

IN THE SUPREME COURT OF THE STATE OF NEVADA

SATICOY BAY, LLC SERIES 34
INNISBROOK,

Appellant,

v.

THORNBURG MORTGAGE
SECURITIES TRUST 2007-3; FRANK
TIMPA; MADELAINE TIMPA;
TIMPA TRUST; RED ROCK
FINANCIAL SERVICES, LLC;
SPANISH TRAIL MASTER
ASSOCIATION; REPUBLIC
SERVICES; AND LAS VEGAS
VALLEY WATER DISTRICT,

Respondents.

Case No. 80111

Electronically Filed
Jul 16 2020 03:26 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

THORNBURG MORTGAGE SECURITIES TRUST 2007-3'S
MOTION TO DISMISS APPEAL

Thornburg Mortgage Securities Trust 2007-3 (Thornburg) moves to dismiss this appeal for lack of jurisdiction or, alternatively, dismiss the quiet title portion of this appeal as frivolous. See NRAP 4(a); NRAP 38.

I. Saticoy Bay Failed to Timely Appeal the December 5, 2018 Order

This is superpriority tender/quiet title action arising out of an HOA foreclosure sale. On December 5, 2018, the district court entered an order granting Thornburg's summary judgment motion on the basis of pre-sale tender. The district court dismissed all remaining claims at 6. The court's order provided notice to Saticoy Bay, LLC Series 34 Innisbrook that it was a final appealable order. See *In re Duong*, 18 Nev. 920, 922, 59 P.3d 1210, 1212 (2002).

Saticoy had the opportunity to file a notice of appeal (or one of many tolling motions), but failed to do so within the 30-day deadline. NRAP 4(a)(1). This court does not have jurisdiction, at least over this portion of the appeal, because Saticoy filed a notice of appeal 349 days after notice of entry of the summary judgment order on November 19, 2019. Ex. B. This order adjudicated all claims and was a final order for purposes of appeal. Ex. A.

Subsequently, the district court statistically closed the case. Ex. C. On May 10, 2019, Saticoy moved to reinstate the statistically closed case on the basis the court did not address the interpleader claims. Ex. D (exhibits excluded). On June 20, 2019, the district court reopened the case to adjudicate the interpleader claims. Ex. E. The district court ultimately resolved the interpleader claims against Saticoy on September 11, 2019, and November 19, 2019. Ex. F and G. Saticoy's notice of appeal, filed on November 19, 2019, may be timely with respect to the interpleader claims, but is not timely as to the primary quiet title claims between Saticoy and Thornbury. Ex. B.

The district court lacked the authority or discretion to extend the thirty-day period for Saticoy to file its notice of appeal with respect to non-interpleader claims. *Southworth v. Eighth Judicial Dist. Court*, 134 Nev. 149, 414 P.3d 311 (2018) ("exercising such discretionary authority is inappropriate in the context of appeal time limits"); *Walker v. Scully*, 99 Nev. 45, 46, 657 P.2d 94, 94 (1983) (a

district court lacks authority to extend the 30-day period to file a notice of appeal set forth by the Nevada Rules of Appellate Procedure).

The notice of appeal was untimely as to the summary judgment order and, as such, this court is without jurisdiction to entertain this portion of the appeal. See Healy v. Volkswagenwerk Aktiengesellschaft, 103 Nev. 329, 330, 741 P.2d 432, 432 (1987) ("An untimely notice of appeal fails to vest jurisdiction in this court."); Scherer v. State, 89 Nev. 372, 374, 513 P.2d 1232, 1233 (1973) ("The timely filing of a notice of appeal is jurisdictional and is an essential prerequisite to the perfection of an appeal.").

Saticoy's motion to reopen the case did not toll the time within which to file its notice of appeal. Nor was it brought as an NRCP 59 or 60 motion. It was brought simply to reopen the case for the district court to distribute excess proceeds from the sale. Saticoy waited approximately six months after the district court granted summary judgment and closed the case to ask for reinstatement. The motion to reopen should not be considered a tolling motion. Said in another way, this court should not, by judicial fiat, transmute the motion to reopen into one that tolls the quiet title judgment. See NRAP 4(a). Even if a motion to reopen is considered a tolling motion in some circumstances, it is not here since Saticoy did not timely file its motion. Allowing tolling under these facts would provide

Saticoy nearly a year of a mortgage-free home and would incentivize other HOA-sale purchasers to delay litigation through the tactics employed by Saticoy.

Although Thornburg believes it was appropriate for the district court to reopen the case to distribute over a \$1,000,000 in excess proceeds from the foreclosure sale, it expresses no opinion as to the timeliness of the appeal in the context of the interpleader claims. To the extent jurisdiction exists as to the interpleader claims, this appeal should be limited to the propriety of the interpleader orders dated September 11, 2019 and November 19, 2019, e.g. *Holiday Inn Downtown v. Barnett*, 103 Nev. 60, 63, 732 P.2d 1376, 1379 (1987).

These amended judgments were directed solely at the interpleader claims and did not affect title, legal rights, or obligations concerning the subject property. Consequently, the interpleader judgments have no significance in determining the timeliness of the appeal as to the quiet title claims between Saticoy and Thornburg. See *Morrell v. Edwards*, 98 Nev. 916, 922-23, 40 P.2d 1322, 1324 (1982).

II. The Quiet Title Portion of this Appeal is Frivolous

This court should alternatively dismiss the appeal as frivolous under NRAP 38 because the former loan servicer, through Miles Bauer Bergstrom & Winters, tendered the superpriority portion of the HOA's lien in advance of the ~~sale~~ ^{sale}. H (Miles Bauer Affidavit) and I (Excerpt from Red Rock's Collection File). This court has adjudicated virtually the same tender ~~many~~ ^{many} times, including cases

involving Saticoy. See Bank of Am., N.A. v. SFR Invs. Pool 1,, 134 Nev. 604, 427 P.3d 113 (2018), see, e.g. Saticoy Bay LLC Series 1011 Rainbow Rock v. Green Tree Servicing LLC, No. 76327 (Nev. Oct. 24, 2019), Saticoy Bay LLC Series 5413 Bristol Bend Ct. v. Bank of Am., No. 75272, 2019 WL 1875606 (Nev. April 25, 2019) (all unpublished dispositions).

Saticoy knows how this court rules when presented with tender facts yet appealed the quiet title portion of this litigation to delay foreclosure. See NRAP 38(b).¹ Its appeal as to quiet title is frivolous and was not brought in good faith. Thornburg is not requesting attorney's fees or costs, just that the quiet title portion of this litigation is dismissed either on jurisdictional or frivolous grounds so that it may proceed with foreclosure on the property.

III. This Court Should Bifurcate the Issues if this Motion is Denied

Should this motion be denied, Thornburg requests this court adjudicate the quiet title portion separately from the novel excess proceeds issues so Saticoy does not reap an unjust windfall for delaying litigation. Whereas superpriority tender cases are automatically affirmed (absent extraordinary circumstances not present here), the excess proceeds issues that stem from the interpleader judgments center on complex statutory interpretation, lean on equitable principles, and pose

¹ According to Zillow, Saticoy receives approximately \$6,000-\$7,000 per month in rental income and the property's fair market value is estimated to be about \$5,000,000. https://www.zillow.com/homedetails/34-Innisbrook-Ave-Las-Vegas-NV-89113/7147860_zpid/

questions this court has yet to see in NRS 116 quiet title litigation. Delaying adjudication financially benefits Saticoy and significantly prejudices Thornburg. It also encourages HOA-sale purchasers to misuse the appellate processes of this court for the sole purpose of delaying a final resolution. This court must deter appeals that address issues this court has answered over and over—like superpriority tender.

DATED this 16th day of July, 2020.

AKERMAN LLP

/s/ Scott R. Lachman

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1635 Village Center Circle, Suite 200
Las Vegas, NV 89134
Attorneys for Thornburg Mortgage
Securities Trust 2007-3

CERTIFICATE OF SERVICE

I certify that I electronically filed on the 16th day of July, 2020, the foregoing THORNBURG MORTGAGE SECURITIES TRUST 2007-3'S MOTION TO DISMISS APPEAL, with the Clerk of the Court for the Nevada Supreme Court by using the CM/ECF system. I further certify that all parties of record to this appeal either are registered with the CM/ECF or have consented to electronic service.

☐ By placing a true copy enclosed in sealed envelope(s) addressed as follows: Not applicable.

☒ (By Electronic Service) Pursuant to CM/ECF System, registration as a CM/ECF user constitutes consent to electronic service through the Court's transmission facilities. The Court's CM/ECF systems sends an e-mail notification of the filing to the parties and counsel of record listed above who are registered with the Court's CM/ECF system.

☒ (Nevada) I declare that I am employed in the office of a member of the bar of this Court at whose discretion the service was made.

/s/ Carla Llarena
An employee of KERNAN LLP

EXHIBIT A

EXHIBIT A



NEFF
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Attorneys for defendant, counterclaimant, and counter-
defendant Thornburg Mortgage Securities Trust 2007-3

EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

SATICOY BAY LLC SERIES 34
INNISBROOK,

Plaintiff,

vs.

THORNBURG MORTGAGE SECURITIES
TRUST 2007-3 et al,

Defendants.

Case No A-14-710161-C

Division: XXVI

NOTICE OF ENTRY OF FINDINGS OF
FACT, CONCLUSIONS OF LAW, AND
ORDER GRANTING THORNBURG
MORTGAGE SECURITIES TRUST
2007-3'S MOTION FOR SUMMARY
JUDGMENT

AND ALL RELATED ACTIONS

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AKERMAN LLP

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1 TO ALL PARTIES AND TO THEIR ATTORNEYS OF RECORD:

2 PLEASE TAKE NOTICE that a FINDINGS OF FACT, CONCLUSIONS OF LAW, AND
3 ORDER GRANTING THORNBURG MORTGAGE SECURITIES TRUST 2007-3'S
4 MOTION FOR SUMMARY JUDGMENT has been entered by this Court on the day of
5 December, 2018, in the above-captioned matter. A copy of said Order is attached hereto as
6 Exhibit A.

7
8 DATED: DECEMBER 5, 2018
9

10 AKERMAN LLP

11 /s/ Thera A. Cooper
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14 THERA A. COOPER, ESQ.
15 Nevada Bar No. 13468
16 1635 Village Center Circle, Suite 200
17 Las Vegas, Nevada 89134

18 Attorneys for Thornburg Mortgage Securities
19 Trust 2007-3
20
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28

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of AKERMAN LLP, and that on this 15th day of December, 2018, I caused to be served a true and correct copy of the foregoing NOTICE OF ENTRY OF FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER GRANTING THORNBURG MORTGAGE SECURITIES TRUST 2007-3'S MOTION FOR SUMMARY JUDGMENT, in the following manner:

(ELECTRONIC SERVICE) Pursuant to Administrative Order 14-2, the above-referenced document was electronically filed on the date hereof and served through the Notice of Electronic Filing automatically generated by the Court's facilities to those parties listed on the Court's Master Service List as follows:

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/s/ Christine Weiss

An employee of AKERMAN LLP

EXHIBIT A

EXHIBIT A

Electronically Filed
12/3/2018 2:19 PM
Steven D. Grierson
CLERK OF THE COURT

A handwritten signature in black ink, appearing to read "Steven D. Grierson", is written over a solid black rectangular background.

EXHIBIT B

EXHIBIT B



NOAS
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Attorneys for Plaintiff
Saticoy Bay LLC Series 34 Innisbrook

DISTRICT COURT

CLARK COUNTY, NEVADA

SATICOY BAY LLC SERIES 34
INNISBROOK,

Case No.: A-14-710161-C
Dept.: XXVI

Plaintiff,

NOTICE OF APPEAL

vs.

THORNBURG MORTGAGE SECURITIES
TRUST 2007-3 et al.,

Defendants.

AND ALL RELATED ACTIONS

Notice is hereby given that Saticoy Bay, LLC Series 34 Innisbrook, Plaintiff above named hereby appeals to the Supreme Court of the State of Nevada from the Court's Order entered in this action on the 18th day of November, 2019, and Notice of Entry of the Order entered on the 19th day of November, 2019, and any order made appealable thereby.

The Court's Order entered in this action on the 11th day of September, 2019 and Notice of Entry of the Order entered in this action on the 11th day of September, 2019, and any order made appealable thereby

1 The Court's Findings of Fact, Conclusions of Law, and Order Granting Thornburg
2 Mortgage Securities Trust 2007's Motion for Summary Judgment, entered on the 14th day of
3 December, 2018 and Notice of Entry of Fact, Conclusions of Law, and Order Granting Thornburg
4 Mortgage Securities Trust 2007's Motion for Summary Judgment entered in this action on the 15th
5 day of December, 2018, and any order made appealable thereby.

6
7 Dated this 19 day of November, 2019.

8 ROGER P. CROTEAU & ASSOCIATES, LTD

9 By: /s/ Roger Croteau

10 ROGER P. CROTEAU, ESQ.

11 Nevada Bar No.: 4958

12 2810 W. Charleston Blvd., Ste. 75

13 Las Vegas, Nevada 89102

14 Attorney for Plaintiff

15 Saticoy Bay LLC Series 34 Innisbrook

1 CERTIFICATE OF SERVICE

2 Pursuant to Nevada Rules of Civil Procedure 5(b), I hereby certify that I am an employee of
3 ROGER P. CROTEAU & ASSOCIATES, LTD. and that on the 19th day of November, 2019, I
4 caused a true and correct copy of the foregoing document to be served on all parties as follows:

5 X VIA ELECTRONIC SERVICE: through the Court's e-file and serve system.

6 Thornburg Mortgage Securities Trust 2007B - Defendant

7 Akerman LLP AkermanLAS@akerman.com

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9 Jared Sechrist jared.sechrist@akerman.com

10 Spanish Trail Master Association Counter Defendant

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26 Steven B. Scow sscow@kochscow.com

27 Travis Akin travisakin8@gmail.com

28 VIA U.S. MAIL: by placing a true copy hereof enclosed in a sealed envelope with
postage thereon fully prepaid, addressed as indicated on service list below in the United
States mail at Las Vegas, Nevada.

VIA FACSIMILE: by causing a true copy thereof to be telecopied to the number indicated
on the service list below.

VIA PERSONAL DELIVERY: by causing a true copy hereof to be hand delivered on this
date to the addressee(s) at the address(es) set forth on the service list below.

_____/s/ Anna Gresl

An employee of ROGER P. CROTEAU &
ASSOCIATES, LTD.

