

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF FLORIDA
WEST PALM BEACH DIVISION

CASE NO. 9:25-CV-80526-DMM

GOOD SAMARITAN MEDICAL
CENTER, INC., et al.,

Plaintiffs,

v.

THE LEAPFROG GROUP,

Defendant.

THE COMMUNITY HOSPITALS' DEPOSITION DESIGNATIONS

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Attorneys for the Community Hospitals

The Community Hospitals, by and through their undersigned counsel and in an effort to streamline their presentation at trial, submit the narrowed deposition designations for (1) the deposition of Dr. Matt Austin,¹ and (2) the deposition of Dr. Karen van Caulil. In addition, The Community Hospitals hereby submit deposition designations for the deposition of Regina West.² These narrowed and revised designations are submitted pursuant to the reservation of rights in The Community Hospitals' initial deposition designations filed at ECF 134.

Finally, pursuant to The Leapfrog Group's notice on January 13, 2026 that Lauren Bailey is unavailable to testify live at trial, and The Community Hospitals' agreement to accommodate Leapfrog's request to present Ms. Bailey's testimony through deposition designations, The Community Hospitals hereby submit deposition designations for the deposition of Lauren Bailey. The highlighted deposition designations are attached as Exhibit A (M. Austin Deposition Transcript Designations), Exhibit B (K. van Caulil Deposition Transcript Designations), Exhibit C (R. West Deposition Transcript Designations), and Exhibit D (L. Bailey Deposition Transcript Designations). The parties agreed to highlight affirmative designations in yellow and counter-designations in blue.

In addition, The Community Hospitals submit the following tables reflecting the specific pages and lines of deposition testimony designated for trial. These tables include The Community Hospitals' deposition designations, The Leapfrog Group's objections and counter-designations, and The Community Hospitals' reply objections to The Leapfrog Group's counter-designations.

The Community Hospitals intend to present these deposition designations at trial and reserve the right to remove any portion of these designations before or during trial. If any witness

¹ Leapfrog objects to The Community Hospitals' narrower deposition designations of Matt Austin.

² Leapfrog objects to The Community Hospitals' affirmative designations of Regina West.

The Community Hospitals intend to call live becomes unavailable or does not appear, The Community Hospitals reserve the right to present that witness's deposition testimony and will amend designations accordingly. The Community Hospitals also reserve the right to submit any testimony that has been designated by The Leapfrog Group either affirmatively or in its counter designations. The Community Hospitals reserve the right to play video recordings of the selected designations during the trial. The Community Hospitals object to repetition of any video segments. The Community Hospitals reserve the right to use all designated testimony in pre-trial and post-trial submissions. Finally, the Community Hospitals reserve the right to use additional designations for purposes of impeachment, rebuttal, or sur-rebuttal, in accordance with the Court's rules.

The Community Hospitals have used the following abbreviations for objections:

AA	Asked & Answered/Duplicative
C	Compound
CU	Cumulative
H	Hearsay
IH	Improper Hypothetical
L	Leading
LF or F	Lacks Foundation
M	Mischaracterizes Testimony
MD	Mischaracterizes Document
N	Non-Responsive
O	Inadmissible Opinion or Conclusion
PK	No Personal Knowledge/Lacks foundation
R	Relevance
S	Calls for Speculation
T	Time Wasting
UP	Unfair Prejudice
V	Vague & Ambiguous

Table 1: The Community Hospitals' Deposition Designations of Matt Austin - 9/25/2025								
Plaintiffs' Affirmative Designations		Objections to Plaintiffs' Designations	Leapfrog's Counter-Designations		Objections to Leapfrog's Counter-Designations	Plaintiffs' Reply Designations		Objections to Plaintiffs' Reply Designations
From: Page:Line	To: Page:Line		From: Page:Line	To: Page:Line		From: Page:Line	To: Page:Line	
11:21	12:3	None						
34:08	34:11	None						
40:9	40:20	None						
41:11	42:02	None						
48:16	48:19	No objection						
90:15	90:17	H, R	89:9	89:21	Objection. T.			
			90:3	90:13	Objection. N.			
104:1	105:6	H, R, Completeness	106:7	107:10	No Objection.			
			108:10	110:7	No Objection.			
105:14	106:6	H, R, Completeness	106:7	107:10	No Objection.			
			108:10	110:7	No Objection.			
112:1	112:5	R, UP, Wasting Time						
115:15	116:2	Completeness	116:13	116:18	No Objection.			
			117:7	118:5	No Objection.			
			118:15	119:4	Objection. O, H.			
120:15	120:19	Completeness	118:15	119:4	Objection. O, H.			
121:06	121:13	Completeness	118:15	119:4	Objection. O, H.			
122:21	123:13	H, R, UP						
127:08	128:1	H, PK as to for 127:20—128:1						
193:14	193:20	H to 193:13-20, Completeness	175:15	176:11	No Objection.			

Table 1: The Community Hospitals' Deposition Designations of Matt Austin - 9/25/2025								
Plaintiffs' Affirmative Designations		Objections to Plaintiffs' Designations	Leapfrog's Counter-Designations		Objections to Leapfrog's Counter-Designations	Plaintiffs' Reply Designations		Objections to Plaintiffs' Reply Designations
From: Page:Line	To: Page:Line		From: Page:Line	To: Page:Line		From: Page:Line	To: Page:Line	
228:14	228:16	H, F, PK, Wasting time, UP						
228:18	228:20	H, F, PK, Wasting time, UP						
237:19	238:13	H, F, PK, Wasting Time, UP, Completeness	239:4	239:17	No Objection.			
239:19	240:7	F, PK, UP	240:8	240:9	No Objection.			
			371:7	372:14	No Objection.			
268:11	268:20	Completeness	268:1	268:10	No Objection.			
284:11	284:16	H, PK						
285:07	285:15							
397:12	398:6	H, R, Wasting Time						
415:16	415:19	H, R, Wasting Time, Cumulative						

Table 2: The Community Hospitals' Deposition Designations of Karen van Caulil - 9/25/2025

Plaintiffs' Affirmative Designations		Objections to Plaintiffs' Designations	Leapfrog's Counter-Designations		Objections to Leapfrog's Counter-Designations	Reply Designations		Objections to Reply Designations
From: Page:Line	To: Page:Line		From: Page-Line	To: Page-Line		From: Page:Line	To: Page:Line	
6:25	7:2	No objection						
9:7	10:5	Completeness	10:6	10:8	No Objection			
24:21	24:24	Clarification	18:3	18:12	Objection. IH, N.			
			24:7	24:17	No Objection			
27:25	28:3	Completeness, UP	18:3	18:12	No Objection			
			26:23	27:11	No Objection			
			28:4	28:7	No Objection			
			28:8	29:3	Objection. R, T.			
61:3	61:8	PK	59:5	60:11	No Objection			
105:18	105:22	R, UP, PK	77:1	77:6	No Objection			
			83:20	84:11	Objection. T, PK.			
			82:15	82:22	Objection. PK, Completeness.			
			80:24	81:4	Objection. Outside the scope of affirmative designations. Clarification: Duplicative designation.			
132:4	132:7	R, H, UP	135:3	135:18	R, T.			
132:13	132:16		135:3	135:18				
			51:6	52:16	No Objection			
149:9	149:12	F, PK, H	147:9	148:10	Objection. Completeness, R, T/CU.			
			149:13	149:25	Objection. Testimony retracted by witness. (173:14–174:15).			
			156:1	157:11	Objection. Testimony retracted by witness. (173:14–174:15)			

Table 3: The Community Hospitals' Deposition Designations of Lauren Bailey - 9/10/2025

Plaintiffs' Designations		Objections to Plaintiffs' Designations	Leapfrog's Counter-Designations		Objections to Leapfrog's Counter-Designations	Plaintiffs' Reply Designations		Objections to Plaintiffs' Reply Designations
From: Page:Line	To: Page:Line		From: Page:Line	To: Page:Line		From: Page:Line	To: Page:Line	
16:5	16:15	No objection.						
27:12	27:15	No objection.						
27:17	27:20	Completeness	26:3	26:16	No objection			
79:9	79:21	Completeness	79:22	80:18	No objection			
			178:1	179:5	No objection			
104:8	104:11	Completeness	104:12	104:12	No objection			
104:13	104:14	Completeness	105:2	106:2	No objection			
150:22	151:3	Completeness	151:4	151:9	T			
176:4	176:7	Completeness	175:3	176:3	T, outside the scope of affirmative designation			
180:10	180:14	Completeness	180:15	180:15	No objection			
180:16	180:20	Completeness, mischaracterizes testimony	180:21	182:2	R, T			
182:20	183:2	Completeness	182:13	182:19	R, T, outside the scope of affirmative designation			
183:14	183:19	Completeness	183:19	184:8	No objection			
187:8	187:22	No objection						
198:14	198:18	No objection						

Table 3: The Community Hospitals' Deposition Designations of Lauren Bailey - 9/10/2025

Plaintiffs' Designations		Objections to Plaintiffs' Designations	Leapfrog's Counter-Designations		Objections to Leapfrog's Counter-Designations	Plaintiffs' Reply Designations		Objections to Plaintiffs' Reply Designations
From: Page:Line	To: Page:Line		From: Page:Line	To: Page:Line		From: Page:Line	To: Page:Line	
198:19	199:4	R, Time-wasting	265:18	267:14	R, T, outside the scope of affirmative designation			
203:5	203:17	Completeness	28:7	28:22	R, T, outside the scope of affirmative designation			
206:8	206:12	Completeness	28:7	28:22	R, T, outside the scope of affirmative designation			
		Completeness	208:4	208:10	R, T, outside the scope of affirmative designation			
			208:16	208:20	R, T, outside the scope of affirmative designation			
209:16	209:22	Completeness	209:8	209:14	R, T, outside the scope of affirmative designation			
210:2	210:5	Completeness	28:7	28:22	R, T, outside the scope of affirmative designation			
			153:5	153:19	R, T, outside the scope of affirmative designation			
291:21	292:2	Completeness	292:3	292:3	No objection			
292:4	292:18	Completeness	290:14	290:18	No objection			
			308:9	308:22	R, T, outside the scope of affirmative designation			

Table 4: The Community Hospitals' Deposition Designations of Regina West - 9/25/2025

Plaintiffs' Designations		Objections to Plaintiffs' Designations	Leapfrog's Counter-Designations		Objections to Leapfrog's Counter-Designations	Plaintiffs' Reply Designations		Objections to Plaintiffs' Reply Designations
From: Page:Line	To: Page:Line		From: Page:Line	To: Page:Line		From: Page:Line	To: Page:Line	
13:04	13:18							
22:21	22:24							
25:22	26:02							
27:03	27:06							
82:20	82:22							
85:22	85:25							
87:02	87:04							
87:06	87:10							
87:12	87:18							
87:20	88:05							
88:07	88:21	H, PK, F	90:9	90:16	Objection. R, TW.			
90:17	90:20	H, F, PK, UP						
90:22	90:24	H, F, PK, UP						
95:14	95:18	No Objection						

Table 4: The Community Hospitals' Deposition Designations of Regina West - 9/25/2025

Plaintiffs' Designations		Objections to Plaintiffs' Designations	Leapfrog's Counter-Designations		Objections to Leapfrog's Counter-Designations	Plaintiffs' Reply Designations		Objections to Plaintiffs' Reply Designations
From: Page:Line	To: Page:Line		From: Page:Line	To: Page:Line		From: Page:Line	To: Page:Line	
95:25	96:09	No Objection						
111:05	111:06							
111:08	111:12							
113:15	113:18	Completeness. NR R.	114:2	114:6	Objection. AA. R, TW/CU.			
113:20	113:20	Completeness. NR R.	114:2	114:6	Objection. AA. R, TW/CU.			
119:07	119:19							
124:24	125:01	Completeness	125:13	126:4	Objection. R T/CU.			
125:03	125:12	Completeness	125:13	126:4	Objection. R T/CU.			
189:24	190:10	No Objection.						
191:18	191:21	Completeness	192:24	193:9	Objection. IH, LF, M, R, T.			
191:23	192:13	Completeness	192:24	193:9	Objection. IH, LF, M, R, T.			

Table 4: The Community Hospitals' Deposition Designations of Regina West - 9/25/2025

Plaintiffs' Designations		Objections to Plaintiffs' Designations	Leapfrog's Counter-Designations		Objections to Leapfrog's Counter-Designations	Plaintiffs' Reply Designations		Objections to Plaintiffs' Reply Designations
From: Page:Line	To: Page:Line		From: Page:Line	To: Page:Line		From: Page:Line	To: Page:Line	
198:25	199:04	F, PK, H, UP	141:2	141:13	Objection. T/CU. BER.			
			215:16	216:11	No Objection.			
199:06	199:25	F, PK, H, UP	141:2	141:13	Objection. T/CU. BER.			
			215:16	216:11	No Objection.			
206:10	206:20							
206:24	207:01	Completeness	207:2	207:7	Objection. R, T.			
237:03	237:18	H, F, PK						
238:07	239:05	H, F, PK, UP, Wasting time						

Dated: January 16, 2026

Respectfully submitted,

By: /s/ Jeffrey Marcus

By: /s/ Daniel Chung

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Exhibit A

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF FLORIDA
WEST PALM BEACH DIVISION

GOOD SAMARITAN MEDICAL)
CENTER, et al.,)
)
Plaintiffs,) CASE NO.
)
v.) 9:25-CV-80526-DMM
)
THE LEAPFROG GROUP,)
)
Defendant.)
_____)

The in-person, video-recorded deposition of Matthew Austin, taken pursuant to Federal Rule of Civil Procedure 45 and Southern District of Florida Local Rule 26.1, at the offices of Zuckerman Spaeder, LLP, 100 E. Pratt Street, Suite 2440, Baltimore, Maryland 21202, by Plaintiffs in the above-referenced action, beginning at 9:09 a.m. The deposition was taken before Marlene Kerr, a Certified Shorthand Reporter, Registered Professional Reporter, Registered Merit Reporter, Certified Realtime Reporter, Federal Certified Realtime Reporter, Notary Public.

Job No. 7616361

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12

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21

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WITNESS: MATTHEW AUSTIN

Good Samaritan, et al., The Leapfrog Group

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WITNESS: MATTHEW AUSTIN

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WITNESS: MATTHEW AUSTIN

Good Samaritan, et al., The Leapfrog Group

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WITNESS: MATTHEW AUSTIN

Good Samaritan, et al., The Leapfrog Group

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P R O C E E D I N G S

THE VIDEOGRAPHER: Good morning.

We are going on the record at 9:09 a.m., on September 25th, 2025. This is media unit one of the video-recorded deposition of Dr. Matthew Austin taken in the matter of Good Samaritan Medical Center, Inc., et al., v. The Leapfrog Group, the United States District Court for the Southern District of Florida, West Palm Beach Division; Case No. 9:25-CV-08526 [sic.] -DMM.

My name is Curtis Roginski, representing Veritext. I'm the videographer. The court reporter is Marlene Kerr, also with Veritext.

Will counsel please identify yourselves and state whom you represent.

MS. LAWSON: Sara Lawson from Zuckerman Spaeder on behalf of the witness, Dr. Matthew Austin, and the Armstrong Institute.

MR. CRAIN: Lee Crain from Gibson Dunn & Crutcher for Plaintiffs.

MS. WOOD: Courtney Wood, Wilson Elser, on behalf of the Defendant, The Leapfrog Group.

1 MR. TOGIAS: Iason Togias on behalf of
2 Plaintiffs with Gibson Dunn & Crutcher.

3 THE VIDEOGRAPHER: Thank you.

4 Would the court reporter please swear in
5 the witness.

6 THE COURT REPORTER: Sure.

7 Would you please raise your right hand to
8 be sworn.

9 (Witness complied.)

10 THE COURT REPORTER: Do you promise and declare
11 under penalty of perjury the testimony you are about to
12 give will be the truth, the whole truth, and nothing but
13 the truth?

14 THE WITNESS: Yes.

15 THE COURT REPORTER: Thank you.

16 (Witness sworn.)

17 MR. CRAIN: I'm sorry. Could we pause for a
18 second?

19 THE COURT REPORTER: Sure.

20 MR. CRAIN: Do we have the realtime?

21 THE COURT REPORTER: You should.

1 MR. CRAIN: Oh, okay. We've got it there.

2 THE COURT REPORTER: Okay.

3 MR. TOGIAS: Is it on, though?

4 THE COURT REPORTER: It's up and running.

5 MR. CRAIN: Actually, can we go off for a
6 second? I'm sorry.

7 (Discussion held off the record regarding
8 the realtime feed.)

9 THE VIDEOGRAPHER: Off the record. The time is
10 9:10 a.m.

11 (Brief pause.)

12 THE VIDEOGRAPHER: This marks the beginning of
13 media unit number two. We're going back on the record.
14 The time is 9:12 a.m.

15 EXAMINATION

16 BY MR. CRAIN:

17 Q. Good morning, Dr. Austin.

18 A. Good morning.

19 Q. My name is Lee Crain. I am counsel for
20 Plaintiffs in this action.

21 Could you please just state your full name

1 for the record.

2 A. Yeah, my full legal name is John Matthew
3 Austin, but I go by Matt Austin.

4 Q. And have you gone by any other names besides
5 those two?

6 A. No, I have not.

7 Q. Okay.

8 Have you ever been deposed before?

9 A. I have not.

10 Q. Okay.

11 I want to go through just some ground rules
12 at the start so we're on the same page. A couple of key
13 rules. You understand the court reporter is taking down
14 what you and I say to create a written transcript?

15 A. Uh-huh.

16 Q. And you understand this deposition is being
17 video-recorded?

18 A. Yes, I do.

19 Q. Because of Marlene and to help her out, we want
20 to make sure that we're taking time between the
21 questions and answers. So I'll do my best to let you

1 finish, and you do your best to let me finish. Fair
2 enough?

3 A. Sounds good. I'll do my best.

4 Q. It's a little unnatural, but we'll get through
5 it.

6 Answers need to be audible, so no shaking
7 heads or nodding, that sort of thing. Fair enough?

8 A. Fair enough.

9 Q. You understand you're under oath today as if
10 you were testifying in court?

11 A. Yes.

12 Q. Are you under any medications that would impair
13 your ability to testify truthfully today?

14 A. No.

15 Q. Is there any other reason you can't give
16 truthful testimony today?

17 A. No.

18 Q. Okay.

19 Occasionally, it will happen where I will
20 ask a bad question. Don't hesitate to ask if you have
21 questions, if you want me to restate the question, or if

1 you're confused. If you don't, I'm going to assume you
2 understand the question, but feel free to clarify any
3 time. Fair enough?

4 A. Fair enough.

5 Q. And then the last -- two last things. From
6 time to time, your attorney or Ms. Wood may object.
7 Unless they're instructing you not to answer, we're
8 going to ask you to answer the question. Clear enough?

9 A. That's clear enough.

10 Q. And then the last thing is we can take a break
11 any time, any time you need, any time anybody else
12 needs. The only thing we ask is not while a question is
13 pending. So we'll go through the question and answer
14 and then we can take a break, if that makes sense?

15 A. Yeah, that makes sense.

16 Q. Great.

17 Okay. So I want to just start right at the
18 top. Did you prepare for this deposition?

19 A. I did.

20 Q. Can you tell me what you did to prepare for the
21 deposition?

1 A. I met with my attorney and a paralegal
2 yesterday and also reviewed some documents that they had
3 sent me.

4 Q. Did you only meet with counsel one time?

5 A. To prepare for the deposition, yes.

6 Q. Did you meet with counsel other times regarding
7 this case?

8 A. We did have an early sort of exploratory call
9 shortly after Sara was named as my counsel.

10 Q. Okay.

11 MS. LAWSON: And I'm just going to object, just
12 interpose an objection just to make sure that Dr. Austin
13 understands that you can answer with respect to sort of
14 basic details, the who, what, where, when, why, and how
15 of our discussions, but those discussions are protected
16 by the attorney-client privilege. So I would just ask
17 and instruct you not to reveal the substance of any
18 discussions that you've had with me or any other of your
19 counsel from Zuckerman Spaeder, like my partner Marty
20 Himeles as well. So just to make that clear.

21

1 BY MR. CRAIN:

2 Q. Yes. And none of my questions are getting at
3 that. So I do not want the substance of your
4 communications with counsel. Fair enough?

5 A. Fair enough.

6 MR. TOGIAS: And just to flag, this is -- the
7 Zoom link, I don't see a live feed.

8 MR. CRAIN: We'll do it after.

9 BY MR. CRAIN:

10 Q. So how long did you meet with counsel --
11 yesterday, you said?

12 A. Yesterday, correct.

13 Q. And how long was that meeting?

14 A. It was approximately three hours.

15 Q. Was anybody else in attendance besides
16 Ms. Lawson -- did I get that right? I'm sorry -- and a
17 paralegal?

18 A. That was it.

19 Q. Okay. And you reviewed documents during that
20 session?

21 A. We reviewed some documents.

1 Q. Okay. Did you review documents outside of that
2 session with your counsel to prepare today?

3 A. No.

4 Q. Okay. Did you watch any videos?

5 A. No.

6 Q. Did you listen to any audio recordings?

7 A. No.

8 Q. Okay. Did you review any other -- any
9 transcripts from depositions in this case?

10 A. No.

11 Q. Did you review any transcripts of anything
12 else?

13 A. No.

14 Q. Let's see. Who have you talked to about this
15 deposition besides counsel?

16 A. So I've talked to my boss, Allen Kachalia, to
17 let him know that I was being deposed. I spoke to
18 Jordan Derk who at the time of -- or at least at the
19 start of the period was working with me on The Leapfrog
20 Group contract; and with Preeti Joshi, who currently is
21 working with me on the Leapfrog contract, my partner at

1 home, and my father who is an attorney.

2 Q. And just going down the line, what did you tell
3 Mr. Kachalia about the deposition?

4 A. I had let him know that there was a lawsuit and
5 that I was being deposed for testimony.

6 Q. And what did you talk to Mr. Derk about?

7 A. I let Mr. Derk know that he was going to be
8 receiving a subpoena for documents. We talked a little
9 bit about the lawsuit, as well as some other related
10 items.

11 Q. Did you talk about the methodology, the
12 Leapfrog Hospital Safety Grade methodology with him?

13 A. We didn't talk about that in detail.

14 Q. And what did you talk about with Ms. Joshi?

15 A. I let her know that there was going to be a
16 lawsuit and that she should come to me with any
17 questions or concerns that she had about that. And then
18 when she received notice that she needed to supply
19 documents, we talked about what she needed to supply and
20 how that would go.

21 Q. Okay. And she's a current employee at

1 Armstrong?

2 A. Correct.

3 Q. Okay.

4 And then with regard to your partner and
5 your father, did you talk about the substance of this
6 case at all?

7 A. I talked about what I was aware of based on the
8 public press releases that both organizations had put
9 out.

10 Q. And what did you say? Just can you give us a
11 general sense?

12 A. Yeah. My general sense is it felt like there
13 was a lot of factual errors in the press release in
14 terms of what tenant was claiming, that those things
15 were just factually wrong.

16 Q. I guess we'll come back to that.

17 And then a couple of other questions. Did
18 you talk to anybody at Leapfrog about this case?

19 A. Not -- so Leapfrog did give me a heads-up that
20 I was going to be receiving a subpoena. So that was the
21 sort of extent of the conversation.

1 Q. Okay.

2 And then did you also speak with counsel at
3 Wilson Elser, Ms. Wood's firm?

4 A. We had a brief conversation the day that I was
5 notified that I was going to be receiving a subpoena.

6 Q. Okay. And have you exchanged emails with
7 Wilson Elser?

8 A. I have not beyond the counsel at Johns Hopkins
9 requested Courtney and Kim's names and emails, and so I
10 supplied them with those.

11 Q. Okay.

12 Now, I want to just start with an exhibit
13 just to mark it. This will be Exhibit 1.

14 (Exhibit No. 1 was marked for
15 identification as of 9/25/2025.)

16 BY MR. CRAIN:

17 Q. Dr. Austin, do you recognize this document?

18 A. I do.

19 Q. And it was produced, if you see the bottom
20 right, by the Armstrong Institute?

21 A. Correct.

1 Q. And it's an email from Ms. Binder to a number
2 of folks, including yourself. Do you see that?

3 A. Yes, I do.

4 Q. And Ms. Binder told you, if you look towards
5 the bottom, she asked everybody in the email not to
6 email or talk about the case in writing. Do you see
7 that?

8 A. Can you point me to where that says that?

9 Q. Yes. So it says, number two: "Do not
10 communicate in writing about this matter, such as on
11 slack or email or texting."

12 Do you see that?

13 A. Yes.

14 Q. Did you adhere to that guidance?

15 A. So outside of sort of the need to communicate
16 with, say, my boss or with counsel, I did follow that.

17 Q. Okay.

18 And then she asks -- she says, number
19 one -- do you see that right above? -- "Please refer all
20 questions or concerns, whether you have them personally
21 or you hear them from external sources, to me, Missy,

1 Lauren, or Karen. Do not put them in writing. Call us
2 or come by my office."

3 Do you see that?

4 A. I do.

5 Q. Did you call any of those folks listed in
6 bullet one?

7 A. I did not.

8 Q. Okay.

9 And then did you come by her office?

10 A. I did not.

11 Q. Okay.

12 Now, did -- I want to talk just for a
13 second about the safety grade expert panel. Do you know
14 what I mean when I say that?

15 A. Yes.

16 Q. I assume you spent a decent bit of time with
17 that group.

18 A. Correct.

19 Q. Did you discuss the lawsuit with the expert,
20 the safety grade expert panel?

21 A. So we did have a meeting with the expert panel

1 already scheduled, and at that meeting, the decision was
2 to share with the expert panel that a lawsuit had been
3 filed.

4 Q. And what was discussed at the meeting? Like,
5 can you give a little more of a play-by-play?

6 A. I don't know if I can give a play-by-play
7 without specific notes in front of me. I don't even
8 remember who shared with the panel that the lawsuit had
9 been filed. I don't know if that was Ms. Binder,
10 Ms. Danforth, if it was counsel for Leapfrog. I really
11 don't remember who shared that information with them.
12 And it was more just to let them know since they had
13 been involved in the safety grade.

14 Q. Okay.

15 I'm going to mark another exhibit. This is
16 Exhibit 2, another Armstrong document.

17 (Exhibit No. 2 was marked for
18 identification as of 9/25/2025.)

19 BY MR. CRAIN:

20 Q. So Dr. Austin, do you recognize this document?

21 A. I do.

1 Q. And it's another, if you look at the bottom
2 right, another Armstrong-produced document?

3 A. Correct.

4 Q. And the email at the top, which you'll see as
5 we go through that usually the first email is the last
6 one in the way it's printed out, but you'll see it's
7 from you to Ms. Danforth. Do you see that?

8 A. Yes.

9 Q. And if you go to the next page, there's an
10 email -- actually, it starts on the bottom of page 1
11 from you. Do you see that, that May 1?

12 A. Correct.

13 Q. And then it's an email from you, it looks like,
14 to the Hospital Safety Grade Expert Panelists. Do you
15 see that?

16 A. Correct.

17 Q. And just to get a sense, take a second if you
18 haven't read it. I just want to know was anything
19 discussed on the expert panel that goes beyond what was
20 said in this email?

21 (Witness peruses document.)

1 THE WITNESS: I don't remember it being much
2 discussion beyond what's in the email.

3 BY MR. CRAIN:

4 Q. Does the email accurately depict what was
5 discussed?

6 A. Yes.

7 Q. Okay.

8 And if you go up in the email, there's an
9 email response from Ms. Danforth to you on May 1 at
10 12:35, p.m. Do you see that?

11 A. Yes.

12 Q. And she says, "Thanks, Matt. I've added Leah
13 Binder and Thomas Duff from Wilson Elser for the first
14 agenda item." Do you see that?

15 A. Correct.

16 Q. Does that refresh your recollection as to
17 whether Ms. Binder was there or whether she spoke at the
18 meeting?

19 A. I know that Ms. Binder was there, and I know
20 counsel was there, but I can't remember exactly who
21 actually led the conversation.

1 Q. Okay.

2 Do you typically lead the conversations in
3 those meetings?

4 A. We have a formal agenda, and we have sometimes
5 different individuals leading different agenda items
6 depending on the item. But I would say I'm one of the
7 primary folks for doing that.

8 Q. Okay.

9 And then just going to the top email, this
10 is an email from you to Ms. Danforth later that day. Do
11 you see that?

12 A. Yes.

13 Q. And it looks -- you say -- it's three lines
14 down -- "I quickly pulled the breakdown of Spring 2025
15 grades by survey submission status. Will work on adding
16 in percentages." Do you see that?

17 A. Yes.

18 Q. Percentages. I just -- I assume that refers to
19 the percentages that these numbers reflect?

20 A. Correct.

21 Q. Okay. And why did you pull these stats?

1 A. To have ready for the expert panel an
2 understanding of how hospital grades break down by the
3 imputation status that Leapfrog uses or did use in the
4 Spring 2025 grades.

5 Q. And just so we're on the same page, can you
6 tell me in your words what's Step 1, what's Step 2?

7 A. Yeah. So Step 1 is that if the hospital has
8 completed a recent Leapfrog Hospital Survey, which I
9 believe is currently defined as within the last survey
10 cycle, that that historical information is used for the
11 hospital.

12 Step 2 is if the hospital does not have a
13 recent survey on record, there is an imputation
14 methodology that is laid out in the methodology document
15 that explains how those scores will be imputed.

16 Q. And just to be clear, the methodology document,
17 is it the one that's linked on the website that's about
18 28, 29 pages?

19 A. I would need to --

20 MS. LAWSON: Object to form but go ahead. Go
21 ahead.

1 THE WITNESS: I would need to see it to
2 confirm.

3 BY MR. CRAIN:

4 Q. Okay. Yeah, let me -- what did you mean when
5 you said the methodology document?

6 A. Leapfrog makes available a public document that
7 explains the Hospital Safety Grade methodology.

8 Q. We'll grab additional documents.

9 And then on Step 1, you said survey cycle.
10 How long is that?

11 A. So if the hospital had completed a survey --
12 this is where I'm doing this from memory. So this is
13 where --

14 Q. It's not a memory test.

15 A. -- I want to be -- I believe what we've changed
16 it to is if the hospital had completed a survey in the
17 prior survey cycle, so if you're looking at 2025, if
18 they completed a 2024 survey, we'll use the 2024 survey
19 results.

20 Q. Okay.

21 So each cycle, just so I understand, is

1 once a year?

2 A. The survey itself is a once-a-year cycle.

3 Q. And the grades are issued twice a year?

4 A. Correct.

5 Q. I think we have that document for you just to
6 make sure we're on the same page.

7 MR. CRAIN: So we'll mark this as Exhibit 3.
8 I'm taking good notes today.

9 (Exhibit No. 3 was marked for
10 identification as of 9/25/2025.)

11 BY MR. CRAIN:

12 Q. You'll see there are other exhibit markings --
13 oh, sorry.

14 You'll see there are other deposition
15 stickers on here, but is Exhibit 3 of your deposition
16 the document you're referring to?

17 A. Yes.

18 Q. Okay.

19 Is there another document you're aware of
20 that outlines the methodology besides this?

21 A. There is a second document that explains how

1 numerical scores are converted into letter grades.

2 Q. What's the name of that document?

3 A. I don't know the official name of it. It is
4 publicly available on Leapfrog's Hospital Safety Grade
5 website.

6 Q. Got it.

7 Does that document includes also the
8 imputation methodology?

9 A. It does not.

10 Q. Okay.

11 All right. Keep on going.

12 MR. CRAIN: And then just for completeness, can
13 we do 64. And then I'm going to mark this Exhibit 4.

14 (Exhibit No. 4 was marked for
15 identification as of 9/25/2025.)

16 BY MR. CRAIN:

17 Q. This is another email produced by the Armstrong
18 Institute. Do you see that on the bottom right?

19 A. Uh-huh.

20 Q. And it's -- the top one is from you to
21 Ms. Danforth, cc'ing our friend Ms. Wood across the

1 table. Is that correct?

2 A. Correct.

3 Q. And you say, "Missy, thanks so much for putting
4 me in touch with Courtney and Kim. I just spoke with
5 Jordan about the lawsuit. I've copied Jordan on the
6 email chain so he has Courtney and Kim's contact
7 information."

8 Do you see that email?

9 A. Yeah, I do.

10 Q. Do this reflect what we discussed earlier, the
11 discussions you had with Mr. Derk and with Wilson Elser?

12 A. Correct.

13 Q. Any other discussions beyond those talked about
14 in this email?

15 MS. LAWSON: Object to form.

16 BY MR. CRAIN:

17 Q. Yeah, let me fix it.

18 About the case?

19 A. I had had a -- yeah, I had had a conversation
20 with Jordan earlier that day.

21 Q. Okay.

1 A. We talked about the subpoena coming.

2 Q. Okay.

3 And did you have conversations, either
4 phone or Zoom or in person, with Ms. Wood and Ms. Blair?

5 A. On the 25th of July, I had a call scheduled
6 with The Leapfrog Group to discuss regular work. That
7 was the day that the subpoenas were issued for Jordan
8 and myself. So as I remember, Courtney and Kim joined
9 that call to talk about the subpoenas and that we should
10 contact Johns Hopkins University to let them know we
11 were receiving subpoenas, and also that we shouldn't be
12 chatting with our colleagues at The Leapfrog Group about
13 the lawsuit.

14 Q. Conventional wisdom.

15 A. Yeah. But that we could talk about regular
16 business.

17 Q. Okay.

18 One other question before we shift gears.
19 You came today with a folio.

20 A. Uh-huh.

21 Q. What's in that folio?

1 A. It's actually the subpoenas.

2 Q. Okay.

3 A. And my pad of paper and a pen.

4 Q. Okay. I have to ask.

5 And when you say "the subpoenas," you mean
6 the document and the deposition subpoenas that led to us
7 being here today?

8 A. Correct.

9 Q. Okay. Anything else?

10 A. No.

11 Q. Okay.

12 I want to shift gears and just talk a
13 little more about your history and your education.

14 A. Uh-huh.

15 Q. So you went to the University of Michigan for
16 undergraduate?

17 A. Correct.

18 Q. Go blue!

19 And you graduated in 1995?

20 A. Correct.

21 Q. You later went to the University of Wisconsin,

1 Madison, right?

2 A. Correct.

3 Q. Okay. And you graduated with a Masters of
4 Science in Industrial Systems Engineering?

5 A. Correct.

6 Q. And then you went on to do your Ph.D.?

7 A. Correct.

8 Q. And just in a brief nugget, what is your Ph.D.
9 in?

10 A. My Ph.D. is in Industrial and Systems
11 Engineering with a focus on Healthcare Systems.

12 Q. When did you start getting interested in
13 healthcare?

14 A. 2005.

15 Q. Okay. And that was during -- that was at
16 Wisconsin, Madison?

17 A. Prior to Wisconsin, Madison.

18 Q. Got it.

19 What were you doing then?

20 A. I actually was working for Continental
21 Airlines.

1 Q. Interesting. How did that convert into a
2 healthcare interest?

3 A. I was interested in transitioning out of the
4 airline industry, and healthcare felt like a prime
5 opportunity for that.

6 Q. Okay.

7 And then you earned your Ph.D. I think in
8 2011. Is that right?

9 A. Correct. Yeah.

10 Q. And then between I think 2008 and 2012, you
11 were a director for The Leapfrog Group. Is that right?

12 A. That was my title --

13 Q. Okay.

14 A. -- that Leapfrog gave me, but I was not
15 employed by The Leapfrog Group.

16 Q. Okay.

17 Let's, just to ground us, I'm going to give
18 you everybody's favorite. LinkedIn.

19 MR. CRAIN: This will be Exhibit 5.

20 (Exhibit No. 5 was marked for
21 identification as of 9/25/2025.)

1 BY MR. CRAIN:

2 Q. Dr. Austin, what I've handed you is what --
3 well, tell me what I've handed you.

4 A. This is what appears to be my LinkedIn profile.

5 Q. Does it look generally accurate to you?

6 A. It does.

7 Q. Great.

8 And just going back, because it's not a
9 memory test, so I figured I'd ground you on the dates,
10 it says you were a director of Leapfrog Hospital Survey
11 from January 2008 to May 2012. Do you see that?

12 A. Correct.

13 Q. Is that -- is that generally right?

14 A. That is -- I actually was employed by the
15 Center for Health Systems Research and Analysis. So my
16 employer was --

17 Q. Got it.

18 A. -- actually CHSRA.

19 Q. Okay. The one right below?
20
21

1 (Whereupon, the court reporter seeks
2 clarification, which colloquy will not be
3 captured on the written record.)

4 BY MR. CRAIN:

5 Q. So you said you were employed by CHSRA during
6 that period?

7 A. Correct.

8 Q. Okay.

9 And you said a moment ago you weren't
10 employed by Leapfrog then. Have you ever been employed
11 by Leapfrog?

12 A. No.

13 Q. Okay.

14 Can you tell us the nature of your title as
15 director?

16 A. So in my role as a researcher at the Center for
17 Health Systems Research and Analysis, I was on a
18 contract with a PI who had a contract -- PI, principal
19 investigator -- with The Leapfrog Group, and I was
20 helping support that work.

21 Leapfrog wanted me to have the title

1 director of Leapfrog Hospital Survey, but that was not
2 my official work title. My official work title at
3 University of Wisconsin was researcher.

4 Q. Was the relationship you had between CHSRA and
5 Leapfrog a contractual relationship?

6 A. Yes.

7 Q. Got it. So Leapfrog had a contract with CHSRA?

8 A. Correct.

9 Q. And who was the PI at the time?

10 A. Barb Rudolph.

11 Q. Okay. And who is she?

12 A. She -- Dr. Barb Rudolph, she has a Ph.D. in
13 social work. She was a senior scientist at the Center
14 for Health Systems Research and Analysis.

15 Q. And what was her role at Leapfrog?

16 A. She helped support them with their measurement
17 and public reporting activities.

18 Q. Was she on the Leapfrog board?

19 A. She was not.

20 Q. Okay.

21 And who was the -- I can't recall if it's

1 president or CEO, but who was the leader of Leapfrog at
2 the time?

3 A. So Suzanne Delbanco was the CEO at that time.

4 Q. Okay.

5 And when did Ms. Binder take that role?

6 A. I believe it was early 2008.

7 Q. Okay. So approximately at the start of your
8 time working with Leapfrog. Is that right?

9 A. So I actually started working with The Leapfrog
10 Group in March of 2007 as part of a student research
11 assistantship.

12 Q. Okay. Got it.

13 So Ms. Binder came in towards the first
14 year or two of your time?

15 A. Correct.

16 Q. Okay.

17 What were your responsibilities either as a
18 director or researcher at the time?

19 A. Yeah. So I was responsible for developing
20 survey questions, analyses of data, working with experts
21 on developing measures, measure specifications, scoring

1 algorithms. Really everything related to putting out a
2 survey around quality and safety of hospitals.

3 Q. And at that time, did Leapfrog assign hospital
4 safety grades?

5 A. No.

6 Q. Approximately, when did that start?

7 A. That started in the Spring of 2012.

8 Q. Okay. We'll come to that a little bit more.

9 Just to round out, after you left
10 Wisconsin, where did you go?

11 A. I came here to Baltimore and to Johns Hopkins
12 University.

13 Q. And you've been here for about 12 years. Is
14 that right?

15 A. Correct.

16 Q. And during that whole time, have you worked
17 with The Leapfrog Group continuously?

18 A. Technically, my contract with The Leapfrog
19 Group didn't start until I think July of 2012, and I had
20 arrived here in May.

21 Q. Got it.

1 A. So just to clarify that.

2 Q. So from July 2012 to the present?

3 A. Correct.

4 Q. I want to shift gears and just talk about your
5 relationship and Armstrong's relationship with Leapfrog.

6 A. Uh-huh.

7 Q. So you said before, I think, there's a
8 contractual relationship between Armstrong and Leapfrog.
9 Is that right?

10 A. Correct.

11 Q. Tell me generally about how that works.

12 A. Yeah. So I serve as the principal investigator
13 on the contract for a portion of my time. So as a
14 research faculty member, I need to cover my effort with
15 grants and contracts, and so Leapfrog is part of that
16 coverage for the work I do.

17 Q. And forgive me. I just don't know. Generally,
18 what is a principal investigator?

19 A. The lead, the lead on a grant or contract.

20 Q. Got it. Okay.

21 And you said it covers a certain portion of

1 your time. Approximately, what time percentage is that?

2 A. It has ranged between 40 and 70.

3 Q. Forty and seventy. Okay. Forty and
4 seventy percent of your time?

5 A. Correct.

6 Q. And Leapfrog also covers funding for you,
7 correct?

8 A. That is the funding that I'm speaking of.

9 Q. Got it.

10 And does that come to you in the form of
11 compensation?

12 A. That money is paid to Johns Hopkins University
13 --

14 Q. Okay.

15 A. -- who pays me a salary.

16 Q. Got it.

17 Let's look at a couple of documents.

18 MR. CRAIN: Maybe start with -- let's start
19 with 4. I'm going to mark this Exhibit 6.

20 (Exhibit No. 6 was marked for
21 identification as of 9/25/2025.)

1 BY MR. CRAIN:

2 Q. So Dr. Austin, do you recognize this document?

3 A. I do.

4 Q. And it's another Armstrong-produced document,
5 right?

6 A. Correct.

7 Q. What is it?

8 A. This is the contract between Johns Hopkins
9 University and The Leapfrog Group.

10 Q. And this is a 2018 version. Do you see that?

11 A. Correct.

12 Q. And if you look at Fees and Payment, it's
13 number 4A on the first page. Do you see that?

14 A. Yes.

15 Q. And it says: "Contractor shall be paid a fee
16 not to exceed \$143,898." Do you see that?

17 A. Yes.

18 Q. Does this reflect the funding that you were
19 talking about, the payment to Armstrong?

20 A. The payment goes to Johns Hopkins University.

21 Q. Got it. Not specifically to Armstrong?

1 A. Correct.

2 Q. And then if we can keep going to page -- I'm
3 going to refer to these numbers as Bates numbers. Do
4 you know what I mean when I say that? And I can tell
5 you if not.

6 A. Page number?

7 Q. Bates numbers.

8 A. No, I don't know what that is.

9 Q. So Bates numbers are these Armstrong numbers on
10 the bottom right.

11 A. Oh, okay. Okay.

12 Q. They're just a stamp that folks give when they
13 produced. And for some reason, there are two of them on
14 these pages, but I'm going to look at the top little
15 one, which is the page number.

16 So if you could go to Armstrong ending in
17 Bates 006, which also happens to be page 6 of the
18 contract.

19 A. Uh-huh.

20 Q. And do you see there first at the top it's
21 signed by Erica Mobley and Thomas F. Burns? Do you see

1 that?

2 A. Yes.

3 Q. And Erica Mobley, who is she?

4 A. She was at the time the director of operations
5 for The Leapfrog Group.

6 Q. She's since moved on?

7 A. Correct.

8 Q. Okay.

9 And then there's a budget further down,
10 down there. Do you see that?

11 A. Uh-huh.

12 Q. And it sort of delineates faculty, analysts,
13 and a few other things. Do you see it says faculty
14 \$59,799?

15 A. Correct.

16 Q. And that says: "40 percent of J. Matt Austin's
17 time." Do you see that?

18 A. Uh-huh.

19 Q. And that refers to you, correct?

20 A. Correct.

21 Q. And does that reflect an amount that's

1 earmarked to you ultimately at the end of the day, or
2 how does that work?

3 A. That is an amount that the university will bill
4 Leapfrog Group for my efforts on the project.

5 Q. Okay. So the university bills Leapfrog for
6 your time, correct?

7 A. Correct.

8 Q. Is it hourly or just a flat fee?

9 A. I don't know for sure.

10 Q. Got it. Okay.

11 And does your compensation rise with this
12 -- or rise -- let me strike that. Bad question. That's
13 the first of many bad questions today.

14 If Leapfrog didn't pay this money, would
15 that affect your compensation?

16 A. Can you clarify that?

17 Q. Yeah.

18 I'm trying to understand -- so this, you
19 said, doesn't get paid to you directly, correct?

20 A. Correct.

21 Q. It gets paid to the university, right?

1 A. Correct.

2 Q. And the university gives you a salary, right?

3 A. Correct.

4 Q. What is the relationship between your salary
5 and grants generally? Let's start with that.

6 A. So as a faculty member, I'm on a three-year
7 contract, and that contract is at risk for nonrenewal if
8 I'm not covering a portion of myself in terms of grants
9 and contracts.

10 Q. Got it. Okay.

11 A. So there would be long-term impact to -- if
12 Leapfrog didn't pay the money to the university, but the
13 short-term is that there isn't an impact. I still
14 receive my salary.

15 Q. Got it. Okay.

16 So it affects your future contract with the
17 university, if any, right?

18 A. Correct.

19 Q. Okay.

20 A. As one of many grants and contracts that I've
21 had.

1 Q. Yeah, how many --

2 A. So it's not --

3 Q. Can you ballpark how many do you have in a
4 year?

5 A. Most contracts or grants last multiple years.
6 In my 12 years at Hopkins, I've probably had 10 to 11
7 different grants and contracts.

8 Q. Okay. All toll. And that includes Leapfrog as
9 one of those 10?

10 A. Correct.

11 Q. Okay. And the reason I clarify is there are
12 multiple contracts, right?

13 A. Yeah, right.

14 Q. Yeah.

15 Okay. And then what -- so I understand
16 this number is not directly paid to you. Can you give a
17 ballpark of what percentage that number is of your total
18 compensation?

19 A. The 40 percent.

20 Q. So this \$59,799 is 40 percent of your salary in
21 that year, correct?

1 A. Correct. And then direct costs are added in
2 overhead as well.

3 Q. Yeah. And those are things like -- like what?

4 A. That includes fringe rights, so coverage of
5 health benefits --

6 Q. Got it.

7 A. -- and that stuff and --

8 Q. Got it.

9 A. -- then the university tacks on a percentage.

10 Q. Commission.

11 A. Yeah.

12 MS. LAWSON: Objection.

13 MR. CRAIN: Fair enough.

14 BY MR. CRAIN:

15 Q. Okay. So I just want to go through a couple of
16 these. Over -- do you have a general sense of over
17 time -- so this is a 2018 contract, correct? Has the
18 grant amount changed during -- you know, in the
19 preceding -- in the last six years?

20 A. Can you clarify when you say the grant has
21 changed?

1 Q. Yeah.

2 So I'm trying to get a sense of where the
3 numbers have gone. So there's the total number we saw
4 on the first page that's paid to Johns Hopkins.

5 A. Uh-huh.

6 Q. Has that generally gone up year over year?

7 A. There has been some fluctuation.

8 Q. Okay.

9 A. I'm trying to -- so there have been times where
10 Leapfrog has requested additional researchers at Hopkins
11 be included in the work, and so just by pure numbers,
12 the value, the dollar value of the contract has gone up
13 for that.

14 Q. Okay.

15 A. My salary has changed over time. So it has
16 increased based on just sort of salary changes, and
17 there's been some fluctuation in efforts.

18 Q. So when your salary has changed, the number
19 sort of earmarked to you as a percentage of your salary
20 goes up, correct?

21 MS. LAWSON: Object to form, but you can

1 answer.

2 THE WITNESS: Yeah, I mean, right. Leapfrog is
3 paying for a portion of my effort, of my total effort,
4 right. So if my salary goes up, they're paying more for
5 the portion of the effort that they're paying for.

6 BY MR. CRAIN:

7 Q. And when you say a portion of your effort, just
8 so it's clear, that means like your time on the job?

9 A. Correct.

10 Q. Let's take a look just before we move off this.
11 I want to look at Exhibit A, which is page little number
12 7.

13 A. Uh-huh.

14 Q. And this -- it says scope of work. Do you see
15 that?

16 A. Yes.

17 Q. And are you familiar generally with -- it's a
18 couple -- it's a few pages. Are you familiar with the
19 scope?

20 A. Yes, I am.

21 Q. Does this accurately depict the scope of work,

1 I'll say plus or minus, that you performed in your role
2 for Leapfrog?

3 A. Yes.

4 Q. Okay.

5 And I want to focus on particularly page
6 little Bates 9. Do you see that?

7 A. Uh-huh.

8 Q. And there's -- about halfway down the page, it
9 says: "Manage the hospital safety score expert panel
10 process." Do you see that?

11 A. Uh-huh.

12 Q. And it says -- I think it's bullet A -- "Have
13 periodic communications with client-approved national
14 expert panel either via teleconferences and/or written
15 communication, to solicit guidance on: One, which
16 performance measures should be considered for inclusion
17 in future versions of the safety score composite; and,
18 two, suggested adjustments for weighting individual
19 measures within the composite. The polling of panel
20 members of these topics will involve the use of
21 structured communication techniques; e.g., the Delphi

1 method."

2 Do you see that paragraph?

3 A. Uh-huh.

4 Q. Does this reflect your work with the Hospital
5 Safety Grade expert panel?

6 A. It does generally reflect that work.

7 Q. What -- are there any meaningful differences
8 between this language and what you actually do?

9 A. We've moved away recently from doing formal
10 polling of panel members.

11 Q. Okay. Does that -- is that what the Delphi
12 method refers to?

13 A. Yeah, that would be a --

14 Q. What is the Delphi method?

15 A. The Delphi method is a -- an approach to gain
16 and understand consensus where you basically go through
17 different rounds of voting where based on the first
18 round, you sort of narrow down to a smaller subset and
19 work towards where there's consensus.

20 Q. And is that -- I see it in here, but is that
21 how it actually worked at the expert -- at the safety

1 grade expert panel?

2 A. In earlier meetings of the safety grade expert
3 panel, 2011, 2012, 2013, we did put a little more of a
4 focus on having a formal process for that.

5 Q. Okay.

6 And I think you said that you -- I don't
7 have the realtime, so I don't remember exactly what you
8 said, but you said in recent years, you've sort of
9 gotten rid of the polling feature. Is that what you
10 testified to?

11 A. Correct.

12 Q. And approximately, when did that dissipate?

13 A. Probably 2014, 2015.

14 Q. Okay. So a little while ago?

15 A. Yeah.

16 Q. Yeah, okay.

17 And then B says -- if you go back to the
18 document, it says: "Work with the national expert panel
19 to gain consensus on the direction of future versions of
20 the safety score composite and/or understand and
21 document the differences among panel members on their

1 future visions."

2 Do you see that as well?

3 A. Yes.

4 Q. Accurate depiction of what you've done for
5 Leapfrog over the years?

6 A. Yes.

7 Q. Okay.

8 And then C: "Understand the direction set
9 by client's Board of Directors on the hospital safety
10 score and keep the national expert panel conceptually
11 aligned with the board's direction."

12 Do you see that?

13 A. Yes.

14 Q. Is that -- so the first question is, is that an
15 accurate statement of what you've done for Leapfrog, you
16 know, since, let's say, 2018 to the present?

17 A. Yes. My one caveat is I think the Board of
18 Directors has been less hands-on with the safety grade
19 as they were early on.

20 Q. Okay. And when you say "early on," what time
21 period are we talking about?

1 A. 2011 through 2014.

2 Q. Okay.

3 So is it fair to say in the early days when
4 the safety grade was being created, the Board was more
5 active?

6 A. Yes, that would be a fair statement.

7 Q. And over the years, the Board has been less
8 involved with respect to changes to the safety grade
9 methodology?

10 A. I have become less involved in communicating
11 with Leapfrog's board. So I can't speak to what
12 Ms. Binder or Ms. Danforth have been communicating to
13 the Board but --

14 Q. Got it. Okay.

15 So let me ask it this way then. This
16 document says one of your services -- if you look at the
17 top, it says: "Contractor will provide client with the
18 following services: Understand the direction set by the
19 client's Board of Directors on the hospital safety
20 score."

21 Do you feel since those early days that

1 you've had a sense of the direction set by the Board of
2 Directors?

3 A. I have not received any feedback that the
4 direction we're going is conflicting with what the Board
5 would want to do.

6 Q. Okay.

7 And have you received feedback that it's
8 consistent with what the Board would want to do?

9 A. As mentioned, I don't have as much
10 communication with the Board members. So Leapfrog staff
11 is sort of the filter for that. So I have not heard any
12 feedback that it's one way or another.

13 Q. Okay. So your understanding comes from
14 Leapfrog staff?

15 A. Correct.

16 Q. And it's your understanding of what the
17 organization wants, as opposed to the Board?

18 MS. LAWSON: Object to form.

19 BY MR. CRAIN:

20 Q. Well, what is your understanding? I'm trying
21 to get a sense of do you have an understanding of what

1 the Board wants, or do you have an understanding of what
2 Leapfrog staff want?

3 A. My direction that I've been given has been from
4 Leapfrog staff.

5 Q. Okay.

6 A. I don't know if that represents their own
7 thoughts or it represents their own thoughts and the
8 Board. I can't speak to that piece.

9 Q. And when you say "staff," who are we talking
10 about?

11 A. Leah Binder, the CEO, and Missy Danforth, the
12 senior vice president of healthcare ratings.

13 Q. Are those folks your primary contacts for
14 Leapfrog?

15 A. Yes.

16 Q. Are there others as well that you interact
17 with?

18 A. A couple of Missy Danforth's direct reports, so
19 Katie Burgraff Stewart and Jean-Luc Tilly. I have quite
20 a bit of contact with them as well.

21 Q. And Ms. Campione?

1 A. Yes, and Alex as well.

2 Q. And what's Ms. Campione's role?

3 A. She -- I don't know her exact title, but she's
4 the one that supports the Hospital Safety Grade program
5 from Leapfrog's side in terms of the analytics and all
6 that goes with that.

7 Q. And does she work with you closely in that
8 regard?

9 A. Yeah.

10 Q. And Mr. Tilly, what's his role?

11 A. Jean-Luc Tilly has a couple of areas of the
12 Leapfrog Hospital Survey that he champions and leads, as
13 well the ambulatory surgery center survey.

14 Q. Okay.

15 And then Ms. Stewart, what's her role?

16 A. Once again, she has certain areas of the
17 Leapfrog Hospital Survey that she champions.

18 Q. Okay.

19 Who do you interact with most at Leapfrog?

20 A. Missy Danforth.

21 Q. Who is the second?

1 A. Probably Katie --

2 Q. Okay.

3 A. -- Stewart.

4 Q. Stewart, yeah.

5 Okay. Let's just keep going. Okay. You
6 can set that -- or wait, actually. Sorry. There's one
7 other thing I want to take a look at.

8 If you go to page 7, just one page back --

9 A. Uh-huh.

10 Q. -- and there's a list of services called manage
11 the research base. Do you see that?

12 A. Yes.

13 Q. Can you just say generally what that entails?

14 A. Yeah. So this item is related to the Leapfrog
15 annual hospital survey, and it's just sort of being
16 aware of where -- what performance measures have been
17 recently endorsed, which are sort of out there in
18 national programs, doing literature reviews on topics.
19 So basically, ensuring that the measures that Leapfrog
20 is using in its Leapfrog Hospital Survey are valid,
21 reliable, evidence-based measures.

1 Q. Got it.

2 So stepping back a little bit, Leapfrog has
3 its hospital survey and its safety grades, right?

4 A. Correct.

5 Q. Are those the primary, like, sides of the
6 house, so to speak?

7 A. Those are their two primary reporting
8 initiatives, but there is the Leapfrog Ambulatory
9 Surgery Center Survey as well.

10 Q. Are you involved in any capacity in all three?

11 A. I am in all three.

12 Q. You are what? Sorry.

13 A. I am involved in all three.

14 Q. Okay. I thought you said I am an author. I
15 was going to say an author of what? But I guess I'll
16 ask that question. Do you author any of the hospital
17 survey? Do you draft any of it?

18 A. I do draft some of the survey questions,
19 measure specifications, end notes, FAQs.

20 Q. A lot of work.

21 A. It is a lot of work, yeah.

1 Q. Do you review each iteration of the hospital
2 survey?

3 A. I do.

4 Q. Top to bottom?

5 A. Not top to bottom.

6 Q. Okay. I would think that would take some time.

7 A. Yeah.

8 Q. Yeah.

9 The survey is about 350 pages. Am I right?

10 A. Correct.

11 Q. Okay.

12 And then with respect to the safety grade,
13 can you just explain your role?

14 A. Yeah. So the role has been to provide Leapfrog
15 with guidance and recommendations on the methodology,
16 and that includes what measures should be included in
17 the safety grade, how we might assign relative weights
18 to each of those measures.

19 Are you asking about currently or sort of
20 historically through the last 11 years?

21 Q. Fair question. I guess I'll start with has it

1 changed meaningfully in the past 11 years?

2 A. I would assess that my role has actually
3 diminished as Alex, Leapfrog, has gained more sort of
4 independence in what they're doing.

5 Q. Got it.

6 So let me ask you about that. The contract
7 in here says that you're being retained to provide
8 strategic -- let me just find the right word. What does
9 it say? Strategic counseling I think. Is that the --
10 do you recall that language?

11 A. I don't recall that language. The language I
12 typically use is to say strategic guidance.

13 Q. Guidance. That's it. Yeah, it's on page 7
14 under background, second paragraph, last sentence. You
15 see it says --

16 A. Uh-huh.

17 Q. -- you were retained to provide client, meaning
18 Leapfrog, with strategic guidance. Do you see that?

19 A. Uh-huh.

20 Q. So to your point of Leapfrog gaining more
21 independence, has the need for strategic guidance

1 diminished over the years?

2 A. Not for strategic guidance, no.

3 Q. So what is diminished as compared to strategic
4 guidance?

5 A. So as an example, in the early years of the
6 Hospital Safety Grade, I actually would be the one to
7 put together a histogram of the hospital safety scores
8 from the prior round, the current round, and we would
9 discuss that as a group in terms of what changes we were
10 seeing. That is now something that Alex would do.

11 So there's sort of an analytic piece that
12 has moved more internal to Leapfrog --

13 Q. Got it. Okay.

14 A. -- but not the strategic guidance part.

15 Q. And just what does strategic guidance mean?

16 A. Yeah. Strategic guidance is thinking about
17 what measures do we currently have in the composite
18 score, what are the changes that are happening like
19 within national programs, CMS, like measures that might
20 be retired, what are new measures that are out there,
21 what are gaps that we would like to try to fill, and are

1 there measures out there that we could use for that.

2 So it's trying to sort of think about
3 what's the right combination of measures to have in a
4 composite score of patient safety and then to also help
5 them think about how we might relatively weight those
6 against each other.

7 Q. So fair to say it's like more holistic as
8 opposed to something more granular that Ms. Campione
9 might do?

10 A. Correct.

11 Q. Okay.

12 I'm not going to put every contract in
13 front of you. You see me flipping.

14 Let me ask a question about just grants
15 before we move on.

16 A. Uh-huh.

17 Q. So you said, for instance -- so we see in the
18 contracts the percentage has changed over time as well,
19 that the grant towards your salary goes to. Do you
20 recall that?

21 A. Correct.

1 Q. Okay.

2 So we saw in 2018 the number allocated to
3 you was 40 percent, right? Of the remaining 60 percent,
4 does that come from other grants?

5 A. Correct.

6 Q. Okay. And how many grants fill that 60,
7 ballpark?

8 A. Two or three depending on the size of them.

9 Q. Okay. And are any of them as significant in
10 proportion as Leapfrog?

11 Let me -- let me -- that's a sort of
12 unwieldy question. Let me fix that. I saw you
13 thinking. So I'll build it a little more clearly.

14 So in 2018, the amount allocated to your
15 salary was 40 percent. Is that right?

16 A. Correct.

17 Q. Okay.

18 You said of the remaining 60 percent, there
19 were two or three other grants that filled that,
20 essentially, right?

21 A. Correct.

1 Q. Are any of those two to three grants also
2 40 percent?

3 MS. LAWSON: And are you asking just specific
4 to 2018?

5 BY MR. CRAIN:

6 Q. Specific to 2018, yeah, if you recall.

7 A. I don't recall, but I could find that out.

8 Q. Okay.

9 A. I just don't remember offhand.

10 Q. Generally, you know, to the extent you know, do
11 you -- have you had other grants that were the same
12 significance in size as Leapfrog over the years?

13 A. This would be the most significant --

14 Q. Okay.

15 A. -- ongoing contract.

16 Q. Okay. Got it.

17 And the other two or three grants, as a
18 percentage of your compensation, can you ballpark
19 generally what they are?

20 MS. LAWSON: Object -- objection to form. And
21 maybe if you can clarify over time --

1 MR. CRAIN: Yeah.

2 MS. LAWSON: -- because I think he testified
3 earlier that he's had like nine or ten other grants.

4 MR. CRAIN: Yeah, I hear you.

5 MS. LAWSON: Yeah.

6 BY MR. CRAIN:

7 Q. So in a given year, let's say between 2018 and
8 2025, the other grants that are not Leapfrog, if you
9 can, approximately what percentage of your compensation
10 do they -- are they?

11 A. It varies from year to year. I'm more trying
12 to just think about what's on my CV and what those
13 efforts are. They might total up to another 50 percent.

14 Q. Total. Okay. Got it. Okay, so --

15 A. So a typical breakdown might be one that's 20,
16 one that's 20, and one that's 10.

17 Q. Okay. Got it. Okay. And I didn't mean it to
18 be a memory test.

19 A. No, no, no, no, no. I'm trying to answer
20 truthfully, but I don't really remember.

21 Q. Just your best estimate.

1 A. My best estimate, yeah.

2 Q. Okay.

3 MS. LAWSON: And if you're not sure, it's okay
4 to tell him that you're not sure because he wants to
5 know --

6 MR. CRAIN: Yeah.

7 MS. LAWSON: -- what you know.

8 THE WITNESS: Okay.

9 MR. CRAIN: I'm not asking you to guess.

10 THE WITNESS: Okay. Okay.

11 MS. LAWSON: Yes, he's not asking you to guess.

12 THE WITNESS: Okay.

13 MR. CRAIN: But your best estimate --

14 THE WITNESS: Okay.

15 MR. CRAIN: -- approximation as the expert of
16 you.

17 THE WITNESS: Right. Okay.

18 BY MR. CRAIN:

19 Q. So let's shift gears a little bit. Are you
20 doing okay on time?

21 A. Yeah.

1 Q. Okay, good. I mean break.

2 A. Yeah.

3 Q. Okay.

4 So I want to talk a little bit more about
5 the safety grade and what it does and what's it's
6 purpose. So --

7 MS. LAWSON: Actually, if we're going to
8 totally switch gears --

9 MR. CRAIN: Yeah. You want to --

10 MS. LAWSON: -- do you mind if we take a --

11 MR. CRAIN: Yeah, yeah. No, now is fine.

12 MS. LAWSON: A break? Yeah.

13 MR. CRAIN: Yeah. Good.

14 THE VIDEOGRAPHER: This marks the end of media
15 unit number two. We're going off the record. The time
16 is 10:05 a.m.

17 THE COURT REPORTER: This gives us a chance to
18 get the realtime going, too.

19 MR. CRAIN: Oh, yeah.

20

21

1 (Whereupon a short break was had, after
2 which the proceedings continued as
3 follows:)

4 (Exhibit No. 7 was marked for
5 identification as of 9/25/2025.)

6 THE VIDEOGRAPHER: This marks the beginning of
7 media unit number three. We're going back on the
8 record. The time is 10:22 a.m.

9 BY MR. CRAIN:

10 Q. Welcome back, Dr. Austin.

11 A. Thank you.

12 Q. It's like a commercial break on TV.

13 So I've given you what's been marked as
14 Exhibit 7. Do you recognize this document?

15 A. I do not.

16 Q. Okay. So I'll represent to you this is from
17 the Leapfrog Safety Grade website,
18 hospitalsafetygrades.org. Is that familiar to your?

19 A. I'm familiar with that website.

20 Q. Do you know -- like, are you -- do you look at
21 the website periodically or no?

1 A. Once in a great while.

2 Q. Okay.

3 So I'm just going to -- I sort of want to
4 walk through what the safety grade is and focus on some
5 of the language in this document if we can. And I -- so
6 starting with paragraph -- the first paragraph, you see
7 there's a sentence "the purpose" -- do you see that --

8 A. Uh-huh.

9 Q. -- at the bottom?

10 A. Uh-huh.

11 Q. "The purpose of the Leapfrog Hospital Safety
12 Grade is to bring this information to light in a way
13 that's easy for you, the consumer, to use."

14 I realize it says "this information," so I
15 probably need to go back. So I'll start at the top.

16 "One of the most significant problems with
17 today's healthcare system is the failure to make safety
18 and quality information available to the public. But
19 the public deserves this information so they can make
20 informed choices about where to receive care.

21 "The purpose of the Leapfrog Hospital

1 Safety Grade is to bring this information to light in a
2 way that's easy for you, the consumer, to use."

3 Do you see that?

4 A. Yep, I do.

5 Q. Do you agree with that paragraph?

6 MS. LAWSON: So I'll just object to form.

7 And just I want to clarify. I think
8 Dr. Austin, you testified you had not seen this before.

9 THE WITNESS: Correct.

10 I would generally agree. I would maybe
11 reframe the first sentence slightly differently.

12 BY MR. CRAIN:

13 Q. How so?

14 A. I might say that one of the significant
15 problems of today's healthcare system is how to best
16 share safety and quality information with the public.

17 Q. Okay.

18 A. I think information is available. I think
19 we've struggled to help people connect to that.

20 Q. So the difference being the failure language?

21 A. Yeah. I wouldn't say failure to make.

1 Q. Okay.

2 And then do you agree that the purpose of
3 the Leapfrog Hospital Safety Grade is to bring this
4 information to light in a way that it's easy for you,
5 the consumer, to use?

6 A. Yes.

7 Q. Okay.

8 And then is it right that -- if you go down
9 to the second page -- "Our letter grade scoring system
10 allows consumers to quickly assess the safety of their
11 local hospital and choose the safest hospital to seek
12 care." Do you see that?

13 A. Yes.

14 Q. Do you agree with that statement?

15 A. Yes.

16 Q. And then it says: "As consumers use the
17 Leapfrog Hospital Safety Grade more and more, we hope
18 more hospitals will be compelled to be open about their
19 safety and quality and participate in meaningful public
20 reporting."

21 Do you see that as well?

1 A. I do.

2 Q. And do you agree with that sentiment?

3 A. I don't know what the evidence or research
4 supporting the first clause is. I wouldn't necessarily
5 be able to speak to that part, about whether consumers
6 are using the safety grade more and more, but I would
7 agree with the last part.

8 Q. The last part being we hope more hospitals will
9 be compelled to be open about their safety and quality
10 and participate in meaningful public reporting?

11 A. Yes.

12 Q. Okay.

13 And just to be clear, do you have any role
14 in the creation, drafting, revision of Leapfrog's
15 websites?

16 A. If I'm asked to review something, I will review
17 it --

18 Q. Okay.

19 A. -- and provide back comments and feedback. But
20 they don't ask me to review every single thing on their
21 website.

1 Q. Okay. How often do they ask you to review the
2 website?

3 MS. LAWSON: Object to form.

4 BY MR. CRAIN:

5 Q. Generally, just over, you know, the last six
6 years.

7 A. Not very often. I mean, I don't know
8 everything that's on their website. You know, so I
9 don't know what the full scope is, so I can't speak
10 to --

11 Q. No, I hear you. Just so we're on the same
12 page, I'm talking about hospitalsafetygrades.org.

13 A. Right.

14 Q. Are you familiar generally with that website?

15 A. Right. Yeah, yeah, yeah, yeah. Right.

16 Q. And Leapfrog -- I forget the other one but the
17 Leapfrog.org website.

18 A. Uh-huh, right.

19 Q. And one of them refers typically to the survey,
20 right?

21 A. Uh-huh.

1 Q. And the other one is about the safety grades,
2 correct?

3 A. Correct.

4 Q. And do you have any specific recollection
5 sitting here today of any particular page on either of
6 those two websites you were asked to opine on?

7 A. I don't remember exactly. I'm sure through
8 12 years there has been something that I have reviewed,
9 but I couldn't speak to what that is and if it's still
10 up or if it's been taken down.

11 Q. Just asking for your memory today.

12 A. Yeah, yeah. I don't. I don't know.

13 Q. And just to fine-tune it a little bit, do you
14 have any specific recollection of opining on any part of
15 the website regarding the imputation methodology?

16 A. Can you be more specific with what exactly
17 you're referencing there?

18 Q. Yeah. So are you aware of any part of
19 Leapfrog's website that articulates its imputation
20 methodology on the safety grades for nonparticipating
21 hospitals in the survey?

1 A. I know there's some information in a prior
2 exhibit that we discussed that talks about the
3 imputation. I don't know if there's something on a
4 webpage itself. I just don't know what is actually --
5 what all the pages are and what's on them.

6 Q. Okay. Just to my question, do you have any
7 specific memory --

8 A. No, I don't have any specific memory.

9 Q. Let me just finish the question so it's clear.

10 Do you have any specific memory of being
11 asked the opine or otherwise opining on any portion of
12 Leapfrog's website regarding the imputation methodology?

13 A. I don't remember being asked to do that.

14 Q. Okay.

15 MR. CRAIN: Let's go to 67. I'll mark another
16 document. This will be Exhibit 8.

17 (Exhibit No. 8 was marked for
18 identification as of 9/25/2025.)

19 BY MR. CRAIN:

20 Q. Dr. Austin, do you recognize this document?

21 A. I recognize that this is a printout of a

1 webpage from Leapfrog's Hospital Safety Grade website.

2 Q. Do you have any reason to think that it's not
3 an accurate depiction of the website?

4 A. No, I have no reason to think so.

5 Q. Are you familiar generally with the "About the
6 Grade" website?

7 A. I'm familiar with that webpage, yes.

8 Q. I want to ask you a couple of questions about
9 the language on this page, just to your understanding.
10 Did you -- do you recall having any role in drafting
11 this page?

12 A. It is possible but I don't remember exactly
13 today.

14 Q. So page 1 -- and I apologize. There's no page
15 numbers on it but the first page and the second
16 paragraph, it says: "The Leapfrog Hospital Safety Grade
17 uses up to 30 national performance measures from the
18 Centers for Medicare & Medicaid Services, CMS, the
19 Leapfrog Hospital Survey, and information from other
20 sources of supplemental data."

21 Do you see that?

1 A. Yes.

2 Q. Is that a correct articulation of what the
3 Leapfrog Hospital Safety Grade uses?

4 A. That represents a summary of what has been the
5 formation of the Hospital Safety Grade in sort of its
6 entirety.

7 Q. Okay, fair enough. So let me ask you it this
8 way. Is that correct for the methodology as it exists
9 today?

10 A. Yes, minus that currently the safety grade I do
11 not believe is using information from other supplemental
12 data sources.

13 Q. Okay. What is the safety grade currently using
14 as a data source?

15 A. We're using data from the Centers for Medicare
16 & Medicaid Services and from the Leapfrog Hospital
17 Survey.

18 Q. Okay. So today there's no other supplemental
19 data sources being used with the grade, correct?

20 A. That is my recollection from the current
21 methodology.

1 Q. And when did that change? Approximately.

2 MS. LAWSON: So it really is a memory test.

3 THE WITNESS: It is a memory test.

4 BY MR. CRAIN:

5 Q. If he has a memory.

6 A. I don't know the year.

7 Q. Okay. Let me refresh your recollection a
8 little bit.

9 A. Okay.

10 Q. So in 2024, am I right that the imputation
11 methodology changed?

12 A. That is my recollection, yes.

13 Q. And then prior to that, there was a different
14 imputation methodology, right?

15 A. Correct. We've actually used four or five
16 different imputation methodologies over the 11, 12 years
17 of the Hospital Safety Grade.

18 Q. Okay.

19 Can you, at a high level, I'm not asking
20 for a memory test, just generally trace what you recall
21 of those four or five different models?

1 A. Yeah, yeah, yeah.

2 So when we met with the expert panel early
3 on to talk about the idea of the Hospital Safety Grade,
4 one of the identified issues was that we were likely to
5 encounter missing data, and how did we want to address
6 the issue of missing data.

7 The expert panel laid out five different
8 ideas of sort of generally-accepted approaches of how
9 that has been addressed.

10 The -- if I can remember the five --

11 Q. I can show you a document.

12 A. Okay.

13 And so we started initially with if we
14 didn't have data for a hospital for our measure, we
15 ignored that measure and put greater weight on the
16 measures for which we did have data. That evolved into
17 using supplementary data sources, specifically the
18 American Hospital Association survey was one of the key
19 data sources for that.

20 That evolved into calculating or assigning
21 the mean performance for hospitals based on cohorts, so

1 sort of the national mean based on the cohort that the
2 hospital fell into, and that has since evolved into
3 assigning the hospitals a lower performance score.

4 Q. That's the current methodology?

5 A. That's the current methodology.

6 Q. And when you say "lower performance score,"
7 that's limited achievement?

8 A. That is correct, how Leapfrog has
9 operationalized that.

10 Q. And in the current model, am I right that there
11 are two steps, right? The first step is the historical,
12 as you said earlier?

13 A. Correct.

14 Q. The second step is the limited achievement that
15 you were referring to, correct?

16 A. Correct.

17 Q. Okay.

18 So going back to the document, when we talk
19 about supplemental data sources, generally, am I right
20 that the AHA data was a supplemental data source?

21 A. Correct.

1 Q. And AHA is American Hospital Association?

2 A. Correct.

3 Q. I always mess that up. That's my aha moment.
4 I've been playing with that one.

5 MS. LAWSON: You delivered it well.

6 MR. CRAIN: Thank you. I'm going to use that
7 one at trial.

8 BY MR. CRAIN:

9 Q. So other forms of supplemental data, is there
10 any -- because CMS is not supplemental data, right?
11 Because it's covered on this page otherwise, correct?

12 A. Correct.

13 Q. Are there any other supplemental data that you
14 can recall Leapfrog using in the Hospital Safety Grade
15 scoring at any time?

16 A. Yes. So the American Hospital Association did
17 a separate survey around health information technology,
18 and we did use that to inform the scores for
19 computerized prescriber order entry. And that's one
20 that comes to my mind. There's none others that
21 immediately come to my mind, but that's not to say there

1 weren't others.

2 Q. Okay.

3 A. I just don't recall.

4 Q. Yeah, okay. So that's helpful.

5 I want to keep going down this document.

6 If you go to the bottom of that paragraph: "The
7 Leapfrog Hospital Safety Grade methodology has been peer
8 reviewed and published in the Journal of Patient
9 Safety."

10 Do you see that?

11 A. Yes.

12 Q. Now, does the Journal of Patient Safety --
13 there's a hyperlink there. Do you see that?

14 A. Uh-huh.

15 Q. And I don't have the document with me, but I'll
16 represent to you it goes to what I think is a 2014
17 article.

18 A. Correct.

19 Q. Does that article, the peer review that this
20 sentence is talking about to your knowledge?

21 A. Yes.

1 Q. And what does peer review mean, generally?

2 A. Peer reviewed, in at least the medical world,
3 which is really the only world I know, so that's all I
4 can speak to, when you submit to a journal, they
5 actually identify two to three external individuals to
6 actually read the manuscript, provide feedback, provide
7 recommendations of how to improve it. Those go back to
8 the editor of the journal, and the editor makes the
9 decision of what to share back with the authors in terms
10 of requested updates or revisions.

11 The peer reviewers could decide -- could
12 recommend that the article be rejected, right. They
13 don't feel like it's a high enough quality. And so it's
14 a process to sort of have some external review of the
15 work.

16 Q. And the 2014 article was peer reviewed?

17 A. Correct.

18 Q. Do you recall generally by whom?

19 A. I don't -- as an author, you're unaware of who
20 the peer reviewers are.

21 Q. Oh, interesting.

1 A. There's a movement recently toward moving --
2 making that transparent, but that has not necessarily
3 been the practice.

4 Q. Got it. Okay.

5 Do you remember any feedback they gave on
6 the article?

7 A. You're really testing my memory here.

8 Q. If you don't, that's okay.

9 A. Yeah, I don't. That was 10 years ago, 11 years
10 ago. I don't remember. I'm sure there was feedback
11 from -- almost every article has some degree of
12 feedback, but I don't remember what the feedback was or
13 to the degree.

14 Q. And I don't at all mean to stretch your memory.
15 If you don't remember --

16 A. Right. I don't.

17 Q. -- that's a perfectly fine answer, yeah, but I
18 have to ask.

19 So now going back, this article, it
20 analyzes an older methodology, right?

21 A. Correct. It was the methodology that was in

1 place at the time for the Hospital Safety Grade.

2 Q. In 2014, correct?

3 A. 2014, although -- it got published in 2014. We
4 wrote it in 2013, so this is probably an earlier
5 version.

6 Q. So do you think it's fair to say that the
7 current methodology has been peer reviewed?

8 A. I think it's fair to say that the general
9 approach remains consistent from 2013, 2014. The
10 individual measures that are included in the safety
11 grade has evolved over time.

12 Q. And just to be clear, though, to my question,
13 is it a fair statement to say the Leapfrog Hospital
14 Safety Grade methodology has been peer reviewed and
15 published in the Journal of Patient Safety in 2025?

16 A. I could argue that it does not say the current
17 Leapfrog Hospital Safety Grade methodology. It just
18 says that the methodology has been peer reviewed.

19 Q. If this is on the public consumer-facing
20 website today, do you think the consumer would
21 understand, looking at this, that this is referring to a

1 2014 methodology, not a 2025 methodology?

2 MS. LAWSON: Object to form. Go ahead.

3 BY MR. CRAIN:

4 Q. You can answer.

5 MS. LAWSON: You can answer.

6 THE WITNESS: I don't know what a consumer
7 would think or not think. Like, I haven't studied that.

8 BY MR. CRAIN:

9 Q. When you first -- this was the first time you
10 recall reading this sentence in a while, at least,
11 right?

12 A. The sentence meaning the one about the patient
13 safety?

14 Q. No, the one I read back to you. The Leapfrog
15 Hospital Safety Grade methodology has been peer reviewed
16 and published in the Journal of Patient Safety.

17 A. Uh-huh.

18 Q. You knew what that referred to, right?

19 A. Yes, I did.

20 Q. Did you think to yourself that's the same for
21 2025 as it was for 2014?

1 MS. LAWSON: Object to form, but you can
2 answer.

3 THE WITNESS: As I mentioned, I think the
4 general format of what we're doing with a composite
5 score made up of 25 measures that are weighted in two
6 domains remains consistent and solid throughout that
7 time frame.

8 Measures, for whatever -- I mean, measures
9 are going to come and go, right. CMS makes decisions
10 about retiring certain measures. They've added new
11 measures. So the safety grade does continue to evolve,
12 and I would say appropriately, right, like to sort of
13 keep up with the latest information and evidence.

14 BY MR. CRAIN:

15 Q. Has the imputation methodology or the
16 imputation model been peer reviewed?

17 A. That has not.

18 Q. Okay.

19 Okay. Let's keep going. I want to go to
20 -- let's see. Here we go. It's -- and I apologize.
21 There's no page number. If you go to the document, it's

1 the first, second, third, fourth, fifth page to the
2 paragraph starting "A hospital."

3 A. Uh-huh.

4 Q. Do you see that?

5 A. Yep.

6 Q. "A hospital must have enough safety data
7 available for our experts to issue them a letter grade.
8 Hospitals missing more than six process measures, more
9 than five outcome measures, or PSI90 are not graded.
10 All hospitals are encouraged to voluntarily report
11 additional safety data through the Leapfrog Hospital
12 Survey, but they are not required to do so to receive a
13 safety grade."

14 Do you see that language?

15 A. I do.

16 Q. So let's start with process measures. Do you
17 see it says hospitals missing more than six process
18 measures...are not graded?

19 A. Uh-huh.

20 Q. Is that an accurate statement?

21 A. As far as I know. I'm not the one implementing

1 the methodology, so I don't -- I can't speak to --

2 Q. Fair enough.

3 A. -- how it got implemented.

4 Q. Yeah, let me fix the question.

5 Based on your knowledge of how the
6 methodology works, not whether it's been implemented
7 faithfully or not, but purely based on your
8 understanding of the methodology, is that an accurate
9 explanation or articulation of the methodology?

10 A. Yes.

11 Q. Okay.

12 A. That is what we have set as minimum data
13 thresholds.

14 Q. So I want to talk about some process measures.
15 BCMA, are you familiar with that term?

16 A. Uh-huh.

17 Q. What is BCMA?

18 A. Barcode medication administration.

19 Q. And what is CPOE?

20 A. Computerized physician order entry.

21 Q. And you're familiar with hand hygiene?

1 A. Correct.

2 Q. As a measure, not generally.

3 And are you familiar with IC -- IPS?

4 A. Yes, ICU physician staffing.

5 Q. And those I'm going to generally talk about now
6 as we move forward as the four imputed measures.

7 A. Uh-huh.

8 Q. Do you understand what I'm talking about?

9 A. Uh-huh. Yes, I do.

10 Q. When a hospital does not report to Leapfrog's
11 survey, does Leapfrog have any data about the hospital's
12 performance on any of those four measures?

13 A. In the imputation method for Step 1, if a
14 hospital submitted a survey in the prior year, there may
15 be data on one or more of those four measures.

16 Q. Fair enough. What about for Step 2?

17 A. For Step 2, there wouldn't be recent data,
18 right. So there wouldn't be either a survey that was
19 submitted the prior year or a survey submitted this
20 year.

21 Q. Yeah. So if a hospital has never reported to

1 Leapfrog's survey, is it fair to say that Leapfrog has
2 no data on the actual performance of that hospital on
3 those four imputed measures?

4 A. We do not have any data that's been reported
5 through the survey, correct.

6 Q. So why is that not missing data?

7 A. Some I guess it could be one's definition of
8 missing. Those missing data thresholds were really
9 intended to not assign grades to small hospitals that
10 may not have enough data from CMS. So, as an example,
11 there are smaller hospitals that may not have had enough
12 central lines inserted during the reporting period to
13 actually have a central line associated blood stream
14 infection rate.

15 And so the intent of those missing data
16 thresholds was really to make sure we weren't assigning
17 grades to hospitals for which we had unreliable
18 information. It was not necessarily intended to allow
19 hospitals not to report.

20 Q. So is missing data really supposed to be absent
21 data? Like, you mentioned folks that don't have enough

1 central lines.

2 A. Missing data would refer to a measure for which
3 we don't have a value.

4 Q. And so just to put it concretely, when you say
5 "we don't have a value," who do you mean?

6 A. Meaning The Leapfrog Group doesn't have a
7 value.

8 Q. So how is that different -- so one of my
9 clients is Delray Medical Center in Florida, right. And
10 we always use Delray as the example. I don't know why,
11 but Delray is the example. We can pick any of them.

12 Leapfrog gave Delray a limited achievement
13 for hand hygiene. Are you generally aware of that?

14 A. I have not reviewed Delray's results but I --

15 Q. But you understand, as the plaintiff in this
16 case, it's a nonparticipating hospital, right?

17 A. Yes, that's my understanding.

18 Q. And it's -- one of the core elements of the
19 case is the Step 2 methodology, right, for imputation?

20 A. Correct.

21 Q. So based on that, you understand that Leapfrog

1 gave Delray a limited achievement for hand hygiene,
2 right?

3 A. That would be my understanding of how that
4 would get applied.

5 Q. And but -- so there's -- to your point a minute
6 ago, which I've now lost but I will find, you said
7 missing data would refer to a measure for which we don't
8 have a value. Isn't it right that Leapfrog has no value
9 for hand hygiene for Delray?

10 A. That would be correct.

11 Q. Okay.

12 So this paragraph is not correct, right,
13 the one we looked at on the document?

14 A. I think the distinction I would make is whether
15 an imputed score is considered missing or if it's
16 considered a value.

17 Q. You're going to have to say more about that
18 one. What do you mean by that?

19 A. Right. So Leapfrog imputed a score for Delray
20 for hand hygiene of 15 points out of 100.

21 Q. Yes.

1 A. So to me it sort of comes down to is that -- we
2 have a score for Delray for that measure. So it's not
3 missing.

4 Q. And how did Leapfrog pick that score?

5 A. Leapfrog -- so the reason Leapfrog chose
6 limited achievement is that has always been the bottom
7 performance category and it -- basically, given the lack
8 of information that we have about the hospital's
9 performance in hand hygiene, it felt like that was the
10 appropriate score to give, given the absence of
11 information that would tell us something otherwise, that
12 they were performing on a higher level.

13 Q. So is the assumption that Delray is performing
14 at the lowest level for hand wipe -- hand hygiene?

15 A. Given the lack of other information from them,
16 that is our assumption.

17 Q. One of the things that hand hygiene evaluates
18 is whether a hospital has a handwashing policy, right?

19 Let me strike that.

20 One of the things that the survey asks
21 about handwashing is about handwashing training. Are

1 you aware --

2 A. Correct. Yes.

3 Q. Do you have any knowledge of any hospital that
4 does not train doctors and nurses on hand hygiene?

5 MS. LAWSON: Object to form. You can answer.

6 BY MR. CRAIN:

7 Q. Your knowledge.

8 A. There are -- to be clear, what's asked in this
9 survey isn't just about training. It's the way that the
10 training is done, who is trained, and that was not
11 necessarily universally done across all hospitals. So
12 it extends just beyond training employees.

13 Q. Okay. Fair enough.

14 So coming back to this document again, so
15 the four imputed measures, do you agree that they are
16 process measures?

17 A. They are considered either process or
18 structural measures.

19 Q. But in terms of -- I understand that Leapfrog
20 puts its measures into two buckets, process or
21 structural or outcome. Is that right?

1 A. Correct.

2 Q. They all fit the process or structural, right?

3 A. Correct.

4 Q. There are also three others, three other
5 process measures that when a nonreporting hospital is
6 graded are left out of the scoring methodology, right?

7 A. Can you clarify that?

8 Q. Yeah.

9 Are you familiar with safe practice one?

10 A. Yes.

11 Q. And can you remind me what it is? If you
12 don't, I can pull it out.

13 A. Yeah, it's like leadership.

14 Q. Yeah. And are you familiar with safe practice
15 two?

16 A. Yes, which is culture measurement.

17 Q. And are you familiar with total nursing care
18 per patient hour?

19 A. Yes.

20 Q. Those are the three measures that -- for
21 nonparticipating hospitals that do not go into the

1 grade, correct?

2 A. Those are not imputed, correct.

3 Q. Those are not imputed. They're just discarded,
4 right?

5 A. They are ignored, and their relative weights
6 are assigned proportionately to the others.

7 Q. Redistributed, right?

8 A. Redistributed.

9 Q. Yeah. I don't mean to put words in your mouth,
10 but I think it's the word I've seen.

11 So then those are process and structural
12 measures, too, right?

13 A. Correct.

14 Q. So that's seven, right?

15 A. Correct.

16 Q. Okay.

17 And just to be clear, this document doesn't
18 say -- this is the Leapfrog website. I'm looking at it
19 again. Hospitals missing more than six process measures
20 are not graded. That's what it says. It doesn't say
21 hospitals -- strike that.

1 We just walked through Leapfrog does not
2 have data for seven process measures, right?

3 MS. LAWSON: Object to form. You can answer.

4 THE WITNESS: Okay.

5 BY MR. CRAIN:

6 Q. If you're confused, I can rephrase. Let me
7 build it up.

8 So we talked about the four imputed
9 measures, right?

10 A. Correct.

11 Q. We talked about the three what I'll call
12 discarded measures, correct? Do you understand what I'm
13 saying when I say that?

14 A. Yeah, I know the three you're referring to.

15 Q. And they're all process or structural measures,
16 right?

17 A. Correct.

18 Q. And there are seven of them?

19 A. Correct.

20 Q. And yet this document tells consumers that
21 hospitals missing more than six process measures are not

1 graded. Do you see that?

2 A. That is what the document says.

3 Q. And can you tell me again why that's accurate?

4 A. For me, it comes back to the question of is it
5 an imputed score, a score, or is it missing. And I
6 would argue it's a score. So for those four imputed
7 measures, those hospitals have scores. They aren't
8 missing data.

9 Q. Aren't missing data even though Leapfrog has no
10 data for those scores?

11 A. Even though Leapfrog does not have any
12 information that was reported by the hospital through
13 the Leapfrog Hospital Survey.

14 Q. Okay.

15 Okay. All right. Let's keep going. I
16 want to also talk about -- let's see if it's on this
17 page.

18 MR. CRAIN: Can we go to tab 65. This will be
19 Exhibit 9.

20 (Exhibit No. 9 was marked for
21 identification as of 9/25/2025.)

1 BY MR. CRAIN:

2 Q. So Dr. Austin, I've been giving you a document.
3 This one has, fortunately, a URL at the bottom. Do you
4 see that?

5 A. Uh-huh.

6 Q. And has page numbers, fortunately, too.

7 Do you recognize this document?

8 A. I do not.

9 Q. Okay. Do you have a general sense just from
10 looking at it what it purports to be at least?

11 A. Yeah, I do.

12 Q. Okay.

13 So I'll represent to you -- and you can see
14 on the URL at the bottom we pulled this off of
15 hospitalsafetygrades.org, which we talked about earlier
16 that's one of Leapfrog's websites, right?

17 A. Uh-huh.

18 Q. And this is a frequently asked questions page.
19 Do you see that?

20 A. Yes.

21 Q. Okay.

1 And I want to talk through a few things on
2 this document. First I want to start with there is a
3 "why." "Why should people" -- yeah. "Why should people
4 worry about a hospital's patient safety. Aren't all
5 hospitals the same?"

6 Do you see that on page 2?

7 A. Yes.

8 Q. And if you go down to about midway down the
9 paragraph, it says "and all." Do you see that?

10 A. Uh-huh.

11 Q. And it says: "And all hospitals are not the
12 same. Some hospitals are much safer than others. Johns
13 Hopkins Medicine researchers estimate that patients are
14 twice as likely to die of a preventable problem at a
15 "C," "D," or "F" hospital than an "A" hospital, and over
16 50,000 lives would be saved if all hospitals performed
17 the way "A" hospitals did."

18 Do you see that?

19 A. Yes.

20 Q. And I know you didn't write this, but do you
21 have any reason to think you are not the Johns Hopkins

1 researcher?

2 A. No, that is me.

3 Q. And do you have any reason to think that's not
4 referring to your white paper?

5 A. I have no reason to believe that it does not
6 refer to the white paper.

7 Q. And tell me, just so we're on the same page,
8 what is the white paper to which this is referring?

9 A. The white paper that -- so we, in 2016, did a
10 white paper that was referred to as "lives lost, lives
11 saved." And in 2019, we did an update to that. So I
12 don't know -- I believe this is referring to the 2019
13 updated white paper.

14 Q. And the 2019 updated white paper did not
15 analyze "A," "B," "C," "D," and "F" hospitals under the
16 current methodology, right?

17 A. No. They were -- that was done through -- I
18 would have to go back and look at the document but
19 probably based on like the Fall 2018 safety grades. I
20 don't -- yeah. I think we put it out in 2019, but I
21 think it may have been Fall of 2018 that we actually

1 used.

2 Q. And have you published any estimates of that
3 patients are twice as likely to die of a preventable
4 problem at a "C," "D," or "F" hospital than an "A"
5 hospital based on the 2025 methodology?

6 A. No, we have not.

7 Q. Do you have any understanding as to whether
8 that is correct today, or you just don't know?

9 A. We have done some early analysis around this
10 based on 2025, and these statements would remain true.

11 Q. Okay. Based on that early analysis?

12 A. Correct.

13 Q. Okay. And when did you conduct that analysis?

14 A. We started that back in March, April, somewhere
15 in that time frame.

16 Q. Okay. And so even though this is referencing
17 the 2019 white paper and the prior methodology, you're
18 saying based on the current imputed methodology the
19 twice as likely to die language is still correct?

20 A. Yes, I would stand by that.

21 Q. You would stand by it or you do?

1 A. I do.

2 Q. Okay.

3 And how did that analysis transpire?

4 A. Transpire? Can you clarify?

5 Q. How did it come to -- how did you -- why did
6 you conduct that analysis?

7 A. Yeah. So The Leapfrog Group asked that we look
8 at doing an update from the 2019 in 2025. So it was an
9 effort to follow through on that request and to provide
10 an updated analysis of where we're at.

11 Q. And have those analyses been released publicly
12 yet?

13 A. No.

14 Q. Okay, and why is that?

15 A. We -- you would have to ask The Leapfrog Group
16 on their decision and timing on that.

17 Q. Okay.

18 And you've not -- have you drafted a new
19 white paper?

20 A. I have started working on drafting a new white
21 paper. I have not finished that.

1 Q. Okay. Do you have any sense of when you're
2 going to publish that?

3 A. I don't have a sense of it.

4 Q. How far into the drafting are you?

5 A. I don't know how to estimate that. I mean,
6 it's actually updating the 2019 white paper. So I've
7 gone through at this point and made notes on which
8 values need to be updated, where we need to update
9 tables, but all that work would still need to be done.

10 Q. And is your analysis, would you say, an apples
11 to apples analysis between what you're doing today and
12 what was done in 2019?

13 A. It mirrors the spirit of what we did in 2019 in
14 that the measures themselves have changed between 2019
15 and now, but the approach of how we've estimated lives
16 lost and lives saved has remained consistent.

17 Q. And can you explain generally what that
18 approach is?

19 A. Yes. So what we've done is we have -- to
20 estimate the lives lost for looking at "A" hospital as
21 an aggregate, "B" hospital as an aggregate, "C" an

1 aggregate, and "D" and "F" hospitals an aggregate, we
2 look at the mean incidence rates of each of the patient
3 safety events that are included in the Hospital Safety
4 Grade. And from the literature, we've identified an
5 attributable mortality rate to each of those events.

6 So as an example, for central line
7 associated blood stream infections, one in every seven
8 patients who acquires one in the hospital passes away
9 from that. So if you are in a hospital that has a
10 higher rate of those, your risk of dying from one of
11 those increases.

12 And so we apply that against the admissions
13 that are in each of those buckets, so "A" hospitals,
14 "Bs", "Cs", "Ds", and "Fs" to estimate the number of
15 lives lost due to the preventable medical mistakes that
16 are included in the Hospital Safety Grade.

17 And we estimate. Let me put that word out
18 there very clearly. It's an estimate of the number of
19 lives that are lost.

20 Q. And why do you emphasize estimate?

21 A. Because we're -- for example, one assumption

1 that we have to make is the attributable mortality rate,
2 right. We're using that same rate in all four buckets,
3 "As," "Bs," "Cs," "Ds," and "Fs." The reality is we
4 might actually see that "A" hospitals have a lower
5 mortality rate when a patient develops a CLABSI than,
6 say, like a "D" and "F." But we're assuming that that
7 mortality rate is similar across all hospitals.

8 Q. Got it. Okay. Okay, we'll come back to that a
9 little bit more.

10 Okay. So then I want to go back to this
11 FAQ just before we go into other topics.

12 A. Sure.

13 Q. I want to talk about -- let's see. I lost the
14 question. Oh, here it is, page 3. It says: "Does a
15 hospital get a better safety grade if it reports to the
16 Leapfrog Hospital Survey?" Do you see that?

17 A. Uh-huh.

18 Q. And it says: "The Hospital Safety Grade
19 reflects how well a hospital does on safety, not whether
20 they complete the Leapfrog Hospital Survey." Do you see
21 that?

1 A. Uh-huh.

2 Q. And just one question on this line. Do you
3 believe, as, you know, familiar as you were with the
4 methodology, is that accurate with respect to
5 nonparticipating hospitals?

6 A. There are nonparticipating hospitals that have
7 received "As," "Bs," "Cs," "Ds," and "Fs."

8 Q. And do you think that is -- the Hospital Safety
9 Grade reflects how well a hospital does on safety, not
10 whether they complete the hospital survey. Do you agree
11 with that statement?

12 A. I do agree with that statement. I think
13 transparency is an important component of safety.

14 Q. Okay. Why do you say that?

15 A. Yeah. So hospitals that are choosing to share
16 their data through the Leapfrog Hospital Survey are
17 making that information transparent, and I think that
18 does tie to a safety culture of one where we want to
19 make information publicly available, hold ourselves
20 accountable. So I do think there is a link between
21 transparency and safety.

1 Q. Have you conducted any analysis to assess
2 whether hospitals that do not participate in the
3 Leapfrog survey are actually less safe than hospitals
4 that do?

5 A. Not that I can think of.

6 Q. Okay.

7 MR. CRAIN: I'm going to shift gears.
8 Everybody good on time? I'm going to switch topics.
9 You good?

10 BY MR. CRAIN:

11 Q. So I want to talk about the development of the
12 imputation models. So I'm going to focus you on the
13 2024 period. Is that fair enough?

14 A. Yep.

15 Q. Okay.

16 So in April 2024, the expert panel met to
17 discuss, among other things, imputation model. Do you
18 recall that meeting?

19 A. That sounds correct. I know we had a meeting
20 with them, and I think that was the timing of when we
21 talked about that topic.

1 Q. Yeah. And I'll get you a document.

2 MR. CRAIN: Can we get 32A, just to ground the
3 discussion. This will be Exhibit 10.

4 (Exhibit No. 10 was marked for
5 identification as of 9/25/2025.)

6 BY MR. CRAIN:

7 Q. Dr. Austin, do you recognize this document?

8 A. Yes.

9 Q. Okay. And this is an email thread leading up
10 to before and after I think the April 12th, 2024, expert
11 panel meeting. Do you see that?

12 A. Yes.

13 Q. Okay. And I want to just start at the -- where
14 is the attachment?

15 MR. CRAIN: Do we have the slide deck? 32 I
16 need also. Sorry. We have them separately.

17 So let's look at the deck, which was
18 attached to this email, but I think it's separate.
19 This will be Exhibit 11.

20 (Exhibit No. 11 was marked for
21 identification as of 9/25/2025.)

1 BY MR. CRAIN:

2 Q. Okay. So now this is the deck. Do you see
3 that, Dr. Austin?

4 A. I do, yeah.

5 Q. Okay. And it's attached to a Zoom invite -- or
6 to a meeting invite you sent on -- at some point but for
7 a meeting at April 12th at 4 to 5 p.m. Do you see that?

8 A. Yes.

9 Q. Okay.

10 And this was for the safety grade expert
11 panel's meeting for I think that year, right?

12 A. I believe that was the only meeting we held
13 with them in 2024.

14 Q. Okay.

15 And so going to the deck, I'm just going to
16 walk through it with you. And if you go to slide two,
17 which is Bates ending 437364 -- do you see that?

18 A. Uh-huh.

19 Q. And you lay out three topics, right?

20 A. Uh-huh.

21 Q. The first topic is update on swearing DHA

1 military treatment facilities.

2 (Whereupon, the court reporter seeks
3 clarification, which colloquy will not be
4 captured on the written record.)

5 BY MR. CRAIN:

6 Q. The second is feedback on reevaluating
7 imputation model, and the third is feedback on two
8 possible new outcome measures.

9 Do you see that?

10 A. Yes, I do.

11 Q. Okay.

12 And I want to focus on the middle one. So
13 if we can skip to what is page 7366 [sic].

14 A. Uh-huh.

15 Q. Now, do you see this slide is entitled "Problem
16 that We are Working to Solve?"

17 A. Uh-huh.

18 Q. And I want to just go back to the prior
19 exhibit. Well, I'll ask before we go there. Do you
20 recall who drafted this slide? If you don't, I can
21 refresh you.

1 A. I believe I actually am the one who probably
2 drafted this.

3 Q. Yeah. So if you look at the prior exhibit --

4 A. Uh-huh.

5 Q. -- this is Exhibit 10.

6 A. Uh-huh.

7 Q. On page 74782, do you see that?

8 A. 782, yes.

9 Q. And there's an email at the bottom from you to
10 Ms. Campione, Ms. Danforth, and Ms. Joshi. Do you see
11 that?

12 A. Yes.

13 Q. And it goes to the next page. And you say,
14 "Attached is an updated version of the slides. Alex,
15 these are looking good. I added in a slide at the start
16 of the imputation section that outlines the problems we
17 are trying to solve." Do you see that?

18 A. Yep.

19 Q. Does that refresh your recollection as to
20 whether you drafted --

21 A. Yep --

1 Q. -- this slide?

2 A. -- it does.

3 Q. Okay.

4 Just remember to let me finish before --

5 A. I'm sorry.

6 Q. -- and vice versa, just for Marlene.

7 So going back to the slide, why did you
8 draft this slide?

9 A. I thought it was helpful to remind the expert
10 panel of what are some of the challenges we are facing
11 with the current Hospital Safety Grade methodology and
12 why we might want to consider moving in a different
13 direction for imputation.

14 Q. Okay. And the challenges you're talking about
15 are the two bottom bullets, right?

16 A. Correct.

17 Q. Okay. And so the first one is imputed scores
18 have crept up, making imputation a more favorable choice
19 for lots of hospitals and has de incentivized true
20 transparency of performance, right?

21 A. Correct.

1 Q. Now, when you say imputation scores have crept
2 up, what's that based on?

3 A. So the imputation methodology at the time was
4 that it involved -- there was still the historic element
5 of Step 1.

6 Q. And I'll help you. I don't mean to interrupt,
7 but there's a slide that lays it out if it's helpful to
8 you.

9 A. Okay.

10 Q. It's 7369.

11 A. Uh-huh.

12 Q. Do you see that?

13 A. Yep, I do.

14 Q. Okay. Just in case it's helpful. But go on.

15 A. So the Step 1 was assigning the most recent
16 scores from the four past rounds of the safety grade,
17 and then Step 2 was actually looking at two different
18 mean performances. And what we had seen was a trend
19 with those scores were creeping up, which incentivized
20 hospitals to not report to the survey and, instead, to
21 take the imputed score.

1 Q. And how did you know it was driving that
2 incentive, that was the reason they were not reporting?

3 A. That feedback was clear from hospitals. They
4 had verbally shared that with Leapfrog.

5 Q. With you?

6 A. Not with me, with Leapfrog.

7 Q. Did you talk to any hospital that shared that
8 with you personally?

9 A. No.

10 Q. Okay.

11 And who did they share it with at Leapfrog?

12 A. From what I remember, Missy Danforth.

13 Q. Any sense of how many hospitals?

14 A. I don't have a sense of that.

15 Q. And do you have any other basis of knowledge to
16 support that statement besides what you said about
17 Ms. Danforth?

18 A. We have -- we numerically had been tracking the
19 mean score. So we did have empirical evidence of that
20 going up.

21 Q. Empirical evidence of scores going up?

1 A. Correct.

2 Q. But not necessarily empirical evidence of
3 nonparticipating hospitals making the decision not to
4 participate because the scores were going up?

5 A. I don't remember any evidence in that way.

6 Q. Okay.

7 Then the second -- just going back to slide
8 I think it's five, which is 7367 on the Bates number,
9 you see -- so the first bullet we just talked about is
10 primarily a problem with Step 2 in this old methodology.
11 Is that right?

12 A. Correct.

13 Q. And the second bullet is about Step 1, right?

14 A. Correct.

15 Q. And it says: "Hospitals are using Step 1
16 imputation, using their individual hospital's historical
17 data as a reason to not report on the current year
18 survey." Right?

19 A. Correct.

20 Q. Okay. So tell me a little bit about that
21 issue.

1 A. Yeah. Leapfrog had seen patterns where
2 hospitals were choosing to report one year, not report
3 the next year, report the next year as a way to sort of
4 keep their scores sort of used in the Hospital Safety
5 Grade without having to report to the survey every year.

6 Q. And what was your understanding of why those
7 hospitals weren't reporting every year?

8 A. I can't speak to why the hospitals were
9 choosing not to report.

10 Q. You have no understanding?

11 A. I have theories but I don't -- I haven't had
12 conversations with hospitals specifically about their
13 decision not to report.

14 Q. So same thing with respect to Step 1 -- 2 that
15 we just talked about, right? You said you --

16 MS. LAWSON: Object to form.

17 BY MR. CRAIN:

18 Q. Yeah, let me fix it.

19 So you said I have theories but I haven't
20 had conversations with hospitals specifically about
21 their decision not to report. That goes for either

1 decision not to report about Step 1 or Step 2, right?

2 A. That is for me personally I never had
3 conversations with hospitals about that.

4 Q. And did you ever have conversations with
5 Ms. Danforth about the hospitals that are deciding not
6 to report in the Step 1 context?

7 A. Yes.

8 Q. Okay. Tell me about those conversations.

9 A. So that was a similar point of feedback, that
10 she had had conversations with hospitals who had
11 indicated -- Leapfrog also has regional leaders, which
12 you may be familiar with. I think the regional leaders
13 were also hearing from hospitals that, oh, yeah, we're
14 not going to report this year because our scores still
15 get used in the Hospital Safety Grade.

16 So there had been sort of a current of
17 we're choosing to bypass transparency.

18 Q. And was that in relation to the burden of
19 completing the survey?

20 A. That's what I can't speak to.

21 Q. So you have no knowledge about the why?

1 A. I don't have any firsthand knowledge of the
2 why.

3 Q. Do you have any secondhand knowledge about the
4 why?

5 A. My secondhand knowledge would be burden would
6 be a consideration.

7 Q. Okay. And when you say "burden would be a
8 consideration," what do you mean by that?

9 A. So what I hear from hospitals generally, not
10 specific to this, is that at times, they feel like they
11 need to prioritize other quality improvement efforts and
12 may make a decision on where those priorities exist from
13 year to year.

14 Q. And when you say what you hear from hospitals,
15 that's not firsthand, right?

16 A. That has been firsthand, yes.

17 Q. So you do talk to hospitals?

18 A. I do talk to hospitals, not specifically about
19 whether they are reporting every year or every other
20 year.

21 Q. Okay.

1 A. I have had conversations with hospitals --
2 well, I guess I have had conversations with hospitals
3 about their decision to pause reporting.

4 Q. Okay. How many conversations, approximately?

5 A. Five to ten through ten years.

6 Q. Okay.

7 And have you had conversations with
8 hospitals about this imputation methodology at all at
9 any time?

10 MS. LAWSON: Well, I just want to object to
11 form.

12 Just to clarify, the imputation -- this
13 imputation methodology, are you asking about the current
14 2024?

15 MR. CRAIN: Yes.

16 MS. LAWSON: Yes. So just to clarify that.

17 THE WITNESS: I do not believe I've had any
18 conversations with hospitals about that.

19 BY MR. CRAIN:

20 Q. Okay.

21 So your knowledge today about hospitals'

1 decision-making with respect to reporting onto the
2 survey primarily comes from Ms. Danforth?

3 A. That would be a fair statement.

4 Q. Okay.

5 Okay. So going back to the deck, there's a
6 number of tables, and I want to go to slide -- it's the
7 slide with your proposal. Oh, here we go. Slide 13,
8 which is 7375.

9 A. Uh-huh.

10 Q. And this is the proposed future imputation
11 methodology. Do you see that?

12 A. Yes.

13 Q. Okay. This is not the methodology that
14 Leapfrog ultimately adopted, right?

15 A. Correct.

16 Q. Okay. Was this the methodology discussed at
17 the meeting?

18 A. Yes. This is what we put forward to the expert
19 panel.

20 Q. Okay. And you received feedback about this
21 proposal?

1 A. Correct.

2 Q. Right.

3 Okay. And just generally, can you explain
4 what the proposal was?

5 A. The proposal was that we would basically move
6 to a single form of imputation which would be the --
7 that we would use Step 2b imputation for all hospitals.

8 Q. And you would -- to your point, a single form
9 of imputation, that's the retire Step 1 bullet?

10 A. Correct. We would retire Step 1, and we would
11 move all hospitals to Step 2b.

12 Q. Okay. And which is 2b?

13 A. 2b, as it's described here, is that hospitals
14 would be assigned to cohorts and then the means of
15 scores from the first year of reporting would be used to
16 calculate the means.

17 Q. Okay.

18 A. And then the hospital would be assigned that
19 mean.

20 Q. Got it. Okay.

21 And then I just want to go -- so that was

1 the proposal you put out, correct?

2 A. Correct.

3 Q. And it was not the one that was adopted?

4 A. Correct.

5 Q. And we'll get to the why, but before we do
6 that, if you could go one slide back, slide 12.

7 A. Uh-huh.

8 Q. You see it says: "A slight dip in survey
9 participation occurred this past year as hospitals opted
10 to use past survey results in Step 1 imputation." Do
11 you see that?

12 A. Correct.

13 Q. So what is that based on? How did you know
14 that the slight dip was caused by hospitals using past
15 survey results in Step 1 imputation?

16 A. That is probably more just a -- based on
17 conversations that Ms. Danforth had had with hospitals.
18 I don't know if that's -- if we have anything
19 empirically to back up that statement.

20 Q. Okay. So you don't know whether that's
21 accurate or not?

1 A. I don't know whether that is -- yeah, correct.

2 Q. Okay.

3 So I want to talk a little bit about the
4 meeting itself. Do you recall whether other expert
5 panelists proposed alternative imputation methodologies?

6 A. I really don't remember the details of that
7 call.

8 Q. Okay.

9 Do you remember who was on it?

10 A. We have meeting notes of -- from that meeting,
11 but I don't recall who exactly was on that call.

12 Q. Okay.

13 So I want to go to tab 33. This is a
14 document I don't think you've seen before, so I'll just
15 preface that so you know.

16 A. Okay.

17 MR. CRAIN: And this will be Exhibit 12.

18 (Exhibit No. 12 was marked for
19 identification as of 9/25/2025.)

20 BY MR. CRAIN:

21 Q. It's huge. I'll walk you through it. So are

1 we good?

2 A. We're good.

3 Q. Okay.

4 So if you look back at exhibit -- the
5 exhibit with the email, which I think is Exhibit 10.

6 A. Uh-huh.

7 Q. Okay?

8 Do you see at the top there'd an email from
9 Ms. Campione to you?

10 A. Uh-huh.

11 Q. And it says, "Here is the link to the recording
12 if you need it for notes. Please let me know if you
13 have any issues with it."

14 A. Uh-huh.

15 Q. And it gives a URL and password, right?

16 A. Uh-huh.

17 Q. So the expert panel meeting was recorded?

18 A. Correct.

19 Q. Was that typically how it was done?

20 A. Yes.

21 Q. Okay.

1 And do you recall watching the video of the
2 recording at any point?

3 A. I did not.

4 Q. Okay. Do you recall reviewing a Zoom
5 transcript at any point?

6 A. I do not.

7 Q. Okay.

8 So I will represent to you this, what you
9 have in front of you, is a certified transcript of that
10 recording --

11 A. Okay.

12 Q. -- just for discussion purposes. And so I want
13 to just walk through a couple of things with you. So --
14 and I know you haven't seen this before, so I'll walk
15 you through it.

16 So if you go to the back of the document,
17 there's an index. Do you see that?

18 A. Uh-huh -- yes.

19 Q. Sorry. Yes?

20 A. Yes.

21 Q. Okay.

1 So the index, I want to just focus on a few
2 things. If you go to page 9 and you go to "L," do you
3 see the word "limited" appear on the index?

4 A. I do not.

5 Q. And I want to go to the word A -- excuse me, to
6 the portion of the index for "A." Do you see the word
7 "achievement"?

8 A. I see achieving but not achievement.

9 Q. Okay. And where is achieving? There it is.
10 Do you want to -- let's flip to 36.3. So page 36, line
11 3. Tell me when you're there.

12 A. I am there.

13 Q. And it says: "But achieving consensus is
14 difficult." Do you see that?

15 A. Yes.

16 Q. So that doesn't refer to limited achievement,
17 right?

18 A. It does not use that phrase.

19 Q. So based on this index, and to the best of your
20 recollection, did anybody at any time during the meeting
21 raise the idea that you could impute limited achievement

1 scores to nonparticipating hospitals?

2 A. I don't remember what was exactly said. I
3 would not be surprised if the Hospital Safety Grade
4 expert panelists weren't familiar with the term "limited
5 achievement."

6 Q. Sorry. Say that again. I think that was a
7 double negative.

8 A. I would not be surprised if the Hospital Safety
9 Grade expert panelists were not familiar with the term
10 limited achievement.

11 Q. Got it. Okay.

12 Is there another term they might use?

13 A. They might have used lowest performance score.

14 Q. Okay. What about zero?

15 A. It's possible that zero could have been
16 mentioned.

17 Q. Okay.

18 So I want to go to zero, too, in the index,
19 just to close that loop.

20 MS. WOOD: And Lee, I do just want to object to
21 form. I've never seen this document before either. Has

1 this been produced in discovery?

2 MR. CRAIN: It is being produced today.

3 MS. WOOD: Okay. And when was it -- was it
4 prepared on September 11th?

5 MR. CRAIN: I do not know the date, but we can
6 talk off the record. So your objection is noted.

7 BY MR. CRAIN:

8 Q. So do you see zero, Dr. Austin, in the index?

9 A. Uh-huh.

10 Q. Okay.

11 If you go to 40, it said -- in the index,
12 it said line 7, 7 to 11. Do you see that?

13 A. Yes.

14 Q. And I just want you to look at this page from,
15 say, line 6 to 11. Does this reflect anybody proposing
16 to impose a zero score for nonparticipating hospitals?

17 A. No, it doesn't.

18 Q. Okay.

19 Okay. So is it accurate to say that no one
20 suggested, based on the index, based on your memory,
21 that imposing a zero score for nonparticipating

1 hospitals?

2 MS. LAWSON: Object to form.

3 THE WITNESS: I honestly don't remember the
4 conversation.

5 BY MR. CRAIN:

6 Q. Okay.

7 A. I will clarify that what has been assigned is
8 not zero to hospitals.

9 Q. I understand.

10 So do you remember any other proposal made
11 during the expert panel meeting besides the one that you
12 proposed in the slides that we looked at?

13 A. I don't remember.

14 Q. Okay.

15 So I'll take you to one other that is in
16 here. Do you recall -- who is Dr. Pronovost, Peter
17 Pronovost?

18 A. He is one of the Hospital Safety Grade expert
19 panelists.

20 Q. Okay. And you worked with him previously at
21 Armstrong, right?

1 A. Correct.

2 Q. Okay.

3 Now, he proposes -- if you go to pages --
4 if you go to page 25 --

5 A. Uh-huh.

6 Q. -- oh, wait. Sorry. Page 26.

7 A. Uh-huh.

8 Q. And you see at line 18 it says Peter Pronovost
9 and colon?

10 A. Uh-huh.

11 Q. And he says, "Peter Pronovost: Missy, though,
12 to Arjun's point, I wonder in our model do we include
13 that if they're in the lowest quartile, that they stay
14 in that? You know what I mean? At least to reduce the
15 gaming."

16 Do you recall him saying that?

17 A. That's what it says here.

18 Q. Yeah. Do you have any independent --

19 A. I don't remember.

20 Q. Okay.

21 Do you know generally what that means, the

1 lowest quartile?

2 A. I would need to go back further up in the
3 document --

4 Q. If you want to take a look and --

5 A. -- to understand what the context was --

6 Q. Yeah, why don't you go back to page --

7 A. -- because I don't know what the discussion was
8 at that point.

9 Q. Go back to page 24 and start with
10 Dr. Srinivasan.

11 Who is Dr. Srinivasan?

12 A. He's at the Centers for Disease Control and
13 Prevention.

14 Q. Okay. And take a second.

15 (Witness peruses document.)

16 THE WITNESS: So I've read it. And can you
17 repeat your question?

18 BY MR. CRAIN:

19 Q. Yeah. I wanted to know if you have an
20 understanding of what Dr. Pronovost was referring to
21 when he's talking about the bottom quartile. And I

1 think Dr. Srinivasan talks about the bottom quartile,
2 too. And I will also preface, if you don't remember, I
3 can show you an email subsequently about the bottom
4 quartile, but I wanted to know if you have an
5 independent recollection.

6 A. I don't have a recollection of that.

7 Q. Okay. That's fine. It's not a memory test.
8 Again, we'll get to another document. I'm just going
9 through this.

10 I want to look at one other quick thing in
11 the index. If you go to "W," do you see the word
12 "willing"?

13 A. I do.

14 Q. Let's see. Where is it?

15 A. Oh, no. I don't see it.

16 Q. Yeah, I didn't see it.

17 Just to confirm, do you see the word
18 "willing" in the index?

19 A. I do not.

20 Q. Okay.

21 Do you know what the phrase "willing to

1 report" means?

2 A. That is the term that Leapfrog used prior to
3 limited achievement.

4 Q. Okay. So that was the lowest performing score,
5 right?

6 A. That was the phrase that was used for that in
7 the past.

8 Q. Okay. Do you recall when it was retired?

9 A. I could estimate 2018, 2019, somewhere around
10 there.

11 Q. And just -- I'm representing to you that the
12 index is from a certified court reporter. Based on this
13 index, the phrase "willing to report" or even just the
14 word "willing" was not discussed at this meeting,
15 correct?

16 A. I do not see the word "willing" in the index.

17 Q. Okay.

18 And you have no independent recollection of
19 a discussion of the phrase "willing to report" at the
20 meeting, right?

21 A. I do not.

1 Q. Okay.

2 Okay. I'm going to set this aside, and
3 we'll come back to it, so don't lose it.

4 (Whereupon, a discussion was held between
5 counsel regarding lunch schedule, which
6 portion was not included in the written
7 record.)

8 BY MR. CRAIN:

9 Q. Okay. So let's keep going.

10 So you mentioned there were minutes after
11 the meeting, right?

12 A. Correct.

13 Q. I want to start with tab 33A, which will be
14 Exhibit 13.

15 (Exhibit No. 13 was marked for
16 identification as of 9/25/2025.)

17 BY MR. CRAIN:

18 Q. So Dr. Austin, do you recognize this document?

19 A. I recognize the meeting notes that are behind
20 it.

21 Q. Behind it. Okay.

1 A. And I recognize the email.

2 Q. Yeah. Okay. So you have no reason to think
3 this wasn't sent and received?

4 A. Correct. Yes.

5 Q. Okay.

6 And you'll note in the bottom it's an
7 Armstrong-produced document, right?

8 A. Correct.

9 Q. So it's an email originally from the 16th from
10 Preeti Joshi. And remind us, who is she again?

11 A. Preeti is an analyst that works for me.

12 Q. Okay. And she works on the Leapfrog account?

13 A. Correct.

14 Q. Okay.

15 And she says first in that email, "Matt,
16 please review the attached Leapfrog Hospital Safety
17 Grade HSG" -- is that Hospital Safety Grade?

18 A. Uh-huh. Correct.

19 Q. -- "expert panel meeting notes, and let me know
20 your suggestions."

21 Then she follows up, right?

1 A. Correct.

2 Q. And she says -- it looks like it's a few hours
3 later that same day, April 16th -- "Matt, please
4 disregard the attachment of previous email and consider
5 the attached document for review. I accidentally attached
6 a different file with previous email."

7 Do you see that?

8 A. Yes.

9 Q. Okay.

10 And then going on to the notes, this is,
11 fair to say, her draft of the notes, right?

12 A. Correct.

13 Q. Okay.

14 And then just stepping back, does every
15 expert panel, safety grade expert panel have meeting
16 notes like these?

17 A. Yes. Could there be one or two for which we
18 just somehow didn't do them? Possibly. But the intent
19 is, yes, to have meeting notes like this.

20 Q. And is this the normal process where the person
21 who is reporting to you starts the first draft and you

1 revise?

2 A. Correct.

3 Q. Okay. And do you generally try to be accurate
4 with the meeting minutes?

5 A. Yes.

6 Q. Okay. What do you look for when you revise?

7 A. I look for accuracy. I try to highlight
8 broader themes. So as an example, often when the
9 analyst first starts working with me, the notes will be
10 incredibly, like, detailed. Sara said this. Bob said
11 this, right. So I try to sort of move it up a level,
12 right, and I try to be clear with sort of action items
13 of what we need to do next and to be clear with decision
14 points.

15 Q. Okay. And you still try to be faithful to the
16 discussion, right?

17 A. Correct.

18 Q. Okay.

19 So I'm going to set this one aside, and I
20 want to go to your version of the notes. Let's see.
21 Oh, wait. Come back. Sorry. Sorry. Let's start with

1 this. I'm all out of order.

2 Okay. So if we go down to Preeti's version
3 of the notes, do you see number two?

4 A. Uh-huh.

5 Q. Proposed changes to the imputation model,
6 right?

7 A. Uh-huh.

8 Q. And if you go, it looks like one, two, three
9 bullets down, it says "Peter asked."

10 A. Uh-huh.

11 Q. "Peter asked whether Leapfrog has a way to keep
12 the low-performing hospitals in the lowest quartile
13 using this Step 2 imputation model." Do you see that?

14 A. Uh-huh.

15 Q. Okay. Was that what we looked at in the
16 transcript a little while ago?

17 A. I don't know because I actually didn't fully
18 follow what Peter was trying to ask there.

19 Q. Okay. Got it.

20 A. To be really, really honest, I -- it didn't
21 make much sense to me.

1 Q. I've been trying to understand it, too, so I
2 get it.

3 Does this seem like a fair articulation of
4 what he was saying in the call?

5 A. If it's in the notes, I would say it's probably
6 a fair articulation, but I don't remember that myself.

7 Q. Okay.

8 Now, just to be clear, looking at this,
9 there is no indication -- and you can read the bullets.
10 They're pretty short -- that anyone was proposing giving
11 hospitals a zero or limited achievement or willing to
12 report, right?

13 A. Can you repeat your question, please?

14 Q. Yeah.

15 Is there any indication in these notes that
16 someone raised the idea during the meeting of giving
17 nonparticipating hospitals a zero or limited achievement
18 or willing to report for the imputed measures?

19 MS. LAWSON: Object to form, but you can
20 answer.

21 THE WITNESS: It doesn't necessarily explicitly

1 say that in these notes.

2 BY MR. CRAIN:

3 Q. Okay.

4 You say "explicitly." Do you have a reason
5 to believe those topics were discussed?

6 A. There was concerns about -- that Arjun raised
7 about a hospital that was performing very poorly and
8 that they would actually get an imputed score, so a
9 better score than what they would actually be -- so to
10 me that seems to be raising the question of whether the
11 current imputation model was rewarding poor performing
12 hospitals.

13 So, I mean, there could be an
14 interpretation of that.

15 Q. So you said the question was raised. My
16 question is was the answer provided, proposed answer?

17 A. I don't remember.

18 Q. Okay.

19 And do you see anything on this page from
20 what you read a few minutes ago from the transcript to
21 suggest that those solutions were proposed that I just

1 mentioned?

2 A. I don't see anything here that would indicate
3 that the actual solution that we landed on is what was
4 explicitly proposed by the expert panel.

5 Q. Okay. Let me ask you this question. Who
6 proposed the solution that you landed on?

7 A. I don't recall with certainty.

8 Q. Okay. Do you think it was Leapfrog, or do you
9 think it was the expert panel?

10 A. I'm guessing it was Leapfrog that proposed that
11 solution based on the concerns that the expert panel was
12 raising.

13 Q. Got it.

14 So to your framing before, the question was
15 raised and Leapfrog was supplying an answer?

16 A. Is your question during this call?

17 Q. During this period. April 2024 --

18 A. I don't remember with certainty how the
19 solution that is currently in use was developed.

20 Q. Okay.

21 I want to also take a look a couple bullets

1 down. It says, "Matt mentioned." Do you see that?

2 A. Uh-huh.

3 Q. And Matt, I take it, is you?

4 A. Correct.

5 Q. "Matt mentioned it is important to see whether
6 there is an actual difference in hospitals' performance
7 and whether there is some sort of bias in the
8 measurement against them. He said to minimize the
9 second, and if there are differences in hospitals'
10 performance, we can address the structural issues to fix
11 them."

12 Do you see that?

13 A. I do.

14 Q. So taking that one by one, what does the first
15 sentence mean?

16 MS. LAWSON: Might it be helpful for him to
17 just review the transcript of what he said?

18 MR. CRAIN: Yeah. I'm pulling that out now.

19 THE WITNESS: That would be helpful.

20 BY MR. CRAIN:

21 Q. But you know what, let's start with this

1 document and what's your understanding of this sentence,
2 and I'll try to find a line.

3 A. It's unclear to me what "them" is referring to
4 in this sentence. Like, I don't have the context to
5 remember what "them" is. To me, I was suggesting that,
6 perhaps, we needed to look at difference in performance
7 between -- yeah, I don't have a great sense just from --

8 Q. I can take you where the -- if you go back to
9 the transcript, page 27 is where you talk about bias.

10 MS. LAWSON: And you might want to just start
11 from the page preceding, which is the page we reviewed
12 previously, and just keep going on the discussion. I
13 think that might help.

14 (Witness peruses document.)

15 THE WITNESS: The context from the transcript
16 is such that we were talking about safety net hospitals
17 and some sort of concerns about bias in measurement for
18 those safety net hospitals.

19 BY MR. CRAIN:

20 Q. Only for them?

21 A. That is the context that Kathy McDonald had

1 brought up was the safety net hospitals.

2 Q. Fair enough. I get that she says that from
3 lines 3 to 11 on page 27, but you follow up, and you
4 say, "I think where I struggle is what is a true --
5 well, where is there a true difference in performance,
6 right, and where is there some sort of bias in the
7 measurement against them. Right?" And then Kathy says,
8 "Right." And then you say, "And I think we want to
9 minimize the second."

10 And so I guess the question I have out of
11 that is what does bias mean in that context?

12 A. Bias would refer to that there is some sort
13 of -- that there is some sort of structural -- I'm
14 trying to think of the right words for this. That there
15 is some sort of structural sort of -- there's something
16 structural about safety net hospitals that disadvantages
17 them.

18 Q. So you're talking about bias about the
19 hospitals or bias about the scoring methodology?

20 A. The bias in the hospitals. And I say that
21 because I think on the next page I talk about that

1 marginalized communities tend to receive care at less
2 safe hospitals. So I think the concern is that there is
3 a bias against safety net hospitals in terms of quality
4 and safety.

5 Q. So this doesn't refer to bias in the survey --
6 in the scoring methodology -- excuse me -- against
7 safety net hospitals?

8 A. I believe what this is referring to is actually
9 the bias in the challenges that safety net hospitals
10 face to prioritize quality and safety of care.

11 Q. And how does that factor into the imputation
12 methodology?

13 A. So safety -- well, to be clear, safety net,
14 there is no formal definition of that. If they are a
15 critical access hospital, they don't receive a Hospital
16 Safety Grade.

17 Q. What is a critical access hospital?

18 A. Critical access hospital, there is about 1,400
19 of them in the United States. They're small hospitals
20 that have 25 beds or less --

21 Q. Got it.

1 A. -- that are generally in rural areas and for
2 which the funding from the government is different,
3 basically to keep their doors open, and they are
4 generally in small, rural communities.

5 Q. And so I get there is no definition of safety
6 net hospital. What's your general understanding of what
7 that means?

8 A. One definition that I commonly use is it's
9 hospitals that care for greater proportions of patients
10 who have Medicaid as their primary insurance.

11 Q. Got it. And they can be for-profit or
12 nonprofit hospitals?

13 A. Correct.

14 Q. Okay. And so what type of -- so how does the
15 safety -- how does the imputation -- like, how does that
16 fact -- let me state the question in a real way rather
17 than stuttering way.

18 How does the safety net bias that you're
19 talking about here relate to the imputation methodology
20 that was the topic of the agenda here?

21 A. I believe what Kathy is looking at is -- was

1 looking at some of the safety net hospitals and just
2 making sure that they were going to be treated fairly.

3 Q. Okay. And is that -- is a difference in the
4 safety net hospitals, as compared to non-safety net
5 hospitals, their capacity to complete the survey?

6 A. I couldn't speak to that.

7 Q. Do they have fewer resources than non-safety
8 net hospitals?

9 A. They typically are more resource constrained
10 hospitals than larger hospitals -- or not larger
11 hospitals, than hospitals that are better funded.

12 Q. So did you understand Kathy to be saying that
13 she wanted to recognize the burden that they were
14 experiencing as compared to non-safety net hospitals?

15 A. I don't know if that was what she was implying
16 there.

17 Q. Okay.

18 So and then going back to your point about
19 bias, how would the imputation methodology -- strike
20 that. Sorry.

21 Going back to your point about bias, how

1 could the imputation methodology take that into account?

2 A. Which imputation methodology are we discussing?

3 Q. Any one, whether -- well, how could any
4 imputation methodology take into account the bias that
5 you're identifying here apparently as to safety net
6 hospitals?

7 A. Well, there's the concern that -- I mean, one
8 potential bias is that if other safety net hospitals are
9 performing less well and you choose to not complete the
10 survey, you're going to maybe get assigned the same
11 value as your average safety net hospital. So that
12 would be one way that a safety net hospital might face a
13 bias.

14 Q. Okay. But you need the definition of what
15 qualifies as a safety net hospital, right?

16 A. Correct. And Leapfrog has its own definition
17 that it uses for that.

18 Q. Is it different from yours?

19 A. I don't know.

20 Q. Okay. You have no knowledge of what that
21 definition is?

1 A. I couldn't say with exact certainty what their
2 definition is.

3 Q. Do you know in what context they have that
4 definition?

5 A. They have it in some of their data files
6 because a lot of their data licensees like to be able to
7 drill down on that type of detail, but I don't know what
8 -- how they get that source or what they are using for
9 them.

10 Q. Okay. Okay.

11 So going back to the notes, which I believe
12 is Exhibit 13, I want to go back to the bullet. Preeti
13 said, "Matt mentioned it is important to see whether
14 there is an actual difference in hospitals' performance
15 and whether there is some sort of bias in the measures
16 against them. He said to minimize the second, and if
17 there are differences in hospitals' performance, we can
18 address the structural issues to fix them."

19 Do you see that?

20 A. I do.

21 Q. Now, she doesn't mention safety net hospitals

1 there, right?

2 A. She does not.

3 Q. Okay. So -- okay. I'll leave it there.

4 MR. CRAIN: I think maybe we'll take a break
5 now. Do you want to do the lunch break now?

6 MS. LAWSON: We're off the record.

7 THE VIDEOGRAPHER: This marks the end of media
8 unit number three. We're going off the record. The
9 time is 11:49 a.m.

10 (Whereupon a lunch break was had, after
11 which the proceedings continued as
12 follows:)

13 THE VIDEOGRAPHER: This marks the beginning of
14 media unit number four. We're back on the record. The
15 time is 12:56 p.m.

16 BY MR. CRAIN:

17 Q. Okay. Welcome back.

18 A. Thank you.

19 Q. I hope you had a nice lunch.

20 A. Yeah. Thank you.

21 Q. So we were talking about the April 12th meeting

1 before we broke. Do you recall that?

2 A. Yes.

3 Q. I want to go back in time just a little bit.

4 The April 12th meeting, if you recall correctly from the
5 notes we saw, was between 4 and 5 o'clock.

6 A. Correct.

7 Q. And if you keep the notes out, if you look at
8 the portion where it says the attendees, do you see
9 that?

10 A. Yes.

11 Q. Dr. Romano is not on that list, right?

12 A. Correct.

13 Q. Okay. And do you recall that -- whether you
14 met with Dr. Romano earlier that day with regard to the
15 safety grade expert panel?

16 A. I can't say with certainty.

17 Q. Okay.

18 A. But I believe we met with him at some point
19 around that meeting.

20 Q. Okay. And that was -- do you recall who
21 attended that meeting?

1 A. I don't recall with certainty. I could
2 estimate who I think would be there, but I can't say
3 with certainty.

4 Q. That's okay. That's okay.

5 And before we go to -- I'll refresh you
6 with a document, but before we go there, who is
7 Dr. Patrick Romano?

8 A. So Dr. Patrick Romano is one of the Hospital
9 Safety Grade expert panelists.

10 Q. And what's his background?

11 A. He is a physician and health services
12 researcher at the University of California, Davis.

13 Q. And fair to say he's an expert in something?

14 A. He is.

15 MS. LAWSON: Object to form but go ahead.

16 THE WITNESS: Yeah. He would be perceived as
17 being an expert in quality measurements in healthcare.

18 BY MR. CRAIN:

19 Q. And have you worked with him for a long time?

20 A. Yes, I have.

21 Q. Did you work with him in the early days when

1 the safety grade was being developed?

2 A. Yes.

3 Q. And was he involved in the development of the
4 first imputation model around 2020, 2021?

5 A. We worked with Dr. Romano in thinking through
6 different options for the imputation.

7 Q. Okay. And do you know how long Dr. Romano has
8 been involved in any capacity with Leapfrog?

9 THE COURT REPORTER: I'm sorry. We just lost
10 connection.

11 MR. CRAIN: Should we go off?

12 THE COURT REPORTER: Could we?

13 MR. CRAIN: Can we go off the record.

14 THE COURT REPORTER: Just one quick second.

15 THE VIDEOGRAPHER: This marks the end of media
16 unit number four. We're going off the record. The time
17 is 12:58 p.m.

18 (Whereupon, the proceedings paused due to
19 technical difficulty, after which the
20 proceedings continued as follows:)

21 THE VIDEOGRAPHER: This marks the beginning of

1 media unit number five. We're going back on the record.

2 The time is 1 o'clock p.m.

3 BY MR. CRAIN:

4 Q. Great. Okay. We're back after a technical
5 glitch, and I'm going to ask the question that we
6 started before.

7 So was Dr. Romano involved in the
8 development of the first imputation model around
9 2020/21?

10 A. He was. To clarify, that wasn't -- it depends
11 on your definition of what is an imputation model. We
12 had had other imputation approaches prior to '20 to '21.

13 Q. Fair enough.

14 Was he involved in the development of that
15 model in --

16 A. Yes. He helped provide input and guidance.

17 Q. Okay.

18 MS. LAWSON: And just make sure that Mr. Crain
19 has finished his question, yes.

20 BY MR. CRAIN:

21 Q. And I think I had asked during the technical

1 glitch, so I'll make sure we get it, how long has
2 Dr. Romano been involved with Leapfrog?

3 A. Since 2011.

4 Q. Okay. So he came on after you joined or after
5 you got involved with Leapfrog, let's say?

6 A. He was part of the Hospital Safety Grade expert
7 panel that was formed in 2011.

8 Q. When the safety grade was originally being
9 developed?

10 A. Correct.

11 Q. Okay.

12 MR. CRAIN: Okay. So I'm going to mark as
13 Exhibit 14...

14 (Exhibit No. 14 was marked for
15 identification as of 9/25/2025.)

16 BY MR. CRAIN:

17 Q. Dr. Austin, do you see this is an
18 Armstrong-produced document?

19 A. Yes.

20 Q. And it's an email from you to you. Do you see
21 that?

1 A. Correct.

2 Q. Does this reflect notes that you took on
3 April 12th, 2024?

4 A. It reflects --

5 Q. I'll direct you to the subject matter, the
6 subject of the email.

7 A. Yes. It was my notes from the Hospital Safety
8 Grade expert panel meeting.

9 Q. And do you have a practice of sending yourself
10 notes over email?

11 A. I do.

12 Q. Okay. So this is a true and accurate, to the
13 best of your knowledge, copy of your notes from that
14 day?

15 A. Yes.

16 Q. Okay.

17 And on the top, it says: "Patrick
18 recommend keep Step 1." Do you see that?

19 A. Yes.

20 Q. Does that refresh your recollection of whether
21 you had a meeting with Dr. Romano on April 12th?

1 A. As I mentioned, I know we met with Dr. Romano
2 around that time because he was unable to make the
3 primary call, but I don't remember the exact timing of
4 when that was.

5 Q. Okay.

6 Do you -- is it correct that these bullets
7 one, two, and three below, "Patrick recommend keep Step
8 1," reflect your notes from the discussion with
9 Dr. Romano?

10 A. That would be likely to be true, yes.

11 Q. Okay. You don't have a specific memory, but
12 that's what the document --

13 A. Correct.

14 Q. -- indicates?

15 A. Yes.

16 Q. Okay. Again, just let's try not to talk over
17 each other.

18 Okay. And then the remainder of this
19 email, just going down, do those reflect your notes from
20 the subsequent expert safety grade panel meeting later
21 that day?

1 A. Yes.

2 Q. Okay.

3 That's all we need to talk about with this
4 document. You can set it aside.

5 MR. CRAIN: Now, I want to go to another
6 document. This will be 15, tab 34.

7 (Exhibit No. 15 was marked for
8 identification as of 9/25/2025.)

9 BY MR. CRAIN:

10 Q. And you will see on the bottom this was a
11 deposition exhibit from Ms. Campione as well. Do you
12 see that blue sticker?

13 A. Yes.

14 Q. Okay.

15 So the top email is from you to
16 Ms. Campione, Ms. Danforth, and Ms. Joshi. Do you see
17 that?

18 A. Yes.

19 Q. And I want to just go through -- if we could
20 start at the bottom, which is the first email, this will
21 be page -- if you could go to page 8331, the second to

1 the last page to orient. Good? Are you there?

2 A. Can you repeat that, please?

3 Q. Sorry.

4 Can you go to page 8331, the second to the
5 last page.

6 A. Yes.

7 Q. Okay.

8 And there's an email from Ms. Campione to,
9 among others, you at 12:17 p.m.?

10 A. Yes.

11 Q. And the subject is imputation changes. Do you
12 see that?

13 A. Yes.

14 Q. So Ms. Campione writes to you and others, "Hi
15 all, please find the table we discussed below. I also
16 included the underlying issues. Please feel free to
17 edit the response to this email." Do you see that?

18 A. Yes.

19 Q. Okay.

20 Do you have a recollection of her sending
21 this email?

1 A. I do remember seeing that table at the bottom
2 of the email, but I didn't remember the context of the
3 email.

4 Q. Do you remember seeing it from back then? Do
5 you remember from seeing it more recently?

6 A. I -- in showing this to me today, I very
7 distinctly remember her sending an email with this
8 table.

9 Q. Okay. Do you remember -- and you said you
10 don't remember the context. Do you remember anything
11 about why she sent it?

12 A. I would guess, based on what's here, it was to
13 sort of further refine a potential direction that we
14 would go for the imputation models.

15 Q. And this was about 10 days after the expert
16 panel meeting, right?

17 A. Correct.

18 Q. Okay.

19 So I want to just go through this chart a
20 little bit just to make sure we're on the same page.
21 Are you looking at the chart on 8332?

1 A. Uh-huh.

2 Q. Okay. So "no change" is the left-most column.
3 Do you see that?

4 A. Yes.

5 Q. And that's -- is it right that's basically the
6 model you had, right, at the time?

7 A. Correct.

8 Q. "Small change" says: "Shorten imputation to
9 past two rounds for Step 1." Do you see that?

10 A. Yes.

11 Q. Is that what you ultimately did, or is it
12 "moderate change" that Leapfrog ultimately imposed?

13 A. Are you asking about recent survey
14 participants?

15 Q. I'm asking -- yeah, I'm asking about Step 1 for
16 recent survey participants. I'll walk you through it.
17 I'll build it a little more clearly.

18 Under "small change" for Step 1, it says:
19 Shorten imputation to two past rounds. Do you see that?

20 A. Uh-huh.

21 Q. Does that reflect, to the best of your

1 understanding, an imputation of a historical score in
2 the past two rounds of the hospital survey?

3 A. Can you repeat that again, please?

4 Q. Yeah.

5 To the best of your understanding, does
6 this column, does this "small change" box in Step 1
7 reflect that you would propose to impute the historical
8 score for a nonparticipating hospital for the past two
9 rounds of the hospital survey? Am I reading that right?

10 A. That is not exactly my understanding.

11 Q. Okay. Can you give me your understanding?

12 A. Yeah. My understanding is what's being
13 proposed is for hospitals that have recently completed
14 the survey, how far of a lookback would we do to see if
15 there was a recent survey.

16 Q. Got it. And was that different from what I
17 said because I said nonparticipating hospitals?

18 A. Correct.

19 Q. Yeah, okay. Let me fix that. That's a fair
20 point.

21 For hospitals that are not participating

1 every year, is that a more apt understanding of what the
2 Step 1 is?

3 A. I would frame it as hospitals that have not
4 submitted the most recent hospital survey.

5 Q. Got it. But for which there exists a
6 historical survey response?

7 A. Correct.

8 Q. Okay.

9 So on the top in Step 1, small change, you
10 go back to the two past rounds of the survey, right?

11 A. That is what's being proposed under small
12 change.

13 Q. Then moderate change is you shorten imputation
14 to one past round, right?

15 A. Correct.

16 Q. And is that what you testified earlier -- is
17 that what ultimately Leapfrog did for Step 1?

18 A. I would have to defer to the methodology --

19 Q. Okay.

20 A. -- document on how that gets phrased or framed.

21 Q. Okay.

1 What do you think is the difference?

2 A. Difference from what?

3 Q. What's your hesitation as to why this is not
4 the same thing as you understand Leapfrog is doing today
5 for Step 1?

6 A. I guess I'm a little unclear on what moderate
7 change would actually be. So that's where I'm now sort
8 of second-guessing like, well, did we implement moderate
9 or did we implement small change?

10 Q. Okay.

11 A. My understanding, putting the words aside, is
12 that what we moved to was the ability for a hospital --
13 we would look back and see if a hospital submitted a
14 survey last year --

15 Q. Got it.

16 A. -- and if we did, we would use that.

17 Q. Okay.

18 A. But we wouldn't go any further back than that.

19 Q. Okay.

20 A. So I don't know how that translates into these
21 exact words.

1 Q. Okay.

2 I mean, I would read one past round to be
3 last year, but I don't know if that's right. You're not
4 sure about that either?

5 A. I'm not sure about that either.

6 Q. Okay.

7 Okay. And then "drastic change" is
8 eliminate Step 1. Do you see that?

9 A. Yes.

10 Q. And that you did not do, right?

11 A. Correct.

12 Q. But that was the proposal at the April 12th
13 meeting, to retire Step 1?

14 MS. LAWSON: Object to form.

15 THE WITNESS: The proposal that we introduced
16 at the Hospital Safety Grade expert panel meeting was to
17 eliminate Step 1.

18 BY MR. CRAIN:

19 Q. Yeah. Okay.

20 Now, in Step 2, if you could just go -- I
21 don't know if you feel more comfortable walking me

1 through it, or I could walk you through it, but Step 2,
2 the no change, it says: "Impute with the mean of first
3 time scores for their cohort." Do you see that?

4 A. Yes.

5 Q. And is that a no change, or is that sort of an
6 adaptation? I had understood the Step 2 to be the mean
7 of first time versus the mean of the cohort generally,
8 right?

9 A. At the time, the nonsurvey -- so Step 2 was --
10 yes, it was the lower of the mean of either first time
11 respondents or the mean of the cohort.

12 Q. Yeah, okay. So slightly different from what
13 the no change says here, right?

14 A. Correct.

15 Q. Okay.

16 And that small change -- there's a no
17 change, which is interesting. Do you see that?

18 A. Correct.

19 Q. Okay.

20 And then moderate change says: "Assign
21 hospitals to the bottom quartile or several standard

1 deviations below the mean." Do you see that?

2 A. Yes.

3 Q. Now, we saw in the transcript that we looked at
4 in the notes the discussion of the lowest quartile. Is
5 this what that's referring to, to the best of your
6 understanding?

7 MS. LAWSON: Object to form.

8 THE WITNESS: I would need to re-review the
9 transcript to refresh myself on what exactly the
10 conversation was about lowest quartile.

11 BY MR. CRAIN:

12 Q. Okay. I'm trying to think should we do that.
13 Would you like to do that? I'm happy to take you back
14 to it unless you have an understanding.

15 A. I don't have -- I mean, I saw in the
16 transcript there was conversation about lowest quartile.

17 Q. Yeah.

18 A. And there's, obviously, conversation here about
19 bottom quartile. I don't know if those two
20 conversations are the same thing. That's what I don't
21 know.

1 Q. Okay. So you don't have an independent
2 recollection of whether this column comes from the
3 discussion of the expert panel meeting or not?

4 A. Correct. I do not have an independent
5 recollection.

6 Q. Okay.

7 And then on the last one, the drastic
8 change, it says: "Impute with limited achievement
9 scores," right?

10 A. Correct.

11 Q. Okay.

12 And, again, we looked at the index, and
13 there was no discussion of limited achievement, right,
14 at least based --

15 MS. LAWSON: Object to form.

16 BY MR. CRAIN:

17 Q. At least based on the index?

18 MS. LAWSON: Object to form.

19 THE WITNESS: Correct. There was no use of
20 that explicit term.

21 BY MR. CRAIN:

1 Q. Yeah.

2 And there was no use of the term
3 willingness, as in willingness to report, right?

4 MS. LAWSON: Object to form.

5 THE WITNESS: Correct.

6 BY MR. CRAIN:

7 Q. Okay.

8 And in the index at least, when we looked
9 at the word "zero," there was no discussion of anybody
10 proposing that nonparticipating hospitals should get
11 zero in Step 2, right?

12 MS. LAWSON: Object to form. Go ahead.

13 THE WITNESS: Correct.

14 BY MR. CRAIN:

15 Q. Okay.

16 So let's go up a little bit on this box.
17 And you respond, do you see that, 12:27 p.m.?

18 A. I --

19 Q. I can give you a page number if you need it.

20 A. I do -- yep.

21 Q. Got it?

1 A. Yep. I do, yes.

2 Q. And you said, "Alex, this looks great. I'm
3 wondering do we, one, want to reflect that we're
4 already" -- doing -- "using" -- sorry -- "drastic change
5 for Step 2 for IPS? And, two, do we want to use a
6 different term for drastic change, like large change?"

7 Do you see that?

8 A. Yes.

9 Q. So just breaking that down, number one, can you
10 tell me what you understood yourself to mean when you
11 said: Do we want to reflect that we're already using
12 drastic change for Step 2 for IPS?

13 A. So as I remember it, we had already moved
14 imputation for IPS to be limited achievement.

15 Q. And when did that come about?

16 A. I don't remember exactly.

17 Q. Okay. And do you remember the basis?

18 A. The basis is we actually had information from
19 CMS, Centers for Medicare and Medicaid Services, that
20 could tell us whether a hospital operated an ICU. And
21 if they operated an ICU, and they had not submitted

1 information to the Leapfrog Hospital Survey about their
2 staffing, we were coming to the conclusion that they
3 didn't meet the staffing model that Leapfrog requires.

4 Q. Got it.

5 So you made the assumption based on the
6 existence of an ICU that they were performing at a level
7 of limited achievement?

8 A. To clarify, I'm not sure we were making an
9 assumption. We were -- we had a lack of information
10 about their staffing models. That would be the
11 equivalent of assigning limited achievement.

12 Q. Got it.

13 And is that, to your knowledge,
14 communicated anywhere on the Leapfrog website to
15 consumers?

16 A. I don't know.

17 Q. Okay.

18 Is that communicated in the methodology
19 document, that that's why Leapfrog assigns limited
20 achievement for IPS for nonparticipating hospitals?

21 A. I don't know for certainty.

1 Q. Okay. Do you want to take a look?

2 A. I can.

3 Q. I'm happy to take you there. That's Exhibit 3.

4 A. That sounds correct.

5 Q. I wrote them down today.

6 A. If my memory serves me right.

7 Q. Do you have it, Dr. Austin?

8 A. I do.

9 Q. And if you go to page 10, it talks about the
10 IPS model -- or the measure.

11 MS. LAWSON: This is for Spring 2025?

12 MR. CRAIN: Correct.

13 BY MR. CRAIN:

14 Q. The IPS, as you testified a minute ago, I
15 think, did not change, right, the imputation
16 methodology?

17 A. That was my comment back to Alex.

18 Q. Okay. Yeah.

19 But to the best of your recollection today,
20 between 2024 and 2025, Step 2 for IPS was always limited
21 achievement, right?

1 A. Correct.

2 Q. Okay.

3 So are you on page 10?

4 A. I am.

5 Q. Okay. So just take a look and read the IPS
6 block.

7 A. Yep. I have, yes.

8 Q. And does it provide any explanation, the
9 explanation you just gave for why hospitals receive
10 limited achievement if they don't participate in the
11 survey?

12 A. You would need to follow the last line that
13 says if a hospital didn't submit a survey, you need to
14 look at using secondary data sources.

15 Q. Okay. Let's go to that page. That's page 15?
16 Take a look. And it's on 15 and 16?

17 A. Yes.

18 Q. Yeah. Is there an explanation there?

19 A. On page 16 there is.

20 Q. Let's see. Where is it?

21 A. Note about IPS: Only hospitals that operate an

1 adult or pediatric medical and/or surgical or neuro ICU
2 are eligible for Step 2 imputation of the IPS measure.
3 A hospital's ICU designation is determined from the
4 number of beds reported on Worksheet 5-3 Part 1 of the
5 hospital's most recent CMS cost report. If your
6 hospital does not operate an ICU but shares a CMS
7 certification number, please contact the help desk.

8 Q. Sorry. I see that on page 15. You see it on
9 16?

10 A. I see it on 16.

11 MS. LAWSON: I also see it on 16.

12 THE WITNESS: Under Step 2.

13 BY MR. CRAIN:

14 Q. Step 2. Okay.

15 And your testimony is that language
16 communicates that if a hospital has an ICU and doesn't
17 participate, it automatically gets limited achievement?

18 A. That is the first sentence under Step 2.

19 Q. Okay.

20 A. If the hospital does not have historical data
21 from the last two rounds of the safety grade, the

1 hospital is assigned a point value that is equivalent to
2 receiving limited achievement for this measure on the
3 Leapfrog Hospital Survey.

4 Q. And so what you testified a minute ago, though,
5 was that the -- tell me if I'm misunderstanding -- that
6 the assumption is if a hospital has an ICU and is not
7 reporting, it's not meeting Leapfrog's standards, right?

8 A. We have assigned a score to hospitals. If we
9 know they operate an ICU based on the CMS cost report,
10 and they don't report to the Leapfrog Hospital Survey,
11 we are assigning them a score of limited achievement.

12 Q. Yes, but that was not directly responsive to my
13 question which was -- and I'll go back just to make sure
14 I say it the right way.

15 What you said a minute ago was that the
16 assumption is that if a hospital has an ICU, and they
17 are not reporting, that they are not meeting Leapfrog's
18 standards, right? That's what you said.

19 A. Correct. And then I corrected myself and did
20 not use the word "assumption." That was a poor choice
21 of word there.

1 Q. Okay. That's what I'm trying to understand.

2 A. Correct.

3 Q. Okay.

4 So maybe you tell me in your words then,
5 because now I'm a little confused by the change, why
6 does a hospital get assigned limited achievement if it
7 has an ICU and does not participate?

8 A. They receive a score of limited achievement
9 because we know they have an ICU, and we don't have any
10 information that would tell us whether or not they are
11 meeting the staffing models that Leapfrog asks hospitals
12 to have in the ICU.

13 Q. So why not impose some achievement and not
14 limited achievement?

15 A. Because the way Leapfrog's standards are set in
16 the survey is there are clear criteria of what needs to
17 be met for some achievement, considerable achievement,
18 and achieved the standard. And if you don't meet the
19 criteria for some achievement, you're in the limited
20 achievement bucket.

21 Q. But, again, you don't know either way whether a

1 given hospital is meeting some versus limited or -- I
2 forgot -- the top one, right?

3 A. Correct.

4 Q. Okay.

5 Okay. So let's go back to this document.
6 So that covers IPS Step 2.

7 The second part says, "Do we want to use a
8 different term for drastic change like large change?"
9 Why did you not like the phrase "drastic change"?

10 MS. LAWSON: Object to form.

11 BY MR. CRAIN:

12 Q. Did you not like the word "drastic change"?

13 A. I did not like the word "drastic change."

14 Q. With that now established, why did you not like
15 the phrase "drastic change"?

16 A. I'm trying to think. It felt -- it felt
17 sensational.

18 Q. Okay. What do you mean by sensational?

19 A. I personally think of the word "drastic" as
20 having sort of a sensational connotation, right. It's
21 extreme.

1 Q. Got it. Dramatic?

2 A. Dramatic. That would be a better word.

3 Q. We work with words for a living.

4 MS. LAWSON: I struggled not to interpose my
5 own.

6 BY MR. CRAIN:

7 Q. So did you feel dramatic was inaccurate or it
8 was a problem with the messaging and how it might be
9 received?

10 A. My concern was the messaging and how it would
11 be received.

12 Q. Okay.

13 MR. CRAIN: Oh, I'm sorry. Iason tells me I
14 said dramatic. No, I meant dramatic.

15 MR. TOGIAS: Oh, you meant it?

16 MR. CRAIN: Yeah.

17 MR. TOGIAS: Okay. Sorry.

18 MR. CRAIN: I meant dramatic.

19 BY MR. CRAIN:

20 Q. Let's see. Okay. So let's keep going up. Let
21 me see if there's anything else here. So you see the

1 chart is revised on page 8330?

2 A. Yes.

3 Q. And that, as best I can tell, is just changing
4 to reflect the limited achievement, you know, for IPS,
5 right?

6 MS. LAWSON: And Dr. Austin, you can read --
7 feel free to read through the whole email chain if you
8 need that to refresh your recollection.

9 (Witness peruses document.)

10 THE WITNESS: Can you repeat your question,
11 please?

12 BY MR. CRAIN:

13 Q. Yeah. I'm just looking at 8330, and it looks
14 like the change on the chart is just as you noted
15 before, that IPS was already doing the impute limited
16 achievement.

17 A. Correct.

18 Q. So there's no change there, right?

19 A. That is the only change from the prior chart.

20 Q. Yeah. Sorry. There's no change to IPS under
21 this chart?

1 A. Correct.

2 Q. Yeah.

3 Okay. Let's set this aside. Keep it at
4 the ready.

5 MR. CRAIN: Can I get 36. I'll mark this as
6 Exhibit 16.

7 (Exhibit No. 16 was marked for
8 identification as of 9/25/2025.)

9 BY MR. CRAIN:

10 Q. So Dr. Austin, do you recognize this document?

11 A. Yes. It's an email between myself and Leapfrog
12 staff.

13 Q. You get the hang of it now, these documents.

14 And you see on the bottom right it's an
15 Armstrong-produced document, right?

16 A. Correct.

17 Q. Okay. I want to start -- just go to the bottom
18 again to the first email in the chain, and if you need a
19 minute, take it. Whenever you're ready.

20 (Witness peruses document.)

21 THE WITNESS: Yes.

1 BY MR. CRAIN:

2 Q. Okay.

3 So the first email on the bottom is from
4 Ms. Campione, and it's to Ms. Danforth, you, and
5 Ms. Joshi. Do you see that at 5:41 p.m.?

6 A. Yes.

7 Q. And the subject is Step 2 imputation scores.
8 Do you see that?

9 A. Yes.

10 Q. And she says, "Hi all. I have some bad/good
11 news. The Step 2 scores aren't what we would like.
12 Turns out the hospitals that do the survey perform very
13 well. The BCMA scores below will likely drop with the
14 methodology changes, though."

15 Do you see that?

16 A. Yes.

17 Q. Do you have any understanding today of what she
18 meant by the Step 2 scores aren't what we would like?

19 MS. LAWSON: Object to form. Go ahead.

20 (Witness peruses documents.)

21 THE WITNESS: Where I'm hesitating is my sense

1 is she was looking at a subset of hospitals, and I don't
2 remember what that subset of hospitals was.

3 BY MR. CRAIN:

4 Q. Okay.

5 Do you remember the purpose of her running
6 that subset?

7 A. My recollection is it's somehow connected back
8 to conversations with the expert panel about imputation
9 and one of the scenarios that maybe someone suggested we
10 look at, but I couldn't explicitly say which scenario
11 that was.

12 Q. So we talked a little bit about quartile,
13 right? Do you remember that discussion?

14 A. Uh-huh.

15 Q. If you look at the chart right below her text,
16 do you see it says Mean of Bottom Quartile?

17 A. Yes.

18 Q. Okay. And it says the CPOE, hand hygiene, and
19 BCMA scores. Do you see that?

20 A. Yes.

21 Q. And I'll work you up the email now.

1 (Whereupon, the court reporter seeks
2 clarification, which colloquy will not be
3 captured on the written record.)

4 BY MR. CRAIN:

5 Q. Let's go up. You respond. Do you see that?

6 A. Yes.

7 Q. And you say, "Alex, would it be easy to look at
8 the same for first time reporters? We may have to
9 consider the option of just assigning the score for
10 limited achievement, which is actually consistent with
11 how we are approaching IPS."

12 Do you see that?

13 A. Yes.

14 Q. Okay.

15 Does this refresh your recollection as to
16 what she was running and why she was doing this?

17 A. Not really.

18 Q. Okay. It doesn't have to. That's okay.

19 A. Okay.

20 Q. Okay. So she responds it looks like five
21 minutes later. She says, "Not too difficult. I would

1 predict they're just slightly lower." And then you
2 respond at the top, "Thanks. Then maybe not worth the
3 effort."

4 Do you see all of that?

5 A. Yes.

6 Q. Okay.

7 Do you have any recollection today about
8 why you would say it's not worth the effort?

9 A. What I interpreted from Alex's statement was
10 that the results wouldn't be much different than what
11 she had originally produced.

12 Q. And the -- go ahead. Sorry.

13 A. So it didn't seem worth the analytical effort
14 to update it for something that wasn't meaningful
15 different -- meaningfully different in terms of Leapfrog
16 deciding how it wanted to move forward.

17 Q. And meaningfully different in this case meaning
18 lower, right?

19 A. Correct. She indicated that they would be
20 slightly lower.

21 Q. And you all wanted the numbers to be lower,

1 right?

2 MS. LAWSON: Object to form.

3 BY MR. CRAIN:

4 Q. You can answer.

5 A. There were concerns that the mean scores that
6 we had been using for imputation had been going up
7 considerably which created a disincentive for hospitals
8 to actually complete the survey.

9 Q. Yes. We saw that in the safety grade meeting,
10 right, that there were concerns that imputation scores
11 were creeping up?

12 A. That was one of the noted -- yeah.

13 Q. Right. On the slide that you drafted.

14 A. Correct.

15 Q. That was one of the bullets, right?

16 A. Correct.

17 Q. And in response to that, we saw that
18 Dr. Pronovost suggested a quartile approach, right?

19 MS. LAWSON: Object to form.

20 THE WITNESS: Once again, I -- in reading the
21 transcript, it wasn't super clear what Peter was exactly

1 discussing or suggesting.

2 BY MR. CRAIN:

3 Q. Let me phrase it a little bit differently that
4 I hope will be easier.

5 At the expert panel meeting, in the
6 transcript we saw him say the word "quartile." Fair?

7 A. Fair.

8 Q. Okay.

9 And then 10 days later -- let me just
10 double check. More than 10 days later we have
11 Ms. Campione sending around a chart that lays out, among
12 other things, the mean of bottom quartile. Do you see
13 that? That's on the last page.

14 A. Yes.

15 Q. Okay.

16 But the numbers are too high there, right?

17 MS. LAWSON: Object to form.

18 THE WITNESS: I don't know how to respond to
19 that. I mean, all of the data are here.

20 BY MR. CRAIN:

21 Q. So let's go to Ms. Danforth's email of

1 9:11 p.m. This is on page 2128. Do you see it?

