

REPORT OF INVESTIGATION REGARDING TERI MCKEEVER

January 17, 2023

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█ [REDACTED]

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EXECUTIVE SUMMARY

Munger, Tolles & Olson LLP (“MTO”) was retained by the University of California at Berkeley (the “University” or “Cal”) to conduct an investigation of allegations that Head Coach Teri McKeever engaged in abusive and/or discriminatory conduct toward members of the Cal Women’s Swimming and Diving team from 1992 to 2022. The University gave MTO the charge of investigating the allegations, making factual findings based on a preponderance of the evidence, and determining whether University policies had been violated.

University policies prohibiting discrimination, bullying, and abusive conduct do not require a finding of intent to harm or intent to discriminate. As outlined in this report, MTO finds by a preponderance of the evidence that Coach McKeever discriminated against certain student-athletes, in certain instances, on the basis of race, national origin, and disability. [REDACTED]

MTO also finds that Coach McKeever’s conduct toward some, but not all, student-athletes in some instances was abusive and violated University policy.

I. THE COMPLAINTS THAT PROMPTED THIS INVESTIGATION

On April [REDACTED], three [REDACTED] contacted the Cal Athletics department to discuss their concerns with Coach McKeever, including the fact that Coach McKeever recently had used the n-word at a swim practice and their belief that Coach McKeever discriminated against the [REDACTED] swimmers on the team. The [REDACTED] staff reported these allegations to the University’s Office for the Prevention of Discrimination and Harassment (“OPHD”), and OPHD opened an investigation. As described below, the University retained MTO to conduct the investigation into these allegations.

Separately, in April [REDACTED], Director of Athletics Jim Knowlton and Executive Senior Associate Athletics Director Jennifer Simon-O’Neill met [REDACTED] with the Women’s Swimming team to obtain the team members’ feedback on their experiences during the [REDACTED] school year. The team participated in an anonymous poll over Zoom, and many reported negative assessments of the team’s culture and of Coach McKeever’s and the assistant coaches’ communication style.

On April [REDACTED], Knowlton and Simon-O’Neill met in person with the [REDACTED] graduating members of the swimming team to conduct an exit interview. The swimmers reported several concerns about Coach McKeever’s conduct with the team, including what they viewed as emotional abuse. Following that meeting, Simon-O’Neill reported to OPHD that one of the senior swimmers had informed them that Coach McKeever had called the swimmer fat. The Athletics Department staff included their concerns about the team’s negative feedback in a draft performance evaluation for Coach McKeever for the period of July 1, [REDACTED] to June 30, [REDACTED]. According to Coach McKeever, she has not received this negative feedback or performance evaluation.

[REDACTED] additional allegations were raised in newspaper articles published in the *Orange County Register* on May 24, 2022 and May 28, 2022. These articles included allegations of verbal and emotional abuse and pressure to swim while injured or suffering from chronic illnesses or eating disorders. The *Orange County Register* and other media, including *The Daily Californian*, the *East Bay Times*, and *Sports Illustrated*, and websites, including *SwimSwam.com*, subsequently published additional allegations of misconduct.

The University placed Coach McKeever on investigatory leave on May 25, 2022, pending the outcome of this investigation, and provided her with a notice of allegations describing the topics to be investigated. The University retained MTO in May 2022 to conduct an investigation on behalf of OPHD into allegations of discrimination on the basis of a protected class (e.g., race, national origin, sexual orientation, disability) and on behalf of the University's Human Resources office into the other allegations of abusive conduct.

II. INVESTIGATION SCOPE AND METHODOLOGY

A. Alleged Conduct Investigated

On behalf of OPHD, MTO investigated allegations that Coach McKeever discriminated against or created a hostile environment for student-athletes on the basis of race, national origin, [REDACTED] and disability. MTO's factual findings and policy determinations for the discrimination investigation are contained in the OPHD section of this report.

MTO also investigated allegations that Coach McKeever's conduct towards certain student-athletes was abusive. More specifically, MTO investigated the following allegations:

- [REDACTED]
- Verbal abuse;
- Targeting of certain swimmers for abusive conduct;
- Pressure to divulge personal information and/or mishandling of personal information;
- Pressure to swim through injury;
- [REDACTED]
- Fostering a negative team environment.

In investigating these allegations, MTO considered the fact that numerous swimmers reported positive experiences with Coach McKeever. MTO also considered a broad range of explanations and defenses raised by Coach McKeever and other witnesses, including alleged gender bias against Coach McKeever and an alleged disconnect in coaching expectations between Coach McKeever and the swimmers who had negative experiences.

MTO's factual findings and policy determinations related to those allegations are contained in the abusive conduct section of this report.

MTO was not retained to investigate the University's knowledge of Coach McKeever's conduct or its past responses to allegations of misconduct by Coach McKeever. MTO did, however, gather information related to Coach McKeever's defenses and responses to the allegations in order to evaluate them, and among Coach McKeever's defenses, she alleged that the University knew of her coaching methods and of prior complaints and had not found her conduct problematic or violative of any policies. Although MTO gathered all relevant information that witnesses provided or gave MTO access to, MTO did not make factual findings or policy determinations on these issues because they were outside of the scope of the investigation.

MTO also was not retained to investigate, and did not investigate, other coaches and their methods of coaching. MTO's investigation focused solely on evaluating whether Coach McKeever's conduct violated applicable policies without regard to whether other coaches' methods also violated these policies.

B. Information Gathered

MTO investigated allegations regarding Coach McKeever's conduct that spanned the nearly thirty years that Coach McKeever worked as Head Coach of the Cal Women's Swimming program.

As part of its investigation, MTO interviewed current and former swimmers, the parents of current and former swimmers, current and former coaching staff, Cal Athletics Department personnel, other University staff, and third parties identified as having relevant information. MTO identified current and former swimmers using Cal swimming and diving team rosters. MTO's investigative team's contact information was published to enable witnesses with relevant information to contact MTO directly, and many current and former swimmers contacted MTO to be interviewed. MTO also requested and obtained contact information for other current and former swimmers from the University and sent requests to those swimmers for an interview. Numerous witnesses declined to speak with MTO or were not responsive to our attempts to contact them. MTO interviewed all Cal-affiliated witnesses who expressed a willingness to be interviewed by MTO.

MTO interviewed 147 individuals over the course of the investigation, including:

- ■ swimmers and divers from the ■ academic year,
- ■ former swimmers and divers,²
- 23 parents of current and former swimmers,
- 39 current and former University personnel, and

- 9 third parties ([REDACTED] for the Cal Women's Swimming team and coaches at other schools' programs).

Those interviewed also included some witnesses suggested by Coach McKeever's attorney, who provided MTO with 49 names of possible witnesses and 47 witness statements. MTO reviewed all 47 written witness statements provided by Coach McKeever's attorney. MTO also reviewed the letters written to MTO by Coach McKeever's counsel and the lengthy letters and attachments submitted by Coach McKeever's counsel to OPHD.

MTO made clear at the outset of every interview that it represented the University and not the witness or any other individual. MTO also told witnesses that their names would be identified to Coach McKeever and to certain individuals at the University unless the witness requested anonymity. MTO informed witnesses that MTO could not base a determination of a policy violation solely on anonymous accounts.

MTO interviewed Coach McKeever on three separate occasions for a total of approximately 15 hours.

MTO reviewed approximately 1,700 documents collected from the Cal Athletics Department, OPHD, Coach McKeever's Cal email account, and from witnesses who provided documents, such as text messages and medical records.¹ In addition, an MTO investigating attorney visited and photographed Spieker Aquatics Complex and Legends Aquatic Center, the pools used by the Cal women's swimming team for practice, observed the pools during team practice, and visited the surrounding Athletics Department and recreation center buildings while those practices were ongoing.

1. Evidence Review by Coach McKeever

In accordance with the University's policies and its July 12, 2022 notice of allegations to Coach McKeever, MTO provided Coach McKeever with the opportunity to review and comment on the evidence gathered, which MTO shared via a secure electronic file sharing system, Box. For the OPHD investigation, MTO provided Coach McKeever with a 147-page summary of the evidence, including summaries of information provided in witness interviews, and 144 exhibits. For the abusive conduct investigation, MTO provided Coach McKeever with 46 exhibits and two summaries of the evidence, totaling 247 pages and including summaries of information provided in witness interviews. Coach McKeever provided written responses to both the OPHD and abusive conduct investigation evidence summaries, and MTO incorporated Coach McKeever's responses in its final factual findings and policy determinations.

Coach McKeever submitted a formal, written complaint to OPHD on November 28, 2022, asserting that she has been wrongfully accused of bullying and abuse and that the University's investigation of her conduct constitutes gender discrimination and reflected gender-biased views. The submission included a number of written statements by former and current swimmers, former Cal coaching staff, parents of former swimmers, and coaches from other

¹ MTO reviewed the medical records from swimmers who voluntarily provided written consent.

schools, attesting to the positive coaching they had experienced or observed from Coach McKeever and denying the existence of any abusive conduct.

III. INVESTIGATION STANDARD AND APPLICABLE POLICIES

In determining whether Coach McKeever violated applicable University policies, MTO applied a preponderance of the evidence standard. The standard is met if the totality of the evidence demonstrates that it is more likely than not that the factual claim occurred. A determination of whether Coach McKeever's conduct violated an applicable policy did not require a finding of fact that Coach McKeever intended to harm or discriminate against a swimmer.

MTO analyzed Coach McKeever's conduct under several University policies, as informed by guidance from the United States Department of Education's Office of Civil Rights. For the investigation conducted on behalf of OPHD to determine whether Coach McKeever discriminated against or harassed swimmers on the basis of a protected class (e.g. race, national origin, disability, gender identity, or sexual orientation), MTO analyzed the following policies:

- The University of California's Nondiscrimination Policy Statement;
- The University of California's Policy on Discrimination, Harassment, and Affirmative Action in the Workplace;
- The University of California Policies Applying to Campus Activities, Organizations and Students ("PACAOS"): Policy on Nondiscrimination ("PACAOS-20"); and
- The United States Department of Education's Office of Civil Rights' Notice of Investigative Guidance: Racial Incidents and Harassment Against Students at Educational Institutions, March 10, 1994.

In assessing whether Coach McKeever discriminated against or harassed swimmers on the basis of a disability, MTO analyzed the following policies:

- The Americans with Disabilities Act;
- PACAOS Guidelines Applying to Nondiscrimination on the Basis of Disability ("PACAOS-140");
- The Department of Education's Office of Civil Rights' Dear Colleague Letter, July 25, 2000, regarding hostile environment discrimination on the basis of disability; and
- The Role of Cal Intercollegiate Athletics Coaches in Medical Care, effective June 14, 2016.

In assessing whether Coach McKeever's treatment of the swimmers constituted abusive conduct, MTO applied the following policies:

- UC Berkeley's Workplace Bullying Prevention Policy, effective May 18, 2016;
- The University of California's Guidance on Abusive Conduct and Bullying in the Workplace, effective July 26, 2016; and
- UC Berkeley's Body Composition Measurement and Athlete Weighting Protocol, effective April 2017, and updated December 2019.

MTO did not evaluate whether Coach McKeever's conduct was a violation of her Cal employment contract.

IV. SUMMARY OF FACTUAL FINDINGS AND POLICY VIOLATION DETERMINATIONS

The evidence collected, our factual findings, and determinations of policy violations are presented in more detail in our report. In this section, we provide a high-level summary.

A. Findings Regarding Alleged Discrimination

1. Allegations of Racial Discrimination and Harassment

We investigated allegations that Coach McKeever discriminated against or harassed swimmers because of their race.

(a) Allegations of Discrimination and Harassment against [REDACTED] Swimmers

[REDACTED] Cal women's swimming team members Swimmer A and Swimmer B were [REDACTED]. Both were freshmen that year. Swimmer A alleged that Coach McKeever discriminated against her in several ways. According to Swimmer A and to other witnesses, Coach McKeever targeted Swimmer A for verbal abuse early in the year and frequently yelled and used curse words when yelling at Swimmer A. Swimmer A also alleged that Coach McKeever attempted to isolate Swimmer A by asking Swimmer A's teammates if Swimmer had a bad attitude or if the team members felt better when Swimmer A was not at practice. Swimmer A and other swimmers said that Coach McKeever frequently made comments on Swimmer A's [REDACTED] in particular her [REDACTED], and frequently interpreted Swimmer A's posture and facial expression as conveying defiance, entitlement, or a bad attitude. Swimmer A and other witnesses said Coach McKeever referred to Swimmer A as [REDACTED]. According to Swimmer A, Coach McKeever frequently kicked Swimmer A out of practice and denied Swimmer A access to team activities, such as the ability to compete in [REDACTED]ional and the ability to train with the men's team when Coach McKeever was absent from campus.

Coach McKeever denied that she discriminated against Swimmer A on the basis of race. She explained that her coaching of Swimmer A was an effort to hold Swimmer A to her high expectations for the team and for all swimmers and that she was justified in kicking Swimmer A out of practice, excluding her from [REDACTED] and the ability to swim with the men's team because of Swimmer A's poor attitude and lack of effort. She explained that she had called other swimmers a [REDACTED]

[REDACTED]

Multiple swimmers described an instance during [REDACTED] in which Coach McKeever told a small group of swimmers that she did not like rap music and the swimmers should avoid playing rap music that contained obscenities at practice. Coach McKeever then mimicked the lyrics of rap songs and included the n-word in her mimicking. Although Swimmer A and Swimmer B were not present during this discussion, multiple teammates informed them of the incident. This incident was reported by three swimmers to the Cal Athletics [REDACTED] department, which in turn reported it to OPHD. Coach McKeever denied using the unbridged form of the n-word.

As detailed in this report, MTO determined that Coach McKeever's conduct toward Swimmer A and Coach McKeever's use of the n-word in mimicking rap music created a hostile environment for the [REDACTED] swimmers based on race. [REDACTED]

(b) Allegations of Discrimination and Harassment against [REDACTED] Swimmers

MTO investigated allegations that Coach McKeever discriminated against [REDACTED] swimmers.

Swimmer C was a swimmer at Cal from [REDACTED]. She and another witness alleged that Coach McKeever mocked Swimmer C's name by referring laughingly to Swimmer C as "[Swimmer C] [REDACTED]." Swimmer C and another witness also reported that Coach McKeever criticized Swimmer C's English language ability and got exasperated with Swimmer C's sometimes halting speech and told Swimmer C to "just speak." According to Swimmer C, Coach McKeever targeted Swimmer C for verbal abuse and yelling, calling her a "waste of scholarship resources," expressed frustration with Swimmer C's more reserved nature, made comments about her weight, and questioned whether Swimmer C should compete for [REDACTED]. Coach McKeever admitted she said "[Swimmer C] [REDACTED]" but did so only

occasionally; she did not deny getting exasperated with Swimmer C's speech but said that Swimmer C spoke good English. As detailed in this report, we concluded that Coach McKeever created a hostile environment for Swimmer C based on Swimmer C's race and national origin.

Swimmer D swam at Cal from [REDACTED]. Swimmer D said that Coach McKeever compared Swimmer D's timing to "[REDACTED]" in an apparent reference to [REDACTED]. According to Swimmer D, Coach McKeever frequently commented on and suggested that Swimmer D was attracted to an athletic trainer because he was [REDACTED] and Swimmer D was too. Swimmer D also felt that Coach McKeever lumped Swimmer D in with Swimmer C. For example, Swimmer D said that Coach McKeever expected Swimmer D to swim with Swimmer C for apparently no reason other than that they were both [REDACTED]. Swimmer D said that Coach McKeever yelled derogatory comments at her, in one-on-one meetings, such as calling Swimmer D an embarrassment to herself, to the team, and to Coach McKeever, and telling Swimmer D that the coaches were wasting money by having Swimmer D on the team. Coach McKeever did not provide a response to these allegations. As detailed in this report, we determined that Coach McKeever created a hostile environment for Swimmer D based on Swimmer D's race.

[REDACTED]

[REDACTED]

2. Allegations of National Origin Discrimination and Harassment

[REDACTED]

[REDACTED]

As stated above, we concluded that Coach McKeever created a hostile environment for Swimmer C (Swimmer, [REDACTED]) based on Swimmer C's national origin.

3. Allegations of Disability Discrimination and Harassment

We investigated several allegations of disability discrimination and harassment. These allegations related to several disabilities, such as chronic medical conditions, developmental and learning disabilities, and physical injuries. As detailed in this report, we concluded that the preponderance of the evidence supported a conclusion that Coach McKeever's conduct constituted disability discrimination related to five swimmers.

Swimmer H was a swimmer for Cal from [REDACTED]. Swimmer H alleged that Coach McKeever targeted her for negative treatment due to Swimmer H's [REDACTED]. Swimmer H said that Coach McKeever told Swimmer H that she should "push through" her pain. Swimmer H and other swimmers also told MTO that Coach McKeever repeatedly expressed skepticism, including in conversations with other team members, about whether Swimmer H truly suffered [REDACTED] and whether it affected Swimmer H's ability to swim. Swimmer H and other swimmers told MTO that Coach McKeever said that Swimmer H was "too fat" to have [REDACTED]. Coach McKeever told MTO she followed the guidance of medical professionals and worked with Swimmer H to come up with a personalized training program; she denied saying that Swimmer H was too fat to have [REDACTED]. MTO concludes that Coach McKeever's overall pattern of behavior and an email she wrote demonstrated that Coach McKeever sought to deny Swimmer H accommodations in order to pressure Swimmer H to quit the team. Coach McKeever's public questioning of the legitimacy of Swimmer H's diagnosis predictably influenced Swimmer H's teammates. As detailed in this report, we concluded that Coach McKeever's conduct created a hostile environment for Swimmer H based on her disability.

Swimmer AN was a swimmer for Cal during [REDACTED]. She transferred out of the program after [REDACTED]. Swimmer AN alleged that Coach McKeever targeted her for sustained abusive conduct due to Swimmer AN's [REDACTED]. Although Coach McKeever provided Swimmer AN with some accommodations, such as a modified practice schedule, Swimmer AN alleged that Coach McKeever often accused Swimmer AN of faking her [REDACTED] to get out of practice or other team events. Swimmer AN and other witnesses said that Coach McKeever expressed skepticism that Swimmer AN's inability to perform was due to [REDACTED]. According to Swimmer AN, Coach McKeever's skepticism contributed to a perception by Swimmer AN's teammates that Swimmer AN was faking her condition, leading to Swimmer AN's isolation from

her teammates. As detailed in this report, we determined that Coach McKeever's conduct created a hostile environment for Swimmer AN based on her disability.

Swimmer I was a swimmer on the Cal team in [REDACTED]. She left the program after [REDACTED]. Swimmer I alleged that Coach McKeever refused to provide her with a reasonable accommodation for Swimmer I's [REDACTED] by refusing to provide [REDACTED]. Coach McKeever told MTO that she appropriately refused to [REDACTED] because she did not want to change her coaching methods for one person, and [REDACTED]. Two other swimmers from [REDACTED] told MTO that Coach McKeever routinely [REDACTED]. As detailed in this report, we determined that Coach McKeever's refusal to [REDACTED] for a swimmer whom she knew had a disability created a hostile environment based on disability.

Swimmer AC [REDACTED] joined the program as a freshman in [REDACTED]. Swimmer AC has [REDACTED], which she disclosed to Coach McKeever before she started swimming for Cal. During her freshman year, Swimmer AC [REDACTED]. As a result, Swimmer AC's doctors placed her on a reduced practice schedule. While Coach McKeever initially was supportive of Swimmer AC's restrictions on swimming, Swimmer AC said Coach McKeever became upset as the season progressed. According to Swimmer AC, Coach McKeever yelled and cursed when Swimmer AC [REDACTED]. Swimmer AC said Coach McKeever refused to allow Swimmer AC to attend meets to support her teammates when Swimmer AC [REDACTED]. According to Swimmer AC, Coach McKeever pressured Swimmer AC to disclose to her teammates that she had [REDACTED]. As detailed in this report, we found that Coach McKeever's conduct created a hostile environment for Swimmer AC related to disability.

MTO interviewed a swimmer who asked to remain anonymous.³ MTO refers to this witness as "Jane Roe #1" in the report. Jane Roe #1 said that she was injured [REDACTED]. Although Coach McKeever initially acted in an understanding manner about Jane's injury, Jane alleged that when Jane returned to practice Coach McKeever berated her about being out of shape and attempted to kick her out of practice. Later in the season, Jane again became injured [REDACTED]. Jane alleged Coach McKeever used abusive language to Jane because of her injury. Coach McKeever recognized these allegations and explained her confusion about Jane's delay in disclosing the second injury, but offered no response to the allegations of abusive language. As detailed in this report, we found that Coach McKeever's conduct created a hostile environment for Jane related to disability.

³ MTO did not base any policy determinations solely on the account of anonymous witnesses. MTO found policy violations only when other, named witnesses corroborated the account.

[REDACTED]

B. Abusive Conduct Determinations

Witnesses alleged that Coach McKeever engaged in various categories of conduct that they believed was inappropriate. This report describes each of the categories of alleged conduct investigated. As detailed in this report, we found by a preponderance of the evidence that Coach McKeever's conduct violated University policies with respect to several swimmers. We did not find any instance where a single, isolated incident of verbal abuse was so egregious in itself that it constituted a violation of University policy. Rather, where MTO determined that Coach McKeever's conduct violated University policy and guidance against bullying and abusive conduct, it was Coach McKeever's entire pattern of conduct with a swimmer, which was repeated and persistent, that resulted in the determination.

■ [REDACTED]

[REDACTED]

2. Alleged Sustained Verbal Abuse and Targeting of Certain Swimmers for Abusive Conduct

Several witnesses reported that Coach McKeever singled out a few swimmers each year for sustained, undue or disproportionate criticism or focus, in a manner that was frequently personal and not constructive, and that resulted in fear, intimidation, and humiliation of those swimmers. Multiple witnesses alleged that Coach McKeever routinely used insulting, belittling, or humiliating language when talking to or about certain swimmers. Witnesses reported, for example, that Coach McKeever called them a "piece of shit," "worthless," "a waste of scholarship," or "an embarrassment" to themselves and their parents. Witnesses recounted that Coach McKeever generally delivered these phrases while yelling and in an angry, exasperated, or irritated tone. Witnesses alleged that Coach McKeever used this language when speaking directly to a swimmer and also when referring to a swimmer outside of their presence. Witnesses also told us that, in many instances, Coach McKeever directed this language at them during one-on-one meetings that were not observed by others. Many of the witnesses who told us they were targeted for persistent verbal abuse from Coach McKeever described the lasting negative effects that such treatment had on them. Witnesses who said they were subjected to verbal abuse described feeling constantly fearful, like they were walking on eggshells.

Swimmers who were not the subject of Coach McKeever's alleged verbal abuse reported witnessing the conduct and its effects.

In contrast, several witnesses denied that Coach McKeever verbally abused swimmers and said that Coach McKeever's comments to swimmers consisted of constructive criticism and instructions for ways in which a swimmer needed to improve. These witnesses said Coach McKeever raised her voice only to be heard and not as a sign of anger. Witnesses also explained that those swimmers who were frequent targets of Coach McKeever's criticism were those swimmers who failed to meet the high expectations appropriately set by Coach McKeever. Coach McKeever denied that her language was inappropriate or abusive. She denied calling swimmers a "piece of shit." Coach McKeever's and other witnesses' explanations are described in further detail in Section XIII below, setting forth Coach McKeever's and other witnesses' defenses and other responses to the allegations.

As detailed in this report, MTO determined that a preponderance of the evidence, including the accounts of more than 40 swimmers, supported the conclusion that Coach McKeever yelled personal insults and epithets at certain swimmers and, with those certain swimmers, used humiliating and belittling language that a reasonable person would find hostile, offensive, and unrelated to the University's legitimate business interests. As detailed in this report, MTO found that Coach McKeever's conduct toward nine swimmers since 2016 violated the University's Workplace Bullying Prevention policy, which became effective in 2016, and Coach McKeever's conduct toward a different swimmer violated the University's policy, Role of Cal Intercollegiate Athletics Coaches in Medical Care. In addition, as detailed in this report, MTO found that Coach McKeever's conduct in having team members identify swimmers on whom they would not devote their time and attention violated the University's Workplace Bullying Prevention policy. In addition, as detailed in this report, MTO found by a preponderance of the evidence that, prior to May 2016 when the Workplace Bullying Prevention policy became effective, Coach McKeever engaged in persistent use of abusive, insulting language directed at fifteen swimmers that a reasonable person would find hostile, offensive, and unrelated to the University's legitimate business interests.

3. Allegations of Fostering a Negative Team Environment

MTO investigated allegations that Coach McKeever fostered a negative team culture in which she directed or influenced swimmers to publicly criticize and rate one another, to inform on one another, and to ostracize swimmers with whom Coach McKeever had a negative relationship. Multiple swimmers alleged that, [REDACTED] Coach McKeever directed the leaders on the team to identify which teammates were "gems," who deserved their attention, and which teammates did not deserve the leaders' attention. As detailed in this report, MTO found by a preponderance of the evidence that Coach McKeever's instruction for swimmers to identify those on the team who were not worth the other swimmers' time or effort violated the University's Workplace Bullying Prevention policy.

4. Alleged Pressure to Swim Through Injury

Approximately twenty swimmers reported feeling pressured by Coach McKeever to swim through injuries or reported seeing teammates experience pressure to swim through

injuries. Although some swimmers said that Coach McKeever directly pressured them to swim through injuries, many swimmers reported they inferred that she expected them to swim through injuries based on her words or conduct. Many other swimmers, however, reported that Coach McKeever was supportive when swimmers were injured and never inappropriately pressured athletes to swim when injured. As detailed in this report, we found for all but one swimmer that we lacked sufficient evidence to conclude by a preponderance of the evidence that Coach McKeever's conduct in these instances violated the University's policy, Role of Cal Intercollegiate Athletics Coaches in Medical Care

6. Alleged Pressure to Disclose Personal Information and/or Mishandling of Personal Information

MTO investigated allegations that Coach McKeever inappropriately shared swimmers' personal information with other swimmers without their consent. For example, some witnesses alleged that Coach McKeever shared swimmers' medical information, grades, or other information such as relationship issues or information related to past psychological trauma. Witnesses also alleged that swimmers were pressured to share their medical information or psychological trauma with the team.

As detailed in this report, because it is unclear from the investigation whether the information sharing was relevant and necessary to the operation of the team and because in certain instances corroboration was lacking as to when and specifically what information was shared, we found we lacked sufficient evidence to conclude by the preponderance of the evidence that Coach McKeever's conduct in most of these instances violated University's policies related to the disclosure of personal information. We found two occasions where Coach McKeever's handling of medical information contributed to a hostile environment based on those swimmers' disabilities.

C. Positive Experiences with Coach McKeever

Multiple witnesses recounted that they had unqualifiedly positive experiences with Coach McKeever. They credited Coach McKeever with being an influential factor in their success in swimming and in life in general. According to these swimmers, Coach McKeever cared deeply about the swimmers' personal development and held them to high expectations to foster not only the team's success but also the swimmers' future success in their personal and professional lives. These witnesses noted that although Coach McKeever had a direct communication style, Coach

McKeever used that style to have honest, candid conversations with the swimmers in order to push the swimmers to become the best possible versions of themselves. They described Coach McKeever as being a supportive presence in their lives at Cal and after graduation. They denied that Coach McKeever was discriminatory or abusive in any way.

Numerous other witnesses said they personally had positive experiences with Coach McKeever and were treated well by Coach McKeever, but they observed Coach McKeever treat other swimmers poorly and, at times, in an abusive manner. These accounts are consistent with the allegation that Coach McKeever targeted a few swimmers each year for enhanced scrutiny and abusive conduct but did not treat everyone on the team in that way.

Some of the witnesses who had positive experiences with Coach McKeever also told us that they did not witness Coach McKeever act inappropriately toward other swimmers. Some denied, for example, ever hearing Coach McKeever call swimmers “a piece of shit” or other phrases alleged by others. These accounts are consistent with the allegations that Coach McKeever made verbal attacks on swimmers in one-on-one meetings or while other swimmers were swimming and that therefore other swimmers could not hear the specific language Coach McKeever used. These witnesses also provided several rationales for why some swimmers made allegations of abusive conduct. For example, some witnesses told us that the conduct some swimmers found inappropriate and abusive was, in their view, justified by the targeted swimmer’s poor performance, poor attitude, lack of effort or commitment, failure to follow team rules, or other shortcoming. Some witnesses told us that the targeted swimmers who felt that Coach McKeever’s conduct was abusive were being overly sensitive and were not prepared for the high expectations of a Division I program. These rationales and others are summarized below and analyzed in further detail in the report.

D. Coach McKeever’s and Other Witnesses’ Defenses to and Responses to the Allegations

Coach McKeever and witnesses who viewed her actions favorably or who denied the alleged conduct occurred provided several reasons for why some swimmers made allegations of abusive conduct.

One rationale provided was that the swimmers who alleged abusive conduct mistook Coach McKeever’s blunt communication style for abusive conduct. Coach McKeever was frequently described as speaking very directly and as not shying away from difficult conversations. Some witnesses said that certain swimmers were unwilling to hear negative assessments of their performance and took Coach McKeever’s constructive criticism out of context. Other witnesses opined that some swimmers alleged misconduct because they took offense when Coach McKeever pointed out the ways in which the swimmers’ actions were counterproductive to their stated goals or the team’s standards and formed a negative opinion of Coach McKeever when Coach McKeever held the swimmers accountable for their actions.

A different reason provided was that the swimmers’ personalities conflicted with Coach McKeever’s personality. Some witnesses explained that, when Coach McKeever called out certain swimmers for having a bad attitude or acting in an entitled manner, the personality mismatch resulted in some swimmers perceiving Coach McKeever’s conduct as inappropriate.

Another possible source of a personality mismatch was that some swimmers wanted a coach to be warm and nurturing or wanted to be friends with their coach and were disappointed to discover that Coach McKeever's personality did not match this desire.

Some witnesses, including Coach McKeever, opined that the allegations of misconduct are a result of gender bias against a woman coach. Coach McKeever and her counsel asserted that men are able to coach in the same style in which Coach McKeever coached, including yelling and cursing at athletes and holding them to stringent standards, without being accused of misconduct. Witnesses said that many Cal swimmers never had been coached by a woman before attending Cal and expected Coach McKeever to display stereotypically feminine traits, such as compassion, gentleness, and warmth. When Coach McKeever did not display those traits, and instead coached in a more direct and uncompromising manner, the swimmers viewed this style to be abusive due to a disconnect between their expectations and reality.

Some witnesses opined that the swimmers who complained about Coach McKeever's coaching style had other, underlying issues, such as mental health issues, that predated or were unrelated to their experiences with Coach McKeever. These witnesses opined that these other, underlying issues skewed the complaining swimmers' perceptions of Coach McKeever and their time on the Cal team and that the complaining swimmers sought to blame Coach McKeever for their own problems.

Coach McKeever and other witnesses theorized that the swimmers who had problems with Coach McKeever could not handle the rigors of an elite Division I swim program, especially at a school as academically challenging as Cal. Witnesses theorized that these swimmers could not compete at the level that Coach McKeever required or had trouble adjusting to no longer being the best swimmer on a team. These witnesses explained that the subsequent friction that occurred between Coach McKeever and the swimmers resulted from these swimmers blaming Coach McKeever for their own inability to compete at such an elite level. Some witnesses also suggested that Coach McKeever's harsher treatment of certain swimmers was justified by the targeted swimmer's poor performance, poor attitude, lack of effort, or other shortcoming.

Coach McKeever and other witnesses also opined that her coaching methods resulted in numerous highly successful teams over multiple decades and that her winning record demonstrated the effectiveness and appropriateness of her coaching methods. Some witnesses suggested that it would be inappropriate for investigators or lawyers to second-guess the highly-specialized judgment calls that coaches must make when deciding, for example, whether to ask an athlete to leave practice, whether to bring an athlete to a particular competition, or when to use blunt feedback and criticism to motivate an athlete to push themselves harder than they had pushed themselves previously.

V. CONSIDERATIONS REGARDING COACHING WHEN REACHING POLICY DETERMINATIONS

MTO considered these alternative rationales when it reached its policy determinations. MTO recognized – as did all the witnesses with whom MTO spoke – that athletes competing at the Division I level must be held to high expectations and must be held accountable when failing

to meet those expectations. MTO recognized that coaches of Division I teams striving to win national championships must push their athletes to perform, whether in practices or meets, beyond what may be comfortable physically and mentally. In reaching its policy determinations, MTO was mindful of the fact that coaches must, by the very nature of coaching, exert pressure on athletes to continually improve and to perform at the highest level. And, MTO gave consideration to the fact that not every athlete can handle the rigors of a demanding Division I program.

MTO interviewed numerous witnesses, including other coaches and Athletics Department staff, and asked probing questions of all witnesses to gain a full understanding of what constitutes appropriate behavior and what crosses the line between appropriate coaching and abusive conduct. Witnesses generally drew a line between constructive, sports-based criticisms on the one hand and, on the other hand, belittling, humiliating, degrading, and personal attacks that resulted in fear and intimidation. In reaching its policy determinations, MTO was mindful of the fact that University policy does not allow one to justify abusive conduct by showing that the recipient of the conduct deserved criticism or failed to meet expectations. The University's prohibition against abusive conduct applies regardless of whether a swimmer meets the expectations of Cal's elite, Division I swimming team or whether the swimmer responds well to Coach McKeever's coaching. The University's prohibition against abusive conduct also does not allow one to justify abusive conduct by showing that others engage in the same conduct and have not been subject to discipline.

MTO also considered that the UC Berkeley Policy on Workplace Bullying Prevention prohibits "a pattern of repeated behavior that a reasonable person would find hostile, offensive, and unrelated to the University's legitimate business interests" and notes that such conduct "often involves an abuse or misuse of power." Regardless of the appropriately high expectations of excellence that one could say are the motivating force behind certain forms of coaching, the policy makes clear that belittling, humiliating, or degrading an athlete through criticism delivered with yelling, screaming, threats, or insults does not serve the University's legitimate business interests.

VI. PRIOR COMPLAINTS TO THE UNIVERSITY

Before the allegations that led to the University's retention of MTO for this investigation, other allegations about Coach McKeever's conduct previously were raised with and resolved by the University. The University's handling of these previous allegations was outside the scope of MTO's investigation. MTO made no factual findings or determinations regarding the University's handling of these previous allegations but includes here, for completeness, a summary of the information provided to MTO about these events.

A.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

B. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

C. [REDACTED]

[REDACTED]

4 [REDACTED]
5 [REDACTED]

REPORT OF INVESTIGATION

MTO investigated whether UC Berkeley Women’s Swimming and Diving Head Coach Teri McKeever engaged in conduct that violated the University of California’s Policy on Discrimination, Harassment, and Affirmative Action in the workplace, UC Berkeley’s Workplace Bullying Prevention Policy, among other university policies.

I. ALLEGED CONDUCT INVESTIGATED

On behalf of UC Berkeley’s Office for the Prevention of Harassment and Discrimination, MTO investigated allegations that Coach McKeever discriminated against student-athletes on the basis of race, national origin, [REDACTED], and disability. MTO’s factual findings and policy determinations for the discrimination investigation are contained in the OPHD section of this report.

As described in the University’s July 12, 2022, Notice of Allegations to Coach McKeever, the allegations of discrimination or hostile environment included that Coach McKeever:

- Used racial epithets, including using the “N” word to mimic the lyrics in rap songs in the team meeting room in [REDACTED];
- Treated racial minority members of the team less favorably than non-racial minority team members, including, but not limited to:
 - During the [REDACTED] Academic Year (AY), criticizing a [REDACTED] swimmer’s performance based on her speech patterns and cultural identity; called her a [REDACTED] and “embarrassment to the University, the team, and [her]self;” criticized her more than other [REDACTED] swimmers; and, asked another [REDACTED] athlete if they felt this swimmer should be part of the team;
 - Told several swimmers that you would “never recruit an [REDACTED] swimmer” to be on the team again, and mocked a former [REDACTED] swimmer’s involvement in [REDACTED]
- Harassed racial minority members of the Team or created a hostile environment for racial minority members of the team;
- [REDACTED];
- [REDACTED]
- During [REDACTED], discriminated against an [REDACTED] athlete based on her national origin by telling her that she should receive medical diagnoses

from an “American doctor” and forcing the student off the team by telling them to enter the transfer portal;

- Treated team members with disabilities less favorably than team members without disabilities, including, but not limited to:
 - Accusing team members of lying about or concealing, and/or berating them about, their medical conditions, injuries or illnesses;
 - Revealing team members’ medical information to other members of the team;
- Harassed team members with disabilities or created a hostile environment for team members with disabilities.

MTO also investigated allegations that Coach McKeever’s conduct towards certain student-athletes was abusive in that it included alleged [REDACTED], verbal abuse, targeting of certain swimmers for abusive conduct, pressure to divulge personal information and/or mishandling of personal information, pressure to swim through injury, [REDACTED]; and fostering a negative team environment. As described in the University’s July 12, 2022, Notice of Allegations to Coach McKeever, the allegations included that Coach McKeever:

- [REDACTED]
- Engaged in a pattern of directing abusive, insulting, or offensive language at team members over a period of years;
- Engaged in a pattern of conduct towards team members that had the purpose or effect of denigrating, belittling, bullying, or arbitrarily targeting them over a period of years;
- Pressured team members to participate in practices or competitions or otherwise engaged in conduct in a manner that was detrimental to their health over a period of years.

In investigating these allegations, MTO considered the fact that numerous swimmers reported positive experiences with Coach McKeever. MTO also considered a broad range of explanations and defenses raised by Coach McKeever and other witnesses, including alleged gender bias against Coach McKeever and an alleged disconnect in coaching expectations between Coach McKeever and the swimmers who had negative experiences.

MTO’s factual findings and policy determinations related to those allegations are contained in the abusive conduct section of this report.

MTO was not retained to investigate the University's knowledge of Coach McKeever's conduct or its past responses to allegations of misconduct by Coach McKeever. MTO did, however, gather information related to Coach McKeever's defenses and responses to the allegations in order to evaluate them, and among her defenses was that the University knew of her coaching methods and of prior complaints and had not found her conduct problematic or violative of any policies. Although MTO gathered all relevant information that witnesses provided or gave MTO access to, MTO did not make factual findings or policy determinations on these issues because they were outside of the scope of the investigation.

MTO also was not retained to investigate, and did not investigate, other coaches and their methods of coaching. MTO's investigation focused solely on evaluating whether Coach McKeever's conduct violated applicable policies without regard to whether other coaches' methods also violated these policies.

A. Information Gathered

MTO investigated allegations regarding Coach McKeever's conduct that spanned the nearly thirty years that Coach McKeever worked as Head Coach of the Cal Women's Swimming program.

As part of its investigation, MTO interviewed current and former swimmers, the parents of current and former swimmers, current and former coaching staff, Cal Athletics Department personnel, other University staff, and third parties identified as having relevant information. MTO identified current and former swimmers using Cal swimming and diving team rosters. MTO's investigative team's contact information was published to enable witnesses with relevant information to contact MTO directly, and many current and former swimmers contacted MTO to be interviewed. MTO also requested and obtained contact information for other current and former swimmers from the University and sent requests to those swimmers for an interview. Numerous witnesses declined to speak with MTO or were not responsive to MTO's attempts to contact them. MTO interviewed all Cal-affiliated witnesses who expressed a willingness to be interviewed by MTO.

MTO interviewed 147 individuals over the course of the investigation, including:

- ■ swimmers and divers from the ■ academic year,
- ■ former swimmers and divers,
- 23 parents of current and former swimmers,
- 39 current and former University personnel, and
- 9 third parties (■ for the Cal Women's Swimming team and coaches at other schools' programs).

Those interviewed also included some witnesses suggested by Coach McKeever's attorney, who provided MTO with 49 names of possible witnesses and 47 witness statements.

MTO reviewed all 47 written witness statements provided by Coach McKeever's attorney. MTO also reviewed the letters written to MTO by Coach McKeever's counsel and the lengthy letters and attachments submitted by Coach McKeever's counsel to OPHD.

MTO made clear at the outset of every interview that it represented the University and not the witness or any other individual. MTO also told witnesses that their names would be identified to Coach McKeever and to certain individuals at the University unless the witness requested anonymity. MTO informed witnesses that MTO could not base a determination of a policy violation solely on anonymous accounts.

MTO interviewed Coach McKeever on three separate occasions, on August 23, September 13, and September 28, 2022. The first interview was conducted via Zoom; the second two were conducted in person. The interviews totaled approximately 15 hours.

MTO reviewed approximately 1,700 documents collected from the Cal Athletics Department, OPHD, Coach McKeever's Cal email account, and from witnesses who provided documents, such as text messages and medical records.⁶ In addition, an MTO investigating attorney visited and photographed Spieker Aquatics Complex and Legends Aquatic Center, the pools used by the Cal women's swimming team for practice, observed the pools during team practice, and visited the surrounding Athletics Department and recreation center buildings while those practices were ongoing.

1. Evidence Review by Coach McKeever

In accordance with the University's policies and its July 12, 2022 notice of allegations to Coach McKeever, MTO provided Coach McKeever with the opportunity to review and comment on the evidence gathered, which MTO shared via a secure electronic file sharing system, Box. For the OPHD investigation, MTO provided Coach McKeever with a 147-page summary of the evidence, including summaries of information provided in witness interviews, and 144 exhibits. For the abusive conduct investigation, MTO provided Coach McKeever with 46 exhibits and two summaries of the evidence, totaling 247 pages and including summaries of information provided in witness interviews.

Coach McKeever provided written responses to both the OPHD and abusive conduct investigation evidence summaries, and MTO incorporated Coach McKeever's responses in its final findings and policy determinations.

Coach McKeever submitted a formal, written complaint to OPHD on November 28, 2022, asserting that she has been wrongfully accused of bullying and abuse and that the University's investigation of her conduct constituted gender discrimination and reflected gender-biased views. The submission included a number of written statements by former and current swimmers, former Cal coaching staff, parents of former swimmers, and coaches from other schools, attesting to the positive coaching they had experienced or observed from Coach McKeever and denying the existence of any abusive conduct.

⁶ MTO reviewed the medical records from swimmers who voluntarily provided written consent.

II. APPLICABLE STANDARDS, POLICIES & GUIDANCE

A. Scope of Review

The investigation sought to determine whether Coach McKeever engaged in the conduct alleged in the Notice of Allegations and if so, whether such conduct constituted a violation of University policies.

B. Factual Findings Standard

The standard applied in determining whether Coach McKeever violated applicable University policies is the preponderance of the evidence. This means that the totality of the evidence demonstrates that it is more likely than not that the alleged conduct occurred in violation of the applicable policy.

C. Race, National Origin, [REDACTED], and Disability Non-Discrimination Policies

1. **University of California Nondiscrimination and Affirmative Action in the Workplace⁷**

The Nondiscrimination Policy provides as its scope, “This policy applies to all University employees and applicants for employment, and where stated in policy, to paid and unpaid interns, volunteers, participants in a training program leading to employment, and independent contractors.” The University of California, in accordance with applicable Federal and State law and University policy, prohibits discrimination on the basis of race, color, national origin, religion, sex, gender identity, pregnancy, physical or mental disability, medical condition (cancer related or genetic characteristics), ancestry, marital status, age, sexual orientation, citizenship, or service in the uniformed services.

The policy is intended to be consistent with applicable state and federal laws and University policies.

2. **Policies Applying to Campus Activities, Organizations and Students: Policy on Nondiscrimination (PACAOS-20)⁸**

PACAOS-20 provides that the University is committed to a policy against legally impermissible, arbitrary, or unreasonable discriminatory practices. All groups operating under the authority of The Regents are governed by this policy of nondiscrimination. The intent of the University’s policy on nondiscrimination is to reflect fully the spirit of the law. In carrying out

⁷ Ex. 145 [CALINT-000826] (Effective 2018); *see also* Ex. 146 [CALINT-000830] (Effective 1999); Ex. 147 [CALINT-000818] (Effective 2002); Ex. 148 [CALINT_000834] (Effective 2004); Ex. 149 [CALINT-000833] (Effective 2008); Ex. 150 [CALINT-000820] (Effective 2013).

⁸ Ex. 151 [CALINT-000817] (Effective 2008); *see also* Ex. 152 [CALINT-000827] (Effective 1994).

this policy, the University also shall be sensitive to the existence of past and continuing societal discrimination.

**3. United States Department of Education’s Office of Civil Rights’
Notice of Investigative Guidance: Racial Incidents and Harassment
Against Students At Educational Institutions, March 10, 1994.⁹**

The U.S. Department of Education’s guidance on nondiscrimination provides further insight into the application of the University’s nondiscrimination policies. *See* Racial Incident and Harassment Against Students (OCR-000015), 59 Fed. Reg. 47 (Mar. 10, 1994). In particular, the Department’s Office of Civil Rights has published investigative guidance the Department will follow “when investigating issues of racial incidents and harassment against students at educational institutions.”

Under this guidance, investigators first apply a different-treatment analysis to allegations of discrimination: a recipient violates Title VI if one of its agents or employees, acting within the scope of his or her official duties, has treated a student differently on the basis of race, color, or national origin in the context of an educational program or activity without a legitimate, nondiscriminatory reason so as to interfere with or limit the ability of the student to participate in or benefit from the services, activities or privileges provided by the recipient. The conduct is evaluated from the perspective of a reasonable person in the alleged victim’s position, considering all the circumstances.

In applying the different-treatment analysis, the Department recommended addressing the following questions:

1. Did an official or representative (agent or employee) of a recipient treat someone differently in a way that interfered with or limited the ability of a student to participate in or benefit from a program or activity of the recipient?
2. Did the different treatment occur in the course of authorized or assigned duties or responsibilities of the agent or employee?
3. Was the different treatment based on race, color, or national origin? A variety of factors are relevant to evaluating whether Respondent’s alleged conduct was based on race, including overt evidence of race-based hostility, a respondent’s treatment of other similarly situated individuals, comments that suggest reliance on stereotypes that are racially motivated, and the presence or absence of a reasonable race-neutral explanation for a given behavior.
4. Did the context or circumstances of the incident provide a legitimate, non-discriminatory, non-pretextual basis for the different treatment?

If the answer to (1)-(3) is yes and the answer to (4) is no, there should be a finding of discrimination under the different treatment standard. The Department explained that

⁹ Ex. 153 [CALINT-000832] (Dated 1994).

harassment does not have to include intent to harm, be directed at a specific target, or involve repeated incidents.

The Office of Civil Rights also provided guidance on investigating a “hostile environment” claim: A violation of Title VI may also be found if a recipient has created or is responsible for a racially hostile environment, i.e., harassing conduct (e.g., physical, verbal, graphic, or written) that is sufficiently severe, pervasive or persistent so as to interfere with or limit the ability of an individual to participate in or benefit from the services, activities or privileges provided by a recipient. A recipient has subjected an individual to different treatment on the basis of race if it has effectively caused, encouraged accepted, tolerated or failed to correct a racially hostile environment of which it has actual or constructive notice.

The Department suggested that a “hostile environment” should be found if there is a finding that:

1. A racially hostile environment existed.
2. The recipient had actual or constructive notice of the racially hostile environment.
3. The recipient failed to respond adequately to redress the racially hostile environment.

To determine whether a “racially hostile environment” exists, investigators should: examine the context, nature, scope, frequency, duration, and location of racial incidents, as well as the identity, number, and relationships of the persons involved. The harassment must in most cases consist of more than casual or isolated racial incidents to establish a Title VI violation. Generally, the severity of the incidents needed to establish a racially hostile environment under Title VI varies inversely with their pervasiveness or persistence. The Department further noted that “[i]n some cases, a racially hostile environment requiring appropriate responsive action may result from a single incident that is sufficiently severe. Such incidents may include, for example, injury to persons or property or conduct threatening injury to persons or property.”

The Department of Education has also issued guidance regarding how its investigation of discrimination interacts with the First Amendment. The Department has explained that “the offensiveness of a particular expression, standing alone, is not a legally sufficient basis to establish a hostile environment under the statutes enforced by OCR.”¹⁰ Rather, “[i]n order to establish a hostile environment, harassment must be sufficiently serious (i.e., severe, persistent or pervasive) as to limit or deny a student’s ability to participate in or benefit from an educational program.”

¹⁰ Ex. 154 [CALINT-000825].

D. Disability Non-Discrimination Policies

1. Americans with Disabilities Act¹¹

The Americans with Disabilities Act (“ADA”) prohibits discrimination on the basis of disability in all services, programs and activities provided to the public by State and local governments, except public transportation services. The ADA also prohibits harassment on the basis of disability. A disability is defined as a physical or mental impairment that substantially limits one or more major life activities, a person who has a history or record of such an impairment or a person who is perceived by others as having such an impairment.

2. PACAOS Guidelines Applying to Nondiscrimination on the Basis of Disability¹²

Under these guidelines, it is considered discriminatory to “deny a qualified individual with a disability to participate in, or benefit from, any aid, benefit, or service” that the University provides, including intercollegiate athletics.

3. United States Department of Education’s Office of Civil Rights’ Dear Colleague Letter, July 25, 2000¹³

According to the Department of Education, disability discrimination includes conduct that creates a hostile environment. When harassing conduct is sufficiently severe, persistent, or pervasive that it creates a hostile environment, it can violate a student’s rights under ADA regulations. A hostile environment may exist even if there are no tangible effects on the student where the harassment is serious enough to adversely affect the student’s ability to participate in or benefit from the educational program. The Department provided the below examples of harassment that could create a hostile environment:

1. Several students continually remark out loud to other students during class that a student with dyslexia is “retarded” or “deaf and dumb” and does not belong in the class; as a result, the harassed student has difficulty doing work in class and her grades decline.
2. A student repeatedly places classroom furniture or other objects in the path of classmates who use wheelchairs, impeding the classmates’ ability to enter the classroom.

¹¹ Ex. 155 [CALINT-000821] (January 19, 2012 Department of Education Dear Colleague Letter).

¹² Ex. 156 [CALINT-000822] (Effective 1994).

¹³ Ex. 157 [CALINT-000823].

3. A teacher subjects a student to inappropriate physical restraint because of conduct related to his disability, with the result that the student tries to avoid school through increased absences.
4. A school administrator repeatedly denies a student with a disability access to lunch, field trips, assemblies, and extracurricular activities as punishment for taking time off from school for a required activity related to the student's disability.
5. A professor repeatedly belittles and criticizes a student with a disability for using accommodations in class, with the result that the student is so discouraged that she has great difficulty performing in class and learning.
6. Students continually taunt or belittle a student with mental retardation by mocking and intimidating him so he does not participate in class.

4. Role of Cal Intercollegiate Athletic Coaches in Medical Care¹⁴

This policy, effective June 14, 2016, was intended to prevent interference in medical care of Cal intercollegiate student-athletes and to ensure that Cal complies with NCAA Bylaws related to medical care autonomy. It provides examples of inappropriate behavior by coaches, including discouraging a student athlete from seeking medical care, attempting to hide an athlete's injury, or encouraging a student to do so. The policy provides that coaches should ensure that any known injury is fully evaluated by medical personnel. The policy also prohibits coaches from treating disorders or prescribing or recommending treatment plans, including suggesting a specific test or medication. The policy also prohibits coaches from diagnosing medical issues or disorders and recommending individual treatment plans, medications, or services. Finally, the policy prohibits coaches from disregarding restrictions placed on student athletes' participation by medical staff. This includes ignoring return-to-play decisions or putting a student-athlete back into a practice/competition when medical staff has not cleared the student to return to play.

E. Abusive Conduct Policies & Guidance

1. UC Berkeley's Workplace Bullying Prevention Policy¹⁵

This policy, effective May 2016, defines bullying as "a pattern of repeated behavior that a reasonable person would find hostile, offensive, and unrelated to the University's legitimate business interests." Such behavior is forbidden, and may take physical, verbal, or written form. The policy also prevents retaliation (e.g., threats, intimidation, reprisals, and adverse actions related to employment) against any person who reports bullying, assists someone with a report of bullying, or participates in an investigation or resolution of a bullying complaint.

¹⁴ Ex. 158 [CALINT-000819] (Effective 2016).

¹⁵ Ex. 159 [CALINT-000824] (Effective 2016).

2. University of California Guidance on Abusive Conduct and Bullying in the Workplace¹⁶

The July 2016 Guidance on Abusive Conduct and Bullying in the Workplace defines abusive conduct as “conduct of an employer or employee in the workplace, with malice,¹⁷ that a reasonable person would find hostile, offensive, and unrelated to an employer’s legitimate business interests.” That definition finds its origin in California Assembly Bill 2053, which requires education and training on the prevention of abusive conduct. The Guidance describes that, under the “Reasonable Person Test[,] [t]hrough the intention of the person responsible for the conduct may be considered, it is not determinative.” A draft amendment to the Guidance, slated to go into effect on January 1, 2023, emphasizes that abuse does not depend on the intent of the perpetrator.

The Department of Education also published a “Dear Colleague Letter” on harassment and bullying on October 26, 2010.¹⁸ According to the Department of Education, “[h]arassment does not have to include intent to harm, be directed at a specific target, or involve repeated incidents. Harassment creates a hostile environment when the conduct is sufficiently severe, pervasive, or persistent so as to interfere with or limit a student’s ability to participate in or benefit from the services, activities, or opportunities offered by a school.”

The University of California Guidance¹⁹ explains that abusive conduct may include repeated infliction of verbal abuse, such as the use of derogatory remarks, insults, and epithets, verbal or physical conduct that a reasonable person would find threatening, intimidating, or humiliating, or the gratuitous sabotage or undermining of a person’s work performance. A single act shall not constitute abusive conduct, unless especially severe and egregious. It then provides examples of what might be considered abusive conduct:

1. Use of abusive and/or insulting language (written, electronic or verbal)
2. Spreading false information and malicious rumors
3. Behavior, language, or gestures that frighten, humiliate, belittle, or degrade, including criticism or feedback that is delivered with yelling, screaming, threats, implicit threats, or insults

¹⁶ Ex. 160 [CALINT-000829] (Effective 2016).

¹⁷ Although the term “malice” appears in the definition of bullying in the University of California Guidance, mirroring the language in AB 2053, neither UC Berkeley nor the Department of Education impose an intent requirement to prove abusive conduct. This understanding is consistent with the University of California’s Workplace Bullying Prevention Policy, the 2010 Department of Education Dear Colleague Letter on harassment and bullying, and the definition of the reasonable person standard found in the University of California Guidance on Abusive Conduct and Bullying in the Workplace.

¹⁸ Ex. 161 [CALINT-000816].

¹⁹ Ex. 160 [CALINT-000829] (Effective 2016).

4. Encouraging others to act, singly or in a group, to intimidate or harass other individuals
5. Making inappropriate comments about a person's appearance, lifestyle, family, or culture, country of origin, visa status, religious/spiritual/philosophical beliefs, or political views in a manner not covered by the University's policies prohibiting discrimination
6. Teasing or making someone the brunt of pranks or practical jokes
7. Making unwanted physical contact or inappropriately encroaching on another individual's personal space, in ways that would cause discomfort and unease, in a manner not covered by the University's Sexual Violence and Sexual Harassment policy
8. Purposefully excluding, isolating, or marginalizing a person from normal work activities for non-legitimate business purposes
9. Making inappropriate threats to block a person's academic or other advancement, opportunities, or continued employment at the University
10. Sabotaging or undermining a person's work performance

The guidance similarly sets out examples of non-abusive behaviors:

1. Providing performance appraisals to employees, including negative appraisals
2. Delivering constructive criticism
3. Grading student performance, including negative assessments
4. Coaching or providing constructive feedback
5. Monitoring or restricting access to sensitive and confidential information for legitimate business reasons
6. Scheduling regular or ongoing meetings to address performance issues
7. Setting ambitious performance goals to align with departmental goals
8. Investigating alleged misconduct or violation of University policy
9. Counseling or disciplining an employee for performance, engaging in misconduct, or violating University policy
10. Engaging in assertive behavior
11. Having a disagreement

12. Making unpopular statements or articulating positions on controversial issues
13. Exercising academic freedom, including comments about scholarship, instruction within the classroom, different approaches to curriculum, opposing opinions about policy issues, or academic achievement, even if the content is considered insulting by the recipient and even if delivered passionately

Retaliation is defined as an adverse action taken against an individual based on their report of Abusive Conduct or participation in an investigation or other resolution process provided for in this policy. An adverse action is conduct that would discourage reporting Abusive Conduct or participating in a process provided for in this policy and includes, but is not limited to, threats, intimidation, or coercion.

3. UC Berkeley Body Composition Measurement and Athlete Weighing Protocol²⁰

These protocols limit the viewing, sharing, and use of body composition and weight data. For example, team results may be reviewed only between the strength and conditioning staff and the Sports Registered Dietician after testing is completed. Coaches are permitted to receive information showing trends regarding change in team and individual body composition testing, but, as of 2017, coaches are not given the underlying, raw data. Coaches are permitted to meet with the sports dietician, strength and conditioning coach, and/or the sports medicine team when they have concerns about a specific athlete in order to create an appropriate treatment plan for said athlete. Relatedly, athletes will not receive their results at the time of their testing, but they can meet later with the sports dietician or strength and conditioning coach to discuss their individual results in detail.

In 2019, updates were made to the 2017 protocols, emphasizing that weight data is personal information and should be treated in a private matter, kept confidential, and only discussed or interpreted by an Athletic Performance Coach and registered dietician.

III. ALLEGED DISCRIMINATION AND HARASSMENT AGAINST [REDACTED] SWIMMERS

A. Swimmer A

1. Swimmer A's Account

Swimmer A is [REDACTED] swimmer who joined the Cal women's swimming team as a freshman in the [REDACTED] academic year. She alleged that Coach McKeever subjected her to persistent verbal abuse, some of which evoked stereotypes of [REDACTED], denied her training and competition opportunities, and targeted her for criticism and isolated

²⁰ Ex. 162 [CALINT-000828] (Effective 2019); Ex. 163 [CALINT-000815] (Effective 2017); Ex. 164 [CALINT-000831] (Swimmer, 2017 Email Update on Policy Changes).

from her teammates. These issues began early in the academic year. In our interviews with her, Swimmer A described the following experiences.

(a) *Beach Trip*

At the beginning of the year and leading up to the [REDACTED] meet in late September [REDACTED], Coach McKeever often criticized Swimmer A's posture. Coach McKeever yelled at Swimmer A for standing with her hips tilted to one side or for slouching. Swimmer A described these conversations as one-sided, with Coach McKeever yelling at her and Swimmer A not responding verbally.

After the swim meet against [REDACTED], the team took a trip to the beach. At the beach, each class met separately with the coaching staff. According to Swimmer A, Coach McKeever had met with the upperclassmen and during those meetings insinuated that Swimmer A was bringing down the team. At the freshmen meeting with the coaches, Coach McKeever had all of the freshmen sit in a circle. Coach McKeever was mad and said that she was sick of people acting like they were doing everyone a favor by being on the team. Coach McKeever singled out Swimmer A and told Swimmer A she was sick of Swimmer A's "bullshit." Coach McKeever called Swimmer A a [REDACTED] in a negative way. Coach McKeever also stated that Swimmer A brought down the team, everyone wanted her off the team, the captains were fed up with her, and Coach McKeever would not have recruited her if she had known this information. Swimmer A asked to respond. She said she had fixed her posture and made a conscious effort, but Coach McKeever replied that Swimmer A was just saying this because Coach McKeever was calling her out on her "bullshit."

Coach McKeever directed all the freshman sitting in the circle to raise their hands if they thought Swimmer A had an attitude. Some swimmers raised their hands. Coach McKeever then required that the team give examples of how Swimmer A had an attitude. [REDACTED] Swimmer B (Swimmer, [REDACTED]), mentioned that when Swimmer A talked to her parents on the phone, she told them that the freshman swim experience was horrible and like boot camp. Swimmer J (Swimmer, [REDACTED]) said that based on what she heard from [REDACTED], it sounded like it would be hard to live with Swimmer A. Being criticized in this manner in front of everyone was extremely embarrassing for Swimmer A.

Later, Swimmer A asked her teammates for their opinions on why Coach McKeever thought Swimmer A had an attitude. Swimmer J (Swimmer, [REDACTED]) said she thought it was because Swimmer A did not stand symmetrically. Swimmer B told Swimmer A that Swimmer J said that Swimmer B had to say something in the group because Swimmer J had been upset that Coach McKeever was mad at the team. Other people said they only raised their hands because they were scared and wanted to be on Coach McKeever's good side. Another teammate told Swimmer A that Swimmer A had said something in class to a professor as a joke, but it could possibly have been interpreted as attitude, although the teammate knew it was a joke. Swimmer A believes that Coach McKeever either embellished or fabricated information about how her teammates viewed Swimmer A because Swimmer A later spoke to the captains and the captains informed Swimmer A that they had never said they wanted her off the team.

After this experience on the beach trip, Coach McKeever and [REDACTED] Staff A (Assistant Coach, [REDACTED]) told her that she should talk to [REDACTED] to figure out what she needed to fix. Swimmer K (Swimmer, [REDACTED]) told Swimmer A to show Coach McKeever that Swimmer A wants to be on the team.

(b) Demeanor and Perceived Attitude

Swimmer A believed that she was pre-judged by Coach McKeever before Coach McKeever had a chance to know her as a person. Swimmer A felt that Coach McKeever painted Swimmer A as the [REDACTED] in front of everyone on the team by describing Swimmer A as having an attitude and calling Swimmer A [REDACTED] "entitled," and a [REDACTED]. Because Coach McKeever assigned the [REDACTED] stereotype to Swimmer A, she interpreted Swimmer A's intentions as negative. For example, Coach McKeever assumed that Swimmer A was defiant when Swimmer A crossed her arms or stood asymmetrically and did not consider other possible interpretations of Swimmer A's body language, such as Swimmer A's posture reflecting Swimmer A feeling cold or tired. Swimmer A believed that Coach McKeever viewed swimmers who were different in a negative manner. As another example, Swimmer A stated that if an individual was not the perfect swimmer in looks or body type, Coach McKeever found a way to isolate that individual and harass her.

Swimmer A said that, as a result of Coach McKeever's treatment of her, she became a version of herself that did not reflect her true personality. Swimmer A described herself as normally an outspoken person, but she did not speak much at practice during the [REDACTED] academic year. When asked if the treatment was because she did not show sufficient effort at practice, Swimmer A said that she worked hard at practice.

Swimmer A said that she was not disrespectful, while others on the team were disrespectful, and therefore Coach McKeever's decision to criticize and punish her was based on something besides Swimmer A's actions. Swimmer A reported that other swimmers were disrespectful to Coach McKeever, but Coach McKeever did not treat those swimmers as negatively as she treated Swimmer A. For example, Swimmer A reported that Swimmer L (Swimmer, [REDACTED]) once screamed at Coach McKeever, after which they engaged in a screaming match together. During one conflict with Swimmer L, Coach McKeever said she had never felt so disrespected by anyone in her entire coaching career, but Coach McKeever did not impose any consequences on Swimmer L for this behavior. Swimmer A also described an incident that occurred during the fall family weekend, which coincided with a recruiting weekend. The team took some recruits to San Francisco. Swimmer A chose not to go with the team to San Francisco. Those who went to San Francisco were caught [REDACTED]. Coach McKeever told those swimmers not to embarrass her that way again but did not impose any other punishment.

Swimmer A denied making statements or engaging in conduct indicating disrespect for Coach McKeever or the team. When asked if Swimmer A ever made a comment to a teammate that Coach McKeever needed to earn Swimmer A's respect, Swimmer A denied making that statement.

(c) *Disparate Access to Resources*

(i) *Practice*

Swimmer A also described disparate treatment in training opportunities. Swimmer A stated that Coach McKeever kicked Swimmer A out of practice twice a week. Swimmer A found it hard to remember all of the details when Coach McKeever explained instructions for a set only twice, and therefore Swimmer A sometimes made mistakes while performing a set during practice. When Swimmer A made a mistake, Coach McKeever pulled her out of practice and screamed, “[Swimmer A] get out, I don’t want you here, get out of the pool, leave, get out.” Other swimmers also often made mistakes while doing the sets, but Coach McKeever did not kick them out for their mistakes.

Coach McKeever also made comments that other swimmers deserved to be at practice more than Swimmer A did. Coach McKeever sometimes pulled Swimmer A and [REDACTED] out of practice and asked someone like Swimmer M (Swimmer, [REDACTED]). One day as they did stations at practice, there were not enough pulleys for all of the swimmers. Coach McKeever said that if someone wanted to leave they could, but no one volunteered. Swimmer A knew it would look bad for her if she chose to leave. Coach McKeever said that since no one wanted to leave, then one person had to sit out and watch practice. When again no one volunteered to leave, Coach McKeever selected Swimmer A and told her to sit and watch practice. According to Swimmer A, she was the top recruit for [REDACTED] in her class, so it did not make sense for her to sit out when there were slower people who could have been selected to leave. Swimmer N (Swimmer, [REDACTED]) then volunteered to stop practicing instead of Swimmer A because Swimmer N’s shoulder hurt, an action that got Swimmer N in trouble with Coach McKeever for being defiant.

During World Trials in April, Coach McKeever was away from the university, and the team trained with the men’s team. At this point, [REDACTED] Staff A (Assistant Coach, [REDACTED]) [REDACTED], so there was no one to coach the women’s team. Coach McKeever said it would be unfair to the men’s coach to have to deal with Swimmer A and Swimmer B for two weeks, so Coach McKeever did not allow them to train. Swimmer A and Swimmer [REDACTED] were the only two swimmers not allowed to train with the men’s team.

(ii) *Competitions*

The coaching staff did not permit Swimmer A to compete in the [REDACTED] held in early October [REDACTED]. Swimmer A was the only injured swimmer who was not permitted to compete in that invitational. According to Swimmer A, Coach McKeever said Swimmer A was not ready to represent the university. Swimmer A also believed she was not allowed to go to this invitational because, during practice the week of the invitation, Swimmer A had asked permission from [REDACTED] Staff A (Assistant Coach, [REDACTED]) to leave practice to use the bathroom. When Swimmer A returned from the bathroom, [REDACTED] Staff A told her to leave practice because she thought Swimmer A was trying to skip the hardest part of

the set. Swimmer A explained that her stomach hurt and offered to make up the set, but Staff A later told Coach McKeever that Swimmer A had never said her stomach hurt. Coach McKeever thought that Swimmer A was calling Staff A a liar.

At the next swim meet, against [REDACTED] in October, Coach McKeever made Swimmer A swim in the break between events rather than compete in the meet itself. According to Swimmer A, there was no reason for Swimmer A to swim in the breaks because her times were fast enough for her to swim in the actual events.

Coach McKeever also threatened to not let Swimmer A compete in [REDACTED] meet in December [REDACTED]. The [REDACTED] meet was [REDACTED]. Despite the threat, Swimmer A was allowed to compete for the first time at the [REDACTED] meet. Swimmer A recounted that she had great times in her races, and, as result, her relationships with Coach McKeever and her teammates improved.

(d) Isolation from Teammates

Swimmer A stated that she felt isolated on the team. One time when Swimmer A missed practice because she was sick, Coach McKeever asked the rest of the team if they felt better without Swimmer A there, with the insinuation that they should say yes. Swimmer A in turn isolated herself from the team because she believed that Coach McKeever targeted swimmers who associated with a swimmer whom Coach McKeever did not like. Since the team was built on fear of and desire to please Coach McKeever, swimmers avoided those whom Coach McKeever disliked. Swimmer A's father confirmed that when he visited the school, he observed that the other swimmers left in groups with their friends, but Swimmer A came out by herself, and he found this isolation to be alarming.

Another time, Swimmer A had food poisoning and was worried she had [REDACTED]. She had not been cleared yet to return to practice. The medical staff told her that if her symptoms subsided for the rest of the day, she could go back to practice the following day. At the team meeting that day, Swimmer A tried to attend remotely by having [REDACTED] Swimmer B (Swimmer, [REDACTED]), who was present at the meeting, [REDACTED], but Coach McKeever instructed Swimmer B to put away her [REDACTED] because Coach McKeever did not want Swimmer A there, as Coach McKeever believed that Swimmer A was already medically cleared and was just too lazy to walk down to the meeting. At practice the next day, Coach McKeever asked Swimmer A why Swimmer A did not apologize and if Swimmer A thought she was too good to hear her teammates' goals. Coach McKeever told Swimmer A that her entitlement was "through the roof" and lectured her on character. Swimmer A asked if she had to leave, and Coach McKeever said that she wanted Swimmer A to leave but that Swimmer A could get back in the pool if Swimmer A wanted. Swimmer A felt it was clear that Coach McKeever did not want her on the team and was trying to get her to quit.

(e) Verbal Abuse

Swimmer A said that Coach McKeever yelled at her every day during the first semester. For example, Coach McKeever often yelled at Swimmer A for standing with her hips tilted to one side or for slouching. Coach McKeever also used curse words when yelling at

Swimmer A and the other swimmers. Swimmer A responded to Coach McKeever only if Coach McKeever wanted a response, but she typically just stood there and took whatever Coach McKeever said. If Swimmer A did try to respond to one of Coach McKeever's allegations, Coach McKeever yelled at her and said "you're saying this because I'm calling you out on your shit."

Coach McKeever also told Swimmer A that Swimmer A was an embarrassment to the team, herself, and Coach McKeever, and she needed to gain confidence. Before Swimmer A's race at the Pac-12 competition, Coach McKeever told Swimmer A she would not achieve her goals because she was not fast enough in practice. During the [REDACTED], Coach McKeever again told Swimmer A that she was an embarrassment to the team and the university.

In a meeting with [REDACTED] Staff A [REDACTED] and [REDACTED] Staff B [REDACTED], Swimmer A reported that Coach McKeever belittled her constantly, called her "untalented," "uninspiring," and a [REDACTED] and told Swimmer A that the captains wanted her off the team.

(f) Physical Appearance

According to Swimmer A, Coach McKeever commented on Swimmer A's physical appearance and style. Swimmer A [REDACTED] Coach McKeever remarked on her [REDACTED] asked her things like, "How do you swim with [REDACTED]" or "How do you swim [REDACTED]" When Coach McKeever spoke to other coaches at meets (for example, [REDACTED] Staff C, and possibly coaches from other schools), she said things like "can you believe she does anything with [REDACTED]" in front of everyone. Swimmer A felt she was being made fun of for her [REDACTED]. When other members of the team [REDACTED] Coach McKeever did not comment on [REDACTED]. She also did not comment on other peoples' [REDACTED]. Swimmer A thought that Coach McKeever may have commented [REDACTED] but Swimmer A was not aware of any comments that Coach McKeever had made concerning Swimmer A's [REDACTED].

(g) Attendance at Optional Practices

During spring training, Swimmer A attended only the mandatory practices. She had taken a break from swimming because [REDACTED], and she was working her way back into full practice (and had told her parents she intended to start attending both mandatory and optional practices). During this time, Swimmer A's teammates informed her that Coach McKeever had used the n-word at a practice Swimmer A had not attended. Swimmer K (Swimmer, [REDACTED]), and others who were at the practice told Swimmer A that Coach McKeever was discussing how Coach McKeever did not like rap music and started mocking rap music by saying, "I hate rap," and then mimicked rap music's use of curse words and the n-word. Swimmer A's teammates informed Swimmer A that Coach McKeever used the unbridged form of the n-word. After learning of Coach McKeever's

use of the n-word, swimming made Swimmer A anxious, and she only went to mandatory practices as she did not want to be around Coach McKeever at all. (See Section III.C.2 below.)

During spring training, Swimmer A could not make the intervals for the individual medley sets because the sets included [REDACTED], and she does not swim [REDACTED]. Coach McKeever pulled Swimmer A and Swimmer B (Swimmer, [REDACTED]) aside and said that if they could not make the intervals, Coach McKeever would cut them from the team in August, but she would be happy to help them enter the transfer portal [REDACTED] if they wanted.

(h) Effect of Treatment on Swimmer A

Swimmer A reported that her interactions with Coach McKeever had a negative effect on her. She cried at least once a day, and she previously was not a frequent crier. Each morning, Swimmer A sobbed about having to go to practice. Swimmer A talked to her parents on the phone three times a day, which was contrary to the independence that she had hoped for in college. She called her mother nearly every day before practice so that her mother could pray with her and calm her. She dreaded going to sleep because she knew she would have to wake up and go to morning practice again. Swimmer A had never gotten nervous for swim meets before, but she did while at Cal.

Over the Thanksgiving break, Swimmer A slept in her parents' bed the night before going back to school and sobbed and begged not to return to Cal. The same thing happened during the winter and spring breaks. Swimmer A had to start going to therapy to address her anxiety, even though she had never previously had anxiety. She reported that her self-confidence was degraded and she was still working on believing in herself in the pool again. At the time of our interview [REDACTED]

2. Relevant Documentation

(a) Speed

In her interview, Coach McKeever said that Swimmer A was the second slowest swimmer on the team. Team records we reviewed are not consistent with this assertion. In an emailed list entitled the [REDACTED] Swimmer A was listed as the [REDACTED] fastest swimmer in the 100-yard [REDACTED] (out of [REDACTED] Cal swimmers). Swimmer A was listed as the [REDACTED] fastest swimmer in the 100-yard [REDACTED] (out of [REDACTED] Cal swimmers). Swimmer A's relay team [REDACTED] was the [REDACTED] team (out of [REDACTED] Cal relay teams), and her relay team for the [REDACTED] [REDACTED] was the [REDACTED] fastest team (out of [REDACTED] Cal relay teams).²¹

(b) [REDACTED]

The decision to not allow Swimmer A to compete at [REDACTED] occurred shortly before the competition. During the week of the competition, Swimmer A's

²¹ Ex. 1 [CALINT-000542].

name was included as a participant in emails exchanged between Coach McKeever, [REDACTED] Staff D (Director of Operations, [REDACTED]), [REDACTED] Staff A (Assistant Coach, [REDACTED]), and [REDACTED] Staff E [REDACTED] about the logistics for travel to, and lodging at, the meet.²² Swimmer A was also included on emails from Coach McKeever to the team with information about the meet on [REDACTED] and early on [REDACTED].²³ On the evening of [REDACTED] (two days before the [REDACTED]), Coach McKeever emailed [REDACTED] Staff D, [REDACTED] Staff A, and [REDACTED] Staff E and stated that she intended to inform Swimmer A and an injured swimmer, [REDACTED], the following morning that they would not travel to the invitational.²⁴

(c) *Attitude at Practices*

On November [REDACTED], Swimmer A sent the following email to Coach McKeever:²⁵

Hi Coach Teri,

I wanted to provide some insight on my recent practices. I know I have been messing up in practice. I don't want you to think I'm not putting in the effort or paying attention. It may not look like it but I am extremely hard on myself and I get frustrated to the point where it prevents me from performing to the best of my ability. Moving forward I plan on talking to my therapist to work on ways to get through this.

I also want you to know that every recommendation that has been given is taken to heart and I am truly working hard to become an asset to this team. I value your expertise and guidance so if you have any further suggestions on how I can deal with this please let me know.

Thanks.

[Swimmer A]

There was no record of a response from Coach McKeever.

On May [REDACTED], Swimmer A emailed Coach McKeever and said,

Hi Coach Teri,

²² Ex. 2 [CALINT-000568]; Ex. 3 [CALINT-000569].

²³ Ex. 4 [CALINT-000570].

²⁴ Ex. 5 [CALINT-000567].

²⁵ Ex. 6 [CALINT-000684].

I wanted to let you know that I really did want to be at practice today. I've just been extremely stressed with finals coming up and it showed in my body language today. Also, part of the reason I looked so sad is because today is the one year anniversary of my grandfather's passing. Normally swimming is my safe space that helps me relax and get out of my head and I am so sorry for the misunderstanding and unintentionally projecting my emotions into the team atmosphere. It truly had nothing to do with not wanting to be at practice.

Coach McKeever's response stated,²⁶

{Swimmer A}-

Thanks for the note.

I understand all this and if this was the first or only time I'd seen what I saw this morning it wouldn't be an issue.

We will have to connect down the road because I'm not convinced that your swimming goals align with the program's goals. This is based on my observations for the past year.

Best of luck with your finals!

Teri

(d) Illness and the Allegation of [REDACTED]

Swimmer A stated that she once tried to attend a team meeting via [REDACTED] because she was sick and still experiencing symptoms [REDACTED]. In her interview (see below), Coach McKeever stated that she did not allow Swimmer A to participate via [REDACTED] because Swimmer A had not provided Coach McKeever with any information about her health situation (Coach McKeever said she learned of the situation only from [REDACTED] Staff F (Athletic Trainer, [REDACTED])²⁷). On November [REDACTED], Swimmer A wrote Coach McKeever the following email:²⁸

Hi Teri,

I just wanted to let you know that [REDACTED] [REDACTED]. Also, I spoke with [REDACTED] Staff F] and we agreed that I shouldn't come to practice until I no longer have any [REDACTED]

²⁶ Ex. 7 [CALINT-000632].

²⁷ [REDACTED] Staff F started at Cal in [REDACTED] but has worked directly with the women's swimming and diving program since [REDACTED] [REDACTED] [REDACTED]

²⁸ Ex. 8 [CALINT-000685].

██████████. Unfortunately, I still don't feel well ██████████ so I won't be at afternoon practice today. I hope to be back for practice tomorrow but I will continue keeping you updated.

Thanks.

[Swimmer A]

(e) Attendance at Optional Practices

In their interviews, Coach McKeever and several team members questioned Swimmer A's work ethic because she did not attend certain practices in Spring ██████████ (see below). Earlier that academic year, in August ██████████, Swimmer A wrote to Coach McKeever:²⁹

Hi Coach Teri.

I just wanted to let you know that I won't be at practice tomorrow morning because I have an eye exam (I left and lost my glasses at home). I understand this practice is optional but I wanted you to know that if I could be there I would. I scheduled this appointment before we got our August schedules and they said I wouldn't be able to get in for a while if I cancel.

Thanks.

[Swimmer A]

On March ██████████, Coach McKeever sent an email to the team: "As previously mentioned we'll be offering practices during spring break for anyone that wishes to attend; these are completely voluntary and are being offered because of requests from team members."³⁰ Additionally, in Spring ██████████, Coach McKeever created a new practice schedule after the NCAA championship competition. With this new schedule, the team was divided into three groups based on the likelihood of a swimmer competing in ██████████. Those that were unlikely to go to ██████████, including Swimmer A, were not allowed to attend certain practices. Coach McKeever documented the new practice calendar and emailed it to the team.³¹

There are also emails between Coach McKeever and Swimmer A in which Swimmer A informed Coach McKeever of Swimmer A's scheduling conflicts with practice. For example, on April ██████████, Swimmer A emailed Coach McKeever:

Hi Coach Teri.

²⁹ Ex. 9 [CALINT-000701].

³⁰ Ex. 10 [CALINT-000663].

³¹ Ex. 11 [CALINT-000657]; Ex. 12 [CALINT-000658]; Ex. 13 [CALINT-000649].

I have a conflict at 2:30 pm with practice today. I am supposed to help show around prospective [REDACTED] students for one of the scholarships that I am a part of. I would like to come to practice today since I can't come tomorrow but I would have to leave early. Is this okay?

Thank you,

[Swimmer A]

Coach McKeever's response stated, "[Swimmer A]- thanks for your note but this won't be possible."³²

On May [REDACTED], Swimmer A emailed Coach McKeever to inform her that she would need to miss practice on the following day due to an academic review session and asked that Coach McKeever send her the planned workout so that Swimmer A could complete the workout on her own. Coach McKeever responded that "It doesn't really work like that to 'make up the practice', plus our session is a long course and you won't be able to do that. If you want to swim you should have all those practices from winter, maybe use one of those."³³

3. Other Witness Accounts

(a) Beach Trip

Multiple witnesses corroborated Swimmer A's account of the team's beach trip in September [REDACTED]. According to Swimmer B (Swimmer, [REDACTED]), Coach McKeever had the freshmen sit in a circle and asked the freshmen to raise their hands if they thought Swimmer A was a problem. Coach McKeever framed raising one's hand to say Swimmer A was a problem as being bold or courageous and suggested that it was a sign of weakness to not raise one's hand. Swimmer B remembers three or four people raising their hands, probably out of fear. According to Swimmer B, if a swimmer showed sympathy towards Swimmer A, then Coach McKeever disliked that swimmer as well.

Swimmer B said that, before the trip occurred, Swimmer A was always quiet. In contrast, freshman Swimmer L (Swimmer, [REDACTED]), who was [REDACTED], frequently and actively talked back to Coach McKeever but was not described by Coach McKeever as having an attitude problem.

According to Swimmer P (Swimmer, [REDACTED]), Coach McKeever had everyone raise their hand if they thought Swimmer A did not deserve to be on the team. Coach McKeever seemed to feel strongly about this issue, and this influenced the rest of the team. Coach McKeever also called Swimmer A a [REDACTED] to her face during the freshman class meeting at the beach trip.

³² Ex. 14 [CALINT-000636].

³³ Ex. 15 [CALINT-000627].

According to Jane Roe #1,⁴⁴ each class had a meeting during the [REDACTED] trip. During the freshman class meeting, Coach McKeever singled out most swimmers and said something to each person. Coach McKeever repeatedly told Swimmer A that Swimmer A had an attitude problem and instructed everyone "raise your hand if you think [Swimmer A] has a shitty attitude." Approximately half the swimmers raised their hands, which shocked the reporting swimmer because she thought that, although Swimmer A talked and stood a certain manner, that manner did not reflect a poor attitude. The reporting swimmer was not sure if people actually thought that Swimmer A had an attitude or if they just wanted to agree with Coach McKeever. She described everyone as being on edge during the meeting.

(b) *Demeanor*

(i) *Teammates' Observation of Swimmer A's Actual Demeanor*

Swimmer K (Swimmer, [REDACTED]) and Swimmer J (Swimmer, [REDACTED]) described Swimmer A as a quiet person. Swimmer K felt that Swimmer A was different from the cookie cutter mold that many swimmers reflected, but she never did anything disrespectful. Swimmer A had explained to Swimmer K that Swimmer A had learned to be quiet in threatening interactions with authority figures. Swimmer K explained that, from Swimmer A's perspective, she was doing the most she could in an effort to make things work. Swimmer J said that Swimmer A was very quiet and sometimes did not hit the required times, which conveyed an attitude of not wanting to be there or putting in effort.

According to Swimmer N (Swimmer, [REDACTED]), Swimmer A and Swimmer B (Swimmer, [REDACTED]) did not talk back to Coach McKeever in a disrespectful way. Swimmer N said that Swimmer L (Swimmer, [REDACTED]) sometimes did talk back to Coach McKeever disrespectfully, but with Swimmer L, Coach McKeever both respected and disliked the behavior at the same time, and Swimmer L was not on Coach McKeever's so-called "shit list," the term swimmers used to refer to those who were constantly criticized by Coach McKeever. Jane Roe #1 confirmed that when Coach McKeever yelled at Swimmer A and Swimmer B, they stayed calm and took the yelling without yelling back at Coach McKeever.

In contrast, a number of swimmers described Swimmer A as having an attitude, although most noted that Swimmer A's attitude improved over the course of the season. Swimmer Q (Swimmer, [REDACTED]) and [REDACTED] Staff A (Assistant Coach, [REDACTED]) both stated that Swimmer A displayed a negative attitude. Swimmer Q stated that Swimmer A sometimes talked back to Coach McKeever. [REDACTED] Staff A stated that the swimmers told Swimmer A that she had an attitude, and Swimmer A was receptive to this feedback and changed her behavior. [REDACTED] Staff A stated that Swimmer A rolled her eyes at the beginning of the school year, but by the end of the year Swimmer A had completely changed and acknowledged if she was potentially being rude.

⁴⁴ MTO gave less weight to the accounts of swimmers who requested anonymity in the interview process.

According to Swimmer R (Swimmer, [REDACTED]), at the beginning of the season, Swimmer A told Swimmer R that Coach McKeever needed to earn her respect. This statement shocked Swimmer R because Swimmer R believed that if a swimmer chose a program, especially a top five program, then the swimmer has chosen the coach and should respect that coach. At the time Swimmer A made this statement, it appeared that Swimmer A wanted someone to confide in and was confiding in Swimmer R because Swimmer R was also new to the team. Swimmer R shared Swimmer A's statement with [REDACTED] juniors on the team, specifically, Swimmer S (Swimmer, [REDACTED]) or Swimmer T (Swimmer, [REDACTED]). Swimmer U (Swimmer, [REDACTED]) stated that she observed Swimmer A talk back to Coach McKeever.

A number of swimmers also commented that Swimmer A's body language was negative. Swimmer R stated that the swimmers were expected to stand tall with good posture. They were not supposed to cross their arms and were not allowed to sit down. Coach McKeever also expected them to keep neutral expressions on their faces, even when they were doing something difficult and when in pain. Swimmer R said that Swimmer A did not watch her body language and sometimes got "sassy" with her body language, but improved over time. When asked to describe what she meant by "sassy," Swimmer R explained that Swimmer A walked very confidently and tall and as if she knew what she wanted.

According to Swimmer N, Swimmer B and Swimmer A were the swimmers who most often looked sleepy at practices. Swimmer A slumped over sometimes and displayed body language that one could perceive as implying she did not want to be there. Swimmer A did not understand the environment quickly enough, and Coach McKeever assumed that Swimmer A had a negative intent. Swimmer N said she did not think Coach McKeever was focused on race in reading a negative intent into Swimmer A's posture, but Swimmer N acknowledged that Coach McKeever's perception involved an unfortunate application of the "sassy" stereotype that aligned with race-based stereotypes [REDACTED].

Swimmer L described Swimmer A as being expressive in communicating what she liked or did not like. If Swimmer A did not want to be at practice, it was visible on her face, which made Coach McKeever unhappy. Swimmer A walked slowly and/or rolled her eyes. According to Swimmer L, Swimmer A did not mean it a bad way, but it was not acceptable to roll one's eyes at Coach McKeever, and Coach McKeever kicked Swimmer A out of practice for it. Coach McKeever did this by telling Swimmer A that she had an attitude and to go home. Swimmer L does not remember Coach McKeever yelling that at Swimmer A.

(ii) Coach McKeever's Portrayal of Swimmer A's Demeanor

Swimmer K (Swimmer, [REDACTED]) stated that Coach McKeever insisted to others that Swimmer A had an "attitude." Swimmer K did not agree. Swimmer K said that Swimmer A was, if anything, "a bit quiet." Swimmer K said that Swimmer A was not disrespectful toward Coach McKeever.

Swimmer V (Swimmer, [REDACTED]) said Coach McKeever did not like Swimmer A's sassiness. Swimmer V felt that Swimmer A was at times a little bit disrespectful towards Coach McKeever, but Swimmer V felt that Coach McKeever overemphasized this

attribute with Swimmer A. Swimmer V felt it was fairly evident that Coach McKeever did not want to work with Swimmer A.

Swimmer P (Swimmer, [REDACTED]) confirmed that in [REDACTED] meetings, especially in the fall, Coach McKeever called Swimmer A a [REDACTED] and said she was entitled or had an attitude. Swimmer P did not recall Coach McKeever saying that anyone else was a [REDACTED] or had an attitude but thought that she might have described others as "entitled." In her view, the words [REDACTED] and [REDACTED] were used by Coach McKeever to describe similar traits but had different connotations; [REDACTED] was used in a positive or funny way, while [REDACTED] was used negatively and carried the implication that the swimmer did not deserve to be there. For example, Coach McKeever called Swimmer W (Swimmer, [REDACTED]) a [REDACTED] because her parents paid for everything and she had expensive clothing.

Swimmer P did not believe that Swimmer A had an "attitude problem." According to Swimmer P, everyone showed up differently to practice and acted differently, but Swimmer A did not deserve to be singled out as much as she was by Coach McKeever. Swimmer P did not believe that anyone really agreed with Coach McKeever and noted that everyone who supported Coach McKeever's view were the people who always supported Coach McKeever's views. According to Swimmer P, Coach McKeever on some occasions said others had an attitude; for example, Coach McKeever sometimes determined that Swimmer X (Swimmer, [REDACTED]) had an attitude just by looking at her face. Swimmer P said that Coach McKeever often told Swimmer A she should be grateful to be on the team. According to Swimmer P, Coach McKeever said the same thing to the people on the team who were not as fast, and Coach McKeever made it seem like it was a bigger deal they were there and they should be more grateful than other people on the team.

According to Swimmer B (Swimmer, [REDACTED]), Coach McKeever developed a critique of Swimmer A that Swimmer A had an attitude. Coach McKeever often yelled at Swimmer A to fix her posture or to stop crossing her arms. Swimmer A naturally stood with her arms crossed, and Coach McKeever often yelled at her for having attitude when she stood with her hip out or arms crossed during their interactions. Swimmer B did not feel that other swimmers were called out for this as much as Swimmer A. Everyone else on the team was quiet, reserved, and scared of Coach McKeever.

According to Swimmer T (Swimmer, [REDACTED]), Coach McKeever had a lot of discussions with other swimmers about Swimmer A's "attitude." Coach McKeever did not think Swimmer A was trying hard enough in practice. Swimmer T did not think that Swimmer A had a bad attitude. Swimmer T felt that she needed time to get to know people and open up. Swimmer T described Swimmer A as being shy at first and that Swimmer A became more outwardly expressive person once she got to know people.

Swimmer J (Swimmer, [REDACTED]) said that Swimmer A came to practices with an attitude. According to Swimmer J, Swimmer A had a tough time in beginning of year in the sense that she did not think she had to put in as much effort and show the team that she wanted to be there for the team – and a big part of the team's culture was showing that one wanted to be there for the team. Swimmer A was quiet, and people interpreted that as not wanting to be there, but she is just generally a quieter person. By mid-season, Swimmer A did a good job and she

proved to everyone that she was a fast and accountable swimmer. According to Swimmer J, Coach McKeever finally saw the part of Swimmer A that was a pure racer when the team needed her to be, which helped Coach McKeever and Swimmer A gain respect for each other.

Several swimmers noted that Coach McKeever labeled Swimmer A a [REDACTED]

- Swimmer I (Swimmer, [REDACTED]) said that Coach McKeever called Swimmer A a [REDACTED] because of her attitude and kicked Swimmer A out of practice for it. Swimmer I described Swimmer A as a sweet person who was not disrespectful, but she would roll her eyes occasionally when Coach McKeever said something.
- [REDACTED] Staff A (Assistant Coach, [REDACTED]) recalled Coach McKeever calling Swimmer A a [REDACTED]. She believed that Coach McKeever meant that Swimmer A was self-centered and did not think of the team. [REDACTED] Staff A also recalled a meeting with [REDACTED] where Coach McKeever told [REDACTED] that she thought swimmers on the team were saying that Swimmer A was a [REDACTED] and had an attitude. [REDACTED] Staff A thought that Coach McKeever likely called Swimmer W (Swimmer, [REDACTED]) a [REDACTED] once.
- According to Swimmer Y (Swimmer, [REDACTED]), Coach McKeever thought Swimmer A had an attitude. Swimmer Y thought that Coach McKeever's opinion of Swimmer A was influenced by Swimmer A's race, in light of Coach McKeever calling Swimmer A a [REDACTED] if Swimmer A expressed being cold or tired. Swimmer Y never heard Coach McKeever call anyone else a [REDACTED].

(c) *Disparate Treatment*

Numerous swimmers reported that Swimmer A was kicked out of practice more often than other swimmers and that the reasons given for her being kicked out were reasons applicable to other swimmers, who were not kicked out. According to [REDACTED] Staff A (Assistant Coach, [REDACTED]), Swimmer A was kicked out of practice the most. [REDACTED] Staff A estimated that this occurred three times in total. [REDACTED] Staff A stated it was possible Swimmer A was kicked out more times, but it did not occur on a weekly basis as Swimmer A said it did. The coaches did not keep a record of when someone was kicked out of practice.

(i) *Speed*

One reason witnesses gave for Coach McKeever kicking Swimmer A out of practice was that Swimmer A swam slowly. In Swimmer T's (Swimmer, [REDACTED]) view, Coach McKeever's treatment of Swimmer A and Swimmer B (Swimmer, [REDACTED]) was not motivated by race but by the fact that they were the slowest on the team. Swimmer R (Swimmer, [REDACTED]) likewise believed that Swimmer A was not intentional in her effort during practices at the beginning of the season. Swimmer A was never fast enough to make the intervals. Swimmer R believed that

Swimmer A told Swimmer B that Swimmer A was not trying hard. Swimmer R noted that Swimmer A's relationship with the team started to change after the [REDACTED] meet, and the upper classmen tried to motivate Swimmer A to do better.

In contrast, some witnesses pointed out that other members of the team were slower than Swimmer A. According to [REDACTED] Staff A (Assistant Coach, [REDACTED]), the slowest people on the team were Swimmer L (Swimmer, [REDACTED]), Swimmer Y (Swimmer, [REDACTED]), Swimmer B, Swimmer Z (Swimmer, [REDACTED]), Swimmer AA (Swimmer, [REDACTED]), Swimmer AB (Swimmer, [REDACTED]) and Swimmer A. [REDACTED] Staff A did not think that Swimmer A was in the bottom three in terms of speed. Rather, she was at the bottom or border of the next tier above the slowest swimmers. [REDACTED] Staff A said that Swimmer A was not slow, but she only had two good events and because each swimmer can score in three events, Swimmer A's limitation to two events affected coaching decisions.

According to Swimmer V (Swimmer, [REDACTED]), several swimmers were slower than Swimmer A: Swimmer L, Swimmer AA, and Swimmer O (Swimmer, [REDACTED]).

According to Swimmer P (Swimmer, [REDACTED]; Captain [REDACTED]), Swimmer A was not fast in practice, but she swam faster at meets than the other slow swimmers. The team did not know that Swimmer A would be able to swim faster in meets until she actually swam in one. Swimmer P explained that how swimmers performed during the first weeks or months is not the most accurate indicator of their ability because the amount of training people did over the summer was varied.

Witnesses also noted that Coach McKeever did not provide Swimmer A with an explanation for why Swimmer A was being kicked out or kicked her out for doing things that other swimmers were not penalized for doing. According to Swimmer N (Swimmer, [REDACTED]), Swimmer A was kicked out of practice more than others. Coach McKeever had a reason to kick her out, but no one else was kicked out for doing the same thing. One day, when the team was doing a set at a certain pace, Coach McKeever said the times were bad and Swimmer A was not going fast. Swimmer A probably forgot to do one small thing, was kicked out, and was told if she was kicked out again, she could not go to the [REDACTED] invitational. In Swimmer N's view, Swimmer A was kicked out for a very minor thing that others do, but Swimmer A was the only one kicked out for it. Swimmer N said that Swimmer G (Swimmer, [REDACTED]) and Swimmer A were two people who were kicked out of practice by Coach McKeever for essentially no reason. Swimmer N considered it to be over-punishment for the issue.

According to Swimmer Y (Swimmer, [REDACTED]), Coach McKeever kicked Swimmer A out of practice shortly before the [REDACTED] invitational. Swimmer Y said that Swimmer A had been picked on a lot by Coach McKeever, and Swimmer Y was not sure why. One time, Swimmer A got kicked out for "not hustling" and being too slow while walking to the pool. At a morning practice, Coach McKeever told Swimmer A that if Coach McKeever kicked Swimmer A out again then Swimmer A could not go to the meet, which was a significant meet at the time. Swimmer A started crying and then left because she was told to leave. Swimmer A did go to the meet, swam well, and started performing better. Swimmer Y believed the situation got better when Swimmer A swam faster.

Swimmer J (Swimmer, [REDACTED]) said Swimmer A got kicked out of practice at the beginning of the fall, which did not help Swimmer A, who was already very quiet and reserved. It hurt Swimmer A because Swimmer A did not know why she was getting kicked out of practice. Swimmer J noted that she did not believe that Coach McKeever kicked swimmers (including Swimmer A) out of practice just for being slow because Swimmer J has missed certain times in the past and was not kicked out of practice.

(ii) “Less Deserving” of Practice Time

Swimmer N (Swimmer, [REDACTED]) described an incident in which Coach McKeever said one person had to leave practice because there was not enough room for everyone because of the way they were doing set stations. Coach McKeever said that Swimmer A had to leave unless someone else wanted to leave. Swimmer N believed there was no reason to kick out Swimmer A. Swimmer N’s shoulder was bothering her, so she volunteered to leave. Afterwards, Swimmer N thought doing so might have been a mistake because she received a text message later from the captains asking if she was doing okay. Swimmer N told them why she left, and asked if she should explain to Coach McKeever about her shoulder. They said Coach McKeever might forget and a text message might just rile her up more. At the next practice Coach McKeever yelled at Swimmer N a lot for practically nothing. Swimmer N spoke to Coach McKeever the next afternoon about her shoulder. Swimmer N said that Coach McKeever told her she understood and was nice about it and asked that she simply communicate more about those things. Coach McKeever also told Swimmer N she deserved to be at practice more than Swimmer A. Coach McKeever explained that the team was split into three groups, one group of people who really deserved to be there, Swimmer N being one of them, one group of “in between” people, and then one group of people like Swimmer A, who did not deserve to be there. Swimmer N felt that Coach McKeever was trying to compliment her, but it did not feel good hearing Coach McKeever put others down.

(iii) Making Mistakes on Practice Sets

According to Swimmer Q (Swimmer, [REDACTED]), Swimmer A got kicked out for making mistakes while practicing complicated sets even when other swimmers also made mistakes during the sets. Swimmer Q messed up sets many times, and Coach McKeever never yelled at her, but others, like Swimmer A, got kicked out without a second chance. It made Swimmer Q wonder if Coach McKeever was observing Swimmer Q and noticing Swimmer Q’s mistakes; according to Swimmer Q, Coach McKeever commented on Swimmer Q’s stroke, thereby showing that she was watching Swimmer Q (but not kicking her out for errors similar to ones Swimmer A was making).

Swimmer K (Swimmer, [REDACTED]) said that Coach McKeever explained sets at practice while Swimmer A or Swimmer B (Swimmer, [REDACTED]), who were slower, were still swimming, and then sent people off to practice, so that Swimmer A and Swimmer B were left confused about the next set. Coach McKeever also sometimes explained a really complicated set, and then asked Swimmer A to repeat it back to her, in effect setting Swimmer A up to fail. Swimmer K noted that Coach McKeever admitted to Swimmer K that she would intentionally come up with complicated sets and quiz Swimmer A and Swimmer B on them. Swimmer K never witnessed Coach McKeever do that to other swimmers. Coach

McKeever also frequently kicked Swimmer A out of practice for minor things, like starting with the wrong arm, things that would be fine if one of Coach McKeever's favorites on the team did it.

According to [REDACTED] Staff A (Assistant Coach, [REDACTED]), Swimmer A claimed she could not focus and she had a hard time with the sets because they were new to her. Coach McKeever told Swimmer A to "FIO" (figure it out), ostensibly by asking other swimmers about the sets, but then told the other swimmers on the team not to spend time on Swimmer A because Swimmer A was slow. Coach McKeever gave Swimmer A corrections and then asked Swimmer A to leave if Swimmer A continued to do the drill incorrectly.

Swimmer B (Swimmer, [REDACTED]) said that Swimmer A was kicked out of practice multiple times a week because Coach McKeever waited for her to mess up on something small like a turn or a set and then kicked her out or yelled at her in front of the team.

Swimmer P (Swimmer, [REDACTED]; Captain [REDACTED]) confirmed that Swimmer A was kicked out of practice. She recalled Swimmer A getting kicked out a handful of times over the course of the season. It happened more often in the fall and less as the year progressed when Swimmer A started swimming well at meets. Swimmer P also confirmed that Swimmer L (Swimmer, [REDACTED]) was kicked out of practice. She recalled others getting kicked out often in previous years: in [REDACTED], it was Swimmer P; in [REDACTED], it was Swimmer H (Swimmer, [REDACTED]); and in [REDACTED], it was Swimmer AB (Swimmer, [REDACTED]).

Swimmer G described Coach McKeever imposing overblown consequences for small acts, for example throwing an individual out of practice for the look on her face and asking the team to confirm that it is better after the person was gone. Swimmer G stated that Swimmer A, Swimmer B (Swimmer, [REDACTED]), and Swimmer AA (Swimmer, [REDACTED]) were frequent targets this year.

(d) *Verbal Criticism*

Swimmer AC (Swimmer, [REDACTED]) said that Swimmer A [REDACTED] [REDACTED], and Coach McKeever kicked her out of practice many times and screamed at her in front of the team constantly. Swimmer AC said Coach McKeever told Swimmer A that she was slower and less valuable than others. Swimmer AC said Swimmer A was kicked out for pouting, yelled at for putting her hand on her hips, and called a [REDACTED] [REDACTED] for breathing too hard on the wall. Swimmer AC did not personally attend the September beach trip [REDACTED] but heard from others that they sat in a circle at the beach and Coach McKeever asked everyone who felt Swimmer A was a negative influence on team to raise their hands.

According to Swimmer AD (Swimmer, [REDACTED]), Coach McKeever told Swimmer A and Swimmer B (Swimmer, [REDACTED]) that they did not deserve to be there, they were not going fast enough, and they were not trying enough. Swimmer AD noted that Coach McKeever said the same things to other swimmers.

(e) [REDACTED] Invitational

[REDACTED] Staff A (Assistant Coach, [REDACTED]) stated that the only two swimmers who did not compete at the [REDACTED] invitational were Swimmer A and Swimmer O (Swimmer, [REDACTED]) (Swimmer O was injured at the time of the invitational). [REDACTED] Staff A stated that Swimmer A had not been paying attention at practice, and the other members of the team said that Swimmer A was speaking ill of teammates and had not earned her spot to travel and represent Cal at that point in the season. The captains were frustrated with Swimmer A. Coach McKeever and [REDACTED] Staff A conferred and decided, in conjunction with the captains, to not have Swimmer A attend the invitational in an attempt to get Swimmer A to understand that she had to earn the right to compete, and especially to travel. [REDACTED] Staff A believes that she was present when the decision was communicated to Swimmer A, and it occurred rather casually on the pool deck.

Swimmer P (Swimmer, [REDACTED]) said that Swimmer A was the only one who did not go to the [REDACTED] invitational.³² Swimmer P denied telling Coach McKeever that Swimmer A should not get to go because of her attitude. Instead, she said that Coach McKeever informed the captains that she had made the decision that Swimmer A was not going because of her attitude; the captains did not have a chance to tell her if they thought she was wrong. Swimmer P believed Coach McKeever mentioned to the team that Swimmer A was not competing because of her attitude. According to Swimmer V (Swimmer, [REDACTED]), Coach McKeever talked to [REDACTED] about not allowing Swimmer A to compete at the invitational in order to show Swimmer A that there was a serious problem. In Swimmer V's opinion, Coach McKeever's approach of not allowing a swimmer to compete or stay at practice was counterproductive and did not help that swimmer integrate into the team, but [REDACTED] agreed with Coach McKeever's decision to not bring Swimmer A to the [REDACTED] invitational. [REDACTED] disagreed later when Coach McKeever talked about not allowing Swimmer A to swim at the [REDACTED] invitational or attend the Hawaii trip.

Swimmer K (Swimmer, [REDACTED]) denied that she suggested Swimmer A should not attend the [REDACTED] Invitational because of her attitude. She noted that before Coach McKeever started focusing on it, Swimmer K did not think Swimmer A had an "attitude problem." But once Coach McKeever started focusing on it and asked the captains for examples, Swimmer K said she noticed when Swimmer A had a look on her face of disinterest (something she said was probably particularly true of Swimmer A) and may have reported it to Coach McKeever. Swimmer K said that Coach McKeever often "planted" ideas about her perceptions of swimmers, as she did with respect to Swimmer G (Swimmer, [REDACTED]). Swimmer K said it was possible others noticed things like Swimmer A's facial expressions before Coach McKeever started drawing attention to it, but she was not sure. Swimmer K also said that Coach McKeever told Swimmer K that she wanted to suspend Swimmer A or kick her off the team in the fall, but thought she would get in trouble with her supervisor, Jennifer Simon-O'Neill (Executive Senior

³² Swimmer P recalled Swimmer AE (Swimmer, [REDACTED]) being held back from the [REDACTED] invitational her freshman year because Coach McKeever did not think she deserved to go. She also recalled Swimmer AF (Swimmer, [REDACTED]) not going for personal reasons in a prior year.

Associate Athletic Director,³⁶ 2013-present), because Swimmer A was [REDACTED].

Swimmer G (Swimmer, [REDACTED]) said that she overheard Coach McKeever say that Swimmer A was not ready to represent Cal at the swim meet.

(f) Attendance at Optional Practices and Effort Level

According to Swimmer V (Swimmer, [REDACTED]) Coach McKeever created a new practice schedule after the NCAA championship competition. With this new schedule, Coach McKeever divided the team into three groups based on the likelihood of a swimmer [REDACTED]. Those that were unlikely to [REDACTED], including Swimmer A, were not allowed to attend certain practices. At least one swimmer, Swimmer AB (Swimmer, [REDACTED]), asked Coach McKeever to be allowed to attend more practices, but Coach McKeever refused. Swimmer K (Swimmer, [REDACTED]; Captain, [REDACTED]) similarly told us about this new practice schedule arrangement. According to Swimmer K, Coach McKeever, for the first time, had a group that was expected to go to all the practices, a group expected to go to most practices, and a group expected to go to the least. Coach McKeever wrote down the lists on a calendar.

Coach McKeever also made clear that certain practices were optional. Swimmer K (Swimmer, [REDACTED]) said Swimmer A and Swimmer B (Swimmer, [REDACTED]) both did not show up to a number of the optional practices. They both went to the bare minimum requirement, but they attended all practices that were mandatory for them. Swimmer K speculated that Swimmer A and Swimmer B did not attend because they did not enjoy practices and felt like Coach McKeever did not want them there. Swimmer K said this was especially true for Swimmer B, as Coach McKeever had told Swimmer K that Coach McKeever was not going to waste her time coaching Swimmer B. Swimmer K felt that the captains probably would not have let Swimmer A and Swimmer B continue to skip the optional practices indefinitely, but Coach McKeever did not make her expectations clear, and Swimmer A and Swimmer B were freshmen so they did not know that optional did not really mean optional.

In contrast, some swimmers said that the team knew that they should attend the optional practices. According to Swimmer W (Swimmer, [REDACTED]) there were a lot of optional practices, and Swimmer B and Swimmer A missed a lot of those optional practices. In Swimmer W's opinion, a swimmer needed to attend these optional practices if she wanted to get better. During Swimmer W's freshman year, almost everyone on the team attended the optional practices. During her sophomore year, [REDACTED]. During her junior year, a fair share of the team attended. This year, barely anybody was showing up, but even this year, there were optional sessions where almost everyone showed up – but Swimmer B and Swimmer

³⁶ Simon-O'Neill started at Cal in 2008 as Director of Olympic Sports Operations and was promoted to Associate Athletic Director in 2013. Since then, she has been promoted a number of times and held various titles. As of 2019, she has served as the Executive Senior Associate Director, Chief of Staff & Senior Woman Administrator. Until 2022, Simon-O'Neill served as the sports administrator for the Cal women's swimming team for a number of years.

A just did not show up to the optional practices. Swimmer J (Swimmer, [REDACTED]) also commented that the team knew that optional practices were not truly optional.

According to Swimmer L (Swimmer, [REDACTED]), until about spring break, Swimmer L thought the people targeted by Coach McKeever were Swimmer A, Swimmer G (Swimmer, [REDACTED]), and herself. After spring break, the others did not come to a single optional practice for the eight weeks between spring break and the end of finals. Swimmer L thought that was when they started being targeted more by Coach McKeever for more criticism. Swimmer L believed Coach McKeever found it frustrating that swimmers who had chosen to swim at Cal's level were not attending optional practices. Swimmer L reached out to the non-attendees, and they said they did not enjoy practicing with Coach McKeever and were focusing on school; Swimmer L noted that they were still going out socially on weekends.

According to Swimmer B, once or twice, Swimmer A said that she did not try hard at practice, but Swimmer B believed that everyone has sets or days when they do not give 100 percent. According to Swimmer N (Swimmer, [REDACTED]), Swimmer A did not swim very hard in practice.

(g) *Isolation*

A number of swimmers reported that Coach McKeever talked to them about Swimmer A in a way that singled her out for particular negative scrutiny and that resulted in isolating her from the rest of the team. Swimmer K (Swimmer, [REDACTED]) said that Coach McKeever held a meeting with the captains to discuss whether Swimmer A had an attitude.

Swimmer P (Swimmer, [REDACTED]) confirmed that Coach McKeever told other teammates that Swimmer A brought the team down and should not be there. Coach McKeever wanted to see if other people agreed with her. Swimmer P reported that Coach McKeever also said this about Swimmer G (Swimmer, [REDACTED]), Swimmer AA (Swimmer, [REDACTED]), Swimmer L (Swimmer, [REDACTED]), and Swimmer AB (Swimmer, [REDACTED]), but never about Swimmer W (Swimmer, [REDACTED]), who in Swimmer P's view actually brought the team down in many instances.

Swimmer Q (Swimmer, [REDACTED]) stated that Coach McKeever mentioned during recruiting that she wanted the team to be "more diverse" and show that they could be better by having more diverse individuals, but Coach McKeever often found ways to kick Swimmer A and Swimmer B out of practice throughout the year. At every team retreat this past year, Coach McKeever asked team members whether Swimmer A and Swimmer B should be on the team. Swimmer Q felt that Coach McKeever was really looking for ways to kick them off the team. Coach McKeever often described Swimmer A and Swimmer B as "not fitting in" or said that they did not appreciate being on the team. In Swimmer Q's view, Swimmer B was one of the most appreciative and gave 110 percent to try to make intervals, but Coach McKeever still said that she needed to be off the team. Coach McKeever told Swimmer Q multiple times in one-on-one meetings that Coach McKeever needed to make Swimmer A's and Swimmer B's lives hell to get them off the team.

Swimmer V (Swimmer, [REDACTED]) corroborated that at the class meetings at the beginning of the year, the freshmen were asked to say if they wanted Swimmer A on the team.

Swimmer B (Swimmer, [REDACTED]) reported that Coach McKeever talked to people while Swimmer A was not there and made statements along the lines of, "you do not want to associate yourself with [Swimmer A], she's going to bring you down." Swimmer B thought Coach McKeever said this at least once at a team meeting. Swimmer B described an instance in which Swimmer A was not allowed to attend one practice and, during that practice, Coach McKeever asked Swimmer B if she felt better now that Swimmer A was not present. Swimmer B did not respond because she did not know how.

(h) Physical Appearance

Swimmer B (Swimmer, [REDACTED]) commented that Swimmer A [REDACTED] Coach McKeever also commented on Swimmer A's [REDACTED], asking how she [REDACTED]. She made a comment of, [REDACTED] Coach McKeever called Swimmer A a [REDACTED] (which Swimmer B views as a racially charged word) during practice.

[REDACTED] Staff A (Assistant Coach, [REDACTED]) said that Coach McKeever made comments about why it took Swimmer A [REDACTED], and [REDACTED] Staff A tried to help Coach McKeever understand why it might take Swimmer A [REDACTED] than other swimmers.

Swimmer K (Swimmer, [REDACTED]) recalled Coach McKeever making comments about Swimmer A's [REDACTED] to the effect of "Oh, [Swimmer A], did you [REDACTED]" Swimmer K said that the comments to Swimmer A were different than what Coach McKeever might say to other swimmers because it felt more like Coach McKeever was calling out Swimmer A about [REDACTED]. Swimmer K also said that Swimmer A's [REDACTED]. Swimmer K did not raise the issue with Coach McKeever because she did not think Coach McKeever would make that accommodation.

Swimmer AC (Swimmer, [REDACTED]) said that Coach McKeever called Swimmer A and Swimmer B [REDACTED] but did not use those labels for others.

Swimmer G (Swimmer, [REDACTED]) heard Coach McKeever comment on Swimmer A's [REDACTED] at least three times. Coach McKeever said things like, "oh you really [REDACTED]" in a tone that Swimmer G described as "funny." Coach McKeever did not say that to other swimmers, but Swimmer G also noted that Swimmer A was also the only one who [REDACTED]. In contrast, an anonymous swimmer, whom MTO will refer to as Jane Roe #2, said that most of the swimmers [REDACTED], but Coach McKeever often commented only on Swimmer A's [REDACTED]. Coach McKeever told Swimmer A, "I'm so distracted by [REDACTED]. How can you even [REDACTED]" Jane Roe #2 said that everyone on the team also [REDACTED] (which surprised her because she used to swim at a different school, where the swimmers did not

[REDACTED]), but Coach McKeever commented only on Swimmer A's [REDACTED]. Jane Roe #2 said that Coach McKeever did not talk to other swimmers other than Swimmer A about their [REDACTED].

Swimmer P (Swimmer, [REDACTED]) said that Coach McKeever made a comment suggesting that Swimmer A's [REDACTED]. Swimmer P said that Swimmer A's [REDACTED] and that Coach McKeever did not comment on other swimmers' [REDACTED]. Coach McKeever also commented on Swimmer A's [REDACTED] in a negative way. Swimmer P noted that others (Swimmer AG (Swimmer, [REDACTED]), Swimmer AH (Swimmer, [REDACTED]), and Swimmer AI (Swimmer, [REDACTED])) had [REDACTED], and Coach McKeever never said anything about it. Swimmer P did not believe [REDACTED] interfered with Swimmer A's swimming.

Swimmer AH (Swimmer, [REDACTED]), who is [REDACTED], stated that she had [REDACTED] but Coach McKeever never commented on Swimmer AH's appearance. Swimmer AH stated that she never heard Coach McKeever refer to a swimmer as a [REDACTED]. Swimmer AH joked that if anyone should have been called a [REDACTED] it would have been her.

In contrast, Swimmer V (Swimmer, [REDACTED]) did not recall any comments to Swimmer A about [REDACTED]. Swimmer V recalled Coach McKeever's comments about Swimmer A's [REDACTED] which Swimmer V thought were justified by the possible [REDACTED]. Swimmer V felt that this was well known in the swimming world.

(i) Effect on Swimmer A

Swimmer N (Swimmer, [REDACTED]) corroborated that Swimmer A closed herself off to everyone on the team during the first semester, but Swimmer A's relationship with the team improved over the course of the year. Swimmer A confided in Swimmer N the distress that she felt, such as waking up panicked about practice and crying every day on the phone with her mother. Swimmer A felt isolated and believed that her teammates did not like her because of Coach McKeever. Swimmer N said that Swimmer A was hesitant to share the struggles she had with Coach McKeever. Before Swimmer A's end-of-year meeting with Coach McKeever, Swimmer A told Swimmer N that Swimmer A was nervous and was worried Coach McKeever would kick her off of the team. Swimmer A felt that such treatment was unfair because she had [REDACTED] even after she was told she was not even supposed to be brought to the competition.

According to Swimmer Q (Swimmer, [REDACTED]), Swimmer A spoke to Swimmer Q throughout the year and told Swimmer Q that Coach McKeever was making Swimmer A's life miserable. Swimmer A told Swimmer Q that Swimmer A did not want to transfer because she loved Cal so much.

(ii) Racially Motivated Treatment

Some swimmers said that they believed Coach McKeever's treatment of Swimmer A was racially motivated.

According to Swimmer B (Swimmer, ██████████), Coach McKeever targeted Swimmer A. Swimmer B said that there was a difference in the way that Coach McKeever criticized Swimmer B and Swimmer A compared to how she criticized the rest of the team, and Swimmer B believes this difference was based on race. Swimmer A had a worse first-semester experience than other swimmers. Swimmer A did not get better during the year at practice (she did not practice well), but she performed well at meets at the beginning of the year and Coach McKeever still threatened to kick her off the team, even though other people were not performing as well or scoring as many points as she was.

Swimmer I (Swimmer, ██████████) said that over the course of two days, there were three instances of the coaches mixing up Swimmer A and Swimmer B's names, presumably because they were ██████████ swimmers on the team.

Swimmer K (Swimmer, ██████████) told us she was unsure of whether Coach McKeever's actions were motivated by race. Swimmer K believed Swimmer A and Swimmer B were both unreasonably targeted by Coach McKeever but had a difficult time determining whether it was because they were ██████████. Swimmer A and Swimmer B were also the two slowest swimmers during practices and Coach McKeever generally tended to target slow swimmers, while she would let high-performing swimmers "get away with anything." Swimmer K said that Swimmer A and Swimmer B were not necessarily the only people called out for things like showing up to practice looking sleepy, but they were among the few. As an example, Swimmer K noted that she came to practice looking "off" one day, and Coach McKeever responded by making a joke about it in the team room. In contrast, just the week before or after, Coach McKeever kicked out three swimmers for the same thing (Swimmer A, Swimmer B and either Swimmer AA (Swimmer, ██████████) or Swimmer L (Swimmer, ██████████)). Swimmer K speculated that it might not have been based on race but rather that Coach McKeever had a certain "ideal mold" for her swimmers (thin, white, academically successful, etc.) and anyone who fell outside of that was treated harshly.

Other swimmers stated that Coach McKeever's actions were not motivated by race and that she treated Swimmer A and Swimmer B in the same way that she treated other, ██████████ swimmers who exhibited the same behavior as Swimmer A and Swimmer B did.

██████████ Staff A (Assistant Coach, ██████████) said that Coach McKeever sometimes told the whole team they had an attitude or were acting entitled. For example, Coach McKeever told Swimmer X (Swimmer, ██████████) that Swimmer X had an attitude. ██████████ Staff A believed that Coach McKeever often focused on certain swimmers, such as Swimmer A and Swimmer G (Swimmer, ██████████), and that she likely saw more of their mistakes, especially in demeanor.

Swimmer AJ (Swimmer, ██████████) said she never witnessed racial discrimination by Coach McKeever. Swimmer AJ believed that any comments Coach McKeever made to "fix your face" or "fix your attitude" were not related to race. Swimmer AJ emphasized that Coach McKeever said similar things to everyone and repeatedly emphasized body language for all swimmers.

In Swimmer T's (Swimmer, ██████████) view, Coach McKeever's treatment of Swimmer A and Swimmer B was not motivated by race but by the fact that they were the slowest on the team.

Swimmer M (Swimmer, ██████████) recounted that Coach McKeever told people to leave practice due to their body language. Coach McKeever focused on body language, and Swimmer M said she agreed with this focus because one should not be disrespectful to Coach McKeever with how one presented at practice. Coach McKeever placed an emphasis on how a swimmer showed up to practice and sometimes told people to change their body language because they were not presenting as empowered women. If people did not improve after a while, she sent them home. This occurred approximately two times. Swimmer A and Swimmer AA, both freshmen, were sent home.

According to Swimmer G (Swimmer, ██████████), Coach McKeever was not nice to ██████████ Swimmer A and Swimmer B. Swimmer G did not think it was about race. Instead, Swimmer G believed that they were outside the type of people with whom Coach McKeever worked well. Swimmer G thought Coach McKeever was "old-fashioned" rather than racist. According to Swimmer G, Coach McKeever had a specific type of person she could train. Examples of swimmers with whom Coach McKeever struggled to connect included a swimmer who liked anime (such as ██████████), wore different clothes, or had long eyelashes and nails. Coach McKeever made comments that belittled those things.

4. Coach McKeever's Response

Coach McKeever described Swimmer A as talented, very smart, and someone with a big personality. When asked why Coach McKeever described Swimmer A as having a big personality, Coach McKeever stated that Swimmer A lit up a room, was chatty, and was louder than most people. She also described Swimmer A as being challenging at times and not a very hard worker for a member on a Division I team. Coach McKeever did not believe that Swimmer A had the kind of discipline and consistency needed to reach her full potential. Coach McKeever said that Swimmer A had a number of excuses about why she could not do something at practice: she was up late, she was trying, or the task was hard. Coach McKeever believed that Swimmer A exhibited a lack of attention to detail, a lack of effort at training, and did not understand the rationale or intent of an exercise. Coach McKeever stated that she could see which swimmers understood what was going on at practice and the rationale behind the practice. There were subtleties that were involved in the sport, and she could tell if someone was paying attention by how they showed up and how their actions related to what the instruction was. She said that her comments about Swimmer A's posture had nothing to do with assigning Swimmer A the ██████████ stereotype and were consistent with her many years of emphasizing body posture.

Coach McKeever struggled to provide objective criteria that she used to determine that Swimmer A displayed a lack of effort during practice and explained that an experienced coach just knows when a swimmer was not trying. Coach McKeever acknowledged that it was partially subjective (*e.g.*, intention, engagement, and visceral things in a swimmer's movements) and partly objective (*e.g.*, how fast a swimmer swam). Coach McKeever gave the example that if they were doing 50s, Swimmer A should be at 30 seconds but was repeatedly at 38 seconds,

which showed Coach McKeever that Swimmer A was not where she needed to be just to compete at her current level, let alone to improve. According to Coach McKeever, a swimmer makes the desired time by paying attention to detail and doing subtle things allows a swimmer to reach her full potential.

According to Coach McKeever, for an athlete to improve, a coach has to see certain things during training. Swimmer A and a handful of her [REDACTED] teammates wanted to focus on the important details at meets but not during daily training, which in Coach McKeever's experience does not lead to consistent success. As an example, Swimmer A had the potential to stay underwater while racing, but that required training commitment. Establishing breathing patterns also required practice. Coach McKeever believed did not understand the "why" of practice activities and needed to do so in order to meet her expectations for effort and success.

(a) Team Beach Trip

Coach McKeever explained that the team took [REDACTED] beach trips: [REDACTED] [REDACTED]. At the September beach trip, Coach McKeever spoke to each class. According to Coach McKeever, during her meeting with the [REDACTED], the swimmers spoke about how disappointed they were that the freshmen were not getting on board with the swim program. Coach McKeever said that every class group specifically mentioned Swimmer A as one of the freshmen with whom they were struggling and that they pointed to Swimmer A's attitude. According to Coach McKeever, during the [REDACTED] meeting, Swimmer Q (Swimmer, [REDACTED]) yelled at Coach McKeever and [REDACTED] Staff A (Assistant Coach, [REDACTED]) and asked them why they recruited Swimmer A when Swimmer Q had [REDACTED] [REDACTED] told [REDACTED] Staff A not to recruit Swimmer A.³⁷ According to Coach McKeever, Swimmer Q said that Swimmer A did not deserve to be on the team and was not a hard worker. After meeting with the seniors, [REDACTED] Staff A was emotional and said she did not remember Swimmer Q saying that to her, and she would not have recruited Swimmer A if she had remembered.

When Coach McKeever met with the freshmen, she told them that they were a huge part of what is going on and needed to be more engaged in helping the team reach their potential. In her interview, Coach McKeever did not recall having everyone sit in a circle and raising their hand if they thought Swimmer A had an attitude, and Coach McKeever said it did not sound like something she would do. She also did not recall asking the other students to give examples of Swimmer A's attitude. She said that she and [REDACTED] Staff A were present for the entire meeting with the freshmen swimmers.

In a later statement, Coach McKeever wrote that, after reviewing MTO's statement of evidence, she recalled the details of the meetings during the [REDACTED] beach trip. She said she sat in a circle with each class year, in order of seniority. She asked the upperclassmen how things were going on the team, and they all raised concerns about the freshmen class, and in

³⁷ Swimmer V (Swimmer, [REDACTED]) confirmed that Swimmer Q became frustrated that Coach McKeever blamed them for recruiting Swimmer A, and Swimmer Q told the coaches that she had advised against recruiting Swimmer A. In the evidence review of this investigation, Coach McKeever denied that she blamed the athletes for recruiting Swimmer A.

particular that the freshmen thought the team culture should adapt to them, rather than them adapting to the culture. Coach McKeever said that Swimmer A's behavior, in particular, was brought up by the upperclassmen as detracting from the team's goals. Coach McKeever asked the upperclassmen if they thought Swimmer A deserved to be there. She said that she did not influence the situation and the swimmers "were quite agitated about [Swimmer A]," and she wanted to know if the whole team felt the same. Coach McKeever felt it appropriate to address these issues with the freshmen directly. She then told each freshman what she could improve upon and gave feedback based on the upperclassmen meetings. With Swimmer A, Coach McKeever said something to the effect of, "I just heard three groups say you don't get it" in terms of competing at the Cal level. "Do you think you deserve to be here?" She then asked the other freshmen if Swimmer A deserved to be there, and many raised their hands to say that Swimmer A did not. Coach McKeever believed that they did not feel pressured to agree, given what she understood to be a unanimous perception of Swimmer A. Coach McKeever said that sitting in a circle was intentional, to enhance inclusivity and send the message that they are all in it together. Coach McKeever also sat in the circle for the same reason, rather than stand in front of or over the top of the swimmers.

During her interview, Coach McKeever said that at the time of the beach trip (five weeks into the school year), the team had already told Coach McKeever that Swimmer A had an attitude. By having an attitude, Coach McKeever meant that an individual expects the environment to change to her rather than being willing to adapt to the environment (Coach McKeever said this is her definition of having an "attitude" for anyone, not just for Swimmer A). Swimmer B (Swimmer, ██████████) spoke to ██████████ Staff A and Coach McKeever after the beach trip and said that she was having problems with Swimmer A. Swimmer B shared that Swimmer A was being negative, which affected Swimmer B's desire to attend workouts. Coach McKeever asked Swimmer B if Swimmer A understood what it meant to be part of the team, and Swimmer B responded that she did not know, it was just hard for her.

Five weeks of practice was equal to approximately fifty practices, which Coach McKeever said was enough time to know if someone was committed, appreciative, and engaged in the environment. There were certain ways the team wanted things done, and Swimmer A did not comply with the team's customs. Swimmer A was always one of the last people at practice. When asked, Coach McKeever clarified that Swimmer A was not technically late to practice, but she was one of the last swimmers to arrive and did not get into the water on time. Swimmer A was one of the last swimmers going from the weight room to the pool, a transition that needed to be done quickly because of the limits on the amount of time the team can train. In Coach McKeever's opinion, Swimmer A did not want to learn how to put up lane lines or flags because she thought other people could do it for her. Coach McKeever did not recall if she specifically told Swimmer A she needed to help with the lane lines or other team guidelines, but it was expected of all swimmers. Swimmer L (Swimmer, ██████████), Swimmer G (Swimmer, ██████████), and Swimmer B also did not help in this regard. Coach McKeever said that it was apparent who was going through the motions of preparing the pool and taking it apart.

Coach McKeever said she expected Swimmer A and everyone else to treat participation in the Cal program as an opportunity, not as a punishment. During Swimmer A's recruitment process, Coach McKeever told Swimmer A that attending Cal would be a stretch for her athletically, a fact that Coach McKeever thought anyone would know based on Swimmer A's

times. Coach McKeever asked Swimmer A if this challenge would bring out the best in her or make her feel inferior and asked if Swimmer A wanted to do the things that would help make her the best she can be.

In summary, Swimmer A did not make a good first impression on Coach McKeever. Coach McKeever viewed Swimmer A's actions as slowing down the rest of the team and a sign of her lack of respect for the team's norms. For Coach McKeever, the fact that Swimmer A was always one of the last ones there, was unwilling to help, and never took initiative sent the message that she did not want to be on the team. Coach McKeever did not believe that Swimmer A's attitude changed over time, but she is not surprised that others thought Swimmer A improved because this particular team had a low view of what it took to succeed and the team members further lowered their bar over the course of the year.

(b) Talking to Others About Swimmer A

Coach McKeever did not directly answer whether she had asked the team if they felt better when Swimmer A was not at practice. Instead, Coach McKeever explained that she told the swimmers that their job was to notice if a particular swimmer was not at practice because the unique elements that that swimmer brought to the team would be missed if the swimmer is absent.

In a follow-up written statement, Coach McKeever said that there were times during the season, including in the spring, when she noted when there was a good practice with good energy because everyone who was present wanted to be there. She said she did not specifically ask if it was better without certain individuals. She added that if Swimmer A felt isolated leaving a locker room alone after practice, it was likely the result of taking longer to change into clothing.

(c) [REDACTED] Invitational

Coach McKeever did not recall why Swimmer A did not swim at the [REDACTED] meet at the beginning of the year. Coach McKeever said it was inaccurate to state that every swimmer automatically competes in the invitational, as swimmers had to be going to practice and doing well in school in order to compete. The only meet all year where everyone swam was the Stanford meet at the end of the year. Coach McKeever did not recall if anyone else on the team was prohibited from swimming at the [REDACTED] meet.

In a complaint to OPHD submitted by Coach McKeever on November 28, 2022, Coach McKeever and her attorney wrote that Coach McKeever did not permit Swimmer A to compete in the [REDACTED] invitational because Swimmer A was toward the bottom of the team in terms of speed times.

(d) Speed

According to Coach McKeever, Swimmer A's events were [REDACTED] and [REDACTED] and her times placed her in the bottom half of the team. Swimmer A routinely was last in training exercises. The only person who had worse times during practice was Swimmer B (Swimmer,

██████████).³⁸ Coach McKeever described Swimmer A as a “stretch recruit” and said that she would not have recruited her. ██████████ Staff A (Assistant Coach, ██████████) recruited Swimmer A based on a previous relationship she had with Swimmer A in a swim camp. Coach McKeever stated that Swimmer A had a lot of excuses about why she could not do something, such as that she stayed awake late, or that she was trying but it was too hard.

Coach McKeever stated that she had Swimmer A swim in the breaks instead of competing at swim meets because Swimmer A’s times were not fast enough to make her one of the four best people in her events. Having her swim in the breaks gave Swimmer A the opportunity to race and show Coach McKeever what her times would be and how she would race. Coach McKeever said it was normal for a swimmer sometimes to swim in the meet and sometimes swim in the breaks. At a home meet, it was very common in collegiate swimming to have swimmers swim in the breaks. The official roster was adjusted before each competition based on the health of the swimmers and the requirements and intent of the competition. Coach McKeever viewed it as an opportunity for swimmers to prove that Coach McKeever made a mistake in who she chose to swim the races.

Sometimes Swimmer A was on the travel team and sometimes she was not. The roster changed. For an invitational, everyone went, money permitting. For dual meets, not everyone went. Most swimmers went to the ██████████ invitational, although Swimmer L (Swimmer, ██████████) did not, perhaps due to illness. Coach McKeever did not say if Swimmer A swam well at the meet, responding by instead asking the interviewers what “well” means. She also noted that top times is only one factor in assessing someone’s abilities. Swimmer A only swam two events, which affected how she could contribute. Coach McKeever also said that her calculus involved comparing Swimmer A’s times to other schools’ times, not just the times of Cal swimmers. Because neither of Swimmer A’s relay teams were the fastest teams at Cal, her relay teams would not assist the team in conference and national meets.

Coach McKeever noted that ██████████ out of the ██████████ people on the team swam times that qualified for ██████████ and Swimmer A did not. (The NCAA limits each school to 18 swimmers.) ██████████

In a follow-up statement, Coach McKeever refuted the claim that Swimmer A was the top ██████████ recruit in her class. She said that two other first year swimmers, Swimmer J

³⁸ In a written follow-up Coach McKeever disagreed with ██████████ Staff A’s (Assistant Coach, ██████████) list of slower athletes, agreeing only that Swimmer ██████████ was slower. Coach McKeever said that Swimmer L (Swimmer, ██████████) was slower at times, Swimmer Y (Swimmer, ██████████) was rarely slower, Swimmer Z (Swimmer, ██████████) was rarely slower, Swimmer AA (Swimmer, ██████████) was slower at times, and Swimmer AB (Swimmer, ██████████) was slower at times. Coach McKeever noted that Swimmer AB put in effort consistently and improved from the prior year.

(Swimmer, ██████████) and Swimmer R (Swimmer, ██████████) qualified for ██████████
██████████.³⁹

(e) Removing Swimmer A from Practice

According to Coach McKeever, in general, there was a lot of adjustment with trying to acclimate the freshmen and sophomores ██████████. At first, Coach McKeever and the other coaching staff tried to correct swimmers when they did something wrong. Around the time of the beach trip, they switched to pointing out when a team member did something correctly. This approach also did not work. They next tried telling the swimmers what needed to be better, giving one warning, and then asking the swimmer to leave practice and saying she could come back and try again the next day. Coaching staff and captains spent a lot of time in meetings with individuals and with the group, which was detracting from the team's ability to train.

Team members were removed from practice for things such as blatantly not following directions, quitting in the middle of a set, pulling on the lane lines, bad body language, and anything that detracted from the productivity of the group in a way that was not helping them reach their potential. Coach McKeever did this because her job was to coach to the highest denominator, not the lowest.

Coach McKeever said that comparing Swimmer A to Swimmer L (Swimmer, ██████████) was not fair, because Swimmer L did not have the same history as Swimmer A and so the repercussions for conflict with Coach McKeever were different. She said that Swimmer L was disrespectful but when confronted, she moved on. In contrast, when Swimmer A was confronted, Swimmer A continued with the same behavior and expected others to adjust to her.

Coach McKeever believed that Swimmer A was kicked out of practice four to five times during the entire year. She said that Swimmer A being kicked out of practice once or twice a week was an exaggeration. Coach McKeever stated that when Swimmer A was kicked out, it was for not paying attention, lack of effort, or her body language. If Swimmer A asked why she was kicked out, Coach McKeever told her. In a follow-up written statement, Coach McKeever added that there were approximately 19 weeks of the collegiate season, and nine, sometimes ten, practices a week. She said that meant 170 training sessions per year, and if Swimmer A was kicked out twice a week that would add up to 38 total times. The reality, she said, was at most six times. Coach McKeever said that Swimmer A was kicked out more than other swimmers because her behavior did not improve.

Coach McKeever explained that with ten practices per week, a swimmer should attain a level of improvement and assimilate into the group, but Swimmer A showed only very minimal improvement. In Coach McKeever's professional opinion, Swimmer A was not putting in the effort needed to produce the kind of improvement that Coach McKeever expected to see. Coach McKeever explained this was partially subjective. She stated that Swimmer A was so slow that Coach McKeever could not start the next set when she normally would, which slowed down the

³⁹ Swimmer R was ██████████ not in Swimmer A's recruiting class.

tempo and cadence of a practice. Swimmer A's failure to pay attention and lack of improvement were detracting from the experience of the best people on the team.

Coach McKeever's job and responsibility was to win meets, so her commitment was to the women who are winning. According to Coach McKeever, she "knew," subjectively, that Swimmer A's lack of improvement was not due to her ability. Coach McKeever clarified that Swimmer A was not kicked out of practice simply for being slow. She stated that she was able to tell when really slow swimmers are trying their best. Coach McKeever stated that whether or not Swimmer A improved her times, she would not affect the team's NCAA results, and meanwhile, Swimmer A was taking away from the women who were there to win. At the end of the year, Coach McKeever was focused more on the times and performance of the swimmers who [REDACTED].

Coach McKeever gave an example of Swimmer A's conduct detracting from others: she said Swimmer A did not make eye contact or listen while Coach McKeever gave the directions for a set. She also did not ask questions when Coach McKeever asked for questions but then would ask someone in her lane for clarification, which took away from that athlete's ability to get ready or do the set. Coach McKeever also explained that not paying attention during a set or instructions risked injury to others. For instance, Swimmer A sometimes pushed off too close to another swimmer.

In response to Swimmer K's (Swimmer, [REDACTED]) comment about making Swimmer A orally repeat back complicated sets, Coach McKeever acknowledged there were three to five times where she asked Swimmer A, Swimmer B (Swimmer, [REDACTED]), and others to repeat the set when she thought they did not know it and had not asked for clarification. She said that she was not setting them up to fail, but rather setting an expectation that everyone needed to know what they were doing before they started, rather than just following the people in front of them, which Swimmer A, Swimmer B, Swimmer AA (Swimmer, [REDACTED]), and Swimmer G (Swimmer, [REDACTED]) tended to do at times. She described this as a standard coaching practice that she applied evenly.

According to Coach McKeever, Swimmer A also had body language and posture issues. Coach McKeever clarified that there was no "right" or "wrong" expression on someone's face, and Coach McKeever did not judge Swimmer A on the first day for having the wrong look. Coach McKeever had observed occasions when Swimmer A engaged with her teammates, had fun, and raced with passion, so she knew that Swimmer A was capable of that. Coach McKeever told Swimmer A individually that if she tapped into that passion, she would help the team, but if she did not, she would not get better or help the team. At the end of a meet where Swimmer A had a great race, Coach McKeever recalled saying, "Wow, look at what [Swimmer A]'s capable of. That is who we need to come to practice." Coach McKeever stated that a swimmer cannot just tap into that on race day and expect to achieve the desired results.

Coach McKeever said that Swimmer L (Swimmer, [REDACTED]), Swimmer O (Swimmer, [REDACTED]), Swimmer J (Swimmer, [REDACTED]), Swimmer K (Swimmer, [REDACTED]), Swimmer Q (Swimmer, [REDACTED]), Swimmer AK (Swimmer, [REDACTED]), and Swimmer AL (Swimmer, [REDACTED]), all talked back, or messed up, or did not meet deadlines, and

are all [REDACTED]. Coach McKeever said that she talked to all of those swimmers too, but at places besides just the pool.

(f) *Training with Men's Team*

Coach McKeever said that she did not let Swimmer A and Swimmer B (Swimmer, [REDACTED]) train with the men's team, as it would have been unfair to the men's coach. She explained that, during the spring, she can mandate only eight hours of practice per week, and Swimmer B and Swimmer A attended only the mandatory practices and none of the optional practices during the first five weeks of the spring (March [REDACTED] through April [REDACTED]).⁴⁰ Coach McKeever explained that if Swimmer A was not going to do anything optional to get better (and Swimmer A had not gone to any optional practice), then Coach McKeever was not going to interfere with the men's swimming program to keep Swimmer A happy. The men are faster swimmers and were doing Coach McKeever a favor, and she did not want to penalize the men by making them practice with women athletes that could not even keep up with other women. She said that she precluded them from attending the men's practices based on their ability – they could not keep up at women's practices – rather than their skin color. In her follow-up written statement, she added that Swimmer O (Swimmer, [REDACTED]) also was not allowed to attend the men's practices.⁴¹

(g) *Ranking Swimmers*

Coach McKeever asked the team to divide themselves into three categories based on what they had done during the spring training season. She told them that she sees them as being in three different groups at that point in the season. She told them that if they placed themselves into a category that she did not think they belonged in, then she wanted to have a one-on-one meeting to discuss their categorization so they would be on the same page. Swimmer B (Swimmer, [REDACTED]) and Swimmer A both put themselves in the category that Coach McKeever had told the team was the “bare minimum” category. Coach McKeever acknowledged telling Swimmer K (Swimmer, [REDACTED]) and others that she did not want to work with those who were not coming to practice and only doing the bare minimum, which was antithetical to the team culture.⁴²

Coach McKeever stated that Swimmer A was the only person who did not schedule her end-of-year meeting with Coach McKeever. Swimmer A told Coach McKeever that she had

⁴⁰ Coach McKeever also justified her decision to create a training schedule with different groups of swimmers invited to different practices by pointing out that she was coaching solo, [REDACTED] and was trying to enhance productivity.

⁴¹ Swimmer O (Swimmer, [REDACTED]) suffered a [REDACTED] injury early in the year and had academic difficulties. She took a leave of absence from the team for the majority of the [REDACTED] season.

⁴² Coach McKeever said that it was unrealistic for individuals or a team to expect to achieve a podium finish at an NCAA Championship and not take advantage of the spring and summer months, which was a common expectation among top programs.

already returned to her home, but in fact she was still on campus. The meetings happened in March through the beginning of May.

(ii) Swimmer A's Attempt to Join a Team Meeting

Coach McKeever recalled the incident where Swimmer A had food poisoning and Coach McKeever did not allow her to attend a team meeting. Coach McKeever stated that she knew Swimmer A was ill and had missed practice that day.

However, on the afternoon in question, Staff F (Athletic Trainer,) told Coach McKeever that Swimmer A was cleared to come to practice. Coach McKeever assumed that Staff F's statement meant that Swimmer A's symptoms had cleared. Coach McKeever also assumed that Staff F got this information from Swimmer A, so her expectation was that Swimmer A and everyone else cleared to participate would be at the meeting that evening. Instead, at the meeting Swimmer B (Swimmer,) and Coach McKeever asked her what she was doing. Coach McKeever told Swimmer B that, because Swimmer A was cleared, if she wanted to participate in the meeting, she needed to attend the meeting in person. No one was offered the option to participate by , even if they were sick. If a swimmer was sick, that swimmer was allowed to miss practice or a team meeting; however, the medical staff had said that Swimmer A was not sick, she was cleared, and she could participate.

Coach McKeever did not know if she called Swimmer A "lazy," but she said during our interview that it would be lazy not to do the short walk down the hill to attend the meeting and to instead expect that one's coach and teammates would allow one to participate via . Swimmer A did not communicate with Coach McKeever about her illness; the only reason that Coach McKeever knew what was happening was because Staff F preemptively contacted her. Swimmer A did not tell Coach McKeever that she was not coming to the meeting and did not ask permission to join via . She just assumed it would be acceptable to join via . By this time, Swimmer A had been on the team for approximately four months and could have handled this situation differently. Coach McKeever interpreted Swimmer A's behavior as assuming she could make her own rules about when she can or cannot join meetings.

Coach McKeever said that if Swimmer A had told her she was cleared but still felt sick, it would have been possible to have a discussion; however, she objected to the idea that Swimmer A's way of solving the problem would be acceptable to Coach McKeever or the team without further discussion. The meeting was one in which teammates shared their goals, which was a personal topic, and other teammates might not want to share their goals with someone who was and might have other people in the room where the is located. Because this issue arose as the meeting was starting, Coach McKeever had to make a quick decision and did not allow Swimmer A to participate via .

During her interview, Coach McKeever said that she did not recall exactly what she said to Swimmer A at practice the next day.⁴³ However, it would have been appropriate to tell Swimmer A that that was a really important meeting and she hoped that Swimmer A could find a way to make it up. She thought her tone was probably one of disappointment and at the volume at which Coach McKeever spoke during the MTO interview (meaning slightly elevated and frustrated or annoyed).

In a follow-up written statement, Coach McKeever said that the quoted emails regarding Swimmer A's practice attendance reflect different times of the year during which there were different expectations of the swimmers. She said that by referencing the November [REDACTED] email and the [REDACTED] meeting, Swimmer A conflated separate incidents. Swimmer A emailed Coach McKeever on November [REDACTED] about [REDACTED] not being able to attend that afternoon's in-person practice. The [REDACTED] meeting Swimmer A referenced was on a different date. The team had a Monday night in-person team meeting around [REDACTED] to share their goals. Swimmer A told Coach McKeever before that meeting that she was not feeling well, and [REDACTED] Staff F called Coach McKeever and told her that [REDACTED] Staff F had cleared Swimmer A to attend. Therefore, when Swimmer A asked Coach McKeever for permission to attend the meeting via [REDACTED], Coach McKeever denied the request.

(i) Tone and Language

Coach McKeever said that she used the same tone with Swimmer A as she did with anyone. Coach McKeever described her tone with Swimmer A as a "coaching tone," and provided examples such as, "[Swimmer A], that is a great job" and "that's not good enough, you're better than that." Coach McKeever stated that in most of the conversations where Swimmer A was in the water, she likely used a loud or direct tone. Coach McKeever also said that she might be loud while the swimmer was on the pool deck if she was frustrated. Coach McKeever said that she did get frustrated sometimes, as it was her job during practice to coach [REDACTED] women, not just Swimmer A.

Coach McKeever denied ever calling Swimmer A disrespectful.

(ii) Use of the Word [REDACTED]

Coach McKeever said she defined a [REDACTED] as someone that likes nice things, wants to make sure she has the best, and likes things to be done her own way. According to Coach McKeever, a [REDACTED] is someone who shows things off and acts like a [REDACTED]; [REDACTED]. Coach McKeever denied that the definition of [REDACTED] was a person who acted entitled. (Coach McKeever said that a "princess" could be someone who is over other people or entitled, but that is not how she defined it.) Coach McKeever did not view the [REDACTED] label to be a negative thing.

⁴³ After reviewing the evidence as part of this investigation, Coach McKeever said that she told Swimmer A the meeting was important and, because Swimmer A chose not to attend, there was no way to for Swimmer A to learn what her teammates had shared about their goals.

Coach McKeever stated that she did call Swimmer A a [REDACTED] but not routinely, and she could not recall how often or in what context she called her a [REDACTED] or in what tone of voice. Coach McKeever stated that Swimmer A never told her not to call her that or said it bothered her. Coach McKeever stated that she also has called Swimmer AM (Swimmer, [REDACTED]) and Swimmer W (Swimmer, [REDACTED]).⁴⁴

(k) Discussions About Quitting/Getting Cut From Team

Coach McKeever acknowledged that she told Swimmer A and Swimmer B (Swimmer, [REDACTED]) that she would cut them from the team if they could not make the intervals.⁴⁵ Coach McKeever said she did not have to keep someone on the team when they cannot keep up with practice. Coach McKeever felt that Swimmer A treated the Cal swimming team like a club team, where she had the right to come to practice. Multiple times during the spring, Swimmer A and Swimmer B had opportunities to prepare themselves to swim at the Cal level, but by their own admission, they did the bare minimum. The university had provided them with resources, and if they were not helping the university perform, Coach McKeever was allowed to give her reasons to the university for why she did not think they should be on the team. Coach McKeever spoke to Jennifer Simon-O'Neill (Executive Senior Associate Athletic Director, 2013-present) and Jim Knowlton (Director of Athletics, 2018-present) about this issue. One of the questions in the end of season performance review was how the athletics administration could help Coach McKeever. In response to that question in her performance review, Coach McKeever said that if some people would not get on board with training at the elite level, she needed the ability to move on from those people, and Coach McKeever requested advice on how the Athletics Department wanted her to handle that situation.⁴⁶ Coach McKeever explained that the people she had in mind were Swimmer AA (Swimmer, [REDACTED]), Swimmer L (Swimmer, [REDACTED]), Swimmer AB (Swimmer, [REDACTED]), Swimmer B, and Swimmer A. (Coach McKeever stated that she saw significant improvement in Swimmer L in March and April.)

Coach McKeever said that her supervisors were already aware of everything brought up in the [REDACTED] articles, including issues surrounding Swimmer B, Swimmer A, and Swimmer AN (Swimmer, [REDACTED]).

Coach McKeever also said that she would not have helped Swimmer A and Swimmer B enter the transfer portal because she was not under the impression that they even wanted to swim. Coach McKeever thought she told Swimmer B that Coach McKeever felt a certain responsibility for Swimmer B being there because it was a stretch for her and she thought Swimmer B was in over her head. She told Swimmer B that she could not continue the way they

⁴⁴ Swimmer AM said in her interview that Coach McKeever never called her a [REDACTED] or a [REDACTED]. Although not explicitly asked, Swimmer W did not state in her interviews that Coach McKeever called her a [REDACTED] or [REDACTED].

⁴⁵ In a follow-up written statement, Coach McKeever clarified that her expectations for Swimmer A with respect to her ability to make intervals and keep the team on task extended beyond times for medley sets. She also said that it was not accurate for a swimmer to say they did not swim a certain stroke because all swimmers were expected to swim all strokes.

⁴⁶ See Ex. 16 [CALINT-000370].

were and told her she did not have to stay at Cal and did not have to swim anymore, she could go somewhere else.

(i) *Physical Appearance*

Coach McKeever said that she remarked once about Swimmer A taking a long time in the locker room. Coach McKeever made this comment because Swimmer A often was in the locker room for up to 45 minutes after practice was over. According to Coach McKeever, this was not a concern, but rather merely an observation, and she did not say it because Swimmer A. Coach McKeever noted that other people also spent a long time in the locker room. The comment she made about Swimmer A was not judgmental or degrading; it was a casual exchange. Coach McKeever denied making any other comments about Swimmer A's.

Coach McKeever said that Swimmer A, and other swimmers at practice asked how Swimmer A. Swimmer A stated that. Coach McKeever asked Swimmer A if she was comfortable with the team talking about, and Swimmer A said that it did not bother her. Coach McKeever asked for general permission to talk about Swimmer A's because she was concerned that the team's comments might hurt Swimmer A's feelings. According to Coach McKeever, Swimmer A said she was glad people noticed. Coach McKeever did not recall saying that she was distracted by Swimmer A's eyelashes. She thinks she may have asked out of interest how Swimmer A could.

Coach McKeever has had swimmers with in prior years and has commented to them about their. She listed as examples Swimmer AH (Swimmer,),⁴⁷ Swimmer AO (Swimmer,), and Swimmer AG (Swimmer,). Coach McKeever thought that Swimmer AJ (Swimmer,) or Swimmer W (Swimmer,) got their, and Coach McKeever commented to them that they looked nice. Coach McKeever noted that there is a difference in appearance between.

Regarding comments made about Swimmer A's, Coach McKeever said that she made comments along the lines of asking Swimmer A how she was able to. Coach McKeever did not think that Swimmer A but she was not sure, as Staff A (Assistant Coach,) handled the team's. Coach McKeever said she does not believe she ever made these comments about Swimmer A to other swimmers or coaches, and she was sure that she did not make negative comments about Swimmer A to other people. According to Coach McKeever, Swimmer A was not the only one with to whom Coach McKeever made this comment. Others included Swimmer AL (Swimmer,) and Swimmer M (Swimmer,).

Coach McKeever disagreed with Swimmer I's (Swimmer,) conclusion that she mixed up Swimmer A's and Swimmer B's names because they were both and called that

⁴⁷ Swimmer AH said that Coach McKeever did not comment on her.

conclusion “ridiculous.” She said that “just like a parent, teacher, [or] friend, I got tongue tied, [and] mixed up people’s names on occasion.”

5. Factual Findings

(a) Allegations Regarding Comments on Demeanor and Attitude

It is undisputed that Coach McKeever perceived Swimmer A as having a bad attitude and that Coach McKeever criticized Swimmer A for having a posture, stance, crossed arms, and facial expressions that Coach McKeever perceived as communicating disrespect. It is also undisputed that Coach McKeever described Swimmer A – both to Swimmer A directly and to her teammates – as ██████ “entitled,” and ██████ and that Coach McKeever discussed with other swimmers what she perceived as Swimmer A’s bad attitude.

What is disputed is whether Swimmer A actually did have a negative attitude or did not work as hard as other swimmers, as well as the nature and severity of that alleged negative attitude. Some swimmers perceived Swimmer A as expressing a negative attitude with her body language; others described her as merely standing with her hip to one side or with a sleepy look on her face, a posture and facial expression that Coach McKeever particularly disliked. Some swimmers, including some seniors and co-captains, described Swimmer A as quiet, hard-working, and grateful for the opportunity to swim on the Cal team. Witnesses uniformly commented that Swimmer A swam more slowly in practices than she did in actual meets, where she performed well. Regardless of whether Swimmer A in fact had a bad attitude or did not work hard, the preponderance of the evidence supports the conclusion that Coach McKeever portrayed Swimmer A as such, both in talking to Swimmer A and to other swimmers.

A number of witnesses throughout Coach McKeever’s time at Cal reported that Coach McKeever criticized them for their facial expressions or posture or lack of effort. We find it more likely than not that Coach McKeever’s criticisms of Swimmer A – for her posture, her crossed arms, her facial expressions and her perceived lack of effort – were similar to criticisms she had of other swimmers for similar conduct. The preponderance of the evidence supports the conclusion that Coach McKeever on occasion used the terms “lazy” and “entitled” to describe other swimmers, who were not ██████, who exhibited similar conduct. We lack sufficient evidence to conclude by a preponderance of the evidence that in making those comments alone, Coach McKeever treated Swimmer A differently in that regard. At the same time, however, the preponderance of the evidence supports the conclusion that Coach McKeever persisted in repeatedly ascribing a “bad attitude,” laziness, and entitlement to Swimmer A in a way that stood out to Swimmer A and to other swimmers. We note that descriptors like “lazy” and “entitled” and “bad attitude,” connoting defiance or obstinacy, are evocative of stereotypes of ██████. As described further below, Coach McKeever’s repeated and persistent ascribing of these characteristics to Swimmer A contributed to an overall pattern of conduct that we analyzed in reaching our policy determination.

We did not find credible Coach McKeever’s statements that she called other swimmers a ██████ or that by ██████ she did not mean to connote something negative but instead used ██████ to refer to ██████. No other swimmer reported to us that Coach McKeever called anyone besides Swimmer A a ██████

Staff A (Assistant Coach,) thought that Coach McKeever “likely” called another swimmer, Swimmer W (Swimmer, , a once, but her recollection was not definite. Swimmer AM (Swimmer,), whom Coach McKeever said she called a or a said that Coach McKeever never referred to her as such. We find it more likely than not that Coach McKeever used the word which has a negative connotation evocative of stereotypes of , to describe Swimmer A and not any other swimmer. We also did not find Coach McKeever’s description of Swimmer A as “loud” credible, as numerous swimmers described Swimmer A as quiet and as someone who did not talk back to Coach McKeever.

(b) Allegations Regarding Asking Swimmers At Beach Trip Whether Swimmer A Had An Attitude

Numerous swimmers told us that Coach McKeever asked the freshman swimmers at the beach trip at the start of the school year whether Swimmer A had an attitude, called Swimmer A a and asked for examples of how Swimmer A had an attitude. Coach McKeever did not deny that she did so, but rather provided context, explaining that the upperclassmen had, during this beach trip, described Swimmer A to Coach McKeever as a problem. While some swimmers told us that at this early point in the school year, they thought Swimmer A might have an attitude problem, some swimmers – and Coach McKeever herself – also identified other swimmers, who were , as having an attitude problem. The swimmers were not called out in the same manner by Coach McKeever during this beach trip exercise. We conclude that it is more likely than not that Coach McKeever singled out Swimmer A in a uniquely harsh and isolating manner during the beach trip as a swimmer who had an attitude problem.

(c) Allegations Regarding Exclusion of Swimmer A From Invitational

It is undisputed that Swimmer A was the only uninjured swimmer whom Coach McKeever precluded from competing at the Invitational in . According to both Coach McKeever and Staff A (Assistant Coach,), the decision to exclude Swimmer A was made in conjunction with the team captains in an attempt to get Swimmer A to understand that she had to earn the right to compete and especially to travel. This account is disputed by at least two , who told us that the captains were merely informed of the already-made decision not to bring Swimmer A to the invitational and that the idea that Swimmer A had an attitude was one that was created and planted by Coach McKeever. Coach McKeever and her counsel later provided a different justification for excluding Swimmer A from the invitational. In a written complaint to OPHD, dated November 28, 2022, Coach McKeever and her counsel said that Coach McKeever did not permit Swimmer A to swim in this meet because Swimmer A was near the bottom of the team in terms of her speed.

We find that the preponderance of the evidence contradicts this assertion and the other reasons Coach McKeever gave for excluding Swimmer A. First, swimmers who were undisputedly slower than Swimmer A, such as Swimmer B, were permitted to compete. Second, the competition was an invitational that apparently did not limit the size of the roster and for which it was not necessary for swimmers to qualify based on speed. Taking Swimmer A

to the invitational would not have prevented Coach McKeever from taking other, faster swimmers. (Also, contemporaneous emails show that the team already had arranged travel for Swimmer A, so the expense of the travel was not a factor.) Third, the assertion that the decision to exclude Swimmer A was based on her lack of speed is contradicted by [REDACTED] and Assistant Coach [REDACTED] Staff A who all agreed that Coach McKeever excluded Swimmer A because of Swimmer A's perceived attitude. A preponderance of the evidence shows that Coach McKeever decided to exclude Swimmer A from the invitational, that Swimmer A was the only uninjured swimmer to be excluded, and that although other [REDACTED] swimmers were viewed by Coach McKeever (and other swimmers) as having an attitude - including one swimmer whom some described as actively talking back to Coach McKeever - those other swimmers were allowed to compete in the invitational.

(d) Allegations Regarding Kicking Swimmer A Out of Practice

A number of witnesses, including swimmers who reported they were treated well by Coach McKeever, observed that Coach McKeever kicked Swimmer A out of practice for making mistakes on sets or perceptions about Swimmer A's attitude whereas other swimmers who made similar mistakes or exhibited a similar demeanor were not kicked out. We find it more likely than not that Coach McKeever kicked Swimmer A out of practice more so than she did other swimmers and that, in some instances, the reasons Coach McKeever gave Swimmer A were reasons that applied to other swimmers who were not asked to leave practice.

(e) Allegations Regarding Swimmer A's [REDACTED]

It is undisputed that Coach McKeever commented on Swimmer A's [REDACTED]. Coach McKeever denied commenting on how [REDACTED] but acknowledged commenting on how long Swimmer A spent in the locker room; however, we find [REDACTED] Staff A's (Assistant Coach, [REDACTED]) description of this incident more credible. [REDACTED] Staff A provided specific details about her concerns about the potential racial biases inherent in such a comment and her efforts to explain this to Coach McKeever. We find it credible that Coach McKeever's comments about Swimmer A's [REDACTED] were based on her perceptions that [REDACTED] might interfere with Swimmer A's [REDACTED] and that long nails might make it difficult [REDACTED].

(f) Allegations Regarding Coach McKeever's Reaction to Swimmer A's Attempt [REDACTED] to Attend Team Meeting

It is undisputed that Coach McKeever refused to allow Swimmer A to attend a team meeting [REDACTED] and that Coach McKeever expected all team members to attend in-person. Coach McKeever disputes Swimmer A's claim that Swimmer A had updated Coach McKeever about [REDACTED]. We lack sufficient evidence to conclude by a preponderance of the evidence that Coach McKeever treated Swimmer A differently from other swimmers in this instance on account of her race.

(g) Allegations Regarding Access to Men's Swimming Team Practices

Swimmer A and Swimmer B (Swimmer, [REDACTED]), [REDACTED], were the only two active swimmers whom Coach McKeever prohibited

from attending the men's team practices in the spring [REDACTED] (a third swimmer also was prohibited from attending, but she was injured and inactive for much of the season). We find credible Coach McKeever's explanation that Swimmer A and Swimmer B were prohibited from attending the men's practices because the two had attended the fewest optional practices that spring. Coach McKeever's claim that Swimmer A and Swimmer B were the two slowest swimmers on the team, who would have slowed the men's team down during practice, is belied, however, by records⁴⁹ showing that Swimmer A's times put her in the middle of the pack – as of December [REDACTED], she swam the [REDACTED] fastest time out of [REDACTED] swimmers for the [REDACTED] [REDACTED] and the [REDACTED] fastest time out of [REDACTED] swimmers for the [REDACTED]; Swimmer A also [REDACTED]. Coaching staff and swimmers described Swimmer A as swimming more slowly in practice than she did in meets, but Swimmer A had demonstrated her ability to swim times that would have allowed her to keep up with the other women on the team. We conclude that a preponderance of the evidence shows that Swimmer A was unfairly grouped with Swimmer B in Coach McKeever's determination of who should be excluded from practicing with the men's team due to their speed.

6. Policy Determination

We find that a preponderance of the evidence supports a finding that, in some instances, Coach McKeever treated Swimmer A differently from similarly-situated swimmers based on her race and that there was not a legitimate, non-discriminatory, non-pretextual basis for the different treatment. Although other freshman swimmers who were [REDACTED] were described by both Coach McKeever and other swimmers as displaying a bad attitude, Swimmer A was the only swimmer whom Coach McKeever singled out for public criticism at the team's beach trip and the only unjured swimmer whom Coach McKeever excluded from the [REDACTED] Invitational in order to teach her a lesson about her attitude. Swimmer A was the only swimmer whom Coach McKeever referred to as a [REDACTED] a term that carries a negative connotation evocative of [REDACTED] [REDACTED]. Coach McKeever's overall pattern of conduct toward Swimmer A suggests an unwillingness to give Swimmer A the same benefit of the doubt that she gave other swimmers and a reliance on stereotypes about [REDACTED].

In Section III.C below, we analyze whether Coach McKeever's pattern of conduct, including her use of the n-word when mimicking rap music, created a hostile environment for Swimmer A based on race.

B. [REDACTED]

1. [REDACTED]

[REDACTED]

⁴⁹ Ex. 1 [CALINT-000542].

■ [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

■ [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

(b) [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

2. Relevant Documentation

(a) [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

49 [REDACTED]

50 [REDACTED]

51 [REDACTED]

52 [REDACTED]

[REDACTED]

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[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

34 [REDACTED]

34 [REDACTED]

[REDACTED]

- [REDACTED]
- [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

22 [REDACTED]

(b)

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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[REDACTED]

[REDACTED]

[REDACTED]

■ [REDACTED]

[REDACTED]

■ [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

C. **Alleged Racially Derogatory Statements and Other Alleged Conduct Giving Rise to A Racially Hostile Environment**

I. **The N-Word**

Swimmer K (Swimmer, [REDACTED]) reported that Coach McKeever used the n-word on one occasion, in its full, unabridged form. According to Swimmer K, the incident with the n-word occurred in the team meeting room, when some but not all members of the team were present. During our interview, Swimmer K identified five other people being present in addition to herself:⁵⁷ Swimmer AL (Swimmer, [REDACTED]), Swimmer U (Swimmer, [REDACTED]), Swimmer AI (Swimmer, [REDACTED]), and possibly Swimmer AD (Swimmer, [REDACTED]) and Swimmer J (Swimmer, [REDACTED]). Swimmer K said that it was a casual environment in which the swimmers were laughing and joking. According to Swimmer K, Coach McKeever told the athletes that she dislikes rap music, saying something to the effect of, "I don't like the rap music you guys listen to these days." Coach McKeever then mimicked the lyrics of rap songs by saying profane words, including swear words and the n-word. As far as Swimmer K recalled, this was the only time Coach McKeever used the n-word in her presence.

Swimmer K reported that she was immediately uncomfortable with Coach McKeever's utterance of the n-word, particularly in her role and in that environment. She said that everyone talked about it afterward, including with swimmers who were not present to witness the incident. A couple of days after the incident, Swimmer B (Swimmer, [REDACTED]) called Swimmer K and asked for Swimmer K's help reporting the incident to the University. Swimmer K participated in reporting the incident.

Swimmer K, Swimmer B, and Swimmer A (Swimmer, [REDACTED]) met with [REDACTED] Staff B [REDACTED] and [REDACTED] Staff A [REDACTED] in April [REDACTED] to report the incident. During that meeting, Swimmer K recounted Coach McKeever's use of the n-word. Swimmer K also described a general team environment driven by fear. Swimmer K's account is documented in [REDACTED] Staff B's April [REDACTED] email to OPHD reporting the swimmers' complaint.⁵⁸ Swimmer K said that she had tried to address various issues with Coach

⁵⁷ According to [REDACTED] Staff B ([REDACTED]), when Swimmer K reported this incident to [REDACTED] Staff B shortly after it occurred, she said that there were about ten athletes in the room.

⁵⁸ Ex. 22 [CALINT-000374].

McKeever but that Coach McKeever was “not receptive” and “began yelling defensively” and “end[ed] the conversation prematurely.”⁵⁹

According to Swimmer N (Swimmer, [REDACTED]), she also was present when Coach McKeever said the n-word. Swimmer N said this occurred during a small group discussion in the team room in the spring. Not many people were present; those who were present were, in her view, the people Coach McKeever liked more than others on the team. Swimmer A and Swimmer B were not present. Swimmer N said that Swimmer T (Swimmer, [REDACTED]), Swimmer K (Swimmer, [REDACTED]; Captain, [REDACTED]), Swimmer AK (Swimmer, [REDACTED]), Swimmer W (Swimmer, [REDACTED]; Captain [REDACTED]), Swimmer U (Swimmer, [REDACTED]),⁶⁰ and Swimmer AL (Swimmer, [REDACTED])⁶¹ were present. Someone asked Coach McKeever for suggestions for music. One swimmer asked Coach McKeever to confirm that Coach McKeever did not like rap music. Coach McKeever responded that she just did not like the words used in rap music. Coach McKeever then started mimicking rap music, including mumbling the n-word. Swimmer N described it as an uncomfortable moment. Swimmer N said that, in mimicking rap lyrics, Coach McKeever censored her use of other curse words, for example saying “F this and F that,” instead of using the word “fuck,” but then used the unabbreviated form of the n-word.

According to Swimmer T (Swimmer, [REDACTED]), this incident occurred as a group of swimmers was trying to find a playlist. Someone had brought up rap music but said it was hard to find a clean playlist for rap. Coach McKeever then said she did not know how others could listen to rap because the lyrics included swear words, which she mimicked by saying, “F this, F that.” Then Coach McKeever said the n-word. The group then just kept on talking. Swimmer T was taken aback. She thought it was noteworthy that Coach McKeever chose to censor out the word “fuck” by saying “f—” but did not censor the n-word by saying “n-word” and instead said the full, unabridged n-word. Swimmer T talked about it afterwards with her teammates and remarked that what happened was very weird. Swimmer T did not feel that Coach McKeever’s statement was racist. She speculated that her use of the n-word maybe just slipped out or that there was a generational difference in how seriously the word is taken. Swimmer T did not view it as a premeditated occurrence. Swimmer T did not discuss this incident with Swimmer A and Swimmer B but was sure they heard about it from others. She did not know how they felt about the situation. Swimmer T never heard Coach McKeever say the n-word any other time.

Swimmer AI (Swimmer, [REDACTED]) said that Coach McKeever has said she does not want rap music played during practice because there are offices around the pool, which is also next to the Tang Center, and the swim program has received complaints in the past about the music. The team used to be allowed to play whatever music they wanted as long as there was not too much swearing or sexually explicit lyrics. In vans while traveling to meets, they are allowed to play rap music. During her

⁵⁹ *Id.*

⁶⁰ Swimmer W and Swimmer U stated that they were not present during the conversation about rap music.

⁶¹ Swimmer AI and Swimmer AK did not participate in the investigation.

interview, Swimmer AI did not say if she was present during the conversation in which the other swimmers said Coach McKeever used the n-word.

Staff F (Athletic Trainer, [REDACTED]) said that Coach McKeever does not like rap music due to her age and other musical tastes. Staff V ([REDACTED]) said that Coach McKeever will not play rap music due to the proximity of the pool to the student health center and her desire to not disturb the health center with profanity.

Staff A ([REDACTED]) said that he has not worked directly with Coach McKeever beyond presentations that he gave in head coaches' meetings. In one such presentation, they talked about not using the n-word, especially for white coaches. He was unsure if Coach McKeever was at that particular meeting.

2. Effect on Swimmer A and Swimmer B

Although Swimmer A (Swimmer, [REDACTED]) and Swimmer B (Swimmer, [REDACTED]) were not present when Coach McKeever said the n-word, they learned of the incident from their teammates. Swimmer B said that Swimmer AK (Swimmer, [REDACTED]), Swimmer S (Swimmer, [REDACTED]), Swimmer L (Swimmer, [REDACTED]), Swimmer K (Swimmer, [REDACTED]), and Swimmer G (Swimmer, [REDACTED]) told her that Coach McKeever had used the n-word. Swimmer P (Swimmer, [REDACTED], Captain [REDACTED]) also told her about the incident, but Swimmer P had heard about it from someone else. This incident, along with Swimmer B's interactions with Coach McKeever and Coach McKeever's statements that Swimmer B's facial expression showed she had an attitude, made Swimmer B feel that she was being targeted. After learning that Coach McKeever used the n-word, Swimmer B refused to attend the optional practices because she did not want to be exposed to Coach McKeever. Before this incident, Swimmer B had not attended prior optional practices because Coach McKeever had spoken negatively about her and insinuated that she was lazy and had an attitude, and learning that Coach McKeever used the n-word reinforced Swimmer B's decision to not attend optional practices.

Swimmer A reported that, after the n-word incident, swimming made Swimmer A even more anxious than she had felt previously, and she thereafter only went to mandatory practices and not any optional practices, as she did not want any additional contact with Coach McKeever.

[REDACTED]

[REDACTED]

Swimmer K also reported that Coach McKeever described Swimmer B and Swimmer A as “diversity recruits,” and that the only reason they were on the team was because of pressure from Jennifer Simon-O’Neill (Executive Senior Associate Athletic Director, 2013-present) to diversify the team.

According to Swimmer I (Swimmer [REDACTED]), the coaches mixed up Swimmer A’s and Swimmer B’s names three times in two days. Swimmer I viewed this as egregious, as Swimmer A and Swimmer B were the only [REDACTED] swimmers.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

In contrast to these witness accounts, 59 people,⁶² including current and former swimmers and coaching staff, said that Coach McKeever never made any comments based on

⁶² Parent of Swimmer BT (Swimmer, [REDACTED]); Parent of Swimmer BT (Swimmer, [REDACTED]); Staff B [REDACTED]; Swimmer AU (Swimmer, [REDACTED]);

nice or that they had never witnessed racist conduct by Coach McKeever. For example, Staff C () said he never witnessed Coach McKeever being racist. Swimmer AS (Swimmer,) said that Coach McKeever treated everyone the same, regardless of race. A number of witnesses also noted, however, that there were not many (or in some years, not any) people of color on the team.

4. Coach McKeever's Response

(a) *The N-Word*

According to Coach McKeever, Swimmer AI (Swimmer,) normally played music from a playlist on from her phone, and Swimmer AI knew Coach McKeever's expectation that there not be swear words in the music. One day when Swimmer AI was not present, Coach McKeever asked who in the group wanted to play music from their playlist. Coach McKeever instructed them to ensure that there was no rap or country music with swear words or lyrics about domestic violence. Coach

Swimmer AN (Swimmer,); Staff F (Athletic Trainer,); Staff H (); Staff I (); Staff J (Assistant Athletic Director,); Staff Q (Assistant Coach,); Staff D (Director of Operations,); Swimmer AV (Swimmer,); Swimmer AW (Swimmer,); Staff C (); Staff K (); Staff C (Athletic Performance Coach,); Parent of Swimmer P (Swimmer,); Staff L (Academic Advisor,); Swimmer AX (Swimmer,); Swimmer AI (Swimmer,); Swimmer AY (Swimmer,); Staff M (); Swimmer AJ (Swimmer,); Swimmer AZ (Swimmer,); Parent of Swimmer AZ; Swimmer X (Swimmer,); Witness A (); Swimmer T (Swimmer,); Jim Knowlton (Director of Athletics, 2018-present); Swimmer BA (Swimmer,); Swimmer BB (Swimmer,); Swimmer BC (Swimmer,); Swimmer BD (Swimmer,); Staff N (); Assistant Coach,); Swimmer AS (Swimmer,); Staff D (Team Consultant,); Swimmer BE (now Swimmer BE) (Swimmer,); Swimmer BF (Swimmer,); Staff E (); Witness N (); Swimmer BG (Swimmer,); Witness B (); Swimmer BH (Swimmer,); Staff E (); Swimmer BI (Swimmer,); Staff G (); Swimmer BJ (Swimmer,); Swimmer BK (Swimmer,); Captain,); Staff O (); Swimmer AP (Swimmer,); Staff J (); Assistant Coach (); Swimmer W (Swimmer,); Swimmer BL (Swimmer,); and three anonymous witnesses.

McKeever stated she likely said "n-this, n-that" in place of the full word. She denied using the word "nigger." Coach McKeever also said that in explaining she did not want any curse words in the music played, she probably said the word "fuck," without censoring herself, while giving an example of inappropriate language.

Coach McKeever said that she did not typically use the full n-word. She stated, however, that if the swimmers said she said it, it is possible that she did, but it was supposed to be an educational statement about not playing such lyrics over a speaker. Her intent was to communicate that rap music with those particular words should be played, but other rap music could. Coach McKeever stated that "if you put a gun to [her] head," she could say she did not say the word, but she did not recall ever using that word.

Coach McKeever did not recall everyone who was present. She believed the following swimmers were present: Swimmer AQ (Swimmer, [REDACTED]) (her music), Swimmer W (Swimmer, [REDACTED]) and Swimmer U (Swimmer, [REDACTED]). Coach McKeever did not know the date of when the conversation occurred, but she believed it was in [REDACTED]. This is the only conversation she recalled having about rap music with the team in [REDACTED].

(b) [REDACTED]

(c) [REDACTED]

(d) Alleged reference to Swimmer B as a "diversity recruit"

Coach McKeever denied characterizing Swimmer B as a "diversity recruit." She stated that the fact that Swimmer B was smart, talented, and [REDACTED] did get Swimmer B on her radar. She told us that Jennifer Simon-O'Neill (Executive Senior Associate Athletic Director, 2013-present), [REDACTED] Staff A [REDACTED] and others in the department are always telling her to be mindful of the diversity on the teams.

5. Factual Findings

(a) Allegations Regarding Use of the N-Word

It is undisputed that Coach McKeever, in the course of explaining to a small group of swimmers why she did not like rap music, mimicked the lyrics of rap songs by using profanity. What is disputed is whether Coach McKeever used the full, unabridged n-word. In our interview of her, Coach McKeever denied using the full, unabridged n-word, and explained that she said "n-word" rather than the full word. We spoke to three swimmers who were present during this incident, [REDACTED]. All three described Coach McKeever as having used the full, unabridged n-word. Shortly after the incident, and before news articles about Coach McKeever were published, Swimmer A (Swimmer [REDACTED]), Swimmer B (Swimmer, [REDACTED]), and one [REDACTED] who was present during the incident reported it to the Athletics Department's [REDACTED], which in turn reported the incident to the University's Office for the Prevention of Harassment and Discrimination. Except in her recollection of how many swimmers were present at the time, the account provided in April [REDACTED] to the University by [REDACTED] who witnessed the incident firsthand is consistent with the account she gave us when we interviewed her this past summer. We find it more likely than not that Coach McKeever used the full, unabridged n-word when mimicking rap music.

We also find credible Coach McKeever's explanation that her intent in mimicking the rap lyrics was to demonstrate why rap music should not be played. Numerous swimmers and coaching staff across multiple years told us that Coach McKeever did not like to play music that used profanity because such music could be heard by others (Spieker Pool is surrounded by the athletics administration offices and the recreation center; Legends Aquatics Center is adjacent to the Tang Center for Student Health and public walkway).

(b) Allegations Regarding Reference to Swimmer B and Swimmer A as "Diversity Recruits"

We find it more likely than not that Coach McKeever referred to Swimmer B and Swimmer A and "diversity recruits," though we credit Coach McKeever's explanation that the fact that Swimmer B was smart, talented, and [REDACTED] was what brought Swimmer B to Coach McKeever's attention in recruiting and that Jennifer Simon-O'Neill (Executive Senior Associate Athletic Director, 2013-present) and others in the department had emphasized with Coach McKeever the importance of enhancing diversity on the team.

6. Policy Determination

We conclude that Coach McKeever's use of the n-word on one occasion in the course of describing what sort of language she did not want played on the pool speakers did not, in isolation, constitute conduct that was sufficiently severe, pervasive, or persistent so as to limit or interfere with an individual's ability to participate in Cal swimming. It is undisputed that Coach McKeever used the n-word to illustrate the sort of language she did not want to hear and not as a reference to another person.

When considered together with Coach McKeever's entire pattern of conduct with Swimmer A and Swimmer B, we find a hostile environment. We conclude that Coach McKeever subjected both Swimmer B and Swimmer A to a racially hostile environment by singling Swimmer A out for negative scrutiny by her teammates, by calling her a [REDACTED] by commenting on Swimmer A's appearance and demeanor in a manner evocative of racial stereotypes, by inappropriately grouping Swimmer A and Swimmer B in both personality and speed, and by using the n-word on one occasion, in an incident that was not witnessed by Swimmer A or Swimmer B, but that they learned about from their teammates. A preponderance of the evidence shows that this hostile environment was pervasive or persistent and that it interfered with both Swimmer B's and Swimmer A's ability to participate in or benefit from the swimming program at Cal. Both described the significant mental and emotional toll the environment took on them throughout the year and their avoidance of optional practices following the incident in which Coach McKeever used the n-word.

IV. ALLEGED NATIONAL ORIGIN-BASED DISCRIMINATION AND HARASSMENT

A. Swimmer G

1. Swimmer G's Account

Swimmer G is [REDACTED] [REDACTED]
[REDACTED] She joined the Cal women's swimming team as a freshman [REDACTED]
[REDACTED]

Swimmer G said she was frequently the target of Coach McKeever's frustration. According to Swimmer G, Coach McKeever reacted angrily when Swimmer G underperformed [REDACTED] during the [REDACTED] Pac-12 championships. According to Swimmer G, Coach McKeever got close to Swimmer G's face and screamed at her. From that point on, Coach McKeever frequently yelled at her and told her she was useless, embarrassing, and not worth her scholarship. Swimmer G noted that Coach McKeever frequently brought up Swimmer G's scholarship while yelling at her. Coach McKeever also frequently pulled Swimmer G out of the pool and kicked her out of the practice for minor things, such as the look on her face. Swimmer G recalled Coach McKeever once leaving practice herself because of how angry she became at Swimmer G's pace. Swimmer G felt that her treatment by Coach McKeever increased her anxiety about racing and affected her performance. [REDACTED]
[REDACTED]

[REDACTED] Swimmer G said that Coach McKeever finally told her that unless Swimmer G transferred, she would make Swimmer G's life miserable.

[REDACTED]

[REDACTED]

[REDACTED]

Swimmer G explained that Coach McKeever told Swimmer G, in a degrading manner, that she was very bad at communicating. When Swimmer G attempted to repeat the things Coach McKeever had asked Swimmer G to do in practice, Coach McKeever screamed back at Swimmer G that she was only repeating what Coach McKeever wanted to hear and that she did not understand. She said that, at one point, Coach McKeever told Swimmer G that Coach McKeever would never recruit another international swimmer.

[REDACTED]

[REDACTED] Swimmer G said that Coach McKeever told Swimmer G on multiple occasions that Swimmer G does not understand things, and Coach McKeever frequently got angry at Swimmer G for her language barrier.

2. Other Witness Accounts

Several swimmers described Coach McKeever's negative treatment of Swimmer G and its apparent effects on Swimmer G. Swimmer Q (Swimmer, [REDACTED]) noted that Swimmer G was targeted by Coach McKeever for persistent, harsh criticism during Swimmer G's freshman year. Swimmer Q said Coach McKeever's verbal attacks on Swimmer G grew worse and became more personal during her sophomore year. Swimmer K (Swimmer, [REDACTED]) noted that Swimmer G had performance anxiety that was exacerbated by Coach McKeever's treatment of her. [REDACTED] Staff A (Assistant Coach, [REDACTED]) noted that Coach McKeever frequently went too far in speaking with Swimmer G. Jane Roe #2 noted that Coach McKeever frequently targeted Swimmer G for negative feedback in front of the team. Jane stated that Coach McKeever repeatedly called Swimmer G "stupid" in front of the team.

(a) Criticism Unrelated to Swimming

Swimmers and coaches described Coach McKeever as attacking Swimmer G for things unrelated to swimming. [REDACTED] Staff A (Assistant Coach, [REDACTED]) said that Coach McKeever believed that Swimmer G was not willing to change or improve, and Coach McKeever told Swimmer G she had mental problems and needed therapy and generally berated her about things unrelated to swimming. Swimmer Q (Swimmer, [REDACTED]) similarly said that Coach McKeever frequently yelled at Swimmer G that she had a mental disorder and needed to be on medication. Swimmer B (Swimmer, [REDACTED]) said that Swimmer G told her that Coach McKeever said to get her ears checked by an American doctor. Swimmer N (Swimmer, [REDACTED]) said she believed Swimmer G got in trouble or was kicked out for minor things or essentially no reason at all.

(b)

[REDACTED]

(c) *Allegations about Swimmer G's Difficult Behavior*

In contrast, some swimmers described Coach McKeever's treatment of Swimmer G as appropriate given what they saw as Swimmer G's difficult behavior. Swimmer R (Swimmer, [REDACTED]) said Swimmer G talked back to Coach McKeever and insisted she had done things correctly when she in fact had done something wrong. Swimmer AI (Swimmer, [REDACTED]) told us that she perceived Swimmer G as someone who did not listen and was not committed because she could not take feedback and did not want to be coached. Swimmer AJ (Swimmer, [REDACTED]) described Swimmer G as a problem on the team because she was not coachable, did not take advice well, and always talked back. Swimmer U (Swimmer, [REDACTED]) stated that Swimmer G was one of several swimmers who talked back to Coach McKeever. Swimmer U felt that the swimmers who had a bad relationship with Coach McKeever bore responsibility because they were disrespectful and misunderstood Coach McKeever's toughness. [REDACTED] Staff D (Team Consultant, [REDACTED]) said that Swimmer G's problem was that she did not "buy in" to Coach McKeever's approach or take her advice. [REDACTED] Staff D noted that Swimmer G had deeply ingrained habits and belief systems and had a hard time changing them. Swimmer J (Swimmer, [REDACTED]) described both Swimmer G and Coach McKeever as being at fault for the problems in their relationship, which she said were primarily caused by communication issues. Similarly, Swimmer W (Swimmer, [REDACTED]) characterized Swimmer G and Coach McKeever's difficulties as caused by issues with their communication styles and not any language challenges or particular bias.

Several coaches and staff members also described Coach McKeever's behavior as appropriate coaching in response to the difficulties of coaching Swimmer G. Witness B [REDACTED] assisted with the team during their trip [REDACTED]. Witness B described an episode [REDACTED] when Coach McKeever stopped a practice after noticing Swimmer G doing something

incorrectly. In Witness B's words, Coach McKeever put Swimmer G "on blast" in front of the entire team and brought Swimmer G to tears. Witness B spoke to Swimmer G to tell her to try and separate the emotion of the message from the content. In Witness B's opinion, this was Coach McKeever at her best, and he would have done the same thing as Coach McKeever [REDACTED]. Witness B thought that Swimmer G may have felt targeted because Coach McKeever focused on Swimmer G because Coach McKeever saw Swimmer G's potential to be a good swimmer. [REDACTED] Staff D (Director of Operations, [REDACTED]) described Swimmer G as difficult from a team operations perspective and said that Swimmer G fixated on minor things and made a big deal out of small things. [REDACTED] Staff D felt that Swimmer G was singled out because she was not a team player and made it challenging to be part of the group.

(d) [REDACTED]

[REDACTED]

[REDACTED]

61 [REDACTED]

64 [REDACTED]

65 [REDACTED]

[REDACTED]

3. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Coach McKeever denied ever calling Swimmer G stupid or telling others she was stupid. She said she did not believe that Swimmer G was stupid. Coach McKeever said that she believed Swimmer G had anxiety and emotional and maturity challenges but had never said that Swimmer G had "mental problems." Coach McKeever noted that she may have expressed exasperation through phrases like "that's a stupid decision" or "that's a stupid thing to do," and she may have done so in conversations with Swimmer G. Coach McKeever said that at some point she became so frustrated with Swimmer G's decision-making process that she started making decisions on Swimmer G's behalf leading up to the Pac-12 championships in order to bring out the best in Swimmer G and the team. Coach McKeever described Swimmer G as someone who wanted to be "spoon fed" and who was not willing to push herself outside of her comfort zone. Coach McKeever also noted that Swimmer G fixated on what might go wrong and blamed her struggles on others, rather than taking responsibility herself. Coach McKeever also asked the investigation to inquire about whether male coaches commonly call out team members for idiotic or stupid behavior.

[REDACTED]

4. Factual Findings and Policy Determination

[REDACTED]

We separately analyzed whether Coach McKeever's conduct toward Swimmer G constituted a violation of University policies prohibiting abusive conduct, and that conclusion is contained in Section VIII.F.6 below on allegations of sustained verbal abuse.

B. Swimmer C

Swimmer C swam for Cal [REDACTED]. She was encouraged to attend Cal by [REDACTED]

Witness B [REDACTED]

[REDACTED], Swimmer C [REDACTED]

[REDACTED] Swimmer C left the Cal team but stayed at Cal as a student. She had an overall very negative experience on the team and felt that she was targeted by Coach McKeever for persistent verbal abuse. Swimmer C believed she was targeted in part because of her race and national origin.

1. Swimmer C's Account

(a) *Mocking of Name, Speech, and Origin*

Swimmer C told us that, in addition to constantly screaming criticisms at Swimmer C, Coach McKeever made fun of her repeatedly throughout her freshman year for having a last name [REDACTED] mockingly saying “[Swimmer C] from [REDACTED].”

Swimmer C also said that Coach McKeever made fun of Swimmer C when Swimmer C expressed herself or when Swimmer C struggled to find the right words, as English is not her first language. Swimmer C noted that Coach McKeever showed impatience with how Swimmer C spoke. Swimmer C said that when Coach McKeever became exasperated with her, Coach McKeever told Swimmer C, “just speak.”

Swimmer C said that Coach McKeever questioned whether Swimmer C should bother competing [REDACTED] because Swimmer C had no chance of winning and it would take her away from Cal.

(b) *Comments About Scholarship*

Swimmer C said that Coach McKeever frequently told her that she was a waste of scholarship resources. Swimmer C said that Coach McKeever was also confused about Swimmer C's scholarship because Swimmer C [REDACTED] and Coach McKeever was annoyed that she still had a scholarship despite that fact.

(c) *Pressure to Swim Through Injury*

Swimmer C said that she suffered [REDACTED] and that Coach McKeever yelled at her frequently during and after her recovery. Swimmer C said that Coach McKeever told her that she had never heard of anyone [REDACTED] from swimming. Swimmer C also told us that Coach McKeever questioned the medical advice Swimmer C was given to avoid kicking or pressing off of walls during her recovery.

(d) *Comments About Weight*

Swimmer C reported that Coach McKeever called her fat and made Swimmer C see a nutritionist after her first year. Swimmer C recalled that her teammates were shocked when she told them what Coach McKeever had said.

(e) *Pressure to Share Private Information*

Swimmer C described how her unwillingness to share personal information, which she attributed to cultural differences in emotional openness, frustrated Coach McKeever. Swimmer C told us that team members were expected to share personal information and vulnerabilities with the rest of team during team circle time and other team activities. Swimmer C explained that, due in part to cultural differences, she did not feel comfortable sharing personal information and that frustrated Coach McKeever.

(f) *Effect on Swimmer C*

Swimmer C described being screamed at by Coach McKeever so persistently that she was unable to sleep; she felt extremely unhappy and worn down by Coach McKeever's constant criticisms; she left the program after two years and [REDACTED] since leaving the Cal program has continued to hate swimming.

2. Other Witness Accounts

Swimmer BP (Swimmer, [REDACTED]) told us that Coach McKeever made fun of swimmers from [REDACTED] by laughing at how they spoke, and in particular made fun of Swimmer C. According to Swimmer BP, Swimmer C sometimes constructed English sentences consistent with [REDACTED] syntax, and Coach McKeever laughed at her in an unkind way for doing so.

Swimmer D (Swimmer, [REDACTED]) noted that Swimmer C was one of the "scapegoats" on the team who, in Coach McKeever's view, could never do anything right. Swimmer D also felt that Coach McKeever wanted to group Swimmer D and Swimmer C together often because they were both [REDACTED] despite the fact that the two had nothing in common besides their race.

[REDACTED] Staff J ([REDACTED] [REDACTED] Staff J) ([REDACTED] Assistant Coach, [REDACTED]) said that Coach McKeever did not mock any foreign athletes' accents or ways of speaking.

3. Coach McKeever's Response

Coach McKeever acknowledged that she probably said "[Swimmer C] from [REDACTED]" on occasion, as she recalled people saying that generally, but said that she did not say "[Swimmer C] from [REDACTED]" every time she addressed Swimmer C. Coach McKeever also noted that Swimmer C went to school [REDACTED] and spoke good English. Coach McKeever said she did not recall Swimmer C's time on the team and that she could see herself expressing exasperation by saying something like, "let's go" to someone holding up practice in a way that was not unique to Swimmer C.

Coach McKeever denied ever calling Swimmer C "fat." She said that she discussed physical fitness with athletes, including topics such as poor nutrition, extra weight, and lack of sleep, because of their impact on performance. Coach McKeever said this was basic advice that every responsible coach must give athletes to ensure that they are healthy while competing.

Coach McKeever also said that any objection to comments she made to Swimmer C about competing [REDACTED] lacked necessary context and that any comments she made raised legitimate concerns about the timing of those competitions and Swimmer C's experience as well as Swimmer C's ability to balance her academics while competing [REDACTED].

4. Witnesses' General Observations Regarding Coach McKeever's Conduct Related to Race and National Origin

Numerous witnesses told us they never witnessed Coach McKeever engaging in race or national origin discrimination. Five swimmers said that either they had not heard of, or did not think Coach McKeever made, comments or demonstrated animus toward [REDACTED] swimmers on the team.

Some witnesses described specific positive experiences or praise that Coach McKeever exhibited towards [REDACTED] swimmers. Swimmer BK (Swimmer, [REDACTED] Captain, [REDACTED]), who swam at Cal [REDACTED] described her experience with Coach McKeever as wonderful. Swimmer BK stated that she had never seen any racism from Coach McKeever. Swimmer BY (Swimmer, [REDACTED]) did not recall Coach McKeever ever saying anything derogatory towards [REDACTED] swimmers on the team, although she recalled Coach McKeever saying something positive about a swimmer being an "[REDACTED] rocket" in the water.

Other witnesses described specific instances in which Coach McKeever did not exhibit any bias against [REDACTED] swimmers. Swimmer AS (Swimmer, [REDACTED]) said that her roommate was [REDACTED], was shy, and did not get treated any differently by Coach McKeever as a result of her race or national origin. [REDACTED] Staff F (Athletic Trainer, [REDACTED]) said Coach McKeever has never made comments about [REDACTED] swimmers, despite having many on the team.

5. Factual Findings and Policy Determination

Coach McKeever acknowledged that she referred to Swimmer C as "[Swimmer C] [REDACTED]". We find it more likely than not that Coach McKeever referred to Swimmer C in this way, as it was described for us not only by Swimmer C, but also by another swimmer who independently shared her observations with us. We also find it more likely than not that Coach McKeever mocked or criticized Swimmer C's English. This was recounted for us not only by Swimmer C but also by another swimmer. This treatment of Swimmer C, combined with Coach McKeever's harsh criticisms of Swimmer C generally, created a hostile environment based on national origin that was sufficiently severe, pervasive, or persistent so as to interfere with Swimmer C's ability to participate in the program. Swimmer C described being unable to sleep, feeling extremely unhappy and worn down by Coach McKeever's constant criticisms; she left the program after two years and in the nearly twenty years since leaving the Cal program has continued to hate swimming.

V. ALLEGED DISCRIMINATION AND HARASSMENT AGAINST [REDACTED] SWIMMERS

A. Swimmer C

Swimmer C swam for Cal [REDACTED]. She had an overall very negative experience on the team and felt that she was targeted by Coach McKeever for persistent verbal abuse. Swimmer C believed she was targeted in part because of her race and national origin.

Swimmer C's account and Coach McKeever's response are described above in Section IV.B regarding the allegations of discrimination and harassment based on national origin.

I. Factual Findings and Policy Determination

We find it more likely than not that Coach McKeever's consistent comments about Swimmer C's name, speech, and national origin, in combination with Coach McKeever's pressure on Swimmer C regarding her injuries and her scholarship, created a hostile environment based on race that was sufficiently severe, pervasive, or persistent so as to interfere with Swimmer C's ability to participate in the program. Swimmer C described being worn down by Coach McKeever's comments and criticism to the point that Swimmer C struggled to sleep. Swimmer C left the team after two years and told us that she has continued hating swimming since she left the team [REDACTED].

B. Swimmer D

I. Swimmer D's Account

Swimmer D swam for Cal [REDACTED]. Swimmer D described Coach McKeever as making her life "a living hell" during Swimmer D's freshman year. Swimmer D described being targeted by Coach McKeever and ostracized by the team as a result.

Swimmer D said that Coach McKeever constantly yelled at her and said things like "you're an embarrassment to yourself, to the team, to me" and "we're wasting money by having you on the team." Swimmer D stated that these comments were mostly made when sitting down privately with Coach McKeever in Coach McKeever's office.

Swimmer D was unsure if she was targeted because she was [REDACTED] but noted that Coach McKeever made what Swimmer D felt were strange comments about Swimmer D being [REDACTED]. For example, Coach McKeever said Swimmer D's timing was like [REDACTED] in what Swimmer D believed to be a reference [REDACTED].

[REDACTED] The team had an [REDACTED] trainer one year, and Coach McKeever made repeated comments insinuating that Swimmer D was attracted to the trainer (such as "you must have a crush on him"), which Swimmer D believed were based solely on the fact that both Swimmer D and the trainer were [REDACTED], which made Swimmer D very uncomfortable.

Swimmer D noted that, during her junior or senior year, a teammate, Swimmer BR (Swimmer, [REDACTED]), asked Swimmer D if it made her uncomfortable that Coach McKeever repeatedly made comments about [REDACTED]. Swimmer BR shared with Swimmer D that the comments made Swimmer BR, who was [REDACTED], uncomfortable.

Swimmer D described struggling with swimming, which intensified Coach McKeever's criticisms, which in turn caused her to struggle more, resulting in what she felt was an endless cycle. She described feeling hurt, experiencing intense anxiety, crying constantly, and feeling like life was a "living hell."

2. Other Witness Accounts

Swimmer BE (now Swimmer BE) (Swimmer, [REDACTED]) identified Swimmer D as a swimmer that was particularly subjected to and struggled with Coach McKeever's constant criticism and negative attention.

Swimmer C (Swimmer, [REDACTED]) said that, while Swimmer D was criticized by Coach McKeever, she did not believe Swimmer D was ridiculed by Coach McKeever to the same degree as Swimmer C was, because Swimmer D [REDACTED] and this did not stand out the same way culturally or linguistically.

3. Coach McKeever's Response

Coach McKeever did not offer any specific response to the allegations regarding Swimmer D's experience.

4. Factual Findings and Policy Determinations

We find Swimmer D credible. She was open and reflective in demeanor during our interview. Her ability to recall some specific details but not all during our interview was consistent with someone who was telling the truth about what she experienced.

We find it more likely than not that Coach McKeever compared Swimmer D's timing to [REDACTED], and that Coach McKeever asked Swimmer D if she was attracted to an athletic trainer for no reason other than that both Swimmer D and the trainer were [REDACTED]. This conduct, combined with Coach McKeever's constant criticisms and belittling of Swimmer D, which was corroborated by other swimmers, created a hostile environment based on race that was sufficiently severe, pervasive, or persistent so as to interfere with or limit Swimmer D's ability to participate in the program.

C. Other Swimmers

1. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]



[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

67 [REDACTED]

2. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

68 [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

■ [REDACTED]

[REDACTED]

3. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

■ [REDACTED]

[REDACTED]

■ [REDACTED]

[REDACTED]

4. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

(b) [REDACTED]

[REDACTED]

(b) [REDACTED]

[REDACTED]

(c) [REDACTED]

(i) [REDACTED]

(ii) [REDACTED]

(iii) [REDACTED]

[REDACTED]

■ [REDACTED]

[REDACTED]

■ [REDACTED]

[REDACTED]

■ [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

(2)

[REDACTED]

[REDACTED]

[REDACTED]

(1)

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

- [REDACTED]
- [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

⁷¹ [REDACTED]

⁷² [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

| [REDACTED]

| [REDACTED]

■ [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

■ [REDACTED]

[REDACTED]

[REDACTED]

74 [REDACTED]

75 [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

(b) [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

(c) [REDACTED]

[REDACTED]

5. [REDACTED]

[REDACTED]

[REDACTED]

B.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

c. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

⁷⁷ [REDACTED]

⁷⁸ [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

79 [REDACTED]

80 [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

D. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

F. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

F. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

G. [REDACTED]

[REDACTED]

81 [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

82 [REDACTED]

84 [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

84 [REDACTED]

85 [REDACTED]

86 [REDACTED]

87 [REDACTED]

VII. ALLEGED DISABILITY-BASED DISCRIMINATION, HARASSMENT, AND FAILURE TO ACCOMMODATE

A. Swimmer AN

I. Swimmer AN's Account

Swimmer AN joined the team in [REDACTED] and transferred out of the program after her first semester. Swimmer AN was diagnosed with [REDACTED] when she was in the fourth grade. Throughout high school, she was able to manage her [REDACTED] well. She was able to [REDACTED] and generally led a normal life. There were times, however, when she [REDACTED] during practice and needed to get out of the pool. Swimmer AN's club coach was very understanding.

In contrast, according to Swimmer AN, Coach McKeever did not understand or accommodate her [REDACTED]. Swimmer AN also believed that Coach McKeever picked on her because she saw Swimmer AN and her [REDACTED] as a "chore." Swimmer AN believed that the stress from that targeted treatment aggravated her [REDACTED], creating a cycle in which the more [REDACTED], the more Coach McKeever picked on her, in turn resulting in more [REDACTED].

(a) *Notification to Coaching Staff and Team Physicians Regarding Swimmer AN's [REDACTED]*

According to Swimmer AN, she told [REDACTED] Staff K (Assistant Coach, [REDACTED]) about her [REDACTED] during a telephone call during the recruiting process. Swimmer AN said she told [REDACTED] Staff K, "I wanted to let you know I have [REDACTED], so I [REDACTED], not [REDACTED] where I [REDACTED]." According to Swimmer AN, [REDACTED] Staff K responded, "ok, got it" and asked no follow-up questions.

In preparation for starting at Cal, Swimmer AN also sought advice from her pediatrician, [REDACTED], about her [REDACTED], but Dr. [REDACTED] did not have any specific advice for her. He told her that, in his experience, his patients were able to successfully transition to college.

Swimmer AN asserted that she was also fully transparent with her history of [REDACTED] during her team physical. Swimmer AN said that the doctors were concerned about her condition as a swimmer, but Swimmer AN gave them her [REDACTED] history and a note from Dr. [REDACTED].⁸⁸ She could not recall whether or not she told [REDACTED] Staff F (Athletic Trainer, [REDACTED]).

During her interview, Swimmer AN noted that perhaps she should have been more proactive about communicating about her condition and how it would affect her swimming, but

⁸⁸ Swimmer AN mentioned that she gave doctor's notes explaining the context of her condition to multiple people on the medical and coaching staff while at Cal. We were unable to obtain access to Swimmer AN's medical records as part of this investigation.

she also believed that being more proactive would not have made a difference in how Coach McKeever treated her.

(b) *Coach McKeever's Initial Response to Swimmer AN's* [REDACTED]

[REDACTED] During that time, [REDACTED] Staff A (Assistant Coach, [REDACTED]) held practices. At this point, Swimmer AN had not told anyone other than her doctors, [REDACTED] Staff K (Assistant Coach, [REDACTED]), and possibly [REDACTED] Staff F (Athletic Trainer, [REDACTED]) about her diagnosis.

Sometime early in the season, after Coach McKeever returned, Swimmer AN [REDACTED]. When she told Coach McKeever, Coach McKeever began yelling at Swimmer AN, claiming that she did not know about Swimmer AN's [REDACTED]. According to Swimmer AN, Coach McKeever initially asked Swimmer AN why she lied to Cal coaching staff during recruitment, but then she acknowledged that Swimmer AN might have mentioned it but that Coach McKeever did not remember. Swimmer AN interpreted this interaction to be at least partially a show of concern and alarmed surprise from Coach McKeever.

Shortly after this episode, Swimmer AN met with Coach McKeever, and Coach McKeever again accused her of [REDACTED]. Swimmer AN was apologetic and noted that she had told [REDACTED] Staff K during recruiting. A few days later, Swimmer AN met with Coach McKeever and [REDACTED] Staff F and explained some of the triggers for her [REDACTED], including [REDACTED]. During the interview, Swimmer AN described the tone of this meeting as being positive and said that Coach McKeever seemed to be genuinely trying to figure out how to support Swimmer AN.⁸⁹ When Swimmer AN suggested that [REDACTED] Coach McKeever was amenable to [REDACTED]. According to Swimmer AN, this was not a formal modification.

Swimmer AN said that [REDACTED]. On these occasions, Swimmer AN said that Swimmer H (Swimmer, [REDACTED]) – who was not swimming at the time because of her medical condition – [REDACTED]. According to Swimmer AN, Swimmer H told Swimmer AN that on these occasions she [REDACTED]. On these occasions, Coach McKeever or [REDACTED] Staff F (Athletic Trainer, [REDACTED]) asked Swimmer AN [REDACTED].

⁸⁹ However, Swimmer AN said later in the interview that she believed Coach McKeever never made an effort to understand her limitations and what it meant to be an [REDACTED] swimmer and that Swimmer AN's sense was that Coach McKeever did not care about her.

(c) *Coach McKeever's Changed Reaction and Targeting*

Swimmer AN said that this initial informal accommodation regarding [REDACTED] ended after Coach McKeever learned that Swimmer AN attended a party [REDACTED]. After that incident, Coach McKeever started to accense Swimmer AN of lying about having [REDACTED]. In our interview of her, Swimmer AN acknowledged that she was wrong to abuse the accommodation and understood why Coach McKeever withdrew [REDACTED]. Swimmer AN noted that her relationship with Coach McKeever deteriorated after that because Coach McKeever lost trust in Swimmer AN.

[REDACTED] Coach McKeever initially suspended her "indefinitely," but Swimmer AN learned that the suspension was for only a week when [REDACTED] Staff A (Assistant Coach, [REDACTED]) called her the following Saturday to ask why Swimmer AN was not at practice.

Swimmer AN said that after the [REDACTED], she became a target for verbal abuse and was afraid to interact with Coach McKeever.⁹⁰ Coach McKeever consistently made sarcastic, belittling, or mean remarks to Swimmer AN, such as telling Swimmer AN, "You're swimming like shit."⁹¹ During the interview, Swimmer AN also read from a list of things that Coach McKeever said to her: "you're a waste of space," "don't expect any attention or coaching in the pool," "you don't care/aren't trying hard enough," "you're in the way of people who want to be here," "you're a distraction/disruption to others on the team," "you're not grateful to be swimming at Cal," and "you should be embarrassed of your behavior." Swimmer AN also reported that Coach McKeever often kicked her out of practice for "ridiculous" reasons.⁹² Swimmer AN said Coach McKeever's coaching style was unlike any she had experienced, even though she has had "crazy" coaches who have told her that, if she [REDACTED] [REDACTED]. Swimmer AN said Coach McKeever's statements to her went beyond that kind of rhetoric.

⁹⁰ Swimmer AN also said that she was the subject of bullying by some of her teammates, mainly Swimmer AH (Swimmer, [REDACTED]), who once yelled at Swimmer AN for not re-racking the weights properly.

⁹¹ Early in the season, some of the sophomore swimmers told Swimmer AN that Coach McKeever targets two to three swimmers per year and "makes their life hell."

⁹² [REDACTED]

Swimmer AN said that Coach McKeever often accused Swimmer AN of faking her [REDACTED] to get out of practice or other team events. For example, Swimmer AN once left in the middle of a recruiting event to take her [REDACTED] medication in her dorm but did not tell Coach McKeever. Swimmer AN said that Coach McKeever later called Swimmer AN, "screaming," asked why she was "flaking," and accused Swimmer AN of faking [REDACTED] because Swimmer AN had attended a practice that morning without incident.

Swimmer AN said that, at least once, Coach McKeever threatened to not let Swimmer AN see a particular doctor again after she missed an appointment. Swimmer AN explained to us that she only canceled appointments when her [REDACTED] was acting up, but Coach McKeever was frustrated and did not understand this.

(d) Swimmer AN's Medical Treatment at Cal

Initially, Swimmer AN was treated by team physician [REDACTED] Staff N (Associate Team Physician, [REDACTED]). Her first appointment with him was positive, but during the second appointment, [REDACTED] Staff N told her that she should quit swimming due to her condition and that he had heard she was partying and not taking swimming seriously enough. Swimmer AN said she was angered to hear that [REDACTED] Staff N had heard this information from Coach McKeever because Swimmer AN had not consented to [REDACTED] Staff N and Coach McKeever meeting without her or discussing her medical condition.⁹³ Swimmer AN said she "basically stormed out" of the appointment. After that appointment, Swimmer AN requested to see team physician [REDACTED] Staff M ([REDACTED] Team Physician, [REDACTED]) instead.

(e) [REDACTED]

⁹³ Swimmer AN spoke to her family and her friend [REDACTED] about the incident but explained that she did not file a formal complaint because she did not realize at the time that her privacy had been violated. However, the FERPA waiver signed by every athlete at the University includes consent for University medical staff "to release medical information concerning any illness or injury relative to [the swimmer's] participation in athletics at UC Berkeley to athletic coaches, administrators, and sports information staff for legitimate educational purposes related to [the swimmer's] participation in those sports." Ex. 210 [CALINT-000846].

[REDACTED]

10

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

(f) *Swimmer AN and Her Parents' First Meeting with Coach McKeever*

In October, a week or two after Swimmer AN's [REDACTED], Swimmer AN and her parents met with Coach McKeever.⁹⁶ [REDACTED] Staff F (Athletic Trainer, [REDACTED]) and [REDACTED] Staff A (Assistant Coach, [REDACTED]) also attended the meeting. Swimmer AN said that at times during the meeting, it felt like Coach McKeever was trying to help but that she was frustrated at not being able to. At the meeting, Swimmer AN's parents mentioned that they had heard (from Swimmer AN) that Coach McKeever had questioned Swimmer AN's [REDACTED]. Coach McKeever told Swimmer AN's parents that she had not meant to say Swimmer AN [REDACTED] her [REDACTED], just that she did not know how bad it was.

[REDACTED] Coach McKeever also told Swimmer AN's parents that Swimmer AN was "horrible," "disrespectful," an "alcoholic," and did not care about the team.

Coach McKeever told Swimmer AN's parents at the meeting that Swimmer AN was [REDACTED] a statement with which Swimmer AN disagreed. Coach McKeever arranged for Swimmer AN to get help with her time management. Swimmer AN said she found the time management tips useful but that the number of other appointments and academic resources Coach McKeever forced on her became overwhelming.

At the end of the meeting, they agreed on a modified practice schedule for Swimmer AN. In discussing the modified schedule, Coach McKeever seemed annoyed and at one point sarcastically asked Swimmer AN, "What practices do YOU want to go to?" Shortly after that meeting, Swimmer AN had to sign a contract that outlined her reduced practice schedule and stated she would be removed from the team if she missed other practices.⁹⁷ The contract also required that she work with [REDACTED] Staff F to see a specific [REDACTED].⁹⁸ Swimmer AN also said the contract required her to go to therapy. During our interview, Swimmer AN said that she was not interested in therapy and did not need it.

Swimmer AN said that she felt like Coach McKeever's goal during the meeting was to show her parents Swimmer AN's supposed "true colors" and get Swimmer AN removed from the team. According to Swimmer AN, Coach McKeever offered during the meeting to help her

⁹⁶ Swimmer AN believed that [REDACTED] Staff F (Athletic Trainer, [REDACTED]) suggested the idea of having a meeting to Coach McKeever, prompted by an incident in which Swimmer AN received a cupping massage during which Swimmer AN almost [REDACTED] and [REDACTED] Staff F had to walk her back to her dorm.

⁹⁷ The contract included a modified practice schedule but did not specify that Swimmer AN would be kicked off the team if she violated the contract. It is possible that was something Coach McKeever told Swimmer AN during the meeting.

⁹⁸ See Ex. 32 [CALINT-000218].

transfer. Swimmer AN left the meeting feeling like Coach McKeever had lied about Swimmer AN to her parents and painted Swimmer AN as a horrible person.

After this meeting, Swimmer AN said that she missed practices only because of her [REDACTED]. However, Coach McKeever seemed to be frustrated that Swimmer AN was medically cleared but still [REDACTED], as she called it a "pattern" in an email to Swimmer AN.⁹⁹ Swimmer AN told us that this pattern had to do with her inability to attend many morning practices because at the time she was [REDACTED] right when she woke up in the morning.

Swimmer AN said that Swimmer H (Swimmer, [REDACTED]) sometimes had to walk Swimmer AN home during practice because Swimmer AN was not doing well. Coach McKeever or [REDACTED] Staff F told her to leave the pool if she was not doing well.

(g) Swimmer AN's Suspension from the Team

In November [REDACTED], Coach McKeever suspended Swimmer AN from the team after Swimmer AN missed practice because of [REDACTED] (According to Swimmer AN, she had to go to the student center for an IV because she was so dehydrated.) Swimmer AN noted that other swimmers who had [REDACTED] were not kicked off the team.

MTO showed Swimmer AN a November 14, [REDACTED], email from Coach McKeever to Swimmer AN that noted a number of concerns Coach McKeever had.¹⁰⁰ Swimmer AN said the email was sent shortly before she got [REDACTED]. Among other things, Coach McKeever was upset that Swimmer AN had not followed up with the University of California San Francisco [REDACTED] that Coach McKeever expected her to see.¹⁰¹ Swimmer AN acknowledged that she too was frustrated about her [REDACTED] and was experiencing side effects from switching medications. The email also noted that Swimmer AN had missed a number of practices. According to Swimmer AN, this was because she was either sick or [REDACTED].

(h) Swimmer AN's Decision to Transfer

Swimmer AN realized that she was happier once she was suspended from the team. While on suspension, Coach McKeever emailed Swimmer AN and told her that she would need to attend another meeting if she still wanted to be on the team. At that point, Swimmer AN decided to quit the team and transfer to another program. She spoke with [REDACTED] Staff L (Academic Advisor, [REDACTED]) about the logistics and timing of a transfer. [REDACTED] Staff L

⁹⁹ This is likely a reference to an October 18, [REDACTED] email from Coach McKeever, which was dated before the meeting between Coach McKeever and Swimmer AN and her parents. See Ex. 33 [CALINT-000128] ("I am very concerned with this pattern I see developing.")

¹⁰⁰ Ex. 34 [CALINT-000120].

¹⁰¹ According to Swimmer AN, the UCSF [REDACTED] never returned her calls, and there was an issue with insurance.

helped Swimmer AN draft an email to Coach McKeever notifying her that Swimmer AN intended to enter the transfer portal.

Swimmer AN informed Coach McKeever of her intent to transfer and believed that would obviate the need for the meeting Coach McKeever had requested, but Coach McKeever responded that she still expected Swimmer AN to meet with her. Swimmer AN agreed to attend another meeting with her mother present.

(i) Second Meeting Between Coach McKeever, Swimmer AN, and Her Mother

Swimmer AN said that there were some positive aspects to the second meeting with Coach McKeever, but overall it was "very awkward." According to Swimmer AN, Coach McKeever said, [REDACTED]

(j) Effect on Swimmer AN

At one point (it is not clear when), Swimmer AN was hospitalized due to a regression in her [REDACTED], which Swimmer AN and her mother both believe was due to Coach McKeever's conduct toward Swimmer AN and the overall environment. Swimmer AN also was switching medications at the time, which caused many side effects. Swimmer AN believed that as soon as Coach McKeever discovered Swimmer AN had [REDACTED], she did not want Swimmer AN as an athlete anymore. Additionally, being screamed at was a trigger for Swimmer AN's [REDACTED], so Coach McKeever screaming at her was particularly unhelpful.

(k) Swimmer AN's Academic Performance

When asked about the academic issues noted above, Swimmer AN said that [REDACTED] Staff L (Academic Advisor, [REDACTED]) [REDACTED]

[REDACTED] Swimmer AN also said that [REDACTED]

According to Swimmer AN, she was [REDACTED]

2. Relevant Documentation

(a) Notification to Coaching Staff of Swimmer AN's [REDACTED]

On July 24, [REDACTED] Staff F (Athletic Trainer, [REDACTED]) wrote Coach McKeever that Swimmer AN had a physical and was not cleared to swim in light of a recent [REDACTED]. Coach

McKeever responded that she “did know [Swimmer AN] has [REDACTED].” She added “I do assume though that this won’t be a long term issue/concern?”¹⁰²

(b) *Swimmer AN’s Discussions with Coaching Staff About Her*

On September 10, [REDACTED], Swimmer AN wrote [REDACTED] Staff A (Assistant Coach, [REDACTED]) asking for a meeting to discuss “what happened today,” her recent diagnosis, and her [REDACTED]. [REDACTED] Staff A responded that Coach McKeever and [REDACTED] Staff F (Athletic Trainer, [REDACTED]) should also be present, to learn how best to support Swimmer AN¹⁰³

On September 26, [REDACTED], Swimmer AN wrote to Coach McKeever telling her that she rescheduled her appointment with [REDACTED] Staff N because she went to the wrong location and added that she was scheduled to see a therapist that day.¹⁰⁴ Later that day, she wrote to Coach McKeever about the toll that [REDACTED] had taken on her and that her therapist recommended she take a break from swimming. She noted that she might not be able to host anyone [for recruiting] that weekend on behalf of the team. Coach McKeever forwarded the message to [REDACTED] Staff A and [REDACTED] Staff F, saying “Never called me back and sent this!”¹⁰⁵

On September 29, [REDACTED], Swimmer AN wrote to Coach McKeever that she was admitted to the ER the prior night and advised to take a break from swimming until she spoke with a [REDACTED]. Coach McKeever responded: “Thanks for the update. I will need you to be seen by our doctors before you can resume training. I also need to know your plan for dealing with your [REDACTED] moving forward.”¹⁰⁶

(c) *Documentation of Missed Practices and Appointments and Academic-related Issues*

On September 30, [REDACTED], [REDACTED] Staff R (Academic Advisor, [REDACTED]) sent an update to [REDACTED] Staff A (Assistant Coach, [REDACTED]) that Swimmer AN was scheduled to meet with a learning specialist weekly but missed her appointment the week before, perhaps because of [REDACTED]. He said “I’m scheduled to meet with [Swimmer AN] today at 4:30p, and if she shows, hopefully I’ll be able to get a better understanding of how to support her.” [REDACTED] Staff A responded asking for an update, and [REDACTED] Staff R replied that Swimmer AN attended and the session went well. [REDACTED] Staff A forwarded this information to Coach McKeever.¹⁰⁷

On October 3, [REDACTED], Swimmer AN emailed Coach McKeever at 1:48 p.m. and informed Coach McKeever that she was cleared to swim and planned to start therapy and consult with an

¹⁰² Ex. 35 [CALINT-000740].

¹⁰³ Ex. 36 [CALINT-000734].

¹⁰⁴ Ex. 37 [CALINT-000730].

¹⁰⁵ Ex. 38 [CALINT-000729].

¹⁰⁶ Ex. 39 [CALINT-000727-28].

¹⁰⁷ Ex. 40 [CALINT-000726].

Coach McKeever responded ten minutes later that she and the team would see Swimmer AN the next day. Coach McKeever also said, “[I] wish you would have sent sooner as you should be here today? Wasn’t your appointment at 11.30am?” Swimmer AN responded later that evening, “Yes - I’m sorry about the late reply. I will see you tomorrow morning.”¹⁰⁸

On October 14, Swimmer AN emailed Coach McKeever, Staff A, and Staff F (Athletic Trainer,) that her and that she would not attend practice that afternoon. Staff A responded that Swimmer AN should try to make the team meeting that evening, which was particularly important.¹⁰⁹

On October 18, Coach McKeever emailed Swimmer AN about missing practice and noted that her parents had requested a meeting.¹¹⁰ When we showed Swimmer AN this email, she said that, at the time, she was , and she felt it was . Swimmer AN believes Coach McKeever was frustrated because Swimmer AN had been medically cleared but was still .

Staff L’s (Academic Advisor,) Academic Status Reports indicate that Swimmer AN was .¹¹¹

On December 4, Coach McKeever emailed Jennifer Simon-O’Neill (Executive Senior Associate Athletic Director, 2013-present) about arranging a meeting with Swimmer AN.¹¹² Coach McKeever noted that Swimmer AN had missed an academic counseling appointment because .¹¹³ She further explained:

[Staff L] says December 13 is the last time to medically withdraw and I believe that if she doesn’t intend to do that she needs to clearly understand not only what issues may hold her back but that I will not allow her to attend our training camp and she won’t compete until she addresses the issues we’ve all seen.

Simon-O’Neill provided documentation from the Sports Medicine Department summarizing Swimmer AN’s medical treatment (numerous appointments with Cal physicians, including urgent appointments with the Head Team Physician), her seventeen missed practices,

¹⁰⁸ Ex. 41 [CALINT-000725].

¹⁰⁹ Ex. 42 [CALINT-000724].

¹¹⁰ Ex. 33 [CALINT-000128].

¹¹¹ Ex. 43 [CALINT-000123]; Ex. 44 [CALINT-000227]; Ex. 45 [CALINT-000228]; Ex. 46 [CALINT-000229].

¹¹² Ex. 47 [CALINT-000133].

¹¹³ *Id.*

her referrals to the Disabled Student Program and Berkeley's Counseling and Psychological Services, and her six missed or canceled appointments.¹¹⁴

(d) First Meeting with Swimmer AN and her Parents

On October 23, [REDACTED], Coach McKeever met with Swimmer AN and her parents, [REDACTED] Staff A (Assistant Coach, [REDACTED]) and [REDACTED] Staff F (Athletic Trainer, [REDACTED]) also attended. Coach McKeever emailed Jennifer Simon-O'Neill (Executive Senior Associate Athletic Director, 2013-present) afterward noting that the 75-minute meeting was "tense at times" and that she would be putting together a contract for Swimmer AN that would include a modified practice schedule.¹¹⁵ Coach McKeever noted that Swimmer AN was "only making 54% of the practices," [REDACTED], and was [REDACTED]. Coach McKeever also noted that the contract would require that Swimmer AN not use alcohol and prevent her from competing. Coach McKeever said that Swimmer AN's parents "were quite upset that [Swimmer AN] was included in the meeting - still not sure why but I was not going to meet with them without her because her messaging to them is quite different than the reality ..."¹¹⁶

Swimmer AN emailed Coach McKeever after the meeting, at Coach McKeever's request. She wrote:

Thank you for taking the time out of your day for sitting down with my family and I. I thought that our meeting today was a good step to what I need to be successful in the future. I think that modifying my practice schedule at the moment will benefit [REDACTED] help me improve my academics. I'm also excited to talk to a new [REDACTED] on October 31st. Getting a different perspective of things, instead of going in circles about this situation hasn't gotten us in my direction so hopefully, this can bring some new information that we haven't thought about. I have made an appointment with the counselor [REDACTED] Staff X] [sic] at 11:15 and I have downloaded the Calm app. I'll try out that app today and see if it works.¹¹⁷

(e) Contract and Training Schedule

On October 25, [REDACTED], Coach McKeever emailed Swimmer AN a copy of her contract and noted, "[REDACTED] Staff L.] also informed [REDACTED] Staff A] and I that you missed your appointment with Kris Arden, the learning specialists [sic], yesterday afternoon after the meet? Honestly, these are the situations that we have to stop happening ..."¹¹⁸

¹¹⁴ Ex. 48 [CALINT-000719].

¹¹⁵ Ex. 49 [CALINT-000134].

¹¹⁶ *Id.*

¹¹⁷ Ex. 50 [CALINT-000139].

