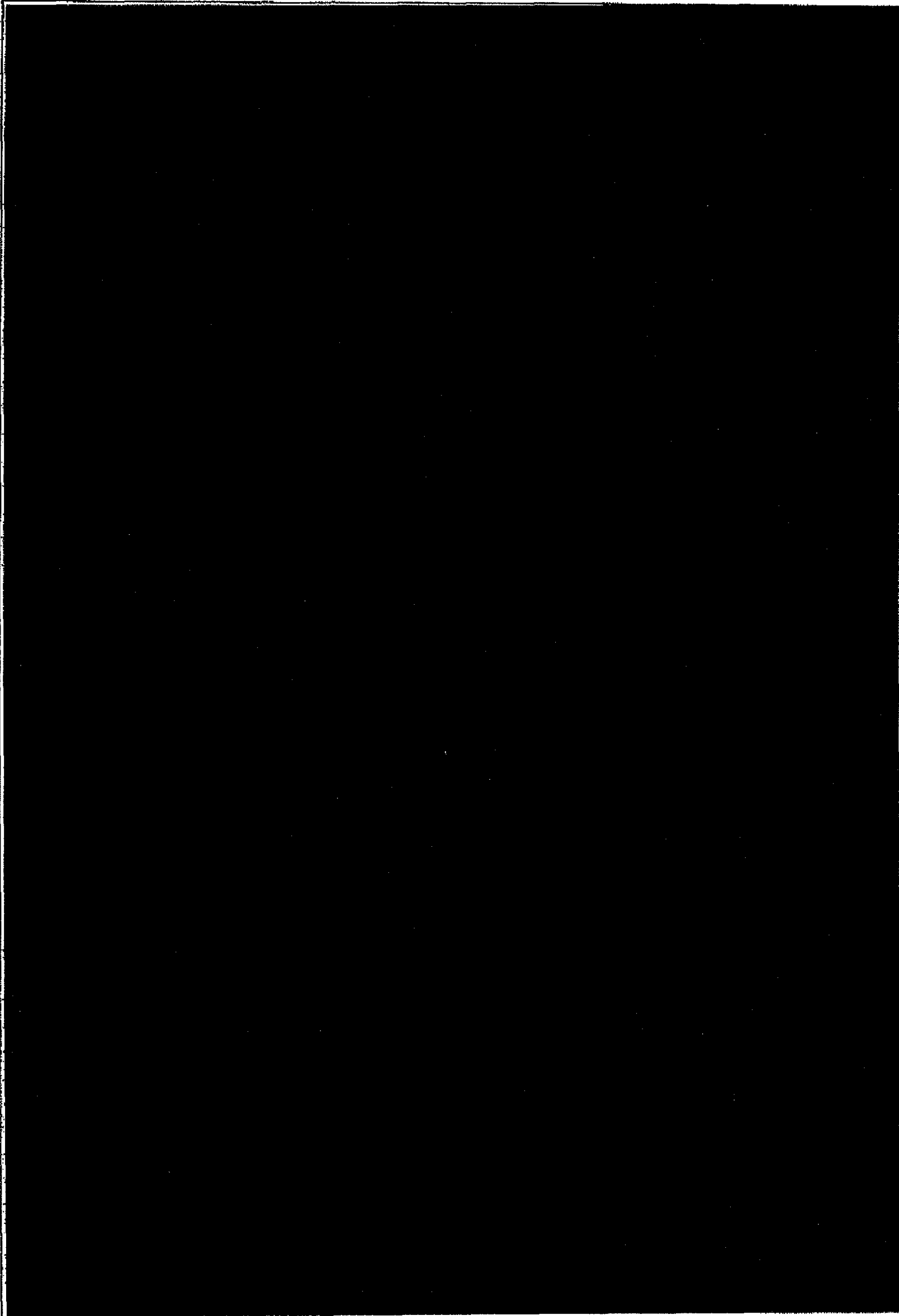
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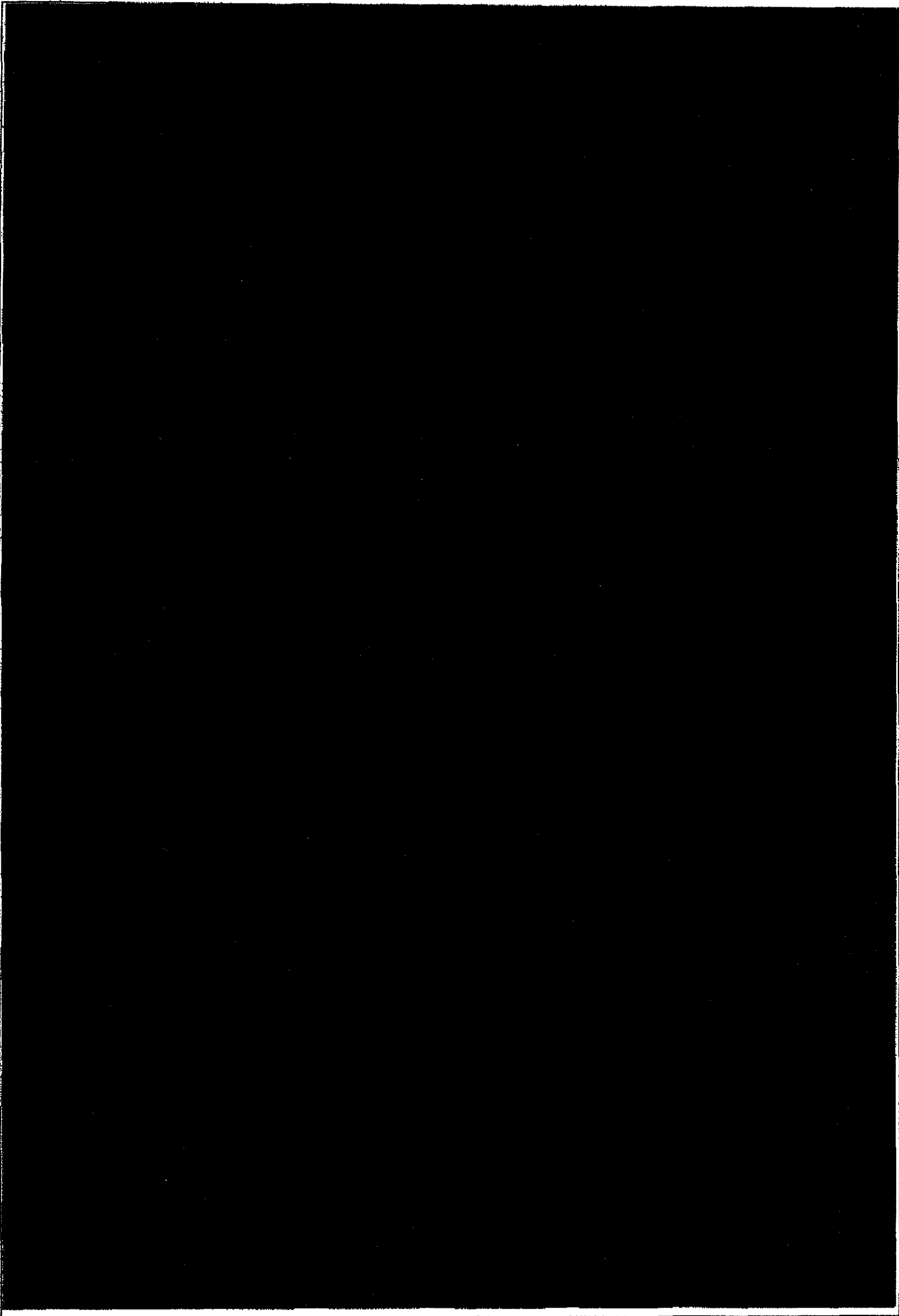
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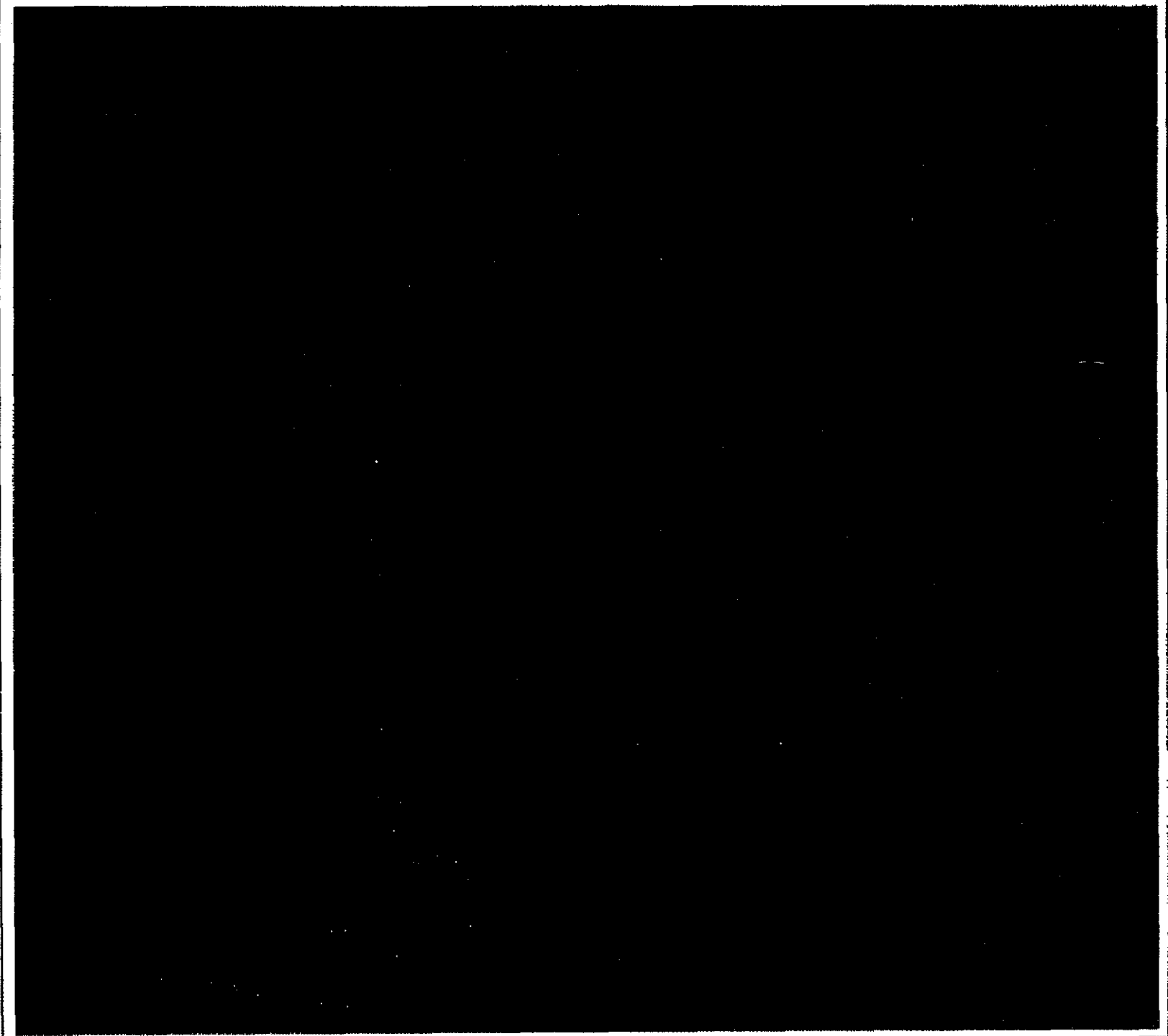
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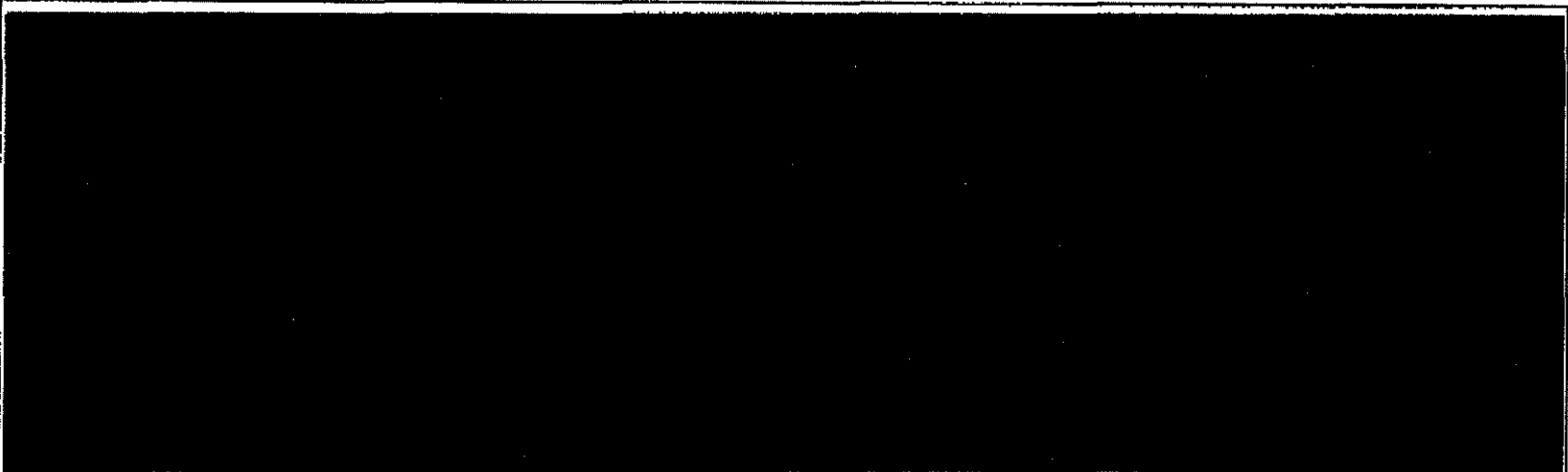
MR. PISANELLI: Counselor, you're still in
that same general time period, 2010, or are you talking
about any time?

MR. ZELLER: I'm talking about any time at
this point.

MR. PISANELLI: Okay. Thank you.



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Q. And I'll show you some documents later on --

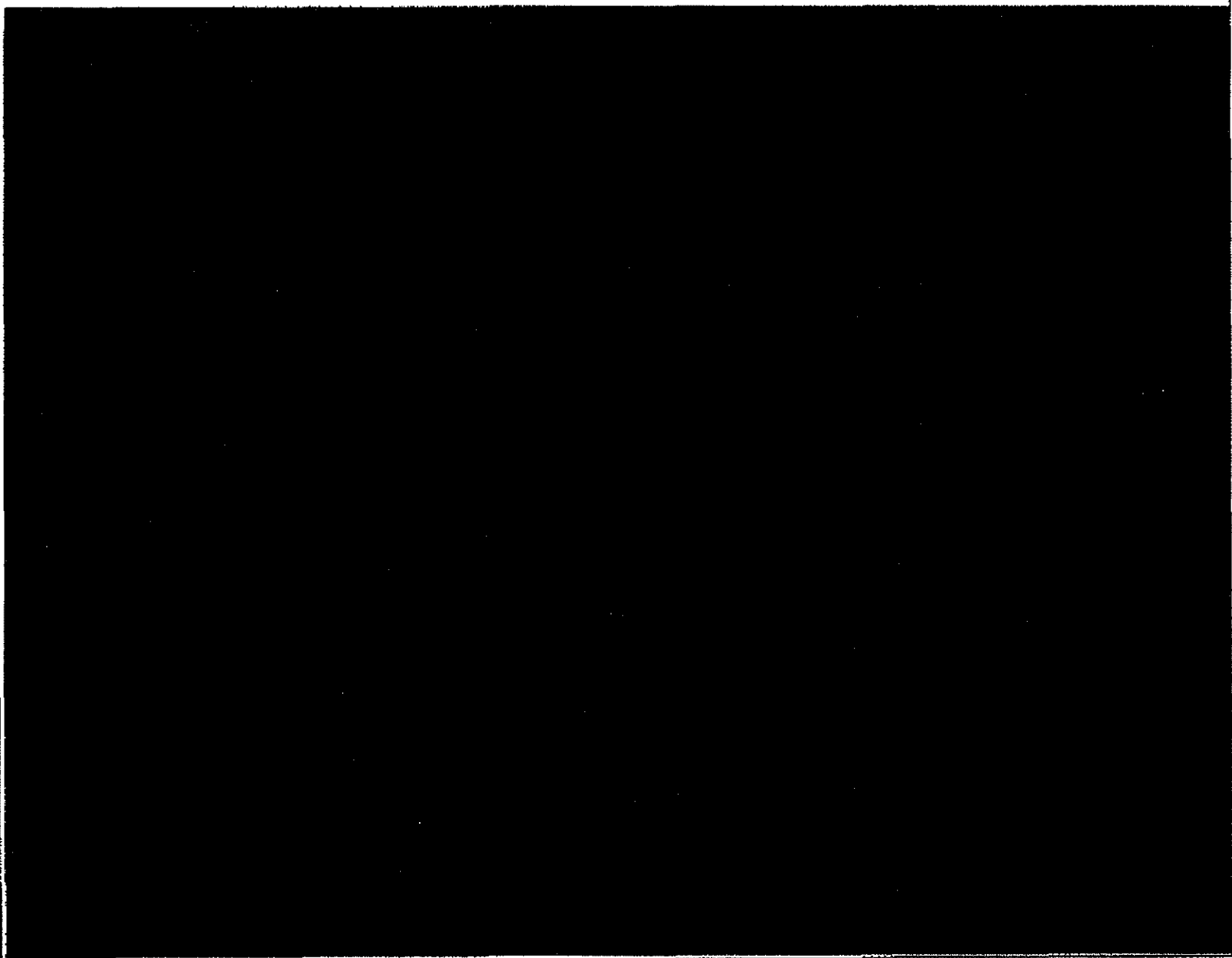
A. Okay. All right.