2 A. Uh-huh.

3 Q. She said, "This is sort of what I was afraid of
4 but somehow more stark seeing the actual numbers. I do
5 think that we need to at least go wider" -- which I
6 understand to mean consider -- "going to limited
7 achievement." Do you see that?

8 A. Yes.

9 Q. Okay.

10 Do you understand what she is saying in
11 this email?

12 A. My understanding is she was indicating that the
13 numbers aligned with what she thought might be the case
14 and was recommending that we need to consider going to
15 limited achievement.

16 Q. Okay.

17 So just to build this out a little bit, at
18 this time, under the methodology that was governing, the
19 imputation under Step 2 was a straight mean, not a
20 lowest quartile mean but a straight mean, right? Do you
21 understand what I mean?

1 A. It was a -- there were two values that were
2 calculated for each hospital. There was the overall
3 mean and I believe that of -- the first time reporters
4 in the hospital got the lower of those two values.

5 Q. And the concern was those means were too high,
6 right?

7 A. The concern was that those means
8 disincentivized hospitals to report into the survey.

9 Q. Yes. Okay. Because they were too high, right?

10 A. Because they would give hospitals a lot of
11 credit when they wouldn't have to necessarily
12 demonstrate anything for that.

13 Q. Okay.

14 And you say when they wouldn't have to
15 demonstrate anything for that, but do you have any
16 empirical knowledge of whether that credit, so to speak,
17 would have been due as a matter of performance?

18 A. We don't have any empirical evidence on what a
19 hospital's performance would be when they don't report
20 because we don't actually have those data.

21 Q. On the measures for which you don't have data,

1 right? What I mean is you have other data, like CMS
2 data for those hospitals?

3 A. Correct.

4 Q. That's all I meant.

5 So then Ms. Campione runs a different mean,
6 right? The mean in this email is not the mean that you
7 all had been imputing as a part of Step 2 in the prior
8 methodology. Is that right?

9 A. My understanding is the very bottom table --

10 Q. Uh-huh.

11 A. -- where it says current Step 2 means for
12 reference are what the means had been that we were using
13 at the time.

14 Q. Okay.

15 And so but the mean in the top part where
16 it says the Mean of Bottom Quartile, am I understanding
17 right that that's taking the bottom quartile of
18 hospitals and calculating the mean of those hospitals?

19 A. That's what I don't know was what sample of
20 hospitals she was using for that calculation. I don't
21 know if it was all hospitals or if it was a subset of

1 hospitals.

2 Q. Okay.

3 So how would it work to calculate the mean
4 of bottom quartile for all hospitals?

5 A. I would take the full dataset of hospitals for
6 which we have data, identify the bottom 25 percent, and
7 calculate the mean of that sample.

8 Q. Okay. And do you have any reason to think
9 that's not what she did?

10 A. I don't have any reason to think it's not what
11 she did, but I also don't know that is what she did.

12 Q. Okay. Okay.

13 Okay. So we can set that aside.

14 MR. CRAIN: Okay. Let's go to tab 38. This
15 will be Exhibit 17.

16 (Exhibit No. 17 was marked for
17 identification as of 9/25/2025.)

18 BY MR. CRAIN:

19 Q. Okay. Dr. Austin, you have Exhibit 17, and you
20 see on the bottom it's an Armstrong document ending
21 16473?

1 A. Yes.

2 Q. And this is an email thread between you and
3 Ms. Joshi, right?

4 A. Yes.

5 Q. And this, if you look at the bottom two emails
6 on the first page, that's the emails we saw at a prior
7 exhibit where she's sending you her draft of the notes,
8 right?

9 A. Yes.

10 Q. Okay. And you say -- this is on May 14th. Do
11 you see that date?

12 A. Yes.

13 Q. So it's a few days after the email we just
14 looked at, which was dated April 22nd. Do you see that?

15 A. Yes.

16 Q. Okay. So this is after you've gone through the
17 analysis of the bottom quartile mean. It's after you've
18 gone through that email thread we just saw, right?

19 A. Yes.

20 Q. Okay.

21 In between that period of April 12th and

1 now May 14th, do you recall any other discussions you
2 had with members of the expert panel about the
3 imputation model?

4 A. I don't remember.

5 Q. Okay. You don't -- just to be clear, you don't
6 remember either way?

7 A. I don't remember either way.

8 Q. Okay.

9 So I want to go to the Word document here
10 of the attachment. And do you see -- is it -- these are
11 your revisions to the notes, correct?

12 A. Yes.

13 Q. And I want to walk through a few of these. You
14 start by at the top adding Tim Vogus to the attendees?

15 A. Yes.

16 Q. Any idea how you remembered he was there a
17 month later?

18 A. To be clear, I sent the edits back to Preeti a
19 month later.

20 Q. That's what the email suggests. If you look --
21 look on page 1.

1 A. But that doesn't mean I made the edits a month
2 later.

3 Q. Oh, so I'll represent to you that the metadata
4 shows that these are your changes.

5 A. Okay.

6 Q. I'm trying to see if there is a comment, too.
7 No. But I'll represent to you that the attachment shows
8 that you -- like you inserted the track changes.

9 Do you have any reason to think you didn't?

10 A. No. I'm wondering about the timing of when I
11 made the edits.

12 Q. Got it. Okay. That I don't know as well. So
13 you're saying you could have made these edits earlier?

14 A. Correct.

15 Q. Got it. Okay.

16 Do you recall, to do these edits, did you
17 watch the video of the meeting?

18 A. No.

19 Q. Okay. So you were going from memory, you
20 think?

21 A. Yes, and my own notes.

1 Q. And your own notes. And your own notes, would
2 they have been different from the email we saw earlier
3 where you sent it to and from yourself?

4 A. No. That was the extent.

5 Q. So I'm going to skip bullet one, which is on
6 the military treatment facilities again, and I want to
7 focus on your edits to bullet two. Do you see those?

8 A. Yes.

9 Q. Okay. And you say, "Matt provided the expert
10 panel with a quick overview of the current imputation
11 model approaches Leapfrog has been using and some of the
12 challenges those approaches have created for issuing
13 accurate grades." Do you see that?

14 A. Yes.

15 Q. Okay. And to the best of your recollection,
16 that is an accurate statement of what occurred at the
17 meeting, right?

18 A. Yes.

19 Q. Okay.

20 Then you say, "The current imputation model
21 has two steps when data are missing." Do you see that?

1 A. Yes.

2 Q. And I won't read them because we've been
3 through them, but just looking yourself at Step 1 and
4 Step 2, consistent with the slide deck that we saw?

5 A. Yes.

6 Q. And then you say, "Leapfrog's proposal was to
7 retire Step 1 of the model and use only Step 2,
8 assigning hospitals the mean score for their cohort."
9 Do you see that?

10 A. Yes.

11 Q. And then I want to skip down a bullet that you
12 delete. Do you see that?

13 A. Yes.

14 Q. And it says, "Missy gave an example of Stewart
15 Health System and said that Leapfrog's purpose by
16 implementing the Step 2 imputation model is not to
17 penalize hospitals or to motivate them to submit a
18 survey, but they don't want to report hospitals with the
19 highest scores when hospitals are not submitting the
20 hospital survey."

21 Do you recall why you deleted that bullet?

1 A. I believe I deleted that bullet because it felt
2 like a little too micro of a note to include in a
3 meeting summary.

4 Q. Got it. So it was not an edit for substance?

5 A. Can you define that?

6 Q. Yeah. Fair enough.

7 Did you delete it because you disagreed
8 that anything -- with anything in that bullet?

9 A. No, that was not my reason for deleting it.

10 Q. Okay.

11 Then let's keep going. So you then go --
12 there's a bullet we looked at before. "Matt mentioned
13 it's important to see whether there is an actual
14 difference in hospitals' performance and whether there
15 is some sort of bias in the measurement against them.
16 He said to minimize the second, and if there are
17 differences in hospitals' performance, we can address
18 the structural issues to fix them."

19 Do you see that?

20 A. Yes.

21 Q. And you deleted that one as well, right?

1 A. Yes.

2 Q. And similar, not to be so granular in the
3 meetings?

4 A. Yes.

5 Q. And then you added a bullet and you say, "The
6 experts' panel were in support of having hospitals share
7 their current performance, so liked the idea of imputing
8 the equivalent of willing to report to hospitals that do
9 not submit a survey."

10 Do you see that?

11 A. Yes.

12 Q. Now, you recall looking at the index of the
13 transcript, right?

14 A. Yes.

15 Q. And we saw the phrase "willing" did not appear
16 at least in the index, correct?

17 A. Yes.

18 Q. Where did this line come from?

19 A. So as mentioned, I'm not sure the expert panel
20 would have necessarily used the term "willing to report"
21 in their conversation. I would need to go back to the

1 transcript, but my guess is that there was communication
2 about putting them in the lowest performance category.

3 Q. Okay. So the phrase you would be looking for
4 is lowest performance category?

5 A. Or some context of that.

6 Q. Okay. And presumably you would want to review
7 the whole thing before committing one way or another?

8 A. Correct.

9 Q. Fair enough.

10 Okay. So to the best of your
11 recollection -- so strike that.

12 When creating the notes, you would have
13 wanted to be accurate, right?

14 A. Correct.

15 Q. Okay. And so just looking at these notes and
16 your edits, your best understanding of these edits is
17 that at some point somebody discussed the concept of
18 giving them the willing to report grade, right?

19 A. Correct.

20 Q. Okay.

21 A. And that others agreed with that point of view.

1 Q. Okay.

2 And then just to go back, do you remember
3 the chart we looked at, the drastic change chart?

4 A. Yes.

5 Q. You want to look at it again just so we're
6 not -- and that is exhibit --

7 A. Fifteen.

8 Q. Fifteen. Let's look at 15. And we can go to
9 the last page, 18332. Do you see that?

10 A. Yes.

11 Q. Okay.

12 And is it your testimony that the bottom
13 right box is the same as this willing to report?

14 A. Yes.

15 Q. Okay. And the bottom right box says impute
16 with limited achievement scores, right?

17 A. Yes.

18 Q. So your testimony is that at the meeting at
19 least somebody discussed the notion of imputing limited
20 achievement scores, maybe not by that word, and that
21 others agreed, right?

1 MS. LAWSON: Object to form.

2 THE WITNESS: From my notes here, it indicates
3 that the expert panel supported the idea of assigning
4 the bottom performance category.

5 BY MR. CRAIN:

6 Q. Okay. And do you recall -- strike that.

7 Okay. You can set that aside.

8 MR. CRAIN: Let's go to tab 43. This is going
9 to be Exhibit 18.

10 (Exhibit No. 18 was marked for
11 identification as of 9/25/2025.)

12 BY MR. CRAIN:

13 Q. All right. This is an email. The top one is
14 from Ms. Binder to Ms. Campione, cc'ing you and
15 Ms. Danforth. Do you see that?

16 A. Yes.

17 Q. Okay. And do you recognize this document?

18 MS. LAWSON: You can take a minute to read
19 through it all.

20 THE WITNESS: The email or the --

21 BY MR. CRAIN:

1 Q. Let's start with the email. Do you recognize
2 the email?

3 A. Yes.

4 Q. Okay. You recall it today?

5 A. Can you clarify that?

6 Q. Yeah. Do you recall receiving it?

7 A. I do recall Alex putting together a document
8 with the proposed changes to the methodology that would
9 go out for public comment.

10 Q. And is that the document, at least in edited
11 form, on page 9813?

12 A. Yes.

13 Q. Okay. And do you recall did any members of the
14 expert panel review and revise the document?

15 A. I don't remember explicitly if we shared this
16 document with them.

17 Q. Yeah. Okay. I mean -- I'll move on from that.
18 I'll move on from that.

19 So the attachment, do you see it says
20 Request for Public Comment?

21 A. Yes.

1 Q. Do you recall reviewing the document?

2 A. I don't recall.

3 Q. Okay. Just your best answer. That's all we
4 ask.

5 So I want to go -- I'll represent to you on
6 page 9814 these are Ms. Binder's tracked change edits to
7 the documents, and I want to just note a few things that
8 she tweaked. So if you go to the second -- tell me when
9 you're ready. No worries.

10 MS. LAWSON: The font is so small.

11 MR. CRAIN: Yeah, it is small. Sorry about
12 that.

13 BY MR. CRAIN:

14 Q. Are you good, Dr. Austin?

15 A. Yes.

16 Q. Okay.

17 So if you go to the second paragraph, to
18 ensure, do you see that?

19 A. Yes.

20 Q. And I apologize. It's in black and white, too,
21 which makes it harder.

1 But go down to the third line. The
2 original text said: "The panel recognized that the
3 current imputation method, which is used to fill in
4 missing data among hospitals that did not complete the
5 most recent Leapfrog survey, have influenced hospital
6 survey participation and may no longer be valid."

7 Do you see that?

8 A. Yes.

9 Q. Okay. She changed it to: "The panel advised
10 that Leapfrog modify the current imputation method,
11 which is used to fill in missing data among hospitals
12 that did not complete the most recent Leapfrog survey."

13 Is that consistent with your recollection
14 of who was advising? Did the panel actually advise
15 Leapfrog to change the methodology?

16 MS. LAWSON: Object to form but go ahead.

17 THE WITNESS: The Leapfrog Group has full
18 decision-making authority around its ratings and rating
19 systems and methodologies. So myself and all of the
20 expert panels are acting in an advisory capacity to
21 Leapfrog for that.

1 BY MR. CRAIN:

2 Q. Okay.

3 So is this accurate, this change?

4 A. Yeah, that change would be accurate.

5 Q. Okay.

6 And then if we go down, I want you to look
7 at -- can you read what she cut in the next paragraph?

8 A. Yes.

9 Q. Okay. "Note that Step 1 imputation will be
10 temporarily paused" -- oh, sorry. That's not the one I
11 wanted.

12 Go back up, excuse me, to the prior
13 paragraph. She cut a sentence: "The collective
14 recommendation was for Leapfrog to modify its current
15 imputation approach to encourage survey participation
16 and to improve user's confidence in the data that are
17 used to calculate scores."

18 Do you see that?

19 A. Yes.

20 Q. Okay. Was that accurate?

21 MS. LAWSON: Just to be clear, you're asking

1 was the sentence that she struck, that the collective
2 recommendation, was that sentence accurate?

3 MR. CRAIN: Correct. Not the strike. I don't
4 want to know if the strike was accurate. I want to know
5 if the sentence as written was accurate.

6 THE WITNESS: Okay.

7 (Witness peruses document.)

8 THE WITNESS: Yes.

9 BY MR. CRAIN:

10 Q. Okay.

11 Now, I want to go to her email. And what
12 she says is -- are you at the top?

13 A. Yes.

14 Q. The second paragraph: "I don't think we need
15 the sentence about influencing survey participation and
16 giving people confidence in validity. It sounds
17 defensive, like nobody participates in the survey and
18 our own TEP questions our validity. Actually, this
19 change affects a minority of hospitals and optimizes the
20 grade's already strong validity. Anyway, it's not
21 necessary to get into the why. It's enough that the

1 expert panel advised us to do the imputation in a
2 different way and not treat older, better data in an
3 equivalent way to new data."

4 Do you see that?

5 A. Yes.

6 Q. Okay.

7 And then did you agree that it sounded
8 defensive -- that's my first question -- the changes
9 that she cut?

10 MS. LAWSON: Object to form.

11 I think, just to clarify, do you agree that
12 the sentence she cut sounded defensive?

13 MR. CRAIN: Correct.

14 (Witness peruses document).

15 THE WITNESS: That wouldn't be the word I would
16 use to describe that sentence.

17 BY MR. CRAIN:

18 Q. What word would you use?

19 A. Explanatory.

20 Q. Okay.

21 And do you agree -- I mean, she says it

1 sounds like nobody participates in the survey and our on
2 TEP questions our validity. Did you have that same
3 reaction reading it?

4 A. That wasn't my own read of that sentence.

5 Q. What was your read of the sentence?

6 A. That we wanted to improve confidence in the
7 data that we were using and the score.

8 Q. And to encourage participation?

9 A. That would be a byproduct of that change.

10 Q. How would that be a byproduct?

11 A. If we're no longer imputing the mean scores, it
12 might encourage some hospitals, specifically those that
13 are performing better than the mean, to actually come in
14 and share their performance. I take that back. They
15 would have been already incentivized to do that.

16 It would incentivize hospitals that didn't
17 report and were below the mean to come in and report.

18 Q. Because the new score would be lower than their
19 performance?

20 A. Correct.

21 Q. Okay. And the new score would not necessarily

1 reflect their actual performance?

2 A. It's undetermined whether it would reflect
3 their performance or not.

4 Q. Because you don't know either way?

5 A. Because we don't know, exactly, where each
6 hospital is at.

7 Q. Yes. Okay.

8 And then I want to go back to her email.
9 And she says, "I think when we respond to the public
10 comments, we can be more pointed and specific about the
11 survey and imputation reasoning, if necessary. The
12 comments will give us a good gauge on the extent to
13 which we need to reveal all our reasoning and whether
14 the expert panelists will truly stand up for it when
15 push comes to shove."

16 Do you see that paragraph?

17 A. Yes.

18 Q. What's your understanding of what she meant
19 here?

20 A. That the -- putting out the proposed changes
21 wasn't the time to share all of the logic which led to

1 the decision to propose this, that that could come out
2 during the responses to the comments.

3 Q. And do you have any understanding by what she
4 means of whether the expert panelists will truly stand
5 up for it when push comes to shove?

6 A. I believe she meant that there could be some
7 pushback from hospitals about this proposed change and
8 would the expert panel stand with Leapfrog in this -- in
9 moving forward in this direction.

10 Q. Had the expert panel ever not stood with
11 Leapfrog in a change to the methodology?

12 A. No.

13 Q. Okay. So any understanding as to why this
14 might be different?

15 A. This change was the most direct in confronting
16 hospitals about their lack of participation in the
17 survey.

18 Q. What do you mean by direct?

19 A. In the past, all the imputation models, from
20 ignoring the measure to using secondary data sources to
21 calculating, assigning you the national mean didn't

1 necessarily direct -- confront a hospital to say you're
2 not submitting data and that's a problem with us.

3 We gave them sort of a pass. We found
4 another way to give them a score. So this was the most
5 direct confrontation on that.

6 Q. Was that the goal of the change?

7 A. I think the goal was multifold.

8 Q. Okay.

9 A. I think one, as mentioned, was to improve the
10 confidence of the data in terms of what data we were
11 using to calculate the scores. A secondary goal was to
12 increase or incentivize survey participation.

13 Q. Okay.

14 And then the confidence of the data, how
15 does it improve the confidence of the data to
16 automatically assign nonparticipating hospitals limited
17 achievement on the four imputed measures?

18 A. In the framework of the idea being that if we
19 don't have any information about your hospital -- so the
20 historical use of willing to report, the idea was that
21 was to acknowledge hospitals who were willing to be

1 transparent but didn't meet the standards that Leapfrog
2 had set.

3 So we don't have -- can you repeat your
4 question again, please?

5 Q. Sure. Sure.

6 I said -- you said -- so you talked about
7 one goal was the confidence of the data, right, and what
8 I asked was how does it improve the confidence of the
9 data to automatically assign nonparticipating hospitals
10 limited achievement on the four imputed metrics?

11 A. So when we were calculating the national mean
12 for hospitals, we don't necessarily have any information
13 that that hospital is an average performer in that area.
14 We are assuming they are average, and in a normal
15 distribution, half of hospitals are below the average.

16 So because we don't know anything about the
17 hospital and their performance in that way, in some ways
18 this idea of willing to report actually better reflects
19 what we do know.

20 Q. Better -- okay.

21 So I want to go and look at -- let's get

1 concrete with this.

2 MR. CRAIN: So this is Exhibit 19.

3 (Exhibit No. 19 was marked for
4 identification as of 9/25/2025.)

5 BY MR. CRAIN:

6 Q. So Dr. Austin, do you recognize this page, at
7 least generally?

8 A. Yes.

9 Q. Okay. This is the Delray Medical Center
10 Hospital Safety Grade page, right?

11 A. Yes.

12 Q. Have you ever seen Delray in particular?

13 A. No.

14 Q. Okay. But you know generally the format of how
15 these pages work, right?

16 A. Yes.

17 Q. Okay. So it's not necessarily the best because
18 it's a paper, and you can see it on a website instead,
19 but you get the gist, right?

20 A. Yes.

21 Q. So I want to go down the page. You see at the

1 top it says big "F," right, for Delray?

2 A. Yes.

3 Q. Okay.

4 And I want to go to page 2. And so this is
5 specifically on the handwashing measure, right?

6 A. Yes.

7 Q. And if you go just back to page 1, and it's a
8 little hard to tell because -- but if you line up the
9 handwashing at the top of page 2 with the gas gauge, do
10 you see that?

11 A. Yes.

12 Q. And there's a red gas gauge above handwashing,
13 right? And then it says: The hospital's score is 15,
14 right?

15 A. Yes.

16 Q. And it says: Worst hospital's score is 15,
17 correct?

18 A. Yes.

19 Q. And then it says: What safer hospitals do.

20 And before I go into that, I just want to
21 clarify again. Did you have any role in editing this

1 website, not specific to Delray but the safety grade
2 pages, generally?

3 A. I did review and help edit the descriptions
4 that are -- the handwashing and what safer hospitals do.

5 Q. Okay. So you're familiar with this language?

6 A. Yes.

7 Q. Okay.

8 And it says: "What safer hospitals do.
9 Hospitals provide training and implement policies to
10 make sure all hospital staff cleans their hands before
11 touching a patient." Do you see that?

12 A. Yes.

13 Q. Okay.

14 Now, you said a goal of the new
15 methodology, the first goal was -- let me just go back
16 to what it was. It's confidence in the data, right?

17 A. Correct.

18 Q. How does putting Delray at a 15 for handwashing
19 give confidence in the data?

20 A. Once again, we don't have any information from
21 Delray Medical Center about how they are doing toward

1 meeting Leapfrog's standard for hand hygiene, and,
2 therefore, in the absence of information, we're going to
3 assign the equivalent of willing to report, which is now
4 limited achievement.

5 Q. Even though they're not willing to report,
6 right? Correct?

7 A. Correct.

8 Q. Yeah.

9 So how does a consumer looking at this
10 page, though, feel confidence that the grade is
11 accurate?

12 A. I haven't studied how consumers review and
13 interpret this information, so I don't know if I can
14 speak to how they would interpret this.

15 Q. You buy things, right?

16 A. I do.

17 Q. And do you look at consumer reports, other
18 ratings types for products?

19 A. Yes.

20 Q. Do you trust that the rating is accurate that
21 those reports provide?

1 MS. LAWSON: Object to form. Go ahead.

2 THE WITNESS: I think it depends on the source.

3 BY MR. CRAIN:

4 Q. Fair enough. Give me one that you trust.

5 A. I can't think of one offhand, but I'd be more
6 inclined to trust something that was an individual
7 reviewing products against similar products.

8 Q. Okay. I'm not sure I understood that, but can
9 you clarify? Sorry.

10 A. Yeah. Meaning like if I wanted to buy a new
11 coffee maker --

12 Q. Yeah.

13 A. -- I would be more inclined to trust someone
14 who has reviewed coffee maker A against B, C, and D --

15 Q. Okay. Got it.

16 A. -- than someone just chiming in about coffee
17 maker A and what their experience was.

18 Q. Okay. That's -- okay. We can work with that
19 one.

20 So my question is if you have coffee maker
21 -- in your first analogy, right, coffee maker A, B, C,

1 and D, he's reviewing them all. If you find out that
2 for a subset of the coffee makers he's giving you
3 information about the quality of the product without
4 actually having reviewed it, does that instill
5 confidence in you or no?

6 A. It might give me pause.

7 Q. And how is that different from what we see
8 here?

9 A. Can you clarify that question?

10 Q. Yeah. So you said it might give you pause if
11 for certain of the coffee makers the ultimate rating
12 included measures for which the reviewer didn't have any
13 information, right? How is that different from
14 handwashing for Delray?

15 A. So I think what's notable is that the score has
16 an asterisk, which explains, I believe, how that score
17 was arrived at.

18 Q. So we'll come to the asterisk in a second. I'm
19 trying to get a sense of you said one of the goals of
20 the new model was to instill confidence in the data.
21 And you said another goal was to encourage

1 participation, right? How does it instill confidence in
2 data to represent that a hospital got the lowest score
3 on hand hygiene when you have no information about their
4 performance otherwise? Doesn't that undermine
5 confidence in the data?

6 MS. LAWSON: Object to form.

7 MR. CRAIN: Two questions.

8 MS. LAWSON: Two questions.

9 BY MR. CRAIN:

10 Q. You can pick either one or I can restart,
11 either or.

12 A. Can you restart?

13 Q. Sure. So -- that's a fair ask.

14 So I want to understand how does it instill
15 confidence in data to represent that a hospital got the
16 lowest score in hand hygiene where this page says
17 hospitals that are safer provide training and implement
18 policies to make sure all hospital staff cleans their
19 hands before touching a patient. How does it instill
20 confidence in data to give a hospital the lowest score
21 on that metric with no information?

1 A. That's what we're representing here is that we
2 have no information. That's what the asterisk is
3 telling you is we have no information.

4 Q. Okay. So the asterisk, you're saying -- so
5 does the asterisk undermine the score?

6 A. No. The asterisk is saying the hospital
7 declined to report their performance, so the score
8 reflects the lack of information available.

9 Q. So then how can the consumer feel confident
10 that the ultimate grade is accurate?

11 A. So Leapfrog is fully transparent with the
12 information it presents. A patient can review each of
13 the measures, decides what's important to them, what's
14 not important to them, and make decisions based on that
15 and other pieces of information that they may look for
16 and acquire.

17 Q. So I take the talking point. Do -- when you
18 say they're fully transparent, is that referring to the
19 methodology document that we looked at as Exhibit 3?

20 A. That is the methodology document. That is how
21 each of the individual scores on each of the individual

1 measures make up the composite.

2 Q. So let's take a different hospital. Delray,
3 you understand, got Step 2 imputation, right?

4 A. Yes.

5 Q. If I showed you a hospital for Step 1
6 imputation, is the website any different?

7 A. I don't know the answer to that.

8 Q. Okay. I will represent to you it's the same
9 asterisk. How does a consumer know whether a
10 nonparticipating hospital got Step 1 or Step 2
11 imputation?

12 A. I don't know enough about what those different
13 scenarios are on the website, so I can't.

14 Q. Do you have any reason to believe that Leapfrog
15 actually communicates to the consumer that Wood hospital
16 or Austin hospital got Step 1, as opposed to Crain
17 hospital Step 2?

18 MS. LAWSON: Object to form. Go ahead.

19 THE WITNESS: To answer that, I would need to
20 see an example of a hospital that had Step 1 imputation.

21 BY MR. CRAIN:

1 Q. Okay. But you have no reason today to think
2 that there is any difference in the presentation?

3 A. I don't know whether there is or is not.

4 Q. Okay.

5 Where on the page in front of you does it
6 say how the score was assigned?

7 A. Can you clarify that question?

8 Q. Yes.

9 So you pointed to the asterisk on this
10 package, right, and it says a score was assigned, right?

11 A. Correct.

12 Q. And you said you had a role in at least
13 reviewing that asterisk, right?

14 A. I don't know that that's true or not true.

15 Q. Okay. You said you had a role in reviewing
16 something on this page.

17 A. I reviewed the descriptions underneath
18 handwashing and what safer hospitals do.

19 Q. Got it. But you don't recall whether you
20 reviewed the asterisk?

21 A. Correct.

1 Q. Okay.

2 So it says a score was assigned, right?

3 Where does it say how the score was assigned?

4 A. Can you clarify the "how"?

5 Q. Sure. I'll give you an example. This was --
6 let's say a hospital is assigned a score through Step 1.

7 Where would it say that on this page?

8 A. I don't know where Leapfrog chose to put that.

9 Q. Okay.

10 Where does it say that Delray received a
11 score under Step 2?

12 A. That's what the asterisk is noting is that it
13 was -- they declined to report their performance, so a
14 score was assigned to reflect the lack of information
15 available.

16 Q. So you're saying that somebody reading that
17 will understand that the assignment of the score was
18 under Step 2?

19 MS. LAWSON: Object to form.

20

21 BY MR. CRAIN:

1 Q. Is that what you're saying?

2 A. I don't know how people read and interpret
3 things.

4 Q. Okay.

5 Do you think this is a clear explication of
6 how the score was assigned?

7 A. I think it puts in words what Leapfrog did. It
8 puts Step 2 into words.

9 Q. How does it put Step 2 into words?

10 A. There was a lack of information available --

11 Q. Uh-huh.

12 A. -- so a score was assigned to reflect the lack
13 of information.

14 Q. But a score could be assigned in any way,
15 right? How would a consumer know that it was assigned
16 with an automatic limited achievement?

17 MS. LAWSON: Object to form.

18 THE WITNESS: From the text that's there and
19 the asterisk, I'm not sure they would know how that was
20 assigned.

21 BY MR. CRAIN:

1 Q. Okay. Thank you.

2 And are you aware of any other page on
3 Leapfrog's website where that's explained besides
4 Exhibit 3, the methodology document?

5 A. I don't know if it is or not.

6 Q. Okay.

7 MR. CRAIN: Okay. Let's -- let's see. How
8 long have we been going? About an hour. Are you good
9 to keep going, or do you want a break?

10 THE WITNESS: Yep. I'm good.

11 MS. LAWSON: I was going to say can we take a
12 quick break?

13 MR. CRAIN: Yeah, that's fine. It's been about
14 an hour. It's not an endurance test.

15 THE VIDEOGRAPHER: This marks the end of media
16 unit number five. We're off the record. The time is
17 2:13 p.m.

18 (Whereupon a short break was had, after
19 which the proceedings continued as
20 follows:)

21 THE VIDEOGRAPHER: This marks the beginning of

1 media unit number six. We're going back on record. The
2 time is 2:38 p.m.

3 BY MR. CRAIN:

4 Q. So Dr. Austin, we were talking about the
5 website, and I think that's what you have in your hand.
6 You can put that aside for now. We're going to go back
7 to what we were talking about before we went down the
8 website rabbit hole.

9 You recall we were looking at Ms. Binder's
10 edits to the -- the public comment document. Do you
11 recall that?

12 A. Yes.

13 Q. Okay.

14 I just want to show you another email.

15 MR. CRAIN: This will be Exhibit 20.

16 (Exhibit No. 20 was marked for
17 identification as of 9/25/2025.)

18 BY MR. CRAIN:

19 Q. All right. Dr. Austin, you see the document,
20 the email at the top is from you?

21 A. Yes.

1 Q. Okay. Do you recognize this email thread?

2 A. Yeah. It's a continuation of the prior one.

3 Q. Yeah, the one -- the prior one being where
4 Ms. Binder gave her comments, right?

5 A. Correct.

6 Q. And do you see Ms. Danforth forwards you
7 Ms. Binder's email that we were looking at before, and
8 she says, "Hi, Matt. Since she mostly updated the parts
9 Peter and Patrick helped with, you can take a look and
10 let us know if you have any concerns? We'd love to get
11 this out Monday or Tuesday next week."

12 Do you see that?

13 A. Yes.

14 Q. First of all, does this refresh your
15 recollection as to whether Peter and Patrick helped with
16 this document?

17 A. Yeah. I will take it at its value or face
18 value. That's what it says, so that's what they had
19 done.

20 Q. And Peter refers to Dr. Pronovost?

21 A. Correct.

1 Q. And Patrick refers to Dr. Romano?

2 A. Correct.

3 Q. Okay. Both of whom have been involved with
4 Leapfrog for many years, right?

5 A. Correct.

6 Q. And you respond at 4:25. Do you see that?

7 A. Yes.

8 Q. And you say, "My only note is the "why" has
9 been edited out the explanation. So you don't really
10 explain why this change is being done. But it reads
11 fine. No concerns." Do you see that?

12 A. Yes.

13 Q. So you noted that the "why" was edited out,
14 right?

15 A. Yes.

16 Q. Would you have preferred to keep it in?

17 A. Prefer is, perhaps, a strong term. The
18 communication is coming from The Leapfrog Group, so they
19 get the final call on what it says. I thought it was --
20 it would be stronger to sort of explain why we were
21 doing this.

1 Q. So you thought -- okay. Got it.

2 And why did you think it would be stronger
3 to explain why you were doing it?

4 A. I think generally people like a context to why
5 something is being done.

6 Q. Would it have been more transparent to explain
7 the reasoning?

8 A. I don't know if transparent is the word I would
9 use for that. It would have been more complete.

10 Q. Okay.

11 Okay. You can set that one aside.

12 Let's see. So just going back to the
13 comment document, right, that we saw. You're aware that
14 it was issued to the public, right?

15 A. Yes.

16 Q. And you're aware that the public commented on
17 the proposal, right?

18 A. Yes.

19 Q. Did you have any role in reviewing the
20 comments?

21 A. I don't remember.

1 Q. Okay. Do you remember anything about the
2 comments generally?

3 A. I don't.

4 Q. Okay. Let's take a look at some and just see
5 if it jogs your memory.

6 MR. CRAIN: Iason, can you give me 45.

7 This will be Exhibit 21.

8 (Exhibit No. 21 was marked for
9 identification as of 9/25/2025.)

10 BY MR. CRAIN:

11 Q. Okay. Exhibit 21. So take a look at this
12 document, Dr. Austin. Do you recognize it at all?

13 A. I do not.

14 Q. Okay. I'm just going to read -- this is an
15 email from the Leapfrog help desk to Ms. Campione. I'm
16 just going to read -- do you see down the page it says
17 Becky Wenthold?

18 A. Yes.

19 Q. And she said, "I was [sic.] disappointed with
20 the 2024 proposed changes. These changes will penalize
21 hospitals that do not submit a Leapfrog survey. The

1 public will not understand nor dig into the methodology
2 of these grades, and hospitals will be falsely
3 represented with a lower grade because they choose not
4 to complete a survey. The survey is extremely time
5 intensive and, in a time when hospitals are barely
6 breaking even financially, they do not have the
7 resources to commit to this survey."

8 Do you see that?

9 A. Yes.

10 Q. You don't recall comments to this effect?

11 A. I do not remember reviewing Ms. Wenthold's
12 comments.

13 Q. Do you recall any other comments?

14 A. I don't remember reviewing the comments.

15 Q. Do you recall comments in favor of the change?

16 A. I don't remember seeing the comments that came
17 in from the public comment period.

18 Q. Okay. So just to close the loop, you have no
19 memory either way?

20 A. I have no memory of seeing them, but I see a
21 lot of information and a lot of -- so if someone

1 produced something and said I had reviewed it, it's
2 probably true, but I don't remember reviewing the
3 comments.

4 Q. Okay. It's possible but you just don't have a
5 recollection?

6 A. Correct.

7 Q. Okay.

8 And fair to say you disagree with what I
9 read, with her comment, or no?

10 MS. LAWSON: Object to form but go ahead.

11 BY MR. CRAIN:

12 Q. I can rephrase if it's helpful.

13 A. Could you rephrase?

14 Q. Yeah.

15 Is there any portion of what I read to you
16 from her comment that you agree with?

17 A. Of the sentences you've read or the ones that
18 go beyond that?

19 Q. Will your answer change?

20 A. It will.

21 Q. Okay. Start with the sentences I've read.

1 A. The sentences you have read, obviously, the
2 first sentence is her own opinion of what she sort of
3 sees the situation as. I don't disagree that the
4 changes will penalize hospitals that don't submit a
5 Leapfrog survey.

6 Q. Okay.

7 A. Her statement about the public won't understand
8 or dig into the methodology of these grades, I'm not
9 sure her nor I really know that to be the truth.

10 Q. Okay.

11 A. Hospitals will be falsely represented with a
12 lower grade I don't think is necessarily a truthful
13 statement.

14 Q. Is it possible because you don't know the
15 actual performance of nonrepresenting hospitals --
16 nonparticipating hospitals, excuse me?

17 A. Correct. So if she said possibly represented
18 with a lower grade.

19 Q. So let me ask it this way. Is it possible that
20 at least some hospitals will be falsely represented with
21 a lower grade than they otherwise would achieve based on

1 performance?

2 A. Right. So imputation by definition is trying
3 to estimate performance, and there is almost, by
4 definition, going to be some error, and that error may
5 be in the measured entity's favorite. It may be in the
6 measured entity's unfavor or disfavor.

7 But, I mean, it's imputation, right. So we
8 don't know the answer. So, therefore, we're trying to
9 estimate or guess an answer. So by definition,
10 imputation is going to have an error associated with it.

11 So when we were imputing higher scores with
12 a means for many hospitals, there was an error
13 associated with that as well.

14 Q. So it's your testimony that imputation is an
15 estimation of actual performance?

16 A. Correct.

17 Q. And is that true with regard to the automatic
18 assignment of limited achievement?

19 A. If we're imputing a score like we were doing
20 with limited achievement, there is the possibility for
21 error.

1 Q. So my question is a little bit different. So
2 let's break it down a little bit.

3 A. Okay.

4 Q. In the prior model for imputation, prior to
5 2024, let's go prior to 2021, you used American Hospital
6 Association data -- we had our aha moment -- to impute a
7 score for the hospitals, right?

8 A. Correct.

9 Q. Okay. And was that an estimation based on the
10 AHA data?

11 A. Yes.

12 Q. Okay.

13 Then when you get to 2024, you impute
14 limited achievement, correct?

15 A. Correct.

16 Q. Is that an estimation of performance or no?

17 A. That is an estimation of performance.

18 Q. Okay.

19 So going back to the website we looked at,
20 again for Delray you impute limited achievement on
21 handwashing, right?

1 A. Correct.

2 Q. So you are saying that's an estimation of their
3 actual performance on handwashing?

4 A. Yes.

5 Q. Okay. And that, again, is based on no data to
6 support it, right?

7 A. That is based on a lack of data.

8 Q. Yes. Okay. But it's an estimate, right?

9 A. It's an estimate.

10 Q. Okay.

11 Okay. Let's go back to the comment.

12 A. Okay. This extremely time intensive, once
13 again, extremely is a relative term, so I don't know how
14 Ms. Wenthold would define extremely.

15 Q. How would you characterize the burden?

16 A. What I hear from hospitals or I've heard from
17 hospitals is that it takes about 40-person hours to
18 complete it the first time but that in future years, as
19 hospitals refine their internal processes for reporting,
20 that that burden decreases.

21 Q. Okay. And which hospitals have you heard that

1 from?

2 A. I've heard that from Johns Hopkins Hospital
3 when I queried them on that question. I've heard that
4 from other hospitals that I couldn't necessarily name,
5 but that's just from poor memory.

6 Q. Fair enough.

7 Ballpark, how many did you ask?

8 A. I've maybe have heard that from three or four.

9 Q. Okay.

10 So going back to the comment.

11 A. Yeah. So what I would -- she is correct that
12 there is no option for the submission for a survey for a
13 health system; that Leapfrog's policy, since its
14 inception, has been for each individual brick and mortar
15 hospital to complete its own survey.

16 And her statement about excellent outcomes
17 will no longer be able to receive an A is actually
18 incorrect because there were two hospitals that actually
19 did get an A that did not complete a survey.

20 Q. Nationwide, right?

21 A. Nationwide.

1 Q. And that was on that first email we looked at
2 where you were pulling information --

3 A. Yes.

4 Q. -- for the lawsuit, right?

5 A. Yes.

6 Q. Just to make sure, I think that was Exhibit 1.

7 Okay. That's helpful.

8 MR. CRAIN: Okay. Let's go to tab 47. This
9 will be Exhibit 22.

10 (Exhibit No. 22 was marked for
11 identification as of 9/25/2025.)

12 BY MR. CRAIN:

13 Q. I'm sorry. This one is very small.

14 Dr. Austin, this is another comment, which
15 I think was submitted through what I believe is
16 Leapfrog's Zendesk platform. Do you see that?

17 A. Yes.

18 Q. My guess is -- have you not -- have you seen
19 this document before?

20 A. No, I haven't.

21 Q. Okay. So I want to just take you to the

1 bottom, and I think that's the comment. Do you see it's
2 from it looks like Alana Noble?

3 A. Yes.

4 Q. And she says, "We strongly disagree with the
5 proposed Fall 2024 Step 2 imputation. If Leapfrog is
6 going to implement this change, they need to offer
7 hospitals an option to opt out of being graded rather
8 than penalize a hospital for not submitting the resource
9 intensive survey. The survey is very resource intensive
10 outside of existing regulatory, quality operations and
11 quality improvement efforts. Hospitals that do not have
12 the resources to do the survey annually should not be so
13 adversely punished, especially in the post-COVID era
14 when resources are increasingly hard to come by and
15 retain."

16 And my question to you is: Why can't
17 Leapfrog give hospitals an option to opt out of being
18 graded?

19 MS. LAWSON: Object to form.

20 You can answer.

21 BY MR. CRAIN:

1 Q. To your understanding.

2 MS. LAWSON: I mean to your understanding.

3 BY MR. CRAIN:

4 Q. It's always to your understanding.

5 A. Right.

6 So the impetus for the Hospital Safety
7 Grade -- let me take us back a little bit in time.

8 So since 2001, Leapfrog has been doing a
9 voluntary survey of hospitals around quality and safety
10 practices. It has collected those data and made those
11 publicly available. One of the concerns for that model
12 is Leapfrog was collecting a lot of different data
13 points and reporting those out as individual data
14 points.

15 And what we know from conversations with
16 consumers and patients is that they strongly prefer
17 composite scores, star ratings, letter grades, that they
18 find that much more digestible.

19 Q. Easier to understand?

20 A. Easier to understand.

21 In addition to wanting to move towards a

1 letter grade, Leapfrog also wanted to -- the model that
2 Leapfrog was working from was the restaurant ratings in
3 like New York City, Los Angeles, right, where the health
4 department comes in. They do an assessment of the
5 restaurant, and the hospital has to post a letter grade
6 in their window with an A, a B, or a C.

7 And one of Leapfrog's board members
8 supposedly thought, oh, wouldn't it be great if we could
9 ask hospitals to do the same thing around the idea of
10 patient safety.

11 The concern with making it voluntary is
12 that it is a relative score, right. So the methodology
13 is such that hospitals are being compared to the
14 national mean, the standard deviation of the national
15 sample. And so it would be difficult to issue grades if
16 we were pulling from a selected subset of hospitals.

17 Q. Is that still true today where 80 percent of
18 inpatient beds are I think represented on the Leapfrog
19 survey?

20 A. So I see that as a little bit of a chicken and
21 egg situation.

1 Q. Okay. Tell me why.

2 A. That if Leapfrog made it voluntary, one
3 potential consequence of that would be fewer hospitals
4 would report to the survey, and, therefore, you would
5 lose that 80 percent capture that is currently there.

6 Q. Is it fair to characterize that as a slippery
7 slope problem?

8 A. I don't know how to characterize a slippery
9 slope.

10 Q. Okay.

11 I guess what I mean by that is you're
12 suggesting that if you make it voluntary, the number
13 20 percent of inpatient beds that were not responding
14 would increase, right?

15 A. That could be a potential consequence.

16 Q. Okay.

17 So to encourage greater participation, it
18 cannot be voluntary. Is that right? Take your time.

19 A. So one of the challenges Leapfrog was trying to
20 address with the Hospital Safety Grade was that there
21 had been a plateauing of hospital participation in the

1 survey.

2 Q. Okay.

3 A. And, therefore, we only had quality and safety
4 information for a -- not a small, a fraction of the
5 hospitals in the United States. And so by making it
6 nonvoluntary was an opportunity to have safety
7 information out there about as many hospitals in the
8 U.S. as possible.

9 And so if you make it voluntary, you sort
10 of defeat that goal of trying to have safety information
11 for as many as possible.

12 Q. Has that goal overtaken any goal to report
13 accurately on safety?

14 A. No.

15 Q. Okay. And why is that? Because -- strike
16 that.

17 We've talked a lot about how there are
18 errors, right, with any imputation methodology. Isn't
19 the most accurate way to get safety information out
20 there to not impute?

21 A. Can you rephrase the question?

1 Q. Yeah.

2 A. Or not rephrase but repeat the question.

3 Q. Oh, repeat? Yeah, repeat I can do because I
4 have the realtime.

5 We've talked a lot about how there are
6 errors with any imputation methodology, correct?

7 A. Correct.

8 Q. Isn't the most accurate way to get safety
9 information out there to not impute?

10 A. Are we discussing the scores, or are we
11 discussing the grades?

12 Q. Let's do both. Start with the score.

13 A. So for the score, I think that would have a
14 little more of an influence -- let me say that again.
15 The decision to impute a score would impact the overall
16 score.

17 Q. The overall grade?

18 A. The overall -- so just to clarify, when we
19 calculate the grade, what we're actually calculating is
20 a score, a numerical score. So each hospital has a
21 numerical score that's calculated. Those numerical

1 scores then get converted into letter grades.

2 Q. Yes. Got it.

3 A. So the letter grade, by definition, is a range
4 of scores, right. So it's less sensitive to the
5 decision to impute one measure or not to impute a
6 measure.

7 If we're talking about the actual numerical
8 score, the accuracy would be improved without
9 imputation.

10 Q. Okay.

11 So is it right that Leapfrog has
12 prioritized as a goal increasing participation as
13 compared to the accuracy of the score?

14 A. So when you say participation, what are you
15 referring to?

16 Q. Participation in the survey. Let me rephrase
17 it so it's clear.

18 Is it fair to say that Leapfrog has
19 prioritized encouraging greater participation in the
20 survey as compared to greater accuracy in the scoring of
21 a safety grade?

1 A. I don't see it as an absolute tradeoff in that
2 way.

3 Q. Okay. Is it -- why is that?

4 A. Because I think you can work towards both
5 goals. I don't think you necessarily have to completely
6 have one goal be worked towards at the detriment of the
7 other goal.

8 Q. You don't think that's what's happening with
9 imputation?

10 A. So to be clear, the decision to impute scores
11 is primarily driven by the desire to have more accuracy
12 in what we are issuing as a score grade. A potential
13 benefit of that is that hospitals may choose to come in
14 and report to the survey.

15 So that's why I don't see them as
16 necessarily diametrically opposed goals.

17 Q. Is the most accurate way to score excluding
18 imputation altogether?

19 A. Yes. As previously stated, you would have a
20 more accurate score without imputation.

21 Q. Okay.

1 And so going -- I don't know if I got an
2 answer to this question, though, but let me just be
3 really clear. So this comment says if Leapfrog is going
4 to implement this change, they need to offer hospitals
5 an option to opt out, right?

6 First, I guess stepping back, do you recall
7 any discussion of an opt out internally to either the
8 expert panel or Leapfrog?

9 A. No. That's never been the conversation.

10 Q. Okay. And why can an opt out not be provided?

11 A. If -- is your question is it possible for
12 Leapfrog to implement an opt out?

13 Q. Well, so --

14 A. Or --

15 Q. Yeah, fair question.

16 So there's the question of whether it's
17 physically possible. I assume it's physically possible
18 to implement an opt out, right?

19 A. Yes.

20 Q. Yeah.

21 Why does -- to your knowledge, why does

1 Leapfrog feel it can't allow an opt out?

2 A. This is my own speculation because I have not
3 discussed with Leapfrog this scenario. One might be
4 concerned that if you allow hospitals to opt out, most
5 of them will, and now what is your rating program if you
6 don't have many participates.

7 Q. And it's also -- what is your rating program,
8 meaning the grade, the survey, or both?

9 A. Potentially both.

10 Q. And going back to the restaurant analogy. You
11 mentioned the L.A. restaurant grades. Do you think
12 that's a fair analogy to what Leapfrog is able to do?

13 MS. LAWSON: Object to form.

14 BY MR. CRAIN:

15 Q. To your knowledge.

16 A. So Leapfrog can't require hospitals to post a
17 letter grade in their window.

18 Q. It also, unlike a regulatory agency, can't
19 compel participation, right? As a legal matter, right?

20 A. I will defer to lawyers on that.

21 Q. Fair enough. Okay.

1 Let me ask --

2 A. Leapfrog, what it's doing is it's using
3 publicly available data to make an assessment of a
4 hospital's patient safety performance.

5 Q. And it's also using the lack of data, right, to
6 make an assessment of performance?

7 A. That's using what data are available.

8 Q. Yeah.

9 A. And in some situations, that is data that's not
10 available.

11 Q. Yeah. Okay.

12 Okay. You can set that one aside.

13 I want to talk a little bit about the
14 imputed measures themselves so -- and we talked about
15 earlier in the day, it feels like hours ago, BCMA, CPOE,
16 IPS, and hand hygiene, right?

17 A. Correct.

18 Q. So I've been trying to understand why are those
19 the four that are imputed as compared to the three what
20 I called earlier in the day discarded measures. You may
21 feel free to call them something else, but why are those

1 different?

2 A. It is somewhat a function of historical
3 artifact and when the measure was introduced to the
4 Leapfrog Hospital Survey. So within those three
5 measures, we put the two safe practices into one bucket
6 and hand hygiene in the other bucket.

7 Q. Okay.

8 A. The safe practices I put in the sort of
9 historical artifact bucket in that when the decision was
10 to move towards secondary data sources, like the aha,
11 AHA hospital survey --

12 Q. That's my favorite.

13 A. There wasn't any data within that AHA survey
14 that matched up with those safe practices. Like, there
15 was nothing about leadership. There was nothing about
16 culture measurement.

17 So at that time, the decision was, okay,
18 we're going to continue to hold those in the
19 we're-just-going-to-ignore-the-measure-if-you-don't-have
20 -it bucket, which was the original imputation.

21 That historical sort of artifact has just

1 sort of rolled forward.

2 Q. Okay. Fair to say it was grandfathered in?

3 A. Yeah. It's a historical artifact of where we
4 started and where we're at.

5 The nursing workforce --

6 Q. Yep.

7 A. -- was just recently introduced to the Leapfrog
8 Hospital Survey, and the collective wisdom was perhaps
9 we don't have enough experience in data with that to
10 impute scores.

11 Q. So very helpful on the three.

12 I want to ask you also about the four, why
13 they are imputed, and I have a document that I think
14 might help us in what I've been trying to figure out.

15 MR. CRAIN: So this will be Exhibit 23.

16 (Exhibit No. 23 was marked for
17 identification as of 9/25/2025.)

18 BY MR. CRAIN:

19 Q. So this is another Armstrong-produced document.
20 You see that on the bottom, right?

21 A. Yes.

1 Q. And it's one of your notes to yourself. Do you
2 see that?

3 A. Yes.

4 Q. And it says: "Notes for today's call with
5 Dr. Romano." [sic] Right?

6 A. Yes.

7 Q. Okay.

8 April 12th, coincidentally, 2019. Do you
9 see that? I say coincidentally because the expert panel
10 meeting was also April 12th.

11 A. Okay.

12 MS. LAWSON: Of 2024.

13 MR. CRAIN: Yeah, of 2024. Sorry. It was my
14 own aha moment.

15 BY MR. CRAIN:

16 Q. So going down, you say, "Patrick, to guide
17 today's call, I put together some quick notes." Do you
18 see that?

19 A. Yes.

20 Q. And I can't tell if you sent this to him or
21 they were just talking points. Any sense?

1 A. They were notes for myself, I believe, for the
2 conversation with Dr. Romano.

3 Q. And do you remember this conversation? Feel
4 free to take a second to read through it if it's
5 helpful.

6 (Witness peruses document.)

7 THE WITNESS: Okay.

8 BY MR. CRAIN:

9 Q. Do you remember the context of this discussion?

10 A. I don't with certainty but based on the --

11 Q. Context clues?

12 A. -- context clues, it would be to talk about
13 maybe changing the imputation approach --

14 Q. And --

15 A. -- and missing data thresholds.

16 Q. Okay.

17 And you see it mentions AHA responses sort
18 of towards the bottom third of the page?

19 A. AHA responses?

20 Q. There's a bullet that says exceptions are BCMA.

21 A. Yes.

1 Q. Okay.

2 And just stepping back for a second, do you
3 recall a time where Leapfrog no longer had access to the
4 AHA data?

5 A. There was a point where AHA revoked Leapfrog's
6 license to use the data.

7 Q. Do you know why they did that?

8 A. My understanding is they had gotten -- strike
9 that.

10 I don't know why AHA revoked the license.

11 Q. When you said "my understanding," did you have
12 something that you heard about it?

13 A. I had heard that, you know, they were getting
14 complaints from their member hospitals about how those
15 data were being used by Leapfrog.

16 Q. Got it.

17 And complaints with respect to the
18 imputation into the methodology?

19 A. Complaints on two fronts. One was how the data
20 were being translated into scores for Leapfrog. Also,
21 some of the hospitals' data were pretty old, and they

1 felt like it was outdated and there really wasn't a
2 mechanism for them to update it. And there were sort of
3 logistical challenges, and my understanding is I think
4 AHA was like, we're out.

5 Q. We're out of this business?

6 A. Right -- what's that?

7 Q. We're out of this business?

8 A. We're out of this business.

9 Q. And when you say old, so I know like CMS data
10 has a lag, right? Yes?

11 A. Some of it does, yes.

12 Q. Was the AHA data a bigger lag than CMS?

13 A. I don't know the exact lag period for the AHA
14 survey.

15 Q. And what you had heard about why the AHA did
16 not want to license anymore, do you recall who that came
17 from?

18 A. The information that I heard from?

19 Q. Yeah, that you just shared with us about --

20 A. From Missy Danforth.

21 Q. Got it. Okay. So Ms. Danforth told you that.

1 Do you know where she got it?

2 A. I don't know.

3 Q. Okay.

4 Anything else you remember about why AHA
5 stopped licensing?

6 A. That's all I'm aware of.

7 Q. Okay.

8 So I want to look specifically at -- you
9 see in this document imputing data?

10 A. Yes.

11 Q. If you go down to the third bullet -- well,
12 let's go to the second bullet first for context. It
13 says: "Current Approach: Exclude the measure and
14 recalibrate the weights for the affected hospitals using
15 only those measures for which data are available."

16 Do you see that?

17 A. Yes.

18 Q. And can you sort of translate what that means?

19 A. Yeah. So the earliest approach of imputation
20 that we followed was to -- if a hospital was missing a
21 measure, we ignored that measure and we redistributed

1 the weights to other measures for which they did have
2 data.

3 Q. Okay.

4 And then there's a -- the next bullet says
5 exceptions, right?

6 A. Correct.

7 Q. And it says: "Exceptions are BCMA, CPOE, and
8 IPS, in which case we have created crosswalks between
9 the AHA responses and Leapfrog performance categories."

10 Do you see that?

11 A. Yes.

12 Q. What does the crosswalk mean?

13 A. The crosswalk was we looked at -- for hospitals
14 that reported to both the AHA survey and to the Leapfrog
15 Hospital Survey, we were able to compare their responses
16 on both and understand in an aggregate way what the
17 relationship was between a hospital's responses to the
18 AHA survey and how they were performing on the Leapfrog
19 Hospital Survey standards.

20 Q. So just to rearticulate, is it fair to say that
21 you had identified that the AHA data was a reasonable

1 enough proxy for the BCMA, CPOE, and IPS scores for
2 Leapfrog?

3 A. In our review and discussions of the AHA
4 survey, we felt like it represented a reasonable
5 approximation of the same quality -- or the same safety
6 standards.

7 Q. And is that the original reason why those three
8 became imputed measures, as opposed to discarded
9 measures?

10 A. Yes.

11 Q. Okay.

12 After Leapfrog lost the AHA data, do you
13 recall any time at which other crosswalks were
14 considered?

15 A. We explored other potential secondary data
16 sources. I can specifically remember having lots of
17 calls with HIMMS, H-I-M-M-S, which is a technology
18 consortium, to see if we could get relevant data related
19 to computerized physician order entry. And as we
20 reviewed their data, we didn't feel confident in that it
21 was getting us the same thing that we needed.

1 So we explored other options, just nothing
2 met.

3 Q. Okay.

4 So is it fair to say that those three
5 measures were essentially grandfathered in from the
6 period in which Leapfrog was using AHA as the crosswalks
7 to the Leapfrog scores?

8 A. We had been imputing scores for those measures
9 using the AHA datasets. That would be true.

10 Q. And it was grandfathered into the next
11 instantiation of the imputation methodology?

12 A. I would need to have better notes on what was
13 the next phase of the imputation methodology --

14 Q. Okay.

15 A. -- to remember what came next after that.

16 Q. Fair enough. Fair enough.

17 So subsequently -- like, the current
18 methodology still imputes on these three measures,
19 right?

20 A. Correct.

21 Q. Is there any particular reason, except for the

1 historical fact of Leapfrog having those crosswalks to
2 the AHA data, that those three are imputed as opposed to
3 other measures that are discarded that you're aware of?

4 A. I could argue that there is, perhaps, some
5 clinical, additional clinical relevance to those. I
6 mean, they do get higher weights in the safety grade.
7 They have been shown to be more effective as it relates
8 to safety and improving safety. So that's what I would
9 speak to.

10 Q. So my question is a little different, though.
11 You are, I think, providing a reason for why those are
12 valuable measures, right?

13 A. Correct.

14 Q. And, in fact, I could show you websites. I'll
15 just represent to you that sometimes Leapfrog puts out
16 information that says those are among the most important
17 measures. It sounds like you might agree with that?

18 A. Correct.

19 Q. Yeah. And they're significantly weighted,
20 right?

21 A. They have higher weights than some other

1 measures.

2 Q. I think the four imputed measures are
3 approximately a quarter to 30 percent of the grade. Are
4 you aware of that?

5 A. I couldn't agree or disagree with that.

6 Q. I mean, it's in the methodology document.

7 A. Right.

8 Q. We can set it aside. I'm not trying to, you
9 know, test you on it. It's all right.

10 So you're giving me reasons for why they
11 are important measures, correct? I want to know the --
12 whether there's an empirical reason or an evidence-based
13 reason for continuing imputation of them outside of the
14 crosswalks that we see in this email.

15 MS. LAWSON: Do you understand the question?
16 Are you clear on what the question is?

17 THE WITNESS: I think I am.

18 MS. LAWSON: Okay. I think he's asking is
19 there a historical -- like, other than the historical
20 experience --

21 MR. CRAIN: I think I'd asked just for no

1 speaking objections or coaching.

2 MS. LAWSON: Yeah, but I just want to make sure
3 that he's clear because we're covering this a second
4 time. We've asked it a -- you know, and I understand.
5 So I understand what your question is, and I just want
6 to make sure he understands so he can answer what you're
7 asking.

8 BY MR. CRAIN:

9 Q. Let me ask it again because I want to make sure
10 the record is clear.

11 So I said: You're giving me reasons for
12 why they are important measures, correct?

13 A. Correct.

14 Q. And I want to know whether there is an
15 empirical reason or some evidence-based reason for
16 continuing to impute these three measures in this email
17 outside of the crosswalks that Leapfrog had identified
18 between the AHA responses and Leapfrog performance
19 categories.

20 A. So the reason it would be important to keep
21 those measures in and to be imputed is because they have

1 a significant impact to patient safety. So to create a
2 composite score that doesn't include those measures
3 would be missing some very key components.

4 Q. For Step 2, where you're automatically
5 assigning limited achievement, doesn't that rationale
6 cut the other way?

7 A. I would disagree. We're actually imputing a
8 score for those because those measures are important.

9 Q. So I take it that those measures are important.
10 Set that aside for a second.

11 We've talked about the limited achievement,
12 right, the automatic assignment is not grounded in any
13 actual evidence about a given hospital's performance,
14 right, today?

15 A. The imputation is -- has an error component to
16 it by definition.

17 Q. Yes. So just -- I want you to answer my
18 question yes or no. The automatic assignment is not
19 grounded in any actual evidence about a given hospital's
20 performance today, correct?

21 A. Can you repeat that?

1 Q. Yeah. Glad to.

2 The automatic assignment of limited
3 achievement for the four imputed measures for a
4 nonparticipating hospital is not grounded in any actual
5 evidence about a nonparticipating hospital's performance
6 today, correct?

7 A. Back to the earlier point, we know the hospital
8 is not being transparent about their safety performance
9 and that safety is an important component of a culture
10 of safety.

11 Q. Okay. So I'll go down the line. An automatic
12 assignment of limited achievement for BCMA is not
13 grounded in any actual facts about a hospital's
14 performance on BCMA, right?

15 A. An imputed score is based on an assumption.

16 Q. Okay. And not actual facts on the ground about
17 performance, right?

18 A. Correct.

19 Q. Okay.

20 A. And that's true of all imputation.

21 Q. It wasn't necessarily true when you had the

1 crosswalks, right?

2 A. That's not completely true.

3 Q. Okay. Explain it for me.

4 A. Because when we had the crosswalks, we were
5 looking at large numbers of hospitals. So we might have
6 had 500 hospitals that reported to both the Leapfrog
7 Hospital Survey and the AHA survey. What we looked at
8 was what was basically the average performance.

9 If a hospital answered this in the AHA
10 survey, how did they, on average, perform on the
11 Leapfrog Hospital Survey? Some of the hospitals
12 performed better. Some performed worse. So there is a
13 degree of error there in imputation.

14 Q. But you had some sort of analysis to build that
15 out, right?

16 A. We had some secondary data sources to help us
17 inform those imputed scores.

18 Q. And today, for the methodology, there is no
19 secondary data source to help you inform the imputed
20 assignment of limited achievement?

21 A. Correct.

1 Q. Okay.

2 So is it fair to say that the reason these
3 three remain as imputed measures is largely, as you said
4 for the other ones, a historical artifact or no?

5 A. I think it's a combination of historical
6 artifact and their importance to the broad concept of
7 patient safety.

8 Q. Got it. Okay. So they're significant, so
9 Leapfrog didn't want to lose them, and also they had
10 been imputing based on other secondary data sources.
11 That combination is why they are still imputed measures
12 today. Is that fair?

13 A. Fair.

14 Q. Okay.

15 Why hand hygiene, which is not represented
16 here? Can you give me the history of that one?

17 A. So hand hygiene was introduced to the Leapfrog
18 Hospital Survey after -- well, don't quote me on this.
19 I believe after the AHA had pulled their data license.

20 Q. Okay. Got it.

21 Okay. So you had no opportunity to create

1 the crosswalk, correct?

2 A. Correct.

3 Q. Okay.

4 I want to show a document. So talking
5 about hand hygiene, again, is it your testimony today
6 that the limited achievement automatic assignment of
7 hand hygiene for nonparticipating hospitals in Step 2 --
8 stay with me -- is an accurate reflection of a
9 hospital's hand hygiene performance, an accurate
10 estimation?

11 A. My testimony is that it's an imputed score for
12 that hospital's performance on hand hygiene.

13 Q. And is it an accurate estimation of their
14 performance on the ground?

15 A. Imputation, by definition, has error.

16 Q. Okay. So for certain hospitals it may be
17 inaccurate?

18 A. Correct.

19 Q. Okay.

20 So I want to look at --

21 MR. CRAIN: This will be Exhibit 24.

1 (Exhibit No. 24 was marked for
2 identification as of 9/25/2025.)

3 BY MR. CRAIN:

4 Q. This is an Armstrong-produced document. Do you
5 see that on the bottom right?

6 A. Yes.

7 Q. And the top email is from you to a group of
8 folks at Leapfrog, I think, and Preeti Joshi. Do you
9 see that? And maybe a couple others.

10 A. Yes.

11 Q. And there's an attachment. It says: Leapfrog
12 Hand Hygiene Report Analysis June 3, 2024. Do you see
13 that?

14 A. Yes.

15 Q. And you write to the group, "As a follow-up
16 from our meeting a few weeks ago, attached are the
17 requested analyses for the hand hygiene report. I think
18 the analyses are pretty self-explanatory, but we are
19 happy to have a call to review if that would be
20 helpful."

21 Do you see that?

1 A. Yes.

2 Q. And then you go in I guess starting with --
3 first question: Did you draft -- I'm looking at page
4 5116. Do you see that?

5 A. Yes.

6 Q. Did you draft what looks like it's titled
7 Leapfrog Hand Hygiene Analysis for Landslide Report?

8 A. Preeti Joshi did this.

9 Q. Okay. Did you review it?

10 A. Yes.

11 Q. Okay. And what was the purpose of this
12 document?

13 A. Leapfrog was interested in putting out a
14 national report on its hand hygiene standard and where
15 hospitals had -- how they've improved over time on the
16 standard.

17 Q. Okay.

18 And so you go, it looks like to me, you go
19 question by question through the Leapfrog survey. Is
20 that right?

21 A. We looked at it both at the individual question

1 level -- yes. In this first part, it's looking at each
2 individual question.

3 Q. Okay. And fair to say for some questions there
4 is pretty -- you know, there's change between 2020 and
5 2023, and for others there's less change. Is that
6 right? I can be more concrete.

7 MS. LAWSON: I was going to object to form
8 there.

9 MR. CRAIN: Fair enough. I'll take it back.

10 BY MR. CRAIN:

11 Q. So question number one is provision of hand
12 hygiene training. Do you see that?

13 A. Yes.

14 Q. And in 2020, it looks like 92.8 percent --
15 well, tell me what the percentage reflects.

16 A. Yeah, that represents the percentage of
17 hospitals -- yeah, the denominator is the number of
18 hospitals that submitted responses to the hand hygiene
19 section of the Leapfrog survey. So the numerator would
20 be those that answered yes, that they meet Leapfrog's
21 requirements for that question.

1 Q. So 92.8 percent of hospitals in 2020 responding
2 to the survey met question one. Is that right?

3 A. Yes.

4 Q. Okay.

5 And that increases to 96.8 percent in 2021,
6 96.8 percent in 2022, and 97.9 percent in 2023. Do you
7 see that?

8 A. Yes.

9 Q. Okay.

10 And I guess the question that I have on any
11 of these, really, is: Is it your assumption that a
12 hospital that is not participating in the survey will
13 perform worse than these numbers as compared to the
14 participating hospitals?

15 A. Can you say that one more time, please?

16 Q. Yeah. So I'm trying to get at -- let's back up
17 a little bit.

18 So I'm trying to understand why Leapfrog
19 imputes for hand hygiene, right. And my question is it
20 seems like, at least based on this analysis, that most
21 hospitals, at least that report, do fairly well on the

1 hand hygiene questions. Is that fair to say or no?

2 A. So Leapfrog actually has fairly high standards,
3 and so for a hospital to meet a domain, they actually
4 have to answer "yes" to all of the questions in that
5 domain.

6 So, for example, in domain training and
7 education, only 85.7 percent answered yes to question
8 two in 2023. So at most, 85.7 percent of hospitals meet
9 that domain, and it's probably something less than that,
10 right.

11 So looking at individual questions may not
12 be the most accurate indicator of how hospitals are
13 doing on each of the domains as Leapfrog has defined
14 them.

15 Q. Okay. So in each of these four domains, you're
16 saying only the lowest denominator respondent are those
17 that passed the domain?

18 A. The lowest percentage within a domain would be
19 the absolute ceiling of the percentage of hospitals that
20 can meet that domain.

21 Q. Got it. Okay.

1 So for domain one, the most -- the highest
2 number of hospitals that would have met that domain are
3 85.7 percent of responding hospitals in 2023, correct?

4 A. Correct.

5 Q. Okay.

6 And do you have any basis to suggest that
7 nonperforming hospitals would be so much worse in
8 performance than 85.7 percent?

9 A. We don't have any information to know how they
10 would perform.

11 Q. So why is it fair to those hospitals to give
12 them the lowest score when the gross majority of
13 hospitals, at least in this domain, pass?

14 MS. LAWSON: Object to form. Go ahead.

15 THE WITNESS: So there are 15 percent of
16 hospitals, at least, that are not meeting the domain,
17 right. So how would we know if hospitals that don't
18 report are part of that 15 percent or part of the
19 85 percent?

20

21 BY MR. CRAIN:

1 Q. You don't know either way, right?

2 A. We don't know either way.

3 Q. Okay. But you assume that the hospitals in
4 that domain that are not reporting are necessarily part
5 of the 15 percent, right?

6 A. We don't have any information about those
7 hospitals, so we are imputing a score.

8 Q. You're imputing a score that estimates that
9 their performance is failing, essentially?

10 A. That they are in the bottom performance
11 category.

12 Q. Okay.

13 And then if you go to domain two, this is
14 infrastructure, do you see that?

15 A. Yes.

16 Q. And this is things like hand sanitizers?

17 A. Correct.

18 Q. Okay.

19 Forgive the question, but have you ever
20 been to a hospital for care?

21 A. Yes.

1 Q. Do you recall any room that you were in without
2 a sanitizer?

3 MS. LAWSON: Object to form.

4 THE WITNESS: So the Leapfrog survey questions
5 about hand sanitizers are fairly specific about the
6 location of them, whether they produce the correct
7 amount of alcohol-based hand gel, and whether or not the
8 hospital does audits to know if they actually have hand
9 gel in them. Because I think we've all experienced
10 going up to one and nothing comes out.

11 BY MR. CRAIN:

12 Q. Not fun.

13 A. So there is more than just about do you have
14 hand sanitizer dispensers. There's a lot more to that
15 standard.

16 Q. Fair enough.

17 So taking your bottom number, if you look
18 at domain two, this would imply that 90.5 percent, at a
19 maximum, passed this domain, right?

20 A. Ninety-one -- 90.5 --

21 Q. Ninety point five, right.

1 A. -- in 2023 --

2 Q. In 2023, correct.

3 A. -- would be the absolute ceiling.

4 Q. Yes.

5 Do you have any sense for what the number
6 actually is for the number of hospitals that passed this
7 domain?

8 A. I don't know offhand.

9 Q. Okay. Fair to say it's likely quite high
10 because of these numbers?

11 MS. LAWSON: Object to form but go ahead.

12 THE WITNESS: Yeah, I mean, I could -- you
13 know, you could assume that all of these were
14 independent, and if you multiply them together, you
15 would come up with an answer that's somewhere in the
16 63 percent, which is probably the floor. So it's
17 somewhere between 63 and 90.5.

18 BY MR. CRAIN:

19 Q. Okay.

20 So but, again, for hospitals that don't
21 participate, for this domain, effectively, they get the

1 lowest possible score, right?

2 A. So to be clear, the hand hygiene standard has
3 five domains. For a hospital to be in achieved the
4 standard, they need to -- if they're only collecting 100
5 hand hygiene observations a month, they need to meet all
6 five domains, which means they're saying "yes" to every
7 single question.

8 Q. Okay.

9 A. Seventy-four percent of hospitals in 2023
10 achieved the standard, so 26 percent did not.

11 Q. Yep. Okay. And that achieved the standard is
12 the highest, right?

13 A. Correct.

14 Q. Then how do you quantify the next three down?

15 A. We have a scoring algorithm that's available
16 online that details that. I couldn't recite what that
17 is, but the idea is basically if you meet a subset of
18 the domains, you get one category; if you meet fewer
19 domains, you get a lower category.

20 Q. Okay.

21 A. It's sort of assessed at the domain level but

1 then it rolls up into an overall score.

2 Q. Okay. No, fair enough.

3 So I guess then my question is why is hand
4 hygiene one of the imputed measures and not one of the
5 discarded measures?

6 A. Because its clinical relevance to patient
7 safety is paramount.

8 Q. Okay.

9 So, again, it's the same point. When we
10 talked about the other three, there were two reasons.
11 The first was the historical what I call grandfathering
12 in combined with the significance, right?

13 A. Correct.

14 Q. For this one, there's no historical, but it's
15 just, you're saying, it's so important, Leapfrog feels
16 it has to impute?

17 A. Correct.

18 Q. Okay. Okay. Let's leave it at that.

19 A. Okay.

20 MR. CRAIN: All right. I think we've been
21 going about an hour. Do you mind if we take a break?

1 MS. LAWSON: That's fine.

2 MR. CRAIN: Okay. Courtney, are you good?

3 MS. WOOD: Uh-huh.

4 THE VIDEOGRAPHER: This marks the end of media
5 unit number six. We're going off the record. The time
6 is 3:26 p.m.

7 (Whereupon a short break was had, after
8 which the proceedings continued as
9 follows:)

10 (Exhibit No. 25 was marked for
11 identification as of 9/25/2025.)

12 THE VIDEOGRAPHER: This marks the beginning of
13 media unit number seven. We're going back on the
14 record. The time is 3:43 p.m.

15 BY MR. CRAIN:

16 Q. Thank you, Dr. Austin.

17 So I've handed you what has been marked as
18 Exhibit 25. Do you see that document?

19 A. Yes.

20 Q. And this is an email from you to what I think
21 is the safety grade expert panel. Do you see that?

1 A. Yes.

2 Q. Okay. And the subject is: Final updates to
3 Leapfrog Hospital Safety Grade methodology for Fall of
4 2024. Do you see that?

5 A. Yes.

6 Q. And generally, can you tell me what this email
7 is?

8 A. This email is an email to the expert panel with
9 the attachment of the final updates to the safety grade
10 methodology for Fall of 2024.

11 Q. Okay. And you say, "Based on the expert
12 panel's thoughtful input and guidance, Leapfrog has
13 decided to move forward with updates to imputation
14 methodology used in the Hospital Safety Grade, effective
15 Fall '24." Do you see that?

16 A. Yes.

17 Q. Okay. Fall of 2024. Sorry. I think I said
18 that wrong. Do you see that as well?

19 A. Yes.

20 Q. Okay.

21 Now, just for the record, I want to be

1 clear. Did Leapfrog decide to adopt this methodology,
2 or did the expert panel decide to adopt it?

3 A. Leapfrog makes all the decisions about their
4 ratings and ratings programs. The work of the expert
5 panel, expert panels, myself, is all in a recommendation
6 advisory capacity.

7 Q. Okay. And are you aware of any document in
8 which the expert panel weighed in on this final proposal
9 as a group?

10 A. Not that I am aware of. Not that I'm aware of.

11 Q. Okay.

12 Do you know sitting today whether the
13 entire expert panel approved of this path forward?

14 A. We did not query the expert panel about whether
15 they approved this or not.

16 Q. Okay. Is it your view that they did approve
17 it?

18 A. It is -- from my point of view, we heard their
19 input and guidance. Leapfrog made a decision of how it
20 wanted to move forward, and we communicated that to the
21 expert panel.

1 Q. Okay.

2 Okay. All right. You can set that aside.

3 MR. CRAIN: Okay. I want to move on to another
4 topic. Tab 15, please. This will be Exhibit 26.

5 (Exhibit No. 26 was marked for
6 identification as of 9/25/2025.)

7 BY MR. CRAIN:

8 Q. All right. So Dr. Austin, you have in front --
9 well, what do you have in front of you?

10 A. I have in front of me our 2013 prepublished
11 ahead of print publication from the Journal of Patient
12 Safety.

13 Q. And we talked about this document a little bit
14 earlier today, right?

15 A. Correct.

16 Q. Okay. This is the document that was peer
17 reviewed that analyzed the methodology at least as it
18 stood back in 2023, right?

19 A. This was the methodology in 2012, early 2013.

20 Q. Okay. And you are the lead author on this
21 paper, correct?

1 A. Correct.

2 Q. As well as it looks like other folks on the
3 expert panel, safety grade expert panel?

4 A. Correct.

5 Q. And I see, for instance, Dr. Romano is here,
6 right?

7 A. Correct.

8 Q. Okay.

9 I want to ask you a few questions about
10 this. I'm going to go to -- starting at the top, do you
11 see the little -- on the left side at the top it says
12 "Methods."

13 A. Yes.

14 Q. And it says: "The Leapfrog Group sought advice
15 [sic.] from a panel of national patient safety experts
16 to develop a composite score." Do you see that?

17 A. Yes.

18 Q. Does that describe generally what this paper is
19 about?

20 A. The paper describes how -- the process Leapfrog
21 used to develop a composite score.

1 Q. Okay. And it says, the next sentence --

2 A. And we do some analyses of early rounds of the
3 grades to demonstrate what that looks like.

4 Q. Some early rounds of the grades to
5 demonstrate -- say more about what you mean.

6 A. Yeah. So let me look in the -- so we had done
7 some data analysis using composite safety scores for
8 2,652 general acute care hospitals, and we calculated
9 safety scores for those.

10 Q. Okay.

11 A. And we show that in figure one.

12 And then in tables two and three, we did
13 some analysis to look at how those safety scores varied
14 by different hospital characteristics, as well as by
15 state in the United States.

16 Q. Okay. And this is the document that we saw
17 that was linked to Leapfrog's website, right?

18 A. Correct.

19 Q. Okay.

20 I want to go to page 4, and I think it's
21 Bates number 668.

1 A. Yes.

2 Q. And there's a section, Dealing with Missing
3 Data. Do you see that?

4 A. Yes.

5 Q. And it says: "Although the expert panel
6 selected nationally reported measures, some data were
7 missing for hospitals that did not report to The
8 Leapfrog Group, and other data were missing because
9 hospitals did not meet CMS's minimum sample requirements
10 to publicly report their results."

11 Do you see that?

12 A. Yes.

13 Q. So this is the section that's, for lack of a
14 better word, dealing with missing data, right?

15 A. Correct.

16 Q. Okay.

17 So the next paragraph lays out, what it
18 looks like, five possible approaches for assessing
19 hospital performance when data were missing. Do you see
20 that?

21 A. Yes.

1 Q. Okay. And I'm going to not march through, but
2 it looks like number four is: "Give the hospital zero
3 credit for the measure." Do you see that?

4 A. Yes.

5 Q. And that's not -- Leapfrog has never done zero,
6 right?

7 A. Correct.

8 Q. They've done limited achievement, correct?

9 A. Correct.

10 Q. Okay. And limited achievement, just to be
11 clear, is the lowest measure, which can range anywhere
12 from 5 to 25 depending on the measure, right?

13 A. Correct.

14 Q. Okay.

15 And then number five says: "Exclude the
16 measure and recalibrate the weights for the affected
17 hospitals using only those measures for which data are
18 available." Right?

19 A. Correct.

20 Q. Now, the -- if you look at -- further down
21 there's a paragraph that says "After." Do you see that?

1 A. Yes.

2 Q. Okay. And it says: "After conducting
3 sensitivity analyses using each of the above approaches,
4 the panel recommended approach number five to address
5 missing data, excluding the measure for a hospital and
6 recalibrating the weights for those measures for which
7 performance data were available, for most measures."

8 Do you see that?

9 A. Yes.

10 Q. Okay. And was that generally the approach that
11 Leapfrog took in the ensuing years?

12 A. That was the approach Leapfrog used initially
13 with the hospital safety grades.

14 Q. Okay.

15 A. As previously mentioned, Leapfrog has evolved
16 its imputation approaches, working through actually at
17 least four out of the five here.

18 Q. Fair enough, yeah. So it's been a moving
19 target.

20 A. It's been evolving.

21 Q. Evolving. Fair enough.

1 So then the paragraph keeps going. The
2 next sentence is -- let's see. It's on the top of page
3 4 on the right side. "In this way." Do you see that?

4 A. Yes.

5 Q. "In this way, we avoided making questionable
6 assumptions about the performance of hospitals with
7 missing data, and we also maintain variation of the
8 final calculated scores by not imputing identical values
9 for all missing observations."

10 Do you see that language?

11 A. Yes.

12 Q. Okay.

13 So at least as of 2013, Leapfrog -- this
14 group of authors peer reviewed, came to the conclusion
15 that excluding the measure was the way to avoid making
16 questionable assumptions about the performance for
17 hospitals. Do you see that?

18 A. Yes.

19 Q. Okay. That changed, right?

20 A. That has evolved.

21 Q. Okay. Is it your view that Leapfrog is making

1 questionable assumptions today about the performance of
2 hospitals?

3 A. I don't believe that to be true.

4 Q. Okay. What's changed between this analysis and
5 today?

6 A. So what has changed is that the -- that we've
7 actually evolved through different imputation
8 approaches. So we started with number five, right.
9 Then we moved to number two, imputing based on other
10 available data. Then we moved to number one, which is
11 imputing performance at the national mean or median,
12 although we did that by cohorts. And then we eventually
13 landed here now at number three, which is imputing a
14 score above or below the median or mean.

15 So all of these are valid imputation
16 approaches. I think the choice of an imputation
17 approach needs to be in the context of sort of time,
18 place, situation.

19 So in 2012, when Leapfrog rolled out these
20 hospital safety grades, hospitals did not know these
21 were coming. So that needed to be sort of the context

1 in which an imputation decision was made.

2 If we fast-forward to 2024, now we've been
3 issuing safety grades for 25 rounds. Hospitals are very
4 aware of the grades. They're very aware of the measures
5 that go into the survey, and so you might have your
6 imputation approach evolve with that.

7 Q. So the assumptions change?

8 A. I don't know if assumptions have changed, but
9 the context has changed.

10 Q. So let me -- so first going back, you said
11 number three, impute a score above or below the median
12 or mean; e.g., minus one standard deviation. Do you see
13 that?

14 A. Yes.

15 Q. That's not what Leapfrog does today, right?

16 A. It is imputing a score below the mean.

17 Q. Below the mean, fair, but not by one standard
18 deviation, right?

19 A. That was just an example of how that could be
20 operationalized.

21 Q. The measure of limited achievement is more than

1 one standard deviation below, right?

2 A. I have not looked at a distribution of scores
3 to be able to answer that.

4 Q. Do you have an estimate as to what -- how much
5 lower than the standard deviation below -- one standard
6 deviation below the mean it is?

7 A. I don't know what that would be.

8 Q. Okay.

9 Okay. So going back, do you recall what
10 the questionable assumption the authors were worried
11 about in this paper was?

12 A. So I think the biggest concern was around
13 option number four, which would be to give the hospitals
14 zero credit for not reporting to Leapfrog.

15 Q. Why is that the biggest concern?

16 A. That was a concern in that hospitals didn't
17 know that this was coming, that we weren't really being
18 fair to hospitals to just assign zero right from the
19 get-go for not reporting.

20 Q. Is it more fair to assign -- would it be more
21 fair to assign zero now?

1 A. From my point of view, it feels like the
2 context and times have changed, and so I would say, yes,
3 that would feel like a more fair decision to make.

4 Q. More fair. Okay.

5 Is it more or less fair than limited
6 achievement?

7 A. It's probably less fair to assign zero than
8 limited achievement. With limited achievement,
9 hospitals are getting some credit. They're not getting
10 zero credits.

11 Q. No one gets zero, right?

12 A. No one gets zero.

13 Q. Okay. Zero is not an available score, correct?

14 A. Correct.

15 Q. Okay.

16 Then so the questionable assumption, just
17 to make sure I understand it, is about the startup of
18 the safety grade, as opposed to assumptions about
19 performance generally?

20 A. It's assumptions about the rollout of the
21 imputation and whether or not it was fair to assign a

1 score that penalized hospitals when they didn't know
2 that the safety grades were coming.

3 Q. Do you know if that language is in this paper?

4 A. I'm not sure that that -- I would have to
5 reread it.

6 Q. I mean, if you want to take a second and read
7 this section, which I think is the only section dealing
8 with this and just goes to the next page, I'm curious
9 does it articulate that as the questionable assumption
10 in here.

11 A. So in the -- that paragraph at the top of page
12 4, in the second paragraph it says: Finally, the third
13 and fourth approaches were rejected to avoid creating a
14 structural bias in favor of Leapfrog reporting
15 hospitals.

16 So as I mentioned, there was a concern
17 about doing that right from the get-go.

18 Q. But that doesn't say get-go, though. It's
19 talking about reporting versus nonreporting, right?

20 A. It was at that -- the article was written at a
21 point in time with experience only up until that point

1 of time, and that was our experience up 'til that point.

2 Q. Is there any structural bias today in favor of
3 reporting hospitals?

4 A. There are hospitals that report to the Leapfrog
5 Hospital Survey that score limited achievement. So a
6 score of limited achievement is not just for hospitals
7 that don't report. There are some hospitals that report
8 that receive that score as well.

9 Q. What does structural bias mean?

10 A. I guess in that context I would think of it as
11 some sort of bias in how we assign scores based on
12 whether they report or don't report to Leapfrog.

13 Q. And so based on that definition, you're still
14 maintaining there's no structural bias in favor of
15 reporting hospitals?

16 A. Based on what we just discussed, I would say
17 there is a structural bias against nonreporting
18 Leapfrog -- nonreporting hospitals.

19 Q. Okay. There is a structural bias?

20 A. There is a structural bias.

21 Q. Okay. That makes sense. Okay.

1 And that's one of the reasons this group of
2 authors, which included yourself and many of the safety
3 grade expert panelists, like Dr. Romano, rejected this,
4 it looks like, the third and four approaches, right?

5 A. At that point in time.

6 Q. Okay. And your position is the structural bias
7 has changed?

8 A. It's not that it has changed. It is more
9 apparent and can be addressed, right. So in the early
10 days of the safety grade, hospitals didn't even know
11 these grades were coming. A lot of them had never
12 completed the Leapfrog Hospital Survey.

13 Fast-forward 12 years, we're in a different
14 place where hospitals are very aware of the safety
15 grades. They're very aware of the survey, and so the
16 context has changed.

17 Q. So just to be clear, when you say addressed,
18 that's not addressing within the methodology. That's an
19 addressing in the context of hospitals could decide to
20 report?

21 A. Correct.

1 Q. Got it.

2 So the methodology doesn't take any
3 measures to address that structural bias?

4 A. Correct.

5 Q. Okay.

6 Okay. And then the other -- if you keep
7 going on that paragraph, it says: "By scoring hospitals
8 on" -- tell me when you're ready.

9 "By scoring hospitals on the available
10 data, the composite scores were based on what was known
11 about the hospital's performance, with no penalties for
12 missing data."

13 Do you see that?

14 A. Yes.

15 Q. Okay. Now, that also is different for today,
16 right?

17 A. That is different than today.

18 Q. Okay.

19 And at this time, scoring hospitals based
20 on what was known about the hospital's performance was
21 something this group of authors deemed advisable, right?

1 A. So to be clear, what we're representing is the
2 Hospital Safety Grade methodology. Not all authors were
3 part of the expert panel. And just to remind you, all
4 of the decisions about the methodology are ultimately
5 Leapfrog's to make.

6 Q. Yes.

7 A. So what we're writing up is the implications of
8 that decision. So when you asked about whether authors
9 agreed, to me it's not an agreement or disagreement.
10 It's were we stating what the facts were at that time.

11 Q. Okay. No, that's fair. So I got it. So
12 you're saying it's an empirical observation?

13 A. Correct.

14 Q. So the observation is by scoring hospitals on
15 the available data, the composite scores were based on
16 what was known about the hospital's performance with no
17 penalties for missing data. You're saying, just to make
18 sure I understand, you're not making a judgment about
19 whether that's good or bad. You're saying it's what's
20 being done?

21 A. Correct.

1 Q. Okay. Got it.

2 Now, this is the paper that Leapfrog touts
3 as having peer reviewed its methodology, right?

4 A. Correct.

5 Q. But there are multiple components, at least in
6 this paragraph that we've seen, that don't apply
7 anymore, right?

8 A. There are -- can you repeat the question?

9 Q. So we've walked through this paragraph about
10 different observations, the questionable assumptions,
11 the structural bias, and then the penalties for missing
12 data, all of which you said are not what Leapfrog does
13 today. They're not reflective of the methodology
14 Leapfrog uses today, correct?

15 A. Correct.

16 Q. Is it fair to say that this paper is a peer
17 reviewed assessment of the methodology today?

18 A. I'm going to be a little careful because I
19 don't know if Leapfrog's website says that it's a peer
20 reviewed of today, right. It's a peer reviewed of their
21 methodology, right.

1 So I'll go back to the previous point that
2 I think the overall structure of the composite score,
3 that it's based on two domains of measures, the data
4 sources, we're going to do relative weights, has
5 remained consistent and constant through time.

6 Have some of the individual decisions about
7 imputation -- obviously, some of that has evolved and
8 changed. So I don't know how to say whether or not it's
9 a fair representation of Leapfrog's methodology or not.

10 Q. Do you agree, yes or no, that Leapfrog's
11 current methodology has been peer reviewed?

12 A. Are you speaking of the Fall 2024 methodology?

13 Q. The one that's operative today.

14 A. I think it sort of depends on your definition
15 of what we mean by methodology. And I don't mean to get
16 into semantics, but I would still come back to like the
17 general structure of all of this is still the same.
18 Some of the nuance differences are different, but that
19 happens continuously throughout the last 12 years.

20 So I don't know how you would write a new
21 paper every time we change one measure or re-weight one

1 measure.

2 Q. So we talked about, maybe an hour ago, that the
3 imputed measures are significant, right?

4 A. I don't know if that's what we discussed.

5 Q. Okay. You talked about how they're
6 clinically -- they matter, right?

7 A. Correct. They're important elements of patient
8 safety.

9 Q. Yes.

10 A. Yes.

11 Q. And they weight quite heavily, right?

12 A. They make up somewhere between 20 and
13 30 percent.

14 Q. Yes, as we talked about.

15 A. Yeah.

16 Q. Is it -- so 30 percent, 20 to 30 percent of the
17 methodology is derived from an imputation model that
18 this paper did not comment on, correct?

19 MS. LAWSON: Object to form. Go ahead.

20 THE WITNESS: As listed under the imputation
21 methods, one of them is exactly what we're doing today.

1 BY MR. CRAIN:

2 Q. Which one? Three?

3 A. Number three.

4 Q. Okay. Impute a score below the mean, correct?

5 A. Correct.

6 Q. Okay. I guess this doesn't say how much far
7 below, right?

8 A. Correct.

9 Q. Because if the means that we saw earlier from
10 Ms. Campione's emails were in the 70s, 80s, and 90s, and
11 the imputation is 15, was that the type of difference
12 below the mean that you were contemplating when you
13 wrote this piece?

14 A. I think there was room for -- there was room
15 for decisions to be made around number three and what
16 sort of score above or below the mean or median. The
17 minus one standard deviation was just an example.
18 Obviously, number four is a more extreme example of
19 zero. So there's a range of options in between those
20 two.

21 Q. Okay.

1 So then I guess going back to my question,
2 we've talked about the imputation methodologies being 20
3 or 30 percent, being significant. Is it fair to say
4 that the current methodology has been peer reviewed
5 given that that substantial portion of it was never
6 reviewed?

7 A. I don't know how to answer that. I feel like
8 it is fair to say that because the primary structure of
9 the methodology has remained the same. Now, others
10 could have a different assessment of that. Some could
11 say, oh, wow, the imputation approaches make this
12 nonrepresentative. I guess that's just a disagreement
13 in how maybe we see the world.

14 Q. Okay. Fair enough.

15 So let me ask this question. The
16 imputation model, has that been peer reviewed?

17 A. No.

18 Q. Okay.

19 Okay. You can set that aside.

20 MR. CRAIN: Let's go to tab 21. This will be
21 Exhibit 27.

1 (Exhibit No. 27 was marked for
2 identification as of 9/25/2025.)

3 BY MR. CRAIN:

4 Q. Okay. So this is another, you see at the
5 bottom, Armstrong-produced document?

6 A. Yes.

7 Q. Do you recognize this one?

8 A. Yes. Well, it's been a while.

9 Q. What does it look like?

10 A. It says it's the meeting agenda. What it
11 actually represents is notes from the meeting.

12 Q. Maybe somebody built out the notes within the
13 agenda?

14 A. Correct.

15 Q. Okay.

16 A. And we just forgot to change the title.

17 Q. Any reason to think this isn't a true and
18 accurate depiction?

19 A. No.

20 Q. So I just have a couple of questions. If you
21 go to -- where is it again -- page 76, do you see theirs

1 is a big, bold "Unintentional consequences of how we
2 currently treat missing data"? Do you see that header
3 on page -- it's the first page?

4 A. Yes.

5 Q. Okay. And I want to go to page 2. And do you
6 see the bullet number two?

7 A. Yes.

8 Q. It says: "Imputation of the score when we have
9 missing data."

10 A. Yes.

11 Q. And it says: "Matt mentioned that expert panel
12 discussed this in the past and did not feel it supported
13 the goal of the safety grade." Do you see that?

14 A. Yes.

15 Q. So I want to break this down a little bit.

16 Now, do you recall making this statement at
17 an expert panel meeting? I recognize it's a while ago.

18 A. I don't remember --

19 Q. Okay.

20 A. -- that conversation.

21 Q. Is it accurate, to the best of your knowledge

1 today, that, looking at the top bullet, imputation of
2 the score when you have missing data is something the
3 expert panel discussed in the past?

4 A. So, yes, we have discussed imputation with
5 them.

6 Q. Okay. Just to build out the --

7 A. Right. Yes, that's fine.

8 Q. Just to get on the same page.

9 A. Yes.

10 Q. And now it says: Did not feel it supported the
11 goal of the safety grade.

12 A. I don't know what that refers to.

13 Q. Okay.

14 A. I will take ownership that the note-taking here
15 may not have been all that accurate, because I don't
16 even know what that refers to because I don't think they
17 -- they have never indicated that imputing scores
18 doesn't support the goal of the safety grade.

19 Q. Okay.

20 A. So I'm thinking that there might have been some
21 nuance to that that wasn't captured in the notes.

1 Q. What could the goal have been referring to?

2 A. I don't know for sure.

3 Q. Okay.

4 So if you go to the next bullet, do you see
5 how -- "Imputing scores for individual measures, like
6 safe practices, would incentivize them to report on the
7 survey." Do you see that?

8 A. Yes.

9 Q. First of all, does that reflect that the safety
10 grade expert panel considered imputing for safe
11 practices?

12 A. That was something that was, I guess, discussed
13 at that meeting.

14 Q. And as we talked about before, was decided
15 against, right?

16 A. Leapfrog has never imputed scores for --

17 Q. Safe practices?

18 A. -- safe practices.

19 Q. One or two?

20 A. One or two.

21 Q. Now, imputing -- it says: "Imputing scores for

1 individual measures would incentivize them to report on
2 the survey." Is that different from the goal reflective
3 in bullet one?

4 A. That I don't know how those connect.

5 Q. We've talked a little bit today about what the
6 goals of the safety grade are. I think we've talked
7 about information, right, as one goal, getting
8 information out there, correct?

9 A. Correct.

10 Q. We've talked about accuracy as another goal,
11 correct?

12 A. Yes.

13 Q. Are there any other goals that you can think
14 of, of the safety grade, that we haven't -- besides
15 those two?

16 A. None come to -- immediately come to mind.

17 Q. Okay.

18 So looking at this bullet, you noted
19 earlier today you endeavor to be accurate in these
20 notes, right?

21 A. That is our goal.

1 Q. And goal -- we talked about goals.

2 So you have no recollection or
3 understanding as to why imputation, at least at this
4 time, would be deemed not supportive of the goal of the
5 safety grade, at least the two goals that we've talked
6 about?

7 A. Yeah. I do not understand how that note ties
8 to everything else I know and understand.

9 Q. Okay. So you just don't remember, or it just
10 doesn't make sense anymore?

11 A. I don't remember what that was intending to --

12 Q. To say?

13 A. To say.

14 Q. Okay. I have to ask.

15 Okay. Let me just see. Yeah. Okay. You
16 can set that aside.

17 MR. CRAIN: And then just one more historical
18 document. Can we do tab 30. This is Exhibit 28.

19 (Exhibit No. 28 was marked for
20 identification as of 9/25/2025.)

21

1 BY MR. CRAIN:

2 Q. Dr. Austin, you have in front of you an email
3 thread between you, Ms. Danforth, Mr. Card, and Emma
4 Domico. Do you see that?

5 A. Correct.

6 Q. Who is Emma Domico?

7 A. Emma was the research analyst who was working
8 for me at the time on the Leapfrog contract.

9 Q. What Ms. Joshi does now?

10 A. Correct. She was in between Jordan and Preeti.

11 Q. Got it.

12 And who is Mr. Card?

13 A. Mr. Card worked for The Leapfrog Group and was
14 the analyst who was supporting the Hospital Safety
15 Grade. So he preceded Alex.

16 Q. Got it.

17 So I want to just look -- so it's a little
18 bit of a confusing email, but I'm going to walk you
19 through at least how I think I read it. So go to the
20 bottom, which is the first one.

21 A. Yes.

1 Q. And it's from you and it's dated August 25th,
2 2021, right?

3 A. Yes.

4 Q. And just for context, is this around the time
5 where AHA was rescinding the license?

6 A. I don't know -- I don't know the timing of the
7 AHA license.

8 Q. Okay. Do you remember generally what was
9 happening in 2021?

10 A. I don't other than COVID was.

11 Q. Fair enough. We all remember that one.

12 A. Yeah, but I don't remember what -- I don't
13 remember the timing of the AHA data because that was all
14 between Leapfrog and --

15 Q. Got it. Okay.

16 So I will at least represent to you that
17 this was -- well, we'll go through the document.

18 A. Okay.

19 Q. So you write -- you say, "Missy, Andrew: Next
20 Friday is the HSG" -- Hospital Safety Grade. Yes? Is
21 that right?

1 A. Yes.

2 Q. Okay.

3 A. Correct.

4 Q. -- "expert panel call. As Emma and I were
5 walking through agenda items, we would benefit from your
6 input/expertise." Do you see that?

7 A. Yes.

8 Q. And I want to focus on number two and start
9 with the bold. Do you see there's two pieces of text.
10 There's a bold and a sort of grayer one on each line?

11 A. Yes.

12 Q. Okay. So let's start with the bold. You say,
13 number two: "How to score hospitals missing
14 process/structural measures. Are we looking for
15 suggestions on imputation methods?" Do you see that?

16 A. Yes.

17 Q. And then if you go to four, it says:
18 "Penalizing hospitals if they don't report. Is this
19 part of agenda item number two? And is Leapfrog really
20 open to this idea? If not, I don't want to keep asking
21 their opinions."

1 Do you see that?

2 A. Yes.

3 Q. Now, we'll come back to this, but I just want
4 to explain to you what the gray is. So if you go one
5 up, the prior page, you see Ms. Danforth writes: "See
6 below"?

7 A. Yes.

8 Q. Okay.

9 So the gray, is it correct to say, those
10 are her comments interlined with your agenda?

11 A. Yes.

12 Q. Okay.

13 So on number two, she says in response to
14 your agenda point, she says, "Yes, and the idea to
15 impute for all missing, including safe practices and HH.
16 I will send a follow-up to the email that Andrew sent."

17 So can you tell me generally what are you
18 proposing as an agenda item, and what did you
19 understanding her response was?

20 A. So what we were proposing as an agenda item was
21 to discuss with the expert panel our imputation methods

1 for process and structural measures.

2 Q. Okay.

3 A. And Missy suggested back the idea that maybe we
4 impute for all missing, including safe practices and
5 hand hygiene.

6 Q. Okay.

7 And then if you go to four, you say -- you
8 have a separate agenda item, right?

9 A. Correct.

10 Q. And it says: "Penalizing hospitals if they
11 don't report. Is this part of agenda item number two?
12 And is Leapfrog really open to this idea?" You all caps
13 "really." Do you see that?

14 A. Yes.

15 Q. So why were you all capping really?

16 A. So back to attachment 27, back to Old Town
17 Alexandria, the Hilton, that was actually a point where
18 the expert panel actually brought up the idea of moving
19 towards an imputation approach where -- to penalize
20 hospitals --

21 Q. Okay.

1 A. -- if they didn't complete the Leapfrog
2 Hospital Survey.

3 So even though it got implemented in 2024,
4 as far back as 2017 conversations were happening about
5 whether or not this was the direction to go into.

6 Q. Okay.

7 A. So in 2021, it was like, is Leapfrog open to
8 this? Are they not open to this? I don't want to keep
9 asking the expert panel over and over again about this
10 if Leapfrog is not open to moving in this direction.

11 Q. Okay.

12 A. So that was the intent of that.

13 Q. And by this direction, you mean a penalty?

14 A. It could be a penalty. It could be an
15 imputation below the mean or median. It could take many
16 different forms, and I don't think a specific proposal
17 had been floated at that point.

18 Q. Okay.

19 And then -- so look at her response. She
20 says: "Remove. This is really covered in number two."
21 Do you see that?

1 A. Correct.

2 Q. Okay. And it sounds like you agree with that?

3 A. Well, I agree that that decision is part of
4 imputation, right. So as we go back to the five
5 imputation methods, number three was one of the possible
6 options, right. So that is part of the imputation
7 discussion is do we impute that a hospital is an average
8 performer? Do we impute that they're a better
9 performer? Right? Like, those are all decisions around
10 imputation.

11 Q. So and when you say "those," you mean the
12 decision of whether to penalize a hospital is part of
13 the analysis of how to impute or whether to impute?

14 A. So there were a couple of approaches that could
15 be taken, right. So if we go back to number 27, Old
16 Town Alexandria, one suggestion from the expert panel
17 was, well, would we want to assign some sort of explicit
18 negative penalty.

19 So we wouldn't necessarily work that into
20 the imputation of individual scores, but we would take
21 so much off of the final score for not being

1 transparent. So that was one idea of how that could be
2 manifested. This could be other ways of manifesting it.

3 Q. Yeah. No, I get that. I'm just trying to
4 understand. So the agenda item number two is how to
5 score hospitals missing process and structural measures.
6 Do you see that?

7 A. Correct.

8 Q. And the question of penalizing hospitals is
9 bound up in that discussion as well, correct?

10 A. I think what Missy was saying is she didn't see
11 that as being a unique part of the agenda, that that
12 would be -- could be incorporated into number two.

13 Q. Well, she said covered in number two, right?

14 A. Correct.

15 Q. And you agree with her?

16 A. I would agree that that, as we've discussed,
17 that that is an option for imputation.

18 Q. And is it fair to say over the years when this
19 topic has come up, the notion of penalizing hospitals
20 has been covered by the topic in number two?

21 A. It's been brought up in that space, yeah.

1 Q. Okay. Okay.

2 Let me take another look. I think that may
3 be it for this email. Yeah, we can set this one aside.

4 So I'm going to shift gears again. We're
5 getting there.

6 A. How many gears are there on this car?

7 Q. I've got a lot of gears. I've got a lot of
8 gears. We're getting close to the end gear. I've only
9 got so much time.

10 I want to talk about the 2019 white paper.

11 A. Okay.

12 Q. Okay? Oh, you seem excited for it.

13 A. I love it.

14 Q. Okay.

15 MR. CRAIN: So I want to start with -- let's go
16 to tab 58. And this is Exhibit 29.

17 (Exhibit No. 29 was marked for
18 identification as of 9/25/2025.)

19 BY MR. CRAIN:

20 Q. So, Dr. Austin, you see this is an email from
21 you to Ms. Campione, Ms. Danforth, and Ms. Bailey from

1 2025.

2 A. Yes. So this is not in reference to the
3 2019 --

4 Q. Yes.

5 A. -- report.

6 Q. It's the lives saved, lives lost, right?

7 A. Correct.

8 Q. Okay. This was the update you were talking
9 about, right?

10 A. This is the update that we've worked on but
11 have not published.

12 Q. Okay. I want to walk through this one, if I
13 can.

14 A. Okay.

15 Q. Okay. So maybe I was a little unfair. I'm
16 starting with 2025 and then I want to lead into the
17 white paper --

18 A. Okay.

19 Q. -- but I want to talk about your numbers here.

20 A. Okay.

21 Q. Okay?

1 So let's go to page -- so I want to look
2 at -- you see Ms. Campione's email on the bottom? It's
3 from her to you, and there's a table on page 0900. Do
4 you see that?

5 A. Yes.

6 Q. Okay. Now, this table -- tell me what this
7 table is.

8 A. So what this table represents is for three
9 points in time, 2016, 2019, and 2025, we have estimated
10 the number of lives lost due to preventable medical
11 mistakes that are captured through the Leapfrog Hospital
12 Safety Grade measures.

13 We also have estimated the number of lives
14 that could be saved if "B," "C," "D," and "F" hospitals
15 all performed as well as "A" hospitals. So we've
16 estimated that at three different points in time.

17 We also have done relative comparisons
18 between "B" and "A" hospitals, "C" and "A", "D" and "A"
19 and "F", and then we break the numbers down.

20 Q. So the chart that we're looking at here on page
21 0900, is it correct that the 2016 column reflects the

1 analysis done on the 2016 white paper, and the 2019
2 reflects the update?

3 A. Correct.

4 Q. Okay. And 2025 reflects, at least in draft
5 form, what the current numbers would be?

6 A. They represent, if we were to maintain the same
7 methodology we used in 2019, what the numbers would look
8 like in 2025.

9 Q. Okay. Can you -- and I'm happy to give you
10 documents if it's helpful, but can you generally
11 describe what that methodology is?

12 A. Yep.

13 Q. And if you need a document, we can get you that
14 document.

15 A. No, no. I can.

16 So what we do is for each grade, "A", "B",
17 "C", and we lump "D" and "Fs" together --

18 Q. Why is that?

19 A. Primarily due to small sample sizes of "F"
20 hospitals.

21 Q. Got it.

1 A. We're looking at less than 20 or 25.

2 Q. Okay.

3 A. For each of the outcome measures that are
4 included in the Hospital Safety Grade, we calculate a
5 mean incidence rate for each cohort of hospitals. So
6 "A" hospitals, how do they do on foreign objects
7 retained? "B" hospitals, how do they do on foreign
8 objects retained?

9 So we have basically an estimated incidence
10 rate of these events by hospitals.

11 Q. And just to translate that, estimated incidence
12 rate means how many times this thing happened?

13 A. Correct.

14 So we display it as a percentage, right?
15 You can think of like, oh, 1.2 percent of patients
16 develop a central line associated blood stream infection
17 in an "A" hospital. Some of those measures, outcome
18 measures are applicable just to patients who have had
19 surgery. Some are just applicable to patients who have
20 been in the intensive care unit.

21 And so we discount the total patients based

1 on who those -- who those measures apply to.

2 Q. Yep.

3 A. Then in terms of estimating the lives lost,
4 from the literature, we've identified the attributable
5 mortality rate to that event happening to a patient in a
6 hospital and their -- yeah, attributable mortality rate.

7 So as previously discussed, like for
8 central line associated blood stream infections, one out
9 of every seven patients who develop C infection in the
10 hospital will die.

11 And we're using that same attributable
12 mortality rate for all categories of hospitals. So that
13 is one of our limitations. We may have variation in
14 that "A" hospitals could actually have a lower mortality
15 rate than "D" and "F" hospitals, but we're making the
16 assumption of that mortality rate.

17 And so that is -- and then in addition to
18 the outcome measures, we're also using ICU physician
19 staffing because there is strong evidence linking
20 improvements in intensivists managing and comanaging
21 patients in the ICU and reduced mortality hospital-wide.

1 Q. Okay.

2 A. Well, both in the ICU and hospital-wide. And
3 so that's the one process and structural method that we
4 use as part of the analysis.

5 Q. So looking at this chart again, just as a
6 grounding mechanism, it looks like to me that there are
7 19 outcome measures and 1 process measure. Is that
8 right? That's what I'm seeing, the 19 and the 1.

9 A. Correct.

10 Q. Okay. And the one is, as you said, ICU
11 physician staffing, correct?

12 A. Correct.

13 Q. Okay. And so basically you're taking the
14 incidence times the mortality and outputting the amount
15 of estimated deaths?

16 A. We are for the outcome measures.

17 Q. Okay.

18 A. What we're doing for ICU physician staffing is
19 we're going back to the historical literature that
20 established the standard to say that there is a
21 30 percent reduction in hospital-wide mortality between

1 no intensivist and high intensivist staffing.

2 And so we actually go back to seventh or
3 eighth grade math, and we have the slope of a line. And
4 this is where hospitals are now at, and, therefore, if
5 we calculate the slope, it would be this point on the
6 line.

7 Q. Oh, boy. You're testing my math skills.

8 A. I test my own as well.

9 And so basically, hospitals that are fully
10 implemented we think have -- we estimate that they have
11 achieved the full impact of that.

12 Q. Okay.

13 A. And if hospitals are somewhere along that
14 continuum, they've achieved a portion of that impact.

15 Q. Okay.

16 So the mortality rating for ICU physician
17 staffing, am I right that it is based on a 2004 article
18 by Dr. Pronovost?

19 A. It's definitely by an article by Dr. Pronovost.
20 I couldn't speak to the year.

21 Q. Okay. Can we grab it?

1 A. I don't disagree with you that it was 2004.

2 Q. You don't know for sure?

3 A. I don't know for sure.

4 Q. I'll represent to you it's 2004. We may as
5 well pull it out. We have it if you want to take a
6 look.

7 A. Okay.

8 Q. My question is have you looked at the research
9 that's come sense to test that estimate?

10 A. So Leah Binder at The Leapfrog Group has asked
11 us to look at that. We have not found anything recently
12 that would be a better way for us to estimate that
13 value.

14 Q. Okay.

15 So I guess, one, have you heard of --
16 there's an article by -- do you know who Deena Kelly
17 Costa is?

18 A. I do not.

19 Q. Okay. I guess I'll just mark it to see if
20 you've seen this article before.

21 MR. CRAIN: Let's mark it as Exhibit 30.

1 (Exhibit No. 30 was marked for
2 identification as of 9/25/2025.)

3 BY MR. CRAIN:

4 Q. Does this article look familiar to you at all?

5 A. I'm not familiar with it.

6 Q. Okay.

7 So the title is: The Association Between
8 Daytime Intensivist Physician Staffing and Mortality in
9 the Context of Other ICU Organizational Practices: A
10 Multicenter Cohort Study.

11 Do you see that?

12 A. Yes.

13 Q. Do any of the authors -- are they familiar to
14 you, Dr. Wallace, Dr. Kahn, and Dr. Costa?

15 A. I do not know any of them.

16 Q. Okay.

17 Do you know the journal here?

18 A. I am familiar with critical care medicine, yes.

19 Q. Reputable journal?

20 A. As far as I know.

21 Q. Okay.

1 Now, I want to go down to Measurements and
2 Main Results, and there's a sentence just at the end
3 which seems to sort of give the bottom line starting
4 with "there." Do you see that?

5 A. Yes.

6 Q. "There was no association between daytime
7 intensivist physician staffing and in-hospital
8 mortality. After adjusting for interprofessional rounds
9 and protocols for mechanical ventilation, the effect of
10 daytime intensivist physician staffing remained
11 nonsignificant."

12 Do you see that?

13 A. Yes.

14 Q. I know you haven't read this article, but at
15 least based on the first page -- and feel free if you
16 want to flip through -- does this undermine the
17 assumptions that the white paper makes with respect to
18 IPS and mortality?

19 MS. LAWSON: Object to form.

20 THE WITNESS: So I think in research there
21 is -- I don't think one can look at one study

1 individually to assess whether there is a relationship
2 or not a relationship, right. I think if we think about
3 -- through humankind, there's lots of studies that have
4 been done. One will show red wine is good for the
5 heart. The next one will show, oh, no, you should stay
6 away from alcohol, right. And over time we sort of
7 build a body of literature.

8 What an additional -- one of the strengths
9 of the Pronovost article, if I'm remembering it
10 correctly, is it was actually a meta analysis. So it
11 actually looked at 15 to 20 different studies and
12 synthesized those results.

13 So it's not to say that every study is
14 going to show a relationship, but one study doesn't
15 necessarily negate a wider body of literature.

16 BY MR. CRAIN:

17 Q. Okay.

18 This is dated 2015. Do you see that?

19 A. Correct.

20 Q. And you've not seen this article, right?

21 A. I have not seen this.

1 Q. Okay. Is it something that you think you
2 should review in the next iteration or no?

3 A. I would be happy to review it and see what we
4 come to in terms of a conclusion.

5 Q. Okay. Okay.

6 So I want to go back to -- I want to just
7 go back to the chart again.

8 A. Yeah. Okay.

9 MS. LAWSON: Is that Exhibit 29?

10 MR. CRAIN: Yeah, 29, the email and the invite.

11 BY MR. CRAIN:

12 Q. Now, I want to just look at the differences in
13 mortality, right. So when you look at -- just take --
14 starting with "D" and "F," right, at the bottom. Do you
15 see that?

16 A. Yes.

17 Q. It says, focusing primarily -- focusing on the
18 outcome measures. It says 1.46 in 2019. Do you see
19 that?

20 A. For "D" and "F," correct.

21 Q. Correct.

1 And is that, just to make sure I understand
2 the numbers, is 1.46, that's 1.46 deaths?

3 A. Correct.

4 Q. Okay.

5 And then if you go down to "C," it's 1.40,
6 right?

7 A. Correct.

8 Q. To "B," it's 1.31, right?

9 A. Correct.

10 Q. And 1.22 for "A." Do you see that?

11 A. Correct.

12 Q. Is the difference just for outcome measures
13 between 1.22 for an "A" and 1.46 statistically
14 significant in your view?

15 A. I would need to do a statistical test to
16 determine whether that there is a statistical difference
17 there.

18 Q. Okay. It's not twice, right? There are not
19 two times as many deaths between -- in that comparison,
20 right?

21 A. Not in just comparing the outcome measures.

1 Q. Just comparing the outcome measures.

2 A. Correct.

3 Q. With respect to the ICU physician staffing,
4 fair to say the difference is more substantial, right?

5 A. Correct.

6 Q. Is the -- would you agree that the analysis
7 places -- like the number of deaths in the analysis is
8 significantly weighted to the ICU physician staffing
9 metric?

10 A. Yes. Although, there is a methodological
11 clarification that I should make because this will help
12 explain it to some degree. We actually take the number
13 of outcome measures, or we take the lives lost in the
14 outcome measures and actually divide that by two.

15 Q. Okay.

16 A. And the reason we do that is because we
17 recognize that there are some deaths that are probably
18 occurring in the ICU that are a result of not good care,
19 right.

20 So you may have developed a central line
21 blood stream infection. We didn't want to count that

1 twice, both in the outcome measures and the ICU
2 physician staffing.

3 So the methodological decision was to cut
4 the outcome measures in half. So we take each value and
5 divide by two so that we aren't double counting between
6 the two.

7 Q. And what was that based on? That's the
8 50 percent number?

9 A. Yeah, the 50 percent. That was just an
10 educated guess.

11 Q. Okay. Is it based on a study or is it based on
12 --

13 A. No. It was just sort of a collective wisdom of
14 people.

15 Q. The authors or other people?

16 A. Other people as well.

17 Q. Who were the other people?

18 A. So the initial work for this actually came out
19 of some work that The Leapfrog Group had done, Leah
20 Binder, with another consultant.

21 Q. Okay. Who is that?

1 A. I don't remember his name.

2 Q. Okay.

3 A. I can sort of picture him, but I don't remember
4 the name. And so it was out of that that the decision
5 was made to multiply it by 50 percent.

6 Q. Okay.

7 So if we look at the bottom, you're saying
8 that "D" and "F," the actual number is closer to 3 than
9 1.46?

10 A. Correct.

11 Q. Okay. Got it.

12 Okay. So then that's still I guess -- my
13 question still remains. The biggest difference, at
14 least it appears to me, between a "D" and "F" hospital
15 and an "A" hospital is the physician staffing mortality.
16 Is that right?

17 A. That is -- from what we're able to quantify in
18 terms of harm, that is where the biggest differences
19 are.

20 Q. Okay. And the mortality rating for that is
21 based on the Pronovost article, right?

1 A. Correct.

2 Q. Okay.

3 And then so let's go to another document.
4 I want to look primarily -- let's look at the chart,
5 actually, on the right side, so the 2025 metric.

6 A. Okay.

7 Q. Now, in all -- this is the first time, at least
8 for IPS and I think everywhere else, there's a slash.
9 Do you see that?

10 A. Yes.

11 Q. What does the slash reflect?

12 A. The slash is reflecting if we -- the value to
13 the right of the slash would be if we were to remove the
14 imputed scores for IPS.

15 Q. Yeah. And say more about that. You mean
16 remove the mortality for nonparticipating hospitals?

17 A. No. We would remove -- if a hospital had an
18 IPS score that was imputed, we would remove that from
19 the calculation.

20 Q. Okay. And that's the right side?

21 A. That is the right side.

1 Q. So the left side reflects -- tell me if this is
2 wrong. I'm just trying to understand. The left side of
3 the slash reflects the hospitals that are participating
4 with IPS scores based on their actual performance data,
5 and the right side includes nonparticipating hospitals
6 with the limited achievement assignment?

7 A. So the left-hand side would be the scores for
8 all hospitals that received a safety grade, including
9 those that were imputed.

10 Q. Okay.

11 A. The right-hand side would be just hospitals
12 that had a score reported through the Leapfrog Hospital
13 Survey.

14 Q. And that's the 80 percent of inpatient beds
15 we've been talking about?

16 A. Correct.

17 Q. Okay. Got it.

18 So the numbers are pretty different, right,
19 at least in certain categories?

20 MS. LAWSON: Object to form. Go ahead.

21 THE WITNESS: I don't know how you would define

1 pretty different.

2 BY MR. CRAIN:

3 Q. Fair enough.

4 If you go to "D" and "F," the difference is
5 7.98 on the left and 3.89 on the right. Do you see
6 that?

7 A. Correct.

8 Q. And if you go to "C," 4.92 and 2.52, right?

9 A. Correct.

10 Q. Now, the differences get smaller. So "B," it's
11 2.12 and 2.01, right?

12 A. Correct.

13 Q. And then "A," it's 1.53 versus 1.5, right?

14 A. Correct.

15 Q. And if I recall correctly, there were only two
16 hospitals that got an "A" with imputed scores, right?

17 A. Correct.

18 Q. So that -- did that explain why that's so close
19 together? Correct?

20 A. I would need to go back and look at the math,
21 but your statement about that there's two hospitals is

1 correct.

2 Q. Yeah. Okay.

3 Do you have a theory as to why the numbers
4 are so different left and right, at least for "D" and
5 "F" and "C"?

6 A. The difference between the two values is the
7 inclusion or exclusion of the imputed values.

8 Q. Is the number on the left or the right more
9 likely an accurate estimate?

10 MS. LAWSON: Object to form.

11 BY MR. CRAIN:

12 Q. Let me step back. You're trying to estimate
13 mortality of "A," "B," "C," "D," and "F" hospitals,
14 right?

15 A. Correct.

16 Q. You want to be accurate in the estimate as best
17 you can?

18 A. Yes, recognizing it's an estimate.

19 Q. Yes. So I'm going to posit that 4.92 versus
20 2.52 for the "C" hospitals, pretty different number of
21 deaths. Is that fair to say or you disagree? I mean,

1 it's almost double, right, on the left side.

2 A. That last part is true. It is almost double.

3 Q. So we'll just go with numerical. It's almost
4 double.

5 What is a more accurate estimate of the
6 mortality of "C" hospitals as a result of ICU physician
7 staffing? Is it 4.92 or is it 2.52?

8 A. I will say both are incorrect.

9 Q. Okay. I'm eager to hear why.

10 A. Well, one includes imputed values, which, by
11 definition, are not exact values.

12 Q. Okay.

13 A. The other one is excluding hospitals that we
14 don't have any data for. So there is some lives lost
15 attached to them. So both of them are actually -- both
16 of them are estimates in two different scenarios.

17 Q. You said a moment ago both of them are
18 incorrect.

19 A. Okay. Both of them are incorrect.

20 Q. Okay.

21 A. It's an estimate, so unless you hit it right on

1 the dot, an estimate is going to be incorrect.

2 Q. Which one is more incorrect?

3 A. I don't know how to judge that.

4 Q. Okay. So you don't know one way or another?

5 A. I don't know one way or another.

6 Q. Okay.

7 MR. CRAIN: So I want to take a look at a few
8 documents here. Give me one second. Oh, no wonder I
9 can't find it. It's actually in this document. Iason
10 knows them better than I do.

11 THE WITNESS: Which one?

12 BY MR. CRAIN:

13 Q. So this is Exhibit 30, what we were just
14 looking at -- oh, sorry, 29 I mean was the chart.

15 MS. LAWSON: 29.

16 MR. CRAIN: Yeah, Exhibit 29 with the chart.

17 BY MR. CRAIN:

18 Q. Okay. And this is from you to Ms. Campione,
19 Ms. Danforth, and Ms. Bailey, right?

20 A. Correct.

21 Q. Okay. So you send an email, and the tenor -- I

1 can read it all, but the tenor seems to be there's a
2 discussion about whether you include the imputed scores
3 in the mortality or not, right?

4 MS. LAWSON: Take a minute and read the email.

5 MR. CRAIN: Yeah, take a second.

6 (Witness peruses document.)

7 THE WITNESS: So, yeah, this is -- the tenor is
8 about the table that we just went through.

9 BY MR. CRAIN:

10 Q. Whether to include the imputed scores or not,
11 right?

12 A. Correct.

13 Q. Okay.

14 And you at the end say, "I would vote for
15 keeping the imputed IPS scores in place. My guess is
16 the averages with the imputed scores are closer to the
17 truth than averages excluding the imputed scores."
18 Right?

19 A. Correct.

20 Q. So what's that based on?

21 A. Well, I think I used the word "guess," so I

1 will qualify that. I guess it's somewhat informed by
2 that, you know, hospitals that choose not to disclose
3 likely may not be meeting Leapfrog's standards. Because
4 if they were meeting them, they would be more likely to
5 disclose them. So it was probably with that assumption.

6 Q. So that -- so okay. But it's multiple levels
7 of assumptions, right? I can build it out to see what I
8 mean.

9 So assumption one is that hospitals that
10 are not reporting are not meeting Leapfrog's standards,
11 right?

12 A. That is the assumption I just stated.

13 Q. And assumption two is that the failure to meet
14 Leapfrog's standards yields a higher mortality rate?

15 A. Correct, based on the literature.

16 Q. Okay. So it's an assumption, but you're saying
17 it's backed by literature?

18 A. Correct.

19 Q. And, again, meaning the Pronovost article?

20 A. Correct.

21 Q. Okay. So your guess is based on those two

1 assumptions?

2 A. Correct.

3 Q. Okay.

4 Do you have any understanding of where
5 Leapfrog is landing on this question, whether to include
6 the imputed or nonimputed?

7 A. I do not know.

8 Q. And just going back to the chart, I want to
9 just look at the numbers. Just go right to the top.
10 You see lives lost, lives saved? Do you see that?

11 A. Yes.

12 Q. Okay. And it's -- the numbers, again, you
13 know, are -- so I'll be factual about it. Lives lost,
14 if you exclude the imputed hospitals, it's about 30,000
15 fewer, right?

16 A. Correct.

17 Q. Okay. And if you exclude the imputed values,
18 it's also about 30,000 fewer on lives saved, right?

19 A. Correct.

20 Q. Okay. And so your view is that it is -- your
21 best guess is that those 30,000 are -- bear some

1 relation -- have some accuracy to them -- strike that.
2 That was a bad question. I know you were going to
3 object. And it was fair.

4 So let me ask another question then.

5 You said the numbers bear out the twice as
6 likely mortality point. Do you remember earlier in the
7 day we talked about Leapfrog says on its website that
8 Johns Hopkins researchers say you're two times likely to
9 die if you go to a "D" or an "F" hospital, as opposed to
10 an "A"?

11 A. I remember that conversation, but I don't
12 remember in what context.

13 Q. We were looking at the website, which we can
14 look at if someone will tell me the exhibit number, and
15 we talked about -- so maybe we can get that document out
16 just to ground us. I think it's exhibit --

17 MR. TOGIAS: It was tab 65.

18 MR. CRAIN: Sixty-five. So that's Exhibit 9.

19 MR. TOGIAS: Frequently asked questions.

20 MR. CRAIN: Yeah.

21 MS. LAWSON: It's on page 2.

1 MR. CRAIN: Yeah, I think that's right.

2 BY MR. CRAIN:

3 Q. Page 2 and it's under the second -- we talked
4 about -- remember this question? "Why should people
5 worry about a hospital's patient safety?" Do you
6 remember that?

7 A. Yes.

8 Q. And if you go to the end of that paragraph:
9 "All hospitals are not the same. Some hospitals are
10 much safer than others. John Hopkins Medicine
11 researchers estimate that patients are twice as likely
12 to die of a preventable problem at a "C," "D," or "F"
13 hospital than an "A" hospital, and over 50,000 lives
14 would be saved if all hospitals performed the way "A"
15 hospitals did."

16 Do you see that?

17 A. Yes.

18 Q. Okay. Now, first of all, the 50,000 lives,
19 based on this chart, going back to Exhibit 29, refers to
20 2019, right?

21 A. Correct.

1 Q. Okay.

2 Your 2025 numbers, I understand, are in
3 draft form, but it would either be 49,000 or 20,000
4 depending on the imputed scores, right?

5 A. Correct.

6 Q. Okay.

7 Now, this Johns Hopkins Medicine
8 researchers estimate that patients are twice as likely
9 to die of a preventable problem at a "C," "D," or "F"
10 hospital than an "A" hospital, do you see that?

11 A. Yes.

12 Q. Now, that -- is that based on the 2019 numbers?

13 A. Yes.

14 Q. Okay.

15 Now, you had said that that was also true
16 as for 2025, albeit in draft form. Do you recall that
17 testimony?

18 A. I think I mentioned that we were seeing
19 probably similar trends.

20 Q. Okay. Is that reflected here? Can you explain
21 to me just on this chart how that works?

1 A. Yeah. So I think Leapfrog took a little
2 liberty with the "twice," but if you take the 87 and the
3 91.8 --

4 Q. Where are you on that?

5 A. Sorry. 2019.

6 Q. Yep. Yep. I see that.

7 A. Those are close to 100 percent, or one could
8 make the argument, so that would be twice as likely --

9 Q. From 2019?

10 A. From 2019.

11 Q. Okay.

12 And what about today?

13 A. And then today the numbers are actually higher.
14 I was just sort of hedging a little bit about what that
15 would be because they range anywhere between
16 46.6 percent and 353.6.

17 Q. Okay. So that's -- it's different whether you
18 include the imputed or not, right?

19 A. Correct.

20 Now, as I look at this further, what I
21 think I would argue is that the number of lives saved

1 when we take out the imputed scores, the 20,252, is such
2 a significant drop-off. I don't know if that's --
3 that's where I had caution about why I thought that
4 seemed questionable to exclude the imputed scores.

5 Same with the 105. To be more clear, the
6 105 is quite a drop, and I don't think we've seen that
7 level of improvement in patient safety in the country,
8 and so I think that would oversell our efforts in
9 patient safety.

10 Q. Is this an annual number?

11 A. That would be an annual number.

12 Q. Okay.

13 A. Correct.

14 Q. So you're saying it would surprise you if it
15 was only 105,000 patients dying, as opposed to 161,000?

16 A. Correct.

17 Q. Okay. Got it. Okay.

18 A. So the 134 on the face felt like more of a
19 reasonable level of improvement that we would have seen.

20 Q. Because it's fewer lives -- it's more lives
21 lost?

1 A. It's fewer lives lost. So we've seen
2 improvements. We've gone from 161,000 lives lost due to
3 medical error to 134,000.

4 Q. It's fewer lives lost than 2019 but more lives
5 lost than without the imputed values?

6 A. Correct.

7 Q. Okay.

8 And then you're saying -- so how does that
9 equate now to the twice as likely to die for "C," "D,"
10 and "F"? Can you walk me through that?

11 A. Yeah, yeah. So that's what I was -- if you
12 look at the --

13 Q. The percent.

14 A. -- 2019 column --

15 Q. Yes, that I'm clear on.

16 A. The "C" versus "A", "D" and "F" versus "A,"
17 those are somewhere in the 100 percent range. Like I
18 said, I think Leapfrog took a little liberty there.

19 Q. Yeah.

20 But 2025?

21 A. For 2025, if we exclude -- if we include the

1 imputed scores, it's actually 133 to 353,000. We would
2 have to do some sort of blended average of those since
3 it says "C," "D," and "F."

4 Q. Yeah. And if you don't include it, it's 46 to
5 204?

6 A. Correct.

7 Q. Okay. And as you said, blended average because
8 there are -- I think there are more "C" hospitals --

9 A. There's a lot more "C" hospitals, right.

10 Q. Okay. Got it.

11 So maybe you just don't know today, but do
12 you have an estimate today as to whether it's really
13 accurate that you're twice as likely to die if you go to
14 a "C," "D," or "F" hospital as compared to an "A"
15 hospital?

16 A. Well, given my statement in the email about
17 Leapfrog, that I feel like the numbers with the imputed
18 scores are more reflective of the actual reality, that
19 would be something greater than twice. It would be
20 probably two and a half times.

21 Q. So --

1 A. So what we're seeing nationally is bigger gaps
2 between "A" hospitals and hospitals at the back of the
3 pack.

4 Q. And what's driving that in your view?

5 A. I believe it's -- I think hospitals have --
6 some hospitals have chosen to really invest time,
7 resources, energy, have created more of a learning
8 health system. I think they have just prioritized
9 safety in ways that other hospitals have chosen not to.

10 Q. And when you say those hospitals, you're
11 talking about the ones that report or the ones that
12 don't report?

13 A. A combination.

14 Q. Okay.

15 Okay. And then I'm going to show you one
16 more document.

17 So if you actually keep that exhibit in
18 front of you, 29, do you see there's a document -- go to
19 the first page.

20 A. Of 29?

21 Q. Of 29, yeah.

1 A. Okay.

2 Q. The email that we've been talking about with
3 the chart.

4 A. Yeah.

5 Q. Do you see there's an attachment that says
6 Lives Lost, Lives Saved Calculator 250515?

7 A. Yeah.

8 Q. Okay.

9 MR. CRAIN: So I just want to mark this as
10 Exhibit 31.

11 (Exhibit No. 31 was marked for
12 identification as of 9/25/2025.)

13 BY MR. CRAIN:

14 Q. So this is an Excel Spreadsheet. Do you see
15 the document?

16 A. Yes, I do.

17 Q. Do you know what this document is?

18 A. Yeah. It's the excel file we use to calculate
19 the lives lost and lives saved.

20 Q. And is that the one attached to this email?

21 A. This is the 2025 -- actually, this is the '25

1 version, yeah, 2025 version.

2 Q. And are you the author of this document?

3 A. Myself and the analyst together.

4 Q. Okay. Got it.

5 Okay. And this is a true and correct copy
6 of the Excel Spreadsheet we're talking about?

7 A. As far as from what I can see, yes.

8 Q. Yeah. And the two pages, right?

9 A. Yeah.

10 Q. Okay.

11 MR. CRAIN: Okay. Can we take five? Go off.

12 THE VIDEOGRAPHER: This marks the end of media
13 unit number seven. We're going off the record. The
14 time is 4:55 p.m.

15 (Whereupon a short break was had, after
16 which the proceedings continued as
17 follows:)

18 (Exhibit No. 32 was marked for
19 identification as of 9/25/2025.)

20 THE VIDEOGRAPHER: This marks the beginning of
21 media unit number eight. We're going back on the

1 record. The time is 5:07 p.m.

2 BY MR. CRAIN:

3 Q. All right. Thank you, Dr. Austin. We're in
4 the home stretch.

5 I've given you what's been marked as
6 Exhibit 32. Do you see it's an Armstrong-produced
7 Document, 14327?

8 A. Yes.

9 Q. Okay. And it's an email from Mr. Derk to you.
10 Do you see that?

11 A. Yes.

12 Q. And it's dated June 5th, 2019?

13 A. Yes.

14 Q. And it says, Subject: Lives Saved
15 Presentation. Do you see that?

16 A. Correct.

17 Q. And there's an attachment. Can you read that
18 attachment into the record?

19 A. Lives lost, Leapfrog partners 02190610.pptx
20 [sic.]

21 Q. And the rest of the document, is that the pptx

1 you just mentioned?

2 A. In reviewing it, I believe that is the case,
3 but there's nothing on here indicating the file name
4 so --

5 Q. Fair enough.

6 If you look at the title, it says: Lives
7 Lost, Lives Saved: The Comparative Analysis.

8 Do you see that?

9 A. Yes.

10 Q. And it's dated June 10th, 2019?

11 A. Yes.

12 Q. Okay.

13 So to the best of your understanding, this
14 is the PowerPoint attached to the email?

15 A. Yes.

16 Q. And I'll also note Armstrong produced it
17 sequentially from 14327 and forward.

18 A. Yeah. The only thing that strikes me as a bit
19 odd is how the presentation is dated June 10th, 2019,
20 but he sent the email on June 5th, 2019.

21 Q. Could it have been a draft?

1 A. That's a possibility.

2 Q. Like for a future presentation?

3 A. Yeah. That makes sense.

4 Q. So flip through the PowerPoint and just -- you
5 know, does it look like a true and accurate depiction of
6 the PowerPoint presentation that either you or he
7 prepared?

8 A. Are you asking me to verify whether each slide
9 is accurate?

10 Q. No, no. Fair enough. Let me start over.

11 Do you recognize this PowerPoint
12 presentation?

13 A. I don't remember this PowerPoint presentation.

14 Q. Okay. Do you recall giving a presentation in
15 2019 on the lives lost, lives saved?

16 A. I don't remember that --

17 Q. Okay.

18 A. -- but that's not to say I didn't do it.

19 Q. Okay.

20 Any reason to think this is not -- you
21 know, again, produced by Armstrong -- this is not a true

1 and accurate depiction of the email and the attachment?

2 A. No, there's no reason to believe that.

3 Q. Okay.

4 Do you remember anything about this
5 presentation at all?

6 A. I don't other than I think we were trying to
7 summarize the lives lost, lives saved analysis.

8 Q. Okay. So just flipping through, that's what
9 this PowerPoint does, it summarizes the methodology?

10 A. Yes.

11 Q. Okay.

12 And then I think you can set that one
13 aside.

14 And then just a question going back to the
15 2019 white paper. Was the 2019 white paper peer
16 reviewed?

17 A. It was not peer reviewed.

18 Q. Was the 2016 white paper peer reviewed?

19 A. The 2016 paper was reviewed by a couple of my
20 colleagues.

21 Q. Is that peer reviewed in the way that we talked

1 about earlier?

2 A. Peer reviewed in terms of journal articles is
3 usually the editors selecting who is going to review
4 your paper. This was me asking two colleagues who I
5 knew and trusted to look through it and provide input
6 and comments.

7 Q. So not peer reviewed in the academic sense?

8 A. Correct.

9 Q. Okay.

10 And 2019 was not peer reviewed in any
11 sense?

12 A. Correct, in the sense that it was an update
13 from 2016. So all we had done was update numbers.

14 Q. Is it right that Ms. Binder edited the white
15 paper in 2019?

16 A. It is possible that Ms. Binder provided some
17 edits to the white paper.

18 Q. Okay.

19 MR. CRAIN: With that, I will, pursuant to the
20 agreement of the parties, for division of time, pass the
21 witness and reserve the balance for recross.

1 MS. WOOD: You want to go off the record while
2 I get mic'd up?

3 MR. CRAIN: It's up to you. I'm happy to go
4 off. Yeah, that's fine. Let's go off.

5 THE VIDEOGRAPHER: This marks the end of media
6 unit number eight. We're going off the record. The
7 time is 5:11 p.m.

8 (Whereupon a short break was had, after
9 which the proceedings continued as
10 follows:)

11 THE VIDEOGRAPHER: This marks the beginning of
12 unit number nine. We're going back on the record. The
13 time is 5:13 p.m.

14 EXAMINATION

15 BY MS. WOOD:

16 Q. Dr. Austin, my name is Courtney Wood. I
17 represent the defendant, The Leapfrog Group, in this
18 matter.

19 I know you testified earlier that we had
20 met before previously when the subpoena came in. It's
21 good to see you again.

1 A. Good to see you as well.

2 Q. I don't have much to ask you today. However, I
3 have enjoyed listening to all of your testimony today,
4 and we appreciate you being here, so I just want to
5 thank you for that.

6 But to start, are you familiar with the
7 hospital grade calculator?

8 A. Yes, I am.

9 Q. Okay. And so is it fair to me -- fair for me
10 to say that there are 10 outcome measures that are
11 included on that grade calculator?

12 A. I couldn't speak to the current version of the
13 calculator. I have not seen it.

14 Q. Okay. But to your knowledge, are there 10
15 outcome measures that are used in the methodology
16 currently?

17 A. Can I refer to the --

18 Q. Sure. Yeah.

19 A. Okay.

20 Q. Was that Exhibit 3?

21 A. I think it's Exhibit 3, yeah.

1 Q. My apologies because I'm not going to know what
2 page it's on but --

3 A. That's fine. I actually know. It is actually
4 on page 6 and 7; 10, correct.

5 Q. Okay. Perfect.

6 And then is it fair to me -- for me to say
7 that those 10 outcome measures all come from CMS data?

8 A. For the five healthcare-associated infections,
9 the primary data source is the Leapfrog Hospital Survey,
10 and a secondary data source is the Centers for Medicare
11 & Medicaid Services.

12 Q. Correct.

13 And then for the process and structural
14 measures, there are 12 of those. Is that correct?

15 A. Correct.

16 Q. Okay.

17 And then are you aware that of those --
18 well, let's strike that.

19 So the 12 structural and process measures
20 come from survey data. Is that correct?

21 A. The seven of them, the Leapfrog Hospital Survey

1 is the primary data source. For 5 out of the 12, the
2 Centers for Medicare & Medicaid Services is the primary
3 data source.

4 Q. Right. And then we call those HCAHPS.

5 A. Correct.

6 (Whereupon, the court reporter seeks
7 clarification, which colloquy will not be
8 captured on the written record.)

9 BY MS. WOOD:

10 Q. Okay. And so to your knowledge, if a hospital
11 does not respond to the Leapfrog survey, then it does
12 not receive a score for the safe practices 1, safe
13 practices 2, and then the nursing care hours per patient
14 day. We were talking about that earlier. Is that still
15 correct?

16 A. Correct.

17 Q. Okay.

18 And so then to your knowledge, when a
19 nonreporting hospital does not respond to the hospital
20 survey, then those weights are redistributed to the
21 other nine measures in that process and structural?

1 A. Correct.

2 Q. Okay.

3 MR. CRAIN: I'm just going to object to form.

4 BY MS. WOOD:

5 Q. Okay. And then of those nine measures, we had
6 just indicated that five of those are the HCAHPS and
7 then the other four are the imputed measures that we
8 were talking about earlier. Is that correct?

9 A. So of the 12, process and structural measures,
10 5 of them come from HCAHPS, which is a patient
11 experience survey that goes to patients. The other
12 seven, the Leapfrog Hospital Survey is the primary data
13 source.

14 As previously discussed, four of those are
15 imputed if the hospital doesn't respond to the survey
16 and three are not imputed.

17 Q. Right. Okay.

18 So what I'm trying to get at is when the
19 hospital doesn't respond -- so those three that we were
20 talking about, the safe practice 1, the safe practice 2,
21 and then the nursing, we take those out and then the

1 weights are redistributed on those other nine, which are
2 the five HCAHPS and then the four imputed measures. Is
3 that correct?

4 MR. CRAIN: Objection to form. I just want to
5 lodge a standing objection to the leading, and then I
6 won't interrupt. But is it okay to stipulate to that?

7 MS. WOOD: Sure.

8 BY MS. WOOD:

9 Q. Is that your understanding?

10 A. Yes.

11 Q. Okay.

12 And would you agree with me when I say --
13 if I made the assertion that if a hospital performed
14 poorly on their HCAHPS scores, then those measures now
15 are getting greater impact on the overall grade?

16 MS. LAWSON: Object to form.

17 BY MS. WOOD:

18 Q. Yeah, let me rephrase it.

19 So since the weights are now a little bit
20 heavier on those HCAHPS scores and the four imputed
21 scores, it would be arguable that those five HCAHPS

1 scores now play a bigger role in going into the Hospital
2 Safety Grade. Is that correct?

3 MS. LAWSON: Object to form.

4 MR. CRAIN: Objection.

5 MS. LAWSON: You can still answer.

6 THE WITNESS: If the hospital does not have
7 data for those three measures, safe practice 1, safe
8 practice 2, nursing workforce, or nursing hours per
9 patient day, more weight is put on the remaining nine
10 measures and that would include the five HCAHPS
11 measures.

12 BY MS. WOOD:

13 Q. Right.

14 So is it fair to say then that if a
15 hospital had poor HCAHPS scores, then those would be
16 weighed heavier and could have a greater impact on the
17 Hospital Safety Grade?

18 MR. CRAIN: Objection to form.

19 THE WITNESS: So independent of the hospital's
20 performance, more weight would be put on those nine
21 measures. So I guess I'm just clarifying that whether

1 they're a good performer or poor performer, more weight
2 is going to be put on those.

3 BY MS. WOOD:

4 Q. Understood. And I would agree with that.

5 And do you have any opinion on how
6 significant that impact can be, whether, you know, say
7 if you're a great hospital and you have great HCAHPS
8 scores, and say you have bad -- and then you get the
9 imputed score because you're a nonresponding hospital,
10 do you have any opinion on what that impact might look
11 like on the Hospital Safety Grade?

12 MR. CRAIN: Object to form.

13 MS. LAWSON: Object to form.

14 THE WITNESS: So the -- I mean, one could test
15 out different scenarios of that question, right. So one
16 could -- the hospital may do really well on certain
17 measures, may not do well on others. There's not
18 necessarily universal, like, just because you're doing
19 well on one HCAHPS, that you're doing well on all
20 HCAHPS.

21 So one could sort of empirically test

1 different what-if scenarios, but I don't know if there's
2 a universal answer to your question.

3 BY MS. WOOD:

4 Q. Okay.

5 And so would it be true that if a hospital
6 was performing well on those five HCAHPS scores and then
7 still got those low imputed scores, that maybe those
8 five HCAHPS scores would actually -- let me rephrase
9 that.

10 So if the five HCAHPS scores were really
11 great scores and then you got those four imputed scores,
12 would it be fair to say that maybe those four imputed
13 scores wouldn't really have an impact then on the
14 overall Hospital Safety Grade?

15 MR. CRAIN: Objection to form.

16 THE WITNESS: There would be a potential
17 scenario where if the hospital does well on the HCAHPS
18 scores and does well on the outcome measures, that they
19 could have a pretty good safety score and safety grade.

20 BY MS. WOOD:

21 Q. Okay. And then would that be applicable as

1 well if there were poor scores for the HCAHPS?

2 A. Once again, it's -- the measures are not looked
3 at simply in isolation, right, because I think one would
4 also need to look at the outcome measures. So just --
5 it needs to be a slightly more holistic view of
6 performance.

7 Q. Okay.

8 And then we were talking about earlier how
9 there is never a zero that is imputed for any of those
10 four measures. Is that correct?

11 A. To the best of my recollection, that is
12 correct.

13 Q. Okay. And do you know why that is?

14 A. So we -- for the Leapfrog Hospital Survey
15 measures, we did have to come up with a way to assign a
16 numerical value to the performance categories, right.
17 So in the Leapfrog Hospital Survey, for those four
18 imputed measures hospitals get reported out as achieved
19 the standard, considerable achievement, some
20 achievement, and limited achievement. But for purposes
21 of incorporating those into the Hospital Safety Grade,

1 we needed to translate those into some sort of numerical
2 value.

3 And so we've used different approaches
4 through the years and for different measures for how to
5 assign those values. If we use hand hygiene as an
6 example, the assigned values are 100, 75, 50, and 25.
7 It was basically to give hospitals some numerical credit
8 for being in a performance category.

9 Q. And is it true that those numerical values on
10 the performance is used for both reporting and
11 nonreporting hospitals?

12 A. So the imputed values for those four measures
13 match what hospitals who report and get limited
14 achievement receive.

15 Q. Okay.

16 And do you ever recall speaking with
17 anybody, whether it's the expert panel or anybody at
18 Leapfrog, about considering imputing a zero for any of
19 those four measures rather than doing the limited
20 achievement, the considerable achievement?

21 A. I don't remember any explicit discussion about

1 zero; although, it's not to say that that hasn't come up
2 as a potential option.

3 Q. Okay.

4 And I want to look at Exhibit 27 again, and
5 this is the -- I think you had said earlier that these
6 were actually your notes from this expert panel meeting.
7 Was that right?

8 A. These were a set of notes.

9 Q. Okay. Because it just had said agenda at the
10 top, but then I think you had said that these were notes
11 following --

12 A. These are notes. I don't -- your question was
13 are these my notes. I don't know if they were my notes
14 or if these were notes prepared by someone else.

15 Q. Oh, okay. That's fair. But these would have
16 been notes following that meeting on this day?

17 A. Correct.

18 Q. And then if we can flip to that second page and
19 number three, and it's the last bullet point under
20 number three. It says: "The panel wondered what the
21 distributions would look like if Leapfrog assigned a

1 score of zero or lowest score possible for the missing
2 elements. Matt and Jordan will look into this following
3 the meeting."

4 Does that refresh your recollection in any
5 way on whether you or Jordan looked into that?

6 A. I don't remember what scenarios we actually ran
7 as a result of that meeting. It's possible that we -- I
8 don't remember. We could have just ran the lowest
9 possible scores. I don't know if we ran zero. I would
10 have to be refreshed on that.

11 Q. Yeah. That's okay.

12 And then do you remember anything else
13 regarding -- any other discussions during this meeting
14 about imputing zeros for those imputed measures?

15 A. Other than what's in the notes --

16 Q. Okay.

17 A. -- that the panel discussed that as a potential
18 scenario.

19 Q. Okay.

20 And then even after seeing this bullet
21 point, you don't recall speaking to anybody else on the

1 expert panel about this?

2 A. I don't remember.

3 Q. Do you recall if you ever spoke with Arjun
4 about this?

5 MR. CRAIN: Objection to form.

6 THE WITNESS: I don't remember if I spoke to
7 Arjun in particular about this topic.

8 BY MS. WOOD:

9 Q. Okay.

10 And usually, after following expert panel
11 meetings, do you ever reach out to some of the panelists
12 to discuss bullet points like this independently?

13 A. Yeah, we do.

14 Q. Okay. So it wouldn't be weird if you had
15 spoken with Arjun, but you just don't recall today?
16 That's something that you might do?

17 A. Correct.

18 Q. Okay. In addition to other panel members as
19 well. Arjun is just an example.

20 A. Correct.

21 MR. CRAIN: Objection to form.

1 BY MS. WOOD:

2 Q. Okay. And so then we were -- I was going to
3 use the handwashing as an example as well. So it's your
4 understanding that 15 is the imputed score for limited
5 achievement for handwashing?

6 A. Let me refer to Exhibit No. 3.

7 Q. Sure. No problem.

8 A. So slide 16 hand hygiene. Was that your --

9 Q. Yep.

10 A. Fifteen is the --

11 Q. Limited?

12 A. -- yep, limited achievement.

13 Q. Perfect. Thank you.

14 And then we were looking at Exhibit 3 again
15 for that, page 16. Hand hygiene, limited achievement,
16 the corresponding measure score is 15.

17 And so I think what you had just testified,
18 that that is both for nonreporting and reporting
19 hospitals, correct?

20 A. That is the score that's assigned to
21 nonreporting hospitals as well as reporting hospitals

1 who failed to meet the some achievement criteria.

2 Q. Right.

3 And so would you agree with me that
4 nonreporting hospitals are actually still receiving a
5 benefit by reviewing a score -- receiving a score that
6 is based on responding hospitals?

7 MS. LAWSON: Object to form.

8 MR. CRAIN: Object to form.

9 THE WITNESS: They are receiving a score -- can
10 you maybe explain more about when you say benefit?

11 BY MS. WOOD:

12 Q. Sure.

13 So if I'm a reporting hospital and I meet
14 the criteria for limited achievement, I get a 15
15 imputed. Is that correct?

16 A. Repeat that one more time.

17 Q. Sure.

18 So a hospital that responds to the survey
19 and they are filling out the hand hygiene portion of the
20 survey and based on the criteria they receive a 15 and
21 they get the limited achievement?

1 A. If the hospital doesn't meet the criteria for a
2 higher performance category --

3 Q. Correct.

4 A. -- they will get limited achievement.

5 Q. Right.

6 But then for the nonresponding hospitals,
7 we don't necessarily know what their hand hygiene
8 policies may be -- or I think earlier we were talking
9 about the hand sanitizer. You had mentioned that there
10 were several different criteria, correct?

11 A. Correct.

12 Q. And so would you say to me -- or would you
13 agree with me when I say that assigning a nonresponding
14 hospital the same score for limited achievement as a
15 responding hospital is giving the nonresponding hospital
16 a benefit?

17 MR. CRAIN: Objection to form.

18 MS. LAWSON: Object to form also.

19 THE WITNESS: I think that's a little bit in
20 the eye of the beholder. Is it better than zero? Yes.
21 Is it as good as 50? No.

1 BY MS. WOOD:

2 Q. Right.

3 A. So I don't know how to really answer that.

4 Q. Okay. So I guess I can ask it another way.

5 So if Leapfrog is not imputing a zero,
6 rather, they're imputing the 15, is Leapfrog making an
7 assumption that the hospitals who are not reporting are
8 actually performing to some extent rather than not
9 performing at all?

10 MR. CRAIN: Objection to form.

11 THE WITNESS: So Leapfrog in that situation is
12 giving nonreporting hospitals an equivalent score to
13 hospitals that have not met the criteria for some
14 achievement, and that can be a range, right. That can
15 be from a hospital that barely missed some achievement
16 to a hospital who has done nothing.

17 So there is a range of hospitals that are
18 getting the limited achievement based on responding.

19 BY MS. WOOD:

20 Q. Understood.

21 And now I want to look at Exhibit 19

1 quickly, and I will have you -- I'm sorry. I'll wait
2 until you're there. And then it's like this webpage.
3 Yes.

4 Okay. And can you flip to the second page
5 that we were talking about earlier. And then you see
6 the asterisk next to the number 15, and it says "This
7 Hospital's Score"?

8 A. Yes.

9 Q. And you would agree with me that that's the
10 limited achievement score for handwashing, correct?

11 A. That 15 is the same value that's assigned, yes,
12 to hospitals that receive limited achievement.

13 Q. Okay.

14 And then right next to it on the right
15 there it says "handwashing." So this would indicate
16 that this hospital, Delray Medical Center, received a 15
17 on the handwashing measure?

18 A. Yes.

19 Q. Okay.

20 And then I know earlier we were talking
21 about the asterisk next to the number 15 indicates to

1 the reader to go down to the end of the webpage there to
2 that disclosure.

3 A. Yes.

4 Q. Okay. And that disclosure says: "The hospital
5 declined to report their performance on this measure, so
6 a score was assigned to reflect the lack of information
7 available." Is that right?

8 A. Yes.

9 Q. Okay.

10 And I think earlier we were talking about
11 the "how," and I believe the question that you were
12 asked was does this webpage show how the score was
13 assigned. Do you recall being asked that question?

14 A. Yes.

15 Q. Okay. And would you agree with me that when it
16 says, so a score was assigned to reflect the lack of
17 information available, that that does indicate the how
18 here?

19 MR. CRAIN: Objection to form.

20 THE WITNESS: So I personally would agree with
21 that. I think the opposing counsel saw that

1 differently.

2 BY MS. WOOD:

3 Q. That's fair. I would agree with you on that
4 one.

5 So let's take it one step further. So if
6 we go back up to where the asterisk is linked to under
7 the hospital safety score 15 asterisk, and then do you
8 see right below that it says best hospital's score 100?

9 A. Yes.

10 Q. And then right below that it says average
11 hospital's score 74.40?

12 A. Yes.

13 Q. And then right below that it says worst
14 hospital's score 15?

15 A. Yes.

16 Q. Okay.

17 And so would you agree with me now, looking
18 at it from this perspective, considering those four
19 hospital scores in conjunction with the asterisk and the
20 disclosure at the bottom, that that shows how the scores
21 are assigned for this handwashing measure?

1 MS. LAWSON: Object to form.

2 MR. CRAIN: Object to form.

3 THE WITNESS: I personally don't think that the
4 display of the other three scores, the best hospital
5 average and worst, helps nor hurts the explanation of
6 how that 15 was assigned.

7 BY MS. WOOD:

8 Q. Okay. But do you think it makes it easier for
9 the reader of this webpage to look and see that if 15 is
10 this hospital's score and 15 is the worst hospital's
11 score, they can come to the conclusion that this
12 hospital is being assigned the worst hospital's score?

13 MS. LAWSON: Object to form.

14 MR. CRAIN: Objection to form.

15 THE WITNESS: I don't want to speculate what
16 people who come to the website, how they understand the
17 material.

18 BY MS. WOOD:

19 Q. That's fair.

20 But you would agree with me that at the
21 top, when it says this hospital's score 15 asterisk,

1 that matches at the bottom the worst hospital's score
2 15? It just doesn't include the asterisk?

3 A. Correct.

4 Q. Okay.

5 And I think earlier you may have testified
6 about whether or not the imputation model and the
7 current methodology penalizes hospitals. Do you
8 remember testifying about that?

9 A. We had a lot of conversation about imputation
10 today, so I would need to be refreshed on what --

11 Q. Sure.

12 A. Yeah, more detail might be needed there.

13 Q. Sure.

14 In your view, when Leapfrog was considering
15 the Fall 2024 methodology change, was the intent or the
16 purpose to change this imputation model to penalize
17 hospitals?

18 A. The goal was not to assess a penalty. The
19 goals were to improve the accuracy of the data and to
20 incentivize -- as a sub goal, incentivize survey
21 participation.

1 Q. Okay.

2 And then would it be fair to say that,
3 rather, the result then of the Fall 2024 methodology
4 change may be that hospitals feel penalized by receiving
5 those limited achievement scores?

6 MS. LAWSON: Object to form.

7 MR. CRAIN: Object to form.

8 THE WITNESS: I can't speak to how hospitals
9 feel.

10 BY MS. WOOD:

11 Q. Okay.

12 I think you said earlier that the
13 penalization is a byproduct of the imputation score. Do
14 you remember? And I'm not trying to mischaracterize
15 your testimony in any way. I just remember you
16 referencing it as being a byproduct.

17 A. Yeah, there may be a feeling of, yes, a
18 penalty.

19 Q. Okay. But that wasn't the intent or the
20 purpose of Leapfrog, to your knowledge?

21 A. That was not the stated intent.

1 Q. Okay.

2 Do you believe that hospitals should report
3 to the Leapfrog Hospital Survey?

4 A. I do.

5 Q. And why do you believe that?

6 A. Because I am a strong believer in transparency.
7 I think in transparency we create a better healthcare
8 system where we understand where our successes are,
9 where our failures are, and that those who are using the
10 healthcare system and those who are paying for the
11 healthcare system know how it's operated.

12 Q. And I know you have testified earlier that
13 sometimes you speak with hospitals in various
14 capacities. Have you ever heard any hospitals refer to
15 the Leapfrog Hospital Survey as kind of a benchmark or
16 an outline to improve their patient safety?

17 A. I -- can you repeat the question?

18 Q. Sure. Yeah.

19 I just know earlier you had testified that
20 sometimes you speak to hospitals in different
21 capacities. So the question I'm about to ask you, I'm

1 not insinuating that you have heard this before. I'm
2 asking if anybody at a hospital has discussed this with
3 you before.

4 But have any of the hospitals told you
5 that -- sorry. Now I'm forgetting my own question --
6 oh, that the Leapfrog Hospital Survey helps them put in
7 benchmarks and outline how they can improve on patient
8 safety measures?

9 A. So for purposes of the Leapfrog Hospital
10 Survey, I have had at least one conversation with a
11 hospital who does see the survey as an opportunity for
12 benchmarking their performance relative to others.

13 Q. And do you believe that to be true?

14 A. I believe it is a source of information for
15 hospitals on a very broad quality improvement journey.

16 Q. And based on your experience in working with
17 Leapfrog, would you understand that you -- or would you
18 testify to me that you understand the mission of
19 Leapfrog?

20 MR. CRAIN: Objection to form.

21 MS. WOOD: Yeah, I can fix that. I tripped

1 over that one.

2 BY MS. WOOD:

3 Q. Based on all your experience and working with
4 Leapfrog, it's been over a decade, almost two decades,
5 would you say that you understand what Leapfrog's
6 mission is?

7 A. Yes.

8 Q. And can you explain that to me in your own
9 words?

10 A. To me, it would be to drive improvements in the
11 quality of our healthcare system primarily using
12 transparency as the mechanism to do that.

13 Q. And do you believe that that's always been
14 Leapfrog's mission?

15 A. Yes.

16 Q. And do you believe that continues to be
17 Leapfrog's mission today?

18 A. Yes.

19 Q. Okay.

20 And so in your experience as a researcher
21 and as a principal faculty member at the Armstrong

1 Institute for patient safety and quality, do you believe
2 that Leapfrog's Hospital Safety Grade provides a benefit
3 to consumers?

4 A. I think sharing information in summary form is
5 what patients and consumers are seeking. So whether
6 that be a star rating, a letter grade, the research is
7 clear that that is what they find helpful for their
8 decision-making.

9 Q. Okay.

10 And have you done any research on whether
11 or not the patients benefit from those star ratings or
12 the Hospital Safety Grade?

13 A. No, I have not done any research on that.

14 Q. Have you read any research or peer reviewed
15 articles on that?

16 A. I have read some research on consumers' use of
17 publicly available quality and safety information. I
18 can't say it's the most recent. There may be more
19 recent information out there.

20 Q. And do you believe that consumers would lose
21 any sort of benefit if hospitals were not graded through

1 the Hospital Safety Grade?

2 MR. CRAIN: Objection to form.

3 THE WITNESS: Can you repeat the question one
4 time?

5 BY MS. WOOD:

6 Q. Sure.

7 If Leapfrog stopped grading hospitals, do
8 you think that that would have any negative impact on
9 consumers?

10 A. So the greatest benefit that's been noted for
11 public reporting of quality and safety information has
12 actually been the hospital's use of that information to
13 drive improvements within their own healthcare system.

14 -- hospital or healthcare system.

15 I don't want to be the bottom performer,
16 right, so I'm going to do what I need to do to get out
17 of the bottom. So in a sense, that improvement in
18 quality and safety has universal benefit, right.

19 Every patient that comes to that hospital
20 has some benefit of the hospital working to improve
21 their quality and safety.

1 Q. And would you say that the Hospital Safety
2 Grade also creates some competition between the
3 hospitals?

4 A. I don't know enough about that.

5 Q. Okay. I just wasn't sure if that's what you
6 were getting at. So that's okay.

7 And so then is it fair to say that if
8 Leapfrog stopped grading hospitals and now patients did
9 not have access to information on patient safety and
10 these measures, that could potentially harm patients?

11 A. I don't know about what the implications of
12 that would be.

13 Q. Okay.

14 Do you think that when patients have the
15 most accurate and transparent data when making their
16 informed decisions on where to treat, that that makes
17 them safer and protects them?

18 MS. LAWSON: Object to form.

19 MR. CRAIN: Object to form.

20 THE WITNESS: I believe that having information
21 is helpful in making a decision to where to receive

1 care.

2 BY MS. WOOD:

3 Q. And are you aware of any other rating systems
4 that are comparable to Leapfrog?

5 MR. CRAIN: Objection to form.

6 THE WITNESS: Can you define comparable?

7 BY MS. WOOD:

8 Q. Sure.

9 Do you believe think -- do you believe that
10 Leapfrog has any direct competitors?

11 A. There's no other entity I know that's putting
12 out a composite, composite and noncomposite
13 information -- well, let me start again.