¹¹⁸ Ex. 51 [CALINT-000143].

(f) Modified Contract and Training Schedule

On November 14, [REDACTED], Coach McKeever emailed Swimmer AN with a new training plan, noting concerns with Swimmer AN's academics and her failure to follow through on an appointment with a new [REDACTED].¹¹⁹

(g) December Meeting and Swimmer AN's Decision to Transfer

Coach McKeever emailed Swimmer AN on December 4 about scheduling a meeting "to evaluate and discuss where we are now in relationship to items we discussed in mid-October."¹²⁰

On December 10, [REDACTED], Swimmer AN emailed Coach McKeever about transferring to another program:

I've been doing a lot of thinking, and I've finally come to the conclusion that I think it would be best if I transferred to another school.

I hope to finish this semester, but I'm thinking about not returning in January.

I'd like to talk with you about this in person.

I'll plan to see you at practice.¹²¹

According to Jennifer Simon-O'Neill's (Executive Senior Associate Athletic Director, 2013-present) notes, on December 10, [REDACTED], there was a meeting between Coach McKeever, Swimmer AN and her mother, [REDACTED] Staff A (Assistant Coach, [REDACTED]), [REDACTED] Staff F (Athletic Trainer, [REDACTED]), [REDACTED] Staff L (Academic Advisor, [REDACTED]), and Simon-O'Neill.

On December 12, [REDACTED], Swimmer AN's status was officially changed in the Department's database.¹²² That same day, Coach McKeever emailed Swimmer AN to request that she return her Cal equipment.¹²³

On December 13, [REDACTED] Staff L noted that she met with Swimmer AN and discussed the details of her withdrawal: "The main reasons she was leaning towards a Fall withdrawal was that [REDACTED]

[REDACTED] After a bit, she decided to stick it out and finish this

¹¹⁹ Ex. 34 [CALINT-000120].

¹²⁰ Ex. 52 [CALINT-000136].

¹²¹ Ex. 53 [CALINT-000127].

¹²² Ex. 54 [CALINT-000140].

¹²³ Ex. 55 [CALINT-000131].

semester even though [REDACTED], and then she plans to cancel her registration for the [REDACTED].¹²⁴

On December 19, [REDACTED], Swimmer AN entered the transfer portal.¹²⁵

(h) *Swimmer AN and Parent of Swimmer AN's Follow-up with the University*

On December 17, [REDACTED], Parent of Swimmer AN called Jim Knowlton (Director of Athletics, 2018-present) to discuss Swimmer AN's experience with Coach McKeever.¹²⁶ In January [REDACTED], Parent of Swimmer AN reached out to the university multiple times requesting "all academic and athletic documents" that Swimmer AN signed.¹²⁷

On February 11, [REDACTED], Staff S ([REDACTED]) emailed Parent of Swimmer AN, apparently unaware that Swimmer AN had withdrawn from the program.¹²⁸ [REDACTED] Staff S and Parent of Swimmer AN spoke, and afterward [REDACTED] Staff S emailed Simon-O'Neill, noting that Parent of Swimmer AN "was very upset and did not have great things to say about the WSWIM program."¹²⁹ After the call, [REDACTED] Staff S invited Parent of Swimmer AN to follow up with Simon-O'Neill. Parent of Swimmer AN did not do so.¹³⁰

In July [REDACTED], when applying for release from her National Letter of Intent (in order to compete with another program), Swimmer AN wrote that she requested release because she was "bullied by coaching staf [sic], medical doctors and teammates."¹³¹ This was reported to OPHD, and [REDACTED] Staff T (OPHD Complaint Resolution Coordinator) followed up with Swimmer AN.¹³²

[REDACTED]
[REDACTED]¹³³

¹²⁴ Ex. 56 [CALINT-000118].

¹²⁵ Ex. 57 [CALINT-000121].

¹²⁶ Ex. 58 [CALINT-000221].

¹²⁷ Ex. 59 [CALINT-000125].

¹²⁸ Ex. 60 [CALINT-000144].

¹²⁹ Ex. 61 [CALINT-000124].

¹³⁰ *Id.*

¹³¹ Ex. 62 [CALINT-000348].

¹³² Ex. 63 [CALINT-000003].

¹³³ [REDACTED]

3. Parent of Swimmer AN's Account

Parent of Swimmer AN joined for parts of Swimmer AN's interview and interjected at times. Parent of Swimmer AN felt like Swimmer AN was "sent to a prison camp" for something Swimmer AN did not do. Parent of Swimmer AN believed that Coach McKeever's insistence that Swimmer AN attend tutoring was intended to "beat her down" and make it impossible for Swimmer AN to get everything done.

Parent of Swimmer AN said that during the first meeting, Coach McKeever "painted a horrible picture of [Swimmer AN] and what a terrible person and alcoholic she was." Parent of Swimmer AN denied that Swimmer AN abused alcohol and said that watching Coach McKeever "beat her up" during the meeting was devastating. [REDACTED]

4. Other Witness Accounts

(a) Knowledge of Coaching, Medical, and Athletic Staff

The coaching staff reported that Swimmer AN did not disclose her [REDACTED] during recruitment or prior to starting practices with the team. [REDACTED] Staff K (Assistant Coach, [REDACTED]), who was involved in Swimmer AN's recruitment, did not remember talking with Swimmer AN about her [REDACTED]. Staff K specifically recalled that Swimmer AN told her that she had a [REDACTED]. [REDACTED] Staff A (Assistant Coach, [REDACTED]) did not know about Swimmer AN's [REDACTED] until her [REDACTED] during practice (for which [REDACTED] Staff A was present) and did not think anyone else knew. [REDACTED] Staff A confirmed that Coach McKeever was alarmed by Swimmer AN's [REDACTED] and angry with her for not disclosing her condition. [REDACTED] Staff A thought that was a normal reaction given the seriousness of the situation.

In contrast, [REDACTED] Staff F (Athletic Trainer, [REDACTED]) believed that Swimmer AN did disclose her [REDACTED] on her intake form and/or during her physical in August, sometime before the start of the school year.¹³⁴ [REDACTED] Staff F recalled that she noted it at that time. [REDACTED] Staff F also said that Swimmer AN noted a history of [REDACTED] when she came to the University. [REDACTED] Staff F recalled Swimmer AN sometimes saying that she felt like she was going to [REDACTED]. [REDACTED] Staff F also said that Swimmer AN's mother was difficult to deal with, and [REDACTED] Staff F believed Parent of Swimmer AN had an "ax to grind."

Others in the athletics administration also recalled Swimmer AN struggled with a number of issues at Cal. [REDACTED] Staff L (Academic Advisor, [REDACTED]) recalled Swimmer AN struggling with a lot of health issues, which permeated other parts of her life, including academics and athletics. [REDACTED] Staff L confirmed that these issues prompted creation of a modified schedule for Swimmer AN where she swam on Mondays, Wednesdays, and Fridays and had to earn her way back to a full schedule. [REDACTED] Staff L did not recall hearing at the time about particular

¹³⁴ As noted above, this was confirmed by the documents.

struggles Swimmer AN was having with Coach McKeever and was not aware of any negative feelings Coach McKeever had toward Swimmer AN.

Jim Knowlton (Director of Athletics, 2018-present) recalled meeting with Swimmer AN's parents at the end of her time on the team. He said they told him that Swimmer AN had a miserable experience on the team because of Coach McKeever. Knowlton himself recalled that Swimmer AN was [REDACTED], and was [REDACTED]. In short, she was in over her head and was likely not able to perform at the level required by Cal. After meeting with the Parents of Swimmer AN, Knowlton spoke to Coach McKeever, and they discussed the challenges Swimmer AN had. Knowlton also noted that Swimmer AN's father has repeatedly contacted him and has gone so far as to issue a threat, behavior that goes well beyond what Knowlton had previously experienced as athletic director.

(b) Coach McKeever's Behavior Toward Swimmer AN

A couple of swimmers said that Coach McKeever's interactions with and reactions to Swimmer AN were reasonable in light of Swimmer AN's behavior and reflected Coach McKeever's desire to help Swimmer AN. Swimmer AI (Swimmer, [REDACTED]) believed that Coach McKeever was frustrated that Swimmer AN would not help herself, was lying to her, was not showing up to practice, and was not performing well in the water. Nevertheless, Swimmer AI believes Coach McKeever had multiple meetings with Swimmer AN because she wanted to help her. Swimmer AI's impression was that Swimmer AN had many issues (medical and [REDACTED]) and disagreed that Swimmer AN's mental state should be attributed to Coach McKeever. Swimmer AJ (Swimmer, [REDACTED]) said that Swimmer AN would "snap back" at Coach McKeever, and that Coach McKeever then reacted in kind. Swimmer AJ could see how Swimmer AN might perceive that as yelling.

A number of witnesses said that Coach McKeever "targeted" Swimmer AN in a negative way and/or treated her poorly.

Swimmer X (Swimmer, [REDACTED]) said that both she and Swimmer AN were on the list of swimmers that Coach McKeever did not like. As a result, other swimmers did not want to associate with them. Swimmer X's impression was that the fact that Swimmer AN and Swimmer X were friends made Coach McKeever dislike them even more. [REDACTED]

[REDACTED] Swimmer X said that Swimmer AN was particularly upset about this comment and that it happened in front of her parents.

Swimmer AT (Swimmer, [REDACTED]) said that Coach McKeever told Swimmer AN to "get over it" when Swimmer AN had [REDACTED].

Swimmer P (Swimmer, [REDACTED]) said that Coach McKeever targeted Swimmer AN for yelling and particularly harsh criticism. According to Swimmer P, Coach McKeever said to Swimmer P, regarding Swimmer AN and other swimmers whom she targeted,

"What the fuck is wrong with them, they don't get it, they don't deserve to be here." When Swimmer P defended them, Coach McKeever got annoyed with her.

Swimmer T (Swimmer, [REDACTED]) said Coach McKeever often yelled at Swimmer AN, and Swimmer T had the impression that Coach McKeever thought Swimmer AN was lazy. Swimmer T said that Coach McKeever did not bring Swimmer AN to the Minnesota Invitational because she thought Swimmer AN was not working hard enough in practice.

Swimmer Q (Swimmer, [REDACTED]) said that Coach McKeever made a comment in front of others on the team that Swimmer AN was faking her [REDACTED].

Swimmer AD (Swimmer, [REDACTED]) said that Coach McKeever "pushed back" on Swimmer AN's [REDACTED] and questioned her condition when Swimmer AN said that she was getting out of the pool because she was going to [REDACTED].

Swimmer AU (Swimmer, [REDACTED]) said that Coach McKeever got annoyed with Swimmer AN but ultimately did not care about her because she was not a high performer.

Swimmer H (Swimmer, [REDACTED]) said that Coach McKeever [REDACTED] [REDACTED]. It was not clear whether Swimmer H witnessed this statement firsthand or heard about it from Swimmer AN or others.

Swimmer V (Swimmer, [REDACTED]) said that Coach McKeever did not want Swimmer AN on the team and yelled at her, ignored her completely, kicked her out of practice, and picked on her until she wanted to quit.

Diver B (Diver, [REDACTED]), who was Swimmer AN's roommate, believed Coach McKeever contributed to Swimmer AN's troubles in the program due to the pressure she put on Swimmer AN. Diver B observed that Swimmer AN became [REDACTED] after Coach McKeever suspended her from the team. Diver B also said Swimmer AN's [REDACTED] returned, although it was not clear whether Swimmer AN attributed that to the suspension, her experience on the team, or both. Diver B said that Swimmer AN told her that Coach McKeever was unhappy about Swimmer AN's [REDACTED].

Diver A (Diver, [REDACTED]) had heard that Coach McKeever did not believe Swimmer AN and was mad that Swimmer AN had not disclosed her [REDACTED] earlier, because Coach McKeever would not have recruited Swimmer AN if she knew. Diver A was under the impression that Swimmer AN did disclose her condition.

[REDACTED] said that Swimmer AN often was kicked out of practice, and he spent time with her when she was. According to [REDACTED], Swimmer AN said that Coach McKeever said Swimmer AN was [REDACTED]. He said Swimmer AN was also sure that sports medicine physician [REDACTED], Staff N and Coach McKeever talked about her medical treatment.

(c) [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

(d) *Team Discussion of Swimmer AN's [REDACTED]*

Swimmer Q (Swimmer, [REDACTED]) said that Coach McKeever discussed Swimmer AN's [REDACTED] and what she was going through with the team without Swimmer AN present.

In contrast, Swimmer X (Swimmer, [REDACTED]) said that Swimmer AN's [REDACTED] was not brought up in front the team without Swimmer AN's permission. Swimmer X said that although it was not discussed with the team, Coach McKeever would yell at Swimmer AN and mention the [REDACTED] when other swimmers could hear her.

(e) *Swimmer AN's Behavior and Missing Appointments*

Swimmer AT (Swimmer, [REDACTED]) confirmed at least one instance when Swimmer AN missed an appointment not related to Swimmer AN's [REDACTED]. Swimmer AT said that one time she told Coach McKeever that she had seen Swimmer AN with [REDACTED]

110 [REDACTED]

[REDACTED] when Swimmer AN was supposed to be at an appointment. She said Coach McKeever then called Swimmer AN's doctors and learned she had been missing appointments. Swimmer AT believed things got much worse for Swimmer AN after that.

Three other swimmers noted that Swimmer AN's issues arose at least in part because she had a tendency not to take care of herself. Swimmer AI (Swimmer, [REDACTED]) said that Swimmer AN went out to parties multiple times a week and often could not make it back to her dorm room due to her level of intoxication. Swimmer AI found Swimmer AN on the side of the street at night, and then Swimmer AN could not come to practice the next morning. Swimmer AI said that she was driving late at night once in September and saw Swimmer AN walking on the side of the road. Swimmer AI said Swimmer AN appeared very intoxicated and was with another male student. Swimmer AI texted Swimmer AN and offered her a ride. Swimmer AN's text back was incoherent.

Swimmer Q (Swimmer, [REDACTED]) said that sometimes Swimmer AN drank too much alcohol, requiring other swimmers on the team to have to take care of her.

Swimmer T (Swimmer, [REDACTED]) noted that Swimmer AN drank alcohol while on her medication, which affected her in practice.

(f) [REDACTED]

[REDACTED]

[REDACTED]

(g) *Coach McKeever's Meetings with Swimmer AN and Her Parents*

[REDACTED] Staff F (Athletic Trainer, [REDACTED]) attended the October 23 meeting with Coach McKeever, Jennifer Simon-O'Neill (Executive Senior Associate Athletic Director, 2013-present), [REDACTED] Staff A (Assistant Coach, [REDACTED]), Swimmer AN, and Swimmer AN's parents.

[REDACTED] Staff F said the meeting occurred because Swimmer AN was [REDACTED] and partying, was not showing up to practice, and was missing appointments. She said that Swimmer AN's father did not seem concerned about that and that Swimmer AN's parents were unaware she had been missing practices. [REDACTED] Staff F denied that Coach McKeever said, "I'm not dealing with this piece of shit" in the meeting and does not believe Coach McKeever would say something like that. [REDACTED] Staff F noted that Coach McKeever did make clear that Swimmer AN was not participating, was not showing up to practice, and was blowing off appointments, and that Coach McKeever "wouldn't do that for three years."

Staff F said Swimmer AN's parents' tone during the meeting was accusatory and defensive, as they maintained that [REDACTED]. They did not understand why Coach McKeever was angry. Staff F could imagine [REDACTED] and listing the specific things she lied about but Staff F did not actually remember that happening.

Staff F was also present for the second meeting, on December 11, which occurred after Swimmer AN decided to transfer. Staff F said Swimmer AN, Coach McKeever, Simon-O'Neill, Staff A, Staff L (Academic Advisor, [REDACTED]) and Swimmer AN's mother attended. Staff F did not describe this meeting in detail.

5. Coach McKeever's Response

(a) Coach McKeever's Prior Knowledge of Swimmer AN's [REDACTED]

Coach McKeever said that Swimmer AN never told her about her [REDACTED]. She found out about Swimmer AN's [REDACTED] from Staff F (Athletic Trainer, [REDACTED]) after Swimmer AN's physical during summer [REDACTED]. Coach McKeever said that she recently looked at her emails and noticed that Staff K (Assistant Coach, [REDACTED]) had sent Swimmer AN feedback on Swimmer AN's admissions essays, advising her to put more medical-related things in them, but Coach McKeever was just copied on this email and does not believe she read it at the time.

Coach McKeever told us that it was common in recent years for her to not learn about serious medical issues or disabilities until after recruiting completed. Coach McKeever did not think that knowing about the [REDACTED] earlier would have affected Swimmer AN's recruiting, but she said that it would have been nice to know what they were getting into and how to support Swimmer AN. She would have expected Swimmer AN and her family to eventually tell her about the [REDACTED], especially since Staff K was leaving.

(b) Questioning Swimmer AN's [REDACTED]

Coach McKeever denied questioning if Swimmer AN really had [REDACTED] or accusing Swimmer AN of [REDACTED]. She told us that Swimmer AN [REDACTED]

Coach McKeever said that she did question whether Swimmer AN was missing practice because of [REDACTED] or for other reasons, such as drinking, [REDACTED], and poor time management. She had also heard from the academic advisor that Swimmer AN was [REDACTED], and one swimmer told her that Swimmer AN was sleeping all day.

(c) Targeting Swimmer AN for Sustained Criticism

Coach McKeever denied kicking Swimmer AN out for "ridiculous" reasons. Although she did not specifically recall why she kicked Swimmer AN out on a "small number" of occasions, she noted that athletes are removed from practice only after first given warnings about and opportunities to correct certain behavior. Coach McKeever also said that these reasons were not "ridiculous" in the context of the Cal program, which is one of the most elite in the world.

Coach McKeever denied Swimmer T's (Swimmer, [REDACTED]) statement that Swimmer AN was not permitted to go to the Minnesota Invitational because Coach McKeever thought she was lazy and not working hard. Coach McKeever noted that she had discussed with Swimmer AN that she would not compete until she had her health and academic issues under control and believed that if Swimmer AN intended to stay at Cal, she should not use a year of her eligibility.

Coach McKeever denied Swimmer V's (Swimmer, [REDACTED]) statement that she was ignoring Swimmer AN. She pointed out that the documentation of the time, energy, and effort she and other staff put in clearly shows that Swimmer AN was not being ignored. Coach McKeever regarded this as a "classic example" of athletes perceiving her as targeting someone without knowing the background issues that led to particular decisions.

[REDACTED]

(d) Disclosing Swimmer AN's Health Information

Coach McKeever denied speaking with [REDACTED] Staff N (Associate Team Physician, [REDACTED]) about any athlete, including Swimmer AN, and stated that if she heard anything about Swimmer AN, it was not from him. She also noted that the facts that Swimmer AN was partying and not taking swimming seriously were public knowledge, and there was not actually an allegation of a violation of Swimmer AN's privacy rights.

(e) Swimmer AN and Her Parents' First Meeting with Coach McKeever

Coach McKeever noted that she asked Swimmer AN which practices she wanted to go to because it was more appropriate to get Swimmer AN's input on what practices she felt she could handle, rather than Coach McKeever arbitrarily coming up with a schedule.

(f) Circumstances of Swimmer AN Leaving the Team

Coach McKeever felt that Swimmer AN did not have a sustainable plan for success at Cal. [REDACTED] Staff F (Athletic Trainer, [REDACTED]) and the team physician wanted Swimmer AN to see a [REDACTED], but Swimmer AN did not go for three months. She did not show up to counseling appointments, did not go to class, and was [REDACTED]. Instead, she stayed up late for social engagements. Coach McKeever met with Swimmer AN and her parents. Swimmer AN's parents told Coach McKeever that there were issues with medication and insurance related to getting a new doctor. [REDACTED] Staff F and Parent of Swimmer AN had numerous follow-up communications, but they could not get Swimmer AN in to see another physician to check on her [REDACTED]. Meanwhile, Swimmer AN was also missing appointments with doctors.

Coach McKeever said that Swimmer AN and Parent of Swimmer AN initiated the meeting in December when Swimmer AN wanted to transfer. Jennifer Simon-O'Neill (Executive Senior Associate Athletic Director, 2013-present) was also present. Coach

McKeever said it was a difficult meeting because no one likes to hear something is not going to work, but Coach McKeever could not make the [REDACTED] better and had done what she could to adjust the swimming requirements by giving Swimmer AN limited practices.

6. Factual Findings

A preponderance of the evidence shows that Coach McKeever was initially supportive and willing to make accommodations for Swimmer AN's [REDACTED], and this willingness to provide accommodations for Swimmer AN ended only after, by Swimmer AN's own account, she abused the accommodation by attending a party instead of an early morning practice or missing appointments without communicating the reason.

A preponderance of the evidence also shows that Coach McKeever subjected Swimmer AN to harsh and belittling criticism and [REDACTED], both to Swimmer AN and to others, about Swimmer AN's [REDACTED]. It appears that Coach McKeever's perception of Swimmer AN's commitment to the team's high standards was affected by Swimmer AN's [REDACTED] and drinking, and we credit Coach McKeever's explanation that she questioned whether Swimmer AN missed appointments or practices because of [REDACTED] or because of partying or other reasons. Nonetheless, a number of witnesses reported that Coach McKeever's expressed skepticism that Swimmer AN's inability to perform was due to [REDACTED] and this contributed to a perception that Swimmer AN was faking her condition, leading to Swimmer AN's isolation from her teammates.

A preponderance of the evidence also shows that Coach McKeever yelled at Swimmer AN after her [REDACTED] and criticized her as "selfish" and "pathetic." Swimmer AN acknowledged that, at some point during this interaction, Coach McKeever seemed to realize that the situation was serious and Coach McKeever then sent Swimmer AN to talk to [REDACTED] Staff F (Athletic Trainer, [REDACTED]), who helped Swimmer AN get help from the Student Health Center.

7. Policy Determination

[REDACTED]

A preponderance of the evidence supports the determination that Coach McKeever subjected Swimmer AN to harsh criticism and belittling that [REDACTED] of her [REDACTED] diagnosis or her inability to perform due to [REDACTED]. The preponderance of the evidence shows that this conduct was pervasive and persistent such that it created a hostile environment. Although some of Coach McKeever's perceptions of Swimmer AN arose out of conduct unrelated to Swimmer AN's [REDACTED], such as drinking and not communicating adequately about missing practices or appointments, some of Coach McKeever's conduct toward Swimmer AN was based on her disability.

[REDACTED]

[REDACTED] We separately analyzed whether Coach

McKeever's conduct toward Swimmer AN constituted a violation of University policies prohibiting abusive conduct.

B. Swimmer H

I. Swimmer H's Account

(a) *Swimmer H's [REDACTED] [REDACTED], and [REDACTED] Diagnosis*

Swimmer H [REDACTED] and joined the team in January [REDACTED] at the age of [REDACTED] (Swimmer H turned [REDACTED]). Swimmer H described her early experience on the team as positive and noted that she accompanied the team to a training trip in Hawaii. Swimmer H stated, however, that she felt that she could sense a fear of Coach McKeever in the team, which made Swimmer H afraid as well.

In February [REDACTED], Swimmer H started experiencing significant [REDACTED]. When she went to [REDACTED] Staff F (Athletic Trainer, [REDACTED]), [REDACTED] Staff F "brushed it off" and told Swimmer H to take some [REDACTED] and return to practice. Swimmer H told us that, as her [REDACTED] continued to worsen, the staff continued to tell Swimmer H to keep swimming. According to Swimmer H, [REDACTED] Staff F thought that Swimmer H simply had [REDACTED]. At one point, Swimmer H was crying in pain during practice, and Coach McKeever told her "no one ever died from [REDACTED]." Coach McKeever then made Swimmer H get in the water and swim through the pain. This took place approximately one to two weeks before Swimmer H had [REDACTED].

At the end of February and beginning of March [REDACTED], Swimmer H continued training and travelled with the team to the Pac-12 championships in [REDACTED]. At Pac-12s, Swimmer H again told the staff that she had significant [REDACTED]. Swimmer H recalled going to [REDACTED] Staff F multiple times due to severe abdominal pain that Swimmer H did not know how to alleviate. Each time, [REDACTED] Staff F just gave Swimmer H [REDACTED]. Swimmer H felt that [REDACTED] Staff F did not take her concerns seriously and that [REDACTED] Staff F should have known that the [REDACTED] were not helping Swimmer H. Swimmer H spoke to [REDACTED] Staff K (Assistant Coach, [REDACTED]), whom Swimmer H described as saying very little in response. Swimmer H also spoke to Coach McKeever, who told Swimmer H that her pain was not significant and that Swimmer H needed to keep swimming.

During Pac-12s, Swimmer H's [REDACTED] pain worsened every day. Swimmer H later learned that she had [REDACTED]. On the day the team returned to campus, Swimmer H [REDACTED] [REDACTED]. Late in the night, Swimmer H awoke with [REDACTED] and, based on advice from her parents, went to the local hospital's emergency room, where she was admitted and had an [REDACTED]. During the [REDACTED], the [REDACTED].

Following the [REDACTED], Swimmer H underwent diagnostic testing. In May, she was diagnosed with [REDACTED] by a [REDACTED] in her hometown (and not affiliated with Cal). Coach McKeever told her to stop getting tested for [REDACTED] because Coach McKeever did not trust any doctor that was not a Cal doctor. After receiving the diagnosis, Swimmer H

informed Coach McKeever and sports medicine physician [REDACTED] Staff N (Associate Team Physician, [REDACTED]). According to Swimmer H, Coach McKeever said, "I don't believe it, that's not what the Cal doctor said." Swimmer H did not recall how [REDACTED] Staff N responded. Swimmer H also said that Coach McKeever told her not [REDACTED] which Swimmer H found to be very isolating. [REDACTED]

(b) Coach McKeever's Response to Swimmer H's Diagnosis

After being diagnosed, Swimmer H often had to leave practice [REDACTED]. Swimmer H said she was clearly struggling during practice after her diagnosis, much more so than when she first arrived at Cal. Swimmer H said that Coach McKeever continued to suggest Swimmer H should "push through" the pain. Swimmer H said she sometimes responded to Coach McKeever that she felt like she was being stabbed and twisted by a knife. Swimmer H said that, while she could not recall Coach McKeever's exact response, Coach McKeever always responded by telling her to keep swimming and that Swimmer H should be able to push through and perform better. Swimmer H noted that, although Swimmer H was diagnosed in May and continued training through the summer, Coach McKeever gave her no accommodations in training until around October. Swimmer H shared her belief that this was because Coach McKeever did not believe Swimmer H's diagnosis or experiences of pain. According to Swimmer H, Coach McKeever told her that she was making it up and [REDACTED]

(c) Departure from Cal Summer Training

Swimmer H trained at Cal during the summer of [REDACTED] (after her diagnosis) and, at one point, had to go to the Tang Center for [REDACTED]. [REDACTED] Staff N happened to be on duty and advised Swimmer H to go home to be evaluated by her [REDACTED] doctor. Swimmer H said [REDACTED] Staff N also advised her to leave without telling Coach McKeever because training under Coach McKeever was dangerous for her health. Swimmer H left Cal that same day and then told Coach McKeever either that night or the next day that she had left. Swimmer H said that Coach McKeever left Swimmer H a very angry voicemail yelling at her for leaving. Swimmer H said she does not still have the voicemail. Afterward, Coach McKeever told Swimmer H to provide her with updates on her treatments. According to Swimmer H, after Swimmer H had left Berkeley, Coach McKeever repeated that she did not believe that Swimmer H had [REDACTED], that she [REDACTED], and that she had not been trying other medications. Swimmer H said she sent her medical records to [REDACTED] Staff F (Athletic Trainer, [REDACTED]) and [REDACTED] Staff N. Swimmer H explained that she did not give Coach McKeever updates on her [REDACTED] because nothing changed during her time away from Cal with respect to her diagnosis or treatment.

(d) Swimmer H's Return to Cal and Suspension from Team

When Swimmer H returned to Cal for the Fall [REDACTED] semester, Coach McKeever suspended her from the team because she did not believe Swimmer H communicated enough about her health and her plan for improvement. From Swimmer H's perspective, she was on the

same medication throughout the summer, and she did not think there was much to communicate. Coach McKeever told Swimmer H that she expected her to join a support group, try [REDACTED] and medications, see a [REDACTED], and attend an appointment with a [REDACTED] that [REDACTED] Staff F (Athletic Trainer, [REDACTED]) identified. Swimmer H was on an indefinite suspension and was expected to communicate with Coach McKeever about everything she was doing. Swimmer H sent Coach McKeever numerous emails during this time (described in the Relevant Documentation subsection, Section VII.B.3, below).

Swimmer H noted that [REDACTED] Staff K (Assistant Coach, [REDACTED]) quit at the end of the [REDACTED] academic year and called Swimmer H around August or September [REDACTED]. On that call, [REDACTED] Staff K told Swimmer H she had heard from other members of the team about what was occurring. [REDACTED] Staff K cried on that phone call and apologized for recruiting Swimmer H to the Cal program. Swimmer H also told us that [REDACTED] Staff K said that she left because Coach McKeever was taking out her anger on [REDACTED] Staff K and because it was too hard of an environment for [REDACTED] Staff K to handle.

[REDACTED]

During her suspension, Swimmer H met with Jennifer Simon-O'Neill (Executive Senior Associate Athletic Director, 2013-present) to complain about Coach McKeever. [REDACTED]

[REDACTED]

[REDACTED] Swimmer H's mother also contacted Simon-O'Neill. Swimmer H was ultimately allowed back on the team with a modified schedule a week before the [REDACTED] dual meet in late October.

After rejoining the team, Swimmer H had a hard time and felt she was on Coach McKeever's so-called "shit list," the term swimmers used to refer to those who were constantly criticized by Coach McKeever. Swimmer H said that Coach McKeever created an environment of dread and fear and targeted certain athletes by consistently criticizing them every day. Swimmer H told us that Coach McKeever said worse things to Swimmer H than anyone has ever said to her, and Swimmer H had never heard any coaches say similar things to swimmers. At this point, according to Swimmer H, Coach McKeever no longer told Swimmer H that she was [REDACTED], rather she criticized Swimmer H's swimming ability, including by telling Swimmer H that she was never going to be good enough to swim at Cal again, she would never swim good times again, she was worthless, she did not work hard enough, and she was a waste of a scholarship. Swimmer H noted that these comments sometimes happened in front of other people, or occurred after practice when other swimmers were walking by them. Swimmer H described the experience of being on the "shit list" as being isolating. Swimmer H felt like it hurt her relationships with other members of the team.

Swimmer H noted that Coach McKeever frequently brought up Swimmer H's scholarship and told Swimmer H that she was not worth the scholarship. Swimmer H said that Coach McKeever told Swimmer H that to be worth her scholarship and keep it, Swimmer H needed to be in two finals at the NCAA championships.

Ultimately, Swimmer H swam during the [REDACTED] academic year but decided to quit in Fall [REDACTED]. She [REDACTED] from the Cal doctors.

2. Parent of Swimmer H's Account

Swimmer H's mother corroborated much of Swimmer H's account. Parent of Swimmer H said that, shortly after Swimmer H went to Cal around January of [REDACTED] and following the Hawaii trip, Swimmer H began calling Parent of Swimmer H complaining about [REDACTED]. Parent of Swimmer H said the Cal athletic trainer and doctor initially putting Swimmer H on [REDACTED]. During the two weeks before the Pac-12 championships, Swimmer H struggled during practice because she was in significant pain, and Coach McKeever thought that Swimmer H was simply making excuses for it. Swimmer H told Parent of Swimmer H that on one occasion, she was crying during practice because she was in so much pain, and she told Coach McKeever she could not continue. Coach McKeever said that "no one ever died from [REDACTED]," and told Swimmer H to get in the water and push through it. Parent of Swimmer H said Swimmer H told her that Coach McKeever said "no one ever doesn't swim because of a [REDACTED]" on the day before the Pac-12 championships.

Swimmer H understood Coach McKeever as wanting Swimmer H to be quiet and stop complaining. Parent of Swimmer H told us that when Swimmer H went to the trainer, the trainer thought she was experiencing [REDACTED], so gave Swimmer H a lot of [REDACTED].

The night Swimmer H returned to campus from the Pac-12 championship, she called her parents in the middle of the night complaining of feeling the worst pain she had ever felt in her life, and her father told her to go to the [REDACTED] hospital's emergency room. Swimmer H was diagnosed with [REDACTED] and admitted for an [REDACTED]. Swimmer H's [REDACTED]. After the [REDACTED], Swimmer H was still in significant pain and [REDACTED], which showed there was something else besides [REDACTED]. Parent of Swimmer H described repeated conversations with [REDACTED] Staff F (Athletic Trainer, [REDACTED]) to update her about Swimmer H's health as Swimmer H visited their local doctor to be tested for [REDACTED]. Parent of Swimmer H noted that Coach McKeever wanted Swimmer H to see Cal doctors and not their local doctor.

At a subsequent swim meet where Cal was competing, Parent of Swimmer H spoke with another Cal swimming team parent and expressed frustration about the situation. Swimmer H contacted Parent of Swimmer H a few days after this conversation and told Parent of Swimmer H

that she should not talk about Swimmer H's medical situation because [REDACTED] Staff K (Assistant Coach, [REDACTED]) had heard about it and told Coach McKeever, and Coach McKeever became very angry with Swimmer H as a result. [REDACTED]

[REDACTED] According to Parent of Swimmer H, Swimmer H appeared shaken by the situation. Parent of Swimmer H also contacted [REDACTED] Staff F to explain the schedule for Swimmer H's testing and treatment and to explain that Swimmer H was still struggling and not getting better, and Parent of Swimmer H said that [REDACTED] Staff F told Coach McKeever, who in turn [REDACTED] Coach McKeever told Swimmer H that she did not understand the difference between [REDACTED] and what it means to have [REDACTED]. After this, Swimmer H reported she was screamed at by Coach McKeever every day at practice for not being good enough. Coach McKeever told Swimmer H that she was [REDACTED].

After Swimmer H was diagnosed with [REDACTED] at the end of the [REDACTED] semester, Parent of Swimmer H gave Cal documentation of the diagnosis. Swimmer H returned to campus to continue to swim over the summer. She struggled, as she was in a lot of pain. She had to [REDACTED] a lot. Coach McKeever frequently yelled at Swimmer H, and Swimmer H told Coach McKeever that she felt like she was "being stabbed and twisted by a knife." Swimmer H reported that Coach McKeever's response was always to just keep swimming and that Swimmer H should be able to push through it and be "better than this."

Parent of Swimmer H corroborated Swimmer H's account of when Swimmer H left Cal during the summer. Parent of Swimmer H described how, after [REDACTED] Staff N told Swimmer H to leave because the stress that Coach McKeever was causing Swimmer H was making her sicker, Swimmer H first talked to the [REDACTED] to get their advice. Parent of Swimmer H told us that Swimmer CO (Swimmer, [REDACTED]) said to Swimmer H that the situation presented her with a Catch-22: if Swimmer H left immediately, Coach McKeever would be mad that she went home without first informing Coach McKeever, but Coach McKeever also would be mad if she did not leave immediately because then Swimmer H would not be following doctor's orders. During the drive back to their home, Parent of Swimmer H recalled that Swimmer H called Coach McKeever back after missing her initial call and Coach McKeever screamed loudly enough through the phone at Swimmer H that Parent of Swimmer H could hear it without the aid of speakerphone. Coach McKeever said Swimmer H did not understand what it meant to be a Division I athlete and expressed anger at Swimmer H for going home.

Parent of Swimmer H said that, once Swimmer H returned to Cal for the start of freshman year, Coach McKeever told Swimmer H she was suspended from the team indefinitely for violating the team's rules by not communicating sufficiently with Coach McKeever. During her suspension, Swimmer H was not allowed to communicate with Coach McKeever (and so did not know when her suspension would end) and not allowed to attend team events; however, she was yelled at for missing recruitment weekend, which she missed because she had returned home to receive medical treatment for her [REDACTED].

Parent of Swimmer H said that, after Swimmer H was allowed to return to the team from her suspension, Parent of Swimmer H expressed concern to [REDACTED] Staff N and to Jennifer Simon-O'Neill. Parent of Swimmer H told Simon-O'Neill that no one took Swimmer H's

seriously, that Coach McKeever's communications with Swimmer H were inappropriate, and that shaming Swimmer H for following her doctor's instructions was inappropriate.

According to Parent of Swimmer H, Swimmer H eventually left the team based on a because Swimmer H felt anxious that, if she was in the pool and sick and something was off, Coach McKeever was going to yell at her and focus all her negative attention on Swimmer H.

Parent of Swimmer H told us that, after Staff K announced she was leaving, Coach McKeever blamed Swimmer H for the loss of her assistant coach because

3. Relevant Documentation

■ [REDACTED]

[REDACTED]

(b) Swimmer H's Initial Diagnosis

On May 27, Swimmer H emailed Coach McKeever that she was diagnosed with and asked for a call to discuss. Coach McKeever responded that day "I'm sure this is a lot and I'm also sure that there is terrific medical staff here in Berkeley to support you through this. For better or worse, we have had significant number of women with issues and obviously [Swimmer AO] thrived while here [REDACTED] so I believe you can do the same."¹³⁸

On June 4, Swimmer H sent Coach McKeever a message that, as she already had told Staff F (Athletic Trainer, [REDACTED]), she was instructed by the doctors to rest from swimming for a week, so she could not be attend the [REDACTED] meet. Coach McKeever asked Staff F (Athletic Trainer, [REDACTED]) what that meant, and Staff F responded, "Long story short, Staff N] thought it might be best for her to head home for the

136 [REDACTED]

137 [REDACTED]

¹³⁸ Ex. 67 [CALINT-000745]

summer to 'get things sorted out.'" Coach McKeever responded "I'm really not okay with just go home. [sic] In my mind all that does is push this back. The fact too that she can't stay 24 hours to talk in person honestly pisses me off. I emailed her last night about meeting today? Sorry I just feel really mislead [sic] and used by her and her family. Thanks for the help!"¹³⁹

On June 6, [REDACTED], Coach McKeever wrote Swimmer H asking to connect in person. Swimmer H responded by explaining again that [REDACTED] Staff N and [REDACTED] Staff F advised her to return home for the rest of the summer and that [REDACTED] Staff N had made a plan to modify her training. Swimmer H offered a call at 12:30 that day or to come in person the next week, which Coach McKeever responded to with a phone call.¹⁴⁰

On June 25, [REDACTED], Swimmer H sent Coach McKeever an update that she experienced [REDACTED] and recently went to the emergency room. She said that, because her [REDACTED] was not managed yet, she was unable to stop the [REDACTED]. Coach McKeever responded that "Obviously this is not good news as it seems progress has been minimal at best. Please reach out to [REDACTED] Staff F] after your tests. I feel strongly that we need doctors and a plan locally as the school year approaches. This should be set up well before classes begin. Hang in there."¹⁴¹

(c) Swimmer H's Medical Treatment and Updates for [REDACTED] Staff F and Coach McKeever

On July 24, [REDACTED] Staff F (Athletic Trainer, [REDACTED]) wrote Coach McKeever that Swimmer H had a [REDACTED] appointment the next day that [REDACTED] Staff F planned to attend. [REDACTED] Staff F said that the last update from Swimmer H was that swimming fast is painful, and she can only do so a couple hours a day. Coach McKeever responded:

This whole thing is ridiculous and from afar all it seems like we're doing is moving backward. She's not making any effort to get back on track and as far as I know exertion does not elevate [REDACTED]. Anything we can do to either clear her and get her going or let's walk away. She has the potential to help us but it's now been since February that she's done any real work. She's basically lost the upcoming year. It will take her at minimum most of the fall if not all to get back in any kind of shape. If she can't swim then let's make her run, spin, etc. Let's make the alternative more uncomfortable than swimming and if she can't do it then she can move on. I'm not having her or [Swimmer CP (Swimmer, [REDACTED])] or anyone stick around that cannot train at an elite Division I program. No more singles only or getting out early or taking some mornings off.¹⁴²

¹³⁹ Ex. 68 [CALINT-000742].

¹⁴⁰ Ex. 69 [CALINT-000768].

¹⁴¹ Ex. 70 [CALINT-000741].

¹⁴² Ex. 35 [CALINT-000740].

On August 22, [REDACTED], [REDACTED] Staff F sent Swimmer H information on a [REDACTED] [REDACTED] Swimmer H corresponded with [REDACTED] Staff F over the next three days regarding insurance and authorization.¹⁴³ Swimmer H wrote Coach McKeever on August 22 saying she followed up with [REDACTED] Staff F and scheduled her [REDACTED] Staff N appointment in four days. Coach McKeever responded, "Great-thanks! This is what I'm expecting."¹⁴⁴

On August 26, [REDACTED], at 4:12pm Swimmer H wrote Coach McKeever and [REDACTED] Staff F that she met with the [REDACTED] and that she "had to reschedule my appointment with [REDACTED] Staff N] tomorrow." Coach McKeever wrote back that evening, "It's my understanding you missed your appointment today with [REDACTED] Staff N]? When updating let's make sure you're owning your role in why you had to reschedule. Your note leads me to believe the reschedule was because of [REDACTED] Staff N]." Swimmer H responded the next day, August 27, apologizing "that my update was not clear. I made the mistake of showing up to my appointment at the wrong time yesterday which caused me to need to reschedule." She went on to explain that she met with [REDACTED] Staff N and was now cleared to swim. She then noted that the online [REDACTED] support group conflicted with a class of hers. [REDACTED] Staff F responded on August 29 that there are two support group options, and, on September 3, sent Swimmer H information on the other option.¹⁴⁵

On August 28, [REDACTED], Swimmer H told Coach McKeever that she had an intake appointment scheduled for [REDACTED], September 4. Coach McKeever thanked her for making progress.¹⁴⁶ On August 29, [REDACTED], Swimmer H emailed [REDACTED] Staff F and Coach McKeever that she was awaiting [REDACTED].¹⁴⁷

On September 5, [REDACTED], Swimmer H emailed [REDACTED] Staff F regarding her attempts to attend the [REDACTED] support group on campus. On September 6, she informed [REDACTED] Staff F, Coach McKeever, and [REDACTED] Staff A (Assistant Coach, [REDACTED]) that the group did not yet have a meeting time.¹⁴⁸

(d) Swimmer H's Suspension and Attendance Concerns

On September 16, [REDACTED], Coach McKeever emailed Jennifer Simon-O'Neill (Executive Senior Associate Athletic Director, 2013-present), copying both [REDACTED] Staff A (Assistant Coach, [REDACTED]) and [REDACTED] Staff F (Athletic Trainer, [REDACTED]). In that email, Coach McKeever noted that she had suspended Swimmer H prior to the start of school "for not following through on items that we had asked her to in regards to taking care of her health through the spring and summer." Coach McKeever said she had documentation in support of

¹⁴³ Ex. 71 [CALINT-000738].

¹⁴⁴ Ex. 72 [CALINT-000766].

¹⁴⁵ Ex. 73 [CALINT-000736].

¹⁴⁶ Ex. 74 [CALINT-000765].

¹⁴⁷ Ex. 75 [CALINT-000764].

¹⁴⁸ Ex. 76 [CALINT-000735].

this assertion. Coach McKeever noted that Swimmer H continued to miss appointments during the first few weeks of school, including a doctor's appointment and a [REDACTED] appointment. Coach McKeever told Simon-O'Neill that upperclassmen on the team had asked Coach McKeever how Swimmer H was drinking despite supposedly working to treat her [REDACTED]. Coach McKeever then explained that she had heard that day that Swimmer H had been providing her professors with letters regarding team travel despite being suspended (and therefore ineligible to travel) and described Swimmer H as "totally not truthful with staff."¹⁴⁹ Coach McKeever's email ended by asking Simon-O'Neill, "How long do we have to pretend that she [Swimmer H] wants to swim and give her her scholarship?"¹⁵⁰

On September 17, [REDACTED], Swimmer H emailed Coach McKeever and described needing to reschedule her [REDACTED] appointment to later in the week due to "a personal reason." Swimmer H also detailed the steps she had taken to discuss various treatment options and connect with the [REDACTED] on campus. Coach McKeever replied with the following email the next day:

It's my understanding that you showed up for your most recent [REDACTED] appointment with less than 10 minutes to go in the time you were allotted without a call or letting them know. So in fact, you had to reschedule because you missed your appointment. Again, you are not giving us the whole story and accepting responsibility for your actions and how you maybe misusing the [REDACTED] time and these valuable resources. There is only two [REDACTED] for over 850 student-athletes and there are many athletes that would love to be able to meet one on one. This is twice since classes began that you have missed a medical appointment that was on your calendar.

Additionally, it was brought to my attention yesterday that you have met with [REDACTED] Staff R a handful of times (at least 3) about a class that won't allow more than four misses a semester. He had no idea, nor have you informed him, that you are NOT training and will not be traveling this semester. Honestly, I find it unethical and at minimum not being upfront with staff and instructors that you would even give your professors a travel excuse letter. Apparently you did switch classes and if you knew you were not traveling this semester and have intentions of competing in future semesters it seems to all of us that this semester was actually the best possible time to stay in that class.

¹⁴⁹ Swimmer H's mother told us that the letter Swimmer H gave her professors was provided by the Athletics Department to help student-athletes inform their professors of their competition schedule. Because Swimmer H did not know how long she would be suspended from the team and there was a possibility she would have to attend meets and would therefore need to work out scheduling issues with her professors, she took the letter to her professors. According to Parent of Swimmer H, when Coach McKeever learned about this, she called Swimmer H and told her she was being unethical by posing as a member of the women's swimming team.

¹⁵⁰ Ex. 77 [CALINT-000091].

Finally, I have had at least three team-members come to me with concerns about your drinking this past weekend. When you, [REDACTED Staff F] and I met before classes began I specially addressed that it went without saying that you should not be drinking. Apparently, this is not what's happening and that this past weekend is not an isolated case.

These issues all cause me great concern and I see a pattern that is not congruent with someone looking to be reinstated as a women's swimmer on the team.¹⁵¹

Swimmer H replied with an email on September 23, [REDACTED]. In that email, Swimmer H apologized for showing up late to her [REDACTED] appointment and acknowledged that it was "disrespectful." Swimmer H said it was due to "a personal issue that I do not feel comfortable discussing." Swimmer H explained that she had not been told that she was not traveling with the team for the full semester and had adjusted her schedule and communicated with professors in case she traveled to the December meet. Swimmer H expressed her concern that she was not invited to attend roster pictures and overall impression that she was not being given a chance to be part of the team.¹⁵²

Simon-O'Neill shared email confirmation of a meeting she had with Swimmer H in Simon-O'Neill's office on September 23, [REDACTED].¹⁵³ At that meeting, Simon-O'Neill presented a document entitled "Meeting Notes from 9/23 on Team Expectations/Standards" listing various bullet points summarizing the team expectations.¹⁵⁴ Simon-O'Neill told us that Swimmer H shared that she was upset about Coach McKeever [REDACTED] but Simon-O'Neill did not consider it a legal issue because of the [REDACTED] that student-athletes sign each year. Simon-O'Neill provided us with a copy of the [REDACTED] for [REDACTED], which she described as similar, if not identical, to the [REDACTED] waiver.¹⁵⁵

On September 26, [REDACTED], [REDACTED] Staff F sent Swimmer H an email, copying Simon-O'Neill, that provided information about how to access Counseling and Psychological Services.¹⁵⁶

On October 1, [REDACTED], Coach McKeever sent an email to Swimmer H, copying [REDACTED] Staff A, [REDACTED] Staff F, and Simon-O'Neill. In her email, Coach McKeever scheduled a meeting with Swimmer H, [REDACTED] Staff A, and [REDACTED] Staff F for October 3, [REDACTED] and requested that Swimmer H attend the meeting to read and sign the team rules as well as review a personal training schedule through October 24. Coach McKeever stated her intent to have Swimmer H begin with an off-season training requirement of 8 hours per week and noted that

¹⁵¹ Ex. 78 [CALINT-000106].

¹⁵² Ex. 79 [CALINT-000085].

¹⁵³ Ex. 80 [CALINT-000088].

¹⁵⁴ Ex. 81 [CALINT-000203].

¹⁵⁵ Ex. 82 [CALINT-000093].

¹⁵⁶ Ex. 83 [CALINT-000083].

Staff F had cleared Swimmer H to participate starting the day after their upcoming meeting.¹⁵⁷ Swimmer H confirmed via email later that afternoon.¹⁵⁸

In the evening on October 1, [REDACTED], Coach McKeever sent Simon-O'Neill an email and copied [REDACTED] Staff A and [REDACTED] Staff F providing additional documentation regarding Swimmer H's suspension in case Swimmer H's mother called. Coach McKeever listed reasons for the suspension, including a lack of updates from Swimmer H, a lack of diligence regarding her care, missed appointments, and the issue regarding potential travel and academic conflicts.¹⁵⁹

Simon-O'Neill shared with us a contract with team expectations and standards that Swimmer H signed at the October 3, [REDACTED] meeting. The contract provides that Swimmer H must (1) review and sign team rules, (2) understand why 8 hours of water time is a priority, (3) review the definition of honesty/appropriate communication, (4) confirm the expectation that she will abstain from alcohol use, and (5) review her training schedule for October 3 to October 24, which included specific times for practice and team meetings.¹⁶⁰

On October 4, [REDACTED], Coach McKeever sent an email recapping the meeting to Simon-O'Neill, copying [REDACTED] Staff A and [REDACTED] Staff F. In that email, in addition to describing the contract and training plan, Coach McKeever mentioned that Swimmer H was "still saying she has pain after 35-40 minutes of swimming" and that Coach McKeever had explained she could not have someone getting out of every practice.¹⁶¹

(e) Swimmer H's Practice Accommodations and Support

On October 4, [REDACTED], Coach McKeever sent Swimmer H an article about athletes inspiring a young man with [REDACTED] and noting [REDACTED] swimmer Swimmer AO (Swimmer, [REDACTED]). [REDACTED] Coach McKeever restated her confidence that the Cal women's swimming program was well-suited to handle this situation and expressed optimism about the future.¹⁶² Swimmer H replied later the same day, thanking Coach McKeever for sharing the email and for the privilege and opportunity to be part of the team.¹⁶³

On October 8, [REDACTED], Coach McKeever sent an email to Swimmer H, copying [REDACTED] Staff A (Assistant Coach, [REDACTED]), [REDACTED] Staff F (Athletic Trainer, [REDACTED]), [REDACTED] Staff U ([REDACTED]), [REDACTED], and Jennifer Simon-O'Neill (Executive Senior Associate Athletic Director, 2013-present), clarifying the practice schedule

¹⁵⁷ Ex. 84 [CALINT-000105].

¹⁵⁸ Ex. 85 [CALINT-000086].

¹⁵⁹ Ex. 86 [CALINT-000082].

¹⁶⁰ Ex. 87 [CALINT-000084].

¹⁶¹ Ex. 88 [CALINT-000102].

¹⁶² Ex. 89 [CALINT-000090].

¹⁶³ Ex. 90 [CALINT-000099].

and noting that Swimmer H could take an updated headshot for the year on November 5,

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On October 16, Coach McKeever drafted and submitted a letter of recommendation on behalf of Swimmer H for a leadership position.¹⁶⁵ The letter was supportive of Swimmer H's growth, personality, hard work, and time management. It noted that "if you are clear and set expectations you will be impressed with [Swimmer H] and happy to have her as an associate."

On October 26, ██████████, Coach McKeever emailed Swimmer H, copying ██████████ Staff A, ██████████ Staff F, and Simon-O'Neill. In her email, Coach McKeever provided an updated personal training schedule for Swimmer H for the following three weeks and expressed that she hoped the program would help Swimmer H "continue to make progress."¹⁶⁶

On October 31, ██████████, Swimmer H emailed Coach McKeever, copying ██████████ Staff A, informing them that ██████████ Staff N ██████████ for a ██████████ and that she was advised not to practice for the next two days.¹⁶⁷ Swimmer H followed up on November 3, saying that she still felt poorly and had another appointment scheduled with ██████████ Staff N. Coach McKeever responded to each email with well wishes and a request for updates. On November 4, Swimmer H said she expected to get back in the water the next day.¹⁶⁸

On November 14, ██████████ Coach McKeever emailed Swimmer H, copying ██████████ Staff A, ██████████ Staff F, and Simon-O'Neill. In her email, Coach McKeever sent Swimmer H an updated personal training schedule through the Minnesota meet. Coach McKeever told Swimmer H that she could attend the Minnesota invite "as long as you attend the before mentioned swims and are in good health, additionally you need to feel that you are doing well academically."¹⁶⁹

On March 20, ██████████, Swimmer H sent the coaching staff a health update. She also stated that she planned to return home due to the ██████████ Coach McKeever responded, "I totally support your decision to return home" and "we will continue to do what we can to support all of your physical health."¹⁷⁰

(f) Swimmer H's Fall ██████████ Departure from Team

On September 2 ██████████ Coach McKeever emailed Jennifer Simon-O'Neill (Executive Senior Associate Athletic Director, 2013-present) expressing concern about Swimmer H. Coach

¹⁶⁴ Ex. 91 [CALINT-000104]

¹⁶⁵ Ex. 92 [CALINT-000760-61].

¹⁶⁶ Ex. 93 [CALINT-000101].

¹⁶⁷ Ex. 94 [CALINT-000722].

¹⁶⁸ Ex. 94 [CALINT-000722].

¹⁶⁹ Ex. 95 [CALINT-000103].

¹⁷⁰ Ex. 96 [CALINT-000762].

McKeever explained that Swimmer H was one of two swimmers that opted [REDACTED] and Swimmer H had told the coaches that she and her family felt that she should remain at home because of Swimmer H's changing medication and desire to seek [REDACTED]. Coach McKeever then noted that the team's captains had reached out to [REDACTED] Staff A (Assistant Coach, [REDACTED]) and Coach McKeever on August 28 and told them that Swimmer H was secretly rushing a sorority. According to Coach McKeever's email, the captains expressed concerns about Swimmer H's dishonesty and the fact that she was back in Berkeley to rush but was not rejoining the team. Coach McKeever told Simon-O'Neill that the captains had reached out to Swimmer H, and Swimmer H had told them that she did not feel supported by the team.¹⁷¹

On October 1, [REDACTED], Coach McKeever emailed Jennifer Simon-O'Neill (Executive Senior Associate Athletic Director, 2013-present) copying [REDACTED] Staff A and [REDACTED] Staff J [REDACTED]. In her email, Coach McKeever informed Simon-O'Neill about a meeting that she and [REDACTED] Staff A had with Swimmer H that day. In that meeting, Coach McKeever said that Swimmer H told them that, after talking to a therapist and others, Swimmer H felt it was "unhealthy" for her to continue swimming and asked about a [REDACTED]. According to Coach McKeever, she told Swimmer H that she would consult with Simon-O'Neill on the matter and that Swimmer H needed to consult with [REDACTED] Staff F (Athletic Trainer, [REDACTED]) to set up further meetings if she wanted a [REDACTED].¹⁷²

On October 26, [REDACTED], Coach McKeever emailed Simon-O'Neill, copying [REDACTED] Staff O (Associate [REDACTED]), [REDACTED] Staff A, and [REDACTED] Staff D (Director of Operations, [REDACTED]). Coach McKeever reaffirmed that Swimmer H was remaining at Cal but not rejoining the swimming team, and she asked if anything further was necessary to document the change in status.¹⁷³

On April 24, [REDACTED], Coach McKeever emailed Simon-O'Neill and mentioned a rumor that Swimmer H was looking to start swimming again and transfer to another program. Coach McKeever stated that she was under the impression that one could not transfer to another program after [REDACTED].¹⁷⁴

4. Other Witness Accounts

(a) Targeting for Sustained Verbal Abuse

Several swimmers told us that Swimmer H was targeted for verbal abuse by Coach McKeever. According to Swimmer AT (Swimmer, [REDACTED]), Swimmer H was targeted, along with Swimmer AN (Swimmer, [REDACTED]) and Swimmer X (Swimmer, [REDACTED]). Swimmer AT said Swimmer H was targeted by Coach McKeever for yelling and

¹⁷¹ Ex. 97 [CALINT-000092].

¹⁷² Ex. 98 [CALINT-000109].

¹⁷³ Ex. 99 [CALINT-000107].

¹⁷⁴ Ex. 100 [CALINT-000108].

criticism because Swimmer H would stand up for herself. According to Swimmer AT, Coach McKeever told the team that what Swimmer H was doing was terrible, and Coach McKeever turned the team against Swimmer H by pushing the narrative that standing up for yourself was wrong. According to Swimmer AN, Swimmer H told her she was suspended because Coach McKeever had “given up” on Swimmer H and did not want to give her attention. Diver B (Diver, [REDACTED]) said that she was afraid of Coach McKeever in part because of her second-hand knowledge of Coach McKeever’s treatment of Swimmer H. Diver B said that Coach McKeever told Swimmer H that she [REDACTED] yelled at her for being sick. Diver B said Swimmer H had a meeting with Jennifer Simon-O’Neill (Executive Senior Associate Athletic Director, 2013-present) and [REDACTED]. Swimmer P (Swimmer, [REDACTED]) said that Coach McKeever targeted Swimmer H for yelling and particularly harsh criticism. According to Swimmer P, Coach McKeever said to Swimmer P, regarding Swimmer H and other swimmers whom she targeted, “What the fuck is wrong with them, they don’t get it, they don’t deserve to be here.” When Swimmer P defended them, Coach McKeever got annoyed with her.

In contrast, other swimmers and coaches stated their belief that Swimmer H was prone to conflict with coaches and made decisions that justified Coach McKeever’s approach. According to Swimmer W (Swimmer, [REDACTED]), Coach McKeever wanted Swimmer H to stay over the summer so she could receive help from Cal doctors, but Swimmer H left without any notice. According to Swimmer AJ (Swimmer, [REDACTED]), Swimmer H snapped at Coach McKeever first, and Coach McKeever reacted back. Swimmer AJ understood how this might be perceived as yelling. Swimmer AJ described Swimmer H as drama-driven and enjoying gossip and rumors about people’s personal lives in a way that harmed team dynamics. According to Swimmer AX (Swimmer, [REDACTED]), who knows Swimmer H through a family relationship, Swimmer H has a history of conflict with coaches and [REDACTED].

(b) Disclosure of Private Health Information

A number of swimmers told us that they had learned about Swimmer H’s [REDACTED] diagnosis from Coach McKeever during a team meeting. According to Swimmer X (Swimmer, [REDACTED]), Coach McKeever told the team that Swimmer H had taken time off to deal with her [REDACTED]. According to Swimmer Q (Swimmer, [REDACTED]), Coach McKeever told the team that Swimmer H was “apparently” [REDACTED] but that Swimmer H would not meet with the Cal doctors. Other witnesses had different recollections. According to Swimmer K (Swimmer, [REDACTED]), Swimmer H told the whole freshman class she had [REDACTED] and that her condition had created a difficult relationship with Coach McKeever. According to Swimmer AJ (Swimmer, [REDACTED]), Swimmer H was vocal about her belief that Coach McKeever [REDACTED]. Swimmer AJ said she [REDACTED] but it is unclear how she knew about Swimmer H’s [REDACTED] and whether it was [REDACTED]. Swimmer AI (Swimmer, [REDACTED]) did not recall a meeting where Swimmer H’s [REDACTED] was discussed. Jennifer Simon-O’Neill (Executive Senior Associate Athletic Director, 2013-present) said Swimmer H told her that she was unhappy that Coach McKeever had [REDACTED]. Simon-O’Neill told Swimmer H she would address it. When Simon-O’Neill discussed it with Coach McKeever, Coach McKeever said she

was trying to explain to the team why Swimmer H was not training with them. According to Simon-O'Neill, [REDACTED]

(c) Treatment of [REDACTED]

Numerous witnesses described Coach McKeever's vocal skepticism and doubt regarding Swimmer H's [REDACTED]. Swimmer Q (Swimmer, [REDACTED]) said Coach McKeever said a couple of times that Swimmer H was [REDACTED]. According to Swimmer Q, Coach McKeever told others that, because Swimmer H was seeing a doctor not affiliated with Cal, Swimmer H was [REDACTED]. Swimmer Q said she believed Coach McKeever and thought Swimmer H was [REDACTED] until Swimmer Q saw Swimmer H at a party in tears, [REDACTED]. After that, Swimmer Q believed Coach McKeever was not telling the truth about the situation. According to Swimmer T (Swimmer, [REDACTED]), Coach McKeever was "harsh" about Swimmer H's [REDACTED]. Swimmer T said that at one point Swimmer H was suspended because Coach McKeever did not think Swimmer H was taking care of herself. According to Swimmer AU (Swimmer, [REDACTED]), Coach McKeever did not believe Swimmer H had [REDACTED] and would talk to the team about it. Swimmer AU said that Coach McKeever said, "I know what [REDACTED] looked like and you don't have it. [REDACTED]". According to Diver B (Diver, [REDACTED]), Swimmer H told Diver B that Coach McKeever told her she did not have [REDACTED] and yelled at Swimmer H for being sick. According to Jane Roe #3, Coach McKeever did not believe that Swimmer H had [REDACTED]. Jane recalled Swimmer H coming on deck saying she felt awful and Coach McKeever still making her swim.

Other swimmers described Coach McKeever as generally good at handling issues around [REDACTED] and suggested that Swimmer H's own behavior was the cause of Coach McKeever's behavior. Swimmer AI (Swimmer, [REDACTED]) said Coach McKeever was open to working with Swimmer H, based on her recent experience with Swimmer AO (Swimmer, [REDACTED]). According to Swimmer AI, Swimmer H did not communicate with Coach McKeever about what her doctors' advice and often was seen partying. Swimmer AI was Swimmer H's "big sister," and Coach McKeever asked Swimmer AI to check in on her. Swimmer H told Swimmer AI that she was not struggling and everything was great. [REDACTED] Staff F (Athletic Trainer, [REDACTED]) recognized Swimmer H's [REDACTED] early on because of recent experience with Swimmer AO. [REDACTED] Staff F noted that Swimmer H was diagnosed at home, and [REDACTED] Staff F initially had a hard time getting the notes from Swimmer H's physician to document the condition. The physician was a family friend of the Parents of Swimmer H and did the evaluation "off the books." [REDACTED] Staff F needed either the documentation or to re-run the tests, but Swimmer H's mother was difficult about it. [REDACTED] Staff F said that everything became contentious after Swimmer H's [REDACTED] because Parent of Swimmer H thought Coach McKeever and [REDACTED] Staff F did not believe that Swimmer H had [REDACTED]. Staff F said that Coach McKeever's statements about Swimmer H's condition were misconstrued and that what Coach McKeever was really saying was that "we don't have enough information to know if [Swimmer H] has [REDACTED]".

(d) *Swimmer H's Departure from the Team*

According to [REDACTED] Staff F (Athletic Trainer, [REDACTED]), Swimmer H [REDACTED] so she could keep her scholarship at Cal. Swimmer H later [REDACTED] and [REDACTED] Associate Athletic Director Jennifer Simon-O'Neill (Executive Senior Associate Athletic Director, 2013-present) recalled Coach McKeever saying that Swimmer H could be competitive if she were in shape, but she was not going to reach that potential because she was rushing a sorority, using alcohol, and had not figured out her medical situation. Simon-O'Neill also said that Swimmer H asked for a [REDACTED] because her therapist said it would be unhealthy for her to continue swimming. Simon-O'Neill said Coach McKeever told Swimmer H that Coach McKeever was not in charge of granting a [REDACTED]. Swimmer H ultimately did get the [REDACTED].

According to [REDACTED] Staff N ([REDACTED]; Assistant Coach, [REDACTED]), Swimmer H was removed from the [REDACTED] for being "destructive." A number of other witnesses told us that they had heard something similar.

[REDACTED] Staff K (Assistant Coach, [REDACTED]) recruited Swimmer H but did not coach her. [REDACTED] was Swimmer H's club coach, and so [REDACTED] Staff K heard that Swimmer H struggled after [REDACTED] Staff K left Cal. [REDACTED] Staff K said that she never heard anything about Coach McKeever's approach to [REDACTED].

Sports medicine physician [REDACTED] Staff N is [REDACTED] and we were not able to interview him.

5. Coach McKeever's Response

(a) *Swimmer H's First Semester*

Coach McKeever recalled that during Swimmer H's first semester at Cal in the Spring [REDACTED], she often left practice due to a [REDACTED]. Coach McKeever noted that it usually occurred an hour or so into practice. When Swimmer H reported experiencing [REDACTED], Coach McKeever asked her if she needed to get out of the pool, and if so, instructed her to see [REDACTED] Staff F (Athletic Trainer, [REDACTED]). Coach McKeever was not aware that Swimmer H was receiving treatment from her doctors at home.

Coach McKeever believed that Swimmer H had the [REDACTED] sometime early in the Spring [REDACTED] semester. She did not remember Swimmer H's symptoms of [REDACTED] starting at a practice and said she would have made whatever accommodations [REDACTED] Staff F had told her to make.

(b) *Swimmer H's [REDACTED] Diagnosis*

Coach McKeever did not learn of Swimmer H's [REDACTED] until after Swimmer H started with the program. She was shocked when she heard about Swimmer H's [REDACTED] diagnosis. Coach McKeever noted that she never heard from [REDACTED] Staff F (Athletic Trainer, [REDACTED]) or a doctor that Swimmer H needed a modified practice schedule.

She heard about Swimmer H's diagnosis when [REDACTED] told [REDACTED] Staff K that Swimmer H's mother informed people at a meet that Swimmer H had [REDACTED]. This occurred near the end of Swimmer H's first semester at Cal. Coach McKeever said that Swimmer H's doctor from home, who was friends with Swimmer H's mother, had diagnosed Swimmer H with [REDACTED]. Coach McKeever said she routinely suggested that Swimmer H get medical support from Cal. She felt this would be in Swimmer H's best interest and would have allowed Cal's medical staff and coaches to better understand her condition and support her in and out of the pool. Without access to her medical records and an understanding of her full condition, Coach McKeever and others at Cal were at a disadvantage in supporting Swimmer H. Coach McKeever said her suggestion for Swimmer H to see Cal doctors had nothing to do with not believing that Swimmer H had a medical issue. When Coach McKeever talked with Swimmer H about it, Coach McKeever noted that she had just finished working with another swimmer, Swimmer AO (Swimmer, [REDACTED]), who also had [REDACTED]. Coach McKeever told Swimmer H that it would be extra work, but she was confident that she and the coaching and medical staff could support Swimmer H. She also offered to connect Swimmer H with Swimmer AO. Coach McKeever noted that because of her experience coaching Swimmer AO, she knew that managing [REDACTED] would be a complex, ongoing issue that she was prepared to work through. She knew Swimmer H would need adjustments, especially since it was a new diagnosis and Swimmer H did not yet know what worked or did not work in managing it.

Coach McKeever gave Swimmer H some guidance on how to train with her [REDACTED] during the summer and asked Swimmer H to check in with her every two weeks. Swimmer H sent Coach McKeever one email and then made no further contact. When Swimmer H returned to Cal in the fall, Coach McKeever encouraged Swimmer H to get medical support in Berkeley, so that she did not have to go back to [REDACTED] every time she experienced a [REDACTED], but Swimmer H refused. Coach McKeever said she likely expressed her concern to Swimmer H (not in a team meeting) that Swimmer H's diagnosis came solely from a doctor in [REDACTED]. Coach McKeever noted that because the only diagnosis was an "off the books" one from her family doctor, the doctor would not provide records. Coach McKeever thought that Swimmer H was eventually seen by doctors at Cal but she was not sure of the details. Coach McKeever said that [REDACTED] Staff F coordinated with Swimmer H's doctors when Swimmer H started [REDACTED].

When asked if she ever said to Swimmer H, "no one died from swimming with a [REDACTED] get in the water," Coach McKeever confirmed that she said that once to Swimmer H before Coach McKeever knew about the [REDACTED]. Coach McKeever noted that Swimmer H's "over the top" behavior was a distraction and influenced the training environment for everyone.

(c) Swimmer H's Return to Campus

When Swimmer H returned in the fall, Coach McKeever wrote up a contract for Swimmer H at Jennifer Simon-O'Neill's (Executive Senior Associate Athletic Director, 2013-present) suggestion. She occasionally created these contracts [REDACTED] and used them like a performance improvement plan. Swimmer H's contract established a modified practice schedule, required her to get the medical

help she needed, and required her to abstain from alcohol. Coach McKeever said that Swimmer H's mother later called to complain about the requirement to abstain from alcohol.

(d) Swimmer H's Suspension

Coach McKeever stated that she suspended Swimmer H because she had asked Swimmer H to update her throughout the summer on her condition. Swimmer H communicated in mid-June, but did not communicate further with Coach McKeever until classes began in August. Coach McKeever noted that although her suspension happened around the same time as Swimmer AN's (Swimmer, [REDACTED]) and Swimmer X's (Swimmer, [REDACTED]), who were suspended for [REDACTED] while Swimmer H was not.

(e) Swimmer H's Departure from the Team

Coach McKeever said that Swimmer H told her she did not feel comfortable returning during [REDACTED]. When she joined a sorority (as shared by Swimmer P (Swimmer, [REDACTED]), [REDACTED], Coach McKeever and [REDACTED] Staff A (Assistant Coach, [REDACTED]) talked to her to understand why she was comfortable joining a sorority but not swimming with the team. Swimmer H said that she did not feel supported by the team. Coach McKeever told Swimmer H that she did not think Swimmer H would find what she was looking for at the sorority. At that point, Swimmer H worked with her doctors to [REDACTED]

(f) Comments About [REDACTED]

Coach McKeever denied ever saying that Swimmer H was [REDACTED]

(g) Disclosure of Private Health Information

Coach McKeever pointed out that she herself had found out about Swimmer H's diagnosis [REDACTED]. Coach McKeever also noted that, over the summer when Swimmer H was training at home, a number of swimmers on the team were talking about Swimmer H's situation. In Fall [REDACTED], when Swimmer H was suspended, Coach McKeever told the team that it was because of her "unfulfilled obligations," not her [REDACTED]. (This is the incident when Swimmer H, Swimmer AN (Swimmer, [REDACTED]), and Swimmer X (Swimmer, [REDACTED]) were confronted by an older swimmer for [REDACTED].)

Coach McKeever was aware that Swimmer H told her mother that Coach McKeever had disclosed her [REDACTED], which Swimmer H's mother then told Jennifer Simon-O'Neill (Executive Senior Associate Athletic Director, 2013-present). Coach McKeever told Simon-O'Neill that it was not a secret and everyone already knew. Coach McKeever noted that Swimmer AO (Swimmer, [REDACTED]) had specifically requested that her diagnosis remain a secret, and Coach McKeever kept it confidential until Swimmer AO [REDACTED] disclosed her diagnosis ahead of the [REDACTED]

(h) Scholarship Discussions

Coach McKeever denied threatening Swimmer H's [REDACTED] scholarship. Instead, she told us that Swimmer H and her parents repeatedly asked about more scholarship money. Coach McKeever told Swimmer H that in order to receive more money, she would need to final in two individual events at the NCAA championships.

[REDACTED]

[REDACTED]

(i) Comments on [REDACTED] Staff K

Coach McKeever denied Swimmer H's statement that [REDACTED] Staff K (Assistant Coach, [REDACTED]) left the team because Coach McKeever was taking her anger out on [REDACTED] Staff K and the environment was too hard for her to handle. Rather, Coach McKeever told us that [REDACTED] Staff K disclosed to Coach McKeever in Spring [REDACTED] that she had been [REDACTED]

Although she was in therapy, [REDACTED] Staff K felt she had to step away for her long term health. Neither [REDACTED] Staff K nor Coach McKeever shared this with the team. Coach McKeever also stated that Parent of Swimmer H's claim that she blamed Swimmer H for [REDACTED] Staff K's departure demonstrates her misunderstanding of the situation.

6. Factual Findings

Coach McKeever denied saying that Swimmer H was [REDACTED] or doubting her diagnosis. But several swimmers across different class years, including swimmers who described themselves as favored by Coach McKeever, told us that Coach McKeever consistently expressed skepticism about Swimmer H's [REDACTED] diagnosis and that Coach McKeever said she was [REDACTED]. Swimmers also described how Coach McKeever's attitude toward and statements about Swimmer H's [REDACTED] convinced them that she was faking it.

A preponderance of the evidence supports a finding that while Coach McKeever initially provided a modified training program to Swimmer H to accommodate her [REDACTED] Coach McKeever later sought to deny Swimmer H reasonable accommodations for her [REDACTED]. Coach McKeever said that she generally followed medical advice when dealing with swimmers with medical issues. But the July 25, [REDACTED], email from Coach McKeever to [REDACTED]

Staff (Athletic Trainer, [REDACTED]) shows Coach McKeever rejected Swimmer H's assertion that it was painful for her to try to swim fast, apparently based on nothing more than Coach McKeever's own belief that "as far as I know exertion does not elevate [REDACTED]" and not based on any medical advice. In response to Swimmer H's assertion that swimming fast was extremely painful, Coach McKeever imposed an alternative to swimming – "let's make her run, spin, etc." – that she expressly intended to be "more uncomfortable than swimming," to try to push Swimmer H to "move on." While Swimmer H could have better complied with the requirements that Coach McKeever imposed on her (status updates, specific appointments with doctors and counselors, etc.), her lack of compliance was not a justification for denying Swimmer H a reasonable accommodation for the pain she experienced when swimming fast.

7. Policy Determinations

A preponderance of the evidence supports a finding that Coach McKeever repeatedly expressed skepticism about the legitimacy of Swimmer H's diagnosed [REDACTED], both to Swimmer H herself and when talking to her teammates and that Coach McKeever pushed Swimmer H to swim through her pain and repeatedly belittled and criticized Swimmer H for poor performances during practice following Swimmer H's diagnosis. The preponderance of the evidence shows that this conduct was pervasive and persistent such that it created a hostile environment. Coach McKeever's treatment of Swimmer H caused her teammates to shun her and isolate her and, as a result, Swimmer H was discouraged and had difficulty participating in the program, which contributed to her eventual decision to leave.

A preponderance of the evidence supports the finding that Coach McKeever [REDACTED] Swimmer H's [REDACTED] diagnosis with her teammates [REDACTED]

We separately analyzed whether Coach McKeever's conduct toward Swimmer H constituted a violation of University policies prohibiting abusive conduct.

C. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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D. Swimmer AC

L. Swimmer AC's Account

Swimmer AC (Swimmer, [REDACTED]) entered Cal as a freshman in Fall [REDACTED] with a history of [REDACTED]. Swimmer AC reported mixed feelings about her first year on the team with Coach McKeever. In some ways, she felt supported by Coach McKeever and had a lot of respect for

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her, but when she read the *Orange County Register* articles, much of what was described was familiar to her and, on reflection, may have been “over the line” in terms of coaching.

(a) *Swimmer AC Disclosed [REDACTED] During Recruitment*

Swimmer AC was diagnosed with [REDACTED] at age 11, but it was [REDACTED] from ages 13 to 16. Swimmer AC’s [REDACTED] when she was 16, after she committed to Cal but before she started swimming for the team. In January [REDACTED], Swimmer AC entered a [REDACTED] [REDACTED] during her senior year of high school. She said she had a meeting with her parents, her club coach, and Coach McKeever where she was forthright with Coach McKeever about her [REDACTED]. Coach McKeever told Swimmer AC that Coach McKeever had experience coaching swimmers with [REDACTED] and that Swimmer AC’s presence on the team would not be a problem. Swimmer AC connected with Coach McKeever again several times before going to Cal to discuss what resources Swimmer AC might need. Coach McKeever offered to have more frequent check-ins with her, and they also planned for Swimmer AC to have more frequent medical check-ins to [REDACTED].

Despite these communications, Swimmer AC described feeling useless and worthless at Cal, and, on reflection, believed Coach McKeever’s reactions and expressions were a contributing factor to those feelings.

(b) *Mental Health Struggles and Pressure to Share with Team*

Swimmer AC started struggling with [REDACTED] a few weeks into the school year and became medically unstable. Early in the season, Swimmer AC’s Cal doctors put her on a 50 percent schedule. At first, Coach McKeever acted in an understanding and accommodating manner, but Coach McKeever told Swimmer AC that Swimmer AC needed to share with the team why she was not practicing full-time because it was a “distraction” to the team. Swimmer AC was uncomfortable with making this disclosure because she generally kept her struggles with her [REDACTED] private and did not yet know her teammates well. Swimmer AC prepared some notes about her [REDACTED] and history with it and shared with the team after an afternoon workout. Swimmer AC said she cried during the speech, and, although her teammates were supportive, she described it as a horrible experience.

Swimmer AC’s struggles in the fall intensified to the point that she became [REDACTED] and had to go to the medical center for several hours until she stabilized.

(c) *Coach McKeever’s Reactions to Swimmer AC’s [REDACTED]*

Swimmer AC said that she initially felt supported by Coach McKeever, but over time Coach McKeever began to react angrily to Swimmer AC’s medical instability. This created internal pressure on Swimmer AC to hide her needs and continue swimming despite the fact that she was struggling with her [REDACTED].¹⁷⁸ Swimmer AC said Coach McKeever’s reactions

¹⁷⁸ Swimmer AC said she was never actually forced to swim when she could not. Those decisions were made by Swimmer AC’s doctors, and Coach McKeever never interfered with those decisions.

got worse as the season progressed, increasing Swimmer AC's [REDACTED], but Swimmer AC said she did not succumb to the pressure and continued to take care of her needs. For example, Swimmer AC knew how to "trick" the [REDACTED] such that she could get clearance to swim, but she did not do so.

As one example of the type of pressure Swimmer AC faced, she described an instance when Coach McKeever was upset that Swimmer AC could not swim at a meet at the end of one week [REDACTED], even though she had been medically cleared at the beginning of the week. Swimmer AC did not immediately inform Coach McKeever when her [REDACTED] came back because she wanted to do so in person. At practice, Coach McKeever pulled her aside and, in an area where others could hear, yelled at Swimmer AC and told her it was "bullshit" that she had been cleared on Monday but could not swim on Wednesday. Swimmer AC recalled that Coach McKeever angrily used the "F" word when talking with Swimmer AC about the situation.

Swimmer AC also recalled a few instances when she wanted to attend meets even though she was not medically cleared to swim because she wanted to go to support her teammates, but Coach McKeever would not let her. Coach McKeever told Swimmer AC that if she was not healthy enough to swim, then she was not healthy enough to attend the meet. Swimmer AC felt excluded and hurt at a time when she needed support.

Swimmer AC noted another instance when she could swim at only 50 percent and waited to tell Coach McKeever in the recreational sports facility. Once Swimmer AC told her, she yelled at Swimmer AC. Swimmer AC noted that the team had gone ahead to dance class, but there were a handful of staff and other individuals in the area at the time.

(d) Comparison to Swimmer AU

In another hurtful instance, after Swimmer AC swam poorly during a race, Coach McKeever critically compared Swimmer AC to Swimmer AU (Swimmer, [REDACTED]), another swimmer with an [REDACTED].¹⁷⁹ Swimmer AC felt Coach McKeever said this intentionally to get under Swimmer AC's skin. Coach McKeever never spoke with Swimmer AC directly about her [REDACTED]

[REDACTED]

¹⁷⁹ This incident was described in starker terms by other swimmers, who said that after a race, Coach McKeever said, "I haven't seen anything that bad since [Swimmer AU]." Swimmer AC did not describe the incident with that level of detail.

[REDACTED]

2. Relevant Documentation

We reviewed emails between Coach McKeever and Swimmer AC. Coach McKeever and Swimmer AC emailed throughout the [REDACTED] season about Swimmer AC's health, her practice restrictions, and, at the end of the season, Swimmer AC's plans to enter a [REDACTED] [REDACTED].¹⁸⁰

3. Other Witness Accounts

(a) Pressure to Share [REDACTED]

Multiple swimmers confirmed that Swimmer AC was forced or pressured to share her diagnosis. Jane Roe #1 said that Coach McKeever "made" Swimmer AC tell the entire team that she had an [REDACTED]. She said it was difficult to watch Swimmer AC's disclosure because Swimmer AC was "clearly terrified" and trembling. Swimmer AC told this swimmer at the time that Coach McKeever made her do it, and that she was very uncomfortable with it. Swimmer T (Swimmer, [REDACTED]) also said that when Swimmer AC was forced to share, she was almost in tears.

(b) Coach McKeever's Reaction to Swimmer AC's [REDACTED]

Several swimmers noted that Coach McKeever was not accommodating toward Swimmer AC or otherwise reacted in a negative way to her [REDACTED] struggles.

Swimmer I (Swimmer, [REDACTED]) said that Swimmer AC sometimes forgot to take her medicine. One morning, Coach McKeever screamed at Swimmer AC, and Swimmer AC later told Swimmer I that it was because Swimmer AC had told Coach McKeever she had forgotten her medication and [REDACTED]. In response, Coach McKeever erupted and asked if Swimmer AC was "stupid." Swimmer L (Swimmer, [REDACTED]) described Coach McKeever as not accommodating toward Swimmer AC's 70-percent practice allotment.

Swimmer L also said that when Swimmer AC was in [REDACTED], Coach McKeever did not respond to Swimmer AC's emails providing status updates.

Swimmer B (Swimmer, [REDACTED]) said that Swimmer AC told Swimmer B her [REDACTED] [REDACTED] was worsened by Coach McKeever and that she had to be [REDACTED] multiple times.

¹⁸⁰ Ex. 101 [CALINT-000623]; Ex. 102 [CALINT-000634]; Ex. 103 [CALINT-000635]; Ex. 104 [CALINT-000638]; Ex. 105 [CALINT-000639]; Ex. 106 [CALINT-000644]; Ex. 107 [CALINT-000645]; Ex. 108 [CALINT-000655]; Ex. 109 [CALINT-000656]; Ex. 110 [CALINT-000662]; Ex. 111 [CALINT-000674]; Ex. 112 [CALINT-000675]; Ex. 113 [CALINT-000682]; Ex. 114 [CALINT-000687]; Ex. 115 [CALINT-000688]; Ex. 116 [CALINT-000689].

with [REDACTED] Coach McKeever became upset if Swimmer AC [REDACTED] which caused stressed Swimmer AC additional stress. When Coach McKeever heard from a doctor that Swimmer AC needed to reduce her training because of [REDACTED], Coach McKeever was upset.

In contrast, some swimmers said that Swimmer AC's troubles were internally driven or that Coach McKeever's frustration was not with Swimmer AC's [REDACTED] but rather due to the fact that Swimmer AC was not fully transparent. [REDACTED] Staff A (Assistant Coach, [REDACTED]) said that both Coach McKeever and she were fully supportive of Swimmer AC getting help, but it frustrated Coach McKeever that Swimmer AC was never fully informed on what was going on with her [REDACTED]. The coaches were not aware of the full scope of the issue before Swimmer AC joined the team. Swimmer AJ (Swimmer, [REDACTED]) said that Swimmer AC's and Coach McKeever's relationship soured because Swimmer AC and Swimmer AC's doctors told Coach McKeever different things.

Others, such as Swimmer V (Swimmer, [REDACTED]), said they believed Coach McKeever handled Swimmer AC's situation well.

(c) Coach McKeever's Comment Comparing Swimmer AC to Swimmer AU

Two anonymous swimmers corroborated that Coach McKeever unfavorably compared Swimmer AC to Swimmer AU (Swimmer, [REDACTED]). Jane Roe #2 said that after Swimmer AC had to be pulled out of the pool at Pac-12s, Coach McKeever said she had not seen anything that bad since Swimmer AU. This swimmer thought this was very insensitive. Jane Roe #1 similarly confirmed that Coach McKeever negatively compared Swimmer AC to Swimmer AU. She said that Coach McKeever had a lot of issues with Swimmer AC's [REDACTED] and had compared Swimmer AC to a past swimmer with regard to the way Swimmer AC looked while swimming.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

4. Coach McKeever's Response

Coach McKeever noted that Swimmer AC joined the team with an [REDACTED], and she believes she and the rest of the coaching, training, and medical staff managed Swimmer AC's [REDACTED] as well as they could. Coach McKeever stated that she believes that Swimmer AC's perception of her experience at Cal was negatively influenced by reading the *Orange County Register* articles.

(a) Swimmer AC's [REDACTED]

Coach McKeever noted that Swimmer AC did not tell the coaching staff about her eating disorder until January [REDACTED], nine months before she enrolled at Cal. She had already been recruited at that point and signed her National Letter of Intent.

As the season progressed, Swimmer AC's condition and limitations were constantly adjusted, which was frustrating for both Swimmer AC and Coach McKeever. Coach McKeever was concerned that rather than making progress, they were inadequately addressing a situation that would need a more permanent solution. For example, there was a Monday where Swimmer AC had one of her best practices, followed by a Wednesday where she needed modified training, leading to uncertainty about whether she could swim in a meet on Friday. According to Coach McKeever, this was not sustainable for Swimmer AC or the team, so she told Swimmer AC they needed to figure out a broader solution.

Coach McKeever stated that she did not respond to Swimmer AC's emails about summer treatment [REDACTED]

(b) Pressure to Share with Team

Coach McKeever said she never pressured Swimmer AC to share her diagnosis with the team. Rather, Coach McKeever told Swimmer AC they needed to tell the other team members something because Swimmer AC was going to miss a significant amount of training and require practice adjustments. Additionally, Swimmer AC's dad was in Berkeley [REDACTED] for the first two weeks, a situation about which Coach McKeever believed other swimmers likely had questions. Coach McKeever asked Swimmer AC how she wanted to handle it and likely told Swimmer AC that she would get more love and support from her teammates if they knew the truth. But Coach McKeever did not tell Swimmer AC that she had to share her story. Coach McKeever also noted that it was be normal to be emotional (shaking and crying) during a conversation like this, and it did not seem fair to say Swimmer AC was having this reaction because Coach McKeever forced her to share.

[REDACTED]

[REDACTED]

[REDACTED]

(d) Comparison to Swimmer AU

Coach McKeever admitted that she said she had not seen anything like Swimmer AC's swim since the Swimmer AU incident in Minnesota. She explained that Swimmer AC had a very poor race the morning of Pac-12s when she swam the [REDACTED]. She noted that there were similarities with Swimmer AU, such as that they were in the middle of a meet where Swimmer AC "completely fell apart" and almost could not finish the race. She acknowledged that she probably did not handle this in the best possible way, but she was concerned that Swimmer AC's [REDACTED] was worse than Swimmer AC thought. Coach McKeever was trying to figure out whether her bad swim was due to mental, physical, or emotional stress. She also asked Swimmer AC questions about it to try to figure out what was going on and what adjustments would need to be made as they prepared for the NCAA championship.

5. Factual Findings

A preponderance of the evidence supports a finding that Coach McKeever yelled at Swimmer AC and cursed when Swimmer AC informed Coach McKeever that she was no longer cleared to swim despite having been medically cleared earlier in the week. We also find credible Swimmer AC's statement that Coach McKeever prevented Swimmer AC from attending meets to support her team as a spectator whenever Swimmer AC was not medically cleared to compete as a swimmer. Coach McKeever told us that she was frustrated and felt that the situation was unsustainable for Swimmer AC and the team, which is consistent with Swimmer AC's account.

Several swimmers recounted that Coach McKeever forced Swimmer AC to disclose to the rest of the team the fact that Swimmer AC had an [REDACTED]. In contrast, Coach McKeever said that she only suggested that Swimmer AC disclose this information to end possible speculation on the team and that she told Swimmer AC that she likely would receive more support from her team if they knew the truth. We find that these accounts are not inconsistent with each other, as a suggestion from Coach McKeever could create a feeling of pressure on Swimmer AC or be reasonably interpreted by Swimmer AC to be a directive.

[REDACTED]

It is undisputed that Coach McKeever reacted to Swimmer AC's poor performance at Pac-12s, where she had to be pulled out of the pool, by saying something like, "I haven't seen anything that bad since [Swimmer AU]," referring to another swimmer with [REDACTED]. While Coach McKeever's comment was highly inappropriate, this one incident was not sufficiently severe so as to limit or interfere with the ability of an individual to participate in or benefit from the activities provided by Cal.

6. Policy Determination

We conclude that Coach McKeever's conduct created a hostile environment for Swimmer AC based on her disability. Although Coach McKeever abided by the swimming restrictions set by Swimmer AC's medical team, she yelled and cursed at Swimmer AC when Swimmer AC's medical clearance to swim was reversed after only a few days. Coach McKeever also refused to allow Swimmer AC to attend meets as a spectator to support the team when Swimmer AC was not medically cleared to swim. Coach McKeever pressured Swimmer AC to disclose her condition to the team and inappropriately compared Swimmer AC to Swimmer AU. Combined, these incidents were sufficiently severe, persistent, or pervasive to create a hostile environment or to limit or interfere with the ability of an individual to participate in or benefit from the activities provided by Cal.

E. Swimmer AW

I. Swimmer AW's Account

Swimmer AW was a [REDACTED] swimmer on the Cal women's swimming team from [REDACTED]. Swimmer AW reported that she was targeted by Coach McKeever beginning in her sophomore year, which led to [REDACTED].

(a) *Allegations of Targeting for Verbal Abuse by Coach McKeever*

Swimmer AW said she was targeted for verbal abuse throughout her sophomore year. As one example, Swimmer AW said that during a training trip Coach McKeever "ripped" into her for not being able to do a back bend, saying she should be doing them outside of practice every day. Coach McKeever was so hard on Swimmer AW that Swimmer AW started crying, at which point Coach McKeever said, "Why the hell are you crying?" Swimmer AW also said that Coach McKeever told Swimmer AW and others that they were [REDACTED] or not contributing enough to the team. Swimmer AW recalled Coach McKeever using the phrase [REDACTED]. Swimmer AW said she did not stand up to Coach McKeever out of fear.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

(d) Swimmer AW's Decision to Quit the Team

Ultimately, Swimmer AW decided to quit the team and scheduled a meeting with Coach McKeever to discuss her decision. Swimmer AW said that Coach McKeever was unresponsive during the meeting.

The meeting primarily concerned logistics.

[REDACTED]

[REDACTED]

[REDACTED]

2. Relevant Documentation

[REDACTED]

Simon-O'Neill's notes dated October 25, [REDACTED] outline the events that led to Swimmer AW's decision to [REDACTED], which were presumably compiled from Simon-O'Neill's conversations with Coach McKeever.¹⁸⁷ Specifically, in September, Coach McKeever and Swimmer AW discussed Swimmer AW's goals and Swimmer AW decided to spend time at home to reflect. When she returned on October 16, Swimmer AW was ready to return to swimming, but Coach McKeever was not comfortable with that decision. On October 22, Swimmer AW reported that she did not want to swim and [REDACTED].

[REDACTED]

[REDACTED] Swimmer AW said the team had a "toxic culture," Coach McKeever was "verbally abusive," and Coach McKeever "isolate[d] you and made you feel like the guilty party every single time." Swimmer AW noted

¹⁸¹ [REDACTED]

¹⁸² Ex. 120 [CALINT-000210].

¹⁸³ [REDACTED]

¹⁸⁴ [REDACTED]

that Coach McKeever used phrases such as [REDACTED] "let the team down," "unappreciative," and [REDACTED]. Swimmer AW reported that teammates generally did not stand up for one another out of fear. Swimmer AW said she was [REDACTED] and "thought [she] was dying." Swimmer AW said she did not report Coach McKeever to the university because she was afraid of retaliation. Swimmer AW also mentioned [REDACTED] and having [REDACTED] Staff F (Athletic Trainer, [REDACTED]) help wrap it.

3. Other Witness Accounts

(a) Allegations Regarding Targeting for Sustained Verbal Abuse

Many of Swimmer AW's teammates confirmed that she was targeted for verbal abuse by Coach McKeever, including Swimmer AT (Swimmer, [REDACTED]), Swimmer V (Swimmer, [REDACTED]), Swimmer BU (Swimmer, [REDACTED]), Swimmer Q (Swimmer, [REDACTED]), Swimmer X (Swimmer, [REDACTED]), Swimmer AU (Swimmer, [REDACTED]). Swimmer Q (Swimmer, [REDACTED]) said Coach McKeever "tore [Swimmer AW] to shreds." Swimmer AU said that Coach McKeever made comments about Swimmer AW's weight and performance. Swimmer BU (Swimmer, [REDACTED]) said that Coach McKeever told Swimmer AW that she was "too fat," "too heavy," and needed to do extra workouts to become slimmer. Swimmer AT (Swimmer, [REDACTED]) said that Coach McKeever kicked Swimmer AW out of practice "a couple of times."

Many swimmers also said that Swimmer AW stood up for herself (Swimmer AT (Swimmer, [REDACTED]), Swimmer AI (Swimmer, [REDACTED]) and/or "talked back" to Coach McKeever (parents of Swimmer CQ (Swimmer, [REDACTED])).

Swimmer AI also said that when Swimmer AW started swimming more slowly her sophomore year, Coach McKeever got on her because she knew that Swimmer AW could perform better and knew that Swimmer AW could be great if she just put in the effort, and Coach McKeever wanted Swimmer AW to be great. Swimmer AI said that Coach McKeever told Swimmer AW things like, "Come on, what are you doing? You're not hitting your pace." In response, Swimmer AW pushed back, saying, "I *am* doing this." Swimmer AI said that Coach McKeever picked on Swimmer AW because she knew Swimmer AW could perform better. Swimmer AI said she did not know what kinds of conversations Swimmer AW and Coach McKeever had outside the pool.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

(d) Circumstances of Swimmer AW Quitting the Team

According to [REDACTED] Staff K (Assistant Coach, [REDACTED]), at some point there were conversations between Swimmer AW and Coach McKeever about Swimmer AW's goals because she did not seem to be happy. Swimmer AW was given a few weeks away from swimming to think about it.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] Staff D ([REDACTED], [REDACTED]) recalled that Coach McKeever told Swimmer AW at one point, "this isn't working." According to [REDACTED] Staff D, Swimmer AW was afraid to tell her family. Coach McKeever offered to help Swimmer AW find a program that was a better fit.

(c) Swimmer AW's Actions After Quitting

Jennifer Simon-O'Neill (Executive Senior Associate Athletic Director, 2013-present), [REDACTED] Staff E (Director of Operations, [REDACTED]), and (parents of Swimmer CQ (Swimmer, [REDACTED], [REDACTED]) noted that Swimmer AW continued coming to swim meets even after she quit the team.

4. Coach McKeever's Response

(a) Verbal Abuse Targeting Allegations

Coach McKeever noted that she emphasizes backbends (as well as cartwheels) because they establish body awareness, which helps with pushing off the walls.

[REDACTED]

[REDACTED]

(c) Circumstances of Swimmer AW's Decision to Quit Swimming

Coach McKeever noted that Swimmer AW swam really well her first couple of years but fell out of love with swimming. Coach McKeever said Swimmer AW was a good example of someone who did not want to continue making the commitment to swimming and struggled with

that decision because of family pressure. Swimmer AW's father's identity was wrapped up in Swimmer AW's swimming. Coach McKeever noted that swimmers often made their own difficult transition into an issue about her and her coaching.

(d) "Toxic" Team Culture

Coach McKeever did not recall isolating the team from Swimmer AW. Swimmer AW wanted to live in an apartment far from campus with a non-swimmer for financial reasons. Coach McKeever warned her that she might feel isolated and that Swimmer AW would need to be the one to initiate things with her teammates.

(e) Behavior After Quitting

Even after she quit the team, Swimmer AW came to meets, and Coach McKeever asked her teammates how Swimmer AW was doing.

■ [REDACTED]

[REDACTED]

■ [REDACTED]

[REDACTED]

We separately analyzed whether Coach McKeever's conduct toward Swimmer AW constituted a violation of University policies prohibiting abusive conduct.

F. Swimmer I

I. Swimmer I's Account

Swimmer I (Swimmer, [REDACTED]) joined the Cal women's swimming team as a [REDACTED] in the fall of [REDACTED] and left the team a few weeks later, in mid-October [REDACTED]. Swimmer I alleged that Coach McKeever did not accommodate her [REDACTED].

■ [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

185 [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

(b) [REDACTED]

At the beginning of the year, the swimmers were required to complete goal sheets. On the sheets, there was a comment section asking if there was anything the swimmer wanted the coaches to know about the swimmer. Swimmer I did not remember if she included information about [REDACTED] but believed it was possible she did. She had just been diagnosed five months before arriving at Cal, so handling [REDACTED] was new to her. Her roommate Swimmer L. (Swimmer, [REDACTED]) gave Swimmer I's goal sheet to Coach McKeever because Swimmer I had [REDACTED].

[REDACTED]

[REDACTED]

Swimmer I arranged for a meeting with Coach McKeever and [REDACTED] Staff A (Assistant Coach, [REDACTED]) to discuss her [REDACTED] at practice. She told them that it was hard to [REDACTED], so she asked if she could have a Sharpie pen by the pool to draw on her arm – and otherwise conveyed that it would be helpful to have the sets written down. Coach McKeever responded, [REDACTED] in a way that conveyed that obviously they knew. Swimmer I was not sure if Coach McKeever knew about Swimmer I's [REDACTED] because Swimmer I had told them or just because Coach McKeever viewed Swimmer I as [REDACTED]. The conversation then focused on whether Swimmer I was good for the program. Coach McKeever told her she was not making the sets at practice. Coach McKeever also said that Swimmer I was taking too many resources from the team.¹⁸⁶ Swimmer I understood Coach McKeever's response as a refusal to allow Swimmer I to write out sets or to provide Swimmer I with written versions of practice sets.

[REDACTED]

[REDACTED]

¹⁸⁶ [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

2. Relevant Documentation

[REDACTED]

Swimmer I email Coach McKeever on September 19 to request a meeting with Coach McKeever to [REDACTED].¹⁸⁷

Coach McKeever emailed Swimmer I on September 22, stating "[REDACTED] Staff F] told me yesterday that during your appointment with [REDACTED] Staff N] he made the decision that you should take the next 2 weeks to step away from the team to spend your time and energy on your overall well being."¹⁸⁸ Coach McKeever went on to state that Swimmer I's status on the team would be revisited on October 7. Coach McKeever also requested that Swimmer I send her an outline of her discussion with [REDACTED] Staff A (Assistant Coach, [REDACTED]) and Coach McKeever, as well as her discussion with [REDACTED] Staff N.

Swimmer I emailed her outlines to Coach McKeever and [REDACTED] Staff A on September 25.¹⁸⁹ Swimmer I's notes reflected that they discussed her struggles with [REDACTED].

¹⁸⁷ [REDACTED]

¹⁸⁸ Ex. 127 [CALINT-000514].

¹⁸⁹ Ex. 128 [CALINT-000513].

¹⁹⁰ Ex. 129 [CALINT-000757].

whether she was emotionally able to be on the team, and the degree to which her behavior was affecting other members of the team.

Coach McKeever emailed Swimmer I on October 18, noting "It's almost been a month since you took some time away and to date I haven't heard from you" and arranged a time to discuss.¹⁹¹

3. Other Witness Accounts

[REDACTED]

[REDACTED]

[REDACTED] Swimmer N also believed Swimmer I had bad anxiety and ADHD that made it difficult for her to remember sets, which made Coach McKeever mad.

[REDACTED]

[REDACTED] Staff A (Assistant Coach, [REDACTED]) said that, in general, Coach McKeever did not write out practice sets for the swimmers. [REDACTED] Staff A explained that that was just Coach McKeever's style; and she was not the only coach that ran practices in that manner. Coach McKeever was creative, and she did not write down the sets because if she wanted to change something, it was hard to do so if the team has already seen it. Coach McKeever also used verbal instructions as a listening and communication tactic. [REDACTED] Staff A said that sometimes swimmers had a hard time hearing and were afraid to ask questions. [REDACTED] Staff A could not remember Coach McKeever ever letting a swimmer write down a practice set.

Regarding Swimmer I specifically, [REDACTED] Staff A believed the coaching staff knew that Swimmer I entered the program with a [REDACTED] because they helped her get tested. [REDACTED] Staff A was part of at least one meeting with Coach McKeever and Swimmer I where they discussed Swimmer I's [REDACTED]. [REDACTED] Staff A also confirmed that Coach McKeever sarcastically said to Swimmer I, [REDACTED]. [REDACTED] Staff A said that Coach McKeever's view was that Swimmer I need to FIO (figure it out) and get help from her teammates. [REDACTED] Staff A said Coach McKeever generally did not have a problem with swimmers getting help from their teammates, as long as they did it in a way that

¹⁹¹ Ex. 130 [CALINT-000512].

did not disrupt practice. [REDACTED] Staff A noted that Swimmer I had trouble “reading the room” and knowing which swimmers to ask for help and when.

According to Swimmer CS (Swimmer, [REDACTED]), Swimmer CS had a [REDACTED]. She initially struggled to keep up in practice, as she was very visual but forgot what she heard verbally. Coach McKeever called Swimmer CS out and made the whole team redo sets if Swimmer CS made mistakes. Swimmer CS’s mother gave Coach McKeever some suggestions, and Coach McKeever began writing the sets on a whiteboard for Swimmer CS to see, a practice that helped Swimmer CS.

Swimmer AH (Swimmer, [REDACTED]) said that she had [REDACTED]. Coach McKeever made an accommodation for Swimmer AH by writing out the practice sets on a board and explaining the sets out loud multiple times.

Swimmer AM (Swimmer, [REDACTED]) said that Coach McKeever frequently used a whiteboard to give instructions for the practice sets. The use of whiteboards was standard procedure with Coach McKeever and with other swim coaches. Sometimes the practice was printed on paper and handed out to the team, and sometimes Coach McKeever provided the instructions verbally. If the instructions were given orally, Coach McKeever repeated the instructions multiple times. If the set was really complicated, Coach McKeever broke it down into parts and had swimmers perform each part and then provided instructions on the next part. If the swimmers needed to perform the whole set without stopping, Coach McKeever reminded the swimmers of the instructions halfway through the set.

[REDACTED] Staff Q (Assistant Coach, [REDACTED]) recalled that Coach McKeever used to write out sets; however, he found the idea of writing out all the sets “ridiculous,” as he thought listening to the sets helps a swimmer learn the nuances of coaching.

[REDACTED]

4. Coach McKeever’s Response

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

(b) [REDACTED]

Coach McKeever was aware that Swimmer I had [REDACTED] and thought that either Swimmer I told her or she learned of it from [REDACTED] Staff L (Assistant Coach, [REDACTED]), who helped recruit Swimmer I through her position in a recruiting service separate from Cal.

Coach McKeever noted that Swimmer I had difficulty in practice with understanding what was happening and keeping up with the other swimmers. Coach McKeever attributed this to Swimmer I not listening well. For example, with simple sets where everyone was doing the same thing, Swimmer I would do the wrong stroke or leave at the wrong time. Coach McKeever met with Swimmer I individually a few times to help her understand the terms she used. [REDACTED] Staff A (Assistant Coach, [REDACTED]) met with Swimmer I as well.

[REDACTED]

[REDACTED]

When Swimmer I asked Coach McKeever to write out sets, Coach McKeever refused because she did not want to change the workout for one person. The workouts were difficult for everyone during the first year, but writing down the workout prevents Coach McKeever from having flexibility to adjust a set and is not realistic. According to Coach McKeever, writing down a set for the team locked her in and does not allow her to be her best as a coach. If this had been important to Swimmer I, she should have asked during recruitment, would have been told no, and could have chosen a program that was a better fit.

Coach McKeever did not recall Swimmer I asking if she could have written the sets on her arm with a Sharpie pen but would have allowed it if asked. She noted that there had been other swimmers in prior years (Swimmer AH (Swimmer, [REDACTED]) and Swimmer CT (Swimmer, [REDACTED])) who had [REDACTED]

Coach McKeever acknowledged that she may have told Swimmer I that she was taking up too much of [REDACTED] Staff F's (Athletic Trainer, [REDACTED]) time. Coach McKeever noted that resources like [REDACTED] Staff F are scarce. Coach McKeever said she was not trying to create a hostile environment but saw it as her job to help Swimmer I decide if she wanted to continue with the team. Coach McKeever noted that Swimmer I had a lot of resources to help her – family pod, captains, etc. Coach McKeever also said it was important to make sure that Swimmer I and others were not detracting from other swimmers' practices, regardless of whether she had a disability. Coach McKeever said that approximately five swimmers told her that they did not feel safe swimming with Swimmer I because she did not know the sets.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

5. Factual Findings

■ [REDACTED]

[REDACTED]

■ [REDACTED]

[REDACTED]

■ [REDACTED]

[REDACTED]

(d) Allegations Regarding Coach McKeever's Refusal to Allow Swimmer I to Write Out Practice Sets

The preponderance of the evidence shows that Coach McKeever knew that Swimmer I had [REDACTED] and that Swimmer I requested an accommodation related to verbal instructions. Coach McKeever did not remember Swimmer I requesting permission to write the sets on her body with a Sharpie, but Coach McKeever did remember that Swimmer I requested some form of written instruction. Coach McKeever said that she denied Swimmer I's request for written instructions. We do not find credible Coach McKeever's explanation that allowing Swimmer I to write out practice sets, which Swimmer I explained were difficult to remember when conveyed orally, would have materially affected Coach McKeever from providing her best coaching to the team. Two [REDACTED] or swimmers [REDACTED] - [REDACTED] [REDACTED] said that Coach McKeever routinely wrote down practice sets on white boards or paper. The lack of written practice sets affected Swimmer I's ability to perform the practice sets as instructed, resulting in criticism from Coach McKeever.

6. Policy Determinations

[REDACTED]

[REDACTED]

We conclude that Coach McKeever's refusal to allow Swimmer I to write out her practice sets or to engage in any discussion of other alternatives denied her a reasonable accommodation and interfered with Swimmer I's ability to participate in the program. Coach McKeever's conduct created a hostile environment for Swimmer I based on her disability.

G. Jane Roe #1¹⁹³

L. Jane's Account

One swimmer we interviewed, who wished to remain anonymous, "Jane Roe #1," swam at Cal during the past ten years. Jane developed a temporary medical condition the same week as a swim meet. This temporary condition was developed away from the pool in a situation into which Jane had accidentally gotten herself. She went to see [REDACTED] Staff F (Athletic Trainer, [REDACTED]), who referred her to [REDACTED] Staff N (Associate Team Physician, [REDACTED]). Jane was cleared by [REDACTED] Staff N for the meet but was restricted from performing training activities in the ocean. This doctor's appointment occurred shortly before the team left for the meet. Coach McKeever was upset and informed Jane that she would not have allowed her to come if she knew that Jane could not participate in all the training activities. An older swimmer on the team told Coach McKeever that she had told Jane to go to the doctor, but Jane had not listened. This led Coach McKeever to tell Jane that she was bad at communicating and did not respect the older swimmers on the team. Coach McKeever yelled at Jane in front of the entire team, telling her that she was immature and was not fit for Cal. Coach McKeever apologized shortly thereafter.

[REDACTED]

[REDACTED] Later, during training, Jane injured herself in such a way that she required medical attention. Coach McKeever called [REDACTED] Staff F and requested her immediate assistance. Jane noted that Coach McKeever was surprisingly understanding and wanted to make sure that Jane was recovering. However, when Jane returned to swimming, Coach McKeever asked Jane why she was so out of shape and questioned why she had not been training over the winter break. Jane was confused and wondered if Coach McKeever had forgotten about her injury. Jane felt that at that point she was on Coach McKeever's bad side because Coach McKeever picked on swimmers who were injured more often.

Right after Jane returned to practice following her injury, Coach McKeever tried to kick her out of practice for not understanding the sets. Jane told Coach McKeever that she wanted to be there and wanted to swim, but Coach McKeever told her that was "bullshit" and that Jane did not care about her swimming. Eventually Coach McKeever rolled her eyes and walked away.

¹⁹³ Because this swimmer chose to remain anonymous, we will not give her account the same weight as swimmers who are identified by name. [REDACTED]

and Jane stayed at practice. Jane said she was on Coach McKeever's bad side after this incident because Coach McKeever picks on swimmers more after they become injured.

Shortly before the Pac-12 championships, Jane re-injured herself in the same way. This time, when she got the injury, she was not participating in swimming-related activities and accidentally got herself into a situation that caused the injury. She did not tell anyone because she knew it would mean that she could not swim. Eventually, she told the assistant coach that she was worried she had re-injured herself, and the assistant coach told her she was overthinking it and should just swim at the meet the next day. Jane swam and did well but noticed the symptoms of the injury got worse each day.

Two days later, Jane went to see [REDACTED] Staff F, who sent her to the doctor. The doctor diagnosed Jane with the injury Jane had suspected she had. Jane was directed to not swim for three days. She texted Coach McKeever, who then called her. Coach McKeever was very upset and angry. Coach McKeever called her a "child" and "immature" and told her that she did not deserve to finish the season at Cal. Coach McKeever also blamed Jane for "self-sabotaging." Jane said she did not remember many of the specific things that Coach McKeever said because it was a traumatic call. Jane felt that there was no right thing to say other than to just take what Coach McKeever said to her. Jane had a panic attack after the phone call with Coach McKeever, which intensified the symptoms of her injury. The call caused her to cry and made her feel "broken." Jane sought medical treatment the next day because her symptoms worsened so much as a result of her emotional reaction to speaking with Coach McKeever. Jane did not attend practice until she felt better.

A few days later, Jane texted Coach McKeever and asked for a meeting to discuss the situation. When Jane arrived at the meeting, Coach McKeever just asked whether she still was injured and if she could swim and, when Jane said she could swim, they never spoke about it again.

2. Other Witness Accounts

Four swimmers who were on the team with Jane confirmed that she had the injury that resulted from training. One of the swimmers stated she told Jane she should get her injury checked out, but Jane never did. One confirmed that Coach McKeever called Jane a "child" for getting injured right before Pac-12s; this swimmer also confirmed that Coach McKeever said she would cut Jane if Jane did not get better after the injury she got as a result of training. A third swimmer stated that Coach McKeever was annoyed that Jane could not swim and said that Jane had gotten injured in a "dumb way" after her final, non-training related injury. According to this swimmer, Coach McKeever tried to get Jane back in the water earlier than her doctors advised.

3. Coach McKeever's Response¹⁹⁴

Coach McKeever acknowledged that she was upset when Jane attended an off-campus training trip while knowing she had a condition that would prevent her from fully participating

¹⁹⁴ [REDACTED]

and did not inform the coaching staff about the issue until she was already on the trip. Coach McKeever admitted to “expressing her displeasure and concern” regarding Jane’s lack of communication.

Regarding Jane’s re-injury, Coach McKeever noted that coaches asked her three to five times following the incident whether she was okay based on their concern about it, but Jane repeatedly said she was fine. Eight days after the incident, Jane reported symptoms for the first time. Coach McKeever and the other coaches were confused why it took Jane so long to report the symptoms, especially given that they knew she was susceptible to re-injury. Coach McKeever thinks she might have asked if she had symptoms all week prior to reporting them. She described Jane as anxious, timid, and uncomfortable during this conversation. Coach McKeever stated that it was possible Jane did not recognize what the symptoms were, which could have contributed to her delay in reporting the symptoms.

4. Factual Findings

■ [REDACTED]

[REDACTED]

(b) Allegations Regarding Coach McKeever’s Reactions to Jane Roe #1’s [REDACTED]

Coach McKeever does not dispute the facts of Jane Roe #1’s account, which we find credible. Coach McKeever said her reaction was due to confusion from the fact that Jane injured herself several days before obtaining a diagnosis. We find it credible that the delayed diagnosis could have caused confusion.

5. Policy Determinations

[REDACTED]

Coach McKeever’s abusive language toward Jane after she recovered from her first injury (e.g., comments about Jane not caring about swimming and saying Jane’s expressed desire to swim was “bullshit”) and her attempt to kick Jane out of practice during her first practice back after her first injury were in themselves not sufficiently severe, pervasive, or persistent so as to interfere with Jane’s ability to participate in the program. But when combined with her reaction

[REDACTED]

to Jane's re-injury, her statements in both instances, taken together, created a hostile environment due to disability that was sufficiently severe, pervasive, or persistent so as to interfere with and limit Jane's ability to participate in the program. Coach McKeever's reaction to Jane's second injury contributed to Jane feeling "broken" and experiencing a panic attack and to her symptoms worsening to such an extent that she sought medical treatment the following day. It also led to Jane avoiding practice until she felt better.

Coach McKeever's stated reason for her conduct - that the delay in Jane's reporting of her diagnosis confused Coach McKeever - does not justify the conduct. Although we find it credible for Coach McKeever to be confused by the diagnosis initially, such confusion does not justify angrily insulting an injured swimmer or saying that they did not deserve to finish the season at Cal.

H. Swimmer X

I. Swimmer X's Account

Swimmer X (Swimmer, [REDACTED]) joined the Cal team in Fall [REDACTED] as a freshman distance swimmer; she transferred to the [REDACTED] in Fall [REDACTED]

[REDACTED]

[REDACTED]

(a) *Swimmer X's Experiences on the Team*

Swimmer X described having a negative experience from her first moments at Cal. In one example, she [REDACTED], which frustrated Coach McKeever. Swimmer X's perception was that Coach McKeever did not like her from the first practice, and Swimmer X did not know why. Swimmer X thought that being friends with Swimmer AN (Swimmer, [REDACTED]) made Coach McKeever dislike both of them more.

Swimmer X described an incident in October, where someone reported that she was excessively drunk and [REDACTED], which Swimmer X denied. Coach McKeever was told that Swimmer X ignored the people who told her to [REDACTED] and told them to "fuck off." Swimmer X was suspended from travel meets for two to three weeks and ostracized by her

teammates. A few weeks after Swimmer X was suspended in October, Coach McKeever pulled Swimmer X out of practice in front of the entire team and yelled at her about her eating habits. Coach McKeever said that Swimmer X was too fat to be a competitive swimmer and needed to lose a lot of weight. Coach McKeever previously had made several minor weight-related comments. [REDACTED]

Swimmer X said that Coach McKeever swore at her or called her a curse word at least twice a week. Swimmer X was kicked out of practice during her second semester for minor infractions, such as squinting at the sun. She said that Coach McKeever told her that her actions were "shitty" and she was "a piece of shit." Swimmer X said that Coach McKeever frequently yelled only a few inches away from her face in a threatening way and that this was especially intimidating given Coach McKeever's position of power. [REDACTED]

According to Swimmer X, Coach McKeever spoke with Swimmer X's mother over the phone with Swimmer X present. Coach McKeever suggested that Swimmer X was a bad swimmer and bad person. When Parent of Swimmer X disputed this assessment of Swimmer X's merit, Coach McKeever responded that Swimmer X had not progressed since December. Coach McKeever's statement ignored the fact that Swimmer X's [REDACTED]

[REDACTED] Once Parent of Swimmer X hung up, Coach McKeever told Swimmer X, "You have to be fucking kidding me, there's no way you're going to NCAAs if you don't perform the way I want at Pac-12s and get it together."

After the call with Parent of Swimmer X, Swimmer X called Coach McKeever to tell her she intended to transfer. Coach McKeever said, "Good, you're done. Don't bother coming back to practice. I never want to see your face again." [REDACTED]

(b) Injury and Medical Issues

Swimmer X had [REDACTED]. In November [REDACTED] Swimmer X sprained her [REDACTED] during practice and was in a lot of pain, so much so that she cried into her goggles. Swimmer X got out of the pool and told Coach McKeever that something happened and it was hurting her to swim. Coach McKeever told her to "get back in and swim or get the fuck out." Swimmer X got back in and finished practice and then went to student health services. The doctor told her that her [REDACTED], gave her crutches, and told her to take a few days off of swimming.

[REDACTED]

(c) Psychological Effect on Swimmer X

According to Swimmer X, Coach McKeever's treatment made her believe at the time and for at least six months thereafter that something was wrong with her and that she had done something to deserve the treatment she received from Coach McKeever. The experience weakened her self-esteem and her swimming confidence. Swimmer X lost some of her swimming ambition and almost quit the sport; she did not get into a pool until the second semester of her sophomore year after leaving Cal and did not want to go to practice or think about swimming until her second semester of sophomore year at [REDACTED]. She was withdrawn and often left practice early. Looking at a pool reminded her of how she felt freshman year at Cal. She has not been diagnosed with [REDACTED] but thinks she has a form of it. She did not go to therapy because she does not like talking to strangers about her feelings. After she left Cal and was swimming for [REDACTED], at the NCAA championships in [REDACTED], she saw Coach McKeever on deck and experienced the sensation of being a freshman, living in fear. She swam terribly as a result. [REDACTED]

When she was a student at Cal, Swimmer X was withdrawn from the people around her. She did not go out and only saw friends once every couple weeks outside of class. She stayed away from anything that had to do with swimming.

2. Parent of Swimmer X's Account

Swimmer X's mother, said that she is a single parent for Swimmer X and very involved in her swimming career. Swimmer X has swum twice daily since the age of six, and Swimmer X would wake Parent of Swimmer X up at 4:00 a.m. daily for rides to practice. Cal was a dream come true for Swimmer X, who had many options.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

(b) Swimmer X's Departure from the Team

Swimmer X started complaining to Parent of Swimmer X about Coach McKeever after the [REDACTED]. Parent of Swimmer X tried to encourage Swimmer X to improve her relationship with Coach McKeever and was frequently on the phone with Swimmer X to develop strategies to do so, for instance encouraging her to change her facial expressions. Swimmer X asked for a meeting with Coach McKeever and was rebuffed. Meanwhile, Parent of Swimmer X said that her relationship with Swimmer X was injured because, at the time, Parent of Swimmer X blamed Swimmer X for having a poor relationship with her coach.

Swimmer X quit the team the week before Pac-12s, driven in part by Coach McKeever's threat to not take Swimmer X to Pac-12s. Parent of Swimmer X then emailed Coach McKeever

196 [REDACTED]

197 [REDACTED]

asking for a meeting to discuss what happened. According to Parent of Swimmer X, when Coach McKeever, Parent of Swimmer X, and Swimmer X met, Coach McKeever said something like "I'm done with you, that's it," and did not provide explanation for the failed relationship with Swimmer X. Parent of Swimmer X told Coach McKeever that they had talked about Swimmer X's disabilities during Swimmer X's recruitment, but Coach McKeever said they had never talked about it and claimed that she was not aware of it. Parent of Swimmer X never contacted anyone because she blamed Swimmer X at the time. She continued trying to meet with Coach McKeever to figure out what happened.

(c) Swimmer X's Injuries

Swimmer X had a lot of chronic injuries from overwork before she attended Cal, mostly with her [REDACTED]. After Swimmer X's [REDACTED], Parent of Swimmer X bought her a scooter in the hopes that she would [REDACTED].

After Swimmer X quit, she told Parent of Swimmer X about the [REDACTED]. Swimmer X is usually tough and will swim through anything, but with the [REDACTED] she asked for a break. Coach McKeever had said that if Swimmer X was not swimming, then she was off the team. According to Parent of Swimmer X, Swimmer X was afraid of how Parent of Swimmer X would react if Swimmer X were off the team; Swimmer X believed that Parent of Swimmer X was not the kind of mother who would think Coach McKeever was wrong. Swimmer X did not tell Parent of Swimmer X that Coach McKeever was making her swim through the injury at the time. If Parent of Swimmer X had known of these incidents at the time, she would have contacted Coach McKeever. All she was told by Swimmer X was that Swimmer X had an injury and needed to walk on crutches and that the injury was bad, but it was getting better. Swimmer X always downplayed her injuries; the [REDACTED].

(d) Alleged Targeting for Negative Treatment

Swimmer X told Parent of Swimmer X that Coach McKeever was mean to her, but Parent of Swimmer X did not remember specific comments. Parent of Swimmer X thought that being friends with Swimmer AN (Swimmer, [REDACTED]) made Coach McKeever like Swimmer X less, and other swimmers on the team shunned her, including Swimmer T (Swimmer, [REDACTED]), who stopped talking to her. Parent of Swimmer X said Swimmer X was traumatized and her confidence still has not recovered, even though she is now swimming well at the [REDACTED].

Parent of Swimmer X said that Coach McKeever asked about Swimmer X's eating habits in front of others, even though Swimmer X had lost weight at that time. Parent of Swimmer X also said that Swimmer X copes with stress by eating.

3. Relevant Documentation

[REDACTED]

[REDACTED]

[REDACTED]

Five months later, on February 17, [REDACTED], Swimmer X's mother wrote Coach McKeever requesting a meeting between just Coach McKeever and herself to discuss the conflict between Coach McKeever and Swimmer [REDACTED].

[REDACTED]

198 [REDACTED]

199 [REDACTED]

200 [REDACTED]

201 [REDACTED]

202 [REDACTED]

203 [REDACTED]

204 [REDACTED]

205 [REDACTED]

[REDACTED]

Couch McKeever then responded to Parent of Swimmer X's original email, explaining that she would meet with Parent of Swimmer X only if Swimmer X was present.²⁰⁷ This meeting ultimately was scheduled for February 20 at 8:30 am. The next day, February 21, in an unrelated thread, Coach McKeever requested that Parent of Swimmer X be removed from a listserv because Swimmer X indicated a desire to transfer.

4. Other Witness Accounts

(a) Conflict with Coach McKeever

Many swimmers noted that Swimmer X was the subject of more than the usual amount and severity of criticism from Coach McKeever, including personal criticisms rather than swimming-based criticisms. These swimmers also noted that Swimmer X often stood up for herself in the face of Coach McKeever's criticism, sometimes responding in kind. Swimmer AN (Swimmer, [REDACTED]) said Swimmer X took Coach McKeever's screaming "like a champ" – adding that, for Swimmer X, it seemed the screaming went in one ear and out the other. Swimmer Q (Swimmer, [REDACTED]) said that Swimmer X got picked on and called a [REDACTED] almost daily, with Coach McKeever yelling in her face. Swimmer Q said that Swimmer X then stood up for herself. Swimmer Q did not know why Coach McKeever went after Swimmer X. Swimmer X swam well, dropped time, and made NCAAs, yet Coach McKeever routinely "reamed her." Swimmer Q noted that she never saw Swimmer X swear back at Coach McKeever, which Swimmer Q found notable and impressive given how frequently Coach McKeever yelled in her face. Swimmer Q recalled Coach McKeever telling Swimmer X to "fix her face." Swimmer AU (Swimmer, [REDACTED]) said Coach McKeever targeted Swimmer X with extra criticism, including for her weight and ability. Swimmer H (Swimmer, [REDACTED]) also said Coach McKeever called Swimmer X a "piece of shit."

Swimmer AD (Swimmer, [REDACTED]) said Coach McKeever asked her if Swimmer X deserved to be on the team, and that over time Swimmer AD slowly started to advocate for Swimmer X. Coach McKeever told Swimmer X she needed to lose weight. Swimmer AD said that Coach McKeever also told Swimmer X that Swimmer X did not deserve to be at Cal and did not deserve to wear a Cal cap. Coach McKeever yelled at Swimmer X that she was not fast enough, that she was not trying, or asked, "What are you doing?" One time, Swimmer X did not bring a water bottle on deck to practice. When Coach McKeever asked about it, Swimmer X said she did not like to drink water during practice. Coach McKeever said, "Don't you understand basic anatomy, are you stupid, do you not understand you need water when you're working out."

Swimmer AD's father said that Swimmer AD saw Swimmer X get screamed at on deck for weight, lack of desire, and Coach McKeever's general frustration. According to Parent of

²⁰⁶ [REDACTED]

²⁰⁷ Ex. 136 [CALINT-000771].

Swimmer AD, Coach McKeever became so frustrated with Swimmer X that she sometimes directed her frustrations toward other swimmers – and Coach McKeever apologized to Swimmer AD over a dozen times for taking out frustrations with Swimmer X on Swimmer AD.

(b) Witnesses Described a Personality Mismatch and Provocation by Swimmer X

Some swimmers attributed Swimmer X's conflict with Coach McKeever to a personality mismatch. Swimmer T (Swimmer, [REDACTED]) was Swimmer X's roommate. She said that Swimmer X was strong and outspoken in a way Coach McKeever found disrespectful. Swimmer T thought Coach McKeever wanted Swimmer X's scholarship back. Swimmer X told Swimmer T that Coach McKeever called her a [REDACTED]. Swimmer T said Coach McKeever at one point apologized to Swimmer T, saying she was just taking out her frustration with Swimmer X on Swimmer T.

Other swimmers viewed Swimmer X as provoking or deserving of Coach McKeever's criticisms. Swimmer AI (Swimmer, [REDACTED]) said that she thought that Coach McKeever had advised Swimmer X that Cal was not the best fit for her, but that Swimmer X came anyway. Coach McKeever, Swimmer AI said, wanted swimmers who wanted to be there. Swimmer AI said that Swimmer X and Coach McKeever would "get into it" on deck about Swimmer X not holding the pace, with Swimmer X yelling back at Coach McKeever. Swimmer AJ (Swimmer, [REDACTED]) similarly said that Swimmer X sometimes snapped at Coach McKeever and told her to "fuck off."

Swimmer W (Swimmer, [REDACTED]) said Swimmer X was incredibly talented but never wanted to train hard. Swimmer W viewed Swimmer X's attitude as difficult. Swimmer W described a distance set that Swimmer AD (Swimmer, [REDACTED]) and Swimmer X swam, in which Swimmer X did not make the required time, such that she had to go again – but Swimmer X did not want to give it effort. In response, Coach McKeever said that Swimmer X did not deserve to wear the Cal cap with her attitude. Swimmer W thought that Swimmer X would not have received the same treatment if she put in the effort. According to Swimmer W, Swimmer X talked back to Coach McKeever and made feedback and coaching into a battle. She thought that Coach McKeever used the word "bullshit" when talking to Swimmer X by saying, "this is bullshit," not "you are bullshit." Swimmer W also thought Swimmer X was [REDACTED]. Swimmer AH (Swimmer, [REDACTED]) said that Swimmer X was very disrespectful to Coach McKeever, displaying a lot of attitude, talking back to Coach McKeever in a sassy tone and starting arguments.

[REDACTED] Staff A (Assistant Coach, [REDACTED]) described Swimmer X as "[the Swimmer G]" (Swimmer, [REDACTED]) of Swimmer X's time at Cal, in that she knew how to press Coach McKeever's buttons but did not deserve the treatment she received from Coach McKeever. Coach McKeever and Swimmer X were very argumentative. [REDACTED] Staff A said that Coach McKeever told Swimmer X to "fix [her] face," but described that instruction as a typical Coach McKeever "tagline" that meant the athlete should look alert.

Multiple athletes, including Swimmer AN (Swimmer, [REDACTED]) and Swimmer AU (Swimmer, [REDACTED]), said that other swimmers bullied Swimmer X, including Swimmer AH (Swimmer, [REDACTED]) and Swimmer AG (Swimmer, [REDACTED]).

(c) Specific Comments by Coach McKeever

[REDACTED] Staff A (Assistant Coach, [REDACTED]) said she thought the incident of Swimmer X getting kicked out for squinting did occur. When asked if Coach McKeever had said, during a meeting with Swimmer X, [REDACTED]

[REDACTED] Staff A said that it accurately reflected what was said and the general tone, although she did not remember the exact words. Regarding weight, [REDACTED] Staff A said that Coach McKeever made some comments to Swimmer X about weight, as Coach McKeever never felt Swimmer X was fit. [REDACTED] Staff A said that she did not witness Coach McKeever say anything to Swimmer X about her weight that was egregious.

(d) Incident

Swimmer AN (Swimmer, [REDACTED]) described an incident where Swimmer X and she were [REDACTED] at a party, and both were suspended.

(e) Injury

[REDACTED] Staff A (Assistant Coach, [REDACTED]) said that Coach McKeever did not always believe that Swimmer X was in pain and did not force Swimmer X to swim but did manipulate her by saying that she should be doing "x" if she wants "y." [REDACTED] Staff F (Athletic Trainer, [REDACTED]) said that Swimmer X was probably told to get in and pull and [REDACTED] (pulling is not an unusual practice modification for athletes with a [REDACTED])

(f) Effects on Swimmer X

Witness E ([REDACTED] Head Men's and Women's Swim Coach, [REDACTED]) [REDACTED]. Witness E said that Swimmer X displayed symptoms that reminded him of his friend in the military [REDACTED]. He said that Swimmer X seemed "beaten down" when she came to [REDACTED] and required calm, soothing coaching and constant reinforcement. Witness E said Swimmer X was constantly afraid of making mistakes. He said he spent a lot of time reassuring Swimmer X that it was okay to not remember a set or not be great every day; that she would not be kicked off the team. Witness E also said that Swimmer X was respectful and a good team member, who needed a lot of encouragement and comforting that she is a valuable person, not just a valuable swimmer. He confirmed that at NAAs, she appeared terrified of the Cal team and Coach McKeever and swam poorly as a result. He said that she occasionally had [REDACTED] at practice, often when thinking she was not swimming well enough, and in those circumstances had to leave practice, though she was mature and collected and would excuse herself.

To address Swimmer X's [REDACTED] Witness E ([REDACTED] Head Men's and Women's Swim Coach, [REDACTED]) wrote sets out for her in advance of practice. He did not believe this took more than a couple minutes out of practice.

5. Coach McKeever's Response

(a) [REDACTED] Incident

Coach McKeever denied that Swimmer X was suspended for two to three weeks. She said that Swimmer X and Swimmer AN (Swimmer, [REDACTED]) were suspended on a Tuesday or Wednesday and prohibited from traveling with the team to an event at Cal Poly but were allowed to begin training again following that weekend meet.

(b) Swimmer X's Attitude

Coach McKeever generally had a very negative impression of Swimmer X. She described Swimmer X as "abrasive and entitled." Coach McKeever said Swimmer X regularly got out of the pool in the middle of practice to go to the bathroom. Although a swimmer may excuse herself to use the bathroom during practice, Swimmer X disregarded Coach McKeever's rules for how and when to do that.

Coach McKeever also said that there were times when Swimmer X left to throw up but that Swimmer X should have thrown up in the gutter, as swimmers have routinely done for a long time before her.

(c) Swimmer X's Injuries

Coach McKeever said Swimmer X complained of issues with her [REDACTED] and so Coach McKeever expected Swimmer X to modify her training and instead pull with a buoy. Coach McKeever recalled that Swimmer X had [REDACTED] at one point. Coach McKeever had the impression that [REDACTED] Staff F (Athletic Trainer, [REDACTED]) gave Swimmer X the [REDACTED] to appease Swimmer X and could not really identify what the issue was. According to Coach McKeever, going to Student Health Services instead of [REDACTED] Staff F was not the appropriate way for Swimmer X, or any student-athlete, to deal with an injury and Swimmer X should have known that by November.

In general, Coach McKeever was "not a big fan" of Swimmer X and did not always believe Swimmer X was truthful about her pain. She acknowledged that she told Swimmer X and other swimmers that "if you expect to do 'x' at the meet, then 'y' needs to happen during training." Coach McKeever did not view that as "manipulation," as characterized by [REDACTED] Staff A (Assistant Coach, [REDACTED]).

(d) Swimmer X's Decision to Quit

At a meet in January, Swimmer X told Coach McKeever an hour and a half before the meet that she could not swim her event. According to Coach McKeever she did not say why. When Swimmer X said she would attend the meet and cheer her team on, Coach McKeever told her that if she cannot swim, she needed to leave.

Swimmer X quit right before Pac-12s. Coach McKeever believed Swimmer X quit because she felt that Coach McKeever was mean to her. Coach McKeever admitted that she thought Swimmer X had a “shitty” attitude and told her as much.

Coach McKeever rejected the suggestion by Swimmer T (Swimmer, [REDACTED]) that she wanted Swimmer X off the team because that would mean getting a scholarship back. According to Coach McKeever, Swimmer X had a “books” scholarship that amounted to \$800 and was the minimum scholarship available.²⁰⁸

[REDACTED]

[REDACTED]

[REDACTED]

(f) Swimmer X's Experience at [REDACTED]

Coach McKeever believed the [REDACTED] program is not of the same caliber as Cal and any comparison is irrelevant.

6. Factual Findings

[REDACTED]

²⁰⁸ Coach McKeever admitted that she apologized to Swimmer T because she thought both she and the team improperly “lumped” Swimmer T and Swimmer X together because they were roommates.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

We separately analyzed whether Coach McKeever's conduct toward Swimmer X constitutes a violation of University policies prohibiting abusive conduct, and that analysis is contained in the section on allegations of sustained verbal abuse, Section VIII.1.9.

1. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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[REDACTED]

[REDACTED]

[REDACTED]

J. Other Information About Disability Discrimination

1. Pressure to Swim Through Injuries

A number of swimmers recounted feeling pressure by Coach McKeever to swim with an injury or seeing teammates pressured to swim through injuries. Their accounts are detailed below in Section X, regarding pressure to swim through injuries.

2. Support for Swimmers Struggling with Physical Injuries or Mental Health

Many swimmers recounted specific stories about Coach McKeever supporting their or their teammates' health struggles.

Swimmer AJ (Swimmer, ██████████) said Coach McKeever was very supportive of swimmers' mental health and connected athletes with resources when they were struggling. For example, Swimmer AJ had ██████████ several times during her sophomore year and Coach McKeever helped her get medical treatment. Swimmer AJ noted that issues arose, however, if a swimmer was not honest with Coach McKeever.

Swimmer W (Swimmer, ██████████) said that when she had a ██████████ injury, Coach McKeever respected that Swimmer W could not swim normally and came up with modified practices for her.

Swimmer CQ (Swimmer, ██████████; ██████████) suffered a very serious ██████████ injury on the training trip in ██████████ in ██████████ but felt supported by Coach McKeever.

Swimmer CV (Swimmer, ██████████) said Coach McKeever went to the hospital to support one of the swimmers on the team who attempted suicide. She said the allegations about Coach McKeever and mental health are hard to imagine. Swimmer CV acknowledged that Coach McKeever is an awkward person who could better develop social skills.

Swimmer AM (Swimmer, ██████████) remembered Coach McKeever taking a swimmer to the hospital who was struggling with mental health and suicidal thoughts. Swimmer AM also submitted a statement noting that she "experienced some of [her] lowest lows while at Cal."²¹⁴ Swimmer AM noted that Coach McKeever was her "first call when [she] experienced some significant health issues. During these challenging times [Coach McKeever] made it very clear to [Swimmer AM] that she did not care if [Swimmer AM] swam fast, or even if [Swimmer AM] ever swam again, she just cared about [Swimmer AM] getting better."

Swimmer CW (Swimmer, ██████████) submitted a statement describing a ██████████ ██████████ that she experienced.²¹⁵ Swimmer CW said she "had never felt so supported and protected. From the beginning, [Coach McKeever] made sure I was able to talk to a therapist, make sure I was able to get any physical therapy treatment I needed, gave me time to recover, and repeatedly reminded me of my importance and value on the team."

Swimmer BS (Swimmer, ██████████) submitted a statement that when she struggled with depression due to injury and family trauma, Coach McKeever connected her

²¹⁴ Ex. 139 [CALINT-000466].

²¹⁵ Ex. 138 [CALINT-000459].

with a life coach and a sports psychologist and empathized with her struggles.²¹⁶ Coach McKeever also supported Swimmer BS with her [REDACTED] and never caused her shame.

Swimmer AS (Swimmer, [REDACTED]) said that when she injured her [REDACTED] during her junior year, Coach McKeever modified workouts (including weights and dryland) until she was recovered.²¹⁷

Swimmer AX (Swimmer, [REDACTED]) said that Coach McKeever made sure the team had the resources they needed to take care of their health. Swimmer X also recalled a time when she came to practice with a fever and Coach McKeever was very supportive.

Swimmer CX (Swimmer, [REDACTED]) said that Coach McKeever “was willing to make concessions when school or mental health needed to be prioritized.”²¹⁸

Other swimmers reported more generally that Coach McKeever was supportive of athletes’ mental and physical health needs. Swimmer M (Swimmer, [REDACTED]) said that Coach McKeever had never pressured anyone to swim through injury or illness. Swimmer AI (Swimmer, [REDACTED]) said that Coach McKeever was generally supportive of swimmers who were sick or injured and cared about her swimmers as people first. Swimmer AI noted that Coach McKeever got angry when swimmers lied about whether they had been medically cleared but the anger was about the lie, not about the swimmer’s recovery. Swimmer AS (Swimmer, [REDACTED]) thought Coach McKeever was very supportive of athletes’ mental health needs.

3. Impressions of Coaching/Training/Medical Staff

Many assistant coaches, team trainers, and team physicians noted, in contrast to what we heard from certain swimmers, that Coach McKeever was consistently supportive of swimmers’ mental and physical health challenges. [REDACTED] Staff F (Athletic Trainer, [REDACTED]) said Coach McKeever talked about and addressed mental health more than anyone that [REDACTED] Staff F has ever worked with. She said that Coach McKeever encouraged athletes to get mental health testing or support if they were struggling. [REDACTED] Staff C (Men’s Swimming Coach, [REDACTED]) did not recall Coach McKeever ever belittling mental health issues.

[REDACTED] Staff M (Team Physician, [REDACTED]) described one meeting she had with a swimmer and Coach McKeever regarding that swimmer’s condition, which was mental, not physical. Coach McKeever was very supportive, understanding, and encouraging. [REDACTED] Staff M remembered there being a difficult conversation around the issue, but specifically said to

²¹⁶ Ex. 140 [CALINT-000802]. Swimmer BS’s mother also submitted a statement that reiterated her view of Coach McKeever as “caring and compassionate” when it came to Swimmer BS’s difficulties. Ex. 141 [CALINT-000477].

²¹⁷ Ex. 142 [CALINT-000801].

²¹⁸ Ex. 143 [CALINT-000800].

multiple people afterwards that Coach McKeever did an amazing job in a difficult situation. Coach McKeever did not get angry or swear.

Staff D (Assistant Athletic Director, [REDACTED]) said that Coach McKeever took mental health very seriously. Staff D could not imagine Coach McKeever telling an athlete to “stuck it up” in response to mental health issues, or otherwise belittling mental health. It was Staff D’s view that the pandemic has produced significant mental health challenges for the student athletes.

4. Reflections from Parents of Swimmers

Parents of Swimmer BT reported that Coach McKeever was very supportive of their daughter, Swimmer BT (Swimmer, [REDACTED]), including helping her get a nutritionist and sports psychologist when Swimmer BT was struggling on the team.

Parent of Swimmer AM (Swimmer, [REDACTED]), submitted a written statement noting that “[d]uring [Swimmer AM’s] time at CAL, she experienced both physical injuries and emotionally challenging times. Coach McKeever provided support, resources and time for [Swimmer AM] to heal.”²¹⁹

5. Other Information from Coach McKeever About Access to Mental Health Resources

Following the NCAA championship, Coach McKeever told swimmers not to see Staff I ([REDACTED]), because she and Staff I ([REDACTED]) planned to make some changes in how the team addressed mental health and team culture. Staff I had given her a book by Daniel Coyle, *The Culture Code: The Secrets of Highly Successful Groups*, which she gave to everyone on the team. Coach McKeever and Staff I met twice [REDACTED] and once [REDACTED] with Staff N ([REDACTED], Assistant Coach, [REDACTED]) to discuss the issues the team was dealing with during the [REDACTED] academic year and proposed changes for the [REDACTED] year.

6. Coach McKeever’s Response

Coach McKeever told us that she had encouraged her athletes to talk about mental health and seek appropriate treatment even before talking about mental health issues was widely accepted and normalized. She previously brought up at head coaches’ meetings that students at Cal are in a mental health crisis, partly due to the lasting effects of COVID, and Cal does not have the resources to address this crisis. It has been Coach McKeever’s experience that unless a student is in crisis, they will not get mental health resources from Cal or the CAPS center, so she encourages athletes to find counselors off-campus for longer-term treatment when needed. She noted that some women were given access to resources but would not go to those appointments

²¹⁹ Ex. 144 [CALINT-000476].

VIII. ALLEGATIONS OF SUSTAINED VERBAL ABUSE

A. Summary of Allegations

We spoke with 56 witnesses, who said that Coach McKeever singled out a few swimmers each year for undue or disproportionate criticism or focus, in a manner that was not constructive and that was sustained in nature. These witnesses included [REDACTED] current and former swimmers,²²⁰ [REDACTED] assistant coaches,²²¹ [REDACTED] divers and [REDACTED],²²² and [REDACTED] family and friends of swimmers.²²³ Section VIIIJ below includes a description of the experiences of each of the swimmers who was allegedly subject to sustained verbal abuse, as recounted either by the swimmer or by other members of the team.

Among those whom we interviewed who believed Coach McKeever engaged in abusive conduct, opinions varied as to whether the athletes also shared some blame for the nature of their interactions with Coach McKeever. Opinions also varied about the degree to which Coach McKeever acted inappropriately. Those nuances are detailed in the individual accounts below.

We also heard from 59 witnesses who said Coach McKeever did not inappropriately target certain swimmers for sustained verbal abuse each year. These witnesses included [REDACTED]

²²⁰ Swimmer A (Swimmer, [REDACTED]); Swimmer B (Swimmer, [REDACTED]); Swimmer N (Swimmer, [REDACTED]); Swimmer AC (Swimmer, [REDACTED]); Swimmer AN (Swimmer, [REDACTED]); Diver A (Diver, [REDACTED]); Swimmer G (Swimmer, [REDACTED]); Swimmer Y (Swimmer, [REDACTED]); Swimmer H (Swimmer, [REDACTED]); Swimmer AD (Swimmer, [REDACTED]); Swimmer X (Swimmer, [REDACTED]); Swimmer T (Swimmer, [REDACTED]); Swimmer K (Swimmer, [REDACTED]); Swimmer P (Swimmer, [REDACTED]); Swimmer Q (Swimmer, [REDACTED]); Swimmer AU (Swimmer, [REDACTED]); Swimmer V (Swimmer, [REDACTED]); Swimmer AT (Swimmer, [REDACTED]); Swimmer AW (Swimmer, [REDACTED]); Swimmer CR (Swimmer, [REDACTED]); Swimmer CI (Swimmer, [REDACTED]); Swimmer BU (Swimmer, [REDACTED]); Swimmer BQ (Swimmer, [REDACTED]); Swimmer BN (Swimmer, [REDACTED]); Swimmer CE (Swimmer, [REDACTED]); Swimmer CK (Swimmer, [REDACTED]); Swimmer AP (Swimmer, [REDACTED]); Swimmer BA (Swimmer, [REDACTED]); Swimmer CY (Swimmer, [REDACTED]); Swimmer CS (Swimmer, [REDACTED]); Swimmer AR (Swimmer, [REDACTED]); Swimmer BY (Swimmer, [REDACTED]); Swimmer CZ (Swimmer, [REDACTED]); Swimmer CN (Swimmer, [REDACTED]); Swimmer CJ (Swimmer, [REDACTED]); Swimmer BP (Swimmer, [REDACTED]); Swimmer D (Swimmer, [REDACTED]); Swimmer BD (Swimmer, [REDACTED]); Swimmer C (Swimmer, [REDACTED]); Swimmer CM (Swimmer, [REDACTED]); Swimmer CL (Swimmer, [REDACTED]); and three anonymous swimmers.

²²¹ Staff A (Assistant Coach, [REDACTED]); Staff H (Assistant Coach, [REDACTED]).

²²² [REDACTED] Diver C (Diver, [REDACTED]); Diver B (Diver, [REDACTED]); Staff M [REDACTED].

²²³ Witness F, friend of Swimmer CE (Swimmer, [REDACTED]); Parent of Swimmer P (Swimmer, [REDACTED]); Parent of Swimmer X (Swimmer, [REDACTED]); Parent of Swimmer T (Swimmer, [REDACTED]); Parent of Swimmer AD (Swimmer, [REDACTED]); Parent of Swimmer B (Swimmer, [REDACTED]).

current and former swimmers,²²⁴ assistant swim coaches,²²⁵ Cal Athletics Department employees,²²⁶ team consultants,²²⁷ and parents of swimmers.²²⁸ These witnesses believed that the allegedly targeted swimmers did not put forward their best effort, performed poorly, were not willing to be held accountable to the Cal swimming program's high standards, exhibited behavior that Coach McKeever made clear she would not tolerate (e.g., slouching, appearing uninterested, or failing to communicate properly), had challenging personalities or personalities that clashed with Coach McKeever's, or otherwise needed extra coaching attention, which Coach McKeever provided.

²²⁴ Swimmer BK (Swimmer, [REDACTED]); Swimmer CX (Swimmer, [REDACTED]); Swimmer BH (Swimmer, [REDACTED]); Swimmer BL (Swimmer, [REDACTED]); Swimmer AY (Swimmer, [REDACTED]); Swimmer BJ (Swimmer, [REDACTED]); Swimmer AX (Swimmer, [REDACTED]); Swimmer DA (Swimmer, [REDACTED]); Swimmer BJ (Swimmer, [REDACTED]); Swimmer BB (Swimmer, [REDACTED]); Swimmer BI (Swimmer, [REDACTED]); Swimmer BM (Swimmer, [REDACTED]); Swimmer AZ (Swimmer, [REDACTED]); Swimmer CD (Swimmer, [REDACTED]); Swimmer BF (Swimmer, [REDACTED]); Swimmer BS (Swimmer, [REDACTED]); Swimmer AS (Swimmer, [REDACTED]); Swimmer AM (Swimmer, [REDACTED]); Swimmer BT (Swimmer, [REDACTED]); Swimmer CQ (Swimmer, [REDACTED]); Swimmer AI (Swimmer, [REDACTED]); Swimmer AH (Swimmer, [REDACTED]); Swimmer AJ (Swimmer, [REDACTED]); Swimmer L (Swimmer, [REDACTED]); Swimmer R (Swimmer, [REDACTED]); Swimmer J (Swimmer, [REDACTED]); Swimmer M (Swimmer, [REDACTED]); Swimmer U (Swimmer, [REDACTED]).

²²⁵ Staff Q (Assistant Coach, [REDACTED]); Staff I (Assistant Coach, [REDACTED]); Staff K (Assistant Coach, [REDACTED]).

²²⁶ Staff F (Athletic Trainer); Staff F (Director of Operations, [REDACTED]); Staff E (Director of Operations, [REDACTED]); Staff D (Director of Operations, [REDACTED]); Staff V (Athletic Performance Coach, [REDACTED]); Staff L (Academic Advisor, [REDACTED]); Staff H ([REDACTED]); Staff B ([REDACTED]); Staff K ([REDACTED]); Jennifer Simon-O'Neill (Executive Senior Associate Athletics Director, 2013-present); Staff R (Director of Operations, [REDACTED]); Staff I ([REDACTED]); Staff C (Athletic Performance Coach, [REDACTED]); Staff G (Athletic Performance Coach, [REDACTED]); Staff M ([REDACTED] Physician, [REDACTED]); Staff W ([REDACTED]); Staff G ([REDACTED] Physician, [REDACTED]).

²²⁷ Staff D (Team Consultant, [REDACTED]); Staff O ([REDACTED]); Staff J ([REDACTED] Assistant Coach [REDACTED]); Witness B ([REDACTED]); Witness H ([REDACTED]).

²²⁸ Parent of Swimmer AZ (Swimmer, [REDACTED]); Parent of Swimmer AM (Swimmer, [REDACTED]); Parent of Swimmer CD (Swimmer, [REDACTED]); Parents of Swimmer BT (Swimmer, [REDACTED]); Parent of Swimmer R (Swimmer, [REDACTED]).

B. Examples of Language Allegedly Used

Below are the most common examples of personally insulting or otherwise derogatory phrases that swimmers or others either told us they witnessed firsthand Coach McKeever say or heard about from others. Witnesses generally told us that Coach McKeever delivered these phrases while yelling in an angry, exasperated, irritated, or threatening tone. Witnesses remarked that Coach McKeever used language that went beyond criticizing a swimmer's performance or effort and that often was personal.

Witnesses told us that Coach McKeever used this language when speaking directly to a swimmer and also when referring to a swimmer outside of their presence. In some instances witnesses told us that Coach McKeever used this language in one-on-one meetings with the swimmer, outside the presence of others; in some instances, witnesses told us that Coach McKeever used this language in front of other swimmers, or in settings where other swimmers could hear (such as when Coach McKeever pulled a swimmer out of the pool and yelled at them on deck). Swimmers across many years at Cal described Coach McKeever yelling at them by getting close to their faces and while grabbing their arm and pulling them in close; they described Coach McKeever's body language and tone during many of these situations as threatening. Witnesses reported Coach McKeever delivering the following phrases, often while yelling:

- "You're a piece of shit."²²⁹
- "Dumbass"; "Fucking dumbass."²³⁰
- "Stupid."²³¹
- "Waste of space"; "Worthless"; "Useless"; "disgrace."²³²

²²⁹ Swimmer P (Swimmer, [REDACTED]); Swimmer Q (Swimmer, [REDACTED]); Swimmer AU (Swimmer, [REDACTED]); Swimmer H (Swimmer, [REDACTED]); Swimmer X (Swimmer, [REDACTED]); Swimmer AN (Swimmer, [REDACTED]); Swimmer AW (Swimmer, [REDACTED]); Swimmer CR (Swimmer, [REDACTED]); Swimmer BU (Swimmer, [REDACTED]); Swimmer BN (Swimmer, [REDACTED]); Swimmer CE (Swimmer, [REDACTED]). The following witnesses heard from other swimmers that Coach McKeever used the phrase "piece of shit": Swimmer T (Swimmer, [REDACTED]); Swimmer K (Swimmer, [REDACTED]); Swimmer Q (Swimmer, [REDACTED]); Swimmer CI (Swimmer, [REDACTED]); Witness F (friend of Swimmer CE).

²³⁰ Swimmer K (Swimmer, [REDACTED]); Swimmer P (Swimmer, [REDACTED]).

²³¹ Swimmer I (Swimmer, [REDACTED]); Swimmer AD (Swimmer, [REDACTED]); Swimmer X (Swimmer, [REDACTED]); Swimmer AN (Swimmer, [REDACTED]); Staff H (Assistant Coach, [REDACTED]); Swimmer CJ (Swimmer, [REDACTED]); Jane Roe #2.

²³² Swimmer G (Swimmer, [REDACTED]); Swimmer H (Swimmer, [REDACTED]); Swimmer BU (Swimmer, [REDACTED]); Swimmer AN (Swimmer, [REDACTED]); Swimmer CE

- "Pathetic."²³³
- "Ungrateful."²³⁴
- "Selfish."²³⁵
- "Embarrassment to [the team/yourself/the University/your family]."²³⁶
- "You should be ashamed of yourself. Your parents should be ashamed of you."²³⁷
- "You don't deserve to wear a Cal swim cap."²³⁸
- "You don't deserve to be here."²³⁹

(Swimmer, [REDACTED]); Swimmer CK (Swimmer, [REDACTED]); Swimmer CN (Swimmer, [REDACTED]), Witness F (friend of Swimmer CE) confirmed that Swimmer CE told her that Coach McKeever called Swimmer CE "worthless." Staff J ([REDACTED]) confirmed that Swimmer G told him that Coach McKeever called her "worthless."

²³³ Swimmer G (Swimmer, [REDACTED]); Swimmer AN (Swimmer, [REDACTED]); Swimmer AR (Swimmer, [REDACTED]); Swimmer CN (Swimmer, [REDACTED]); Swimmer AI (Swimmer, [REDACTED]) said that Coach McKeever said to her after a swim, "that was kind of pathetic." Swimmer AI viewed this as commentary on the swim, not on her personally, but thought that some people might take it personally.

²³⁴ Swimmer V (Swimmer, [REDACTED]); Swimmer AN (Swimmer, [REDACTED]); Swimmer AW (Swimmer, [REDACTED]); Swimmer CI (Swimmer, [REDACTED])

²³⁵ Swimmer AN (Swimmer, [REDACTED]); Swimmer CM (Swimmer, [REDACTED]); Anonymous Swimmer. Swimmer K (Swimmer, [REDACTED]) heard second-hand that Coach McKeever called a number of swimmers "selfish."

²³⁶ Swimmer A (Swimmer, [REDACTED]); Swimmer X (Swimmer, [REDACTED]); Swimmer AN (Swimmer, [REDACTED]); Swimmer CK (Swimmer, [REDACTED]); Swimmer CJ (Swimmer, [REDACTED]); Swimmer D (Swimmer, [REDACTED]); Swimmer T (Swimmer, [REDACTED]) heard from Swimmer X that Coach McKeever called her an "embarrassment."

²³⁷ Swimmer CK (Swimmer, [REDACTED])

²³⁸ Swimmer G (Swimmer, [REDACTED]); Swimmer W (Swimmer, [REDACTED]); Swimmer BU (Swimmer, [REDACTED])

²³⁹ Swimmer AD (Swimmer, [REDACTED]); Swimmer CE (Swimmer, [REDACTED]); Swimmer CS (Swimmer, [REDACTED]); Swimmer CN (Swimmer, [REDACTED])

- "The University is wasting its money on you", "waste of a scholarship."²⁴⁰
- [REDACTED]
- "Grow the fuck up."²⁴²
- "Get the fuck out."²⁴³
- "You're swimming like shit."²⁴⁴
- "Get your shit together."²⁴⁵
- "What the fuck are you doing?"²⁴⁶
- "What's fucking wrong with you?"²⁴⁷
- "What's that look on your face?"²⁴⁸
- "Fix your face."²⁴⁹
- "If you don't swim any faster, we're going to kick you off the team."²⁵⁰

²⁴⁰ Swimmer G (Swimmer, [REDACTED]); Swimmer H (Swimmer, [REDACTED]); Swimmer C (Swimmer, [REDACTED]); Swimmer D (Swimmer, [REDACTED]).

²⁴¹ [REDACTED]

²⁴² Swimmer CK (Swimmer, [REDACTED]).

²⁴³ Swimmer T (Swimmer, [REDACTED]); Swimmer X (Swimmer, [REDACTED]); Swimmer BU (Swimmer, [REDACTED]); Jane Roe #2.

²⁴⁴ Swimmer W (Swimmer, [REDACTED]); Swimmer G (Swimmer, [REDACTED]); Swimmer CN (Swimmer, [REDACTED]).

²⁴⁵ Swimmer BM (Swimmer, [REDACTED]).

²⁴⁶ Swimmer P (Swimmer, [REDACTED]).

²⁴⁷ Swimmer BN (Swimmer, [REDACTED]), [REDACTED] Staff F (Athletic Trainer, [REDACTED]) and [REDACTED] Staff J ([REDACTED] Assistant Coach, [REDACTED]) suggested that Swimmer BN may be influenced by her close relationship with another swimmer who has made allegations.

²⁴⁸ Swimmer CN (Swimmer, [REDACTED]).

²⁴⁹ [REDACTED] Staff A (Assistant Coach, [REDACTED]); [REDACTED] Staff F (Athletic Trainer, [REDACTED]) Swimmer Q (Swimmer, [REDACTED]); Swimmer CE (Swimmer, [REDACTED]).

²⁵⁰ Swimmer D (Swimmer, [REDACTED]).

A number of people also described Coach McKeever's speech after the [REDACTED] [REDACTED], where the team placed [REDACTED] as particularly harsh. Swimmer AD (Swimmer, [REDACTED]) said that during the awards ceremony, Coach McKeever yelled at the team on deck, telling them they deserved to be in [REDACTED] place given how they had performed in practice. According to Swimmer AD, Coach McKeever told them that only Swimmer AJ (Swimmer, [REDACTED]) had carried the team through the whole meet and no one else contributed. Swimmer Q (Swimmer, [REDACTED]) said that Coach McKeever told them, "If this is what you think dedication looks like, you're wrong. Working with you this year has been the worst." Swimmer Q said that a number of swimmers started crying during the speech. Swimmer V (Swimmer, [REDACTED]) said that a number of parents raised concerns because they witnessed Coach McKeever yelling at the swimmers.

[REDACTED] Staff A (Assistant Coach, [REDACTED]) confirmed that Coach McKeever "laid into" the team and was critical of their performance at the meet as well as their performance in practice. [REDACTED] Staff A noted that Jennifer Simon-O'Neill (Executive Senior Associate Athletics Director, 2013-present) was also present for Coach McKeever's speech.²⁵¹ Coach McKeever also told the swimmers they could not meet with [REDACTED] Staff I [REDACTED] until she said they could.²⁵² [REDACTED] Staff I was present and confirmed that Coach McKeever focused a lot on how the swimmers had not put in the work that season and the result was an obvious reflection thereof.²⁵³

C. Common Themes in the Allegations of Verbal Abuse

Swimmers spanning the decades of Coach McKeever's time as Head Coach at Cal consistently described certain categories of experiences with respect to Coach McKeever's verbal conduct. Numerous swimmers described:

- Personal attacks: Swimmers said that Coach McKeever belittled and personally insulted them. They said Coach McKeever's criticisms were personalized attacks in which Coach McKeever used sensitive information that she knew about the swimmers to degrade them. Swimmers said these personal attacks crossed the line of what constituted appropriate coaching and contributed to some swimmers to becoming depressed or having mental health struggles. Many swimmers said that Coach McKeever's conduct was far beyond what they ever had experienced with other coaches, even tough coaches. Many swimmers alleged that Coach McKeever's criticisms were not constructive, and she did not counterbalance her personal attacks with positive

²⁵¹ Simon-O'Neill said that Coach McKeever brought the team together to talk to them about "what it takes to get back on the podium," but said she was not yelling.

²⁵² Swimmer AD (Swimmer, [REDACTED]).

²⁵³ Swimmer K (Swimmer, [REDACTED]) also said that she shared many of her frustrations about Coach McKeever's methods with [REDACTED] Staff I.

feedback. They also noted the aggregation of the personal attacks over a prolonged period of time was difficult to take.

- **Public shaming and humiliation:** Some swimmers said that Coach McKeever frequently criticized or said demeaning things to them in front of teammates, other teams, and other coaches. These public criticisms included both criticisms related to swimming and unrelated to swimming, such as grades or outside activities. Other swimmers said that Coach McKeever pulled a swimmer aside in a publicly visible manner to criticize them or yell at them in a one-on-one conversation. Swimmers described the public nature of the criticism as humiliating.
- **Coach McKeever's persistent focus on an athlete's posture and facial expression:** A number of witnesses said that Coach McKeever frequently critiqued swimmers on their body language and facial expressions. She commonly told swimmers to "fix" their faces in order to look more engaged and to remove any expression that made it appear that the swimmer was confused, tired, scared, standoffish, or did not want to be present. Coach McKeever also required swimmers to maintain a certain body posture. If a swimmer crossed her arms for any reason, such as because she was cold, Coach McKeever yelled at her and said that the swimmer was not ready to swim or that the swimmer looking cold made Coach McKeever feel bad. Coach McKeever frequently kicked swimmers out of practice if they exhibited body language or facial expressions that she did not like.
- **Coach McKeever's negative comments about athletes' bodies:** Some swimmers said that Coach McKeever made derogatory comments about certain swimmers' body type, weight, or how their swimsuits looked on them. These witnesses said Coach McKeever exerted pressure on certain athletes to lose weight and tended to pick on heavier swimmers. They also said Coach McKeever sometimes made comments about the weight or appearance of swimmers on other schools' teams. To the extent not described in our summaries of individual swimmers' experiences, we provide further detail regarding allegations in Section XI.
- **Coach McKeever's dislike of body piercings and tattoos:** Several swimmers noted that Coach McKeever had strict rules about the swimmers' presentation and appearance and criticized or treated swimmers negatively for having alternative physical appearances, such as body piercings and tattoos. In general, it appears that Coach McKeever's intolerance for body piercings and tattoos has lessened in more recent years.
- **Coach McKeever's treatment of those who receive scholarships:** Some swimmers said that Coach McKeever tied an athlete's perceived shortcomings

or lack of performance to the investment Cal had made in the athlete by giving them a scholarship. Swimmers said that Coach McKeever weaponized their receipt of scholarships against them when criticizing their performance by making comments about how they were bad investment or were not swimming up to the level they were supposed to swim at based on their scholarship. Swimmers also perceived that Coach McKeever targeted certain swimmers for sustained verbal abuse in order to pressure them to leave the program so Coach McKeever could recoup their scholarships.

- Coach McKeever's describing some athletes as less deserving of being on the team or less deserving of team resources: Swimmers across several years told us that Coach McKeever treated some team members as being less deserving of resources, including access to coaching and feedback. Swimmers said that Coach McKeever explicitly and implicitly expressed to certain swimmers that they should not expect any attention from the coaching staff. Swimmers also noted that those who did not qualify for the NCAA championship were not permitted to train with the rest of the team for several weeks leading up to the NAAs. Some swimmers said that Coach McKeever commented they should be kicked off the team or threatened them with expulsion from the team if they did not improve their speed. Some swimmers also told us that Coach McKeever asked them or other teammates about whether they deserved to be on the team or communicated that they were less deserving of being on the team in ways that humiliated them in front of their teammates. Swimmers and [REDACTED] coaching staff also told us that Coach McKeever limited access to resources like athletic trainers, sports psychologists, and massage therapists, as well as access to summer training at Cal, to only top-performing athletes, and prohibited some athletes from accessing those resources.
- Coach McKeever's pressure on athletes to quit: A number of witnesses said if Coach McKeever did not want someone on the team, she yelled at them constantly, ignored them completely, or otherwise picked on them until they quit. Swimmers said that many on the team believed that Coach McKeever would make it difficult for anyone who tried to transfer to another college rather than quit.
- Coach McKeever's volatility and unpredictability: Several witnesses said that Coach McKeever was unpredictable, which created a volatile environment for the swimmers because they did not know what to expect from Coach McKeever from day to day. On some days, Coach McKeever was in a good mood and practice ran smoothly, but on other days, she was angry and hard on the team. This caused stress on team at the beginning of each practice while they tried to determine what Coach McKeever's mood was for that day. Numerous witnesses across multiple decades described feeling like they were

“walking on eggshells” with Coach McKeever, as they never knew what sort of mood she was in or what might set her off on that particular occasion. Witnesses noted that Coach McKeever’s volatility and unpredictability frequently manifested in Coach McKeever kicking swimmers out of practice for what were perceived to be trivial reasons or no reason at all – or for perceived mistakes that other swimmers made with no consequence. Some swimmers said that those whom Coach McKeever targeted for sustained verbal abuse were kicked out of practice more frequently than other swimmers.

In considering the allegations regarding individual swimmers’ experiences of verbal abuse, we considered the fact that swimmers across multiple years reported similar experiences.

Swimmers also reported that Coach McKeever fostered a team culture in which certain athletes were treated as favorites by Coach McKeever, teammates were instructed to criticize one another, inform on one another, and implicitly encouraged or incited to isolate and ostracize those swimmers who were the targets of Coach McKeever’s criticism. We describe in Section IX the information that witnesses provided about the team dynamics and culture fostered by Coach McKeever.

D. Effects of Coach McKeever’s Behavior on Athletes

Swimmers said that Coach McKeever’s conduct negatively affected swimmers in several ways, including by causing or exacerbating mental health issues, negatively affecting their ability to communicate with Coach McKeever, and causing swimmers to quit or transfer to a different college.

At least 11 swimmers reported experiencing or knowing teammates who experienced suicidality and/or engaged in self-harm. Three other swimmers reported diagnosed or suspected post-traumatic stress disorder (PTSD), which they believe was a result of Coach McKeever’s behavior. The full accounts of the individual swimmers who experienced these issues are detailed below in Section VIII.J below on specific swimmers targeted for sustained verbal abuse.

Some witnesses described an environment in which swimmers were afraid to talk to Coach McKeever because they did not want to be yelled at or because they thought that Coach McKeever would have a negative reaction to what they said. Other swimmers were unwilling to talk to Coach McKeever because they did not think she would listen to what they said. Certain Athletics Department staff noted that they sensed that the swimmers were afraid to interact with Coach McKeever or intimidated by Coach McKeever. ██████████ Staff F (Athletic Trainer, ██████████) told us that she helped swimmers and other athletes figure out how to communicate with their coaches in a way that was helpful and informative.

Several witnesses told us that they or others they knew quit the team or transferred schools due to Coach McKeever’s behavior. We spoke with the following swimmers, who said they quit due to Coach McKeever’s conduct: Swimmer AU (Swimmer, ██████████), Swimmer AN (Swimmer, ██████████), Swimmer H (Swimmer, ██████████), Swimmer AW (Swimmer, ██████████),

Swimmer G (Swimmer, [REDACTED]),²⁵⁴ Swimmer BC (Swimmer, [REDACTED]), Swimmer X (Swimmer, [REDACTED]), Swimmer AR (Swimmer, [REDACTED]), Swimmer C (Swimmer, [REDACTED]), Swimmer CR (Swimmer, [REDACTED]), Swimmer CM (Swimmer, [REDACTED]), Swimmer CL ([REDACTED]), Swimmer CK (Swimmer, [REDACTED]), Swimmer CN (Swimmer, [REDACTED]), Swimmer BN (Swimmer, [REDACTED]), Swimmer I (Swimmer, [REDACTED] and Swimmer CS (Swimmer, [REDACTED]).²⁵⁵ A number of witnesses and news articles mentioned other swimmers who left the team due to Coach McKeever's conduct; we were not able to speak with those witnesses.²⁵⁶

E. Accounts that Coach McKeever Was Not Verbally Abusive

Some former and current swimmers told us that, in their view, Coach McKeever's behavior was not over the line. These swimmers described Coach McKeever as holding swimmers accountable and told us that Coach McKeever's coaching style was in line with what they witnessed from other coaches. In addition to the many witnesses who told us they never witnessed Coach McKeever being verbally abusive, some witnesses provided additional specific details. Four swimmers and one coach said they never heard Coach McKeever swear.²⁵⁷ Two other swimmers and an Athletics Department staff member noted that Coach McKeever swore but not at swimmers and not in an inappropriate way.²⁵⁸

At least eight swimmers said Coach McKeever's yelling was no different or worse than that of other coaches they have had.²⁵⁹ Eleven swimmers noted that Coach McKeever was

²⁵⁴ Although Swimmer G had planned to transfer after the [REDACTED] season, she decided to stay at Cal [REDACTED].

²⁵⁵ [REDACTED]

²⁵⁶ [REDACTED] Swimmer CT (Swimmer, [REDACTED]) transferred to the [REDACTED] because of Coach McKeever. [REDACTED] Swimmer CT also spoke with Cal's Office for the Prevention of Harassment and Discrimination in [REDACTED] and told the OPHD investigator that she transferred to [REDACTED] and was diagnosed with [REDACTED] because of her experience with Coach McKeever. [REDACTED] Swimmer DT (Swimmer, [REDACTED]) transferred to [REDACTED] because of Coach McKeever. [REDACTED] We were not able to interview Swimmer CT and Swimmer DT.

²⁵⁷ Swimmer R (Swimmer, [REDACTED]); Swimmer AH (Swimmer, [REDACTED]); Swimmer AZ (Swimmer, [REDACTED]); Swimmer BJ (Swimmer, [REDACTED]); Staff G ([REDACTED]).

²⁵⁸ Swimmer BT (Swimmer, [REDACTED]); Swimmer BS (Swimmer, [REDACTED]); Staff D (Director of Operations, [REDACTED]).

²⁵⁹ Swimmer M (Swimmer, [REDACTED]); Swimmer AJ (Swimmer, [REDACTED]); Swimmer AI (Swimmer, [REDACTED]); Swimmer AS (Swimmer, [REDACTED]); Swimmer BF (Swimmer, [REDACTED]); Swimmer BM (Swimmer, [REDACTED]); Swimmer BL (Swimmer, [REDACTED]); Swimmer AY (Swimmer, [REDACTED]).

“direct” or “harsh” and even yelled sometimes, but her feedback was always focused on performance, not on personal issues.²⁶⁰

Some swimmers denied that Coach McKeever kicked swimmers out of practice for arbitrary or unnecessary reasons. They told us that Coach McKeever kicked people out for repeated errors or an accumulation of mistakes, such as having a bad attitude and not following the rules—and that this practice was appropriate and consistent with how other coaches behaved. Some swimmers also said that Coach McKeever told swimmers to leave practice when the swimmers did not feel well and were unable to give their full effort in order to give them an opportunity to rest. Three swimmers told us that they did not recall Coach McKeever ever kicking swimmers out of practice.

Some swimmers also told us they did not observe Coach McKeever treating those who did not perform as well as less deserving of team resources. Some swimmers denied Coach McKeever exerted pressure on swimmers to quit, even when swimmers’ performance did not live up to their expectations.

Below are the accounts of fourteen swimmers who described some harsh language by Coach McKeever that they did not think rise to level of verbal abuse.

Swimmer R (Swimmer, [REDACTED]) said that Coach McKeever did not yell or scream, but she did raise her voice. She sometimes said someone had a “shitty race” or a “slutty practice,” but it was always about the swimming, not the person.

Swimmer AJ (Swimmer, [REDACTED]) said that Coach McKeever’s coaching style was in line with what she had witnessed from other swimming coaches. She said that Coach McKeever yelled, to an extent, but never to demean individuals and instead to encourage them. She told us that Coach McKeever criticized swimmers’ attitudes at times but never personally attacked them.

Swimmer AI (Swimmer, [REDACTED]) said that she never heard Coach McKeever verbally abuse anyone. She noted that Coach McKeever was vocal in her frustration at times, but was motivated as a coach to push swimmers whom she knew could perform better.

Swimmer CQ (Swimmer, [REDACTED]) said that Coach McKeever cursed and said harsh things, like “that practice was shit,” but never said things that were personal or over the line.

²⁶⁰ Swimmer R (Swimmer, [REDACTED]); Swimmer AJ (Swimmer, [REDACTED]); Swimmer AI (Swimmer, [REDACTED]); Swimmer CV (Swimmer, [REDACTED]); Swimmer CQ (Swimmer, [REDACTED]); Swimmer BT (Swimmer, [REDACTED]); Swimmer BF (Swimmer, [REDACTED]); Swimmer CD (Swimmer, [REDACTED]); Swimmer BM (Swimmer, [REDACTED]); Swimmer BB (Swimmer, [REDACTED]); Swimmer AX (Swimmer, [REDACTED]).

Swimmer AM (Swimmer, [REDACTED]) said Coach McKeever did not yell at her, and, when Coach McKeever pulled her out of the pool, it was always for a “conversation.” She did see Coach McKeever raise her voice with other swimmers.

Swimmer BS (Swimmer, [REDACTED]) said that if a swimmer did something wrong in practice, Coach McKeever pulled the swimmer out of the pool and gave her a “stern talking to” and then might ask the swimmer to leave practice. Swimmer BS noted that Coach McKeever’s communication style was unpredictable in that she might be in a good mood and ready to joke around or could be in a bad mood and swimmers had to “keep their heads down.” Swimmer BS did not think it was unreasonable for Coach McKeever to have “good” days and “bad” days. Swimmer BS said that although Coach McKeever cursed, nothing stood out as having crossed a line and noted that she previously had a male coach who would swear at the team all the time. She also noted that the people whom Coach McKeever called out more often did not work as hard, did not do the assignments, came up with excuses, and caused drama on the team.

Swimmer CD (Swimmer, [REDACTED]) said that Coach McKeever sometimes got caught up in the moment and later apologized for her behavior. She talked loudly and closely, but Swimmer CD did not characterize it as yelling. Swimmer CD did not feel Coach McKeever’s coaching was ever over the line because it was never personal in nature; it was always about swimming.

Swimmer BB (Swimmer, [REDACTED]) said that Coach McKeever yelled and called out swimmers who were not meeting expectations, but it was always “factual” and not personal. For example, Coach McKeever called out swimmers for their cadence or the way they were breathing. Swimmer BB described Coach McKeever as “passionate” and said she got “right in your face.” Swimmer BB did not recall Coach McKeever ever cursing.

Swimmer BM (Swimmer, [REDACTED]) said that Coach McKeever was direct and tough but also inspiring. If a swimmer was not swimming well, Coach McKeever stopped the whole team to say, “This isn’t good enough. What’s going on?” Swimmer BM said her perception was that Coach McKeever always tried to find a solution together with the swimmer.

Swimmer BJ (Swimmer, [REDACTED]) never heard Coach McKeever curse and said she yelled infrequently.

Swimmer AX (Swimmer, [REDACTED]) said that Coach McKeever did not yell in an abusive way or use personal insults (as opposed to performance-based feedback). Swimmer AX recalled a time when she believed Swimmer DC (Swimmer, [REDACTED]) was “out of line” during practice, and Coach McKeever called her out for not putting in her best effort. Swimmer AX thought Coach McKeever acted appropriately in that situation, and that she had the team’s best interest in mind.

According to Swimmer AY (Swimmer, [REDACTED]), Coach McKeever yelled on the sidelines during competitions like any other coach. Swimmer AY never witnessed Coach McKeever yell in a derogatory way or engage in personal attacks.

According to Swimmer BH (Swimmer, [REDACTED]), Coach McKeever did not lose her temper and only yelled in the sense that she raised her voice to be heard. Coach McKeever said encouraging things like, "you guys can do better, come on!" Swimmer BH did not remember Coach McKeever saying anything derogatory.

According to Swimmer BK (Swimmer, [REDACTED]), Coach McKeever did not yell in a derogatory way but only to be heard. It was no different than what other coaches did.

F. Observations of Assistant Coaches and Other University Staff

Some assistant coaches thought some of Coach McKeever's behavior crossed the line into verbal abuse. Others said Coach McKeever did not cross that line.

I. Allegations that Coach McKeever Crossed the Line

[REDACTED] Staff A (Assistant Coach, [REDACTED]) said that Coach McKeever stopped practice to have the team watch her "chew someone out." She said Coach McKeever regularly yelled at swimmers and called them out for something at practices. [REDACTED] Staff A thought Coach McKeever often went too far.

[REDACTED] Staff H (Assistant Coach, [REDACTED]) said that Coach McKeever made "pointed comments" about swimmers and said harsh things like, "get your head out of your ass." [REDACTED] Staff H said that he went to [REDACTED] and told her that he could no longer work as the assistant coach because Coach McKeever was disrespectful. According to [REDACTED] Staff H, [REDACTED] response was that the University did not know what to do with Coach McKeever, and they wanted her to go to anger management classes.

[REDACTED] Staff X ([REDACTED]) implied that he suggested to athletes that they should speak to [REDACTED] Staff J ([REDACTED]) about Coach McKeever's treatment of them.

[REDACTED] Staff C ([REDACTED]) said that when Coach McKeever felt attacked (e.g., that her team was not getting the right resources), she reacted with a level of intensity (volume, tone, swearing) that [REDACTED] Staff C found unacceptable. [REDACTED] Staff C also witnessed Coach McKeever using personal insults, such as calling someone in the Athletics Department a "glorified jock sniffer." [REDACTED] Staff C never witnessed Coach McKeever say anything inappropriate or abusive to her swimmers. He heard Coach McKeever yell in her office but did not hear what she said.

[REDACTED] Staff M ([REDACTED]) said that Coach McKeever yelled and screamed at him regularly. He specifically recalled one time that Coach McKeever yelled at him for 45 minutes.

2. Accounts of Coach McKeever Acting Appropriately and/or Within the Norm

According to [REDACTED] Staff K (Assistant Coach, [REDACTED]), Coach McKeever could be direct and harsh but was focused on effort and performance. She told swimmers, “You might not be the best swimmer on the team, and that’s okay, but you need to be contributing something.” [REDACTED] Staff K heard Coach McKeever tell athletes they had a “shitty swim” but never heard her call anyone a “piece of shit.” [REDACTED] Staff K did not observe Coach McKeever yell at individual swimmers. At most, she saw Coach McKeever yell at the whole team, but it was with the goal of getting the team to come together.²⁶¹ [REDACTED] Staff K told us that she never felt that Coach McKeever crossed the line of what constituted appropriate coaching despite being a tough coach with high expectations.

According to [REDACTED] Staff I (Assistant Coach, [REDACTED]), any yelling or cursing by Coach McKeever was for the purpose of keeping swimmers focused on the sets and was not a personal attack. [REDACTED] Staff I said the yelling and cursing did not occur every day. He estimated that it occurred every few weeks and more often in the fall. [REDACTED] Staff I did not view Coach McKeever’s occasional cursing as abusive in nature.

[REDACTED] Staff Q (Assistant Coach, [REDACTED]) told us that he does not think Coach McKeever coaches any differently than how anyone else coaches. According to [REDACTED] Staff Q, Coach McKeever confronted athletes who were not meeting expectations. For example, she approached the swimmer, clapped at them, and said “wake up.” Her goal was to get the swimmer focused. [REDACTED] Staff Q saw it as one of Coach McKeever’s strengths that she would not ignore a swimmer’s lack of effort. [REDACTED] Staff Q heard Coach McKeever describe to him a swimmer who she thought was swimming “like shit,” but he never heard her say that to a swimmer. [REDACTED] Staff Q said that he never saw Coach McKeever try to make a swimmer quit by targeting them for verbal abuse. He recalled conversations with Coach McKeever during which they tried to understand why certain swimmers were quitting.

Many others on the athletics and swimming staff said that Coach McKeever’s conduct, such as yelling, kicking swimmers out of practice, and focus on a swimmer’s scholarship was no

²⁶¹ However, Swimmer AU (Swimmer, [REDACTED]) said that after the [REDACTED], [REDACTED] Staff K called Swimmer AU sobbing and apologized for not “doing more,” suggesting to Swimmer AU that [REDACTED] Staff K was aware that Coach McKeever’s behavior was unacceptable.

different or worse than that of other coaches.²⁶² Some also said that Coach McKeever was direct but always focused on performance, not on personal issues.²⁶³

Jennifer Simon-O'Neill (Executive Senior Associate Athletics Director, 2013-present) had an office near the pool and regularly went on the swim deck during practices, sometimes without notifying Coach McKeever in advance that she was coming. Simon-O'Neill observed a positive culture with clear structure. She said Coach McKeever always talked to swimmers in a positive and constructive way, and she never heard Coach McKeever yell at anyone. Simon-O'Neill did, however, describe an incident in which Swimmer DB's (Swimmer, [REDACTED]) father called Simon-O'Neill and told her he was upset that Coach McKeever had yelled at Swimmer DB in a meeting because she was mad Swimmer DB was transferring. There were no allegations of swearing in the meeting. Simon-O'Neill is not sure why Swimmer DB transferred but thought Cal might not be the right match for her.

[REDACTED] Staff F (Athletic Trainer, [REDACTED]) said that Coach McKeever yelled at swimmers and sometimes swore but was not out of line as compared to other coaches. [REDACTED] Staff F noted that Coach McKeever's comments can sometimes be "mean" but were generally focused on performance. For example, [REDACTED] Staff F has heard Coach McKeever tell a swimmer that she was "better than that." [REDACTED] Staff F has not heard Coach McKeever tell a swimmer she was "worthless" or her "swim was worthless." [REDACTED] Staff F told us that she has not heard Coach McKeever use personal attacks, and that what she heard from Coach McKeever was all appropriate coaching. [REDACTED] Staff F said that Coach McKeever kicked athletes out of practice for a variety of reasons, typically related to poor performance, not listening, or not following instructions. [REDACTED] Staff F never saw Coach McKeever kick someone out for not having the right look on their face but could imagine it happening. [REDACTED] Staff F also told us she was not aware of Coach McKeever trying to protect her time or otherwise limit swimmers' usage of [REDACTED] Staff F this past year.

[REDACTED] Staff D (Team Consultant, [REDACTED]) periodically served as a consultant coach for the team [REDACTED] [REDACTED] Staff D observed Coach McKeever yelling at athletes but never on a personal level. Coach McKeever always focused on the behavior and decisions the swimmers made—for example arriving at practice late, interrupting, and using a cell phone.

Witness B [REDACTED] coached [REDACTED] teams with Coach McKeever and attended the [REDACTED] training trip in Hawaii. He never heard her use the phrase "piece of shit" or other harsh language. Witness B told us it was not his style to kick athletes out of practice, but he did not think the method was inappropriate. He noted that his practices had 50-60 athletes, as opposed

²⁶² [REDACTED] Staff M ([REDACTED] Physician, [REDACTED]); [REDACTED] Staff V (Athletic Performance Coach, [REDACTED]); [REDACTED] Staff G (Athletic Performance Coach, [REDACTED]); [REDACTED] Staff C (Athletic Performance Coach, [REDACTED]); [REDACTED] Staff E (Director of Operations, [REDACTED]); [REDACTED] Staff R (Director of Operations, [REDACTED]); [REDACTED] Staff F (Director of Operations, [REDACTED]).

²⁶³ [REDACTED] Staff D (Director of Operations, [REDACTED]); [REDACTED] Staff V (Athletic Performance Coach, [REDACTED]); [REDACTED] Staff F (Director of Operations, [REDACTED]).

to about 25 at Coach McKeever's practices, so it was harder for him to see if someone was having a bad day. He also said that all coaches are trying to create an environment of homogeneity.

██████████ Staff I (Assistant Coach, ██████████) confirmed that he and Coach McKeever asked swimmers to leave practice. He viewed this as normal, and it conformed to what he had seen at other coaching jobs. ██████████ Staff I said that this happened for several reasons, including swimmers not meeting desired times or not making the adjustments that Coach McKeever had requested. There were different expectations for different swimmers. For example, an inexperienced freshman was not expected to swim at the same level as an upperclassman Olympian, like ██████████ but he said that coaches could tell when an athlete was doing their best. He stated that swimmers who were removed were upset because they wanted to make their coaches proud and work towards their goals.

██████████ Staff R (Director of Operations, ██████████) told us that he did not view Coach McKeever's tactics as over the line, in contrast to some other coaches he has worked with previously.

██████████ Staff K ██████████ witnessed Coach McKeever yell at swimmers but not in an inappropriate way. He also said that she cursed but not "at" swimmers in a way that was a personal attack. ██████████ Staff K speculated that some swimmers may interpret or understand what Coach McKeever said in a way that twists her words.

██████████ Staff C ██████████ noted that, while he had limited opportunity to observe Coach McKeever's interactions with her swimmers, he had not heard or seen anything that he would characterize as inappropriate or abusive.

██████████ Staff F (Director of Operations, ██████████) told us that the attrition rate during his time with the swimming team was in line with other athletic programs at Cal. ██████████ Staff F also said that swimmers seemed to be leaving for similar reasons that caused athletes to leave other programs.

Witness H ██████████ told us that she never saw Coach McKeever tear down an athlete past the point of no return, which she views as over the line. Witness H also told us that discussions between a coach and an athlete regarding scholarships are standard as a way to motivate swimmers or teach them accountability. Witness H said whether this is used properly as a technique depends on whether the discussion was motivational.

Witness I ██████████ told us that it is common for swimmers at major conferences (such as the Pac-12 and the SEC) to lose their scholarships when they are cut from the team for performance-based reasons.

Many on Coach McKeever's coaching staff or otherwise associated with the program expressed skepticism that the mental health issues that the swimmers had were attributable to Coach McKeever.

Staff J (Assistant Coach,) believed the accounts of mental health struggles by athletes were attributable to nationwide trends and not to Coach McKeever's conduct.

Staff O did not believe that Coach McKeever caused anxiety in her swimmers and was skeptical that those who reported anxiety had never experienced anxiety prior to coming to Cal. Staff O noted that Cal was a naturally stressful environment because swimmers had to adjust to how competitive Cal was compared to their previous programs. Staff O believed some swimmers may not have realized they were prone to anxiety because they came from sheltered environments.

Staff I expressed skepticism that Coach McKeever's style of coaching exacerbated swimmers' mental illness to the point of suicidal ideation. Staff I noted that he never heard such allegations in his meetings with swimmers.

Staff W interacted with Coach McKeever during . She received an email from Coach McKeever in noting that it was a "tough year for the team and me."²⁶⁴ Staff W observed that Coach McKeever had several swimmers on the team who struggled with anxiety and basic life skills. Staff W believed Coach McKeever had to deal with more mental health issues than was typical.

Witness B, who coached teams alongside Coach McKeever and participated in the training trip, said he was skeptical that swimmers became suicidal within a few months or a year of joining the team.

G. Observations Regarding the Environment

Both the pool decks at Spieker and Legends are visible to other members of the Cal Athletics Department. Spieker is surrounded on several sides by athletics administration offices on the second floor and higher, and by the Cal Recreational Sports Facility. The windows to those upper floor offices may be opened, but it appears to be difficult for anyone in those offices to hear what coaches say on the pool deck, especially over the noise of swimming and music playing. Legends is abutted on one side by a public walkway between the Tang Center and Legends, and the pool deck can be viewed and heard through the chain link fence along the walkway and through the gate at the Legends entrance – though, again, it appears to be difficult, except perhaps through sustained and focused observation or surveillance, to hear the specific language that coaches use on the pool deck, especially over the noise of swimming and music playing.²⁶⁵

²⁶⁵ Some swimmers told us they did not think others could hear what was happening on deck. For example, according to Swimmer CR (Swimmer,), even though the practices were in the open, there was always music playing, so in her view, it was not necessarily true that anyone

H. Coach McKeever's Overall Response

Coach McKeever's responses to specific allegations are detailed in Section VIII.J below.

1. Allegations of Verbal Abuse

Coach McKeever generally denied inappropriately targeting certain athletes for verbal abuse. She said that it was her job as a coach to tell swimmers what they needed to improve and to deliver candid, honest feedback, even if the swimmer did not want to hear that feedback. Coach McKeever said that she tells the truth when asked a question or asked for her professional opinion, and she cannot control the subtleties of how someone responds to her comments. She said she never called an individual "stupid" or a "piece of shit." Swimmers may have felt that way, but Coach McKeever denied saying those insults. Coach McKeever refuted the claim that she cursed and called swimmers names on a daily basis. According to Coach McKeever, she and her team spend four to five hours a day with one another for years, so there were times that she said things that were "harsh" or even used profanity, but it did not happen daily. Coach McKeever said the accounts of the swimmers who described negative experiences lack the full context of the situations that the swimmers reported. Coach McKeever felt that the witnesses and the investigators cherry picked difficult conversations and omitted the context in which those conversations occurred. She said she felt the investigative process cherry picked difficult conversations while suggesting that nothing occurred before or after them.

Coach McKeever said that if she scrutinized one person more than another person, it was because of that first person's behavior or attitude. If Coach McKeever said something repeatedly to specific swimmers, it was either because they did not understand the feedback, value the feedback, or change their behavior in response to the feedback. In situations where swimmers continued to make mistakes, Coach McKeever continued to provide coaching to try to get them to understand. She also asked teammates to help the struggling swimmer. If the swimmer still did not improve, Coach McKeever either stopped talking to them about it, which was not good, or they became frustrated.

Coach McKeever explained that, especially for the new swimmers, elite sport is difficult and not a friendly, fair, or fun environment all the time. There are different phases of training, requirements, and expectations at different times of the year. Most of the swimmers were the best student and the best swimmer at their club and high schools so it was jarring to come into an environment where they were no longer the star on the team. For most of the swimmers, swimming had been an individual sport, and they had to adjust to Coach McKeever's request to look at it as a team sport. Most of the swimmers struggled with this initially, but while some swimmers have alleged the environment was abusive, others found it empowering. The swimmers were told during the recruiting process that it was a huge commitment, the team was the priority, they were expected to recognize they would be part of a team and something bigger than themselves, and their job was to support the team's goals, each other, and perform to the best of their ability. According to Coach McKeever, the swimmers had a choice of which

else (including other coaches, like [REDACTED]) would be able to hear what was happening. Swimmer CR also believed that the athletics administration knew what was happening but would never defend an athlete over Coach McKeever.

program to join, and they chose an environment that was extremely competitive, in both the classroom and the pool. According to Coach McKeever, the swimmers were adults who said they wanted and expected to be coached as an elite athlete and, in some cases, a professional athlete. Division I athletics are more structured and tougher than high school and club swimming. She said that some swimmers viewed Coach McKeever's feedback as criticism and some saw it as a suggestion that there was a better or different way that could improve performance. The swimmers should not have expected to improve and compete at a higher level without needing suggestions for change. Coach McKeever said that by accepting a position on the Cal team, the swimmers indicated they wanted to help the team's performance, and her job was to have the team performance at its highest level for the University.

In Coach McKeever's view, the [REDACTED] team had an overwhelming tendency to either share their concerns with one another or corroborate the various allegations made by one another. According to Coach McKeever, a young woman who has spent only one season at the Division I intercollegiate level does not have the experience or necessary investment to have the type of success that was expected in the Cal program. In her view, many of the women who are most critical of Coach McKeever are those who experienced the traumatic effect of COVID on their academics, athletics, friendships, and families. Additionally, an individual team member did not always have the information or perspective that the head coach did. An athlete's view of a situation generally does not include all the information, and Coach McKeever believed that they have filled in the blanks with their own assumptions as to her intent. Coach McKeever explained that she often had to make decisions where it was not appropriate to share the details regarding her decision, and she believed that resulted in others coming to their own conclusions as to why she did or said something. As a coach, Coach McKeever fought a constant battle to balance what was in the best interest of the individual and what was in the best interest of the team. Coach McKeever said that she made the best decisions she could at the time with the information that she had at that moment. Regarding some of the specific language alleged in Section VIII.B above, Coach McKeever denied that she called any swimmer "worthless." She has explained to swimmers that the phrase "fix your face" was a way to tell swimmers to check in with their bodies. She categorically denied calling anyone a "piece of shit" but said that she called swimmers' efforts "shitty." She said that one standard explanation she used when critiquing swimmers was, "I'm not saying you're a piece of shit; I'm saying you need to give a better effort."

Coach McKeever said that her general attitude is that if a swimmer is upset about being yelled at, they should come talk to her and have a conversation about it. Coach McKeever said she would be open to feedback. Coach McKeever said she knew some swimmers took criticism very personally and she therefore tried to emphasize that she was not mad at the swimmer but was pointing out what needed to improve.

Coach McKeever said she believes that a coach's intention is what makes coaching behavior cross the line from tough coaching to abusive. In her view, what matters is the coach's intent. She noted that the university had never told her what abusive coaching is. She said that, based on how other coaches are treated by the university, the line is unclear; she noted that other coaches yell at athletes and hold them accountable and, unlike Coach McKeever, are not placed on administrative leave and investigated.

The perfect situation occurs when a coach's intention and impact align, but this does not always happen due to things such as stress, frustration, and previous experiences. She sometimes could discern situations in which her intention and impact did not align, either because an athlete asked for clarification or because she felt a disconnect, but sometimes she had no idea that the impact on the athlete was different from Coach McKeever's intention because it was never brought to her attention. Coach McKeever tried to model behavior that demonstrated self-reflection, self-awareness, and the ability to recognize that she could do better. She saw her role as a teacher and she worked to stay in teaching mode on deck and beyond.

According to Coach McKeever, elite sport contains struggles and obstacles and does not always go the way one hopes it will. She said it is normal to look back at one's college years and have disappointment, frustration, anger, and regret. It is the swimmer's choice, not the coach's, on how she perceives those obstacles. When Coach McKeever struggled with an athlete or when an athlete fell short of expectations, Coach McKeever looked at what her role in situation too. Both parties shared responsibility. Coach McKeever said it is too simple to blame only the coach for an athlete's struggles.

Coach McKeever said that she believes that the line is drawn differently for female coaches as compared to male coaches – and she also questioned whether male athletes would have complained about the same conduct she is alleged to have engaged in. Coach McKeever questioned whether male athletes would suggest abuse when their coach told them to work on their fitness or when they were pulled aside at a practice, given tough feedback, and then asked to get back into practice. She questioned whether male athletes would claim abuse when their coach grabbed their arm as they ran off a field to give them feedback or if a male athlete would expect their coach to give them feedback and criticism so they could improve their performance.

Coach McKeever questioned how she was never told of these allegations if the conduct has been going on for years. Coach McKeever emphasized her willingness to adjust based on feedback and said that the university needed a policy regarding how complaints were made about coaches and trainers. According to Coach McKeever, when her supervisors gave her feedback, she made adjustments. She said she kept her supervisors fully apprised of the great majority of the situations were covered by this investigation. In some cases, swimmers previously said they had a positive experience on the team and now are stating otherwise. She questioned whether Cal can show an instance where the University gave her coaching feedback and she did not listen and make changes. Coach McKeever said the Cal administration has a major role in this situation. She questioned why she did not receive feedback to allow her to make adjustments to her coaching style and why she did not get the opportunity to make any adjustments. According to Coach McKeever, the majority of the feedback she received through the years was praise for her coaching job, and she routinely received positive feedback from the department for her results in the classroom and the pool.

Coach McKeever noted that her coaching at Spieker and Legends is both visible and audible to the athletics administration offices and others, and that if she truly had been yelling abusive language at her athletes over the course of so many years of coaching, this would have been known by others.

When asked why so many swimmers would make the same or similar allegations if they were not true, Coach McKeever speculated that former swimmers were getting together and comparing stories so they could say the same thing, which is something she heard a rumor about. She also speculated that her use of the word “shit” was being remembered out of context. She acknowledged saying things she wished she could take back and said she has called swimmers after butting heads to emphasize she did not mean something personally.

2. Allegations Regarding Kicking Swimmers Out of Practice

Coach McKeever told us that she kicked swimmers out of practice for being disrespectful. She said she did not have a set rules or guidelines for when to kick out a swimmer but made the decision based on reading the environment. Coach McKeever’s philosophy was that a swimmer at practice should want to be there; if a swimmer did not want to be there, then that swimmer should not interfere with those who did want to be there.

3. Allegations Regarding Treating Only Certain Swimmers As Deserving of Team Resources

Coach McKeever acknowledged that she chose to focus her time, attention, and energy on those athletes who were going to score points for the team at the Pac-12 and NCAA championships. She explained that Cal expected her to win and, in order to win, she had to focus her time on getting the most out of the six to eight athletes who would score the points Cal needed to win. She was not going to focus on those athletes who were not performing well.

With respect to the NCAA championship participants receiving access to resources that others did not receive, Coach McKeever acknowledged that, with respect to massages, there was a limited budget and the team could not provide massages for everyone, so there was a performance-based priority list. Coach McKeever said that from the Pac-12 championships to the NCAA championships, only those team members who are going to the NCAA championships got to practice with the team; they also got access to more massage therapy and recovery, as well as more gear.

With respect to limitations on using resources, such as consulting with [REDACTED] Staff I [REDACTED] Coach McKeever said there was a limit on how often the team could see him, and Coach McKeever needed to make sure this resource was used efficiently and wisely. If a swimmer missed appointments or felt she did not need to continue seeing [REDACTED] Staff I, Coach McKeever made sure his time was given to others who needed it.

Coach McKeever said that all Cal coaches are under increasing pressure to perform with the limited resources available, including financial, medical, nutritional, mental, and administrative. The coaches also must perform an increasing amount of non-coaching responsibilities.

Coach McKeever said that she told some swimmers they did not deserve to wear a Cal cap. She said this to swimmers when they were not giving their best effort and not appreciating the people that came before them. She said that her team captains once had the idea of having

everyone turn their caps inside out, and then the coaches could decide when the swimmers could turn them right-side out.

4. Allegations of Pressure Regarding Scholarship

Coach McKeever said that she did not have the power to threaten to take away anyone's scholarship. Coach McKeever denied ever trying to make people miserable so that they quit. She said that this perception is likely driven by swimmers who want to quit but are afraid to because of monetary considerations.

Coach McKeever acknowledged that she talked with swimmers about scholarships being an investment. She explained that she asked swimmers, "Why do you think Cal and I gave you a scholarship; what did we expect from you," and then when the swimmer provided an answer, she asked if they were meeting those expectations. She explained that, when a swimmer accepted a scholarship, they accepted an agreement to meet certain expectations, such as giving a good effort, helping with recruiting, and generally being a contributing member to the team. When asked if she put additional pressure on athletes with larger scholarships, Coach McKeever said that she sometimes told certain athletes that they need to make a decision because they looked miserable and like they did not want to be on the team. Coach McKeever also passed along feedback from teammates if athletes were not doing the right things away from the pool or were telling teammates that they did not want to be on the team.



5. Allegations Regarding Pressure to Quit or Transfer

Coach McKeever said that if swimmers did not enjoy swimming for the team, they should quit, but many swimmers did not quit because they worried about what quitting meant for their lives or because they faced pressure from their parents. Coach McKeever also said that if a swimmer did not keep up with practice, she did not have to keep them on the team.

6. Allegations Regarding Coach McKeever's Conduct and Its Effect on Swimmers' Mental Health

Coach McKeever said that she can accept that some swimmers may perceive her as a contributor to mental health issues, but there are a multitude of factors that contribute to depression, anxiety, isolation, and other mental health struggles.

I. Overall Findings Regarding Allegations of Verbal Abuse

Individual findings regarding specific swimmers are detailed in Section VIII.J below.

In general, we find that a preponderance of the evidence, including the statements of more than 40 swimmers, supports the conclusion that Coach McKeever frequently yelled personal insults and epithets at certain swimmers and used humiliating and belittling language that a reasonable person would find hostile, offensive, and unrelated to the University's

legitimate business interests. Although some swimmers we interviewed told us they did not witness this behavior, the majority of swimmers we interviewed did. Moreover, certain specific remarks – calling swimmers a “piece of shit,” a “dumbass,” “worthless,” and saying their family should be ashamed of them – were reported by multiple swimmers who participated in the Cal swim program during different times and whose time on the team spanned much of Coach McKeever’s career at Cal. Their accounts of Coach McKeever’s conduct corroborated one another’s.

We generally find credible the explanations of numerous swimmers who told us that Coach McKeever used the most offensive language during one-on-one meetings with swimmers, which explained why other coaching staff and some swimmers said they never witnessed abusive verbal conduct. We considered the explanations of Coach McKeever and other coaching staff and swimmers who told us, in essence, that the swimmers who complained of sustained verbal abuse were exaggerating their experiences, deserved to be criticized, and had only themselves to blame for failing to perform well, failing to communicate properly, or for otherwise not being well-suited to a high-pressure Division I, elite swim program. We also considered the explanations of a number of witnesses who said that those swimmers who complained about Coach McKeever were seeking to blame her for their own poor performances. We find that there was sufficient corroboration for the accounts of swimmers who were targeted for sustained verbal abuse; such corroboration was provided by swimmers who told us they were not themselves targeted for sustained verbal abuse and in fact were treated well by Coach McKeever and were considered “favorites” of Coach McKeever. These particular swimmers had little motive to fabricate or exaggerate what they witnessed; to the contrary, they were reluctant to come forward and provide information that Coach McKeever and others would view as being “disloyal” to Coach McKeever.

J. Specific Swimmers Allegedly Targeted For Sustained Verbal Abuse

L. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

266 [REDACTED]

267 [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

268 [REDACTED]

269 [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

2. Swimmer A (Swimmer, [REDACTED])

Swimmer A (Swimmer, [REDACTED]) said that Coach McKeever yelled at and used curse words when yelling at swimmers, including her, every day. Swimmer A said that Coach McKeever told her that she was sick of Swimmer A's "bullshit," that she brought down the team, that everyone wanted her off the team, that the captains were fed up with her, and that Coach McKeever would not have recruited her if she had known all of this.²⁷⁰ One day Coach McKeever pulled Swimmer A aside and told her that her entitlement was "through the roof."

²⁷⁰ As detailed in Section III.A on discrimination against [REDACTED], a number of witnesses described Coach McKeever's frequent yelling at Swimmer A and the language she used. For example, Swimmer AC (Swimmer, [REDACTED]) confirmed that Coach McKeever screamed at Swimmer A in front of the team constantly, calling her less valuable and [REDACTED]. Swimmer B (Swimmer, [REDACTED]) said that Coach McKeever criticized Swimmer A's posture, [REDACTED] her attitude, and questioned her effort.

Toward the end of the season, Coach McKeever told Swimmer A and Swimmer B (Swimmer [REDACTED]) that she would cut them if they could not make intervals.

A more detailed narrative of Swimmer A's experience on the team, other witness accounts, and Coach McKeever's response are included in Section III.A, regarding the allegations of discrimination and harassment against [REDACTED].

(a) Factual Findings

We make the same findings here that are outlined in Section III regarding the allegations of discrimination and harassment against [REDACTED].

(b) Policy Determinations

Coach McKeever violated the University's Workplace Bullying Prevention policy by engaging in a pattern of repeated behavior toward Swimmer A that a reasonable person would find hostile, offensive, and unrelated to the University's legitimate business interests. Specifically, Coach McKeever (1) directed abusive, insulting, and offensive language at Swimmer A, (2) exhibited behavior or language that humiliated, belittled, or degraded Swimmer A, including criticism that was delivered with yelling, screaming, threats, or insults, (3) made repeated inappropriate comments about Swimmer A's [REDACTED] and (4) purposefully excluded, isolated, or marginalized Swimmer A from normal swim activities.

The preponderance of the evidence shows that Coach McKeever repeatedly yelled and used curse words when yelling at Swimmer A. Coach McKeever degraded Swimmer A by calling her an embarrassment to the team, herself, and Coach McKeever. She humiliated and marginalized Swimmer A by having the freshmen swimmers sit in a circle and raise their hands if they believed that Swimmer A had an attitude and by asking swimmers, when Swimmer A was not present, whether they felt better without Swimmer A there. Coach McKeever made repeated comments about Swimmer A being [REDACTED]. Coach McKeever purposefully excluded Swimmer A from normal team activities by frequently kicking Swimmer A out of practice, prohibiting her from swimming in [REDACTED], and prohibiting her from practicing with the men's swimming team.

Although multiple swimmers and coaches opined that Swimmer A did display a bad attitude at times, stood with a posture or facial expression that Coach McKeever believed conveyed disrespect, and did not attend optional practices, the preponderance of the evidence shows that Coach McKeever singled out Swimmer A for particularly harsh criticism and yelled at or kicked Swimmer A out of practice for doing things that other swimmers were permitted to do without similar consequences.

3. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

■ [REDACTED]

[REDACTED]

■ [REDACTED]

[REDACTED]

4. [REDACTED]

[REDACTED]

[REDACTED]

■ [REDACTED]

[REDACTED]

[REDACTED]

■ [REDACTED]

[REDACTED]

■ [REDACTED]

[REDACTED]

5. [REDACTED]

[REDACTED]

[REDACTED]

■ [REDACTED]

[REDACTED]

■ [REDACTED]

[REDACTED]

6. Swimmer G (Swimmer, [REDACTED])²⁷¹

Swimmer G, [REDACTED] joined the Cal women's swimming program as a freshman [REDACTED].

Swimmer G's account of her experience is also detailed in Section IV.A regarding the allegations of national origin-based discrimination and harassment. Swimmer G's allegations related primarily to Coach McKeever's targeting of Swimmer G for sustained verbal abuse are described below.

(a) Breakdown in Relationship

Swimmer G said that her anxiety skyrocketed and her relationship with Coach McKeever degraded when Swimmer G made mistakes during the Pac-12 and the NCAA championships in [REDACTED]. She said that Coach McKeever screamed at her and "got in her face" after it happened.

According to Swimmer G, the first semester of the [REDACTED] year was "okay," but after the [REDACTED] Pac-12 championships, Coach McKeever screamed at her "every other day" and called Swimmer G "useless," "pathetic," "embarrassing," and "not worth her scholarship." Swimmer G said the breakdown in the relationship resulted from a combination of things, including Swimmer G's swimming performance remaining static. Swimmer G said she frequently asked Coach McKeever what she could do to improve, and Coach McKeever never provided her with specific advice. Instead, Coach McKeever just said that Swimmer G needed to change and to figure out what that change looked like. Swimmer G said that Coach McKeever often lost her temper because Swimmer G was not improving, calling her the "weakest link."

According to Swimmer G, Coach McKeever spoke to Swimmer G in a manner that came across to Swimmer G as attacking because Coach McKeever could not control her negative emotions. Swimmer G said she relied on Swimmer T (Swimmer, [REDACTED]) and Swimmer K (Swimmer, [REDACTED]) to explain the message behind the attack. Swimmer G said that when Swimmer G cried in response to Coach McKeever's verbal abuse, Coach McKeever told her that Swimmer G crying was just as abusive towards Coach McKeever as when Coach McKeever screamed at Swimmer G. According to Swimmer G, Coach McKeever said she felt that Swimmer G's crying was an attempt to make Coach McKeever seem like a mean person. Coach McKeever asked Swimmer G to think about how Swimmer G's crying made Coach McKeever feel. Swimmer G also told us that Coach McKeever told Swimmer G to stop looking at her like a victim with sad eyes.

In Swimmer G's view, Coach McKeever kicked Swimmer G out of the pool frivolously for a look on her face, taking a breath on a turn, or just because Coach McKeever did not want to see her. According to Swimmer G, Coach McKeever became mad at Swimmer G for things

²⁷¹ [REDACTED]

other swimmers did without retribution, like not showing up early enough to practice. At one point, Coach McKeever ranked Swimmer G [REDACTED] out of [REDACTED] swimmers on receptiveness to coaching.

(b) High Expectations for Swimmer G

At the same time, Coach McKeever frequently pulled Swimmer G aside to tell Swimmer G that she is talented, has lots of potential, and is very smart, which made the experience of swimming for Coach McKeever feel like a rollercoaster. Swimmer G said that Coach McKeever occasionally realized that she had gone too far in expressing her frustration and apologized to Swimmer G. Swimmer G thought Coach McKeever's frustration came in part from Swimmer G's lack of improvement, but she felt that Coach McKeever's expressed frustration was not constructive feedback and Coach McKeever knew it was not constructive but could not help it. Swimmer G said that Coach McKeever treated her as useless, which led her to develop such bad anxiety that she threw up after every race. Swimmer G said that Coach McKeever always assumed the worst of intentions when it came to Swimmer G.

(c) Allegations of Physical Targeting

Swimmer G noted some physical elements to her treatment by Coach McKeever. Coach McKeever occasionally held her arm tightly, spoke to Swimmer G while standing very closely, and, on one occasion, made Swimmer G repeatedly reach for a pen while pushing her hand back, purportedly to teach Swimmer G a lesson about perseverance. Swimmer G said Coach McKeever's physicality was but a small part of Swimmer G's trouble with Coach McKeever and her real concern was with the mental pressure and toxicity of the team culture Coach McKeever created.

(d) Exclusion from [REDACTED]

According to Swimmer G, the situation came to a head when Swimmer G was left out of [REDACTED]. Coach McKeever kicked Swimmer G out of practice one day. After that practice, some of Swimmer G's teammates found her still crying in the locker room. When those teammates informed Coach McKeever that Swimmer G was still in the locker room, Coach McKeever had them bring Swimmer G into her office. During the meeting in the office with Coach McKeever, the team captains, and [REDACTED] other teammates, Coach McKeever was angry that Swimmer G had lingered in the locker room and decided that Swimmer G should not go to [REDACTED] because it would be too much of a distraction for Coach McKeever and the team.

Swimmer G said that Coach McKeever had a rule that swimmers who were not swimming in [REDACTED] could not train with the team [REDACTED], so Swimmer G then had to train by herself [REDACTED]. She asked the Athletic Performance Coach, [REDACTED] Staff V (Athletic Performance Coach, [REDACTED]), for help, without telling Coach McKeever. Coach McKeever found out and told [REDACTED] Staff V to not help Swimmer G.

Swimmer G said that by April she had decided to transfer to another school, in response to Coach McKeever's exclusion and degradation. According to Swimmer K (Swimmer

Swimmer G met with Staff F (Athletic Trainer,) and Jennifer Simon-O'Neill (Executive Senior Associate Athletics Director, 2013-present) at the end of the year, as well as Staff J ().

(e) *Other Witness Accounts*

(i) *Allegations of Verbal Abuse*

Swimmer K (Swimmer,) said that Coach McKeever frequently yelled at Swimmer G, sometimes to a point that caused Swimmer G to cry. Swimmer AC (Swimmer,) said that Coach McKeever yelled at and degraded Swimmer G without reason. Jane Roe #2 said when Swimmer G breathed wrong, Coach McKeever pulled her out, yelled at her, and kicked her out of practice. Swimmer Q (Swimmer,) said that Coach McKeever told Swimmer G, "You clearly , you clearly have a mental disorder." Staff A (Assistant Coach,) said that Coach McKeever told Swimmer G she had mental problems and needs therapy and berated her about things that had nothing to do with swimming. Coach McKeever also told Staff A, in front of Swimmer G, that Staff A should not spend any energy on Swimmer G. Jane Roe #1 confirmed Coach McKeever often yelled at Swimmer G. Swimmer AJ (Swimmer,) said that Coach McKeever yelled at Swimmer G, but it was because Swimmer G did not listen to feedback.

(ii) *Allegations that Coach McKeever's Treatment of Swimmer G Was Unwarranted*

Many swimmers, including Swimmer AT (Swimmer,), Swimmer P (Swimmer,), Swimmer A (Swimmer,), Swimmer Y (Swimmer,), and those summarized below said that Swimmer G was a target of disproportionate criticism and yelling by Coach McKeever.

Swimmer AC (Swimmer,) said that Swimmer G was yelled at and degraded by Coach McKeever without reason. If a preferred athlete, like Swimmer AJ (Swimmer,), did the same things Swimmer G did, Coach McKeever did not yell. Swimmer AC attributed this targeting to the difference in the two swimmers' speed.

[REDACTED]

Swimmer V (Swimmer,) Coach McKeever's treatment of Swimmer G "appalling."

Swimmer Q (Swimmer,) said that during Swimmer G's sophomore year, Coach McKeever's attacks on Swimmer G became more personal, and Swimmer G broke in response. Swimmer Q thought that Coach McKeever messed with Swimmer G's mind to the point that Swimmer G could not gather herself. Swimmer Q said that Coach McKeever

attacked Swimmer G multiple times a day for breathing into the wall and then told Swimmer G that Swimmer G would never be able to fix it. Coach McKeever and her favorite swimmers said things like, "why can't she fix it," and "she's so dumb, she's going to [REDACTED] again." Swimmer Q found it shocking that Coach McKeever and others could not see that Swimmer G was so scared that she could not control herself and did not understand what the set was. In Swimmer Q's view, Coach McKeever made Swimmer G into the worst version of herself and then picked on her for being that version.

Swimmer N (Swimmer, [REDACTED]) said that, prior to the [REDACTED], Coach McKeever told the team that she could not coach Swimmer G anymore, so Swimmer G had to transfer. Swimmer N said Coach McKeever never gave a clear reason, and in her view, Swimmer G never did something so wrong as to deserve the label of being "uncoachable." Coach McKeever said Swimmer G made Coach McKeever a worse person and that Swimmer G struggled with Coach McKeever's coaching style. Swimmer N said that because Swimmer G was always getting yelled at, it became very hard for Swimmer G to change anything. Swimmer N witnessed Coach McKeever getting on Swimmer G's case throughout the year for breathing on walls and said things like: "What are you doing," "I can't deal with you," "I can't coach you," and "If you do that again I'll kick you out." Swimmer N believed that Coach McKeever targeted individuals for particularly harsh criticism who were not swimming up to their potential, like Swimmer G. Swimmer N also noted that Coach McKeever's abstract coaching style was not a good fit for Swimmer G. Swimmer N said that, during the year, she thought that Swimmer G was the problem, but once she returned home after the season and had some separation from the team environment, she realized that Coach McKeever manipulated the team into believing Swimmer G was the problem.

Swimmer K (Swimmer, [REDACTED]) was close friends with Swimmer G and said that Swimmer W (Swimmer, [REDACTED]) and Swimmer AJ (Swimmer, [REDACTED]) were mean to Swimmer G because they followed Coach McKeever's lead. Swimmer K said that Swimmer G developed performance anxiety after [REDACTED] and this anxiety was exacerbated by Coach McKeever's enhanced and negative scrutiny. She said that Coach McKeever frequently yelled at Swimmer G for being late or other minor things that did not make Coach McKeever angry if someone else did them. Swimmer K said that Coach McKeever commented to Swimmer K more than once that Coach McKeever does not react well to Swimmer G. Swimmer K met with Coach McKeever and [REDACTED] Staff A (Assistant Coach, [REDACTED]) prior to the NCAA championships to talk about the situation with Swimmer G and to stand up for Swimmer G.

Jane Roe #2 said that Coach McKeever reportedly called Swimmer G "stupid," which was one of many pejorative words Coach McKeever used when referring to Swimmer G. Jane said Swimmer G made mistakes a fair amount, but she had only been [REDACTED] was [REDACTED] years old, and adjusting to Coach McKeever involved a learning curve. [REDACTED] Jane said that others, like Swimmer AJ (Swimmer [REDACTED]) were not yelled at for similar [REDACTED] mistakes. [REDACTED] Jane said that she had never seen an athlete called "stupid" and yelled at for her character in front of others.

Staff A said she agrees completely with what Swimmer G reported [REDACTED] and believes that Swimmer G and Coach McKeever both played a role in the situation. Staff A said that Swimmer G made more mistakes on sets than other swimmers but was called out by Coach McKeever with less leniency than other swimmers. Staff A said that Coach McKeever was especially harsh with Swimmer G, including by telling Swimmer G that she has mental problems and needs therapy. Staff A said that Coach McKeever berated Swimmer G about things that had nothing to do with swimming. Staff A said Coach McKeever often took it too far. For instance, if Swimmer G had a bad race, Coach McKeever told Swimmer G that it was because she gave up during the race.

Coach McKeever told Staff A, in front of Swimmer G, that Staff A was not allowed to talk to Swimmer G or put any more energy into coaching her. Staff A said that when Coach McKeever kicked Swimmer G out of practice, it was usually because Coach McKeever did not want to deal with her anymore and Coach McKeever could not find another way to manage her frustration. Staff A did not know exactly what Coach McKeever said to Swimmer G in these instances, but Coach McKeever often came to Staff A afterwards and complained about Swimmer G. According to Staff A, sometimes Coach McKeever told her she kicked Swimmer G out of practice as a result of Swimmer G talking back, and other times Coach McKeever said it was because she did not see the changes she wanted to see.

Staff A said that she thought that Swimmer G became so focused on and anxious about things that Coach McKeever persistently yelled at her for, like not breathing into the wall, that Swimmer G ended up doing the very thing she tried to avoid. In Staff A's view, the fear that the relationship with Coach McKeever created in Swimmer G likely fueled a negative cycle that caused Swimmer G to make more mistakes. Staff A mentioned that she believed Swimmer G slouched and looked down as a defense mechanism, which elicited an even more frustrated response from Coach McKeever. Swimmer G was the only swimmer Staff A saw where the swimmer and Coach McKeever engaged in screaming matches that led to Coach McKeever kicking Swimmer G out of practice.

Staff A said that if she were the head coach, she would have dealt with Swimmer G by dropping the issue for a while when it was not changing. Staff A had a conversation with Jennifer Simon-O'Neill (Executive Senior Associate Athletics Director, 2013-present) the day after [REDACTED]. During this conversation, Staff A told Simon-O'Neill that she was uncomfortable with how Swimmer G was treated. Simon-O'Neill told Staff A that she and Staff F (Athletic Trainer, [REDACTED]) had met with Swimmer G before she went into the transfer portal to make sure she was okay. Simon-O'Neill assured Staff A that her concerns would not get back to Coach McKeever; however, Staff A wanted her concerns to get back to Coach McKeever.

(iii) Allegations that Coach McKeever's Treatment of Swimmer G Was Appropriate

Others described Coach McKeever's scrutiny of and attention toward Swimmer G as appropriate under the circumstances.

Swimmer AJ (Swimmer, [REDACTED]) described Swimmer G as a significant problem on the team over the course of [REDACTED] because she was hard to coach, did not take advice, and talked back to Coach McKeever. Swimmer AJ noted that Coach McKeever pulled Swimmer G out of practice multiple times a week and recalled thinking that Coach McKeever seemed very frustrated with the situation.

Swimmer AI (Swimmer, [REDACTED]) said that Coach McKeever repeatedly told Swimmer G to not breathe into the wall in order to help the team improve. Swimmer AI said that with repetition came more frustration. Swimmer AI perceived Swimmer G (and others who in her view consistently could not improve in the way Coach McKeever wanted them to) as refusing to listen, not being committed to the team or to performing at a Division I level, unwilling to take feedback, and unwilling to be coached. Swimmer AI thought that Swimmer G was kicked out of practice only for real infractions, like not paying attention and not being on a block when she should be.

Swimmer L (Swimmer, [REDACTED]) thought that Swimmer G was a perfectionist and thought too much about most things, which conflicted with Coach McKeever's coaching style, which depends on movement without thinking. This difference in style resulted in Coach McKeever thinking Swimmer G was not trying when she got things wrong or did not improve.

According to Witness B ([REDACTED]), Coach McKeever asked him to come to [REDACTED] to join the annual training camp. There, he witnessed Coach McKeever interact with Swimmer G. Witness B also spoke with Swimmer G at a moment when she was very emotional in response to feedback from Coach McKeever. He said that, from what he witnessed, Coach McKeever knew Swimmer G could be good and cast attention on Swimmer G to help her improve. He said that Swimmer G probably did not appreciate the increased scrutiny and Coach McKeever likely could have done it better, but that these things happen in the heat of the moment, and he is frequently guilty of the same. He said that Coach McKeever was not abusive toward Swimmer G, and he rejected the label "targeting," as he believed Coach McKeever closely observed the entire team to foster improvement.

[REDACTED] Staff D (Director of Operations, [REDACTED]) said that Swimmer G and Coach McKeever did not mesh well because Swimmer G fixated on little things and made everything a big deal, such as [REDACTED]. [REDACTED] Staff D said that Coach McKeever encouraged Swimmer G to go to a therapist for her [REDACTED]. Staff D thought that Swimmer G was singled out for not being a team player and being too focused on herself.

[REDACTED] Staff V (Athletic Performance Coach, [REDACTED]) said that Coach McKeever frequently raised Swimmer G's name in staff meetings as an athlete who was late or was not connecting with her coach. He said that Swimmer G did not get along well with Coach McKeever because Swimmer G believed Coach McKeever always picked on her for the same thing. Swimmer G vented to him a few times about this. In coaching meetings, Coach McKeever complained about trying to get Swimmer G to change one thing and Swimmer G's refusal to change. [REDACTED] Staff V's opinion was that there was a communication disconnect.

which was not abnormal. Swimmer G said Coach McKeever yelled at Swimmer G, which Staff V believed, but he did not see a red flag indicating abusive conduct.

(iv) Decision to Not Bring Swimmer G to the [REDACTED]

Staff A (Assistant Coach, [REDACTED]) recounted that Coach McKeever decided not to bring Swimmer G to the [REDACTED]. Staff A said that she offered to work with Swimmer G to make her not a distraction for Coach McKeever, but Coach McKeever still chose not to bring her. Coach McKeever was not her best self around Swimmer G, so Coach McKeever believed that it was best not to bring Swimmer G. Staff A wanted Coach McKeever to tell Swimmer G about this decision in a public place because she was worried about the tension level that the meeting might rise to in Coach McKeever's office. Staff A thought that some of the swimmers felt Swimmer G should not go to [REDACTED], while others felt it was unfair to Swimmer G, which caused a fracture in the team going into the meet.