Q. -- that might help clear up the dates.

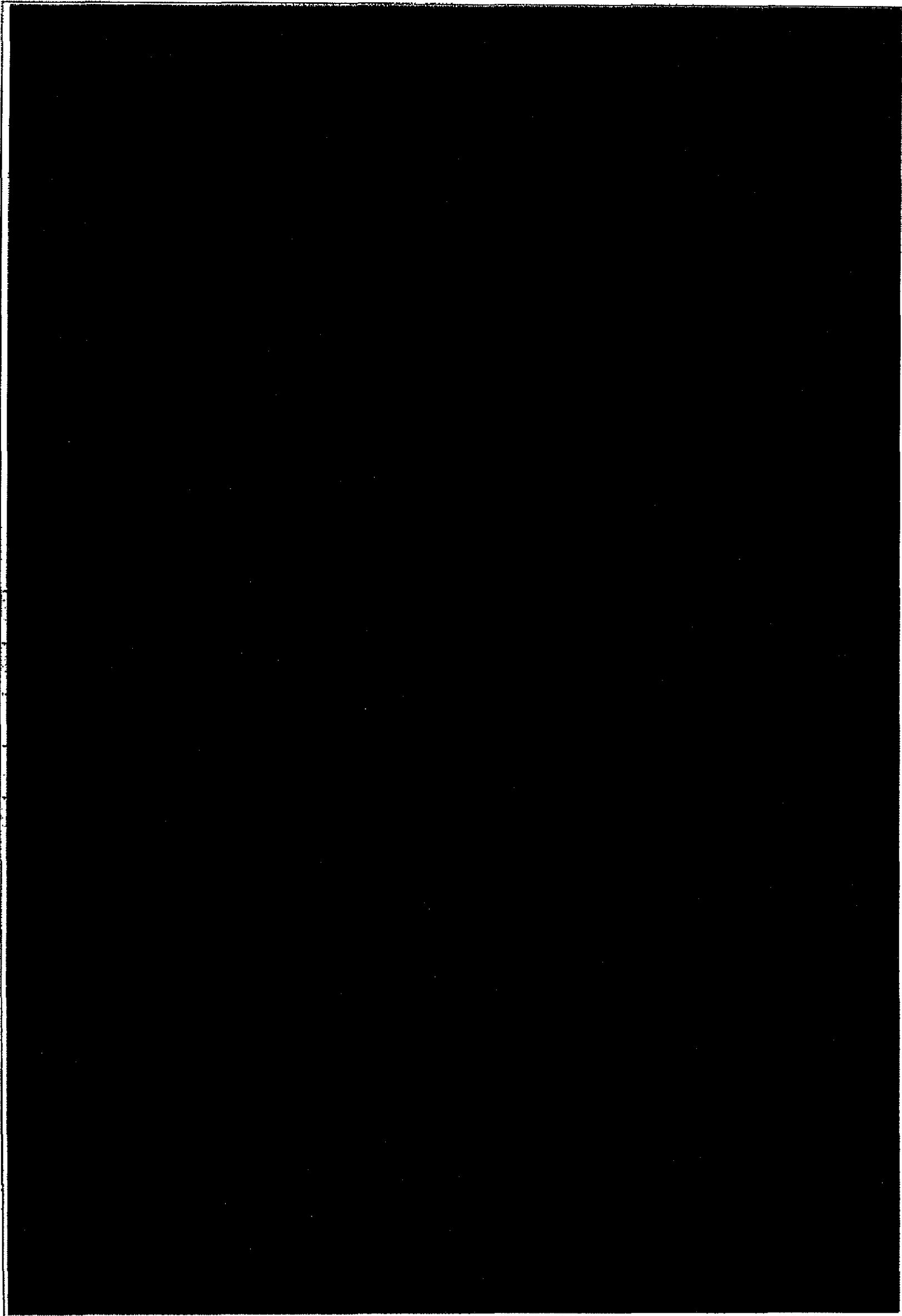
A. Yes.

Q. I'm just trying to right now figure out what
your memory is.

A. Yes.



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Exhibit C

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18 Q. One thing you'll find out, I'm sure, because
19 you've -- well, you'll recall. You've been in lots of
20 depositions. But one thing is I certainly don't want
21 you to guess or, you know -- and to the extent, you
22 know, you're -- what I'm really looking for is your
23 best memory of something.

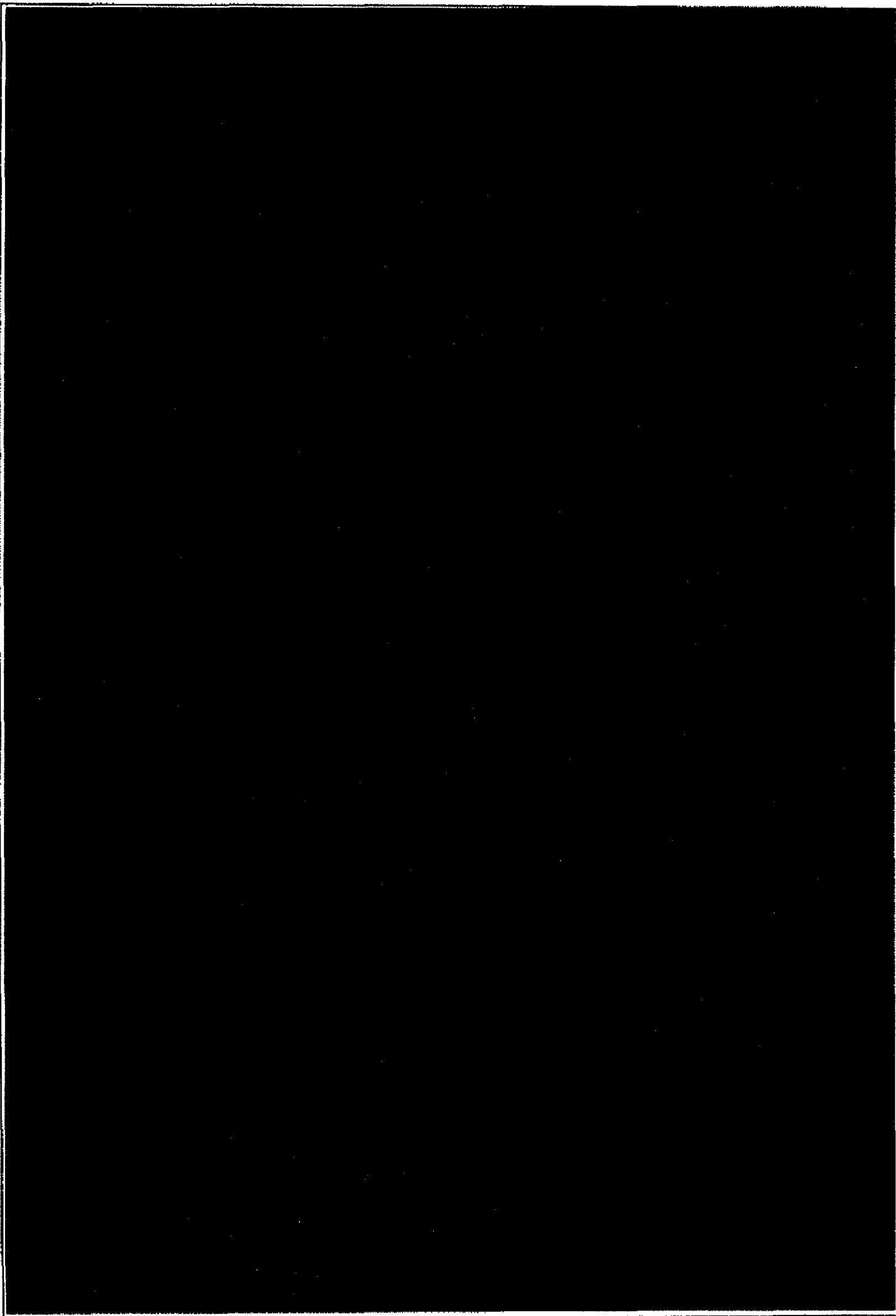
24 A. I'm trying to give it to you.