14 I'm not aware of any other entity that's
15 putting out a composite score around the specific area
16 of patient safety. There are other entities, like the
17 Centers for Medicare & Medicaid Services that do publish
18 information about the quality and safety of care,
19 similar to what Leapfrog does.

20 Q. And do you have any knowledge about the CMS
21 star ratings?

1 A. I do.

2 Q. And what is your knowledge with regard to the
3 CMS star ratings?

4 MR. CRAIN: Object to form.

5 BY MS. WOOD:

6 Q. I guess we can start with do you have
7 experience with working with CMS in regard to those CMS
8 star ratings?

9 A. I do. I served on their technical expert
10 panel.

11 Q. Okay. Can you explain to me a little bit what
12 that was like?

13 A. Yeah. So that is a -- this is actually written
14 into federal legislation that CMS needs to publish a
15 star rating for hospitals. It is considered to be a
16 summary of all of the information that is shared on
17 their care compare website.

18 So early on in the technical expert panel
19 meetings, I would say, well, what are we actually trying
20 to measure? And the contractor was like, well, we're
21 supposed to summarize all the information. I'm like,

1 well, what's the underlying construct? We're just
2 supposed to summarize the information.

3 So it's not clear exactly what CMS is
4 measuring, but it is intended to be a summary of
5 information. And so what they do is they take the
6 measures that are publicly reported and have put those
7 into domains, and different domains get different
8 weights. They use Z-scores. It's all -- it's very
9 similar to how Leapfrog has gone about calculating
10 scores but just with a different set of measures and a
11 different set of constructs.

12 Q. To your knowledge, does CMS have any patient
13 safety measures that go into that star rating system?

14 A. They do.

15 Q. Okay.

16 And I know Leapfrog on their website
17 usually says, when looking at the Hospital Safety Grade,
18 consider other options or look to other sources. Does
19 that sound familiar to you?

20 MS. LAWSON: Object to form.

21 MR. CRAIN: Object to form.

1 THE WITNESS: I don't know what's said on the
2 website so...

3 BY MS. WOOD:

4 Q. Okay. Have you ever heard people at Leapfrog
5 discuss that patients should not only consider the
6 Hospital Safety Grade when choosing where to seek care?

7 A. Yes.

8 Q. Okay. And would you say that other -- strike
9 that.

10 Another source that patients could look at
11 is CMS star ratings. Is that correct?

12 MR. CRAIN: Object to form.

13 THE WITNESS: That is another publicly
14 available rating of hospitals.

15 BY MS. WOOD:

16 Q. And do you have any knowledge on how, I guess,
17 popular those star ratings are? You know, in your line
18 of business or speaking with hospitals, do you tend to
19 see that people rely on them or talked about relying on
20 them?

21 MS. LAWSON: Object to form.

1 MR. CRAIN: Objection to form.

2 THE WITNESS: So I can speak to my experience
3 with Johns Hopkins Medicine. The Board of Directors for
4 Johns Hopkins Medicine, as well as senior leaders,
5 have -- are very, very interested in the hospital safety
6 grades. And when they see that the safety grades are
7 dropping, there is usually a call for what's going to be
8 done to get us back to an "A" or to a "B."

9 So I think it's been a way to engage health
10 system leaders, Board of Directors, around the issue of
11 patient safety. That's just my experience with Johns
12 Hopkins Medicine.

13 BY MS. WOOD:

14 Q. Yeah.

15 And then does Johns Hopkins Medicine also
16 discuss their star ratings?

17 A. I believe so.

18 MS. WOOD: I think that's all that I have for
19 you.

20 THE WITNESS: Thank you.

21 MR. CRAIN: I have a little recross.

FURTHER EXAMINATION

BY MR. CRAIN:

Q. So just a few questions, Dr. Austin.

At one point counsel was asking you questions about whether the Leapfrog survey was a benchmark. Do you recall that line of questions?

A. Correct.

Q. And you said something like hospitals don't want to be the bottom performers. Do you recall testifying something to that effect?

A. Correct.

Q. Why don't hospitals want to be a bottom performer?

A. What I hear is that, specifically when you're dealing with physicians, they generally are individuals who have excelled throughout their lifetime in terms of academics and don't want to be perceived as being at the bottom.

Q. So to put it concretely, doctors working at a hospital don't want to work for an "F." Is that fair to say?

1 A. I can't speak for doctors working at "F"
2 hospitals.

3 Q. But the ones, the doctors you were just talking
4 about --

5 A. Yeah, they would -- yes. They would not want
6 to work at an "F" hospital.

7 Q. And fair to say that an "F" can damage a
8 hospital's reputation?

9 MS. LAWSON: Object to form.

10 THE WITNESS: I don't know -- well, what
11 reputation are you referring to?

12 BY MR. CRAIN:

13 Q. Fair enough.

14 So hospitals -- in your experience, do
15 hospitals have reputation in their communities, just
16 reputations for quality of care, for safety, that sort
17 of thing?

18 A. I think there are perceptions within
19 communities around which hospitals have higher quality
20 care than others.

21 Q. Can an "F" hospital -- can an "F" grade from

1 Leapfrog influence that perception?

2 A. I don't know.

3 Q. You have no opinion one way or another?

4 A. You didn't ask my opinion. You asked what I
5 knew.

6 Q. Okay. Fair enough. Fair enough.

7 Do you have an opinion?

8 You're getting good at this.

9 A. I don't know how much -- if reputation is --
10 well, let me start over.

11 I don't know how -- I don't know the
12 literature well enough to know how hospitals form
13 reputations in their communities.

14 Q. Okay.

15 A. Obviously, a component of that is consumers and
16 patients directly. There is media. There's a lot of
17 different influences, and I don't know how each of those
18 is tying into the Hospital Safety Grade and influencing
19 the reputation.

20 Q. Okay. Fair enough. I get it.

21 Okay. We talked -- you went back --

1 counsel went back to look at the Delray website again,
2 right. And you testified something to the effect of the
3 asterisk at the bottom of the page explains the how a
4 grade is assigned, right?

5 So I don't have a piece of paper for you,
6 but I'm going to do something a little avant-garde and
7 show you a website.

8 So I want to just direct you -- and just so
9 counsel can see, it's another Hospital Safety Grade
10 website. Do you see that?

11 So this is a hospitalsafetygrade.org
12 website. Can you see it okay?

13 A. I can.

14 Q. And do you see it says Pikeville Medical
15 Center? Do you see that?

16 A. Yes.

17 Q. And Pikeville is in Pikeville, Kentucky. Do
18 you know anything about Pikeville, Kentucky?

19 A. I do not.

20 Q. Okay.

21 What's the grade it gets?

1 A. They received a "D" in the Spring 2025 Hospital
2 Safety Grade.

3 Q. Okay.

4 So I want to go down and just look at safe
5 medication administration. Do you see that's toggled
6 there?

7 A. Yes.

8 Q. And that is the BCMA?

9 A. Correct.

10 Q. Okay.

11 So now, do you see what their score is?

12 A. It's a 25.

13 Q. Okay. And what's the worst score?

14 A. Twenty-five.

15 Q. Okay. And it has the little asterisk, right?

16 A. Correct.

17 Q. Now, read the asterisk for me. Can you read it
18 into the record?

19 A. The hospital declined to report their
20 performance on this measure, so a score was assigned to
21 reflect the lack of information available.

1 Q. Do you have any idea how the score was imputed?

2 A. Are you asking me do I know that, or do I know
3 that from what I'm reading there?

4 Q. From the information you have gathered from
5 this website or otherwise -- but you don't know
6 Pikeville, so I assume it's from this website -- how was
7 Pikeville's limited achievement score assigned?

8 A. I, Matt Austin, know that it was assigned based
9 on them not reporting to the survey, and they get
10 assigned a score based on that nonsubmission.

11 Q. So that's why it was assigned, right? It was
12 assigned because they didn't report, right?

13 A. Uh-huh.

14 Q. The question of how it was assigned I see as
15 conceptually different. Does that seem fair to you or
16 no?

17 A. I guess I see them as linked and maybe one in
18 the same. That's where I'm struggling to distinguish.

19 Q. So let me -- I can make it more concrete.

20 The imputation methodology as it applies
21 today has two steps, right?

1 A. Correct.

2 Q. Right? There is Step 1, historical, and Step
3 2, limited achievement, right?

4 A. Correct.

5 Q. Do you have any idea how Pikeville -- which
6 step was applied to Pikeville?

7 A. I know from the Hospital Safety Grade
8 methodology that declining to report on the measure is
9 what resulted in them getting a score assigned.

10 Q. But I'm asking a different question. I'll just
11 do it more directly. Did Pikeville get assigned limited
12 achievement through Step 1 or Step 2?

13 A. I don't know from what this is telling me
14 whether --

15 Q. And yet, to be clear, you testified earlier
16 that this asterisk explained how the score was assigned,
17 right?

18 A. I testified that the why and how to me were
19 sort of one in the same.

20 Q. Okay. So then just setting the semantics
21 aside, just looking at this asterisk, you have no idea

1 whether Pikeville got limited achievement through Step 1
2 or Step 2, correct?

3 A. I don't know that.

4 Q. Now, you -- sorry. Just to be clear. Correct?

5 A. Correct. I do not know whether they were
6 assigned a Step 1 or Step 2.

7 Q. Now, is it fair to say Step 1 is a little more
8 accurate because it relies at least on the prior year's
9 survey that Pikeville or another hospital might submit?

10 A. The underlying assumption is that a hospital's
11 specific information from a recent time period would be
12 a better indicator of current performance than just a
13 general imputed score.

14 Q. So Step 1 can be a better, I think you said,
15 better indicator of current performance, right?

16 A. Correct.

17 Q. Okay. And yet you have no idea whether
18 Pikeville is Step 1 or Step 2, right?

19 A. Not from what's shown here.

20 Q. Which, again -- can you state for the record
21 what is being shown here?

1 A. What's being shown here is the hospital's score
2 with an asterisk, which says the hospital declined to
3 report their performance on this measure, so a score was
4 assigned to reflect the lack of information available.
5 So that could be either Step 1 or Step 2.

6 Q. Great. Okay.

7 So we'll set Pikeville aside, our dear
8 friends in Kentucky.

9 A couple other questions. So counsel
10 raised the question of whether the limited achievement
11 score was a benefit, right? Do you recall that line?

12 A. Yes.

13 Q. Okay. Is it your testimony that assigning
14 limited achievement automatically in Step 2 is a
15 benefit?

16 A. I did not testify to that.

17 Q. I just want to understand if it is your
18 testimony.

19 A. That is my testimony, that it is not
20 necessarily a benefit.

21 Q. Can it be a benefit ever?

1 A. For some hospitals it could be a benefit.

2 Q. Now, why is that, though?

3 A. If the alternative was to assign zero,
4 assigning a 15 is better than a zero. But if we
5 assign -- if the decision was to assign 50, assigning 15
6 would be a negative. So I don't know if there's a
7 universal way of answering that question.

8 Q. Fair enough. So let me just lay it out this
9 way. If a hospital participated in the survey and
10 failed on every hand hygiene question, what score did
11 they get?

12 A. They would receive limited achievement.

13 Q. They wouldn't achieve zero, right?

14 A. They would be scored as limited achievement.

15 Q. So what is the benefit vis-à-vis the
16 nonparticipating hospital and the hospital that scores
17 zero down the line? Is there a benefit? Let's start
18 with that.

19 A. Can you repeat that again?

20 Q. Yeah.

21 Counsel was suggesting there's a benefit

1 that Leapfrog gives limited achievement versus zero.

2 But just to be clear, no hospital gets zero, right?

3 A. In the current scoring methodology, no hospital
4 gets zero.

5 Q. Even if the hospital failed every one of the
6 questions we looked at for hand hygiene, they would get
7 I think it's 15, right?

8 A. Correct.

9 Q. Okay.

10 A couple other lines. So we talked about
11 the Alexandria, Virginia notes. Do you remember that
12 document?

13 A. Yes.

14 Q. I think that was Exhibit --

15 A. Twenty-seven.

16 Q. -- 27. And you said at one point other than
17 the notes, I don't remember anything. I just want the
18 record to be clear. Do you remember the meeting, or are
19 you just looking at the notes?

20 A. I remember having an in-person meeting with the
21 expert panel. I can picture a conference room. I

1 honestly can't remember if it was this meeting or a
2 different meeting.

3 Q. I guess what I'll say is do you remember,
4 actually have a memory of what was said, or you just
5 have no reason to doubt the notes?

6 A. I have -- I do remember at this in-person
7 meeting, I do remember the conversation about whether an
8 explicit penalty should be something that's on the table
9 or if Leapfrog should consider assigning an explicit
10 penalty.

11 Q. Okay.

12 A. I do remember that, but I don't remember
13 whether it was this meeting or another meeting. But
14 when I look at these notes, this seems to corroborate
15 that it was this meeting.

16 Q. Okay. Fair enough.

17 And then I want you to just tell me
18 everything you remember about the discussion about the
19 penalty you're referring to just so it's clear.

20 A. So what I remember, which may be different than
21 what's in the notes, is specifically Dr. Andrew Bindman,

1 who at the time was the head of -- the director of the
2 Agency for Healthcare Research and Quality, which is the
3 federal agency that oversees quality and safety work.
4 From what I remember, Andy is -- broached the subject
5 of, well, hospitals should just be reporting to the
6 survey. Shouldn't we just like assign some sort of
7 penalty for them if they aren't reporting? That will
8 get them to report.

9 Q. Fair enough. Okay.

10 A. So that's what I remember.

11 Q. Yep.

12 A. Because I sort of remember where I was sitting,
13 where he was sitting.

14 Q. Okay. And anything else you remember about
15 that --

16 A. No. That's what I remember.

17 Q. Okay.

18 A couple of last questions. HCAHPS. So
19 you talked a little bit with counsel about HCAHPS,
20 right?

21 A. Correct.

1 Q. What does HCAHPS measure?

2 A. HCAHPS measures the patient experience of their
3 inpatient hospital stay.

4 Q. Okay. So if a hospital is loud, is that
5 reflected in HCAHPS?

6 A. So there are different domains within the
7 HCAHPS survey. One is quietness of the hospital
8 environment.

9 Q. Okay. Can you give us a sense of the others?

10 A. Yeah. So the five that are included in the
11 Hospital Safety Grade include physician communication,
12 nurse communication, communication about medicines.

13 Q. Not a memory test.

14 A. The other -- the five that we've included are
15 all related to communication --

16 Q. Okay.

17 A. -- and sort of the importance of communication
18 as it relates to patient safety.

19 Q. And there are other HCAHPS domains that are not
20 included?

21 A. Correct.

1 Q. Okay.

2 And HCAHPS, as you said, relates primarily
3 to patient satisfaction?

4 A. Patient experience.

5 Q. Experience. I'm sorry.

6 A. Yes, which is considered a different construct
7 than patient satisfaction.

8 Q. Got it. And is it a different construct from
9 safety?

10 A. There are -- there is probably some conceptual
11 overlap between safety and patient experience.

12 Q. Okay.

13 A. There's probably some overlap between patient
14 experience and patient satisfaction, to be fair.

15 Q. So like a Venn diagram?

16 A. Correct.

17 Q. Okay. Got it.

18 I think the last sequence, I want to go
19 back to Exhibit 3, the methodology document that you
20 were asked about. Do you recall that?

21 A. I remember being asked about the number of

1 measures --

2 Q. Yes.

3 A. Yes, in each domain.

4 Q. So I want to just -- a quick question for you.

5 Does Leapfrog -- for nonparticipating hospitals that are
6 imputed, does Leapfrog impute secondary data to assign a
7 score?

8 A. Is -- can you repeat that?

9 Q. Yeah, let me break it down. So let's go back
10 to the AHA days, right. So back then when Leapfrog was
11 using the American Hospital Association data, it was
12 using the AHA data as a secondary source that it was
13 imputing into the safety grade score. Is that fair or
14 no?

15 A. Correct. So the AHA data was the data that was
16 being used to impute a score.

17 Q. Okay. Because the imputation model is not
18 secondary data itself. It's a method of imputing
19 secondary data, right?

20 A. Correct.

21 Q. Okay. To impute, one needs secondary data,

1 right?

2 A. No.

3 Q. No. Okay. Tell me why.

4 A. So as outlined in the famous email where we
5 list the five different imputation options, one of them
6 is using secondary data to arrive at some sort of
7 estimate of the hospital's performance.

8 Q. Got it.

9 A. But one could just assign zero. One could
10 assign some value above or below the mean, right. So
11 one does not necessarily require secondary data to
12 impute a score.

13 Q. Okay. But if one is imputing secondary data,
14 there needs to be a secondary data source, in theory,
15 right?

16 A. Correct.

17 Q. Okay.

18 So I want to go to page 5 of the
19 methodology document, Exhibit 3. You see it's the
20 measures you were talking about before?

21 A. Yes.

1 Q. And do you see the top three at least are three
2 of the imputed measures, right?

3 A. Which page are you on?

4 Q. I'm looking at five.

5 A. Okay.

6 MS. LAWSON: Is it four of the slide, or is it
7 five of the slide?

8 BY MR. CRAIN:

9 Q. Oh, I'm sorry. It's the one -- I may be --
10 page 4. You're right. Page 4.

11 A. Okay.

12 Q. Okay. I'm pulling it off my electronic
13 version.

14 So my question is do you see where it says
15 Computerized Physician Order Entry right there?

16 A. Yes.

17 Q. And Primary Data Source is the 2024 Leapfrog
18 Hospital Survey, right?

19 A. Right.

20 Q. That's accurate, correct?

21 A. Correct.

1 Q. Secondary data source says the imputation model
2 applied, right?

3 A. Correct.

4 Q. For any hospital under Step 2, there isn't a
5 secondary data, right?

6 A. In the -- are you asking about the current?

7 Q. Yes.

8 A. In the current methodology, there is not
9 secondary data, correct.

10 Q. Under Step 2?

11 A. Under Step 2.

12 Q. Is there under Step 1, or would you not call
13 the historical secondary data?

14 A. I wouldn't call that secondary data.

15 Q. Okay.

16 So fair to say for CPOE, BCMA, IPS, and
17 hand hygiene there is no secondary data?

18 A. We are currently not using secondary data as
19 part of the imputation models.

20 Q. Okay.

21 MR. CRAIN: Okay. Nothing further from me.

1 You good?

2 You're free to go unless Sara wants to go.

3 MS. LAWSON: We can go off the record.

4 MR. CRAIN: Off the record.

5 THE VIDEOGRAPHER: This concludes the
6 deposition of Dr. Matthew Austin. This ends media unit
7 number nine. We're off the record. The time is
8 6:06 p.m.

9 THE COURT REPORTER: Ms. Lawson, will you be
10 handling signature for the witness, or are you waiving
11 signature?

12 MS. LAWSON: We'll read and sign.

13 She'll prepare a transcript of it so that
14 you can review your testimony and note any corrections.

15 THE COURT REPORTER: Ms. Wood, do you need a
16 rough draft as well?

17 MS. WOOD: Yes, if I can get a rough as soon as
18 possible.

19 (The deposition adjourned at 6:06 P.M.)

20

21

1 I, Marlene Kerr, a Notary Public of the
2 District of Columbia, do hereby certify that the
3 within-named witness personally appeared before me at
4 the time and place herein set out, and after having been
5 duly sworn by me, according to law, was examined by
6 counsel.

7 I further certify that the examination was
8 recorded stenographically by me, and this transcript is
9 a true record of the proceedings.

10 I further certify that I am not of counsel
11 to any of the parties, nor in any way interested in the
12 outcome of this action.

13 As witness my hand this 29th day of
14 September, 2025.

15 
16

Marlene Kerr

Notary Public

17
18 My Commission Expires:

19 July 28, 2026.
20
21

CERTIFICATE OF DEPONENT

I hereby certify that I have read and examined the foregoing transcript, and the same is a true and accurate record of the testimony given by me.

Any additions or corrections that I feel are necessary will be made on the Errata Sheet.

Matthew Austin

Date

(If needed, make additional copies of the Errata Sheet on the next page or use a blank piece of paper.)

Job Number: 7616361

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ERRATA SHEET

WITNESS: MATTHEW AUSTIN

Good Samaritan Medical, et al., vs. The Leapfrog Group

Thursday, September 25, 2025

PAGE/LINE	SHOULD READ	REASON FOR CHANGE
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JOB NUMBER: 7616361

September 29, 2025

Good Samaritan Medical Center Inc, Et Al. v. The Leapfrog Group

DEPOSITION OF: Dr. Matthew Austin (# 7616361)

The above-referenced witness transcript is available for read and sign.

Within the applicable timeframe, the witness should read the testimony to verify its accuracy. If there are any changes, the witness should note those on the attached Errata Sheet.

The witness should sign and notarize the attached Errata pages and return to Veritext at errata-tx@veritext.com.

According to applicable rules or agreements, if the witness fails to do so within the time allotted, a certified copy of the transcript may be used as if signed.

Yours,

Veritext Legal Solutions

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[wonder - yeah]

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Federal Rules of Civil Procedure

Rule 30

(e) Review By the Witness; Changes.

(1) Review; Statement of Changes. On request by the deponent or a party before the deposition is completed, the deponent must be allowed 30 days after being notified by the officer that the transcript or recording is available in which:

(A) to review the transcript or recording; and

(B) if there are changes in form or substance, to sign a statement listing the changes and the reasons for making them.

(2) Changes Indicated in the Officer's Certificate. The officer must note in the certificate prescribed by Rule 30(f)(1) whether a review was requested and, if so, must attach any changes the deponent makes during the 30-day period.

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Exhibit B

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF FLORIDA
WEST PALM BEACH DIVISION
CASE NO.: 9:25-CV-80526-DMM

GOOD SAMARITAN MEDICAL
CENTER, INC., et al.,
Plaintiffs,

vs.

THE LEAPFROG GROUP,
Defendants.

CONFIDENTIAL

VIDEO-RECORDED

DEPOSITION OF: KAREN VAN CAULIL

DATE: September 25, 2025

TIME: COMMENCED: 9:03 a.m.

CONCLUDED: 12:31 p.m.

TAKEN BY: Plaintiffs

PLACE: Wilson Elser Moskowitz Edelman & Dicker,
LLP

111 North Orange Avenue
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REPORTED BY: Mae Fisher, RMR, CRR

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P R O C E E D I N G S

THE VIDEOGRAPHER: Good morning. We are on the record at 9:03 a.m. on September 25, 2025.

Please note that the microphones are sensitive and may pick up whispering and private conversations. Please mute your phones at this time. Audio and video recording will continue to take place unless all parties agree to go off the record.

This is media unit number 1 of the video-recorded deposition of Karen van Caulil taken by counsel for plaintiff in the matter of Good Samaritan Medical Center, Inc., et al., versus The LeapFrog Group.

My name is Anthony Giagnacova and the court reporter is Mae Fisher, both representing Veritext Legal Solutions.

Counsel will now state their appearances and affiliations for the record beginning with the noticing attorney, after which the court reporter will swear in the witness.

MR. HVIDT: This is Scott Hvidt with Gibson Dunn for the plaintiffs.

MS. DABANKA: Elizabeth Dabanka with Gibson Dunn for the plaintiffs.

MR. BILLEK: Max Billek from Wilson Elser on

1 behalf of LeapFrog Group and I'm representing the
2 witness as well.

3 THE WITNESS: Hi, I'm Karen van Caulil with the
4 Florida Alliance for Healthcare Value.

5 THE COURT REPORTER: Can you raise your right
6 hand, please.

7 Do you solemnly swear or affirm that the
8 testimony you are about to give in this cause will be
9 the truth, the whole truth, and nothing but the truth?

10 THE WITNESS: Yes.

11 KAREN VAN CAULIL,
12 a witness herein, having been first duly sworn, was
13 examined, and testified as follows:

14 DIRECT EXAMINATION

15 BY MR. HVIDT:

16 Q. Good morning, Ms. Van Caulil.

17 A. It's Dr. van Caulil.

18 Q. Dr. van Caulil. Thank you.

19 A. It's okay.

20 Q. I was about to ask if that's how I should refer
21 to you.

22 A. Karen is fine.

23 Q. Karen is fine.

24 A. Yes.

25 Q. Okay. Could you please state your full name for

1 the record again?

2 A. Sure. It's Karen van Caulil.

3 Q. And do you understand that the court reporter is
4 taking down all the questions I ask and the answers that
5 you will be providing?

6 A. Yes.

7 Q. Have you been deposed before?

8 A. Yes. It's many years ago, I was trying to
9 remember how long, probably 30 years ago.

10 Q. And is that the only time you've been deposed?

11 A. Yes.

12 Q. And what type of matter was that?

13 A. It was in North Carolina. It was a certificate
14 of need-related matter.

15 Q. And I know it's been 30 years. But I'm just
16 going to go over a few ground rules for the deposition
17 to make her life easier today.

18 A. Okay.

19 Q. So because she's taking down a record, let's try
20 not to talk at the same time. I will try to allow you
21 to finish your answers completely before asking the next
22 question. I ask that you allow me to finish my question
23 before you begin your answer.

24 Do you understand that?

25 A. Yes, I do.

1 Q. And all the answers will need to be audible. So
2 no nodding of the heads or shaking heads so that she's
3 able to take down the actual words that you're answering
4 with.

5 A. Okay.

6 Q. And do you understand that you are testifying
7 under oath today?

8 A. Yes.

9 Q. And are you taking any medications or any
10 influence that would make it difficult for you to
11 understand questions or provide accurate answer?

12 A. No.

13 Q. If you don't understand one of my questions, and
14 that's very likely, please -- please ask to -- for me to
15 rephrase it and so -- because if you do not do so, we'll
16 assume -- the record will assume that you knew what I
17 was talking about.

18 A. Okay.

19 Q. From time to time, your counsel might object to a
20 question and so we will get into a cadence back and
21 forth, but please allow for a pregnant pause to allow
22 him to assert an objection if there's one that's needed.

23 A. I understand.

24 Q. And then please do speak up if you'd like a
25 break, need to go to the bathroom, need food, need

1 anything. But I'd just ask that we not take a break
2 during -- while a question is pending.

3 A. Okay.

4 Q. Thank you.

5 Dr. van Caulil, do you work?

6 A. Yes.

7 Q. Where do you work?

8 A. I work at the Florida Alliance for Healthcare
9 Value.

10 Q. And what do you do for them?

11 A. I'm the president and CEO.

12 Q. And what is included in your job responsibilities
13 as the president and CEO?

14 A. So we are a small nonprofit. We're a business
15 coalition on health. We're a 501(c)(3) research and
16 education organization.

17 We -- if you're familiar with business coalitions
18 on health, it's public and private sector employers who
19 come together in a learning community. The employers we
20 work with are typically self-funded, which means they're
21 paying the bills for healthcare and they have the
22 ability to flex their benefit design, do variations on
23 their network, their outreach, et cetera.

24 And so in my capacity as president and CEO, I'm
25 leading the organization in terms of, you know, the

1 projects and initiatives and the research that we
2 undertake. I have a board of directors and that's
3 composed of nine public and private sector employers.
4 So as far as, you know, board-related matters, that's in
5 my purview to work with the board.

6 I -- we work in policy as well, to make sure that
7 the employer voice is heard in Tallahassee and in D.C.
8 around health matters. Typically they haven't
9 participated on the healthcare policy and the employers
10 we work with are not healthcare businesses. They are
11 school districts and manufacturing companies and many
12 other industries. And so when they have worked in the
13 policy space, it's been around their core business. So
14 this is an area where if we see something that might
15 impact them favorably or not, we would be involved in
16 policy there.

17 I oversee my staff. I have a vice president. I
18 have a project and a program coordinator and an
19 administrative coordinator.

20 I'll stop there, if you have any further
21 questions.

22 Q. That's very helpful. So one item today, so if I
23 called it the Florida Alliance for Healthcare Values
24 today The Alliance?

25 A. Florida Alliance.

1 Q. Florida Alliance. Would that be what you'd
2 prefer for just --

3 A. Yeah, because there actually is a sister
4 organization called The Alliance in Wisconsin, so not to
5 confuse with them.

6 Q. Wonderful. Yeah, I want to just make sure that
7 we can come up with a terminology.

8 A. Florida Alliance works.

9 Q. Florida Alliance will be how we refer to it
10 today. Thank you for that.

11 A. Um-hmm.

12 Q. So as the name might suggest, for the Florida
13 Alliance, are all the employer members Florida
14 employers?

15 A. They -- it's a mix because there are some, like a
16 public school district. You know, all of their
17 employees, their plan members are in the state of
18 Florida. But there are companies that are members that
19 may have lives in other states or even globally. So
20 it's a mix.

21 Q. But do all --

22 A. But they all have at least -- I'm sorry, to
23 finish the thought -- they all have to have lives in
24 Florida.

25 Q. Wonderful. So like a company might have

1 employees in Florida and in California and they can be a
2 member of the Florida Alliance?

3 A. Yes. As long as they have lives in Florida.

4 Q. Understood. And so if the company only has
5 live -- only has employees or lives in California but
6 not any in Florida, they cannot be a member of the
7 Florida Alliance?

8 A. That's correct. Actually, I'd like to clarify
9 that. Not an employer member. So we have affiliate
10 members. And affiliate members are a mix of -- it's
11 hospitals and healthcare systems. It's solution
12 providers in healthcare, benefits consultants and they
13 typically are not headquartered in Florida. They may
14 have employees, but that's not a factor in that level of
15 membership. Sorry I wasn't clear on that.

16 Two -- two different levels. We also have a
17 healthcare advisory council and that's some hospitals
18 and healthcare systems, only a handful of those. We are
19 moving that category into affiliate so we only have the
20 two.

21 Q. And as a nonprofit with these multiple types of
22 members, is the organization focused on the benefit of
23 the employer members and then the affiliate members are
24 also in service of that mission? Is that a fair way to
25 refer to it?

1 A. Yes. I would say so. We're led by the
2 employers. It is a business coalition on health and the
3 affiliate members and the healthcare advisory council
4 members work with us on projects and initiatives. We
5 work in as multi-stakeholder way as possible. They
6 provide a lot of resources. They're also very
7 interested in what employers are doing and thinking and
8 challenged by, so it's an opportunity for them as well
9 to interact and to learn.

10 Q. And you mentioned that these employers are in a
11 variety of industries and they're not in the healthcare
12 industry, per se. Is there interest in healthcare
13 values related to their provision of health plans to
14 their employees?

15 A. I'm not understanding your question. This is the
16 employer members you're speaking about? Would you mind
17 repeating the question?

18 Q. Yeah. So your employer members are in a variety
19 of industries.

20 A. Right.

21 Q. Correct?

22 A. Correct.

23 Q. And they are members of the Florida Alliance for
24 Healthcare Values?

25 A. Yes.

1 Q. And their interest in healthcare values, is that
2 connected to their provision of health plans to their
3 employees?

4 A. Yes. I just want to clarify. You're saying
5 values, plural, it's not. You had that on the
6 deposition that way. It's Florida Alliance for
7 Healthcare Value. It's the cost and the quality
8 equation for value. So just want to clarify that.

9 Q. Thank you. And so --

10 A. So --

11 Q. So to go back to the question --

12 A. Yes.

13 Q. -- to make that clear.

14 A. Sorry.

15 Q. So the member -- the employer members of the
16 Florida Alliance for Healthcare Value, their interest in
17 healthcare, is that related to their provision of health
18 plans to their employees?

19 A. Yes. It is also related to educating their
20 workforce in the healthcare space. So it's not limited
21 to the provision of coverage. It is that culture of
22 health and well-being is also part of that.

23 Q. And that is -- what they're trying to do -- what
24 they're interested in there is not just providing a
25 health plan to their employees, but helping give their

1 employees information about the options they see in the
2 medical area to make the right healthcare decisions for
3 themselves; is that a fair way of saying it?

4 A. Some of the employers do that. I don't have
5 sight on all 80 of the employers and what they're
6 providing to their -- to their workforce, to their
7 employees. But some do that. And they do that through
8 different ways. They might have a vendor who works with
9 them in a -- you know, sort of a narrow network sort of
10 way. They might have direct contracts. You know,
11 there's different vendors who the employee can go in and
12 search on a provider and look at, you know, their
13 ratings from all different organizations. But they
14 don't all do that.

15 Q. I am handing you what's been marked as Exhibit 1
16 in your deposition.

17 (Exhibit No. 1 was marked for identification.)

18 BY MR. HVIDT:

19 Q. Have you seen this document before?

20 A. Yes.

21 Q. And what is this document?

22 A. This is the notice given to me that I'm having
23 this deposition today.

24 Q. You see this is the notice of the subpoena for a
25 non-party Karen van Caulil here at Wilson Elser --

1 A. Yes.

2 Q. -- in Orlando, Florida --

3 A. Yes.

4 Q. -- on September 25th?

5 A. Yes.

6 Q. I'd ask, just a reminder to let me finish --

7 A. Sorry.

8 Q. -- my question before answering. I know that I
9 can be foreshadowing sometimes of where I'm going but
10 just for the ease of the court reporter.

11 A. I apologize.

12 Q. No worries. Thank you.

13 And do you see what's called the case caption up
14 above, where it says Good Samaritan Medical Center, et
15 al., versus The LeapFrog Group?

16 A. Yes.

17 Q. Do you understand that you are being deposed in
18 that litigation?

19 A. Yes.

20 Q. And is Florida Alliance a party to that
21 litigation?

22 A. I don't believe that Florida Alliance is party.

23 Q. And are you a party to the litigation?

24 A. I don't believe I am.

25 Q. And do you have an understanding of what the

1 lawsuit is about?

2 A. Yes.

3 Q. And in your own words, what do you understand the
4 lawsuit to be about?

5 A. My understanding is that the five hospitals in
6 Palm Beach County that are part of Tenet Healthcare
7 wanted The LeapFrog Group to suppress their grades from
8 the spring hospital grade reporting. That the hospital
9 system has issue with the way the methodology generates
10 the grade. That's basic understanding.

11 Q. And do you have an understanding of what your
12 role may or may not be in the litigation?

13 A. I believe that my role is because the Florida
14 Alliance for Healthcare Value is the regional leader
15 organization, that there may be some interest by the
16 hospitals in that role that we serve.

17 Q. Did you prepare for your deposition today?

18 A. Yes.

19 Q. How did you prepare for your deposition?

20 A. I had a couple of meetings with my attorneys,
21 two. I looked at some of the e-mails that I knew that I
22 was involved with regarding LeapFrog in recent times. I
23 scanned our weekly bulletins, which is our major
24 communication with our employer members every week, just
25 to remind myself of what information we shared with them

1 over time. I thought about what questions you might be
2 asking me and thought about my responses.

3 So I will say that the regional leader
4 responsibilities in our organization fall to my vice
5 president, Ashley Tait-Dinger, so I don't attend
6 regional leader meetings. If I have over the years,
7 it's been minimal when she's unable to attend. So she
8 is the absolute main contact for regional leader
9 activities. So just to clarify that, that I don't have
10 -- you know, I don't sit in on regional leader meetings.
11 I don't review what they're -- what they're doing.
12 That's Ashley's role in the organization.

13 Q. Did you speak with Ashley before your deposition
14 today to prepare for it?

15 A. She had major surgery last Wednesday and is out
16 on medical leave so I did talk to her before she went
17 out. Just to, you know, clarify a few things that, you
18 know, I figured I should probably, you know, know. I
19 asked if anyone had reached out, you know, for example,
20 about the lawsuit that she may not have mentioned to me
21 and nobody had. Questions like that.

22 Q. And in preparing for your deposition, did you
23 review any documents outside the presence of counsel?

24 A. Are you asking did I look at documents on my own?

25 So I looked at -- well, I'm also trying to think

1 about the timing of getting the deposition, versus what
2 I might have seen prior to that time. So I -- I read
3 what was in the media, different articles that were
4 published in the spring. I read the LeapFrog response
5 to that. So those are things that I had done
6 previously.

7 Q. And in meeting -- you mentioned meeting with your
8 counsel in preparation for today's deposition. How long
9 were the meetings that you had with counsel?

10 A. I would say probably each of them was an hour,
11 hour and a half.

12 Q. And is -- are you or Florida Alliance paying for
13 your counsel's time in this matter?

14 A. No. LeapFrog is paying, as I understand.

15 Q. You could set that aside. We don't need that.

16 A. Where do I put it?

17 MR. BILLEK: You just turn it upside down.

18 BY MR. HVIDT:

19 Q. You can just turn it upside down.

20 MR. BILLEK: So it's not distracting.

21 THE WITNESS: Okay.

22 BY MR. HVIDT:

23 Q. I understand we don't have that much space.

24 Dr. van Caulil, did you attend college?

25 A. Yes.

1 Q. And where did you attend college?

2 A. My undergrad was at Duke University.

3 Q. And what was your degree in?

4 A. Bachelor of science in biology.

5 Q. And do you have any professional degrees?

6 A. I have a master's and I have a doctorate. But
7 when you say a professional degree, what would be an
8 example of a professional degree?

9 Q. Those would both be examples of professional
10 degrees.

11 A. Okay.

12 Q. What is your master's in?

13 A. Master of science in public health and health
14 policy and administration.

15 Q. And where did you earn that degree?

16 A. University of North Carolina at Chapel Hill.

17 Q. And you mentioned you had a doctorate. What is
18 your doctorate in?

19 A. I have a PhD in public affairs from the
20 University of Central Florida.

21 Q. And following receiving your degree, can you --
22 degrees, could you walk me through at a high level your
23 employment history?

24 A. Sure. So following graduation from college, I
25 was employed in Durham, North Carolina, with a company

1 called Medical Personnel Pool. And they were a home
2 health agency and supplemental staffing and I was a
3 coordinator. So that was for a couple years. And then
4 I worked at Duke hospital in the department of surgery
5 in between my undergrad and master's also, and then
6 while I was working on my master's, I was a research
7 assistant in the department of surgery.

8 After my master's, I did an administrative
9 residency at North Carolina Baptist Hospital, which is
10 in Winston-Salem. And from there, they hired me to work
11 in the department of clinical strategic planning, which
12 was a joint department between the hospital and the
13 school of medicine.

14 We moved from North Carolina to Florida and I
15 telecommuted, which was unusual back then, and stayed
16 with them for a couple of years and then worked on a
17 contract basis. I -- when I had my kids, I was a
18 consultant doing a lot of certificate of need work,
19 still for Baptist and some other clients.

20 Then I was hired in -- here in Orange County in
21 Orlando to develop and implement the system of care for
22 the uninsured here in Orange County. And -- so that
23 involved securing a federal grant to be able to bring
24 all the different stakeholders together to create that
25 system.

1 Then I was hired to be the executive director of
2 the Health Council of East Central Florida, which is a
3 regional health planning agency. So that's four
4 counties of Orange, Osceola, Seminole and Brevard, so
5 sort of Greater Orlando. And the University of Central
6 Florida College of Medicine recruited me away to be the
7 director of health planning to help build the medical
8 city here in Lake Nona.

9 And also in that position, I managed a big
10 federal grant to bring -- I think it was 1400 primary
11 care docs from paper charts to electronic health
12 records. And since then, I've been at the Florida
13 Alliance. Our legal name is actually Central Florida
14 Healthcare Coalition and the d/b/a is Florida Alliance.
15 We did a name change with the d/b/a probably six years
16 ago. It was Florida Healthcare Coalition and changed
17 the name in 2019.

18 I have been adjunct faculty at UCF, you know, in
19 that time period as well.

20 Q. Thank you. Impressive career.

21 Did you start the Florida Alliance when you
22 joined or did it exist before you got there?

23 A. The Central Florida Healthcare Coalition, the
24 legal name organization, started in 1984. So no, I did
25 not start it. I was in my senior year of college then.

1 So well before I got to Florida.

2 Q. And does the -- does Florida Alliance -- does it
3 have a relationship with any governmental entities?

4 A. So we have in our membership municipalities and
5 county governments. So in that capacity, yes.

6 Q. And is there any relationship between Florida
7 Alliance and our state regulator of hospitals?

8 A. The only relationship I think that would fit in
9 that category would be that I chair the Agency for
10 Healthcare Administration's -- it's a long name --
11 Advisory Council. State Consumer Health Information and
12 Policy Advisory Council. So that advisory council is in
13 statute to, you know, ensure that the state-reported
14 data, the regulator data is transparent and available to
15 consumers in a way that they can understand it.

16 Q. And is that -- you mentioned that you chair that
17 agency.

18 A. I currently, yeah.

19 Q. Is that a -- that sounds like it is a
20 relationship that you have. Is that correct?

21 A. Correct. That's why I was saying, the only thing
22 that really comes to mind, there's no contractual
23 relationship that we have with the state. So I don't
24 believe that there is anything beyond disclosing that I
25 have that role that I play on a volunteer basis.

1 Q. And does the Florida Alliance have any
2 relationship with any of the plaintiff hospitals in this
3 litigation?

4 A. No.

5 Q. Has the Florida Alliance ever communicated with
6 the plaintiff hospitals?

7 A. Ashley has sent letters requesting all of the
8 hospitals, including those, to fully participate,
9 encourage them to fully participate in the LeapFrog
10 hospital survey. She has signed off on those letters in
11 recent years. I signed off on them in the past. So I
12 think that's probably the only correspondence that we
13 ever had, and that is to basically say, we encourage you
14 to participate; we are all about transparency of
15 healthcare quality and costs and hope that you will
16 consider doing so and direct them to LeapFrog to take it
17 from there.

18 Q. And you mentioned LeapFrog. Do you understand
19 The LeapFrog Group is the defendant in this litigation?

20 A. Yes.

21 Q. And does the Florida Alliance have a relationship
22 with the defendant, LeapFrog Group?

23 A. The Florida Alliance is the regional leader
24 organization for the -- for Florida, for LeapFrog.

25 Q. And what is a regional leader organization for

1 LeapFrog?

2 A. So that's the vehicle that The LeapFrog Group
3 uses in, you know, in the markets, if you will. And I
4 don't know if they're -- they're not all necessarily at
5 a state level. It depends on the regional leader
6 organization that they work with. Some are, you know,
7 municipality level. Some might even be multistate.

8 And the regional leaders are the organizations
9 that, using the influence of employers and other
10 purchasers to encourage hospitals to be transparent
11 about patient safety and quality. So sending those
12 letters that I mentioned a few minutes ago is really
13 probably the most major aspect. I think -- I certainly
14 couldn't respond for what every regional leader
15 organization does. I think there's, you know, some
16 differentiation on the level of activity that they --
17 that they do.

18 For us, as regional leader, we make sure that our
19 employer members receive the reports that are generated
20 by The LeapFrog Group, that they're aware of the
21 websites for the survey and the grades, so they can go
22 there and use the information and the resources there.
23 We will also conduct meetings with hospitals with our
24 employers to talk about all different issues and
25 LeapFrog will often come up in those. So it's kind of

1 high level.

2 Q. You mentioned that part of being a regional
3 leader, the Florida Alliance makes sure that its
4 employer members are aware of the grades that LeapFrog
5 Group releases; is that correct?

6 A. Yes. Make them aware that they've been released
7 and then they can go and look for themselves in their
8 respective markets. What we'll do is, we have a weekly
9 bulletin that goes out almost every week of the year.
10 There are a couple weeks in the year that we don't do
11 it. And when the spring release and the fall release
12 comes out, we will do a synopsis that says, you know, we
13 had, you know, this many hospitals graded, this many
14 were A, B, C, D, F, have the link so that they can go to
15 the website. We will generate a press release that's
16 sort of high level, too. There were this many -- excuse
17 me -- hospitals in each of those grade levels. And,
18 also, if there were top hospitals -- and this is also
19 for ASCs. I shouldn't say it's just hospitals; it's
20 also the ambulatory surgery centers but direct them, you
21 know, for more information to go directly to LeapFrog to
22 get that information.

23 Q. And as part of the Florida Alliance's
24 relationship with The LeapFrog Group, you mentioned this
25 regional leader component, is part of the regional

1 leader component; is there a contract that governs that
2 relationship?

3 A. No.

4 Q. It's a volunteer relationship?

5 A. Yes.

6 Q. No money is exchanged, either direction, as part
7 of that relationship?

8 A. No money is exchanged. I do get reimbursed for
9 travel expenses if -- and so does Ashley, if we need to
10 leave Florida to go, you know, to a meeting. But that's
11 the only -- only exchange.

12 Q. And is there any other relationship between
13 Florida Alliance and The LeapFrog Group, other than the
14 regional leader relationship?

15 A. I serve on the board as an individual. No other
16 relationship beyond regional leader for the
17 organization. There is a data use agreement between
18 LeapFrog and the Florida Alliance, at least in the past,
19 we don't have a current data use agreement. So the last
20 year or so, LeapFrog has a new platform and a different
21 agreement came through and we've been back and forth
22 just trying to get clarification on the wording so we
23 don't have an active agreement. So right now, there's
24 nothing in force.

25 Q. To break that down a little bit, so you are

1 currently a member of the LeapFrog board of directors;
2 is that correct?

3 A. Yes.

4 Q. And your membership on the LeapFrog board of
5 directors is in the capacity -- in your individual
6 capacity; is that correct?

7 A. Yes.

8 Q. Your membership on the LeapFrog board of
9 directors is not something that's like the Florida
10 Alliance gets an automatic member on the LeapFrog board
11 of directors?

12 A. That's correct. It's because of my individual
13 experience and expertise and relationships with other
14 organizations. It's not -- it's not a Florida Alliance
15 board seat.

16 Q. Thank you. And then you mentioned the data use
17 agreement. What is the data that is at issue in that
18 agreement?

19 A. Well, Ashley knows all the details of that. I
20 would say at a kind of basic level, it would be the
21 hospital and ambulatory surgery grade data, survey data.
22 You know, I don't think there's anything else in there,
23 if you have the data use agreement and have access to
24 that data.

25 Q. And is there any fee that the Florida Alliance

1 pays The LeapFrog Group to get access to that data
2 pursuant to the data use agreements?

3 A. No.

4 MR. HVIDT: I am handing the witness what has
5 been marked as Exhibit 2.

6 (Exhibit No. 2 was marked for identification.)

7 MR. HVIDT: And Exhibit 2 was produced in this
8 litigation as FHA000045. The plaintiffs received this
9 production from the Florida Alliance on Tuesday night
10 and when we received it, the documents were identified
11 by code, like this Bates number, but they were not
12 Bates stamped.

13 Our vendor in uploading them yesterday did not
14 have time to apply the Bates stamping consistent with
15 the coding that Florida Alliance applied in the
16 document ID before we needed to print them for the
17 deposition today. So we are proceeding without Bates
18 stamped versions today for the Florida Alliance
19 productions.

20 And on the record, want to ask counsel for the
21 witness, who's also counsel for the defendant,
22 LeapFrog Group, if it's okay that we apply, insert a
23 Bates-copied version of the same document as soon as
24 one is available for purposes of the documents used
25 today that were produced by Florida Alliance?

1 MR. BILLEK: Of course.

2 THE WITNESS: May I ask what a Bates stamp is?

3 BY MR. HVIDT:

4 Q. Yes. A Bates stamp is a -- so you will see one
5 from a document produced by LeapFrog Group later. And
6 it is at the bottom right-hand corner of the document
7 and it simply is a coding where it's -- the code I read
8 in FHA0045, it would simply say that on that first page
9 and then the next page would go to 46.

10 A. Okay.

11 Q. And it's meant for evidentiary purposes so that
12 when we're talking about a document, we know that we're
13 all talking about the same thing.

14 MR. BILLEK: So it's like a page number that we
15 stamp on when we give it over.

16 THE WITNESS: Okay. Thank you.

17 BY MR. HVIDT:

18 Q. You're welcome.

19 A. So Bates must have been an important person, I
20 guess.

21 MR. BILLEK: Exactly.

22 THE WITNESS: At some point.

23 MR. HVIDT: I have handed the witness
24 Exhibit 2.

25 BY MR. HVIDT:

1 Q. Dr. van Caulil, have you seen this document
2 before?

3 A. Yes.

4 Q. And what is this document?

5 A. So this is the slide deck that was used for our
6 annual meeting of the board of directors in March. That
7 was our 41st annual board of directors meeting.

8 Q. And does the Florida Alliance have a process for
9 saving documents in the ordinary course of business?

10 A. Yes.

11 Q. And as far as you're aware, was this document
12 pulled from that process, that computer server that
13 saved this document in the ordinary course?

14 A. I was not involved in pulling the documents at
15 the request. So I don't know whether this came off of
16 our server or whether that was something that was just
17 directly turned over. Sorry, I don't. I don't know.

18 Q. Do you have any reason to doubt that this
19 document is an accurate reflection of the document that
20 was presented to the board of directors on March 4 of
21 2025?

22 A. Well, if I could just flip through quickly, I
23 could answer that question.

24 Q. Please go ahead.

25 A. Thank you.

1 THE VIDEOGRAPHER: The microphone.

2 THE WITNESS: I'm sorry. Didn't mean to do
3 that.

4 I don't have any reason to doubt that this
5 document is an accurate reflection of what was
6 presented.

7 BY MR. HVIDT:

8 Q. And was this document prepared in the ordinary
9 course of business?

10 A. Yes.

11 Q. And did you have a role in creating this
12 document?

13 A. Yes.

14 Q. And if you flip to page 2, do you see where it
15 says, Today's agenda?

16 A. Yes.

17 Q. And you see the first item on the agenda is a
18 call to order, welcome and overview?

19 A. Yes.

20 Q. And do you see your name there listed as the
21 president and CEO?

22 A. Yes.

23 Q. If we could flip to page 4 where the -- where the
24 title of the page is Florida Alliance Staff. Do you see
25 that?

1 A. Yes.

2 Q. And it lists your name there at the top.

3 Correct?

4 A. Yes.

5 Q. And then earlier today, you mentioned Ashley
6 Tait-Dinger. Do you recall that?

7 A. Yes.

8 Q. And is her name listed there as the vice
9 president?

10 A. Yes.

11 Q. And what is her role for Florida Alliance?

12 A. So as you can see, we're a small staff. In fact,
13 Jack Mahoney has subsequently retired, so it's just the
14 four of us. So if you're familiar with running a
15 nonprofit organization, everybody wears multiple hats to
16 be able to execute on the mission and actually be a
17 viable, sustainable organization.

18 Ashley's responsibilities are regional leader
19 responsibilities. She does our financial work and
20 compliance and insurance and sort of the business of
21 running the business, I would say. She is a very
22 technical person, so she does IT and data. So those are
23 her primary responsibilities. But if I'm unable to
24 attend a meeting or run a meeting, she could get called
25 on to do that.

1 I could say those are her primary
2 responsibilities. But -- and, as I said, as a small
3 organization, it's -- you know, other duties as
4 assigned. Happens pretty frequently, so...

5 Q. You mentioned one of Ashley's responsibilities is
6 as regional leader responsibilities. When you were
7 referring to regional leader responsibilities, those are
8 The LeapFrog Group regional leader responsibilities; is
9 that correct?

10 A. Yes.

11 Q. And looking at this list of the Florida Alliance
12 staff, below Ashley's name is Lisa Hain. Is that how
13 you pronounce it?

14 A. Yes.

15 Q. And what is Lisa Hain's role?

16 A. So she provides support to all of our team in
17 terms of scheduling meetings. She -- so she keeps my
18 calendar in particular. She facilitates the
19 correspondence between the board and the Florida
20 Alliance and with our members. She maintains the
21 website. She may, you know, at times work on the weekly
22 bulletin if I need her to look something up or find a
23 link. So she is administrative only. She's not project
24 management at all.

25 Q. And one of her roles you mentioned was

1 facilitating correspondence. Does she initiate
2 correspondence on behalf of Florida Alliance on her own
3 with members?

4 A. No.

5 Q. And so if she's sending a correspondence to a
6 Florida Alliance member, is that either because you or
7 Ashley directed her to do so?

8 A. Yes. Or on my behalf. So I should clarify to
9 say, you know, a lot of the letters that we do only need
10 to be updated or, you know, slightly amended. She'll
11 pull up out of the records the most recent version of a
12 document and do a preliminary updating or I'll direct
13 her or Ashley will direct her. Well, that same
14 correspondence needs to go to this party, you know, to
15 do that. So she doesn't do content-related generation
16 of a document.

17 Q. Understood. So she might send a document on --
18 an e-mail on your behalf; is that correct?

19 A. Yes. She will do that.

20 Q. Do -- consistent with that, does Lisa Hain -- or
21 Hain report to you?

22 A. Yes, she does.

23 Q. Does Ashley Tait-Dinger report to you?

24 A. Yes.

25 Q. If we could flip now to page 8. The title of the

1 page is Board of Directors 2025 to 2026.

2 A. Um-hmm.

3 Q. Please let me know when you're at that page.

4 A. I am.

5 Q. Is this the current Florida Alliance board of
6 directors?

7 A. Yes.

8 Q. And other than you listed there, are these
9 individuals all representatives from Florida employers?

10 A. Yes.

11 Q. And if you could, who is Kenneth Aldridge?

12 A. So he is the director of health services at Rosen
13 Hotels & Resorts. He also serves as our secretary and
14 treasurer on the board.

15 Q. And do you know -- do you know how many Florida
16 employees Rosen Hotels & Resorts has?

17 A. I don't have the actual number of employees, but
18 I think it's in the four to 5,000 range.

19 Q. And then can you tell me a little bit about Beth
20 Curran?

21 A. Yes. So she is the senior director of risk
22 management for Orange County Public Schools. She's also
23 the compliance officer on the board.

24 Q. And do you know how many employees approximately
25 Orange County Public Schools has?

1 A. Again, I don't have the number of employees. And
2 the reason that I don't, there's a couple reasons. We
3 have 80 employer members, so I don't have those numbers,
4 and they fluctuate. But sometimes that gets conflated
5 with covered lives in this world that we work in of
6 benefits. So I do know that Orange County Public
7 Schools probably has 32,000 covered lives. I think that
8 employee number is in the twenties. But that's just
9 ballpark.

10 Q. And the reason that covered lives might exceed
11 the number of employees is because some -- an employee
12 might have dependents that are included in the health
13 plan; is that correct?

14 A. Yes. And sometimes they have retirees.

15 Q. And so let's continue to use the phrase covered
16 lives moving forward as I try to communicate about this.
17 So going back to Rosen Hotels, do you have an
18 understanding of -- an estimate of how many covered
19 lives Rosen Hotels & Resorts has?

20 A. No. Let me explain why it would be better to
21 stick with an employee ballpark because our dues that
22 the members pay are on a sliding fee scale based on
23 their number of Florida employees.

24 I do know about Orange County Public Schools
25 covered lives because I've been in meetings where that

1 has come up. So I -- you know, again, I don't have
2 specifics on any of them, so I'm going to be giving you
3 my best guess as we go down -- down the line here.

4 Q. I appreciate that. Thank you. And it's possible
5 that the number of covered lives under Rosen
6 Hotels & Resorts exceeds the four to 5,000 estimate of
7 number of employees that it has; is that correct?

8 A. It's possible. I don't know if all of their --
9 they call them associates, their employees are eligible
10 for benefits in the hotel industry. There might be
11 part-time people not eligible. So I wouldn't say it's a
12 definite that -- it varies from industry to industry.
13 So I don't know the answer to that.

14 Q. Thank you.

15 And then can you tell me about Jair Espinosa?

16 A. Jair.

17 Q. Thank you.

18 A. Jair Espinosa is -- I don't know whether it's
19 benefits director or benefits manager at the City of
20 Miami. I honestly couldn't guess at this point how many
21 employees they have. They're not a very, very large
22 organization. So it's probably 2,000 if I were to
23 guess, but I don't feel comfortable guessing, so...

24 Q. And can you tell me about Sara Holtzman DeMarino?

25 A. Yes. So LYNX is Central Florida transit

1 authority. She is in a wellness, well-being position
2 there. I don't -- off the top of my head, I don't
3 know -- anticipating your next question on lives or
4 employees -- I don't -- I don't know.

5 Q. Appreciate that. Just for purposes of creating a
6 record, if we could -- I know that it's clear where I'm
7 going with my next question. But if -- just with your
8 counsel's permission, if we could stick with the
9 question asked and then to establish the record, that
10 would be helpful. I'll try to be as efficient as
11 possible.

12 A. Okay.

13 Q. And so to be clear, you do not know how many
14 employees or covered lives LYNX has; is that correct?

15 A. That's correct. I'm not comfortable guessing.

16 Q. And can you tell me a little bit about Dawn Hunt?

17 A. Sure. She leads benefits for MarineMax. They're
18 a national, if not global, company. But they are
19 headquartered here in Florida.

20 Q. And do you know how many Florida covered lives or
21 employees MarineMax has?

22 A. It's right around the 2,000 employee mark.

23 Q. And can you tell me about Stephanie Koch, Koch
24 (pronouncing)?

25 A. Koch.

1 Q. Koch. Third try.

2 A. Stephanie is the director of HR, human resources
3 for Hendry Marine Industries. She is the vice chair of
4 our board. And Hendry Marine has 400 employees.

5 Q. Can you tell me a little bit about Susan McBroom?

6 A. Susan is also the head of human resources in her
7 position at Patriot Rail. They are also a smaller
8 employer within Florida, probably three to 400 or a
9 couple -- I'll just say 300, ballpark, employees.

10 Q. And can you tell me about Rosa Novo and any
11 understanding of how many Florida employees or covered
12 lives Miami-Dade County Public Schools has?

13 A. Sure. So Rosa is our board chair. And her title
14 is administrative benefits director for the district.
15 They are the largest school district in the state of
16 Florida, third largest in the country. As far as
17 covered lives, it's in the 50,000 mark.

18 I don't have an updated number for the school
19 districts because this year there's been a loss of the
20 number of students and staff for a variety of reasons
21 across the state. So that's the most recent number that
22 I've heard.

23 Q. Thank you. And then lastly, can you tell me a
24 little bit about Mark Weinstein and any understanding of
25 how many Florida covered lives or employees ICUBA has?

1 A. Um-hmm. So Mark Weinstein is the CEO of ICUBA
2 and that is Independent Colleges and Universities
3 Benefits Association. They're a little bit different
4 than the other employer representatives on the board in
5 that they're a multiple-employer welfare arrangement.
6 And the short version of that is called a MEWA. So they
7 have, I believe, 25 private educational institutions
8 that come together in this MEWA to purchase healthcare
9 services. And they do that through ICUBA. I believe
10 there's about 15,000 employees in all of these different
11 private schools.

12 Q. And for the private educational institutions
13 within ICUBA, are those all Florida private
14 universities?

15 A. Yes. They're all located in Florida.

16 Q. Do you know if any of them are located in the
17 Palm Beach County area?

18 A. No. I don't know for sure. But it's possible.
19 They have schools in South Florida, Orlando and Tampa
20 predominantly. But I can't think of any that are
21 specifically in Palm Beach County. Nova Southeastern
22 University is one of their members, and I don't know
23 that they have a campus there.

24 Q. Thank you. Understanding that these were
25 estimates that you were able to provide here today, I've

1 been adding that all up, and so between Rosen
2 Hotels & Resorts, four to 5,000 employees; Orange County
3 Public Schools, 32,000 covered lives, the City of
4 Miami's estimated 2,000 employees; not knowing the
5 number with LYNX; the 2,000 MarineMax; the 400 employees
6 with Hendry Marine Industries; the three to 400 with
7 Patriot Rail; the approximately 50,000 with Miami-Dade
8 County schools, understanding that there's been some
9 changes within that; and the approximately 15,000 among
10 the 25 private educational institutions within ICUBA,
11 that adds up to just over 100,000 Florida employees
12 covered by the -- represented by the employers on your
13 board of directors; is that fair to say?

14 MR. BILLEK: Object to form.

15 You can answer. You can answer.

16 THE WITNESS: I -- we have a mix of employees
17 and covered lives in that calculation, so it's not all
18 apples and apples.

19 BY MR. HVIDT:

20 Q. Understanding that to be the case, do you --
21 understanding that there are some of those numbers that
22 are employees and some of those numbers that are covered
23 lives, if you add up the employees and the covered lives
24 as you've testified today where you've known those
25 numbers or estimated those numbers, do you -- is that

1 a -- adding those numbers all up, is that -- does that
2 sound right to you?

3 MR. BILLEK: Object to form.

4 You can answer.

5 THE WITNESS: Well, I didn't add them up. If
6 you added them up and that's the total that you got,
7 that sounds about right. I did not -- I don't have a
8 calculator in front of me and I didn't do a running
9 tally. It doesn't sound out of line.

10 BY MR. HVIDT:

11 Q. Flipping to page 13, where it says at the top,
12 2024 by the numbers, do you see that?

13 A. Yes.

14 Q. Do you see where it says that you have 87
15 employer members?

16 A. Yes. This was 20 -- from the 2024 annual report.
17 Yes.

18 Q. Do you know how many employer members you have
19 sitting here today?

20 A. It's just over 80. The difference between the 87
21 and the 82 is largely because there were banks that also
22 are another MEWA under the Florida Bankers Health
23 Consortium that merged or were taken over by other
24 banks, so it's attributed primarily to that.

25 Q. Do you know approximately how many Florida

1 covered lives are under that -- under your employer
2 membership?

3 A. We haven't done an update of that in a while and
4 need to. Over the years, it's been, you know, about
5 300,000, 400,000. What has complicated that calculation
6 is that sometimes the employers will send all of the
7 lives in all of their markets and all of their states
8 and will have to go back and forth on that. So I have
9 held back on publishing any number because I don't want
10 to have apples and oranges. And we've actually had
11 discussions about, well, should we -- should we ask
12 covered lives, rather than employees? Should we say
13 anywhere, not just Florida? So we haven't landed on a
14 final decision on that. But it is a significant number
15 of employees/lives that are represented by the 80-plus
16 employer members.

17 Q. And for your 80-plus employer members, do you
18 know how many employees are included within that?

19 A. No, that would be part of that update.

20 Q. So the answer as it relates to employees would be
21 similar to the -- the same as the answer you gave to the
22 question about how many covered lives there are within
23 the employer members; is that correct?

24 A. That's correct. I wish I had the specifics, but
25 it has -- seems like it should be a pretty

1 straightforward ask and answer, but it doesn't always
2 come back that way. So -- and as I mentioned
3 previously, some employers, based on the industry, not
4 every employee is eligible for benefits. Some have
5 dependents. Some have retirees. So that also
6 unfortunately complicates the calculation. So we -- we
7 try.

8 Q. Understanding that the number is difficult to
9 calculate, you mentioned earlier that the last estimate
10 you were aware of was around 300 to 400,000 Florida
11 covered lives; is that correct?

12 A. That's correct. But that's probably four or five
13 years ago.

14 Q. Do you think that that number has increased?

15 A. I think it's probably not vastly different for a
16 few reasons. I mean, we've had additional employer
17 members but also workforce size has also gone down in
18 some instances. So, you know, there are gains and
19 losses in different -- different members. So I feel
20 comfortable with that as a ballpark.

21 Q. If you could flip to the next page, do you see
22 where it says, Employer Members?

23 A. Yes.

24 Q. And then if you flip to the next page, does this
25 page represent the logos of the employer members that

1 granted you permission to use their logos on the page?

2 A. Yes.

3 Q. And then I believe that this page number I'm
4 going to flip to is towards the back of the document.
5 And so we'll take time to get there. But if you could
6 flip to the page that is 2025 Plan of Work.

7 A. Okay.

8 Q. It's page 38 of the PDF.

9 A. Oh, must have just passed it.

10 I have it.

11 Q. Thank you. Do you see where the top of the slide
12 reads, 2025 Plan of Work?

13 A. Yes.

14 Q. And is the plan of work a high-level summary of
15 the things that Florida Alliance is going to be doing in
16 the year 2025?

17 A. Yes. It's a high-level list of what we hope to
18 be able to work on. It is a mix of what we've secured,
19 if there's a grant, perhaps, project funding that we
20 might be seeking. So it basically covers the high-level
21 description of the projects.

22 Q. And if you look at the second bullet there, do
23 you see where it says, LeapFrog regional leader
24 activities/employer action reports?

25 A. Yes.

1 Q. And are the LeapFrog regional leader activities
2 consistent with those that we talked about earlier?

3 A. Yes.

4 Q. And what are employer action reports?

5 A. So we haven't been able to work on those yet
6 because we do not have a data use agreement. And that
7 is in LeapFrog's court right now and they've been busy
8 of late. And that would give us permission to create,
9 for the employers at their request, reports that could
10 use some of the LeapFrog survey and grade data alongside
11 other data. Fair price-related activities that you
12 could see later on the list.

13 And so in the back and forth on the data use
14 agreement, we're trying to get permission to show
15 LeapFrog results and, also, other -- other sources of
16 data. And that hasn't -- process has not been
17 completed. So we haven't done -- we haven't done that.
18 But that would be for the employers as they're figuring
19 out their changes they might have in networks and their
20 benefit design. A lot of them have been looking at
21 direct contracting. For example, you can see that also
22 on the list. They would ask us for information and we
23 haven't -- we haven't done an employer action report in
24 several -- several years. But the board members had
25 suggested that that would be useful.

1 Q. When was the last year that you did an employer
2 action report, if you can recall?

3 A. Well, that was one of the questions that I asked
4 Ashley because I couldn't recall and she said it's
5 probably January of 2020, she said, preCOVID.

6 Q. When you say that employers are looking into
7 direct contracting, what is direct contracting?

8 A. So they -- there's a bunch of different ways to
9 do direct contracting. But they could work with the
10 health plan, the carrier, the TPA, whatever phrase they
11 use who administers their health plan to carve out a
12 particular center of excellence as an example. Or they
13 may hire a separate third-party administrator to have a
14 relationship, not just with a hospital, it could be with
15 independent physicians for specific services.

16 Oftentimes it is to, you know, get a better deal
17 on the cost that they're paying, but they want to make
18 sure that these are providers who are doing a good job,
19 have good outcomes. So they do their due diligence to
20 determine that that's an appropriate strategy for
21 driving value in their health plan.

22 We have members who might direct contract for
23 home health services, for infusion services. It's such
24 a variety.

25 Q. And one example of direct contracting that you

1 mentioned is if an employee wants to carve out a
2 particular center of excellence, did I get that right?

3 A. They may have a direct contract with a center of
4 excellence, yeah. It could be carved in, it could be
5 carved out.

6 Q. And does a center for excellence there refer to a
7 particular hospital or health system?

8 A. It could. But it could also be an outpatient.
9 It could be community oncologists. The term center of
10 excellence is used pretty -- pretty broadly. A lot of
11 health -- you know, healthcare systems say they're a
12 center of excellence for oncology or cardiac, so it
13 really does depend on what the organization is referring
14 to for themselves. But what the employers, when they
15 say a center of excellence, this is a provider who, from
16 their due diligence, has been able to have good
17 outcomes, has -- if applicable to LeapFrog in
18 particular, you know, they have done well in terms of
19 achieving, you know, in the survey results or the grade
20 results, but they certainly look at a lot of other --
21 other data.

22 So excellence has a lot wrapped into it. It's
23 price, it's quality, it's patient safety, it's equity.
24 So...

25 Q. And so it's possible -- some of them -- some of

1 your employer members are looking into direct
2 contracting; is that correct?

3 A. Yes.

4 Q. And one mechanism you can build into a direct
5 contract, if you're an employer, is you might get a
6 better deal by directing from a particular provider by
7 directing your employees to that provider; is that fair?

8 A. Yes. It usually has an element of a volume
9 expectation.

10 Q. And Florida Alliance is looking to create
11 employer action reports that use LeapFrog survey and
12 grading data to help facilitate its Florida members'
13 efforts into potentially direct contracting with
14 providers; is that correct?

15 A. Yes. That's one of the reasons that an employer
16 member would want that information.

17 Q. Thank you.

18 MR. HVIDT: We've been going about an hour.
19 Would you like to take a break, go off the record for
20 a minute?

21 THE WITNESS: I'm fine to keep going. It's up
22 to you.

23 MR. HVIDT: Are you okay?

24 THE COURT REPORTER: I'm fine, thanks.

25 MR. HVIDT: I'm happy to keep going if you're

1 okay. I just wanted to be mindful of that.

2 THE WITNESS: Thank you.

3 BY MR. HVIDT:

4 Q. You can set that document to the side.

5 A. Thank you.

6 Q. Earlier, we were talking about how Florida
7 Alliance is LeapFrog's regional leader; is that correct?

8 A. Yes.

9 Q. And do you understand what LeapFrog's goal is in
10 having regional leaders?

11 A. Yes. I think that the goal is to have boots on
12 the ground in the various states and regions of the
13 state who have relationships with employers and
14 healthcare purchasers to be able to reach out to the
15 hospitals they have relationships with and ambulatory
16 surgery centers, and they would be -- the regional
17 leader organizations would presumably be more familiar
18 with the market. And that helps LeapFrog with their
19 mission.

20 Q. Is one of the goals of LeapFrog's relationship
21 with the regional leaders to increase hospital
22 participation in the LeapFrog hospital survey?

23 A. Yes. Because, you know, our mission certainly
24 syncs with LeapFrog's mission to promote transparency.
25 And so having all of the hospitals, all of the

1 ambulatory surgery centers in the state fully respond to
2 their respective surveys would be the ultimate goal.

3 Q. You say that part of Florida Alliance's goal --
4 mission is to promote transparency. Is that correct?

5 A. Yes.

6 Q. Do you also ask for transparency from LeapFrog?

7 A. I don't know that we've explicitly had to ask
8 LeapFrog because they've been transparent about, you
9 know, how the -- you know, the hospitals and the
10 ambulatory surgery centers are asked to participate, the
11 process for submitting the data. They publish their
12 methodology. I won't speak for Ashley Tait-Dinger but
13 she's very active, I know from hearing from others on
14 the regional leader calls. If she has questions about
15 anything, she has never said that there was any pushback
16 or refusal to answer any questions she might have.

17 So I would say that, you know, our relationship
18 with LeapFrog has been, you know, very clear and any
19 questions, if we did have them, were always answered.
20 But, you know, methodology specifics would have to go to
21 the website and look at them specifically. I could not
22 tell you off the top of my head about the complexity of
23 that.

24 Q. I am handing you what's been marked as Exhibit 3
25 to your deposition.

1 (Exhibit No. 3 was marked for identification.)

2 BY MR. HVIDT:

3 Q. The -- Exhibit 3 has been produced in this
4 litigation as LEAPFROG00401485. And it is the 2025
5 regional leader communications toolkit launching
6 LeapFrog surveys.

7 Do you see that?

8 A. I do.

9 Q. Have you seen this document before?

10 A. I have not. If I could just flip through it,
11 there may be pieces of it I have seen. This would be a
12 document that would go to Ashley.

13 Yeah, this is not a document that would have been
14 sent to me personally. This would be the toolkit that
15 the representatives at the regional leader organizations
16 would use to -- I assume to guide the process. And
17 we've been involved with LeapFrog since 2002 as an
18 organization, and Ashley's worked on LeapFrog as her
19 responsibility -- she's probably been with the
20 organization 12 years, so I have full confidence in her,
21 in carrying out those duties.

22 Q. And Florida Alliance is one of LeapFrog's
23 regional leaders; is that correct?

24 A. Florida Alliance is the regional leader for
25 Florida for LeapFrog.

1 Q. And Ashley works for Florida Alliance; is that
2 correct?

3 A. That's correct. She's the vice president, as we
4 discussed earlier.

5 Q. And looking at this cover page to this document,
6 it is described as the communications toolkit for
7 regional leaders. Do you see that?

8 A. Yes.

9 Q. And if we go to the next page, you look down at
10 the last paragraph, see that the first sentence there,
11 do you see where it says, The 2025 communications
12 toolkit offers you instructions for launching the
13 LeapFrog Hospital survey and the LeapFrog ASC survey in
14 your region, focusing on the critical initial
15 communication you carry out, to encourage hospital and
16 ASC participation.

17 Do you see that?

18 A. Yes.

19 Q. Do you have any understanding whether Ashley and
20 Florida Alliance follows the communications toolkit that
21 LeapFrog provides?

22 A. I don't know if every item that's in here is
23 something that she does. I -- I don't know the answer.

24 Q. Do you know if she follows it generally?

25 A. I would have to assume, yes. There isn't -- as

1 we talked about earlier, there isn't a contract or an
2 agreement that says you will do this at this time in
3 this way. There's nothing like that. This is a
4 volunteer activity. And I believe I also said earlier
5 that my understanding is the regional leader
6 organizations do different levels of activity. I'm sure
7 it's a bandwidth issue with different organizations.
8 We're small, some are smaller than we are.

9 So I don't think this is a -- my best guess would
10 be that this is not a document that there's an
11 expectation that everybody is doing every single thing
12 in here. It's a guide.

13 Q. And would you agree that LeapFrog is providing
14 its regional leaders with this guide in hopes that they
15 follow it?

16 A. I'm sure they would like the regional leaders to
17 follow the guide.

18 MR. BILLEK: Just note my belated objection to
19 the form of the question.

20 BY MR. HVIDT:

21 Q. If you could flip to page 4 of this document,
22 which ends in 488 on the Bates stamp. Do you see where
23 it says, Step by step how to launch the LeapFrog
24 hospital survey and LeapFrog ASC survey in your market?

25 A. Yes.

1 Q. And then do you see that this slide, this page
2 and the next, provide a numerical list of recommended
3 action items to encourage participation in the survey?

4 A. From a quick scan, yes. But I haven't read all
5 of these to know what all those steps are.

6 Q. Understand. And then if you look at item 1, it
7 says, To get members and hospitals and ACSs excited
8 about the 2025 surveys.

9 Do you see that?

10 A. Yes.

11 Q. And then step 2 references, Personalizing
12 template letters asking hospitals to participate.

13 Do you see that?

14 A. Oh, down 2 -- yes. I see it now.

15 Q. And then if you look down to 4, it says, Send
16 hospitals letters by mail or e-mail no earlier than
17 March 30th but no later than April 30th.

18 A. Yes.

19 Q. And then if you go over to step 5, it says,
20 Follow up with those who have not responded.

21 Do you see that?

22 A. Yes.

23 Q. Is it fair to say that LeapFrog is encouraging
24 that regional leaders take multiple -- communicate
25 multiple times with hospitals or ACSs to encourage them

1 to participate in a given year?

2 A. Yes.

3 Q. Do you have any understanding from your role on
4 the LeapFrog board of directors that participation in
5 the surveys, the more there is, the better it is for
6 LeapFrog's finances?

7 MR. BILLEK: Object to form. You can answer.

8 THE WITNESS: The hospitals and ACSs do not pay
9 to participate in the survey. So answering it from my
10 role on the board, that's not a correct -- that's not
11 a correct question. There is not a financial line
12 item related to survey participation.

13 BY MR. HVIDT:

14 Q. So while the hospitals don't pay to participate
15 in the survey, does the increase in the number of
16 hospitals that participate in the survey impact the
17 licensing revenue that LeapFrog is able to achieve?

18 A. So I really don't know much about the licensing
19 revenue. I believe that's to be able to use the data.
20 Is that -- is that what the licensing revenue is that
21 you're referring to?

22 Q. The licensing that I was referring to there is
23 the licensing of the survey responses that hospitals
24 provide LeapFrog in participating in the survey.

25 But then moving on, do you have any understanding

1 whether the number of hospitals that participate in this
2 survey, if it increases, leads to a directional increase
3 in the number of accolades, subscriptions that LeapFrog
4 is able to get from hospitals?

5 A. So it would follow that the pool of potential
6 hospitals that could -- going back to your other
7 question -- pay to receive the results and/or pay the
8 accolade fee -- and I don't know how much either of
9 those are -- if that pool is greater, then I would agree
10 that that, you know, stands to be advantageous for
11 LeapFrog. That's not a discussion that I've been a
12 party to at any time. I wouldn't -- you know, I would
13 assume that makes sense. If there's more -- more
14 hospitals participating, then there's more hospitals who
15 might be interested in the data and might be interested
16 in participating in that accolade program.

17 Q. Flipping to slide -- page 7 of Exhibit 3, ending
18 in Bates number 491, do you see where it says, Best
19 practices used by regional leaders?

20 A. Yes.

21 Q. And the first item there bulleted under,
22 Launching the LeapFrog surveys in your community, do you
23 see where it says, Engage employers with purchasing
24 power to influence hospital decision-making based on
25 hospital survey participation?

1 A. Yes.

2 Q. Do you have an understanding why LeapFrog is
3 recommending that regional leaders engage employers with
4 purchasing power?

5 A. So all employers have purchasing power. It's
6 their second largest line item, healthcare is, and
7 hospital services are a significant portion of that.

8 So do I have an understanding why LeapFrog is
9 recommending engaging employers with purchasing power?
10 Well, my understanding, notwithstanding LeapFrog's
11 recommendation, is that all employers should be engaged,
12 you know, in speaking to, you know, the hospitals and
13 other providers in their markets about being transparent
14 with their price and their quality and their patient
15 safety.

16 And so I don't know how to answer the question on
17 any understanding why LeapFrog is recommending it. I
18 think it's broader than that. I think it's engage
19 employers across the board to be able to be more active
20 purchasers of healthcare, to insist upon transparency,
21 to be able to get their own data. This is not just an
22 issue that's with LeapFrog and the employers. They're
23 challenged by getting data from the PBMs, from the
24 health plans, their own data, if you will, their claims.

25 So one of the things that we do, not just as a

1 regional leader, but, you know, for our members, is to
2 get them to be more active. They do wield influence in
3 the market, especially, you know, if they're a
4 significant size. But collectively, through the Florida
5 Alliance, and you saw that we have smaller employer
6 members, can all sit down together and have a respectful
7 conversation with a hospital or a health plan or a PBM
8 and lay out expectations and hopes.

9 So, sorry I'm not answering directly, but I think
10 the premise of LeapFrog is to engage employers.
11 Employers started LeapFrog.

12 THE VIDEOGRAPHER: Counsel, can we take a small
13 break for the video change?

14 MR. HVIDT: Yeah.

15 MR. BILLEK: Absolutely.

16 THE VIDEOGRAPHER: We are off the record at
17 10:36 a.m.

18 (A brief recess was taken.)

19 THE VIDEOGRAPHER: We are on the record at
20 10:44 a.m.

21 BY MR. HVIDT:

22 Q. Counsel, are employers purchasers of healthcare?

23 A. You said counsel, so --

24 Q. Sorry. Strike that. Thank you.

25 MR. BILLEK: I'm happy to answer.

1 MR. HVIDT: Thank you, Counsel.

2 BY MR. HVIDT:

3 Q. Dr. van Caulil, are employers purchasers of
4 healthcare?

5 A. Yes.

6 Q. And do they purchase -- can they purchase that
7 healthcare from hospitals?

8 A. Yes.

9 Q. And so are employers directly and indirectly
10 customers of hospitals?

11 A. I've never heard the term customers used in that
12 exchange. They are paying the bill on behalf of their
13 plan members. So I guess -- I guess you could call that
14 a customer. Not familiar with using that term in our
15 world here.

16 Q. Looking down at the third bullet here back on
17 Exhibit 3 on page 7, do you see where it says, Meet with
18 local media?

19 A. Yes.

20 Q. And in that bullet, do you see the last sentence
21 there where it says, Encourage them to call attention to
22 the hospitals and ACSs that decline to respond to your
23 request for survey participation?

24 Do you see that?

25 A. Yes.

1 Q. What do you interpret that sentence to mean?

2 A. That the regional leaders, I guess, should
3 consider engaging with media to encourage full
4 participation in the survey. We don't do this. We
5 don't -- we don't work with the media on any kind of
6 issues on a regular basis.

7 Q. Can you flip to the next page, please. Do you
8 see where it says on page 8, on Bates number ending in
9 1492, Ideas for encouraging nonrespondents to the
10 LeapFrog surveys?

11 A. I see it.

12 Q. And do you see in the bolded underlined section
13 where it references, Common objections?

14 A. Yes.

15 Q. Have you ever encouraged hospitals -- you in your
16 individual capacity, encouraged hospitals to participate
17 in the LeapFrog hospital survey?

18 A. Me individually? No, not -- not as a rule. I
19 have been in meetings with hospitals that haven't --
20 well, let me rephrase. I'm sorry, I guess I have to
21 think this through, so strike what I said. So --

22 Q. Would you like me to reask the question?

23 A. Yeah. Please reask it. I thought of a couple of
24 instances that could probably be applicable.

25 Q. In your individual capacity, have you ever

1 encouraged hospitals to participate in the LeapFrog
2 hospital survey?

3 A. Yes. There was a period of time where the HCA
4 hospitals in Florida declined to respond. I think it
5 was in two -- two cycles. And there are 47 HCA
6 hospitals in the state, so that was a significant gap in
7 transparency for us because they had fully participated
8 for years and years and been very active in terms of
9 working with LeapFrog. And they declined to respond
10 because there were some new measures that were added a
11 few years ago, couple years ago.

12 And I did send letters to the CEOs of those
13 hospitals and asked them to please consider responding
14 to the survey again, that it was very important for the
15 Florida Alliance employer members for them to do so, and
16 if they needed to skip those questions, that would be up
17 to them. But please not to completely, you know,
18 nonrespond.

19 So in that individual capacity, yes. We had --
20 we had a meeting, I don't know, a year or more ago with
21 one of the hospitals in South Florida that either they
22 weren't responding at all or perhaps not fully. And in
23 that meeting, I said basically the same thing that I
24 just mentioned with HCA and that was that, you know, we
25 would encourage them -- you know, we -- we, on behalf of

1 the employer members, really want to promote
2 transparency.

3 So because I've not read this regional leader
4 book, you know, our encouraging in Florida as regional
5 leader is pretty much limited to issuing those letters
6 that I mentioned a while ago, you know, please respond,
7 and sending them to LeapFrog. I don't believe we do any
8 kind of follow-up if they haven't responded. We
9 certainly don't engage the media to call anybody out.
10 But we do have conversations in meetings with the
11 hospitals around LeapFrog participation.

12 Q. For the conversation with the hospital in South
13 Florida where they weren't responding to the survey, did
14 they provide to you a reason why they don't participate
15 in the survey?

16 A. Yes. And I think it was for certain questions.
17 I don't think it was for the entire survey. But I don't
18 recall exactly. But it boiled down to not enough
19 bandwidth in the staff, that it was a heavy lift for
20 them.

21 Q. And aside from the HCA dynamic and that one
22 Florida -- South Florida hospital, do you have any other
23 recollection sitting here today of your individual
24 encouragement of hospitals to participate in the survey?

25 A. Well, I signed the letters, you know, for many

1 years that would go to them. I haven't signed them in
2 the last couple of years. Nothing -- nothing else comes
3 to mind that would be me, Karen van Caulil, you know,
4 having a discussion or a letter.

5 Q. Does the Florida Alliance receive objections from
6 nonrespondents to the survey as to why they're not
7 responding? Now I'm asking the question not as to you
8 individually but the Florida Alliance in its reach-outs
9 to hospitals to encourage them to participate.

10 A. I'm rereading your question. Does the Florida
11 Alliance receive objections from nonrespondents to the
12 survey as to why they're not responding? I don't
13 understand the question.

14 Q. Does Florida Alliance when it reaches out to
15 hospitals to encourage them to participate, does the
16 Florida Alliance receive reasons from those hospitals as
17 to why they're not responding to the survey?

18 A. You know, I think that Ashley sends something
19 that's like your intention to participate or not. I --
20 I -- we don't ever talk about whether she gets anything
21 back because I think that the form says, you know, and
22 why not, if you're not. But I don't have direct
23 knowledge of that. But I think there is a vehicle for
24 receiving that information.

25 I can tell you that one instance comes to mind

1 when she had sent a letter to one of the hospitals that
2 was really obliterated in a hurricane up in the
3 Panhandle and somebody got back and said, we're closed,
4 you know, until we can get back up and running, so take
5 us off the list. So I think that's an extreme example,
6 but that one comes to mind. So that tells me there's a
7 vehicle for that communication.

8 Q. You can set that document to the side for now.

9 How did you first hear of the LeapFrog Group?

10 A. I think that I probably first heard about it when
11 I was interviewing for the position and wasn't familiar
12 with it. So that would have been 14-plus years ago,
13 probably during the interview process. That would be in
14 2011.

15 Q. And when you say you first heard about it when
16 you were interviewing for the position, that's the
17 position as the CEO and president of the Florida
18 Alliance; is that correct?

19 A. Correct. At the time called the Florida
20 Healthcare Coalition, yes.

21 Q. And --

22 MR. BILLEK: Central Florida.

23 THE WITNESS: Well, let me --

24 MR. BILLEK: Oh, no. I didn't mean to open up
25 a can of worms.

1 THE WITNESS: No, no, no. So just to clarify,
2 because it is confusing. So the legal name is Central
3 Florida Healthcare Coalition. We have the d/b/a of
4 Florida Healthcare Coalition and a d/b/a Florida
5 Alliance for Healthcare Value. When I joined the
6 organization, it was called the Florida Healthcare
7 Coalition.

8 MR. BILLEK: My apologies.

9 BY MR. HVIDT:

10 Q. Thank you.

11 You -- we talked earlier about how you are a
12 member of the board of directors of LeapFrog; is that
13 correct?

14 A. Correct.

15 Q. And when did you join the board?

16 A. September 2023.

17 Q. Were you invited to join the board?

18 A. Yes.

19 Q. Who were you invited by?

20 A. The nominating committee chair, and I can't
21 remember who it was at the time. And Leah.

22 Q. And who's Leah?

23 A. Leah Binder is the CEO of LeapFrog.

24 Q. Before you were invited in part by her to the
25 LeapFrog board, did you have a preexisting relationship

1 with her?

2 A. Yes. I've known Leah for probably the majority
3 of the time that I've been with the Florida Alliance.
4 We've served on committees and other boards together and
5 certainly knew of her from our work as a regional
6 leader. So I -- so I guess the shorter answer is, I
7 knew Leah. We have worked together.

8 Q. Were you aware whether there are any requirements
9 to be a board member of LeapFrog?

10 A. I serve on the nominating committee now. And the
11 way that board members are identified or potential board
12 members are identified is by looking at skill sets and
13 experience and expertise that would be helpful in having
14 strategic discussions about LeapFrog. So I'm not aware
15 of any specific requirements or qualifications, but I do
16 know that I was looked to as somebody who could
17 represent the employer healthcare purchaser voice.

18 Q. Are there any conflict of interest requirements?

19 A. I believe we sign a conflict of interest
20 disclosure form, yeah.

21 Q. Is there any requirement that the board donate to
22 The LeapFrog Group?

23 A. They have asked that we each contribute whatever
24 level, especially this year because of the 25th
25 anniversary, and they wanted to create like a board

1 match for donations.

2 Q. How often does the board of LeapFrog meet?

3 A. We have quarterly meetings.

4 Q. Are they all in person?

5 A. They have been two in person and two virtual, in
6 my two years.

7 Q. And what do you understand to be the duties and
8 responsibilities of a LeapFrog board member?

9 A. Well, certainly to attend the meetings and to
10 participate on a committee. I serve on the nominating
11 committee, as I mentioned. We -- you know, any board
12 member of any nonprofit, you know, has a fiduciary duty,
13 so certainly when the audited financial statements are
14 presented to us, we, you know, are seeking a clean audit
15 and can ask questions and have to vote to approve that
16 or not.

17 But primarily, it is the strategic direction of
18 LeapFrog and participating in those -- those
19 discussions.

20 Q. Does the LeapFrog board have any responsibilities
21 as it relates to the operations or management of
22 LeapFrog?

23 A. No. The operations and management people will
24 give updates. Leah will give an update on some of the
25 other staff on the status of operations, but they're not

1 action items.

2 Q. Has -- in your time on the LeapFrog board, since
3 September 2023, has the LeapFrog board ever disagreed
4 with the decisions of the LeapFrog executive team?

5 A. I don't think that we've, in the two years -- and
6 I haven't been at every board meeting. I missed one of
7 them because I had surgery like a day or so before. But
8 I don't think that there's ever been any kind of
9 disagreement with the team when they've brought things
10 forward. I would say that the members of the LeapFrog
11 board are all very smart, insightful people and they
12 might provide an alternate view or something to
13 consider. But I'm not aware of any disagreement with a
14 decision. People ask questions to, you know, understand
15 more deeply decisions that the LeapFrog staff have made
16 or the expert panel or whatever's being presented.

17 Q. In your time since you joined the board, what
18 kind of strategic decisions have been put forward to the
19 LeapFrog board for vote?

20 A. The only vote that I can think of in the two
21 years on a strategic decision has been how to conduct a
22 strategic planning process. Would it be to create a
23 committee, and that was a vote, and then they brought it
24 back recently to vote on it being a part of longer board
25 meetings. But an example of a strategy is to start

1 thinking about artificial intelligence and how that
2 might relate to the work that The LeapFrog Group does
3 and to bring in some experts to help navigate through
4 that because there wasn't anybody on the board that, you
5 know, would be really strong in that area.

6 Q. And so other than the vote on how to conduct a
7 strategic planning process, in your time on the LeapFrog
8 board of directors since September 2023, you can't
9 recall another time where the board was asked to vote on
10 a strategic decision as it relates to LeapFrog's
11 operations; is that correct?

12 A. I'm thinking right at the moment. I think we --
13 we don't really vote on operational matters. So I'm
14 going to say, to the best of my recollection, I can't
15 think of another time where we voted. The voting, vote
16 on minutes, as I said, vote on the audit, vote on having
17 a committee, those have been the primary votes that I
18 can recall.

19 Q. And would you consider LeapFrog's methodology for
20 how it grades hospitals to be part of those operational
21 matters that the LeapFrog board hasn't had a vote
22 regarding in your time on the LeapFrog board since
23 September 2023?

24 A. I -- I don't think we've voted on methodology in
25 that time. We've been informed about the methodology.

1 I can't recall a vote. We don't have that detail. In
2 fact, the last board meeting we had in June or somewhere
3 around that time, they did a 101 with the board to
4 educate anyone who is available to educate about
5 high-level methodology for the grade and the survey.
6 Because it's just not something that the board
7 deliberates.

8 MR. HVIDT: I'm handing the witness what's been
9 marked as Exhibit 4 in this deposition, which has been
10 produced in this litigation as LEAPFROG00378234.

11 (Exhibit No. 4 was marked for identification.)

12 BY MR. HVIDT:

13 Q. And it's a document titled, Final Draft LeapFrog
14 Long Range Strategic Intent, Fiscal Year 2026 to 2032,
15 December 2024.

16 Do you see that, Dr. van Caulil?

17 A. Yes, I do.

18 Q. And have you seen this document before?

19 A. I don't think I have. If it was presented to the
20 board on December 2024, that's the meeting that I
21 missed. I had surgery on December 13th and I think the
22 board meeting was the 16th up in Baltimore. I couldn't
23 travel for it.

24 Q. Understood. Thank you for clarifying that.

25 The item that I just want to point to,

1 understanding that you weren't there, when you're --
2 even if you aren't able to attend a board meeting, are
3 you e-mailed the packet of materials that are displayed
4 at the board meeting?

5 A. They send us materials in advance to review.
6 Sometimes they send things that weren't in the board
7 packet after. I don't -- I don't actually recall seeing
8 this. That doesn't --

9 Q. It's possible you may have received it but you
10 just haven't read it. Is that --

11 A. It's possible. It's possible that I received it.
12 I don't -- I don't remember seeing this.

13 I do know that the strategic planning committee
14 was working on something to react to.

15 Q. And looking there at objective 1, do you see
16 where it says, Scale of resources to the capacity needed
17 to make giant leaps for patient safety and stop
18 avoidable death and suffering?

19 A. Yes.

20 Q. Understanding that there has been, as you've
21 described earlier, movement in the strategic planning,
22 is scaling LeapFrog's resources one of the objectives in
23 LeapFrog's current strategic plan?

24 A. So there have been discussions about adding
25 additional staff because of workload, if that's what

1 scale resources to the capacity needed means. So that's
2 certainly been a discussion or at least an information
3 sharing to the board.

4 Q. And if you could flip to the next page where it
5 carries over to 235. Is it fair to say that this page
6 has about five bullets that are under that objective 1
7 that we just talked about?

8 A. Yes, I see it.

9 Q. And is the first bullet, Expand and diversify
10 revenue sources including funding through grants,
11 development, industry partnerships, data licensure?

12 A. Yes. That's the first bullet. Yes.

13 Q. You can set that document to the side for now.

14 We talked earlier about -- we mentioned
15 LeapFrog's hospital safety grade before. Can you tell
16 me in your own words what LeapFrog's hospital safety
17 grade is?

18 A. So two times a year, The LeapFrog Group publishes
19 A, B, C, D, F grades for hospitals and ambulatory
20 surgery centers also. I know you just asked about
21 hospital, but they're published at the same time. And
22 those are patient safety specific measures. It is, to
23 my understanding, a combination of publicly reported
24 data to CMS and, also, if the hospital responds to the
25 survey, there are some elements that get pulled into the

1 calculation of that grade.

2 Q. Do you have an understanding of how a hospital
3 who is -- who does not participate in the LeapFrog
4 hospital survey is grading?

5 A. They use publicly available data to generate a
6 grade.

7 Q. What is the publicly available data that they use
8 to generate a grade?

9 A. It's primarily CMS data.

10 Q. Do they use any other data to fill in for the
11 measures that are only -- that are not CMS-related data?

12 MR. BILLEK: Object to form.

13 You can answer.

14 THE WITNESS: Would you mind repeating the
15 question?

16 BY MR. HVIDT:

17 Q. Yes. So you mentioned that the LeapFrog Hospital
18 Safety Grade includes measures that are pulled from the
19 survey results that a hospital completes for the
20 LeapFrog Hospital Survey; is that correct?

21 A. Yes. I think there's a -- some subset of
22 questions that are from the survey.

23 Q. And if a hospital doesn't respond to the survey,
24 LeapFrog doesn't have data from that hospital for
25 those -- that subset of measures; is that correct?

1 A. That's correct.

2 Q. And do you have any understanding as to how
3 LeapFrog treats that subset of measures where the -- for
4 the hospitals that don't participate in the survey?

5 A. Yes. Certainly. That was something that was
6 explained to the board since I've been on the board
7 because that methodology changed last year, how they
8 imputed a score. And my understanding is that up until
9 the fall, if you didn't respond to the survey, you would
10 get the average or median score. And then for four
11 measures now, it's not that any longer. It's the lowest
12 possible score. So limited achievement for that
13 measure.

14 Q. You used the word impute -- imputed a score.
15 What does that mean?

16 A. That's the terminology that LeapFrog uses. So to
17 your earlier question, when they don't have it
18 available, this is how they fill that in.

19 Q. What does the word impute mean?

20 A. To calculate, to identify. I don't know the
21 dictionary definition. I would say in context it is how
22 they generate a score for that.

23 Q. How they generate a score for missing data; is
24 that correct?

25 A. Yes.

1 Q. And you mentioned that up until the fall, if you
2 didn't respond to the survey, you'd get an average or
3 median score. When you say the fall, are you referring
4 to up until fall of 2024?

5 A. I don't know specifics on this. I'm not involved
6 with the methodology. I've given you my understanding.
7 I don't know the exact time in 2024. I don't know when
8 it took effect.

9 Q. And you were a board member when the change took
10 effect; is that correct?

11 A. I was a board member when it was discussed. I
12 don't recall when it would take effect.

13 Q. And you mentioned that there are hospitals that
14 don't respond to the survey are now assigned the lowest
15 possible score; is that correct?

16 A. Limited achievement, I believe is what it's
17 actually called.

18 Q. And do you know on what basis LeapFrog assigns
19 nonparticipating hospitals the lowest possible score?

20 A. So they work with an expert panel to determine
21 the methodology and the basis for that change would have
22 been result of their deliberation and study of the issue
23 as to what the most appropriate proxy for nonresponse
24 would be.

25 Q. So is it your understanding that the LeapFrog

1 expert panel, in coming up with the lowest possible
2 score, was trying to identify the most approximate
3 estimate for what that score would have been had the
4 nonrespondent participated in the survey?

5 A. No. I don't think that's what they were trying
6 to do. They are assigning limited achievement of that
7 measure because they don't have data or information to
8 tell them what that hospital response would have been
9 should they have responded.

10 Q. So is it your understanding that the methodology
11 is not trying to estimate what the -- an accurate
12 estimate of what the nonresponding hospital would have
13 answered had it answered the survey?

14 A. I don't think that's the intent of the
15 methodology to try to come up with what the hospital
16 would have responded. They're asking the hospital to
17 respond to the question so that they can have accurate
18 information.

19 My recollection of conversations around this
20 change was that there were participating hospitals who
21 raised the issue of why would you give an average score
22 to somebody who's not responding, that might be a higher
23 score than somebody who is responding, that you need to
24 go back and come up with a different way.

25 And I can also tell you that over the years, I've

1 been in meetings, whether that's with the Florida
2 Hospital Association or some of these hospital meetings
3 where comments have been made, you know that hospitals
4 are gaming this with the survey by not responding to the
5 question because they'll get a better score if they
6 don't respond than if they provided their experience.

7 So I had heard that a few times. So I think that
8 probably was a factor in determining that providing an
9 average score was probably not fair to the hospitals
10 that do participate.

11 Q. And do -- strike that.

12 And so you -- the intent of the methodology is
13 not -- of the imputation methodology is not to assign
14 the nonresponding hospitals an accurate estimate of what
15 they would have answered had they answered the survey?
16 Is that correct?

17 MR. BILLEK: Object to form.

18 You can answer.

19 THE WITNESS: I want to say that I am not
20 involved in the methodology determination. And I
21 don't know what the intent was of the methodology
22 change. I -- I can't really answer that question
23 because it doesn't seem like it would even be possible
24 for those who work at LeapFrog to come up with an
25 answer that the hospital should be providing

1 themselves. They wouldn't have the data. They
2 wouldn't have the ability to come up with what they
3 could have provided themselves.

4 BY MR. HVIDT:

5 Q. So from your perspective as a LeapFrog board
6 member, you don't think it's possible for LeapFrog to
7 come up with an answer that would estimate what the
8 nonresponding hospitals would have achieved had they
9 participated in the LeapFrog survey; is that correct?

10 MR. BILLEK: Object to form.

11 THE WITNESS: I -- I don't know how they would
12 come up with an estimate when the simplest thing would
13 be for the hospital to answer that question for
14 themselves.

15 BY MR. HVIDT:

16 Q. So let me ask it again, because it's a yes-or-no
17 question.

18 So from your perspective as a LeapFrog board
19 member, you don't think it's possible for LeapFrog to
20 come up with an answer that would estimate what the
21 nonresponding hospitals would have achieved had they
22 participated in the LeapFrog survey; is that correct?

23 MR. BILLEK: Object to form.

24 THE WITNESS: I don't think this is a LeapFrog
25 board of directors' role since we don't talk about the

1 methodology and we don't hear about all of the
2 investigation and research and thinking and
3 deliberation on that. I would say as an individual, I
4 can't answer this as a LeapFrog board member. I would
5 say as an individual, I think it would be very
6 difficult to estimate what the nonresponding hospital
7 would have achieved on a measure and we'll say again,
8 the best way to come up with the most correct response
9 is for the hospital to provide that information
10 themselves.

11 BY MR. HVIDT:

12 Q. And isn't it the case that the -- by assigning
13 the hospital the lowest possible score, LeapFrog is not
14 trying to estimate what that hospital would have
15 achieved had it participated in the LeapFrog Hospital
16 Survey?

17 MR. BILLEK: Same objection.

18 THE WITNESS: I don't know what LeapFrog is
19 trying to achieve with the methodology because I
20 wasn't part of the discussions or have I heard about
21 the discussions to know what they were trying to
22 achieve.

23 BY MR. HVIDT:

24 Q. Is LeapFrog, by assigning the non -- by assigning
25 nonparticipating hospitals the lowest possible score for

1 the measures that LeapFrog does not have data on those
2 hospitals, is LeapFrog trying to encourage those
3 nonparticipating hospitals to participate in its survey?

4 A. I would think that as a hospital, if you know
5 you're performing better than that limited achievement
6 score, you would want to respond to that question so
7 that the public can see that you do care about patients'
8 safety and you are doing well on that measure.

9 So to answer your question, it could be that in
10 their deliberations about the change in the methodology,
11 that they hoped that nonparticipating hospitals would
12 answer for themselves. But I am not privy to that
13 discussion or whether that was part of their rationale
14 for this change.

15 Q. So as a LeapFrog board member, you are not privy
16 to whether the change in methodology as it relates to
17 nonparticipating hospitals, what the rationale was for
18 that change; is that correct?

19 A. I don't remember the exact discussion at the
20 meeting because it was a while ago and I think I was a
21 new board member trying to get my bearings, if you will,
22 on LeapFrog board responsibilities.

23 My recollection would be that the change was made
24 so that hospitals that are participating in the survey
25 who might be performing with limited achievement weren't

1 upset that hospitals that are not participating were
2 getting a higher score. That's my recollection of the
3 rationale. But I do know that when it was presented, it
4 was said to us that it was an extensive evaluation and
5 assessment and determination by the experts who were
6 convened to do that. And for us on the board,
7 collectively, we trust their expertise and their charge
8 to do that work.

9 So it wasn't a lengthy discussion. It was
10 information that was provided. But again, it's, you
11 know, easily a year ago.

12 Q. So when LeapFrog was updating the board about the
13 methodology change, it was said to the board that this
14 change followed a determination by the expert panel; is
15 that correct?

16 A. Yes.

17 Q. And did they discuss whether the expert panel
18 voted on this methodology change?

19 A. I don't recall that being part of the discussion.

20 Q. Did they discuss whether the expert panel
21 convened in a quorum regarding the proposed methodology
22 change that was actually implemented?

23 A. I don't know whether it was in a quorum. I don't
24 know that.

25 Q. So the LeapFrog executives didn't communicate to

1 you that the methodology change that they were going to
2 implement was not discussed with the full board at an
3 expert panel meeting?

4 A. No, I didn't say that. I said that I don't -- I
5 don't recall -- you know, I don't know whether it was a
6 quorum because I don't recall whether it was presented
7 that way.

8 Q. Understand and --

9 MR. BILLEK: And just note my objection to the
10 double negative you used. It made it confusing.

11 THE WITNESS: Yeah.

12 BY MR. HVIDT:

13 Q. Understand. I'm going to go back to that --

14 A. Okay. Sorry.

15 Q. -- because I was not trying to suggest that you
16 said that.

17 What I wanted to get an understanding of is when
18 the LeapFrog executives communicated about the
19 methodology change with the board, did they share with
20 the board that the methodology change that they were
21 proposing was not discussed with the full expert panel
22 at the April expert panel -- April 2024 expert panel
23 meeting?

24 A. I don't recall hearing that.

25 Q. So when --

1 A. I'm reading. I'm sorry. Let me read your
2 question again. Did they share with the board that the
3 methodology change that they were proposing was not
4 discussed with the full expert panel at the April expert
5 panel meeting?

6 I don't recall that level of specificity. It
7 could have been said. I don't -- I don't recall that.

8 Q. As a board member, would you have appreciated
9 knowing that the methodology proposal that was discussed
10 with the expert panel in April 2024 was different than
11 the methodology that the LeapFrog -- that LeapFrog ended
12 up implementing in the fall of 2024?

13 MR. BILLEK: Object to form.

14 THE WITNESS: I think that I would have wanted
15 to know what the difference was between the
16 recommendation and what was being implemented.

17 BY MR. HVIDT:

18 Q. Sitting here today, do you have any awareness
19 that the methodology change that was discussed at the
20 April 2024 expert panel meeting is different than the
21 LeapFrog methodology that it has had in place since the
22 fall of 2024?

23 A. I don't recall hearing that.

24 MR. HVIDT: Can we go off the record for a
25 moment? Thank you.

1 THE VIDEOGRAPHER: We are off the record at
2 11:33 a.m.

3 (A brief recess was taken.)

4 THE VIDEOGRAPHER: We are on the record at
5 11:37 a.m.

6 MR. HVIDT: Thank you.

7 BY MR. HVIDT:

8 Q. I'm handing you what's been marked as Exhibit 5.

9 (Exhibit No. 5 was marked for identification.)

10 BY MR. HVIDT:

11 Q. And Exhibit 5 has been produced in this
12 litigation by Florida Alliance as FHA0002072.

13 Do you see that, Dr. van Caulil?

14 A. Yes.

15 Q. And earlier today, we were talking about how the
16 LeapFrog staff presented to the LeapFrog board of
17 directors a LeapFrog 101. Do you remember that?

18 A. Yes. It wasn't part of a board meeting. It was
19 a separate meeting if people were available, and then
20 they sent the slides if you were unable to attend.

21 Q. And did you receive the slides?

22 A. Yes.

23 Q. Have you looked through them?

24 A. Yes.

25 Q. And the date of this set of slides is April 28,

1 2025. Do you see that?

2 A. Yes.

3 Q. And were you able to attend the meeting where
4 Leah Binder and Missy Danforth presented these?

5 A. No.

6 Q. And so is that why you were sent the slides
7 separately?

8 A. Yes. But they may have sent them to everybody,
9 whether you attended or not. I don't recall the e-mail
10 specifically.

11 Q. But you did not hear Leah Binder and Missy
12 Danforth walk through --

13 A. No, I --

14 Q. -- the slides in any way?

15 A. No, and I don't believe -- I'm sorry, I
16 interrupted -- no, and I don't believe they sent a
17 recording.

18 Q. Thank you. That was going to be my next
19 question.

20 And if -- you mentioned that you have read these
21 slides; is that correct?

22 A. I looked at them when I received them, yes.

23 Q. Okay. And if we can flip to slide 10. Do you
24 see where it says, Improving voluntary transparency?

25 A. Yes.

1 Q. Okay. And do you see where it says that
2 80 percent of hospitals voluntarily respond to
3 LeapFrog's annual survey?

4 A. Well, the wording is 80 -- Hospitals that
5 voluntarily respond to the annual LeapFrog survey
6 represent 80 percent of all acute care beds in the U.S.,
7 so that's specific to acute care beds.

8 Q. And so do you -- is that consistent with your
9 understanding that participation in LeapFrog's survey is
10 voluntary?

11 A. Yes.

12 Q. And if 80 percent of all acute care beds in the
13 United States are represented through hospitals that
14 participate, does that imply that there are 20 percent
15 of acute care beds in the U.S. that do not -- are in
16 hospitals who do not participate in the LeapFrog survey?

17 MR. BILLEK: Note my objection to form of the
18 question.

19 You can answer.

20 THE WITNESS: I don't know that you can say
21 20 percent of acute care beds. There are some
22 hospitals that don't qualify, if they're a specialty
23 hospital in some other determination. So if you
24 wouldn't mind repeating the question.

25 BY MR. HVIDT:

1 Q. Essentially the question is if -- 100 percent
2 minus 80 percent equals 20 percent; is that correct?

3 A. Yes, it is correct.

4 Q. Thank you.

5 A. So -- there's always caveats to everything, I'm
6 afraid.

7 Q. And you do not know whether or not the hospitals
8 that are excluded from that -- the hospital safety grade
9 are included in that calculation of 80 percent; is that
10 correct?

11 A. So this is a question about the survey. Can you
12 ask your question again, because I heard you say the
13 grade. So I just want to make sure I heard it
14 correctly.

15 Q. Yes. So you can strike that. It's not
16 significant.

17 A. Okay.

18 Q. We can -- let's flip over to the next slide,
19 please.

20 A. Okay.

21 Q. Do you see where it says at the top of slide 11,
22 Levers LeapFrog uses to gain survey participation?

23 A. Yes.

24 Q. And is this slide consistent with your
25 understanding that LeapFrog is trying to increase survey

1 participation?

2 A. LeapFrog -- yes. LeapFrog is trying to increase
3 survey participation because they'd like to see all the
4 hospitals in the country be transparent about their
5 quality and patient safety.

6 Q. And on this slide, does LeapFrog reference that a
7 lever that it can use to gain survey participation is
8 assigning nonparticipating hospitals the lowest score
9 for the imputed scores?

10 A. I'm waiting for the question to fully type out so
11 I can review it here. Does LeapFrog reference that a
12 lever that it can -- it's not showing on my screen.

13 Q. If you can -- if you can't understand my
14 question, then just ask me to repeat it again, because
15 looking back at the transcript, she's doing her best to
16 type it up but --

17 A. Yeah -- no, I --

18 Q. If we can just --

19 A. Please repeat the question.

20 Q. Yeah. On this slide, does LeapFrog reference
21 that one of the levers it uses to gain survey
22 participation is assigning nonparticipating hospitals
23 the lowest possible score for the imputing measures?

24 A. No, it doesn't include the limited achievement
25 score.

1 Q. And is this -- this is a slide deck that was sent
2 by LeapFrog staff to its board of directors to give it a
3 101 on the LeapFrog -- on LeapFrog's business; is that
4 correct?

5 A. Yes.

6 Q. And as the board, would you have appreciated that
7 LeapFrog staff be fully transparent of all the levers it
8 uses to gain survey participation in this slide?

9 A. I don't know that by leaving out the limited
10 achievement score for nonresponses would be something
11 that would be on a slide like this as a strategy.
12 Because I don't know, based on all the questions you
13 asked earlier and my responses, I don't know if that was
14 the intent of the expert panel or the staff in making
15 that decision to change the methodology.

16 So LeapFrog is transparent and I don't think by
17 leaving that out, they are not being transparent. It
18 says some measures included in the hospital safety
19 grade, so...

20 Q. And some measures being included in the hospital
21 safety grade is referencing to the notion that if you
22 participate in the LeapFrog survey, those answers get
23 used in the hospital safety grade; is that correct?

24 A. You're going to have to repeat that. I'm sorry.

25 Q. The reference to some measures included in the

1 hospital safety grade as a lever, LeapFrog uses to gain
2 survey participation, likely references the notion that
3 if you participate in the survey, those survey answers
4 go to measures that are included in your hospital safety
5 grade?

6 A. Survey participation in and of itself does not
7 mean you're going to get a better hospital safety grade,
8 but there are measures, yes, in the hospital survey that
9 are used in calculating the hospital safety grade if
10 you've responded to the survey.

11 Q. If you could flip to slide 25. I understand...

12 MR. BILLEK: Am I missing where these are
13 numbered or do you just mean the 25th page?

14 MR. HVIDT: 25th page on the PDF.
15 Unfortunately, it was produced to us without page
16 numbers.

17 MR. BILLEK: No, that's okay. When you said
18 slide 25, I thought you meant there was a number on
19 this slide somewhere that I couldn't see.

20 MR. HVIDT: The slide that is 25 is,
21 Differences Between LeapFrog Hospital Survey and
22 Safety Grade.

23 BY MR. HVIDT:

24 Q. Are you on that page?

25 A. I am now.

1 Q. Do you see where under LeapFrog Hospital Safety
2 Grade, it says, Grades are assigned via many sources?

3 A. Yes.

4 Q. The grades are assigned from LeapFrog from CMS
5 scores; is that part of the sources?

6 A. I don't know all the sources but I know CMS is
7 one of the sources.

8 Q. And do you know that LeapFrog Hospital Survey
9 answers are a source that goes into the grades?

10 A. Yes.

11 Q. Is there another source?

12 A. I don't know all the sources.

13 Q. Sitting here today, you can't think of another
14 source; is that correct?

15 A. That's correct.

16 Q. And if you could flip now to page 27, which is --
17 says, New safety grade imputation model.

18 Do you see that?

19 A. Yes.

20 Q. And then if you flip to the next page, slide 28,
21 it says, How LeapFrog calculates a grade for hospitals
22 that don't report to the survey, imputation.

23 Do you see that?

24 A. Yes.

25 Q. And in the first bullet on the left-hand side, it

1 reads, There's been a shift over time toward imputing
2 lowest level of performance when we don't have LeapFrog
3 Hospital Survey data.

4 Do you see that?

5 A. Yes.

6 Q. Does this slide explain why there's been a shift
7 toward imputing the lowest level of performance?

8 A. Only in that it's in line with the second bullet,
9 they're in line with recommendations from the national
10 expert panel and Johns Hopkins advisors. It doesn't --
11 I believe that's the answer.

12 Q. And that second bullet just references that the
13 change was made in line with recommendations. And that
14 bullet doesn't say why those recommendations were made;
15 is that correct?

16 A. That's correct. And again, I wasn't there for
17 the presentation for any additional, you know,
18 explanation or if anybody asked. And I don't have a
19 recording, so I don't know if it was addressed at the
20 time.

21 Q. And here, it says that the -- under that second
22 bullet that LeapFrog changed, quote, the way it
23 estimates performance.

24 Do you see that?

25 A. Yes.

1 Q. And so do you interpret this slide to mean that
2 LeapFrog was saying that the imputation process is
3 trying to estimate the performance of the nonperforming
4 hospitals?

5 MR. BILLEK: Object to form.

6 THE WITNESS: It says LeapFrog changed the way
7 it estimates performance for hospitals.

8 BY MR. HVIDT:

9 Q. So is that a yes?

10 A. Yes.

11 Q. You could flip to the next slide. Do you see
12 where it says, Common objections to LeapFrog?

13 A. Yes.

14 Q. And then if you flip again to the slide 31, the
15 slide after that, kind of banner change, says, Common
16 objections to LeapFrog concerns with the data.

17 Do you see that on slide 31?

18 A. There's two slides with that, so which one in
19 particular?

20 Q. We'll start with the first slide.

21 A. Okay. All right. Yes, I see it.

22 Q. The one where the first item on the left says,
23 LeapFrog data is self-reported. How can it be trusted?

24 Do you see that?

25 A. I do.

1 Q. And is it your understanding that this slide and
2 the next slide, LeapFrog is communicating common
3 objections that hospitals have provided for not
4 participating -- for reasons why they're not
5 participating in LeapFrog's hospital survey?

6 A. I don't know that if it's limited to not
7 participating. It could be that it's raised by a
8 hospital that has participated. So I wouldn't come to
9 the conclusion that it's just from those who have not.

10 Q. That's fair. These are objections to the
11 LeapFrog hospital safety grade that could be from
12 nonparticipating hospitals or could be from anyone. Is
13 that correct?

14 A. It doesn't say specifically, but I -- I would
15 have to guess it could be from anyone.

16 Q. Do you see there on slide 31 where the third box
17 says -- the blue box says, We have a poor safety grade
18 only because we do not participate in the LeapFrog
19 Hospital Survey.

20 Do you see that?

21 A. Yes.

22 Q. And so the inclusion of that quote on the slide
23 implies that that's a common objection that has been
24 raised to LeapFrog; would you agree with that?

25 A. Yes.

1 Q. And you see how in response, the last sentence
2 that's response below that says, Many hospitals that do
3 not report to LeapFrog earn As.

4 A. I see that.

5 Q. Do you have any understanding of the truth of
6 that statement?

7 A. I have seen but couldn't quote it directly a
8 number that LeapFrog has provided in recent months of
9 the number of hospitals who have As, Bs, Cs, Ds, Fs, who
10 don't participate in the survey.

11 Q. Would it surprise you to know that there's about
12 550 nonparticipating hospitals in this last grading
13 cycle that were given the lowest score through the
14 imputation methodology?

15 A. I would not be surprised or surprised. I don't
16 have a sense of how many. I don't know. I don't know
17 if that number is surprising or not.

18 Q. And of those 550 nonparticipating hospitals, do
19 you know that there are zero nonparticipating hospitals
20 in Florida who were given an A by LeapFrog in the spring
21 2025 cycle? Would that surprise you?

22 A. I don't have a reaction that's surprise or not
23 surprise. It's -- I didn't know that information,
24 though.

25 Q. And if the number of nonparticipating hospitals

1 that were given imputed lowest score for the four
2 measures, of the 550 across the country was only two,
3 would that, in your mind, be many hospitals?

4 MR. BILLEK: Object to form.

5 You can answer.

6 THE WITNESS: Could you repeat the question?

7 BY MR. HVIDT:

8 Q. Yeah. So in this document, the LeapFrog staff is
9 communicating to the board that many hospitals that do
10 not report to LeapFrog earn As. Do you see that?

11 A. I see that, yes.

12 Q. And in spring of 2025, the nonresponding
13 hospitals who were given a step 2 imputation that earned
14 an A was two of 550. Does that -- is two out of 550
15 many hospitals in your mind?

16 MR. BILLEK: Object to form.

17 THE WITNESS: I don't know that this response
18 here is limited to just one grade cycle. So could be
19 many hospitals over time that have not reported to
20 LeapFrog earn As.

21 BY MR. HVIDT:

22 Q. And did you know that in the fall of 2024, the
23 only other grading cycle that had this imputation
24 methodology, the numbers were the same?

25 MR. BILLEK: Object to form.

1 THE WITNESS: I hadn't heard that data.

2 BY MR. HVIDT:

3 Q. If that data is accurate, would you characterize
4 that data as being many hospitals?

5 A. Two hospitals in two hospitals is not many for
6 just those two cycles. I would assume that what they're
7 trying to say is that many hospitals over time have
8 received As.

9 Q. Before the methodology change, there could have
10 been nonresponding hospitals that got As, and that
11 statement could have been correct prior to the
12 methodology change; is that correct?

13 A. I think that's possible. I don't know the answer
14 to that, though.

15 Q. You can set that document to the side.

16 MR. BILLEK: That was 5?

17 MR. HVIDT: Yes. Thank you. And before I hand
18 the witness what has been marked as Exhibit 6, I want
19 to, on the record, note that there's a set of
20 documents that LeapFrog provided to plaintiff's
21 counsel on Sunday without Bates stamps. And when they
22 communicated that, they said that they would be
23 producing them later with Bates stamps. And we have
24 not yet received those versions.

25 And so there are a few documents we're going to

1 have to use today that do not yet have Bates stamps
2 but will have Bates stamps soon, consistent with how
3 we treated the Florida Alliance documents that were
4 produced, approximately 30 hours ago. Counsel, can we
5 get an agreement that we can insert the Bates-copied
6 version of this document in place of the
7 nonBates-copied version of this document when that's
8 provided by you?

9 MR. BILLEK: Of course.

10 MR. HVIDT: Thank you.

11 (Exhibit No. 6 was marked for identification.)

12 BY MR. HVIDT:

13 Q. I'm handing you what we've marked as Exhibit 6 to
14 your deposition. And I'll represent that Exhibit 6
15 appears to be LeapFrog group board of director minutes
16 from the June 11, 2024, board of directors meeting at
17 the Darcy Hotel, Washington, D.C. and Zoom.

18 Do you see that, Dr. van Caulil?

19 A. Yes.

20 Q. And do you see under the attendees your name
21 listed there on the third line?

22 A. I do.

23 Q. And is that correct? Did you attend this board
24 of directors meeting?

25 A. Yes. I can't recall whether it was in person or

1 Zoom, though.

2 Q. And is it part of LeapFrog's practices to prepare
3 minutes for board of directors meetings?

4 A. Yes.

5 Q. And when LeapFrog Group prepares minutes for
6 board of directors meetings, do they try to be truthful
7 and accurate as to the events that occurred during the
8 LeapFrog board of directors meetings?

9 A. Yes.

10 Q. And looking here at this document, do you have
11 any reason to doubt the authenticity or accuracy of the
12 minutes provided here?

13 A. No.

14 Q. And looking through this document, at this
15 meeting, was -- was the LeapFrog Group board of
16 directors asked to vote on whether the LeapFrog Group
17 should change its grading methodology for its hospital
18 safety grades?

19 A. I don't think that was an action taken. May I
20 look through the minutes?

21 Q. You may. Please look through the minutes and let
22 me know if that was an action taken at this meeting.

23 A. I don't see any actions taken on the grading
24 methodology.

25 Q. Do you see any reference in these minutes to

1 LeapFrog changing its imputation methodology to, instead
2 of trying to estimate the performance of
3 nonparticipating hospitals, to instead assign them the
4 lowest possible score for those measures that were
5 previously imputed?

6 A. I don't see an agenda item on the topic at all.

7 Q. Do you recall receiving a -- you can set that to
8 the side -- do you recall receiving a report from the
9 LeapFrog CEO at that June 2024 board of directors
10 meeting?

11 A. Leah typically does a verbal and written report.
12 I don't recall what was said.

13 Q. When you say written report, would she provide a
14 report in writing to the board of directors?

15 A. Yes. She does that. I don't know if that's
16 every time, but she'll write out her talking points.

17 MR. HVIDT: I'm handing the witness what has
18 been marked as Exhibit 7 in the Karen van Caulil
19 deposition which has been produced in this litigation
20 as LEAPFROG00326021. The cover page is an e-mail from
21 Leah Binder dated June 6, 2024, to Angela Hopkins re:
22 CEO report June 2024.

23 (Exhibit No. 7 was marked for identification.)

24 BY MR. HVIDT:

25 Q. Do you see that, Dr. van Caulil?

1 A. Yes.

2 Q. Do you see how there's an attachment there, CEO
3 report-June 2024?

4 A. I see -- it doesn't have a dash. It says
5 LeapFrog Group board of directors, CEO report, Leah
6 Binder, June 2024.

7 Q. In looking at the e-mail, do you see where Leah
8 says, Attached is the final?

9 A. Yes.

10 Q. And I also put it in the board packet. Little
11 correction there, I to in.

12 A. Okay.

13 Q. Do you see that?

14 A. Yes.

15 Q. So flipping to the attachment now, do you see in
16 that first section there where it says, The hospital
17 safety grade successful spring update?

18 A. Yes.

19 Q. Looking down to that second paragraph, can you
20 read that paragraph into the record for me, please?

21 A. We also published our planned updates to the
22 safety grade methodology slated for this fall. The
23 update dramatically lowers imputed scores for certain
24 measures for hospitals that decline to report to the
25 LeapFrog Hospital Survey. This follows a strong

1 recommendation from the expert panel. This should have
2 some impact on hospital reporting to the survey and will
3 strengthen the grade overall.

4 Q. Thank you.

5 And seeing that document in that line, does that
6 refresh your recollection of whether there was
7 discussion -- whether it was reported to the board that
8 there would be a methodology change at that June 2024
9 meeting?

10 A. Yes. I knew that it had been reported to us that
11 there was a change, but there wasn't board discussion or
12 a presentation of the methodology. So when Leah does a
13 report like this, this is essentially her talking points
14 during the meeting.

15 Q. Understood. So Leah may have said this or
16 something like this at the meeting. But you don't
17 recall there being any discussion after that was
18 referenced; is that correct?

19 A. I don't recall if there was discussion. There
20 could have been comments, but it wasn't a significant
21 discussion.

22 Q. And do you see where she says that, This follows
23 a strong recommendation from the expert panel?

24 A. I see that.

25 Q. Is that consistent with what you testified to

1 earlier that when The LeapFrog Group communicated this
2 change to you, they said that this came from a
3 recommendation from the expert panel?

4 A. Yes.

5 Q. And do you see where following that, she says,
6 This should have some impact on hospital reporting to
7 the survey?

8 A. Yes, I see that.

9 Q. And with that sentence, when she says, should
10 have some impact, do you think she is suggesting that
11 this change should increase hospital participation in
12 the LeapFrog Hospital Survey?

13 MR. BILLEK: Object to the form.

14 You can answer.

15 THE WITNESS: I -- I don't know what impact
16 that implies in that statement.

17 BY MR. HVIDT:

18 Q. And just to confirm, there was no board vote in
19 June 2024 on whether LeapFrog should change its safety
20 grade methodology in this regard; is that correct?

21 A. That's correct. We don't vote on the
22 methodology.

23 MR. HVIDT: Consistent with the last exhibit,
24 this is a document that was produced to us on Sunday
25 without Bates numbers with an indication that Bates

1 numbers versions would be following but haven't
2 followed yet. Are we in agreement that we can use
3 this document in the same regards?

4 MR. BILLEK: Of course.

5 MR. HVIDT: Thank you.

6 (Exhibit No. 8 was marked for identification.)

7 MR. HVIDT: I have handed the witness what will
8 be marked as Exhibit 8.

9 I'm so sorry.

10 MR. BILLEK: That's all right.

11 BY MR. HVIDT:

12 Q. Did I hand you two?

13 A. Oh, yes, actually. I'm sorry.

14 Q. Thank you.

15 MR. HVIDT: That may have been why I thought
16 that you already had one.

17 MR. BILLEK: That's all right. I don't want
18 anybody at Gibson Dunn to get fired over that
19 photocopying issue.

20 MR. HVIDT: We have handed the witness what is
21 titled at the top, Minutes, The LeapFrog Group Board
22 of Directors September 25, 2024, Zoom.

23 BY MR. HVIDT:

24 Q. Do you see that?

25 A. Yes.

1 Q. And do you see under attendees, your name is
2 listed?

3 A. Yes.

4 Q. And consistent with the exhibit two exhibits ago,
5 are minutes for LeapFrog Group board of directors
6 meetings prepared in the ordinary course of business?

7 A. Yes.

8 Q. Do you have any understanding to doubt or reason
9 to doubt the accuracy of the information in this
10 document?

11 A. No.

12 Q. And do you have an understanding of the time of
13 the year where LeapFrog's methodology is locked in for
14 how it's going to report for when -- how it's going to
15 report grades for the upcoming cycle?

16 A. No, I don't.

17 Q. And you're sitting there September 25, 2024, and
18 there's a grade cycle that's in the late fall and fourth
19 quarter of 2024; is that correct?

20 A. I don't know when they publish the fall scores,
21 but the last quarter sounds correct.

22 Q. And do you think that the LeapFrog methodology
23 that it was using for the fall of '24 would have been
24 locked in by this meeting?

25 A. I don't know.

1 Q. At this meeting, was there a vote on whether
2 LeapFrog should change its methodology for how it grades
3 nonparticipating hospitals?

4 A. No. We don't vote on methodology changes.

5 Q. And if you flip to the second-to-last page of the
6 minutes, the very bottom, do you see where it says,
7 Safety grade methodology change underlined?

8 A. Yes.

9 Q. And then carrying forward onto the last page, do
10 you see a description of the LeapFrog's safety grade
11 methodology change?

12 A. Yes.

13 Q. And do you see in that first sentence where it
14 says, LeapFrog uses an imputation model to be able to
15 grade hospitals even if they do not submit a LeapFrog
16 Hospital Survey?

17 A. Yes.

18 Q. Is it your understanding that if LeapFrog didn't
19 use an imputation model, it would not be able to grade
20 hospitals that do not submit a LeapFrog Hospital Survey?

21 MR. BILLEK: Object to form.

22 You can answer.

23 THE WITNESS: I -- I don't know if it would be
24 appropriate to have a different methodology for
25 nonresponding hospitals. So I think that using the

1 imputation model is so that they can use the same
2 approach for all hospitals. I'm not sure I'm
3 answering your question.

4 BY MR. HVIDT:

5 Q. Understanding, yeah, yeah --

6 A. Yeah.

7 Q. -- so I'll have a couple follow-ups on that.

8 A. Okay.

9 Q. The first question is, using the words in the
10 document?

11 A. Right.

12 Q. And so I'm just trying to get an understanding of
13 how that -- that sentence is structured. In there, it
14 says that LeapFrog uses an imputation model to be able
15 to grade hospitals even if they do not submit a LeapFrog
16 Hospital Survey.

17 Do you see that?

18 A. I do.

19 Q. And so would you take that sentence to mean that
20 if LeapFrog didn't use an imputation model, it would not
21 be able to grade hospitals if they did not submit the
22 LeapFrog Hospital Survey?

23 A. I read the sentence to say that's how -- the
24 imputation model is how they are able to grade
25 hospitals. I don't know that it says that without it,

1 they could not. I wouldn't take it that far in my
2 reading of that sentence.

3 Q. Okay. And you mentioned that you don't think it
4 would be appropriate to have a different methodology for
5 nonresponding hospitals. Is that correct?

6 A. That is not a fully formed thought. I was trying
7 to think as I was speaking how you would do that. So
8 I -- I probably should retract my comment because it's
9 not a fully formed thought. I'm trying to think out
10 loud in response to your question.

11 Q. Do you think that all hospitals should be graded
12 on the same methodology?

13 A. I think that it's complicated to answer that
14 question because if the hospitals don't participate and
15 you're missing a couple of items, you have to find
16 another way to put a value in.

17 Q. But if you're putting a value in, are you not --
18 are you grading them in a different methodology because
19 you don't have the data for those missing measures?

20 A. No. If your methodology states and it's publicly
21 available and the hospitals know that ahead of time,
22 this is the methodology, if you choose not to respond,
23 we're still grading you and this is how it will be
24 calculated. So it is the same methodology. It's not a
25 different methodology.

1 Q. Are nonresponding hospitals and responding
2 hospitals graded in the same manner?

3 A. I don't know how to interpret that question.
4 I -- I don't know what happens behind the development of
5 the grade. So I can't answer that question.

6 Q. Setting LeapFrog aside for the minute, if you are
7 grading hospitals, shouldn't you try to grade the
8 hospitals on the same measures?

9 MR. BILLEK: Object to form.
10 You can answer.

11 THE WITNESS: LeapFrog gives the opportunity
12 for every hospital to respond to the questions. And
13 they have in the methodology, we're doing this grade.
14 You should respond to the survey to ensure that your
15 achievement of that measure is reflected. In the
16 absence of that, here is the methodology that we use.

17 BY MR. HVIDT:

18 Q. And in that approach, is that approach clear to
19 those who use the LeapFrog grades to make their
20 decisions about where to receive healthcare?

21 MR. BILLEK: Object to form.

22 THE WITNESS: I can tell you that the Florida
23 Alliance in our role as regional leader makes sure
24 that the employers who are in our membership
25 understand that. LeapFrog has always been very

1 transparent on their website for the hospitals on the
2 methodology or the materials that are sent to them.

3 BY MR. HVIDT:

4 Q. Do you think that LeapFrog is clear that it is
5 penalizing nonresponding hospitals for not participating
6 in the survey?

7 A. I think LeapFrog is very clear that they'll give
8 limited achievement for that measure in the absence of
9 having any other information.

10 Q. And do you agree that giving limited achievement
11 to a hospital that doesn't participate in the LeapFrog
12 Hospital Survey is a penalty for not participating in
13 the LeapFrog Hospital Survey as it relates to the grade?

14 A. No. I don't see it has a penalty.

15 Q. What do you see it as?

16 A. I see it as the best possible guess, estimate,
17 proxy for that measure in the absence of having any
18 other information. Why would you say that there's been
19 a higher level of achievement when there's no evidence
20 to support that?

21 Q. And why would you say that there's a lower level
22 of achievement when there's no evidence to support that?

23 A. Because -- well, it says in the previous,
24 LeapFrog would look at their most recent scores from
25 four rounds, they're looking at the last two rounds. So

1 I don't know if there's some level of analysis. Again,
2 I've said it so many times, I don't know how the
3 methodology works. I don't know what happens behind the
4 scenes and why they came up with, after deliberation on
5 the expert panel, that putting limited achievement as
6 the appropriate way to fill in that gap, I had -- I've
7 not thought of that as a penalty. I've thought of that
8 as an opportunity for the hospital to provide the
9 information we want to see. We're about transparency
10 and if you know ahead of time what that methodology is
11 in fact, then that gives you every opportunity to put
12 the answer in that reflects your achievement.

13 Q. Again, why would you say that a lower level
14 achievement score is appropriate for a nonresponding
15 hospital when there's no evidence to support that?

16 MR. BILLEK: Object to form.

17 THE WITNESS: I think it's more appropriate to
18 give that level than it is to assume that they've had
19 a higher level of achievement.

20 BY MR. HVIDT:

21 Q. But when you're giving a lower -- lowest level of
22 achievement, aren't you also -- are you assuming that
23 they wouldn't -- that they would get the lowest level?

24 A. I'm not making any assumptions. I don't
25 understand your question.

1 Q. By assigning the lowest level of achievement to
2 nonparticipating hospitals, for the imputed measures,
3 LeapFrog is not trying to estimate their performance had
4 they responded to the survey; is that correct?

5 A. You showed me a document that had wording that
6 said this is how LeapFrog is estimating their
7 performance, a few minutes ago -- a few documents ago.

8 Q. I showed you a document that showed that the
9 LeapFrog staff communicated to the board that they're
10 trying to estimate --

11 A. Correct.

12 Q. -- the -- that they're trying to estimate the --
13 what the nonparticipating hospital would have achieved
14 by assigning them a lowest score; is that correct?

15 A. The document that we looked at said that they're
16 trying to estimate what the nonparticipating hospital
17 would have achieved, but I don't remember it saying by
18 assigning the lowest score. I don't remember seeing
19 that tag on to the statement.

20 Q. And when the LeapFrog staff communicated to the
21 board of directors that they were trying to estimate how
22 the hospital would have performed had it participated in
23 the LeapFrog survey by assigning the lowest possible
24 score, did you take them as being truthful in that?

25 A. I don't remember the specific discussion. I know

1 it's written like this. I didn't have any reason to
2 think that I wasn't being told the truth.

3 Q. Looking back at the minutes, if we go down -- I
4 think it's probably like eight lines down, do you see
5 where it says, This means hospitals?

6 A. I see that.

7 Q. Sentence reads, This means hospitals that have
8 not reported their performance to LeapFrog will have a
9 lower score for the imputed measures.

10 Do you see that?

11 A. Yes.

12 Q. And so by that sentence, LeapFrog staff was
13 updating the LeapFrog board that nonparticipating
14 hospitals would automatically have a lower score for the
15 imputed measures.

16 Is that correct?

17 A. Yes.

18 Q. And then it goes on to say that, These measures
19 are CPOE, BCMA, IPS and hand hygiene.

20 Do you see that?

21 A. Yes.

22 Q. The next sentence says, Hospitals can still get
23 an A if they fall into this category but it does make it
24 harder.

25 Do you see that?

1 A. Yes.

2 Q. And so is the LeapFrog staff communicating to the
3 board that it will be harder for a nonparticipating
4 hospital to receive an A simply by virtue of not
5 participating in the LeapFrog Hospital Survey?

6 MR. BILLEK: Object to form.

7 You can answer.

8 THE WITNESS: I don't know that that full
9 sentence that you said, by -- simply by virtue of not
10 participating, is -- is accurate. They're saying that
11 hospitals can still get an A if they do extremely well
12 in the publicly reported data. They're not going to
13 get that mid-level response without providing their
14 own -- their own data.

15 BY MR. HVIDT:

16 Q. And here, the LeapFrog staff is communicating to
17 the board that it will be harder for nonparticipating
18 hospitals to get an A if they don't participate in the
19 LeapFrog survey and are given an imputed limited
20 achievement score; is that correct?

21 MR. BILLEK: Object to form.

22 You can answer.

23 THE WITNESS: Yes.

24 BY MR. HVIDT:

25 Q. And as I mentioned earlier, it would be harder to

1 get an A -- it has proven to be harder to be getting an
2 A if you're a nonparticipating hospital in the LeapFrog
3 survey. Only two of 550 such hospitals got one in the
4 spring of 2025; is that fair to say that that's harder?

5 MR. BILLEK: Object to form.

6 You can answer.

7 THE WITNESS: What were the numbers prior to
8 that time? I don't know the answer.

9 BY MR. HVIDT:

10 Q. Over 100.

11 MR. BILLEK: Object to form.

12 You can answer.

13 THE WITNESS: So over 100 in the cycles before
14 got As who were a nonrespondent and it went down to
15 two? Okay. And the question was?

16 BY MR. HVIDT:

17 Q. Does that show that it has proven to be harder
18 for nonparticipating hospitals to get an A?

19 A. Yes. I don't know that -- with a caveat. I
20 don't know the detail of the 98 or however, you know,
21 100, whatever number you said. Now I don't remember.
22 200, 100. Hospitals, whether they performed poorly on a
23 CMS measures. I don't know that it's because of those
24 four measures that were imputed. So I would have to
25 revise my answer to say, certainly going from 100 to two

1 shows that there's something happening to reduce the
2 number of As. It could be a combination. It could be a
3 combination of issues.

4 Q. So assigning them the lowest score is likely a
5 contributing factor in --

6 A. I would -- I would say it could be a contributing
7 factor. I don't know that it is the only factor.

8 Q. And again, it is proven harder for a
9 nonparticipating hospital to get an A as there's no
10 Florida nonparticipating hospitals who got an A in the
11 spring of 2025 grading cycle; is that correct?

12 A. Is the question -- the question is it harder for
13 Florida than anyone else, you're saying, or you're just
14 saying has it proven that it's harder?

15 Q. Does the fact that there are no Florida
16 nonparticipating hospitals who got an A in the spring
17 2025 grading cycle confirm that the LeapFrog staff was
18 communicating to the board that this methodology change
19 will make it harder for nonparticipating hospitals to
20 get an A?

21 A. Yes.

22 MR. HVIDT: I have a subject change and it's
23 12:30. Do we want to go off the record?

24 THE WITNESS: Whatever you want to do.

25 MR. BILLEK: Do you want to take a break for

1 lunch or something?

2 MR. HVIDT: Yeah, I'm happy for it to be a
3 brief lunch but I do think we have around two hours
4 remaining.

5 THE COURT REPORTER: Do you want to go off the
6 record?

7 MR. HVIDT: Yeah. Sorry.

8 THE VIDEOGRAPHER: We are off the record at
9 12:31 p.m.

10 (Luncheon recess was taken.)

11 THE VIDEOGRAPHER: We are on the record at
12 12:59 p.m.

13 MR. HVIDT: Thank you.

14 BY MR. HVIDT:

15 Q. Earlier this morning, we talked about Florida
16 Alliance's role as a regional leader for The LeapFrog
17 Group; is that correct?

18 A. Yes.

19 Q. And you talked about how as part of that role,
20 Florida Alliance will send letters to hospitals to
21 encourage their participation in the LeapFrog Hospital
22 Survey; is that correct?

23 A. Yes.

24 Q. And has Florida Alliance sent letters to the
25 plaintiff hospitals in 2025 encouraging them to

1 participate in the LeapFrog Hospital Survey?

2 A. I don't know for sure.

3 Q. Does Florida Alliance have a practice of sending
4 letters to all hospitals in its region to encourage them
5 to participate in the LeapFrog Hospital Survey?

6 A. So Ashley, who I've mentioned, our VP, is in
7 charge of making that determination. I mentioned that
8 sort of extreme answer -- excuse me -- example of a
9 hospital that might be damaged and, you know, not
10 operational or not fully operational. So she does go
11 through, you know, who would be eligible. And the goal
12 is to send, you know, to every -- every eligible acute
13 hospital. So in general, you know, and the different --
14 the different categories.

15 So the shorter answer is, the practice is to send
16 to all applicable hospitals because there are some that
17 are not applicable.

18 Q. Thank you.

19 MR. HVIDT: I'm handing the witness what has
20 been marked as Exhibit 9 in this deposition.

21 (Exhibit No. 9 was marked for identification.)

22 THE WITNESS: Okay.

23 MR. HVIDT: Which has been produced in this
24 litigation as PBHN000018124. It is dated
25 April 23, 2025.

1 Counsel, do you see that date? I'm sorry.

2 Strike that.

3 BY MR. HVIDT:

4 Q. Dr. van Caulil, do you see that date?

5 A. I do.

6 Q. And what is Exhibit 9?

7 A. So this is a letter to -- I don't know if I'm
8 pronouncing his first name correctly -- Jerad Hanlon at
9 West Boca Medical Center and it has that item on the
10 intent to submit. Looks like it's a partial letter. It
11 looks like it's missing the signature page on it. So it
12 doesn't look like a full letter, actually, because if we
13 were to send it, it would be signed. So it's a letter
14 that looks like it's not complete. So I don't know
15 whether -- do you have the remainder of it? Okay.

16 Q. This is the document that was received by --

17 A. Okay.

18 Q. -- Jerad Hanlon at West Boca Medical Center.

19 A. Okay.

20 Q. And produced in the way that he sent it to us or
21 was kept in ordinary course of business. And so looking
22 at the top of the letter, do you see the Florida
23 Alliance for Healthcare Value logo?

24 A. Yes.

25 Q. Do you have any reason to doubt that Florida

1 Alliance sent a letter to West Boca Medical Center?

2 A. I don't have any doubts, but I -- I would say the
3 letter is not -- it's not complete. It's not -- it's
4 missing at least one page.

5 Q. And aside from lacking a signature --

6 A. I don't know the reason why. I'm sorry. I can't
7 speculate as to why. But I know that, you know --

8 Q. Aside from the fact that you're not seeing a
9 signature on this document, do you have any other reason
10 to question that the -- that the substance of the
11 document is inaccurate in any way?

12 A. No, I don't.

13 Q. And is this letter consistent with the letters
14 that Florida Alliance sends to hospitals in Florida to
15 encourage them to participate in the LeapFrog Hospital
16 Survey?

17 A. So I have already mentioned that it is not a
18 complete letter, I don't think. I -- when I've seen
19 copies of the letters, Ashley is signing them and
20 there's more specific information that would be included
21 from my quick perusal of it. So it is not consistent,
22 then, in that somewhere along the way, part of it is
23 missing, I think.

24 Q. Looking at the first page, is the first page of
25 the letter consistent with the first page of the letters

1 that Florida Alliance typically sends to Florida
2 Hospitals to encourage them to participate in the
3 LeapFrog Hospital Survey?

4 A. Yes. I believe so. But the letters come from
5 Ashley Tait-Dinger, so I don't have, you know, exact
6 wording known for the letter. But it looks consistent
7 with what I've seen in the past.

8 Q. Does Ashley Tait-Dinger report to you?

9 A. Yes, she does.

10 Q. Would you -- do you review the templates of the
11 letters before you approve of the template being
12 personalized for the Florida Hospitals?

13 A. No. If she's signing the letter, I may or may
14 not have seen -- seen it. The template comes from
15 LeapFrog and is updated with, I guess, local information
16 if -- if needed.

17 Q. And -- but the nature of this was produced by
18 West Boca Medical Center, do you have any reason to
19 dispute that they received this document?

20 A. No.

21 Q. And in looking at this first page of the letter,
22 do you -- is it fair to say that the letter is trying to
23 encourage West Boca to participate in the LeapFrog
24 Hospital Survey?

25 A. Yes.

1 Q. And it includes a form on the next page asking
2 for its intent to participate or not. Do you see that?

3 A. Yes. And that's what I had mentioned earlier
4 this morning, trying to recall what that looked like,
5 yeah.

6 Q. Absolutely. And there's a comment box where we
7 talked about how there's --

8 A. Correct.

9 Q. -- you might explain why you do not wish to
10 participate?

11 A. Yes.

12 Q. And in looking at this letter, and that's
13 represented in Exhibit 9, do you see any reference to
14 how LeapFrog will assign a low score to the hospital for
15 imputed measures if it doesn't participate in the
16 LeapFrog Hospital Survey?

17 A. No. And again, for the record, wherever along
18 the way there -- there is an aspect of this letter that
19 I'm pretty sure is missing, which would direct the
20 recipient with any questions to LeapFrog to their
21 website for reporting. That's what I believe is missing
22 from this letter.

23 Q. Are you aware whether Florida Alliance produced a
24 copy of this letter in its production?

25 A. I am not.

1 Q. Are you aware whether this document would have
2 been responsive to the subpoena sent to Florida
3 Alliance?

4 A. It should have been. At the time period, yes, it
5 should have been.

6 Q. And do you have any understanding as to why it
7 wasn't produced?

8 A. No. I don't know that it wasn't produced.

9 Q. When did you become aware of the lawsuit that was
10 filed by plaintiff hospitals for the -- that the
11 deposition that you're taking is within?

12 A. I was at our annual conference on May 1st and I
13 think I got an e-mail from Leah that day. I remember
14 seeing -- seeing it then. I think that there were some
15 conversations maybe earlier than that that it might
16 happen. Yeah. Late April or so.

17 Q. So you were informed in late April or so that
18 there might be a litigation; is that correct?

19 A. I think that sounds like the time period. Yes.

20 Q. And how were you informed?

21 A. I don't remember specifically whether it was in a
22 meeting or reading something that said that there had
23 been conversations between the hospitals and LeapFrog
24 about not displaying the grade and when LeapFrog said
25 we're going to display the grade, the information that I

1 got was we could expect a lawsuit as a result.

2 Q. And would that have come in the capacity as a
3 board member?

4 A. I don't recall.

5 Q. Were -- when you had that communication, were you
6 asked to do anything before the lawsuit was filed by
7 LeapFrog?

8 A. Only if any calls or e-mails or letters were
9 directed to us, to send them to Leah or Karen, whoever
10 at LeapFrog, and also not to speak to the media.

11 MR. HVIDT: I am handing the witness what's
12 been marked as Exhibit 10 in this deposition.

13 (Exhibit No. 10 was marked for identification.)

14 MR. BILLEK: Thanks.

15 MR. HVIDT: Exhibit 10's Bates number will be
16 FHA0002804. It was produced in this litigation by
17 Florida Alliance.

18 BY MR. HVIDT:

19 Q. Dr. van Caulil, do you see the document that I've
20 handed you?

21 A. Yes.

22 Q. Do you see that the top e-mail is an e-mail from
23 Chris Skisak to Leah Binder, regional leaders of
24 LeapFrog, board members of LeapFrog, with copy to Missy
25 Danforth, Karen Jupiter and Lauren Bailey regarding

1 spring safety grade lawsuit?

2 A. Yes.

3 Q. And you mentioned earlier that you received an
4 e-mail from Leah Binder on May 1, 2025, regarding the
5 lawsuit. Is that correct?

6 A. Yes. As I said, we had our annual conference
7 that day and I looked at my phone and saw the e-mail.

8 Q. And looking down at the e-mail from Leah Binder,
9 do you see where she cites the hospitals involved in the
10 lawsuit?

11 A. Yes.

12 Q. Do you see next to the hospitals involved in the
13 lawsuit, she puts their spring grade. Do you see that?

14 A. I do.

15 Q. And in your own words, how would you characterize
16 Leah Binder's e-mail to the regional leaders and the
17 board members here?

18 A. So she's certainly alerting the board and the
19 regional leaders to the fact that there's a lawsuit
20 that's been filed. And that they're going to do what it
21 takes to defend LeapFrog's position. She -- I'm just
22 looking down -- yes, she did attach the statement that
23 she had put together. That was the other document that
24 I had seen at or around that same time. And also to
25 please, you know, let people know that if they had any

1 questions, who to refer to.

2 Q. And do you see Chris Skisak's response above?

3 A. Chris Skisak, yes. He's my counterpart at the
4 Houston Business Coalition on Health, yes, I see it.

5 Q. So is he a regional leader?

6 A. The Houston Business Coalition on Health is a
7 regional leader, yes.

8 Q. Is he a member of the board of LeapFrog?

9 A. No.

10 Q. Do you see the second sentence of his e-mail, he
11 writes, In this case, the grades are doing what we all
12 hope - steer patients away from unsafe hospitals to more
13 safe ones, close quote.

14 A. Yes, I see that.

15 Q. Do you agree with him?

16 A. I wouldn't characterize the situation that way.

17 Q. Do you agree that a low LeapFrog grade steers
18 patients away from those hospitals?

19 A. I think it can. I think that patients take in a
20 lot of information in seeking hospital care. Oftentimes
21 they're going at the request -- at the recommendation of
22 their physician. I don't know that they're looking at
23 the -- at the grades. But it certainly could, if
24 somebody was aware of the hospital safety grades, give
25 them pause and to investigate further.

1 Q. And is one of the reasons why LeapFrog publishes
2 safety grades to influence consumer decisions about what
3 hospitals they should get their care at?

4 A. I wouldn't use the word influence. LeapFrog does
5 this to promote transparency so that consumers and
6 employers, purchasers of health services, have
7 information about patient safety performance. And they
8 are free to look at the methodology and the approach and
9 make their own decision about whether they agree with it
10 and should take that grade under consideration.

11 Q. Do you understand that LeapFrog's own documents
12 notes that one of the reasons for their hospital safety
13 grades is to influence consumer hospital decisions?

14 A. I haven't seen that written.

15 Q. In going back to Chris's e-mail, he references
16 steering patients away from unsafe hospitals.

17 Do you see that?

18 A. I do.

19 Q. And so is he connecting unsafe hospitals with the
20 letter grades D and F?

21 A. I don't know what Chris is doing.

22 Q. Would you characterize an F and D grade to be an
23 unsafe hospital?

24 A. I always look at the whole picture: The hospital
25 survey information, the safety grade information, when

1 we're -- when I'm personally seeking care, elderly
2 mother, and look at the history. So I'm a different
3 person than the general community, I will give that.
4 But I think it's part of a story and should be looked
5 at, you know, alongside other -- other sources.

6 Q. And that part of the story can impact decisions
7 made about where to receive healthcare --

8 A. Yes.

9 Q. -- is that correct?

10 A. Yes.

11 Q. And when you say that it's always good to look at
12 the whole picture, would you consider part of the whole
13 picture to include whether or not that hospital
14 participated in the LeapFrog survey?

15 A. For me personally, yes.

16 Q. Do you think that that's something that the
17 general consumer of the LeapFrog grade understands?

18 A. I don't know.

19 Q. You can set that to the side for the moment.

20 After receiving notice from Leah Binder of the
21 lawsuit, did you then notify your board at Florida
22 Alliance?

23 A. Yes.

24 Q. And going back to our discussion this morning,
25 your board, other than yourself, are representatives

1 from Florida employers; is that correct?

2 A. Yes, that's correct.

3 MR. HVIDT: I'm handing the witness what's been
4 marked as Exhibit 11 in the van Caulil deposition. It
5 was produced by the Florida Alliance as FHA0001995.

6 (Exhibit No. 11 was marked for identification.)

7 MR. HVIDT: Momentarily going back to
8 Exhibit 10. Exhibit 10 was produced by the Florida
9 Alliance as FHA0001739.

10 BY MR. HVIDT:

11 Q. Dr. van Caulil, do you see Exhibit 11 as an
12 e-mail chain regarding lawsuit against LeapFrog from
13 hospitals in Palm Beach County by and among you and your
14 board and Ashley Tait-Dinger in May of 2025?

15 A. Yes.

16 Q. And if you could go down to your original e-mail
17 dated May 6, 2025, on the third-to-last page.

18 A. Okay.

19 Q. Do you see your e-mail there to your board with
20 copy to Ashley that initiates this chain?

21 A. Yes.

22 Q. And included in your e-mail to your board of
23 Florida employers, you included the same lists of the
24 plaintiff hospitals that Leah Binder included in her
25 e-mail, along with the LeapFrog spring 2025 grade for

1 the hospitals.

2 Do you see that?

3 A. Yes.

4 Q. And so when you send an e-mail to your board, you
5 expect them to hopefully read the e-mail; is that
6 correct?

7 A. Yes.

8 Q. And your board, as we walked through in a
9 back-of-the-napkin manner, might have an employee or
10 covered lives number in Florida around 100,000; is that
11 fair?

12 A. Yes. We came to that earlier.

13 Q. And here in this e-mail, you are alerting them to
14 the plaintiff hospitals with their LeapFrog spring 2025
15 grade next to them; do you see that?

16 A. Yes.

17 Q. And if you flip to the next page, do you see the
18 paragraph beginning, I asked what protection?

19 A. Yes.

20 Q. Farther down, you write in that paragraph, We
21 have not sent these hospital CEOs the requests to
22 complete this survey as it would likely fan the flames.

23 Do you see that?

24 A. Yes, I do see that.

25 Q. What do you mean by that?

1 A. So as it says also earlier in the letter, I did
2 have a call with the LeapFrog attorney a few days before
3 that and felt that it would upset the CEOs to receive
4 those letters. And now Leah had wanted us to go ahead
5 and to send those letters and -- after this time of
6 this -- after this was sent. And we waited and I had
7 forgotten -- I had forgotten there was a period of time
8 in there where we didn't want to do that. So then the
9 letters were eventually sent, because of the later
10 sentence there, Business as usual, not to change course.

11 Q. Understood. And so there was a decision
12 initially to not send the hospital CEOs a request to
13 complete the LeapFrog Hospital Survey?

14 A. Yes.

15 Q. And later, there was a change?

16 A. Yes.

17 Q. And LeapFrog -- and Florida Alliance did send
18 letters to the plaintiff hospitals asking them to
19 participate in the LeapFrog survey?

20 A. Yes.

21 MR. BILLEK: Scott, when you have a second, I
22 just need a two-second break for an urgent matter I
23 have to deal with. I'm sorry to interrupt you and I'm
24 not trying to jam up your -- so whenever you get a
25 minute.

1 MR. HVIDT: Totally understand. Mind if we
2 quickly finish this document? We're pretty close.

3 MR. BILLEK: Of course. Finish your topic.

4 Thank you.

5 BY MR. HVIDT:

6 Q. At the time of this e-mail, it wasn't yet clear
7 whether LeapFrog's counsel would be your counsel; is
8 that correct?

9 A. That's correct.

10 MR. HVIDT: I can pause there for you to go
11 deal with your matter.

12 MR. BILLEK: Thank you.

13 MR. HVIDT: We can go off the record.

14 THE VIDEOGRAPHER: We're off the record at 1:25
15 p.m.

16 (A brief recess was taken.)

17 THE VIDEOGRAPHER: We are on the record at 1:31
18 p.m.

19 BY MR. HVIDT:

20 Q. Looking back at the page in Exhibit 12 that we're
21 looking at --

22 A. I think we're looking at 11.

23 Q. We're looking at Exhibit 11, the page we're still
24 at, in the following paragraph that begins, We also
25 decided.

1 Do you see that?

2 A. Yes.

3 Q. In this paragraph, is it fair to say that you are
4 contemplating whether to include reference to this
5 lawsuit in the weekly bulletin sent to the Florida
6 employer members that you have? And if so, what amount
7 of information?

8 A. Yes. I was asking the board if we should alert
9 the employer members because you showed earlier, you
10 know, our members are displayed, you know, publicly, in
11 case they were contacted by the media or anyone so they
12 would know ahead of time and they would know who to
13 direct their questions to. I wasn't sure what to do. I
14 was asking for board guidance on that.

15 Q. And ultimately, you -- the decision was made to
16 include a reference in the weekly bulletin to the
17 lawsuit; is that correct?

18 A. Yes. The board members wanted us to do that.

19 Q. Handing you what's been marked as Exhibit 12 in
20 the van Caulil deposition.

21 (Exhibit No. 12 was marked for identification.)

22 BY MR. HVIDT:

23 Q. Which was produced in this litigation by Florida
24 Alliance as FHA0000001.

25 Do you see Exhibit 12 before you, Dr. van Caulil?

1 A. Yes.

2 Q. And what is Exhibit 12?

3 A. So I mentioned earlier in the deposition that we
4 communicate with our employer members via a weekly
5 bulletin. And this is the one that went out on May 9th.

6 Q. And so this weekly bulletin that went out on
7 May 9th was distributed to all of the Florida employer
8 members of the Florida Alliance for Healthcare Value; is
9 that correct?

10 A. Yes. Each of the employer members would have
11 received this via e-mail on that day.

12 Q. And earlier, we discussed that the employer
13 members of the Florida Alliance for Healthcare Value
14 represented approximately three to 400,000 Florida
15 employees or covered lives a few years ago and that
16 might be a fair approximation of where it sits today; is
17 that correct?

18 A. Yes.

19 Q. And if you flip through this document, which
20 hopefully has page numbers, to page 7. Do you see where
21 there's a blue banner that says, The LeapFrog Group?

22 A. Yes.

23 Q. And if you scroll down to the bottom of that
24 section, do you see where it says, As you may have
25 heard, a lawsuit has been filed against The LeapFrog

1 Group on behalf of five hospitals in Palm Beach County,
2 requesting that The LeapFrog Group suppress their grades
3 on the safety score website.

4 A. Yes.

5 Q. And then you go on to say if they have questions
6 or inquiries, to direct them to Karen Jupiter at The
7 LeapFrog Group; do you see that?

8 A. Yes.

9 Q. Are weekly bulletins prepared in the ordinary
10 course of Florida Alliance business?

11 A. Yes.

12 Q. You can set that to the side.

13 MR. HVIDT: Can we go off the record
14 momentarily?

15 THE VIDEOGRAPHER: We are off the record at
16 1:37 p.m.

17 (A brief recess was taken.)

18 THE VIDEOGRAPHER: We are back on the record at
19 1:39 p.m.

20 MR. HVIDT: Thank you.

21 BY MR. HVIDT:

22 Q. Dr. van Caulil, did you attend a board meeting in
23 June of this year for The LeapFrog Group?

24 A. Yes. I wasn't able to attend for the full time,
25 but I was there for a good portion of the meeting.

1 Q. And during that board meeting, was there a report
2 on the lawsuit?

3 A. I don't recall. I assume you're looking for the
4 minutes or agenda from it, so if I could refresh my
5 memory. Sorry the jump to conclusions, but --

6 Q. That one was helpful.

7 A. Yeah.

8 MR. HVIDT: And so I'm handing the witness
9 what's been marked as Exhibit 13 in the van Caulil
10 deposition, which is a document that was produced by
11 The LeapFrog Group on Sunday without Bates numbers and
12 we haven't yet received the Bates-copied version.

13 I'll note on the record an item for all the
14 documents produced by LeapFrog Group on Sunday that
15 don't have Bates numbers, that LeapFrog Group asks
16 that they be confidential, and so we'll have the
17 transcript be confidential while those portions are
18 designated as confidential moving forward.

19 Is that okay with you, Counsel?

20 (Exhibit No. 13 was marked for identification.)

21 MR. BILLEK: Yes.

22 BY MR. HVIDT:

23 Q. And, Dr. van Caulil, do you see that the top of
24 this document says, LeapFrog Group board meeting agenda?

25 A. Yes.

1 Q. And do you see the date of it is June 25, 2025?

2 A. Yes.

3 Q. And there's a location in person and a board
4 meeting Zoom link. Do you see that?

5 A. Yes.

6 Q. And is it the practice of The LeapFrog Group to
7 not memorialize and approve minutes at the subsequent
8 board meeting?

9 A. Yes. The practice is you would receive the
10 minutes from this June meeting at the September meeting.

11 Q. So it is the case that here, before the September
12 board meeting occurred, there would not have been
13 minutes at this meeting yet approved; is that correct?

14 A. That's correct. We have not received a draft
15 minutes or a board packet yet.

16 Q. And looking down at the agenda items, do you see
17 where it says five rows down, Executive session?

18 A. Yes.

19 Q. And then it says the -- in the discussion, The
20 board will meet in the executive session with counsel
21 and Leah and three members of the management team to be
22 briefed on a confidential legal matter.

23 Do you see that?

24 A. I do.

25 Q. As part of that discussion, do you recall there

1 being a PR message delivered to the board?

2 A. No, I don't recall. Public relations PR you're
3 saying?

4 Q. Correct.

5 A. No.

6 Q. Do you recall Lauren Bailey communicating --

7 A. Oh, Lauren did a presentation. Okay. I guess I
8 wouldn't have called that PR. But yes. Lauren did a
9 presentation.