Swimmer Q (Swimmer, [REDACTED]) said that, although Swimmer G was the fastest [REDACTED], Coach McKeever chose not to bring her to [REDACTED]. Swimmer Q said that Coach McKeever called Swimmer AJ (Swimmer, [REDACTED]), Swimmer W (Swimmer, [REDACTED]), and Swimmer K (Swimmer, [REDACTED]) into a room and let Swimmer AJ and Swimmer W berate Swimmer G. Swimmer Q said that those two swimmers conveyed that no one on the team liked Swimmer G, she frequently moped, could not fix her breathing issues, and brought the team down. Swimmer K said that Swimmer AJ (Swimmer, [REDACTED]) "tattled" to Coach McKeever about Swimmer G staying in the locker room after Coach McKeever kicked Swimmer G out of practice. Swimmer K said that in the subsequent meeting of Coach McKeever, Swimmer [REDACTED], Coach McKeever screamed at Swimmer G for ten minutes and Swimmer G started crying. It was at that meeting that Coach McKeever decided to [REDACTED], even though Swimmer K thought that Swimmer G was the [REDACTED].

Swimmer AJ (Swimmer, [REDACTED]) described the practice where Coach McKeever decided not to bring Swimmer G [REDACTED]. Swimmer AJ said that this was the first time [REDACTED]. Coach McKeever had said that she planned to bring only [REDACTED]. The morning of the decision to not take Swimmer G, Coach McKeever kicked Swimmer G out of practice and Swimmer G remained in the locker room until after practice ended. Swimmer AJ felt this was very unusual and decided to inform Coach McKeever. Coach McKeever was already frustrated with how much of her time was taken by Swimmer G and away from other swimmers and was further angered by Swimmer G's decision to stay in the locker room. Swimmer W and Swimmer K were also present and expressed to Coach McKeever that they felt she and Swimmer G together did not bring out the best in the team. Then, Swimmer AJ retrieved Swimmer G from the locker room and the group

had a conversation in which Swimmer AJ expressed her frustration with Swimmer G's frequent talk about transferring. Swimmer AJ recalled Coach McKeever getting emotional to the point of crying in this meeting.

Swimmer N (Swimmer, [REDACTED]) said that the decision [REDACTED] Swimmer G was entirely on Coach McKeever even though Swimmer AJ and Swimmer W agreed with Coach McKeever. Swimmer N acknowledged that a lot of the team resented Swimmer AJ and Swimmer W because of that meeting but said that she thought they were trying to gain Coach McKeever's approval, who was responsible for the decision not to bring Swimmer G. Swimmer N also believed that not bringing Swimmer G probably did make the team's lives easier because Coach McKeever would have been angrier throughout the trip.

Swimmer T (Swimmer, [REDACTED]) said that she saw in passing the meeting between Swimmer G, Coach McKeever [REDACTED], which involved Coach McKeever yelling at Swimmer G. In Swimmer T's view, leaving Swimmer G behind was worse for the team and better for Coach McKeever, because Coach McKeever could not keep her emotions in check when she was around Swimmer G.

(v) Two Swimmers Talked With Coach McKeever About Her Treatment of Swimmer G

The day after the decision [REDACTED], Swimmer Q (Swimmer, [REDACTED]) met with Coach McKeever after hearing about the meeting from others. Swimmer Q said that what happened was not okay. Coach McKeever became extremely angry and blew up at Swimmer Q, yelling at her for a sustained period. Swimmer Q described the meeting as extraordinary and said that Coach McKeever cycled through angry screaming and then ostensibly regretful crying. Swimmer Q said that, at the end of the conversation, Coach McKeever said, "Thank you [Swimmer Q], for letting me know, you're the only honest one here," which made Swimmer Q feel gas-lit. Swimmer Q said that Coach McKeever said she would quit coaching multiple times during that conversation. At the end of the conversation, Coach McKeever went home because she was so agitated and beside herself she was not in any condition to coach practice; she handed Swimmer Q a workout to give to the assistant coach. The next day, during a land workout, Coach McKeever pulled Swimmer Q aside and asked if she and Coach McKeever were "good." Swimmer Q was shocked by this, given the intensity of Coach McKeever's anger and yelling at her, but said, "Sure." Swimmer Q later got a call from [REDACTED] Staff D (Director of Operations, [REDACTED]), whom Swimmer Q was close with. [REDACTED] Staff D said she talked to Coach McKeever, who [REDACTED] Staff D said was pacing around in her office and seemed erratic, worrying [REDACTED] Staff D. Swimmer Q and [REDACTED] Staff D met in person and [REDACTED] Staff D said that she believed Swimmer G deserved everything that happened, which Swimmer Q disagreed with. Swimmer Q said that [REDACTED] Staff D had not spent any time with Swimmer G and that her perception of the situation was based only on what Coach McKeever told her.

Swimmer K (Swimmer, [REDACTED]) told us she spoke up in defense of Swimmer G during the meeting itself. Swimmer K said that she tried to express that the way Coach McKeever treated Swimmer G took a toll on the team and on Swimmer K mentally and emotionally. Then, a couple of days later, Swimmer K had a longer conversation with Coach

McKeever. Coach McKeever was angry with Swimmer K for allegedly telling Swimmer Q about the incident, leading to Swimmer Q confronting Coach McKeever. Swimmer K said that she believed Swimmer AJ (Swimmer, [REDACTED]) and Swimmer W (Swimmer, [REDACTED]) were not good teammates to Swimmer G during that conversation, and Coach McKeever disagreed. Swimmer K said that Coach McKeever assumed malicious intent by Swimmer G for staying in the locker room, which Swimmer K also disagreed with. Swimmer K said that Coach McKeever viewed Swimmer G as selfish and was angry at Swimmer K for consistently siding with Swimmer G instead of supporting Coach McKeever. Later, [REDACTED] Staff D (Director of Operations, [REDACTED]) texted Swimmer K and congratulated her for speaking up. However, at NCAAs, Swimmer K had a conversation with [REDACTED] Staff D in which Swimmer K shared that she thought Coach McKeever was to blame for the difficult relationship between Swimmer G and Coach McKeever; [REDACTED] Staff D did not agree and defended Coach McKeever.

(f) Coach McKeever's Response

(i) Coach McKeever's Description of What She Viewed As Swimmer G's [REDACTED]

Coach McKeever described Swimmer G as a [REDACTED] in a way that paralyzed her. Coach McKeever also said that Swimmer G sells herself short and plays the victim role when she is capable of being an advocate for herself and others around her. Coach McKeever gave as an example that Swimmer G did not make [REDACTED] and then fixated on how it was [REDACTED] fault for changing the rules to intentionally harm her. Coach McKeever also described how Swimmer G wanted to apply to [REDACTED] and spent an entire team trip to [REDACTED] asking everyone on the plane what she should say in her application. Coach McKeever told her that asking everyone, "what should I say," is very different than saying, "these are the three prompts, here's what I was thinking, what do you think." Coach McKeever said that when she designed a practice, the athletes often have a lot of options for how to do things, but Swimmer G refused to experiment and problem-solve, to try new techniques and learn through failure.

Coach McKeever said that sometimes she asked others what was going on with Swimmer G, as Coach McKeever might do for swimmers who had bad body language or were not acting like themselves. One time, Coach McKeever talked to Swimmer G, Swimmer K (Swimmer, [REDACTED]) and Swimmer T (Swimmer, [REDACTED]), and Swimmer G started crying. Coach McKeever looked to Swimmer K and Swimmer T during that meeting to ask what she said to cause this. Coach McKeever said that she wanted to coach adults, not eight-year-olds.

Coach McKeever said that Swimmer G's issue is that she does not want to be coached. Coach McKeever asked Swimmer G what the difference was between her first year and second year. Swimmer G did not know, and Coach McKeever said this made it difficult to coach Swimmer G. Coach McKeever said she did not call Swimmer G "stupid" but may have said, "that's a stupid thing to do."

(ii) [REDACTED]

Coach McKeever said that Swimmer Q (Swimmer, [REDACTED]) complained that Coach McKeever had asked the captains as well as other [REDACTED] Swimmer AJ (Swimmer, [REDACTED]) and Swimmer W (Swimmer [REDACTED]) if Swimmer G could be a good team supporter if she went [REDACTED]. Swimmer Q was upset that Swimmer W and Swimmer AJ had said to Swimmer G's face, with Coach McKeever there, that Swimmer G did not deserve to [REDACTED]. Coach McKeever was upset because Swimmer Q accused her teammates of bullying Swimmer G. Coach McKeever yelled, got angry, and left practice.

Coach McKeever said that in the lead-up to [REDACTED] when Swimmer G was not able to practice with the team but was [REDACTED], Swimmer G asked Coach McKeever to write her a training program. When they went over it together, Swimmer G accused Coach McKeever of being at fault for various issues; but Coach McKeever wanted to start fresh with their relationship. Coach McKeever said that she then told Swimmer G that she is welcome to stay at Cal, but that Coach McKeever refused to coach Swimmer G any more.

(g) *Factual Findings*

We find that a preponderance of the evidence, including the statements of numerous witnesses, including [REDACTED] Staff A (Assistant Coach, [REDACTED]), supports the conclusion that Coach McKeever regularly targeted Swimmer G for criticism and subjected her to language that humiliated and belittled her, including criticism that was delivered with yelling and insults, and frequently berated Swimmer G in practice. Coach McKeever said that she believed Swimmer G made the relationship worse through ineffective communication and an inability to adjust her swim technique in the ways that Coach McKeever felt were necessary to improve her performance. Coach McKeever felt that Swimmer G's inability to adjust her technique justified the targeted criticism. Although a few witnesses agreed with Coach McKeever that Swimmer G was the sole or primary source of the problem in the relationship, including Swimmer AI (Swimmer, [REDACTED]) and Swimmer AJ (Swimmer, [REDACTED]), the overwhelming majority of witnesses viewed Coach McKeever as making the situation worse by fueling Swimmer G's anxiety with daily harsh and berating criticisms. Moreover, a preponderance of evidence supports that Coach McKeever used degrading language without any coaching purpose, such as calling Swimmer G "stupid," "useless," "pathetic," "embarrassing," and "not worth her scholarship." Coach McKeever also told Swimmer G she had a mental disorder in a critical tone. The personal and insulting nature of Coach McKeever's comments was corroborated by Swimmer Q (Swimmer, [REDACTED]), Swimmer K (Swimmer, [REDACTED]), Swimmer V (Swimmer, [REDACTED]), [REDACTED] and Jane Roe #2. [REDACTED] Staff A said that Coach McKeever kicked Swimmer G out of practice when Coach McKeever was unable to handle her own frustration.

Witnesses said that Coach McKeever decided to exclude Swimmer G from [REDACTED] primarily to avoid interpersonal conflict with Swimmer G, a conflict that witnesses viewed as one that Coach McKeever was responsible for amplifying. We find that a preponderance of the evidence shows that Coach McKeever's manner of communicating to Swimmer G her decision to exclude her from [REDACTED], by asking certain

upperclassmen for their opinions in front of Swimmer G, was unproductive, degrading, and isolating, and done in a manner that a reasonable person would find offensive.

[REDACTED]

(h) Policy Determinations

A preponderance of evidence supports the determination that Coach McKeever engaged in a pattern of repeated behavior toward Swimmer G, in the form of insulting, humiliating, and belittling verbal communication, encouraging teammates to isolate Swimmer G, and excluding Swimmer G from team activities in which she otherwise would have been included, especially [REDACTED]. It is noteworthy that witnesses generally believed that Coach McKeever was aware that her harshness with Swimmer G was unproductive and was aware that Swimmer G could have helped the team [REDACTED] but for her dislike of and inability to effectively coach Swimmer G. Coach McKeever's conduct constituted a pattern of repeated behavior toward Swimmer G that a reasonable person would find hostile, offensive, and unrelated to the University's legitimate business interests.

We considered the explanations of Coach McKeever and other swimmers who told us, in essence, that Swimmer G deserved to be criticized and was not well-suited to a high-pressure Division I, elite swim program. We note that, while University policy distinguishes between appropriate coaching and constructive feedback on one hand and persistent or egregious use of abusive, insulting, or offensive language on the other, University policy does not allow one to justify abusive conduct by showing that the recipient of the conduct deserved criticism. The University's prohibition against abusive conduct applies regardless of whether a swimmer meets the expectations of Cal's elite, Division I swimming team or whether the swimmer responds well to Coach McKeever's coaching.

7. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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[REDACTED]

[REDACTED]

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[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

8. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

9. Swimmer X (Swimmer, [REDACTED])

Swimmer X joined the Cal women's swimming team as a freshman [REDACTED] and transferred to [REDACTED]. Swimmer X said that Coach McKeever used curse words when yelling at her and called Swimmer X an expletive at least twice a week²⁷³ by Coach McKeever. According to Swimmer X, Coach McKeever pulled her out of the pool and yelled at her in front of everyone for having a "shitty" attitude or making "shitty" faces. According to Swimmer X, Coach McKeever called Swimmer X a "piece of shit." At the [REDACTED], after Swimmer X swam well, Coach McKeever said, [REDACTED]. When Swimmer X hurt [REDACTED] during practice, Coach McKeever told her to [REDACTED]. In their last conversation when Swimmer X quit, Coach McKeever said to Swimmer X "Good, you're done. Don't bother coming back to practice. I never want to see your face again. You're a piece of shit, [REDACTED]."

A full account of Swimmer X's experience on the team, other witness accounts, and Coach McKeever's response, are included in Section VIIH regarding the allegations of disability discrimination.

(a) *Factual Findings*

The preponderance of the evidence supports that Coach McKeever consistently yelled at Swimmer X and used curse words when doing so, criticized Swimmer X for trivial mistakes, to a

²⁷³ Swimmer Q (Swimmer, [REDACTED]) said Coach McKeever called Swimmer X a "piece of shit" and screamed at her almost daily. Swimmer T (Swimmer, [REDACTED]) said that Coach McKeever yelled at Swimmer X throughout the year, and Swimmer X told Swimmer T that Coach McKeever called her a "piece of shit" and an "embarrassment" during [REDACTED]. Swimmer AD (Swimmer, [REDACTED]) said that Coach McKeever screamed at Swimmer X about her weight and lack of desire. Swimmer AD (Swimmer, [REDACTED]) recalled a time when Swimmer X did not bring a water bottle and told Coach McKeever she did not like to drink water during practice. Coach McKeever's response was, "Don't you understand basic anatomy? Are you stupid? Do you not understand you need water when you're working out?"

²⁷⁴ [REDACTED] Staff A (Assistant Coach, [REDACTED]) did not remember Coach McKeever's exact words but believes that was her general tone.

degree of severity not used with other athletes for similar mistakes, and used personal insults and derogatory language in her interactions with Swimmer X. This finding is supported by Swimmer X's detailed and specific recollection of her interactions with Coach McKeever and by the accounts of many of her teammates, including Swimmer AN (Swimmer, [REDACTED]), Swimmer Q (Swimmer, [REDACTED]), Swimmer AU (Swimmer, [REDACTED]), Swimmer H (Swimmer, [REDACTED]), Swimmer AD (Swimmer, [REDACTED]), and Swimmer T (Swimmer, [REDACTED]). Also, Swimmer X eventually—but well before our interview—shared many details of her experience with her mother and her coach at [REDACTED], both of whom corroborated certain details of Swimmer X's account in our interviews with them.

Notably, Coach McKeever did not dispute most of Swimmer X's factual allegations about her treatment of Swimmer X on the team. Instead, Coach McKeever focused primarily on Swimmer X's behavior and attitude and suggested that Swimmer X deserved the criticism she received. During our interview, Coach McKeever exhibited visceral disdain for Swimmer X, calling Swimmer X "abrasive and entitled" and noting that she is "not a big fan" of Swimmer X's.

[REDACTED]

With regards to specific conduct, we find by a preponderance of the evidence that Coach McKeever pulled Swimmer X out of the pool during a practice and yelled at Swimmer X about her eating habits in front of her teammates, calling Swimmer X "too fat" to be a competitive swimmer. Swimmer X's teammates Swimmer AU (Swimmer, [REDACTED]) and Swimmer AD (Swimmer, [REDACTED]), as well as [REDACTED] Staff A (Assistant Coach, [REDACTED]), confirmed that Coach McKeever criticized Swimmer X's weight.

We also find by a preponderance of the evidence that Coach McKeever yelled criticisms, including swear words, at Swimmer X during practice on at least a weekly basis, which Swimmer X credibly described and Swimmer Q (Swimmer, [REDACTED]) confirmed. We also find that Coach McKeever specifically called Swimmer X a "piece of shit," which Swimmer X told us and was confirmed by Swimmer Q (Swimmer, [REDACTED]) and Swimmer H (Swimmer, [REDACTED]). Although Coach McKeever denied ever calling a swimmer a "piece of shit," this finding is further supported by the fact that fourteen other witnesses between 2008 and 2022 either personally witnessed Coach McKeever use this phrase or heard from swimmers that Coach McKeever used the phrase. *See supra* n. 229. We also find that Coach McKeever used other personal insults when speaking to Swimmer X, including calling her "slutty," "stupid," and "a bad swimmer and a bad person." Swimmer X credibly described this behavior, and Swimmer X's teammate Swimmer AD (Swimmer, [REDACTED]) confirmed that Coach McKeever called Swimmer X "stupid." The other reported insults ("shitty" and "a bad swimmer and a bad person") are in line with the other phrases Coach McKeever used against Swimmer X.

111 [REDACTED]

Furthermore, we find by a preponderance of the evidence that Coach McKeever told Swimmer X to [REDACTED] when Swimmer X sprained [REDACTED] during a practice. More broadly, we find by a preponderance of the evidence that Coach McKeever regularly kicked Swimmer X out of practice for minor issues, such as [REDACTED] Staff A (Assistant Coach, [REDACTED]) confirmed that Swimmer X was kicked out of practice for [REDACTED]

In regards to comments related to Swimmer X's performance, we find by a preponderance of the evidence that Coach McKeever told Swimmer X that she did not deserve to be at Cal and did not deserve to wear a Cal cap. In addition to Swimmer X's own credible account, this was corroborated by both Swimmer AD (Swimmer, [REDACTED]) and Swimmer W (Swimmer, [REDACTED]) although Swimmer W clarified that she believed this comment was justified because Swimmer X was not willing to put in the effort on a particular set that Coach McKeever wanted her to do. Additionally, we find by a preponderance of the evidence that [REDACTED] Parent of Swimmer X corroborated that Swimmer X told her at the time that Coach McKeever was critical of Swimmer X [REDACTED]

We also find by a preponderance of the evidence that during their last meeting, Coach McKeever said to Swimmer X something to the effect of, "Good, you're done. Don't bother coming back to practice. I never want to see your face again. You are a piece of shit." [REDACTED] Staff A ([REDACTED]), who was present in the meeting, could not confirm the precise wording but corroborated Swimmer X's account that Coach McKeever conveyed this sentiment during the meeting.

We also find by a preponderance of the evidence that Swimmer X was profoundly affected by Coach McKeever's treatment. As confirmed by her mother, the experience had a negative impact on Swimmer X's self-esteem and self-confidence. Swimmer X credibly noted that she almost quit swimming. Her coach at [REDACTED] corroborated this, noting that when Swimmer X saw Coach McKeever at [REDACTED], she panicked [REDACTED]. Although Coach McKeever questioned the genuineness of Swimmer X's reported mental state, Coach McKeever provided no factual basis to support her doing so.

(b) Policy Determinations

A preponderance of the evidence supports a finding that Coach McKeever violated the University's Workplace Bullying Prevention policy by engaging in repeated behavior toward Swimmer X that a reasonable person would find hostile, offensive, and unrelated to the University's legitimate business interests. Specifically, Coach McKeever directed abusive, insulting, and offensive language at Swimmer X, including calling Swimmer X "shitty," "a piece of shit," "stupid," and a "bad person"; swearing at Swimmer X on a weekly basis; regularly commenting on Swimmer X's weight in front of Swimmer X's teammates; berating Swimmer X after she performed well at an early meet; and casting doubt on the genuineness of Swimmer X's pain after Swimmer X [REDACTED]. Coach McKeever also kicked Swimmer X out of practice for trivial issues, like Swimmer X [REDACTED]

We considered the explanation that Coach McKeever and two other swimmers told us that Swimmer X deserved to be criticized because she had a bad attitude, tended to talk back, and just “clashed” with Coach McKeever’s personality. While the University’s policy distinguishes between appropriate coaching and constructive feedback on one hand and persistent or egregious use of abusive, insulting, or offensive language on the other, University policy does not allow one to justify abusive conduct by showing that the recipient of the conduct deserved criticism. The University’s prohibition against abusive conduct applies regardless of whether a swimmer has a “good” or “bad” attitude or gets along with the coach.

10. Swimmer AN (Swimmer, [REDACTED])

Swimmer AN joined the Cal women’s swimming team as a freshman [REDACTED] and left the team [REDACTED] after [REDACTED]. Swimmer AN said that Coach McKeever screamed at swimmers in a belittling way and said things like, “You’re swimming like shit.” Swimmer AN also recalled a time when she missed a recruiting event and Coach McKeever screamed at her something to the effect of, [REDACTED] you’re making the team look horrible and dragging your shit everywhere.” The day after Swimmer AN [REDACTED] Coach McKeever [REDACTED] started yelling at her, calling her [REDACTED]. Coach McKeever asked her if she was even thinking and said it was “the dumbest thing I’ve ever heard.”

[REDACTED] Swimmer AN first told us Coach McKeever called her a “piece of shit” [REDACTED] then later said that Coach McKeever said [REDACTED]

A full account of Swimmer AN’s experience on the team, other witness accounts, and Coach McKeever’s response are included in Section VII.A regarding the allegations of disability discrimination.

(a) Factual Findings

Coach McKeever denied many of Swimmer AN’s allegations. Among other things, Coach McKeever denied knowing that Swimmer AN had epilepsy before Swimmer AN joined the team, denied questioning Swimmer AN’s condition once Coach McKeever became aware of it, claimed she only kicked Swimmer AN out of practice when warranted, and denied calling Swimmer AN – or any other swimmer – a “piece of shit.”

Regarding Swimmer AN’s condition, Swimmer AN acknowledged that she told [REDACTED] Staff K (Assistant Coach, [REDACTED]) about her [REDACTED] and not Coach McKeever. However, it is also undisputed that [REDACTED] Staff F (Athletic Trainer, [REDACTED]) made Coach McKeever aware

²⁷⁶ [REDACTED] Staff F (Athletic Trainer, [REDACTED]) was at the meeting and said Coach McKeever did not call Swimmer AN a “piece of shit,” but Coach McKeever did say that Swimmer AN was not participating, not showing up, and blowing off medical appointments, and Coach McKeever would not do this for three years.

of Swimmer AN's [REDACTED] after Swimmer AN's team physical. We ultimately find that any factual dispute related to when and how Coach McKeever learned about Swimmer AN's [REDACTED] is not consequential to our policy finding. University personnel, including [REDACTED] Staff K, [REDACTED] Staff F, [REDACTED] Staff A (Assistant Coach, [REDACTED]), [REDACTED] Staff L (Academic Advisor, [REDACTED]), and Jim Knowlton (Director of Athletics, 2018-present) corroborated Coach McKeever's account that Swimmer AN struggled with her health and her classes [REDACTED]

Regarding Swimmer AN's experience on the team more generally, the majority of Swimmer AN's teammates who we interviewed corroborated Swimmer AN's account that Coach McKeever regularly targeted Swimmer AN and subjected her to language that humiliated and belittled her, including criticism that was delivered with yelling and insults, and frequently berated Swimmer AN in practice. Three swimmers – Swimmer AT (Swimmer, [REDACTED]), Swimmer Q (Swimmer, [REDACTED]), and Swimmer AD (Swimmer, [REDACTED]) – also confirmed that Coach McKeever publicly questioned Swimmer AN [REDACTED] during practice. Two swimmers – Swimmer X (Swimmer, [REDACTED]) and Swimmer H (Swimmer, [REDACTED]) – said that Swimmer AN told them that Coach McKeever called her a “piece of shit” shortly after the [REDACTED]

Although there are some inconsistencies in Swimmer AN's account, the significant corroboration from her teammates leads us to find that a preponderance of the evidence supports the conclusion that Coach McKeever subjected Swimmer AN to persistent, abusive criticism, that Coach McKeever questioned her medical condition, that Coach McKeever regularly kicked Swimmer AN out of practice for minor infractions, and that Coach McKeever called or referred to Swimmer AN as a “piece of shit.”²⁷⁷

(b) Policy Determination

A preponderance of the evidence supports a finding that Coach McKeever violated the University's Workplace Bullying Prevention policy by engaging in repeated behavior toward Swimmer AN that a reasonable person would find hostile, offensive, and unrelated to the University's legitimate business interests. Specifically, Coach McKeever directed abusive, insulting, and offensive language at Swimmer AN, including referring to Swimmer AN as a “piece of shit” on at least one occasion, berating Swimmer AN on multiple occasions in front of the team, repeatedly kicking Swimmer AN out of practice for minor infractions, and casting doubt on the genuineness [REDACTED]

While we find that Swimmer AN struggled with both her academics and her health while at Cal and credit that Coach McKeever at times—particularly early in the season—sought to support and help Swimmer AN, a preponderance of the evidence supports that Coach McKeever's conduct toward Swimmer AN, as detailed above, did not serve any legitimate business interest for the University. Berating Swimmer AN in front of her teammates, publicly (or privately) casting doubt on [REDACTED], and calling Swimmer AN (or any

²⁷⁷ This finding is further supported by the fact that fourteen other swimmers between 2008 and 2022 either personally witnessed Coach McKeever use this phrase or heard from swimmers that Coach McKeever used the phrase. See *supra* n.229.

swimmer) a "piece of shit" cannot reasonably be construed as legitimate performance appraisals or constructive feedback.

We considered the explanation that Coach McKeever and certain other swimmers gave—that Swimmer AN deserved to be criticized because she was not showing up to practice, not performing well, and was not taking care of her health, including by going to parties. While the University's policy distinguishes between appropriate coaching and constructive feedback on one hand and persistent or egregious use of abusive, insulting, or offensive language on the other, University policy does not allow one to justify abusive conduct by showing that the recipient of the conduct deserved criticism. The University's prohibition against abusive conduct applies regardless of whether a swimmer is performing well.

11. Swimmer P (Swimmer, [REDACTED])

Swimmer P joined the Cal women's swimming program as a freshman [REDACTED] and swam [REDACTED]. She transferred to [REDACTED]. Swimmer P described intense targeting for criticism by Coach McKeever during her [REDACTED] at Cal. She said that she worked hard to train and improve [REDACTED] and came back as one of Coach McKeever's preferred athletes her junior year. Despite the change in Coach McKeever's treatment of her, she continued to empathize with those she saw as targeted by Coach McKeever.

(a) Allegations Regarding [REDACTED] Targeting for Sustained Verbal Abuse

Swimmer P said she chose Cal for the opportunity to train under a female head coach and for the potential to be part of an NCAA championship team. Swimmer P said she struggled early on, and swimming was the most difficult thing in her life. Swimmer P said she thought there was something wrong with her because she was yelled at daily by Coach McKeever for not putting in sufficient effort, looking tired, or not listening, which caused anxiety the night before meets, as well as panic attacks, which she had never previously experienced. Swimmer P did breathing exercises to go to sleep but experienced anxiety when she awoke, in anticipation of going to practice. She walked on eggshells during practice and felt only momentary reprieve when practice ended. Swimmer P could not focus during class, even though she had previously been a motivated student. She felt she had lost her identity. She called her mother every day after practice to tell her she did not want to be there anymore. At the time, she thought this was normal for collegiate athletics.

Swimmer P did not know why she was targeted, but she speculated that it was because she was a people-pleaser, which Coach McKeever saw as a weakness. Coach McKeever often stopped Swimmer P at practice and yelled at her and told her she was not trying. At first, this just felt like coaching, but when Swimmer P did change or try harder, nothing changed with Coach McKeever. Swimmer P said that Coach McKeever's tone was scary and felt like personal animosity. One time at the end of practice, Coach McKeever told Swimmer P that she was sandbagging a workout, meaning waiting till the end to try, which Swimmer P believed was untrue and made her feel not seen. Another time, Coach McKeever suddenly kicked Swimmer P

out of practice after scolding her for looking tired. This was the first time Swimmer P had ever been kicked out of practice. Swimmer P felt she had not done anything wrong and felt like Coach McKeever just did not want her there anymore. Another time when Swimmer P was kicked out of practice for making a mistake during a set, Swimmer DE (Swimmer, [REDACTED]) told Swimmer P after practice that Swimmer DE had made a similar mistake and Coach McKeever did not say anything.

When Coach McKeever was particularly frustrated, she called Swimmer P a "piece of shit" and said, "What the fuck are you doing." Swimmer P also recalled a time at the end of one practice, when Coach McKeever said if she were Swimmer P's teammate, she would be "fucking pissed" because Swimmer P waited until the end of the set to start trying. When Swimmer P responded that she had been trying, Coach McKeever said that she was not trying and that she "looked terrible." Swimmer P said Coach McKeever yelled at her after every race during her first two years.

Swimmer P said that, with respect to some swimmers, Coach McKeever said they were not paying attention to the details or did not deserve to be there, but other swimmers did the same thing and Coach McKeever did not criticize them. Swimmer P believed that who Coach McKeever chose to criticize was based on who Coach McKeever liked as a person. Swimmer P said that when someone like Swimmer AJ (Swimmer, [REDACTED]) or Swimmer W (Swimmer, [REDACTED]) spoke up for themselves, Coach McKeever did not yell at them – whereas she did if others spoke up for themselves.

Swimmer P talked to Swimmer DF (Swimmer, [REDACTED]) for about an hour during a pre-NCAA practice about Swimmer P's experience that year. Swimmer DF asked if Swimmer P was the "freshman bitch" of the year and told her it was a known pattern that one freshman was harped on every year by Coach McKeever. Swimmer DF told Swimmer P that Swimmer DG (Swimmer, [REDACTED]) responded to similar treatment by putting her head down and working harder, which paid off. Swimmer P then reached out to her high school sports psychologist. Based on her conversation, Swimmer P concluded Coach McKeever went beyond negative coaching into the realm of personal attacks. Swimmer P told her psychologist that she wanted to remain at Cal, however, because this had been a dream of hers for so long and transferring meant letting Coach McKeever win. Swimmer P also talked to Swimmer CI (Swimmer, [REDACTED]) and Swimmer BU (Swimmer, [REDACTED]) at the end of her freshman year, who encouraged her to stay for the good of the team as a whole. Swimmer P started talking to [REDACTED] Staff Y (Berkeley Counseling and Psychological Services, [REDACTED]). [REDACTED] Staff Y told Swimmer P he had met with several of Coach McKeever's swimmers and understood how she was with people. That made Swimmer P think that Coach McKeever's behavior was all normal. [REDACTED] Staff Y did not diagnose her [REDACTED]. Swimmer P went home for the summer and worked hard to improve.

(b) Sophomore Year Illness

At the beginning of Swimmer P's [REDACTED] year, there was an [REDACTED] that left Swimmer P bedridden [REDACTED] for [REDACTED] days. The Athletics Department trainers at first thought she might just be having [REDACTED] and approved

her attending a retreat [REDACTED], but she ended up having to leave early because her symptoms got worse. When Swimmer P told Coach McKeever she had [REDACTED], Coach McKeever asked why she had attended the retreat. Swimmer P said that the doctors had approved it. Coach McKeever told her that she put her teammates at risk, and Swimmer P apologized. Swimmer P had a severe case; [REDACTED]

Swimmer P returned in time for the team's first meet against [REDACTED] but had not been able to train much prior to the meet. Coach McKeever yelled at Swimmer P at the practice after the meet, said she was swimming slowly, asked what was wrong with her, and suggested she was not trying. Swimmer P said she was not in her best shape because she had been bedridden for [REDACTED] days. Coach McKeever told her that she and [REDACTED] Staff D (Team Consultant, [REDACTED]) had noticed that Swimmer P did not look very good on deck. Coach McKeever then said to Swimmer P, "You're fat, your clothes don't really fit you, do they?" Swimmer P was caught off guard and very embarrassed. Coach McKeever told her to get back into the workout and keep going. No one had said anything like this to Swimmer P before, as she has always been in good shape. Coach McKeever also told her that she probably should not eat a cinnamon roll later; the rest of the team had them. Although people saw her getting yelled at for an extended period, Swimmer P was too embarrassed to share what Coach McKeever said.²⁷⁸

(c) *Sophomore Year [REDACTED] Injury*

The next week [REDACTED], the team had a two-day meet at [REDACTED]. Swimmer P finished the race and, when she pulled her [REDACTED] out of the water, it was bleeding profusely. Coach McKeever suggested it was just a cramp, but when the [REDACTED] trainers helped Swimmer P to a table, she saw that the left side of her [REDACTED] was so shredded that the bone was visible. Coach McKeever said, "Oh shit, it's not a cramp," and came over to Swimmer P. The trainers put hydrogen peroxide on it and Coach McKeever told Swimmer P they had to leave, so Swimmer P had it wrapped. Back at Berkeley, Swimmer P went to urgent care by herself and received a tetanus shot and stitches. She could not get the stitches in her [REDACTED] wet for six to eight weeks. When Swimmer P told Coach McKeever that evening that she could not swim for several weeks, Coach McKeever was frustrated and not sympathetic. Eventually, Swimmer P got a cast cover on her [REDACTED] that enabled her to resume swimming.

(d) *Sophomore Year [REDACTED]*

On Swimmer P's first day back from her [REDACTED] injury, she was [REDACTED]. Swimmer P is [REDACTED]. Coach McKeever was already frustrated with Swimmer P's performance that day and, when she got out of the pool, Coach

²⁷⁸ The following year, [REDACTED] Coach McKeever said, "Actually, now you look really good, I can tell you've lost weight, you're skinnier." Swimmer P is still mindful of her weight because of these interactions with Coach McKeever.

McKeever asked her “what the fuck” she was doing. Swimmer P told her she was sorry, but she [REDACTED]. Coach McKeever asked her “what the fuck” Swimmer P wanted Coach McKeever to do about it, while backing away from Swimmer P with her hands raised in the air. Swimmer P said this was one of Coach McKeever’s common responses to a surprising situation. While Swimmer P attempted to treat [REDACTED], Coach McKeever asked Swimmer P about her gear, which was still on deck, and one of Swimmer P’s teammates promised to take care of it. Swimmer P used the [REDACTED] and the team’s trainer at the time, [REDACTED] Staff P [REDACTED] drove Swimmer P to the Tang Center. Swimmer P then used a [REDACTED] at the Tang center, had a panic attack, and was kept there for six hours because she was slow to recover. She spent that time worried about missing afternoon practice and told the medical staff she needed to update her coach. The Tang Center eventually called an ambulance that took Swimmer P to the emergency room for medication and monitoring. [REDACTED] [REDACTED] picked her up and got her dinner. Swimmer P called Coach McKeever and said she did not feel well enough to make it to the team meeting that evening, which was non-substantive and involved the teammates throwing around stuffed animals. Coach McKeever responded, “Okay, I just want you to know you haven’t been very present on the team recently and that’s on you, that’s your fault. I can’t force you to come, but you should come.”

Coach McKeever told Swimmer P she could not come to the upcoming meet [REDACTED] because Swimmer P had been so absent. While the team was away, Swimmer P met with [REDACTED] Staff N ([REDACTED] Physician, [REDACTED]). He told Swimmer P that other staff had concerns about her mental health, so he was going to do an assessment. The assessment showed that Swimmer P had severe depression and anxiety. Before this, she had been struggling mentally and wrote a letter during a class when she was having a panic attack in which she described what she was grateful for generally and liked about swimming.²⁷⁹ Swimmer P kept the note folded up on her wall the rest of her time at Cal because to her, it represented her in survival mode.

(e) [REDACTED] *Swimmer P’s Final Two Years*

[REDACTED] [REDACTED] By the start of Swimmer P’s junior year, she was in very good shape and had lost weight. Swimmer P dropped time for the first time in five years and continued to improve. [REDACTED] Swimmer P was recognized often by her teammates for having figured out how to succeed in the Cal program; [REDACTED] [REDACTED] [REDACTED]

²⁷⁹ Ex. 170 [CALINT-000525].

Swimmer P felt accomplished and motivated, and her relationship with Coach McKeever improved. Swimmer P believed Coach McKeever's targets for harsh criticism and scrutiny became Swimmer F (Swimmer, [REDACTED]), Swimmer AN ([REDACTED]), Swimmer H (Swimmer, [REDACTED]), Swimmer T (Swimmer, [REDACTED]), and Swimmer G (Swimmer, [REDACTED]). Coach McKeever often asked Swimmer P, "what the fuck is wrong" with those swimmers and made statements like "they don't get it" and "they don't deserve to be here." Swimmer P defended them, but that made Coach McKeever annoyed with her, so Swimmer P felt like she had to agree with what Coach McKeever wanted her to say.

(f) Reporting of Issues

During Swimmer P's exit interview with Senior Associate Athletics Director Jennifer Simon-O'Neill and Jim Knowlton (Director of Athletics, 2018-present) [REDACTED], she reported Coach McKeever's behaviors over the prior four years. Before the exit interview, Swimmer P drafted a set of talking points.²⁸⁰ Swimmer P said that Knowlton did not take notes but did ask what they could work on to improve and asked why these issues were not brought up sooner. Swimmer P explained in response that they believed that Simon-O'Neill had a conflict of interest based on her travel with the team and personal relationship with Coach McKeever. Swimmer P also explained that the team had discussed these issues with the athletic trainer, [REDACTED] Staff F (Athletic Trainer, [REDACTED]), and then had been yelled at by Coach McKeever. Knowlton responded that [REDACTED] Staff F's role was that of trainer, not sports psychologist. Swimmer P pointed out that there was only one sports psychologist, [REDACTED] [REDACTED] for all athletes at Cal.²⁸¹

After that exit interview, when Swimmer P and Swimmer DH (Swimmer, [REDACTED]) went to pick up their [REDACTED] awards, Coach McKeever confronted Swimmer P about talking to Knowlton and Simon-O'Neill. Coach McKeever gave Swimmer DH her award but did not have Swimmer P's award. Coach McKeever told Swimmer P that Swimmer P probably thought that was on purpose. After Swimmer DH left, Coach McKeever told Swimmer P that she would have appreciated it if Swimmer P had brought her issues to Coach McKeever before talking to Knowlton and Simon-O'Neill. Coach McKeever said she had never felt supported by Swimmer P and that Swimmer P had turned her back on the program the past couple months, which Swimmer P surmised was because she did not attend practice often after the NCAA championships. Coach McKeever said that Swimmer P had never cared for her even though she always had Swimmer P's best interests in mind. During this conversation, Coach McKeever was loud and looked like she was shaking with anger. Coach McKeever said it was pathetic that Swimmer P tried to get Coach McKeever to like her, so Swimmer P started to cry and said that she wanted to have a relationship with which they could both be happy. Coach McKeever said that never happened. Swimmer P saw Coach McKeever the next day in the nail salon and was surprised by Coach McKeever's warm and friendly greeting.

²⁸⁰ Exs. 171-172 [CALINT-000809-810].

²⁸¹ Following this meeting, Simon-O'Neill reported to the University's Office for the Prevention of Harassment and Discrimination that Swimmer P had reported that Coach McKeever had called her "fat."

(g) *Other Witness Accounts*

(i) Parent of Swimmer P's Account

Parent of Swimmer P said that she learned early on that there was not an open line of communication between Swimmer P and Coach McKeever. Parent of Swimmer P said that often when Swimmer P called, she cried, which was historically abnormal for Swimmer P. At the end of Swimmer P's freshman year, a [REDACTED], Swimmer BU (Swimmer, [REDACTED]) told Parent of Swimmer P that every year Coach McKeever chooses a swimmer to pick on and this year it was Swimmer P. Parent of Swimmer P sensed that her own involvement would only make things worse for Swimmer P and did not ask Swimmer P if she should talk to Coach McKeever.

Parent of Swimmer P said that Swimmer P's sophomore year involved one mishap after another. She said that, after Swimmer P injured her [REDACTED], Coach McKeever said to Parent of Swimmer P, "You might want to go take care of your kid," like it was an inconvenience for Swimmer P to get injured. Parent of Swimmer P said that she heard from Swimmer P that Swimmer P was on the receiving end of significant negativity, including being called "fat," and that Swimmer P had to go on medication for her mental health.

Parent of Swimmer P said that Swimmer P thrived [REDACTED], culminating in her [REDACTED] award. Parent of Swimmer P also said that Coach McKeever pushed swimmers to only look out for themselves. For example, Swimmer P offered to help less experienced swimmers and Coach McKeever responded that doing so was a waste of time. Parent of Swimmer P thought that some of the people who were not targeted were people for whom Coach McKeever had low expectations. Parent of Swimmer P said that Coach McKeever took away from Swimmer P the joy of swimming, but that joy returned during Swimmer P's [REDACTED] year [REDACTED] at the [REDACTED]. Swimmer P, however, never wants to see Coach McKeever again, a sentiment that Parent of Swimmer P has never seen before in her daughter.

(ii) Other Swimmers

Other swimmers we spoke with believed that Swimmer P was targeted by Coach McKeever for criticism and scrutiny.

Swimmer Q (Swimmer, [REDACTED]) said that, less than a week after older swimmers on the team told her that Coach McKeever always picked one person to go after all year, Coach McKeever started targeting Swimmer P for criticism. Swimmer Q said Coach McKeever criticized Swimmer P for minor things, like how Swimmer P used a snorkel. According to Swimmer Q, Coach McKeever called Swimmer P "fat" on multiple occasions and said that her clothes did not fit properly.

Swimmer AU (Swimmer, [REDACTED]) said that Swimmer P was not the strongest swimmer and that, at a [REDACTED] swim meet, Coach McKeever started screaming at Swimmer P and brought up Swimmer P's body size. Swimmer AU said that Swimmer P was picked on the most during their freshman year.

Swimmer K (Swimmer, [REDACTED]) heard from Swimmer S (Swimmer, [REDACTED]) that Swimmer P had it really tough during her freshman year and that Coach McKeever was very hard on her.

Swimmer AT (Swimmer, [REDACTED]) said that Coach McKeever targeted Swimmer P for constant criticism, causing her anxiety and forcing her to go on medication. Swimmer AT said that she and Swimmer P bonded over having a similar experience with Coach McKeever. Swimmer AT said that Coach McKeever also made comments about Swimmer P's weight.

[REDACTED] Staff A (Assistant Coach, [REDACTED]) heard that Swimmer P was picked on a lot her freshman year, which was the year before [REDACTED] Staff A arrived. She was not aware of Coach McKeever calling Swimmer P fat. [REDACTED] Staff A recalled that Swimmer P had a lot of issues at the beginning of her sophomore year and Coach McKeever was exasperated with her. [REDACTED] Staff A was aware Swimmer P struggled during that time period and talked to Swimmer P about it shortly after [REDACTED] Staff A's contract was not renewed [REDACTED]

One swimmer told us that Swimmer P was not subjected to inappropriate conduct. Swimmer AJ (Swimmer, [REDACTED]) said that she never saw Coach McKeever engage in abusive or inappropriate conduct, but she said that Swimmer P was one of the swimmers who got more attention from Coach McKeever her freshman year.

(h) Coach McKeever's Response

After the [REDACTED] [REDACTED] Swimmer P and several others stopped speaking with Coach McKeever. Coach McKeever said that in a conversation with Swimmer P [REDACTED], when Swimmer P picked up her [REDACTED] Award, Coach McKeever apologized that Swimmer P did not feel good about the year. Coach McKeever thought that senior exit interviews happened before the meeting with Swimmer P, but no one told Coach McKeever the content of the senior exit interviews. Swimmer P responded that she had had a horrible experience and Coach McKeever became very emotional but did not yell or raise her voice. Swimmer P cried, but Coach McKeever said that Swimmer P cried very easily. Coach McKeever's perception was that Swimmer P cried because she was sharing something emotional, not because of something Coach McKeever did. Coach McKeever was upset in part because she and Swimmer P had a very good relationship, and she was very proud of Swimmer P's career. [REDACTED] Swimmer P [REDACTED] someone who struggled but then found herself and moved into a leadership position.

Coach McKeever said that Swimmer P, Swimmer K (Swimmer, [REDACTED]) Swimmer V (Swimmer, [REDACTED]) and Swimmer Q (Swimmer, [REDACTED]) often complained about the freshmen not getting on board. At some point, around January or February, Coach McKeever instructed them to worry about themselves, take care of themselves, and explained that their job is not to worry about other people. Coach McKeever said that she became upset recently regarding Swimmer P, because she at one point thought that Swimmer P took what the Cal environment had to offer and achieved her goals. Coach McKeever said that she stood behind Swimmer P's back [REDACTED] in her academic and athletic goals.

Coach McKeever described Swimmer P as incredibly anxious and uncomfortable in her own skin freshman year. Swimmer P decided to work on her anxiety and depression, and her performance, as a result, got better. Coach McKeever said that Swimmer P wanted to blame her poor performance on other people until she did the hard work. Coach McKeever speculated that swimmers who live together will share Swimmer P's perception that she was targeted.

Regarding Swimmer P's weight, Coach McKeever denied calling Swimmer P "fat." According to Coach McKeever, she probably said that Swimmer P could improve her performance by losing weight. Swimmer P had asked her for advice, so Coach McKeever responded that her weight gain was slowing her down. Swimmer P did lose weight and Coach McKeever said that she probably congratulated her after. Coach McKeever recalled Swimmer P struggling for two years, performance-wise, losing a little weight, working hard, including on her mental health, and then doing a great job.

(i) Factual Findings

The preponderance of the evidence supports that, for Swimmer P's first two years on the team, Coach McKeever regularly yelled at and berated Swimmer P, including accusing her of not putting in sufficient effort and calling Swimmer P a "piece of shit," kicked Swimmer P out of practice simply for looking tired, and called Swimmer P "fat." Swimmer P's account was corroborated by a number of witnesses. Swimmer P's teammates Swimmer Q (Swimmer, [REDACTED]), Swimmer AU (Swimmer, [REDACTED]), and Swimmer AT (Swimmer, [REDACTED]) observed that Coach McKeever quickly targeted Swimmer P for harsh treatment when Swimmer P was a freshman. Both Swimmer Q and Parent of Swimmer P confirmed that Swimmer P told them that Coach McKeever called Swimmer P "fat." Coach McKeever denied calling Swimmer P "fat" but herself acknowledged that she told Swimmer P, in response to Swimmer P asking for advice, that Swimmer P could improve her performance by losing weight.

The preponderance of the evidence also supports that Coach McKeever's treatment of Swimmer P contributed to or worsened Swimmer P's anxiety and depression. As Swimmer P described, the criticism from Coach McKeever was particularly stressful because Swimmer P felt like there was nothing she could do to make it better. Coach McKeever criticized Swimmer P for not trying hard enough but when she tried harder, nothing changed. This led Swimmer P to believe Swimmer P was the problem, and she dreaded going to practice. Parent of Swimmer P confirmed that Swimmer P often called Parent of Swimmer P during her freshman and sophomore years and discussed her difficulties with Coach McKeever. Parent of Swimmer P told us that Swimmer P often broke down crying during these calls, which was unusual for Swimmer P.

(ii) Policy Determination

A preponderance of the evidence supports a finding that Coach McKeever violated the University's Workplace Bullying Prevention policy by engaging in repeated behavior toward Swimmer P that a reasonable person would find hostile, offensive, and unrelated to the University's legitimate business interests. Specifically, during Swimmer P's first year and a half on the team, Coach McKeever frequently subjected Swimmer P to harsh criticism that was

unduly personal in nature, including berating Swimmer P and criticizing her effort, calling her a “piece of shit,” kicking her out of practice, and commenting on her weight.

Coach McKeever acknowledged that Swimmer P had a “difficult” time during her first couple of years on the team but attributed that to Swimmer P’s own anxiety. However, as noted above, the preponderance of the evidence supports that although Coach McKeever may not have been the sole cause of Swimmer P’s anxiety and depression, it was a factor. We find that the constant criticism Swimmer P faced went beyond appropriate providing constructive feedback and was instead persistent and egregious use of abusive and insulting language.

12. Swimmer H (Swimmer, ██████████)

Swimmer H joined the Cal women’s swimming program in ██████████ and left Cal in ██████████. Swimmer H said that Coach McKeever yelled not just to be heard but yelled *at* people, using profanity and calling people names. Swimmer H felt that Coach McKeever yelled at her or put her down daily. Swimmer H said that Coach McKeever called her “worthless” and a “waste of space” and said she did not work hard enough. Swimmer H said that Coach McKeever said the worst things that anyone has ever said to her, and told her she was not skinny enough to have ██████████. She said that being on Coach McKeever’s “shit list” was very isolating because her teammates felt they needed to distance themselves from Swimmer H. She was also afraid to go to practice each day.

A full account of Swimmer H’s experience on the team, other witness accounts, and Coach McKeever’s response are included in Section VII.B regarding allegations of disability discrimination.

(a) *Factual Findings*

As detailed above in Section VII.B.6, we find that a preponderance of the evidence supports the conclusion that Coach McKeever repeatedly expressed skepticism about the genuineness of Swimmer H’s ██████████ diagnosis, belittled and doubted her expressions of pain, and suggested Swimmer H was “too fat” to have ██████████ both in talking to Swimmer H directly and when talking about Swimmer H with others. Both Swimmer H and many of her teammates, including Swimmer Q (Swimmer, ██████████), Swimmer T (Swimmer, ██████████), Swimmer AU (Swimmer, ██████████), and Diver B (Diver, ██████████), confirmed that Coach McKeever was harsh with Swimmer H and pressured her to continue swimming through pain. Coach McKeever herself admitted saying to Swimmer H – albeit before Swimmer H’s ██████████ diagnosis (but sometime before she needed ██████████) – “no one ever died from ██████████ pain.”

██████████ Staff F (Athletic Trainer, ██████████) told us that Coach McKeever’s comments about Swimmer H’s ██████████ were misconstrued and that Coach McKeever was just pointing out that because Swimmer H had not seen specialists at Cal, there was not enough information to know if Swimmer H had ██████████. But ██████████ Staff F was not present during many of the conversations that Swimmer H, Swimmer Q, Swimmer T, and Swimmer AU told us about. We also do not find a meaningful difference between questioning the genuineness of Swimmer H’s diagnosis and saying there is not enough information to confirm it. A July ██████████ email from

Coach McKeever to [REDACTED] Staff F – noting “If she [Swimmer H] can’t swim then let’s make her run, spin, etc. Let’s make the alternative more uncomfortable than swimming and if she can’t do it then she can move on”²⁸² – is additional evidence that Coach McKeever was skeptical of Swimmer H’s pain and was willing to force her to train despite her pain, to the point of pushing her off the team.

We also find by a preponderance of the evidence that Swimmer H was frequently subject to Coach McKeever’s verbal tirades. A number of swimmers observed that Swimmer H was the subject of Coach McKeever’s yelling and criticism. And Parent of Swimmer H confirmed that Coach McKeever yelled at Swimmer H when Swimmer H was in the car returning home over the summer, as instructed by the team physician, [REDACTED] Staff N (Associate Team Physician, [REDACTED]).²⁸³

A preponderance of the evidence further supports that when Swimmer H returned to the team after a suspension in the Fall of [REDACTED] she was subject to frequent and persistent criticism. Coach McKeever criticized Swimmer H’s swimming, said she would never be good enough to swim at Cal, and was worthless and a waste of scholarship resources. In addition to Swimmer H reporting this conduct, much of it was confirmed by Swimmer AT (Swimmer, [REDACTED]).

Coach McKeever and some of Swimmer H’s teammates told us that Swimmer H regularly missed medical appointments, secretly [REDACTED], attended parties and drank alcohol [REDACTED], and did not communicate effectively with Coach McKeever. Some of Swimmer H’s teammates viewed Swimmer H and her commitment to swimming unfavorably. As discussed below, we find those facts do not excuse Coach McKeever’s conduct. Similarly, although multiple people reported to us that Swimmer H also experienced difficulties when she transferred [REDACTED],²⁸⁴ we find that Swimmer H’s experience at [REDACTED] is not relevant to our findings regarding Coach McKeever’s conduct at Cal.

(b) Policy Determination

A preponderance of the evidence supports a finding that Coach McKeever violated the University’s Workplace Bullying Prevention policy by engaging in repeated behavior toward Swimmer H that a reasonable person would find hostile, offensive and unrelated to the University’s legitimate business interests. Specifically, Coach McKeever repeatedly questioned the genuineness of Swimmer H’s [REDACTED] diagnosis and belittled her pain, suggested Swimmer H was “too fat” [REDACTED], pressured Swimmer H to continue swimming despite pain and repeatedly yelled at Swimmer H regarding her condition, her ability to swim, and other issues.

²⁸² Ex. 35 [CALINT-000740].

²⁸³ A contemporaneous email from Coach McKeever confirms that she was “pisse[d]” about Swimmer H leaving campus, even though she was instructed to do so by [REDACTED] Staff N. Ex. 68 [CALINT-000742].

²⁸⁴ Swimmer AX (Swimmer, [REDACTED]); [REDACTED] Staff N ([REDACTED]) Assistant Coach, [REDACTED]).

We considered the explanation that Coach McKeever and other swimmers told us – essentially, that Swimmer H invited or deserved Coach McKeever’s harsh treatment because she was not following Coach McKeever’s instructions regarding how to treat [REDACTED] and was not sufficiently dedicated to the team. While the University’s policy distinguishes between appropriate coaching and constructive feedback on one hand and persistent or egregious use of abusive, insulting, or offensive language on the other, University policy does not allow one to justify abusive conduct by showing that the recipient of the conduct deserved criticism. Swimmer H’s inability or unwillingness to follow Coach McKeever’s advice or instructions did not justify Coach McKeever’s conduct. The University’s prohibition against abusive conduct applies regardless of whether a swimmer has a “good” or “bad” attitude or gets along with the coach.

13. Swimmer AT (Swimmer, [REDACTED])

Swimmer AT joined the Cal women’s swimming program as a freshman [REDACTED] and swam for [REDACTED]. Swimmer AT believed that she was targeted by Coach McKeever for yelling and criticism at the start of her time at Cal because of her anxiety.

(a) *Anxiety Attack*

Swimmer AT said that her anxiety issues began during the freshman year fall retreat, when she was encouraged to share something personal about herself. During the retreat, Swimmer AT shared that she experienced anxiety and outsider syndrome. Publicly sharing that experience at the retreat triggered her anxiety. A couple of months later, in [REDACTED], Swimmer AT’s heart rate rose to a resting level of [REDACTED] while she lay in bed before practice. This was uncommon for Swimmer AT and was caused by her diagnosed anxiety, triggered by her fear of going to the pool. Swimmer AT emailed the trainer, [REDACTED] Staff F, and contacted a psychologist at the Tang Center. After contacting help, Swimmer AT emailed Coach McKeever to update her that Swimmer AT’s heart rate was elevated, she did not feel well, but that she was still coming to practice.²⁸⁵

Coach McKeever pulled Swimmer AT aside at practice and asked in a judgmental tone what her email meant. Swimmer AT explained that her breathing felt heavy, and it was hard to get air into her lungs. Coach McKeever responded by telling her that her chest was not actually caving in and calling her “immature.” Coach McKeever lectured Swimmer AT that it was unfair to send a cryptic email and that it showed immaturity to expect people to drop everything for her. Swimmer AT began sobbing and explained that she had just been trying to send an update and to get help. Coach McKeever told her to stop sobbing, which she called embarrassing, and then said, “Your parents did a shitty job getting you the obvious help you needed.” Coach McKeever also said it was ridiculous to not expect anxiety in college. Coach McKeever asked if Swimmer AT’s anxiety had anything to do with her weight gain. She said that Swimmer AT’s weight gain was obvious and “made her look like a [REDACTED] little girl in the pool.” Coach McKeever suggested Swimmer AT see a nutritionist and made Swimmer AT leave the pool deck. According to Swimmer AT, everyone on the pool deck could hear this conversation. Swimmer AT left, emailed a nutritionist as she walked out, and immediately went to see that nutritionist. Swimmer

²⁸⁵ Ex. 173 [CALINT-000803].

AT did not say anything about Coach McKeever to the nutritionist. The nutritionist said that everything that Swimmer AT already was doing was right.

For the next week, Coach McKeever did not look at or talk to Swimmer AT. Swimmer AT was the fastest breaststroke swimmer on the team, but Coach McKeever had Swimmer AT swim in exhibitions for all of her swims, meaning she could not score points for the team. Coach McKeever did not say why and did not talk to her. Swimmer AT kept a diary of these events, as well as emails.²⁸⁶

(b)

In [REDACTED], the [REDACTED] Fire directly affected Swimmer AT's family's home and a dozen of Swimmer AT's friends' homes. Swimmer AT's parents evacuated, and their house almost burned. Swimmer AT informed Coach McKeever of the situation while crying before practice. Coach McKeever questioned whether the fire was close to her home and forced Swimmer AT to pull up the fire map to show her. Coach McKeever then asked if her family was alright. Swimmer AT said yes, and Coach McKeever told her to not think about it and focus on the workout, which Swimmer AT could not do. After the workout, Coach McKeever yelled at Swimmer AT for not being able to compartmentalize, saying she was "making a mountain out of a molehill," and that worrying would not help. Swimmer AT described this as Coach McKeever's insensitivity to separating life from swimming.

(c) *Choose Your Death Workout*

Swimmer AT described a workout, called "choose your death," where a swimmer chose two sets from a list of three or four set options written on a board. Swimmer AT chose a mid-distance, free-style set, which was a little outside her comfort zone. Swimmer AT and Swimmer AW (Swimmer, [REDACTED]) did the set, and this particular set was Swimmer AW's niche, so Swimmer AW did significantly better than Swimmer AT did. Coach McKeever stopped the set and yelled at Swimmer AT for choosing the wrong set. Coach McKeever said that Swimmer AT was taking away from Swimmer AW's ability to perform. After the workout, Coach McKeever pulled Swimmer AT aside and said, if Swimmer AT continued making "shit decisions," then she should not go on the [REDACTED] trip in a week, as it would be a waste of time, even though Swimmer AT had already paid for the [REDACTED] trip. Ultimately, Swimmer AT went to [REDACTED]

(d) *Pac-12 and NCAA Championships*

Swimmer AT said that the targeted criticism continued, and Coach McKeever did not talk to Swimmer AT at the Pac-12 and NCAA championships. Swimmer AT swam in [REDACTED] in the preliminary and final heats at the NCAA championships. Following the preliminary race, without checking the splits, Coach McKeever grabbed Swimmer AT and asked, "How dare you swim like that?" Swimmer AT asked what she did, and Coach McKeever replied that Swimmer AT swam a time of [REDACTED], when Swimmer AT had been consistently swimming [REDACTED]. Swimmer AT said that if she had swum a [REDACTED], the feedback would have made sense, but she did swim a

²⁸⁶ Ex. 174 [CALINT-000804]. We have not viewed Swimmer AT's diary, but Swimmer AT recalled specific dates of events based on her diary entries.

[REDACTED], which she later discovered. Coach McKeever said Swimmer AT was an embarrassment to the team for going so slowly and the reason they almost missed the finals. [REDACTED] Swimmer AT's teammates were present, and Swimmer AT remembered that Swimmer CV (Swimmer, [REDACTED]) and Swimmer V (Swimmer, [REDACTED]) talked about it with her after the event. They said they knew Swimmer AT swam a time of [REDACTED]. When Coach McKeever figured out her mistake, her response was, "Oh. Okay."

(e) Transfer Attempt

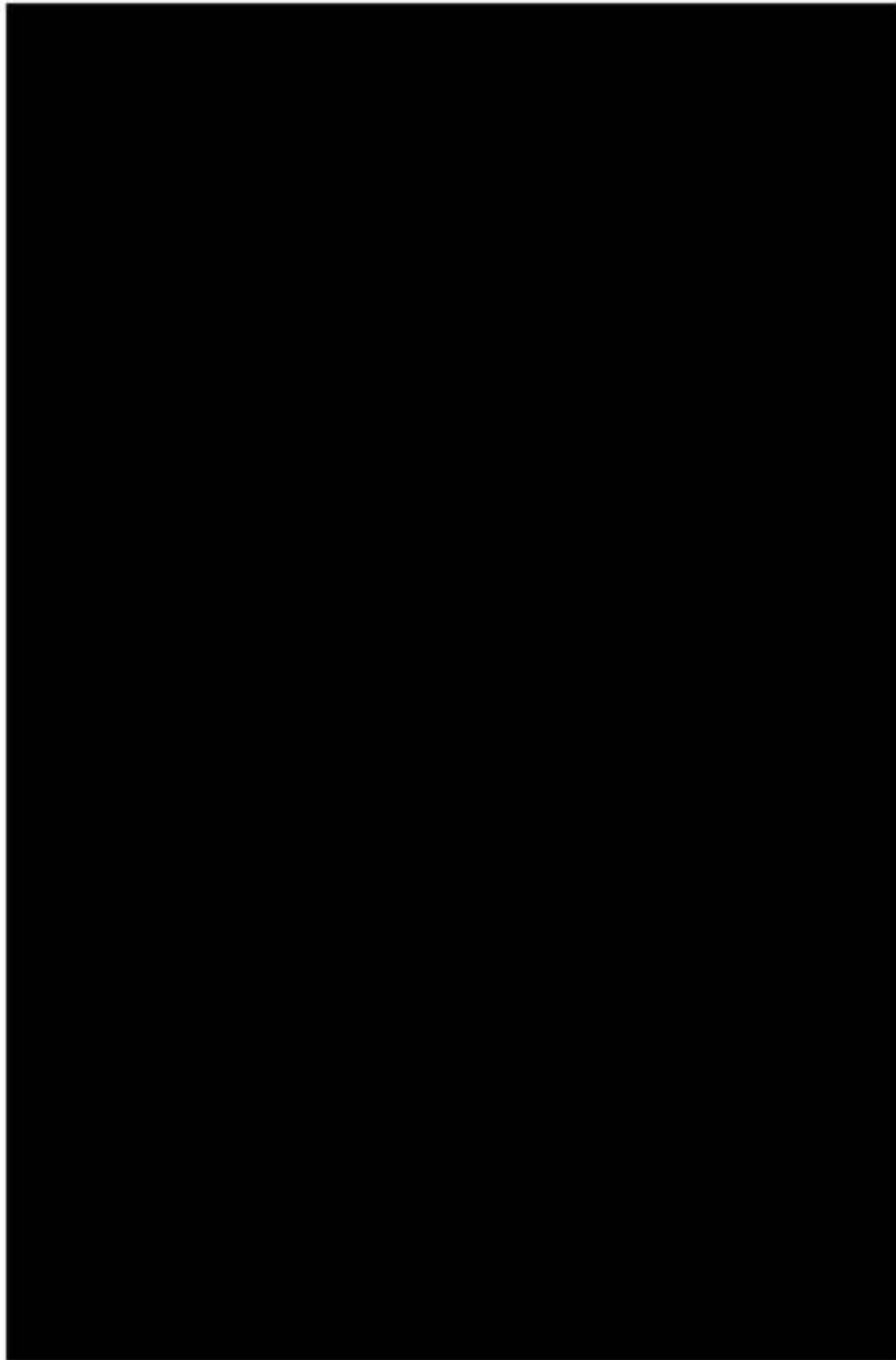
After the NCAA championships, Swimmer AT emailed Coach McKeever and asked about options for transferring to a different college. Swimmer AT then met with Coach McKeever during practice. The meeting lasted for two hours, during which Coach McKeever yelled at Swimmer AT for an hour and a half. Coach McKeever called Swimmer AT a waste of space, time, and energy and suggested that Swimmer AT was part of reason the team finished [REDACTED] at the NCAA championships. Swimmer AT recalled that she responded that she felt bullied by the swimmers on the team and by Coach McKeever (Swimmer AT told us that Swimmer AH (Swimmer, [REDACTED]) screamed at her for small things like putting in lane lines, saying "You're so inept. Why are you here. "). Coach McKeever replied by defending everyone else and saying that Swimmer AT should have stood up for herself sooner. Coach McKeever threatened to not sign off on a transfer and force Swimmer AT to stay at Cal and pay for her own school. The office window was open and Swimmer V (Swimmer, [REDACTED]) told Swimmer AT that she and the team heard everything Coach McKeever said.

Swimmer AT said that the last thing she wanted to do was leave, as she had dreamed of attending Cal her whole life. For the last thirty minutes, the conversation became calmer, with both Coach McKeever and Swimmer AT crying. Coach McKeever said she could have been better at helping Swimmer AT address her anxiety but said Swimmer AT needed to [REDACTED] see a real psychologist outside of the Tang Center. Swimmer AT believes that Coach McKeever did not want her to transfer because she needed Swimmer AT's [REDACTED] ability. Swimmer AT started [REDACTED] seeing a therapist. When Swimmer AT came back from spring break, Coach McKeever could see she was working on herself and did not target Swimmer AT for criticism again. By Swimmer AT's junior and senior years, Coach McKeever had brought Swimmer AT over to Coach McKeever's side, where Coach McKeever discussed with Swimmer AT her beliefs about what was wrong with other swimmers.

(f) Relevant Documentation

Swimmer AT shared contemporaneous [REDACTED] posts, which described her meeting with Coach McKeever related to her heightened heart rate and need to see a nutritionist, as well as her [REDACTED] frustrations with the program.

The day after the elevated heart rate incident, Swimmer AT posted²⁸⁷:



²⁸⁷ Ex. 175 [CALINT-000837].

On [REDACTED], Swimmer AT posted that [REDACTED]

On [REDACTED], Swimmer AT posted:

In response to our investigation of Swimmer AT's allegations, Coach McKeever submitted a text message that Swimmer AT sent her on May 24, 2022 after reading the first *Orange County Register* article alleging that Coach McKeever had engaged in abusive conduct. Swimmer AT's text to her read:

Hi Teri,

I just wanted to reach out and say I'm so sorry for the article that's [sic] going around right now. I am forever grateful for the four years I had at Cal with you and the girls, as well as for the relationship we built. I know that our time together was centralized around you having nothing but the best intentions for me as a young woman. I can honestly say that I am the person I am today because of that, so thank you. Sending you nothing but love and gratitude [two heart emojis]

Coach McKeever responded "Thank you for sharing your thoughts [gratitude emoji and heart emoji.]"

(g) *Swimmer AT's Response Regarding Her May 24 Text Message to Coach McKeever*

In a follow-up interview, we asked how Swimmer AT reconciled the text message that she sent to Coach McKeever with what she told us about her experience on the team. Swimmer

⁷²⁸ Ex. 176 [CALINT-000836]

⁷²⁹ Ex. 177 [CALINT-000839].

AT said the text message was motivated by reading the initial article and the allegations from Swimmer AN (Swimmer, [REDACTED]). Swimmer AT was [REDACTED] during Swimmer AN's time on the team and her "big sister." Swimmer AT felt that the article minimized Swimmer AN's more troubling behavior, including her tendency to [REDACTED] and then lie about it. Swimmer AT texted Coach McKeever because she felt that the article was an attack on them both.

After reflecting over several months – Swimmer AT was interviewed more than three months after the initial article was published – and reviewing her diary and Instagram posts from the time, Swimmer AT came to believe that although Coach McKeever's intentions may have been good, her methods were not appropriate.

(h) *Other Witness Accounts*

Swimmer K (Swimmer, [REDACTED]) said that Coach McKeever's abuse was constant and manipulative. Swimmer K gave Swimmer AT as an example of someone Coach McKeever gas-lit and made think there was something wrong with them.

(i) *Coach McKeever's Response*

Coach McKeever did not deny any of Swimmer AT's specific factual allegations but cited the text message that Swimmer AT sent to her immediately after the publication of the initial article in the *Orange County Register*.

Coach McKeever said Swimmer AT struggled with [REDACTED]. There was a group of swimmers, Swimmer AD (Swimmer, [REDACTED]), Swimmer DD (Swimmer, [REDACTED]), and Swimmer S (Swimmer, [REDACTED]), that pushed the envelope on what was acceptable [REDACTED]. Swimmer AT felt pressure to not get them in trouble.

(j) *Factual Findings*

The preponderance of the evidence supports Swimmer AT's account that she experienced sustained verbal abuse while on the team. Specifically, we find that (1) when she suffered an elevated heart rate during practice and sought medical help, Coach McKeever told Swimmer AT she was being "immature" and that her parents "did a shitty job" getting her the help she needed, (2) Coach McKeever commented on her weight and then told Swimmer AT she looked like a "little girl" in the pool, (3) in response to Swimmer AT telling Coach McKeever about a wildfire near her home, Coach McKeever told Swimmer AT that she was "making a mountain out of a molehill," and (4) when Swimmer AT told Coach McKeever she was thinking about transferring, Coach McKeever yelled at her, telling Swimmer AT something to the effect that she was "a waste of space, time, and energy" and responsible for the team's performance at the NCAA championship.

Coach McKeever did not deny any of Swimmer AT's specific factual allegations but cited the text message that Swimmer AT sent to her immediately after the publication of the initial article in the *Orange County Register*. We find that the text message does not contradict Swimmer AT's account, in light of Swimmer AT's credible explanation that the text was based on Swimmer AT's reaction to Swimmer AN's allegations, which Swimmer AT took particular issue with as Swimmer AN's [REDACTED] and "big sister."

(k) *Policy Determinations*

Coach McKeever violated the University's Workplace Bullying Prevention policy by engaging in repeated behavior toward Swimmer AT that a reasonable person would find hostile, offensive, and unrelated to the University's legitimate business interests. Specifically, Coach McKeever directed abusive, insulting, and offensive language at Swimmer AT, including calling Swimmer AT "immature," telling Swimmer AT that her parents "did a shitty job raising her," and commenting on her weight and saying she look like a "little girl" in the pool, all while Swimmer AT was experiencing a medical issue for which she was seeking treatment; belittling Swimmer AT's concerns about her family and friends during a wildfire affecting their homes; and yelling at Swimmer AT for more than an hour when she attempted to transfer. These incidents humiliated and degraded Swimmer AT, as demonstrated by Swimmer AT's contemporaneous Instagram posts.

14. Swimmer CI (Swimmer, [REDACTED])

Swimmer CI joined the Cal women's swimming team as a freshman [REDACTED] and swam for four years; she was a [REDACTED]. Swimmer CI said her experience was different depending on the year and she experienced very harsh treatment by Coach McKeever her freshman year.

Swimmer CI said she and a few others received the brunt of Coach McKeever's criticism and yelling her freshman year. She said that the criticism was much harsher than she had previously experienced, as Coach McKeever yelled criticism at her in front of the team as opposed to in one-on-one conversations. Swimmer CI said that such criticisms occurred once or twice a week, and would start with swimming-related critiques like breathing during each stroke, then shift to topics less related to swimming like Swimmer CI not carrying enough weight on the team, not contributing her fair share, or being selfish. Swimmer CI said it was often hard to connect what Coach McKeever was angry about to what Swimmer CI was doing. For example, Coach McKeever told her she was "selfish" and said, "Do you even want to be here," and Swimmer CI said that it was not clear from these comments what she should change to fix the situation. The unpredictability and easily triggered nature of the critiques made Swimmer CI nervous; it felt like small things could set Coach McKeever off. Swimmer CI noted that Coach McKeever did not like it when swimmers showed displeasure on their faces. Swimmer CI said that it seemed as if Coach McKeever's mood was the biggest factor in determining whether Coach McKeever would yell at Swimmer CI.

According to Swimmer CI, Coach McKeever yelled at Swimmer CI when she breathed on every stroke; Swimmer CI noticed, however, that other swimmers did the exact same thing and Coach McKeever did not yell at them. Swimmer CI acknowledged that she could not see everything that was happening during practice, but she found it hard to believe that others did not make similar mistakes. Swimmer CI said she could not recall many specific phrases Coach McKeever used except, "I bet your parents used to do everything for you." Swimmer CI also said that, although she did not witness Coach McKeever saying, in front of a group, that someone was a "piece of shit," she said that swimmers came back from one-on-one meetings with Coach McKeever and reported that Coach McKeever had said that to them individually.

Swimmer CI said that Coach McKeever frequently took her or others out of the pool to yell at them and then directed them to get back in the pool and swim. While yelling at a swimmer, Coach McKeever had a tendency to grab the swimmer's arm and pull them in close – and, as a result, others on the team might be able to see what was happening but not hear what was being said. Swimmer CI said that, when Coach McKeever yelled at a swimmer one-on-one on a crowded pool deck, other people would avoid the area, as no one wanted to walk right by someone getting yelled at by their coach.

Swimmer CI described a one-on-one meeting in Coach McKeever's office, in which Coach McKeever picked out a number of mistakes Swimmer CI had made, including printing something in a hurry and leaving her student ID in the university printing room, which another swimmer on the team later found. Swimmer CI said that Coach McKeever was really angered by this. Swimmer CI said that Coach McKeever's anger did not seem proportionate to what had happened; she also felt that the mistake was not really related to swimming.

Swimmer CI said that after a particularly difficult dual meet against ██████ her freshman year, in which the Cal team did not perform well, Coach McKeever had the team stand in a circle and directed swimmers who did not swim well or swim up to the standards of the team to step forward into the middle of the circle. Swimmer CI said that swimmers knew if they were someone that Coach McKeever expected to step forward; one person whom Coach McKeever expected to step forward did not, and Coach McKeever called them out. Coach McKeever then asked each of the swimmers who had stepped forward to apologize to the rest of the team. Swimmer CI said that Coach McKeever told her, in front of the team, "You don't deserve to wear a Cal cap – turn it inside out." Swimmer CI described feeling humiliated and embarrassed; in talking about it during our interview, it was clear the event was still extremely painful to remember. Swimmer CI said that she was aware she was not one of the top recruits and the message that she did not deserve to be at Cal was particularly hard to hear, especially in front of her teammates. Swimmer CI said that this experience was the worst one that she remembered.

Swimmer CI described feeling isolated her freshman year, in part because if she expressed she was having a hard time, other swimmers might share what Swimmer CI said with Coach McKeever directly. Swimmer CI said that her relationship with Coach McKeever started to improve sophomore year, but that it was still difficult and Coach McKeever was particularly harsh toward her after she swam poorly at Pac-12 championships. Swimmer CI said that during her junior and senior years Coach McKeever did not yell at her the same way and began supporting her in other ways, like giving her more leeway with swimming so Swimmer CI could devote energy to applying to graduate school. Swimmer CI attributed this development to the fact that she learned the idiosyncrasies of how Coach McKeever wanted to be communicated with, and that she became good friends with Coach McKeever's preferred swimmers, Swimmer BU (Swimmer, ██████) and Swimmer CQ (Swimmer, ██████). Swimmer CI noted that every year, there were particular people that Coach McKeever picked on for yelling and harsh criticism, and it was most often freshmen and sophomores. She also said that, during her time at Cal, it seemed like distance swimmers often received the brunt of Coach McKeever's criticism.

(a) *Other Witness Accounts*

Swimmer CR (Swimmer, [REDACTED]) described Swimmer CI as someone who was often targeted for sustained criticism by Coach McKeever.

Swimmer BU (Swimmer, [REDACTED]) described her experience after the [REDACTED] dual meet that took place during her and Swimmer CI's freshman year. She called it one of her "top ten worst experiences." According to Swimmer BU, after the meet, Coach McKeever brought then team into the locker room, had them stand in a circle, and instructed swimmers to step into the circle if they didn't feel like they had done a good job. Swimmers could also point to who they thought could have done better. The swimmers who were pointed at then had to go around in a circle and defend themselves, and Coach McKeever then stepped in and criticized them even more. Coach McKeever told Swimmer CI, "You don't deserve to wear a fucking Cal cap, turn it inside out" and that Swimmer CI would be lucky if she was allowed to show up to practice on Monday. Swimmer BU said that, for 45 minutes, Coach McKeever singled out swimmers one-by-one and told them they were not living up to her expectations.

(b) *Coach McKeever's Response*

Coach McKeever did not specifically deny Swimmer CI's description of her experience. Coach McKeever said that her team captains once had the idea of having everyone turn their caps inside out, and then the coaches could decide when the swimmers could turn them right side out.

(c) *Factual Findings and Policy Determination*

A preponderance of the evidence supports the conclusion that Coach McKeever was repeatedly critical in a harsh way with Swimmer CI during her freshman year and, at one point, humiliated her in front of the team by telling her she did not deserve to wear a Cal cap and to turn it inside out. We do not reach a policy determination because the applicable policies and guidelines went into effect in 2016.

15. Swimmer AW (Swimmer, [REDACTED])

Swimmer AW joined the Cal women's swimming program as a freshman [REDACTED] and left the team [REDACTED]. Swimmer AW said that she was often targeted for verbal harassment by Coach McKeever. According to Swimmer AW, Coach McKeever called her "ungrateful" and a "piece of shit" and told her she was "not a good enough contributor." Swimmer AW noted that Coach McKeever did not commonly call her a "piece of shit," but Coach McKeever sometimes said it at the end when she was talking to Swimmer AW about how she was a problem. Swimmer AW said Coach McKeever criticized her for not being able to do a backbend during the [REDACTED] [REDACTED]. Coach McKeever was so harsh that Swimmer AW started crying, at which point Coach McKeever said, "Why the hell are you crying?"

As documented in a memo from [REDACTED] the then Acting Director of the University's Office for the Prevention of Harassment and Discrimination (OPHD), to Jim Knowlton and Jennifer Simon-O'Neill, Swimmer AW told OPHD [REDACTED] that Coach McKeever was "verbally abusive" to the point where Swimmer AW became clinically depressed

and decided to leave the team. She said that the worst conversations with Coach McKeever took place in her office. She said Coach McKeever referred to swimmers as a “piece of shit,” and that Coach McKeever told her she was “ungrateful,” “unappreciative,” and “let the team down” and there was an unspoken threat of taking Swimmer AW’s scholarship away. Swimmer AW said that Coach McKeever isolated her and made her feel like the guilty party. Swimmer AW said she did not tell anyone in the Cal administration about her experience because she thought no one would believe her and because she knew it would get back to Coach McKeever. Swimmer AW said that she had been scared to come forward about her experiences while she was at Cal, because it was “ingrained” in her not to say anything, given Coach McKeever’s success and the success of the Cal swim program.

A fuller account of Swimmer AW’s experience on the team, other witness accounts, and Coach McKeever’s response are included in Section VII.E regarding the allegations of disability discrimination.

(a) *Other Witness Accounts*

Swimmer BU (Swimmer, [REDACTED]) witnessed interactions between Coach McKeever and Swimmer AW and said Coach McKeever called Swimmer AW “worthless” and said that she just “taking up space.” Swimmer BU also said that Swimmer AW was “fiery” in response to Coach McKeever’s statements. Swimmer AT (Swimmer, [REDACTED]) similarly said that Swimmer AW frequently stood up to Coach McKeever and was the only swimmer to do so. Swimmer Q (Swimmer, [REDACTED]) told us that Coach McKeever “tore [Swimmer AW] to shreds” and tried to make it seem like it was Swimmer AW’s fault. Swimmer V (Swimmer, [REDACTED]) told us that Coach McKeever picked on Swimmer AW to the point that Swimmer AW had to quit the team.

Swimmer AU (Swimmer, [REDACTED]) and Swimmer BU (Swimmer, [REDACTED]) told us that Coach McKeever made weight-related comments to Swimmer AW, including telling her that she was “too fat” and needed to do extra workouts to become slimmer. When we asked Swimmer AW whether Coach McKeever had ever made any comments about her weight, she denied it.

Some witnesses said they did not observe Coach McKeever inappropriately criticize Swimmer AW. [REDACTED] Staff K (Assistant Coach, [REDACTED]) observed many interactions between Coach McKeever and Swimmer AW. [REDACTED] Staff K said that Coach McKeever was harsh with Swimmer AW, but her comments were always focused on swimming and were not personal in nature. Swimmer CQ (Swimmer, [REDACTED]) said that, when Coach McKeever told Swimmer AW she needed to do something different, Swimmer AW talked back to Coach McKeever, and Coach McKeever in turn argued back. For example, when Coach McKeever told Swimmer AW not to “swim in her shoulders,” Swimmer AW responded that she was trying, and Coach McKeever then said, “Well, that’s not getting you anywhere.” Swimmer CQ said she never heard Coach McKeever call Swimmer AW a “piece of shit” and could not imagine her doing so. Swimmer AH (Swimmer, [REDACTED]) said that, after her freshman year, Swimmer AW frequently talked back to Coach McKeever, including through screaming, and gave Coach McKeever a lot of attitude, as frequently as once a week, and this resulted in Coach McKeever telling Swimmer AW to get out of the pool and go home.

(b) Coach McKeever's Response

Coach McKeever did not specifically deny the allegations that she called Swimmer AW in particular "worthless," "ingrateful," or a "piece of shit," however, she generally denied allegations that she targeted any swimmers for negative treatment, or ever called a swimmer a "piece of shit."

(c) Factual Findings

We make the same findings here as we do in the disability section of the report, Section VII.E.5.

We also find that a preponderance of the evidence shows that Coach McKeever subjected Swimmer AW to persistent criticism, including through yelling, that humiliated and belittled her. A number of Swimmer AW's teammates told us that Coach McKeever targeted Swimmer AW for persistent, harsh criticism. Although some witnesses said they never witnessed Swimmer AW being subjected to inappropriate, abusive criticism, this is consistent with Swimmer AW's description of the worst conversations occurring one-on-one in Coach McKeever's office. Furthermore, Swimmer AW reported this conduct to OPHD [REDACTED]

A preponderance of the evidence also supports the conclusion that Coach McKeever called Swimmer AW or referred to her as a "piece of shit." Although Coach McKeever denied ever calling a swimmer a "piece of shit," this finding is further supported by the fact that fourteen other swimmers between 2008 and 2022 either personally witnessed Coach McKeever use this phrase or heard from swimmers that Coach McKeever used the phrase. *See supra* n.229. And this finding is supported by the fact that Swimmer AW told OPHD about it [REDACTED]

(d) Policy Determination

We conclude by a preponderance of the evidence that Coach McKeever engaged in a pattern of repeated behavior with Swimmer AW that a reasonable person would find hostile, offensive, and unrelated to the University's legitimate business interests, a violation of the Workplace Bullying Prevention policy.

We considered the explanation that other swimmers provided – that Swimmer AW had a bad attitude and talked back to Coach McKeever. While the University's policy distinguishes between appropriate coaching and constructive feedback on one hand and persistent or egregious use of abusive, insulting, or offensive language on the other, University policy does not allow one to justify abusive conduct by showing that the recipient of the conduct deserved criticism. The University's prohibition against abusive conduct applies regardless of whether a swimmer has a "good" or "bad" attitude or gets along with the coach.

16. Swimmer CR (Swimmer, [REDACTED])

Swimmer CR joined the Cal women's swimming program as a freshman [REDACTED]

(a) *Alleged Targeting for Criticism*

Swimmer CR said that, from the very start of her time at Cal, it seemed like everything she did was wrong. Coach McKeever had issues with Swimmer CR's stroke, turns, and breathing patterns. Swimmer CR said that Coach McKeever criticized her frequently and harshly. According to Swimmer CR, Coach McKeever yelled, "You're a piece of shit" directly to Swimmer CR during practice. When questioned about whether Coach McKeever said, "it was a shit workout" or some other use of the word "shit," Swimmer CR reiterated that Coach McKeever said directly to her, "You're a piece of shit." According to Swimmer CR, Coach McKeever also yelled things like, "you don't belong here" and "you're not worth my time," and "you're a bad investment" to Swimmer CR. Swimmer CR said this "bad investment" comment has stuck with Swimmer CR. Swimmer CR said she started to believe what Coach McKeever said.

Swimmer CR also explained that Coach McKeever said these things to her while pulling her aside – so that the conversation would occur in front of everyone but not in a way that was audible to the rest of the team. Swimmer CR said that she did not cry in front of Coach McKeever – she would cry later, in private – and in front of Coach McKeever, Swimmer CR just stood there while Coach McKeever berated her, and Swimmer CR felt her lack of crying seemed to bother Coach McKeever.

Swimmer CR felt that she got kicked out of practice all the time, including for not being able to do over-under drills. She often became nervous, as the drill required a sustained period of time under water without taking a breath, and her anxiety in turn made things harder. Sometimes when she was kicked out of practice, she did not know why, which she said was painful and humiliating.

Swimmer CR could not figure out what she was doing wrong, and while Coach McKeever asked older swimmers to speak to Swimmer CR, they did not provide her with specifics and instead just said to "do better." Coach McKeever encouraged swimmers to give back to the team but first-year swimmers did not know yet what that meant. Swimmer CR and her roommate tried to be the first people to show up to early morning practice and be the ones to set up the lane lines in order to show commitment. Swimmer CR had a meeting with Coach McKeever a few weeks into the school year, and Coach McKeever nevertheless criticized her commitment. Swimmer CR responded by mentioning that she put in the lane lines and cheered for the team. According to Swimmer CR, she raced harder than she trained, which Coach McKeever did not like. Swimmer CR tried to volunteer for recruiting efforts to prove herself, but she felt her efforts were never enough to satisfy Coach McKeever.

Swimmer CR said that Coach McKeever tore her and other swimmers down but would not build them back up. She described the toll that Coach McKeever's conduct took on her. Swimmer CR said that Coach McKeever made her life hell. According to Swimmer CR, she

threw up and cried frequently as a result of how she was treated and said that she has never thrown up or cried so much in her life. Swimmer CR said that she still has nightmares about her time at Cal; it took her years to get back in the water; and her feelings of self-doubt fostered by Coach McKeever still surface today.

(b) *International Competition and Allegations that Coach McKeever Pressured Swimmer CR to Leave Cal*

Swimmer CR qualified for the [REDACTED] and Coach McKeever was mad at her for not communicating in advance that she had the chance to qualify. Swimmer CR trained in [REDACTED], and swam the best she had ever swum. Coach McKeever did not communicate with her until the two crossed paths at [REDACTED] at which point Coach McKeever walked up to her and told her to not mess up, which messed with Swimmer CR's head. In the winter of [REDACTED], Swimmer CR qualified for [REDACTED]. When Swimmer CR told Coach McKeever, she told Swimmer CR, "You're done here – either you quit, or you transfer."

Swimmer CR's view was that Coach McKeever's attempt to force her to quit was a common practice among swim coaches and was about Swimmer CR's scholarship money, which Coach McKeever felt could be better spent elsewhere. Swimmer CR's roommate did not perform as well but was not on scholarship and was not targeted as much. Swimmer CR said that Coach McKeever made her life hell until she had no choice but to quit. According to Swimmer CR, the day Swimmer CR quit, Coach McKeever was the nicest she had ever been. Swimmer CR's suspicions were confirmed when Coach McKeever told Swimmer CR that she was a bad investment.

Swimmer CR still does not quite understand why Coach McKeever did not let her continue swimming because she was swimming reasonably well and improving. Swimmer CR said that she wanted desperately for Coach McKeever to like her, and when she could not figure out how to achieve that, she just wanted to get through without Coach McKeever yelling at her.

(c) *Other Witness Accounts*

Parent of Swimmer CR participated in our interview of Swimmer CR and told us that she witnessed Coach McKeever making a different swimmer into an outcast. Parent of Swimmer CR later learned that Swimmer CR was an outcast. Swimmer CR told Parent of Swimmer CR about getting kicked out of practice, and Parent of Swimmer CR subsequently emailed Coach McKeever expressing concern for daughter and asking what went wrong.²⁹⁰ Parent of Swimmer CR said that she is unsure if Coach McKeever ever responded – but that Swimmer CR got in "huge trouble" with Coach McKeever as a result. Parent of Swimmer CR said that Swimmer CR told her that Coach McKeever's subsequent criticism of Swimmer CR was framed in terms of how Parent of Swimmer CR's email affected Coach McKeever – that Coach McKeever demanded to know of Swimmer CR, "How could you do that to me?" and "How could you tell your mother these things?" Parent of Swimmer CR described the effect that Swimmer CR's time

²⁹⁰ Ex. 183 [CALINT-000805].

at Cal had on Swimmer CR. She described seeing Swimmer CR completely broken down and described feeling like she had “lost [her] daughter” to abuse.

Swimmer AW (Swimmer, [REDACTED]) said that Swimmer CR was picked on by Coach McKeever her freshman year. Swimmer CR was kicked out of practice for reasons such as not taking direction or not doing what Coach McKeever wanted. Swimmer CR also did not improve at swimming lengths without coming up for air to breathe, so Coach McKeever kicked her out for breathing, especially during over/under drills. According to Swimmer AW, Swimmer CR did not react to Coach McKeever’s yelling – instead she just sat in the water and nodded, which Swimmer AW thought made Swimmer CR more of a target for criticism. Swimmer AW did not remember exactly what Coach McKeever said to Swimmer CR but remembered that no one looked up or talked to Swimmer CR at those practices so that they did not become “guilty by interaction.” In the locker room after practice, the team checked in on her. A couple times, Swimmer CR broke down and cried. Swimmer AW said that after freshman summer, Swimmer CR gained weight because she had not been training. At their end-of-summer boot camp, Swimmer AW heard Coach McKeever talk to Swimmer CR about how she gained weight and needed to lose it. Coach McKeever also pointed out when swimmers’ bodies did not fit into swimsuits, which caused Swimmer CR to order a larger size. Coach McKeever continued yelling at Swimmer CR every day into September of sophomore year until she quit the team but remained at Cal as a student.

According to Swimmer BU (Swimmer, [REDACTED]) Swimmer CR seemingly could not do anything right. When Swimmer CR messed up drills, Coach McKeever pulled her out of the water to yell at her and kick her out of practice. Swimmer BU did not think that anyone got kicked out of practice as much as Swimmer CR and said that it took a toll on her performance. Swimmer BU said that, one time, Swimmer CR did not perform well at a meet and Coach McKeever said she was a detriment to the team and holding back everyone else. Swimmer BU said that Coach McKeever yelled at Swimmer CR one-on-one rather than in front of everyone. Swimmer BU said that Swimmer CR quit because of Coach McKeever.

Swimmer AT (Swimmer, [REDACTED]) said that she was aware that Swimmer CR was targeted by Coach McKeever and was pressured to quit for performance reasons.

Swimmer CR was one of the swimmers named in the July [REDACTED] anonymous letter and did not respond to outreach from OPHD.²⁹¹

(d) Coach McKeever’s Response

Coach McKeever did not specifically deny allegations regarding Swimmer CR.

(e) Factual Findings

We find that a preponderance of the evidence supports the conclusion that Coach McKeever subjected Swimmer CR to sustained, harsh, and personal criticism, including calling

²⁹¹ Ex. 181 [CALINT-000006].

Swimmer CR a “piece of shit,” telling Swimmer CR she did not belong and was not worth Coach McKeever’s time; and regularly kicked Swimmer CR out of practice for trivial or unexplained reasons. Our finding is based on Swimmer CR’s detailed recollection of her treatment, which was corroborated by three of Swimmer CR’s teammates – Swimmer AT (Swimmer, [REDACTED]), Swimmer AW (Swimmer, [REDACTED]), and Swimmer BU (Swimmer, [REDACTED]). Coach McKeever did not address or dispute Swimmer CR’s allegation. In addition, Parent of Swimmer CR corroborated that Swimmer CR told Parent of Swimmer CR that Coach McKeever targeted Swimmer CR for verbal harassment, which is confirmed by an email Parent of Swimmer CR sent to Coach McKeever [REDACTED].¹⁹²

(f) Policy Determination

A preponderance of the evidence supports a finding that Coach McKeever violated the University’s Workplace Bullying Prevention policy by engaging in repeated behavior toward Swimmer CR that a reasonable person would find hostile, offensive, and unrelated to the University’s legitimate business interests. Specifically, Coach McKeever directed harsh and personal language at Swimmer CR on a regular basis, including calling her a “piece of shit” and questioning whether Swimmer CR deserved to be on the team; and frequently kicked Swimmer CR out of practice for unexplained reasons.

17. Swimmer BU (Swimmer, [REDACTED])

Swimmer BU joined the Cal women’s swimming team as a freshman [REDACTED] and swam for four years. She was a [REDACTED]. Swimmer BU described her experience as “rough” because she had been a good recruit and wanted to swim for and with her idols, but she found the environment to be lacking and isolating, a tone set by Coach McKeever. She said the team environment had both good and bad aspects, although the bad aspects were very bad.

Swimmer BU described the environment as being volatile because the swimmers never knew what Coach McKeever’s mood would be from one day to the next. There was no apparent consistency or structure to changes in her moods. The team watched how she walked into practice and then adjusted their expectations accordingly. Swimmer BU was anxiety-ridden every day because she did not know what each day would be like. They sometimes asked Swimmer AP (Swimmer [REDACTED]) to talk to Coach McKeever to get Coach McKeever in a good mood. During Swimmer BU’s senior year, they had Swimmer CQ (Swimmer, [REDACTED]) have the hard conversations with Coach McKeever because Swimmer CQ was more “in touch” with her.

Coach McKeever had a “shit list,” which was a term used by the team to describe the people to whom Coach McKeever frequently directed negative attention. The people on the list typically did not remain on the team. Swimmer BU was not on the “shit list,” but she also was not a favorite and was sometimes targeted by Coach McKeever for verbal abuse and criticism. Swimmer BU said that Swimmer BV (Swimmer, [REDACTED]), Swimmer AW (Swimmer,

¹⁹² Ex. 183 [CALINT-000805].

██████████), and Swimmer CR (Swimmer, ██████████) were on the “shit list” during the time that Swimmer BU was on the team.

Swimmer BU said that Coach McKeever’s conduct crossed the line of what was appropriate conduct. Swimmer BU worked with tough and mean coaches in the past and believed there was value in a coach being tough or critiquing an athlete’s performance. Coach McKeever’s feedback, however, was not that Swimmer BU’s performance was lacking, rather it was that *she* was lacking. Coach McKeever told Swimmer BU things like her parents must be disappointed in her. The environment made the swimmers feel that they deserved to be told such things.

According to Swimmer BU, the team’s culture was rooted in fear. When Coach McKeever yelled at one of them, the rest of the team felt relieved because it meant that Coach McKeever was not yelling at them. Once Coach McKeever treated a swimmer badly, the rest of the team isolated and did not talk to that swimmer. Swimmer BU said the culture started with Coach McKeever, but team members mistreated one another as well and that mistreatment was celebrated and promoted. Swimmer BU did not think that Coach McKeever is an awful person but did believe she did awful things to people.

(a) *Freshman Year*

Swimmer BU had a difficult time on the team during her freshman year and described it as being the most toxic of her four years. She initially could not tell if she was just having a hard time adjusting to college and the team or if something else was wrong.

The seniors on the team were mean and prided themselves on being “mini Teris.” During her first semester at Cal, she was friendly with Swimmer CQ (Swimmer, ██████████) and Swimmer AO (Swimmer, ██████████), who were also freshmen, and the three of them were the three fastest freshmen on the team. This led to them being “attacked” by the seniors, especially Swimmer AM (Swimmer, ██████████). It culminated in a team meeting that Swimmer AM and Swimmer CF (Swimmer, ██████████) held without Coach McKeever’s knowledge, at which the seniors sat on the bench, had everyone else sit on the floor, and told them that the swimming team was a hierarchy and they had to know their places. Swimmer AM and Swimmer CF told Swimmer BU, Swimmer CQ, and Swimmer AO that they could not be friends anymore because they were “tearing the team apart.” After that meeting, the three freshmen tried not to hang around each other when they were around the team.

During the ██████████ training trip, Coach McKeever pulled Swimmer BU aside to ask her why she no longer talked as much. Coach McKeever screamed at her, asking “What the fuck is wrong with you?” Swimmer BU said that Coach McKeever initially was aggressive but caring. She told Coach McKeever about the meeting with the upperclassmen, after which Coach McKeever called Swimmer BU a “lying piece of shit,” told her that the seniors would never have done that without Coach McKeever’s permission, and eventually told Swimmer BU to “get the fuck out of here.” Swimmer BU cried during the meeting. This conversation lasted for approximately an hour on the swim deck while the rest of the team waited in a bus to return to the hotel. Although the rest of the team could not hear the conversation, everyone could see what was happening, and everybody knew that Coach McKeever was angrily yelling at her

because of Coach McKeever's animated body language and the fact that Coach McKeever got close in Swimmer BU's face. Coach McKeever eventually was made aware that the team meeting did happen, but Coach McKeever did not address it or apologize to Swimmer BU. After this event, Swimmer BU's relationship with Coach McKeever was never the same.

Swimmer BU asked Coach McKeever for permission to leave a practice early in order to be able to fly home [REDACTED] for Thanksgiving. Swimmer BU offered to do extra practices while at home. Coach McKeever got mad and screamed at her, saying "If you'd rather swim there, then don't fucking come back." Swimmer BU said that it was hard for her as an eighteen-year old to process this reaction to asking to leave practice early once. Swimmer BU noted that Coach McKeever permitted [REDACTED] Staff J [REDACTED]; Assistant Coach, [REDACTED] to go home for the day.

Swimmer BU said her experience after the [REDACTED] meet during her freshman year was one of her "top ten worst experiences." According to Swimmer BU, after the meet, Coach McKeever brought then team into the locker room, had them stand in a circle, and instructed swimmers to step into the circle if they did not feel like they had done a good job. Swimmers could also point to who they thought could have done better. The swimmers who were pointed at then had to defend themselves, and, when they did, Coach McKeever stepped in and criticized them even more. Coach McKeever told Swimmer CI (Swimmer, [REDACTED]) "You don't deserve to wear a fucking Cal cap, turn it inside out" and that Swimmer CI would be lucky if she was allowed to show up to practice on Monday. Swimmer BU said that, for 45 minutes, Coach McKeever singled out swimmers one-by-one and told them they were not living up to her expectations.

At the Pac-12 meet shortly after the [REDACTED] meet, while Swimmer BU was pacing and warming up for the [REDACTED] race, Coach McKeever pulled her out of the pool and told her she would never be an Olympian like [REDACTED] (Swimmer, [REDACTED]) and [REDACTED] (Swimmer, [REDACTED]) and then did not speak to her again until after her race. Swimmer BU told us that Coach McKeever knew what to say to be terribly mean and cut straight to what would hurt a person. Swimmer BU ended up swimming really well and won an event, so Coach McKeever was nice to her later.

Between the Pac-12 championship and the NCAAs her freshman year, Swimmer BU suffered severe [REDACTED] issues. She had [REDACTED] and was in a lot of pain. She [REDACTED] was admitted to the hospital on at least two occasions. [REDACTED] Staff F (Athletic Trainer, [REDACTED]) communicated with Coach McKeever about Swimmer BU's condition. Coach McKeever was supportive between Pac-12s and NCAAs, but when Swimmer BU told Coach McKeever that she was in a lot of pain at NCAAs, Coach McKeever told Swimmer BU that she was fine and should suck it up. Once they returned to Cal, Swimmer BU was hospitalized again. She contrasted this with the treatment received by Swimmer AM (Swimmer, [REDACTED]) [REDACTED] when Swimmer AM was allowed to go to the hospital for a migraine and Swimmer BU had to fill in for Swimmer AM in one of Swimmer AM's relays. Swimmer BU did not ask to go to the hospital because [REDACTED] Staff F had not recommended it and Swimmer BU was not given the option the way Swimmer AM was.

[REDACTED]

Swimmer BU came close to [REDACTED] team but did not [REDACTED] which greatly disappointed her. Coach McKeever said she did not know why Swimmer BU was so upset and asked Swimmer BU, "Did you actually think you'd [REDACTED]" Swimmer BU said Coach McKeever always said that they should tell her how they were feeling and when they needed help, but Coach McKeever's reaction made Swimmer BU feel that she could not talk to Coach McKeever about her feelings related to failing to [REDACTED] team.

Swimmer BU began cutting herself and drinking alcohol, sometimes to excess. Other swimmers told Coach McKeever that Swimmer BU was drinking and should be kicked off the team, even though they were also drinking. Coach McKeever pulled Swimmer BU aside and was mad at Swimmer BU for not taking advantage of all that Coach McKeever had done for her. Swimmer BU broke down emotionally in front of Coach McKeever, admitted that she was not okay, and agreed to be sober for the rest of the season. Coach McKeever did not talk to her much after that conversation but did work to set her up with a psychologist [REDACTED]. Swimmer BU found that if she tried to talk to that psychologist about Coach McKeever, however, he instead talked about how great Coach McKeever was. Eventually, Swimmer BU found her own therapist at Cal who did not know Coach McKeever and was able to stop cutting herself. At one point, Coach McKeever told her that she needed to "figure out what the fuck was wrong with her," and told her she needed to be on antidepressants. Coach McKeever was open about her own struggles with depression and the fact that she was on medication, but Swimmer BU thought Coach McKeever crossed a line when pushing her to get medicated, although Swimmer BU acknowledged that she was very sensitive about the topic. She thought Coach McKeever pushed other swimmers to get on medication and believed several swimmers went on anxiety medication during their time at Cal. Coach McKeever also forced swimmers to state her sobriety intentions in front of the team, which she described as traumatizing. She and other swimmers she talked to were unsure why she was forced to do this.

Swimmer BU was very teary during the interview when she discussed how depressed she was during her sophomore and junior years because of this situation.

(c) *Allegations of Other Verbally Abusive Language*

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

(e) *[REDACTED] Anonymous Complaint*

In [REDACTED] the University received an anonymous letter [REDACTED]

[REDACTED]

²⁹³ Ex. 178 [CALINT-000004].

█. OPHD reached out to Swimmer BU. In response, Swimmer BU emailed Jennifer Simon-O'Neill (Executive Senior Associate Athletics Director, 2013-present):

I hope all is well with you and your family! I am reaching out because an email account run by my agent for the use of sponsorships, deals, etc. related to me received an email from Cal's Office for the Prevention of Harassment And Discrimination. The email said "Earlier this week, our office received a report that you have concerns regarding Coach Teri McKeever." However, I have never made a report about Teri, nor did I recently make a report or even say anything about Teri, especially in a negative manner. I wanted to bring this to your attention because I find false reporting extremely upsetting and the fact that my name was attached to a false report deeply upsets me. I have reached out to the office via phone and they have yet to return my call. Again, the email that was used I do not even have access to, but is in my social media biographies for business purposes. I am not sure what can be done about false reporting, but I do want to make it clear that I have not filed or made any report against Teri McKeever in any form. Thank you for helping me in any capacity to stop whatever this report/concern may have been. Go Bears!

Swimmer BU told us that she did not know anything about the anonymous letter that was sent to the administration in █ █. She said she just got an email from OPHD saying OPHD had received a complaint from her. No one would tell her what document her name was on, if it looked like she signed it, or if it looked like she wrote the letter. She asked not to be associated with it because she did not know what it was. She wanted to know what it actually said but still did not know at the time of the interview. She remembered that █ everyone was frustrated that they were not permitted to see something that contained their names.

(f) Effect on Swimmer BU

Swimmer BU said that she talked to her parents about the situation while she was still in college. At Cal, there is a weekend in October that was called Freefall where the swimming team got the Friday through Sunday off. Swimmer BU's parents were in █ and she spent most of her freshman Freefall weekend crying to them that she did not want to go back and wanted to transfer. This was her parents' first time seeing her since she went to college, and they encouraged her to go back and give it another shot. They became concerned in █ Her parents started urging her to leave or transfer and they did not speak to Coach McKeever at the end of year banquet █. Swimmer BU said her parents felt helpless about the situation.

Swimmer BU tearfully told us that she is still scared of Coach McKeever. It scared her to talk about her experience on the team because she could not do so for so long. She did not want to appear ungrateful, because there were some good things, but some things were inexcusable. Swimmer BU said that she was trying to do right for what happened to her and her teammates but felt like there would be retaliation even though she no longer swims. She was afraid that

someone would accuse her of trying to destroy Coach McKeever. Swimmer BU said that was not her intention; she just did not want the bad aspects to be overlooked because of the good aspects.

(g) *Other Witness Accounts*

According to Swimmer AW (Swimmer, [REDACTED]), there were a couple instances where Swimmer BU coped with [REDACTED] [REDACTED] [REDACTED] by drinking a lot. The team knew it was an issue but brushed it under the rug. Swimmer AW knew that Swimmer BU struggled a lot with depressive episodes and drinking problems and thought she was suspended from the team at one point for drinking problems, but it was not discussed openly. Swimmer AW said that Swimmer BU talked back to Coach McKeever when Swimmer BU felt targeted, but she was not regularly targeted because she was such a good swimmer.

Swimmer CV (Swimmer, [REDACTED]) told us that Swimmer BU was protected by Coach McKeever. There were multiple instances of behavior that warranted a suspension but that did not result in a suspension, including concerns that Swimmer CV brought to Coach McKeever about Swimmer BU's behavior. During Swimmer CV's senior year, they hosted recruits on a football game day, so they were not supposed to drink alcohol. The team got together to play a game. Swimmer BU showed up drunk. Coach McKeever addressed it in private rather than in front of the team, and Swimmer CV had the impression that she was treated fairly and respectfully by Coach McKeever. Swimmer CV never heard Coach McKeever speak negatively about Swimmer BU. Another time, in [REDACTED] Swimmer BU was drunk and hungover in the lobby of a hotel while still wearing her fins and swimsuit. Someone from another team called Coach McKeever. Swimmer BU missed her flight but did not suffer consequences as far as Swimmer CV knew.

Swimmer CQ (Swimmer, [REDACTED]) said Swimmer BU suffered some leg injuries. According to Swimmer CQ, Swimmer BU felt that Swimmer CQ got better treatment for her injuries than Swimmer BU did. For example, Swimmer BU thought Swimmer CQ was allowed to go to the best physical therapists and Swimmer BU was not allowed to see them and felt this was because that Coach McKeever hated her. However, Swimmer CQ had gone through all of the other physical therapists first without improvement before consulting with the other physical therapists. Swimmer CQ said that Swimmer BU did not get along with Coach McKeever, and Swimmer CQ speculated that this was because Swimmer BU no longer received the one-on-one attention every day that she thought she deserved and had gotten in her club team.

Swimmer CR (Swimmer, [REDACTED]) told us that she heard that Coach McKeever threw water bottles at Swimmer BU. Swimmer Q (Swimmer, [REDACTED]) also told us that Swimmer BU told her that Coach McKeever threw a water bottle at Swimmer BU. Swimmer Q said that Swimmer BU was [REDACTED] during Swimmer Q's [REDACTED] year and was one of the best [REDACTED] Swimmer Q ever had, yet she and Coach McKeever had a terrible relationship. Swimmer Q did not know why. Swimmer Q heard Coach McKeever speak negatively about the fact that Swimmer BU trained with a different program, even though Coach McKeever had told her to do so.

Staff K (Assistant Coach, [REDACTED])

[REDACTED] swimmer BU frequently vented to [REDACTED] Staff K about Coach McKeever. Mostly, Swimmer BU said that Coach McKeever did not listen to what Swimmer BU needed. Swimmer BU and Swimmer AO (Swimmer, [REDACTED]) both swam the same events and were very good, but Swimmer BU felt that Coach McKeever favored Swimmer AO, an assessment with which [REDACTED] Staff K disagreed. [REDACTED] Staff K said Coach McKeever and Swimmer BU had an "up and down" relationship and frequently butted heads. In [REDACTED] Staff K's opinion, Swimmer BU was frustrated with her swimming career, leading to her and Coach McKeever butting heads.

According to [REDACTED] Staff J ([REDACTED] Assistant Coach, [REDACTED]), Swimmer BU was too similar to Coach McKeever and liked to push Coach McKeever's buttons. [REDACTED] Staff J cannot imagine Coach McKeever telling Swimmer BU not to "fucking come back" when Swimmer BU wanted to leave practice early during the Thanksgiving holiday to fly home. At the beginning of the year, the athletes were given their schedules, and they knew when the holiday breaks were.

(h) *Coach McKeever's Response*

(i) *General Response*

Coach McKeever told us that she did not cursed and called swimmers names on a daily basis. Coach McKeever said that she tells athletes the truth when asked a question or when giving her professional opinion. Coach McKeever said that she cannot control all the subtleties of how someone responds to her comments.

(ii) *Request for Early Departure for Thanksgiving*

According to Coach McKeever, Swimmer BU and the rest of the team were provided with a sheet of information in July containing the important dates for the upcoming year, and early departures for Thanksgiving and Christmas breaks were specifically discussed. Coach McKeever viewed Swimmer BU's request for something different than what was outlined as unacceptable. Coach McKeever also had different expectations for team members and staff in terms of requesting an early departure.

(iii) [REDACTED] and Aftermath

Coach McKeever said that attendance at the clinic Swimmer BU went to was voluntary and it was Swimmer BU's decision to attend. Coach McKeever noted that [REDACTED]

[REDACTED] Coach McKeever said that Swimmer BU placed [REDACTED] in her two best events at the [REDACTED] and improved her personal times by significant amounts. In Coach McKeever's opinion, Swimmer BU had one of the best meets of any [REDACTED]. According to Coach McKeever, Swimmer BU and her family chose to look at the situation as a huge disappointment, but Coach McKeever saw it as a huge success and something she looked forward to build on.

According to Coach McKeever, she never knew that Swimmer BU cut herself.

(i) *Factual Findings*

We find by a preponderance of the evidence that although Swimmer BU and others did not consider Swimmer BU to be on Coach McKeever's "shit list," Swimmer BU was subjected to multiple instances of abusive language delivered with yelling that humiliated and degraded Swimmer BU. We also find by a preponderance of the evidence that Swimmer BU had some troubling encounters with Coach McKeever after her freshman year, though by Swimmer BU's own account, the alleged abuse was less persistent after her freshman year.

(i) *Freshman Year*

Regarding Swimmer BU's request to leave early for Thanksgiving, we credit that Coach McKeever, as the head coach, had wide latitude to set policy for the team and was not required to grant Swimmer BU's request to leave early. But Coach McKeever did not deny that she reacted angrily to that request, nor did she deny Swimmer BU's allegation that Coach McKeever told Swimmer BU, "If you'd rather swim there [Swimmer BU's hometown], then don't fucking come back."

We also find credible Swimmer BU's allegation that during the [REDACTED] training trip, Coach McKeever berated Swimmer BU during an hour-long conversation, which included saying to Swimmer BU "[w]hat the fuck is wrong with you?", calling Swimmer BU a "lying piece of shit," and telling Swimmer BU to "get the fuck out of here." We also credit Swimmer BU's description that Coach McKeever used animated body language during the conversation and got close in Swimmer BU's face, which Swimmer BU found threatening. Although, by Swimmer BU's own description, no one else witnessed this interaction, Swimmer BU's detailed and credible description of this experience is corroborated by the accounts of many other swimmers who told us about similar experiences with Coach McKeever over the years, including Coach's McKeever use of strikingly similar language, such as calling swimmers a "piece of shit," and telling them to "get the fuck out."

We also credit that Coach McKeever told Swimmer BU during the Pac-12 championship her freshman year something to the effect of, "you will never been an Olympian like" [REDACTED]. In responding to Swimmer BU's allegations, Coach McKeever pointed out that she cannot help how swimmers react to her honest feedback, which we understand as Coach McKeever's tacit admission that she said such things to Swimmer BU and others.

[REDACTED]

Swimmer BU also noted that in general, Coach McKeever often used language that Swimmer BU considered “over-the-line,” like attacking swimmers personally rather than based on performance, which is consistent with what we have heard from other swimmers. As an example, Swimmer BU noted that Coach McKeever told her that her parents would be disappointed in her.

In each of the circumstances noted above, we find that a reasonable person would find the language Coach McKeever used, and the way it was delivered, to be hostile, offensive, and unrelated to the University’s legitimate business interests. We find by a preponderance of the evidence that over the course of Swimmer BU’s freshman year, she was repeatedly subjected to these derogatory remarks, insults, and epithets by Coach McKeever. Swimmer BU also credibly described how Coach McKeever’s behavior toward Swimmer BU and others on the team created an environment where Swimmer BU was “anxiety-riddled” every day. We also credit Swimmer BU’s account that she was so troubled by her experiences on the team that she considered transferring during her freshman year and that she is still scared of Coach McKeever today.

(ii) [REDACTED] and After

There is no dispute that Swimmer BU was deeply disappointed about her performance at [REDACTED] and this disappointment caused, or at least contributed to, Swimmer BU experiencing alcohol abuse and depression. Coach McKeever denied knowing that Swimmer BU was engaging in self-harm during this period, but the exact degree to which Coach McKeever was aware of what Swimmer BU was going through is not determinative of any of our findings. Coach McKeever acknowledged that Swimmer BU was deeply disappointed about her performance and did not deny knowing that Swimmer BU was experiencing emotional difficulties. We credit Swimmer BU’s account that Coach McKeever told her during this period that she need to “figure out what the fuck was going on with her,” and told Swimmer BU she needed to be on antidepressants. Coach McKeever did not deny these allegations.

[REDACTED]

[REDACTED]

[REDACTED]

(j) *Policy Determination*

A preponderance of the evidence supports the conclusion that Coach McKeever subjected Swimmer BU to repeated instances of abusive language, often delivered with yelling, that humiliated and degraded Swimmer BU, especially during her freshman year, when she often berated Swimmer BU, including in the lead-up to Olympic trials. Although we believe this conduct constituted a pattern of repeated behavior that a reasonable person would find hostile, offensive, and unrelated to the University's legitimate business interests, we do not reach a policy determination [REDACTED]

[REDACTED] the Workplace Bullying Prevention Policy did not go into effect until May 18, 2016, and the Guidance on Abusive Conduct and Bullying in the Workplace did not go into effect until July 26, 2016. [REDACTED]

[REDACTED]

We find that a preponderance of the evidence supports the conclusion that Coach McKeever's statements to Swimmer BU following [REDACTED] that she needed to start taking antidepressant medication violated the University's policy on the Role of Cal Intercollegiate Athletic Coaches in Medical Care. Among other things, that policy prohibits coaches from diagnosing medical issues or recommending that an athlete take medication. Although we do not criticize Coach McKeever for suggesting Swimmer BU get treatment for her depression (the policy specifically notes that it is appropriate for coaches to refer athletes to University resources for assessment and treatment), we find by a preponderance of the evidence that Coach McKeever's specific suggestion that Swimmer BU take antidepressants was a violation of that policy.

18. [REDACTED]

[REDACTED]

- [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

19. Swimmer CK (Swimmer, [REDACTED])

Swimmer CK joined the Cal women's swimming team as a freshman [REDACTED] before transferring to [REDACTED]. Swimmer CK described her experience as "horrible." She said that Coach McKeever yelled and used curse words when yelling at swimmers "every day" and that swimmers cried in their goggles before, during, and after practice.

(a) [REDACTED] and Allegations about Targeted Verbal Abuse.

Swimmer CK said that she started her time at Cal on Coach McKeever's good side but saw Coach McKeever abuse other swimmers and friends. Swimmer CK said that her relationship with Coach McKeever worsened after Swimmer CK did not perform well at [REDACTED]. At that meet, Coach McKeever screamed at Swimmer CK on deck in front of the team, which was humiliating. [REDACTED]

After the [REDACTED] meet, Swimmer CK's parents wanted to see her. Swimmer CK's mother wanted at the end of the walkway from the pool to the bus with Swimmer CK's favorite food in a takeaway bag. Swimmer CK saw her and wanted a hug, but Coach McKeever noticed and pushed Swimmer CK forward, saying "Grow the fuck up, [Swimmer CK]; you don't need your mom right now." Swimmer CK's mother wanted to meet her in the hotel lobby, but Swimmer CK did not meet with her because she was scared someone might see her.

After [REDACTED], Swimmer CK said that she became the person that Coach McKeever yelled at every day, all day long. Coach McKeever yelled at Swimmer CK at other meets and practices. Coach McKeever frequently called Swimmer CK the "poster child for meritocracy," which Swimmer CK thought was a malapropism for "mediocrity." Coach McKeever said that Swimmer CK's race at the Pac-10s was one of the most humiliating races that Coach McKeever had to watch and asked Swimmer CK why she was not upset. Coach McKeever told Swimmer CK she did not deserve to be on the Cal team, she "was an embarrassment to the team," she "should be ashamed of herself," her parents "should be ashamed of her," and she "was a waste of space on the team." Coach McKeever also frequently told Swimmer CK to "grow the fuck up" in response to Swimmer CK crying, which Swimmer CK frequently did in response to Coach McKeever yelling. Swimmer CK believed that yelling was Coach McKeever's way of trying to push her to become better.

Swimmer CK gave us a copy of an essay she wrote for an English class [REDACTED]. In that essay, she recounted criticisms that Coach McKeever yelled at her. They included, “You don’t have the body of an elite level athlete. You are too fat and not toned enough. It’s apparent you don’t give a rat’s ass about how you perform, if you don’t even take care of your body.”²⁹⁹ And, “I’ve asked some of your teammates to watch your progress and willingness to change these past couple of months in and out of the pool, and they all say you don’t give a fuck. This is unacceptable, how dare you disrespect my team like this!”

(b) *Leaving the Team*

Swimmer CK committed to training with the team over the summer, so she got a new apartment with a teammate and obtained a summer job to pay for summer classes and her apartment. After practice one day, [REDACTED] Staff L (Assistant Coach, [REDACTED]) pulled Swimmer CK out and said that Coach McKeever wanted to meet with her.

Swimmer CK said that, at that meeting, Coach McKeever took everything she knew about Swimmer CK, including from the personality assessments the team had done, and picked on her biggest weaknesses. Coach McKeever told Swimmer CK that on team evaluations the previous week every single person on the team wrote that Swimmer CK did not deserve to be on the team, did not contribute to the team, did not have the passion needed to be on the team, and was a “slacker.” Swimmer CK now believes this was not true because she later asked other swimmers on the team, and they said they did not write anything like that.

Coach McKeever viewed Swimmer CK’s summer job as demonstrating a lack of commitment to the team and suggested to Swimmer CK that she quit swimming and do something more fun with her time at Cal. Swimmer CK began hyperventilating and agreed to quit. Coach McKeever told her not to come to the pool for the next week or talk to anyone on the team. Coach McKeever also asked Swimmer CK to check in daily to confirm she still intended to quit the sport. Coach McKeever ended the meeting by giving Swimmer CK a hug. Swimmer CK felt ashamed and traumatized by the meeting and struggled to take care of her daily needs for the next week. Swimmer CK texted Coach McKeever every morning that she still wanted to quit. Through conversations with her teammates, Swimmer CK realized she wanted to transfer instead of quit and wrote a long letter to Coach McKeever explaining her decision.³⁰⁰

Swimmer CK brought the letter to the next meeting with Coach McKeever. When she began to read the letter out loud, Coach McKeever became upset about the decision to transfer and yelled at her. Coach McKeever said that if Swimmer CK could not do well under her, it was a joke to think Swimmer CK could do well under a different coach. The meeting ended with Swimmer CK leaving the letter on Coach McKeever’s desk and telling her that she intended to transfer. Swimmer CK said that her year at Cal was very detrimental to her psyche. It is

²⁹⁹ Ex. 197 [CALINT-000812].

³⁰⁰ Ex. 196 [CALINT-000811].

Swimmer CK's perception that Coach McKeever singled out swimmers who were bad at standing up for themselves and had timid personalities.

(c) Other Witness Accounts

Diver C (Diver, ██████████) ██████████ said Swimmer CK told her that Coach McKeever yelled, called Swimmer CK "the poster child of mediocrity," called Swimmer CK overweight, and shared the results of a survey by the team in which Swimmer CK was deemed least valuable. Diver C said that Swimmer CK returned to ██████████ crying every day and eventually transferred to ██████████ Coach McKeever was shocked when Swimmer CK wanted to transfer. In Diver C's view, singling Swimmer CK out was not meant to drive Swimmer CK to transfer, it was just to break her down, make her dependent on Coach McKeever, and get her to train over the summer.

Swimmer CE (Swimmer, ██████████) said that Swimmer CK had a very difficult first competition at the ██████████ and performed worse than she had been in training. Coach McKeever pulled Swimmer CK aside after a weights practice and told Swimmer CK that she did not think Swimmer CK wanted to be there anymore. Swimmer CK had to meet with Coach McKeever two days later to explain why she wanted to be there. According to Swimmer CE, there was no lead-up or escalation to this point.

Swimmer BB (Swimmer, ██████████) said she knew that Swimmer CK was criticized for not meeting expectations but did not remember any details. Swimmer BB emphasized that Coach McKeever's criticisms of swimmers she called out were, in her view, factual and not personal, and she did not believe Coach McKeever's coaching style was any different from that of coaches at comparable programs.

Swimmer AZ (Swimmer, ██████████) did not know Swimmer CK well but said that she thought Swimmer CK's performance was not at the level as the team's performance. Swimmer AZ said that Swimmer CK's weaker performance was clear from the beginning and showed at the conference championship.

(d) Coach McKeever's Response

Coach McKeever did not remember when Swimmer CK swam. She responded to the allegation that she stopped Swimmer DK (Swimmer, ██████████) from comforting Swimmer CK by explaining that the middle of practice was not a time to stop to comfort others. When asked if she called Swimmer CK "an embarrassment to the team," Coach McKeever said she told swimmers they were "an embarrassment to the team." Coach McKeever explained that she receives letters from hundreds of people wanting to be part of the program so her expectation is that those who make the team value the opportunity. If a swimmer did not value it, that was embarrassing for the swimmer, the University, her teammates, and the women who paved the way for the current team.

(e) Factual Findings

The preponderance of the evidence supports the conclusion that Swimmer CK experienced sustained verbal abuse that a reasonable person would find hostile, offensive, and

unrelated to the University's legitimate business interests. Swimmer CK's account was corroborated by two of Swimmer CK's teammates, Swimmer CE (Swimmer, [REDACTED]), and Diver C (Diver, [REDACTED]). In addition, Swimmer CK's allegation that Coach McKeever called her a "poster child for meritocracy [sic: mediocrity]" was corroborated by Diver C and a contemporaneous letter Swimmer CK wrote to Coach McKeever.³⁰¹ Swimmer CK's account that Coach McKeever berated her and told Swimmer CK that her teammates did not think she was a hard worker was corroborated by an essay Swimmer CK wrote [REDACTED] a year after she left Cal.³⁰² Other swimmers who swam at Cal around the same time Swimmer CK and at other times have independently shared that Coach McKeever told swimmers they should be ashamed of themselves, that their parents should be ashamed of them, and that they were a "waste of space," and we find Swimmer CK's account of Coach McKeever using these statements to be credible. We also find that a preponderance of the evidence supports that Swimmer CK found her experience of being yelled at by Coach McKeever to be belittling and humiliating, as this was credibly reported by Swimmer CK and corroborated by her college essay, which was authored relatively closely in time.³⁰³

[REDACTED]

Coach McKeever did not deny, however, telling Swimmer CK to "grow the fuck up," in the course of telling her not to interact with her mother. Coach McKeever did not recall Swimmer CK's time on the team and therefore did not refute or deny any of her specific allegations.

At least one swimmer told us that Swimmer CK received disproportionate criticism because Swimmer CK did not meet Coach McKeever's expectations. We acknowledge that coaches have latitude to provide constructive criticism to their athletes to help them improve but find, as noted above, that a preponderance of the evidence supports that much of Coach McKeever's behavior towards Swimmer CK went beyond providing constructive feedback given the personal nature of criticism.

(f) Policy Determination

We do not reach a policy determination because the applicable policies and guidelines went into effect in 2016, after Swimmer CK left Cal.

20. Swimmer CE (Swimmer, [REDACTED])

Swimmer CE joined the Cal women's swimming team as a freshman [REDACTED] and swam for four years [REDACTED]. She described her time at Cal as four of the hardest years of

³⁰¹ Ex. 196 [CALINT-000811].

³⁰² Ex. 197 [CALINT-000812]. We considered Swimmer CK's college essay as corroboration for certain allegations she described in our interview but did not consider it as an independent source of allegations.

³⁰³ See Ex. 197 [CALINT-000812].

her life. She said that she was one of the people whom McKeever selected to be “scapegoated,” causing her to feel she was under constant emotional and mental assault.

(a) *Allegations of Early Targeting for Verbal Abuse*

Swimmer CE said Coach McKeever singled her out for bullying during the first team retreat, before the start of the school year. Swimmer CE described how teammates and later Coach McKeever pulled her aside to criticize her posture. After the retreat, things escalated to the point of Coach McKeever yelling at her before, during, and after practice, and often unexpectedly. Swimmer CE remembered Coach McKeever calling her “worthless,” a “disgrace,” and a “failure.” Swimmer CE said she called Swimmer CE a “piece of shit” and told her to “fix your face.”

One practice, Swimmer CE swam faster than people who were usually better performers. Coach McKeever pulled Swimmer CE out of the water and yelled at her for not trying hard enough. Swimmer CE continued at an unsustainable pace, and Coach McKeever said, “See, you weren’t trying hard enough,” and kicked her out of practice. Swimmer CE said that Coach McKeever’s criticism extended to all areas of her life, such as how she walked to class, her posture, and how she sat in class. Swimmer CE said that Coach McKeever did not care what fast swimmers did with the rest of their time but scrutinized everyone else. Swimmer CE noted that she had been yelled at before but never like this and not without there being a valid reason. In contrast to previous coaching, she felt like this was an attack on her identity.

(b) *Injury and Illness*

During her years on the team, Swimmer CE described being forced to swim through an asthma attack, train through a [REDACTED] injury, and practice after [REDACTED]. She said she twisted her ankle and did not tell Coach McKeever out of fear. Coach McKeever also accused Swimmer CE of lying during the recruiting process about her [REDACTED], which made the breaststroke more difficult.

(c) *Alleged Threat of Removal*

Swimmer CE said Coach McKeever threatened to remove her from the team two months into her freshman year. According to Swimmer CE, because she was studying for an exam, she let a recruit she was hosting go to dinner with teammates, and Swimmer CE asked the recruit to get a receipt. The recruit did not get a receipt, and, when Swimmer CE expensed the twenty dollars for the recruit’s dinner, Coach McKeever became angry and claimed that Swimmer CE was jeopardizing the whole team. Coach McKeever suspended Swimmer CE for three days and said she would let Swimmer CE know then if she was still on the team. After three days, Coach McKeever met with Swimmer CE, handed Swimmer CE her gear in a bag, laughed, and said, “You didn’t actually think I’d kick you off the team for that, did you?” Swimmer CE said Coach McKeever threatened to kick Swimmer CE off the team three more times over the following three years, with no particular reason each time. Coach McKeever accompanied these threats with complaints about Swimmer CE’s commitment. Swimmer CE said Coach McKeever indirectly threatened her with removal from the team at Nationals during the summer of her [REDACTED] year. She swam poorly in a [REDACTED] race, and Coach McKeever and [REDACTED] Staff L

(Assistant Coach, ██████████) pulled Swimmer CE aside and told her that maybe she should not come back the next year. Swimmer CE also said Coach McKeever removed her from weights practice because she had not qualified for the NCAA championships.

According to Swimmer CE, Coach McKeever also threatened to kick her off the team unless Swimmer CE saw a therapist after she failed a class. Swimmer CE believed that the school's therapist did not know how to respond when she identified Coach McKeever as the root of her problems. She met with him for the required number of sessions and then stopped.

Swimmer CE said that she experienced significant emotional distress as a result of Coach McKeever's targeting her for persistent, harsh criticism, including disruption to her sleep (she said she slept only four to five hours a night for all four years) and significant weight loss. She emphasized the terror she felt before going to practice and not knowing what might set off Coach McKeever. Swimmer CE recalled wishing for a semi-serious injury so that she did not have to go to practice. Her parents begged her to quit.

(d) Other Witness Accounts

We spoke to Witness F, who was friends with Swimmer CE and who did not attend Cal. Witness F explained that she was two years behind Swimmer CE in high school and the two became best friends when they swam with the same club swimming team. Witness F visited Swimmer CE numerous times at Cal. After Witness F graduated high school and went to college ██████████, she saw Swimmer CE when they were home and the two also called each other. They stay in touch to this day.

Witness F told us that Swimmer CE's challenges emerged very quickly in her freshman year. Swimmer CE was ██████████ with another swimmer, Swimmer AZ (Swimmer, ██████████) so Witness F heard a lot about how Swimmer CE was treated by Coach McKeever and how that compared to the way Swimmer AZ was treated for doing the same things. Witness F said Swimmer CE told her that Coach McKeever called her "useless," "terrible," "worthless," and a "piece of shit." Witness F also said that Coach McKeever said Swimmer CE did not deserve to be on the team. Witness F noted that Swimmer CE was an extremely hard worker and this experience sapped Swimmer CE's self-confidence. Witness F described Swimmer CE as someone who stepped up to the challenge of not being as fast as others and thought that Swimmer CE's difficulties were much more about Coach McKeever's coaching style. Witness F noted that Swimmer CE acted like she owed something to Coach McKeever for being on the team and had to make up for that debt.

Witness F recalled that one summer, when Swimmer CE's mental state had deteriorated, the two were at Swimmer CE's parents' house, and Swimmer CE asked if Witness F could stay the night because she had such a hard time sleeping because of Coach McKeever. Swimmer CE had a recurring nightmare about being late for practice. Witness F said that Swimmer CE apparently still has this nightmare a decade later. Witness F's mother recalled a time when Swimmer CE came over to Witness F's house and Swimmer CE started crying to Witness F's mother about how she did not understand why she was not good enough. Witness F noted that Swimmer CE's times were good enough to easily allow her to transfer. Witness F felt that Swimmer CE wanted to stick it out and prove to everyone that she was good enough to swim at

Cal all four years. Witness F said the experience caused permanent changes in Swimmer CE's personality.

Swimmer CK (Swimmer, [REDACTED]) said Coach McKeever yelled at Swimmer CE daily and that Swimmer CE left the pool deck shaking. Swimmer CK said Swimmer CE had insomnia while at Cal because she was so affected by these interactions.

Swimmer BA (Swimmer, [REDACTED]) said that Swimmer CE was a swimmer who was on Coach McKeever's "shit list," meaning she was someone whom Coach McKeever frequently targeted for verbal abuse. It seemed as if in Coach McKeever's view, Swimmer CE could never do anything right: Coach McKeever did not like how Swimmer CE was training, her attitude, the look on her face, or her posture. One time, Swimmer CE had an asthma attack, and Coach McKeever screamed at her, yelled at her, and degraded her in front of others on the team. Swimmer BA believes Coach McKeever then kicked Swimmer CE out of practice. Swimmer BA recalled consoling Swimmer CE. She said that Swimmer CE did not sleep very well because of stress and often woke up well before her alarm due to anxiety.

Some witnesses who viewed Coach McKeever positively said that Swimmer CE had difficulty with Coach McKeever but did not view her as "targeted." They pointed to Swimmer CE's lack of speed and difficulty adapting as reasons for Coach McKeever's criticism. Swimmer AZ (Swimmer, [REDACTED]) said that Swimmer CE fell into the category of swimmers who had difficult interactions with Coach McKeever. Swimmer CE was Swimmer AZ's [REDACTED]. Swimmer AZ recalled that the two of them were both late to a couple of practices during freshman year and were yelled at by Coach McKeever as a result. Swimmer AZ said that Swimmer CE was yelled at more in the subsequent years due to performance. Swimmer CE was not one of the faster swimmers and struggled to make sets at practice, which meant more corrections from Coach McKeever.

Swimmer CD (Swimmer, [REDACTED]) said that Coach McKeever did not take it well when people did not adapt or repeated the same thing every day. That was how Coach McKeever saw Swimmer CE, who always chose the same set. Swimmer CD said Swimmer CE and Coach McKeever had a hard relationship, but Swimmer CD did not remember Swimmer CE being targeted more than anyone else. Swimmer CD clarified that "targeted" was not the right word, given Swimmer CD's favorable view of Coach McKeever. Swimmer CD acknowledged that there was a longer period during which Swimmer CE did not adapt, which may have resulted in a longer period of toughness from Coach McKeever.

Swimmer BB (Swimmer, [REDACTED]) said that Swimmer CE was one of the swimmers called out by Coach McKeever for not meeting expectations. Swimmer BB also noted that Swimmer CE was regularly late to practice. Swimmer BB emphasized that Coach McKeever's criticisms of swimmers she called out were, in her view, factual and not personal, and she did not believe Coach McKeever's coaching style was any different from that of coaches at comparable programs.

Swimmer BI (Swimmer, [REDACTED]) felt Swimmer CE had a more difficult experience at Cal. During Swimmer CE's freshman year, Swimmer CE had a boyfriend at home and did not seem fully present, and in Swimmer BI's view, that was the beginning of Swimmer CE's

struggle. The one memory Swimmer BI had of Swimmer CE was when the team was sharing their goals for the season and Swimmer CE said she wanted to be better at a certain drill. Coach McKeever said they were not being timed for their ability at that drill, so it was okay to not be good at it. That stood out to Swimmer BI as a very real comment and reminded Swimmer BI to be specific in her goals.

(e) Coach McKeever's Response

Coach McKeever said she did not think she berated Swimmer CE or kicked her out when Swimmer CE was having an asthma attack. If Coach McKeever did, then she did not think it is a big deal for a swimmer to take her asthma medicine and talk to Coach McKeever about why she yelled.

Coach McKeever said she did not call any individual “worthless.” She has said “fix your face” or “check in with your body language,” and that might have been misunderstood. Coach McKeever said that she has been told for several years how horrible she was to Swimmer CE, but Coach McKeever saw Swimmer CE as someone who had the opportunity to come to Cal and did not swim her best times until her senior year. Coach McKeever described her as not an asset nor a negative, just a “nondescript” person. Coach McKeever talked to [REDACTED] Cal Alumni [REDACTED] and he told Coach McKeever that she was very supportive of Swimmer CE when she swam her best time at [REDACTED]

Coach McKeever said that she frequently kicked swimmers out of practice after they did not try hard enough. If a swimmer argued and said they could not do better, Coach McKeever kicked her out for being disrespectful. Coach McKeever said she did not have a “playbook” on kicking swimmers out of practice but made judgment calls. She said that swimmers who should quit generally did not quit at the right time because swimming was tied to their identity and their relationship with their parents. Coach McKeever said she did not threaten to kick Swimmer CE off the team over the reimbursement issue but may have suspended her if she failed to provide a receipt multiple times. She believed it was important that reimbursements be done the right way.

(f) Factual Findings

Swimmer CE's account that Coach McKeever subjected her to repeated harassment and abusive conduct that caused a negative and long-lasting effect on Swimmer CE's mental health was corroborated by several other witnesses. A friend of Swimmer CE's who was not on the Cal team noted the detrimental effect that Swimmer CE's time on the Cal team had on her personality. Coach McKeever's statement that she has been told for several years how horrible she was to Swimmer CE implies that other witnesses noted abusive behavior and that it was severe enough to be memorable for years after the event. Given the corroboration of Swimmer CE's account, we find by a preponderance of the evidence that Coach McKeever subjected Swimmer CE to persistent abusive criticism.

We find by a preponderance of the evidence that Coach McKeever used abusive language with Swimmer CE, which frightened and threatened Swimmer CE, and which a reasonable person would find hostile, offensive, and unrelated to the University's legitimate business interests.

(g) *Policy Determination*

We do not reach a policy determination because the applicable policies and guidelines went into effect in 2016, after Swimmer CE's time at Cal.

21. Swimmer BA (Swimmer, ██████████)

Swimmer BA joined the Cal women's swimming team as a freshman ██████████ and swam until her graduation ██████████. Swimmer BA spoke critically about the culture of the swimming team and the behavior of Coach McKeever, who she said yelled and used curse words when yelling at swimmers on the team. Swimmer BA also described the traumatic effect this experience had on her. Other swimmers also told us that Swimmer BA was targeted by Coach McKeever for particularly harsh criticism.

(a) *Swimmer BA's Account*

Swimmer BA described an environment of constant fear, in which she had to change who she was in order to avoid being targeted for harsh treatment by Coach McKeever. She said that even though she avoided being directly targeted, it was a hard atmosphere in which to live. Swimmer BA said that she and other recruited Division I swimmers were willing and able to accept toughness, tough love, hard work, and being held accountable to high expectations. But, in her experience, Coach McKeever degraded swimmers in public and private and created a culture of fear and not a culture of supportive competitiveness. According to Swimmer BA, Coach McKeever's personality did not make swimmers feel like they were receiving love, care, or support.

Coach McKeever often told Swimmer BA that she was "nothing but a smile on the pool deck." Swimmer BA said it felt horrible to hear that from someone who was supposed to push her towards her goals. Coach McKeever never directly called Swimmer BA a "piece of shit," but her behavior made Swimmer BA feel that way. When Coach McKeever was mad, it was not in a productive way. Swimmer BA said Coach McKeever's coaching style included yelling and cursing very close to a swimmer's face, about five or six inches away. Swimmer BA said that, if a swimmer backed away, Coach McKeever got even closer.

One time after practice, Swimmer BA helped to clean up the pool and became frustrated that a lane line broke. Coach McKeever yelled at Swimmer BA and said she was not a team player and she should come back when she was ready to be a team player.

Swimmer BA told us about an activity at a retreat where everyone had to share their worst quality. Swimmer BA said her worst quality was that it was hard for her to get out of a bad mood. Coach McKeever disagreed and told her that her worst quality was that she had no personality. Further details are included below in the section on retreats, Section IX.E.

Swimmer BA said that athletes were allowed to greet family and friends after a meet only after the team had completed the team meeting and cool down. At one meet, her family, including her grandmother, came to support her but had to leave early because of her grandmother. Swimmer BA's mother approached Coach McKeever to ask if Coach McKeever would make an exception to her rule so that Swimmer BA could quickly say goodbye to her

family, but Coach McKeever said “no” and later yelled at Swimmer BA because her parents had asked for the exception. Swimmer BA did not talk to her parents about it because she was afraid they would email or call Coach McKeever and get her into even more trouble.

Swimmer BA almost quit the program in her fourth year. The summer before her fourth year, Coach McKeever told her, “I’m not sure swimming is for you.” Swimmer BA said she was depressed, but she found enough strength to not fall into Coach McKeever’s view of her because she did not want Coach McKeever to decide when she ended her swimming career. Swimmer BA told Coach McKeever that her only goal during the fourth year was to have fun, and after that Coach McKeever mostly left her alone. Swimmer BA believed that she had the best swimming year that year, and Coach McKeever moved on to the next person on her targeting list.

Swimmer BA described feeling severe anxiety and needing therapy because of being constantly yelled at by Coach McKeever. She described feeling so much fear of Coach McKeever that, many years later, when visiting the Cal campus, she would not go near the pool, for fear of seeing Coach McKeever. She could not swim for a long time after leaving Cal because she would have flashbacks and nightmare about swimming for Coach McKeever.

(b) Other Witness Accounts

Swimmer CK (Swimmer, [REDACTED]) described Swimmer BA as a swimmer who stuck out as a victim of Coach McKeever’s yelling.

Swimmer AP (Swimmer, [REDACTED]) described Swimmer BA as one of the swimmers that “got the brunt of it.” Swimmer AP said that Swimmer BA was kind and wanted to please Coach McKeever but was not very fast. Swimmer AP said it was hard for Swimmer BA to figure out her role on the team.

At least two witnesses told us that they believed Coach McKeever’s conduct was not inappropriate. Swimmer BB (Swimmer, [REDACTED]) said that Swimmer BA was one of the swimmers who got called out more frequently for not meeting expectations. Swimmer BB emphasized that Coach McKeever’s criticisms of swimmers she called out were, in her view, factual and not personal, and she did not believe Coach McKeever’s coaching style was any different from that of coaches at comparable programs.

Swimmer AZ (Swimmer, [REDACTED]) described Swimmer BA as someone who did not communicate well and struggled in workouts. Swimmer AZ said that Coach McKeever had a direct style of communication that did not work well for Swimmer BA.

(c) Coach McKeever’s Response

During evidence review, Coach McKeever was provided with the factual details of Swimmer BA’s account, but Swimmer BA’s name was withheld from Coach McKeever at Swimmer BA’s request. Coach McKeever did not provide a response to the specific allegations made by Swimmer BA, but Coach McKeever denied in general allegations of verbal abuse.

(d) *Factual Findings*

We find by a preponderance of the evidence that Coach McKeever engaged in persistent use of abusive, insulting language directed at Swimmer BA that a reasonable person would find hostile, offensive, and unrelated to the University's legitimate business interests. We find the accounts of Swimmer BA and the other witnesses to be credible. Coach McKeever made derogatory comments that belittled or degraded Swimmer BA, such as by saying that Swimmer BA was "nothing but a smile on the pool deck" or that Swimmer BA had no personality. Coach McKeever's frequent yelling of criticism into Swimmer BA's face created fear and anxiety and was conduct a reasonable person would find hostile, offensive, and unrelated to the University's legitimate business interests.

(e) *Policy Determination*

We do not reach a policy determination because the applicable policies and guidelines went into effect in 2016, after Swimmer BA swam at Cal.

22. Swimmer AR (Swimmer, [REDACTED])

Swimmer AR swam at Cal during the [REDACTED] academic year, [REDACTED]. Swimmer AR arrived at Cal as a freshman [REDACTED], broke her [REDACTED], and did not compete. Swimmer AR did not return to school [REDACTED]. She joined the [REDACTED] team the following fall.

(a) *Practice Environment*

Swimmer AR loved her teammates and Cal. Swimmer AR described practices, however, as more intensely serious than she expected, with an "air of arrogance" exuded by Coach McKeever and the assistant coaches. Swimmer AR liked Coach McKeever's unique training style but did not like the lack of smiling or joking on deck. A month and a half into the year, Swimmer AR said she was having trouble progressing. One day after practice, Swimmer AR went to Coach McKeever to ask for feedback on her stroke. Coach McKeever looked at Swimmer AR and said that, as a freshman, Swimmer AR did not deserve and had not earned Coach McKeever's opinion.

Swimmer AR believed that after this moment she was targeted by Coach McKeever. Coach McKeever verbally demeaned Swimmer AR and called her "pathetic" and similar insults [REDACTED] from then on, instead of giving Swimmer AR a grace period. Coach McKeever "tore into" her. Swimmer AR described Coach McKeever as tearing people down and making them feel like they are the problem and a failure.

Swimmer AR said that, for years, she thought she was the problem and the failure:

(b) Broken

Coach McKeever told Swimmer AR that Swimmer AR could not attend an [REDACTED] because she was not ready. Swimmer AR tried to ask what she could do, but Coach McKeever refused to engage with her. Swimmer AR broke her ankle walking around campus that weekend after drinking with other swimmers who were not at the meet. Swimmer AR described this as the culmination of bad choices induced by her frustration with the swimming situation. When Swimmer AR showed up to practice with a swollen foot, Coach McKeever became mad and asked whether Swimmer AR had been drinking. Swimmer AR initially said no, out of fear, but eventually said yes during the same conversation. Coach McKeever took that as a lie. She sent Swimmer AR to the trainer. Swimmer AR was in a boot and on crutches, could not practice, and felt that Coach McKeever gave up on her. Swimmer AR then missed a meeting, and Coach McKeever told Swimmer AR to get it together. When Swimmer AR returned, she was made to practice separately, and Coach McKeever criticized her for not fully trying when Swimmer AR practiced flip turns on one foot.

During her injury, Swimmer AR felt isolated. Other swimmers were supportive when Coach McKeever was not around but cautious about talking to Swimmer AR when Coach McKeever was present. Swimmer AR's roommate drew faces on Swimmer AR's cast, which Coach McKeever took as Swimmer AR not taking the situation seriously.

(c) Decision to Quit

Swimmer AR went home for Thanksgiving, and her parents could tell something was wrong based on Swimmer AR's personality changes. Swimmer AR returned for finals, which was a time when certain practices were optional. Coach McKeever accused Swimmer AR of skipping a practice the day before, even though Swimmer AR did not have a final exam. Swimmer AR told McKeever she was at practice, and other team members vouched for her, but Coach McKeever kicked her out of practice. Coach McKeever ultimately told Swimmer AR she knew that Swimmer AR had been present but said Swimmer AR was not trying hard enough. Swimmer AR said she ended up needing to go to the emergency room because she pushed herself so hard to get back into the pool and was stressed and dehydrated. Swimmer AR went home for Christmas and decided to transfer. Once Swimmer AR told Coach McKeever, Coach McKeever was willing to talk to her. Coach McKeever told Swimmer AR she was a nice person and could stay at Cal but was not allowed to swim. Coach McKeever told Swimmer AR she would not succeed in a Division I program.

(d) Parents of Swimmer AR's Account

Parents of Swimmer AR felt that, by Thanksgiving, Swimmer AR was a shell of herself. Swimmer AR cried when they drove her back to the airport to return to school. They said that Swimmer AR was one of the swimmers that, from day one, Coach McKeever picked to isolate and bully. They said that Swimmer AR had always done well and wanted to please her coaches.

They thought it was very tough for Swimmer AR to deal with someone who did not like her as a person. They also described Swimmer AR's [REDACTED] injury and said that Coach McKeever was mad at her for it. They said that they got a call regarding Swimmer AR's trip to the emergency room and were informed that Swimmer AR's [REDACTED] were low as a result of physical exhaustion. They said that after Swimmer AR collapsed on deck during practice, Coach McKeever never called them. By [REDACTED], Parents of Swimmer AR knew Swimmer AR was finished with the program. They said that the decision was made immediately before the school [REDACTED] and that they could see the relief in Swimmer AR.

Parent of Swimmer AR had a conversation with Coach McKeever before they drove down to Berkeley to collect Swimmer AR's possessions to ask if there was an option to get back on the team. Coach McKeever said that Swimmer AR could train hard on her own and work her way back, but Parent of Swimmer AR knew Swimmer AR would not be able to do that without access to the facilities and felt like this was a fake offer.

(e) Other Witness Accounts

[REDACTED] Staff H (Assistant Coach, [REDACTED]) described Swimmer AR as a "chosen one" [meaning chosen by Coach McKeever for scrutiny and yelling] and said that Coach McKeever was always on her case. According to [REDACTED] Staff H, Coach McKeever said that she could not stand Swimmer AR and did not want to look at her. He said that Coach McKeever demeaned the way Swimmer AR walked and talked in front of others. He said that Coach McKeever mockingly mimicked Swimmer AR crying both directly to Swimmer AR, while she was crying, and later to [REDACTED] Staff H. He wanted to support Swimmer AR but feared retaliation. [REDACTED] Staff H called it "damning" and "overwhelming" how Coach McKeever conducted herself with Swimmer AR.

Swimmer BB (Swimmer, [REDACTED]) said that Swimmer AR struggled to handle Coach McKeever's appropriate but tough coaching style. Swimmer BB said that Coach McKeever called out Swimmer AR for not meeting expectations, not for Swimmer AR's personal attributes. Swimmer BB described a spin class in which Coach McKeever called Swimmer AR out on her cadence. Swimmer BB said this was typical in the sense that Coach McKeever was focused on whether the athlete was meeting expectations, not on personal issues. Swimmer BB speculated that Swimmer AR was able to have a successful swim career elsewhere because [REDACTED] was not at the same caliber as Cal.

(f) Coach McKeever's Response

Coach McKeever did not specifically deny allegations regarding Swimmer AR.

(g) Factual Findings

We find the accounts of Swimmer AR, her parents, and [REDACTED] Staff H to be credible. We likewise find Swimmer BB's account that Coach McKeever was tough on Swimmer AR is not inconsistent with the other accounts, although Swimmer BB believed that Coach McKeever's toughness reflected an appropriate coaching style. Coach McKeever did not provide a response to the allegations pertaining to Swimmer AR.

We find by the preponderance of the evidence that Coach McKeever's expression of her personal dislike for Swimmer AR, insults to Swimmer AR, and mocking of Swimmer AR belittled or degraded Swimmer AR in a way that a reasonable person would find hostile, offensive, and unrelated to a legitimate University interest.

(h) Policy Determination

We do not reach a policy determination because the applicable policies and guidelines went into effect in 2016, after Swimmer AR swam at Cal.

23. Swimmer CS (Swimmer, [REDACTED])

Swimmer CS joined the Cal women's swimming team as a freshman [REDACTED] and swam at Cal [REDACTED]. Swimmer CS was on a partial scholarship. [REDACTED] Swimmer CS had a difficult experience at Cal and ultimately left the team at the end of her junior year. She attributed her decision to leave, in part, to Coach McKeever's treatment of her.

(a) Swimmer CS's Account

(i) Freshman Year and Disability

Swimmer CS was not the top recruit in her class but also was not a walk-on to the team. Freshman year was a big adjustment for Swimmer CS, and trouble began when she started making mistakes in practice by failing to keep count, not making sendoffs, or not kicking well. Coach McKeever made modifications for Swimmer CS, who had [REDACTED]. Still, Coach McKeever called Swimmer CS out and made the entire team redo sets if Swimmer CS made a mistake. Swimmer CS recalled telling her "big sisters" on the team about her [REDACTED] and feeling resentment from them. Swimmer CS started struggling at school as well. Coach McKeever eventually added [REDACTED] at practice and [REDACTED] which helped Swimmer CS do better at practice, and the targeted criticism subsided.

(ii) [REDACTED]

[REDACTED]

[REDACTED]

805 [REDACTED]

[REDACTED]

[REDACTED]

(iii) Return to Swimming

Swimmer CS returned to the team that year and started winning her exhibition heats. She also started doing better in school because of her [REDACTED] classes. Coach McKeever was still always mad at her because she could not stretch due to a [REDACTED] injury that she chose not to treat with [REDACTED]. Coach McKeever thought that Swimmer CS was not doing enough physical therapy or putting in other effort to deserve to be on the team. In Swimmer CS's words, it bothered Coach McKeever that she did not live for swimming.

Swimmer CS said she ultimately had a successful freshman year, [REDACTED] and reduced her reaction time to an impressive number. At that point, Coach McKeever's attitude toward Swimmer CS softened somewhat. Still, Coach McKeever occasionally told Swimmer CS and others in a threatening tone that they did not deserve to be there.

(iv) Specific Allegations of Verbal Abuse

Swimmer CS said that she was yelled at by Coach McKeever on an almost daily basis. Swimmer CS noted that some of the comments would not have felt out of line or remarkable except that Coach McKeever was so consistent about picking on Swimmer CS. Swimmer CS gave a number of examples:

- Swimmer CS said that Coach McKeever told her, "You don't deserve to be here." According to Swimmer CS, Coach McKeever made her verbal attacks on swimmers one-on-one, where others could not overhear her, like near the ice machine. Swimmer CS described Coach McKeever's tone and body language as threatening. Swimmer CS said Coach McKeever grabbed her shoulder and dug her nails in while yelling at her.
- Swimmer CS said that, starting around sophomore year, Coach McKeever regularly drew attention to and made fun of Swimmer CS's [REDACTED]. Coach McKeever said, in front of others on the team, that Swimmer CS [REDACTED] 60

badly Coach McKeever had to [REDACTED]

Coach McKeever also jokingly said, [REDACTED]

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- Swimmer CS suffered a [REDACTED] injury that prevented her from doing certain types of [REDACTED]. Coach McKeever repeatedly told Swimmer CS that she was overstating her injury, that Swimmer CS “thinks too much of herself,” and that if it were truly bad, Swimmer CS would not be able to swim. During [REDACTED] Coach McKeever yelled at Swimmer CS: “Go deeper. You need to be going deeper.”
- Swimmer CS was also unable to [REDACTED], which she only recently discovered is because she is [REDACTED]. Coach McKeever yelled at her that she simply needed to stretch more and that it was Swimmer CS’s fault because she was not doing enough to try to improve her flexibility.
- Swimmer CS recalled having a [REDACTED] when they were returning from one training trip. They had only a very short time to quickly go home and pack and leave for their next meet in [REDACTED]. When they got back to Cal, Coach McKeever told Swimmer CS to go straight to the trainer but Swimmer CS felt she did not have time because she needed to pack. It turned out that Coach McKeever had made Swimmer CS a doctor’s appointment that Swimmer CS had missed. When Coach McKeever found out, she said to Swimmer CS, “Why the fuck didn’t you go to the trainer.” Swimmer CS thought this was very harsh, as Coach McKeever did not even tell Swimmer CS she had made an appointment.
- Coach McKeever often negatively compared Swimmer CS to other swimmers and said things like, “Why can’t you be more like [swimmer name].”

Swimmer CS also said she, Swimmer CS, was obsessed with her weight at the time. According to Swimmer CS, Coach McKeever made negative comments about Swimmer CS’s body type. Coach McKeever said to her, “Look at your body type and how it’s different from Swimmer BZ’s. She’s [REDACTED] and you’re not.” According to Swimmer CS, Coach McKeever made swimmers change their suits if she did not like how the suit looked, which she felt was body shaming. She said Coach McKeever told Swimmer CS, “You can’t wear that kind of suit; you have to keep everything together,” which Swimmer CS heard as Coach McKeever calling her “fat.” She said Coach McKeever called another swimmer “tubby.”

³⁰⁶ After college, Swimmer CS learned that she had [REDACTED]. Swimmer CS thought her college swimming career would have been a lot different if Coach McKeever helped her get medical care instead of making fun of her.

Swimmer CS said Coach McKeever kicked her and other swimmers out of practice on what felt like a random basis and for seemingly trivial things, like not hanging up the flags right. She said that, at one practice, she was praised for being one of only two swimmers doing something right but then, five minutes later, Coach McKeever kicked her out of practice.

(v) Leaving the Team

Swimmer CS met with Coach McKeever in [REDACTED] of her [REDACTED] year and told Coach McKeever she did not think she wanted to be part of the program anymore. Coach McKeever slammed her pen on the table and told Swimmer CS something to the effect of, "I don't see this as a problem with me; it's a problem with you. You're interpreting what I'm saying to you wrong." Swimmer CS viewed this as gaslighting; she explained that comments like that by Coach McKeever caused Swimmer CS to question herself, even today.

At the [REDACTED], Swimmer CS was working with her [REDACTED] for [REDACTED] class instead of stretching. Coach McKeever yelled at her for a sustained period of time, saying things like, "Why can't you just be more like everybody else?" Swimmer CS said that other coaches and swimmers on the team witnessed this incident and that other swimmers became very uncomfortable and tried to walk away. Afterward, in the locker room, Swimmer CS broke down. Swimmer CS described feeling shaken and in "shock" after this incident.

After returning to Cal, Swimmer CS realized she had to leave. She had qualified for the [REDACTED] and felt like she was giving up on her dream. Swimmer CS spoke with Coach McKeever. According to Swimmer CS, Coach McKeever did not believe herself to be at fault in any way for Swimmer CS's decision to leave. Swimmer CS lost her scholarship when she quit and believed it would be too expensive and burdensome to transfer.

(vi) Psychological Impact

Swimmer CS's experience with Coach McKeever had a profoundly negative impact on her. It left her with a pervasive sense of self-doubt and caused lingering psychological trauma and depression. Even today, if her boss asks Swimmer CS to come into their office to speak with her, Swimmer CS becomes anxious and nervous that she is going to be yelled at. One of the bosses noticed the reaction and told Swimmer CS that she should not assume she is in trouble. One of her other bosses learned that she needed to keep the door open during their conversations for Swimmer CS to feel safe. Swimmer CS also noted that when she experiences self-doubt, she hears the voice of Coach McKeever telling her she is not good enough or that everyone would be better off without her.

Swimmer CS said Coach McKeever "ruined" swimming for her and that she can no longer swim because even the smell of chlorine or dipping her toe in the water reminds Swimmer CS of her experience with Coach McKeever. Swimmer CS attempted suicide [REDACTED] and attributes that, at least in part, to how Coach McKeever treated her.

(b) Parent of Swimmer CS's Account

[REDACTED]

[REDACTED]
parent of Swimmer CS also recalled hearing a comment from Coach McKeever about Swimmer CS's [REDACTED] and was aware of Coach McKeever's body shaming.³⁰⁷

(c) Other Witness Accounts

Swimmer CJ (Swimmer, [REDACTED]) said that it seemed that Coach McKeever picked on women who were weaker, such as Swimmer CS, who was quiet, introverted, and did not stand up for herself. [REDACTED]

Swimmer BY (Swimmer, [REDACTED]) said that Swimmer CS was on Coach McKeever's list of targets.

Swimmer CZ (Swimmer, [REDACTED]) recalled Swimmer CS getting yelled at and feeling relief that it was someone else rather than her at whom Coach McKeever yelled.

[REDACTED] Staff H (Assistant Coach, [REDACTED]) said that Coach McKeever targeted, berated, and spoke down to Swimmer CS in front of others but was supportive when she swam well.

Swimmer BA (Swimmer, [REDACTED]) said that Swimmer CS was one of the swimmers who could not do anything right in the eyes of Coach McKeever. Coach McKeever yelled at Swimmer CS for no apparent reason and did not want to talk or listen to Swimmer CS.

Swimmer AP (Swimmer, [REDACTED]) described Swimmer CS as one of the swimmers targeted by Coach McKeever. At one Cal home meet, Swimmer CS swam a [REDACTED] that she was really excited about, and Coach McKeever said she did not know why Swimmer CS was happy. To Swimmer AP, that feedback did not seem to be from a place of trying to help Swimmer CS. Swimmer AP noted that Swimmer CS was not in tune with her body, struggled with [REDACTED] and no one wanted to room with Swimmer CS because she [REDACTED]. There was a sense that Coach McKeever did not believe Swimmer CS had a genuine condition, but Swimmer CS also struggled to find answers.

At least one witness told us they believed Coach McKeever's conduct was not inappropriate. Swimmer BB (Swimmer, [REDACTED]) said that Swimmer CS was at the top of list of examples of people who might feel like they did not have a fair experience and who were called out for not meeting expectations. Swimmer BB described Swimmer CS as trying hard to be perfect. Swimmer BB said that Coach McKeever often picked on Swimmer CS for her

³⁰⁷ [REDACTED]

attitude and body language, including hunching her body. Swimmer BB said Swimmer CS could not do much right in Coach McKeever's eyes. Swimmer BB emphasized that Coach McKeever's criticisms of swimmers she called out were, in her view, factual and not personal, and she did not believe Coach McKeever's coaching style was any different from that of coaches at comparable programs.

Swimmer DA (Swimmer, [REDACTED]) Swimmer CS's roommate, [REDACTED] said that when Swimmer CS returned, she was behind the rest of the team. Swimmer DA was not sure she agreed with the allegation that Coach McKeever berated Swimmer CS. Swimmer DA said that Coach McKeever strongly encouraged faster swimming, which Swimmer DA did not view as berating. Swimmer DA also said that Coach McKeever never commented on Swimmer CS's weight but might have suggested that swimmers, including Swimmer CS, try a larger size bathing suit. Swimmer DA also said that when Swimmer CS came back from her hiatus, she was not able to lift as much as the team.

(d) Coach McKeever's Response

[REDACTED]

Coach McKeever said she did not know how she could have known that Swimmer CS [REDACTED] and she denied that she made fun of Swimmer CS. Coach McKeever knew a handful of people had [REDACTED] like Swimmer BT (Swimmer, [REDACTED]), who [REDACTED] joked about it.

Coach McKeever said she did not call Swimmer CS "fat" but may have called her lazy. Swimmer CS tended to be lazy, by not making the intervals, putting in marginal effort, or picking and choosing when she wanted to put in effort.

(e) Factual Findings

We generally find Swimmer CS's account credible. Six swimmers and an assistant coach corroborated that Coach McKeever targeted Swimmer CS for sustained verbal abuse, including by regularly criticizing Swimmer CS, telling her she "thinks too much of herself," and making fun of Swimmer CS for [REDACTED]. Although Coach McKeever claimed that she did not know Swimmer CS [REDACTED] we credit Swimmer CS's very specific recollection of these comments, especially when combined with Swimmer AP's account that the team was generally aware that Swimmer CS [REDACTED]. We therefore find by a preponderance of the evidence that Coach McKeever engaged in persistent use of abusive, insulting language directed at Swimmer CS that a reasonable person would find hostile, offensive, and unrelated to the University's legitimate business interests.

[REDACTED]

(f) *Policy Determination*

We do not reach a policy determination because the applicable policies and guidelines went into effect in 2016, after Swimmer AR swam at Cal.

24. Swimmer CZ (Swimmer, [REDACTED])

Swimmer CZ swam at Cal from [REDACTED] and said that her experience started out tough and got tougher by the end of first year. She said that, at some point during her first year, Coach McKeever degraded and bullied her and also in some instances refused to talk to her. She said that Coach McKeever said things that “beat you up enough mentally to make you think you’re the problem, that you’re ruining the team.” She said that Coach McKeever yelled at her and at other swimmers for minor reasons, such as arriving late or dressing incorrectly. Swimmer CZ described being yelled at so frequently that she hated swimming due to Coach McKeever, and said that it got to the point that she quit the team and transferred to a different university.

Swimmer CZ described Coach McKeever yelling aggressively and getting in her face. She said that Coach McKeever frequently said to her, “I’m only mean to you” or “I only yell at you” because “I care.” Swimmer CZ described feeling that she, Swimmer CZ, was the problem. Her teammates isolated her; as Swimmer CZ explained, they did not want to be on Coach McKeever’s bad list, “so why would they help?”

Swimmer CZ said she did not perform well at the [REDACTED] [REDACTED], where she also did not perform as well as she wanted. She feared losing her scholarship and her opportunity to be on the team if she did not stay at Cal during the summer after her freshman year. Swimmer CZ described it as a miserable summer, when she wanted to go home, relax, spend time with family, and practice somewhere else, while not being yelled at all the time.

Swimmer CZ gained fifteen pounds her freshman year and started vomiting to lose weight during the summer after her freshman year. Other swimmers told Swimmer CZ that Coach McKeever was not nice to her. Swimmer CZ recalled feeling depressed and like she was not fast enough, thin enough, or smart enough. She did not recall Coach McKeever saying those things specifically; instead, Coach McKeever sent the message with her tone and implication, and Swimmer CZ responded that she could do better while shrinking into herself.

Swimmer CZ described an instance where she hurt her [REDACTED] and took herself to the emergency room. She developed [REDACTED] which meant she could not practice, required daily care, and could not go to class. She described the experience as traumatic and lonely. Coach McKeever never called or visited Swimmer CZ. Swimmer CZ contrasted this to Swimmer DO (Swimmer, [REDACTED]), whom Coach McKeever followed up with consistently after she [REDACTED] at a swim meet. Swimmer CZ hated swimming after that experience and felt suicidal.

Swimmer CZ decided to return to Cal for her junior year. During one practice, Coach McKeever yelled at Swimmer CZ for being near the wall, or fixing a piece of equipment, or some other minor issue. Swimmer CZ got out of the pool, filled up her net bag with her equipment, and tossed her net bag in the direction of Coach McKeever. She said, “I fucking quit.” Swimmer CZ felt suicidal after that because her success as a swimmer was tied into her identity. She called her mother that night and said she quit swimming and cried for a couple hours on the phone. Swimmer CZ packed up her belongings that weekend and drove home. Later, Swimmer CZ told Coach McKeever she was going to transfer to another university, and Coach McKeever said, “Fine, go somewhere else and win a national championship.”

Swimmer CZ eventually swam at [REDACTED], where she performed better and [REDACTED]. Later, Coach McKeever apologized to Swimmer CZ, which was hard for Swimmer CZ to process or understand.

(a) Other Witness Accounts

Swimmer DA (Swimmer, [REDACTED]) said that Cal did not work for Swimmer CZ, so she left. Swimmer DA described Coach McKeever’s so called “shit list” as consisting of those swimmers who were confrontational or who got under Coach McKeever’s skin, like Swimmer CZ.

Swimmer CS (Swimmer, [REDACTED]) said that Swimmer CZ got [REDACTED] and required a lot of medical attention. Swimmer CS said that Coach McKeever forced Swimmer CZ to swim despite the illness. Swimmer CS also recalled comments by Coach McKeever about Swimmer CZ’s body weight, such as saying the swimsuit did not look right on her body or calling her “tubby.”

Swimmer AR (Swimmer, [REDACTED]) said that Swimmer CZ left Cal due to her interactions with Coach McKeever. Swimmer AR described Swimmer CZ as a happy, bubbly person, which may have been “a sore spot” for Coach McKeever.

Swimmer BY (Swimmer, [REDACTED]) said that Coach McKeever targeted Swimmer CZ. Swimmer BY said that Coach McKeever told Swimmer CZ her swimsuit was too small.

(b) Coach McKeever’s Response

Coach McKeever did not specifically deny allegations regarding Swimmer CZ.

(c) Factual Findings

We find Swimmer CZ’s account and those of the corroborating witnesses to be credible. We find by a preponderance of the evidence that Coach McKeever engaged in persistent use of abusive, insulting language directed at Swimmer CZ that a reasonable person would find hostile, offensive, and unrelated to the University’s legitimate business interests.

(d) *Policy Determination*

We do not reach a policy determination because the applicable policies and guidelines went into effect in 2016, after Swimmer CZ swam at Cal.

25. Swimmer BY (Swimmer, ██████████)

(a) *Swimmer BY's Account*

Swimmer BY joined the Cal women's swimming team as a freshman ██████████ and swam for four years. Swimmer BY submitted a letter to the University documenting her experience on the swimming team and supporting others who alleged abusive conduct by Coach McKeever.³⁰⁸ Swimmer BY knew during recruiting that Coach McKeever was tough and had high expectations. Still, Swimmer BY felt targeted by Coach McKeever for harsh treatment and targeted early in her time at Cal. At first, Swimmer BY thought she needed to work harder or train differently because she believed Coach McKeever was hard on her to make her better, but things worsened as her freshman year progressed. Coach McKeever frequently mentioned Swimmer BY's scholarship in her first few years, which Swimmer BY believed Coach McKeever regretted giving her. Swimmer BY believed Coach McKeever targeted Swimmer BY because she wanted Swimmer BY to quit so she could have back Swimmer BY's scholarship.

During Swimmer BY's second year, she said that Coach McKeever targeted her for verbal abuse almost daily. Swimmer BY said that during this time she was not improving. Swimmer BY had a ██████████ in December, so she went home, missed time on the team, and finished the season with an average performance. When she returned, there was always something wrong in Coach McKeever's view, such as how Swimmer BY looked, her commitment, or how hard she worked. At the end of Swimmer BY's sophomore year, she met with Coach McKeever, who brought up her scholarship and the fact that this was a business. Coach McKeever offered to release her and pushed her to go to a different team. Swimmer BY did not want to do that because Cal was a good school and she had made good friends. The meeting escalated when Swimmer BY said she wanted to improve at Cal. After the meeting, Swimmer BY called her mother sobbing because she wanted to swim but did not know what to do. Swimmer BY believed Coach McKeever felt that she had invested in Swimmer BY and was not getting anything out of it.

In the summer between her junior and senior years, she went home and trained hard with the ██████████ team, which was a high-level team. In the fall, she asked to train with the Cal assistant coach, ██████████ Staff S (Assistant Coach, ██████████), who was a ██████████ coach, even though she was not a ██████████ swimmer. Swimmer BY said that Coach McKeever made a last-ditch effort to get her to quit the team before her senior year, at which point Swimmer BY's mother drafted a letter addressed to ██████████ Staff T (Athletic Director, ██████████) and then sent the letter to Coach McKeever.³⁰⁹ Swimmer BY is not certain her mother sent the letter to ██████████ Staff T. Things improved during Swimmer BY's senior year, which she

³⁰⁸ Ex. 199 [CALINT-000813].

³⁰⁹ Ex. 200 [CALINT-000814].

attributed to Coach McKeever knowing her scholarship would be available soon. She saw a sports psychologist starting her junior year, and the sports psychologist felt her performance issues resulted from stress. Swimmer BY recalled Coach McKeever diminished the fact that she was seeing the sports psychologist and the opinions of that psychologist.

One time, Swimmer BY's cap ripped during practice her senior year, and a teammate lent her a silver cap, which was for special meets, like the NCAA championships. Coach McKeever said in front of the team that Swimmer BY could not wear the cap because she had not gone to the NCAA championships. Coach McKeever ended up letting Swimmer BY keep it on for just the day, but Swimmer BY got out of the pool and replaced it. Swimmer BY saw the comment as a way for Coach McKeever to undermine her self-confidence.

Swimmer BY said that one effect of being targeted by Coach McKeever was not being able to complain about injuries because any injury gave Coach McKeever an excuse to kick her off the team. Swimmer BY described an episode after an important December swimming meet during her senior year. Swimmer BY was tired during the set and did not keep up with the team. Coach McKeever pulled her out of the pool and asked what was wrong. Swimmer BY said she had not recovered from the meet, and Coach McKeever had her leave practice, seemingly acknowledging in a supportive way that she was tired. Swimmer BY suggested this was out of the ordinary and happened because Swimmer BY was soon to graduate. Swimmer BY said that while she was never seriously injured, she felt physically exhausted all the time. She acknowledged that competing on a Division I team will cause that effect.

(b) *Swimmer BY's Reflections on Targeting for Sustained Verbal Abuse*

Swimmer BY said that Coach McKeever isolated her targets and made an example of how that swimmer did everything wrong. For instance, in a meeting with one of Swimmer BY's teammates, Coach McKeever said that Swimmer BY was not contributing to the team. Swimmer BY noticed that Coach McKeever frequently questioned the commitment of targeted athletes and insinuated that they had personal issues. She did the same to Swimmer BY. Coach McKeever then got mad at little things that were not directly related to swimming, such as a swimmer not gathering her belongings quickly enough before a set. In contrast, Coach McKeever was very supportive of the teammates that she did not target. Coach McKeever asked if they got enough rest, what they needed, how they were doing academically, and if they needed to spend time in the athletic trainer's room.

Swimmer BY believed that it was easier for Coach McKeever to target isolated swimmers who were awkward or did not fit in immediately. Swimmer BY felt very isolated, but she became close with her teammates, which made it harder for Coach McKeever to target her. Coach McKeever never kicked Swimmer BY out of practice.

(c) *Other Witness Accounts*

Swimmer BP (Swimmer, [REDACTED]) said that Swimmer BY was on the list of Coach McKeever's targets. Swimmer DP (Swimmer, [REDACTED]) texted Swimmer BY when the [REDACTED]

Orange County Register article was published and said, "this was you," despite being [REDACTED]

Swimmer CJ (Swimmer, [REDACTED]) overheard Coach McKeever tell Swimmer BY that she was fat, even though Swimmer BY was not. Swimmer CS (Swimmer, [REDACTED]) remembered Coach McKeever making a comment about Swimmer BY's weight and suggesting she change suits.

[REDACTED] Staff H (Assistant Coach, [REDACTED]) described Swimmer BY as a "chosen one," whom Coach McKeever called out for harsh criticism. He said that for one morning workout, [REDACTED] Staff H encouraged Swimmer BY, and Coach McKeever told him not to encourage swimmers so much because they would stop believing his praise. [REDACTED] Staff H said that Coach McKeever hated that she had recruited Swimmer BY and felt she should not have given Swimmer BY a full ride.

At least one other witness told us they believed Coach McKeever's conduct was not inappropriate. Swimmer BB (Swimmer, [REDACTED]) said that Swimmer BY was one of the swimmers called out by Coach McKeever for not meeting expectations. Swimmer BB said that Swimmer BY was one of the slowest on the team and took Coach McKeever's treatment lightly, meaning Swimmer BY seemed to not have a problem being ignored. Swimmer BY's attitude seemed to be that she planned to stay for four years no matter what and joked about Coach McKeever not paying attention to her. Swimmer BB emphasized that Coach McKeever's criticisms of swimmers she called out were, in her view, factual and not personal, and she did not believe Coach McKeever's coaching style was any different from that of coaches at comparable programs.

(d) Coach McKeever's Response

Coach McKeever did not specifically deny allegations regarding Swimmer BY.

(e) Factual Findings

We find Swimmer BY's account and the accounts of the corroborating witnesses to be credible. We find by a preponderance of the evidence that Coach McKeever engaged in persistent use of abusive, insulting language directed at Swimmer BY that a reasonable person would find hostile, offensive, and unrelated to the University's legitimate business interests.

(f) Policy Determination

We do not reach a policy determination because the applicable policies and guidelines went into effect in 2016, after Swimmer BY swam at Cal.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

■ [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

■ [REDACTED]

[REDACTED]

27. Swimmer C (Swimmer, [REDACTED])

Swimmer C swam at Cal from [REDACTED]. Swimmer C's narrative, other witness accounts, and Coach McKeever's response are discussed in further detail in Sections IV.B and V.A regarding allegations of discrimination on the basis of national origin and regarding allegations of discrimination against [REDACTED] swimmers.

(a) Factual Findings

We find Swimmer C to be a credible witness. As described in the section on discrimination on the basis of [REDACTED] Section V.A, her account was corroborated by a number of other swimmers. We find that Coach McKeever's persistent criticism of Swimmer C had a lasting negative on her. The preponderance of the evidence supports the finding that Coach McKeever engaged in persistent or egregious use of abusive, insulting, or offensive language or language that frightened, humiliated, belittled, or degraded Swimmer C that a reasonable person would find hostile, offensive, and unrelated to the University's legitimate business interests.

(b) Policy Determination

We do not reach a policy determination because the applicable policies and guidelines went into effect in 2016, after Swimmer C swam at Cal.

28. Swimmer BP (Swimmer, [REDACTED])

Swimmer BP swam from [REDACTED]. She was a recruited swimmer with a partial scholarship. Swimmer BP described herself as one of Coach McKeever's "pets," meaning someone whom Coach McKeever targeted for yelling. Starting halfway into her freshman year, Swimmer BP had negative experiences with Coach McKeever. She stayed on the team all four years in defiance of her treatment by Coach McKeever, but the team lost two to three swimmers each year while Swimmer BP was there. At her last swimming meet, Swimmer BP cried in the locker room between every race because she was so happy to have survived and be done. Swimmer BP said that if a swimmer was on Coach McKeever's bad side, not even that swimmer's friends defended her. Swimmer BP said that, when she was sobbing after practice, no one wanted to be associated with her, as they did not want to put themselves in Coach McKeever's line of fire. She said that, because other swimmers would not speak with or support Swimmer BP when she was being verbally attacked by Coach McKeever, it made Swimmer BP feel like she got what she deserved.

According to Swimmer BP, Coach McKeever was "nasty" to Swimmer BP every day at practice and laughed in a mean way about her doing little things wrong. Swimmer BP said Coach McKeever grabbed her arm, pulled her in close, and screamed at her. Swimmer BP did not know why she was singled out – she said it felt like there was no rhyme or reason to whom received this sort of treatment – but she hypothesized that Coach McKeever responded negatively to her effusive and positive personality. Coach McKeever screamed at her in front of everyone one practice to "knock it off with her crap," which Swimmer BP took to mean stop talking and being positive. The next week, when Swimmer BP did not talk, Coach McKeever screamed at her that she had a bad attitude and suggested she "take her scholarship and walk." Swimmer BP said that at one point Coach McKeever told Swimmer BP that she was "ruining the team." According to Swimmer BP, Coach McKeever frequently pulled Swimmer BP into the hallway to yell at her instead of doing so on the pool deck, as that would look bad.

Swimmer BP described spending more time crying in school than not, and said her grades suffered as a result. She said she suffers from [REDACTED] as a result of Coach McKeever's treatment of her. Swimmer BP emphasized that she did not come from a coddled household, and she was used to working hard at swimming for a previous coach who was "a jerk," but that no other coach was ever degrading like Coach McKeever.

On a training trip in [REDACTED] Swimmer BP [REDACTED] and needed crutches. Swimmer BP asked her mother what to do with the crutches because she was not sure she could take them through airport security. Her mother told her to leave them at the hotel. When Coach McKeever saw her at the airport without crutches, she screamed at Swimmer BP, saying that she had wasted the university's money and the crutches belonged to the university, when in fact Swimmer BP's mother paid for them.

Swimmer BP said that several Cal employees witnessed Coach McKeever's behavior, including [REDACTED] Staff K [REDACTED] [REDACTED] Staff Q (Assistant Coach, [REDACTED]), [REDACTED] Staff S (Assistant Coach, [REDACTED]), Witness G [REDACTED], and the weight coaches. Since the first *Orange County Register* article was published, people who worked at the university while Swimmer BP was a student asked her

brother (who [REDACTED] at Cal) how she has been doing. Those [REDACTED] employees did not also ask about [REDACTED], who was a favored swimmer at Cal at the same time. This led Swimmer BP to believe that these employees knew that she was a target, while [REDACTED] was a favorite.

(a) Other Witness Accounts

Swimmer BY (Swimmer, [REDACTED]) said that Swimmer BP was one of the swimmers with whom Coach McKeever always found something wrong. Swimmer BD (Swimmer, [REDACTED]) said the same.

Swimmer D (Swimmer, [REDACTED]) said that, after Swimmer BP's injury in [REDACTED] Coach McKeever targeted her for verbal abuse. Swimmer D explained that the injury made her not as good of a swimmer, which elicited Coach McKeever's anger.

Swimmer CJ (Swimmer, [REDACTED]) said that Swimmer BP had an [REDACTED] issue for years but felt like she had to keep swimming because she did not want to give Coach McKeever something to yell about.

(b) Coach McKeever's Response

Coach McKeever did not specifically deny allegations regarding Swimmer BP

(c) Factual Findings

We conclude that a preponderance of the evidence supports a finding that Coach McKeever subjected Swimmer BP to a pattern of repeated, harsh criticism, including yelling and degrading and belittling comments such that a reasonable person would find it hostile, offensive, and unrelated to the University's legitimate business interests. We credit accounts provided by Swimmer BP and others of Coach McKeever screaming at Swimmer BP repeatedly with little basis or because of Swimmer BP's positive demeanor. We also find it more likely than not that Coach McKeever engaged in degrading and belittling behavior towards Swimmer BP when she made comments to Swimmer BP such as that Swimmer BP was "ruining the team."

(d) Policy Determination

We do not reach a policy determination because the applicable policies and guidelines went into effect in 2016, after Swimmer BP swam at Cal.

29. Swimmer D (Swimmer, [REDACTED])

Swimmer D joined the Cal women's swimming program as a freshman [REDACTED] and swam for four years. Swimmer D said Coach McKeever regularly and constantly yelled at her during practice and after practice, in one-on-one meetings, which made Swimmer D cry. Swimmer D described herself as an "easy target" and "scapegoat" for Coach McKeever. She said that Coach McKeever did not like crying, and Swimmer D's crying seemed to make Coach McKeever dislike her even more, leading to an "endless cycle" of yelling and more crying. Swimmer D told us that Coach McKeever often yelled at her things like, "You're an

embarrassment to yourself, to the team, to me,” and “we’re wasting money by having you on the team.” Swimmer D said that, after she had a bad swim, Coach McKeever said things like, “That was crap,” or “That was shit, what was that?” Swimmer D said most of this happened when she was meeting one-on-one with Coach McKeever in her office and that the things Coach McKeever said to her got under her skin and hurt her as a struggling freshman. Swimmer D told us that she could not remember too many specific quotes by Coach McKeever but she could remember how Coach McKeever’s treatment of her made her feel.

She recalled a specific time her junior year when she had a bad swim. When Coach McKeever asked her what happened, Swimmer D responded that she did not know. Coach McKeever then yelled at her for 45 minutes for saying, “I don’t know.” Swimmer D said she had heard other swimmers say, “I don’t know,” and Coach McKeever did not get angry at those swimmers for saying the same thing she said. Swimmer D felt singled out for particularly harsh criticism and yelling. Swimmer D described Coach McKeever’s intensely critical way of coaching as not effective and as inflicting significant emotional damage. Swimmer D described feeling intense anxiety and fear walking to practice and her freshman year as “a living hell.” She said that Coach McKeever had “good days” and “bad days,” and that she was always “walking on eggshells,” not knowing what she would do or say that would “set Teri off.” Swimmer D said that her performance improved after her freshman year, she [REDACTED], and became a swimmer that “Teri needed.”

Swimmer D’s full narrative, other witness accounts, and Coach McKeever’s response are included in Section V.B regarding allegations of discrimination against [REDACTED] swimmers.

(a) *Factual Findings*

Swimmer D’s account of being singled out was corroborated by Swimmer BE (Swimmer, [REDACTED]), who independently identified Swimmer D as someone who was the subject of Coach McKeever’s constant criticism and who told us that Swimmer D struggled with that treatment. We find Swimmer D’s account of her experience credible, in part because she forthrightly acknowledged the circumstances that made her freshman year particularly challenging, including her lack of physical readiness for certain aspects of Cal’s training program, such as weight training, core training, and running – she explained that, before she came to Cal, her training had focused on a lot of swimming yardage. Swimmer D also explained that she was diagnosed with asthma her freshman year and that it took a while for her treatment to become effective. All of these circumstances combined led to Swimmer D not performing well in her freshman year, which made her a target for Coach McKeever’s criticisms.

Coach McKeever did not respond to (and therefore did not deny) Swimmer D’s account of her experience. Coach McKeever generally explained that her way of coaching achieved winning results, as evidenced by her winning record, and that her coaching style, while at times blunt, was no more critical than that of any other elite, Division I coach.

Given the lack of a denial by Coach McKeever, the corroboration by another swimmer, and our conclusion that Swimmer D was a credible witness, we find that a preponderance of the evidence supports the conclusion that Coach McKeever subjected Swimmer D to persistent

criticism, using language that frightened and humiliated Swimmer D, including through yelling, such that a reasonable person would find it hostile, offensive, and unrelated to the University's legitimate business interests.

(b) Policy Determination

We do not reach a policy determination because the applicable policies and guidelines went into effect in 2016, after Swimmer D swam at Cal.

Our findings and policy determination regarding Coach McKeever's conduct as it relates to the University's anti-discrimination policy is detailed in Section V.B.4 regarding allegations of discrimination on the basis of Swimmer D's race.

30. Swimmer CN (Swimmer, ██████████)

Swimmer CN joined the Cal women's swimming program as a freshman ██████████ and swam for three years. At the beginning, Swimmer CN could sense that something was "off" about how Coach McKeever handled herself and her athletes. Swimmer CN said it got worse later.

(a) Swimmer CN's Account

Swimmer CN said that Coach McKeever singled out and yelled at her and others at practice. Swimmer CN perceived this as an isolating tactic to make her feel bad about herself and as though she was a problem. Swimmer CN said that Coach McKeever singled out at least two or three swimmers for negative attention. Coach McKeever yelled at them in front of the team, asked what they were doing, told them they should be swimming faster, and said they were bringing down the team. Swimmer CN said that when a swimmer was targeted for negative attention, Swimmer CN stayed away from them. Swimmer CN had a small scholarship and was afraid of losing it by defending targeted athletes. Swimmer CN described a culture that made people want to tough it out without saying anything.

Swimmer CN was yelled at almost every day her freshman year but not as much during her sophomore and junior years. During Swimmer CN's freshman year, Coach McKeever took Swimmer CN into an equipment room, got in her face, and started yelling at her. Swimmer CN described it as startling, abusive, and aggressive. Swimmer CN stood there and did not say anything except that she would try harder because she thought she had to take it. After that, Swimmer CN went to her dorm and cried. She already felt depressed because of a family health issue, and this pushed her to a worse mental state. Specific quotes that Coach McKeever said to Swimmer CN included: "What are you doing here? You're swimming like shit. I don't know if you deserve to be here. There are plenty of other swimmers that want to be swim here. Maybe they deserve it more." The yelling crossed the line for Swimmer CN when Coach McKeever said something personal, like that she did not deserve to be there. Swimmer CN said, however, that the conduct she read about in the recent news article was worse than what she experienced. Coach McKeever criticized Swimmer CN's swimming but never called her a "piece of shit." Swimmer CN speculated that Coach McKeever's conduct has gotten worse over time. Coach McKeever also criticized Swimmer CN's facial expression including, at least once, criticizing Swimmer CN's resting facial expression.

[REDACTED]

Swimmer CN told us that she reported several issues about Coach McKeever and other swimming team staff to OPHD in [REDACTED]. At that time, Swimmer CN reported inappropriate yelling by Coach McKeever in the equipment room. [REDACTED]

(b) Parents of Swimmer CN's Accounts

Parents of Swimmer CN described their daughter Swimmer CN as enthusiastic about attending Cal, but they said they noticed her demeanor change freshman year. They also noticed from Swimmer CN's body language that she was afraid to talk to her coach after swims. They believed that Swimmer CN was an excellent swimmer and would have been a strong addition to the team if she had been given a chance. They were not sure why she was blacklisted. They said that after Cal, they had to change careers so they could be more available to support Swimmer CN, who was very broken mentally. They said that Swimmer CN has only recently put her life back together to the point of starting her career.

Parent of Swimmer CN described a time when Swimmer CN [REDACTED] and Coach McKeever did not believe her and did not let her get it examined. Coach McKeever showed no remorse when she learned it was actually broken. They also described the incidents where Swimmer CN was not allowed to compete due to a piercing and where Coach McKeever pulled her into an equipment room. Swimmer CN told her parents that Coach McKeever called her a "piece of shit" several times and that she did not deserve to be on the team. They also said that Coach McKeever encouraged her preferred swimmers to shun targets, like Swimmer CN.

(c) Other Witness Accounts

Swimmer BD (Swimmer, [REDACTED]) identified Swimmer CN as someone whom Coach McKeever targeted for harsh criticism. According to Swimmer BD, Coach McKeever picked out a few people whom she attacked verbally for any reason she could find, over and over again, at every practice, until they quit. Swimmer BD said that Coach McKeever made targeted swimmers' lives miserable by constantly embarrassing and berating them in front of their friends and yelling at them for no legitimate reason. Such reasons could be for performance, tardiness, failure to set up equipment, wearing the wrong thing, or showing the wrong facial expression. Swimmer BD said that she herself was not a target of Coach McKeever, but she witnessed

110 [REDACTED]

111 [REDACTED]

certain teammates, including Swimmer CN, suffer constant berating, which created an atmosphere of fear and negativity.

Swimmer BY (Swimmer, [REDACTED]) said that Coach McKeever targeted Swimmer CN, as she did other swimmers who she did not think were working hard enough or were not doing something correctly. If a swimmer made a performance mistake, Coach McKeever got angry and then characterized that mistake as a lack of commitment to the team, a reaction that Swimmer BY thinks is different from that of other coaches. Swimmer BY said it was easy to make a list of targets because the way Coach McKeever treated those people was so distinct.

Swimmer CJ (Swimmer, [REDACTED]) described one occasion where the team was doing a circuit in the weight room and the people outside did not hear Coach McKeever's instructions. When Swimmer CN performed a station incorrectly, Coach McKeever screamed, "How dare you do this" at Swimmer CN, and Swimmer CN started crying. Swimmer CJ described that type of criticism as unrelated to performance or attitude.

[REDACTED] Staff H (Assistant Coach, [REDACTED]) thought that Coach McKeever may have pressured Swimmer CN to compete while she was dealing with mental health issues.

(d) Coach McKeever's Response

Coach McKeever did not specifically deny allegations regarding Swimmer CN.

(e) Factual Findings

We find that a preponderance of the evidence supports Swimmer CN's account of Coach McKeever's behavior. [REDACTED]

[REDACTED] The preponderance of the evidence supports, however, that Coach McKeever's overall pattern of conduct with Swimmer CN involved persistent use of yelling and language that frightened, humiliated, and belittled Swimmer CN.

(f) Policy Determination

We do not reach a policy determination because the applicable policies and guidelines went into effect in 2016, after Swimmer CN swam at Cal.

31. Swimmer CM (Swimmer, [REDACTED])

Swimmer CM joined the Cal women's swimming program as a freshman [REDACTED] and swam at Cal for two years, from [REDACTED], before leaving the team in part due to injuries.

(a) Allegations of Targeting for Verbal Abuse

Swimmer CM described being the subject of frequent yelling by Coach McKeever, who she said constantly belittled her, demeaned her, and called her embarrassing. She felt that Coach

McKeever chose to humiliate her in front of her teammates and described herself as “cannon fodder.” She believed that Coach McKeever’s targeting of certain athletes was a psychological tactic to instill fear in others on the team. Swimmer CM described the team culture as one where no one felt safe emotionally.

Swimmer CM said Coach McKeever made little comments meant to make Swimmer CM feel bad even before she got in the pool. As an example, Swimmer CM was stressed about final exams during one practice, and her friend said something to Coach McKeever and put her arm around Swimmer CM. Coach McKeever started laughing with [REDACTED] Staff Q (Assistant Coach, [REDACTED]) and called Swimmer CM a “joke” for caring so much about her final exams. In another example, a teammate told Swimmer CM she saw Swimmer CM’s [REDACTED] high school teammate swimming well. Coach McKeever got in Swimmer CM’s face and said she should not be talking about a swimmer at a different school and that no one cared. Swimmer CM found the comments isolating and demoralizing. Swimmer CM said that every practice was oriented around Swimmer BZ (Swimmer, [REDACTED]), so the team did a lot of practice kicking and holding their breath, which Swimmer BZ was exceptionally good at. Swimmer CM could not do those breathing sets, and Coach McKeever laughed at Swimmer CM.

Swimmer CM said that Coach McKeever refused to acknowledge her doing something good. For example, Swimmer CM and other swimmers qualified for a lunch to reward high academic performers. At practice, Coach McKeever asked each swimmer whether they qualified for the lunch but intentionally did not ask Swimmer CM if she qualified even though Coach McKeever already had the list and knew who qualified. Swimmer CM described racing Swimmer DS (Swimmer, [REDACTED]) in practice, who was a favorite of Coach McKeever, and almost beating Swimmer DS. Coach McKeever and [REDACTED] Staff Q congratulated Swimmer DS on coming so far and racing well and walked away from Swimmer CM without saying anything to Swimmer CM. She said things like this happened regularly, which was a reason that [REDACTED]

Swimmer CM did not qualify for the NCAA championships and Coach McKeever told the team that if they did not qualify and needed time off, then they should take it without judgment. Swimmer CM went to Coach McKeever’s office and said she needed this time off from swimming. Coach McKeever yelled at her for being “selfish” and not working as hard as Swimmer BZ. Coach McKeever did not let Swimmer CM not take those two weeks off before the NCAA championships. Coach McKeever believed that collective suffering was a form of support.

Swimmer CM said that she had tough coaches before Coach McKeever, coaches who kicked her out, yelled at her, and told when she had bad races. Those coaches, however, did so to make her better, and it felt like Coach McKeever did not. Coach McKeever did not balance out her yelling and criticism with any sort of celebration or positivity, which is what hurt Swimmer CM most. Swimmer CM said that her parents described her at the time as a “shell” of her [REDACTED] self.

(b) *Injuries*

Swimmer CM began experiencing bad [REDACTED] and [REDACTED] pain. Coach McKeever sent her to a trainer for physical therapy, but the pain kept getting worse, and her [REDACTED] continued to [REDACTED]. One day, Swimmer CM could not practice because something felt [REDACTED], and she could not move her arms. The trainer did not believe her, and Swimmer CM had hoped that he would convey her injury to Coach McKeever. When Swimmer CM finally went to go see a doctor, she was in tears because of the high pain level.

Two or three nights after Swimmer CM saw the doctor, Coach McKeever called her parents and said she had no idea Swimmer CM was in pain and believed in helping the whole team. Swimmer CM said it was very clear that Coach McKeever's concern was not genuine and that someone must have called her and questioned how she let Swimmer CM's pain reach such a high level. A few months later, Swimmer CM's parents encountered Coach McKeever [REDACTED]. Swimmer CM's mother asked how Swimmer CM's injury was doing, and Coach McKeever responded in an exasperated tone that she did not know. Swimmer CM later learned that her [REDACTED] was torn, and that her [REDACTED] tearing. Swimmer CM did not specifically recall telling Coach McKeever, whom she found difficult to talk to, but she did tell [REDACTED] Staff Q (Assistant Coach, [REDACTED]) that she could not move her arms. Swimmer CM said that [REDACTED] injuries are linked to depression, and she was diagnosed with [REDACTED] in sophomore year.

After Swimmer CM left the team, Coach McKeever continued to make fun of how "embarrassing" and "bad" she was to the rest of the team. Swimmer CM said that Coach McKeever told a teammate to stay away from Swimmer CM after Swimmer CM quit.

(c) *Other Witness Accounts*³¹²

Swimmer BD (Swimmer, [REDACTED]) described Swimmer CM, who was Swimmer BD's [REDACTED], as one of the swimmers selected at the beginning of the year by Coach McKeever for particularly harsh criticism. According to Swimmer BD, Coach McKeever picked out a few people whom she attacked verbally for any reason she could find, over and over again, at every practice, until they quit. Swimmer BD said that Coach McKeever made targeted swimmers' lives miserable by constantly embarrassing and berating them in front of their friends and yelling at them for no legitimate reason. Such reasons could be for performance, tardiness, failure to set up equipment, wearing the wrong thing, or showing the wrong facial expression. Swimmer BD said that she herself was not a target, but she witnessed certain teammates, including Swimmer CM, suffer constant berating, which created an atmosphere of fear and negativity. Swimmer BD said that Swimmer CM had a [REDACTED] injury that she was forced to swim through, and that Swimmer CM ended up quitting because of it. Swimmer CJ (Swimmer, [REDACTED]) noted that Swimmer CM quit within a couple weeks of several other swimmers.

[REDACTED] Staff Q (Assistant Coach, [REDACTED]) said that Swimmer CM swam her best time at a conference meet and was a [REDACTED] whom Coach McKeever gave a chance. The expectation

³¹² Swimmer CM and Swimmer CL were interviewed together and broadly supported each other's accounts.

was still that Swimmer CM would be there to do the work. [REDACTED] Staff Q remembered telling Swimmer CM she was her own worst enemy and she was digging her own hole. Swimmer CM was frustrated because she was not improving, and her body language showed frustration. [REDACTED] Staff Q noted that Coach McKeever placed a high value on confident body language.

(d) *Coach McKeever's Response*

Coach McKeever did not specifically deny allegations regarding her treatment of Swimmer CM.

(e) *Factual Findings*

We generally found Swimmer CM credible. Her account was corroborated by other witnesses. We find that a preponderance of the evidence supports Swimmer CM's account of Coach McKeever's behavior. The preponderance of the evidence supports that Coach McKeever's overall pattern of conduct with Swimmer CM involved persistent use of yelling and language that frightened, humiliated, and belittled Swimmer CM.

(f) *Policy Determination*

We do not reach a policy determination because the applicable policies and guidelines went into effect in 2016, after Swimmer CM swam at Cal.

32. Swimmer CL (Swimmer, [REDACTED])

Swimmer CL joined the Cal women's swimming program as a freshman [REDACTED] and left the team [REDACTED]. Swimmer CL said that it was quickly clear that Coach McKeever had it out for her, which caused feelings of shame and isolation. Swimmer CL said that Coach McKeever yelled and screamed at her almost constantly and mocked her on the pool deck, saying things like, "Why are you talking about that? No one cares. Get in the pool." Swimmer CL said that everything Swimmer CL said was an "excuse," and this led Swimmer CL to start to question her own words. Swimmer CL said Coach McKeever said to her, "enough with the excuses" and told her to "shit or get off the pot." Swimmer CL said that Coach McKeever pulled her to the side during practice by grabbing her arm; she described Coach McKeever talking aggressively, close to her face, and said this had the effect of intimidating her.

If Swimmer CL confided in others, they were targeted as well. Swimmer CL said Coach McKeever expected that, if others on the team (like Swimmer BZ (Swimmer, [REDACTED])) could do something, then Swimmer CL should be able to do it too, but Coach McKeever gave Swimmer CL zero resources or support to reach that expectation. Swimmer CL felt like nothing she did was ever good enough. She said Coach McKeever did not counterbalance her yelling and harshness with any support. Swimmer CL said that the emotional abuse she experienced changed her – she was a different person as a college sophomore than she was as a high school senior.

Swimmer CL was a [REDACTED], so she worked with Coach McKeever daily. At first, Swimmer CL tried to show up to practice in positive spirits to cheer on the other swimmers, but Coach McKeever ridiculed and laughed at that countenance. Then Swimmer CL showed up

small and quiet. Swimmer CL said that she was still the subject of constant yelling and mocking, which might have resulted from joking with friends or a topic of conversation of which Coach McKeever did not approve. Swimmer CL said she was also yelled at for not meeting the standard of Swimmer BZ (Swimmer, [REDACTED]). Coach McKeever pulled her aside and asked why she could not do a set. Swimmer CL said it was her first time and very challenging. Coach McKeever then asked whether her high school coach would agree if Coach McKeever called him. Swimmer CL told Coach McKeever yes. Swimmer CL gave this as an example of Coach McKeever believing everything she said was an excuse. Swimmer CL said she knew what hard work entailed but that with zero support from Coach McKeever, she felt she was not going to develop. She said that the repetitiveness of the uncaring interactions with Coach McKeever was demoralizing.

[REDACTED]

[REDACTED] Swimmer CL said that Coach McKeever's bullying caused her to question herself. [REDACTED] Swimmer CL has blamed herself for not being able to cut it at Cal and felt so much shame about college.

Swimmer CL also described her struggles with injury while at Cal. At the time, she did not know she had a [REDACTED]. When she was in high school, her coach knew that Swimmer CL could not kick when swimming the [REDACTED] because it caused her [REDACTED]. Coach McKeever said that she was no different than anyone else and had to kick on her [REDACTED]. In [REDACTED], Swimmer CL's [REDACTED] and her [REDACTED] re as the team did pull ups and running. The doctor did an MRI and found [REDACTED].³¹³ The next fall, Coach McKeever expected Swimmer CL to train at full capacity and kicked Swimmer CL out of practice because she could not do a flip turn. [REDACTED] eventually returned, which was not Coach McKeever's fault, and Swimmer CL experienced the same issue again in [REDACTED].³¹⁴ Coach McKeever later told Swimmer CL that she was not allowed to travel with the team, which Swimmer CL felt was stating the obvious in a callous way. Coach McKeever also had a few phone conversations with Swimmer CL's father, in which Coach McKeever explained that the team did not have the space to allow Swimmer CL to rehabilitate. Swimmer CL quit that month.

Swimmer CL said that she experienced longstanding damage to her psyche as a result of her experience on the Cal swimming team, including persistent sadness and self-doubt. She provided a journal entry, which she created before the allegations against Coach McKeever were reported by the *Orange County Register* in the Spring of 2022, in which she reflected that she does not trust herself, feels a pit of sadness, and connected those feelings to Coach McKeever's distrust of her.³¹⁵

³¹³ Ex. 203 [CALINT-000842]; Ex. 204 [CALINT-000844].

³¹⁴ Ex. 205 [CALINT-000841]; Ex. 206 [CALINT-000843].

³¹⁵ Ex. 209 [CALINT-000840].

(a) *Other Witness Accounts*¹¹⁶

Swimmer BD (Swimmer, [REDACTED]) said that Swimmer CL was one of the swimmers selected at the beginning of the year by Coach McKeever for particularly harsh criticism. According to Swimmer BD, Coach McKeever picked out a few people whom she attacked verbally for any reason she could find, over and over again, at every practice, until they quit. Swimmer BD said that Coach McKeever made targeted swimmers' lives miserable by constantly embarrassing and berating them in front of their friends and yelling at them for no legitimate reason. Such reasons could be for performance, tardiness, failure to set up equipment, wearing the wrong thing, or showing the wrong facial expression. Swimmer BD said that she herself was not a target, but she witnessed certain teammates, including Swimmer CL, suffer constant berating, which created an atmosphere of fear and negativity.

Swimmer CJ (Swimmer, [REDACTED]) said that Swimmer CL quit within a couple weeks of other swimmers on the team.

[REDACTED]

[REDACTED]

[REDACTED]

¹¹⁶ Swimmer CM and Swimmer CL were interviewed together and broadly supported each other's accounts.

¹¹⁷ [REDACTED]

¹¹⁸ [REDACTED]

(b) Coach McKeever's Response

Coach McKeever said that Swimmer CL at one point told her that she struggled swimming for a woman coach. Coach McKeever responded that she was a woman when she recruited Swimmer CL. [REDACTED]

(c) Factual Findings

Coach McKeever did not specifically deny allegations regarding her treatment of Swimmer CL. We generally found Swimmer CL credible, and her account was corroborated by other witnesses. We find that a preponderance of the evidence supports Swimmer CL's account of Coach McKeever's behavior. The preponderance of the evidence supports that Coach McKeever's overall pattern of conduct with Swimmer CL involved persistent use of yelling and language that frightened, humiliated, and belittled Swimmer CL.

(d) Policy Determination

We do not reach a policy determination because the applicable policies and guidelines went into effect in 2016, after Swimmer CL swam at Cal.

33. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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IX. ALLEGATIONS OF FOSTERING A NEGATIVE TEAM ENVIRONMENT

[REDACTED]

A. Allegations that Coach McKeever Required Swimmers to Criticize Their Teammates

1. After Meets

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

As described in Section VIII.J.14, Swimmer CI (Swimmer, [REDACTED]) said that, after the team did not swim well at a [REDACTED] meet, Coach McKeever had them stand in a circle and directed swimmers to step forward if they did not swim well or up to the team's standards. Coach McKeever then had each swimmer who stepped forward apologize to the rest of the team. Coach McKeever said to Swimmer CI, "You do not deserve to wear a Cal cap" and told her to turn it inside out. Swimmer CI said the experience was extremely humiliating. Swimmer BU (Swimmer, [REDACTED]) described the same incident and said she was extremely disturbed by it.

[REDACTED]

[REDACTED]

[REDACTED]

Other swimmers described these post-meet assessments as positive experiences. According to Swimmer AI (Swimmer, [REDACTED]), Coach McKeever praised the swimmers and provided positive feedback after races. She also had the team members praise one another. Coach McKeever had people raise their hands if they saw someone who did a great job and let them provide details about what the person did. People said so many positive things that Coach McKeever always had to cut it short in the interest of time. When Coach McKeever was not happy with a practice, she had people grade their practice with a letter grade (A, B, C, or D) and explain why they gave themselves an A, and then Coach McKeever said why she disagreed. Swimmer AI viewed this as a self-reflection exercise that helped people be accountable for how they performed each day. Swimmer AI did not see this as bullying. Swimmer AI also said that Coach McKeever did not target just some people; everyone participated and it occurred multiple times. Coach McKeever wanted people to learn to be comfortable with being uncomfortable. Swimmer AI did not recall this happening after races but said that it might have happened once after a dual meet.

Swimmer CQ (Swimmer, [REDACTED]) said that swimmers graded themselves after meets, but she did not remember them grading one another. There were team meetings after events such as a dual meet or a recruiting weekend where the team did this type of exercise. Coach McKeever asked each swimmer to evaluate themselves on a scale of one to ten, on how they felt that day went and what they felt they brought to practice. If Swimmer CQ gave herself too high of a grade, Coach McKeever said she did not think that was fair, and then a captain or someone else took a leadership role to say that the team should be more honest with where they are. Swimmer CQ thought other swimmers' resentment over the assessments came from hearing the truth about the fact that they were not performing at the grade that they gave themselves. Swimmer CQ felt that if a person wanted to be on a national championship team, then she had to know what was expected of her and how she was performing.

According to [REDACTED] Staff K (Assistant Coach, [REDACTED]), after a meet ended, Coach McKeever either had the group rate itself as a group or had every individual rate themselves on how they did that day. If someone gave themselves too high of a grade, Coach McKeever called them out on it. [REDACTED] Staff K thinks this made people uncomfortable, but [REDACTED] Staff K did not believe that it was out of line. At the time, [REDACTED] Staff K did not think it was ill-received by the team, but in hindsight, she can see how people could be offended by being called out on

100 [REDACTED]

their weaknesses. There was one team meeting where they passed around a piece of paper and everyone had to write a strength and weakness of everyone on the team. Coach McKeever did not call anyone out during this exercise.

2. End-of-Year Evaluations

Several swimmers noted that Coach McKeever required swimmers to submit evaluations of their teammates at the end of the year. [REDACTED]

[REDACTED] Swimmer CK (Swimmer [REDACTED]) said that Coach McKeever told her that every one of her teammates wrote in their evaluations that Swimmer CK did not deserve to be on the team, did not contribute to the team, did not have the passion needed to be on the team, and was a slacker.

3. Grading Exercises

[REDACTED]

[REDACTED]

[REDACTED]

Other witnesses viewed this grading process as positive and constructive. Parent of Swimmer R (Swimmer, [REDACTED]) said Coach McKeever used the grading exercises to teach swimmers to communicate using Coach McKeever's process, which can require courageous conversations, similar to the courage it takes to speak with a Cal professor. Parent of Swimmer R provided an example where Swimmer R performed poorly in an exercise to clear lactic acid and graded herself a D grade. Later that day, Coach McKeever called Swimmer R to check on her because Swimmer R had given herself a poor score. Swimmer R walked Coach McKeever through her thought process, which Parent of Swimmer R described as a conversation that took courage.

4. Allegations Regarding Labeling Certain Swimmers as "Gems"

Several swimmers and coaching staff said that Coach McKeever prompted the team to identify which swimmers were worthy of the team's time and which swimmers were not. [REDACTED]

Swimmer K (Swimmer, [REDACTED]), Swimmer Q (Swimmer, [REDACTED]), Swimmer G (Swimmer, [REDACTED]), and Swimmer AD (Swimmer, [REDACTED]) said that during a trip in [REDACTED], Coach McKeever gathered the leaders and older members of the team and directed them to pick out which of the [REDACTED] were the "gems" and which were "throwaways," those not worth Coach McKeever's time and energy. Those who were not gems were to be ignored. Swimmer Q said swimmers identified as needing to step up were Swimmer A (Swimmer, [REDACTED]), Swimmer B (Swimmer, [REDACTED]), Swimmer AA (Swimmer, [REDACTED]), and Swimmer L (Swimmer, [REDACTED]). Swimmer K noted that Coach McKeever did not make this type of request in prior years, and Swimmer K thinks it was because the [REDACTED] class was so [REDACTED], and Coach McKeever did not know how to handle it.

[REDACTED]

Staff A (Assistant Coach, [REDACTED]) said Coach McKeever sometimes pitted swimmers against one another. Coach McKeever asked the swimmers in one-on-one meetings who should not be on the team. Staff A said that the team went for a beach weekend in [REDACTED]. While in [REDACTED], there was a conversation about the "gems" on the team. Coach McKeever asked, "Who do you think the gems are? Where do we put our energy?" Coach McKeever insinuated that some people were more important than others.

Staff O ([REDACTED], [REDACTED]) said the older swimmers were asked to pick out the "gems" on the team. Staff O said this was based on a revelation she had after working with Coach McKeever for a few years. Staff O realized that, by September, one could divide the team into three different groups based on how coachable they were. The top group wanted a high level of success. The middle group did not respond as well as the top group but did not resist as much as the bottom group. The bottom group resisted Coach McKeever's coaching. Although Staff O did not know about any incidents where Coach McKeever asked the team to divide themselves into groups, Staff O found it plausible that Coach McKeever had them sort themselves by effort. It was all about effort in the pool, and whether a swimmer's effort was meeting their stated intention. Coach McKeever was most frustrated by someone saying they wanted to be a gold medalist but then not being willing to work hard to achieve that goal.

5. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

6. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

7. Coach McKeever's Response

(a) *Allegations Regarding Ranking Swimmers After Meets and Practices*

Coach McKeever said that she had the team rate themselves and their energy level because holding each other accountable was everyone's responsibility. People knew what needed to be done to succeed in the pool and the classroom. She said that getting feedback was not always positive, which was okay, but the feedback needed to be accurate. She never asked the swimmers to criticize one another, but she might have asked them, "Is there something you think someone can do better?" To be elite, swimmers needed to be able to take feedback from one another, as well from wherever they can get it. Coach McKeever communicated her intent to the team in doing these exercises, but she did not re-explain her intent every time she asked for feedback. The team talked a lot about feedback, failure, and success. Coach McKeever noted that it was impossible to control how someone felt about themselves or know how feedback landed with each person.

Coach McKeever acknowledged that she has asked certain swimmers which swimmers they think should be on relay teams and in what order. Although many coaches do not ask the athletes about the relays, she did so because asking them for their opinion empowered them and let them know Coach McKeever listened to them.

According to Coach McKeever, asking athletes to evaluate themselves, their teammates, and the team as a whole was a way to gain insight, perspective and valuable information. This was done at various times of the year and also regularly done for exceptional performances. These evaluations occurred just as often, if not more, following good performances, and teammates were asked to give accolades to those who impressed them and describe what they were proud of. These assessments also allowed individuals to gain the ability to self-reflect and learn that honest feedback to another individual is not the same thing as being mean; it actually is a gift that allows others to decide what they want to do with that feedback.

(b) *Allegations Regarding Identifying Certain Athletes as "Gems"*

Coach McKeever said that she asked the team to identify "gems" in one of the meetings at the beginning of the [REDACTED] year. The captains and the returning athletes said they were struggling with their new teammates. Coach McKeever decided that instead of catching people doing something wrong, the team should try to catch people doing something right and identify the gems whose behavior was in line with the program. Coach McKeever was surprised to hear that people came away thinking they were asked to identify "throwaways" or those not worthy of time or energy. Coach McKeever denied using the term "throwaways" with the team and seemed surprised to hear that term used to describe people. At different points, all of the captains were overwhelmed trying to get team members on board with the program. In response, Coach McKeever told them not to use so much energy on others that it took away from their own

school, sleep, and performance. People have been telling Coach McKeever for the last 25 years that she has to take care of herself, not just the swimmers. Coach McKeever said some swimmers were not as valuable from a performance perspective, but they are not "throwaways" because throwaways would not be allowed to remain on the team.

B. Allegations of Preferential Treatment of Favorite Athletes

A number of witnesses said Coach McKeever gave preferential treatment to her favored athletes, including by being more supportive in the pool, giving more leeway in practice, and not punishing certain swimmers who used drugs and alcohol or cheated on exams.

I. General Allegations Regarding Favoritism

(a) Some Swimmers Said that Coach McKeever Had Favorites

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Swimmer P (Swimmer, [REDACTED]) described favoritism for certain athletes and gave an example of one day where Coach McKeever thought Swimmer P made a mistake (even though Swimmer P does not think she did) and kicked Swimmer P out of practice. Swimmer DE (Swimmer, [REDACTED]) talked to Swimmer P later and said that Swimmer DE had made the same mistake as Swimmer P, but Coach McKeever did not say anything to her. Swimmer P said that for some people, Coach McKeever said that they were not paying attention

to the details or did not deserve to be there, while for other people, the same behavior was fine. This difference was based on who Coach McKeever liked more as a person, which were often the people Coach McKeever viewed as strong and willing to stand up for themselves. [REDACTED]

Swimmer Q (Swimmer, [REDACTED]) said Coach McKeever kicked Swimmer G out for breathing on the wall, but she did not say anything to Swimmer Q, who had been doing the same thing all week. [REDACTED]

[REDACTED]

(b) Some Witnesses Said Coach McKeever Did Not Have Favorites

Parent of Swimmer R (Swimmer, [REDACTED]) contrasted Coach McKeever's environment, which was one of high performance and opportunities for those who seized the chance, with the environment at [REDACTED] where Swimmer R's younger sister swam.

[REDACTED]

Whereas Coach McKeever always created a dialogue and brought the whole team to the Pac-12 championship.

Swimmer BK (Swimmer, [REDACTED]) said she did not experience singling out of swimmers or favoritism.

2. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

3. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

4. [REDACTED]

[REDACTED]

[REDACTED]

c. [REDACTED]

1. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

2. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

D. Allegations Regarding Isolating/Shunning/Ostracizing Swimmers

Several swimmers, spanning more than twenty years, said that team members avoided associating with swimmers whom Coach McKeever did not like in order to avoid becoming targeted by Coach McKeever.

[REDACTED]

Swimmer P (Swimmer, [REDACTED]) said that Coach McKeever subjected certain swimmers like Swimmer AN ([REDACTED]), Swimmer H (Swimmer, [REDACTED]), Swimmer I (Swimmer, [REDACTED]), and Swimmer G (Swimmer, [REDACTED]) to harsh criticism, including when speaking to Swimmer P. [REDACTED]

Swimmer Q (Swimmer, [REDACTED]) said Coach McKeever's constant "tearing to shreds" of certain swimmers like Swimmer H (Swimmer, [REDACTED]), Swimmer G (Swimmer, [REDACTED]), and Swimmer AW (Swimmer, [REDACTED]) [REDACTED]

Swimmer X (Swimmer, [REDACTED]) said she and Swimmer AN (Swimmer, [REDACTED]) were both on the list of swimmers Coach McKeever did not like, so other swimmers did not want to associate with them. [REDACTED]

Swimmer AW (Swimmer, [REDACTED]) stopped associating with other swimmers after she quit the team. The remaining swimmers were not allowed to talk to or about her. Swimmer V (Swimmer, [REDACTED]) told Swimmer AW that she was mentioned once, and Coach McKeever said, "We don't talk about her." Swimmer AW full account is detailed in Section V.I.E regarding allegations of disability discrimination.

Swimmer CR (Swimmer, [REDACTED]) said there was always at least one swimmer who was ostracized, and no one understood why. [REDACTED]

[REDACTED]

A few weeks or months later, Parent of Swimmer CR then received a call from Swimmer CR in which Swimmer CR said she was now the outcast, and no one came close to her because they were afraid of Coach McKeever. Swimmer AW remembered that no one would look at or talk to Swimmer CR at those practices, so they would not be guilty by association. Later, in the locker room, the team checked on her and asked how she was doing. Swimmer CR's account is detailed in the sustained verbal abuse section VIII.J.16.

[REDACTED]

Swimmer CI (Swimmer, [REDACTED]) said that Coach McKeever yelled at her frequently during her freshman year and then focused on Swimmer CI less during her junior and senior years. Coach McKeever even started to support Swimmer CI in certain ways, and Swimmer CI [REDACTED]. Swimmer CI attributes the change to Swimmer CI outgrowing the targeted verbal abuse and learning the things Coach McKeever did not like to hear. [REDACTED]

[REDACTED] Swimmer CI knew that if she ever criticized Coach McKeever, then Coach McKeever would get upset and return to yelling, raising her voice, and telling Swimmer CI that she was being disrespectful and did not appreciate the opportunity she was given. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Swimmer CK's own relationship with Coach McKeever became bad after the championship season. Swimmer CK's "big sister" on the team, Swimmer DK (Swimmer, [REDACTED]), tried to comfort her, but when Coach McKeever saw, pushed Swimmer CK away from Swimmer DK and said that Swimmer CK was not allowed to talk to Swimmer DK for the rest of the meet because she would drag down Swimmer DK.

[REDACTED]

[REDACTED]

Swimmer CZ (Swimmer, [REDACTED]) said that when Coach McKeever yelled at Swimmer CS (Swimmer, [REDACTED]), [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

1. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

2. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

(b)

[REDACTED]

(c)

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

(b) [REDACTED]

[REDACTED]

[REDACTED]

(c) [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

F. Allegations Relating to the Retirements

1. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

2. [REDACTED]

(a) [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

(b) [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

3. Specific Exercises

(i) [REDACTED]

(ii) [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

(iii) [REDACTED]

[REDACTED]

(iv) [REDACTED]

[REDACTED]

8) [REDACTED]

[REDACTED]

9) [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

10) *Miscellaneous*

[REDACTED]

[REDACTED]

11) [REDACTED]

Swimmer BA (Swimmer, [REDACTED]) told us about an activity where each individual had to take a piece of red tape and write what they believed was their worst quality on the tape before placing it on their shirts. The swimmer then stood in front of the group and explained why it was her worst quality. If someone disagreed, they could raise their hand and say what they thought the swimmer's worst quality was. Swimmer BA said her worst quality was that it was hard for her to get out of a bad mood. Coach McKeever disagreed and told her that her worst quality was that she had no personality.

[REDACTED]

4. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

336 [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

3 [REDACTED]

44 [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

(b) [REDACTED]

[REDACTED]

6. [REDACTED]

(b) [REDACTED]

[REDACTED]

(b) [REDACTED]

[REDACTED]

7. [REDACTED]

(b) [REDACTED]

[REDACTED]

[REDACTED]

40

[REDACTED]

[REDACTED]

[REDACTED]

41

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

42

[REDACTED]

[REDACTED]

43

[REDACTED]

[REDACTED]

[REDACTED]

0 [REDACTED]

[REDACTED]

[REDACTED]

12 [REDACTED]

13 [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

14 [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

3. [REDACTED]

(a) [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

5. [REDACTED]

[REDACTED]

[REDACTED]

6. [REDACTED]

[REDACTED]

10. [REDACTED]

7. [REDACTED]

[REDACTED]

8. **Coach McKeever's Response**

[REDACTED]

[REDACTED] Thus, for instance, she did not assume that Swimmer H's (Swimmer, [REDACTED]) [REDACTED] diagnosis was a secret because she heard other teammates talking about it.

G. **Allegations Regarding Use of Sexual History**

1. **General Allegations Regarding Use of Sexual History**

Several swimmers stated that Coach McKeever used swimmers' sexual history against them. Swimmer BE (Swimmer, [REDACTED]) recounted an incident in which Coach McKeever discussed swimmer Swimmer EC's (Swimmer, [REDACTED]) sexual reputation with the team. According to Swimmer BE, Coach McKeever asked the team how they could help "contain" this promiscuous reputation in order to help Swimmer EC and ensure that the swimming team's reputation did not suffer. Swimmer BE also noted that Swimmer EC's mother had passed away when she came to Cal and Swimmer EC appeared to be struggling with that. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

330

[REDACTED]

[REDACTED]

330 [REDACTED]

[REDACTED]

5. [REDACTED]

[REDACTED]

H. Allegations Regarding Retaliation

Several witnesses described instances of actual or feared retaliation by Coach McKesyer:

I. [REDACTED]

(a) [REDACTED]

[REDACTED]

[REDACTED]

(b) [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

2. Allegations of Past Retaliation

[REDACTED]

[REDACTED]

[REDACTED] Swimmer P (Swimmer, [REDACTED]) said that she raised concerns about Coach McKeever in the senior exit interview with Jim Knowlton (Director of Athletics, 2018-present) and Jennifer Simon-O'Neill (Executive Senior Associate Athletics Director, 2013-present). Swimmer P told us that afterwards, Coach McKeever confronted her about talking to Knowlton and Simon-O'Neill while picking up her Golden Bear of the Year award from Coach McKeever's office. This is described in Section VIII.J.11, Swimmer P's

¹¹¹ [REDACTED]

¹¹² [REDACTED]

portion of the section on sustained verbal abuse, including other witness accounts and Coach McKeever's response.

3. Other Witness Accounts

Swimmer V (Swimmer, [REDACTED]) told us that [REDACTED] Swimmer P (Swimmer, [REDACTED]) was yelled at by Coach McKeever for speaking up in the senior exit interview meeting. She noted that when Swimmer P returned from her meeting with Coach McKeever, Swimmer P was crying and hyperventilating.