EXHIBIT C

EXHIBIT C



OSCC

**DISTRICT COURT
CLARK COUNTY, NEVADA**

SATICOY BAY LLC SERIES 34
INNISBROOK, PLAINTIFF(S)
VS.
THORNBURG MORTGAGE
SECURITIES TRUST 2007-3,
DEFENDANT(S)

CASE NO.: A-14-710161-C

DEPARTMENT 26

CIVIL ORDER TO STATISTICALLY CLOSE CASE

Upon review of this matter and good cause appearing,
IT IS HEREBY ORDERED that the Clerk of the Court is hereby directed to
statistically close this case for the following reason:

DISPOSITIONS:

- ☐ Default Judgment
- ☐ Judgment on Arbitration
- ☐ Stipulated Judgment
- ☒ Summary Judgment
- ☐ Involuntary Dismissal
- ☐ Motion to Dismiss by Defendant(s)
- ☐ Stipulated Dismissal
- ☐ Voluntary Dismissal
- ☐ Transferred (before trial)
- ☐ Non-Jury – Disposed After Trial Starts
- ☐ Non-Jury – Judgment Reached
- ☐ Jury – Disposed After Trial Starts
- ☐ Jury – Verdict Reached
- ☐ Other Manner of Disposition

DATED this 7th day of December, 2018.



GLORIA STURMAN
DISTRICT COURT JUDGE

EXHIBIT D

EXHIBIT D

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5/10/2019 12:35 PM
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CLERK OF THE COURT

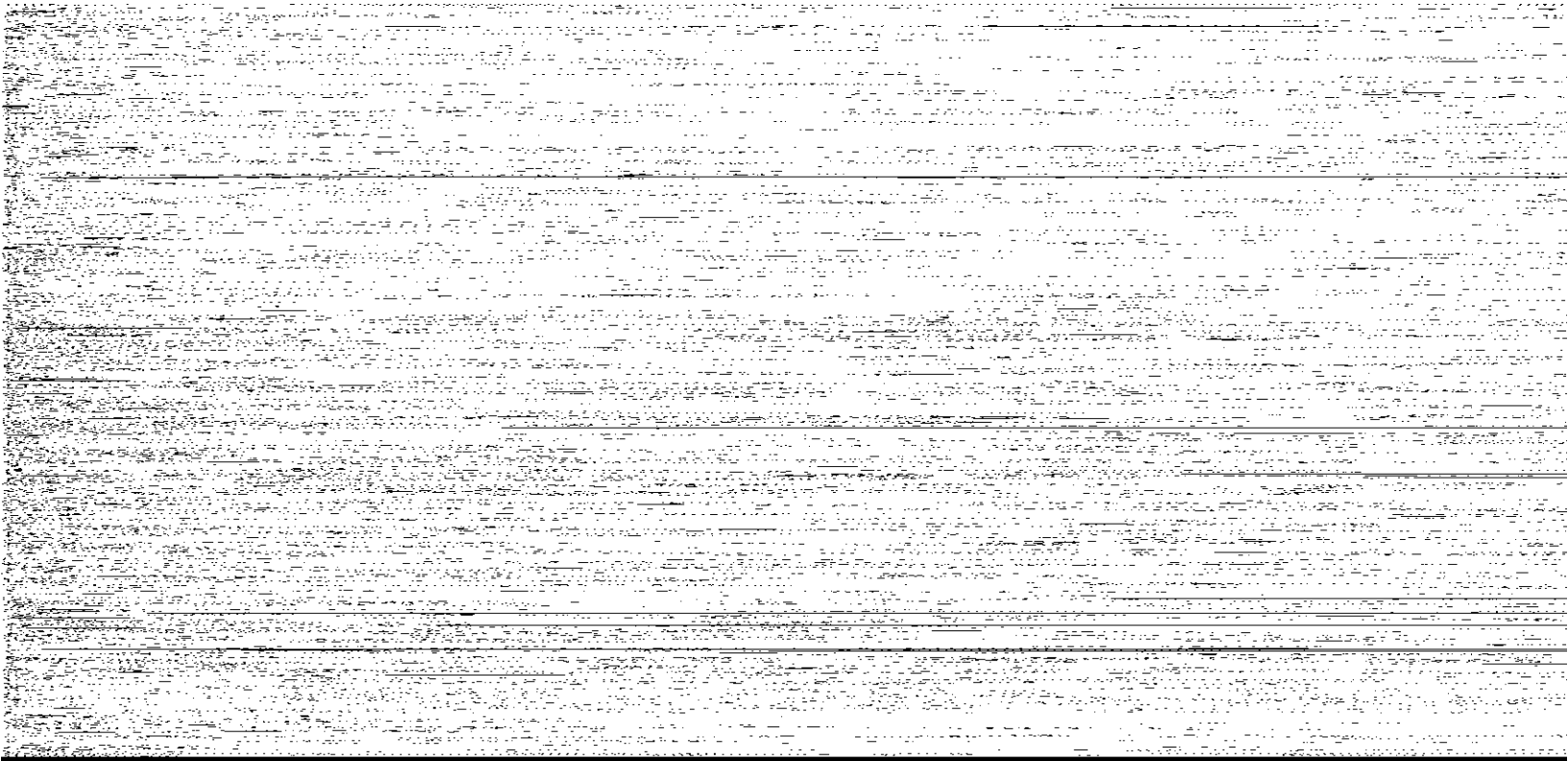
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EXHIBIT E

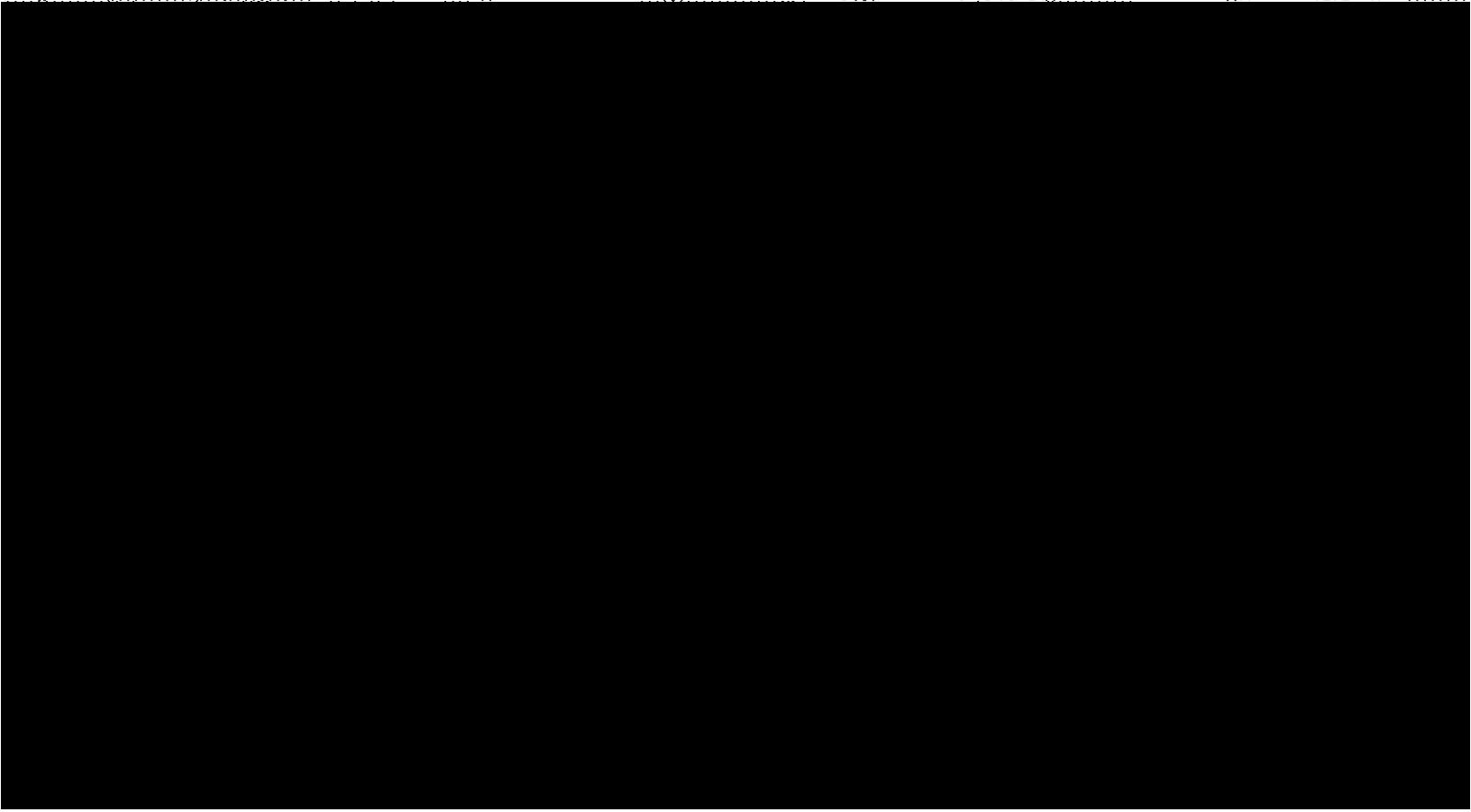
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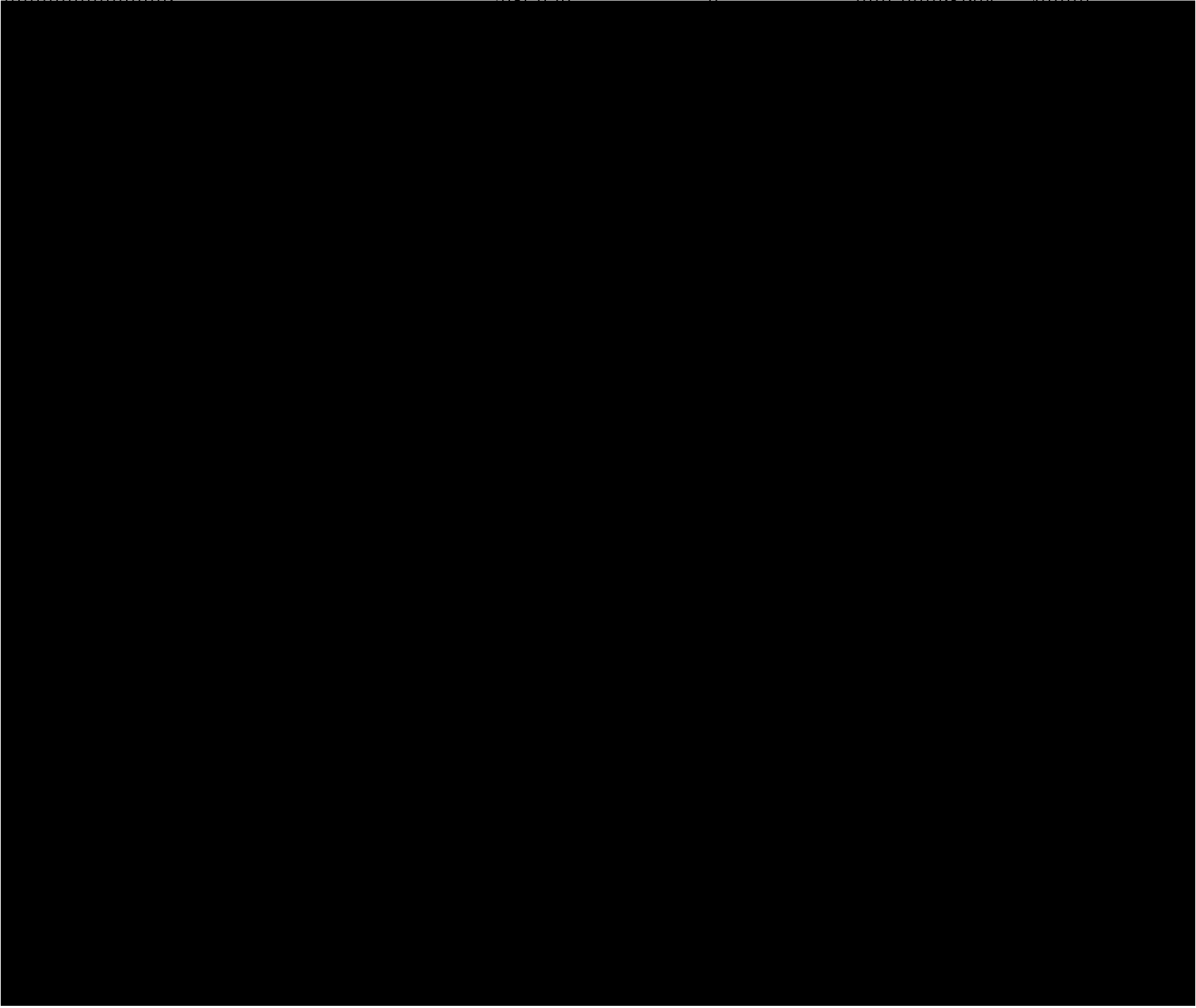
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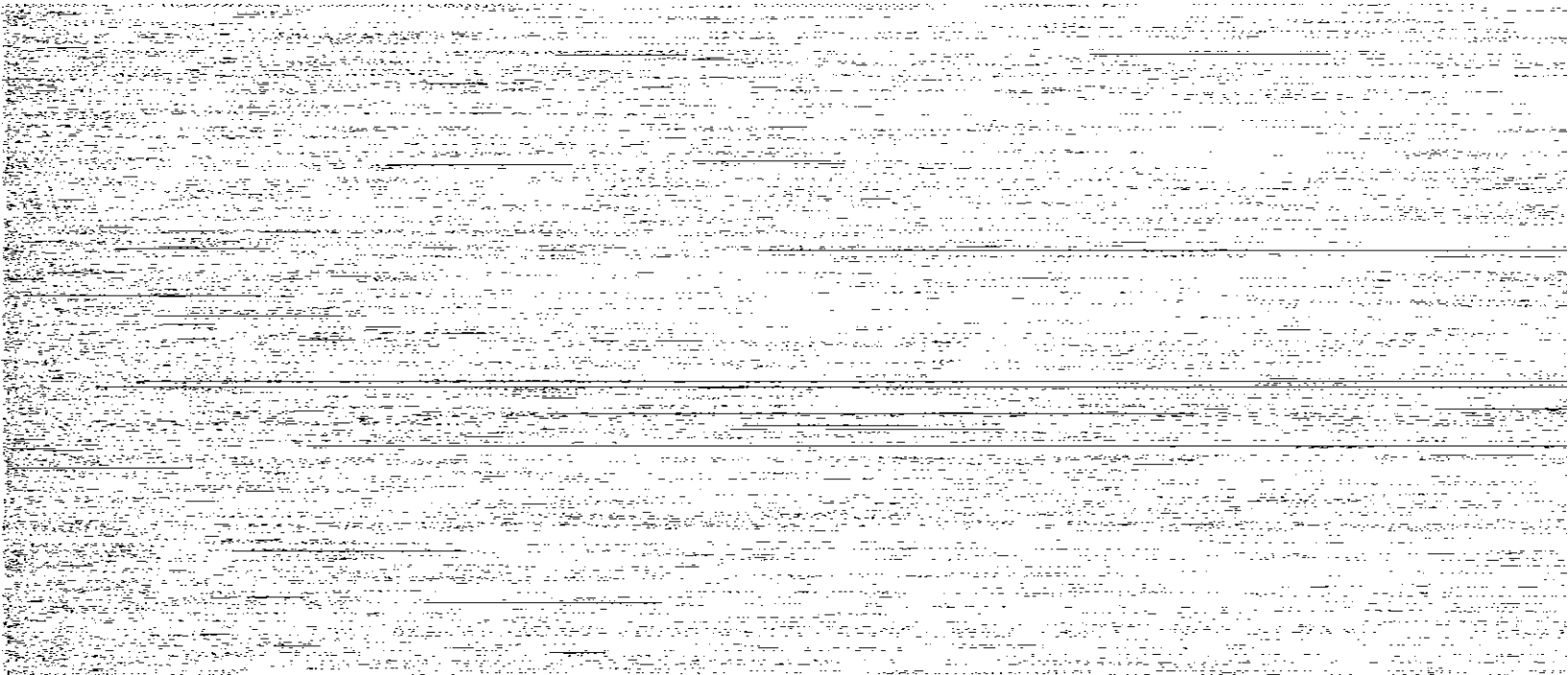
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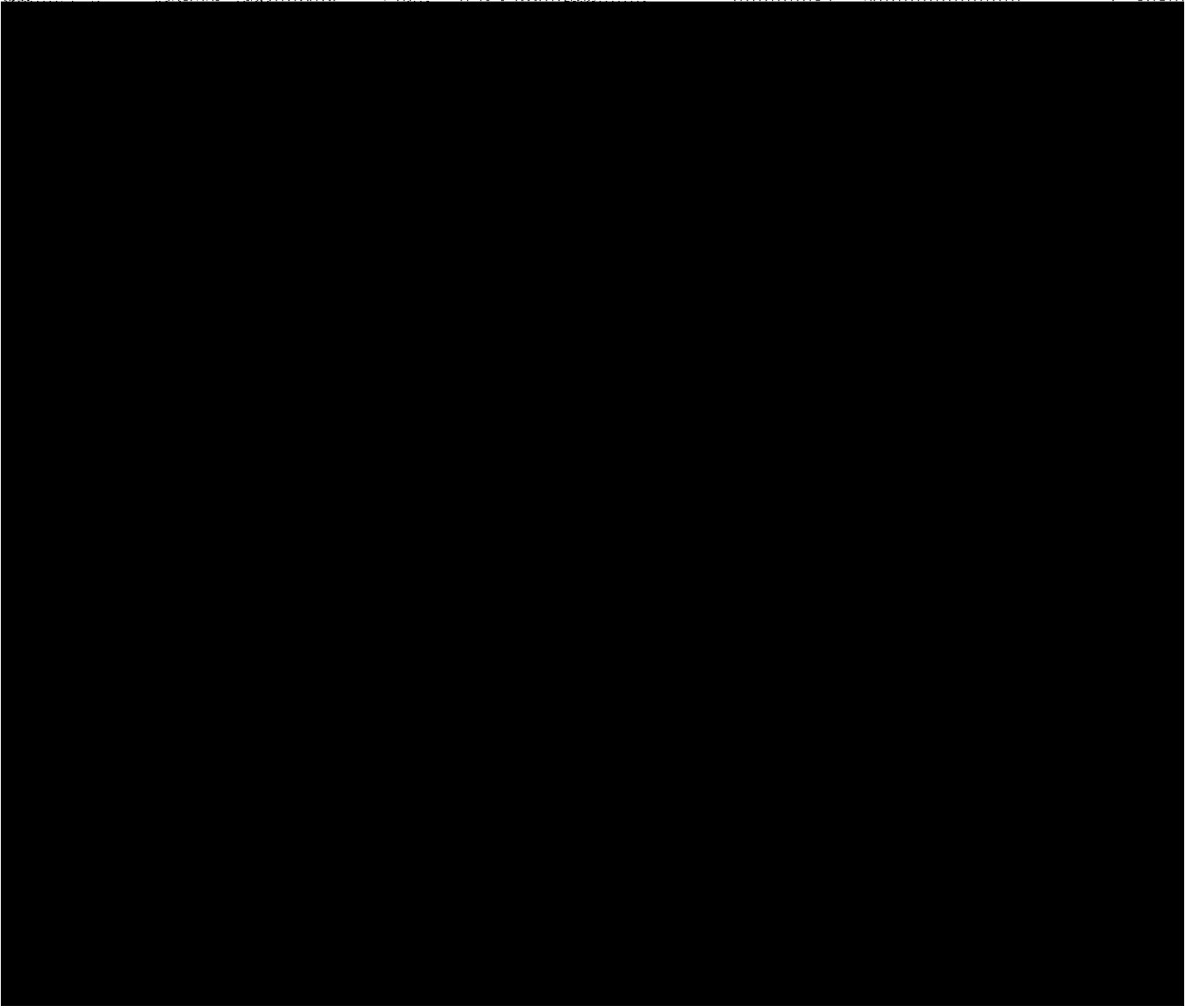
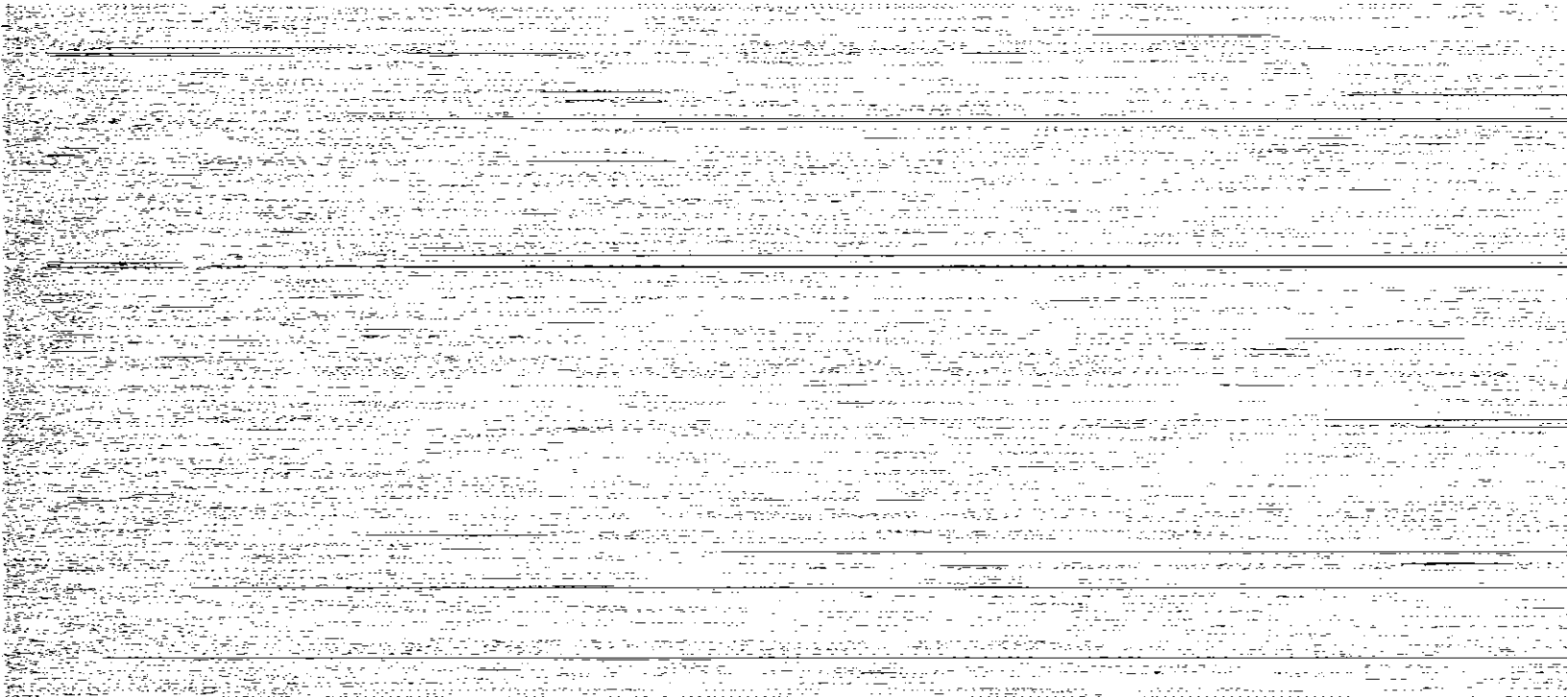