10 Q. What would you call that presentation that Lauren
11 did?

12 A. Communications.

13 Q. Do you recall when Lauren gave that presentation
14 that there was a slide deck accompanying that
15 presentation?

16 A. Yes. There were slides, yes.

17 Q. And did the slides follow along with oral
18 communication that she gave to the board?

19 A. Yes.

20 Q. You can set that one to the side.

21 MR. HVIDT: I'm handing Dr. van Caulil a
22 document that's been marked as Exhibit 14, which was
23 produced in this litigation by LeapFrog as
24 LEAPFROG00402156, as previously marked as Bailey
25 Exhibit 42.

1 (Exhibit No. 14 was marked for identification.)

2 BY MR. HVIDT:

3 Q. Do you see that, Dr. van Caulil?

4 A. Yes, I do.

5 Q. And flipping through the document, and please
6 take your time, could you let us know if the message on
7 the page is consistent with what you recall being orally
8 communicated by Lauren Bailey at the board meeting?

9 A. Yes.

10 Q. Looking in the document, Exhibit 14, do you see
11 under slide 2 where it says, Slide 2?

12 A. Yes.

13 Q. Do you see where Lauren says, quote, We will make
14 it painful for Tenet by drawing further attention to
15 their very poor performance with strategic media
16 coverage and local and national press?

17 A. Yes.

18 Q. Is that consistent with the message that Lauren
19 gave to the board at the June 2025 board meeting?

20 A. To the best of my recollection, yes.

21 Q. Do you see down in that first page where it says,
22 Slide 7, and then there's three sub-bullets there?

23 A. Yes.

24 Q. And there's a bold part where he says, They say
25 we are weaponizing fear, distorting facts and misleading

1 the public.

2 Do you see that?

3 A. I do.

4 Q. And her response is, Our methodology is
5 100 percent transparent and completely unbiased.

6 Do you see that?

7 A. I do.

8 Q. Do you believe that the LeapFrog methodology is
9 completely unbiased?

10 A. I do.

11 Q. Do you have an understanding that the LeapFrog
12 safety grade expert panel does not agree that it's
13 completely unbiased?

14 A. No.

15 Q. Flipping over to the next page, do you see where
16 there's a reference to Slide 9?

17 A. Yes.

18 Q. And then three sub-bullets down, it says quote,
19 We also like to focus on the poor performance of these
20 hospitals earning a D and F.

21 Do you see that?

22 A. Yes.

23 Q. And so in this communication, is LeapFrog
24 equating a D and F to the poor performance of the
25 hospitals?

1 A. Is that a question?

2 Q. Yes. The question was, in this communication, is
3 LeapFrog staff equating to the board poor performance to
4 the hospitals receiving a D and an F?

5 A. Yes.

6 Q. And so when someone is communicating that the
7 hospitals received a D and an F, that's consistent with
8 trying to communicate that they are poor-performing
9 hospitals; is that correct?

10 A. Poor performing on the hospital safety grade,
11 yes.

12 Q. Looking at slides 10 and 11, Lauren references
13 how they've garnered 18 original stories about the
14 lawsuit.

15 Do you see that?

16 A. I do.

17 Q. When you heard the word -- or garnered, a similar
18 message, did you interpret that to mean that The
19 LeapFrog Group was taking efforts to put the lawsuit
20 into the press?

21 MR. BILLEK: Object to form.

22 You can answer.

23 THE WITNESS: I -- when I was hearing the
24 presentation, my interpretation was that both sides
25 were engaging the media heavily to get their story

1 across.

2 BY MR. HVIDT:

3 Q. You also mentioned earlier today that you had
4 read some references about the lawsuit in the press
5 before; is that correct?

6 A. Yes.

7 Q. And had you read about the Palm Beach Post
8 articles?

9 A. I -- I couldn't say specifically.

10 Q. Okay.

11 A. Sorry.

12 Q. Is it fair to say that there was local Florida
13 press about the lawsuit that highlighted the hospital's
14 D and F grades?

15 A. So it's an interesting question because I had to
16 look for it, you know, to Google, if you will, to be
17 able to pull up the articles. I didn't see anything in
18 the normal course of my engaging with the news media,
19 and I had board members and other people who knew about
20 this say, I haven't heard a thing. I haven't heard
21 anything. I haven't seen anything. I have a board
22 member who lives in Palm Beach County, I have other
23 employer members down there that said, I haven't seen
24 anything.

25 So while there was local Florida press about the

1 lawsuit, I don't know that it was pervasive. And I
2 don't know that it all had the grades in it, depending
3 on which side of the issue, plaintiff or the defendant,
4 were telling the story. So I just thought that was
5 interesting that most people in my circle hadn't seen or
6 heard anything about it. And that surprised me.

7 Q. In today's news cycles, there's a lot of news
8 happening. Is that fair to say?

9 A. Yes, there's a lot of news happening.

10 Q. And often when you -- we're no longer in the days
11 where we got a morning paper and that's a primary way
12 where we got the morning -- got the news; is that right?

13 A. Yes.

14 Q. And we're no longer in a day where there's three,
15 four nightly news stations that you tune into to get the
16 news for the day --

17 A. Yes.

18 Q. -- is that correct?

19 A. Yes, unfortunately that's the case.

20 Q. I agree that's unfortunate.

21 And so the fact that you need to search for news
22 that you're looking for doesn't mean that people aren't
23 consuming it?

24 A. Correct. But my point is that the people who I
25 thought would have heard about it hadn't, quote, seen

1 anything, their words, on it. If you go back to the
2 discussion we had about the board and what should we do
3 and say, I was concerned that, you know, they would read
4 about it in the media before hearing it from us and they
5 know we're a regional leader, we'd be associated in some
6 way.

7 Q. And I'll come back to that momentarily.

8 When you have those conversations with them, did
9 you fill them in about the lawsuit?

10 A. No.

11 Q. Flipping to the last page of this document before
12 we set it aside. Do you see in the second-to-last
13 paragraph, Lauren mentions your name. Do you see that?

14 A. I do.

15 Q. And what is Lauren referring to there?

16 A. So in July, I'm going to say mid July, the Bruce
17 Bradley fellows, are you familiar with that program in
18 LeapFrog? It's a fellowship that they have. They were
19 coming down to Florida, specifically to Orlando,
20 specifically to AdventHealth, to have their educational
21 session and such. And Leah had asked -- well, actually,
22 Joe Berger, who runs the regional leader program, asked
23 Ashley, my vice president, if she would attend that
24 meeting, Leah would be there, Jill would be there, the
25 fellows would be there, AdventHealth was going to do a

1 big presentation on their patient safety.

2 Ashley was unable to come for medical reasons.
3 She lives in the state of Washington right now. So I
4 was to attend. And so Leah said to me, or somebody on
5 her staff said Leah has had a conversation with the CEO
6 of Jupiter Medical Center. She was thanking them for
7 their straight As. And in the course of the
8 conversation mentioned the Florida Alliance and the CEO
9 is not familiar with your organization. And Leah
10 thought it might be a good opportunity when she's in
11 Florida to go down to Jupiter Medical Center, learn from
12 them what they've done to be able to achieve straight As
13 and have me and an employer member or two come along to
14 talk about the Florida Alliance.

15 And so I said that, you know, I would -- I would
16 be able to do that. And I had a couple of employer
17 members who are willing to attend. I -- my intent in
18 the meeting for us was to be able to educate about the
19 Florida Alliance. We do a lot, a lot more than
20 LeapFrog. It's a very small percent of the work that we
21 do. And hospital CEOs like to meet with employers in an
22 area and use it as that opportunity, not to, you know,
23 really get into any kind of LeapFrog discussion.

24 The meeting was subsequently canceled. Leah did
25 not come to Florida at all. She had -- I believe it was

1 her brother having surgery and so she reached out to me
2 and said that the meeting was canceled. I could go
3 ahead if I wanted to and meet with them. But as this
4 lawsuit was progressing, I was not really feeling
5 comfortable with going down to Palm Beach and having my
6 employers brought into the mix in case anything had come
7 up about the lawsuit.

8 So I was fine with the meeting being canceled.
9 We had no prep calls. I never rescheduled and there's
10 been nothing further.

11 Q. You mentioned that your intent behind the meeting
12 was to connect your employer members to a CEO who wasn't
13 aware of the Florida Alliance.

14 A. That's correct.

15 Q. What -- thank you.

16 A. Sorry.

17 Q. What was -- what was communicated to you from
18 LeapFrog as to what their intent was for the meeting?

19 MR. BILLEK: Just note my objection.

20 You can answer.

21 THE WITNESS: Leah told me and then also in
22 this meeting, the board meeting, that it was to
23 highlight and spotlight and congratulate Jupiter
24 Medical Center on their achievement. I learned that
25 they were setting up media interviews, and I did say

1 that we would not be participating in anything like
2 that.

3 BY MR. HVIDT:

4 Q. Did LeapFrog communicate to you that they were
5 trying to keep LeapFrog in the news in Palm Beach
6 County?

7 A. I don't remember them saying it that way and that
8 that would be a way to do that, so no.

9 Q. Did LeapFrog communicate to you that they were
10 trying to portray Jupiter in contrast to plaintiff
11 hospitals in the media and with employers?

12 A. I would say yes.

13 Q. And in one of the -- and in trying to contrast
14 Jupiter Medical Center with the plaintiff hospitals, did
15 LeapFrog want to contrast Jupiter's A LeapFrog grade
16 with plaintiff hospital's D and F LeapFrog grades?

17 MR. BILLEK: Object to form.

18 You can answer.

19 THE WITNESS: I don't know what their plan was
20 for that. The gist of the message was, here's a
21 straight A hospital in an area where we have several
22 hospitals who haven't achieved that level of success
23 with our grading. So what are you doing differently
24 and innovatively around patient safety and quality
25 that we can learn from and perhaps share?

1 BY MR. HVIDT:

2 Q. You can set that document to the side.

3 A. The pile's getting a little smaller.

4 Q. That, it is.

5 A. It's getting higher over here.

6 Q. Did the Florida Alliance reach out to its -- some
7 of its members to see if they would be willing to
8 participate in the meeting with Jupiter Medical Center?

9 A. Yes, I did.

10 MR. HVIDT: I've handed the witness what has
11 been produced in this litigation by Florida Alliance
12 as FHA0000907.

13 (Exhibit No. 15 was marked for identification.)

14 THE WITNESS: Yes.

15 BY MR. HVIDT:

16 Q. Do you see Exhibit 15 in front of you?

17 A. I do.

18 Q. And what is Exhibit 15?

19 A. So this is an e-mail that Lisa Hain sent to check
20 in with Nancy Bolton, who is the benefits person at Palm
21 Beach schools, to see if she's available to attend that
22 meeting at Jupiter Medical Center. We already had Susan
23 McBroom, who we talked about earlier today, at Patriot
24 Rail, who had said that she would attend. And she sent
25 that on July 1st. I was in Europe at the time.

1 Q. And earlier today, we talked about Lisa Hain's
2 role with Florida Alliance. Do you recall that?

3 A. Yes.

4 Q. And you said that she performs an administrative
5 role and will coordinate communication. Is that fair?

6 A. I wouldn't say she coordinates communication.
7 She supports us in our communication effort.

8 Q. And so when -- before we presented you with
9 Exhibit 15, you mentioned that you sent a message to
10 some of your Florida employer members about
11 participating in the meeting with Jupiter Medical
12 Center. Do you recall that?

13 A. Yes.

14 Q. And so when Lisa is the actual sender of this
15 e-mail, did you direct her to send this e-mail?

16 A. So I don't recall that. As I said, I was on
17 vacation. I was in Scandinavia at the time. And I
18 think that I sent e-mails before I left, which would
19 have been -- I think I left June 28th for vacation. And
20 then when either I wasn't hearing from people or they
21 couldn't respond, it could be that Ashley worked with
22 her on this. I don't recall whether I would have
23 e-mailed while I was away. So, I'm sorry, I don't
24 recall. But it was due to the fact that I was -- I was
25 out of pocket.

1 Q. Would either you or Ashley have been the one
2 to -- directed the communication that Lisa Hain sent
3 here?

4 A. Yes.

5 Q. And the substance of the message from Lisa Hain,
6 is that a substance that would have been communicated
7 for her to send by either you or Ashley?

8 A. Yes.

9 Q. And in the message, you're reaching out to Palm
10 Beach schools and Nancy Bolton specifically. Why are
11 you reaching out to Palm Beach schools?

12 A. Because the meeting was going to be in Palm Beach
13 County.

14 Q. And would the meeting being in Palm Beach County
15 also relate to the notion that Jupiter is in Palm Beach
16 County?

17 A. Yes.

18 Q. And would the nature of the meeting in Palm Beach
19 County relate to that the five plaintiff hospitals are
20 in Palm Beach County?

21 A. I would say much less than -- than the issue that
22 Jupiter Medical Center is in Palm Beach County. As I
23 said a few minutes ago, my intent for the meeting was to
24 get to know the CEO, and I presume other team members,
25 who would come so that we could educate them about the

1 Florida Alliance and see where there were opportunities
2 to collaborate.

3 Q. You didn't initiate the meeting request, it
4 wasn't your idea --

5 A. No.

6 Q. -- to come up with the idea for the meeting; is
7 that correct?

8 A. That's correct.

9 Q. Was it LeapFrog's idea to have that meeting?

10 A. I don't know whose idea it was. I don't know
11 whether it came from Jupiter Medical Center or
12 originated from LeapFrog. I don't know.

13 Q. And in this message that was sent, do you see --
14 can you read into the record the last sentence of that
15 main paragraph of the e-mail?

16 A. The purpose of the meeting is to recognize and
17 thank Jupiter Medical Center for the straight As they
18 received as part of the spring LeapFrog Hospital Safety
19 Grades when there are five other hospitals in the county
20 with Ds and Fs.

21 Q. Thank you.

22 And when it references that there are five other
23 counties -- five other hospitals in the county with Ds
24 and Fs, is that a reference to the plaintiff hospitals?

25 A. Yes.

1 Q. Why did Florida Alliance feel a need to include
2 reference to the notion that there are five other
3 hospitals in the county with Ds and Fs?

4 A. I don't recall.

5 Q. And is Palm Beach schools an employer of a decent
6 amount of covered lives in Palm Beach County?

7 A. Yes.

8 Q. And in connecting Palm Beach schools with Jupiter
9 Medical Center, is there a goal to direct Palm Beach
10 schools to have their employees go to Jupiter Medical
11 Center over the five plaintiff hospitals?

12 A. No.

13 Q. Is it a possibility that upon being informed that
14 Jupiter Medical Center gets straight As, in comparison
15 to five hospitals in Palm Beach County that get Ds and
16 Fs from LeapFrog, that Nancy Bolton might direct her
17 employees to go to Jupiter Medical Center instead of the
18 five plaintiff hospitals?

19 A. I don't know whether Nancy Bolton or her
20 leadership would do that.

21 Q. Is it a possibility that upon being informed that
22 Jupiter Medical Center gets straight As, in comparison
23 to five hospitals in Palm Beach County that gets Ds and
24 Fs from LeapFrog, that Nancy Bolton might direct her
25 employees to go to Jupiter Medical Center instead of

1 five plaintiff hospitals?

2 MR. BILLEK: Object to the form of the
3 question.

4 You can answer.

5 THE WITNESS: I don't know if it's a
6 possibility. I don't know if it's a possibility
7 because I don't know what their plan states or their
8 benefit design or their contracts. So I don't know if
9 it's a possibility.

10 BY MR. HVIDT:

11 Q. Is that the intent that LeapFrog had behind this
12 meeting, in juxtaposing Jupiter with plaintiff
13 hospitals?

14 MR. BILLEK: Object to form.

15 You can answer.

16 THE WITNESS: I don't know what the intent was
17 of LeapFrog beyond what I said which was to highlight
18 their -- Jupiter Medical Center's straight As and to
19 give us an opportunity to introduce ourselves.

20 BY MR. HVIDT:

21 Q. But when you were at a board meeting in June of
22 2025, did Lauren Bailey communicate to the board and
23 yourself that LeapFrog wanted to make it painful for
24 Tenet?

25 A. Yes. That was stated.

1 Q. So is it possible that the effort to set up a
2 meeting with Jupiter Medical Center and Florida
3 employers highlighting Jupiter Medical Center's LeapFrog
4 straight As with plaintiff hospitals' Ds and Fs, that
5 that was one of the ways that LeapFrog was trying to
6 make it painful for Tenet?

7 MR. BILLEK: Object to form.

8 THE WITNESS: I don't recall that I make that
9 connection. If LeapFrog wants to highlight a
10 high-performing hospital and give us an opportunity to
11 create a relationship with a hospital, a health system
12 or whoever, who we haven't had the opportunity to work
13 with, I don't translate that to being pain for the
14 other hospitals.

15 BY MR. HVIDT:

16 Q. But LeapFrog's communicated to you that that was
17 their intent behind this meeting; is that correct?

18 A. That was not my intent for the meeting.

19 Q. But did LeapFrog communicate to you that that was
20 their intent for the meeting?

21 MR. BILLEK: Just note my objection to the
22 form.

23 THE WITNESS: No, they did not communicate to
24 me that the intent for the Jupiter meeting was to
25 cause any harm or pain to the five hospitals. It was

1 to spotlight, thank Jupiter Medical Center because
2 you're in a county where not everybody is able to
3 achieve that high level of grade consistently. What
4 is it that you are doing that is innovative and
5 effective that we can learn from? I mean, they're
6 also a 501(c)(3) organization just like the Florida
7 Alliance. And these types of meetings can put a
8 spotlight on things that can be shared broadly.

9 So to me, when it was posed as an opportunity,
10 that's what I saw could happen at the meeting.
11 However, we never had the meeting.

12 BY MR. HVIDT:

13 Q. You never had the meeting but you did have
14 reach-outs to Florida employers, correct?

15 A. I reached out. My staff reached out to Florida
16 employers who live or work in Palm Beach County to see
17 if they were interested in meeting at the hospital.

18 Q. And in those correspondences, you noted that five
19 of the hospitals in Palm Beach County have Ds and Fs, in
20 comparison to Jupiter Medical Center's As; is that
21 correct?

22 A. Yes. That's correct.

23 Q. And -- let's look at another one of those
24 correspondence.

25 Did Nancy Bolton respond to this outreach, do you

1 recall?

2 A. I don't recall. She -- if she did respond, she
3 couldn't make it.

4 MR. HVIDT: I'm handing the witness what's been
5 marked as Exhibit 16, which was produced by Florida
6 Alliance as --

7 THE WITNESS: Oh, okay.

8 (Exhibit No. 16 was marked for identification.)

9 MR. HVIDT: -- FHA0000913, which is the e-mail
10 chain, Re: Join Karen at Jupiter Medical Center
11 July 16th between Lisa Hain and Karen van Caulil at
12 the top.

13 BY MR. HVIDT:

14 Q. Do you see that?

15 A. Yes.

16 Q. And if you flip down to the second page, do you
17 see the response from Nancy Bolton there in the middle?

18 A. Yes, I see it now that she was unable to make the
19 meeting.

20 Q. But in responding to the e-mail, is it fair to
21 say that she had received and consumed the e-mail that
22 was sent to her?

23 MR. BILLEK: Object to form.

24 THE WITNESS: Nancy responded to Lisa's e-mail
25 on July 1st saying she had a school board meeting that

1 day and unable to attend. So I would interpret that
2 as her having read Lisa's e-mail.

3 MR. HVIDT: Thank you.

4 And I'm now handing the witness what's been
5 marked as Exhibit 17, which was produced in this
6 litigation by Florida Alliance as FHA0002804.

7 (Exhibit No. 17 was marked for identification.)

8 MR. HVIDT: Exhibit 17 at the top is an e-mail
9 chain between Ashley Tait-Dinger, Karen van Caulil
10 regarding, Join Karen at Jupiter Medical Center July
11 16, 1:00 p.m. to 3:00 p.m.

12 BY MR. HVIDT:

13 Q. Do you see that?

14 A. Yes.

15 Q. If you flip back to your -- origin of this
16 e-mail, do you see on July 1, 2025, Lisa Hain e-mailed
17 Rosa Novo? Do you see that?

18 A. Yes.

19 Q. And Rosa Novo is the chair of the Florida
20 Alliance board; is that correct?

21 A. Yes.

22 Q. And in this message that was sent, does this
23 message mirror what we looked at in Exhibit 15?

24 A. Yes.

25 Q. And there in that sentence, at the end of that

1 main paragraph, Florida Alliance references Jupiter
2 Medical Center's straight As and then says, When there
3 are five hospitals in a county with Ds and Fs.

4 Do you see that?

5 A. Yes.

6 Q. And Rosa Novo works with Miami-Dade schools; is
7 that correct?

8 A. Correct.

9 Q. And how many covered lives or employees do you
10 recall they had?

11 A. Yeah. That was like 45 or 50,000, I believe I
12 said at the time.

13 Q. And in this message, Florida Alliance is
14 communicating to Rosa that plaintiff hospitals have Ds
15 and Fs and is contrasting that with Jupiter Medical
16 Center's straight As; is that correct?

17 A. I'm sorry? Could you say that again? I was --

18 Q. Yeah. Going back to the original e-mail. In
19 this message, Florida Alliance is communicating to Rosa
20 Novo that plaintiff hospitals have Ds and Fs and is
21 contrasting that with Jupiter Medical Center's straight
22 As.

23 Is that correct?

24 A. So the e-mail does not say it's the plaintiff
25 hospitals. It just says there are five other hospitals

1 in the county with Ds and Fs. That doesn't make any
2 reference to the five hospitals or that they are the
3 ones that are -- that have filed a lawsuit.

4 Q. It doesn't refer to them by name; is that
5 correct?

6 A. That's correct.

7 Q. But are the five -- is the intent here behind
8 Florida Alliance's communication to five other hospitals
9 in the county with Ds and Fs are the five plaintiff
10 hospitals?

11 A. It is referencing the five -- that there are five
12 other hospitals in the county with Ds and Fs. That's
13 what it says. But it does not call them out and it does
14 not point out that it's those five that happen to be in
15 the lawsuit.

16 Q. And -- but it does reference that there are five
17 other hospitals in the county with Ds and Fs?

18 A. Yes, it does.

19 Q. And is LeapFrog's intent in setting up this
20 meeting to contrast an A grade hospital with D and F
21 grade hospitals?

22 A. I don't know if it's LeapFrog's intent at the
23 time to do that.

24 Q. And Rosa responds saying she can't attend; is
25 that correct?

1 A. Correct.

2 Q. And then Lisa updates you that Rosa is not able
3 to attend; is that right?

4 A. That's correct. Which I felt was unfortunate
5 because of her being board chair.

6 Q. And you ask -- excuse me, strike that.

7 Lisa then references to you on July 4th that
8 there's no word from MAPEI. Do you see that?

9 A. Yes.

10 Q. What is MAPEI?

11 A. So that's another employer member down in the
12 same area. I can't remember what language it's an
13 acronym for but maybe Italian, the different letters.
14 They're like a manufacturing industrial glues and
15 adhesives and such, so...

16 Q. Do you have any -- are they in the Palm Beach
17 County area?

18 A. Yes.

19 Q. Do you have any understanding of how many covered
20 lives or employees they have?

21 A. I would say less than 1,000.

22 Q. And then moving forward, you write to Ashley on
23 July 4th, I hate to even suggest this but should I see
24 if FPL would like to attend?

25 You see that?

1 A. Yes.

2 Q. What's FPL?

3 A. Florida Power & Light. They're not a member of
4 the Florida Alliance.

5 Q. Okay. And then --

6 A. I wanted to keep it to employer members, but knew
7 that they were located in the county as their
8 headquarters.

9 Q. And after discussion of that idea, you suggest
10 maybe Melissa Miller; do you see that on the first page?

11 A. Yes.

12 Q. Who's Melissa Miller?

13 A. So she is with -- or had been with Florida
14 Power & Light. I was just clarifying to Ashley that I
15 was not thinking of this other person, Michael, who we
16 had been working with. Melissa had served as our board
17 vice chair and was in a different position at FPL. I
18 didn't take it further than that.

19 Q. There was no reach-out to --

20 A. No.

21 Q. -- Melissa Miller?

22 A. No. Stopped right there, yes.

23 Q. How many -- do you recall how many employer
24 members you reached out to about attending this meeting?

25 A. Rosa and Nancy, Elissa from MAPEI, Marcia from

1 Lennar, Susan McBroom from Patriot Rail. I think that's
2 it.

3 Q. I'm handing you what's been marked as Exhibit 18
4 to this deposition. And Exhibit 18 was produced by
5 Florida Alliance as FHA0000921.

6 (Exhibit No. 18 was marked for identification.)

7 BY MR. HVIDT:

8 Q. And it is an e-mail from Lisa Hain to Elissa
9 Cadovius?

10 A. Cadovius.

11 Q. And Barbara Ramos regarding, Join Karen at
12 Jupiter Medical Center July 16, 1:00 p.m. to 3:00 p.m.

13 Do you see that?

14 A. Yes.

15 Q. And is the substance of this message to Elissa
16 and Barbara consistent with the message that was
17 conveyed to Rosa Novo and Nancy Bolton in Exhibit 17 and
18 15 respectively?

19 A. Yes.

20 Q. And in this message, again, it references Jupiter
21 Medical Center's straight As from the LeapFrog Hospital
22 Safety Grade when there are five other hospitals in the
23 county with Ds and Fs.

24 Do you see that?

25 A. Yes.

1 Q. You can set that to the side. Thank you.

2 You mentioned Lennar. Did I say it right?

3 A. Lennar Homes, yes.

4 Q. Lennar Homes?

5 A. Yes.

6 Q. Do you have an understanding of how many covered
7 lives Lennar Homes has?

8 A. That's one of the employer members who gives like
9 national, international numbers. And I don't know that
10 I have offhand Florida, I would say it's maybe 2,000 in
11 Florida.

12 Q. You also mentioned Patriot Rail, and a
13 representative of Patriot Rail sits on your board; is
14 that correct?

15 A. Yes.

16 Q. And earlier we talked about how they might have a
17 few hundred Florida employees or covered lives; is that
18 correct?

19 A. Correct.

20 Q. And why -- why, again, were you targeting -- or
21 do all those Florida employers you were talking about
22 have a presence in Palm Beach County?

23 A. All of them except for Patriot Rail. Susan
24 McBroom lives in Palm Beach County. If they have lives
25 in Palm Beach County, it's a very small number.

1 Q. Patriot Rail might be a little bit further south
2 in Florida?

3 A. No, out of Jacksonville predominantly.

4 Q. Oh, Jacksonville.

5 A. Its short rail, railroad, I don't really know
6 what that really means, but that's what I've been told.

7 Q. Don't they connect to the big ones?

8 A. I think so.

9 Q. And did you ever reach out to Florida bankers
10 regarding the meeting as well?

11 A. I guess I might have, yeah. I -- I don't
12 remember if we did or not. They do have banks in South
13 Florida. As I mentioned, there are multiple employer
14 welfare arrangements as well with many, many banks.

15 MR. HVIDT: And I've handed the witness what's
16 been marked as Exhibit 19 to this deposition, which
17 was produced by Florida Alliance as FHA0001749 and is
18 a May 8, 2025, e-mail from Ashley Tait-Dinger to Lisa
19 Hain regarding contacts.

20 (Exhibit No. 19 was marked for identification.)

21 BY MR. HVIDT:

22 Q. Do you see that?

23 A. Yes.

24 Q. And then Ashley Tait-Dinger writes, Can you send
25 me the main contacts' e-mails for the following?

1 Do you see that?

2 A. Yes.

3 Q. And then lists Palm Beach - Nancy Bolton. Do you
4 see that?

5 A. Yes.

6 Q. And then it notes Lennar - not sure who this is?

7 A. Yes.

8 Q. And then it says MAPEI - not sure who this is?

9 And then it says Banker - Adella.

10 Do you see that?

11 A. Yes.

12 Q. And then do you see where she writes, I need to
13 contact them about the LeapFrog lawsuit?

14 A. Yes, I see that.

15 Q. Do you have an understanding of whether Florida
16 Alliance contacted each of those Florida employer
17 members of Florida Alliance about the LeapFrog lawsuit?

18 A. No, I don't.

19 Q. And are these communications that we've been
20 looking at the contacts' e-mails that Ashley Tait-Dinger
21 was looking for those contact information for?

22 A. Are you asking about for the Jupiter meeting?

23 Q. Yes.

24 A. No, I don't think so. I don't think that the
25 invitation to the Jupiter meeting was till weeks after

1 that, probably in -- probably in June.

2 Q. Did you ask Ashley Tait-Dinger to reach out to
3 those Florida employer members about the lawsuit?

4 A. I don't recall doing that. We talked earlier
5 about the dialogue with the board on how to inform the
6 members and it could be that this didn't happen and it
7 deferred to the weekly bulletin correspondence. I'm not
8 familiar with this e-mail.

9 Q. I'm handing you what's been marked as Exhibit 20
10 to the van Caulil deposition, which is produced in this
11 litigation as LEAPFROG00792177.

12 At the top of the document is an e-mail chain
13 between Lauren Bailey, Karen van Caulil, Leah Binder,
14 Angela Hopkins, Karen Jupiter, regarding Jupiter Medical
15 Center.

16 Do you see that, Dr. van Caulil?

17 (Exhibit No. 20 was marked for identification.)

18 THE WITNESS: Yes.

19 BY MR. HVIDT:

20 Q. If we could walk this back to the original e-mail
21 in this chain on Bates number ending 2180.

22 A. Yes.

23 Q. The e-mail on this chain that started it was from
24 Leah Binder; is that correct?

25 A. Yes.

1 Q. And it's dated May 28th. Do you see that?

2 A. Yes.

3 Q. And she writes, You may recall we spoke about
4 planning a visit of you and some of your members and me
5 to Jupiter Medical Center, one of the straight A
6 hospitals.

7 Do you see that?

8 A. Yes.

9 Q. Do you recall when you spoke with Leah Binder
10 about planning a visit between you and her and some of
11 the Florida Alliance members to Jupiter Medical Center
12 that predated May 28, 2025?

13 A. I think that we spoke just before that, only
14 maybe days before. I don't recall the exact date. She
15 called me and asked me if I would be interested. It was
16 a very short conversation.

17 Q. And she writes that the CEO of Jupiter Medical
18 Center is excited about the visit and is interested in
19 setting up this meeting; is that correct?

20 A. That's what it says.

21 Q. And forwarding along in this e-mail to the page
22 number ending 2178, do you see your e-mail dated
23 June 16, 2025?

24 A. Yes.

25 Q. And you wrote that you have an enthusiastic yes

1 from Susan McBroom, the director of human resources at
2 Patriot Rail.

3 Do you see that?

4 A. Yes.

5 Q. And you also referenced the -- you're waiting to
6 hear back from Nancy Bolton at Palm Beach schools.

7 Do you see that?

8 A. Correct. Yes.

9 Q. And then carrying forward, you respond that
10 Shannon Chamberlain from Lennar Homes is also attending.
11 Do you see that, on June 19th?

12 A. Yes.

13 Q. And so is it correct that before the meeting was
14 canceled, you had a commitment to attend the meeting
15 from two of your Florida employer members; is that
16 correct?

17 A. That's correct.

18 Q. And those were Lennar Homes and Patriot Rail?

19 A. Correct.

20 Q. And in response to your e-mail, Lauren Bailey
21 responds the next day, I'm going to reach out to their
22 PR team today to kick off planning.

23 Do you see that?

24 A. Yes.

25 Q. Did you interpret the their PR team to be Jupiter

1 Medical Center's PR team?

2 A. Yes.

3 Q. And you had mentioned that you did not intend to
4 participate in the PR component; is that correct?

5 A. That's correct.

6 Q. Did your intention of not participating in the PR
7 component stop -- was that communicated before June 20,
8 2025?

9 A. I communicated that from the outset. As soon as
10 I heard that there was going to be any level of media,
11 it might have been at the board meeting the first time I
12 heard that. I said that I would not participate nor put
13 my employers in a position like that. And Leah said she
14 understood.

15 Q. And LeapFrog intended to continue with the PR
16 effort, even if it didn't include the Florida members in
17 that PR component?

18 A. I don't know if they were going to continue
19 without us. I just made it clear that we were not
20 participating.

21 Q. If you had communicated to Leah at the board
22 meeting earlier in June that you had intended not to
23 have your members participate in the LeapFrog -- in the
24 PR effort regarding the meeting and on June 20, 2025,
25 Lauren Bailey's communicating a plan to reach out to

1 Jupiter Medical Center's PR team today to kick off
2 planning, does that indicate that LeapFrog was --
3 continued to go ahead with PR planning for the meeting
4 with Jupiter Medical Center even after you communicated
5 your intent not to participate in such PR planning?

6 A. It looks like that was Lauren's plan. I don't
7 know if she went ahead and did that, but it looks like
8 that's her plan.

9 MR. HVIDT: I'm handing the witness what's been
10 marked as Exhibit 21 to the van Caulil deposition.
11 The exhibit was produced in this litigation as
12 FHA0002195. And the top e-mail is from Karen van
13 Caulil to Ashley Tait-Dinger regarding Jupiter Medical
14 Center dated May 28, 2025.

15 (Exhibit No. 21 was marked for identification.)

16 BY MR. HVIDT:

17 Q. Do you see that?

18 A. Yes.

19 Q. Was this e-mail sent in the ordinary course of
20 business?

21 A. Yes.

22 Q. And if you flip to the e-mail that originated
23 this chain, do you see the e-mail that was in a prior
24 exhibit that we looked at from Leah Binder to you
25 regarding this Jupiter Medical Center meeting?

1 A. Yes.

2 Q. And again, she references a conversation that she
3 had with you predating this May 28, 2025, e-mail; is
4 that correct?

5 A. Yes.

6 Q. And you forwarded that e-mail to Ashley
7 Tait-Dinger on May 28, 2025, on the second page.

8 Do you see that?

9 A. Yes.

10 Q. And then Ashley Tait-Dinger replies, I thought
11 the meeting was with AdventHealth in June.

12 Do you see that?

13 A. Yes.

14 Q. And you write back on May 28, 2025. Can you read
15 in the record your e-mail?

16 A. Yes. This is something different. Leah wants to
17 highlight Jupiter Medical Center's A safety grade
18 because of the lawsuit and poor performing hospitals in
19 Palm Beach County.

20 Q. Does reading this e-mail refresh your
21 recollection that Leah communicated to you that she
22 wants to highlight Jupiter Medical Center's A safety
23 grade because of the lawsuit and poor performing
24 hospitals in Palm Beach?

25 A. Well, I hadn't recalled that I had said that in

1 an e-mail, so obviously my statements earlier, I need to
2 amend. She must have said at some point to me that that
3 was her intent. And I hadn't remembered that. Because
4 subsequent discussions were about when we had the
5 follow-up call was to really highlight their straight A
6 performance.

7 Q. And so before your e-mail on May 28, 2025, you're
8 communicating that when Leah spoke with you, she
9 communicated to you that she wanted to highlight Jupiter
10 Medical Center's A safety grade because of the lawsuit
11 and poor performing hospitals in Palm Beach County; is
12 that correct?

13 A. I don't recall the exact conversation, but I
14 don't see myself writing that sentence if I didn't feel
15 that at the time.

16 Q. And you mentioned earlier that you recalled that
17 the conversation you had with her was shortly before the
18 May 28th e-mail from her to you that starts this chain;
19 is that correct?

20 A. Yes. I don't remember the exact date. It was a
21 brief conversation and it was supposed to have a more
22 detailed follow-up which never happened. There was a
23 planning meeting set, and I think on the Jupiter end
24 they had to reschedule it so it never was rescheduled.

25 Q. And you didn't think that the meeting was a good

1 idea from the outset; is that correct?

2 A. No. It's not entirely correct. Initially, I
3 thought it would be a good opportunity to be able to
4 meet the Jupiter Medical Center CEO and his leadership
5 team and as the days and weeks progressed and I
6 discussed this with Ashley, we thought that it probably
7 would be best not to do it while the lawsuit was going
8 on, that it probably made more sense to wait until a
9 later date and hope that we could reengage.

10 Q. And why would having a meeting with Jupiter
11 Medical Center highlighting its A LeapFrog grade not be
12 a good idea while the lawsuit was pending?

13 MR. BILLEK: Object to form.

14 You can answer that again.

15 THE WITNESS: So, you know, you can't control
16 where a conversation is going to go before you have
17 it. And as Ashley and I continued to talk about it,
18 it just made sense to stick with what we were saying
19 to everybody else, which was to, you know, kind of
20 stay out of any kind of discussions about the matters
21 of the lawsuit. And in case it came up, didn't want
22 to put my employers in that position.

23 BY MR. HVIDT:

24 Q. I'm handing you what's been marked as Exhibit 22
25 in the van Caulil deposition, which was produced in this

1 litigation as FHA0002516.

2 (Exhibit No. 22 was marked for identification.)

3 BY MR. HVIDT:

4 Q. It is an e-mail chain between -- at the top
5 between Ashley Tait-Dinger and Karen van Caulil dated
6 July 7, 2025, Re: Visit to Jupiter Medical Center.

7 Do you see that?

8 A. Yes.

9 Q. And if you'd go to the original e-mail in this
10 chain on the last page, let me know when you're there.

11 A. I'm here.

12 Q. And so did you get an e-mail from Leah Binder on
13 July 7, 2025, Re: Visit to Jupiter Medical Center?

14 A. Yes.

15 Q. And in the second sentence of the e-mail, does
16 Leah Binder tell you -- or strike that.

17 The first sentence of the e-mail, Leah Binder
18 informs you that she's not going to be able to make the
19 trip to Florida. Do you see that?

20 A. Yes.

21 Q. And the second sentence references what we talked
22 about earlier as relates to her brother needing surgery.
23 Do you see that?

24 A. Yes.

25 Q. And then what's the third sentence say, if you

1 could read that into the record, please?

2 A. In addition, the timing is not right for me to be
3 in Florida in terms of some legal issues.

4 Q. Do you have an understanding of what she was
5 referencing there?

6 A. No, not specifically.

7 Q. Were you aware that as of July 7th, LeapFrog was
8 maintaining that the court that is housing this
9 litigation didn't have jurisdiction over the LeapFrog
10 Group?

11 A. No, I'm not aware.

12 Q. Were you aware that at this time, the LeapFrog
13 Group was claiming that it didn't direct business into
14 Florida?

15 A. I'm not understanding directing business into
16 Florida. No, I'm not aware of that.

17 Q. And then forwarding on in the e-mail chain,
18 there's an e-mail from Ashley Tait-Dinger to you and
19 potentially to Lisa Hain, but it's not clear whether
20 she's on it or not, on July 7th at 9:35 p.m., that
21 begins on the first page and then goes on to the second.

22 Do you see that?

23 A. Yes.

24 Q. She says, Just to you. So this has actually
25 removed Lisa Hain. Does that make sense?

1 A. Yes.

2 Q. And she writes, Leah e-mailed me too. Shocking
3 counsel did not think this was good timing...but let us
4 do it...oh, I thought we were covered under your
5 insurance...if you were told not to, why would we be
6 allowed?

7 Do you see that?

8 A. Yes.

9 Q. What did you interpret her to mean?

10 A. I didn't understand her e-mail. I was still out
11 of the country at the time. And Ashley will send
12 e-mails that are a little hard to follow with stream of
13 consciousness. My interpretation of it was we all came
14 to the same conclusion, that the meeting should not
15 proceed.

16 Q. And you responded, quote, I am relieved it is
17 canceled.

18 Do you see that?

19 A. Yes.

20 Q. And can you explain why you were relieved it is
21 canceled?

22 A. I think I've already answered that. I didn't
23 want to put my employer members in a difficult position
24 when I was also hearing about media and what might
25 happen at the meeting. I just thought it would be best.

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1 And Leah offered. She said if you want to go
2 ahead with the meeting without me, you can do that. But
3 I, as I said, was like, let's reschedule for a later
4 time.

5 Q. And Ashley Tait-Dinger replied, Yes, me too, I
6 thought the whole thing was a bad idea.

7 Do you see that?

8 A. I do see that.

9 Q. Do you agree with her?

10 MR. BILLEK: Object to form.

11 You can answer.

12 THE WITNESS: I had already said I was fine
13 with it being canceled.

14 MR. HVIDT: If we could go off record for a
15 minute.

16 MR. BILLEK: Sure.

17 THE VIDEOGRAPHER: We are off the record at
18 2:46 p.m.

19 (A brief recess was taken.)

20 THE VIDEOGRAPHER: We are on the record at 2:55
21 p.m.

22 MR. HVIDT: Counsel for plaintiffs rest and
23 reserve.

24 MR. BILLEK: I have nothing further. I don't
25 have anything at all.

1 THE VIDEOGRAPHER: This concludes the
2 deposition. We are off the video record at 2:55 p.m.

3 MR. BILLEK: We will order in the same speed
4 and information that plaintiff orders.

5 (The deposition was concluded at 2:55 p.m.)
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CERTIFICATE OF OATH

STATE OF FLORIDA)

COUNTY OF ORANGE)

I, MAE FISHER, Registered Merit Reporter,
Certified Realtime Reporter and Notary Public, State of
Florida, certify that KAREN VAN CAULIL personally
appeared before me on September 25, 2025, and was duly
sworn/affirmed.

WITNESS my hand and official seal this 29th day
of September, 2025.



MAE FISHER, RMR, CRR

Notary Public - State of Florida

Commission HH 443649

Expires: January 8, 2028

Personally known _____

OR Produced Identification X _____

Type of Identification Produced Driver's license

1	1	TRANSCRIPT CERTIFICATE
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2	2	STATE OF FLORIDA)
		COUNTY OF ORANGE)

3 3
4 4 I, MAE FISHER, Registered Merit Reporter,
Certified Realtime Reporter and Notary Public, State of
5 5 Florida, certify that I was authorized to and did
stenographically report the deposition of Karen van
6 6 Caulil; that a review of the transcript was not
requested; and the foregoing transcript, pages 5 through
7 7 180, is a true record of my stenographic notes.

8 8 I FURTHER CERTIFY that I am not a relative,
employee, attorney, or counsel of any of the parties,
9 9 nor am I a relative or employee of any of the parties'
attorney or counsel connected with the action, nor am I
10 10 financially interested in the action.

DATED this 29th day of September, 2025, at
Orlando, Orange County, Florida.

Mae Ziaher

17	17	
		MAE FISHER, Notary Public
18	18	State of Florida

Good Samaritan Medical Center Inc, Et Al. v. The Leapfrog Group
Karen Van Caulil (#7586376)

E R R A T A S H E E T

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PAGE_____ LINE_____ CHANGE_____

REASON_____

Karen Van Caulil

Date

1 Good Samaritan Medical Center Inc, Et Al. v. The Leapfrog Group
2 Karen Van Caulil (#7586376)

3 ACKNOWLEDGEMENT OF DEPONENT

4 I, Karen Van Caulil, do hereby declare that I
5 have read the foregoing transcript, I have made any
6 corrections, additions, or changes I deemed necessary as
7 noted above to be appended hereto, and that the same is
8 a true, correct and complete transcript of the testimony
9 given by me.

10
11 _____
12 Karen Van Caulil

_____ Date

13 *If notary is required

14 SUBSCRIBED AND SWORN TO BEFORE ME THIS

15 _____ DAY OF _____, 20____.

16
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18 _____
19 NOTARY PUBLIC
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[& - 2024]

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[worked - zoom]

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Federal Rules of Civil Procedure

Rule 30

(e) Review By the Witness; Changes.

(1) Review; Statement of Changes. On request by the deponent or a party before the deposition is completed, the deponent must be allowed 30 days after being notified by the officer that the transcript or recording is available in which:

(A) to review the transcript or recording; and

(B) if there are changes in form or substance, to sign a statement listing the changes and the reasons for making them.

(2) Changes Indicated in the Officer's Certificate. The officer must note in the certificate prescribed by Rule 30(f)(1) whether a review was requested and, if so, must attach any changes the deponent makes during the 30-day period.

DISCLAIMER: THE FOREGOING FEDERAL PROCEDURE RULES ARE PROVIDED FOR INFORMATIONAL PURPOSES ONLY.

THE ABOVE RULES ARE CURRENT AS OF APRIL 1, 2019. PLEASE REFER TO THE APPLICABLE FEDERAL RULES OF CIVIL PROCEDURE FOR UP-TO-DATE INFORMATION.

VERITEXT LEGAL SOLUTIONS

COMPANY CERTIFICATE AND DISCLOSURE STATEMENT

Veritext Legal Solutions represents that the foregoing transcript is a true, correct and complete transcript of the colloquies, questions and answers as submitted by the court reporter. Veritext Legal Solutions further represents that the attached exhibits, if any, are true, correct and complete documents as submitted by the court reporter and/or attorneys in relation to this deposition and that the documents were processed in accordance with our litigation support and production standards.

Veritext Legal Solutions is committed to maintaining the confidentiality of client and witness information, in accordance with the regulations promulgated under the Health Insurance Portability and Accountability Act (HIPAA), as amended with respect to protected health information and the Gramm-Leach-Bliley Act, as amended, with respect to Personally Identifiable Information (PII). Physical transcripts and exhibits are managed under strict facility and personnel access controls. Electronic files of documents are stored in encrypted form and are transmitted in an encrypted

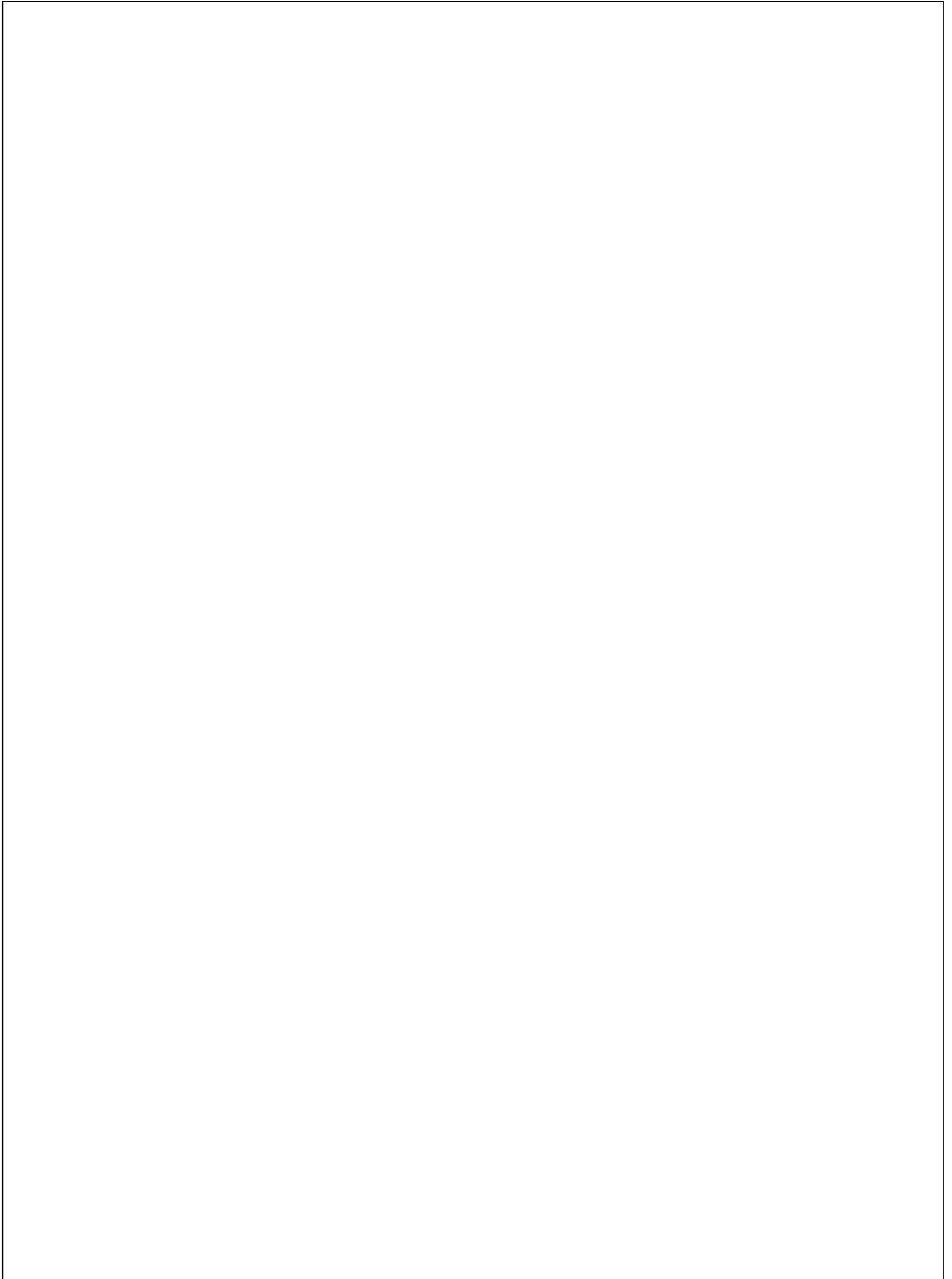
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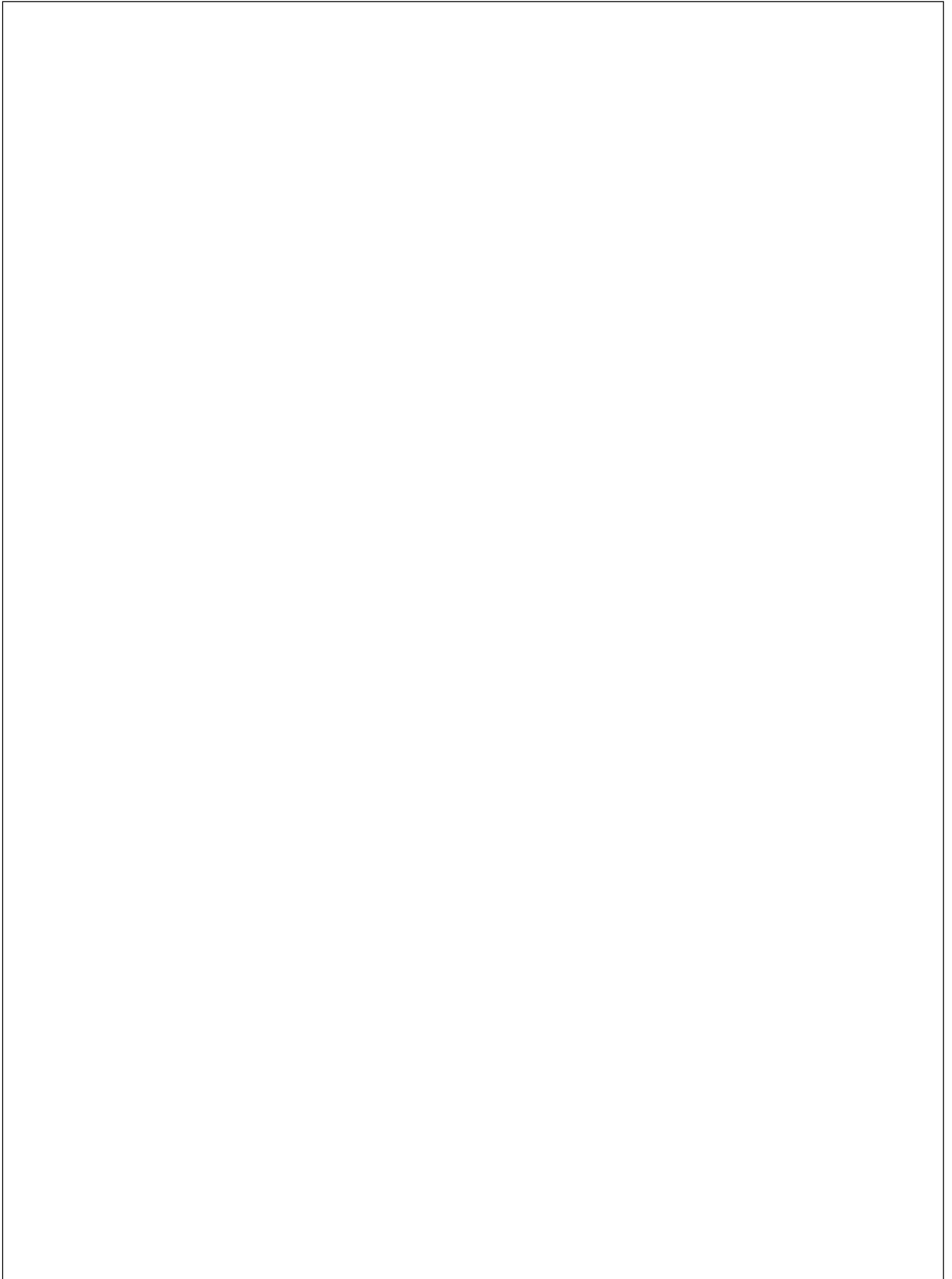
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Exhibit C