[REDACTED] He told us that it was the team's perception that Jennifer Simon-O'Neill (Executive Senior Associate Athletics Director, 2013-present) had told Coach McKeever what happened in the meeting with the seniors. Additionally, the seniors had asked Jim Knowlton (Director of Athletics, 2018-present) to have Simon-O'Neill leave the room because of their fear of retaliation, but he had declined.

[REDACTED]

4. Coach McKeever's Response

According to Coach McKeever, no one told her the content of the senior exit interviews, although she believed her meeting with Swimmer P (Swimmer, [REDACTED]) was after the exit interview. Coach McKeever denied yelling at Swimmer P or raising her voice. Coach McKeever's account is described in greater detail in Section VIII.J.II.H above.

[REDACTED]

I. Factual Findings

1. Allegations Regarding Coach McKeever Requiring Swimmers to Criticize Their Teammates

(a) Allegations Regarding Ranking After Swim Meets and Practices

[REDACTED]

[REDACTED]

While indisputably challenging for many swimmers, having the team publicly assess itself was intended to further a legitimate interest in self-evaluation and reflection. There were instances, however, in which the preponderance of the evidence shows that these public assessments were accompanied by insults or yelling in such a manner that it turned the exercise into a form of abusive conduct that humiliated or degraded the swimmers. In particular, Swimmer CI (Swimmer, [REDACTED] and Swimmer BU (Swimmer, [REDACTED]; [REDACTED] recounted a time during their freshman year when Coach McKeever told Swimmer CI, “You do not deserve to wear a fucking Cal cap, turn it inside out.” This comment was hostile, offensive and unrelated to the University’s legitimate business interests.

(b) Allegations Regarding Labelling Swimmers as “Gems”

It is undisputed that Coach McKeever had the team identify which swimmers were “gems.” Several swimmers and coaching staff said that Coach McKeever prompted the team to identify which swimmers were worthy of the team’s time and which swimmers were not. Coach McKeever did not dispute that she had the team identify the “gems.”

The preponderance of the evidence supports that Coach McKeever also had the team identify which swimmers were not worth the team’s energy. Several swimmers, including a co-captain and a swimmer who got along well with Coach McKeever, confirmed that Coach McKeever instructed the swimmers to identify swimmers in this manner. [REDACTED] Staff A (Assistant Coach, [REDACTED]) said Coach McKeever sometimes pitted swimmers against one another and insinuated that some people were more important than others.

(c) [REDACTED]

[REDACTED]

(d) [REDACTED]

2. [REDACTED]

3. [REDACTED]

4. Allegations Regarding Isolating/ Shunning/Ostracizing Teammates

Several swimmers said that there was a tendency among team members to not speak with athletes who underperformed or were yelled at by Coach McKeever while Coach McKeever was present. There was the same tendency to not speak about swimmers who had quit the team. The majority of swimmers, however, said that this was an unwritten or unspoken rule. Numerous swimmers described avoiding underperforming swimmers because they did not want to themselves become the subject to Coach McKeever's scrutiny or criticism. A number of swimmers described Coach McKeever reacting negatively when they tried to defend their teammates. Some swimmers described their own lack of respect for swimmers who were underperforming. Those views were informed, in significant part, by hearing Coach McKeever's criticisms of those swimmers. For example, Swimmer Q (Swimmer, [REDACTED]) said Coach McKeever's constant "tearing to shreds" of certain swimmers like Swimmer H (Swimmer, [REDACTED]), Swimmer G (Swimmer, [REDACTED]), and Swimmer AW (Swimmer, [REDACTED]) led other swimmers to believe that what Coach McKeever said about those swimmers was true. We find these accounts to be credible.

The preponderance of the evidence shows that, although Coach McKeever may not have explicitly directed swimmers not to talk to certain swimmers who underperformed, swimmers were strongly influenced by Coach McKeever's publicly expressed attitude toward and negative comments about those swimmers and that Coach McKeever's statements about those swimmers, such as "what the fuck is wrong with them,"³¹ and "they don't deserve to be here" had the effect of marginalizing those swimmers from the team.

5. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

7. Allegations Regarding Use of Sexual History

We find that a preponderance of the evidence supports a finding that Coach McKeever discussed Swimmer EC's (Swimmer, [REDACTED]) sexual reputation with the team.

[REDACTED]

[REDACTED]

8. Allegations Regarding Retaliation

[REDACTED]

We credit that Swimmer P (Swimmer, [REDACTED]) interpreted her end-of-year meeting with Coach McKeever, when she picked up her Golden Bear award, as resulting from her negative review of Coach McKeever. And we credit that the interaction was negative and included yelling by Coach McKeever. We credit Coach McKeever's explanation that she did not know the specific content of the senior exit interviews at the time she spoke with Swimmer P, but we conclude that the interaction would have had a dissuasive effect on future negative feedback to school administration. And we find that a preponderance of evidence supports that the negativity of Coach McKeever's response was fueled at least in part by the fact that the senior year exit reviews had occurred and Coach McKeever was aware that they were not positive.

J. Policy Determination

[REDACTED]

In instances where we determined that Coach McKeever's conduct engaged in sustained verbal abuse of certain swimmers, as set forth in Section VIII.J, we considered the conduct discussed in this section in reaching our determination.

I. Allegations Regarding Coach McKeever Requiring Swimmers to Criticize Their Teammates

(a) Allegations Regarding Ranking After Swim Meets and Practices

[REDACTED]

Coach McKeever's comment to Swimmer CI (Swimmer, [REDACTED]) which was insulting and unrelated to the University's legitimate business interests [REDACTED]

[REDACTED]

(b) *Allegations Regarding Labelling Swimmers as "Gems"*

[REDACTED]

Having team members, including team co-captains, identify swimmers on whom they would not devote their time and attention, [REDACTED] is a method of purposefully excluding, isolating, or marginalizing a person from normal team activities and therefore violates the University's Workplace Bullying Prevention policy.

(c) [REDACTED]

[REDACTED]

(d) [REDACTED]

[REDACTED]

2. [REDACTED]

[REDACTED]

3. [REDACTED]

[REDACTED]

4. Allegations Regarding Isolating/Shunning/Ostracizing Teammates

[REDACTED]

For those swimmers for whom we found that Coach McKeever violated the Workplace Bullying Prevention policy in Section VIII.J, we also find that Coach McKeever’s conduct resulted in purposeful marginalizing of swimmers.

5. [REDACTED]

[REDACTED]

6. [REDACTED]

[REDACTED]

7. Allegations Regarding Use of Sexual History

We do not reach a policy determination because the applicable policies and guidelines went into effect in 2016, after Swimmer CS and Swimmer EC swam at Cal.

8. Allegations Regarding Retaliation

We find that preponderance of evidence supports that a policy violation occurred by Coach McKeever retaliating against Swimmer P (Swimmer, [REDACTED] for providing negative feedback in her senior year exit review. Coach McKeever’s conduct was such that it “would discourage reporting Abusive Conduct,” and as such, it constituted an adverse action under relevant University guidance.³³³

³³³ University of California Guidance on Abusive Conduct and Bullying in the Workplace. Ex. 160 [CALINT-000829].

X. ALLEGATIONS REGARDING PRESSURE TO SWIM THROUGH INJURY

At least 20 athletes reported feeling pressured by Coach McKeever to swim through injuries or reported seeing teammates experience pressure to swim through injuries.

A. Allegations That Coach McKeever Improperly Pressured Athletes to Swim Through Injuries

Swimmers who said that Coach McKeever pressured them to swim despite injury or illness include:

- [REDACTED]
- Four swimmers reported that when Swimmer Z (Swimmer, [REDACTED]) had multiple concussions her freshman year, Coach McKeever inappropriately questioned whether she really had a concussion and the severity of her symptoms.³³⁴
- Swimmer AT (Swimmer, [REDACTED]) said that Coach McKeever pressured athletes to swim when sick or injured. Swimmer AT had a labrum tear from pull-ups but felt she had to keep practicing. Swimmer AT's account is provided in the section on sustained verbal abuse, Section VIII.J.13.
- Swimmer BU (Swimmer, [REDACTED]) said that she experienced a number of gastrointestinal issues between the Pac-12 and the NCAA championships her freshman year. She said that Coach McKeever was initially supportive, but, when they got to the NCAA championships and Swimmer BU experienced a lot of pain, Coach McKeever told her to "suck it up." Swimmer BU contrasted her experience with Swimmer AM (Swimmer, [REDACTED]), whom she said was more supported by Coach McKeever. Swimmer BU's account is provided in the section on sustained verbal abuse, Section VIII.J.17.

³³⁴ Swimmer AD (Swimmer, [REDACTED]); Swimmer T (Swimmer, [REDACTED]); Swimmer A (Swimmer, [REDACTED]); and Swimmer Y (Swimmer, [REDACTED])

- [REDACTED]

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- Swimmer CE (Swimmer, [REDACTED]) said that when she had an asthma attack during her freshman year, Coach McKeever pressured her to continue swimming until Swimmer CE could not breathe. Swimmer CE also recalled that after she was stung by a stingray in [REDACTED], Coach McKeever mocked her and forced her to swim. When Swimmer CE cut her foot in [REDACTED], Coach McKeever made her continue to train until Coach McKeever finally saw the seriousness of the cut and told Swimmer CE that she could stop. Finally, Swimmer CE hid an ankle injury from Coach McKeever because she was afraid of Coach McKeever’s reaction. Swimmer CE’s account is detailed in the section on sustained verbal abuse, Section VIII.J.20.

- Swimmer BA (Swimmer, [REDACTED]) showed up at a practice with a 102-degree fever and told [REDACTED] Staff H (Assistant Coach, [REDACTED]) that she had to get out of the pool. Swimmer BA said Coach McKeever gave her a “nasty” look from the other side of the pool deck. Swimmer BA ended up going to the emergency room and learned she had a [REDACTED] infection. Swimmer BA also had shoulder injuries and felt pressured to swim through those. Swimmer BA noted that she was afraid to tell Coach McKeever about her injuries because Coach McKeever would be mad. Swimmer BA’s account is included in the section on sustained verbal abuse, Section VIII.J.21.

- Swimmer AR (Swimmer, [REDACTED]) broke her foot at the beginning of her freshman year while drinking at a party. Swimmer AR said that Coach McKeever was not supportive, and she felt a lot of pressure to get back in the pool. Swimmer AR was given a separate practice regimen and was criticized for not trying to use her uninjured foot. Swimmer AR said she was pressured by the trainers to start swimming again and ultimately pushed herself so hard to start swimming again that she ended up in the emergency room due to exhaustion and dehydration. After Swimmer AR went home for Christmas, she decided to transfer to a different college. Parents of Swimmer AR also

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said that Coach McKeever reacted poorly to Swimmer AR's injury. Swimmer AR's account is included in the section on sustained verbal abuse, Section VIII.J.22.

- Swimmer BP (Swimmer, [REDACTED]) said that a lot of athletes swam with back and shoulder injuries, including [REDACTED] Swimmer CN (Swimmer, [REDACTED]).
- [REDACTED]
- Swimmer C (Swimmer, [REDACTED]) said that she suffered a [REDACTED] fracture and that Coach McKeever yelled at her frequently during and after her recovery. Swimmer C said that Coach McKeever told her that she had never heard of anyone breaking a bone from swimming. Swimmer C also told us that Coach McKeever questioned the medical advice Swimmer C was given to avoid kicking or pressing off of walls during her recovery. Swimmer C's account is provided in Section IV.B (regarding allegations of discrimination on the basis of national origin), Section V.A (regarding allegations of discrimination against [REDACTED] swimmers), and Section VIII.J.27 (regarding sustained verbal abuse).
- Swimmer CL (Swimmer, [REDACTED]) had a [REDACTED] that ultimately led to a tear and surgery. She said Coach McKeever did not believe Swimmer CL when she said her knee was popping out and causing pain. Swimmer CL had surgery over the summer after her freshman year and said Coach McKeever expected her to participate in practice when she returned. She was kicked out when she could not do a flip-turn because of her knee. Swimmer CL's knee required another surgery, and Coach McKeever told her father that there was not room in the pool to allow Swimmer CL to rehabilitate in a separate lane. Swimmer CL quit the team. Swimmer CL's account is included in the section on sustained verbal abuse.
- Swimmer CM (Swimmer, [REDACTED]) said that she had severe back and shoulder pain, but Coach McKeever did not believe it was real and did not help her find a doctor to treat it.³³⁶ (Swimmer CM also said she was afraid to tell Coach McKeever, so it is not clear exactly what she told her and when.) After two years on the team, the pain was severe, and Swimmer CM's father arranged for her to see an orthopedist. Coach McKeever called Swimmer CM's parents afterward and said she had no idea Swimmer CM was injured and in pain. Swimmer CM reported that she was in pain for many years after

³³⁶ Swimmer BD (Swimmer, [REDACTED]) confirmed that Swimmer CM was forced to swim with a shoulder injury.

she left Cal. Swimmer CM's account is included in the section on sustained verbal abuse.

- [REDACTED]

I. Diver C (Diver, [REDACTED])

Diver C (Diver, [REDACTED]) had a back injury early in the season and did not receive good medical care. She received a cortisone shot before Pac-12s and competed in the morning on the one-meter springboard but got very sick with the flu in the evening. She was dehydrated, had a fever, and could not eat or sleep. She also could not walk straight and was advised by the trainer to not compete in the three-meter dive event the next day, even though Diver C was the best diver at Cal.

Coach McKeever, accompanied by [REDACTED] Staff L (Assistant Coach, [REDACTED]), berated Diver C. Coach McKeever accused Diver C of abusing over-the-counter drugs to get out of diving because Diver C had said she could not walk straight, a statement that Coach McKeever found implausible based on the supposed timing of her medication. Coach McKeever urged her to dive and told Diver C that if Diver C just completed her dives and took last place, it would earn one point, and that point could make the difference in the team winning. Diver C recalled Coach McKeever raising her voice.

Due to her illness, Diver C had to simplify her diving list to the most basic dives required and was unable to warm up before competing. On one dive, Diver C intentionally failed nudaïr for safety reasons. During our interview, Diver C was visibly upset remembering the embarrassment and shame she felt about her performance. Diver C's club coach from high school was judging the event and did not speak to Diver C afterwards. Diver C felt that her performance led to her being shunned by the diving community. Diver C said that the team did not end up needing the point she earned, as they won by 30 points.

Diver C recalled that at the NCAA diving competition she was injured, so [REDACTED] Staff M (Diving Coach, [REDACTED]) told her that if she could not dive, she could just tell him. Diver C did just that before the three-meter dive, and [REDACTED] Staff M yelled at her in front of the team, telling her she was off the team. Diver C later learned that [REDACTED] Staff M had already told the rest of the team that he kicked Diver C off the team. Coach McKeever was not present, but Coach McKeever knew that Diver C was removed from the team because she called Diver C's father afterwards. Diver C said her father described the call as cordial, but Diver C's father felt that Coach McKeever was trying to keep Diver C off the team. Coach McKeever told Diver C's

[REDACTED]

- Swimmer CJ (Swimmer, [REDACTED]) noted that while she had several surgeries and never had an issue with Coach McKeever, Swimmer BP (Swimmer, [REDACTED]) had her ankle issue from Coach McKeever and swam through it.

Other swimmers alleged that Coach McKeever simply did not give swimmers the proper amount of time or attention to help athletes with their injuries.

- [REDACTED] ¹³⁹
- Swimmer CQ (Swimmer, [REDACTED]) broke her [REDACTED] during a training trip in Hawaii in [REDACTED] but no one initially realized how serious it was, and the break was not diagnosed until Swimmer CQ returned to Cal. [REDACTED] Swimmer CQ told us that she did not blame Coach McKeever or Cal for what happened but believed others may speculated about the situation.³⁴⁰
- Swimmer CN (Swimmer, [REDACTED])³⁴¹ injured her [REDACTED] during a training trip to [REDACTED]. She was sent to a trainer who thought it was bruised, so Swimmer CN was forced to run, train, and lift weights on it. When she returned to Cal, she saw a doctor and learned it was fractured. Once Swimmer CN told Coach McKeever about the fracture, she was allowed to modify practices. She faults the coaching staff for not helping her get her [REDACTED] evaluated by a doctor sooner.

C. Accounts of Coach McKeever's Support of Injured Athletes

Many swimmers reported that Coach McKeever was direct but supportive when it came to injuries. Fourteen swimmers said that Coach McKeever never inappropriately pressured athletes to swim through injuries.³⁴² Ten swimmers noted that when swimmers had injuries, they

¹³⁹ [REDACTED]

³⁴⁰ [REDACTED]

³⁴¹ Parent of Swimmer CN confirmed that Swimmer CN told her that Coach McKeever did not believe she had broken her [REDACTED] and would not let Swimmer CN get it examined or treated.

³⁴² Swimmer R (Swimmer, [REDACTED]); Swimmer M (Swimmer, [REDACTED]); Swimmer U (Swimmer, [REDACTED]); Swimmer AI (Swimmer, [REDACTED]); [REDACTED]; Swimmer BT (Swimmer, [REDACTED]); Swimmer AM (Swimmer, [REDACTED]).

were given modified practices.³⁴³ A few witnesses noted how difficult injuries are to accept, particularly when it interferes with training, and many swimmers put pressure on themselves to try to swim through injuries.³⁴⁴ Swimmer CD (Swimmer, [REDACTED]) said that many athletes had an irrational anxiety about telling Coach McKeever they could not practice. Swimmer AM (Swimmer, [REDACTED]) and Swimmer AX (Swimmer, [REDACTED]) noted that Coach McKeever noticed when they were sick or otherwise unwell and ensured that they received medical help.

Swimmer AJ (Swimmer, [REDACTED]) and Swimmer CQ (Swimmer, [REDACTED]) said that issues with injuries arose when Coach McKeever believed the swimmer was lying about the injury or not being proactive about addressing it. Swimmer CQ said it justifiably frustrated Coach McKeever when she believed swimmers were lying about their injuries, and she tried to hold her athletes accountable. Swimmer CQ said Coach McKeever also had an issue if a swimmer informed her of an injury but then did not do physical therapy or follow up with the doctor.

Swimmer AZ (Swimmer, [REDACTED]), Swimmer BB (Swimmer, [REDACTED]), and Swimmer AP (Swimmer, [REDACTED]) all noted that it is a challenge for Division I athletes to navigate between “good” pain that they should learn to swim through and “bad” pain that needs to be addressed. Swimmer AP said Coach McKeever was good about helping athletes figure out the difference, whereas Swimmer AZ said that Coach McKeever mostly expected swimmers to figure that out themselves. Swimmer BB said Coach McKeever never pushed athletes beyond where they should go.

Eleven swimmers recounted how Coach McKeever supported them through injuries.

Swimmer AJ (Swimmer, [REDACTED]) said that Coach McKeever was very supportive when she struggled with mental health issues and [REDACTED] and helped her connect with resources.

Swimmer AS (Swimmer, [REDACTED]); Diver C (Diver, [REDACTED]); Swimmer CD (Swimmer, [REDACTED]); Swimmer AZ (Swimmer, [REDACTED]); Swimmer BI (Swimmer, [REDACTED]); Swimmer AY (Swimmer, [REDACTED]); Swimmer BH (Swimmer, [REDACTED]); Swimmer CW (Swimmer, [REDACTED]) submitted a written statement that said that Coach McKeever did not inappropriately pressure her to swim through injury.

³⁴³ Swimmer R (Swimmer, [REDACTED]); Swimmer W (Swimmer, [REDACTED]); Swimmer BT (Swimmer, [REDACTED]); Swimmer AS (Swimmer, [REDACTED]); Swimmer BI (Swimmer, [REDACTED]); Swimmer AP (Swimmer, [REDACTED]); Swimmer BB (Swimmer, [REDACTED]); Swimmer BJ (Swimmer, [REDACTED]); Swimmer BL (Swimmer, [REDACTED]); Swimmer BK (Swimmer, [REDACTED]);

³⁴⁴ Swimmer J (Swimmer, [REDACTED]); Swimmer AH (Swimmer, [REDACTED]); Swimmer CV (Swimmer, [REDACTED]); Swimmer BQ (Swimmer, [REDACTED]); Swimmer BI (Swimmer, [REDACTED]); Swimmer AY (Swimmer, [REDACTED]);

Swimmer AH (Swimmer, [REDACTED]) had a torn [REDACTED] in college and felt that Coach McKeever was always supported and invested in helping Swimmer AH with what she needed. Swimmer AH said, if anything, she put pressure on herself to come back, and Coach McKeever stopped her from doing that.

Swimmer AM (Swimmer, [REDACTED]) said that when she injured her [REDACTED], Coach McKeever was extremely supportive and took Swimmer AM to the [REDACTED] surgeon and stayed with Swimmer AM while she recovered. Swimmer AM and her mother said that Coach McKeever did not put any pressure on Swimmer AM to start competing again.

Swimmer AS (Swimmer, [REDACTED]) broke her [REDACTED] at a party one year soon before winter training. She was afraid and embarrassed to tell Coach McKeever, but when she did, she found Coach McKeever to be accommodating and invested in helping Swimmer AS figure out how to train as much as she could.

Swimmer BB (Swimmer, [REDACTED]) injured her [REDACTED] while on a training trip in [REDACTED]. Swimmer BB got it evaluated when she returned to campus and learned it was broken. Swimmer BB was very upset about it, and she described Coach McKeever as very supportive. Coach McKeever comforted her and eventually helped design exercises and training that she could do to maintain her strength, even with the broken [REDACTED].

Swimmer BG (Swimmer, [REDACTED]) said that she worked through injuries while on the team. She said it was difficult, and she placed a lot of pressure on herself, but Coach McKeever was supportive and encouraging, telling Swimmer BG to focus on herself.

Swimmer DA (Swimmer, [REDACTED]) had an [REDACTED] injury and said that she found a way to handle it that worked well with Coach McKeever. Swimmer DA was very proactive in getting it evaluated, understanding her options, and then communicating with Coach McKeever about what modifications she needed and how she planned to handle the injury. Swimmer DA said Coach McKeever responded well and was supportive.

Swimmer CQ (Swimmer, [REDACTED]) said that Swimmer AI had a [REDACTED] condition. When Swimmer AI had flare-ups, Coach McKeever waited for Swimmer AI to tell her whether it was serious. Swimmer CQ said Coach McKeever always reacted appropriately and never pressured Swimmer AI to swim when she was not able to.

Swimmer BL (Swimmer, [REDACTED]) noted that when she tore her [REDACTED], Coach McKeever insisted (over Swimmer BL's protestations) that she only kick at practices until her [REDACTED] was better.

D. Coaching and Athletics Staff

Coach McKeever's assistant coaches and the Cal trainers and doctors all reported that Coach McKeever did not pressure athletes to swim through injuries. A number noted, however, that Coach McKeever pressed certain athletes about their symptoms.

1. Assistant Coaches

Staff A (Assistant Coach, [REDACTED]) said that Coach McKeever sometimes questioned the severity of swimmers' injuries. Staff A said that Coach McKeever's level of skepticism depended on the specific swimmer involved. Staff A said Coach McKeever sometimes questioned whether swimmers were "milking" concussion symptoms, and gave Swimmer Z (Swimmer, [REDACTED]) [REDACTED]. Staff A also noted that Coach McKeever questioned Swimmer X's (Swimmer, [REDACTED]) injury, as detailed more fully in the section on disability discrimination, Section VII.H.

Staff K (Assistant Coach, [REDACTED]) and Staff I (Assistant Coach, [REDACTED]) said that Coach McKeever never inappropriately pressured swimmers to swim through injuries. Staff K noted, however, that if a swimmer had a cold but no fever before a competition, Coach McKeever expected them to compete.

Staff D ([REDACTED], [REDACTED]) said that he never saw Coach McKeever pressure swimmers to swim through injuries. He noted that athletes sometimes made excuses to avoid practice, and even in those cases, Coach McKeever told them to see Staff F (Athletic Trainer, [REDACTED]) and to take time off if they needed it. Staff D noted that Coach McKeever was risk-averse and simply did not take the risk of having a swimmer do lasting or permanent damage.

2. Trainers

Staff F (Athletic Trainer, [REDACTED]) was not aware of any swimmers being forced to swim through injuries and questioned the accuracy of reports from the *Orange County Register* articles. She said the University had strict guidelines to prevent coaches from interfering with medical decisions, and Coach McKeever never pressured Staff F about her decisions or recommendations. Staff F also noted that while she and Coach McKeever communicated about athletes' conditions and what they could do in practice, Coach McKeever also expected athletes to communicate directly with her.

Staff D (Director of Operations, [REDACTED]) did not believe Coach McKeever directly pressured swimmers to swim when injured, but she said Coach McKeever may have questioned whether a swimmer was still injured.

Staff V (Athletic Performance Coach, [REDACTED]), Staff C (Athletic Performance Coach, [REDACTED]), and Staff G (Athletic Performance Coach, [REDACTED]) said that Coach McKeever never pressured athletes to compete or practice while injured, and Coach McKeever exhibited a high level of concern for her athletes.

Staff J ([REDACTED]) often worked with injured athletes and said that he was not aware of Coach McKeever ever inappropriately pressuring a swimmer to swim through an injury. Staff J noted that this was a tricky issue because there can be some types of pain or even injury that an athlete needed to learn to swim through, and other injuries that required rest and/or modification. He

said that it could be difficult for both the coach and the swimmer to know which injury fell into which category.

3. Medical and Counseling Staff

Staff M (), Staff G (), and Staff I () said that they never heard from any swimmers that Coach McKeever pressured them to swim while injured. Staff M noted that, if the issue is pain, Staff M and the swimmer have an informed discussion about how to manage it, and the athlete will continue practicing and competing.

4. Other Staff and Coaches

Staff L (Academic Advisor,), Staff E (Director of Operations,), and Staff R (Director of Operations,) did not witness Coach McKeever pressure swimmers to swim through injuries. Staff E noted that Swimmer AF (Swimmer,) wanted to swim when she was unwell, and Coach McKeever did not let her.

[REDACTED]

Staff C (Men's Swim Coach,) said he had never seen or heard about Coach McKeever pressuring swimmers to practice or compete when injured.

E. Coach McKeever's Response

Coach McKeever said that her approach to swimmers with injuries depended on the injury. Coach McKeever noted that there were some injuries with which an athlete could swim, other injuries with which an athlete could practice but not compete, and still others that required the athlete to not swim. Coach McKeever deferred to the medical staff and trainers for guidance about how to respond to particular injuries. Sometimes, discretion was left to the athlete in terms of whether to train or not.

Coach McKeever denied that she pressured injured athletes to compete. She noted that there were times when she tested their reports of symptoms, which she considered to be her responsibility, and had candid conversations about how to deal with recurring injuries. As an example, if an athlete had a shoulder injury, Coach McKeever asked questions about their history of injury, how it caused pain, whether it was common, what caused it before, and could or should the athlete continue swimming. Coach McKeever said she posed these questions to learn whether it was an injury or just sore and whether they needed an adjustment or needed to see a doctor. She expected athletes to be aware of their bodies and take responsibility for working through any injuries. She noted that "there is a fair amount of discomfort [involved] with being an elite-level athlete."

Coach McKeever noted that she was coaching at a university with very high expectations and with athletes who had high aspirations. She gave her professional opinion of what she believed it took to be at a top program, but she did not think that ever meant an athlete putting themselves in a position where they got injured. She saw her job as helping the athlete understand the situation and find a solution.

Coach McKeever said she would not be surprised if certain athletes felt pressure, but, in those circumstances, she expected the athlete to be an adult and be honest with her and say they needed to not train. Coach McKeever did not consider it her role to tell the athletes what to do, she asked questions, so the athlete could come to their own decision. She noted that she became frustrated with swimmers when they went to a doctor but did not have concrete information and did not ask the right questions (for example, whether they could or should swim and how long the injury would last).

Coach McKeever noted that she has not prevented a swimmer from talking to [REDACTED] Staff F (Athletic Trainer, [REDACTED]). Coach McKeever noted, however, that she expected that if a swimmer spoke with [REDACTED] Staff F about an injury, that swimmer also informed Coach McKeever of the injury.

F. Factual Findings

[REDACTED] Only one athlete, however, alleged that Coach McKeever disregarded the restrictions placed on her participation by medical staff. Diver C (Diver, [REDACTED]) said that Coach McKeever pressured Diver C to dive even though the medical trainer had advised Diver C against diving. This account was supported by a preponderance of evidence, including by [REDACTED] Staff M (Diving Coach, [REDACTED]).

[REDACTED] for certain swimmers, Coach McKeever's reactions to their injuries were a piece of how those swimmers were otherwise treated by Coach McKeever and contributed to their feelings of being targeted for sustained verbal abuse, and those instances were considered as part of our policy findings related to targeting for sustained verbal abuse more generally.

G. Policy Determination

XI. ALLEGATIONS REGARDING WEIGHT AND BODY IMAGE ISSUES

A. Allegations Regarding Coach McKeever Mishandling Weight Issues

Some [REDACTED] swimmers described Coach McKeever as handling body weight issues inappropriately.

[REDACTED]

[REDACTED]

Swimmer AW said that, after she injured her [REDACTED], she gained weight and was struggling. She told us that Coach McKeever never mentioned Swimmer AW's weight gain. Swimmer BU, however, had a different recollection. Swimmer BU said that, during summer training after Swimmer AW's freshman year, Coach McKeever sometimes critiqued Swimmer AW's performance and, when Swimmer AW responded that she was trying her best, Coach McKeever was "mean" in response, commenting on Swimmer AW's weight, calling her worthless, and telling her she would never be fast again. According to Swimmer BU, Coach McKeever told Swimmer AW she was "too fat," "too heavy," and she needed to do extra workouts to slim down because she did not look like everyone else in the pool. Swimmer AU (Swimmer, [REDACTED]) also told us that Coach McKeever made comments about Swimmer AW's weight.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

According to Swimmer CK, Coach McKeever was furious that Swimmer CK's body fat percentage was 14 percent following the championship season, told her that she would be faster if her body fat percentage were lower, and said that if she cared about the team, her percentage would be lower. Coach McKeever then chastised her for making poor nutrition choices. Swimmer CK said that one of her teammates, Swimmer CD (Swimmer, [REDACTED]) reported Swimmer CK's food habits to Coach McKeever, and this led to Swimmer CK being scared to eat in front of anyone. Swimmer CK said that, in an effort to reduce her body fat percentage, she took on extra practices and over-trained to the point of injury. She also became [REDACTED] until she left the team. Swimmer CK said that, aside from yelling at her about body fat percentage and nutrition, Coach McKeever never talked to her. Swimmer CK did not think there was a nutritionist working with the team. She did not witness Coach McKeever talking about other swimmers' body fat percentages. Swimmer CK's roommate at the time, Diver C (Diver, [REDACTED]), corroborated some of what Swimmer CK told us. Diver C said that, at the time, Swimmer CK shared with her that Coach McKeever had basically called her "fat."

[REDACTED]

Swimmer CZ (Swimmer, [REDACTED]) told us that, after she gained fifteen pounds her freshman year, she experienced bullying and degrading comments from Coach McKeever during her sophomore year. Swimmer CZ told us that she started to vomit in order to lose weight the summer after her freshman year. She said that Coach McKeever made comments about how she (Coach McKeever) was on the Weight Watchers program and Swimmer CZ felt that the expectation was that the swimmers should do the same.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

1. Allegations Regarding Shaming Comments Made by Coach McKeever

[REDACTED]

Swimmer P (Swimmer, [REDACTED]) said that Coach McKeever told her that she and the assistant coach had noticed that Swimmer P did not look very good on deck. “like you’re fat. Your clothes don’t really fit you, do they?” Swimmer P told us she was extremely embarrassed by this comment. Other teammates who witnessed Swimmer P being yelled at (but who could not hear all of what Coach McKeever said) asked Swimmer P about what was said, but Swimmer P was too embarrassed to share the comment. Later, at breakfast, Coach McKeever told Swimmer P she probably should not have a cinnamon roll, the rest of the team ate them instead. Swimmer P told us that, during her junior year, after she had lost weight, Coach McKeever commented to her during a meet that she looked good, “I can tell you’ve lost weight, you’re skinnier.” Swimmer P said that, because of Coach McKeever’s comments, she still struggles with a desire to lose weight. During her senior exit interview with Jim Knowlton (Director of Athletics, 2018-present) and Jennifer Simon-O’Neill (Executive Senior Associate Athletics Director, 2013-present) in [REDACTED], Swimmer P reported that Coach McKeever told her she was fat. Simon-O’Neill reported that comment the same day to UC Berkeley’s Office for the Prevention of Discrimination and Harassment.

Swimmers also recalled Coach McKeever making negative comments to Swimmer P about her weight. Swimmer AT (Swimmer, [REDACTED]) also said that Coach McKeever made similar comments to Swimmer P (Swimmer, [REDACTED]). Swimmer Q (Swimmer, [REDACTED]) similarly told us that Coach McKeever called Swimmer P “fat,” to Swimmer P directly, on multiple occasions and that Coach McKeever told Swimmer P that her clothes did not fit right. Swimmer AU (Swimmer, [REDACTED]) told us that, during a meet at [REDACTED], Coach McKeever yelled at Swimmer P, brought up her body size and told her she needed to get in better shape. Swimmer V (Swimmer, [REDACTED]) said that Coach McKeever once called Swimmer P “fat.” Swimmer V said that, when Coach McKeever yelled at a swimmer, she often mentioned that swimmer’s weight or how that swimmer’s parents raised her. Swimmer V also said, however, that Coach McKeever never restricted the swimmers’ diets or told them what to eat. Swimmer V felt that Coach McKeever was decent in handling swimmers’ eating disorders.

Swimmer AT (Swimmer, [REDACTED]) said that Coach McKeever told her that her weight gain was obvious and made her look like “a fat, little girl” in the pool. According to Swimmer AT, Coach McKeever told her the real problem (rather than her anxiety) was that she had gotten fat and that she should see a nutritionist. Swimmer AT told us that Coach McKeever then kicked her off the pool deck to see the nutritionist.

Swimmer X (Swimmer, [REDACTED]) said that, during her first semester at Cal, Coach McKeever pulled her out of practice in front of the entire team to question her, while yelling, about her eating habits and told her she "was too big to be a competitive swimmer" and "needs to lose weight." Swimmer X told us that Coach McKeever frequently brought up Swimmer X's weight in front of other swimmers. She did not recall Coach McKeever making comments about any other swimmers' weight. She said that Coach McKeever frequently told her "if you lost weight, you'd swim faster" or "you need to lose weight." Parent of Swimmer X told us that Swimmer X had shared with her that Swimmer X once told Coach McKeever she had actually lost weight, in response to Coach McKeever's comments about weight gain. Coach McKeever responded with a comment like, "You must be kidding me."

Numerous other swimmers told us they observed similar comments directed at Swimmer X. Swimmer AU (Swimmer, [REDACTED]) said that Coach McKeever targeted Swimmer X and picked on her for her weight. Swimmer T (Swimmer, [REDACTED]) also told us that Coach McKeever called Swimmer X "fat," both directly to Swimmer X's face and when talking to other swimmers about Swimmer X. Swimmer T said Coach McKeever made these comments on the pool deck when talking to small groups of swimmers. Swimmer K (Swimmer, [REDACTED]) said that Coach McKeever made a lot of comments about what Swimmer X ate. Swimmer AD (Swimmer, [REDACTED]), another distance swimmer who swam alongside Swimmer X her freshman year, told us that she witnessed Coach McKeever frequently erupting at Swimmer X, yelling at her for her pace times, how she was standing, her facial expression, and her weight. According to Swimmer AD, Coach McKeever told Swimmer X on deck that she needed to lose weight and body-shamed Swimmer X. Swimmer AD said that Coach McKeever told Swimmer AD that Swimmer X was overweight and out of shape. Swimmer AD also said that Coach McKeever has remarked to team members that she wishes she could require the team to do weigh-ins because some swimmers were out of shape. Parent of Swimmer AD told us that Swimmer AD shared with him how troubled she was by seeing Coach McKeever yell at Swimmer X on deck about her weight and what Coach McKeever perceived to be a lack of effort and lack of desire.

[REDACTED] Staff A (Assistant Coach, [REDACTED]) told us that Coach McKeever commented to her that Swimmer X was not "fit," and this comment was based on Swimmer X not looking super athletic. [REDACTED] Staff A said that, in her view, not looking athletic does not make one unfit to be an athlete and Swimmer X certainly could swim. [REDACTED] Staff A said the comment did not need to be said. [REDACTED] Staff A did not remember Coach McKeever making comments like this in front of Swimmer X or other swimmers, but said that it was possible she did. [REDACTED] Staff A also told us that she did not recall Coach McKeever making any comments about weight that she thought crossed the line. Witness E ([REDACTED], [REDACTED]), who [REDACTED] Swimmer X, told us that Swimmer X works hard at staying fit and is not overweight. He said that she is not a typical skinny swimmer, but she swims at an elite level and [REDACTED] qualified for the NCAA championship every year.

[REDACTED]
[REDACTED]
[REDACTED]
Swimmer H also told us that Coach McKeever commented to her that she did not look thin enough to have [REDACTED].

[REDACTED]

Swimmer CS (Swimmer, [REDACTED]) told us that Coach McKeever made comments to her implying she was fat. She said Coach McKeever told her, "You can't wear that kind of suit. You have to keep everything together;" implying her body was not compact and did not fit in the suit. She also said that Coach McKeever told other swimmers they needed to change their swimsuits, implying it was because they were overweight. According to Swimmer CS, Coach McKeever called a swimmer "tubby" and said she did not like how the swimsuit looked. Swimmer CS said that Coach McKeever always wanted her to stand in the back (presumably for photos) because she did not have a body type that Coach McKeever thought looked good. Coach McKeever told Swimmer CS, "Look at your body type and how it's different from [Swimmer BZ]'s." She's an Olympian and you're not."

[REDACTED]

Swimmer BY (Swimmer, [REDACTED]) told us that Coach McKeever sometimes commented on how out of shape Swimmer BY was. Coach McKeever once said to her, "I don't know what you've been doing," in reference to her weight gain. According to Swimmer BY, the comment was focused on how she looked, not on her performance, and Coach McKeever did not suggest that she see a nutritionist.

[REDACTED]

Swimmer C (Swimmer, [REDACTED]) said that Coach McKeever called her "fat" and told her to see a nutritionist. The nutritionist told her to drink half a liter of water before every meal. Swimmer C said that, during her freshman year, during a conversation about Swimmer C's performance, Coach McKeever said to her, "You're late to practice, you're not doing well, you're fat." Swimmer C did not witness Coach McKeever say anything similar to others.

Swimmer C told her teammates about Coach McKeever's comments and her teammates were shocked.

Jane Roe #3 told us that Coach McKeever sometimes referred to swimmers as "fat" behind their backs to other members of the team. Jane told us that Coach McKeever said things like, "[a swimmer] is kind of fat right now." She also said that Coach McKeever regularly commented on how certain swimmers fit in their suits, once telling Jane that her suit was tight and she should get a larger size. Coach McKeever regularly commented on having a "professional body" or a "professional look," which exerted pressure on swimmers to have a "professional body."

2. Accounts of Swimmers with Negative Experiences Denying that Coach McKeever Handled Weight Issues Inappropriately

Some swimmers who reported negative experiences with Coach McKeever said they did not witness Coach McKeever speak inappropriately about weight or about other swimmers' weight.

Swimmer AC (Swimmer, [REDACTED]) told us that Coach McKeever never spoke to Swimmer AC about weight.

Swimmer AN (Swimmer, [REDACTED]) told us she did not recall Coach McKeever speaking about body weight issues of other swimmers.

Swimmer BP (Swimmer, [REDACTED]) told us that, although she had a negative experience with Coach McKeever, she did not experience or witness anybody shaming from Coach McKeever.

B. Accounts of Appropriate Handling of Weight Issues by Coach McKeever

Some [REDACTED] swimmers said Coach McKeever handled weight and body image issues appropriately. Swimmer M (Swimmer, [REDACTED]) told us that she struggled with her weight when she arrived at Cal and spoke with Coach McKeever about it. She told us that Coach McKeever was very supportive and told her that, as long as she felt good in the water, there was no issue. Swimmer M said that her coaches in [REDACTED] often told her she was fat and she had been worried this would continue to be a problem at Cal.

Parent of Swimmer R (Swimmer, [REDACTED]) told us that, even though Swimmer R was not a tiny person, Coach McKeever never said anything to Swimmer R about weight.

Swimmer J (Swimmer, [REDACTED]) told us that she never experienced inappropriate comments from Coach McKeever about weight. She said she heard from Swimmer AL (Swimmer, [REDACTED]) that Coach McKeever had a conversation with Swimmer AL about

nutrition in the context of building up muscle to improve her stroke. Swimmer J said that Swimmer AL told her that it hurt to talk about changing her diet, especially as a woman, but that she knew it was the next step she needed to take.

Swimmer AI (Swimmer, [REDACTED]) told us that she heard that other swimmers perceived Coach McKeever as making inappropriate comments about body image when Coach McKeever told them to pull their suit out of their buttocks because the suit did not fit them. Swimmer AI did not think this was a weight issue; rather, not having a swimmer's suit in her butt was part of Coach McKeever's expectation that swimmers look a certain way at meets, as they are representing Cal and there are parents around. Swimmer AI said that Coach McKeever once explained to her, "It's not that you're not fit, it's that I don't want to see your butt." Swimmer AI told us that Coach McKeever was careful and thoughtful about talking to swimmers about their weight. For example, Coach McKeever shared with Swimmer AI that she was trying to get Swimmer AL (Swimmer, [REDACTED]) to see a nutritionist. In Swimmer AI's view, Coach McKeever would never just tell a swimmer she was fat and needed to lose weight; instead, Coach McKeever worked to get swimmers the help they needed to address performance issues, including their weight.

Swimmer AH (Swimmer, [REDACTED]) told us that Coach McKeever did not bring up her weight, but when she developed an eating disorder, Coach McKeever helped her create a recovery plan and kept it confidential. The plan had Swimmer AH meet with the team doctor once a week, get counseling, and allowed her to sometimes miss practices. She felt that Coach McKeever was supportive and she felt she could reach out to anyone on the team.

Swimmer CQ (Swimmer, [REDACTED]) told us that Coach McKeever did not make any comments to her about her weight. She believed that Coach McKeever understood the potential for weigh-ins to lead to eating disorders and knew a number of swimmers struggled with eating disorders. Swimmer CQ said she gained weight her freshman year and Coach McKeever never told her she needed to lose weight. Swimmer CQ said she told Coach McKeever she was not in the shape she wanted to be in, so Coach McKeever offered to have her work with a nutritionist. Swimmer CQ was aware Coach McKeever talked to some of her teammates about losing weight but believed that Coach McKeever approached it as a way to improve performance. She said that Coach McKeever knew to be very careful about body image issues and understood the impact she could have. Swimmer CQ said that Coach McKeever once told her that she would not tell anyone she loves to go into coaching because there are so many people who are ready to react negatively to anything a coach says; for example, a coach cannot tell someone to get in shape or lose weight without the athlete feeling attacked or unfairly criticized.

Swimmer CV (Swimmer, [REDACTED]) said that she told Coach McKeever that she, Swimmer CV, would not weigh herself because she suffered from body dysmorphia and did not want to know how much she weighed. Swimmer CV said that Coach McKeever did not have a problem with Swimmer CV's approach.

Swimmer AM (Swimmer, [REDACTED]) told us that she struggled with her weight her freshman year and proactively asked Coach McKeever for help. Coach McKeever referred her to a nutritionist. Swimmer AM said that she never heard Coach McKeever make comments

about swimmers' weight and that some of her teammates never weighed themselves. Swimmer AM said that Coach McKeever kept her efforts to lose weight private and never discussed the issue with the team.

Swimmer AZ (Swimmer, [REDACTED]) said Coach McKeever never spoke with her about weight. She said that the team had a nutritionist whom Coach McKeever asked to work one-on-one with certain swimmers. She felt that Coach McKeever struck a good balance with respect to diet and weight. The strength and conditioning coaches managed the body composition testing; the results were shared only with the individual swimmer and not with other swimmers. Coach McKeever was very explicit that the absolute numbers in body composition testing did not matter; what mattered was looking at changes and trends.

Swimmer BS (Swimmer, [REDACTED]) told us that she struggled with her weight, and Coach McKeever connected her with the support she needed, including a nutritionist and a sports psychologist. While working with Coach McKeever, Swimmer BS started keeping a food journal and had weekly check-ins with [REDACTED] Staff L (Assistant Coach, [REDACTED]) about her journal. Swimmer BS said that Coach McKeever emphasized that she needed to get healthy and needed to focus on walking and eating healthier. She said that Coach McKeever never discussed her weight or her struggles with weight with the team. In a written statement Swimmer BS provided to the investigation, she wrote:

When I struggled with my nutrition and weight she never once made me feel shame or called me fat. She connected me with [REDACTED] Staff L] and our nutritionist so I could have resources to learn how to better take care of myself. She understood the struggle. My weight went up and down during college and during neither of those times did I feel that Teri objectified or shamed my body. Rather she listened to me and what I wanted to change, be better at, and work on and she supported me with that.

Swimmer CD (Swimmer, [REDACTED]) said she had many conversations with Coach McKeever about her weight and Coach McKeever always handled them appropriately and sensitively. She said that Coach McKeever never shamed or reprimanded her publicly, even when she needed to lose weight to perform at her best. She never heard Coach McKeever talk to anyone about their weight on the pool deck. Swimmer CD said that Coach McKeever was never present when the swimmers had their "bod pod" measurements done. The athletes were given their results individually and these results were also shared with Coach McKeever.

Swimmer BI (Swimmer, [REDACTED]) said that the team used a machine called the "bod pod" every year to measure body composition and the results were then communicated individually to each swimmer via a folded piece of paper. Swimmer BI viewed the body composition information as a tool for swimmers to use, together with the trainer or weight coach, to improve their performance. Swimmer BI said Coach McKeever was not present when the "bod pod" measurements were done and she did not know if Coach McKeever was given the results; she said she never heard Coach McKeever talk about the results. Swimmer BI said that any pressure she experienced about weight was pressure she put on herself.

Swimmer BM (Swimmer, [REDACTED]) told us that Coach McKeever never addressed a swimmer's weight or appearance in front of the team. She said that, when Coach McKeever had concerns about a swimmer's weight, she asked the captain to address the issue with the swimmer. In Swimmer BM's view, many swimmers gained weight their freshman year because of access to alcohol and to the dining hall, and they were not accustomed to having to make smart choices about what to eat. Swimmer BM said that, if a freshman gained weight, Coach McKeever expressed concern for them and did not make fun of them or shame them. Swimmer BM said that Coach McKeever did not foster an environment in which she was self-conscious about her body.

Parent of Swimmer AZ (Swimmer, [REDACTED]) told us that, based on what she knew about her daughter's experience in the program, Coach McKeever never told people what to eat. She believed that all of the women on the team took good care of themselves.

Swimmer BB (Swimmer, [REDACTED]), who had a positive experience with Coach McKeever, said she did not recall any issues about weight or body image. She said there was a scale in the weight room and that weigh-ins were optional.

Swimmer AP (Swimmer, [REDACTED]) said that Coach McKeever took an individualized approach toward weight and there was no set weight required for good performance. She contrasted Coach McKeever's approach to that of her [REDACTED] coach and other staff at a different university (Swimmer AP transferred to Cal [REDACTED]), whom she described as looking at swimmers with disgust if he thought they needed to lose weight and where the nutritionist stood over swimmers in the dining hall to watch what they ate, resulting in swimmers foregoing dessert.

Swimmer DA (Swimmer, [REDACTED]) said that Coach McKeever never made any comments about her weight. She said that, during her junior and senior years, the team weighed-in on the days they did strength training in order to track their strength. She said the team had a nutritionist. According to Swimmer DA, any comments Coach McKeever made about swimmers' weights were tied to holding swimmers accountable. Swimmer DA explained that a couple of swimmers liked to party, and Coach McKeever might have made a comment that it was time for swimmers to stop partying after those swimmers gained weight due to partying during the summer. With respect to Swimmer CS (Swimmer, [REDACTED]), Swimmer DA said she did not recall Coach McKeever making comments about her weight; she did recall that Swimmer CS had fallen behind from a strength perspective and could not lift as much weight as the rest of the team. With respect to comments about swimmers' suits being too small, Swimmer DA explained that many teammates tried to fit into the tiniest suits possible, and Coach McKeever said in response, "Why don't you try this suit; this is a smarter option for you."

Swimmer BJ (Swimmer, [REDACTED]), who also had a positive experience with Coach McKeever, said there were weigh-ins during her freshman year. She said that during her junior year, one of her teammates was severely anorexic, and Coach McKeever tried to provide all the support she could, including having the swimmer see nutritionists, but eventually Coach McKeever told the swimmer she could not swim. Swimmer BJ said that

nutritionists spoke with the whole team to foster an understanding of and to prevent similar problems.

Swimmer AY (Swimmer, [REDACTED]), who had a positive experience with Coach McKeever, told us that Coach McKeever valued being healthy. Swimmer AY said that issues swimmers had about losing weight were internally driven. She said that, unlike other swim coaches that Swimmer AY had encountered, Coach McKeever did not have strict rules about weight or diet.

Swimmer AV (Swimmer, [REDACTED]) did not remember Coach McKeever making comments about swimmers' weight.

Swimmer BL (Swimmer, [REDACTED]) said that swimmers were weighed by the trainers, and Coach McKeever had private, one-on-one conversations with swimmers who needed to lose weight. She believes that the routine of weighing swimmers was discontinued shortly after she left the team. She said that Coach McKeever occasionally commented to a swimmer if her swimsuit did not cover her buttocks, but that such comments were about modesty and not about weight.

Swimmer BH (Swimmer, [REDACTED]), who had a positive experience with Coach McKeever, told us that swimmers were weighed by the weight coaches, who then talked to the swimmers about their weight. She also said there was a group identified as needing to lose weight at the time and explained that there was a running group that was mandatory for those people. Swimmer BH said part of being an athlete was being able to accept your weaknesses and overcome them.

C. Experiences of Former and Current Coaches and Coaching Staff

Former and current coaching staff at Cal told us that they never witnessed Coach McKeever make inappropriate comments about weight. [REDACTED] Staff C (Men's Swimming Coach, [REDACTED]) told us he never witnessed Coach McKeever body shaming any athletes. Similarly, [REDACTED] Staff K (Men's Water Polo Coach, [REDACTED]) told us he had no knowledge of Coach McKeever discussing body weight, body image issues, or eating disorders. He explained that, although coaches used to weigh athletes, they were no longer allowed to do so, and eating disorders and weight were issues that the trainers and doctors dealt with, not coaches. [REDACTED] Staff F (Athletic Trainer, [REDACTED]) said she never witnessed or heard about Coach McKeever engaging in any body shaming. She told us that Coach McKeever is very open about her own struggles with weight and has dealt appropriately with a fair number of swimmers who have eating disorders. [REDACTED] Staff F told us that, a number of years ago, the strength training staff weighed athletes as part of strength training and the nutritionist and Athletic Performance Coach did body composition testing two or three times a year for informational purposes. She said the results were used to tailor strength training programs and performance plans and were never used as a punishment.

[REDACTED] Staff N ([REDACTED] Assistant Coach, [REDACTED]) said that he felt Coach McKeever was compassionate in the way she talked about weight with swimmers. Coach

McKeever told [REDACTED] Staff N that she had discussed weight with one, world-class swimmer on the team, noting that if she wanted to be a champion, she had to watch her weight.

[REDACTED] Staff L (Academic advisor, [REDACTED]) said that Coach McKeever discussed in “high performance” meetings with coaching staff the need to refer certain swimmers to nutritionists. [REDACTED] Staff L said she believes Coach McKeever was sensitive to the need to handle these issues appropriately and avoided judging swimmers based on their bodies and instead focused on getting swimmers to compete at their highest level.

[REDACTED] Staff G (Athletic Performance Coach, [REDACTED]) told us that, every day in the weight room, athletes had to log-in with their body weight by getting on a scale, but there usually was no one else present and Coach McKeever was never present. According to [REDACTED] Staff G, Coach McKeever told him that her coach made her step on the scale in front of her coach, and as a result, she was sensitive to not having her swimmers feel the same way. Until [REDACTED], the Athletic Performance Coaches measured body composition three times a year; [REDACTED] Staff G viewed body fat percentage as a fair performance metric. [REDACTED] Staff G met with Coach McKeever to review how the swimmers’ body fat percentages changed over time. [REDACTED] Staff G said he did not know what conversations she may have had with swimmers afterward, but he felt that she was not going to “hammer” someone even though she was not happy if a swimmer returned to campus having gained a lot of weight. [REDACTED] Staff G could not recall anyone struggling with an eating disorder at the time.

[REDACTED] Staff C (Athletic Performance Coach, [REDACTED]) told us that he never witnessed Coach McKeever speak about weight or body composition inappropriately and that she was ahead of her time in always using the right language. He said he never heard her “fat shame” a swimmer.

[REDACTED] Staff V (Athletic Performance Coach, [REDACTED]) told us that he never heard Coach McKeever engage in personal attacks on swimmers, though he acknowledged that he has not been to the pool to observe practices, and Coach McKeever attended strength training sessions only two or three times a semester. He told us he never heard Coach McKeever comment on a swimmer’s weight in an inappropriate way and noted that Coach McKeever commented on weight only in the context of performance.

Assistant coaches all felt that Coach McKeever treated weight issues appropriately. [REDACTED] Staff Q (Assistant Coach, [REDACTED]) told us that he did not recall weighing swimmers. He said Coach McKeever discussed weight with swimmers but not in a way that shamed them. [REDACTED] Staff H (Assistant Coach, [REDACTED]) told us he never witnessed Coach McKeever body shaming any swimmers. [REDACTED] Staff I (Assistant Coach, [REDACTED]) said the coaching staff did not weigh swimmers and did not discuss swimmers’ bodies or weight with the swimmers. He could not recall Coach McKeever ever assigning extra workouts to a swimmer to help her lose weight; he also could not recall any swimmers struggling with eating disorders during his time with the team. [REDACTED] Staff K (Assistant Coach, [REDACTED]) said that Coach McKeever was very sensitive to body weight issues and handled them appropriately. According to [REDACTED] Staff K, Coach McKeever never said anything inappropriate about swimmers’ weight or engaged in fat-shaming. If someone was struggling with their weight, Coach McKeever shared that she also struggled with her weight and has had to learn what kind of diet works for her. Coach McKeever

also set swimmers up with the nutritionist when they needed help. As noted above, [REDACTED] Staff A (Assistant Coach, [REDACTED]) said that, although Coach McKeever felt that Swimmer X (Swimmer, [REDACTED]) was not fit based on how her body looked, Coach McKeever did not make any over-the-line comments in front of [REDACTED] Staff A about Swimmer X's weight.

[REDACTED] Staff R (Director of Operations, [REDACTED]) told us that he never observed Coach McKeever make comments to swimmers about body weight. He acknowledged, however, that he generally was not on the pool deck during practices and that he did not know what Coach McKeever talked about with swimmers during her one-on-one meetings with them. [REDACTED] Staff H ([REDACTED], [REDACTED]), told us that he never saw Coach McKeever engage in any abusive conduct and did not hear her make inappropriate comments about weight.

Coaching staff of other programs also said similar things. Witness B ([REDACTED] Head Coach, [REDACTED]) first met Coach McKeever in the mid-1980s and then coached on every U.S. national team since 1987 or 1988 and coached the World championships teams and Goodwill Games teams together with Coach McKeever. He told us that he never witnessed Coach McKeever making comments about weight or how swimmers' suits fit.

Witness E ([REDACTED] Swim Coach) [REDACTED] Swimmer X) told us that a male coach may be able to "get away with" more than a female coach when talking about an athlete's weight.

D. Coach McKeever's Response

Coach McKeever explained that how she talked about weight depended on the swimmer. She explained that she personally struggled with weight and understood why people might overeat. She noted that she has often shared her own personal struggle with weight. She described having a personal level of empathy for swimmers who struggled with weight. She told us she shared with Swimmer P (Swimmer, [REDACTED]) that she herself messed up her own college career because she gained too much weight. Coach McKeever said that things were different when she swam collegiately; she was weighed in front of the football team and was suspended for gaining too much weight. She was made to feel weird or fat in her swimsuit when compared to her teammates and she is therefore sensitive to not making her swimmers feel the same way.

Coach McKeever said that some swimmers misperceived her comments as being fat-shaming or body-shaming when, in reality, she was commenting on their fitness and ability to perform. She said she assessed some people's fitness as not where it needed to be so she had them do extra sets or a different type of set. She said it was appropriate for coaches to give swimmers feedback on their lack of fitness if that was why they were not performing. She said that she cannot control how the swimmer perceived those comments. Coach McKeever explained that it was hard for swimmers to see other swimmers in their swimsuits and to look different from them. According to Coach McKeever, if some swimmers felt fat compared to their teammates, that was not a result of her actions or words.

1. [REDACTED]

[REDACTED]

2. [REDACTED]

[REDACTED]

[REDACTED]

3. [REDACTED]

[REDACTED]

4. Comments About Specific Swimmers

Coach McKeever said she never weighed swimmers on the team and generally denied making any fat-shaming or body-shaming comments to swimmers. She denied telling Swimmer CS (Swimmer, [REDACTED]) that she was “fat,” but acknowledged she probably did call her “lazy” and explained that Swimmer CS had a tendency to make only marginal effort, was inconsistent with her effort level and often did not make her intervals.

[REDACTED]

She denied telling Swimmer H (Swimmer, [REDACTED]) or anyone else that Swimmer H was too fat to have [REDACTED] and explained that fat had nothing to do with whether a person had [REDACTED] and, in any event, Swimmer H was not fat. She also denied saying anything that could have been misinterpreted as such a comment.

With regard to Swimmer X (Swimmer, [REDACTED]), Coach McKeever said she might have said something like “If you could lose some weight, it would help your fitness.” She denied

telling Swimmer X that she was “fat.” Coach McKeever explained that Swimmer X was one of the few swimmers who definitely needed to lose weight to be her best. She said she was able to assess this by looking at Swimmer X. [REDACTED]

With regard to Swimmer P, Coach McKeever told us she probably said to Swimmer P, “if you could lose some weight, I think it would help your performance.” Coach McKeever explained that Swimmer P is tiny and had put on weight, possibly from depression or anxiety, and that “it wasn’t working in the water.” According to Coach McKeever, Swimmer P had asked her why she thought Swimmer P was not performing well. Coach McKeever told us she responded that it was “because you’ve gained some weight and I think it’s hurting your performance.” Swimmer P then lost some weight and Coach McKeever probably said “great job.” Coach McKeever recalled Swimmer P struggling for two years performance-wise, but she lost a little weight, worked really hard, worked on mental health, and then did a great job. According to Coach McKeever, any implication that there was an ongoing conversation with Swimmer P about her weight was not accurate.

E. Factual Findings

Several swimmers said Coach McKeever focused on what they ate and drank and emphasized body weight through underhanded or degrading comments. Some swimmers said this led to overtraining and unhealthy eating habits. Several swimmers also mentioned comments about fitting into swimsuits or not looking good in their swimsuit. Swimmer CK (Swimmer, [REDACTED]) said that one of her teammates reported to Coach McKeever what Swimmer CK ate, which led Swimmer CK to fear eating in front of others. Pressure to reduce her body fat led to overtraining and bulimia. Swimmer BQ (Swimmer, [REDACTED]) said she was told to reduce her body fat percentage from seventeen to nine, to mirror Swimmer BZ (Swimmer, [REDACTED]). A number of swimmers, including Swimmer CJ (Swimmer, [REDACTED]), Swimmer C (Swimmer, [REDACTED]), Swimmer CS (Swimmer, [REDACTED]), Swimmer X (Swimmer, [REDACTED]), Swimmer K (Swimmer, [REDACTED]), and Swimmer Q (Swimmer, [REDACTED]) said that Coach McKeever called themselves or others “fat” or close synonyms thereof.

On the other hand, three swimmers who had negative experiences with Coach McKeever reported never hearing inappropriate comments on weight. At least 20 swimmers, as well as two of their parents, who had positive overall experiences with Coach McKeever, reported that she appropriately handled issues relating to weight and body image. Former and current coaching staff at Cal, as well as Athletics Department staff unanimously reported not witnessing inappropriate comments about weight. The athletic trainer, [REDACTED] Staff F, and three Athletic Performance Coaches spanning [REDACTED] who hold responsibilities related to athlete fitness and weighing, reported appropriate behavior by Coach McKeever. And assistant coaches, spanning from 2000 to 2022, all felt that Coach McKeever handled issues relating to weight appropriately. Coach McKeever, as mentioned, attributed these allegations to misperceptions of her appropriate comments on fitness and performance.

[REDACTED]

Where certain individuals were allegedly subjected to harassing or inappropriate conduct without a valid coaching objective, those allegations are analyzed with respect to those swimmers individually in Section VIII J.

[REDACTED]

F. Policy Determination

[REDACTED]

XII. [REDACTED]

I. [REDACTED]

I. [REDACTED]

[REDACTED]

[REDACTED]

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E. Policy Determination

[REDACTED]

XIII. COACH MCKEEVER'S DEFENSES

A. Accounts of Positive Experiences with Coach McKeever

I. Accounts of Swimmers' Experiences

Several former and current swimmers shared positive stories and experiences of Coach McKeever.

(a) *Accounts of an Inclusive Coaching Style*

Several swimmers praised Coach McKeever's coaching style for helping every swimmer feel welcome while taking an individualized approach to each swimmer.

Swimmer AJ (Swimmer, [REDACTED]) told us that her experience with Coach McKeever was very positive. Swimmer AJ explained that Coach McKeever helped her in all aspects of her life and not just in swimming. Swimmer AJ noted that Coach McKeever went out of her way to make all swimmers feel welcome on the team, even if they did not qualify for the Pac-12 or NCAA championships. Swimmer AJ noted that Coach McKeever regularly apologized publicly if she said anything uncalled for to swimmers.

According to Swimmer W (Swimmer, [REDACTED]), Coach McKeever took an individual approach to each swimmer's needs that helped Swimmer W realize her potential. Swimmer W credited Coach McKeever with pulling her out of a state of depression during her time on the team by connecting her with mental health resources.

Swimmer AS (Swimmer, [REDACTED]) submitted a written statement describing her positive experience with Coach McKeever's inclusive coaching style.

Swimmer AX (Swimmer, [REDACTED]) said that she had a positive experience with Coach McKeever. She described Coach McKeever as very dedicated and noted that Coach McKeever tried to find value in every member of the team, not just the fast ones. She noted that Coach McKeever made sure that the team knew about available health and wellness resources.

According to Swimmer BM (Swimmer, [REDACTED]), Coach McKeever was a direct and tough but inspiring coach. Swimmer BM noted that she had a great relationship with Coach McKeever and found her to be easier to approach than many of her past coaches. Swimmer BM described Coach McKeever doing small things like giving stickers to the team to help bring the team closer together. She noted several ways in which Coach McKeever went above and beyond in small ways for team members, such as personalizing gear for individual swimmers and making holiday goodie bags for the team containing inspiring quotes. Swimmer BL (Swimmer, [REDACTED], [REDACTED]) said that she had a very positive experience on the team despite not being the fastest swimmer. Swimmer BL praised Coach McKeever's approach of holding swimmers accountable and noted that she did not see Coach McKeever's coaching as crossing any lines.

According to Swimmer AM (Swimmer, [REDACTED]), Coach McKeever was an influential female mentor for her. Swimmer AM and Parent of Swimmer AM praised Coach McKeever's individual approach to coaching and willingness to cheer on each member of the team, and said that Coach McKeever was more prone to showing disappointment than anger. Swimmer AM and her mother also praised Coach McKeever's direct and precise communication style.

(b) Accounts Regarding Supportive Coaching

Several swimmers described Coach McKeever as supportive and approachable as a coach.

According to Swimmer U (Swimmer, [REDACTED]), her experience on the team was positive. Swimmer U felt that Coach McKeever was very supportive and helped Swimmer U believe in herself.

Swimmer M (Swimmer, [REDACTED]) told us that she had a wonderful experience at Cal. In Swimmer M's view, Coach McKeever had no bad intentions and solely wanted to help the swimmers improve.

Swimmer R (Swimmer, [REDACTED]) told us that she had a positive experience with Coach McKeever and viewed it as a privilege to be coached by her. Swimmer R described a speech about success that Coach McKeever gave prior to a dual meet at the [REDACTED] that energized the entire team. Parent of Swimmer R corroborated Swimmer R's views and told us that Coach McKeever gave the swimmers autonomy and opportunity.

Swimmer CQ (Swimmer, [REDACTED]) told us that she had a very good experience with Coach McKeever, especially while training with Coach McKeever as a post-graduate.

Swimmer CW (Swimmer, [REDACTED]) submitted a written statement describing her positive experience with Coach McKeever as a supportive coach.

Swimmer BJ (Swimmer, [REDACTED]) told us that Coach McKeever was approachable and worked with swimmers to figure out problems or injuries they were facing.

Swimmer BS (Swimmer, [REDACTED]) told us that she had a difficult experience at Cal for reasons unrelated to Coach McKeever. Swimmer BS noted that Coach McKeever was particularly supportive as she struggled through mental health and body image issues.

(c) *Accounts of Holistic Support for Swimmers*

Several swimmers praised Coach McKeever's support for swimmers' development as individuals and not just as athletes.

According to Swimmer AI (Swimmer, [REDACTED]), Coach McKeever was wonderful as her coach and prioritized swimmers as people first and athletes second. Swimmer AI noted that Coach McKeever was understanding when Swimmer AI had an off day and emphasized that she felt comfortable going to Coach McKeever regarding a range of different issues in her life.

Swimmer AP (Swimmer, [REDACTED]) said that she credits Coach McKeever with helping Swimmer AP turn around her life and swimming career after Swimmer AP's last coach was verbally abusive. Swimmer AP noted that Coach McKeever cared more about Swimmer AP's future after swimming than her other coaches had. Swimmer AP told us that once she was able to stand up to Coach McKeever and yell back at her on deck for the first time, her relationship with Coach McKeever improved.

Swimmer BT (Swimmer, [REDACTED]) told us that she had a very positive experience at Cal with Coach McKeever. Swimmer BT and Parents of Swimmer BT described Coach McKeever as a supportive coach who helped Swimmer BT develop as both a swimmer and as a person more generally.

According to Swimmer BI (Swimmer, [REDACTED]), her experience on the team with Coach McKeever was the best experience of her life. Swimmer BI credited Coach McKeever with the strength of the relationships she formed while on the team. Swimmer BI emphasized Coach McKeever's use of resources and funds to try to make the swimmers better people.

Swimmer EM (Swimmer, [REDACTED]) and Swimmer CX (Swimmer, [REDACTED]) submitted written statements describing their positive experiences with Coach McKeever's focus on their development as individuals beyond swimming.

Swimmer AY (Swimmer, [REDACTED]) told us that she had a very positive experience with Coach McKeever and greatly respected Coach McKeever because of how Coach McKeever cared deeply for her swimmers both in and out of the pool.

Swimmer BK (Swimmer, [REDACTED]) told us that she had a wonderful experience with Coach McKeever at Cal. Swimmer BK described Coach McKeever as concerned with the athlete as an individual and as having a good heart. Swimmer BK explained that Coach McKeever helped Swimmer BK rediscover her love of swimming. Swimmer BK also noted that Coach McKeever was, if anything, considered too soft by the swimmers on the team.

(d) *Accounts of an Honest and Accountable Environment*

Several swimmers praised Coach McKeever for cultivating an open environment through her honesty and accountability.

Swimmer AH (Swimmer, [REDACTED]) told us that Coach McKeever was honest and understanding and held herself accountable while expecting the same from the swimmers.

According to Swimmer BF (Swimmer, [REDACTED]), Coach McKeever cared deeply about her swimmers and made herself vulnerable with the swimmers. Swimmer BF told us that Coach McKeever had changed Swimmer BF's life for the better by believing in her. Swimmer BF noted that she was unsettled by recent news coverage because she did not believe she had witnessed any mistreatment by Coach McKeever.

Swimmer CD (Swimmer, [REDACTED]) told us that she had a good experience with Coach McKeever. Swimmer CD felt that Coach McKeever pushed her hard, but in a way that was honest and helped Swimmer CD. Swimmer CD credited Coach McKeever with much of her success and emphasized that she found Coach McKeever inspiring and motivating. Swimmer CD said that Coach McKeever went further than she wanted to during emotional moments and sometimes apologized afterwards for having "a moment."

Swimmer AZ (Swimmer, [REDACTED]) told us that she had an intensely positive experience as part of the Cal team, in large part due to Coach McKeever. Swimmer AZ described a positive team culture of openness and sharing that was fostered by retreats and modeled by coaches. Parent of Swimmer AZ similarly praised Swimmer AZ's experience with the Cal team and Coach McKeever's role in creating that experience.

Swimmer BB (Swimmer, [REDACTED]) told us that she had a very positive experience at Cal and described her time on the team as the best years of her life. She credited Coach McKeever with making a lasting, positive impact on her life. Swimmer BB told us that when things got heated between Coach McKeever and a swimmer, Coach McKeever often returned later and acknowledged that she had reacted harshly. Swimmer BB described occasions when Coach McKeever called her back and got teary.

Swimmer EN (Swimmer, [REDACTED]) submitted a written statement praising Coach McKeever's honesty and communication.

According to Swimmer DA (Swimmer, [REDACTED]), she had an overall positive experience with Coach McKeever. Swimmer DA said that Coach McKeever was transparent with her expectations and boundaries and praised Coach McKeever's leadership and personable nature.

According to Swimmer BH (Swimmer, [REDACTED]), her experience with Coach McKeever was better than with her prior swim coaches. By way of example, Coach McKeever reached out to Swimmer BH, after Swimmer BH mistakenly thought she was kicked out of a weight room training, to make sure that Swimmer BH understood that Coach McKeever had not in fact kicked her out of practice. Swimmer BH viewed the story as showing Coach

McKeever's understanding nature. Swimmer BH also described Coach McKeever as having a thoughtful and organized communication style.

(e) Accounts Regarding Exit Surveys and Exit Interviews

Exit surveys and notes of exit interviews spanning [REDACTED] from a number of different swimmers contained positive reviews of Coach McKeever.³⁵⁰ An aggregated exit survey from [REDACTED] similarly contained positive comments from swimmers about Coach McKeever and no negative comments.

2. Accounts of University Staff Members and Administrators

Cal staff members and administrators described positive experiences with Coach McKeever.

According to [REDACTED] Staff X (Staff Psychologist at University Health, [REDACTED]), Coach McKeever referred many swimmers to counseling, which he attributed to Coach McKeever being particularly attuned to mental health issues and available resources for swimmers.

[REDACTED] Staff F (Director of Operations, [REDACTED]) told us that Coach McKeever cared deeply about her swimmers and treated every swimmer on the roster the same.

According to [REDACTED] Staff F (Athletic Trainer, [REDACTED]), Coach McKeever addressed mental health more than any other coach with whom [REDACTED] Staff F has ever worked. [REDACTED] Staff F noted that at alumni events, [REDACTED] swimmers often relayed positive messages to [REDACTED] Staff F about the impact that Coach McKeever had on their lives.

Jennifer Simon-O'Neill (Executive Senior Associate Athletics Director, 2013-present) said Coach McKeever received very little negative feedback on end-of-year reviews, and support staff always described a great relationship with her. Simon-O'Neill's notes from senior exit interview with Swimmer V³⁵¹ (Swimmer, [REDACTED]), Swimmer AT (Swimmer, [REDACTED]), Diver E (Diver, [REDACTED]), Swimmer CP (Swimmer, [REDACTED]), Swimmer CH (Swimmer, [REDACTED]), Swimmer EL (Swimmer, [REDACTED]), and Swimmer AF (Swimmer, [REDACTED]) reflected only positive experiences, including that "Teri is about

³⁵⁰ The individual swimmers are Swimmer CB (Swimmer, [REDACTED]), Swimmer EH (Swimmer, [REDACTED]), Swimmer AM (Swimmer, [REDACTED]), Swimmer BT (Swimmer, [REDACTED]), Swimmer EI (Swimmer, [REDACTED]), Swimmer EJ (Swimmer, [REDACTED]), Swimmer BO (Swimmer, [REDACTED]) and Swimmer EK (Swimmer, [REDACTED]).

³⁵¹ Swimmer V gave a positive senior year exit review after her senior year [REDACTED] season, and [REDACTED] in [REDACTED].

developing well-rounded females. Team here really values the sense of gratitude – Cal is a unique environment.”³⁵²

██████████ Staff C (Athletic Performance Coach, ██████████) was impressed by Coach McKeever’s commitment to process over outcomes and general support for her athletes. He described Coach McKeever as honest and direct with athletes.

According to ██████████ Staff M (██████████ Team Physician, ██████████), Coach McKeever met with ██████████ Staff M and a swimmer to discuss a swimmer’s condition. ██████████ Staff M recalled later telling several people that Coach McKeever did an amazing job in a difficult situation during that conversation.

██████████ Staff D (Director of Operations, ██████████) told us that Coach McKeever had a positive coaching style that ██████████ Staff D viewed as creating good community members. ██████████ Staff D expressed admiration for Coach McKeever’s high standards.

According to ██████████ Staff W (██████████, ██████████), ██████████ Staff W knew Coach McKeever to be someone who had a high standard and could push athletes while also demonstrating love and accountability. At the few practices ██████████ Staff W attended, she said Coach McKeever was clear and direct.

██████████ Staff D (██████████, ██████████) said that he has a very positive impression of Coach McKeever and her approach of training the whole person rather than just focusing on the swimmer. He described Coach McKeever as creating an environment of mutual support to help swimmers in all aspects of their lives. ██████████ Staff D told us that Coach McKeever often “owned” the situation after yelling at swimmers by telling ██████████ Staff D that she “should not have done that.” ██████████ Staff D said that Coach McKeever often offered explanations regarding the personal issues facing the swimmer in question.

██████████ Staff J (██████████, ██████████), ██████████) told us that he has seen Coach McKeever be both very compassionate and an effective and direct communicator. ██████████ Staff J described an incident in which a foreign student drank too much alcohol on her first night on campus, and Coach McKeever responded by personally taking care of the student instead of delegating the task to ██████████ Staff J or an assistant coach.

3. Accounts of Coaching Colleagues

Coaching colleagues described positive stories or experiences of Coach McKeever.

According to Coach Witness J (Women’s Club Swim Coach, ██████████), she observed Coach McKeever at a practice before the ██████████ Pac-12 competition. Witness J described Coach McKeever as professional, and said she was impressed by the quality of Coach McKeever’s coaching and her ability to connect to her swimmers.

³⁵² Ex. 208 [CALINT-000185]. Simon-O’Neill’s notes did not attribute this statement to any one individual.

Witness B ([REDACTED] Head Men's and Women's Swim Coach, [REDACTED]) helped the Cal team in Hawaii and noted that he was impressed by the quality of Coach McKeever's coaching. Witness B described Coach McKeever as a very detail-oriented coach and had success as a coach by holding athletes accountable.

Coach Witness I ([REDACTED] Head Women's Swim Coach, [REDACTED]) told us that she watched Coach McKeever at a practice once in Hawaii, and she was impressed by Coach McKeever's attention to the basics. She also noted that the swimmers appeared to have lots of fun.

According to Witness A (High School Swim Coach; [REDACTED] Team Manager), Coach McKeever had a more individualized, empathetic and affirmative coaching style than some of the other coaches.

Coach McKeever has emphasized these positive accounts of her coaching and noted that the most egregious of the complaints against her are new, despite interacting with hundreds of athletes over 30 years.

4. Factual Finding

We credit the numerous accounts from current and former swimmers of highly positive experiences with Coach McKeever. We find that Coach McKeever made lasting positive impacts in the lives of many swimmers. We also credit the positive impressions of Coach McKeever provided by various staff and coaching colleagues. We have factored these positive experiences into our assessment of Coach McKeever's coaching methods with a focus on whether swimmers with varying impressions were treated differently or instead responded differently to the same treatment. We note that the success of a particular swimmer in response to certain behavior, however, does not excuse or justify policy violations in the treatment of other swimmers.

B. Rationalizations for the Allegations of Abuse

Many swimmers who had a positive experience at Cal, as well as many individuals in the collegiate swim world, believed that there were reasons for the allegations against Coach McKeever that were not related to any fault on Coach McKeever's part. These reasons included disconnects in communication and personality, a propensity of swimmers to take criticism out of context, resistance to the imposition of accountability, a lack of fit with Coach McKeever's unique style, swimmers' unpreparedness for the rigors of Cal, changes in the recent generation of college students, and preexisting problems that athletes unfairly attributed to Coach McKeever. Additionally, witnesses attributed allegations to the media's fixation on attacking Coach McKeever and double standards for swim coaches based on gender.

1. Allegations of a Communication and Personality Disconnect

(a) *Accounts that Coach McKeever Was an Honest and Direct Communicator*

Several individuals reported that athletes who struggled at Cal may have struggled to process or respond to Coach McKeever's communication style, given that Coach McKeever was direct, honest, and willing to repeatedly and directly call out problems. [REDACTED] swimmers who attributed the allegations to this issue described themselves as benefiting from and appreciating Coach McKeever's honest communication.

Swimmer AH (Swimmer, [REDACTED]) said that Coach McKeever told swimmers when they repeatedly failed to do something, a style which Swimmer AH wanted and viewed as good coaching. In Swimmer AH's view, other swimmers had a negative attitude about that sort of honesty.

Swimmer CQ (Swimmer, [REDACTED]) said that her teammates who did not have a good relationship with Coach McKeever did not want to be given feedback that was hard to hear. She said that the individuals in the *Orange County Register* articles and others either tried to hide things from Coach McKeever or from themselves. Swimmer CQ explained that Coach McKeever did not put up with "bullshit" and wanted an honest relationship; she preferred that a swimmer say that she missed practice because she messed up rather than lie about being sick.

Swimmer AM (Swimmer, [REDACTED]) said that Coach McKeever became frustrated when a swimmer was told the same thing repeatedly and did not make changes. Swimmer AM described this as based on a personality clash, meaning the inability of swimmers to receive information from Coach McKeever and make changes.

Parents of Swimmer BT (Swimmer, [REDACTED]) said that, if a swimmer were trustworthy and worked hard, then she did fine. If a swimmer disrespected Coach McKeever or had a bad attitude, then there were problems, but no more than there would have been with any other coach.

Swimmer BS (Swimmer, [REDACTED]) said Coach McKeever's communication style was very direct but also depended on Coach McKeever's mood. Swimmer BS said on days that Coach McKeever was in a good mood they could laugh and have fun at practice, and on days on which she was not, they needed to keep their heads down and swim. Swimmer BS acknowledged that on these days, Coach McKeever could be harsh and "miss the mark." The mix of these two types of days was equal.

Swimmer AZ (Swimmer, [REDACTED]) discussed several swimmers and how they did not communicate well with Coach McKeever. Swimmer AZ called herself a direct communicator, similar to Coach McKeever, in that Swimmer AZ wanted to understand the problem accurately and fix it. Swimmer AZ said that directness did not work for all swimmers, and when it was "overdone," it led the swimmer to believe they were doing everything wrong. Coach McKeever's style of coaching was to always find something to critique and improve.

Swimmer BJ (Swimmer, ██████████) described Coach McKeever as intense and said that she was never offended by Coach McKeever's communication style, but she could understand how it might bother other people.

██████████ Staff V (Athletic Performance Coach, ██████████) said that Coach McKeever was blunt and said exactly what she saw. He viewed the post-meet discussions between Coach McKeever and swimmers as normal, although he could not hear exactly what was said.

██████████ Staff K (Assistant Coach, ██████████) said Coach McKeever was very blunt and directly called out swimmers to get ahead of problems, whereas other coaches might ignore those problems or have the assistant coach handle them. For example, if an athlete said she wanted to be a national champion but posted a picture of herself partying on a weekend night, Coach McKeever called her out in a group setting.

██████████ Staff Q (Associate Athletic Trainer, ██████████) said that Coach McKeever was a tough and direct coach, but ██████████ Staff Q said she did not mind that style of coaching, which she called old-school. ██████████ Staff Q described McKeever as one of the top coaches with whom she ever worked. ██████████ Staff Q noted that Coach McKeever's coaching style was probably not for everyone but called that an issue of fit.

Witness B (██████████ Head Men's and Women's Swim Coach, ██████████) said Coach McKeever told it how it was and made expectations incredibly clear. Witness B attended a team training trip to Hawaii at Coach McKeever's invitation.

Coach McKeever explained that she was coaching at a university with very high athletic expectations. She said that she gave her professional opinion of what she thought it took to be a top program and top athlete. She believed that she would not have been doing her job properly if she were not honest and did not have those uncomfortable conversations about success standards. Coach McKeever knew that the way she communicated did not resonate with everybody. She said that as a young coach she withheld feedback because she wanted people to like her and did not want to upset someone.

(b) Allegations that Swimmers Took Coach McKeever's Criticisms Out of Context

Some witnesses described how swimmers who felt targeted for criticism by Coach McKeever often took constructive feedback out of the context in which it was delivered, which in many cases meant interpreting a swimming critique as a personal critique.

Swimmer J (Swimmer, ██████████) described Coach McKeever as stern, short, and direct. Swimmer J said this was due to Coach McKeever's personality due to being a scheduled, efficient person. Swimmer J said some swimmers reacted to Coach McKeever based on their emotions in the moment, whereas Swimmer J took time to process the feedback and think about a response.

Parent of Swimmer R (Swimmer, ██████████) said she heard from other swimmers' parents that Coach McKeever told the team after the NCAA championships that the team "sucked" and did poorly. Parent of Swimmer R said that Swimmer R told her something different, specifically

that Coach McKeever had said there were not any superstars on this team [REDACTED], as there have been in past years, and there was hard work to do for the [REDACTED].

Swimmer AJ (Swimmer, [REDACTED]) believed that some swimmers might be more sensitive to certain comments like “check your attitude.” Swimmer AJ viewed the situation as Coach McKeever having a lot of expectations for a swimmer who was not living up to those expectations. As a result, Coach McKeever tried really hard to coach them.

Swimmer AI (Swimmer, [REDACTED]) said that Coach McKeever, like all coaches, got on a swimmer when she did not meet expectations. In Swimmer AI’s view, Coach McKeever yelled because she knew that the swimmers could achieve more. Swimmer AI believed that a lot of things Coach McKeever said were taken personally and out of context by some swimmers. For example, a swimmer misinterpreted Coach McKeever’s criticism of effort as criticism of the person. Coach McKeever once told Swimmer AI a race was pathetic, and Swimmer AI agreed and did not take it as Coach McKeever calling Swimmer AI pathetic. Swimmer AI acknowledged that not every swimmer was as capable as she was of communicating in response.

Swimmer CQ (Swimmer, [REDACTED]) said Coach McKeever was not a morning person and therefore did not come to practice smiling. Swimmer CQ said that Coach McKeever also was an introvert who wanted to be quiet and analyze things. Swimmer CQ said Coach McKeever’s communication style can be off-putting, noting that Coach McKeever has not had many close friends in her life. Swimmer CQ, however, felt that she learned a lot about communication from Coach McKeever because she was good at directly saying what she needed and whether something was good or bad.

Swimmer BT (Swimmer, [REDACTED]) speculated that the swimmers who came forward against Coach McKeever were the ones who took appropriate but negative feedback more personally. For example, Coach McKeever forced a swimmer to sit out of a meet because she forgot to bring the right swimsuit. In Swimmer AM’s view, it was appropriate for Coach McKeever to hold the swimmer accountable, and she never again forgot her swimsuit.

Swimmer BM (Swimmer, [REDACTED]) said some swimmers were more vulnerable to Coach McKeever’s style of coaching, and things got really tough with school, swim, and travel. If Coach McKeever said, “let’s figure this shit out,” then maybe that swimmer took that comment more harshly, but Swimmer BM did not remember anyone mentally struggling because of Coach McKeever’s coaching style.

Swimmer AP (Swimmer, [REDACTED]) said that Coach McKeever sometimes used what Swimmer AP called a “you’re an idiot” tone of voice, but, in reality, she cared about the athletes and wanted them to succeed. Swimmer AP contextualized Coach McKeever’s tone of frustration with the high stakes timelines of preparing for the Olympics and the NCAA championships.

[REDACTED] Staff B [REDACTED] said she used to coach and has had parents lambast her for lineup decisions or for saying something that landed wrong and that was then passed on to parents. Parents then emailed the Athletic Director or Chancellor

before going to her. Swimmer AR said she received similarly exaggerated emails criticizing Coach McKeever's conduct. Swimmer AR said that Coach McKeever also received lots of support.

██████████ Staff F (Director of Operations, ██████████) said Coach McKeever's intentions were entirely positive, and she was a direct, hard coach. He heard her yell at athletes for not meeting expectations, but she also cried out of desire for them to succeed.

Witness K (██████████ ██████████ Head Women's Swim Coach) speculated that the "piece of shit" comment reported in the media may have been taken out of context. She said that, in her experience, it was common for athletes to hear a criticism and remember it in an exaggerated way, imputing their emotional response into the words.

Witness H (██████████ Head Women's Swim Coach, ██████████) said that an athlete's perception is sometimes different from what really happened. Witness H gave an example of her swimming team's reunions, where athletes remember things differently or exaggeratedly, such as thinking Witness H played the same song every day at practice.

Coach McKeever said she has probably called someone an idiot, or said "that's shitty, that was idiotic, you're better than that, or don't quit on yourself." She said that these comments were about behavior, but they might have been heard the way that they made the swimmer feel.

(c) *Accounts of Personality Clashes with Coach McKeever*

Some witnesses suggested that certain athletes had personalities that did not mesh with Coach McKeever's because they came into the program expecting to have a friendship with their coach or a comforting and nurturing personality, which Coach McKeever did not offer. These witnesses suggested that the swimmers better suited to handle a harsh personality thrived at Cal.

(i) *Swimmers' and Parents' Accounts*

Swimmer U (Swimmer, ██████████) said that the swimmers who had a bad relationship with Coach McKeever bore responsibility because they were not respectful or misunderstood Coach McKeever's toughness. Swimmer U also felt that swimmers who had bad relationships with Coach McKeever expected her to be their friend and not their coach. When Coach McKeever was tough, they felt like she was against them, not that she was trying to make them better.

Swimmer M (Swimmer, ██████████) said that Coach McKeever was strict but pushed them to be their best. Swimmer M said that she needed someone to shout at her and understood that to be precisely how Coach McKeever expressed her belief in swimmers and her desire to see improvement. Swimmer M thought that Coach McKeever's style was normal.

Swimmer AJ (Swimmer, ██████████) said that several swimmers discussed ██████████ ██████████ as being targeted for verbal abuse by Coach McKeever regularly snapped at Coach McKeever or were disrespectful. Swimmer AJ's view was that many swimmers in the ██████████ freshman class had a significant entitlement issue and expected everything to go their way.

Swimmer CV (Swimmer, [REDACTED]) said that Coach McKeever was not good at expressing frustration in a way that was productive to the people with whom she was frustrated. However, Swimmer CV remembered Coach McKeever's yelling being only about swimming and performance. Swimmer CV thought Swimmer CV's aggressive personality helped her to appreciate this style of communication. Swimmer CV also said that her sense of self was not linked to swimming, so she did not see the way Coach McKeever thought about her as an indictment on her being. She also noted that one of Coach McKeever's nervous ticks was to laugh when she was uncomfortable. Swimmer CV acknowledged that Coach McKeever was an awkward person who could use social skills development.

Swimmer AS (Swimmer, [REDACTED]) said that it took a particular kind of person to "vibe" with Coach McKeever's style, and those who did not "vibe" transferred. Swimmer AS could not identify exactly what that personality type was. Swimmer AS also believed that Coach McKeever was transparent in recruiting but acknowledged that certain aspects of the program only came out after a person spent more time on the team.

Parent of Swimmer AZ (Swimmer, [REDACTED]) said that one swimmer she knew of butted heads with Coach McKeever because of a personality mismatch.

Swimmer DA (Swimmer, [REDACTED]) believed that issues arose for swimmers who were confrontational with each other or with Coach McKeever and did things that got under others' skins. A captain told Swimmer DA early on that she would succeed if she worked hard, swam fast, and went to school. Swimmer DA contrasted that mentality with that of [REDACTED] Swimmer CZ (Swimmer, [REDACTED]), who was verbally negative, which elicited a response from others to either stop complaining and do the work or leave.

Swimmer AX (Swimmer, [REDACTED]) said that certain personality types clashed with Coach McKeever, namely the "queen bee" or "prima donna" personalities that felt that they were better than other people. Swimmer AX said that Coach McKeever believed it was a team sport and subjected anyone who thought they could go easy on a practice set and then beat everyone to a coaching moment.

(ii) Accounts of Coaches and Other Staff

[REDACTED] Staff A (Assistant Coach, [REDACTED]) said that swimmers who were more introspective sometimes made Coach McKeever more upset by not having an immediate response to critiques.

[REDACTED] Staff K (Assistant Coach, [REDACTED]) said that Coach McKeever was very demanding and was not the kind of coach who smiled on deck the entire time. If an athlete came from a smaller club team or a program where this was not their experience or they had a closer relationship with their coach, they might have had a hard time adjusting to Coach McKeever's approach. [REDACTED] Staff K noted that a lot of the better athletes liked Coach McKeever, which might have been because they had experience with different kinds of coaches. Everywhere [REDACTED] Staff K has worked, there have been a few swimmers every year that do not click or work out with the program.

Swimmer AP (Swimmer, ██████████) said that Coach McKeever asked her to be a personality balance with the swimmers since they needed nurturing that Coach McKeever was ill-equipped to provide. Coach McKeever called Swimmer AP a mother bird. Swimmer AP said that when ██████████ Staff A was the assistant coach, Coach McKeever had to take on the warm and fuzzy role on deck, which everyone (including Coach McKeever) knew was a bad idea.

██████████ Staff O (██████████, ██████████) said that Coach McKeever is by nature not a “warm and fuzzy person.” ██████████ Staff O thought that a lot of swimmers were looking for a nurturing personality in a coach because of the parenting style to which they were accustomed.

██████████ Staff F (Director of Operations, ██████████) described Coach McKeever as a “strong personality,” which can rub some people the wrong way. ██████████ Staff F liked to be around strong personalities and be challenged.

Coach McKeever said she hoped swimmers were a little intimidated by her when they arrived at Cal and valued the opportunity to swim at a program with a coach who had a lot of credentials. Coach McKeever thought it was valuable for the swimmers to learn how to navigate that relationship, which should be built on respect and trust over time. She described it like building respect from a professor in a classroom. Coach McKeever said that some swimmers, including the swimmers in the articles, never completed that arc. She said it was difficult for those swimmers to understand that she was not their mom or their friend or supposed to make them comfortable. Her job was to tell them things they do not want or need to hear to reach their goal.

Coach McKeever said that she was not a typical woman in that she did not give a swimmer a hug; instead, she gave a solution to a problem. She knew this was hard for some swimmers, especially in swimming, because very few had ever had an elite female coach.

2. Allegations of an Accountability Disconnect

Many witnesses believed that the athletes who struggled at Cal were the ones who were unwilling or unable to put in the effort required to meet their individual and team goals. They said that Coach McKeever held individual swimmers to their goals and did not let up if they were not making the decisions needed to meet those goals.

Swimmer AJ (Swimmer, ██████████) said that Coach McKeever was frustrated by swimmers not having a plan to improve. She said that many of the swimmers ██████████ did not want help, such as treatment or therapy, which frustrated Coach McKeever.

Swimmer U (Swimmer, ██████████) said that swimmers who had difficulties with Coach McKeever were not the top swimmers and swimming was not their first priority, so they did not put much effort into the relationship and culture.

Swimmer R (Swimmer, ██████████) said that the seniors in ██████████ were frustrated with the freshmen because of the freshmen lollygagging between sets and other small acts of laziness.

Swimmer M (Swimmer, [REDACTED]) said that she agreed with Coach McKeever's practice of kicking swimmers out who were not meeting expectations and questioned how someone could be at Cal if they were not making the intervals.

Swimmer AI (Swimmer, [REDACTED]) said Coach McKeever liked not just the fast swimmers but also those that wanted to be there and put in effort. Swimmer AI said that Coach McKeever was aware that her coaching style was not for everyone and told Swimmer X (Swimmer, [REDACTED]) directly that Cal was not the best fit for her, but Swimmer X came anyway. Swimmer AI perceived Swimmer G (Swimmer, [REDACTED]) and others like Swimmer G, who repeatedly did not listen, as not being committed because they did not want to be coached.

Swimmer AP (Swimmer, [REDACTED]) said that, for example, some swimmers got menstrual cramps every month and wanted to not practice, which was not a viable path to the Olympics.

Swimmer CQ (Swimmer, [REDACTED]) believed that many swimmers were not doing things for themselves to maintain a good relationship with Coach McKeever, like trying their best at swimming.

Swimmer CD (Swimmer, [REDACTED]) said that when a swimmer's expectations for achievement were not aligned with the effort she was putting in, Coach McKeever was willing to call that out, which was difficult and not something many coaches did. Parent of Swimmer CD said that Coach McKeever expected everyone to be in a competitive mindset all the time.

Parent of Swimmer AM (Swimmer, [REDACTED]) said that occasionally a swimmer partied hard the night before or did not try at practice like she should. Swimmer AM was frustrated by this and told Parent of Swimmer AM that Coach McKeever should be all over it. Swimmer AM told Parent of Swimmer AM that Coach McKeever was "very firm," and occasionally came off more strongly than intended.

Swimmer AS (Swimmer, [REDACTED]) described Coach McKeever as holding the team "fiercely accountable" to their goals. At the beginning of the year, the team spent a lot of time getting centered on one goal. Coach McKeever later said things like, "You told me in August you wanted to win a national championship. This practice is not representing that goal." Swimmer AS said that her "unwavering accountability" was sometimes tough to hear. Swimmer AS recently saw Coach McKeever at a wedding, and they talked about how people in the real world compliment each other on a "good job" for no reason.

Swimmer BS (Swimmer, [REDACTED]) believed that the swimmers allegedly targeted for negative treatment by Coach McKeever were "subtractive" from the team's energy, meaning they did not work as hard or do the assignments and created excuses. Swimmer BS also said that they were people who caused drama or forgot to bring a bathing suit to a dual meet.

Swimmer BI (Swimmer, ██████████) thought that some swimmers chose not to sacrifice for the team. She heard stories about current swimmers avoiding responsibilities by using the restroom for long periods of time.

██████████ Staff I (Assistant Coach, ██████████) said that if a swimmer did not execute the sets as designed or put in her best effort, a coach's role was to challenge that swimmer. That was especially true if the swimmer had high aspirations. He said that this may have been the case for Coach McKeever.

██████████ Staff Q (Assistant Coach, ██████████) said that Coach McKeever was angered by swimmers not living up to expectations and not doing the things necessary to improve. He said that swimmers were sometimes used to being superstars and the favorite on a team, so they were less willing to put in effort when that was not the case. He said that certain swimmers consistently lacked effort and Coach McKeever's strength was that she did not ignore those swimmers because she wanted them to improve. ██████████ Staff Q described the swimmers under discussion as those Cal took a chance on hoping they developed, but they did not.

██████████ Staff F (Athletic Trainer, ██████████) said that she heard through conversations with other swimmers that some swimmers just did not listen or repeatedly made the same mistake. This was the team's perspective, not Coach McKeever's. ██████████ Staff F often checked in with the athlete who was currently in the "dog-house," who sometimes was fine and sometimes said that she was "having trouble getting it together," or "had a bad day." ██████████ Staff F was always told the reason for the athlete being criticized and never heard an athlete say, "Coach McKeever was really on this person in practice for no reason at all." It did not surprise ██████████ Staff F that Coach McKeever inspired anxiety in athletes, because Coach McKeever expected a lot out of ██████████ Staff F and held her accountable even if ██████████ Staff F did not want to hear it. ██████████ Staff F could not think of anyone who was on Coach McKeever's bad side who was not lacking in either effort, attitude, or performance.

██████████ Staff O (██████████, ██████████) said that certain swimmers were not targeted for criticism but instead were resistant to being coached. Coach McKeever met with such swimmers one on one and asked them what was not working. ██████████ Staff O said that it became an issue if a swimmer constantly was three to five seconds slower than everyone else. ██████████ Staff O said that those swimmers might think that because their parents believed they would succeed, their lack of success was Coach McKeever's fault.

██████████ Staff B (Athletic Director, ██████████) heard that Coach McKeever at times was tough on one or two swimmers and ██████████ Staff B thought the most likely interpretation was that those swimmers were not working as hard, so Coach McKeever pushed them to be as accountable as others on the team. ██████████ Staff B said that Coach McKeever rode people hard if they were not meeting the standard.

Coach McKeever described having an unspoken set of non-negotiable expectations, including being on time, using a legal technique, putting in good effort, adding to the environment, wanting to be there, and supporting and respecting the other swimmers. She took a failure to abide by these expectations as a teaching moment. She suggested that swimmers who struggled were not aligned with the values of the program. Coach McKeever also described

frequently asking if it was the team's goal to get on a podium. When the team always responded affirmatively, Coach McKeever told them what needed to change to attain that goal.

Coach McKeever described herself as a teacher and said that one of her goals was to help the women build their own toolbox to succeed beyond swimming. She said that many larger collegiate programs hold athletes' hands. Coach McKeever did not think that Cal, the athletics department, or she coddles athletes; rather, they believe in learning to advocate for oneself, asking for help when needed, and providing help. Coach McKeever viewed her conduct as holding people accountable. She believed that the vast majority of the issues in the allegations against her are about young women who did not want to or could not be held accountable and who were not willing to buy into something bigger than themselves.

Coach McKeever said that the [REDACTED] group of swimmers were not at the level they thought they were and who were more interested in the social aspects of Cal. She thought the people on the team wanted a combined male and female swim program and now have said what was needed to get such a program. She said that the athletes who have complained about her have ignored their own lack of effort, decisions to violate team rules, and the fact that other women were faster.

3. Allegations of a Coaching Style Disconnect

Witnesses said that Coach McKeever had a unique coaching method that emphasized a "feel of the water" approach and encouraged swimmers to experiment with their technique and take ownership over their development. This style did not work for everyone, especially those swimmers who were accustomed to being told exactly what to do.

Swimmer J (Swimmer, [REDACTED]) said that Coach McKeever wanted swimmers to show autonomous decision making and did not want to work with a "child." Coach McKeever raised questions and asked swimmers to tinker with parts of the body to figure out what worked best.

Swimmer N (Swimmer, [REDACTED]) said that Coach McKeever had an abstract coaching style and became frustrated when swimmers did not understand what she was saying. Swimmer N said that it is hard to teach the "feel of the water" approach. Swimmer N said that people who were worst at the "feel of water" approach were the ones Coach McKeever liked the least. Lack of athleticism generally frustrated Coach McKeever because swimming is all about connection between the core and extremities.

According to Swimmer AS (Swimmer, [REDACTED]), Coach McKeever's coaching style was nontraditional in terms of the sets and swimming styles that she employed.

Swimmer AR (Swimmer, [REDACTED]) said that she was initially attracted to the way Coach McKeever trained, which was a different approach to swimming. Coach McKeever had the swimmers do yoga, spin, dancing, and alligator breathing. Swimmer AR said she did not like Coach McKeever's superiority complex or the refusal to smile, joke around, and have fun on deck.

Swimmer BC (Swimmer, [REDACTED]) said that Coach McKeever liked to try different things. Coach McKeever had more of an emotional approach to coaching than Swimmer BC

meshed with, leading Swimmer BC to feel nervous and doubt herself. Swimmer BC said that a lot of swimmers did enjoy that style.

Swimmer C (Swimmer, [REDACTED]) said that for Coach McKeever, there is one method and that was the only way. Coach McKeever's attitude was, "If you cannot cope with it, that is your problem."

Coach McKeever said that her style involved setting ground rules and expectations and then allowing uncertainty so that athletes experimented and developed a set of tools to create success for themselves.

4. Allegations that Swimmers Were "Not Meant for Cal"

Witnesses suggested that the athletes who reported issues to the *Orange County Register* were those that were not cut out for the rigor of Cal, including the simultaneous academic and swimming demands. These witnesses believe that Cal was not for everyone and that it was inevitable that there were swimmers every year who could not handle the pressure.

Swimmer AJ (Swimmer, [REDACTED]) noted that Coach McKeever may have spoken more frequently with the swimmers who were not the fastest, in part to get them on the team's level or convince them to adopt the mindset that they belonged. Swimmer AJ also believed that many of the individuals who alleged abusive conduct by Coach McKeever struggled with the pressure of the program.

Parent of Swimmer CQ (Swimmer, [REDACTED]) said that people who went to Cal to swim for Coach McKeever were there to compete for national championships. He said that in the last few years the team had not been at that level, and the swimmers who came in probably did not belong in that environment.

Swimmer CV (Swimmer, [REDACTED]) knew that there were some people for whom the environment did not work, and Coach McKeever recruited a team knowing that some swimmers would leave. A lot of swimmers came to Cal thinking they were comfortable with being a small fish in a big pond, but there were different expectations at a place where high performance was the norm. There is a "figure it out" culture that was challenging.

Swimmer BF (Swimmer, [REDACTED]) said that Cal is elite and not a fit for everyone. Coach McKeever's philosophy, which emphasized swimmers as a whole person, was also not necessarily a fit. If a swimmer was not doing well in a classroom, Coach McKeever really cared and expected the swimmer to address it, and if the swimmer did not, Coach McKeever became frustrated. Similarly, when a swimmer wanted to be All-American or go to the NCAA championships and her actions did not match the effort needed to achieve this goal, Coach McKeever held the swimmer accountable. In Swimmer BF's view, that was a lot of sudden accountability for 17- and 18-year-olds. Swimmer BF said that this is a big contrast from other swim programs, as almost all programs only care about swimmers in the pool. Swimmer BF concluded that the individuals who were quoted in the *Orange County Register* articles were the ones who did not know what they were getting themselves into.

Swimmer AZ (Swimmer, ██████████) discussed a number of swimmers wanting something different than what Cal offered. Swimmer AZ was frustrated by the term “shit list” because it seemed to her that those swimmers were not meeting expectations and were appropriately being called out on that. Swimmer AZ said that what they were trying to do (swimming in the Cal program) was very difficult, particularly for the freshmen, who are new to a collegiate program.

Swimmer BB (Swimmer, ██████████) had a very positive experience at Cal and was frustrated with the recent news articles about Coach McKeever. Swimmer BB speculated that swimmers who left the program and transferred went to schools that were not of the same caliber as Cal.

██████████ Staff D (██████████, ██████████) said that the swimmers who struggled were ones who did not get with McKeever’s program. He also noted that female swimmers have a particularly hard adjustment to Division I programs because they tend not to improve during their four years, as opposed to men who are still growing during college.

██████████ Staff O (██████████, ██████████) said she told Coach McKeever that the team could be broken into three categories. The first third would “just catch fire” with Coach McKeever’s coaching; they came in already prepared to deliver what Cal required. The second third were where Coach McKeever had the most leverage and could mold the swimmer into performing at the Cal level. The final third were immediately overwhelmed with the difficulty of the new terrain and not able to cut it.

Witness B (██████████) Head Men’s and Women’s Swim Coach, ██████████) thought it was ironic that it was the swimmers that Coach McKeever let on the team that she had no need to let on the team that were causing problems. He described it as the weakest link in the chain judging Coach McKeever.

██████████ Staff X (Staff Psychologist at University Health, ██████████) believed that coming to Cal was a challenging transition because all the swimmers were exceptional and outstanding in high school but were now in a place where they would be competing against national champions and Olympians. It was psychologically hard when a person’s identity was tied to being outstanding.

██████████ Staff C (Athletic Performance Coach, ██████████) said that Coach McKeever was clear during the recruiting process and swimmers knew what to expect. ██████████ Staff C thought the more recent swimmers did not get to know the coaches or expectations in the same way and saw Cal as a shiny object.

██████████ Staff L (Academic Advisor, ██████████) said that Coach McKeever had strong expectations for students to be prepared for practice, but some students were less prepared than others. ██████████ Staff L heard about those students from other students.

Coach McKeever said that when she coached at Fresno State, she did not have the same expectations. She described this as a source of disconnect with some swimmers. She said that some swimmers came in expecting to go through the motions, but that would not work at Cal. Coach McKeever said that at an elite Division I program an athlete must expect to make

sacrifices, like giving up partying, and other hard choices. Coach McKeever's choice was to honor the level at which the program was. Some of the swimmers chose not to honor the women who came before them and the program those women built. These swimmers wanted to say they swam at Cal but did not want to put in the level of work or commitment. Coach McKeever thought that to have as successful a program as Cal, there would be people with a bad experience, and many would inevitably blame Coach McKeever for that.

5. Allegations of Generational Changes

Several witnesses, including swim coaches from other programs, believed that there have been generational shifts in the last 20 years, which have made swimmers more sensitive to negative feedback and have empowered athletes and their parents to register complaints with the Coach to the school. These witnesses believed that many of these newly emerging complaints are unjustified.

Swimmer AS (Swimmer, [REDACTED]) spent a week on the phone with people she swam with wondering how people could make the allegations made in the *Orange County Register* when Swimmer AS and her teammates all had such a wonderful four years with Coach McKeever. She attributed it to generational differences between [REDACTED] and the women in the article. Swimmer AS also mentioned that [REDACTED] was tough on teenagers.

Swimmer BB (Swimmer, [REDACTED]) had conversations with a Division III coach about how, in the last 10 years, there were things he (the coach) can no longer say, due to differences in what this current generation of students expect and are willing to tolerate in order to achieve their best.

According to Swimmer BJ (Swimmer, [REDACTED]), she saw Coach McKeever at recent swim meets, and Coach McKeever told a group of people that the current team was very challenging and difficult.

Swimmer BL (Swimmer, [REDACTED]) observed that the expectations for coaching have changed between [REDACTED] over the course of Swimmer BL's coaching career. In recent years, a lot of athletes have said their mothers were their best friends, a statement which Swimmer BL considers to be a red flag because a coach, like a parent, should not be a friend. Swimmer BL thought perhaps it was easier for her to coach a less competitive program than it was for Coach McKeever to coach at Cal because her athletes did not enter the program used to having everything handed to them. Coach McKeever had swimmers in her program who were big fish in their small ponds and struggled with being "taken down a notch."

Swimmer AY (Swimmer, [REDACTED]) thought that the swimming environment and what was acceptable to say to a team has changed over time.

Swimmer BK (Swimmer, [REDACTED]) thought that generational differences might be a contributing factor. Coach McKeever talked about the lack of resilience in student athletes and not being able to put things in perspective. This age is very different, with social media and the digital world, and Swimmer BK thought that navigating new types of sensitivity can be difficult.

██████████ Staff Q (Assistant Coach, ██████████) said that coaching swimming has changed over the years. He has had to change his delivery. He used to be fierier and let his emotions get the best of him. Avoiding that sometimes results in less honesty. He finds himself more frequently “blowing smoke up their [the athlete’s] ass and telling them how great they are, which isn’t in their best interests.”

██████████ Staff Q (Associate Athletic Trainer, ██████████) remarked that she has spoken with Coach McKeever since the pandemic and said Coach McKeever told her that her swimmers do not believe in themselves. ██████████ Staff Q found this to be true generally, including with the athletes on the other teams with whom she worked.

██████████ Staff F (Director of Operations, ██████████) said that there was a different culture seven to ten years ago around how athletes and coaches worked together and around what was acceptable.

Witness K (██████████ ██████████ Head Women’s Swim Coach) said that in recent years, swimmers started texting as soon as they got in the locker room if they got yelled at by the coach, spreading the story in a way that lacked context. Witness K believed that swimmers took conversations with their coach out of context and only heard a portion of what was said. Witness K said that in earlier times, athletes took criticism better and examined what they did wrong. Witness K was tough with her athletes, and now some of those athletes are grateful because it has helped them in the real world.

Witness B (██████████ ██████████ Head Men’s and Women’s Swim Coach, ██████████) said that in today’s world swimmers want their parents to fix their problems when things go wrong. Witness B had a former swimmer write a scathing post on Facebook about how much of a bully he was. He said that is happening to a lot of coaches. Witness B said that the swimmers that thrived under him were not given special treatment, nor were they high maintenance. He said that they were the type of person who dealt well with Coach McKeever’s level of expectation.

Witness I (██████████ ██████████ Head Women’s Swim Coach, ██████████) said that Coach McKeever shared her experiences with Witness I and worked hard to stay in touch with millennials. The biggest recent generational change Witness I has seen has been the closeness of the mother-daughter relationship. When Witness I disciplined a woman swimmer in the last few years, she could not do anything right in the eyes of team, and they told their mom or dad, who called the Athletic Director.

Witness H (██████████ ██████████ Head Women’s Swim Coach, ██████████) said she coached very differently in 1998, 2008, and 2018. Witness H said that her last three years of coaching (██████████) changed dramatically, in that swimmers came in with more expectations of shared authority, such as YouTube videos they wanted to try at practice. Witness H had to listen more and engage more to build trust. Athletes also complained about things like being let out of practice two minutes late. Witness H said that in the last five years there was also less advocacy for coaches. In the past, supervisors trusted and supported coaches, as opposed to athletes.

Coach McKeever said that parenting has changed over time, as has social media, the pandemic, and reactions to coaching. Coach McKeever thinks this is true around the country and said that she would be hard-pressed to find a coach that has coached for 20 years who does not believe that college student-athletes today are far less mature than they were 20 years ago. Most coaches have made adjustments, and Coach McKeever frequently discussed it. For example, she stopped making a big deal about piercings or swimsuits. She also took more care to explain the intentions of her actions, meaning why the team was doing certain things and how those things led to performance. Coach McKeever also believed that coaches have recently been asked to do more things now than they were asked to do in the past.

6. Allegations that Athletes Had Preexisting Problems

Regarding Coach McKeever's handling of health issues, and particularly mental health, a few witnesses emphasized their belief that these issues existed before the athletes interacted with Coach McKeever. They believed that the issues experienced at Cal were the result of the rigors of the program and the failure by the swimmers to manage their pre-existing issues.

Swimmer AJ (Swimmer, [REDACTED]) felt that many of the swimmers [REDACTED] may have had their own struggles prior to coming to Cal and blaming Coach McKeever for those struggles was unfair. Swimmer AJ's view was that issues arose when swimmers began lying to Coach McKeever.

Witness B ([REDACTED] Head Men's and Women's Swim Coach, [REDACTED]) said that a lot of athletes' mental health issues were pre-existing. He was skeptical that swimmers become suicidal after a year of training with a coach.

[REDACTED] Staff F (Athletic Trainer, [REDACTED]) thought that many of the swimmers in the articles had pre-existing mental health problems that were exacerbated by swimming at a high-level program, being away from home, COVID, and being held accountable for the first time in their lives. She also noted that mental health diagnoses are common at this age.

[REDACTED] Staff O ([REDACTED], [REDACTED]) said there were a lot of pre-existing physical or mental health issues that [REDACTED] Staff O felt swimmers withheld from Coach McKeever during recruiting. She also noted that Coach McKeever had a lot of swimmers who used swimming to manage anxiety.

[REDACTED] Staff D (Director of Operations, [REDACTED]) believed that students genuinely might have had bad experiences, but they might not be looking at how they played a role in the experience.

Coach McKeever thought that the college age group used mental health issues as a catch all. She said that if there were actual mental health concerns the swimmer needed to see a counselor and should not expect their coach or teammates to take care of it. In a supplemental submission, Coach McKeever noted that she does not believe that Cal provides sufficient resources to athletes to manage their mental health concerns, and that athletes, in turn, often unfairly attribute their negative emotional state to their coach.

7. Account of the Public Nature of Coaching Methods and University Awareness

Coach McKeever, in her interviews with us and in a November 28, 2022 complaint of gender discrimination submitted to OPHD, asserted additional arguments and provided a number of rationalizations, justifications, or other defenses in response to the allegations against her. One such rationalization was that Cal's "Administration can (anytime and easily) and has observed my practices and meets." Coach McKeever noted that one of the pools is observable from the Athletic Director's office and the compliance office and said that meetings with athletes are typically witnessed by someone else, as other water sport coaches are on the pool deck. Coach McKeever pointed out that she was held out by the school as an example of good coaching.

8. Factual Findings and Analysis

In reaching the policy determinations throughout this report, we factored in the above witness accounts and justifications. We recognize that athletes competing at the Division I level must be held to high expectations and must be held accountable when failing to meet those expectations; that coaches of Division I teams striving to win national championships must push their athletes to perform, whether in practices or meets, beyond what may be comfortable physically and mentally; that not every athlete can handle the rigors of a demanding Division I program – and that coaches must, by the very nature of coaching, exert pressure on athletes to continually improve and to perform at the highest level.

While we acknowledge there have been generational changes in athletes' expectations and in what is viewed as abusive conduct, we also recognize that the relevant policies set forth a "reasonable person" standard, which takes into account the mores and needs of the present. A failure to adapt does not justify or excuse a policy violation.

With respect to the argument that there can be no policy violation because Coach McKeever did all her coaching of athletes in the open, at Cal pool decks that are viewable by members of the Athletics administration or, at Legends, by the public, we note that such argument does not account for the fact that numerous witnesses reported being spoken to one-on-one on the pool deck, often away from the rest of the team, or in meetings in Coach McKeever's office. Additionally, the pool decks are large and loud, making it difficult to overhear, from office windows multiple floors higher or from the other side of the pool, what a coach is saying, particularly when music is playing over the loudspeakers, as witnesses said frequently occurred.

We considered the numerous accounts from witnesses who said they never saw Coach McKeever act inappropriately or engage in bullying or verbal abuse and conclude that, in general, they do not negate or undermine the credibility of the numerous accounts from witnesses who said they experienced such conduct. We credit that numerous swimmers had a positive experience and viewed Coach McKeever as an inspiring, motivating, and supportive force in their lives. The fact that certain swimmers had such positive experiences does not, in our analysis, negate the fact that other swimmers experienced bullying and verbal abuse. We find it plausible and credible that both types of experiences occurred. We also find it plausible and credible that the intense focus on individual performance fostered by the sport of swimming

and swimmers' preoccupation with their own training resulted in a lack of awareness, on the part of some witnesses, that certain swimmers were subjected to harsh treatment that they themselves did not experience or witness. We also note that we spoke to a number of swimmers who said they had positive experiences themselves but acknowledged that others did not.

We note that, where conduct by Coach McKeever rose to the level of bullying and is supported by a preponderance of evidence, there is no rationalization or reason for that conduct that justifies it or undoes the policy violation determination. In other words, there is no rationalization defense to bullying, and we analyze whether there was a legitimate purpose for Coach McKeever's conduct and find these alleged rationalizations most useful as contextual lenses through which to view contradictory witness accounts. While University policy distinguishes between appropriate coaching and constructive feedback on one hand and persistent or egregious use of abusive, insulting, or offensive language on the other, University policy does not allow one to justify abusive conduct by showing that the recipient of the conduct deserved criticism. The University's prohibition against abusive conduct applies regardless of whether a swimmer meets the expectations of Cal's elite, Division I swimming team or whether the swimmer responds well to Coach McKeever's coaching. Stated another way, the fact that a swimmer does not meet Coach McKeever's expectations or is not able to swim at an elite, Division I level does not mean they should be subjected to bullying or verbal abuse.

C. Allegations of a Double Standard Regarding Gender

Coach McKeever repeatedly emphasized her belief that she has long been the subject of gender bias, and that the present allegations against her stem in large part from biases held by athletes, parents, university officials, and the swim community. This claim was the primary basis for a document styled as a Complaint, which Coach McKeever submitted to OPHD on November 28, 2022. That document surveyed the numerous ways in which Coach McKeever alleges that gender bias plays out and included numerous academic articles and other forms of support.³⁵³ One of the defensive allegations it raised was that there are no clearly established coaching standards, particularly for elite division one athletics, and it is the responsibility of the university and its investigators to speak to and observe other coaches to develop an objective coaching standard.³⁵⁴

Several witnesses told us that they believed Coach McKeever was the victim of a gendered double standard, where the same conduct was viewed differently by athletes depending on whether the coach was a man or woman. Those who believed there was a double standard thought that conduct such as yelling and holding athletes accountable was judged more harshly when the coach was a woman than when the coach was a man because women were expected to be more empathetic. Other witnesses told us that they did not believe Coach McKeever was the victim of a double standard, and her behavior would be equally as wrong if a man did it. Some

³⁵³ A complete list of the articles and other forms of support that Coach McKeever sent to MTO can be found in Appendix 4.

³⁵⁴ MTO spoke to numerous coaches of swim programs of various levels, and in those interviews focused on developing an understanding of an objective line between reasonable coaching and abusive behavior.

witnesses told us they believed the double standard cut the other way – in other words, that Coach McKeever’s conduct went unchecked for so long because she was a woman, and the administration would have intervened long ago if a man had engaged in the same conduct.

1. Allegations of Different Gender Standards

(a) *Allegations That Male Coaches Exhibit Similar (or Worse) Behavior*

Swimmer W (Swimmer, ██████████) noted that the football team said that if Coach McKeever had to leave due to these allegations, half of college football coaches would have to leave their positions due to similar or worse behavior. Swimmer W has a sister at ██████████ whose male coach has called her names, but she would never come forward and make public allegations against her coach.

Swimmer AJ (Swimmer, ██████████) said that the discussion around Coach McKeever would likely not be taking place if she were a male coach. She recalled training with male coaches at earlier points in her career who were verbally abusive in a way that Coach McKeever was not. These male coaches tried to push swimmers to a breaking point in order to elicit a personal reaction; Swimmer AJ did not think Coach McKeever tried to do this.

Swimmer CQ (Swimmer, ██████████) said that Coach McKeever was held to a different standard since she was a female coach in a women’s sport. For example, ██████████, the previous ██████████ head coach, had similar allegations arise, but they were not published in the media, and he now coaches at ██████████. Swimmer CQ knew it happened only because she had a friend on the team at the time. She said she believed a lot of this is happening just because it is Coach McKeever, and people (on sites such as SwimSwam) do not like her or her coaching style.

Swimmer BT (Swimmer, ██████████) attributed the allegations against Coach McKeever to gender bias.

Parent of Swimmer AM (Swimmer, ██████████) said she believed that Coach McKeever was being held to a higher standard than male coaches based on her experience with her daughters’ prior male and female coaches.

Swimmer BS (Swimmer, ██████████) told us she previously had a male coach that cursed at her team all the time and said that Coach McKeever’s cursing did not cross the line.

Swimmer CD (Swimmer, ██████████) said she firmly believed that Coach McKeever was being treated more harshly because she is a woman. Swimmer CD could not think of any coaches who have not cursed on the pool deck. She said she has seen men’s coaches on the pool deck call a guy “Big Tuna” and make him pull more lane lines because he was fat. No one seemed to care, and the athlete was called that nickname for all four years of college. Swimmer CD said she believed that it was hard to be a woman coaching a women’s team because Coach McKeever got called a “bitch” for the same things for which male coaches were called “strong.” This was true both at Cal and at the

national level, where male coaches who coached young women were allowed to reference body type and performance, but Coach McKeever was viewed unfavorably for saying the same things.

Swimmer BM (Swimmer, ██████████) told us that Coach McKeever was less abusive than other coaches, such as Swimmer EO's coach ██████████, who coached the ██████████. As another example, on the ██████████ USA National Team, one of the coaches told a woman she swam one event poorly and no one would ever want to recruit her.

Swimmer BB (Swimmer, ██████████) noted that she was frustrated with the articles because they could have been written about any Division I coach, and she feels that people are only speaking out against Coach McKeever because she is a woman and people have different expectations for a woman coach. When the articles about Coach McKeever were published, Swimmer BB expected a kind of "me too" moment about many coaches, but because only Coach McKeever has been implicated, Swimmer BB believes the reaction is gendered. Swimmer BB named Witness L ██████████ as an example of someone with really tough coaching practices who has never been held accountable.

Swimmer BJ (Swimmer, ██████████) told us she thought that her experience was hard in the way that it would have been at any top program. She noted that other top programs all had male coaches and believed that Coach McKeever was held to a different standard as a female coach. She told us that she had friends at other programs, and she knew that some of what was described in the articles was also happening in those programs.

Swimmer AX (Swimmer, ██████████) said she thought that Coach McKeever would not have been "attacked" this way if she were a male. Swimmer AX told us that her ██████████ plays football, and Coach McKeever's behavior is "night and day" compared to what her ██████████'s (male) coaches do.

Swimmer AY (Swimmer, ██████████) said she believed Coach McKeever was the victim of a double standard because she saw male coaches act inappropriately and not be held accountable for their actions. For example, she saw male coaches tell female swimmers they cannot eat ice cream. ██████████ Staff V (██████████ Cal Men's Swim Co-Head Coach) and ██████████ Staff W (██████████ Cal Men's Swim Head Coach) told sprinters they needed to stay thin and generally yelled frequently. They said that Witness M, the ██████████ Head Swim Coach, used to put his swimmers on "weird" diets and was notorious for playing favorites.

██████████ Staff G (Athletic Performance Coach, ██████████) said he heard Coach McKeever raise her voice but not in a way that was different from what he saw from his own male coaches when he was an athlete.

Witness K (██████████ Head Coach of Women's Swim, ██████████) told us that in the 1990s, there were only eight women coaches in top level swimming; now, there are still only eight women coaches. Witness K believes that men are still saying and doing the same things they did in the 1990s and are getting away with it. For example, she heard a ██████████ coach yell at athletes with such harsh and disturbing words that she was surprised he still has a job. The male coach's behavior was so egregious that Witness K's team did not want to sit near his team at meets because of how he berated athletes.

██████████ Staff D (Director of Operations, ██████████) questioned whether this investigation would be happening to a male coach or in a male sport.

██████████ Staff G (Team Physician, ██████████) said she believed there is gender bias in how women coaches are viewed and that men are treated differently. For example, the Cal women's soccer coach was accused of improper conduct in the media, which was treated differently, even though it was all out in the open.

(b) *Allegations that People React Differently to Criticism or Expectations of Accountability Coming from a Woman*

██████████ Staff K (Assistant Coach, ██████████) said she worked in ██████████ and knew that women are perceived differently than men when they are demanding and honest. She noted that there are very few women coaches in swimming. She did not have a full opinion on whether the treatment of Coach McKeever was gender-related, but she could see how people take criticism a little more harshly from another woman.

Swimmer AP (Swimmer, ██████████) told us that she believed people, herself included, took criticism from women more personally than criticism from men, especially yelling. People also expected women to be more loving, and Coach McKeever was very prickly and blunt and very different than the motherly figure that people might assume she would be. Swimmer AP said she initially went to ██████████ before transferring because she did not feel she could be coached by a woman; she had always had male coaches, and her mother let her get away with things so she did not think a female coach would push her hard enough. Swimmer AP noted that there is a stereotype that a female coach cannot push swimmers like a male coach can. Swimmer AP also told us that the male coaches in the swimming community called Coach McKeever's program "cult-like" just because she was so different in her approach.

██████████ Staff N (██████████ Head Coach, ██████████; Assistant Coach, ██████████) told us that the criticism of Coach McKeever was due to a double standard that is common when women coach women. He said that Jim Knowlton (Director of Athletics, 2018-present) is having several problems with women head coaches who are coaching women-only teams at Cal. ██████████ Staff N also told us that he worked with a woman at ██████████ that the team could not stand, and 70 percent of them said she was physically abusive. When asked what that meant, they said that practice was just too hard.

Witness I ██████████ told us she is a Title IX Deputy and in that role saw many ways in which female coaches were treated differently than male coaches, especially by athletes and athletic directors. She said she believed it is a difficult time to be a female head coach. For example, athletes think it is okay for a man, but not a woman, to be demanding and will call a demanding female coach a bitch. When she consulted with women athletes who did not like their coach, a lot of them were burned out and wanted something different. On the other hand, when she consulted with male athletes, she found them less burned out, and the ones who were burned out simply quit. She noted that when she has disciplined a female athlete in the past few years, she could not do anything right in the eyes of the team, and the athlete would tell their parents, who in turn would tell the athletic director. She

strongly believed women cannot take constructive criticism from another woman. She noted that in investigations into abusive coaching behavior, male coaches are more often allowed to stay on deck, while women are removed. She said she did not believe that Coach McKeever's coaching was any different than most male coaches.

Staff B said she believed that Coach McKeever is being held to a different standard. For example, a male swimmer tried to hurt himself, but no one suggested that Staff C (Men's Swimming Coach,) should be held accountable for that. She also noted that , a longtime national team coach, behaved worse than Coach McKeever and no one disciplined him. She stated that men coaching women get a different response than women coaching women. With a female coach, women athletes ascribe a personal element to criticism, but with male coaches, they view the criticism as relating to their performance. She also noted that the Cal coach, yells at his athletes and has been much less successful than Coach McKeever, but no one has investigated him.

(c) Allegations that Society Judges Women More Harshly Than Men

Swimmer AY (Swimmer,) noted that society generally views an assertive woman as a "bitch," and views an assertive man as a good, confident leader.

Swimmer AZ (Swimmer,) said she believed that there is an element of gender bias in the criticism of Coach McKeever, and things would be viewed differently if she were a male coach. Swimmer AZ told us that, in general, she finds women who communicate directly are viewed negatively in our society; Swimmer AZ is a and encounters unconscious bias frequently. Coach McKeever was direct and drew a firm line, which would be viewed as a strength in a male coach but was viewed negatively with Coach McKeever.

Parents of Swimmer BT (Swimmer,) told us that they believe women are judged very differently and Coach McKeever is no exception.

Staff F (Director of Operations,) said he believes that Coach McKeever had to jump through extra hoops as a woman in a widely male-coach-dominated field.

Staff J (; Assistant Coach,) said that women coaches face more pressure than their male counterparts and believed that it is more acceptable for men to yell than for women to do so.

Witness H (Head Women's Swim Coach,) told us that female coaches cannot yell in the same way as men and struggle with recruiting more than men. For example, she was always shocked by how screamed at his water polo players. It was hard for Witness H to recruit swimmers because most athletes are coached by men, and it is hard to find ones who want to be coached by women.

(d) *Allegations Regarding Expectations of Women Coaches and Expectations Unique to Coaching Women Athletes*

Witness B ([REDACTED] Head Coach, [REDACTED]) said swimmers expected Coach McKeever to be empathetic because she is a woman just like the swimmers themselves. Witness B contrasted this with his experience with his own athletes. For example, if one of his swimmers asks if he has favorites, he says he hates all of them. Because the swimmers expected more empathy from Coach McKeever, Witness B said he thought it was probably harder for them to accept feedback or criticism when they were not performing well. Witness B said he does not think the same allegations of misconduct would have been made if Coach McKeever were male.

[REDACTED] Staff Q (Assistant Coach, [REDACTED]) told us that Coach McKeever did things differently from other coaches because she is more in tune with the “female side” and needs of the swimmers, and this led her to work with that “female side.”

[REDACTED] Staff O (Executive Coach, [REDACTED]) said she believed that Coach McKeever was paid less than [REDACTED] Staff C. She noted that Coach McKeever often spoke to her about the gender issue as it related to the Olympics and world championships. She said she believed Coach McKeever experienced both implicit and explicit bias, and that it was hard for her to be the only elite woman coach. She noted that Coach McKeever is not a warm, fuzzy person, she believed that many swimmers were looking for a warm, fuzzy landing place since their moms were not there anymore. She told us she felt Coach McKeever was chastised for acting like a man on the pool deck.

[REDACTED] Staff Q (Associate Athletic Trainer, [REDACTED]) said that at a meet where Swimmer BS was crying, Coach McKeever had Swimmer BS go warm down instead of continuing to cry by the team. Coach McKeever told [REDACTED] Staff Q that when coaching women, one has to be careful not to have one person bringing negative energy and spreading it to the group. The wisdom of this was confirmed for [REDACTED] Staff Q a year later when Swimmer BZ (Swimmer, [REDACTED]), who had seen a male swimmer crying, asked the swimmer’s teammates what was wrong with him. The teammates told her that his father was sick; the male teammates had not noticed he was crying.

2. Assertions that There Were Not Different Gender Standards, that the Gender Standard Was Irrelevant or Weighed In Coach McKeever’s Favor, or that Coach McKeever Needed to Adapt Her Style to the Needs of Women Athletes

According to Swimmer N (Swimmer, [REDACTED]), the negative stereotypes about women are at least partially true in Coach McKeever’s case. For example, she described Coach McKeever as having a chip on her shoulder because she went through hardships a man would not have had to go through. Swimmer N also acknowledged that there is a lot of emotional energy in an all-female program, such as a lot of crying, which is emotionally draining.

According to Jane Roe #2, Coach McKeever’s behavior continued for so long because she is a woman. In Jane’s view, the same behavior in a man would have been viewed as more

abusive. She found it hard to draw a comparison because she did not have a lot of experience with female coaches.

Parent of Swimmer P (Swimmer, [REDACTED]) said she thought that Coach McKeever was only allowed to stay in her position because she is a woman and would have been fired a long time ago if she had been a man with the same allegations made against her.

Swimmer Q (Swimmer, [REDACTED]) told us she does not believe that Coach McKeever is being judged more harshly because she is a woman. To the contrary, she believes that Coach McKeever has only made it this far because she is a woman, and if she were a man, she would have been fired the first time something like this was mentioned. Instead, Coach McKeever has a lot of cachet as the first female Olympic women's swimming coach. Swimmer Q heard that a coach at [REDACTED] was fired; however, Coach McKeever was not fired for [REDACTED].

Swimmer V (Swimmer, [REDACTED]) said she thought that interacting with Coach McKeever was "much worse" than with the male coaches she had.

Swimmer CR (Swimmer, [REDACTED]) told us she does not agree with the idea that Coach McKeever is the victim of gender bias. Her male high school coach had a military-style, strict personality, but he never made things "personal" in the way Coach McKeever did.

Swimmer CI (Swimmer, [REDACTED]) said she did not believe gender played a role in the allegations. She does not think it is true that women were more sensitive to Coach McKeever's conduct, as the toughest people Swimmer CI knows are the people that swam on that team.

Swimmer D (Swimmer, [REDACTED]) said she believed that Coach McKeever might be under more scrutiny because she is a woman, and some male coaches may be getting away with similar things, but this investigation is happening because the underlying allegations are true and not because she is a woman.

According to Parent of Swimmer CN (Swimmer, [REDACTED]) female athletes need a lot of support in general, and she and her husband felt that Coach McKeever acted like she was coaching a team of males.

Swimmer BD (Swimmer, [REDACTED]) said she had never had a female coach before Coach McKeever. She said that her male coaches were more focused on swimming, not about drama.

3. Factual Findings and Policy Determination

We do not reach a specific finding regarding gender discrimination or gender bias, as such a determination is outside the scope of what we were asked to investigate. We did not investigate, for example, whether male coaches engaged in the same conduct but were not alleged to have been abusive. Similarly, we did not investigate whether society or women athletes in fact have different expectations of female coaches than they do of male coaches. And we did not

investigate whether male athletes would complain if their coaches engaged in the same conduct alleged here.

When we reviewed the evidence in other sections, we were aware of the surrounding context of possible gender bias as described in this section and took that context into account as appropriate. We recognize that women are in many instances held to a different standard and a different set of expectations than men. We also recognize that gender-biased expectations do not necessarily negate or excuse conduct that meets the standard of verbal abuse or bullying. Stated another way, one can be both the subject of gender bias and also objectively found to have violated University policy. In addition, even if we were to assume that male coaches engage in the same abusive conduct alleged here without suffering any consequences, that would not excuse or justify the conduct such that we could reach a determination that a woman coach engaged in such conduct did not violate University policy. Similarly, even if we were to assume that male athletes would not complain if their coaches engaged in the same conduct alleged here, that would not allow us to conclude that a coach engaged in such conduct with female athletes did not violate University policy.

D. Allegations Regarding Media Fixation

This section describes views put forth by certain witnesses that allegations against Coach McKeever are driven by a media fixation on Coach McKeever and criticism of her team.

██████ coaching staff expressed negative views about the news articles. ██████ Staff Q (Associate Athletic Trainer, ██████) said that she was incensed reading news coverage of the situation and felt that articles were one-sided and part of a “hatchet job” going after Coach McKeever. ██████ Staff D (██████, ██████) told us that he felt that Coach McKeever was under an unfair amount of pressure as the only female coach of a Division I program and was subject to unfair criticism in the media. ██████ Staff F (Director of Operations, ██████) told us that he felt that everything Coach McKeever’s program did at Cal was questioned to a greater degree than any other program. ██████ Staff J (██████, Assistant Coach, ██████) told us that *Orange County Register* reporter ██████ loves controversy and twisted what he was told by swimmers to write his articles about Coach McKeever. She also claimed that ██████ did not fact check any of his articles about Coach McKeever. ██████ Staff E (Director of Operations, ██████) told us that she felt that criticism of Coach McKeever was driven by media fixation. She noted that SwimSwam and other news outlets thrive on stories like the recent ones about Coach McKeever and argued that people love to tear down Coach McKeever. ██████ Staff B (Athletic Director, ██████) said it was a known fact that people on the SwimSwam boards were harsh on Coach McKeever.

A ██████ swimmer expressed similar views. Swimmer CQ (Swimmer, ██████) told us that Coach McKeever has been blamed throughout her career in ways that other coaches were not. Swimmer CQ told us that SwimSwam does not like Coach McKeever.

1. Factual Findings and Policy Determination

We do not reach a specific finding regarding the motivation behind media coverage of Coach McKeever in general or in relation to recent allegations of misconduct. When reviewing media coverage of Coach McKeever, we were aware of allegations of bias and took that context into account as appropriate.

APPENDIX I: Witnesses Interviewed

SWIMMERS/DIVERS

NAME	ROLE
Swimmer BT	Swimmer [REDACTED]
Swimmer B	Swimmer [REDACTED]
Swimmer D	Swimmer [REDACTED]
Swimmer AU	Swimmer [REDACTED]
Swimmer BU	Swimmer [REDACTED]
Swimmer BS	Swimmer [REDACTED]
Swimmer A	Swimmer [REDACTED]
Swimmer CI	Swimmer [REDACTED]
Swimmer AN	Swimmer [REDACTED]
Swimmer H	Swimmer [REDACTED]
Swimmer BP	Swimmer [REDACTED]
Swimmer N	Swimmer [REDACTED]
Swimmer CE	Swimmer [REDACTED]
Swimmer AW	Swimmer [REDACTED]
Swimmer AD	Swimmer [REDACTED]
Swimmer M	Swimmer [REDACTED]
Swimmer G	Swimmer [REDACTED]
Swimmer P	Swimmer [REDACTED]
Diver B	Diver [REDACTED]
Diver A	Diver [REDACTED]
Swimmer AX	Swimmer [REDACTED]
Swimmer AT	Swimmer [REDACTED]
Men's Swimmer A	Men's Diver [REDACTED]
Diver C	Diver [REDACTED]
Swimmer AY	Swimmer [REDACTED]
Swimmer CV	Swimmer [REDACTED]
Swimmer BM	Swimmer [REDACTED]
Swimmer AJ	Swimmer [REDACTED]
Jane Roe #1	Swimmer [REDACTED]
Jane Roe #2	Swimmer [REDACTED]
Jane Roe #3	Swimmer [REDACTED]
Swimmer AZ	Swimmer [REDACTED]
Swimmer L	Swimmer [REDACTED]
Swimmer X	Swimmer [REDACTED]

APPENDIX I: Witnesses Interviewed

NAME	ROLE
Diver D	Diver [REDACTED]
Swimmer T	Swimmer [REDACTED]
Swimmer C	Swimmer [REDACTED]
Swimmer AC	Swimmer [REDACTED]
Swimmer BA	Swimmer [REDACTED]
Swimmer Y	Swimmer [REDACTED]
Swimmer CD	Swimmer [REDACTED]
Swimmer AR	Swimmer [REDACTED]
Swimmer CR	Swimmer [REDACTED]
Swimmer CJ	Swimmer [REDACTED]
Swimmer BB	Swimmer [REDACTED]
Swimmer J	Swimmer [REDACTED]
Swimmer CQ	Swimmer [REDACTED]
Swimmer BC	Swimmer [REDACTED]
Swimmer BD	Swimmer [REDACTED]
Swimmer CM	Swimmer [REDACTED]
Swimmer R	Swimmer [REDACTED]
Swimmer AH	Swimmer [REDACTED]
Swimmer AS	Swimmer [REDACTED]
Swimmer V	Swimmer [REDACTED]
Swimmer CZ	Swimmer [REDACTED]
Swimmer BE	Swimmer [REDACTED]
Swimmer CK	Swimmer [REDACTED]
Swimmer BF	Swimmer [REDACTED]
Swimmer U	Swimmer [REDACTED]
Swimmer CN	Swimmer [REDACTED]
Swimmer Q	Swimmer [REDACTED]
Swimmer AM	Swimmer [REDACTED]
Swimmer BY	Swimmer [REDACTED]
Swimmer DA	Swimmer [REDACTED]
Swimmer BG	Swimmer [REDACTED]
Swimmer BH	Swimmer [REDACTED]
Swimmer BI	Swimmer [REDACTED]
Swimmer BN	Swimmer [REDACTED]
Swimmer AV	Swimmer [REDACTED]

APPENDIX I: Witnesses Interviewed

NAME	ROLE
Swimmer K	Swimmer [REDACTED]
Swimmer I	Swimmer [REDACTED]
Swimmer BJ	Swimmer [REDACTED]
Swimmer BK	Swimmer [REDACTED]
Swimmer CS	Swimmer [REDACTED]
Swimmer CL	Swimmer [REDACTED]
Swimmer BQ	Swimmer [REDACTED]
Swimmer AP	Swimmer [REDACTED]
Swimmer AI	Swimmer [REDACTED]
Swimmer W	Swimmer [REDACTED]
Swimmer BL	Swimmer [REDACTED]

PARENTS

NAME	ROLE
Parent of Swimmer BT	Mother of Swimmer BT [REDACTED]
Parent of Swimmer BT	Father of Swimmer BT [REDACTED]
Parent of Swimmer B	Mother of Swimmer B [REDACTED]
Parent of Swimmer AM	Mother of Swimmer AM [REDACTED]
Parent of Swimmer H	Mother of Swimmer H [REDACTED]
Parent of Swimmer AD	Father of Swimmer AD [REDACTED]
Parent of Swimmer P	Mother of Swimmer P [REDACTED]
Parent of Swimmer AZ	Mother of Swimmer AZ [REDACTED]
Parent of Swimmer AR	Mother of Swimmer AR [REDACTED]
Parent of Swimmer AR	Father of Swimmer AR [REDACTED]
Parent of Swimmer T	Mother of Swimmer T [REDACTED]
Parent of Swimmer CD	Mother of Swimmer CD [REDACTED]
Parent of Swimmer CD	Father of Swimmer CD [REDACTED]
Parent of Swimmer CR	Mother of Swimmer CR [REDACTED]
Parent of Swimmer CQ	Father of Swimmer CQ [REDACTED]
Parent of Swimmer CQ	Mother of Swimmer CQ [REDACTED]
Parent of Swimmer R	Mother of Swimmer R [REDACTED]

APPENDIX 1: Witnesses Interviewed

NAME	ROLE
Parent of Swimmer CN	Father of Swimmer CN
Parent of Swimmer CN	Mother of Swimmer CN
Parent of Swimmer CS	Mother of Swimmer CS
Parent of Swimmer X	Mother of Swimmer X

STAFF

NAME	ROLE
Staff AA	Executive Director
Staff F	Athletic Trainer
Staff H	
Staff I	Director
Staff J	Senior Associate Athletics Director
Staff AB	
Staff Q	Assistant Coach
Staff D	Director of Operations
Staff A	Associate Athletic Director
Staff K	Assistant Coach
Staff C	Men's Swimming Coach
Staff K	
Staff C	Athletic Performance Coach
Staff J	Assistant Coach
Staff L	Academic Advisor
Staff G	Team Physician
Staff M	Team Physician
Staff Q	Associate Athletic Trainer
Knowlton, Jim	Director of Athletics
Staff A	Assistant Coach
Staff P	Diving Coach
Staff X	Staff Psychologist at University Health
Staff N	Assistant Coach
Staff M	Diving Coach
Staff D	Team Consultant

APPENDIX 1: Witnesses Interviewed

NAME	ROLE
Staff W	[REDACTED]
Staff E	Director of Operations [REDACTED]
Staff Z	[REDACTED]
Staff F	Director of Operations [REDACTED]
Staff V	Athletic Performance Coach [REDACTED]
Staff B	[REDACTED]
Simon-O'Neill, Jenny	Executive Senior Associate Athletic Director 2013-present
Staff X	Director of Operations [REDACTED]
Staff G	Athletic Performance Coach [REDACTED]
Staff O	[REDACTED]
Staff H	Assistant Coach [REDACTED]
Staff B	Director, [REDACTED]
Staff O	Executive Coach [REDACTED]
Staff I	Assistant Coach [REDACTED]

THIRD PARTY

NAME	ROLE
Witness F	Friend of Swimmer CE [REDACTED]
[REDACTED]	[REDACTED] Head Women's Swim Coach [REDACTED]
[REDACTED]	High School Swim Coach; [REDACTED] [REDACTED] Swimming Team Manager
[REDACTED]	Women's Club Swim [REDACTED]
[REDACTED]	Director, [REDACTED]
[REDACTED]	[REDACTED] Head Men's and Women's Swim Coach [REDACTED]
[REDACTED]	[REDACTED] Head Men's and Women's Swim Coach [REDACTED]
[REDACTED]	[REDACTED] Head Women's Swim Coach
[REDACTED]	[REDACTED] Head Women's Swim Coach [REDACTED]

APPENDIX 2: Correspondence from Thomas Newkirk

DATE	PAGES	SUBJECT
August 3, 2022	7 pages	Letter Regarding Information to Investigators and Interview Enclosures: Introduction to the Risks of Implicit Gender Bias and Socialization
August 5, 2022	3 pages	Letter Regarding Witness Statements and "De-Biasing" Approach
August 19, 2022	8 pages	Letter Response to 8/8/2022 MTO letter; Enclosures: Witness Statements; Analysis of Bias Risks of Student Evaluations of University Employees
November 28, 2022	135 pages	Complaint of Teri McKeever to OPHD
November 28, 2022	2 pages	Letter to the University Regarding Filing of OPHD Complaint

APPENDIX 3: Letters Provided by Thomas Newkirk On Behalf Of Teri McKeever

<u>NO.</u>	<u>NAME</u>	<u>ROLE</u>
RECEIVED AUGUST 4, 2022		
1	[REDACTED]	Swimmer [REDACTED] and Friend
2	[REDACTED]	Women's and Men's Swimming and Diving Head Coach at [REDACTED]
3	Swimmer CW	[REDACTED] Cal W Swimmer
4	Parent of Swimmer AZ	Parent of Swimmer AZ
5	Parents of Swimmer CD	Parents of [REDACTED] Swimmer CD
6	Swimmer CQ	[REDACTED] Cal W Swimmer [REDACTED]
7	Swimmer AM	[REDACTED] Cal W Swimmer
8	Swimmer BI	[REDACTED] Cal W Swimmer
9	[REDACTED]	[REDACTED] Head Men's Swim Coach [REDACTED]
10	Swimmer EM	[REDACTED] Cal W Swimmer [REDACTED]
RECEIVED AUGUST 5, 2022		
11	[REDACTED]	Friend (swam with McKeever [REDACTED])
12	Parent of Swimmer AM	Parent of [REDACTED] Cal W Swimmer AM [REDACTED]
13	Parent of Swimmer BS	Parent of [REDACTED] Cal W Swimmer BS [REDACTED]
14	[REDACTED] Staff Y	[REDACTED] Cal Women's Water Polo Head Coach
15	Swimmer BB	[REDACTED] Cal W Swimmer
16	Swimmer AX	[REDACTED] Cal W Swimmer
17	Swimmer CX	[REDACTED] Cal W Swimmer
18	Swimmer AY	[REDACTED] Cal W Swimmer
19	Swimmer BM	[REDACTED] Cal W Swimmer
20	Swimmer AZ	[REDACTED] Cal W Swimmer [REDACTED]
21	[REDACTED]	Friend and [REDACTED] High School Swim and Water Polo Coach
22	[REDACTED]	[REDACTED] Team Manager [REDACTED]
23	[REDACTED]	Assistant Coach and Team Administrator at [REDACTED]
24	[REDACTED]	[REDACTED] Head Swim Coach at [REDACTED]
25	[REDACTED]	Friend and [REDACTED] Head Swim Coach at [REDACTED]
26	[REDACTED]	[REDACTED] Head Coach at [REDACTED]

APPENDIX 3: Letters Provided by Thomas Newkirk On Behalf Of Teri McKeever

<u>NO.</u>	<u>NAME</u>	<u>ROLE</u>
27	[REDACTED]	[REDACTED] Head Women's Swim Coach [REDACTED]
28	[REDACTED]	[REDACTED] Head Women's Swim Coach [REDACTED]
29	Swimmer BL	[REDACTED] Cal W Swimmer [REDACTED]
RECEIVED OCTOBER 4, 2022		
30	Parents of Swimmer BT	Parents of [REDACTED] Cal W Swimmer BT [REDACTED]
31	[REDACTED]	Head Men's and Women's Swimming and Diving Coach [REDACTED]
32	[REDACTED] Staff K	[REDACTED] Cal Berkeley Assistant Coach [REDACTED]
33	[REDACTED]	Coach [REDACTED]
34	[REDACTED]	Retired Head Women's Swimming & Diving Coach [REDACTED]
35	[REDACTED]	Friend and Colleague [REDACTED]
36	[REDACTED]	[REDACTED] Head Men's and Women's Swim Coach [REDACTED]
37	Swimmer EN	[REDACTED] Cal W Swimmer [REDACTED]
38	Swimmer BH	[REDACTED] Cal W Swimmer [REDACTED]
39	[REDACTED]	[REDACTED] Associate Head Coach [REDACTED]
40	Swimmer AS	[REDACTED] Cal W Swimmer [REDACTED]
41	Swimmer U	[REDACTED] Cal W Swimmer [REDACTED]
42	[REDACTED]	[REDACTED] USA and college swimming coach [REDACTED]
43	Swimmer BG	[REDACTED] Cal W Swimmer [REDACTED]
44	[REDACTED]	Head Coach at [REDACTED]
45	[REDACTED]	Assistant Coach at [REDACTED]
46	[REDACTED] Staff I	[REDACTED] Cal Berkeley Assistant Coach [REDACTED]
47	[REDACTED] Staff J	[REDACTED] Cal Berkeley Assistant Coach [REDACTED]

APPENDIX 4: Articles Provided by Thomas Newkirk Regarding Gender Bias

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APPENDIX 4: Articles Provided by Thomas Newkirk Regarding Gender Bias

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APPENDIX 4: Articles Provided by Thomas Newkirk Regarding Gender Bias

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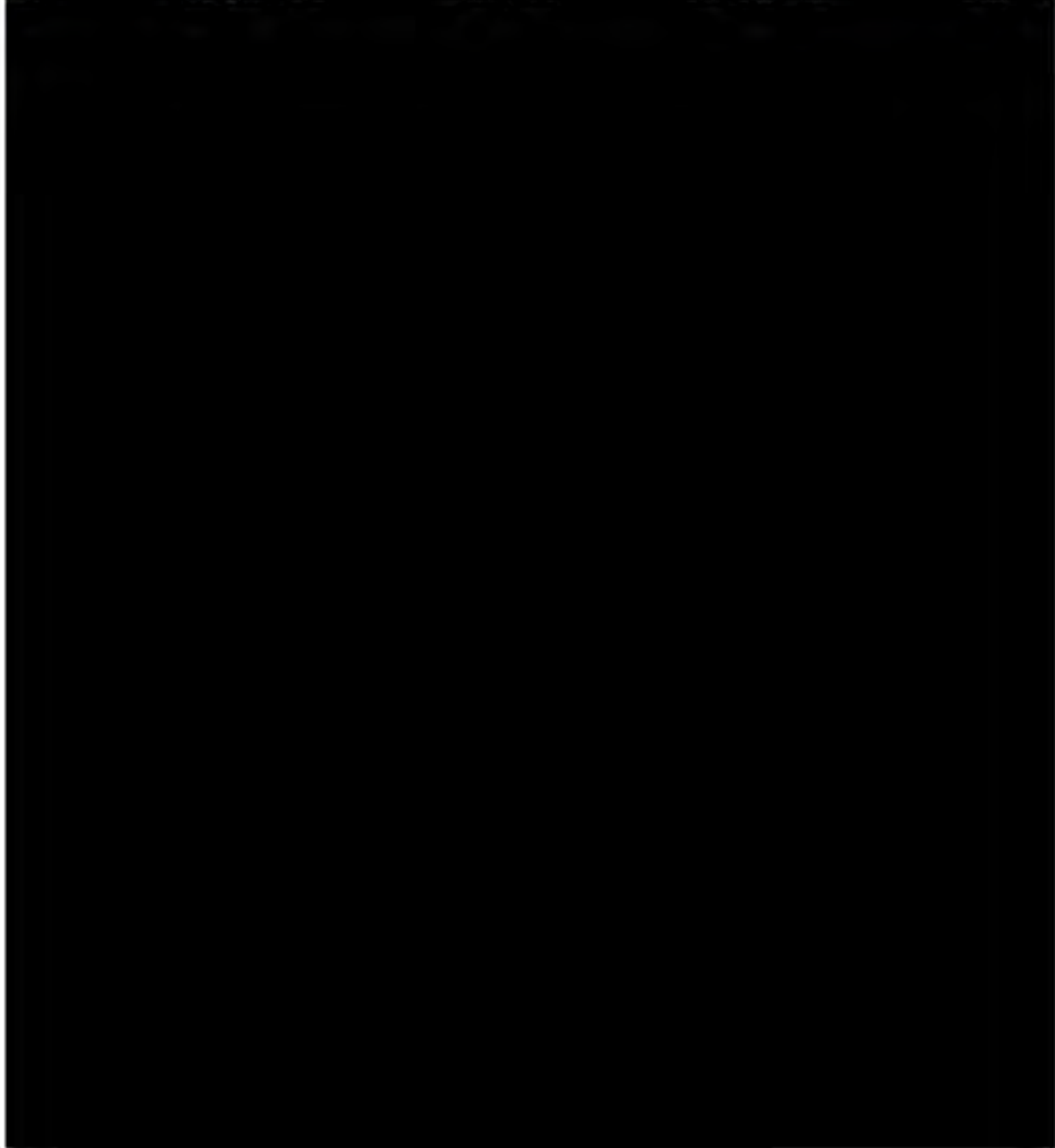
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California

Name	Time	Date	Meet	Cal PB	Name	Time	Date	Meet	Cal PB
------	------	------	------	--------	------	------	------	------	--------



California

Name	Time	Date	Start	Cal. PL. I	DELAYS
------	------	------	-------	------------	--------

From: Teri J MCKEEVER (mckeever@berkeley.edu)
Sent: [REDACTED] 12:17:15 AM
To: Teri J MCKEEVER (mckeever@berkeley.edu)
CC: [REDACTED] Staff D [REDACTED] Staff E [REDACTED] Staff A
Subject: W. Swim [REDACTED]
Attachments: [REDACTED]

Hi All-

Here is the final itinerary for our upcoming [REDACTED] trip

Please note the updated rooming lists and the schedule/needs from the bus driver.

[REDACTED] ^{hard} Can we get \$20 on each of the team member's cards?

Thanks,

Teri



Teri McKeever [REDACTED]
Head Coach
Women's Swimming and Diving

Intercollegiate Athletics
135C Haas Pavilion, Berkeley, CA 94720

P: [REDACTED] **E:** mckeever@berkeley.edu **W:** CalBears.com

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California Golden Bears

at

Invitational

October

October

- 6:00 AM Bus departs from in front of RSF for
Wear your UA travel gear- blue pants, t-shirt and gold sweat top.
We'll have some fruit and bars for bus and the meet.
We'll also stop at a Starbucks as we approach area.
We'll let you know when we are 30 minutes from there and you can place a mobile order if you want something.
- 9:45 AM Approximate arrival at pool-
- 11:00 AM 200 Medley Relay (7 CAL teams) Speedo gear on deck
-5 min break-
500 free
200 IM
50 free
-10 min break-
200 Free Relay (7 CAL teams)
Lunch after session from then we'll drive to hotel for check-in.
(If you want something else to eat, please bring that with you)
- Check into hotel:
- 4:30 PM Depart hotel for pool
- 6:00 PM Speedo Sweats with CAL shirt of your choice/ patterned suit
400 IM
100 fly
200 free
100 breast
100 back
-10 min break-
800 Free Relay (2 CAL teams)

After session we'll pick up dinner at [redacted] (pre-ordered) then eat together in the lobby area of the hotel. In your own room by 10:00PM.

Saturday-October 9, 2021

Wake-up and breakfast at the hotel.

8:15 AM Depart hotel with all your belongings, we will not be going back.

10:00 AM Speedo attire with [redacted]
400 Medley Relay (6 CAL teams)
-5 min break-
1650 free
200 back
100 free
200 breast
200 fly
-10 min break-
400 Free Relay (6 CAL teams)

Lunch- Jimmy John's will be for lunch delivered to the pool

Drive home immediately after session is completed.

ROOMING LISTS:

McKeever
[redacted] Staff A
Swimmer W Swimmer AL Swimmer M
Swimmer K Swimmer AB Swimmer N
Swimmer O Swimmer U Swimmer Z
Swimmer S Swimmer A
Swimmer AC Swimmer AF Swimmer U

Bus driver
Swimmer V Swimmer AD Swimmer G
Swimmer P Swimmer AA
Swimmer AI Swimmer Y Swimmer O
Swimmer T Swimmer BS Swimmer J
Swimmer R

WHAT TO BRING:

- Pillow for bus
- Speedo Suits for deck/ only Speedo suits- race in navy and patterned/ yellow Pac-12 caps
- Speedo shorts on deck
- Need to bring your own towel- we won't return to hotel after Saturday's session
- Water bottle, sunscreen, hat
- [redacted] for Friday AM/ CAL shirt of your choice for Friday PM/ [redacted] for Saturday AM
- Jump Rope, ball for feet
- Homework
- Any food you may want outside of meals we have planned.

From: Teri J MCKEEVER [mckeever@berkeley.edu]
Sent: [REDACTED] 12:26:11 AM
To: Teri J MCKEEVER [mckeever@berkeley.edu]
CC: [REDACTED] Staff A [REDACTED] Staff F [REDACTED] Staff D
[REDACTED] Staff D [REDACTED] Staff U jennifer.simon@berkeley.edu
[REDACTED] Staff V [REDACTED] Staff L
[REDACTED] Staff O [REDACTED] Staff D

Swimming Team

Subject: Itinerary and Entries for this weekend- W. Swim [REDACTED]
Attachments: [REDACTED]

Bears-

Here's a copy of the itinerary and the entries for this weekend. Please let me know if you have any questions.

A reminder to work with [REDACTED] on your Spring courses for Phase I of early registration on October [REDACTED]. Please send [REDACTED] and I an email if you have any practice conflicts explaining the conflict, why you need to take that course and what your suggestion is for making it up.

Have a nice evening and Wednesday.

Go Bears!

Teri



Teri McKeever [REDACTED]
Head Coach
Women's Swimming and Diving

Intercollegiate Athletics
135C Haas Pavilion, Berkeley, CA 94720

P: [REDACTED] **E:** mckeever@berkeley.edu **W:** CalBears.com

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From: Teri J MCKEEVER [mckeever@berkeley.edu]
Sent: [REDACTED] 5:18:54 PM
To: Teri J MCKEEVER [mckeever@berkeley.edu]
CC: [REDACTED] Staff D [REDACTED] Staff E [REDACTED] Staff A
Subject: Re: W. Swim [REDACTED]

Hi All-
I'm going to be letting Swimmer A and Swimmer O tomorrow morning that they won't be traveling to [REDACTED]. No need to change the rooming list but they won't need the per diem and we'll have to adjust the manifest. Thanks, Teri



Teri McKeever [REDACTED]
Head Coach
Women's Swimming and Diving

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On [REDACTED] Teri J MCKEEVER <mckeever@berkeley.edu> wrote:
Hi All-

Here is the final itinerary for our upcoming [REDACTED] trip.

Please note the updated rooming lists and the schedule/needs from the bus driver.

Original Message
Can we get \$20 on each of the team member's cards?

Thanks,

Teri



Teri McKeever [REDACTED]
Head Coach
Women's Swimming and Diving

Intercollegiate Athletics
135C Haas Pavilion, Berkeley, CA 94720

P: [REDACTED] **E:** mckeever@berkeley.edu **W:** CalBears.com

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From: Swimmer A
Sent: [REDACTED]:46:02 PM
To: Teri J MCKEEVER [mckeeper@berkeley.edu]
Subject: Practice

Hi Coach Teri,

I wanted to provide some insight on my recent practices. I know I have been messing up in practice. I don't want you to think I'm not putting in the effort or paying attention. It may not look like it but I am extremely hard on myself and I get frustrated to the point where it prevents me from performing to the best of my ability. Moving forward I plan on talking to my therapist to work on ways to get through this.

I also want you to know that every recommendation that has been given is taken to heart and I am truly working hard to become an asset to this team. I value your expertise and guidance so if you have any further suggestions on how I can deal with this please let me know.

Thanks,
Swimmer A

From: Teri J MCKEEVER [mckeever@berkeley.edu]
Sent: [REDACTED] 4:58:48 PM
To: Swimmer A
CC: [REDACTED] Staff N
Subject: Re: Practice Today

Swimmer A

Thanks for the note.

I understand all this and if this was the first or only time I'd seen what I saw this morning it wouldn't be an issue.

We will have to connect down the road because I'm not convinced that your swimming goals align with the program's goals. This is based on my observations for the past year.

Best of luck with your finals!

Teri

[REDACTED]

Teri McKeever [REDACTED]
Head Coach
Women's Swimming and Diving

Intercollegiate Athletics
135C Haas Pavilion, Berkeley, CA 94720

P: [REDACTED] **E:** mckeever@berkeley.edu **W:** CalBears.com

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On [REDACTED] May [REDACTED] at 9:49 AM Swimmer A wrote:

I wanted to let you know that I really did want to be at practice today. I've just been extremely stressed with finals coming up and it showed in my body language today. Also, part of the reason I looked so sad is because today is the one year anniversary of my grandfather's passing. Normally swimming is my safe space that helps me relax and get out of my head and I am so sorry for the misunderstanding and unintentionally projecting my emotions into the team atmosphere. It truly had nothing to do with not wanting to be at practice. I also wanted to let you know that I am unable to come to practice this afternoon because I have an organic chemistry review session today during practice. Finally, I wanted to let you know that I will be flying home for the summer this Sunday and plan to train with my club team once I get home.

Thank you,
Swimmer A

From: Teri MCKEEVER [mckeever@berkeley.edu]
Sent: [REDACTED] 11:41:59 AM
To: Swimmer A
CC: [REDACTED] Staff A
Subject: Re: Afternoon Practice Absence

Swimmer A

Thanks for the update.
Please keep us in the loop and these need to be addressed to both [REDACTED] and I please.
Hope you feel better soon,
Teri

[REDACTED]

Teri McKeever [REDACTED]
Head Coach
Women's Swimming and Diving

Intercollegiate Athletics
135C Haas Pavilion, Berkeley, CA 94720

P: [REDACTED] **E:** mckeever@berkeley.edu **W:** CalBears.com

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On [REDACTED] Nov [REDACTED] at 12:50 PM **Swimmer A** wrote:

I just wanted to let you know that [REDACTED] Also, I spoke with [REDACTED] and we agreed that I shouldn't come to practice until I no longer [REDACTED] Unfortunately, I still don't feel well [REDACTED] so I won't be at afternoon practice today. I hope to be back for practice tomorrow but I will continue keeping you updated.

Thanks,
Swimmer A

From: Teri J MCKEEVER (mckeever@berkeley.edu)
Sent: [REDACTED]:13:22 AM
To: Swimmer A
CC: [REDACTED] Staff A
Subject: Re: Eye Exam

Thanks for letting me know,
Best,
Teri



Teri McKeever
Head Coach
Women's Swimming and Diving

Intercollegiate Athletics
135C Haas Pavilion, Berkeley, CA 94720

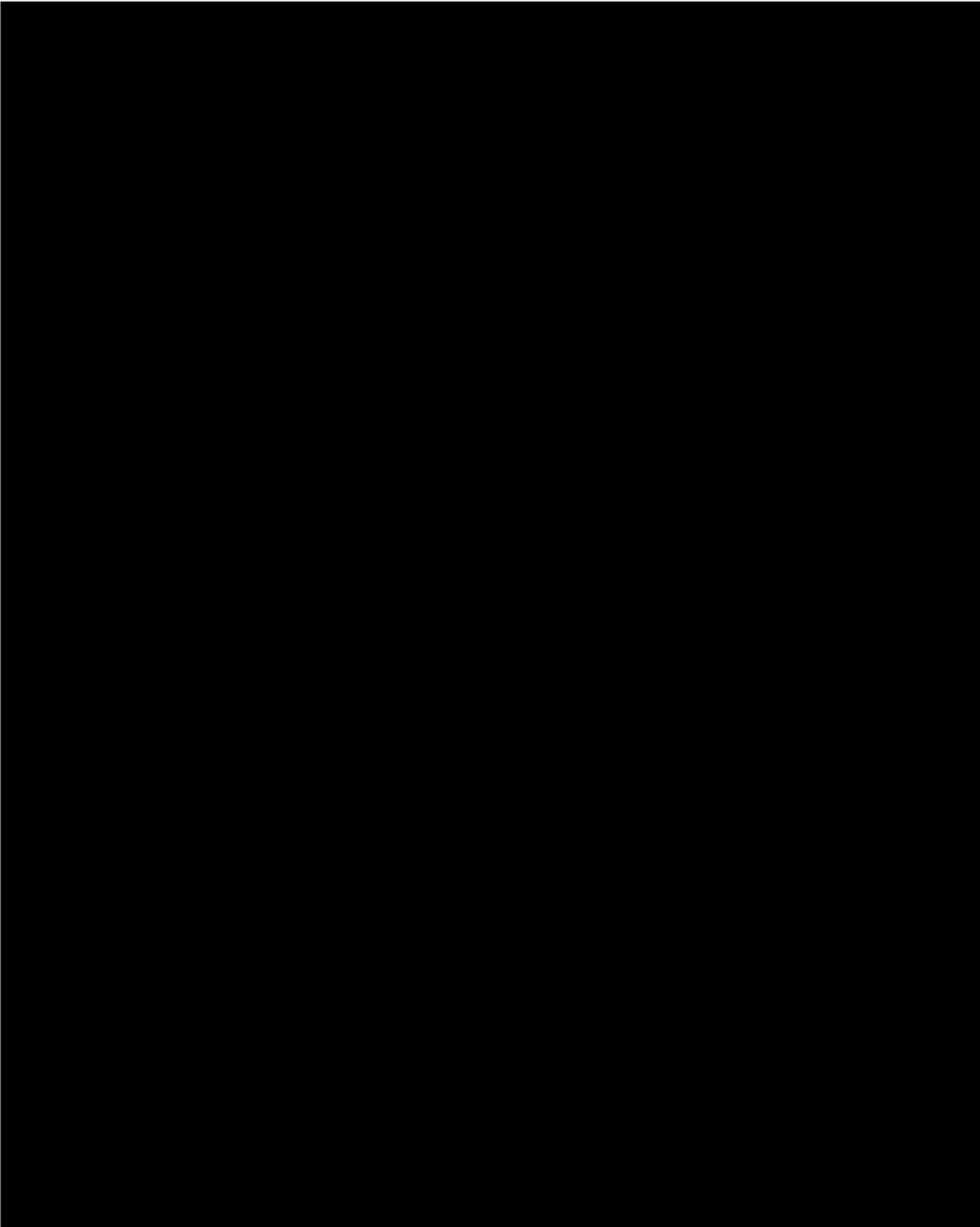
P: [REDACTED] **E:** mckeever@berkeley.edu **W:** CalBears.com

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On [REDACTED] Aug [REDACTED] at 7:12 PM **Swimmer A** wrote:

Hi Coach Teri,
I just wanted to let you know that I won't be at practice tomorrow morning because I have an eye exam (I left and lost my glasses at home). I understand this practice is optional but I wanted you to know that if I could be there I would. I scheduled this appointment before we got our August schedules and they said I wouldn't be able to get in for a while if I cancel.

Thanks
Swimmer A





From: Teri J MCKEEVER [mckeeper@berkeley.edu]
Sent: [REDACTED] 12:01:03 AM
To: Teri J MCKEEVER [mckeeper@berkeley.edu]
CC: [REDACTED] Staff A, [REDACTED] Staff F, [REDACTED] Staff D, [REDACTED] Staff D, [REDACTED] Staff L, [REDACTED] Staff H, [REDACTED] Staff O, [REDACTED] Staff D, [REDACTED] Staff H, Jennifer Simon-O'Neill [jenny.simon@berkeley.edu]; [REDACTED]
BCC: [REDACTED]

Swimming Team

Subject: Swimming Team [REDACTED]
Attachments: Two week calendar [REDACTED] / Award Ballot/ Additional Info [REDACTED] and award ballot.pdf

Golden Bears-

It was nice to see so many of you this afternoon.

I've attached an electronic copy of the two week calendar we reviewed. If you weren't in attendance, I'm happy to provide any clarity when I see you next. We'll evaluate how this works as we move through the next couple of weeks and make adjustments if needed.

I've also attached a ballot sheet for the end of the year banquet. If you did not submit your votes, I'll accept those through noon on [REDACTED] 3 [REDACTED]. We're going to stick with a [REDACTED] at 10:00am PST. I asked you all to discuss and come up with a time/day that we could try to go out to dinner and celebrate as a team in person.

Also, as you look to plan for the Fall [REDACTED] semester here are our training times: 7-8:50AM M-F/ 7-9:00AM Sat/ 1:15-4:00PM MF/ 1-2:00pm Weights TTH/ 2-4:00PM TTH. If you have a conflict please send me an email outlining the conflict. Please don't assume that lifting in the morning is an option. If you can't make 1-2:00PM then that needs to be disclosed as a conflict.

Have a nice evening and Go Bears!!

Teri
[REDACTED]

Teri McKeever [REDACTED]
Head Coach
Women's Swimming and Diving

Intercollegiate Athletics
135C Haas Pavilion, Berkeley, CA 94720

P: [REDACTED] **E:** mckeever@berkeley.edu **W:** CalBears.com

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Go Bears!

- April

Two Week Schedule- March

Women's Swimming

Monday	Tuesday	Wednesday	Thursday	Friday	Saturday	Sunday
120 Meeting Swim @ Legends (L) Blue/G	7-8:30 am Swim @ Legends (L) optional Gold/Blue	7:00 am Gold/Blue - 9:15 am Team Blue/White Swim @ Legends (L)	7-8:40 am Swim @ Legends (L) Gold/Blue optional	11:30 am Gold/Blue - 9:15 am Team Blue/White Swim @ Legends (L)	*	*
	1 pm Weights 2:15-3:30 pm Swim @ Spiker (S) Blue/White 2:30-3:45 pm Gold	*	1-2:15 pm Weights 2:15-3:30 pm Swim @ Spiker (S) Blue/White	*		
Monday	Monday	Wednesday	Thursday	Friday	Saturday	Sunday
	7-8:30 am Swim @ Legends (L) Gold/Blue optional	7-8 am Swim @ Legends (L) Gold/Blue/White	7-8:30 am Swim @ Legends (L) Gold/Blue optional	7-8 am Swim @ Legends (L) Gold/Blue/White	7-9 am Swim @ Legends (L) optional Gold/Blue	
	1-2 pm Weights 2:05-2:30 pm Blue/White 2:05-3:45 pm Gold/Blue Swim @ Spiker (S)	*	1-2 pm Weights 2:15-3 pm Blue/White 2:15-3:45 pm Swim @ Spiker (S)	12:30 pm Swim @ Legends (L) Gold optional		
Monday	Monday	Wednesday	Thursday	Friday	Saturday	Sunday
	1:30-3 pm Swim @ Legends (L) Gold/Blue/White					5:20-7 pm SVSH Training - Mandatory

Gold: Swimmer AA Swimmer M Swimmer G Swimmer AJ Swimmer T Swimmer AQ Swimmer U Swimmer A Swimmer AI Swimmer R
 Blue/White: Swimmer N Swimmer AD Swimmer ACSwimmer J Swimmer DDSwimmer K Swimmer S
 Blue/White: Swimmer B Swimmer A Swimmer AK Swimmer Z Swimmer L Swimmer AE Swimmer EP

Team Awards



Name: _____

Most Outstanding:

1. _____

2. _____

3. _____

Most Improved:

1. _____

2. _____

3. _____

Golden Bear Award:

1. _____

2. _____

3. _____

Kathie Wickstrand Leadership Award:

1. _____

2. _____

3. _____

**Warren Hellman Scholastic Awards:
Highest GPA for Spring '21 and Fall '22**

Go Bears!



Two Week Schedule- April



* Women's Swimming *

Swimming

Monday	Tuesday	Wednesday	Thursday	Friday	Saturday	Sunday
<p>Apr</p> <p>7-8am Swim @ Legends (Lc) Optional Gold/Blue/Over</p> <p>8:50 Zoom End of Year Check-in</p> <p>9:30am Swim @ Legends (Lc) Gold/Blue/Over</p>	<p>Apr</p> <p>7-8am Swim @ Legends (Lc) Optional Gold/Over</p> <p>10pm Weights 20:30pm Swim @ Speaker (Sey) Blue/Over Gold/Over</p>	<p>Apr</p> <p>7-8am Swim @ Legends (Lc) Gold/Blue/Over</p> <p>X</p>	<p>Apr</p> <p>7-8am Swim @ Legends (Sey) Optional Gold/Blue/Over</p> <p>10pm Weights 20:30pm Swim @ Speaker (Sey) Blue/Over Gold/Over</p>	<p>Apr</p> <p>7am Swim @ Legends (Lc) Gold/Blue/Over</p> <p>1:30pm Swim @ Legends (Lc) Blue/Over Gold?</p>	<p>Apr</p> <p>7-8am Swim @ Legends (Lc) Optional Gold/Blue/Over</p> <p>7-9am Swim @ Legends (Lc) Optional Gold/Blue/Over</p>	<p>Apr</p> <p>off</p> <p>Easter Sunday</p>
<p>Monday</p> <p>Apr</p> <p>130-330pm Swim @ Legends (Lc) Gold/Blue/Over</p>	<p>Tuesday</p> <p>Apr</p> <p>10pm Weights 2-3pm Swim @ Speaker (Sey) Gold/Blue/Over</p>	<p>Wednesday</p> <p>Apr</p> <p>X</p>	<p>Thursday</p> <p>Apr</p> <p>10pm Weights 2-3pm Swim @ Speaker (Sey) Gold/Blue/Over</p>	<p>Friday</p> <p>Apr</p> <p>130-330pm Swim @ Legends (Lc) Optional Gold/Over</p>	<p>Saturday</p> <p>Apr</p> <p>Staff L B-day</p>	<p>Sunday</p> <p>Apr</p> <p>off</p>



- Swimmer M Swimmer G Swimmer T Swimmer AD Swimmer AL Swimmer AI Swimmer K
- Swimmer AA Swimmer USwimmer N Swimmer AD Swimmer J Swimmer DD Swimmer SSwimmer W Swimmer EP
- Swimmer B Swimmer A Swimmer L Swimmer Z Swimmer ABSwimmer AK Swimmer O

From: Teri J MCKEEVER [mckeever@berkeley.edu]
Sent: [REDACTED] 6:23:25 PM
To: Swimmer A
Subject: Re: Practice Today

Swimmer A thanks for your note but this won't be possible.

Teri McKeever [REDACTED]
Head Coach
Women's Swimming and Diving

Intercollegiate Athletics
135C Haas Pavilion, Berkeley, CA 94720

P: [REDACTED] **E:** mckeever@berkeley.edu **W:** CalBears.com

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On [REDACTED] Apr [REDACTED] at 9:51 AM Swimmer A wrote:
Hi Coach Teri,

I have a conflict at 2:30 pm with practice today. I am supposed to help show around prospective [REDACTED] students for one of the scholarships that I am a part of. I would like to come to practice today since I can't come tomorrow but I would have to leave early. Is this okay?

Thank you,
Swimmer A

From: Teri J MCKEEVER [mckeever@berkeley.edu]
Sent: [REDACTED] 1:20:26 PM
To: Swimmer A
Subject: Re: Workout for Tomorrow

Hi Swimmer A

It doesn't really work like that to "make up the practice", plus our session is long course and you won't be able to do that. If you want to swim you should have all those practices from winter, maybe use one of those. Hope the review session is helpful.

Best,
Teri

Teri McKeever [REDACTED]
Head Coach
Women's Swimming and Diving

Intercollegiate Athletics
135C Haas Pavilion, Berkeley, CA 94720

P: [REDACTED] **E:** mckeever@berkeley.edu **W:** CalBears.com

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On Fri, [REDACTED] at 8:13 PM Swimmer A wrote:

Hi Coach Teri,

I was wondering if you could possibly send me the workout for tomorrow as I have another review session from 8-10 am but would also like to complete the workout on my own. I will make sure I attend the banquet on time as there is some overlap with the review session.

Thank you,
Swimmer A

HEAD COACH PERFORMANCE EVALUATION FORM

Teri McKeever _____ W. Swimming _____
Name **Sport** **Evaluation Period July 1, [REDACTED] - June 30, [REDACTED]**

Mission Statement: To Educate, Compete, Serve and Excel... *Developing Leaders of Tomorrow*

Vision Statement: The Model of Comprehensive Excellence in Intercollegiate Athletics

Core Values: Integrity, Respect, Passion, Excellence

Rating Scale

- 5 - Exceptional (E):** Performance consistently exceeded expectations due to exceptionally high quality of work performed in all essential areas of responsibility. Goes above and beyond normal responsibilities to provide leadership, foster teamwork, provide innovative ideas, etc.
- 4 - Exceeds Expectations (EE):** Performance consistently exceeded expectations in all essential areas of responsibility, and the quality of work overall was very good. The majority of annual goals were met.
- 3 - Meets Expectations (ME):** Performance consistently met expectations in all essential areas of responsibility, possibly exceeding expectations occasionally, and the quality of work overall was good. The most critical annual goals were met.
- 2 - Improvement needed (I):** Performance did not consistently meet expectations in one or more essential areas of responsibility, and/or one or more of the most critical goals were not met. A professional development plan to improve performance must be outlined including timelines, and monitored to measure progress.
- 1 - Unsatisfactory (U):** Performance was consistently below expectations in most essential areas of responsibility, and/or reasonable progress toward critical goals was not made. Significant improvement is needed in one or more important areas. A professional development plan is needed to correct performance, and must be outlined, including timelines and monitored to measure progress.

3-5 GOALS/OBJECTIVES FROM PREVIOUS YEAR

This section will be completed by the supervisor and evaluate the coach's achievement of the goals and objectives from the previous 12-month period. The evaluation should include overall level of achievement, factor of success, and any extenuating circumstances.

1. I want to work with [REDACTED] Staff On a 360 evaluation of myself to see where I can continue to grow as a leader.
2. I also want to do a better job "coaching" [REDACTED] to become the next head coach here at CAL. I will use [REDACTED] Staff and a 360 evaluation on [REDACTED] to begin this process, as well as setting up regular sessions for us to evaluate and reflect on her performance.

3. I also want to look at the entirety of the program and start delegating portions that will assist in [redacted]'s growth and will allow me to be my best by focusing on the parts of the program where I can have the most impact and influence.

PERFORMANCE FACTORS

ATHLETIC SUCCESS: Demonstrates a commitment to athletic success. Achieves post-season competition. Implements effective and innovative training methods that achieve success. Develop and implement annual plan for program, understanding and adhering to mission, vision, values, and goals for the program and department.

Supervisor Comments: As Teri noted in her section, the team had some great performances this year and some performances that fell below expectation. There were individual swimmers that had great years in particular Swimmer AL Swimmer AL and Swimmer J. The [redacted] palace finish at Pac-12 was notable as it came down to a tight competition [redacted] and our team managed to pull ahead without any diving points. As we have discussed the [redacted] was not where any of us would like to see the program finish though there were some great swims and some lifetime best in that meet as well. We will work in partnership with Teri to develop a plan to return this program to the perennial podium finishes.

Head Coach Comments: I feel our athletic performance was a bit all over the place this season. We had moments of rising to the competition and even exceeding our expectations; the [redacted] and [redacted] dual meets and [redacted] invite come to mind. At the same time, we sometimes were flat and didn't have the energy to really excel when we were much better than the opponent. Our performances at [redacted] were inconsistent and it's difficult to access program adjustments with individual situations that may have resulted in less than expected performances. I do feel our work ethic as a program needs improvement if we want to see better results.

Coach's Self-Rating: ME

Admin Rating: ME

STUDENT-ATHLETE ACADEMIC SUCCESS: Promotes and facilitates student-athlete academic success through a commitment to student-athlete class attendance, academic achievement, and graduation. Provides framework to maximize retention and graduation of student-athletes.

Supervisor Comments: We were really happy to hear the feedback that Teri and her staff were such great partners with the ASC. Teri's team continues to be exceptional in the classroom, finishing the Fall semester with a 3.39GPA. The program also has a 1,000 single year APR, 993 multiple year APR and a 96 GSR. Swimmer V was the Pac-12 Scholar Athlete of the Year. Swimmer V was also named [redacted] for having the highest GPA among Cal's graduating female student-athletes.

Head Coach Comments: I continue to be proud of our academic performance, especially the [redacted] winners and [redacted] winning the [redacted]. I think the newcomers struggled a bit meeting the demands of elite level academics and athletics, but I do think as coaches we supported them (through this and communicated our belief that academic commitments are to be honored. It also appears that there is greater range in how professors are dealing with academic commitments this year which I found interesting.

ASC Comments: Teri ranks among the highest in this area of student athlete academic success! She truly understands academics at Cal, and she provides the structure and sets out clear "standards and expectations" for her student athletes from the moment they are being recruited to campus. She expects her students to attend class (and makes adjustments to practice times for certain students when there's an academic need), she expects her students to put in 100% effort in each class, and she expects her students to graduate. She sets the bar high, and her students rise to the challenge. She truly

cares about her students' pursuits in the pool and in the classroom and in life. She understands the challenges student athletes face with scheduling, class rigor, ebbs and flows of the semester, and the different majors.

She does not require her students to fulfill a certain number of "study hall" or "tutoring" hours each week, and yet her team has repeatedly been among the top 3 team GPAs.

The mentorship structure that she creates within her team each year aids in their academic success. The older members share their experience, tips, and tricks with the younger members of the team, especially in their freshman year.

Communication with Teri is superb! She's very organized and she is quick to respond if I initiate an email or phone call. We meet regularly as a staff for "High Performance" meetings to discuss each student and to troubleshoot areas of concern together. And she and [REDACTED] always follow-up with students who need to take action (based on what was discussed in those meetings).

It's a pleasure to work with Teri and [REDACTED].

Coach's Self-Rating: EE

Admin Rating: EE

STUDENT-ATHLETE EXPERIENCE & DEVELOPMENT: Demonstrates a commitment to providing an environment where student-athletes learn the values of citizenship, integrity, appreciation for cultural diversity, and respect and responsibility for self and others. Provides opportunities for leadership development, service to others, and prepared student-athletes for life after college. Encourages student-athletes to participate in internal/external programs and projects that will enhance life skills.

Supervisor Comments: This is an area that needs improvement which Teri acknowledged during our conversation as well. Consistent with all of our programs, we conducted a [REDACTED] poll with all of the student-athletes on the team, there were several questions that returned concerning results:

Does your coaching staff promote a culture of respect for the student-athletes?

- Exceptional – 11% (3)
- Above Average - 11% (3)
- Average – 29% (8)
- Below average 21% (6)
- Unsatisfactory – 29% (8)

Does your coaching staff promote a positive team culture?

- Exceptional – 0% (0)
- Above Average 14% (4)
- Average – 18% (5)
- Below Average – 36% (10)
- Unsatisfactory 32% (9)

There is additional feedback that we received about the student-athlete experience this year that is concerning and we will work in partnership with Teri to create a written plan with [REDACTED] Staff I's help for how we can improve the culture of the program and in turn the student-athlete experience.

Head Coach Comments: This needs to improve to be at a level that I expect of myself and the program, and at the same time I feel I meet expectations. As mentioned in the program review, I think there are a plethora of reasons I wasn't able

to provide the consistent experience and development that I would have liked. Some of these are out of my control and others I need to do better. I feel strongly that the student-athletes I'm now working with don't have a realistic expectation of what it takes to truly be world-class. Wanting something and being willing to follow through with behavior that supports one's wishes are two different things. [REDACTED] new members all at once definitely affected all of our experiences this season.

Coach's Self-Rating: ME

Admin Rating: I

STUDENT-ATHLETE HEALTH & WELL-BEING: Demonstrates a commitment to the health and well-being of student-athletes. Collaborates with sports medicine, nutrition, and strength & conditioning support staff to facilitate student-athlete health. Utilizes approved practice and training methodologies.

Supervisor Comments: In speaking with the support staff, Teri has been a great partner with them in referring student-athletes and operating based on their guidance related to each student-athlete.

Head Coach Comments: I have more concern than ever about the student's ability to navigate their academic and athletic commitments. We had a number of health issues ([REDACTED]) that I feel we handled the best we could. However, all this resulted in missed training which obviously affected performance. More of a concern is the lack of emotional agility and resilience. While not always followed through on by the athletes, I continue to encourage and suggest professional support. I also believe the [REDACTED] is causing greater stress for more athletes and showing itself in a variety of ways. I also believe a general societal intolerance of difference of opinions is manifesting itself and causing tension that aren't always dealt with in a mature/adult way.

Coach's Self-Rating: ME

Admin Rating: ME

RECRUITING: Understands, supports, and abides by all applicable recruiting rules and regulations. Plans, organizes, and implements a sound and successful recruiting strategy to achieve specific recruiting objectives. Recruits high-quality athletes who are qualified for admissions to Cal and capable of succeeding academically.

Supervisor Comments: We are excited about the transfers that Teri has recruited for next year. Per her evaluation as well as our observations, there needs to be improvement in being able to sign the top high school seniors. I am confident that Teri is looking closely at her recruiting strategies and will make necessary adjustments.

Head Coach Comments: We're meeting expectations by using the transfer portal and [REDACTED]. We need to do better with the high school athletes. I believe this is one of the main reasons a change needed to be made with my assistant. I also think me being closer to retirement in some instances makes it more challenging with the younger athletes.

Coach's Self-Rating: ME/I

Admin Rating: ME/I

OBSERVANCE OF RULES COMPLIANCE: Demonstrates knowledge and compliance with University, conference, and NCAA rules and regulations. Ensures relevant information is shared with Compliance staff and they are consulted when necessary. All compliance responsibilities are performed in timely and accurate manner.

Supervisor Comments: I am happy to hear that Teri has been working collaboratively with the compliance staff and meeting expectations.

Head Coach Comments: I think we've stayed on top of compliance issues, answer emails/requests in a timely manner and continue to ask questions if clarity is needed.

Compliance Comments: Demonstrates an atmosphere of compliance with NCAA, Pac-12 and institutional rules and regulations. Coach McKeever works very well with the compliance office and completes required tasks and documentation in a timely manner. Specifically, she ensures her program completes all recruiting, playing and practice season, and financial aid tasks prior to deadlines. She is also responsive on items with the compliance staff and designates appropriate responsibilities to his staff. Compliance staff that work closely with Teri have only good things to say about their time with Teri this year. A few challenging items came up this year outside of anyone's control, and Teri has worked collaboratively with our office to address those challenges. Teri has been a pleasure to work with.

Coach's Self-Rating: ME

Admin Rating: ME

FISCAL RESPONSIBILITY: Demonstrates fiscal responsibility, including budget management of operating and discretionary budgets. Understand, support, and abide by all department and University policies and procedures (i.e. budgets, team travel, purchasing, etc.). Stays within or under annual budget, forgoing any extenuating circumstances.

Supervisor Comments: I agree that Teri is an excellent steward of campus resources and has managed her budget very well.

Head Coach Comments: I feel as though I continue to be mindful of our fiscal situation and have made decisions that are fiscally responsible. I don't think there is excess in our program and staying at or under the budget is something I take seriously and have done for many years.

Business Office Comments: Teri, year-over-year has been an excellent steward of campus resources and has historically done a great job of managing her budget.

Coach's Self-Rating: EE

Admin Rating: ME

FUNDRAISING & COMMUNITY OUTREACH: Collaborates and participates effectively with Development office. Communicates positively and effectively with external constituents, including fans, media, alumni, and donor groups. Achieves program fundraising goals.

Supervisor Comments: The feedback from development is great and very constructive. It looks like there is an opportunity for growing partnership in this area.

Head Coach Comments: We have had some changes with our contact in development this year. Our first contact I found difficult to work with. I now believe our contact and I will be able to be more effective and efficient. I support when asked and have suggested on my own ways [REDACTED] and I can contribute to our fundraising efforts. I am hopeful that in the coming year I will have the bandwidth to invest more time and energy in alumni relations. I feel like there is more strategic opportunity here in these last few years of my career.

Development Comments: I was impressed by Teri stepping up to be the only coach to offer a matching gift out of their own pocket to encourage donors to make a gift on Big Give. She then took the donor list and did 1:1 stewardship outreach.

Teri engages her alums to come speak to the team, my only ask would be for her to let us know who she's in contact with so we can coordinate efforts.

Teri readily acknowledged that her community is not as philanthropic as the men and "we have work to do and I know that". I think Teri and our office will thrive with a specific year-long plan mapped out ahead of time so we can avoid the busier times of the year for her.

I think Teri was a bit more nervous than some of our coaches around hosting alumni events [REDACTED] which was unfortunate this year, but understandable. I thought she put together a nice senior lunch post-meet where a few alums stood up and addressed the group about their experience as alums of the program.

We have a real opportunity to engage with her community in the upcoming months ahead of the aquatics gala in the fall.

Coach's Self-Rating: EE

Admin Rating: ME

ADMINISTRATIVE RESPONSIBILITY: Demonstrates administrative responsibility, scheduling, and student assistance. Communicates effectively with peers, subordinates, and student-athletes by actively listening, clearly and effectively sharing information through oral and written communication. Identifies problems and makes clear, consistent, and transparent decisions to resolve them. Coaches, evaluates, set expectations, provides feedback, develops, manages conflicts, and inspires subordinates.

Supervisor Comments: Teri has always been super organized and great about submitting paperwork on time. She also has been very good at communicating with me as issues arise. Based on the feedback from student-athletes, it sounds like her communication with the team could improve.

Please rate the effectiveness of your coaches' communication.

Exceptional - 0% (0)
Above Average - 14% (4)
Average - 39% (11)
Below Average - 28% (8)
Unsatisfactory - 18% (5)

We will continue to work through this in partnership with Teri and [REDACTED] Staff I and develop a plan for improvement in the student-athlete communication area.

Head Coach Comments: I believe I did a good job communicating with Jenny and other support staff. I think I gave plenty of notice about any changes and for the most part asked for support in time so that things weren't last minute. I also think I am very effective communicating the training plan and expectations with the team.

Coach's Self-Rating: ME

Admin Rating: ME

PROFESSIONAL CONDUCT: Exhibits professional approach in the workplace, including but not limited to leading by example, integrity, accessibility, punctuality, and general positive demeanor with students and peers. Demonstrates the ability to work in harmony with other members of the coaching staff. Shows respect for others and their differences, promoting fairness and equality. Works effectively and in partnership with others in the department and promotes cooperation and collaboration.

Supervisor Comments: Teri has done a nice job of collaboration with fellow coaches, staff and administrators throughout the past year. Her demeanor with the others in the department has been positive. Based on the feedback that we are hearing (as noted above), it does sound like there is some room for improvement in some of her interactions with the team and individual student-athletes.

Head Coach Comments: There are many constituents that need to work together to have a successful result and experience for the team. I feel I am inclusive of and acknowledge and appreciate those individuals that support our program. I do

think I struggled with getting [redacted] and I to work together as a more collaborative unit and at times this effected my relationship and interaction with the team and some individual team members.

Coach's Self-Rating: ME

Admin Rating: 1

EQUITY, DIVERSITY, & INCLUSION. How is the program reflecting the University's commitment to equity, diversity, and inclusion?

DEIBJ Office Comments: The DEIBJ office has not had any substantive engagement with the women's swimming program or Coach Teri. This is something that is needed and that the DEIBJ Office would welcome.

Head Coach Comments: I struggle with this at times because I feel that an atmosphere of inclusion and equity isn't always an atmosphere of excellence. I believe you have to earn with your actions and behaviors the opportunity to belong to a culture of excellence. And, not everyone wants to do that which is fine. However, because individuals aren't willing to make the consistant choices and priorities to earn this opportunity I don't think they should get to say the coach or program is not inclusive or equitable.

Coach's Self-Rating: ME

Admin Rating: ME

SUPERVISOR COMMENTS

Include notes from student-athletes interviews: [redacted] poll results

This was a challenging year for Teri and the team. Many of the issues Teri raised in her write-up were definitely factors in the internal strife within the team. I have included above the feedback from the student-athletes and it was not very positive nor was the feedback during the senior exit interviews. Themes from the student-athletes included:

- Personalized attacks – particularly during freshmen and sophomore years
- Some students afraid to go to practice
- Afraid to talk to Teri
- Student-athletes are so anxious going into every practice
- Very negative coaching style
- Fear of retaliation
- Gotten worse this year
- Teri doesn't take criticism very well
- Picking on individual people

Overall results from the year included:

- [redacted]
- [redacted]
- Individual achievements:

- Swimmer AL
- Swimmer AJ
- Swimmer V
- All-Americans,
- Pac-12 Academic Honors
- Olympic Staff

Conclusion:

The culture must improve and we will work with Teri and Staff to develop a written plan to make the necessary adjustments to address these issues.

HEAD COACH COMMENTS

I thought was a tough year, and this season far exceeded last year. A much larger squad with roughly % of the team members being new to CAL, the diving coach resignation, struggles with my assistant coach and so much more all contributed to a season that literally has me emotionally and physically spent.

Since NCAA's I have made tough decisions, used my resources to reflect and also just let things be. I find myself disappointed and at the same time knowing that I truly did my best each day. Hindsight allows us to question our decisions, and it also allows us to be motivated to do better. After this evaluation process, I want to give myself permission to move forward and stop beating myself up for what I could have done better.

This year, I found myself wrestling with situations that I didn't have experience to draw from, and that's telling when you've been a Division I head coach for years and here at CAL for . The responsibilities of this job have never been greater and more diverse. I find it increasingly more challenging to meet all of these demands from so many people, all of whom seem to want and expect something different from me.

I also want to thank you for allowing me to serve as . That experience seems like a lifetime ago as I write this, but it definitely is one that I am so happy to have had. I am proud of how I was able to show up and how I supported our swimming success.

I also don't want to feel like I have to apologize for not being . While disappointing, I feel the consistency of our long term success is exceptional. We broke the record at for consecutive yet the program has been since the season.

PROFESSIONAL DEVELOPMENT PLAN FOR NEXT YEAR

This section should be completed to reflect career advancement and development opportunities, including identification of deficiencies needing improvement. Coach and supervisor should work together to develop specific steps for development/improvement, time parameters, and as appropriate re-evaluation of performance.

3-5 GOALS/OBJECTIVES FOR NEXT YEAR

This section will be completed jointly by employee and supervisor to identify specific goals and objectives to be achieved in the next year. It should include training/education needs, specific goals in the job, and steps contributing to department goals. The employee and supervisor should review progress during the 12-month period.

1. I want to find more joy and fun in my interactions with the team. I want to inspire and teach beyond the A's and D's of swimming because I feel that's the true value of sport. I need to find time to interact with team members beyond the clock; coffee, travel, class, dinners, etc.

Comments

2. I want to feel comfortable delegating more off my plate. I want to really get clear on how I can best use my skills and times to positively affect the team.

Comments

3. I would like to put together some sort of alumni newsletter, solidify the alumni support behind me as the coach and use our alumni to teach, inspire and mentor the current team.

Comments

4. Goals

Comments

5. Goals

Comments

OVERALL PERFORMANCE RATING

1 - 5 Scale

3

Coach Signature

Date

Sport Supervisor Signature

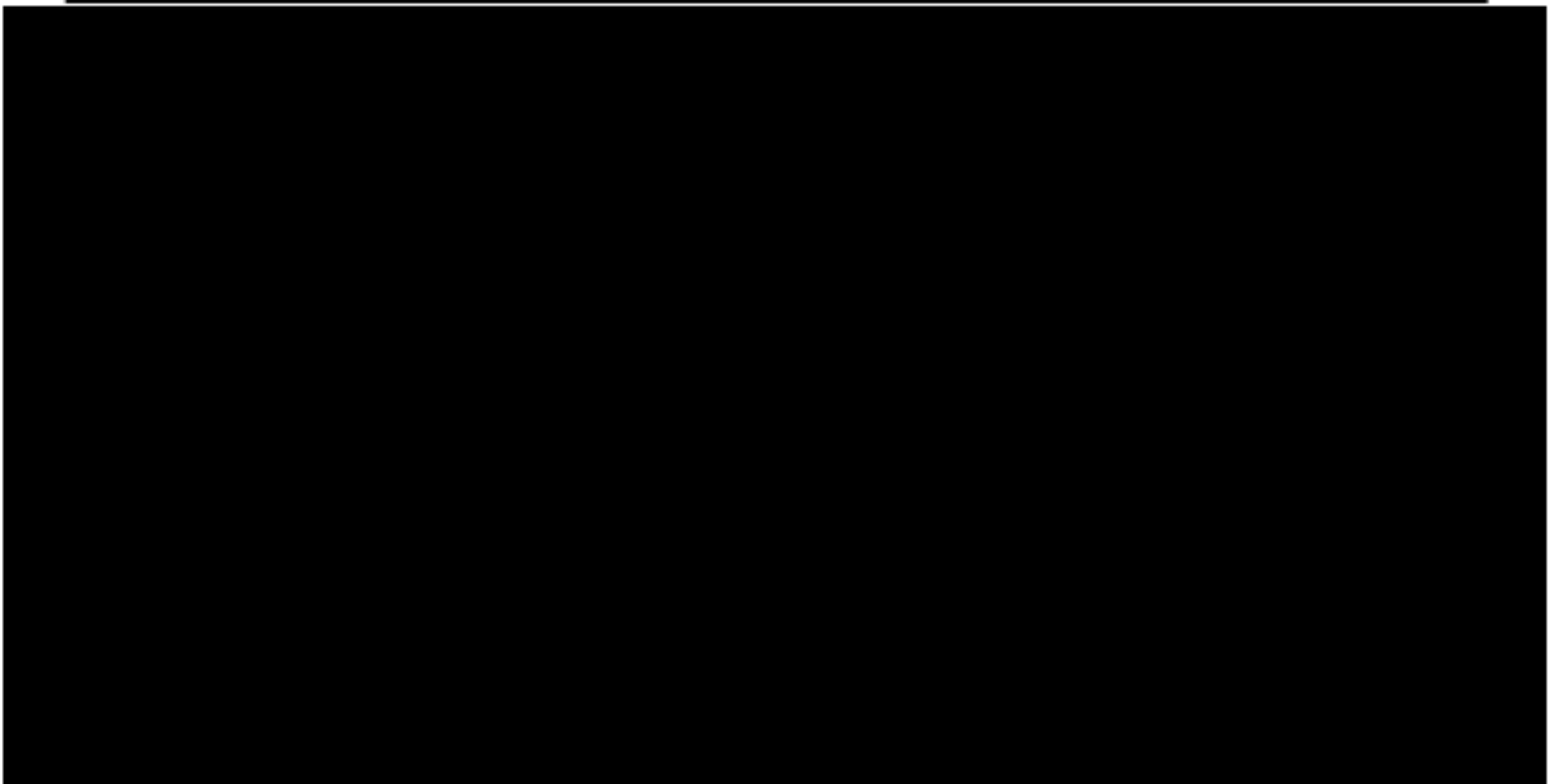
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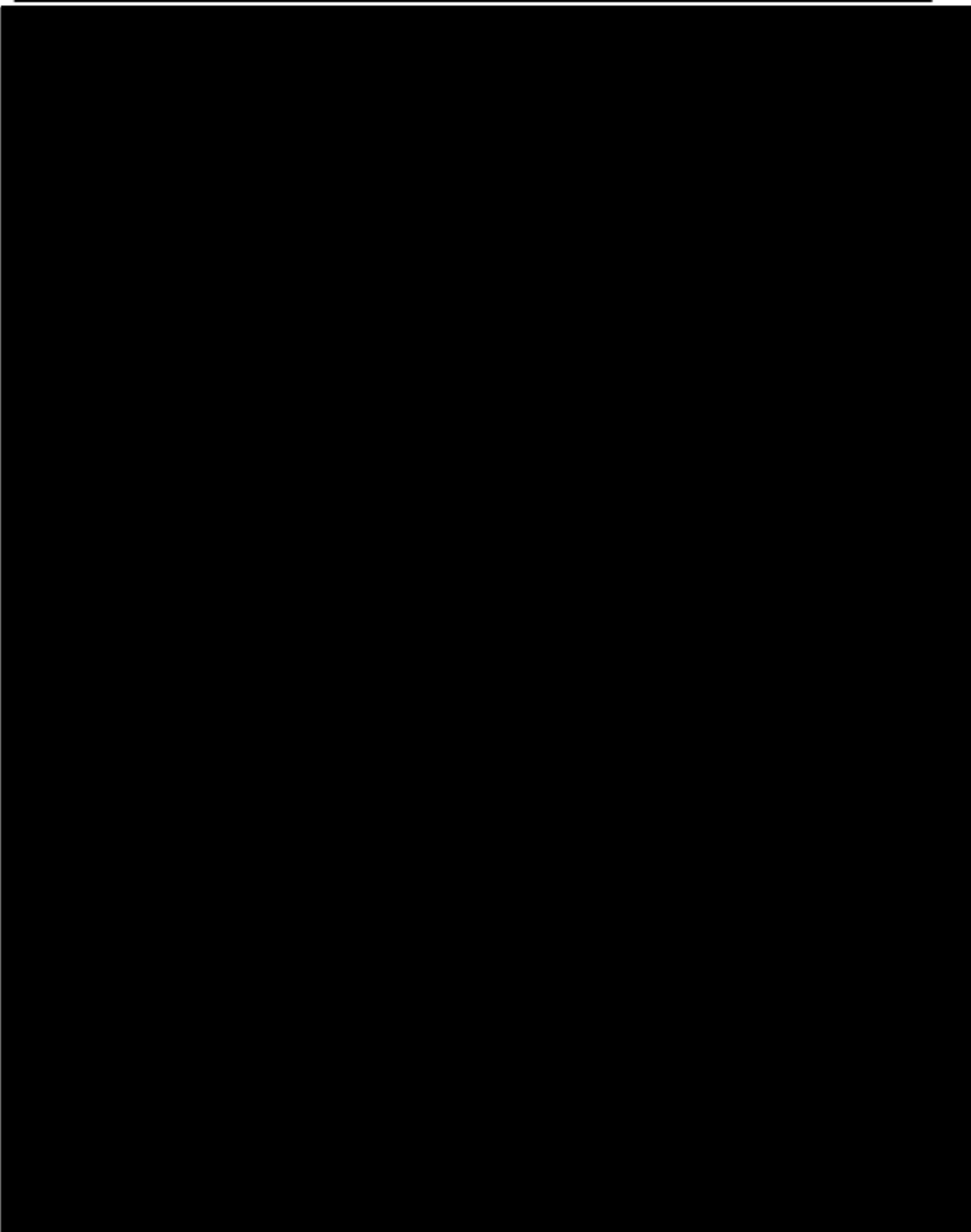
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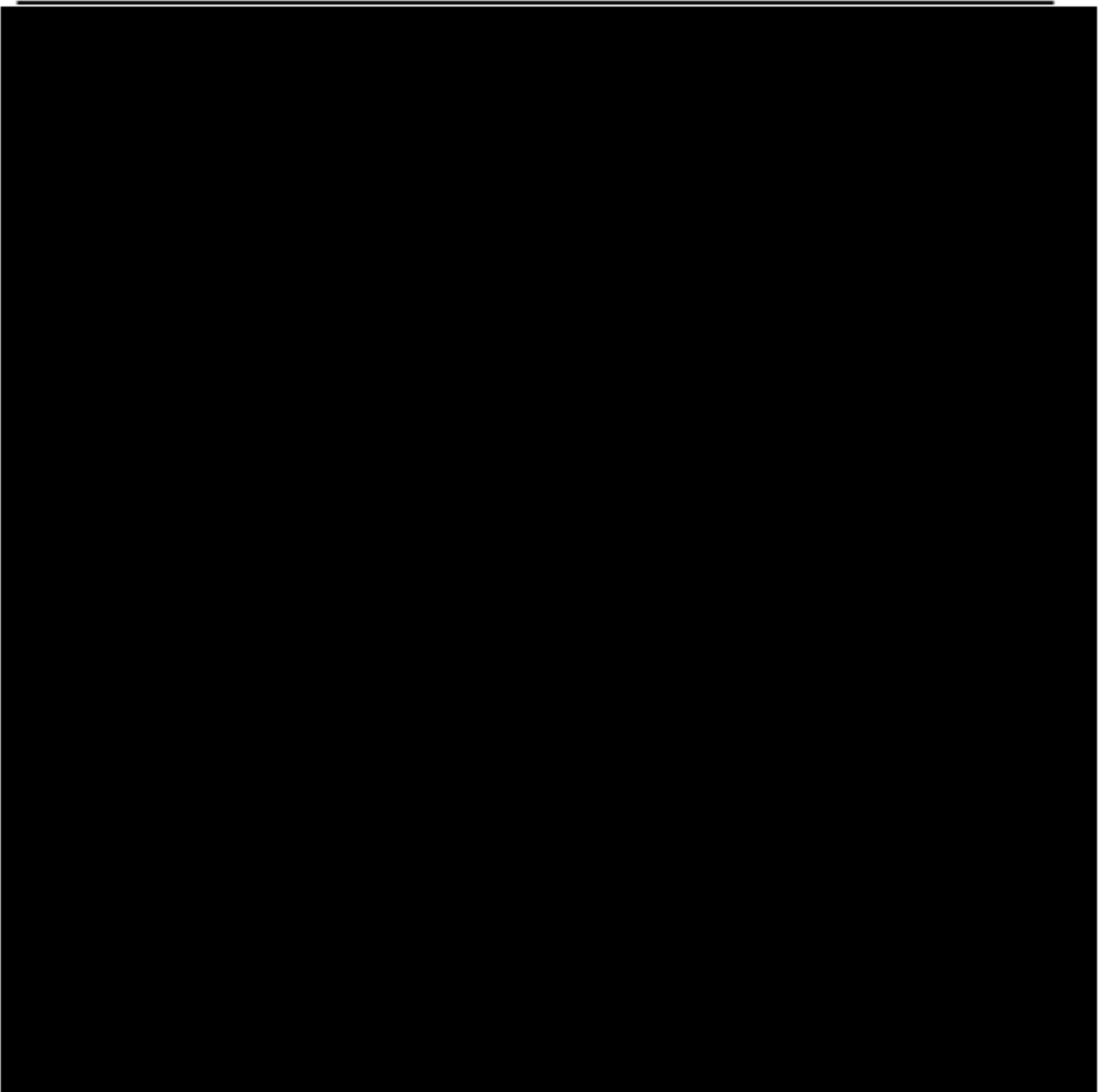
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Fwd: Filing a Report

2 messages

Ask ophd Departmental <ask_ophd@berkeley.edu>

Apr [REDACTED] at 1:21 PM

To: [REDACTED]

fyi...

Forwarded message

From: [REDACTED] Staff B [REDACTED]

Date: Apr [REDACTED] at 3:17 PM

Subject: Filing a Report

To: Ask ophd Departmental <ask_ophd@berkeley.edu>

Cc: [REDACTED] Staff J [REDACTED] Staff A [REDACTED]

To whom it may concern at OPHD,

I am submitting this report on behalf of myself and my supervisor, [REDACTED] Staff B

[REDACTED] On [REDACTED] April [REDACTED] Staff B and I met with three Women's Swimming student-athletes - Swimmer K, Swimmer A and Swimmer B (at their request) and we learned about the following incidents, experiences, and situations:

In the Women's Swimming & Diving Team Meeting Room, Head Coach Teri McKeever was talking with about 10 student-athletes (unclear if the purpose of this meeting/engagement was formal or informal), and Teri was talking about her dislike of rap music. She elaborated about her disliking by mimicking lyrics of rap songs, intentionally saying profane words, including saying the N-word. The student-athlete who shared this acknowledged her immediate discomfort with that word being used, especially by that person and in that environment. The two Black Women's Swimming student-athletes were not present during this incident, and they said that the fact that she felt comfortable saying this, especially in their absence, was disturbing.

The three student-athletes also shared details describing the culture of the Women's Swimming program. Below, I have listed the shared sentiments:

- The three student-athletes shared that they, along with their teammates, feel that the "team is driven by fear ... fear of retaliation, fear of gaslighting, fear of criticism," and the three expressed fear of their positions being in jeopardy for speaking up.
- The [REDACTED] has addressed issues (experienced by teammates) to Teri, and "Teri's response was not receptive to the information that had been shared, and began yelling defensively, ending the conversation prematurely." She also mentioned that she does not appreciate the environment in which they operate as it is not healthy for the student-athletes, and that she does not see herself wanting to continue so long as Teri remains the coach.
- One of the [REDACTED] student-athletes stated that throughout the majority of the year, she felt anxiety towards Swimming caused by Teri's engagements with her, and found herself "crying almost daily" and experiencing panic attacks before practice, as well as prior to returning to Berkeley from various holiday breaks. She said for the first time in her life, she felt as if she hated swimming. She articulated that her coach constantly belittled her, criticized her more than others, kicked her out of practice for not memorizing complex sequences, and more. She shared that her coach said "you are an embarrassment

to the university, the team, and yourself" during the student-athletes' first National Championship experience.

- One of the [redacted] student-athletes shared that as a [redacted] she doesn't feel supported or encouraged at all by Teri, and that historically, there is not a positive track record of [redacted] student-athletes who have matriculated through the Women's Swimming program -- most "dropped out or were forced to quit." She mentioned that she's from [redacted] and that she is unfortunately accustomed to experiencing racism there, but she chose Berkeley because of what she thought was an inclusive environment -- especially of [redacted] -- led by a progressive female coach, but that unfortunately, her experience has not been positive. She shared that Teri asked her if she thought the other [redacted] student-athlete should be on the team, and felt as if she were being encouraged to speak negatively about her [redacted] teammate.

Sincerely,
[redacted] Staff B



[redacted] Staff B

Intercollegiate Athletics

TW: [redacted] IG: [redacted] W: [redacted]

"The most important thing is to try and inspire people so they can be great in whatever they want to do." - Kobe

[redacted] Apr [redacted] at 8:51 AM

Hi [redacted] Staff Z met with [redacted] Staff J yesterday to learn more. It seems like most of the issues are generalized bullying allegations but this issue with the rap commentary crosses OPHD lines. At the least, we would like to have a targeted educational conversation with Teri about the impact of this language on the team, but we are still working to determine the extent of the allegations and whether an investigation is necessary.

[redacted] I'm sure you are in the loop, so just FYI on our next steps.