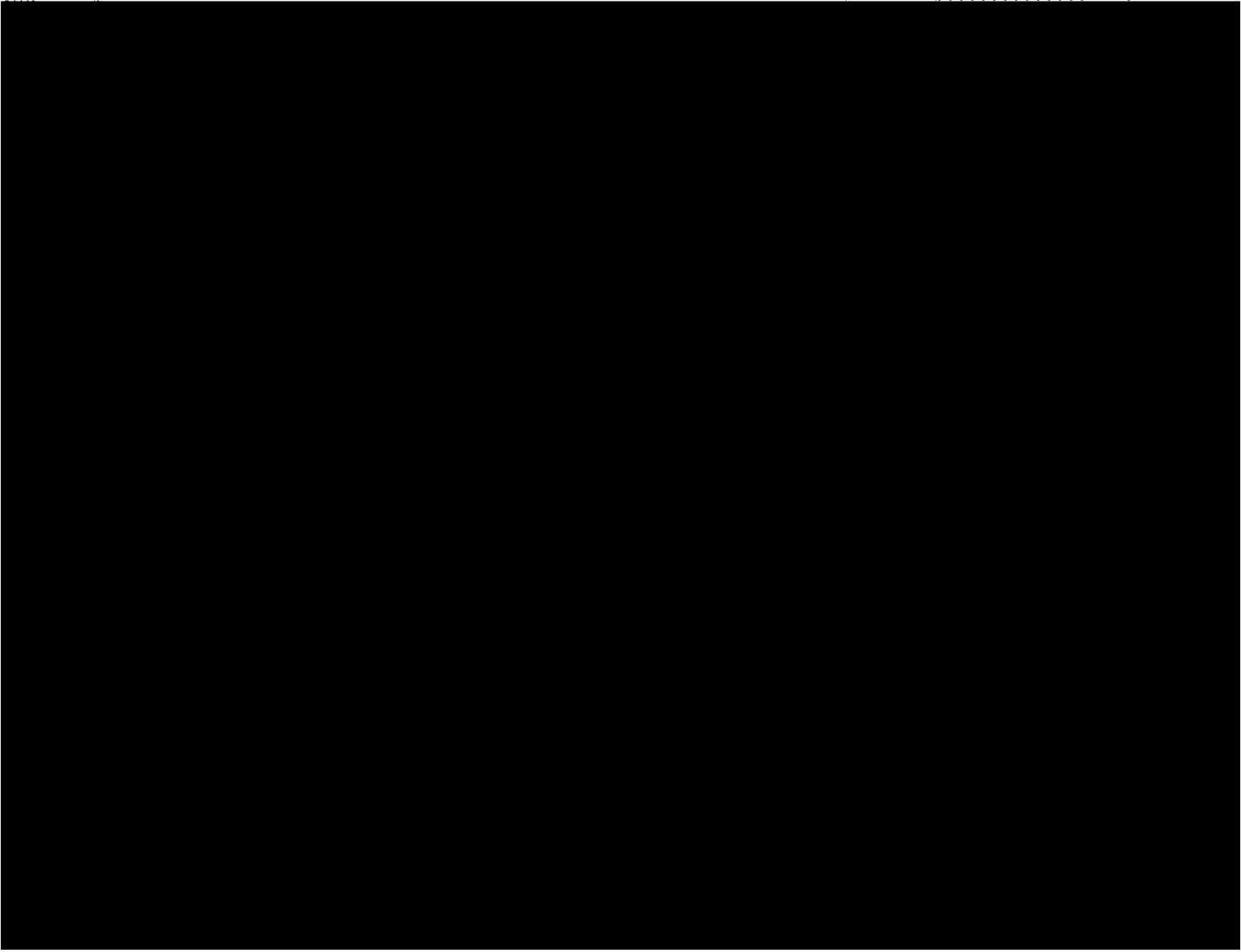
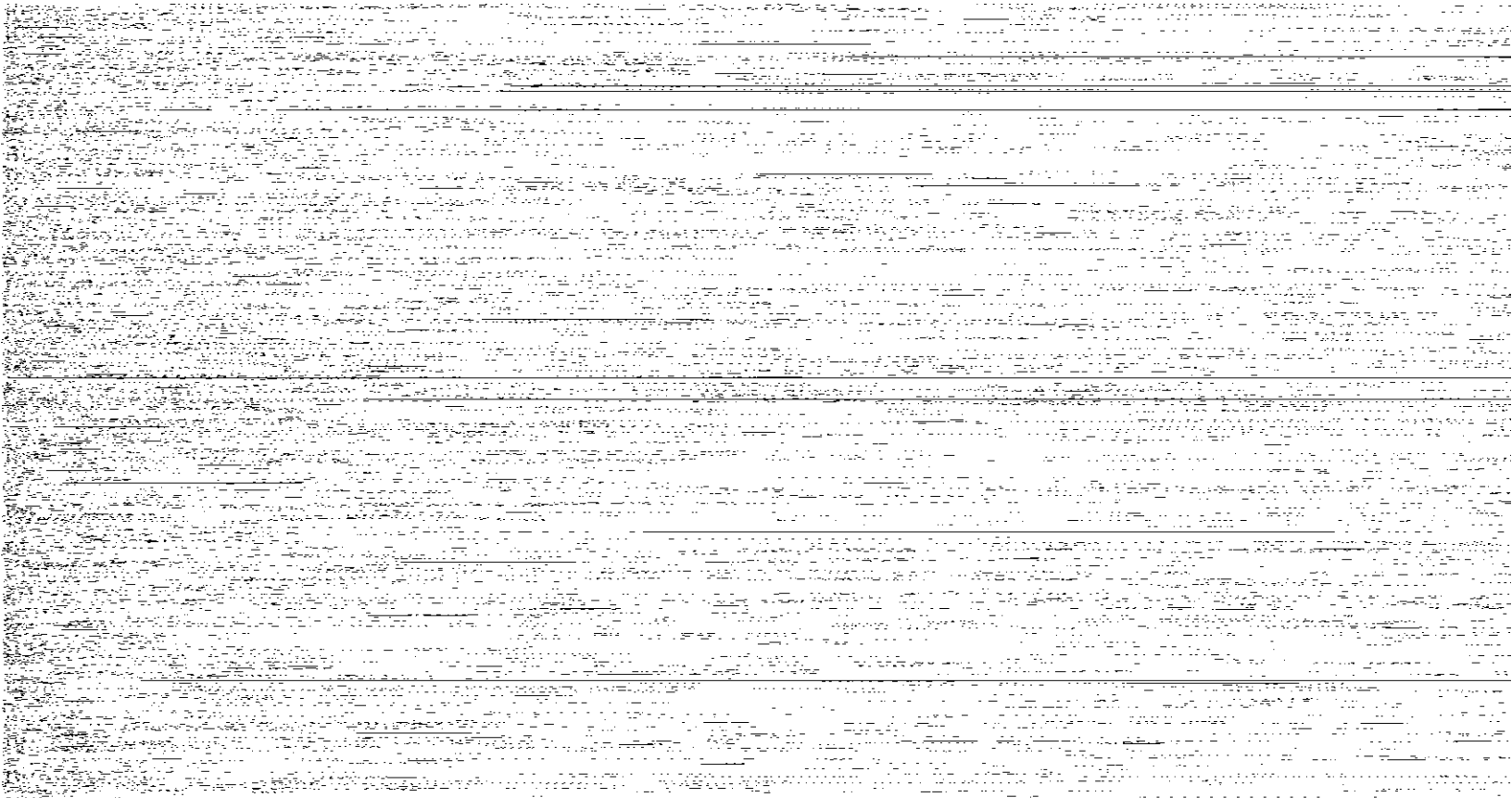