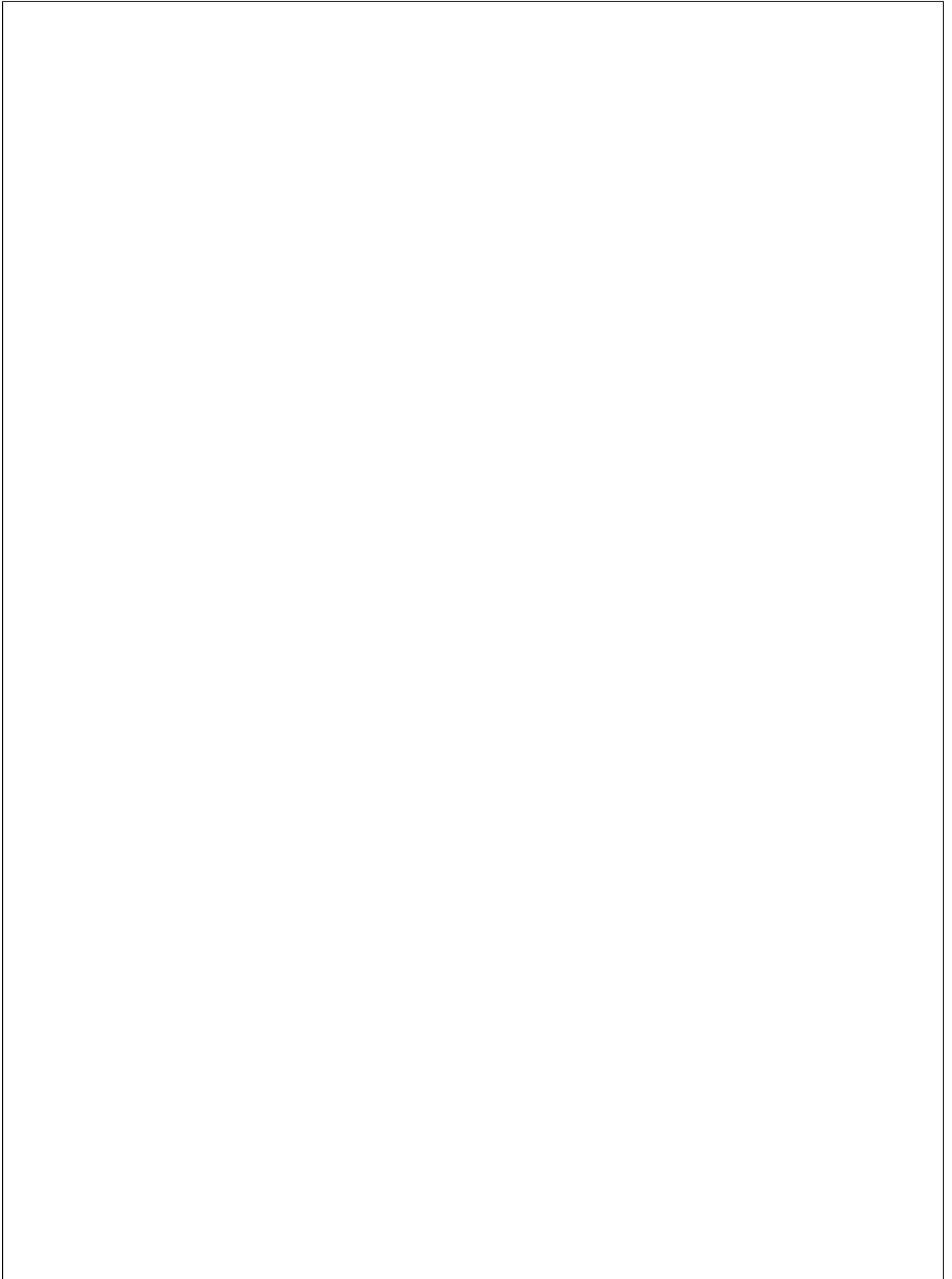
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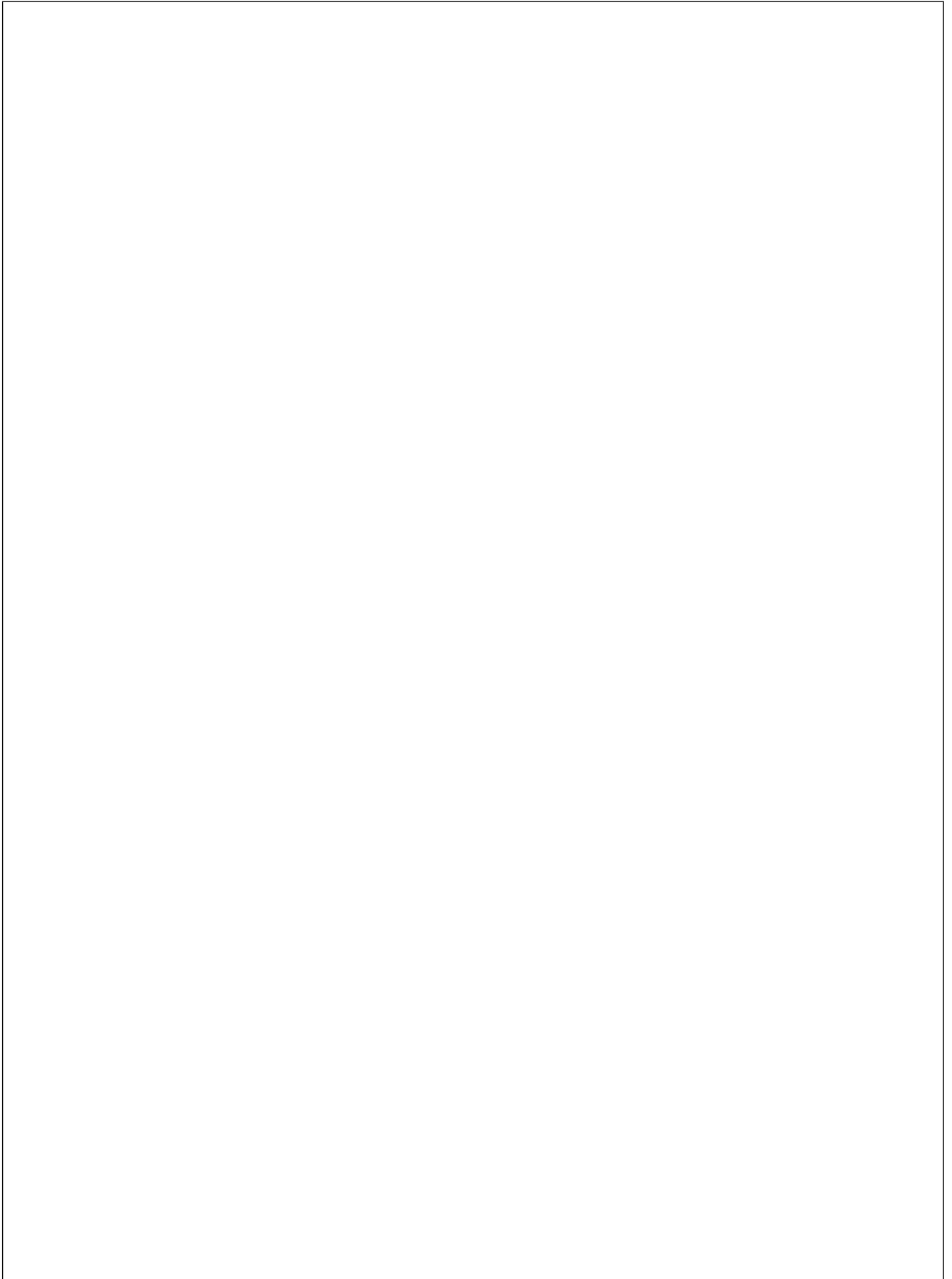
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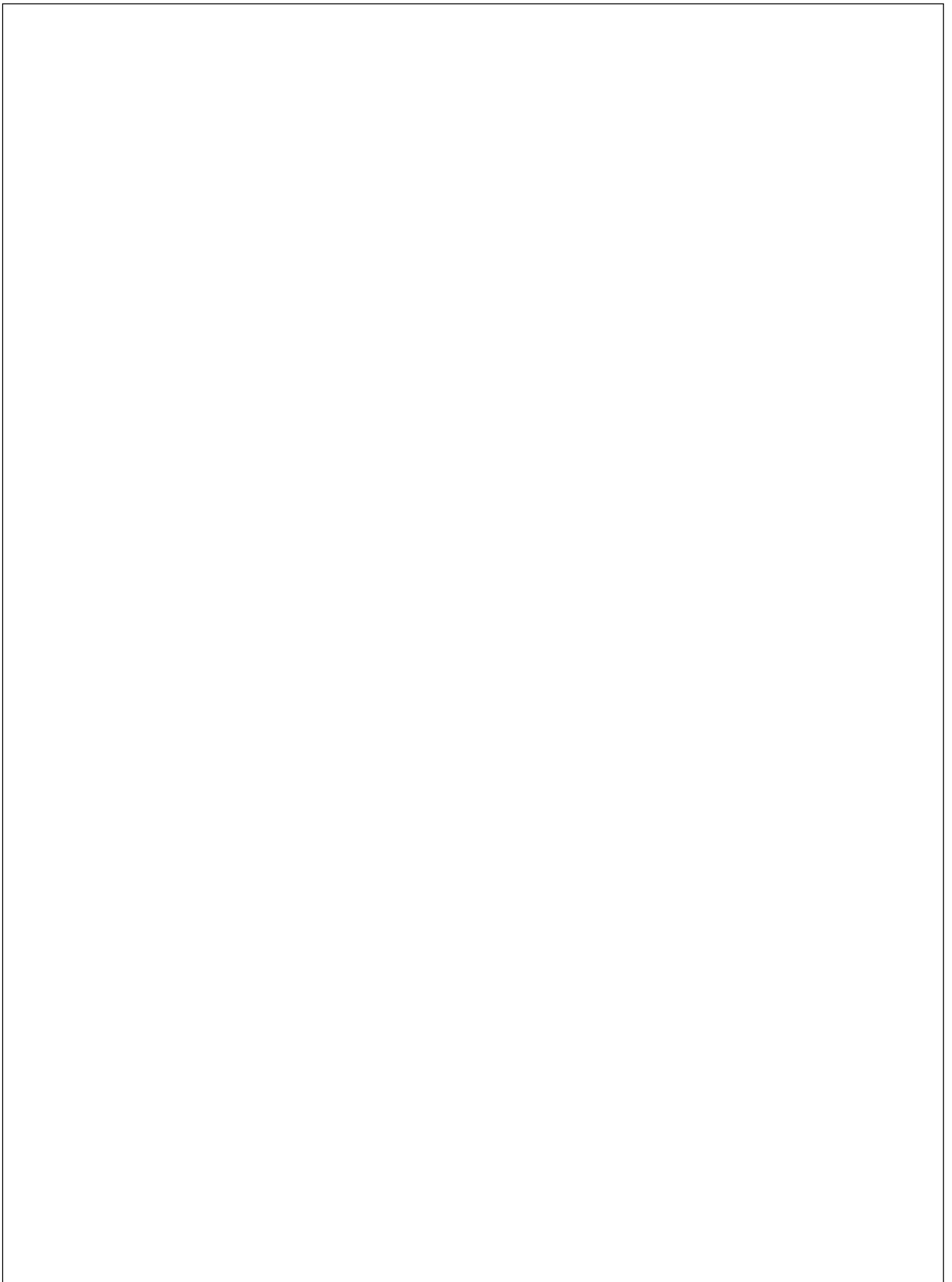
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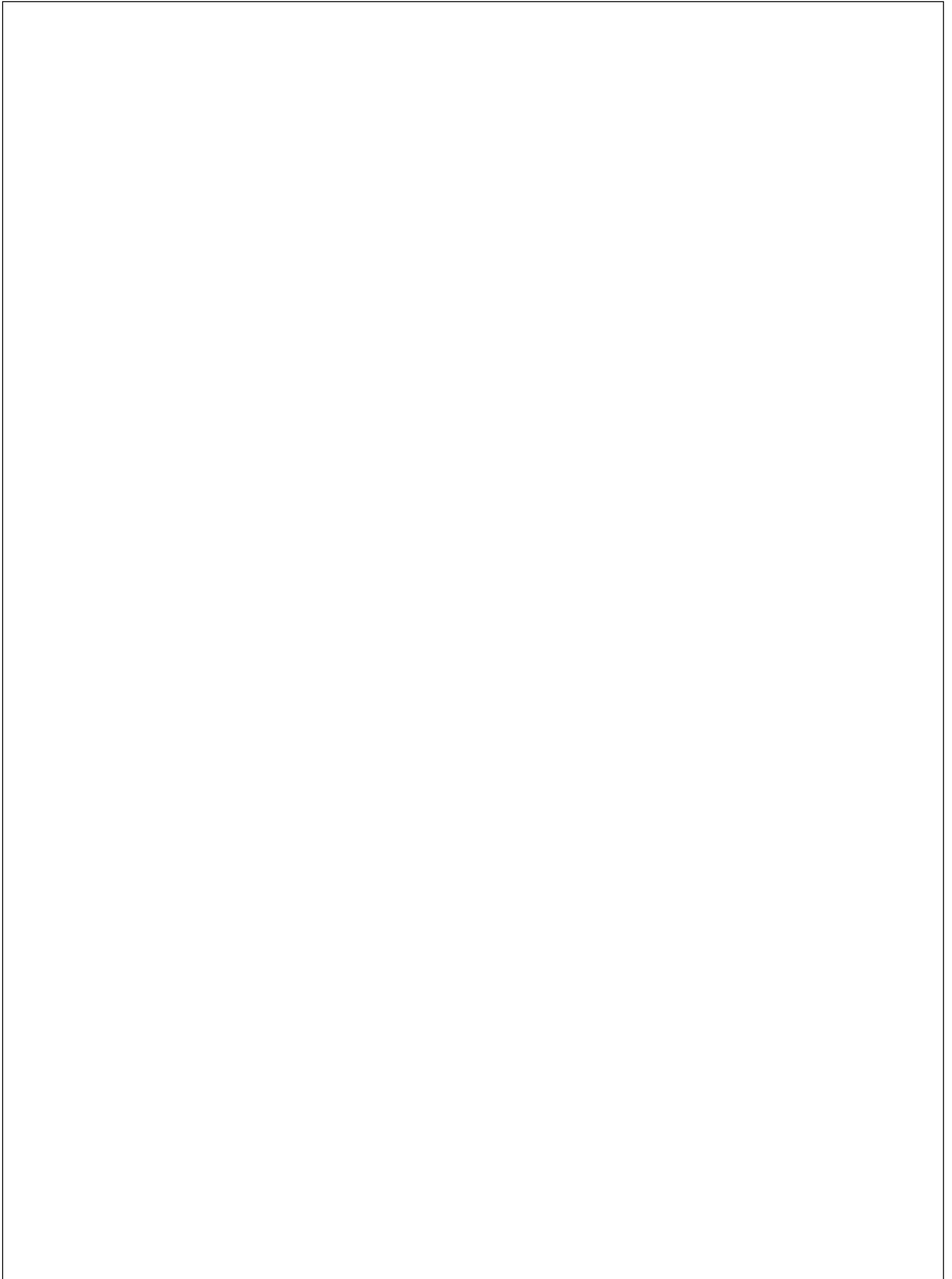
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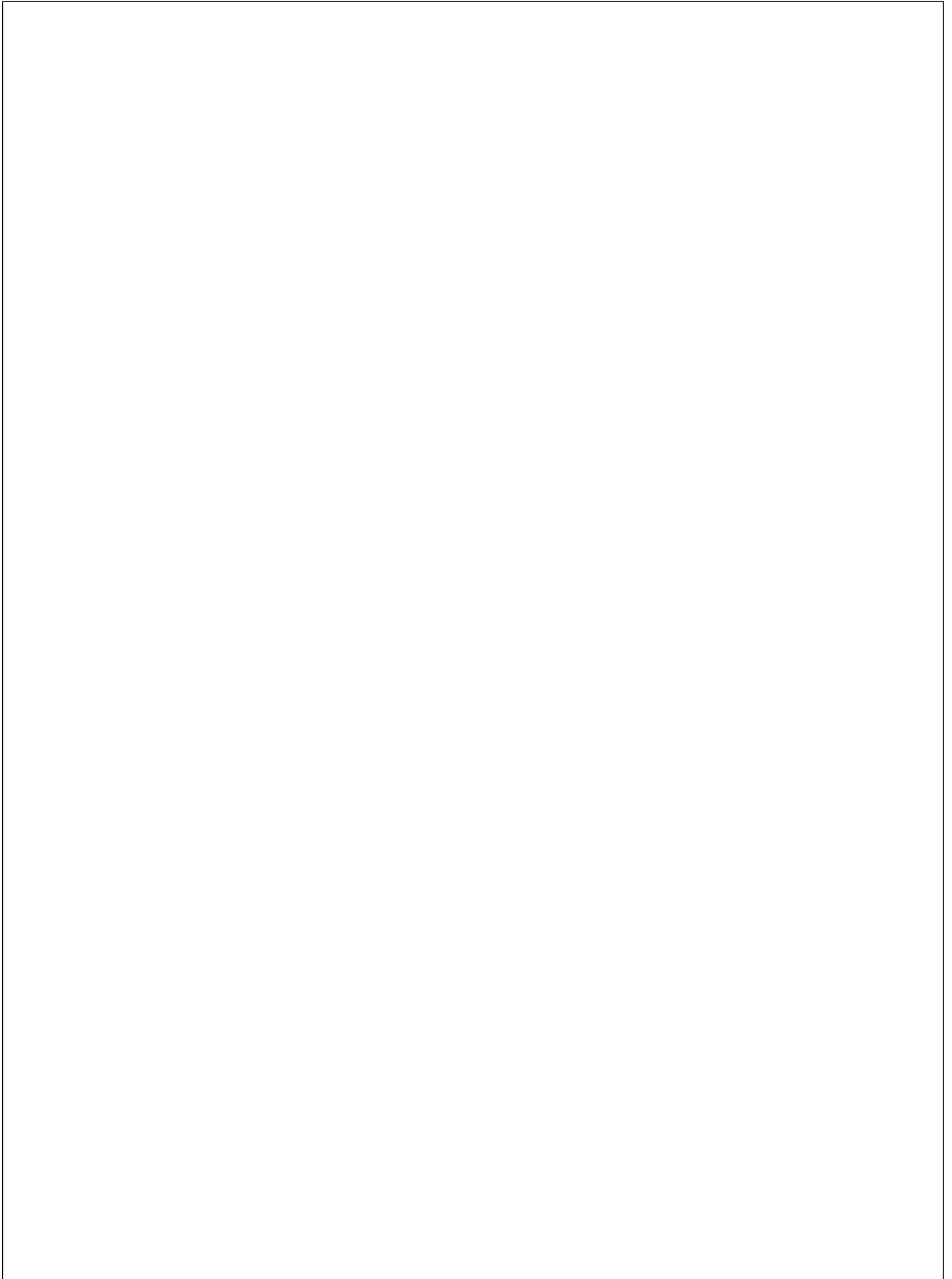
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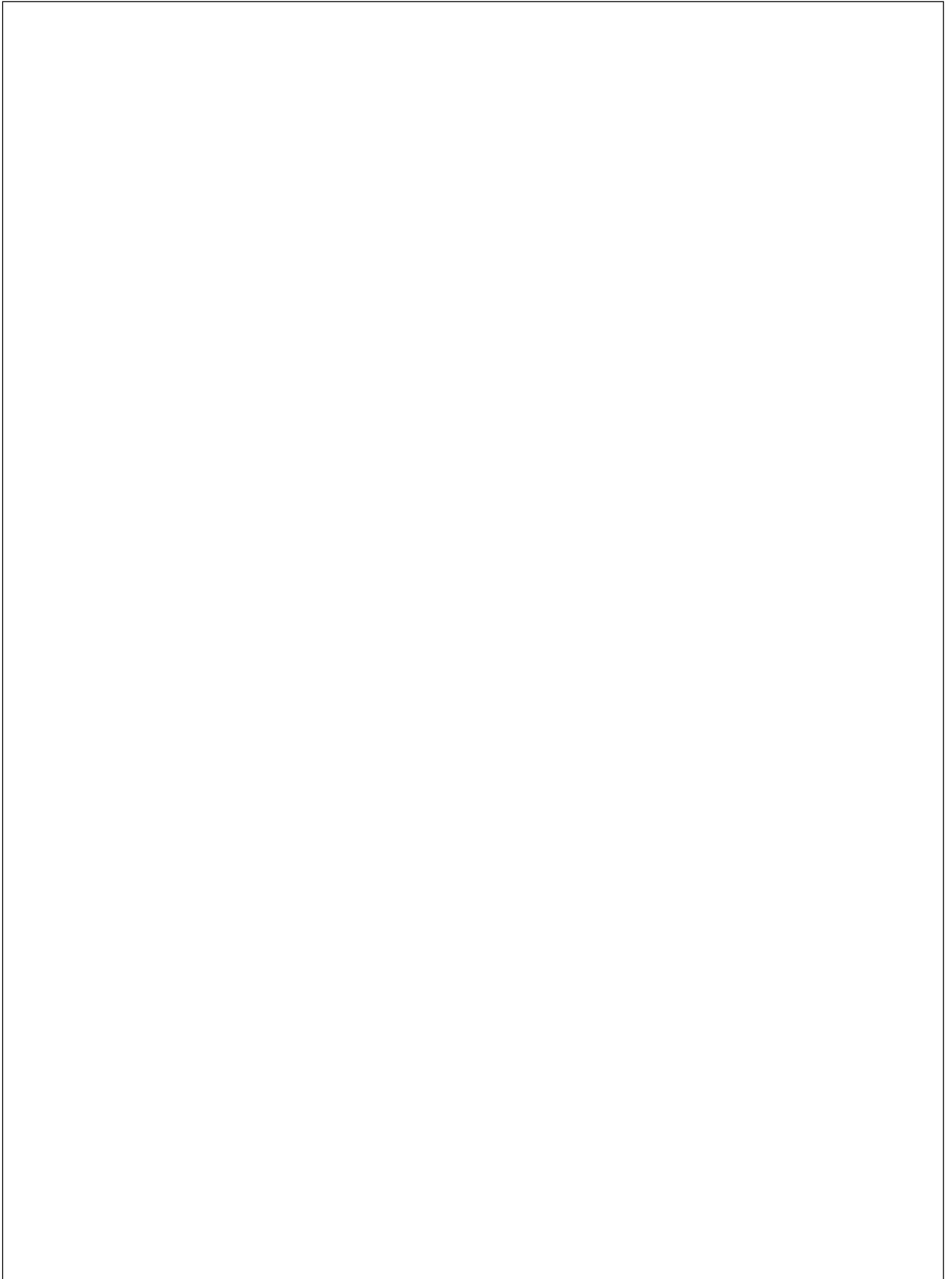
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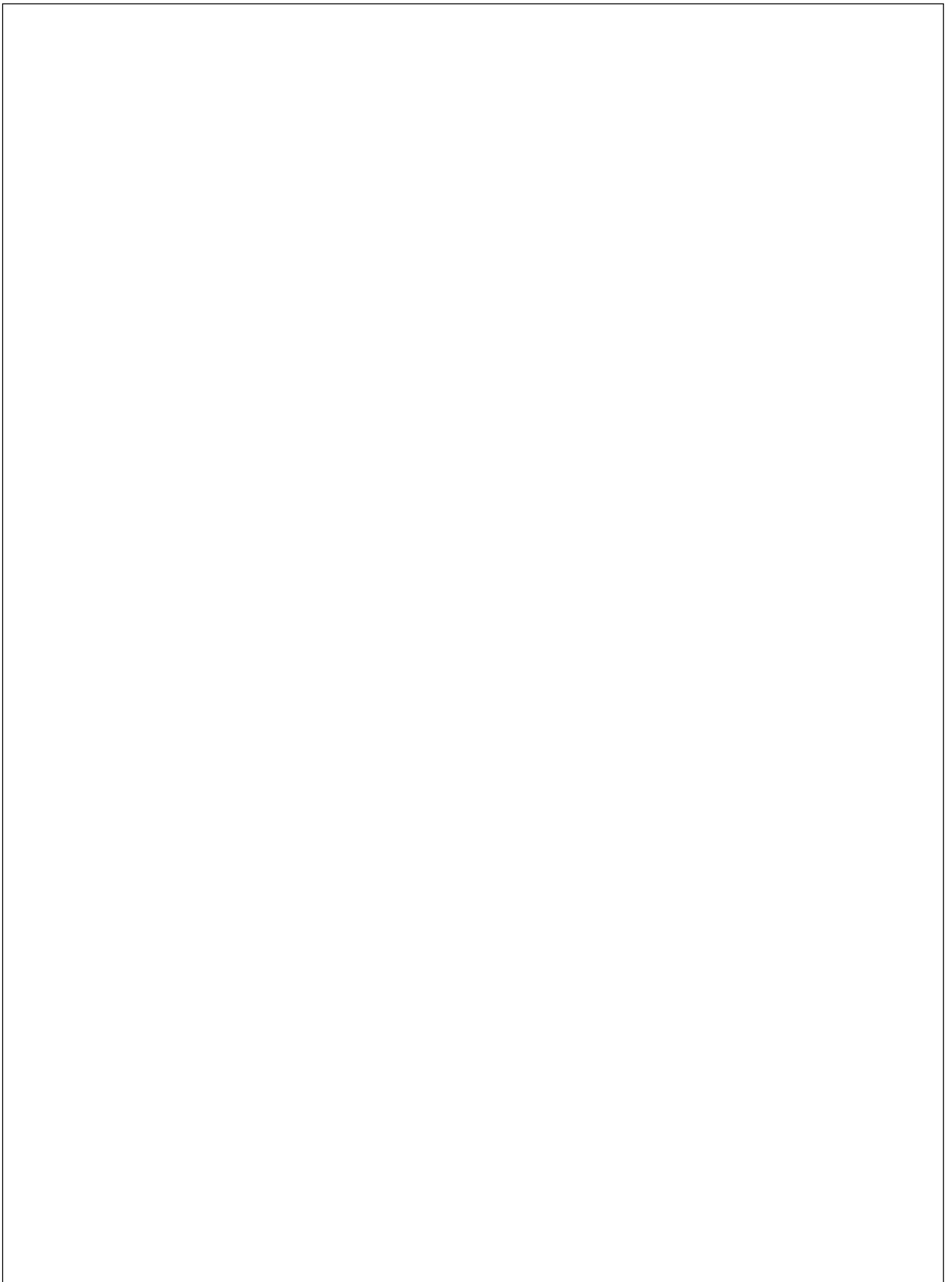
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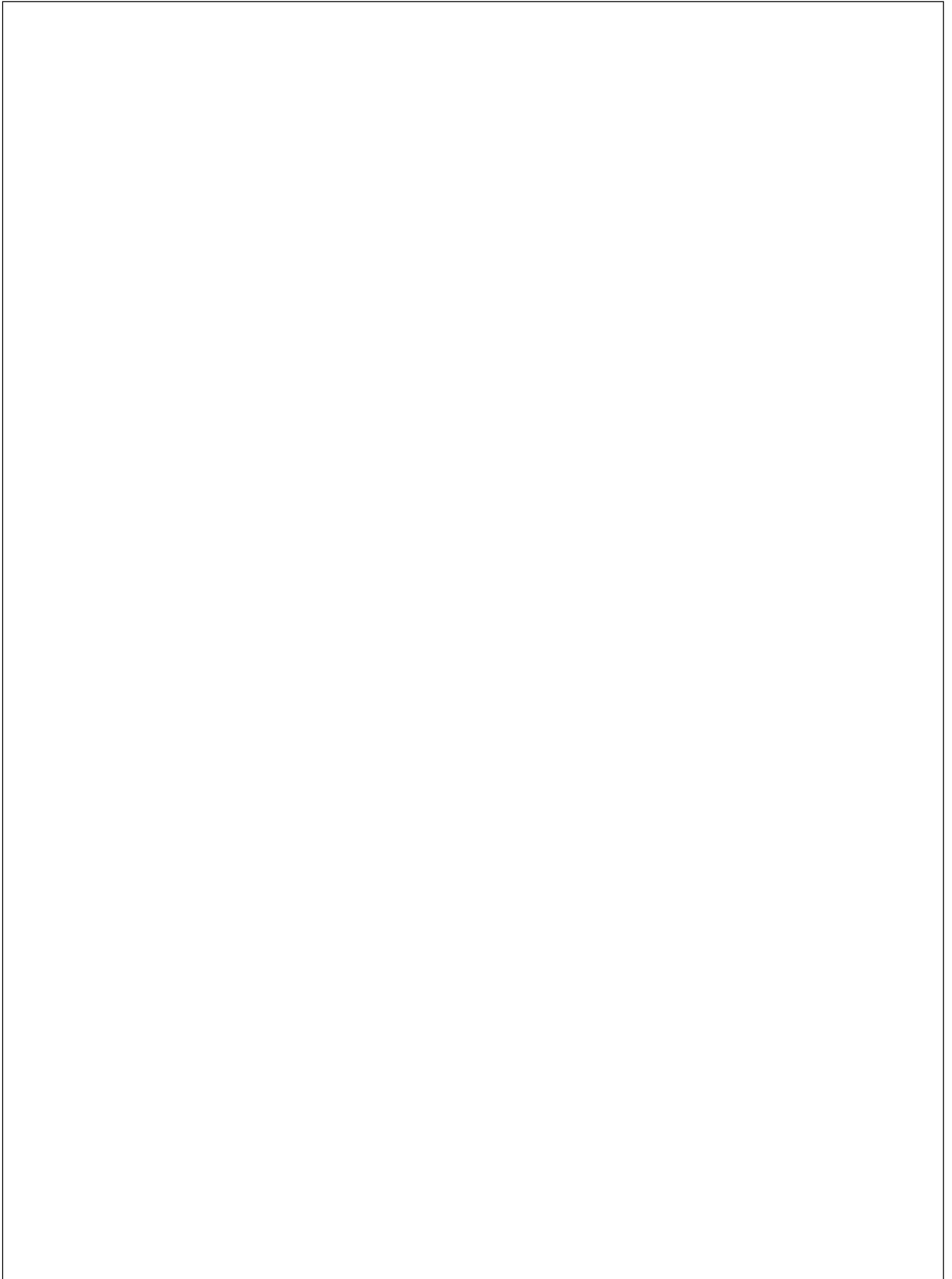
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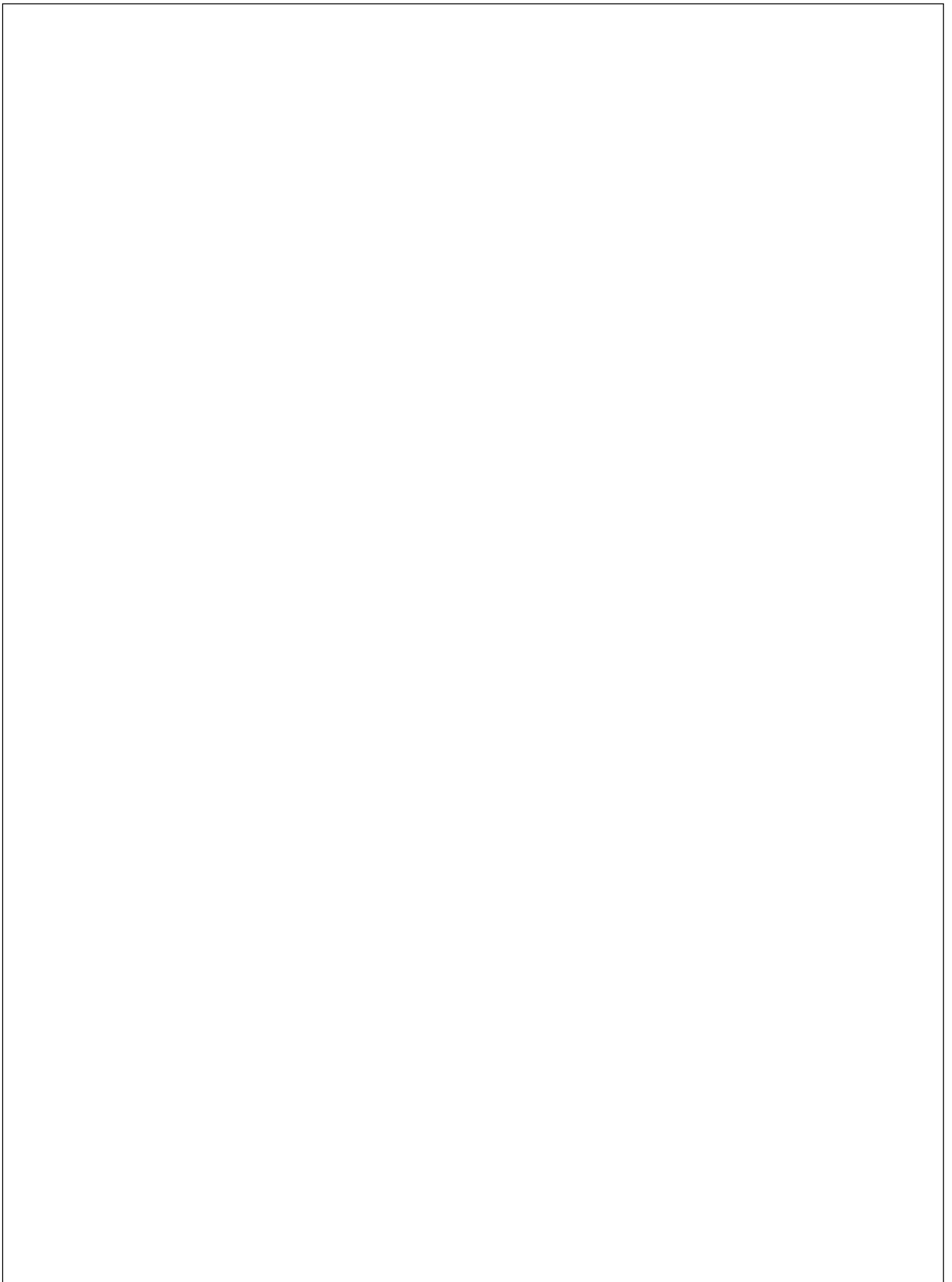
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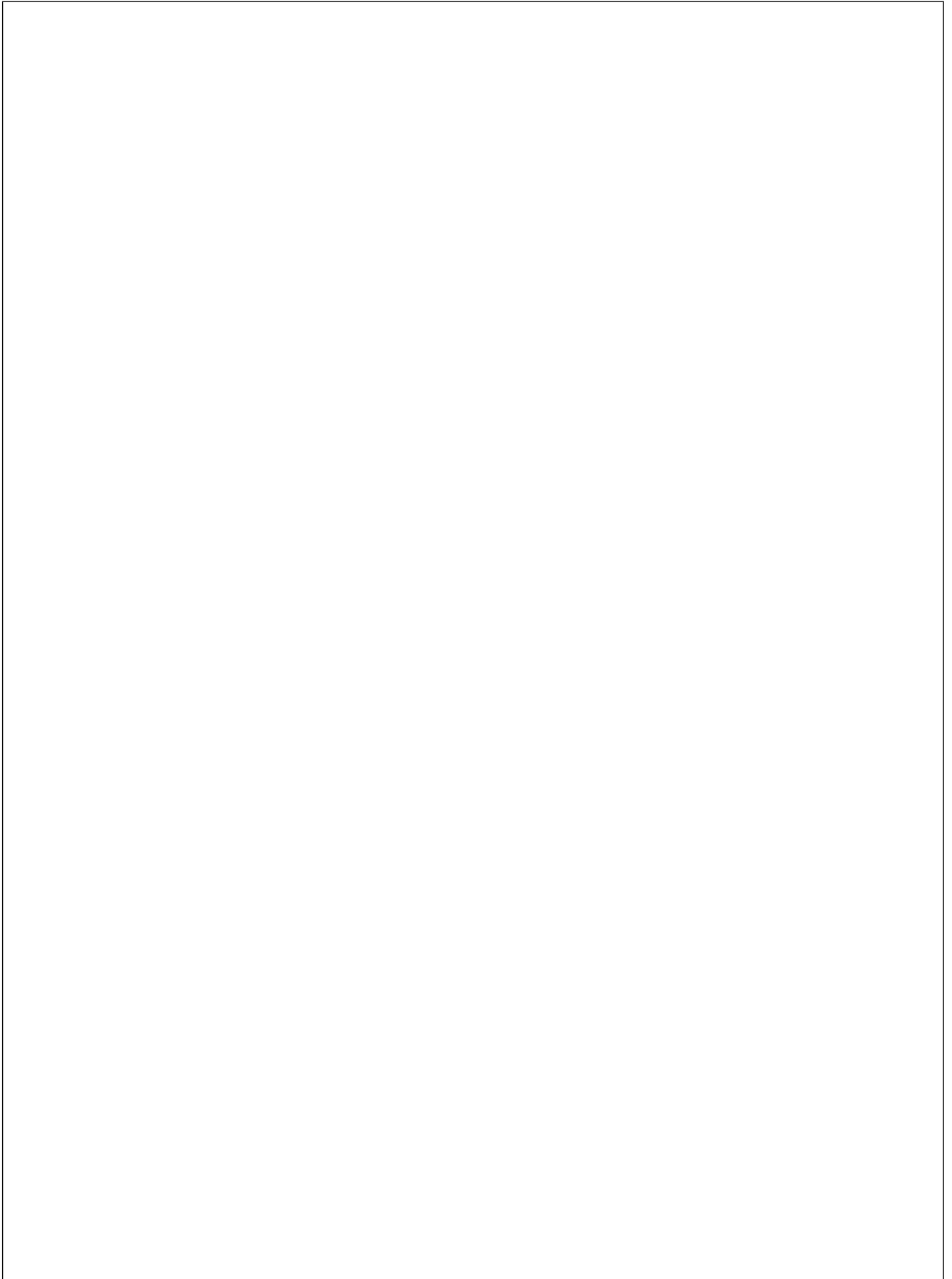
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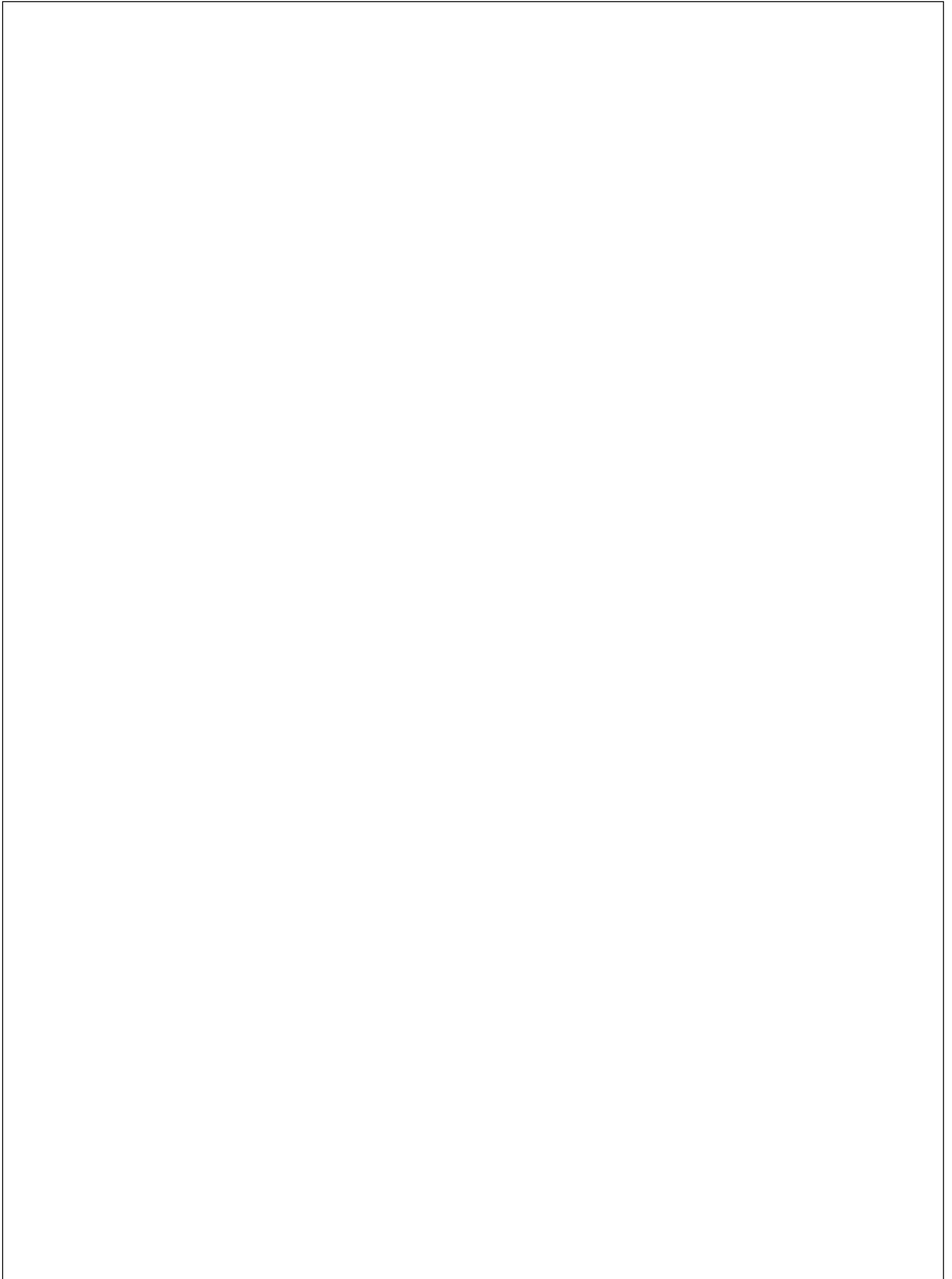
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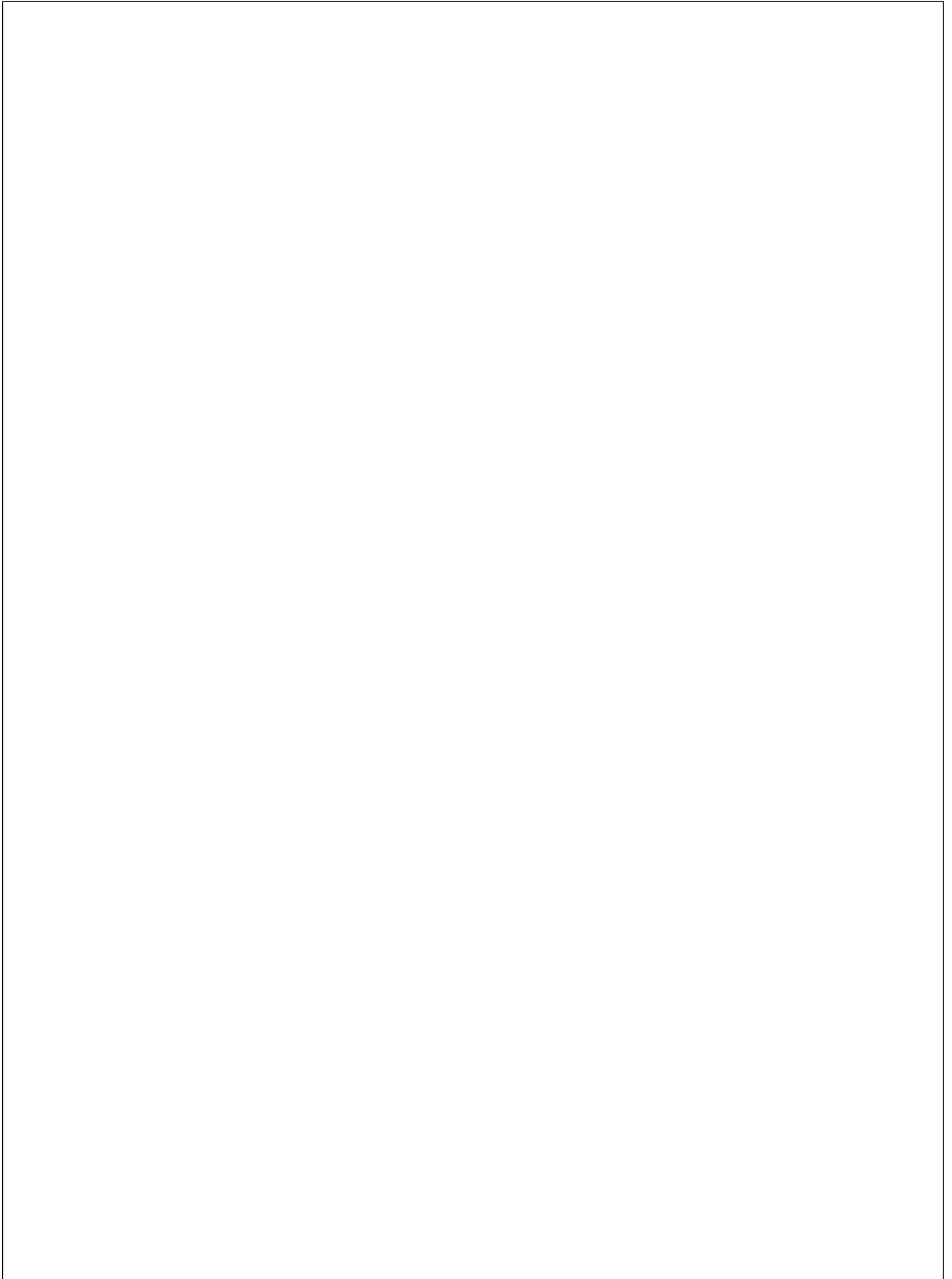
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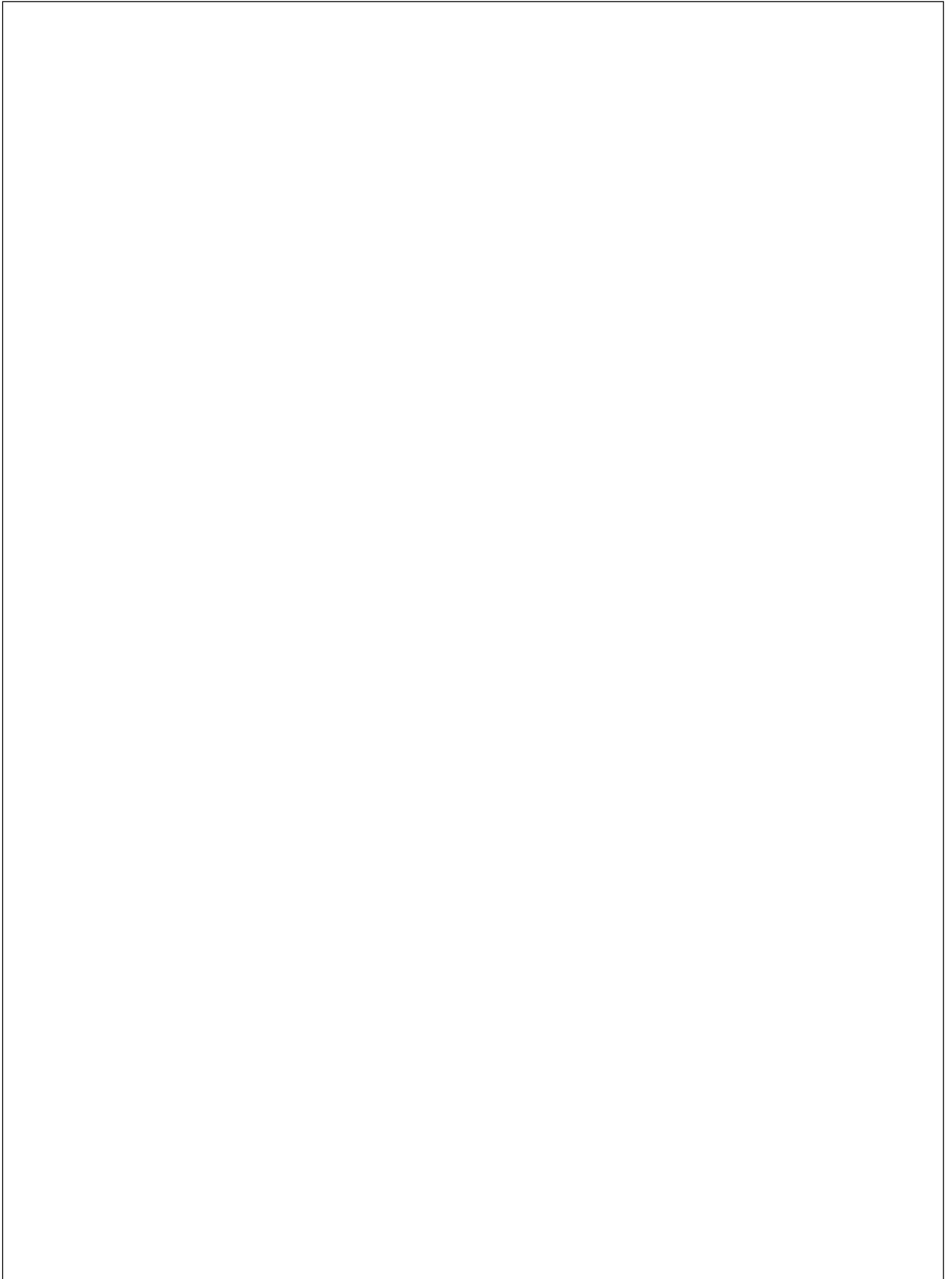
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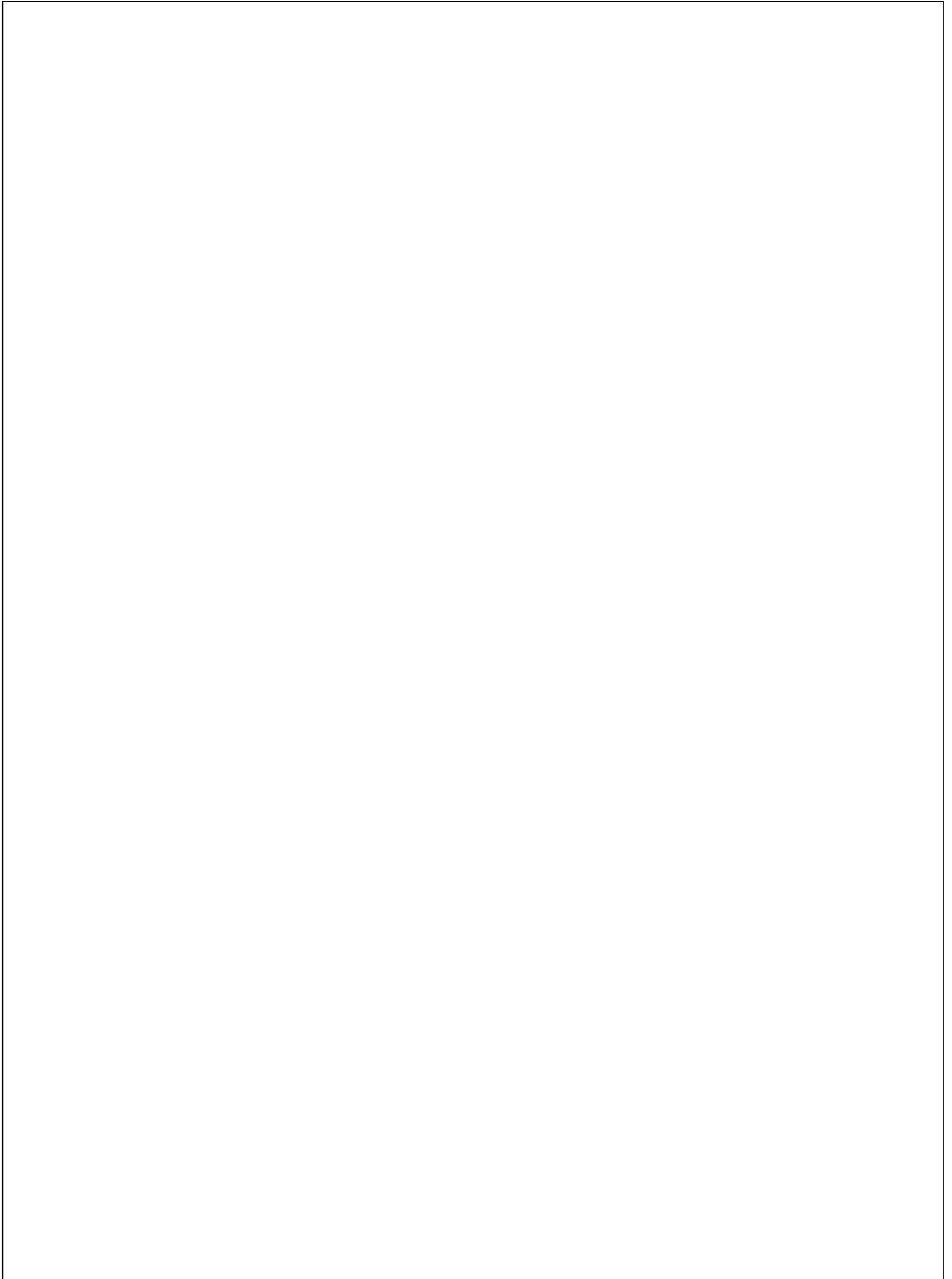
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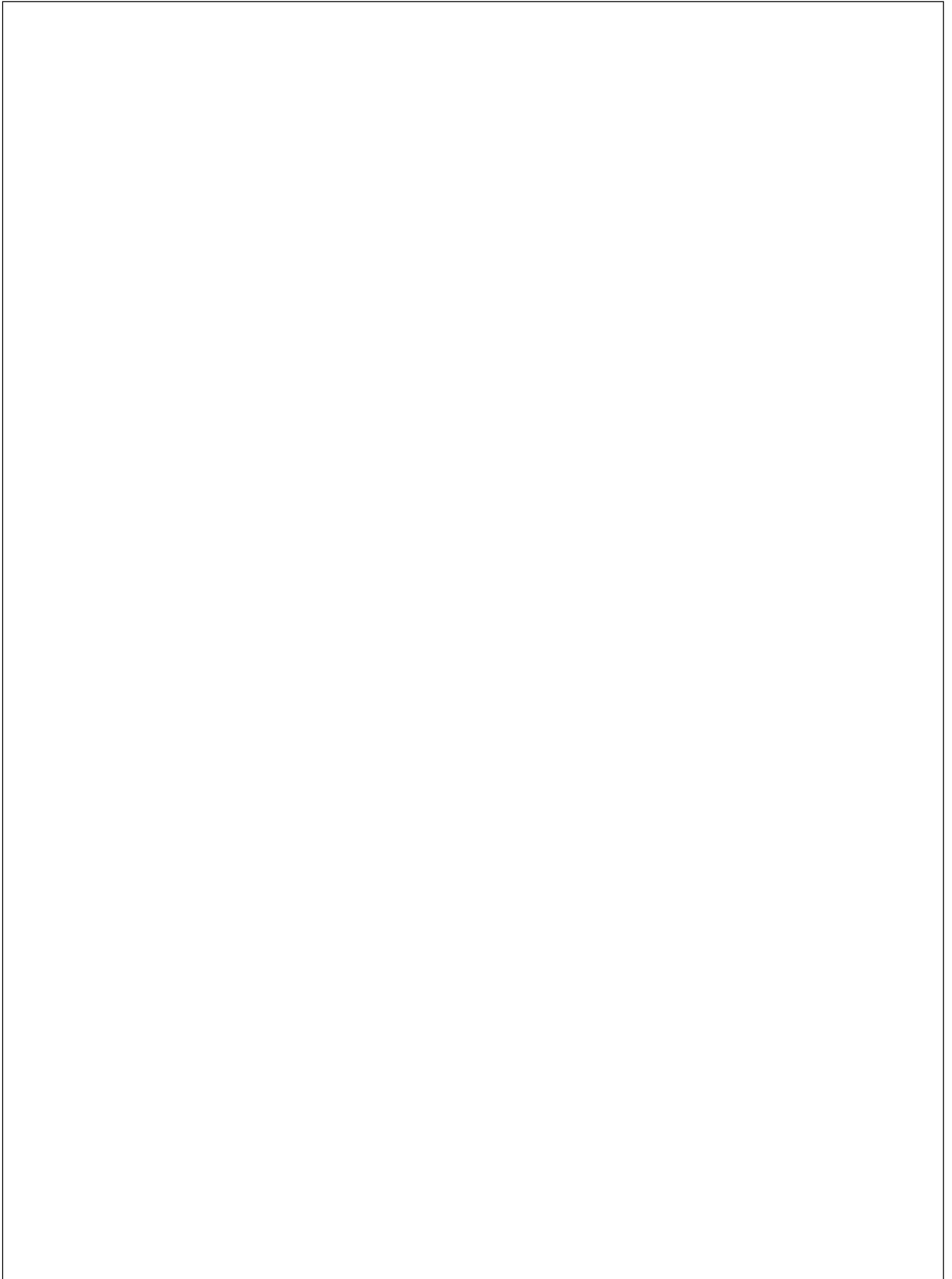
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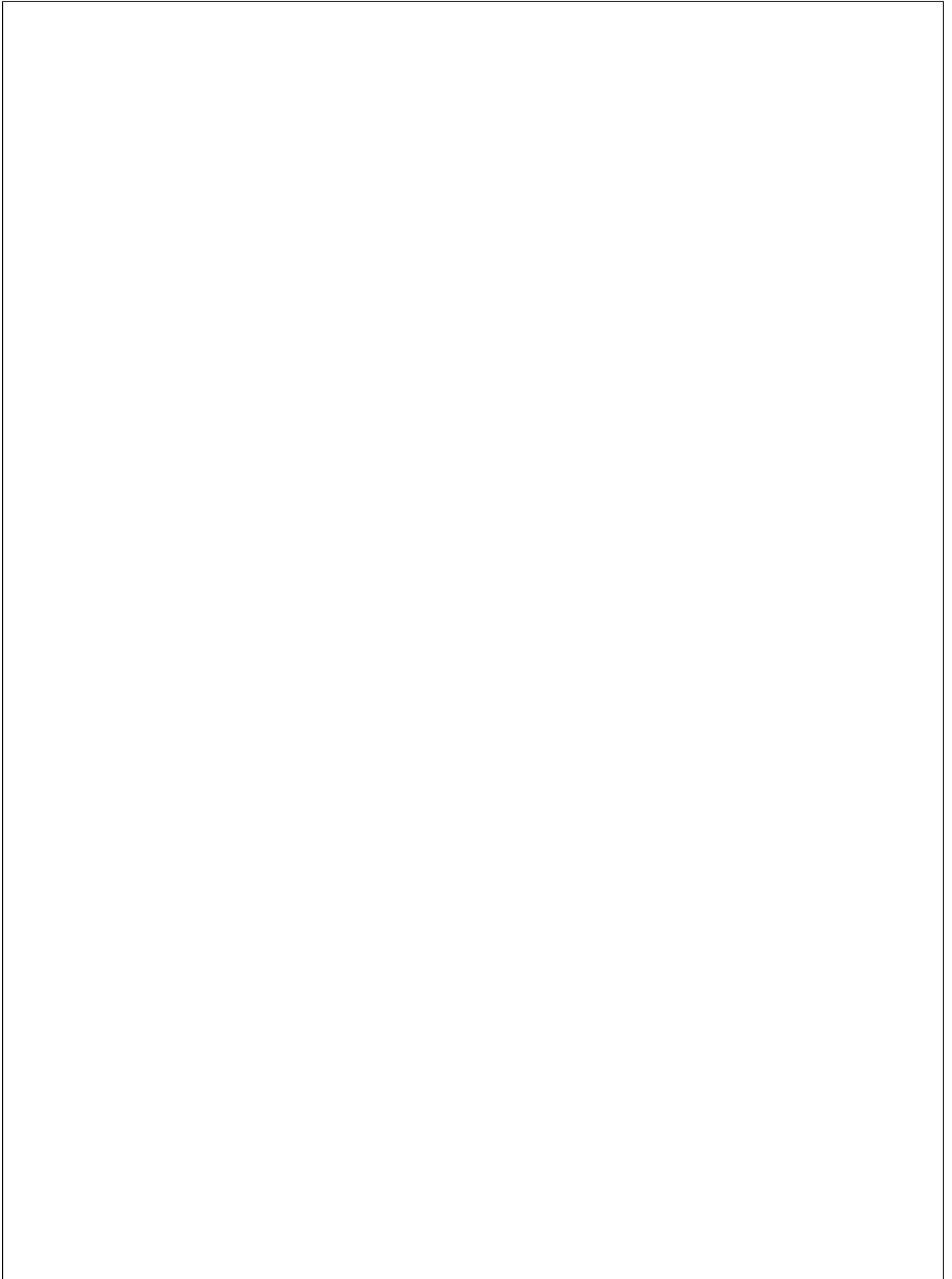
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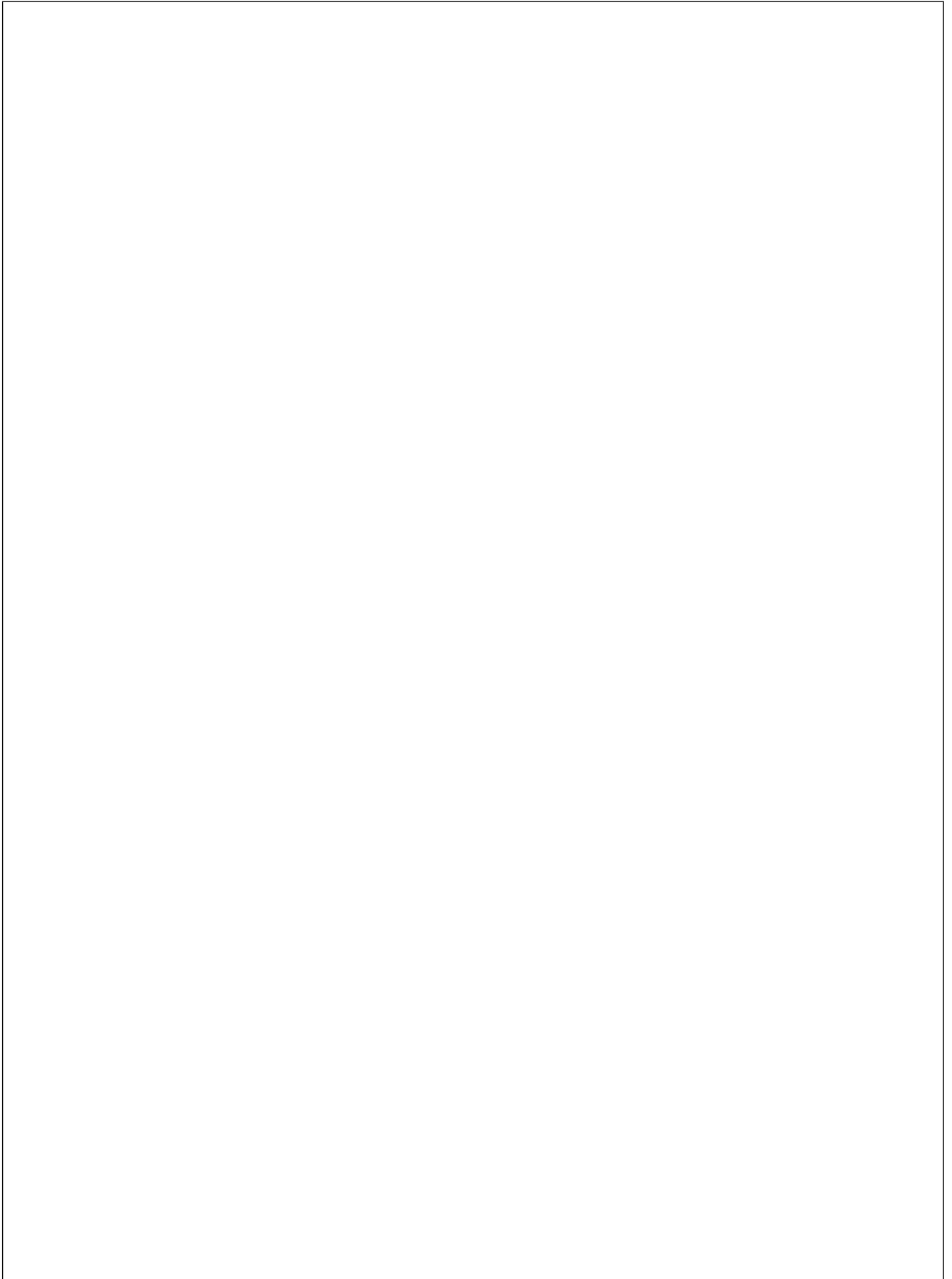
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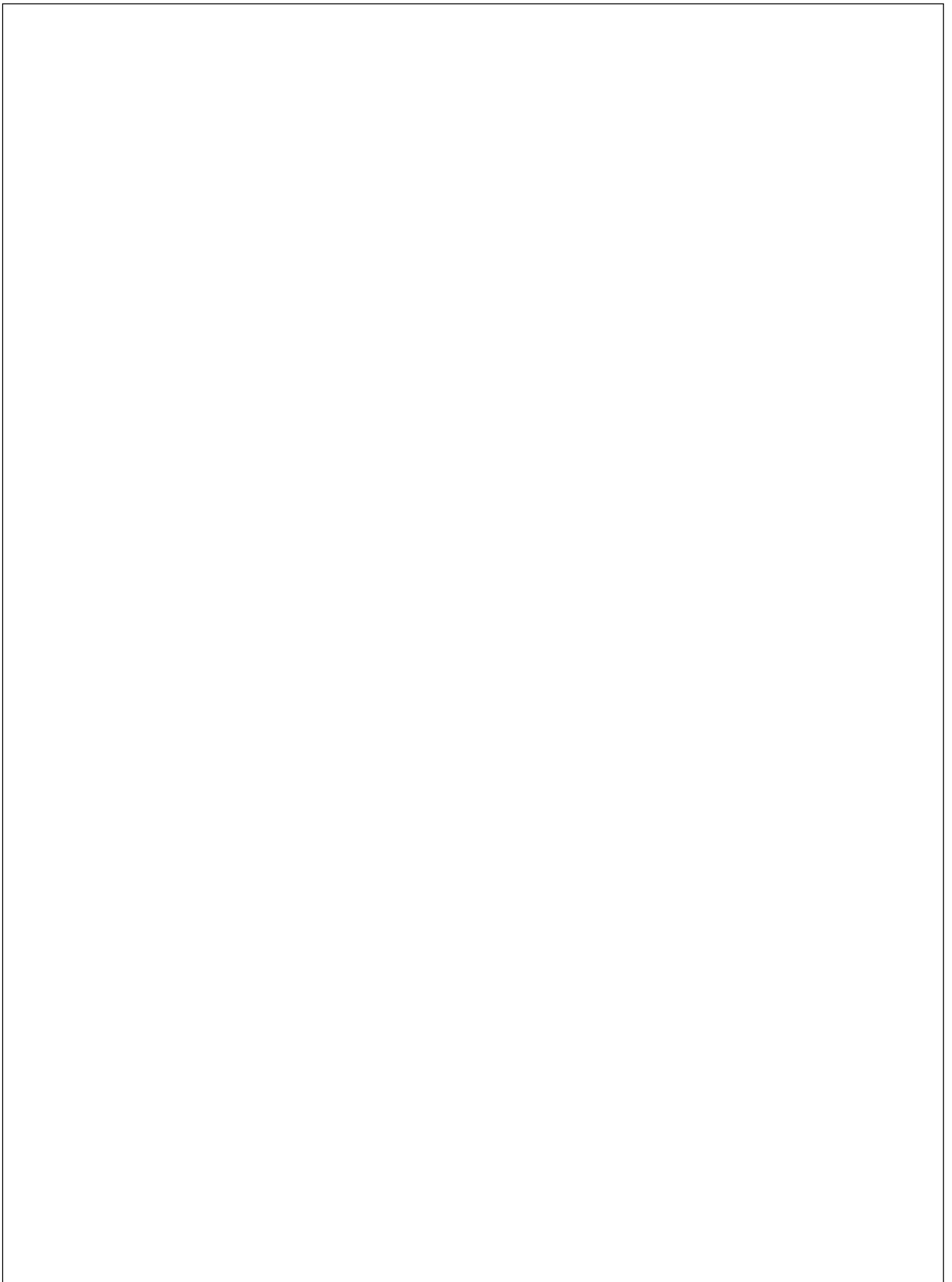
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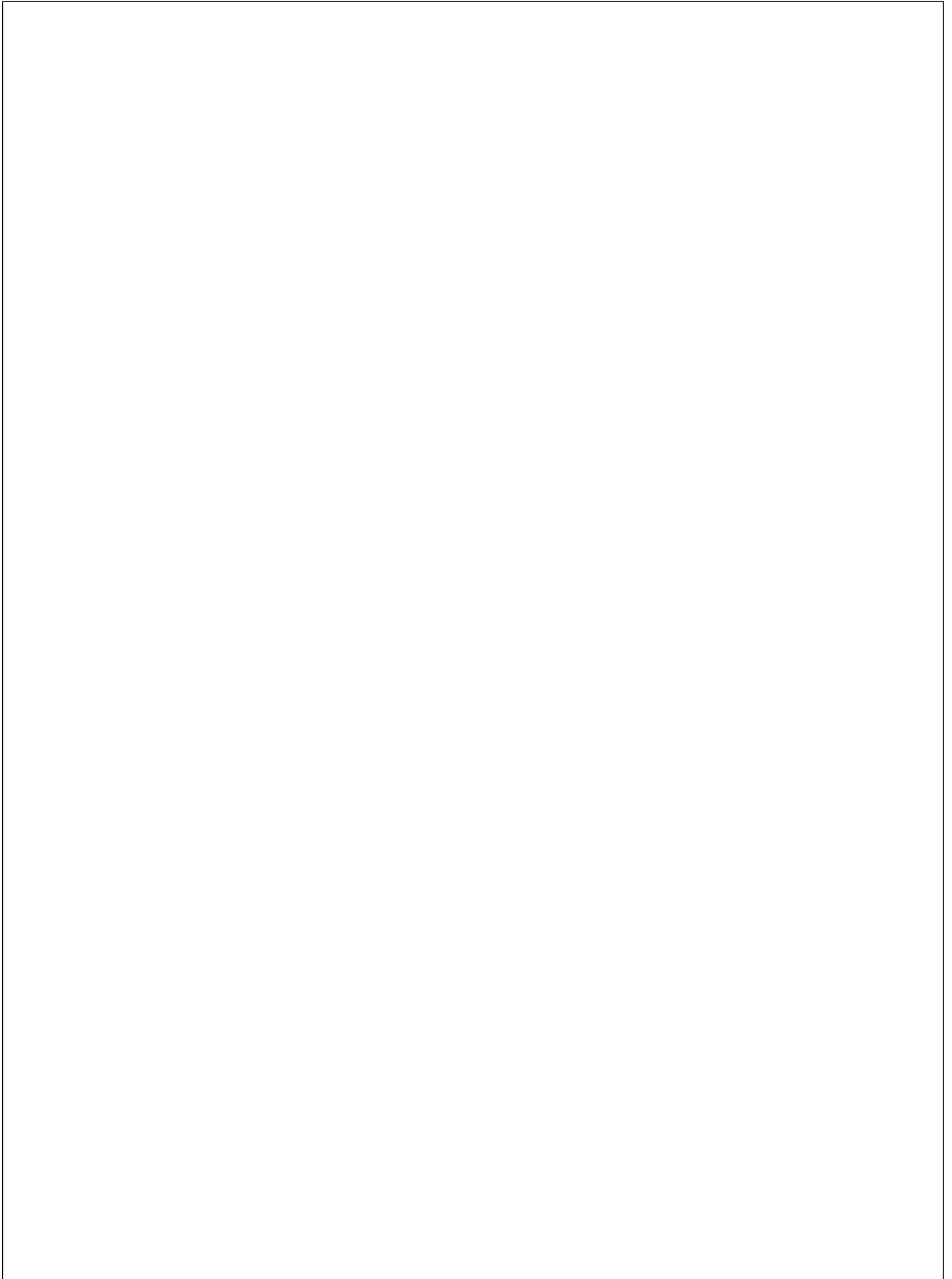
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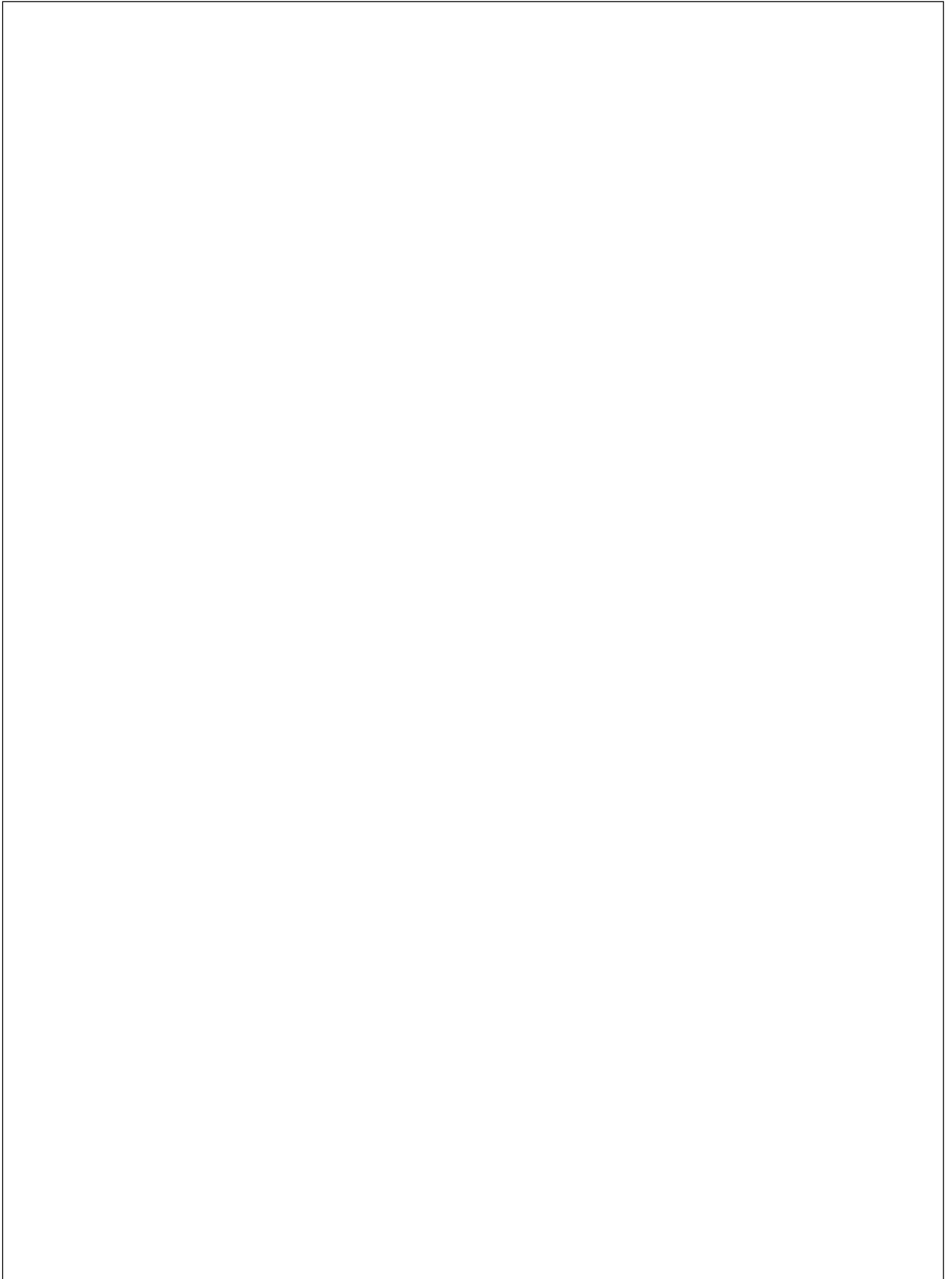
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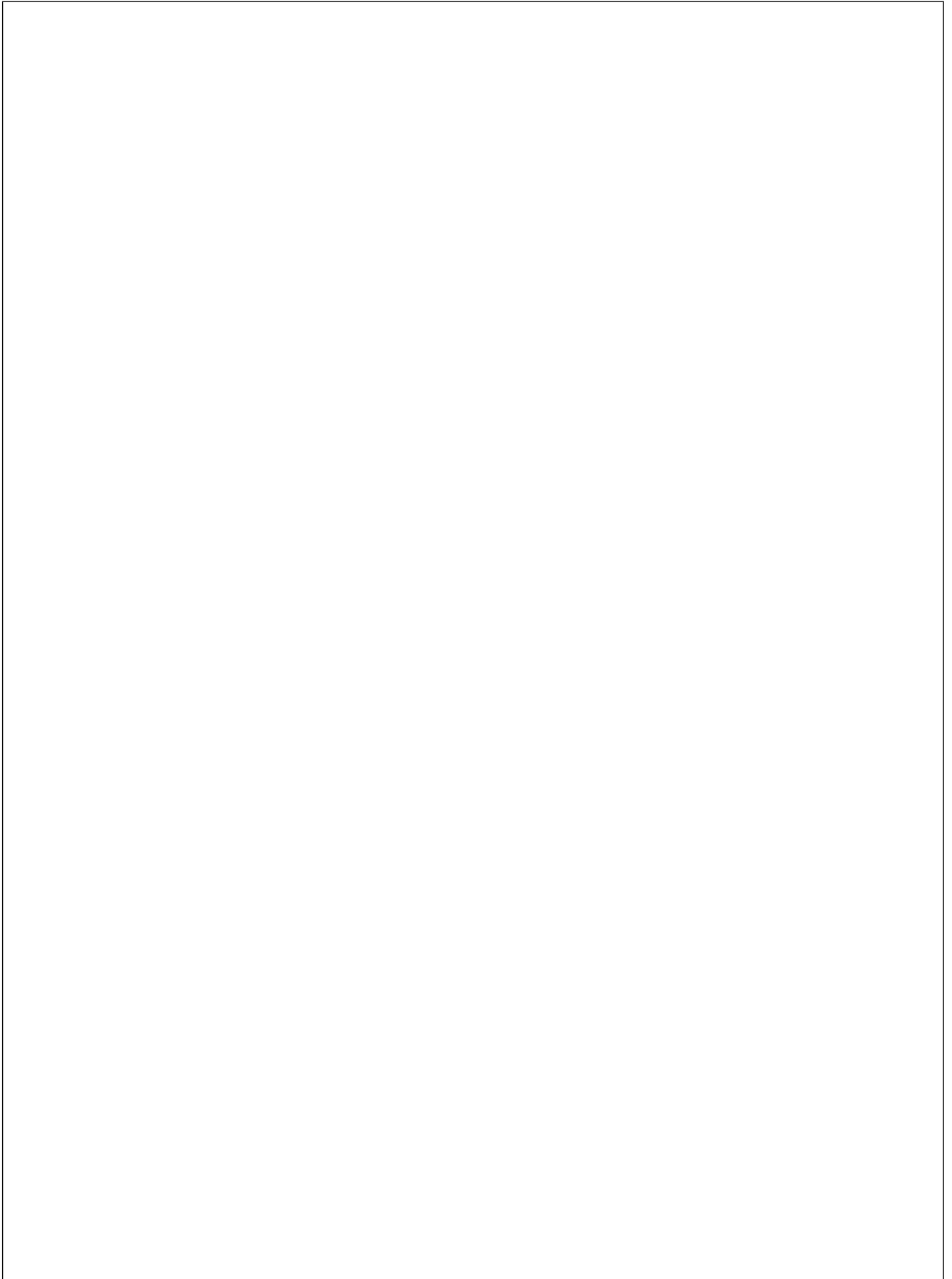
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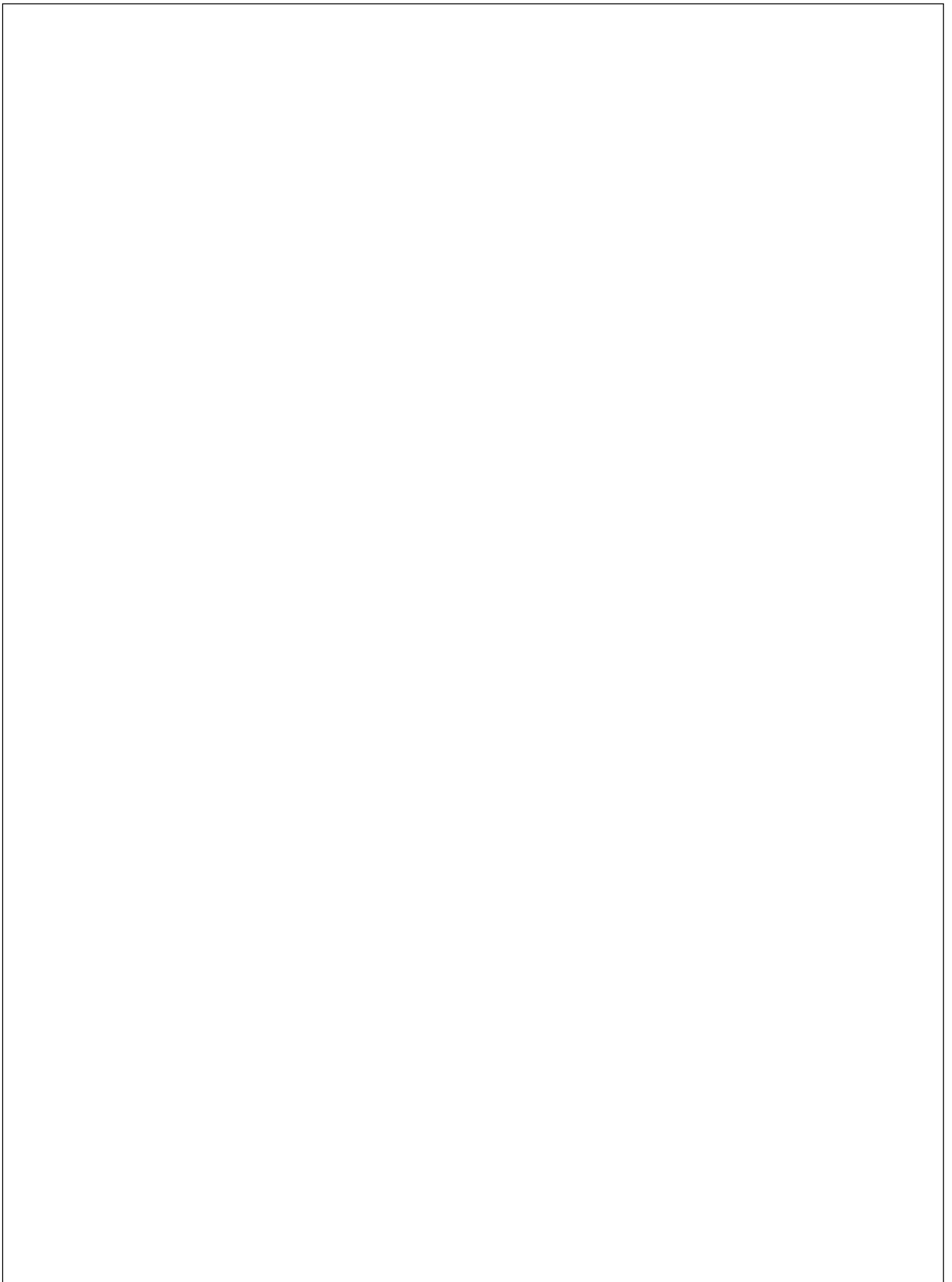
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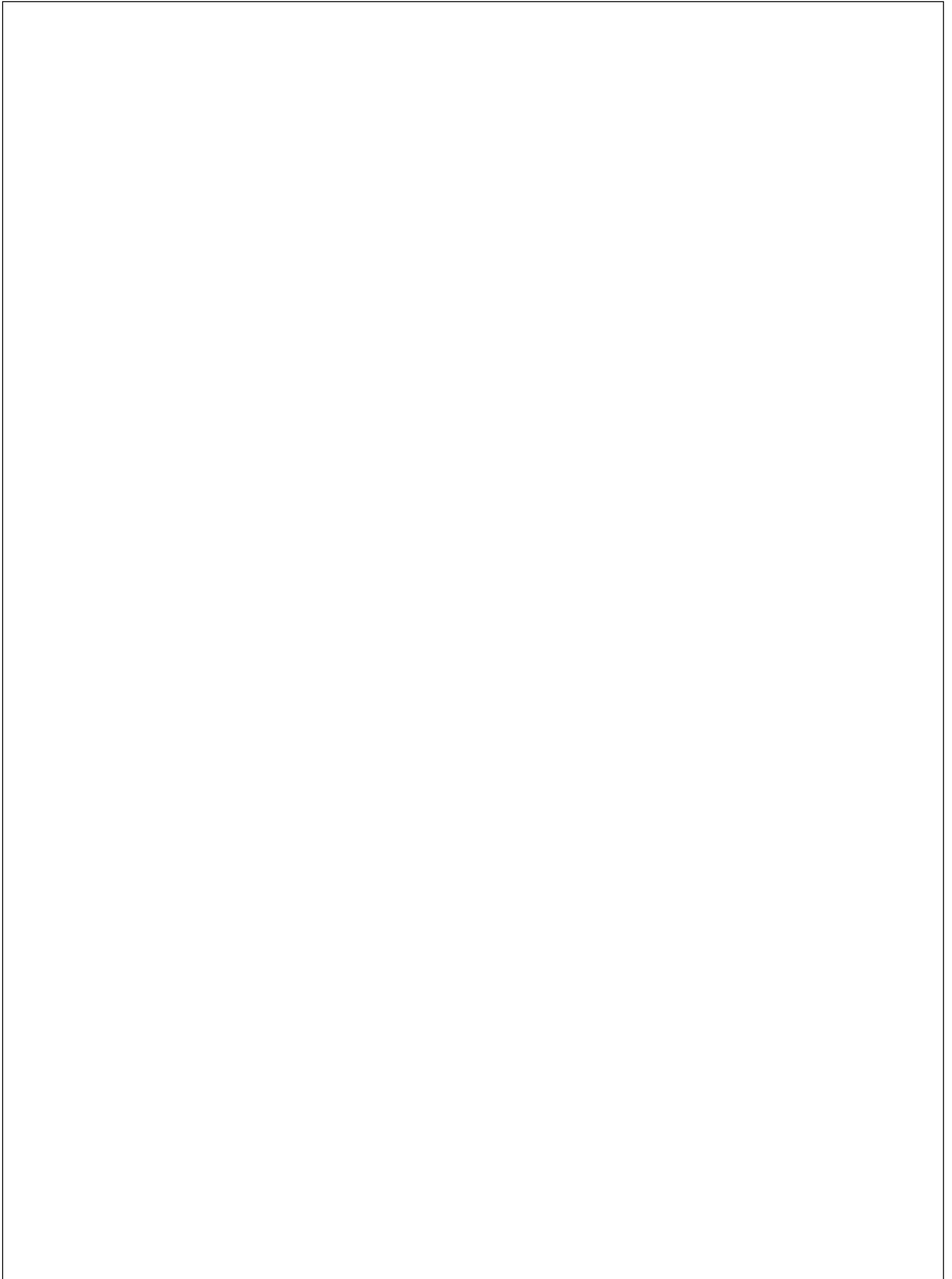
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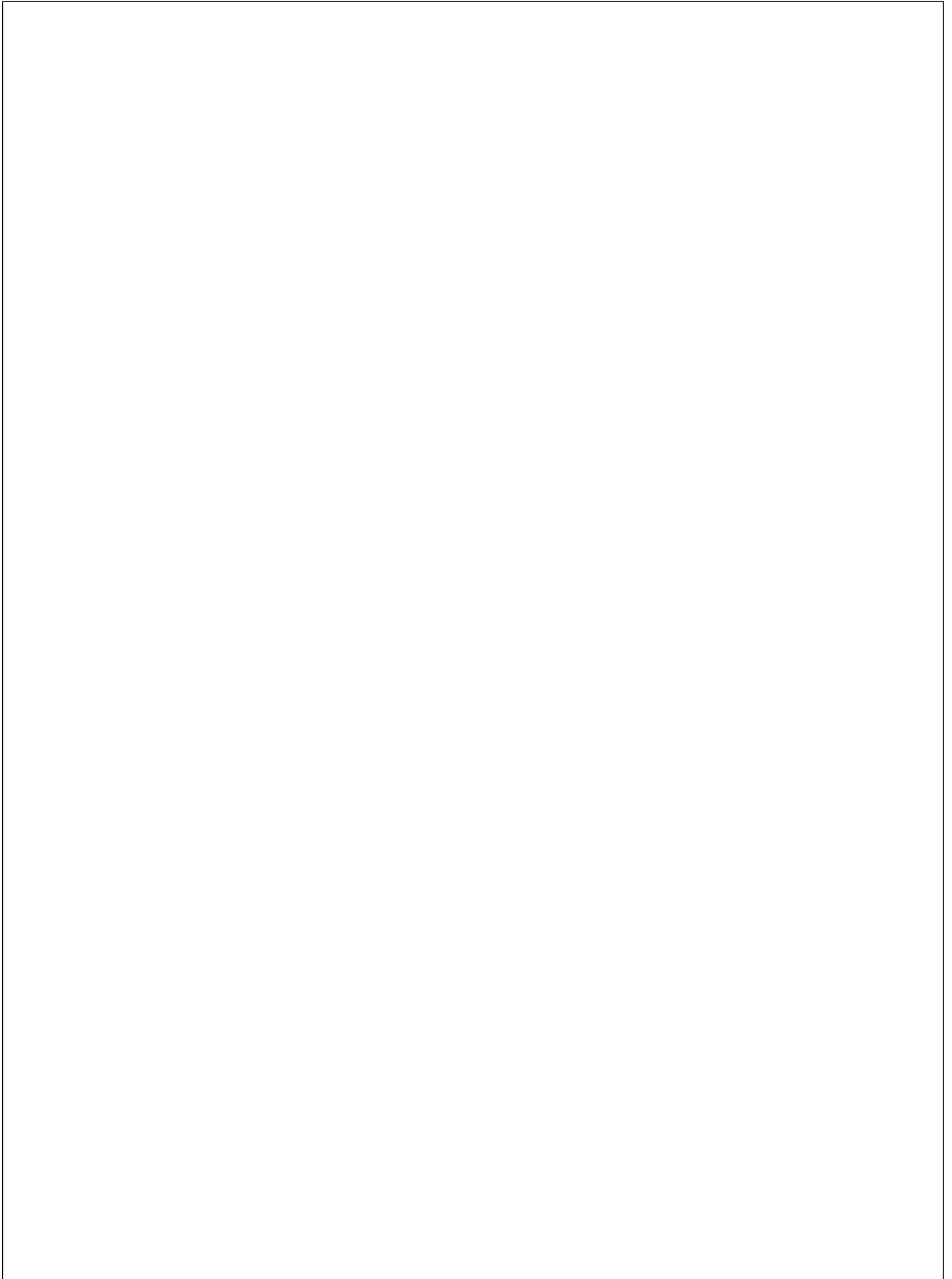
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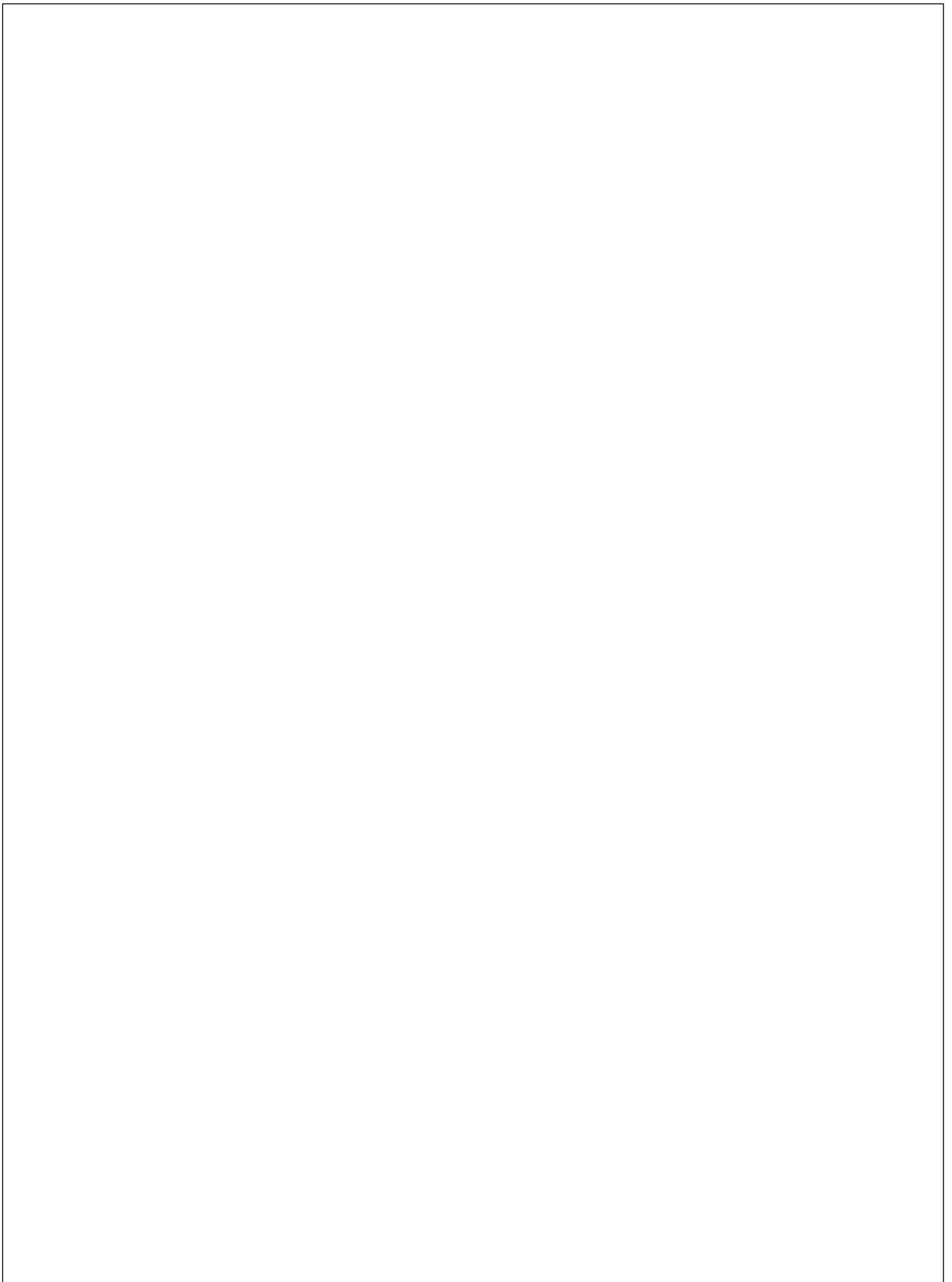
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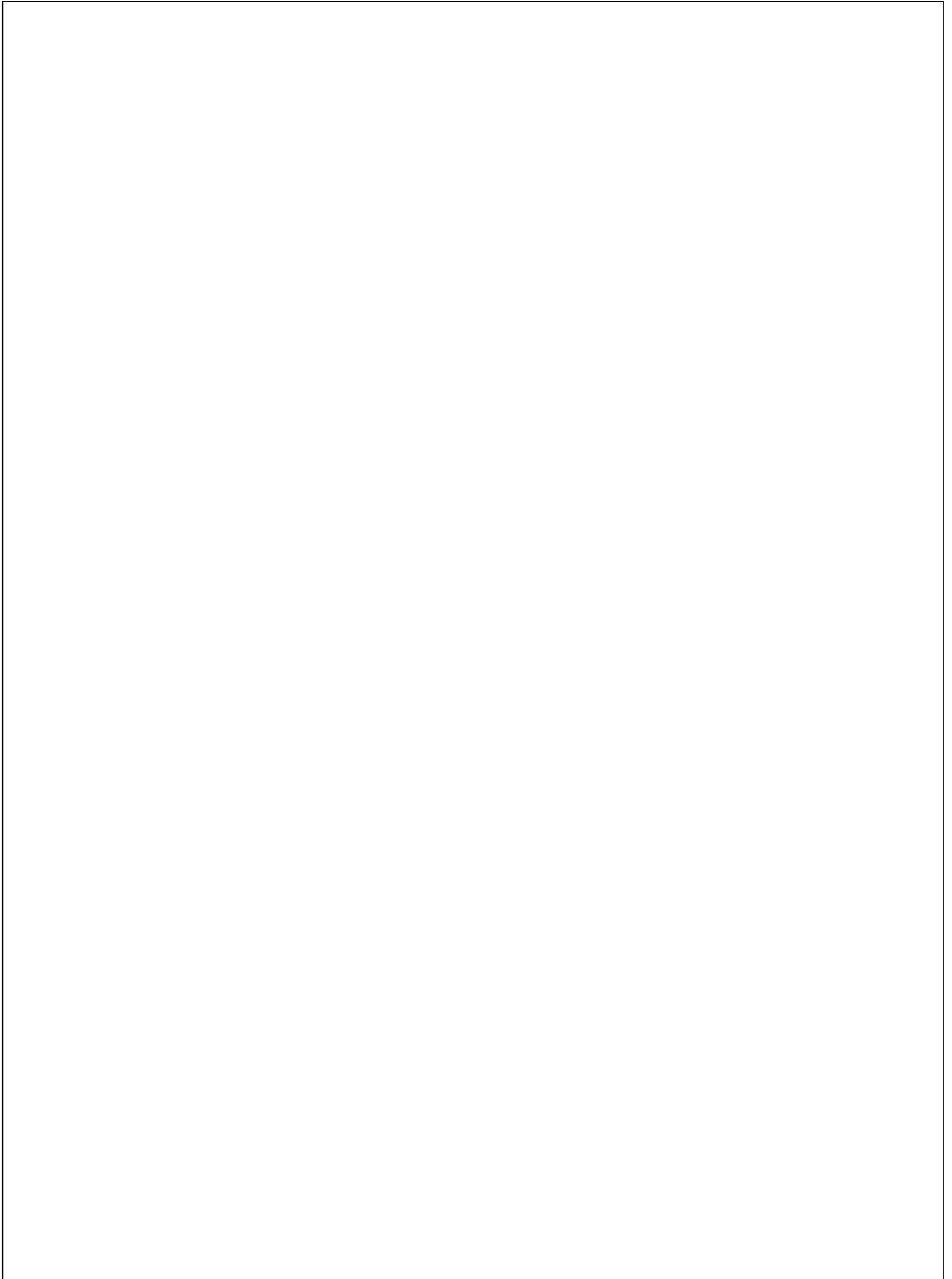
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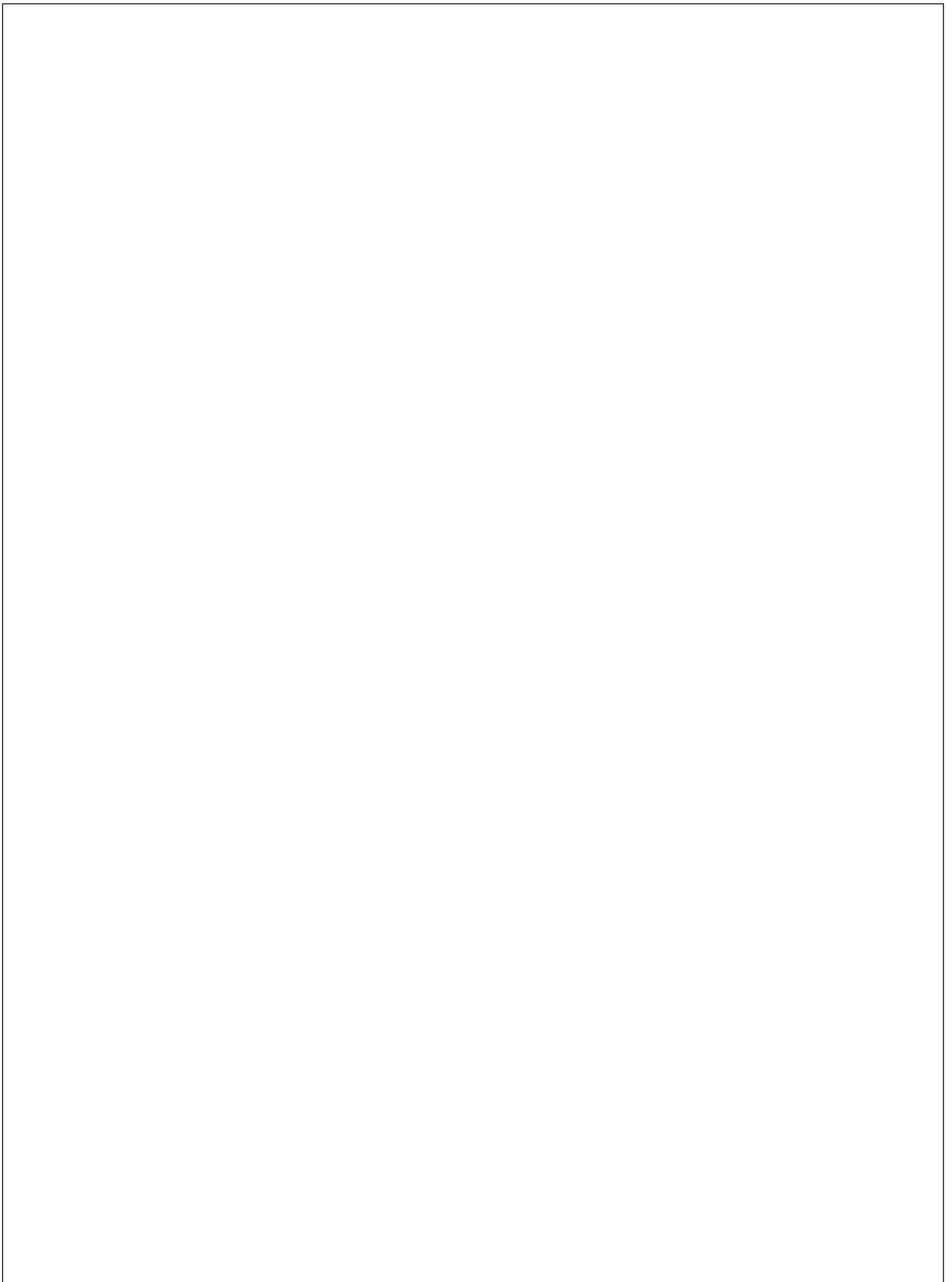
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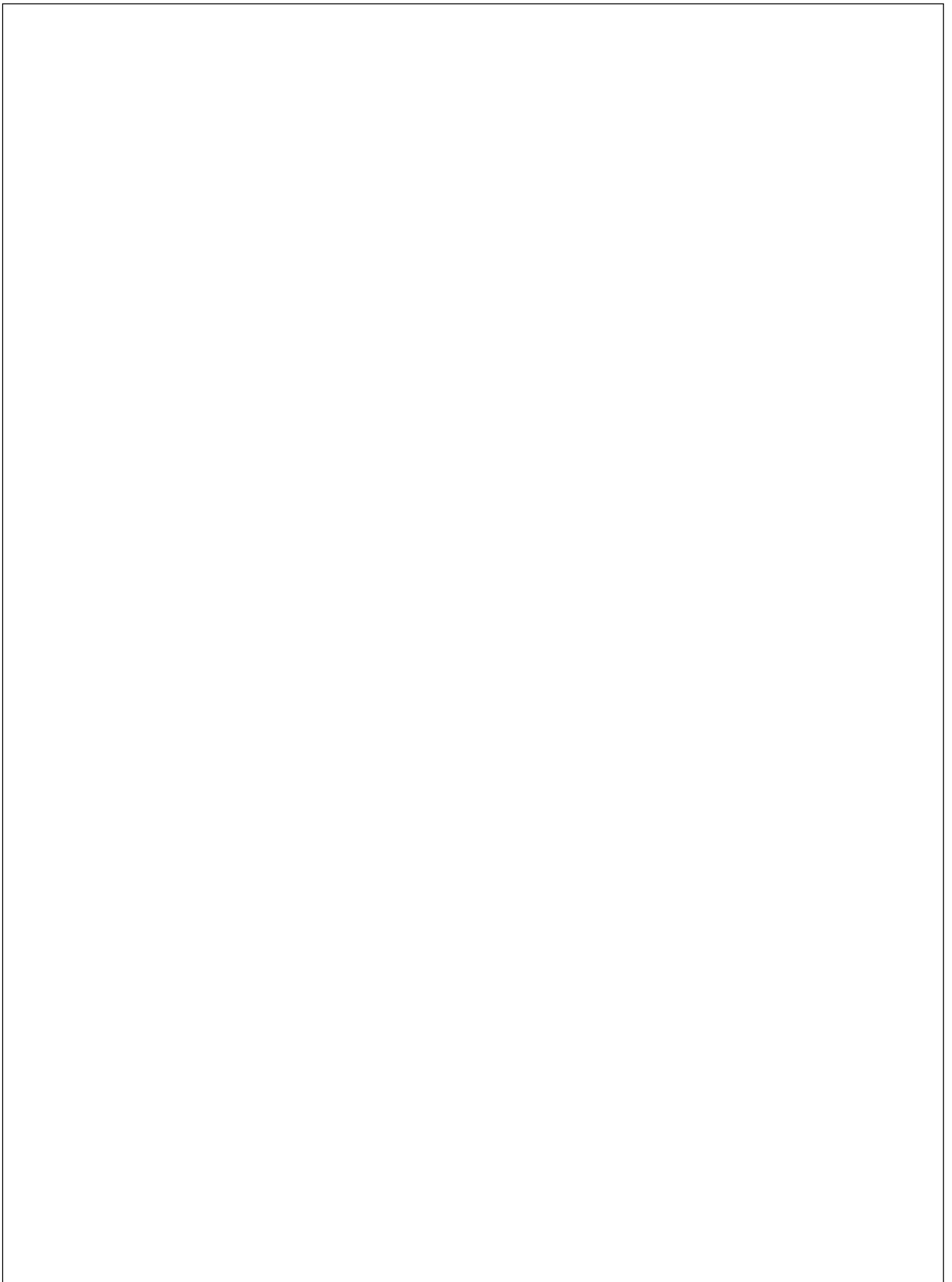
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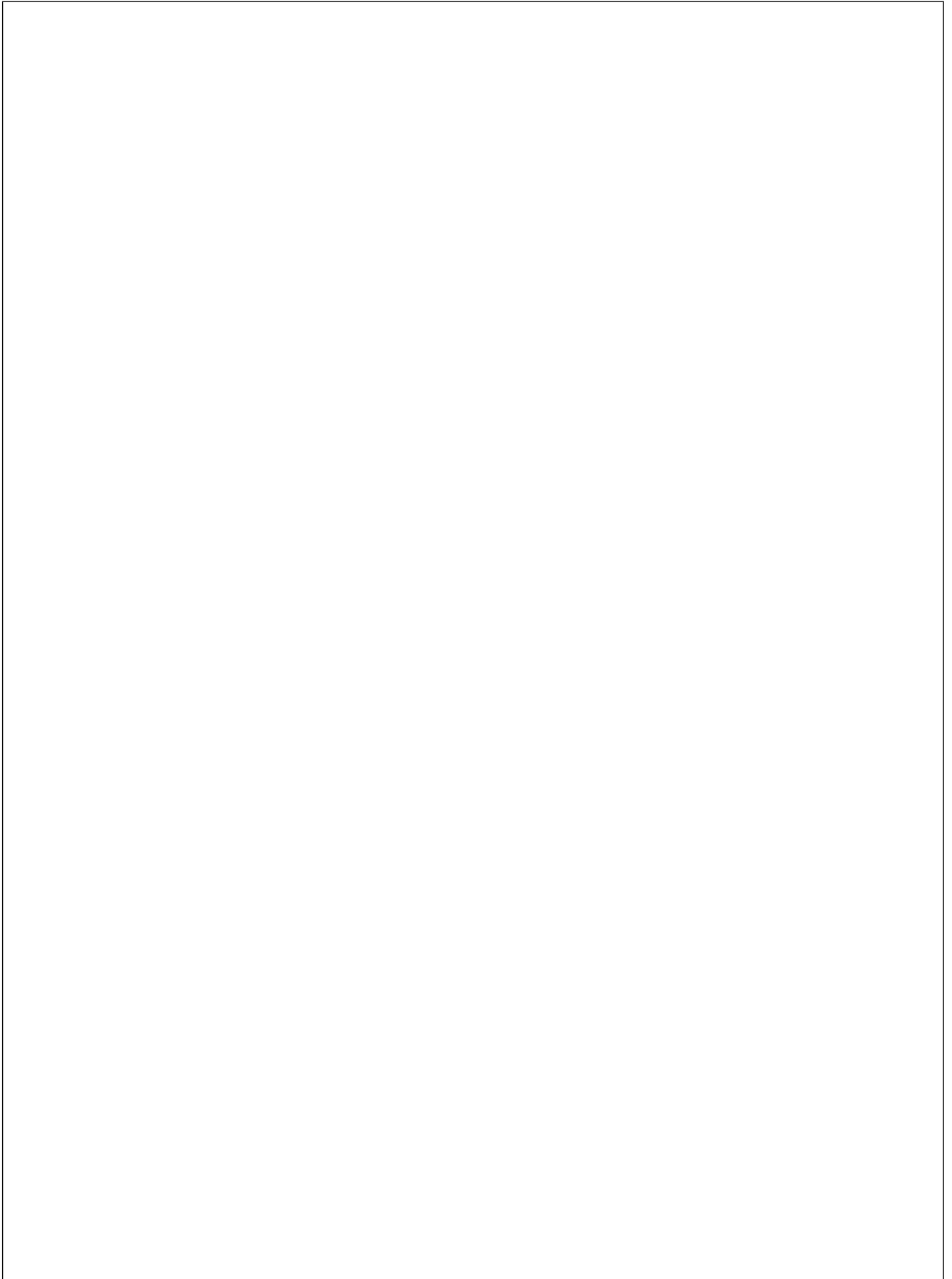
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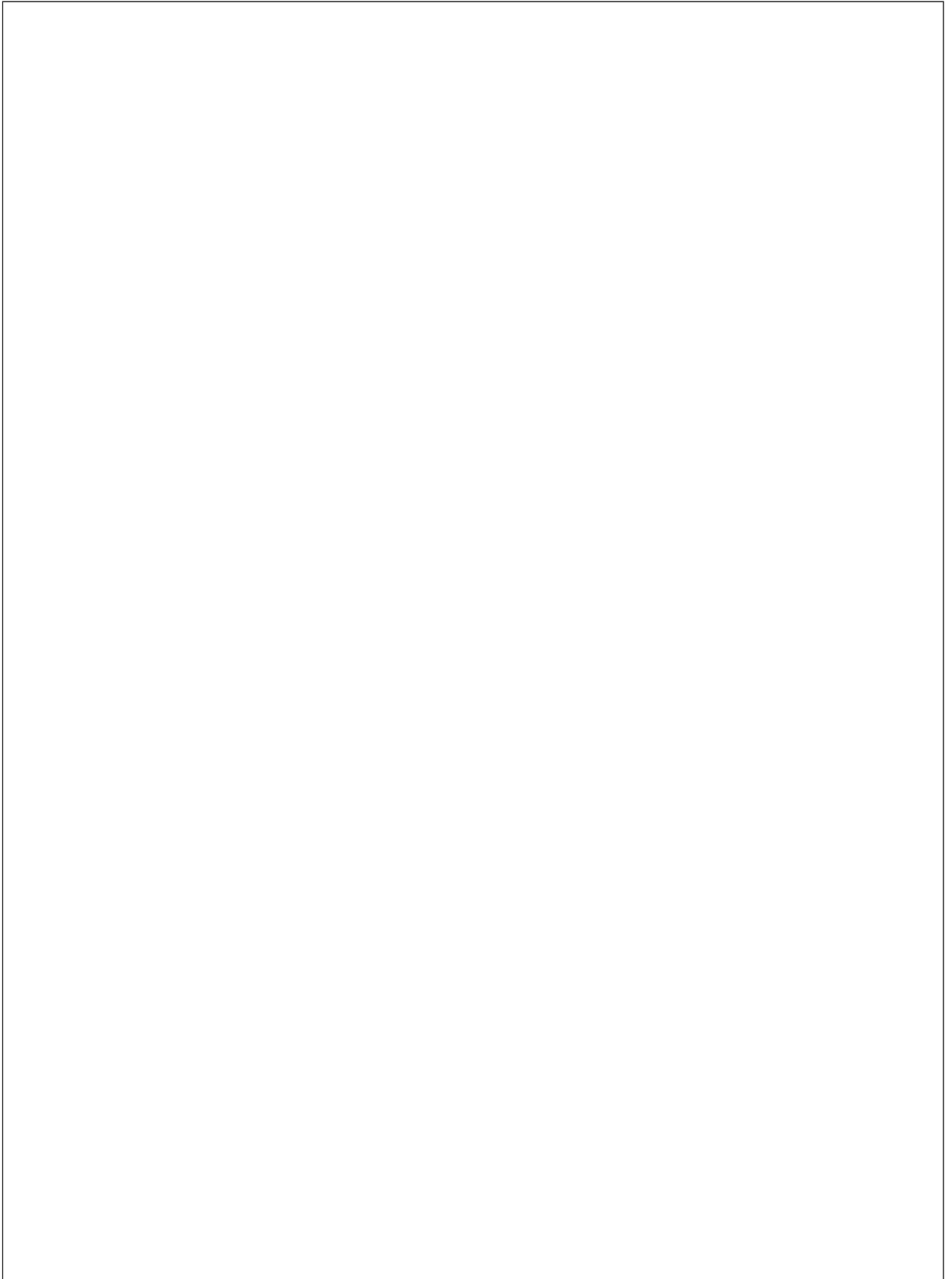
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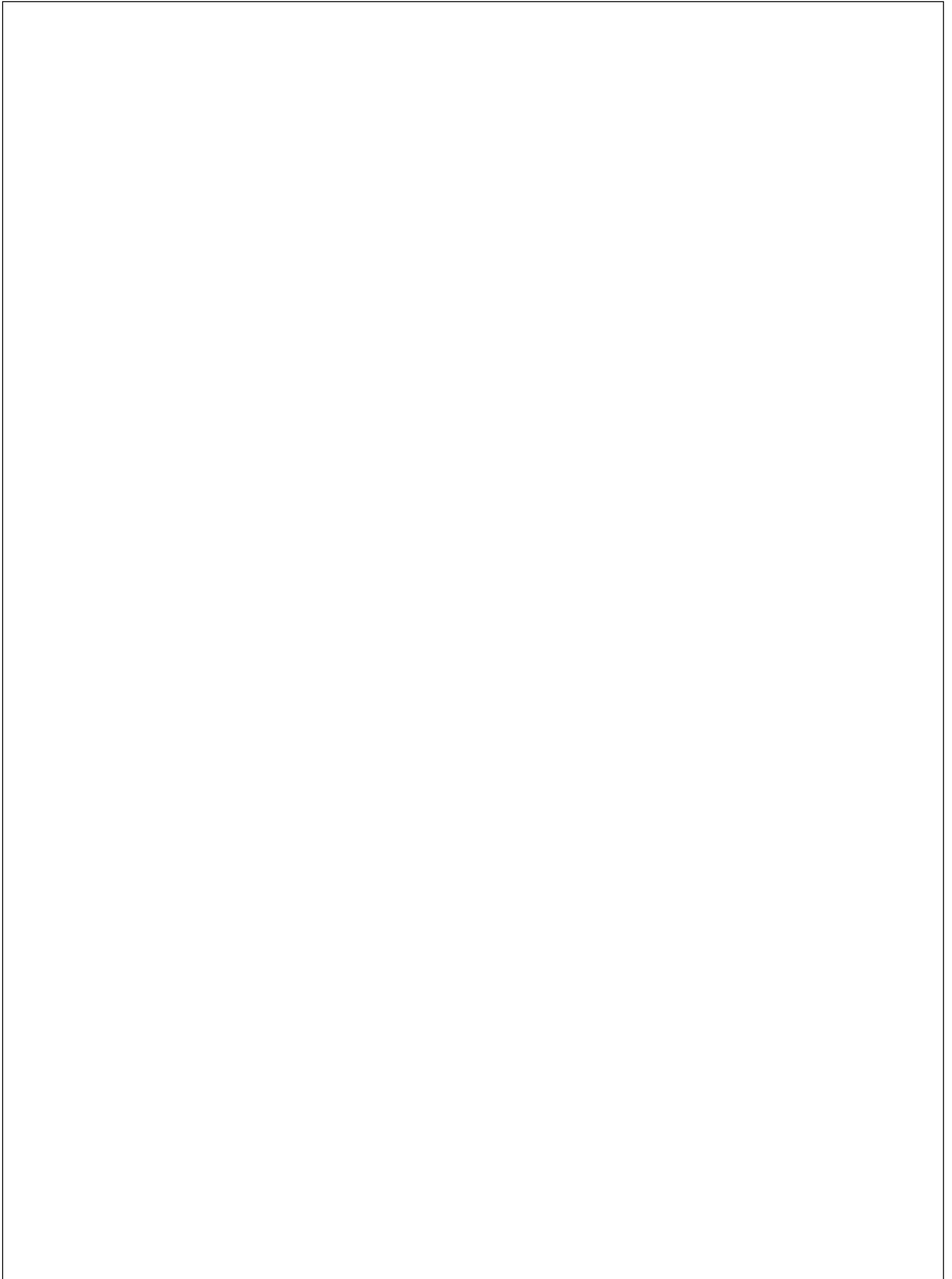
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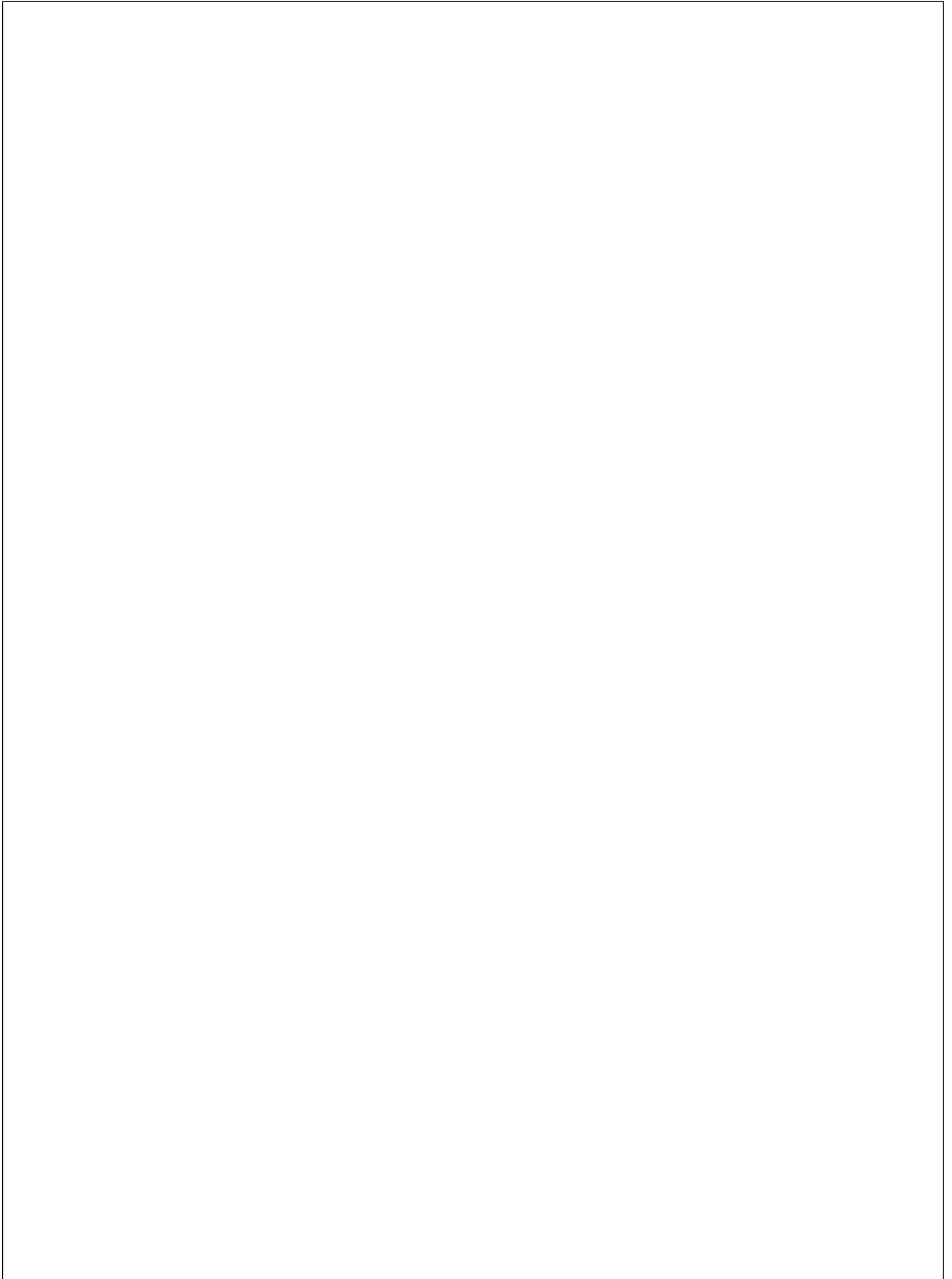
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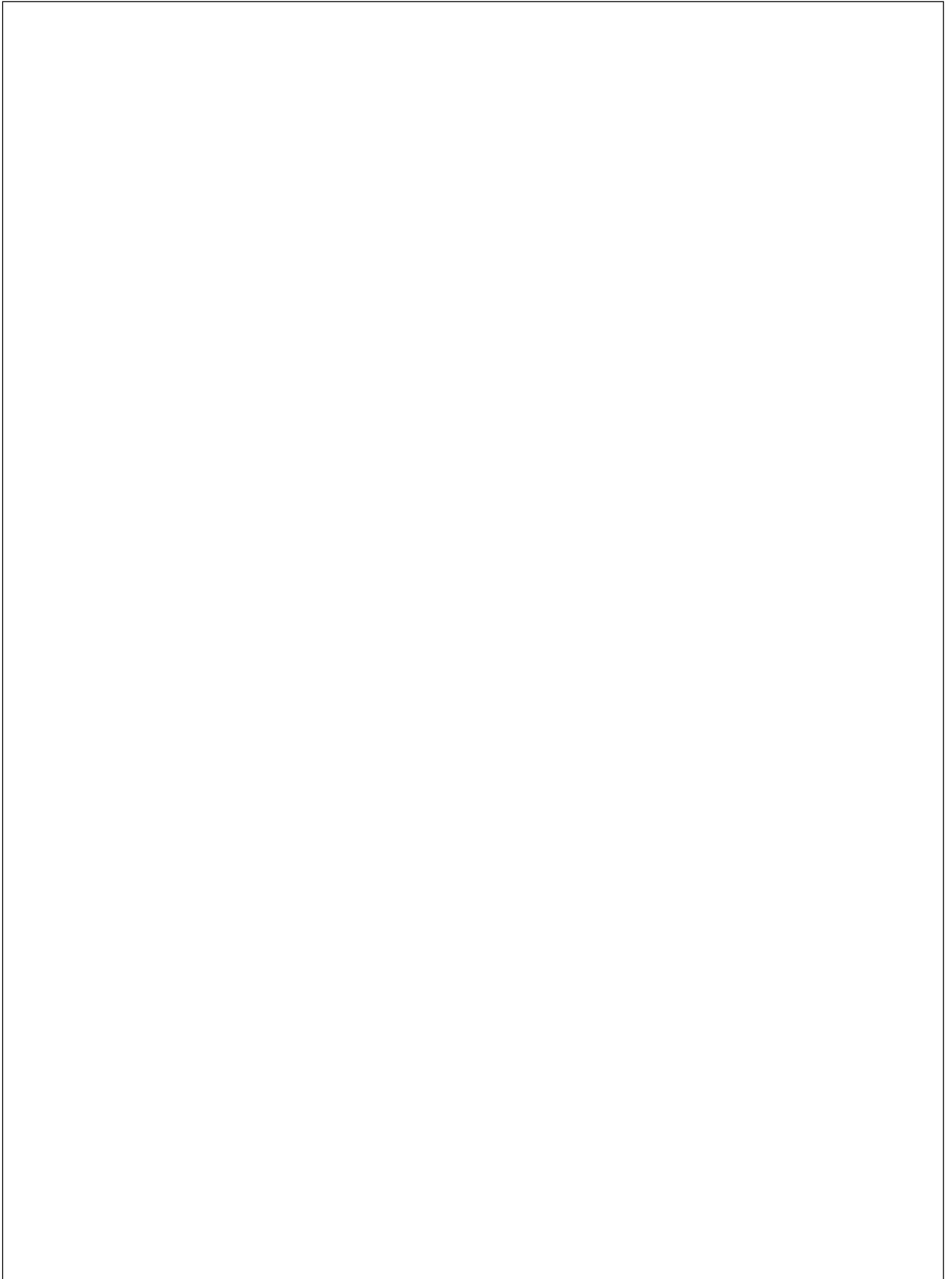
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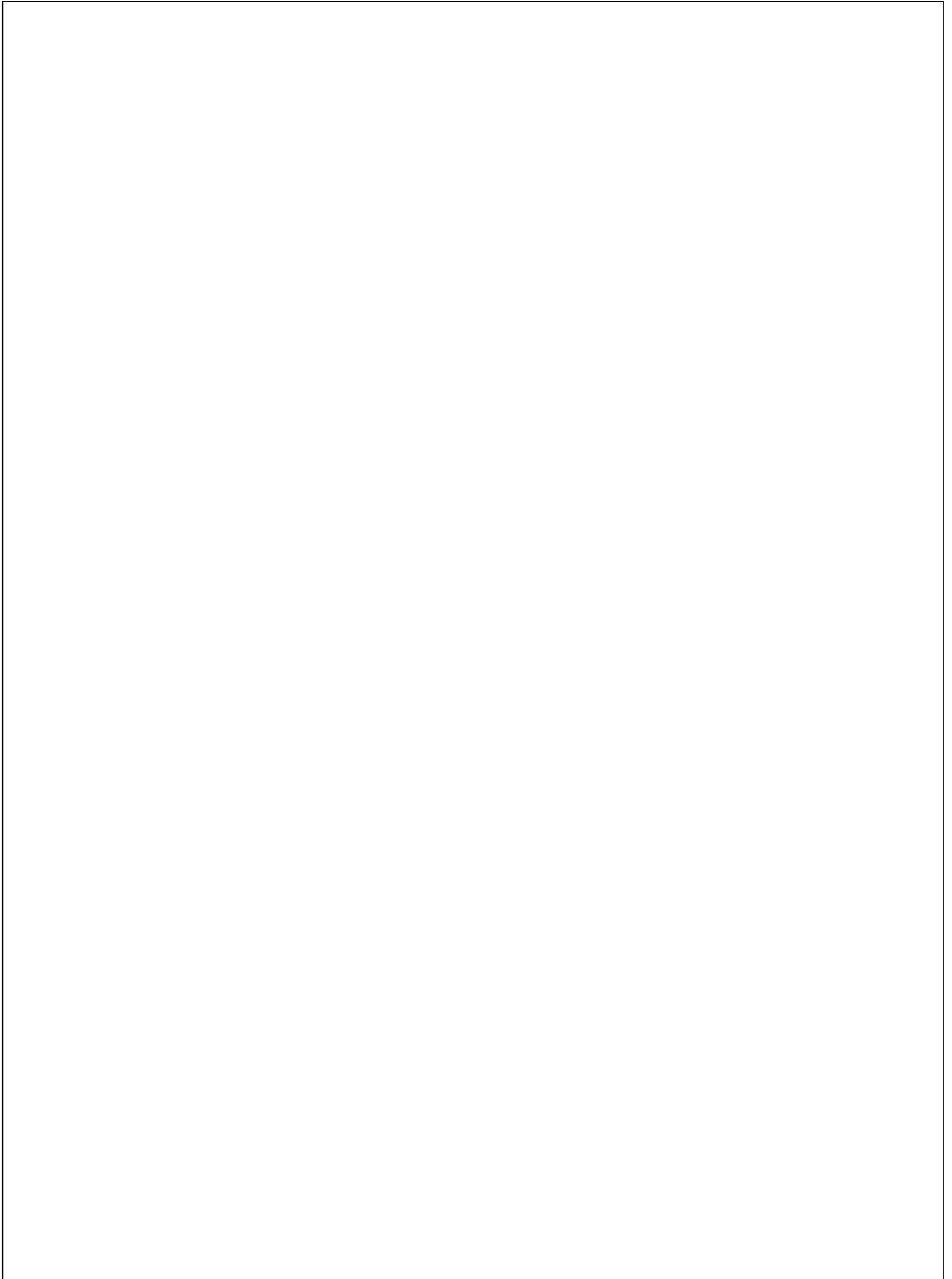
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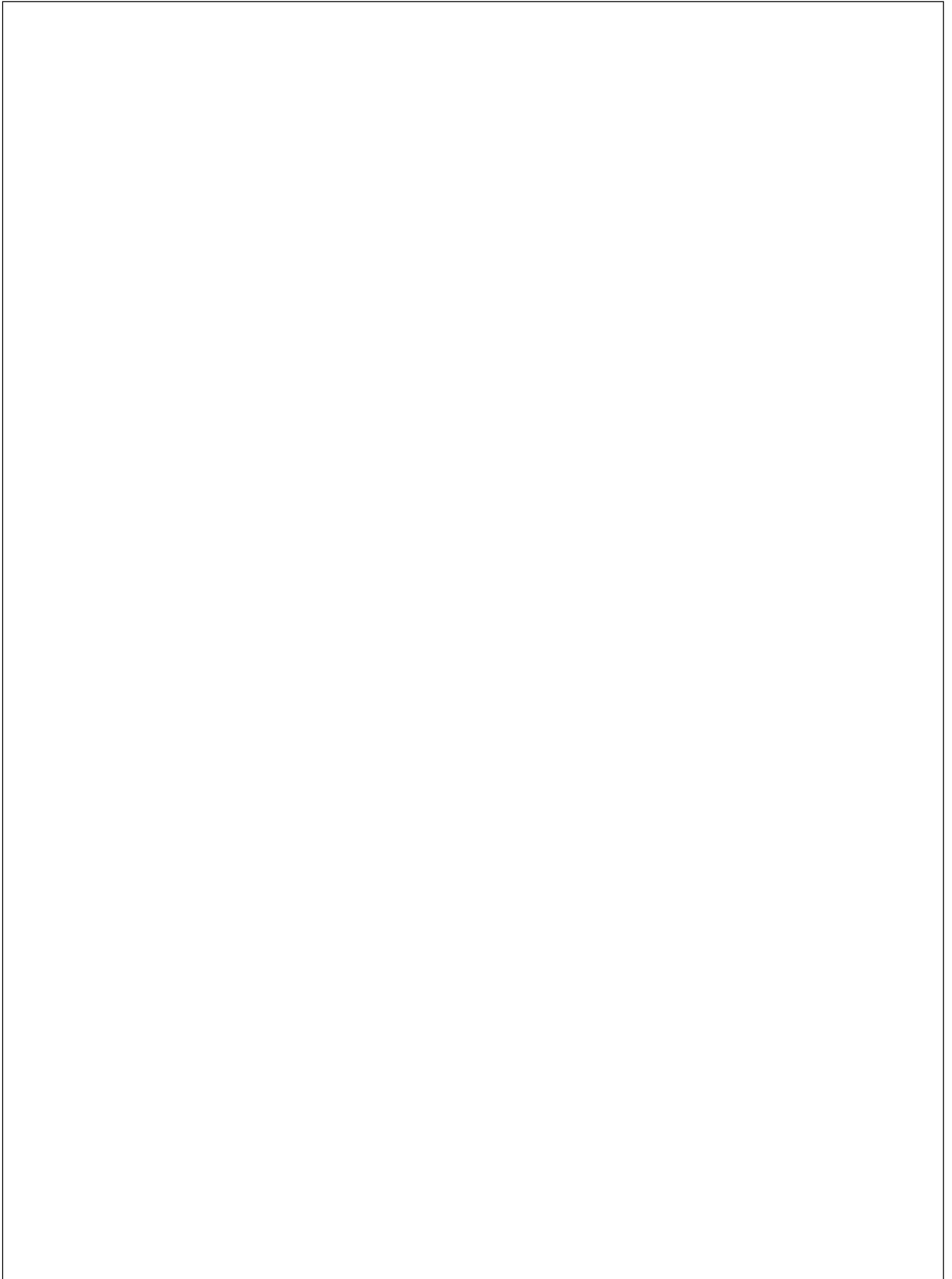
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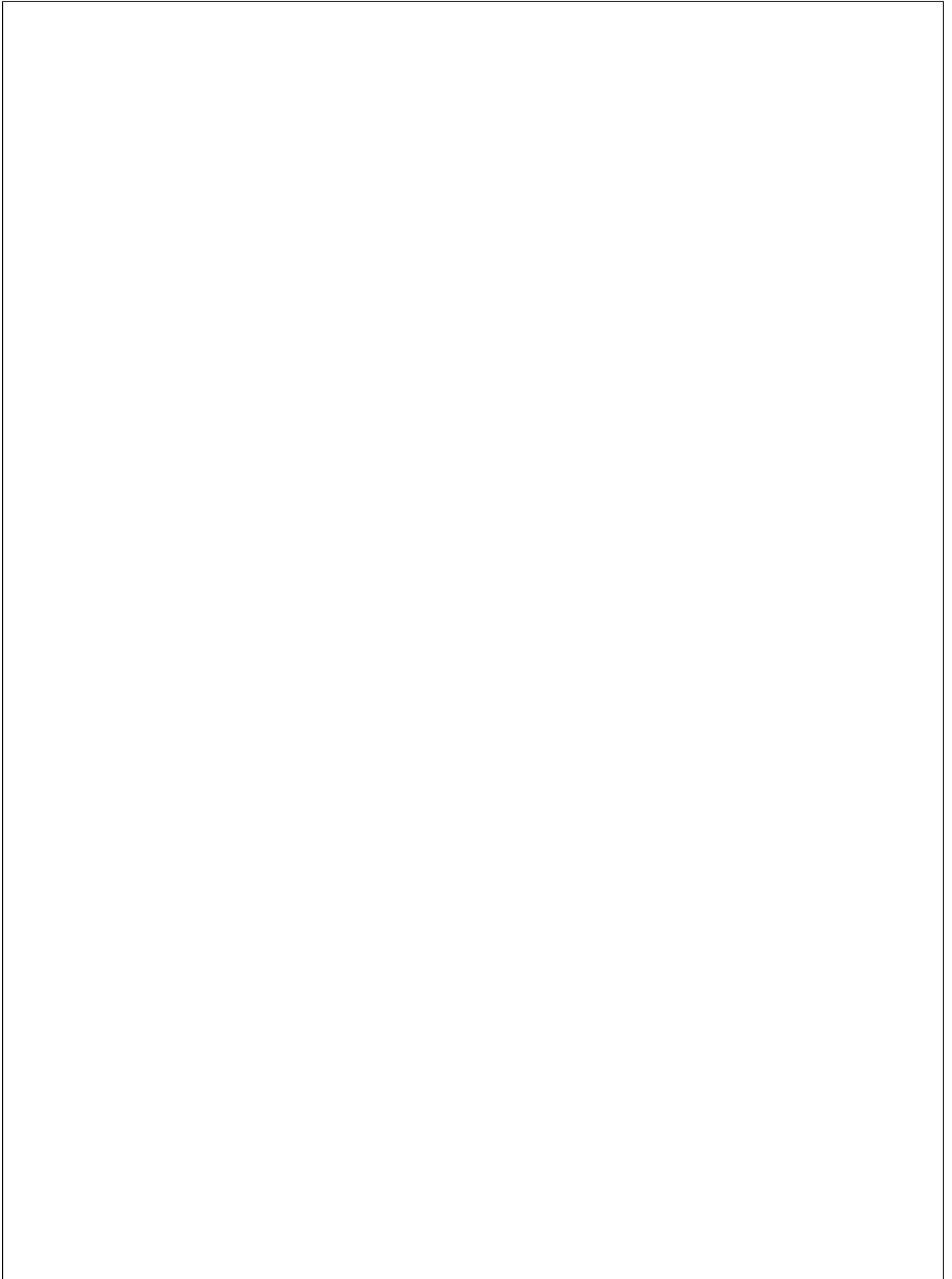
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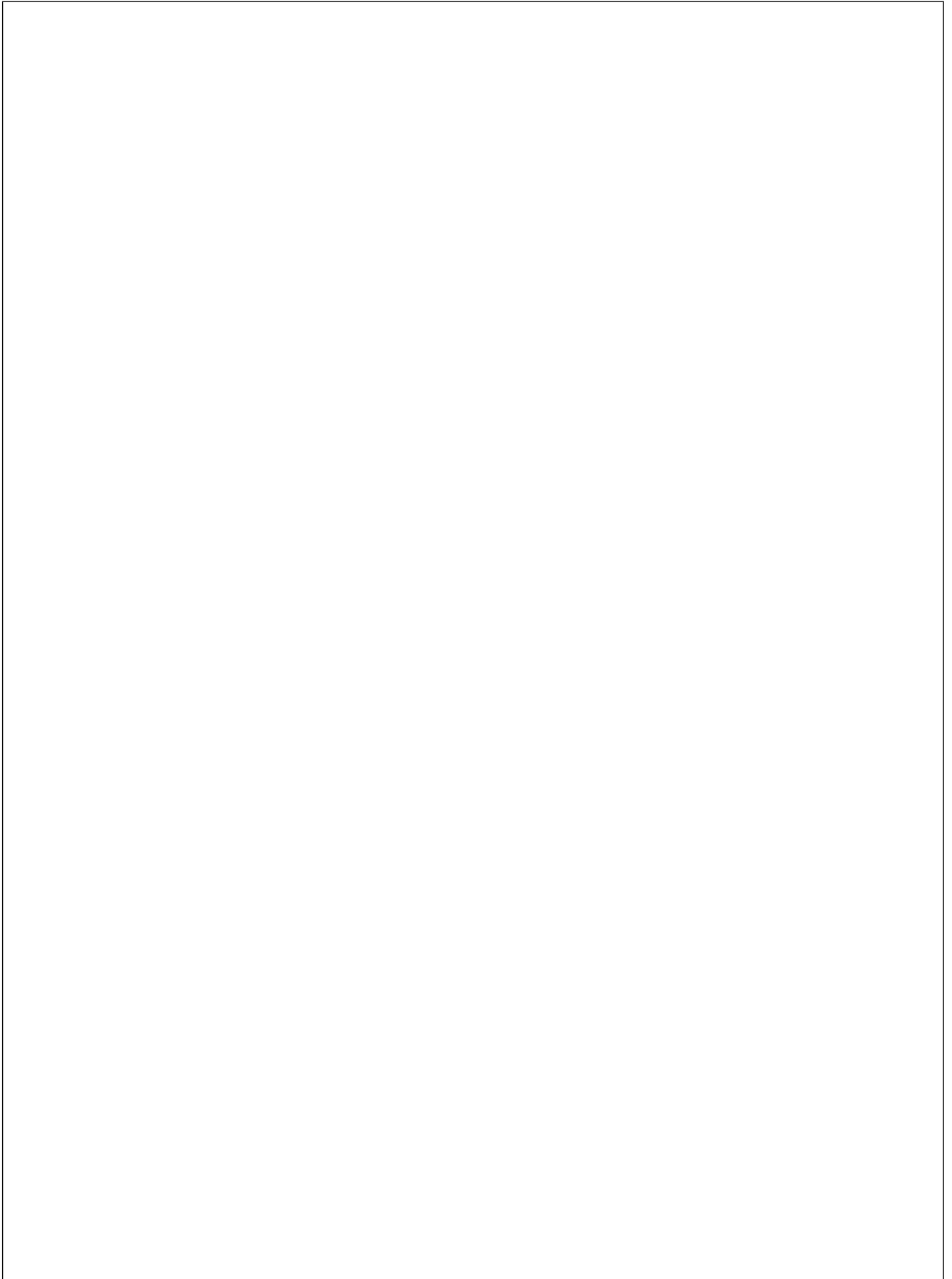
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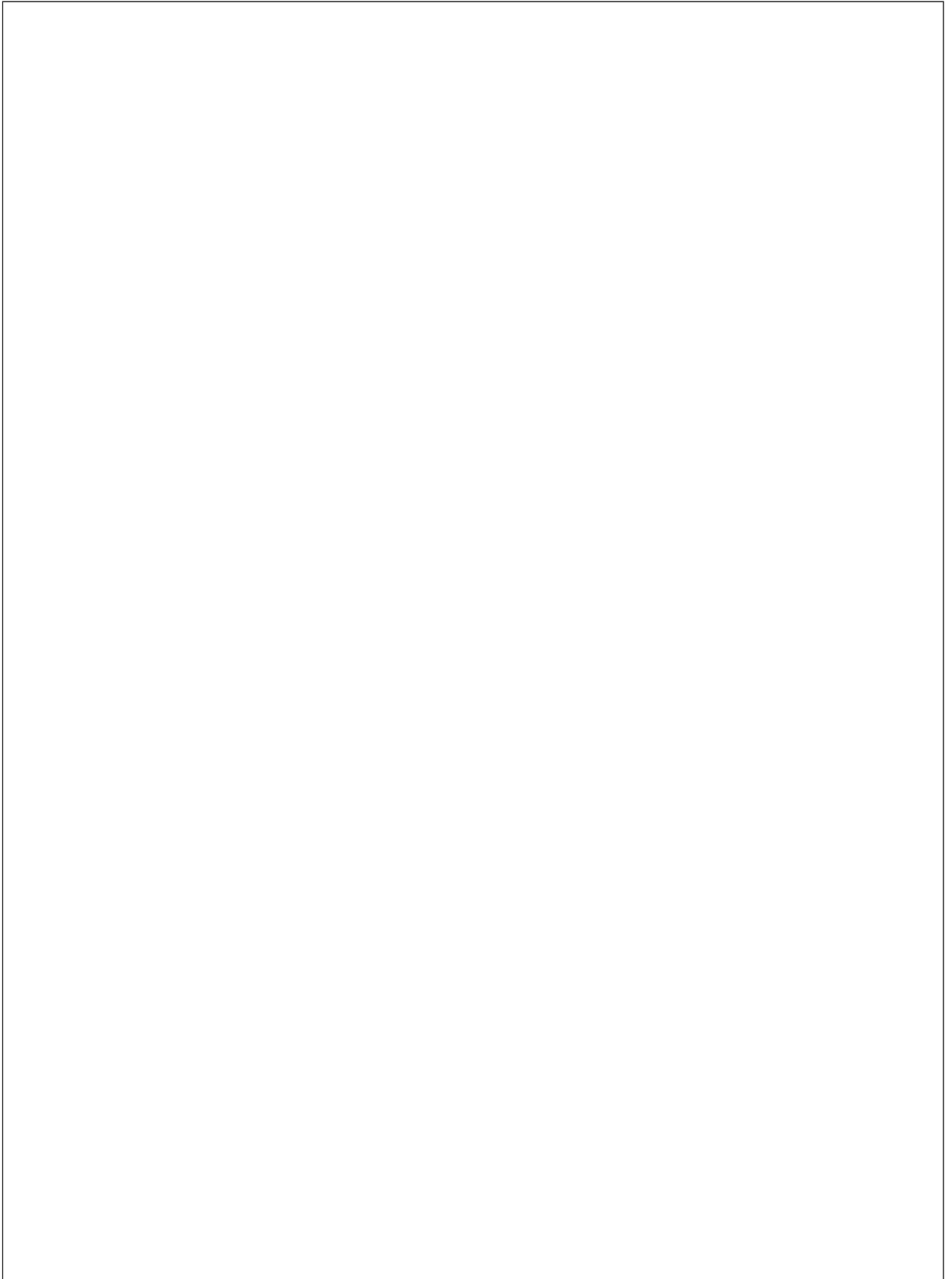
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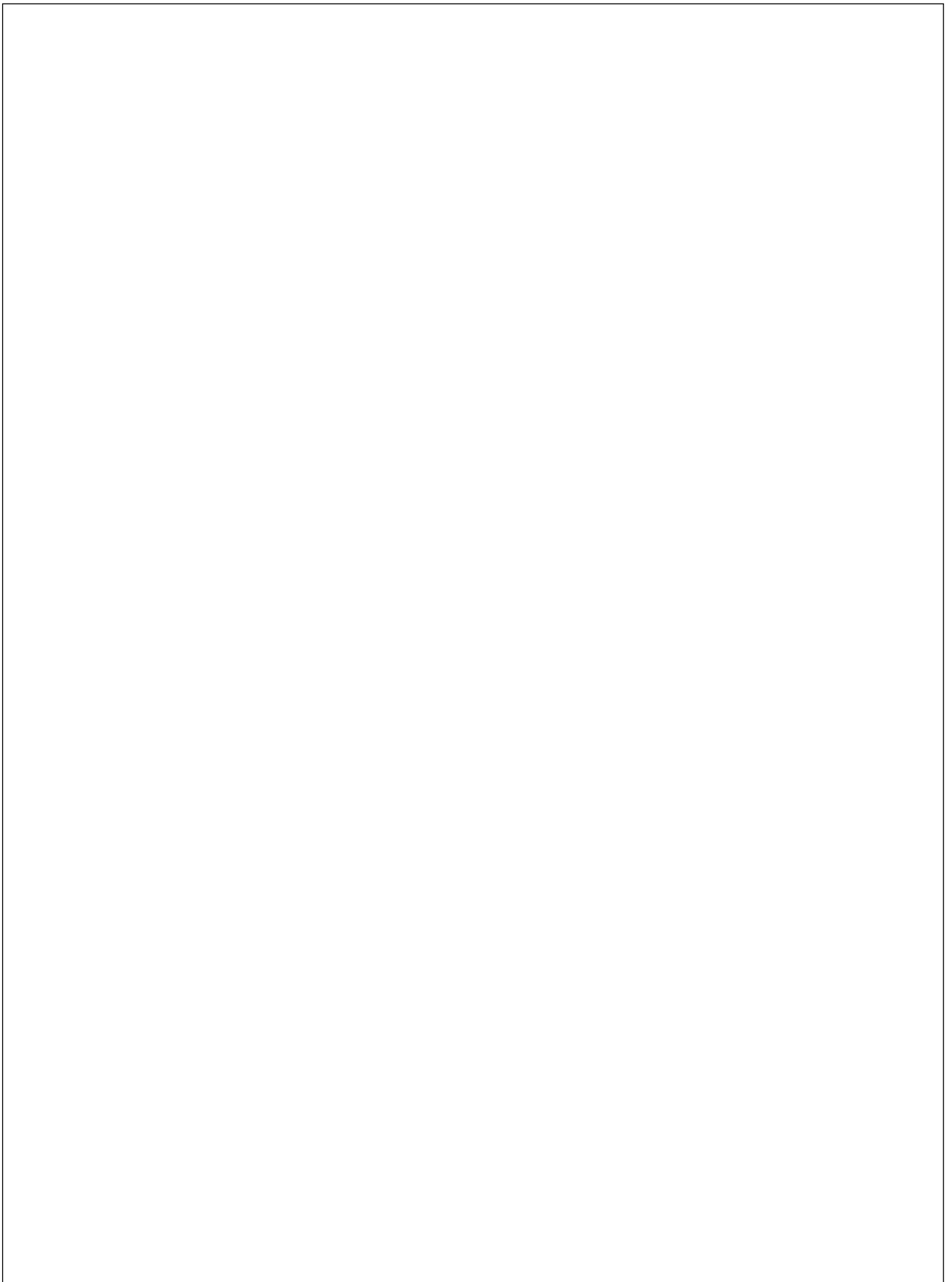
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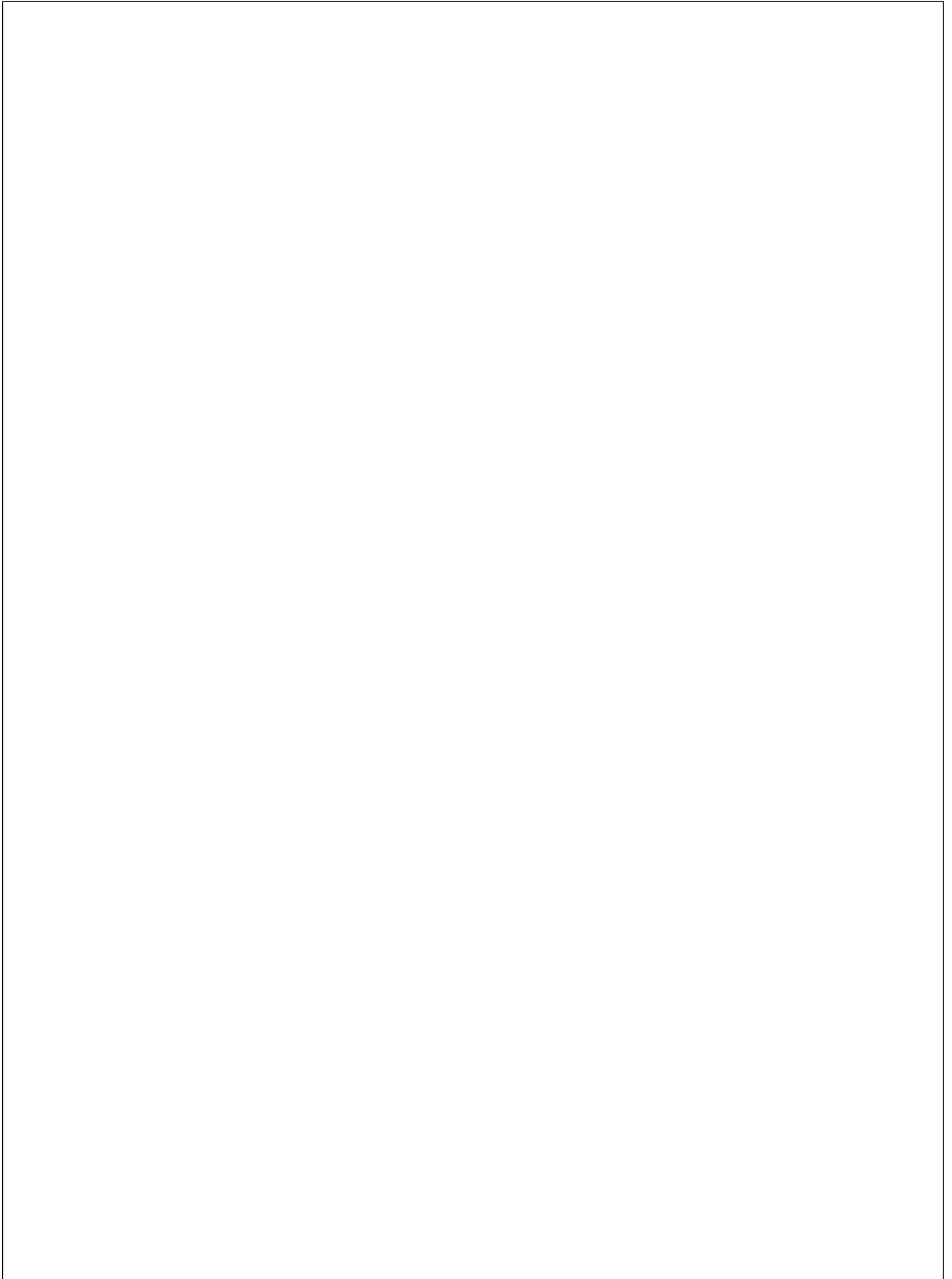
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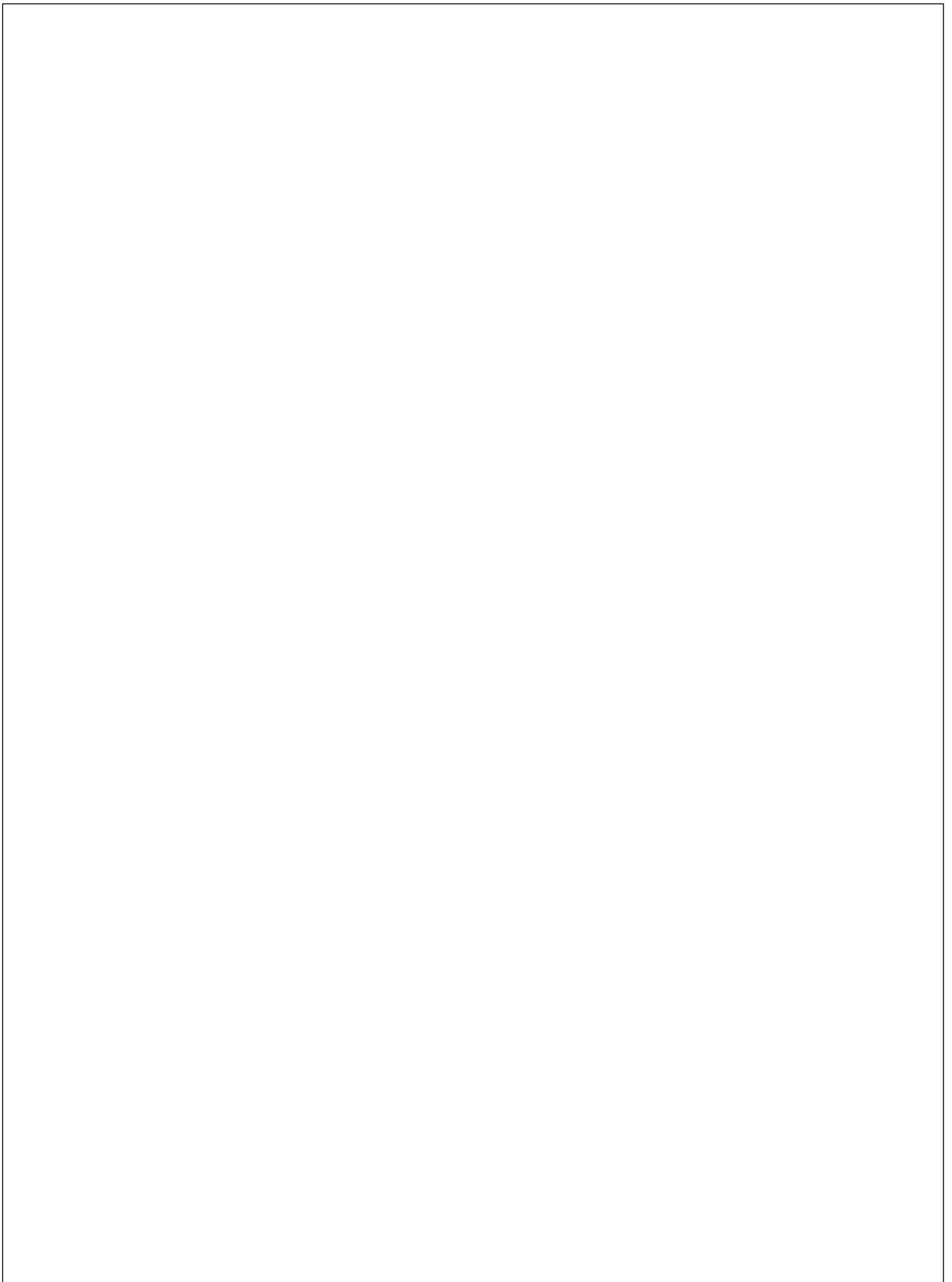
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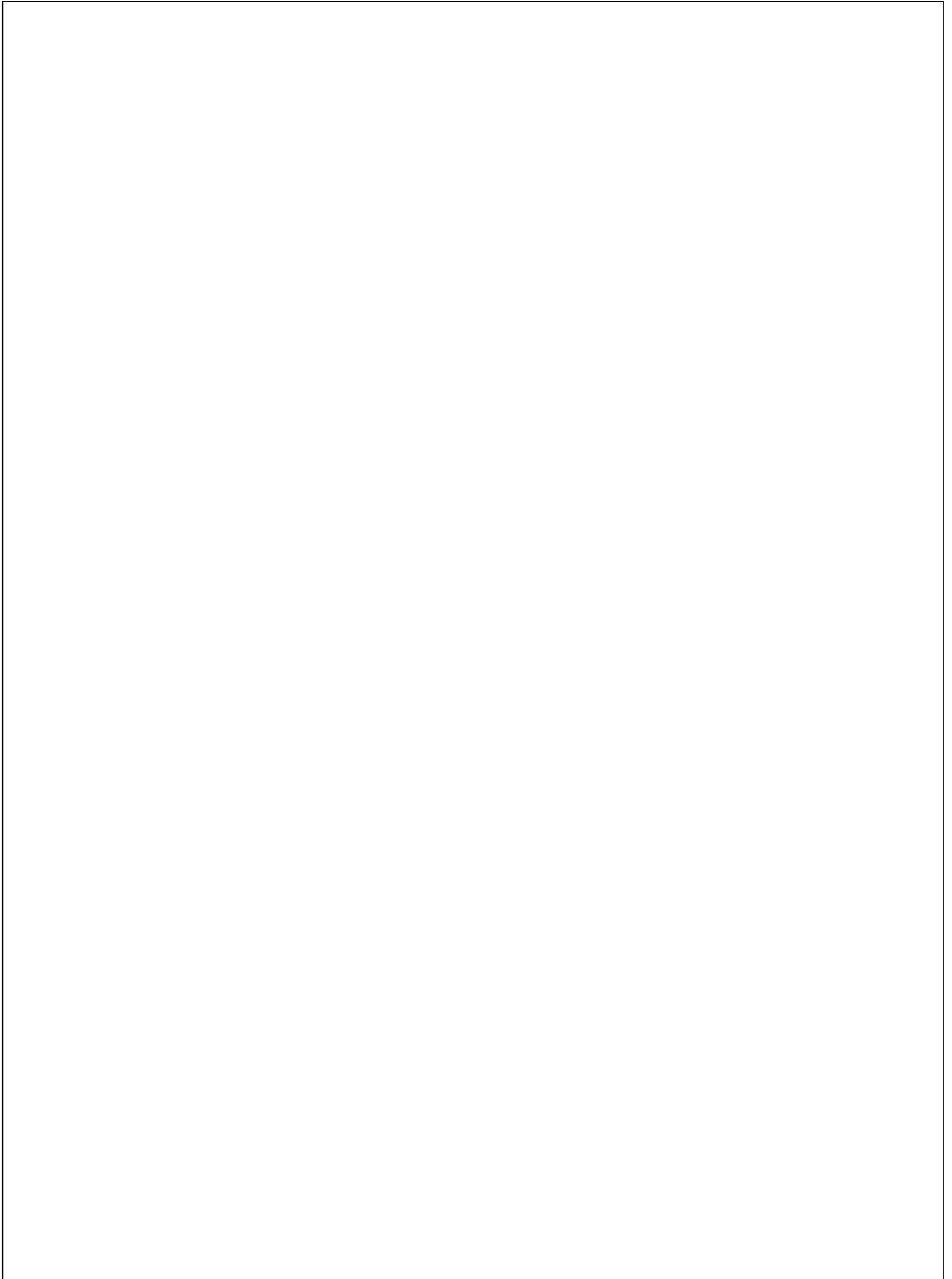
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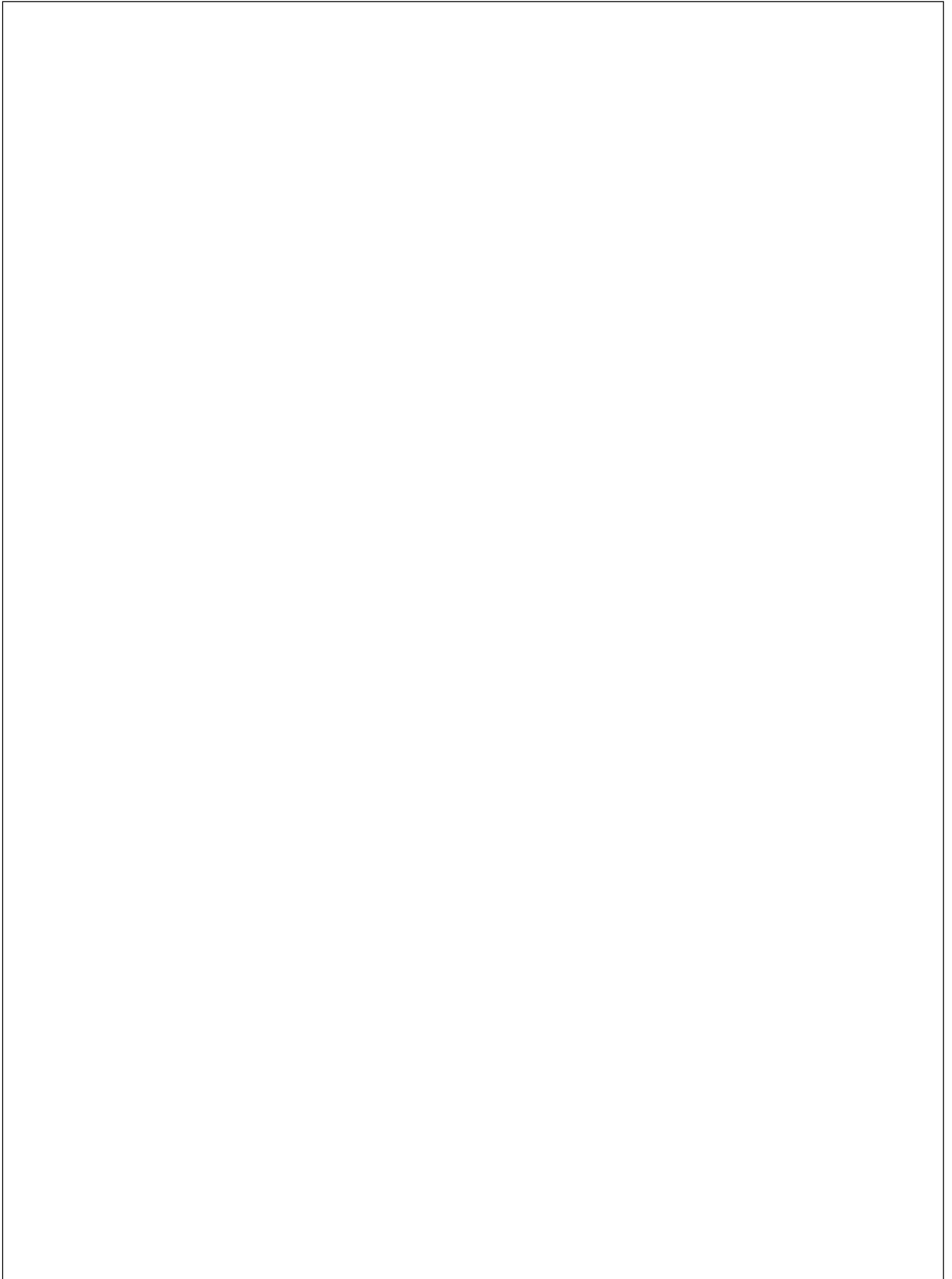
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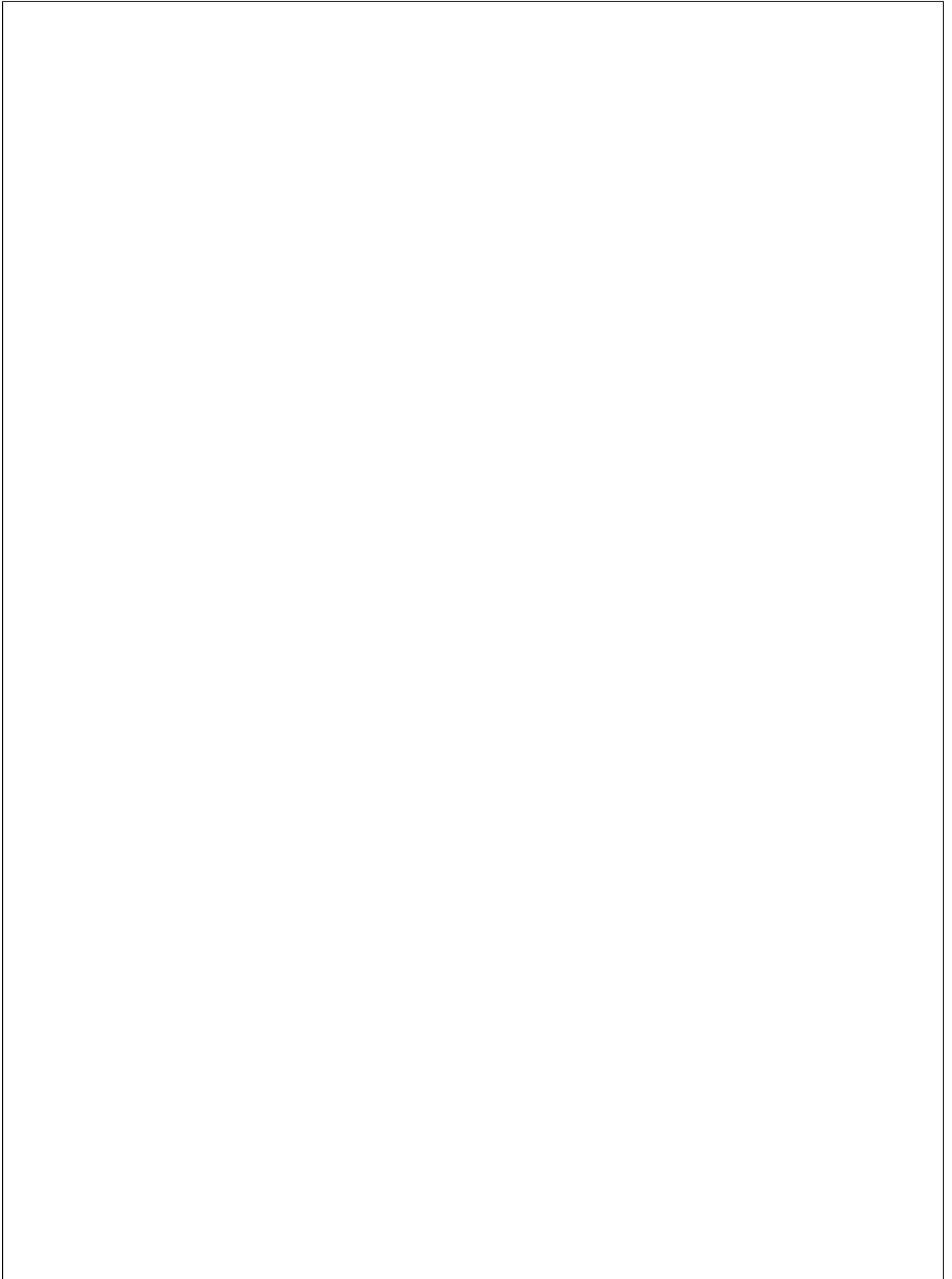
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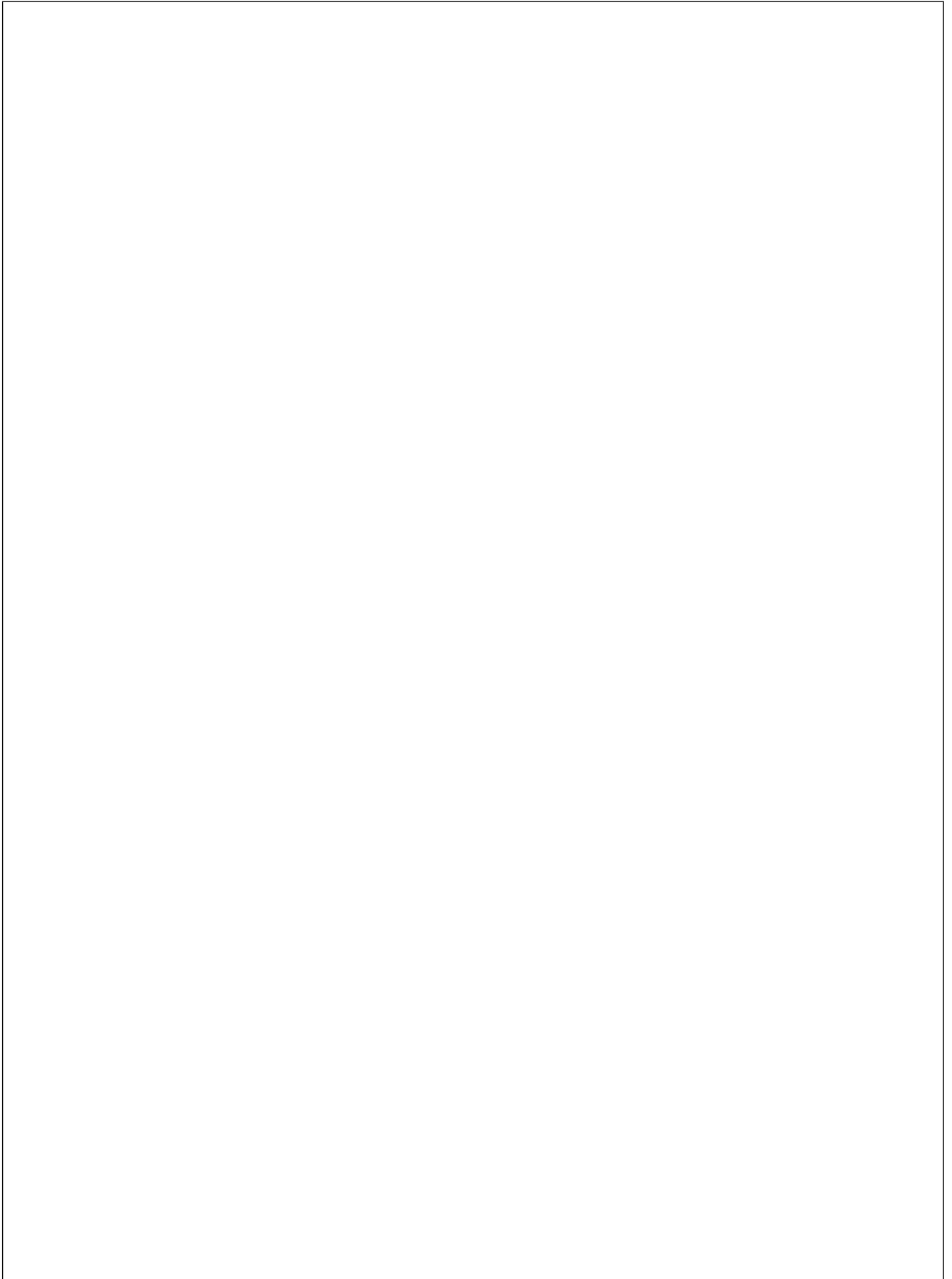
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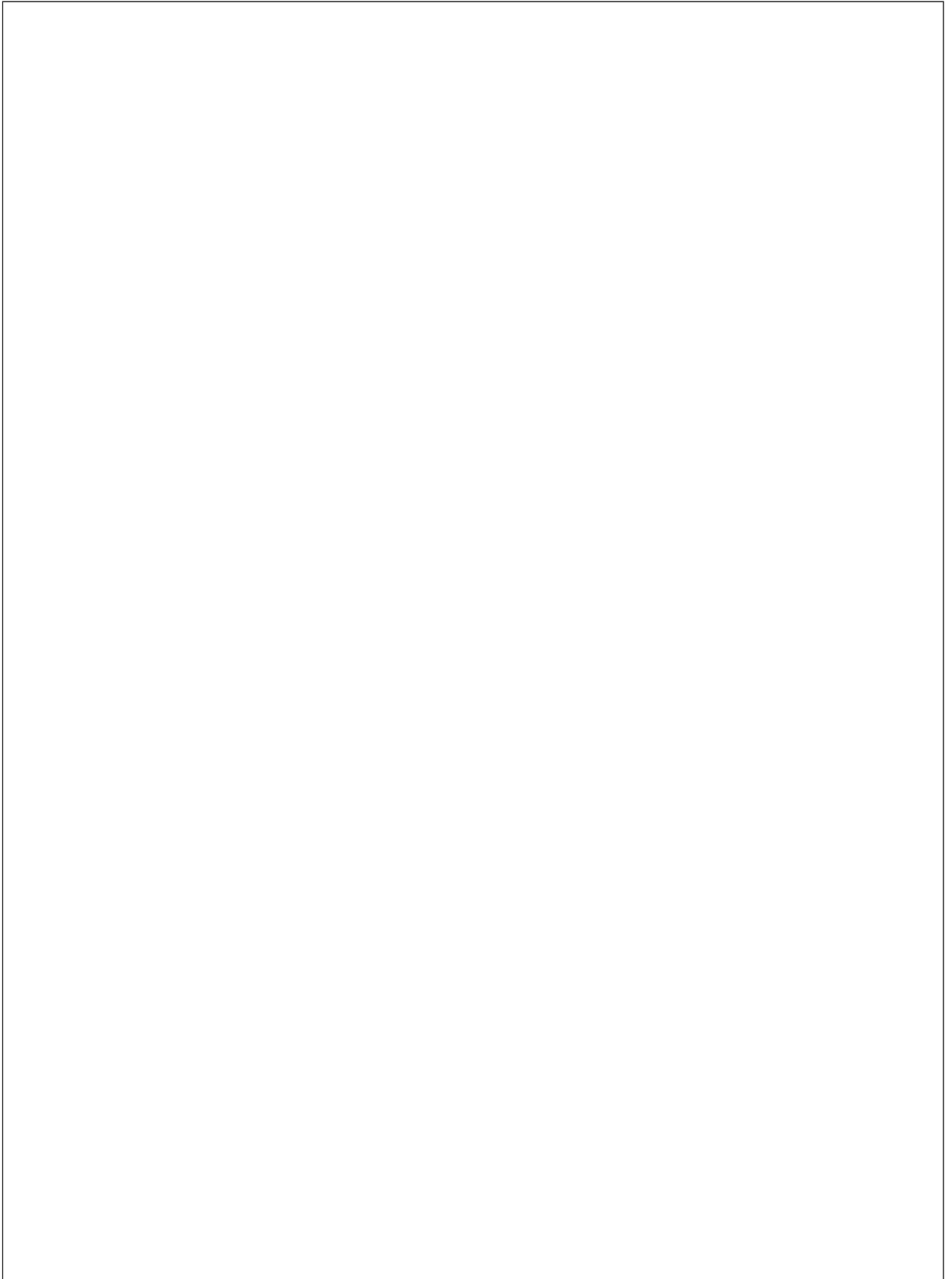
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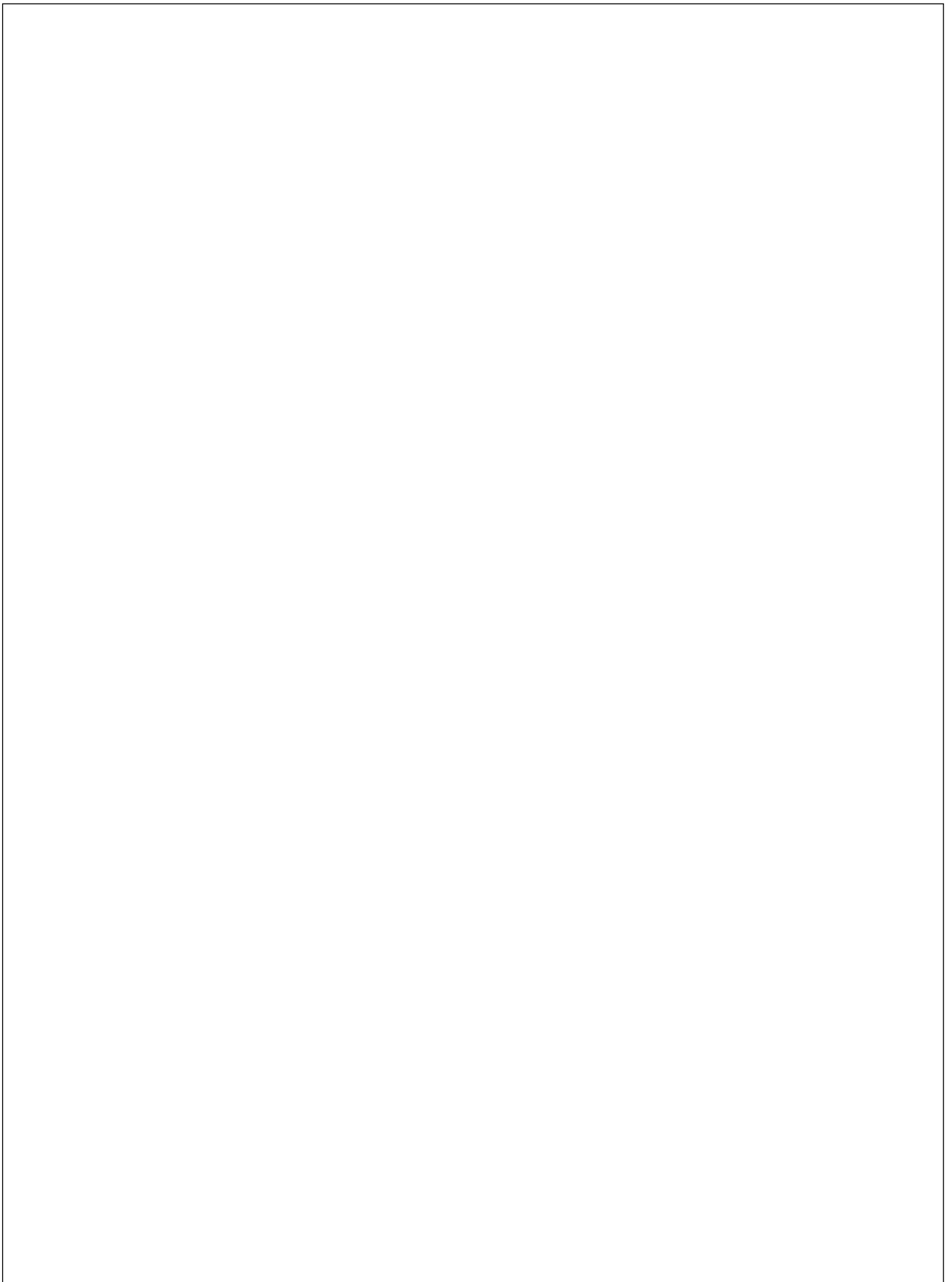
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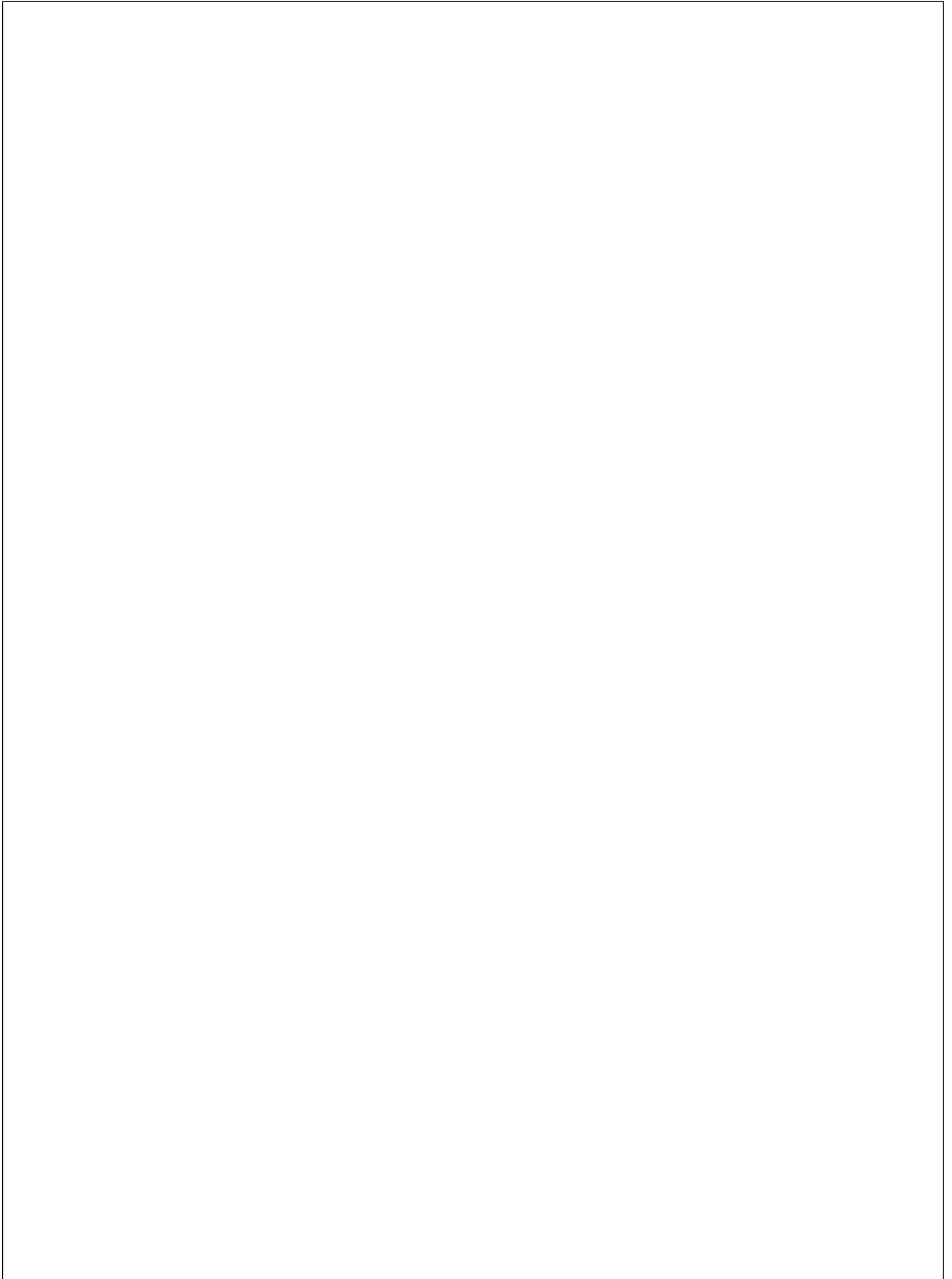
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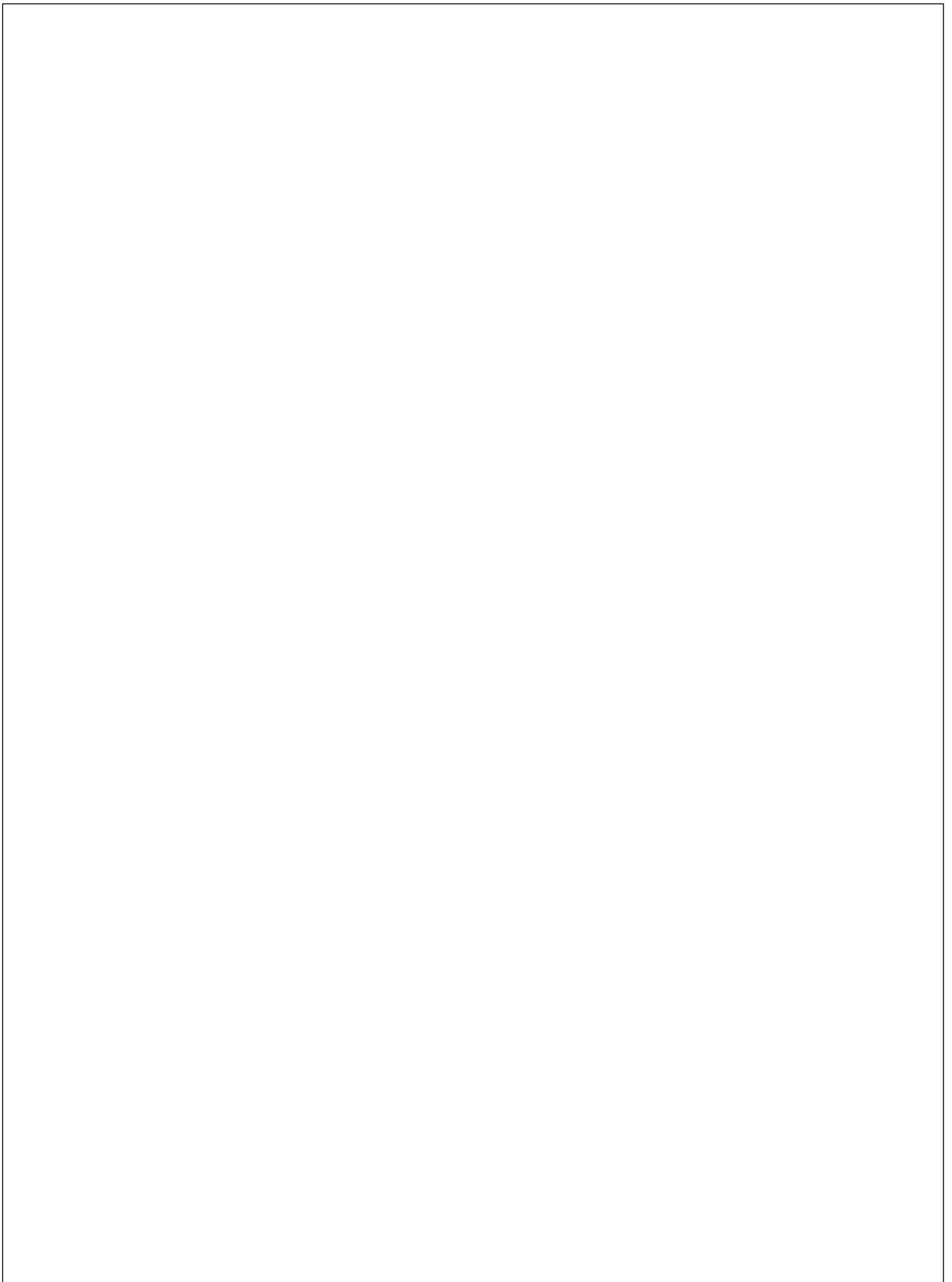
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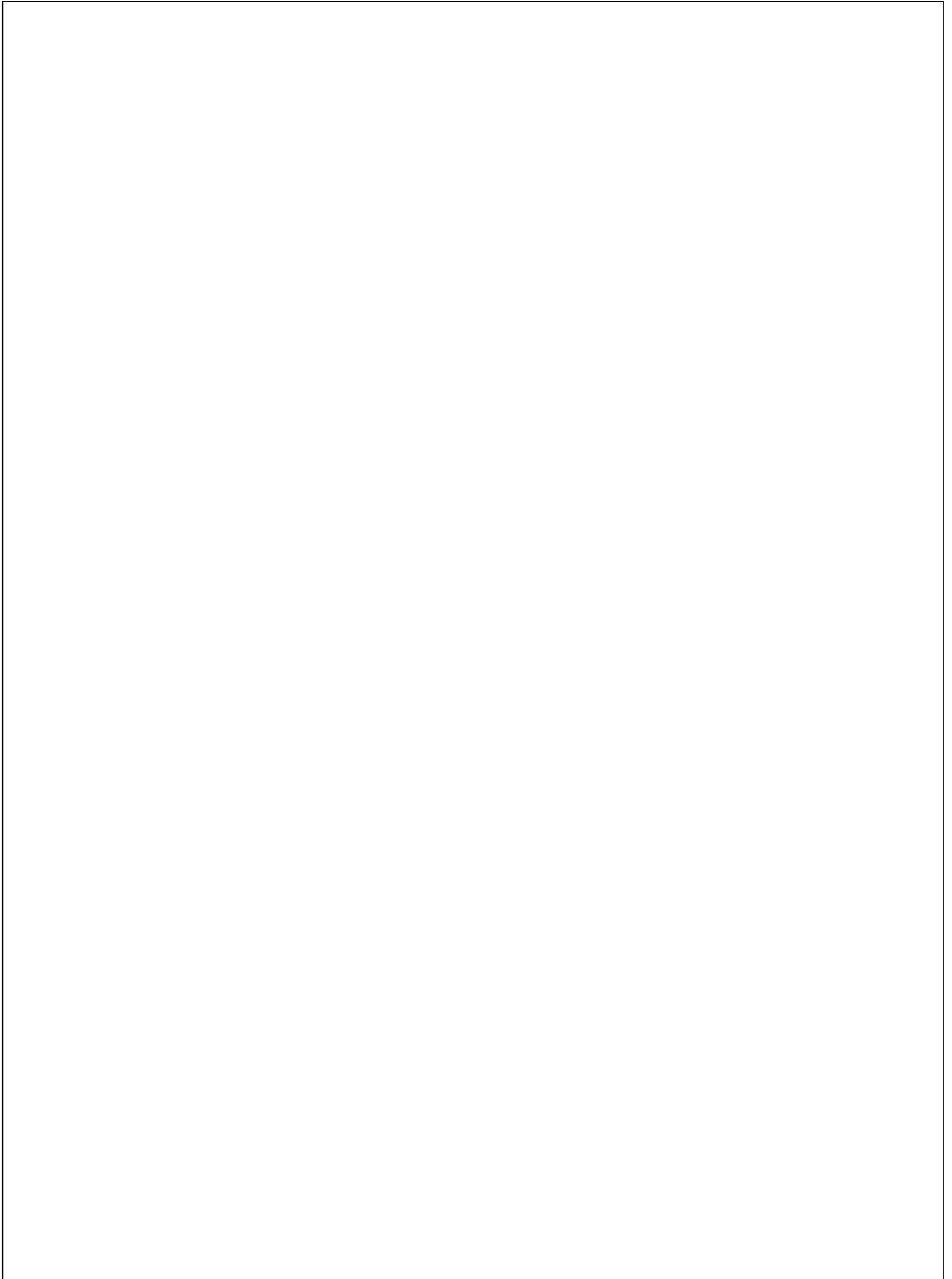
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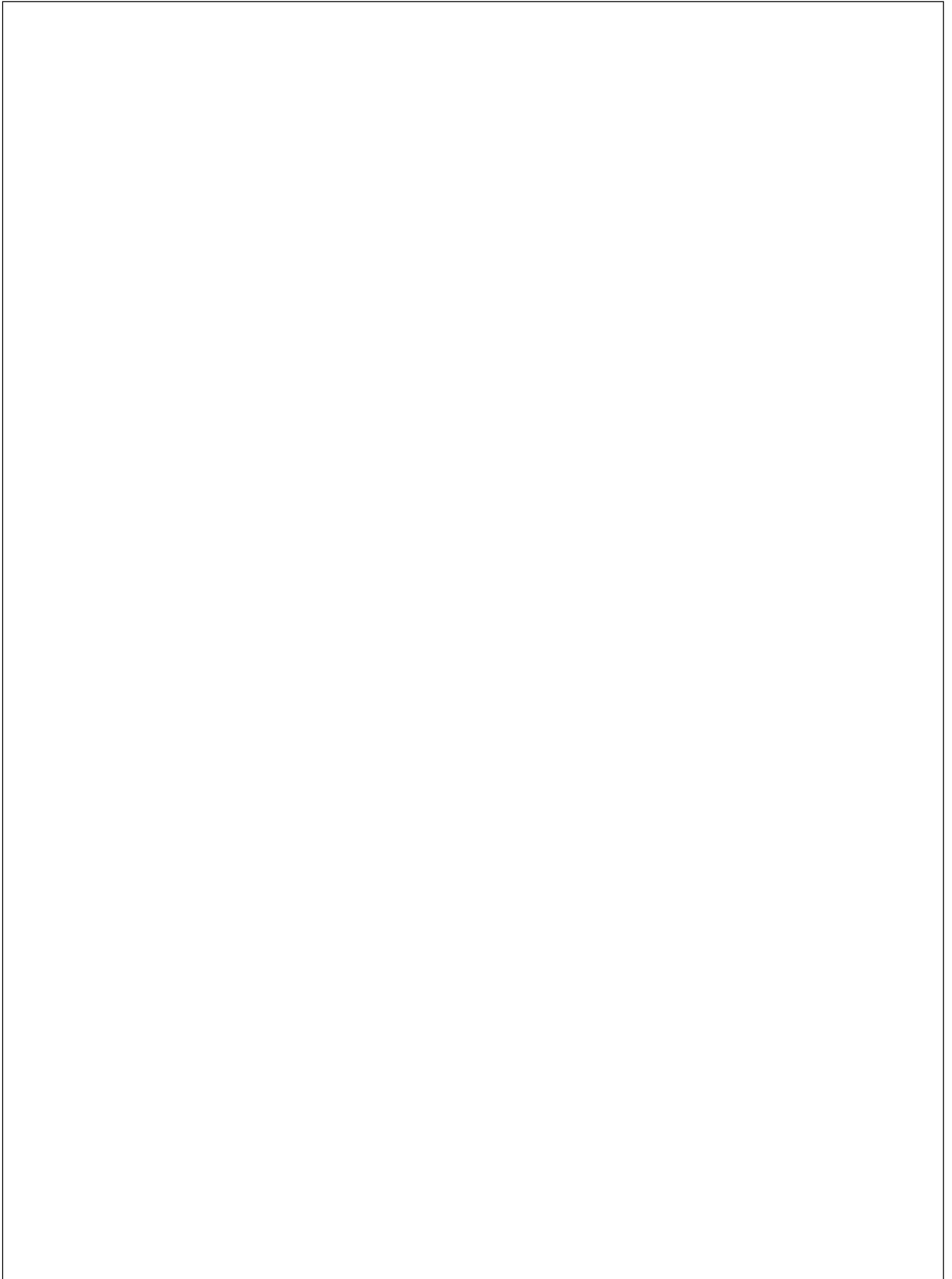
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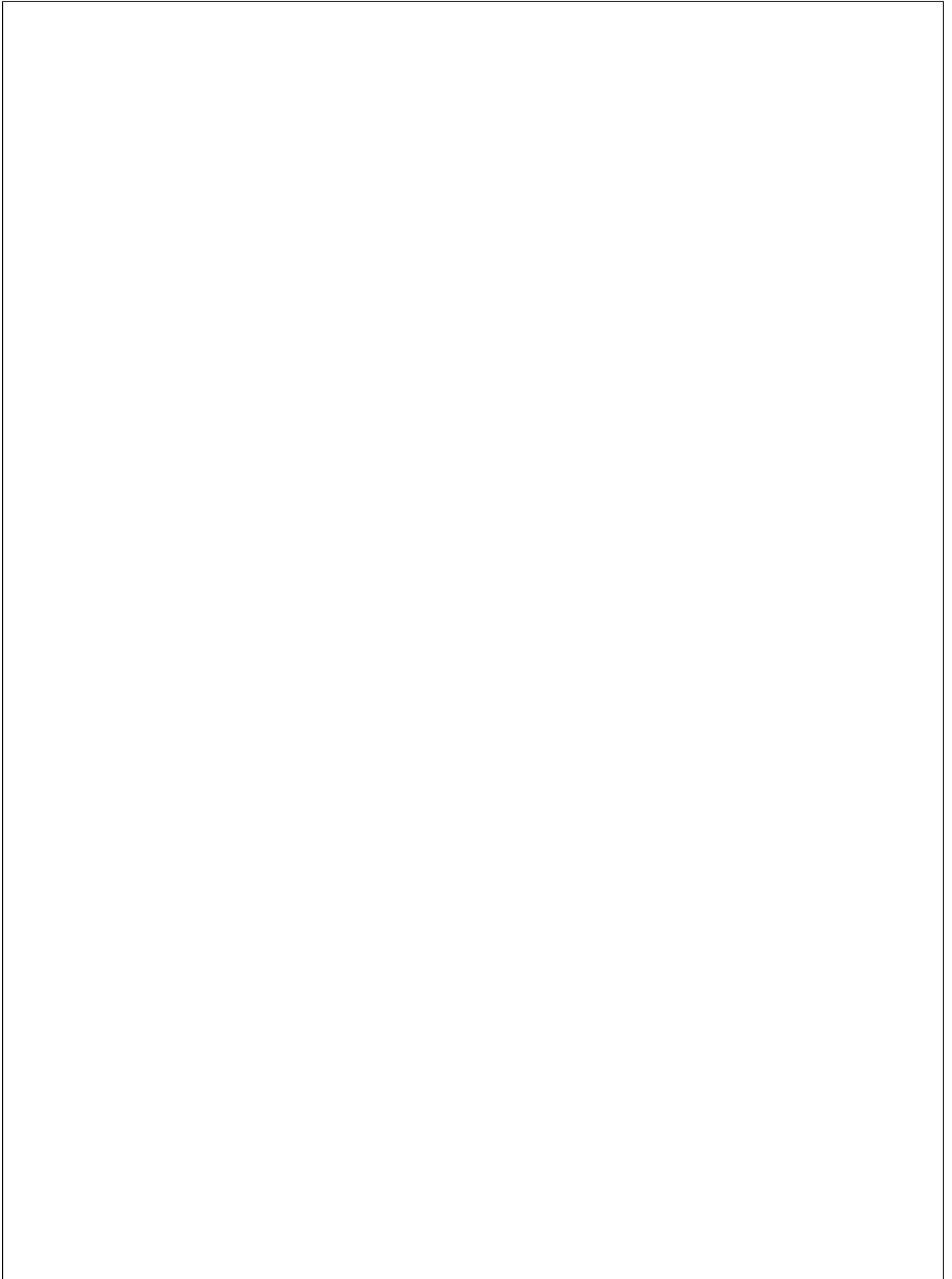
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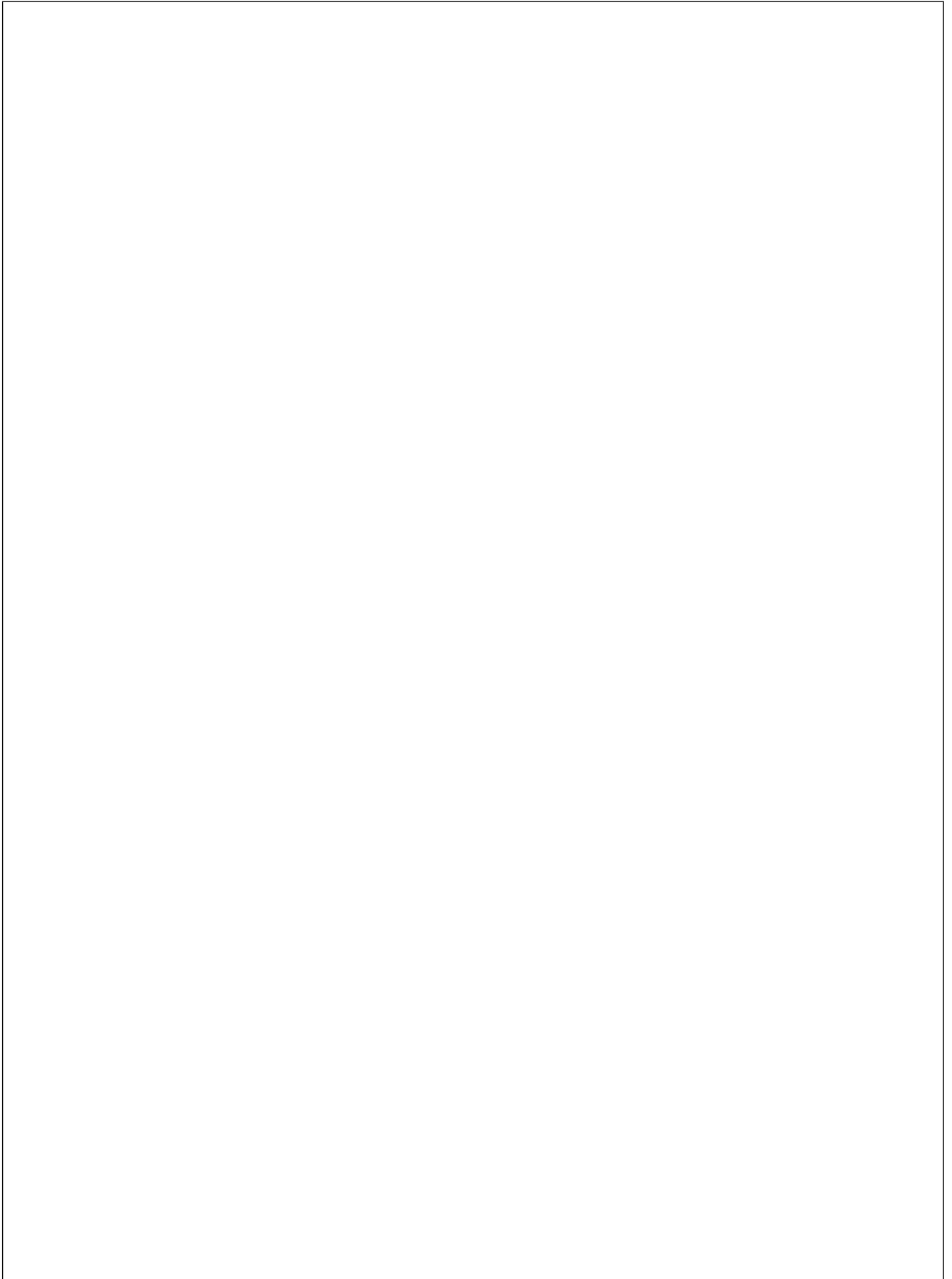
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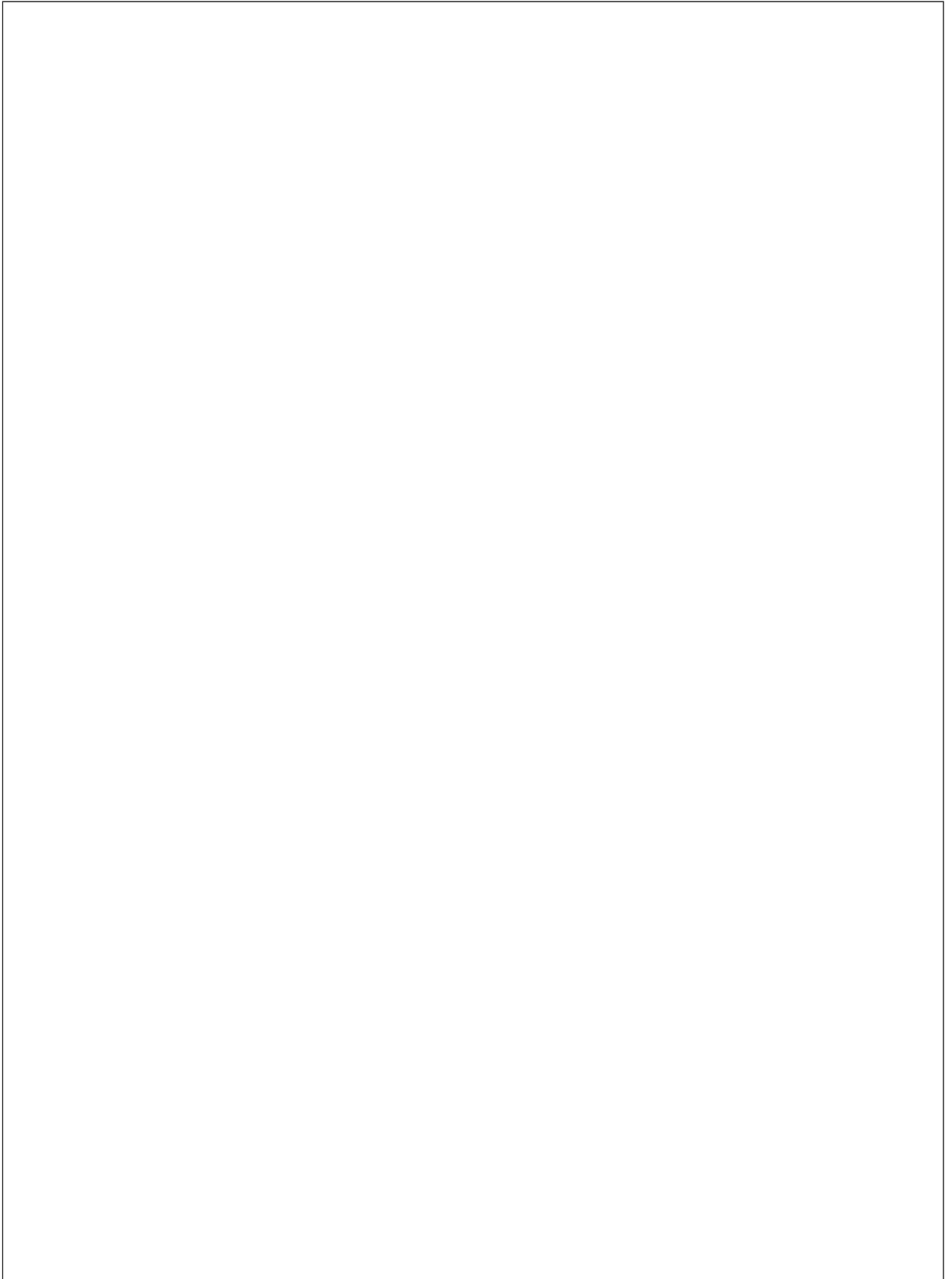
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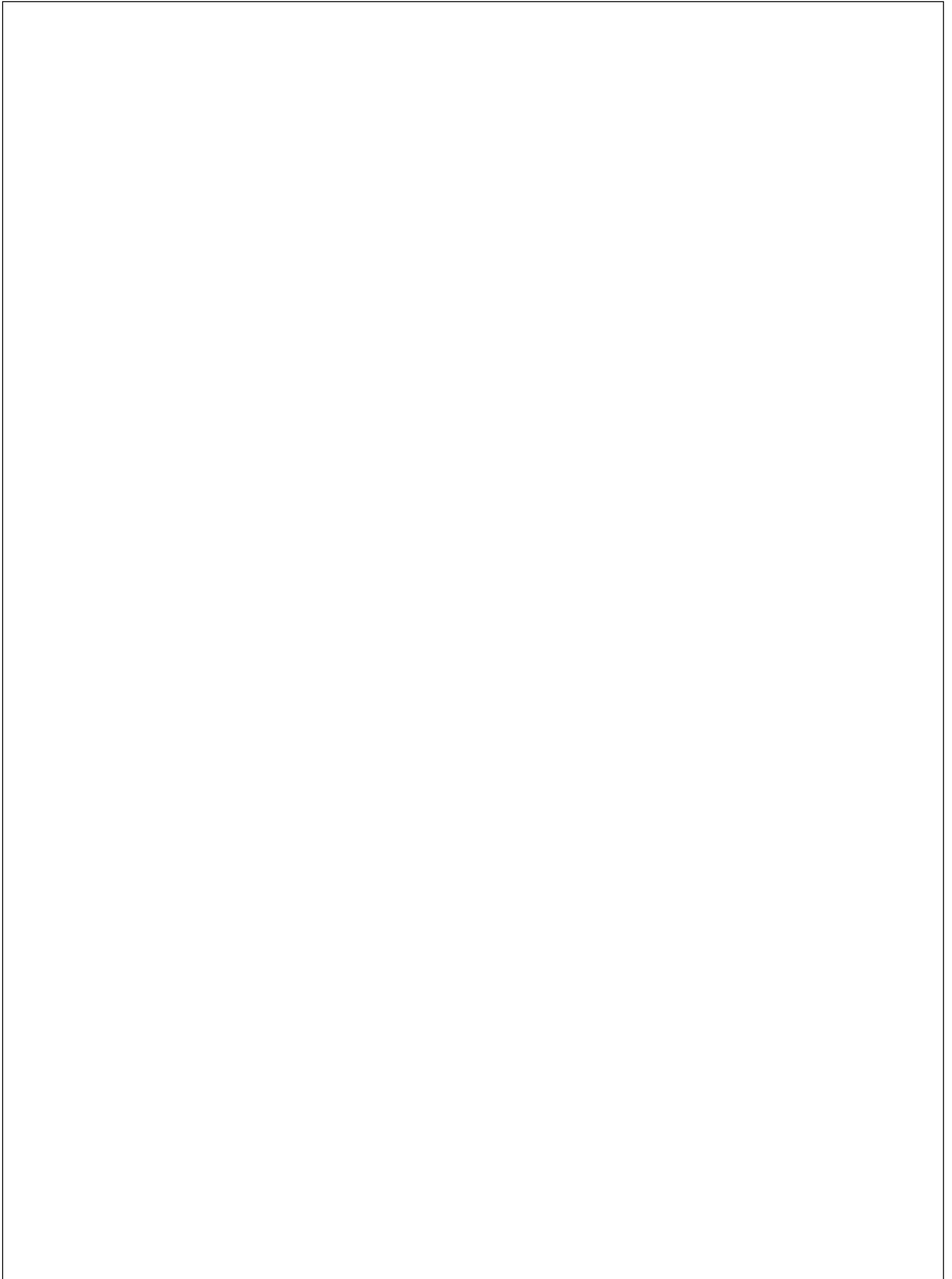
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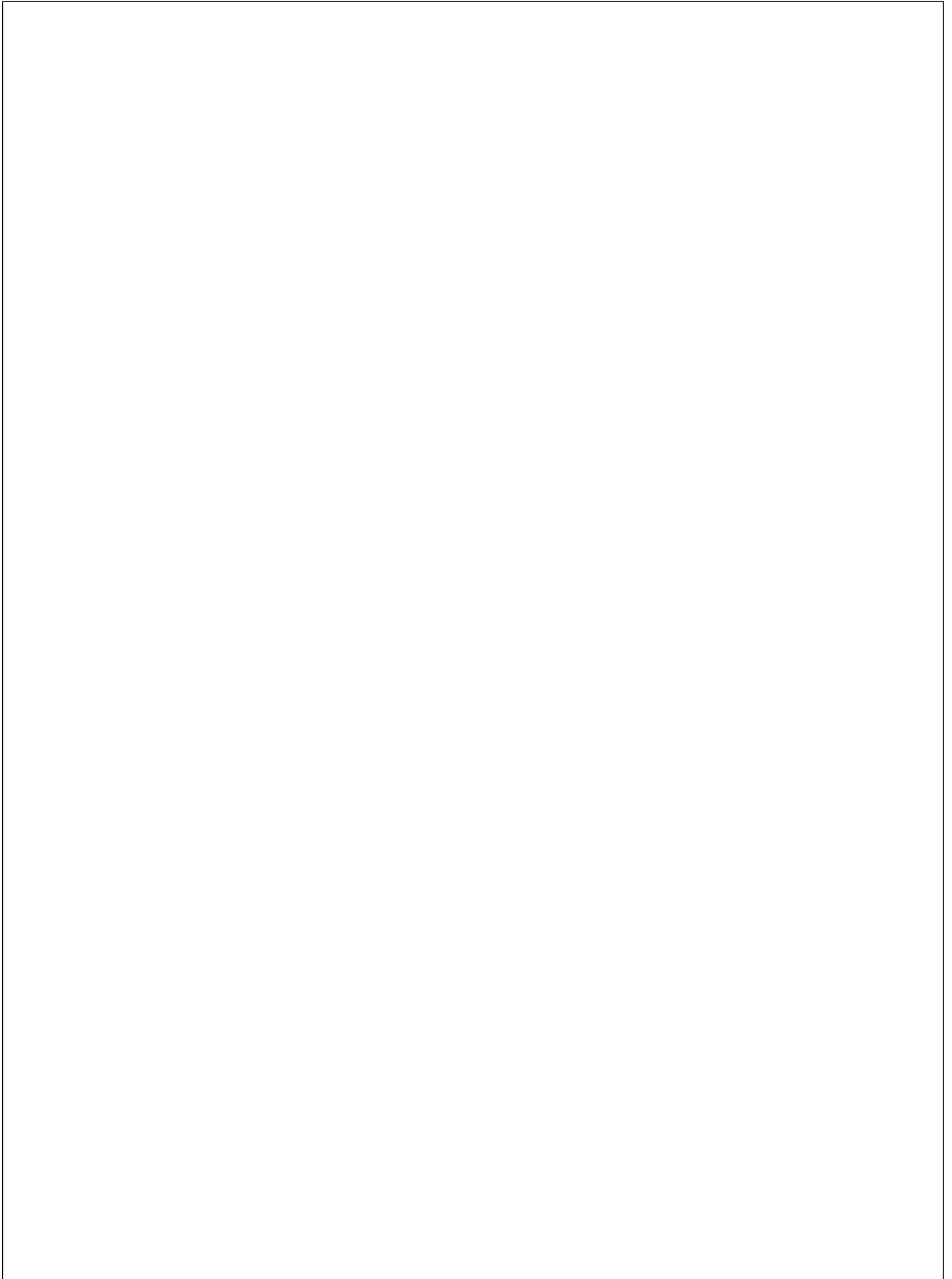
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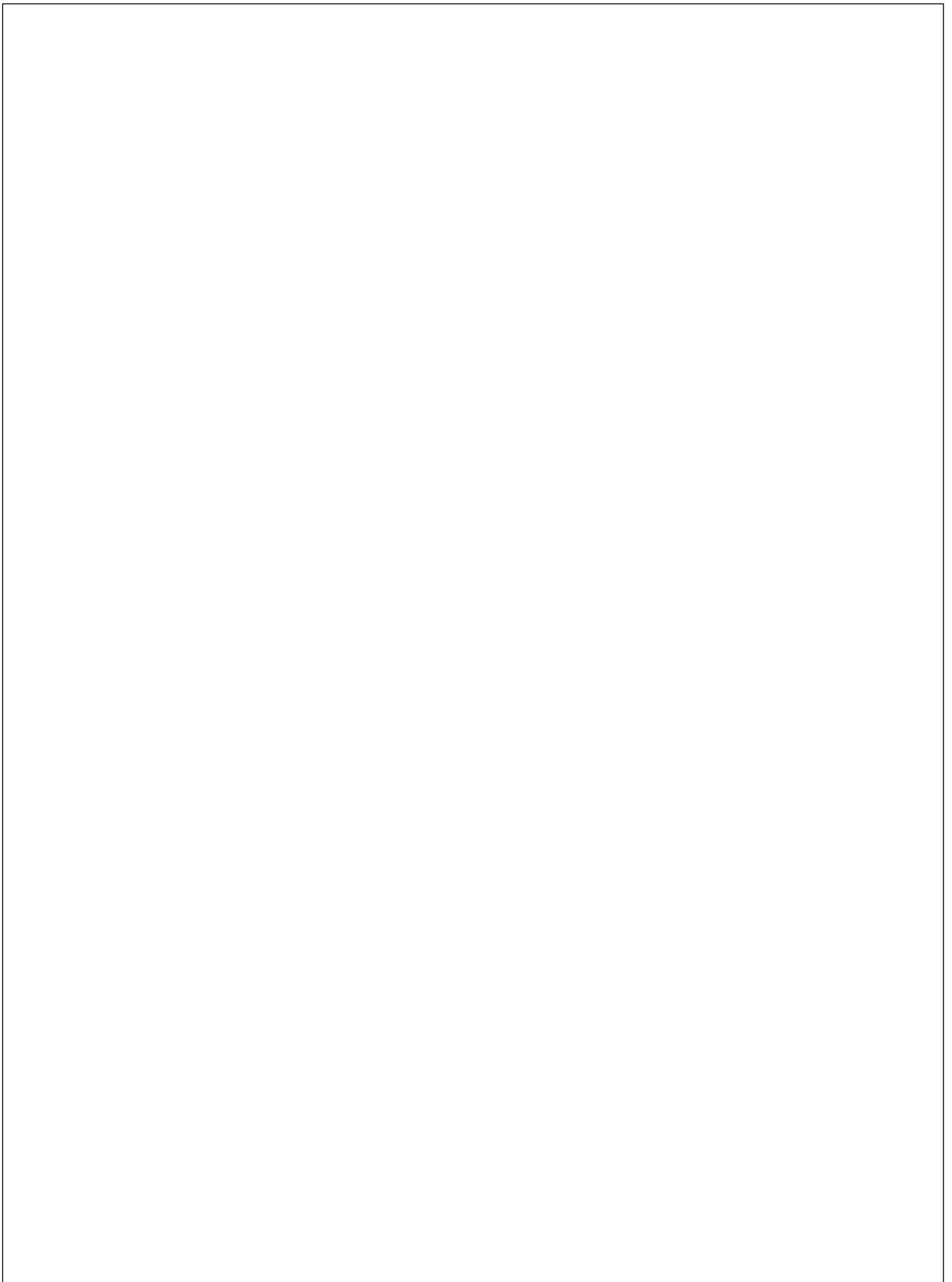
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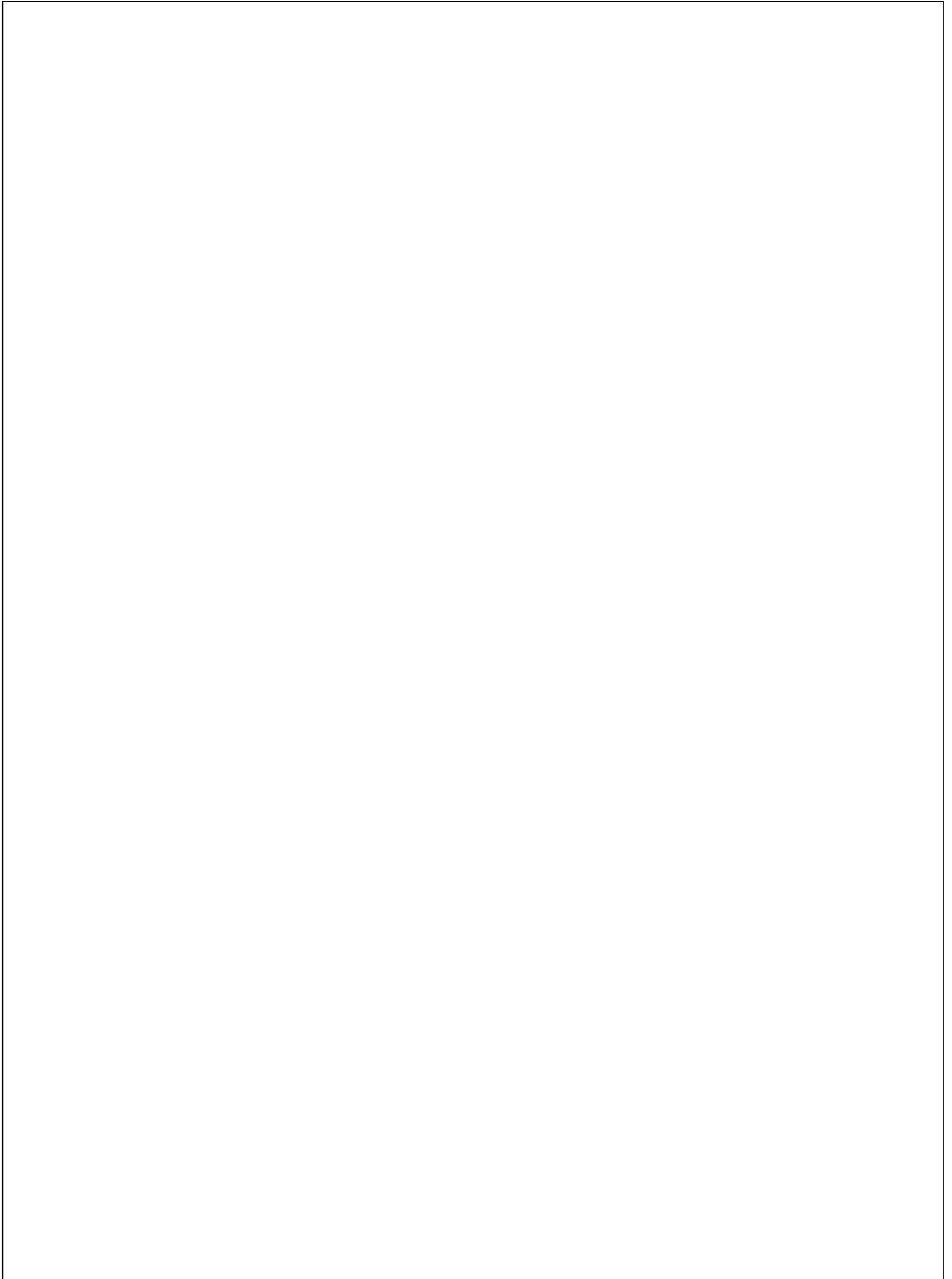