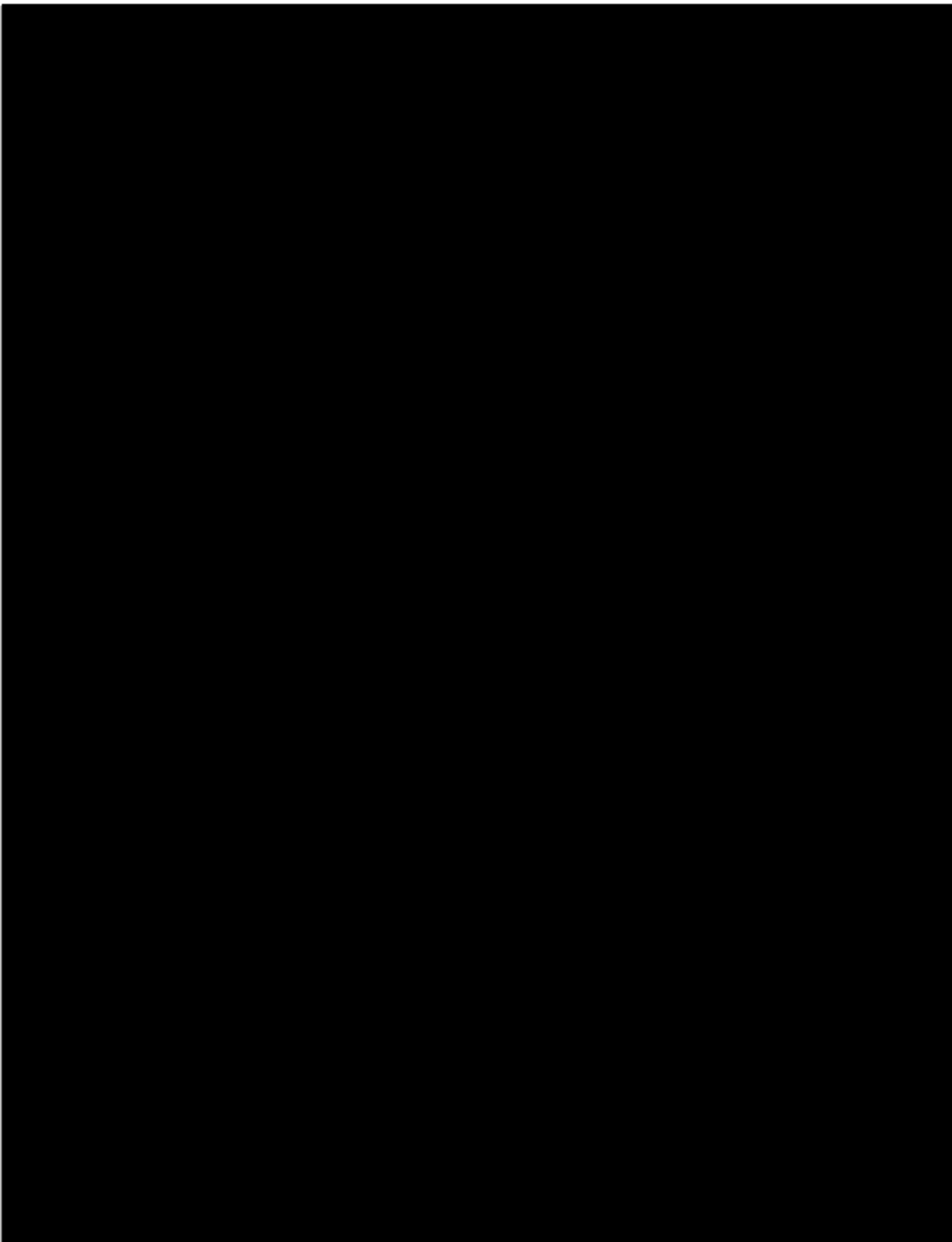
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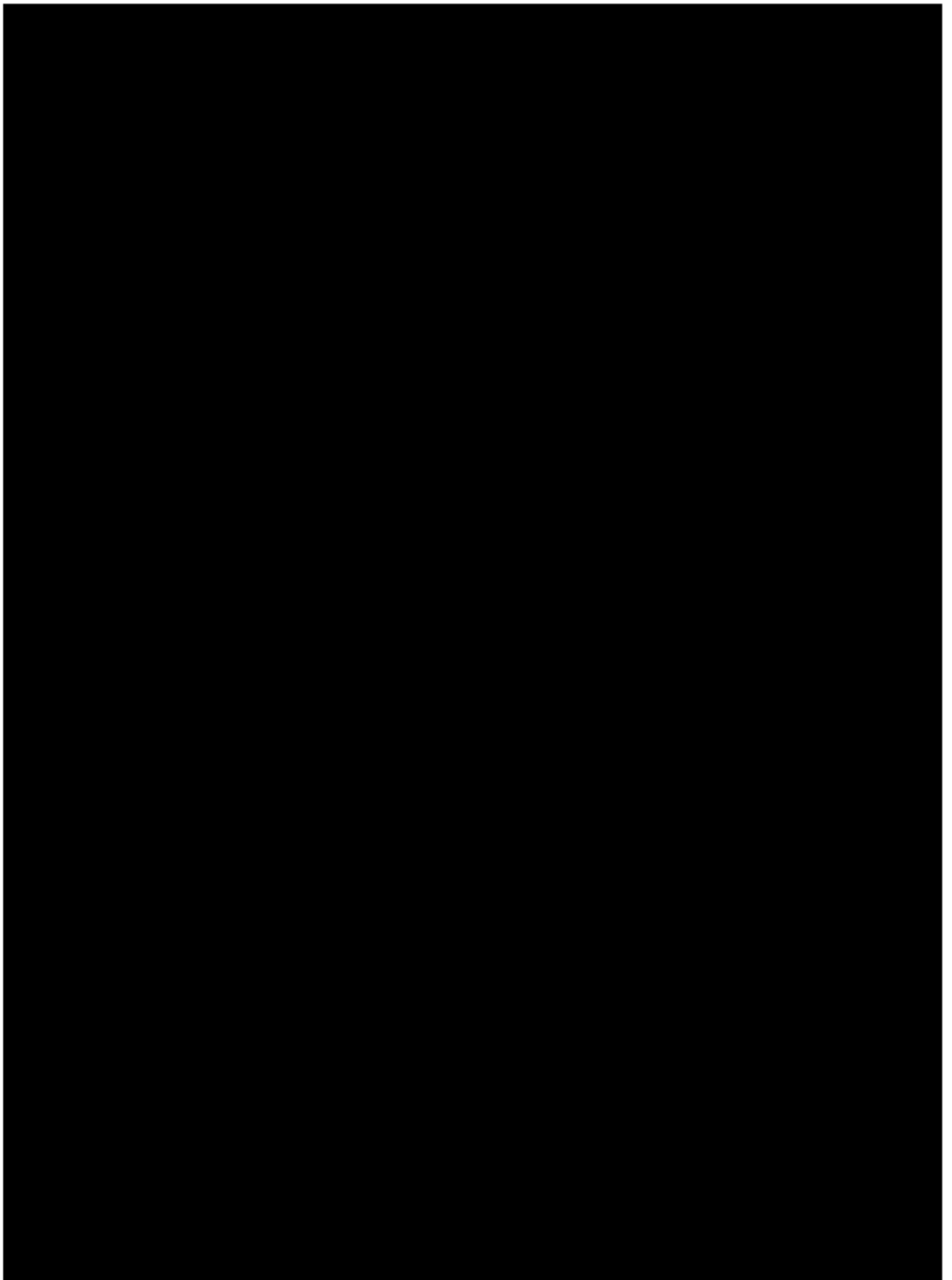
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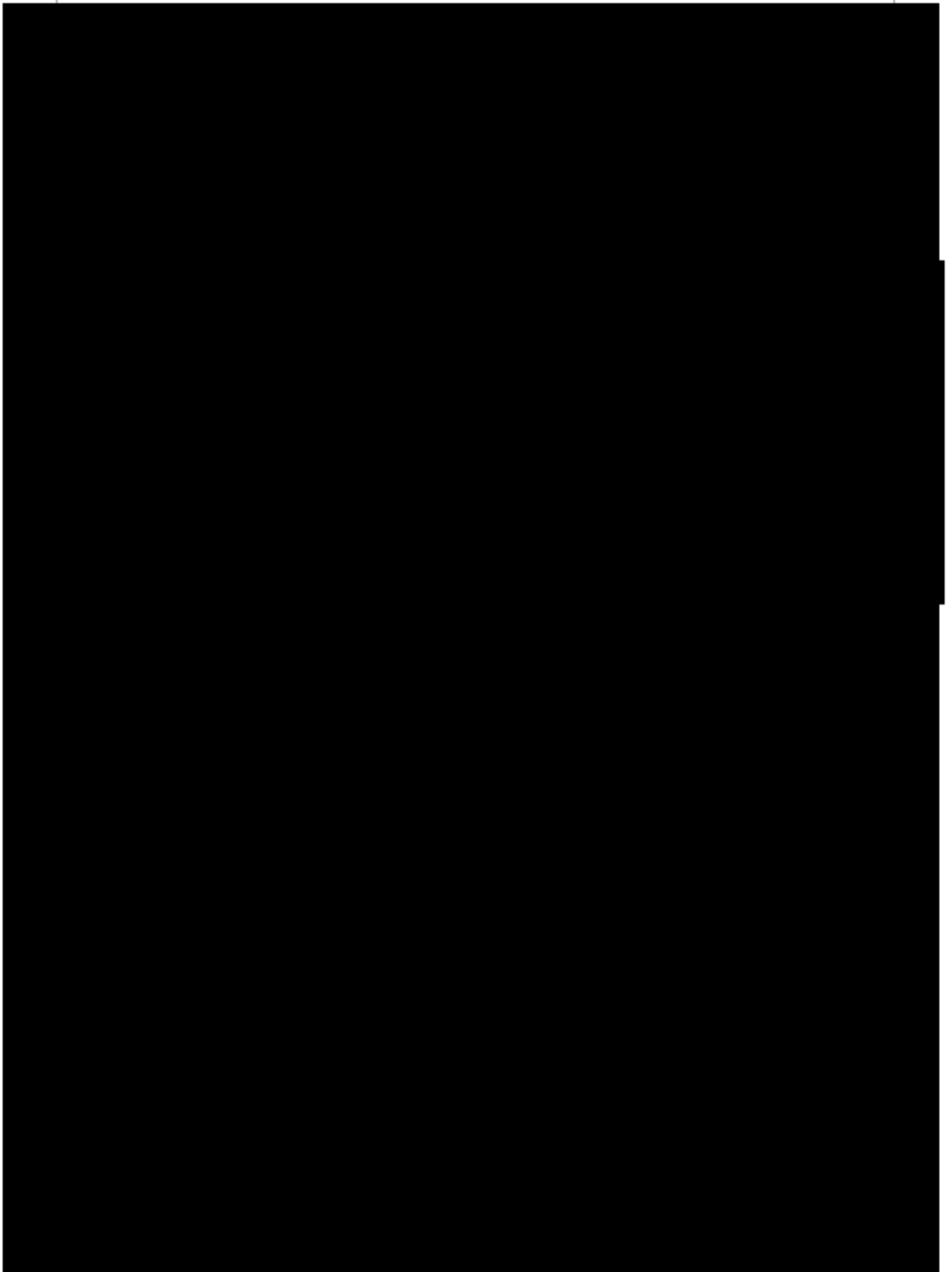
UC Berkeley Mail - Fwd: Filing a Report

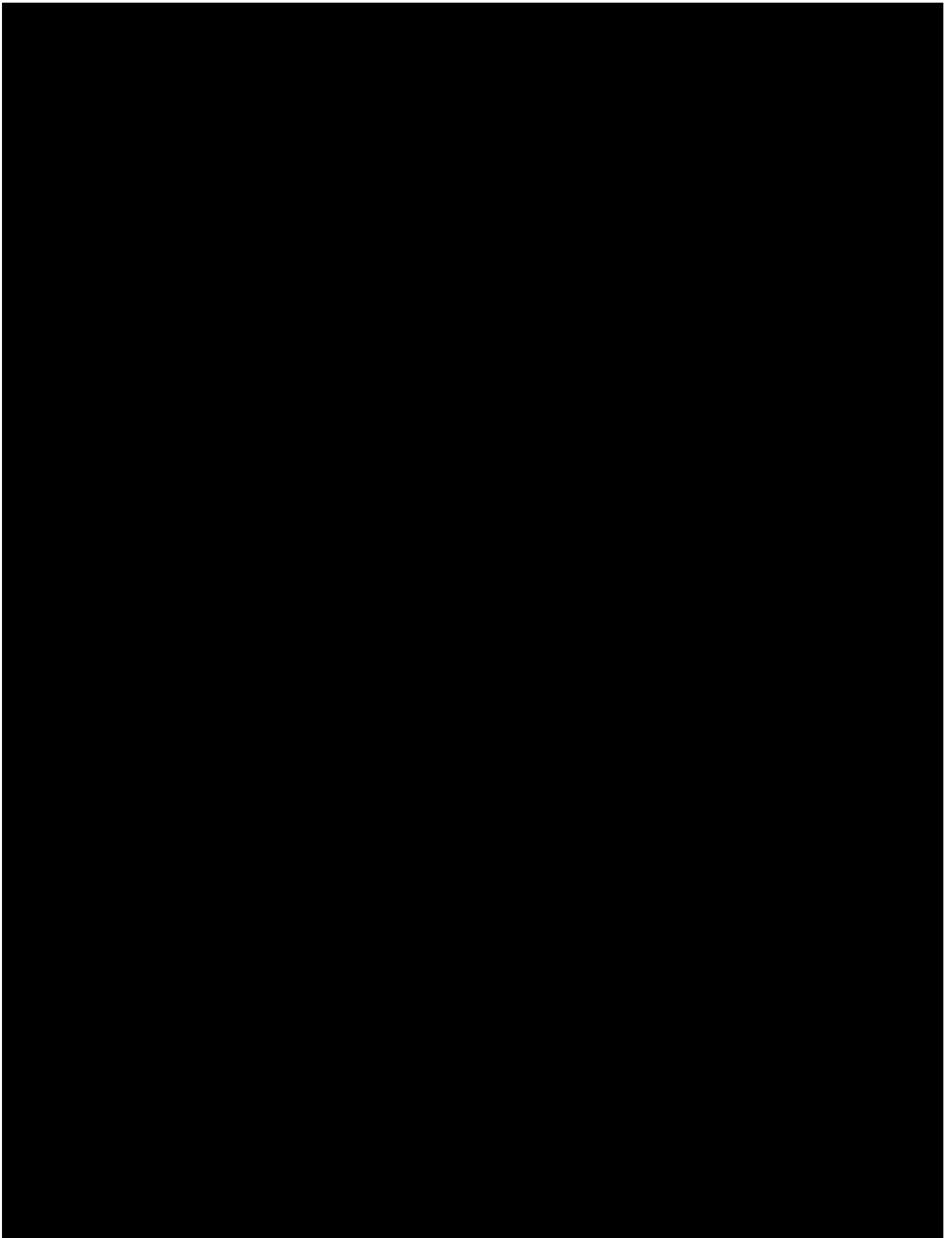


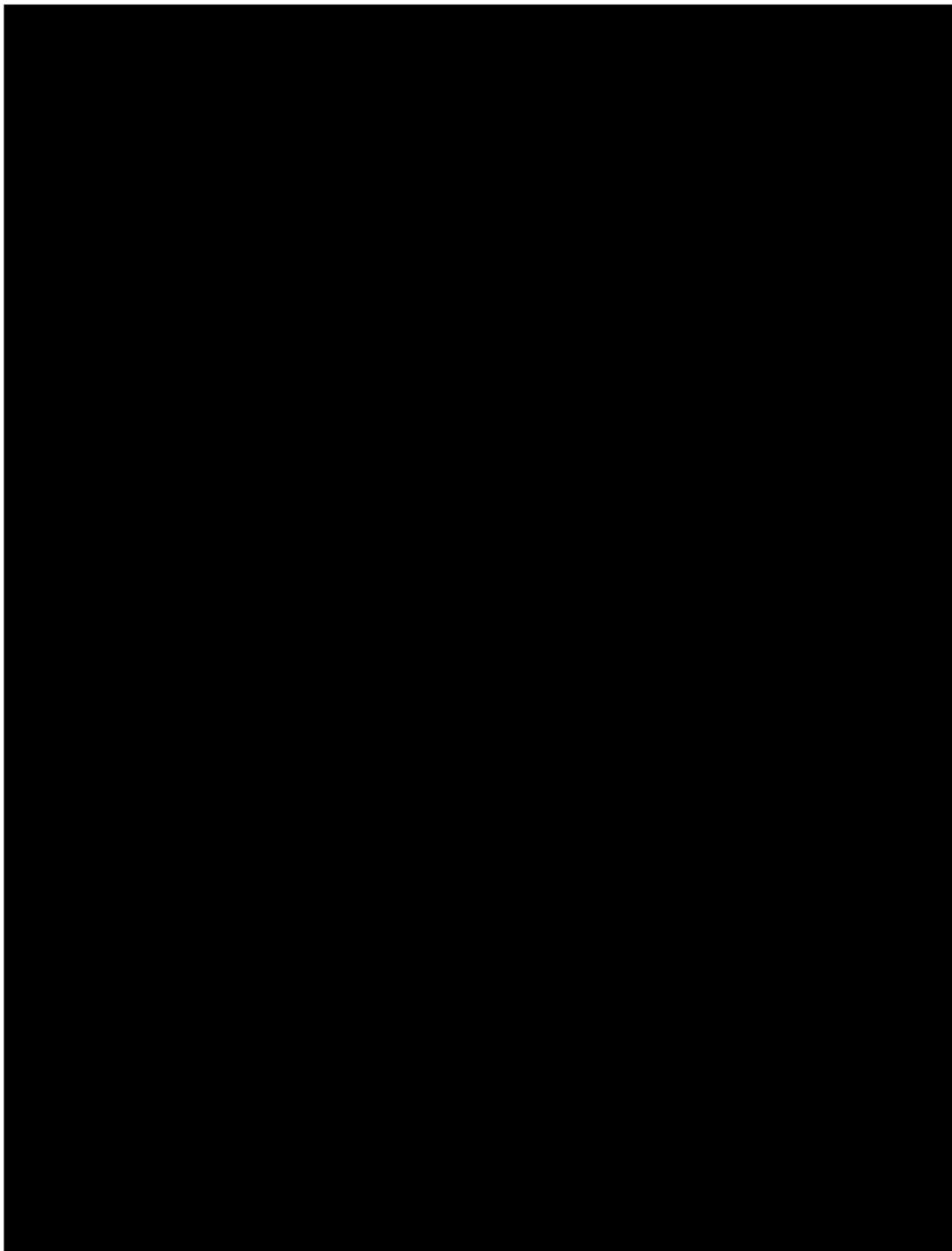
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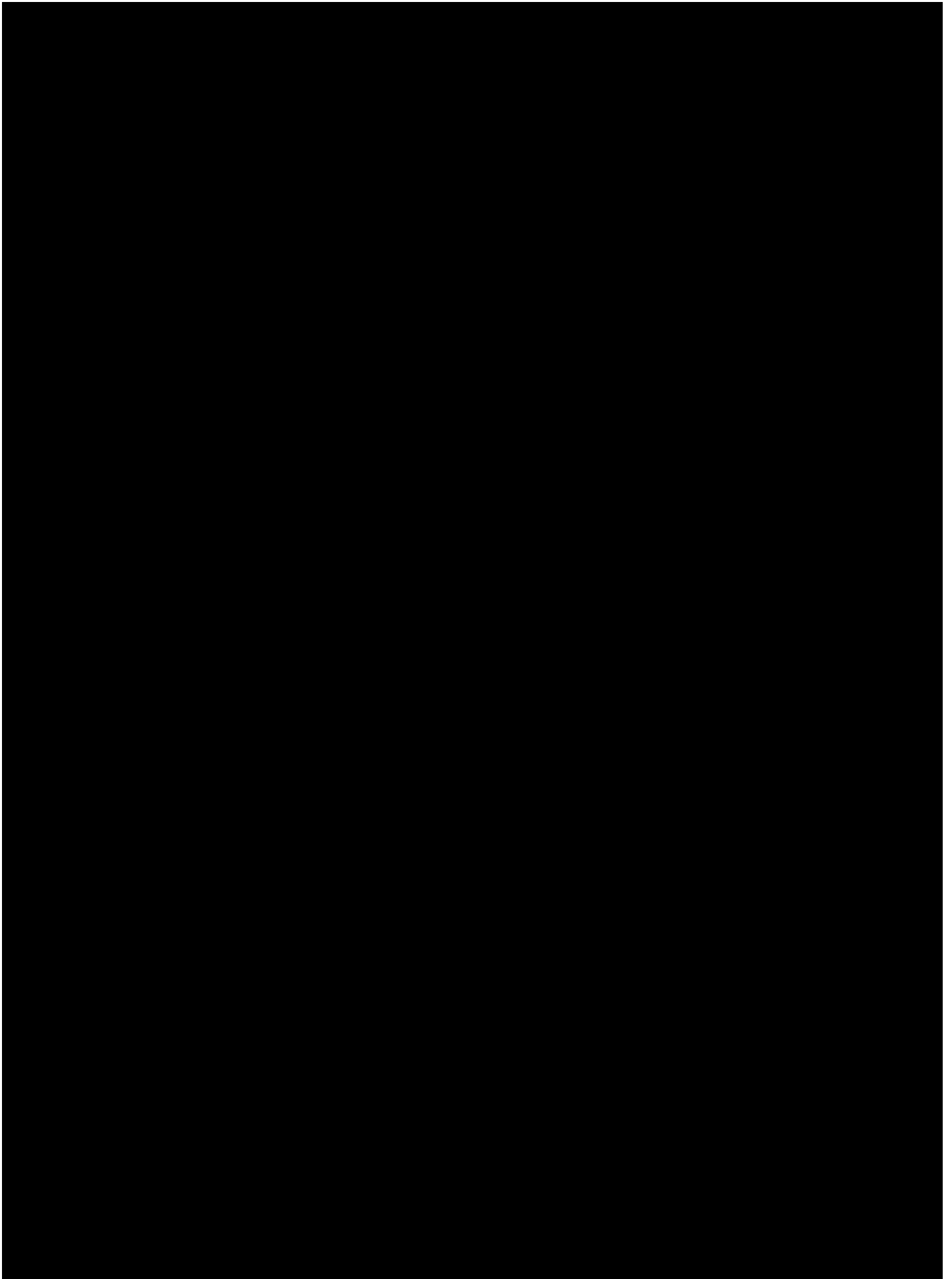


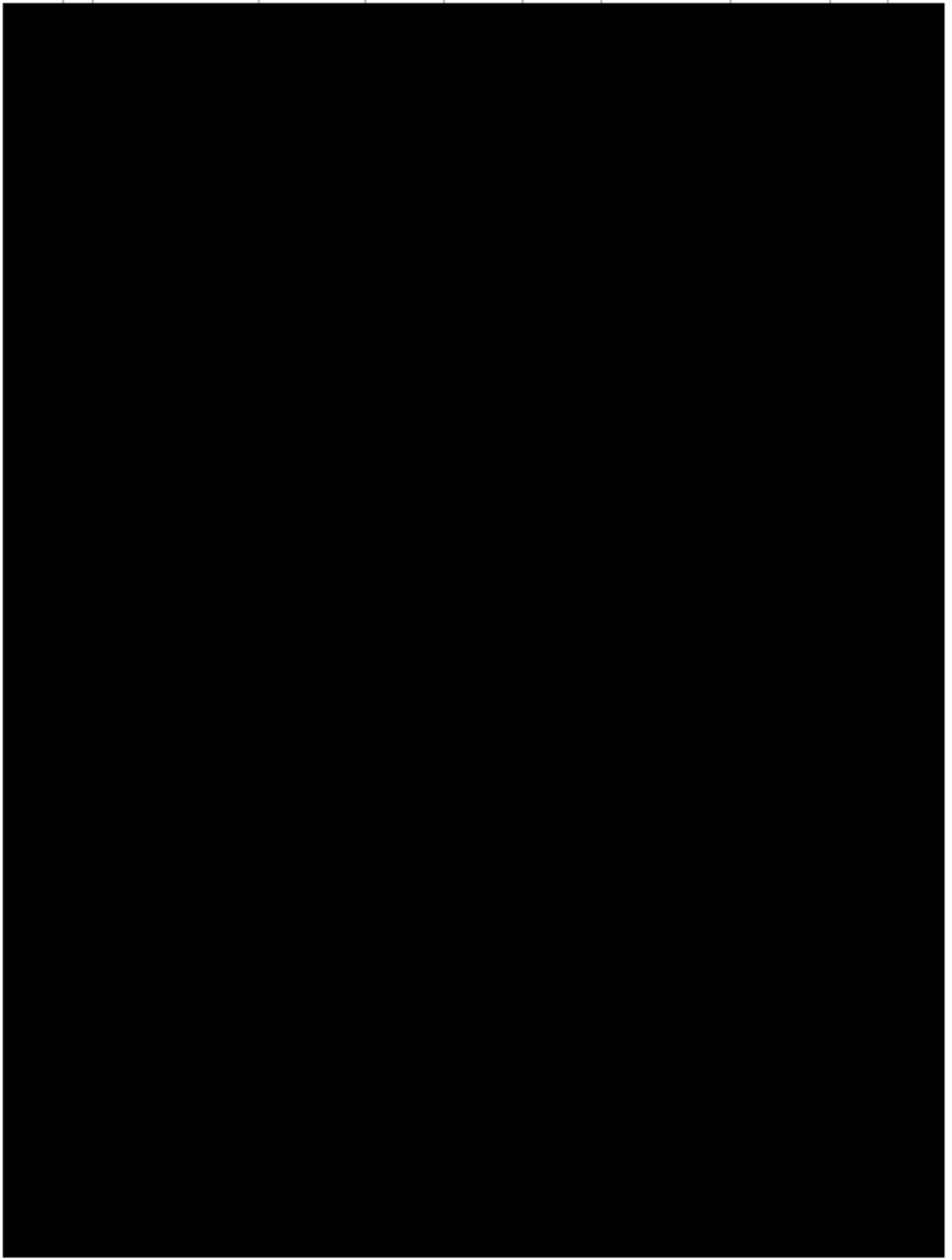


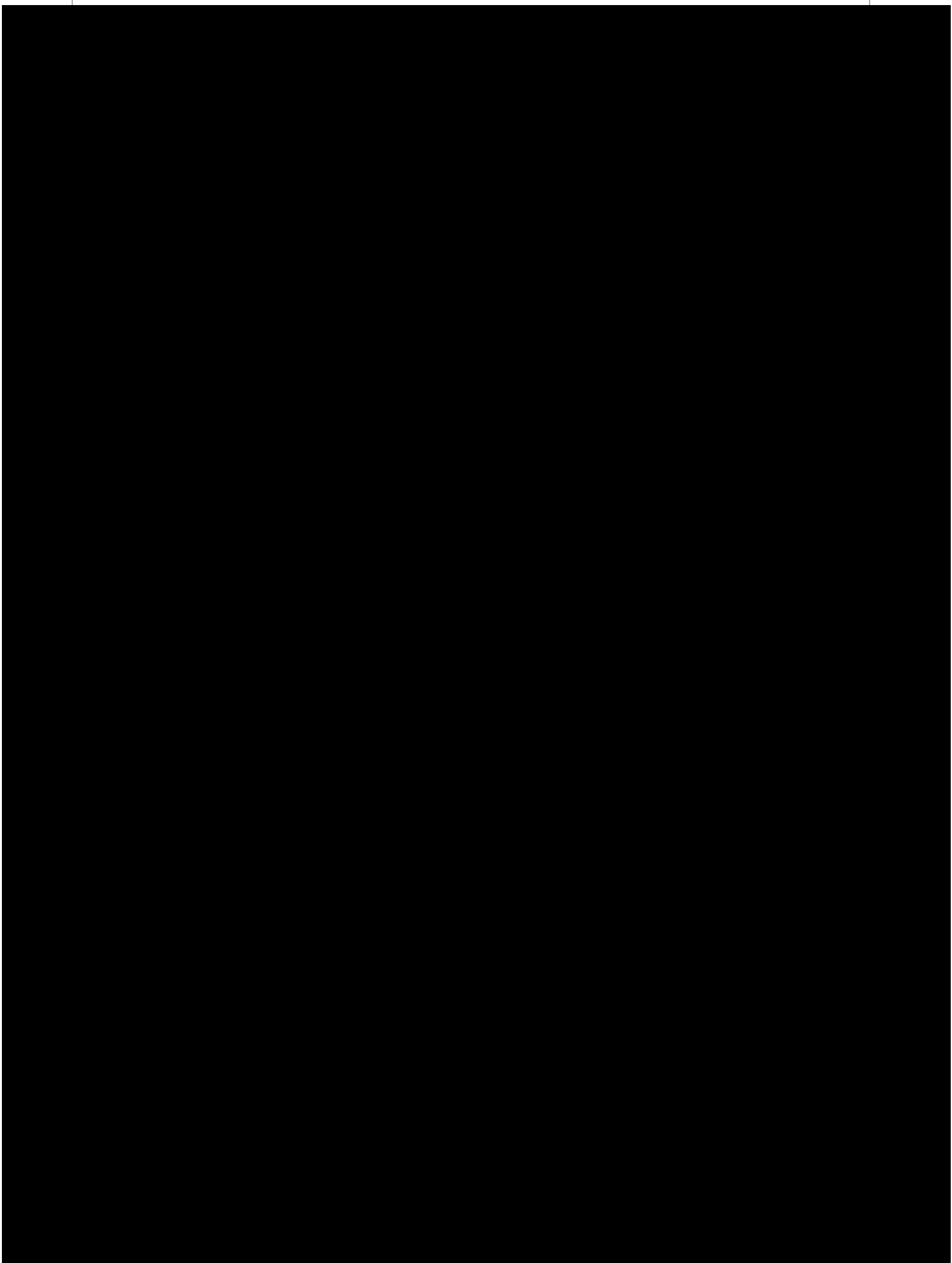


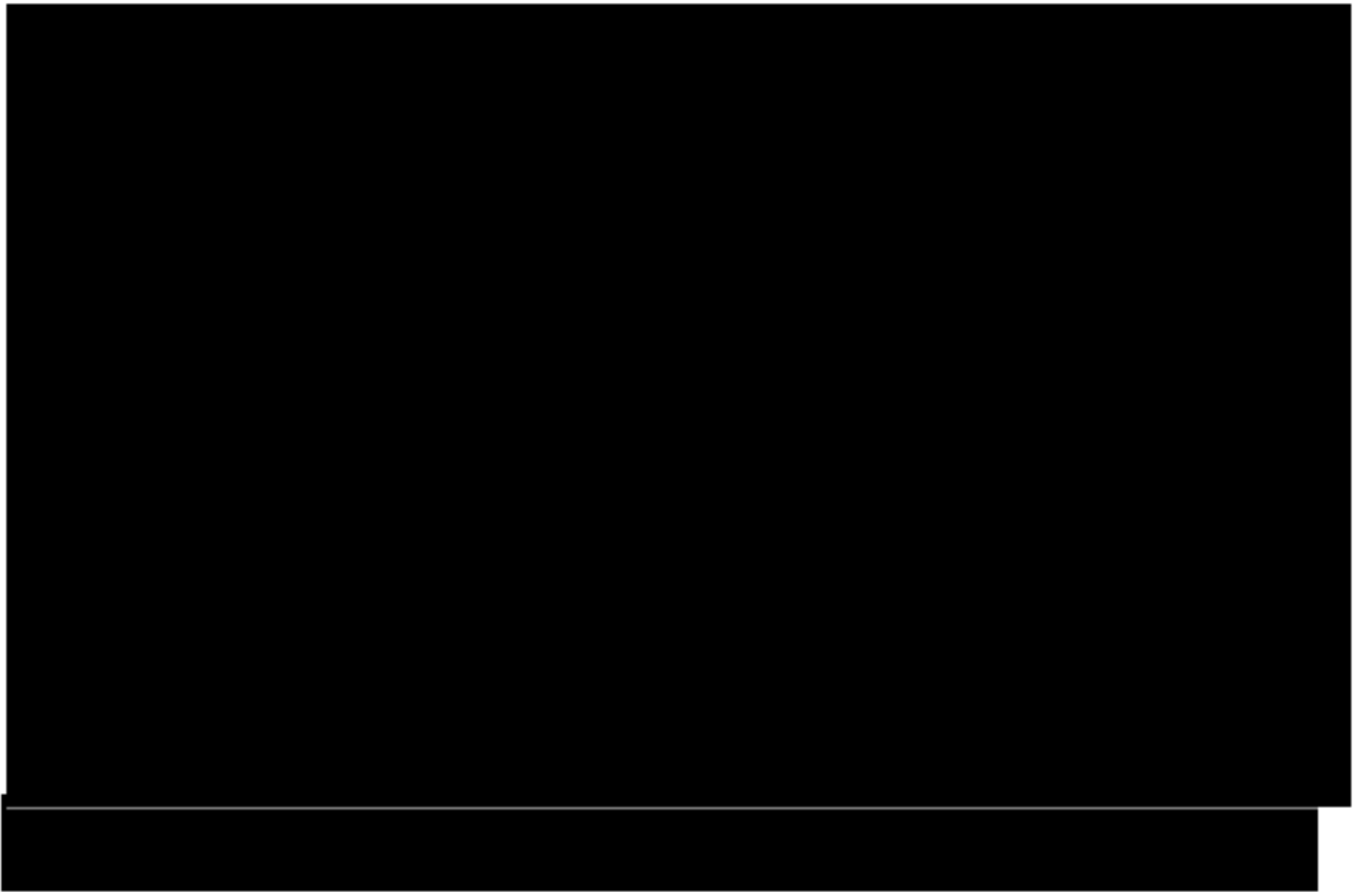


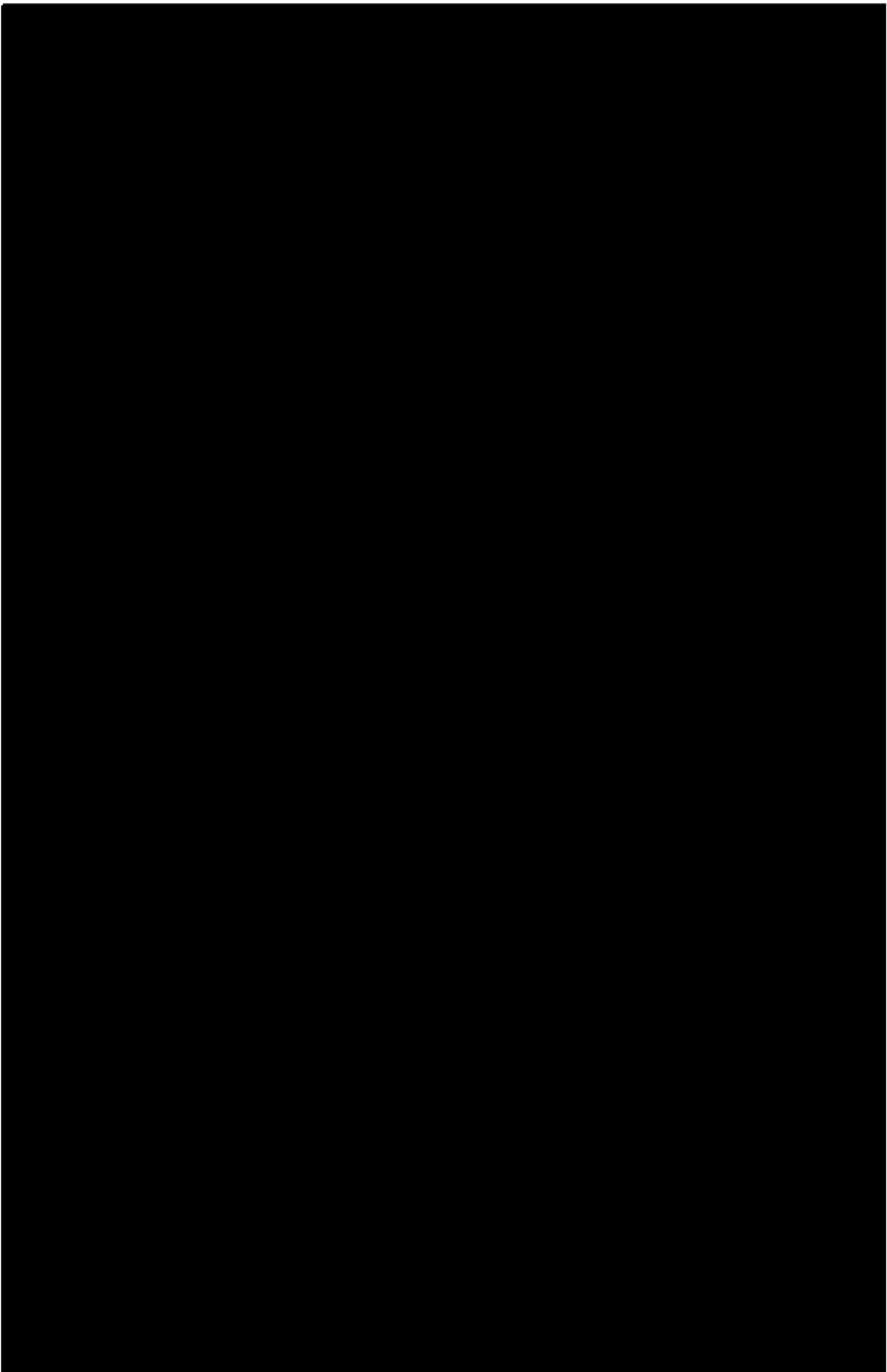


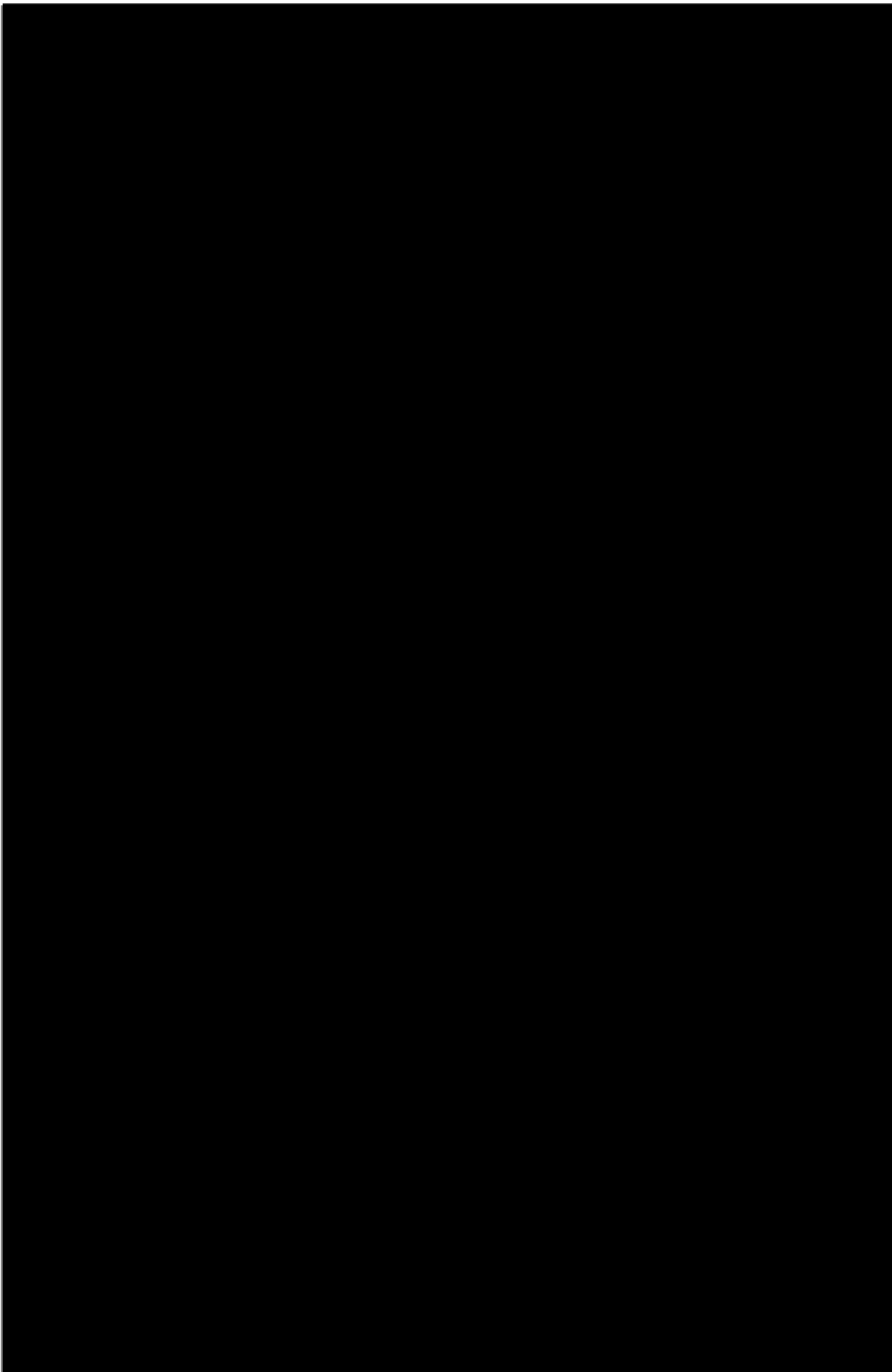


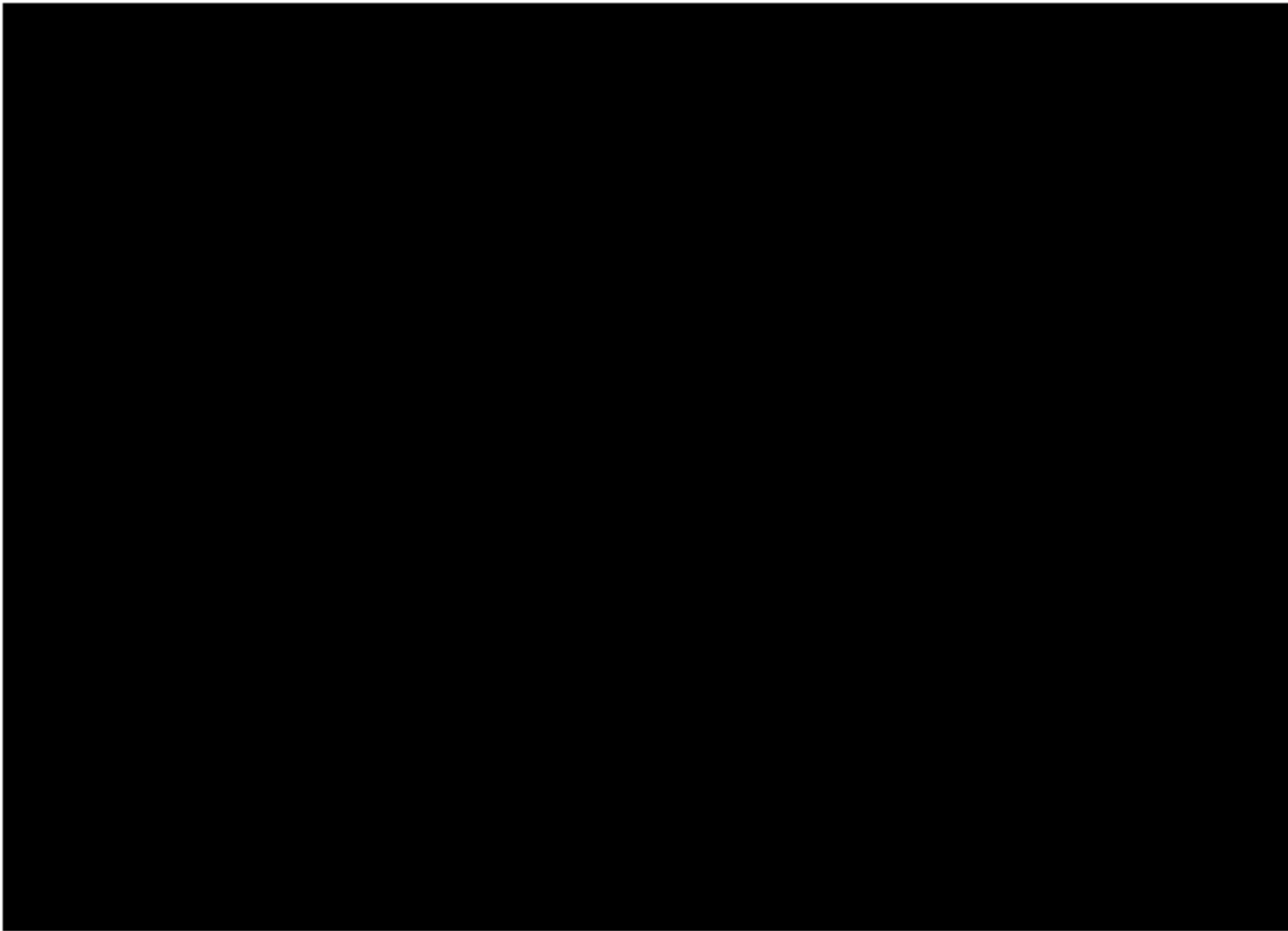


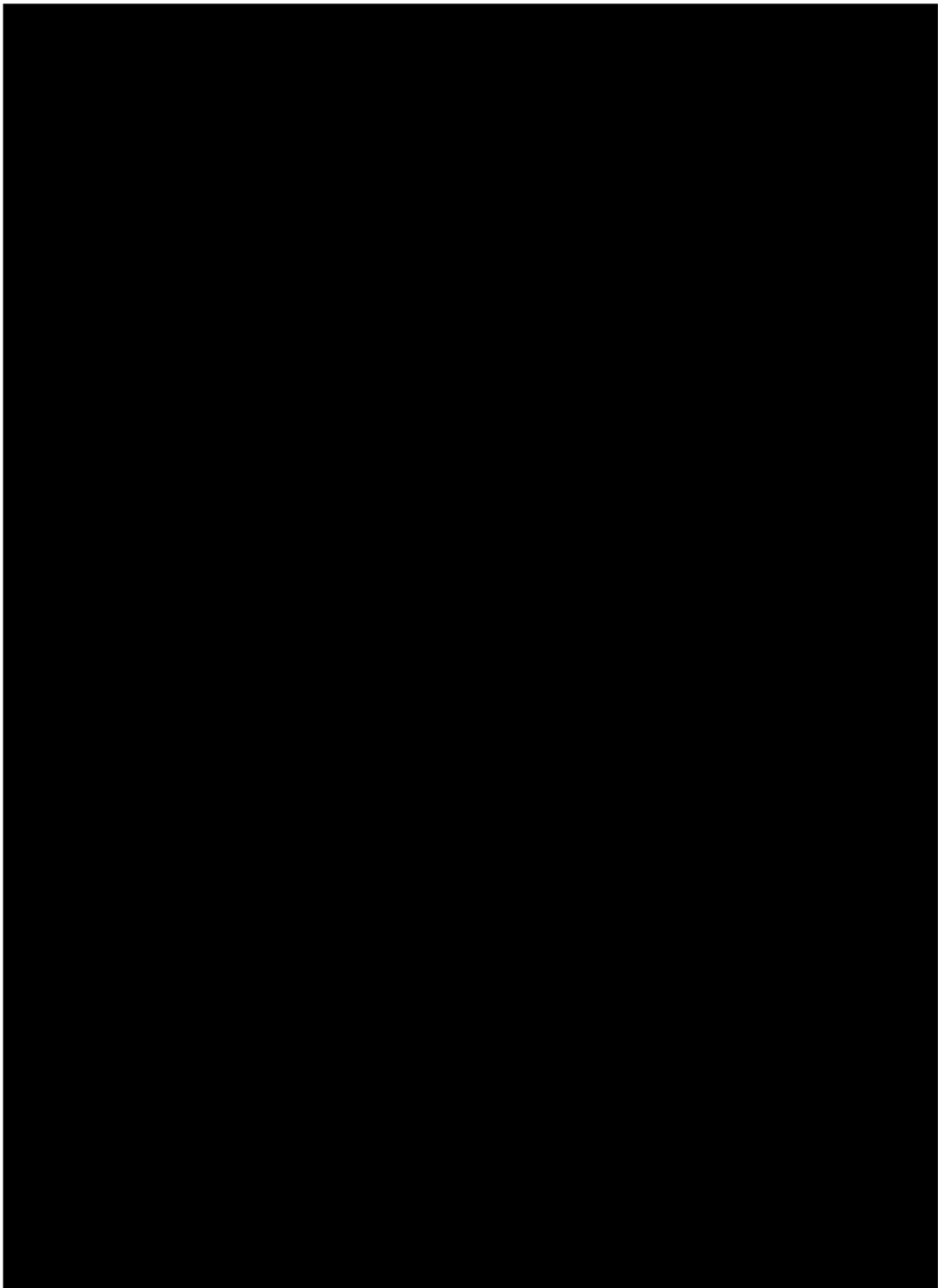


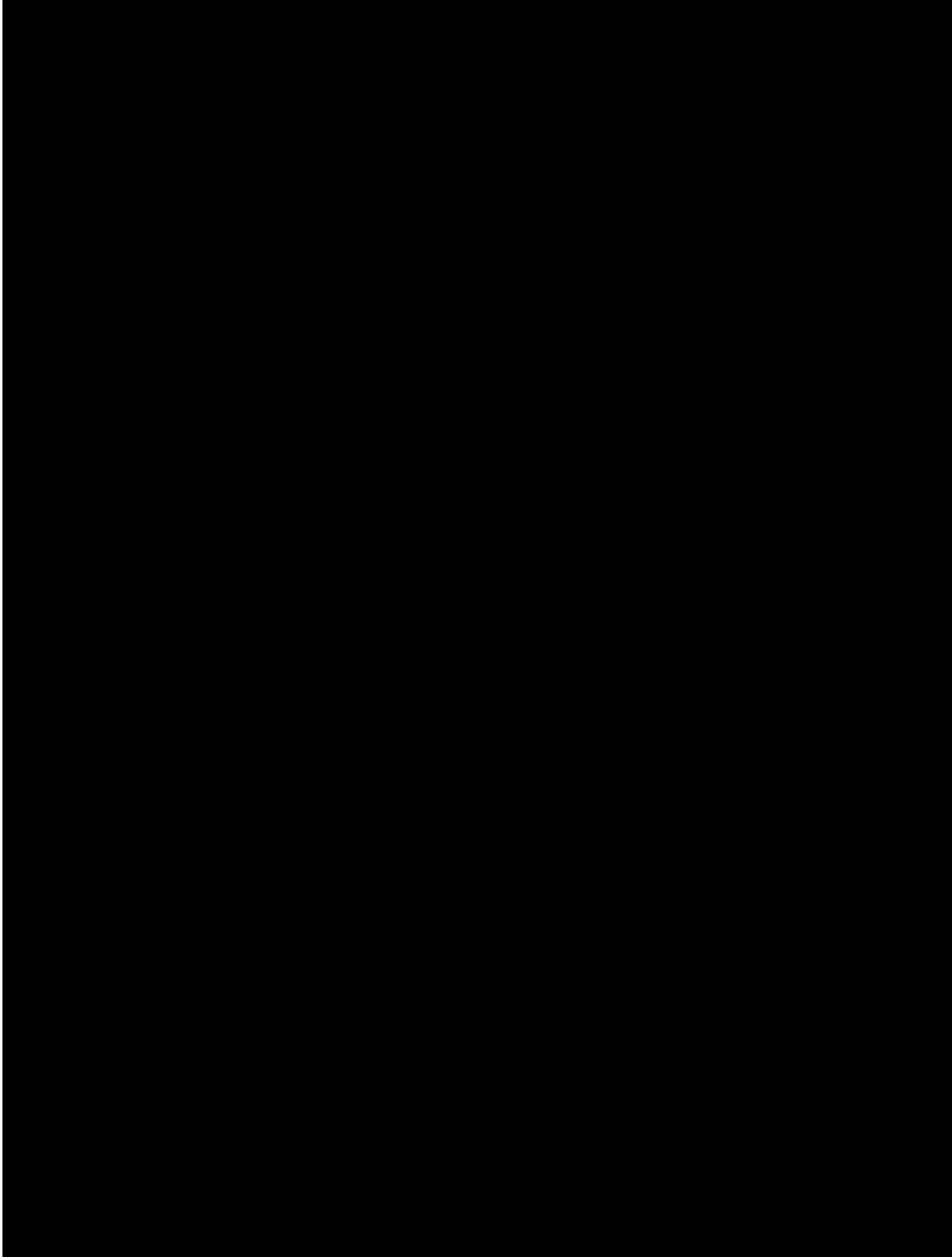


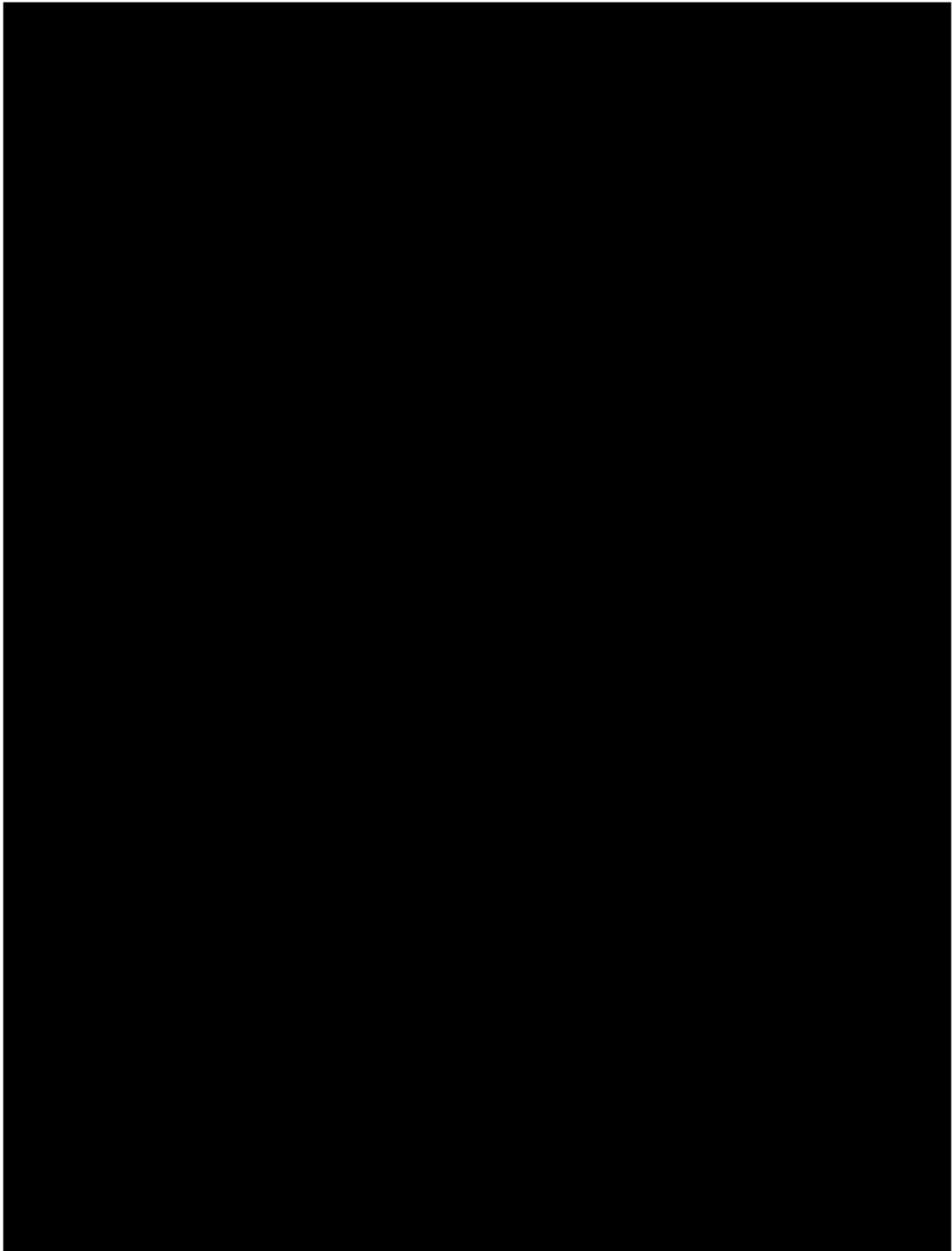


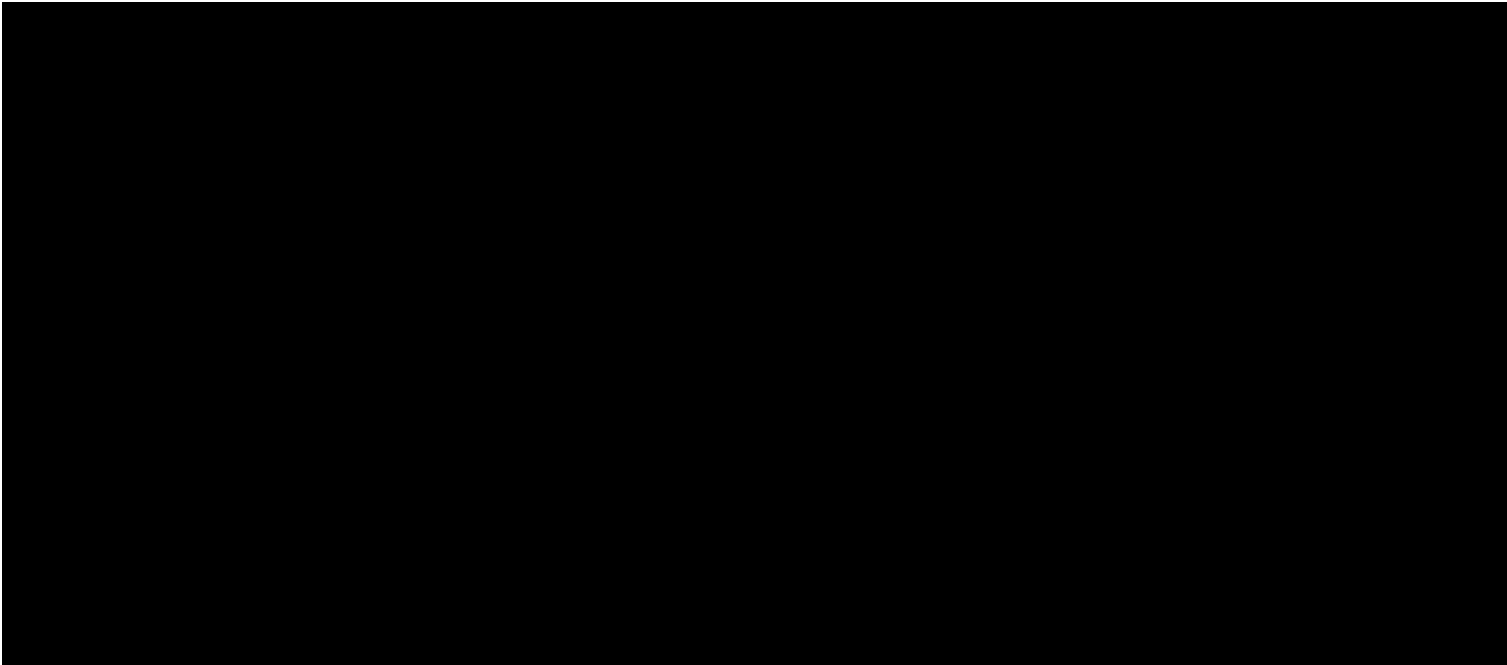


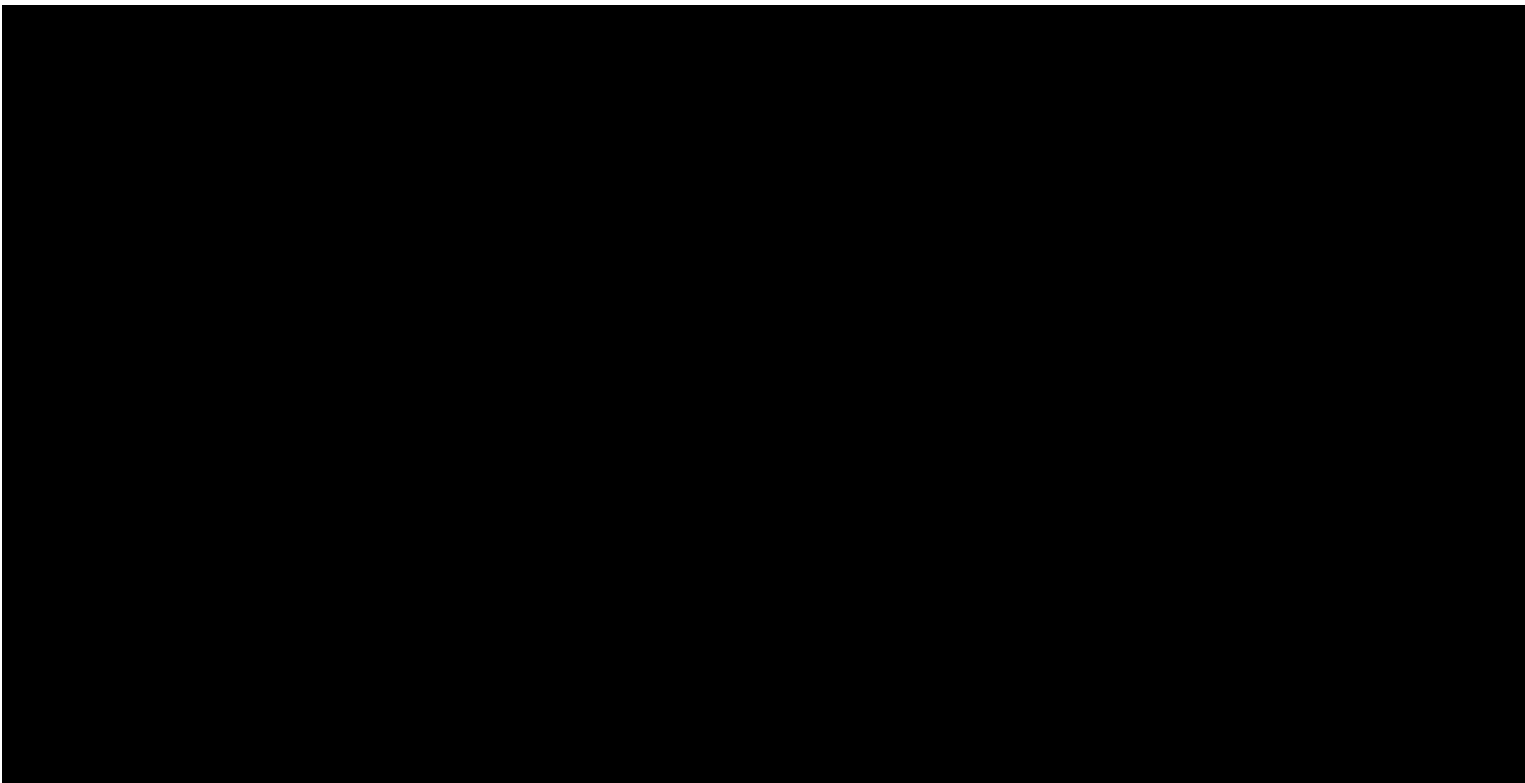
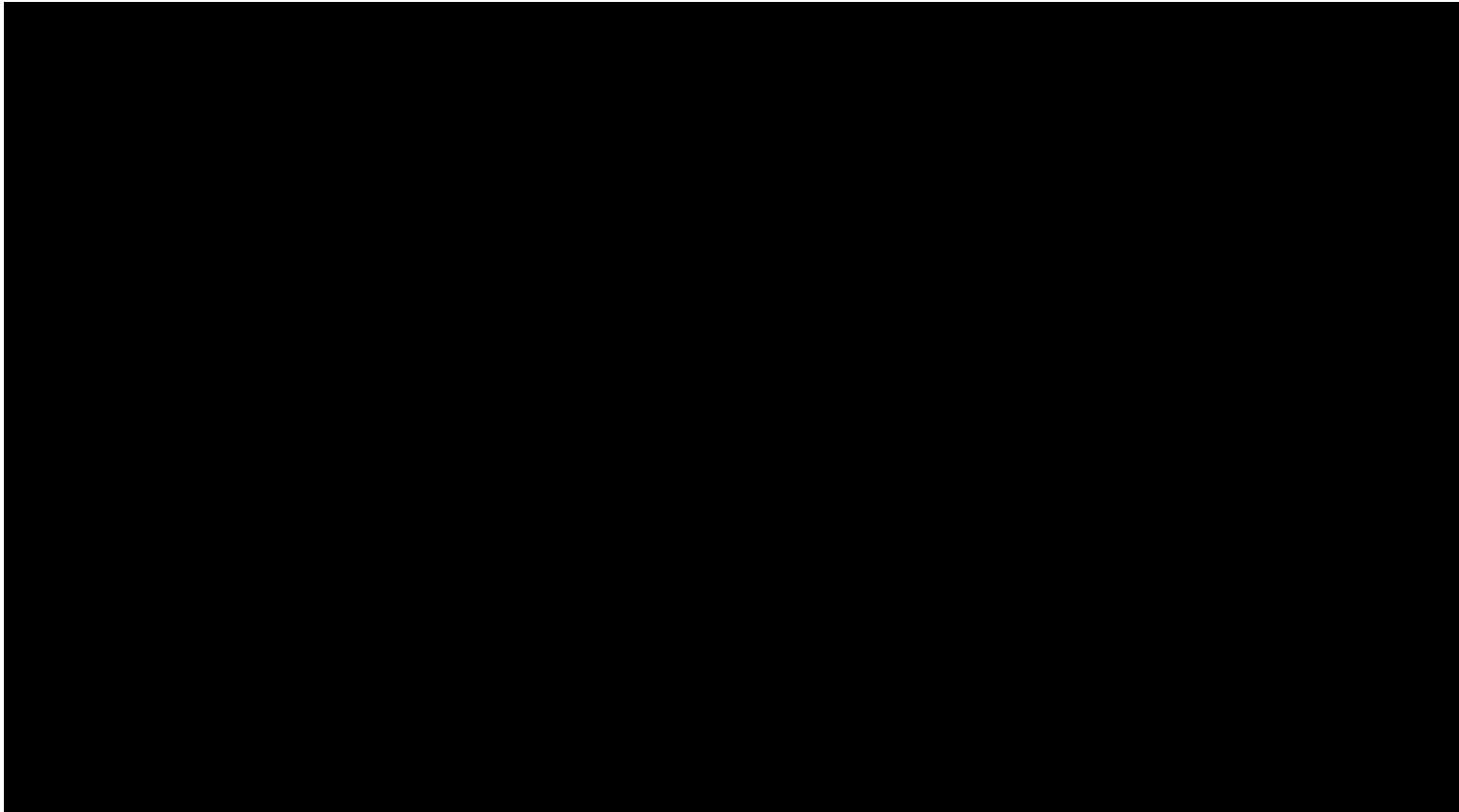


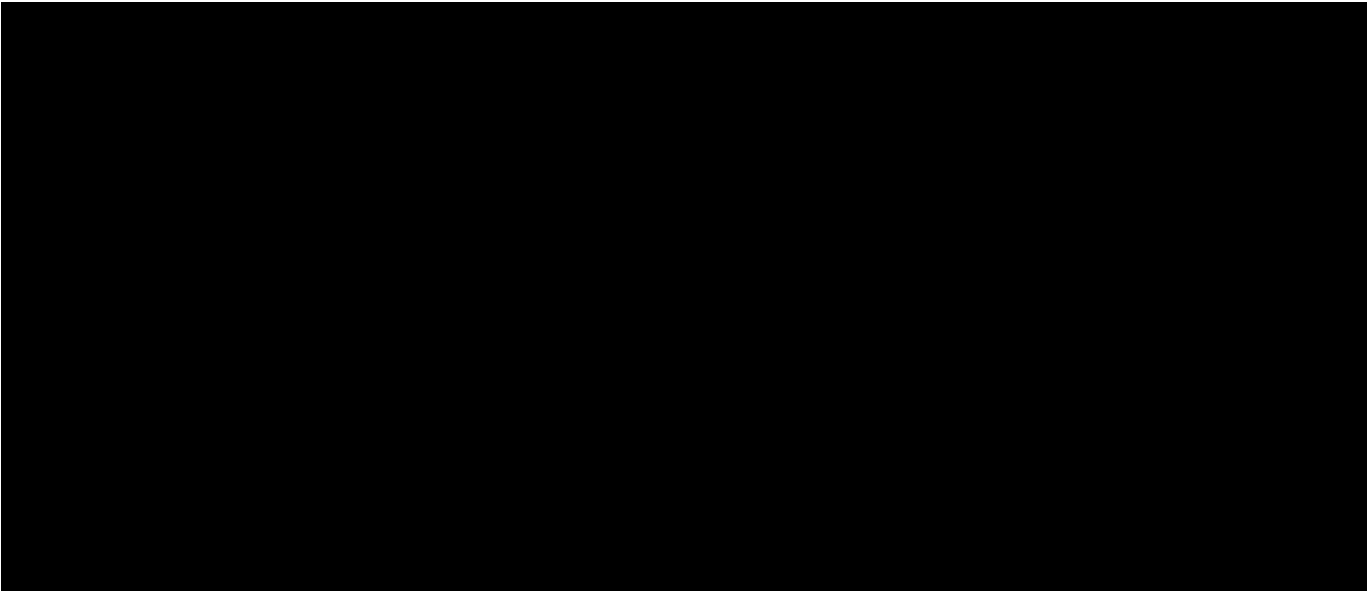
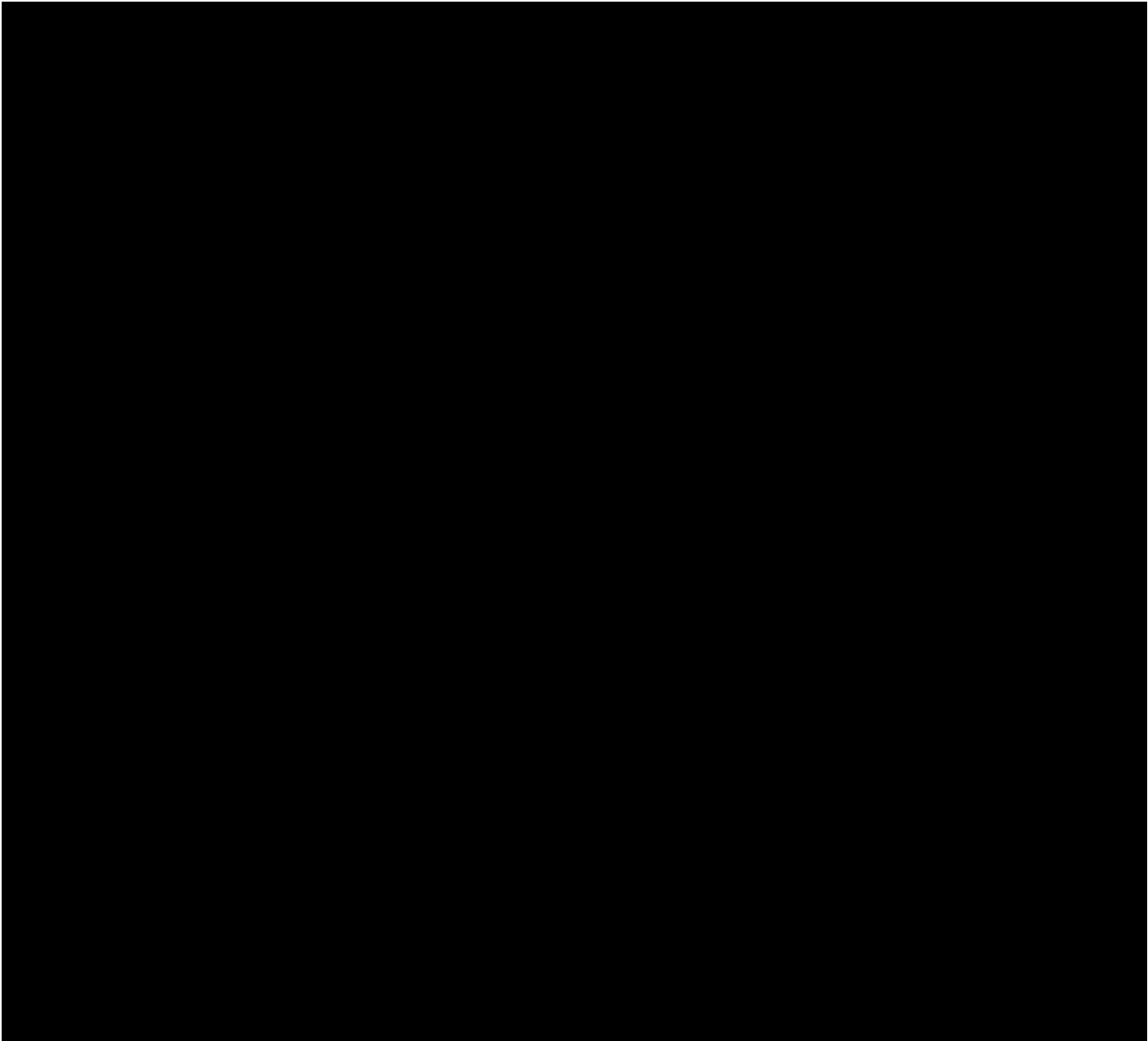


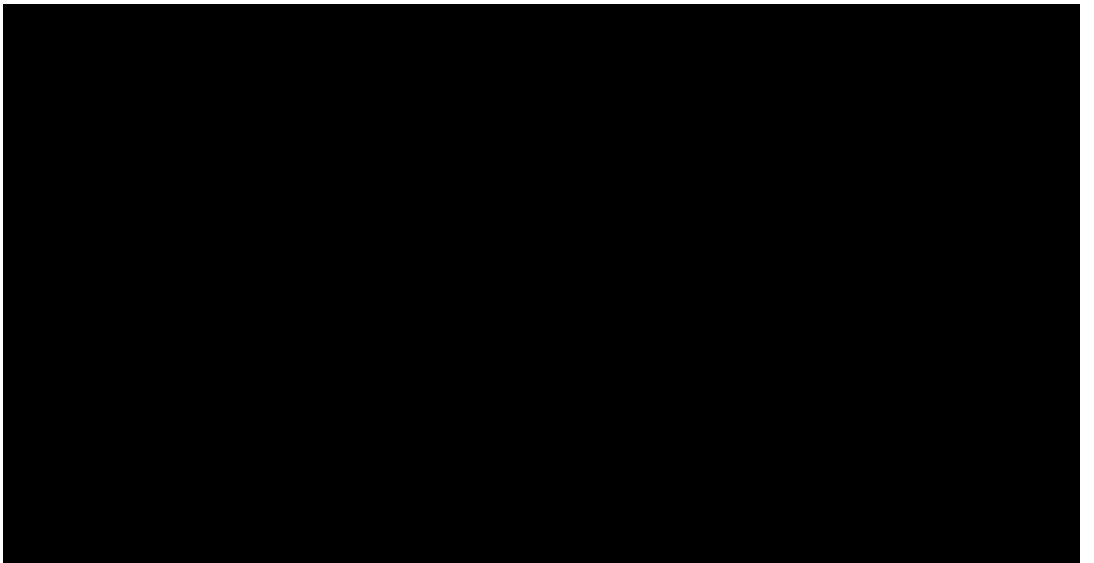
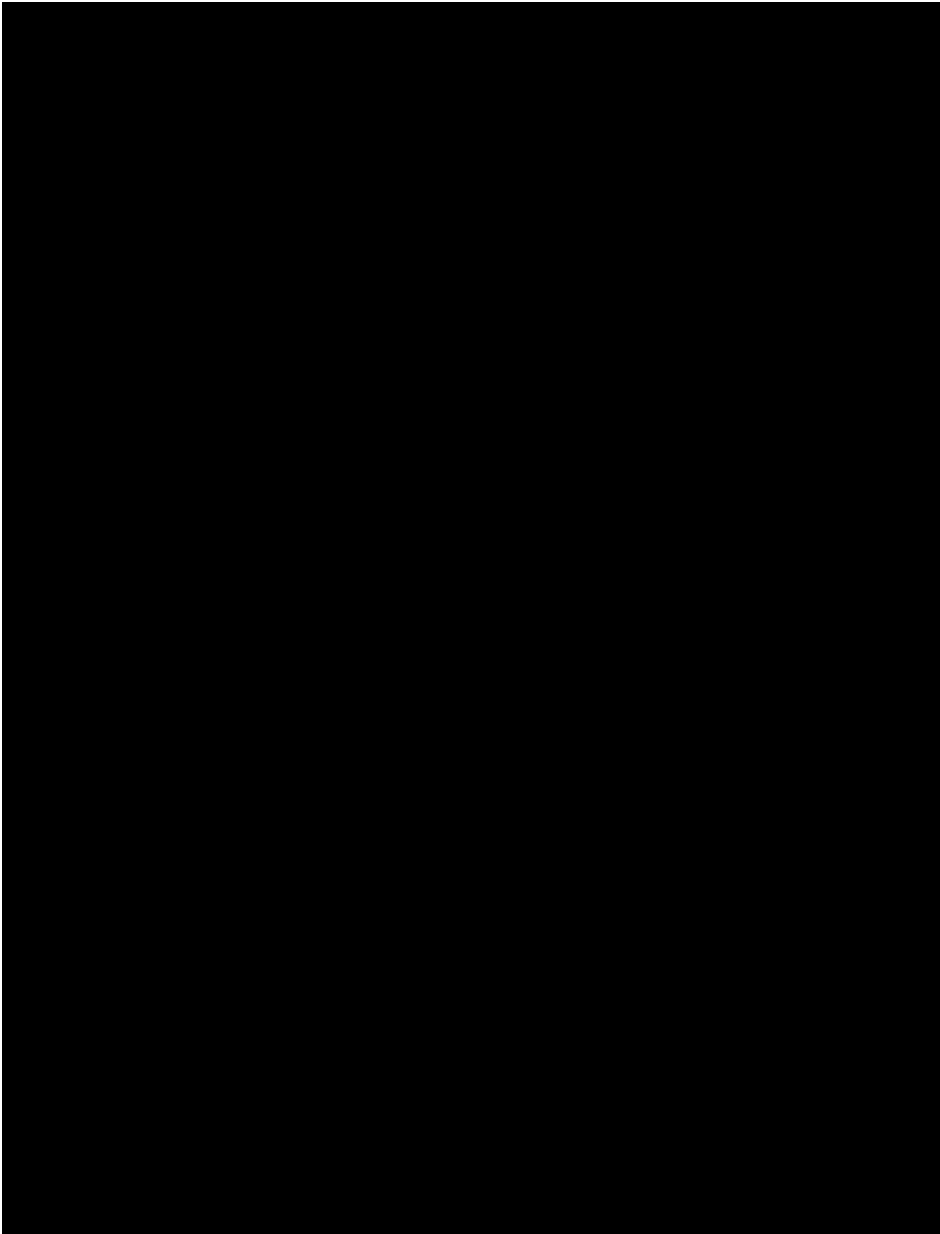


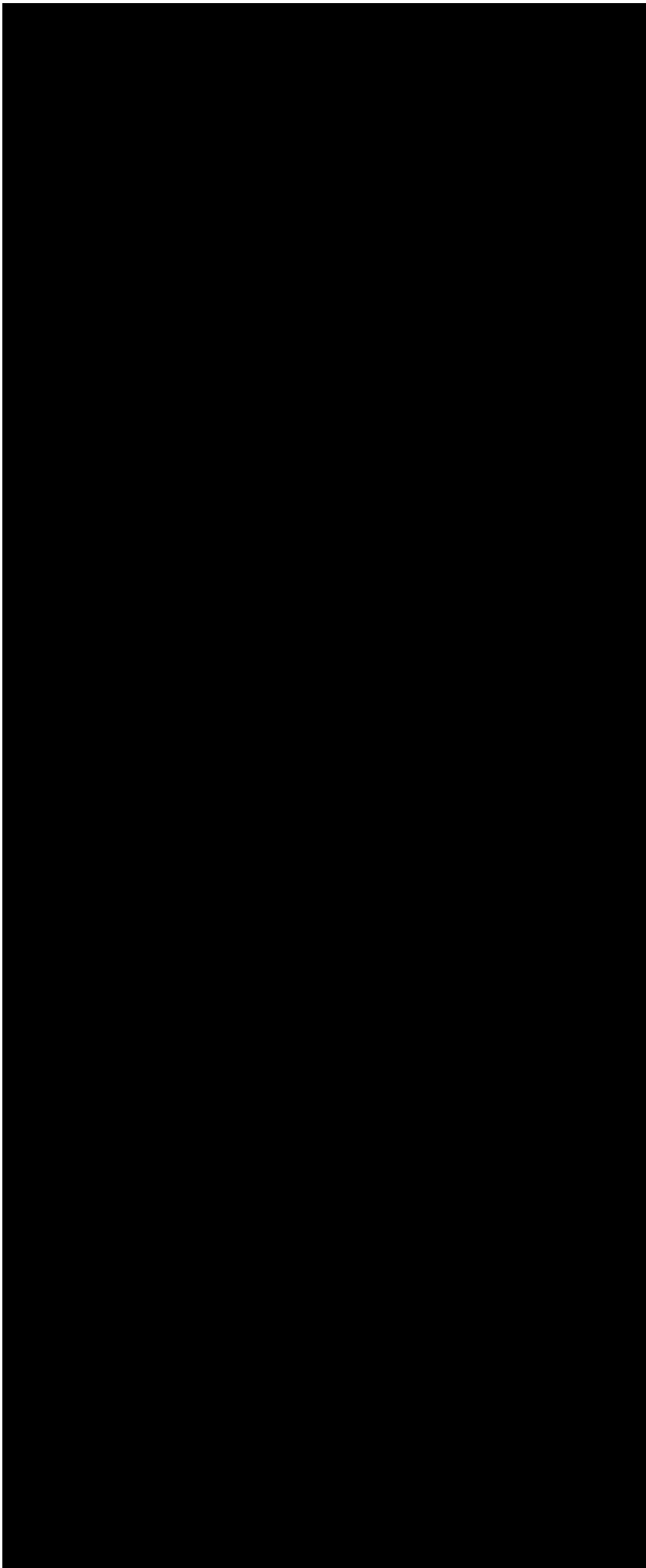


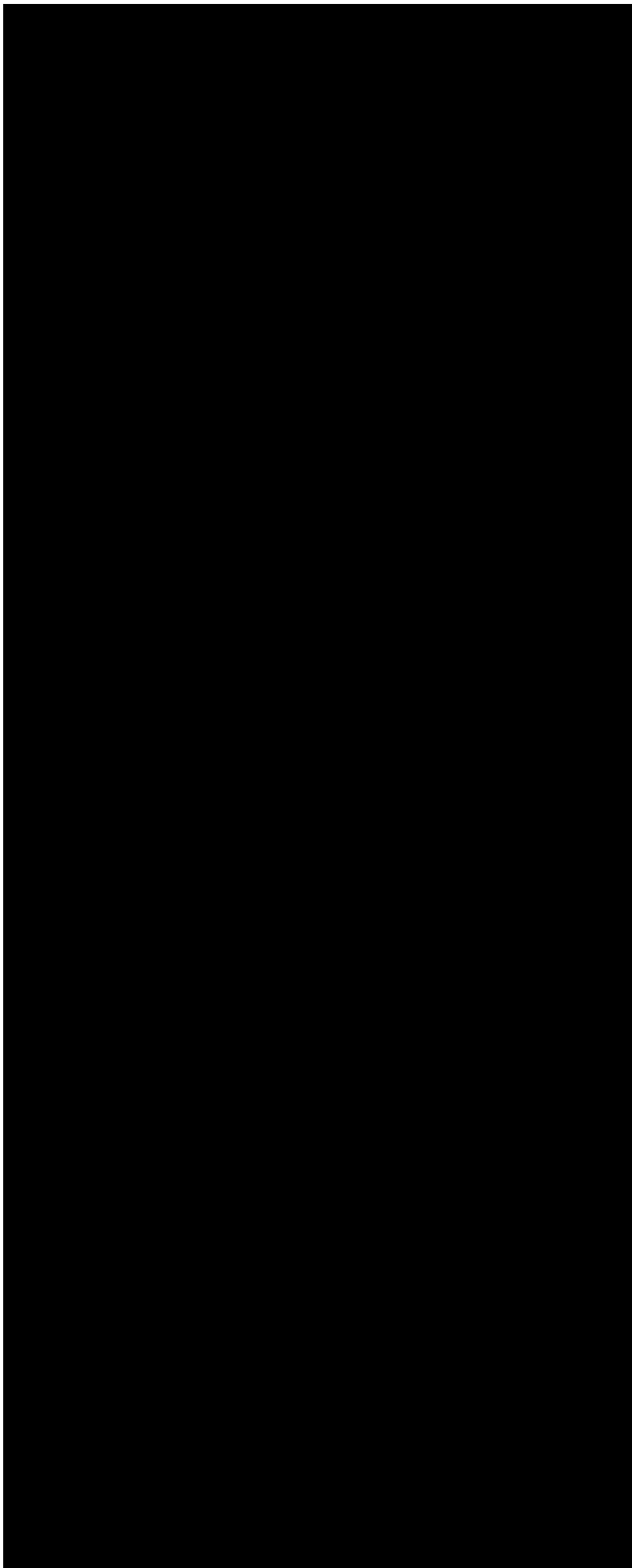












Swimmer AN

The following are contract items that were discussed on [REDACTED], October 23, [REDACTED] with Swimmer AN, her parents, [REDACTED], [REDACTED] and myself:

Modified practice from 10/24-11/11-

10/28 Pm only

10/29 AM/PM

10/30 off

10/31 PM only

11/1 AM/PM

11/2-3- [REDACTED] is off

11/4 AM/PM

11/5 PM only

11/6 off

11/7 AM/PM

11/8 PM only

11/9-11/11- [REDACTED] off (team out of town)

[REDACTED] 10/27 [REDACTED] scheduled

[REDACTED] 10/31 10:00am appointment at UCSF w/ Cal [REDACTED] (mom and [REDACTED] attend)

Swimmer AN is also required to do the following:

- immediately get into counseling at Tang for stress/anxiety skills
- attend all team meetings
- try to see [REDACTED] Staff L every week instead of every other week
- look into additional tutor support/ meet with professors/ GSI's to address the academic deficiencies discussed
- look into [REDACTED] or other sleep aid solutions
- abstain from any alcohol use
- understands that she will not compete or travel at this time

After the additional medical tests and appointments are concluded we will address a plan moving forward.

I agree to these statements and intend to follow the plan set forward.

_____ date _____

[REDACTED]
Swimer AN



Teri McKeever
Head Coach
Women's Swimming and Diving

Intercollegiate Athletics
135C Haas Pavilion, Berkeley, CA 94720

P: [REDACTED] **E:** mckeever@berkeley.edu **W:** CalBears.com

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From: Teri J MCKEEVER (mckeever@berkeley.edu)
Sent: 7/25/2011 5:09:37 AM
To: Staff F [REDACTED]
Subject: Re: Couple of Updates

Hi [REDACTED]

Thanks for this!

I didn't do a good job with [REDACTED] checking in before I left. It was over email. I think I'll let her try to swim and she'll either get on board or her back will hurt and then we have our out.

I did know [REDACTED] has [REDACTED]. I'm assuming she's not cleared until the doctors here have a better idea of her situation. I do assume though that this won't be a long term issue/concern?

As far as [REDACTED] I'm so glad you are going to the appointment. This whole thing is ridiculous and from afar all it seems like we're doing is moving backward. She's not making any effort to get back on track and as far as I know exertion does not elevate [REDACTED]. Anything we can do to either clear her and get her going or let's walk away. She has the potential to help us but it's now been since February that she's done any real work. She's basically lost the upcoming year. It will take her at minimum most of the fall if not all to get back in any kind of shape. If she can't swim then let's make her run, spin, etc. Let's make the alternative more uncomfortable than swimming and if she can't do it then she can move on. I am not having her or [REDACTED] or anyone stick around that cannot train at an elite Division I program. No more singles only or getting out early or taking some mornings off.

This goes too for someone like [REDACTED] the frosh that's way out of shape. If she starts complaining of shoulder soreness or if anyone starts hurting because they haven't but in the foundational work I am not going to let them continue with the team. They can keep their scholarship for the year, but I'll cut them. That may be harsh but we have too much energy/ time/ \$ being spent on women that aren't doing their part.

Finally, I'm going to connect with the Swim Canada psych person about SD in the next couple of days. Anxious to get her take on the situation and current status as well as things moving forward.

Big night tonight with the [REDACTED] and the [REDACTED]!

Hope you are doing well. Go Bears!! Teri

Teri McKeever
Head Coach
Women's Swimming and Diving

Intercollegiate Athletics
135C Haas Pavilion, Berkeley, CA 94720

P: [REDACTED] **E:** mckeever@berkeley.edu **W:** CalBears.com

On [REDACTED] Jul 24, [REDACTED] at 3:39 AM [REDACTED] Staff F [REDACTED] wrote:

Hi Teri,

Just wanted to pass along a couple of health-related updates from out here!

Swimmer CP has continued to see Physical Therapy here and based on our PT's assessment is ready to be discharged from regular sessions and the majority of her symptoms have resolved. I am not sure where you left off with her, but from a physical standpoint, she will be cleared for all activity (we will still modify her lift to try to prevent future issues / [REDACTED]).

Swimmer AN had her physical on Sunday and she is NOT CLEARED. She has [REDACTED] (with a recent [REDACTED]) so [REDACTED] Staff M is going to reach out to her [REDACTED] to discuss her case. I will update you once I get more information there.

[REDACTED] has her local [REDACTED] appointment on Thursday and I will be attending that with her. I asked her for an update last week and she said she has "only been able to swim for about an hour each day - light swimming - because it's super painful when I try to go fast." Hopefully we will get more clarity around all of this on Thursday!

Will update you as soon as I get more information!

[REDACTED] Staff F

--

Go Bears!



[REDACTED] Staff F

Intercollegiate Athletics

W: [CalBears.com](#)

From: [REDACTED] Staff A [REDACTED]
Sent: 9/12/2011 1:50:19 AM
To: Swimmer AN [REDACTED]
CC: mckeever@berkeley.edu; [REDACTED]
Subject: Re: [REDACTED]

Hi Swimmer AN

We will plan to meet tomorrow at 4:30 in Teri's office. Thanks

Go Bears!



[REDACTED] Staff A

Sent from my iPhone

On Sep 10, [REDACTED] at 10:52 PM, Swimmer AN [REDACTED] wrote:

Anytime after 4pm works for me.

On [REDACTED] Sep 10, [REDACTED] at 8:03 PM [REDACTED] Staff A [REDACTED] wrote:

Is there another time besides right after a practice? It's hard for [REDACTED] to make that time since she's usually providing treatment to the team.

Thanks,
[REDACTED] Staff A

Go Bears!



[REDACTED] Staff A

Sent from my iPhone

On Sep 10, [REDACTED] at 7:59 PM, Swimmer AN [REDACTED] wrote:

Does 4pm after [REDACTED]s afternoon practice work?

Swimmer AN

On [REDACTED] Sep 10 [REDACTED] at 5:52 PM [REDACTED] Staff A [REDACTED] wrote:
Hi [REDACTED]

Thank you for reaching out. I think it's a great idea to sit down and talk about today and your recent diagnosis. I do think it is best to have Teri and [REDACTED] involved in the meeting as well so we can all know how to support you best. I have included them on this email so we can all find a time that works to meet.

If you can let us know a few good times for you either later this week or early next that would be great. I hope you are feeling better and have gotten some rest today.

Go Bears!



[REDACTED] Staff A

Intercollegiate Athletics
[REDACTED]

[REDACTED] W. CalBears.com

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On [REDACTED] Sep 10, [REDACTED] at 4:05 PM Swimmer AN [REDACTED] wrote:
Hey [REDACTED]

I was wondering if we could have a talk about what happened today. I was also wondering if I could talk about my recent diagnosis of my [REDACTED]

[REDACTED]

Swimmer AN

Swimmer AN

Swimmer AN

From: Swimmer AN [REDACTED]
Sent: 9/26/2011 12:10:40 AM
To: Teri J MCKEEVER [mckeever@berkeley.edu]
Subject: Appointment

Hi Teri,

This morning I set up an appointment with [REDACTED] ^{Staff N} to talk to him about updates about my medication which I thought was up at the Simpson Center. I misheard [REDACTED] ^{met} and I went to the Simpson Center, but my appointment was at Haas. I had to reschedule because I went to the wrong location, but I was able to visit [REDACTED] ^{Staff N} this afternoon and talk about my transition to a new medication for my [REDACTED] that my [REDACTED] prescribed. I am also going to see a therapist about my [REDACTED] and other medical issues I have encountered.

--
Thank you,
Swimmer AN

From: Teri McKeever (mckeever@berkeley.edu)
Sent: 9/27/2011 9:22:25 AM
To: Staff A
Subject: Fwd: Therapy and Urgent Care

Never called me back and sent this!!

Teri McKeever
Head Coach
Women's Swimming and Diving
135C Haas Pavilion
Berkeley, CA 94720-4422

Begin forwarded message:

From: Swimmer AN
Date: September 26, 2011 at 8:40:56 PM PDT
To: Teri J MCKEEVER <mckeever@berkeley.edu>
Subject: Therapy and Urgent Care

Hi Teri,

I'm sorry I couldn't reach you today and that we were playing phone tag. I apologize for not being able to email you this afternoon because [REDACTED] what I was typing and [REDACTED] what I am typing. Today I went to [REDACTED] today and she helped me getting help by going to urgent care than seeing a therapist. We talked about how [REDACTED] has taken a mental toll on how I feel about life. He recommended that I should take a break from swimming and back up to see the whole picture. I am going to call him tomorrow morning to ask for a doctor's note. I am also unsure if I will be able to host anybody this weekend because I feel like I will bring a bad impression to our visitors. I was wondering if I could talk to you in person soon?

—
Thank you,
Swimmer AN

From: Teri McKeever [mckeever@berkeley.edu]
Sent: 9/30/2008 3:45:58 PM
To: Swimmer AN
CC: Staff F [redacted] Staff A
Subject: Re: Moving forward with new diagnosis of [redacted]

Swimmer AN

Thanks for the update. I will need you to be seen by our doctors before you can resume training. I also need to know your plan for dealing with your stress and anxiety moving forward.
Thanks,
Teri

Teri McKeever
Head Coach
Women's Swimming and Diving
135C Haas Pavilion
Berkeley, CA 94720-4422
[redacted]

> On Sep 29, 2008, at 8:14 PM, Swimmer AN [redacted] wrote:

>

> Hi Teri,

>

> As you know I was admitted to the ER Saturday night because I was [redacted] and was close to [redacted]. The doctor recommends taking a break from swimming until I speak with my [redacted] about new ways to manage my [redacted]. I will be talking to him on Tuesday afternoon so I won't be swimming on Tuesday morning, but I will try to be there on Tuesday afternoon and will let you know if any changes occur.

>

> Thank you,

> Swimmer AN

From: Teri McKeever [mckeever@berkeley.edu]
Sent: 9/29/2011 12:50:15 AM
To: Swimmer AN
CC: Staff A
Subject: Re: Hospital

Ok. Sorry you're not feeling well. Thanks for letting me know.
Hoping you're feeling better soon.
Teri

Teri McKeever
Head Coach
Women's Swimming and Diving
135C Haas Pavilion
Berkeley, CA 94720-4422
[REDACTED]

> On Sep 28, [REDACTED] at 5:18 PM, Swimmer AN wrote:
>
> Hi Teri,
>
> I went home on Friday because I was feeling [REDACTED] and had a lot of [REDACTED]. Today I
wake up [REDACTED] and didn't think anything of it. Now every time I move my neck I get really close to
[REDACTED] and [REDACTED]. I am in the ER right now getting checked out. I will keep you and [REDACTED] staff
updated.
>
> - Swimmer AN
>
> Swimmer AN

From: [REDACTED] Staff A [REDACTED]
Sent: 10/1/2011 2:00:30 PM
To: mckeever@berkeley.edu
Subject: fwd: Swimmer AN

Go Bears!



[REDACTED] Staff A
[REDACTED]

Sent from my iPhone

Begin forwarded message:

From: [REDACTED] Staff R
Date: September 30, [REDACTED] at 4:12:04 PM PDT
To: [REDACTED] Staff A [REDACTED]
Subject: Re: Swimmer AN

She made it by today and we had a great meeting. She's also going to meet with [REDACTED] Staff L this week as well.
[REDACTED] Staff R

On [REDACTED] Sep 30, [REDACTED] at 4:16 PM [REDACTED] Staff A [REDACTED] wrote:
Thanks,

Can you let us know if she shows up or not.

Go Bears!



[REDACTED] Staff A
[REDACTED]

Sent from my iPhone

On Sep 30, [REDACTED] at 3:32 PM, [REDACTED] Staff R wrote:
Hey Coaches and [REDACTED] Staff L

I wanted to provide a brief update on Swimmer AN prior to the next HP meeting. She is scheduled to meet with Learning Specialist, [REDACTED] on Thursdays from 4-5p; however, last Thursday she missed her appointment with [REDACTED]. [REDACTED] reached out to me not only to inform me of the missed appointment, but also to express concern relating to her [REDACTED] and its impact on her ability to attend meetings. [REDACTED] also noted that Swimmer AN sounds/seems pretty stressed out.

I'm scheduled to meet with Swimmer AN today at 4:30p, and if she shows, hopefully I'll be able to get a better understanding of how to support her.

Best,

[REDACTED] Staff R

[REDACTED] Staff R

University of California, Berkeley

[REDACTED]
GO BEARS

[REDACTED] Staff R

University of California, Berkeley

[REDACTED]
GO BEARS

From: Swimmer AN
Sent: 10/3/2011 9:04:29 PM
To: Teri J MCKEEVER [mckeeper@berkeley.edu]
Subject: Re: [REDACTED] Staff M meeting

Yes- I'm sorry about the late reply. I will see you tomorrow morning.

On [REDACTED] Oct 3, [REDACTED] at 1:58 PM Teri J MCKEEVER <mckeeper@berkeley.edu> wrote:

We'll see you in the morning and we'll have to meet next week.

Thanks for the note- wish you would have sent sooner as you should be here today? Wasn't your appointment at 11:30am?

Teri



Teri McKeever
Head Coach
Women's Swimming and Diving

Intercollegiate Athletics
135C Haas Pavilion, Berkeley, CA 94720

P: [REDACTED] **E:** mckeeper@berkeley.edu **W:** CalBears.com

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On [REDACTED] Oct 3, [REDACTED] at 1:48 PM **Swimmer AN** wrote:

Hi All,

I had a meeting with [REDACTED] Staff M today and she gave me the clear to swim. She had me make an appointment with [REDACTED] Staff X for therapy and is helping me make an appointment with an [REDACTED] to help with my [REDACTED]. Because I am clear to swim, I was wondering if we could all meet sometime soon to help me get back to swimming. I already have set some goals and standards that will help me manage my [REDACTED].

Thank you,

Swimmer AN

Swimmer AN

From: [REDACTED] Staff A [REDACTED]
Sent: 10/14/2017 7:27:25 PM
To: Swimmer AN
CC: Teri J MCKEEVER [mckeever@berkeley.edu]; [REDACTED] Staff F [REDACTED]
Subject: Re: Swimmer AN [REDACTED] Swimming Afternoon

Swimmer AN

Are you able to make the team meeting this evening? It is very important the entire team is present for the workshop that will be taking place.

—
Go Bears!



[REDACTED] Staff A
[REDACTED]
Women's Swimming and Diving
Intercollegiate Athletics

[REDACTED] W: CalBears.com

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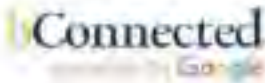
On Oct 14, [REDACTED] at 12:22 PM, Swimmer AN wrote:

Hi Everyone,

I will not be at practice this afternoon due to my [REDACTED] I will try my best to be at practice tomorrow morning and am trying to keep up with my health. I still haven't got any information about a scheduled appointment for my [REDACTED] but I will let you know more information about it as soon as possible.

Thank you.

Swimmer AN



Jennifer Simon-O'Neill <jenny.simon@berkeley.edu>

Academic Status Reports

[Redacted], Nov 20 [Redacted] at 1:08 PM

To: Jennifer Simon-O'Neill <jennysimononail@berkeley.edu>

Hi Jenny,

I'm sorry I haven't sent you these earlier, but I've been distributing them in person to Teri, [Redacted] and Derek the past few times we've met.

Just wanted to loop you in on the academic status of Women's Swimming and Diving since you're the sport administrator.



Best,

[Redacted] Staff L

[Redacted] Staff L

FIAT LUX! *GO BEARS!*

3 attachments

-  W SwimDive ASR 10-22-[Redacted].docx
38K
-  W SwimDive ASR 11-5-[Redacted].docx
36K
-  W SwimDive ASR 11-19-[Redacted].docx
38K

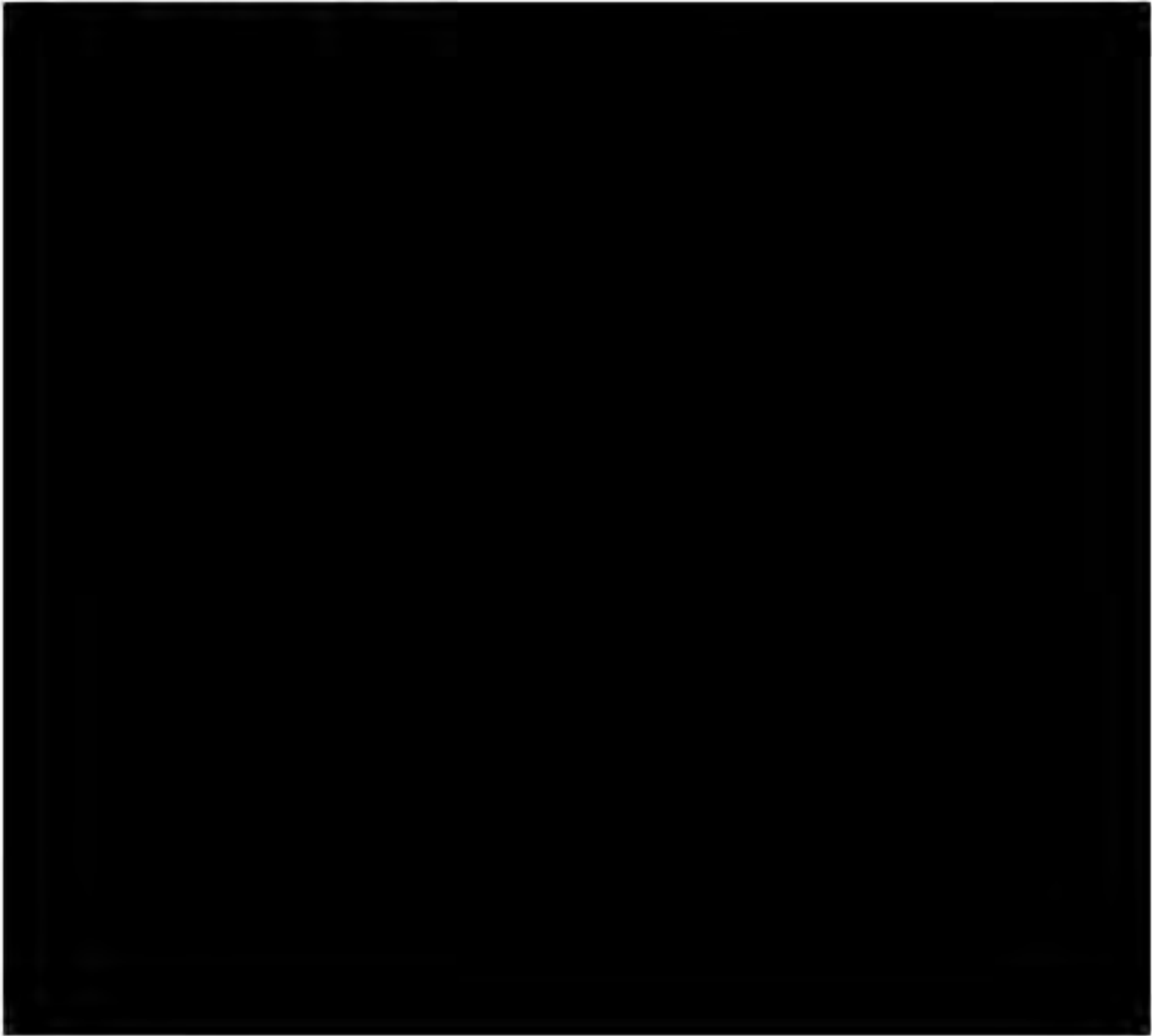


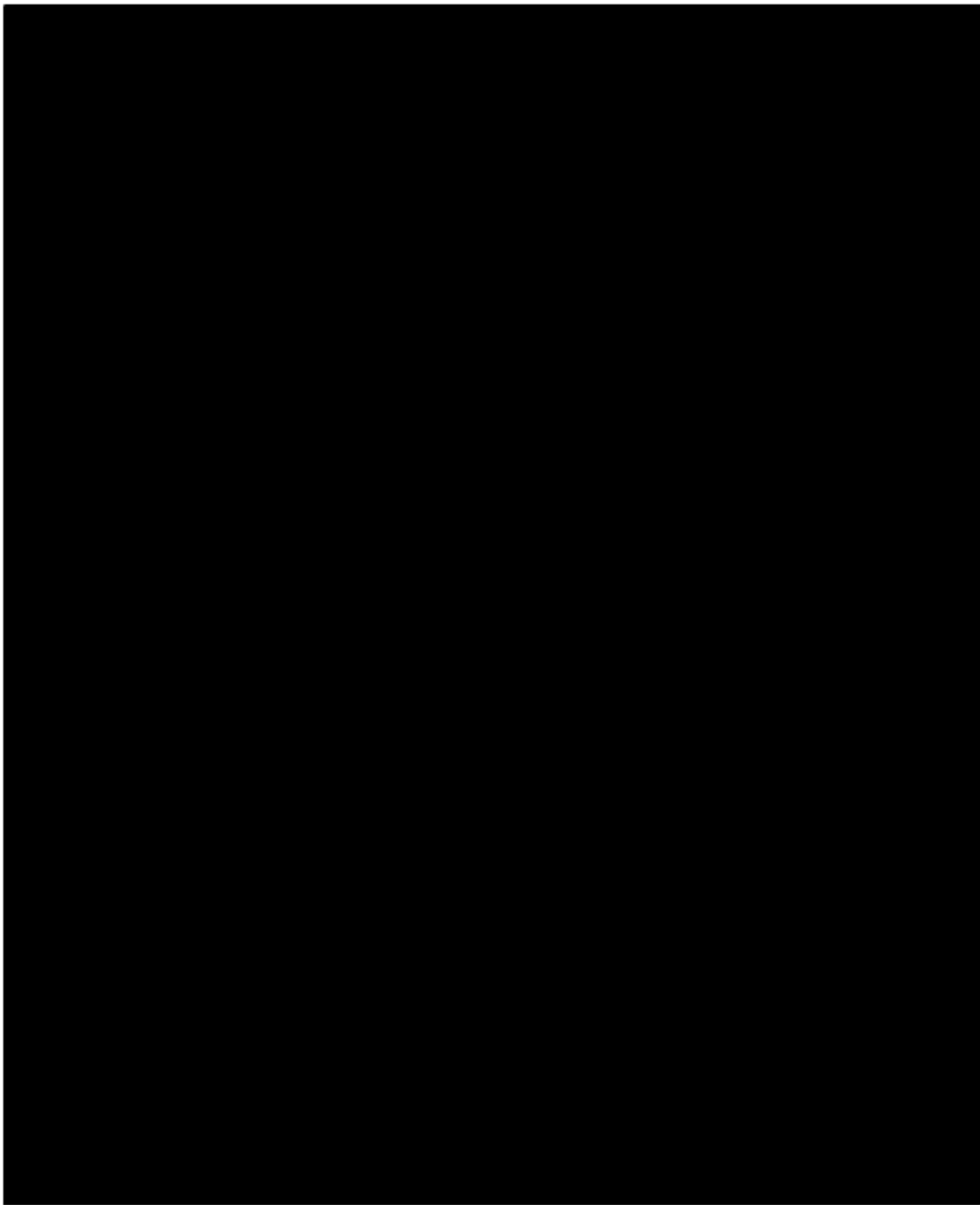
Academic Status Report

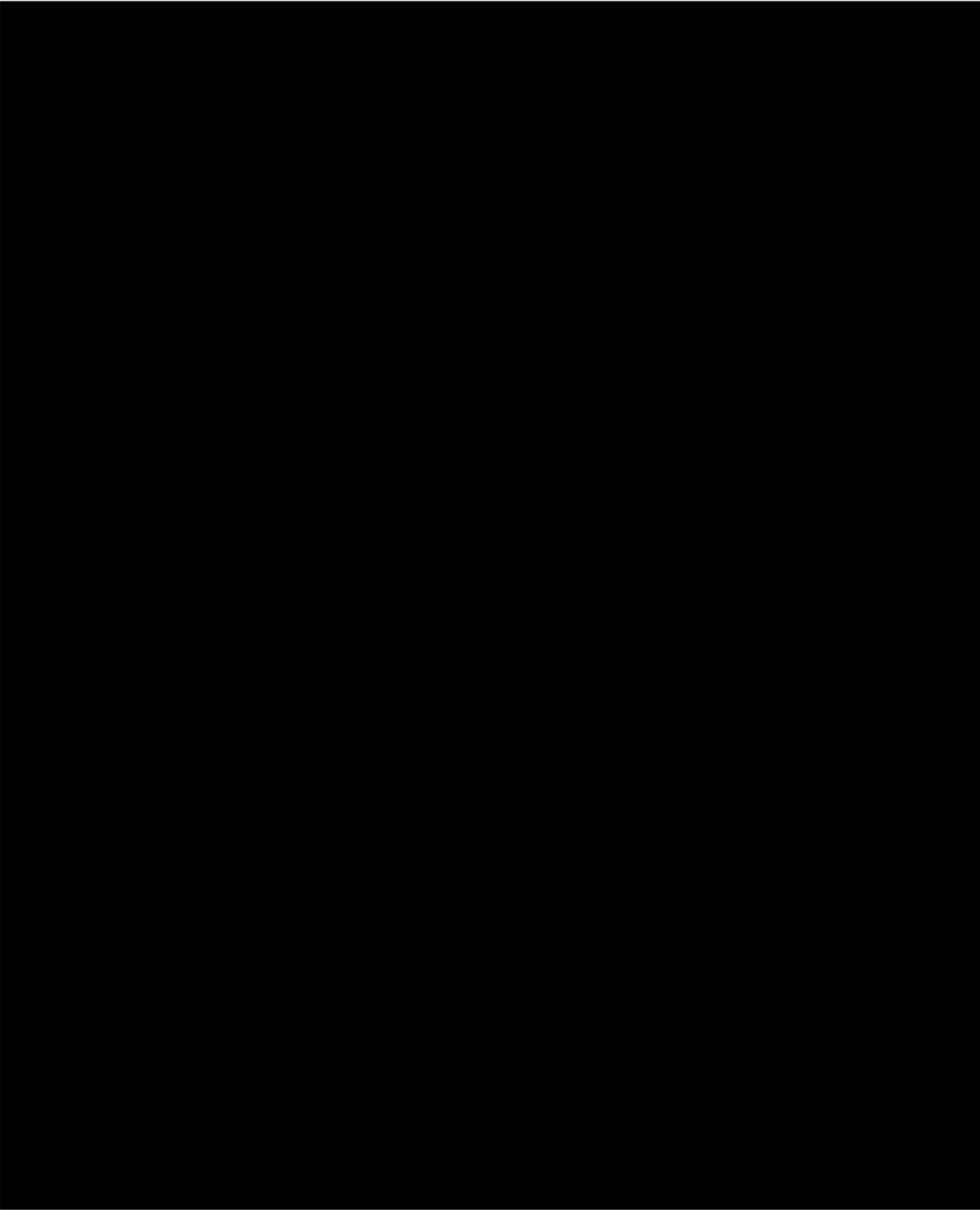
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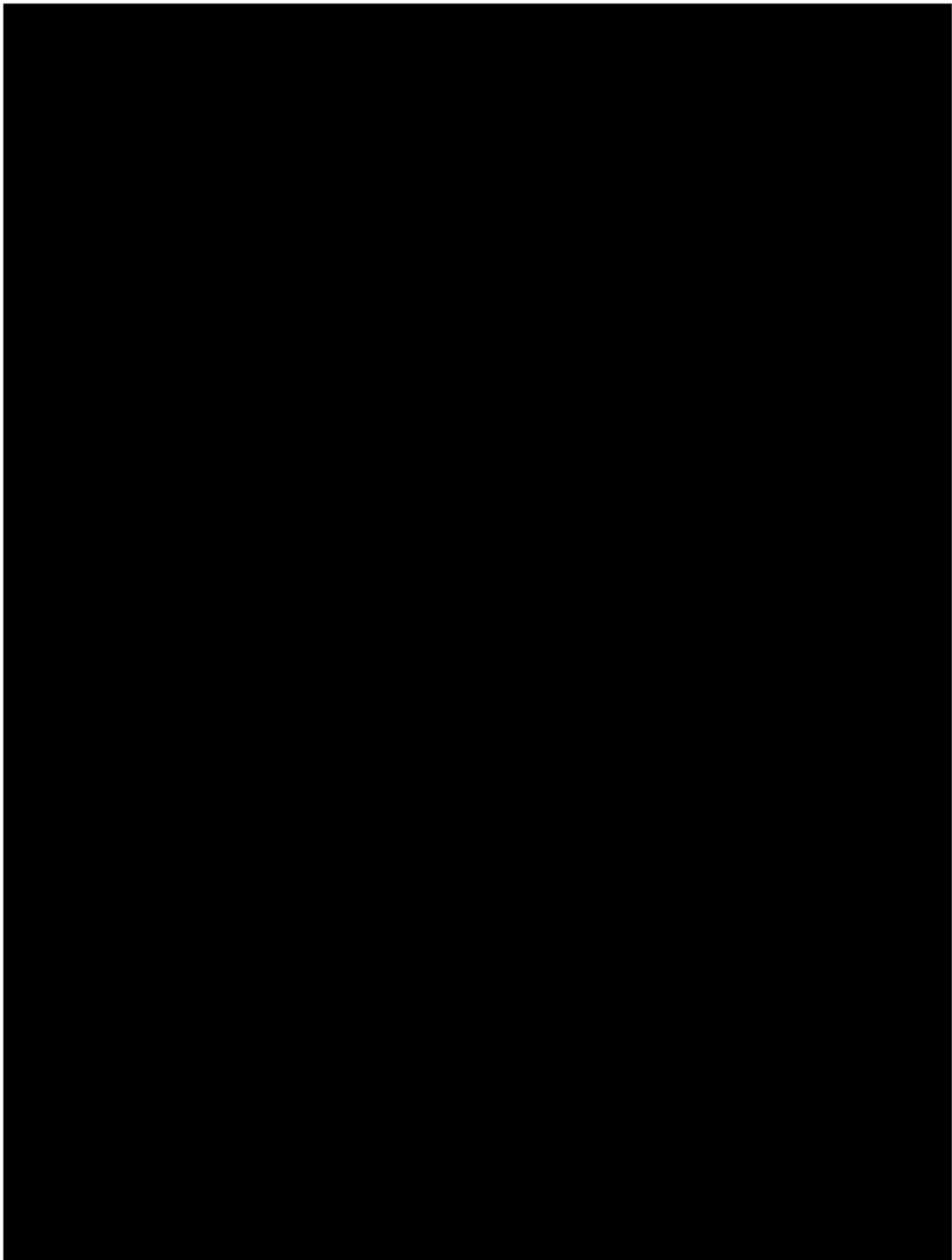
Date: 10/22 ■

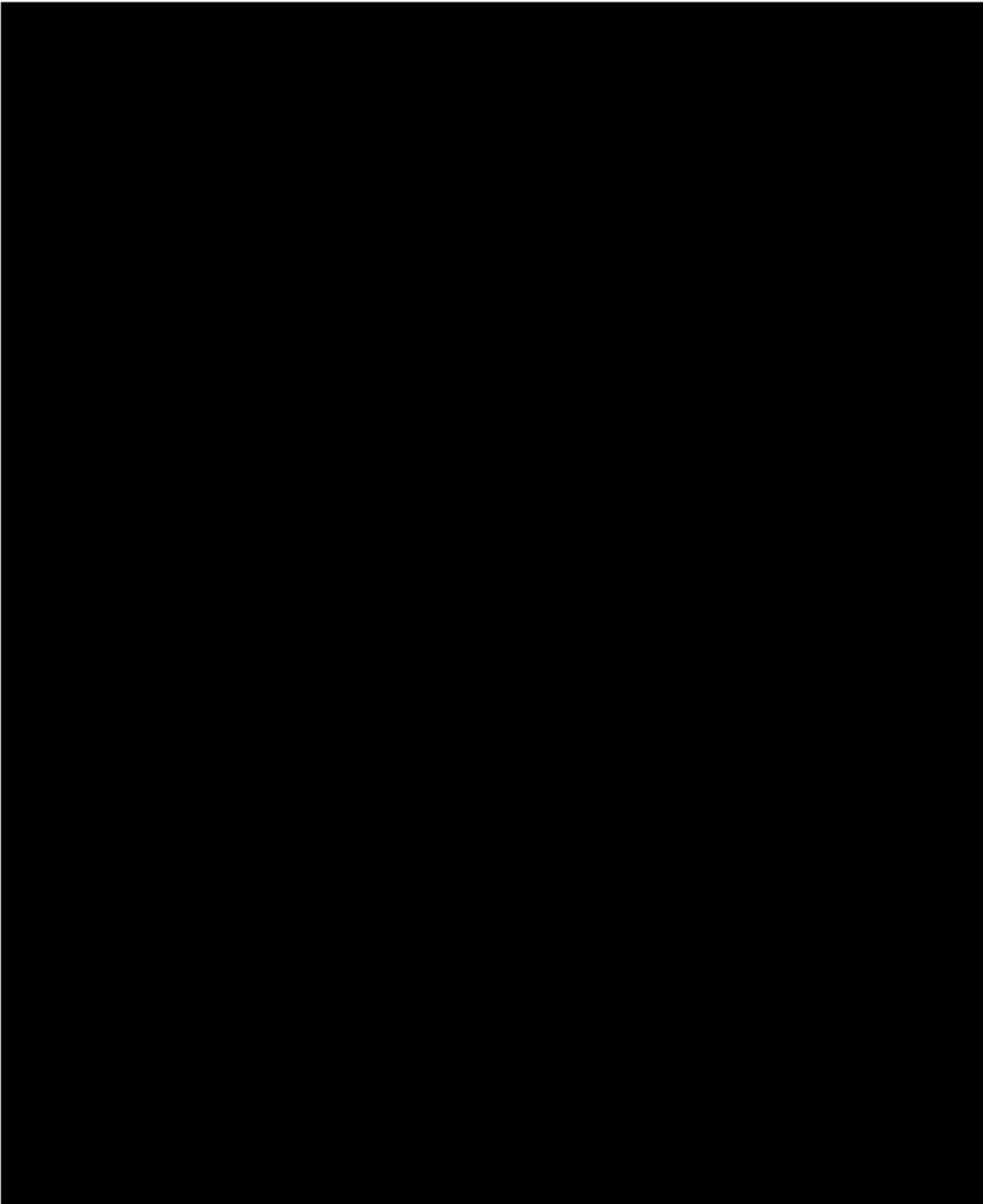
Team: Women's Swimming & Diving















Jennifer Simon-O'Neill <jenny.simon@berkeley.edu>

Time to Meet about Swimmer AN

Teri J MCKEEVER <mckeever@berkeley.edu> [redacted], Dec 4, [redacted] at 10:17 AM
To: Jennifer Simon-O'Neill <jenny.simon@berkeley.edu>
Cc: [redacted] Staff A, [redacted] Staff F, [redacted] Staff L
Teri J MCKEEVER <mckeever@berkeley.edu>

Hi Jenny-

I want to schedule a meeting with Swimmer AN that ideally you [redacted] Staff F and [redacted] Staff A will be out recruiting next week. Happy to have Swimmer AN parent(s) there too if they can make it.

Swimmer AN had a contract that she hasn't upheld on two main fronts 1) medically and 2) counseling. Her practice schedule has continued to be modified and her attendance at tutoring is fairly consistent but we know of at least one occasion where she hasn't shown because she was [redacted], yet staff saw her walking on Bancroft and about the same time as the appointment.

[redacted] says December 13 is the last time to medically withdraw and I believe that if she doesn't intend to do that she needs to clearly understand not only what academic issues may hold her back but that I will not allow her to attend our training camp and she won't compete until she addresses the issues we've all seen.

Therefore, Jenny do you have time on your calendar Tuesday-Friday that wouldn't be during our practice times of before 8:00am and roughly 1-4:00pm. Wednesday pm is an option?

If you'd like to discuss further I'm happy to do that. I thought your calendar would be the hardest and the rest of us can work around your schedule hopefully.

Thanks,

Teri



Teri McKeever
Head Coach
Women's Swimming and Diving

Intercollegiate Athletics
135C Haas Pavilion, Berkeley, CA 94720

P: [redacted] E: mckeever@berkeley.edu W: CalBears.com

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Basic Medical Information:

- 7 Cal Physician appointments in 4 months (a student with an [REDACTED] and [REDACTED] is generally seen about 5 times over the first 4 months)
- Head Team Physician also made herself urgently available for an appointment with the student outside of a scheduled clinic due to concern about how the student was doing (Less than 5% of varsity athletes per year are seen in this urgent manner)
- Head Team Physician additionally personally spoke with her home [REDACTED] 4 separate times (She was the only athlete this year whose outside physician the Head Team Physician contacted this many times)
- Due to concern about how the student was doing, Head Team Physician was the one who encouraged her home [REDACTED] to do further testing
- Due to concern about how the student was doing, Head Team Physician referred her to UCSF [REDACTED] for higher evaluation, and personally arranged for a timely appointment (within 2 weeks, general wait time is 4-6 weeks)

Sport Activity:

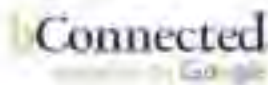
- Missed 17 practices and stopped an additional 3 practices early
- Beginning on 10/23 [REDACTED] she had a modified/limited practice schedule that was agreed upon by her and her coach in the presence of her parents

Referrals for Assistance in School/Daily Life:

- Disabled Student Program (DSP) Information sent directly to the student via email on September 8th [REDACTED] (she did not seek services until much later in the semester)
- Counseling and Psychological Services (CAPS) and Social Services Resources and contact information emailed directly to the patient on 9/17 [REDACTED] and again on 10/9 [REDACTED], in addition to offers to assist with connecting with counselors in visits with Head Team Physician and with Athletic Trainer

Missed / No-show / Late Cancelled medical appointments:

- 9/18 [REDACTED] Missed [REDACTED] Appointment with [REDACTED]
- 9/23 [REDACTED] Missed Medical Appointment with [REDACTED] Staff N
- 9/25 [REDACTED] Missed Medical Appointment with [REDACTED] Staff N
- 10/1 [REDACTED] Cancelled Medical Appointment with [REDACTED] Staff N for medical clearance following ER visit (canceled one hour prior)
- 10/27 [REDACTED] Scheduled for [REDACTED] per [REDACTED] Staff M recommendation, to be used in 10/31 [REDACTED] appointment, but canceled on 10/26 [REDACTED] due to 'insurance reasons'
- 10/31 [REDACTED] Scheduled for an appointment with UCSF [REDACTED] per [REDACTED] Staff M recommendation, but canceled on 10/30 [REDACTED] due to 'insurance reasons'; Per student's Mother, would work to change insurance and re-schedule as soon as possible but to date still has not



Jennifer Simon-O'Neill <jenny.simon@berkeley.edu>

Update/ Question

Teri J MCKEEVER <mckeever@berkeley.edu>
 To: Jennifer Simon-O'Neill <jenny.simon@berkeley.edu>
 Cc: Teri J MCKEEVER <mckeever@berkeley.edu>

Oct 23, [REDACTED] at 8:43 PM

Hi Jenny-

I hope that you are feeling better and taking good care of yourself!

I want to update you on a few things:

1) Today [REDACTED] Staff A [REDACTED] Staff I met with Swimmer AN [REDACTED] and her mom and dad. We spoke for about 75 minutes and it was tense at times but this is our plan moving forward.

- I will be putting together a contract for [REDACTED] Staff AN from now until November 11. To date she is only making 54% of the practices, has dropped a class so that she will need to pass all the ones she still has and got midterm reports from 2 of the 3 classes that she is [REDACTED] as of her work to date. There are numerous red flags and I shared with her and her parents that I worried this may be too much. She will have a modified training schedule, will have to seek out counseling, has agreed to not use alcohol and will not compete. On [REDACTED] she is getting a [REDACTED] and on [REDACTED] she will go to [REDACTED] to have an appointment with our [REDACTED] Her mom [REDACTED] Staff will attend this appointment. When we have info from these meetings we will explore our options. She also has 2 hours of tutoring with the learning specialists and 2 hours with another individual tutor. I tried to explain that in my experience things get harder rather than easier as you move through your academic and swimming career [REDACTED] Staff has a google doc of missed appointments and inconsistencies that have lead us to this meeting. The parents were quite upset that [REDACTED] Staff was included in the meeting- still not sure why but I was not going to meet with them without her because her messaging to them is quite different than the reality.

I will include you when I send [REDACTED] Staff the agreement and I will ask her to verify in an email that she is willing to accept the parameters.

2) I also wanted to explore if you and Jim would consider talking with me about extending my contract? I'm getting questions, the girls are getting questions, and this seems to be what other schools are using when these young women are saying they like CAL or are considering CAL. It is definitely hurting us in the recruiting wars. The word on the street is that I have a contract through [REDACTED]. I was wondering if you would be willing to talk about an extension that protects CAL and helps us publically address that I am not retiring or moving on? I am open to your thoughts and Jim's thoughts on what this may look like.

3) We had a young lady, [REDACTED] that had given me a commitment in February of [REDACTED] just decide to go to [REDACTED]. The whole situation stinks and has been very eye opening. There are definitely things we need to do better and I believe [REDACTED] Staff and I are already addressing some of these. It stings and I'm sure the public play on this will spin negative for CAL. I'm confident though that we probably dodged a huge bullet and will be better off without this young lady. The way she and her family conducted themselves in the last couple of weeks makes me know this is not the type of people I want in our program.

4) The alumni event on Friday was very special and I think there is a lot we can do to build on the good feelings. It was very powerful for my current team and the recruits and their families that were here. I enjoyed it a lot!

5) I scheduled a meeting with [REDACTED] and [REDACTED] Staff A [REDACTED] October 31 at 12:30pm. I have a few significant things I have concerns about:

- He had two [REDACTED] female recruits in this weekend and didn't send any info to us on them. They were at the Friday event and I knew nothing about them. He shows up at the event after it begins while [REDACTED] Staff B [REDACTED] Staff A and I have been there for over an hour setting up. There is never any thought on how to support the overall program or the events.

-During our performance meeting yesterday he mentioned that Diver B, our [REDACTED], would benefit from trampoline work. Then he says that he needs to get into [REDACTED] Staff G and [REDACTED] Staff H and hasn't had time in the last month. I don't know what he's doing??

-He continues to show up kind of out of it and over dramatic about life as a parent and balancing work. (sleep, etc.)

-I am not going to use scholarship funds for divers that he can't tell me about. I'm not convinced he has a legitimate plan of how to get these women here. I am also concerned about his ability to fully do his job beyond the pool time. Why haven't you got the info to the powers that be for equipment you know you need to improve your divers?

6) We have our free fall weeknd tomorrow after the meet so I will be out until Monday afternoon. We have been working hard and all of us need a good step away and reset. Jerry and I will be going to the beach and I am always available should you want to talk.

Thanks so much and again I hope you're feeling better, . . .

Go Bears!

Teri



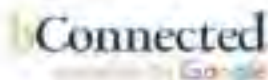
Teri McKeever

Head Coach
Women's Swimming and Diving

Intercollegiate Athletics
135C Haas Pavilion, Berkeley, CA 94720

P: [redacted] **E:** mckeever@berkeley.edu **W:** CalBears.com

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Jennifer Simon-O'Neill <jenny.simon@berkeley.edu>

Copy of contract for your records

Teri J MCKEEVER <mckeever@berkeley.edu>

Oct 25, [redacted] at 5:21 PM

To: Swimmer AN [redacted]

Cc: [redacted] Staff F [redacted] Staff A [redacted] Jennifer Simon-O'Neill <jenny.simon@berkeley.edu>

Hi Swimmer AN

Here's an electronic copy of your contract that you signed yesterday. I will keep the one that you signed.

Hope it works out to get your [redacted] on Sunday.

[redacted] Staff F also informed [redacted] Staff A that you missed your appointment with [redacted], the learning specialists, yesterday afternoon after the meet? Honestly, these are the situations that we have to stop happening. . .

Go Bears.

Teri



Teri McKeever
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Swimmer ANContract.docx

P: [REDACTED] E: mckeever@berkeley.edu W: CalBears.com

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On Wed, Dec 4, [REDACTED] at 10:58 PM Teri McKeever <mckeever@berkeley.edu> wrote:
Swimmer AN

Can you make 4-5pm on [REDACTED] This is the only other possibility.
Let me know ASAP so I can try to work with the others to see if this time still works for the others.
Thanks,
Teri

Teri McKeever
Head Coach
Women's Swimming and Diving
135C Haas Pavillion
Berkeley, CA, 94720-4422
[REDACTED]

On Dec 4, [REDACTED], at 10:44 PM, Swimmer AN [REDACTED] > wrote:

Hi Teri,

I already scheduled a therapy session with [REDACTED] from 1-2pm before I received your email. Is there any way to reschedule the meeting to another time?

Thank you,
Swimmer AN

On [REDACTED] Dec 4, [REDACTED] at 8:11 PM Teri J MCKEEVER <mckeever@berkeley.edu> wrote:
Hi Swimmer AN

Apologies- I failed to mention that we've set aside 1-2:00pm on the 11th.

Thanks all,

Teri



Teri McKeever
Head Coach
Women's Swimming and Diving

Intercollegiate Athletics
135C Haas Pavilion, Berkeley, CA 94720

P: [REDACTED] E: mckeever@berkeley.edu W: CalBears.com

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On [REDACTED] Dec 4, [REDACTED] at 10:09 PM Teri J MCKEEVER <mckeever@berkeley.edu> wrote:

Hj Swimmer AN

I want to schedule a meeting this coming [REDACTED] - December 11 with you, your parents if you'd like them there. [REDACTED] staff E, [REDACTED] staff L, and Jenny Simon-O'Neill, our SWA and the sport supervisor for women's swimming. [REDACTED] staff A will be out of town recruiting and unable to join us.

The purpose of the meeting is to evaluate and discuss where we are now in relationship to items we discussed in mid-October. Let's plan on meeting in Jenny's office in the AD suite of Haas.

I need you to 1) confirm you can make the meeting and 2) let us know if your parents will be joining us by sending your confirmation to this email. Please "reply all" so that the group knows as well.

Thanks,

Teri



Teri McKeever
Head Coach
Women's Swimming and Diving

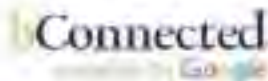
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P: [REDACTED] E: mckeever@berkeley.edu W: CalBears.com

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Swimmer AN

Swimmer AN



Jennifer Simon-O'Neill <jenny.simon@berkeley.edu>

Re: Swimmer AN My Thoughts

Teri J MCKEEVER <mckeever@berkeley.edu> Dec 10, [redacted] at 9:05 PM
To: Swimmer AN [redacted]
Cc: [redacted] Staff L [redacted] > [redacted] Staff A [redacted] [redacted] Staff F [redacted]
Jennifer Simon-O'Neill <jenny.simon@berkeley.edu>

Hi Swimmer AN

Thanks for your email. I had a chance to check in with [redacted] Staff L today and it sounds like you have been working with her and she's been providing good counsel as you look to finish the semester.

I'd like to still keep our meeting in Jenny Simon-O'Neill's office tomorrow at 4:10pm so that we can all be on the same page and we can help support you and your decision. As you know there will be a variety of items you'll want to be sure to address in the next week plus.

Therefore, I'll meet you outside of the AD suite at 4:10pm. I don't think this will take long but I appreciate the opportunity to make sure we are all be on the same page and to do so in person.

See you tomorrow afternoon

Teri



Teri McKeever
Head Coach
Women's Swimming and Diving

Intercollegiate Athletics
135C Haas Pavilion, Berkeley, CA 94720

P: [redacted] E: mckeever@berkeley.edu W: CalBears.com

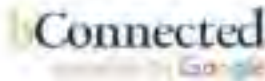
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On [redacted], Dec 10, [redacted] at 12:44 PM Swimmer AN [redacted] wrote:

Dear Teri,
I've been doing a lot of thinking, and I've finally come to the conclusion that I think it would be best if I transferred to another school.
I hope to finish this semester, but I'm thinking about not returning for January.
I'd like to talk with you about this in person.
I'll plan to see you at practice.
Thank you,

Swimmer AN

Swimmer AN



Jennifer Simon-O'Neill <jenny.simon@berkeley.edu>

Swimmer AN - NCAA Transfer Portal

Dec 19, at 1:38 PM

To: Swimmer AN

Cc: Teri J McKeever <mckeever@berkeley.edu>, Jennifer Simon-O'Neill <jenny.simon@berkeley.edu>

Hi Swimmer AN,

Per your request, you have been entered into the NCAA Transfer Portal. You can now communicate with other schools about the possibility of transferring.

Attached is the Cal Student-Athlete Transfer Policy for your reference. Please let us know if you have any questions.

Best,

Kat

—



Recruiting and Eligibility

Intercollegiate Athletics
Compliance and Student Services
119 Haas Pavilion, Berkeley, CA 94720

P: [Redacted] W: CalBears.com

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[Cal Student-Athlete Transfer Policy - Updated 11.1.18.pdf](#)
536K

Signed

WANTS TO SEE YOU
CAME TO SEE YOU

OfficeMax
DM197302

IMPORTANT MESSAGE

Parent of Swimmer AN

Date

12/17

Time

3:30

PM

of

Swimmer AN

Phone

FAX
 MOBILE

AREA CODE

NUMBER

EXTENSION

Message

experience of Terri
INSF -

Signed

LEED

RETURNED YOUR CALL

PLEASE CALL

WILL CALL BACK

WANTS TO SEE YOU

CAME TO SEE YOU

OfficeMax
DM197302

IMPORTANT MESSAGE



Jennifer Simon-O'Neill <jenny.simon@berkeley.edu>

Fwd: Swimmer AN - Cal Housing Cancellation

[redacted] Jan 23, [redacted] at 12:58 PM
to: [redacted] Jennifer Simon-O'Neill <jenny.simon@berkeley.edu>, [redacted]

An update for the group: I spoke with Swimmer AN mom this morning and asked her specifically what she was looking for. She said she wanted the admissions documents that Swimmer AN signed. I told her that Swimmer AN would have received an email from the Admissions Office last spring with her offer of admission, and she would have been able to log in and accept the offer. I also told her we also would have sent her an athletics scholarship offer, which she would have printed and signed before returning to us. Swimmer AN mom said she would ask Swimmer AN to look for these documents in her email account. I told her to call me if she could not find them.

Thanks,

[redacted]

From: [redacted]
Sent: Thursday, January 23, [redacted] 6:36 AM
To: jenny.simon@berkeley.edu, [redacted]
Subject: Fwd: Swimmer AN - Cal Housing Cancellation

Jenny [redacted]

Swimmer AN mom keeps reaching out to us. I know you are both very busy, but would you have time to call/connect with her before the end of the week? Please let me know if I can help in any way — I am more than happy to call her and handle this if that would be easier for each of you. Just let me know.

Thanks,

[redacted]

Sent from my iPhone

Begin forwarded message:

From: [redacted]
Date: January 22, [redacted] at 5:13:11 PM PST
To: [redacted]
Cc: [redacted]
Subject: Re: Swimmer AN - Cal Housing Cancellation

Hello [redacted]

I will reach out to [redacted] to see if he will be able to assist me.

P: [REDACTED] C: [REDACTED]
W: CalBears.com

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On [REDACTED] Jan 20, [REDACTED] at 3:09 PM Parent of Swimmer AN [REDACTED] wrote:

Dear [REDACTED]

I still have not heard from [REDACTED]

I'm looking for a copy of all academic and athletic documents that my daughter Swimmer AN signed when she was admitted to Cal Berkeley.

If it's easier I can come in to somebody's office to request this information but I'm not sure who to reach out to at this point.

If [REDACTED] is not able to assist me, would there be somebody else that I may be connected with please?

Sincerely,

Parent of Swimmer AN

Parent of Swimmer AN

Thank you for the follow up email. [REDACTED] confirmed that she received a cancellation form. Please keep in mind that there is a \$300 housing cancellation fee that will be charged to Swimmer AN CalCentral account.

I just got out of a team meeting with [REDACTED] I mentioned that you were looking forward to hearing back from him. He should follow up with you shortly. Unfortunately, I don't have access to the athletics or admissions documents you are requesting. But if [REDACTED] doesn't get back to within the next couple of days please let me know.

Thanks for you patience.

Best,

[REDACTED]



[Redacted]

[Redacted]

Intercollegiate Athletics

Compliance & Student Services
119 Haas Pavilion, Berkeley, CA 94720

P: [Redacted] C: [Redacted]
[Redacted] W: CalBears.com

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On [Redacted] Jan 9, [Redacted] at 3:00 PM Parent of Summer AN [Redacted] wrote:

Dear [Redacted]

I wanted to confirm with you that Summer AN turned in her cancellation form to the Blackwell dorms on [Redacted], December 19, then again today to [Redacted]

I also wanted to follow up and let you know I haven't heard back from [Redacted]. Would you be able to assist me with these documents that I'm looking for?

Sincerely,

Parent of Summer AN

[Redacted]

I would reach out to [Redacted] who works for the bookstore. He can be reached at [Redacted] Summer AN can also

drop off the books to the bookstore located at the MLK Student Union on Bancroft to return tier books.

Please let me know if you have any other questions or concerns.

Best,

[Redacted]



[Redacted]

[Redacted]

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119 Haas Pavilion, Berkeley, CA 94720

P: [Redacted] C: [Redacted]
[Redacted] W: CalBears.com

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On [Redacted] Dec 29, [Redacted] at 2:46 PM Parent of Summer AN [Redacted] wrote:

Hello [Redacted]

I look forward to reconnecting with you about requested documents that Summer AN signed when you return.

Do you have a point person where we can return Summer AN school books to as well?

Sincerely,

Parent of Summer AN

Parent of Summer AN

I will follow up with [REDACTED] about your request when I am back in the office on January 6th.

Attached is the [REDACTED] *Cancellation Form and Policy* that you can email to [REDACTED] from Cal Housing. From my end, there are no additional forms that ^{Swimmer AN} needs to fill out upon your departure.

As far as her swim items go, I would return them to one of our Directors of Equipment [REDACTED] or [REDACTED]

Please let me know if you have any other questions or concerns.

Best,

[REDACTED]



[REDACTED]
[REDACTED]

Intercollegiate Athletics

Compliance & Student Services
119 Haas Pavilion, Berkeley, CA 94720

P: [REDACTED] C: [REDACTED]

W: CalBears.com

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On [REDACTED] Dec 27, [REDACTED] at 9:19 AM From: [REDACTED]
[REDACTED] wrote.

Dear [REDACTED]

Thank you for your follow up email and message.

I have not heard back from [REDACTED] yet. I am looking for all documents my daughter Swimmer AN signed with Cal Athletics and any admission documents as well.

Swimmer AN moved out of the Blackwell dorm on [REDACTED] December 19th. She had her walkthrough on December 19th with [REDACTED] signed release forms and gave back her dorm and mail box key.

Would you be able to assist me with locating the housing cancellation form? Is there any additional exit forms we need to sign upon our departure?

Swimmer AN also has books, swim clothing and 2x swim bags that the Cal swim coach requested returning. We will work to find the best point of contact for returning these items. Or if you have any suggestions please let us know.

Sincerely,

Parent of Swimmer AN

Parent of Swimmer AN

I hope this email finds you well. My name is [REDACTED] and I am the [REDACTED] at Cal. We spoke about two weeks ago when you requested a copy of every document that your daughter, Swimmer AN has signed with Cal Athletics. If you have not heard back from my supervisor, [REDACTED] about this please let me know.

I also wanted to follow up on Swimmer AN on-campus housing since I help coordinate on-campus housing for our athletes.

Since Summer AN is not returning to Cal next semester, she will have to cancel her housing contract before she is charged additional housing fees aside from the \$300 cancellation fee. I would recommend that she email a Cancellation Form to [REDACTED]

[REDACTED] provide supporting documentation showing that she has officially withdrawn, return her keys to the front desk of her dorm, and pay the cancellation fee which was mentioned in her contract.

If Summer AN has not returned her dorm keys, please have her mail them to the following address:

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

If you have any questions or concerns, please do not hesitate to contact me.

Thank you and enjoy your holidays!

[REDACTED]



[REDACTED]
[REDACTED]

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CA 94720

P: [REDACTED] C: [REDACTED]

[REDACTED]

W: CalBears.com

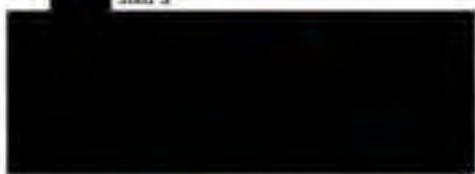
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<[REDACTED] Cancellation Form and
Policy (2).pdf>

<[REDACTED] Cancellation Form and Policy (2).pdf>



Staff 5



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To make a gift or to stay connected to the Cal Athletics Funds' special events, Knowlton's Notes and top news, visit [CalAthleticsFund.com](#).

On **Oct 4, [REDACTED]** at 4:20 PM **[REDACTED] Staff 5** **[REDACTED]** wrote:
Good afternoon From: [REDACTED] <[REDACTED]>

I hope this finds you well!

My name is **[REDACTED] Staff 5** I work with Cal Aquatics alumni and parents to increase support for the program.

I am reaching out because I will be in **[REDACTED]** area next week. I would love the opportunity to connect with you, hear about your experience (and ~~know~~ **AN** experience) with the team so far, and answer any questions that you may have.

Are you available **[REDACTED]** October 10 or **[REDACTED]** October 11 for me to treat you to coffee or lunch? I am happy to come to a location that is convenient for you.

I look forward to hearing from you. Thank you!

Go Bears!

[REDACTED]

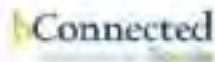
<image.png>
Staff 5



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Stay connected to The Cal Athletics Funds' special events, Knowlton's Notes, and top news by visiting [CalAthleticsFund.com](#). Go Bears!



Jennifer Simon-O'Neill <jenny.simon@berkeley.edu>

Availability to discuss a WSWIM parent

Jennifer Simon-O'Neill <jenny.simon@berkeley.edu>
To: [Redacted] Staff L [Redacted]

[Redacted] Feb 12, [Redacted] at 3:21 PM

Thank!



Jenny Simon-O'Neill
Executive Senior Associate Athletic Director - Chief of Staff
Senior Women Administrator (SWA)

Intercollegiate Athletics
115 Haas Pavilion, Berkeley, CA 94720

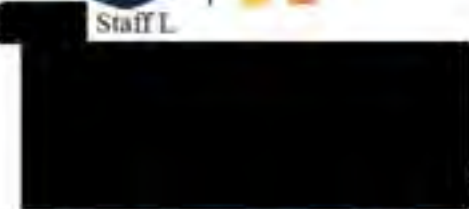
P: [Redacted] C: [Redacted] E: jenny.simon@berkeley.edu W: CalBears.com

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On [Redacted], Feb 12, [Redacted] at 3:17 PM [Redacted] Staff L [Redacted] wrote:
Great! I sent you a meeting invitation.

I'll see you [Redacted]

[Redacted] Staff L



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On [Redacted] Feb 12, [Redacted] at 3:07 PM Jennifer Simon-O'Neill <jenny.simon@berkeley.edu> wrote:
1-1:30 sounds great!



Jenny Simon-O'Neill
Executive Senior Associate Athletic Director - Chief of Staff
Senior Woman Administrator (SWA)

Intercollegiate Athletics
115 Haas Pavilion, Berkeley, CA 94720

P: [Redacted] C: [Redacted] E: jenny.simon@berkeley.edu W: CalBears.com

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On [redacted] Feb 12, [redacted] at 10:38 AM [redacted] Staff L [redacted] wrote:
Hi Jenny.

Do you have availability [redacted] to meet from 1-1:30 pm or 4-4:30 pm?

[redacted] Staff L



[redacted] Staff L

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On [redacted] Feb 11, [redacted] at 9:22 PM Jennifer Simon-O'Neill <jenny.simon@berkeley.edu> wrote:

Happy to meet this week. Is [redacted] a possibility?

I have spoken [redacted] as well but would like to hear your perspective

Thanks!
Jenny

Sent from my Phone

On Feb 11, [redacted] at 4:53 PM, [redacted] Staff L [redacted] wrote:

Hi Jenny,

I reached out to [redacted] mother of Swimmer AN [redacted] early October requesting a development meeting and never received a response. Early this morning I followed up with [redacted] about my request to meet with her. She responded within 5 minutes and requested that I call her to speak over the phone or to set up a time meet. I spoke with [redacted] the phone about an hour ago. She was very upset and did not have great things to say about the WSWIM program.

Do you have availability to meet with me and [redacted] this week to talk about my conversation with [redacted]

[redacted] Staff L



[redacted] Staff L

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6/7/22, 6:00 PM

U.C. Berkeley Mail - Availability to donate a WSWJM program

To make a gift or to stay connected to the Cal Athletics Funds' special events, Knowlton's Notes and top news, visit CalAthleticsFunds.com.

Former Student-Athlete Claim

2 messages

Jul 24, [REDACTED] at 10:44 AM

To: Ask_ophd Departmental <ask_ophd@berkeley.edu>

Cc: [REDACTED] Staff J [REDACTED] Jennifer Simon-O'Neill <jenny.simon@berkeley.edu>

Hello,

One of our former women's swimming student-athletes, **Swimmer AN**, left our program and the University after the Fall [REDACTED] semester. At the time of her departure, she made some complaints to our athletic administration, which were reviewed. **Swimmer AN** has now requested a release from her National Letter of Intent to make her eligible to compete at her next school. In making that request, she stated the following as the reason for her departure from Cal:

I was bullied by coaching staf, medical doctors and teammates

I wasn't sure whether this is something that is required to be reported to OPHD, but wanted to err on the side of caution and send it to you. I know Jenny Simon O'Neill and [REDACTED] Staff J from our athletic administration (both cc'd here) were involved in the review of **Swimmer AN** initial complaints so they are a resource if there are any questions.

Thanks,

[REDACTED]



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115 Haas Pavilion, Berkeley, CA 94720

P: [REDACTED] V: CalBears.com

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Ask_ophd Departmental <ask_ophd@berkeley.edu>

Jul 24, [REDACTED] at 12:50 PM

To: [REDACTED]

Cc: [REDACTED] Staff J [REDACTED] Jennifer Simon-O'Neill <jenny.simon@berkeley.edu>

Hi [REDACTED]

Thank you for forwarding this information to us. We will outreach to **Swimmer AN** with an invitation to speak to us and to get more information about her experiences. Additionally, since **Swimmer AN** is no longer a student, would you have the updated contact information for her? I also want to note that our [REDACTED] is aware of this report and may have also responded as well.

Thank you,

[REDACTED] Staff T

Office for the Prevention of Harassment and Discrimination

Private OPHD Introduction and Resources

1 message

Ask_ophd Departmental <ask_ophd@berkeley.edu>

Jul 24, [REDACTED] at 3:31 PM

To: [REDACTED]

Dear [REDACTED] AH,

I hope this email finds you well during these times. My name is [REDACTED] STAFF and I am the Complaint Resolution Coordinator at UC Berkeley's Office for the Prevention of Harassment and Discrimination (OPHD). Our office oversees the [UC Policy on Sexual Violence and Sexual Harassment](#) for UC Berkeley (SVSH Policy). We are notified when campus partners learn about behavior related to harassment and discrimination made on a protected basis, as well as incidents of sexual harassment and sexual violence. We recently learned that you were bullied by coaching staff, medical doctors and teammates when you were a student-athlete in Women's Swimming.

We are reaching out to you to see if you can share more information about your experience. If you'd like to speak with us about this and to discuss resolution options for moving forward, let me know and we can schedule a day and time to talk. We are also available to answer any questions you may have about our processes. We are available by phone, [REDACTED] - whatever is easiest for you - and you are welcome to have someone with you if/when we talk.

Please know that you are under no obligation to speak with me if you do not want to.

Please find below community resources that may be helpful to you. I understand that these experiences can bring up a variety of emotions, especially at an already challenging time in society. I hope you consider connecting with resources that can offer support to individuals who are impacted by sexual violence. Please know that you and others also deserve care.

- [Bay Area Women Against Rape](#) is a great resource for people in Alameda County who are dealing with the trauma of sexual assault, regardless of their gender. They offer experienced counseling and 24/7 advocacy. Their hotline is available in English and Spanish: (510) 845-7273.
- The [Family Violence Law Center](#) is a resource that provides survivor-centered legal and crisis intervention services for people who experienced domestic violence and sexual assault in Alameda County. They also provide meaningful referrals to counseling and other supportive services. Their 24/7 crisis line can be reached at (800) 947-8301.
- The [National Sexual Assault Hotline](#) is available by phone or online chat for survivors and their loved ones. They are free, confidential, and available 24/7. You can call (800) 656-HOPE (4673) to be connected with a trained staff member from a sexual assault service provider in your area or chat with them online.
- The highly-trained advocates at the [National Domestic Violence Hotline](#) are available 24/7 to talk confidentially with anyone experiencing domestic violence, seeking resources or information, or questioning unhealthy aspects of their relationship. You can call 1-800-799-7233, text LOVEIS to 2252, or chat online to speak with someone.

Please feel free to contact me if you have any questions, or to set-up an appointment to talk to us.

Warm regards,

[REDACTED] STAFF

Office for the Prevention of Harassment and Discrimination
University of California, Berkeley

September 1, 2022

Michael Drake, President
University of California,
president@ucop.edu

Rich Leib, Vice Chair
University of California Board of Regents
rich.leib@dunleerstrategies.com

Carol Christ, Chancellor
University of California - Berkeley
chancellor@berkeley.edu

Office of the Secretary and Chief of Staff to the Regents
1111 Franklin St.,12th floor
Oakland, CA 94607

VIA EMAIL

Dear President Drake, Vice Chair Leib and Chancellor Christ,

We are a group of current and former Cal Women's Varsity swimming athletes; as a group, our experience with Cal swimming extends from the early 1990's and the beginning of Teri McKeever's tenure to the current day. As has been reported in multiple news articles, we witnessed and/or were victims of the longstanding pattern of verbal and emotional abuse perpetrated by McKeever and endorsed by Cal Athletics for over 20 years.

The articles accurately characterize the experience of swimming under McKeever: bullying, verbal and emotional abuse, racial epithets, and coaching practices that encouraged athletes to betray their own bodies, mental health, and teammates. Many more stories of abuse have gone unshared. For us former swimmers, the consequences of McKeever's coaching, the culture of fear and intimidation on the team, and the athletic department's disappointing failure to protect its student-athletes have unfortunately followed us into adulthood. The articles painfully resurfaced the trauma we and our children endured as a result of the program.

In the weeks since the news broke, many of us have found solidarity and comfort in reconnecting with former teammates, supporting one another, and rebuilding the bonds that were broken by our isolating and traumatizing experiences at Cal. We expect you now to not let history repeat itself and urgently call on you to stop the abuse that continues with each new class. As program alumnae and

parents, it is an understatement to say that we are very concerned that a toxic culture in the swimming program continues to reward coaches, protect predators, and safeguard those who use outdated and trauma-inducing tactics.

While a formal investigation by the University into McKeever unfolds, we feel there is an urgent need for cultural change within Cal Swimming to transition the program to one in which student-athletes are respected, safe, and can thrive. To that end, we have five concerns we would like addressed immediately:

- At the recent National Association of Collegiate Directors of Athletics (NACDA) conference, data was presented affirming that while a quarter of student athletes suffer from mental health issues, only 10% seek help. We would expect UC Berkeley to have resources readily available, especially in the heightened climate of attention around Cal Swimming this season. What is the university doing to ensure that student athletes know about mental health and medical resources and feel safe and supported accessing them?
- Our experience has shown that widespread university leadership has failed to take action on our concerns. Beyond the athletic department, which university departments are included in the investigation? Who is responsible for leading a university-wide shift in culture toward protecting student athletes?
- We understand that the ongoing investigation may cause fallout within the current team and create a hostile climate for some athletes. We would like to ensure that the current student-athletes feel safe. What is the university doing to support a positive and cohesive team culture in a high-stakes season that will play out in the public eye? What resources will be available to the coach to ensure their ability to support the team?
- The university has not yet made a decision on McKeever's employment. When will a decision be made regarding McKeever's status with the university?
- Our experiences and voices have been dismissed and ignored for the last twenty years. For the investigation to have legitimacy, it must be published in written form and available for former athletes and the public to read. Will there be a written report from the internal investigation, and if so, when can we expect it to be issued?

You can reach the signatories of this letter at CalWSwimming@gmail.com. In addition to the signatures below there are ten athletes who support the letter but wish to remain anonymous. We look forward to your response.

Sincerely,

Swimmer CT

, NCAA All American, [REDACTED] National
Team, 4x World Championship Qualifier, Commonwealth Youth Games Medalist, [REDACTED]
Record Holder

Swimmer BE

Olympic Trials Qualifier

Swimmer ER, Cal Swimming Alumni
 Swimmer ES, Cal Swimming Alumni
 Swimmer AN
 Swimmer H, Pac-12 Finalist and Academic Honor Roll
 Swimmer BP, NCAA Qualifier, Pac-10 Finalist
 Swimmer CE, Olympic Trials Qualifier, Pac-10 Finalist
 Swimmer AW, Olympic Trials Qualifier, Pac-12 Finalist, CSCAA Scholar All American
 Swimmer BD, All American, NCAA Finalist, Olympic Trials Qualifier, [REDACTED]
 Swimmer EY, Cal Swimming Alumni
 Swimmer BC
 Swimmer X, 4x [REDACTED] Finalist, NCAA qualifier
 Swimmer C, [REDACTED], Medalist at [REDACTED] Games, [REDACTED]
 [REDACTED] Record Holder
 Swimmer ET, Cal Swimming Alumni
 Swimmer AR, NCAA Finalist, All American, [REDACTED]
 Swimmer CL, Olympic Trials Qualifier, Pac-10 Finalist
 Swimmer EU, Cal Swimming Alumni
 Swimmer CM, Honorable Mention All-Academic Pac-10
 Swimmer CK, US Nationals Finalist
 Swimmer CN, Pac-10 Finalist
 Swimmer DQ, All American, Olympic Trials Qualifier
 Swimmer EV, Cal Swimming Alumni
 Swimmer EA, [REDACTED], [REDACTED], [REDACTED] All American, Team [REDACTED]
 Swimmer EW, [REDACTED], [REDACTED], Olympic Trials Qualifier, All [REDACTED]
 Swimmer BN, Olympic Trials Qualifier
 Swimmer EZ, Cal Swimming Alumni
 Swimmer CS, All American, Pac-10 Finalist, Member of [REDACTED] Team, Olympic Trials Qualifier
 Swimmer BQ, [REDACTED], [REDACTED] Record Holder, Olympic Trials Finalist, World University Games Finalist
 Swimmer CG, Pac-12 Finalist
 Swimmer EX, Cal Swimming Alumni

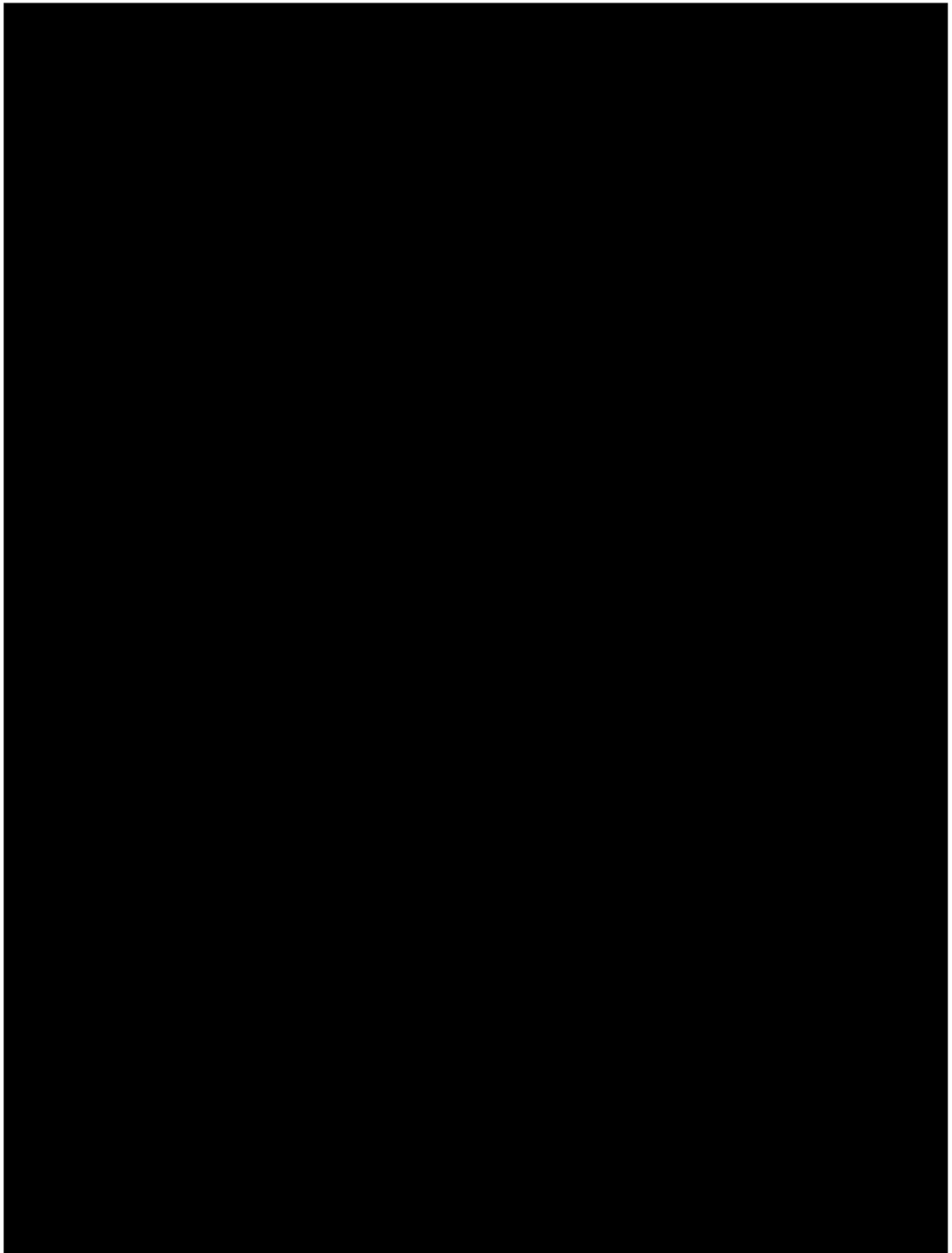
Parent Supporters:

Parent of Swimmer CT, [REDACTED]

Parents of Swimmer BE, [REDACTED]
Parents of Swimmer BP, [REDACTED]
Parents of Swimmer AN, [REDACTED]
Parents of Swimmer AW, [REDACTED]
Parent of Swimmer BD, [REDACTED]
Parent of Swimmer BD, [REDACTED]
Parent of Swimmer AR, [REDACTED]
Parents of Swimmer CL, [REDACTED]
Parents of Swimmer CM, [REDACTED]
Parents of Swimmer CN, [REDACTED]
Parents of Swimmer BN, [REDACTED]
Parents of Swimmer CS, [REDACTED]
Parent of Swimmer X, [REDACTED]

CC:

Benjamin Hermalin, Executive Vice Chancellor & Provost (hermalin@berkeley.edu)
Khira Griscavage, Associate Chancellor and Chief of Staff (kgriscavage@berkeley.edu)
Diana Harvey, Associate Vice Chancellor, Communications and Public Affairs
(diana.harvey@berkeley.edu)
Ryan King, Associate Director of Media Relations, (Ryan.King@ucop.edu)
James Knowlton, Director, Intercollegiate Athletics (jim.knowlton@berkeley.edu)
Ty-Ron Douglas, Associate Athletics Director, Diversity, Equity, Inclusion, Belonging & Justice
(tmodouglas@berkeley.edu)
David M. Robinson, Chief Counsel (dmrobinson@berkeley.edu)
Julie Connor, Associate Campus Counsel (jconner@berkeley.edu)
Jamie Jue, Director of Audit, Investigations, and Risk (jjue@berkeley.edu)
James Vernon, Berkeley Faculty Association (jvernon@berkeley.edu)
Mary Ann Smart, Chairman Berkeley Academic Senate (masmart@berkeley.edu)



From: Teri J MCKEEVER [mckeever@berkeley.edu]
Sent: 5/27/2014 7:10:53 PM
To: Swimmer H [REDACTED]
CC: [REDACTED] Staff F [REDACTED]
Subject: Re: [REDACTED] follow-up

Swimmer H

Thanks for the note and [REDACTED] and I briefly touched base. I'm sure this is a lot and I'm also sure that there is terrific medical staff here in Berkeley to support you through this.

For better or worse, we have had a significant number of women with issues and obviously Swimmer AO thrived while here so I believe you can do the same.

Best,

Teri



Teri McKeever

Head Coach

Women's Swimming and Diving

Intercollegiate Athletics

135C Haas Pavilion, Berkeley, CA 94720

P: [REDACTED] **E:** mckeever@berkeley.edu **W:** CalBears.com

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On [REDACTED] May 27, [REDACTED] at 11:49 AM Swimmer H [REDACTED] wrote:

Hi Teri,

I just wanted to reach out and let you know that after [REDACTED] I was diagnosed with [REDACTED] I am a little overwhelmed by all of this right now, but I am hoping that knowing this will only help me get better. I have already communicated with [REDACTED] and I have started treatment with medicine and [REDACTED]. I'm sure this is a lot for everyone to take in right now, but let me know if you have time for a phone call sometime this week. Thanks!

Best,

Swimmer H

From: Teri McKeever [mckeever@berkeley.edu]
Sent: [REDACTED]
To: [REDACTED] Staff F [REDACTED]
Subject: Re: Doctor Follow-Up

I didn't have time to call. Now I understand she's home and I'm really not okay with just go home. In my mind all that does is push this back. The fact too that she can't stay 24 hours to talk to me in person honestly pisses me off.

I emailed her last night about meeting today?

Sorry I just feel really misled and used by her and her family

Thanks for the help!

Teri

Teri McKeever
Head Coach
Women's Swimming and Diving
135C Haas Pavilion
Berkeley, CA. 94720-4422
[REDACTED]

On [REDACTED] Staff F [REDACTED] wrote:

Teri,
She saw [REDACTED] Staff N today so I have some updates for you. I know you are at the coaches retreat, so give me a call if you want to talk. Long story short, [REDACTED] Staff N thought it might be best for her to head home for the summer to "get things sorted out". I think it will end up being what's best for everyone, including you! There is a plan for her to continue working out and getting back into full time training.
Hope that helps!
[REDACTED]

On [REDACTED] Teri J MCKEEVER <mckeever@berkeley.edu> wrote:
What do you make of this?



Teri McKeever
Head Coach
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[REDACTED] E: mckeever@berkeley.edu W: CalBears.com

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----- Forwarded message -----

From: Swimmer H [REDACTED]

[REDACTED]
Subject: Doctor Follow-Up
To: Teri J MCKEEVER <mckeever@berkeley.edu>

Hi Teri,

I have already communicated with [REDACTED] but I just wanted you to hear from me that I was instructed by the doctors to take the rest of the week off. I was prescribed [REDACTED] and to [REDACTED]

I am seeing the team doctor at 10:30am tomorrow and I will let you know if there are any updates with that.

Because I was told I need time off for my body to heal, I will not be attending [REDACTED] I'm hoping that we can all get this under control.

Let me know if you would like to set up a call or meeting. Thank you for your time.

Best,
Summer H

Go Bears!

[REDACTED]

[REDACTED] Staff F
[REDACTED]

Intercollegiate Athletics
[REDACTED]
[REDACTED]

W: CalBears.com

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From: Teri J MCKEEVER [mckeeper@berkeley.edu]
Sent: 6/6/2011 9:00:55 PM
To: Swimmer H [REDACTED]
CC: [REDACTED] Staff F [REDACTED]
Subject: Re: Meeting

Swimmer H

I left a voicemail and look forward to hearing your reply.

Teri



Teri McKeever

Head Coach

Women's Swimming and Diving

Intercollegiate Athletics

135C Haas Pavilion, Berkeley, CA 94720

P: [REDACTED] **E:** mckeeper@berkeley.edu **W:** CalBears.com

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On [REDACTED] Jun 6, [REDACTED] at 8:43 AM Swimmer H [REDACTED] wrote:

Hi Teri,

I'm not sure if you have been in contact with [REDACTED] Staff N and [REDACTED] yet, but they decided to have me go home for the rest of the summer. They told me to go home yesterday and to not stay another night. [REDACTED] Staff N has made a plan to modify my training and for my treatment so I can get better as soon as possible. His plan is focused on me getting better now so I'm ready to perform at my best next semester for the team.

For the meeting, I could either call today at 12:30pm or you could schedule a time next week for me to come down and meet in person. Whatever works best for you.

Thanks,

Swimmer H

On [REDACTED] Jun 6, [REDACTED] at 3:07 AM Teri McKeever <mckeeper@berkeley.edu> wrote:

Swimmer H

Would like to connect in person after my retreat commitments today. Can you meet me at 12:30pm in my office?

Teri

Teri McKeever

Head Coach

Women's Swimming and Diving

135C Haas Pavilion

Berkeley, CA 94720-4422



From: Teri MCKEEVER (mckeever@berkeley.edu)
Sent: 6/26/2015 5:10:45 PM
To: Swimmer H [REDACTED]
CC: [REDACTED] Staff A [REDACTED] Staff F [REDACTED]
Subject: Re: Health Update

Swimmer H

Thanks for the update. Obviously this is not good news as it seems like progress has been minimal at best. Please reach out to [REDACTED] after your tests. I feel strongly that we need doctors and a plan locally as the school year approaches. This should be set up well before classes begin.

Hang in there,

Teri

[REDACTED]

Teri McKeever
Head Coach
Women's Swimming and Diving

Intercollegiate Athletics
135C Haas Pavilion, Berkeley, CA 94720

P: [REDACTED] **E:** mckeever@berkeley.edu **W:** CalBears.com

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On [REDACTED] Jun 25, [REDACTED] at 11:51 AM Swimmer H [REDACTED] wrote:
Hi Teri,

I just wanted to send a quick update on how things are going. This past week I have had a few [REDACTED] with [REDACTED]. Unfortunately, I have been feeling worse lately and have been having a [REDACTED]. On Thursday evening, I went to the [REDACTED] during a [REDACTED] to get some treatment and labs done. Since my pain has been increasing, my doctor ordered a [REDACTED] to get some better imaging of what is going on. I got some [REDACTED] done this morning and will be having the [REDACTED] done on Wednesday or Thursday.

Right now I am still waiting for the [REDACTED] medication to take full effect because it takes about [REDACTED] to work at it's full potential. If I am not turning the corner and getting better at that mark, I am going to be trying another treatment option. I am also still [REDACTED]. Since my [REDACTED] there is not much I can do to control the [REDACTED] that I am going through right now. I have been feeling worse at night and worse on the days that I swim. Right now it is difficult for me to swim because it causes [REDACTED] and then it lasts throughout the day as well. But, I think that [REDACTED] has been helpful because I've noticed when [REDACTED] it's hard for me to [REDACTED].

[REDACTED] I'm hopeful that things will start to get better soon once we can get this managed and figure out what works for me.

My [REDACTED] has been in contact with [REDACTED] Staff and I know everyone is working hard to help me get through this. Thank you for your time.

Best,
Swimmer H

From: [REDACTED] Staff F [REDACTED]
Sent: 8/26/2007 5:50:57 PM
To: Swimmer H [REDACTED]
CC: Teri J MCKEEVER [mckeever@berkeley.edu]
Subject: Re: Follow Up Information

Hey Swimmer H

Here is the SHIP office website. The phone number is listed about halfway down the page on the left. [REDACTED] is our athletics insurance coordinator and he may also be able to help you out. His direct number is: [REDACTED]

[REDACTED] Staff F

On [REDACTED] Aug 23, [REDACTED] at 8:25 PM Swimmer H [REDACTED] wrote:
[REDACTED] office is the one that is [REDACTED]. The Ship is the primary and the [REDACTED] is the secondary. Do you have the Ship athletic contact? The office admin want to connect with them.

On [REDACTED] Aug 23, [REDACTED] at 3:57 PM [REDACTED] Staff F [REDACTED] wrote:
Swimmer H

Which one of your physicians is [REDACTED]? Their office will have to be the one to submit the insurance authorization.

On [REDACTED] Aug 22, [REDACTED] at 4:23 PM Swimmer H [REDACTED] wrote:
Hi [REDACTED] and Teri,

Thanks [REDACTED] I found out that the offices are working on authorizing with [REDACTED] in [REDACTED]. This [REDACTED] is the one that will come to me and do the [REDACTED] in my dorm or training room after the first few in office treatments. I'm not sure if there is anyway to get this authorized faster? The office number is [REDACTED].
I can also call the center that you found and see about insurance.

Thanks for the information on the support groups, I will check them out!

Best,
Swimmer H

On [REDACTED] Aug 22, [REDACTED] at 3:51 PM Teri J MCKEEVER <mckeever@berkeley.edu> wrote:
GREAT start... thanks [REDACTED]



Teri McKeever
Head Coach
Women's Swimming and Diving

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On [REDACTED] Aug 22, [REDACTED] at 3:07 PM [REDACTED] Staff F [REDACTED] wrote:
Swimmer H

Here are some links to some of the information that we had discussed in our meeting today:

1. I found a [REDACTED] Here is the link to their website. I would recommend calling to see if they accept your insurance(s).

2. There is a great website full of information regarding [REDACTED] through the [REDACTED]

[REDACTED] is a advocate for this group and I reached out to her to get some information. Swimmer AO said there is a great support group right here on campus that she herself attended and highly recommends.

There is also assistance through Social Services at the Tang Center for [REDACTED]

Let me know if /when you hear back from DSP.

Thanks,

[REDACTED]

Go Bears!

[REDACTED] Staff F

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From: Teri J MCKEEVER [mckeever@berkeley.edu]
Sent: 8/22/2011 1:18:04 PM
To: Swimmer H [REDACTED]
CC: [REDACTED] Staff F [REDACTED]
Subject: Re: Appointment Schedule

Great-thanks! This is what I'm expecting.

Teri McKeever
Head Coach
Women's Swimming and Diving

Intercollegiate Athletics
135C Haas Pavilion, Berkeley, CA 94720

P: [REDACTED] **E:** mckeever@berkeley.edu **W:** CalBears.com

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On [REDACTED] Aug 22, [REDACTED] at 4:15 PM Swimmer H [REDACTED] wrote:
Hi Teri,

I followed up with [REDACTED] and was able to schedule my appointment with [REDACTED] Staff N on Monday at 9:30am. I'm meeting with [REDACTED] at 1pm on Monday for medical clearance and I have a [REDACTED] appointment at 1:30pm on Monday as well.

Best,
Swimmer H

From: [REDACTED] Staff [REDACTED]
Sent: 9/3/2011 8:00:13 PM
To: Swimmer H [REDACTED]; Teri J MCKEEVER (mckeever@berkeley.edu)
Subject: Re: Update

Hey^{Swimmer H}

There looks like there is an on campus support group, not associated with the Tang Center. Check out this page... it should be the second one listed below the map.

On [REDACTED] Sep 3, [REDACTED] at 12:52 PM Swimmer H [REDACTED] wrote:
Hi

I only saw the online session for the support group which is the same time as my math class. I did not see an on campus group through the [REDACTED] the on campus one I think is just through Tang. I let them know I am interested in joining the support group and am waiting to hear back about my screening with the counselor that runs the group. I'm going to give them a call back again today!

On [REDACTED] Aug 29, [REDACTED] at 8:38 AM [REDACTED] Staff [REDACTED] wrote:
Hey^{Swimmer H}

For the support group, I thought I saw that there were two options through the [REDACTED] - in person on campus and an online version. Do you have conflicts with both or just the online session? I would definitely follow up with the counselor that typically runs the [REDACTED], if they know people are interested, they may be more likely to start the group up again.

On [REDACTED] Aug 27, [REDACTED] at 12:43 PM Swimmer H [REDACTED] wrote:
Teri,

Sorry that my update was not clear. I made of the mistake of showing up to my appointment at the wrong time yesterday which caused me to need to reschedule.

I met with [REDACTED] Staff^N this morning and he said I am cleared to swim. He said that the pain I'm experiencing is not causing permanent damage and that I am good to go. But, he said that the symptoms are holding me back and that we may need to navigate to a modified schedule until the [REDACTED] I am following up with him in 4 weeks.

The online [REDACTED] support group is only offered at the same time as my Math 10A discussion so I cannot attend that. I called Tang and they said they currently are not holding the [REDACTED] but they can make me an appointment with the counselor that runs that group when it is in session. Do either of you have other support group ideas? I'm going to call [REDACTED] office and see if they have any available locally.

Thank you,
Swimmer H

On [REDACTED] Aug 26, [REDACTED] at 11:13 PM Teri J MCKEEVER <mckeever@berkeley.edu> wrote:
Swimmer H

Thanks for the update.

It's my understanding that you missed your appointment today with [REDACTED] Staff N. When updating let's make sure you're owning your role in why you had to reschedule. Your note leads me to believe the reschedule was because of [REDACTED] Staff N. I'm looking for you to take ownership in this whole process and giving me the whole picture is part of it.

Teri



Teri McKeever

Head Coach

Women's Swimming and Diving

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On [REDACTED] Aug 26, [REDACTED] at 4:12 PM Swimmer H [REDACTED] wrote:
Hi Teri and [REDACTED]

I met with the [REDACTED] today and it was really helpful. Our goal is to identify [REDACTED] by keeping a [REDACTED]. I am also going to start [REDACTED] to see if that helps me. She also got me in contact with someone at the [REDACTED] that can help me navigate [REDACTED]. I meet with her again in two weeks on [REDACTED] September 9th.

I had to reschedule my appointment with [REDACTED] Staff N tomorrow.

Also, I have not yet heard back from the disability office about setting up my appointment. Maybe [REDACTED] Staff F could help me get in touch with them? I was hoping to get that set up soon.

Best,
Swimmer H

Go Bears!



[REDACTED] Staff F

Intercollegiate Athletics
[REDACTED]



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Go Bears!



Staff

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From: Teri J MCKEEVER [mckeever@berkeley.edu]
Sent: 8/29/2011 5:25:53 AM
To: Swimmer H [REDACTED]
CC: [REDACTED] Staff F [REDACTED]
Subject: Re: Update

Great-glad you're making progress!

Teri



Teri McKeever
Head Coach
Women's Swimming and Diving

Intercollegiate Athletics
135C Haas Pavilion, Berkeley, CA 94720

P: [REDACTED] **E:** mckeever@berkeley.edu **W:** CalBears.com

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On [REDACTED] Aug 28, [REDACTED] at 7:11 PM Swimmer H [REDACTED] wrote:
Hi Teri,

I was able to make an intake appointment with the DSP office today. My appointment is on [REDACTED] September 4th at 11am.

Best,
Swimmer H

From: Swimmer II [REDACTED]
Sent: 8/29/ [REDACTED] 11:29:58 PM
To: [REDACTED] Staff [REDACTED]; Teri J MCKEEVER [mckeever@berkeley.edu]
Subject: Update

I've been communicating with the [REDACTED] and they just told me today that I needed some [REDACTED] before I could set up an [REDACTED]. I just got the [REDACTED] and it is being processed as urgent. This process of getting the [REDACTED] is very frustrating, I keep calling and pushing for authorization. But once the [REDACTED] I should get authorized by the insurance and [REDACTED] I'm hoping everything will be done by tomorrow so I can set up an infusion date.

From: Swimmer H [REDACTED]
Sent: 9/6/ [REDACTED] 7:02:01 PM
To: [REDACTED] Staff F [REDACTED]
CC: [REDACTED] Staff A [REDACTED] Teri J MCKEEVER (mckeever@berkeley.edu)
Subject: Re: [REDACTED]

The group does not have a meeting time set up yet for this semester. Last semester it was twice a month at 7pm in different classrooms. I am getting added to the [REDACTED] where the meetings are coordinated and where people ask for and give advice on [REDACTED]

On [REDACTED] Sep 5, [REDACTED] at 1:02 PM [REDACTED] Staff F [REDACTED] wrote:

Good work!
Keep us posted!

Content Deleted

On [REDACTED] Sep 5, [REDACTED] at 12:45 PM Swimmer H [REDACTED] wrote:
Hi,

I just emailed the contact for the [REDACTED] group here on campus and asked for the details about when/where the group meets. Online the only details are that it is here at the UC Berkeley campus and that the group meets monthly. Hopefully I won't have a conflict with this group!

Best,
Swimmer H

Go Bears!

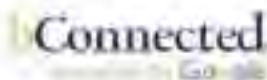


Staff F [REDACTED]

Intercollegiate Athletics
[REDACTED]

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Jennifer Simon-O'Neill <jenny.simon@berkeley.edu>

Re: Update

Teri J MCKEEVER <mckeever@berkeley.edu>

[REDACTED], Sep 18, [REDACTED] at 4:09 PM

To: Swimmer H [REDACTED]

Cc: [REDACTED] Staff F [REDACTED]

Staff A [REDACTED]

Jennifer Simon-O'Neill

<jenny.simon@berkeley.edu>

Swimmer H

It's my understanding that you showed up for your most recent [REDACTED] appointment with less than 10 minutes to go in the time you were allotted without a call or letting them know. So in fact, you had to reschedule because you missed your appointment. Again, you are not giving us the whole story and accepting responsibility for your actions and how you may be misusing the [REDACTED] time and these valuable resources. There is only two [REDACTED] for over [REDACTED] student-athletes and there are many athletes that would love to be able to meet one on one. This is twice since classes began that you have missed a medical appointment that was on your calendar.

Additionally, it was brought to my attention yesterday that you have met with [REDACTED] staff a handful of times (at least 3) about a class that won't allow more than four misses a semester. He had no idea, nor have you informed him, that you are NOT training and will not be traveling this semester. Honestly, I find it unethical and at minimum not being upfront with staff and instructors that you would even give your professors a travel excuse letter. Apparently you did switch classes and if you knew you were not traveling this semester and have intentions of competing in future semesters it seems to all of us that this semester was actually the best possible time to stay in that class.

Finally, I have had at least three team-members come to me with concerns about your drinking this past weekend. When you [REDACTED] staff I met before classes began I specially addressed that it went without saying that you should not be drinking. Apparently, this is not what's happening and that this past weekend is not an isolated case.

These issues all cause me great concern and I see a pattern that is not congruent with someone looking to be reinstated as a women's swimmer on the team.

Teri

**Teri McKeever**

Head Coach

Women's Swimming and Diving

Intercollegiate Athletics

135C Haas Pavilion, Berkeley, CA 94720

P: [REDACTED] E: mckeever@berkeley.edu W: CalBears.com

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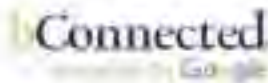
On [REDACTED] Sep 17, [REDACTED] at 11:44 PM Swimmer H [REDACTED] wrote:
Hi,

I just finished my first midterm of the semester! It was [REDACTED] and I thought it went well, but it was really challenging. I had to reschedule my [REDACTED] appointment to Thursday due to a personal reason. It has been a challenging week. My [REDACTED]

[REDACTED]. I am going to contact my [REDACTED] and see when I am going to be able to schedule [REDACTED] for now that I know [REDACTED]. I am going to get in and start swimming again during the open rec hours. I was able to do this the beginning of last week after the [REDACTED]. The evening open rec hours can fit into my schedule.

I also have a call set up on Thursday with the counselor that normally runs the [REDACTED] support group at Tang. That is at 1:30pm. The [REDACTED] support group still has not had any meetings set up here on campus, but hopefully those will start soon.

Best,
[REDACTED]



Jennifer Simon-O'Neill <jenny.simon@berkeley.edu>

Re: Update

Swimmer H [REDACTED] [REDACTED], Sep 23, [REDACTED] at 10:05 PM
 To: Teri J. MCKEEVER <mckeever@berkeley.edu>
 Cc: [REDACTED] Staff F [REDACTED] Staff A [REDACTED] Jennifer Simon-O'Neill
 <jenny.simon@berkeley.edu>

Hi Teri,

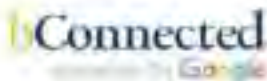
I realize that me showing up late to my [REDACTED] appointment was disrespectful, but I truly was unable to get there on time due to a personal issue that I do not feel comfortable discussing. I wish I had a better answer to this, but I tried to make the best of it by attending at the last few minutes when I was able to in order to reschedule.

Regarding the class, I was not informed that I would not be traveling with the team at all this semester. You did not communicate that with me, so I was adjusting my schedule so I could be ready to go. The end of the season meet in December had a conflict with that class. If I attended the December meet, I would automatically get a C in the class. I was trying to revolve my schedule around swimming because I want to be on this team and I was doing my best to make my classes work with swim in case I was able to attend the meet. I had no malicious intentions by giving my professor the travel letter and if it had been communicated that there was no chance of me traveling, I wouldn't have. I was acting accordingly to the information I had and was trying to make the best situation in hopes that I would be able to be a part of the team.

It greatly concerns me that I was not invited to attend roster pictures because that correlates to me being off of the roster for the entire year. I feel like I am not being given a chance to show that I want to be a part of the team and I instead am being isolated. It feels as if that you are just frustrated with the medical situation I am in and am taking it out on me by pushing me to the side so you can focus on what is going well. I really want to be a part of the team and would like the opportunity to do that. I hope you can understand my perspective.

Best,

[Quoted text hidden]



Jennifer Simon-O'Neill <jenny.simon@berkeley.edu>

Meeting

Jennifer Simon-O'Neill <jenny.simon@berkeley.edu>
To: Swimmer H [REDACTED]

[REDACTED], Sep 23, [REDACTED] at 3:27 PM

Great – see you then. My office is in 115 Haas.



Jenny Simon-O'Neill
Executive Senior Associate Athletic Director – Chief of Staff
Senior Woman Administrator (SWA)

Intercollegiate Athletics
115 Haas Pavilion, Berkeley, CA 94720

P: [REDACTED] **C:** [REDACTED] **E:** jenny.simon@berkeley.edu **W:** CalBears.com

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[Quoted text hidden]

Meeting Notes from 9/23 on Team Expectations/Standards

Foundational:

- ★ Excellence all around/give 100%
- ★ Team goal of NCAA title
- ★ Actions match words
- ★ No entitlement
- ★ Your shit vs. team time
- ★ Transparent and honest with everyone
- ★ Sense of urgency and engagement
- ★ Awareness of surroundings (things and people)
- ★ Be on time
- ★ Respect people and environment we are in
- ★ Always acting as an ambassador for Cal Women's Swimming
- ★ Address issues in a timely manner
- ★ Self advocate
- ★ Efficiency in all we do
- ★ Sense of privacy (keep it about and within our team)
- ★ NO red
- ★ No drugs, vaping, smoking
- ★ Attendance at scheduled meetings
- ★ Do not avoid hard conversations in person

Training:

- ★ Be on time/early
- ★ Have equipment ready
- ★ 100% physically and mentally
- ★ Be present
- ★ Leave issues at the door
- ★ Communicate injuries and have them verified
- ★ Know the why?/purpose
- ★ I hold yourself accountable . hold teammates accountable
- ★ Criticism isn't personal
- ★ Lead by example/practice what preach
- ★ Engaged listening/pay attention
- ★ Know the set
- ★ Keep team spaces clean
- ★ Leave areas better than we found them
- ★ If you miss practice you do not go out for social events
- ★ Be coachable
- ★ Positive engagement
- ★ API (Assume Positive Intent)
- ★ Consistency
- ★ Willingness to be uncomfortable

Travel/Meets:

- ★ Appropriate attire
- ★ Know itinerary
- ★ Representing Cal - language, sportsmanship, attitude, manners
- ★ Respect time on the schedule
- ★ Team first communication
- ★ Know when it's team time and when you can engage with parents
- ★ Positivity in team area
- ★ NO deck changing
- ★ Speedo on deck
- ★ NO drinking/partying
- ★ Proper phone usage only (ie: music, splits, race video)
- ★ Treat as a business trip - stay focused
- ★ All competitions matter
- ★ Always show up with respect
- ★ Ability to move on quickly
- ★ Know how to take and acknowledge a compliment
- ★ Support appropriately (be aware of teammates races)
- ★ Freshman rollers
- ★ Bring ID
- ★ Respect team space
- ★ Communicate with parents
- ★ Pack essentials in your carry on
- ★ Pace (know what you need and communicate)
- ★ One event at a time

Academics:

- ★ Go to Class
- ★ Communicate with professors
- ★ Time management
- ★ Prioritize academics
- ★ Know Honor code of Cal
- ★ Respect various interests and abilities
- ★ Use academic resources
- ★ Don't cheat
- ★ Hand in travel letters
- ★ Remind professors of travel closer to the meet date
- ★ Minimize class conflicts
- ★ Attend meetings with advisor
- ★ Excellence in the classroom

Recruiting:

- ★ Focus on positive things

- ★ Sell Cal
- ★ NO alcohol
- ★ They are "visitors" - not "recruits"
- ★ Be on time
- ★ Don't overshare
- ★ Offer a few options of things to do and do what they want
- ★ Stay off your phone
- ★ Get to know them personally
- ★ No photos with them
- ★ Be a good host (bed, offer clothes)
- ★ Don't talk money/scholarship
- ★ No talk about academics/test scores
- ★ Take to bookstore
- ★ Speak as if already a Cal Bear → "when you come here" not "if you come here"
- ★ No negative recruiting
- ★ Know their bio
- ★ Stay with them all the time
- ★ Be informed on their itinerary
- ★ TEAM effort (ALL classes)
- ★ Communicate before and after trip
- ★ Communicate with coaches about fit
- ★ volunteer/step up to help

Communication:

- ★ Always representing Cal
- ★ Ask family pod/teammates/captains first
- ★ FIO (figure it out)
- ★ Watch language in social media captions
- ★ Honesty
- ★ Communicate with your family
- ★ Watch what you post - it is a snapshot of you, is it what you would want people to see
- ★ Communicate equally with ALL staff
- ★ If you are running late/sick you must communicate (call teri's phone)
- ★ Respectfully communicate/motivate
- ★ No rude comments on social media
- ★ OVER communicate

Performance:

- ★ NO drinking during the week
- ★ Need to recover outside of the pool (ie: nutrition, sleep, taking care of self, etc)
- ★ Fill emotional well to stay happy
- ★ Focus on injury prevention
- ★ Prioritize health
- ★ Make sleep a priority

- ★ Know difference between NEED and WANT
- ★ Be willing to accept help
- ★ Help self first (need to help self **before** helping others or asking for help)
- ★ HYDRATION!
- ★ Eat (use food) as fuel
- ★ Establish a routine
- ★ Take advantage of team resources
- ★ Be self aware of what YOU need

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

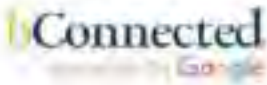
[REDACTED]

[REDACTED]

[REDACTED]

Date:

[REDACTED]



Jennifer Simon-O'Neill <jenny.simon@berkeley.edu>

CAPs Information

Staff F [redacted] Sep 26, [redacted] at 4:33 PM
To: Swimmer H [redacted]
Cc: Jennifer Simon-O'Neill <jenny.simon@berkeley.edu>

Hey [redacted],

Please see the attached document for information regarding the Counseling and Psychological Services (CAPs) at the Tang Center. You can contact them in a variety of ways, but the easiest is to call their office directly to set up an appointment. You can do that by calling [redacted]. Let me know if you have any questions!

 CAPS Student Athlete Guide, [redacted], [digita...](#)

Go Bears!



Staff F [redacted]
[redacted]
[redacted]
[redacted] [W: CalBears.com](#)

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Swimmer 11



1. Review and sign Team Rules
2. Why 8 hours- water time is the priority
3. Review definition of honesty/ appropriate communication
4. Confirm expectation that you will abstain from alcohol use
5. Go over training 10/3-10/24:

■■■■ - 7-8:30am

■■■■ - 7-9:00am

(3.5 hours)

■■■■ - 7-8:30am

■■■■ 6:45-8:45am

■■■■ - 6:45-8:45am

■■■■ - 90 minutes of swimming on your own

(7 hours)

■■■■ - 7-8:30am (Team Meeting)

■■■■ - 6:45-8:45am

■■■■ - 6:45-8:45am

■■■■ - 7-8:30am

■■■■ - first hour of practice

(8 hours)

■■■■ - 7-8:30am

■■■■ - 6:45-8:45am

■■■■ - 7-8:30am

■■■■ - 7-8:45am (Need to support team at the meet)

(6.75 hours)

Signature: _____

Date: _____ -that you lift with the team at the scheduled time and you don't intentionally schedule classes/appointments to not be in the weight room with the team.

From: Teri J MCKEEVER (mckeever@berkeley.edu)
Sent: 10/16/2014 7:07:50 PM
To: [REDACTED]
Subject: Letter of Recommendation for Swimmer H
Attachments: Swimmer H_LOR.docx

Please see the attached letter of recommendation.

Teri McKeever
Head Coach
Women's Swimming and Diving

Intercollegiate Athletics
135C Haas Pavilion, Berkeley, CA 94720

P: [REDACTED] **E:** mckeever@berkeley.edu **W:** CalBears.com

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October 16, [REDACTED]

To Whom It May Concern:

I liked to take this opportunity to recommend Swimmer H for the position in your organization for which she is applying.

Swimmer H swam for us at the University of California, Berkeley for the past two seasons. Unfortunately, her struggles with [REDACTED] has brought an end to her competitive swimming career. That being said, I feel that from the growth I've seen since her diagnosis she would be a perfect spokesperson.

Swimmer H is very personable and gets along well with others. She has high standards, is very bright and tends to inspire those around her to be the best version of themselves.

She works well with others, has learned to take initiative and has the ability to do big picture problem solving. Through her elite level academics and athletics, she has demonstrated excellent time management and the ability to set a goal and put the work in to achieving it.

I believe if you are clear and set expectations you will be impressed with Swimmer H and happy to have her as an associate. I am happy to answer any additional questions or discuss her qualities further if that should be of help.

I wish you the best with this search and thank you for the support you provide to Swimmer H and others.

Sincerely,

Teri McKeever
Head Women's Swimming Coach- UC Berkeley
[HYPERLINK "mailto:mckeever@berkeley.edu"]
[REDACTED]



Jennifer Simon-O'Neill <jenny.simon@berkeley.edu>

Swimmer B Training Plan 10/28-11/16

Teri J MCKEEVER <mckeeper@berkeley.edu> [REDACTED] Oct 26, [REDACTED] at 2:42 PM
To: Swimmer B [REDACTED]
Cc: [REDACTED] Staff A [REDACTED], [REDACTED] Staff P [REDACTED], Jennifer Simon-O'Neill <jenny.simon@berkeley.edu>

Hi Swimmer B

I've attached what I was thinking for the next three weeks in term of training. I added the beginnings of some of Monday/Friday afternoons because [REDACTED] starting us off with 15plus minutes of land work that I think will get you started on some strength that should help you as you progress.

Please look this over and let me know if you have any questions and/or concerns. It steps you up and hopefully allows you to continue to make progress.

Hope you're enjoying your weekend!

Go Bears.

Teri



Teri McKeever
Head Coach
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Swimmer B Training [REDACTED].docx

From: Swimmer H
Sent: 11/4/2011 9:56:23 PM
To: Teri McKeever (mckeever@berkeley.edu)
CC: Staff A [REDACTED] Staff F [REDACTED]
Subject: re: neath update

I just had my appointment with [REDACTED] Staff N and the plan is for me to get back in the water tomorrow morning. He thinks that the [REDACTED] helped reduce the symptoms of my small [REDACTED] flare, but prolong the symptoms of the [REDACTED]. Since my [REDACTED] from the [REDACTED] he thinks it may just take me longer than others to recover and start feeling better from this. My plan is to continue to get as much rest as possible this week and to do the best I can in the water. I'm excited to get back into it tomorrow morning. I will see you tonight at the meeting

Best
Swimmer H

On [REDACTED] Nov 4, [REDACTED] at 12:36 PM Swimmer H wrote:
I am still not feeling well and won't be able to come to afternoon practice. I am going to my appointment with [REDACTED] Staff N at 1:15pm today and will update you afterwards on what he says. I will come to the team meeting tonight and my goal is to be in the water tomorrow.

Best,
Swimmer H

On [REDACTED] Nov 3, [REDACTED] at 6:13 PM Teri McKeever <mckeever@berkeley.edu> wrote:
Swimmer H

Sorry to hear you're not feeling well. Thanks for the update.
Look forward to hearing how your appointment goes.
Best,
Teri

Teri McKeever
Head Coach
Women's Swimming and Diving
135C Haas Pavillion
Berkeley, CA 94720-4422
[REDACTED]

On Nov 3, [REDACTED] at 5:55 PM, Swimmer H wrote:

Hi Teri and [REDACTED]

Unfortunately, I am still not feeling better. I won't be coming to practice tomorrow morning. I think I will benefit more from sleeping in and continuing to get rest to get better. I have an appointment with [REDACTED] Staff N tomorrow at 1:15pm. I will update you on how that goes and what he recommends.

Thanks,
Swimmer H

On [REDACTED] Oct 31, [REDACTED] at 5:58 PM Teri J MCKEEVER <mckeever@berkeley.edu> wrote:

Thank You for the update and clarity. Sorry to hear you aren't feeling well and sounds like you have a solid plan to progress.

See you [REDACTED]
Teri



Teri McKeever
Head Coach
Women's Swimming and Diving

Intercollegiate Athletics
135C Haas Pavilion, Berkeley, CA 94720

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On [REDACTED] Oct 31 [REDACTED] at 3:19 PM **Swimmer H** wrote:
Hi Teri and [REDACTED] Staff A


I wanted to update you and let you know that I just saw [REDACTED] Staff N in the urgent care at Tang. He prescribed me with a [REDACTED] and [REDACTED] because he thinks I'm experiencing a small [REDACTED] up along with a [REDACTED]. Earlier this week I started having [REDACTED] symptoms. I got medicine from [REDACTED] for that. But, I started having [REDACTED] yesterday along with [REDACTED]. I was able to come to practice this morning, but my symptoms got worse after.

[REDACTED] Staff N advised me to not practice tomorrow or [REDACTED] so I can get better and be ready for next week by [REDACTED] morning. He thinks my progression has been going well and that this is just a small setback. I will take the time this weekend to rest and recover so I can feel better as soon as possible. I also saw the [REDACTED] today and she advised me to go on a [REDACTED] until I start feeling better. I discussed that with her and feel confident that I am going to be able to get this under control quickly. [REDACTED] also gave me some different [REDACTED]. I've already been communicating with [REDACTED] Staff F but I wanted to let you know everything as well.

See you [REDACTED]
Swimme

From: Teri J MCKEEVER (mckeever@berkeley.edu)
Sent: 3/20/2020 3:42:04 PM
To: Swimmer H [REDACTED]
CC: [REDACTED] Staff A [REDACTED]; [REDACTED] Staff F [REDACTED]
Subject: Re: Update

Swimmer H

Thanks for the thorough update. So glad you have found a support group that can be a source of strength, answers and community during this tough situation.
I totally support your decision to return home and agree it makes the most sense from a health and financial standpoint.
We will continue to do what we can to support all of your physical health as we move through this- glad that [REDACTED] posting things has been a good first step for you and others.
Stay safe,
Teri


Teri McKeever
Head Coach
Women's Swimming and Diving

Intercollegiate Athletics
135C Haas Pavilion, Berkeley, CA 94720

P: [REDACTED] **E:** mckeever@berkeley.edu **W:** CalBears.com

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On [REDACTED] Mar 19, [REDACTED] at 8:07 PM Swimmer H [REDACTED] wrote:
Dear all,

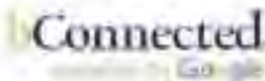
I wanted to send a quick update of what my plans going forward are and how [REDACTED]. Today I got [REDACTED] to evaluate how I am responding to my current treatment. My doctor and I decided to [REDACTED] and there is also a lot of [REDACTED]. With that said, I still have two weeks to [REDACTED]. I should get the results of the [REDACTED] within about a week and give us time to figure out the plan moving forward. I have found that [REDACTED] has been a good place for me to feel supported throughout this time.

For housing, the [REDACTED] I have discussed this with my family and from a financial standpoint this seems like the best option for me since we would get refunded. I am aiming to move out before April 1st (which is the first move out date). This will also allow me to continue to [REDACTED] which I think is very important for my health and putting that first.

I have not been able to get in the water since [REDACTED] but my plan is to start doing more at home workouts. My dad has some equipment and light weights at home so this is my best option right now. I think [REDACTED] posting workouts will be very helpful.

If anyone has any suggestions for me please let me know! Thanks for your time and I hope you all are staying healthy. Go bears!

Thank you,
Swimmer II



Jennifer Simon-O'Neill <jenny.simon@berkeley.edu>

Updates to make you aware of

Teri J MCKEEVER <mckeever@berkeley.edu> [REDACTED] Sep 2, [REDACTED] at 5:00 PM
To: Jennifer Simon-O'Neill <jenny.simon@berkeley.edu>
Cc: Teri J MCKEEVER <mckeever@berkeley.edu>

Hi Jenny-

Loved your [REDACTED] :)!

I wanted to just loop in on some issues/concerns with Swimmer H. As you know, [REDACTED] and Swimmer AE are the only two women that opted to not [REDACTED]

[REDACTED] and I decided that if someone wasn't [REDACTED] I initially had people sort of setting their own timelines on arrival and I wasn't comfortable with that.

[REDACTED] told the coaches individually that she and her family thought she should stay home because her [REDACTED]. This was on August 21.

[REDACTED] then shared this news with the team on August 25.

The captains reached out [REDACTED] and I on August 28 letting us know that they heard [REDACTED] was secretly rushing. They were concerned with her dishonesty and upset that she wasn't coming to swim but would rush. They are struggling with how this decision lines up with being on the team, our values and goals. We spent quite a bit of time this summer looking at all of this.

The four captains reached out to [REDACTED] on [REDACTED] 8/31 to ask what was going on. She said she didn't feel supported by the team but couldn't give them any examples. It's my understanding they are going to follow up with her but I'm not certain of when.

Additionally, [REDACTED] Staff A on [REDACTED] that for the second time this summer [REDACTED] diver, [REDACTED], has flown out to see her. She's indicated that she and her family have concerns about her safety coming back to Berkeley yet [REDACTED]

Not sure where this is headed but wanted to loop you in. . . .

Also the [REDACTED] captains and coaches with [REDACTED] came up with a [REDACTED] that the captains shared with the team also on Monday and are getting sign off from each person before they are allowed to swim.

Finally, I just got off the phone with Swimmer W and her mom and wanted to share some of their concerns with various standards upon returning and now the [REDACTED] and her ability to get in the pool. She isn't in a good space emotionally, hasn't been since April and I have reached out to [REDACTED] Staff I to try to connect them. Her mom is leaving in the morning and she is concerned about leaving her in her current state. I also have a call into [REDACTED] to try to look at options.

Thanks.

Teri

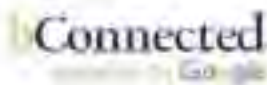


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P: [REDACTED] **E:** mckeever@berkeley.edu **W:** CalBears.com

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Jennifer Simon-O'Neill <jenny.simon@berkeley.edu>

Update on Swimmer H

Teri J MCKEEVER <mckeever@berkeley.edu>

[REDACTED] Oct 1, [REDACTED] at 8:27 PM

To: Jennifer Simon-O'Neill <jenny.simon@berkeley.edu>

Cc: [REDACTED] Staff J [REDACTED] Staff A [REDACTED]

Hi Jenny-

I wanted to let you know that [REDACTED] and I had a follow up meeting with Swimmer H today. You may remember that initially she wasn't [REDACTED].

We met with her on September 8 when it was brought to our attention by the captains she had rushed and they had already had two conversations with her. At that time, she said she needed until the end of the month to make a decision about swimming and her future.

Today during our meeting, she indicated that she had returned to Berkeley this past weekend, so she is now in town locally. Additionally, she says she has talked to a therapist and others and she feels it's "unhealthy" for her to continue swimming. She also mentioned that there were issues at home adding to her stress when I inquired as to how her family was feeling about her decision.

At that point, I told her I would consult with you and see if she could not be on the active roster but get her tuition covered for the spring as she got her feet on the ground. She then quickly asked about a [REDACTED] (She is friends with Swimmer A's [REDACTED]).

I told her that those decisions have nothing to do with the coach. And in fact the spring tuition ask was not ultimately my decision, I would just suggest it to you. I told her she needed to contact [REDACTED] to set up a meeting with [REDACTED] Staff M if she wanted to inquire about a [REDACTED].

I spoke with [REDACTED] Staff J this evening about Swimmer AU concerns and I mentioned Swimmer H's intention to inquire about the medical to give him a heads up.

Please let me know if you need anything else. We did not do anything with the change of status on the student database because I did not know how to address the question about future financial aid.

Thank you,

Teri

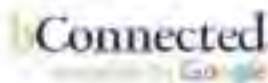


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Jennifer Simon-O'Neill <jenny.simon@berkeley.edu>

Info I wanted to share

Teri J MCKEEVER <mckeever@berkeley.edu>
To: Jennifer Simon-O'Neill <jenny.simon@berkeley.edu>

██████████, Apr 24 ██████████ at 6:56 PM

Hi Jenny-

I have a few areas I want to discuss and info to share and hope that we can find some time to connect. Here we go:

1) ██████████ had an initial ██████████ interview with ██████████ this past week. She just called me to tell me she was offered an in person interview the week of May 3 ██████████ and I met for almost two hours last Wednesday. This was very productive and I'd like to share my thoughts for moving forward.

2) I received ██████████ email and had a call with him on Friday. While I appreciate getting on this, I have some concerns on a few things that I would rather say then write. I am willing to write though that I have a problem with getting a request to review 9 resumes at 5:00pm on a Saturday and expect me to do it by Sunday evening. I have A LOT more going on then this. And, I am not going to spend my Sunday looking at diving resumes. Also, I think I took those classes he's asking about and I'll need help trying to figure that out- I assume ██████████ can help me?

3) I have a better idea of what our CAL women's Triad needs will be, but I'm not sure what the resource situation is and I'd like to get a better idea of that.

4) ██████████ who was Swimmer II club swim coach and is ██████████ ██████████, texted ██████████ after a afternoon letting her know that ██████████ was at a high school meet today telling people that she's thinking about starting to swim again and maybe transfer. I was under the impression that if you did a ██████████ you cannot transfer and compete because you only get that when your ██████████. Just want to get this on your radar because I could see her manipulating the situation.

Thanks and hope you're having a nice weekend!

Teri



Teri McKeever
Head Coach
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135C Haas Pavilion, Berkeley, CA 94720

P: ██████████ E: mckeever@berkeley.edu W: CalBears.com

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From: Teri J MCKEEVER [mckeever@berkeley.edu]
Sent: 5/12/2013 13:58 PM
To: Swimmer AC
Subject: Re: Update

Swimmer AC

Hi
Thanks so much for this lengthy and comprehensive update!
I'm glad that you were able to make the academic piece work so you don't have to worry about that down the road!
Sounds like this program is ideal for you, glad you are getting the support and tools that you feel will help you has you move forward.
Sending my best and please let me know if you need anything from me.

Teri



Teri McKeever [REDACTED]
Head Coach
Women's Swimming and Diving

Intercollegiate Athletics
135C Haas Pavilion, Berkeley, CA 94720

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On [REDACTED] May 12, [REDACTED] at 8:30 AM Swimmer AC wrote:

I hope you are doing well. I wanted to send a quick email to update you on my progress since I started treatment on [REDACTED]

Academically, I wanted you to know I will be taking two finals today and one tomorrow, which means I will be finishing the academic year and will not have any incompletes!

As for treatment, this is my first time [REDACTED] and [REDACTED]. I think these changes in the procedure will really help me develop the tools I need to be able to keep myself accountable and stable independently. I had a few meetings with my team and our goals are to get me to a place where I am confident in knowing [REDACTED] and am able to [REDACTED]. This treatment is very much on me, which is very different than last time where I [REDACTED]. I am also attending to some other [REDACTED] and [REDACTED]. I am working to check all the boxes that contribute to my behaviors so I can rule out these impacts.

In the past few days [REDACTED] and have been working with the providers to make sure I get the most out of this treatment. I have been straightforward with my goals and we are developing a plan

that allows me to be independent and accountable for my success. [REDACTED]
[REDACTED]

The treatment has a rule that the first two weeks of treatment are observation and therefore no exercise is allowed. However, I am on the athlete track which means that if I continue to remain compliant and [REDACTED] [REDACTED] I will be able to incorporate swimming! I am very excited for this and I will continue to keep you updated regarding when that will begin. I am also in specific athlete groups that provide tools and discussion about [REDACTED] and we get tools that are specific to our relationship with sport, which is very helpful.

I think the biggest difference between treatment now and my previous stay is that [REDACTED] [REDACTED] I owe it to myself, my family, my team, and you as my coach to do everything I can to get the most out of this experience.

I am beyond grateful for you and your support and I appreciate you so much. I am very thankful to have a coach and team as supportive as I do and I do not take it for granted. I will continue to remain in touch as I continue to work through this. Thank you for everything!

Swimmer AC

From: Swimmer AC
Sent: 5/6/2014 1:02:17 AM
To: Teri J MCKEEVER [mckeeper@berkeley.edu]
Subject: Re: Update

Yes I will definitely be there!! Yes I think it will be good to get a head start so I can work through this efficiently and effectively!!

Thank you so much, I'll see you tomorrow!

Swimmer AC

On **Swimmer AC** May 5, 2014 at 4:22 PM Teri J MCKEEVER <mckeeper@berkeley.edu> wrote:

Thanks for the update.

Will you be coming to the team dinner tomorrow night?

Glad to hear you can get into the program and take care of your final exams. Sounds like a win-win!!

Best,

Teri



Teri McKeever [REDACTED]
Head Coach
Women's Swimming and Diving

Intercollegiate Athletics
135C Haas Pavilion, Berkeley, CA 94720

P: [REDACTED] **E:** mckeeper@berkeley.edu **W:** CalBears.com

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On **Swimmer AC** May 5, 2014 at 3:26 PM [REDACTED] wrote:
Hi Teri,

Thank you so much for your support, it really means a lot to me and I appreciate it.

After speaking with [REDACTED] Staff M and [REDACTED] they were able to find a spot for me to start this coming [REDACTED] May 9th. [REDACTED] Staff and my treatment team believe that this is the safest option and getting started on [REDACTED] earlier will be beneficial for me this summer. I worked with [REDACTED] Staff M and my professors and I will be able to take all of my exams remotely, therefore I will be completing the academic year even if I leave a week early.

Currently, the plan is for me to leave Berkeley [REDACTED] and start treatment the next day. I also spoke with the treatment center about my return to the pool and they are putting me on the athlete track which will allow me to swim while I am in treatment as soon as I am medically cleared. I will continue to keep you in the loop as things progress. Thank you for your continued support throughout this process, I really appreciate you.

Thank you,

Swimmer AC

On [REDACTED] May 4, [REDACTED] at 3:14 PM Teri J MCKEEVER <mckeever@berkeley.edu> wrote:
Swimmer AC

Thanks for the update.

I'm sorry to hear you are struggling so much.

Obviously, balancing your academics and your health is the major priority.

I trust you and your family are doing all you can to take care of you and if there is anything you need from me please let me know.

I will be back on campus tomorrow.

Best,

Teri



Teri McKeever [REDACTED]

Head Coach

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On [REDACTED] May 4, [REDACTED] at 9:38 AM Swimmer AC wrote:
Hi Teri, I hope you're doing well.

I wanted to update you with the new information I have been getting.

I met with [REDACTED] Staff M and [REDACTED] but she is concerned with how [REDACTED] in the past few weeks and she believes I need more [REDACTED]. I spoke with the treatment program and they have a spot for me to start either next week or the week after. I am speaking with my professors to see if I can take my exams remotely next week. [REDACTED] Staff M recommended that if the professors agree with the remote exams it might be safest for me to go home at the end of this week and admit to treatment next week rather than the week after. This would allow me to get started on the treatment earlier.

I will continue to update you as I get more information. Thank you so much.

Swimmer AC

From: Swimmer AC
Sent: 5/1/2011 1:52:46 AM
To: Teri J MCKEEVER [mckeever@berkeley.edu]
Subject: Update

Hi Teri! I hope you are doing well and had a good trip!

I wanted to give you a quick update. Unfortunately [REDACTED] right now. I am working with a new [REDACTED] and [REDACTED] Staff M as well as my doctor from home to turn this around. I have been working with them very hard to get to the root of the [REDACTED]. I will see [REDACTED] Staff M again on Monday and [REDACTED]. As of now I am still not cleared for movement.

I have my assessment for treatment on Tuesday and should be starting treatment on the Monday after school ends.

I am working very hard to change [REDACTED] and will continue to do so now and through the summer. I am putting in the work now to [REDACTED]. Thank you for everything and I will continue to work on this! Thank you again.

Swimmer AC

From: Swimmer AC
Sent: 4/19/2012 12:49:05 AM
To: Teri J MCKEEVER [mckeever@berkeley.edu]
Subject: Update

Hi Teri, I hope you're doing well.

I just saw [REDACTED] Staff M this afternoon and wanted to update you. She is unhappy with the [REDACTED] and has not cleared me for physical activity. She wants to see [REDACTED] before she allows me to get back to movement.

I also got more information today regarding the treatment plan for this summer. I will be going to the [REDACTED] and I will be a part of the [REDACTED]. This program is different from any treatment I have ever done because I will be [REDACTED] while I go through treatment and the treatment is more based on [REDACTED] which I think will provide me with different tools that are more suited for being successful in college and after college. Learning to keep myself accountable has been a challenge for me this year and after talking to the [REDACTED] I believe I will make serious progress there.

I am very optimistic about my ability to work through this program and expose the areas where I am lacking in [REDACTED] so that I can have a more [REDACTED] year next year. I am extremely motivated to do the work I need to do [REDACTED] and over the summer to set myself up for a better year and better emotional well being in general. I will also be a part of a [REDACTED] I have been on [REDACTED]

I will be seeing [REDACTED] Staff M again on Friday to get my [REDACTED] and have a check in. I will update you on how that goes and you'll be the first to know of any changes or developments.

I am happy to meet sometime this week or before the end of the semester because I understand that this is a very busy time and you will be out of town. I really appreciate your patience during this time.

Thank you,

Swimmer AC

From: Teri J MCKEEVER [mckeever@berkeley.edu]
Sent: 4/12/2012 10:39:31 PM
To: Swimmer AC
Subject: Re: Update

Great news!
Looking forward to getting more of it.
Go Bears,
Teri

Teri McKeever [REDACTED]
Head Coach
Women's Swimming and Diving

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135C Haas Pavilion, Berkeley, CA 94720

P: [REDACTED] **E:** mckeever@berkeley.edu **W:** CalBears.com

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On [REDACTED] Apr 12, [REDACTED] at 10:18 AM, Swimmer AC wrote:

Hi Teri, I hope you're doing well.

I just had my doctors appointment and it went well! My [REDACTED] and I am cleared to return to school this week. I will not be allowed to swim this week but I'll be seeing [REDACTED] Staff M on Monday and we will talk about options going forward. Thank you for your patience with me while I figure this out, I will continue to update you if anything changes!

Swimmer AC

From: Swimmer AC
Sent: 4/11, [REDACTED] 2:29:52 AM
To: Teri McKeever (mckeever@berkeley.edu)
Subject: Re: Update

Thank you so much! I really appreciate your support while I figure this out. Thank you again and I'll update you as soon as I know more.

Swimmer AC

On [REDACTED] Apr 10, [REDACTED] at 1:11 PM Teri McKeever <mckeever@berkeley.edu> wrote:
Swimmer AC

Thanks for the update. Appreciate you feeling me in and staying on top of all this. Just a reminder that you're expected to do the SVSH Training later today. Hang in there!
Teri

Teri McKeever
Head Coach
Women's Swimming and Diving
135C Haas Pavillion
Berkeley, CA 94720-4422
[REDACTED]

On Apr 10, [REDACTED] at 12:10 PM, Swimmer AC wrote:

Hi Teri,

I have been in contact with all of my professors and they are letting me follow along virtually this past week and the next week. I was planning on taking my courses as incompletes because I didn't think I would be able to return to campus. However, I have [REDACTED] has about a 5-6 week waiting list currently. I'm working with my [REDACTED] return to campus to complete my academics while I [REDACTED]

I meet with my doctor on Tuesday and will finalize my plan for hopefully returning to campus shortly thereafter. I have been in communication with [REDACTED] Staff L and I will also update [REDACTED] on what my doctor says on Tuesday.

Thank you,
Swimmer AC

On [REDACTED] Apr 9, [REDACTED] at 4:26 PM Teri J MCKEEVER <mckeever@berkeley.edu> wrote:

Hi Swimmer AC
Thanks for the update.
Glad you are having some small improvement.
What are you doing about your academics?
Teri



Teri McKeever [REDACTED]
Head Coach
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On [REDACTED] Apr 8, [REDACTED] at 7:20 PM **Swimmer AC** wrote:

Hi Teri, I hope you're doing well. I wanted to send you an email to give you an update on how things are going.

I got home Tuesday night and have been closely [REDACTED] since. My [REDACTED] along with my physical symptoms. I have been in touch with a variety of [REDACTED] and am currently on their waiting lists and we are working on coming up with a [REDACTED]

I will continue to keep you updated as we progress with deciding the best treatment options and plan.

Thank you,
Swimmer AC

From: Teri J MCKEEVER [mckeever@berkeley.edu]
Sent: 3/30/2010 10:26:29 PM
To: Swimmer AC
Subject: Re: Small Update

Swimmer AC

Thanks for the note and update.
Please keep me in the loop and let me know if there is anything you need from me.
Best,
Teri

Teri McKeever [REDACTED]
Head Coach
Women's Swimming and Diving

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135C Haas Pavilion, Berkeley, CA 94720

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On [REDACTED] Mar 30, [REDACTED] at 3:20 PM **Swimmer AC** wrote:

Hi Teri,

Since I returned from break on [REDACTED] I have not been [REDACTED] I now recognize this, and I am determined to fix it before it becomes a problem. I am meeting with my [REDACTED] later today, and I am going to schedule an appointment with [REDACTED] Staff M. At this moment, I don't need anything from you, I just want you to be aware of everything that's going on. I would only ask that you trust that if I need to adjust [REDACTED] it would be because I believe it to be in the best interest of my health.

Thank you
Swimmer AC

From: Swimmer AC
Sent: 3/25/2017 7:51:47 PM
To: Teri J MCKEEVER (mckeever@berkeley.edu); [REDACTED] Staff A
Subject: Spring/Summer Plans and Update
Attachments: spring [REDACTED] nfo sheet.docx.pdf

Hi Teri and [REDACTED] Staff A

I hope you're both doing well and enjoying some time off. I've attached my spring sheet as a PDF to this email.:

I wanted to send you this email just to inform you of some things I've been working on this week that I think would be useful to share.

This week, I met with a few of my treatment providers who helped me a lot when I was living at home. We talked through how this year went, what I felt I did well, what I felt I need to improve on, and what I can do to start working on setting myself up for a better and more consistent year starting this fall. I feel that [REDACTED] is a year of adjustments and is challenging in itself. I think that my [REDACTED] created another layer of challenge that I worked to navigate. With that said, I want much more from next year and the rest of my years at Cal. It is not fair to myself, the team, or both of you for me to be as inconsistent in my availability to train and compete as I was this year. I take this year as the learning opportunity it was, but I do not want to repeat it.

After a lot of processing and planning, we came up with a tentative plan for the summer that I wanted to tell you about and hear your input on. Swimming wise, I am planning on representing [REDACTED] beginning this summer. I spoke with [REDACTED] the director of [REDACTED] swimming, and we came up with the plan that I outlined in my Spring sheet.

I've decided that over the summer I will work on a few things that contribute to my [REDACTED] specifically my [REDACTED] and [REDACTED] I will be doing a [REDACTED] and I will be incorporating a few different approaches through programs recommended by my doctors to learn more tools that can help me in the coming years. I want to let you know this so that you are aware of the steps I will be taking in order to support my goals of being more consistent and stable next year. I know that wanting to have a better year is not enough, I need to initiate action that will lead to the change and I thought it would be important to share with you both. I really believe that really exposing the areas where I am lacking in my recovery will pay off in a big way when I return to school. I know I have a lot to learn, both in the pool and out of the pool. This spring and summer I want to take in every tool and every opportunity I can to learn how to manage this disease, because I owe it to myself, my family, my team, and you both as my coaches to do everything I can to be at my best.

I also did some reflecting on this year throughout this past week. I recognized that this year I was very much in survival mode, doing everything I could to just make it through. I think this mindset held me back drastically from achieving the things I am capable of. I recognized that I was pretty overwhelmed and lost crucial pieces of my process that I know help me be successful in the pool. I am determined to rebuild my process and approach this spring and summer so I can come back next fall ready to go. There's a few specific things I want to reincorporate into my routine that I'd love to share at our meeting because they really used to work for me. I also recognized that I haven't been in high stress meets in a while, so I am continuing to work with my sports psych to recognize [REDACTED] and work through them effectively. I am all in for this team and for myself, and I know that I need to make some serious changes in my actions in order to show up the way I know I'm capable of. I want to do my part to show up every single day which is something I wasn't able to do this past season.

I want to thank you for supporting me so much this past year, and I also want you to know that I am doing and will continue to do everything in my power to make sure I don't have another year like this one. My intention behind sending this email is to be transparent about my plans and give you some insight into what I am working to change. I would love to talk more about it at our next meeting.

Thank you!

Swimmer AC

Spring [REDACTED]

Name: Swimmer AC

- 1) Do you have plans to race at the US World Champ Trials [REDACTED]

[REDACTED]

- 2) If you are an [REDACTED] are you planning to return home before schools out for a qualifying meet?

If so, please list your travel dates and meet dates.

I have a meet in [REDACTED] in May that serves as a qualification meet for [REDACTED]. The specific dates are not out yet, but [REDACTED] (the director of [REDACTED] Swimming who I am communicating with) believes it will be after school is out. I am in communication with him and should know the dates in a few days.

Have you done the outside competition form yet?

Not yet, but I'm in communication with [REDACTED] just in case the meet ends up being before school is out.

- 3) Briefly outline your summer competition plans:

- a. Where will you be training? I will be training in [REDACTED] at my club team [REDACTED] from the end of May (after I return from the qualification meet in [REDACTED] until the middle of July which is when I will leave to go to [REDACTED] for the [REDACTED]. I will stay in [REDACTED] after the Games and train in the [REDACTED] with the [REDACTED] National Team until we all leave together for the [REDACTED] (assuming I attain the necessary qualification standards, in order to qualify I need to go a [REDACTED] [REDACTED] [REDACTED] at prelims and at finals at a [REDACTED] approved meet. My current times are [REDACTED]. Then I will go back to [REDACTED] briefly and then go straight to Berkeley.
- b. How many meets will you be attending? We are looking into attending one meet in May in [REDACTED] the [REDACTED] and one additional qualification meet in July, and [REDACTED] in August, assuming I qualify.
- c. What will be your focus meet for the summer? My focus will be on the [REDACTED] [REDACTED] in August.

- 4) What other summer plans do you have? Summer school? Working? Internship?

I'll explain this in depth in my email to you! Mostly working though different approaches to better manage my mental health and develop tools to help me stay consistent.

5) CAL will be hosting two summer sessions of camp: [REDACTED] Do you have any desire to work the camps?

I don't think so.

6) Is there anything else you'd like to be sure I know about your spring and summer? Mostly in my email;) And I will be training in the 9 practice a week group.

From: Teri J MCKEEVER (mckeever@berkeley.edu)
Sent: 3/4/2012 12:47:13 AM
To: Swimmer AC
Subject: Re: Reflection and Update

Hi Swimmer AC:

I can and will support you anyway I can. Let's talk about how to set up a system/routine that works for you.
Go Bears,
Teri

Teri McKeever [REDACTED]
Head Coach
Women's Swimming and Diving

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135C Haas Pavilion, Berkeley, CA 94720

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On [REDACTED] Mar 3, [REDACTED] at 12:15 PM Swimmer AC wrote:

Thank you so much it means a lot! I thought about it and I think one thing that might help me is a quick check in before I race. I think it will help me relax to verbally communicate my plan. If that's okay with you I can start coming to you or [REDACTED] before the session starts or the night before just to check in! And of course, you're extremely experienced and if you have any advice I would love to implement it!! I also thought about it after we talked and I recognize that my demeanor changes for the worse when I'm stressed so I am making a very conscious effort to relax and enjoy and therefore change how I present myself. I know this will help me and the team both in and out of the pool. I am extremely privileged to be a part of this team and I am making the changes to support my performance. Thank you again, I really appreciate it!

On [REDACTED] Mar 2, [REDACTED] at 7:20 PM Teri J MCKEEVER <mckeever@berkeley.edu> wrote:

Hi Swimmer AC

Thanks for the detailed note and additional insight. This is very helpful and I appreciate your willingness to work through this with people that know you best. I'm anxious to know what I may be able to do to support you. Please let me know.

Get some sleep and we'll see you in the afternoon.

Go Bears!

Teri



Teri McKeever [REDACTED]
Head Coach
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On [REDACTED] at 5:55 PM Swimmer AC wrote:
Dear Ten and [REDACTED]

I hope you're both well! I wanted to update you because I just met with my sports psych and got some insight that I think would be beneficial to share.

While we talked today, I realized a few things that contributed to my heightened anxiety during the meet.

For weeks I was anticipating the meet, and I think the excitement I had for the meet was masking the anxiety I didn't even realize was really developing. I always try to be as process focused as I can going into meets, but I noticed that my thoughts were revolving around outcome and I thought it was okay because I was excited but looking back, I was obsessing about times. I also really wanted to be able to perform for the team which heightened my nerves going into my races.

My sports psych also reminded me that something similar has happened to me before. I just hadn't thought about it. It was not as extreme as what happened during the end of my races at Pac-12s, but during high school I had a few instances where the beginning of my race would be fast but my stroke was so forced and I was tense due to my anxiety and by the last 25 my race would fall apart. I didn't really connect the dots because it's been a few years since it's happened.

I think my anxiety leading into the meet led to me compromising my stroke in a way that made it extremely inefficient and taxing and led to the shutdown at the end of my races, both in the [REDACTED]. I thought about it and I don't think that my races were [REDACTED]. I have been [REDACTED] since October, with the only exception being the dip in January that was a result of when I got sick. I've given it a lot of thought and I don't think I would have been able to perform the way I did in practice leading up to the meet if I had [REDACTED].

I will continue to double check my [REDACTED] with [REDACTED] and I am confident I have been and will continue [REDACTED]. My sports psych gave me additional tools to work through my [REDACTED] that I will be implementing. I am happy to talk about this further, I just wanted to update you!

Thank you
Swimmer AC

From: Teri MCKEEVER (mckeever@berkeley.edu)
Sent: 1/23/2011 11:37:59 PM
To: Swimmer AC
CC: [REDACTED] Staff A
Subject: Re: Update

Swimmer AC

Thanks for the update!
Let's just keep taking one step at a time.
We'll see what [REDACTED] Staff M decides and then go from there.
Thanks,
Teri

Teri McKeever [REDACTED]
Head Coach
Women's Swimming and Diving

Intercollegiate Athletics
135C Haas Pavilion, Berkeley, CA 94720

P: [REDACTED] **E:** mckeever@berkeley.edu **W:** CalBears.com

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On [REDACTED] Jan 23, [REDACTED] at 2:47 PM Swimmer AC wrote:
Hi Teri and [REDACTED] Staff A

I just wanted to give you a quick update. I have been resting and making sure [REDACTED]. Physically I am feeling much better and my symptoms have gone away. I've been in touch with Janelle and we are going to be seeing each other once a week in order to check in and make sure nothing like this happens again. I'm seeing [REDACTED] Staff M on Monday at 12:15 and I am confident my vitals will be looking good and I will be allowed to get back to training. Thank you so much for supporting me through this and I am so sorry for causing this. Going forward I am going to be extremely proactive and on top of my health and I won't let something like this happen again. Thank you again, see you soon.

Swimmer AC

From: Teri J MCKEEVER [mckeever@berkeley.edu]
Sent: 1/20/2015 5:23:32 PM
To: Swimmer AC
Subject: Re: Communication Changes

Swimmer AC
Hi

Thanks for your note and your further clarification of why this is so difficult. I know you are doing your best and I want nothing more than to have you reach ALL of your goals and dreams here in and out of the pool. I know you can and I just want to be part of the solution.

Hopefully you're good for this afternoon.

Teri

Teri McKeever [REDACTED]
Head Coach
Women's Swimming and Diving

Intercollegiate Athletics
135C Haas Pavilion, Berkeley, CA 94720

P: [REDACTED] **E:** mckeever@berkeley.edu **W:** CalBears.com

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On [REDACTED] Jan 19, [REDACTED] at 8:14 PM **Swimmer AC** wrote:

I just wanted to follow up on our phone call from earlier today. First I want to apologize for not giving you all the information you deserve and need to know at the appropriate times. I am not very good at recognizing the moment when I need to pull myself out of a practice because I always feel like I can and should push through it instead. This is completely unfair to you and I will work on gauging how I feel with the appropriate action. I also have a tendency to ignore issues that scare me in hopes that they will go away on their own. That's what I did earlier this week when I disregarded how I was feeling. All I want is to train as hard as I can and when I feel like something might disturb that routine I panic and try to pretend it's not there. I'm scared of becoming a problem to you and to the team, which is why I attempt to solve everything on my own. I know you and [REDACTED] took a risk by allowing me on the team with my past and I don't want to let you down. These are the reasons why I didn't communicate clearly with you, but they are not excuses. You deserve to receive clear communication from me no matter the circumstances. Going forward I will be extremely transparent. I see this as an opportunity for me to grow from my mistakes and make a very crucial change. Competing for Berkeley is my dream and I will work to do everything I can do to keep it a reality. Going forward I will be extremely forthcoming in my communication and I hope that allows for our relationship and trust to grow. I am extremely committed to making this change and I am so sorry for not being able to make it sooner. I want to be here more than anything and I will do everything I can to make this possible. Thank you very much and I hope to see you soon.

Swimmer AC

From: Swimmer AC
Sent: 12/8/2011 3:50:25 AM
To: Teri J MCKEEVER (mckeever@berkeley.edu), [REDACTED] Staff A
Subject: Minnesota Recap

Dear Teri and [REDACTED] Staff A

I hope you're both doing well! I have my [REDACTED] recap here:) Thank you!

1) General Overview

Overall, I think my meet at [REDACTED] had its ups and downs. I was really happy with my [REDACTED] [REDACTED]. I think those races were two of my best through execution and self-talk. In these races I was able to implement what I've learned this semester about my walls and underwaters. I was able to use my hips more on my walls rather than just my upper body and was able to use more vibration for faster underwaters. In my [REDACTED] I resorted back to my old habit of forcing my stroke, something that I've been trying to change since I came to Cal. I wasn't balanced in my breakouts and my self-talk before the race had a lot of room for improvement. I was also trying to focus on too many pieces of the race that I wanted to execute correctly which ended up overwhelming me and preventing me from performing the way I'm capable of. In my [REDACTED] I improved throughout the day. In the morning, my self-talk wasn't great and I put too much emphasis on how I was feeling in the water. In the afternoon, I kept my mind blank other than a very distinct race plan I wanted to execute: [REDACTED]. This method really helped me keep my mind free from negative thoughts and my straightforward race plan prevented me from getting overwhelmed with many different aspects of the race. In general, I found that having film of my races available is super helpful because seeing the places that I can improve and comparing it to the people in my heat really helps me understand the changes I will implement in practice. I also learned a lot about what I need for warm up and warm down. My biggest area for improvement is my self-talk, because it has such a big impact on my race. I came up with some affirmations I can say during meets to keep my mind blank and free of negative thoughts, and I'm planning to try this out at our next meet.

2) Team

We really showed who we are in [REDACTED]. We inspired one another through our races and words of encouragement and we laid it on the line for the team. I was super motivated by the rest of the team and I think our external talk was very positive and encouraging. One thing I did notice was that as a team we struggled on the walls. It seemed like during the swimming pieces of the race we would be catching up to try to make up for the walls. I think this is a major area for improvement that could really push us to a higher level.