25 Q. I understand. And just in terms of what your



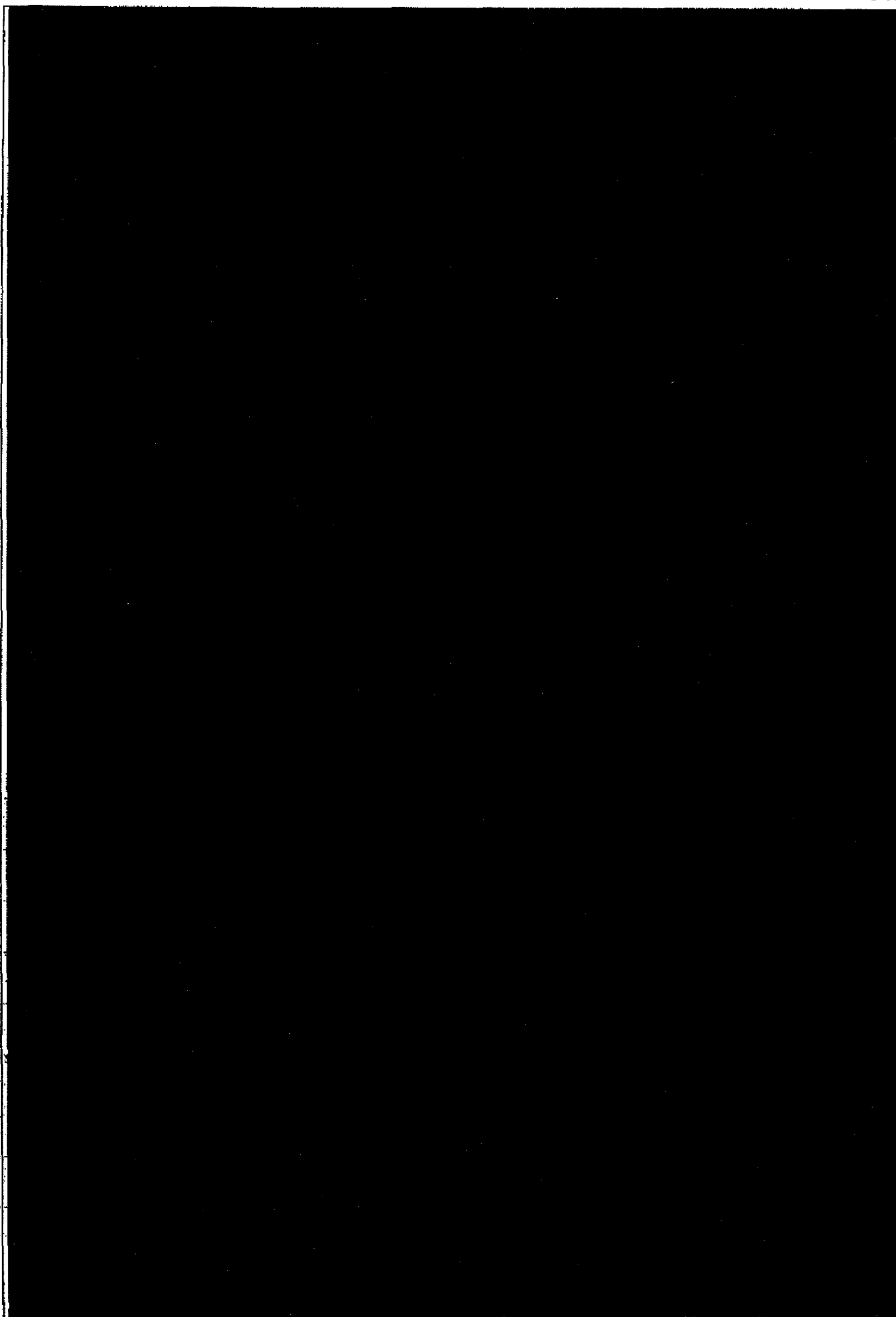
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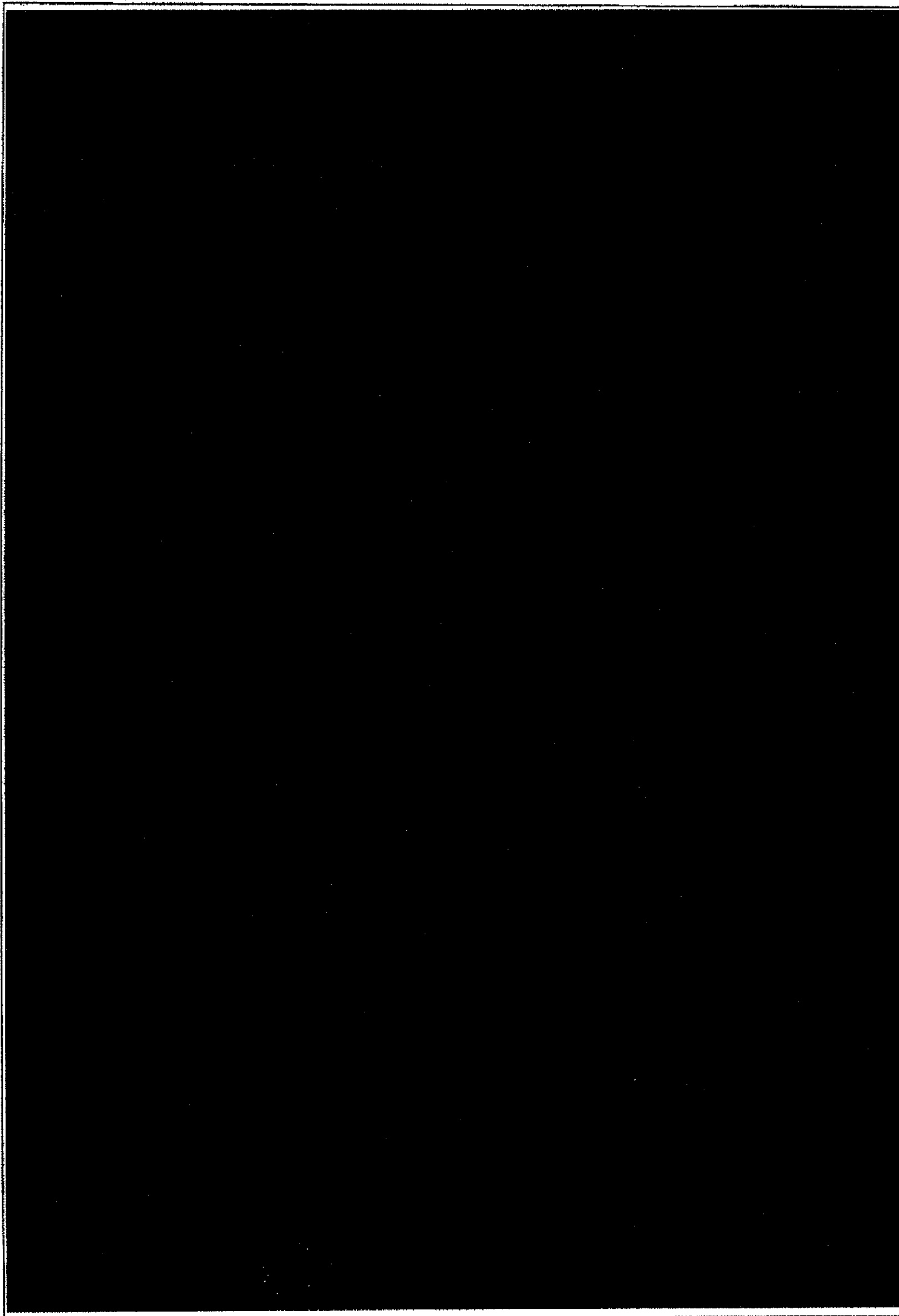
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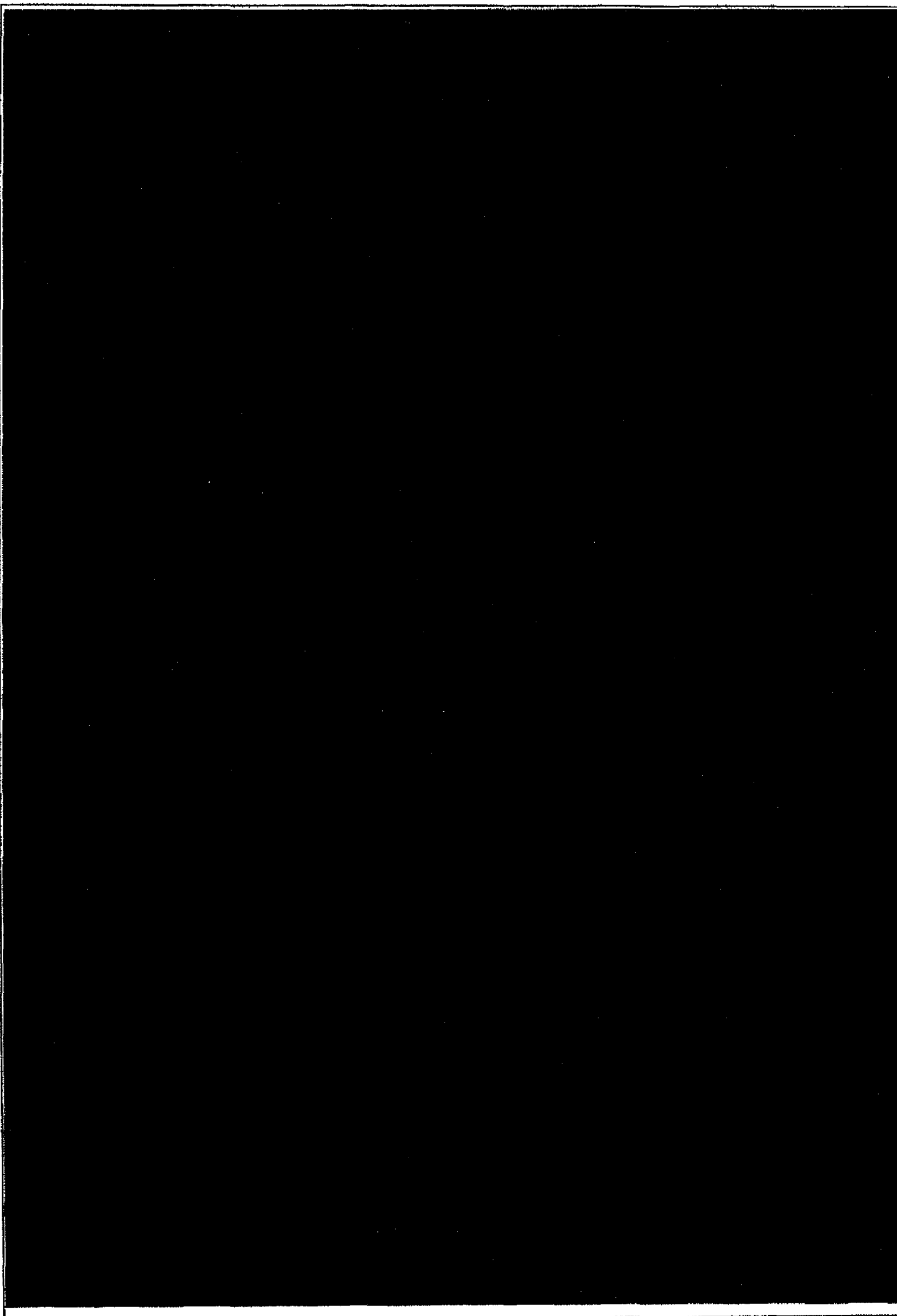
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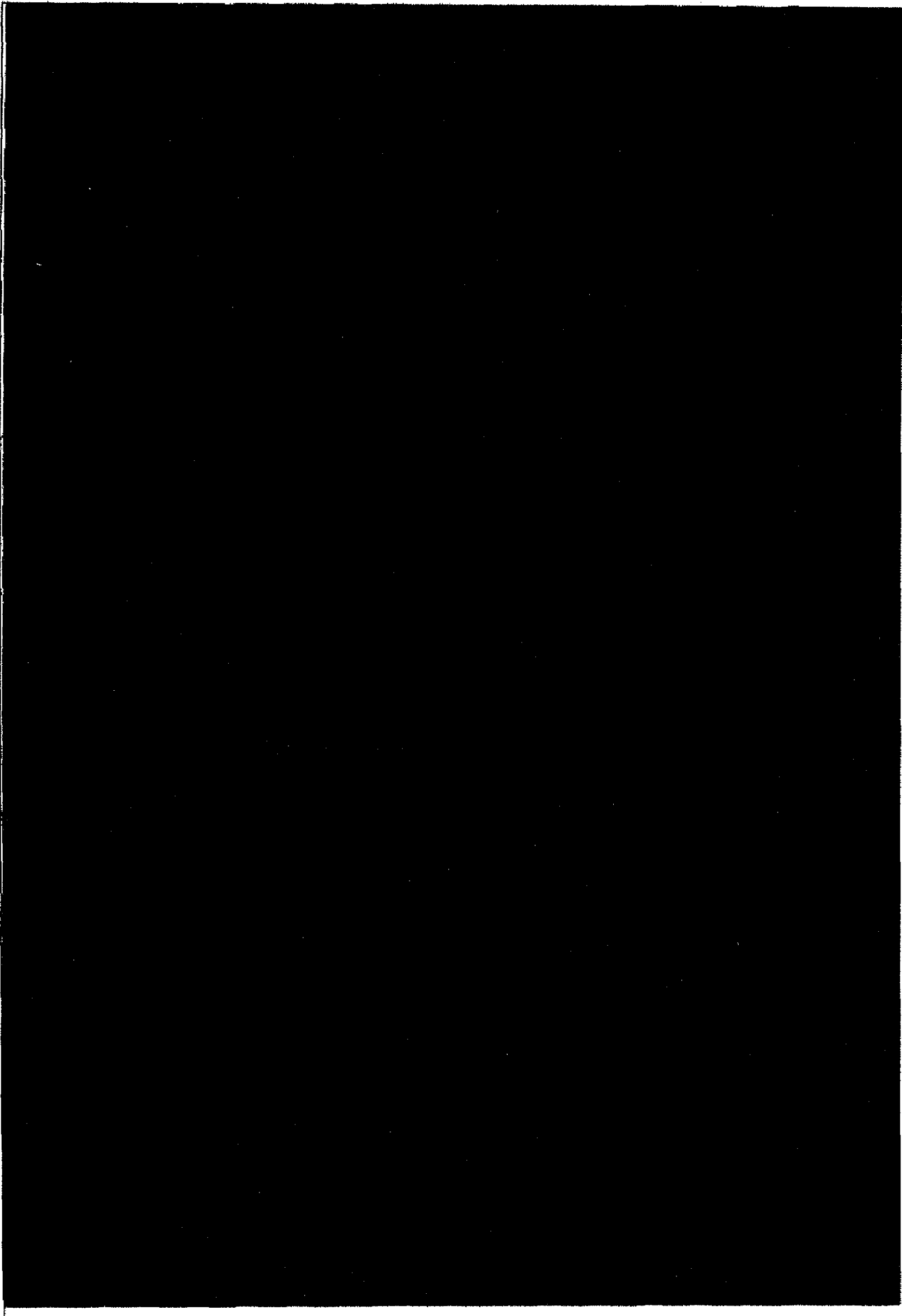
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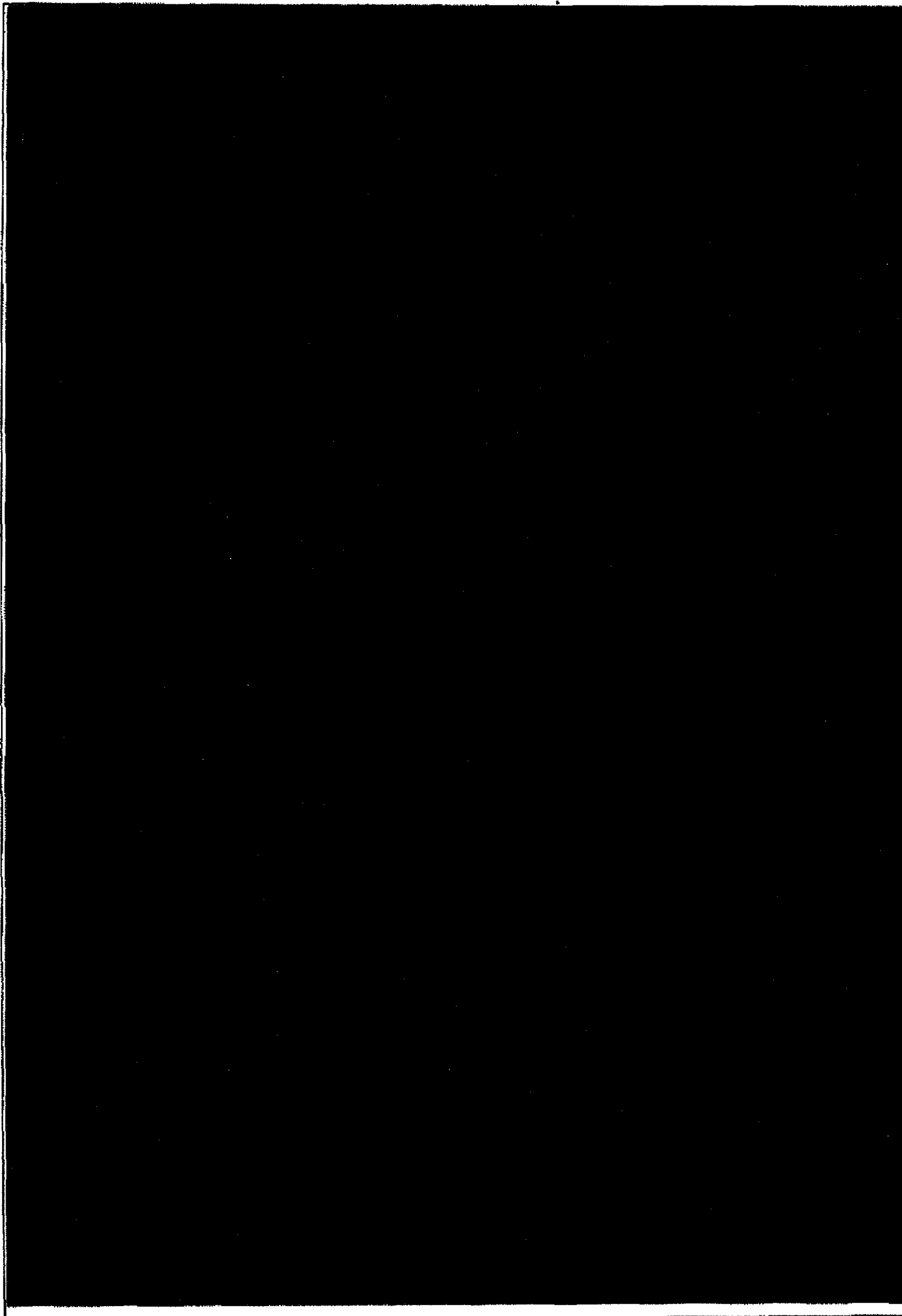
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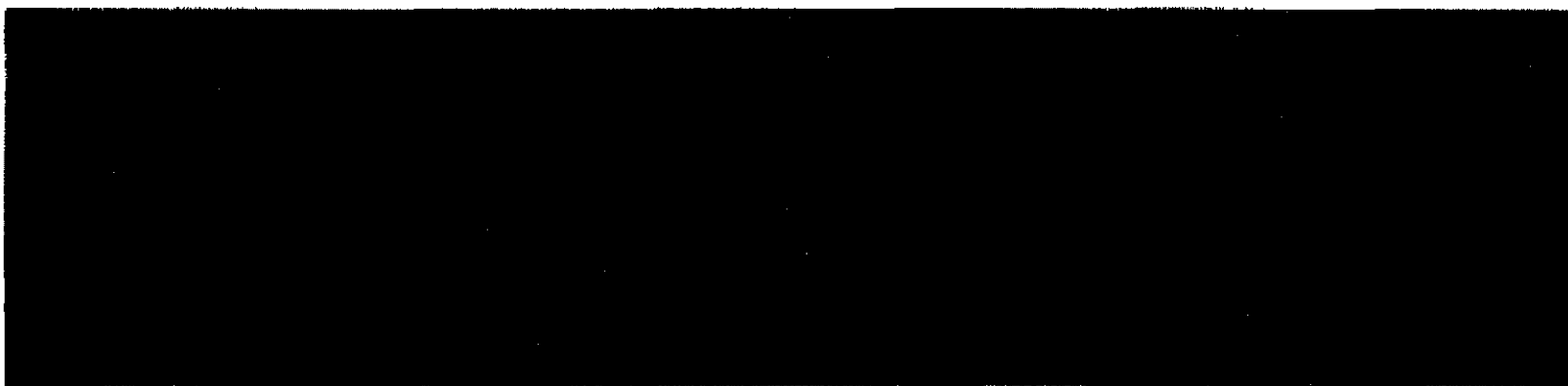
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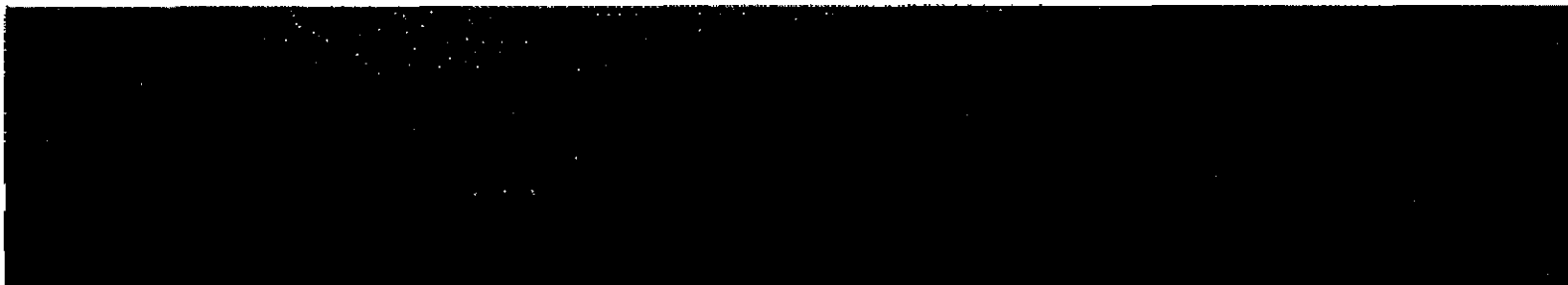


MR. PISANELLI: Objection. Vague, assumes facts, mischaracterizes the witness's testimony.

A. You're going to have to refresh what conversation I had with Elaine.



MR. PISANELLI: Objection. Mischaracterizes the witness's testimony.



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MR. PISANELLI: Objection. Lack of
foundation.

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A. I honestly don't remember.

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MR. PISANELLI: Objection. Lack of

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foundation.

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A. I don't recall.

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MR. PISANELLI: How are we doing on time on

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the tape?

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THE VIDEOGRAPHER: I have 45 minutes left on

22

this tape. They're two-hour tapes. So we've gone an

23

hour twelve already.

24

MR. ZELLER: Do you want to take a break?

25

MR. PISANELLI: Whenever you're ready is fine



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1 by me.

2 MR. ZELLER: Yeah, we can take a break now.

3 THE VIDEOGRAPHER: This marks the end of
4 media two. We're off the record at 2:55 p.m.

5 (A recess was taken.)

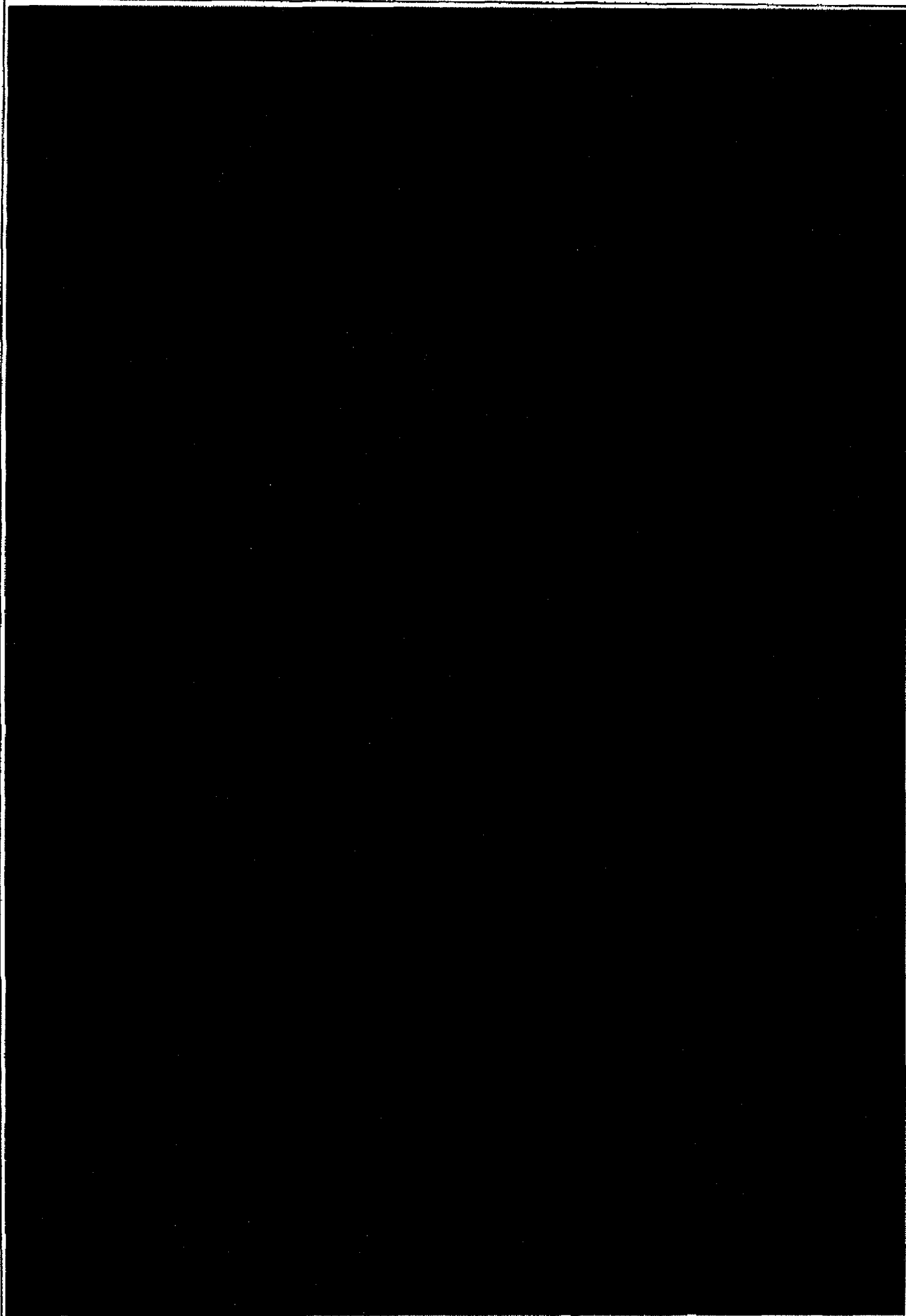
6 THE VIDEOGRAPHER: Back on the record. The
7 time is 3:34 p.m., and this marks the beginning of
8 Media No. 3 in the continuing video-recorded deposition
9 of D. Boone Wayson, Volume 2.

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10 MR. PISANELLI: Objection. Lack of
11 foundation.

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24 MR. PISANELLI: Objection. Mischaracterizes
25 the witness's testimony.



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MR. PISANELLI: Objection. Lack of
foundation.

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MR. PISANELLI: Objection. Vague, lack of
foundation.

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A. You lost me again.

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MR. PISANELLI: Objection. Vague.

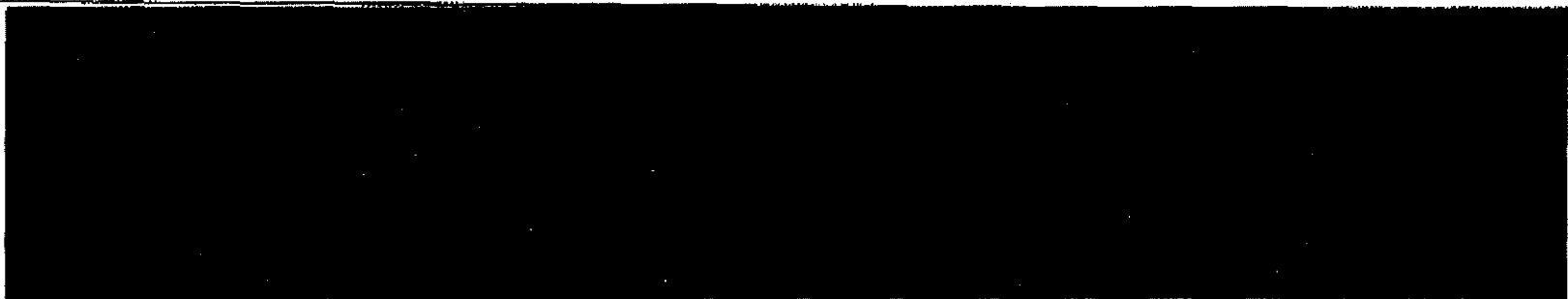
MR. PISANELLI: Objection. Lack of
foundation.