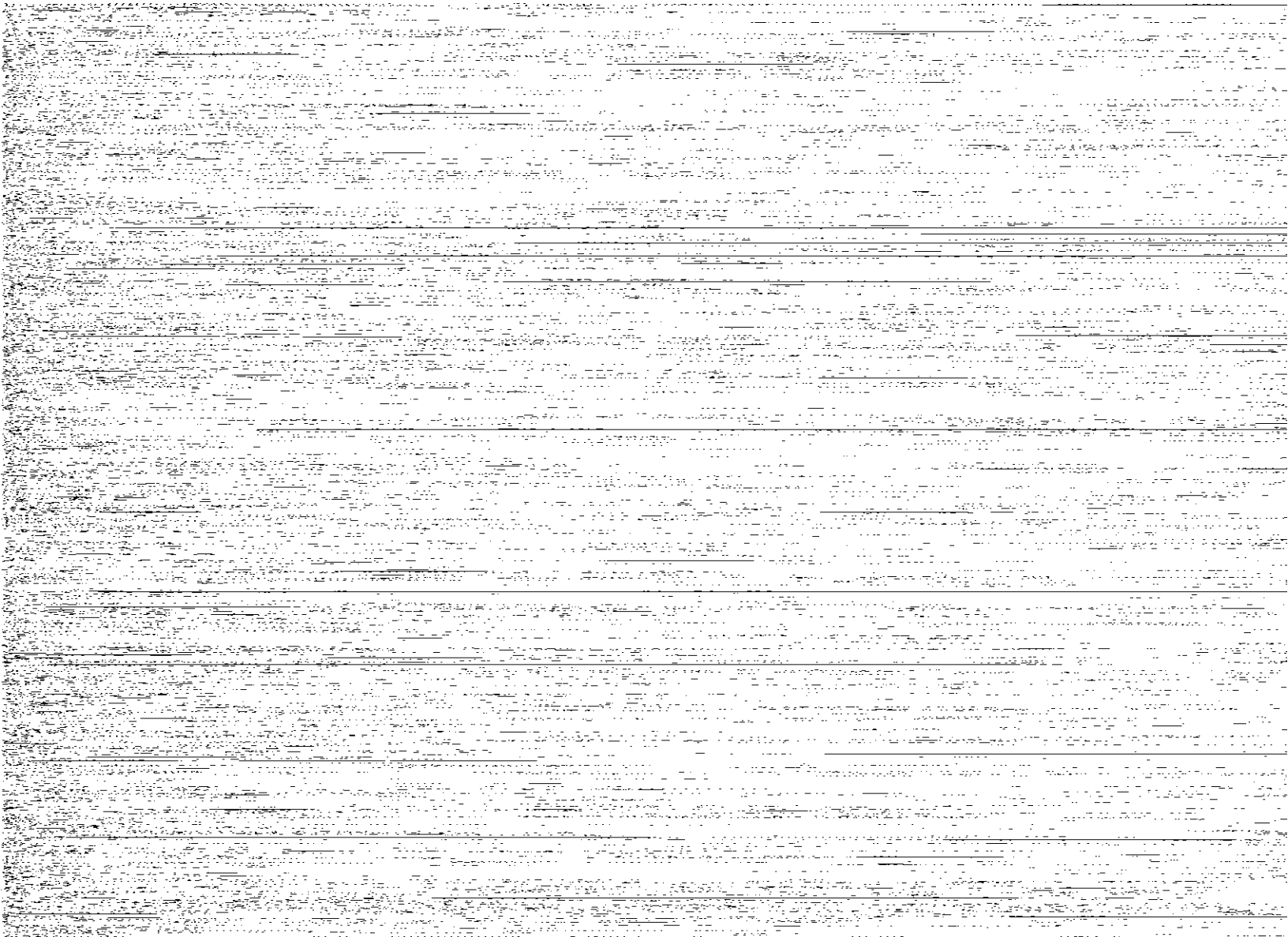


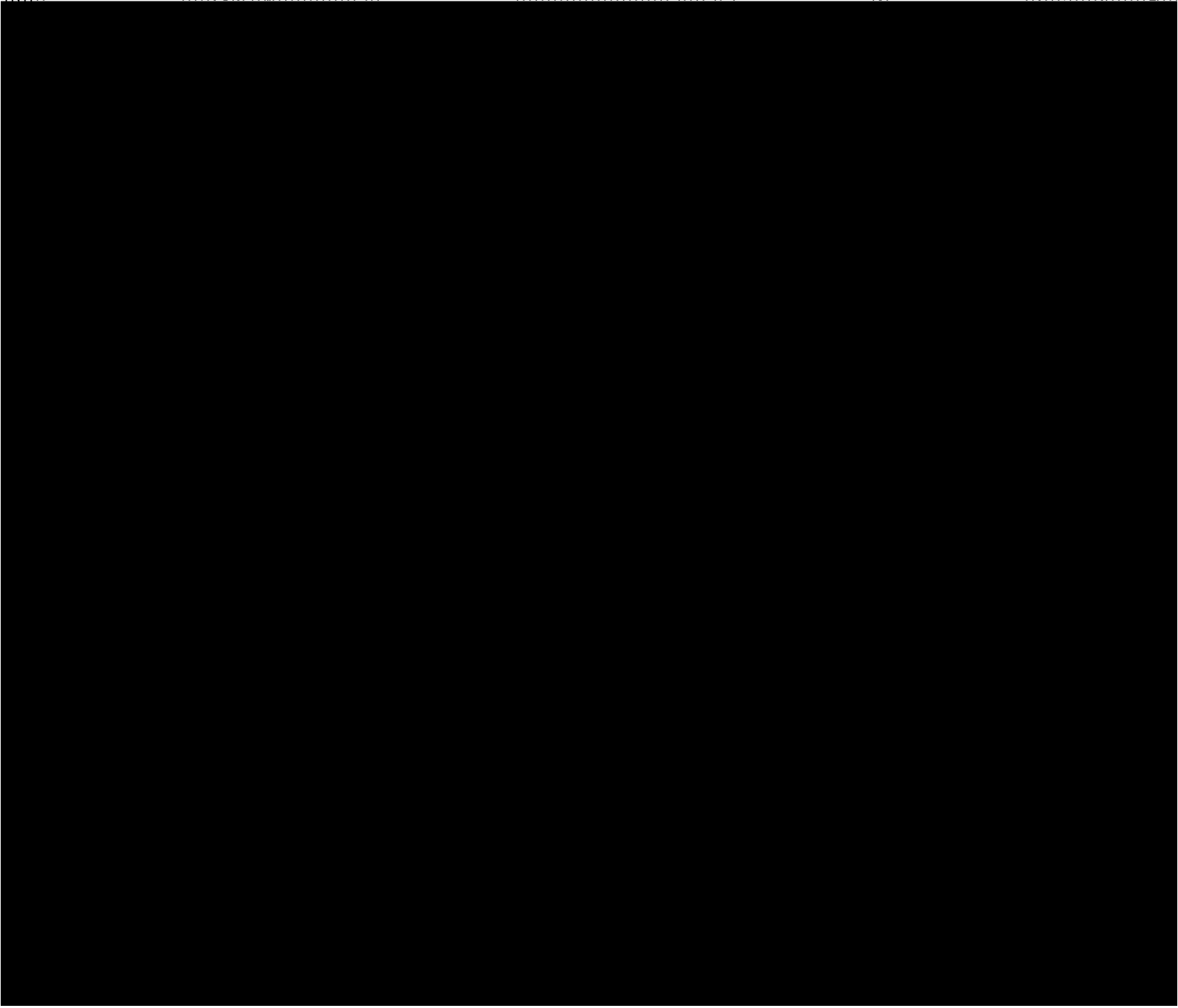
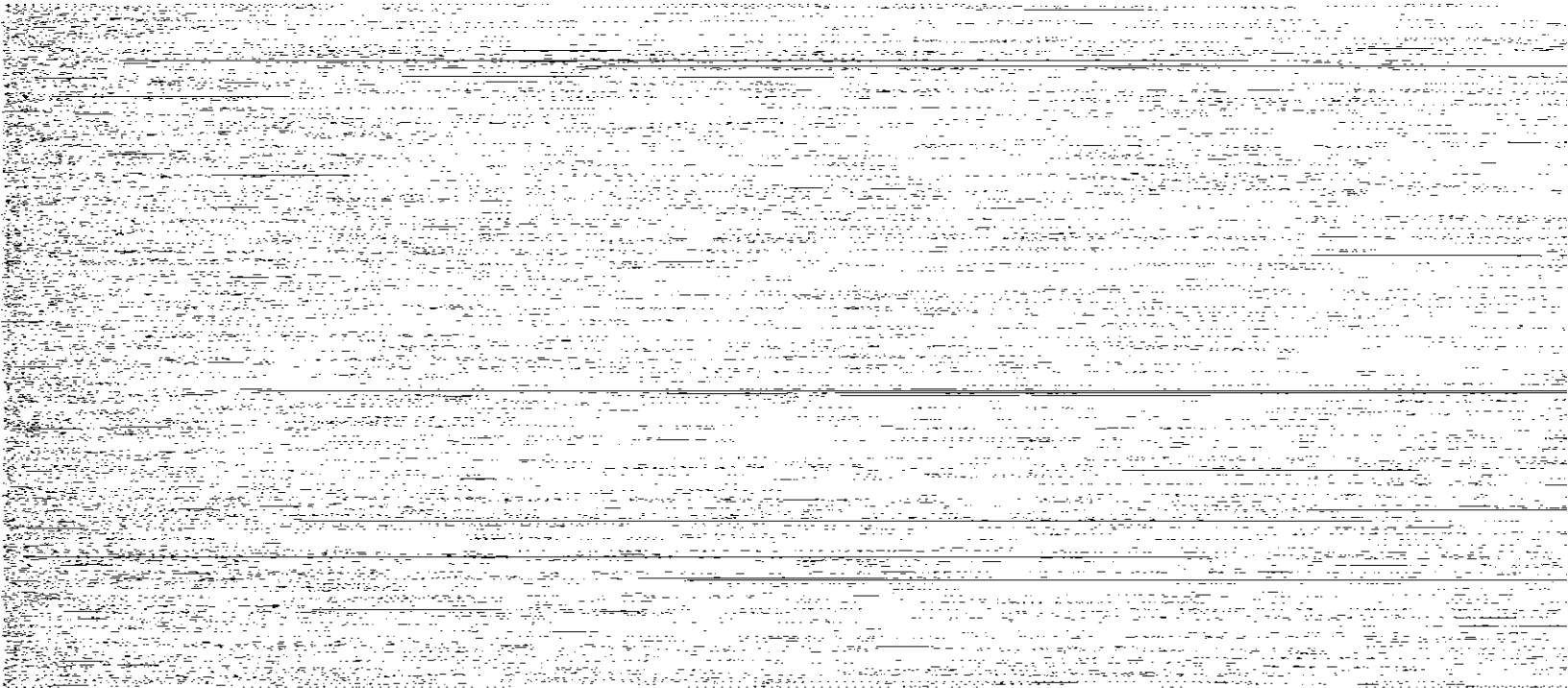