3) Reading Week

This semester has been pretty light for me, and my reading week and finals week schedule isn't too rigorous. I have an eight page paper due for [REDACTED] but I have nothing due on Finals Week. I am excused from my [REDACTED] final, which would be on the 16th. [REDACTED] My anxiety is pretty low, I feel confident in my ability to write the paper well.

Thank you so much!!

Swimmer AC

From: Swimmer AC
Sent: 10/21/2015 5:33:47 PM
To: coach teri mckeever [mckeever@berkeley.edu]

Hi Coach Teri!

I hope you're doing well! I am so excited to be back to full training with the team!!

I also got the email regarding the [REDACTED] scholarship and I wanted to say thank you so so much for this honor. I appreciate you and your support greatly and I want you to know I feel so grateful to be a part of such an incredible team. This really means a lot to me and I am so thankful!! Thank you again and see you soon!

Swimmer AC

From: Swimmer AC
Sent: 10/11/2011 5:06:42 PM
To: Teri McKeever (mckeever@berkeley.edu)
CC: Staff A
Subject: Re: Training this Week

Oh absolutely! I can reach out to Staff N and ask to change the schedule for this week to make it more collaborative, I totally understand the practices are all different and I definitely want to make the most out of my time. I also think I'll be back to full schedule very soon because I've been so I'm crossing my fingers! Thank you!

Swimmer AC

On Oct 11, 2011 at 9:27 AM Teri McKeever <mckeever@berkeley.edu> wrote:

I appreciate this and I think this is okay for now.

Long term though if we're doing this I would like more input into where you should attend. All practices are not the same and if we can only then we need to maximize that time.

For example, I don't want factored into your time this week.

Thanks,

Teri

Teri McKeever
Head Coach
Women's Swimming and Diving
135C Haas Pavillion
Berkeley, CA 94720-4422

> On Oct 11, 2011 at 9:02 AM, Swimmer AC wrote:

>
> Hi Teri and Staff A

>
> I hope you're both well and had a great

>
> I just had my appointment with Staff N and wanted to update you. My where he wanted it to be so he'd like me to continue

> Swimmer AC

From: Swimmer AC
Sent: 10/4/2011 3:45:15 PM
To: Staff A
Subject: Meeting with Staff N

coach teri mckeever [mckeever@berkeley.edu]

Hi!

I hope you're both doing well. I wanted to give you a quick update regarding my meeting with Staff N. I was able to turn it around this weekend and hit my [redacted]! Having the team around me was such good motivation and really helped me stay on track. My [redacted] are looking better so Staff N feels comfortable with me [redacted] this week and hopefully [redacted] next week. Thank you so much, see you soon!

Swimmer AC

Swimmer AW Meeting -- 10/25, [REDACTED]

 HTML Content

Swimmer AW

10/25

Swimmer AW

- Teri had talked to club coach

October 2nd
* lots of alternative

- September 18th → Goals

- September 27th → needed time

Swimmer AW went home

head reasons in recruiting

- October 16th

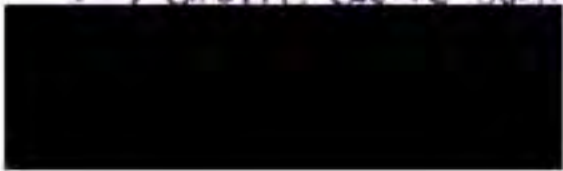
↳ break was good
feeling better
ready to go
jump back

didn't talk about options other than revised plan

TM → wasn't comfortable

- October 20th

↳ didn't want swim



Preliminary Inquiry/Intake Notes – Anonymous v Teri McKeever

Complainant – Unknown

Respondent: Teri McKeever-Women's Swimming and Diving Coach

Advocate Case#: [REDACTED]

On July [REDACTED] Cal Athletics and Exec Director Kellie Brennan received [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Swimmer AW

[REDACTED]

The [REDACTED] was forwarded to OPHD and Cal Athletics gathered email addresses for the individuals whose names appeared on the letter.

On July [REDACTED]

[REDACTED] sent an outreach communication to the following individuals for whom we had email addresses.

[REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]
Swimmer AW
[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED] received the following responses to her outreach.

[REDACTED]

Swimmer AW - [REDACTED]
HOWEVER, did have concerns regarding bullying and mistreatment by Coach Mckeever that led to her to quit the team. The concerns were unrelated to protected class. See notes below.

[REDACTED]

[REDACTED]

[REDACTED] B [REDACTED]

[REDACTED]

[REDACTED]

Swimmer AW [REDACTED]

[REDACTED] spoke by phone with Swimmer AW "Yes I have had problems with Teri. I was a little surprised to hear from [OPHD]. She has been intending to reach out but didn't want to until she graduated. She swam for 2 years [REDACTED] and then quit the team in her [REDACTED] year.

[REDACTED]

Her experience with the Coach was "verbally abusive" to the point that she was clinically depressed and anxious that she couldn't sleep. It is so "terrifying" to be in that position and no one will stand up for you because they don't want to be in that position.

I got to the point that I thought I was dying, my whole life impinged on her "i couldn't live any longer" with her controlling her life. She left the team after her [REDACTED] year. No one says anything because no one would believe me. Didn't tell anyone including asst coaches or trainers because she knew it would get back to Teri and she would pay for it.

She had to go on [REDACTED] She wasn't able to function and stayed on the [REDACTED]

The culture was toxic. If anyone said anything to anyone (teammates, athletes, coaches), Teri would find out about it and "we would be in trouble" by being verbally abusive toward them in front of other people. She would "isolate you and made you feel like the guilty party every single time." A lot of the worst, terrible conversations occurred in her office.

Verbally abusive = personal provocations. [REDACTED] let the team down, unappreciative, wasn't contributing to the team. There were the unsaid threat of taking scholarship away "if you don't perform we have to take your scholarship away." Fear of having the scholarship removed prevented her from saying anything to anyone. It wasn't abnormal or out of character for Teri to refer to players a "a piece of shit". When she would yell at team members whether in public or private and the asst coaches or trainers were there, they would not do anything or say anything. No one will stand up to her.

[REDACTED]

She would feel comfortable talking to someone in Athletics now as long as it was an unbiased third party. But she is scared to come forward about it because that feeling "was ingrained since she came to Cal".

"I am just another swimmer in her [redacted] of coaching the team. I am insignificant [in that context]." "I am not an exception." This has happened to others. She doesn't want to go through all of the trauma and stuff again to have Athletics not take it seriously and "sweep it under the rug."

July [redacted]
[redacted] and to James Knowlton and Jenny Simon-O'Neil in Athletics alerting them to the results of the OPHD inquiry and to inform them that OPHD was referring the matter to Athletics and [redacted] for review and action. [redacted] included the request that Swimmer AW made to speak with someone about her concerns, and asked that [redacted] Mr. Knowlton and Ms. Simon-O'Neil let OPHD know to whom to refer Swimmer AW

[redacted]

August [redacted]
[redacted] spoke by phone with Jennifer Simon-O'Neil. Ms. Simon-O'Neil stated that she had many conversations with Swimmer AW when Swimmer AW was a student on the swim team, including conversations with Swimmer AW and Coach McKeever. Ms. Simon-O'Neil stated that they recognized some of the difficulties that Swimmer AW was having and sought to extend to her an additional scholarship to get her through another year so that she could make a successful transition to another school/team. Ms. Simon-O'Neil said that she would be willing to talk with Swimmer AW

[redacted] sent a follow-up email to Swimmer AW letting her know that Ms. Simon-O'Neil is interested in talking with her if she is interested. Additionally, [redacted] let Swimmer AW know that her concerns were also referred to [redacted] at [redacted] for review and follow-up as appropriate.

August [redacted]
Swimmer AW sent AD [redacted] an email stating she would welcome a conversation with [redacted] Director of [redacted]

August [redacted]
[redacted] sent [redacted] an email with Swimmer AW's contact information and a request that she reach out to her, and [redacted] sent Swimmer AW the contact info for [redacted]

Unless new or additional information becomes available, No Further Action is Required.

UNIVERSITY OF CALIFORNIA, BERKELEY

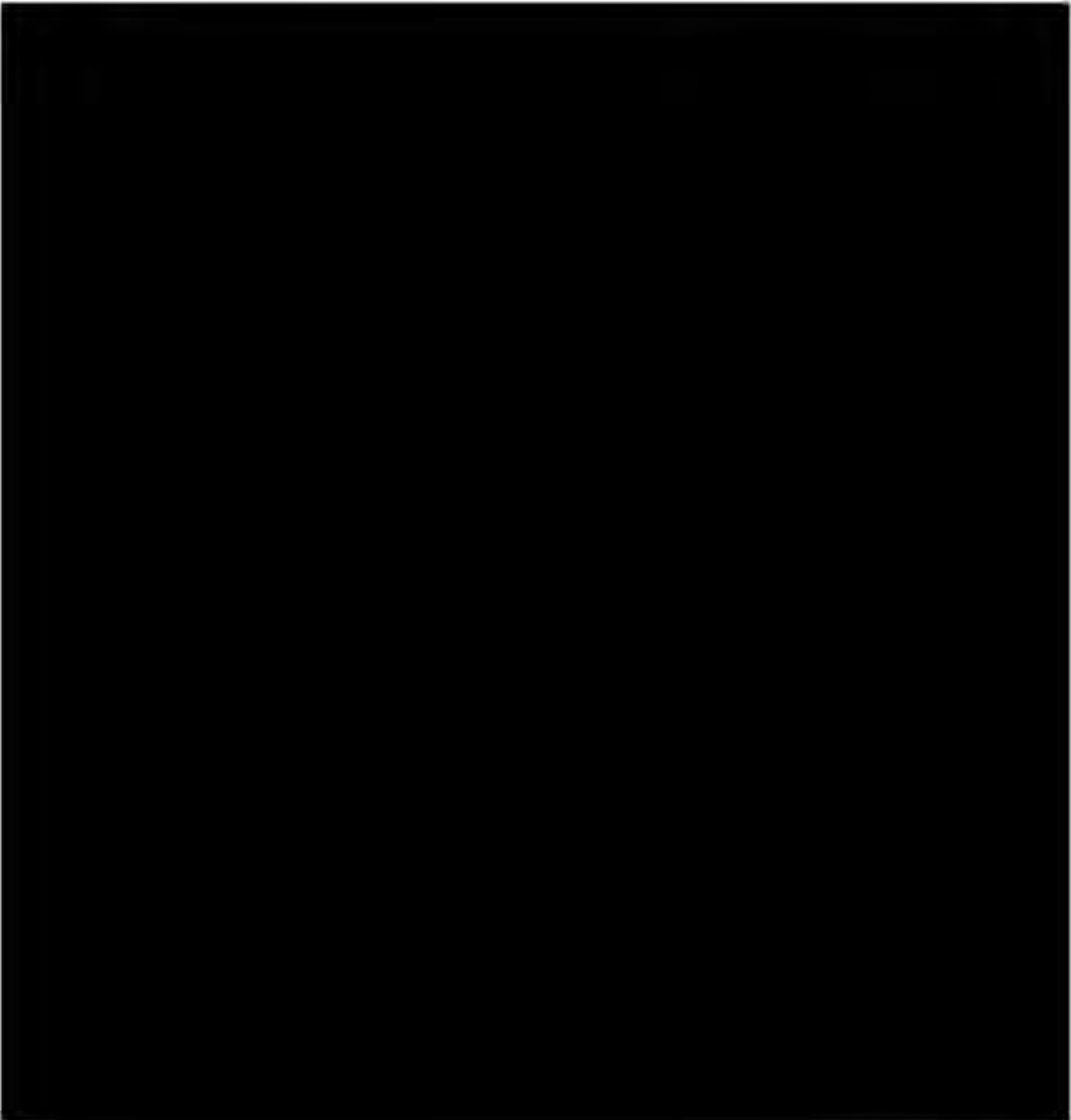
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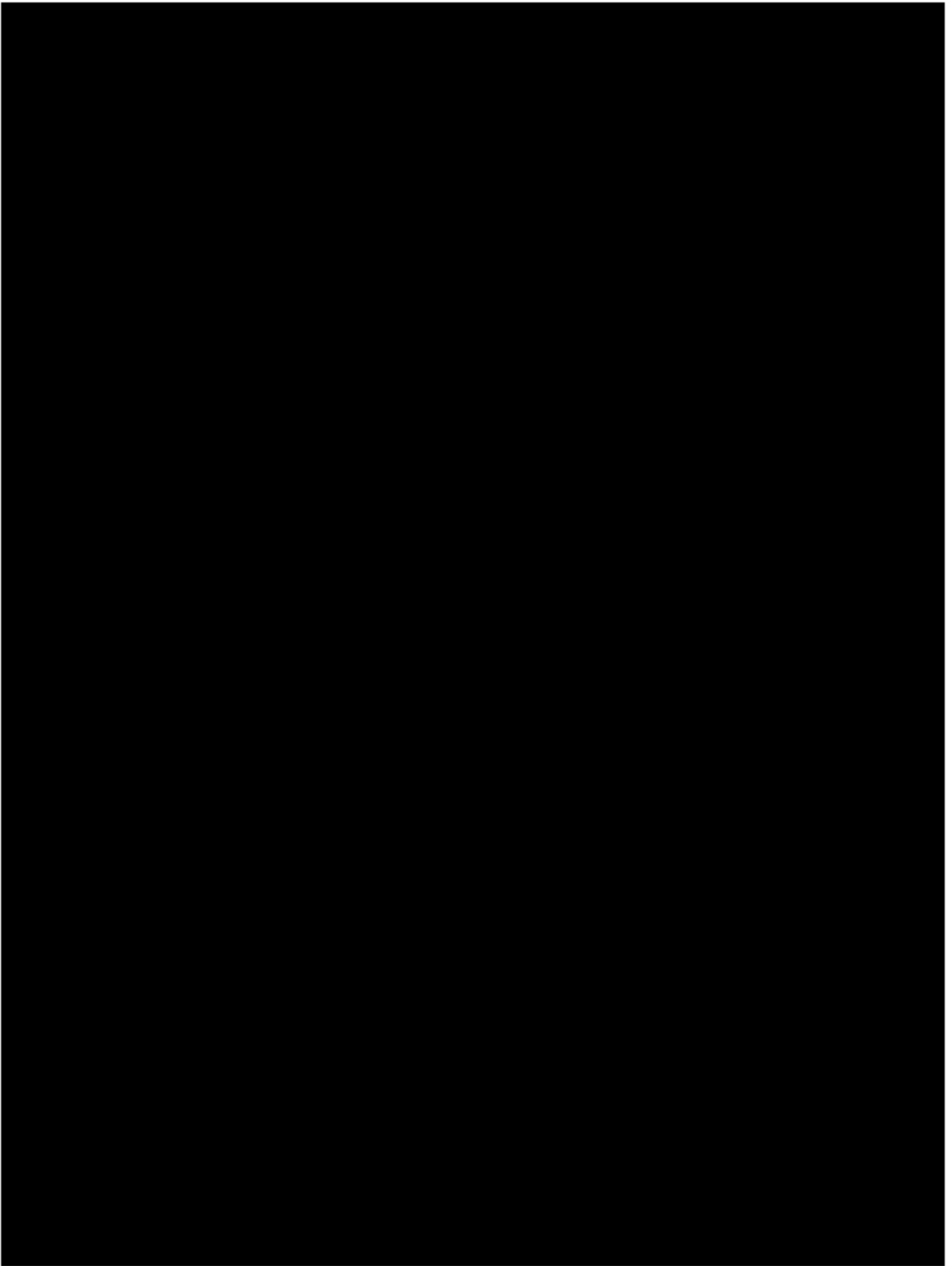


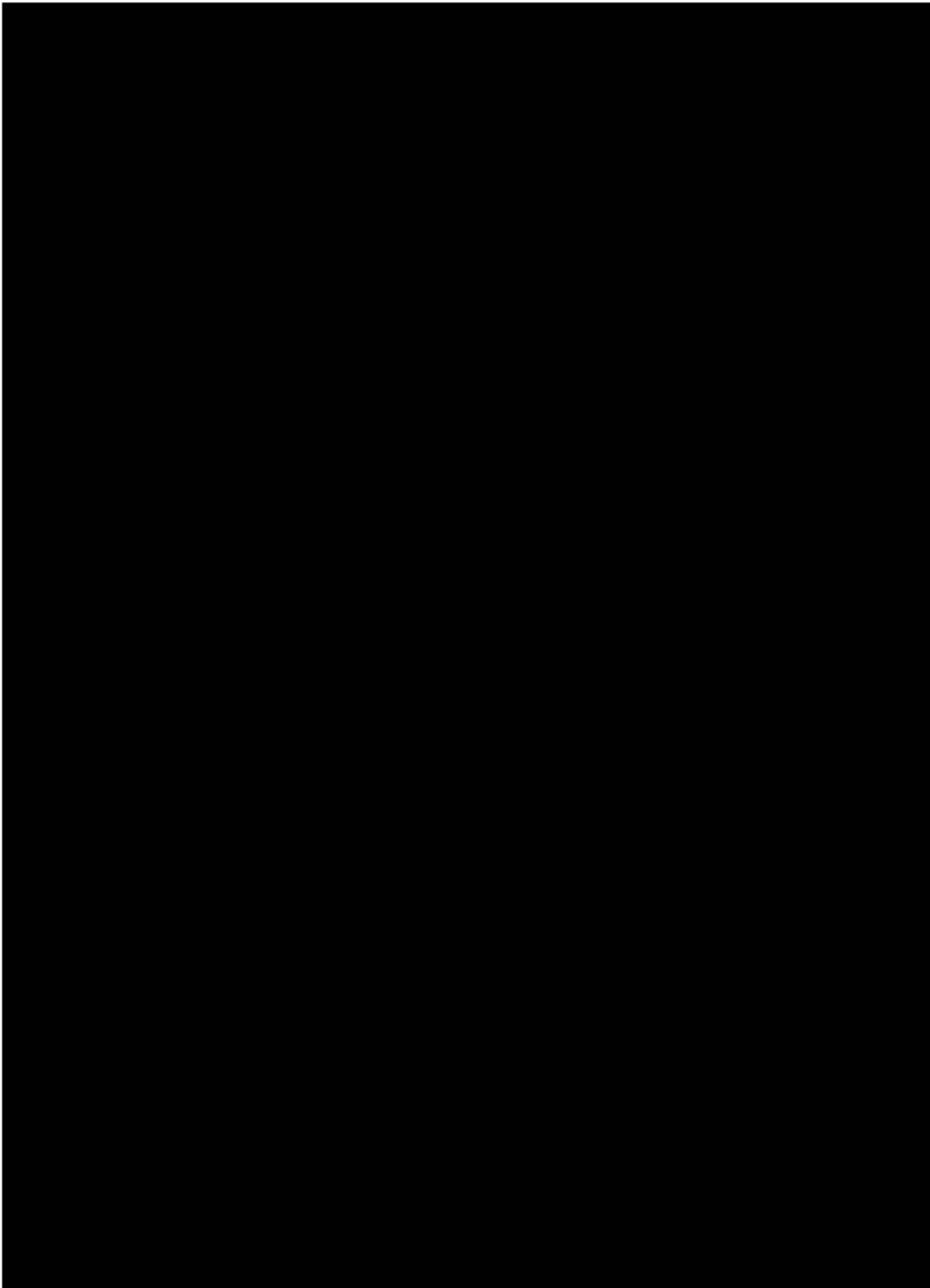
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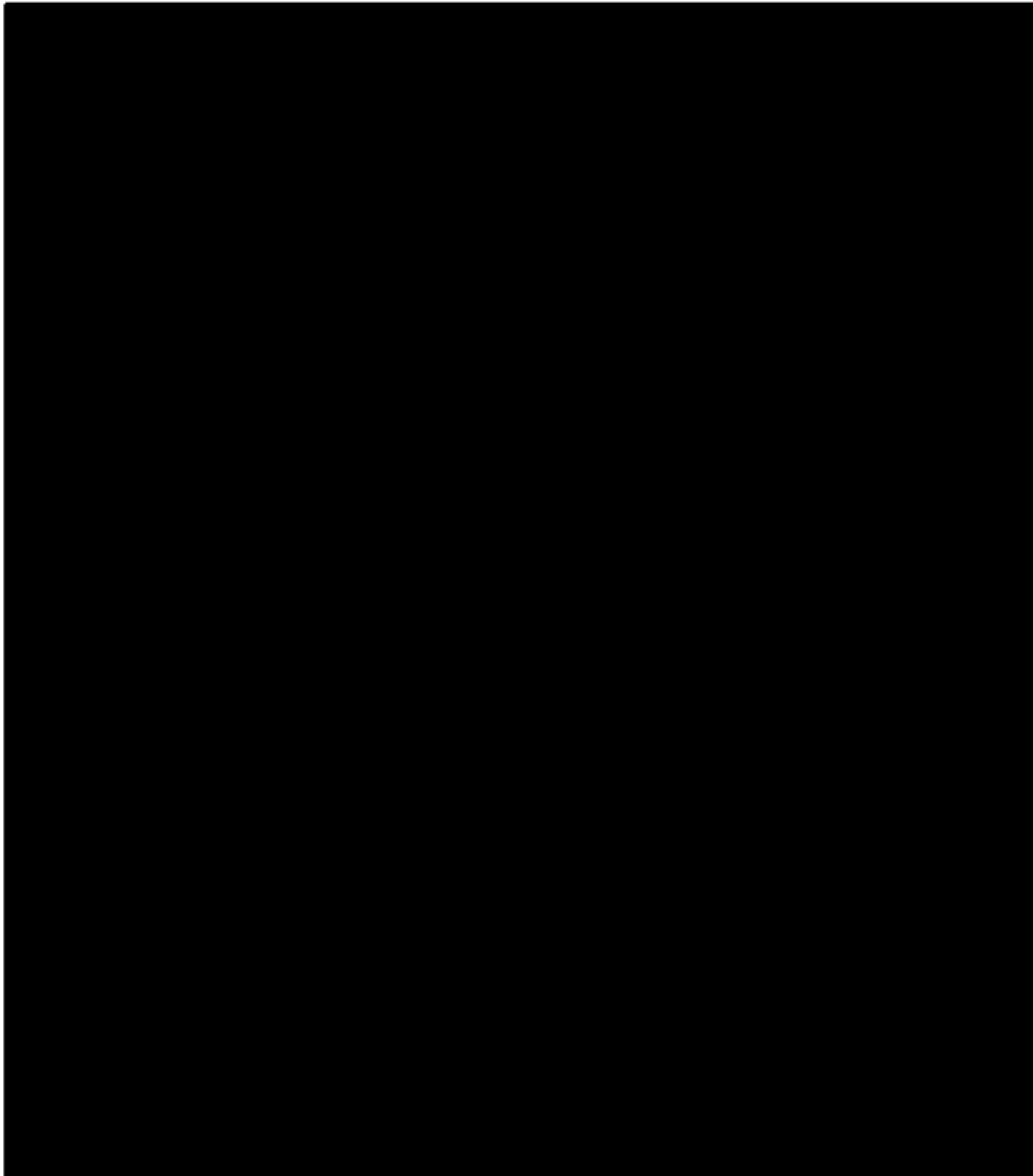
Cheryl Garcia
Acting Title IX Officer and Director

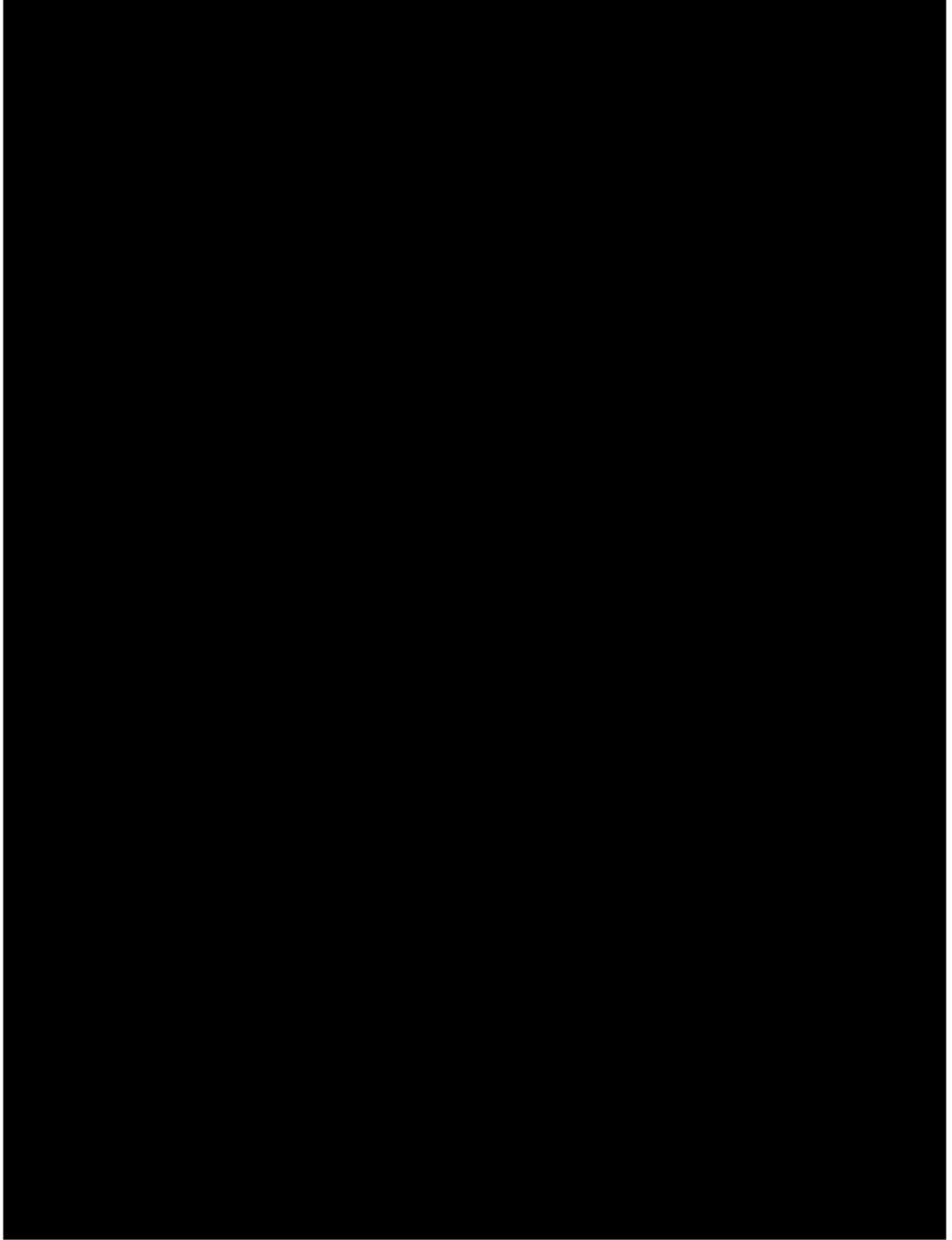
Office for the Prevention of Harassment
and Discrimination
114 Bancroft Way, Suite 300, MC 116
Tel.: (916) 844-1933
Email: ask_oph@berkeley.edu

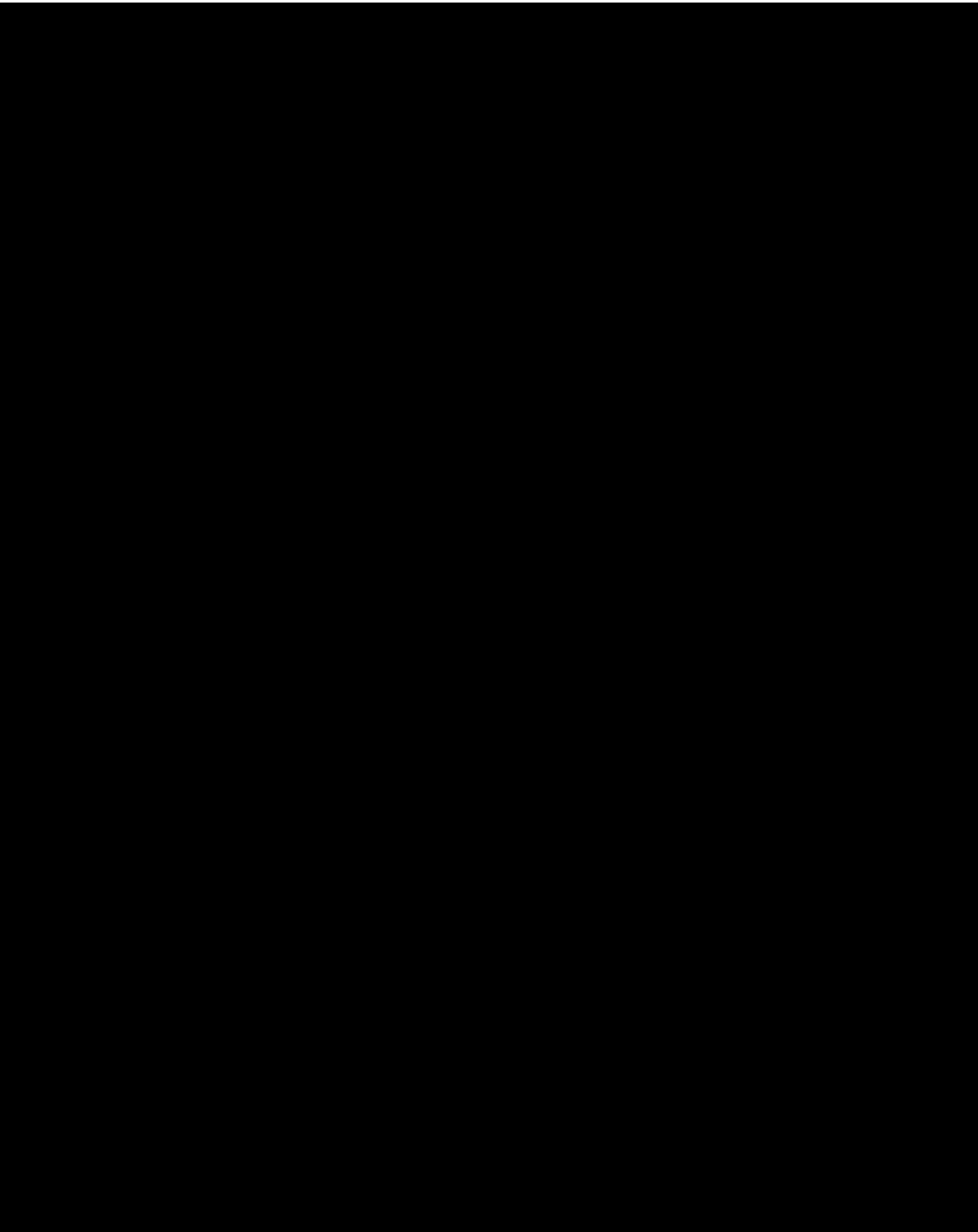












Swimmer I [REDACTED]

[REDACTED]
5 mensajes

Swimmer I [REDACTED] [REDACTED], sep. 19, [REDACTED], 12:38 p.m.
Para: Teri J MCKEEVER <mckeeper@berkeley.edu>

Hi Coach Teri,

Could I meet with you for ten minutes in person to discuss [REDACTED]? Maybe after practice Monday morning?

[Se ocu tó e texto c tado]

Teri J MCKEEVER <mckeeper@berkeley.edu> [REDACTED], sep. 19, [REDACTED] 5:36 p.m.
Para: Swimmer I [REDACTED]
Cc: [REDACTED] Staff A [REDACTED]

Hj Swimmer I

Thanks for the note and the request to meet.

I cannot meet after morning practice as I have a Pac 12 Coaching Meeting for three hours [REDACTED] morning.

Also, we'll need [REDACTED] Staff A to join us.

I think you've also underestimated the time that such a meeting will take?

Can you send both of us a note of your availability on Tuesday? We can meet for 20 minutes.

Thanks,

Teri

Teri McKeever
Head Coach
Women's Swimming and Diving

Intercollegiate Athletics
135C Haas Pavilion, Berkeley, CA 94720

P: [REDACTED] **E:** mckeeper@berkeley.edu **W:** CalBears.com

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[Se ocu tó e texto c tado]

Swimmer I [REDACTED] [REDACTED], sep. 19, [REDACTED] 8:01 p.m.
Para: Teri J MCKEEVER <mckeeper@berkeley.edu>
Cc: [REDACTED] Staff A [REDACTED]

CALINT-000514_0001

Hi Coaches,

20 minutes sounds great. I am available after Tuesday morning practice until 11:00am and I'm available after 6:15pm. Please let me know what time works for both of you then. I hope the Pac-12 Meeting goes well and I seriously appreciate you meeting with me on this matter.

Thank you both so much,

Teri J MCKEEVER

[Se ocu tó e texto c tado]

Teri J MCKEEVER <mckeeper@berkeley.edu>

[REDACTED], sep. 20, [REDACTED] 8:16 p.m.

Para: Swimmer I [REDACTED]

Cc: [REDACTED] Staff A [REDACTED]

We can meet at 9:40am in my office. [REDACTED] Staff A has another meeting at 10:00am. Thanks, Teri

[Se ocu tó e texto c tado]

Swimmer I [REDACTED]

[REDACTED], sep. 20, [REDACTED] 8:28 p.m.

Para: Teri J MCKEEVER <mckeeper@berkeley.edu>

Cc: [REDACTED] Staff A [REDACTED]

Great! Thank you both so much. See you both tomorrow.

[Se ocu tó e texto c tado]

Swimmer I [REDACTED]

Checking In

4 mensajes

Teri J MCKEEVER <mckeeper@berkeley.edu>

[REDACTED] sep. 22, [REDACTED], 10:49 a.m.

Para: Swimmer I [REDACTED]

Cc: [REDACTED] Staff A [REDACTED] Staff F [REDACTED]

Hj Swimmer I

[REDACTED] Staff E told me yesterday that during your appointment with [REDACTED] Staff N he made the decision that you should take the next 2 weeks to step away from the team to spend your time and energy on your overall well being.

So, it's my understanding that on October 7 we will revisit where you are and make a decision in regards to your return.

If I am incorrect or there's something else I've missed please let me know.

I hope this time will help you feel better.

Best,

Teri

Teri McKeever

Head Coach

Women's Swimming and Diving

Intercollegiate Athletics

135C Haas Pavilion, Berkeley, CA 94720

P: [REDACTED] **E:** mckeeper@berkeley.edu **W:** CalBears.com

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Swimmer I [REDACTED]

[REDACTED], sep. 22, [REDACTED], 2:10 p.m.

Para: Teri J MCKEEVER <mckeeper@berkeley.edu>

Cc: [REDACTED] Staff A [REDACTED] Staff F [REDACTED]

Hi Teri,

Yes, that is all correct. Thank you for the email and wishing me well.

[Se ocu tó e texto c tado]

CALINT-000513_0001

Teri J MCKEEVER <mckeeper@berkeley.edu>

██████████, sep. 22, ██████████, 10:30 p.m.

Para: Swimmer I ██████████

Cc: ██████████ Staff A ██████████ ██████████ Staff F ██████████

Swimmer I

I'd also like you to send me an outline and recap in your own words of your meeting with ██████████ Staff A and I yesterday.

Additionally, I'd like to have the same from your meeting with ██████████ Staff N when the decision was made to step away for the next two weeks. This is so I can make sure we're all on the same page.

Please copy ██████████ Staff A and ██████████ Staff F when sending your comments. I'd appreciate getting these by Saturday afternoon.

Thanks,

[Se ocu tó e texto c tado]

Swimmer I ██████████

██████████, sep. 23, ██████████, 3:38 p.m.

Para: Teri J MCKEEVER <mckeeper@berkeley.edu>

Cc: ██████████ Staff A ██████████ ██████████ Staff F ██████████

Hi Coach Teri,

Sounds good. I will get those two summaries to you, ██████████ Staff F, and ██████████ Staff A by Saturday afternoon.

[Se ocu tó e texto c tado]

CALINT-000513_0002

From: Swimmer I [REDACTED]
Sent: 9/25, [REDACTED] 9:51:09 PM
To: Teri McKeever (mckeever@berkeley.edu)
CC: [REDACTED] Staff F [REDACTED] Staff A [REDACTED]
Subject: Re: [REDACTED] 8/21 Meeting Summaries

Sounds good. I'm glad we're on the same page now.

Swimmer I

On [REDACTED] Sep 25, [REDACTED] at 1:10 PM Teri McKeever <mckeever@berkeley.edu> wrote:
Thank you for this and getting it to us in a timely fashion.
Two clarifications I'd like to make:

- 1). I would say our discussion was more around your [REDACTED] of being apart of the team.
- 2). I didn't say you had to be at your best times in a month. I do expect you to be moving in a direction of improvement that is significant from what I've seen to date.

Thanks,

Teri

Teri McKeever
Head Coach
Women's Swimming and Diving
135C Haas Pavillion
Berkeley, CA, 94720-4422
[REDACTED]

On Sep 25 [REDACTED] at 10:06 AM, Swimmer I [REDACTED] wrote:

Hi Teri,

Below are the summaries of the meetings you've asked for. I want to let you know that I have been talking with counselors, [REDACTED] Staff I, my parents, and [REDACTED] Staff N since I started my break and that I am not going through this tough time alone. I am being supported and I am being taken care of. I have confidence that this time of healing and reflection is what I need and I am taking advantage of my time on my own to really figure out what I need to be happy and healthy.
Anyways, here are the summaries:

Meeting with Teri and [REDACTED] Staff A

1. Talked about my [REDACTED] and how it is affecting me in and out of the pool.
2. Discussed how I am not up to par with my swimming compared to when I was recruited.

3. Discussed how my [REDACTED] at practice is affecting my teammates.
4. Discussed how I need to reevaluate if I have the [REDACTED] to be on the swim team right now.
5. I have one month to make improvements that demonstrate that I am getting back to my best times and prove that my presence at practice will be productive for the team. Otherwise, I will be suspended from the team and we'd reevaluate me being on the team next year.

Meeting with [REDACTED] Staff N

1. Discussed how I have been feeling since my trip to Urgent Care.
2. I explained my logic behind why I think my [REDACTED] are coming from [REDACTED] and how my [REDACTED] is intensely physically affecting me.
3. We talked about the medications I'm taking and my medication history
4. I brought up how I am concerned that my mental health is becoming more and more of an issue and that I don't know what else I can do to get back to feeling normal/ not having [REDACTED] because of all of the help I am already receiving.
5. [REDACTED] Staff N told me that I am doing everything right by reaching out for help as much as I am. He recommended that I take at least a two week break from swimming and swim activities to destress myself as much as possible and let my medications have their full effect.
6. Talked about continuing to meet with [REDACTED] Staff N weekly and continuing to meet with my other [REDACTED] professionals.

I'm glad to see and hear that the team is having fun down in [REDACTED]. I hope the trip back is fun and safe.

Swimmer I

Swimmer I [REDACTED]

Check in

7 mensajes

Teri J MCKEEVER <mckeever@berkeley.edu>

[REDACTED], oct. 18, [REDACTED], 12:51 p.m.

Para: Swimmer I [REDACTED]

Cc: [REDACTED] Staff A [REDACTED] Staff F [REDACTED]

Hj Swimmer I

It's almost been a month since you took some time away and to date I haven't heard from you.

I need to know what your status is and we need to come to some sort of mutual agreement on future steps.

Please let me know when you may be ready to do this.

Thank you,

Teri

Teri McKeever [REDACTED]

Head Coach

Women's Swimming and Diving

Intercollegiate Athletics

135C Haas Pavilion, Berkeley, CA 94720

P: [REDACTED] **E:** mckeever@berkeley.edu **W:** CalBears.com

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Swimmer I [REDACTED]

[REDACTED], oct. 18, [REDACTED], 2:01 p.m.

Para: Teri J MCKEEVER <mckeever@berkeley.edu>

Cc: [REDACTED] Staff A [REDACTED] Staff F [REDACTED]

Hi Teri,

I will be meeting with [REDACTED] Staff N at 2:00 pm tomorrow to check in and most likely finalize our plan for me moving forward. I will contact you after that and give you an update.

Thanks,

[Se ocu tó e texto c tado]

CALINT-000512_0001

Swimmer I [REDACTED] [REDACTED] oct. 19, [REDACTED], 7:19 p.m.
Para: Teri J MCKEEVER <mckeeper@berkeley.edu>
Cc: [REDACTED] Staff A [REDACTED] [REDACTED] Staff F [REDACTED]

Hi Teri,

[REDACTED] Staff N and I met today and I'd like to meet with you and [REDACTED] Staff A to discuss where I'm at. Do you have any time on Thursday before 3:30 to meet for 20 minutes in person?
[Se ocutó el texto c tado]

Teri J MCKEEVER <mckeeper@berkeley.edu> [REDACTED], oct. 20, [REDACTED], 10:07 a.m.
Para: Swimmer I [REDACTED]
Cc: [REDACTED] Staff A [REDACTED] [REDACTED] Staff F [REDACTED]

We can meet at 11:30.
See you then.
[Se ocutó el texto c tado]

Swimmer I [REDACTED] [REDACTED] oct. 20, [REDACTED] 10:14 a.m.
Para: Teri J MCKEEVER <mckeeper@berkeley.edu>
Cc: [REDACTED] Staff A [REDACTED] [REDACTED] Staff F [REDACTED]

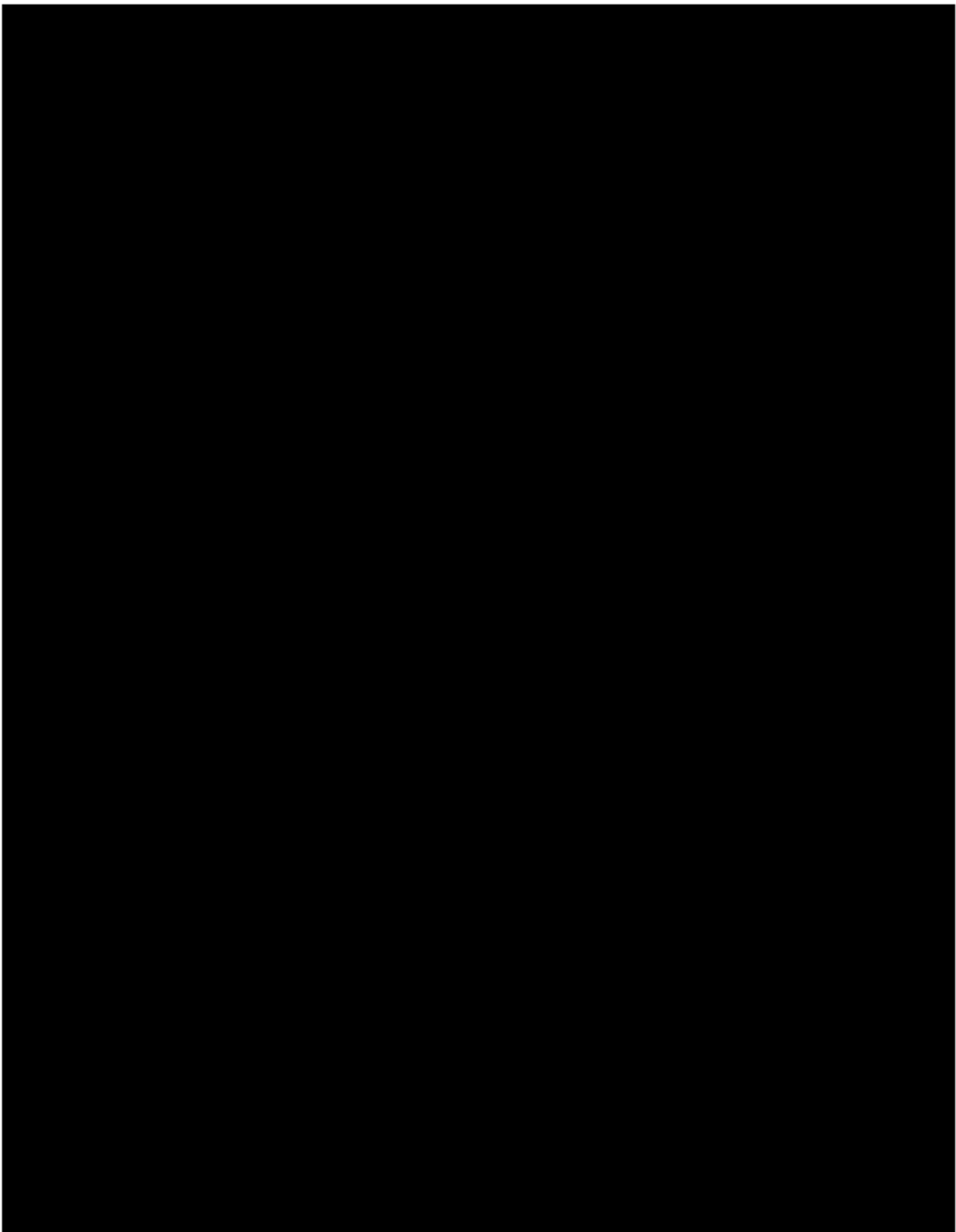
Sounds good! See you then.
[Se ocutó el texto c tado]

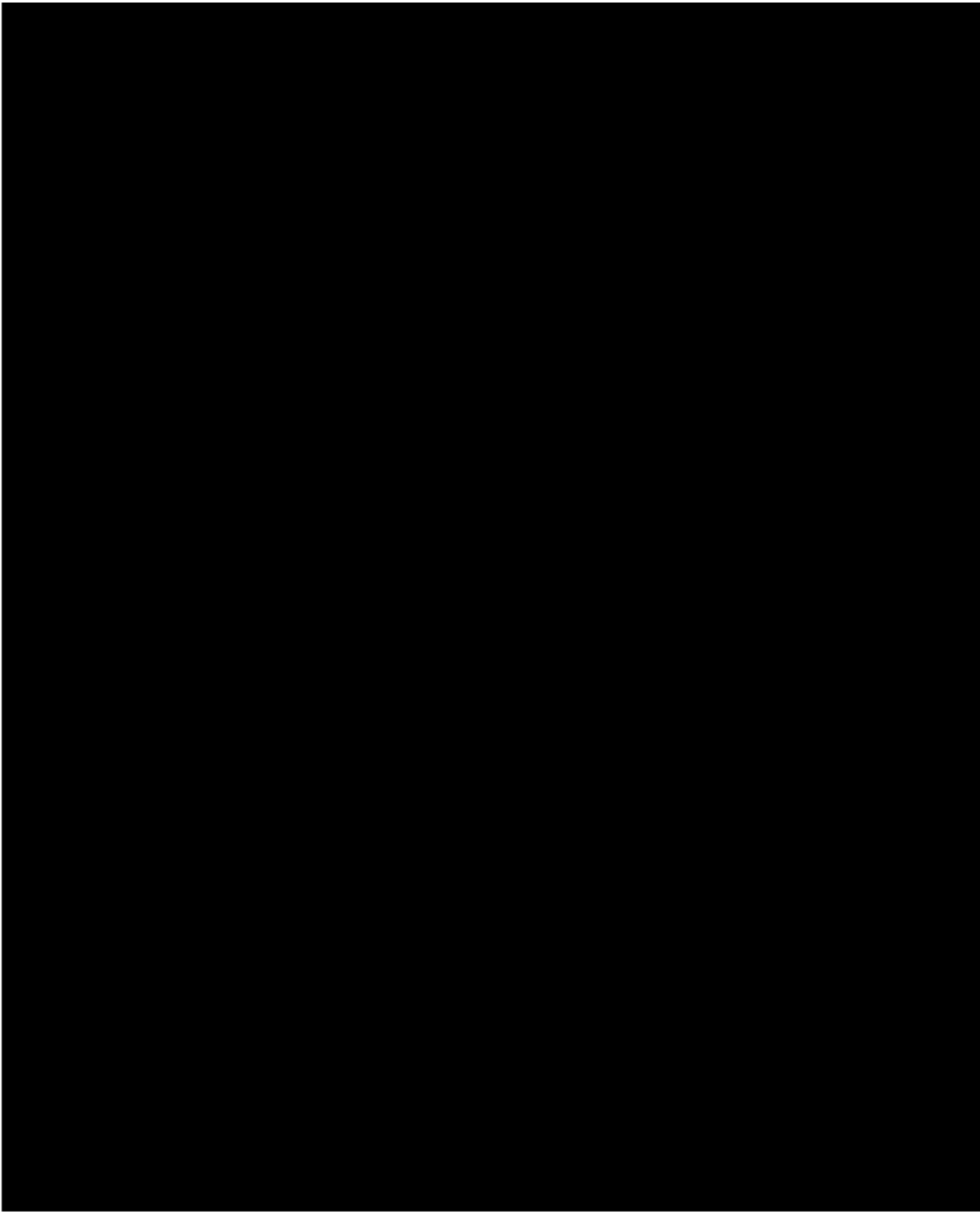
Teri J MCKEEVER <mckeeper@berkeley.edu> [REDACTED], oct. 20 [REDACTED], 10:15 a.m.
Para: Swimmer I [REDACTED]
Cc: [REDACTED] Staff A [REDACTED] [REDACTED] Staff F [REDACTED]

Swimmer I
Actually, I apologize we now have a meeting 11:30-12:30 so we can connect at 12:30pm. Please confirm 12:30 will work.
Thanks,
[Se ocutó el texto c tado]

Swimmer I [REDACTED] [REDACTED] oct. 20, [REDACTED], 10:24 a.m.
Para: Teri J MCKEEVER <mckeeper@berkeley.edu>
Cc: [REDACTED] Staff A [REDACTED] [REDACTED] Staff F [REDACTED]

Yes, that works for me. See you then.
[Se ocutó el texto c tado]





[Redacted]

[Redacted]

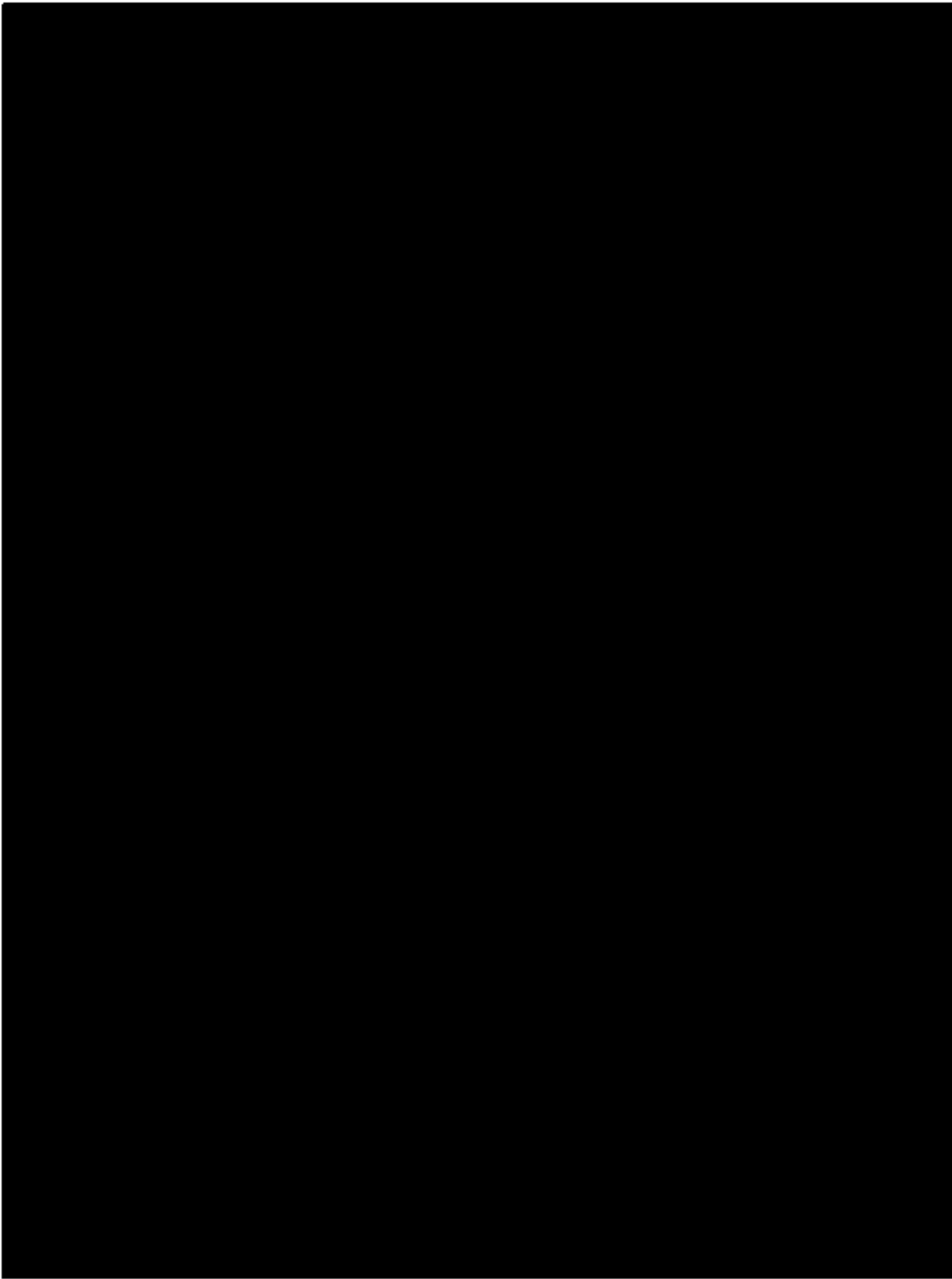
The first part of the document discusses the importance of maintaining accurate records of all transactions. It emphasizes that every receipt, invoice, and bill should be properly filed and indexed for easy retrieval. This not only helps in tracking expenses but also ensures compliance with tax regulations.

Next, the document outlines the various methods for collecting and organizing financial data. It suggests using spreadsheets or specialized accounting software to input and analyze data. Regularly updating these records is crucial for identifying trends and making informed decisions.

The document also addresses the need for periodic audits. By conducting regular reviews of financial statements, businesses can detect errors or discrepancies early on. This proactive approach helps in maintaining the integrity of the financial data and prevents potential legal issues.

Furthermore, it highlights the significance of keeping up-to-date with changes in tax laws and regulations. Consulting with a professional accountant can provide valuable insights into the most effective ways to structure transactions and minimize tax liabilities.

In conclusion, the document stresses that a systematic and disciplined approach to financial record-keeping is essential for the long-term success and stability of any business. By following the guidelines provided, businesses can ensure that their financial records are accurate, complete, and compliant with all relevant laws.



From: Parent of Swimmer X [REDACTED]
Date: February 17, 2020 at 5:35:40 PM PST
To: mckeever@berkeley.edu
Subject: Swimmer X

Dear Teri,

I know it is a busy time for you and the team but I was wondering if you could find a minute to talk with me on the phone. I can call at any time convenient for you.

[REDACTED]

I know that there is a conflict and hope you could find time to tell me what is happening.

Thank you,

Parent of Swimmer X

[Sent from Yahoo Mail for iPhone](#)

From: Parent of Swimmer X [REDACTED]
Sent: 2/19/ [REDACTED] 2:51:56 PM
To: Teri McKeever (mckeever@berkeley.edu)
CC: Swimmer X [REDACTED] Staff A [REDACTED]
Subject: Re: Call

Teri,
Thank you. I understand, there must be rules I may not be aware of.
Swimmer X will be there at 8:30 but will have to make it to class at 9.
Thank you,

Sent from Yahoo Mail for iPhone

On [REDACTED] February 19, [REDACTED] 9:01 AM, Teri McKeever <mckeever@berkeley.edu> wrote:
Parent of Swimmer X

Sorry but I will not speak with a parent without the student present.
We purposely scheduled the call at 8:30 with a stop at 9:00 so Swimmer X could be present. That's also why Staff A will be present.
If she feels she can't attend, then I'm sorry I not comfortable speaking with you.
We will be in my office at 8:30 should Swimmer X change her mind.
Regards,
Teri

Teri McKeever
Head Coach
Women's Swimming and Diving
135C Haas Pavillion
Berkeley, CA 94720-4422
[REDACTED]

On Feb 19, [REDACTED] at 12:31 AM, Parent of Swimmer X [REDACTED] wrote:

Dear Teri,
Thank you for your response. I should have contacted you earlier but I was out of the country Jan 29-Feb 17 and was not able to do that.
I will be calling in at 8:30 am.
Swimmer X will not be able to be in your office at 8:30 am as she has a class at 9am.

Swimmer X believes that she did everything in her power to meet your expectations and resolve the situation which apparently had a negative impact on her wellbeing for a while. I should have gotten involved earlier but she thought she can do it on her own and did not let me contact you. [REDACTED]

Unfortunately, at this point Swimmer X is not comfortable with direct communication and cannot come to your office.

I will be calling in at 8:30 but if Swimmer X absence is a problem, please feel to reject the call.
All I need is to hear from you what caused this disaster.
Thank you,

[Sent from Yahoo Mail for iPhone](#)

On [REDACTED] February 18, [REDACTED] 10:37 PM, Teri J MCKEEVER <mckeever@berkeley.edu> wrote:
Parent of Summer X

I received your email requesting a time to connect on a call. I am happy to connect on the phone but I need Summer X and [REDACTED] Staff A to be involved in the call.

If you'd like to talk, [REDACTED] and I could speak tomorrow at 8:30am. Summer X should plan to be at my office. Just to be clear, we will need to be done no later than 9:00am.

Please confer with Summer X and reply all if we should expect to talk.

Regards,

Teri



Teri McKeever

Head Coach

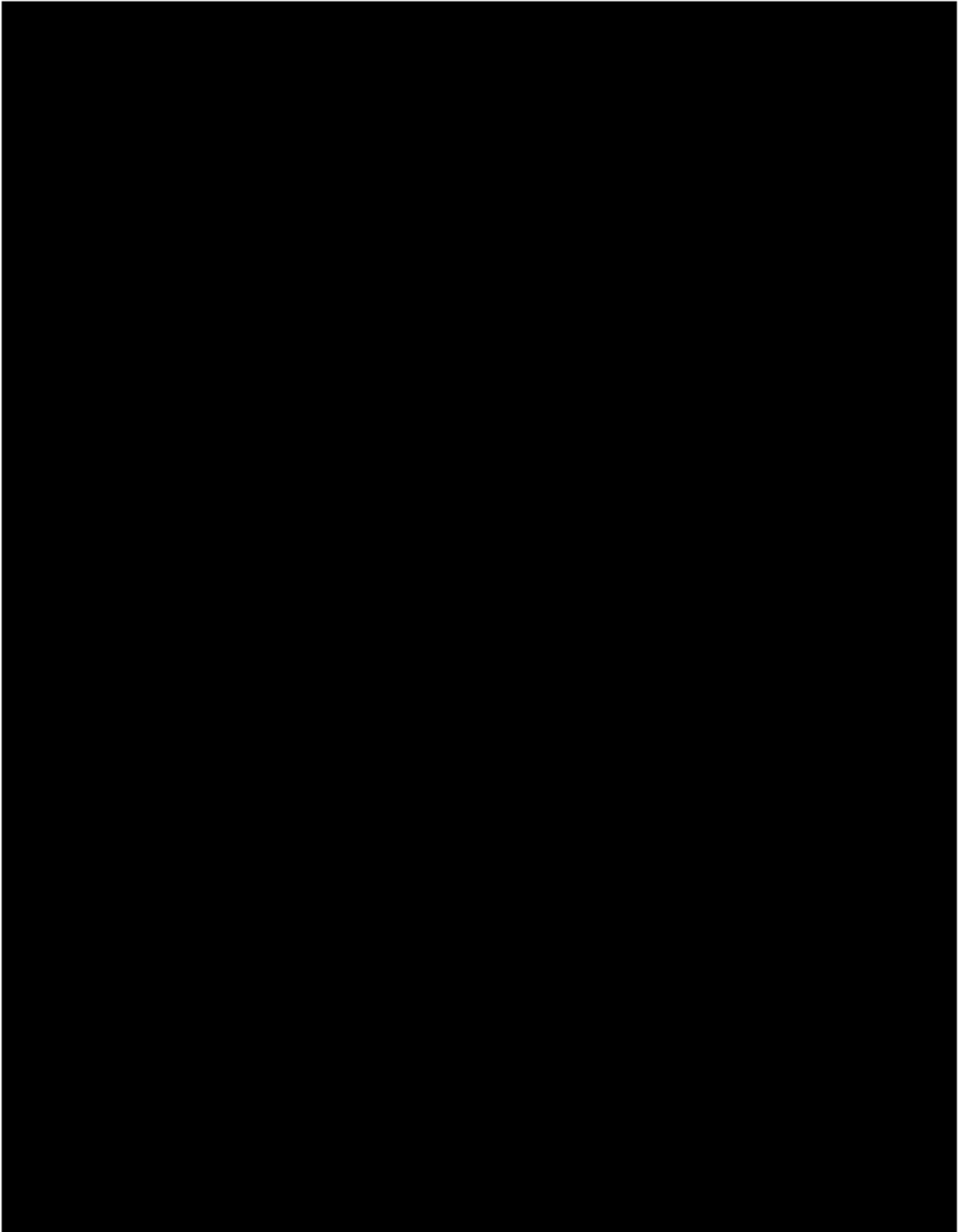
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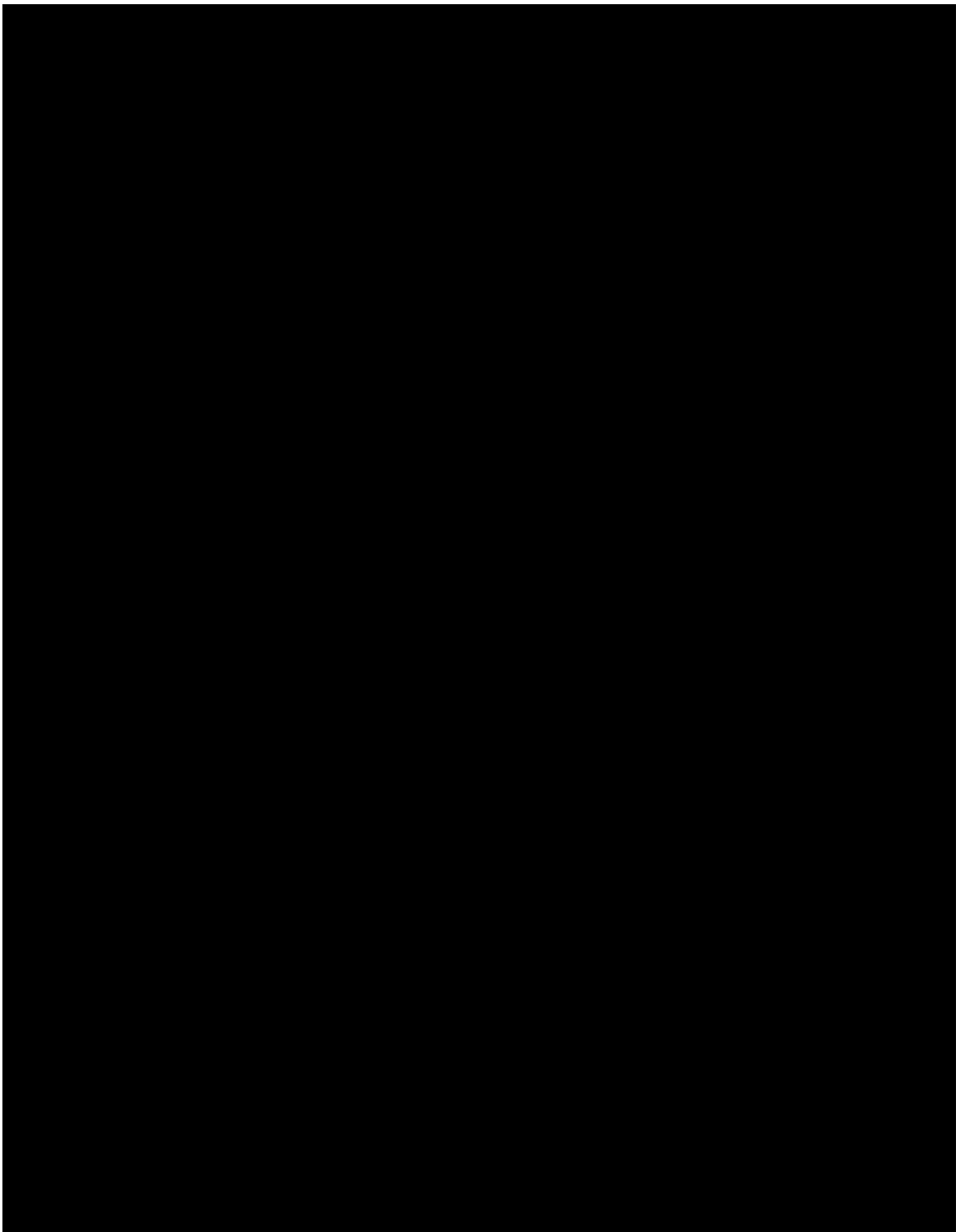
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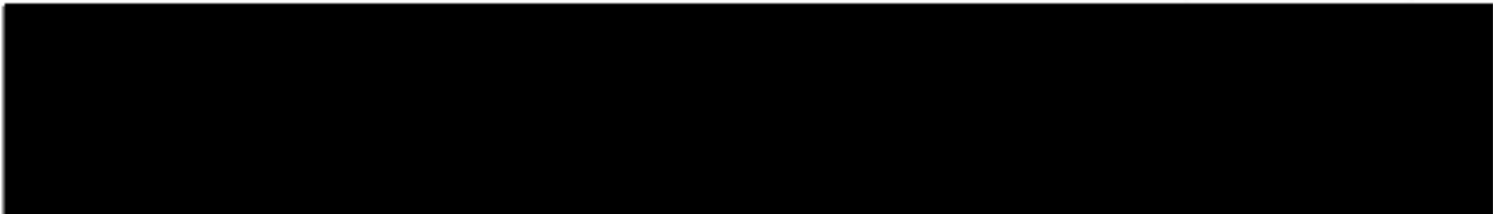
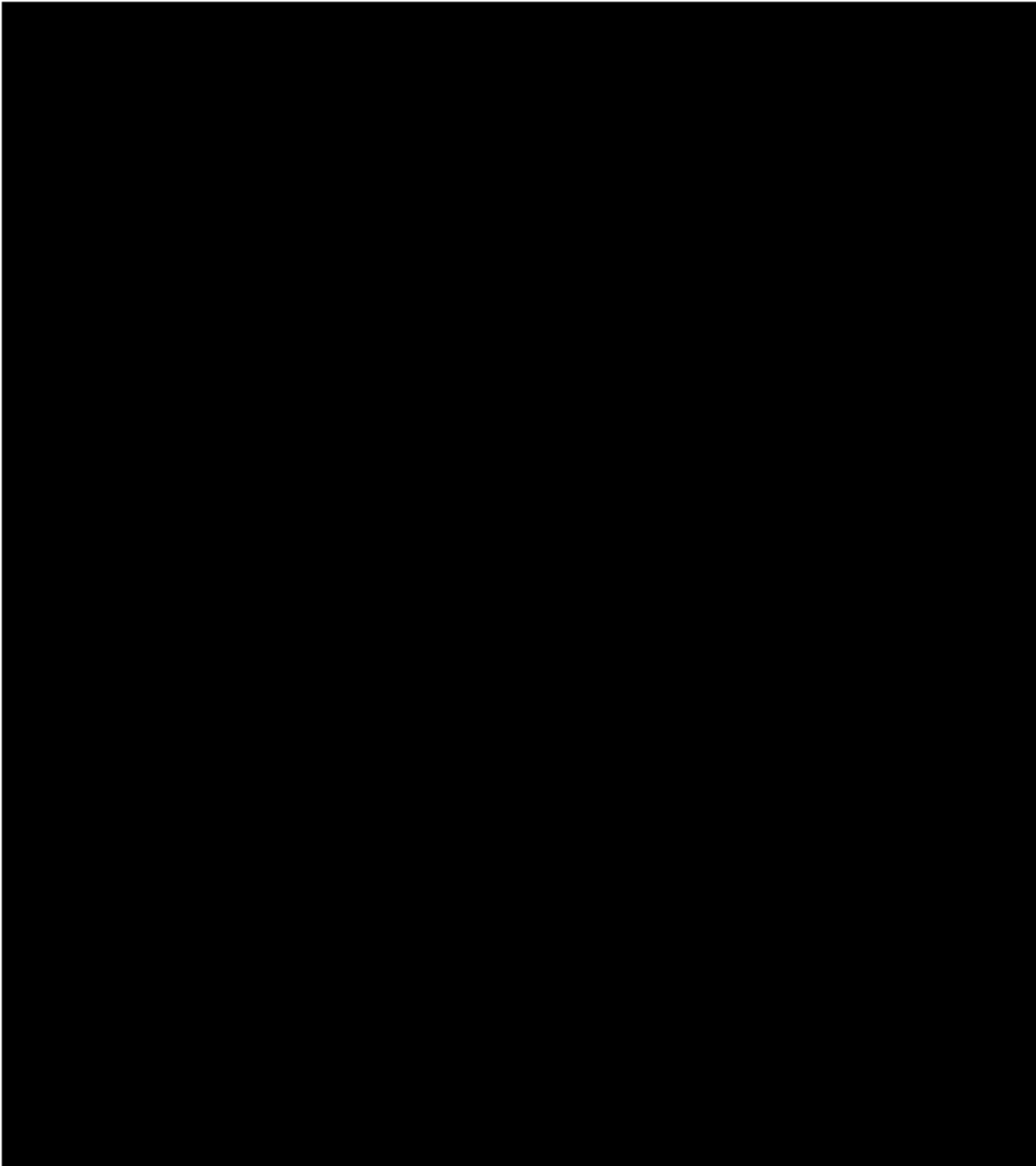
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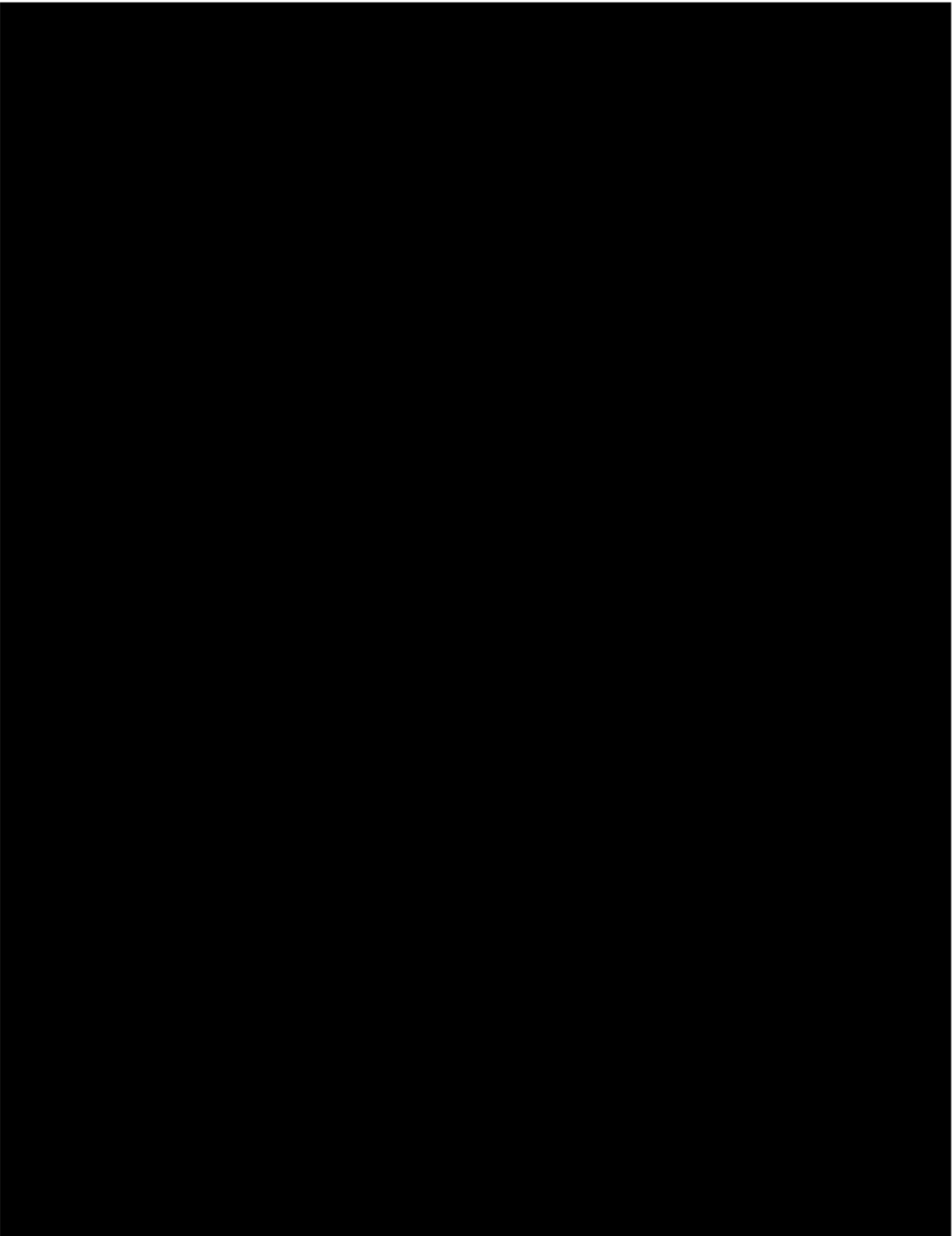
P: [REDACTED] **E:** mckeever@berkeley.edu **W:** CalBears.com

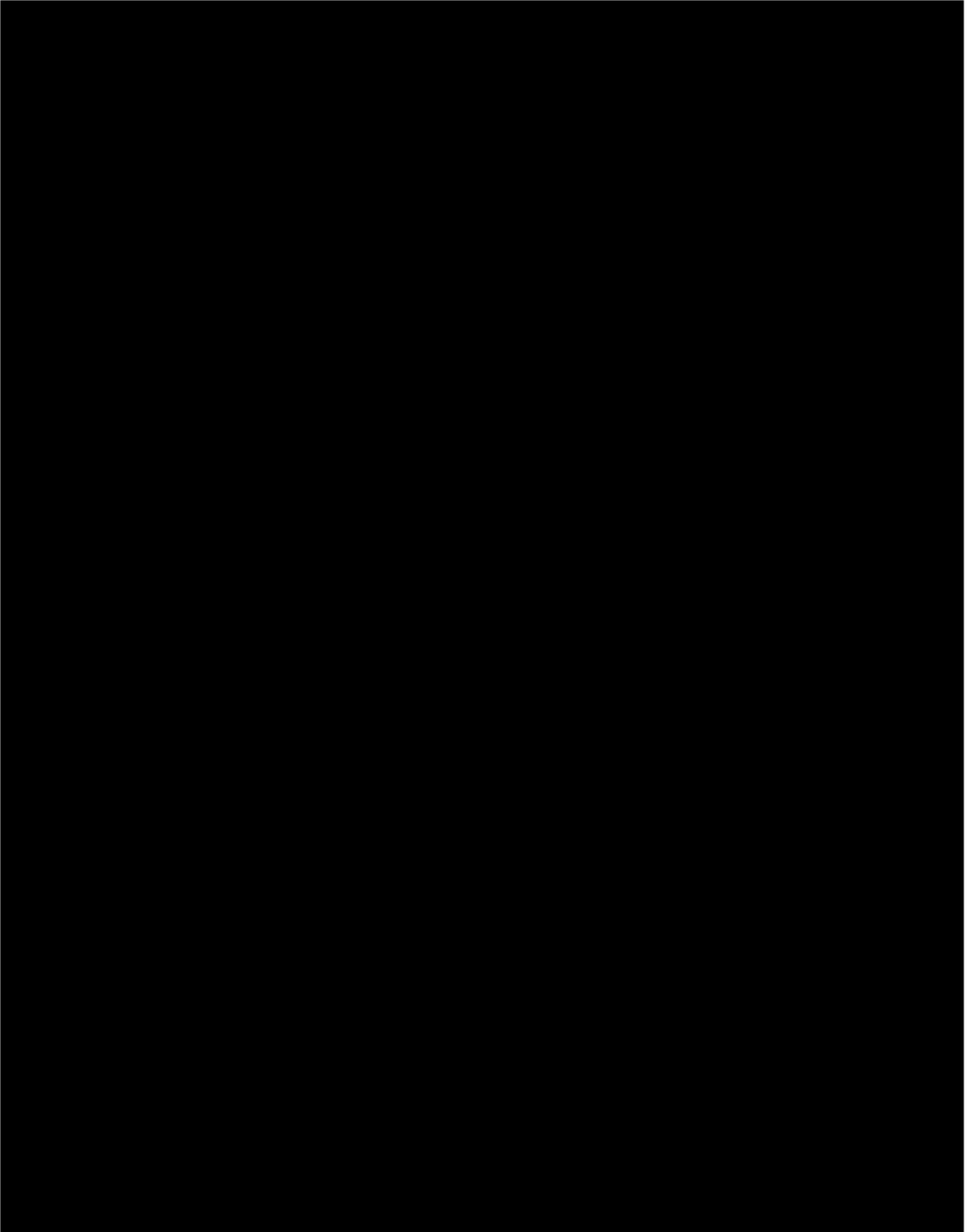
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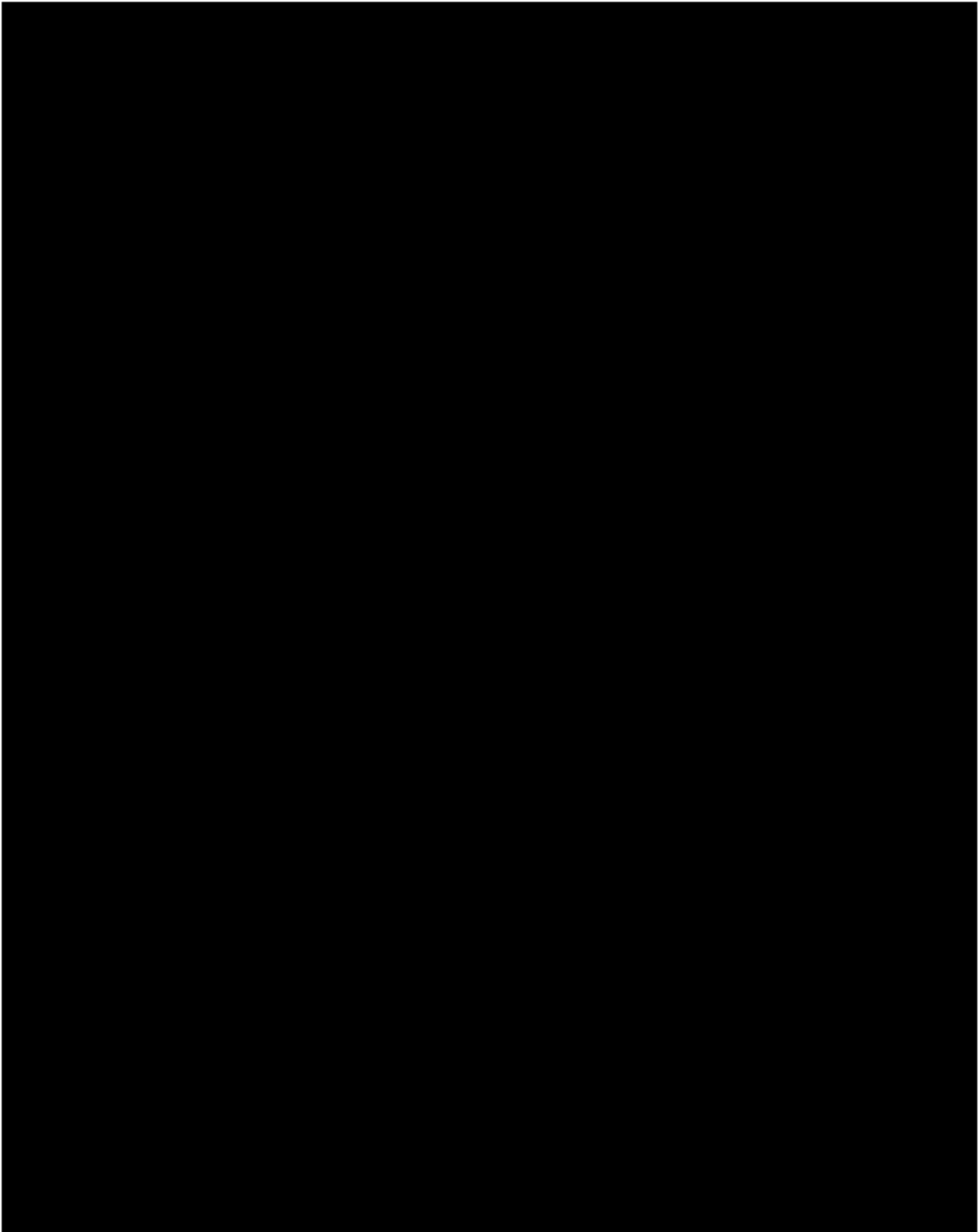


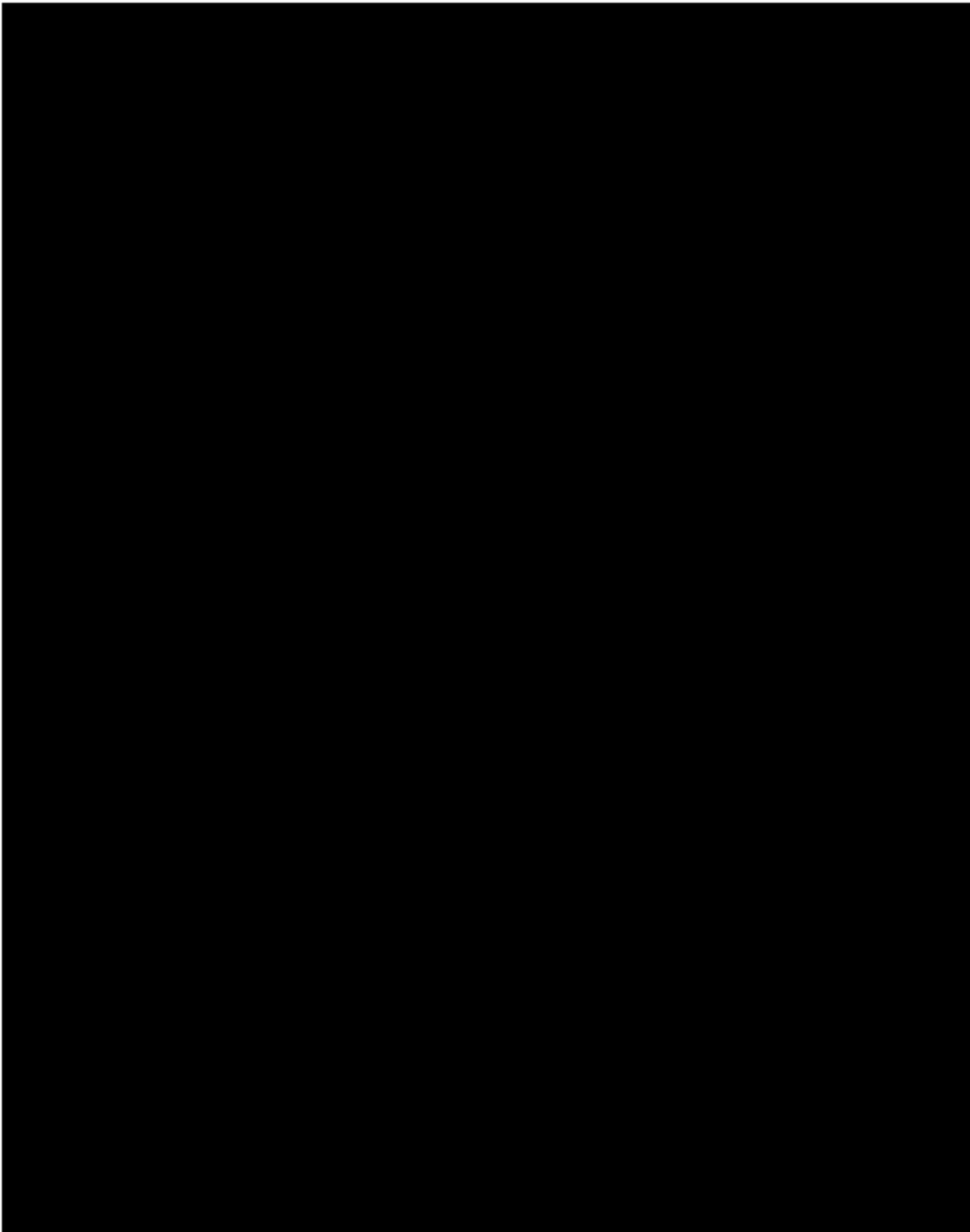












Dear Jim Knowlton,

I was a member of the Cal Women's Swim team from [REDACTED]. Teri McKeever was my coach and she has had an incredibly positive influence on my life. My dream was always to swim at Cal and to compete with some of the best athletes in the world. After my freshman year, I got a [REDACTED] I felt alone, depressed, worthless and discouraged. At that point, I did not think there was a spot for me on the team and my dreams would be destroyed. In contrast, I had never felt so supported and protected. From the beginning, Teri made sure I was able to talk to a therapist, made sure I was able to get any physical therapy treatment I needed, gave me time to recover, and repeatedly reminded me of my importance and value on the team. I grew into a strong and confident woman who learned that I could still achieve my goals even in the face of adversity. I am very grateful for Teri. The many life lessons I learned under her mentorship still play an incredibly important part in my life and career to this day.

.Swimmer CW, Class of [REDACTED]

Dear Jim Knowlton,

I had the privilege of swimming for Teri at Cal for 4 years, graduating in [REDACTED]. Swimming at Cal, more specifically swimming for Teri McKeever, since I was a little girl. I knew that Teri was a world class coach but what was more important to me was that she was a female coach in a traditionally male dominated field. I also knew that Teri cared about the whole person, not just the swimmer, which was very important to me because I knew one day my time as a swimmer would end but the lessons I learned from her would be life long.

My time at Cal swimming for Teri was the hardest but the most formative, rewarding and best four years of my life. I achieved some of the highest highs and accomplishments and Teri is a key reason for that success. She knew how to push and motivate me to become a better swimmer and competitor. She knew that I needed some extra support in certain areas and she did everything she could to meet those needs. I also experienced some of my lowest lows while at Cal, and again Teri was right by my side. She was my first call when I experienced some significant health issues. During these challenging times she made it very clear to me that she did not care if I swam fast, or even if I ever swam again, she just cared about me getting better. Teri created an environment where I knew that she wanted me to become a better swimmer, but more importantly she wanted me to become a better person, friend, teammate, daughter, wife, mother among so many more important titles in life other than "swimmer".

Teri has been and always will be one of my biggest life mentors and I have nothing but the utmost respect and gratitude for her.

Swimmer AM

My name is Swimmer BS, I swam at Cal [REDACTED] and I majored in [REDACTED]. Cal taught me how to fail successfully, how to be a strong female leader, how to do hard things and how to stand tall in the face of adversity.

This is something Teri would probably make us present at a team dinner, she liked to teach us to speak well in public and stand with confidence. We would get a prompt and each of us got space to say something in front of the room. This thing that we used to groan at having to do is the reason I interview and speak so well. This small anecdote is one of the hundreds of examples of Teri-isms that made us better.



helped me understand my strengths and weaknesses. Not many 18-21 yr olds can speak to WHO they are but Teri taught us how to be introspective and how our traits were not good or bad, they make up who we are.

Now I want to get into MY experiences with Teri. This is a post I made on [REDACTED] and I have elaborated on it.

[REDACTED]

I have so much more I can say. But I hope through reading this you will notice a theme; the theme that Teri provided us opportunities to be better, to be strong women, to be leaders. She allowed us to fail in a safe space. However, these opportunities were provided if YOU WANTED TO GET BETTER. The athletes that were honest with themselves and with her about their goals, their struggles, the athletes that went to her with a list of solutions and a mindset to “figure it out” while supporting the team and being additive to Cal swimming—got the support.

I got into every kind of trouble I could at Cal, I was [REDACTED], I had family issues, [REDACTED] I was not swimming fast—I mean everything I went through should (based on the stories those girls told) have made Teri hate me, bully me, kick me off the team. She never did.

I do not know what else to add or what else to say. I do not even know if this is helpful. All I know is that this woman does not deserve this. She does not deserve for only one side of the story to be shared. The women who feel they were abused are allowed to feel that without feeling shame or blame. Their truth is their truth, and their feelings are fact. However, they are not the only ones who get to speak.

Cal swimming was the hardest thing I had ever done, and it has allowed me to excel and do many more hard things. Teri, gave me that. Thank you, Teri.

Dear Jim Knowles,

As a parent of a Swimmer BS a swimmer and [REDACTED], I can't speak to a personal experience on the pool deck with Coach Teri, but I would like to share my feelings.

During my daughters time at Cal under Teri, we had several unfortunate family issues occur, which left my daughters and I dealing with several difficult situations both emotionally and financially. [REDACTED]
[REDACTED]
[REDACTED]

What I saw through my daughter's eyes was a very caring and compassionate person, woman, coach who took the time personally to help Swimmer BS and guide her to get the help and assistance she needed to deal with the many things going on. From Swimmer BS I heard all about the support given to her through the life coach Teri brought on board, tutoring she made sure she got and just checking in on Swimmer BS to make sure things were ok. I also listened to Swimmer BS about how Teri would push her to work harder, to excel, to give it her all, on some of those days Swimmer BS would be ready to quit, on others she was proud of how she had met or exceeded the challenge.

Did Teri, always speak with a gentle voice? No. Did she cuss? Likely yes. Did she show favoritism? Probably, but let me ask you this. As a parent did you ever yell at your children? Did you maybe swear at them on occasion? And sometimes did you show favoritism to your child who is trying really hard whether they are successful, because frankly they are earning it and deserve it not because of the success they achieved but due to their effort. And sometimes your child who just isn't trying, has an attitude or is just being difficult and upsetting everyone else in the family is given a "time out", emotionally, physically, or in some way. I would bet

What I felt from listening to Swimmer BS's experience was that Coach Teri, cared about her first as a woman, then as a student and lastly as a swimmer. Occasionally when at team events if Teri and I happened to have a moment she always ask how I was and how my other daughter was doing, I appreciated that she cared enough to check in even for just that moment. I also know there were many other ways Teri stepped in to help Swimmer BS not only during her years at Cal but after when Swimmer BS reached out for advice Teri was there to support her.

I think the thing that speaks volumes to me as Swimmer BS's mom is that at the end of her college swimming she didn't walk away hating the sport and coaches, but has grown both in appreciation for the sport and continues to swim and compete to this day. As for Swimmer BS's coaches, she recognizes that both Teri and [REDACTED] played a major role in not only her swimming success, love of the sport, but who she is as a woman today. I know from parents of swimmers both collegiate and age group that at the end they were through and to this day have not gone back to the sport.

I recognize that not all will have the same experience that Swimmer BS did. I understand that some may feel they were victims of *abuse*, a word for some thrown around to freely and for others in this world not spoken out loud enough. I appreciate the need for this issue to be thoroughly looked into, but I hope it is done with eyes wide open. I can not imagine being the Coach of a team of young 18-22 year old women, as they learn to navigate being away from home, taking responsibility for self, adulthood, pressures of academics and the personality and emotional dynamics that occur within any group of 3, let alone 25 women. It seems to me that it is inevitable that any Coach or

person for that matter in that role would on occasion yell, swear, show appreciation for some and frustration with others, but is the all on the Coach or do the athletes need to look at themselves and wonder if maybe they need to own some of their experience to what they themselves did or didn't do?

I wish healing for those swimmers who felt abused. I wish for Teri who has given so much to so many and the sport of women's swimming to be cleared and for peace of mind that there are many out there who appreciate and are grateful for all she has done.

Thank you,

Parent of Swimmer BS

[REDACTED]
[REDACTED]

Dear Jim Knowlton,

I wish to share my experience working with Teri Mckeever.

I was not the best swimmer on the team - in fact I never competed at an NCAAs, and scored a handful of points at Pac12s. I was a 5-star recruit out of high school, receiving a scholarship and expectation to contribute at the National level. I failed to reach any of best times during my time at Cal.

Teri never once mentioned my scholarship, or made me feel like a wasted investment. In fact, she made me feel quite the opposite. I was able to contribute to the team in other ways, like making signs for the NCAA team as they drove off on the bus, or helping with filming during summer practices. Teri consistently showed appreciation for me.

My junior year, I [REDACTED]. Teri modified workouts for my recovery (including weights and dry land). She taught me that if I only have 50% to give, show up with all 50%, and that's what I did.

It took me a year or so to figure out Cal Academically. Teri checked in with me bi-weekly, and introduced me to Academic resources that helped guide me to success. I ended up getting accepted into a capped major at Cal, Public Health. In fact, when I got accepted during our training trip in Hawaii, Teri was so happy for me that she personally took me to McDonald's to get a soft serve ice cream to celebrate.

Teri always told us how much she dreamed of having children, and how we were all her own. Her passion for improving the lives of her athletes shined through in how she showed up on a daily basis.

I start every work week with a gratitude list - this is something I learned from Teri, and we did as a team. She created a safe space for us to share.

I learned to fail fast, fail often, and get up and try again. Teri provided a space for us to fail, held us accountable to what we wanted to achieve, and opportunities for us to try again.

I learned what it means to be accountable. Teri would ask our goals, and hold us to those goals with no waver. This included dealing with some tough realities, like when a single practice on a rainy Tuesday morning wasn't reflective of the goal I was chasing. I've yet to meet someone who held me to the same standards as Teri.

I learned what it means to have respect for someone. Being a leader doesn't always mean you're liked by everyone, but it means you can command a room based on mutual respect.

When I was 17 years old, I committed to Cal. My commitment to Cal was a commitment to excellence, and that's the standard I believe Teri held us to.

I am so grateful for my [REDACTED] years at Cal, the friends that have become family, the lessons I learned, incredible memories, and a lifelong gratitude and appreciation for Teri Mckeever.

Thank you for listening,
Cal W Swim [REDACTED]

Swimmer AS s

Dear Jim Knowlton,

I am writing to express my support of Teri McKeever by sharing my personal experience. I swam for Cal and Teri from [REDACTED]. Even though I walked onto the team, Teri saw potential in me and always fostered my athletic and personal growth. With her inspiration and motivation, I improved my swimming and ended up scoring points at our [REDACTED] meets. I qualified for U.S. Nationals for the first time and was [REDACTED] my senior year.

Teri always treated the women on the team with respect. She did not raise her voice, cuss at her athletes, and she definitely did not employ emotional manipulation tactics. She was extremely inclusive and fair.

Swimming at an elite, Division 1 level is a challenging journey – especially at an academically rigorous university like Berkeley. The demands on us were abundant, and she was always checking in to make sure the whole swimmer was supported, not just the athlete. She was willing to make concessions when school or mental health needed to be prioritized. Teri was in the unique position to mentor women leaving home for the first time and had the pressure of leading us to success both in and out of the pool. She was responsible for our collegiate experience, swimming performance, and personal happiness. Teri took that role seriously. It was a very tall order and there were challenges at every turn, but she always handled them with a level head and compassion.

I had a wonderful experience swimming for Teri. In the four years under her guidance, I felt supported and respected. The D1 athletic experience is a pressure cooker, and Teri was always in our corner celebrating the highs and wiping the tears during the lows. She was an excellent ambassador of the University, and we were lucky to have her as our coach.

Dear Jim Knowlton,

I am writing this brief email in support of Ter McKeever. My daughter, Swimmer AM, swam for Coach McKeever from [REDACTED]. Her experience at CAL was only positive. She credits her success both in the classroom and as an athlete to Coach McKeever and her program. As her parents, we were in constant contact with Swimmer AM I via the phone, email and visits. Swimmer AM never expressed any concerns about the program or her coaches. Her comments were positive and she often expressed that the training was hard but she loved it.

I also personally experienced Coach McKeever's support for my swimmer. During Swimmer AM's time at CAL she experienced both physical injuries and emotionally challenging times. Coach McKeever provided support, resources and time for Swimmer AM to heal.

I am happy to answer any questions or provide specific examples if needed.

Regards,

Parent of Swimmer AM

[REDACTED]



Discrimination, Harassment, and Affirmative Action in the Workplace

[Discriminación, acoso y acción afirmativa en el lugar de trabajo](#)

[工作場所歧視、騷擾及平權行動](#)

[Diskriminasyon, Panliligalig, at Positibong Aksyon sa Lugar ng Trabaho](#)

Academic Officer:	Vice Provost – Academic Personnel and Programs
Academic Office:	APP – Academic Personnel and Programs
Staff Officer:	VP – Human Resources
Staff Office:	HR – Human Resources
Issuance Date:	February 14, 2018
Effective Date:	February 14, 2018
Last Review Date:	January 17, 2018
Scope:	This policy applies to all University employees and applicants for employment, and where stated in policy, to paid and unpaid interns, volunteers, participants in a training program leading to employment, and independent contractors.

	Academic	Staff
Contact:	Rebecca Woolston (APP)	Abigail Norris (HR)
Title:	Associate Director	Policy Specialist
Email:	Rebecca.Woolston@ucop.edu	Abigail.Norris@ucop.edu
Phone #:	(510) 987-9153	(510) 987-0612

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I. POLICY SUMMARY

The University of California is committed to providing a workplace free of discrimination and harassment. The University prohibits discrimination against any person employed; seeking employment; or applying for or engaged in a paid or unpaid internship or training program leading to employment with the University of California. In addition, the University prohibits harassment of an employee, applicant, paid or unpaid intern, volunteer, person participating in a program leading to employment, or person providing services pursuant to a contract. The University undertakes affirmative action, consistent with its obligations as a federal contractor.

II. DEFINITIONS

Exception to Policy: An action that exceeds what is allowable under current policy or that is not expressly provided for under policy. Any such action must be treated as an exception.

Executive Officer: The University President, Chancellor, Laboratory Director, or Vice President–Agriculture and Natural Resources.

Gender: The sex of a person, including a person’s gender identity, and gender expression.

Gender Expression: A person’s gender-related appearance or behavior, or the perception of such appearance or behavior, whether or not stereotypically associated with the person’s sex assigned at birth.

Gender Identity: Each person’s internal understanding of their gender, or the perception of a person’s gender identity, which may include male, female, a combination of male and female, neither male nor female, a gender different from the person’s sex assigned at birth, or transgender.

Gender Transition: The process some transgender people go through to begin living as the gender with which they identify, rather than the sex assigned to them at birth. This process may include, but is not limited to, changes in name and pronoun usage, facility usage, participation in employer-sponsored activities (e.g. sports teams, team-

building projects, or volunteering), or undergoing hormone therapy, surgeries, or other medical procedures.

Pregnancy: Includes pregnancy, childbirth, and medical conditions related to pregnancy and childbirth.

Protected Veteran: A veteran who is protected under the non-discrimination and affirmative action provisions of the Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended; specifically, a veteran who may be classified as a "disabled veteran," "recently separated veteran," "active duty wartime or campaign badge veteran," or an "Armed Forces service medal veteran," as defined by 41 CFR 60-300.2.

Service in the Uniformed Services: Includes service in the uniformed services as defined by the Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA), as well as state military and naval service.

Sex: Includes, but is not limited to, pregnancy; childbirth; medical conditions related to pregnancy, childbirth, or breast feeding; gender; gender identity; and gender expression, or perception by a third party of any of the aforementioned.

Transgender: A general term that refers to a person whose gender identity differs from the person's sex assigned at birth. A transgender person may or may not have a gender expression that is different from the social expectations of the sex assigned at birth. A transgender person may or may not identify as "transsexual."

III. POLICY TEXT

A. *General*

The University prohibits discrimination against any person employed; seeking employment; or applying for or engaged in a paid or unpaid internship or training program leading to employment with the University of California on the basis of race, color, national origin, religion, sex, gender, gender expression, gender identity, gender transition status, pregnancy, physical or mental disability, medical condition (cancer-related or genetic characteristics), genetic information (including family medical history), ancestry, marital status, age, sexual orientation, citizenship, or service in the uniformed services, including protected veterans. This policy applies to all employment practices, including recruitment, selection, promotion, transfer, merit increase, salary, training and development, demotion, and separation.

In addition, the University prohibits harassment based on the above protected characteristics of an employee, applicant, paid or unpaid intern, volunteer, person participating in a program leading to employment, or person providing services pursuant to a contract.

If the harassment is sexual in nature, the University's Sexual Violence and Sexual Harassment (SVSH) policy will apply. [Local SVSH resource information](http://sexualviolence.universityofcalifornia.edu/get-help/index.html) can be found at <http://sexualviolence.universityofcalifornia.edu/get-help/index.html>.

This policy is intended to be consistent with applicable state and federal laws and University policies.

B. Retaliation

University policy prohibits retaliation for bringing a complaint of discrimination or harassment pursuant to this policy against any person employed; seeking employment; providing services pursuant to a contract; or applying for or engaged in a paid or unpaid internship, volunteer capacity, or training program leading to employment with the University of California. This policy also prohibits retaliation against a person who assists someone with a complaint of discrimination or harassment, or participates in any manner in an investigation or resolution of a complaint of discrimination or harassment. Retaliation includes threats, intimidation, reprisals, and/or adverse actions related to employment.

C. Complaints

Individuals who believe they have been subjected to discrimination, harassment, or retaliation are encouraged to submit complaints through their local Human Resources office, Affirmative Action/Equal Employment Opportunity office, Academic Personnel office, Labor Relations office, or the University [Whistleblower Hotline](https://www.universityofcalifornia.edu/whistleblower-hotline) (800-403-4744). Complaints will be assigned to the appropriate office or officer for review and investigation.

When the University receives an allegation of discrimination, harassment, or retaliation, it will conduct a fair, timely, and thorough investigation that provides all parties appropriate due process and reaches reasonable conclusions based on the evidence collected. Confidentiality will be kept by the University to the extent possible, but the investigation may not be completely confidential. If the investigation finds discrimination, harassment, or retaliation, appropriate administrators, in consultation with the applicable Affirmative Action/Equal Employment Opportunity office, will take appropriate remedial measures.

D. Affirmative Action

It is the policy of the University to undertake affirmative action, consistent with its obligations as a federal contractor, for minorities and women, for persons with disabilities, and for protected veterans. The University commits itself to apply every good faith effort to achieve prompt and full utilization of minorities and women in all segments of its workforce where deficiencies exist. These efforts conform to all current legal and regulatory requirements, and are consistent with University standards of quality and excellence.

In conformance with federal regulations, written affirmative action plans will be prepared and maintained by each campus of the University, by the Lawrence Berkeley National Laboratory, by the Office of the President, and by the Division of Agriculture and Natural Resources. Such plans will be reviewed and approved by the Office of the President and the Office of the General Counsel before they are officially promulgated.

E. Pay Transparency

The University of California will not discharge or in any other manner discriminate against employees or applicants because they have inquired about, discussed, or

disclosed their own pay or the pay of another employee or applicant. However, employees who have access to the compensation information of other employees or applicants as a part of their essential job functions cannot disclose the pay of other employees or applicants to individuals who do not otherwise have access to compensation information, unless the disclosure is (a) in response to a formal complaint or charge, (b) in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the University, or (c) consistent with the University's legal duty to furnish information.

IV. COMPLIANCE/RESPONSIBILITIES

A. Implementation of the Policy

Executive Officers (the University President, Chancellor, Lawrence Berkeley National Laboratory Director, or Vice President of Agriculture and Natural Resources) and their designees have the authority to develop procedures and supplementary information to support the implementation of this policy. Responsible Officers (Vice Provost-Academic Personnel and Programs and Vice President-Human Resources) will apply appropriate and consistent interpretations of this policy that are consistent with the policy.

The Executive Officer, or their designee, at each location, will establish and implement local procedures consistent with this policy. Exceptions to local procedures required by the policy will be approved by the Executive Officer or designee.

B. Revisions to the Policy

The President is the Policy Approver and has the authority to approve policy revisions upon recommendation by the Responsible Officers.

The Vice Provost, Academic Personnel and Programs and the Vice President-Human Resources have the authority to initiate revisions to the policy, consistent with approval authorities and applicable Bylaws and Standing Orders of the Regents.

The UC Provost and Executive Vice President for Academic Affairs and the Executive Vice President-Chief Operating Officer have the authority to ensure that the policy is regularly reviewed, updated, and consistent with other governance policies.

C. Approval of Actions

Actions within this policy must be approved in accordance with local procedures.

D. Compliance with the Policy

The Executive Officer at each location will designate the local management office that is responsible for monitoring, enforcing, and reporting policy compliance. The Senior Vice President-Chief Compliance and Audit Officer will periodically audit and monitor compliance with the policy.

E. Additional Enforcement Information

The U.S. Equal Employment Opportunity Commission (EEOC), the Office of Federal Contract Compliance Programs (OFCCP), and the California Department of Fair Employment and Housing (DFEH) investigate reports of unlawful discrimination and harassment in employment. These agencies may serve as fact finders and attempt to facilitate the voluntary resolution of disputes. For more information, contact the nearest office of the EEOC, OFCCP, or DFEH.

F. Noncompliance with the Policy

Noncompliance with this policy is handled in accordance with University policies, including but not limited to, the [Faculty Code of Conduct \(APM – 015\)](#) and [University Policy on Faculty Conduct and the Administration of Discipline \(APM – 016\)](#), [Non-Senate Academic Appointees/Corrective Action and Dismissal \(APM – 150\)](#), [Personnel Policies for Staff Members 61, 62, 63, and 64](#) or, as applicable, [collective bargaining agreements](#).

V. PROCEDURES

Local procedures will include the following elements:

A. Supervisor Responsibilities

Supervisors must report complaints of discrimination or harassment to a designated representative at the relevant location so that the claim may be resolved internally if possible.

B. Complaint Process

Complaints will be confidential to the extent possible and will receive a timely response and closure. In addition, the University will conduct impartial and timely investigations by qualified personnel; provide documentation and tracking for reasonable progress; and provide appropriate options for remedial actions and resolutions.

Dissemination of this policy and local procedures is required.

VI. RELATED INFORMATION

- [The Uniformed Services Employment and Reemployment Rights Act \(USERRA\)](#) (referenced in Section II of this policy)
- [Sexual Violence and Sexual Harassment](#) policy (referenced in Section III.A of this policy)

Academic Personnel Manual

- [Academic Personnel Manual \(APM\) Section 015, The Faculty Code of Conduct](#) (referenced in Section IV.F of this policy)

- [Academic Personnel Manual \(APM\) Section 016, University Policy on Faculty Conduct and the Administration of Discipline](#) (referenced in Section IV.F of this policy)
- [Academic Personnel Manual \(APM\) Section 035, Affirmative Action and Nondiscrimination in Employment](#)
- [Academic Personnel Manual \(APM\) Section 140, Non-Senate Academic Appointees/Grievances](#)
- [Academic Personnel Manual \(APM\) Section 150, Non-Senate Appointees/Corrective Action and Dismissal](#) (referenced in Section IV.F of this policy)
- [Academic Personnel Manual \(APM\) Section 160, Academic Personnel Records/Maintenance of, Access to, and Opportunity to Request Amendment of](#)

Personnel Policies for Staff Members

- [Personnel Policies for Staff Members 12, Nondiscrimination in Employment](#)
- Personnel Policies for Staff Members [61](#), [62](#), [63](#), and [64](#) (referenced in Section IV.F of this policy)
- [Personnel Policies for Staff Members 81, Reasonable Accommodation](#)

VII. FREQUENTLY ASKED QUESTIONS

N/A

VIII. REVISION HISTORY

July 7, 2022: Updated APP Policy Owner/contact

Changes effective as of **February 14, 2018:**

- Deleted definition of "Covered Veteran" and added definition of "Protected Veteran" to comply with the Vietnam Era Veterans Readjustment Assistance Act, as amended (VEVRAA) (41 CFR 60-300.2)
- Modified definitions of "Gender Expression" and "Gender Identity," and added definitions of "Gender Transition," "Sex," and "Transgender" to comply with definitions in 2 CCR § 11030
- Updated for compliance with California Fair Employment and Housing Act regulations regarding Harassment and Discrimination Prevention and Correction (2 CCR § 11023)
- Updated for compliance with California Assembly Bill 1443, which extends discrimination and harassment protections to volunteers, unpaid interns, and trainees, and harassment protections to contractors (2 CCR § 11009, 11019)

Discrimination, Harassment, and Affirmative Action in the Workplace

- Added pay transparency [Nondiscrimination Provision](#) required by the Office of Federal Contract Compliance Programs (41 CFR 60-1.35(c))
- Reformatted Policy Statement with subsections
- Added reference to the University's Sexual Violence and Sexual Harassment policy in Section III.A

This Policy was also remediated to meet Web Content Accessibility Guidelines (WCAG) 2.0.

This policy was reformatted into the standard University of California policy template effective **July 3, 2013**.

As a result of the issuance of this policy, the following policy is rescinded as of the effective date of this policy and is no longer applicable:

- University of California Nondiscrimination and Affirmative Action Policy Regarding Academic and Staff Employment, dated July 3, 2013

The following policies have been rescinded and are no longer applicable:

- University of California Nondiscrimination and Affirmative Action Policy Regarding Academic and Staff Employment, dated June 24, 2010
- University of California Nondiscrimination and Affirmative Action Policy Regarding Academic and Staff Employment, dated January 1, 2004



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April 1, 1999

Nondiscrimination Affirmative Action Employment

CHANCELLORS
LABORATORY DIRECTORS
VICE PRESIDENT-AGRICULTURE AND NATURAL RESOURCES

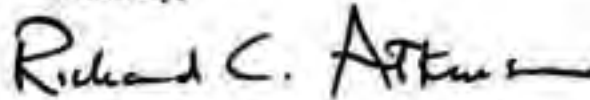
Dear Colleagues:

The enclosed *University of California Nondiscrimination and Affirmative Action Policy Regarding Academic and Staff Employment* and *Nondiscrimination and Affirmative Action Policy Statement for University of California Publications Regarding Employment Practices* have been revised to:

- add "genetic characteristics" as a basis for nondiscrimination with regard to medical condition, to conform with an amendment to the California Fair Employment and Housing Act, Government Code Section 12926(h);
- add a new group of veterans (veterans who served on active duty during a war or in a campaign or expedition for which a campaign badge has been authorized) covered by nondiscrimination and affirmative action requirements, to conform with an amendment to the Vietnam Era Veterans Readjustment Assistance Act;
- delete "underutilized" in reference to equal employment opportunity and affirmative action with regard to minorities and women, to comply with an agreement with the Department of Labor, Office of Federal Contract Compliance Programs; and
- delete reference to "State" affirmative action requirements, to conform with the amendment to the California State Constitution (Article I, Section 31) as a result of the passage of Proposition 209.

The policies supersede those issued July 25, 1996, and are effective immediately.

Sincerely,



Richard C. Atkinson
President

Enclosures

cc: Members, President's Cabinet
Academic Council Chair Dorr
Associate Vice President Boyette
Assistant Vice President Levin
Acting Assistant Vice President O'Rourke
Special Assistant Gardner
Principal Officers of The Regents

*University of California
Office of the President
April 1, 1999*

**NONDISCRIMINATION AND AFFIRMATIVE ACTION POLICY STATEMENT
FOR UNIVERSITY OF CALIFORNIA PUBLICATIONS
REGARDING EMPLOYMENT PRACTICES**

The University of California prohibits discrimination against or harassment of any person employed by or seeking employment with the University on the basis of race, color, national origin, religion, sex, physical or mental disability, medical condition (cancer-related or genetic characteristics), ancestry, marital status, age, sexual orientation, citizenship, or status as a covered veteran (special disabled veteran, Vietnam era veteran, or any other veteran who served on active duty during a war or in a campaign or expedition for which a campaign badge has been authorized).

The University of California is an affirmative action/equal opportunity employer. The University undertakes affirmative action to assure equal employment opportunity for minorities and women, for persons with disabilities, and for special disabled veterans, Vietnam era veterans, and any other veterans who served on active duty during a war or in a campaign or expedition for which a campaign badge has been authorized.

University policy is intended to be consistent with the provisions of applicable State and Federal laws.

Inquiries regarding the University's equal employment opportunity policies may be directed to:

Academic: [Name or Title/Telephone Number]

Staff and Management: [Name or Title/Telephone Number]

This policy statement supersedes the previous version dated July 25, 1996.

University of California
Office of the President
April 1, 1999

**UNIVERSITY OF CALIFORNIA
NONDISCRIMINATION AND AFFIRMATIVE ACTION POLICY
REGARDING ACADEMIC AND STAFF EMPLOYMENT**

It is the policy of the University not to engage in discrimination against or harassment of any person employed or seeking employment with the University of California on the basis of race, color, national origin, religion, sex, physical or mental disability, medical condition (pandemic-related or genetic characteristics), ancestry, marital status, age, sexual orientation, citizenship, or status as a covered veteran (special disabled veteran, Vietnam era veteran, or any other veteran who served on active duty during a war or in a campaign or expedition for which a campaign badge has been authorized). This policy applies to all employment practices, including recruitment, selection, promotion, transfer, merit increase, salary, training and development, demotion, and separation. This policy is intended to be consistent with the provisions of applicable State and Federal laws and University policies.

In addition, it is the policy of the University to undertake affirmative action, consistent with its obligations as a Federal contractor, for minorities and women, for persons with disabilities, and for special disabled veterans, Vietnam era veterans, and any other veterans who served on active duty during a war or in a campaign or expedition for which a campaign badge has been authorized. The University commits itself to apply every good faith effort to achieve prompt and full utilization of minorities and women in all segments of its workforce where deficiencies exist. These efforts conform to all current legal and regulatory requirements, and are consistent with University standards of quality and excellence.

In conformance with Federal regulations, written affirmative action plans shall be prepared and maintained by each campus of the University, by each Department of Energy Laboratory, by the Office of the President, and by the Division of Agriculture and Natural Resources. Such plans shall be reviewed and approved by the Office of the President and the Office of the General Counsel before they are officially promulgated.

This Policy supersedes the University of California Nondiscrimination and Affirmative Action Policy Regarding Academic and Staff Employment, dated July 25, 1996.

W/F DISCRIMINATION (Non-DISCRIMINATION)

UNIVERSITY OF CALIFORNIA

BERKELEY • DAVIS • IRVINE • LOS ANGELES • MERCED • RIVERSIDE • SAN DIEGO • SAN FRANCISCO



SANTA BARBARA • SANTA CRUZ

OFFICE OF THE PRESIDENT



1111 Franklin Street
Oakland, CA 94607-5200
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June 21, 2002

**CHANCELLORS
LABORATORY DIRECTORS
VICE PRESIDENT--AGRICULTURE AND NATURAL RESOURCES**

Dear Colleagues:

The enclosed *University of California Nondiscrimination and Affirmative Action Policy Regarding Academic and Staff Employment* and *Nondiscrimination and Affirmative Action Policy Statement for University of California Publications Regarding Employment Practices* have been revised to add a new group of veterans ("recently separated veterans") covered by nondiscrimination and affirmative action requirements, to conform with an amendment to the Vietnam Era Veterans' Readjustment Assistance Act. These policies supersede those issued on April 1, 1999.

Staff Personnel Policies 12 and 14 and Academic Personnel Policy 035 have been updated to conform to the Presidential policies.

Sincerely,

Richard C. Atkinson
President

Enclosures

- cc: Members, President's Cabinet
- Academic Council Chair Viswanathan
- Associate Vice President Boyette
- Assistant Vice President Switkes
- Special Assistant Gardner
- Principal Officers of The Regents

UNIVERSITY OF CALIFORNIA
NONDISCRIMINATION AND AFFIRMATIVE ACTION POLICY
REGARDING ACADEMIC AND STAFF EMPLOYMENT

It is the policy of the University not to engage in discrimination against or harassment of any person employed or seeking employment with the University of California on the basis of race, color, national origin, religion, sex, physical or mental disability, medical condition (cancer-related or genetic characteristics), ancestry, marital status, age, sexual orientation, citizenship, or status as a covered veteran.¹ This policy applies to all employment practices, including recruitment, selection, promotion, transfer, merit increase, salary, training and development, demotion, and separation. This policy is intended to be consistent with the provisions of applicable State and Federal laws and University policies.

In addition, it is the policy of the University to undertake affirmative action, consistent with its obligations as a Federal contractor, for minorities and women, for persons with disabilities, and for covered veterans. The University commits itself to apply every good faith effort to achieve prompt and full utilization of minorities and women in all segments of its workforce where deficiencies exist. These efforts conform to all current legal and regulatory requirements, and are consistent with University standards of quality and excellence.

In conformance with Federal regulations, written affirmative action plans shall be prepared and maintained by each campus of the University, by each Department of Energy Laboratory, by the Office of the President, and by the Division of Agriculture and Natural Resources. Such plans shall be reviewed and approved by the Office of the President and the Office of the General Counsel before they are officially promulgated.

This Policy has been updated with technical changes and supersedes the University of California Nondiscrimination and Affirmative Action Policy Regarding Academic and Staff Employment, dated April 1, 1999.

¹ Covered veterans are special disabled veterans, recently separated veterans, Vietnam era veterans, or any other veterans who served on active duty during a war or in a campaign or expedition for which a campaign badge has been authorized.

**NONDISCRIMINATION AND AFFIRMATIVE ACTION POLICY STATEMENT
FOR UNIVERSITY OF CALIFORNIA PUBLICATIONS
REGARDING EMPLOYMENT PRACTICES**

The University of California prohibits discrimination against or harassment of any person employed by or seeking employment with the University on the basis of race, color, national origin, religion, sex, physical or mental disability, medical condition (cancer-related or genetic characteristics), ancestry, marital status, age, sexual orientation, citizenship, or status as a covered veteran.¹

The University of California is an affirmative action/equal opportunity employer. The University undertakes affirmative action to assure equal employment opportunity for minorities and women, for persons with disabilities, and for covered veterans.

University policy is intended to be consistent with the provisions of applicable State and Federal laws.

Inquiries regarding the University's equal employment opportunity policies may be directed to:

Academics: [Name and/or Title; and Address and/or Telephone Number]

Staff and Management: [Name and/or Title; and Address and/or Telephone Number]

This policy statement has been updated with technical changes and supersedes the Nondiscrimination and Affirmative Action Policy Statement for University of California Publications Regarding Employment Practices dated April 1, 1999.

¹ Covered veterans are special disabled veterans, recently separated veterans, Vietnam era veterans, or any other veterans who served on active duty during a war or in a campaign or expedition for which a campaign badge has been authorized.

12. Nondiscrimination in Employment

June 21, 2002

A. GENERAL

It is the policy of the University not to engage in discrimination against or harassment of any person employed by or seeking employment with the University of California on the basis of race, color, national origin, religion, sex, physical or mental disability, medical condition (cancer-related or genetic characteristics), ancestry, marital status, age, sexual orientation, citizenship, or status as a covered veteran.¹ This policy is intended to be consistent with the provisions of applicable State and Federal laws and University policies.

B. SEXUAL HARASSMENT

The University of California is committed to creating and maintaining a community in which all persons who participate in University programs and activities can work together in an atmosphere free of all forms of harassment, exploitation, or intimidation, including sexual. Specifically, every member of the University community should be aware that the University is strongly opposed to sexual harassment and that such behavior is prohibited both by law and by University policy. It is the intention of the University to take whatever action may be needed to prevent, correct, and, if necessary, discipline behavior which violates this policy.

C. COMPLAINTS

Information regarding applicable policies and procedures for resolving complaints of discrimination and harassment and for pursuing available remedies is available in the local Human Resources office.

Applicability: All Staff Members

¹ Covered veterans are special disabled veterans, recently separated veterans, Vietnam era veterans, or any other veterans who served on active duty during a war or in a campaign or expedition for which a campaign badge has been authorized.

Personnel Policies for Staff Members
Employment

14. AFFIRMATIVE ACTION

June 21, 2002

A. GENERAL

Consistent with its status as a Federal contractor, the University undertakes affirmative action for minorities and women, for persons with disabilities, and for covered veterans.¹

Applicability: All Staff Members

¹ Covered veterans are special disabled veterans, recently separated veterans, Vietnam era veterans, or any other veterans who served on active duty during a war or in a campaign or expedition for which a campaign badge has been authorized.

GENERAL UNIVERSITY POLICY REGARDING
ACADEMIC APPOINTMENT
Affirmative Action and Nondiscrimination in Employment

AFM - 039

035-C Policy

a. **Nondiscrimination**

It is the policy of the University not to engage in discrimination against or harassment of any person employed or seeking employment with the University of California on the basis of race, color, national origin, religion, sex, physical or mental disability, medical condition (cancer-related or genetic characteristics), ancestry, marital status, age, sexual orientation, citizenship, or status as a covered veteran.¹ This policy is intended to be consistent with the provisions of applicable State and Federal laws and University policies.

Sexual Harassment

The University of California is committed to creating and maintaining a community in which all persons who participate in University programs and activities can work together in an atmosphere free of all forms of harassment, exploitation, or intimidation, including sexual. Specifically, every member of the University community should be aware that the University is strongly opposed to sexual harassment and that such behavior is prohibited by law and by University policy. It is the intention of the University to take whatever action may be needed to prevent, correct, and, if necessary, discipline behavior which violates this policy.

Complaints

Upon an employee's request, the campus academic affairs office shall provide information regarding applicable policies and procedures for resolving complaints of discrimination and for pursuing available remedies.

b. **Affirmative Action**

It is the policy of the University of California to undertake affirmative action, consistent with its obligations as a Federal contractor, for minorities and women, for persons with disabilities, and for covered veterans. The University commits itself to apply every good and lawful effort to achieve prompt and full utilization of minorities and women in all segments of its workforce.

¹ Covered veterans are special disabled veterans, recently separated veterans, Vietnam era veterans, or any other veterans who served on active duty during a war or in a campaign or expedition for which a campaign badge has been authorized.

GENERAL UNIVERSITY POLICY REGARDING
ACADEMIC APPOINTMENT
Affirmative Action and Nondiscrimination in Employment

APM - 035

where deficiencies exist. These efforts conform to all current legal and regulatory requirements, and are consistent with University standards of quality and excellence.

In conformance with Federal regulations, written affirmative action plans shall be prepared and maintained by each campus of the University, by each Department of Energy Laboratory, by the Office of the President, and by the Division of Agriculture and Natural Resources. Such plans shall be reviewed and approved by the Office of the President and the Office of the General Counsel before they are officially promulgated.

Rev. 6/21/02

CALINT-000818_0007

University of California
Office of the President
January 7, 2004

UNIVERSITY OF CALIFORNIA
NONDISCRIMINATION AND AFFIRMATIVE ACTION POLICY
REGARDING ACADEMIC AND STAFF EMPLOYMENT

It is the policy of the University not to engage in discrimination against or harassment of any person employed or seeking employment with the University of California on the basis of race, color, national origin, religion, sex, gender identity, pregnancy, physical or mental disability, medical condition (including related or genetic characteristics), ancestry, marital status, age, sexual orientation, citizenship, or status as a covered veteran.¹ This policy applies to all employment practices, including recruitment, selection, promotion, transfer, merit increase, salary, training and development, discipline, and separation. This policy is intended to be consistent with the provisions of applicable State and Federal law and University policies.

In addition, it is the policy of the University to undertake affirmative action, consistent with its obligations as a federal contractor, for minorities and women, for persons with disabilities, and for covered veterans. The University continues to use every good faith effort to achieve prompt and full utilization of minorities and women in all segments of its workforce where deficiencies exist. These efforts conform to all current legal and regulatory requirements, and are consistent with University standards of quality and excellence.

In conformance with Federal regulations, written affirmative action plans shall be prepared and established by each campus of the University, by each Department of Energy Laboratory, by the Office of the President, and by the Division of Agriculture and Natural Resources. Such plans shall be reviewed and approved by the Office of the President and the Office of the General Counsel before they are officially promulgated.

This Policy has been updated with editorial changes and references to the University of California Non-Discrimination and Affirmative Action Policy Regarding Academic and Staff Employment, dated June 24, 2003.

¹ Pregnancy includes pregnancy, childbirth, and medical conditions related to pregnancy or childbirth.

² Covered veterans are special disabled veterans, recently separated veterans, Vietnam era veterans, or any other veterans who served on active duty during a war or in a campaign or expedition for which a campaign badge has been authorized.

July 1, 2008

UNIVERSITY OF CALIFORNIA
NONDISCRIMINATION AND AFFIRMATIVE ACTION POLICY
REGARDING ACADEMIC AND STAFF EMPLOYMENT

It is the policy of the University not to engage in discrimination against or harassment of any person employed or seeking employment with the University of California on the basis of race, color, national origin, religion, sex, gender identity, pregnancy, physical or mental disability, medical condition (career-related or genetic characteristics), ancestry, marital status, age, sexual orientation, citizenship, or service in the uniformed services (as defined by the Uniformed Services Employment and Reemployment Rights Act of 1994).¹ This policy applies to all employment practices including recruitment, selection, promotion, transfer, merit increase, salary, training and development, demotion, and separation. This policy is intended to be consistent with the provisions of applicable State and Federal laws and University policies.

University policy also prohibits retaliation against any employee or person seeking employment for bringing a complaint of discrimination or harassment pursuant to this policy. This policy also prohibits retaliation against a person who assists someone with a complaint of discrimination or harassment, or participates in any manner in an investigation or resolution of a complaint of discrimination or harassment. Retaliation includes threats, intimidation, reprisals, and/or adverse actions related to employment.

In addition, it is the policy of the University to undertake affirmative action, consistent with its obligations as a Federal contractor, for minorities and women, for persons with disabilities, and for covered veterans.² The University commits itself to apply every good faith effort to achieve prompt and full utilization of minorities and women in all segments of its workforce where deficiencies exist. These efforts conform to all current legal and regulatory requirements, and are consistent with University standards of quality and excellence.

In conformance with Federal regulations, written affirmative action plans shall be prepared and maintained by each campus of the University, by the Lawrence Berkeley National Laboratory, by the Office of the President, and by the Division of Agriculture and Natural Resources. Such plans shall be reviewed and approved by the Office of the President and the Office of the General Counsel before they are officially promulgated.

This Policy supersedes the University of California Non-discrimination and Affirmative Action Policy Regarding Academic and Staff Employment, dated January 1, 2006.

¹ Pregnancy includes pregnancy, childbirth, and medical conditions related to pregnancy or childbirth.

² Service in the uniformed services includes membership, application for membership, performance of service, qualification for service, or obligation for service in the uniformed services.

³ Covered veterans include veterans with disabilities, recently separated spouses, Vietnam era veterans, veterans who served on active duty in the US Military, General, Naval or Air Service during a war or in a campaign or expedition for which a campaign badge has been authorized, or Alaska Front service medal veterans.



Nondiscrimination and Affirmative Action Policy Regarding Academic and Staff Employment

Academic Officer:	Vice Provost – Academic Personnel
Academic Office:	AP – Academic Personnel
Staff Officer:	VP – Human Resources
Staff Office:	HR – Human Resources
Issuance Date:	7/3/2013
Effective Date:	7/3/2013
Last Review Date:	
Scope:	This policy applies to all University applicants and employees.

Contact:	Pamela Peterson	Abigail Norris
Email:	Pamela.Peterson@ucop.edu	Abigail.Norris@ucop.edu
Phone #:	(510) 987-0888	(510) 987-0612

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I. POLICY SUMMARY

It is the policy of the University not to engage in discrimination against or harassment of any person employed or seeking employment with the University of California. In addition, it is the policy of the University to undertake affirmative action, consistent with its obligations as a Federal contractor.

Nondiscrimination and Affirmative Action Policy Regarding Academic and Staff Employment

II. DEFINITIONS

Covered Veterans: Includes veterans with disabilities, recently separated veterans, Vietnam era veterans, veterans who served on active duty in the U.S. Military, Ground, Naval or Air Service during a war or in a campaign or expedition for which a campaign badge has been authorized, or Armed Forces service medal veterans.

Executive Officer: The University President, Chancellor, or Laboratory Director.

Exception to Policy: An action that exceeds what is allowable under current policy or that is not expressly provided for under policy. Any such action must be treated as an exception.

Gender: The sex of a person, including a person's gender identity, and gender expression.

Gender expression: A person's gender-related appearance and behavior whether or not stereotypically associated with the person's assigned sex at birth.

Gender identity: An individual's personal sense of himself/herself as being male and masculine or female and feminine, or ambivalent.

Pregnancy: Includes pregnancy, childbirth, and medical conditions related to pregnancy and childbirth.

Service in the Uniformed Services: Includes service in the uniformed services as defined by the Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA), as well as state military and naval service.

Top Business Officer: Executive Vice President-Business Operations for the Office of the President, Vice Chancellor for Administration, or the position responsible for the location's financial reporting and payroll as designated by the Executive Officer.

III. POLICY TEXT

It is the policy of the University not to engage in discrimination against or harassment of any person employed or seeking employment with the University of California on the basis of race, color, national origin, religion, sex, gender, gender expression, gender identity, pregnancy, physical or mental disability, medical condition (cancer-related or genetic characteristics), genetic information (including family medical history), ancestry, marital status, age, sexual orientation, citizenship, or service in the uniformed services. This policy applies to all employment practices, including recruitment, selection, promotion, transfer, merit increase, salary, training and development, demotion, and separation. This policy is intended to be consistent with the provisions of applicable state and federal laws and University policies.

University policy also prohibits retaliation against any employee or person seeking employment for bringing a complaint of discrimination or harassment pursuant to this policy. This policy also prohibits retaliation against a person who assists someone with a complaint of discrimination or harassment, or participates in any manner in an investigation or resolution of a complaint of discrimination or harassment. Retaliation

Nondiscrimination and Affirmative Action Policy Regarding Academic and Staff Employment

includes threats, intimidation, reprisals, and/or adverse actions related to employment.

In addition, it is the policy of the University to undertake affirmative action, consistent with its obligations as a Federal contractor, for minorities and women, for persons with disabilities, and for covered veterans. The University commits itself to apply every good faith effort to achieve prompt and full utilization of minorities and women in all segments of its workforce where deficiencies exist. These efforts conform to all current legal and regulatory requirements, and are consistent with University standards of quality and excellence.

In conformance with Federal regulations, written affirmative action plans shall be prepared and maintained by each campus of the University, by the Lawrence Berkeley National Laboratory, by the Office of the President, and by the Division of Agriculture and Natural Resources. Such plans shall be reviewed and approved by the Office of the President and the Office of the General Counsel before they are officially promulgated.

IV. COMPLIANCE / RESPONSIBILITIES

A. Implementation of the Policy

The Vice Provost – Academic Personnel and the Vice President–Human Resources are the Responsible Officers for this policy and have the authority to implement the policy. A Responsible Officer may apply appropriate interpretations to clarify the policy provided that the interpretations do not result in substantive changes to the underlying policy. The Chancellor is authorized to establish and is responsible for local procedures necessary to implement the policy.

B. Revisions to the Policy

The President is the Policy Approver and has the authority to approve policy revisions upon recommendation by the Vice President–Human Resources.

The Vice Provost – Academic Personnel and the Vice President–Human Resources have the authority to initiate revisions to the policy, consistent with approval authorities and applicable *Bylaws* and *Standing Orders* of the Regents.

The Executive Vice President–Business Operations has the authority to ensure that policies are regularly reviewed, updated, and consistent with other governance policies.

C. Approval of Actions

Actions within this policy must be approved in accordance with local procedures. Chancellors and the Vice President–Human Resources are authorized to determine responsibilities and authorities at secondary administrative levels in order to establish local procedures necessary to implement this policy.

D. Compliance with the Policy

The following roles are designated at each location to implement compliance monitoring responsibility for this policy:

Nondiscrimination and Affirmative Action Policy Regarding Academic and Staff Employment

The Top Business Officer and/or the Executive Officer at each location will designate the local management office to be responsible for the ongoing reporting of policy compliance.

The Executive Officer is accountable for monitoring and enforcing compliance mechanisms and ensuring that monitoring procedures and reporting capabilities are established.

The Vice President–Human Resources is accountable for reviewing the administration of this policy. The Senior Vice President–Chief Compliance and Audit Officer will periodically audit and monitor compliance to this policy.

E. Noncompliance with the Policy

Noncompliance with the policy is handled in accordance with Personnel Policies for Staff Members 61, 62, 63, 64, 65, and 67 pertaining to disciplinary and separation matters, and in accordance with University policies, including but not limited to, The Faculty Code of Conduct (APM – 015) and University Policy on Faculty Conduct and the Administration of Discipline (APM – 016), or, as applicable, collective bargaining agreements.

V. PROCEDURES

N/A

VI. RELATED INFORMATIONS

N/A

VII. FREQUENTLY ASKED QUESTIONS

N/A

VIII. REVISION HISTORY

August 28, 2017: This Policy was remediated to meet Web Content Accessibility Guidelines (WCAG) 2.0 and Academic Personnel contact information was also updated.

July 1, 2013: This policy was reformatted into the standard University of California policy template.

Policy changes effective as of July 1, 2013:

- New language, in compliance with California Assembly Bill 887 – Chapter 719.
- Addition of gender and gender expression to the policy text.
- Addition of a definition of gender, gender expression, and gender identity.

The following policy is rescinded as of the effective date of this policy and is no longer applicable:

- University of California Nondiscrimination and Affirmative Action Policy Regarding Academic and Staff Employment, dated June 24, 2010.



Policies Applying to Campus Activities, Organizations and Students (PACAOS)

APPENDIX C: NONDISCRIMINATION POLICY STATEMENT FOR UNIVERSITY OF CALIFORNIA PUBLICATIONS REGARDING STUDENT-RELATED MATTERS

Responsible Officer:	VP - Student Affairs
Responsible Office:	SA - Student Affairs
Issuance Date:	10/20/2008
Effective Date:	10/20/2008
Scope:	For all pertinent activities involving University students, employees, and properties, the <i>Policies Applying to Campus Activities, Organizations and Students</i> apply to the Division of Agriculture and Natural Resources and to the Department of Energy Laboratories operated by the University of California, subject to Laboratory implementing regulations and contractual obligations between The Regents and the Department of Energy

Contact: Eric Heng
Email: Eric.Heng@ucop.edu
Phone #: (510) 987-0239

I. POLICY SUMMARY

The *Policies Applying to Campus Activities, Organizations and Students* are a compendium of University-wide policies relating to student life. Appendix C provides a sample nondiscrimination policy statement for University of California publications regarding student-related matters.

II. DEFINITIONS

Definitions for the *Policies Applying to Campus Activities, Organizations and Students*, and the campus implementing regulations adopted pursuant to them, are provided in Section 14.00.

III. POLICY TEXT

APPENDIX C – (SAMPLE)

Nondiscrimination Policy Statement for University of California Publications Regarding Student-Related Matters

The University of California, in accordance with applicable Federal and State law and University policy, does not discriminate on the basis of race, color, national origin, religion, sex, gender identity, pregnancy,¹ physical or mental disability, medical condition (cancer related or genetic characteristics), ancestry, marital status, age, sexual orientation, citizenship, or service in the uniformed services.² The University also prohibits sexual harassment. This nondiscrimination policy covers admission, access, and treatment in University programs and activities.

Inquiries regarding the University's student-related nondiscrimination policies may be directed to: [Name or title and telephone number of responsible official(s).]

¹Pregnancy includes pregnancy, childbirth, and medical conditions related to pregnancy or childbirth.

²Service in the uniformed services includes membership, application for membership, performance of service, application for service, or obligation for service in the uniformed services.

IV. COMPLIANCE / RESPONSIBILITIES

Chancellors shall adopt campus implementing regulations consistent with these *Policies*. The University shall publish these *Policies* and make them widely available, and Chancellors shall do the same with respect to the implementing regulations for their campuses. This requirement may be satisfied through the on-line publication of these *Policies* and their respective campus implementing regulations. (See also Section 13.20 of these *Policies*.)

V. PROCEDURES

The President shall consult as appropriate with Chancellors, Vice Presidents, the Office of the General Counsel, and Universitywide advisory committees prior to amending

these *Policies*. Chancellors shall consult with faculty, students, and staff prior to submitting to the President any campus recommendations related to proposed amendments to these *Policies*. Amendments that are specifically mandated by law, however, do not require consultation with campus representatives or Universitywide advisory committees to the extent that legal requirements do not permit such consultation. (See also Section 13.10 of these *Policies*.)

Chancellors shall consult with students (including student governments), faculty, and staff in the development or revision of campus implementing regulations except when the development or revision of such regulations results from changes to these *Policies* that have been specifically mandated by law. Campuses shall specify procedures, including consultation processes, by which campus implementing regulations may be developed or revised. (See also Section 13.30 of these *Policies*.)

Prior to their adoption, all proposed campus implementing regulations, including all substantive modifications to existing such regulations, shall be submitted to the Office of the President for review, in consultation with the Office of the General Counsel, for consistency with these *Policies* and the law. (See also Section 13.40 of these *Policies*.)

VI. RELATED INFORMATION

See also *Policies Applying to Campus Activities, Organizations and Students* sections:

- 10.00 Preamble and General Provisions
- 11.00 Authority
- 12.00 Applicability
- 13.00 Development and Review of Universitywide Policies and Campus Implementing Regulations
- 14.00 Definitions

VII. FREQUENTLY ASKED QUESTIONS

Not applicable

VIII. REVISION HISTORY

Original issuance September 1, 1970
Revised October 29, 1973
Revised July 21, 1978
Effective January 3, 1979
Revised October 31, 1983
Revised August 15, 1994

Revised October 20, 2008

Reformatted June 1, 2012 into the standard University of California policy template



Policies Applying to Campus Activities, Organizations and Students (PACAOS)

20.00 POLICY ON NONDISCRIMINATION

Responsible Officer:	VP - Student Affairs
Responsible Office:	SA - Student Affairs
Issuance Date:	8/15/1994
Effective Date:	8/15/1994
Scope:	For all pertinent activities involving University students, employees, and properties, the <i>Policies Applying to Campus Activities, Organizations and Students</i> apply to the Division of Agriculture and Natural Resources and to the Department of Energy Laboratories operated by the University of California, subject to Laboratory implementing regulations and contractual obligations between The Regents and the Department of Energy

Contact: Eric Heng
Email: Eric.Heng@ucop.edu
Phone #: (510) 987-0239

I. POLICY SUMMARY

The *Policies Applying to Campus Activities, Organizations and Students* are a compendium of University-wide policies relating to student life. Section 20.00 describes the University's policy against legally impermissible, arbitrary, or unreasonable discriminatory practices.

II. DEFINITIONS

Definitions for the *Policies Applying to Campus Activities, Organizations and Students*, and the campus implementing regulations adopted pursuant to them, are provided in Section 14.00.

III. POLICY TEXT

20.00 POLICY ON NONDISCRIMINATION

The University is committed to a policy against legally impermissible, arbitrary, or unreasonable discriminatory practices. All groups operating under the authority of The Regents, including administration, faculty, student governments, University-owned residence halls, and programs sponsored by the University or any campus, are governed by this policy of nondiscrimination. The intent of the University's policy on nondiscrimination is to reflect fully the spirit of the law. In carrying out this *Policy*, the University also shall be sensitive to the existence of past and continuing societal discrimination. (See also Appendix C [*Nondiscrimination Policy Statement for University of California Publications Regarding Student-Related Matters*]; Section 140.00; Section 150.00; and Section 160.00.)

IV. COMPLIANCE / RESPONSIBILITIES

Chancellors shall adopt campus implementing regulations consistent with these *Policies*. The University shall publish these *Policies* and make them widely available, and Chancellors shall do the same with respect to the implementing regulations for their campuses. This requirement may be satisfied through the on-line publication of these *Policies* and their respective campus implementing regulations. (See also Section 13.20 of these *Policies*.)

V. PROCEDURES

The President shall consult as appropriate with Chancellors, Vice Presidents, the Office of the General Counsel, and Universitywide advisory committees prior to amending these *Policies*. Chancellors shall consult with faculty, students, and staff prior to submitting to the President any campus recommendations related to proposed amendments to these *Policies*. Amendments that are specifically mandated by law, however, do not require consultation with campus representatives or Universitywide advisory committees to the extent that legal requirements do not permit such consultation. (See also Section 13.10 of these *Policies*.)

Chancellors shall consult with students (including student governments), faculty, and staff in the development or revision of campus implementing regulations except when the development or revision of such regulations results from changes to these *Policies* that have been specifically mandated by law. Campuses shall specify procedures, including consultation processes, by which campus implementing regulations may be developed or revised. (See also Section 13.30 of these *Policies*.)

Prior to their adoption, all proposed campus implementing regulations, including all substantive modifications to existing such regulations, shall be submitted to the Office of

the President for review, in consultation with the Office of the General Counsel, for consistency with these *Policies* and the law. (See also Section 13.40 of these *Policies*.)

VI. RELATED INFORMATION

See also *Policies Applying to Campus Activities, Organizations and Students* sections:

- 10.00 Preamble and General Provisions
- 11.00 Authority
- 12.00 Applicability
- 13.00 Development and Review of Universitywide Policies and Campus Implementing Regulations
- 14.00 Definitions

VII. FREQUENTLY ASKED QUESTIONS

Not applicable

VIII. REVISION HISTORY

Original issuance September 1, 1970

Revised October 29, 1973

Revised July 21, 1978

Effective January 3, 1979


Revised October 31, 1983

Revised August 15, 1994


Reformatted June 1, 2012 into the standard University of California policy template


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Racial Incidents and Harassment Against Students

[OCR-000015]

Federal Register / Vol. 59, No. 47 / Thursday, March 10, 1994 / Notice

**DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS****RACIAL INCIDENTS AND HARASSMENT
AGAINST STUDENTS AT EDUCATIONAL
INSTITUTIONS; INVESTIGATIVE GUIDANCE**

ACTION: Notice of investigative guidance.

SUMMARY: The Assistant Secretary for Civil Rights announces investigative guidance, under title VI of the Civil Rights Act of 1964, that has been provided to the Office for Civil Rights (OCR) Regional Directors on the procedures and analysis that OCR staff will follow when investigating issues of racial incidents and harassment against students at educational institutions. The investigative guidance incorporates and applies existing legal standards and clarifies OCR's investigative approach in cases involving racial incidents and harassment.

EFFECTIVE DATE: March 10, 1994.

FOR FURTHER INFORMATION CONTACT: Jeanette J. Lim, U.S. Department of Education, 400 Maryland Avenue, SW., Room 5036 Switzer Building, Washington, DC 20202-1174. Telephone: (202) 205-8635. Individuals who use a telecommunications device for the deaf (TDD) may call the TDD number at (202) 205-9683 or 1-800421-3481.

SUPPLEMENTARY INFORMATION: Title VI of the Civil Rights Act of 1964 (title VI), 42 U.S.C. 2000d et seq., prohibits discrimination on the basis of race, color, or national origin in any program or activity receiving Federal financial assistance. The Department of Education (Department) has promulgated regulations in 34 CFR part 100 to effectuate the provisions of title VI with regard to programs and activities receiving funding from the Department. The regulations in 34 CFR 100.7(c) provide that OCR will investigate whenever a compliance review, report, complaint, or any other information indicates a possible failure to comply with title VI and the Department's implementing regulations. The Department has interpreted title VI as prohibiting racial harassment.

The existence of racial incidents and harassment on the basis of race, color, or national origin against students is disturbing and of major concern to the Department. Racial harassment denies students the right to an education free of discrimination. To enable OCR to investigate those incidents more effectively and efficiently, a memorandum of investigative guidance has been distributed to OCR staff. The substance of this memorandum and the accompanying legal compendium are being published today with this notice to apprise recipients and students of the legal standards, rights, and responsibilities under title VI with regard to this issue.

The guidance outlines the procedures and analysis that OCR will follow when investigating possible violations of title VI based upon racial incidents and harassment. The guidance relies upon current legal standards.

Dated: March 7, 1994.

Norma V. Cantu,
Assistant Secretary for Civil Rights.

Investigative Guidance on Racial Incidents and Harassment Against Students

This notice discusses the investigative approach and analysis that the Office for Civil Rights (OCR) staff will follow when investigating issues of discrimination against students based on alleged racial incidents including incidents involving allegations of harassment, on the basis of race that occur at educational institutions. This guidance is supplemented by a corresponding compendium of legal resources for detailed legal citations and examples.

Under Title VI of the Civil Rights Act of 1964 (Title VI) and its implementing regulations, no individual may be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination on the ground of race, color or national origin under any program or activity that receives Federal funds. Racially based conduct that has such an effect and that consists of different treatment of students on the basis of race by recipients' agents or employees, acting within the scope of their official duties, violates Title VI. In addition, the existence of a racially hostile environment that is created, encouraged, accepted, tolerated or left uncorrected by a recipient also constitutes different treatment on the basis of race in violation of Title VI. These forms of race discrimination are discussed further below.

Jurisdiction

In all cases, OCR must first decide whether it has jurisdiction over claims involving racial incidents or harassment. Under the Civil Rights Restoration Act of 1987, OCR generally has institution-wide jurisdiction over a recipient of Federal funds.

If an institution receives Federal funds, Title VI requirements apply to all of the academic, athletic, and extracurricular programs of the institution, whether conducted in facilities of the recipient or elsewhere. Title VI covers all of the uses of property that the recipient owns and all of the activities that the recipient sponsors. Title VI covers all of these operations, whether the individuals involved in a given activity are students, faculty, employees, or other participants or outsiders.

Standard Different Treatment by Agents or Employees

As with other types of discrimination claims, OCR will first apply a standard different treatment analysis to allegations involving racial incidents perpetrated by representatives of recipients. Under this analysis, a recipient violates Title VI if one of its agents or employees, acting within the scope of his or her official duties, has treated a student differently on the basis of race, color, or national origin in the context of an educational program or activity without a legitimate, nondiscriminatory reason so as to interfere with or limit the ability of the student to participate in or benefit from the services, activities or privileges provided by the recipient. In applying this standard different treatment analysis, OCR staff will address the following questions:

1. Did an official or representative (agent or employee) of a recipient treat someone differently in a way that interfered with or limited the ability of a student to participate in or benefit from a program or activity of the recipient?
2. Did the different treatment occur in the course of authorized or assigned duties or responsibilities of the agent or employee?
3. Was the different treatment based on race, color, or national origin?
4. Did the context or circumstances of the incident provide a legitimate, non-discriminatory, non-pretexual basis for the different treatment?

Where, based on the evidence obtained in the investigation, questions 1-3 are answered "yes" and question 4 is answered "no," OCR will conclude that there was discrimination in violation of Title VI under this standard different treatment analysis. If questions 1, 2 or 3 are answered "no," or if questions 1 through 4 are answered "yes," OCR will find no violation under this theory. If warranted by the nature and scope of the allegations or evidence, OCR will proceed to determine whether the agent's or employee's actions established or contributed to a racially hostile environment as described below. OCR also will conduct a "hostile environment" analysis where actions by individuals other than agents or employees are involved.

Hostile Environment: Analysis

A violation of title VI may also be found if a recipient has created or is responsible for a racially hostile environment i.e., harassing conduct (e.g., physical, verbal, graphic, or written) that is sufficiently severe, pervasive or persistent so as to interfere with or limit the ability of an individual to participate in or benefit from the services, activities or privileges provided by a recipient. A recipient has subjected an individual to differential treatment on the basis of race if it has effectively caused, encouraged, accepted, tolerated or failed to correct a racially hostile environment of which it has actual or constructive notice (as discussed below).

Under this analysis, an alleged harasser need not be an agent or employee of the recipient, because this theory of liability under title VI is premised on a recipient's general duty to provide a nondiscriminatory educational environment.

To establish a violation of title VI under the hostile environment theory, OCR must find that: (1) A racially hostile environment existed; (2) the recipient had actual or constructive notice of the racially hostile environment; and (3) the recipient failed to respond adequately to redress the racially hostile environment. Whether conduct constitutes a hostile environment must be determined from the totality of the circumstances, with particular attention paid to the factors discussed below.

Severe, Pervasive or Persistent Standard

To determine whether a racially hostile environment exists, it must be determined if the racial harassment is severe, pervasive or persistent. OCR will examine the context, nature, scope, frequency, duration, and location of racial incidents, as well as the identity, number, and relationships of the persons involved. The harassment must in most cases consist of more than casual or isolated racial incidents to establish a title VI violation. Generally, the severity of the incidents needed to establish a racially hostile environment under title VI varies inversely with their pervasiveness or persistence.

First of all, when OCR evaluates the severity of racial harassment, the unique setting and mission of an educational institution must be taken into account. An educational institution has a duty to provide a nondiscriminatory environment that is conducive to learning. In addition to the curriculum, students learn about many different aspects of human life and interaction from school. The type of environment that is tolerated or encouraged by or at a school can therefore send a particularly strong signal to, and serve as an influential lesson for, its students.

This is especially true for younger, less mature children, who are generally more impressionable than older students or adults. Thus, an incident that might not be considered extremely harmful to an older student might nevertheless be found severe and harmful to a younger student. For example, verbal harassment of a young child by fellow students that is tolerated or condoned in any way by adult authority figures is likely to have a far greater impact than similar behavior would have on an adult. Particularly for young children in their formative years of development, therefore, the severe, pervasive or persistent standard must be understood in light of the age and impressionability of the students involved and with the special nature and purposes of the educational setting in mind.

As with other forms of harassment, OCR must take into account the relevant particularized characteristics and circumstances of the victim (special) the victim's race and age when evaluating the severity of racial incidents at an educational institution. If OCR determines that the harassment was sufficiently severe, that it would have adversely affected the enjoyment of some aspect of the recipient's educational program by a reasonable person, of the same age and race as the victim, under similar circumstances, OCR will find that a hostile environment existed. The perspective of a person of the same race

as the victim is necessary because race is the immutable characteristic upon which the harassment is based. The reasonable person standard as applied to a child must incorporate the age, intelligence and experience of a person under like circumstances to take into account the developmental differences in maturity and perception due to age.

To determine severity, the nature of the incidents must also be considered. Evidence may reflect whether the conduct was verbal or physical and the extent of hostility characteristic of the incident. In some cases, a racially hostile environment requiring appropriate responsive action may result from a single incident that is sufficiently severe. Such incidents may include, for example, injury to persons or property or conduct threatening injury to persons or property.

The size of the recipient and the location of the incidents also will be important. Less severe or fewer incidents may more readily create racial hostility in a smaller environment, such as an elementary school, than in a larger environment, such as a college campus. The effect of a racial incident in the private and personal environment of an individual's dormitory room may differ from the effect of the same incident in a student center or dormitory lounge.

The identity, number, and relationships of the individuals involved will also be considered on a case-by-case basis. For example, racially based conduct by a teacher even an "off-duty" teacher, may have a greater impact on a student than the same conduct by a school maintenance worker or another student. The effect of conduct may be greater if perpetrated by a group of students rather than by an individual student.

In determining whether a hostile environment exists, OCR investigators will also be alert to the possible existence at the recipient institution of racial incidents other than those alleged in the complaint and will obtain evidence about them to determine whether they contributed to a racially hostile environment or corroborate the allegations.

Finally, racial acts need not be targeted at the complainant in order to create a racially hostile environment. The acts may be directed at anyone. The harassment need not be based on the ground of the victim's or complainant's race, so long as it is racially motivated (e.g., it might be based on the race of a friend or associate of the victim). Additionally, the harassment need not result in tangible injury or detriment to the victims of the harassment.

If OCR finds that a hostile environment existed under these standards, then it will proceed to determine whether the recipient received notice of the harassment, and whether the recipient took reasonable steps to respond to the harassment.

Notice

Though the recipient may not be responsible directly for all harassing conduct, the recipient does have a responsibility to provide a nondiscriminatory educational environment. If discriminatory conduct causes a racially hostile environment to develop that affects the enjoyment of the educational program for the student(s) being harassed, and if the recipient has actual or constructive notice of the hostile environment, the recipient is required to take appropriate responsive action. This is the case regardless of the identity of the person(s) committing the harassment a teacher, a student, the grounds crew, a cafeteria worker, neighborhood teenagers, a visiting baseball team, a guest speaker, parents, or others. This is also true regardless of how the recipient received notice. So long as an agent or responsible employee of the recipient received notice, that notice will be imputed to the recipient.

A recipient can receive notice in many different ways. For example, a student may have filed a grievance or complained to a teacher about fellow students racially harassing him or her. A student, parent, or other individual may have contacted other appropriate personnel, such as a principal, campus security, an affirmative action officer, or staff in the office of student affairs. An agent or responsible employee of the institution may have witnessed the

harassment. The recipient may have received notice in an indirect manner, from sources such as a member of the school staff, a member of the educational or local community, or the media. The recipient also may have received notice from flyers about the incident(s) posted around the school.

In cases where the recipient did not have actual notice, the recipient may have had constructive notice. A recipient is charged with constructive notice of a hostile environment if, upon reasonably diligent inquiry in the exercise of reasonable care, it should have known of the discrimination. In other words, if the recipient could have found out about the harassment had it made a proper inquiry, and if the recipient should have made such an inquiry, knowledge of the harassment will be imputed to the recipient. A recipient also may be charged with constructive notice if it has notice of some, but not all, of the incidents involved in a particular complaint.

In some cases, the pervasiveness, persistence, or severity of the racial harassment may be enough to infer that the recipient had notice of the hostile environment (e.g., a racially motivated assault on a group of students). A finding that a recipient had constructive notice of a hostile environment meets the notice requirement of the analysis.

If the alleged harasser is an agent or employee of a recipient, acting within the scope of his or her official duties (i.e., such that the individual has actual or apparent authority over the students involved), then the individual will be considered to be acting in an agency capacity and the recipient will be deemed to have constructive notice of the harassment. If the recipient does not have a policy that prohibits the conduct of racial harassment, or does not have an accessible procedure by which victims of harassment can make their complaints known to appropriate officials, agency capacity and thus constructive notice is established.

The existence of both a policy and grievance procedure applicable to racial harassment (depending upon their scope, accessibility and clarity, and upon the acts of harassment) is relevant in the determination of agency capacity. A policy or grievance procedure applicable to harassment must be clear in the types of conduct prohibited in order for students to know and understand their rights and responsibilities. As discussed above, in the education context, the person from whose perspective the apparent authority of an agent or employee of a recipient must be evaluated is a reasonable student of the same age, intelligence and experience as the alleged victim of the harassment.

Finally, in order to find that the recipient had a duty to respond to notice of a racially hostile environment, OCR must examine the facts and circumstances to establish that the recipient knew or should have known that the conduct was of a racial nature or had sufficient information to conclude that it may have been racially based. OCR will consider whether the incident involved explicitly racial conduct or whether the circumstances indicate that, through symbols or other persuasive factors, the recipient should have recognized that the conduct was in fact, or was reasonably likely to have been, racial (e.g., the hanging of nooses, random violence against minorities, etc.).

Recipient's Response

Once a recipient has notice of a racially hostile environment, the recipient has a legal duty to take reasonable steps to eliminate it. Thus, if OCR finds that the recipient took responsive action, OCR will evaluate the appropriateness of the responsive action by examining reasonableness, timeliness, and effectiveness. The appropriate response to a racially hostile environment must be tailored to redress fully the specific problems experienced at the institution as a result of the harassment. In addition, the responsive action must be reasonably calculated to prevent recurrence and ensure that participants are not restricted in their participation or benefits as a result of a racially hostile environment created by students or non-employees.

In evaluating a recipient's response to a racially hostile environment, OCR will examine disciplinary policies, grievance policies, and any applicable anti-harassment policies. OCR also will determine whether the responsive action was consistent with any established institutional policies or with responsive action taken with respect to similar incidents.

Examples of possible elements of appropriate responsive action include imposition of disciplinary measures, development and dissemination of a policy prohibiting racial harassment, provision of grievance or complaint procedures, implementation of racial awareness training, and provision of counseling for the victims of racial harassment.

Conclusion

OCR will investigate allegations of racial incidents where the incidents fall within its jurisdiction. Based on the facts and circumstances of each case OCR will use either or both the standard different treatment analysis and the hostile environment analysis to determine whether title VI has been violated.

If OCR determines that an agent or employee, acting within the scope of his or her employment, treated someone differently on the basis of race, color, or national origin without a legitimate, nondiscriminatory reason for the treatment (i.e., direct different treatment), then OCR will conclude that Title VI was violated. If OCR determines that a racially hostile environment exists at a recipient, the recipient had notice of it, and the recipient failed to take adequate action in response to the hostile environment, OCR will also find a violation. If OCR determines that a hostile environment was not established, or that a hostile environment was established but that the recipient either (1) did not have notice of it; or (2) had notice of it and took adequate action in response, OCR will find no violation.

Appendix Racial Incidents and Harassment Against Students - Compendium of Legal Resources

This compendium provides an outline summarizing key legal resources (including statutes, regulations, cases, and letters of findings) to serve as a reference for the Office for Civil Rights (OCR) staff in investigating possible discrimination against students based on racial incidents including incidents involving allegations of harassment on the basis of race that occur at educational institutions. It is intended to be used in conjunction with the investigative guidance on racial incidents and harassment, and follows the same general outline as that guidance.

The investigation and analysis of cases under title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d, (title VI) relies, to a large extent, on case law developed under Title VII of the Civil Rights Act of 1964, 42 U.S.C. 2000e, which prohibits discrimination on the basis of race, color, national origin, sex, and religion in employment. See *Dillon County District No. 1 and South Carolina State Department of Education, No. 84-VI-16* (Civil Rights Reviewing Auth. 1987); *United States v. LULAC*, 793 F.2d 636, 648-49 (5th Cir. 1986); *Georgia State Conference of Branches of NAACP v. Georgia*, 775 F.2d 1403, 1417 (11th Cir. 1985); and *NAACP v. Medical Center, Inc.* 657 F.2d 1322 (3d Cir. 1981). See also, generally, EEOC Revised Enforcement Guidance on Recent Developments in Disparate Treatment Theory, No. N- 915.002 (July 14, 1992).

1. Jurisdiction

OCR must first decide whether it has jurisdiction over a claim involving racial incidents or harassment. OCR has jurisdiction if the complainant alleges that the racially based conduct occurred in the context of an operation of an elementary, secondary, or postsecondary school or institution, or other entity that is a recipient of Federal funds.

A. Title VI: Prohibits Race Discrimination in Federally Funded Programs and Activities

Title VI prohibits race discrimination in programs and activities that receive Federal financial assistance. See also 34 CFR part 100 (regulations effectuating provisions of Title VI).

B. OCR Has Institution-Wide Jurisdiction

Under the Civil Rights Restoration Act of 1987, OCR generally has institution-wide jurisdiction over a recipient of Federal funds.

C. Allegation Must Relate to an Operation of Recipient

Discrimination must be alleged in an "operation" of a recipient. See 42 U.S.C. 2000d-4a.

D. Specific Discriminatory Actions Prohibited

The regulations implementing Title VI include provisions prohibiting discrimination based on race in terms of:

1. Services: Provision of services or other benefits. 34 CFR 100.3(b)(1)(iii).
2. Privileges: Restriction of an individual's enjoyment of an advantage or privilege enjoyed by others. 34 CFR 100.3(b)(1)(iv).
3. Participation: Opportunities to participate. 34 CFR 100.3(b)(1)(v).

The regulations also include a general, catchall provision prohibiting race discrimination. See 34 CFR 100.3(b)(5).

II. Standard Different Treatment by Agents or Employees

As with other claims of race discrimination under Title VI, OCR should first apply a standard different (disparate) treatment analysis to allegations involving racial incidents perpetrated by representatives of recipients. In doing so, OCR must determine whether a student was treated differently than other students on the basis of race without a legitimate, nondiscriminatory, non-pretextual reason.

The basic elements of a different treatment case were set out by the U.S. Supreme Court in *McDonnell Douglas Corp. v. Green*, 411 U.S. 792 (1973) (focusing on indirect evidence of such treatment), a Title VII employment case. See also *United States Postal Service Board of Governors v. Aikens*, 460 U.S. 711 (1983); *Texas Department of Community Affairs v. Burdine*, 450 U.S. 248 (1981).

A. Prima Facie Case

1. Identify the racial group to which the complainant belongs for purposes of differential treatment analysis.
2. Determine whether the complainant was treated differently than similarly situated members of other racial groups with regard to a service, benefit, privilege, etc., from the recipient. See, e.g., *University of Pittsburgh*, OCR Case No. 03-89-2035 (campus police treated black students more severely than white students); *Roosevelt Warm Springs Institute for Rehabilitation*, OCR Case No. 04-893003 (similar).

B. Rebuttal of Prima Facie Case by Showing Legitimate, Nondiscriminatory Reason for Treatment

After a prima facie case of race discrimination has been established against the recipient, OCR must then determine whether the recipient had a legitimate, nondiscriminatory reason for its action(s) which would rebut the prima facie case against it.

C. Recipient's Rebuttal Overcome With Showing of Pretext

If the prima facie case of discrimination is rebutted, OCR must next determine whether the recipient's asserted reason for its action(s) is a mere pretext for discrimination. Ultimately however, the weight of the evidence must convince OCR that actual discrimination occurred. See *S. Mary's Honor Center v. Hicks*, 113 S.Ct. 2742 (1993) (under title VII disparate treatment analysis, ultimate burden of persuasion regarding intentional discrimination remains at all times with plaintiff).

III. Hostile Environment Analysis

A violation of Title VI may be found if racial harassment is severe, pervasive, or persistent so as to constitute a hostile or abusive educational environment. See *Meritor Savings Bank v. Vinson*, 477 U.S. 57 (1986) (sets similar standard for sexual harassment under title IX) (relying on *Rogers v. EEOC*, 454 F.2d 234, 238 (5th Cir. 1971) (race discrimination can consist of an "environment heavily charged with ethnic or racial discrimination"), cert. denied, 406 U.S. 957 (1972)); *Harris v. Forklift Systems, Inc.*, 114 S.Ct. 367 (1993) (reiterating *Meritor* standard). Accord, *Hicks v. Gates Rubber Co.*, 833 F.2d 1406, 1412 (10th Cir. 1987); *Snell v. Suffolk County*, 782 F.2d 1094, 1102 (2d Cir. 1986); *Gray v. Greyhound Lines, East*, 545 F.2d 169, 176 (D.C. Cir. 1976) (noting with approval that EEOC has consistently held that title VII gives employee right to "a working environment free of racial intimidation"). See also, e.g., *Defiance College*, OCR Case No. 05-9-2024 (violation where college was aware of "repeated" and "patently offensive" verbal and physical racial harassment committed by students).

Whether conduct constitutes a hostile environment must be determined from the totality of the circumstances. See *Harris v. Forklift Systems, Inc.*, 114 S.Ct. 367 (1993) (under title VII, factors to consider may include frequency and severity of discriminatory conduct, whether it is physically threatening or humiliating or merely offensive, and whether it interferes with work performance; psychological harm is not required but may be taken into account like any other relevant factor); *Johnson v. Bunny Bread*, 646 F.2d 1250, 1257 (8th Cir. 1981) (court examined nature, frequency, and content of racial harassment, as well as identities of perpetrators and victims). See also *Snell*, 782 F.2d at 1103 (citing *Henson v. City of Dundee*, 682 F.2d 897, 904 (11th Cir. 1982)) (same standard for sexual harassment).

A. Harassment Must Be Severe, Pervasive or Persistent

1. Pervasive or Persistent

Where the harassment is not sufficiently severe, it must consist of more than casual or isolated racial incidents to create a racially hostile environment. Compare *Trenton Junior College*, OCR Case No. 07-87-6006 (title VI violated where college failed to provide adequate security for black basketball players who were subjected to a break-in, cross-burning, and placement of raccoon skins at their campus residences) with *University of California, Santa Cruz*, OCR Case No. 09-91-6002 (no finding of racial harassment where OCR found only isolated individual incidents over three year period). See also, e.g., *Snell*, 782 F.2d at 1103 ("To establish a hostile atmosphere, *** plaintiffs must prove more than a few isolated incidents of racial enmity ***. Casual comments, or accidental or sporadic conversation will not trigger equitable relief"); *Gates Rubber Co.*, 833 F.2d 1406; *Powell v. Missouri State Highway and Transportation Department*, 822 F.2d 798 (8th Cir. 1986); *Moylan v. Maries County*, 792 F.2d 746 (8th Cir. 1986); *Henson*, 682 F.2d at 904 (quoting *Rogers*, 454 F.2d at 238).

OCR and Federal courts have found a hostile environment where there was a pattern or practice of harassment, or where the harassment was sustained and nontrivial. See, e.g., *Wapato School District No. 207*, OCR Case No. 10-821039 (Title VI violated where teacher repeatedly treated minority students in racially derogatory manner). Compare *Walker v. Ford Motor Co.*, 684 F.2d 1355 (11th Cir. 1982) (hostile environment where use of derogatory terms

was "repeated, continuous, and prolonged") with *Gilbert v. City of Little Rock*, 722 F.2d 1390 (8th Cir. 1983) (hostile environment; not created by isolated and allegedly unrelated racial slurs), cert. denied, 466 U.S. 972 (1984).

2. Severe

The severity of individual incidents must also be considered. See, e.g., *Vance v. Southern Bell Telephone and Telegraph Co.*, 863 F.2d 1503, 1510-11 (11th Cir. 1989) (determination whether conduct is "severe and pervasive" does not turn solely on number of incidents; fact-finder must examine gravity as well as frequency) (decided under 42 U.S.C. 1981); *Carrero v. New York City Housing Authority*, 890 F.2d 569, 578 (2d Cir. 1990) ("It is not how long the *** obnoxious course of conduct lasts. The offensiveness of the individual actions *** is also a factor to be considered.").

Generally, the severity of the incidents needed to establish a racially hostile environment varies inversely with their pervasiveness or persistence. See EEOC Policy Guidance on Current Issues of Sexual Harassment, No. N915.050 (Mar. 19, 1990) ("the more severe the harassment, the less need to show a repetitive series of incidents").

a. Special mission and duties of educational institutions. The unique setting and mission of an educational institution must be taken into account when OCR evaluates the severity of racial harassment under title Vt. School officials have a duty to provide a nondiscriminatory environment conducive to learning. See generally 34 CFR part 100 (regulations prohibiting any form of race discrimination which interferes with educational programs or activities under title Vt).

b. Characteristics and circumstances of victim especially race and age. OCR must take into account the characteristics and circumstances of the victim on a case-by-case basis particularly the victim's race and age when evaluating the severity of racial incidents at an educational institution. See *Harris v. International Paper Co.*, 765 F. Supp. 1509, 1515-16 (D. Me. 1991) (the appropriate standard to apply in a "hostile environment racial harassment case is that of a 'reasonable black person'"). See also, e.g., *Ellison v. Brady*, 924 F.2d 872 (5th Cir. 1991) (discussing differences in perspectives of men and women toward sexual harassment, and need to examine harassment from perspective of reasonable victim with characteristic upon which harassment was based).

The reasonable person standard as applied to children is "that of a reasonable person of like age, intelligence, and experience under like circumstances." Restatement (2d), Torts Section 283A (1965) (Comment b: "The special standard to be applied in the case of children arises out of the public interest in their welfare and protection ***"). See also, e.g., *Honeycutt v. City of Wichita*, 247 Kan. 250, 796 P.2d 549 (Kan. 1990) (adopting Restatement standard); *Standard v. Shine*, 278 S.C. 337, 295 S.E.2d 788 (S.C.1982) (same); *Camerlinck v. Thomas*, 209 Neb. 843, 312 N.W.2d 260 (Neb. 1981) (same).

c. Nature of incident. The nature of the incident(s) should also be considered. See, e.g., *Vance v. Southern Bell Telephone and Telegraph Co.*, 863 F.2d at 1506-10 (hostile environment created where noose was hung twice at employee's workstation); *Watts v. New York City Police Department*, 724 F. Supp. 99, 105 (S.D.N.Y.1989) (same, based on two sexual assaults).

A single incident that is sufficiently severe may establish a racially hostile environment. See EEOC Policy Guidance on Current Issues of Sexual Harassment, No. N-915.050 (Mar.19 1990) and cases cited therein, *Barnett v. Omaha National Bank*, 584 F. Supp. 22 (D. Neb.1983), *aff'd*, 726 F.2d 424 (8th Cir. 1984) (sexually hostile environment established by sexual assault).

d. Size of recipient and location of incidents. The size of the recipient and the location of the incidents also may be important.

e. Identity of individuals involved. The identity, number, and relationships of the individuals involved will also be considered on a case-by-case basis. See, e.g., *Wapato School District No. 207*, OCR Case No.10-82-1039 (racial harassment of students by teacher was particularly egregious).

f. Other incidents at the recipient. OCR will also consider other racial incidents at the institution. See, e.g. *Midwest City-Del City Public Schools* OCR Case No. 06-92-1012 (finding of racially hostile environment based in part on several racial incidents at a school which occurred shortly before incidents in complaint).

g. Harassment need not be directed specifically at complainant, or tangibly harm complainant or victim. The regulations implementing Title VI provide that a complaint may be filed by "[a]ny person who believes himself or any specific class of individuals to be subjected to discrimination prohibited by this part." 34 CFR 100.7(b). Thus, in hostile environment cases, the harassment need not be targeted specifically at the individual complainant. See *Waltman v. International Paper Co.*, 875 F.2d 468, 477 (5th Cir. 1989) (all sexual graffiti in office, no. just directed at plaintiff, was relevant to plaintiff's claim); *Hall v. Gus Construction Co.*, 842 F.2d 1010, 1015 (8th Cir. 1988) (evidence of sexual harassment directed at others is relevant to show hostile environment); *Gates Rubber Co.*, 833 F.2d at 1415 ("one of the critical inquiries in a hostile environment claim must be the environment" as a whole) (emphasis in original); *Walker v. Ford Motor Co.*, 684 F.2d 1355,1358-59 (11th Cir. 1982) (hostile environment established where racial harassment made plaintiff "feel unwanted and uncomfortable in his surroundings," even though it was not directed at him).

The harassment need not be based on the ground of the complainant's or victim's race, so long as it is racially motivated. See, e.g., *Center Grove Community School*, OCR Case No.1591-1168 (title VI violated where white girl was forced to withdraw from all white school, as result of harassment by classmates which included note criticizing her association with black student at another school).

To establish a hostile environment harassment need not result in a tangible injury or detriment to the complainant or the victim of the harassment. *Vinson* 477 U.S. at 64. See also, e.g., *Harris v. Forklift Systems, Inc.*, 114 S.Ct. at 371 (under title VII several factors are considered including whether behaviors interfere with work performance psychological harm is not required but may be taken into account like any other relevant factor); *Gilbert*, 722 F.2d at 1394 (environment "which significantly and adversely affects the psychological well-being of an employee because of his or her race" is enough to constitute title VII violation); *Bundy v. Jackson*, 641 F.2d 934, 943-45 (D.C. Cir.1981) (protection against race and sex discrimination extends to "psychological and emotional work environment").

B. Notice

A recipient has a duty to provide a nondiscriminatory educational environment, but it must somehow receive notice of racial harassment in order to be found responsible for it. See *Vinson*, 477 U.S. at 72; see also *Steele v. Offshore Shipbuilding, Inc.*, 867 F.2d 1311 (11th Cir. 1989); *Lipsett v. University of Puerto Rico*, 864 F.2d 881 (1st Cir.1988).

1. Actual Notice

A recipient may be found liable for racial harassment if it has actual knowledge of the racially offensive behavior or actions. See, e.g., *Hunter v. Allis-Chalmers Corp.*, 797 F.2d 1417 (7th Cir. 1986) (liability exists if management-level employees were aware of barrage of offensive conduct); *Katz v. Dole*, 709 F.2d 251 (4th Cir. 1983) (actual knowledge where victim complains of harassment to appropriate authorities); *Henson v. City of Dundee*, 682 F.2d 897, 904 (11th Cir. 1982).

2. Constructive Notice

A recipient may be found liable where it reasonably should have known of the harassment e.g., because the harassment was so pervasive that its awareness may be inferred. See *Paroline v. Unisys Corp.*, 879 F.2d 100 (4th Cir. 1989) (liability may be imputed where employer knew or should have known about prior conduct of harasser toward other women), vacated in part on other grounds, 900 F.2d 27 (4th Cir. 1990); *Yates v. Avco Corp.*, 819 F.2d 630 (6th Cir. 1987) (constructive notice where employee harassed women on a daily basis); *Waltman*, 875 F.2d 468 (possibility of constructive notice where sexual graffiti existed in numerous locations); *Vance v. Southern Bell Telephone and Telegraph Co.*, 863 F.2d at 1510-11; *Swentokv. USAir, Inc.*, 830 F.2d 552 (4th Cir. 1987).

If the alleged harasser is an agent or employee of a recipient, acting within the scope of his or her official duties (i.e., such that the individual has actual or apparent authority over the students involved), then the individual will be considered to be acting in an agency capacity and the recipient will be deemed to have constructive notice of the harassment. See, e.g., *Kauffman v. Allied Signal, Inc., Autolite Division*, 970 F.2d 178 (6th Cir.) ("scope of employment" standard for holding employers liable for supervisory harassment is based on traditional agency principles, such as when and where harassment took place, and whether it was foreseeable), cert. denied, 113 S.Ct. 831 (1992). See also EEOC Policy Guidance on Current Issues of Sexual Harassment, N-915.050 (Mar. 19, 1990) (apparent authority exists where third parties reasonably believe that actions of supervisor represent exercise of authority possessed by virtue of employer's conduct).

In evaluating whether constructive notice should be imputed to a recipient, the availability, coverage and public dissemination of anti-discrimination policies and grievance procedures for students will be considered in determining whether the recipient has made a sufficient effort to become aware of racial incidents if and when they occur. See *Meritor Savings Bank*, 477 U.S. at 72-73 (existence of uninvoked grievance procedures and policies against discrimination is relevant to issue of employer liability for sexual harassment, but not dispositive).

C. Recipient's Response

1. Duty to Take Reasonable Steps to End Harassment:

Once a recipient has notice of a racially hostile environment, it has a duty to take reasonable steps to eliminate it. If it fails to respond adequately to the hostile environment, then the recipient may be found to have violated title VI. See, e.g., *California State University, Chico*, OCR Case No. 09-89-2106 (inadequate response to racial harassment where university had no written grievance procedure and failed to interview most of the individuals involved); *Township High School District No. 214*, OCR Case No' 05-82-1097 (OCR found violation where school district failed to take adequate steps to correct repeated racial harassment by students, of which employees were aware). See also, e.g., *Snell v. Suffolk County*, 782 F.2d 1094 (2d Cir. 1986) (responsibility depends on gravity of harm, nature of work environment, and resources available); *HaZl v. Gus Construction Co., Inc.*, 842 F.2d 1010 (8th Cir. 1988) (employer will be liable for failing to discover what is going on and to take remedial steps when actions are so numerous, egregious, and concentrated as to add up to campaign of harassment); *Paroline*, 879 F.2d 100 (4th Cir. 1989); *Henson v. City of Dundee*, 682 F.2d 897, 904 (11th Cir. 1982).

2. Response or Remedy Should Redress Actual Problems

The appropriate response or remedy for a hostile environment should be tailored to redress the specific problems experienced at the institution. See, e.g., *Trenton Junior College*, OCR Case No. 07-87-6006 (region developed remedial plan with college that included staff training on racial harassment, payment of compensation to harassed students and individuals who assisted the students in arranging for their safety, implementation of special efforts including financial aid to recruit black students, and development of plan for handling future harassment complaints).

3. Response Must Reasonably Attempt to Prevent Recurrence

The responsive action taken by a recipient must be reasonably calculated to prevent recurrence and ensure that individuals are not restricted in their participation or benefits as a result of a racially hostile environment created by students or non-employees. See, e.g., *Brooms v. Regal Tube Co.*, 881 F.2d 412 (7th Cir. 1989) (response must be reasonably calculated to prevent further harassment under particular facts and circumstances of case at time allegations are made; courts should not focus solely on whether remedial activity ultimately succeeded, but should determine whether total response was reasonable); *Waltman v. International Paper Co.*, 875 F.2d 468,476 (5th Cir.1989) (response must be reasonably calculated to halt harassment); *Bundy v. Jackson*, 641 F.2 934 (D.C. Cir. 1981) (employer liable where supervisor had full notice of harassment and did nothing to stop or investigate practice; employer must take all necessary steps to investigate and correct harassment including warnings, appropriate discipline, and other means of preventing harassment).

[FR Doc. 94-5531 Filed 3-9-94; 8:45 am]

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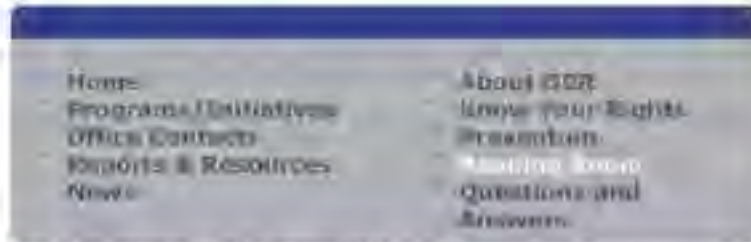


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First Amendment: Dear Colleague

**UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS
400 MARYLAND AVE., S.W.
WASHINGTON, D.C. 20202-1100**

THE ASSISTANT SECRETARY

July 28, 2003

Dear Colleague:

I am writing to confirm the position of the Office for Civil Rights (OCR) of the U.S. Department of Education regarding a subject which is of central importance to our government, our heritage of freedom, and our way of life: the First Amendment of the U.S. Constitution.

OCR has received inquiries regarding whether OCR's regulations are intended to restrict speech activities that are protected under the First Amendment. I want to assure you in the clearest possible terms that OCR's regulations are not intended to restrict the exercise of any expressive activities protected under the U.S. Constitution. OCR has consistently maintained that the statutes that it enforces are intended to protect students from invidious discrimination, not to regulate the content of speech. Harassment of students, which can include verbal or physical conduct, can be a form of discrimination prohibited by the statutes enforced by OCR. Thus, for example, in addressing harassment allegations, OCR has recognized that the offensiveness of a particular expression, standing alone, is not a legally sufficient basis to establish a hostile environment under the statutes enforced by OCR. In order to establish a hostile environment, harassment must be sufficiently serious (i.e., severe, persistent or pervasive) as to limit or deny a student's ability to participate in or benefit from an educational program. OCR has consistently maintained that schools in regulating the conduct of students and faculty to prevent or redress discrimination must formulate, interpret, and apply their rules in a manner that respects the legal rights of students and faculty, including those court precedents interpreting the concept of free speech. OCR's regulations and policies do not require or prescribe speech, conduct or harassment codes that impair the exercise of rights protected under the First Amendment.

As you know, OCR enforces several statutes that prohibit discrimination on the basis of sex, race or other prohibited classifications in federally funded educational programs and activities. These prohibitions include racial, disability and sexual harassment of students. Let me emphasize that OCR is committed to the full, fair and effective enforcement of these statutes consistent with the requirements of the First Amendment. Only by eliminating these forms of discrimination can we fully ensure that every student receives an equal opportunity to achieve academic excellence.

Some colleges and universities have interpreted OCR's prohibition of "harassment" as encompassing all offensive speech regarding sex, disability, race or other classifications. Harassment, however, to be prohibited by the statutes within OCR's jurisdiction, must include something beyond the mere expression of views, words, symbols or thoughts that some person finds offensive. Under OCR's standard, the conduct must also be considered sufficiently serious to deny or limit a student's ability to participate in or benefit from the educational program. Thus, OCR's standards require that the conduct be evaluated from the perspective of a reasonable person in the alleged victim's position, considering all the circumstances, including the alleged victim's ego.

There has been some confusion arising from the fact that OCR's regulations are enforced against private institutions that receive federal funds. Because the First Amendment normally does not bind private institutions, some have erroneously assumed that OCR's regulations apply to private federal funds recipients without the constitutional limitations imposed on public institutions. OCR's regulations should not be interpreted in ways that would lead to the suppression of protected speech on public or private campuses. Any private post-secondary institution that chooses to limit free speech in ways that are more restrictive than at public educational institutions does so on its own accord and not based on requirements imposed by OCR.

In summary, OCR interprets its regulations consistent with the requirements of the First Amendment, and all actions taken by OCR must comport with First Amendment principles. No OCR regulation should be interpreted to impinge upon rights protected under the First Amendment to the U.S. Constitution or to require recipients to enact or enforce codes that punish the exercise of such rights. There is no conflict between the civil rights laws that this Office enforces and the civil liberties guaranteed by the First Amendment. With these principles in mind, we can, consistent with the requirements of the First Amendment, ensure a safe and nondiscriminatory environment for students that is conducive to learning and protects both the constitutional and civil rights of all students.

Sincerely,

Assistant Secretary
Office for Civil Rights
Department of Education



UNITED STATES DEPARTMENT OF EDUCATION

OFFICE FOR CIVIL RIGHTS

THE ASSISTANT SECRETARY

January 19, 2012

Dear Colleague:

This year, we will celebrate the 22nd anniversary of the landmark Americans with Disabilities Act (ADA), 42 U.S.C. §§ 12101-12213. We at the Office for Civil Rights (OCR) in the United States Department of Education (Department) recognize the progress our country has made toward ensuring that educational opportunities are provided free from disability discrimination. As Secretary Arne Duncan has stated, the Department is "strengthening our efforts to ensure that all students, including those with disabilities, have the tools they need to benefit from a world-class education that prepares them for success in college and careers."¹

Pursuant to a delegation by the U.S. Attorney General, OCR shares in the enforcement of Title II of the ADA (Title II), 28 C.F.R. § 35.190(b)(2). Title II prohibits discrimination on the basis of disability by public entities, including public elementary, secondary, and postsecondary schools, regardless of whether they receive Federal financial assistance. Title II requires that qualified individuals with disabilities, including students, parents, and other program participants, are not excluded from or denied the benefits of services, programs, or activities of a public entity, or otherwise subjected to discrimination by a public entity, by reason of disability. OCR also enforces Section 504 of the Rehabilitation Act of 1973 (Section 504), a Federal law designed to protect the rights of individuals with disabilities in programs and activities that receive Federal financial assistance. Recipients of this Federal financial assistance from the Department include public school districts, other state and local educational agencies, and institutions of higher education.

Through our civil rights enforcement activities, and in responding to requests for technical assistance, OCR has learned that additional guidance on the requirements of the ADA and Section 504 in the elementary and secondary school context would be helpful, especially in light of changes to the law made by the ADA Amendments Act of 2008 (Amendments Act).² To that end, OCR has prepared the attached "Questions and Answers on the ADA Amendments Act of 2008 for Students with Disabilities Attending Public Elementary and Secondary Schools" (Amendments Act FAQ). With passage of the Amendments Act, Congress intended to ensure a broad scope of protection under the ADA and to

¹ For more of Secretary Duncan's remarks regarding the ADA, see Press Release, U.S. Dep't of Educ., 20th Anniversary of the Americans with Disabilities Act a Cause for Celebration and Rededication to Equal Educational Opportunity for Students with Disabilities (July 26, 2010), available at <http://www.ed.gov/news/press-releases/20th-anniversary-americans-disabilities-act-cause-celebration-and-rededication-e>.

² You can review the text of the Amendments Act on OCR's website at <http://www2.ed.gov/policy/rights/guid/ocr/disability.html> (see bullet entitled "The Americans with Disabilities Act Amendments Act of 2008"). The law went into effect January 1, 2009.

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The Department of Education's mission is to promote student achievement and preparation for global competitiveness by fostering educational excellence and ensuring equal access.

[OCR-00061]

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convey that the question of whether an individual's impairment is a disability under the ADA and Section 504 should not demand extensive analysis. To effectuate the ADA's purpose, the Amendments Act:

- directs that the ameliorating effects of mitigating measures (other than ordinary eyeglasses or contact lenses) may not be considered in determining whether an individual has a disability;
- expands the scope of "major life activities" by providing nonexhaustive lists of general activities and major bodily functions;
- clarifies that an impairment that is episodic or in remission is a disability if it would substantially limit a major life activity when active; and
- clarifies how the ADA applies to individuals who are "regarded as" having a disability.

The attached Amendments Act FAQ

- addresses the broadened definition of disability and the changes made by the Amendments Act;
- discusses how the Amendments Act affects Section 504;
- explains various obligations of school districts under Section 504 and Title II; and
- addresses how OCR evaluates compliance with Title II and Section 504 in light of the Amendments Act.

Since the ADA's enactment, measurable progress has been made, but more can be done. OCR will continue to work to eliminate disability discrimination in public elementary, secondary, and postsecondary schools by investigating complaints, conducting compliance reviews, issuing policy guidance, providing technical assistance, and working closely with the Department of Justice.

OCR is committed to providing technical assistance to States, school districts, service providers, and individuals to ensure that students with disabilities have equal educational opportunities. To that end, OCR has other documents that provide guidance on Title II and Section 504, which can be found at <http://www.ed.gov/about/offices/list/ocr/publications.html#Section504>. If you need additional information or technical assistance in complying with Title II, Section 504, or the other civil rights laws that OCR enforces, please visit <http://wdcrobcolp01.ed.gov/CFAPPS/OCR/contactus.cfm> for the contact information for the OCR enforcement office that serves your state or outlying area. Technical assistance regarding the ADA and other resources can also be found on the Department of Justice's website at www.ada.gov.

Thank you for joining me in our continuing efforts to realize the full potential of Section 504 and the ADA by ensuring nondiscrimination for students with disabilities.

Sincerely,

/s/

Russlynn Ali

Assistant Secretary for Civil Rights



Policies Applying to Campus Activities, Organizations and Students (PACAOS)

140.00 GUIDELINES APPLYING TO NONDISCRIMINATION ON THE BASIS OF DISABILITY

Responsible Officer:	Vice President and Vice Provost
Responsible Office:	Graduate, Undergraduate Affairs
Issuance Date:	8/15/1994
Effective Date:	8/15/1994
Last Review Date:	12/4/2020 – technical update
Scope:	For all pertinent activities involving University students, employees, and properties, the <i>Policies Applying to Campus Activities, Organizations and Students</i> apply to the Division of Agriculture and Natural Resources and to the Department of Energy Laboratories operated by the University of California, subject to Laboratory implementing regulations and contractual obligations between The Regents and the Department of Energy.

Contact:	Eric Heng
Title:	Acting Director, Student Policies & Governance
Email:	Eric.Heng@ucop.edu
Phone:	(510) 987-0239

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I. POLICY SUMMARY

The *Policies Applying to Campus Activities, Organizations and Students* are a compendium of University-wide policies relating to student life. Section 140.00 describes the University's guidelines applying to nondiscrimination on the basis of disability.

II. DEFINITIONS

Definitions for the *Policies Applying to Campus Activities, Organizations and Students*, and the campus implementing regulations adopted pursuant to them, are provided in Section 14.00.

III. POLICY TEXT

140.00 GUIDELINES APPLYING TO NONDISCRIMINATION ON THE BASIS OF DISABILITY

- 140.00 Introduction
- 141.00 Definitions
- 142.00 Discrimination Prohibited
- 143.00 Educational Programs, Services, and Activities
- 144.00 Employment Practices
- 145.00 Program Accessibility
- 146.00 Health, Welfare, and Other Social Services and Benefits
- 147.00 Voluntary Action
- 148.00 Notification and Publication Requirements
- 149.00 Grievance Procedures

140.00 INTRODUCTION

In compliance with the Federal Rehabilitation Act of 1973, as amended (Public Law 93-112) and the Americans with Disabilities Act of 1990 (Public Law 101-336), University of California policy prohibits unlawful discrimination on the basis of disability in its programs, services, and activities.

The following *Guidelines* are designed to be consistent with the Rehabilitation Act of 1973 and the Americans with Disabilities Act of 1990. However, it is possible that these statutes may be amended in the future and, in such instances, the most current applicable laws shall represent University policy as it applies to nondiscrimination on the basis of disability.

141.00 DEFINITIONS

141.10 Individual with a Disability

141.11

An "individual with a disability" means any person who has a physical or mental

impairment which substantially limits one or more major life activities, who has a record of such an impairment, or who is regarded as having such an impairment.

141.12

"Physical or mental impairment" means any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: neurological; musculoskeletal; special sense organs; respiratory (including speech organs); cardiovascular; reproductive; digestive; genitourinary; hemic and lymphatic; skin; and endocrine.

"Physical or mental impairment" also means any mental or psychological disorder, such as mental retardation or developmental disabilities, organic brain syndrome or acquired brain injury, emotional or mental illness, and specific learning disabilities.

Physical and mental impairment also includes, but is not limited to, contagious and noncontagious diseases and conditions such as orthopedic, visual, speech, and hearing impairments; cerebral palsy; epilepsy; muscular dystrophy; multiple sclerosis; cancer; heart disease; diabetes; mental retardation; emotional illness; HIV disease (whether symptomatic or asymptomatic) and tuberculosis.

141.13

"Major life activities" means functions such as caring for oneself, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.

141.14

"Has a record of such impairment" means has a history of, or has been incorrectly classified as having, a mental or physical impairment that substantially limits one or more major life activities.

141.15

"Is regarded as having an impairment" means has a physical or mental impairment that does not substantially limit major life activities, but is treated by the University as limiting such activities; has a physical or mental impairment that substantially limits major life activities as a result of the attitudes of others toward such an impairment; or has none of the impairments listed in Section 141.12, but is treated as having such an impairment, such as persons with a limp or persons with disfiguring scars.

141.16

An "individual with a disability" does not include a person who is currently engaging in the illegal use of drugs. However, an individual who is currently participating in, or who has successfully completed, a supervised drug rehabilitation program and is not currently engaging in the illegal use of drugs, or who is otherwise no longer engaging in such use, shall be considered an individual with a disability if the individual otherwise fits the definition of a disabled person as described in Sections 141.00 through 141.15 of these Guidelines.

141.17

Individuals with drug or alcohol addictions who are not currently engaging in the illegal

use of drugs, or who are no longer engaging in drug or alcohol abuse as described in Section 141.16 above, should not be prohibited from attending the University if they can successfully participate in the education program of the University, if they comply with University policies and campus/laboratory regulations, and if their behavior does not impede the performance of other students.

141.20 Qualified Individual with a Disability

141.21

With respect to students who are employed by the University, a qualified individual with a disability is one who, with or without reasonable accommodation, can perform the essential functions of the position in question and who meets the definition of an individual with a disability, as specified in Sections 141.00 through 141.16 of these *Guidelines*.

141.22

With respect to postsecondary education, an otherwise qualified individual with a disability is one who meets the academic and technical standards requisite for admission or participation in the education programs of the University and who meets the definition of an individual with a disability, as specified in Sections 141.00 through 141.16 of these *Guidelines*.

The term "technical standards" refers to nonacademic admissions criteria that are applicable to such programs.

141.23

With respect to other services, a qualified individual with a disability is one who meets the eligibility requirements for the receipt of such services and who meets the definition of an individual with a disability, as specified in Sections 141.00 through 141.16 of these *Guidelines*.

141.30 Facility

"Facility" means all or any portion of buildings, structures, sites, complexes, equipment, rolling stock and other conveyances (e.g., buses, shuttles, vans), roads, walks, parking lots, or other real or personal property, including the site where the building, property, structure, or equipment is located.

142.00 DISCRIMINATION PROHIBITED

142.10

In providing any aid, benefit, or service, the University may not, directly or through contractual, licensing, or other arrangements, discriminate on the basis of disability to:

- a. Deny a qualified individual with a disability the opportunity to participate in, or benefit from, any aid, benefit, or service which it provides;
- b. Provide any qualified individual with a disability an opportunity to participate in, or benefit from, any aid, benefits, or services that are not equal to those afforded to individuals who do not have disabilities;

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- c. Provide a qualified individual with a disability with any aid, benefits, or services that are not as effective as those provided to individuals who do not have disabilities. To be "equally effective," an aid, benefit, or service need not produce an identical result or level of achievement for individuals with disabilities and individuals without disabilities. However, the University must afford individuals with disabilities an equal opportunity to obtain the same result or level of achievement in the most integrated setting appropriate to the individual's needs and to encourage, as appropriate, interaction among all users, including individuals with disabilities;
- d. Provide any different or separate aid, benefits, or services to individuals with disabilities or to any class of individuals with disabilities unless such action is necessary to provide qualified individuals with disabilities with aid, benefits, or services that are as effective as those provided to individuals who are not disabled;
- e. Aid or perpetuate discrimination against a qualified individual with a disability by providing any significant assistance to any agency, organization, or person that discriminates on the basis of disability against beneficiaries of the University's programs;
- f. Deny a qualified individual with a disability the opportunity to participate as a member of planning or advisory boards; or
- g. Otherwise limit a qualified individual with a disability in the enjoyment of any University right, privilege, advantage or opportunity enjoyed by individuals who are not disabled.

142.20

In determining the site or location of a facility, the University may not make selections that have the following effect:

- a. Excluding qualified individuals with disabilities from, denying them the benefits of, or otherwise subjecting them to discrimination under any program, service, or activity it operates; or
- b. Defeating or substantially impairing the accomplishment of the objectives of the University's programs, services, or activities with respect to qualified individuals with disabilities.

142.30

The exclusion of individuals who do not have disabilities from the benefits of a program limited by statute or executive order to individuals with disabilities, or the exclusion of a specific class of individuals with disabilities from a program limited by statute or executive order to a different class of individuals with disabilities, is not prohibited.

143.00 EDUCATIONAL PROGRAMS, SERVICES, AND ACTIVITIES

143.10 Admissions, Enrollment, and Recruitment

143.11

Qualified individuals with disabilities may not, on the basis of disability, be denied admission to the University or enrollment in University classes or participation in

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University programs, services, or activities, or be subjected to discrimination in the admissions process or in recruitment procedures.

143.12 Admissions or Enrollment

- a. Limitations may not be applied upon the number or proportion of individuals with disabilities who may be admitted or enrolled.
- b. Tests or criteria for admission may not have a disproportionate, adverse effect on individuals with disabilities or any class of such individuals unless:
 1. The tests or criteria have been validated as predictors of success in the education programs, services, or activities in question; and
 2. Alternate tests or criteria that have a less disproportionate, adverse effect, and which are acceptable to the University, are not shown to be available by the appropriate Federal agency.
- c. Before admission tests are selected and administered, campuses should be assured that:
 1. Admissions tests are selected and administered to ensure that when a test is administered to an applicant who has a disability that impairs sensory, manual, or speaking skills, the test results accurately reflect the applicant's aptitude or achievement level, or whatever other factor the test purports to measure, rather than reflecting the applicant's impaired sensory, manual, or speaking skills, except when those skills are the factors that the test purports to measure;
 2. Admissions tests that are designed for persons with disabilities are offered as often and in as timely a manner as are other admissions tests; and
 3. Admissions tests are administered in facilities that, on the whole, are accessible to individuals with disabilities. In this context, "on the whole" does not mean that all facilities must be accessible, only that a sufficient number must be available to individuals with disabilities.
- d. Pre-admission inquiries as to whether applicants for admission are individuals with disabilities may not be made, except for the purpose of recruitment, as discussed in Section 143.13 of these *Guidelines*. Post-admission inquiries may be made on a confidential basis regarding disabilities that may require accommodation.

143.13 Recruitment

When voluntary action is taken to overcome the effects of conditions that resulted in limited participation in certain programs, services, or activities, pursuant to Section of these *Guidelines*, campuses may invite applicants for admission or enrollment to indicate whether and to what extent they are disabled, provided that:

- a. It is clearly communicated that the information requested is for use solely in connection with voluntary action efforts; and
- b. It is clearly communicated that the information is being requested on a voluntary basis, that it will be kept confidential, that refusal to provide it will not subject the

applicant to any adverse treatment, and that it will be used only in accordance with the implementing regulations of applicable laws and executive orders.

143.20 Treatment of Students and Participants in University Programs, Services, or Activities

143.21

Qualified students with disabilities or participants with disabilities in University programs, services, or activities may not, on the basis of disability, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any academic, research, occupational training, housing, health insurance, counseling, financial aid, physical education, athletics, recreation, transportation, other extracurricular activity, or other educational program, service, or activity offered by the University.

Health services and insurance plans should be provided to qualified students with disabilities on the same basis as for students without disabilities generally. However, student health centers need not provide specialized services and aids; for example, if a center treats only simple disorders, such as cuts, bruises, and colds, its obligation to students with disabilities is to treat only those same disorders.

143.22

Campuses that consider participation by students in education programs, services, or activities not wholly operated by them as part of, or equivalent to, an education program, service, or activity they operate, should assure themselves that the other education program, service, or activity, as a whole, provides an equal opportunity for the participation of qualified individuals with disabilities. For example, in connection with student teaching assignments, campuses may work with elementary or secondary school systems only if their student teaching programs, when viewed in their entirety, offer student teachers with disabilities the same range and quality of choice in assignments offered to student teachers without disabilities.

143.23

All programs, services, and activities should be conducted in the most integrated setting appropriate to a disabled individual's needs and to encourage, as appropriate, interaction among all users, including individuals with disabilities. For example, if a campus offers several elementary physics classes, and one such class is moved to the first floor of the science building to accommodate students who use wheelchairs, it would be a violation of this requirement to also concentrate students with disabilities but who are not mobility impaired in this class.

143.30 Academic Adjustments

143.31 Modification of Academic Requirements

Academic requirements should be modified, as necessary and appropriate, to ensure that they do not discriminate or have the effect of discriminating, on the basis of disability, against qualified applicants or students with disabilities. As appropriate, modifications may include changes in the length of time permitted for the completion of degree requirements, substitution or waiver of specific courses required for the

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completion of the requirements, and adaptation of the manner in which specific courses are conducted. For example, a campus may permit an otherwise qualified student who is deaf to substitute a music history class for a required class in music appreciation, or the campus could modify the manner in which the music appreciation course is conducted for the student who is deaf.

Academic requirements that are determined by the Academic Senate to be essential to programs of instruction or for any directly related licensing requirement are not regarded as discriminatory.

143.32 Course Examinations

In course examinations or other procedures for evaluating students' academic achievement, methods should be provided, as appropriate, for evaluating the achievement of students who have a disability that impairs sensory, manual, or speaking skills as will best ensure that the results of the evaluation represent students' achievement in the course, rather than reflecting students' impaired sensory, manual, or speaking skills, except when such skills are among the factors the test purports to measure.

143.33 Auxiliary Support Services and Devices

- a. Steps should be taken, as appropriate, to ensure that no qualified student or participant with a disability in a University program, service, or activity is denied the benefits of, is excluded from participation in, or is otherwise subjected to discrimination because of the absence of educational auxiliary support services and devices.

In meeting this requirement, campuses may assist qualified students or participants with disabilities in University programs, services, or activities in contacting existing resources, such as State vocational rehabilitation agencies and private charitable organizations, to obtain auxiliary support services and devices. Also, other students may be asked to work with students with disabilities, or private agencies that tape texts for individuals with disabilities free of charge may be contacted in order to reduce the number of readers needed for students with visual impairments and students with learning disabilities. Typically, it is still the University's obligation to provide appropriate educational auxiliary support services and devices should public and private agencies be unable to provide such services or devices. As appropriate, the provision of auxiliary support services and devices to students with disabilities may be provided by the University during the period in which outside help is solicited or in lieu of such outside help.

As long as no qualified person with a disability is excluded from a program because of the lack of appropriate auxiliary support services or devices, such support services and devices need not be on hand at all times.

- b. Educational auxiliary support services and devices include, but are not limited to, taped texts, interpreters, notetakers, or other effective methods of making orally delivered materials available to, for example, students with hearing impairments or learning disabilities; readers for students with visual impairments; classroom

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equipment adapted for use by students with manual impairments; or other aids for students with disabilities.

Attendants, individually prescribed devices, readers for personal use, or other devices or services of a personal nature need not be provided.

Any prohibition against the use of tape recorders or brailers in classrooms, or dog guides and service dogs in campus buildings, or other rules that have the effect of limiting the participation of qualified students with disabilities in educational programs, services, or activities, may not be adopted.

Students or participants with disabilities in University programs, services, or activities may be required to sign an agreement that they will not release tape recordings or transcriptions of lectures, or otherwise hinder the ability of a professor to obtain a copyright.

143.34 Responsibility for Academic Adjustments

Section 10.00 of these *Policies* specifies that each member of the University community shares the responsibility of maintaining conditions conducive to the achievement of the University's mission of research, teaching, and public service. Thus, in attempting to provide any type of academic adjustment, faculty, disability-management staff, and students with disabilities should work in concert to formulate accommodations that meet the individual educational needs of qualified students with disabilities while maintaining the academic integrity of the program, service, or activity to be modified.

Moreover, it is essential that during this consultative process students be given an opportunity to express their preferred choice for disability accommodations and that this choice be given careful consideration, unless an equally effective accommodation can be provided, or that the use of the student's choice would result in a fundamental alteration of the academic program, service, or activity, or would result in an undue financial and administrative burden.

143.35 Student-Specific Obligations in the Provision of Academic Adjustments

In providing any type of academic adjustment, including, but not limited to, modification of academic requirements, course examinations, or support services and devices, the University may require that: 1) students with disabilities provide reasonable advance notice of requests for, changes to, or cancellation of, academic adjustments; 2) students with disabilities provide sufficient and timely verification of their disability and documentation of their disability-related academic adjustment needs; and 3) students with disabilities comply with campus rules regulating requests for, and the proper use of, auxiliary support services or devices.

143.36 Campus Disability Accommodation and Mediation Procedures

Campuses are encouraged to develop written procedures for: 1) the provision of academic accommodations to students with disabilities; and 2) resolving disagreements regarding the provision of academic adjustments to students with disabilities.

143.40 Housing

143.41 On-Campus Housing

The University provides on-campus housing for non-disabled students and shall provide comparable, convenient, and accessible on-campus housing at the same cost to students with disabilities. Housing for students with disabilities should be made available in sufficient quantity and variety so the scope of their choice of living accommodations will, when viewed in its entirety, be comparable to that of students who are not disabled.

143.42 Off-Campus Housing

With regard to housing that is not provided by the University, but is listed by the campus, each campus shall assure itself that such housing, when viewed in its entirety, is made available in a manner that does not result in discrimination on the basis of disability. If a campus determines that off-campus housing, when viewed in its entirety, is not available to students with disabilities, efforts should be made to generate new sources of housing.

143.50 Financial Aid

143.51

In providing financial assistance to qualified students with disabilities, the University may not, on the basis of disability, provide less assistance to those students than is provided to non-disabled students, may not limit their eligibility for assistance, or may not otherwise discriminate against them. The University also may not assist any entity or person that provides financial assistance to any student in a manner that discriminates against qualified students with disabilities on the basis of disability.

143.52

The University may administer or assist in the administration of scholarships, fellowships, or other forms of financial assistance established under wills, trusts, bequests, or similar legal instruments that require awards to be made on the basis of factors that discriminate or have the effect of discriminating on the basis of disability, only if the overall effect of the award of scholarships, fellowships, and other forms of financial assistance is not discriminatory on the basis of disability.

143.53

Athletic scholarships may be denied to students with disabilities on the basis of disability, if the disability renders the person unable to qualify physically for the award. For example, a student who has lost the use of his legs may be denied a varsity football scholarship on the basis of the student's inability to play football. However, a student who has a hearing-impairment could not, on the basis of disability, be denied a scholarship for the diving team; the student with a hearing-impairment could only be denied the scholarship on the basis of comparative diving ability.

143.60 Student Employment

Each campus, each Laboratory, the Office of the President, and the Division of Agriculture and Natural Resources may not employ University students in a manner that

would violate Section 144.00 of these *Guidelines*.

When assisting outside agencies, organizations, or persons in providing employment opportunities for University students, campuses should assure themselves that such opportunities, as a whole, are available in a manner that would not violate Section 144.00 of these *Guidelines*.

143.70 Physical Education, Athletics, and Similar Activities

In providing physical education courses and athletics, and similar programs, services, and activities, campuses may not discriminate on the basis of disability. Qualified students or participants with disabilities in University programs, services, or activities should be provided with an equal opportunity to participate in physical education courses, intercollegiate, club, and intramural athletics or similar activities whether as part of the required curriculum or as an extracurricular activity. For example, a student who uses a wheelchair should not be denied the opportunity to enroll in a regular archery course, nor should a student who has a speech impairment be excluded from participating in a wrestling course.

Students with disabilities who cannot participate in regularly offered physical education courses or who cannot compete in athletic programs may be offered separate physical education and athletic activities designed to accommodate students with disabilities.

However, students with disabilities must be offered the opportunity to participate in regular physical education or athletic activities, in the most integrated setting possible, even if separate physical education or athletic programs for students with disabilities are offered.

143.80 Counseling and Placement Services

Personal, academic, or career counseling, guidance, and placement services should be provided without discrimination on the basis of disability.

Campuses should ensure that qualified students with disabilities are not counseled toward more restrictive career objectives than are non-disabled students with similar interests and abilities. This does not preclude providing factual information about licensing and certification requirements that may present obstacles to individuals with disabilities in their pursuit of particular careers.

143.90 Social Organizations

Before providing any significant assistance, such as financial support, use of University facilities, or official University recognition or affiliation, including, but not limited to, fraternities, sororities, or similar organizations, campuses shall assure themselves that these organizations do not permit discrimination that is otherwise prohibited by these *Guidelines*.

144.00 EMPLOYMENT PRACTICES

The University may not discriminate against any qualified individual with a disability, on the basis of disability, in employment under any program, service, or activity, including any program, service, or activity that employs students with disabilities. Information concerning the University's employment policies as they apply to individuals with

disabilities may be obtained from campus personnel offices or ADA/Section 504 Compliance Officers.

145.00 PROGRAM ACCESSIBILITY

No qualified individual with a disability shall be denied, on the basis of that disability, the benefits of, be excluded from participation in, or otherwise be subjected to discrimination under any of the University's programs, services, or activities because University facilities are inaccessible to, or unusable by, individuals with disabilities. The University must make its programs, services, and activities accessible to and usable by any qualified individual with a disability, unless doing so would result in a fundamental alteration to the nature of its programs, services, and activities, or would result in undue financial and administrative burdens.

145.10 Existing Facilities

Each program, service, or activity shall be operated so that, when viewed in its entirety, it is readily accessible to and usable by individuals with disabilities, except where to do so would result in a fundamental alteration in the nature of the program, service, or activity or in undue financial and administrative burdens. This requirement does not mean that each facility, or every part of each facility must be accessible to and usable by individuals with disabilities. Accessibility may be achieved through other means such as:

- a. Redesign of equipment;
- b. Reassignment of classes or other services to accessible buildings;
- c. Assignment of aides to beneficiaries;
- d. Home visits;
- e. Delivery of health, welfare, or other social services at alternate accessible sites;
- f. Use of accessible rolling stock or other conveyances (e.g., buses, shuttles, vans); or
- g. Alteration of existing facilities, including changes, additions, or modifications in construction or occupancy. Alterations of existing facilities will be implemented only when administrative solutions are either not feasible or not preferable and when there is no other way to make a program accessible. Neither a totally barrier-free environment, nor the removal of all architectural barriers in existing facilities is required. Regarding the methods selected, priority should be given to those that offer programs, services, and activities to individuals with disabilities in the most integrated setting appropriate to the individual's needs and to encourage, as appropriate, interaction among all users, including individuals with disabilities.

If sufficient relocation of classes is not possible using existing facilities, alterations to ensure program accessibility should be made. Students with disabilities may not be excluded from a specifically requested course offering because it is not offered in an accessible location, but every section of that course need not be made accessible.

Buildings leased by the University are not necessarily required to meet accessibility standards because they are not owned by the University. However, such buildings are

subject to the program accessibility requirements stated above. If a leased building is altered, such alterations shall be constructed in compliance with applicable Federal and State accessibility standards.

145.20 New Construction

145.21 New Facilities

All new facilities constructed by, on behalf of, or for the use of the University shall be designed and constructed so that the facilities are readily accessible to and usable by individuals with disabilities. New construction shall be planned and constructed according to all applicable Federal accessibility regulations and State building codes.

145.22 Altered or Remodeled Facilities

Each facility or part of a facility constructed or altered by, on behalf of, or for the use of the University shall be designed, constructed, or altered to be readily accessible to, and usable by, individuals with disabilities. Altered or remodeled facilities shall be planned and constructed according to all applicable Federal accessibility regulations and State building codes.

145.30 Transportation

Campus/laboratory transportation systems and services shall comply with applicable Federal and State accessibility laws.

146.00 HEALTH, WELFARE, AND OTHER SOCIAL SERVICES AND BENEFITS

Health care providers have the responsibility and authority to determine the nature and extent of medically necessary care and treatment for their patients. Subject to the foregoing, in providing health, welfare, or other social services or benefits, the University's hospitals, medical clinics, or other health-related programs may not, on the basis of disability:

- a. Deny a qualified individual with a disability such benefits or services;
- b. Afford a qualified individual with a disability an opportunity to receive benefits or services that are not equal to those offered to individuals who do not have a disability;
- c. Provide a qualified individual with a disability with benefits or services that are not as effective as those provided to others (see Section 142.00 of these *Guidelines*);
- d. Provide benefits or services that limit or have the effect of limiting participation of qualified individuals with disabilities; or
- e. Provide different or separate benefits and services to individuals with disabilities, except when necessary to provide qualified individuals with disabilities with benefits and services as effective as those provided to others.

This Section does not require specialized hospitals and other health care providers to treat all individuals with disabilities. For example, a burn treatment center need not provide other types of medical treatment to individuals with disabilities unless it provides

such medical services to individuals who do not have a disability. It could not, however, refuse to treat the burns of a person who is deaf because of his or her deafness.

Special programs, services, or activities for individuals with disabilities or classes of individuals with disabilities are permitted.

146.10 Notice

Any notice concerning benefits or services or written material concerning waivers of rights or consent to treatment shall ensure that qualified individuals with disabilities, including those with impaired sensory or speaking skills, are not denied effective notice because of their disability.

146.20 Emergency Treatment for Hearing-Impaired Persons

A procedure shall be established for effective communication with persons who are deaf or hard of hearing for the purpose of providing emergency health care. For example, a hospital may fulfill this responsibility by providing either full-time interpreters or interpreters on call, both within and outside the institution, and paper and pencils for written communications.

146.30 Auxiliary Support Services and Devices

Appropriate auxiliary support services and devices shall be provided to individuals with disabilities, when necessary, to afford them an equal opportunity to benefit from services offered by University hospitals, medical clinics, or health-related programs.

Auxiliary support services and devices may include, for example, brailled and taped material, and interpreters. In providing any type of auxiliary support services and devices, the University may require that individuals comply with campus rules regulating requests for and proper use of auxiliary support services and devices.

146.40 Drug and Alcohol Addiction

University hospitals, medical clinics, or health-related programs may not discriminate in admission or treatment against a person with a medical condition, because of the person's drug or alcohol abuse or alcoholism, although University health care providers have the responsibility and authority to determine the nature and extent of medically necessary care and treatment for their patients. This does not require that all facilities must treat drug addiction and alcoholism. For example, a cancer clinic may not refuse to treat a cancer patient because he or she is also an alcoholic. If the patient's primary problem is drug addiction or alcoholism, the clinic may refer him or her to a more appropriate facility.

146.50 Education of Persons Admitted to University Medical Facilities

Campuses should ensure that qualified individuals with disabilities, present in University medical facilities as a result of their disability and who qualify for public preschool, elementary, secondary, or adult educational services, are provided with access to these educational services for the period of their stay. For example, a campus hospital that admits an individual with a disability who qualifies for a free public elementary school education should ensure that appropriate elementary school officials are notified of the individual's presence and should provide access to these school officials, as medically

appropriate, so that they may provide an "appropriate education" as defined in Subpart D of the Federal regulations implementing Section 504 of the Rehabilitation Act of 1973 (34 CFR Part 104).

147.00 VOLUNTARY ACTION

Each campus, each Laboratory, the Office of the President, and the Division of Agriculture and Natural Resources may take voluntary steps to overcome the effects of conditions that resulted in limited participation by qualified individuals with disabilities in its programs, services, or activities.

148.00 NOTIFICATION AND PUBLICATION REQUIREMENTS

148.10 Content of Publication

The implementing regulations of the Rehabilitation Act of 1973 require that students, beneficiaries, and applicants be informed that the University does not discriminate on the basis of disability. In addition, the Americans with Disabilities Act requires that applicants, participants, beneficiaries, and other interested persons be informed that the University does not discriminate against qualified individuals with disabilities on the basis of disability. It is the purpose of these *Guidelines* to apprise all such persons of those provisions.

148.20 Designation of Compliance Officer

Each campus, each Laboratory, the Office of the President, and the Division of Agriculture and Natural Resources shall designate at least one employee to coordinate compliance with the applicable sections of the Rehabilitation Act of 1973 and the Americans with Disabilities Act, including investigation of grievances and handling of inquiries.

148.30 Compliance Statement

The compliance statement should read:

As required by applicable laws and regulations, the University of California does not discriminate on the basis of disability in admission or access to, or treatment in, the programs, services, and activities which it operates. Compliance statements should include the *Nondiscrimination Policy Statement for University of California Publications Regarding Student-Related Matters* found in Appendix C, which includes nondiscrimination on the basis of disability. Inquiries concerning these laws and regulations should be directed to (name, title, and telephone number of responsible University official).

The individual named in the compliance statement should be the person designated by each campus, each Laboratory, the Office of the President or the Division of Agriculture and Natural Resources to coordinate compliance with applicable sections of the Rehabilitation Act of 1973 and with the Americans with Disabilities Act (see Section 148.20)

148.40 Frequency of Publication

The compliance statement should be included on a continuing basis in recruitment

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materials and publications containing general information that are made available to students, beneficiaries, applicants, or program participants.

148.50 Medium of Publication

Methods used for notification may include the posting of notices, publication in newspapers and magazines, placement of notices in official campus/laboratory publications, and distribution of memoranda or other written communications. Such notices should be available in accessible formats, which may include braille or taped formats.

149.00 GRIEVANCE PROCEDURES

Each Campus has established grievance procedures for students to deal with complaints and allegations of noncompliance with these *Guidelines*. Information concerning the University's grievance procedures as they apply to individuals with disabilities may be obtained from campus ADA/Section 504 Compliance Officers.

IV. COMPLIANCE/RESPONSIBILITIES

Chancellors shall adopt campus implementing regulations consistent with these *Policies*. The University shall publish these *Policies* and make them widely available, and Chancellors shall do the same with respect to the implementing regulations for their campuses. This requirement may be satisfied through the on-line publication of these *Policies* and their respective campus implementing regulations. (See also Section 13.20 of these *Policies*.)

V. PROCEDURES

The President shall consult as appropriate with Chancellors, Vice Presidents, the Office of the General Counsel, and Universitywide advisory committees prior to amending these *Policies*. Chancellors shall consult with faculty, students, and staff prior to submitting to the President any campus recommendations related to proposed amendments to these *Policies*. Amendments that are specifically mandated by law, however, do not require consultation with campus representatives or Universitywide advisory committees to the extent that legal requirements do not permit such consultation. (See also Section 13.10 of these *Policies*.)

Chancellors shall consult with students (including student governments), faculty, and staff in the development or revision of campus implementing regulations except when the development or revision of such regulations results from changes to these *Policies* that have been specifically mandated by law. Campuses shall specify procedures, including consultation processes, by which campus implementing regulations may be developed or revised. (See also Section 13.30 of these *Policies*.)

Prior to their adoption, all proposed campus implementing regulations, including all substantive modifications to existing such regulations, shall be submitted to the Office of the President for review, in consultation with the Office of the General Counsel, for consistency with these *Policies* and the law. (See also Section 13.40 of these *Policies*.)

VI. RELATED INFORMATION

See also *Policies Applying to Campus Activities, Organizations and Students* sections:

- 10.00 [Preamble and General Provisions](#)
- 11.00 [Authority](#)
- 12.00 [Applicability](#)
- 13.00 [Development and Review of Universitywide Policies and Campus Implementing Regulations](#)
- 14.00 [Definitions](#)

VII. FREQUENTLY ASKED QUESTIONS

Not applicable.

VIII. REVISION HISTORY

December 4, 2020: Updated Responsible Officer/Office. This Policy was also remediated to meet Web Content Accessibility Guidelines (WCAG) 2.0.

June 1, 2012: Reformatted into the standard University of California policy template

August 15, 1994: Revised

October 31, 1983: Revised


July 21, 1978: Revised

Effective January 3, 1979

October 29, 1973: Revised

September 1, 1970: Original issuance

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Prohibited Disability Harassment

[OCR-00021]

Reminder of Responsibilities under Section 504 of the Rehabilitation Act of 1973 and Title II of the Americans with Disabilities Act:

UNITED STATES DEPARTMENT OF EDUCATION
WASHINGTON, D.C. 20202

July 25, 2000

Dear Colleague:

On behalf of the Office for Civil Rights (OCR) and the Office of Special Education and Rehabilitative Services (OSERS) in the U.S. Department of Education, we are writing to you about a vital issue that affects students in school - harassment based on disability. Our purpose in writing is to develop greater awareness of this issue, to remind interested persons of the legal and educational responsibilities that institutions have to prevent and

appropriately respond to disability harassment, and to suggest measures that school officials should take to address this very serious problem. This letter is not an exhaustive legal analysis. Rather, it is intended to provide a useful overview of the existing legal and educational principles related to this important issue.

Why Disability Harassment Is Such an Important Issue

Through a variety of sources, both OCR and OSERS have become aware of concerns about disability harassment in elementary and secondary schools and colleges and universities. In a series of conference calls with OSERS staff, for example, parents, disabled persons, and advocates for students with disabilities raised disability harassment as an issue that was very important to them. OCR's complaint workload has reflected a steady pace of allegations regarding this issue, while the number of court cases involving allegations of disability harassment has risen. OCR and OSERS recently conducted a joint focus group where we heard about the often devastating effects on students of disability harassment that ranged from abusive jokes, crude name-calling, threats, and bullying, to sexual and physical assault by teachers and other students.

We take these concerns very seriously. Disability harassment can have a profound impact on students, raise safety concerns, and erode efforts to ensure that students with disabilities have equal access to the myriad benefits that an education offers. Indeed, harassment can seriously interfere with the ability of students with disabilities to receive the education critical to their advancement. We are committed to doing all that we can to help prevent and respond to disability harassment and lessen the harm of any harassing conduct that has occurred. We seek your support in a joint effort to address this critical issue and to promote such efforts among educators who deal with students daily.

What Laws Apply to Disability Harassment

Schools, colleges, universities, and other educational institutions have a responsibility to ensure equal educational opportunities for all students, including students with disabilities. This responsibility is based on Section 504 of the Rehabilitation Act of 1973 (Section 504) and Title II of the Americans with Disabilities Act of 1990 (Title II), which are enforced by OCR. Section 504 covers all schools, school districts, and colleges and universities receiving federal funds.¹ Title II covers all state and local entities, including school districts and public institutions of higher education, whether or not they receive federal funds.² Disability harassment is a form of discrimination prohibited by Section 504 and Title II.³ Both Section 504 and Title II provide parents and students with grievance procedures and due process remedies at the local level. Individuals and organizations also may file complaints with OCR.