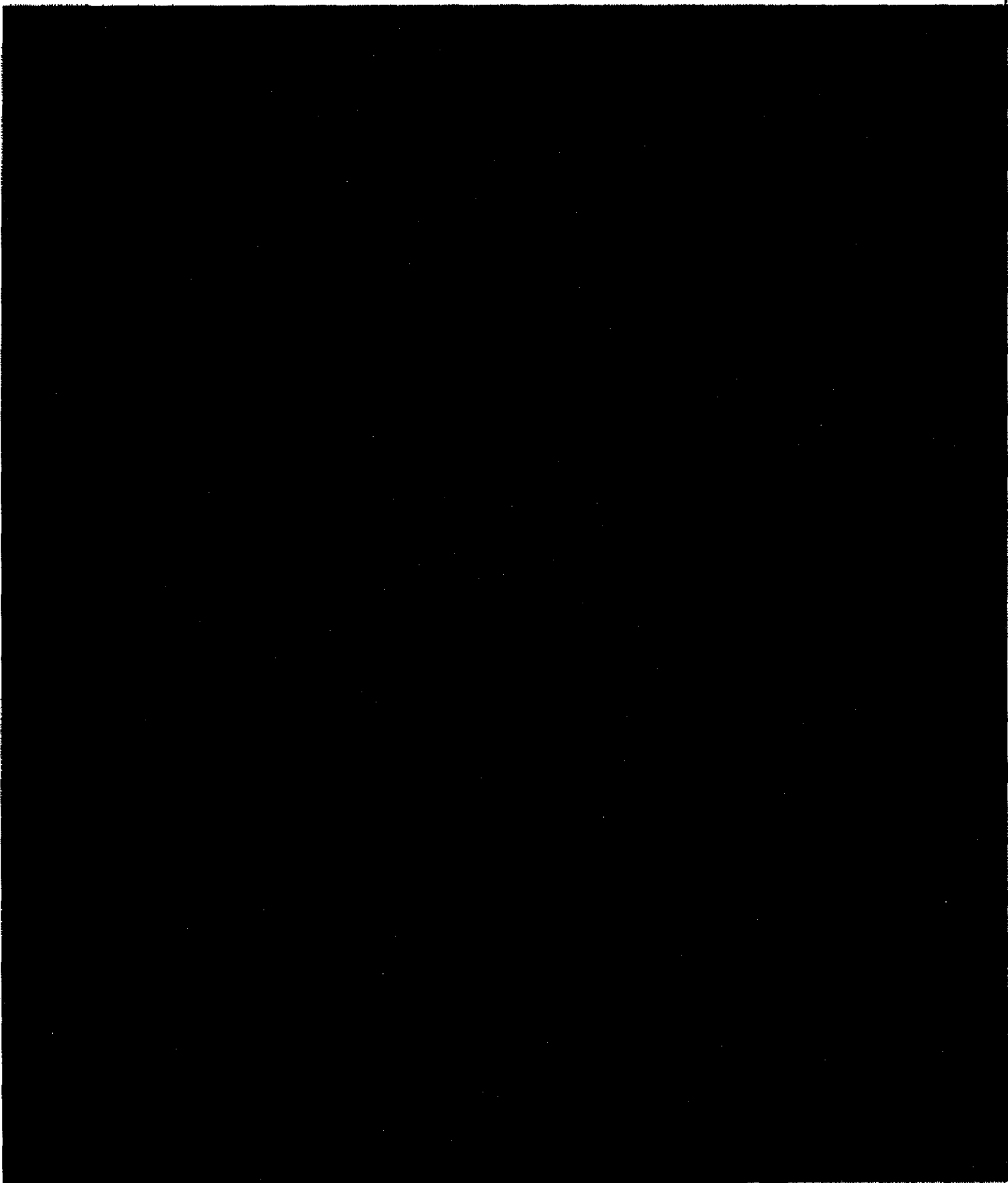
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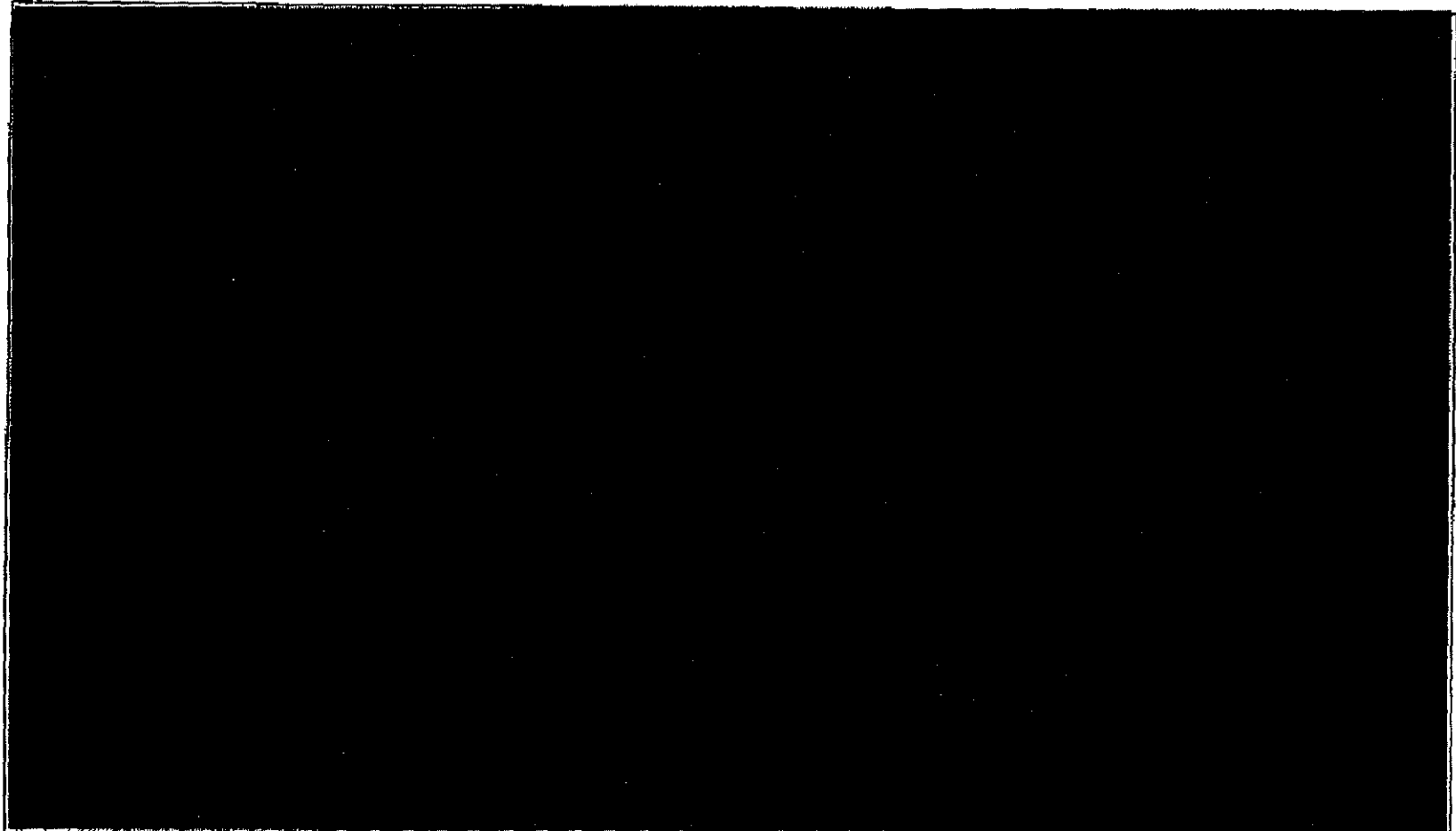


MR. PISANELLI: Objection. Lack of
foundation, calls for speculation.

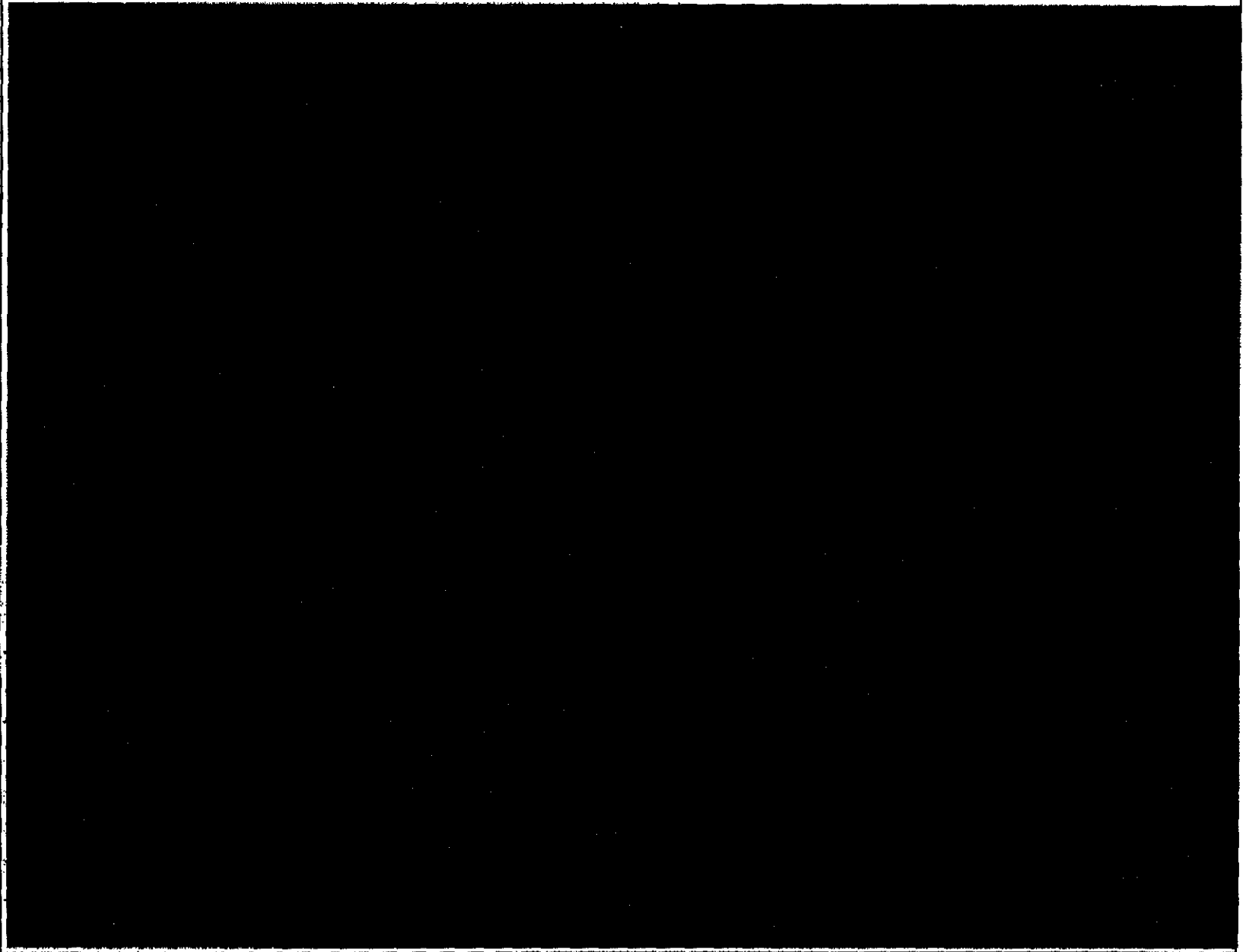


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MR. PISANELLI: Objection. Lack of
foundation.



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[REDACTED]

MR. PISANELLI: Objection. Assumes facts not
in evidence.

[REDACTED]

MR. PISANELLI: Objection. Calls for
speculation.

[REDACTED]

CERTIFICATE OF REPORTER

STATE OF NEVADA)
) ss:
COUNTY OF CLARK)

I, Judith Payne Kelly, a Certified Court
Reporter licensed by the State of Nevada, do hereby
certify that I reported the deposition of D. BOONE
WAYSON, commencing on Wednesday, February 17, 2016, at
10:10 a.m.

Prior to being deposed, the witness was duly
sworn by me to testify to the truth; and I thereafter
transcribed my said shorthand notes into typewriting
and that the typewritten transcript is a complete, true
and accurate transcription of my said shorthand notes;
and that a review of the transcript was requested.

I further certify that I am not a relative,
employee or independent contractor of counsel or of any
party involved in the proceeding, nor a person
financially interested in the proceeding, nor do I have
any other relationship that may reasonably cause my
impartiality to be questioned.

IN WITNESS WHEREOF, I have set my hand in my
office in the County of Clark, State of Nevada, this
22nd day of February, 2016.

Judith Payne Kelly

Judith Payne Kelly, RMR, CCR No. 539



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EXHIBIT D

**SUBMITTED
UNDER
SEAL
PURSUANT
TO
CONFIDENTIALITY
ORDER**

EXHIBIT E

PISANELLI BICE

March 7, 2016

DEBRA L. SPINELLI
ATTORNEY AT LAW
DLS@PISANELLIBICE.COM

VIA E-MAIL

Michael Zeller, Esq.
Michael Fazio, Esq.
QUINN EMANUEL URQUHART &
SULLIVAN, LLP
865 South Figueroa Street, 10th Floor
Los Angeles, CA 90017
michaelzeller@quinnemanuel.com
michaelfazio@quinnemanuel.com

William R. Urga, Esq.
David J. Malley, Esq.
JOLLEY URG WIRTH
WOODBURY & STANDISH
3800 Howard Hughes Parkway, 16th Floor
Las Vegas, NV 89169
WRU@juwww.com
DJM@juwww.com

RE: *Wynn Resorts, Limited v. Kazuo Okada, et al.*
Eighth Judicial District Court, Case No. A-13-678658-B

Dear Counsel:

This correspondence responds to a letter dated February 4, 2016 from Michael Zeller regarding Director Alvin V. Shoemaker's document production in response to Elaine P. Wynn's requests for production related to her claims against Stephen A. Wynn.

First, Ms. Wynn accuses Mr. Shoemaker of failing to produce board materials he received via Director's Desk. This may stem from a misunderstanding. Director's Desk is a software application through which board members can electronically access their board materials prior to the board meeting. The documents cannot be downloaded onto one's devices but rather are "downloaded" within the application. The board materials only remain accessible through the application or a certain period of time.

Upon receipt of your letter, we confirmed the access and viewing process with Mr. Shoemaker. Although Mr. Shoemaker testified to having "downloaded" documents

Exhibit E

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Counsel for Elaine P. Wynn

March 7, 2016

Page 2

from Director's Desk to his iPad for review, there was no "download" as you seem to interpret that word. Rather, he accessed Director's Desk to view the board materials via his iPad, but the materials were maintained and viewed with the application.

Thus, and in response to your question, we do not intend to conduct any further inquiry or search on this topic. In any case, the board materials are created and maintained by the Company and, if responsive to a request, have been produced in this action.

Second, your letter states that Mr. Shoemaker "acknowledged that he used his personal e-mail address to correspond with his fellow Wynn Resorts board members regarding company business," but ignores what Mr. Shoemaker actually said in response to a question posed by counsel for the Okada Parties: He said that if he does email, he does so "rarely" (Vol. II, 288:22-24). He did not say that he did so related to subjects relevant to this case. Indeed, he testified that he has "[z]ero documents of anything," does not take notes, accesses board materials through Director's desk, and does not maintain any files. (Vol. II, 287.) His testimony demonstrates that substantive communications that he has with fellow board members regarding board matters is done via oral communications.

Nevertheless, and in light of Mr. Shoemaker's testimony that he does, though rarely, email related to Wynn Resorts, an email search will be conducted and any responsive, non-privileged documents not otherwise in the possession of the Company will be produced. We anticipate being in touch shortly to discuss the estimated timeline for such a search and production. In the interim, please feel free to contact me with any questions or concerns.

Sincerely,

Debra L. Spinelli

DLS/

cc: *via email only*

Campbell & Williams

Buckley Sandler LLP

Holland & Hart

Exhibit E

EXHIBIT F

PISANELLI BICE

March 7, 2016

DEBRA L. SPINELLI
ATTORNEY AT LAW
DLS@PISANELLIBICE.COM

VIA E-MAIL

Michael Zeller, Esq.
Michael Fazio, Esq.
QUINN EMANUEL URQUHART &
SULLIVAN, LLP
865 South Figueroa Street, 10th Floor
Los Angeles, CA 90017
michaelzeller@quinnemanuel.com
michaelfazio@quinnemanuel.com

William R. Urga, Esq.
David J. Malley, Esq.
JOLLEY URGAL WIRTH
WOODBURY & STANDISH
3800 Howard Hughes Parkway, 16th Floor
Las Vegas, NV 89169
WRU@juwww.com
DJM@juwww.com

RE: *Wynn Resorts, Limited v. Kazuo Okada, et al.*
Eighth Judicial District Court, Case No. A-13-678658-B

Dear Counsel:

This correspondence responds to letters dated February 16, 2016 from Michael Zeller, and February 23, 2016 from Michael Fazio, both on the topic of Governor Miller's testimony and the preservation, search, and production of responsive documents in his possession. Your letters are replete with false and inflammatory accusations that appear to be based on a lack of familiarity with the case, and perhaps also a desire to "shock and awe." Regardless, and consistent with our duty to meet and confer pursuant to EDCR 2.34, each is addressed in turn.

I. Accusations of a Deficient Production

First, you misrepresent that "Governor Miller [REDACTED]
[REDACTED]" and that he also "testified that [REDACTED]
[REDACTED] He did neither. Rather, Governor Miller

Exhibit F

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RA0177



Counsel for Elaine P. Wynn
March 7, 2016
Page 2

testified that [REDACTED] (Vol. I, 99:13-15; Vol. III, 612-613.) Governor Miller's documents have been reviewed and produced in the ordinary course from the outset of this case, and his production in response to specific requests served by Ms. Wynn and the Okada Parties have been supplemented as the case proceeded, as required under the Nevada Rules of Civil Procedure.