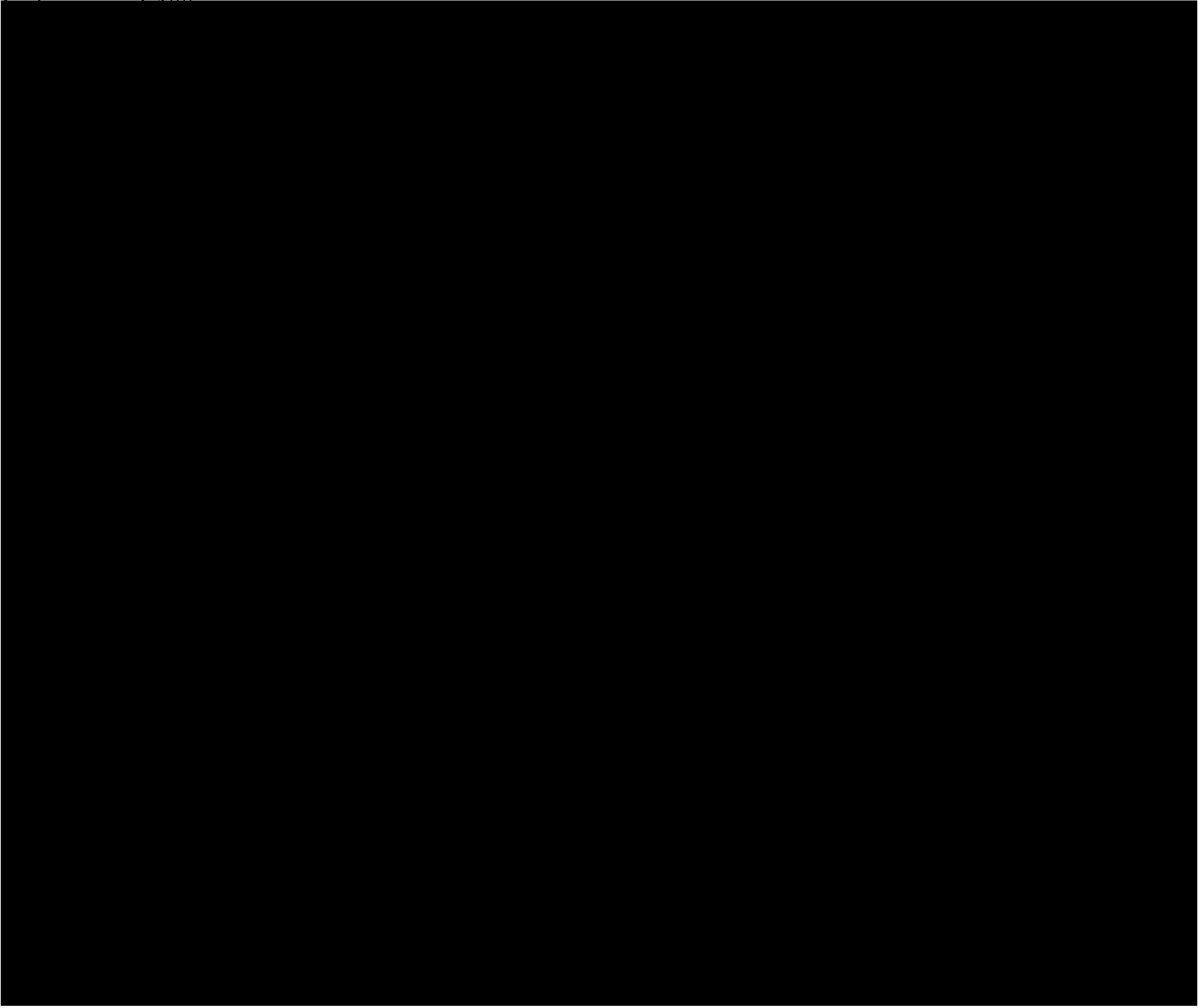
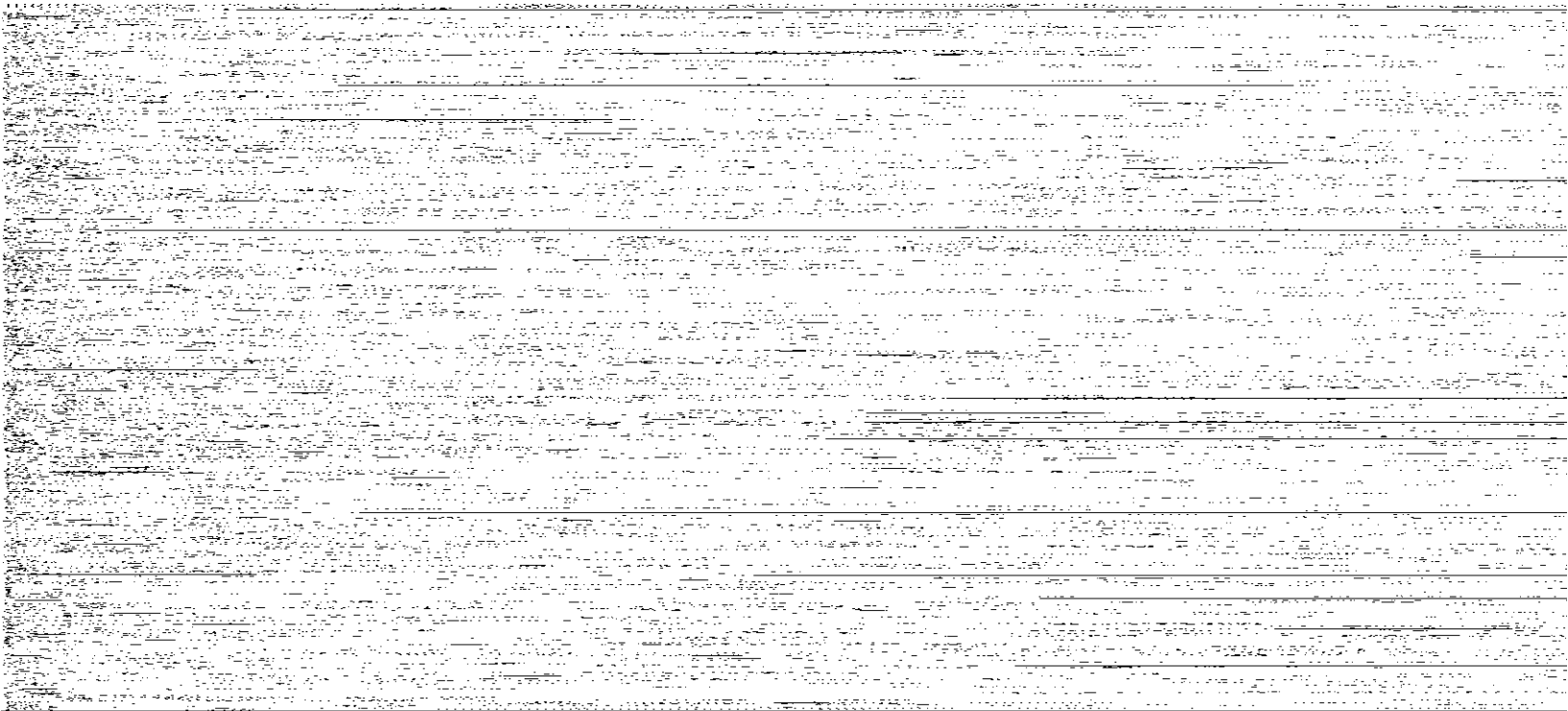












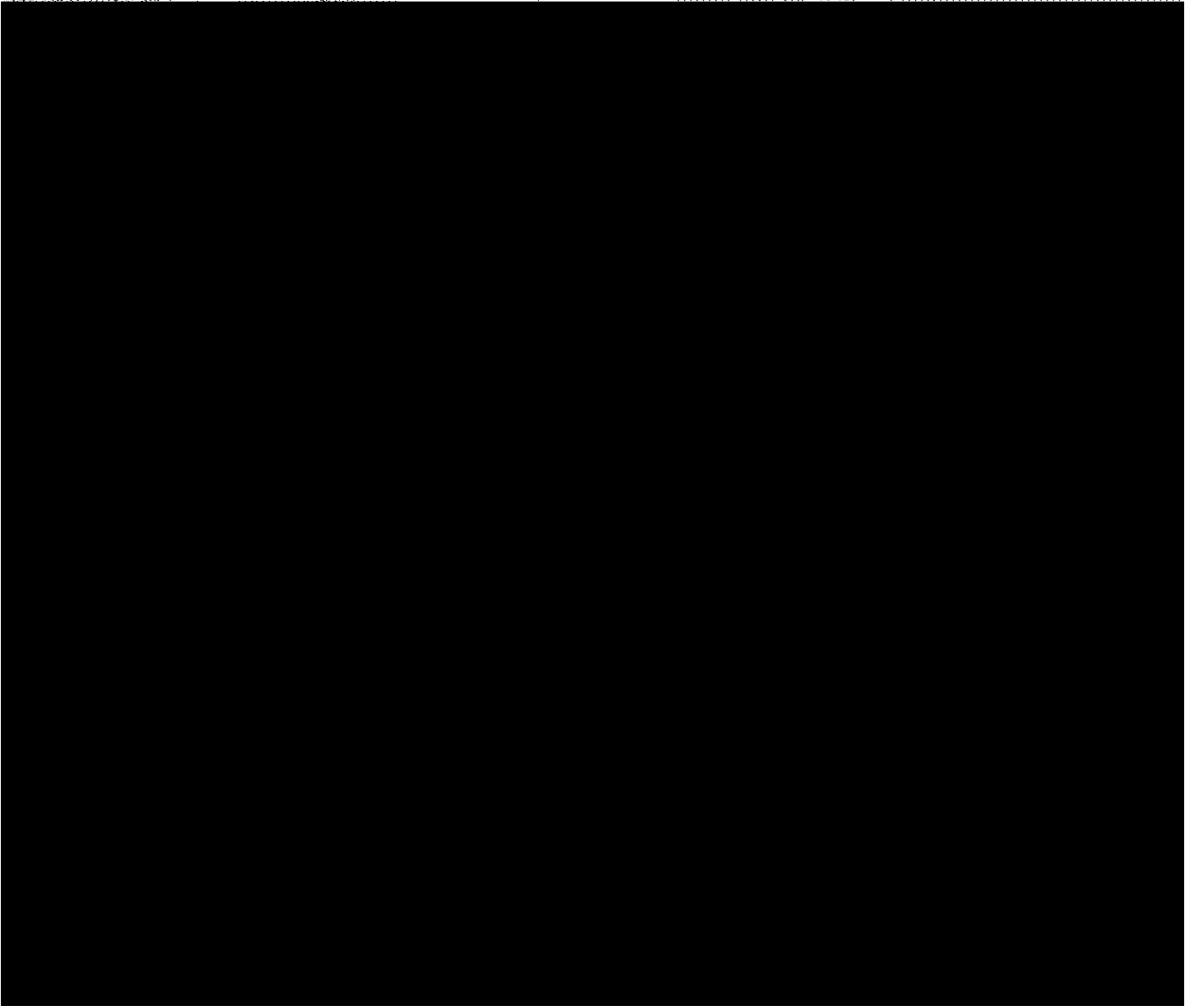
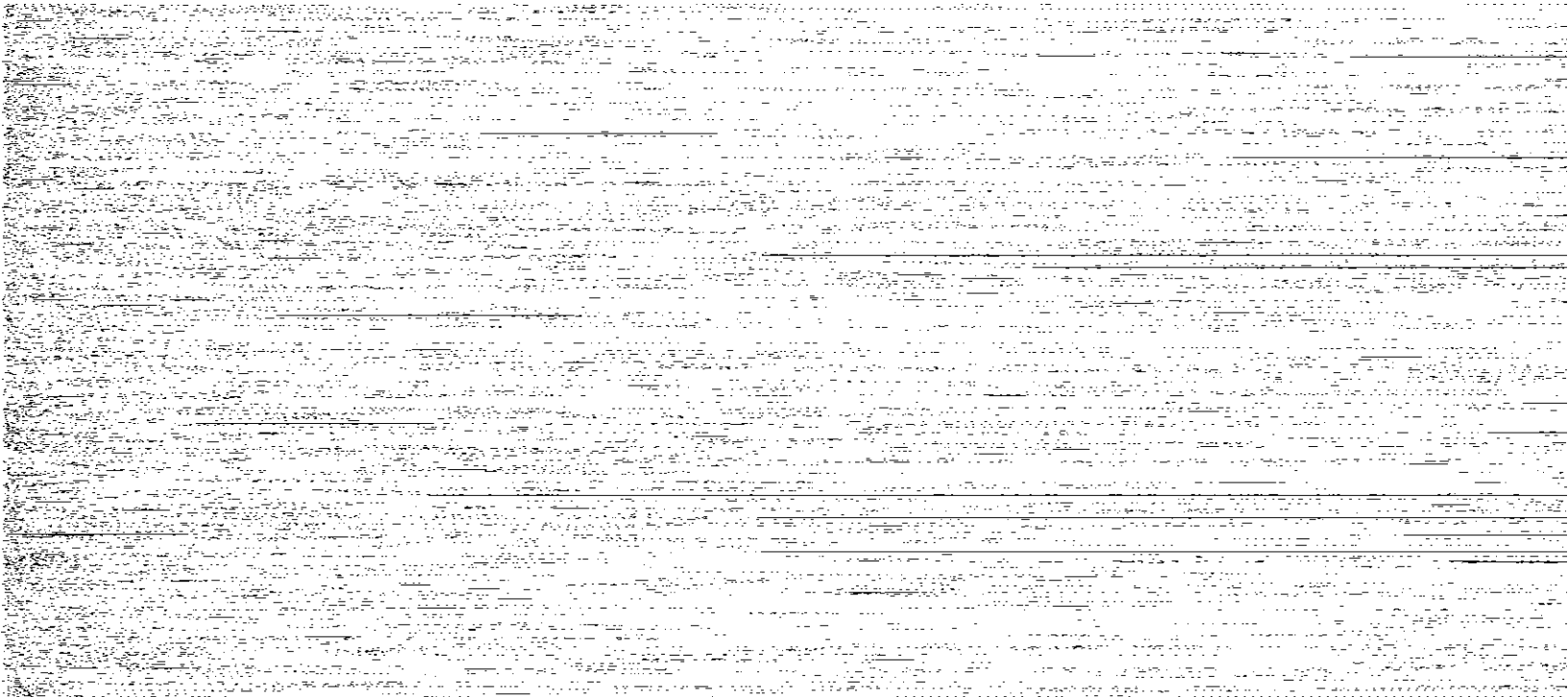
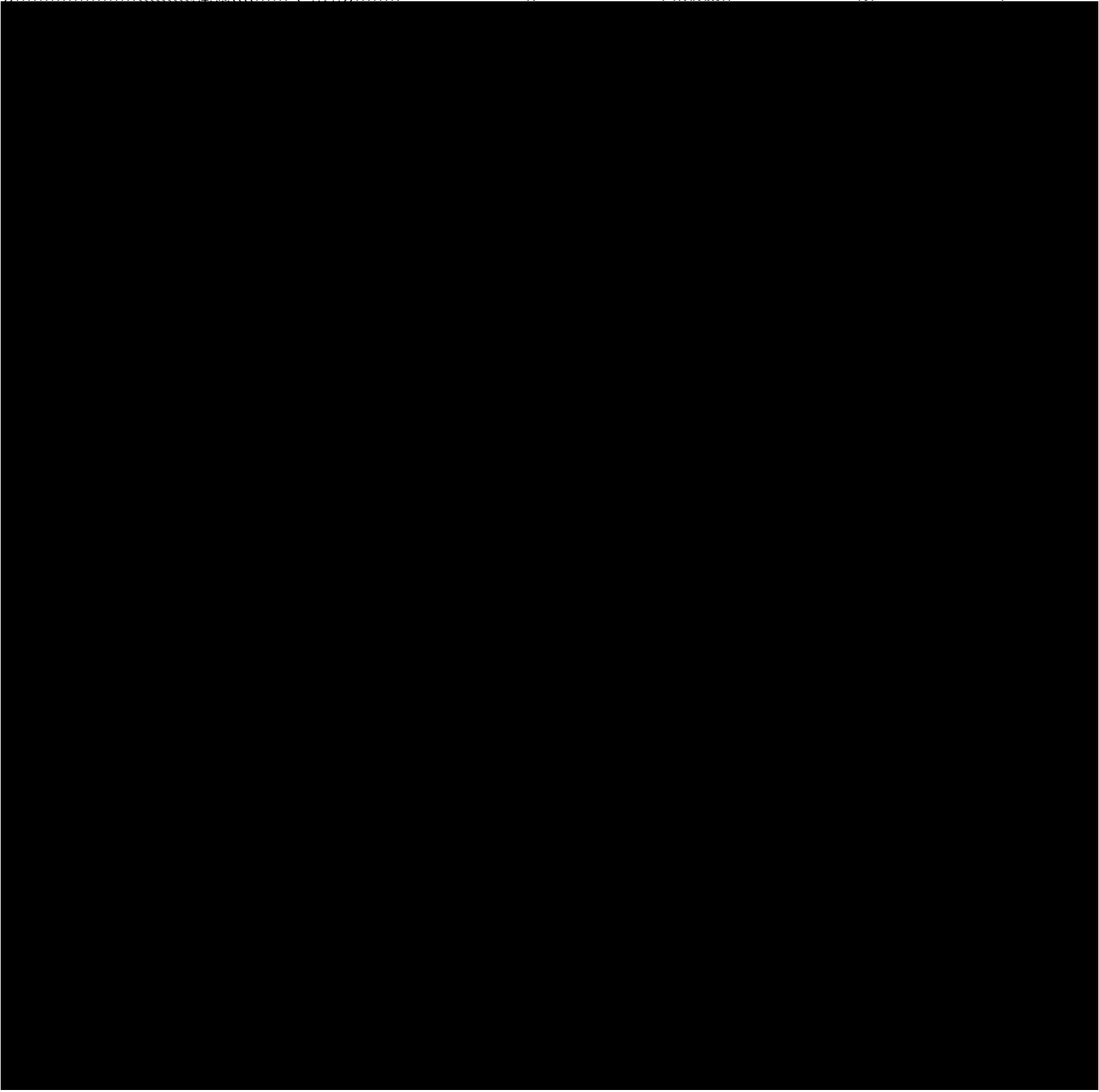
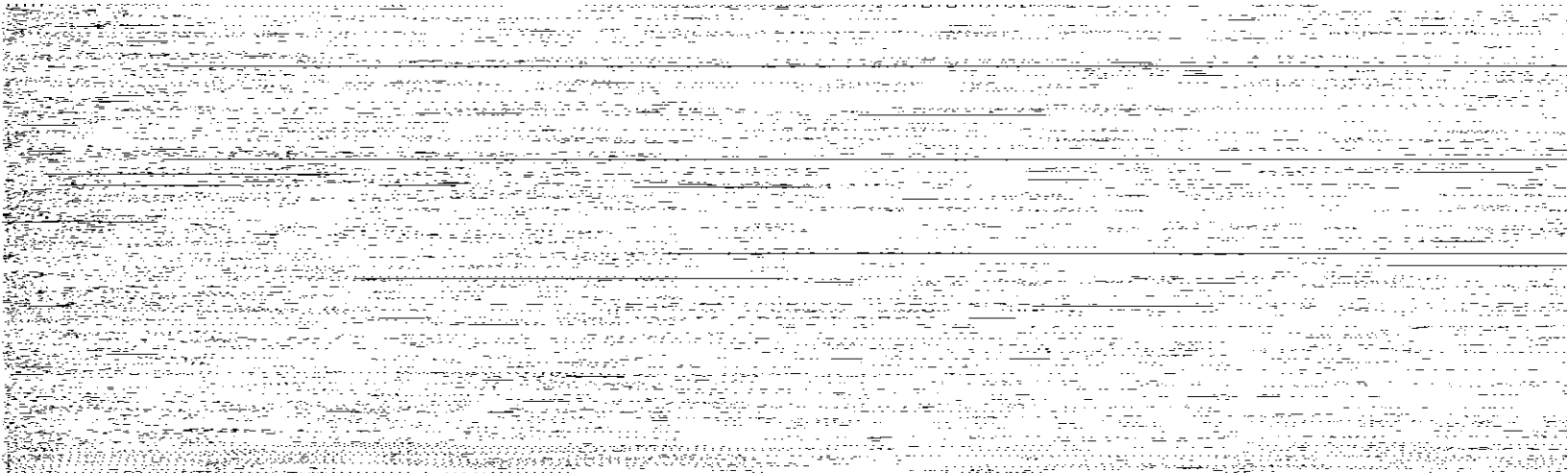