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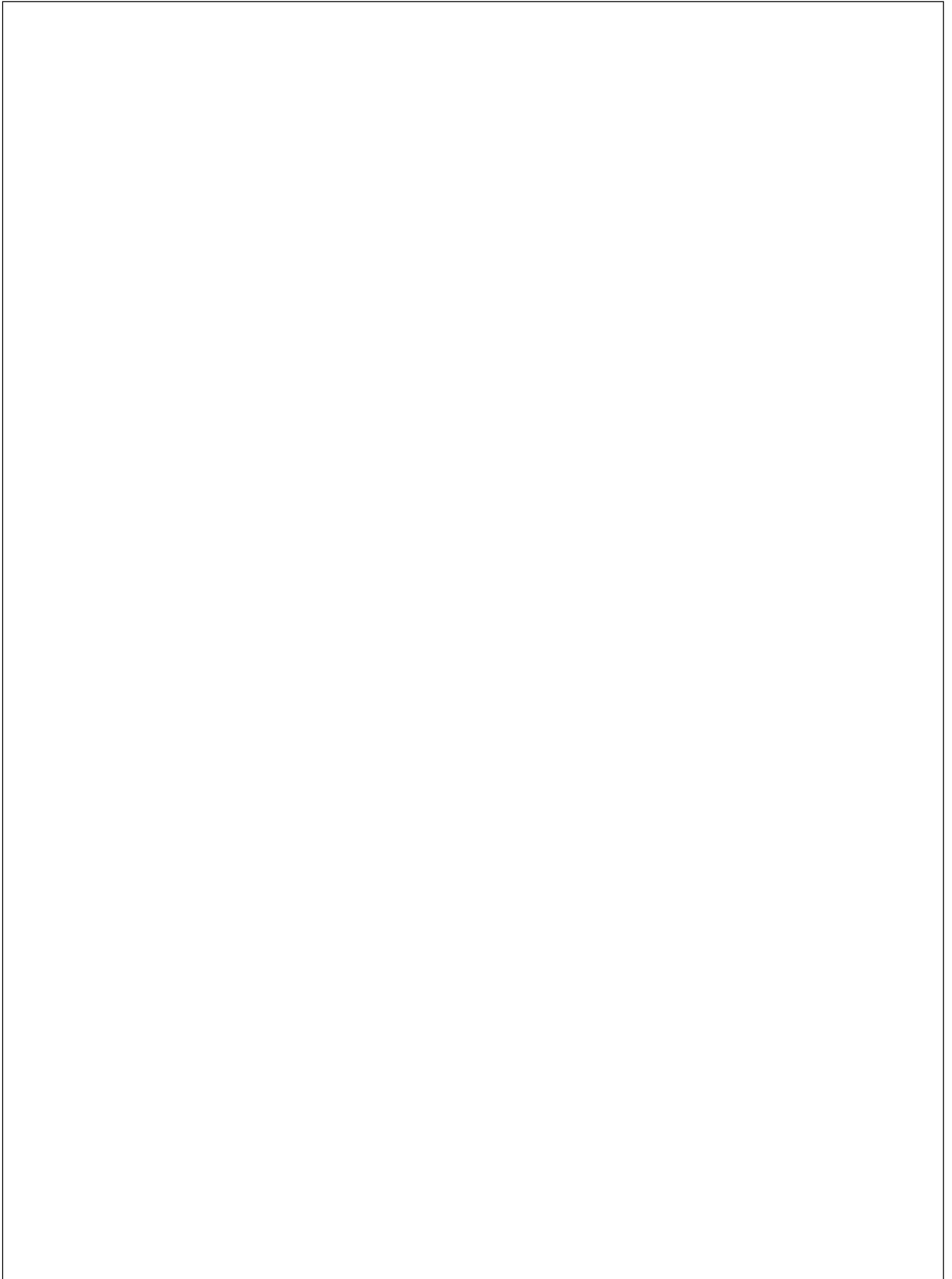
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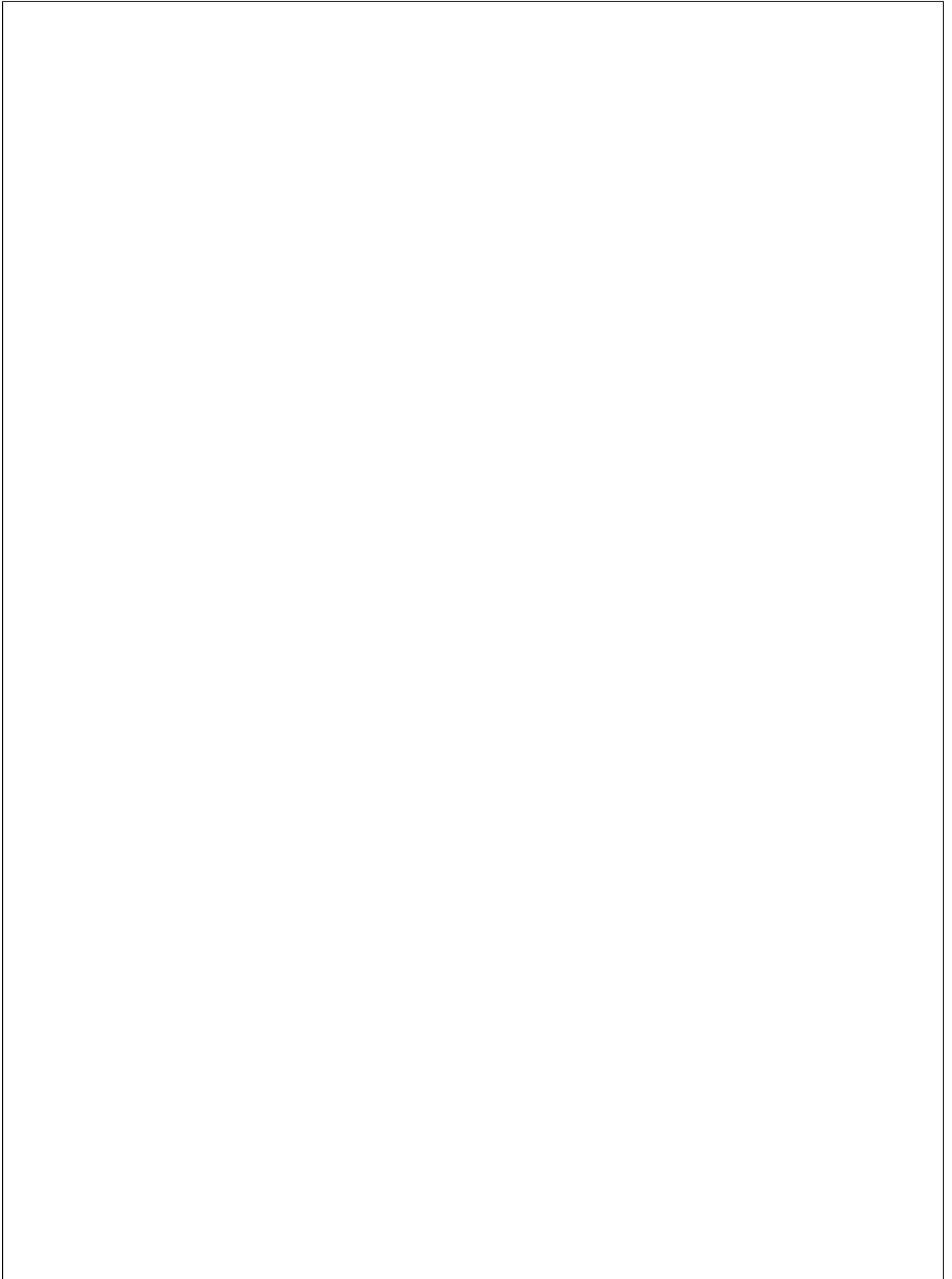
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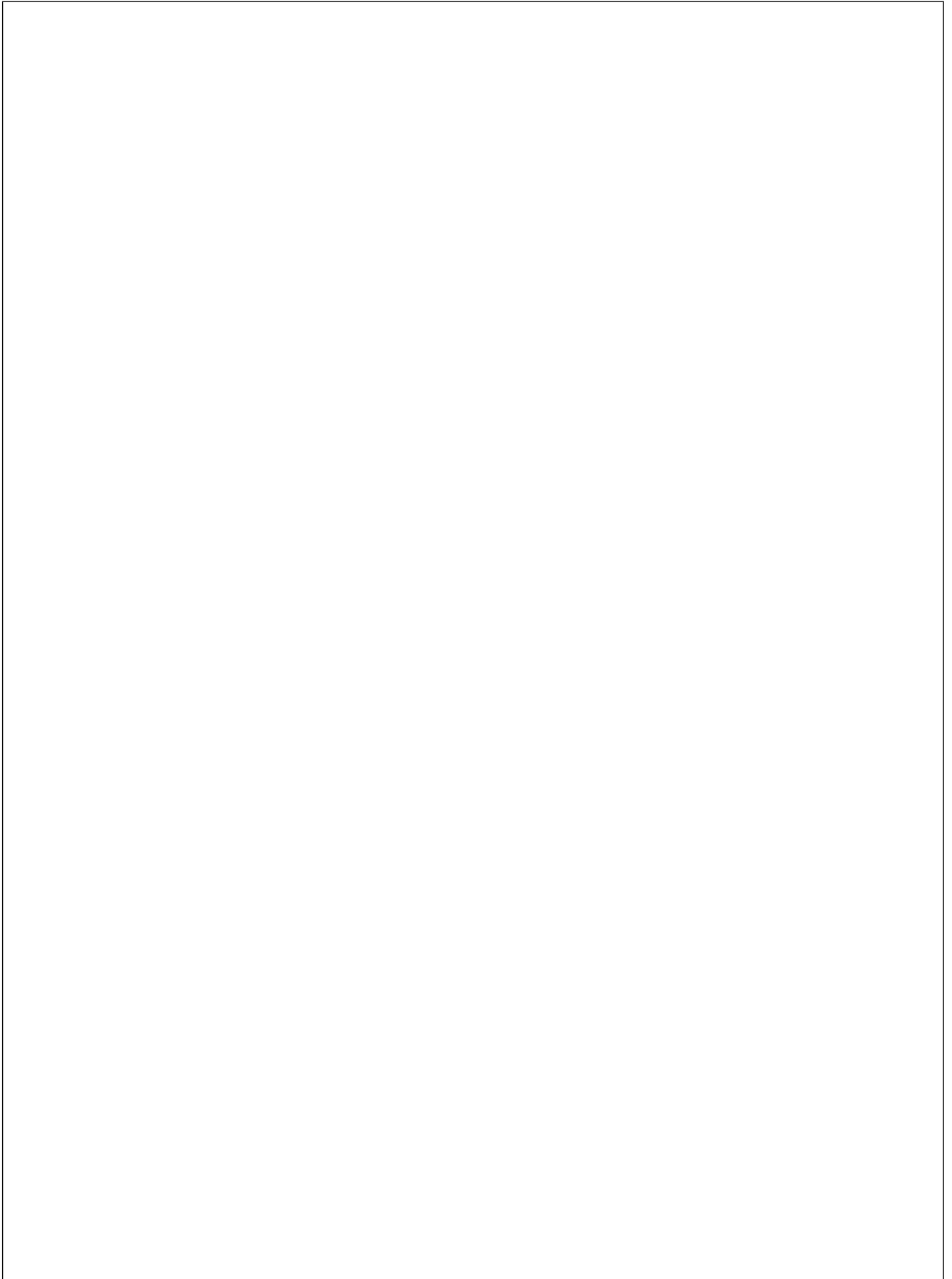
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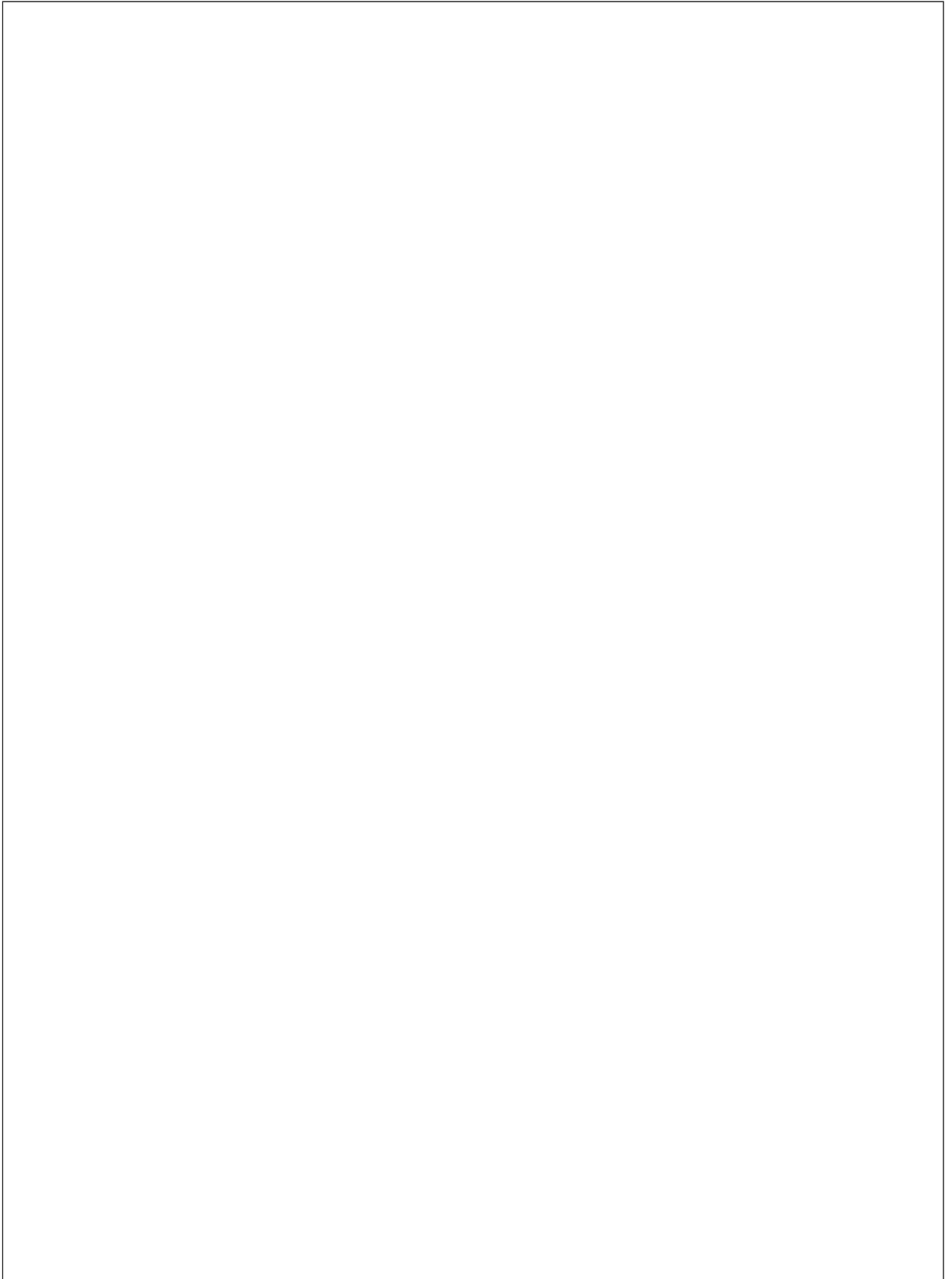
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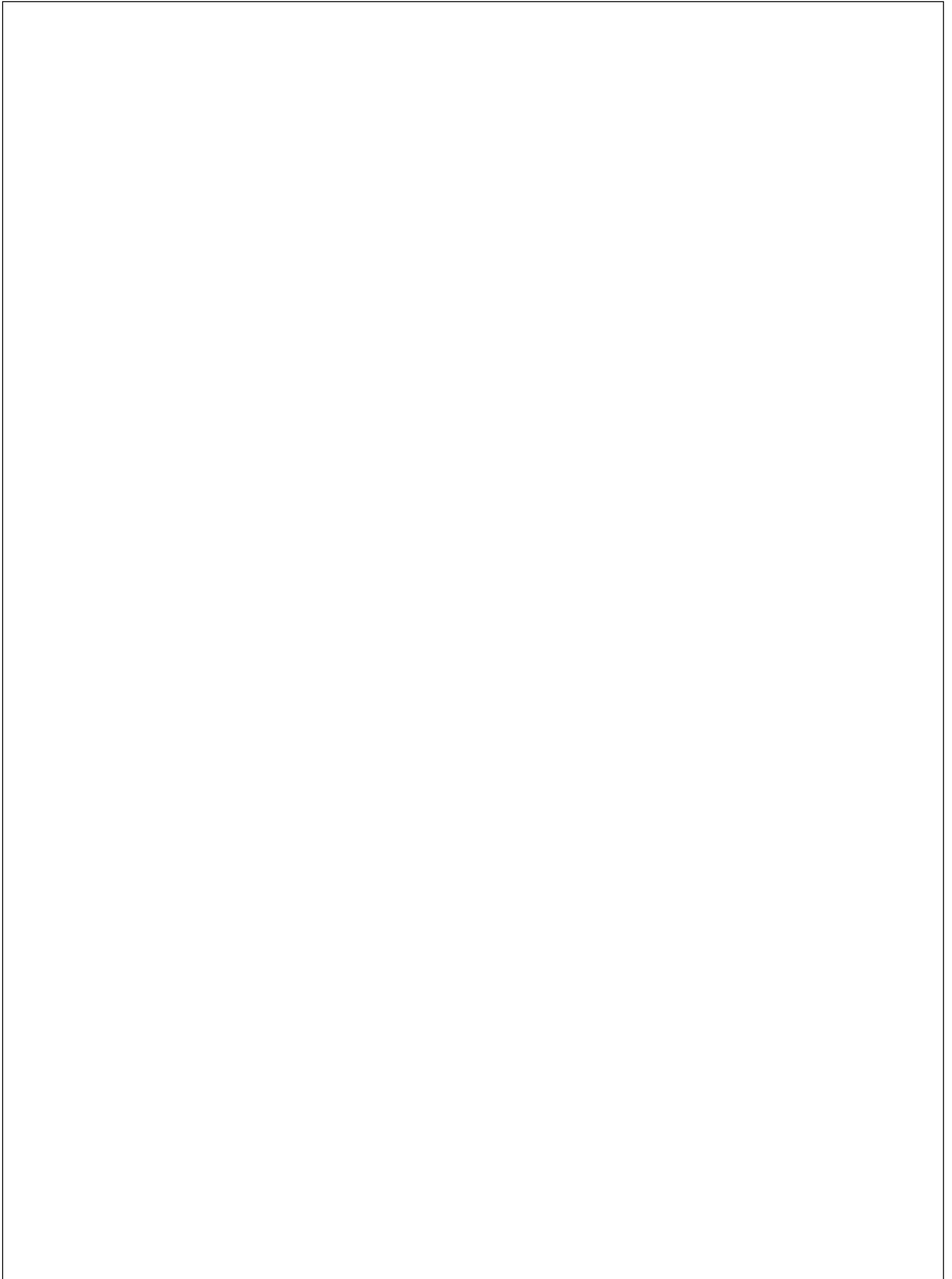
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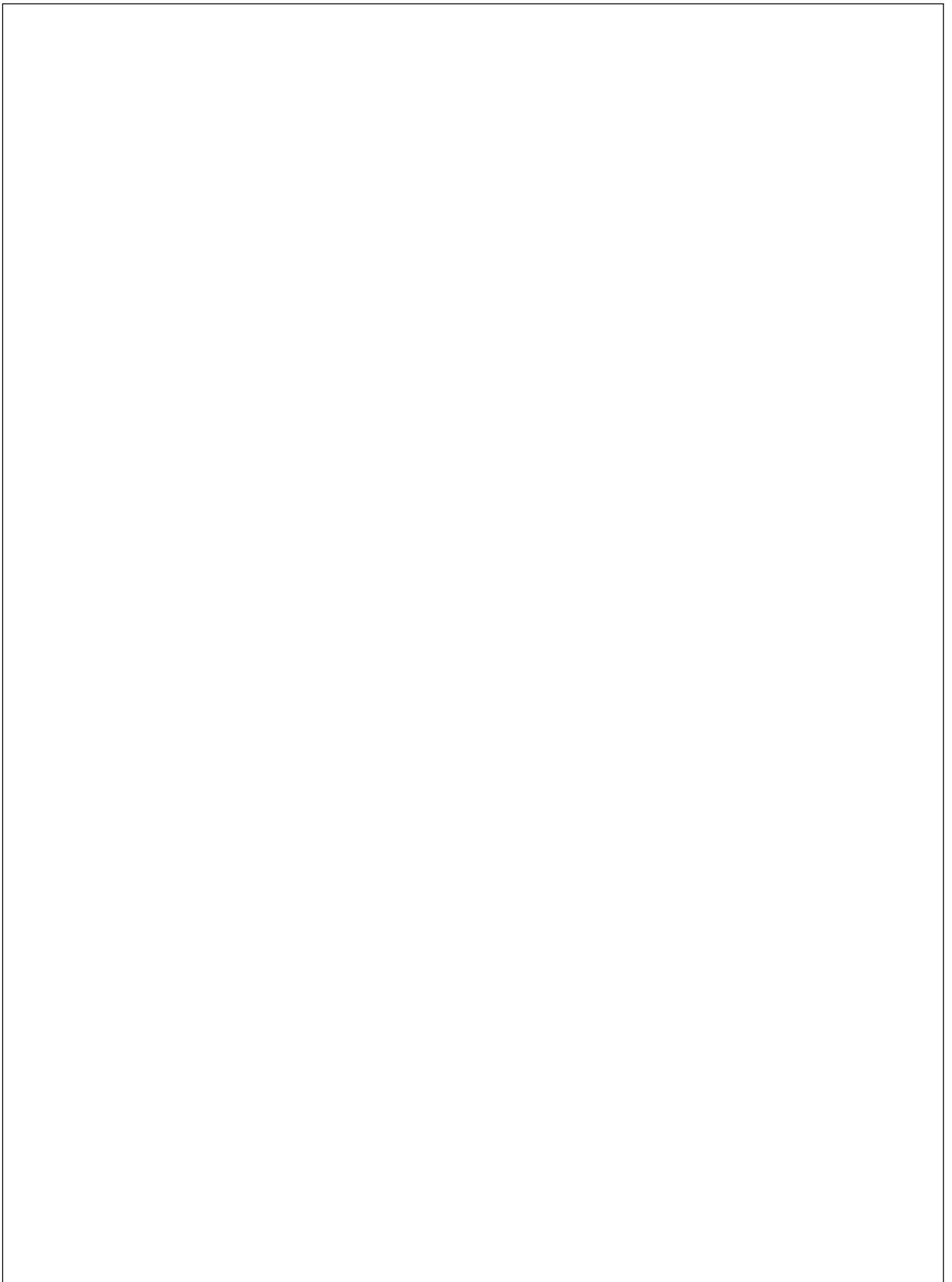
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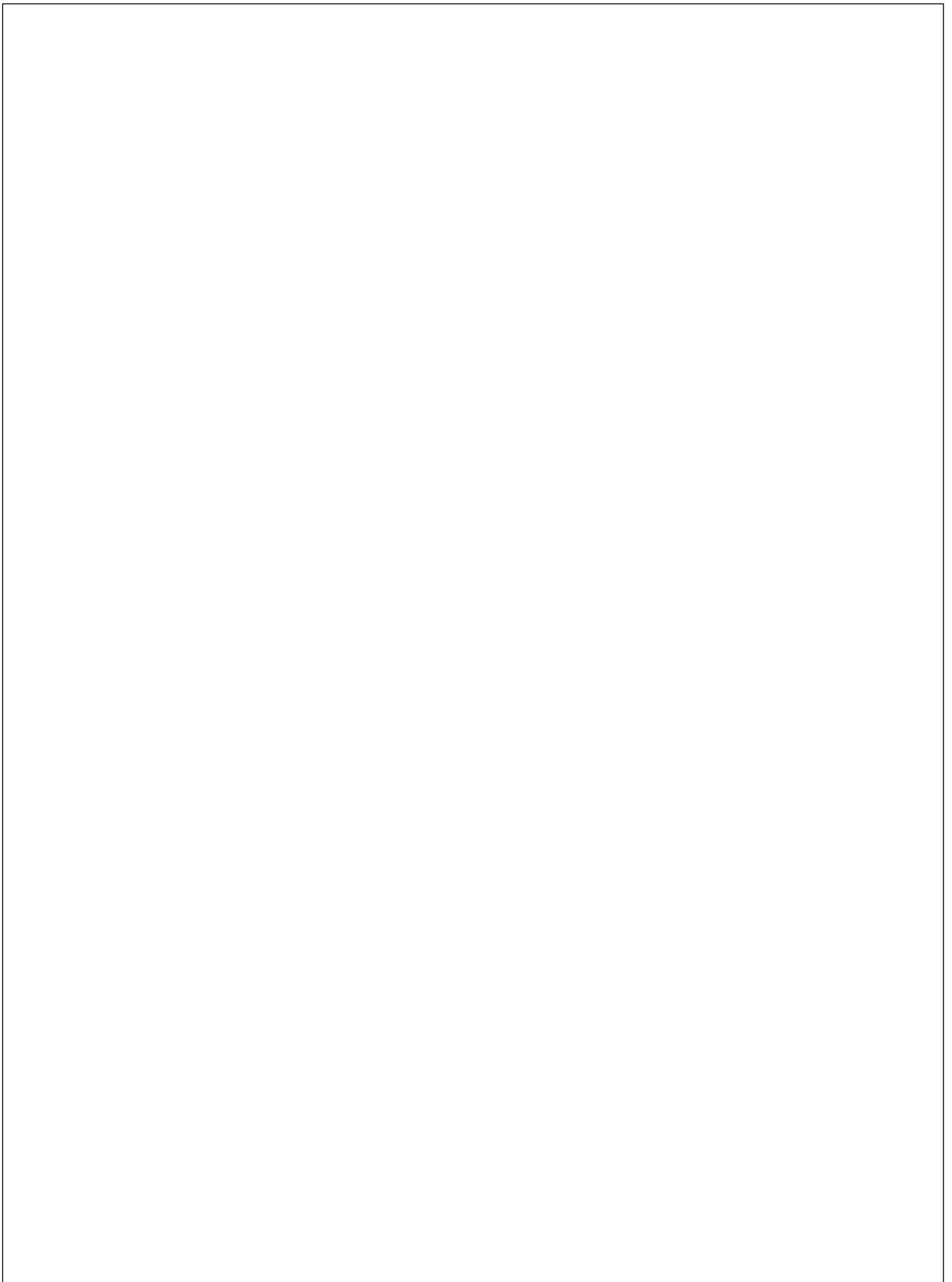
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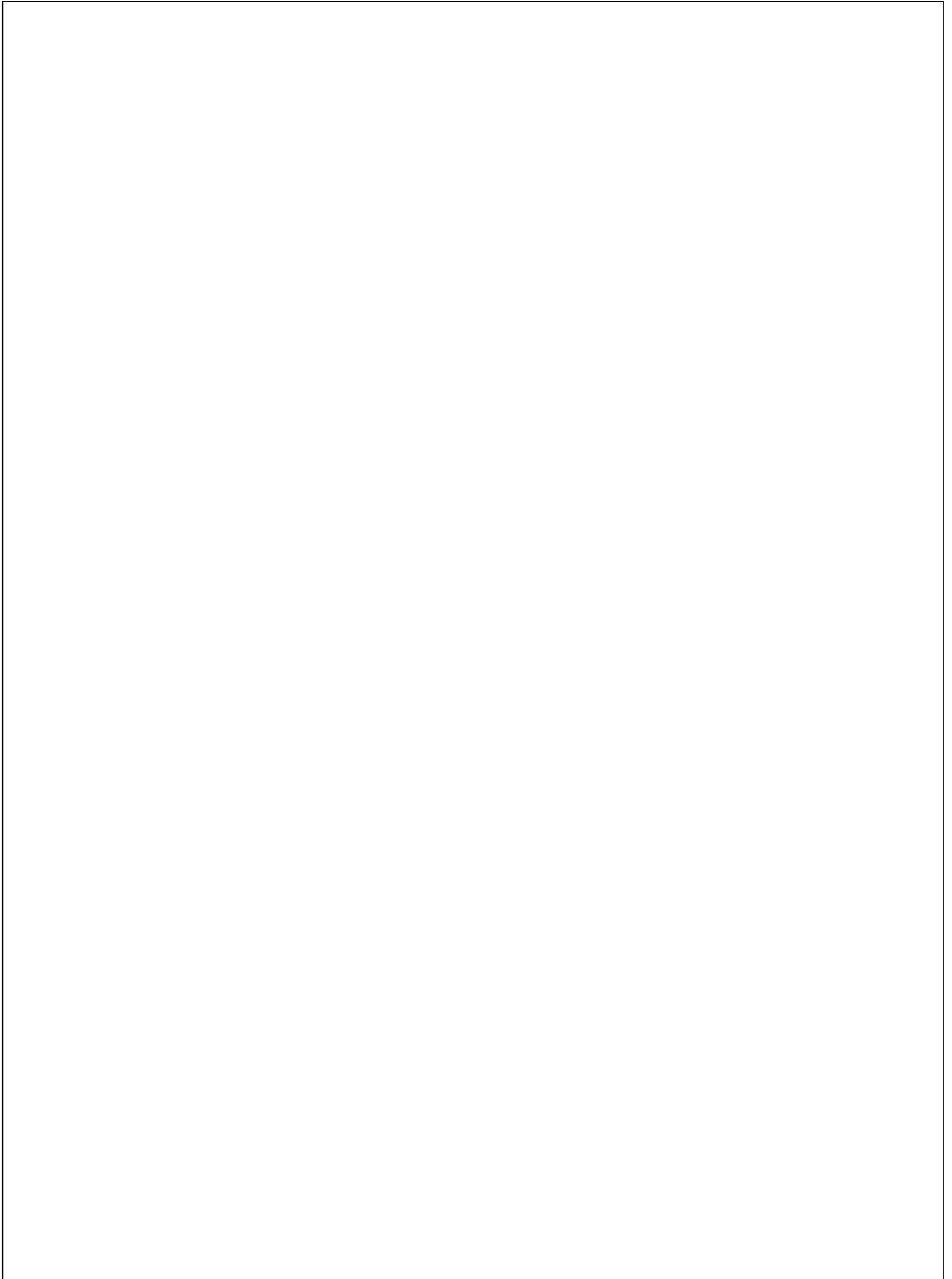
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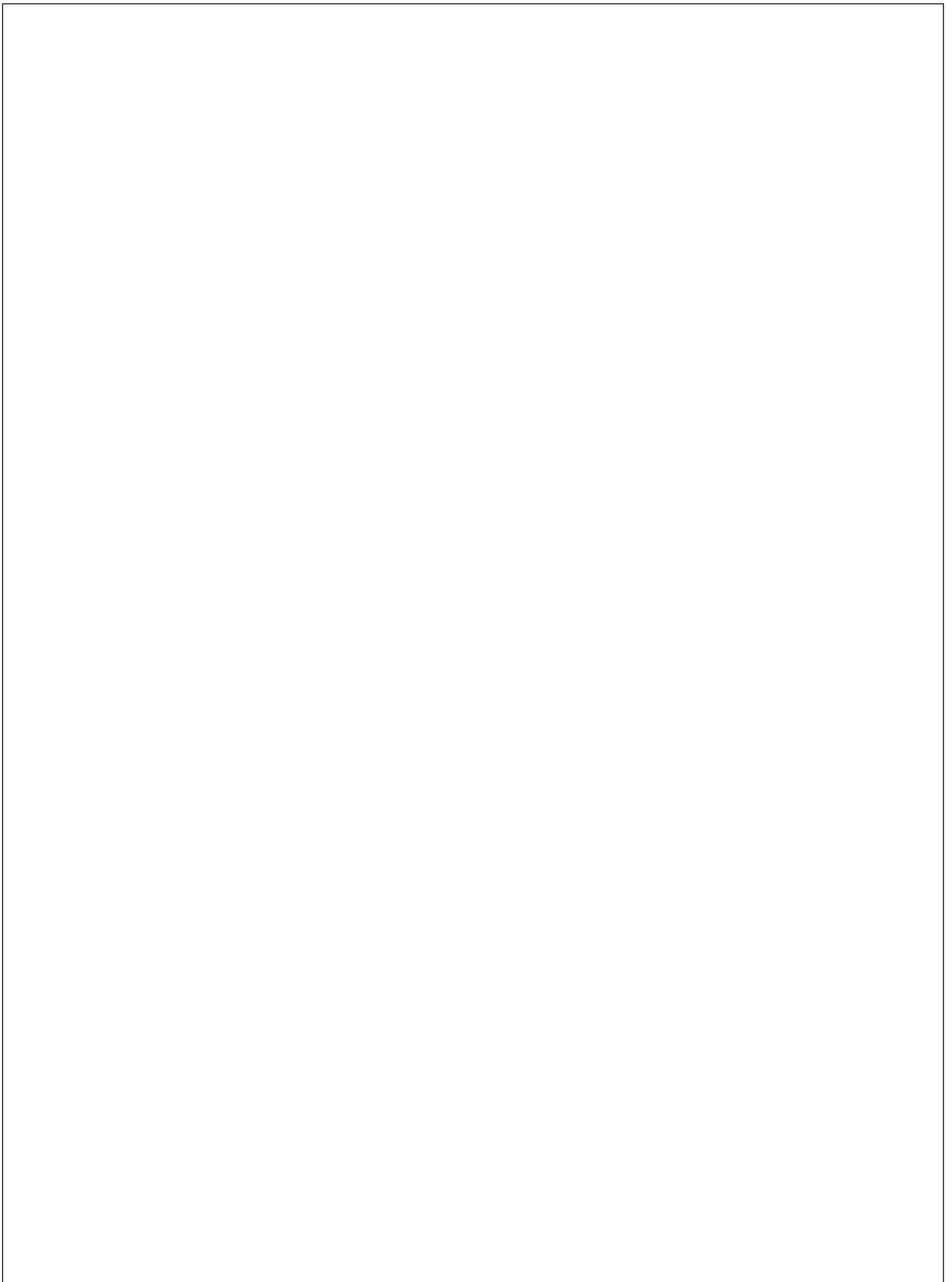
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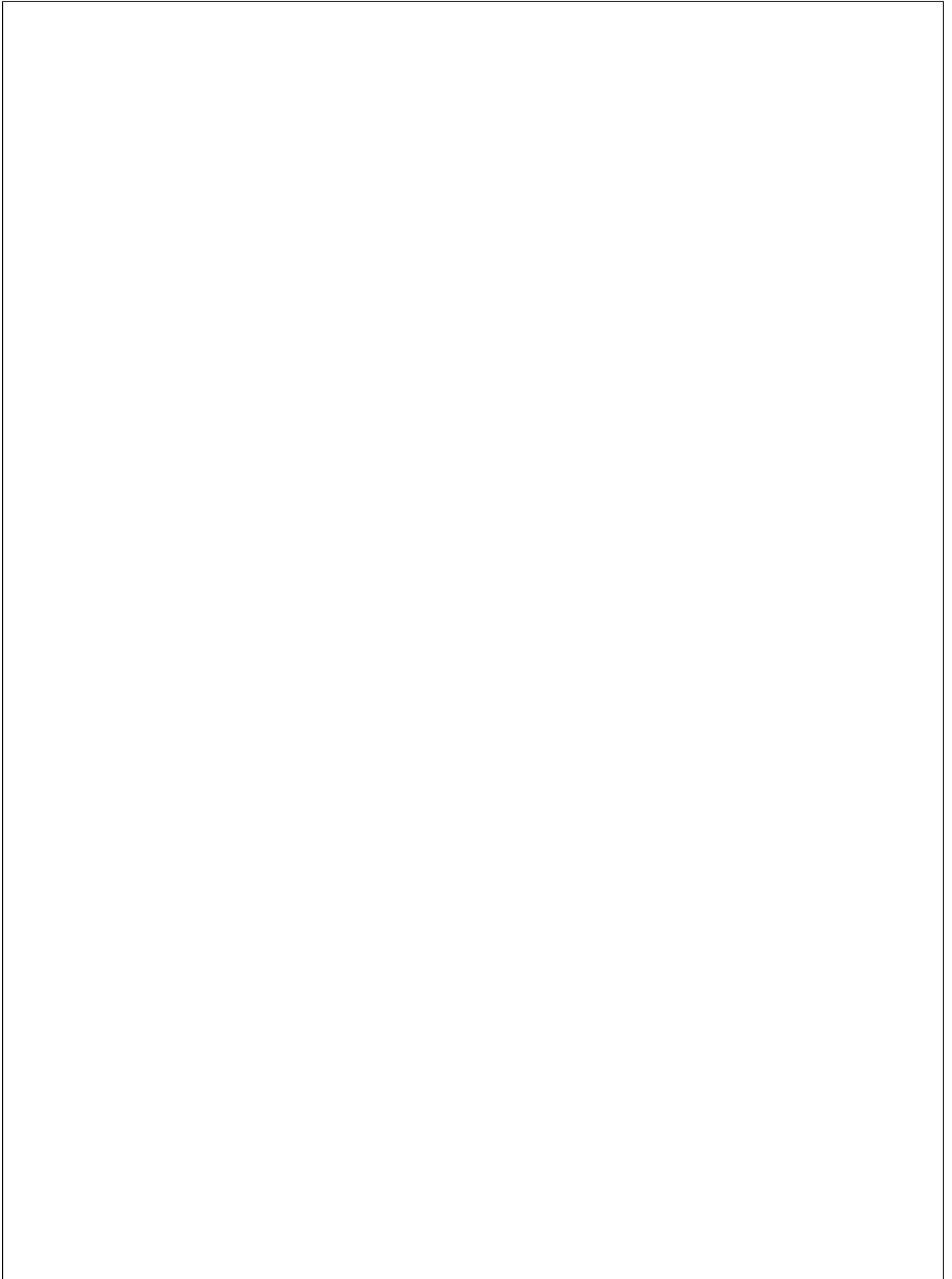
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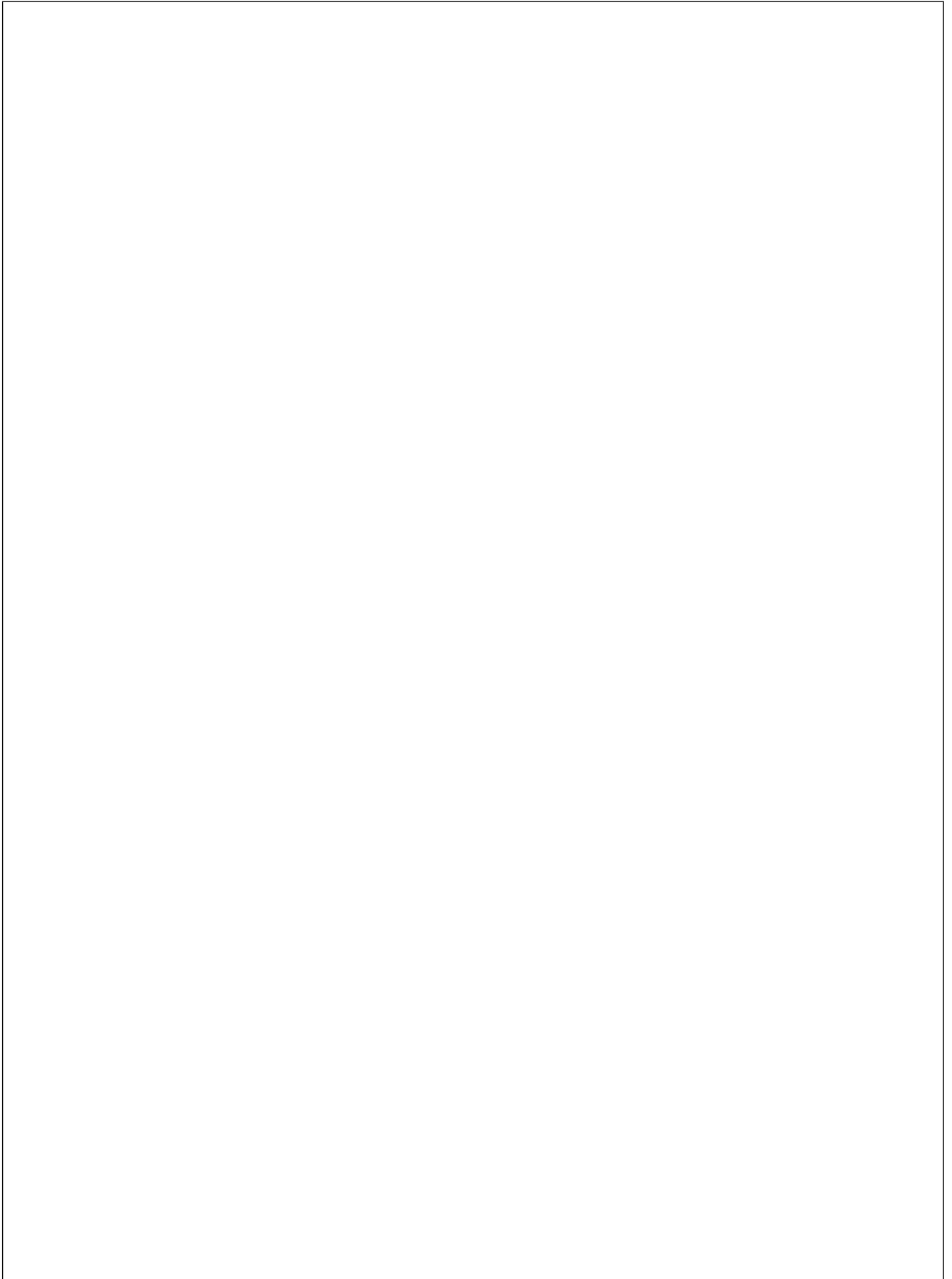
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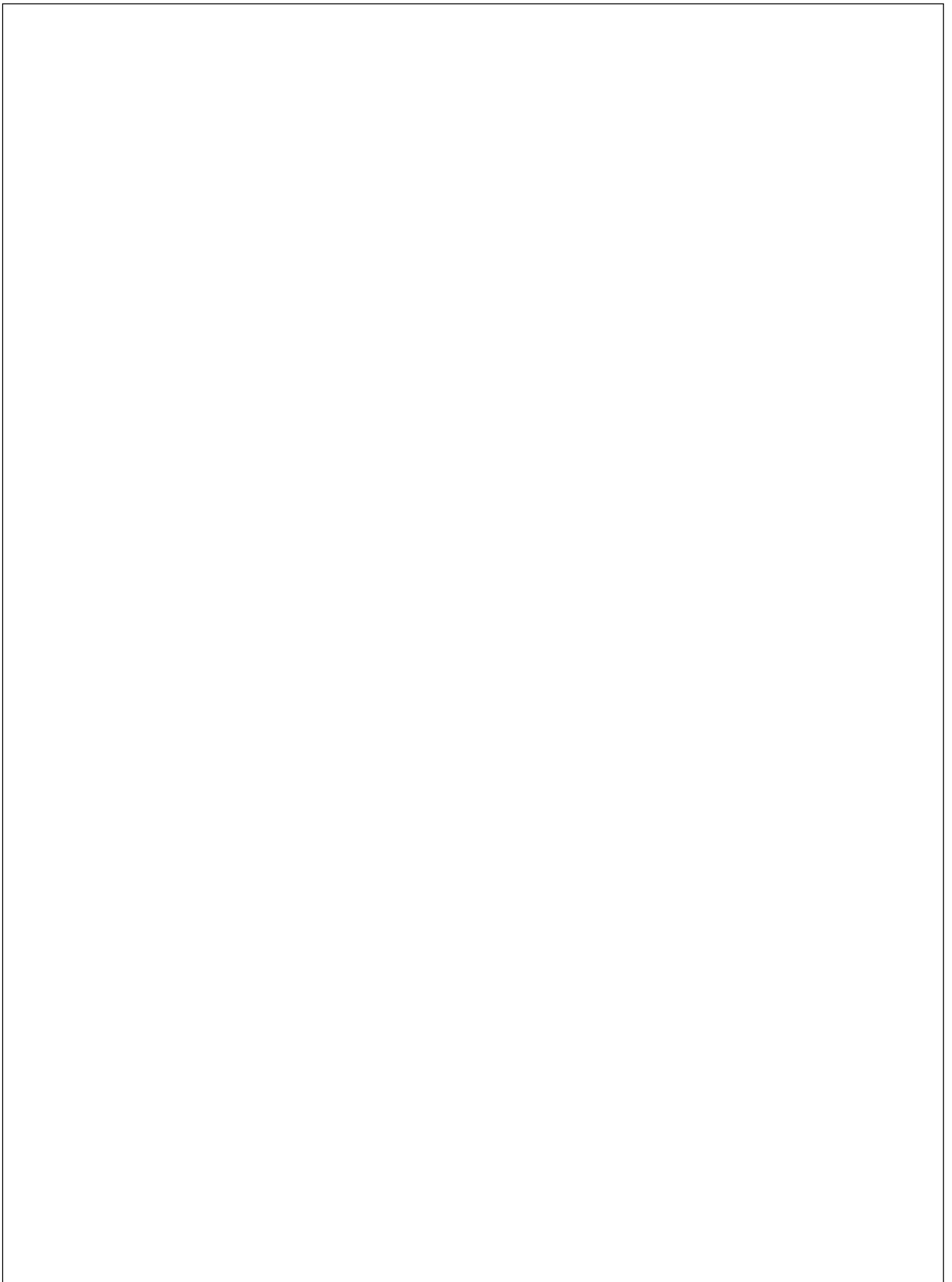
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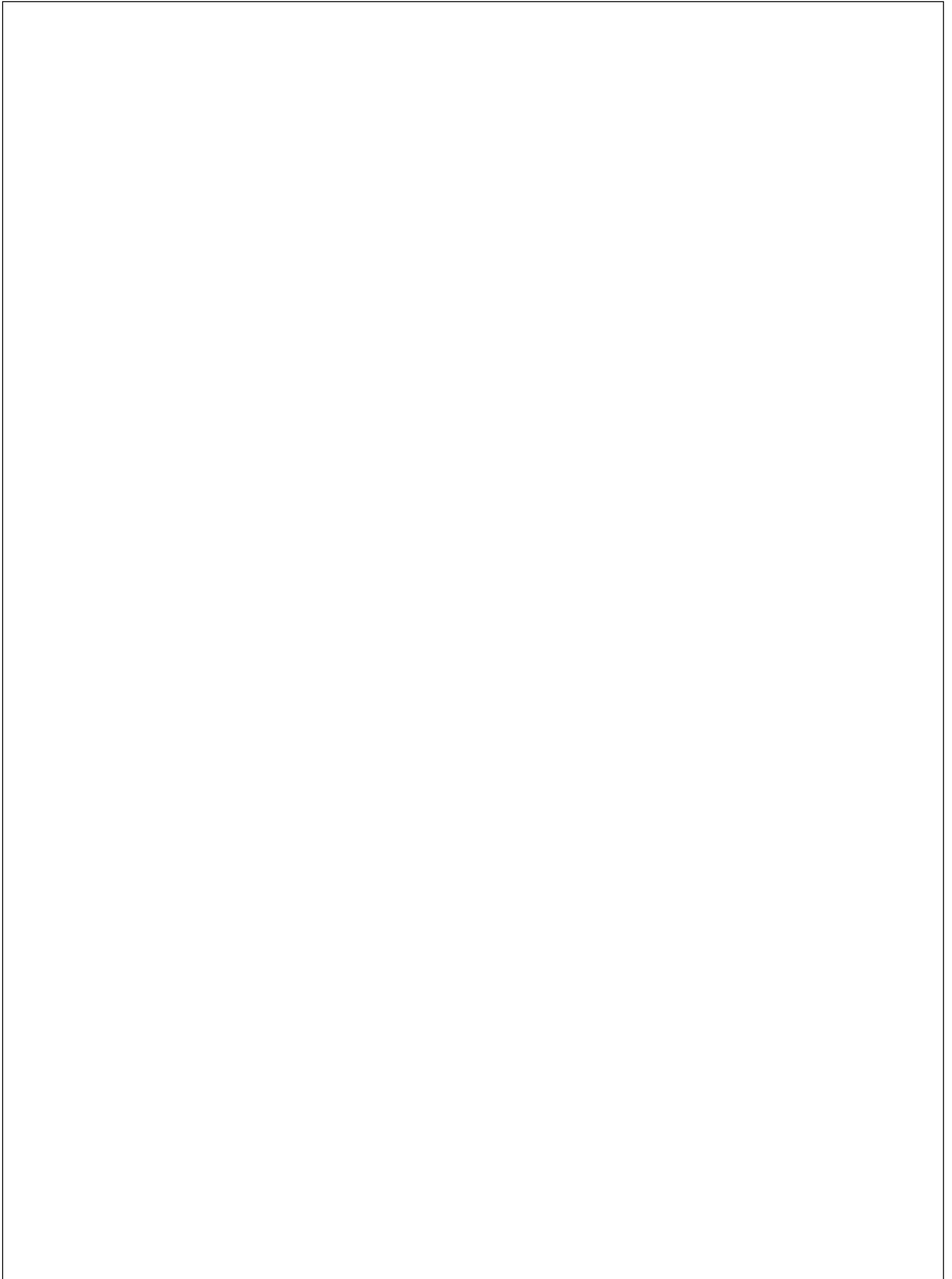
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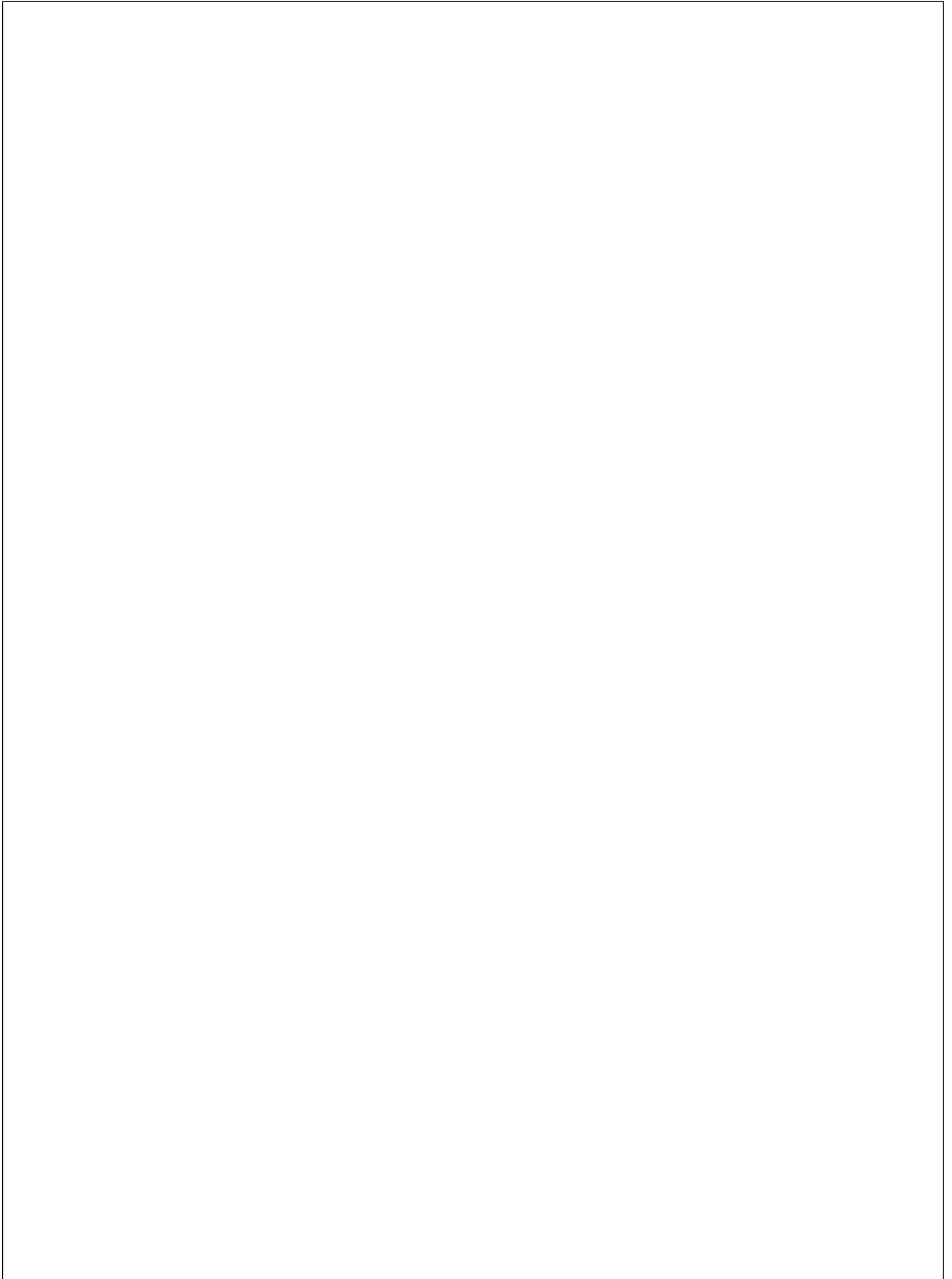
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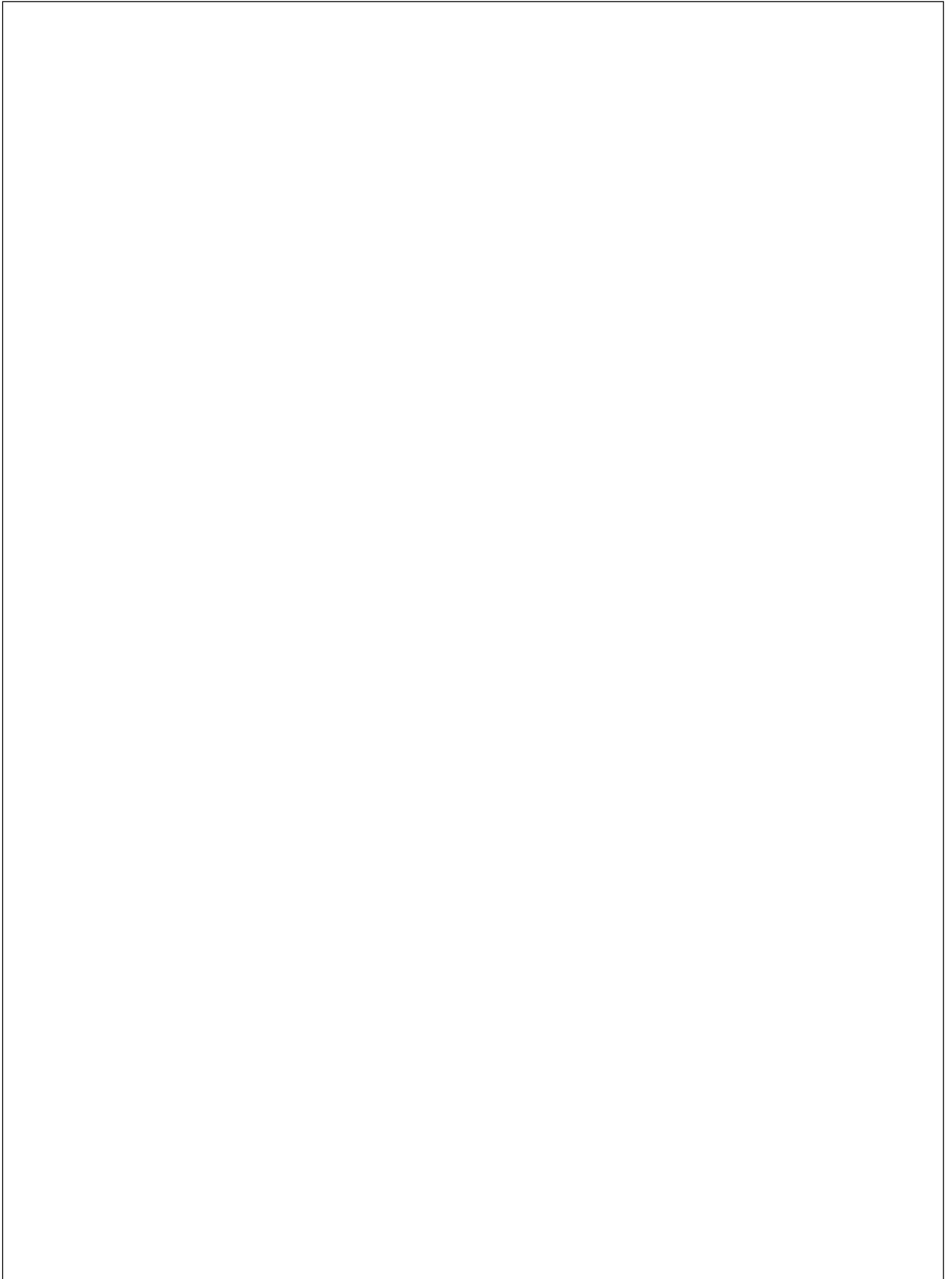
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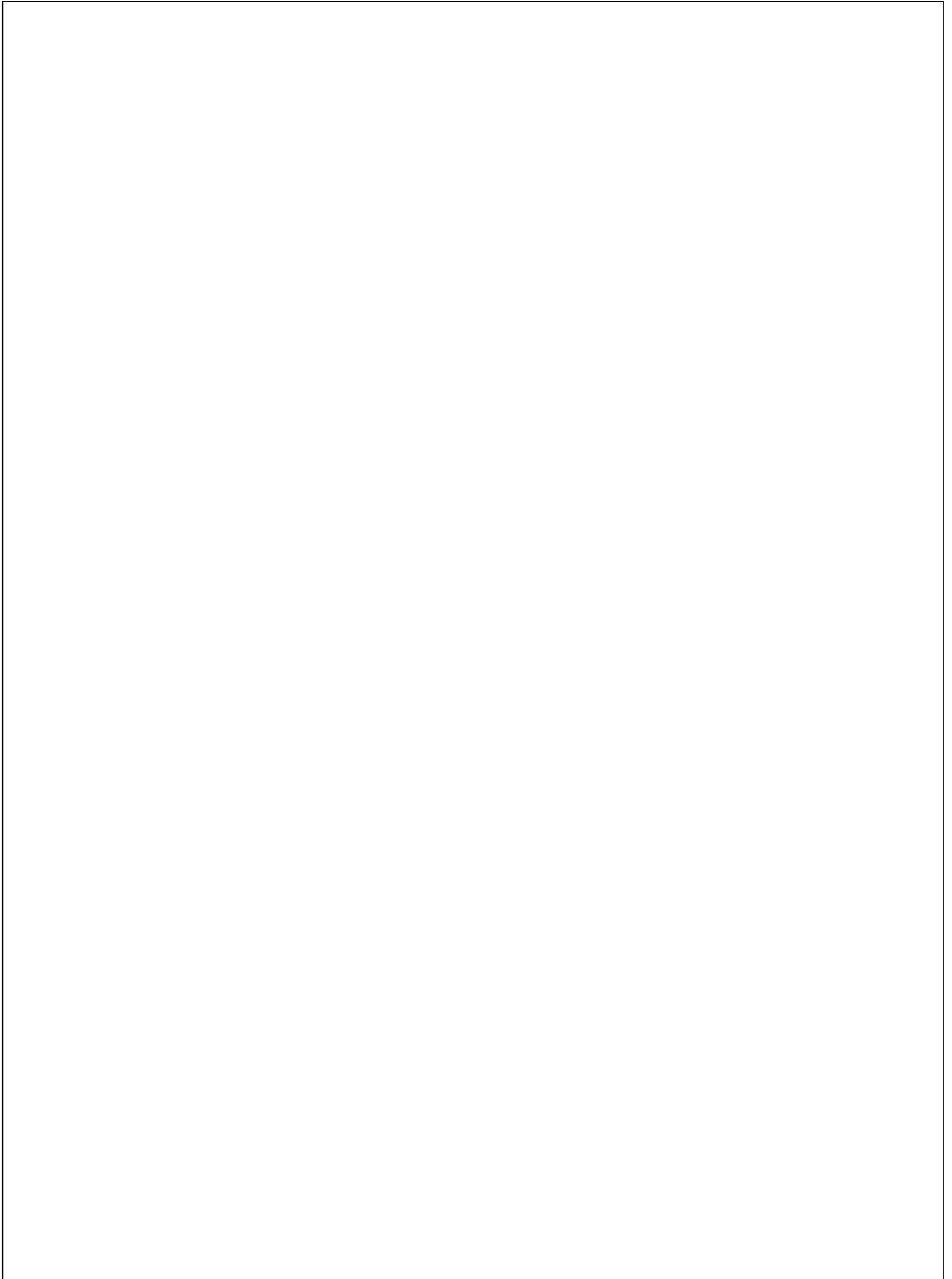
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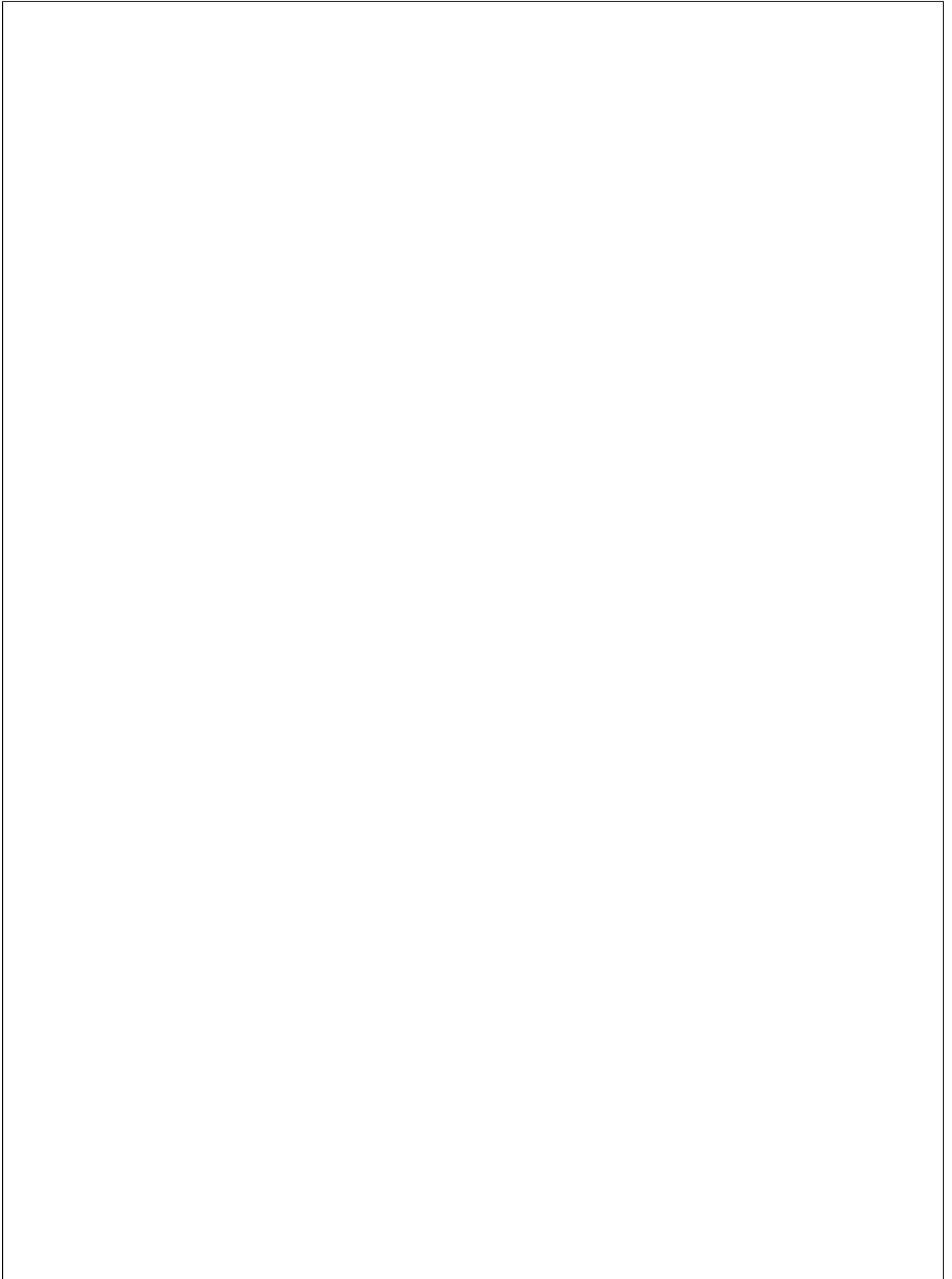
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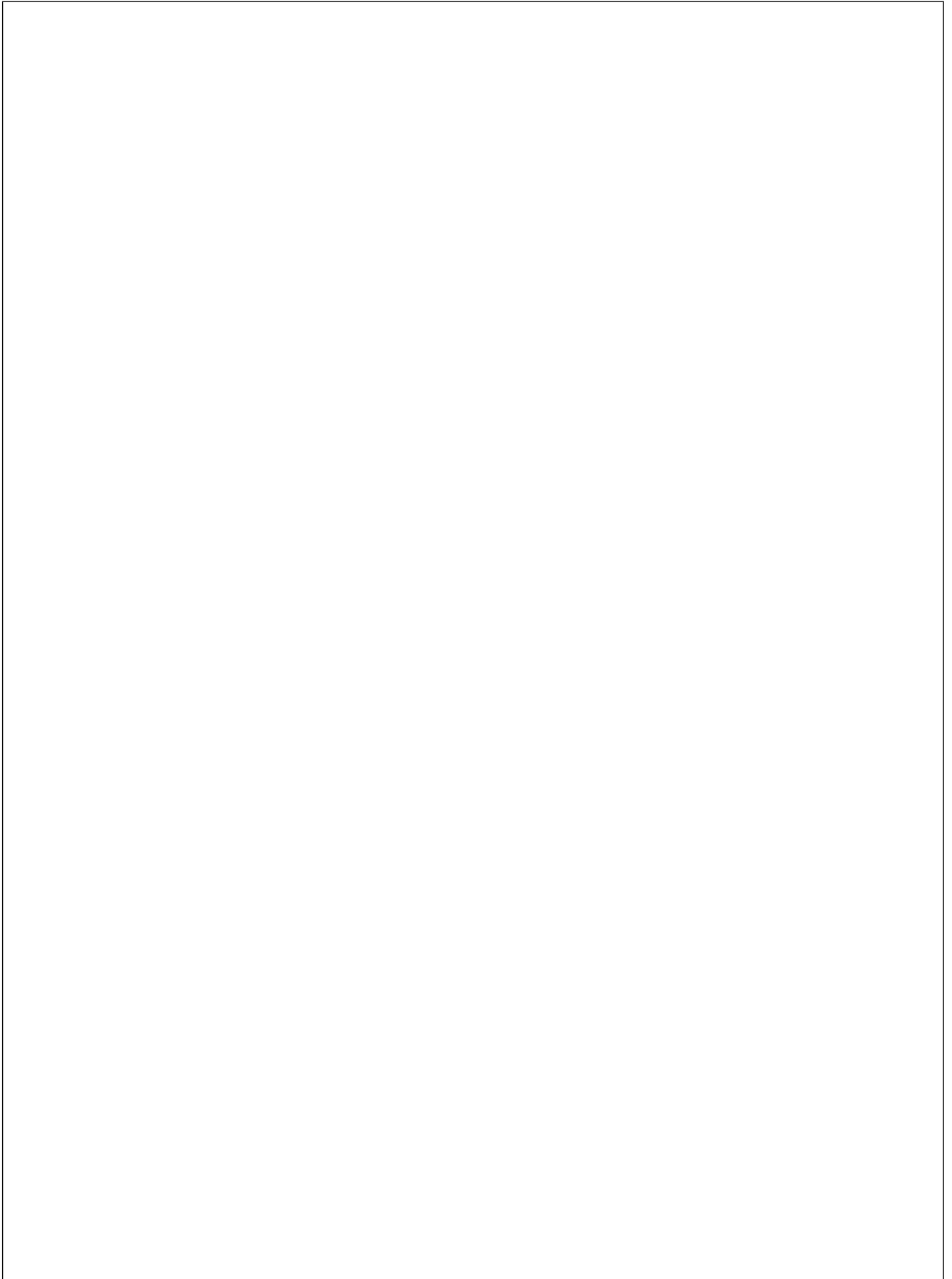
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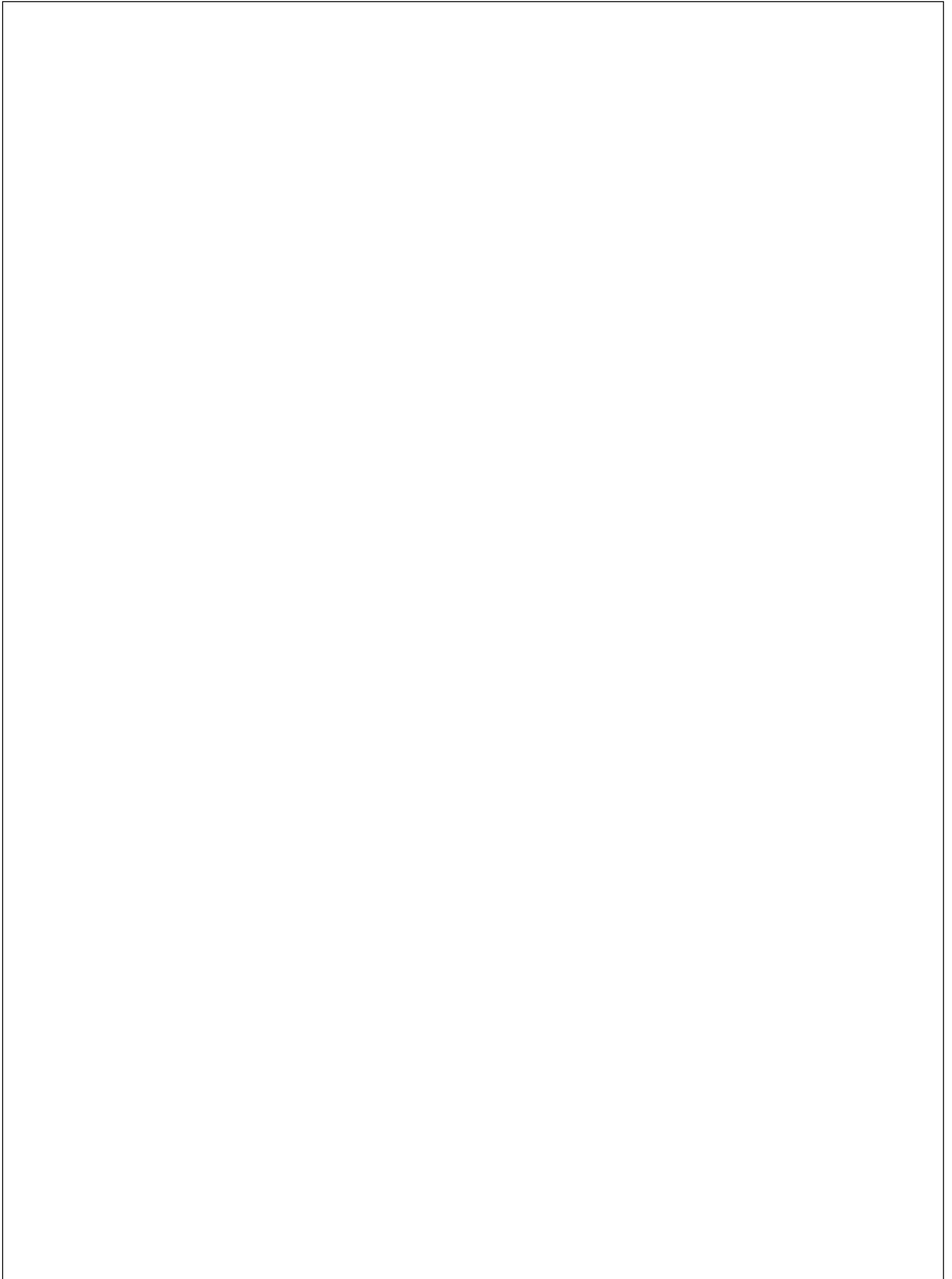
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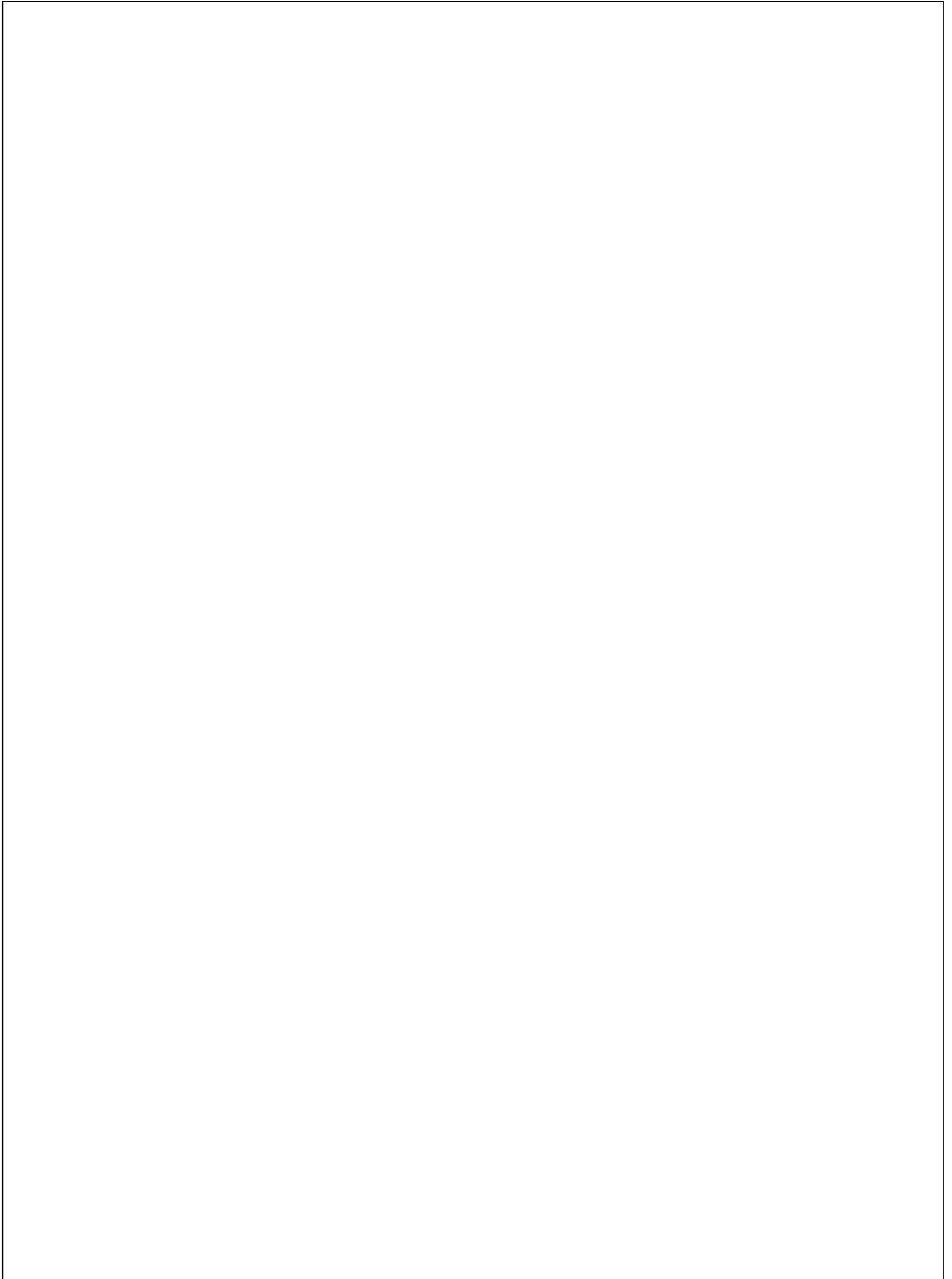
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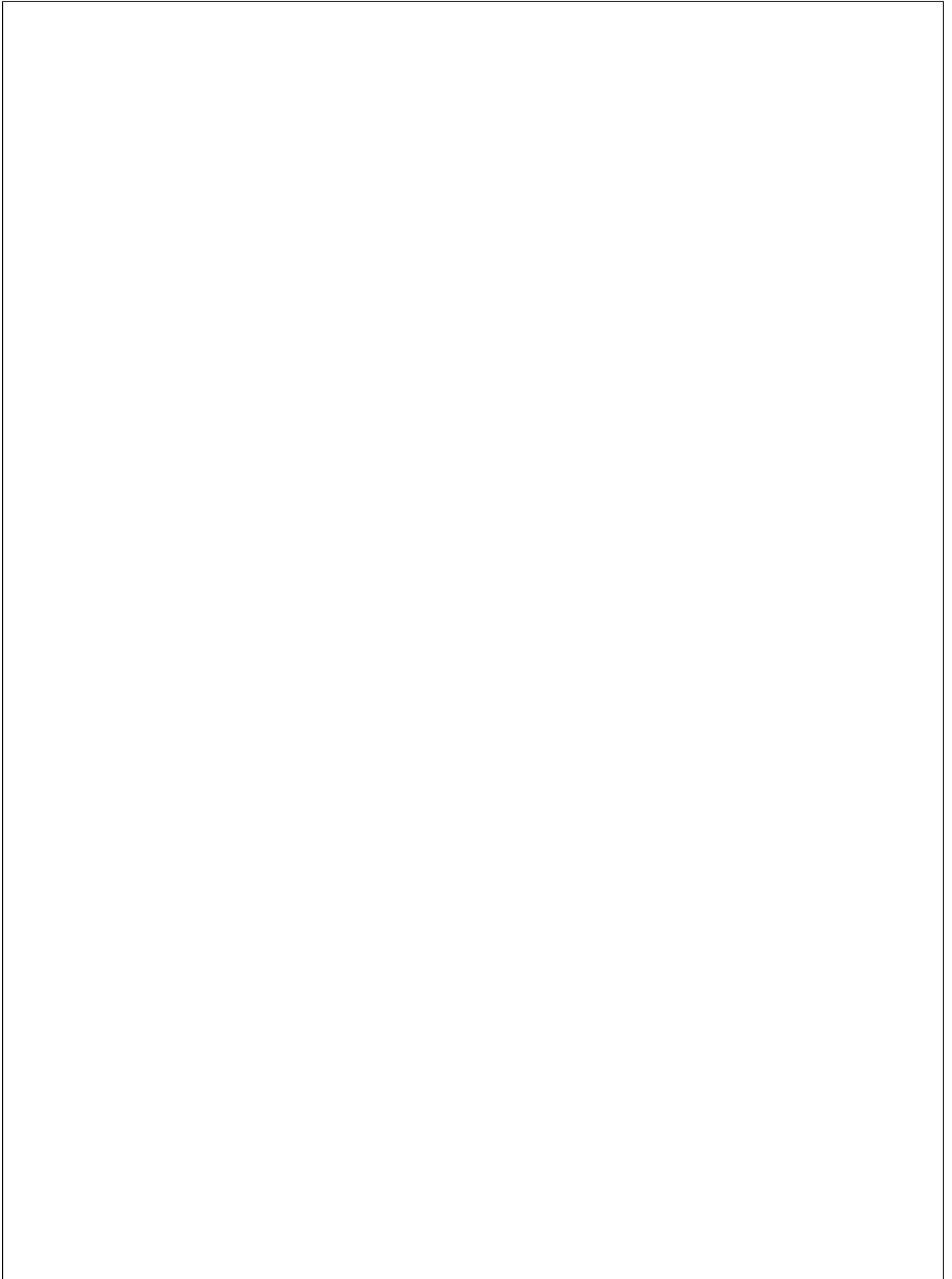
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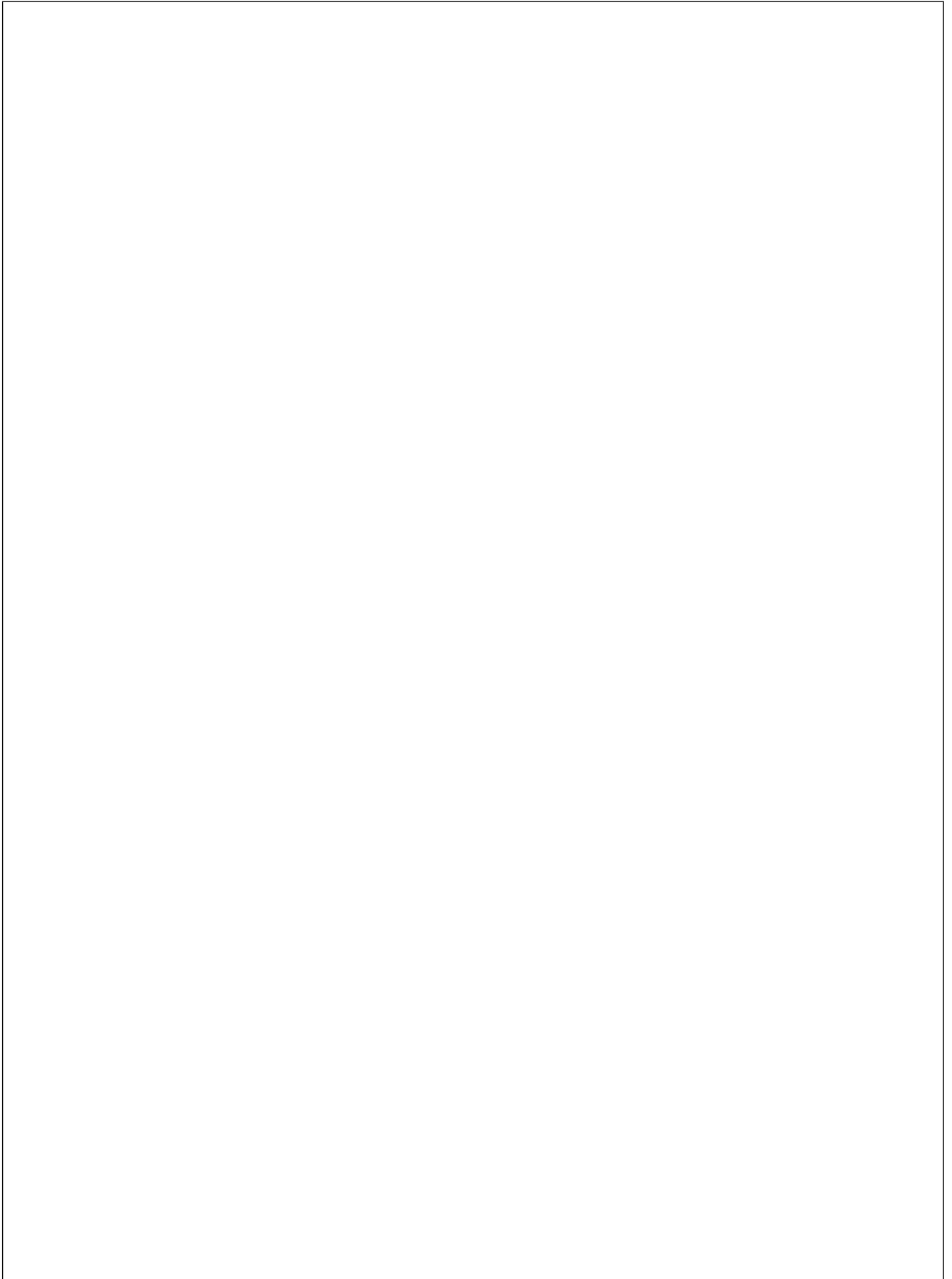
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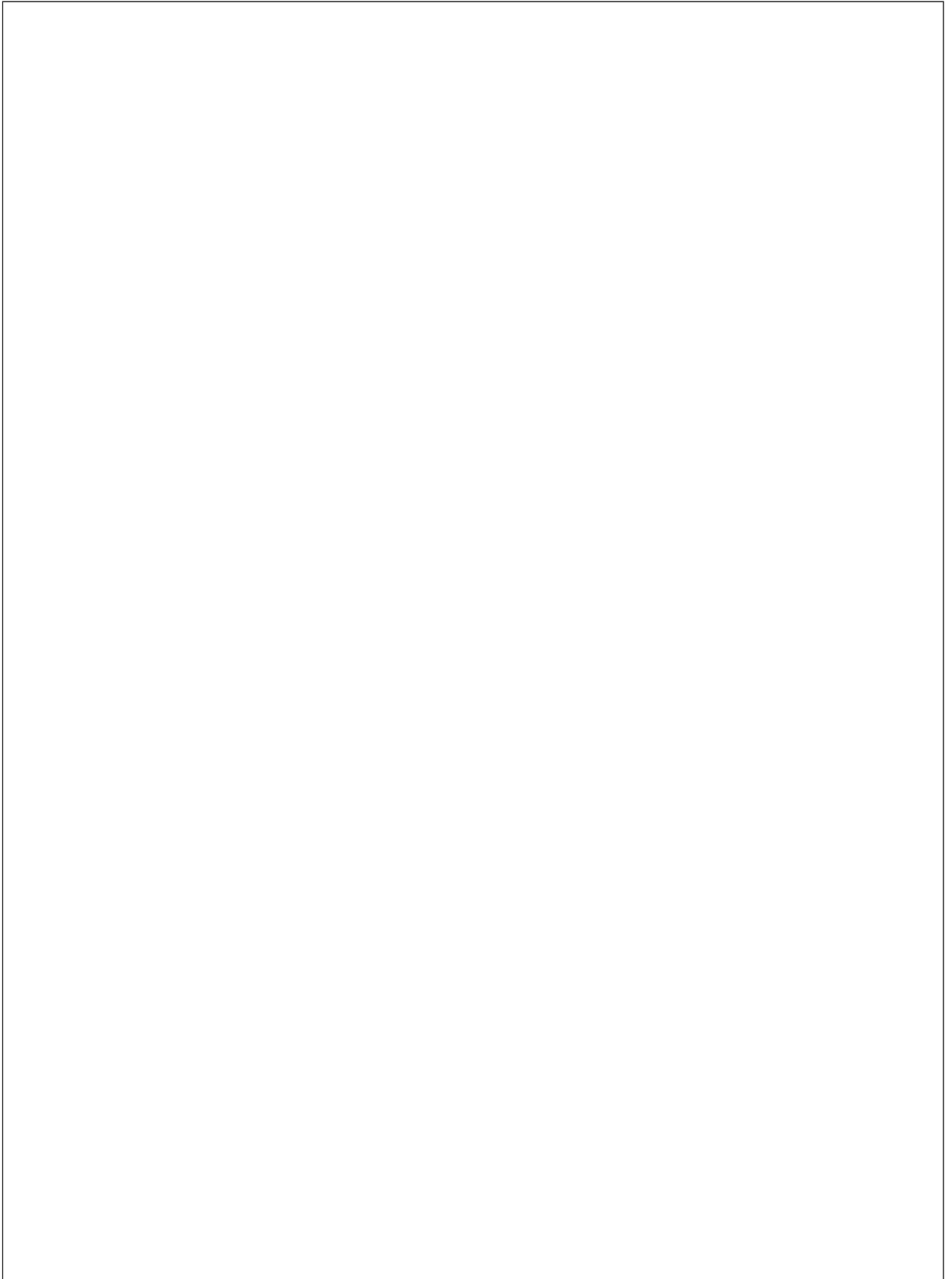
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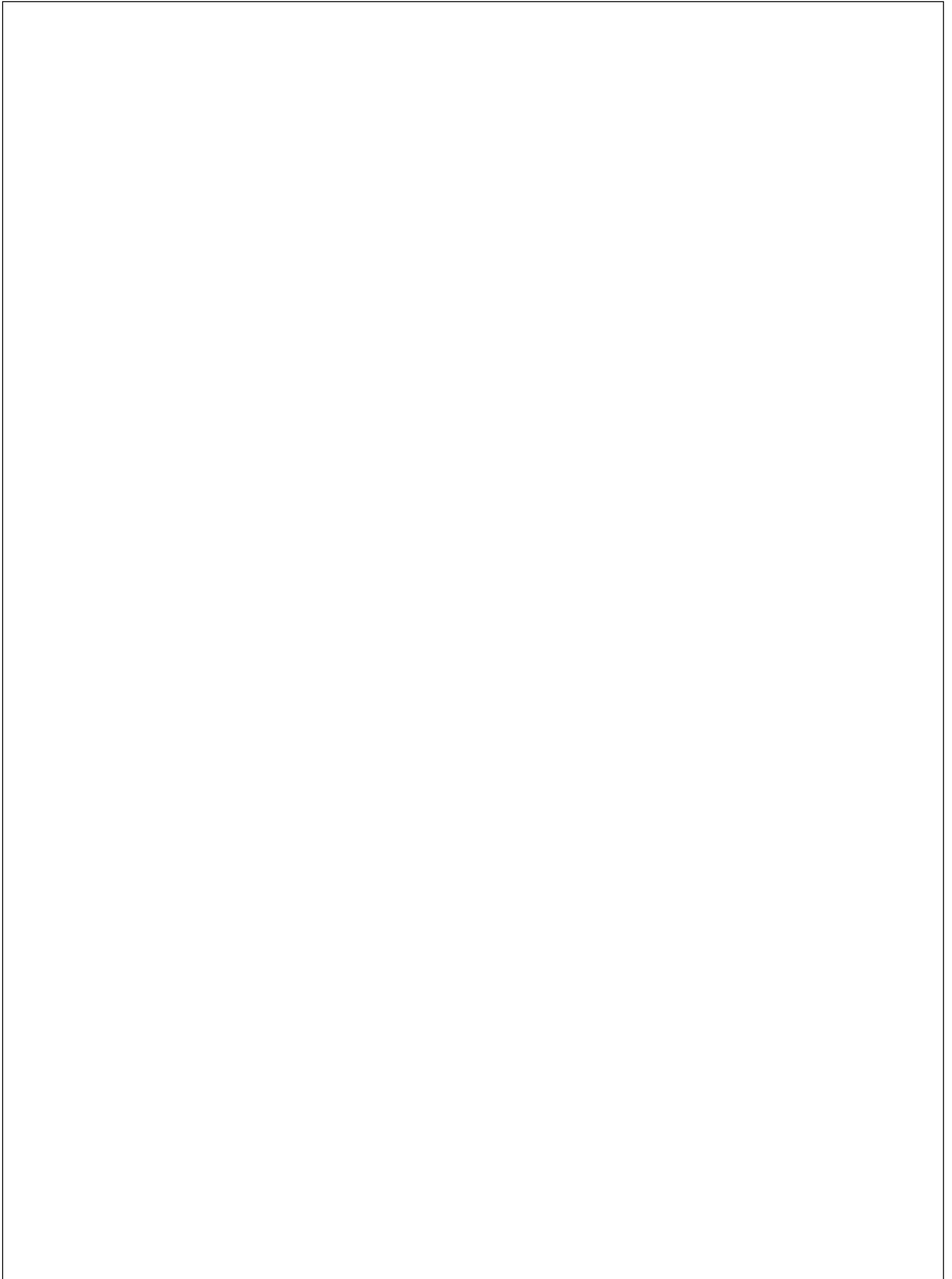
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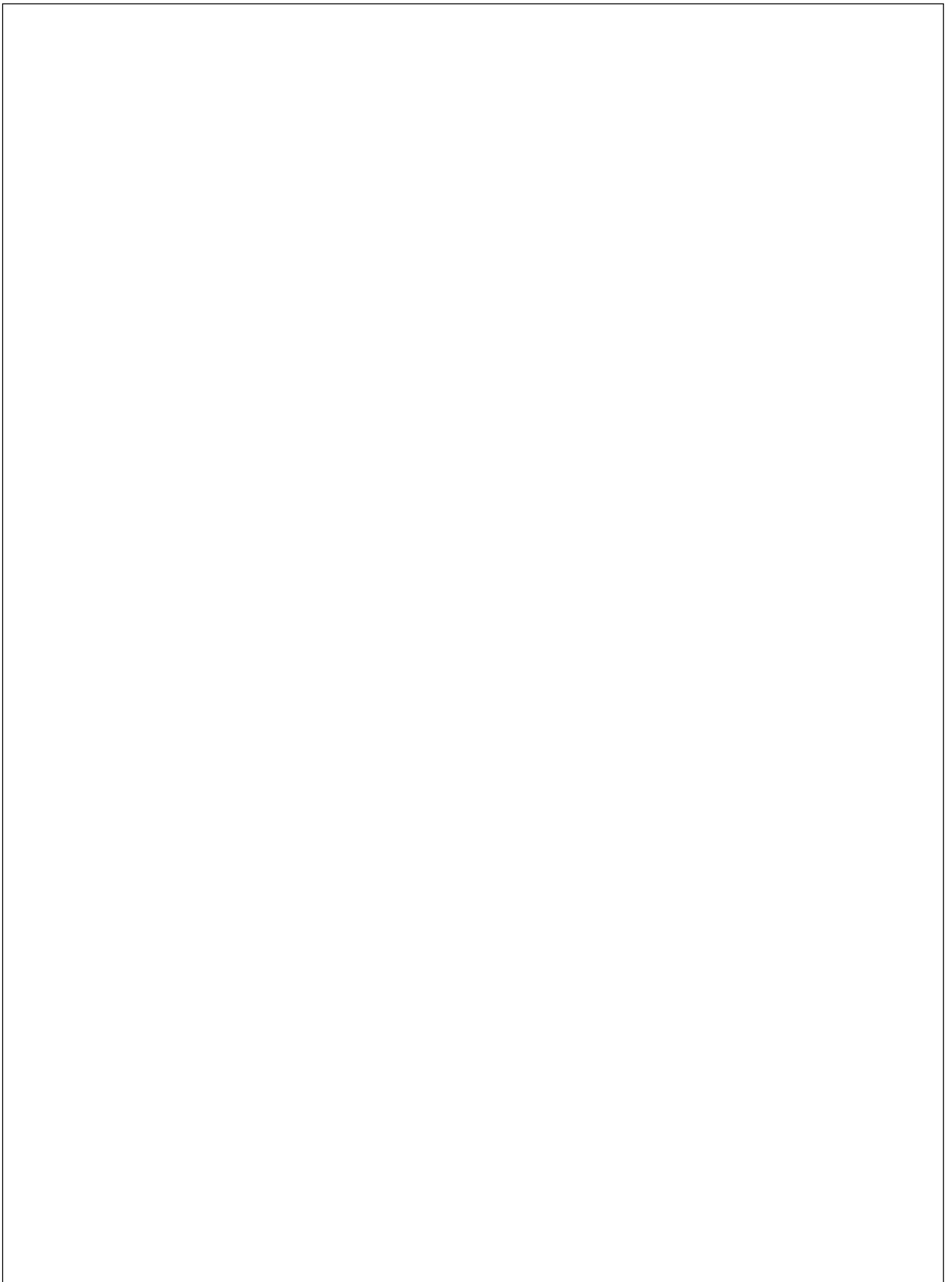
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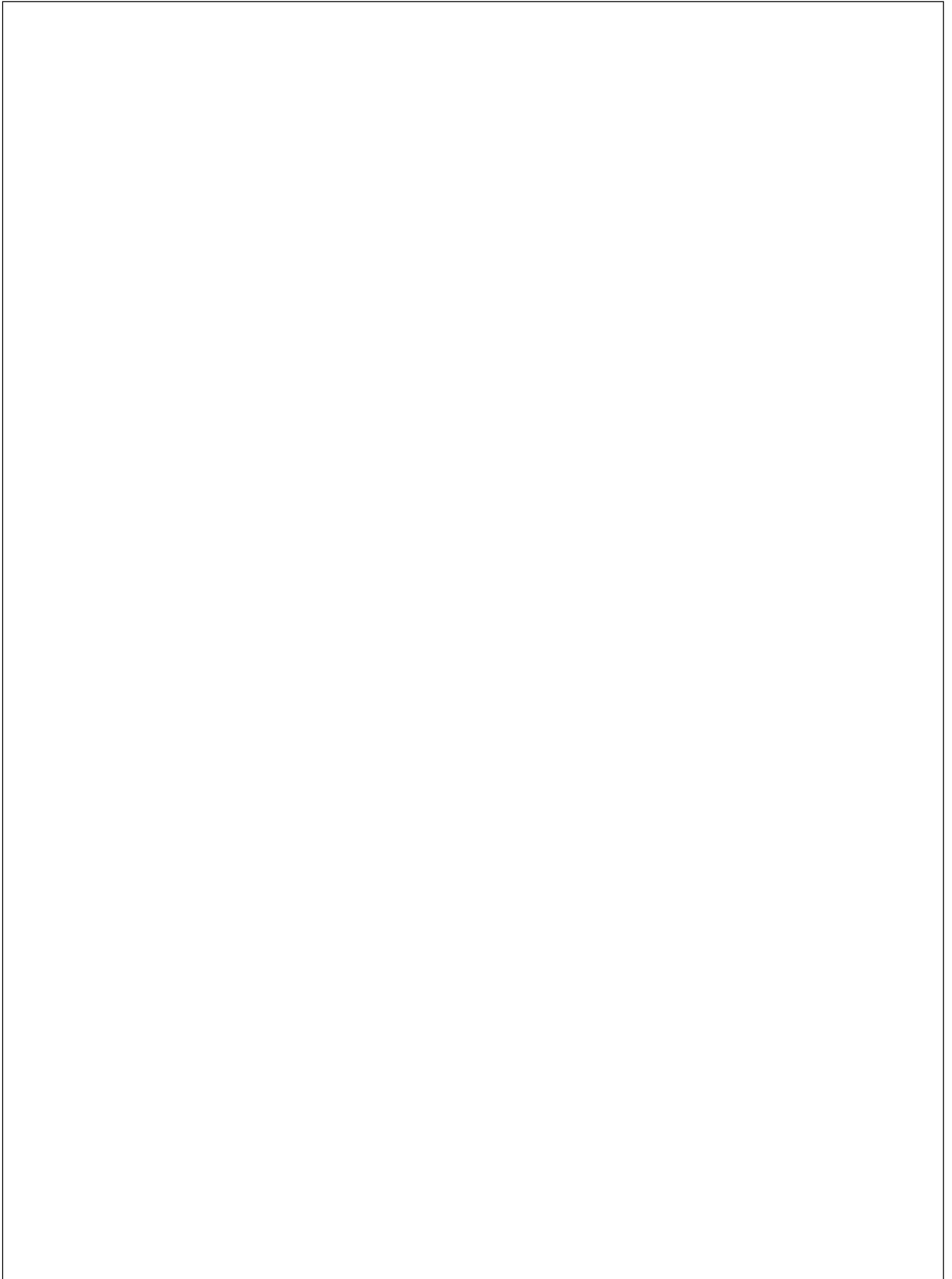
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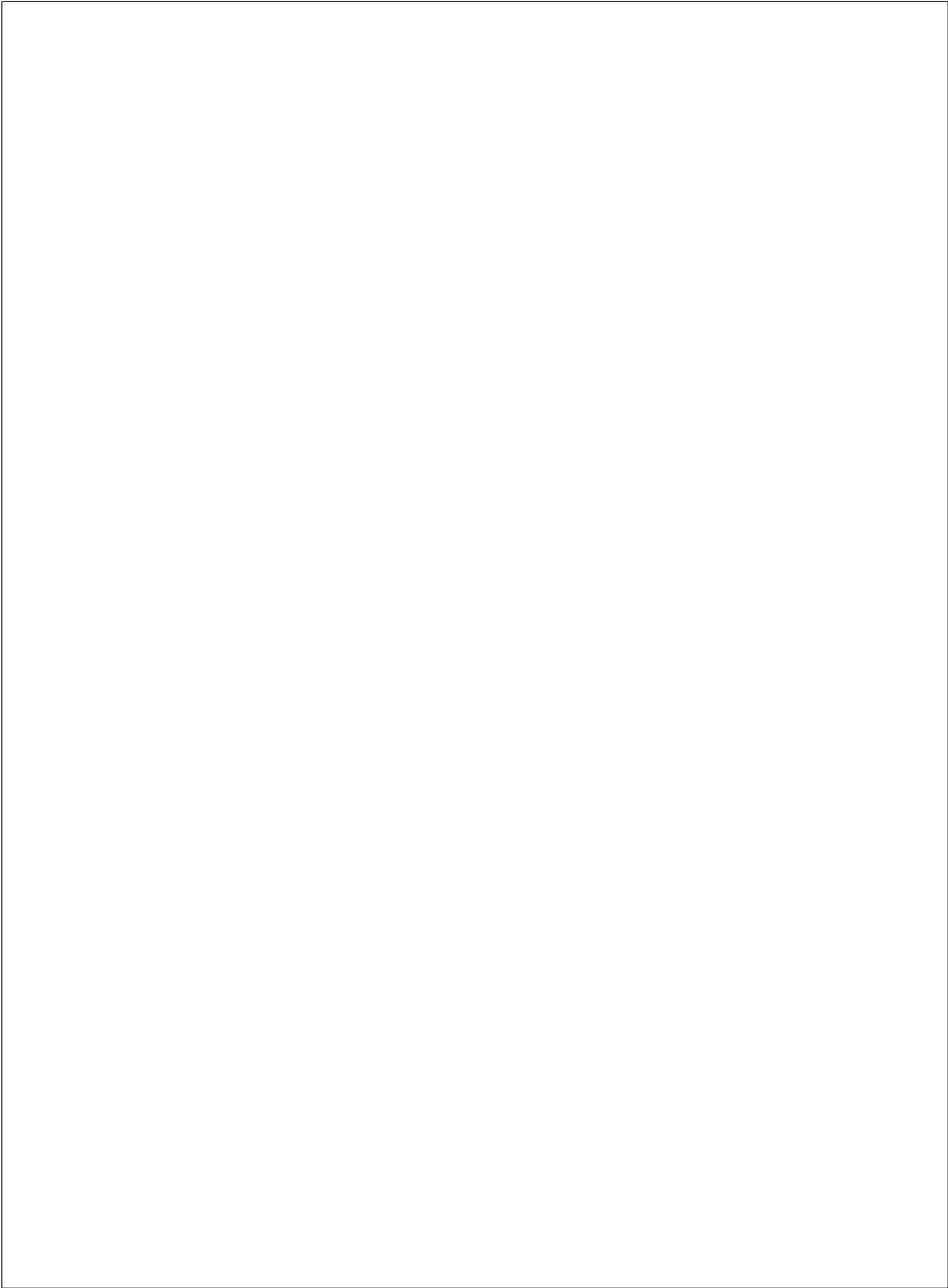
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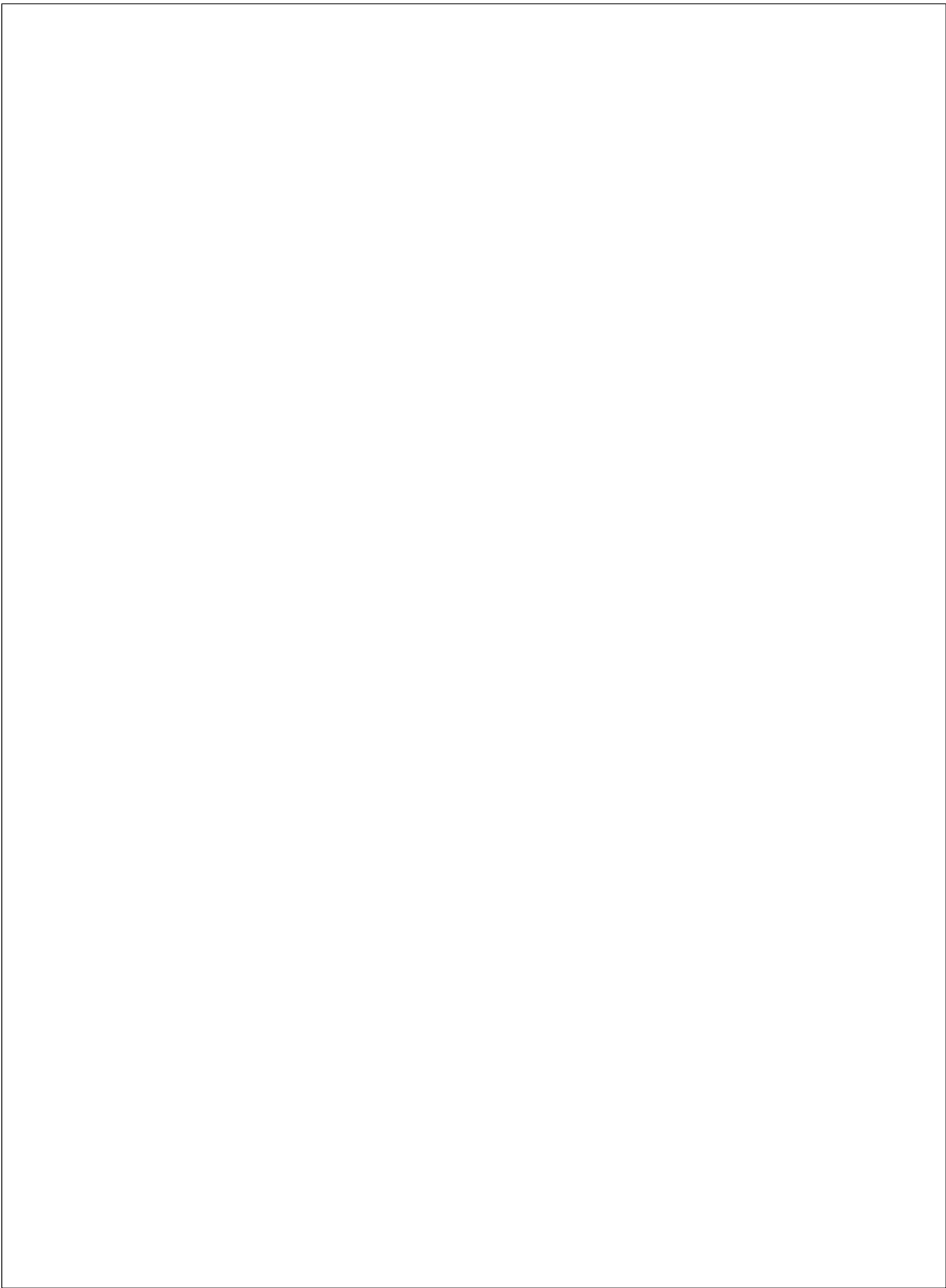
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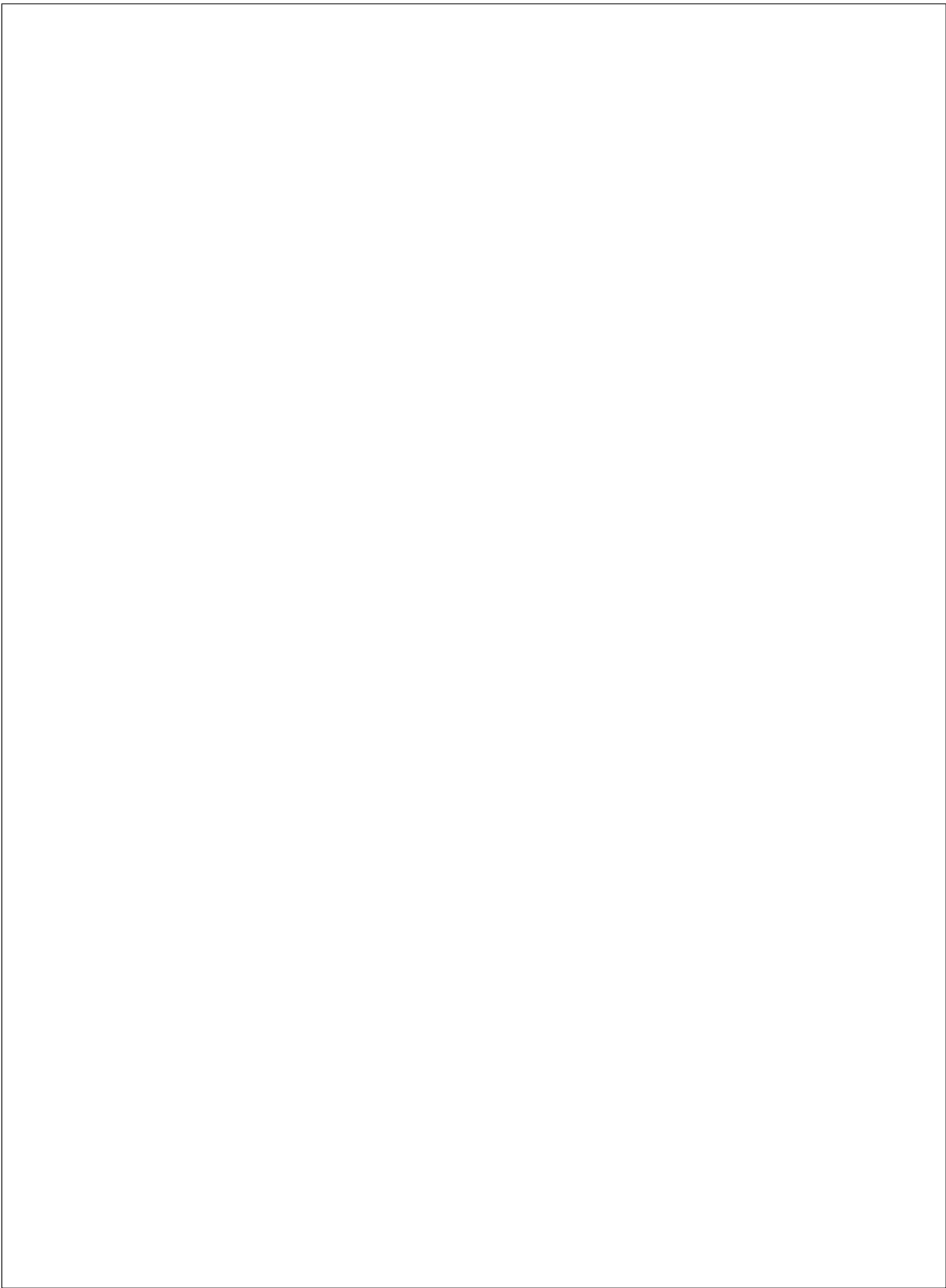
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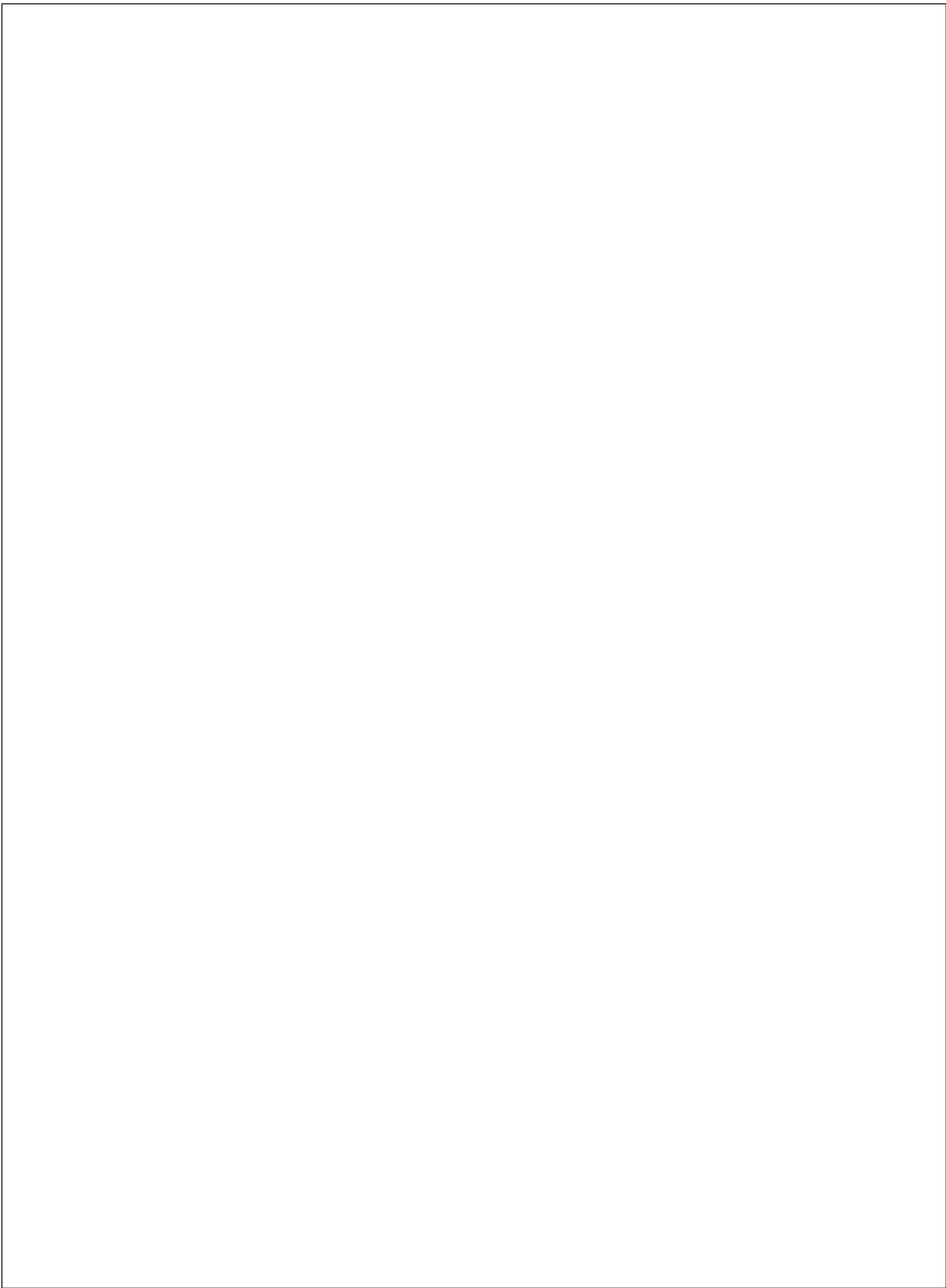
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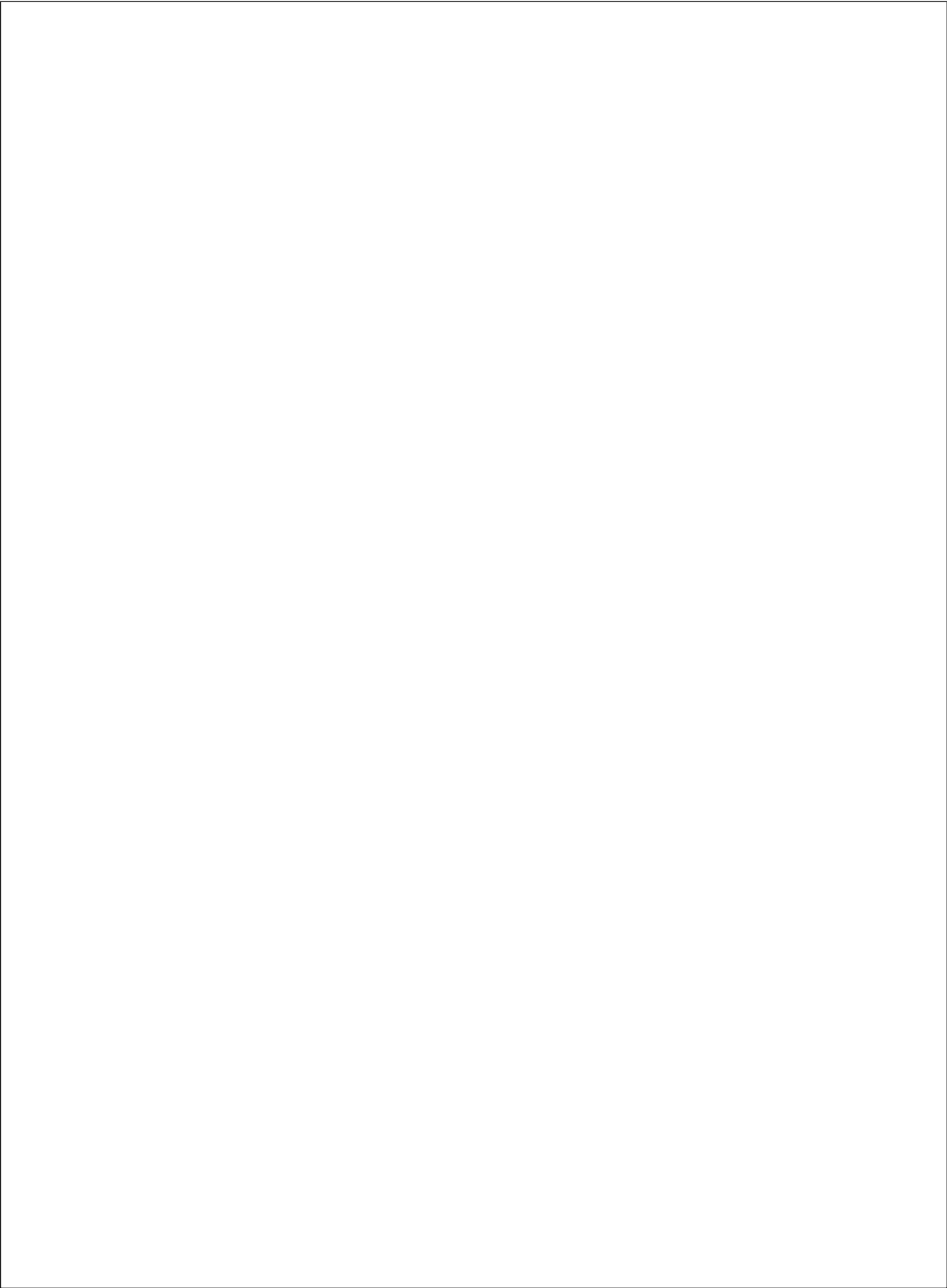
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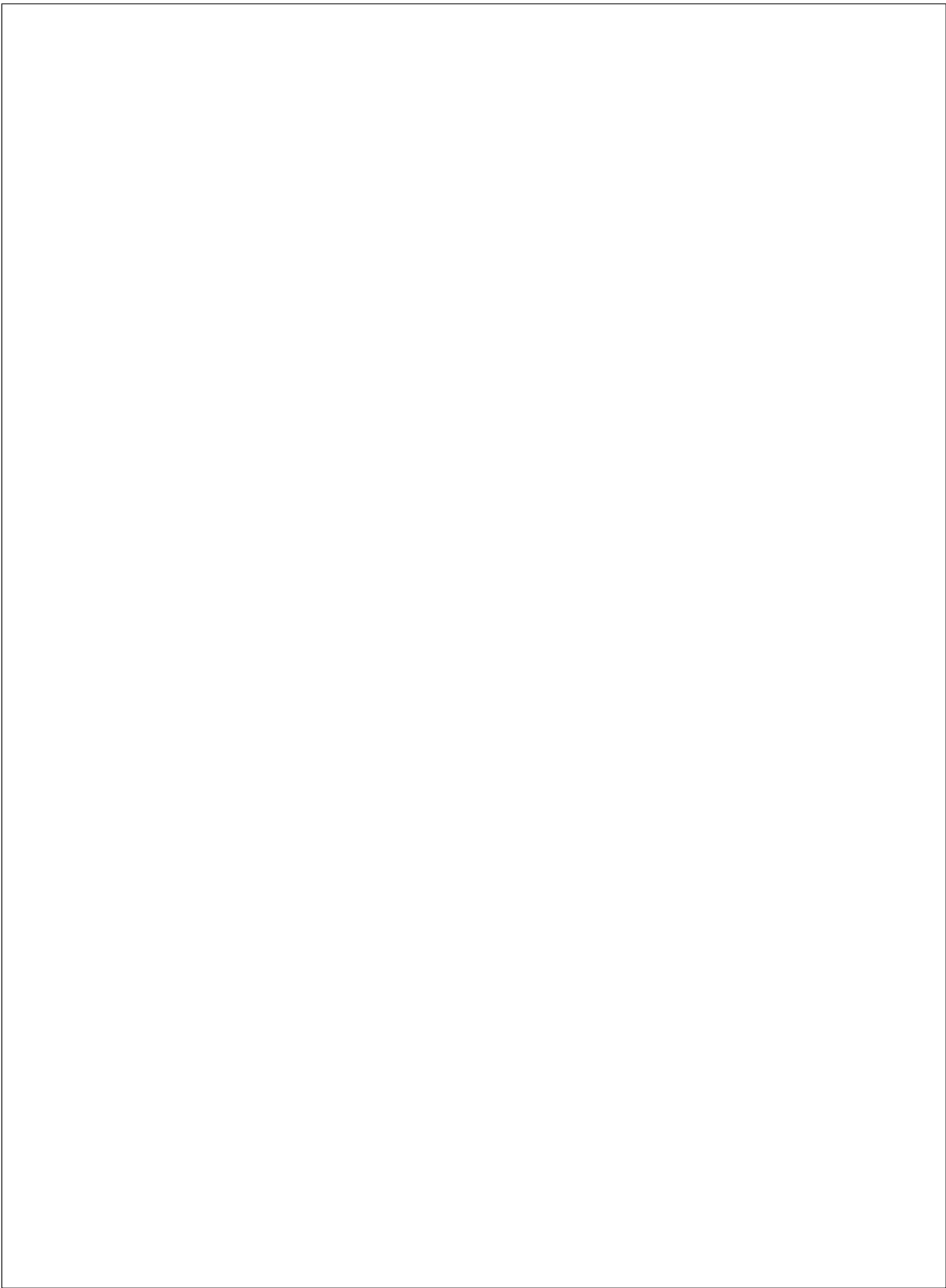
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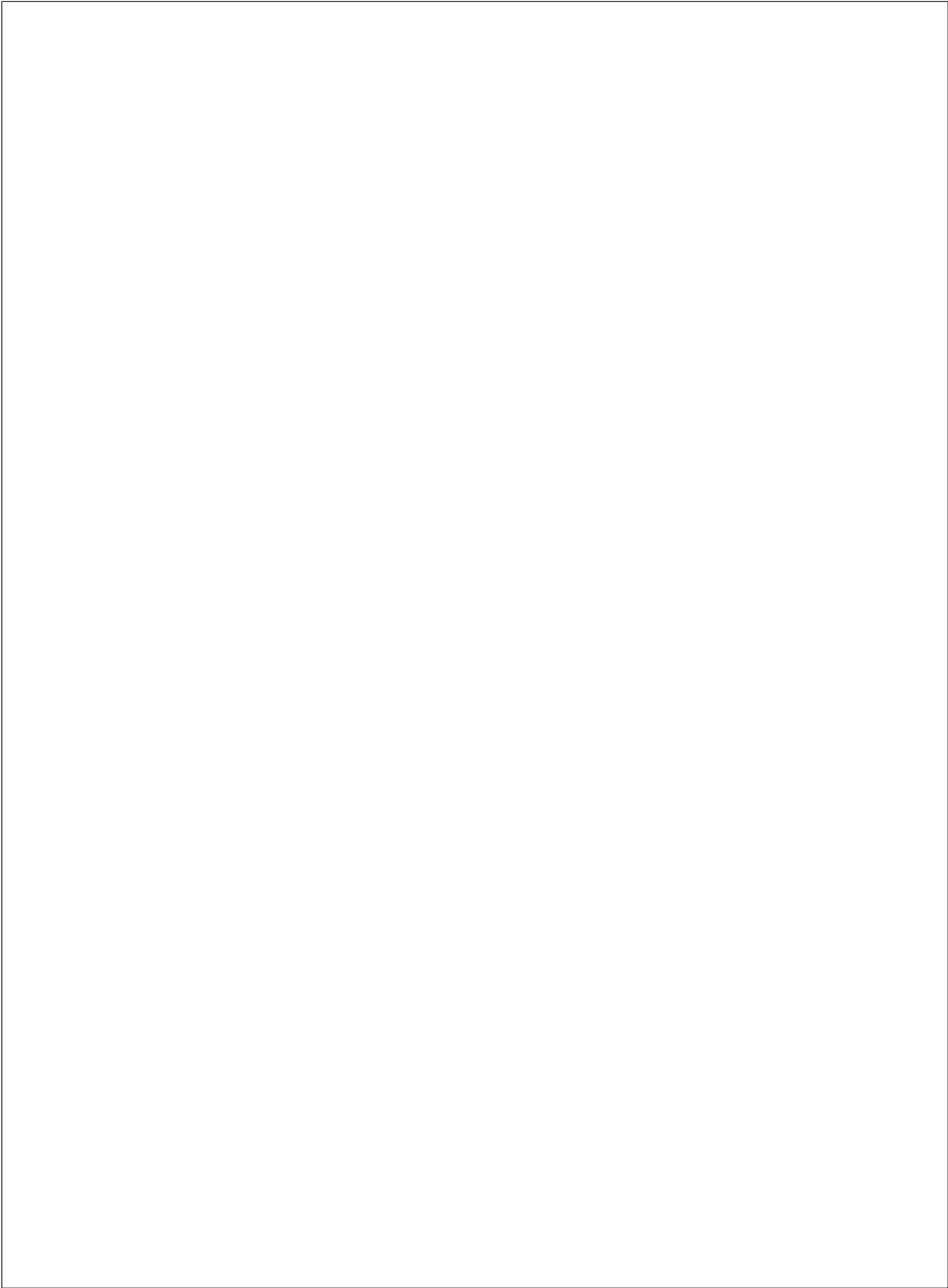
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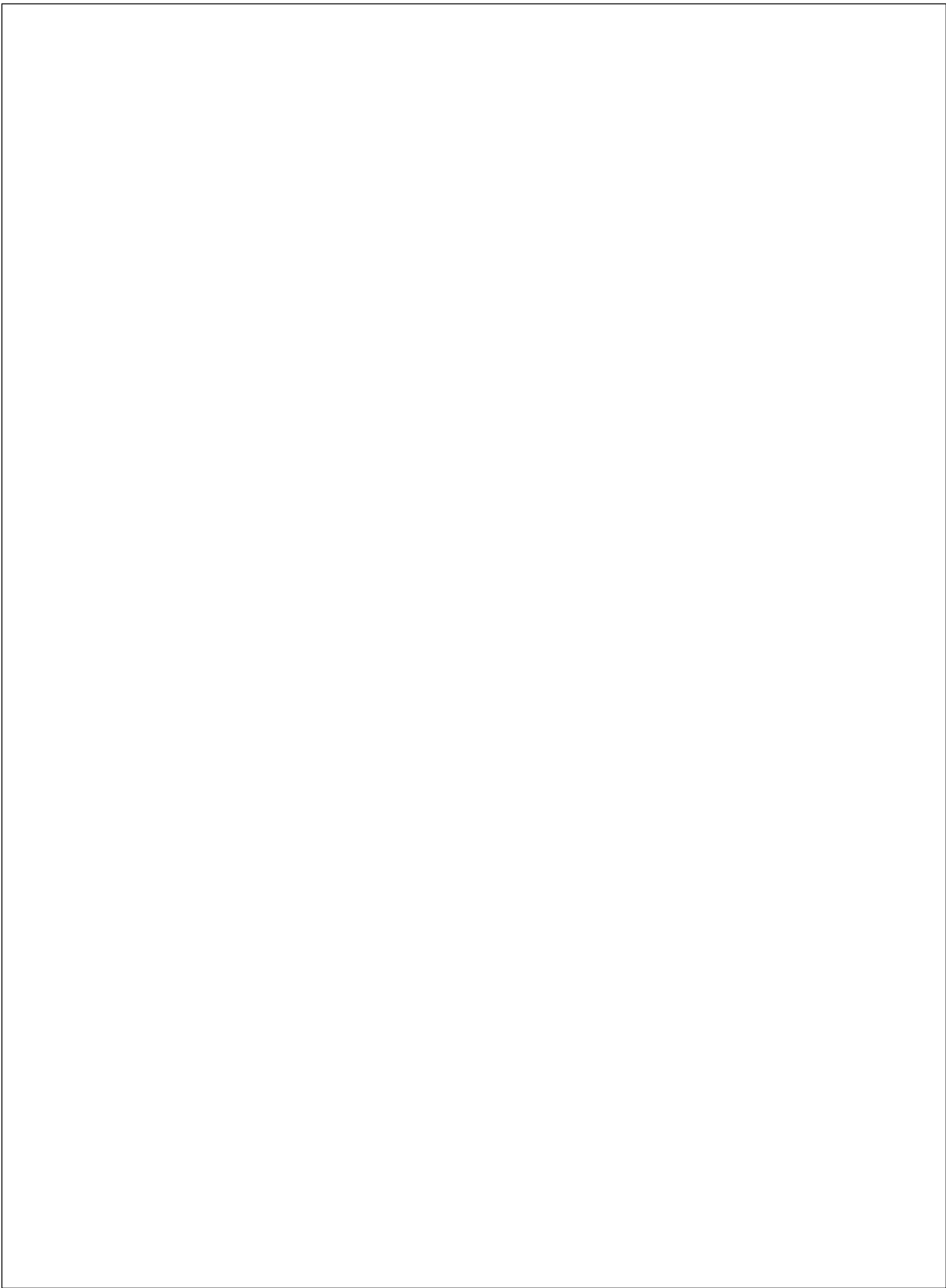
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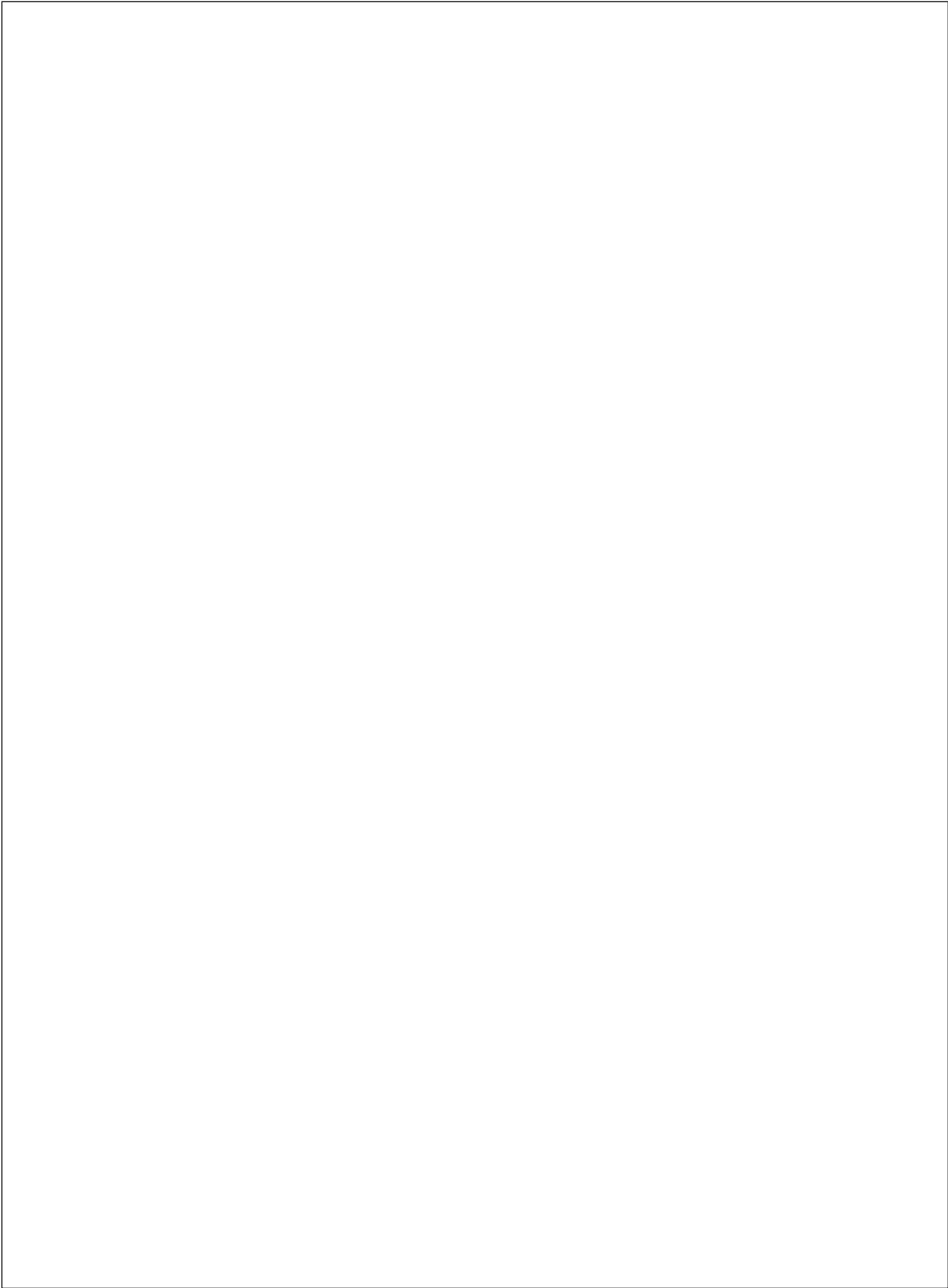
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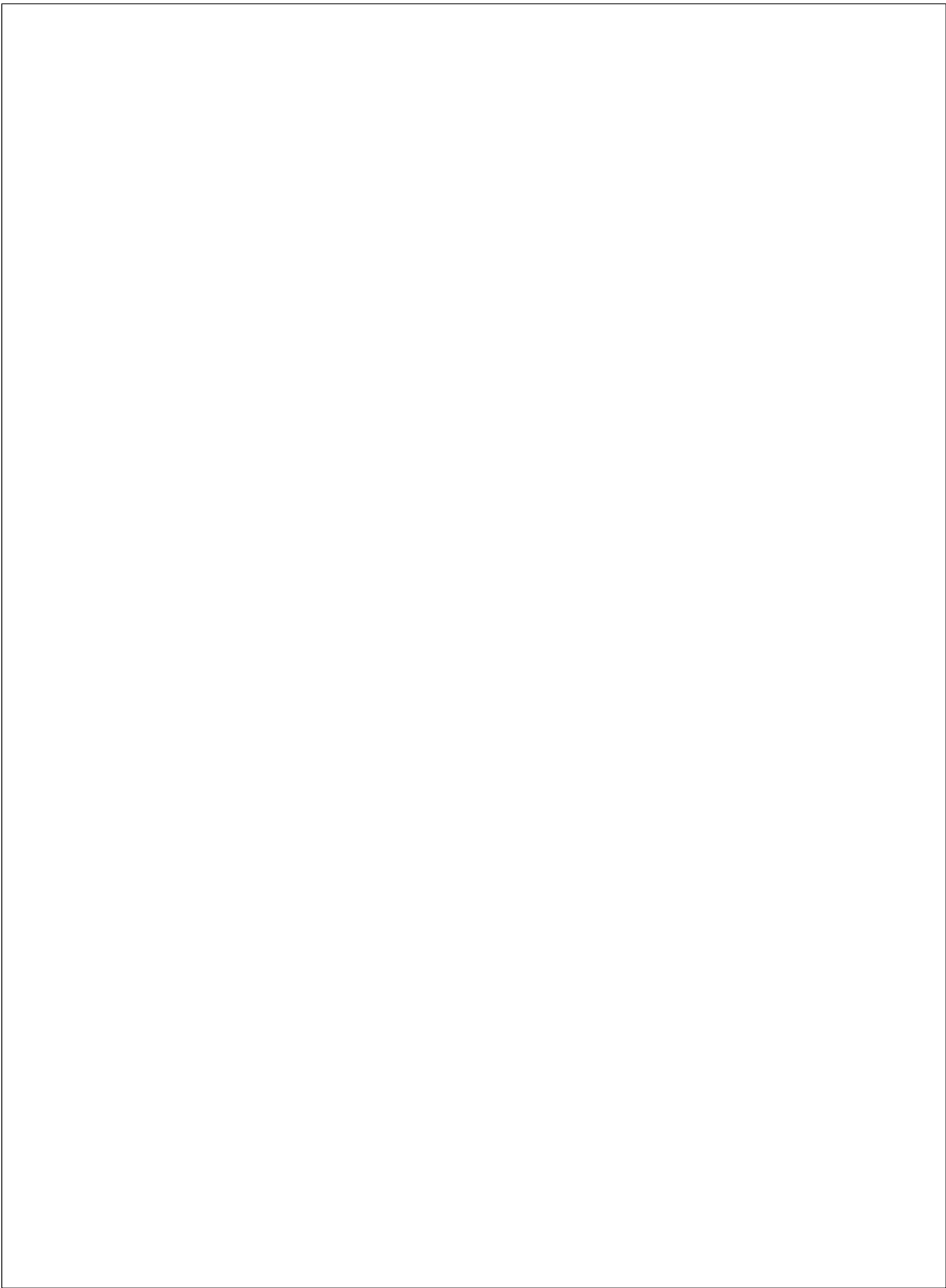
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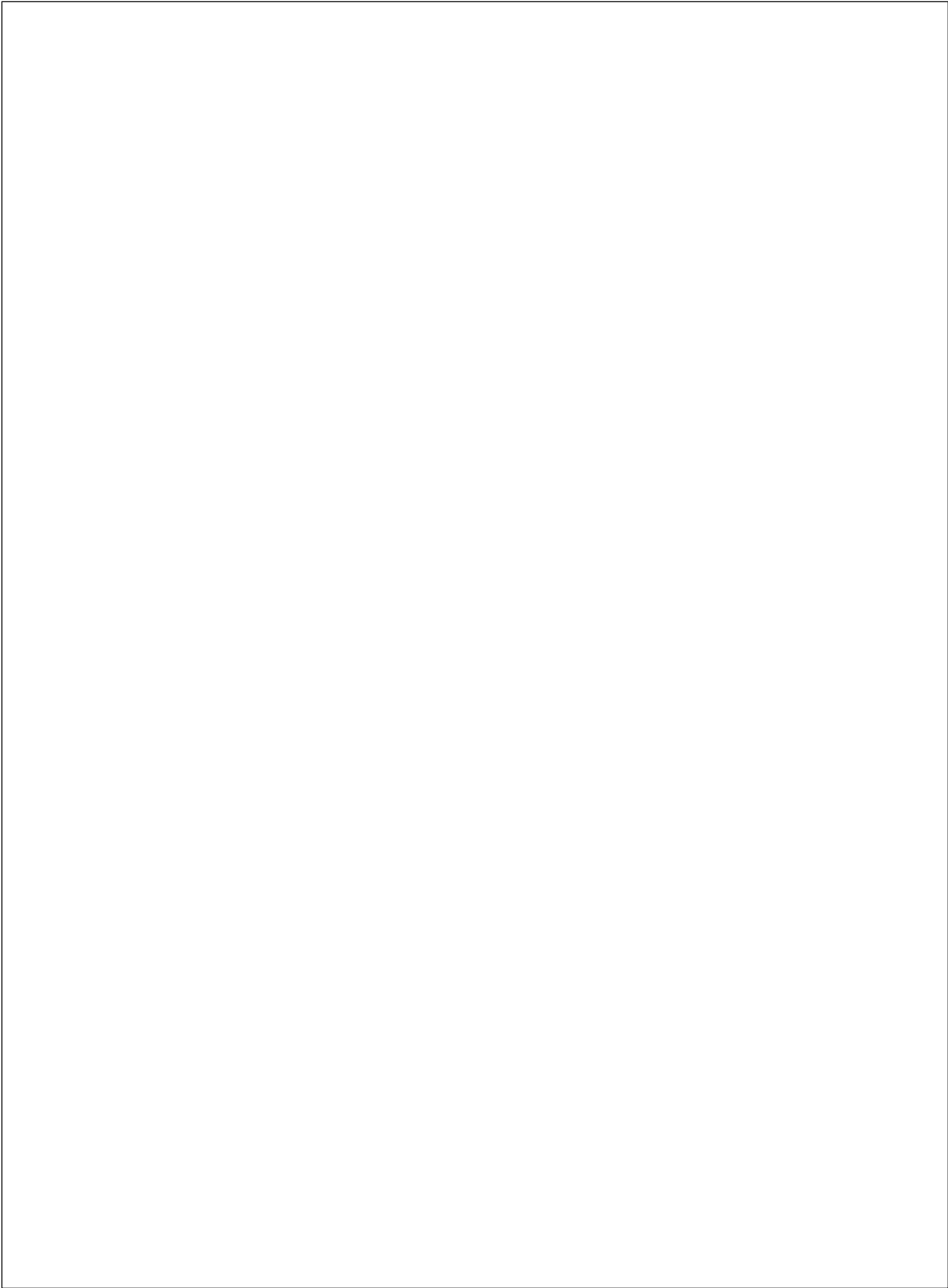
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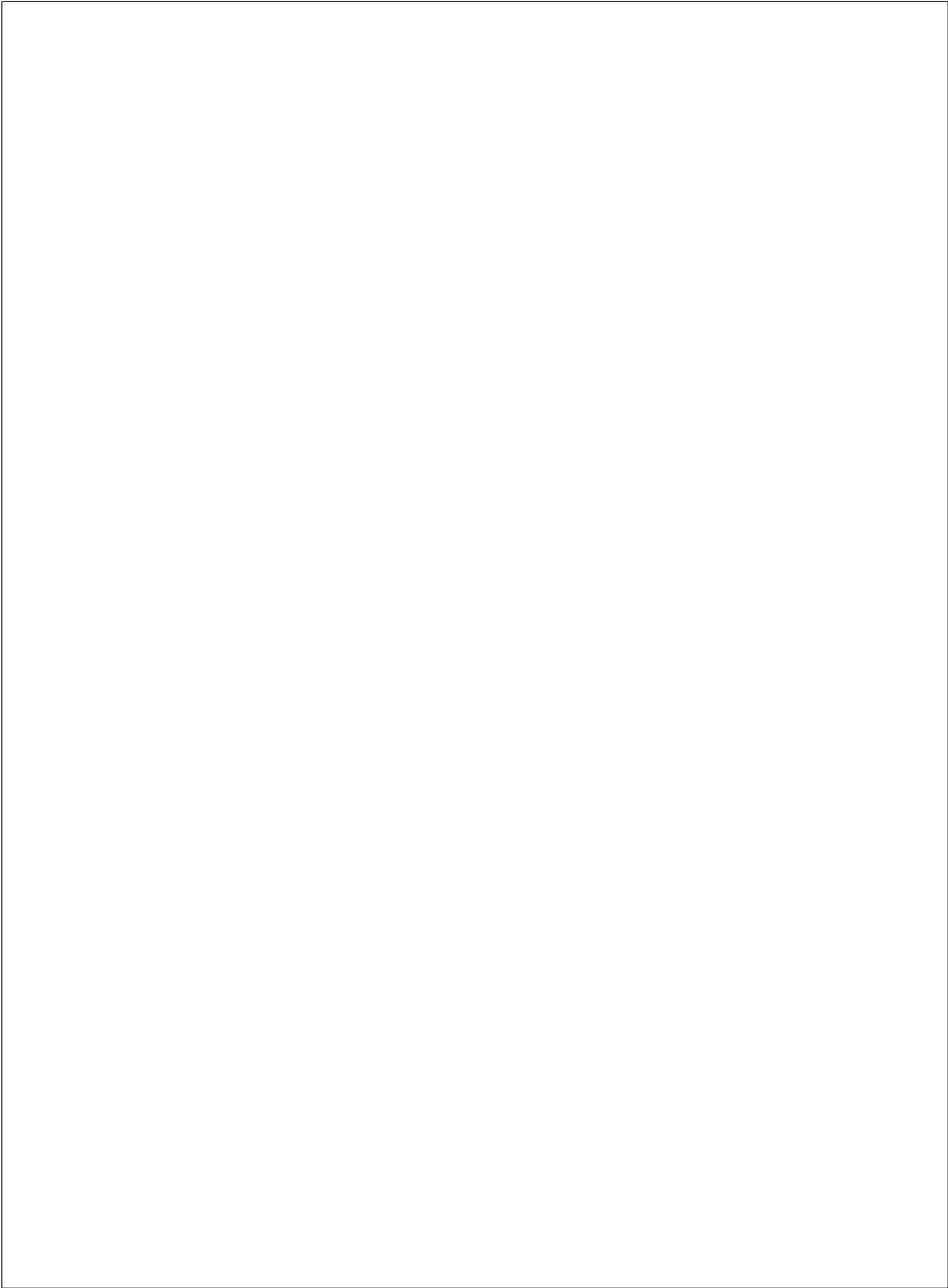
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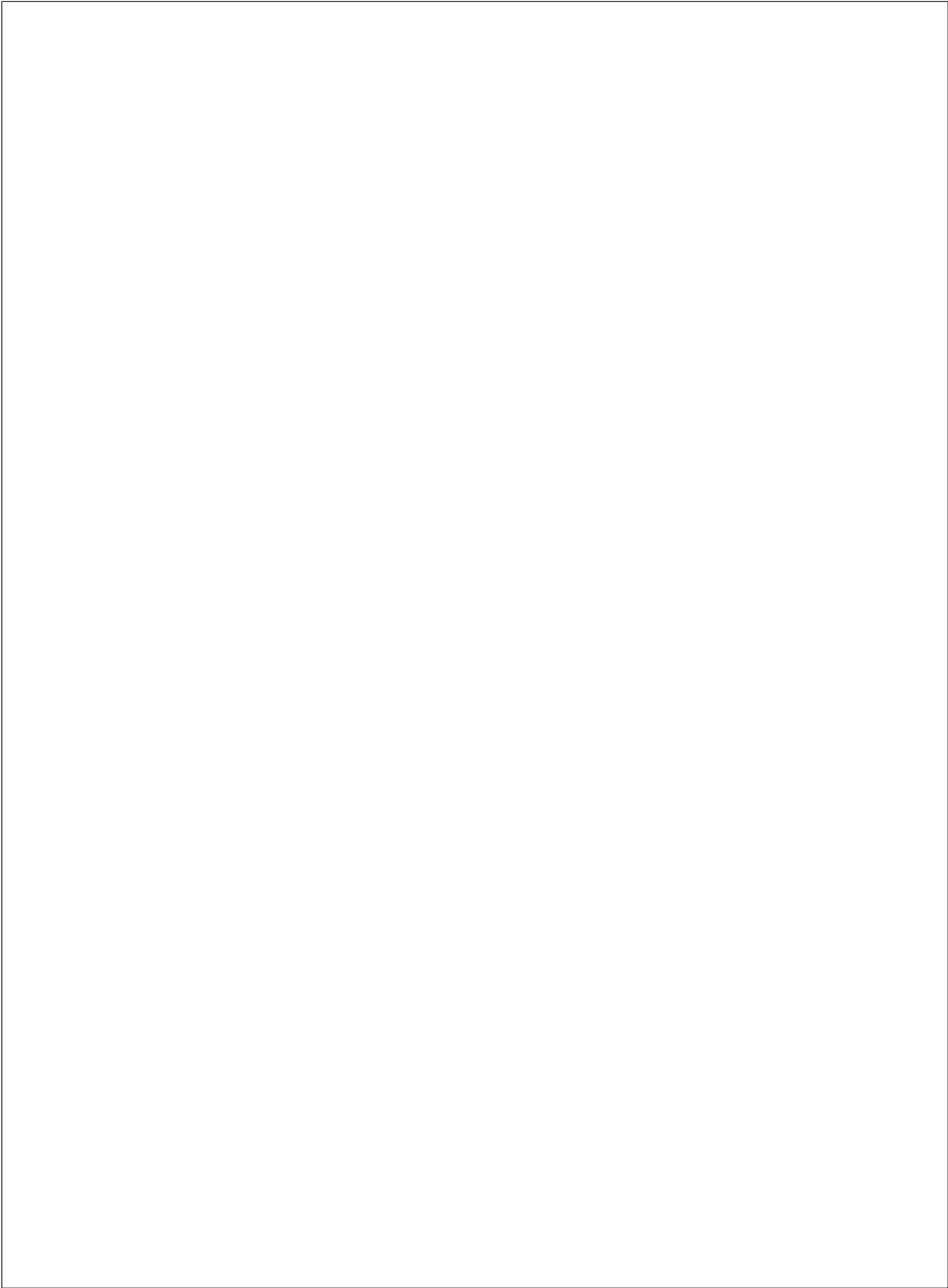
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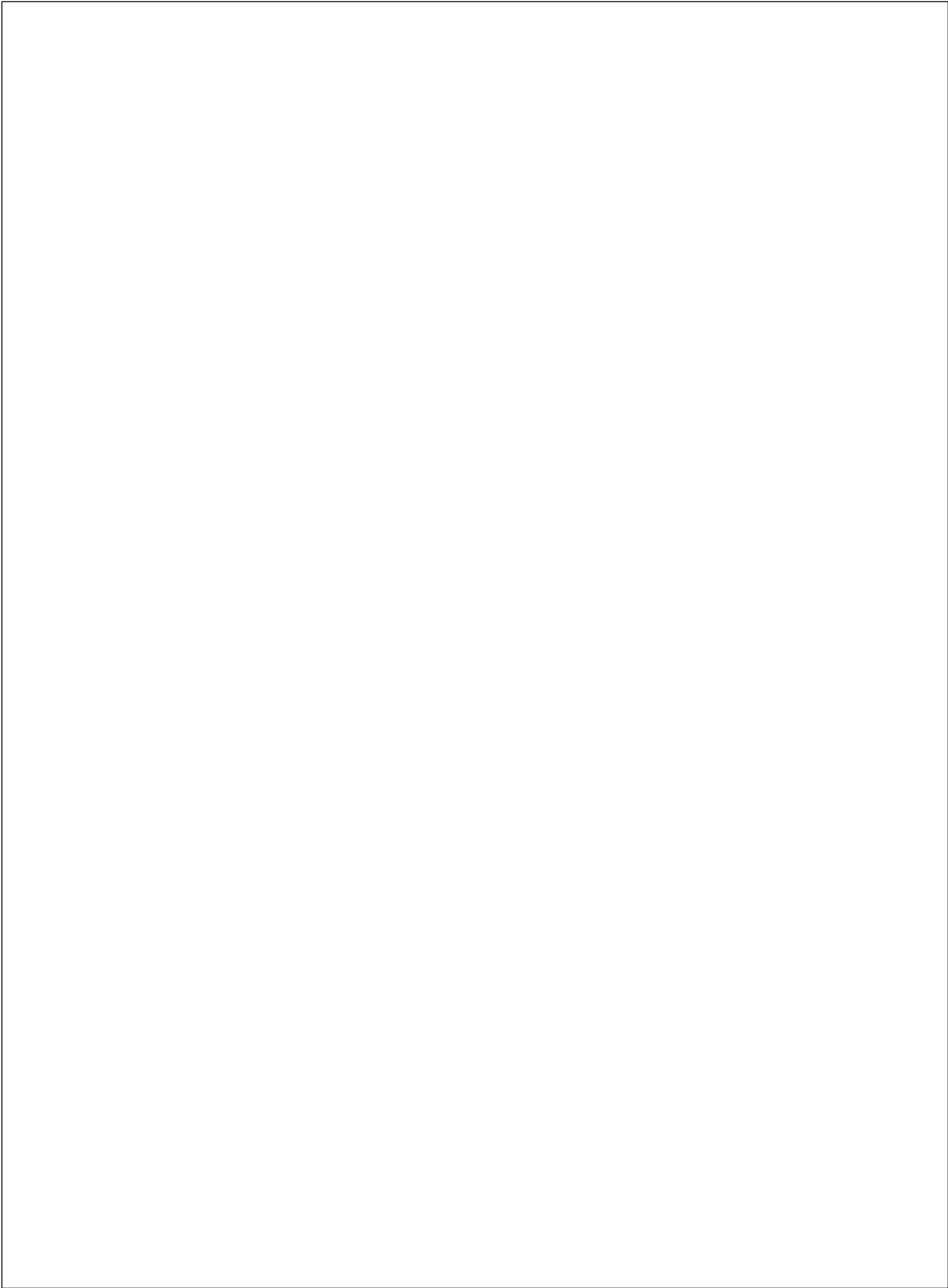
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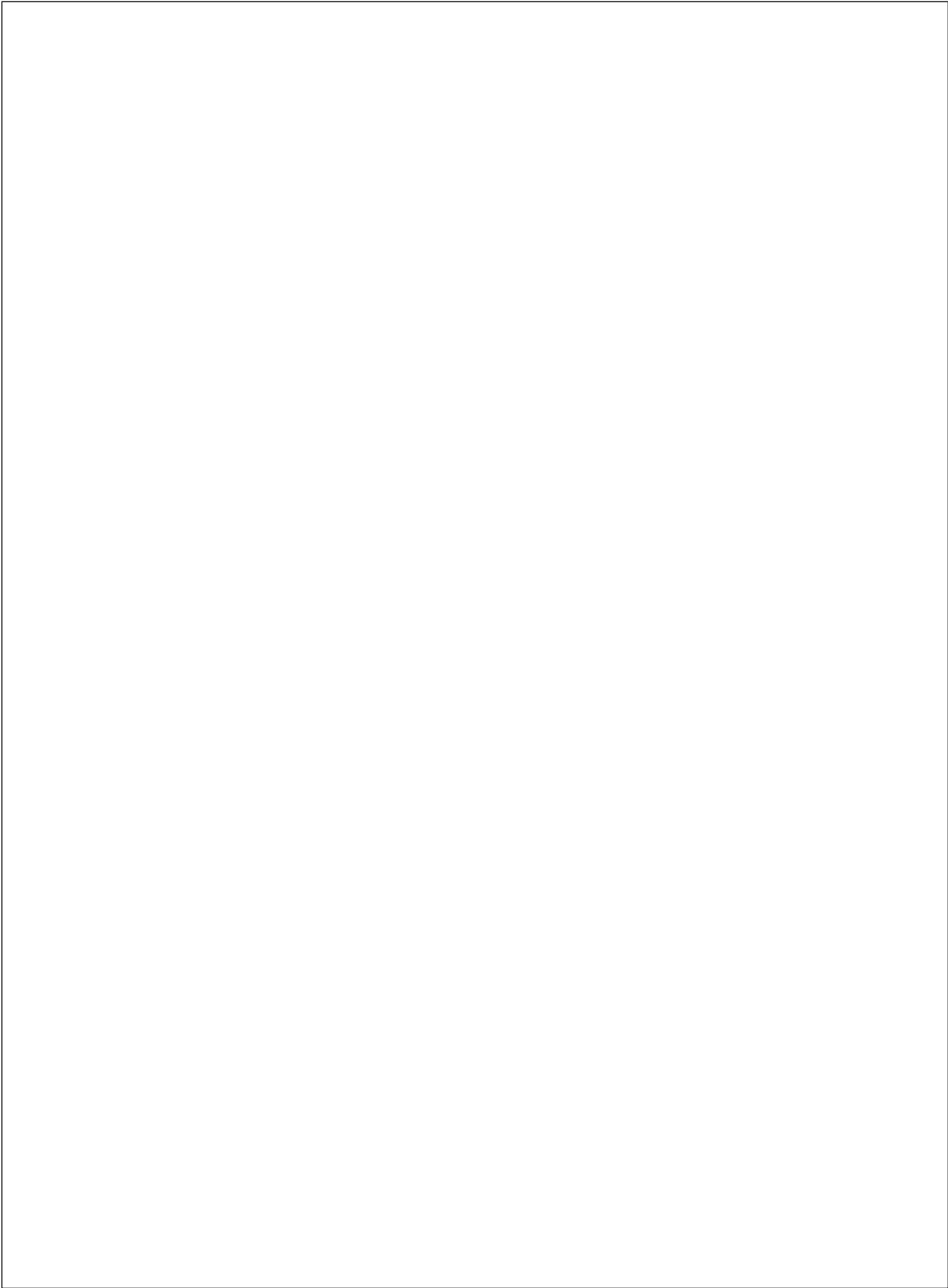
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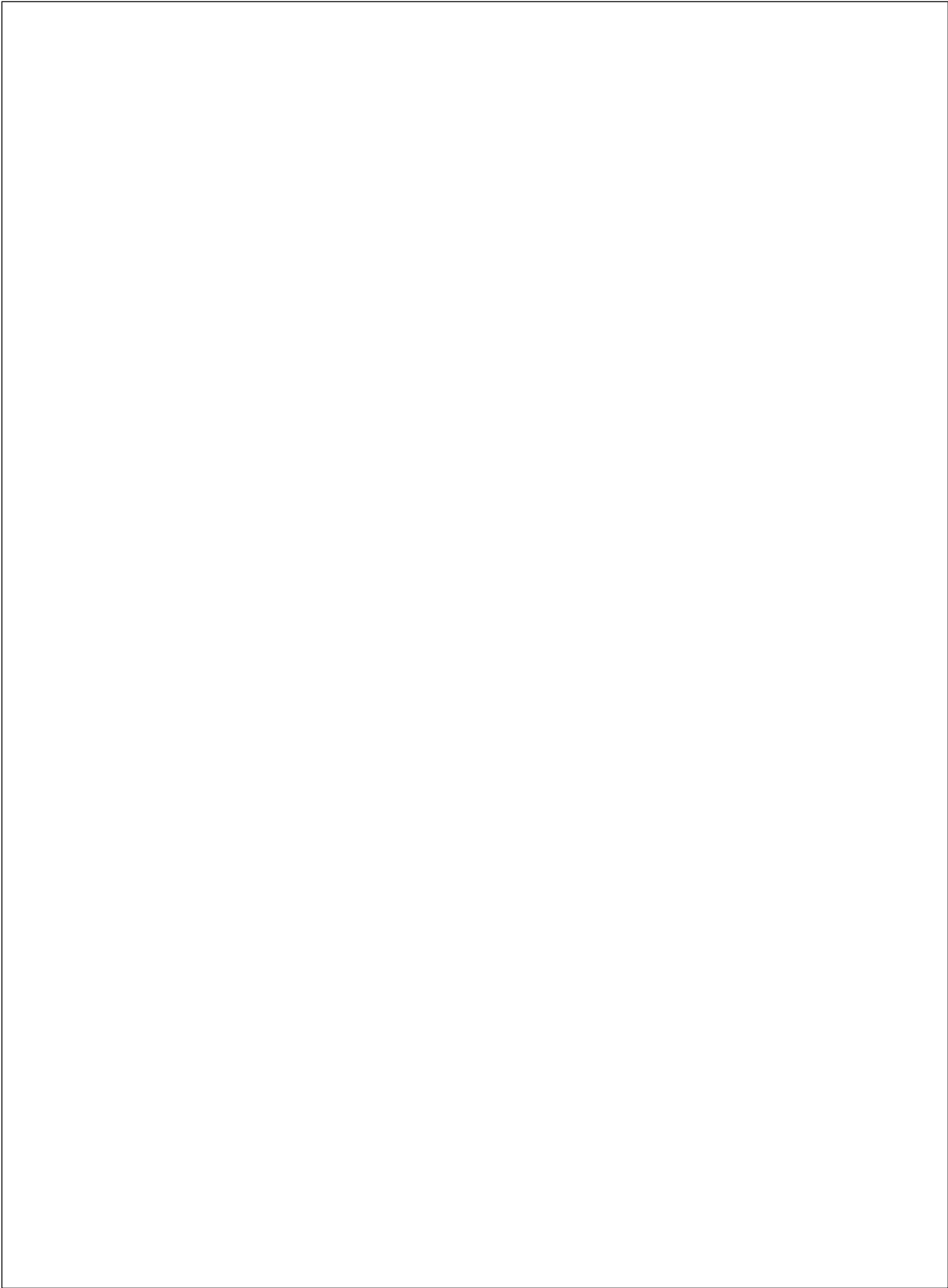
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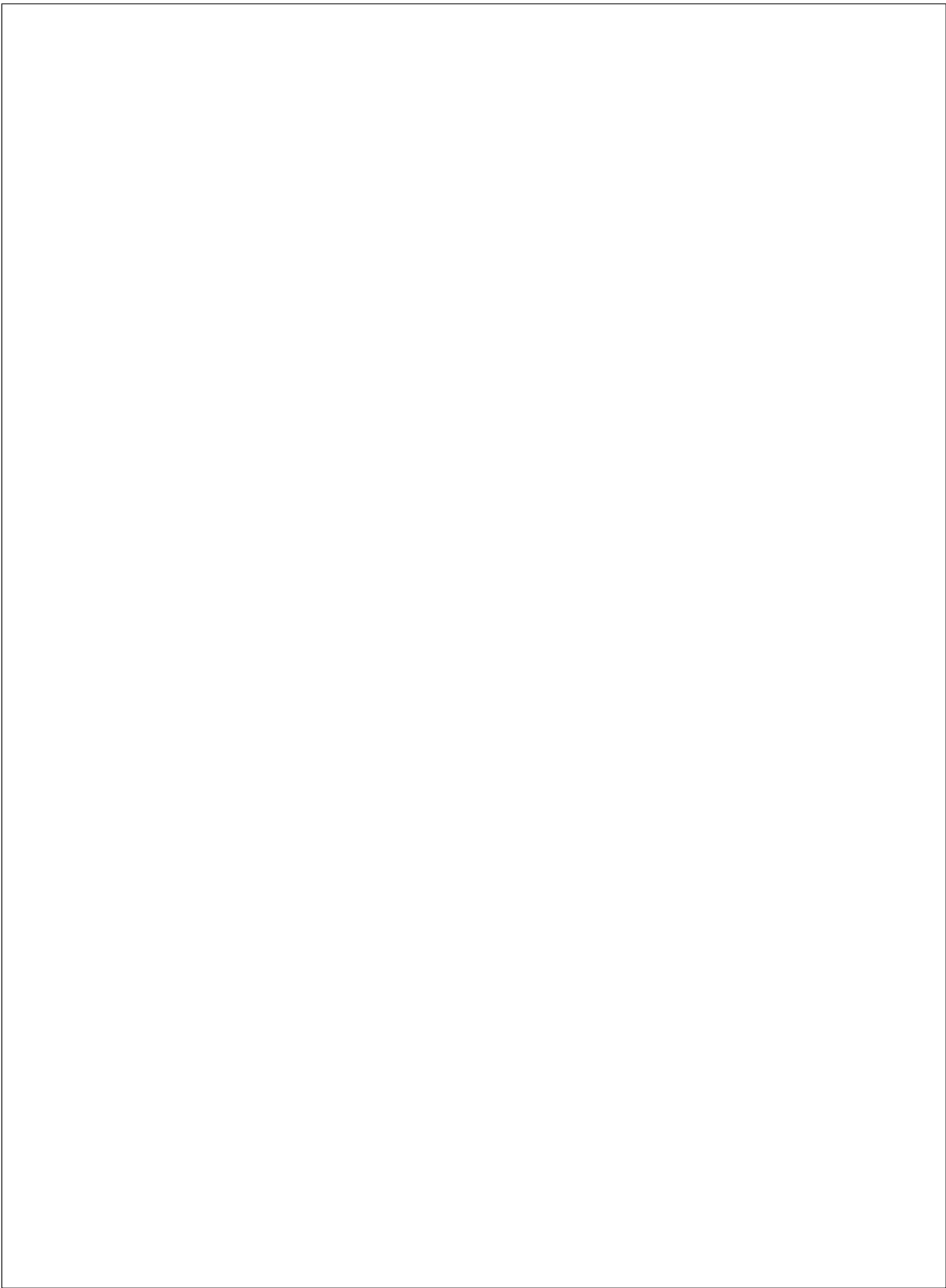
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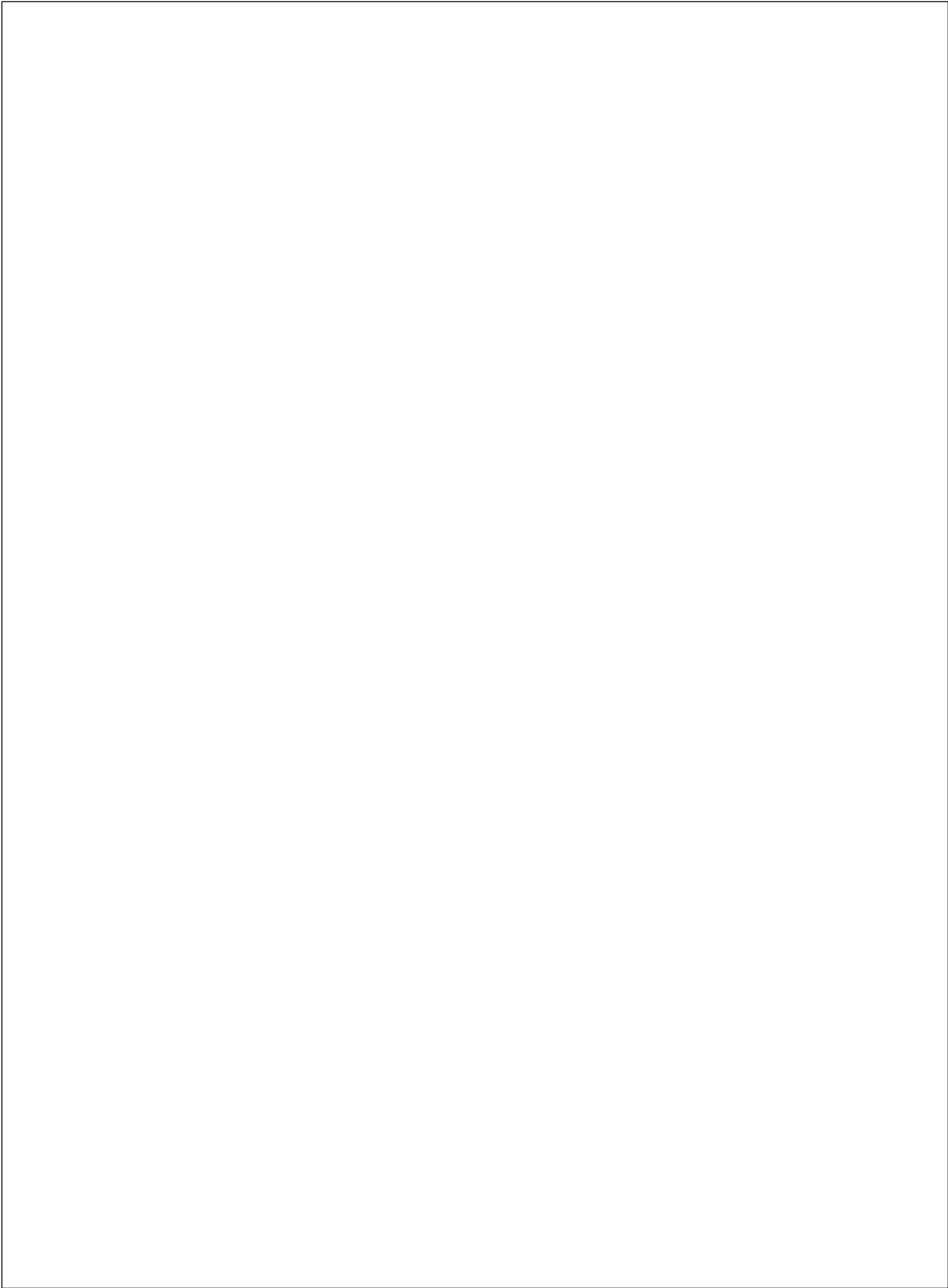
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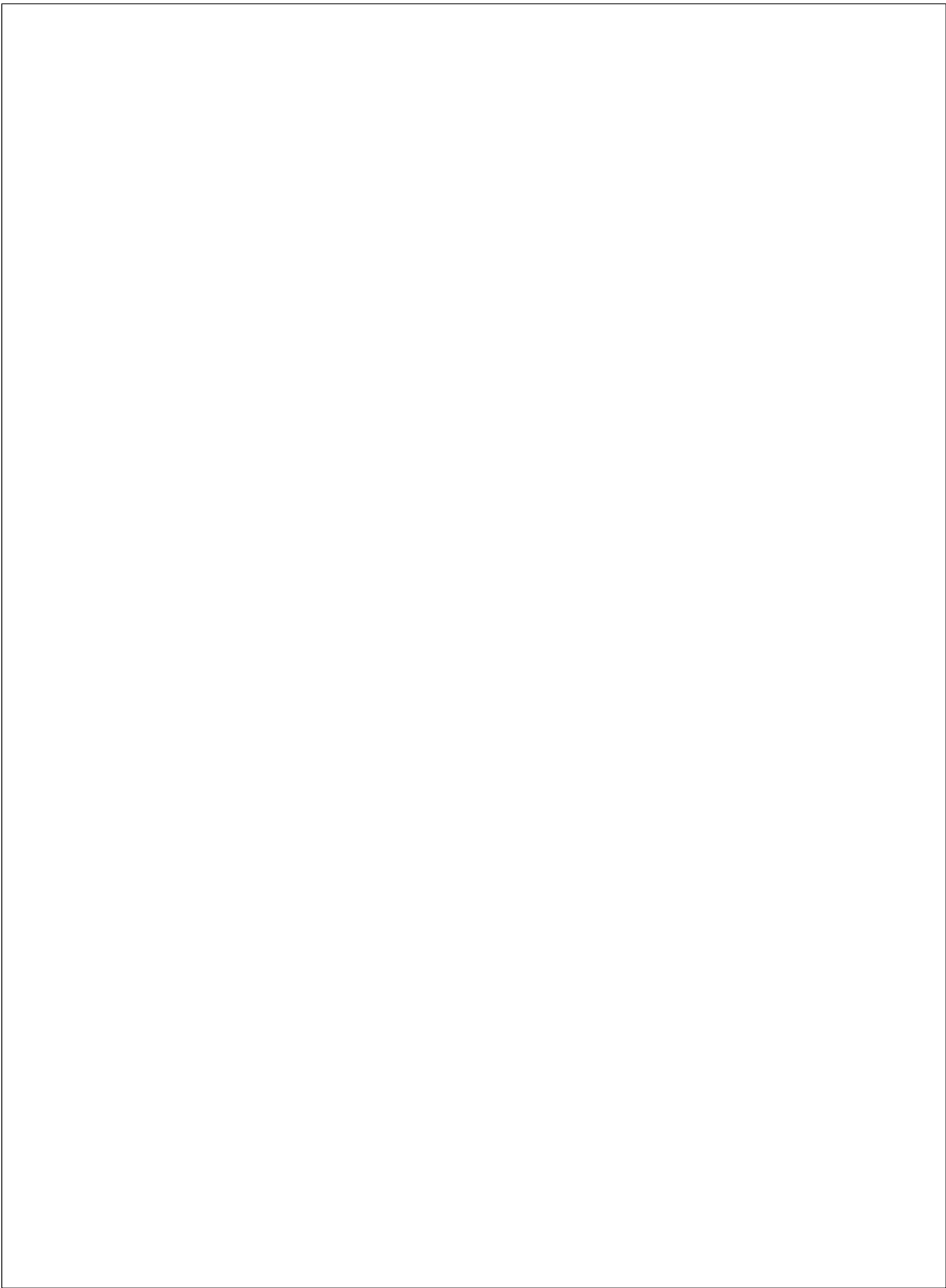
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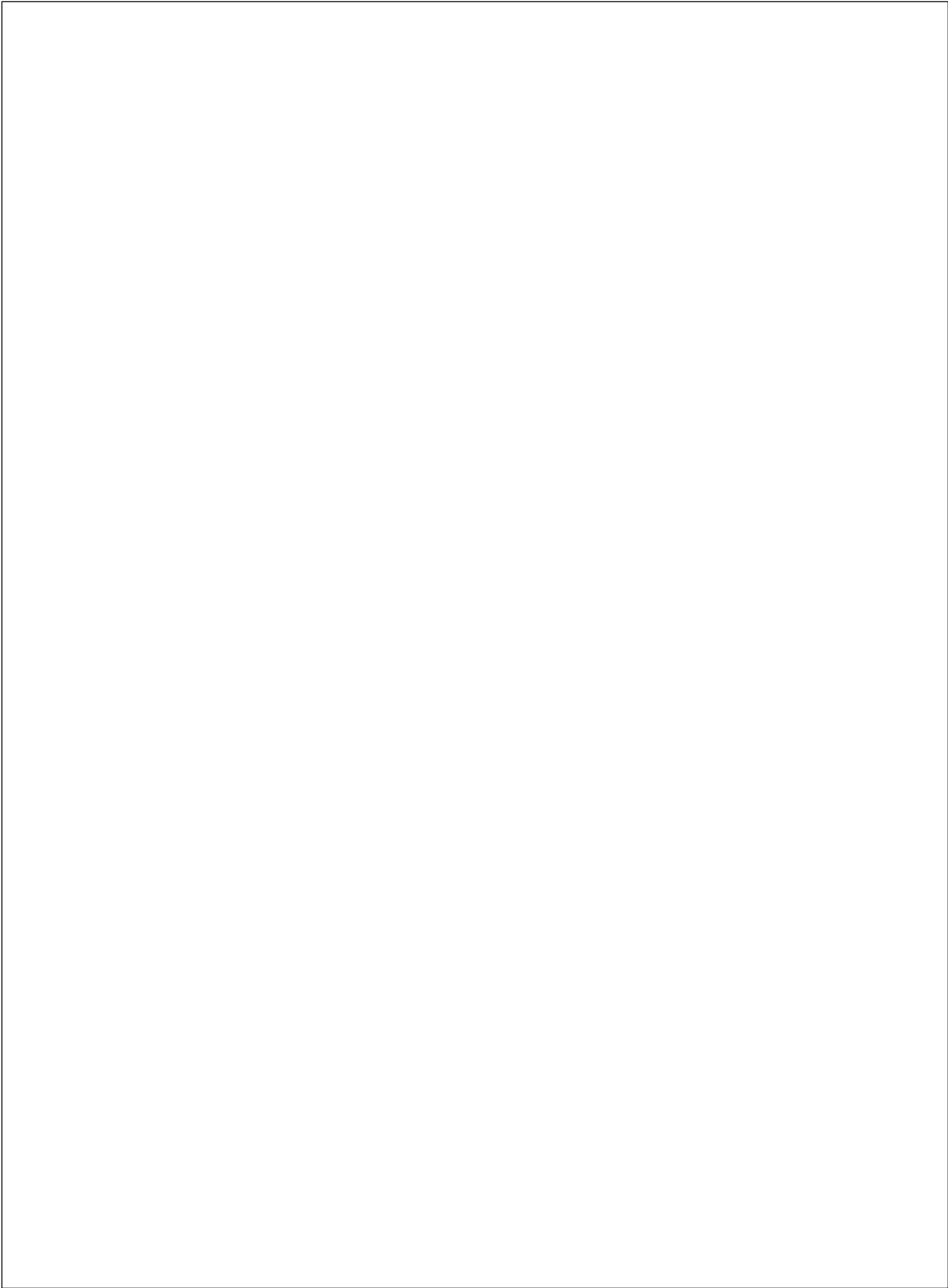
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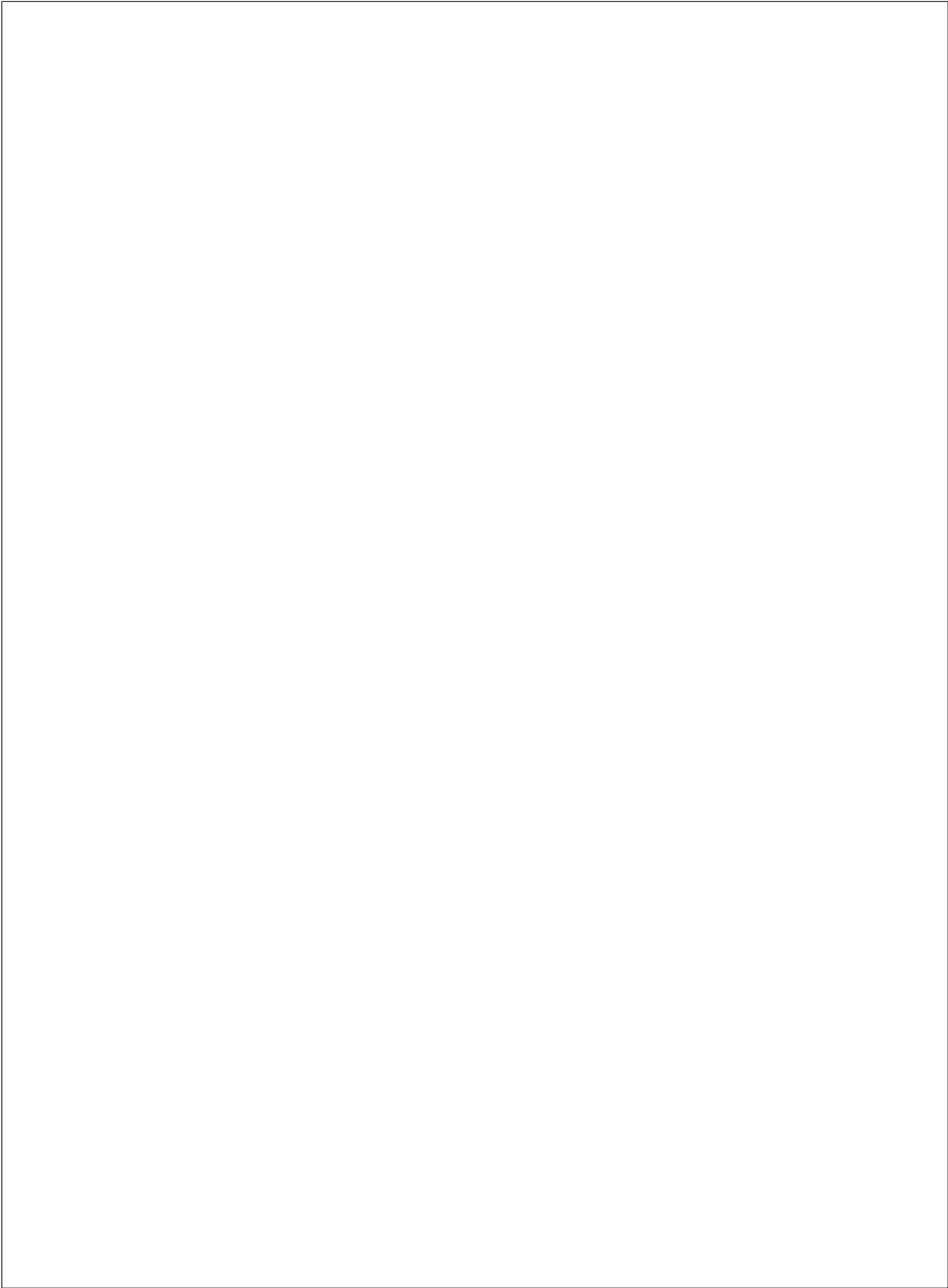
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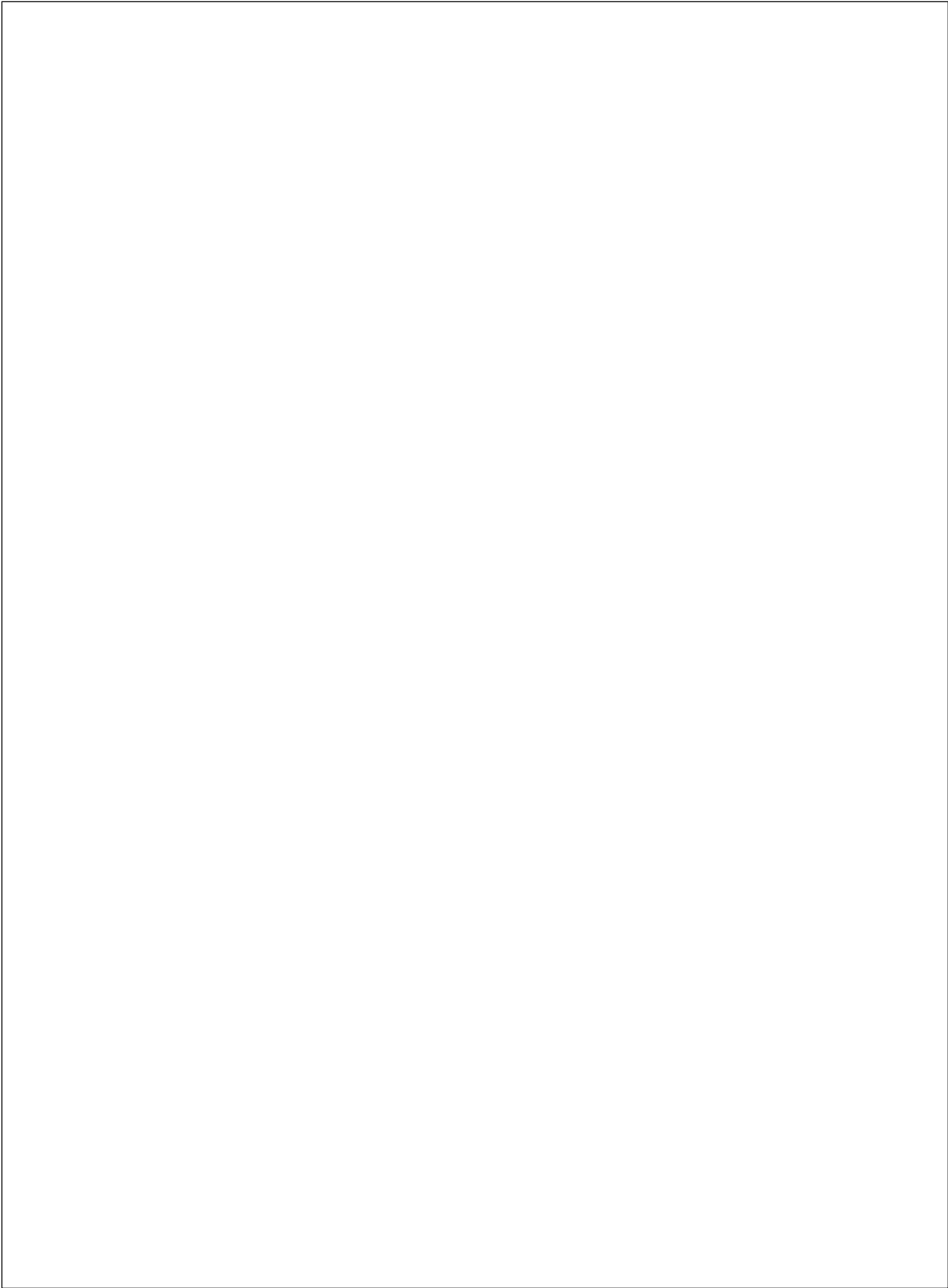
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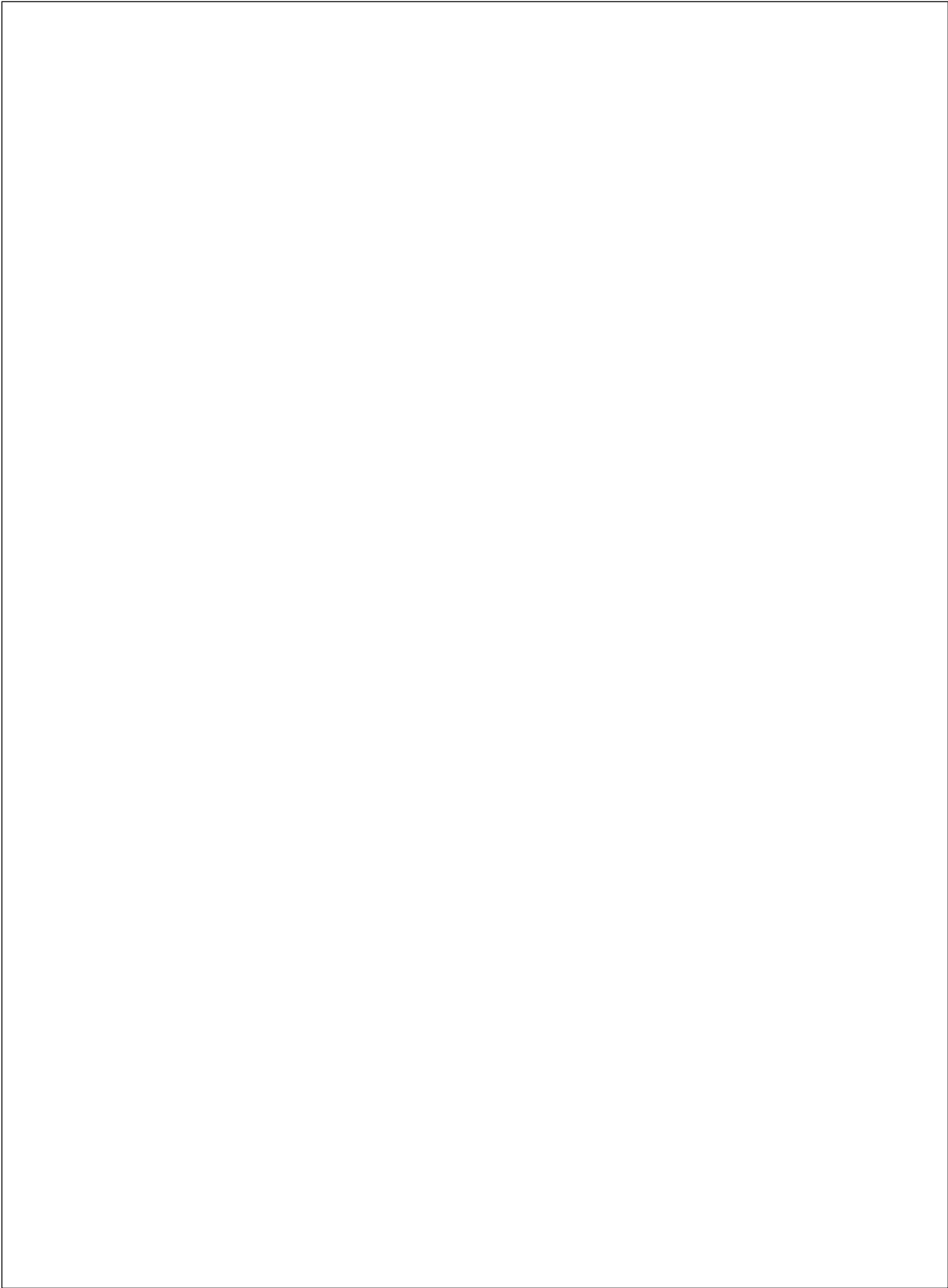
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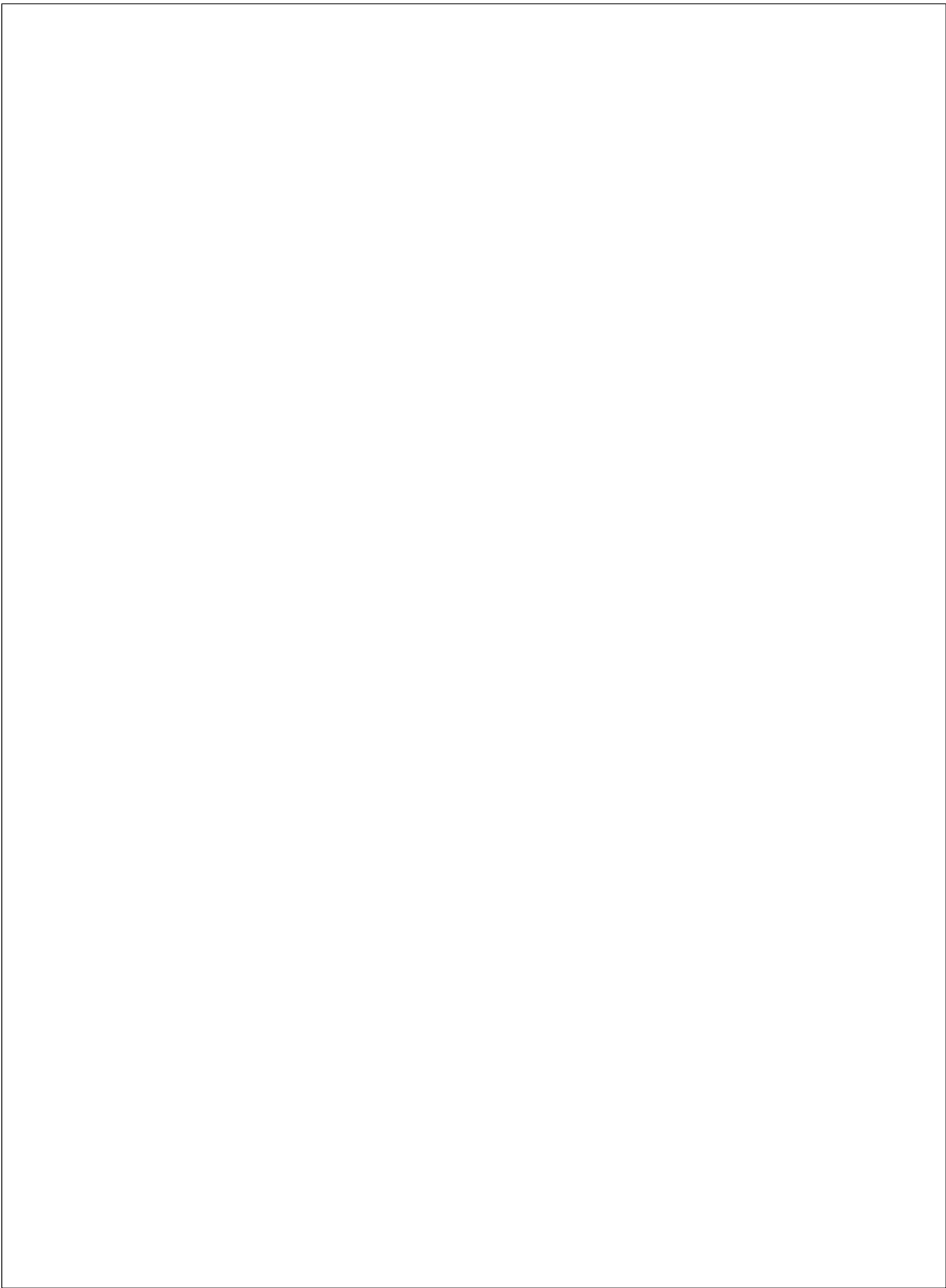
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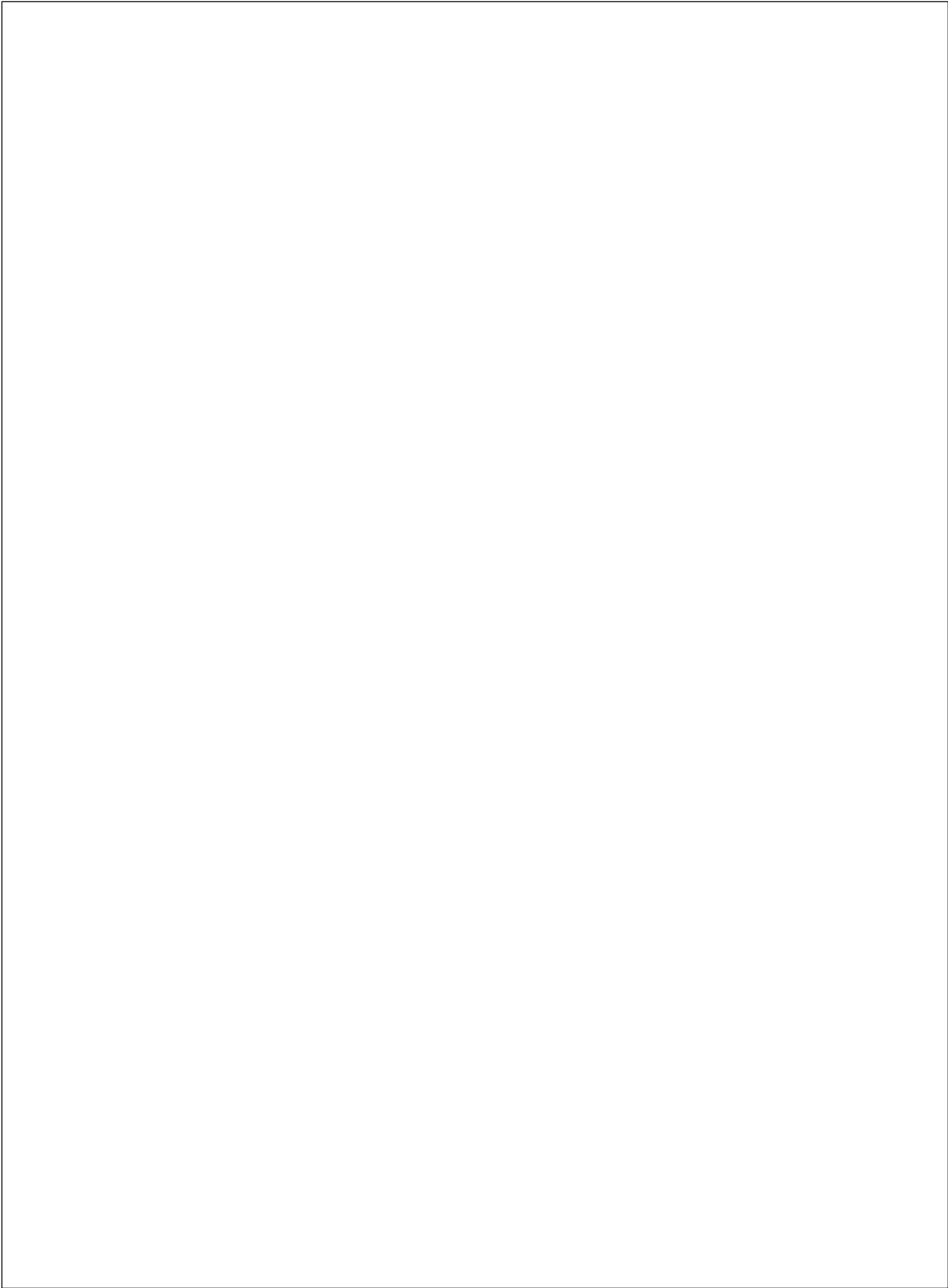
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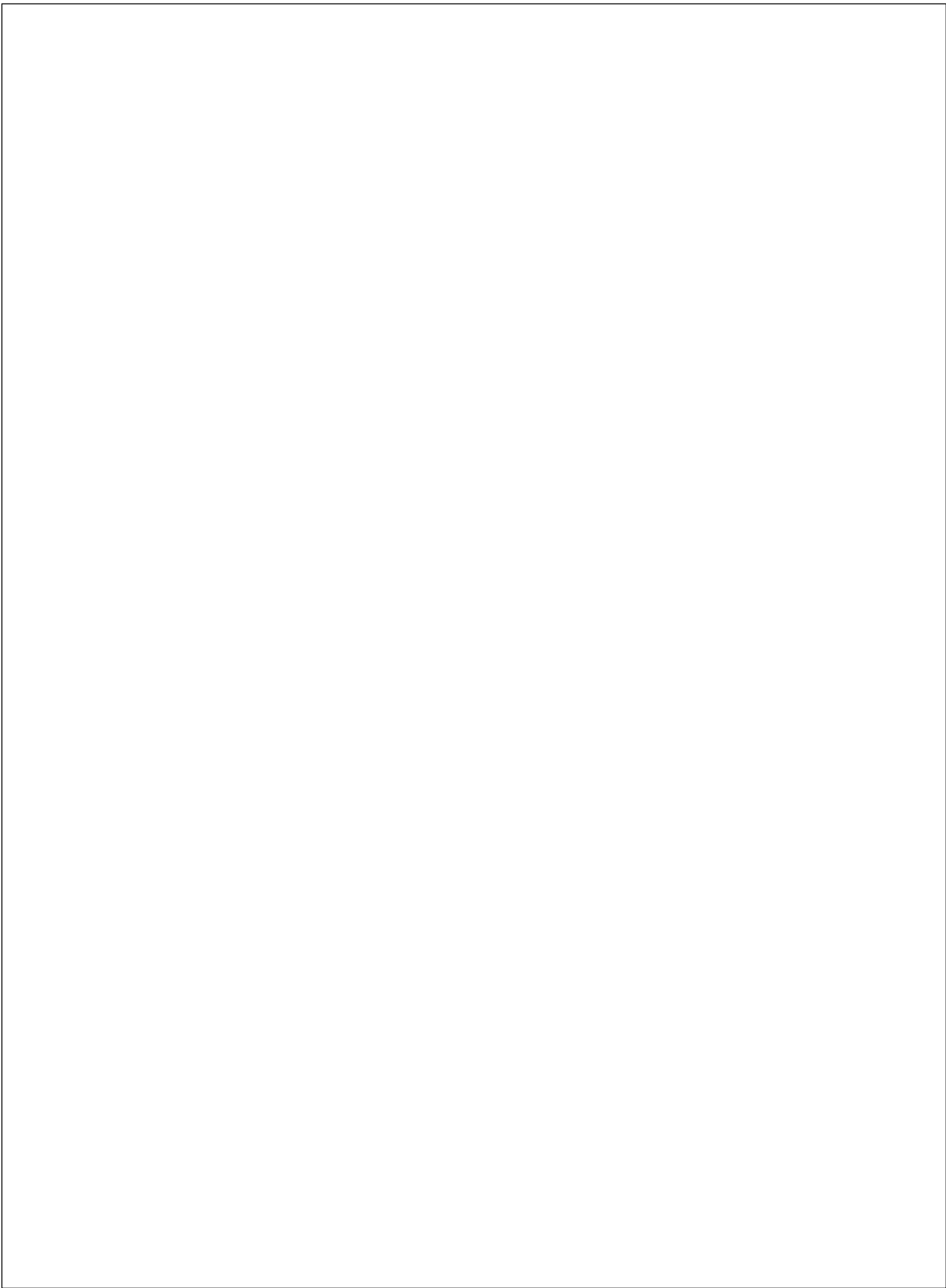
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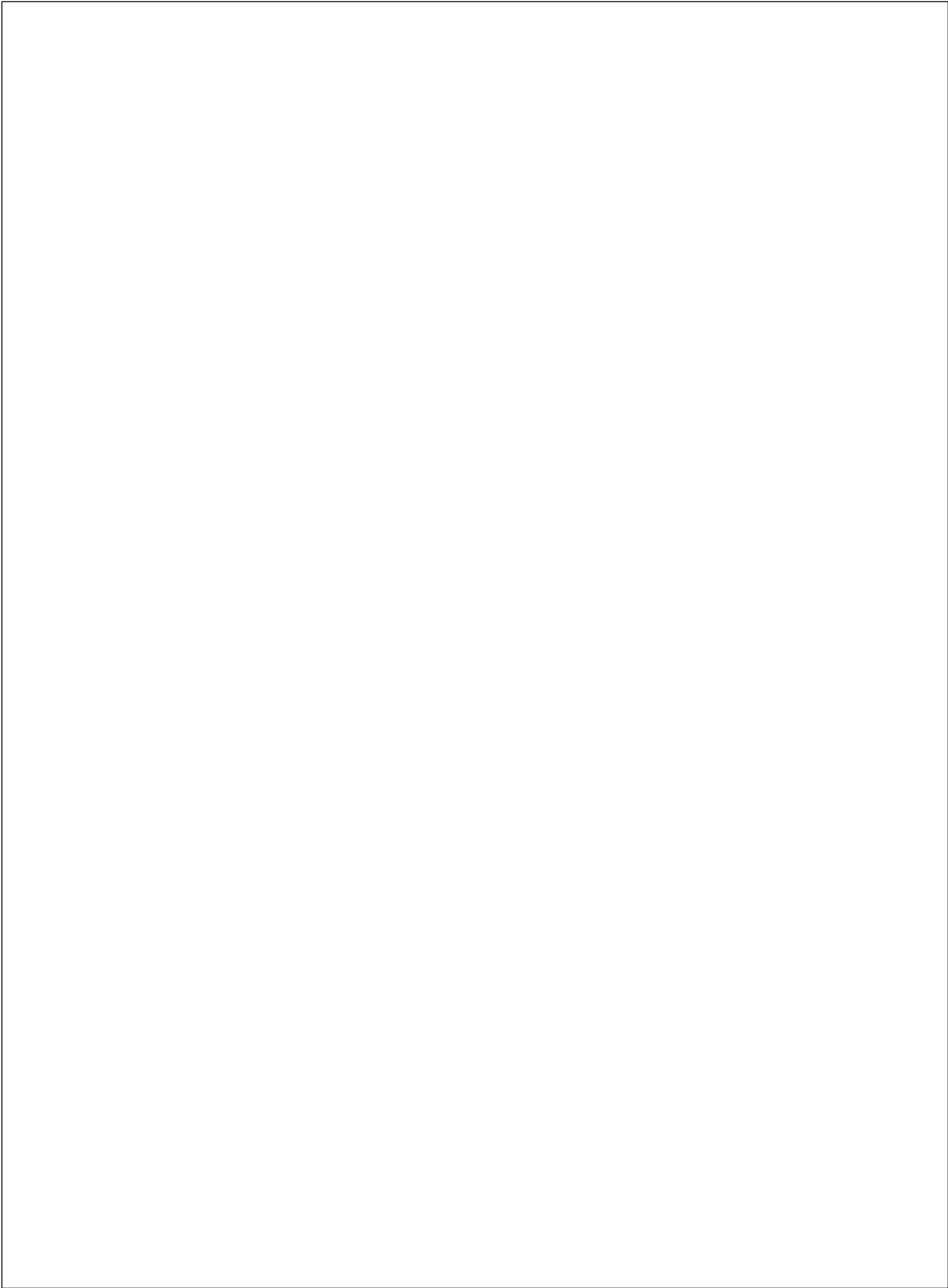
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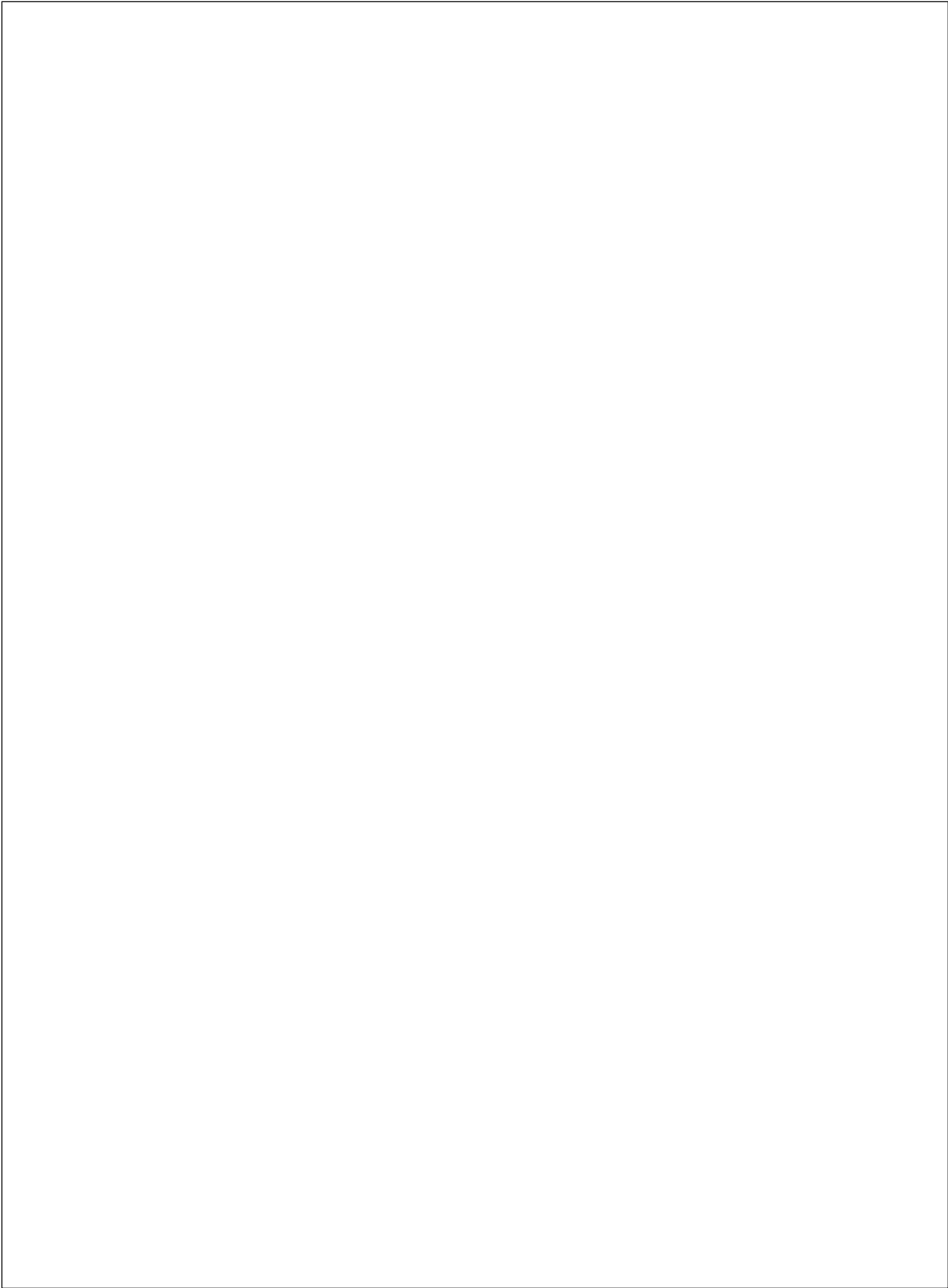
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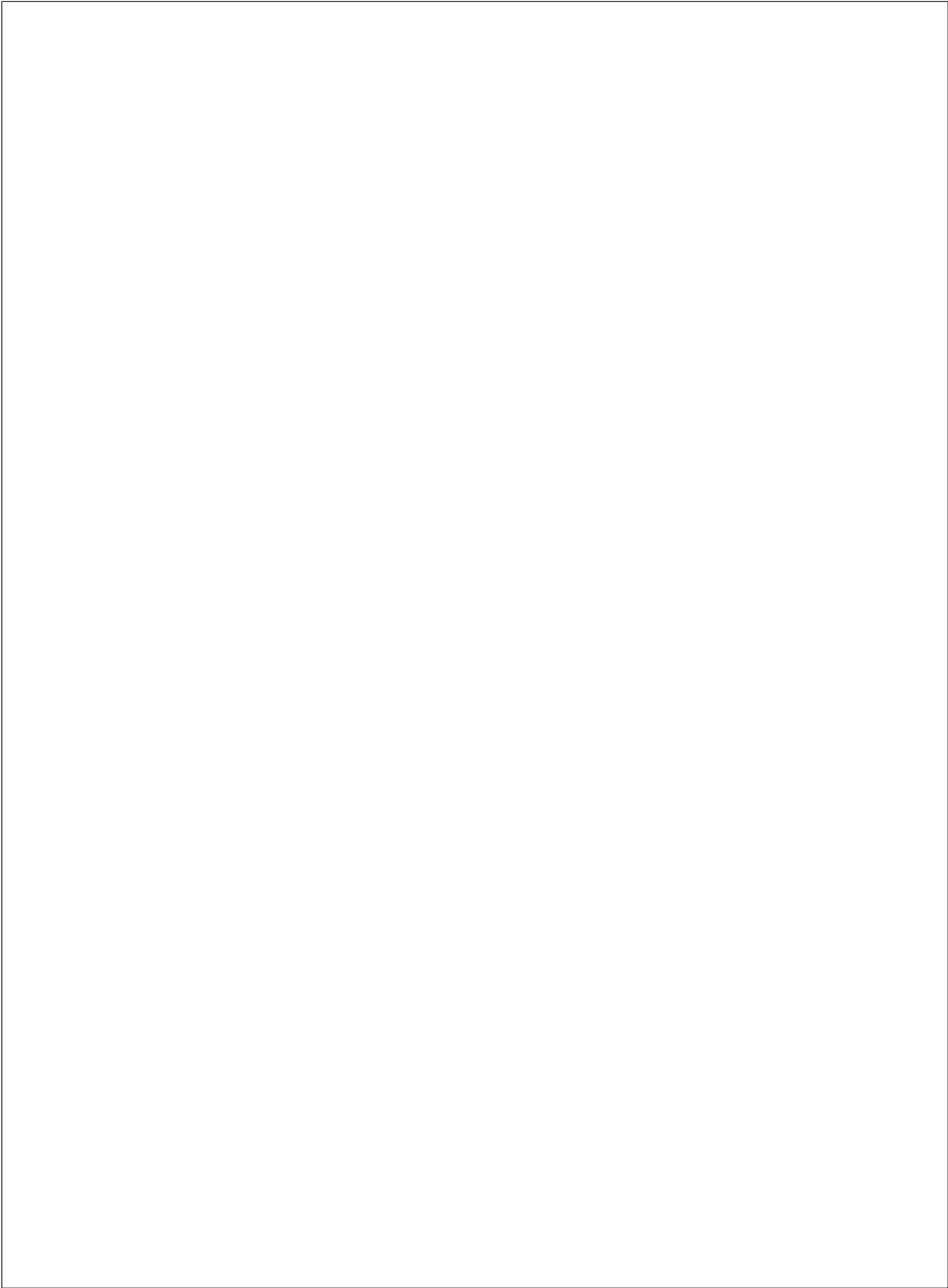
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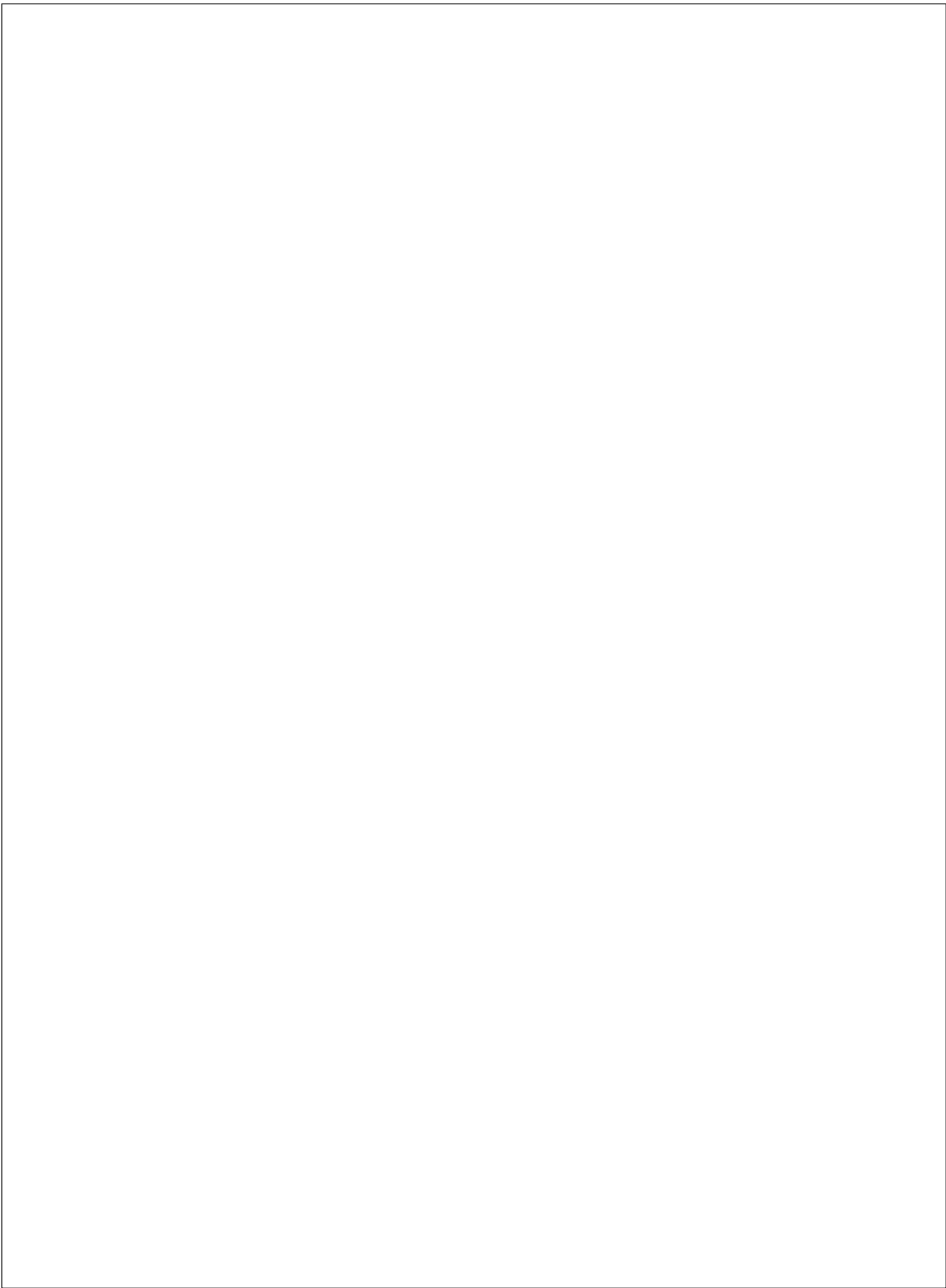
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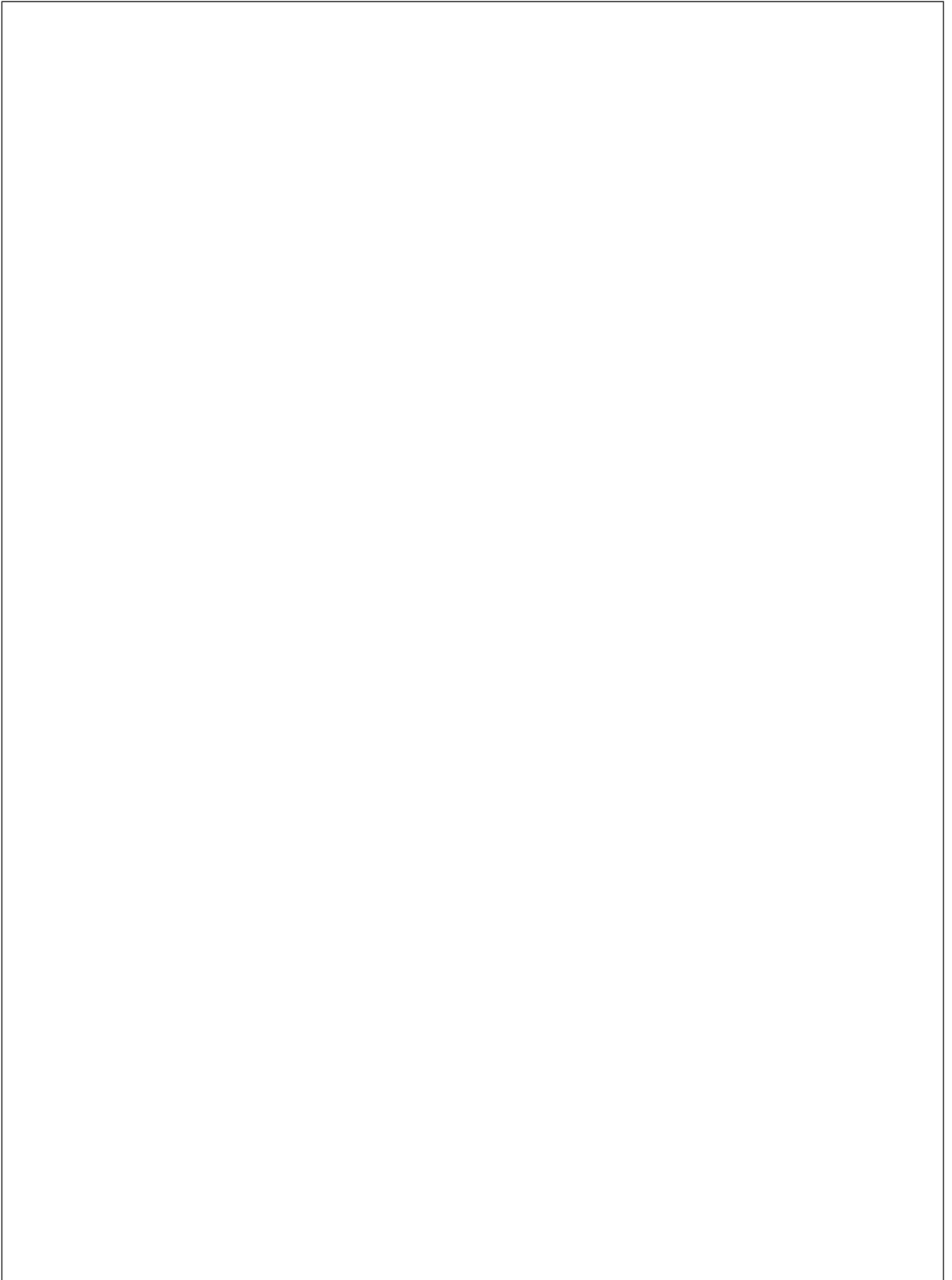
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Exhibit D