While your letters complain about not having [REDACTED] your letter mischaracterizes Governor Miller's testimony on the subject. He specifically testified that [REDACTED] He also testified that [REDACTED] Governor Miller had already produced [REDACTED] In fact, [REDACTED]

Similarly, you falsely accuse Governor Miller of [REDACTED] This is a nonsensical argument. Mr. Quinn only knew [REDACTED] (Exhibit 17.) Governor Miller produced [REDACTED] This should have been done before bombastically accusing Governor Miller of "failing" to produce documents.

On this same issue of a purported failure to produce, via your February 23, 2016 letter, you claim to need more time to examine Governor Miller on documents that "failed" to produce prior to his deposition, and you attempt to identify such documents. This second letter again reflects a lack of knowledge of the case and the documents.

Governor Miller produced responsive documents on and before December 31, 2015, and they were produced with WYNN Bates numbers. The metadata required by the ESI Protocol identifies [REDACTED] In a January discussion with your predecessor counsel and for *their* convenience, the Wynn Parties agreed to re-produce documents for which [REDACTED] with MILLER-specific Bates numbers. This reproduction was done via the February 18, 2016 supplemental disclosure, as straightforwardly explained in the body of the disclosure. Also in the body of that disclosure, the Wynn Parties stated clearly that the production index (attached as exhibit A to the disclosure) provided the necessary information to cross-reference the two sets of Bates numbers.



Counsel for Elaine P. Wynn
March 7, 2016
Page 3

So, the complaint in your February 23 letter that the document bearing Bates number WYNN-MILLER0000003-4 had been received only after Governor Miller's deposition is wrong. As the exhibit A to the 25th supplemental disclosure clearly states, this document had been previously produced with Bates number WYNN00029479-80. Ironically, this very document [REDACTED] Ms. Wynn is entitled to no further time with this witness to discuss this document.

Similarly, your February 23, 2016 letter accuses Governor Miller of "failing" to produce prior to his deposition the document bearing Bates number WYNN-MILLER0000017. This is also a false accusation. The document was produced prior to Governor Miller's deposition as WYNN00029493, as exhibit A to the 25th supplemental disclosure clearly provides. Your failure to review the production in advance of the examination does not entitle Ms. Wynn to more time with this witness.

Governor Miller supplemented his prior productions with 9 new documents on February 18, only 4 of which [REDACTED] Out of those 4, one was a [REDACTED] (WYNN00000237-238), and one was [REDACTED] [REDACTED] (WYNN-MILLER00000233-235). There are only two documents [REDACTED] that Governor Miller produced after the deposition that [REDACTED] The first document, WYNN-MILLER00000430 and 431, discusses [REDACTED] [REDACTED] Thus, there is only one [REDACTED] that Ms. Wynn's counsel did not possess prior to Governor Miller's deposition that [REDACTED] WYNN-MILLER0000432-35.¹ And, even then, the witness was examined, thoroughly so, on the substance and subject matter.

Further to your hollow accusation of a deficient production by Governor Miller, the fact that Governor Miller's production did not include [REDACTED] [REDACTED], does not mean that the search of Governor Miller's documents was deficient. It is obvious that time was not taken to review the ESI Protocol

¹ [REDACTED]
We are making efforts to provide better copies, as requested.

² We do not recall seeing [REDACTED] in Ms. Wynn's production but rather than accuse her or her counsel of not preserving or producing relevant documents, one has an obligation to determine whether any responsive documents would have existed.



Counsel for Elaine P. Wynn
March 7, 2016
Page 4

and the metadata required with every production before Governor Miller's deposition or your letter. But, both [REDACTED] are document custodians whose documents were reviewed for responsiveness. Your letter and accusations ignore Governor Miller's testimony that [REDACTED] (Vol. III, 613:21-22.) In short, the testimony revealed that [REDACTED]

II. Accusation of Non-Preservation

You next accuse Governor Miller of destroying documents in violation of a duty to preserve. This accusation is a result of your lack of knowledge of [REDACTED] and the file in this case.

First, [REDACTED]

Governor Miller explained this during examination by Mr. Quinn when he testified that [REDACTED]

[REDACTED] In sum, [REDACTED] and, if responsive to a request, have been produced in this action.

On this point, under the governing ESI Protocol, the parties agreed to de-duplicate across custodians. Therefore, for documents in the possession of the Company *and* one or more non-executive directors (i.e., those without a Wynn Resorts email address), the Company produced the documents. This was discussed with the Okada Parties and your predecessor counsel. If the directors had any documents not otherwise in the possession of the Company (including any documents with added notes, writings, post-its, etc.), those records would be produced by the individual directors. This was to alleviate the production of duplicate documents since the purpose of discovery, and we assume the intent of Ms. Wynn and her counsel, is to discover all information and documents; not to harass and unnecessarily raise fees and costs. If Ms. Wynn has an intent and purpose different than all of the other parties to this action, she must clearly state whatever that may be.



Counsel for Elaine P. Wynn

March 7, 2016

Page 5

In conversations with your co-counsel, the Wynn Parties confirmed that the Company would produce additional documents responsive to Ms. Wynn's recent requests by February 18, 2015. The Wynn Parties gave Ms. Wynn the opportunity to not go forward with Governor Miller's (and certain other directors') depositions until after the February 18 production. Ms. Wynn declined through your co-counsel, and this was after your firm entered this case. There was no need for Ms. Wynn to depose Governor Miller on the third of three days set aside for his deposition. In fact, the depositions of various directors that both the Okada Parties and Ms. Wynn seek to depose have been broken up. But, for whatever strategic purpose, your team went ahead knowing that the Company's production was forthcoming, without having filed a motion to compel, and fully aware that your team was not up to speed or prepared to take that deposition.

III. Accusation of Not Answering Questions at the Deposition

Next in the list of accusations, you accuse Governor Miller of refusing to answer certain questions. The lengthy exchanges and responses in the transcript pages you reference demonstrate that Governor Miller answered Mr. Quinn's questions but Mr. Quinn did not like the answers. Questions were repeated multiple times and in different ways to try to elicit different answers. Deposition tactics aside (and this includes making rude and patronizing gestures outside the purview of the video camera), Mr. Quinn did receive answers to his badgering repeated questions.

IV. Accusations of Improper Privilege Assertions

Finally, you argue that Mr. Quinn was unable to get answers to questions based on "unfounded privilege assertions" and instructions not to answer. This is also untrue. Mr. Quinn repeatedly and deliberately sought [REDACTED] For instance, Mr. Quinn asked Governor Miller, [REDACTED] (Vol. III, 458:19, 21.) He went on to ask a more pointed question: [REDACTED]

[REDACTED] (Vol. III, 459:10-12.) Governor Miller was [REDACTED]

The subsequent colloquy among counsel was designed to provide Mr. Quinn with the information he would be entitled to in the form of a privilege log (e.g., that [REDACTED]

[REDACTED]. But Mr. Quinn persisted, despite claiming that [REDACTED]

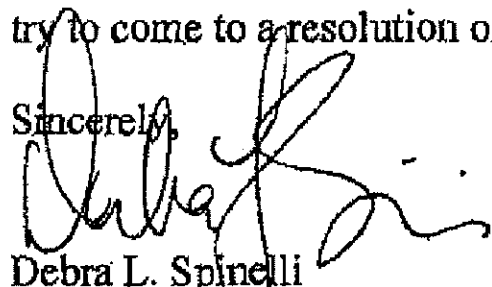
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Counsel for Elaine P. Wynn
March 7, 2016
Page 6

[REDACTED] (Vol. III; 459:21-23.) Of course, Mr. Quinn was trying to invade the privilege and the witness was properly instructed not to answer. Ms. Wynn is not entitled to privileged communications.

As noted throughout, we disagree that Governor Miller's preservation and production of documents was deficient, that Governor Miller refused to answer questions poses to him at the deposition, and that Governor Miller was improperly instructed not to answer questions that sought to invade the attorney-client privilege. We understand that your client is eager to have you meet and confer on these issues and therefore will make ourselves available try to come to a resolution on some, if not all, issues described above.

Sincerely,


Debra L. Spinelli
DLS/

cc: *via email only*
Campbell & Williams
Buckley Sandler LLP
Holland & Hart

Exhibit F

RA0182

EXHIBIT G

In the Matter Of:
WYNN RESORTS vs. OKADA, et al.

A-12-656710-B

ALVIN V. SHOEMAKER

January 29, 2016

Volume II



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DISTRICT COURT	
CLARK COUNTY, NEVADA	
WYNN RESORTS, LIMITED, a Nevada corporation,)
Plaintiff,)
vs.) Case No.
) A-12-656710-B
) Dept. No. XI
KAZUO OKADA, an individual;)
ARUZE USA, INC., a Nevada)
corporation; and UNIVERSAL)
ENTERTAINMENT CORP., a)
Japanese corporation,)
Defendants.)
AND ALL RELATED CLAIMS	

VIDEOTAPED DEPOSITION OF ALVIN V. SHOEMAKER

VOLUME II

(Pages 235 to 389)

Taken at the Law Offices of:
Holland & Hart
9555 Hillwood Drive, Second Floor
Las Vegas, Nevada 89134

Friday, January 29, 2016

9:09 a.m.

Reported By: Gale Salerno, RMR, CCR No. 542

Job No. J0285991



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1 APPEARANCES:

2 For Wynn Resorts, Limited; Linda Chen; Russell
3 Goldsmith; Ray. R. Irani; Robert J. Miller; John A.
4 Moran; Marc D. Schorr; Alvin V. Shoemaker; Kimmarrise
Sinatra; D. Boone Wayson, and Allan Zeman:

5 JAMES J. PISANELLI, ESQUIRE
6 DEBRA L. SPINELLI, ESQUIRE
7 Pisanelli Bice, PLLC
8 400 South Seventh Street, Suite 300
Las Vegas, Nevada 89101
(702) 214-2100
jjp@pisanellibice.com
dls@pisanellibice.com

9 ** and **

10 ROBERT SHAPIRO, ESQUIRE
11 Glaser Weil Fink Howard Avchen & Shapiro
12 10250 Constellation Boulevard, 19th Floor
Los Angeles, California 90067
(310) 553-3000

13
14 For Aruze USA, Inc.:

15 BRYCE K. KUNIMOTO, ESQUIRE
16 Holland & Hart
17 9555 Hillwood Drive, Second Floor
Las Vegas, Nevada 89134
(702) 669-4600
bkunimoto@hollandhart.com

18 ** and **

19 BRADLEY A. MARCUS, ESQUIRE
20 ADAM MILLER, ESQUIRE
21 Buckley Sandler, LLP
22 1250 24th Street NW, Suite 700
Washington, D.C. 20037
(202) 349-8021
bmarcus@buckleysandler.com
23 amiller@buckleysandler.com

24

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1 For Elaine Wynn:

2 MICHAEL T. ZELLER, ESQUIRE
3 Quinn Emanuel
4 865 South Figueroa Street, 10th Floor
5 Los Angeles, California 90017
6 (213) 443-3000
7 michaelzeller@quinnemanuel.com

8 For Stephen A. Wynn:

9 DONALD J. CAMPBELL, ESQUIRE
10 J. COLBY WILLIAMS, ESQUIRE
11 Campbell & Williams
12 700 South Seventh Street
13 Las Vegas, Nevada 89101
14 (702) 382-5222
15 djc@campbellandwilliams.com
16 jcw@campbellandwilliams.com

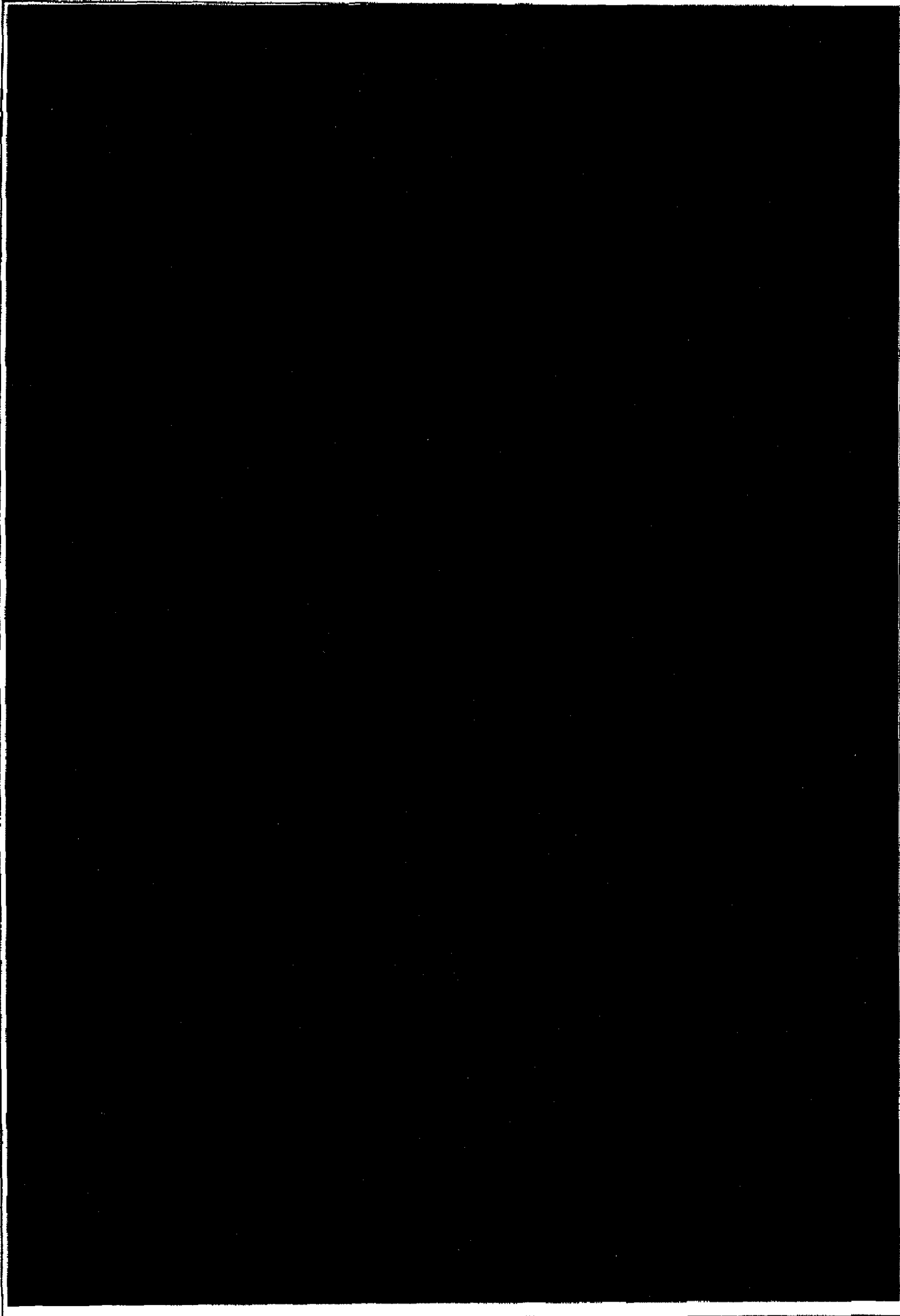
17 Also Present:

18 MR. ANDREW JONES, Videographer
19 KIM SINATRA, ESQUIRE, Wynn Resorts

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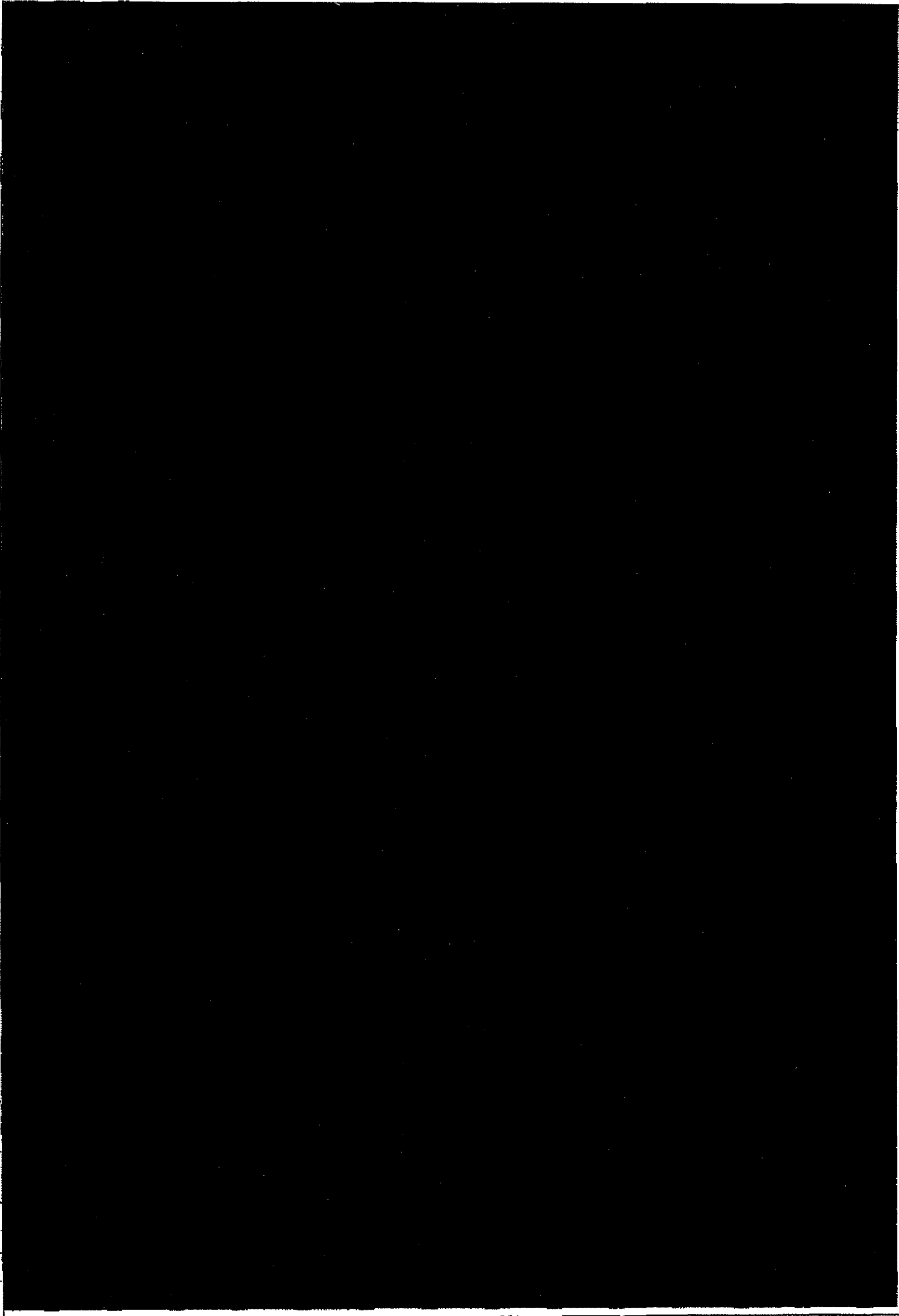
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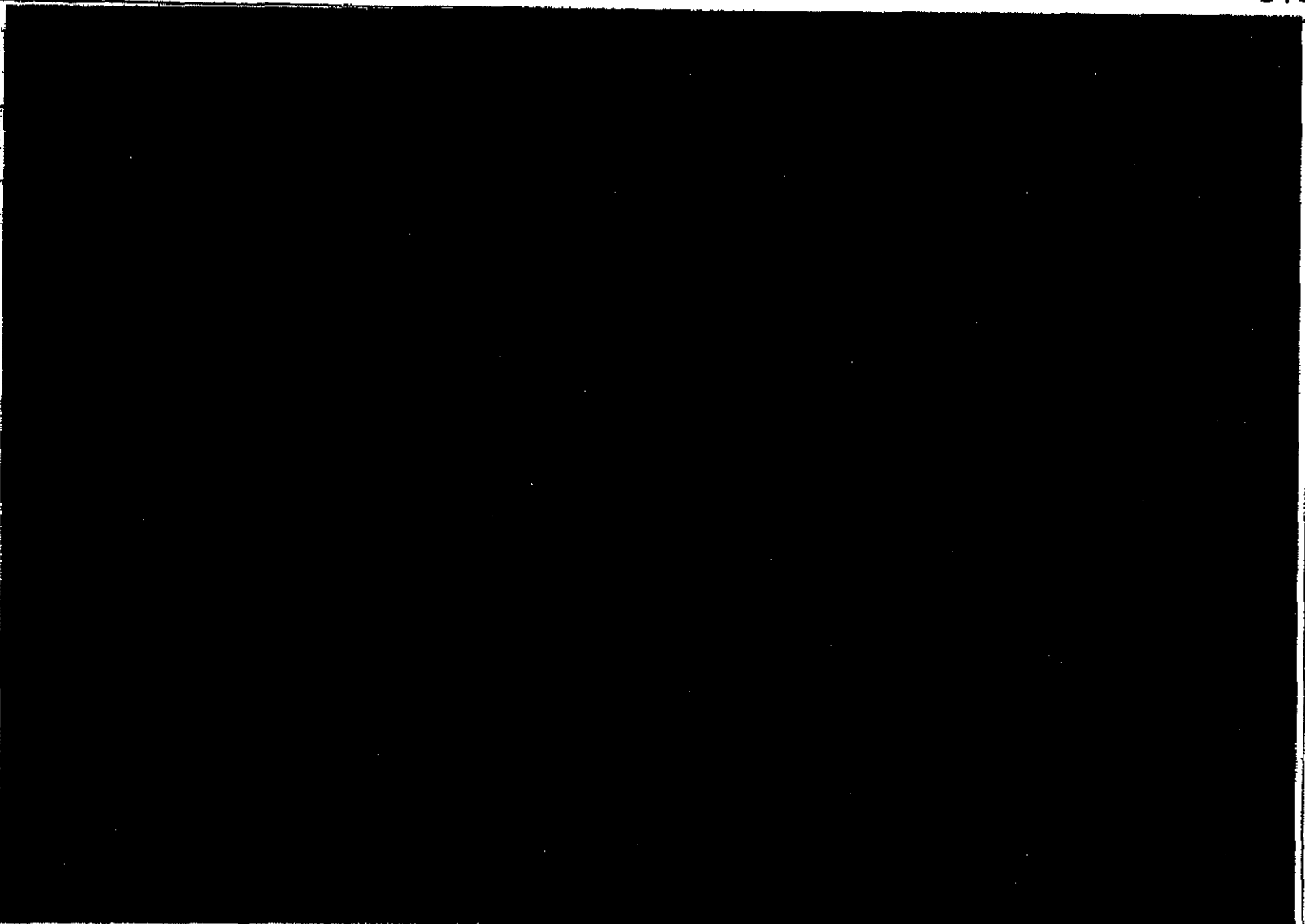
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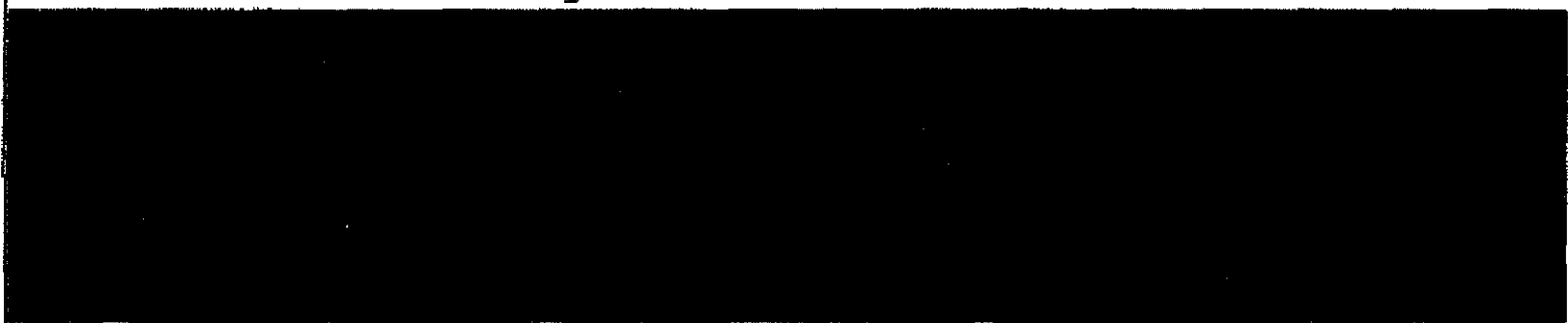
BY MR. ZELLER:

Q. You mentioned during this time period in November of 2014 that you, Mr. Virtue and Bob Miller were on the compensation committee.

A. I'm not sure whether Boone Wayson was on there as well. You would have to check the record. It's a public record. I don't know.

Q. At some point, Boone Wayson was on the compensation committee?

A. That's my recollection.



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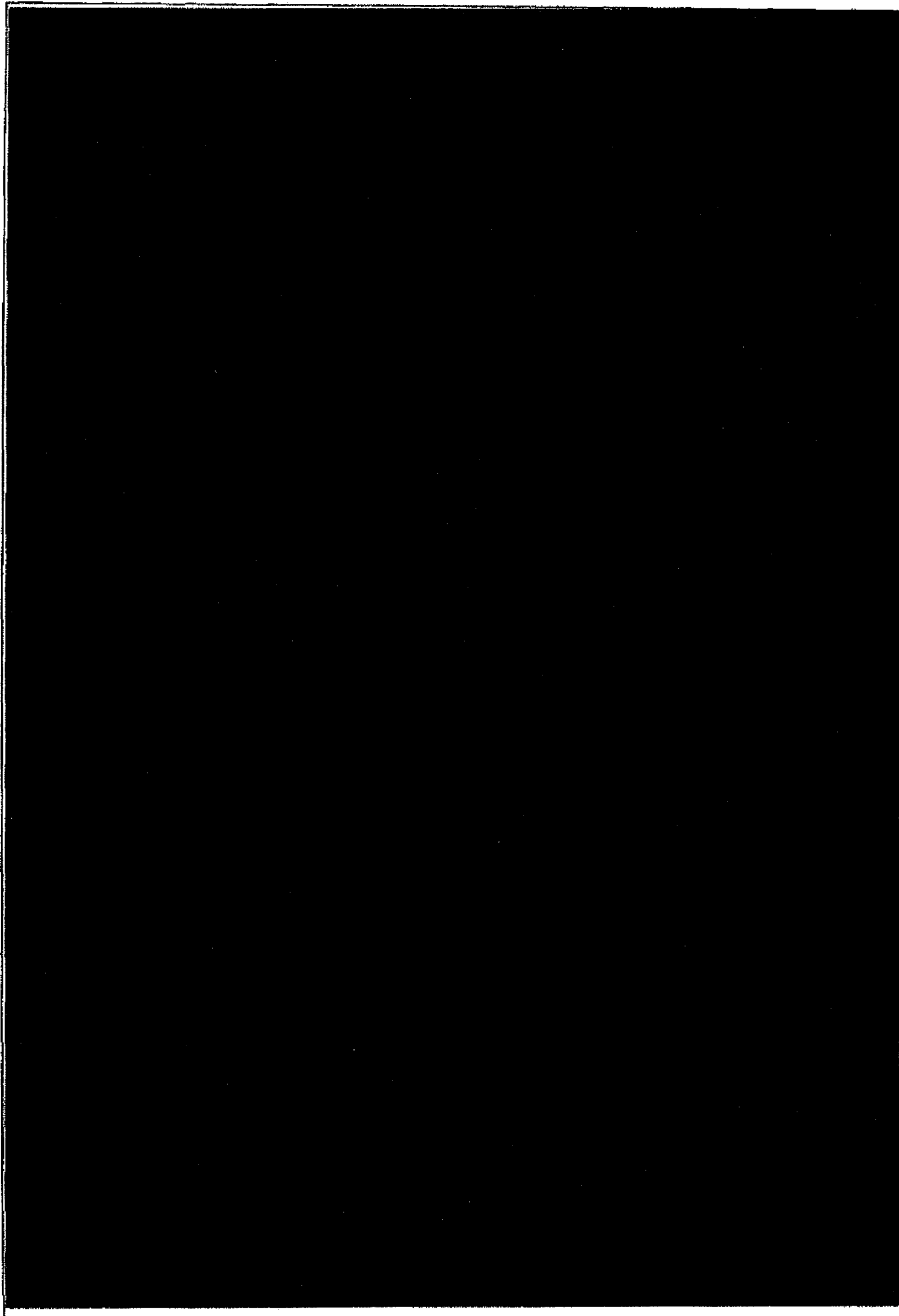


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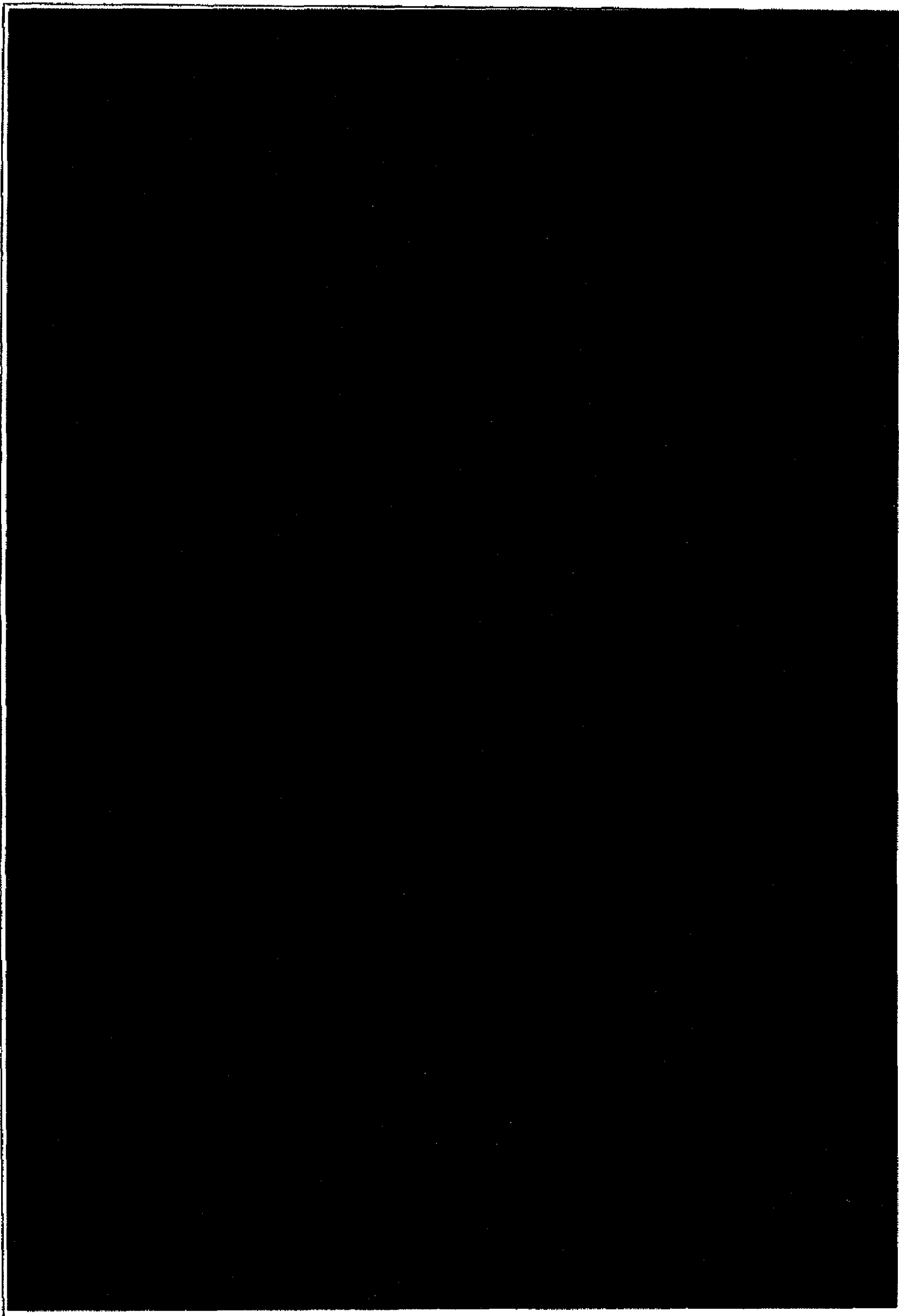


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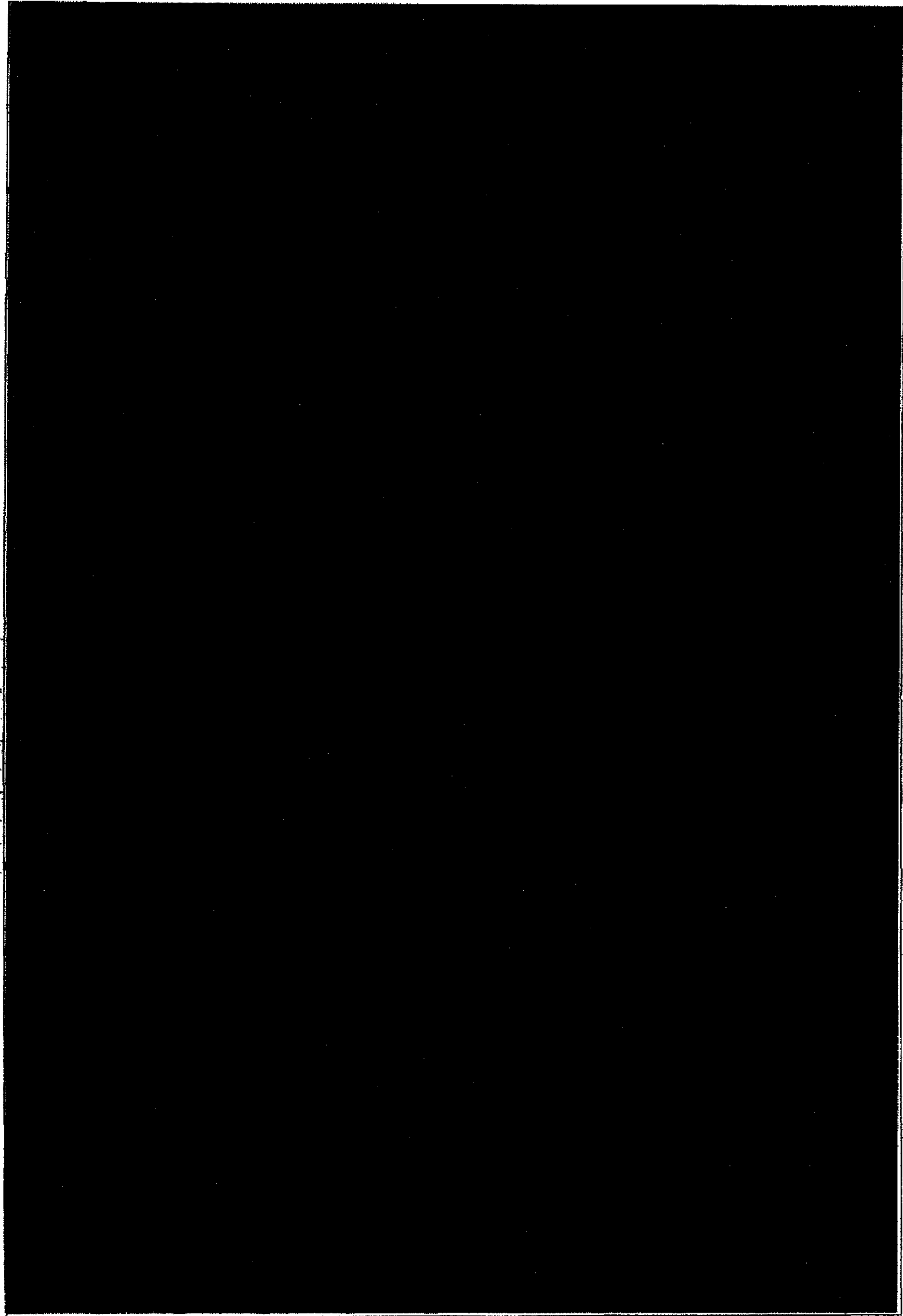