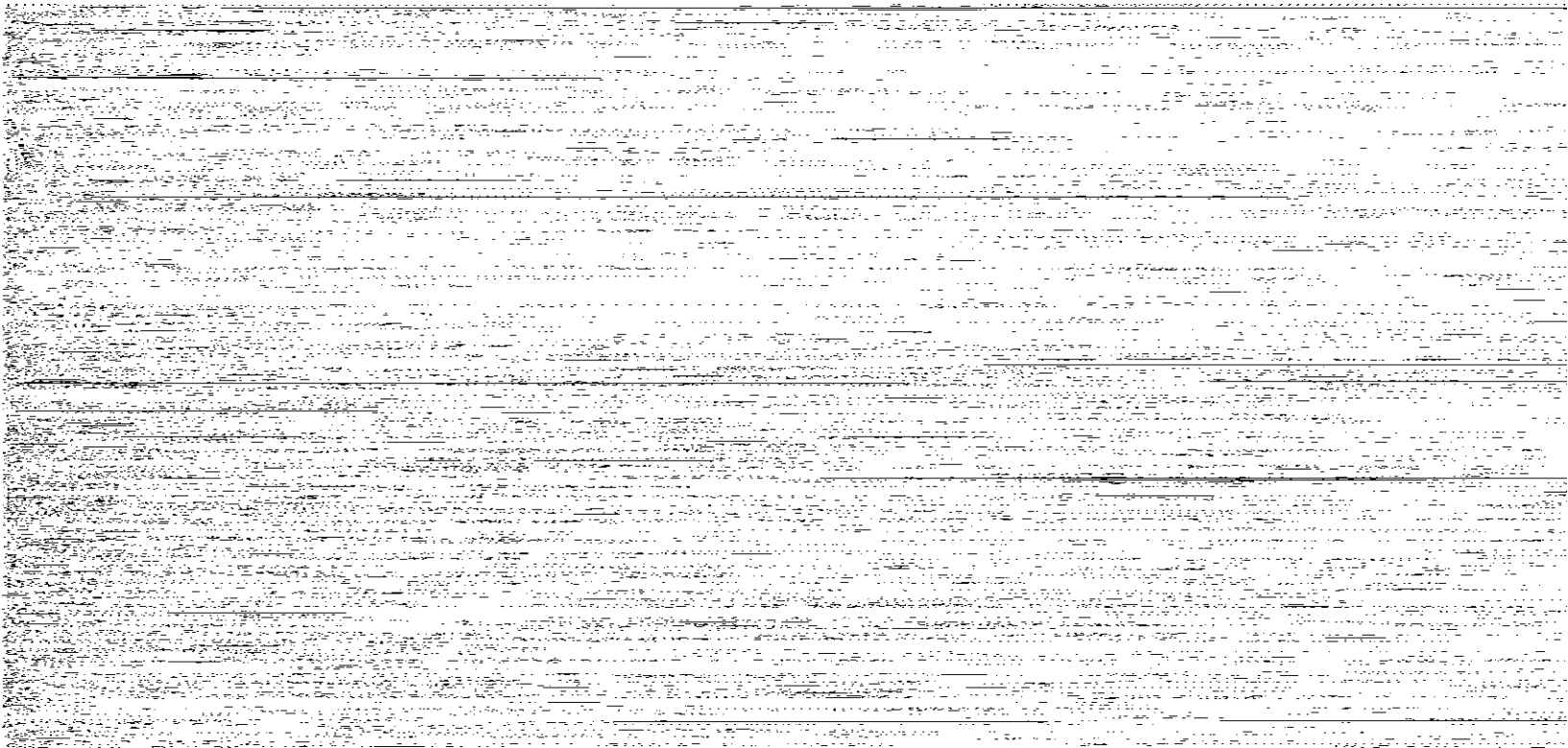
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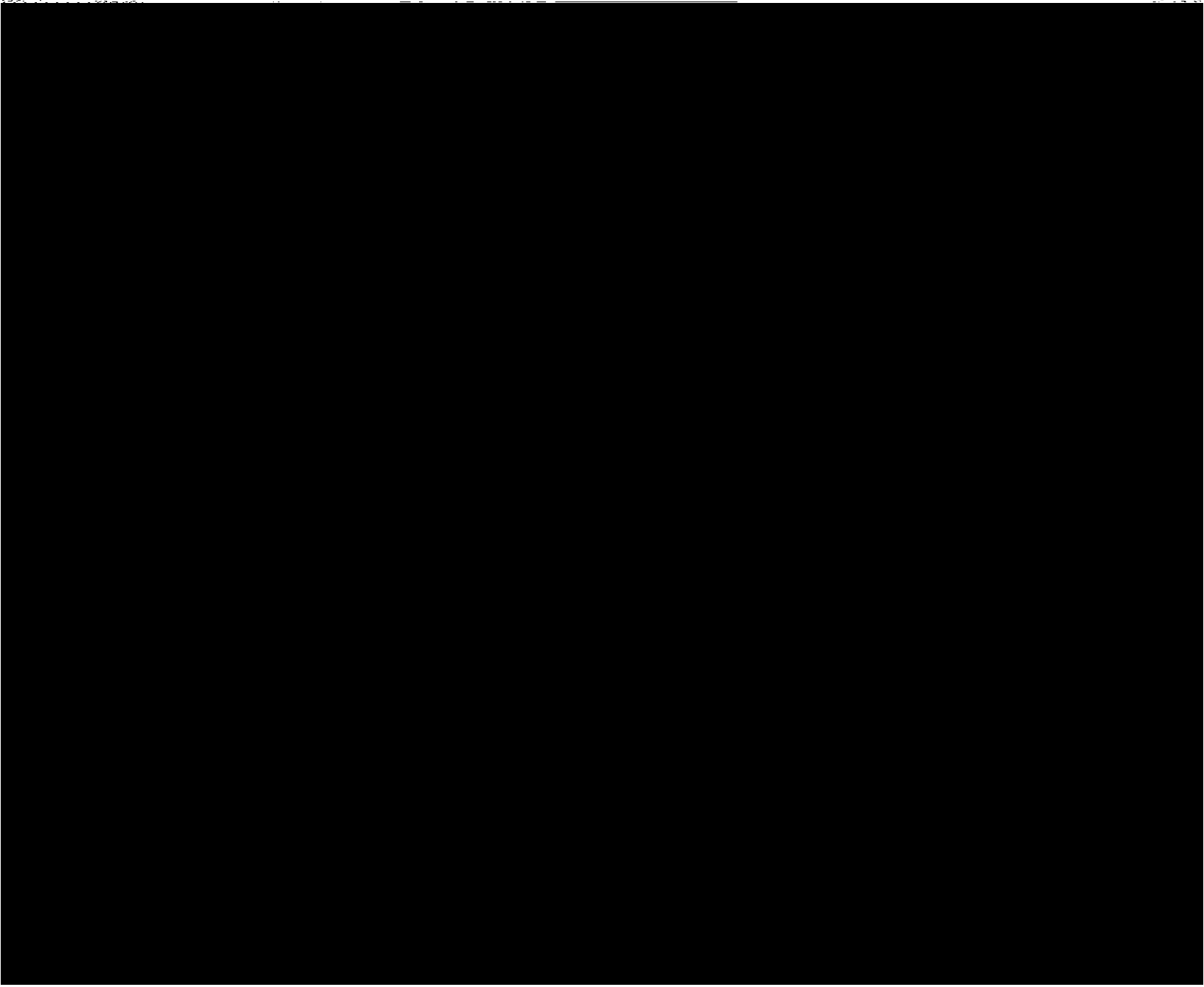
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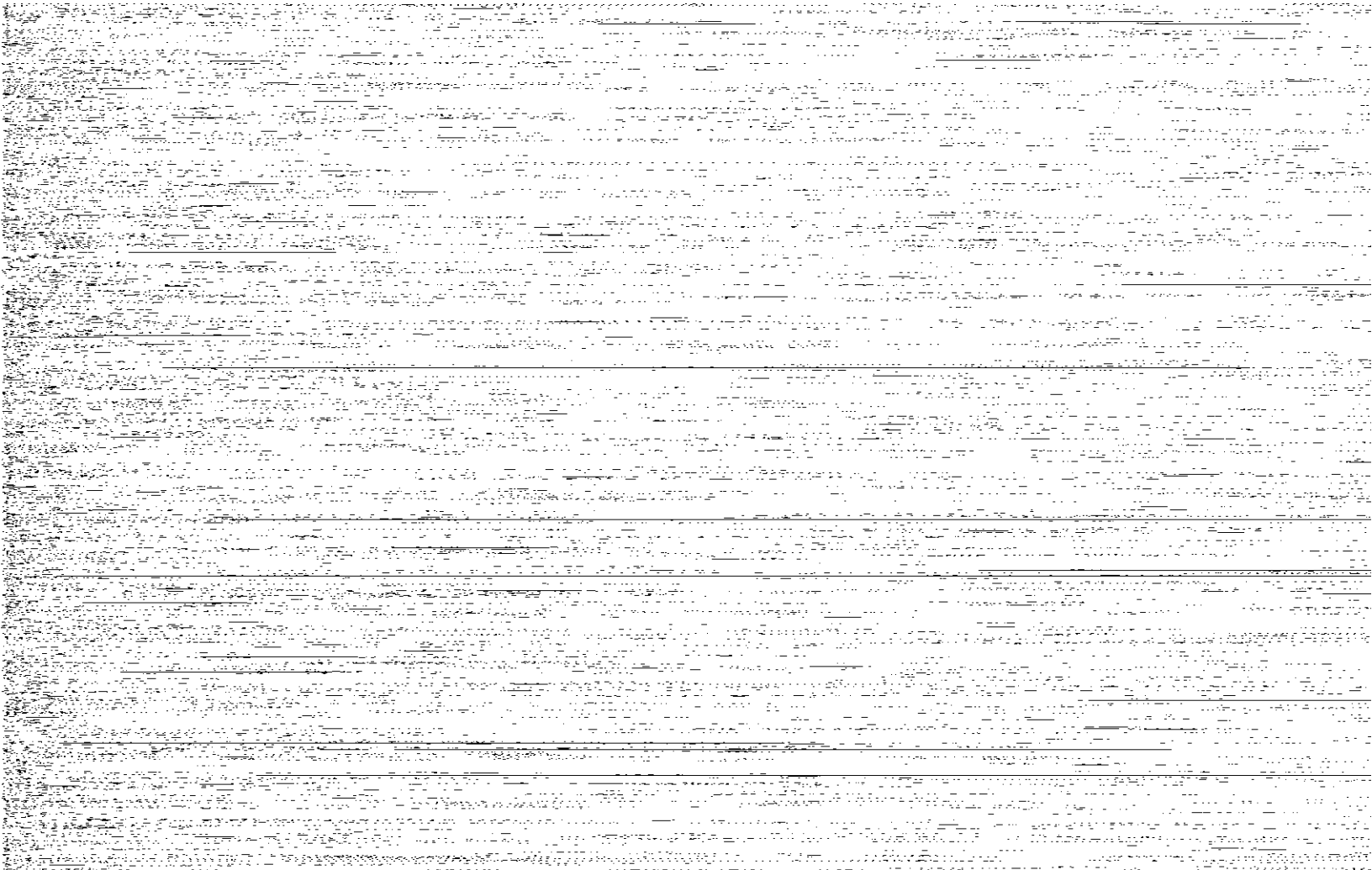
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Steven D. Grierson
CLERK OF THE COURT