States and school districts also have a responsibility under Section 504, Title II, and the Individuals with Disabilities Education Act (IDEA),⁴ which is enforced by OSERS, to ensure that a free appropriate public education (FAPE) is made available to eligible students with disabilities. Disability harassment may result in a denial of FAPE under these statutes. Parents may initiate administrative due process procedures under IDEA, Section 504, or Title II to address a denial of FAPE, including a denial that results from disability harassment. Individuals and organizations also may file complaints with OCR, alleging a denial of FAPE that results from disability harassment. In addition, an individual or organization may file a complaint alleging a violation of IDEA under separate procedures with the state educational agency.⁵ State compliance with IDEA, including compliance with FAPE requirements, is monitored by OSERS' Office of Special Education Programs (OSEP).

Harassing conduct also may violate state and local civil rights, child abuse, and criminal laws. Some of these laws may impose obligations on educational institutions to contact or coordinate with state or local agencies or police with respect to disability harassment in some cases; failure to follow appropriate procedures under these laws could result in action against an educational institution. Many states and educational institutions also have addressed disability harassment in their general anti-harassment policies.⁶

Disability Harassment May Deny a Student an Equal Opportunity to Education under Section 504 or Title II

Disability harassment under Section 504 and Title II is intimidation or abusive behavior toward a student based on disability that creates a hostile environment by interfering with or denying a student's participation in or receipt of benefits, services, or opportunities in the institution's program. Harassing conduct may take many forms, including verbal acts and name-calling, as well as nonverbal behavior, such as graphic and written statements, or conduct that is physically threatening, harmful, or humiliating.

When harassing conduct is sufficiently severe, persistent, or pervasive that it creates a hostile environment, it can violate a student's rights under the Section 504 and Title II regulations. A hostile environment may exist even if there are no tangible effects on the student where the harassment is serious enough to adversely affect the student's ability to participate in or benefit from the educational program. Examples of harassment that could create a hostile environment follow.

- Several students continually remark out loud to other students during class that a student with dyslexia is "retarded" or "deaf and dumb" and does not belong in the class; as a result, the harassed student has difficulty doing work in class and her grades decline.
- A student repeatedly places classroom furniture or other objects in the path of classmates who use wheelchairs, impeding the classmates' ability to enter the classroom.
- A teacher subjects a student to inappropriate physical restraint because of conduct related to his disability, with the result that the student tries to avoid school through increased absences.
- A school administrator repeatedly denies a student with a disability access to lunch, field trips, assemblies, and extracurricular activities as punishment for taking time off from school for required related to the student's disability.
- A professor repeatedly belittles and criticizes a student with a disability for using accommodations in class, with the result that the student is so discouraged that she has great difficulty performing in class and learning.
- Students continually hound or belittle a student with mental retardation by mocking and intimidating him so he does not participate in class.

When disability harassment limits or denies a student's ability to participate in or benefit from an educational institution's programs or activities, the institution must respond effectively. Where the institution learns that disability harassment may have occurred, the institution must investigate the incident(s) promptly and respond appropriately.

Disability Harassment Also May Deny a Free Appropriate Public Education

Disability harassment that adversely affects an elementary or secondary student's education may also be a denial of FAPE under the IDEA, as well as Section 504 and Title II. The IDEA was enacted to ensure that recipients of IDEA funds make available to students with disabilities the appropriate special education and related services that enable them to access and benefit from public education. The specific services to be provided a student with a disability are set forth in the student's individualized education program (IEP), which is developed by a team that includes the student's parents, teachers and, where appropriate, the student. Harassment of a student based on disability may decrease the student's ability to benefit from his or her education and amount to a denial of FAPE.

How to Prevent and Respond to Disability Harassment

Schools, school districts, colleges, and universities have a legal responsibility to prevent and respond to disability harassment. As a fundamental step, educational institutions must develop and disseminate an official policy statement prohibiting discrimination based on disability and must establish grievance procedures that can be used to address disability harassment.⁸ A clear policy serves a preventive purpose by notifying students and staff that disability harassment is unacceptable, violates federal law, and will result in disciplinary action. The responsibility to respond to disability harassment, when it does occur, includes taking prompt and effective action to end the harassment and prevent it from recurring and, where appropriate, remedying the effects on the student who was harassed.

The following measures are ways to both prevent and eliminate harassment:

- Creating a campus environment that is aware of disability concerns and sensitive to disability harassment; weaving these issues into the curriculum or programs outside the classroom.
- Encouraging parents, students, employees, and community members to discuss disability harassment and to report it when they become aware of it.
- Widely publicizing anti-harassment statements and procedures for handling discrimination complaints, because this information makes students and employees aware of what constitutes harassment, that such conduct is prohibited, that the institution will not tolerate such behavior, and that effective action, including disciplinary action, where appropriate, will be taken.
- Providing appropriate, up-to-date, and timely training for staff and students to recognize and handle potential harassment.
- Counseling both person(s) who have been harmed by harassment and person(s) who have been responsible for the harassment of others.
- Implementing monitoring programs to follow up on resolved issues of disability harassment.
- Regularly assessing and, as appropriate, modifying existing disability harassment policies and procedures for addressing the issue, to ensure effectiveness.

Technical Assistance Is Available

U.S. Secretary of Education Richard Riley has emphasized the importance of ensuring that schools are safe and free of harassment. Students can not learn in an atmosphere of fear, intimidation, or ridicule. For students with disabilities, harassment can inflict severe harm. Teachers and administrators must take emphatic action to ensure that these students are able to learn in an atmosphere free from harassment.

Disability harassment is preventable and can not be tolerated. Schools, colleges, and universities should address the issue of disability harassment, not just when but before incidents occur. As noted above, awareness can be an important element in preventing harassment in the first place.

The Department of Education is committed to working with schools, parents, disability advocacy organizations, and other interested parties to ensure that no student is ever subjected to such conduct, and that where such conduct occurs, prompt and effective action is taken. For more information, you may contact OCR or OSEP through 1-800-USA-LEARN or 1-800-437-0633 for TTY services. You also may directly contact one of the OCR enforcement offices listed on the enclosure or OSEP, by calling (202) 205-5507 or (202) 245-7488 for TTY services.

Thank you for your attention to this serious matter.

Norma V. Cantu,
Assistant Secretary for
Civil Rights

Judith E. Heumann,
 Assistant Secretary
 Office of Special Education
 and Rehabilitative Services

¹ Section 504 provides: "No otherwise qualified individual with a disability . . . shall, solely by reason of her or his disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance." 29 U.S.C. § 794(a). See 34 CFR Part 104 (Section 504 implementing regulations).

² Title II provides that "no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any such entity." 42 U.S.C. § 12132. See 28 CFR Part 35 (Title II implementing regulations).

³ The Department of Education's Office for Civil Rights (OCR) has issued policy guidance on discriminatory harassment based on race (see 59 Fed. Reg. 11448 (Mar. 10, 1994),) and sex (see 62 Fed. Reg. 12034 (Mar. 13, 1997),). These policies make clear that school personnel who understand their legal obligations to address harassment are in the best position to recognize and prevent harassment, and to lessen the harm to students if, despite their best efforts, harassment occurs. In addition, OCR recently collaborated with the National Association of Attorneys General (NAAG) to produce a guide to raise awareness of, and provide examples of effective practices for dealing with, hate crimes and harassment in schools, including harassment based on disability. See "Protecting Students from Harassment and Hate Crime: A Guide for Schools," U.S. Department of Education, Office for Civil Rights, and the National Association of Attorneys General (Jan. 1999) (OCR/NAAG Harassment Guide), Appendix A: Sample School Policies. The OCR/NAAG Harassment Guide may be accessed on the internet at www.ed.gov/offices/OCR/archives/Harassment/ (<http://www.ed.gov/offices/OCR/archives/Harassment/>). These documents are a good resource for understanding the general principle of discriminatory harassment. The policy guidance on sexual harassment will be clarified to explain how OCR's longstanding regulatory requirements continue to apply in this area in light of recent Supreme Court decisions addressing the sexual harassment of students.

⁴ 20 U.S.C. §1400 et seq.

⁵ 34 C.F.R. § 300.660 et seq.

⁶ For more information regarding the requirements of state and local laws, consult the OCR/NAAG Harassment Guide, cited in footnote 3 above.

⁷ Appropriate classroom discipline is permissible, generally, if it is of a type that is applied to all students or is consistent with the Individuals with Disabilities Education Act (IDEA) and Section 504, including the student's Individualized Education Program or Section 504 plan.

⁸ Section 504 (at 34 CFR § 104.7) and Title II (at 28 CFR § 35.107(a)) require that institutions have published internal policies and grievance procedures to address issues of discrimination on the basis of disability, which includes disability harassment. While there need not be separate grievance procedures designed specifically for disability harassment, the grievance procedures that are available must be effective in resolving problems of this nature.

Enclosure - list of OCR enforcement offices (<http://www2.ed.gov/about/offices/list/ocr/addresses.html>)

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- Engage Every Student (<https://www.ed.gov/ost?src=rn>)
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Role of Cal Intercollegiate Athletics (“Cal Athletics”) Coaches in Medical Care

Main Category: Sports Medicine

Sub Category: NCAA Compliance/Sports Medicine

Policy Name: Role of Cal Intercollegiate Athletics (“Cal Athletics”) Coaches in Medical Care

Rationale: This policy is written to prevent interference in medical care of Cal intercollegiate student-athletes and to ensure that Cal complies with NCAA Bylaws related to medical care autonomy. This policy clearly delineates the role of medical staff and coaches in sports medicine care and medical decisions, and ensures that medical decisions are not influenced by those without medical training, appropriate expertise, and/or the authority to make those decisions. The policy provides specific guidance and examples of how these interactions must occur. With proper training and administrative structure, along with clearly delineated roles for sports medicine staff, coaches and administration, this policy supports their collaborative work to ensure the health and safety of student athletes.

Effective Date: June 14, 2016

Last Revision: N/A

Applies To: All Cal Intercollegiate Athletics Staff (employees, volunteers/affiliates, student workers, etc.)

Responsible Party: Sports Medicine, Athletics

Policy Owner: Sports Medicine, Athletics

POLICY SUMMARY

In response to new NCAA legislation related to the medical care of student athletes, Cal Athletics has created this Policy.

This Policy will specify the reasons for and details of the independent nature of the medical care provided to Cal's Student Athletes.

Violations of applicable portions of this policy will be reported to the supervisor and other key campus officials up to and including the Chancellor's Office and Faculty Athletic Representative.

Cal Athletics, together with University Health Service ("UHS") of UC Berkeley, provide a structure of independent medical care via the collaborative Cal Sports Medicine Program. Cal Athletics hereby affirms the unchallengeable autonomous authority of primary athletics health care providers (team physicians and athletic trainers) to determine medical management and return-to-play decisions related to Student Athletes (pursuant to NCAA Bylaw 3.2.4.1.7, Independent Medical Care)

Additionally, the Cal Sports Medicine Program has an administrative structure that ensures that no coach serves as the primary supervisor for any medical provider, nor has hiring, retention, and/or dismissal authority over that provider. (pursuant to NCAA Bylaw 3.2.4.1.7, Independent Medical Care). It should also be noted that all athletic trainers, team physicians and other health care providers have a reporting line to the Head Team Physician and UHS Medical Director on all medical matters and are considered UHS or joint UHS/Cal Athletics employees in the Cal Sports Medicine Program for their provision of medical care to Student Athletes.

The display of any disrespectful, intimidating, or coercive language or behavior directed at any member of UHS/Cal Athletics Medical Staff (athletic trainer, physician, or other ancillary UHS/Cal Athletics healthcare provider) regarding the withholding of Student Athletes from practice or competition and/or return-to-play decisions is a direct violation of this Cal Athletics departmental policy. Such action, or any other action in violation of this Policy, may subject the person acting in this fashion to immediate disciplinary action, up to and including termination.

POLICY

UHS/Cal Athletics Medical Staff aspires to:

- Utilize coaches' sporting expertise to help gather information on an injury and once initial rehabilitation progress is sufficient to warrant return to activity, build an appropriate return to sport-specific activity plan
- Get feedback from coaches on their Student Athletes and the coaches' view of any injury.
- Communicate diagnoses and treatment plans to Student Athletes, and when appropriate and allowable, coaches.

Appropriate roles for coaches in relation to the medical care of their Student Athletes:

- Refer Student-Athletes to the UHS/Cal Athletics medical staff for assessment and treatment of medically-related concerns/issues.
- Share their concerns or their thoughts on the Student Athlete with the medical staff in advance of appointments, and at any time afterwards, DIRECTLY to the medical staff
- Ask appropriate questions in a professional and appropriate/civil manner.
- Follow all recommendation of the medical staff.
- Support and encourage the treatment plan that is provided by the health care team (medical doctor, sports dietitian, and/or athletic trainer/other).
- Recognize and support the role of UHS/Cal Athletics Medical Staff by acknowledging their unchallengeable autonomy and authority as final decision makers on medical and return-to-play decisions, as well as matters relating to the safety of any workout, drill, competition, or physical activity. (Examples include: (a)suspension or cancellation of a workout or drill due to things like weather, general design or safety concerns; (b) removing a Student Athlete from any participation if it is seen as unsafe, etc.).

INAPPROPRIATE roles for coaches in relation to the medical care of their Student Athletes and actions that would constitute a violation of this Policy:

- Diagnose medical issues/disorders.
- Treat medical issues/disorders or perform any medical service themselves. This can include hands on treatment/care or interference with active treatment or care.
- Prescribe or recommend individual treatment plans, medications or services ("you need ART" or "you need laboratory tests" or "you need to see a chiropractor" or "you need a prescription medication" or "you need IV fluids" or "go tell the doctor you need...").
- Recommend diagnostics testing studies be done, or not be done ("go get an MRI or X-Ray" or "Don't get an MRI").
- Substitute their own advice regarding medical issues for that of a UHS/Cal Athletics Medical Staff Member.
- Interfere in emergency medical decisions/processes to active EMS (911), interfere in the use of emergency medical equipment, or interfere in the immobilization of a student athlete in an emergency health situation (examples include attempting to move a Student Athlete while being immobilized by medical staff).

Role of Cal Intercollegiate Athletics ("Cal Athletics") Coaches in Medical Care

- Refer to Health Care providers outside the Cal UHS/Cal Athletics approved, credentialed medical staff (or the threat to hire/consult Health Care providers outside of Cal UHS/Cal Athletics approved providers)
- Disregard restrictions placed on Student Athletes' participation by medical staff (examples include ignoring return-to-play decisions that have been communicated, or putting a Student-Athlete back in to a practice/competition when medical staff has not cleared the student to return to play).
- Use any form of intimidation of medical staff around their medical decisions (playing status, clearance), including inappropriate language. (examples might include yelling, cursing, threatening their employment status in any way)
- Discourage in any way a Student Athlete from seeking medical care, including attempting to hide an injury, or encouraging a student to do so. Coaches should ensure that any known injury is fully evaluated by medical personnel.
- Criticism of medical staff decisions to Student Athletes or other staff directly, with or without the attempt to have a Student Athlete avoid reporting, treating or caring for any injury or illness.

Duty to Report

Those who feel they may have witnessed a violation of this Policy should report it to their supervisor and/or the UHS Medical Director, Head Team Physician or Athletic Director (or designee). Pursuant to NCAA Bylaw 2.8 (The Principle of Rule Compliance) and other NCAA regulations, *failure to report* a coach or staff member for violations of NCAA or Cal Athletics Policy (examples here might include Bylaw 3.2.4.17 Concussion Management Plan, and NCAA Bylaw 3.2.4.17, Independent Medical Care) *may constitute a violation of NCAA and/or Cal Athletics Policy.*

Medical Staff roles in the health care delivery include:

- Pursuant to NCAA Bylaw 3.2.4.16, Cal Athletics must designate a team physician. In this case, UHS will employ the team physician and this position will be supervised by the UHS Medical Director. Per NCAA rule, the team physician is authorized to oversee the medical services for injuries and illnesses incidental to a Student Athlete's participation in intercollegiate athletics. Additionally, pursuant to NCAA Bylaw 3.2.4.17, the Head Team Physician at Cal is designated the director of medical services to oversee Cal's athletic health care administration and delivery, assisted by the Associate Director of Athletics for Performance, Health and Welfare and the Head Athletic Trainer (or designee).
- The other health care providers in the UHS/Cal Athletics Medical Staff operate at the direction of the Head Team Physician, and the instructions and protocols of the Head Team Physician. Instructions from the medical staff must be followed whether delivered by the Head Team Physician or any of his/her designees (including other Associate Team Physicians, Athletic Trainers or other members of the UHS/Cal Athletics Medical Staff).

Role of Cal Intercollegiate Athletics ("Cal Athletics") Coaches in Medical Care

- UHS/Cal Athletics Medical Staff, via delegated staff, make decisions related to hiring, retention, or dismissal of any UHS/Cal Athletics Medical Staff Member. Before any UHS/Cal Athletics Staff Member can be hired or terminated, a representative from both UHS and Cal Athletics must be consulted (including team physicians, athletic trainers, and other UHS/Cal Athletics Medical Staff). Any disagreement on employment status will be referred to the Director of Cal Athletics (or designee) and UHS Medical Director (or designee) for joint resolution. (pursuant to NCAA Bylaw 3.2.4.1.7, Independent Medical Care).
- Some duties in medical care may be delegated by the Head Team Physician to other UHS/Cal Athletics medical staff and coaching staff members, as appropriate. Examples include:
 - Review of workout design is appropriately delegated to Strength & Conditioning Coaches/Sport Coaches unless it is nontraditional, off site, or atypical. In any of the latter circumstances, it may be reviewed and approved by the Head Team Physician, Head Strength & Conditioning Coach and/or Head Athletic Trainer. Additional individual restrictions may be issued by the UHS/Cal Athletics Medical Staff to any workout for a Student Athlete with specific conditions (Sickle Cell Trait, as an example).
 - Safety when no medical staff is present or when a coaching decision is appropriate is delegated to coaches, for example:
 - EMS activation, Emergency Action Plan, CPR/First Aid/AED use as trained and when no medical staff is on site
 - Concussion, must follow coaches role as delineated in NCAA Bylaws and Cal Concussion Management Protocols
 - Weather safety and other environmental conditions
 - Other areas as defined and communicated by the Head Team Physician (or designee), Head Athletic Trainer (or designee)

Failure to follow the above may:

- Create confusion on treatment plans and medical authority that requires medical staff to openly overrule or contradict statements/recommendations by a coach.
- Result in disciplinary action by U.C. Berkeley (see "Possible Sanctions").
- Expose an individual coach or employee and the university to general and possible criminal legal action

Role of Cal Intercollegiate Athletics ("Cal Athletics") Coaches in Medical Care

Possible Sanctions:

Conduct in alleged violation of this Policy may result in a campus and/or NCAA-led investigation.

Disregard for the health & safety of a Student Athlete, in the form of ignoring medical instruction in any way, or other disregarding the appropriate role of coaches in medical care may result in the following sanctions (egregious action may require moving immediately to steps 2 or 3)

1. Letter of Concern/Warning may be issued by IIR, at minimum, in addition to other IIR available sanctions.
2. Possible Suspension, with or without pay, may be issued, in addition to other HR available sanctions.
3. Up to and including possible dismissal, in addition to other HR available sanctions.

Possible violations of this policy will be documented and copied to any/all of the following (along with any corresponding investigation and/or findings):

- Director of Athletics
- Faculty Athletic Representative
- Sport Administrators of involved sport coach
- Medical Director, LHS
- Chancellor's Office
- Legal Counsel and/or Risk Management

References:

UC Berkeley Workplace Violence Prevention Policy:

<http://campuspol.chance.berkeley.edu/policies/workplaceviolence.pdf>

University of California, Berkeley Policy on Respect and Civility in the Campus Community: <http://students.berkeley.edu/uga/respect.stm>

NCAA Manual 2015-16:

<http://www.ncaapublications.com/productdownloads/D116.pdf>

3.2.4.16 Designation of Team Physician

An active member institution shall designate a team physician for all or each of its intercollegiate teams. The team physician shall be a doctor of medicine (MD) or doctor of osteopathic medicine (DO) with a current license in good standing to practice medicine in the state in which the institution is located. The team physician shall be authorized to oversee the medical services for injuries and illnesses incidental to a student-athlete's participation in intercollegiate athletics. (Adopted: 1/18/14 effective 8/1/14)

3.2.4.17 Independent Medical Care, NCAA New Bylaw and Rationale, Effective August 1, 2016: (Effective Date: August 1, 2016)

An active member institution shall establish an administrative structure that provides independent medical care and affirms the unchallengeable autonomous authority of primary athletic health care providers (team physicians and athletic trainers) to determine medical management and return-to-play decisions related to student-athletes. An active institution shall designate a director of medical services to oversee the institution's athletic health care administration and delivery. (Adopted: 1/15/16 effective 8/1/16)

Rationale: The NCAA Principle of Health and Safety makes it the responsibility of institutions to protect the health of, and provide a safe environment for its student-athletes. As a continuum of Inter-Association Consensus: Independent Medical Care for College Student-Athlete Guidelines, this proposal supports this principle and requires further administrative controls in the delivery of integrated sports medicine and athletic training services. Specifically, this proposal addresses the issue of medical providers at institutions having unchallengeable autonomous authority to determine medical management and return-to-play decisions of student-athletes. Further, the administrative structure should ensure that no coach serve as the primary supervisor for any medical provider, nor have hiring, retention, and dismissal authority over that provider. Current legislation gives some authority to the sports medicine staff member to be empowered to have the unchallengeable authority to cancel or modify workouts for health and safety reasons, but it does not address medical management of student-athletes. This is an issue facing institutions that directly impacts the health and well-being of student-athletes and this proposal will help ensure that appropriate medical care controls and authority exists.

University of California, Berkeley
Policy Issued: May 18, 2016
Effective Date: May 18, 2016
Supersedes: None, New Policy
Next Review Date: May 18, 2021



Workplace Bullying Prevention

Responsible Executive: Vice Chancellor – Administration & Finance

Responsible Office: Central Human Resources

Contact: Jeannine Raymond, Assistant Vice Chancellor, Human Resources
510-642-9022
askeru@berkeley.edu (non-represented staff)
labrel@berkeley.edu (represented staff)

I. POLICY SUMMARY

The University of California, Berkeley is committed to promoting and maintaining a healthy working, learning, and social environment where every individual is treated with civility and respect. Bullying behavior will not be tolerated in the University of California, Berkeley workplace. The University strongly encourages anyone who is a victim of bullying behavior, or anyone who observes such behavior, to promptly report it to any manager or supervisor or Central Human Resources. Retaliation against individuals who report bullying also is prohibited.

The University will respond promptly and effectively to reports of bullying and will take appropriate action to prevent, correct, and discipline behavior that violates this policy.

II. POLICY SCOPE

This policy applies to non-represented staff, including undergraduate student-employees, and represented staff in the Clerical Unit, Health Care Professional Unit, Registered Nurses Unit, Patient Care Technical Unit, Printing Trades Unit, Research Support Professional Unit, Service Unit, Skilled Crafts Unit, Student Health Physicians' Unit, and Technical Unit are responsible for complying with this policy in the workplace, at University-sponsored events, and in connection with work-related travel.

UNIVERSITY OF CALIFORNIA, BERKELEY
Policy on Workplace Bullying Prevention

III. POLICY STATEMENT

A. Prohibited Conduct

Bullying is a pattern of **repeated behavior** that a **reasonable person** would find hostile, offensive, and unrelated to the University's legitimate business interests. Bullying behavior may take many forms including physical, verbal, or written acts or behaviors. Workplace bullying often involves an abuse or misuse of power. A single physical, verbal, or written act or behavior generally will *not* constitute bullying unless especially severe and egregious.

Examples of bullying may include:

- persistent or egregious use of abusive, insulting, or offensive language directed at an employee;
- spreading misinformation or malicious rumors;
- behavior or language that frightens, humiliates, belittles, or degrades, including criticism or feedback that is delivered with yelling, screaming, threats, or insults;
- making repeated inappropriate comments about a person's appearance, lifestyle, family, or culture;
- regularly teasing or making someone the brunt of pranks or practical jokes;
- interfering with a person's personal property or work equipment;
- circulating inappropriate or embarrassing photos or videos via e-mail or social media;
- unwarranted physical contact; or
- purposefully excluding, isolating, or marginalizing a person from normal work activities.

B. Bullying vs. Supervision

It is important to distinguish between bullying behavior and appropriate workplace supervision. Reasonable supervisory actions, when carried out in an appropriate manner, include:

- providing performance appraisals;
- coaching or providing constructive feedback;
- monitoring or restricting access to sensitive information for legitimate business reasons;
- scheduling ongoing meetings to address performance issues;
- setting aggressive performance goals to help meet departmental goals;
- counseling or disciplining an employee for misconduct; and
- investigating alleged misconduct.

Differences of opinion, interpersonal conflicts, and occasional problems in working relations are an inevitable part of working life and do not necessarily constitute workplace bullying.

UNIVERSITY OF CALIFORNIA, BERKELEY
Policy on Workplace Bullying Prevention

C. Retaliation

This policy prohibits retaliation (e.g., threats, intimidation, reprisals, and adverse actions related to employment) against any person who reports bullying, assists someone with a report of bullying, or participates in an investigation or resolution of a bullying complaint. Reports of such retaliation will be addressed under the procedures described below.

D. Dissemination of this Policy

As part of the University's commitment to providing a working and learning environment free from bullying, this policy will be disseminated widely to the University community upon onboarding and through publications, websites, new employee orientations, and other appropriate channels of communication.

IV. PROCEDURES FOR REPORTING AND RESPONDING TO REPORTS OF BULLYING

A. Reporting Incidents of Bullying

All members of the University community are strongly encouraged to report conduct believed to constitute bullying under this policy to a manager, supervisor, or Central Human Resources. Managers and supervisors who observe bullying behavior or receive a report of bullying are required to address such behavior immediately and notify their HR Partner-Representative.

The University has distinct procedures for the investigation and resolution of complaints against staff, students, and faculty. Central Human Resources will refer reports of alleged bullying by faculty, academic appointees, and sworn members of the University of California Police Department to the appropriate office or grievance procedure for processing. Whether a complaint made against an undergraduate student-employee is processed under this policy depends on whether the conduct at issue arises out of their employment status or student status.

B. Resolution Options

Individuals making reports of bullying will be informed about options for resolving potential violations of this policy. These options may include facilitated early resolution or formal investigation.

The University will respond to reports of bullying brought anonymously or by third parties not directly involved in the complaint. However, the response to such reports may be limited if the report's allegations cannot be verified by independent facts. Anonymous reports may be made online or by calling the Ethics Point hotline at (800) 403-4744.

UNIVERSITY OF CALIFORNIA, BERKELEY
Policy on Workplace Bullying Prevention

C. Facilitated Early Resolution

The goal of early resolution is to resolve concerns at the earliest stage possible with the cooperation of all of the parties involved. The University encourages early resolution and will assist the parties in reaching a mutually agreeable resolution when the parties wish to resolve the situation collaboratively.

Early resolution may include a review of the facts, but typically does not include a formal investigation. Means for early resolution will be flexible and encompass a full range of possible appropriate outcomes.

Options for early resolution may include:

- obtaining an agreement between the parties;
- physically separating the parties;
- changing reporting lines;
- referring the parties to counseling and coaching programs;
- negotiating an agreement for personnel action;
- conducting targeted educational and training programs; and/or
- following up with the parties after a period of time to assure that the resolution has been implemented effectively.

While the University encourages early resolution, the University does not require that parties participate in early resolution prior to the University's decision to initiate a formal investigation. In some cases, Central Human Resources may determine that early resolution is inappropriate and may initiate a formal investigation instead.

D. Formal Investigation

In response to reports of bullying where early resolution is unsuccessful or inappropriate, the complainant may request a formal investigation. Central Human Resources may initiate a formal investigation after a preliminary review of the facts even in cases where the complainant has not requested one.

Formal investigation of reports of bullying will incorporate the following procedures:

1. The respondent will be advised of the relevant allegations in the complaint.
2. The investigation generally will include interviews with the parties if available, interviews with other witnesses as needed, and a review of relevant documents or other evidence as appropriate.
3. Disclosure of facts to parties and witnesses will be limited to what is reasonably necessary to conduct a fair and thorough investigation. Participants in an investigation may be advised to maintaining confidentiality when essential to protect the integrity of the investigation.
4. Upon request, the complainant and the respondent may each have a representative present when he or she is interviewed. Other witnesses may have a representative

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Policy on Workplace Bullying Prevention

present at the discretion of the investigator or as required by the applicable University policy or collective bargaining agreement.

5. At any time during the investigation, the investigator may recommend that the University provide interim protections or remedies for the complainant or witnesses. These protections or remedies may include separating the parties, placing limitations on contact between the parties, or making alternative work arrangements. Failure to comply with the terms of interim protections may be considered a separate violation of this policy.
6. Central Human Resources will make every effort to complete the investigation as quickly as possible. Generally, the investigation will be completed within 90 calendar days from the date the request for formal investigation was submitted.
7. Following the completion of the investigation, the investigator will prepare a written report that, at a minimum, includes a statement of the allegations and issues, the positions of the parties, a summary of the evidence, findings of fact, and a determination by the investigator as to whether the conduct at issue violated this policy. Central Human Resources will submit the report to the appropriate University official, and, in consultation with the appropriate manager or supervisor, determine and implement the actions necessary to resolve the complaint.
8. The complainant and the respondent will be informed when the investigation is completed and whether the complaint was substantiated. Actions taken to resolve the complaint, if any, that are directly related to the complainant, such as an order that the respondent not contact the complainant will be shared with the complainant. In accordance with University policies protecting individuals' privacy, the complainant may be notified generally that the matter has been referred for disciplinary action, but will not be informed of the details of the recommended disciplinary action without the respondent's consent.
9. The complainant and the respondent may request a copy of the investigative report pursuant to University policies governing privacy and access to personal information. In accordance with University policy, the report will be redacted to protect the privacy of personal and confidential information regarding all individuals other than the individual requesting the report.

E. Remedies

Findings of violations of this policy may be considered in determining remedies for individuals harmed by the bullying and will be referred to the appropriate manager. Violations may include engaging in bullying, retaliating against a complainant reporting bullying, or violating interim protections. Investigative reports made pursuant to this policy may be used as evidence in subsequent complaint or grievance resolution processes or disciplinary proceedings.

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V. OTHER CAMPUS RESOURCES

Ombuds Offices: These offices provide informal, impartial conflict resolution and problem-solving services regarding academic or work-related concerns. The Ombuds Offices are strictly confidential resources. Unless there is an imminent risk of serious harm, they will not disclose the identity of individuals who have used their services or information provided without express permission. In addition, these offices are not offices of record and are not offices for filing complaints. Communications with the Ombuds offices do not place the University on notice and individuals seeking to file complaints will be informed of appropriate University resources. In the interest of maintaining confidentiality, the Ombuds offices request that anyone seeking assistance contact the office by telephone only.

Staff Ombuds Office: 510-642-7823

Student Ombuds Office: 510-642-5754

Office for the Prevention of Harassment and Discrimination (OPHD): OPHD is responsible for ensuring the University provides an environment for faculty, staff and students that is free from discrimination and harassment on the basis of categories including race, color national origin, gender, age and sexual orientation/identity. OPHD also has the specific responsibility for providing prompt and effective responses to all complaints of sex discrimination or harassment for faculty, staff and students. In addition to serving as an investigation officer when a formal complaint of sexual harassment is filed, OPHD provides consultation to faculty administrators, directors, managers and supervisors, and graduate and undergraduate students for resolution strategies at the earliest possible levels.

(OPHD): 685 University Hall; 510-643-7985; ask_ophd@berkeley.edu

University Health Services (UHS): The two departments below provide assessment, consultation, and counseling in a confidential setting, and referrals regarding work and personal stress or emotional concerns that are interfering with an individual's ability to work in his or her professional or academic setting.

UHS: Tang Center, 2222 Bancroft Way

- *Employee Assistance for Faculty and Staff: 510-643-7754*
- *Social Services for Graduate and Undergraduate Students: 510-642-6074*

Staff Diversity Initiatives, Division of Equity & Inclusion: Staff Diversity Initiatives (SDI) is a unit of the Division of Equity & Inclusion that is charged with engaging staff and management to ensure staff diversity throughout the campus at all levels of employment and to foster an inclusive workplace environment with a welcoming climate.

SDI: 101 California Hall, #1508; (510) 642-5973; staffdiversity@berkeley.edu

Whistleblower Investigations, Office of Ethics, Risk and Compliance Services (OERCS):

The University of California has a responsibility to conduct its affairs ethically and in compliance with the law. Whistleblower investigations are conducted in response to reports of known or suspected improper governmental activity or retaliation against an employee for reporting suspected wrongdoing.

Whistleblower Investigations: Anonymous reports may be made online or by calling the Ethics Point hotline at (800) 403-1741

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VI. POLICY WEB ADDRESS

<http://campuspol.berkeley.edu/policies/bullying.pdf>

VII. GLOSSARY

Complainant: An individual who alleges they have been subjected to bullying.

Exclusively Represented Staff Member: A staff employee represented by a union.

Exclusively Represented Academic Appointee: An employee holding an academic title that is also represented by a union.

Legitimate Business Interests: An action that supports or is related to the University of California's missions of education, research, and public service.

Reasonable Person Test: The basis for determining whether the conduct at issue rises to the level of bullying is whether a reasonable person in the same or similar circumstances would find the conduct hostile, offensive, and unrelated to the University's legitimate business interests. Though the intention of the person responsible for the conduct may be considered, it is not determinative.

Respondent: An individual alleged to have violated this policy.

Workplace: For purposes of this policy, any location owned, leased, or rented by the Regents of the University of California on behalf of the University of California, Berkeley, or any location where a University employee is acting in the course and scope of employment. This includes, but is not limited to, buildings, grounds, and surrounding perimeters, including parking lots, field locations, classrooms, and residence halls. It also includes vehicles when those vehicles are used for University business.

VIII. RELATED DOCUMENTS AND POLICIES

- [University of California Statement of Ethical Values and Standards of Ethical Conduct](#)
- [University of California, Berkeley Principles of Community](#)
- [University of California Nondiscrimination and Affirmative Action Policy Regarding Academic and Staff Employment](#)
- [University of California Policy on Sexual Harassment and Sexual Violence](#)
- [University of California Whistleblower Policy \(Policy on Reporting and Investigating Allegations of Suspected Improper Governmental Activities\)](#)
- [University of California Whistleblower Protection Policy](#)
- [University of California Personnel Policies for Staff Members](#)
- [University of California Collective Bargaining Agreements](#)



7/26/2016

Guideline on	Guidance on Abusive Conduct and Bullying in the Workplace
Related Policy:	Discrimination and Harassment
Effective Date:	7/26/2016

Contact:	Abby Norris
Email:	Abigail.Norris@ucop.edu
Phone #:	(510) 987-0612

Please see attached President's letter and the Guidance on Staff Abusive Conduct and Bullying in the Workplace.



111 Franklin Street
 Oakland, California 94617-5210
 Phone: (510) 885-0074
 Fax: (510) 885-9006
<http://www.unipg.edu>

July 26, 2016

CHANCELLOES

LAWRENCE BERKELEY NATIONAL LABORATORY DIRECTOR
 MEDICAL CENTER CHIEF EXECUTIVE OFFICERS
 VICE PRESIDENT—AGRICULTURE AND NATURAL RESOURCES

Dear Colleagues:

While I consider the University of California to be a leader for its treatment of employees and for cultivating a positive working environment, I recognize the unfortunate reality that bullying and other abusive behaviors occur in every workplace. In my regular meetings and interactions with staff, Council of University of California Staff Assemblies (CUCSA) leadership and members of the CUCSA delegation, and the Staff Advisors to The Regents, finding ways to improve the working climate for staff has been a consistent theme. To help advance this important issue, I formed a working group to aid me in my development of Presidential Guidance with regard to abusive behavior and bullying of staff earlier this year. They have been hard at work over the past few months and recently submitted a report and recommendations to me on this matter. I am including their report as an attachment to this message.

I would like to make clear to you and to those at all of our locations that all UC community members are expected to behave in ways that support the University's Principles of Community and Regents Policy 1111 (Statement of Ethical Values and Standards of Ethical Conduct), which state that UC is committed to treating each member of the University community with respect and dignity. The University does not tolerate abusive conduct or bullying. Such behaviors are inconsistent with the values of the University and should be addressed directly and comprehensively, whereby staff at all levels found to be engaging in abusive conduct should be held accountable, and no member of the University community will be retaliated against for reporting bullying in good faith.

UC has a number of current policies that could be used to address bullying, but there is some confusion among employees about what bullying is and how to address it. Consistent with the recommendations, I would like to start by moving us towards a systemwide definition of bullying and abusive conduct. Fortunately, the State legislature helped lead the way on the formulation of such language and I believe it suits the purposes of the University, as well. Assembly Bill 2053, which requires training on the prevention of abusive conduct, defines abusive conduct as "conduct of an employer or employee in the

Chancellors et al.
July 26, 2016
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workplace, with malice, that a reasonable person would find hostile, offensive, and unrelated to an employer's legitimate business interests."

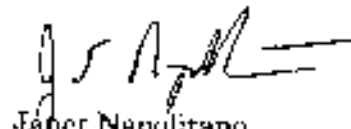
Abusive conduct may include repeated infliction of verbal abuse, such as the use of derogatory remarks, insults, and epithets, verbal or physical conduct that a reasonable person would find threatening, intimidating, or humiliating, or the gratuitous sabotage or undermining of a person's work performance. A single act shall not constitute abusive conduct, unless especially severe and egregious.

In addition to clarifying policies regarding bullying, I feel it is vitally important that we provide clear guidance about best practices with regard to bullying prevention, the identification of abusive conduct in the workplace, and the resources available to staff when such incidents arise. You will note that in the working group's report, these resources have been mapped, and it is crucial that these resources are accessible and visible to staff.

I ask that you ensure the attached Presidential Guidance is distributed broadly and that in your communication to the campuses, you not only highlight the efforts being undertaken systemwide, but also the specific campus-based resources available to your staff on this matter.

Please be in touch with Executive Vice President Rachael Nava or Vice President Dwaine Duckett if you have any questions or comments about this Presidential Guidance. Thank you for your commitment to address the important issue of abusive conduct and bullying of staff, and to cultivate a climate of collegiality and care that befits the University of California.

Yours very truly,



Janet Napolitano
President

Enclosures

cc: Executive Vice President Nava
Vice President Duckett

Guidance from the President Regarding Staff Abusive Conduct and Bullying **7/26/16**

The University of California is committed to providing a safe, supportive, responsive and equitable environment for all employees. The University strives to be a leader as an employer and to foster a positive working environment.

In furtherance of these goals and the University's anti-harassment and anti-discrimination policies, all UC community members are expected to behave in ways that support UC's [Principles of Community](#) and [Regents Policy 1111](#) (Statement of Ethical Values and Standards of Ethical Conduct), which states that UC is committed to treating each member of the University community with respect and dignity. Abusive conduct and bullying behaviors are inconsistent with the values of the University and should be addressed directly and comprehensively. The University does not tolerate abusive conduct or bullying. Regardless of circumstances or setting, staff at all levels found to be engaging in abusive conduct should be held accountable. No member of the University community will be retaliated against for reporting bullying in good faith. While UC has a number of current policies that could be used to address bullying, there is some confusion among employees about what bullying is and how to address it.

State legislation related to abusive conduct provides a helpful description of bullying. [Assembly Bill 2053](#), which requires training on the prevention of abusive conduct, defines abusive conduct as:

Conduct of an employer or employee in the workplace, with malice, that a reasonable person would find hostile, offensive, and unrelated to an employer's legitimate business interests.

Abusive conduct may include repeated infliction of verbal abuse, such as the use of derogatory remarks, insults, and epithets, verbal or physical conduct that a reasonable person would find threatening, intimidating, or humiliating, or the gratuitous sabotage or undermining of a person's work performance. A single act shall not constitute abusive conduct, unless especially severe and egregious.

Examples of abusive conduct may include:

- persistent or egregious use of abusive, insulting, or offensive language directed at an employee
- spreading misinformation or malicious rumors
- behavior or language that frightens, humiliates, belittles, or degrades, including criticism or feedback that is delivered with yelling, screaming, threats, or insults
- making repeated inappropriate comments about a person's appearance, lifestyle, family, or culture
- regularly inappropriately teasing or making someone the brunt of pranks or practical jokes
- inappropriately interfering with a person's personal property or work equipment
- circulating inappropriate or embarrassing photos or videos via e-mail or social media;
- unwarranted physical contact
- purposefully inappropriately excluding, isolating, or marginalizing a person from normal work activities

There is a difference between bullying and appropriate supervision. Examples of reasonable supervisory actions, when carried out in an appropriate manner, include:

- providing performance appraisals
- coaching or providing constructive feedback
- monitoring or restricting access to sensitive information for legitimate business reasons
- scheduling ongoing meetings to address performance issues
- setting aggressive performance goals to help meet departmental goals
- counseling or disciplining an employee for misconduct
- investigating alleged misconduct

Differences of opinion, interpersonal conflicts, and occasional problems in working relations are an inevitable part of working life and do not necessarily constitute workplace bullying. Moreover, this guidance is not intended to interfere

with employees' right to engage in protected, concerted activity under the Higher Education Employer-Employee Relations Act (HEERA).

People, if they experience abusive conduct or bullying, have a variety of resources they can go to, including but not limited to, local Human Resources and Ombuds or similar offices.

For more information on the above policy guidance you may contact your local human resources or Dianna Henderson, Director of HR Policy and Chief of Staff to the VP of HR at Dianna.henderson@ucop.edu.

UNIVERSITY
OF
CALIFORNIA

Report to the President

Abusive Conduct
Working Group

June 6, 2016

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I. EXECUTIVE SUMMARY

Statement

The University of California (UC) is committed to providing a safe, supportive, responsive and equitable environment for all employees. The University strives to be a leader as an employer and to foster a positive working environment. All faculty and staff members are expected to behave in ways that support UC's Principles of Community and Regents Policy 1111 (Statement of Ethical Values and Standards of Ethical Conduct), which states that UC is committed to treating each member of the University community with respect and dignity. Abusive conduct and bullying behaviors are inconsistent with the values of the University and should be addressed directly and comprehensively.

Background

On September 9, 2014, Governor Brown signed Assembly Bill (A.B.) 2053 into law, amending the Fair Employment and Housing Act to require that covered employers include training on the prevention of abusive conduct in their state-mandated sexual harassment prevention curriculum. A.B. 2053 is a training requirement only; it does not prohibit abusive conduct. The University is in compliance with this requirement, which took effect January 1, 2015.

Consistent with the intent of A.B. 2053 to reduce workplace bullying, there is interest across UC in issuing a statement or guidance specifically addressing this issue. Although UC currently has a number of policies that can be used to address abusive conduct when it occurs, there is no systemwide statement or policy prohibiting it, nor is there a consistent definition of what constitutes abusive conduct and how to most effectively address allegations of abusive conduct.

Working Group Process

The UC Abusive Conduct Working Group was established in response to a request from President Napolitano to Executive Vice President Nava in February 2016. The President charged the group with providing information and analysis that would aid in her development of Presidential Guidance on abusive conduct and bullying of staff. She requested that the group include appropriate University representation and engage in a consultative process that spans the ten campuses. Specifically, the President requested information and analysis related to definition of terms, scope, dispute resolution (formal and alternative), functional areas on campus best suited to manage these complaints and a close and thorough review of existing policies, including how they are currently communicated on campuses.

The working group met on six occasions between March and May 2016. The group divided into subgroups to examine current UC abusive conduct policies and processes and to identify best practices

and inconsistencies or gaps in these areas. In their analyses, the subgroups used information collected from all locations through surveys of online resources and interviews with Human Resources staff. These analyses are presented in Sections II-IV of this report. Sections V and VI describe best practices and recommendations that arose from subgroup discussions.

Summary and Recommendations

UC locations currently have many policies and other directives that address some forms of abusive conduct, particularly related to workplace violence. The only location with a proposed bullying-specific policy is UC Berkeley; the policy is expected to take effect in the next few weeks. Most locations stated that a clear, systemwide definition of bullying with examples of prohibited conduct would help both employees experiencing bullying and staff responsible for investigating bullying complaints. A few locations stated that existing policies and procedures are adequate for addressing complaints.

Practices to prevent and manage bullying situations vary across locations. Some locations focus on creating positive, collaborative work environments; others offer trainings for employees and managers on dispute resolution and other related topics. Due to differences in how bullying is interpreted and the complexity of some bullying situations, there are many approaches to resolution. Options for informal resolution include working with an Ombuds, HR, or employee assistance office. Depending on the circumstances, formal resolution procedures may include filing a grievance, PPSM-70 complaint, Title IX complaint, discrimination complaint, or harassment complaint. Although multiple avenues to resolution may be appropriate, the resources available to staff and the process for accessing them is often confusing.

As described more fully in Section V, the working group recommends issuing guidance that outlines UC's expectations for respectful behavior and productive work environments. The guidance could include such elements as:

- A statement that the University does not tolerate bullying and that staff found to be engaging in such behavior are expected to be held accountable through existing mechanisms;
- A reference to the definition of abusive conduct in A.B. 2053 and clear examples of abusive conduct;
- Recommendations that locations staff Ombuds offices appropriately, designate bullying "intake offices," create bullying-specific websites, and develop bullying prevention and training communication plans; and
- Descriptions of systemwide efforts to prevent bullying, including training and a systemwide website

II. EXISTING POLICIES AND PROCEDURES

UC Policies

All campuses have Principles of Community to guide appropriate behavior. Many locations also have policies focused on violence in the workplace or disruptive behavior, but they are not focused on bullying per se; UC Berkeley is the only UC location that has proposed a specific policy fully dedicated to bullying, entitled "Workplace Bullying Prevention." UC Irvine does not have a specific policy but addresses abusive conduct through its Labor and Employee Relations, Ombuds, Discrimination and Whistleblower offices. Other locations address some bullying behaviors through policies such as, "Disruptive Behavior in the Workplace," "Violence and Hate Incidents in the Workplace," "Workplace Violence Prevention," "Intimidating and Disruptive Behavior," and "Sustaining Community and Preventing Violence." Although several locations have policies or other resources that can be referenced when managing bullying, some only have policies that prohibit workplace violence. In most instances, bullying takes the form of offensive and disrespectful behavior rather than physical violence.

The working group focused on staff issues, but it is important to note that there are related policies that apply to faculty and students as well. The Faculty Code of Conduct (APM-015) (as approved by the Assembly of the Academic Senate and by the Regents) establishes the ethical and professional standards which University faculty are expected to observe. Students are expected to comply with the Student Code of Conduct. Faculty, staff and students in the UC community work together every day and abusive behavior can occur across these lines.

Definitions and Scope

Among the UC locations, UC Berkeley's proposed policy includes the clearest and most comprehensive definition of bullying. The policy provides concrete examples of bullying and defines the difference between bullying and supervision in order to reduce confusion and baseless accusations of misconduct. Other locations' policies address the broader spectrum of disruption or violence in the workplace and therefore include multiple definitions, such as bullying, domestic violence, intimidation, property damage, stalking, threats and violent behavior. UCLA Medical Center's Intimidating and Disruptive Behavior policy also includes guidelines that classify the severity of misconduct at Level 1 (physical abuse), Level 2 (verbal abuse), and Level 3 (indirect or at-large verbal abuse).

Some policies include a detailed list to clarify who is covered, such as staff, undergraduate-student workers, patients, visitors, volunteers, contractors, and physicians.

Procedures

All policies state that incidents that are considered an emergency should be immediately reported to campus security or 911. Most locations have multiple reporting options, depending upon the type and severity of the occurrence or on one's role in the organization. UC Berkeley's proposed policy and Davis' policy reference a hotline for anonymous reports. UC Davis also lists contact information for Student Judicial Affairs and Academic Personnel. UCLA established a Behavioral Intervention Team Coordinator who addresses prevention, emergence and resolution of issues. UC Irvine's Medical Center and UCLA Medical Center have committees that assist with the administrative response to incidents.

In several existing policies, resolution of issues includes corrective action procedures, such as warning, written apology, suspension or termination. The proposed UC Berkeley bullying policy provides a list of options for early resolution, including obtaining agreement between the parties, separating the parties, changing reporting lines, referring to counseling, taking personnel action, conducting training and following up to ensure resolution. In the event of potential danger or particularly disruptive conduct, the policies note that investigatory leave may be initiated so that relevant information can be gathered and an appropriate resolution or disciplinary action can be taken.

Workplace violence policies that integrate bullying as a definition are helpful, but the definitions are not robust and may differ from the definition used in A.B. 2053. In addition, the lack of examples of what is bullying and what is not can be confusing to staff and those who are trying to address the behavior. Procedures for intervention, early resolution, investigation and associated discipline or sanctions may also be lacking in existing workplace violence policies.

III. PREVENTION AND MANAGEMENT

Prevention

Positive, collaborative working environments were cited as a deterrent to abusive conduct. In addition to Principles of Community, several locations have values initiatives that describe the type of climate they expect employees to foster.

Locations also stated that training conducted by Human Resources, outside vendors, or the Ombuds Office helps prevent issues that may lead to bullying. Training for managers focused on good performance management practices and conflict resolution and training for staff focused on policy and process awareness were viewed as very helpful.

The systemwide training module on Sexual Violence and Sexual Harassment (SVSH) Prevention, available to staff on the systemwide Learning and Management System (LMS), includes a full module on bullying ("Avoiding Abusive Behavior"). The module defines abusive conduct, provides examples of it and discusses how it negatively impacts individuals and the organization. The training for supervisors provides additional details on supervisors' duties to respond to, report and prevent abusive conduct. There is no separate training specifically related to bullying available on LMS.

Dispute Resolution and Complaint Management

Locations' responses to bullying complaints can take many forms. This is often appropriate, as complaints may range in severity from situations where employees are unhappy with performance management to situations where employees are experiencing severe bullying combined with discrimination or harassment. For this reason, most locations have several entities that respond to abusive conduct complaints, including an employee's supervisor, Human Resources offices (generally Employee and Labor Relations divisions), Ombuds Offices, Title IX and Nondiscrimination offices, Whistleblower complaint hotlines, Behavioral Intervention Teams, University counsel and occasionally campus police forces.

The primary informal counseling options to address bullying complaints are employee supervisors; Ombuds and equivalent offices, which provide confidential and impartial conflict resolution; Employee and Labor Relations staff; and employee assistance programs, which offer confidential counseling, consultation and referral services for employees and managers.

Formal processes for complaint resolution include grievance procedures for represented employees and PPSM-70 complaints for staff, though some bullying complaints will not meet the eligibility requirements for complaint resolution through these mechanisms. Whistleblower complaints are referred to the appropriate office, generally Employee and Labor Relations, for investigation or intervention. Title IX and Nondiscrimination offices may also be involved in investigating formal complaints where appropriate.

Although there are currently many methods for addressing bullying behavior at UC locations, the resources available to staff are not always apparent; it seems that many employees are either unaware of these resources or unsure how to access them. Employees also may be reluctant to report abusive conduct for fear of retaliation.

In addition, information on whether counseling or discipline has worked to reduce incidents of abusive conduct is not readily available because such issues are normally considered to be confidential personnel matters.

IV. COMMUNICATION

The predominate methods that most locations use to communicate Abusive Conduct-related policies and procedures are email, websites/intranet, and new employee orientation (NEO). For example, UC Berkeley distributes CalMessage emails to applicable staff. The emails may be directed to designated staff, such as managers and supervisors, or distributed to all staff. That communication frequently includes links to websites or intranet sites that provide more detail regarding the policy and specific procedures to address issues. Campuses that conduct NEO use that time to review key policies, including those that are related to abusive conduct. Since NEO is sometimes conducted by the hiring department instead of Human Resources (HR) or another central office, it is difficult to gauge how well these policies are being communicated to new employees.

Ensuring that Abusive Conduct-related policies and procedures are communicated is the charge of the Human Resources departments on many UC campuses. In addition to the methods listed above, HR communicates policies through meeting with Business Partners (UC Riverside), HR Advisory Groups or Committees (UC Davis, UC Davis Medical Center, UCLA) that help to disseminate information to key constituents across campus. A small number of campuses distribute regular newsletters and use them to communicate new or revised policies (UC Davis, UC Davis Medical Center, UC Riverside).

Abusive conduct awareness and prevention have been included in supervisory trainings and webinars; Agriculture and Natural Resources often uses webinars since their employee population is widely-dispersed across the region. UC Berkeley and the Office of the President indicated that policies and procedures are communicated during the recruitment process via the offer letter. The most unique methods that were mentioned included UC San Francisco's compliance-oriented approach of having employees sign a notice that they are aware of the policy and UC Irvine Medical Center's engaging approach of integrating the policy into a values campaign that includes awards and training.

V. BEST PRACTICES

Policies, Guidance and Statements

Many locations cited having clear policies that include examples as a best practice. Most requested a systemwide or local policy, guidance, or statement with definitions. Several locations stated that bullying is becoming a "headline issue" for their organizations and noted that there should be alignment between a systemwide policy or statement and local policies. Some also suggested that bullying be included in newly created or existing Codes of Conduct.

There was hesitation about a systemwide policy among some locations – several medical centers and one campus location believe a policy or statement is unnecessary. One location noted that existing policies enable it to respond effectively, especially since situations vary and different resources may need to be used for each investigation. There is a concern that even with a policy, it can be difficult to hold faculty and high-ranking staff accountable; there may need to be another way to address these two groups.

Ombuds

Several locations stated that it is important to have an Ombuds or similar office to conduct training related to bullying and to assist with resolution of issues. UC Irvine's Ombuds Office was referenced as a good model of the services that Ombuds and similar offices can provide. Neutral, confidential third party assistance and advice was cited as an important option for employees dealing with abusive conduct situations.

Communication, Culture and Training

Three locations described communicating their values and associated behaviors as a best practice for addressing abusive conduct. UC Irvine Medical Center has the ARISE Values initiative, UCLA has the C-I-CARE initiative that promotes upgraded service and the UC Office of the President (UCOP) has its Principles of Community. A cultural commitment to a safe environment free from abusive conduct should be displayed through clear communication of expectations, policies and behaviors.

Several UC campuses have developed effective workshops and tools that describe bullying behaviors and how to manage them, including UC Irvine's Ombuds Office and UCLA's Behavior Intervention Team. UC Irvine has conducted trainings on conflict resolution and mediation as well.

Dispute Resolution and Complaint Management

Most locations were comfortable with the abilities of their Employee and Labor Relations offices to investigate complaints and utilize corrective action policies, although several stated that clear definitions to reference would make this process easier. One campus indicated that the structure of their HR office, which is more centralized than most, allows them to see across the whole campus and positions them to conduct early interventions and resolutions.

Locations have found it important to establish processes to monitor incidents of bullying in order to determine whether remedial actions have been effective. In addition, thorough and timely investigations benefit all parties involved in bullying complaints.

Several locations have experienced staff teams that work together effectively to address abusive conduct; UC Berkeley's Human Resources office works in tandem with the Ombuds Office and the

Office for the Prevention of Harassment and Discrimination, UCLA's Behavioral Intervention Team Coordinator pulls together multiple offices to address concerns and Lawrence Berkeley National Lab uses a Crisis Action Team in situations involving violent verbal or physical behavior.

VI. RECOMMENDED OPTIONS

To address locations' desire for clarity on what constitutes bullying behavior and how it should be addressed, the working group recommends issuing guidance that outlines UC's expectations for respectful behavior and productive work environments. The proposed guidance is not intended to interfere with employees' right to engage in protected, concerted activity. Counsel can assist with preparing and implementing the guidance to be consistent with employee rights under the Higher Education Employer-Employee Relations Act (HEERA). The working group recommends that the completed guidance be sent to the Academic Senate for consideration.

The guidance could include such elements as:

Statements and Definitions

- A statement that the University does not tolerate bullying
- A reference to the definition of abusive conduct in A.B. 2053
 - This definition (See Appendix B) states that abusive conduct is behavior by an employer or employee in the workplace, "with malice, that a reasonable person would find hostile, offensive, and unrelated to an employer's legitimate business interests."
 - The definition also provides specific examples of abusive conduct and notes that a single act is not abusive conduct unless it is especially severe and egregious. UC Berkeley's proposed definition of abusive conduct (See Appendix A) is based upon the A.B. 2053 definition.
- A statement that staff at all levels found to be engaging in abusive conduct are expected to be held accountable through existing mechanisms
- Clear examples of abusive conduct, including a prohibition against retaliation for reporting bullying
- An explanation of the difference between bullying and appropriate supervision similar to the description in UC Berkeley's proposed policy
- An acknowledgement of the importance of Ombuds Offices or equivalent resources for confidential problem-solving and mediation
- A statement noting that there are existing UC policies that address some bullying behaviors, such as workplace violence

Recommendations to Locations

- Recommendation that locations staff Ombuds and equivalent offices appropriately and ensure that their services are easily accessible
- Recommendation that locations designate bullying "intake offices" to provide clear information on how to mediate disputes and report complaints related to abusive conduct
 - These offices should be knowledgeable about how the location is organized and should be able to refer employees to appropriate resources, such as the Ombuds Office if the employee prefers confidential assistance.
 - Existing resources such as bullying or whistleblower hotlines should direct employees to these offices.
 - Some locations may dedicate new resources to the creation of these offices, but in most cases it will not be necessary – current approaches to addressing bullying can be streamlined and centralized.
- Recommendation that locations create bullying-specific websites that:
 - Are clear and easy to understand
 - Link to a systemwide website
 - Include consistent information such as:
 - Contact information for the location's bullying intake office
 - Resources available at the location, such as trainings on conflict mediation or dispute resolution services
 - Information about how to report bullying and possible resolution options
- Recommendation that locations develop bullying prevention and training communication plans

Description of Systemwide Efforts

- Description of training
 - Guidance could point to bullying training module in the required SVSH training
 - UCOP could develop separate bullying-specific trainings for employees and managers that would be offered through the systemwide LMS or presented live
- Description of systemwide bullying website that links to bullying-specific websites at each location

VII. APPENDICES

Appendix A: UC Berkeley Proposed Bullying Policy

University of California, Berkeley
Policy Issued: TBD
Effective Date: TBD
Supersedes: None, New Policy
Next Review Date: TBD



Workplace Bullying Prevention

Responsible Executive: Vice Chancellor – Administration & Finance
Responsible Office: Central Human Resources
Contact: Jeannine Raymond, Assistant Vice Chancellor, Human Resources
510-642-9022
askeru@berkeley.edu (non-represented staff)
labrel@berkeley.edu (represented staff)

I. POLICY SUMMARY

The University of California, Berkeley is committed to promoting and maintaining a healthy working, learning, and social environment where every individual is treated with civility and respect. Bullying behavior will not be tolerated in the University of California, Berkeley workplace. The University strongly encourages anyone who is a victim of bullying behavior, or anyone who observes such behavior, to promptly report it to any manager or supervisor or Central Human Resources. Retaliation against individuals who report bullying also is prohibited.

The University will respond promptly and effectively to reports of bullying and will take appropriate action to prevent, correct, and discipline behavior that violates this policy.

II. POLICY SCOPE

This policy applies to non-represented staff, including undergraduate student-employees, and represented staff in the Clerical Unit, Health Care Professional Unit, Registered Nurses Unit, Patient Care Technical Unit, Printing Trades Unit, Research Support Professional Unit, Service Unit, Skilled Crafts Unit, Student Health Physicians' Unit, and Technical Unit are responsible for complying with this policy in the workplace, at University-sponsored events, and in connection with work-related travel.

III. POLICY STATEMENT

A. Prohibited Conduct

Bullying is a pattern of **repeated behavior** that a **reasonable person** would find hostile, offensive, and unrelated to the University's legitimate business interests. Bullying behavior may take many forms including physical, verbal, or written acts or behaviors. Workplace bullying often involves an abuse or misuse of power. A single physical, verbal, or written act or behavior generally will *not* constitute bullying unless especially severe and egregious.

Examples of bullying may include:

- persistent or egregious use of abusive, insulting, or offensive language directed at an employee;
- spreading misinformation or malicious rumors;
- behavior or language that frightens, humiliates, belittles, or degrades, including criticism or feedback that is delivered with yelling, screaming, threats, or insults;
- making repeated inappropriate comments about a person's appearance, lifestyle, family, or culture;
- regularly teasing or making someone the brunt of pranks or practical jokes;
- interfering with a person's personal property or work equipment;
- circulating inappropriate or embarrassing photos or videos via e-mail or social media;
- unwarranted physical contact; or
- purposefully excluding, isolating, or marginalizing a person from normal work activities.

B. Bullying vs. Supervision

It is important to distinguish between bullying behavior and appropriate workplace supervision. Reasonable supervisory actions, when carried out in an appropriate manner, include:

- providing performance appraisals;
- coaching or providing constructive feedback;
- monitoring or restricting access to sensitive information for legitimate business reasons;
- scheduling ongoing meetings to address performance issues;
- setting aggressive performance goals to help meet departmental goals;
- counseling or disciplining an employee for misconduct; and
- investigating alleged misconduct.

Differences of opinion, interpersonal conflicts, and occasional problems in working relations are an inevitable part of working life and do not necessarily constitute workplace bullying.

C. Retaliation

This policy prohibits retaliation (e.g., threats, intimidation, reprisals, and adverse actions related to employment) against any person who reports bullying, assists someone with a report of bullying, or participates in an investigation or resolution of a bullying complaint. Reports of such retaliation will be addressed under the procedures described below.

D. Dissemination of this Policy

As part of the University's commitment to providing a working and learning environment free from bullying, this policy will be disseminated widely to the University community upon onboarding and through publications, websites, new employee orientations, and other appropriate channels of communication.

IV. PROCEDURES FOR REPORTING AND RESPONDING TO REPORTS OF BULLYING

A. Reporting Incidents of Bullying

All members of the University community are strongly encouraged to report conduct believed to constitute bullying under this policy to a manager, supervisor, or Central Human Resources. Managers and supervisors who observe bullying behavior or receive a report of bullying are required to address such behavior immediately and notify their HR Partner/Representative.

The University has distinct procedures for the investigation and resolution of complaints against staff, students, and faculty. Central Human Resources will refer reports of alleged bullying by faculty, academic appointees, and sworn members of the University of California Police Department to the appropriate office or grievance procedure for processing. Whether a complaint made against an undergraduate student-employee is processed under this policy depends on whether the conduct at issue arises out of their employment status or student status.

B. Resolution Options

Individuals making reports of bullying will be informed about options for resolving potential violations of this policy. These options may include facilitated early resolution or formal investigation.

The University will respond to reports of bullying brought anonymously or by third parties not directly involved in the complaint. However, the response to such reports may be limited if the report's allegations cannot be verified by independent facts. Anonymous reports may be made online or by calling the Ethics Point hotline at (800) 403-4744.

C. Facilitated Early Resolution

The goal of early resolution is to resolve concerns at the earliest stage possible with the cooperation of all of the parties involved. The University encourages early resolution and will assist the parties in reaching a mutually agreeable resolution when the parties wish to resolve the situation collaboratively.

Early resolution may include a review of the facts, but typically does not include a formal investigation. Means for early resolution will be flexible and encompass a full range of possible appropriate outcomes.

Options for early resolution may include:

- obtaining an agreement between the parties;
- physically separating the parties;
- changing reporting lines;
- referring the parties to counseling and coaching programs;
- negotiating an agreement for personnel action;
- conducting targeted educational and training programs; and/or
- following up with the parties after a period of time to assure that the resolution has been implemented effectively.

While the University encourages early resolution, the University does not require that parties participate in early resolution prior to the University's decision to initiate a formal investigation. In some cases, Central Human Resources may determine that early resolution is inappropriate and may initiate a formal investigation instead.

D. Formal Investigation

In response to reports of bullying where early resolution is unsuccessful or inappropriate, the complainant may request a formal investigation. Central Human Resources may initiate a formal investigation after a preliminary review of the facts even in cases where the complainant has not requested one.

Formal investigation of reports of bullying will incorporate the following procedures:

1. The respondent will be advised of the relevant allegations in the complaint.
2. The investigation generally will include interviews with the parties if available, interviews with other witnesses as needed, and a review of relevant documents or other evidence as appropriate.
3. Disclosure of facts to parties and witnesses will be limited to what is reasonably necessary to conduct a fair and thorough investigation. Participants in an investigation may be advised to maintaining confidentiality when essential to protect the integrity of the investigation.
4. Upon request, the complainant and the respondent may each have a representative present when he or she is interviewed. Other witnesses may have a representative

present at the discretion of the investigator or as required by the applicable University policy or collective bargaining agreement.

5. At any time during the investigation, the investigator may recommend that the University provide interim protections or remedies for the complainant or witnesses. These protections or remedies may include separating the parties, placing limitations on contact between the parties, or making alternative work arrangements. Failure to comply with the terms of interim protections may be considered a separate violation of this policy.
6. Central Human Resources will make every effort to complete the investigation as quickly as possible. Generally, the investigation will be completed within 90 calendar days from the date the request for formal investigation was submitted.
7. Following the completion of the investigation, the investigator will prepare a written report that, at a minimum, includes a statement of the allegations and issues, the positions of the parties, a summary of the evidence, findings of fact, and a determination by the investigator as to whether the conduct at issue violated this policy. Central Human Resources will submit the report to the appropriate University official, and, in consultation with the appropriate manager or supervisor, determine and implement the actions necessary to resolve the complaint.
8. The complainant and the respondent will be informed when the investigation is completed and whether the complaint was substantiated. Actions taken to resolve the complaint, if any, that are directly related to the complainant, such as an order that the respondent not contact the complainant will be shared with the complainant. In accordance with University policies protecting individuals' privacy, the complainant may be notified generally that the matter has been referred for disciplinary action, but will not be informed of the details of the recommended disciplinary action without the respondent's consent.
9. The complainant and the respondent may request a copy of the investigative report pursuant to University policies governing privacy and access to personal information. In accordance with University policy, the report will be redacted to protect the privacy of personal and confidential information regarding all individuals other than the individual requesting the report.

E. Remedies

Findings of violations of this policy may be considered in determining remedies for individuals harmed by the bullying and will be referred to the appropriate manager. Violations may include engaging in bullying, retaliating against a complainant reporting bullying, or violating interim protections. Investigative reports made pursuant to this policy may be used as evidence in subsequent complaint or grievance resolution processes or disciplinary proceedings.

V. OTHER CAMPUS RESOURCES

Ombuds Offices: These offices provide informal, impartial conflict resolution and problem-solving services regarding academic or work-related concerns. The Ombuds Offices are strictly confidential resources. Unless there is an imminent risk of serious harm, they will not disclose the identity of individuals who have used their services or information provided without express permission. In addition, these offices are not offices of record and are not offices for filing complaints. Communications with the Ombuds offices do not place the University on notice and individuals seeking to file complaints will be informed of appropriate University resources. In the interest of maintaining confidentiality, the Ombuds offices request that anyone seeking assistance contact the office by telephone only.

Staff Ombuds Office: 510-642-7823

Students Ombuds Office: 510-642-5754

Office for the Prevention of Harassment and Discrimination (OPHD): OPHD is responsible for ensuring the University provides an environment for faculty, staff and students that is free from discrimination and harassment on the basis of categories including race, color national origin, gender, age and sexual orientation/identity. OPHD also has the specific responsibility for providing prompt and effective responses to all complaints of sex discrimination or harassment for faculty, staff and students. In addition to serving as an investigation officer when a formal complaint of sexual harassment is filed, OPHD provides consultation to faculty administrators, directors, managers and supervisors, and graduate and undergraduate students for resolution strategies at the earliest possible levels.

OPHD: 685 University Hall; 510-643-7945; ask_ophd@berkeley.edu

University Health Services (UHS): The two departments below provide assessment, consultation, and counseling in a confidential setting, and referrals regarding work and personal stress or emotional concerns that are interfering with an individual's ability to work in his or her professional or academic setting.

UHS: Tang Center, 2222 Bancroft Way

- *Employee Assistance for Faculty and Staff: 510-643-7754*
- *Social Services for Graduate and Undergraduate Students: 510-642-6074*

Staff Diversity Initiatives, Division of Equity & Inclusion: Staff Diversity Initiatives (SDI) is a unit of the Division of Equity & Inclusion that is charged with engaging staff and management to ensure staff diversity throughout the campus at all levels of employment and to foster an inclusive workplace environment with a welcoming climate.

SDI: 104 California Hall, #1508; (510) 642-5973; staffdiversity@berkeley.edu

Whistleblower Investigations, Office of Ethics, Risk and Compliance Services (OERCS): The University of California has a responsibility to conduct its affairs ethically and in compliance with the law. Whistleblower investigations are conducted in response to reports of known or suspected improper governmental activity or retaliation against an employee for reporting suspected wrongdoing.

Whistleblower Investigations: Anonymous reports may be made online or by calling the Ethics Point hotline at (800) 403-4744.

VI. POLICY WEB ADDRESS

<http://campuspol.berkeley.edu/policies/bullying.pdf>

VII. GLOSSARY

Complainant: An individual who alleges they have been subjected to bullying.

Exclusively Represented Staff Member: A staff employee represented by a union.

Exclusively Represented Academic Appointee: An employee holding an academic title that is also represented by a union.

Legitimate Business Interests: An action that supports or is related to the University of California's missions of education, research, and public service.

Reasonable Person Test: The basis for determining whether the conduct at issue rises to the level of bullying is whether a reasonable person in the same or similar circumstances would find the conduct hostile, offensive, and unrelated to the University's legitimate business interests. Though the intention of the person responsible for the conduct may be considered, it is not determinative.

Respondent: An individual alleged to have violated this policy.

Workplace: For purposes of this policy, any location owned, leased, or rented by the Regents of the University of California on behalf of the University of California, Berkeley, or any location where a University employee is acting in the course and scope of employment. This includes, but is not limited to, buildings, grounds, and surrounding perimeters, including parking lots, field locations, classrooms, and residence halls. It also includes vehicles when those vehicles are used for University business.

VIII. RELATED DOCUMENTS AND POLICIES

- [University of California Statement of Ethical Values and Standards of Ethical Conduct](#)
- [University of California, Berkeley Principles of Community](#)
- [University of California Nondiscrimination and Affirmative Action Policy Regarding Academic and Staff Employment](#)
- [University of California Policy on Sexual Harassment and Sexual Violence](#)
- [University of California Whistleblower Policy \(Policy on Reporting and Investigating Allegations of Suspected Improper Governmental Activities\)](#)
- [University of California Whistleblower Protection Policy](#)
- [University of California Personnel Policies for Staff Members](#)
- [University of California Collective Bargaining Agreements](#)

Assembly Bill No. 2053

CHAPTER 306

An act to amend Section 12950.1 of the Government Code, relating to employment.

[Approved by Governor September 9, 2014. Filed with Secretary of State September 9, 2014.]

LEGISLATIVE COUNSEL'S DIGEST

AB 2053, Gonzalez. Employment discrimination or harassment: education and training: abusive conduct.

Existing law makes specified employment practices unlawful, including the harassment of an employee directly by the employer or indirectly by agents of the employer with the employer's knowledge. Existing law further requires every employer to act to ensure a workplace free of sexual harassment by implementing certain minimum requirements, including posting sexual harassment information posters at the workplace and obtaining and making available an information sheet on sexual harassment.

Existing law also requires employers, as defined, with 50 or more employees to provide at least 2 hours of training and education regarding sexual harassment to all supervisory employees, as specified. Existing law requires each employer to provide that training and education to each supervisory employee once every 2 years.

This bill would additionally require that the above-described training and education include, as a component of the training and education, prevention of abusive conduct, as defined.

The people of the State of California do enact as follows:

SECTION 1.

Section 12950.1 of the *Government Code* is amended to read:

12950.1.

(a) An employer having 50 or more employees shall provide at least two hours of classroom or other effective interactive training and education regarding sexual harassment to all supervisory employees in California within six months of their assumption of a supervisory position. An employer covered by this section shall provide sexual harassment training and education to each supervisory employee in California once every two years. The training and education required by this section shall include information and practical guidance regarding the federal and state statutory provisions concerning the

prohibition against and the prevention and correction of sexual harassment and the remedies available to victims of sexual harassment in employment. The training and education shall also include practical examples aimed at instructing supervisors in the prevention of harassment, discrimination, and retaliation, and shall be presented by trainers or educators with knowledge and expertise in the prevention of harassment, discrimination, and retaliation.

(b) An employer shall also include prevention of abusive conduct as a component of the training and education specified in subdivision (a).

(c) The state shall incorporate the training required by subdivision (a) into the 80 hours of training provided to all new supervisory employees pursuant to subdivision (b) of Section 19995.4, using existing resources.

(d) Notwithstanding subdivisions (j) and (k) of Section 12940, a claim that the training and education required by this section did not reach a particular individual or individuals shall not in and of itself result in the liability of any employer to any present or former employee or applicant in any action alleging sexual harassment. Conversely, an employer's compliance with this section does not insulate the employer from liability for sexual harassment of any current or former employee or applicant.

(e) If an employer violates this section, the department may seek an order requiring the employer to comply with these requirements.

(f) The training and education required by this section is intended to establish a minimum threshold and should not discourage or relieve any employer from providing for longer, more frequent, or more elaborate training and education regarding workplace harassment or other forms of unlawful discrimination in order to meet its obligations to take all reasonable steps necessary to prevent and correct harassment and discrimination.

(g) (1) For purposes of this section only, "employer" means any person regularly employing 50 or more persons or regularly receiving the services of 50 or more persons providing services pursuant to a contract, or any person acting as an agent of an employer, directly or indirectly, the state, or any political or civil subdivision of the state, and cities.

(2) For purposes of this section, "abusive conduct" means conduct of an employer or employee in the workplace, with malice, that a reasonable person would find hostile, offensive, and unrelated to an employer's legitimate business interests. Abusive conduct may include repeated infliction of verbal abuse, such as the use of derogatory remarks, insults, and epithets, verbal or physical conduct that a reasonable person would find threatening, intimidating, or humiliating, or the gratuitous sabotage or undermining of a person's work performance. A single act shall not constitute abusive conduct, unless especially severe and egregious.

Appendix C: Existing UC Policies

Location	Policy
UC Berkeley	Workplace Bullying Prevention (Proposed) Workplace Violence Prevention
UC Davis	Disruptive Behavior in the Workplace
UC Davis Medical Center	Disruptive Behavior in the Workplace Violence and Hate Incidents in the Workplace (P&P 1616)
UC Irvine	No policy
UC Irvine Medical Center	Workplace Violence Prevention & Response
UCLA	Workplace Violence Prevention
UCLA Medical Center	Workplace Violence Prevention Intimidating and Disruptive Behavior (Medical Staff) Disruptive Behavior Among Employees (Health System Staff) Code of Conduct (Health System, School of Medicine) Work Rules (School of Medicine)
UC Merced	Workplace Violence, Bias Incidents, Hate Crimes and Disruptive Behaviors Prohibition of Abusive Conduct and Acts of Violence (Draft)
UC Riverside	Violence and Threats in the Workplace – Zero Tolerance
UC San Diego	Violence or Threat of Violence (Draft) Workplace Violence Employee Handbook
UC San Diego Medical Center	Code of Conduct – Disruptive Physicians and Staff Workplace Violence Employee Handbook
UC San Francisco	Violence in the Work Place
UC Santa Barbara	Sustaining Community and Preventing Violence
UC Santa Cruz	Violence in the Workplace Policy and Handbook
Agriculture and Natural Resources	Disruptive Behavior in the Workplace (UC Davis)
Lawrence Berkeley National Lab	Violence in the Workplace
UC Office of the President (Local HR)	Workplace Violence Prevention
Systemwide	APM-015: Faculty Code of Conduct Nondiscrimination and Affirmative Action Policy Regarding Academic and Staff Employment PPSM 12: Nondiscrimination in Employment PPSM 62: Corrective Action PPSM 70: Complaint Resolution Principles of Community Regents Policy 1111: Policy on Statement of Ethical Values and Standards of Ethical Conduct Sexual Violence and Sexual Harassment Statement of Ethical Values Student Conduct and Discipline

Appendix D: Working Group Members

Working Group Members	
De Acker	Director of Campus Climate, Staff Advisor to the Regents – Merced
Tanya Akel	Southern California Regional Director, Teamsters
Dianna Henderson	Director of HR Policy and Chief of Staff to the Vice President
Bernie Jones	Deputy Chief of Staff to the President
Janna Le Blanc	Assistant Director of HR and CUCSA Delegate – Riverside
David Lane	Systemwide Deputy Compliance Officer
Amy Lee	Diversity, Labor & Employee Relations Director, Academic Personnel and Programs
Lubbe Levin	Associate Vice Chancellor – UCLA
Trina Mastro	Counsel, Labor and Employment
Rejeana Mathis	Management Development Manager for Campus HR and CUCSA Chair Elect – UCLA
Abby Norris	HR Policy Specialist
Cathy O’Sullivan	Chief of Staff to the Chief Operating Officer
Anita Raman	Director, HR Policy and Practice – Berkeley
Anke Schennink	President, UAW Local 5810
John Steele	Programmer-Analyst 3 and CUCSA Delegate – UCSC



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

October 26, 2010

Dear Colleague:

In recent years, many state departments of education and local school districts have taken steps to reduce bullying in schools. The U.S. Department of Education (Department) fully supports these efforts. Bullying fosters a climate of fear and disrespect that can seriously impair the physical and psychological health of its victims and create conditions that negatively affect learning, thereby undermining the ability of students to achieve their full potential. The movement to adopt anti-bullying policies reflects schools' appreciation of their important responsibility to maintain a safe learning environment for all students. I am writing to remind you, however, that some student misconduct that falls under a school's anti-bullying policy also may trigger responsibilities under one or more of the federal antidiscrimination laws enforced by the Department's Office for Civil Rights (OCR). As discussed in more detail below, by limiting its response to a specific application of its anti-bullying disciplinary policy, a school may fail to properly consider whether the student misconduct also results in discriminatory harassment.

The statutes that OCR enforces include Title VI of the Civil Rights Act of 1964¹ (Title VI), which prohibits discrimination on the basis of race, color, or national origin; Title IX of the Education Amendments of 1972² (Title IX), which prohibits discrimination on the basis of sex; Section 504 of the Rehabilitation Act of 1973³ (Section 504); and Title II of the Americans with Disabilities Act of 1990⁴ (Title II). Section 504 and Title II prohibit discrimination on the basis of disability.⁵ School districts may violate these civil rights statutes and the Department's implementing regulations when peer harassment based on race, color, national origin, sex, or disability is sufficiently serious that it creates a hostile environment and such harassment is encouraged, tolerated, not adequately addressed, or ignored by school employees.⁶ School personnel who understand their legal obligations to address harassment under these laws are in the best position to prevent it from occurring and to respond appropriately when it does. Although this letter focuses on the elementary and secondary school context, the legal principles also apply to postsecondary institutions covered by the laws and regulations enforced by OCR.

Some school anti-bullying policies already may list classes or traits on which bases bullying or harassment is specifically prohibited. Indeed, many schools have adopted anti-bullying policies that go beyond prohibiting bullying on the basis of traits expressly protected by the federal civil

¹ 42 U.S.C. § 2000d et seq.

² 20 U.S.C. § 1681 et seq.

³ 29 U.S.C. § 794.

⁴ 42 U.S.C. § 12101 et seq.

⁵ OCR also enforces the Age Discrimination Act of 1975, 42 U.S.C. § 6101 et seq., and the Boy Scouts of America Equal Access Act, 20 U.S.C. § 7905. This letter does not specifically address those statutes.

⁶ The Department's regulations implementing these statutes are in 34 C.F.R. parts 100, 104, and 106. Under these federal civil rights laws and regulations, students are protected from harassment by school employees, other students, and third parties. This guidance focuses on peer harassment, and articulates the legal standards that apply in administrative enforcement and in court cases where plaintiffs are seeking injunctive relief.

rights laws enforced by OCR—race, color, national origin, sex, and disability—to include such bases as sexual orientation and religion. While this letter concerns your legal obligations under the laws enforced by OCR, other federal, state, and local laws impose additional obligations on schools.⁷ And, of course, even when bullying or harassment is not a civil rights violation, schools should still seek to prevent it in order to protect students from the physical and emotional harms that it may cause.

Harassing conduct may take many forms, including verbal acts and name-calling; graphic and written statements, which may include use of cell phones or the Internet; or other conduct that may be physically threatening, harmful, or humiliating. Harassment does not have to include intent to harm, be directed at a specific target, or involve repeated incidents. Harassment creates a hostile environment when the conduct is sufficiently severe, pervasive, or persistent so as to interfere with or limit a student's ability to participate in or benefit from the services, activities, or opportunities offered by a school. When such harassment is based on race, color, national origin, sex, or disability, it violates the civil rights laws that OCR enforces.⁸

A school is responsible for addressing harassment incidents about which it knows or reasonably should have known.⁹ In some situations, harassment may be in plain sight, widespread, or well-known to students and staff, such as harassment occurring in hallways, during academic or physical education classes, during extracurricular activities, at recess, on a school bus, or through graffiti in public areas. In these cases, the obvious signs of the harassment are sufficient to put the school on notice. In other situations, the school may become aware of misconduct, triggering an investigation that could lead to the discovery of additional incidents that, taken together, may constitute a hostile environment. In all cases, schools should have well-publicized policies prohibiting harassment and procedures for reporting and resolving complaints that will alert the school to incidents of harassment.¹⁰

When responding to harassment, a school must take immediate and appropriate action to investigate or otherwise determine what occurred. The specific steps in a school's investigation will vary depending upon the nature of the allegations, the source of the complaint, the age of the student or students involved, the size and administrative structure of the school, and other factors. In all cases, however, the inquiry should be prompt, thorough, and impartial.

If an investigation reveals that discriminatory harassment has occurred, a school must take prompt and effective steps reasonably calculated to end the harassment, eliminate any hostile

⁷ For instance, the U.S. Department of Justice (DOJ) has jurisdiction over Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000e (Title VI), which prohibits discrimination on the basis of race, color, sex, religion, or national origin by public elementary and secondary schools and public institutions of higher learning. State laws also provide additional civil rights protections, so districts should review these statutes to determine what protections they afford (e.g., some state laws specifically prohibit discrimination on the basis of sexual orientation).

⁸ Some conduct alleged to be harassment may implicate the First Amendment rights to free speech or expression. For more information on the First Amendment's application to harassment, see the discussions in OCR's Dear Colleague Letter, First Amendment (July 28, 2003), available at <http://www.ed.gov/about/offices/list/ocr/firstamend.html>, and OCR's Revised Sexual Harassment Guidance: *Harassment of Students by School Employees, Other Students, or Third Parties* (Jan. 19, 2001) [Sexual Harassment Guidance], available at <http://www.ed.gov/about/offices/list/ocr/docs/shguide.html>.

⁹ A school has notice of harassment if a responsible employee knew, or in the exercise of reasonable care should have known, about the harassment. For a discussion of what a "responsible employee" is, see OCR's *Sexual Harassment Guidance*.

¹⁰ Districts must adopt and publish grievance procedures providing for prompt and equitable resolution of student and employee sex and disability discrimination complaints, and must notify students, parents, employees, applicants, and other interested parties that they (districts) does not discriminate on the basis of sex or disability. See 28 C.F.R. § 83.106; 28 C.F.R. § 85.107(b); 34 C.F.R. § 104.7(b); 34 C.F.R. § 104.8; 34 C.F.R. § 106.8(b); 34 C.F.R. § 106.9.

environment and its effects, and prevent the harassment from recurring. These duties are a school's responsibility even if the misconduct also is covered by an anti-bullying policy, and regardless of whether a student has complained, asked the school to take action, or identified the harassment as a form of discrimination.

Appropriate steps to end harassment may include separating the accused harasser and the target, providing counseling for the target and/or harasser, or taking disciplinary action against the harasser. These steps should not penalize the student who was harassed. For example, any separation of the target from an alleged harasser should be designed to minimize the burden on the target's educational program (e.g., not requiring the target to change his or her class schedule).

In addition, depending on the extent of the harassment, the school may need to provide training or other interventions not only for the perpetrators, but also for the larger school community, to ensure that all students, their families, and school staff can recognize harassment if it recurs and know how to respond. A school also may be required to provide additional services to the student who was harassed in order to address the effects of the harassment, particularly if the school initially delays in responding or responds inappropriately or inadequately to information about harassment. An effective response also may need to include the issuance of new policies against harassment and new procedures by which students, parents, and employees may report allegations of harassment (or wide dissemination of existing policies and procedures), as well as wide distribution of the contact information for the district's Title IX and Section 504/Title II coordinators.¹¹

Finally, a school should take steps to stop further harassment and prevent any retaliation against the person who made the complaint (or was the subject of the harassment) or against those who provided information as witnesses. At a minimum, the school's responsibilities include making sure that the harassed students and their families know how to report any subsequent problems, conducting follow-up inquiries to see if there have been any new incidents or any instances of retaliation, and responding promptly and appropriately to address continuing or new problems.

When responding to incidents of misconduct, schools should keep in mind the following:

- The label used to describe an incident (e.g., bullying, hazing, teasing) does not determine how a school is obligated to respond. Rather, the nature of the conduct itself must be assessed for civil rights implications. So, for example, if the abusive behavior is on the basis of race, color, national origin, sex, or disability, and creates a hostile environment, a school is obligated to respond in accordance with the applicable federal civil rights statutes and regulations enforced by OCR.
- When the behavior implicates the civil rights laws, school administrators should look beyond simply disciplining the perpetrators. While disciplining the perpetrators is likely a necessary step, it often is insufficient. A school's responsibility is to eliminate the

¹¹ Districts must designate a person responsible for coordinating compliance with Title IX, Section 504, and Title II, including the investigation of any complaint, and some agencies have established a specific title for this person. See 28 C.F.R. § 35.107(-); 34 C.F.R. § 103.7(a); 34 C.F.R. § 105.8(-).

hostile environment created by the harassment, address its effects, and take steps to ensure that harassment does not recur. Put differently, the unique effects of discriminatory harassment may demand a different response than would other types of bullying.

Below, I provide hypothetical examples of how a school's failure to recognize student misconduct as discriminatory harassment violates students' civil rights.¹⁷ In each of the examples, the school was on notice of the harassment because either the school or a responsible employee knew or should have known of misconduct that constituted harassment. The examples describe how the school should have responded in each circumstance.

Title VI: Race, Color, or National Origin Harassment

- *Some students anonymously inserted offensive notes into African-American students' lockers and notebooks, used racial slurs, and threatened African-American students who tried to sit near them in the cafeteria. Some African-American students told school officials that they did not feel safe at school. The school investigated and responded to individual instances of misconduct by assigning detention to the few student perpetrators it could identify. However, racial tensions in the school continued to escalate to the point that several fights broke out between the school's racial groups.*

In this example, school officials failed to acknowledge the pattern of harassment as indicative of a racially hostile environment in violation of Title VI. Misconduct need not be directed at a particular student to constitute discriminatory harassment and foster a racially hostile environment. Here, the harassing conduct included overtly racist behavior (e.g., racial slurs) and also targeted students on the basis of their race (e.g., notes directed at African-American students). The nature of the harassment, the number of incidents, and the students' safety concerns demonstrate that there was a racially hostile environment that interfered with the students' ability to participate in the school's education programs and activities.

Had the school recognized that a racially hostile environment had been created, it would have realized that it needed to do more than just discipline the few individuals whom it could identify as having been involved. By failing to acknowledge the racially hostile environment, the school failed to meet its obligation to implement a more systemic response to address the unique effect that the misconduct had on the school climate. A more effective response would have included, in addition to punishing the perpetrators, such steps as reaffirming the school's policy against discrimination (including racial harassment), publicizing the means to report allegations of racial harassment, training faculty on constructive responses to racial conflict, hosting class discussions about racial harassment and sensitivity to students of other races, and conducting outreach to involve parents and students in an effort to identify problems and improve the school climate. Finally, had school officials responded appropriately

¹⁷ Each of these hypothetical examples contains elements based from actual cases.

and aggressively to the racial harassment when they first became aware of it, the school might have prevented the escalation of violence that occurred.¹³

- *Over the course of a school year, school employees at a junior high school received reports of several incidents of anti-Semitic conduct at the school. Anti-Semitic graffiti, including swastikas, was scrawled on the stalls of the school bathroom. When custodians discovered the graffiti and reported it to school administrators, the administrators ordered the graffiti removed but took no further action. At the same school, a teacher caught two ninth-graders trying to force two seventh-graders to give them money. The ninth-graders told the seventh-graders, "You Jews have all of the money, give us some." When school administrators investigated the incident, they determined that the seventh-graders were not actually Jewish. The school suspended the perpetrators for a week because of the serious nature of their misconduct. After that incident, younger Jewish students started avoiding the school library and computer lab because they were located in the corridor housing the lockers of the ninth-graders. At the same school, a group of eighth-grade students repeatedly called a Jewish student "Drew the dirty Jew." The responsible eighth-graders were reprimanded for teasing the Jewish student.*

The school administrators failed to recognize that anti-Semitic harassment can trigger responsibilities under Title VI. While Title VI does not cover discrimination based solely on religion,¹⁴ groups that face discrimination on the basis of actual or perceived shared ancestry or ethnic characteristics may not be denied protection under Title VI on the ground that they also share a common faith. These principles apply not just to Jewish students, but also to students from any discrete religious group that shares, or is perceived to share, ancestry or ethnic characteristics (e.g., Muslims or Sikhs). Thus, harassment against students who are members of any religious group triggers a school's Title VI responsibilities when the harassment is based on the group's actual or perceived shared ancestry or ethnic characteristics, rather than solely on its members' religious practices. A school also has responsibilities under Title VI when its students are harassed based on their actual or perceived citizenship or residency in a country whose residents share a dominant religion or a distinct religious identity.¹⁵

In this example, school administrators should have recognized that the harassment was based on the students' actual or perceived shared ancestry or ethnic identity as Jews (rather than on the students' religious practices). The school was not relieved of its responsibilities under Title VI because the targets of one of the incidents were not actually Jewish. The harassment was still based on the perceived ancestry or ethnic characteristics of the targeted students. Furthermore, the harassment negatively affected the ability and willingness of Jewish students to participate fully in the school's

¹³ More information about the applicable legal standards and OCR's approach to investigating allegations of harassment on the basis of race, color, or national origin is included in *Racial Incidents and Harassment Against Students at Educational Institutions: Investigative Guidance*, 29 Fed. Reg. 11,448 (Mar. 10, 1994), available at <http://www2.ed.gov/about/offices/list/ocr/docs/race0394.html>.

¹⁴ As noted in footnote seven, DOJ has the authority to remedy discrimination based solely on religion under Title IV.

¹⁵ More information about the applicable legal standards and OCR's approach to investigating complaints of discrimination against members of religious groups is included in OCR's Dear Colleague Letter: Title VI and Title IX Religious Discrimination in Schools and Colleges (Sept. 13, 2004), available at http://www2.ed.gov/about/offices/list/ocr/religious_09132004.html.

education programs and activities (e.g., by causing some Jewish students to avoid the library and computer lab). Therefore, although the discipline that the school imposed on the perpetrators was an important part of the school's response, discipline alone was likely insufficient to remedy a hostile environment. Similarly, removing the graffiti, while a necessary and important step, did not fully satisfy the school's responsibilities. As discussed above, misconduct that is not directed at a particular student, like the graffiti in the bathroom, can still constitute discriminatory harassment and foster a hostile environment. Finally, the fact that school officials considered one of the incidents "teasing" is irrelevant for determining whether it contributed to a hostile environment.

Because the school failed to recognize that the incidents created a hostile environment, it addressed each only in isolation, and therefore failed to take prompt and effective steps reasonably calculated to end the harassment and prevent its recurrence. In addition to disciplining the perpetrators, remedial steps could have included counseling the perpetrators about the hurtful effect of their conduct, publicly labeling the incidents as anti-Semitic, reaffirming the school's policy against discrimination, and publicizing the means by which students may report harassment. Providing teachers with training to recognize and address anti-Semitic incidents also would have increased the effectiveness of the school's response. The school could also have created an age-appropriate program to educate its students about the history and dangers of anti-Semitism, and could have conducted outreach to involve parents and community groups in preventing future anti-Semitic harassment.

Title IX: Sexual Harassment

- ◆ *Shortly after enrolling at a new high school, a female student had a brief romance with another student. After the couple broke up, other male and female students began routinely calling the new student sexually charged names, spreading rumors about her sexual behavior, and sending her threatening text messages and e-mails. One of the student's teachers and an athletic coach witnessed the name calling and heard the rumors, but identified it as "hazing" that new students often experience. They also noticed the new student's anxiety and declining class participation. The school attempted to resolve the situation by requiring the student to work the problem out directly with her harassers.*

Sexual harassment is unwelcome conduct of a sexual nature, which can include unwelcome sexual advances, requests for sexual favors, or other verbal, nonverbal, or physical conduct of a sexual nature. Thus, sexual harassment prohibited by Title IX can include conduct such as touching of a sexual nature; making sexual comments, jokes, or gestures; writing graffiti or displaying or distributing sexually explicit drawings, pictures, or written materials; calling students sexually charged names; spreading sexual rumors; rating students on sexual activity or performance; or circulating, showing, or creating e-mails or Web sites of a sexual nature.

In this example, the school employees failed to recognize that the “hazing” constituted sexual harassment. The school did not comply with its Title IX obligations when it failed to investigate or remedy the sexual harassment. The conduct was clearly unwelcome, sexual (e.g., sexual rumors and name calling), and sufficiently serious that it limited the student’s ability to participate in and benefit from the school’s education program (e.g., anxiety and declining class participation).

The school should have trained its employees on the type of misconduct that constitutes sexual harassment. The school also should have made clear to its employees that they could not require the student to confront her harassers. Schools may use informal mechanisms for addressing harassment, but only if the parties agree to do so on a voluntary basis. Had the school addressed the harassment consistent with Title IX, the school would have, for example, conducted a thorough investigation and taken interim measures to separate the student from the accused harassers. An effective response also might have included training students and employees on the school’s policies related to harassment, instituting new procedures by which employees should report allegations of harassment, and more widely distributing the contact information for the district’s Title IX coordinator. The school also might have offered the targeted student tutoring, other academic assistance, or counseling as necessary to remedy the effects of the harassment.¹⁰

Title IX: Gender-Based Harassment

- *Over the course of a school year, a gay high school student was called names (including anti-gay slurs and sexual comments) both to his face and on social networking sites, physically assaulted, threatened, and ridiculed because he did not conform to stereotypical notions of how teenage boys are expected to act and appear (e.g., effeminate mannerisms, nontraditional choice of extracurricular activities, apparel, and personal grooming choices). As a result, the student dropped out of the drama club to avoid further harassment. Based on the student’s self-identification as gay and the homophobic nature of some of the harassment, the school did not recognize that the misconduct included discrimination covered by Title IX. The school responded to complaints from the student by reprimanding the perpetrators consistent with its anti-bullying policy. The reprimands of the identified perpetrators stopped the harassment by those individuals. It did not, however, stop others from undertaking similar harassment of the student.*

As noted in the example, the school failed to recognize the pattern of misconduct as a form of sex discrimination under Title IX. Title IX prohibits harassment of both male and female students regardless of the sex of the harasser—i.e., even if the harasser and target are members of the same sex. It also prohibits gender-based harassment, which may include acts of verbal, nonverbal, or physical aggression, intimidation, or hostility based on sex or sex-stereotyping. Thus, it can be sex discrimination if students are harassed either for exhibiting what is perceived as a stereotypical characteristic for their

¹⁰ More information about the applicable legal standards and OCR’s approach to investigating allegations of sexual harassment is included in OCR’s Sexual Harassment Guidelines, available at <http://www.ed.gov/about/offices/list/ocr/docs/shguide.html>.

sex, or for failing to conform to stereotypical notions of masculinity and femininity. Title IX also prohibits sexual harassment and gender-based harassment of all students, regardless of the actual or perceived sexual orientation or gender identity of the harasser or target.

Although Title IX does not prohibit discrimination based solely on sexual orientation, Title IX does protect all students, including lesbian, gay, bisexual, and transgender (LGBT) students, from sex discrimination. When students are subjected to harassment on the basis of their LGBT status, they may also, as this example illustrates, be subjected to forms of sex discrimination prohibited under Title IX. The fact that the harassment includes anti-LGBT comments or is partly based on the target's actual or perceived sexual orientation does not relieve a school of its obligation under Title IX to investigate and remedy overlapping sexual harassment or gender-based harassment. In this example, the harassing conduct was based in part on the student's failure to act as some of his peers believed a boy should act. The harassment created a hostile environment that limited the student's ability to participate in the school's education program (e.g., access to the drama club). Finally, even though the student did not identify the harassment as sex discrimination, the school should have recognized that the student had been subjected to gender-based harassment covered by Title IX.

In this example, the school had an obligation to take immediate and effective action to eliminate the hostile environment. By responding to individual incidents of misconduct on an *ad hoc* basis only, the school failed to confront and prevent a hostile environment from continuing. Had the school recognized the conduct as a form of sex discrimination, it could have employed the full range of sanctions (including progressive discipline) and remedies designed to eliminate the hostile environment. For example, this approach would have included a more comprehensive response to the situation that involved notice to the student's teachers so that they could ensure the student was not subjected to any further harassment, more aggressive monitoring by staff of the places where harassment occurred, increased training on the scope of the school's harassment and discrimination policies, notice to the target and harassers of available counseling services and resources, and educating the entire school community on civil rights and expectations of tolerance, specifically as they apply to gender stereotypes. The school also should have taken steps to clearly communicate the message that the school does not tolerate harassment and will be responsive to any information about such conduct.¹⁷

Section 504 and Title II: Disability Harassment

- *Several classmates repeatedly called a student with a learning disability "stupid," "idiot," and "retard" while in school and on the school bus. On one occasion, these students tackled him, hit him with a school binder, and threw his personal items into the garbage. The student complained to his teachers and guidance counselor that he was continually being taunted and teased. School officials offered him counseling services and a*

¹⁷ Guidance on gender-based harassment is also included in OCR's *Sexual Harassment Guidance*, available at <http://www.ed.gov/about/offices/list/ocr/docs/txhguide.html>.

psychiatric evaluation, but did not discipline the offending students. As a result, the harassment continued. The student, who had been performing well academically, became angry, frustrated, and depressed, and often refused to go to school to avoid the harassment.

In this example, the school failed to recognize the misconduct as disability harassment under Section 504 and Title II. The harassing conduct included behavior based on the student's disability, and limited the student's ability to benefit fully from the school's education program (e.g., absenteeism). In failing to investigate and remedy the misconduct, the school did not comply with its obligations under Section 504 and Title II.

Counseling may be a helpful component of a remedy for harassment. In this example, however, since the school failed to recognize the behavior as disability harassment, the school did not adopt a comprehensive approach to eliminating the hostile environment. Such steps should have at least included disciplinary action against the harassers, consultation with the district's Section 504/Title II coordinator to ensure a comprehensive and effective response, special training for staff on recognizing and effectively responding to harassment of students with disabilities, and monitoring to ensure that the harassment did not resume.¹⁸

I encourage you to reevaluate the policies and practices your school uses to address bullying¹⁹ and harassment to ensure that they comply with the mandates of the federal civil rights laws. For your convenience, the following is a list of online resources that further discuss the obligations of districts to respond to harassment prohibited under the federal antidiscrimination laws enforced by OCR:

- *Sexual Harassment: It's Not Academic* (Revised 2008):
<http://www.ed.gov/about/offices/list/ocr/docs/ocrshpam.html>
- *Dear Colleague Letter: Sexual Harassment Issues* (2006):
<http://www2.ed.gov/about/offices/list/ocr/letters/sexhar-2006.html>
- *Dear Colleague Letter: Religious Discrimination* (2004):
<http://www2.ed.gov/about/offices/list/ocr/religious-rights2004.html>
- *Dear Colleague Letter: First Amendment* (2003):
<http://www.ed.gov/about/offices/list/ocr/firstamend.html>

¹⁸ More information about the applicable legal standards and OCR's approach to investigating allegations of disability harassment is included in OCR's Dear Colleague Letter: Prohibited Disability Harassment (July 25, 2006), available at <http://www2.ed.gov/about/offices/list/ocr/docs/disabilityrights.html>.

¹⁹ For resources on preventing and addressing bullying, please visit <http://www.bullyinginfo.org>, a Web site established by a federal interagency Working Group on Youth Programs. For information on the Department's bullying prevention resources, please visit the Office of Safe and Drug-Free Schools' Web site at <http://www.ed.gov/offices/OSDFSPS>. For information on regional Equity Assistance Centers that assist schools in developing and implementing policies and practices to address issues regarding race, sex, or national origin discrimination, please visit <http://www.ed.gov/programs/equitycenters>.

- *Sexual Harassment Guidance (Revised 2001):*
<http://www.ed.gov/about/offices/list/ocr/docs/shguide.html>
- *Dear Colleague Letter: Prohibited Disability Harassment (2000):*
<http://www.ed.gov/about/offices/list/ocr/docs/disabharassltr.html>
- *Racial Incidents and Harassment Against Students (1994):*
<http://www.ed.gov/about/offices/list/ocr/docs/race394.html>

Please also note that OCR has added new data items to be collected through its Civil Rights Data Collection (CRDC), which surveys school districts in a variety of areas related to civil rights in education. The CRDC now requires districts to collect and report information on allegations of harassment, policies regarding harassment, and discipline imposed for harassment. In 2009-10, the CRDC covered nearly 7,000 school districts, including all districts with more than 3,000 students. For more information about the CRDC data items, please visit <http://www2.ed.gov/about/offices/list/ocr/whatsnew.html>.

OCR is committed to working with schools, students, students' families, community and advocacy organizations, and other interested parties to ensure that students are not subjected to harassment. Please do not hesitate to contact OCR if we can provide assistance in your efforts to address harassment or if you have other civil rights concerns.

For the OCR regional office serving your state, please visit: <http://wdcrobcop01.ed.gov/CFAPPS/OCR/contactus.cfm>, or call OCR's Customer Service Team at 1-800-421-3481.

I look forward to continuing our work together to ensure equal access to education, and to promote safe and respectful school climates for America's students.

Sincerely,

/s/

Russlynn Ali
Assistant Secretary for Civil Rights

Body Composition Measurement and Athlete Weighing Protocol

University of California, Berkeley

Sports Medicine/Performance Nutrition/ Athletic Performance

Updated December 2010

Introduction:

Body composition measurements and body weights can be important components of an athlete's performance evaluation and plan. Monitoring weight changes while training may help detect poor hydration practices or medically significant weight gain or loss that may impact an athlete's overall well-being. Weight monitoring may also be important in contact sports to ensure athlete safety.

Body composition testing can measure changes in muscle mass and adipose tissue over time and in relation to student-athlete's physical training; appropriate changes in muscle mass and adipose tissue can be beneficial to one's health and performance, while excessive changes can be detrimental to one's health.

However, there is not one ideal weight or body composition for performance.^{2,5} Weight and body composition are affected by a variety of factors, including stage of development/maturation, weight and growth history, genetics, nutrition, and hydration.

Research clearly documents that an overemphasis on weight or body composition can lead to harmful behaviors such as disordered eating, the overuse of supplements, skipping meals, avoiding hydration, and over-exercising; these behaviors can compromise both health and performance. For this reason, messages and practices around weigh ins and body composition should be standardized without an emphasis on ideal weight or body composition.¹⁻⁵

Additionally, mandatory weigh-ins have been found to cause distress, as well as lead to increased weight control behaviors in athletes: 75% of NCAA division I (female) athletes who participated in mandatory weigh ins reported using at least one weight control method in preparation for the weigh in.^{2,2} Mandatory weigh-ins can also cause athletes to believe that they should weigh far less than is realistic.^{2,3} Furthermore, weights taken more than weekly can communicate that weight is more important than overall health.⁵ Distress from mandatory weigh-ins leading to inappropriate weight control behaviors will additionally compromise sport performance.

Bodyweight collection and monitoring is only one component of a comprehensive process to guide student-athlete health and performance and should NOT be done in isolation. It is essential that all coaches and staff should promote the development of healthy lifestyle behaviors, and should not focus on weight or body composition as a measure of performance or "progress." Healthy lifestyle behaviors include appropriate/balanced eating, adequate sleep, stress management, the inclusion of rest days in training, and the avoidance of alcohol/drugs.

In order to ensure the appropriate and healthy use of weights and body composition testing, these measurements should be performed with a protocol and be managed by a multidisciplinary team that includes Sports Medicine (Athletic Trainers//Head Team Physician), Registered Dietitians, and

Athletic Performance Coaches.

Body Composition Measurement

Purpose:

To measure changes in muscle mass and adipose tissue over time and in relation to athletic training.

Participation

All athletes are eligible to have body composition assessments completed.

Body composition testing is **optional** for all student athletes, and any athlete may choose to decline testing.

- Athletes must be told of the optional nature of this testing

The Registered Dietitian and Sports Medicine staff will determine in advance if any high-risk athlete (those at risk of an eating disorder or in recovery) will participate in body composition testing, based on the athlete's current plan of care.

Scheduling

Team body composition measurements are to be completed at specific times during the season based on the phase of training as predetermined by an Athletic Performance Coach, Registered Dietitian, and head coach (when applicable). Athletic Performance Coaches will determine testing dates/times for their respective teams. Suggested times are quarterly:

- Pre-season
- Mid-season
- Post-season
- End of off season

The dates and times for body composition evaluation will be reserved on bCal Agenda by each team's Athletic Performance Coach. These times will be communicated with the designated Registered Dietitian with a bCal invite.

Privacy

Weight data is considered personal information and should be taken in a private manner.² All data pertaining to weight and body composition testing should be kept confidential. All weight-related data is managed by the Registered Dietitian, Sports Medicine, and Athletic Performance.

Procedure/Protocol

- Body composition testing is done by the In-Body bioelectrical impedance (BIA)
- All measurements will be taken in the Simpson Center Nutrition Laboratory, according to standardized procedures.
- Only Athletic Performance Coaches, Registered Dietitians, Performance Nutrition Intern (pending approval of the Registered Dietitian) or member of the Sports Medicine Staff may

- measure an athlete's body composition
- Any staff who performs body composition testing must be trained prior to taking measurements.
 - A Registered Dietitian will provide annual body composition training prior to each academic year.
- Body composition education, as developed by a Registered Dietitian, will be given annually to all athletes who undergo regular/yearly measurements.
- Body composition education, as developed by a Registered Dietitian, will be given annually to all coaches whose team undergoes regular/yearly measurements.
- A High Performance Team meeting, which includes the team's designated Athletic Performance Coach, Registered Dietitian, Athletic Trainer, Head Coach or designated representative, and other support staff (as appropriate) must take place prior to any and all body composition testing.
 - **The purpose of this performance team meeting is to ensure both the athlete's performance and health needs are considered.**
 - In this meeting, the body composition testing goals for the team will be set, and any individual goals (as appropriate) will be determined and reviewed.
- Both a Registered Dietitian and an Athletic Performance Coach will be present during all body composition testing.
- Body composition measurements should be taken no more than four times per year, and no less than 8 weeks apart on any individual athlete.^{1,2}
 - Additional or more frequent measurements may be considered as deemed appropriate by the Sports Medicine team.
- Only an Athletic Performance Coach and Registered Dietitian may discuss/interpret individual results as it pertains to both performance and health.
- Coaches should not discuss weights or body composition data with athletes.
- The Registered Dietitian and Athletic Performance Coach will work together to determine appropriate training and dietary adjustments for performance based on an athlete's body composition results.
- After an athlete's body composition test is completed, they will meet with their Athletic Performance Coach and Registered Dietitian to discuss the results as they pertain to performance and health.
 - For high-risk athletes who are participating in testing, the Registered Dietitian, Athletic Trainer and Head Team Physician will determine beforehand if providing results is appropriate in the interest of protecting the student-athlete's well-being.
- If body composition results are not within a range considered to be beneficial for health and/or performance, athletes will be referred to their Registered Dietitian and/or team physician for further evaluation.

Data Communication with Coaches

- If requested by the head coach, after all of the measurements are completed for a team, the Registered Dietitian will provide the coach a summary of the results via standardized excel

format and the Performance Team will meet with the coach to discuss those trends.

- Coaches may receive information on trends of change and the treatment plan/goals for individual athletes when deemed appropriate by the Sports Nutrition staff.
- Coaches will not receive any specific information on an athlete's body composition or weight
- Coaches with any specific questions or concerns about an athlete's body composition should discuss these with the Registered Dietitian, Athletic Performance Coach or Athletic Trainer; as needed. Athletic Performance/ Athletic Training may choose to direct the coach to the Registered Dietitian for further discussion.

Weigh-Ins:

Purpose

For medical concern (per Sports Medicine) for unhealthy weight loss or gain, hydration evaluation, and when necessary for specific performance assessment measures.

Participation

Regular weigh-ins are always **optional**, and an athlete may decline being weighed at any time.

- Athletes must be told of the optional nature of this testing

The Sports Medicine Team may recommend that an athlete not participate in team weigh-ins at any time to protect the athlete's well-being.

Privacy

Weight data is considered personal information and should be taken in a private manner.² All data pertaining to weight and body composition testing should be kept confidential. All weight-related data is managed by the Registered Dietitian, Sports Medicine and Athletic Performance

Procedure/Protocol

- Any team conducting regular weigh-ins must have prior approval from Sports Medicine and Sports Nutrition.
- Additional performance testing such as body composition and athletic performance metrics must be performed and tracked for all athletes undergoing regular weigh-ins
- Nutrition education, as developed by a Registered Dietitian, will be given annually to all athletes who undergo regular weighing.
- Nutrition education, as developed by a Registered Dietitian, will be given annually to all coaches whose team undergoes regular weighing.
- A Performance Team meeting, which includes the team's designated Athletic Performance Coach, Registered Dietitian, Athletic Trainer, and other support staff (as appropriate) must take place prior to implementing weigh-ins for a team, and annually thereafter.
 - **The purpose of this performance team meeting is to ensure both the athlete's performance and health needs are considered.**
 - In this meeting, any individual goals (as appropriate) will be determined and reviewed.

- Only Athletic Performance Coaches, Registered Dietitians, Performance Nutrition Intern (pending approval of the Registered Dietitian) or member of the Sports Medicine Staff may measure an athlete's weight
- The number of weigh-ins per year will be determined with the direct input of the Sports Nutrition and Sports Medicine staff
 - Weigh-ins will not be taken more than once a week unless specifically approved by the Sports Nutrition and Sports Medicine staff.^{1,2}
- Weigh-ins will emphasize:
 - The role of tracking hydration
 - Trends of change²
- Discussion regarding weigh-ins will be kept neutral, as both positive or negative comments regarding weight can be harmful to an individual
- *At no time should an ideal, target or goal weight for optimal performance be emphasized.*^{2,5}
- Any concerning weight changes should be communicated to a Registered Dietitian.
 - Weight concerns will be managed by the Performance team

Data Communication with Coaches

- Coaches should not discuss weights with athletes
- Coaches may receive information on trends of change and the treatment plan/goals for individual athletes when deemed appropriate by the Sports Nutrition staff
- Coaches will not receive any specific information on an athlete's weight
 - Exceptions may be made by the sports Performance Team if weight information is deemed necessary to perform coaching duties, the athletes have provided consent to share, AND the team is not considered high-risk for eating disorder behaviors
 - Sports categorized as increased risk for eating disorder behaviors are Endurance Sports, Weight Category Sports, and Aesthetic Sports⁶⁻⁸
 - If this data is misused in any way outside of the policy (goal weights being set, recommendations for change, etc.), that coach will no longer receive weight data and will face disciplinary actions
- Coaches with any specific questions or concerns about an athlete's body composition or weight should discuss these with the Registered Dietitian, Athletic Performance Coach or Athletic Trainer; as needed, Athletic Performance/ Athletic Training may choose to direct the coach to the Registered Dietitian for further discussion.

References

1. Turocy PS, DePalma BF, Horswill CA, Laquale KM et al. National Athletic Trainers' Association Position Statement: Safe Weight Loss and Maintenance Practices in Sport and Exercise. *J Athl Train.* 2011;46(3):322-336.

2. Bonci CM, Bonci LJ, Granger LR, Johnson CL et al. National Athletic Trainers' Association Position Statement: Preventing, Detecting, and Managing Disordered Eating in Athletes. *J Athl Train.* 2008;43(1):80-108.
3. Tackett BP, Petric TA, Anderson CM. The frequency of weigh-ins, weight intentionality and management, and eating among female collegiate athletes. *Eat Behav.* 2016; 23: 82-85.
4. Meyer NL, Sundgot-Borgen J, Lohman TG, Ackland TR et al. Body composition for health and performance: a survey of body composition assessment practice carried out by the Ad Hoc Research Working Group on Body Composition, Health, and Performance under the auspices of the IOC Medical Commission. *Br J Sports Med.* 2013;47:1044-1053.
5. Sports Nutrition: A Practice Manual for Professionals. *Sports, Cardiovascular, and Wellness Nutrition Dietetic Practice Group.* 5th edition. 2012.
6. Beals KA, Manore MM. Disorders of the female athlete triad among collegiate athletes. *Int J Sport Nutr Exerc Metab.* 2002 Sep; 12(3):281-93
7. Sundgot-Borgen J. Nutrient intake of female elite athletes suffering from eating disorders. *Int J Sport Nutr.* 1993 Dec; 3(4):431-42
8. Sundgot-Borgen J, Torstveit M. Prevalence of eating disorders in elite athletes is higher than the general population. *Clin J Sport Med.* 2004;14:25-32

Body Composition Measurement and Athlete Weighing Protocol

University of California, Berkeley

Sports Medicine/Sports Nutrition
Updated April 2017

Introduction:

There is not one ideal weight or body composition for performance.^{2,5} Weight and body composition are affected by a variety of factors, including stage of development/maturation, weight and growth history, genetics, nutrition, and hydration.

Research clearly documents that an overemphasis on weight or body composition can lead to harmful behaviors such as disordered eating, the overuse of supplements, skipping meals, avoiding hydration, and over-exercising. For this reason, messages and practices around weigh ins and body composition should be standardized without an emphasis on ideal weight or body composition.¹⁻⁶

All coaches and staff should promote the development of healthy lifestyle behaviors, and should not focus on weight or body composition as a measure of performance or "progress." Healthy lifestyle behaviors include: appropriate/balanced eating, adequate sleep, stress management, the inclusion of rest days in training, and the avoidance of alcohol/drugs.

Body Composition Measurement

Purpose:

Body composition measurements can be used as a tool to measure changes in muscle mass and adipose tissue over time and in relation to athletic training. Appropriate changes in muscle mass and adipose tissue can be beneficial to one's performance and health, while excessive changes can be detrimental to one's health. Therefore, these measurements should be performed with a protocol and multi-disciplinary team place.

Methods

Body composition testing is currently completed with the In-Body bioelectrical impedance (BIA) at Cal.

Location

All measurements will be taken in the Simpson Center Nutrition Laboratory, according to standardized procedures.

Participation

All athletes are eligible to have body composition assessments completed. However body composition testing is **optional** for all student athletes, and any athlete may choose to decline testing.

Scheduling

Team body composition measurements are to be completed at specific times during the season based on the phase of training as predetermined by strength coach, RD, and head coach (when

applicable). Strength coaches will determine testing dates/times for their respective teams. Suggested times are quarterly:

- Pre-season
- Mid-season
- Post-season
- End of off season

The dates and times for body composition evaluation will be reserved on bCal Agenda by each team's strength coach. These times will be communicated with the RD with a bCal invite.

Staffing

Strength coaches will be responsible for measuring the athletes for his/her respective teams. The RD will assist the strength coaches with these measurements as needed.

Training

Any staff that completes body composition testing must be trained prior to taking measurements on athletes.

The Sports RD will provide annual body composition training prior to each academic year.

Protocol

1. Body composition measurements should be taken no more than four times per year, and no less than 8 weeks apart on any individual athlete.^{1,2}
 - a. Additional or more frequent measurements may be considered as deemed appropriate by the Sports Medicine team.
2. Body composition education, as developed by a Sports RD, will be given annually to all athletes who undergo regular/yearly measurements.
3. At the time of testing, staff completing the measurements will not discuss/interpret individual results under any circumstances, and athletes will not receive a print out of their body composition test.
4. After all of the measurements are completed for a team, the strength coach for that team will summarize the results via standardized excel format and discuss the results with the RD.
 - a. After all team data is compiled and reviewed by the Sports RD and strength coach, athletes can receive information regarding changes in their body composition, defined as increases or decreases in lean body mass or fat mass, from the RD or strength coach.
 - b. Information regarding body composition measurements should be done in a private meeting.
5. Coaches will not receive any specific information on an athlete's body composition or weight, but when appropriate may receive information on trends of change and the treatment plan/goals from the Sports RD or strength coach. Coaches may bring body composition questions or concerns to the Sports RD or strength coach at any time in the season.
6. If body composition goals are not within a range considered to be beneficial for health and/or performance, athletes will be referred to the sports dietitian and/or team physician for further

evaluation. Athletes that may need to lose or gain weight will be referred to the sports RD so that appropriate dietary adjustments can be made with regards to weight goals.

Weigh Ins:

Mandatory weigh ins have been found to cause distress, as well as lead to increased weight control behaviors in athletes: 75 % of NCAA division I (female) athletes who participated in mandatory weigh ins reported using at least one weight control method in preparation for the weigh in.^{2,3}

Mandatory weigh ins may also cause athletes to believe that they should weigh far less than is realistic.^{2,3} Furthermore, weights taken more than weekly can communicate that weight is more important than overall health.³

Purpose

Monitoring weight changes while training may help detect poor hydration practices or significant weight gain/loss. Occasionally, for medical reasons, the Sports Medicine team may determine that closer weight monitoring is necessary in an individual athlete.

Participation

Weekly weigh ins performed by the Strength & Conditioning Staff should **not** be mandatory or required; an athlete may decline being weighed at any time. Furthermore, the sports medicine team may recommend that an athlete not participate in team weigh ins at any time.

Privacy

Weight data is considered personal information and should be taken in a private manner.²

Guidelines for Weigh Ins with S & C staff:

1. Weigh ins should not be taken more than once a week.^{1,2}
 - a. Exceptions for the frequency of weigh ins may be made on a team-by-team basis.
 - i. Such exceptions will be determined by the Sports RD, in consultation with the Sports Medicine Team when appropriate.
2. Weigh ins should emphasize:
 - a. The role of tracking hydration
 - b. Trends of change²
3. Discussion regarding weigh ins should be kept neutral, as both positive or negative comments regarding weight can be harmful to an individual.
4. At no time should an ideal or target weight for optimal performance be emphasized.^{2,5}
5. Strength coaches who track weights should refer any concerning weight changes to a Sports RD. Weight concerns should be managed by a team including a Sports RD, and not one individual/coach.

Coaches Role

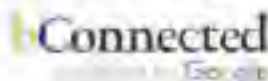
Coaches will not receive any specific information on an athlete's body composition or weight, but when appropriate may receive information on trends of change and the treatment plan/goals from the Sports RD or strength coach.

Coaches with any specific questions or concerns about an athlete's body composition or weight should discuss these with the Sports RD, strength coach or ATC; as needed, the strength coach or ATC may choose to direct the coach to the Sports RD for further discussion.

At no time should an ideal or target weight for optimal performance be emphasized to an individual athlete.²⁵

References

1. Turocy PS, DePalma BF, Horswill CA, Laquale KM et al. National Athletic Trainers' Association Position Statement: Safe Weight Loss and Maintenance Practices in Sport and Exercise. *J Athl Train.* 2011;46(3):322-336.
2. Bonci CM, Bonci LJ, Granger LR, Johnson CL et al. National Athletic Trainers' Association Position Statement: Preventing, Detecting, and Managing Disordered Eating in Athletes. *J Athl Train.* 2008;43(1):80-108.
3. Tackett BP, Petrie TA, Anderson CM. The frequency of weigh-ins, weight intentionality and management, and eating among female collegiate athletes. *Eat Behav.* 2016; 23: 82-85.
4. Meyer NL, Sundgot-Borgen J, Lohman TG, Ackland TR et al. Body composition for health and performance: a survey of body composition assessment practice carried out by the Ad Hoc Research Working Group on Body Composition, Health, and Performance under the auspices of the IOC Medical Commission. *Br J Sports Med.* 2013;47:1044-1053.
5. Sports Nutrition: A Practice Manual for Professionals. *Sports, Cardiovascular, and Wellness Nutrition Dietetic Practice Group.* 5th edition. 2012.



Body Composition and Weighing Protocols

17 messages

Cal Sports Nutrition <sportsnutrition@berkeley.edu>

Fri, May 5, 2017 at 11:44 AM

To: undisclosed recipients <calathletics@berkeley.edu>

Bcc: Amanda Augustus <augustus@berkeley.edu>, Brooke Eubanks <beubanks@berkeley.edu>, Coralie D Simmons <coralie.simmons@berkeley.edu>, David A Durden <durden@berkeley.edu>, David C Esquer <dcesquer@berkeley.edu>, Derek Starks <derek.starks@berkeley.edu>, Diane L Ninemire <ninemire@berkeley.edu>, Emiliano Acosta <alacosta@berkeley.edu>, Jack E Clark <clarkj@berkeley.edu>, Justin D Wilcox <jwilcox@berkeley.edu>, Justin Howell <jhowell@berkeley.edu>, Kevin J Grimes <kevin.grimes@berkeley.edu>, Kirk Everist <kevenist@berkeley.edu>, Lindsay Gottlieb <lgottlieb@berkeley.edu>, Meagan Schmitt <mschmitt@berkeley.edu>, Mike Toti <mtoti@berkeley.edu>, Nancy K McDaniel <nmcdan@berkeley.edu>, Neil J McGuire <nmcguire@berkeley.edu>, Peter T Wright <pwright@berkeley.edu>, Rich I Feller <rifeller@berkeley.edu>, Shellie B Orstead <sonstead@berkeley.edu>, Sonny Dykes <sdykes@berkeley.edu>, Teri J McKaever <mckaever@berkeley.edu>, Tony M Sandoval <tsandtrvl@berkeley.edu>, Walter L Chun <waltchun@berkeley.edu>, Wyking Jones <wykingj44@berkeley.edu>, Art Kaufman <coechkaufman@berkeley.edu>, Austin Pile <aspile@berkeley.edu>, Austin Risenhoover <hoover25@berkeley.edu>, Beau Baldwin <bbaldwin17@berkeley.edu>, Beverly Vatananugukil <bvatana@berkeley.edu>, Brad A Sanfilippo <bradsanfilippo@berkeley.edu>, Charles Davis <chasdavis@berkeley.edu>, Charles E D'Arcy <cdarcy@berkeley.edu>, Charles Ragle <cragle@berkeley.edu>, Charmin A Smith <charminsmith@berkeley.edu>, Christopher Lee <christopher.lee@berkeley.edu>, Corrine R Callahan <coralexander@berkeley.edu>, Desmond Bishop <dbishop@berkeley.edu>, Elisabeth Crandall <ecrandall@berkeley.edu>, Eric Mina <eric-mina@berkeley.edu>, Gerald Alexander <geraldalexander@berkeley.edu>, Henry Fouk <henryfa@sbcglobal.net>, Ian Walsh <ianwalsh@berkeley.edu>, Jacob Wilson <jake.wilson@berkeley.edu>, Jeffrey C Tyrrell <jeffryr@berkeley.edu>, Jennifer M Dorr <j.dorr@berkeley.edu>, Jennifer Porretto <jporretto@berkeley.edu>, Jerry Azzinaro <j.azzinaro@berkeley.edu>, JT Okada <jto@berkeley.edu>, Kacie B Lewis <klewis@berkeley.edu>, Kai Felton <felton@berkeley.edu>, Laura A VanWarf <Lauravanwarf@berkeley.edu>, Louise R Kinder <lkinder@berkeley.edu>, Malachi Mahan <mmahan5@berkeley.edu>, Marques Tulasosopo <coachtul@berkeley.edu>, Matt J McShane <matmcs@berkeley.edu>, Mike B Gipson <mgipson@berkeley.edu>, Mohamad Saatara <msaatara@berkeley.edu>, Nicholas Edwards <njadwards@berkeley.edu>, Nick Newman <coachnicknewman@berkeley.edu>, Owen Monroy <monroy@berkeley.edu>, Patrick Schulkers <pschulkers@berkeley.edu>, Rebecca A Carlton <becca.carlton@berkeley.edu>, Scott Frandsen <frandsen@berkeley.edu>, Shayla Houlhan <shoulhan@berkeley.edu>, Steve Greatwood <steve.greatwood@berkeley.edu>, Tammy L Lohmann <tl@berkeley.edu>, Thomas Eager <teager@berkeley.edu>, Tim O'Toole <totoole@berkeley.edu>, Timothy Deruyter <td17@berkeley.edu>, Tom W Billups <tbillups@berkeley.edu>, Tony Franklin <coachfranklin@berkeley.edu>, Tony Tuoli <ttuoli@berkeley.edu>, Tyler W Browne <tbrowne@berkeley.edu>, Vanessa F Tavalero <vtavalero@berkeley.edu>, Wendale Farrow <wfarrow@berkeley.edu>, Yuri Sugiyama <ysugiyama@berkeley.edu>, Zack Warren <zwarren@berkeley.edu>, Ashwin Puri <ashwinpuri@berkeley.edu>, Beth Voetsch <b_voetsch@berkeley.edu>, Chris Pezman <cpezman@berkeley.edu>, Christopher J Celona <ccelona@berkeley.edu>, David Secor <davidsecor@berkeley.edu>, Foti T Mellis <fmellis@berkeley.edu>, Gordon A Bayne <gbayne@berkeley.edu>, Jay A John <jay.john@berkeley.edu>, Jay Larson <jlarson@berkeley.edu>, Jenny Simon-O'Neill <jenny.simon@berkeley.edu>, Jeremy Wang <jeremy.wang@berkeley.edu>, Josh Hummel <joshhummel@berkeley.edu>, Justin M Panarese <jpanarese@berkeley.edu>, Laura A Dixon <ladixon@berkeley.edu>, Patrick Glaessner <pglaess@berkeley.edu>, Ryan H Cobb <ryancobb@berkeley.edu>, Sierra Achin <sierraachin@berkeley.edu>

Coaches,

We hope your final push through this semester and spring seasons are going well!

On behalf of the Sports Medicine and Sports Nutrition departments, we are writing to let you know that we are ready to roll out our updated athlete body composition and weighing protocol that will take effect this week.

We are excited about this, as it will enhance our student-athletes' experience in the realm of health and performance.

The main aim of this protocol is to create increased communication among team coaches, strength and conditioning coaches, athletic trainers, sports dietitians, and physicians when dealing with body composition concerns; working as a team, we will be able to better serve student athlete's health, well-being, and performance.

The policy also aims for standardize testing across all teams at Cal in a research-based manner.

Please take note of some of the "highlighted" additions/changes to the existing protocol:

Body composition testing

- Will be done no more than four times a year, and no less than 8 weeks apart.
- Team results will be reviewed between the strength and conditioning staff and the Sports RD after testing is completed.
- Athletes will not receive their results at the time of their testing, but can later meet with the Sports RD or Strength and Conditioning coach to go over their individual results in detail.
- Coaches will be able to receive trends of change in team and individual body composition testing; however, they will no longer be given the raw data.
- Coaches will be able to meet with the Sports RD, S&C coach, and/or the Sports Medicine team when they have concerns about a specific athlete in order to create an appropriate treatment plan for said athlete when necessary; this can be done at any point in the season.

Athlete weighing

- Student athletes may be weighed up to once a week by the strength and conditioning staff in a private manner, this information should be kept confidential.

* Exceptions to the frequency of body composition testing or weighing may be made on a case-by-case basis or when deemed medically appropriate.

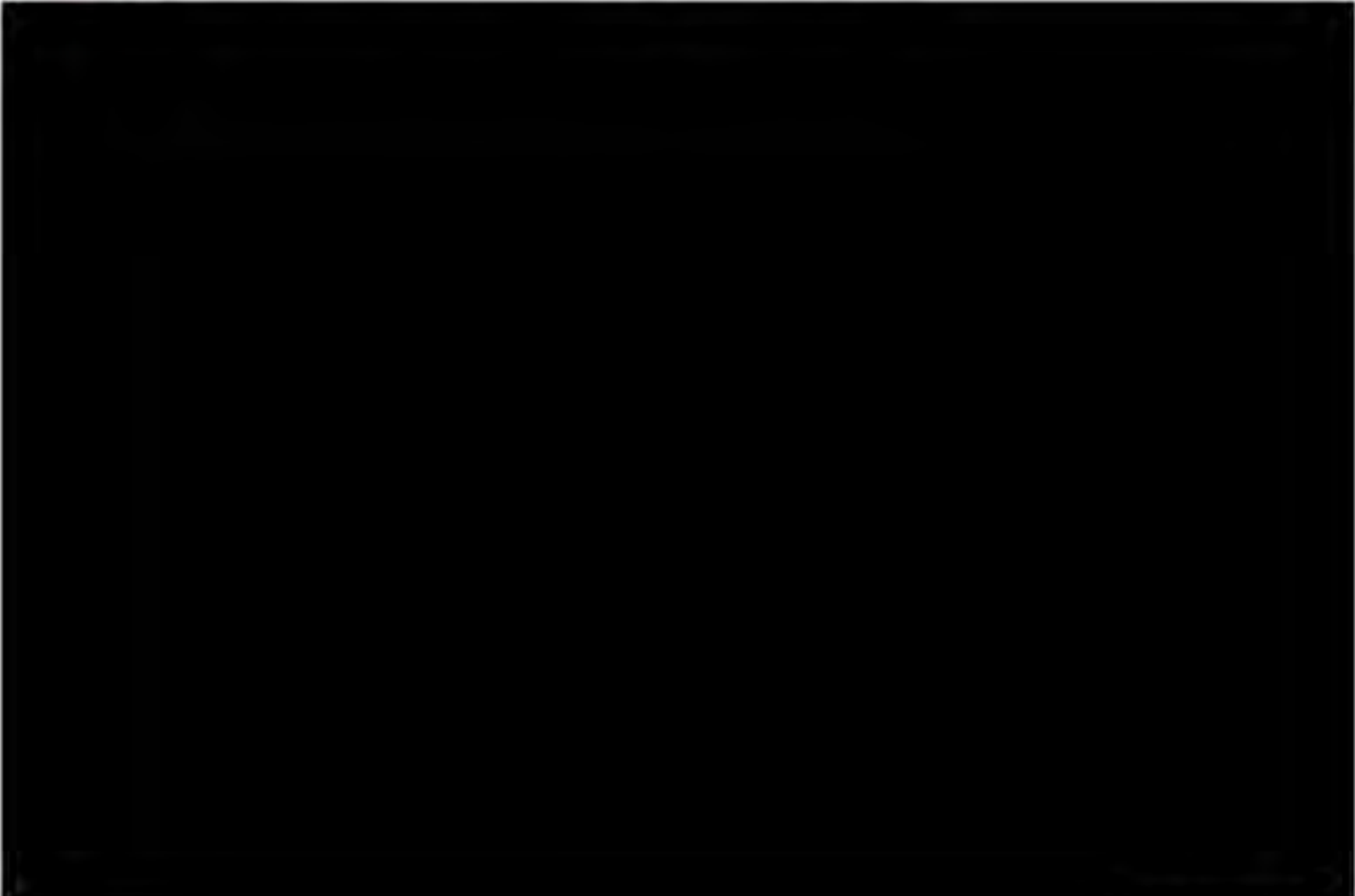
Please see the protocol **attached** for further details.

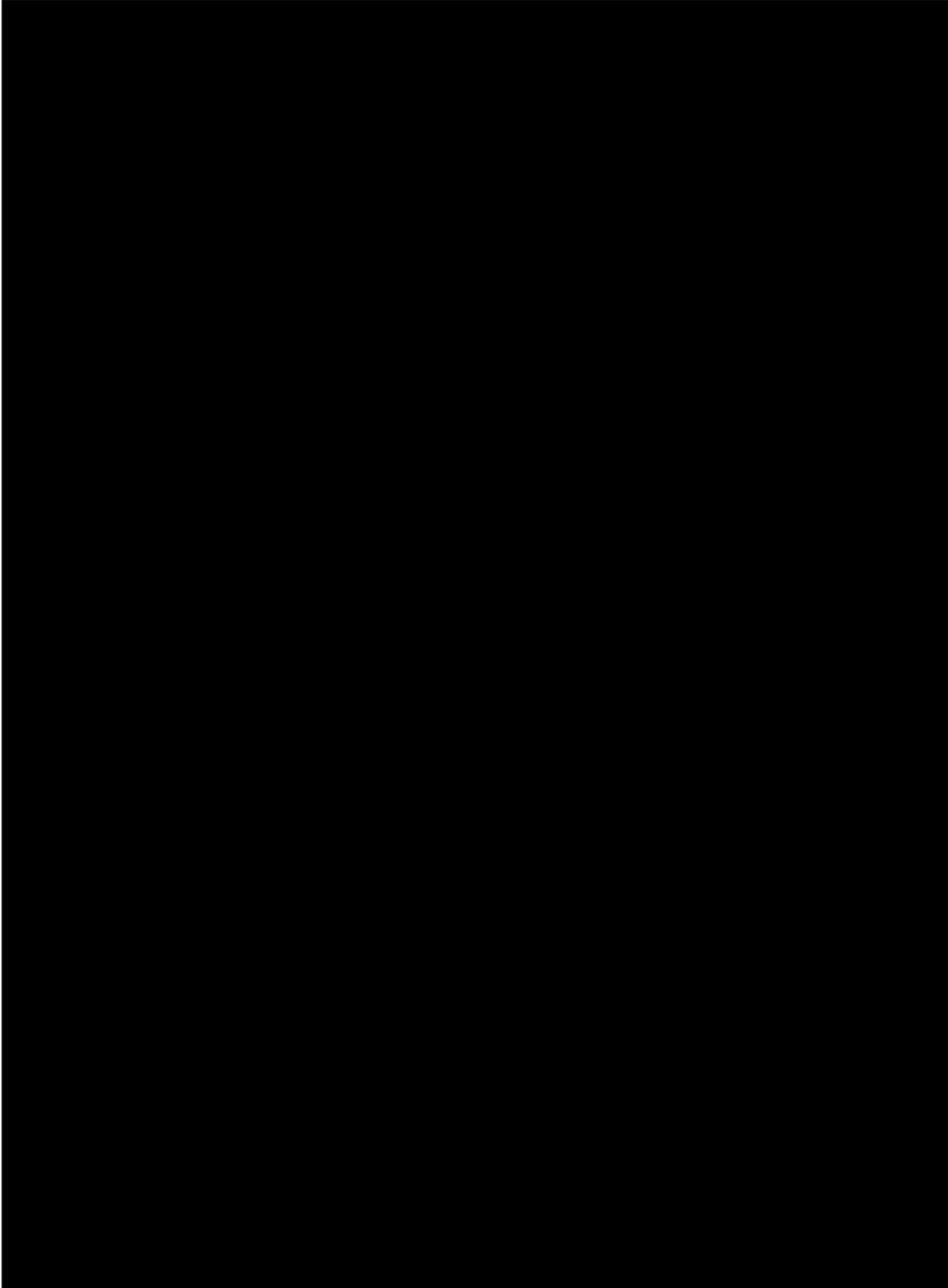
We thank you for your patience as we transition to this new protocol. Please direct any questions or concerns you have to: Sportsnutrition@berkeley.edu

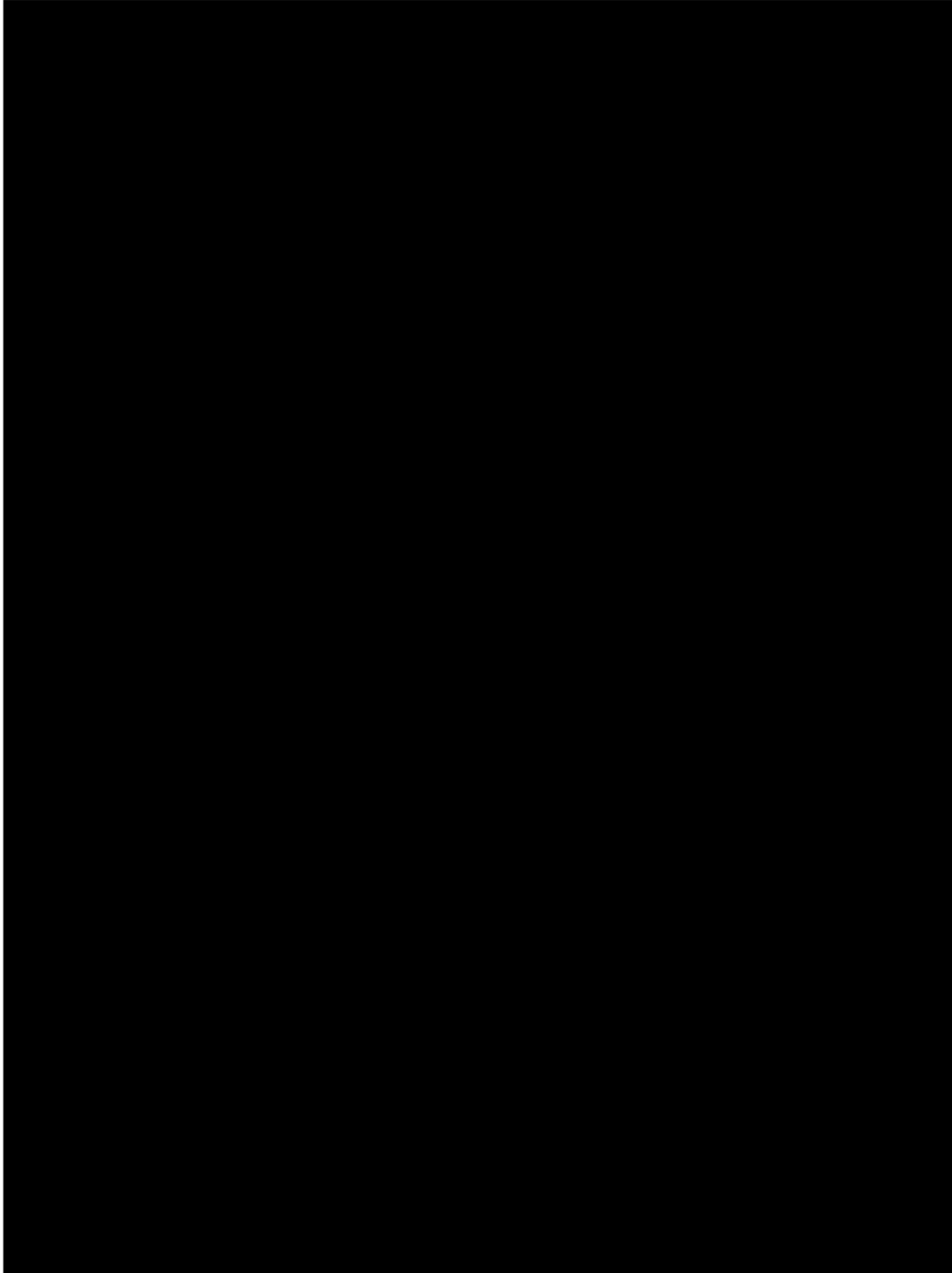
Sincerely,

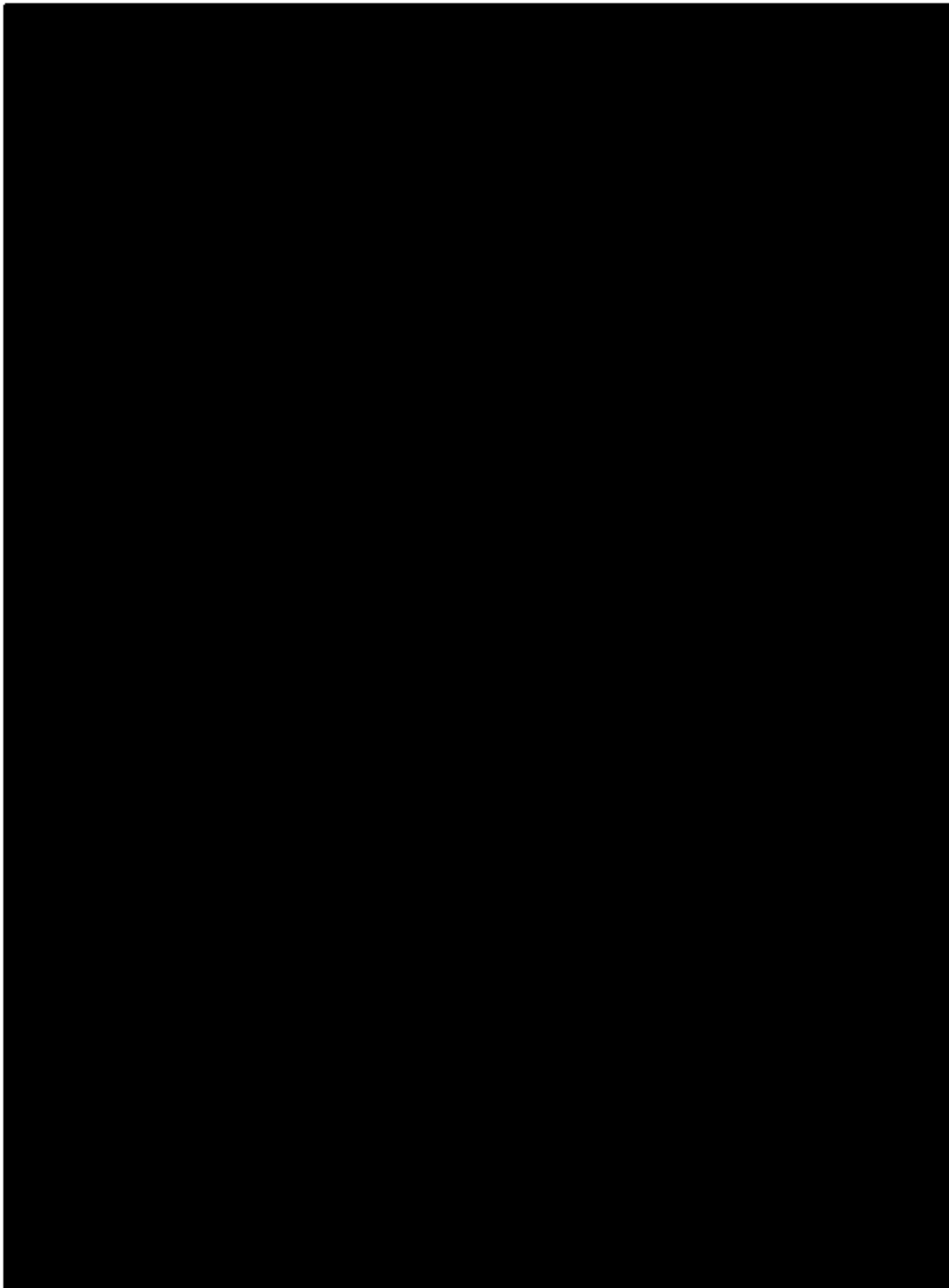
[Redacted Signature]

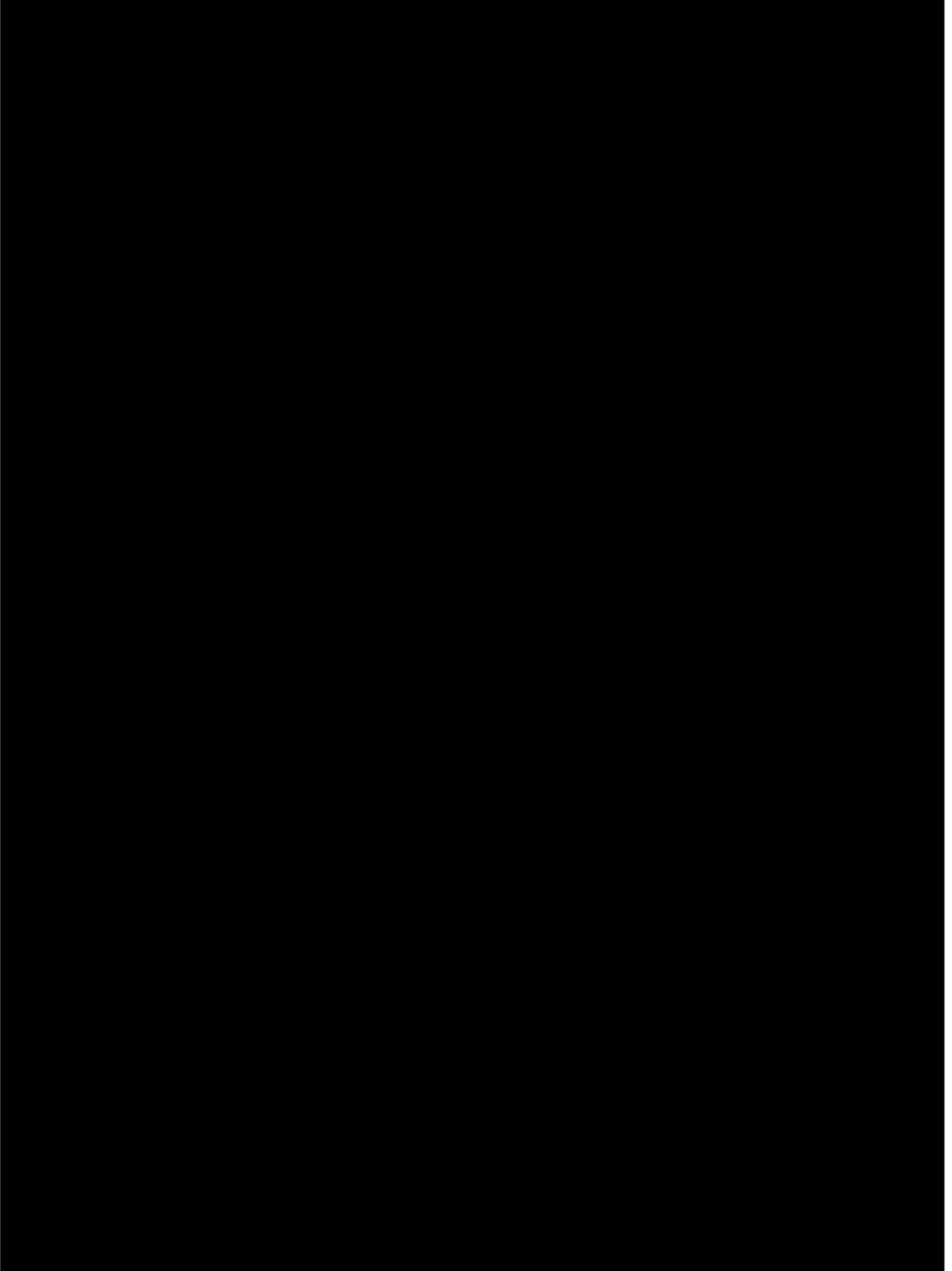
 **BODY COMPOSITION MEASUREMENT PROTOCOL, Updated April 2017.pdf**
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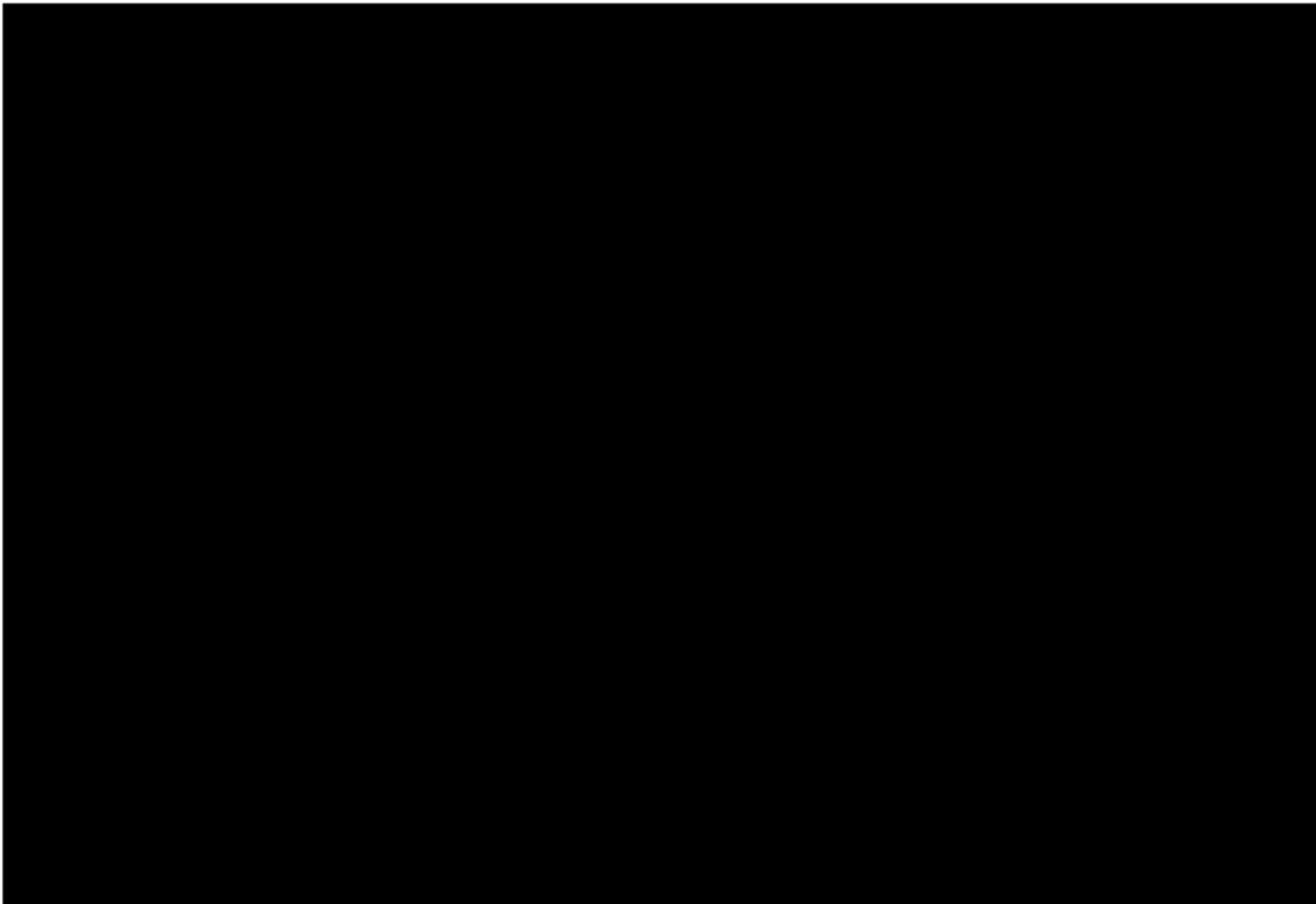


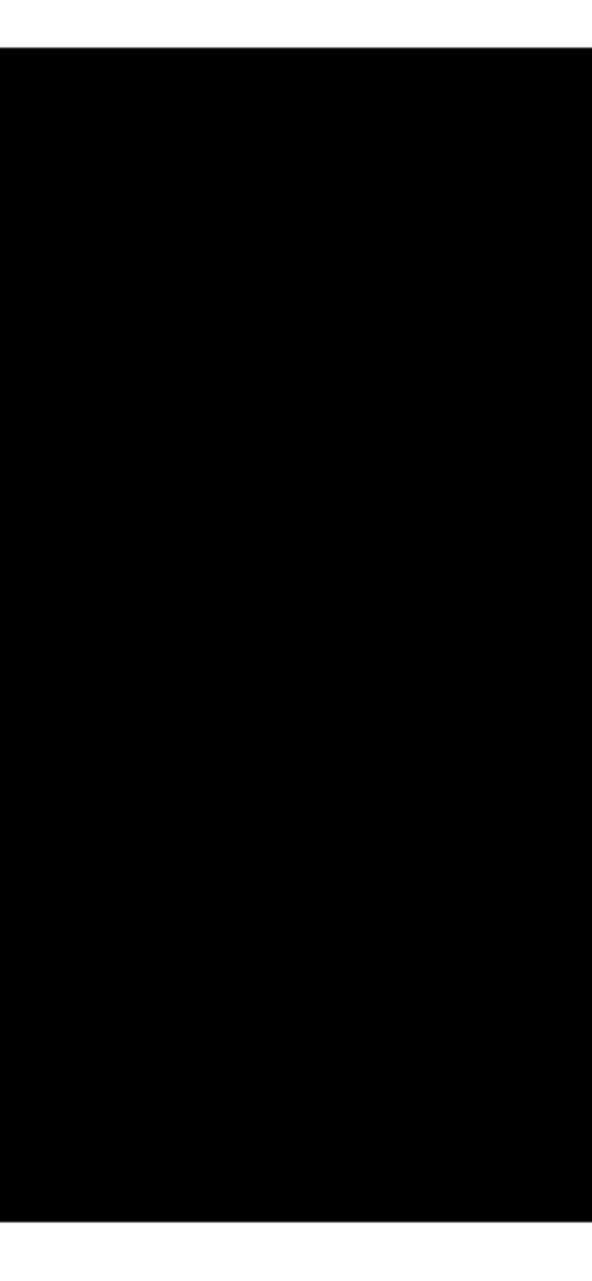


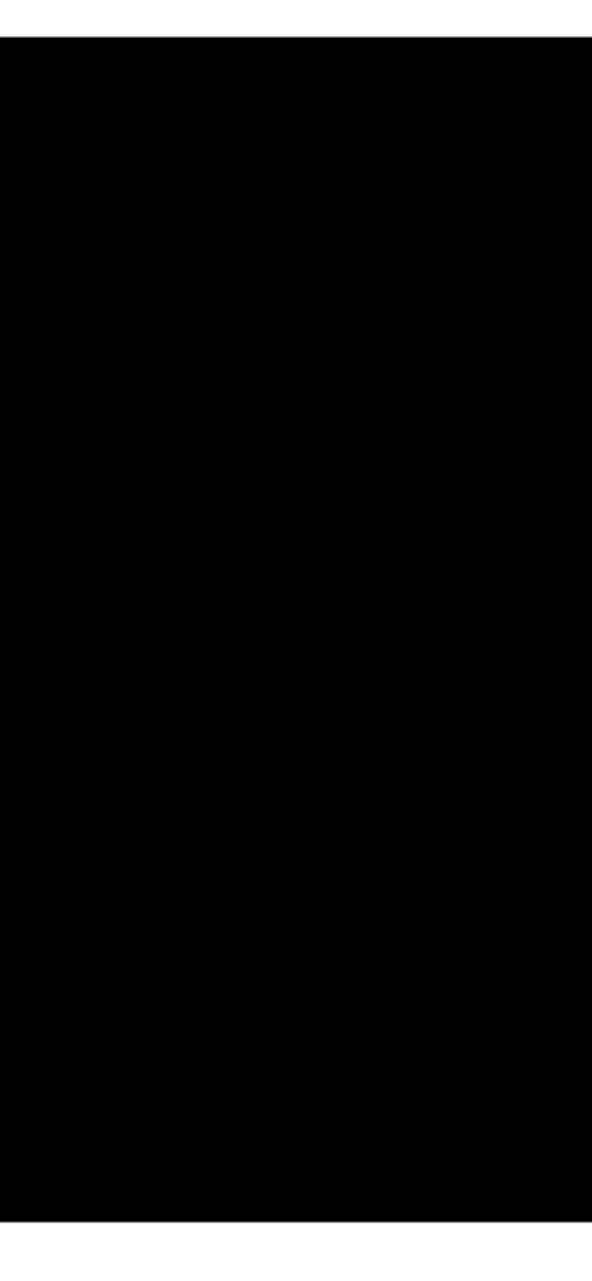


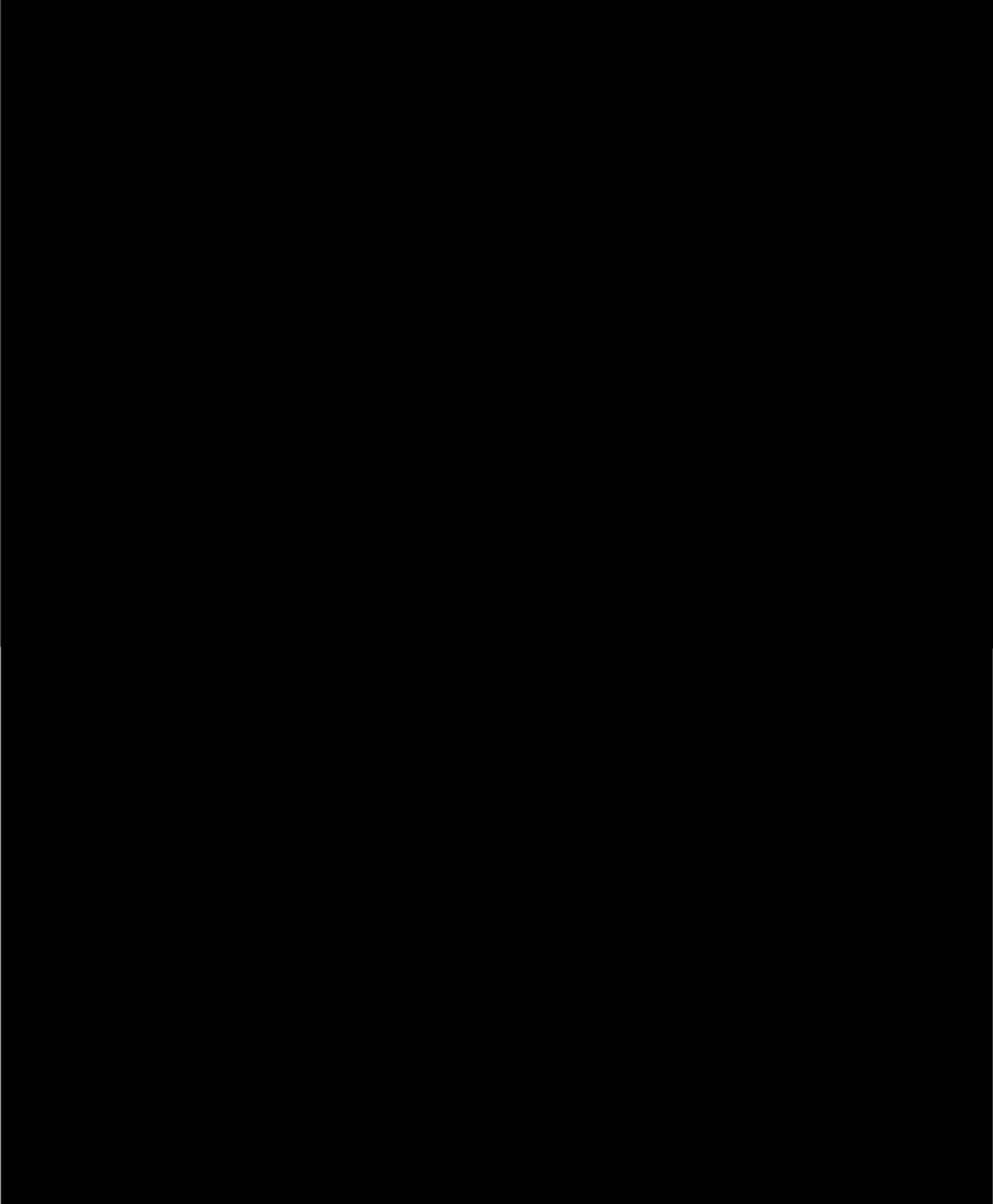


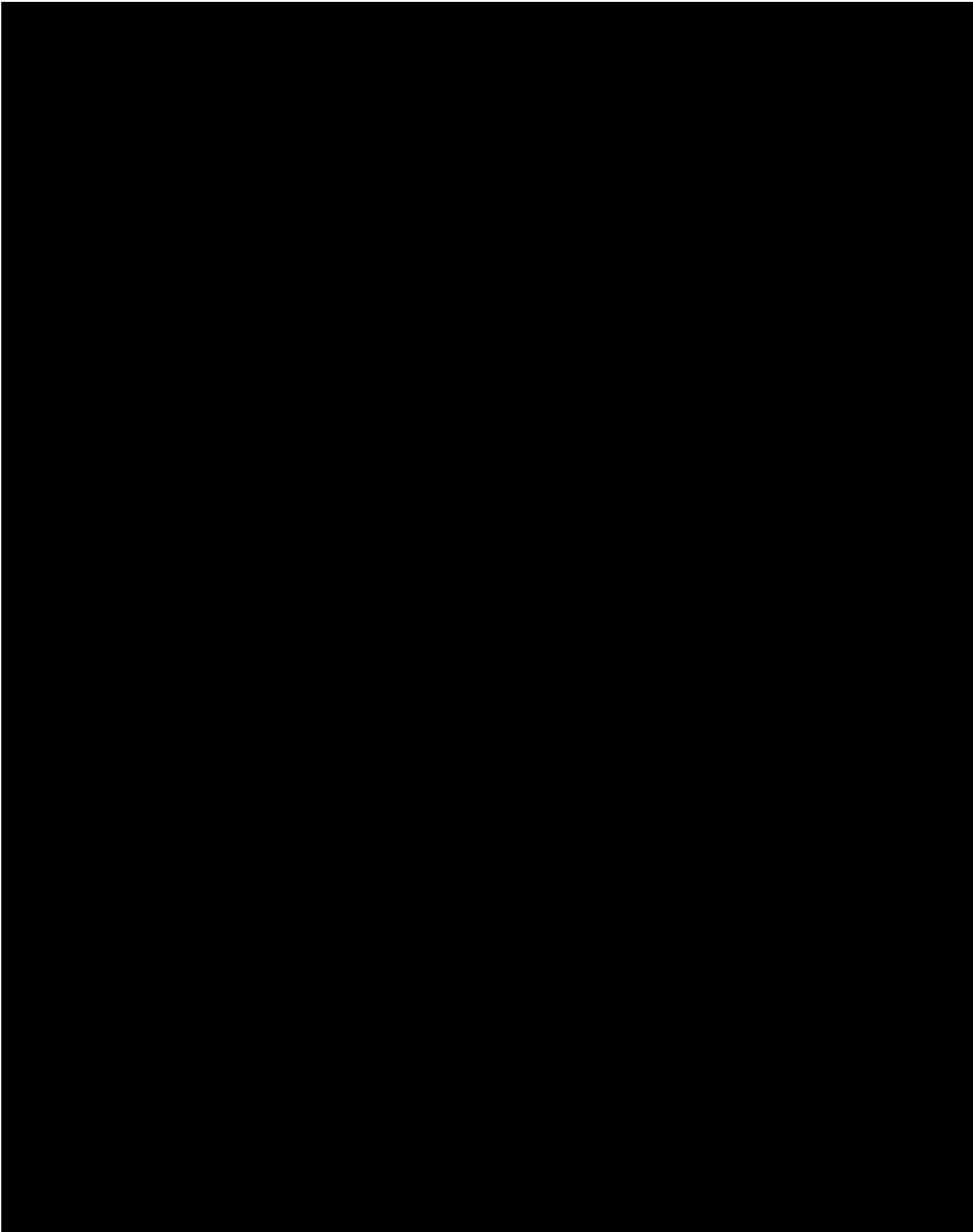


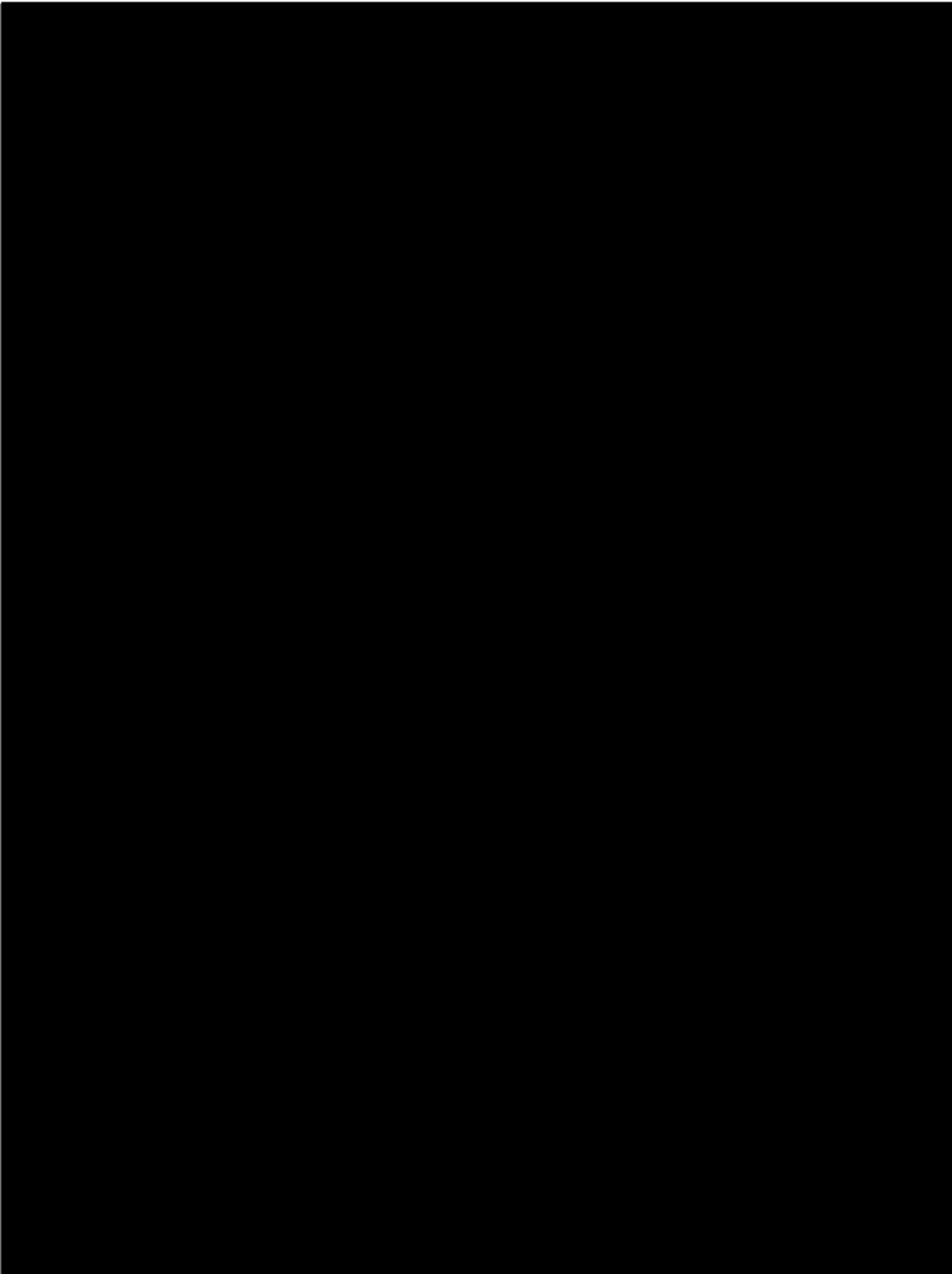


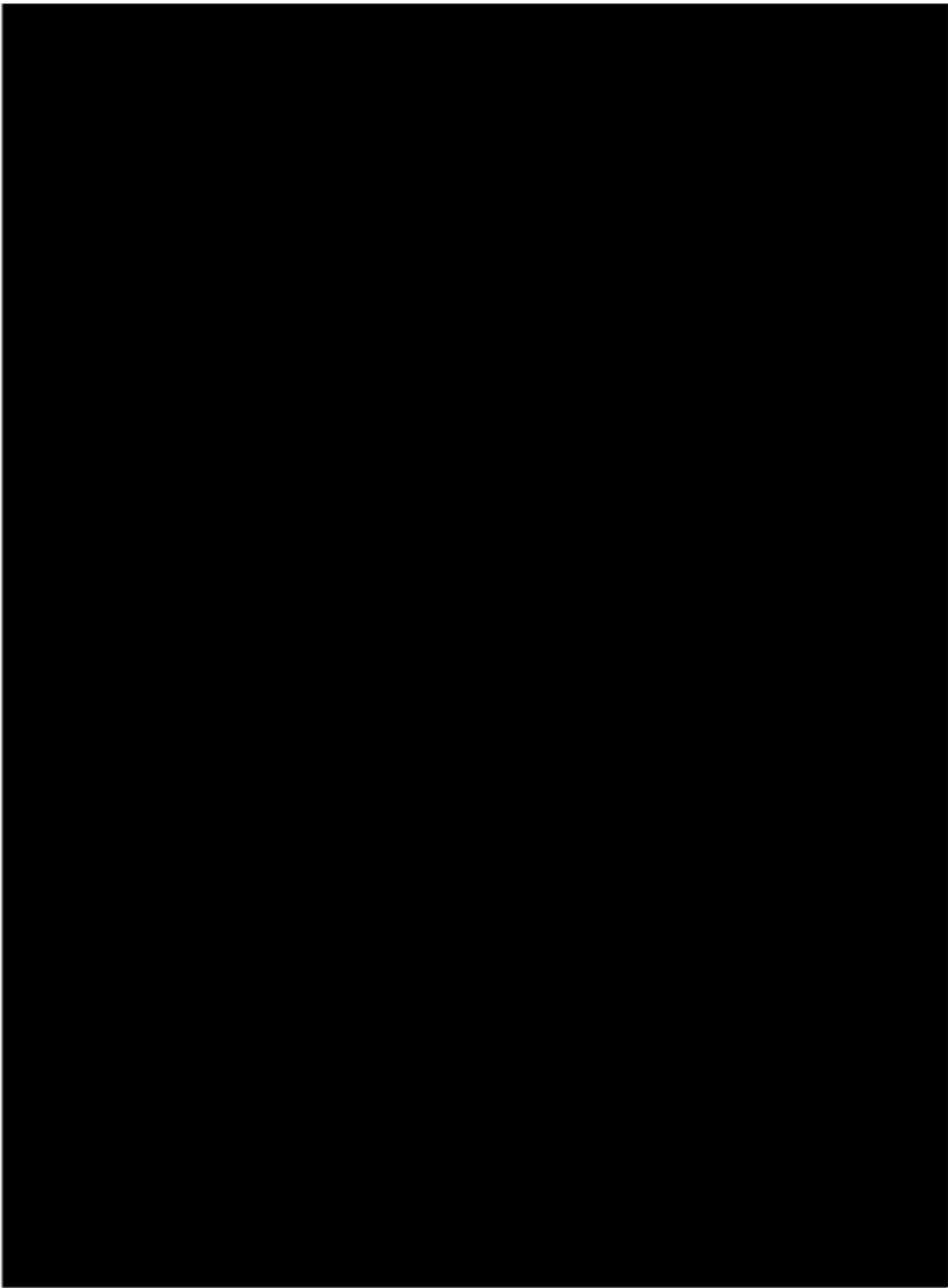


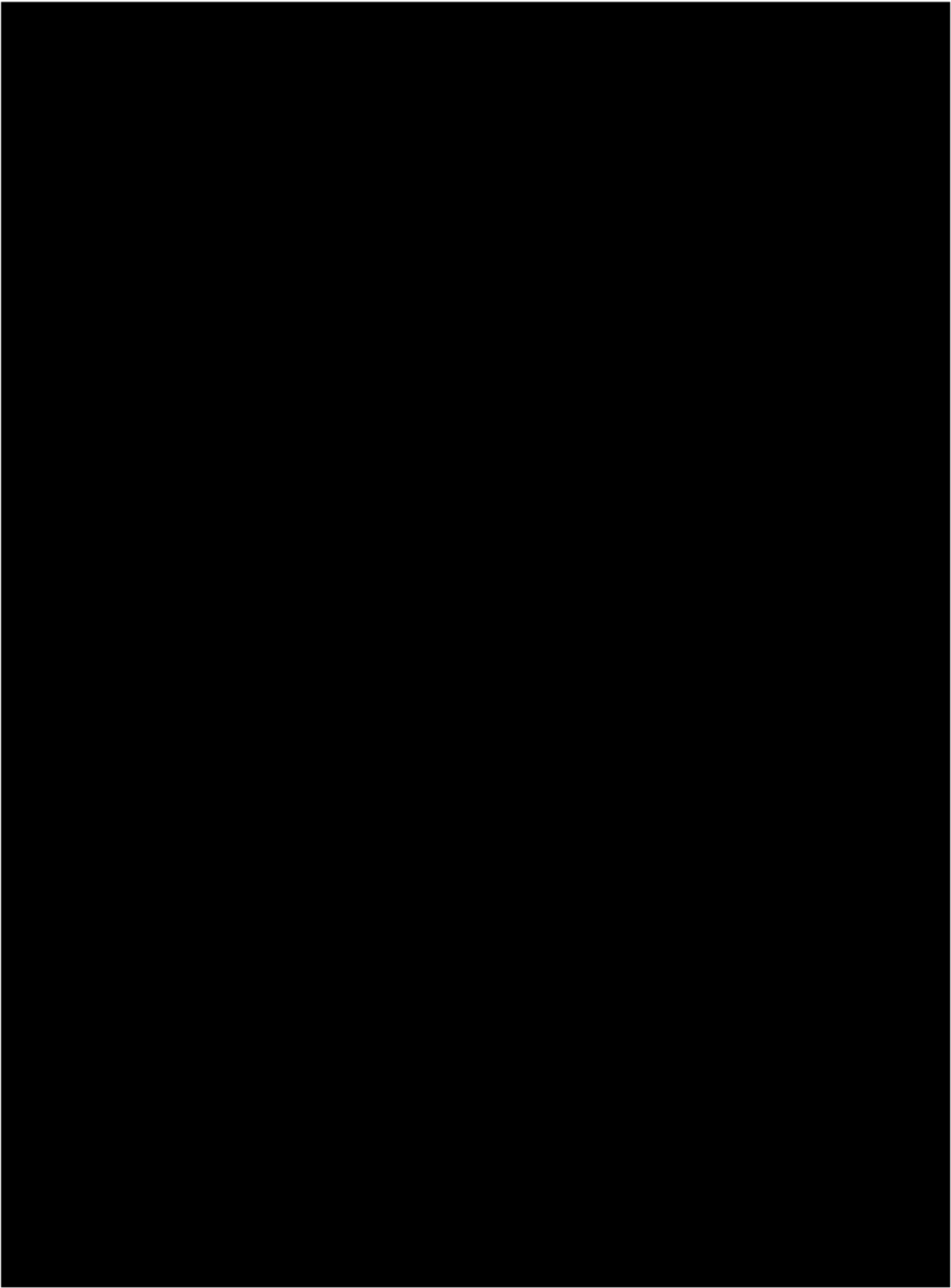


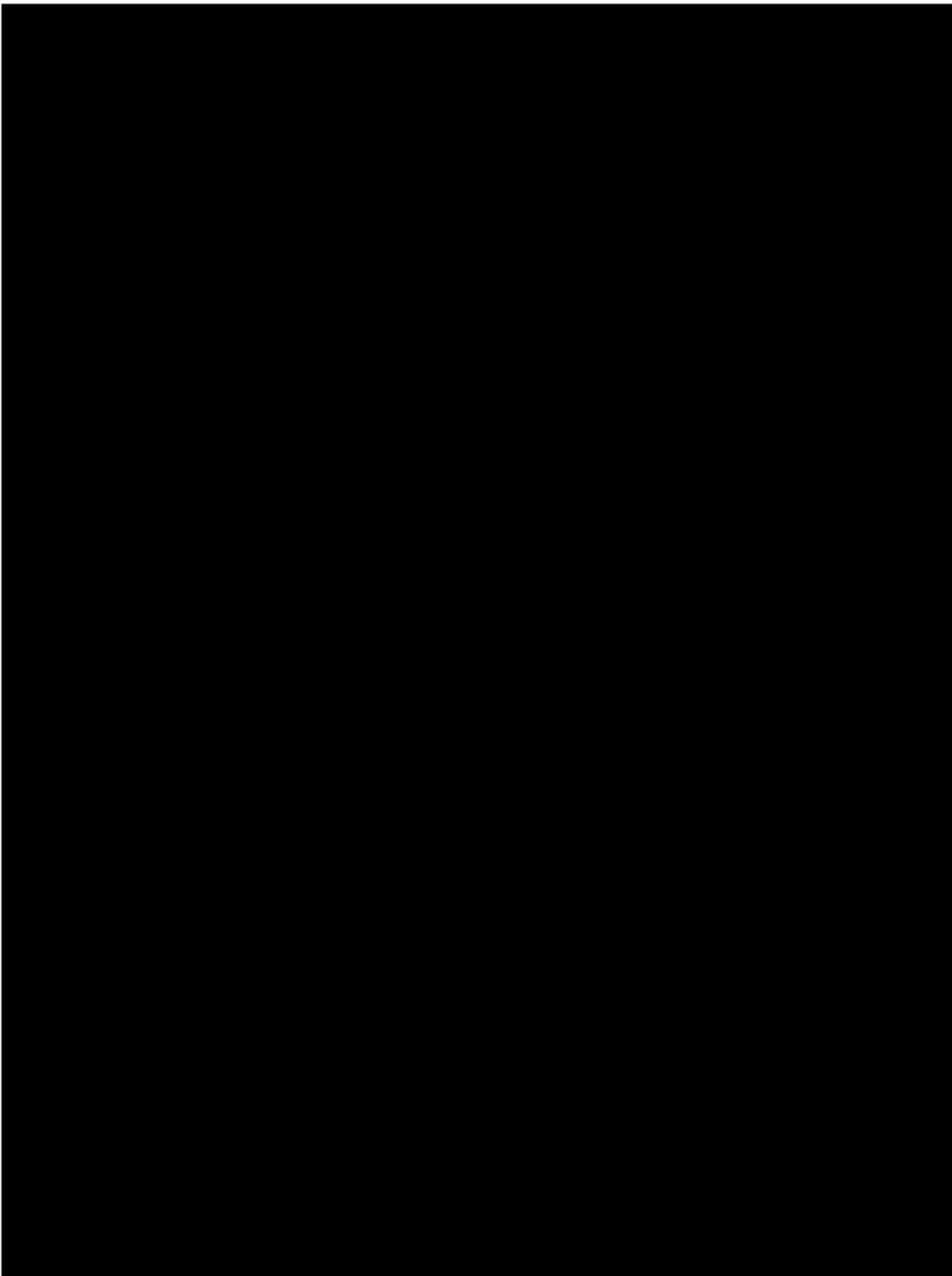


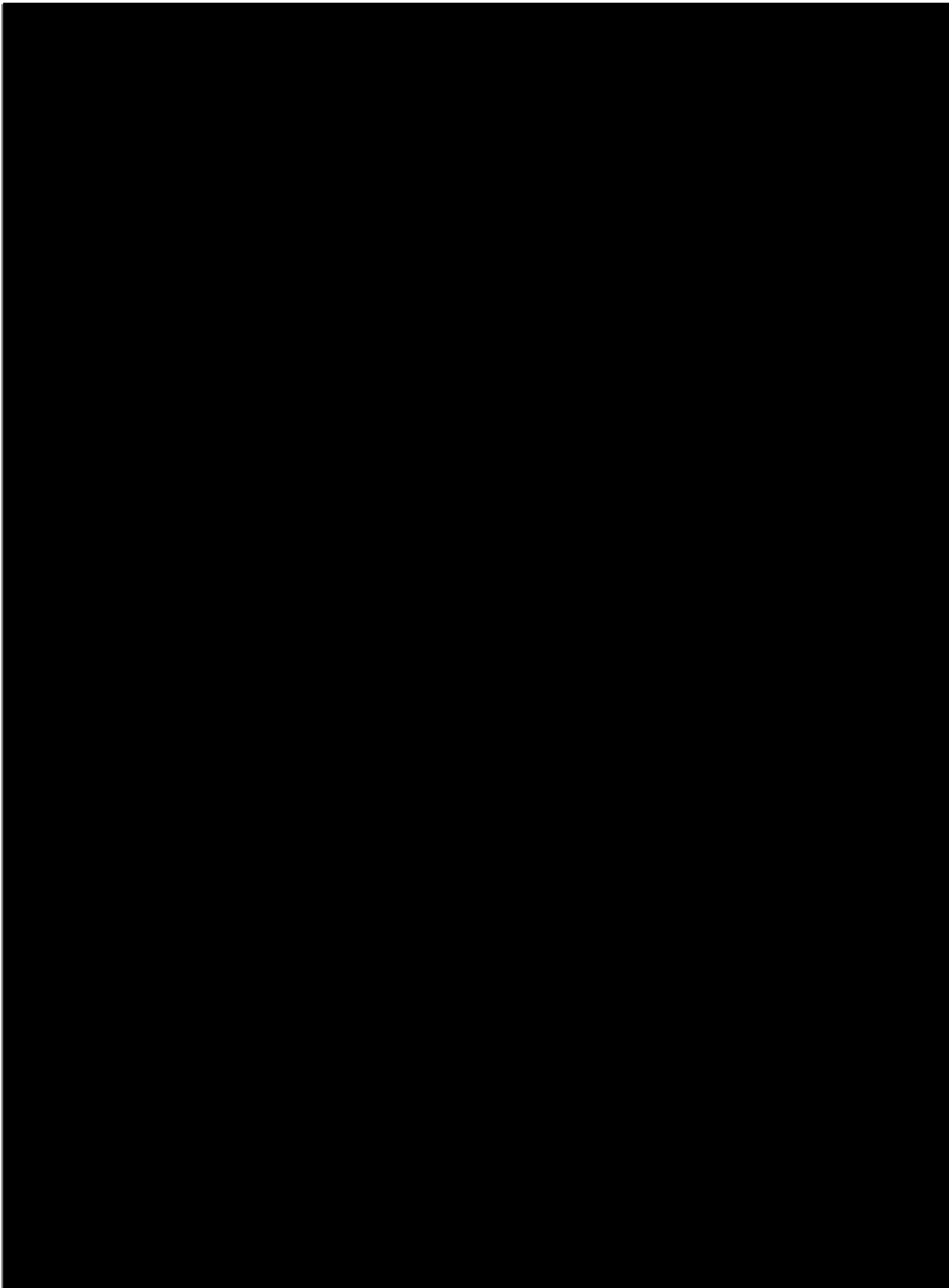


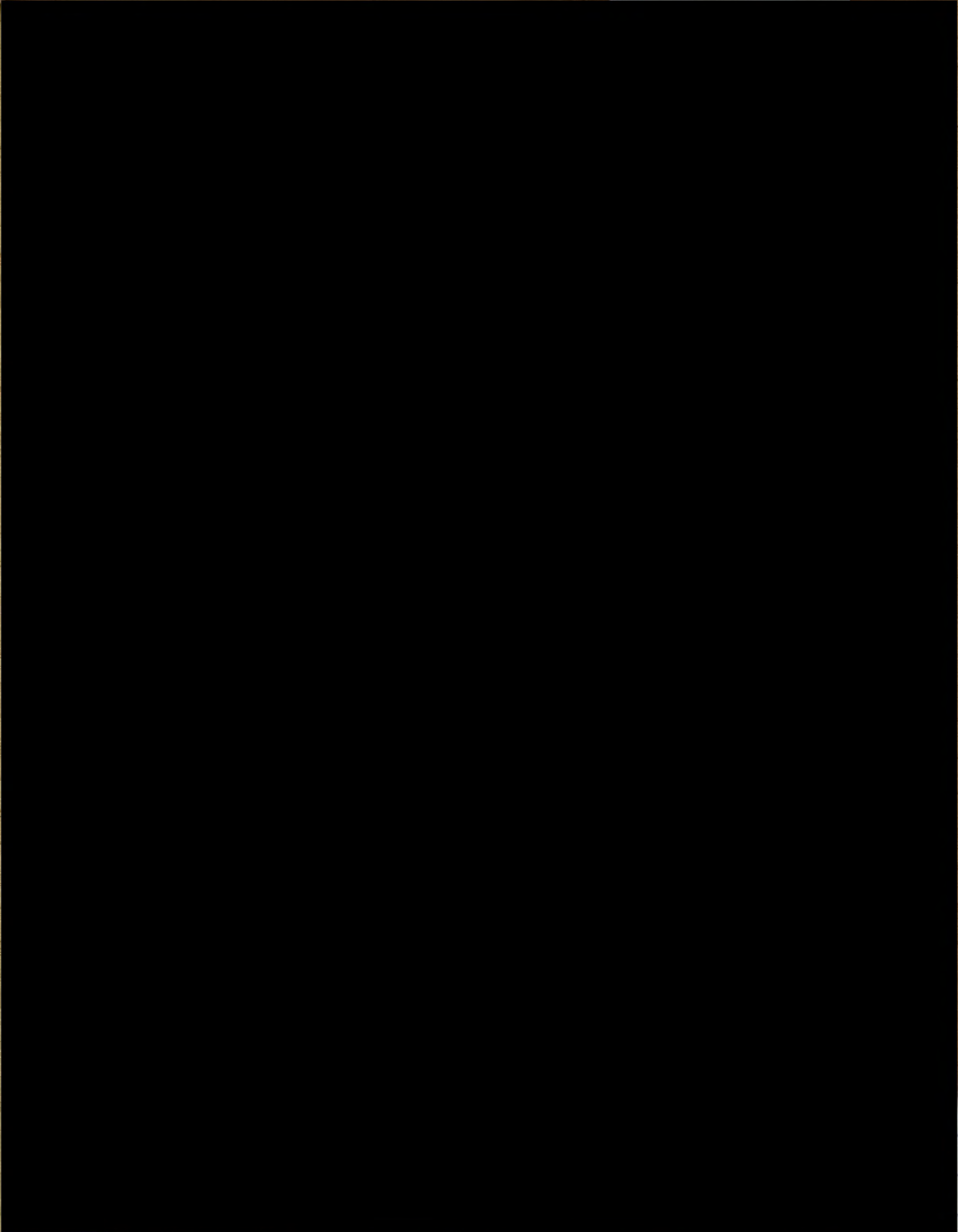


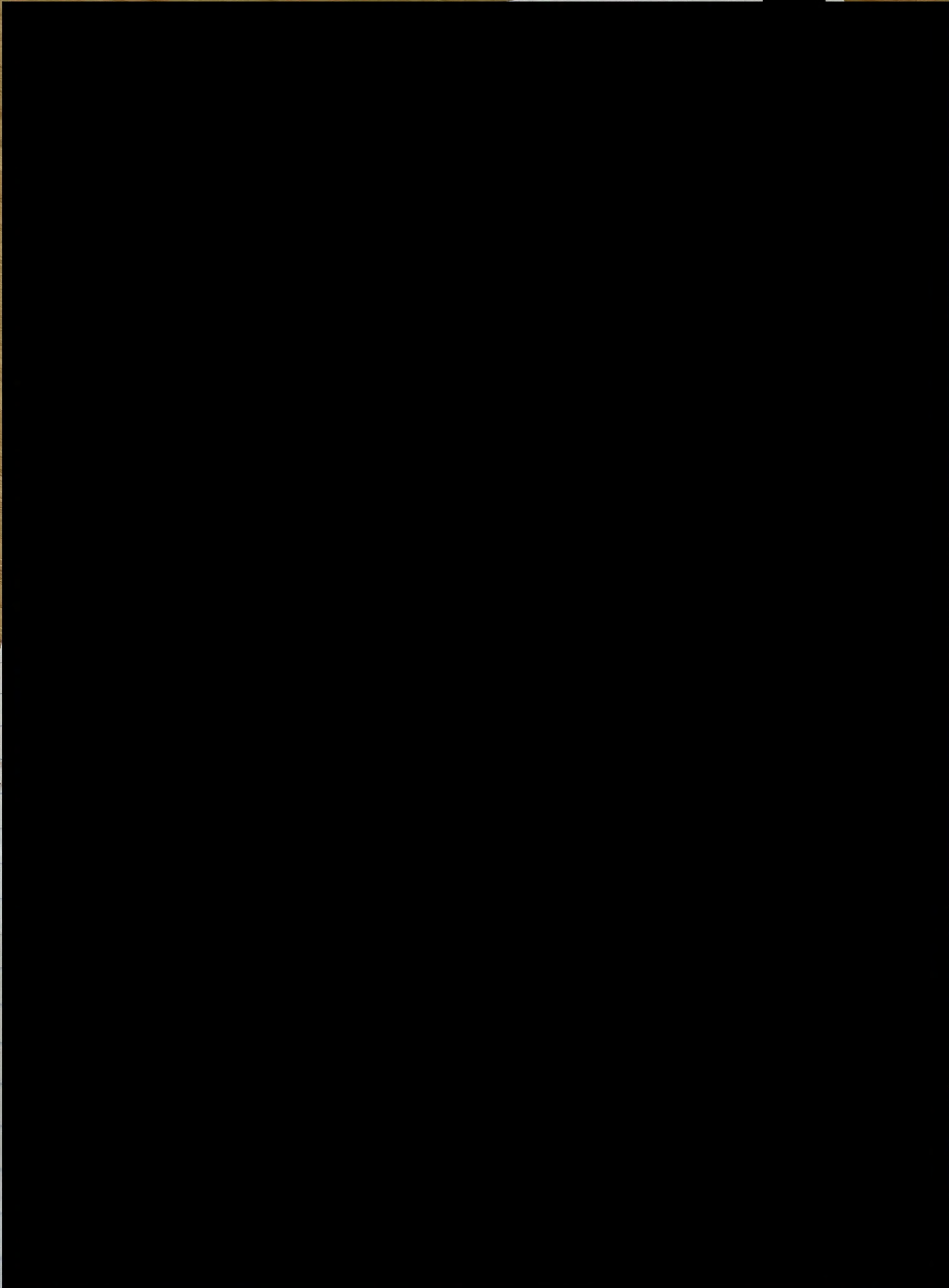


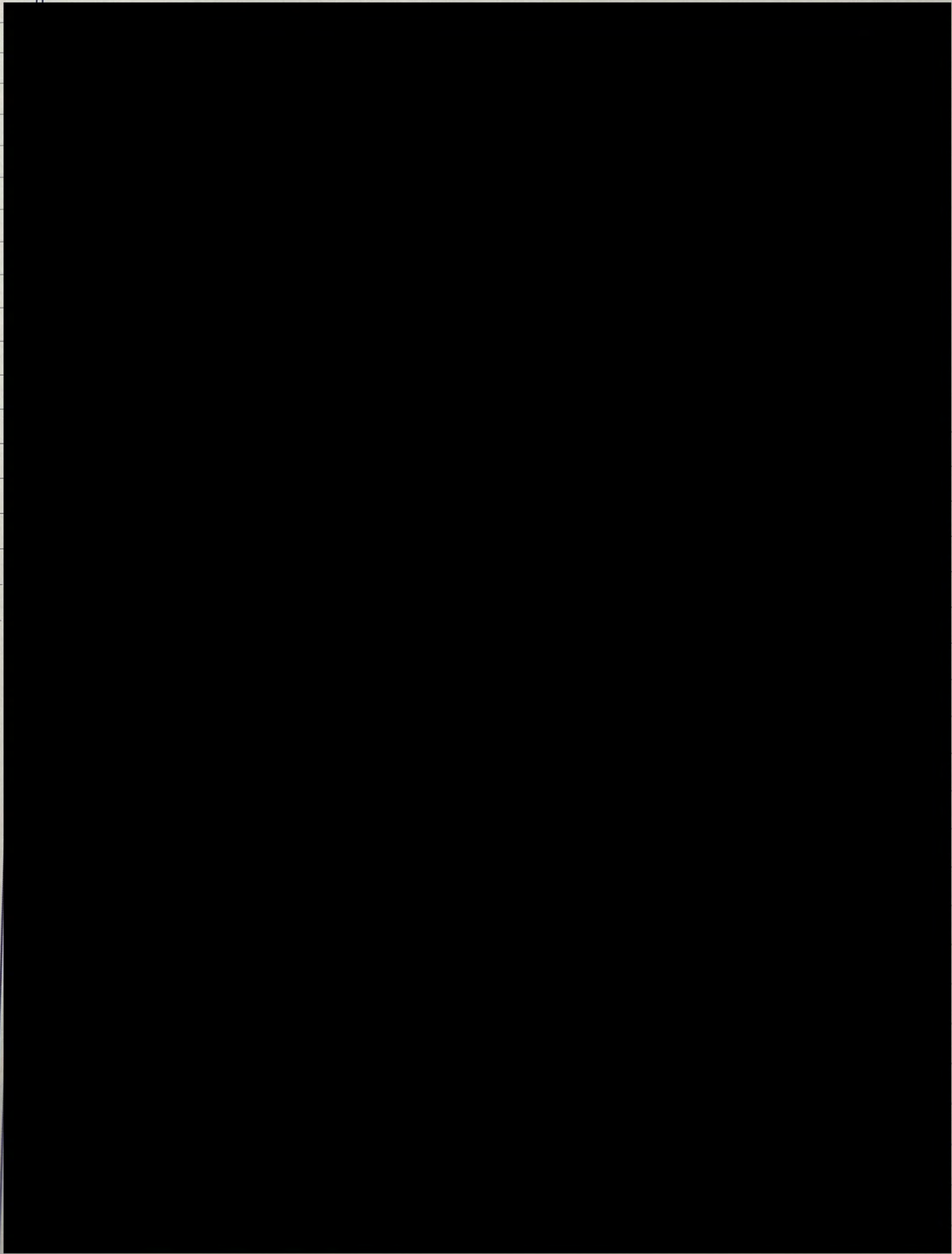












----- Forwarded message -----

From: Swimmer AT [REDACTED]
Date: [REDACTED]
Subject: Anxiety
To: Teri J MCKEEVER <mckeever@berkeley.edu>

Hi Teri,

Just emailing to let you know that my anxiety has been really bad recently and today especially for some reason. I talked to [REDACTED] today and called [REDACTED] Staff X with psychological services to set up an appointment and left a message. My heart rate is about [REDACTED] right now and I can't get it to slow down, but I will still be at practice.

Thank you and I hope Jerry is recovering well!

[REDACTED]

[REDACTED]

----- Forwarded message -----

From: Swimmer AT [REDACTED]
Date: [REDACTED]
Subject: Re: Meeting?
To: Teri J MCKEEVER <mckeever@berkeley.edu>

Teri,

Thank you, I'll send my parents your number now. I talked to them and they want to reach out. I did get the text from [REDACTED] and I'm going to try to talk with [REDACTED] tomorrow and I'm setting up an appointment with my doctor at home regarding medicine for over spring break.

On [REDACTED] Teri J MCKEEVER <mckeever@berkeley.edu> wrote:

I believe you got a text from [REDACTED] with some options.

Hopefully you're getting some rest before class!

If your parents want or would like to talk to me please give them my cell number. I assume you are keeping them in the loop? However, I want to make sure you and they know we're here to support you as best we can.

Thanks for reaching out. Please be kind to yourself!

Hang in there,

Teri

The logo for the University of California, featuring the word "Cal" in a stylized, blue, cursive font.

Teri McKeever

Head Coach
Women's Swimming and Diving

Intercollegiate Athletics
135C Haas Pavilion, Berkeley, CA 94720

E: mckeeper@berkeley.edu W: CalBears.com

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On [REDACTED] Swimmer AT [REDACTED] wrote:

Teri,

I want to talk about plans for next year, and it should take probably around 30 minutes.

Swimmer

On [REDACTED] Teri J MCKEEVER <mckeeper@berkeley.edu> wrote:

How long are you needing and what do you want to talk about?

Teri



Teri McKeever

Head Coach

Women's Swimming and Diving

Intercollegiate Athletics
135C Haas Pavilion, Berkeley, CA 94720

E: mckeeper@berkeley.edu W: CalBears.com

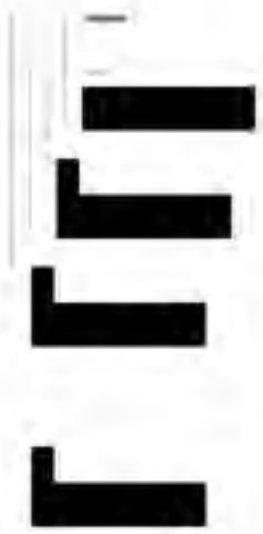
Follow us on [Facebook](#) | [Twitter](#) | [YouTube](#)

On [REDACTED], Swimmer AT [REDACTED] wrote:

Good morning Teri,

I was wondering if we could meet sometime today or tomorrow. I am free today anywhere from 12-5, and tomorrow from 9-2 or 3-5, but if these times are inconvenient for you please let me know what works best for your schedule.

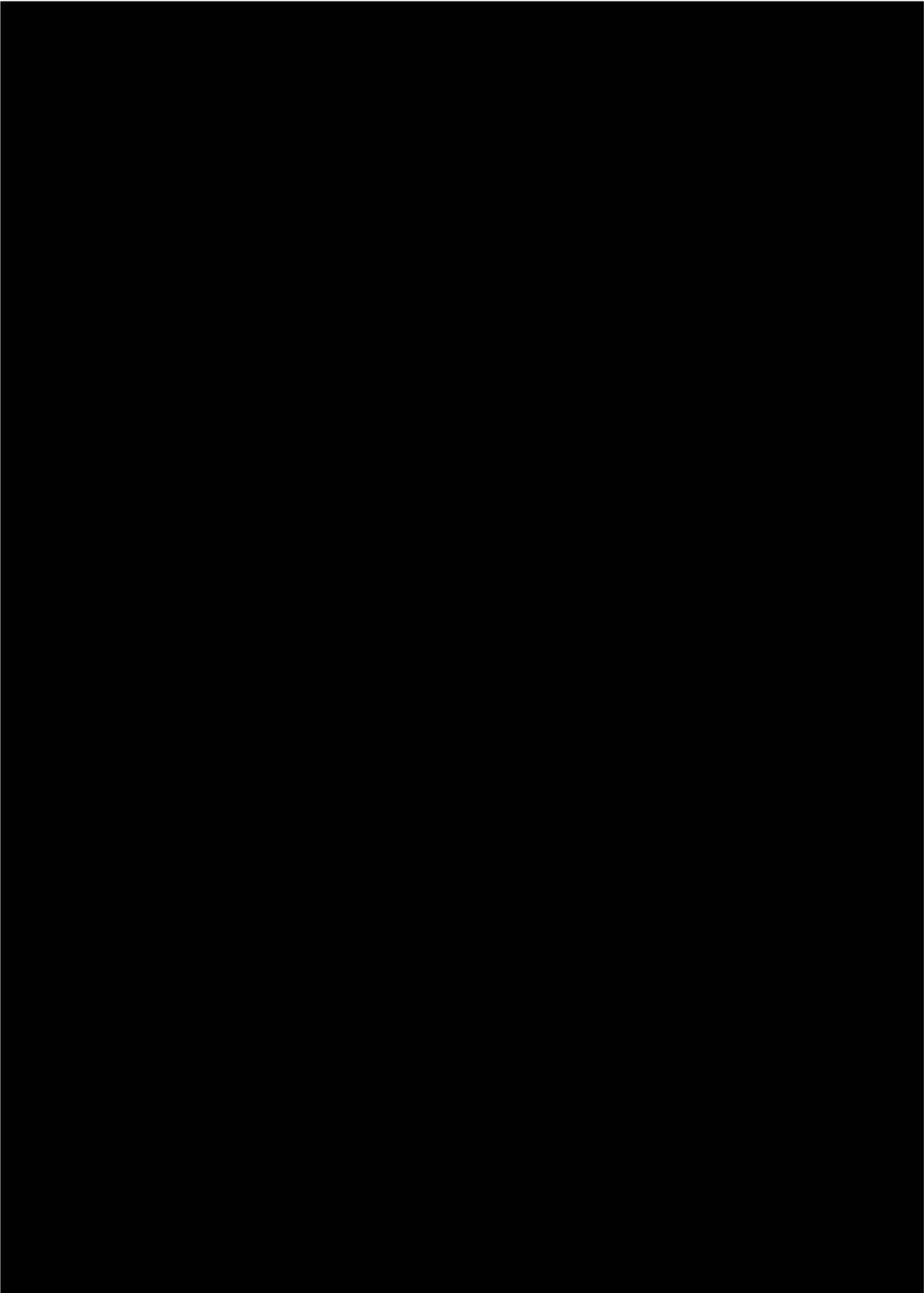
Thank you!

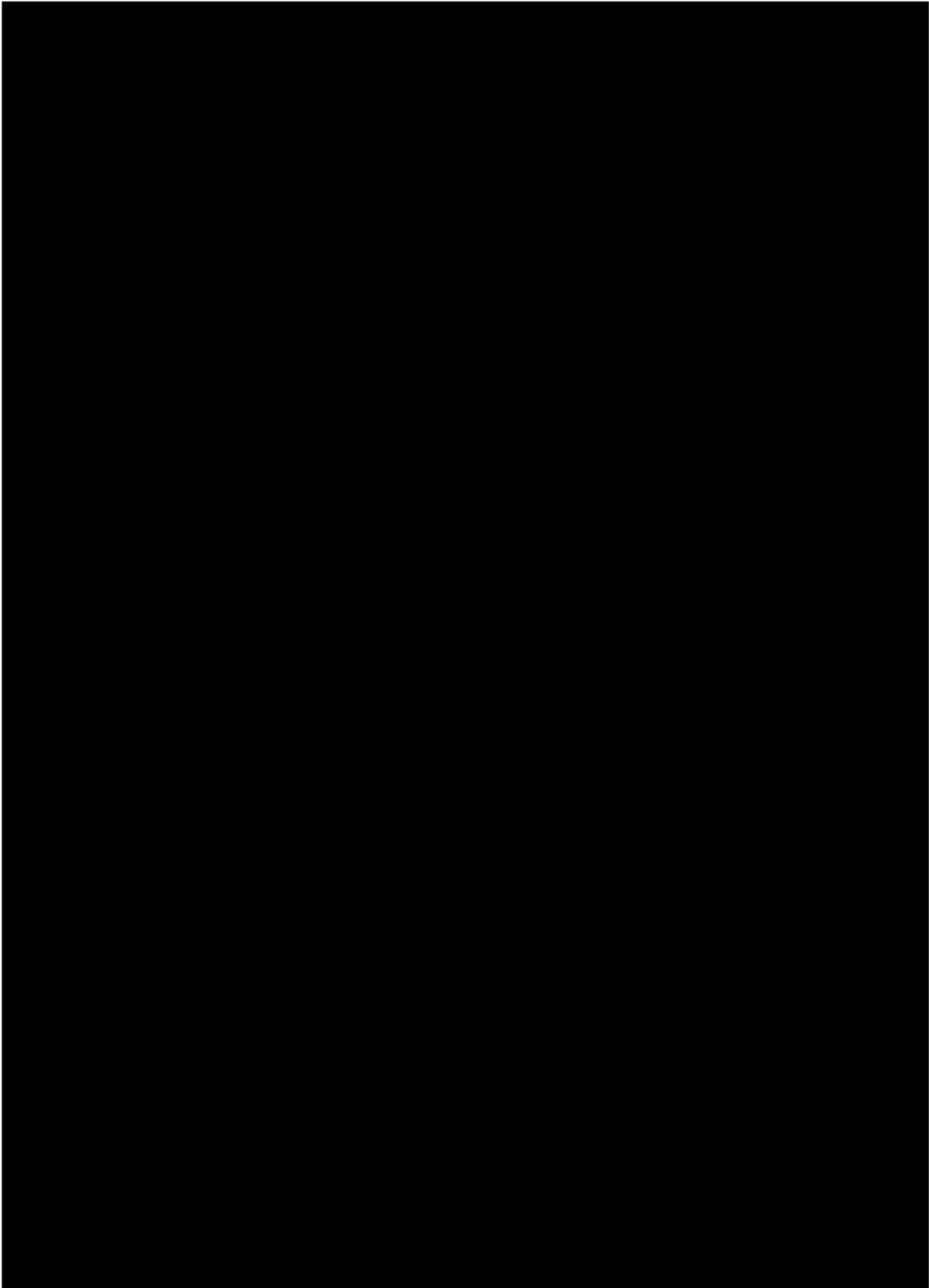


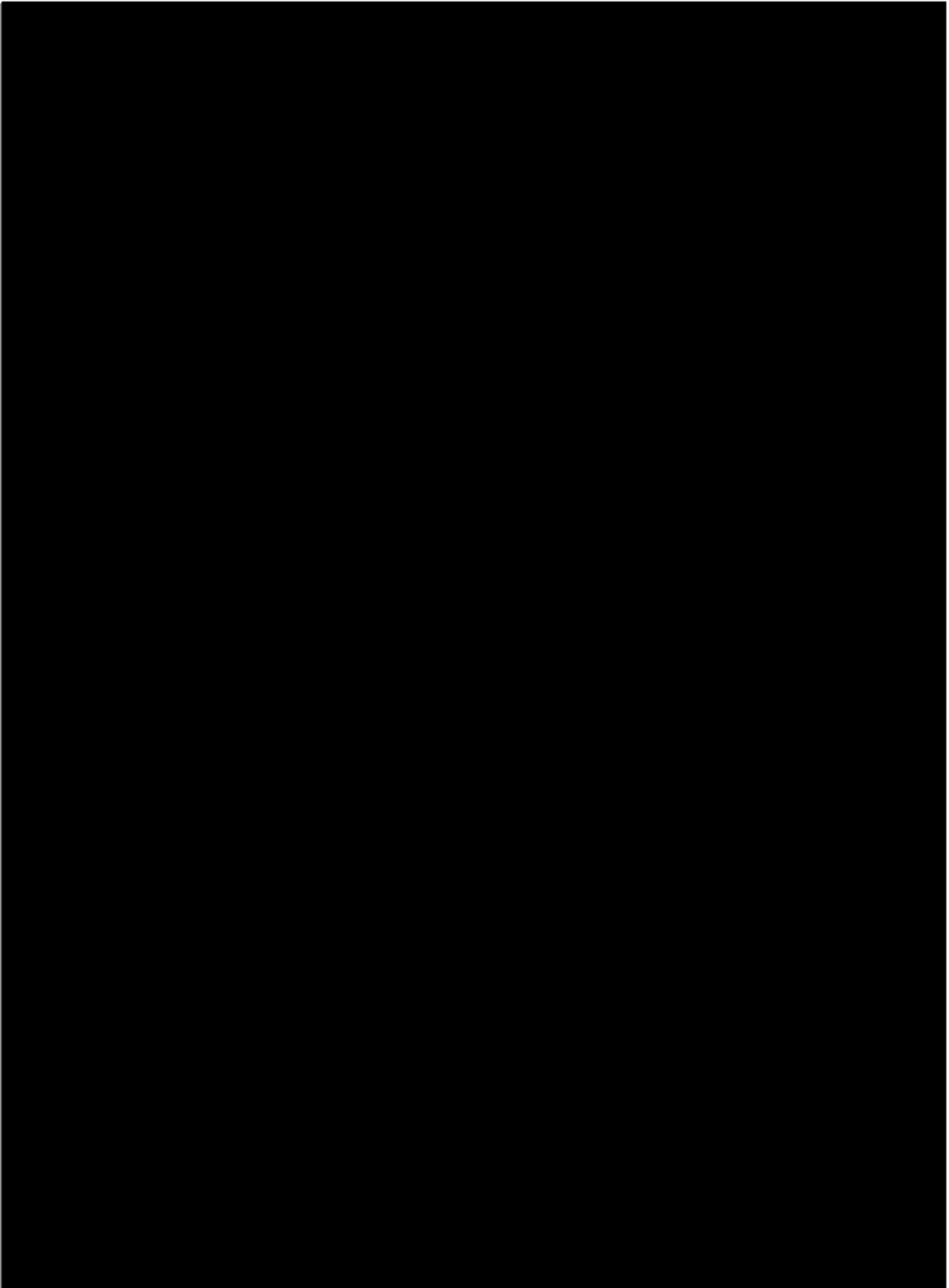


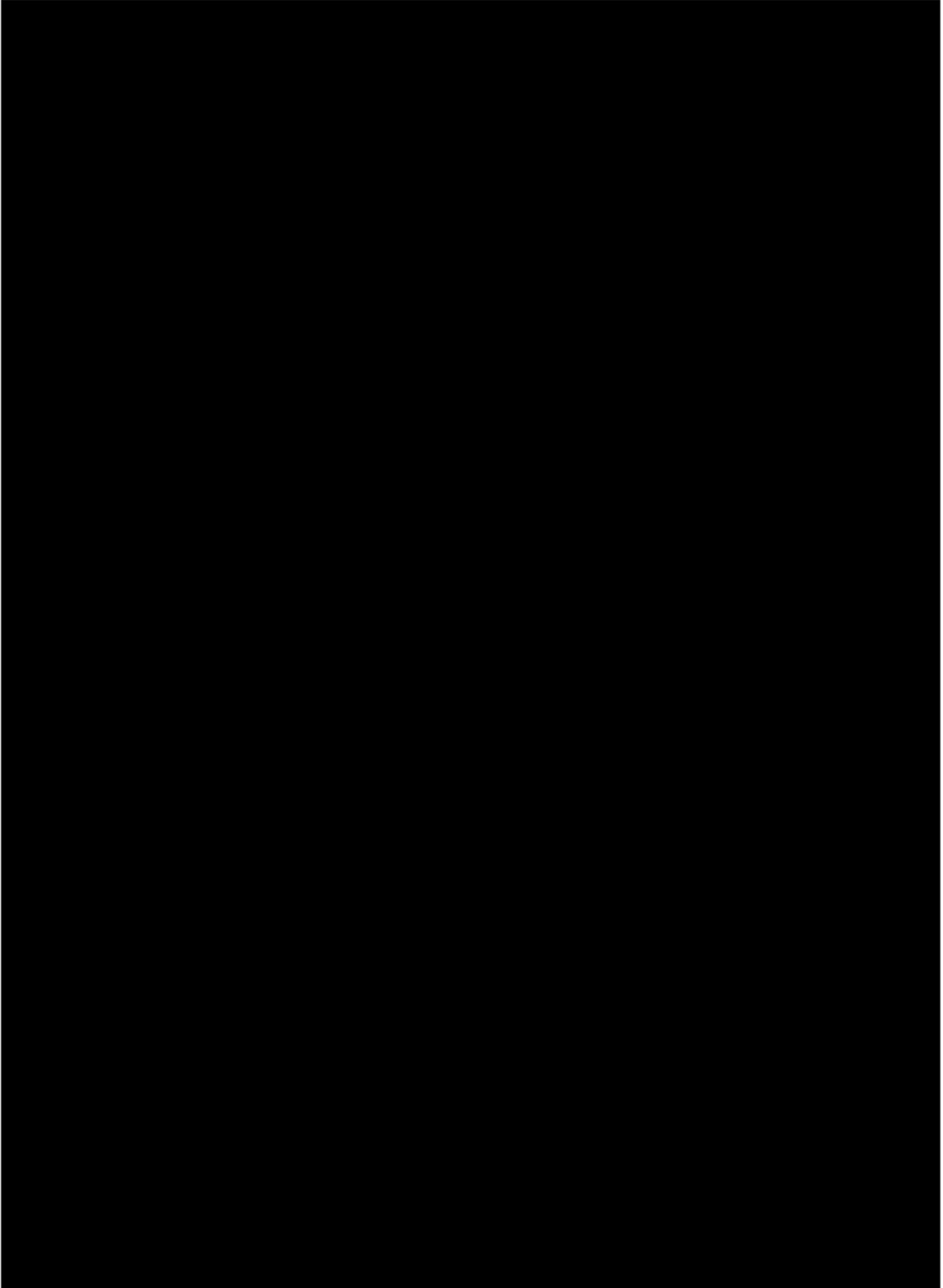












Preliminary Inquiry/Intake Notes – Anonymous v Teri McKeever

Complainant – Unknown

Respondent: Teri McKeever-Women's Swimming and Diving Coach

Advocate Case#: [REDACTED]

On July 18, [REDACTED] Cal Athletics [REDACTED] received an email containing an image of a hand-written letter that was sent to the President of the NCAA and President of the Pac-12.

"We have been silent for too long. Something needs to be done about the brutal nature of Teri McKeever. Talk to us. We have stories, though we are nervous about retaliation."

The letter was handwritten and the names below appeared at the bottom of the letter. The names were not signatures per se, but printed in the same handwriting as the rest of the letter.

[REDACTED]

[REDACTED]

The letter was forwarded to OPHD and Cal Athletics gathered email addresses for the individuals whose names appeared on the letter.

On July 23, [REDACTED]

[REDACTED] sent an outreach communication to the following individuals for whom we had email addresses.

[REDACTED]

[REDACTED]

[REDACTED] received the following response to request:

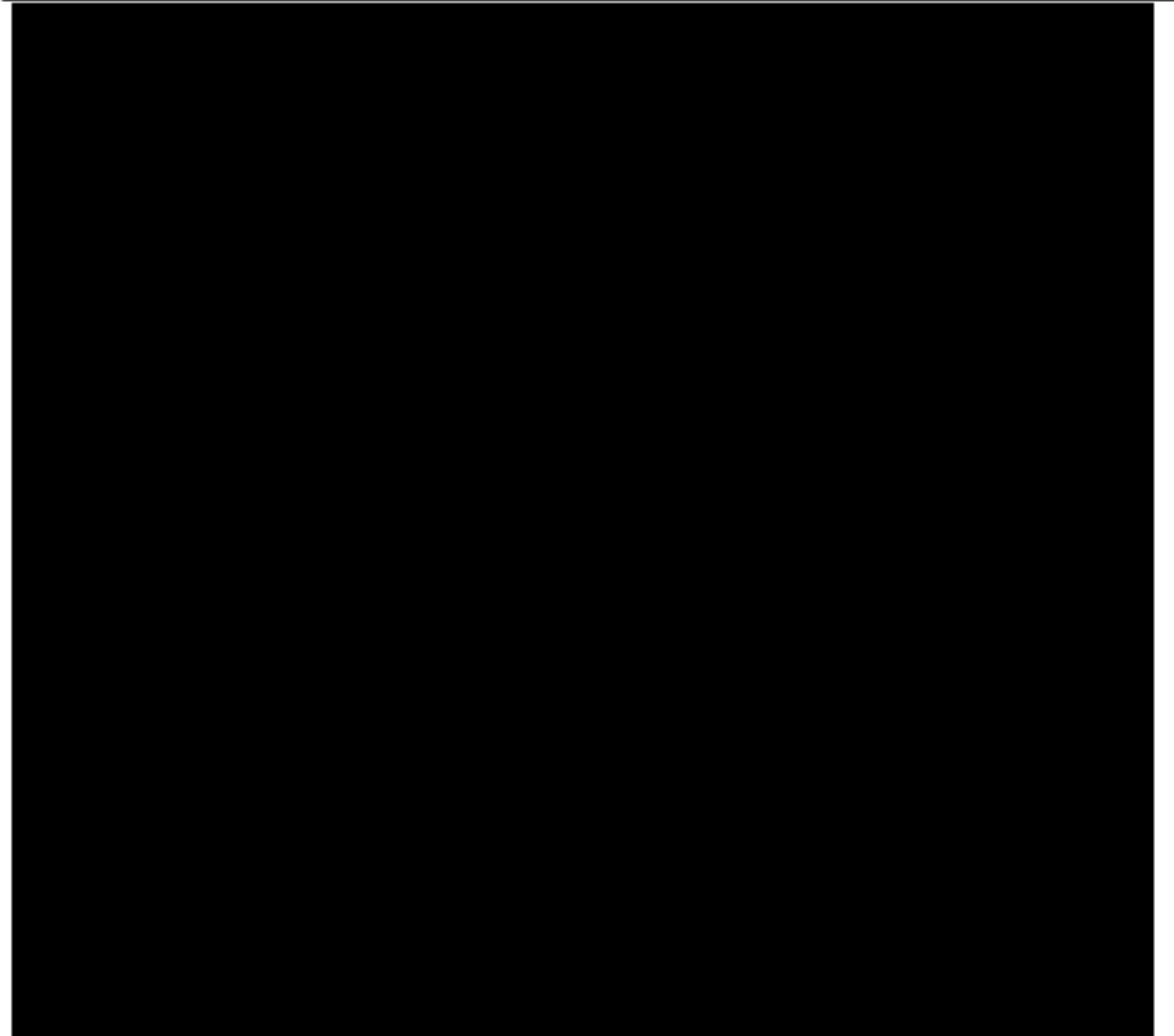
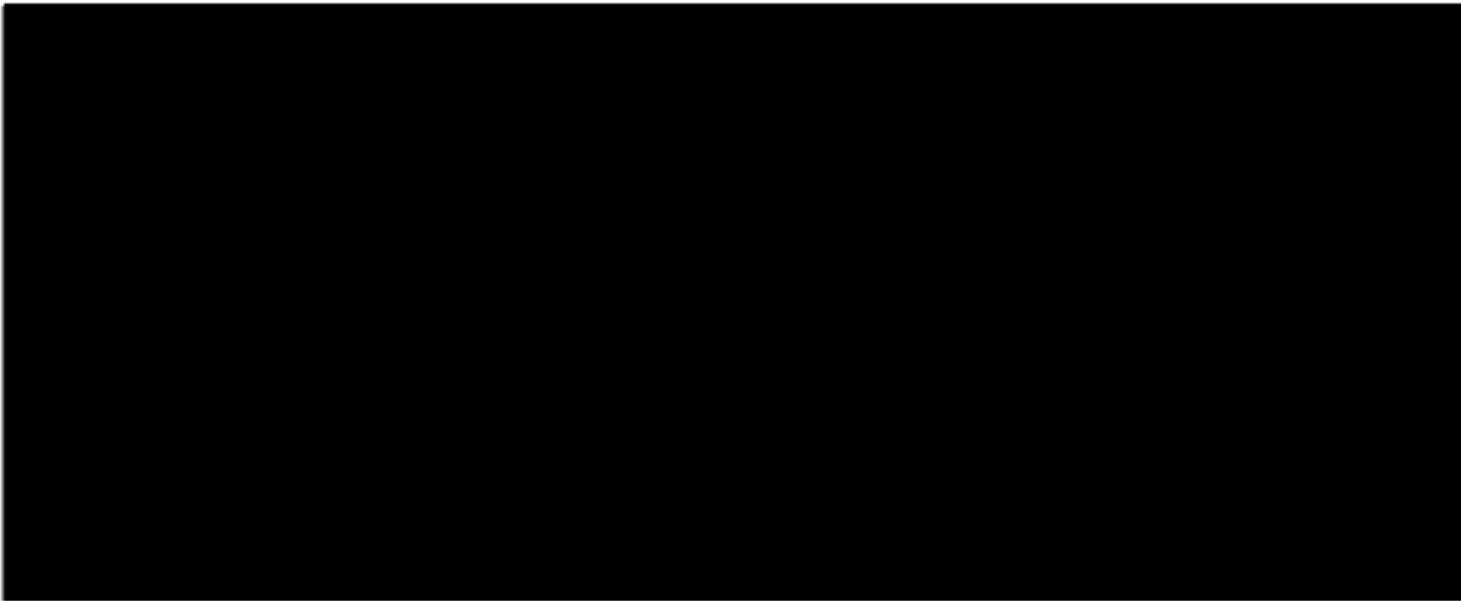
[REDACTED]

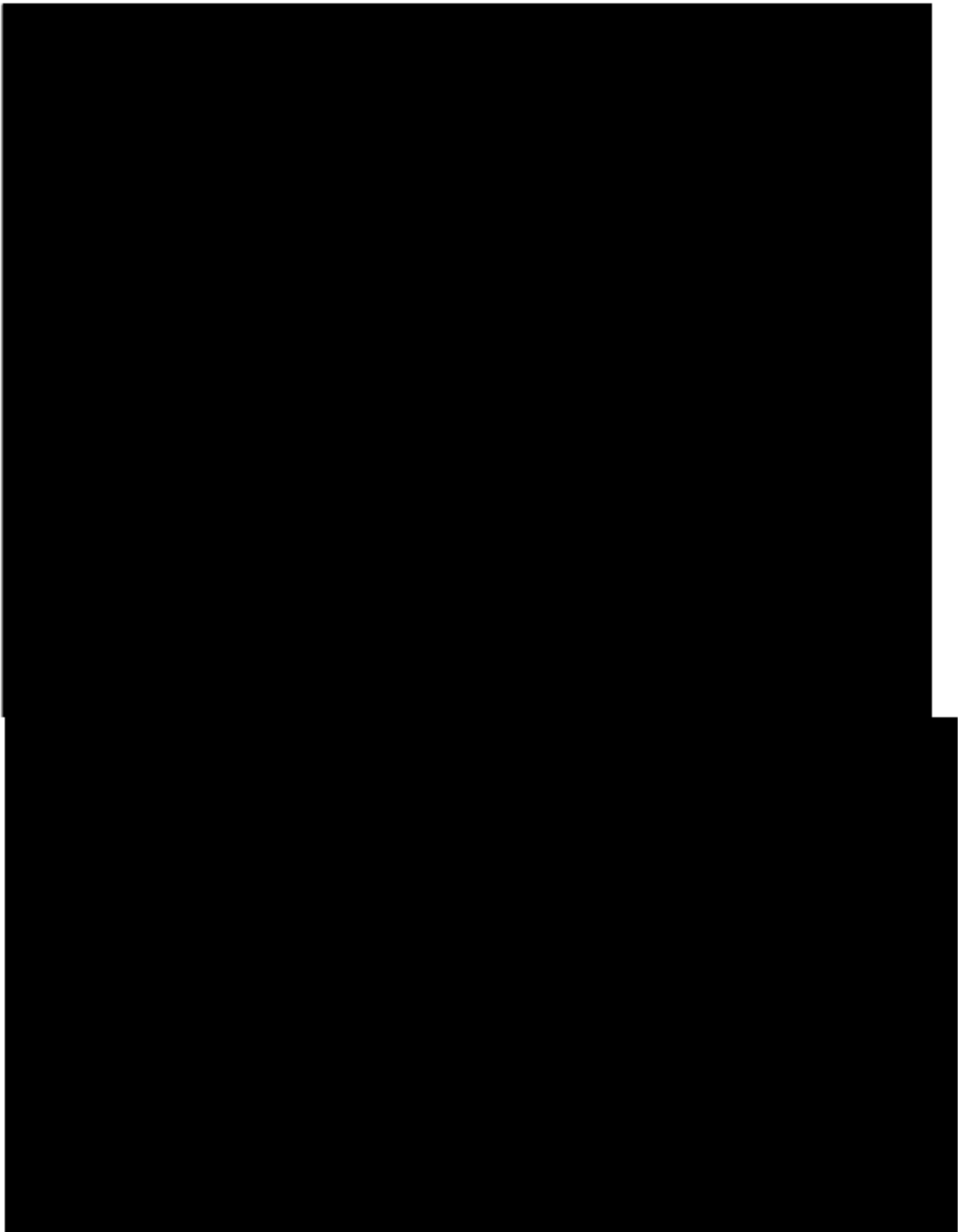
Swimmer CR - no response

[REDACTED]

[REDACTED]

[REDACTED]





From: Parent of Swimmer ^{CE} [REDACTED]
Subject: only the mother
Date: [REDACTED]
To: mckeever@berkeley.edu

Dear Terry:

Please contact us. We do not understand what has happened since the beginning of the school year. ^{Swimmer CE} has been swimming since she was a little girl and the four of us have supported her. It has been her dream and she has worked so hard and always with perseverance, honesty, respect for others, kindness and love for the competition. She has given [REDACTED] and then [REDACTED] a lot of success for their teams. Her little sisters and us have been with her in every competition and trip. I became very ill her last two years of high school and she was completely in her own. It was very hard for her. She had problems with her shoulders but she never stopped. She had options for college and she fell in love with your program because of the unity of the team, but more than anything she loved your soul. She thought you will understand her as a person, a human been not a machine and take her far. We were about to choose a school close to home but she wanted YOU, because you were so human, like a mother and a strict one but that touches their souls in a positive way. It saddened me to see her go all the way to California. But after a lot of prayer we trusted ^{Swimmer CE} choice.