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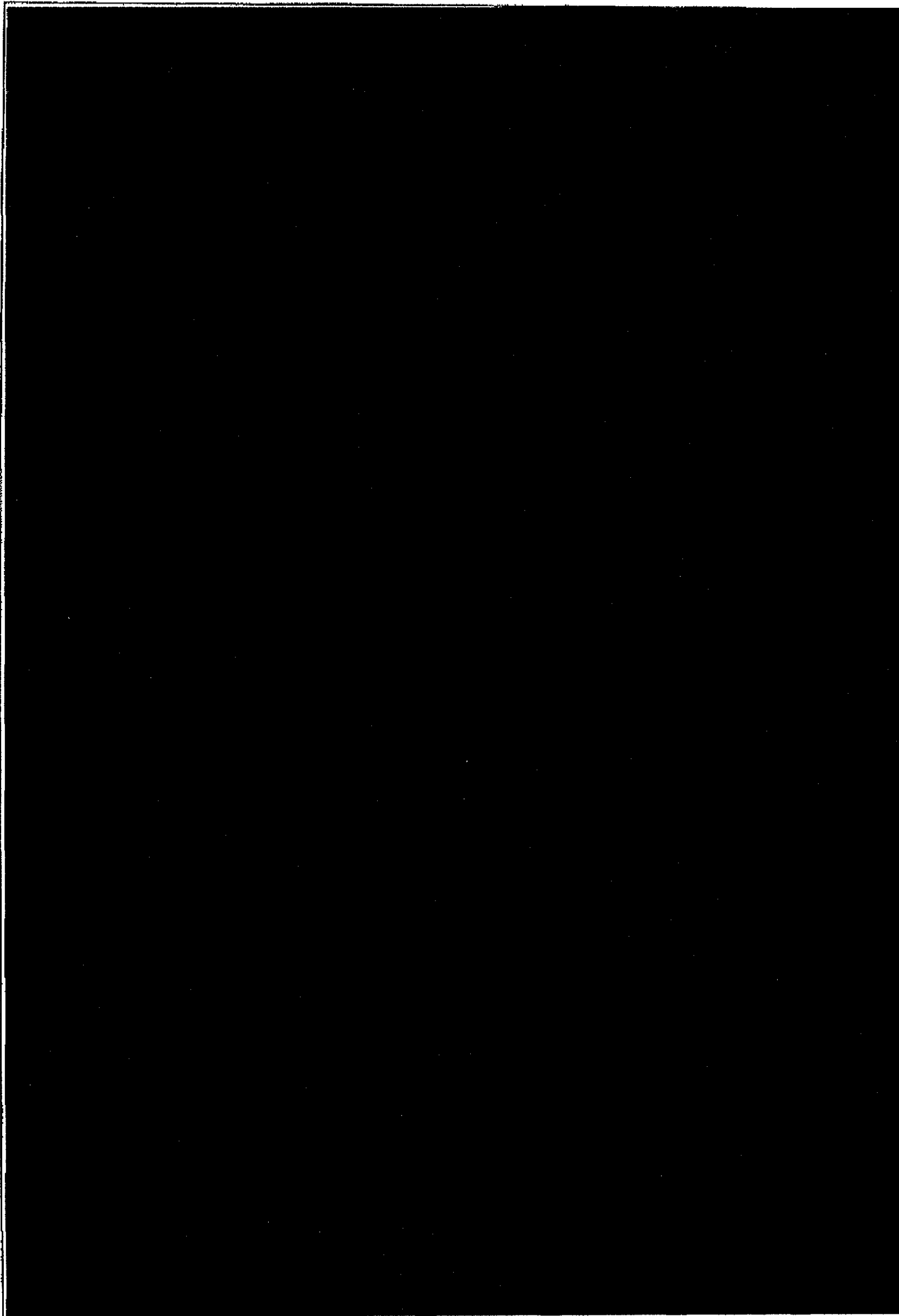


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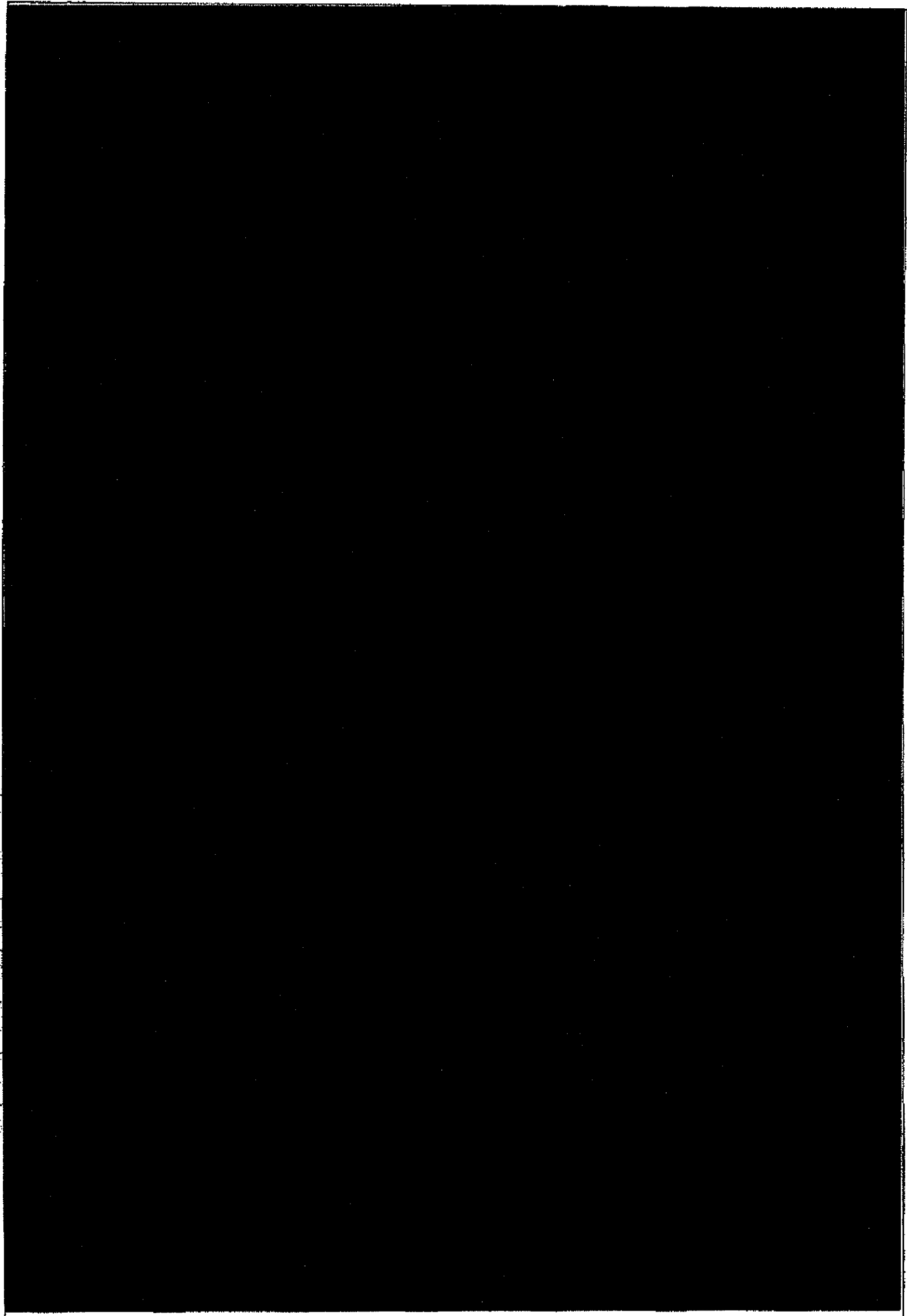


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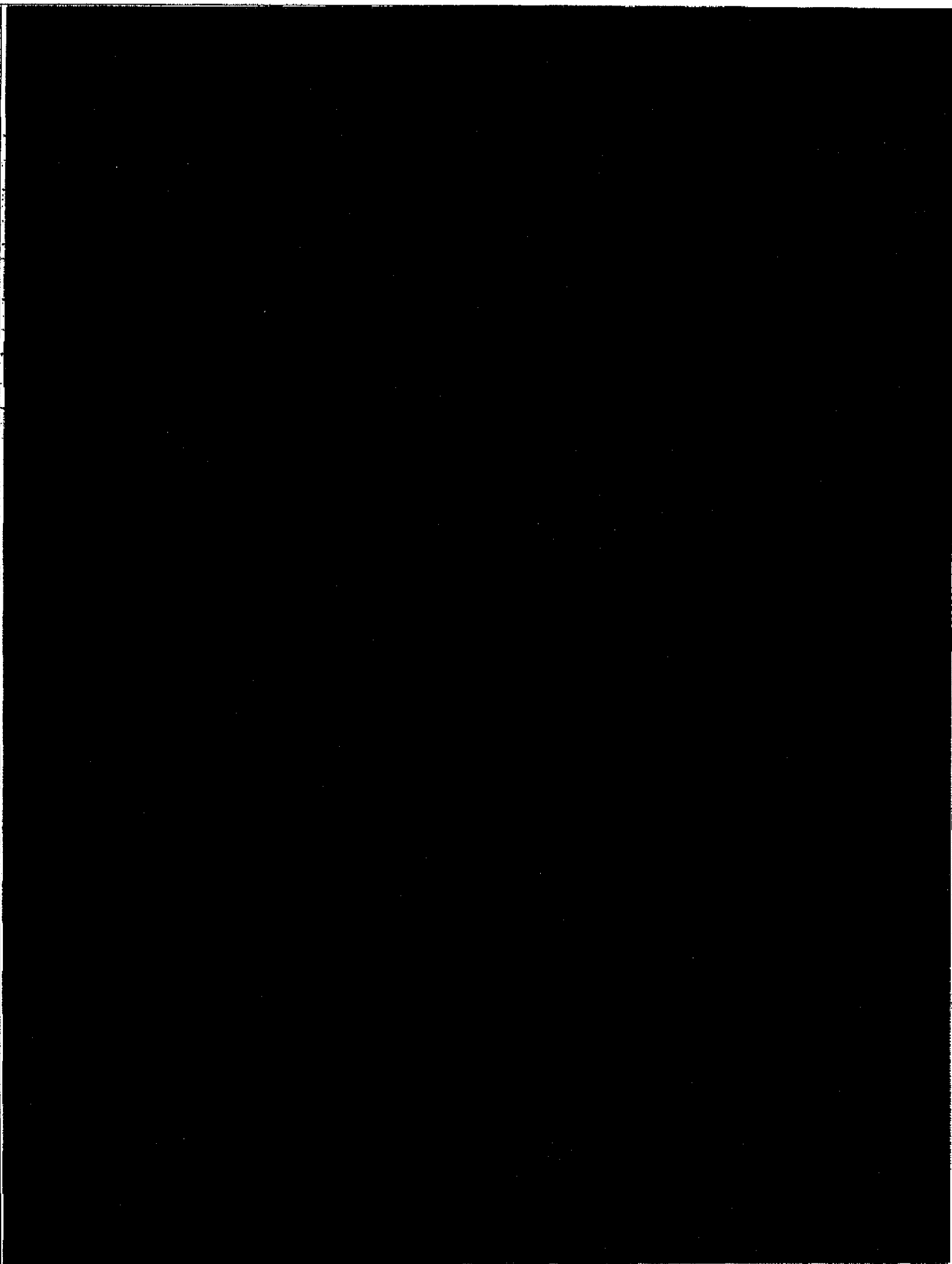
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MR. ZELLER: We need to change tapes.
Let's please take a break.

1 THE VIDEOGRAPHER: We are off the record at
2 11:50.

3 (A recess was taken from 11:50 a.m.
4 to 1:00 p.m.)

5 (Mr. Campbell left the room.)

6 THE VIDEOGRAPHER: We are back on the
7 record at 1:00 o'clock.

8 BY MR. ZELLER:

9 Q. Did you ever have an understanding as a
10 director that Steve Wynn was obligated to endorse
11 Elaine Wynn to the board of directors?

12 A. Well, he had an obligation to vote for her.
13 I don't know what you mean by endorse, but yeah, he
14 had an obligation to vote for her.

15 Q. And what was your understanding of that
16 based on?

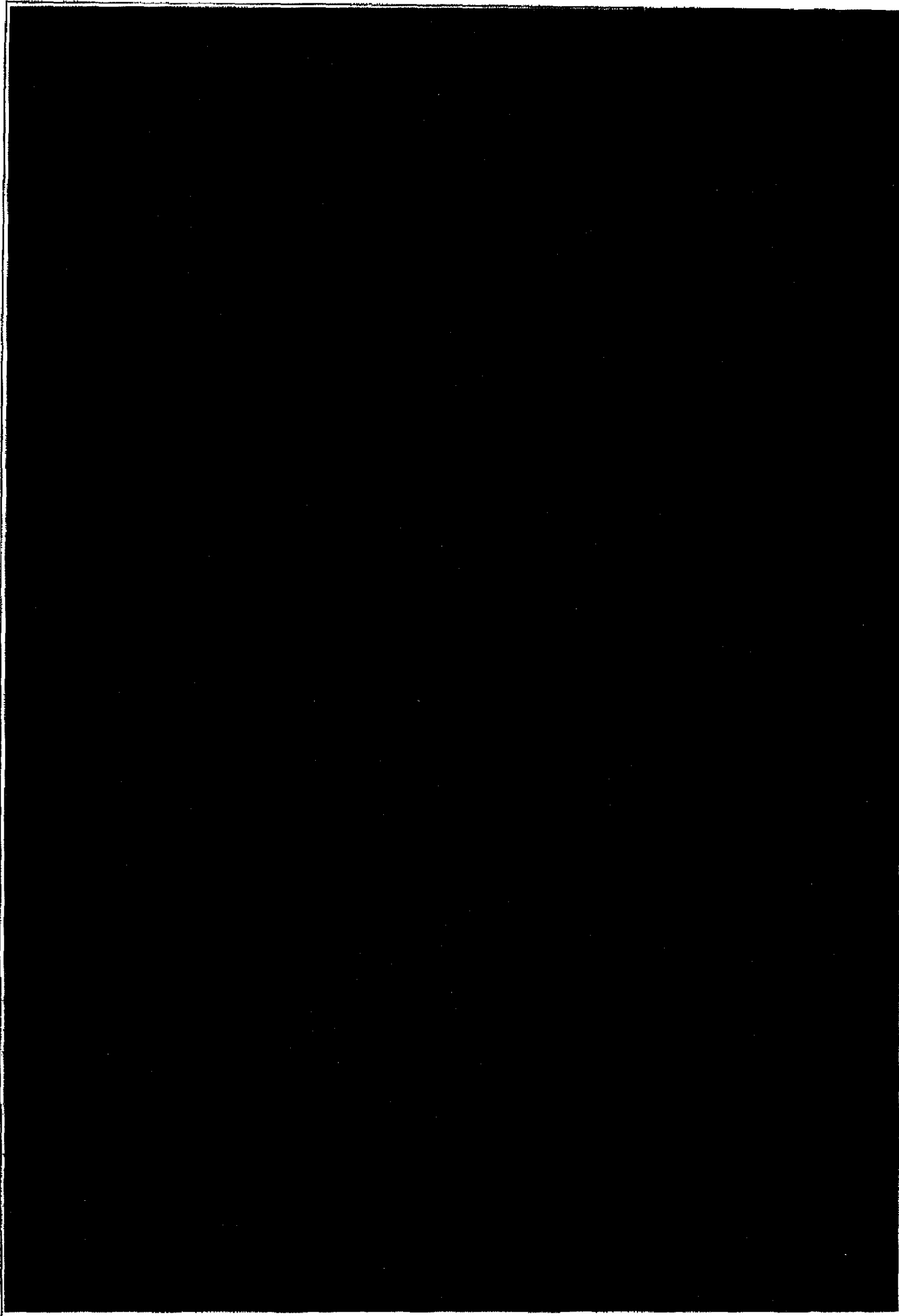
17 A. It was somewhere along the description of
18 what was involved, and it came out in the process
19 that under the agreement he had an obligation to vote
20 for her.