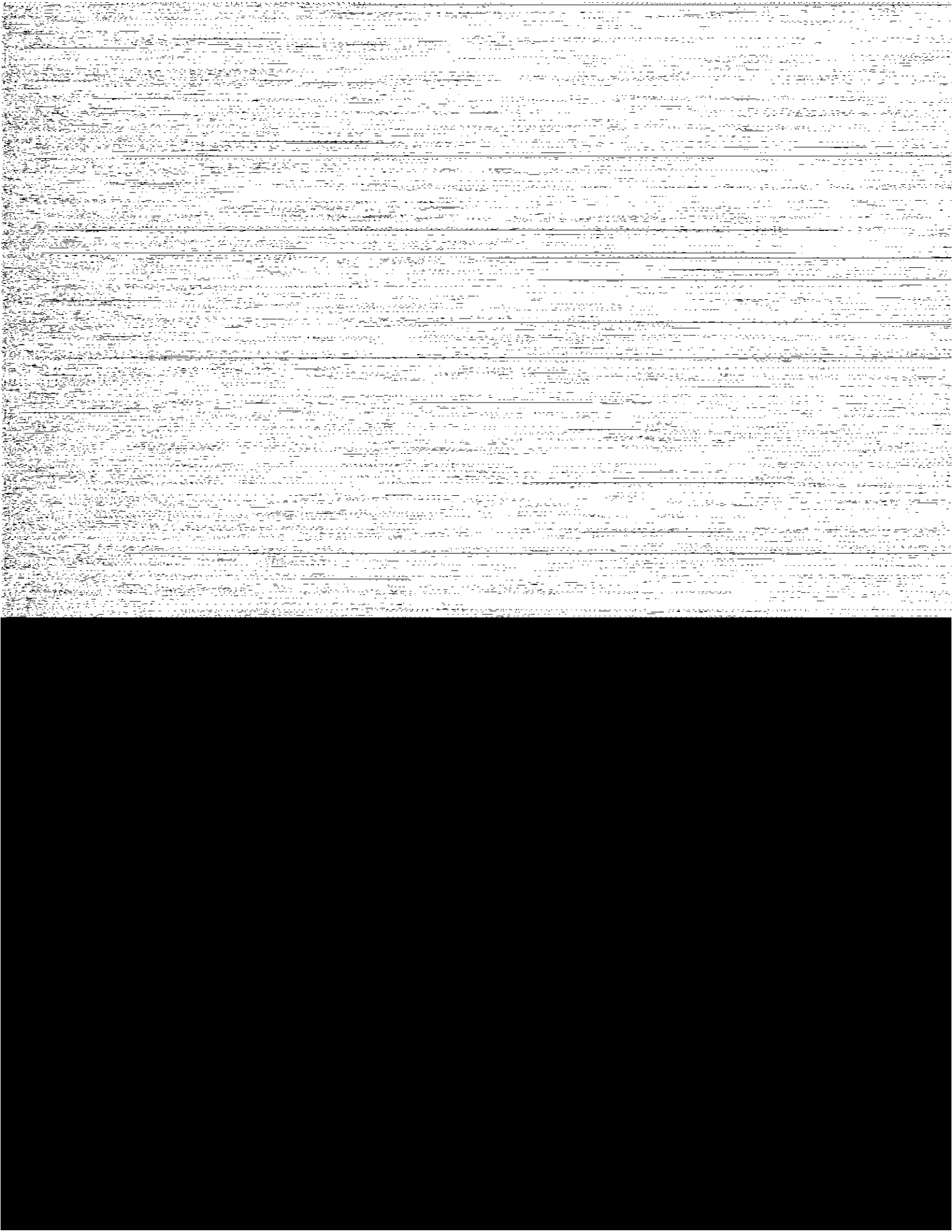
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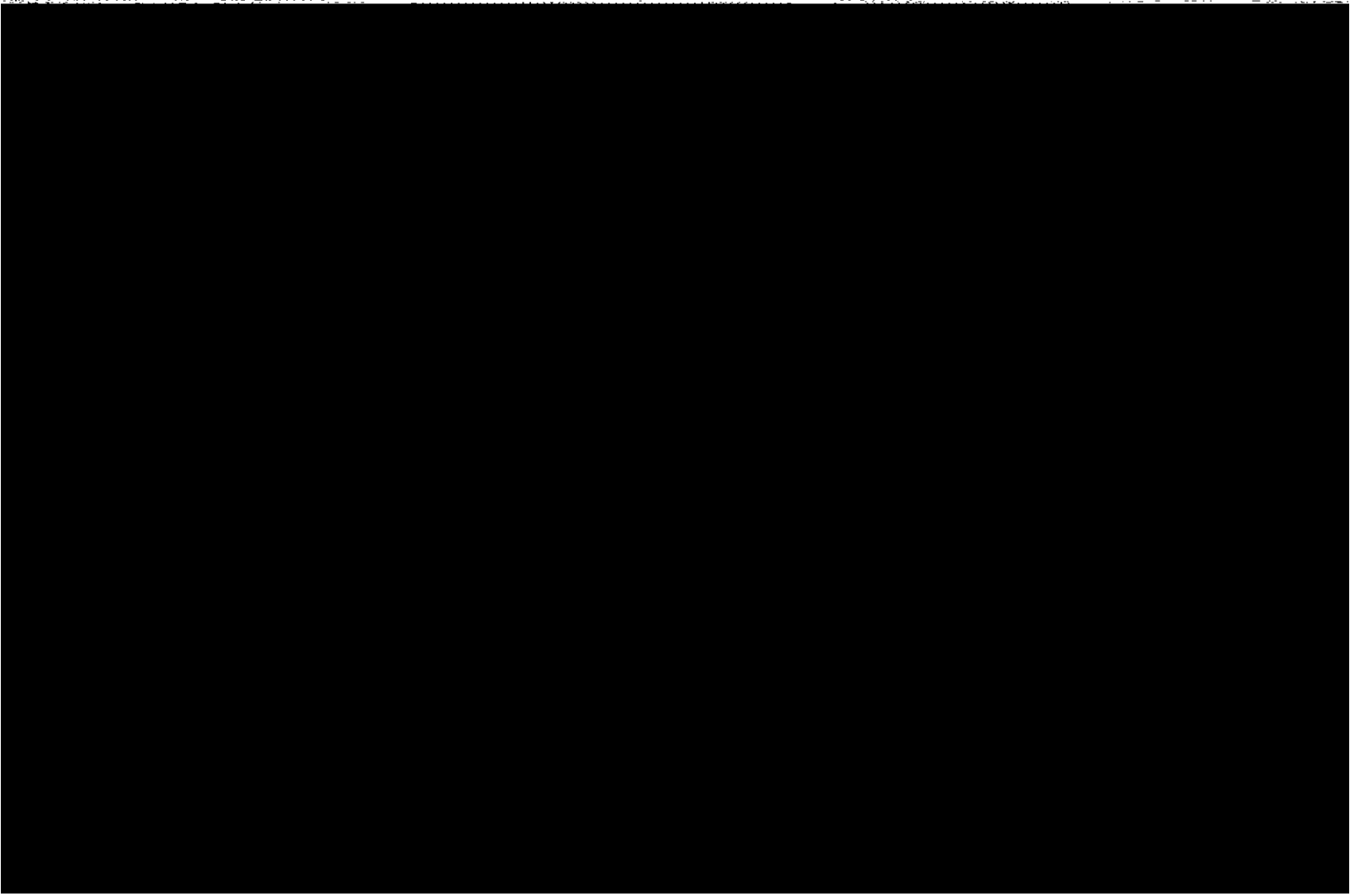
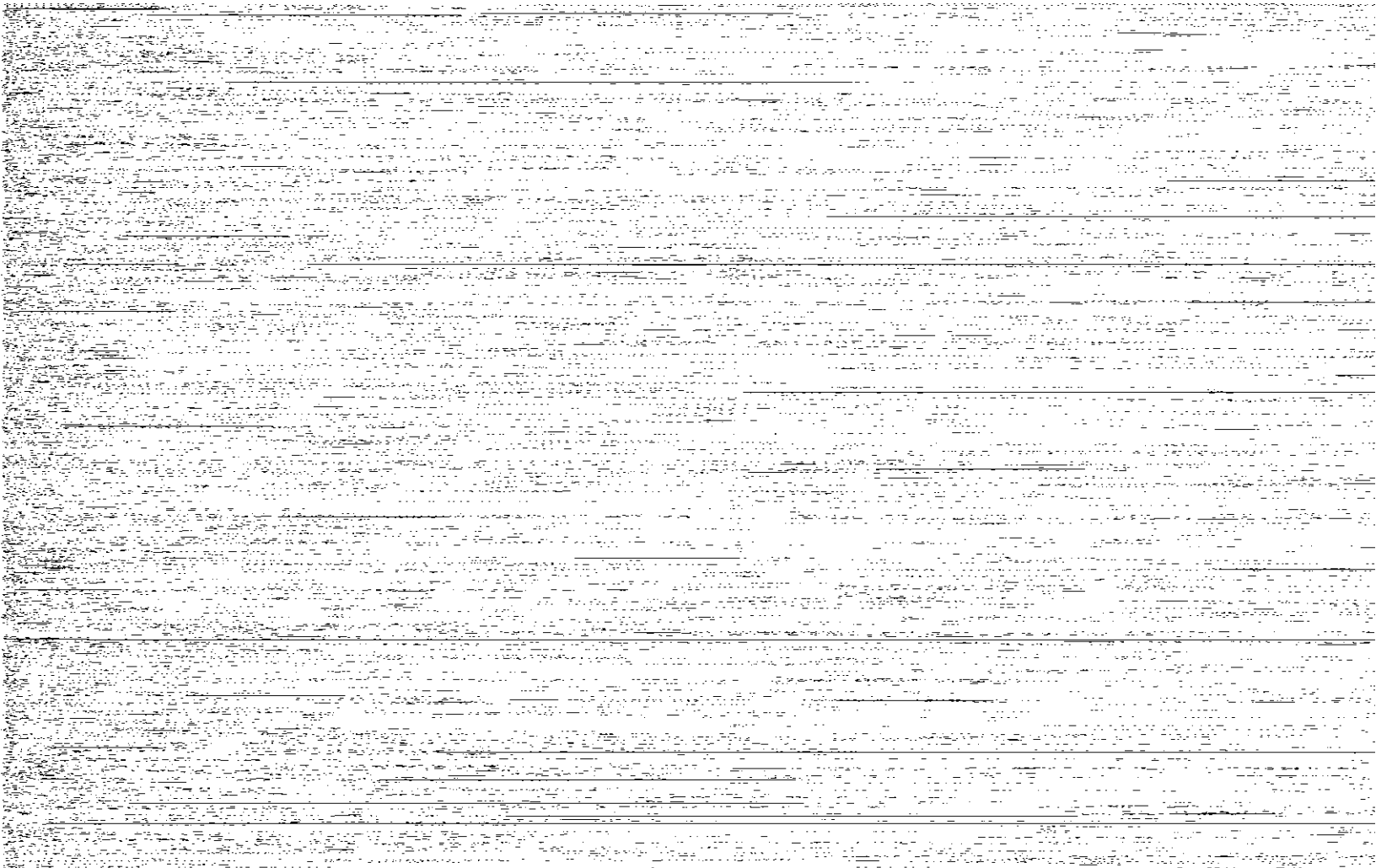


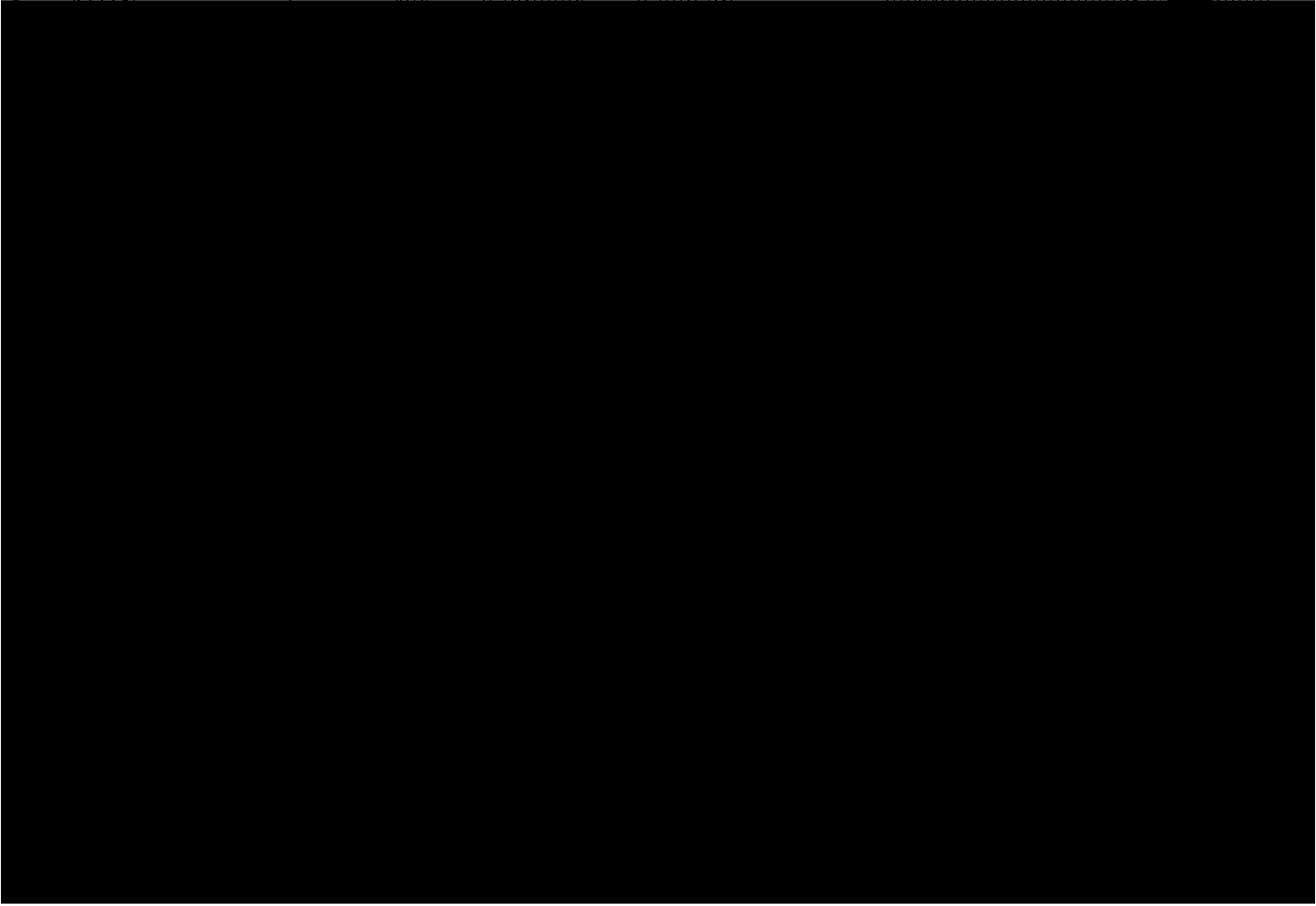
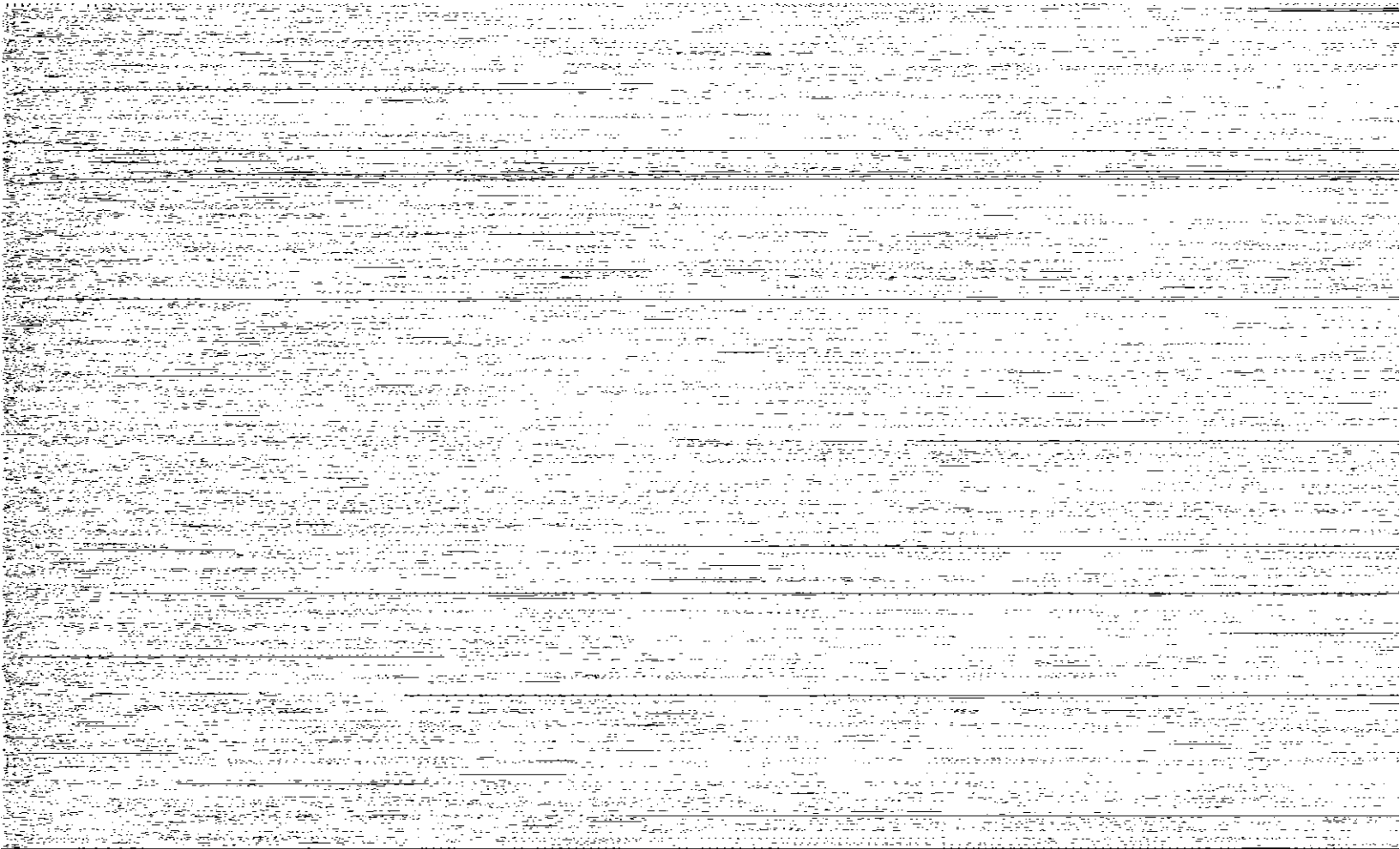