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF FLORIDA
WEST PALM BEACH DIVISION

- - - - - x
GOOD SAMARITAN MEDICAL :
CENTER, INC., et al., :
Plaintiffs, : Case No.
v. : 9:25-CV-80526-DMM
THE LEAPFROG GROUP, :
Defendant. :

- - - - - x

Wednesday, September 10, 2025

Washington, D.C.

Videotaped Deposition of:

LAUREN L. BAILEY,
called for oral examination by counsel for the
Plaintiffs, pursuant to notice, at the law offices of
Gibson Dunn & Crutcher, LLP, 1700 M Street,
Northwest, Washington, D.C. 20036-4504, before
Christina S. Hotsko, RPR, CRR, CA CSR, of Veritext
Legal Solutions, a Notary Public in and for the
District of Columbia, beginning at 9:06 a.m., when
were present on behalf of the respective parties:

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C O N T E N T S

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21 * (Exhibits attached to transcript.)

22

P R O C E E D I N G S

VIDEO TECHNICIAN: Good morning. We are going on the record at 9:06 a.m. on September 10th, 2025.

Please note that the microphones are sensitive and may pick up whispering and private conversations.

Please mute your phones at this time. Audio and video recording will continue to take place unless all parties agree to go off the record.

This is media unit 1 of the video-recorded deposition of Ms. Lauren Bailey in the matter of Good Samaritan Medical Center, Inc., et al. versus The Leapfrog Group, filed in the United States District Court for the Southern District of Florida, West Palm Beach Division, case number 9:25-cv-80526-DMM.

My name is Orson Braithwaite representing Veritext Legal Solutions, and I am the videographer.

The court reporter is Christina Hotsko

1 from the firm Veritext Legal Solutions.

2 Counsel will now state their appearances
3 and affiliations for the record, beginning with
4 the noticing attorney.

5 MR. CHUNG: Daniel Chung of Gibson Dunn &
6 Crutcher for plaintiffs.

7 MR. KUNTZ: Andrew Kuntz, Gibson Dunn &
8 Crutcher, for plaintiffs.

9 MS. BLAIR: Kim Blair, Wilson Elser, for
10 defendants -- defendant.

11 MS. WOOD: Courtney Wood, Wilson Elser,
12 for defendant Leapfrog.

13 VIDEO TECHNICIAN: Thank you. Will the
14 court reporter please swear in the witness.
15 Whereupon,

16 LAUREN L. BAILEY,
17 being first duly sworn or affirmed to testify to
18 the truth, the whole truth, and nothing but the
19 truth, was examined and testified as follows:

20 EXAMINATION BY COUNSEL FOR PLAINTIFFS

21 BY MR. CHUNG:

22 Q. Good morning. Could you please state

1 your full name for the record.

2 A. Lauren Lytle Bailey.

3 Q. Have you gone by any other names?

4 A. No.

5 Q. Okay. Do you understand that the court
6 reporter sitting next to you is taking down
7 everything that's being said today, all the
8 questions and answers?

9 A. Yes.

10 Q. Okay. So before we start, I wanted to go
11 over some basic ground rules for the deposition.
12 Most of the ground rules are just to keep our
13 court reporter sane, so let's start with number
14 one.

15 Let's try not to talk over each other.
16 So if you can wait for me to finish a question
17 before you answer, and I'll do the same; I'll
18 wait until you finish your answer before I ask
19 the next question because the court reporter
20 can't take down two people talking at the same
21 time.

22 The next ground rule is to make sure that

1 your answers are audible and they're words. So
2 try to stay away from uh-huh or huh-uhs because
3 that's hard for the court reporter to take down.

4 You understand that you're testifying
5 under oath, Ms. Bailey?

6 A. Yes.

7 Q. All right. And you understand that by
8 taking that oath you're obligated to provide
9 truthful and accurate answers to the best of your
10 ability?

11 A. Yes.

12 Q. Okay. Are you taking any medications or
13 under the influence of any substances or is there
14 any reason that makes it difficult for you to
15 understand the questions I'm asking you or really
16 to understand what's happening today?

17 A. No.

18 Q. Okay. If you don't understand one of my
19 questions, please ask me to clarify them. I want
20 to make sure that you understand the questions
21 before you answer them.

22 Do you understand that?

1 A. Yes.

2 Q. Okay. From time to time, Ms. Blair may
3 lodge objections to my questions. In those
4 instances, unless Ms. Blair instructs you not to
5 answer the question, you must answer the
6 question.

7 Do you understand that?

8 A. Yes.

9 Q. Okay. You can take a break whenever you
10 want. Just let us know. The only thing we ask
11 is that we finish a question and answer before
12 taking a break. So no questions pending when we
13 take a break.

14 Do you understand that?

15 A. Yes.

16 Q. Okay. Terrific.

17 So just some background questions.

18 Have you ever had your deposition taken
19 before?

20 A. No.

21 Q. So this is your first time?

22 A. Yes.

1 Q. All right. Did you prepare for your
2 deposition today?

3 A. Yes.

4 Q. Okay. How did you go about preparing?

5 A. Met with our counsel, Kim and Courtney --

6 Q. Okay.

7 A. -- who are here in this room.

8 Q. Approximately how many times?

9 A. About three times.

10 Q. All right. And in the course of those
11 about three times you met with your counsel, did
12 you review any documents?

13 A. Yes. We reviewed documents, e-mails,
14 Slack messages.

15 Q. Okay. Terrific.

16 Did you review any documents outside of
17 those preparation sessions with your counsel?

18 A. Not without counsel, no.

19 Q. Your educational history. Can you just
20 go over your educational history?

21 A. Sure. I graduated from Brigham Young
22 University in 2011 with a bachelor of arts in

1 communications with an emphasis in public
2 relations and a minor in psychology.

3 Q. Okay. Apart from the bachelor of arts
4 degree from BYU, do you have any certifications
5 or licenses?

6 A. No.

7 Q. No? Okay. Any kind of advanced degrees?

8 A. No.

9 Q. No? Okay.

10 Any training in your field that you
11 regularly take?

12 A. I've regularly stay up to date on trends
13 within public relations. We use online classes,
14 like, from Udemy and things like that just to
15 stay as up to date as possible.

16 Q. Okay. Now, you mentioned that, with your
17 degree, you had a specialization in public
18 relations.

19 In the course of your -- and we'll get
20 into your employment history.

21 In the course of your -- the various jobs
22 you've held, are there any -- has it continued to

1 focus on public relations?

2 A. Yes.

3 Q. Okay. Let's get into your employment
4 history.

5 So can you just kind of outline for us
6 your employment history?

7 A. Yes. So when I graduated college, I
8 moved back to Seattle and I worked for Weber
9 Shandwick, which is a large global public
10 relations firm. I was hired into the consumer
11 technology practice. Within a year, when I got a
12 promotion, I changed to the healthcare practice.
13 And I've been working in healthcare PR for 13
14 years, since then.

15 So I transferred from the Seattle office
16 in Weber Shandwick to the D.C. office. And a
17 little while later, I got a new job working
18 in-house for Children's National Hospital here in
19 D.C. as a senior media relations specialist. So
20 I managed press that came onsite at the hospital.
21 I did celebrity events, crisis communications,
22 awards, things like that. That's actually how I

1 became familiar with Leapfrog Group. Children's
2 National Hospital had been awarded the top
3 children's hospital award by Leapfrog. And
4 coincidentally, I had just finished writing a
5 press release about it, and I got an e-mail from
6 a recruiter at the Leapfrog group about a
7 communications position at Leapfrog.

8 My only contacts with Leapfrog was from
9 that one press release I had written. I thought
10 it sounded interesting, so talked to the
11 recruiter, and I learned a lot more about
12 Leapfrog and a different part of healthcare,
13 which has been really interesting. I'm not sure
14 if you're aware, but Leapfrog represents
15 employers. So we were founded 25 years ago by a
16 lot of big companies, GM, GE, Boeing, Marriott.
17 They got together and they said, we don't know
18 what the quality and transparency of the
19 healthcare in hospitals for our employees is, and
20 we want to change that. And they started
21 Leapfrog in 2000, and we've been around since
22 then.

1 So again, I've been in healthcare for a
2 long time, but that wasn't a side of it I'd
3 thought of before. So I've been with Leapfrog
4 since 2017.

5 Q. Okay. And so when you -- at the time
6 when you first heard about f Leapfrog when you
7 were at Children's Hospital, at the time, did
8 Leapfrog have the hospital safety grade program
9 at the time?

10 A. Yes.

11 Q. Okay. What was your first position or
12 title at Leapfrog?

13 A. Communications manager.

14 Q. Okay. And is that the title you hold
15 today, or has that changed?

16 A. That's changed.

17 Q. Okay. And what is -- just tell us kind
18 of the progression since approximately 2017 in
19 terms of titles?

20 A. Sure. So I started as communications
21 manager in January of 2017. In 2020, I had my
22 first baby and made a decision that fall, for

1 personal reasons, to work part time. So at that
2 point, I was senior communications advisor until
3 June of 2024, when I was promoted to director of
4 communications, which is my title today.

5 Q. Okay. So as your -- as director of
6 communications since June of 2024, what are
7 your -- generally speaking, what are your roles
8 and responsibilities?

9 A. I oversee all external communications.
10 So that is generally public relations, media
11 relations. I manage our agency of record for PR,
12 CURA Strategies. I oversee the content of our
13 website. I oversee social media. I help with
14 speeches. I am in charge of the brand overall,
15 brand guidelines, things like that.

16 Q. Okay. So in terms of -- in terms of --
17 and we're taking this from Leapfrog's website --
18 right? -- the description of your -- are you a
19 member of the executive staff at Leapfrog?

20 A. I am a member of the management team.

21 Q. Right.

22 A. But I know on our website it says

1 executive staff, and that includes our CEO, VPs
2 and directors.

3 Q. Okay. According to the website, your --
4 as director of communications, you oversee all
5 strategic communications for Leapfrog, including
6 media relations, social media, and content
7 development, which is consistent with your
8 testimony.

9 Does that include communications with
10 hospitals themselves?

11 A. No.

12 Q. Okay. Who is in charge of or who
13 oversees communications with the hospitals
14 themselves?

15 A. Missy Danforth and her team.

16 Q. Okay. Do you have any interaction with
17 hospitals in your role?

18 A. Rarely. The only time I do is if I'm
19 working on a case study or something like that.

20 Q. Okay. And why is it that from -- so why
21 is it that, as director of communications, your
22 role doesn't include communications with

1 hospitals?

2 A. We're a really small organization. So it
3 may appear that we have roles that seem different
4 than maybe in large organizations. So I am one
5 person. I have one other full-time staff member.
6 We are the communications team. So we don't have
7 it in our bandwidth.

8 And the communications we have with
9 hospitals is very technical, so it's managed on
10 the ratings team side.

11 Q. Okay. You mention that you have one
12 other person on your team.

13 Who is that?

14 A. Nate Longmore. He's the communications
15 coordinator.

16 Q. All right. And what is his role?

17 A. He is the day-to-day for posting on
18 social media. He is the day-to-day for actually
19 doing the content posting on our website. He
20 does a lot of graphic design and just other
21 communications tasks.

22 Q. Okay. And he -- is he the only employee

1 at Leapfrog that reports to you, or do you have
2 other folks reporting to you?

3 A. He's the only one who reports to me.

4 Q. And who do you report to?

5 A. Karen Jupiter.

6 Q. All right. Anyone else at Leapfrog that
7 you report to?

8 A. No.

9 Q. Okay. And Karen Jupiter, what is her
10 role?

11 A. She's VP of development.

12 Q. What forms of communication do Leapfrog
13 employees use? And I mean internally within the
14 organization.

15 A. Outlook for e-mail. And we use Slack.

16 Q. And Slack is -- for purpose of chatting
17 or instant messaging?

18 A. Yes.

19 Q. Okay. Any other messaging platforms or
20 other forms of electronic communication that
21 Leapfrog employees use?

22 A. No, not that I can think of right now.

1 Q. Okay. We're going to turn to our first
2 exhibit.

3 MR. CHUNG: We're going to mark this
4 Exhibit 1.

5 (Bailey Deposition Exhibit 1 marked for
6 identification and attached to the
7 transcript.)

8 THE WITNESS: Thank you.

9 BY MR. CHUNG:

10 Q. All right. Ms. Bailey, just take a few
11 moments to look through it. Let me know if you
12 recognize it.

13 A. Yes. I recognize it.

14 Q. All right. And what is it?

15 A. It's my performance review from
16 January of this year.

17 Q. Okay. And so this is -- by this point
18 you had spent several months as director of
19 communications, which is your current role,
20 correct?

21 A. Yes.

22 Q. Okay. And who drafted this particular

1 document?

2 A. The first part of it is a
3 self-evaluation, so I drafted that part.

4 Q. Okay. And then the -- there's a second
5 part, right?

6 A. Yes.

7 Q. And -- which starts at -- if you look at
8 the bottom -- generally throughout this
9 deposition, I'll be referring -- in terms of
10 page numbers, I'll be referring to what's called
11 a Bates number, which is typically at the bottom
12 right-hand corner.

13 So the page with Bates number Leapfrog
14 395525, is this the second half that you're
15 referring to --

16 A. Yes.

17 Q. -- of the document?

18 And the author of that part is Karen
19 Jupiter, the VP of development that you
20 referenced earlier was your supervisor; is that
21 right?

22 A. Yes.

1 Q. Okay. I want to direct your attention to
2 the page before that, Bates number Leapfrog
3 395524. If you can turn to that.

4 There are a series of bullet points at
5 the top.

6 If you look at the fourth bullet point it
7 reads, Demonstrate deep knowledge of Leapfrog's
8 programs and initiatives with extensive knowledge
9 of Leapfrog's initiatives, including the hospital
10 safety grade and Leapfrog surveys. I remain a
11 go-to resource for staff seeking guidance or
12 clarity on programs and stakeholder relations.

13 Do you see that?

14 A. Yes.

15 Q. And is that a bullet point that you,
16 yourself, drafted?

17 A. Yes.

18 Q. All right. How did you go about -- or
19 how do you go about obtaining deep knowledge of
20 Leapfrog's programs and initiatives in your role?

21 A. I've been working at Leapfrog for over
22 eight-and-a-half years. So over the time, I have

1 learned more about Leapfrog's programs. As part
2 of my job, I am in charge of talking points and
3 preparing people for media interviews and
4 speaking engagements, so I have learned a lot
5 throughout the years from a communications
6 perspective.

7 Q. Okay. Does that include any kind of
8 focused discussion or trainings around the
9 organization's programs and initiatives?

10 MS. BLAIR: Objection to form.

11 THE WITNESS: Can you restate the
12 question?

13 BY MR. CHUNG:

14 Q. Sure.

15 Does this deep knowledge come about also
16 as a result of any trainings that you received on
17 the organization's programs and initiatives?

18 A. No, not that I can recall.

19 Q. So just kind of on-the-job training is
20 how you obtained this knowledge --

21 A. Yes.

22 Q. -- would you say? All right.

1 If you look at -- we're still in the same
2 document. Turn a couple pages before that. So
3 Bates ending in 5522.

4 If you look at the second-to-last bullet
5 point there it reads, Draft and edit
6 publications, articles, and blogs. I drafted
7 nine blog posts in 2024, providing valuable
8 thought leadership and supporting Leapfrog's
9 communications efforts.

10 Does -- are those blog posts written or
11 authored under your own name? Are they
12 ghostwriting for others?

13 What's the nature of those blog posts?

14 A. The blog is part of our newsroom. So I
15 when I write, I represent Leapfrog.

16 Q. Okay. So that's -- so they're -- is your
17 name kind of attached or explicitly named as the
18 author for those blog posts?

19 A. No. There's no specific author listed.

20 Q. Okay. The last sentence there regarding
21 the comprehensive brand guide in 2024, is that a
22 written document?

1 A. It is.

2 Q. Okay. And what -- can you just describe
3 generally what it is?

4 A. It's a general brand guide. It's pretty
5 standard in communications. It needed a refresh.
6 The one that we had was in Word. We use Canva
7 for graphic design now, primarily. So we
8 moved -- I moved it into Canva and ensured that
9 we were all on the same page. We've had some new
10 programs in the last couple of years started at
11 Leapfrog that weren't part of the previous brand
12 guide. So just getting it up to date.

13 Q. What were the new programs that weren't
14 in the previous version of the brand guide?

15 A. The Recognized Leader Program, which is
16 our partnership with the American Diabetes
17 Association.

18 Q. Any other programs?

19 A. Recognizing Excellence in Diagnosis I
20 think would be the other one.

21 Q. So let's get into the hospital safety
22 grade, which I'm sure you understand is one of

1 the topics -- right? -- involved in the matter
2 here.

3 What is Leapfrog's hospital safety grade?

4 A. It's a letter grade that we assign to all
5 general acute care hospitals in the United States
6 based on patient safety. So we look at
7 accidents, errors, injuries, infections.

8 Q. And what's the purpose of assigning
9 hospitals a hospital safety grade?

10 MS. BLAIR: Objection to form.

11 THE WITNESS: We created the safety grade
12 for consumers. Healthcare ratings can be
13 confusing, and consumers generally understand a
14 letter grade, A, B, C, D, F. So it was created
15 for consumers to have a place to start when
16 they're looking at hospitals.

17 BY MR. CHUNG:

18 Q. You just testified that we created the
19 hospital safety grade for consumers.

20 Who is the "we"?

21 A. I'm a communications professional, so I'm
22 used to saying "we," as in the Leapfrog Group. I

1 was not at Leapfrog personally when the safety
2 grade began.

3 Q. Do you know who -- understanding that you
4 came onboard, you know, after the safety grade
5 was created, do you know who originated or
6 created the hospital safety grade?

7 A. Leah Binder.

8 Q. Okay. And -- who is the founder of the
9 organization, correct?

10 A. She is not the founder. She's the second
11 CEO.

12 Q. Okay. Why does Leapfrog assign a single
13 letter grade to hospitals rather than using some
14 other form of rating like a numerical rating or a
15 percentage rating?

16 MS. BLAIR: Objection. Form.

17 THE WITNESS: I can only speak to that
18 from a communications perspective. And it's just
19 that -- like I said before, that consumers
20 generally understand a letter grade.

21 BY MR. CHUNG:

22 Q. Okay. Because it just -- reminds them of

1 school, basically, it's easy to understand, kind
2 of an A to F concept; is that right?

3 A. Yes.

4 Q. Do you know how the cutoff for each
5 grade -- let's say A to B, B to C -- is decided?

6 A. No. I'm not part of those conversations.

7 Q. Okay. Does Leapfrog intend for consumers
8 to rely on the hospital safety grade when they
9 make a decision about which hospital to go to?

10 A. Our communications messaging is that it's
11 a place to start. We recommend that patients
12 look at the safety grade for general patient
13 safety and then use other ratings, including the
14 Leapfrog hospital survey, U.S. News & World
15 Report, et cetera, to look at quality as well.

16 Q. Okay. So your -- does Leapfrog
17 explicitly tell or advise consumers to look at
18 other hospital ratings other than Leapfrog in
19 making their decisions where to go for their
20 care?

21 A. Yes. It's part of my regular
22 communications messaging.

1 Q. Okay. How is it determined which
2 hospitals are assigned a hospital safety grade?

3 A. In --

4 MS. BLAIR: Objection to form. Sorry.

5 THE WITNESS: In my understanding, it's
6 all general acute care hospitals in the U.S.

7 BY MR. CHUNG:

8 Q. Okay. Are there -- let's look at another
9 one.

10 Are there certain hospitals that are not
11 assigned a safety grade?

12 A. Specialty hospitals, like children's
13 hospitals, critical access hospitals.

14 Q. You testified earlier when you were in
15 the Children's Hospital system here in D.C. that
16 they received a recognition, correct?

17 A. No, I didn't say that. I said the safety
18 grade did exist when I was at Children's
19 National, but they're a children's hospital. So
20 they did the Leapfrog hospital survey, and that
21 was the top children's hospital award.

22 Q. I see. So they submitted a -- they

1 responded to Leapfrog's survey but did not
2 receive the safety grade; is that correct?

3 A. Correct. Children's hospitals do not
4 receive a safety grade at this time.

5 Q. Okay. And how often does Leapfrog
6 release hospital safety grades?

7 A. Twice a year.

8 Q. And why is it twice in a year as opposed
9 to annually or more frequently?

10 A. We want to include the most recent data
11 possible.

12 Q. Okay. Let's move on to how Leapfrog
13 arrives at hospital safety grades for individual
14 hospitals.

15 Are you familiar with Leapfrog's scoring
16 methodology behind the safety grade?

17 A. Yes. From a communications perspective,
18 I am.

19 Q. Okay. When you say -- you've testified a
20 number of times or you've prefaced your responses
21 with "from a communications perspective."

22 What does that mean?

1 A. I am not involved in the technical
2 aspects. I'm not a data scientist. I'm a
3 communications person. So I consider myself an
4 expert in our messaging but not in the data
5 science.

6 Q. Understood. All right. But you -- at
7 least in our first exhibit, Exhibit 1, in your
8 writeup of your evaluation, you represented that
9 you have deep knowledge, right, of the -- of the
10 organization's programs and initiatives,
11 including the hospital safety grade and the
12 hospital survey; is that right?

13 A. Yes. Within my role. Yes.

14 Q. Okay. Why don't we put at least two
15 versions of the scoring methodology as exhibits.

16 MR. CHUNG: So 41 and 45.

17 (Bailey Deposition Exhibit 2 marked for
18 identification and attached to the
19 transcript.)

20 BY MR. CHUNG:

21 Q. As we're getting the exhibits,
22 Ms. Bailey, do you have any role in designing

1 Leapfrog's scoring methodology behind the safety
2 grades?

3 A. No.

4 Q. All right. How about any role in
5 implementing that scoring methodology to specific
6 hospitals?

7 A. No.

8 Q. Do you have any role with respect to the
9 scoring methodology in terms of its content?

10 A. No.

11 Q. Do you have any input on the content or
12 provide feedback on the content?

13 A. No.

14 Q. Who at Leapfrog is, number one, involved
15 in the design of the scoring methodology?

16 A. Missy Danforth and Alex Campione.

17 Q. All right. And what are their roles?

18 A. Missy Danforth is the senior
19 vice-president for healthcare ratings. Alex
20 Campione is a program analyst for the safety
21 grade.

22 MR. CHUNG: All right. So we're going to

1 mark two exhibits, Exhibits 2 and 3.

2 And Exhibit 2 will be the spring 2025
3 safety grade scoring methodology and Exhibit 3
4 will be the preceding version, the spring 2024
5 scoring methodology.

6 (Bailey Deposition Exhibit 3 marked for
7 identification and attached to the
8 transcript.)

9 BY MR. CHUNG:

10 Q. Okay. So you mentioned Ms. Danforth and
11 Ms. Campione in being involved in the design of
12 the scoring methodology.

13 Is there anyone outside -- first of all,
14 is there anyone else within Leapfrog that's
15 involved in the design of the scoring
16 methodology?

17 A. Leah Binder I'm sure has a role in it.

18 Q. Okay. Anyone --

19 A. That's all I can recall.

20 Q. I'm sorry?

21 A. That's all.

22 Q. Okay. Anyone outside of the organization

1 involved in the design of the scoring
2 methodology?

3 A. The expert panel has a role in advising
4 on the methodology.

5 Q. Okay. And that's a good segue.

6 What is the expert panel?

7 A. The expert panel is a group of experts
8 who volunteer their time to Leapfrog to advise us
9 on methodology.

10 Q. Okay. Now, from the website, Leapfrog
11 tells consumers that Leapfrog works under the
12 guidance of an expert panel to select appropriate
13 measures and develop a scoring methodology.

14 Are you familiar with that language from
15 the website?

16 A. Yes.

17 Q. Okay. Did you have a -- were you
18 involved in putting together that particular
19 language?

20 A. No. It precedes my time.

21 Q. Okay. Now, there is -- do you understand
22 that there is -- there's a panel that consists of

1 patient safety experts? Are you aware of that?

2 A. For the Leapfrog hospital survey.

3 Q. Okay. Which -- and do you -- are you
4 aware that there was a change in the scoring
5 methodology in the spring to fall of 2024?

6 Are you aware of that?

7 A. Yes.

8 Q. Okay. Were there any experts from the
9 experts panel that were involved in that
10 methodology change in 2024?

11 A. I don't talk to the expert panel, so I
12 wouldn't know.

13 Q. Okay.

14 A. I assume.

15 Q. Well, I'm not asking you whether you
16 spoke to the expert panel.

17 Are you aware whether any experts from
18 the expert panel were involved in that
19 methodology change in 2024?

20 A. I don't know. It wasn't discussed with
21 me.

22 Q. Okay. How are panelists for that expert

1 panel selected?

2 A. I don't know.

3 Q. Do you know whether any of those
4 panelists are experts in disclosures to
5 consumers?

6 A. I don't know.

7 Q. Okay. How about in website design?

8 A. I don't know.

9 Q. Digital literacy?

10 A. I don't know.

11 Q. All right. Any of those -- do you know
12 whether any of those experts on the experts panel
13 have a background or are experts in
14 communications strategy?

15 A. I don't know.

16 Q. Okay. Do those panelists have to come
17 from organizations that participate in the
18 Leapfrog survey?

19 A. No.

20 Q. All right. Are there panelists that --
21 from organizations that do participate in the
22 Leapfrog survey?

1 A. I believe so. I'm not an expert in
2 everyone who's on the panel.

3 Q. Okay. Can you think of any members of
4 the expert panel that are from organizations that
5 participate in the hospital survey?

6 A. Not that I can recall off the top of my
7 head.

8 Q. Okay. Are you aware of any instances
9 where Leapfrog ended its relationship with a
10 patient safety expert on that expert panel
11 because their organization stopped participating
12 in the hospital survey?

13 A. I don't know. It would surprise me if
14 so.

15 Q. Okay. But you're not aware of an
16 instance?

17 A. I'm not aware, no.

18 Q. You testified I think in the first or
19 second question on this topic that these expert
20 panelists volunteer their time to Leapfrog; is
21 that right?

22 A. That's my understanding. Yes.

1 Q. So are panelists on this expert panel
2 compensated at all?

3 A. Not to my knowledge.

4 Q. Are the organizations that they came from
5 compensated in connection with the expert
6 panelists being on the expert panel?

7 A. Not to my knowledge.

8 Q. All right. What role does the expert
9 panel play in developing a scoring methodology?
10 And that's the language we just went over from
11 the website.

12 What's their role in developing a scoring
13 methodology?

14 A. I only know that generally they advise on
15 measures and help ensure that the safety grade is
16 up to the latest science.

17 Q. Okay. Who at Leapfrog works with the
18 safety grade? Do you work with them at all?

19 A. I do not. It's run by Missy Danforth.

20 Q. All right. Anyone else within Leapfrog
21 that works with them?

22 A. The safety grade expert panel? Not to my

1 knowledge.

2 Q. Okay. So it's just Missy Danforth that
3 works with the safety grade expert panel --

4 MS. BLAIR: Objection to form.

5 BY MR. CHUNG:

6 Q. -- is that right?

7 A. To my knowledge.

8 Q. Okay. So what is the process by which
9 these -- the hospital safety grade experts advise
10 on the hospital safety grade?

11 A. Can you restate the question?

12 Q. Is there a process or protocol that
13 Leapfrog follows in getting advice from the
14 patient safety health -- patient safety experts
15 on the experts panel?

16 A. I don't know.

17 Q. Are there any regular meetings with these
18 experts?

19 A. I'm not aware of when they meet.

20 Q. Okay. If a patient safety -- if the
21 patient safety experts make a recommendation with
22 respect to the scoring method- -- scoring

1 methodology, is Leapfrog obligated to implement
2 that recommendation?

3 A. No.

4 Q. And why not?

5 A. The Leapfrog hospital safety grade is
6 Leapfrog's program. So Missy Danforth and Leah
7 Binder would have the final decision.

8 Q. All right. So Leapfrog could reject a --
9 theoretically could reject a recommendation by
10 the patient safety experts.

11 A. Theoretically, yes.

12 Q. Do you know whether, if there's a
13 recommendation from the patient safety experts,
14 whether that recommendation has to be unanimous
15 among the members of that particular panel?

16 A. I don't know.

17 Q. Do the safety experts patient have to
18 approve the wording of any change in the scoring
19 methodology that Leapfrog adopts?

20 A. I don't know.

21 Q. On the website it says a hospital must
22 have enough safety data available for our experts

1 to issue them a letter grade.

2 So is it correct that the patient safety
3 experts themselves issue the letter grades?

4 MS. BLAIR: Objection to form.

5 THE WITNESS: I don't know. I'm not
6 involved in the assigning of safety grades.

7 BY MR. CHUNG:

8 Q. Does that -- just reading again, A
9 hospital must have enough safety data available
10 for experts to issue them a letter grade.

11 Is that accurate?

12 MS. BLAIR: Objection to form.

13 THE WITNESS: I think it's accurate
14 because it says "our experts." I mean, that
15 could include the expert panel; that could
16 include experts within Leapfrog.

17 BY MR. CHUNG:

18 Q. Which experts within Leapfrog are you
19 referring to?

20 MS. BLAIR: Objection to form as to the
21 document you're reading from.

22 THE WITNESS: Missy Danforth and Leah

1 Binder are experts.

2 BY MR. CHUNG:

3 Q. Are the patient safety experts involved
4 in the disclosures on Leapfrog's websites?

5 A. Can you repeat the question?

6 Q. Are the patient safety experts involved
7 in the disclosures on Leapfrog's websites?

8 A. I don't know. I don't talk to the expert
9 panel.

10 Q. So no -- just to be clear, you have no
11 communication whatsoever with members of the
12 expert panel?

13 A. Not that I can recall unless there's a
14 specific media opportunity or -- but I can't
15 recall something right now.

16 Q. Let's go to the next document.

17 MR. CHUNG: Tab 31.

18 THE WITNESS: Is that Exhibit 2?

19 MR. CHUNG: Oh, no, we're going to put
20 another document in front of you.

21 THE WITNESS: Okay. We don't open these.

22 MR. CHUNG: Yeah. We may go back to

1 those later.

2 THE WITNESS: Okay. I'll just put them
3 over here.

4 MR. CHUNG: So this will be Exhibit 4.
5 (Bailey Deposition Exhibit 4 marked for
6 identification and attached to the
7 transcript.)

8 BY MR. CHUNG:

9 Q. Ms. Binder [sic], we're putting Exhibit 4
10 in front of you. It's a series of Slack
11 messages.

12 A. Okay.

13 Q. Take a few moments to take a look at it.
14 Let me know when you recognize it.

15 Oh, Bailey, I'm sorry.

16 All right. So Ms. Bailey, these are
17 Slack Messages from May 1 of this year between
18 you and Ms. Jupiter.

19 What are you working on with Ms. Jupiter
20 in the course of this Slack conversation?

21 A. A lot of different things.

22 Q. Let's go through -- just let me know --

1 if you can tell us what you're working on.

2 A. We discussed IPPS, which is a proposed
3 rule with CMS. We provide comment letters.

4 We discussed some materials with our
5 American Diabetes Association program.

6 We discussed a contract for a
7 photographer.

8 Q. Is there also a discussion about a
9 followup statement that Ms. Binder is going to
10 make on the -- on this lawsuit?

11 A. Do you know what page you're looking at?

12 Q. Yeah. Why don't I focus you on Leapfrog
13 9912.

14 A. 9912? Okay. The last page?

15 Q. That's right. Yeah.

16 A. Yes. A statement for our website.

17 Q. Okay. Now, at about 6:12 p.m. -- just
18 looking at the markers on the right side -- you
19 write, I think we should link to results for each
20 hospital too so people can see their fully
21 transparent grades.

22 What are you referring to here?

1 A. From what I remember, the statement
2 that's currently on our website links to each of
3 the five plaintiff hospitals and their safety
4 grades.

5 Q. All right. And -- so what did you mean
6 by "so people can see fully transparent grades"?

7 A. The Leapfrog hospital safety grade is
8 fully transparent. Leapfrog stands for
9 transparency, so you'll probably see me saying
10 transparent a lot because we focus on being
11 transparent.

12 Q. So that's kind of -- that's language that
13 you often use from kind of a communications
14 perspective; is that right?

15 A. Yes.

16 Q. Then Ms. Jupiter writes, Not sure we want
17 to link expert panel, followed by we don't really
18 want them contacted.

19 Why didn't Ms. Jupiter want the expert
20 panel to be contacted in this context?

21 MS. BLAIR: Objection to form.

22 THE WITNESS: I don't know. You can see

1 in here that I was going to link to it. I don't
2 remember -- I don't know what she meant.

3 BY MR. CHUNG:

4 Q. All right. And then you write in
5 response, like you just testified, It's on our
6 website so I think it's okay. It is a point we
7 make a lot that we have the national expert
8 panel.

9 What does that mean? Why is the national
10 expert panel appointment -- a point that Leapfrog
11 makes a lot?

12 A. It's part of our standard messaging.

13 Q. Okay. And that standard messaging is
14 what, as relevant to this exchange here?

15 A. That we have a national expert panel
16 that's part of developing the safety grade
17 methodology.

18 Q. Again, just going back to what
19 Ms. Jupiter wrote here kind of in the middle of
20 your conversation, Not sure we want to link
21 expert panel. We don't really want them
22 contacted.

1 Was there a concern between you and
2 Ms. Bailey and others at Leapfrog about members
3 of that expert panel being contacted by the
4 press?

5 A. I'm Ms. Bailey.

6 Q. Ms. Bailey -- I'm sorry. Ms. Bailey.
7 We're going to do that again.

8 A. Okay.

9 Q. Was there a concern between you and
10 Ms. Jupiter and others at Leapfrog about the
11 press contacting members of the expert panel?

12 A. I don't know what Karen meant by this.

13 Q. All right. I'm not asking what
14 Ms. Jupiter meant by this.

15 But did you have any concerns about
16 members of the expert panel being contacted by
17 the press?

18 A. No.

19 Q. How about other members of Leapfrog? Did
20 Ms. Binder have any concerns about the expert
21 panel being contacted by the press?

22 A. I didn't discuss it with her.

1 Q. Okay. How about with Ms. Danforth?

2 A. I didn't discuss it with her.

3 Q. Ms. Campione?

4 A. I don't discuss that kind of thing with
5 Alex, no.

6 Q. Okay. Let's move on to the hospital
7 survey.

8 What is Leapfrog's hospital survey?

9 A. It is a voluntary survey that is annual
10 that all hospitals can choose to report to
11 Leapfrog on. And it measures quality and safety.

12 Q. Do you have any role in designing the
13 hospital survey?

14 A. No.

15 Q. Do you have any input on the content of
16 the hospital survey?

17 A. No.

18 Q. Have you ever reviewed the hospital
19 survey?

20 A. I proofread it.

21 Q. All right. Proofread it. So you have --
22 so what's the purpose of proofreading it?

1 A. Catch any typos or anything the ratings
2 team may have missed as far as grammar.

3 Q. All right. So it's just a hard
4 proofread. Doesn't have anything to do with the
5 content?

6 A. Correct.

7 Q. All right. Is there anyone -- so who
8 within Leapfrog is involved in designing the
9 hospital survey?

10 A. Missy Danforth and Katie Stewart
11 primarily.

12 Q. And what's Ms. Stewart's role?

13 A. She is the director of healthcare ratings
14 for Leapfrog.

15 Q. Is there anyone outside of Leapfrog
16 that's involved in the design of the hospital
17 survey?

18 A. We have an expert panel for every section
19 of the survey.

20 Q. And when you say every section of the
21 survey, what do you mean by that?

22 A. So some examples are medication safety,

1 maternity care. We have a patient and family
2 expert panel.

3 Q. Okay. And so each of those areas has a
4 corresponding section in the survey; is that
5 right?

6 A. Yes.

7 Q. All right. And what is the role of each
8 of those specific expert panels with respect to
9 their respective sections in the hospital survey?

10 A. It's very similar to the role with the
11 safety grade. They advise on measures and
12 methodology, share research that they're working
13 on, can stay up to the latest science.

14 Q. Okay. Do they -- do members of the
15 expert panels have to approve final versions of
16 the Hospital -- of the survey before it's issued?

17 A. I don't know.

18 Q. All right. Do the expert panels make
19 recommendations with respect to their respective
20 sections in the hospital survey?

21 A. As far as I understand, yes, that's their
22 role.

1 Q. All right. Is Leapfrog obligated to
2 adopt those recommendations?

3 A. No, not to my understanding.

4 Q. Are you aware of any instances when a
5 recommendation by the expert panel on the
6 hospital survey was not adopted by Leapfrog?

7 A. Not that I can recall.

8 Q. Okay. Do you have any role in reviewing
9 hospitals' responses to the survey?

10 A. No.

11 Q. Have you ever done that, reviewed any
12 responses to the hospital survey?

13 A. No.

14 Q. Who at Leapfrog is responsible for
15 reviewing those responses?

16 A. Missy Danforth's team. They work
17 together on it.

18 Q. All right. Now, Missy Danforth's team.
19 How many -- approximately how many members of the
20 team are there?

21 A. Eight to ten.

22 Q. And is it their responsibility to review

1 the many responses that the organization gets the
2 survey?

3 A. Yes.

4 MR. CHUNG: Let's go to the next
5 document.

6 So this will be Exhibit 5.

7 (Bailey Deposition Exhibit 5 marked for
8 identification and attached to the
9 transcript.)

10 BY MR. CHUNG:

11 Q. Now, Ms. Bailey, I've put in front of you
12 the hospital survey that's taken from the
13 website, a version taken from the website.

14 Do you recognize it?

15 A. Yes.

16 Q. Okay. Now, you see that the survey is
17 approximately 350 pages long.

18 Do you see that?

19 A. Yes.

20 Q. Okay. Have you -- do you know whether
21 Leapfrog has conducted any studies or collected
22 data on how long it takes hospitals to respond to

1 the survey?

2 A. I don't believe we've done anything
3 formally.

4 Q. Okay.

5 A. No.

6 Q. Do you know generally -- and this can be
7 a range -- how long it takes for hospitals to
8 respond or fill out the survey?

9 A. We've heard 40 to 80 hours.

10 Q. Okay. Where is that from? Where do you
11 hear that from?

12 A. The ratings team told me that, just
13 talking to hospitals I believe anecdotally.

14 Q. Okay. Are you aware of any concerns that
15 hospitals have raised about the amount of time or
16 resources it takes to respond to the survey?

17 A. Any hospital I talk to, they prioritize
18 Leapfrog and patient safety. So to them, it's no
19 time. To them, they spend a lot more time on
20 other ratings than they do on Leapfrog and don't
21 see it as a burden, so I haven't personally heard
22 complaints.

1 Q. Okay. You testified earlier that you
2 don't speak to hospitals.

3 So what's the nature of the
4 communications you're referring to here?

5 A. I testified earlier that I do case
6 studies. So that's the only specific instance I
7 can think of when I would talk to a hospital.

8 Q. Okay. And what -- did you conduct a case
9 study of how long hospitals or what -- kind of
10 the extent of resources hospitals have to
11 undertake to complete these surveys?

12 A. No.

13 Q. So what was the context in which you
14 got -- in which you heard from hospitals that --
15 about how long it takes for them to fill out this
16 survey?

17 A. When I'm preparing for a case study, we
18 usually do an interview. And I do a
19 pre-interview, which is very standard in
20 communications, where I just try to understand,
21 you know, their role with Leapfrog. You know,
22 what is your stance on Leapfrog? How long have

1 you done the survey? What parts of it are most
2 valuable to your organization?

3 And that helps me, as a communications
4 person, come up with the questions for the formal
5 interview. So we always ask them about the
6 survey as part of that.

7 Q. Okay. So apart from the conversations
8 you've had with hospitals, have you heard of any
9 concerns or complaints raised by hospitals about
10 the amount of time or resources it takes to
11 respond to the survey?

12 A. Not personally.

13 Q. Okay. Have you just -- from colleagues,
14 have you heard about -- heard a complaint or
15 concern along these lines?

16 A. Not that I can recall.

17 Q. Okay. Never heard a concern about -- or
18 a complaint about how long it takes?

19 A. Not particularly from hospital. I don't
20 work on the help desk, so I wouldn't -- I
21 wouldn't know.

22 Q. Okay. This is not -- this sort of issue

1 is not -- you mentioned the help desk. What is
2 that?

3 A. The help desk is in-house for Leapfrog.
4 We use nDesk. So hospitals and ambulatory
5 surgery centers, if they have questions, they
6 reach out to our staff through the help desk and
7 they get back to them.

8 Q. Okay. Have -- so putting aside kind of
9 how much time it takes to fill out or respond to
10 the survey, have any of the hospitals that you've
11 spoken to expressed concerns or complaint about
12 the content or the fairness of the hospital
13 survey?

14 A. No.

15 Q. All right. How about apart from --
16 putting aside your personal communications with
17 hospitals -- right? -- have you heard from
18 colleagues about hospitals expressing concerns
19 about the fairness of the hospital survey?

20 A. Not that I can recall.

21 Q. Okay. So is it -- have you heard -- in
22 your conversations with hospitals, have the

1 hospitals expressed anything kind of negative or
2 even ambivalent about the hospital survey?

3 A. Not that I can recall.

4 Q. Okay. So it's all been positive about
5 the hospital survey; is that right?

6 A. From a communications perspective? Yes.
7 Because we focus on hospitals that do the survey
8 for the case studies.

9 Q. Okay. Can you explain that? I'm not
10 quite sure I understand.

11 A. So as I said before, I do case studies
12 with hospitals occasionally. That's the only
13 time I could think of that I would have a direct
14 conversation with a hospital and would
15 potentially get feedback from them.

16 But we do case studies on hospitals that
17 complete the survey.

18 Q. Understood. So is it -- so is it fair to
19 say that, because you conduct case studies of
20 hospitals that complete the survey, that the
21 feedback you receive from those hospitals is
22 positive?

1 A. Yes.

2 Q. All right. Have you conducted any case
3 studies of hospitals that did not fill out the
4 survey?

5 A. Not that I can recall.

6 Q. Okay. Why not?

7 A. My job is to promote Leapfrog as a
8 communications person, so it -- it would be --
9 it's beneficial to do case studies on hospitals
10 that do the survey.

11 Q. So for these case studies, because it's
12 from a -- for a communications purpose, is the
13 goal with these case studies to basically
14 highlight or showcase hospitals that completed
15 the survey?

16 A. Yes. And use the survey to spur
17 change --

18 Q. All right.

19 A. -- and use it for benchmarking.

20 Q. And are these hospitals that received an
21 A for their hospital safety grade?

22 A. They are different programs. The

1 Leapfrog hospital survey and the Leapfrog
2 hospital safety grade are different.

3 So we've done case studies on children's
4 hospitals that don't get a safety grade.

5 We've done case studies on an hospital
6 that had an F on the safety grade and now has an
7 A on the safety grade.

8 So we've had a lot of different types of
9 stories.

10 Q. How often does Leapfrog make changes to
11 the hospital survey?

12 A. I know it's reviewed regularly and
13 changes are made just when necessary. Every year
14 we put out proposed changes if there are any
15 changes that are put out for public comment.

16 Q. So that's every year because the hospital
17 survey is issued annually, correct?

18 A. Yes. It is annual.

19 Q. Can you tell us about -- can you describe
20 for us step by step how that public comment
21 process works?

22 A. I'm not intimately involved in it, but

1 from my understanding, we -- my team posts it on
2 the website. And any public comments go through
3 the help desk. So again, Missy Danforth's team
4 reviews the public comments.

5 Q. All right. So it is -- public comment is
6 invited -- is it just on the website itself, or
7 are there other avenues for inviting public
8 comment?

9 A. From my understanding, it's through the
10 help desk.

11 Q. Okay. And who monitors that help desk
12 again?

13 A. Missy Danforth's team. They all do.

14 Q. Are any -- are any posts or feedback on
15 the help desk ever elevated to you for
16 communications purposes?

17 A. Sometimes reporters will reach out on the
18 help desk just because they're in the wrong
19 place, so they get sent to me.

20 Q. Do you ever -- have you ever monitored
21 the help desk because sometimes reporters or
22 members of the media placed their questions on

1 the help desk?

2 A. No. They'll just forward it to me and I
3 e-mail the reporter.

4 Q. Okay. Are you familiar with Leapfrog's
5 imputation model in its scoring methodology?

6 A. Yes. Generally.

7 Q. All right. And what is it, generally?

8 A. If we have a situation where we don't
9 have the data, we use an imputation model to
10 assign scores.

11 Q. All right. And how long has Leapfrog
12 used an imputation model in its scoring
13 methodology?

14 A. I believe at least for as long as I've
15 been at Leapfrog.

16 Q. Okay. And just to be clear, this is the
17 scoring methodology behind the hospital safety
18 grades, correct?

19 A. Correct.

20 Q. Why did -- so let's -- actually, let's
21 move on to the next document.

22 MR. CHUNG: This will be Exhibit 6.

1 (Bailey Deposition Exhibit 6 marked for
2 identification and attached to the
3 transcript.)

4 BY MR. CHUNG:

5 Q. So we've put Exhibit 6 in front of you,
6 Ms. Bailey. It's an e-mail exchange from
7 October 24, 2024.

8 Just let us know when you've had a chance
9 to look at it.

10 Have you had a chance to review it?

11 A. Yes.

12 Q. All right. What's being discussed here?

13 A. The imputation messaging. So anytime
14 there is a change in the methodology, we try to
15 be as transparent and definitely as accurate as
16 possible, so we update the frequently asked
17 questions on our website, as well as spokesperson
18 talking points, things like that.

19 Q. Okay. So you write here to Ms. Danforth
20 that you're working on synthesizing for FAQs,
21 messaging, et cetera.

22 So in terms of this imputation messaging,

1 where does it show up? You touched on it
2 earlier, but can you kind of list for us where
3 this messaging is incorporated?

4 A. Off the top of my head, it's in our
5 FAQs -- or at the time of this e-mail, like when
6 the fall 2024 safety grade was issued, it was in
7 our FAQs which we give to every press member that
8 we do any outreach to. It's linked at least
9 twice on our website.

10 That's all I can think -- it's an
11 internal talking points.

12 Q. Okay. In the first bullet point you
13 wrote, for purposes of this messaging, Annually,
14 Leapfrog's expert panel and researches at John
15 Hopkins Medicine review the scoring methodology
16 and have recommended modifying the current
17 imputation method used for filling in missing
18 data from hospitals that did not complete the
19 latest Leapfrog survey.

20 So is it correct that Leapfrog's expert
21 panel that we discussed earlier were the ones
22 that recommended adopting an imputation model?

1 A. From my understanding, yes.

2 Q. What is that understanding based on?

3 A. This messaging that I wrote was based on
4 a much longer writeup that Missy and her team put
5 together. So often my job as communications
6 manager is to take more complicated data science
7 type language and to make it make sense to the
8 lay public.

9 So that's what I was doing in this e-mail
10 exchange.

11 Q. Okay. So in that longer writeup that
12 Ms. Danforth and her team put together,
13 Ms. Danforth was -- and that team were
14 representing that the expert panel themselves
15 were recommending -- were recommending this
16 change in the imputation methodology?

17 A. Yes. That's my understanding.

18 Q. Did you -- was that consistent with your
19 own understanding, that it was the expert panel
20 that recommended this change in the imputation
21 methodology?

22 A. Yes.

1 Q. And what is your personal understanding
2 based on?

3 A. Being at Leapfrog for as long as I have
4 been. I generally know that the expert panel --
5 like, what their role is.

6 Q. All right. And so in this particular
7 instance with the change in the scoring
8 methodology, you -- your understanding was that
9 the expert panelists recommended this change just
10 based on your general understanding of their
11 role?

12 A. Yes.

13 Q. Okay. It also says here, just looking at
14 the same sentence, Annually, Leapfrog's expert
15 panel and researchers at John Hopkins Medicine
16 review the scoring methodology.

17 Is that annual review that's represented
18 here, is it consistent with your personal
19 understanding?

20 A. Yes.

21 Q. Okay. It also mentions that it's not
22 just the expert panel but researchers at John

1 Hopkins Medicine reviewed the scoring methodology
2 and made the recommendation here.

3 In this instance, do you have an
4 understanding as to why researchers at John
5 Hopkins Medicine were involved as well, in
6 addition to the members of the expert panel?

7 A. John Hopkins Medicine, the Armstrong
8 Institute for Patient Safety and Quality, they're
9 our research partner.

10 Q. What does that mean, research partner?

11 A. So Matt Austin is our research -- so he
12 is a researcher, from my understanding of what he
13 does, and he oftentimes, with me and the rest of
14 the staff, he's sharing the most up-to-date
15 research on things with us. He works with our
16 expert panels. He works closely with Missy
17 Danforth and has, as far as I know, for over
18 20 years.

19 Q. So for purposes of the review here of the
20 scoring methodology and the recommendation, is it
21 your -- let me put it another way, Ms. Bailey.

22 Is it typical for the expert panels --

1 for John Hopkins Medicine researchers to be
2 involved in this process?

3 A. Yes.

4 Q. So for all the -- so it's typical that,
5 annually, John Hopkins Medicine researchers
6 review Leapfrog's scoring methodology and make
7 recommendations?

8 A. Yes.

9 Q. So it's not just the expert panel that
10 engages in this; is that your understanding?

11 A. Yes.

12 Q. Okay. So this is about a change -- this
13 e-mail is about messaging around a change in the
14 imputation methodology in 2024.

15 What was that change?

16 A. It's this last bullet here, where we were
17 changing the way that the data for these four
18 measures -- CPOE, BCMA, ICU physician staffing
19 and hand hygiene -- were scored. So instead of,
20 I believe, four rounds of safety grade data, we
21 changed it to two rounds. And then if we don't
22 have that data, we assign hospitals a point value

1 equivalent to limited achievement, which reflects
2 the lack of data available.

3 Q. What do you mean by the four rounds
4 versus the two rounds?

5 A. So we call -- so we have safety grades
6 twice a year, in the spring and the fall, and we
7 call each of those a round; sometimes call them a
8 cycle.

9 Q. So what is that -- how is that relevant
10 here to the change in the imputation methodology?

11 A. Just reading from the paper. I don't --
12 can you restate the question?

13 Q. Sure. So what exactly is the change as
14 it relates to the number of rounds?

15 A. It's less.

16 Q. So there are fewer rounds -- so there are
17 fewer rounds -- I'm just trying to understand --
18 right? -- in terms of the number of rounds
19 involved -- right? -- in the safety grades, how
20 that's relevant to the change in the imputation
21 methodology.

22 A. So there are two steps to the imputation

1 methodology. Step 1 is using, if we don't have
2 the data for right now -- so, like, for the fall
3 safety grade, the data cutoff point snapshot date
4 is August 31st. So if we don't have the data for
5 2025 survey, we'll go back to safety grade
6 rounds. So I think six months, six more months.
7 And we can use those scores.

8 It used to be longer. Again, one of the
9 reasons a safety grade is twice a year is we want
10 to have the most up-to-date information possible.
11 So from my understanding, that's why we made that
12 specific change to step 1 of the imputation
13 model.

14 Q. Understood.

15 It also says here -- just going back to
16 Exhibit 6 -- if there's no data available for the
17 measure within the last two safety grade cycles,
18 Leapfrog will assign the hospital a point value
19 equivalent to receiving limited achievement.

20 So is this -- you just went over step 1.
21 Right?

22 Is this messaging around step 2 of a new

1 imputation methodology?

2 A. Yes.

3 Q. All right. Limited achievement. What
4 does that mean?

5 A. Limited achievement is a term that we use
6 in the Leapfrog hospital survey. And these four
7 measures come from the Leapfrog hospital survey.

8 We have performance categories, so
9 depending on how you score as a hospital, limited
10 achievement is the lowest.

11 Q. Okay. So where there's no data available
12 for a specific measure -- right? -- at least
13 among the four here involved, within the last two
14 safety grade cycles, is it correct that, under
15 step 2 of this change, Leapfrog will assign
16 automatically to that hospital a limited
17 achievement score for those particular -- for
18 that particular measure? Is that right?

19 A. Yes. For those four measures.

20 Q. Just taking a step back, why was it these
21 four metrics -- CPOE, BCMA, IPS and hand
22 hygiene -- why are they the four metrics involved

1 here?

2 A. I wasn't part of the conversations
3 exactly to choose measures. I'm not part of
4 that.

5 But from a communications perspective,
6 these measures are critical to patient safety.
7 We're talking CPOE and BCMA; that's medication
8 safety. Medication errors are the number one
9 most common type of error that happen in a
10 hospital. Very, very important that these
11 systems -- most hospitals have them -- but that
12 they actually work and are protecting patients.

13 ICU physician staffing. Again, very,
14 very important. There are studies that we
15 reference that having critical care doctors in
16 the ICU taking care of patients can reduce
17 mortality by 40 percent, which is huge for
18 patients.

19 And hand hygiene, washing your hands, is
20 the most effective way to reduce the spread of
21 infections.

22 Q. Okay. Well, I'm glad that you went one

1 by one, but I'm going to take you back through
2 each of them.

3 A. Okay.

4 Q. So starting with CPOE, why is it
5 appropriate for Leapfrog to use an imputation
6 model for CPOE?

7 MS. BLAIR: Objection to form.

8 THE WITNESS: I can't speak to that. I'm
9 not a data scientist.

10 BY MR. CHUNG:

11 Q. Okay. Well, from a communications
12 perspective?

13 A. I don't know.

14 Q. Okay. Why is it -- let's put it another
15 way.

16 Why do you understand it's appropriate
17 for Leapfrog to automatically assign a limited
18 achievement score for CPOE where it doesn't have
19 data according to step 2 of this change in
20 methodology?

21 MS. BLAIR: Objection to form.

22 THE WITNESS: From a communications

1 perspective, okay, would be patients have the
2 most at risk for this and they are the most at
3 risk if we understated a hospital's performance
4 on any of these four measures.

5 That's my opinion on it.

6 BY MR. CHUNG:

7 Q. That's your opinion? Okay.

8 So what do you mean by understating?

9 A. So limited achievement, as I testified
10 before, is the lowest achievement. If we
11 overstated that performance, patients have the
12 most to lose if they go into the hospital
13 thinking that this hospital scores high on
14 something that they actually don't report on.

15 Q. Okay. Is there a concern -- is there a
16 concern at all by automatically assigning the
17 lowest possible score -- right? -- the limited
18 achievement, in the absence of data on CPOE that
19 consumers might be misled?

20 MS. BLAIR: Objection to form.

21 THE WITNESS: I don't think so.

22

1 BY MR. CHUNG:

2 Q. Why not?

3 A. Because we've made it clear on the
4 website that the score is assigned.

5 Q. Okay. And which website are you
6 referring to?

7 A. Hospitalsafetygrade.org.

8 Q. So that's one of the two websites that
9 Leapfrog runs, correct?

10 A. Correct.

11 Q. Okay. Same series of questions for BCMA,
12 another one of the four imputed metrics.

13 Why is it appropriate for Leapfrog to use
14 an imputation model for BCMA with this -- this
15 change two-step process?

16 MS. BLAIR: Objection to form.

17 THE WITNESS: The same answer that I had
18 to the CPOE. Again, as I testified before, this
19 has to do with medication safety. It's the most
20 common type of error that happens in hospitals.
21 Patients have the most at risk if these systems
22 aren't working.

1 BY MR. CHUNG:

2 Q. Okay. Same question with respect to IPS.

3 MS. BLAIR: Objection. Form.

4 THE WITNESS: Same answer. That patients
5 have the most at risk. As I testified before,
6 having critical care doctors in the ICU is very
7 important for patients who are in critical
8 states.

9 BY MR. CHUNG:

10 Q. Okay. And then how about for the fourth
11 and final, hand hygiene?

12 A. Again, patients have the most at risk.
13 Hand hygiene is arguably the most important part
14 of not spreading infections.

15 Q. Okay. So why does Leapfrog use the
16 imputation model for CPOE, BCMA, IPS, and hand
17 hygiene, but does not use an imputation model for
18 a number of other measures? And in particular,
19 we're looking at safe practice 1, safe practice
20 2, and total nursing care hours per patient day
21 when there isn't a response from the hospital.

22 A. I don't know.

1 MS. BLAIR: Objection to form.

2 BY MR. CHUNG:

3 Q. Okay. Are you -- has Leapfrog received
4 complaints or concerns about the change in the
5 imputation methodology from last year?

6 A. I'm not aware. I'm not in those
7 conversations.

8 Q. Not aware of any feedback, negative or at
9 least -- negative feedback or concerns about the
10 change in imputation methodology?

11 A. No. I don't talk to hospitals in the
12 help desk.

13 Q. Okay. How about from your colleagues?

14 A. Not that I can recall.

15 Q. Do you know whether there are any plans
16 to further revise or update the imputation
17 methodology in the future?

18 A. I don't know.

19 Q. Did you have any role in the change to
20 the imputation methodology from last year?

21 A. No.

22 Q. Who at Leapfrog was involved in the

1 change?

2 A. It would be Missy Danforth, Leah Binder
3 primarily.

4 Q. All right. Any others within Leapfrog?

5 A. I'm not sure.

6 Q. All right. How about from outside of
7 Leapfrog? Anyone involved in the methodology
8 change? We went over some -- we went over the
9 messaging -- right? -- as it relates to the
10 expert panel and the John Hopkins researchers.
11 But apart from those individuals or institutions,
12 any others outside of Leapfrog that were involved
13 in the change to the imputation methodology from
14 last year?

15 A. I don't know. I don't think so.

16 Q. Okay. Are you aware whether -- in terms
17 of the expert panel itself, do you know which
18 section or group of the expert panelists were
19 involved in the imputation methodology change?

20 A. It's the safety grade expert panel.

21 Q. So none of the other -- you testified
22 earlier, at least with respect to the hospital

1 survey -- right? -- that there are separate,
2 we'll call them subpanels that are focused on
3 each of the sections.

4 Were any of those other expert panels
5 involved in the imputation methodology change?

6 A. I don't know.

7 Q. Okay. So in terms of the change, why --
8 as you understand it, why did Leapfrog decide to
9 automatically assign this lowest score, the
10 limited achievement score, for these imputed
11 metrics instead of the average hospital score, as
12 it had done previously?

13 MS. BLAIR: Objection to form.

14 THE WITNESS: I don't know.

15 BY MR. CHUNG:

16 Q. Was there any -- as the communications
17 director -- right? -- was there any messaging,
18 communications-focused messaging, around that
19 very question, the question being why the change,
20 right?

21 A. Can you restate that?

22 Q. Sure.

1 Was there any messaging -- right? -- from
2 a communications perspective, around the question
3 of why Leapfrog decided to change the imputation
4 methodology from using the average hospital score
5 for step 2 to automatically assign the lowest
6 score under step 2?

7 A. Nothing beyond what's in Exhibit 6.

8 Q. Okay. So there's no -- so if we're
9 looking at Exhibit 6 -- right? -- am I correct
10 that there's -- in these bullet point messaging,
11 that there's nothing about -- that goes to why
12 Leapfrog went from just using the average
13 hospital score to automatically assign the
14 limited achievement score?

15 A. Yeah, no, that's generally too in the
16 weeds for communications messaging.

17 Q. Why is that too in the weeds?

18 A. I don't know. I'm not usually -- we
19 don't usually get that specific. As far as
20 communications goes, generally having too much
21 information can be confusing.

22 Q. But why -- if you could kind of explain

1 why messaging around that question -- right? --
2 the question that focuses on the actual change to
3 the imputation methodology, why that would be --
4 why that would be too confusing to include.

5 A. I mean, this is a small part of the
6 safety grade. I have a lot of other messaging
7 for the safety grade. This is four of the
8 measures.

9 So as a communications person, you only
10 have so much attention with people and there's a
11 lot of other messages. So this is what we chose
12 to do.

13 Q. What are the other messages around the
14 hospital safety grade?

15 A. What is the hospital safety grade? Why
16 is it important? What types of measures does it
17 include? Have there been any changes -- which is
18 where this comes in. Et cetera.

19 Q. Did you -- I asked you earlier whether
20 you had heard any feedback or complaints about
21 changes to the imputation methodology. Let me
22 just be a little bit more specific with that

1 question.

2 Have you heard from hospitals or just
3 more generally any concerns or complaints about
4 the scores, the limited achievement scores that
5 non-participating hospitals were automatically
6 receiving on these imputed metrics?

7 A. I can't recall any specifics, no.

8 Q. Okay. And is it correct that, with this
9 change in the imputation methodology, that
10 hospitals who don't participate in the survey get
11 lower hospital safety grades?

12 MS. BLAIR: Objection to form.

13 THE WITNESS: Can you restate the
14 question?

15 BY MR. CHUNG:

16 Q. Sure.

17 And is it correct that hospitals that do
18 not respond to the survey -- right? -- get lower
19 hospital safety grades as a result of this new
20 imputation methodology?

21 A. Not necessarily lower.

22 Q. Not necessarily? So can you explain

1 that?

2 A. So the -- if you did participate in the
3 hospital survey, you could score limited
4 achievement and you would get the same measure
5 score for these four measures.

6 So it doesn't necessarily mean it would
7 be better or worse.

8 Q. Okay. Are you aware that -- was -- what
9 was the purpose of the change in this
10 methodology?

11 MS. BLAIR: Objection to form.

12 THE WITNESS: I don't know.

13 BY MR. CHUNG:

14 Q. Okay. Are you aware that one of the
15 purposes of the change in methodology was to
16 penalize hospitals that did not participate in
17 the survey?

18 MS. BLAIR: Objection to form.

19 THE WITNESS: That's not my viewpoint.

20 BY MR. CHUNG:

21 Q. I understand -- I'm not asking for your
22 viewpoint.

1 Are you aware that that was one of the
2 purposes?

3 A. No. I don't think it's one of the
4 purposes.

5 Q. Okay. Are you aware that one of the
6 purposes of the change in the methodology was to
7 induce hospitals to participate in the survey?

8 A. No.

9 Q. No, you're not aware of it or, no, that's
10 not one of the purposes?

11 A. I'm not generally aware of it, no.

12 Q. What do you mean by generally aware of
13 it?

14 A. Like, I mean, logically, it is an
15 incentive. It's not the only incentive, major
16 incentive. I'd say the major incentive of doing
17 the survey is to be transparent and to show the
18 public how you're performing.

19 Q. So -- understand the logic, right? But
20 is that -- the purpose of incentivizing hospitals
21 to participate in the survey, was that a purpose
22 that you and your colleagues at Leapfrog

1 discussed?

2 MS. BLAIR: Objection to form. Mis- --

3 THE WITNESS: Can you restate?

4 BY MR. CHUNG:

5 Q. Did you and your Leapfrog colleagues
6 discuss that one of the purposes of the change in
7 methodology here was to induce hospitals to
8 participate in the survey?

9 A. Our job at Leapfrog is always to have
10 more hospitals do the survey. We would love if
11 every hospital did the survey, so it's always a
12 part of our conversation.

13 Q. My question is, with respect to the
14 change in the imputation methodology -- right?
15 Understand that, fine, that's generally something
16 that you discuss. Right? But specific to the
17 change in the imputation methodology, did you and
18 your colleagues at Leapfrog discuss that this
19 would be a way to induce more hospitals to
20 participate in the survey?

21 A. I don't remember having those
22 conversations myself.

1 Q. Was Leapfrog trying to induce hospitals
2 to participate by automatically giving
3 non-participating hospitals the lowest score on
4 the four imputed metrics?

5 MS. BLAIR: Objection to form. Asked and
6 answered.

7 THE WITNESS: I don't know.

8 BY MR. CHUNG:

9 Q. You don't know? Okay.

10 Was Leapfrog -- looking at another
11 perspective, for hospitals that actually
12 participated in the survey, that responded to the
13 survey, was this change in methodology a way to
14 appease those hospitals that were participating
15 in the survey?

16 A. No, I don't think so.

17 Q. Okay.

18 MR. CHUNG: Let's go to the next
19 document.

20 MS. BLAIR: Daniel, is it okay to take a
21 break?

22 MR. CHUNG: Yes. Of course. We've been

1 going for a while.

2 VIDEO TECHNICIAN: The time is 10:29 a.m.
3 Ending unit 1. We're off the record.

4 (A recess was taken.)

5 VIDEO TECHNICIAN: The time is 10:40 a.m.
6 This begins unit number 2. We're on the record.

7 MR. CHUNG: All right. Ms. Bailey, we're
8 going to mark the next document Exhibit 7.

9 (Bailey Deposition Exhibit 7 marked for
10 identification and attached to the
11 transcript.)

12 BY MR. CHUNG:

13 Q. And it's an e-mail chain from April of
14 this year, 2025.

15 Just take a few moments to look at it.

16 A. Okay. I read it.

17 Q. All right. So what's being discussed
18 here in this chain?

19 A. We were doing -- from what I remember, we
20 were preparing a presentation for our board of
21 directors. We had some newer board of directors.
22 We wanted to give them an overview of Leapfrog

1 programs.

2 Q. And let's turn your -- and was -- part of
3 this overview, did that include the new
4 imputation methodology?

5 A. I don't recall.

6 Q. Okay. Well, let's just focus on a few
7 pieces. In particular, Ms. Binder's -- the
8 initial kind of long e-mail that kicks off the
9 discussion.

10 So if you look at Bates ending 500, the
11 fourth bullet down of a series in Ms. Binder's
12 e-mail, she notes that -- the most important
13 things to convey in this speech.

14 So what is "this speech" referring to?

15 A. Meeting with our board of directors.

16 Q. Okay. And the fourth bullet down is, Why
17 the imputation strategy is controversial was
18 among the most important things to convey in this
19 speech.

20 Why was the imputation -- why is or was
21 the imputation strategy controversial?

22 A. I don't know why she necessarily used

1 this word. I don't remember exactly what was in
2 this presentation. It was a lot of our standard
3 slides.

4 But anytime there's a change at Leapfrog,
5 you know, we make sure our board knows about it.

6 Q. What is your understanding as to why the
7 imputation strategy was controversial?

8 A. From my history at Leapfrog, anytime
9 there is a change on the survey or the safety
10 grade, it could be controversial. It depends on
11 the person you talk to.

12 Q. Controversial to whom?

13 A. I don't know.

14 Q. Okay. But you said based on your time or
15 your experience at Leapfrog. Right?

16 So have there been experiences or
17 instances during your time there where a change
18 in the imputation strategy was controversial?

19 A. I mean, we're talking about the change
20 from fall 2024, and this --

21 Q. Well, I'm talking about what she is
22 referring to here in the fourth bullet point, why

1 the imputation strategy is controversial. Right?

2 So let's just start with have there been
3 instances during your time at Leapfrog where
4 there was controversy around the imputation
5 strategy?

6 A. I can't recall a specific instance.

7 Q. Okay. Do you have an understanding as to
8 why Ms. Binder wrote here that this particular --
9 that why the imputation strategy is controversial
10 was an important thing to convey to the board?

11 A. If this was written in April, that would
12 mean that it was about to be the second safety
13 grade since the new change. So it still was a
14 new change.

15 So again, any new changes would be
16 something we would make sure the board knew.

17 Q. Okay. Was the board involved in the
18 decision to change the imputation methodology?

19 A. Leah reports to the board, so they're
20 aware of changes.

21 Q. Okay. Putting aside awareness of the
22 changes, does the board have input into -- did

1 the board have input into the change in the
2 imputation methodology?

3 A. I believe so, from what I can remember.

4 Q. How were they involved? Or what sort of
5 input did they have?

6 A. It was discussed in board meetings before
7 it went out for public comment.

8 Q. So this is -- these were discussions
9 before the actual imputation methodology was
10 implemented and finalized?

11 A. Correct. While we were developing the
12 proposed changes.

13 Q. Okay. And so what were -- can you
14 describe those discussions with the board about
15 the -- about the proposed or the contemplated
16 change in imputation methodology?

17 A. I don't remember.

18 Q. Are you -- do you participate or are you
19 present at Leapfrog board meetings?

20 A. I take minutes.

21 Q. So you're there?

22 A. Yes.

1 Q. Okay. But you don't remember even just a
2 sketch -- right? -- of discussions at these board
3 meetings about the upcoming change in the
4 imputation methodology?

5 A. I don't remember. We've had a lot of
6 board meetings since then, and it's a small part
7 of my job.

8 Q. Okay. In the second-to last bullet
9 point -- we're looking at the same page, Bates
10 500 -- again, the most important things to convey
11 in this speech are the levers we pull to get
12 hospitals and ASCs to participate.

13 What were those -- what are or what were
14 those levers?

15 A. So as I mentioned earlier on, we're
16 founded by employers. And our board represents
17 employers. So they are employers themselves. We
18 also have patient advocates. So, you know,
19 that's the audience that we're talking to and
20 that's the audience that we're talking about with
21 the levers.

22 So we educate them on why the surveys are

1 important and how facilities can utilize them and
2 also how employers -- I think, in this instance,
3 we're talking specifically about hospitals and
4 ASCs. Our general messaging focuses on showing
5 your commitment to transparency and that you put
6 patient safety first in talking to hospitals and
7 ASCs, as well as you can use it for benchmarking
8 purposes.

9 Q. So how are those -- just to kind of break
10 that down, how are those levers to get hospitals
11 and ASCs to participate -- do you take this to
12 mean to participate in the survey?

13 A. Yes. To participate in the survey.

14 Q. Okay. So just going back to the
15 question.

16 How are each of those -- can you just
17 kind of describe how each of those are levers to
18 get hospitals to participate in the survey?

19 A. I wouldn't use the word "levers." I
20 would use the word, maybe, incentives or
21 advantages. Like how do we -- what are the
22 interests of hospitals, like --

1 Q. Why wouldn't --

2 A. -- how do they benefit.

3 Q. I'm sorry to interrupt you.

4 Why wouldn't you use the term "levers"
5 that Ms. Binder used here?

6 A. That's not a word I would use. I don't
7 really know what it means in this context
8 exactly.

9 Q. Okay. So using incentives -- right? --
10 as another word, how are each of those incentives
11 to get hospitals and ASCs to participate in this
12 survey?

13 A. If we're talking about benchmarking,
14 there are a lot of hospitals and ASCs that use
15 their survey results in benchmarking so they can
16 see year over year where the changes are.
17 Especially at the system level. A lot of systems
18 who really embrace transparency will use the
19 survey as a benchmark so they can see with all
20 their hospitals and their systems, you know,
21 where there may be opportunities to improve.

22 So that's a good incentive for them to

1 have that.

2 Q. Is the imputation methodology itself a
3 lever to get hospitals to participate in the
4 survey?

5 A. It's not one we use in messaging. I
6 wouldn't have been included in this from my
7 knowledge.

8 Q. Putting aside that it's not included in
9 messaging -- right? -- is it a lever, the
10 imputation methodology itself a lever to get
11 hospitals to participate in the survey?

12 MS. BLAIR: Objection to form.

13 THE WITNESS: I'd say it's an incentive.

14 BY MR. CHUNG:

15 Q. Okay. And how is it an incentive?

16 A. Because they have the opportunity to give
17 us more information about patient safety in those
18 measures. Potentially would have the opportunity
19 to score differently, potentially not. There's
20 no guarantee either way.

21 Q. Okay. At least -- would it be fair to
22 say that it is -- the imputation methodology is

1 an incentive to hospitals to participate at least
2 so that they don't get automatically scored --
3 given automatically a limited achievement score
4 in the four imputed metrics?

5 MS. BLAIR: Objection to form.

6 THE WITNESS: Can you repeat the
7 question?

8 BY MR. CHUNG:

9 Q. Sure.

10 Is it fair to say that it's an incentive
11 to hospitals to participate in the survey so that
12 they don't get the lowest score on the four
13 imputed metrics?

14 MS. BLAIR: Objection to form.

15 THE WITNESS: Possibly.

16 BY MR. CHUNG:

17 Q. Okay. She continues -- Ms. Binder in
18 this e-mail continues with, in other words --
19 well, we're looking at Bates 501. Let's just go
20 on to the next page.

21 About halfway down there's a
22 paragraph that starts, Then there needs to be a

1 slide.

2 Do you see that?

3 A. Yes.

4 Q. Okay. Then there needs to be a slide
5 about what Leapfrog does to grade a hospital when
6 they decline to report the survey. I think it's
7 very important for the board to understand what
8 we moved over time toward imputing the lowest
9 level of performance when we don't have recent
10 Leapfrog data.

11 Why was that important for the board to
12 understand?

13 A. Again, it was a change. Our board is not
14 made of healthcare professionals. It's made of
15 employers and patient safety advocates. So it's
16 not the same as talking to a data scientist, so
17 she wanted to make sure they understood since it
18 is a change.

19 Q. Okay. And then she continues, In other
20 words, the slides should not detail the
21 step-by-step imputation process. It should
22 summarize the strategic import of the imputation

1 process. This has been a shift over time and one
2 with significant policy ramifications for the
3 organization.

4 First, what was the strategic import that
5 she's referring to here?

6 A. I don't know.

7 Q. Don't know?

8 A. (No verbal response.)

9 Q. Do you recall having conversations with
10 Ms. Binder about that language around this time?

11 A. No. I mean, this is like a stream of
12 consciousness e-mail of edits, so I wouldn't take
13 it as a directive.

14 Q. Okay. What do you mean by a stream of
15 consciousness, stream of edits?

16 A. There's, you know, two pages,
17 single-spaced, of edits, so she was just quickly
18 writing her edits down.

19 Q. Okay. What were the significant policy
20 ramifications for Leapfrog that she was referring
21 to here?

22 A. I don't know.

1 Q. Okay. Just going back to that sentence,
2 The slide should not detail the step-by-step;
3 imputation process. It should summarize the
4 strategic import of the imputation process.

5 Why didn't she want the board to be
6 provided detail about the step-by-step imputation
7 process?

8 MS. BLAIR: Objection to form.

9 THE WITNESS: They had been provided the
10 step-by-step, in my recollection. At this time,
11 we had one hour to do this presentation, and this
12 was not the only focus of the presentation. So I
13 think she was giving a directive of, you know,
14 she recommends that this is what we show on the
15 slide for purpose of this meeting.

16 BY MR. CHUNG:

17 Q. Okay. But where the -- where there's a
18 change -- right? -- in the imputation
19 methodology -- right? -- don't you think it would
20 be important for the board to know what the
21 change itself was in terms of the steps of the
22 imputation methodology?

1 MS. BLAIR: Objection to form.

2 THE WITNESS: I mean, from my knowledge,
3 we're talking about, what, April 2025? So it was
4 already in place. So it's not that this was the
5 first time we talked to them. It had been
6 several times --

7 BY MR. CHUNG:

8 Q. So --

9 A. -- in my recollection.

10 Q. Okay. So you know that they'd -- they
11 had been already given the details about the
12 changes in the steps to the imputation
13 methodology by this time?

14 A. Yes.

15 Q. Okay. How?

16 A. As I testified before, in board meetings.

17 Q. Okay.

18 MR. CHUNG: Let's go to the next
19 document. This will be Exhibit 8.

20 (Bailey Deposition Exhibit 8 marked for
21 identification and attached to the
22 transcript.)

1 BY MR. CHUNG:

2 Q. Now, Ms. Danforth [sic], this is a -- it
3 looks like a presentation to the Leapfrog board
4 of directors dated April 28, 2025, that we
5 believe corresponds to the discussion over the
6 e-mail that we were looking at. But if you could
7 take a few moments to flip through it. Let me
8 know if you recognize it.

9 A. Sure. Ms. Bailey.

10 Q. Ms. Bailey. All right.

11 A. Too many.

12 Q. We'll get there.

13 Just for the record, what you're looking
14 at, Exhibit 8, we believe is what's discussed
15 and -- but it wasn't technically attached --
16 right? -- to the e-mail that we saw in Exhibit 7.

17 MR. CHUNG: And just for counsel, I think
18 the document attached as a child to the e-mail
19 earlier had a technical slip sheet.

20 MS. BLAIR: Oh, okay.

21 MR. CHUNG: So this is what we believe --
22 it's another copy that we believe should have

1 been attached to that e-mail.

2 THE WITNESS: I'm not sure if this was
3 the final version, but --

4 BY MR. CHUNG:

5 Q. Okay.

6 A. -- generally it looks...

7 The only piece of this presentation that
8 I really remember is this last piece. And this
9 looks like an old draft.

10 Q. When you say "last piece," it's the
11 last --

12 A. The very last -- the common objections to
13 Leapfrog.

14 Q. Okay.

15 A. I had a different format, I remember.

16 Q. The format was different in the final --

17 A. Yeah --

18 Q. -- so far as you remember?

19 A. -- this isn't the final. Yeah, this
20 looks like it was the very first draft.

21 Q. Okay. Let's go to 1092. Leapfrog 1092.
22 It's a slide titled, Leapfrog Strategy.

1 A. Okay.

2 Q. So here, the second bullet point reads,
3 Influence consumer decisionmaking and purchaser
4 payment strategy like contracting, network
5 design, and steerage.

6 What's being referenced here?

7 A. So this slide here is referencing back to
8 our founding. So these logos right here are
9 talking about -- these are some of the companies
10 that founded The Leapfrog Group. So we represent
11 employers and purchasers.

12 So that's what this slide number 2 is
13 about in the context of employers.

14 Q. Okay. What does it mean by influencing
15 consumer decisionmaking?

16 A. One of the purposes of Leapfrog is for
17 patients to know that not all hospitals are the
18 same.

19 Q. Okay. And what does purchaser payment
20 strategy mean?

21 A. I'm not an expert in this, but I believe
22 the next three that follow explain it. So direct

1 contracting might be -- maybe you've heard of
2 centers of excellence that some employers set up.
3 Network design is, I think -- I believe designing
4 which hospitals are in the network.

5 And steerage, kind of the same thing,
6 which hospitals are in the network.

7 Q. All right. Let's go to 1096.

8 So Leapfrog By the Numbers is the title
9 of this slide, and you see that it has a series
10 of statistics, Ms. Bailey?

11 A. Yes.

12 Q. Okay. So in the center of the top row it
13 says, Leapfrog websites received more than
14 2.3 million page views per year.

15 Do you see that?

16 A. Yes.

17 Q. Okay. And is that -- that encompasses
18 the two websites that we discussed earlier,
19 correct?

20 A. From my understanding, yes.

21 Q. Okay. And do you have -- as part of your
22 role as communications director, you oversee and

1 manage those two websites; is that right?

2 A. I do, but our PR firm is the one who
3 looks at Google Analytics, so they would be the
4 one to provide me stats like this.

5 Q. So the PR firm is CURA Strategies; is
6 that right?

7 A. Yes.

8 Q. Okay. So the grade, the hospital safety
9 grade, that Leapfrog gives to hospitals is seen
10 by an audience in the millions of people; is that
11 right?

12 MS. BLAIR: Objection to form.

13 THE WITNESS: Our website
14 receives millions of views. Yes.

15 BY MR. CHUNG:

16 Q. Okay. So in the bottom row on the right
17 it says, Every year Leapfrog ratings and data are
18 acceptable -- are accessible to 200 million-plus
19 employees, health plan members, and consumers
20 through Leapfrog's various partners and
21 resellers.

22 Do you see that?

1 A. Yes.

2 Q. Okay. So just putting those two
3 statistics together, the 2.3 million views of the
4 websites and then the 200 million-plus employees
5 and the other individuals that are referenced
6 here, is it fair to say that this is the universe
7 of people that at least potentially see the
8 hospital safety grades that are assigned to
9 hospitals?

10 A. That's my understanding, but there's a
11 very big overlap in that 2.3 million with the
12 2 million.

13 Q. 2 million or 200 million?

14 A. I'm saying, of the 200 million, the
15 website views, it's probably a lot of the same
16 people.

17 Q. And what makes you say that?

18 A. You can't see in Google Analytics who it
19 is, who they are, who's clicking on your website,
20 but just based on our communication strategy and
21 how Leapfrog is set up representing employers,
22 the primary way that we reach patients is not

1 necessarily them knowing what a safety grade is;
2 it's through employers.

3 Q. Okay. Understood.

4 Let's go to 1094.

5 So this is titled, Why hospitals
6 participate in the survey. And then we see a
7 series of statements here.

8 Are these the different reasons why
9 hospitals participate in the Leapfrog survey, the
10 hospital survey?

11 A. Yes. This is similar to what we were
12 talking about before with the incentives.

13 Q. Okay. So fair to say that hospitals --
14 various hospitals participate in the hospital
15 survey for different reasons?

16 A. Yes.

17 Q. All right. Just looking at the
18 page here, do any of the reasons given here
19 include that the hospitals have good patient
20 safety?

21 A. Can you restate the question?

22 Q. Sure.

1 Do any of the reasons enumerated here,
2 included here, include that the hospitals have
3 good patient safety?

4 MS. BLAIR: Objection to form.

5 BY MR. CHUNG:

6 Q. Is that one of the reasons included here?

7 A. I don't understand the question.

8 Q. Sure.

9 Do you see anywhere -- among the
10 reasons -- right? -- here -- you just testified
11 that these are the various reasons that hospitals
12 participate in the survey, correct?

13 A. Right.

14 Q. Right. And this is -- this is a
15 presentation being made to the board of Leapfrog,
16 correct?

17 A. Correct.

18 Q. All right. So of the reasons set forth
19 here -- right? -- are there any reasons that
20 point to hospitals having good patient safety?

21 A. No, not as written on this
22 page necessarily. I guess number 2 could kind of

1 be, make it easy for the public to find
2 information about their safety and quality.

3 Q. Okay. But fair to say that hospitals
4 that participate in the survey can do so or
5 actually do so for reasons other than their
6 safety record; is that right?

7 MS. BLAIR: Objection to form.

8 THE WITNESS: I don't understand the
9 question.

10 BY MR. CHUNG:

11 Q. Right. Are there -- based on what we see
12 on this slide here -- right? -- are there -- is
13 it fair to say that participating hospitals
14 respond to the survey for reasons other than
15 their safety record?

16 A. Yes. These are some of the reasons.

17 Q. Okay. Let's go to Bates 1116, which is
18 the last page you were referring to earlier.

19 A. Okay. Thank you.

20 Q. This one is titled, Common objections to
21 Leapfrog, and we're looking at Bates
22 Leapfrog 1116.

1 So again, this is presented to the board.

2 Is it correct that the statements on this
3 slide are common objections to the Leapfrog
4 survey? Is that right?

5 A. To be clear, yeah, common objections is a
6 communications term, so it doesn't mean that it's
7 -- we hear it all the time or anything. It's
8 just like an FAQ. So...

9 Q. Okay. I'm not sure I quite understand
10 that. Why is it like an FAQ?

11 A. So, like, common objections, it's kind
12 of, like, commonly asked questions, which doesn't
13 mean that they're asked all the time, it's just
14 what we think is important in our messaging.

15 Q. So why -- why are these objections called
16 common objections?

17 A. It's just a PR term.

18 Q. Okay. But fair to say that these are
19 objections or statements that appear in actual
20 feedback?

21 A. Probably.

22 Q. Well, where do you obtain these -- how do

1 you determine whether an objection is common or
2 not?

3 A. I know it says, "common objection," but
4 it's just a communications term. The way that we
5 came up with these bullets was just talking to
6 staff internally of what do we think that the
7 board should know and be able to answer.

8 Q. So this is -- so just to ask the question
9 again: Do these objections -- are these
10 objections based on actual objections from
11 hospitals and other parties?

12 A. Not things necessarily they actually
13 said, just a summary of types of topics.

14 Q. Okay. So taking what you just said, is
15 it -- it's not uncommon for hospitals to object
16 that Leapfrog data is self-reported?

17 A. That's a common question that we get.

18 Q. From hospitals; is that right?

19 A. I wouldn't necessarily know from
20 hospitals. But from reporters or people who are
21 new to Leapfrog, that's something they want to
22 know about.

1 Q. Okay. And this is -- you testified
2 earlier that, based on -- at least in part these
3 common objections were based on discussion
4 internally, right, within Leapfrog?

5 A. Correct.

6 Q. Right? So was this -- did those -- in
7 the course of those internal discussions, did you
8 learn from your colleagues that this particular
9 objection, that Leapfrog data is self-reported,
10 was one that came from hospitals?

11 A. No. This was -- I know this one because
12 this is one that reporters will ask.

13 Q. Okay. So I guess similar question: It's
14 not uncommon for hospitals to object that their
15 quality is evidenced in other ways; is that
16 right?

17 A. Which bullet are you referring to?

18 Q. Well, I guess the third one: Our efforts
19 to promote quality is evidenced by many accolades
20 received within the past year, so we don't need
21 to report to Leapfrog.

22 A. It's -- I'm not saying it's exact. The

1 reason there are quotes, to be clear, is so that
2 they know this isn't something that Leapfrog is
3 saying. That's why there are quotes in here.
4 It's just a form. It doesn't mean it's a pull
5 quote from a specific hospital or something.
6 Just to be clear.

7 This is something in general, a sentiment
8 that we've heard before, not me personally, but
9 from the ratings team that we've heard. And we
10 want -- you can't see the answers here, which
11 is -- if you had seen the final draft, I think it
12 would display it more clearly.

13 But what we're really getting at here is
14 what makes Leapfrog different.

15 Q. But the question is, is this an
16 objection -- right -- or at least a statement
17 that hospitals have made?

18 A. In my understanding, yes.

19 Q. Just going down the line here, is it not
20 uncommon for hospitals to object that their poor
21 safety grade is only because they did not
22 participate in the Leapfrog hospital survey?

1 A. Yeah. Hospitals have said that.

2 Q. Okay.

3 A. In this lawsuit they say that.

4 Q. And it's not uncommon to hear that
5 consumers are confused by having too many ratings
6 programs; is that right?

7 A. So the -- I wouldn't say that. I think
8 consumers can get confused. And this answer
9 leads in to why we created the hospital safety
10 grade as a single letter, for them to be more --
11 it's easier for consumers to understand that.

12 Q. So where -- so is this objection --
13 right? -- consumers are confused by having too
14 many ratings programs, why does Leapfrog
15 matter? -- is that coming from hospitals?

16 A. I don't know.

17 Q. Where is this coming from? Where is this
18 common objection coming from?

19 A. Again, this is a collective effort with
20 the Leapfrog team. We've had these for a long
21 time. So they come from various -- some of them
22 could just come from, you know, us talking as a

1 staff and saying, this is an important message
2 point and something someone might say.

3 Q. All right. But where is this --
4 understanding that it may come from your
5 discussions with your colleagues, but where does
6 this objection come from? Where -- kind of --
7 where was it -- where has it been heard or
8 observed?

9 MS. BLAIR: Objection to form. Asked and
10 answered.

11 THE WITNESS: In my opinion, it is the
12 reason we created the safety grade. And this
13 specific line I believe is on our safety grade
14 website.

15 BY MR. CHUNG:

16 Q. No, but my question is, where did this
17 statement come from? Where are you hearing this
18 concern or objection?

19 A. I don't know. Precedes my time.

20 Q. This slide or this deck precedes your
21 time?

22 A. No. This line, I said, we've used as a

1 reason why we created the safety grade, which
2 precedes my time.

3 Q. Okay. So this is -- I mean, are you
4 testifying that this is kind of -- this bullet
5 point is recycled from previous board
6 presentation decks from before your time?

7 MS. BLAIR: Objection to form.

8 THE WITNESS: Our messaging doesn't
9 change very much, so all of these bullets we've
10 been using for a long time.

11 BY MR. CHUNG:

12 Q. Okay. So -- but my question is this
13 particular bullet point.

14 Are you telling us that this is a bullet
15 point that's been recycled or has been used to
16 present to the board since before your time in?

17 A. I would assume so. I've seen it the
18 whole time I've been at Leapfrog.

19 Q. Okay. Has Leapfrog received any feedback
20 from insurers regarding the reliability of
21 hospital safety grades for non-responding
22 hospitals?

1 A. I don't know.

2 Q. All right. How about from consumers,
3 generally?

4 A. I haven't seen any. I don't know.

5 Q. Do you know whether Leapfrog has
6 considered not grading hospitals that don't
7 respond to the survey?

8 A. I don't know.

9 Q. Is that something that's ever discussed
10 between you and your colleagues?

11 A. I personally haven't heard it discussed,
12 no.

13 Q. Okay. Let's turn to our next document,
14 tab -- let's go with tab 7.

15 This will be Exhibit 10.

16 THE REPORTER: 9.

17 MR. CHUNG: 9, sorry.

18 (Bailey Deposition Exhibit 9 marked for
19 identification and attached to the
20 transcript.)

21 BY MR. CHUNG:

22 Q. Okay. Ms. Bailey, we put in front of you

1 Exhibit 9, which is The Leapfrog Group and
2 affiliate consolidated financial statements dated
3 June 30, 2024.

4 Have you seen this document before?

5 A. I believe I've seen it in the context of
6 it being presented at a board meeting.

7 Q. And are you -- what involvement do you
8 have at all in putting together the financial
9 statements of the organization?

10 A. No involvement.

11 Q. Do you have any input, provide any data,
12 for purposes of putting together the financial
13 statements?

14 A. No.

15 Q. Okay. Who is? Who's involved?

16 A. I know Leah is involved.

17 Q. Okay. If you look at page 5, or Bates
18 ending in 9789 -- and where you see two Bates
19 numbers in the lower right-hand corner, I'm going
20 to point to the one that's -- the top one. Okay?

21 A. Okay.

22 Q. You'll see here that this outlines the

1 revenue and support for the organization.

2 Do you see that?

3 A. Yes.

4 Q. The first line there, accolade licensing
5 revenue.

6 What is accolade licensing revenue?

7 A. The accolade licensing is licensing our
8 safety grade A and our top hospital logos to
9 hospitals.

10 Q. All right. And is this -- at least based
11 on this document, is this the single biggest
12 revenue source for the organization?

13 A. Looks like it in this document.

14 Q. Yeah. So 3. -- about \$3.29 million for
15 2024, correct?

16 A. Yes.

17 Q. Okay. And then there's -- the next item
18 down is data licensure.

19 What is that referring to?

20 A. We sell our data to, like, solutions
21 providers, health plans, companies like that.

22 Q. And which data is this referring to?

1 A. I believe this includes the safety grade
2 and the survey.

3 Q. Okay. So data collected from hospitals
4 that respond to the survey?

5 A. Yes.

6 Q. Okay. And what is the data around the
7 hospital safety grade that's licensed?

8 A. I don't know the specifics on that.

9 Q. Okay. But your understanding is that
10 this data licensure revenue encompasses licensing
11 of the hospital safety grade and the data
12 collected from hospitals to the survey?

13 A. Yes. That's my understanding.

14 Q. Okay. And is that the -- it looks like
15 that's the second highest revenue source, is that
16 right, \$2.17 million for 2024?

17 A. Yes.

18 Q. Okay. Membership is the third line down,
19 \$1.14 million in revenue.

20 What does this encompass?

21 A. I believe it's our partners advisory
22 committee dues.

1 Q. Okay. And what is the partners advisory
2 committee?

3 A. So as I mentioned before, our board
4 doesn't include -- if your business is 30 percent
5 or more healthcare, you're not on our board.

6 So we created the partners advisory
7 committee over ten years ago as a way to have a
8 formal relationship with healthcare companies
9 that want to be involved with Leapfrog. They
10 have no governance over Leapfrog.

11 Q. Okay. And so these entities or these
12 companies pay a membership fee -- is it an annual
13 membership fee to Leapfrog -- to be part of this
14 partners advisory committee?

15 A. Yes.

16 Q. And approximately how much is that
17 membership fee?

18 A. 35,000 is what I believe it is.

19 Q. Okay. Just a few lines down there's a
20 revenue source data products and reports that
21 corresponds to about \$314,000 in revenue for
22 2024.

1 What does this refer to?

2 A. I don't know.

3 Q. Now, do you have any involvement in the
4 Leapfrog annual meeting? We understand that the
5 organization has an annual meeting.

6 A. Yes. As the communications director, I'm
7 involved in the annual meeting.

8 Q. All right. How are you involved in that,
9 in the annual meeting?

10 A. I am part of our planning committee.
11 Again, we have a small staff, so we might do
12 things that wouldn't be particular in other
13 groups. We all really work together on this.

14 So Karen and Angela Hopkins, who is our
15 office administrator, really run point. I help
16 with whatever is needed but, of course, oversee
17 all of the printed publications, all of the
18 marketing, all of the social media, that kind of
19 thing.

20 Q. All right. And is the annual meeting a
21 source of revenue as well?

22 A. I don't think we consider it a source of

1 revenue. All I've heard is that we generally
2 lose money.

3 Q. All right. But in order to attend the
4 annual meeting, there's a fee required of
5 attendees; is that right?

6 A. Correct.

7 Q. Just going -- kind of stepping back, we
8 looked at a few of the line items here on the
9 financial -- from the statement.

10 How does Leapfrog raise money from the
11 hospital safety grades and the hospital survey
12 specifically?

13 A. Can you restate your question?

14 Q. Yes. So how does Leapfrog raise revenue
15 or money from the hospital safety grades and
16 hospital survey?

17 A. So I see it as we raise revenue so that
18 we can cover the costs of those programs. It
19 costs a lot in staff time, in website, in
20 everything that goes into these programs so it's
21 not --

22 Q. Ms. Bailey, that's not my question.

1 How does -- right? How does the
2 organization raise revenue or money from those
3 two programs?

4 A. I think it's just what's on here.

5 Q. Okay. Can you just --

6 A. All of these things.

7 Q. Can you just describe how it's done?

8 A. Oh. We just talked about accolade
9 licensing. We just talked about data licensure.

10 Q. Okay.

11 A. That's all I know.

12 Q. Okay. And what is -- can you break down
13 kind of how -- under the types of accolade
14 licensing, how that raises revenue for the
15 organization?

16 A. I don't understand the question.

17 Q. All right. Let's put it another way.

18 How many hospitals pay Leapfrog to
19 advertise their hospital safety grades?

20 A. I don't know the numbers.

21 Q. Okay. What does a hospital that does pay
22 Leapfrog to advertise their hospital safety

1 grade, what do they get through that payment?

2 A. They get the logo; it's like a badge they
3 can use in advertising.

4 Q. Okay. Is there any way for a hospital to
5 freely advertise their hospital safety grade
6 without paying Leapfrog?

7 A. Yes. Many do. That's the part I'm
8 involved in. I'm not involved in accolades. I'm
9 involved in that part, which is we provide
10 detailed press kits for hospitals they use for
11 free.

12 Q. Okay. Has Leapfrog ever told a hospital
13 to stop advertising a safety grade unless it paid
14 Leapfrog the fee?

15 A. Not that I can recall.

16 Q. Do you know whether Leapfrog receives any
17 advertising revenue from hospitals with, let's
18 say, a C or a lower than a C grade?

19 A. I don't know.

20 Q. All right. Generally speaking, when --
21 do you have any kind of statistics or do you know
22 generally whether -- in terms of kind of the

1 marketing for advertising of the hospital safety
2 grade, does Leapfrog focus on the hospitals that
3 have an A grade?

4 A. Can you restate? I don't understand the
5 question.

6 Q. In terms of the marketing -- right? --
7 for the advertising of the hospital safety grade,
8 does Leapfrog focus on hospitals that have
9 received an A grade? Or does it market more
10 generally to all hospitals that have received a
11 grade?

12 A. I don't do marketing. But if we're
13 talking about accolade licensing, that's -- A and
14 B are the only logos that I know my team creates.

15 MR. CHUNG: Let's go to tab 16.

16 This will be Exhibit 10.

17 (Bailey Deposition Exhibit 10 marked for
18 identification and attached to the
19 transcript.)

20 BY MR. CHUNG:

21 Q. So Ms. Bailey, Exhibit 10 is a short set
22 of Slack messages. Just let me know when you've

1 had a chance to look at it.

2 A. Okay. Yes. I've looked at it.

3 Q. Okay. So this is from March 21 of 2024,
4 a discussion with Ms. Jupiter.

5 And you write, at about 11:30 a.m., She
6 wants CURA to be ready to ask and help staff
7 answer common questions we get. Right?

8 So first of all, what's being discussed
9 here?

10 A. From what I remember -- so CURA is our PR
11 firm. And we had them come into the office and
12 give staff a presentation about PR 101.

13 Q. Okay. And so how does this -- the "she"
14 that you're discussing here, is that Leah Binder?
15 She wants CURA to be ready to ask and help staff
16 answer common questions we get.

17 A. I believe so.

18 Q. Okay. Now, these are -- when we went
19 over the board presentation earlier -- right? --
20 you said that -- kind of the common questions or
21 common objections there were based on discussions
22 you had internally within Leapfrog, right?

1 A. Yes.

2 Q. Here, the -- what you're writing here is
3 that Ms. Binder wants CURA to be ready and ask
4 and help staff answer common questions we get.

5 What did you mean by "common questions we
6 get"?

7 A. So this was for all of our staff. And a
8 good majority of our staff is the ratings team.
9 And part of my job as communications manager -- I
10 mean, director of communications, sorry -- is to
11 make sure we're all on the same page with how
12 we're responding to things. Even if I don't talk
13 to hospitals, they're talking to people, I have
14 an interest in ensuring we're on the same page.

15 Q. Okay. So the members of the ratings
16 team, this is the team under Ms. Danforth; is
17 that right?

18 A. Correct.

19 Q. Okay. And they're interacting or
20 communicating with hospitals?

21 A. Correct.

22 Q. All right. And they're the ones -- and

1 when we say -- when you're writing here to help
2 staff answer common questions we get, does that
3 mean common questions we or you're getting from
4 hospitals?

5 A. I don't remember exactly what I meant,
6 but I would infer that. Yes.

7 Q. Okay. You see where you write, just the
8 next line down, So, like, Leapfrog is pay for
9 play, where a hospital gets a bad CMS star rating
10 but an A. Why?

11 So this is -- the question about pay for
12 play, do you agree that's a common question
13 Leapfrog receives from hospitals?

14 A. Yes. I mean, that's what this -- it's
15 mentioned a lot in this current lawsuit we're
16 talking about.

17 Q. Well, we're talking about -- I'm talking
18 about in the context of this Slack messages -- of
19 these Slack messages from March 2024.

20 So at this time -- right? -- which
21 obviously preceded this lawsuit --

22 A. Uh-huh.

1 Q. -- is it fair to say that pay to play, a
2 question whether Leapfrog is pay to play, was
3 common enough that it's listed in the list of
4 commonly asked questions?

5 A. Yes. I'd say a lot of people are
6 confused about that. There's a lot of ratings,
7 and a lot of them are pay to play. Leapfrog is
8 not.

9 Q. Okay. The next one down, Or a hospital
10 gets a bad CMS star rating but an A,
11 presumably --

12 A. Uh-huh.

13 Q. -- from Leapfrog, right?

14 A. Uh-huh.

15 Q. Do you agree that that's a common
16 question Leapfrog receives from hospitals?

17 A. It was just an example. I don't know if
18 that's a common question. It's just -- I was
19 giving an example to Karen, who is not as
20 familiar with this.

21 Q. Right. But you started the discussion,
22 or at least kind of introduced these two items as

1 helping staff answer common questions we get.
2 Right? And I think you testified we get from
3 hospitals. Right?

4 A. Uh-huh.

5 Q. So just going back to the original
6 question, is this -- the question of a hospital
7 getting a bad CMS star rating but an A from
8 Leapfrog, is that a common question Leapfrog gets
9 from hospitals?

10 A. In my knowledge, it actually doesn't
11 happen that often that that's the case.

12 Q. My question is, is this a question -- a
13 common question you get from hospitals?

14 MS. BLAIR: Objection to form. Asked and
15 answered.

16 THE WITNESS: It's part of our commonly
17 asked question, which I explained is a
18 communications term. I don't know how often it's
19 asked. I just know that it comes up in
20 conversations internally, so it's one of my PR
21 priorities.

22

1 BY MR. CHUNG:

2 Q. Okay. Is this -- the pay for play
3 question -- right? -- is Leapfrog a pay for play
4 question [sic], is it a common question or
5 concern that you hear from regional leaders,
6 Leapfrog's regional leaders?

7 A. Can you restate the question?

8 Q. Right. The question of or the concern of
9 whether Leapfrog is pay to play -- right? -- is
10 that a concern or question that's relayed to you
11 by Leapfrog's regional leaders?

12 A. I believe they had heard -- like, some of
13 them have probably heard that before. Because
14 like I said, it can be confusing. There's a lot
15 of ratings, and a lot of them are pay for play.
16 Leapfrog is not.

17 MR. CHUNG: Let's go to tab --

18 BY MR. CHUNG:

19 Q. Ms. Bailey, are you aware that hospitals
20 that participate in the survey are required to
21 affirm that Leapfrog may use the survey
22 information in a commercial manner for profit?

1 A. Yes. I'm generally aware of that.

2 Q. Okay. And you're aware that that is
3 explicitly in the hospital survey?

4 A. I've heard that.

5 Q. Okay. Do you know how long Leapfrog has
6 required that affirmation from participating
7 hospitals?

8 A. I don't know.

9 Q. Does it precede your time, fair to say?

10 A. I don't know.

11 Q. Okay. Can a hospital opt out of that
12 affirmation and still respond to the survey?

13 A. I don't know.

14 Q. All right. Do you know whether -- have
15 you heard of any hospital voicing concerns or
16 asking that question, can they opt out of that
17 affirmation?

18 A. I haven't heard of it, no.

19 Q. All right. Any complaints from hospitals
20 about not being able to opt out of that
21 affirmation?

22 A. No, I haven't heard of any.

1 Q. Okay. All right. Going back to kind of
2 the revenue streams that we discussed earlier, am
3 I right that Leapfrog licenses the hospital
4 safety grades to insurance companies? We already
5 talked about hospitals, but do they also license
6 the hospital safety grades to insurance
7 companies?

8 MS. BLAIR: Objection to form.

9 THE WITNESS: I know we have before.

10 BY MR. CHUNG:

11 Q. Is that still in effect?

12 A. I don't know who our current licensees
13 are. I'm not involved in that.

14 Q. Okay. Do you know how -- in your
15 communications director role, do you have -- do
16 you communicate with insurance companies?

17 A. Not that I can think of.

18 Q. Okay. Have you ever communicated with
19 insurance companies while at Leapfrog?

20 A. We have -- some members of our partners
21 advisory committee are from health plans, so I've
22 talked to them before.

1 Q. All right. And what was the nature of
2 those discussions?

3 A. Very early on at Leapfrog, there were
4 only 12 staff members, so my job was bigger than
5 it is now, where I oversaw our stakeholder group,
6 so I oversaw our partners advisory committee from
7 2017 to 2020 and then also our regional leaders.

8 And during that time, our -- we have
9 co-chairs of all of our committees who are actual
10 members, and the co-chairs were from health
11 plans. So I talked to them about planning our
12 partners advisory committees quarterly.

13 Q. Okay. So you're at least generally aware
14 that Leapfrog licenses the hospital safety grades
15 to insurance companies, right?

16 A. Yes.

17 Q. Okay. How do those licensing deals work?

18 A. I don't know.

19 Q. Okay. What do the insurance companies --
20 what exactly are the insurance companies
21 licensing from Leapfrog?

22 MS. BLAIR: Objection to form.

1 THE WITNESS: Data.

2 BY MR. CHUNG:

3 Q. Which data?

4 A. Whatever data they're interested in. I
5 believe it's custom. Customized to the client.

6 Q. Okay. And this is the survey data
7 collected from hospitals, correct?

8 A. Yeah, it could be.

9 Q. Okay. Do they also license the hospital
10 safety grades themselves, the letter grades?

11 A. They could. Yes.

12 MS. BLAIR: Objection to form.

13 BY MR. CHUNG:

14 Q. Okay. So isn't Leapfrog incentivized to
15 have as many hospitals as possible participate in
16 the survey so that it can convince insurers that
17 the ratings have value?

18 A. I've never heard that as a primary goal.

19 Q. Okay. Does Leapfrog license hospital
20 survey data to researchers?

21 A. Yes.

22 Q. Okay. And are these researchers -- are

1 they institutions? Are they sole researchers?

2 What kind of researchers are they?

3 A. It's a variety. These sometimes come in
4 through our communications e-mail or through our
5 PR firm. Oftentimes it's even college students.
6 It's anyone who could be working on a research
7 paper and wanting to use Leapfrog data.

8 Q. And how does Leapfrog market this aspect,
9 the licensing of hospital survey data, to
10 researchers?

11 A. We don't market it to my knowledge.

12 Q. So so far as you're aware, these deals
13 come about as a result of researchers approaching
14 Leapfrog?

15 A. Correct.

16 Q. All right. And isn't Leapfrog
17 incentivized to have as many hospitals as
18 possible participate in the survey to convince
19 researchers that the data has value?

20 MS. BLAIR: Objection to form.

21 THE WITNESS: No, I don't think that's
22 what our focus is. I've never heard that as a

1 focus.

2 BY MR. CHUNG:

3 Q. Okay. Leapfrog also licenses hospital
4 survey data to businesses; is that right?

5 A. Yes. Like solution providers.

6 Q. Okay. And you've mentioned solution
7 providers before. But generally, who are these
8 solution providers?

9 A. I can't speak to who currently licenses.
10 I know that, you know, types of companies might
11 be, like, hand hygiene companies, like, GOJO who
12 owns Purell, like BioVigil, companies who have a
13 solution for hospitals and they want the data.

14 Q. Okay. Does Leapfrog market this hospital
15 survey data to these solutions providers?

16 A. I believe so. I'm not involved in the
17 marketing.

18 Q. Okay. So no with respect to researchers,
19 but yes or maybe with respect to solutions
20 providers; is that --

21 A. Yes.

22 Q. Okay. And how does it go about doing

1 that for the solutions providers?

2 MS. BLAIR: Objection to form.

3 THE WITNESS: I don't know. I'm not
4 involved in it.

5 BY MR. CHUNG:

6 Q. Okay. Do you know whether the survey
7 data -- the sale of the survey data is marketed
8 to solutions providers as part of their
9 participation in the partners advisory committee?

10 MS. BLAIR: Objection to form.

11 THE WITNESS: I know that they get a
12 discount on the data as part of the member
13 benefits.

14 BY MR. CHUNG:

15 Q. And how much is that discount?

16 A. I don't know.

17 Q. Okay. Are -- in terms of the kinds of
18 businesses that license hospital survey data, do
19 hospitals, competitor hospitals, license hospital
20 survey data? So let me just put it another way.

21 Do hospitals license the data of
22 competitor hospitals from Leapfrog?

1 MS. BLAIR: Objection to form.

2 THE WITNESS: I've never heard of that.

3 MR. CHUNG: Okay. Let's go to 72.

4 Exhibit 11.

5 (Bailey Deposition Exhibit 11 marked for
6 identification and attached to the
7 transcript.)

8 BY MR. CHUNG:

9 Q. All right. Ms. Bailey, Exhibit 11 is an
10 e-mail chain from July of 2024.

11 Okay. Have you had a chance to look
12 through it?

13 A. Yes.

14 Q. So let's just start with the first e-mail
15 from Ms. Binder to you --

16 A. Okay.

17 Q. -- July 9, 2024. She writes to you, I'm
18 at a meeting July 26 where they ask me to discuss
19 our work with HT and Turquoise Health and compare
20 price transparency and safety grade.

21 What is or who are HTA and Turquoise
22 Health?

1 A. HTA is the Healthcare Transformation
2 Alliance.

3 Turquoise Health, I don't know. I
4 actually didn't write that press release.

5 Q. Okay. So you don't know who or what
6 Turquoise Health is?

7 A. I can't remember right now.

8 Q. Okay. She continues, We did it last
9 year, and there was a press announcement,
10 et cetera. Could you give me the
11 background/press release on -- when you get a
12 chance? They're interested in other possible
13 uses of our data and what can be done to improve
14 survey reporting.

15 And then she concludes asking for any
16 further ideas from you or others.

17 And then you then describe in response,
18 Ms. Bailey, I think it's four ideas that we came
19 up with.

20 Do you see that?

21 A. Yes.

22 Q. Okay. And that is to -- and that you

1 wanted to get feedback from Kush Banerjee; is
2 that right?

3 A. Yes.

4 Q. And who is Kush Banerjee?

5 A. Kush Banerjee is the director of
6 licensure and -- I don't remember his exact
7 title, sorry. He just changed it.

8 Q. So, generally, what does he do?

9 A. He oversees the accolades and data
10 licensure programs.

11 Q. Okay. So this corresponds to the revenue
12 streams we were looking at earlier in the
13 financial statement?

14 A. Yes.

15 Q. Okay. So he responds after, it looks
16 like, reviewing four ideas that you came up with
17 for other possible uses of data.

18 Well, just to --

19 A. Uh-huh.

20 Q. -- let's go back to the e-mail -- the
21 second e-mail to Ms. [sic] Banerjee copying Jill
22 Berger. Who is Jill Berger?

1 A. She's the director of employer and payor
2 engagement, I think is her title.

3 Q. Okay. And what does that role involve?

4 A. She oversees our employer panel, as well
5 as our regional leaders.

6 Q. Okay. And so is this -- and so these
7 four additional ideas for use of the data, for
8 the hospital survey data, these are four ideas
9 that you came up with after brainstorming with
10 Ms. Berger; is that right?

11 A. Yes. I forgot to mention, she also
12 oversees our Bruce Bradley fellows, who are HR
13 mid-career professionals.

14 So these ideas -- I vaguely remember this
15 conversation, and these ideas were based on
16 projects that these fellows had done as part of
17 the fellowship.

18 Q. Okay. Now, Mr. Banerjee responds on
19 July 23rd. He writes -- it's fair to say that
20 he's commenting on the four ideas that you
21 presented to him?

22 A. Looks like it.

1 Q. Okay. He writes, Similarly, LF data
2 versus medical device or technologies is
3 interesting to measure a variation effectiveness
4 for the technologies and enable technology
5 companies to engage with us through the PAC or
6 data licensing.

7 Do you see that?

8 A. Yes.

9 Q. Okay. And the PAC, is that a reference
10 to the partners advisory committee?

11 A. Yes.

12 Q. Okay. So is he -- what's he saying here?

13 MS. BLAIR: Objection to form.

14 THE WITNESS: I don't know. Let me read
15 it again.

16 BY MR. CHUNG:

17 Q. Sure.

18 A. I don't really understand the way he
19 worded this, but it looks like he's talking about
20 medical device --

21 Q. Yeah.

22 A. -- companies and --

1 Q. So is --

2 A. -- that they could license the data.

3 Q. I'm sorry. Is he referring to the fourth
4 idea that you raised with him, the Leapfrog data
5 and medical device and technology data?

6 A. That's what it looks like.

7 Q. Okay. So what is that -- can you
8 describe what idea that was, what that idea
9 encompassed?

10 So let's just kind of break it down.
11 Right?

12 A. Okay.

13 Q. So is the audience here -- right? -- the
14 potential partners or the purchasers of the data,
15 they are medical device companies and technology
16 companies; is that right?

17 A. Yes.

18 Q. Okay. And then it looks like this
19 sub-bullet there, technology's role in enhancing
20 hospital safety and quality, is that just kind of
21 a basic concept behind the idea?

22 A. Yes. That's what it looks like.

1 Q. Okay. And then, underneath that, data
2 sources, safety grades, and data on medical
3 devices and healthcare technologies, is that a
4 reference to the types of data sources at
5 Leapfrog that could be marketed to medical device
6 and technology companies, that could be of use to
7 them?

8 MS. BLAIR: Objection to form.

9 THE WITNESS: I don't know. I think so.

10 BY MR. CHUNG:

11 Q. Okay. Well, this is your idea, so --

12 A. Well, it's not -- this isn't my idea, so
13 let's be clear. Kush was on paternity leave, and
14 I was trying to fill in something while he was
15 coming back from paternity leave. Normally, he
16 would have brainstormed these ideas. This isn't
17 a regular part of my job. Leah just asked me to
18 talk to Jill.

19 Q. Okay.

20 A. And Jill works part time, so she doesn't
21 have time to send e-mails all the time. So this
22 was a compilation. It wasn't necessarily my

1 idea.

2 Q. Okay.

3 A. It was just my job to communicate it.
4 And there's -- a lot of that happens in my job at
5 Leapfrog.

6 Q. Okay. But these are ideas that, working
7 with Ms. Burger, that you compiled and sent on to
8 Kush, correct?

9 A. That's what it looks like.

10 Q. Okay. And so the idea here, Ms. Bailey,
11 that this is a proposal to approach --
12 potentially approach medical device and
13 technology companies to license safety grade --
14 the safety grades and data on medical devices and
15 healthcare technologies?

16 MS. BLAIR: Objection to form.

17 THE WITNESS: That's what it looks like.

18 BY MR. CHUNG:

19 Q. Okay. And to potentially engage medical
20 device and healthcare technologies to become
21 members of the partner advisory committee; is
22 that right?

1 A. Yes. That was part of Jill's job at the
2 time.

3 Q. Okay. Now, Mr. Banerjee continues --
4 just going back to his e-mail, The first two --
5 so the last paragraph of this e-mail.

6 The first two are interesting as well,
7 but I don't see that they can have the same
8 impact on driving data licensing and PAC
9 engagement from my revenue lens as the other two.

10 Is he saying here that the first two of
11 the four ideas that were presented in your
12 e-mail -- and this is the Leapfrog data and
13 public health data and Leapfrog data and social
14 determinants of health data -- right? Those are
15 the first two. That in his view don't have the
16 same impact as the third and fourth ideas from a
17 revenue perspective; is that right?

18 MS. BLAIR: Objection to form.

19 THE WITNESS: I take that to mean maybe
20 those are good PR ideas, but not for his job.

21 BY MR. CHUNG:

22 Q. Where does he refer to PR?

1 A. I'm just inferring that because my job is
2 PR. So that's the lens that I have when I do
3 things. Again, I don't normally do stuff like
4 that. I very vaguely remember this. And that's
5 what I take him to mean, is that it probably
6 wouldn't make sense for him, but like I said --
7 so in the second one, it says, Note, Stacy looked
8 at a fellow project, so that's, again, part of a
9 fellowship. So --

10 Q. Okay.

11 A. -- I think he was just saying it
12 wouldn't -- it doesn't make sense for him.

13 Q. So -- and then you respond up top,
14 Thanks, Kush. Great points re driving data
15 licensing. I think I'll just share 3 and 4 with
16 Leah from that lens. So happy you're back.

17 Do you see that?

18 A. Yes.

19 Q. Okay. So did you -- why did you only
20 share 3 and 4 with Leah, as opposed to the first
21 and second that Ms. [sic] Banerjee said would not
22 have the same impact from a revenue lens?

1 A. I don't remember. I just -- it looks
2 like I took his advice on it.

3 Q. Okay. Do you know whether Leapfrog
4 implemented any of these ideas?

5 A. I don't know.

6 MR. CHUNG: Let's go to tab 47.

7 This is Exhibit 12.

8 (Bailey Deposition Exhibit 12 marked for
9 identification and attached to the
10 transcript.)

11 BY MR. CHUNG:

12 Q. All right. Ms. Bailey, this is an e-mail
13 chain. You're not on the chain, but let me know
14 if any of it looks familiar to you. The e-mail
15 chain and the attachment.

16 A. I haven't seen this before, but it looks
17 like they're talking about the budget.

18 Q. Okay. If you look at the first page
19 Bates ending in 8278, there's an e-mail from
20 Ms. Binder to Ben Choi.

21 And I understand that Ben Choi was the
22 former CFO, am I right, of the organization?

1 A. Yeah, the interim.

2 Q. Interim CFO? Okay.

3 And she writes here, If we move toward
4 cost reduction as the primary strategy, it will
5 be much more severe than this, but I'm not going
6 there for now. We can address incremental
7 spending issues, but let's not lose focus on what
8 managers should be thinking about 24/7, which is
9 revenues.

10 That particular sentence, let's not lose
11 focus on what managers should be thinking about
12 24/7, which is revenues, is that a sentiment or
13 directive that Ms. Binder has shared with you or
14 communicated to you?

15 A. Not for the communications team, no.

16 Q. Okay. Have you heard from your
17 colleagues -- right? -- whether they're in
18 finance or in licensing, or really any
19 colleagues, about Ms. Binder communicating this
20 directive to them?

21 A. No, not that I can recall.

22 Q. Okay. Any -- is it a -- is generating

1 revenue -- ways of generating revenue, is it a
2 focus of Ms. Binder in running the organization?

3 A. Yeah. She's the CEO, so yes.

4 Q. Okay. And in what -- in your
5 interactions with her, in what ways has she
6 communicated with you that it is a focus?

7 A. I just know it's part of her job because
8 if we didn't have money, we couldn't run any of
9 our programs.

10 Q. All right. Are there any specific ways
11 of raising revenue that she -- that you've heard
12 her -- that you've heard her discuss?

13 A. No, not beyond what we've talked about.
14 Just accolades and data licensure is all I know.

15 Q. Okay. And in terms of the accolades and
16 data licensure, what has she said about those
17 particular programs for purposes of raising
18 revenue?

19 A. Just that they are revenue.

20 Q. Just that they are revenue? Is that what
21 you're testifying to?

22 A. Right. In the financial statements.

1 That's the extent that I'm involved in these
2 discussions.

3 Q. What has she said about raising more
4 revenue through those particular programs?

5 A. Nothing I can recall to me.

6 Q. Okay. Maybe not to you but to your
7 colleagues?

8 A. I don't know.

9 Q. All right. Has she discussed how to
10 change the hospital grading methodology in order
11 to generate more revenue through the accolade
12 licensing and the data licensure program?

13 A. Can you restate the question?

14 Q. Yes.

15 Has she discussed how the organization
16 can change the grading methodology or the scoring
17 methodology in order to generate more revenue
18 from accolade licensing?

19 A. I -- no, I don't recall her saying that.

20 Q. Who is Leapfrog's competition?

21 A. I've never heard Leah or anyone use the
22 word "competition." There's a lot of ratings

1 systems out there, but we're all fairly
2 consistent, us and other ratings organizations,
3 that we're different and unique and that
4 consumers should use what resonates with them.

5 Q. In your view -- putting aside what
6 Ms. Binder might have said or not said, in your
7 view, who are Leapfrog's competitors?

8 A. I mean, rating -- other large rating
9 systems, like U.S. News and World Report,
10 Healthgrades are the ones that come to mind.

11 Q. Okay. So those two. Any others?

12 A. Those are the only that come to mind.
13 But again, we tell people, like, even in our
14 social media, like, look at these ratings. When
15 the new U.S. World and News Report honor roll
16 comes out, we promote it on social media. And
17 they do the same for us. Like, we -- I wouldn't
18 say we're, like, normal competitors. We're a
19 nonprofit, so it's a bit different.

20 Q. Do you -- does Leapfrog track those
21 competitors, U.S. News and World Report and
22 Healthgrades, in terms of their -- in terms of

1 the products or developments in their products?

2 A. I don't know.

3 Q. Does Leapfrog engage directly with
4 hospitals, whether it's the leadership or
5 administrative staff, to encourage participation
6 in the hospital survey?

7 A. Can you restate the question?

8 Q. Yeah.

9 Does Leapfrog engage directly with
10 hospitals to encourage hospitals to participate
11 in the survey?

12 A. That's all done through our regional
13 leaders.

14 Q. Okay. Are there any resources, like
15 toolkits or consultants, that are provided to
16 hospitals to basically help them participate in
17 the survey?

18 A. Not that I can recall.

19 Q. Are there any partnerships with employers
20 or insurers or other third parties that use
21 hospital participation in the survey as a
22 criterion for contracting or inclusion in the

1 network?

2 A. I don't know.

3 Q. Does Leapfrog track hospital
4 participation rates over time?

5 A. Yes.

6 Q. All right. And what has Leapfrog kind of
7 witnessed in terms of that tracking?

8 A. Overall, it continues to increase every
9 year. During COVID, we saw it go down, just like
10 everything else in the world.

11 Q. Okay. And what steps -- where
12 participation declines -- right? -- or fails to
13 meet organizational goals, what does Leapfrog do
14 to address those declines or those changes?

15 A. From my knowledge, it only happened
16 during the pandemic. And that was a very unique
17 situation, so we kind of let it ride out. And as
18 soon as it was over, participation went back up.
19 That's my understanding.

20 Q. Okay. Did participation in the hospital
21 survey increase after the fall 2024 change to the
22 imputation methodology?

1 A. I don't know.

2 Q. Okay. Has Leapfrog conducted any studies
3 or analyzed whether survey participation improves
4 a hospital's safety grade over time?

5 MS. BLAIR: Objection to form.

6 THE WITNESS: Can you restate that?

7 BY MR. CHUNG:

8 Q. Yeah.

9 Has Leapfrog conducted any studies or
10 analyzed whether participation in the survey
11 improves a hospital's safety grade over time?

12 A. I don't know. I don't think so.

13 Q. You don't think that Leapfrog has ever
14 studied that?

15 A. Yeah, I don't know.

16 Q. Okay. All right. Let's move on to the
17 websites which we've discussed already a bit. So
18 what --

19 (Discussion off the record.)

20 MR. CHUNG: We're about to enter a new
21 section. Are you folks okay with taking a break
22 right now for lunch?

1 MS. BLAIR: Sure.

2 THE WITNESS: Sure.

3 MR. CHUNG: Let's do that, then.

4 VIDEO TECHNICIAN: The time is 11:56 a.m.
5 This ends unit 2. We're off the record.

6 (A recess was taken.)

7 VIDEO TECHNICIAN: The time is 12:59 p.m.
8 This begins unit number 3. We're on the record.

9 BY MR. CHUNG:

10 Q. So Ms. Bailey, we're now going to discuss
11 the two websites that we referenced earlier.

12 And am I correct that the two websites
13 that Leapfrog -- operated by Leapfrog are
14 the leapfroggroup.org and the
15 hospitalsafetygrade.org sites? Is that correct?

16 A. Yes.

17 Q. So what's the distinction between the
18 two? What's the purpose of each?

19 A. So on leapfroggroup.org, we house our
20 hospital and ASC survey results.

21 And on hospitalsafetygrade.org we house
22 the hospital safety grade results.

1 So the reason why we have the distinction
2 is because they are two distinct programs, so we
3 want to keep them separate.

4 Q. Okay. On the -- but do both websites --
5 can a consumer go on both websites and look up
6 their local hospital?

7 A. Yes.

8 Q. Okay. And just to be clear, both are
9 operated by Leapfrog, correct?

10 A. Correct.

11 Q. And as director of communications, can
12 you just tell us again what is your role with
13 respect to the websites?

14 A. I oversee the content that's on the
15 website and I work with the ratings team before
16 each survey year when we refresh the survey data
17 and then before each safety grade cycle to do
18 testing to make sure all the data went through
19 correctly.

20 Q. Okay. And in terms of the content of the
21 websites, to be clear, you oversee the content of
22 both websites; is that right?

1 A. Correct.

2 Q. Okay. And how does that work? What is
3 the process by which you oversee the content for
4 both websites?

5 A. Can you restate the question?

6 Q. Sure.

7 What I'm getting at is, how do you do it?
8 How do you oversee the contents of the websites?
9 Are there periodic checks that you conduct? Are
10 there -- how does it work?

11 A. Okay. So as I've testified before,
12 Leapfrog is a small organization, and we work
13 together in a lot of areas.

14 So there are sections of our website,
15 particularly leapfroggroup.org, that are actually
16 fully managed by the ratings team. So that would
17 be anything relating -- to do -- like, you
18 actually can fill out your survey through our
19 website. Like, it's all housed there.

20 So leapfroggroup.org has a lot more in
21 that aspect, and that's managed by the ratings
22 team. So I can't speak for that. We'll

1 sometimes make some changes, but that's overseen
2 by Missy Danforth and her team.

3 The other aspects of the website that I
4 am regularly updating would be, like, the
5 newsroom, our blog. Anytime there's things going
6 on that are, you know, PR worthy, they'll go in
7 either of those spots, or maybe both.

8 I also update the home page quite
9 frequently and updating program pages or
10 things -- the process there is just, if there is
11 a change, we'll update it. If there's a broken
12 link, we'll change it.

13 Q. Okay. How do you know or how do you
14 monitor or determine whether the website -- and
15 let's just focus on the leapfroggroup.org
16 website -- is up to date.

17 A. Sorry, can you restate the question?

18 Q. Sure.

19 How do you monitor or confirm that the
20 leapfroggroup.org website is up to date at any
21 given time?

22 A. It's a -- it's a team effort. So we're

1 all -- we all work on the back end of the
2 website.

3 Q. Okay. So that's the Leapfrog -- I think
4 you specified your response with respect to the
5 leapfroggroup.org website.

6 How about the hospitalsafetygrade.org
7 website? How do you oversee or monitor the
8 content on that website?

9 A. So that website is much more focused. So
10 that is just focused solely on the hospital
11 safety grade. So for that site, we update it
12 twice a year around the launch of a new round of
13 the safety grade.

14 Q. Okay. And so you are -- you oversee that
15 process?

16 A. Yes. I work with the ratings team on
17 that.

18 Q. Okay. So what we're going to do is,
19 because it's, I think, easier to follow, we're
20 going to, instead of using -- relying solely on
21 just printouts from the websites, we're actually
22 going to go on the websites themselves. We're

1 going to put a laptop in front of you and just
2 kind of --

3 A. Okay.

4 Q. -- have you kind of help us navigate
5 through both of the websites. Okay?

6 A. Okay.

7 MR. CHUNG: So why don't we do that.

8 THE WITNESS: Do you want me to put it
9 like this? Or --

10 BY MR. CHUNG:

11 Q. No, you can just put it in right front of
12 you.

13 A. Oh, okay.

14 Q. All right. So first things first, who
15 designed these websites?

16 A. I don't know. It was before my time.

17 Q. Okay. And I think the first thing we're
18 going to do is, are you aware that, upon a --
19 kind of a basic Google search of hospital safety
20 grade, that the two top website hits that come up
21 are the Hospital Safety Grade and then
22 The Leapfrog Group websites?

1 A. That makes sense.

2 Q. Okay. Why don't we just -- go ahead and
3 do that. If you can just type in --

4 A. Okay.

5 Q. -- hospital safety grade as a Google
6 search.

7 And do the search results reflect that --

8 A. Yes.

9 Q. -- Hospital Safety Grade up top and then
10 The Leapfrog Group below that?

11 A. Yes.

12 Q. Now, before we navigate through the --
13 actually, what we'll do is, let's look first at
14 the leapfroggroup.org website.

15 A. Okay.

16 Q. So if you can click on that. And then
17 what we'll do is...

18 MR. CHUNG: If you can get tab 19.

19 (Bailey Deposition Exhibits 13 and 14
20 marked for identification and attached to
21 the transcript.)
22

1 BY MR. CHUNG:

2 Q. Now, we're also going to put in front
3 of you a couple of exhibits marked Exhibits 13
4 and 14.

5 So looking at the leapfroggroup.org
6 webpage, can you just run a search for Delray
7 Medical Center, which is one of the plaintiff
8 hospitals in this matter?

9 A. Okay.

10 Q. Okay. And do you see that the first kind
11 of result of the page, after running that search,
12 there's a window that says there are four
13 facilities in your search that declined to
14 respond to Leapfrog's request for patient safety
15 and quality data.

16 Do you see that?

17 A. I see Delray Medical Center has declined
18 to respond.

19 Q. Okay. Got it. And so -- and you
20 understand that Delray Medical Center is one of
21 the plaintiff hospitals --

22 A. Yes.

1 Q. -- in this matter, one of the five,
2 correct?

3 A. Yes.

4 Q. Okay. And I think you testified that you
5 see -- is it a red box that says, Declined to
6 respond?

7 A. Yeah. The top is red.

8 Q. Top is red. Okay.

9 And does that correspond to Exhibit 13 in
10 front of you?

11 A. Yes.

12 Q. Okay. And then underneath that red box
13 that says, Delray Medical Center has declined to
14 respond, it says, What does this mean? Thousands
15 of hospitals nationwide report to Leapfrog
16 hospital survey to help patients and purchasers
17 make better healthcare decisions. This hospital
18 did not participate.

19 Do you see that?

20 A. Yes.

21 Q. Okay. So -- and you can't -- with this
22 pop-up, with the red bar across the top, does

1 that kind of obscure what's behind the pop-out
2 box in terms of the webpage?

3 A. It's gray behind the box.

4 Q. Yup. Okay. So I'm going to ask you to
5 click out of the pop-up.

6 A. Okay.

7 Q. And is it correct that, of all the
8 measures that are listed once you pop out of the
9 pop-up -- click out of the pop-up, the
10 webpage says that the hospital declined to
11 respond; is that right?

12 A. Yes.

13 Q. Okay. And is that reflected on
14 Exhibit 14 in front of you?

15 A. Yes.

16 Q. Okay. Just using the Delray Medical
17 Center example, right?

18 A. Yes.

19 Q. Okay. And am I right that there's no
20 hospital safety grade on this page? Am I right?

21 A. Correct. This is Leapfrog hospital
22 survey data.

1 Q. Okay. And then if you click on
2 preventing patient harm on that page.

3 Do you see that?

4 A. Yes.

5 Q. Okay. And just as an example, there's
6 a -- under the handwashing metric, it says,
7 Declined to respond.

8 Do you see that?

9 A. Yes.

10 Q. Okay. And there's no imputed score
11 delineated there; is that right?

12 A. Correct.

13 Q. Okay. Now, let's turn to -- we're now
14 going to turn to the other website, the
15 hospitalsafetygrade.org-

16 A. Okay.

17 Q. -- website. So if you can kind of toggle
18 back and then click on -- I think it was the
19 first --

20 A. Yeah --

21 Q. -- result.

22 A. Sorry, I didn't mean to interrupt you.

1 At the bottom of -- if you scroll to the
2 bottom of the page that we were just on, it says,
3 See this facility's safety grade. So that's what
4 I clicked on.

5 Q. Okay. If you can go back to the Google
6 results. Okay?

7 A. Okay.

8 Q. And then I think you said that the
9 hospitalsafetygrade.org website was the first
10 hit, right?

11 A. Yes.

12 Q. Okay. So let's just go to that.

13 A. Okay.

14 MR. CHUNG: This will be Exhibit 15.

15 (Bailey Deposition Exhibit 15 marked for
16 identification and attached to the
17 transcript.)

18 BY MR. CHUNG:

19 Q. All right. So kind of a similar
20 exercise, Ms. Bailey. If you can run a search
21 for Delray Medical Center on the
22 hospitalsafetygrade.org website.

1 A. Okay.

2 Q. And does the page specific to the Delray
3 Medical Center show up?

4 A. Yes.

5 Q. Okay. Great.

6 And is that, what we see on Exhibit 15,
7 what shows up on the computer?

8 A. Yes.

9 Q. Okay. And it shows that -- a box, a gray
10 box, that says this hospital grade is F, correct?

11 A. Yes.

12 Q. And in particular to the spring 2025,
13 which I believe is the most recent round of
14 safety grades; is that right?

15 A. Yes.

16 Q. Okay. So in contrast -- unlike on the
17 leapfroggroup.org website that we looked at
18 earlier, this website does not immediately have a
19 pop-up box indicating that the hospital did not
20 provide data to Leapfrog sufficient to rate the
21 hospital, correct?

22 A. Correct.

1 Q. Okay. Now, going to see full score, it
2 shows -- when we click on the tab -- I'm sorry.
3 When we click on tab practices to prevent
4 errors -- do you see that?

5 A. Yes.

6 Q. It's the fourth one across, right?
7 We see, for doctors order medications
8 through a computer, does it show that this
9 hospital scores a 15?

10 Do you see that?

11 A. Yes.

12 Q. And does this measure on the website
13 correspond to CPOE, so far as you understand?

14 A. Yes.

15 Q. Okay. And so is this one of the imputed
16 metrics under the new methodology?

17 A. Yes.

18 Q. Okay. And then for safe medication
19 administration, which is the next one over --
20 right? -- am I correct that it shows a score of
21 25?

22 A. Yes.

1 Q. And is the safe medication administration
2 measure, does that correspond to BCMA?

3 A. Yes.

4 Q. All right. And then for hand washing,
5 which is the next one over, it shows a score of
6 15, correct?

7 A. Yes.

8 Q. All right. And this measure is --
9 corresponds to hand hygiene that we already
10 discussed, correct?

11 A. Yes.

12 Q. All right. And these are all -- the ones
13 we've gone over so far, the three, are all,
14 again, imputed metrics under the new methodology,
15 correct?

16 A. Yes.

17 Q. All right. Now, if we go under the next
18 tab, doctors, nurses, and hospital staff, the one
19 on the right, there's a measure underneath
20 specially trained doctors for ICU patients.

21 Do you see that?

22 A. Yes.

1 Q. And do you see that the score there
2 for -- is a 15? Is that right?

3 A. It's a 5.

4 Q. 5, I'm sorry.

5 It's a 5, correct?

6 A. Yes.

7 Q. And does this measure correspond to IPS?

8 A. Yes.

9 Q. All right. And then for -- and again, is
10 this also one of the imputed metrics under the
11 methodology?

12 A. Yes.

13 Q. All right. And so for all of these
14 scores, the scores for Delray Medical Center
15 under these four imputed metrics, these are all
16 limited achievement scores, correct?

17 A. For the survey. Yes.

18 Q. Yes. For the survey. Right.

19 And if you look at the gas gauge type,
20 kind of the -- the picture or the scores for
21 these four imputed metrics, they're all set to
22 the lowest possible value.

1 Do you see that? Is that right?

2 A. Yes. Worse than average.

3 Q. Right. Worse than average. And they're
4 kind of -- the gas gauge is to the red, to the
5 left, right?

6 A. Yes.

7 Q. Okay. But they're not -- there isn't any
8 wording in those gas gauges along the lines of
9 decline to report, right, or not enough data,
10 correct?

11 A. Not on the gas gauge.

12 Q. Not in the gas gauge. Right.

13 So -- but there are certain measures on
14 this website where it is indicated that the
15 hospital declined to report; is that right?

16 A. Correct.

17 Q. Okay. And can you give us one or two
18 examples of -- for which measures that declined
19 to report pictorial shows up?

20 A. On this page, the one right now, it's
21 effective leadership to prevent errors and
22 nursing and bedside care for patients.

1 Q. Okay. And so it's only at the -- we're
2 looking right now above the fold, the
3 webpage above the fold; is that right?

4 A. I don't -- that's a newspaper term, so I
5 don't...

6 Q. Okay. That's a really unfair response.
7 So we're looking at kind of the
8 webpage as the consumer sees it, right?

9 A. Yes. We're reading the webpage.

10 Q. All right. So are there any
11 disclosures -- just looking at the webpage now,
12 without scrolling at all -- right? -- are there
13 any disclosures on the webpage about -- that
14 disclose that the hospital here, in this case
15 Delray Medical Center, did not provide data to
16 The Leapfrog Group?

17 A. There's only an asterisk, which is the
18 normal communication that there's more
19 information below.

20 Q. Okay. That asterisk corresponds to a
21 footnote, correct, toward the bottom of the page
22 as you scroll down to the bottom of the page,

1 correct?

2 A. Yes.

3 Q. All right. And you're familiar with all
4 of this because you oversee this website and the
5 other website, correct?

6 A. Correct.

7 Q. Okay. So -- and it's at the bottom of
8 the page in -- let's just go to it -- in the
9 smaller font where Leapfrog discloses that this
10 hospital did not provide data to The Leapfrog
11 Group, correct?

12 A. In notes and definitions, we're referring
13 to number 4 --

14 Q. Right.

15 A. -- which is an asterisk in bold red.

16 Q. Okay. And it says, Hospital declined to
17 report the performance on this measure, so a
18 score was assigned to reflect lack of information
19 available, correct?

20 A. Correct.

21 Q. And this footnote is in reference to the
22 four imputed metrics that are laid out above it,

1 correct?

2 A. Correct. There's an asterisk that --
3 yes.

4 Q. Right. Now, does this -- the footnote,
5 however, does not explain how that score was
6 assigned, correct?

7 A. Correct.

8 Q. Okay. So we have looked at -- we've kind
9 of scrolled through it and we've looked at each
10 of the two Leapfrog websites, or the websites
11 that are operated by Leapfrog.

12 Why doesn't Leapfrog use the same
13 disclosures as they relate to hospitals that
14 don't participate in the survey -- right? -- why
15 doesn't Leapfrog use the same disclosures on each
16 website?

17 MS. BLAIR: Objection to form.

18 THE WITNESS: They're complete -- they're
19 different programs. So the Leapfrog hospital
20 survey is a different program than the Leapfrog
21 hospital safety grade. The Leapfrog hospital
22 survey includes safety and quality.

1 BY MR. CHUNG:

2 Q. Okay. But we looked at -- so how does
3 that explain the difference between the
4 website -- the two websites as we just went over,
5 the parts that we went over?

6 A. They're different. So maybe a better way
7 to say it: So the survey is voluntary.
8 Hospitals choose or not choose to do the survey.

9 The safety grade is not voluntary. The
10 safety grade was designed so that it was assigned
11 to all general acute care hospitals for patients
12 to get as much information as possible.

13 Q. Okay. Was there ever a concern at
14 Leapfrog -- right? -- that consumers or visitors
15 to both websites would be confused about the
16 imputed metric scores for hospitals that did not
17 participate in the hospital survey?

18 MS. BLAIR: Objection to form.

19 THE WITNESS: Can you restate the
20 question?

21 BY MR. CHUNG:

22 Q. Yes.

1 Was there ever any concern at Leapfrog
2 that visitors to the websites, including
3 consumers, would be confused about imputed metric
4 scores for hospitals that did not participate in
5 the hospital survey?

6 A. No. That's the reason we did the
7 asterisk with the note. We feel that it's a
8 clear description that this was a score that was
9 assigned.

10 Q. Okay. Though the footnote -- the
11 asterisk and the footnote does not describe how
12 that automatic low score was assigned, correct?

13 MS. BLAIR: Objection to form.

14 THE WITNESS: That's in our methodology.
15 We only have a certain amount of real estate on
16 the website. It wouldn't make sense -- it's
17 something in communications that's also important
18 to know -- this is our philosophy in
19 communications just generally in the field,
20 actually6 -- is that too much information can
21 actually be more confusing to consumers.

22 Consumers don't generally understand

1 what "imputed" means, but they understand basic
2 language, that this hospital declined to report
3 their performance on this measure, so a score was
4 assigned to reflect the lack of information
5 available.

6 BY MR. CHUNG:

7 Q. Okay. So I'm just going to ask the
8 question again: Was there ever any concern --
9 right? -- at Leapfrog that visitors to the
10 websites might be confused about the imputed
11 metric scores for hospitals that didn't report to
12 the survey?

13 A. Well, we made this so that they wouldn't
14 be confused.

15 Q. So the question -- yes? No? Were there
16 concerns or were there not concerns?

17 A. There were concerns, which is the reason
18 why we did the asterisk and disclosed it in bold
19 red as clear as possible.

20 Q. When you say as clear as possible, what
21 do you mean by that?

22 A. Like, we have it in bold in red, which

1 will draw people's eyes.

2 Q. Okay. But the -- it doesn't -- but the
3 footnote does not describe how that lowest
4 possible score was assigned to the hospital,
5 correct? Just to be clear.

6 MS. BLAIR: Objection to form.

7 THE WITNESS: Can you restate the
8 question?

9 BY MR. CHUNG:

10 Q. Yes. But am I correct that that
11 footnote does not inform the consumer --
12 right? -- the visitor to the website how that
13 lowest possible score was assigned to that
14 hospital, correct?

15 MS. BLAIR: Objection. Form.

16 THE WITNESS: That's not the purpose of
17 this part of the website.

18 BY MR. CHUNG:

19 Q. Okay.

20 A. It's the methodology.

21 Q. And so are -- when you say that's not the
22 purpose of the website, are consumers expected,

1 then, to be knowledgeable about the methodology?

2 A. No, I'm not saying that. Like, if you
3 look at all of the measures, it doesn't very
4 clearly explain how each thing was scored. We
5 put the most clear information possible for each
6 of the measures for consumers.

7 Q. Okay. Has Leapfrog -- all right. So you
8 testified about kind of -- well, has Leapfrog
9 received any feedback, first of all, from
10 hospitals regarding any confusion or
11 inconsistencies between the information presented
12 on the two websites?

13 A. Not that I can recall.

14 Q. Okay. How about any feedback -- has
15 Leapfrog received any feedback from patients --
16 right? -- consumers, regarding confusion or
17 possible inconsistencies between the information
18 presented on the websites?

19 A. Not that I can recall.

20 Q. Okay. Have you -- has Leapfrog received
21 any feedback from any party about confusion or
22 potential inconsistencies in the information

1 presented between the two websites?

2 A. Not that I can recall.

3 Q. Okay. Has Leapfrog ever conducted any
4 testing or surveys or other research to assess
5 whether consumers see the disclosures on each
6 website as opposed to -- Ms. Bailey, as opposed
7 to just seeing, for one, the grade -- right? --
8 on the website?

9 So the question is, yeah, has Leapfrog
10 ever studied whether consumers actually --
11 whether they actually look at or see the
12 disclosures on each of the websites?

13 A. I know that when the website was created,
14 I wasn't here. But from -- my understanding is
15 that we hired a low literacy expert. We also had
16 focus groups.

17 And the whole structure in general of the
18 website has not changed since then. So it was
19 developed with feedback from those experts.

20 Q. So -- I think you said low literacy
21 expert.

22 What is that?

1 A. We want to ensure that our website is
2 written to an eighth grade level of education.

3 Q. Okay. Is another word for that digital
4 literacy expert?

5 A. I don't know.

6 Q. Okay. Has there been -- do you know
7 when, approximately, that low literacy expert was
8 retained to advise on the website?

9 A. It was whenever we created this website,
10 and it was prior to my time at Leapfrog.

11 Q. Okay. Do you know whether that expert
12 looked at both websites or just one of them?

13 A. I don't know.

14 Q. All right. Have there been -- during
15 your time at Leapfrog over the last several
16 years, has a low literacy or a digital literacy
17 expert ever reviewed either or both of these
18 websites?

19 A. Not to my knowledge. We haven't made
20 substantial changes to how the data is displayed.

21 Q. Okay. Do you think it's realistic to
22 assume or to think that visitors, particularly

1 one with -- let's assume one with an eighth grade
2 literacy level -- right? -- low literacy, will
3 read a footnote at the bottom of the page on the
4 hospitalsafetygrade.org website?

5 A. I think -- yes, I think someone at an
6 eighth grade level would understand what an
7 asterisk means, and if they were interested, they
8 could learn more, scroll down.

9 Q. Okay. Do you -- so I'll ask it again.

10 Do you think it's reasonable or realistic
11 for such a consumer with the eighth grade
12 literacy level to read through that entire page,
13 to scroll down and then study the information at
14 the bottom of the page?

15 A. Yes. I think if they're interested in
16 the data, they'll read it.

17 Q. Okay. Does Leapfrog want consumers to
18 believe that the imputed metrics are based on
19 actual data?

20 MS. BLAIR: Objection to form.

21 THE WITNESS: No. I mean, we really --
22 we clearly say on this, a score was assigned to

1 reflect the lack of information available.

2 BY MR. CHUNG:

3 Q. Okay. And it's not disclosed here
4 that -- is it disclosed anywhere on the Hospital
5 Safety Grade website that the scores, the limited
6 achievement scores are automatically assigned to
7 these hospitals on these imputed metrics?

8 A. Can you say that again?

9 Q. Yeah. Is it anywhere disclosed -- is it
10 disclosed on the website, the
11 hospitalsafetygrade.org website, that
12 non-participating hospitals are automatically
13 assigned a limited achievement score on these
14 imputed metrics?

15 A. I think that it's clear because it says,
16 again, a score was assigned. And then if you see
17 this hospital score and you see worst hospital
18 score, you see that it was the lowest.

19 Q. Okay. Has Leapfrog ever considered
20 standardizing the disclosures or the presentation
21 of information across these two websites as it
22 relates to non-responding hospitals?

1 When I say non-responding, hospitals that
2 didn't respond to the hospital survey.

3 MS. BLAIR: Objection. Form.

4 THE WITNESS: Can you say the question
5 again.

6 BY MR. CHUNG:

7 Q. Sure has Leapfrog ever considered
8 standardizing -- right? -- making consistent
9 between the two websites the disclosures or the
10 presentation of information as it relates to
11 hospitals that do not participate in the hospital
12 survey?

13 MS. BLAIR: Objection to form.

14 THE WITNESS: Because they're different
15 programs -- Leapfrog hospital safety grade and
16 Leapfrog hospital survey are different -- no.

17 BY MR. CHUNG:

18 Q. Okay. Let's talk about Leapfrog's
19 marketing.

20 So are you -- you're the communications
21 director. Do you have responsibilities with
22 respect to Leapfrog's marketing function?

1 A. Marketing is different than
2 communications, so --

3 Q. Okay.

4 A. -- I wouldn't consider that, no. What's
5 your definitions of marketing?

6 Q. Who's in charge of marketing?

7 A. We don't have a marketing person.

8 Q. All right. And you mentioned that --
9 other than CURA Strategies, are there any other
10 outside contractors or consultants that provide,
11 you know, public relations or communications
12 services?

13 A. We have a few services that we will use.
14 CURA Strategies is our agency of record.

15 We work with Nonprofit Megaphone, which
16 is a vendor who helps us with our Google ads. We
17 have a Google ad grant since we're a nonprofit.

18 We work with North American Network,
19 which is a radio vendor, around the safety grade
20 to help us get the safety grade out.

21 We work with ForeMedia, which kind of
22 does the same thing but for broadcast TV.

1 Q. Okay.

2 MR. CHUNG: Let's go to tab 22. This
3 will Exhibit 16.

4 (Bailey Deposition Exhibit 16 marked for
5 identification and attached to the
6 transcript.)

7 BY MR. CHUNG:

8 Q. All right. Ms. Bailey, I've put in front
9 of you Exhibit 16, which is titled, 2025 Regional
10 Leader Communications Toolkit: Launching
11 Leapfrog Surveys.

12 Take a few moments. Let me know if it
13 looks familiar to you.

14 A. Yes. I'm familiar with this.

15 Q. Okay. Is this a document that provides
16 instructions to Leapfrog regional leaders on how
17 to market the hospital survey?

18 A. I wouldn't use the word "market."
19 There's no money exchanged in our relationship
20 with regional leaders.

21 This is a toolkit that lives on their
22 intranet, you could call it, on our website, and

1 they can refer back to it throughout the year.

2 One of the primary responsibilities of
3 regional leaders are really to represent Leapfrog
4 in their markets, and so a really big part of
5 that is sending out physical letters to all the
6 hospitals on their rosters. So for our regional
7 leader in Seattle, they do all of the hospitals
8 in Seattle. And they also have ambulatory
9 surgery centers on their rosters.

10 Q. And so what is the purpose of regional
11 leaders reaching out to hospitals in their
12 markets?

13 A. Healthcare is local.

14 Q. So what's the purpose?

15 A. The purpose is that they represent
16 Leapfrog in their markets and they are -- as
17 employers, they represent employers in their
18 markets. So Leapfrog, again, was founded by
19 employers. And so the ask to participate in the
20 survey comes from the employer community.

21 Q. All right. So just in short, they are --
22 the regional leaders are responsible for

1 communicating with hospitals in their market to
2 try to get them to participate in the survey,
3 correct?

4 A. Yes. They send letters. Yes.

5 Q. Now, how do they -- what are the typical
6 kind of ways in which regional leaders try to
7 achieve that?

8 A. Most of them just send letters, physical
9 letters and e-mails.

10 Q. And does this toolkit -- it looks like
11 this toolkit includes suggestions of how to
12 format those letters --

13 A. Yes.

14 Q. -- or word those letters, correct?

15 A. Yes.

16 Q. Okay. If you look at, later in the
17 document, Bates ending 517, there's a chart.

18 A. Yes.

19 Q. And it's beginning to sound like a broken
20 record, but it's titled, Common objections and
21 frequently asked questions about Leapfrog and its
22 ratings.

1 Do you see that?

2 A. Yes.

3 Q. Okay. And there's a table that goes on
4 for, I think, several pages --

5 A. Yes.

6 Q. -- till the end of the document, correct?

7 The -- on this first page, the second
8 row, reads, under objection, Leapfrog data is
9 self-reported and, therefore, unreliable.