21 Q. And you're referring to the stockholders
22 agreement?

23 A. Yes, that's right.

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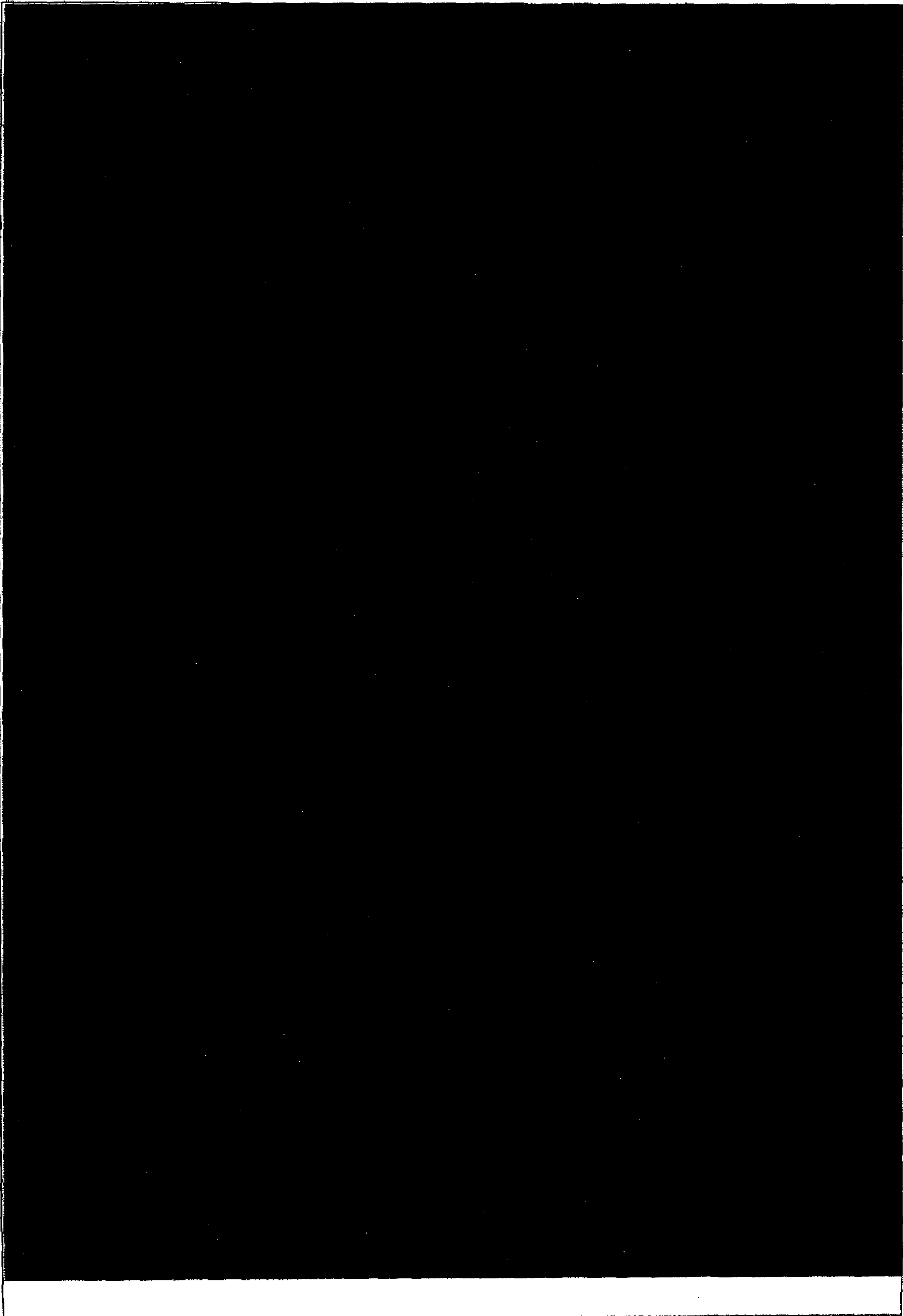


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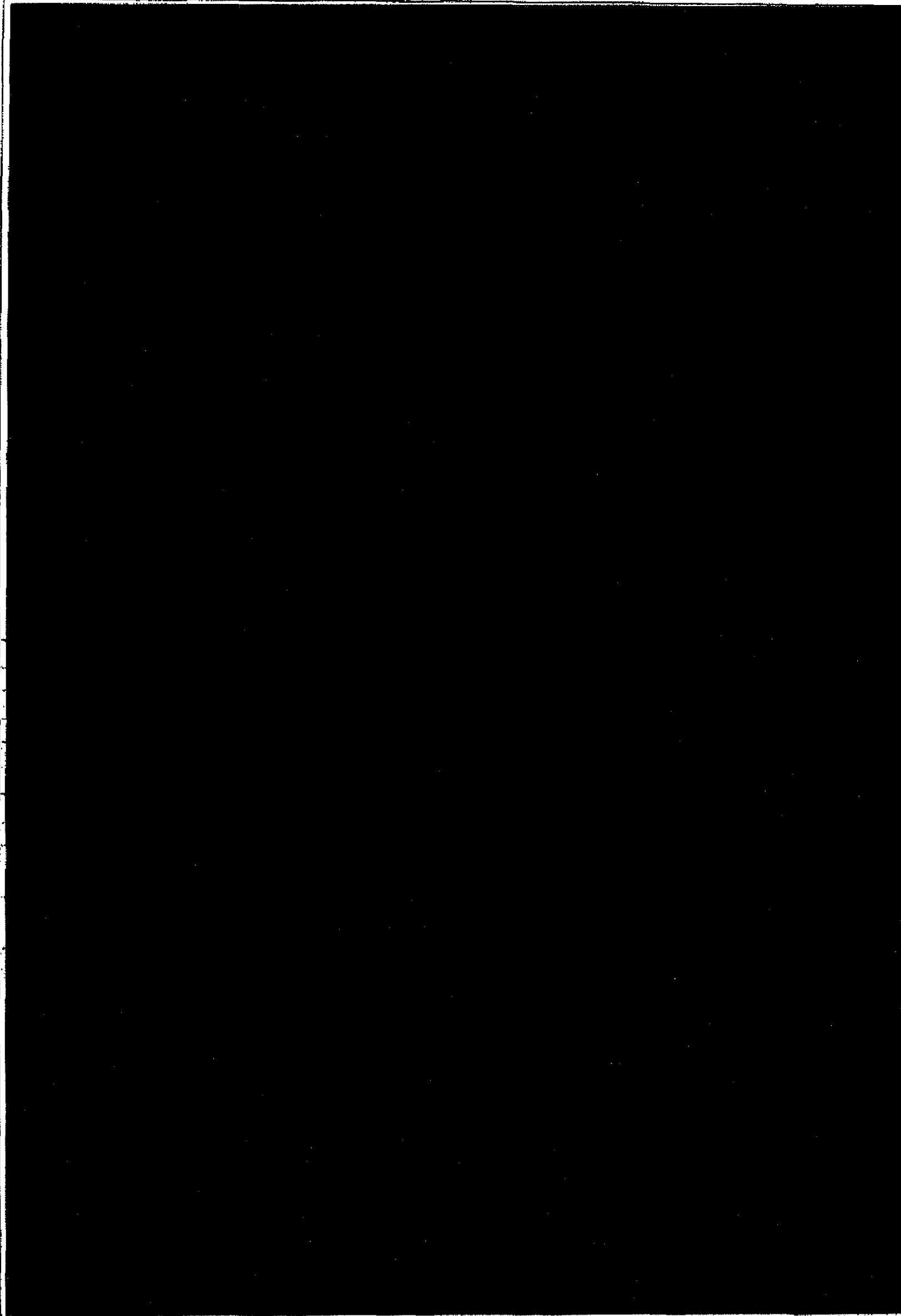
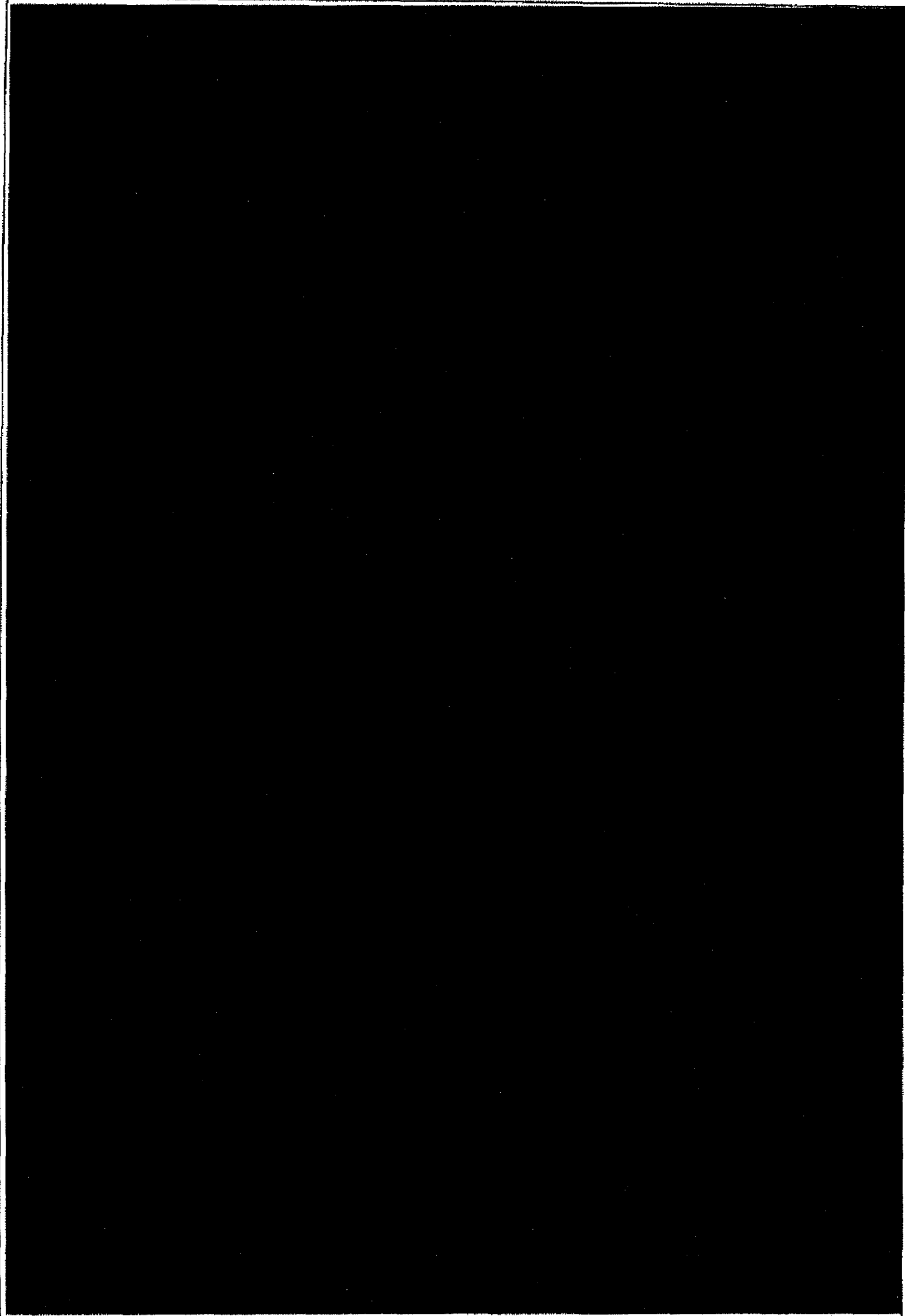


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1 A. Well, I found some of it offensive. At
2 least I took offense from the fact that Mrs. Wynn
3 claimed that she was the only person who could stand
4 up to Steve Wynn, because that impugned my integrity
5 that I would not be independent and do what I thought
6 was in the right manner.

7 And the fact of the matter is that
8 Mrs. Wynn only participated in a very small portion
9 of the board agenda and program. She did not -- as
10 you know, in board meetings all preparations run this
11 way: The first day are committee meetings. You
12 spend about six hours going through in detail various
13 whatever you're on.

14 The committee -- the board itself is really
15 more a report of what went on at these committee
16 meetings, and so she didn't participate in any of
17 that.

18 So I took it as a bit of -- I took it
19 personally, at least put it that way. I didn't think
20 she knew what she was talking about.

21 Q. My question was: If you recall anything
22 else about the shareholders meeting in February of
23 2015 that pertained to the proxy fight other than
24 what you had told me earlier?

25 A. No.



1 Q. And you had mentioned that you were
2 offended by this. When did you become offended by
3 this? Was it as of the shareholders meeting? Was it
4 before that?

5 A. I heard during the process when it came
6 back by way of institutions that this was one of the
7 tacks that she was taking, and I took it personally,
8 and was offended by it.

9 Q. Was this before or after you decided that
10 you were going to follow any recommendation by the
11 nominating committee?

12 A. No. This was after. This was when the
13 contest was going on.

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1 [REDACTED]
2 [REDACTED]
3 [REDACTED]
4 [REDACTED]
5 [REDACTED]
6 Q. Do you know a Marc Schorr?

7 A. Oh, yes, I know Marc.

8 Q. Marc Schorr was on the board of directors
9 at Wynn Resorts?

10 A. Yes.

11 Q. What time period?

12 A. I don't know. I don't know the time he was
13 on.

14 Q. Do you recall Mr. Schorr being appointed to
15 the board of directors in about July of 2010?

16 A. I don't recall it, but you've enhanced my
17 memory so it must be true.

18 Q. You were aware that Mr. Schorr was the
19 chief operating officer of Wynn Resorts starting from
20 about 2002; is that right?

21 A. Yes.

22 Q. And then he left in June of 2013?

23 A. Yes.

24 Q. Did he leave both the COO position and the
25 board at the same time?

1 A. That's my recollection.

(2)

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Q. Have you seen Mr. Schorr since then?

8

A. Oh, yes.

9

Q. And where do you see him?

10

A. I occasionally run into him up in

11

Sun Valley. I have a house up there, too.

12

Q. Do you know if he works for or has any

13

relationship with Wynn Resorts or any of its

14

affiliates today?

15

A. We rehired him a few months ago to help out

16

in the opening of the new hotel over in Macau. He's

17

got -- he's opened a lot of hotels and has a lot of

18

experience.

19

Q. What's your understanding of what position

20

he's been rehired as? In other words, is he a

21

consultant? Is he an employee?

22

A. Consultant.

23

Q. And do you know who at Wynn hired him?

24

A. Well, it was my understanding it was

25

Matt Maddox, but...



1 Q. Was that from Mr. Schorr that you
2 understood that?

3 A. No. It was -- it was Matt that told me.

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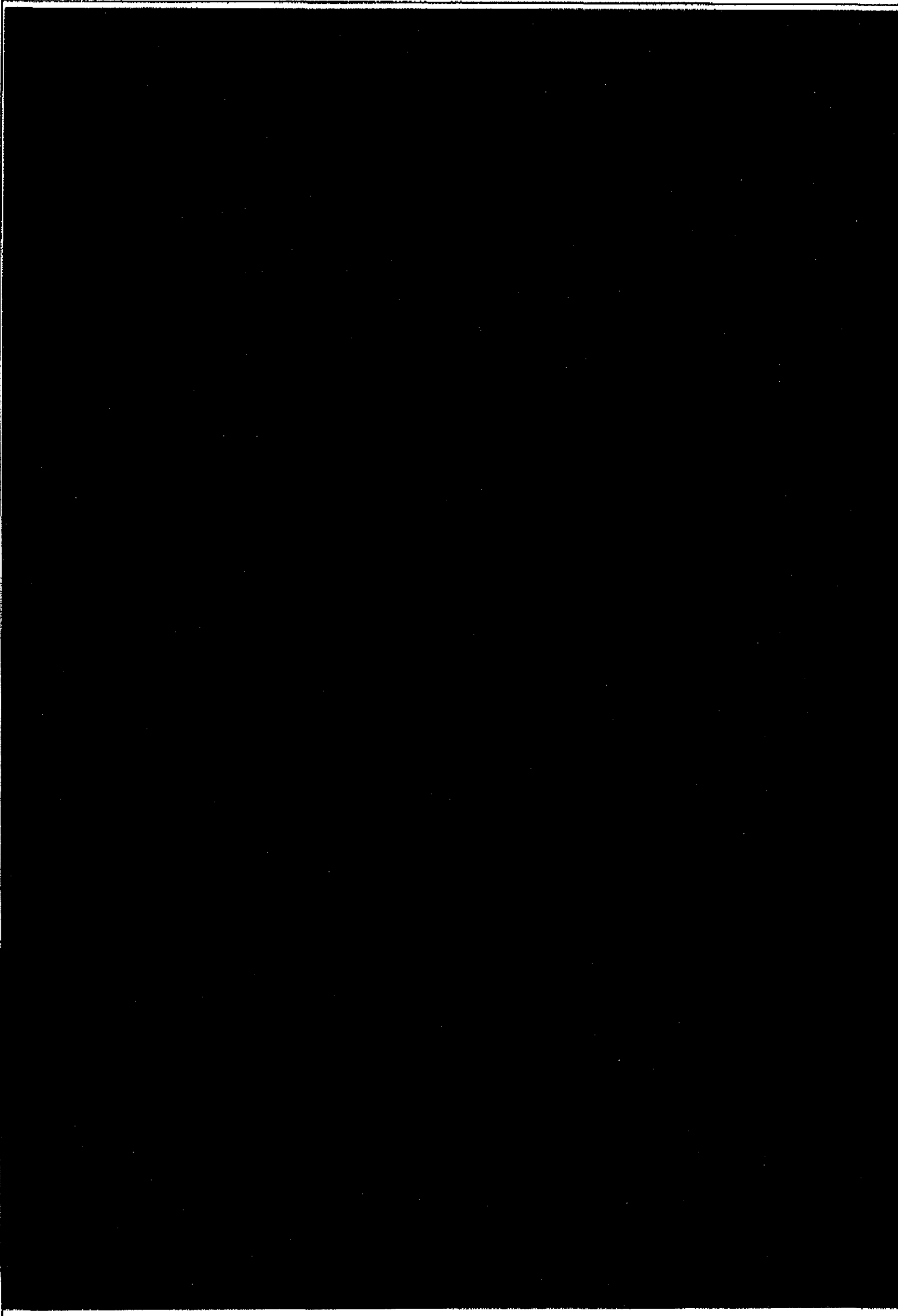


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Q. What was the project or company that
Mr. Pasquale went to work at?

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A. Well, it's a property across the street
from us. I don't even know who the investors are.
My recollection is that -- well, I'll get -- I think
the regional owner of that land were some Israelis
that just way overpaid, and then they finally had to
dump the land. And I can't tell you who his
investors are that he's -- it might be Melco, but I
really don't want to speculate because I just don't
remember all the details.

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10 Q. And I take it you don't have any more
11 specific or any further recollections about any
12 issues with Andrew Pasquale than what you've told
13 me?

14 A. No.

15 MR. ZELLER: Well, let's take a few
16 minutes. I'm going to check my notes, but I think
17 we're getting close.

18 THE VIDEOGRAPHER: We are off the record at
19 2:28.

20 (A recess was taken from 2:28 p.m.
21 to 2:39 p.m.)

22 THE VIDEOGRAPHER: We are back on the
23 record at 2:39.

24 BY MR. ZELLER:

25 Q. Did Steve Wynn ever say to you or in your

CERTIFICATE OF REPORTER

STATE OF NEVADA)

SS:

COUNTY OF CLARK)

I, GALE SALERNO, a certified court
reporter, do hereby certify:

That prior to being examined, the witness
in the foregoing proceedings was by me duly sworn to
testify to the truth, the whole truth, and nothing
but the truth;

That said proceedings were taken before me
at the time and place therein set forth and were
taken down by me in shorthand and thereafter
transcribed into typewriting under my direction and
supervision; and that transcript review was requested
pursuant to NRCP 30(e.)

I further certify that I am neither counsel
for nor related to any party to said proceedings, and
that I am not anywise interested in the outcome
thereof.

IN WITNESS WHEREOF, I have hereunto
subscribed my name this 31st day of
January, 2016.


GALE SALERNO, RMR, CCR #542