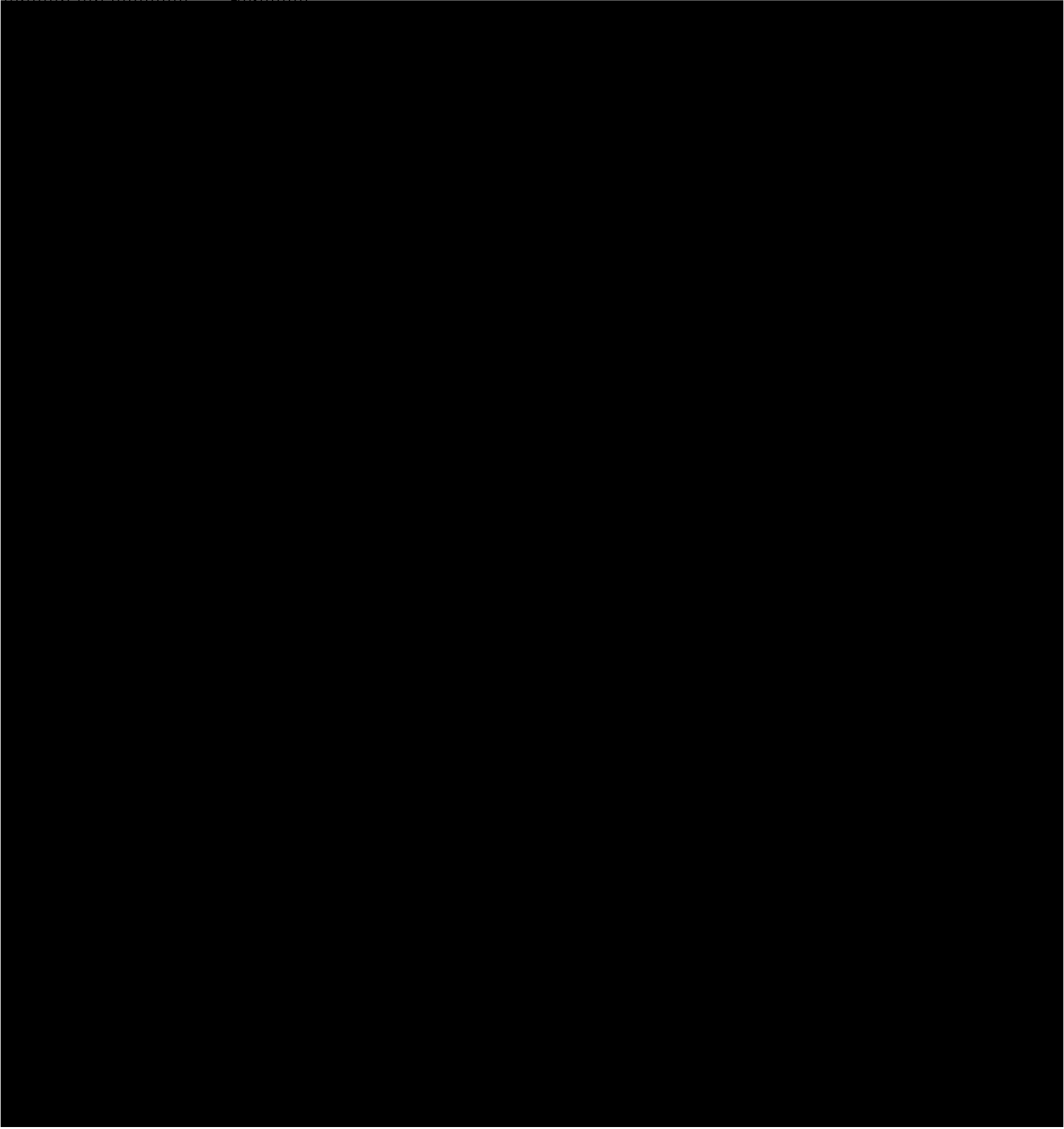
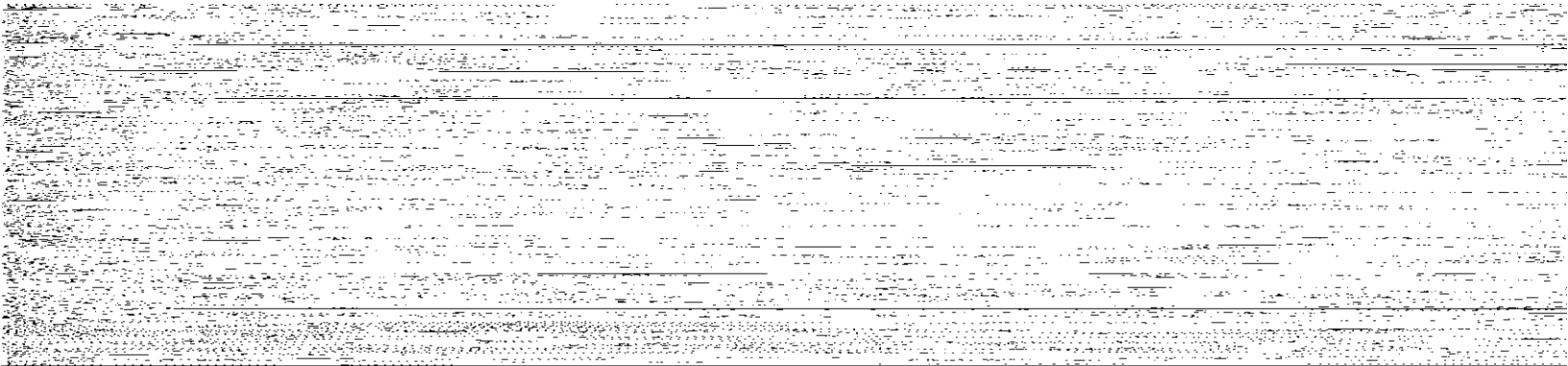


EXHIBIT G

EXHIBIT G



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Saticoy Bay LLC Series 34 Innisbrook

DISTRICT COURT
CLARK COUNTY, NEVADA

SATICOY BAY LLC SERIES 34
INNISBROOK,

Plaintiff,

vs.

THORNBURG MORTGAGE SECURITIES
TRUST 2007-3 et al.,

Defendants.

AND ALL RELATED ACTIONS

Case No.: A-14-710161-C
Dept.: XXVI

NOTICE OF ENTRY OF ORDER

PLEASE TAKE NOTICE that an ORDER has been entered on the 1st day of November, 2019, in the above captioned matter, a copy of which is attached hereto.

DATED this 18th day of November, 2019.

ROGER P. CROTEAU & ASSOCIATES, LTD.

/s/ Roger P. Croteau
ROGER P. CROTEAU, ESQ.
Nevada Bar No. 4958
2810 W. Charleston Blvd., Ste. 75
Las Vegas, Nevada 89102
Attorney for Plaintiff

CERTIFICATE OF SERVICE

Pursuant to Nevada Rules of Civil Procedure 5(b), I hereby certify that I am an employee of ROGER P. CROTEAU & ASSOCIATES, LTD. and that on the 1st day of November, 2019, I caused a true and correct copy of the foregoing document to be served on all parties as follows:

X VIA ELECTRONIC SERVICE: through the Nevada Supreme Court's efilex e-file and serve system.

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Spanish Trail Master Association - Counter Defendant

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_____ VIA U.S. MAIL: by placing a true copy hereof enclosed in a sealed envelope with postage thereon fully prepaid, addressed as indicated on service list below in the United States mail at Las Vegas, Nevada.

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/s/ Jennifer Lee

An employee of ROGER P. CROTEAU &
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1 **ORDG**

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13 **DISTRICT COURT**

14 **CLARK COUNTY, NEVADA**

15 *****

16 SATICOY BAY LLC SERIES 34
17 INNISBROOK,

18 Plaintiff,

19 vs.

20 THORNBURG MORTGAGE SECURITIES
21 TRUST 2007-3 et al.,

22 Defendants.

Case No.: A-14-710161-C
Dept.: XXVI

23 **AND ALL RELATED ACTIONS**

24
25 **ORDER**

26 A hearing having been held on October 29, 2019, on Saticoy Bay LLC Series 34
27 Innisbrook's ("*Plaintiff*") Motion for Reconsideration under NRCP 59(e) and 60(b) of (I) the
28 Court's Summary Judgment Order of December 3, 2018 and (II) the Court's Order Concerning the

1 Distribution of Excess Proceeds and Plaintiff's Motion to Amend Complaint Pursuant to NRCP
2 15(b)(2) and 60(b), the Supreme Court of Nevada's Decision in Jessup, and EDCR 2.30 to Set
3 Aside/Rescind, Ex Parte Motion for Entry of an Order Shortening Time for Hearing on Plaintiffs
4 Motion to Amend Complaint pursuant to NRCP 15(b)(2) and 60(b), the Supreme Court of Nevada's
5 Decision in Jessup, and EDCR 2.30 to Set Aside/Rescind NRS 116 Foreclosure Sale. Appearances
6 by Bryan Naddafi, Travis Akin, and Elena Nutenko on behalf of Timpa Trust U/T/D March 3,
7 1999's (hereafter "*Timpa Trust*"), Donna Wittig on behalf of Thornburg Mortgage Securities Trust
8 2007-3 (hereafter "*Thornburg*"), Roger Croteau on behalf of Saticoy Bay LLC, Series 34
9 Innisbrook, and Brody Wight on behalf of Red Rock Financial Services LLC (hereafter "*Red*
10 *Rock*"). There having been no appearance by Spanish Trail Master Association (hereafter "*Spanish*
11 *Trail*"). The Court, having considered the moving papers, and the representations of counsel
12 present at the hearing, and good cause appearing:

13 **IT IS HEREBY ORDERED, ADJUDGED, AND DECREED** that Plaintiff's Motion to
14 Amend Complaint Pursuant to NRCP 15(b)(2) and 60(b), the Supreme Court of Nevada's Decision
15 in Jessup, and EDCR 2.30 to Set Aside/Rescind NRS 116 Foreclosure Sale is DENIED as the
16 Court does not see the request as an appropriate approach, that there is a separate final order and
17 the case is final and as a result the request is procedurally untimely.

18 **IT IS FURTHER ORDERED, ADJUDGED, AND DECREED** that Plaintiff's Motion for
19 Entry is DENIED.

20 **IT IS FURTHER ORDERED, ADJUDGED, AND DECREED** that Plaintiff's Motion for
21 Reconsideration under NRCP 59(e) and 60(b) of (I) the Court's Summary Judgment Order of
22 December 3, 2018 and (II) the Court's Order Concerning the Distribution of Excess Proceeds is
23 GRANTED IN PART to amend the Findings of Fact in the December 8, 2019 Summary Judgment
24 Order to now state that at the time of the December 8, 2019 Order, the Supreme Court of Nevada's
25 March 2019 decision in *Bank of Am., N.A. v. Thomas Jessup, LLC Series VII* had not yet been
26 published and any such references regarding the unwinding of the foreclosure sale were not
27 discussed or considered in the Summary Judgment Order of this case and to the extent that the
28 determination in *Jessup* have any bearing to this case, it was not considered by the Court.

EXHIBIT H

EXHIBIT H

EXHIBIT I

EXHIBIT I