10 Do you see that?

11 A. Yes.

12 Q. And that is a common objection that we've
13 seen kind of in prior documents, including the
14 presentation to the board that we looked at,
15 correct?

16 A. The presentation to the board came from
17 this document. Yes.

18 Q. Okay. Now, turning to -- and is it --
19 looking at this document now, for this toolkit
20 for regional leaders, is this objection, Leapfrog
21 data is self-reported and, therefore, unreliable,
22 an objection that -- a common objection from

1 hospitals?

2 A. We've -- I testified before about this,
3 that, yes, we've heard this.

4 Q. Okay. Turning to the next page, so Bates
5 ending 518, it is the fifth objection down. It
6 reads, We believe something on the survey is not
7 risk-adjusted adequately and/or invalid or
8 unscientific.

9 Do you see that particular objection?

10 A. Yes, I do.

11 Q. Okay. And is it correct that that is
12 another common objection to the Leapfrog survey
13 from hospitals?

14 A. Again, in my testimony earlier, common
15 is -- common objections is just a PR term. It
16 doesn't mean we hear it all the time. It means
17 we think it's important for regional leaders to
18 have the answer to this question. Maybe we've
19 heard it before; maybe it was discussed with
20 staff that it could be asked.

21 Q. Okay. So this is -- but where does this
22 common objection come from?

1 A. We came up with these as staff members.

2 Q. So this is not based at all on feedback
3 or anything you've heard from hospitals; is that
4 your testimony?

5 A. I testified already about this, that,
6 yes, it is based on maybe conversations people
7 have had. It's not direct quotes. It's in
8 combination of maybe things we've heard over the
9 last, you know, 25 years and we are compiling
10 them into a PR document.

11 Q. All right. And what is the purpose of --
12 what's the purpose of listing out all of these
13 common objections for the regional leaders?

14 A. It helps to have all of our messaging in
15 one place. It's just a strategy that we use.
16 Again, this lives on the intranet. So we have a
17 very small staff. We have limited resources.
18 There's more regional leaders than there are
19 Leapfrog staff members, to be clear, so we don't
20 have the ability to, you know, be available all
21 the time to answer every question, so this saves
22 us a little time for them to have the common --

1 you know, our idea of what potentially they could
2 be asked, and they have an approved response.

3 And if they ask anything beyond this,
4 they know that they go -- they come to us.

5 Q. Okay. So -- you're right, that for each
6 of these common objections, there is a
7 proposed -- a proposed or recommended response
8 next to it, correct?

9 A. Yes.

10 Q. And am I correct that the purpose of
11 providing the common objections and the responses
12 is to give regional leaders a tool or a proposed
13 response in the event that a hospital voices one
14 or more of these common objections, correct?

15 A. Or one of their employers.

16 Q. Okay. But the hospitals as well,
17 correct?

18 A. Yes.

19 Q. All right. And the purpose of providing
20 these responses to the objections is it helps
21 regional leaders enlist more hospitals to
22 participate in the survey, correct?

1 A. Yeah. It helps them with their outreach
2 efforts.

3 Q. Okay. And the more hospitals that
4 respond to the survey, the more data that's
5 submitted to Leapfrog in conjunction with those
6 responses, correct?

7 A. Correct. But if you look at the safety
8 grade, 80 percent of hospitals respond, so we
9 already have a very full data set.

10 Q. Okay. It's also correct that -- can you
11 say that again? That 80 percent -- I'm sorry, I
12 didn't catch that response.

13 A. Yes. I believe that it's 80 percent of
14 hospitals report to Leapfrog that get a safety
15 grade.

16 Q. Okay. But there are still hospitals that
17 don't respond to the survey, correct?

18 A. Correct.

19 Q. All right. And there are hospitals that
20 have responded in the past but at some point
21 stopped responding to the survey, correct?

22 A. I've heard of that happening. Yes.

1 Q. And so one of the purposes of providing
2 this toolkit of common objections and responses
3 to the regional leaders is to try to convince
4 those hospitals either to participate in the
5 survey in the first instance or resume their
6 responses to the survey, correct?

7 A. Yes. It's important to our mission --

8 Q. All right.

9 A. -- that hospitals are transparent.

10 Q. It's also important to your mission to
11 have as many hospitals participate in the survey
12 as possible, correct?

13 A. Yes. We would love if all hospitals did
14 in the survey. We would have a lot of data for
15 patients.

16 Q. All right. And it also allows -- the
17 more hospitals that participate in the survey,
18 the more data from those hospitals you have,
19 correct?

20 A. Correct.

21 Q. And the more data you have, the more you
22 can license that data to third parties; is that

1 correct?

2 MS. BLAIR: Objection to form.

3 THE WITNESS: No, I wouldn't agree with
4 that. We don't -- we don't charge more based on
5 how much data is available.

6 BY MR. CHUNG:

7 Q. That's not my question. The question is,
8 the more data, hospitals' data you have
9 available, the more marketable that data is to
10 third parties, correct?

11 MS. BLAIR: Objection to form.

12 THE WITNESS: Yes. But I'd say it's
13 already very marketable. We already have a lot
14 of hospitals participating.

15 BY MR. CHUNG:

16 Q. Okay. Does Leapfrog pay for search
17 engine optimization for either or both of its
18 websites?

19 A. We just started this in July of this
20 year.

21 Q. All right. And what exactly is it paying
22 for in terms of that search engine optimization?

1 A. We're on month two of it, so I'm not
2 completely well versed. This is something that
3 Nate Longmore, our communications coordinator,
4 works on with Nonprofit Megaphone. It's a
5 service that they provide.

6 As of right now, we're in the very early
7 stages. So when you're in the very early stages
8 of SEL, my understanding is that, first, we're
9 looking for any pages that have broken links that
10 we may have missed or things like that to clean
11 up, and then we kind of move on from there.

12 Q. Okay. And is that for both websites?

13 A. I believe so.

14 Q. All right. Does Leapfrog partner with
15 any journalists or media outlets in anticipation
16 of publishing the hospital safety grades?

17 A. I would not use the word "partner." We
18 do pitch media, yes.

19 Q. All right. And approximately how many
20 journalists or these media outlets do you
21 pitch -- pitch what, exactly?

22 A. Leapfrog hospital safety grades and

1 trends in the safety grades. And again,
2 healthcare is local, and so it's a really
3 important of [sic] our strategy to get the safety
4 grades out to these local publications.

5 Q. Okay. Does Leapfrog embargo the hospital
6 grade results with these media outlets and
7 journalists?

8 A. Yes.

9 Q. And why does it do that?

10 A. To give the reporters more time to work
11 on their stories.

12 Q. All right.

13 MR. CHUNG: Let's go to tab 42.

14 (Bailey Deposition Exhibit 17 marked for
15 identification and attached to the
16 transcript.)

17 BY MR. CHUNG:

18 Q. We're going to look at a few other
19 sections of the websites, Ms. Bailey.

20 A. Okay.

21 Q. We're going to look at printouts.

22 And this is 17, I think.

1 Okay. Exhibit 17 is taken from the
2 hospitalsafetygrade.org website.

3 Do you recognize it?

4 A. Yes.

5 Q. Okay. It's a section, How to use the
6 grade.

7 And if you look at page 4 of the
8 document, in the second paragraph under the
9 heading What About Past Grades, in the second
10 paragraph there's a sentence that reads, Patients
11 should always decide on where to receive care
12 based on a hospital's current safety grade.

13 Do you see that?

14 A. Yes.

15 Q. Okay. So is the message to the consumers
16 here that a drop in a hospital's safety grade
17 means that the hospital has become more
18 dangerous?

19 A. That's not what that says. It says in
20 the context -- this is the context of past
21 grades. If you look at the beginning, it says,
22 What about past grades? So on the website, you

1 can click, View past grades. So we're saying,
2 look at the current safety grade; don't rely on
3 the old safety grade. The new data will be more
4 reflective of your experience today.

5 Q. Okay. So if -- my question is, is the
6 message here -- or one of the messages from this
7 sentence, from this section, that if the current
8 safety grade is lower or has dropped -- right? --
9 from previous safety grades, that that hospital
10 has become more dangerous? Is that part of the
11 message?

12 A. Not that it's become more dangerous, but
13 their patient safety has decreased.

14 Q. Okay. Does the messaging also include
15 that the consumer, as a result of seeing this
16 decrease or the drop in the safety grade, should
17 be more cautious about visiting that hospital?

18 A. Consumers should be cautious when
19 visiting any hospital. And we're very clear that
20 no hospital is perfectly safe. Not A-hospitals;
21 no hospital is safe. You should always be
22 cautious. We have a lot of tools on our website

1 for questions you should ask.

2 Q. I'm asking specific -- not generally,
3 Ms. Bailey, but specific to the message here that
4 we just went over.

5 Is the message or part of the message at
6 least that a consumer should, upon seeing this
7 change in the safety grade, be more cautious
8 about visiting that hospital?

9 A. Yes. We're not saying you shouldn't go
10 to a hospital. We're just saying, be aware of
11 the safety; ask questions.

12 Q. Okay. There is -- if we turn to the
13 previous page, so page 3 of the document, under
14 What measures are most important, there's a
15 handwashing bullet point.

16 Do you see that?

17 A. Yes.

18 Q. And handwashing is one of the imputed
19 metrics that we've gone over; is that right?

20 A. Yes.

21 Q. Now, it says, Does your hospital have a
22 handwashing policy to ensure that all staff

1 members are washing their hands before and after
2 patient contact.

3 Do you see that?

4 A. Yes.

5 Q. All right. So is Leapfrog telling
6 consumers here that one of the most important
7 measures they should consider when choosing a
8 hospital is handwashing?

9 A. Yes.

10 Q. Okay. Does it disclose here at all that
11 Leapfrog, under its imputation methodology,
12 automatically gives non-participating hospitals
13 the lowest grade possible on handwashing?

14 A. No. That wouldn't make sense in this
15 context.

16 Q. But no, correct?

17 A. No.

18 Q. That's not disclosed. All right.

19 MR. CHUNG: Let's go to document 43.

20 This will be Exhibit 18.

21

22

1 (Bailey Deposition Exhibit 18 marked for
2 identification and attached to the
3 transcript.)

4 BY MR. CHUNG:

5 Q. Okay. This is another section or excerpt
6 of the Hospital Grade -- Safety Grade website
7 titled, Choosing the best hospital.

8 Are you familiar with this section of the
9 website?

10 A. Yes.

11 Q. Okay. And is this a part of the website
12 that you oversee for content?

13 A. This is a page that we would consider
14 evergreen content. So I don't remember
15 personally making edits to this page.

16 Q. What do you mean by evergreen content?

17 A. It's something that -- I mean, I would,
18 like, triple check, but it's something that
19 really wouldn't change. A lot of our content on
20 some of the first half in the safety grade is
21 just, like, consumer information.

22 Q. Okay. So this is Exhibit 18.

1 So is it your testimony that you,
2 yourself, don't monitor this particular page for
3 any updates or whether it's accurate?

4 A. I mean, we look at the whole website all
5 the time, but I don't remember making changes to
6 this page personally.

7 Q. Okay. If you look at the first page, the
8 second paragraph, it reads, Your choice of
9 hospitals -- your choice of hospital could be a
10 life or death decision.

11 Do you see that?

12 A. Yes.

13 Q. All right. Is that messaging designed to
14 scare consumers upon reading -- coming to the
15 website?

16 MS. BLAIR: Objection to form.

17 THE WITNESS: I wouldn't use the
18 word "scare." It's to make them understand it's
19 an important decision.

20 BY MR. CHUNG:

21 Q. Okay. Is it, in fact, a life or death
22 decision, in your view?

1 A. Yes. It can be.

2 Q. Okay. To put it another way, does
3 Leapfrog expect consumers not to be scared when
4 they read that?

5 MS. BLAIR: Objection to form.

6 THE WITNESS: I don't know.

7 BY MR. CHUNG:

8 Q. Is this message, Your choice of hospital
9 could be a life or death decision, is it designed
10 to encourage consumers to use Leapfrog's hospital
11 safety grades when choosing a hospital?

12 A. Yes.

13 MR. CHUNG: Let's go to tab 44. This
14 will be Exhibit 19.

15 (Bailey Deposition Exhibit 19 marked for
16 identification and attached to the
17 transcript.)

18 BY MR. CHUNG:

19 Q. So Exhibit 19 is another section of the
20 same website. It's the frequently asked
21 questions about the Leapfrog hospital safety
22 grade.

1 Do you recognize this section?

2 A. Yes.

3 Q. All right. Is this evergreen as well
4 or --

5 A. No.

6 Q. All right. And so is this a section that
7 you check for accuracy and that it's up to date?

8 A. We update it before each safety grade
9 round.

10 Q. Okay. And do you also check for
11 accuracy?

12 A. Can you restate the question?

13 Q. Yes. Do you check this section, this FAQ
14 section, for accuracy?

15 A. Yes.

16 Q. Okay. How often do you do that?

17 A. Prior to each safety grade round, we
18 update the FAQs.

19 Q. Okay. Let's look at the second page.

20 This section tells the consumers or
21 readers that patients are twice as likely to die
22 of a prevental [sic] problem at a C, D, or

1 F-hospital than an A-hospital.

2 Do you see that?

3 A. Yes.

4 Q. All right. So similar question: Is the
5 strategy here to scare consumers away from
6 hospitals with C, D, or F safety grades?

7 MS. BLAIR: Objection to form.

8 THE WITNESS: It is not. It's just to
9 give information that not all hospitals are the
10 same.

11 BY MR. CHUNG:

12 Q. Do you think that this is an effective
13 way of -- of communicating that, that not all
14 hospitals are the same?

15 A. Can you restate your question?

16 Q. Do you think this sentence is an
17 effective way of communicating that not all
18 hospitals are the same?

19 A. Yes. That hospitals differ in their
20 patient safety.

21 Q. Why not just -- why not just tell the
22 consumer not all hospitals are the same, as

1 opposed to telling them that -- or representing
2 to them that patients are twice as likely to die
3 of a preventable problem at a C, D, or F?

4 MS. BLAIR: Objection to form.

5 THE WITNESS: Can you restate the
6 question?

7 BY MR. CHUNG:

8 Q. Yeah. Why not -- just kind of presenting
9 your own testimony, why not just tell consumers
10 that not all hospitals are the same?

11 MS. BLAIR: Objection to form.

12 THE WITNESS: We do say that as well.
13 But this is a study from John Hopkins that we
14 cite.

15 BY MR. CHUNG:

16 Q. Okay. Does Leapfrog want consumers to
17 think that visiting a hospital with a D or F
18 grade could seriously injure or kill them? Is
19 that part of the messaging?

20 A. The messaging is that you're more likely,
21 based on the preventable problems that are
22 represented in the safety grade.

1 Q. All right. And like the other message,
2 is this messaging designed to encourage consumers
3 to use the hospital safety grades when choosing a
4 hospital?

5 A. Yes.

6 Q. Now, the website also tells consumers
7 that the hospital safety grade reflects how well
8 a hospital does on safety, not whether they
9 complete the Leapfrog hospital survey.

10 Are you familiar with that?

11 A. Where are you reading from?

12 Q. This is from the frequently -- this is
13 actually --

14 A. Oh, it's --

15 Q. -- on page 3, I'm sorry.

16 A. Thank you.

17 Q. I should have directed you to that.

18 A. Thank you.

19 Q. So page 3, under that question, Does a
20 hospital get a better safety grade if it reports
21 the Leapfrog hospital survey -- there's a
22 sentence right underneath it.

1 Do you see that?

2 A. Yes.

3 Q. Okay. It's -- is that true?

4 A. Yes.

5 Q. All right. But if a hospital does not
6 respond to the survey or does not complete the
7 survey, it automatically receives the lowest
8 possible score on the four imputed metrics,
9 correct?

10 A. Just on those four metrics. Yes.

11 Q. Okay. And these are among the most
12 important metrics, I think you testified earlier,
13 correct?

14 A. Correct. But there are hospitals, let's
15 be clear, that don't get a safety grade that
16 still get an A. It's not automatically that you
17 get a bad grade.

18 Q. But on those four critical imputed
19 metrics, these non-participating hospitals are
20 given the lowest possible score without the
21 benefit of any actual data on those four metrics,
22 correct?

1 A. Correct. They're assigned that score.

2 MR. CHUNG: Let's go to tab 58.

3 So this will be 20.

4 (Bailey Deposition Exhibit 20 marked for
5 identification and attached to the
6 transcript.)

7 BY MR. CHUNG:

8 Q. So Ms. Bailey, Exhibit 20 is -- you've
9 got an e-mail chain from October 29 of 2024, and
10 then there's an attachment to it with what looks
11 like a markup of an FAQ about the hospital safety
12 grade.

13 A. Yes.

14 Q. So take a few moments. Let me know when
15 you've had a chance...

16 A. Yes.

17 Q. Okay. Do you recognize what's being
18 discussed in this e-mail chain?

19 A. Yes.

20 Q. So it appears that this is discussion
21 around frequently asked questions about the
22 Leapfrog hospital safety grade, correct?

1 A. Yes. The document we were just looking
2 at.

3 Q. Okay. This is coming off of the website,
4 the section that we just looked at, in
5 Exhibit 19, right?

6 A. Yes.

7 Q. All right. Now, if you look at the
8 page Bates ending 7096, it's the first page of
9 the markup of the FAQs.

10 And just to be clear, are the edits that
11 we see here on this document -- whose edits are
12 these?

13 Are they Ms. Binder's edits?

14 A. Yes. And this was to the fall 2024 FAQs.
15 And the one we just looked at was the spring 2025
16 FAQs.

17 Q. Okay. So on the first page of -- so
18 Bates ending 7096, toward the bottom there, one
19 of the FAQs is, Why did hospital X get an F and
20 why did hospital Y get an A?

21 Do you see that?

22 A. Yes. A little hard to read.

1 Q. Yes, I'm sorry. It's a little bit faint.

2 In brackets it says, Answer these
3 questions by being very specific about how the
4 asked-about hospital did on specific measures but
5 don't say how those measures caused the bad
6 grade. In other words, talk about the safety
7 measures, not the methodology.

8 Do you see that?

9 A. Yes. It's hard to read.

10 Q. Okay. Why did Ms. Binder not want to
11 talk about the methodology?

12 MS. BLAIR: Objection to form.

13 THE WITNESS: I don't know.

14 BY MR. CHUNG:

15 Q. Okay. On the next page, 7097, there's
16 another header titled, Does a hospital get a
17 better safety grade if it reports the Leapfrog
18 hospital survey?

19 Do you see that?

20 A. Yes.

21 Q. Okay. It's the very next one.

22 And then underneath it, the markup reads,

1 The hospital safety grade reflects how well a
2 hospital does on safety, not whether they
3 complete the Leapfrog hospital survey.

4 That corresponds to the sentence or the
5 response that we read on the preceding exhibit,
6 correct?

7 A. Yes. It looks like it's the same.

8 Q. So is that Ms. Binder's kind of edit with
9 respect to that FAQ?

10 A. Let me see. Track changes are hard
11 sometimes.

12 It looks like she actually may have just
13 moved that from -- if you look two paragraphs
14 down -- sorry, this is kind of hard to explain --
15 it says, Does a hospital get a better safety
16 grade if -- do you see how that's X'd out? I
17 think she just moved that paragraph up.

18 Q. Okay.

19 A. It's really hard to read with the
20 crosses, so I can't really tell if there are
21 differences or not.

22 Q. All right. When you saw the edit or her

1 comment about not wanting to talk about
2 methodology in the first part of the markup as to
3 why did hospital X get an F while another
4 hospital got an A -- right? -- did that concern
5 you at all about not -- about the consumer here
6 not getting an explanation for how the hospital
7 gets a grade under the new methodology?

8 MS. BLAIR: Objection to form.

9 THE WITNESS: No. I don't think she
10 meant that by -- what I take from this is that
11 this is an FAQ document. It's meant for
12 reporters. We keep it short. They get the
13 methodology printout as well separately. Every
14 reporter gets that.

15 BY MR. CHUNG:

16 Q. Well, I thought that this FAQ was on the
17 website.

18 A. It is.

19 Q. Isn't it addressed to consumers, visitors
20 to the website?

21 A. It is. It has multi purposes. We send
22 it to reporters as well.

1 Q. Okay. But the content here is on the
2 website, correct?

3 A. It's also on the website, yes.

4 Q. Okay. So we're staying on this document,
5 the markup of the FAQs. Let's go to Bates ending
6 in 7098, so the very next page.

7 There is -- one of the questions is, Are
8 there methodology changes in the fall 2024
9 Leapfrog hospital safety grade?

10 Do you see that?

11 A. Yes.

12 Q. Okay. Now, the original -- so if you
13 kind of try to kind of parse out what's been
14 deleted or edited -- right? -- part of the
15 original language here -- actually, do you know
16 who in the first instance drafted the FAQs as
17 well as the responses?

18 A. Me, in combination with Nate.

19 Q. Okay. And is -- are those -- is that
20 kind of taken what Ms. Binder edited here taken
21 directly from the website? Is she editing what's
22 on the website?

1 A. This right here is in addition to the
2 FAQs.

3 Q. All right. So this is new material?

4 A. Yes. This corresponds with -- I don't
5 know what exhibit at this point, but the e-mail
6 to Missy where we were talking about messaging
7 for the imputation change.

8 Q. Okay.

9 A. That's where this came from.

10 Q. So if you look at the language that's
11 been struck -- right? -- it reads, The Leapfrog
12 Group aims to provide the public with timely,
13 transparent information on hospitals' safety
14 performance. To uphold this commitment, Leapfrog
15 utilizes the best available data for calculating
16 hospital safety grades. Annually, Leapfrog's
17 expert panel and researchers at John Hopkins
18 Institute for Patient Safety and Quality --
19 actually, it's the Armstrong Institute, right?

20 A. Yes.

21 Q. -- and Leapfrog's expert panel and
22 researchers at the Armstrong Institute review the

1 scoring methodology and have recommended
2 modifying the current imputation method used for
3 filling in missing data from hospitals that did
4 not complete the latest Leapfrog survey.

5 Do you see that?

6 A. Yes.

7 Q. Okay. Now, according to the edits
8 here -- right? -- to the red-line here, what
9 comes out of it is in line with the
10 recommendations from the national expert panel
11 and John Hopkins advisors, Leapfrog changed the
12 way it estimates performance for hospitals that
13 declined to report to the Leapfrog hospital
14 survey.

15 So why was that change made from
16 basically an answer that says that the expert
17 panel, John Hopkins, Armstrong Institute, and
18 researchers have recommended modifying the
19 current imputation model -- right? -- to in
20 line with recommendations from the national
21 expert panel and John Hopkins advisors, Leapfrog
22 changed the way it estimates performance?

1 Do you have an understanding as to why
2 the change was made from the experts and John
3 Hopkins making that recommendation -- right? --
4 to Leapfrog changing the way -- changing the
5 imputation methodology in line with the
6 recommendation from the experts?

7 A. I don't know. And this isn't the final,
8 so it's -- I don't remember what the final text
9 even said.

10 Q. Okay. Putting aside whether it's final
11 or not, do you have an understanding as to why
12 that change was made?

13 A. No, I don't.

14 Q. Okay. Then we see for four out of the 30
15 measures -- and we see the four imputed
16 metrics -- right? --

17 A. Yes.

18 Q. -- that we've already discussed --
19 Leapfrog will first check the last two safety
20 grade cycles for available data. If none exist,
21 hospitals will receive a point value of 15 for
22 the measure, the lowest performance category.

1 This reflects analysis of actual performance of
2 hospitals with prior missing data as well as
3 expert consultation.

4 Do you see that?

5 A. Yes.

6 Q. Okay. How does this -- as you understand
7 it, how does this -- the description of the
8 change in imputation methodology, how does it
9 reflect analysis of actual performance of
10 hospitals with prior missing data?

11 A. I don't know. I didn't write it. I
12 don't know what she meant.

13 Q. Okay. And how does it reflect expert
14 consultation?

15 A. I don't know. Among our expert -- aside
16 from our expert panel, I don't know.

17 Q. Okay. But this is -- as communications
18 director, these frequently asked questions that
19 go out to, I think, by your testimony, to
20 reporters as well as to consumers on the website,
21 this is one of your responsibilities, correct?

22 A. Correct. But these are Leah's edits, and

1 I don't remember what we decided on.

2 Q. Are you responsible for understanding
3 Leah's edits?

4 A. Not necessarily what she meant by it
5 always. If we don't understand something, we'll
6 go to her and talk to her about it, but it looks
7 like Nate is the one who had those conversations.

8 Q. And Nate is a communications -- I think
9 manager?

10 A. Coordinator.

11 Q. -- coordinator who reports to you,
12 correct?

13 A. Correct.

14 Q. So as his manager, as his supervisor, do
15 you have responsible for at least understanding
16 Ms. Binder's edits?

17 A. I think it's unrealistic that I'd
18 understand her intention of every single edit she
19 makes.

20 Q. Okay. Is this an important edit?

21 A. I don't know.

22 Q. Do you agree that the change in the

1 imputation methodology in 2024 was an important
2 change to the methodology?

3 A. Yes. And this isn't the final. I
4 don't -- I honestly do not remember what the
5 final text was.

6 Q. Right. I'm not asking about the final
7 text. We're just focusing on this document here.

8 So given that the change in the
9 imputation methodology in the fall of 2024 was an
10 important change, was it important for you to
11 understand the messaging around that change in
12 the imputation methodology?

13 A. Yes.

14 Q. Okay. And was it important for you to
15 understand how the leader of the organization,
16 Leah Binder, viewed that change in the imputation
17 methodology?

18 A. Yes.

19 Q. All right. And was it important for you
20 to understand changes or edits she was making to
21 the messaging around that change in the
22 imputation methodology?

1 A. Yes.

2 Q. Okay. But your testimony here today is
3 that you do not understand where these changes
4 are coming from?

5 MS. BLAIR: Objection to form.

6 THE WITNESS: This line right here, I
7 mean, this was an edit almost a year ago. I
8 don't remember edits from a year ago.

9 BY MR. CHUNG:

10 Q. Okay. Does this -- sitting here today,
11 looking at these edits, does it raise any
12 concerns for you about whether Leapfrog was being
13 transparent about the effect of the methodology
14 change?

15 A. No. My understanding is Leah hasn't
16 shown me any instances where she's trying to not
17 be transparent. Our goal is always transparency.

18 Q. I'm not talking about generally. Right?
19 Looking at these edits here -- right? -- which I
20 understand, based on your testimony, you don't
21 remember -- right?

22 But reading these changes here today, do

1 they give you pause or any concerns about whether
2 Leapfrog was being transparent about the effect
3 of the methodology change?

4 A. No.

5 MS. BLAIR: Objection to form.

6 THE WITNESS: No.

7 BY MR. CHUNG:

8 Q. Okay. I think we went into this a bit
9 previously, but what processes does Leapfrog have
10 in place for soliciting or collecting consumer
11 patient feedback regarding the scoring
12 methodology and the hospital safety grades?

13 A. We publish proposed changes to both
14 annually, from what I can recall at the moment.
15 It's published on our website, on our home page.
16 I mean, technically, anyone could submit a public
17 comment.

18 Q. Okay. Has Leapfrog received -- and is
19 that -- that's directly through the website,
20 correct?

21 A. Correct.

22 Q. Other than the website, is there any

1 affirmative outreach by Leapfrog to hospitals or
2 other third parties about -- to solicit feedback
3 about changes in the scoring methodology or the
4 hospital safety grades?

5 A. It's all through their proposed changes.
6 So we'll send it out through our e-mail
7 newsletters, through social media. We'll send it
8 to our stakeholders.

9 Q. Okay. Has Leapfrog ever put together any
10 panels or committees or working groups to discuss
11 or address consumer feedback about the scoring
12 methodology or the safety grades?

13 A. Can you repeat the question?

14 Q. Sure.

15 Has Leapfrog ever convened any panels or
16 committees or working groups to assess consumer
17 feedback about the scoring methodology or the
18 safety grades?

19 A. In my understanding, creating the patient
20 and family expert panel was a piece of that.

21 Q. Okay. And how was -- can you just go
22 more into that?

1 A. I don't know any more about that. I just
2 know we created it to have a direct conversation
3 with patients and families.

4 Q. Okay. Have there been any instances
5 where consumer feedback has led to a change or a
6 revision in Leapfrog's scoring methodology?

7 A. Not that I can recall.

8 Q. All right. Any instances where consumer
9 feedback has led to a change in the way hospital
10 safety grades are assigned or reported?

11 A. Not that I can recall.

12 Q. Okay. Does Leapfrog have any formal
13 policies or guidelines that govern how consumer
14 feedback is to be considered or incorporated into
15 the scoring methodology of the safety grades?

16 A. I don't know.

17 Q. Can you think of any instances where
18 consumer feedback was explicitly rejected or
19 disregarded in the process of updating or
20 maintaining the scoring methodology?

21 A. Not to my knowledge.

22 Q. Are you aware of any instances in which

1 patients or members of the public have told you,
2 told Leapfrog, that they've delayed necessary
3 medical care as a result of the safety grades?

4 A. Not that I can recall.

5 Q. All right. Are you aware of any
6 instances in which patients or members of the
7 public have reported forgoing necessary medical
8 care as a result of Leapfrog's safety grades?

9 A. Not that I can recall.

10 Q. Are you aware of any instances in which
11 patients or members of the public have reported
12 having to transfer to a hospital that they had
13 previously avoided based on Leapfrog's safety
14 grade?

15 MS. BLAIR: Objection to form.

16 THE WITNESS: Can you restate the
17 question?

18 BY MR. CHUNG:

19 Q. Yes.

20 Are you aware of any instance when a
21 patient of -- a patient or a member of the public
22 telling Leapfrog that they had to transfer to a

1 hospital that they had previously avoided because
2 of the safety grade assigned to that hospital?

3 A. Sorry, I don't understand the question.

4 Q. Okay. We can move on.

5 A. Okay.

6 Q. Has Leapfrog received any feedback from
7 patients or their families indicating that the
8 safety grades have caused confusion about which
9 hospital to go to?

10 A. Not that I can recall.

11 Q. All right. Any feedback or complaints
12 from patients and their families that safety
13 grades have led them to make unsafe healthcare
14 decisions?

15 A. Not that I can recall.

16 Q. Okay. Has Leapfrog -- has Leapfrog heard
17 from any patients or family members about
18 instances that they had to travel further to
19 hospitals as a result of the hospital safety
20 grades?

21 A. Yes. I've done that myself for planned
22 care.

1 Q. I'm not talking about yourself. I'm
2 talking about patients or their family members.

3 Have you heard any instances like that?

4 A. We have a story in our annual report, our
5 last annual report, about a patient who traveled
6 to a hospital that had an A when he was injured
7 for something. It was a non-emergent injury.

8 Q. Okay. Any instances for an emergent
9 injury where a patient had to travel further to a
10 hospital based on the hospital safety grade?

11 A. No, I have not heard of that. And our
12 messaging explicitly says go to the closest
13 hospital in an emergency.

14 Q. Okay. Where is that messaging?

15 A. It's in the -- about the gray tab. Like,
16 the first tab on -- I'm visualizing it. It's the
17 first tab on our website. And it's a very normal
18 part of our communications, our talking points.

19 Q. Okay. Are you aware of any cases where
20 patients have gone to hospitals based on
21 Leapfrog's safety grades to hospitals that were
22 under investigation or had significant safety

1 concerns?

2 A. Can you repeat the question?

3 Q. Yeah. Are you aware of any cases where,
4 based on Leapfrog's safety grades, patients have
5 gone to hospitals that were under investigation
6 or had significant safety concerns?

7 A. Not that I can think of.

8 MR. CHUNG: Let's go to tab 29.

9 This will be Exhibit 21.

10 (Bailey Deposition Exhibit 21 marked for
11 identification and attached to the
12 transcript.)

13 BY MR. CHUNG:

14 Q. All right. Ms. Bailey, Exhibit 21 is an
15 e-mail chain from February of 2023.

16 A. Okay. I've read it.

17 Q. So in this e-mail chain -- it's a thread
18 about a reporter asking why a hospital -- the
19 Mission Hospital in Asheville, North Carolina --
20 had received A grades -- right? -- from Leapfrog,
21 despite low ratings from CMS for patient
22 experience and reports of poor quality care.

1 First of all, do you remember what's kind
2 of generally being discussed in this e-mail
3 chain?

4 A. Generally.

5 Q. Okay. So on the first page -- so Bates
6 ending 649 -- Ms. Binder responds to Elizabeth
7 Harmon and Patrice Brown.

8 Who are Elizabeth Harmon and Patrice
9 Brown?

10 A. Elizabeth Harmon was the senior
11 communications coordinator, I believe, was her
12 title.

13 Patrice Brown was the chief operating
14 officer.

15 Q. Okay. She writes, Missy or I can do
16 this. I really like help from a PR firm refining
17 our talking points because this is officially a
18 serious PR issue.

19 Why was this a serious PR issue?

20 A. This -- hold on, let me look at this
21 again.

22 Q. Let me just put it another way.

1 Was -- just reading Ms. Binder's e-mail
2 response here, was this a serious PR issue
3 because of potential news around Leapfrog's
4 methodology not being supported by CMS?

5 A. No.

6 Q. How do you know that?

7 A. I don't take it as that. I mean, that's
8 not my interpretation.

9 Just -- I interpret this as -- and this
10 was a couple of years ago, so I'm trying to
11 remember.

12 I interpret this as let's discuss the
13 messaging around A-hospitals. We know no
14 hospital is perfectly safe, not even an
15 A-hospital. We need to make sure we're on the
16 same page.

17 That's what I take this as.

18 Q. Okay. But there are -- if you look at
19 the reporter's e-mail here, what's kind of cut
20 and pasted from what the reporter wrote, there
21 are specific allegations here, correct --

22 A. Yes.

1 Q. -- that Mission -- that the hospital at
2 issue gets only two stars from CMS for patient
3 experience, yet Leapfrog, which intends to rank
4 for patient safety and regularly rates Mission an
5 A, and that rating is used by Mission in its
6 marketing.

7 So how is that disjunction or disparity a
8 serious PR issue?

9 A. I take it, again, as Leah just said, we
10 need to discuss -- I don't know, this was a
11 couple of years ago, but this isn't something
12 that comes up all the time. So I took it as her
13 saying, you know, this is something we do need to
14 discuss and take seriously.

15 Q. Okay. Was she -- there's another
16 sentence in that same paragraph from the
17 reporter's allegations: But I would like to know
18 how much of Leapfrog's annual revenue is earned
19 from fees that hospitals pay for using its rating
20 in their marketing.

21 How is that -- how did that contribute to
22 this being a serious PR issue?

1 A. I don't remember that part of this.

2 Q. Okay. Was there a concern that the
3 public relations or the PR around this issue
4 would allege that Leapfrog was a pay-to-play
5 scheme?

6 A. No, I don't think so.

7 Q. Okay. He go on to write, I'd also like
8 to learn if there are other ways in which
9 Leapfrog earns fees from the hospitals that it
10 rates.

11 What was the serious PR issue around that
12 allegation?

13 A. I don't think --

14 MS. BLAIR: Objection to form.

15 THE WITNESS: I don't think that's a
16 serious PR issue.

17 BY MR. CHUNG:

18 Q. Why not?

19 A. We're transparent about this stuff. I
20 don't see it as a PR issue.

21 Q. Okay. What did Ms. Binder think was a
22 serious PR issue around this allegation?

1 A. I don't know. I told you my opinion,
2 that I think it's just the two stars from CMS.
3 Although in this e-mail, it says, for patient
4 experience, which is just one part of the
5 Leapfrog hospital safety grade.

6 Q. Is -- Ms. Binder [sic], we've looked at
7 common objections, you know, common issues
8 previously, and one of them was allegations that
9 Leapfrog was pay to play, correct? We've seen
10 that.

11 A. Correct. Ms. Bailey.

12 Q. Ms. Bailey. I'm sorry.

13 Is this an example of one of the common
14 objections or observations from the public about
15 Leapfrog being a pay-to-play scheme?

16 A. Which? Can you specifically say which
17 part for me?

18 Q. The part that we just read: But I would
19 like to know how much of Leapfrog's annual
20 revenue is earned from fees that hospitals pay
21 for using its rating in their marketplace [sic].
22 I'd also like to learn if there are other ways in

1 which Leapfrog earns fees from hospitals that it
2 rates.

3 A. I infer the patient was trying to
4 understand -- again, there's a lot of ratings out
5 there that are completely pay for play, like
6 Healthgrades, so I think there is some
7 clarification there that we likely made. I
8 wasn't part of this.

9 Q. Okay. Has Leapfrog ever issued a
10 correction or a retraction of a safety grade
11 after learning that the grade it issued may have
12 misrepresented a hospital's actual safety or
13 quality of care? Has that ever happened?

14 A. Not that I can recall. Not that I can
15 recall.

16 Q. Okay. Has there ever been discussion
17 among your colleagues of the potential public
18 health risks associated with publishing safety
19 grades for hospitals where it lacks sufficient or
20 reliable data?

21 A. Can you restate the question?

22 Q. Yes.

1 Has there been any discussion among your
2 colleagues about the potential public health
3 risks associated with publishing safety grades
4 for hospitals where Leapfrog lacks sufficient or
5 reliable data?

6 A. I don't know.

7 Q. Okay. Is that -- given part of what
8 we've been discussing during this deposition is
9 about non-participating hospitals -- right? --
10 and that they're automatically assigned the
11 lowest possible score in the four imputed metrics
12 where there isn't data, has there ever been any
13 discussion among you and your colleagues about
14 whether assigning that lowest score on imputed
15 metrics might present a public health risk?

16 A. Not that I can recall.

17 Q. All right. I asked you, I think,
18 previously whether you're aware of any feedback
19 or complaints from hospitals regarding the
20 accuracy or fairness of their assigned safety
21 grades, but I'll ask again.

22 Are you aware of any feedback or

1 complaints from hospitals along those lines?

2 A. Can you restate the question?

3 Q. Yes.

4 Are you aware of any feedback or
5 complaints from hospitals regarding the accuracy
6 or fairness of the safety grades assigned to
7 them?

8 A. Besides the obvious, we're sitting in
9 this room today because your clients are very
10 unhappy with their safety grades.

11 Q. Apart from the -- the plaintiff hospitals
12 involved here.

13 A. Not that I can recall.

14 Q. Okay.

15 MR. CHUNG: Let's go to tab 23.

16 This is Exhibit 22.

17 (Bailey Deposition Exhibit 22 marked for
18 identification and attached to the
19 transcript.)

20 THE WITNESS: Okay. I've read it.

21 BY MR. CHUNG:

22 Q. Okay. Ms. Bailey, have you seen this --

1 the comment here, or this -- the feedback from
2 the help desk?

3 A. No.

4 Q. Do you recognize the format of this
5 document, that it's a comment submitted to the
6 help desk?

7 A. I don't look at the help desk, but I can
8 infer that it's from the help desk. Yes.

9 Q. All right. Now, the commenter here
10 writes that they're disappointed with the 2024
11 proposed changes.

12 And I should note, this is from May 21 of
13 2024.

14 And she writes that the changes will
15 penalize hospitals that do not submit a Leapfrog
16 survey. The public will not understand nor dig
17 into methodology of these grades, and hospitals
18 will be falsely represented with a lower grade
19 because they chose not to complete a survey.

20 Is that -- have you seen this feedback
21 before?

22 A. No, I haven't seen feedback from this.

1 Q. Okay. Is it a fair -- do you think
2 that's a fair characterization, that the proposed
3 changes in the imputation methodology will
4 penalize hospitals that do not submit a Leapfrog
5 survey by automatically assigning them the lowest
6 possible score on the four imputed metrics?

7 A. Can you restate the question?

8 Q. Yes.

9 Do you think it's a fair assessment, a
10 fair statement here, that the changes here will
11 penalize hospitals that do not submit a Leapfrog
12 survey?

13 A. No. I mean, I wouldn't agree with that.

14 Q. Okay. Why not?

15 A. I mean, I don't see it that way.

16 Q. Aren't -- well, aren't the hospitals, in
17 fact, being penalized for not participating in
18 the survey by being automatically assigned these
19 lowest possible scores on the four metrics?

20 MS. BLAIR: Objection to form.

21 THE WITNESS: I don't see it that way.
22

1 BY MR. CHUNG:

2 Q. Okay. How about the statement here that
3 the public will not understand nor dig into the
4 methodology of these grades?

5 I think you would agree with that, right?

6 A. It --

7 MS. BLAIR: Objection to form.

8 THE WITNESS: You'll see that Missy -- I
9 don't understand exactly how this works, but it
10 looks like Missy said that we should do a symbol.

11 So this was part of the -- from what I
12 understand. I'm not involved in looking at the
13 comments, but what I would -- here -- would --
14 what Missy said above, which -- let's make sure
15 it's clear on the website.

16 That's what I take from that.

17 BY MR. CHUNG:

18 Q. My question is -- I'm not -- we haven't
19 gotten to Missy's comment and your response yet.
20 Right?

21 But the comment or statement here that
22 the public will not understand nor dig into the

1 methodology of these grades -- right? -- wouldn't
2 you agree with that?

3 A. No.

4 MS. BLAIR: Objection to form.

5 THE WITNESS: I don't know if the public
6 will look into it or not.

7 BY MR. CHUNG:

8 Q. Okay. Well, you're a communications
9 director, right? I mean, you are -- you're a
10 communications professional.

11 Isn't it part of your expertise to at
12 least have a hypothesis as to what the public
13 will understand or delve into?

14 A. I mean, I don't -- I don't know what any
15 one person is going to understand or not
16 understand. My goal is just always to be as
17 transparent as we can be on the website.

18 Q. Right. But I think you've testified, I
19 think, repeatedly throughout your deposition that
20 describing the steps in the changed imputation
21 methodology is too in the weeds, correct?

22 A. Correct.

1 MS. BLAIR: Objection to form.

2 BY MR. CHUNG:

3 Q. All right. And I think that's consistent
4 with what the commenter here is saying, that the
5 public will not understand nor dig into the
6 methodology of these grades, correct?

7 A. Can you restate that?

8 Q. Yeah.

9 And is that -- the position you've taken
10 with respect to the changes in the imputation
11 methodology being too in the weeds, that's
12 basically what the commenter is saying here,
13 right? That the public will not understand nor
14 dig into the methodology of these grades,
15 correct?

16 A. Yes.

17 Q. Okay. And is it -- the next part of the
18 sentence here, that hospitals will be falsely
19 represented with a lower grade because they chose
20 not to complete a survey, isn't that a fair
21 observation, given that the public will not
22 understand how they got the grade in the first

1 place?

2 MS. BLAIR: Objection to form.

3 THE WITNESS: I don't think so. I don't
4 think that it's necessarily falsely
5 representative if a hospital did the survey; you
6 get the same score.

7 BY MR. CHUNG:

8 Q. Okay. But for those hospitals that do
9 end up getting a lower score -- right? -- isn't
10 it true -- isn't it a fair assessment that that
11 score is a false representation of that hospital?

12 MS. BLAIR: Objection to form.

13 THE WITNESS: I don't think so.

14 MR. CHUNG: Let's go on to the next tab,
15 24.

16 BY MR. CHUNG:

17 Q. Actually, before we go on to the next
18 one, the next sentence in the comment is the
19 survey is -- we're still on Exhibit 22 -- the
20 survey is extremely time-sensitive [sic] and in a
21 time when hospitals are barely breaking even
22 financially; they do not have the resources to

1 commit to this survey.

2 Is that -- what is your reaction to that
3 statement?

4 A. My reaction to that statement is that the
5 opposite of that is also true: If hospitals --
6 we've seen hospitals that do prioritize patient
7 safety make the time for this, and they spend a
8 lot less time on Leapfrog than a lot of other
9 ratings.

10 Q. Okay. But what do you make of this
11 particular statement itself? Is the survey
12 extremely time-intensive?

13 A. I don't think it is.

14 Q. Okay. And what is that based on?

15 A. My opinion.

16 Q. What is that opinion based on?

17 A. That we've heard from hospitals it takes
18 40 to 80 hours, and we're talking about an entire
19 year.

20 Q. Okay.

21 A. So I don't think that's a lot of time.

22 Q. All right. Have you heard also of

1 hospitals that do not have the resources to
2 commit to responding to the survey?

3 A. No, not personally, no.

4 Q. Okay.

5 MR. CHUNG: All right. Let's move on to
6 24, which will be Exhibit 23.

7 (Bailey Deposition Exhibit 23 marked for
8 identification and attached to the
9 transcript.)

10 BY MR. CHUNG:

11 Q. Now, Exhibit 23 is another comment
12 submitted through the help desk, we believe, in
13 response to the planned safety grade methodology
14 changes in 2024.

15 And Ms. Bailey, if you look at the --
16 kind of the last entry there, it reads, We
17 strongly disagree with the proposed fall 2024
18 step 2 imputation.

19 Do you see that?

20 A. Yes.

21 Q. Okay. If Leapfrog is going to implement
22 this change, they need to offer hospitals an

1 option to opt out of being graded rather than
2 penalize a hospital for not submitting the
3 resource-intensive survey.

4 Do you see that?

5 A. Yes.

6 Q. Okay. What is your reaction to that
7 particular comment?

8 MS. BLAIR: Objection to form.

9 THE WITNESS: My initial reaction is that
10 a theoretical option to opt out is completely
11 against the whole point of the safety grade,
12 which is to assign grades to hospitals and have
13 as much data as possible for patients.

14 BY MR. CHUNG:

15 Q. Okay. So part of -- I think you said
16 that one of the aims of the hospital safety grade
17 is to have as much data as possible for patients,
18 correct?

19 A. Correct.

20 Q. All right. But where, for
21 non-participating hospitals, the hospital safety
22 grades are based at least in part -- right? -- on

1 the absence of data, does that achieve that
2 mission?

3 MS. BLAIR: Objection to form.

4 THE WITNESS: I mean, I was specifically
5 talking about grades, like having more hospitals
6 graded available.

7 BY MR. CHUNG:

8 Q. Okay. But for a number of those
9 hospitals that are being graded -- right? -- that
10 didn't participate in the survey, that's not
11 based on actual data, correct?

12 MS. BLAIR: Objection to form.

13 BY MR. CHUNG:

14 Q. At least with respect to the four imputed
15 metrics; is that right?

16 A. It's our methodology.

17 Q. Okay. Hospitals who do not -- I'm just
18 reading further here: Hospitals who do not have
19 the resources to do the survey annually should
20 not be so adversely punished, especially in the
21 post-COVID era where resources are increasingly
22 hard to come by and retain.

1 What's your reaction to that comment?

2 A. My reaction to that comment is that -- I
3 mean, I think they're talking about burden --
4 right? -- of the survey. And we look at burden
5 differently at Leapfrog. We don't look at burden
6 as how long it takes a hospital to fill out a
7 survey. We think of burden -- of [sic] patients
8 of having the absence of that data.

9 Q. Okay. So the fact that a hospital does
10 not have resources or resources can -- are taken
11 away from actual care of patients is not a factor
12 that concerns Leapfrog?

13 MS. BLAIR: Objection to form.

14 THE WITNESS: In my understanding, it's
15 not the actual clinicians who are doing the
16 survey. They're not the ones providing patient
17 care, in my understanding.

18 BY MR. CHUNG:

19 Q. Okay. What is your understanding as to
20 who is responding to the survey, then?

21 A. It's quality people. People are
22 specifically hired to do ratings programs, from

1 my knowledge of working in a hospital.

2 Q. There are -- so you're saying that there
3 are -- so no patient care resources are diverted
4 at all when having to respond to the survey? Is
5 that your testimony?

6 A. I'm not saying that. I'm not an expert
7 in hospitals.

8 I'm saying, from my understanding, it's
9 not the same people who are, you know, performing
10 surgeries that are doing the survey.

11 Q. Okay.

12 MR. CHUNG: Let's go to tab 25. This
13 will be Exhibit 24.

14 (Bailey Deposition Exhibit 24 marked for
15 identification and attached to the
16 transcript.)

17 BY MR. CHUNG:

18 Q. Similarly, Ms. Bailey, another comment in
19 response to the change in methodology in 2024.

20 So if you look at the second page toward
21 the bottom, the comment reads, Imputation step 2
22 model.

1 Do you see that?

2 A. Yes.

3 Q. Yes. And the commenter -- commentator
4 writes, We feel like this model is unnecessarily
5 punitive. We often skip survey submission
6 because the responses provided for IPS, hand
7 hygiene, BMCA [sic] and CPOE are largely
8 unchanged in the two-year period that was
9 allotted before negatively impacting grades, and
10 the FTE resource commitment to complete the
11 survey is already significant. There's no value
12 added by completed a survey every year or every
13 other year when practices in our hospitals have
14 not changed.

15 Is that a fair response to the change in
16 the imputation methodology? The -- first, that
17 the model is unnecessarily punitive?

18 A. I mean, I don't agree with that.

19 Q. Why don't you agree with that?

20 A. I've already testified that I don't think
21 it's unnecessarily punitive.

22 Q. Okay. What about the fact that at least

1 this particular hospital skips survey submission
2 because the responses provided for the four
3 imputed metrics is largely unchanged in the
4 two-year period?

5 MS. BLAIR: Objection.

6 BY MR. CHUNG:

7 Q. What's your reaction to that?

8 A. That I have -- I don't have any
9 information about that. I wouldn't be able to
10 speak to if it's accurate or not.

11 Q. If it is accurate, is it a fair criticism
12 of the change in the imputation methodology?

13 MS. BLAIR: Objection to form.

14 THE WITNESS: I don't think so.

15 BY MR. CHUNG:

16 Q. And why not?

17 A. I don't -- I mean, I don't know -- I
18 don't run a hospital, so I don't know how this
19 is. I just know that these measures are
20 important, and our goal at Leapfrog is to have
21 the most up-to-date data possible.

22 Q. Right. But where that data for the four

1 imputed metrics has been largely unchanged in the
2 two-year period -- right? -- is it a fair reason
3 for a hospital then to not respond to the survey
4 in a given year?

5 MS. BLAIR: Objection to form.

6 BY MR. CHUNG:

7 Q. Especially where there are resource
8 constraints.

9 A. I don't know that it's not unchanged.

10 Q. I'm just asking you, if we assume that
11 what the commenter here is saying is true.

12 A. I don't know.

13 Q. Okay.

14 A. Not my area.

15 MR. CHUNG: Exhibit 25.

16 (Bailey Deposition Exhibit 25 marked for
17 identification and attached to the
18 transcript.)

19 BY MR. CHUNG:

20 Q. All right. Ms. Bailey, different format
21 here, but another response to the change --
22 proposed change in imputation methodology. This

1 is from June 2024 from Ascension.

2 Are you familiar with Ascension?

3 A. Just that it's a hospital system.

4 Q. Okay. Now, this is coming from the chief
5 advocacy officer, a Peter Leibold.

6 At the bottom of the first page of this
7 letter he writes, Ascension cannot support
8 Leapfrog's proposed update and strongly
9 encourages Leapfrog to refrain from implementing
10 it. We fundamentally believe that the hospital
11 safety grade and the hospital survey should
12 remain separate. The survey should not affect
13 the grades. We don't -- we believe this is not
14 in the best interest of public policy as not all
15 the hospitals have the information or
16 capabilities to complete the hospital survey. We
17 further believe it is unreasonable for an
18 optional survey to have such a significant
19 impact.

20 Is it your view that the survey is
21 optional?

22 A. Yes. It's voluntary.

1 Q. Okay. But where -- after the change in
2 the imputation methodology in 2024, is it fair to
3 say that the survey has effectively become a
4 required one for hospitals?

5 A. No, I don't think so.

6 MS. BLAIR: Objection.

7 Sorry. Objection to form.

8 BY MR. CHUNG:

9 Q. Go ahead.

10 A. There's still hospitals that get As that
11 don't do the survey.

12 Q. Okay. But where a non- -- formerly a
13 non-participating hospital risks a lower grade
14 because it's automatically assigned the lowest
15 possible grade on four imputed metrics, is it
16 fair to say that more hospitals will feel that
17 this is a required survey, as opposed to an
18 optional survey?

19 A. I don't know how hospitals will feel.
20 It's four of, you know, up to 32 measures.

21 Q. Okay. But by your own testimony,
22 these -- the four measures are among the most

1 critical for purpose of patient safety, correct?

2 MS. BLAIR: Objection to form.

3 THE WITNESS: Yeah. Yes.

4 BY MR. CHUNG:

5 Q. Isn't that part of the reason that they
6 were -- that they are the -- four of the metrics
7 that were selected for this imputation
8 methodology?

9 MS. BLAIR: Objection to form.

10 THE WITNESS: Yes. It still doesn't
11 change that it's just four of up to 32.

12 BY MR. CHUNG:

13 Q. Okay. But getting the lowest possible --
14 automatically getting the lowest possible score
15 on those four imputed metrics does increase the
16 risk that the hospital will get a lower resulting
17 safety grade; is that fair?

18 MS. BLAIR: Objection to form.

19 THE WITNESS: Not necessarily.

20 MR. CHUNG: Okay. Let's go to tab 27.

21 This will be 26.

22

1 (Bailey Deposition Exhibit 26 marked for
2 identification and attached to the
3 transcript.)

4 BY MR. CHUNG:

5 Q. Okay. Another comment and response to
6 the proposed imputation methodology.

7 So if you look at the final entry on the
8 second page, Ms. Bailey, the commenter here
9 outlines a number of what she calls more accurate
10 options.

11 Do you see that?

12 A. I'm not there yet.

13 Q. Okay.

14 A. Oh, I see the line now. Okay.

15 Q. Okay.

16 A. It starts with "rather"?

17 Q. Yup.

18 A. Is that where you're at?

19 Okay.

20 Q. And my question is, were any of these
21 alternatives discussed at Leapfrog?

22 A. I don't know.

1 MR. CHUNG: Let's go to -- let's skip
2 that.

3 THE WITNESS: Can we take a break next
4 time we're pending?

5 MR. CHUNG: We can take a break right
6 now.

7 THE WITNESS: Great.

8 VIDEO TECHNICIAN: The time is 2:49 p.m.
9 This ends unit 3. We're on the record.

10 (A recess was taken.)

11 VIDEO TECHNICIAN: The time is 3:04 p.m.
12 This begins unit number 4. We're on the record.

13 MR. CHUNG: All right. Ms. Bailey, we're
14 going to put another document in front of you
15 marked 27, Exhibit 27.

16 (Bailey Deposition Exhibit 27 marked for
17 identification and attached to the
18 transcript.)

19 BY MR. CHUNG:

20 Q. It's another Slack chat between yourself
21 and, I think, Katie Stewart.

22 A. Okay.

1 Q. And to start with, who is Katie Stewart?

2 A. Katie Stewart is the director of
3 healthcare ratings.

4 Q. And she works under Ms. Danforth; is that
5 right?

6 A. Yes.

7 Q. Why don't you take a few moments to
8 review that.

9 And so this is from November 15, 2024. I
10 want to direct your attention -- at 2:46 p.m., it
11 looks like Ms. Stewart asks you, Any thoughts on
12 what to say when a reporter is interested in two
13 hospitals that got worse because of the
14 imputation change?

15 Is this a particular -- specific instance
16 that she's referring to, so far as you're aware?

17 A. I don't remember this conversation, but
18 that's what I would infer, yes.

19 Q. Okay. And you respond, I know Leah said
20 she didn't want to lean in on the transparency
21 side, but that's what this is.

22 What did you mean here when Leah said she

1 didn't want in on the transparency side? Do you
2 remember?

3 A. I don't really remember this.

4 Q. Okay. Do you remember her saying that
5 she didn't want to lean in on the transparency
6 side?

7 A. I don't recall this -- like, talking
8 about this specifically.

9 Q. Okay. If we go down several lines, at
10 2:52 -- or, actually, up at 2:51, Ms. Stewart
11 writes, Not sure what else we can say.

12 And she continues, They should report.
13 LOL.

14 And you respond, Right. Totally. We are
15 focused on accuracy and having the most recent
16 data possible.

17 Does that refresh your recollection as to
18 what Ms. Binder was saying when she did not want
19 to lean in on the transparency side?

20 A. I really don't remember that
21 conversation. I remember the second half of that
22 sentence, that we want to encourage hospitals to

1 be transparent and report their data.

2 That's in line with our regular
3 messaging.

4 Q. Okay. But you don't recall what Leah
5 specifically was saying about not wanting to lean
6 in on the transparency side?

7 A. I don't remember. This was almost a year
8 ago.

9 Q. Okay.

10 A. I don't remember.

11 MR. CHUNG: Let's go to 59.

12 The story as well.

13 This will be 28 and 29.

14 (Bailey Deposition Exhibits 28 and 29
15 marked for identification and attached to
16 the transcript.)

17 BY MR. CHUNG:

18 Q. So Exhibit 28 is an e-mail chain.
19 Exhibit 29 is basically a statement, a public
20 statement, that's referenced in the e-mail chain.

21 So just take a few moments to review
22 that.

1 A. So I vaguely recall this.

2 Q. Okay. So you have a vague recollection
3 as to what's being discussed here.

4 A. Yes.

5 Q. So what is being discussed? And then
6 we'll go into more specifics.

7 A. A media request from AL.com, which is an
8 outlet in Alabama, about a Huntsville hospital.

9 Q. Okay. And is it that this Huntsville
10 hospital was issued a statement disputing
11 Leapfrog's spring 2025 hospital safety grade that
12 penalized the hospital for not completing the
13 survey? Is that what this is about?

14 MS. BLAIR: Objection to form.

15 THE WITNESS: From reading the context of
16 the e-mail and from what I remember, it was
17 actually -- the reporter first did a story about
18 their F, and then, in response, the hospital did
19 this statement.

20 BY MR. CHUNG:

21 Q. Okay.

22 A. That's my understanding.

1 Q. Have you had a chance to review the
2 statement as well that's Exhibit 29.

3 A. It's been a few months, so let me dig in.

4 Q. Okay. So Ms. Bailey, just focus in on
5 the first instance in the first paragraph of the
6 statement.

7 A. Okay.

8 Q. And this is a statement issued by
9 Huntsville Hospital.

10 The first paragraph reads, The Leapfrog
11 survey is not an accurate measure of patient
12 safety at Huntsville Hospital. The hospital did
13 not complete this voluntary 353-page survey, yet
14 Leapfrog chose to publish a rating with
15 incomplete information. This process is unfair
16 to the thousands of dedicated clinicians working
17 around the clock to care for the community and
18 response -- and respond to the emergencies
19 anytime they are called.

20 So is that kind of the gist of what the
21 reporter wants Leapfrog to respond to?

22 A. It looks like the reporter is just asking

1 for more data about the hospital.

2 Q. Okay.

3 A. And then how does Leapfrog respond to the
4 issues raised in the statement. That's what they
5 asked.

6 Q. All right. If you look at -- in the
7 e-mail chain, Bates ending in 1050, you write
8 June 4, 2025, to members of CURA Strategies,
9 Alexander [sic] Campione, Nate Longmore, and
10 Karen Jupiter.

11 You write, in the middle of your e-mail,
12 Leah is out until Tuesday. I'm not sure that
13 this warrants her needing to do a statement.
14 We'd like to keep this out of the press as much
15 as possible.

16 Why did you want to keep this out of the
17 press as much as possible?

18 A. It's not standard practice that we
19 publicize F grades.

20 Q. Okay. Is this -- is this publicizing an
21 F grade? Is that what is at issue here?

22 A. I mean, the original story that we're

1 talking about in this, from Huntsville Hospital,
2 is a story just about one F-hospital, and that's
3 not something that we proactively will pitch.
4 Our pitches are typically -- our priority is
5 focused on promoting positive stories,
6 A-hospitals.

7 Q. Okay. Even in response to a statement, a
8 public statement, from the hospital?

9 A. Can you restate your question?

10 Q. Yeah.

11 So even where the hospital has made a
12 public statement -- right? -- challenging its
13 grade and the process --

14 MS. BLAIR: Objection to form.

15 BY MR. CHUNG:

16 Q. -- you wanted to -- well, let me put it
17 another way.

18 What is the "this"? When you read that
19 sentence, We'd like to keep this out of press as
20 much as possible.

21 Right? So there's no -- I don't think
22 this is referring to a proactive press effort on

1 this issue. But how -- why did you want to keep
2 this out of the press as much as possible?

3 A. Just from my memory, specifically we just
4 didn't want more stories about F-hospitals in the
5 news.

6 Q. Okay. Did you -- was it keeping stories
7 about F-hospitals out of the news or was it
8 keeping stories out of the hospitals challenging
9 their hospital safety grades out of the news? Or
10 both?

11 A. From what I remember, it was the first,
12 keeping the -- like, our focus is not the
13 F-hospitals. We didn't want more stories in the
14 press about F-hospitals.

15 Q. Okay. Now, you suggested that, in
16 response, that the focus should be on how the
17 hospital is now going to participate in the
18 Leapfrog survey.

19 Do you see that?

20 A. Yes.

21 Q. Do you have an understanding as to why
22 where the hospital -- here, Huntsville

1 Hospital -- has called the Leapfrog survey not an
2 accurate measure of patient safety and that the
3 process is unfair -- do you have an understanding
4 as to why the hospital would now agree to commit
5 significant resources to complete the survey?

6 MS. BLAIR: Objection to form.

7 BY MR. CHUNG:

8 Q. Why is it doing that?

9 MS. BLAIR: Same objection.

10 THE WITNESS: I don't know why they're
11 doing the survey. They put in their statement
12 they're going to do the survey. I only know
13 what's written on this paper.

14 BY MR. CHUNG:

15 Q. All right. Fair to say that they're
16 feeling coerced into completing the survey?

17 MS. BLAIR: Objection to form.

18 THE WITNESS: I wouldn't say that, no.

19 BY MR. CHUNG:

20 Q. Have you gotten any sort of feedback from
21 hospitals that they feel like they're being
22 coerced into the survey because of this

1 methodology change?

2 A. Not that I can recall.

3 Q. Okay.

4 MR. CHUNG: Let's go to tab 60.

5 BY MR. CHUNG:

6 Q. Actually, before we go there, let's go --
7 we have another document relating to this
8 Huntsville, Alabama -- Huntsville Hospital.

9 A. Okay.

10 MR. CHUNG: And this will be Exhibit 30.
11 (Bailey Deposition Exhibit 30 marked for
12 identification and attached to the
13 transcript.)

14 BY MR. CHUNG:

15 Q. Now, relatedly, Ms. Bailey, Exhibit 30 is
16 an article I believe from AL.com as a follow-up
17 to this exchange regarding the Huntsville
18 Hospital.

19 Just let me know if you've seen it
20 before.

21 A. Yeah, that's what it looks like.

22 Q. Okay. And you'll see that it's based on

1 an interview with the Huntsville Hospital CEO
2 Jeff Samz; is that right?

3 A. Yes.

4 Q. And you'll see on the third page of the
5 document, in the middle of the page, he's quoted,
6 Now, because of the coercive nature of Leapfrog
7 creating a false score that is going to coerce
8 our hospital into completing a survey, I'm going
9 to take resources that could be used for patient
10 care or doing something productive and I'm going
11 to have to dedicate them for months to fill out a
12 survey. So publishing a score that is, by the
13 way they do it, low creates a false perception of
14 the safety of the organizations that don't
15 participate in the survey.

16 Does this refresh your recollection as to
17 why the Huntsville Hospital decided eventually to
18 fill out the survey?

19 A. I don't know that they have done the
20 survey. I only know what we're reading. I don't
21 have any other context.

22 Q. Okay. So this doesn't refresh your

1 recollection as to why they decided to eventually
2 submit to the survey?

3 A. I don't know if they do do the survey
4 today, and I don't know anything besides what
5 we're reading.

6 Q. Okay. So you've never -- you haven't
7 seen this article before?

8 A. I have seen this article. I'm just
9 saying I don't know anything beyond what we're
10 reading in this.

11 Q. Okay. Do you know whether there have
12 been any discussions with the Huntsville
13 Hospital -- with the CEO or other members of the
14 staff about their decision to respond to the
15 survey eventually?

16 A. I don't know, actually.

17 Q. Okay.

18 MR. CHUNG: Let's move on to 60. So this
19 will be Exhibits 31 and 32.

20 (Bailey Deposition Exhibits 31 and 32
21 marked for identification and attached to
22 the transcript.)

1 BY MR. CHUNG:

2 Q. All right. Ms. Bailey, Exhibits 31 and
3 32 are an e-mail chain and then an article that's
4 referenced in that e-mail chain arising from an
5 e-mail with a healthcare reporter in Cleveland
6 about another hospital disputing its spring 2025
7 hospital safety grade.

8 And I want to direct you first to the
9 e-mail from Julie Washington from Cleveland.com.

10 A. Yes.

11 Q. And this is on Bates ending 7440.

12 She addresses you, Hi, Lauren. I am a
13 healthcare reporter at the Cleveland Plain Dealer
14 and Cleveland.com, and I'm wanting to -- and I'm
15 writing about the spring Leapfrog grades. A
16 local hospital leader made the statement below,
17 and I wanted to run it past you because it
18 doesn't align with an explanation from Leapfrog's
19 CEO Leah Binder that I saw in Becker's. Can you
20 please clarify?

21 So -- it looks like Ms. Washington
22 excerpts from a statement from a local hospital

1 leader: In the past, Leapfrog carried forward
2 past responses for hospitals that did not fill
3 out a survey. Now, the safety nonprofit will no
4 longer carry four-year-old scores, and they
5 basically assign you the lowest ranking of the
6 people who completed the survey.

7 Do you recall, at least generally, this
8 discussion?

9 A. Yes. I remember generally.

10 Q. Okay. Now, what -- the second document,
11 so Exhibit 32, is the -- what we understand to be
12 the Becker's article that Ms. Washington is
13 alluding to. Okay? And it quotes Ms. Binder.

14 Do you see that?

15 A. Yes. I'm just reading it.

16 Q. In the fourth paragraph down it says --
17 or she says, We use the Leapfrog data when we
18 have that data. We impute scores for the data
19 when we don't have it. I think that the measures
20 that the hospitals are concerned about are four
21 out of the 30 measures we use in the hospital
22 safety grades.

1 Do you see that?

2 A. Yes.

3 Q. Okay. Is this the statement the reporter
4 was referring to as not aligning with what she
5 was hearing from the hospital?

6 A. I'd assume so. She's quoted one more
7 time in the next page.

8 Q. Okay.

9 A. Or two more times.

10 Q. Have you -- it sounds like you've
11 interacted with this reporter before, who's a
12 healthcare reporter for the Cleveland Plain
13 Dealer. Am I right?

14 A. Most likely. We talk to a lot of
15 reporters, so I don't remember specifically. But
16 Cleveland.com is an outlet that covers Leapfrog.
17 Yes.

18 Q. Okay. So if the healthcare reporter here
19 thought that these statements did align -- I
20 mean, what's your view as to whether ordinary
21 consumers or patients would think? Wouldn't they
22 also believe that these statements didn't align?

1 MS. BLAIR: Objection to form.

2 THE WITNESS: I don't know what the first
3 statement is that we're comparing. I don't see
4 what the first statement is.

5 BY MR. CHUNG:

6 Q. The first statement from -- the excerpt
7 from the hospital itself. At the bottom --

8 A. Where?

9 Q. -- of Bates ending 7440.

10 A. 7440?

11 Q. Yes.

12 A. Oh, this (indicating)?

13 Q. Correct. Yeah. Below the...

14 A. I mean, that's not accurate, what the
15 hospital said. We do still use past scores; it's
16 just a different time period.

17 Q. Right. That's if -- that's with respect
18 to step 1 of the imputation methodology, correct?

19 A. Right. That's what it looks like the
20 hospital is referring to, is step 1.

21 Q. Okay. But what -- doesn't this actually
22 refer to step 2, actually?

1 MS. BLAIR: Objection to form.

2 BY MR. CHUNG:

3 Q. If your old scores aren't applicable
4 under step 1, the hospital is assigned a lowest
5 ranking of all the hospitals who complete the
6 survey, correct?

7 A. I mean, to me, it sounds like this
8 hospital is confused. They didn't know that
9 step 1 was still in place.

10 I'm not sure. I don't know what the
11 hospital meant.

12 Q. Okay. Ms. Washington is asking you,
13 though -- she's observing that it does not align
14 with Ms. Binder's explanation, correct, in
15 Becker's.

16 A. That's what she's saying. Yes.

17 Q. Okay. So do you agree with her that the
18 two statements did not align?

19 MS. BLAIR: Objection to form.

20 THE WITNESS: I mean, I agree that the
21 hospital seems to be confused.

22

1 BY MR. CHUNG:

2 Q. Okay. How are they confused?

3 A. I just testified to that, that it seems
4 that they don't understand that the step 1 of the
5 imputation still exists.

6 Q. Okay. But is it incorrect that if --
7 that, in step 2, hospitals are assigned the
8 lowest possible grade or the lowest ranking of
9 the people who completed the survey?

10 A. Yeah, that's correct.

11 Q. Okay. So does that align with
12 Ms. Binder's statement from the Becker's article
13 that we use the Leapfrog survey when we have that
14 data; we impute scores for the data when we don't
15 have it?

16 Does Ms. Binder, in the Becker's article,
17 say anything about assigning those non-reporting
18 hospitals the lowest possible score?

19 A. Not in the quote, but I'm -- like, she
20 very well might have said it in an interview. We
21 can't control what pieces the reporter decides to
22 quote.

1 Q. Understood. But in what was published in
2 the article, it's not mentioned at all, it's not
3 disclosed at all, by Ms. Binder that the lowest
4 possible score is assigned to those
5 non-participating hospitals on those four
6 metrics, correct?

7 A. She didn't quote that part, but like I
8 said, Leah very well could have said it. We
9 can't control what a reporter reports.

10 Q. Do you know if she did?

11 A. I don't know. I don't staff her
12 interviews. You'd have to ask her.

13 Q. Okay. So the hospital -- so I think your
14 testimony is that the hospital at issue here is
15 confused about the methodology; is that right?

16 A. That's what I -- that's how I read it.
17 And that's how I read it at the time, too.

18 Q. Going back to one of my questions
19 earlier: If a hospital is confused about the
20 methodology, do you expect consumers -- isn't it
21 fair to say that consumers would be confused by
22 the methodology as well?

1 MS. BLAIR: Objection to form.

2 THE WITNESS: She's saying a local
3 hospital leader. I have no idea who this person
4 is, what their role is. They could very well
5 have the same knowledge as a consumer, so I can't
6 draw that inference.

7 MR. CHUNG: Okay. Let's go to tab 61.
8 This will be 33, Exhibit 33.

9 (Bailey Deposition Exhibit 33 marked for
10 identification and attached to the
11 transcript.)

12 BY MR. CHUNG:

13 Q. Okay. Exhibit 33 is an e-mail chain from
14 June 2024. And then you'll see a second part of
15 the document, Final updates to Leapfrog hospital
16 safety grade methodology for fall 2024.

17 Do you recognize this document?

18 A. I've seen it before. Yes.

19 Q. Okay. And what is it?

20 A. It looks like it's a draft of the final
21 updates for the safety grade methodology for fall
22 2024.

1 Q. Okay. So on the page ending Bates 0454,
2 Ms. Danforth writes to Ms. Binder, Mr. Austin,
3 and copying Alexandra Campione, Hi, Leah and
4 Matt. Alex did a great job responding to the
5 public comments we received and finalizing the
6 changes to the fall 2024 hospital safety grade
7 methodology.

8 Is that correct? Is that -- Alexander
9 [sic] Campione was responsible for responding to
10 the public comments here?

11 A. I don't know. I'm not her manager. I
12 don't know what she does. Like, I don't -- I
13 don't know.

14 Q. You don't know what she does?

15 A. Like, I don't know how they divide up
16 roles, but that's -- it looks like that's what
17 Missy said. So...

18 Q. Okay. Did you -- let's put it another
19 way.

20 As director of communications, did you
21 regularly communicate with Ms. Campione about the
22 change to the imputation methodology?

1 A. We talked about the changes. We -- not
2 that I recall we talked about the public
3 comments. That's typically separate.

4 Q. Okay. So do you know whether
5 Ms. Campione finalized the changes to the
6 imputation methodology?

7 A. I don't -- I don't know. That's what
8 this says. It looks like she proposed this draft
9 of the final changes, and they potentially
10 provided edits. I don't think I was on this
11 e-mail chain.

12 Q. Okay. Just looking at the next e-mail --
13 so Bates ending 0453 -- Ms. Binder writes,
14 responding to Ms. Danforth, Thanks, Missy and
15 Alex. This is a hard one to do.

16 Did you have an understanding as to what
17 she meant by that?

18 A. I don't know what she meant.

19 Q. Okay. Did you have any conversations
20 with Ms. Campione about this being a particularly
21 difficult project to work on? The imputation
22 methodology.

1 A. I don't -- I don't recall.

2 Q. Okay. You don't recall having any
3 conversations like that with Ms. Campione?

4 A. We talked about the messaging. Any
5 change comes with different challenges. I don't
6 recall any.

7 Q. Any change comes with -- I don't
8 understand.

9 A. Like -- can you restate your original
10 question?

11 Q. Yeah.

12 Did you have any discussions with
13 Ms. Campione about difficulties -- right? -- or
14 challenges relating to the changes to the
15 imputation methodology in fall 2024?

16 A. Yeah, I don't recall this specifically.
17 I know that anytime we're getting a final update
18 done, it can be challenging. There's a lot of
19 people you have to collaborate with, and it's a
20 big project. I think -- I mean, that's what I
21 think.

22 Q. Generally speaking? I'm asking specific

1 to this particular change in the imputation
2 methodology.

3 A. I don't know.

4 Q. You don't know?

5 A. I just said what I know.

6 Q. Okay. All right. Let's discuss the
7 lawsuit itself.

8 When did you first learn about the
9 lawsuit that's in front of us?

10 A. On April 30th.

11 Q. And was that the date the lawsuit was
12 filed?

13 A. I think so.

14 Q. Okay. How did you learn about the
15 lawsuit?

16 A. I was up late getting the website ready
17 for the safe grade launch the next morning and
18 got a call that it had been filed.

19 Q. Okay. Have you been involved in
20 Leapfrog's response to the lawsuit?

21 A. From a communications perspective, yes.

22 Q. Okay. And what do you mean by that, from

1 a communications perspective you've been involved
2 in the response to the lawsuit?

3 A. Well, in a lot of ways, there was -- we
4 needed a public relations response right away
5 because there were very aggressive lies being
6 told by, actually, your firm in the media, and we
7 needed to reply right away. So that was a public
8 relations concern.

9 Q. Okay. So what specific things did you do
10 as part of that effort?

11 A. We that evening, from my recollection,
12 put a short statement up on the website. The
13 next day we did a more detailed statement when we
14 had a little more time.

15 We reached out to local reporters with
16 publicly filed -- your publicly filed complaint.

17 Q. Anything else?

18 A. That's what I can recall right now.

19 Q. Okay. Who else has worked with you on
20 this response to the lawsuit from a
21 communications perspective?

22 MS. BLAIR: I'm going to just object to

1 the extent any of your communications involved
2 lawyers. But you can answer it to the extent it
3 did not involve communications with lawyers.

4 MR. CHUNG: Yes.

5 THE WITNESS: Can you repeat the
6 question?

7 BY MR. CHUNG:

8 Q. Yes.

9 Who else has worked with you on this
10 response to the lawsuit from a communications
11 perspective?

12 A. Generally, CURA Strategies. Leah Binder
13 has been involved. Missy Danforth, Karen
14 Jupiter.

15 Q. Okay. And has the -- and CURA
16 Strategies, am I correct that they have been --
17 that they were Leapfrog's PR consultant even
18 before this lawsuit?

19 A. Yes. We've been working with them for a
20 few years.

21 Q. And what role does CURA Strategies serve
22 in the context of the response to the lawsuit?

1 A. They manage the majority of our media
2 relations. So in this case, they did the same.
3 They did some research on what the local media is
4 like in the area and sent our statement and your
5 clients' complaint.

6 Q. Okay. Do you remember whose idea it was
7 to hire CURA in the first place? I'm not talking
8 about with respect to the lawsuit, but just going
9 back to when they first were hired.

10 A. It was a joint decision. I -- we did an
11 RFP. We do RFPs every three to four years with
12 our PR firms. This is the third firm I've worked
13 with since I've been at Leapfrog.

14 Q. And what were the other two -- so there
15 were two predecessor public relations firms that
16 Leapfrog worked with before CURA Strategies?

17 A. Yes.

18 Q. Okay. And which firms were those?

19 A. The Stern Group was the first one when I
20 first started. And then JPA Health
21 Communications. And now CURA Strategies.

22 Q. So why did you move on from those two

1 other PR firms to CURA Strategies?

2 A. For Stern, they were hired before I
3 started at Leapfrog. It's very normal for a
4 comms manager to start and to choose a new firm.
5 So I, as soon as I got comfortable with my job,
6 did an RFP and chose a firm that I thought would
7 meet our needs more.

8 With JPA, there was a lot of staff
9 turnover at the agency, very normal for PR firms.
10 They weren't meeting our needs. Decided to do an
11 RFP. Chose CURA Strategies.

12 Q. Okay. And you've testified that you've
13 worked with CURA Strategies for a few years now.

14 Is it since 2023?

15 A. Yes. Yes.

16 Q. Okay. So you've worked -- so CURA
17 Strategies has been the only PR consultant since
18 2023 for Leapfrog; is that correct? Have there
19 been any other PR consultants that you've worked
20 with during that time?

21 A. Not that I can recall.

22 Q. Okay. So do you have a sense of how much

1 Leapfrog has paid CURA Strategies since 2023
2 while they've been the PR consultant?

3 A. We pay them about \$1500 a month as a
4 retainer.

5 Q. Okay. Does --

6 A. Sorry, I meant 15,000. Is that what I
7 said?

8 MS. BLAIR: No. You said --

9 THE WITNESS: Sorry. 15,000 is how much
10 we pay.

11 BY MR. CHUNG:

12 Q. Okay. So is it just -- over the last two
13 or so years, is it correct that Leapfrog has
14 spent about \$400,000 on CURA Strategies?

15 A. I'm not great at mental math, but that
16 seems correct.

17 Q. Okay. And then, going forward, do you
18 have a budget for how much you're spending on
19 CURA Strategies?

20 A. In our budget, it's still the 15,000 a
21 month.

22 Q. Okay. And for 2025 and 2026, is it

1 accurate that Leapfrog has budgeted about
2 \$180,000 for CURA Strategies?

3 A. Per year?

4 Q. For 2025 to 2026. Yes.

5 A. Per year, that seems right.

6 Q. Okay. So that roughly translates to
7 about the \$15,000 per month kind of retention
8 arrangement you have with CURA Strategies?

9 A. Correct.

10 Q. Okay. How would you describe -- you
11 testified that you've been involved in the
12 communications aspect -- right? -- of responding
13 to the lawsuit.

14 How would you describe Leapfrog's
15 communication strategy regarding the lawsuit?

16 MS. BLAIR: Objection to form.

17 Also, to the extent it calls for any
18 attorney-client communications, do not reveal
19 those. But to the extent it calls for -- you can
20 answer that without revealing conversations your
21 attorney, you need to answer.

22 MR. CHUNG: Yup.

1 BY MR. CHUNG:

2 Q. I'm not interested in conversations with
3 counsel.

4 A. Right.

5 Q. But how would you describe that -- the
6 communication strategy of the organization
7 regarding the lawsuit.

8 A. I think our public statement on our
9 website is a great example of what our strategy
10 is, which is just to counter the false claims in
11 the complaint and to stand -- that we stand
12 behind our missions, that we are transparent,
13 that we are accurate.

14 Q. Okay. Has Leapfrog sought to promote
15 negative publicity regarding the five plaintiff
16 hospitals?

17 A. To counter false claims that we were
18 attacked with.

19 Q. Okay. And how have you gone -- how have
20 you achieved that, promoting negative publicity
21 about the five plaintiff hospitals?

22 MS. BLAIR: Objection to form.

1 THE WITNESS: I wouldn't say that -- can
2 you say it again?

3 BY MR. CHUNG:

4 Q. Yes.

5 How have you gone about doing that,
6 promoting negative publicity regarding the five
7 plaintiff hospitals?

8 MS. BLAIR: Same objection.

9 THE WITNESS: I wouldn't say negative
10 publicity. I mean, we've said -- we promote the
11 statement that's on our website, which is just
12 reiterating that these are the grades, that they
13 are poor grades. We stand behind our
14 methodology. You know, click on the safety grade
15 link and see their full grade.

16 BY MR. CHUNG:

17 Q. And that is -- that's just on the
18 website, correct?

19 A. Yes. It's a statement on the website and
20 we direct press to that.

21 Q. Okay. Any other measures that you have
22 taken with respect to promoting negative

1 publicity about the plaintiff hospitals in
2 response to the lawsuit?

3 MS. BLAIR: Objection to form.

4 THE WITNESS: We ran some Google ads.

5 BY MR. CHUNG:

6 Q. Can you tell us about that?

7 A. We have a Google ad grant, and we
8 regularly have, I'd say, like, 170-ish Google ads
9 running at a time, and we change them up,
10 depending on what's going on. Usually, because
11 of what we do, we want people to be searching
12 their local hospital ratings.

13 So it's normal for us for about, I'd say,
14 half or more of those Google ads to be directly
15 linking to hospitals' survey results or safety
16 grade results. So we had -- for just a couple of
17 the months, we had five of those running towards
18 the plaintiff hospitals.

19 Q. Okay. And how was that -- so just to be
20 clear, this Google ad strategy was if -- can you
21 just kind of go step by step what you had Google
22 do with respect to the strategy?

1 A. We have a -- Nonprofit Megaphone is the
2 one that administrates -- administers the ads.
3 But as far as my knowledge goes, it's just a
4 direct link to the safety grades for the five
5 hospitals.

6 Q. Okay. How do -- when does this direct
7 link show up, according to the strategy,
8 according to what you're describing?

9 A. I don't know. I assume -- I'm not a
10 Google ad expert, so we have a contractor who
11 works on it.

12 From my understanding, it's when you
13 Google the hospital, I think.

14 Q. So when you run a Google search for one
15 of the hospital names, the hospital safety grade
16 will show up? How does it work exactly?

17 A. From my understanding, in Google ads,
18 you'll see "sponsored," and you can click on it.
19 So it would say, Leapfrog hospital safety grade.

20 Q. So upon a Google search for one of the
21 plaintiff hospitals, a sponsored advertisement
22 linking to that particular hospital's hospital

1 safety grade will show up for the person running
2 the search, correct?

3 A. Yeah, not every person, but yes.

4 Q. What do you mean by not every person?

5 A. Like, if you look at the analytics, I
6 think five people saw it, so clearly it's not
7 every person. I hope -- I mean, I think there's
8 more than five people searching for these
9 hospitals. So...

10 Q. Okay. Who -- so who was responsible --
11 kind of who was tasked with devising Leapfrog's
12 communication strategy regarding the lawsuit?

13 A. Can you restate the question?

14 Q. Yeah.

15 Who was tasked? Was there a specific
16 person that was tasked with putting together
17 Leapfrog's strategy regarding the lawsuit?

18 A. I'd say me. It's my primary responsible.

19 Q. Okay. How was Leah Binder involved in
20 it, if at all?

21 A. She's involved in almost everything at
22 Leapfrog.

1 Q. Okay. So how was she involved in the
2 communication strategy?

3 A. Approving it. Giving input.

4 Q. Okay. Was it also approved by Leapfrog's
5 board?

6 A. The board usually doesn't get involved in
7 these kinds of things, but the board knew what we
8 were doing.

9 Q. Okay. Did they know that you were
10 engaging in this Google ads strategy as well?

11 A. I'm not sure. It's a very, very small
12 part of what we've been doing. It wasn't the
13 focus. It was just one tiny part of it.

14 Q. Okay. So the question is, was the board
15 aware of this Google ad strategy?

16 A. I don't know. They don't know
17 everything -- we don't tell them every single
18 thing we are doing. That would be way too much
19 information.

20 Q. Okay.

21 A. But we give them in our quarterly
22 reports, which I believe you've seen, we give

1 Google ad and Google analytics information.

2 Q. Okay.

3 MR. CHUNG: Let's go to tab 30. This
4 will be Exhibit 34.

5 (Bailey Deposition Exhibit 34 marked for
6 identification and attached to the
7 transcript.)

8 BY MR. CHUNG:

9 Q. Exhibit 34 is an e-mail chain from
10 March of 2025.

11 What's being discussed here with
12 Ms. Jupiter?

13 A. I don't remember. I don't remember this.

14 Q. In the first sentence you write that you
15 looked at articles that Ms. Jupiter sent you; is
16 that right?

17 A. That's what I said. Yes.

18 Q. Okay. Do you have an understanding as to
19 why Ms. Jupiter was sending these articles to
20 you?

21 A. I don't remember this. Let me read it.

22 Q. Okay. Take your time.

1 A. I don't remember this.

2 Q. Okay.

3 A. Looking at the time frame, it looks like
4 it may have had something to do with the letter
5 sent from your client.

6 Q. What do you mean by that?

7 A. Just looking at the time frame in March,
8 that I know that there were letters sent.

9 I wasn't involved in it, but I know that
10 a lot of these things were referenced in the
11 complaint letters.

12 Q. So are these -- are these articles, are
13 these references to instances in the past when
14 hospitals or other parties had criticized or
15 challenged Leapfrog's hospital safety grade
16 system?

17 MS. BLAIR: Objection to form.

18 THE WITNESS: I think that they were --
19 it looks it me that they were things that, yeah,
20 your firm brought up in the complaint, in the
21 letters.

22

1 BY MR. CHUNG:

2 Q. Okay. And how generally did -- how
3 generally did Leapfrog respond to these types of
4 complaints?

5 MS. BLAIR: Objection to form.

6 THE WITNESS: I don't understand the
7 question.

8 BY MR. CHUNG:

9 Q. How did -- with respect to all these
10 prior instances of hospitals challenging or
11 complaining about the hospital safety grades,
12 what was Leapfrog's general strategy of
13 responding to these complaints?

14 A. I mean, these are ten -- eight, ten very
15 unique situations. There isn't a -- like, we
16 handle everything on a case-by-case basis. I...

17 Q. How were they very unique situations?

18 A. We're talking about eight different
19 instances. We're -- like, they're all different
20 bullets. There's no connection that I see.

21 Q. Okay. But how are they -- why do you say
22 that they're very unique? What about them makes

1 you say that they're very unique?

2 A. They're different. Like, we're talking
3 about a study, talking about a report. And I
4 don't have any of the attachments, I can't tell
5 you specifics on these. I don't remember all of
6 these.

7 Q. Okay.

8 A. Mission Hospital, which we mentioned
9 earlier...

10 Q. So you don't have a recollection as to
11 why Ms. Jupiter was collecting and sending you
12 these articles?

13 A. I don't remember.

14 Q. Okay.

15 MR. CHUNG: Let's go on to 32. This will
16 be Exhibit 35.

17 (Bailey Deposition Exhibit 35 marked for
18 identification and attached to the
19 transcript.)

20 MR. CHUNG: Let's do 33 as well, the
21 talking points.

22

1 (Bailey Deposition Exhibit 36 marked for
2 identification and attached to the
3 transcript.)

4 BY MR. CHUNG:

5 Q. So Exhibit 35 and 36, we have got an
6 e-mail chain with Ms. Jupiter sending updated
7 talking points to regional leaders -- right? And
8 then Exhibit 36 are the talking points
9 themselves.

10 Do you recognize these documents?

11 A. Yes.

12 Q. All right. Why are talking points about
13 the lawsuit being sent to Leapfrog's regional
14 leaders?

15 A. In my understanding, we wanted them to be
16 informed in case they had questions.

17 Q. Okay. What's in those talking points?

18 A. Really nothing different than what's in
19 our public statement on our website.

20 Q. Okay.

21 A. It's just organized a little differently.

22 Q. Can you just tell us what's in the

1 talking points?

2 A. Sure. Starts with top-line messaging.
3 We talk about hospital-specific performance. And
4 then a section countering false claims.

5 Q. All right. So the top line, I think,
6 is -- the top-line message is, We encourage you
7 to focus on the very poor performance of these
8 hospitals on patient safety, first and foremost,
9 correct?

10 A. Oh, you're reading the --

11 Q. Yeah, the talking points --

12 A. The preamble?

13 Q. -- Exhibit 36.

14 Do you see that?

15 A. Yes, I see that.

16 Q. Okay. And you are -- above that you say
17 that We prefer you to avoid talking directly to
18 the press about the lawsuit. Instead, you may
19 direct them to Lauren -- to you.

20 Why did you express a preference to have
21 them avoid talking directly to the press about
22 the lawsuit?

1 A. Just standard operating procedure for us.

2 Q. And why is that standard operating
3 procedure? Is that standard operating procedure
4 specific to the regional leaders?

5 A. For the regional leaders, yes. I mean,
6 they don't know everything about Leapfrog and
7 they really only know what their coalition does.
8 So that's just standard operating procedure for
9 press. We always prefer that they direct them to
10 us.

11 Q. Okay. Now, turning to the second bullet
12 point under the countering false claims -- this
13 is on the second page, Bates ending 6116 --
14 you'll see there that Hospital participation in
15 the Leapfrog hospital survey has no automatic up
16 or down impact on a hospital's safety grade.

17 Do you see that particular bullet point?

18 A. Yes.

19 Q. All right. But doesn't declining to
20 participate in the survey automatically drop four
21 of the metrics down to the limited achievement
22 score?

1 MS. BLAIR: Objection to form. Asked and
2 answered.

3 THE WITNESS: Yeah, I've already talked
4 about this. No, it -- I stand by the statement,
5 it doesn't have an automatic up or down impact.
6 A hospital could do the survey and score the
7 same.

8 BY MR. CHUNG:

9 Q. That's not my question.

10 So my question was, doesn't declining to
11 participate in the survey automatically drop four
12 of the metrics down to the limited achievement
13 score?

14 A. No, it's not automatic. Because if
15 they -- if they had the data and they scored
16 that, it would be...

17 Q. That's --

18 A. I don't understand the question.

19 Q. No.

20 My question is, for hospitals that do not
21 participate in the survey -- right? -- aren't
22 their scores on the four imputed metrics

1 automatically assigned the limited achievement
2 score?

3 A. For those four --

4 Q. Yes.

5 A. -- not for the entire safety grade.

6 Q. That's been my question. For those
7 four --

8 A. Okay.

9 Q. -- imputed metrics.

10 A. Yes, for its four imputed metrics.

11 Q. Okay. So with respect to this bullet
12 point here that you're asking the regional
13 leaders to basically disseminate, is it accurate
14 to say that hospital participation or
15 non-participation in the survey has no automatic
16 up or down impact on a hospital's safety grade?

17 A. Yes. I already said yes. We stand by
18 these.

19 Also, we're telling them, do not talk to
20 people. This is just giving them background
21 information.

22 Q. Okay. Would you agree that

1 non-participation in the survey at least raises
2 the risk of that hospital getting a lower overall
3 hospital safety grade?

4 A. Possibly. As I've testified before,
5 there are hospitals that get As that don't do the
6 survey.

7 Q. Okay.

8 MR. CHUNG: Let's go to tab 34. This
9 will be Exhibit 37.

10 (Bailey Deposition Exhibit 37 marked for
11 identification and attached to the
12 transcript.)

13 BY MR. CHUNG:

14 Q. So it's an e-mail chain from May of 2025,
15 and it looks like CURA Strategies, a Lula
16 Hailesilassie, is attaching a day one coverage
17 report from the hospital safety grade
18 announcement.

19 Do you see that?

20 A. Yes.

21 Q. Okay. And then you, responding to -- or
22 forwarding this to Ms. Binder, Flagging this in

1 case you didn't see it. There hasn't been
2 anything new today on the lawsuit that we've seen
3 in the press.

4 Do you see that?

5 A. Yes.

6 Q. Okay. And Ms. Binder responds, Thanks,
7 Lauren. This coverage is great. Let's make a
8 goal to have one story at minimum every three
9 days about Tenet or one of the hospitals.

10 Now, you forward that message to
11 Ms. Jupiter with just an ellipses, dot-dot-dot.

12 What did you mean by that?

13 A. From what I can recall, like, we need to
14 talk about this.

15 Q. To Ms. Jupiter?

16 A. Yes.

17 Q. What do you mean by -- what did you need
18 to talk about?

19 A. Just I had never heard Leah say this
20 before. So -- she's my boss. I want to talk to
21 her about it.

22 Q. What about this directive did you need to

1 talk about, making it a goal to have one story at
2 a minimum every three days about Tenet or one of
3 the hospitals?

4 A. Just that it was something that Leah said
5 and we hadn't discussed the strategy and I wanted
6 to talk to my boss about it. That -- I...

7 Q. Did you have concerns about what Leah was
8 directing you to do?

9 A. I don't think I understood. And we
10 didn't do it, so...

11 Q. I'm not asking whether it eventually
12 happened or whether you eventually did it.

13 But did you have concerns about what Leah
14 was directing you to do here?

15 A. I didn't understand the goal of it.
16 This -- I can't recall exactly what -- this week
17 was incredibly stressful for us.

18 Q. Okay. So you didn't understand the goal
19 of it.

20 Did Ms. Jupiter share that concern about
21 what the goal of having this many stories was?

22 A. I don't recall this specific conversation

1 that we had. I only recall the outcome.

2 Q. Did you raise your question with Leah as
3 to what the goal of this strategy was?

4 A. I'm sure I did. I don't remember
5 exactly. Like I said, I only remember the
6 outcome.

7 Q. Okay. Not asking about the outcome.
8 Right?

9 What do you remember about discussions
10 you had with Ms. Binder about this strategy? And
11 the strategy, to be specific, is what she's
12 directing you to do here, right? One story -- at
13 least one story every three days about Tenet or
14 one of the hospitals.

15 A. From what I remember about the
16 conversation, the follow-up conversations we had,
17 understanding what she meant from it was simply
18 that we needed to do what we could to counter all
19 the false claims that were out there. We didn't
20 know what else was coming. We saw Mary Beth
21 Maloney saying a lot of very untrue things in the
22 press. We didn't know what else was planned.

1 Leah wanted to make sure we had a plan
2 and that we could defend ourselves.

3 That's what she meant, in my
4 understanding.

5 Q. So how was having one story at minimum
6 every three days about Tenet or one of the
7 hospitals consistent with that, with what you
8 just described?

9 A. I mean, I'd say just, again, getting our
10 side out there. And to me, it was about the
11 safety grades. I mean, if you look at our
12 statement, that's the very first thing, we stand
13 behind our safety grades, here's a link to them,
14 making sure the press locally know what the
15 safety grades were.

16 Q. Okay. Did you talk to Ms. Jupiter about
17 Ms. Binder's request after you had forwarded this
18 e-mail?

19 A. I really -- I don't remember the
20 specifics.

21 Q. I understand. But a moment ago you
22 didn't remember your discussions with -- anything

1 about your discussions with Ms. Binder, but then
2 you actually described them later on.

3 So can you give another shot at trying to
4 remember discussions with Ms. Jupiter about this?

5 MS. BLAIR: Objection to form.

6 THE WITNESS: I told you I remembered the
7 outcome, and the outcome was that discussion I
8 just explained. And that's all I remember.

9 BY MR. CHUNG:

10 Q. Okay. What kinds of stories? So the
11 directive here is to have one story at minimum
12 every three days about Tenet or one of the
13 hospitals, right?

14 A. That's what it says.

15 Q. All right. What about Tenet and/or the
16 hospitals did Ms. Binder want stories about every
17 few days?

18 A. I don't recall. We didn't do it, so I --
19 I don't know what she meant, specifics.

20 Q. Okay.

21 MR. CHUNG: Let's go to tab 35. This is
22 Exhibit 38.

1 (Bailey Deposition Exhibit 38 marked for
2 identification and attached to the
3 transcript.)

4 BY MR. CHUNG:

5 Q. So this is an e-mail chain from June 3rd,
6 2025 -- or May and June 2025.

7 And in the top e-mail, Ms. Bailey, to
8 Ms. Jupiter, there is a section about the lawsuit
9 itself, correct?

10 A. Correct.

11 Q. We've also been proactively pitching
12 updates around the Tenet Healthcare lawsuit to
13 national and local press to own the narrative.

14 Do you see that?

15 A. Yes.

16 Q. Okay. So these are outreaches to
17 national and local press outlets proactively to
18 give them updates, correct?

19 A. It's what I testified to before, that we
20 were sending the complaint and our statement.
21 Again, in this situation, we're being attacked by
22 a large healthcare system. We're a very small

1 nonprofit. We're doing anything we can to defend
2 ourselves and our reputation because this is a
3 huge reputational risk for us.

4 Q. Right. So what you just testified to now
5 and earlier were basically reactive strategy,
6 right? Reactive outreaches to press outlets to
7 counter what you're alleging are falsehoods,
8 correct?

9 A. Correct. Depends on how you look at it.

10 Q. So -- but here, what you're describing to
11 Ms. Jupiter are proactive pitching updates around
12 the Tenet Healthcare lawsuit to all these press
13 outlets to own the narrative.

14 A. Right.

15 Q. Do you see that?

16 A. Yes.

17 Q. So this is -- fair to say that this is a
18 different, but complementary strategy to the
19 reactive measures that you described?

20 A. It's the same strategy. I think it just
21 depends on how you look at it. We're at a
22 disadvantage when we're the ones being sued and

1 we're the ones being attacked in the press.

2 And so yes, I could see how you could see
3 that you might think it's reactive. But when I
4 use this word, proactive, what I remember is that
5 we wanted to send the complaint and countering
6 the false claims to reporters before we got a
7 reactive question from them.

8 Does that make sense?

9 Q. So what were you -- so you sent them the
10 complaint and the Leapfrog statement.

11 What else were you sending to these press
12 outlets in this proactive approach?

13 A. That's all I recall. Just anything
14 that's publicly filed.

15 Q. Okay. You're saying here that you're
16 proactively pitching updates around the Tenet
17 Healthcare lawsuit to national and local press.

18 What were these updates?

19 A. Anything that's publicly filed in the
20 suit.

21 Q. Okay. So can you give us -- can you kind
22 of outline for us what those updates were?

1 A. I am not a lawyer, so I don't know these
2 terms.

3 Q. I don't think you have to have a lawyer.

4 A. There was a -- well, there are. There
5 are documents that were filed by you, your firm.

6 Q. Okay.

7 A. So --

8 Q. So what were those --

9 A. Preliminary injunction. I remember that
10 one.

11 Q. Yeah.

12 A. I don't remember the rest of them.

13 Q. Okay. In addition to providing
14 filings -- right? -- from the lawsuit, were you
15 supplying these -- the national and local press
16 outlets with any other information or commentary
17 on the filings?

18 A. Leah did some interviews.

19 Q. Okay. How was -- just looking at the
20 second part of this sentence, you're pitching --
21 proactively pitching updates to own the
22 narrative.

1 How was Leapfrog trying to own the
2 narrative? What was this referring to?

3 A. Just a standard PR term. Again, in the
4 situation we're in, we're in the disadvantage.
5 We're the ones being sued. We're the ones being
6 attacked in the press. We're a very small
7 nonprofit. Our strategy was to do what we could
8 to own the narrative, to stand up for ourselves,
9 to show that we are transparent.

10 Q. Okay. How were -- what was the narrative
11 that you were trying to own?

12 A. That our safety grades are transparent
13 and accurate; we're not pay to play.

14 Q. Okay. Was part of that -- was part of
15 that -- did you include in that narrative how
16 non-participating hospitals are assigned their
17 safety grades?

18 A. I don't recall. I don't think so.

19 Q. Okay. Was that, I think in your words
20 earlier, too detailed to be included in the
21 narrative?

22 MS. BLAIR: Objection to form.

1 THE WITNESS: That wasn't the story that
2 we were pitching.

3 BY MR. CHUNG:

4 Q. Okay. Because it was inconvenient to
5 your story, correct?

6 MS. BLAIR: Objection to form.

7 THE WITNESS: No. We're pitching the
8 story that your firm is attacking our small
9 nonprofit that's trying to do a public service.
10 That's the story we're pitching.

11 BY MR. CHUNG:

12 Q. Okay. But as part -- what you're calling
13 an attack, wasn't that an attack on Leapfrog's
14 methodology for arriving at safety grades for
15 non-participating hospitals? Wasn't that part of
16 what you're calling the attack on Leapfrog?

17 A. The attack I'm referring to is what
18 Mary Beth Maloney did in the press.

19 Q. Okay. But I'm asking you, wasn't the
20 attack that you're alleging that you were
21 responding to -- right? -- part of that attack
22 was a criticism or a challenge to Leapfrog's

1 methodology for non-participating hospitals;
2 isn't that correct?

3 A. I mean, your complaint was over 50 pages
4 long. We're not going to outline every single
5 thing in it, but we attached it, shared it with
6 reporters proactively.

7 Q. Okay. I'm asking you to respond to my
8 question. All right?

9 Wasn't the criticism or challenge to the
10 methodology for non-participating hospitals part
11 of what you're calling the attack on Leapfrog?

12 MS. BLAIR: Objection to form. Asked and
13 answered.

14 THE WITNESS: It was one of the elements
15 in this 50-plus page complaint. Yes.

16 BY MR. CHUNG:

17 Q. Okay. And it wasn't part of your
18 narrative to comment -- to even comment on that
19 criticism of the methodology, correct?

20 MS. BLAIR: Objection to form.

21 THE WITNESS: It wasn't our primary
22 focus.

1 BY MR. CHUNG:

2 Q. Okay. And is it fair to say that it
3 wasn't part of your primary focus because it was,
4 in fact, a valid criticism of -- of the
5 methodology?

6 MS. BLAIR: Objection to form.

7 THE WITNESS: No.

8 MR. CHUNG: Okay. Let's go to 36.

9 Tab 36.

10 This is Exhibit 39.

11 (Bailey Deposition Exhibit 39 marked for
12 identification and attached to the
13 transcript.)

14 BY MR. CHUNG:

15 Q. Ms. Bailey, Exhibit 39 is an e-mail
16 exchange with CURA Strategies, and it includes a
17 meeting agenda with Leapfrog and CURA.

18 Do you see that?

19 A. Yes.

20 Q. All right. And on that agenda, there are
21 a handful of items.

22 The Tenet lawsuit coordination, what is

1 that referring to?

2 A. What we just talked about, the press
3 strategy.

4 Q. Okay. And underneath that it looks like
5 kind of an indentation: Patient story.

6 What is that referring to?

7 A. We, at the time -- so May 8th -- again,
8 this was the first week of the lawsuit. We were
9 really trying to figure out what our strategy
10 was, what was going on. We were considering
11 looking at patient stories. We had several
12 patients reach out to us with stories. We were
13 looking into that. We didn't pitch any to press
14 at this time.

15 Q. Okay. So this particular bullet point or
16 this idea did not come to fruition eventually?

17 A. Not at this time.

18 Q. Okay. And why not?

19 A. We just decided not to pursue it right
20 now.

21 Q. Understood that you decided not to pursue
22 it. But why not?

1 A. We just -- we just didn't do it. I
2 don't -- there were so many things going on at
3 this time, it just didn't -- it was not the
4 priority anymore.

5 Q. Were there not enough patient stories to
6 support that project?

7 A. No, that's not it.

8 Q. Were the --

9 A. We just -- sorry, go ahead.

10 Q. Were the patient stories not what you
11 were looking for in terms of this strategy?

12 A. No. We were just brainstorming
13 strategies and decided to not go with that one.

14 Q. Okay. The second kind of indented point
15 is paid media campaign.

16 What is that referring to?

17 A. The Google ads.

18 Q. Okay. The Google ads that you were
19 testifying to earlier where the hospital safety
20 grades for the five hospitals pop up upon a
21 search for those hospitals?

22 A. Correct.

1 Q. Okay. Any other aspects of a paid media
2 campaign that this included?

3 A. Not that I can recall.

4 MR. CHUNG: Let's go to tab 37. This
5 will be Exhibit 40.

6 (Bailey Deposition Exhibit 40 marked for
7 identification and attached to the
8 transcript.)

9 BY MR. CHUNG:

10 Q. Okay. This is a series of Slack messages
11 between yourself, Ms. Jupiter, and Nate Longmore
12 from May 12 of 2025.

13 A. Yes. I vaguely remember this.

14 Q. Okay. What's being discussed here?

15 A. I believe we were on the call -- a call,
16 and we were discussing the Google ads.

17 Q. Okay. And you write -- or Ms. Jupiter
18 writes up top, She has no clue how this works.

19 Who is the "she" she's referring to?

20 A. I think Leah. She doesn't know how
21 Google ads work.

22 Q. Okay. So just to be specific, what is

1 she referring to? What does Ms. Binder have no
2 idea -- has no clue about how what works?

3 MS. BLAIR: Objection. Form. Asked and
4 answered.

5 THE WITNESS: Yeah, I just said. The
6 Google ads -- she doesn't understand how Google
7 ads work.

8 BY MR. CHUNG:

9 Q. What is she not understanding about it?

10 A. She doesn't understand, like, how they
11 work. Like, just generally how they work.

12 Q. Okay. What did you -- you responded with
13 this emoji on the next line. What did you mean
14 by that emoji?

15 A. I don't know. It was a really stressful
16 call. I send a lot of emojis. I can't even tell
17 what it is.

18 Q. Okay. And Ms. Jupiter next asks, Why,
19 though? What would be the point?

20 And you responded, I don't get it.

21 And you note, further below, I'm afraid
22 to ask.

1 What did you not get?

2 A. I don't recall everything about this
3 conversation. There was back and forth about
4 what we would do with Google ads. I...

5 Q. Okay. Were you expressing that you did
6 not get or you did not understand what Ms. Binder
7 was trying to achieve with this Google ads idea?

8 A. That's what it looks like. Yeah.

9 Q. Okay. And what were you afraid to ask?

10 A. I don't remember.

11 Q. Okay. Why were you afraid to ask?

12 A. I don't remember.

13 Q. Now, further down, you wrote that Leah
14 said she wants to know if we can do ads where, if
15 someone searches those five hospitals, it shows
16 an ad with their safety grade URL and says they
17 have an X grade.

18 Why did Ms. Binder want to know if we can
19 do ads where, if someone searches those five
20 hospitals, it shows an ad with their safety grade
21 URL? Why did she want to know about this?

22 A. I was just recapping to Nate what she had

1 said because his WiFi was unstable, so it's just
2 what I testified to before.

3 Q. Yeah, but why did Leah want to know about
4 this?

5 MS. BLAIR: Objection to form.

6 THE WITNESS: Can you restate the
7 question?

8 BY MR. CHUNG:

9 Q. Yeah.

10 So you wrote, Leah said she wants to
11 know -- right? -- if we can do ads -- I'm not
12 going to repeat everything, but just this
13 line here.

14 Why did she want to know this?

15 A. She wanted us to do it.

16 Q. Okay. Did Ms. Binder want to further
17 publicize the hospital safety grades?

18 A. I already testified to what we did the
19 Google ads for. But again, at this time, we were
20 being attacked in the press. And we're a small
21 nonprofit. Trying to figure out what resources
22 we have.

1 Q. So my question was, did Ms. Binder want
2 to further publicize the plaintiff hospitals'
3 safety grades through this Google ads proposal?

4 A. Yes. We want to publicize the safety
5 grades.

6 Q. Okay. And was the purpose of that, a
7 further publicizing the plaintiff hospitals'
8 safety grades, to show more people the safety
9 grades that had been assigned to these plaintiff
10 hospitals?

11 A. I think more than anything it was just
12 feeling like there was something that we could do
13 in the midst of feeling attacked, and this was
14 something we could do. Got five clicks. Not
15 like a ton of people saw the ads.

16 Q. But putting aside kind of the result
17 here -- right? -- was the idea behind tying these
18 safety grades to the Google ads was to get the
19 maximum possible impact?

20 MS. BLAIR: Objection. Form.

21 THE WITNESS: Can you restate the
22 question?

1 BY MR. CHUNG:

2 Q. Were you trying to reach as many people
3 as possible in publicizing the hospital safety
4 grades of these hospitals?

5 A. Clearly, we weren't, since we got five
6 clicks, it wasn't, like, we put a lot of effort
7 towards it, so no.

8 Q. I'm not talking about the results.
9 Right? But was the goal here to reach as many
10 people as possible?

11 A. I don't think so.

12 Q. Okay. Then what was the goal here?

13 A. I don't know what the goal was. That's
14 what this whole Slack conversation is about.

15 Q. All right. Did you think this was a good
16 idea?

17 A. At this point, like I said, this was a
18 super-stressful meeting. It was a very stressful
19 couple of weeks. I'm one of two communications
20 persons dealing with all of this stuff. Like, I
21 was just trying to figure out my life in general
22 at this point.

1 Q. Ms. Binder [sic], that's not responsive.
2 Did you think that this was a good idea?

3 MS. BLAIR: Objection to form.

4 THE WITNESS: Ms. Bailey.

5 BY MR. CHUNG:

6 Q. Ms. Bailey. I'm sorry.

7 Did you think that this was a good idea?

8 A. I didn't think it would make an impact,
9 no.

10 Q. Okay. What did Ms. Jupiter think about
11 this idea?

12 MS. BLAIR: Objection to form.

13 THE WITNESS: She doesn't understand
14 Google ads, so she -- I mean, it's clear in the
15 Slack conversation she had no idea what was going
16 on.

17 BY MR. CHUNG:

18 Q. Okay. Let's go to the next page of the
19 Slack messages. This is Bates ending 1321.
20 Okay? And there's a continuing discussion, it
21 looks like, of this Google ads idea.

22 And at 2:36 p.m., Ms. Jupiter writes, So

1 she just wants to harass them?

2 And Mr. Longmore responds, I love that
3 the strategy is to become a Disney villain.

4 Is the "she" here Ms. Binder that they're
5 referring to?

6 A. Yes. I think Karen was trying to figure
7 out what she was saying.

8 Q. Okay. And is the "them" the plaintiff
9 hospitals?

10 A. I assume so, yes.

11 Q. Okay. Was that the view -- was that your
12 view, that Ms. Binder was -- just wanted to
13 harass the plaintiff hospitals by having their
14 hospital safety grades pop up with Google
15 searches?

16 A. My view is that we were trying to do what
17 we could to defend ourselves.

18 Q. I'm talking about specifically with this
19 idea. Right? With the -- with the Google
20 results.

21 Was it your view that this was just a
22 measure to just harass the plaintiff hospitals?

1 A. No, I don't think so.

2 Q. Okay. So it wasn't -- it looks like it
3 was Ms. Jupiter's view that this was a form of
4 harassment; is that right?

5 A. She was --

6 MS. BLAIR: Objection to form.

7 BY MR. CHUNG:

8 Q. Is that --

9 A. She wasn't asking. I don't think she --
10 she wasn't saying that she was harassing them.
11 She was asking what is the strategy; what is she
12 saying? That was my interpretation of her
13 message.

14 Q. Okay. In discussions -- putting aside
15 the Slack messages, did Ms. Jupiter express to
16 you that she believed that this strategy was just
17 harassment of the hospitals?

18 A. No. I don't remember her saying that.

19 Q. Okay. Now, Mr. Longmore writes, I love
20 that the strategy is to become a Disney villain.

21 What did Nate mean here?

22 MS. BLAIR: Objection.

1 BY MR. CHUNG:

2 Q. Or Mr. Longmore.

3 MS. BLAIR: Objection to form.

4 THE WITNESS: Nate, he's just making a
5 joke. He -- that's kind of his mood in the
6 office. He just tries to lighten the mood. We
7 were extremely stressed out these weeks, and
8 that's just -- it's a normal -- he just makes
9 jokes.

10 BY MR. CHUNG:

11 Q. Okay. Do you agree that, with this
12 Google results strategy, that Leapfrog was
13 responding to this lawsuit by becoming a Disney
14 villain? Did you agree with this sentence?

15 MS. BLAIR: Objection.

16 THE WITNESS: No. I knew it was a joke.
17 Like, that's how I read it. I read it as a joke.

18 BY MR. CHUNG:

19 Q. Okay. But it follows Ms. Jupiter's
20 comment that she was wondering whether Ms. Binder
21 just wanted to harass the hospitals -- right? --
22 with this Google ads idea; is that right?

1 A. Yes. He sent it right after.

2 MR. CHUNG: Let's go to tab 39. This
3 will be Exhibit 41.

4 (Bailey Deposition Exhibit 41 marked for
5 identification and attached to the
6 transcript.)

7 THE WITNESS: Can I ask the time? I'm
8 just curious how much time has passed.

9 VIDEO TECHNICIAN: 5 hours and 49
10 minutes.

11 THE WITNESS: Thank you.

12 BY MR. CHUNG:

13 Q. Okay. Exhibit 41 is an e-mail chain
14 involving Nonprofit Megaphone. I think you
15 testified to it earlier, but what is Nonprofit
16 Megaphone?

17 A. They're a vendor that administrates our
18 Google ads.

19 Q. Okay. And just looking through this
20 e-mail chain, is this a discussion about how
21 Nonprofit Megaphone is helping you use the grant
22 from Google for nonprofits?

1 A. Can you restate the question?

2 Q. Yes. Is this a discussion about how
3 Nonprofit Megaphone is helping Leapfrog use a
4 grant from Google for nonprofits?

5 A. Yes. It's about our Google ads.

6 Q. Okay. So what is -- I want to direct
7 your attention to -- so what exactly are the
8 services that Nonprofit Megaphone provides to
9 Leapfrog? What do they do for you?

10 A. We tell them what we want to promote, and
11 they develop and administer the Google ads based
12 on the money we get from Google every month as
13 part of our grant.

14 We can only publicize our website.
15 That's what we do.

16 Q. Okay. Turning your attention to Bates
17 ending in Leapfrog 1876.

18 A. Okay.

19 Q. You'll see there's an e-mail from you to
20 Noah Shelgren at Nonprofit Megaphone and others.

21 There's a list of what looks like ZIP
22 codes -- right? -- and cities and states.

1 What's the purpose of all of this?

2 A. It looks like we are geotargeting these
3 markets.

4 Q. Okay. So this is a way for -- this is a
5 list of markets that -- what is -- what do you
6 mean by geotargeting markets?

7 A. Just what I said in my e-mail, that it
8 was the -- so the Google ads that we have been
9 discussing --

10 Q. Right.

11 A. -- would just go to these specific
12 markets.

13 Q. Okay. And so when you look at the
14 preceding page, Bates ending in Leapfrog 1875,
15 Mr. Longmore's e-mail to Noah, he writes, We'd
16 also like to set it up so that, when someone
17 searches for any of the five specific hospitals,
18 it shows an ad displaying their hospital safety
19 grade.

20 Do you see that?

21 A. Yes.

22 Q. And this is kind of the proposal or the

1 idea that we've been discussing so far, correct?

2 A. Yes.

3 Q. Okay. And then the five plaintiff
4 hospitals are listed there?

5 A. Yes.

6 Q. Okay. Now, Mr. Shelgren responds, Hi,
7 Nate -- and this is going on to Bates ending in
8 1874 -- I believe we should be able to do this.
9 It's possible that Google might flag specific
10 hospital names, but as far as I know, this
11 wouldn't break any of the regulations for the
12 grant.

13 What do they mean by that?

14 MS. BLAIR: Objection to form.

15 THE WITNESS: I'm actually not sure
16 because we do regularly run links to specific
17 hospitals' ratings, so I'm actually not sure.

18 BY MR. CHUNG:

19 Q. Okay. How much in the Google grant money
20 has Leapfrog spent on the response to this
21 lawsuit?

22 A. For the Google grant?

1 Q. Yes.

2 A. Does it say in here? Not a lot. Looks
3 like 75 percent impressions and five clicks.
4 That's very, very low in comparison to the rest
5 of our ads.

6 I don't know what that equates to in
7 dollars.

8 Q. Okay.

9 MR. CHUNG: Let's move on to tab 50.

10 BY MR. CHUNG:

11 Q. Okay. Before, actually, we go into the
12 document, we discussed earlier about the board
13 meetings.

14 How often does Leapfrog's board of
15 directors meet?

16 A. Quarterly.

17 Q. And do you help prepare materials for
18 these board meetings?

19 A. Sometimes I help prepare the
20 communications updates as part of Leah's CEO
21 reports.

22 Q. And do you attend the meetings?

1 A. Yes. I take minutes during the meetings.

2 Q. So every quarterly board meeting, you're
3 there taking minutes at the meetings, correct?

4 A. Unless I am out for some reason. Yes.

5 Q. Okay. Do you ever present at the
6 meetings?

7 A. Not usually.

8 Q. All right. In the case -- in the
9 instances that you do, what do you typically
10 present on?

11 A. I don't recall having a specific
12 presentation. Typically, I'm just there to take
13 minutes.

14 Q. Okay.

15 MR. CHUNG: So I -- this will be
16 Exhibit 42.

17 (Bailey Deposition Exhibit 42 marked for
18 identification and attached to the
19 transcript.)

20 BY MR. CHUNG:

21 Q. So Ms. Binder, this is a document --
22 Ms. Bailey, this is a document that was produced

1 to us. It had a file name, board notes for
2 ME 6/25.

3 We don't have a parent e-mail or anything
4 that this was attached to.

5 But with that said, is this document
6 familiar to you?

7 A. Let me read it.

8 Q. Sure. And I can represent that this
9 document, actually, came from your custodial
10 files.

11 A. Okay. Yes, it looks like it's maybe
12 pasted from an e-mail with counsel.

13 Q. Okay. So is this document familiar to
14 you?

15 A. Not immediately.

16 Q. Okay. Did you participate in drafting
17 this document?

18 A. I don't remember this document.

19 I don't know where this document
20 originated from, but --

21 Q. Okay. Does the document, just reading
22 through the document, refresh your recollection

1 as to whether you presented at any board -- at a
2 board meeting regarding communication strategies?

3 A. We did have a special meeting with the
4 board about the lawsuit with counsel.

5 Q. Okay. So I'm just going to focus on a
6 few items here.

7 So under the -- on the first page, Bates
8 ending 21, there's a slide 2. Right? Do you see
9 that?

10 A. Yes.

11 Q. Up top. It reads, Our overall goal is to
12 make it clear to all hospitals that Leapfrog will
13 not compromise or back down. We will make it
14 painful for Tenet by drawing further attention to
15 their very poor performance with strategic media
16 coverage in local and national press?

17 Do you see that?

18 A. Yes.

19 Q. Okay. Is it correct to say that
20 Leapfrog's use of the Google advertisements was
21 part of this plan to make it painful for the
22 plaintiff hospitals?

1 A. That's -- no, that's not what we said.
2 We're talking specifically about media coverage
3 in this.

4 Q. Okay. So media coverage does not include
5 the Google advertisement strategy?

6 A. I wouldn't include that as part of media
7 coverage.

8 Q. All right. But the media coverage
9 itself, does that include the efforts to put out
10 a story about Tenet or one of the plaintiff
11 hospitals at minimum every three days? Is that
12 part of the strategy to make it painful for the
13 hospitals?

14 A. That didn't -- that wasn't our strategy.
15 That's just something that was brought up in an
16 e-mail.

17 Q. Right. But was that the intent of that
18 strategy, to make it painful for the hospitals?

19 A. Again, we're being attacked by Tenet
20 Healthcare, one of the biggest systems in the
21 country. We're a small nonprofit. So we're
22 trying to defend ourselves. That's what this

1 means to me.

2 Q. But would you agree here -- right? --
3 that the intent behind that strategy was to make
4 it painful for Tenet by drawing further attention
5 to their very poor performance?

6 MS. BLAIR: Objection to form.

7 THE WITNESS: Again, we're just defending
8 ourselves.

9 BY MR. CHUNG:

10 Q. Okay. Can you just respond to the
11 question?

12 Is this an accurate description of the
13 media strategy, to make it painful for Tenet and
14 the plaintiff hospitals?

15 MS. BLAIR: Objection to form. Asked and
16 answered.

17 THE WITNESS: I mean, that's what's
18 written.

19 BY MR. CHUNG:

20 Q. Okay. Do you recall -- many of these --
21 of what's -- much of what's in this document
22 seems to correspond to slides.

1 Do you remember preparing a slide
2 presentation that corresponds to these comments?

3 A. Vaguely. Again, this looks like it's
4 referring to a meeting that we had with counsel.

5 Q. Now, when we move -- if we go to the
6 third page of the document -- this is Bates
7 ending 2158, Ms. Bailey -- it reads, Here's an
8 overview of what's next for our media strategy.
9 Leah wrote an op-ed about an experience she had
10 with her grandmother at Delray, one of the
11 hospitals in the suit, in 2014 when they had an A
12 grade. We are actively pitching this to local
13 press now.

14 Were you involved in putting together
15 that op-ed?

16 A. Leah wrote it, I edited it, and Kara
17 pitched it.

18 Q. Okay. Next, we will file our motion to
19 dismiss, as Kim mentioned, this week and will
20 share that with reporters.

21 And then, the third paragraph there is,
22 Leah and Karen van Caulil are visiting Jupiter

1 Medical Center, which is a straight-A-hospital in
2 the area, with some of Karen's employer members.
3 We will pitch some in-person media interviews for
4 Leah while she's in town.

5 That particular paragraph, who is Karen
6 van Caulil?

7 A. She's on our board and she's our regional
8 leader for Florida.

9 Q. All right. And Jupiter Medical Center,
10 is that one of the hospitals in the same market
11 or similar market as the five plaintiff
12 hospitals?

13 A. To my understanding, yes.

14 Q. Okay. So it's one of the kind of
15 competitor hospitals to at least one of the
16 plaintiff hospitals; is that right?

17 MS. BLAIR: Objection to form.

18 THE WITNESS: I don't know who the
19 competitor hospitals are, but I know it's in the
20 area.

21 BY MR. CHUNG:

22 Q. Okay. And so this is under an overview

1 of what's next for the media strategy.

2 How was this visit by Ms. Binder and
3 Ms. van Caulil to Jupiter Medical Center part of
4 the media strategy related to the lawsuit?

5 MS. BLAIR: Objection to form.

6 THE WITNESS: This didn't end up
7 happening -- sorry, what was the question?

8 BY MR. CHUNG:

9 Q. My question is, putting aside whether it
10 happened or not --

11 A. Right.

12 Q. -- right? -- how was this visit by
13 Ms. Binder and Ms. van Caulil to Jupiter Medical
14 Center part of the media strategy in response to
15 the lawsuit?

16 MS. BLAIR: Objection to form.

17 THE WITNESS: I testified before that,
18 generally, our strategy for media is we prefer to
19 talk about improvement, positive stories. This
20 is a positive story in the market. So --
21 counteracting some negative stories.

22

1 BY MR. CHUNG:

2 Q. Were there negative stories about Jupiter
3 Medical Center that you were trying to counteract
4 as part of the lawsuit?

5 A. Oh, no, that's not what I meant. I meant
6 the other stories in the market are all about D-
7 and F-hospitals.

8 Q. Okay. So how was a visit to Jupiter
9 Medical Center part of this media strategy
10 related to the lawsuit?

11 MS. BLAIR: Objection to form.

12 THE WITNESS: We were going to pitch it
13 to -- it says right here, we're going to pitch it
14 to press that we're going to Jupiter Medical
15 Center.

16 BY MR. CHUNG:

17 Q. I understand that's what it says. But
18 why? Why was a visit to Jupiter Medical Center
19 part of the media strategy for responding to the
20 lawsuit?

21 MS. BLAIR: Objection to form.

22 THE WITNESS: Like I said before, we --

1 our strategy was to tell a positive story in the
2 market.

3 BY MR. CHUNG:

4 Q. Okay. Was the purpose here to highlight
5 Jupiter Medical Center and to steer patients or
6 consumers away from the plaintiff hospitals?

7 A. No.

8 Q. Okay. So I'm going to ask again: What
9 was the purpose, in the context of the lawsuit,
10 of Ms. Binder and Ms. van Caulil visiting Jupiter
11 Medical Center --

12 MS. BLAIR: Objection to --

13 BY MR. CHUNG:

14 Q. -- and pitching in-person media
15 interviews there?

16 MS. BLAIR: Objection to form. Asked and
17 answered.

18 THE WITNESS: Just to highlight a
19 straight-A-hospital.

20 BY MR. CHUNG:

21 Q. Okay. So by highlighting a
22 straight-A-hospital -- in this case, not just any

1 straight-A-hospital; Jupiter Medical Center,
2 competitor hospital to plaintiff hospitals --
3 what other reason is there, as it's relevant to
4 the media strategy, than to dissuade consumers
5 from going to the plaintiff hospitals?

6 A. I don't think, and I never thought, that
7 them going to Jupiter Medical Center would
8 dissuade patients or persuade them.

9 Q. So what was the purpose of, in your
10 words, highlighting Jupiter Medical Center in the
11 context of this media strategy?

12 MS. BLAIR: Objection to form. Asked and
13 answered.

14 THE WITNESS: To display a hospital that
15 has a straight-A and -- in the area and that does
16 well in the -- on the safety grade.

17 BY MR. CHUNG:

18 Q. Right. To -- that does well on the
19 safety grade in contrast -- right? -- to how the
20 five plaintiff hospitals did on their hospital
21 safety grade; is that correct?

22 MS. BLAIR: Objection to form.

1 THE WITNESS: No, we weren't going to
2 pitch that contrast story, no.

3 BY MR. CHUNG:

4 Q. What other purpose can there be, then, in
5 the context of the media strategy for this
6 litigation?

7 A. That's what we decided -- like, that --
8 we didn't do it, but that was what we wanted to
9 do. We were looking for any other types of
10 stories in the market. This was a
11 straight-A-hospital. Something we could talk
12 about to get Leapfrog's name out in local press.
13 It's not about the reputation of another
14 hospital. It's about Leapfrog's reputation.

15 Q. Okay. And it just so happens you're
16 focusing on a hospital that is a direct
17 competitor of certain of the plaintiff hospitals;
18 is that right?

19 A. Again, Mary Beth Maloney was attacking
20 Leapfrog in that market. We're looking for ways
21 to show Leapfrog's reputation. One way, by
22 telling a positive story in the market.

1 Q. Okay.

2 MR. CHUNG: Let's go to tab 51 and 52.

3 All right. This will be Exhibits --
4 let's go with the e-mail first -- 43 and 45. 43
5 and 44.

6 (Bailey Deposition Exhibits 43 and 44
7 marked for identification and attached to
8 the transcript.)

9 BY MR. CHUNG:

10 Q. All right. So Ms. Bailey, Exhibits 43
11 and 44 are an e-mail as well the Leah Binder
12 op-ed in the Palm Beach Post I think that you
13 alluded to earlier -- or that we were discussing
14 earlier.

15 A. Yes.

16 Q. And I think you testified that you helped
17 at least edit this op-ed; is that right?

18 A. Yes.

19 Q. And whose idea was it to do this op-ed?

20 A. Leah's.

21 Q. And why was the Palm Beach Post selected
22 for placement of the op-ed?

1 A. There aren't that many outlets in Palm
2 Beach. It's just the one that accepted op-eds.

3 Q. Okay. And in your e-mail, you write that
4 you think that the Palm Beach Post is the good
5 target for this since they are so hyper-local.

6 Do you see that?

7 A. Yes.

8 Q. Why was being hyper-local a good thing
9 for purposes of placing this op-ed?

10 A. Again, healthcare is local. So if we're
11 talking about a hospital, we want to place it in
12 that market.

13 Q. What do you mean by healthcare being
14 local? Why is that important?

15 A. Generally, people aren't traveling from
16 different markets to go to a hospital. So...

17 Q. Okay. So because healthcare is local,
18 meaning that generally people are not traveling
19 long distances to visit hospitals, the purpose
20 of -- is it correct that placing it in the Palm
21 Beach Post, the goal was reach local consumers;
22 is that right?

1 A. Yes.

2 Q. Okay. And to get Leapfrog's message
3 about the lawsuit to those local consumers in the
4 Palm Beach area, correct?

5 A. Yes.

6 Q. All right. And to -- and these are
7 consumers -- this is a relevant universe of
8 consumers of the five plaintiff hospitals,
9 correct?

10 A. Can you restate the question?

11 Q. Right.

12 This is the universe of consumers that
13 are going or not going to the five plaintiff
14 hospitals, correct?

15 A. It's Palm Beach, so I assume yes.

16 Q. Okay. And that -- not only for these
17 five plaintiff hospitals but for Jupiter Medical
18 Center as well, correct?

19 A. We don't talk about Jupiter in this, but
20 I assume that --

21 Q. That they're in this market, correct?

22 A. I think they are.

1 Q. They're in the market covered by the Palm
2 Beach -- by the Palm Beach Post here?

3 A. I don't know that for sure. I know that
4 they're close. I don't know Florida geography.

5 Q. Okay. So in the course of drafting
6 this -- the op-ed, was discussing or talking
7 about Leapfrog's change in imputation methodology
8 ever discussed as a possibility?

9 A. No. Leah drafted this independently. I
10 just looked at the draft that we see in this
11 e-mail here.

12 Q. Okay. Did you have -- did you ever
13 propose to or suggest to her maybe we should
14 disclose or be transparent about the imputation
15 methodology in your op-ed?

16 A. We never really talked about her op-ed.
17 She said she wanted to write an op-ed. She wrote
18 it and she sent it to me. We didn't have
19 conversations prior to this e-mail that I recall.

20 Q. Okay. So was the -- was one of the
21 purposes of the op-ed to basically impact the
22 reputation of the plaintiff hospitals here within

1 the Palm Beach market?

2 A. I don't see it that way. I see it as,
3 again, we're getting our side of the story out.

4 Q. Right. But do you see -- but is it fair
5 to say that at least one of the impacts of this
6 op-ed is to affect the reputation of the
7 plaintiff hospitals? Is that fair to say?

8 A. I mean, I don't think so. She talks
9 about how they -- how Delray Medical Center had
10 an A; her own grandmother went there. So I don't
11 think that's a reputation.

12 Q. Right. But she also focuses on the
13 performance -- right? -- of these hospitals; is
14 that right?

15 A. Right.

16 Q. Right. So by focusing on the
17 performance, isn't at least one of the potential
18 impacts of that focus to impact the reputation of
19 the plaintiff hospitals?

20 A. Maybe. I mean, the sole focus is
21 promoting Leapfrog.

22 Q. Okay.

1 MR. CHUNG: Let's go to -- actually,
2 we've been going a while. Why don't we take a
3 short break and come back.

4 THE WITNESS: Okay.

5 MR. CHUNG: So off the record.

6 MS. BLAIR: The time is 4:47 p.m. This
7 ends media 4. We're off the record.

8 (A recess was taken.)

9 VIDEO TECHNICIAN: The time is 5:02 p.m.
10 This begins unit number 5. We're on the record.

11 (Bailey Deposition Exhibit 45 marked for
12 identification and attached to the
13 transcript.)

14 BY MR. CHUNG:

15 Q. All right. Ms. Bailey, you have
16 Exhibit 45 already in front of you. It is a --
17 e-mails exchanged between Ms. Van Caulil and Leah
18 Binder regarding Ms. Binder's plan to visit
19 Jupiter Hospital.

20 Do you see that?

21 A. Yes.

22 Q. Okay. I want to direct your attention to

1 the second page Bates ending Leapfrog 8771.

2 And Ms. Binder writes here, We are
3 thinking of reaching out to Jupiter Medical
4 Center to see if they'd give a tour to me, and
5 hopefully you and some of your members. They are
6 a straight-A-hospital and happen to be in Palm
7 Beach County. Do you know them at all?

8 Do you see that?

9 A. Yes.

10 Q. Okay. And this is in May of 2025, right?
11 After the launch of the lawsuit; is that right?

12 A. Yes.

13 Q. Okay. And as we saw earlier in the
14 exhibit regarding the board presentation, a
15 potential visit, or at least the visit and media
16 strategy around Jupiter Medical Center, was part
17 of the PR strategy in response to the lawsuit,
18 correct?

19 A. Yes.

20 Q. Okay. And so are these discussions about
21 that particular strategy, about the potential
22 visit to Jupiter Medical Center?

1 A. Yes. It's what it looks like.

2 Q. Okay. Now, she goes on to write, The key
3 issue is keeping the safety grade in the news in
4 Palm Beach County.

5 Do you see that?

6 A. Yes.

7 Q. All right. Why was keeping the safety
8 grade in the news in Palm Beach County a key
9 issue, as Ms. Binder writes here?

10 A. Similar to what I testified to earlier,
11 that there was a lot of news in the Palm Beach
12 area. It was all focused on D- and F-hospitals.
13 We wanted a story out there about A-hospitals.

14 Q. All right. So there was a lot of -- now,
15 these -- the coverage of the D- and F-hospitals
16 in the Palm Beach market that you're referring to
17 are the plaintiff hospitals, correct?

18 A. Right. As a result to your clients
19 filing the lawsuit. Yes.

20 Q. So there was -- as you say, there was
21 some amount -- there was coverage already in the
22 market -- right? -- about the grades that had

1 been assigned to those particular hospitals,
2 correct?

3 A. Yes.

4 Q. Right. And the -- the purpose of -- the
5 purpose of this visit or this planned visit to
6 Jupiter Medical Center was because Jupiter
7 Medical Center was a, as it's written here, a
8 straight-A-hospital, right?

9 A. Yes.

10 Q. Okay. And straight-A-hospital is -- does
11 that mean that Jupiter Medical Center had
12 received a series of As over a period of time for
13 its hospital safety grade?

14 A. Yes.

15 Q. Right. And this is -- Jupiter Medical
16 Center is in the same kind of market as at least
17 some of the plaintiff hospitals, correct?

18 A. Yes.

19 MS. BLAIR: Objection to form.

20 BY MR. CHUNG:

21 Q. And so the purpose here was to
22 essentially provide a contrast -- right? --

1 between a straight-A-hospital and the D- and
2 F-hospitals that had already been covered in the
3 market, correct?

4 MS. BLAIR: Objection to form. Asked and
5 answered.

6 THE WITNESS: Right. It was to tell
7 another Leapfrog story in the market but of an
8 A-hospital.

9 BY MR. CHUNG:

10 Q. Okay. And so Leapfrog wanted to keep the
11 safety grade in the traditional news media, like
12 in the Palm Beach Post; was that part of kind of
13 the strategy here?

14 A. Right. Yes.

15 Q. All right. Is that true of the
16 online news media as well?

17 A. Yes. That's news media.

18 Q. Okay. How about social media? Was it a
19 goal here to keep the safety grade in the news as
20 it's reflected in social media?

21 A. No, that's not part of this.

22 Q. Okay. I think you had testified that one

1 of your responsibilities as communications
2 director is over social media, correct?

3 A. Yes. I oversee it.

4 Q. And what about social media do you
5 oversee?

6 A. The strategy.

7 Q. What do you mean by that?

8 A. Like, Nate Longmore does the everyday
9 posting. I don't micromanage everything he
10 posts, but we talk weekly about what's planned
11 for social media and brainstorm ideas.

12 Q. All right. Is it correct that Leapfrog
13 wanted to have people in this market or in
14 Florida talking about the Leapfrog grades on
15 social media?

16 A. I don't recall that. This is just
17 talking about media. That's what our focus --

18 Q. Just media generally; is that right?

19 A. Social -- sorry. We're talking about
20 traditional media in this.

21 Q. Okay. Was there anything that Leapfrog
22 did to try to get the plaintiff hospitals' grades

1 in the news on social media?

2 A. We posted our statement on social media.
3 That's all I can recall.

4 Q. Okay. And was the goal for other -- for
5 social media outlets or influencers or other
6 social media accounts to pick up on that posting?

7 A. No. It was to let our constituents know
8 that we're in this lawsuit.

9 Q. Okay. Are you aware that there is a
10 TikTok posting that broadcasts the hospital
11 safety grades for the plaintiff hospitals? Are
12 you aware of that TikTok posting?

13 MS. BLAIR: Objection to form.

14 THE WITNESS: We don't deal with TikTok
15 really at all at Leapfrog, so I wouldn't --

16 BY MR. CHUNG:

17 Q. I'm not asking whether you deal with
18 TikTok. Are you aware that there's a TikTok
19 posting out there that basically broadcasts or
20 publicizes the D and F grades for the plaintiff
21 hospitals?

22 MS. BLAIR: Objection to form.

1 THE WITNESS: No, I don't recall seeing
2 it.

3 BY MR. CHUNG:

4 Q. Okay. You do realize -- I just want to
5 confirm that you realize that you're testifying
6 under oath.

7 A. Yes.

8 Q. Okay. And you're testifying that you're
9 not aware of any TikTok posting as it relates to
10 the D and F grades for these plaintiff hospitals?

11 A. Like, there might be TikToks out there,
12 but we don't have a TikTok account. We don't
13 reach out to TikTokers, so I don't -- I don't
14 understand the question.

15 Q. I'm not asking -- are you aware of any
16 TikTok postings -- right? -- that include or
17 broadcast the D and F safety grades for the five
18 plaintiff hospitals?

19 A. I don't know about the five plaintiff
20 hospitals in general. The only thing I could
21 think of that might be on TikTok is, like, the
22 really click-baity TikToks that --

1 Q. Okay.

2 A. They might pick up the safety grade, but
3 I don't --

4 Q. Are you aware of any click-bait TikTok
5 postings that have included or broadcast the D
6 and F grades for the plaintiff hospitals?

7 A. I don't recall the exact -- I mean, I
8 think -- there may have been something on TikTok.
9 I can't recall the exact TikTok. I don't -- I
10 don't understand the question.

11 Q. The question is, have you seen or heard
12 of any TikTok postings or TikTok accounts that
13 have -- that have broadcast or have mentioned the
14 D and F grades for the plaintiff safety -- the
15 plaintiff hospitals?

16 A. Have I heard of?

17 Q. Yes.

18 A. Maybe.

19 Q. Okay.

20 MR. CHUNG: Tab 64. Okay. This will be
21 Exhibit 46.

22

1 (Bailey Deposition Exhibit 46 marked for
2 identification and attached to the
3 transcript.)

4 BY MR. CHUNG:

5 Q. All right. This is an e-mail chain from
6 June of 2025. And I want to direct your
7 attention to the e-mail from Ms. van Caulil on
8 the first page where she writes, I have an
9 enthusiastic "yes" from Susan McBroom, the
10 director of human resources at Patriot Rail. She
11 serves on my board and executive committee, and
12 this year they won our "most engaged employer"
13 award. Waiting to hear back from Nancy Bolton at
14 Palm Beach Schools.

15 Do you see that?

16 A. Yes.

17 Q. Okay. And are these -- what is Patriot
18 Rail?

19 A. I don't know.

20 Q. Okay. How about Palm Beach Schools? How
21 are they relevant to Leapfrog?

22 A. It looks like they're some of the

1 employer members of the Florida Alliance for
2 Healthcare Value.

3 Q. Okay. Patriot Rail as well?

4 A. That's what it appears.

5 Q. Okay. Why was Ms. van Caulil scheduling
6 these entities to attend the planned visit to
7 Jupiter Medical Center by Ms. Binder?

8 A. It's normal. Again, Leapfrog represents
9 employers. So if we're going to a hospital,
10 typically with a regional leader, we'll have them
11 invite employer members.

12 Q. Okay. Has Ms. van Caulil been contacting
13 other Florida employers about the plaintiff
14 hospitals in particular?

15 A. I don't know.

16 Q. Okay. Is that part of -- a part of the
17 communications strategy?

18 A. Can you restate the question?

19 Q. Is part of the communications strategy in
20 the context of the lawsuit to have regional
21 leaders reach out to employers within their
22 networks about the lawsuit?

1 A. Not that I can recall about the lawsuit.

2 Q. Okay. Has Ms. van Caulil been contacting
3 other -- so was -- are there any other employers
4 within the network that Ms. van Caulil contacted
5 about possibly joining this Jupiter Medical
6 Center visit?

7 A. I don't see anything else in this e-mail.
8 I don't know anything beyond this e-mail.

9 Q. Okay. Has Leapfrog in any way broadcast
10 or shared specifically the D and F grades of the
11 plaintiff hospitals to employers within these
12 networks?

13 A. Can you restate the question?

14 Q. Yeah.

15 Has Leapfrog in any way publicized or
16 broadcast the D and F grades for the plaintiff
17 hospitals to employers within the Florida
18 network?

19 A. Not that I can recall. We have a
20 statement on our website.

21 Q. Okay. Has it engaged in any direct
22 outreach to employers in Florida within this

1 network about this lawsuit?

2 A. Not that I know of.

3 Q. Well, you're the director of
4 communications. Do you know whether that's
5 happened?

6 A. I don't know. I don't know.

7 Q. Was that part of the strategy, though? A
8 communications strategy?

9 A. No.

10 Q. All right.

11 MR. CHUNG: Let's go to tab 78.

12 Okay. This will be Exhibit 47, I think.

13 (Bailey Deposition Exhibit 47 marked for
14 identification and attached to the
15 transcript.)

16 BY MR. CHUNG:

17 Q. So Ms. Bailey, Exhibit 47 that you have
18 in front of you is -- I can represent to you that
19 this is another Slack conversation that was
20 produced to us yesterday by CURA Strategies,
21 Leapfrog's PR firm.

22 Now, do you -- are you on any Slack

1 conversations with members -- with personnel from
2 CURA?

3 A. No.

4 Q. No? Okay. So for the Slack messaging
5 that you engage in, that's all internal to
6 Leapfrog; is that right?

7 A. Yes.

8 Q. Okay. I want to direct -- this is kind
9 of a long document. I want to direct your
10 attention to the page with Bates 000466.

11 And who is Sarah Farinelli?

12 A. She's our day-to-day account lead at
13 CURA.

14 Q. Okay. And Lula -- whose name we've seen
15 a number of times -- who is Lulu?

16 A. She's another member of the team.

17 Q. And then Anne. Does that ring a bell?

18 A. Yes. She's the CEO of CURA Strategies.

19 Q. All right. How about Ariel Le?

20 A. I actually don't know her.

21 Q. Okay. So we're looking here, just based
22 on kind of the format of the document here, from

1 July 2025, going on to the next page Bates ending
2 467. I just want to turn to the next page.

3 And it says, under Anne, FYI from Lauren.
4 Hi, Anne and Sarah. We just received notice that
5 our motion to dismiss was unfortunately denied.
6 I wanted to give your team a heads-up in case you
7 receive any press inquiries. Please let us know
8 if anyone reaches out to you. We are regrouping
9 internally on Thursday afternoon and then I'll
10 follow up with any PR next steps. Best, Lauren.

11 Does this refer to an e-mail or some sort
12 of message that you sent to CURA after the motion
13 to dismiss in this case was denied?

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

15 Q. Okay. Do you recall sending this
16 message, at least the substance of the message,
17 just letting CURA know about the status of the
18 motion to dismiss?

19 A. Yes.

20 Q. Okay. And then Ms. Farinelli or -- Sarah
21 Farinelli responds, Crap. I was so sure it would
22 be dismissed.

1 If we look down several -- or in the
2 middle of the page, Stephanie Wright.

3 Who is Stephanie Wright?

4 A. She's another member of the team.

5 Q. Okay. And she writes, On Leah's e-mail,
6 I agree about having talking points ready, but I
7 don't know about complaining to Bloomberg. It
8 would be different if they had gone to the other
9 side for comment.

10 Do you see that?

11 A. Yes.

12 Q. And is she -- is Ms. Wright referring
13 to -- it looks like an e-mail that Ms. Binder
14 sent to CURA; is that right?

15 A. Yes.

16 Q. Okay. Do you recall this e-mail that
17 Ms. Binder sent to CURA?

18 A. Yes. Generally.

19 Q. All right. What was it about? We don't
20 have the e-mail, but what was it about?

21 A. So if you look at the Slack message right
22 before -- sorry.

1 Q. Yeah.

2 A. Yeah, so there's a story in Bloomberg Law
3 that came out and, from what I remember, Sarah
4 sent an e-mail flagging the news coverage, which
5 is normal. Anytime there's a new news story,
6 lawsuit or not, CURA will flag it to us; it's
7 part of their job responsibilities.

8 Q. Yes.

9 A. We were not contacted by Bloomberg Law.
10 So -- sometimes when there are stories that come
11 out and we weren't contacted, it can be
12 frustrating.

13 Q. Okay.

14 A. That's what I remember.

15 Q. Now, the CURA personnel here continue the
16 discussion. And Ms. Farinelli writes, What does
17 complain to Bloomberg mean? They didn't feature
18 commentary from Tenet either, just pulled from
19 the legal docs.

20 A. Uh-huh.

21 Q. Do you recall that being part of the
22 discussion with CURA around the motion to dismiss

1 coverage?

2 A. Yes. Yes. I remember more about this
3 now.

4 So I believe when Leah had sent this
5 e-mail that they're referencing, this was behind
6 a paywall, and I don't think she had seen the
7 full article. I think she just opened it and
8 read a few lines and she hadn't seen it in full
9 context and was assuming, I think, that the
10 reporter had interviewed the plaintiffs but not
11 us.

12 And I think that's what they're
13 discussing.

14 Q. Okay. So if you go on to the next page,
15 Bates ending CURA 468, Anne -- and what's Anne's
16 last name? I'm sorry.

17 A. Why am I blanking on her last name?

18 Q. That's fine. This is not a name memory
19 test.

20 A. It may come to me. I'm sorry. It's been
21 a lot of hours at this point.

22 Q. So -- Anne Woodbury.

1 A. Thank you. Thank you. I know her. I
2 just...

3 Q. So Ms. Woodbury -- I'm just trying to be
4 polite here -- she writes --

5 A. Thank you.

6 Q. -- the fact that it is Bloomberg, too, I
7 think is influencing her. She wants to hurt
8 Tenet and, to do that, she has to hit them
9 financially.

10 Do you see that?

11 A. Yes.

12 Q. All right. So after this motion to
13 dismiss was denied, is it correct that
14 Ms. Binder's goal was to hurt Tenet financially?

15 A. No, I don't agree that that was her goal.

16 Q. All right. Where is -- where is Anne
17 Woodbury getting this from, then?

18 A. I don't know. Like, I don't understand
19 the jump that happened in this Slack --

20 Q. Okay.

21 A. -- conversation.

22 Q. Well, we've gone over -- in terms of the

1 strategy of linking the D and F grades for the
2 plaintiff hospitals to Google search results --
3 right? -- wasn't the -- fair to say that at least
4 one of the purposes or goals of that strategy was
5 to hurt Tenet, correct?

6 A. Yes. Defending ourselves.

7 Q. Okay. Is it also fair to say that by --
8 is it also fair to say that the -- putting out
9 kind of negative publicity or stories -- one of
10 the purposes -- I'm not saying the sole
11 purpose -- that one of the purposes of trying to
12 get a story out about Tenet or one of the
13 hospitals at a minimum every three days was to
14 hurt Tenet? Is that fair?

15 MS. BLAIR: Objection to form.

16 THE WITNESS: Yes. We didn't do it.

17 BY MR. CHUNG:

18 Q. Okay. And is it fair to say that by --
19 at least this plan -- that one of the purposes of
20 this planned visit to Jupiter Medical Center, as
21 you said, was to highlight Jupiter, which was a
22 straight-A-hospital, correct?

1 A. Yes.

2 Q. Right. And Jupiter Medical Center is in
3 the same Palm Beach market of -- with at least
4 some of the plaintiff hospitals, correct?

5 A. Yes.

6 Q. And at least one of the purposes of that
7 planned visit was to basically provide a contrast
8 between a straight-A-hospital -- Jupiter Medical
9 Center -- and the D- and F-hospitals that were
10 the plaintiff hospitals, correct?

11 MS. BLAIR: Objection to form.

12 THE WITNESS: We were not talking about
13 the plaintiff hospitals as part of the visit.
14 No. We were just focusing on Jupiter.

15 BY MR. CHUNG:

16 Q. Okay. But would you say it's common
17 knowledge that Jupiter Medical Center and the
18 plaintiff hospitals are competitors in the Palm
19 Beach market?

20 MS. BLAIR: Objection to form. Asked and
21 answered.

22 THE WITNESS: Yes, I know that they're in

1 the same market.

2 BY MR. CHUNG:

3 Q. Okay. What is -- Leapfrog is a nonprofit
4 organization, correct?

5 A. Yes.

6 Q. All right. And it's also tax-exempt; is
7 that right?

8 A. Yes.

9 Q. All right. What is kind of the stated
10 goal of Leapfrog, consistent with this nonprofit
11 status?

12 A. Our mission is to improve American
13 healthcare through transparency.

14 Q. Okay. Do you know why it gets its
15 tax-exempt status?

16 A. Because we're a nonprofit.

17 Q. Okay. Do you -- I want to get your view
18 on this.

19 Do you think that paying a PR firm like
20 CURA Strategies to generate bad media against the
21 hospitals here is consistent with that nonprofit
22 purpose?

1 MS. BLAIR: Objection to form.

2 THE WITNESS: Our mission is to promote
3 our ratings, and we're promoting our ratings.

4 BY MR. CHUNG:

5 Q. Okay. But do you think that paying a
6 public relations firm to generate negative
7 publicity, bad media, against hospitals is
8 consistent with that purpose?

9 MS. BLAIR: Objection to form. Asked and
10 answered.

11 THE WITNESS: I don't understand the
12 question. Can you restate it?

13 BY MR. CHUNG:

14 Q. Well, I think -- what did you -- your
15 testimony regarding that -- you testified that
16 your mission, Leapfrog's mission, is to promote
17 ratings, right? You are promoting your ratings;
18 is that right?

19 MS. BLAIR: Objection to form.

20 THE WITNESS: We're promoting our
21 programs, yes.

22

1 BY MR. CHUNG:

2 Q. Okay. I think your testimony is that
3 you're promoting specifically ratings, correct?

4 A. Yes. Our programs are ratings programs.
5 Yes.

6 Q. Okay. And those ratings programs depend
7 on participation by as many hospitals as
8 possible, correct?

9 MS. BLAIR: Objection to form.

10 THE WITNESS: No. Leapfrog hospital
11 safety grades are assigned.

12 BY MR. CHUNG:

13 Q. Okay. But the -- but in terms of the
14 survey -- right? -- that depends on responses --
15 the success of the survey program depends on
16 more -- as many hospitals participating in that
17 survey as possible, correct?

18 MS. BLAIR: Objection to form.

19 THE WITNESS: Yes. We want hospitals to
20 participate in the survey.

21 BY MR. CHUNG:

22 Q. Okay. And so is generating -- is

1 generating bad media against hospitals that do
2 not participate in hospitals [sic], is that
3 consistent with that mission to get as many
4 hospitals to participate in the survey as
5 possible?

6 MS. BLAIR: Objection to form.

7 THE WITNESS: Our mission is not to
8 get -- that is not our mission. Our mission is
9 to improve healthcare through transparency.
10 We're talking about two different programs.

11 In the press we're talking -- what we're
12 talking about right now with the plaintiff
13 hospitals is the safety grade, not the survey.

14 BY MR. CHUNG:

15 Q. All right. But in order to -- I think
16 we're also talking about a survey as well. This
17 is -- these are hospitals that did not -- that
18 did not participate in the survey, correct?

19 A. Yes, but it's a different program. We're
20 not talking about the survey. We're talking
21 about the safety grade.

22 Q. When we're talking about the safety

1 grade, which context are you talking about?

2 A. You just said we're generating press
3 about the plaintiff hospitals. We're talking
4 about the safety grade.

5 Q. Right. But these are safety grades for
6 hospitals that did not participate in the survey,
7 correct?

8 A. Correct, but that's a different issue.

9 Q. And these hospitals, because they didn't
10 participate -- or at least in part because they
11 didn't participate in the survey, they received
12 the D and F grades, correct?

13 MS. BLAIR: Objection to form. Asked and
14 answered.

15 THE WITNESS: Like I've said before, we
16 don't know that their grade would change if they
17 participated in the survey.

18 MR. CHUNG: Okay. Why don't we take a
19 short break. I think we're almost done. Why
20 don't we take a short break.

21 MS. BLAIR: Okay.

22 VIDEO TECHNICIAN: The time is 5:27 p.m.

1 We're off the record.

2 (A recess was taken.)

3 VIDEO TECHNICIAN: The time is 5:32 p.m.

4 We're on the record.

5 BY MR. CHUNG:

6 Q. So Ms. Bailey, on the topic of your
7 compensation from Leapfrog, are there certain key
8 performance indicators that at least influence or
9 guide how much compensation you get from
10 Leapfrog?

11 A. Not beyond just fulfilling what's in my
12 job description.

13 Q. Okay. So just specifically, are -- you
14 know, the number of kind of views that the
15 Leapfrog websites get, is that a key performance
16 indicator or at least an indicator that you look
17 to or your supervisors or your managers look to
18 in terms of your performance?

19 A. Not in terms of my performance that I can
20 think of. We do track it and report it to the
21 board quarterly.

22 Q. Okay. Is that something that you'll look

1 to as at least one measure of -- of how the
2 communications strategy or the function of
3 Leapfrog is performing?

4 A. Yes. At least one of the aspects. Yes.

5 Q. Okay. What other kind of metrics --
6 right? -- or indicators do you track or do you
7 view as some indicator of how well the
8 communications function or strategy is working at
9 Leapfrog?

10 A. What we regularly track are social media
11 metrics, engagement rate on social media. We
12 track really basic Google analytics. By "we" I
13 mean CURA tracks that for that and reports to us
14 on a quarterly basis, which we report it to the
15 board. Really basic things like page views,
16 length of time on a page, top referral sources,
17 and then media coverage.

18 Q. Okay. And so is the goal then with
19 respect to those metrics, whether it's on the
20 webpage or social media, to increase that
21 engagement as much as possible as part of the
22 communications strategy?

1 A. Can you restate the question?

2 Q. Yeah. Is the goal with respect to the
3 metrics to increase those metrics?

4 A. Yes.

5 Q. Okay. And the -- and the idea behind
6 increasing those metrics is to reach as many
7 consumers as possible; is that the idea?

8 A. Right. We want to increase our reach.
9 Yes.

10 Q. Okay. And that includes increasing the
11 reach and impact of the hospital safety grades;
12 is that right?

13 A. Can you restate the question?

14 Q. And is part of that -- increasing the
15 reach wanting to broadcast as much as possible
16 the hospital safety grades program?

17 A. Yes.

18 Q. Okay. And as -- okay.

19 The -- I think last -- this past year,
20 your compensation was -- or your base
21 compensation was \$160,000; is that right?

22 A. Yes.

1 Q. Okay. And did you -- we understand that
2 you -- a bonus of 10 percent of that salary, of
3 \$16,000, was authorized?

4 A. Yes.

5 Q. Okay. And so what do you understand to
6 be kind of the reason for getting that bonus?
7 Why were you awarded that bonus?

8 A. My understanding is that it was just
9 always part of -- like, when I signed the
10 contract -- signed the offer letter to be a
11 director of communications, my understanding was
12 that probably most years I would get that bonus
13 as long as I did my job.

14 Q. Okay. Are you aware whether other
15 personnel, whether they're managers or executives
16 at Leapfrog, whether their compensation is tied
17 to certain metrics?

18 A. I don't know.

19 Q. Okay. So you're not aware how --
20 whether, let's say, for example, Ms. Binder's
21 compensation is tied to reaching certain
22 milestones or metrics?

1 A. I'm not sure.

2 Q. Okay. Your salary and the bonus, the
3 160,000 and the \$16,000 bonus, relatively
4 speaking, is that kind of high, mid, low for a
5 role of your type?

6 A. I'd say average.

7 Q. Average? Okay.

8 MR. CHUNG: No further questions. Thank
9 you.

10 THE WITNESS: Oh. Okay.

11 MS. BLAIR: That's it. I will order a
12 rough draft, as well as regular delivery of an
13 e-tran.

14 VIDEO TECHNICIAN: The time is 5:36 p.m.
15 This concludes today's deposition. We're off the
16 record.

17 (Whereupon, at 5:36 p.m., the videotaped
18 deposition of LAUREN L. BAILEY was
19 concluded.)
20
21
22

CERTIFICATE OF NOTARY PUBLIC

I, CHRISTINA S. HOTSKO, the officer before whom the foregoing deposition was taken, do hereby certify that the witness whose testimony appears in the foregoing deposition was duly sworn by me; that the testimony of said witness was taken by me in stenotypy and thereafter reduced to typewriting under my direction; that said statement is a true record of the proceedings; that I am neither counsel for, related to, nor employed by any of the parties to the action in which this statement was taken; and, further, that I am not a relative or employee of any counsel or attorney employed by the parties hereto, nor financially or otherwise interested in the outcome of this action.

September 12, 2025



CHRISTINA S. HOTSKO

Notary Public in and for the
District of Columbia

My commission expires:

1 January 2027

Good Samaritan Medical Center Inc, Et Al. v. The Leapfrog Group
Lauren L. Bailey Job No. 7574631

E R R A T A S H E E T

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Lauren L. Bailey

Date

1 Good Samaritan Medical Center Inc, Et Al. v. The Leapfrog Group
2 Lauren L. Bailey 7574631

3 ACKNOWLEDGEMENT OF DEPONENT

4 I, Lauren L. Bailey, do hereby declare that I
5 have read the foregoing transcript, I have made any
6 corrections, additions, or changes I deemed necessary as
7 noted above to be appended hereto, and that the same is
8 a true, correct and complete transcript of the testimony
9 given by me.

10
11 _____
12 Lauren L. Bailey

Date

13 *If notary is required

14 SUBSCRIBED AND SWORN TO BEFORE ME THIS

15 _____ DAY OF _____, 20____.

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Federal Rules of Civil Procedure

Rule 30

(e) Review By the Witness; Changes.

(1) Review; Statement of Changes. On request by the deponent or a party before the deposition is completed, the deponent must be allowed 30 days after being notified by the officer that the transcript or recording is available in which:

(A) to review the transcript or recording; and

(B) if there are changes in form or substance, to sign a statement listing the changes and the reasons for making them.

(2) Changes Indicated in the Officer's Certificate. The officer must note in the certificate prescribed by Rule 30(f)(1) whether a review was requested and, if so, must attach any changes the deponent makes during the 30-day period.

DISCLAIMER: THE FOREGOING FEDERAL PROCEDURE RULES ARE PROVIDED FOR INFORMATIONAL PURPOSES ONLY.

THE ABOVE RULES ARE CURRENT AS OF APRIL 1, 2019. PLEASE REFER TO THE APPLICABLE FEDERAL RULES OF CIVIL PROCEDURE FOR UP-TO-DATE INFORMATION.

VERITEXT LEGAL SOLUTIONS

COMPANY CERTIFICATE AND DISCLOSURE STATEMENT

Veritext Legal Solutions represents that the foregoing transcript is a true, correct and complete transcript of the colloquies, questions and answers as submitted by the court reporter. Veritext Legal Solutions further represents that the attached exhibits, if any, are true, correct and complete documents as submitted by the court reporter and/or attorneys in relation to this deposition and that the documents were processed in accordance with our litigation support and production standards.

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