What happened? I have never seen ^{Swimmer CE} cried so much and I can't do anything ... From the first day she was not wanted...

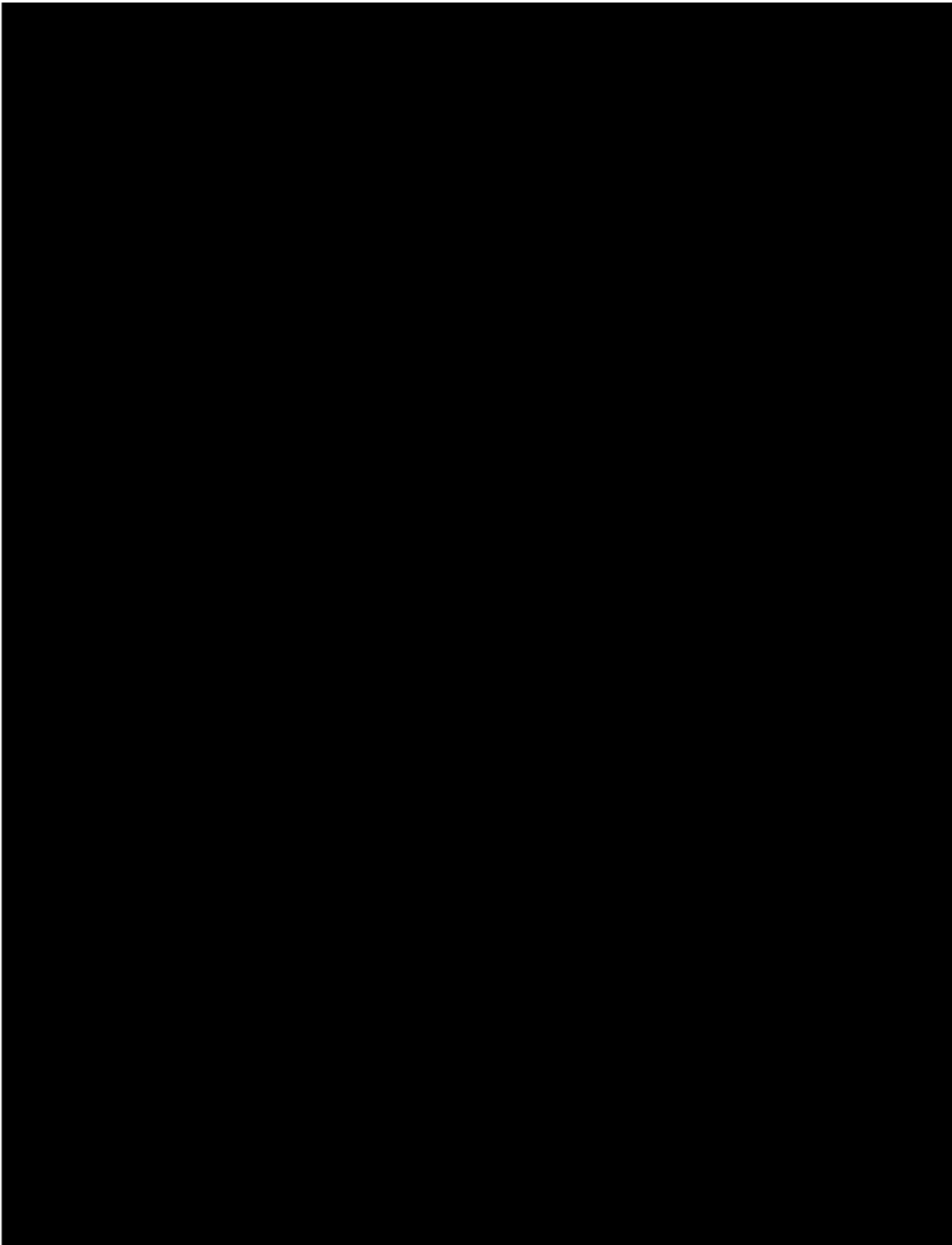
Please Terry what happened? All these letters of team support, all these wonderful calls?

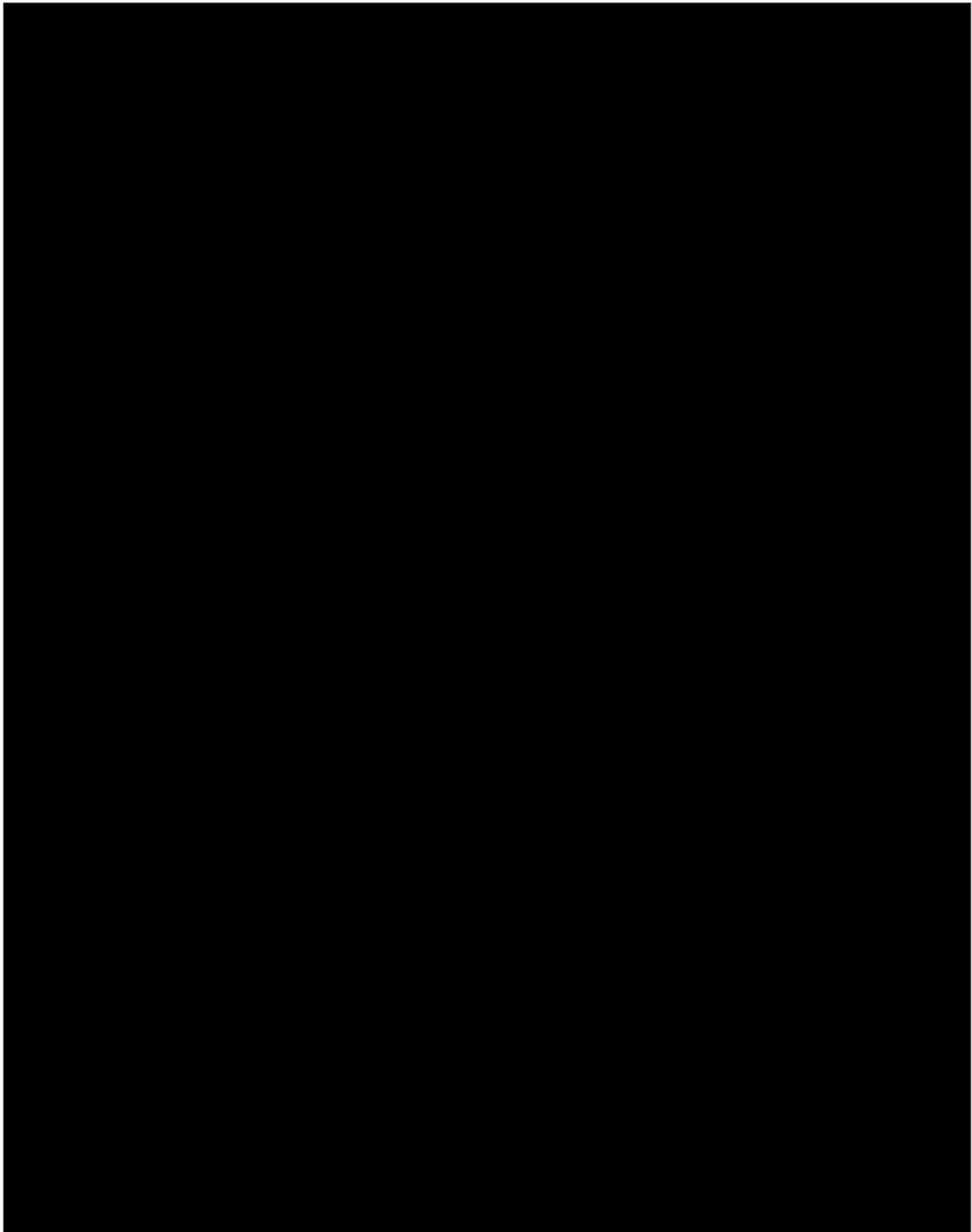
No one could improve with so much disdain ...

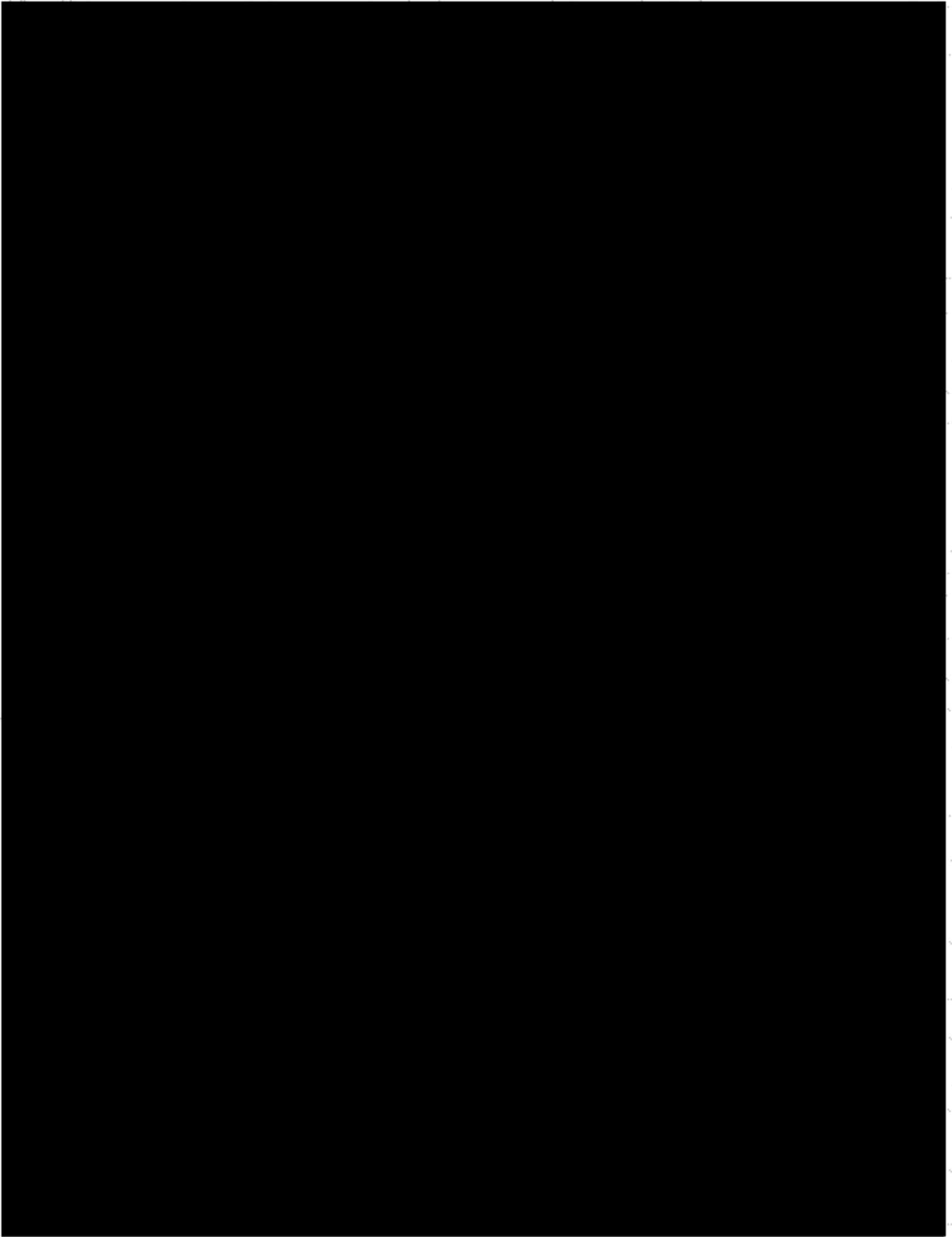
Forgive me for this e-mail but It is so hard to be a parent and not be able to understand. I am getting very sick again and it is harder with this feeling of hopelessness.

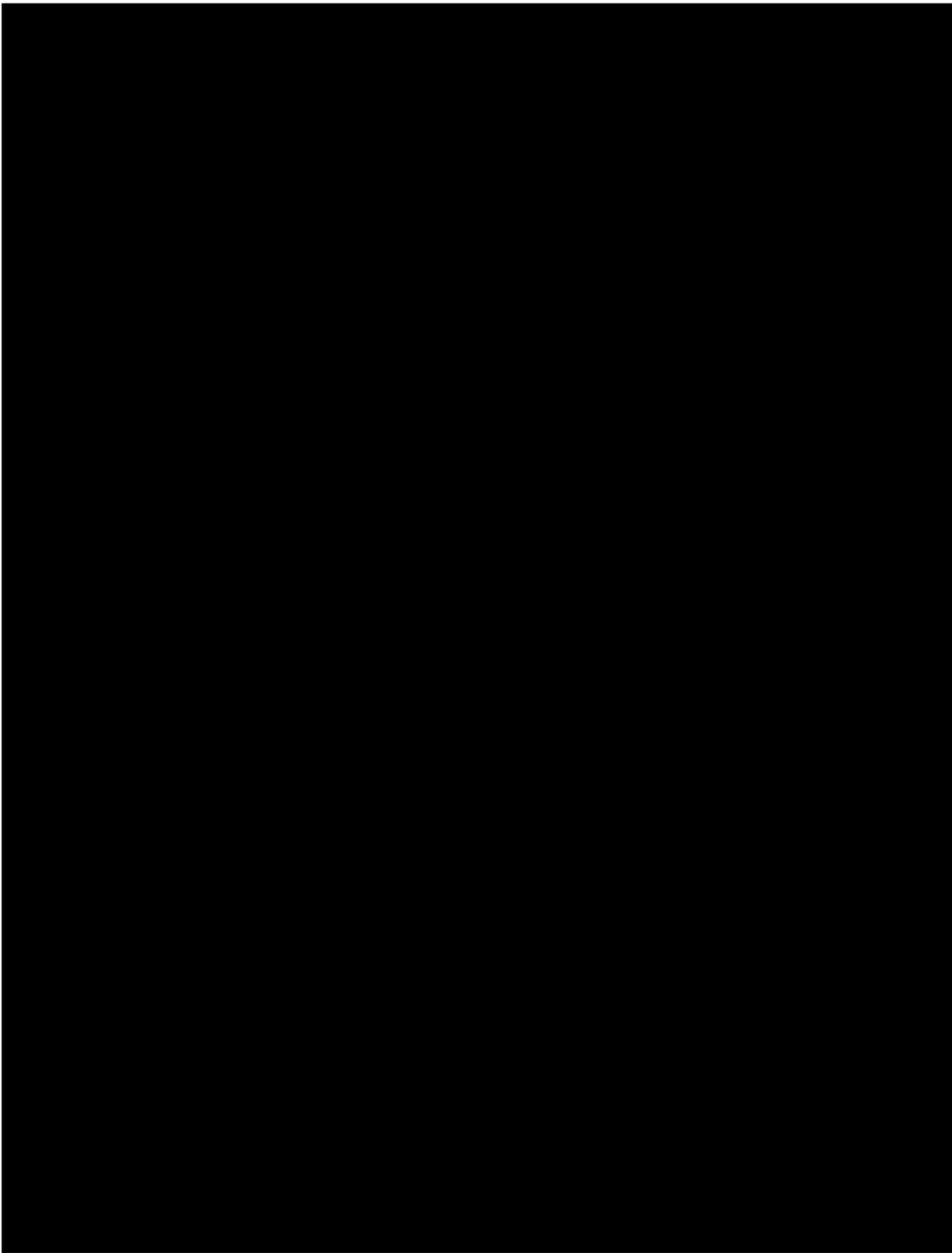
Sincerely,
Parent of Swimmer ^{CE}

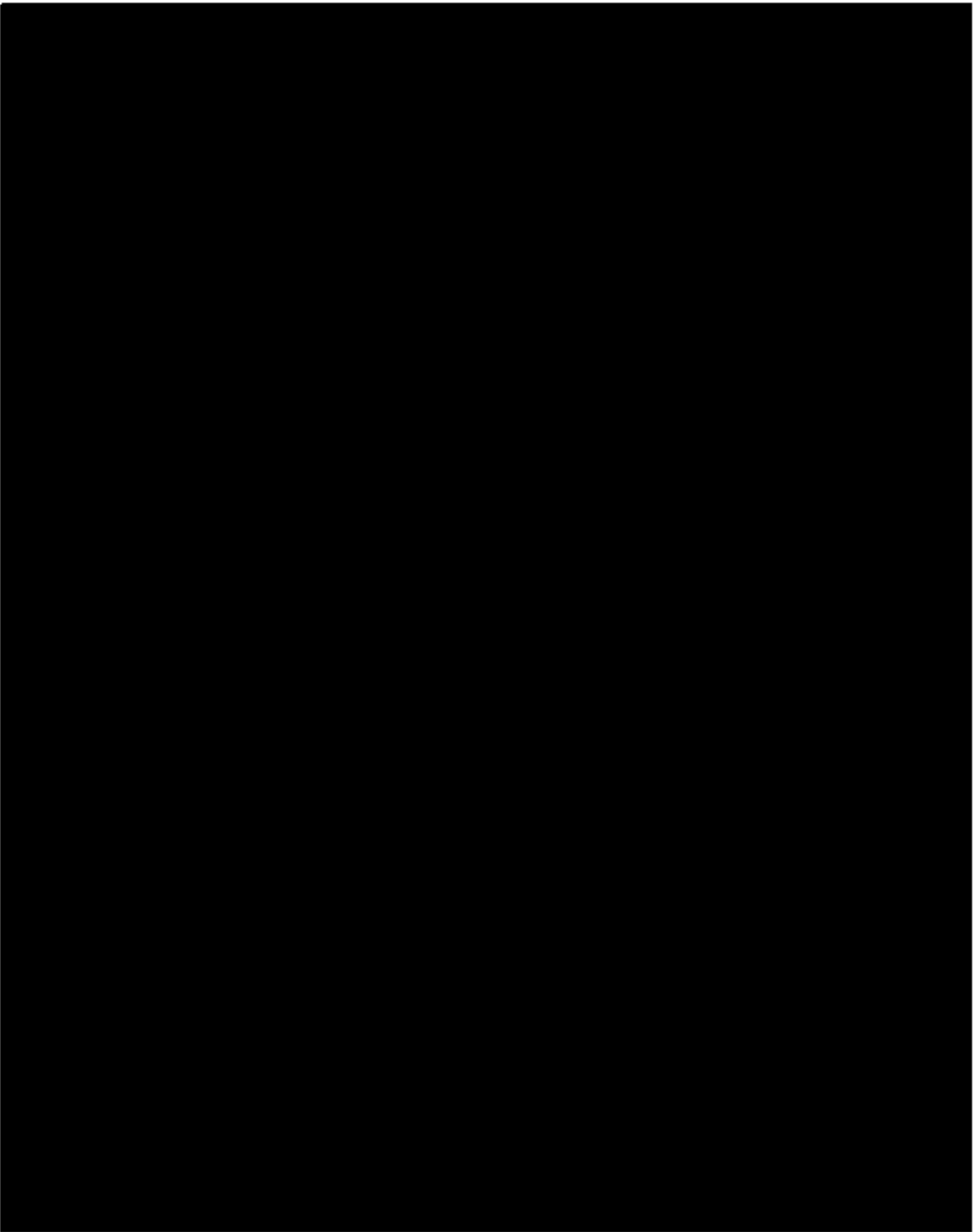
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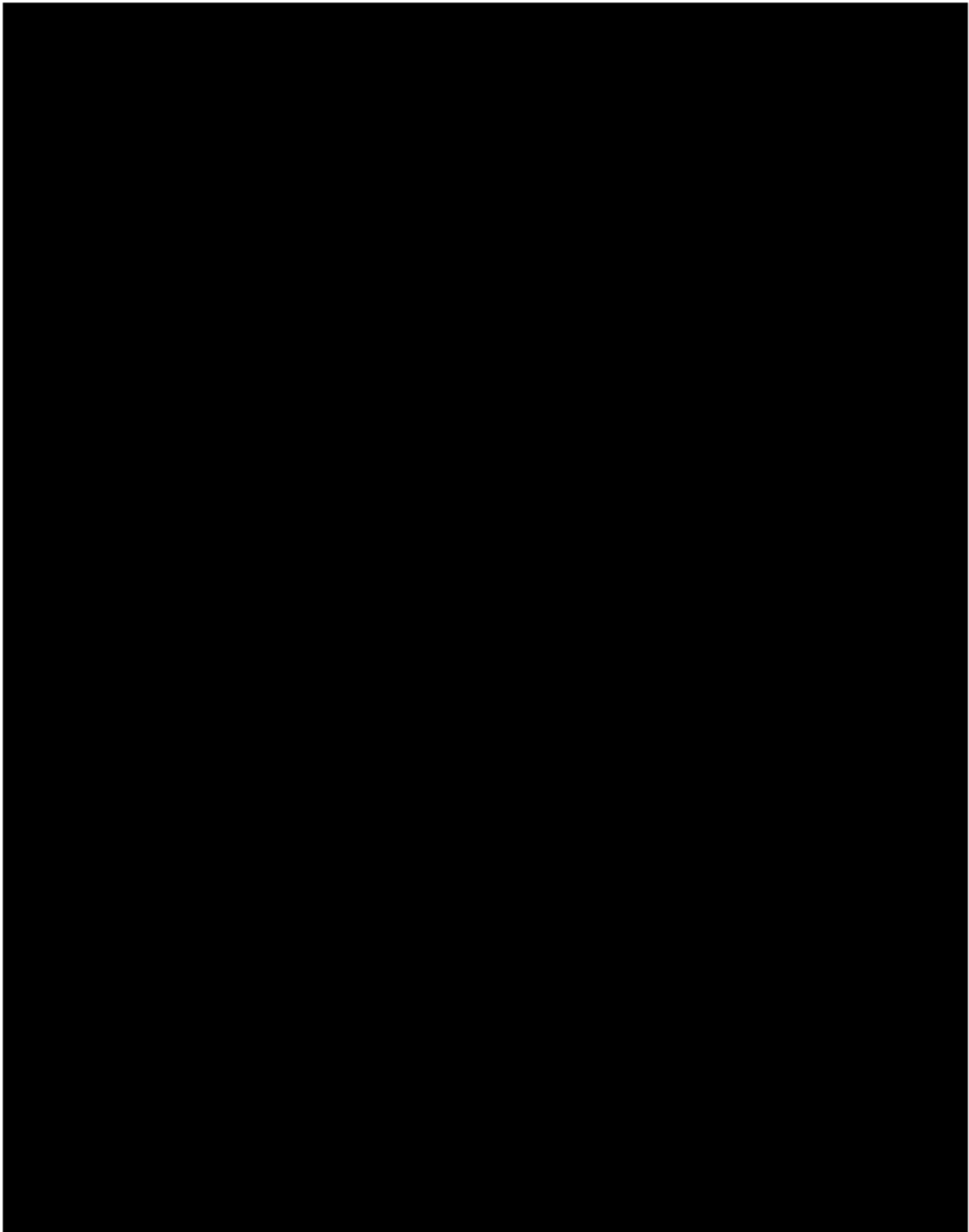


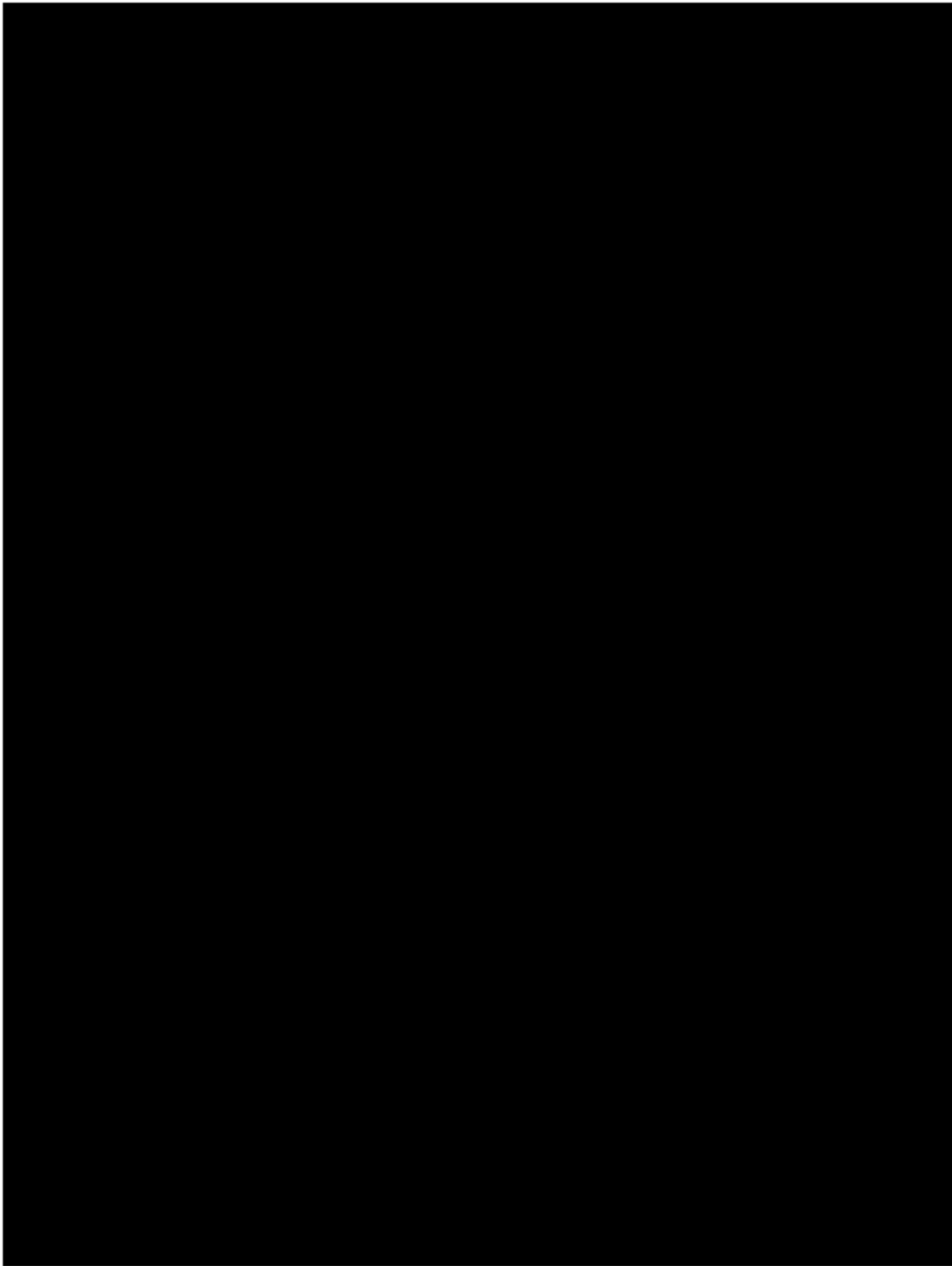


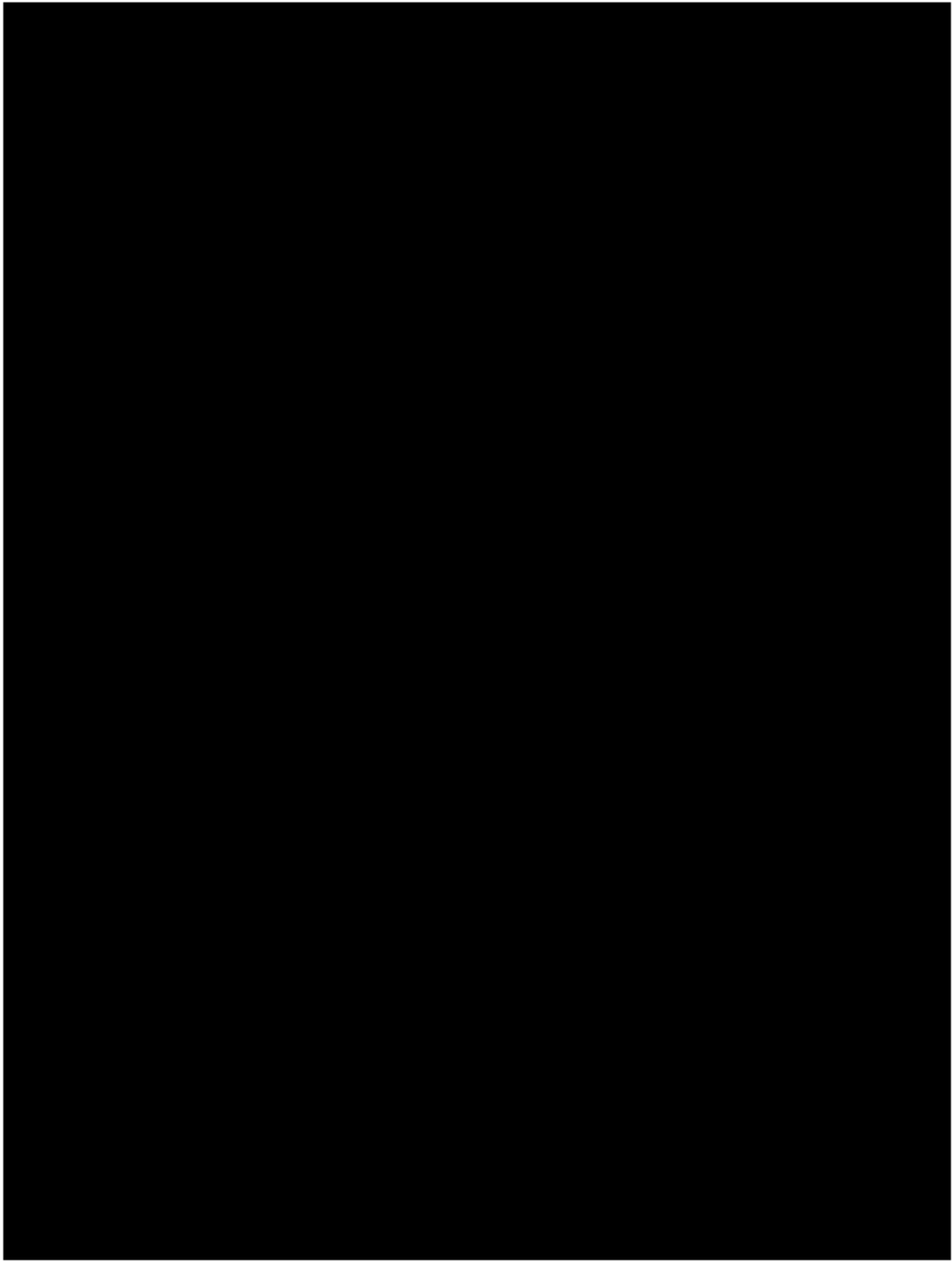


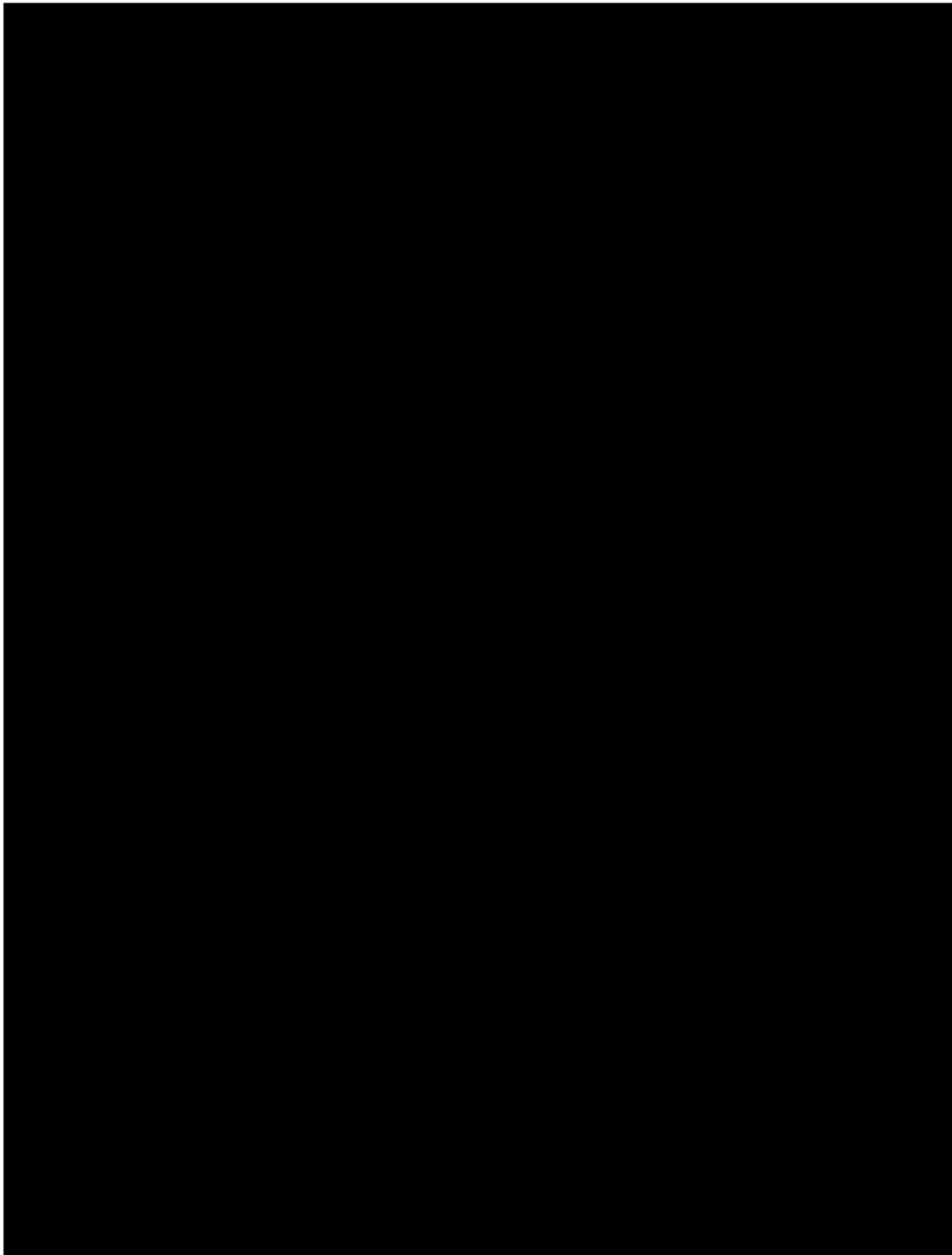


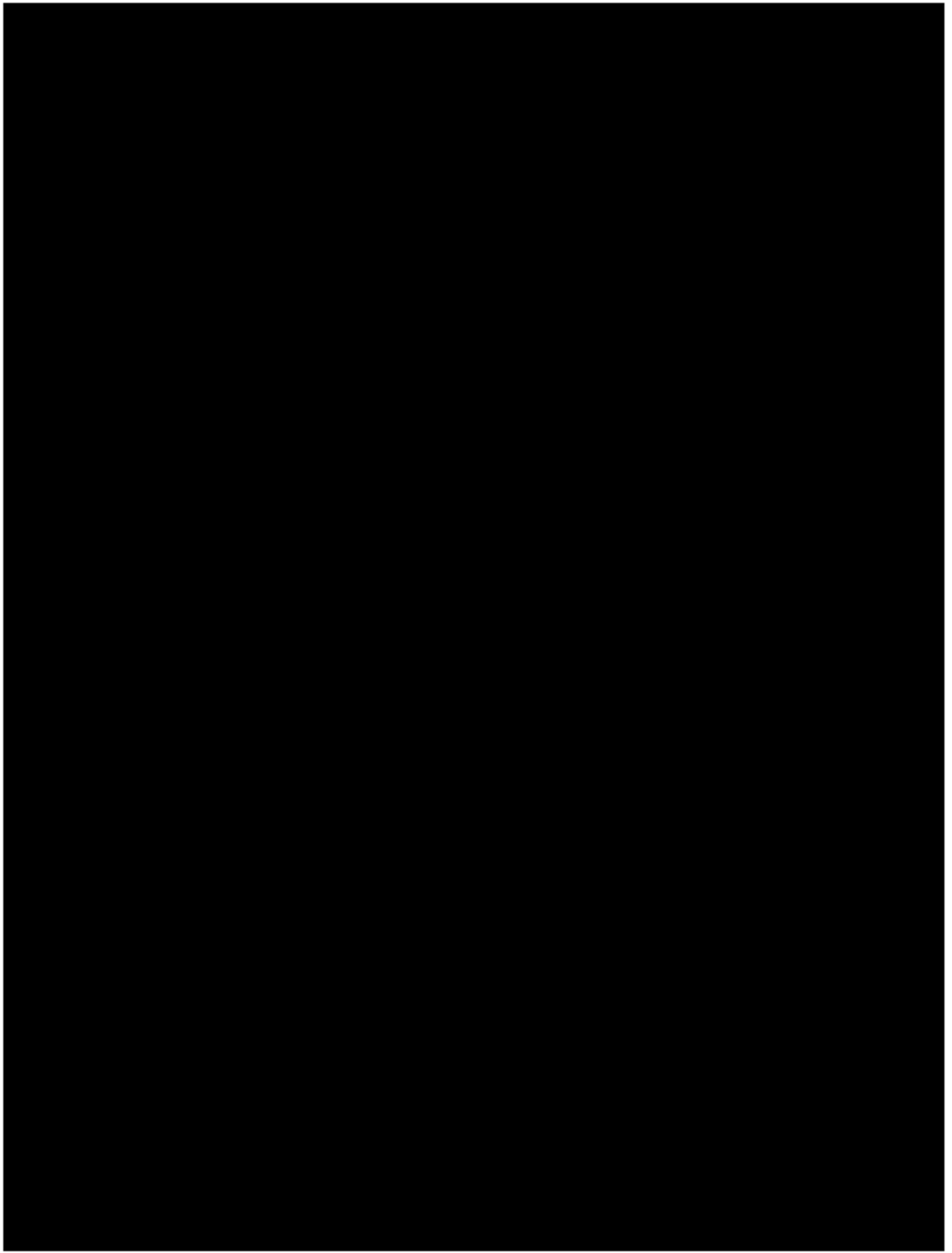


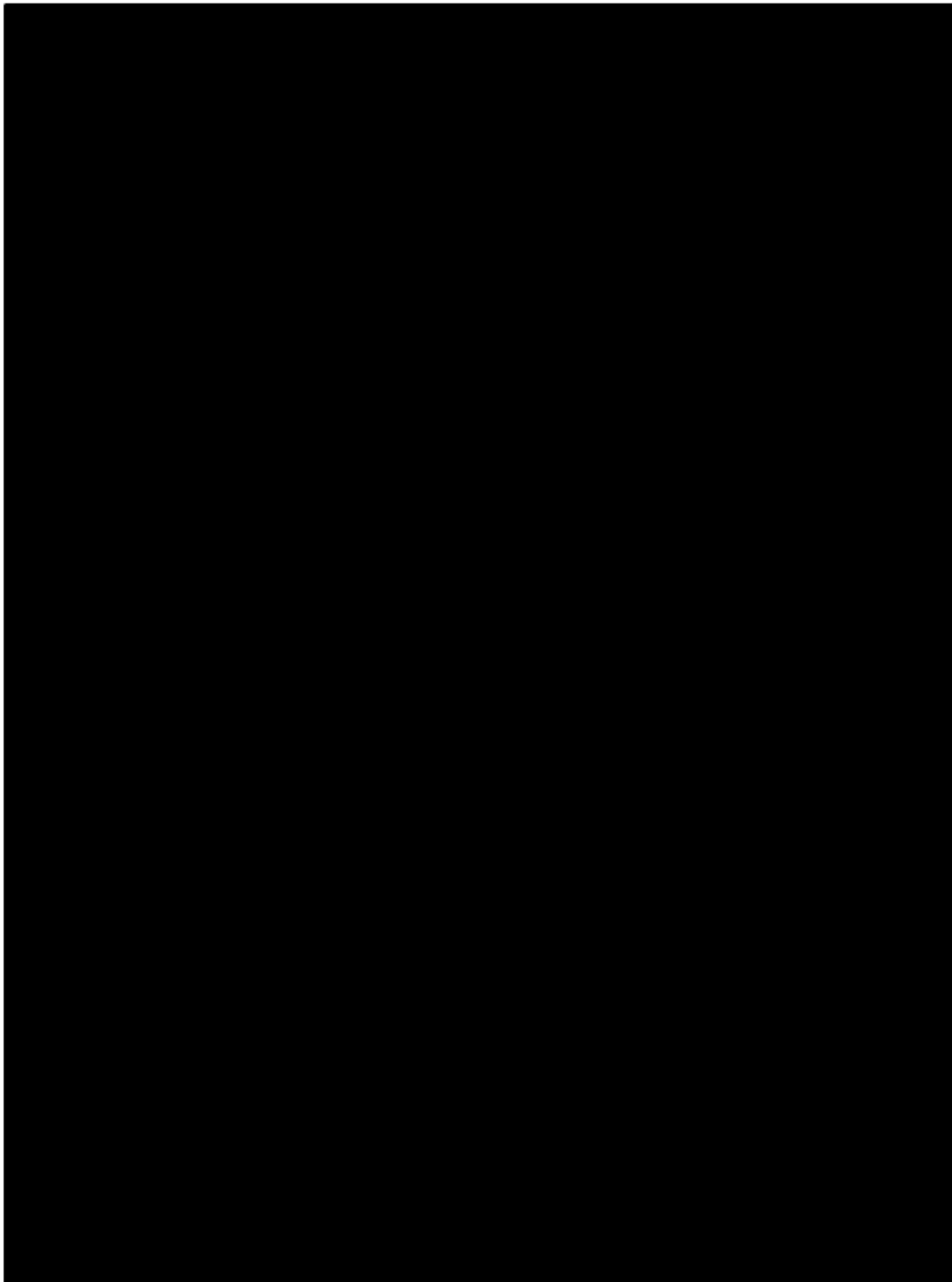


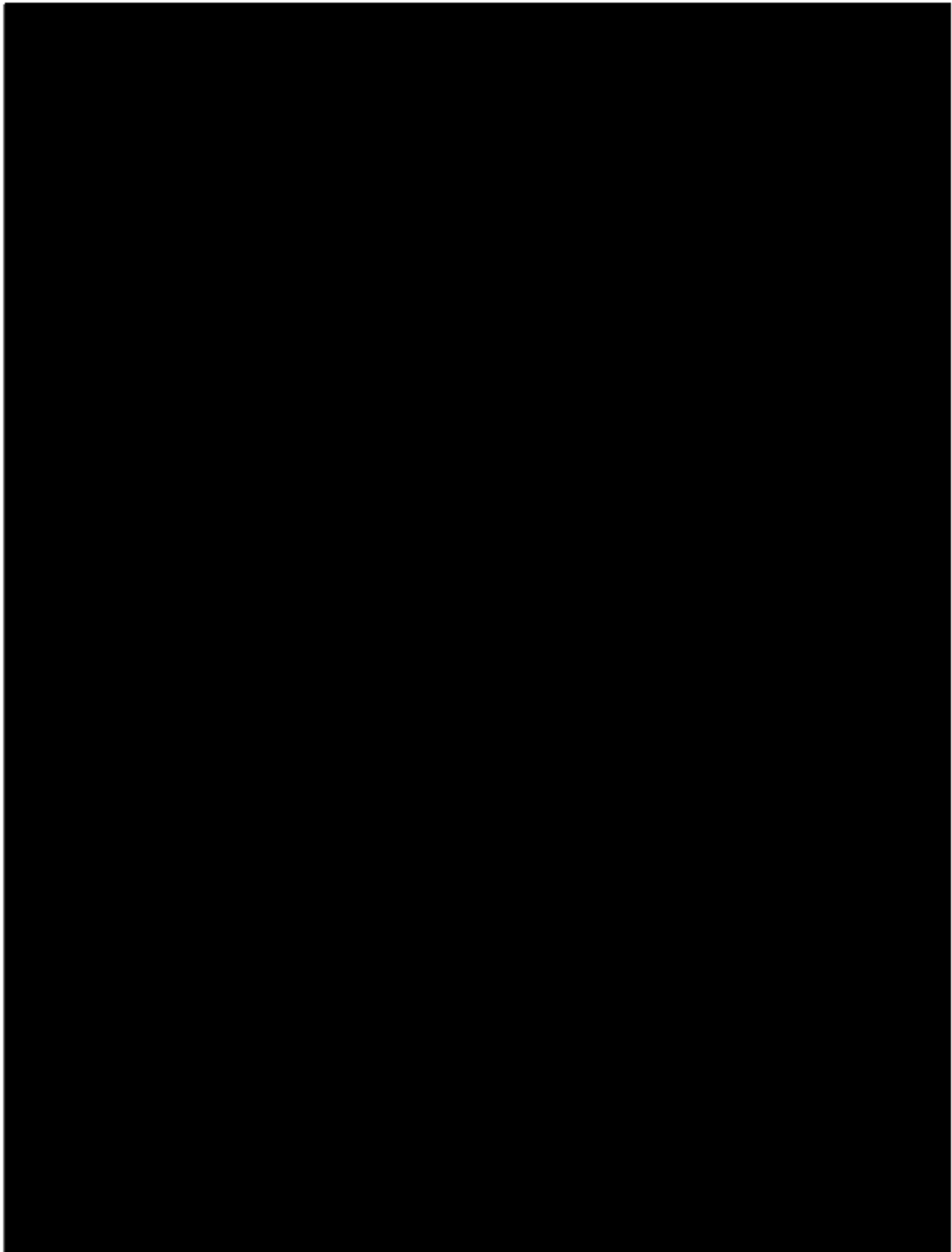


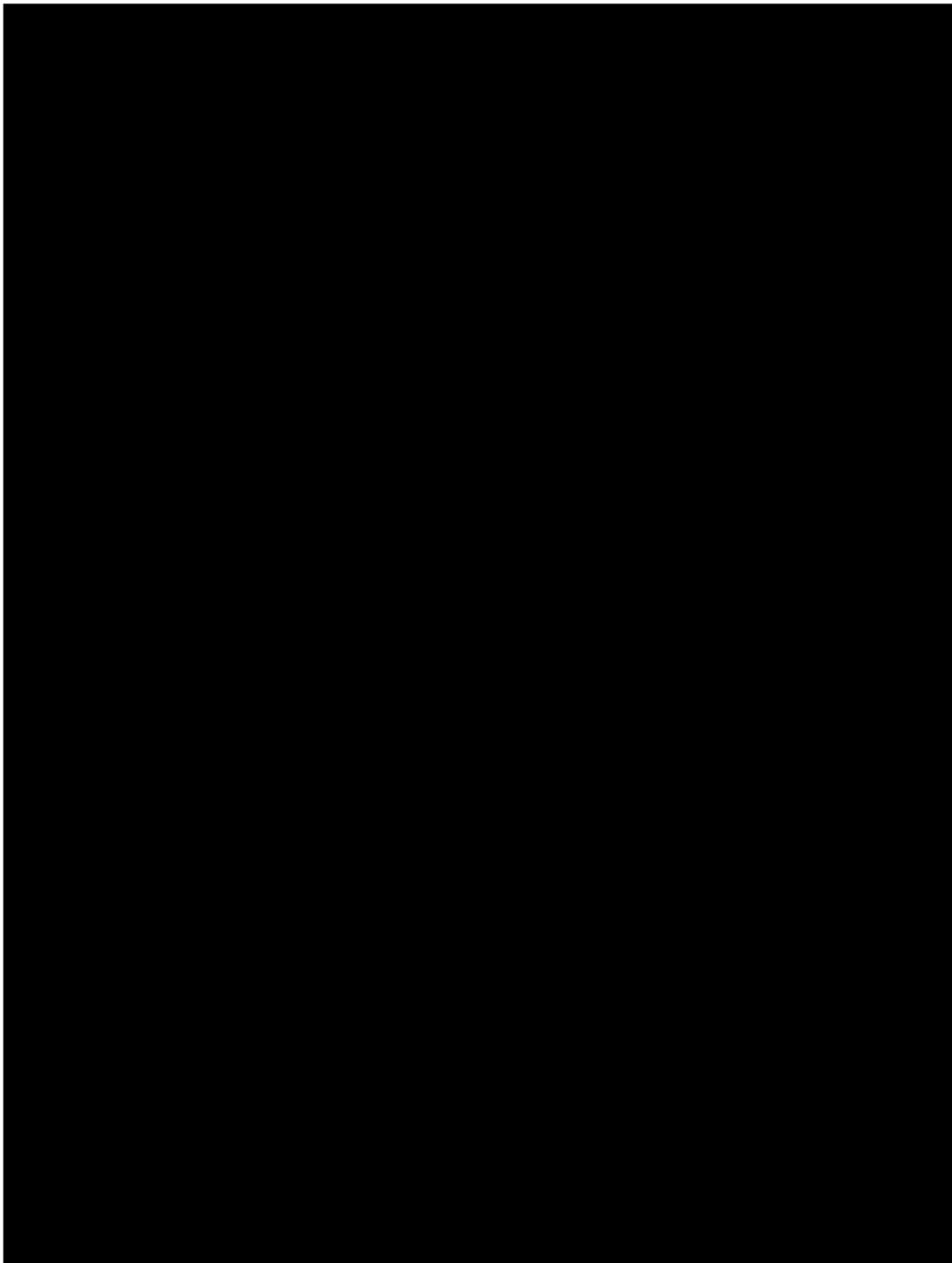


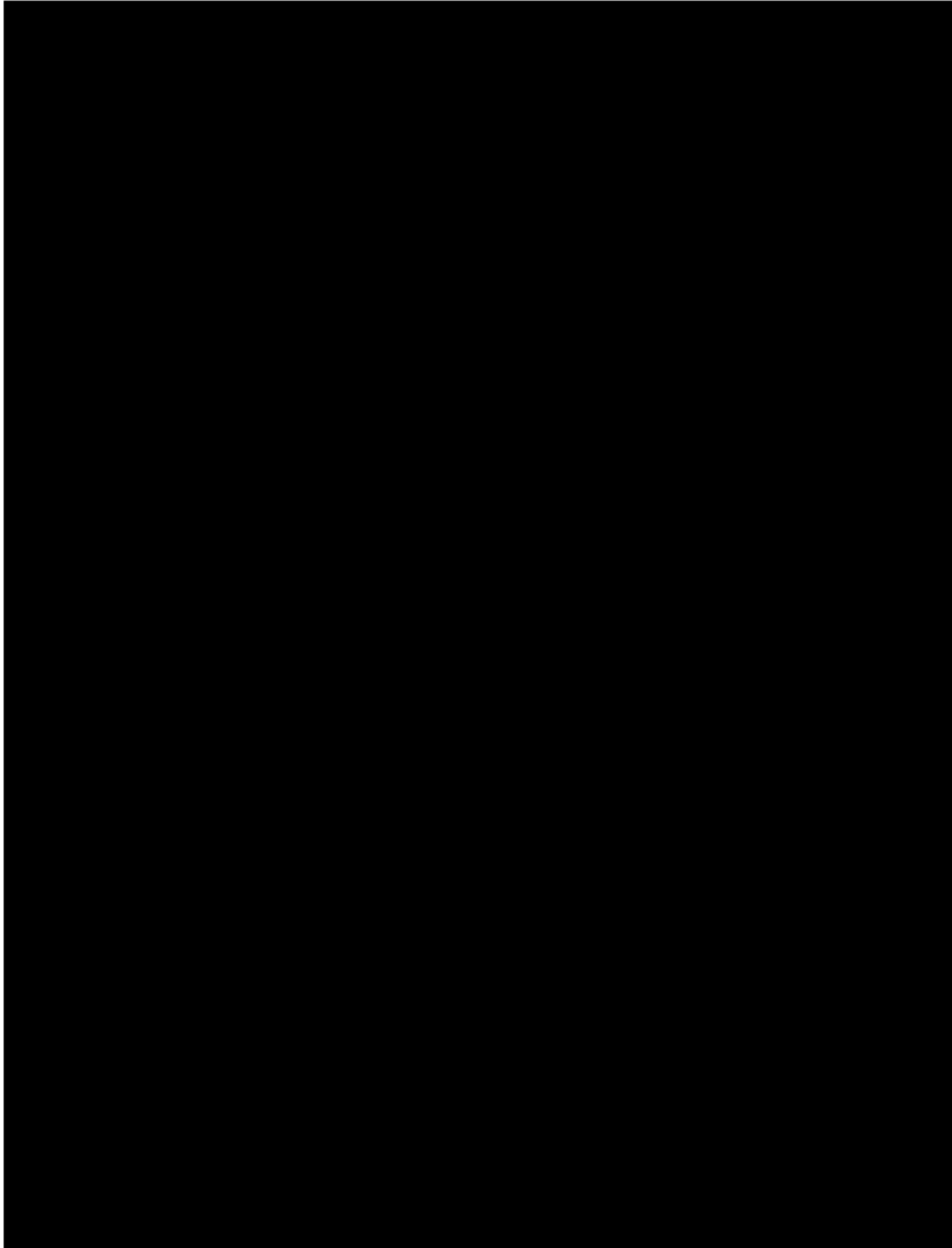


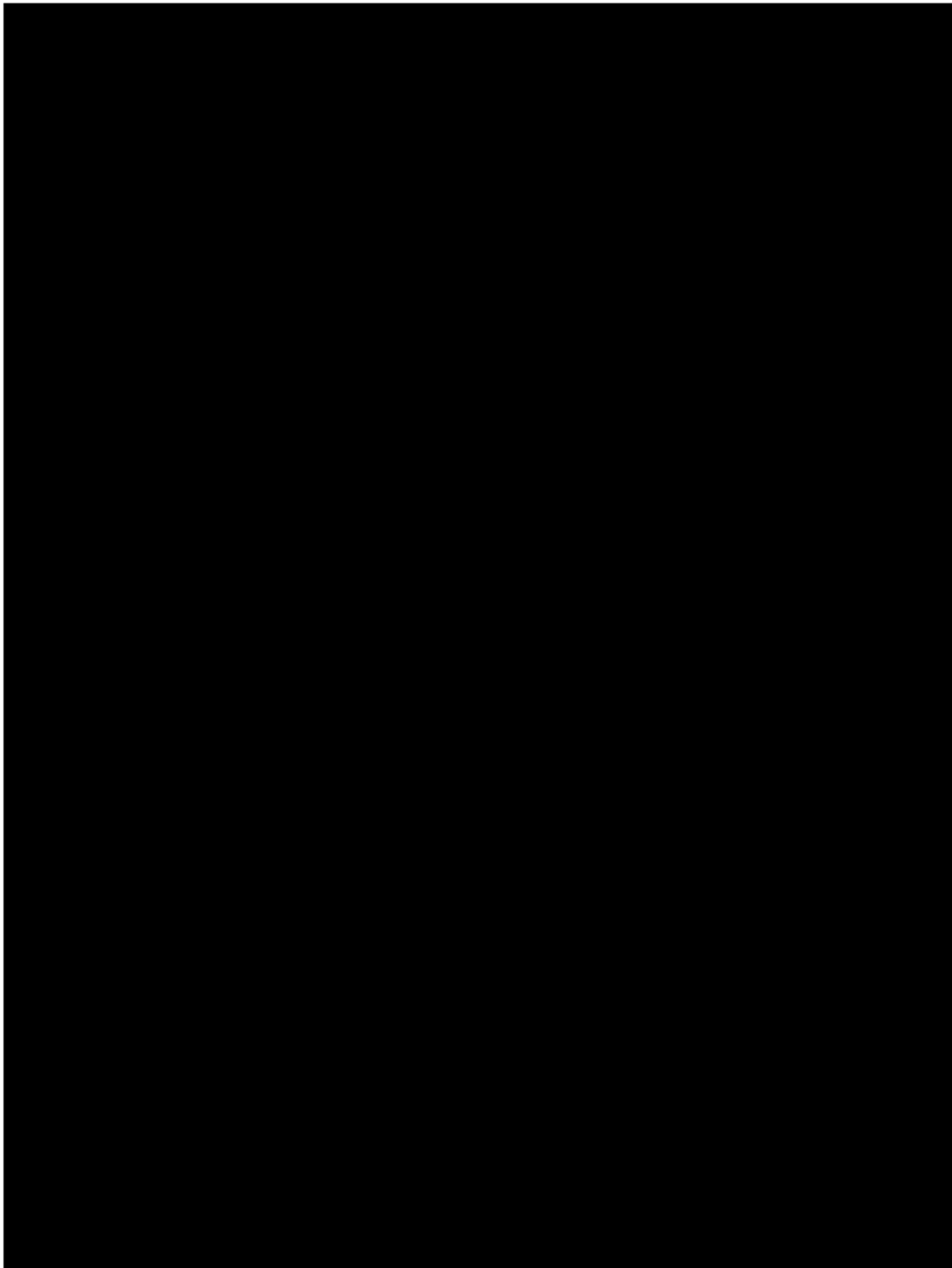


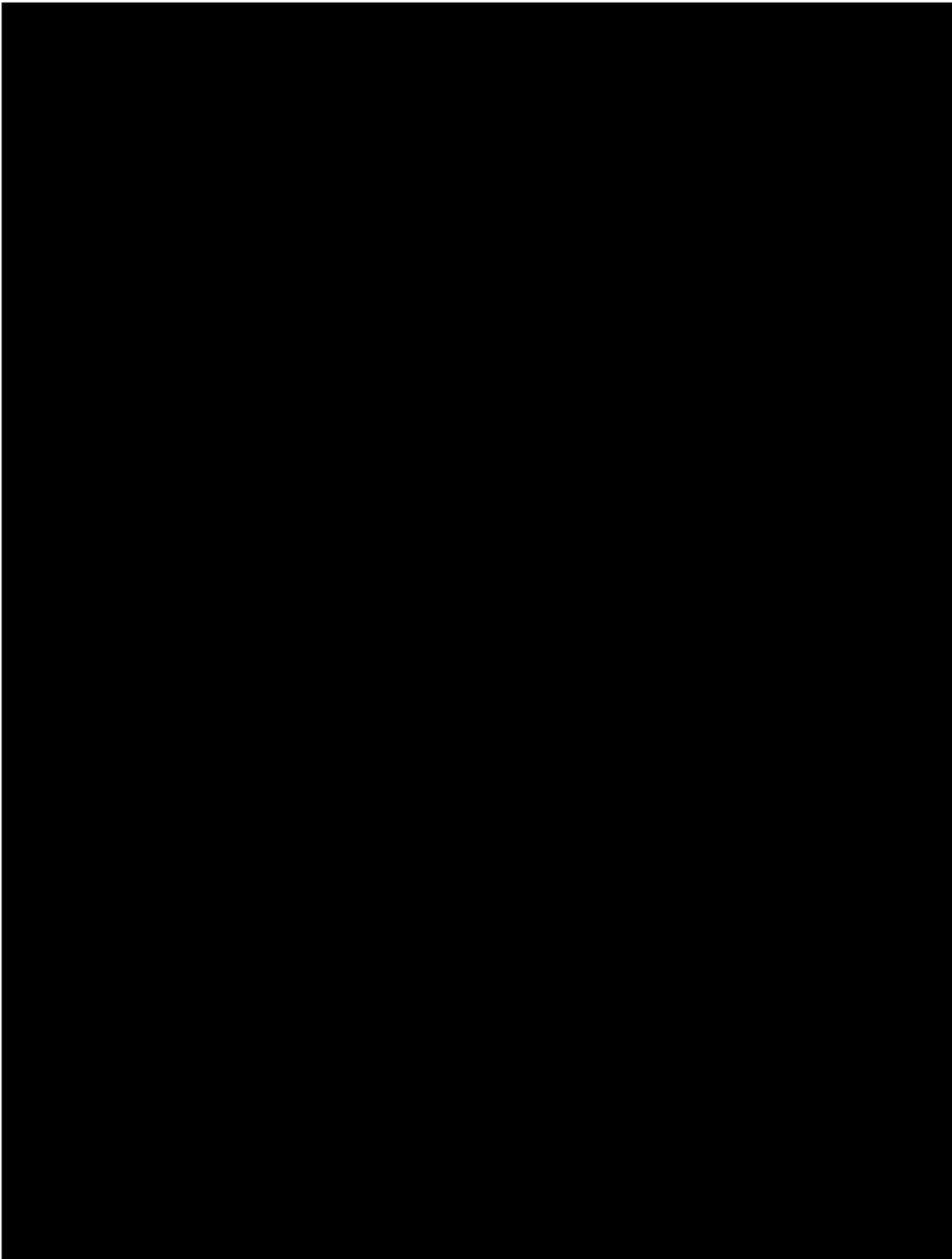


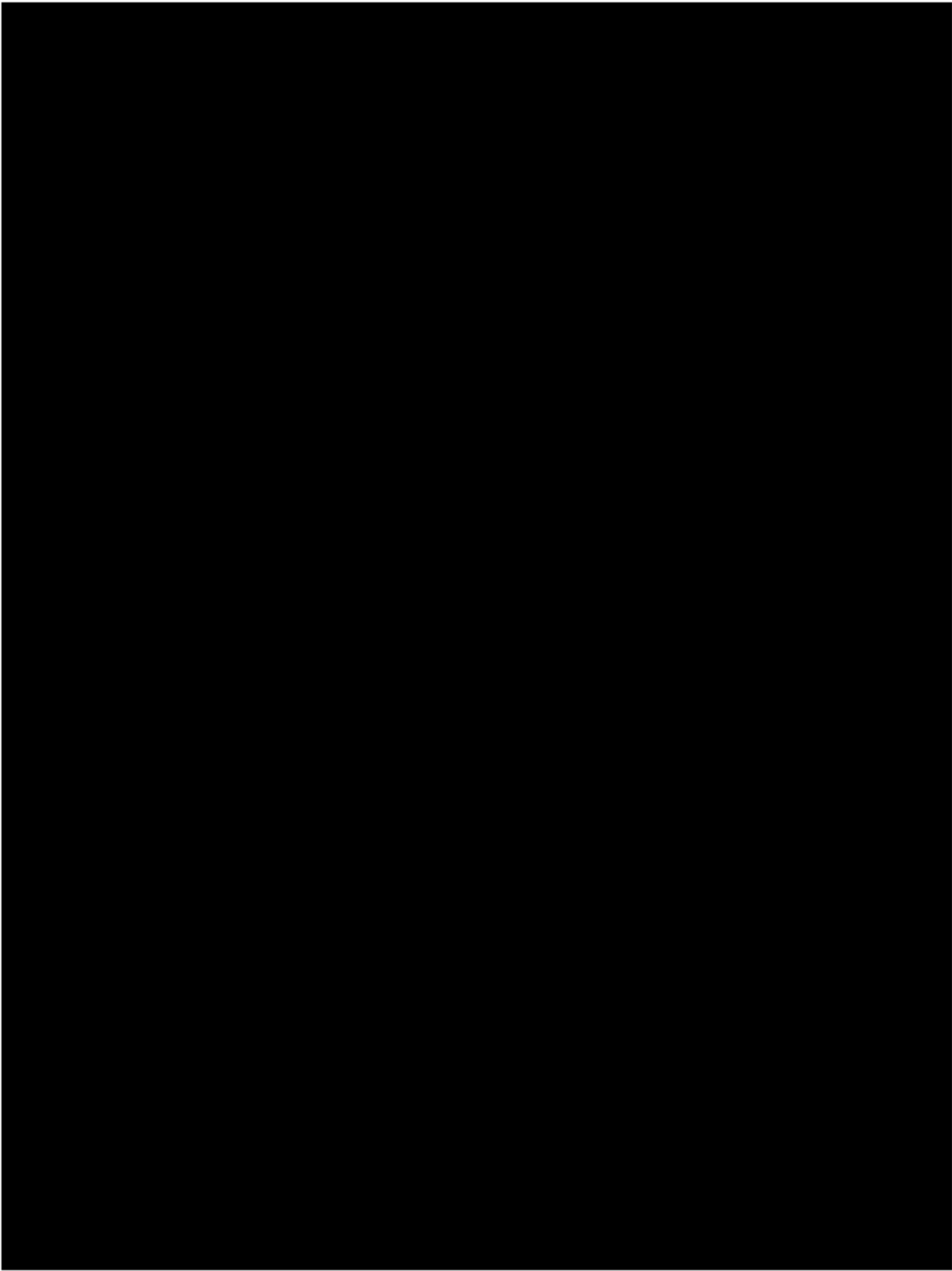


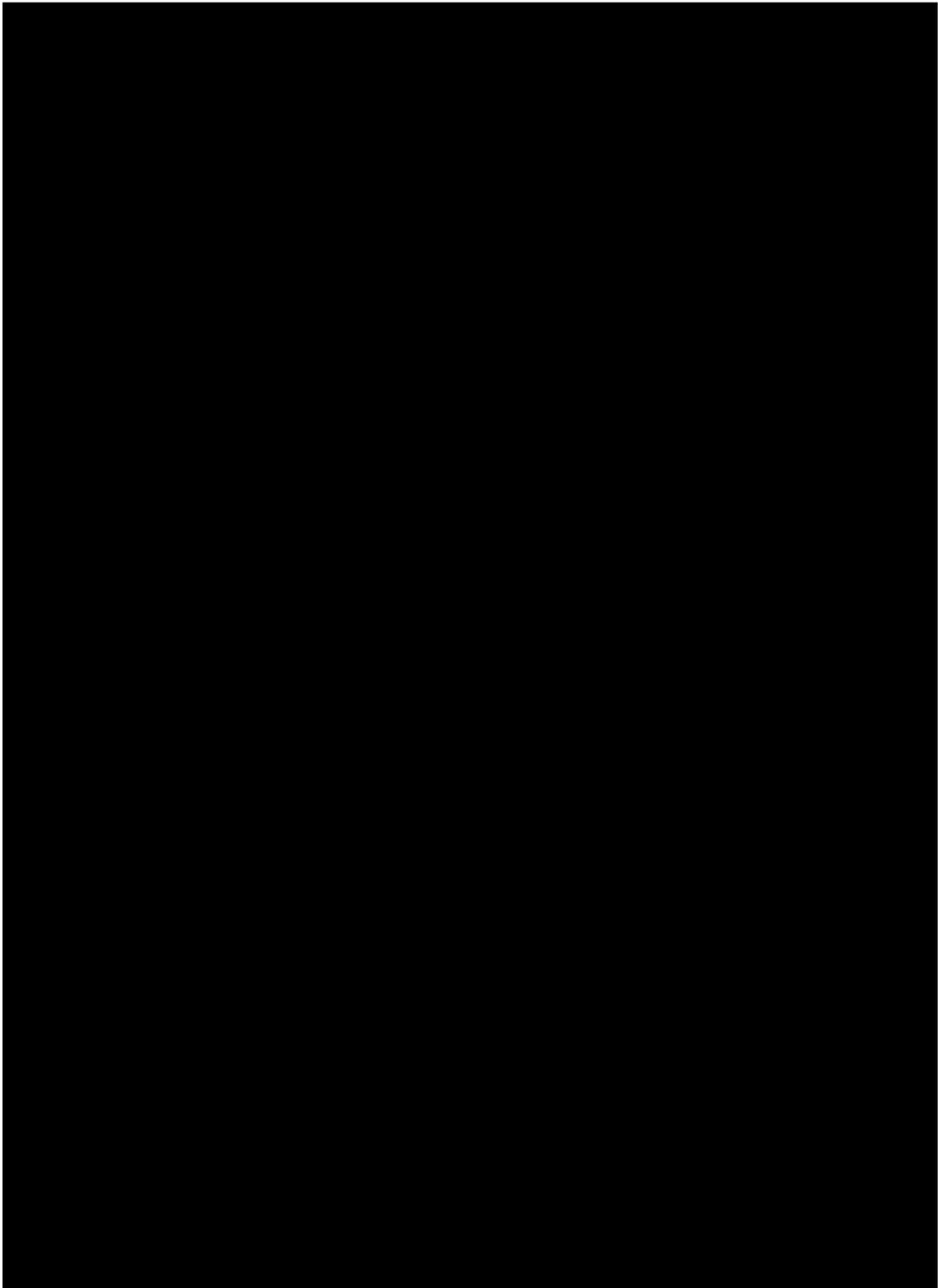


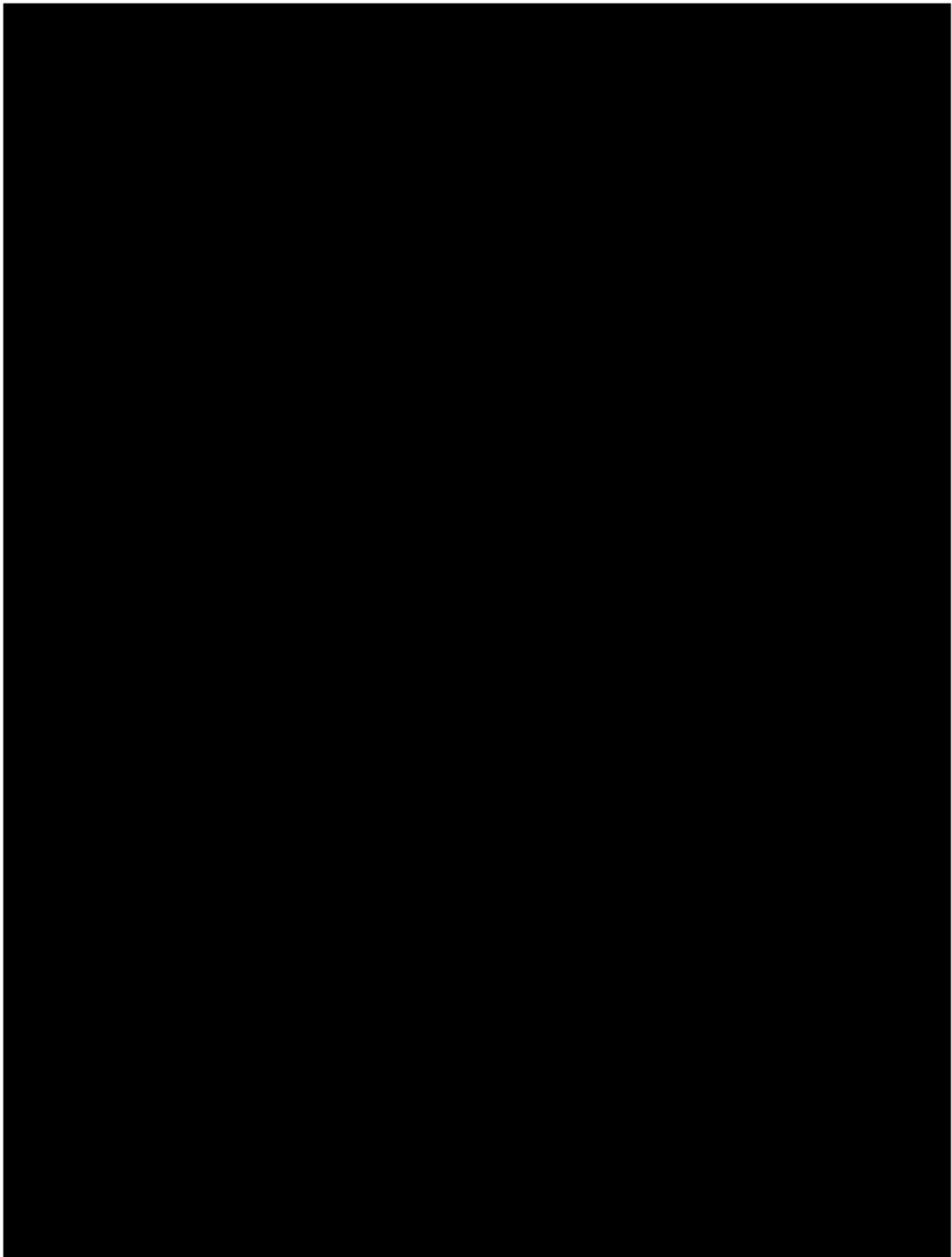


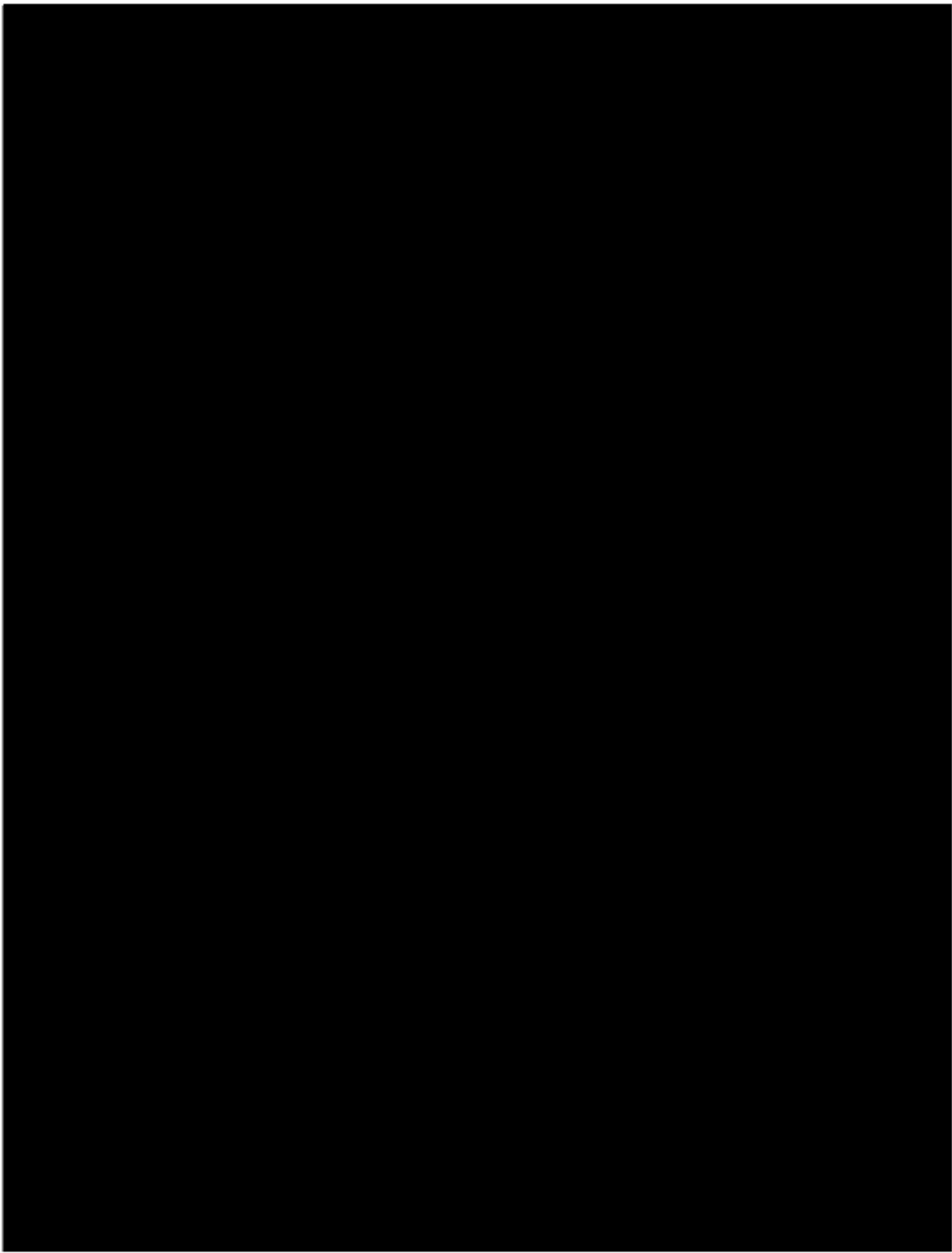


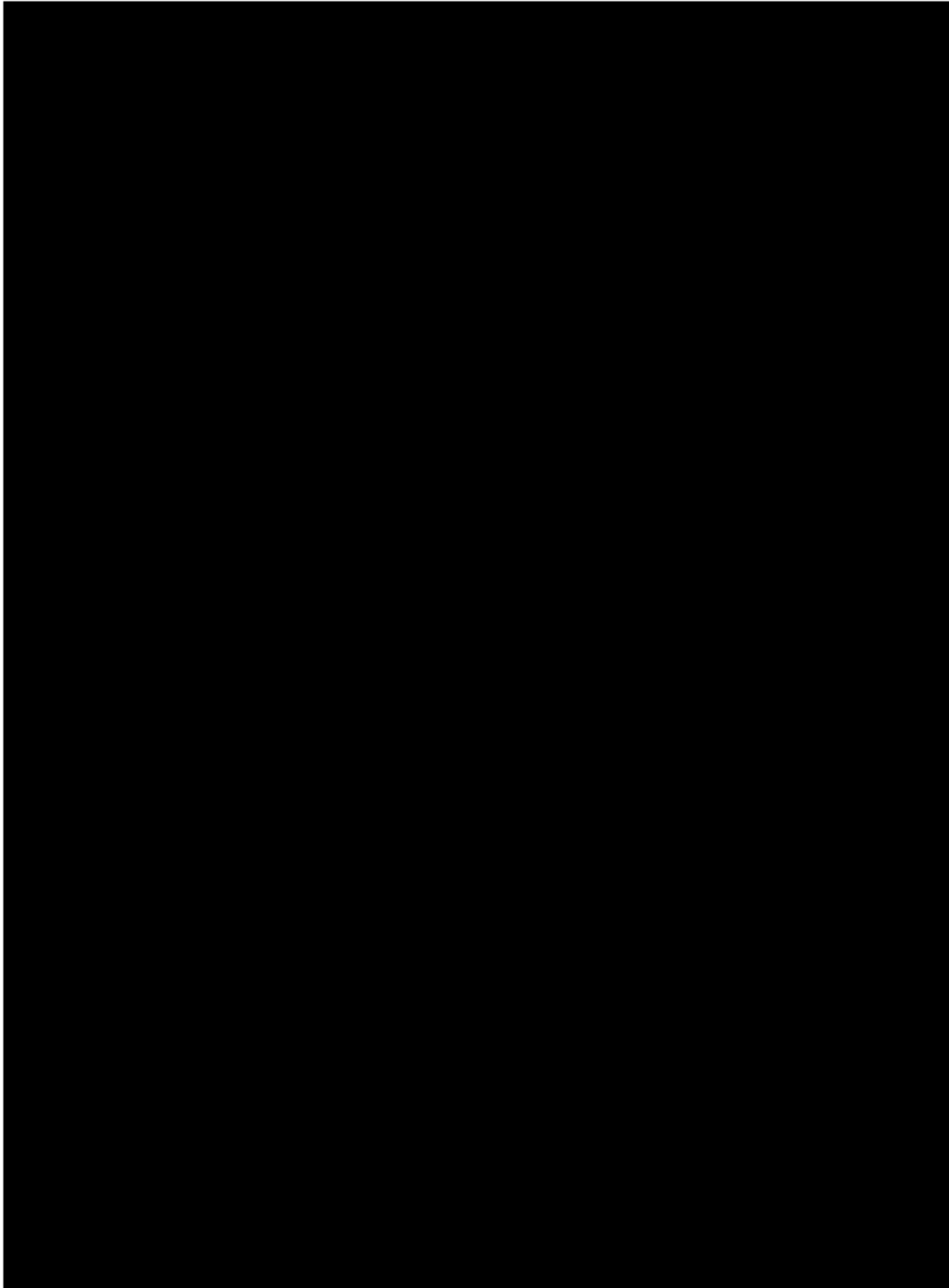


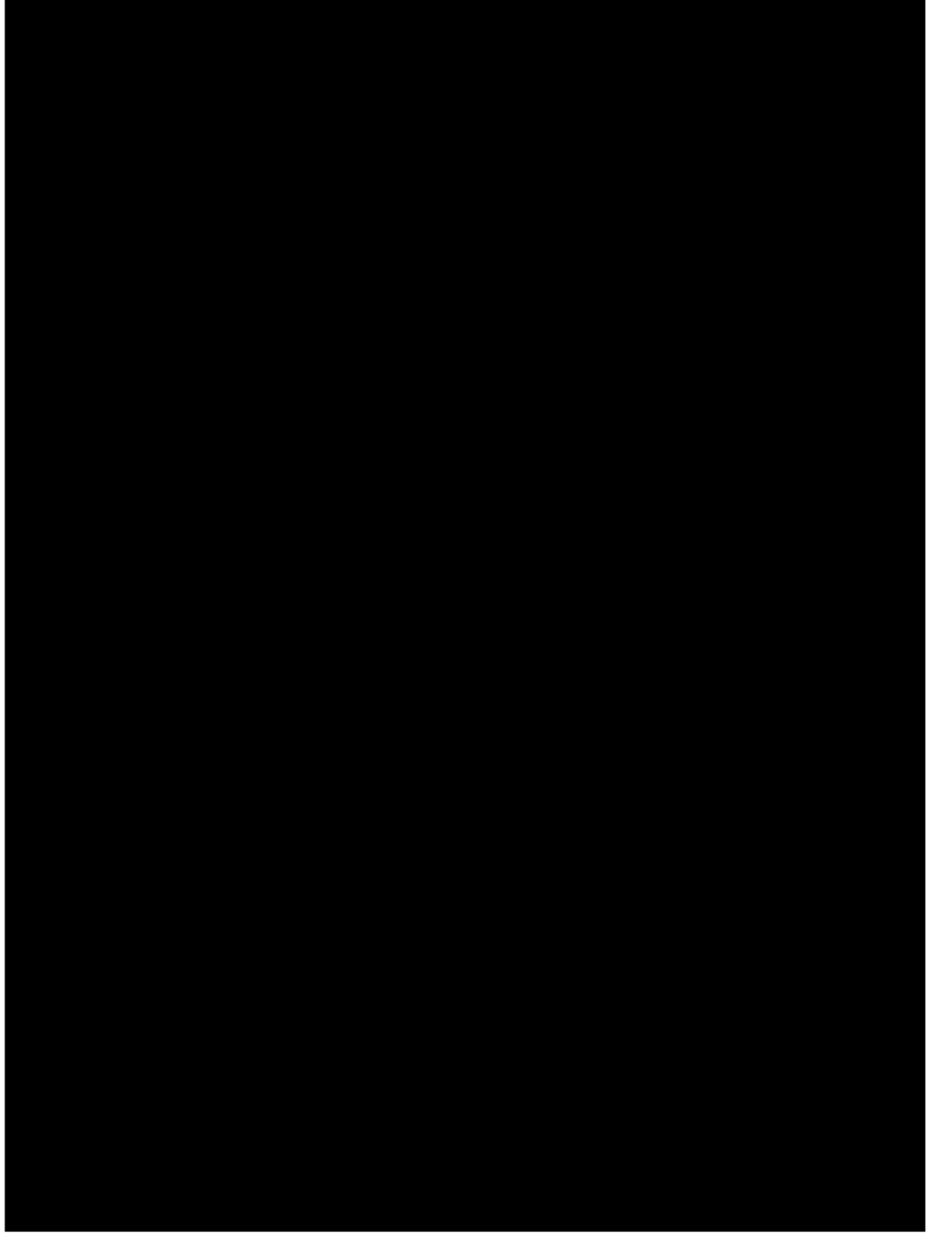


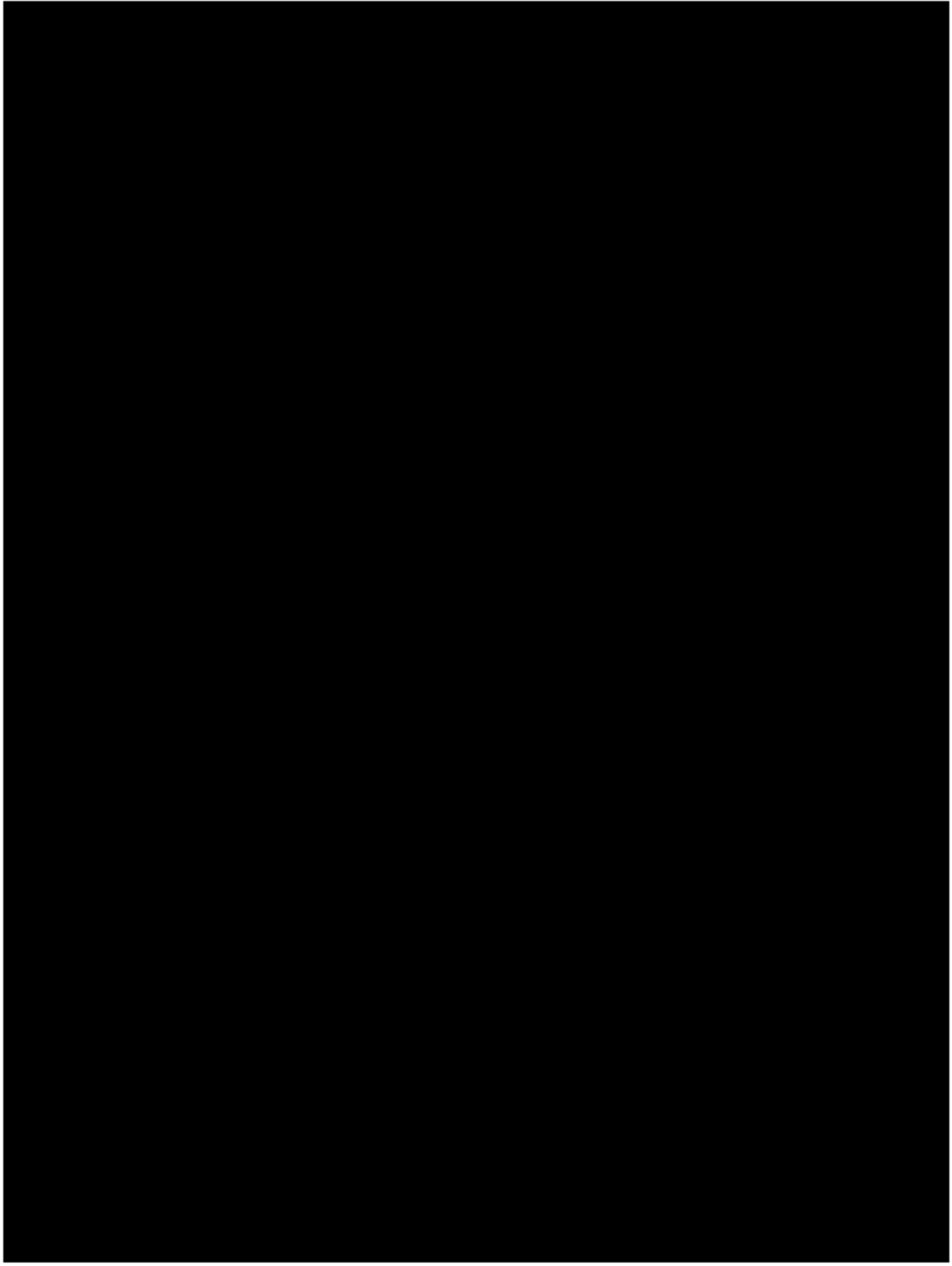


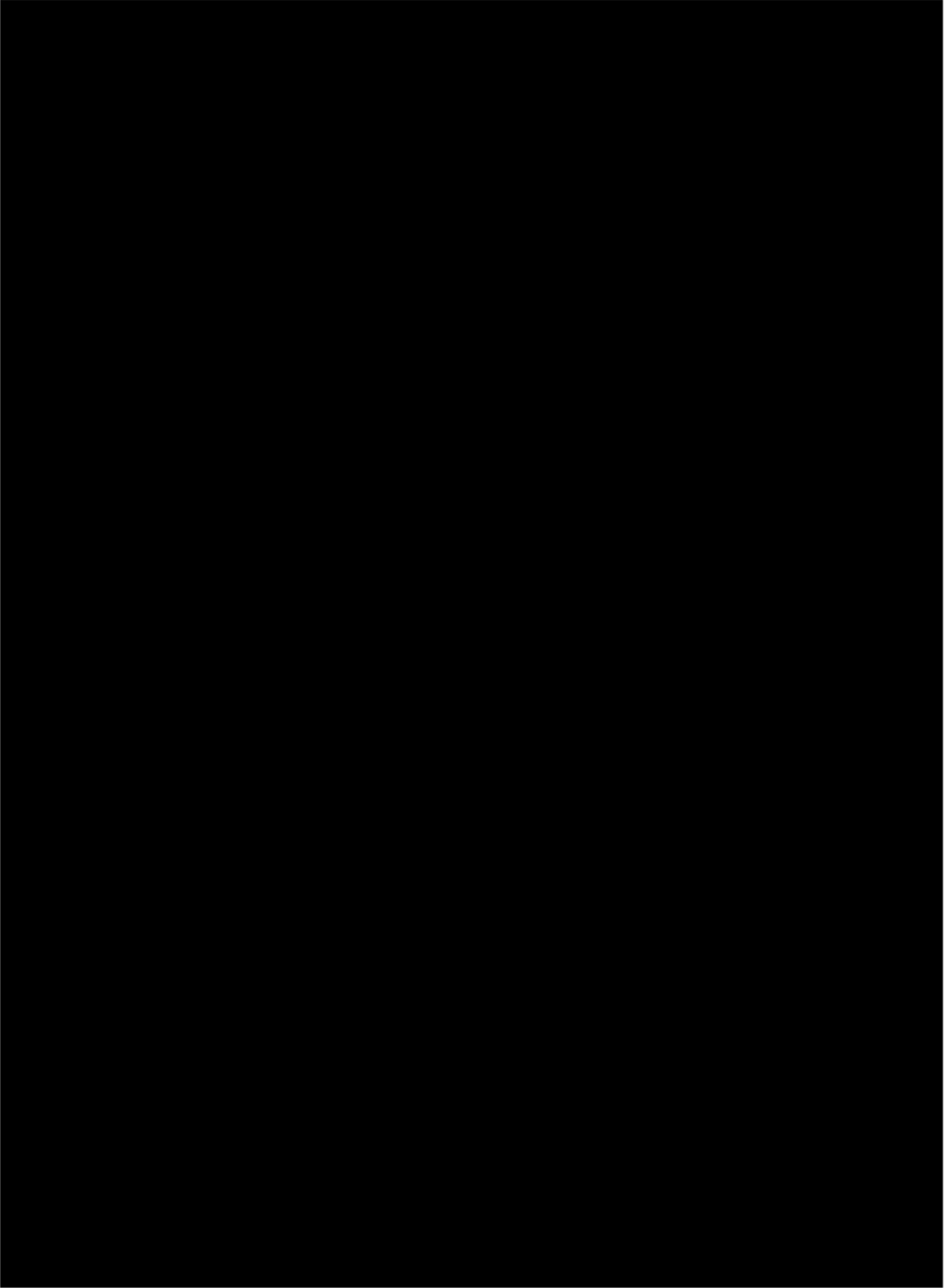


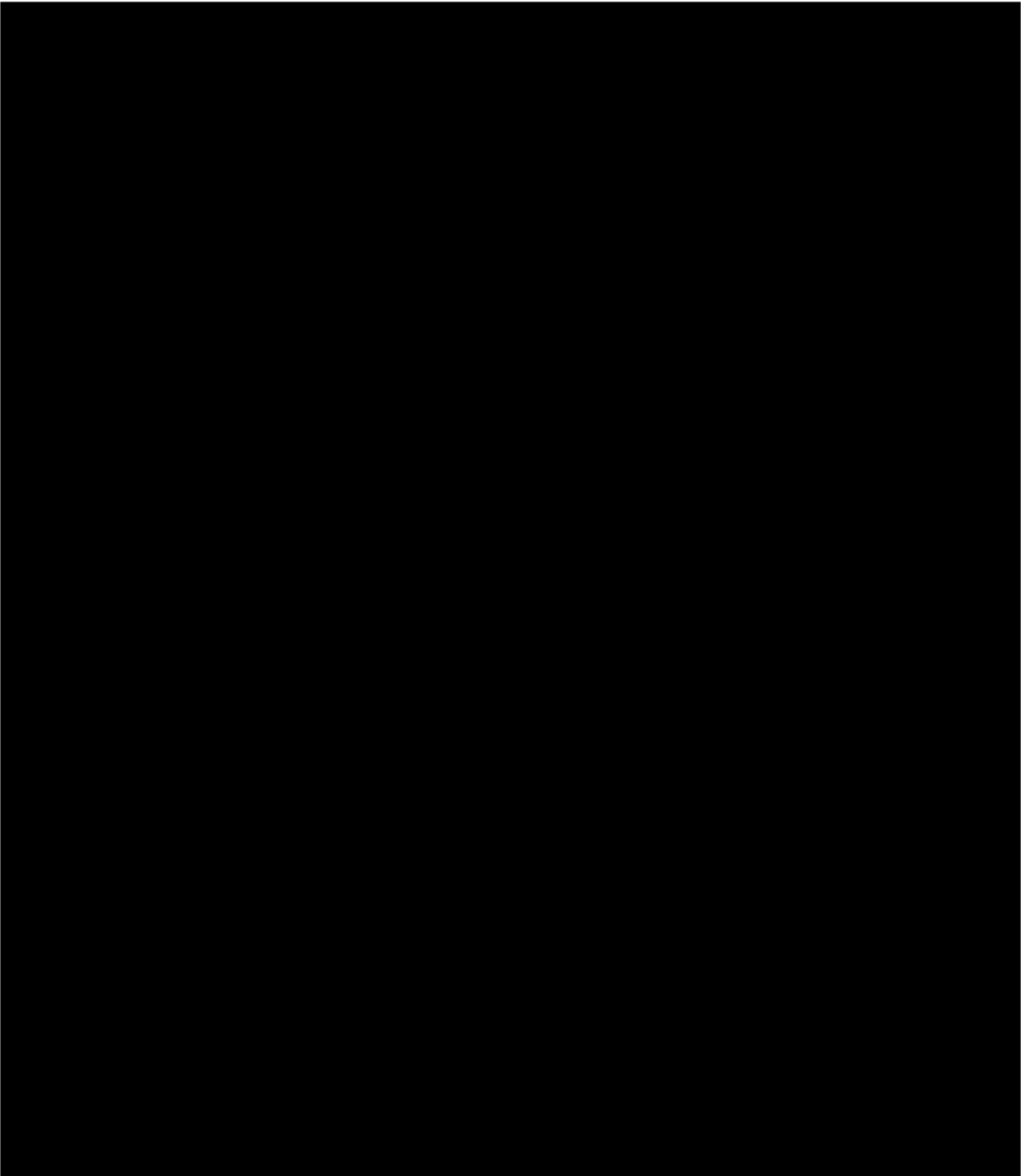


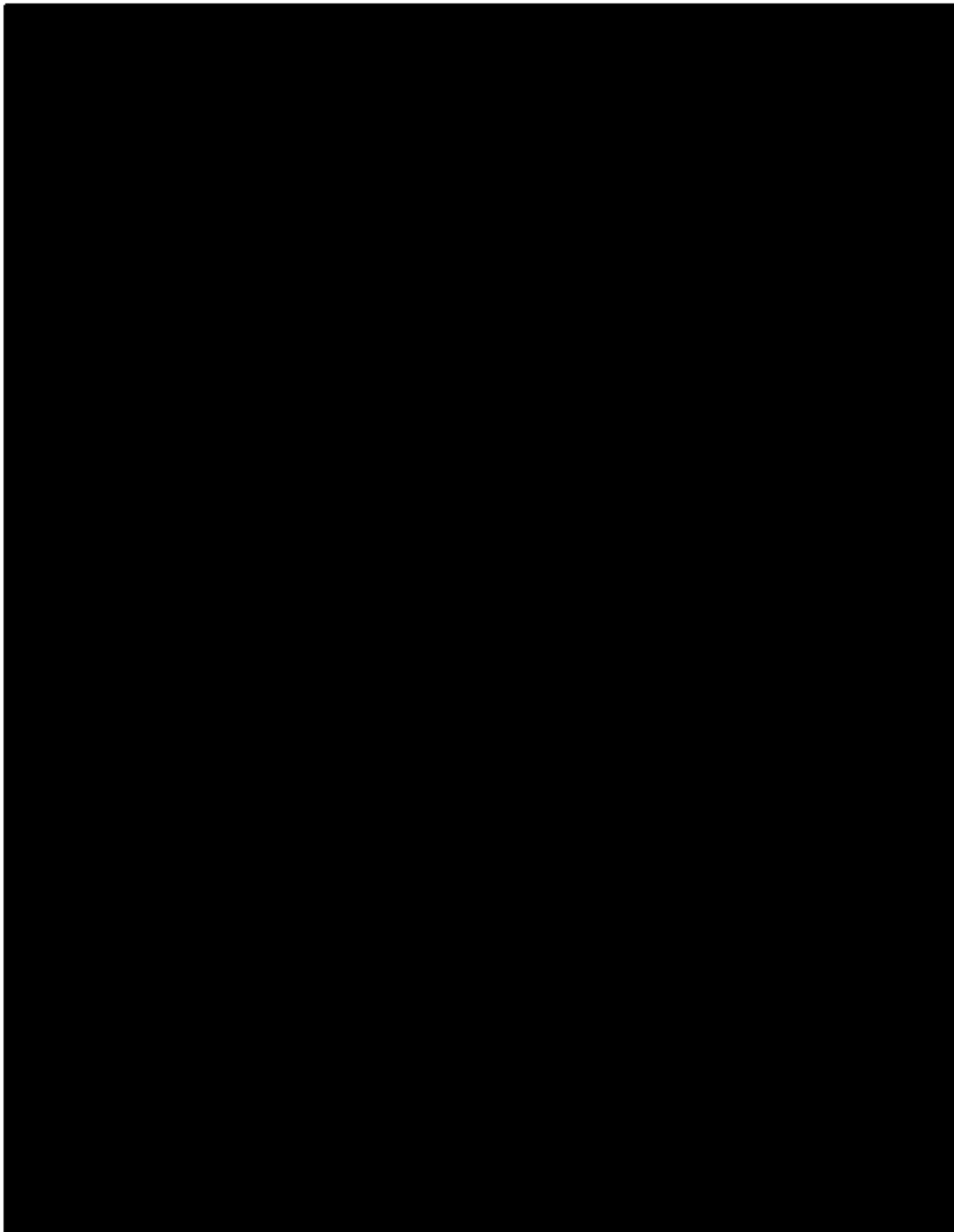


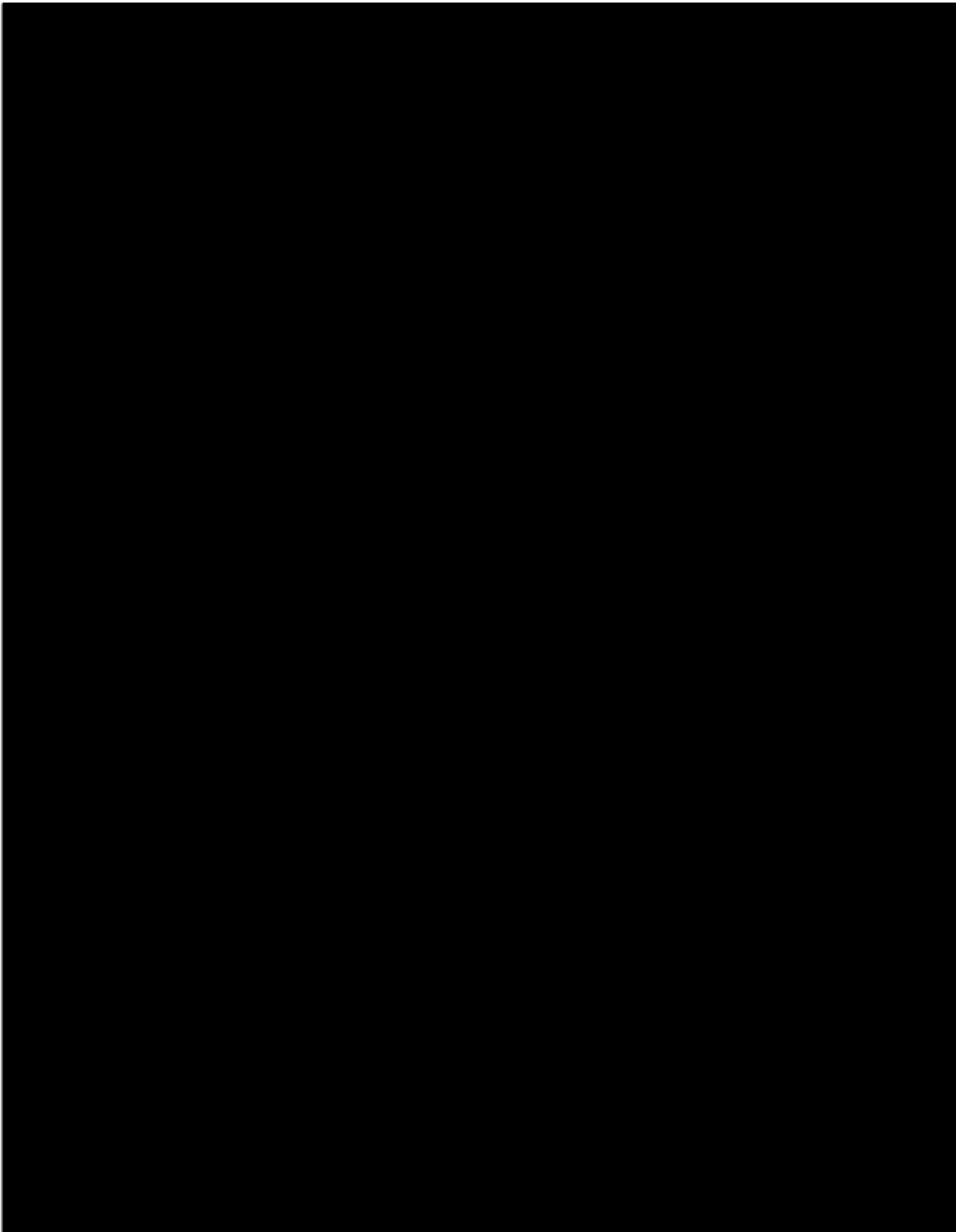


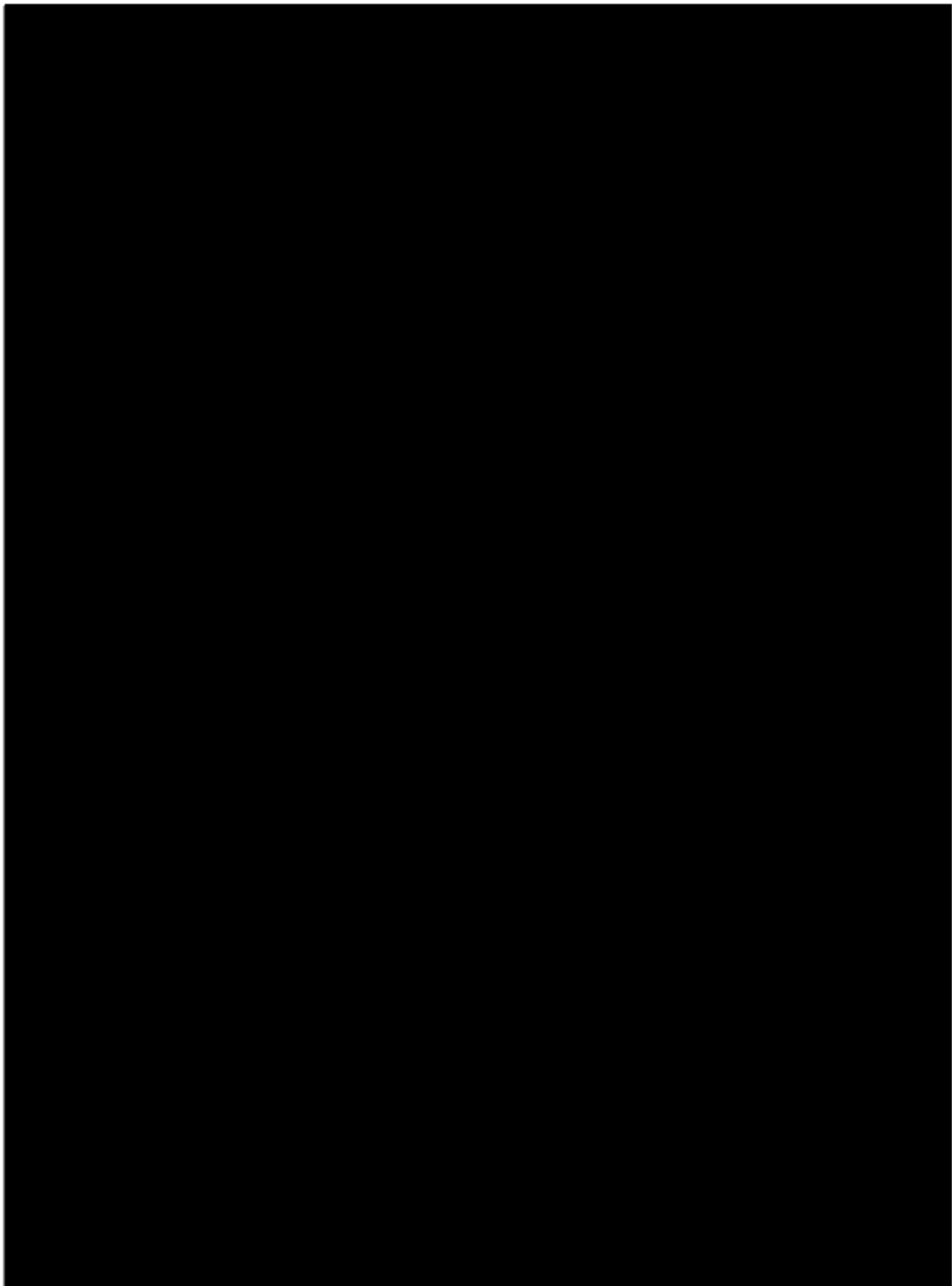


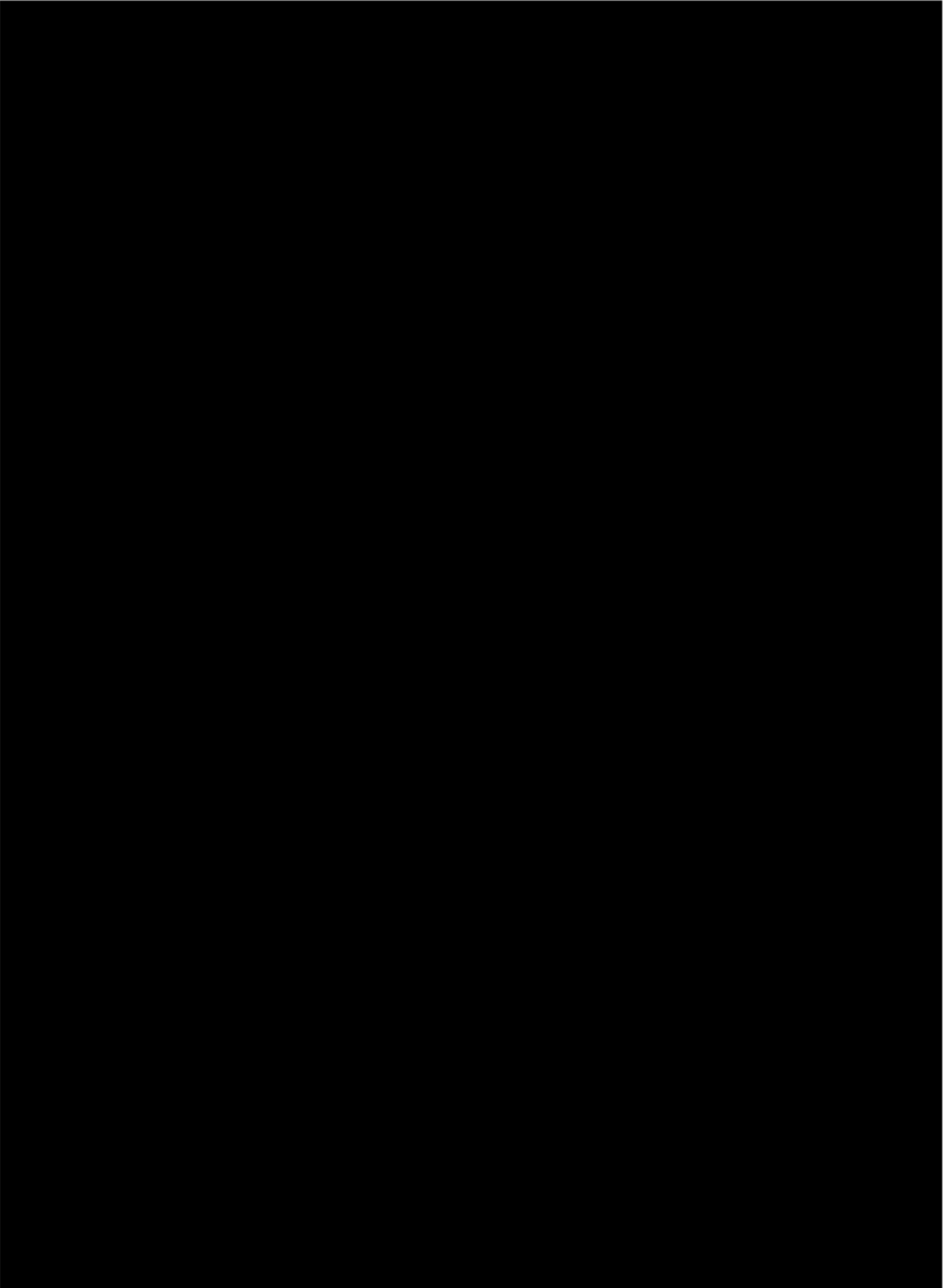












I am writing all of this down because I want you to know the following things, and to be completely honest, I am terrified talking to you one on one and I get so scared my mind goes blank. Every little detail is important for me to say and I really want you to hear it, so please don't say anything until I finish because you owe it to me to hear me out. During our meeting last week, the things you said really hit me hard and came as a total shock to me. I wasn't able to explain myself clearly because my emotions were all over the place and I didn't know what to make of them. When you bombarded me with all of your statements it was all so overwhelming I was starting to get panic attacks and wasn't able to express many of the things I wanted to tell you . I know during our last meeting we came to the conclusion that I wasn't as passionate about swimming as I was before, but thinking about it for the last couple of days, I know that I love swimming just as much as I did before I came here, if not more now. I was so lost and overwhelmed this year, that instead of you being able to see my love for swimming, you saw a swimmer who was trying desperately to figure things, someone who in a sense, had gone into survival mode.. At meets, I didn't feel I deserved to be there at all and thus, that fire I used to have was blocked with self doubt. The lack of confidence I had this year made me second guess myself on whether this was the right place for me and why I was doing this. But these last couple of days, I realized that swimming is, and always will be my first love. It's a lifestyle that I have chosen, and no matter where I am I want it to always be a part of my life. I don't care what anyone else ever tells me, I know this is the truth and I'm not going to let anyone make me think differently.

From the first day I was on this team it has been a constant struggle for me to make the adjustments necessary to not only be a part of the team, but try and contribute as well. Being a part of the CAL team was a dream come true and for the first semester it didn't even seem real to me. You were right, I was just there, watching and observing and just being happy to be here. But this past semester I realized I wanted more than that, and I wanted to step it up and contribute to the team's success. I was more committed than ever, and took it upon myself to do extra things outside of the pool. I was doing abs and back class twice a week, doing coreblasters after Saturday morning practice, doing cardio kickboxing after practices and doing bikram yoga every Sunday. When we had the time off after pac 10s until after spring break, I worked my ass off everyday so that I can be in even better shape and prove to you I wanted to be here. During finals week, I didn't miss a single practice and made that week of training as big of a priority as swimming, and rushing from practice to my final was worth it because that is how much I cared about showing you I wanted to be here. I also confided in several teammates to ask for advice on how I can make the necessary changes and to ask for support and guidance. The fact that the teammates you talked to about me had negative feedback about my progress was one of the hardest things I have ever had to hear. I took all the advice my teammates told me to heart and really gave it my best effort to apply it.

While the changes I was making were not as immediate as you would have liked, I don't think it is fair that I was given such a limited time to make them. I am only a freshman, and as a freshman you are supposed to struggle and then learn and grow from them. These past couple months have been huge growing months for me, and whether you have seen them or not, I have figured so much out. I have figured out how to keep myself healthy, and from doing so, have started feeling better about myself. I don't want you to take this the wrong way, but I completely disagree with what you said, when you told me I was the poster child for meritocracy. If that was true, I wouldn't have committed to CAL. This was the hardest year of my life without a doubt, and I knew that coming in. Everyday I had to work

harder than I thought I could just so I wouldn't fall behind in practice. While sometimes it seemed I wasn't performing how you wanted in practice, I know I'm being honest when I say I did the best I could possibly do. While you may not understand how I could enjoy struggling everyday here, I know that I love the challenge and pushing myself beyond my limits.

Yes, I may not be the fastest person on the team, but there would be days in practice when I would be able to keep up with some of the fastest swimmers on this team during pull sets or be the fastest one on the team during a kick set, and I take great pride in knowing that I was able to push and race some of the greatest swimmers in the nation. While I did not contribute that much to the team speed wise during competition, I know in my heart that my love for each person on the team and how much I care about them helped make this year's team special. While a team does need fast swimmers to succeed, it also needs support, encouragement, friendship and love, and I know I offered all of those things to this team. It hurts so much to hear that half of the team disagrees that I am a hardworker, because all of my life I have taken great pride in knowing that I do hold myself accountable and I give my best effort in everything that I do. It also hurts like crazy that you don't see my passion for swimming. There is no way I would have swum for █ years if I didn't love it. I feel that on a swimmer-coach relationship, both of us failed at putting the necessary effort in for you to be able to see my immense love for swimming. I honestly don't care what you may think of me and how you think I feel, but I know in my heart, and these last couple of days has reassured me of this, that my biggest passion in the world is swimming. I'm not ready to walk away from a sport that means so much to me, and I feel I have so much more that I can accomplish from it.

I think I figured out why my teammates may have had such a low opinion of me when doing my evaluations. As you said, I tried so extremely hard to change myself so that I could be a part of this team, that it was exhausting me. Its so draining to everyday be constantly worried about what your teammates think about you, and even more what your coaches think of you. Im going to be frank, while I have the upmost respect for you, I am completely terrified of you. I care so much about your opinion and this whole year I was scared I wasn't good enough and you were going to ask me to leave, and that you didn't want me here on this team. I know you would get frustrated at meets when I wouldn't communicate with you, and you would take that as if I didn't care. Please don't take this the wrong way, but for me it was always extremely hard to approach you and I felt as nothing I did was ever good enough for you. I knew I wasn't performing to my abilities this year and it always felt as if I was letting you and the team down.

I know I was meant to be on this team, and I deserve to be here. I am grateful for this opportunity and being on the team has made me happy and I have enjoyed every moment of it, even though it may have not come across that way to others. Trust me, if I hated being on this team and didn't enjoy swimming for you, I would have left months ago because the amount of work that is required here can't be done if you don't truly love what you're doing. I am willing to work with you to make me being on the team work, because I want to be here.

I came here because I love swimming and this team was an opportunity of a lifetime. The team didn't get to see the real me, which is a shame because I have so much to offer. The real me is a girl who loves swimming, and always will. A girl who has dedication and drive, determination, and passion. I want to be the best me that I can possibly be. While you may say that I haven't made any of the necessary changes required to be on the team, I must disagree with you. I am changing, growing up,

and improving. I have started to discover myself and looking at myself now compared to my young and naive freshman self, I have matured and learned to deal with real life. Representing the CAL swim team means the world to me, and I know that I have what it takes to be a part of this team because the new me is gaining confidence in herself, figuring things out on her own, and starting to learn how to make strives for greatness. While next year will be a huge challenge for me as a star-studded class of [REDACTED] freshman join us, I know that I will be able to help them adjust to life at Berkeley smoother than I did, be there to support them, and help get them on track so they can help out the team. I also have confidence in myself that the changes I am making will start to pay off soon and they will pay off for the good.

It comes across to me that you don't think I have what it takes to continue being on this team because you can't see my love for swimming. I need my coach to have faith in me and support me and want to coach me. I feel as if you have given up on me, which is a shame because I was not given a fair opportunity to prove myself. After [REDACTED] I was more than determined to prove to you I deserve to be here, and I know you have many important priorities with being a world class coach, but I don't think its fair to make me wait [REDACTED] weeks after [REDACTED] to talk about all of this and not even give me a second chance to change, because I deserve that chance. I had planned on training with you over summer so that I could be prepared come the fall, and the only reason I got a job was so I could afford to do so. The past can't be changed, but I don't think it was right for you to tell me all of this so late.

I love this team with all my heart and there is nowhere else that I would ever want to be, but I don't ever want to be that person that is a hinder to the teams success. I don't want to be that person that others don't enjoy training with or coaching. I don't want to make the team frustrated and I don't want to take away its opportunity to accomplish the great things I know it will. While you may not see it right now, I know I deserve to be on this team, and I really think together we can make it work. I don't want to give up on swimming just yet because I really feel I can block out all the negativity I have been putting on myself and show the confidence and passion that I know I have inside of me. I've never been a person to show those things to others, but I think I can learn to. I know myself and not swimming will never be an option for me. I also know that whatever we decide upon, I will always be a golden bear at heart and I gave this my all to make this work.

An Unexpected 'Thank You'

Dripping sweat and out of breath after just completing a rough swim practice and weights circuit, and my heart rate skyrocketing as I was anxiously awaiting to discover the reasoning for this meeting being called, I sat in a chilly and bare room full of boxes, as the office of Teri McKeever was currently being remodeled. From the moment I entered the room, I could feel the tense atmosphere, and the cold glares I received upon walking in for being one minute late felt like daggers going through my soul. Little did I know, that the instant I sat down, my life would forever change. The last time I had been in this office, I was an optimistic, energetic girl who had butterflies in her stomach from the excitement of knowing that Teri McKeever, swim coach of the women's swim team at the University of California, Berkeley, was offering me the chance to attend one of the most prestigious universities in the world, and be a member of the number one women's collegiate swimming program in the nation. A year later, I sat in the same chair, but this time, as a burnt out, scared, and discouraged swimmer who was having to force smiles to deny the fact that the "plan" was no longer a physical or emotionally healthy one.

From the time I was nine years old, I had made up my mind that I was going to become a good enough swimmer to be a part of the Cal swim team. As a gullible young girl who had dreams bigger than the moon and back, I thought that if I could get to the same school that groomed and perfected the most decorated female Olympian, then I too would become prone to her lifestyle of success. For the next eight years, every milestone I achieved academically and athletically were stepping stones to getting me to the place where I was so sure I was destined to be: all of my energy went one hundred percent into making my plan a reality, and every decision I made was carefully thought out, as to not risk messing up the plan.

Now, two feet away from where I was sitting, sat the Women's 2012 Olympic swim team coach, the coach of a national championship team, a coach whom many argue was the best female swim coach in the entire world. As I sat there trembling in my chair, and the knot growing larger by the second in my stomach, I listened to the domineering five foot eight, brown haired, brown eyed woman, with layers of wrinkles indented into her forehead and bushy brows in a shape of a wide v, apparent from the years of stress and the consistent frown present on her face, hovered over me like a giant about to crush an ant for two agonizing hours. Her voice, resembling that of an elderly man who has smoked one too many cigarettes in his days, echoed off the bare walls in a pitch that seemed to suck all of the air out of the room. -Your presence these past couple of months is not up to the standards of my team. *-What?? Where is this coming from?* I thought, with a feeling of paralysis taking over my body. *You just told me last week that you were glad I was a part of this team.* -You are not a hard worker. You are bringing down the team atmosphere at practice. *-I don't understand. Two days ago you told me I had the best practice of my life and that you were really proud of me.* -I've asked some of your teammates to watch your progress and willingness to change these past couple of months in and out of the pool, and they all say you don't give a fuck. This is unacceptable, how dare you disrespect my team like this! *-What are you talking about?! I asked them for advice, I obviously do care. And several teammates told me they are noticing the hard work I've put into this team. Why are you having us backstab and judge one another anyway?!* -You don't have the body of an elite level athlete. You are too fat and not toned enough. It's apparent you don't give a rats ass about how you perform, if you don't even take care of your body. *-Who are you to judge me? You are at least a good 40 pounds overweight. And are you blind, I am the smallest and skinniest one on this team! Do you want me to become anorexic or something?* -I just don't think you are

passionate about swimming. Honestly, you should quit and become a sorority girl. *-What the hell?!!! If I wasn't passionate about swimming, I definitely would not be putting myself through this grueling sport. And become a sorority girl? I hope you realize I am the only person on your team who does not drink or party, so I would double check your facts. -You can't be a part of this team anymore. Don't come to practice for the next six days and decide what you want to do with your life. -NO! I'm only a freshman, you have to give me more time to prove myself. This isn't fair.*

For one hundred and twenty minutes I let Teri McKeever tear me to shreds, forgetting that I had a voice, and control over my life. I felt like the most inanimate object on the face of the earth, and with a year of daily verbal abuse, and ever present panic that made go into a sense of survival mode, I had lost all individuality, as the thought did not even cross my mind to speak up and defend myself. I had been programmed into one of her robots. On the Cal women's swim team, this was the only successful method: to create a team where each member is emotionless and thoughtless, so that each member would willingly submit themselves to a dictator who would have control over every aspect of their life. At the time, it felt like a nightmare which I could not wake up from, my plan had been destroyed and I had put myself in a position where another person held all the power to to achieve success is to eliminate all of my individuality. Upon realizing this during the meeting, the knot in my stomach became so intense that it felt as if I had been sucker punched multiple times, and I had to hold my breath for the remainder of the meeting as to not burst out into hysterics.

I left defeated and broken, running in a full on sprint to my house, sobbing and gasping for air. It seemed as if my whole world had fallen to pieces. Everything that I had worked my entire life for was destroyed in an instant, and for a brief minute, I wanted to give up. As I lay on

my bed, thinking about what had just happened, and how I had reached the point where I had given up all power in my life. She had programmed me to believe that her way was the only way in which I could become successful in swimming, and since I had not met her standards of success, I was deemed a failure. Maybe she was right, if she couldn't help me, who the hell could? For an agonizing sixty seconds, I lay on my bed, and imagined my life without swimming. To live a life free of the permanent perfume of chlorine, a life where waking up before that glimpse of light hit the night's sky was no longer a normal part of my daily routine, where I would no longer be plagued with muscles so sore that brushing my constantly wet, chemically ridden hair seemed like the most impossible of tasks, and the adrenaline rush from diving into a crystal clear blue pool with the water rushing past my body and propelling me forward like a torpedo, would be non-existent. As I thought about that possibility, I could not even form a grimace of a smile crossed my face. I shot up from my bed, and healed over, with my elbows digging into my knees, head pressed firmly into my hands, having the worst panic attack I had ever experienced. I was disgusted with myself for thinking that one person had the ability to run my life for me, and to convince me to abandon my first and only love: swimming.

For an entire year, I watched as Teri tried to change twenty-four young, intelligent, talented, upbeat elite level swimmers, many of whom would one day make the Olympic team, into her assembly line of championship producing athletes. She had established an atmosphere where swimming was the only way of life, and was to always be the first priority; family, friends, God, and school, all came in second. It was a place where your best was never good enough, and your failures were more dominant than your accomplishments. Teri has built her team to scrutinize teammates on their every move, and to reject a member until they conform to the mentality of the twisted hierarchy she had designed. For this team, the highlight of their lives would forever and

always be winning a national championship, everything else flailing in comparison. Swimming is the only thing they know, to them, nothing else matters. The madness behind it all has been safely hidden from the public, as unless you personally experience firsthand the daily tortures that are present, Teri has trained her team to fool the rest of the swimming community. There will only ever be a handful of people who can fully comprehend the terror and insanity that occurs at Cal; a majority of past and present Cal swimmers have been completely transformed into brainwashed robots. Realizing all of this, I was able to recognize that while her list of credentials was impressive, the one thing Teri did not hold any power in was determining what I chose to do with **my** life. The boxes that lay in the Teri's office hours earlier represented more than just a re-arranged office, they represented the opportunity for me to re-arrange my life as well. I now held the reigns in my hands, and decided that I would transfer to the [REDACTED]

Four days later, I announced my plan to Teri. –What the fuck ^{Swimmer CK} this was not what we agreed upon. –No, I said confidently and calmly, you decided I would quit swimming. I never said I would. –If you can't swim fast in my program, what in the hell makes you think you can swim fast anywhere else?! –I don't know, but I want to try. I'm transferring to [REDACTED] and I'm going to continue swimming there. –That is bull shit! If you are really passionate about swimming you would have come in here and argued for your place on the team. I looked directly into her glaring brown eyes, which seemed to have a look of sadness hidden behind her fierce, over large pupils, and leaned over the desk, this time hovering over her. –Well guess what Teri, I wrote fourteen pages on why I know I deserve to be on this team. But you know what, I do not want to be a part of this team anymore. As I angrily slammed my essay of reasons onto her desk, Teri sat back in her chair, shocked that her little robot had ripped out the command button and

had taken control over her own life. By her knocking me down to the lowest of the low in the prior meeting, she allowed me to discover the confidence and courage I had to take charge of my life and make decisions for myself.

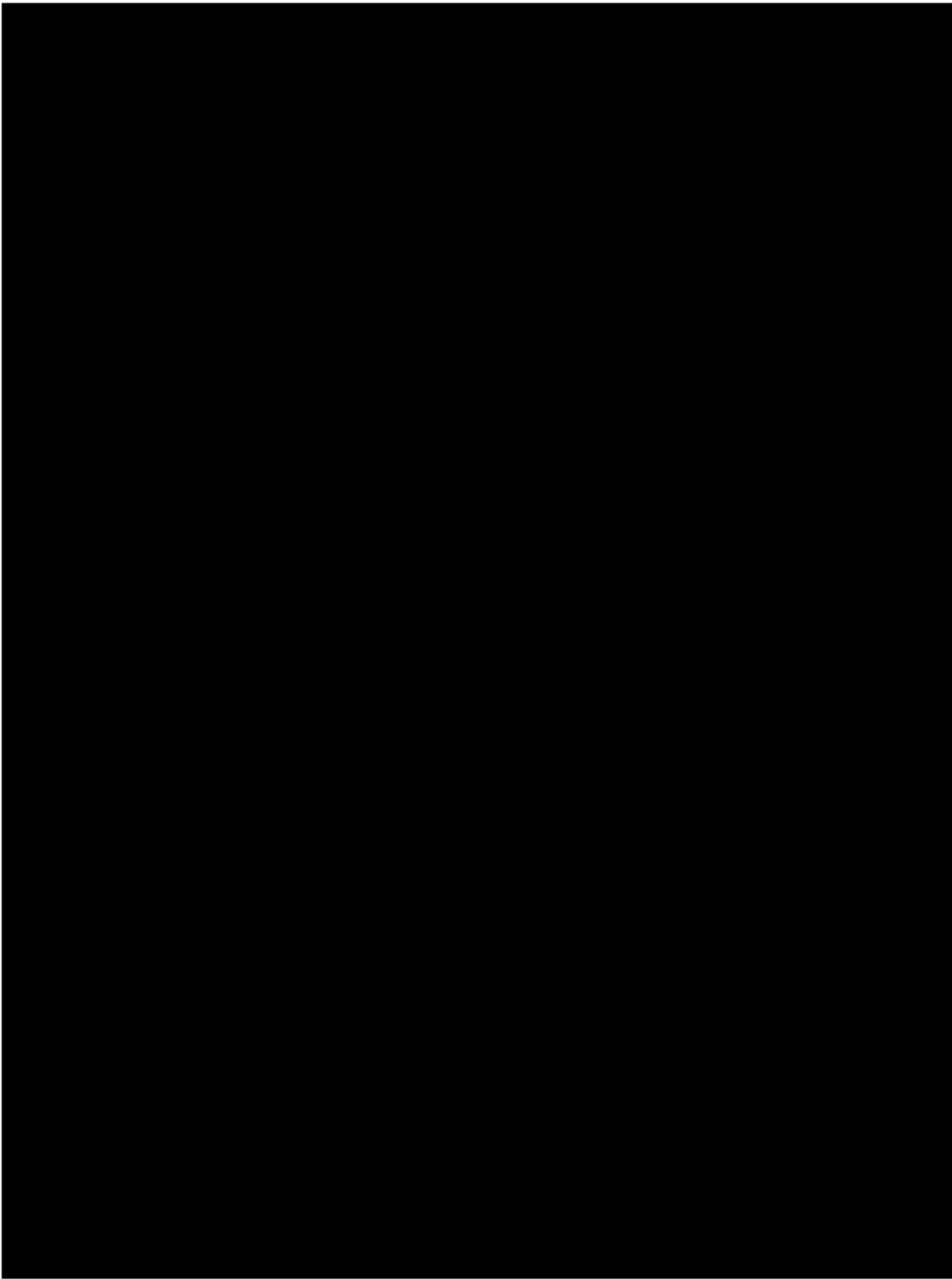
Fast forward three months, and I was accepted to [REDACTED]. I had an entire summer to heal from the scars Cal left me, and even though I kept it well hidden, the wounds were still fresh and I was full of fear and uncertainty. - *What if the same thing that happened at Cal happened again at [REDACTED] -What if Teri was right, what if I was not cut out to be a division one swimmer? –What if everyone judges me and assumes I left because I wasn't good enough?* Despite all of these questions consuming most of my thoughts for the weeks leading up to moving to [REDACTED] I found that after only one week of being a part of the [REDACTED] women's swim team, the pain from the past began to disappear. Without the fear of failure lingering over me at every practice, I found it easier to breathe, easier to swim, easier to enjoy doing a sport I had always loved.

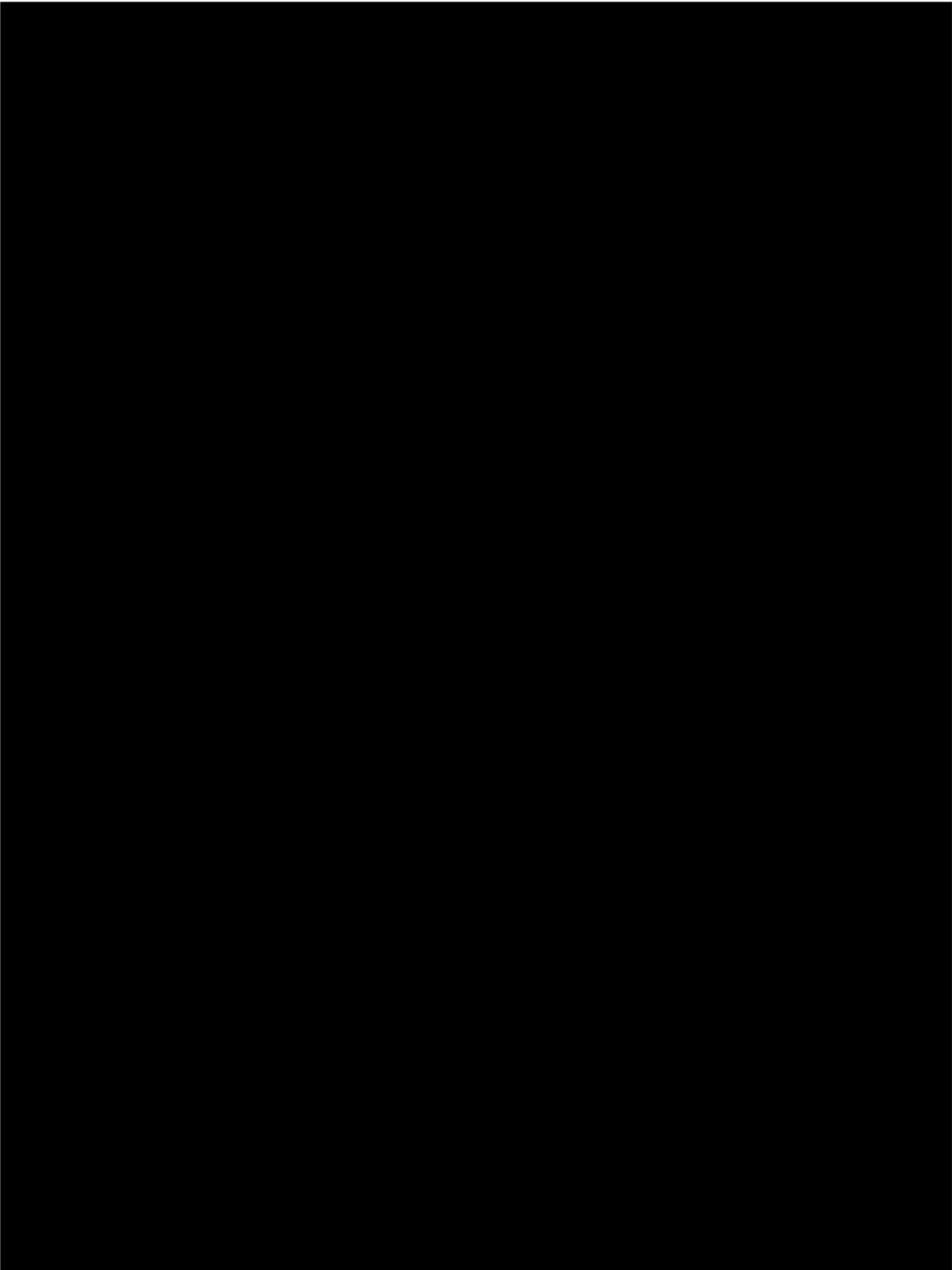
Hanging above the door in the [REDACTED] lies the famous [REDACTED] saying [REDACTED] There are still times in which I feel people view me as a failure for leaving Cal. Yet that saying above the pool door entrance serves as a daily reminder that I have already become a champion. As I looked at the glistening water in the [REDACTED] pool, with the [REDACTED] [REDACTED] Championship banners reflecting from the surface, I saw my reflection in the water as well. I laughed to myself, as this was the first time in my life that I remember looking at the pool and seeing my reflection look back at me. To me, this was the most monumental moment in my life, because it was proof that I now held all the power in my swimming career, and success was lingering right in front of me.

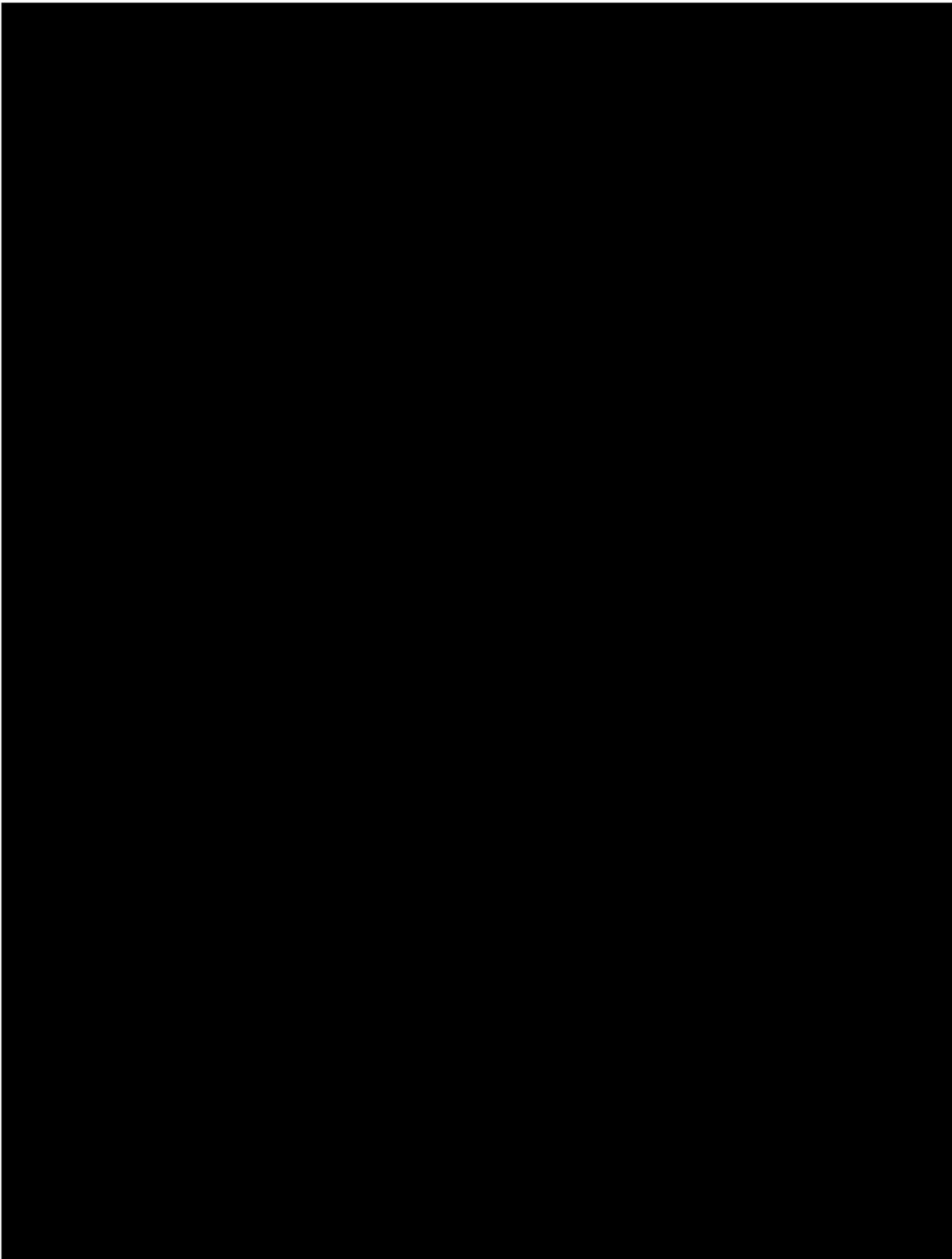
Having a coach at [REDACTED] who not only saw promise in my potential, but cared more

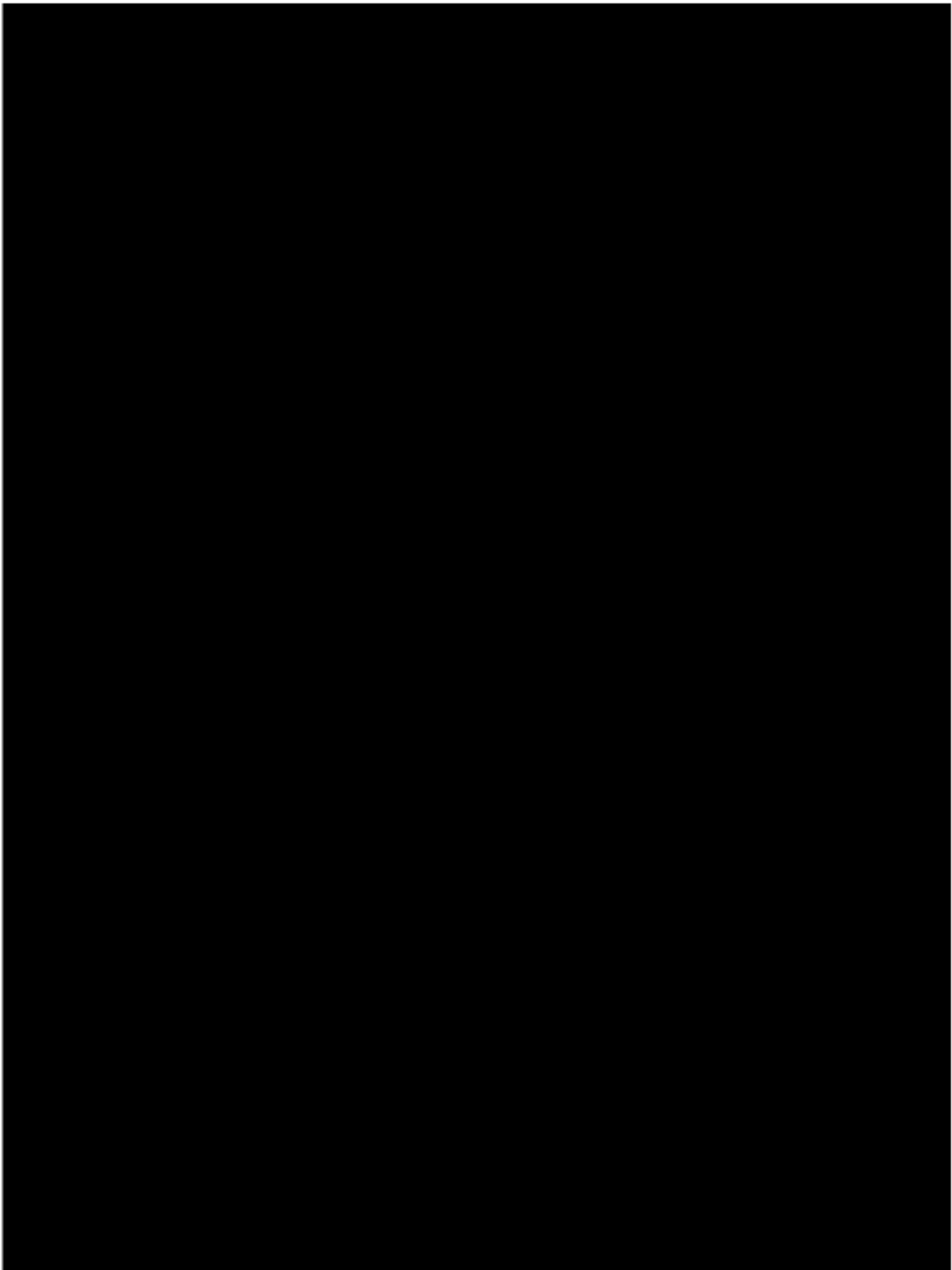
about me as an individual created an atmosphere on the pool deck in which success was sought after, but the journey was of larger importance; where individuality was highly encouraged, judgement was non-existent, and support and understanding was constant. Swimming has turned into an opportunity to discover myself, and I am beginning to feel alive again. A year since my experience at Cal, I can look back on that meeting with Teri McKeever and see it in a new perspective. I now realize that her goal of the meeting was to not get me to quit swimming, but to break me down so much mentally, that my conscience became extinct and I would become another one of her successfully programmed robots, and be willing to do anything upon her request to remain on the Cal swim team. Teri was shocked in my decision, not so much towards the school I was transferring to, but because she realized she had failed. She had failed to change me, and could not come to terms that I was that one in a million defected robot who would not tolerate her mind controlling games.

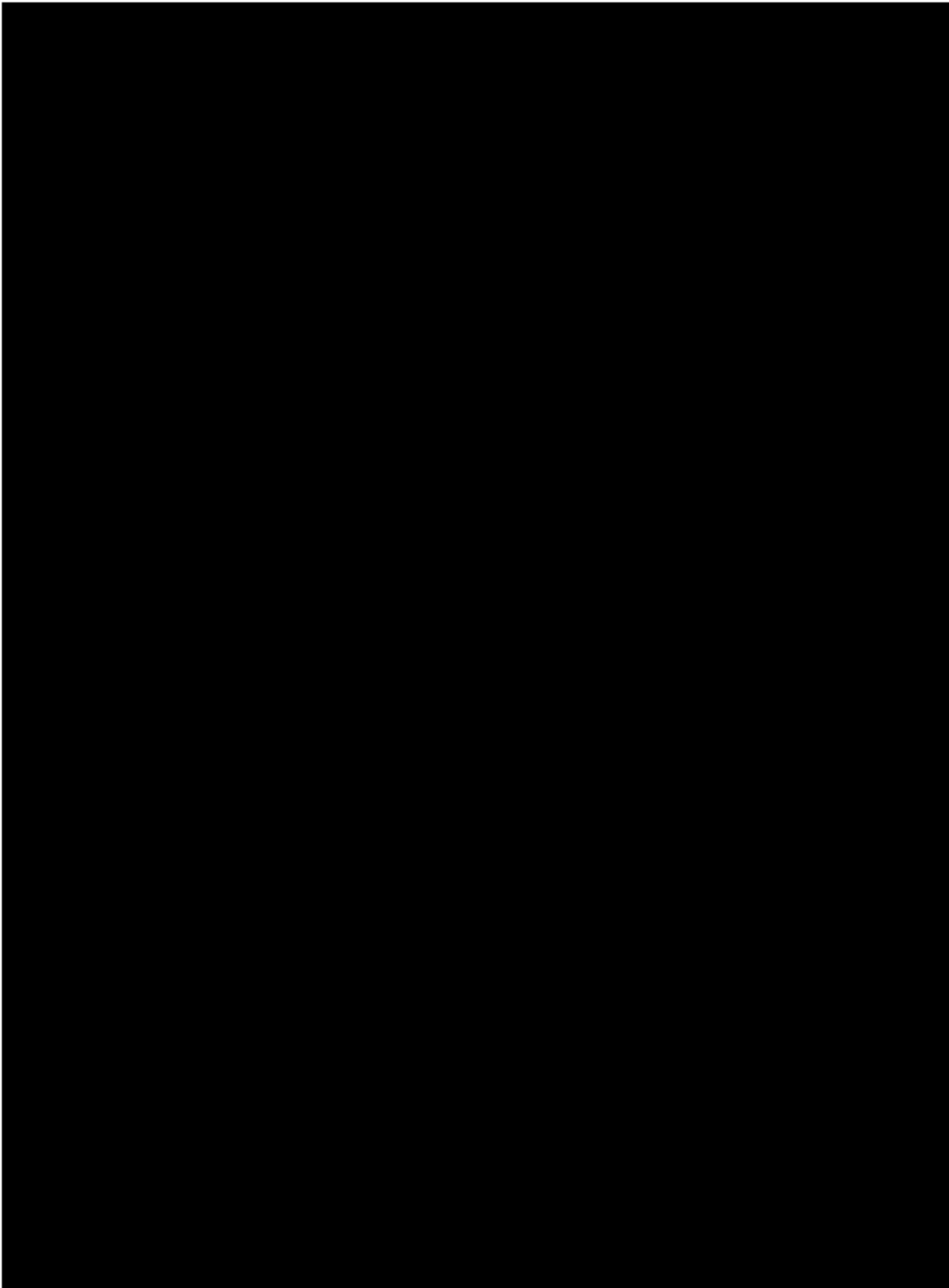
With all the confidence in the world, I can assuredly say that I am thankful for Teri seemingly take away my once prominent dream. Through her making me face adversity, I was able to develop into a person who I was proud of, one of those rare athletes who was able to develop a brain of their own. I discovered I am brave enough to take a chance and dive into the unknown. I owe most of my current success to Teri McKeever, because it was through her in which I developed my new life plan. This plan has not been perfected yet, it is more of a work in progress, but is that not how life is supposed to be?

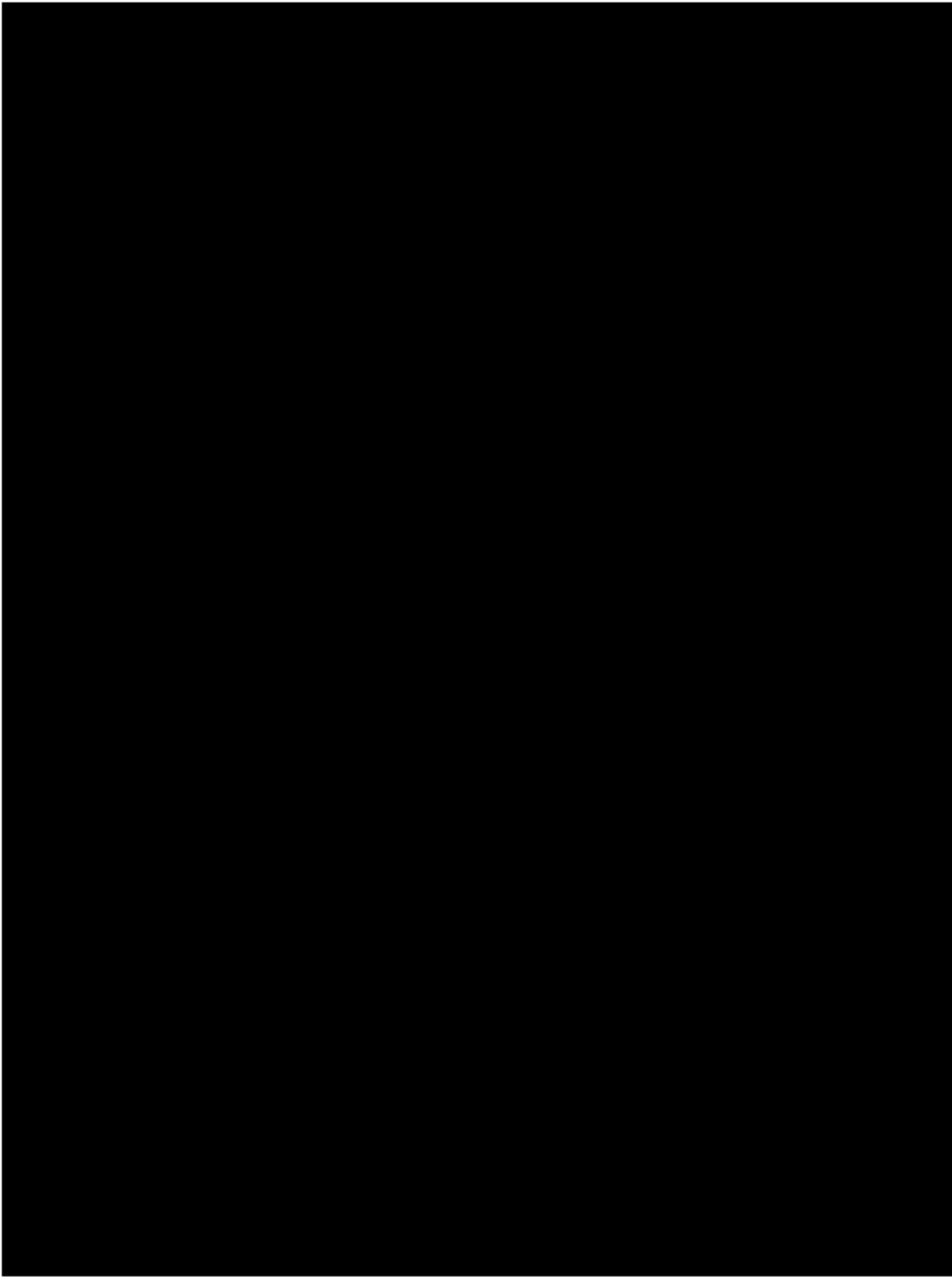


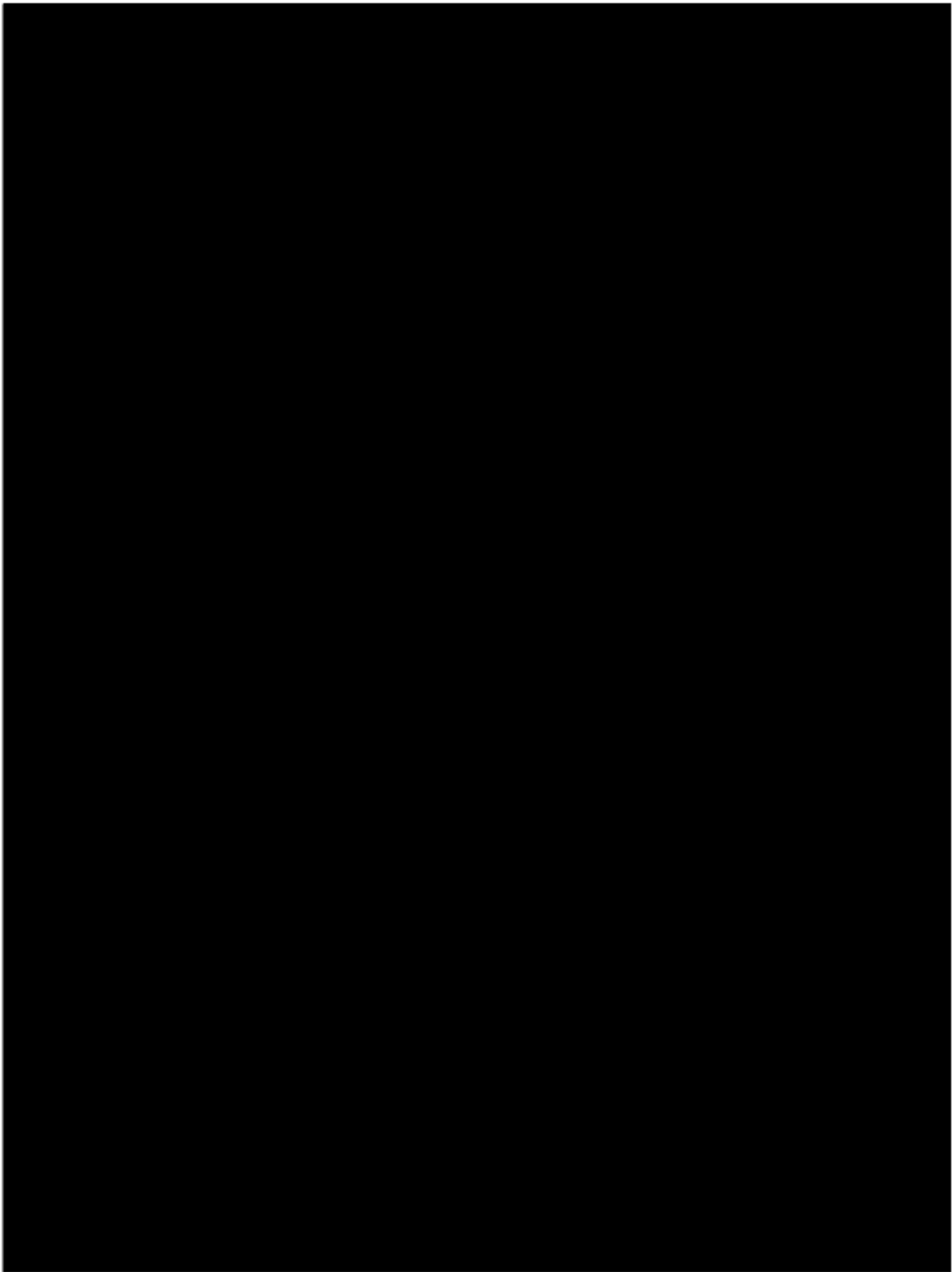


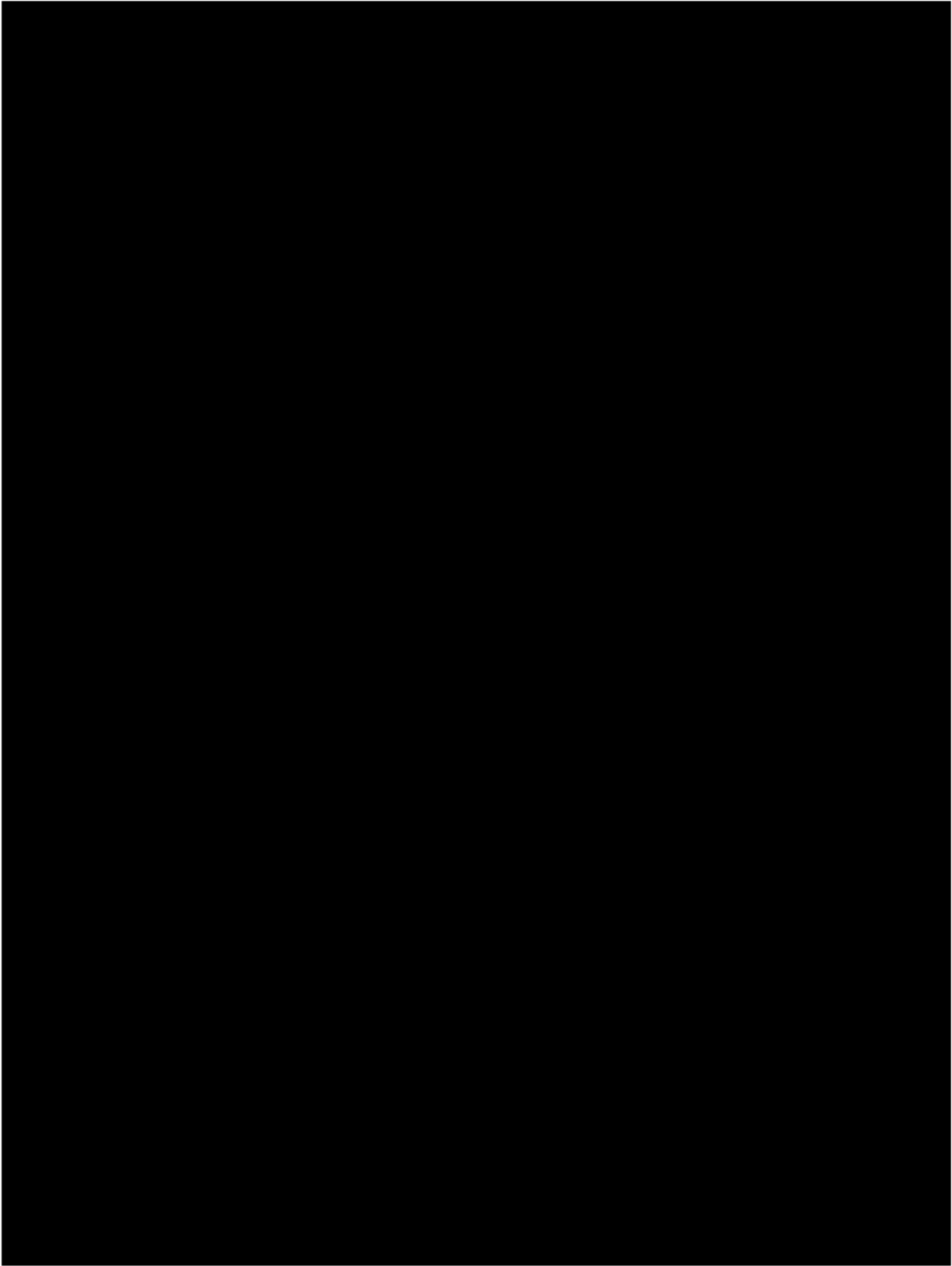


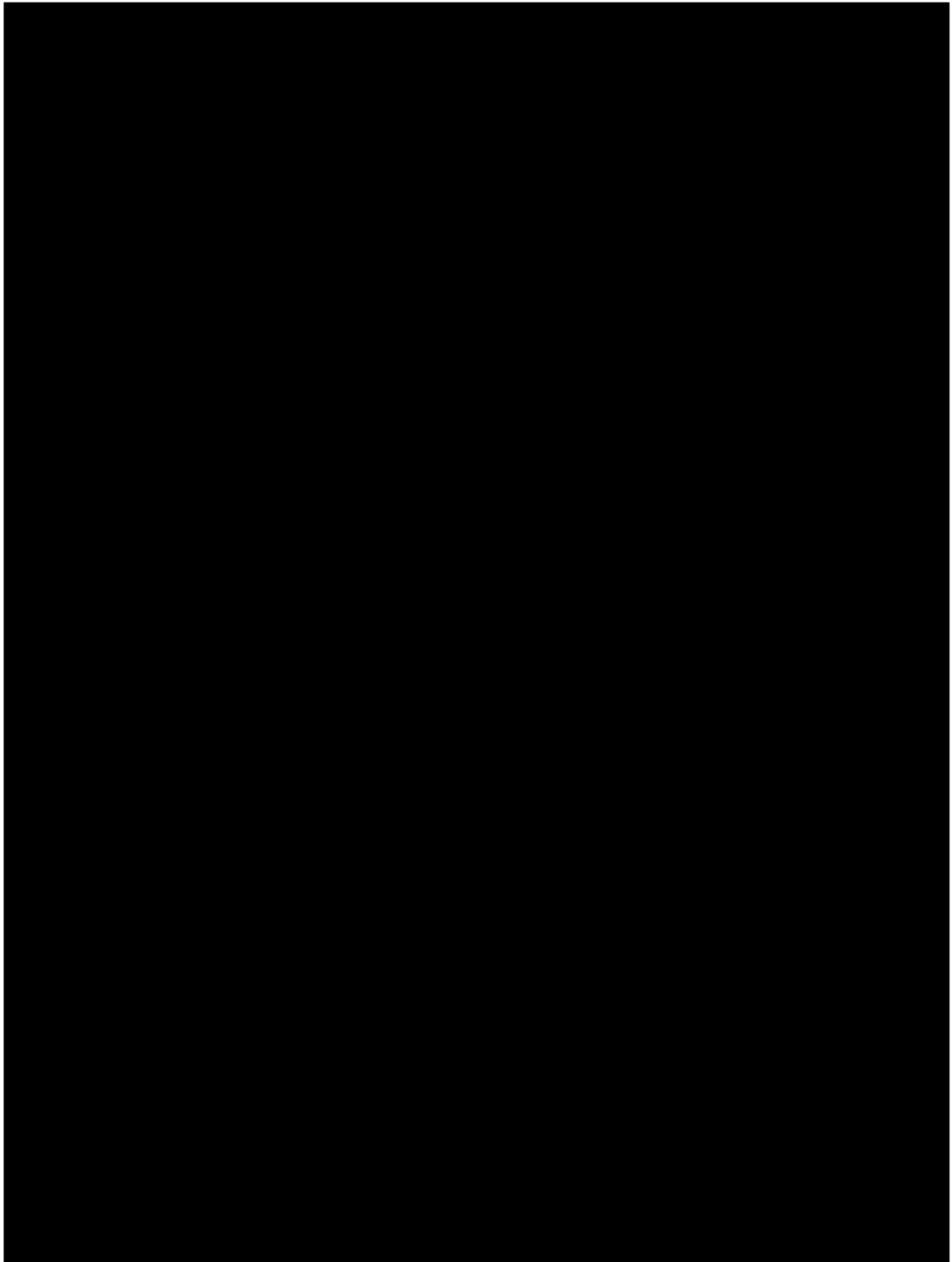


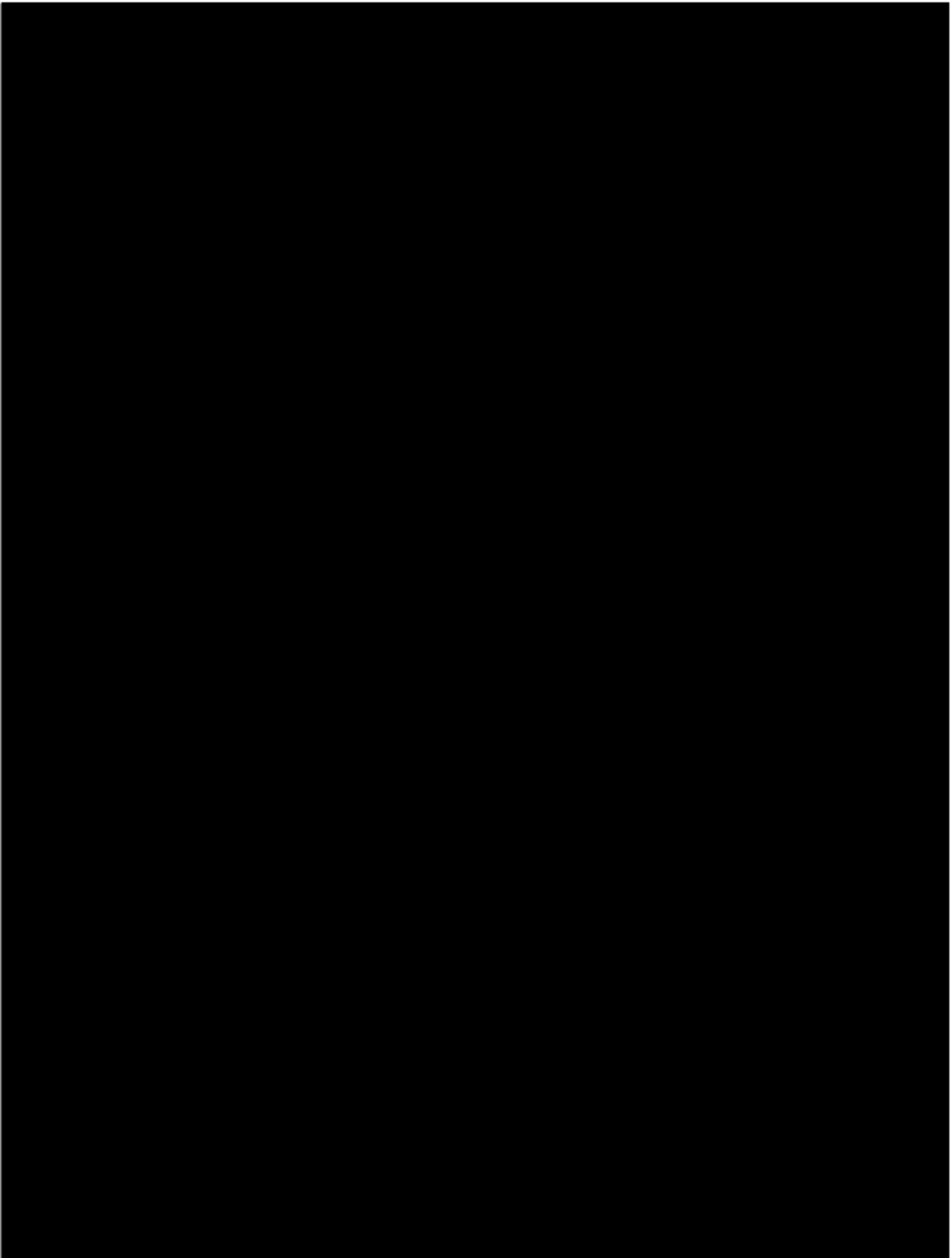


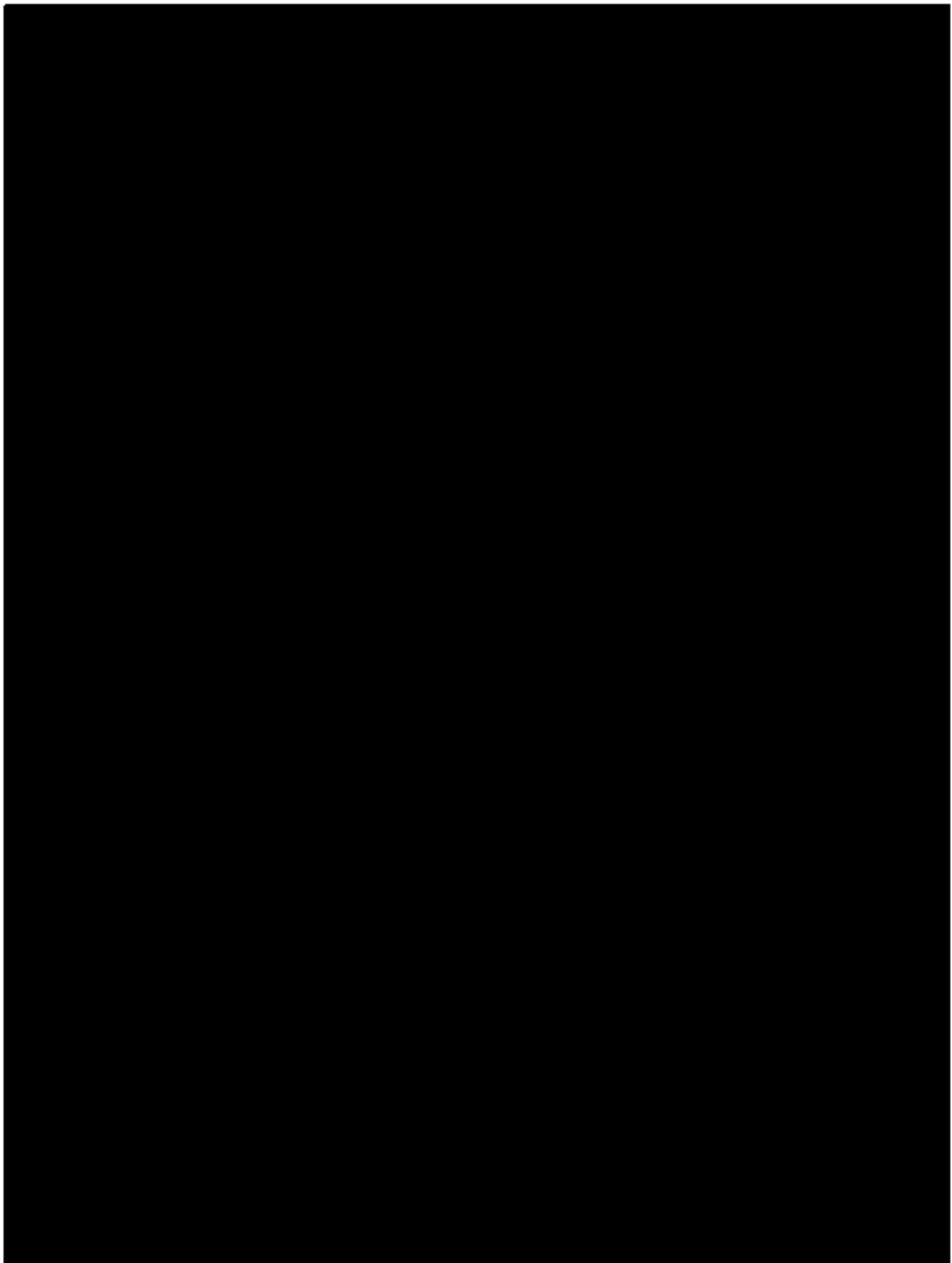


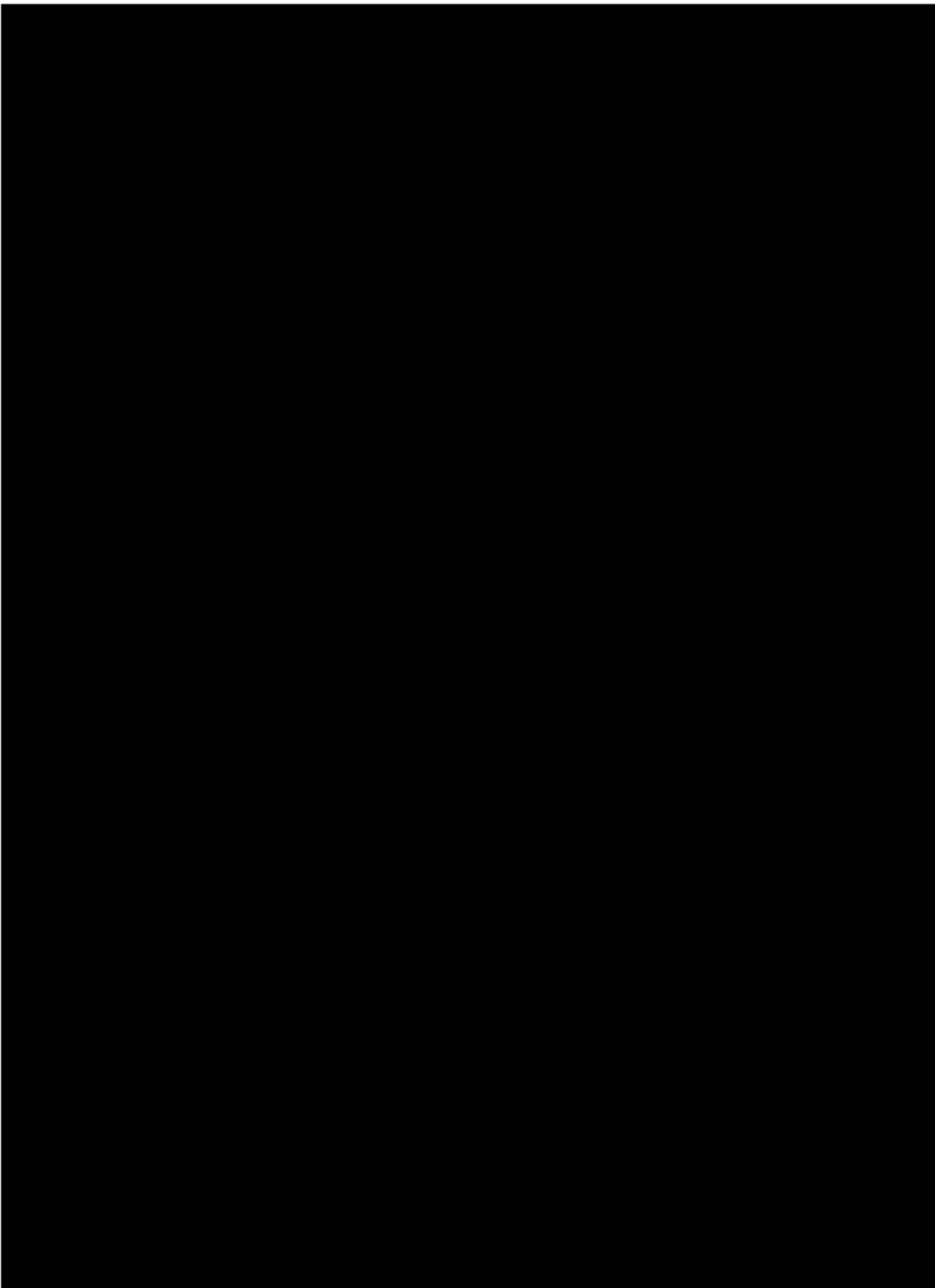


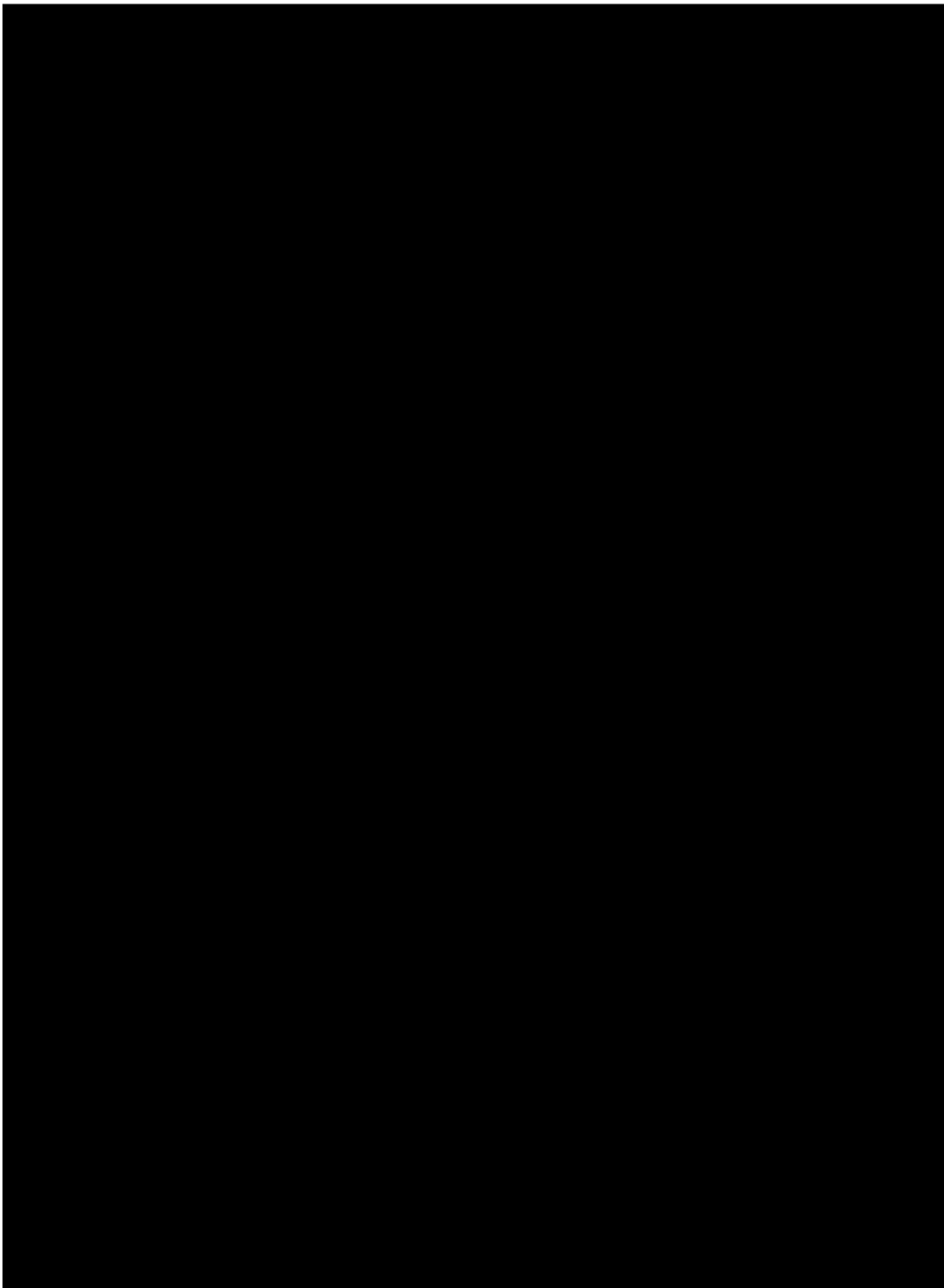


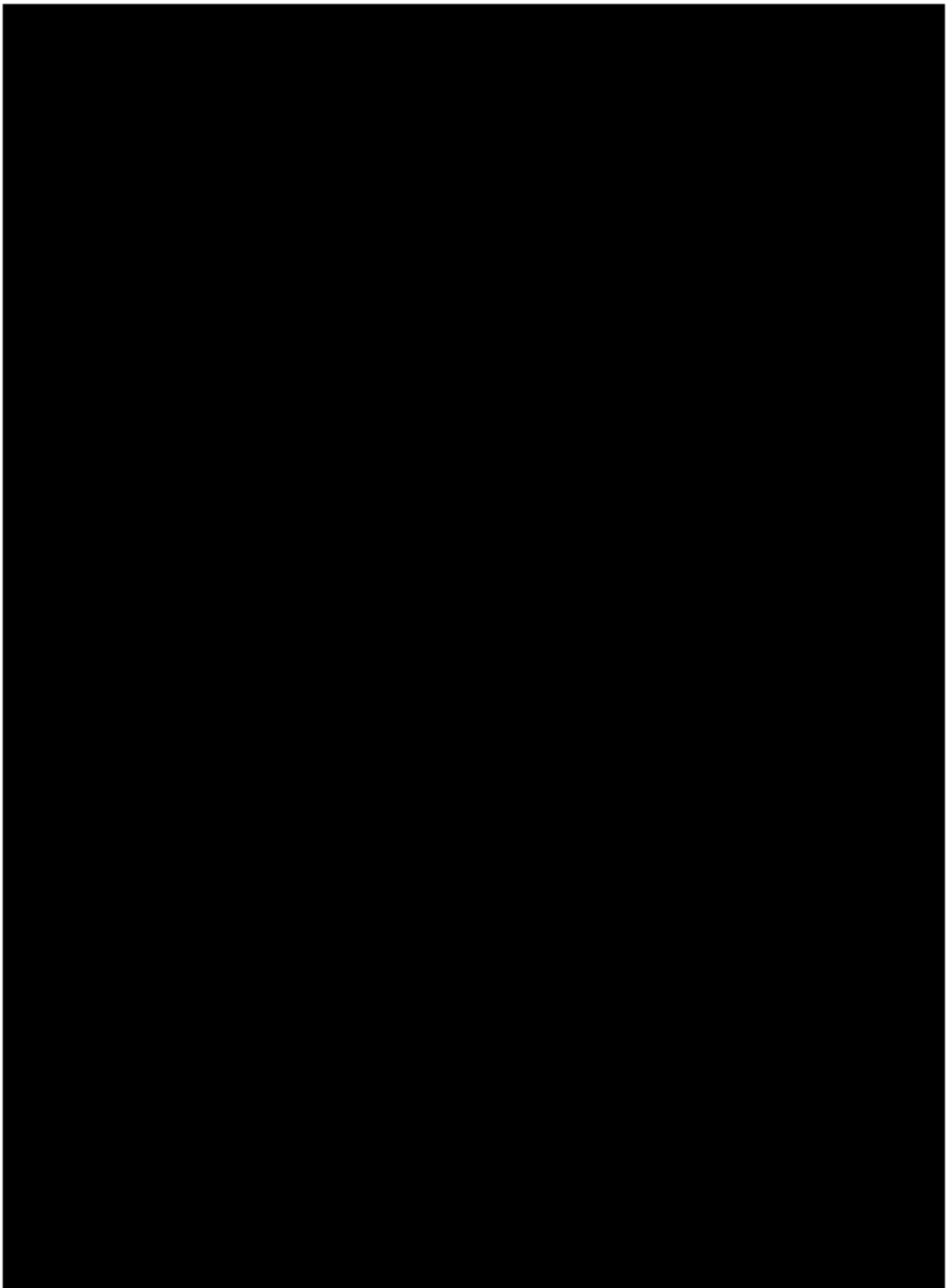


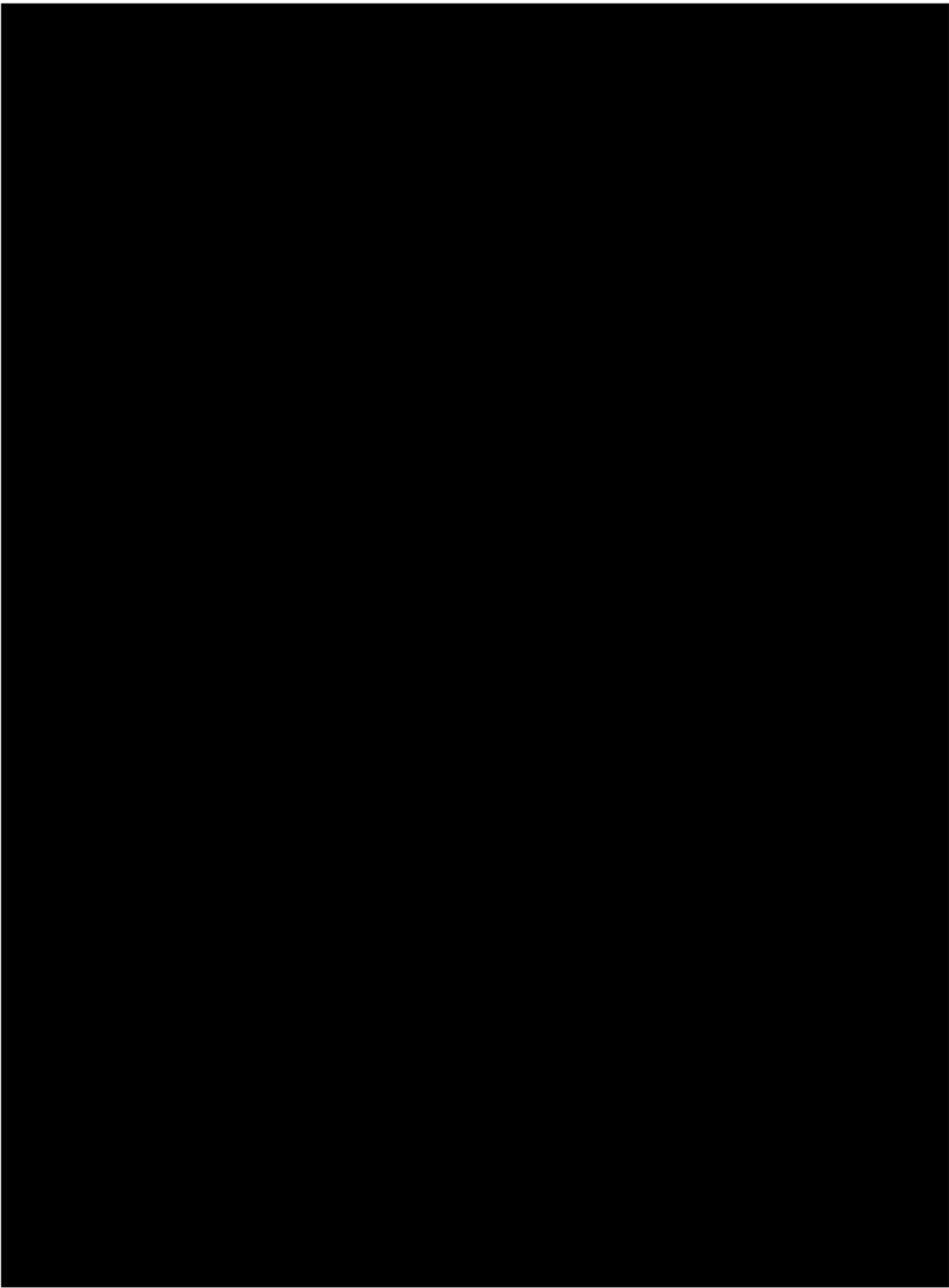


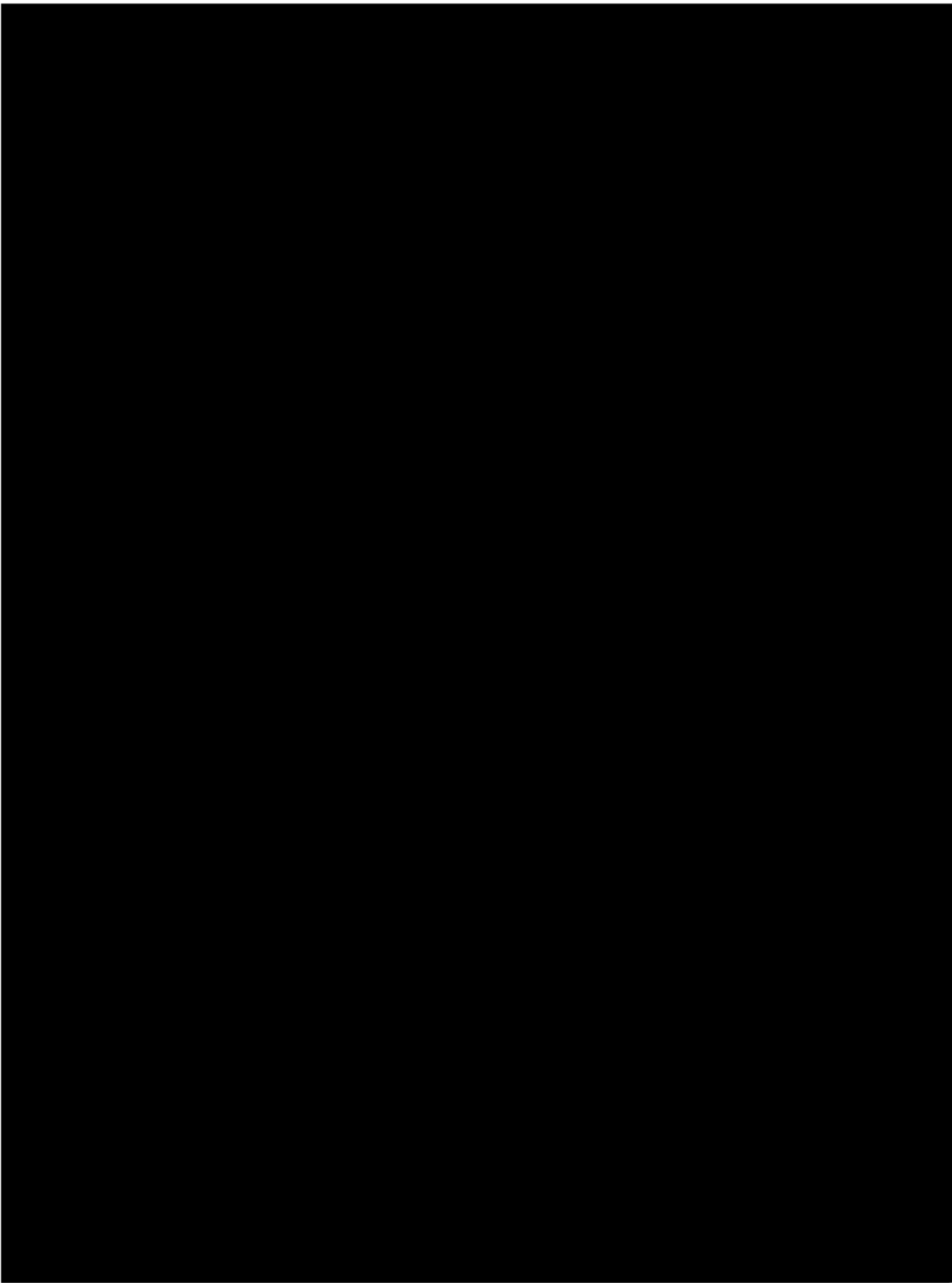












To Whom it May Concern,

My name is Swimmer BY (maiden name: ^{Swimmer BY}). I was a member of the UC Berkeley swim team from [REDACTED]. I am contacting you because I want to support the recent claims made about Cal's long-time coach, Teri McKeever, by current and former swimmers. Not only did I witness Teri's abusive behavior throughout my 4-year career at Cal, but I experienced it firsthand.

I was recruited by Teri during my senior year of high school. I was a talented, up and coming swimmer from small club team in [REDACTED]. I had recently won the [REDACTED] championship in the [REDACTED] and was being recruited by several division 1 colleges across the country. I felt so honored when Teri showed an interest in me and was thrilled when she offered me an athletic scholarship. Being a part of Cal's swim team meant I would train and compete among the best swimmers in the world, particularly in the backstroke events, my specialty. I imagined competing at the highest level, NCAA's, Olympia Trials and maybe even the Olympics one day. When I first arrived at Cal, I felt almost star-struck by my new teammates. They were so experienced and talented. Many had already achieved athletic success I could only dream about. I often felt like an imposter on Cal's swim team-I think Teri knew this and preyed on these emotions.

There was a stark contrast between what I dreamed being a Cal swimmer would mean and the reality. Shortly after the season began, Teri quickly singled out a few members of the team, myself included, and would verbally berate them on a daily basis. Teri would criticize anything and everything about the targeted swimmers. This ranged from their work ethic or commitment, to how quickly they were able to gather their equipment before a set, or the size of their swimsuit. Sometimes, Teri simply did not like "the look" on a swimmer's face. Teri was especially good at isolating the swimmers she targets from the rest of the team. I distinctly remember Teri targeting a swimmer early in my freshman year and openly questioning her commitment to the rest of the team and at one point saying she "had issues". I remember feeling like I was supposed to stay away from her. This swimmer quit shortly after the season began.

A slower swimmer, a more introverted person, or someone who is socially awkward were easy targets for Teri, but her abusive treatment was not limited to these women. NCAA qualifiers, World Record holders, and even an assistant coach (employed for a brief period of time during my senior year) were subject to Teri's behavior and treatment. Teri would often berate swimmers in front of the entire team, humiliating them, but some of the most abusive comments were made without an audience. On more than one occasion, Teri told me I did "not contribute anything" to my team, in or out of the water, and was "failing" in the classroom and the pool (I was always in good academic standing at Cal). I believe Teri took a special interest in me because of the scholarship I was on. At a one on one meeting at the end of my sophomore year, Teri was angry with my performance at [REDACTED]. Teri attempted to get me quit the team during this meeting, citing that I should be performing better given the scholarship that I was on and that she would gladly release me from the team. Teri took it further than just my performance in the pool, questioning my overall commitment to the team, the sport and the school, my friendships with my teammates, and even commenting on my body and how out of shape I looked. When I told Teri that I loved swimming and did not want to quit, she told me "this is a business". I believe Teri did everything in her power to make my life as a Cal swimmer miserable in hopes that I would quit the team voluntarily, as it would have been more difficult to take my scholarship away if she removed me from the team without cause.

I lived in constant fear that I would lose my scholarship and have to leave my friends and the school I loved, as there was no way my family could afford to pay out of state tuition at Berkeley. The emotional stress and physical demands made it difficult to focus academically and perform athletically, so I sought out the assistance of a local Sports Psychologist near Berkeley. While sessions with the psychologist were initially spent discussing my swimming performance, the focus quickly shifted to strategies to survive Teri's methods with the remaining time I had left at Cal. In a phone call just before my senior year, I told Teri I had been working with a sports psychologist to deal with the emotional stress of swimming at Cal, and her response was that "he [the psychologist] doesn't give you your scholarship-I do". Teri's poor treatment towards me only stopped during my senior year, when I would graduate and my scholarship money would then be available to another swimmer.

I think it is really important to note that Teri's behavior goes back [REDACTED] and is not simply a matter of a few isolated incidents or bitter athletes who did not perform well. This is clearly her method of coaching. I believe swimmers, other coaches and the Cal administration have remained loyal to her because they feel she is the reason for the athlete's personal successes and the program's achievements. Regardless of if there is any truth to this, it does not change the fact that this treatment DID occur and affected a lot of people in a negative way. I had multiple teammates leave the team or quit swimming altogether after their experience with Teri. These were talented athletes, recruited from all over the world, and had a lot of good swimming left in them. One teammate comes to mind, who quit the team, despite being a contributor at NCAA's the previous season, largely because of Teri's treatment towards her. I remember trying to convince her to continue swimming, as she was very talented, but she said "I can't take it [Teri's treatment]. I am not as strong as you".

I began my swimming career at Cal almost 20 years ago and have largely moved on from my time as a Cal Swimmer. I am married, have children, and have a successful career as a doctor of physical therapy. Still, I spent years wondering what I did to receive the treatment at Cal. Why was I targeted when other teammates were not? What was the problem with me? After reading the accounts of other athletes who received similar or even worse treatment from Teri, I now know without a doubt, that Teri was and is the problem. It is unfortunate that Teri has been able to continue with this behavior so many years later, and that UC Berkeley continues to have an athletic administration that prioritizes successful coaches, however harmful their methods may be, over their student athletes.

Thank you for listening to my story,

Swimmer BY

Parents of Swimmer BY

██████████ Staff T
University of California
██████████
Berkeley, CA 94720-4426

Dear ██████████ Staff T,

My daughter Swimmer BY is a swimmer with the Cal-Berkeley team. She is approaching her senior year at Cal, and has been excited to return and pursue her studies and swimming. She loves her school and loves swimming.

Over the summer she has been training hard, working part time and taking a Calculus course so that she may be able to graduate in 4 years. She swims twice a day, helping to coach a local team, runs about 5 miles a day and does weight training. She is in great shape, consistently preparing to start next years swim season. When she left for summer break, she parted on positive terms with her coach, Teri Mckeever. Teri indicated that she had worked hard and was a positive asset to the team.

Swimmer BY received a harsh phone call from Teri today indicating that her position on the team is in jeopardy due to the fact that she has not been training. Teri questioned Swimmer BY's commitment and dedication to the team. Swimmer BY previously stated, she has been training strenuously to prepare for next season. In fact, she has worked *very hard at swimming and academics since her arrival at Berkeley*. She has *never* indicated she does not want to be on the team, *always* indicated she loves to swim, and *always* indicated she loves her school.

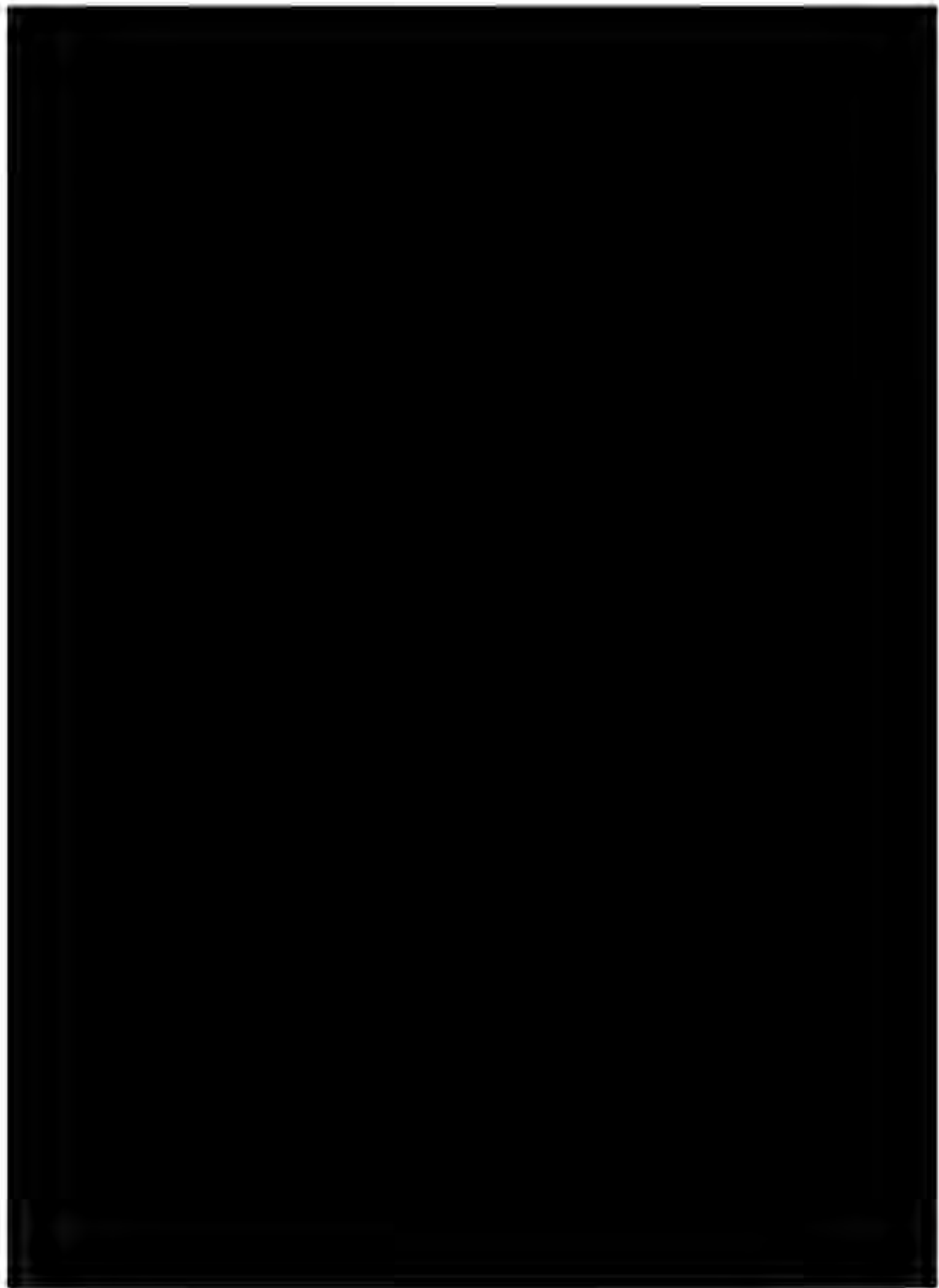
I am notifying you of this incident because I am concerned about my daughter's emotional well-being. Two years ago Teri called ██████████ in for a meeting telling her she may lose her position on the team for "lack of dedication" to the sport. ██████████ had been attending all practices, working *very hard* both athletically and academically, and coping with the sudden death of a close uncle and serious illness of her grandmother. ██████████ called me *extremely* upset on *several occasions* because of comments made by Teri and fear she may lose her scholarship. In fact, she was so distraught over the comments and criticism by Teri that I advised her to seek the counsel of a sports psychologist in the Cal-Berkeley area. The counselor has repeatedly told ██████████ she is being over-trained and she is physically and mentally exhausted. It is my belief that not all methods of coaching are effective for all athletes. I feel my daughter is very talented but finds it difficult to

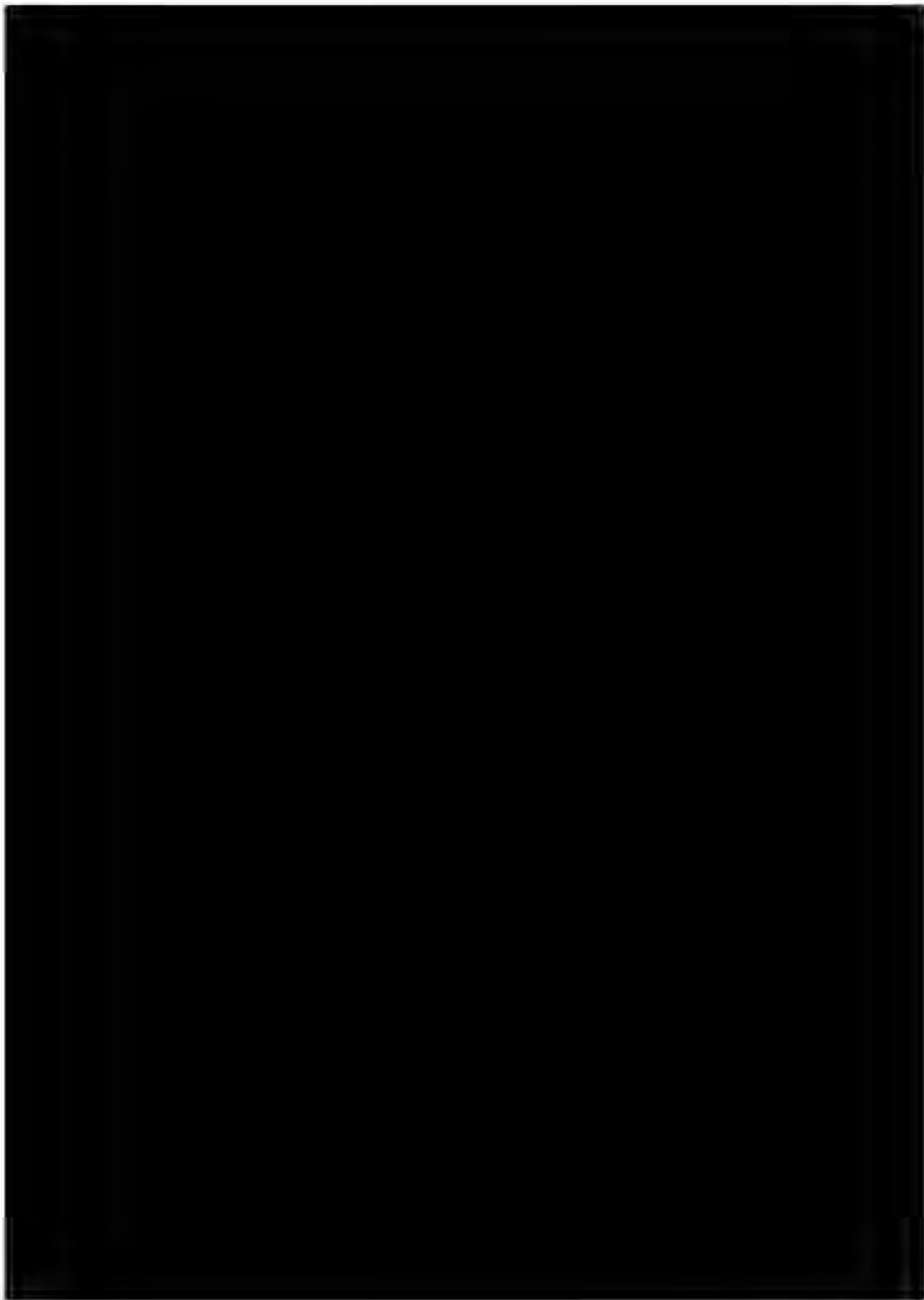
perform if she doesn't feel supported. I know she works very hard and has a strong natural desire to excel. I have never had to "push" Swimmer BY swimming!

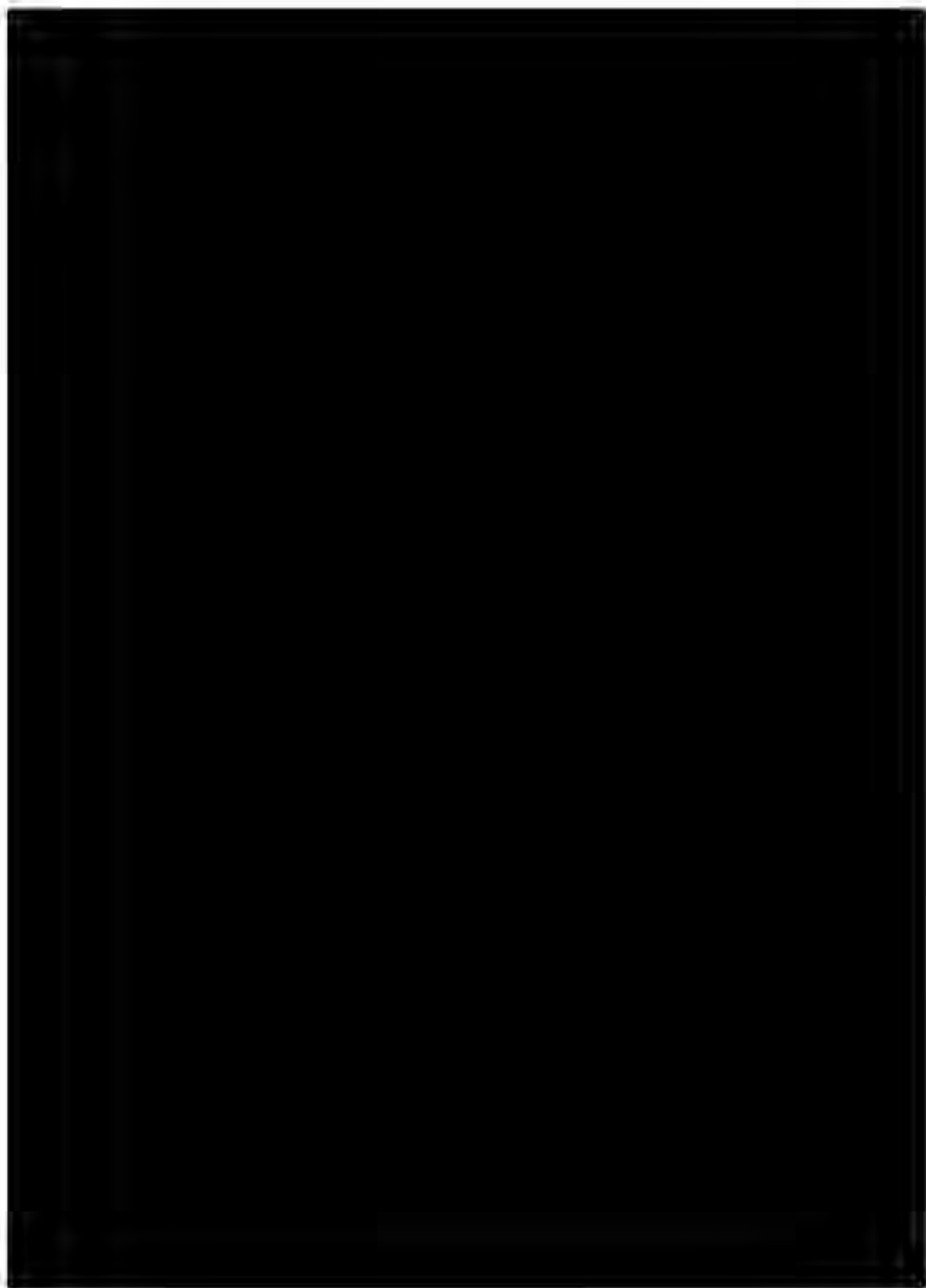
I am notifying you of these incidences because I know my daughter wants very much to swim on the Cal team in addition to excelling academically. She has her scholarship-that is not the issue. I do not want her to feel "forced off a team" that she loves and has worked so hard for. I want her to continue "loving" a sport she has participated since she was 7 years old. As I mentioned in the copy of the e-mail I sent Teri, Swimmer BY most of us do, on positive reinforcement. Often performance is directly linked to self esteem and confidence.

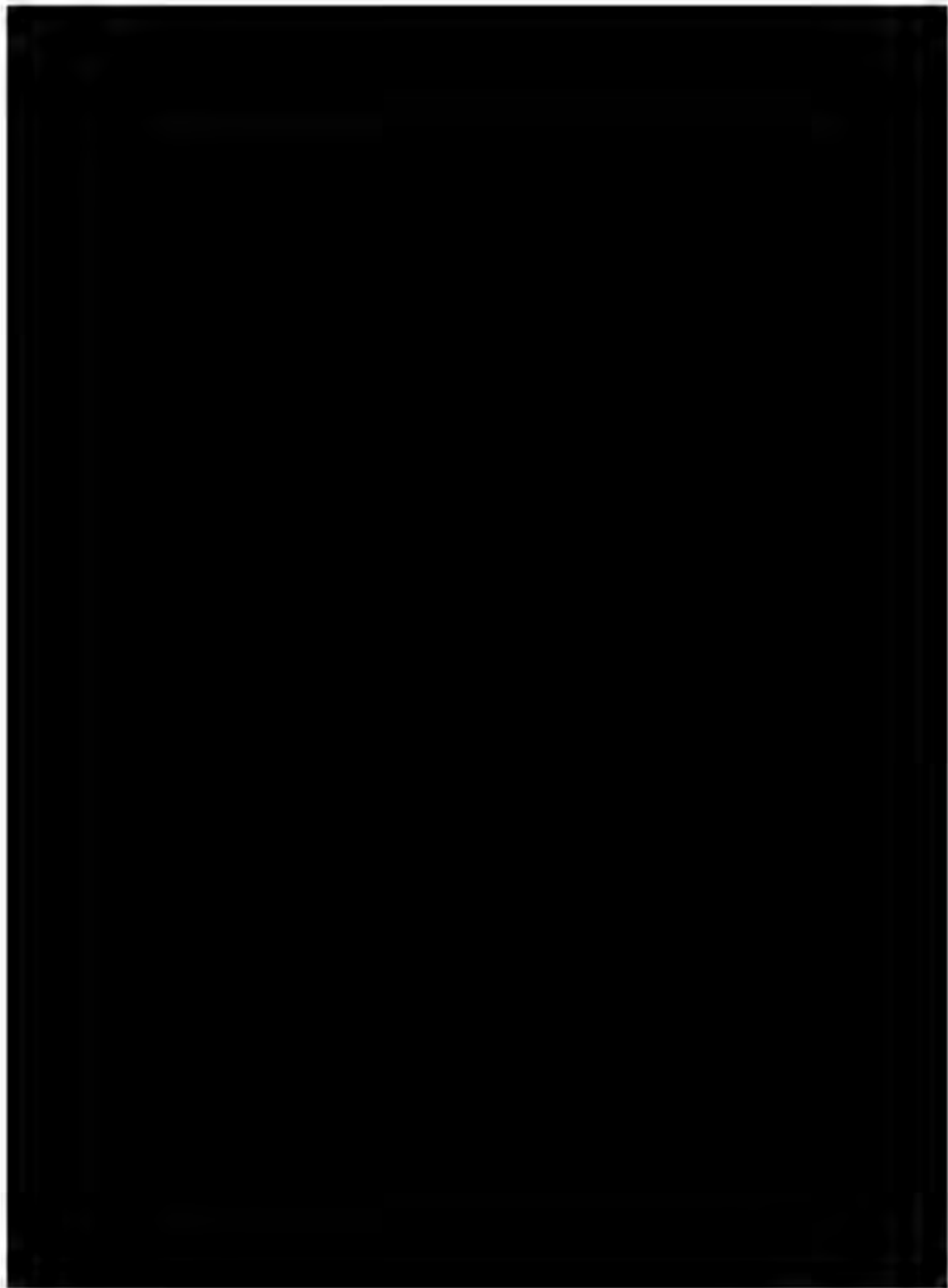
Yours Truly,

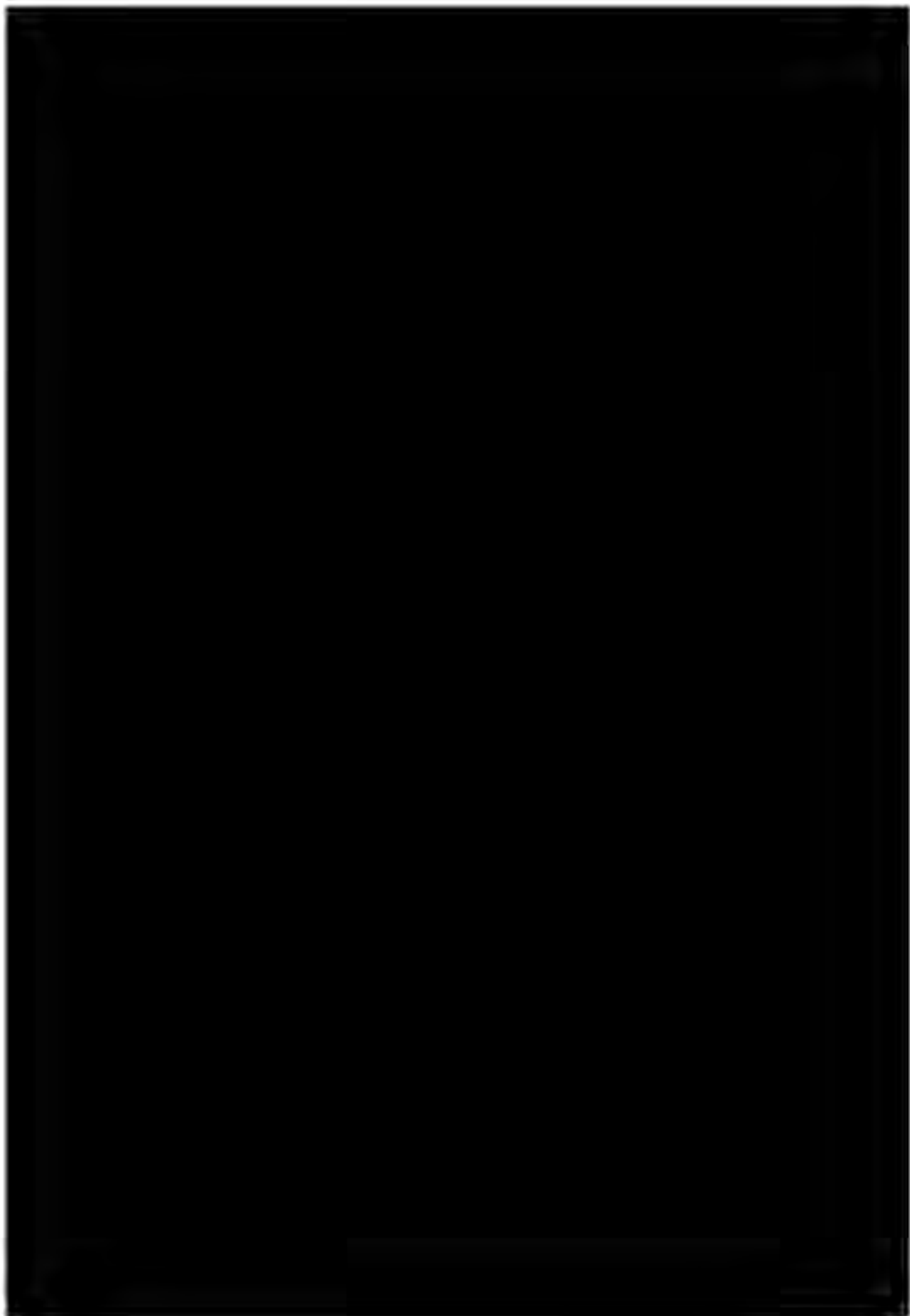
Parent of Swimmer BY

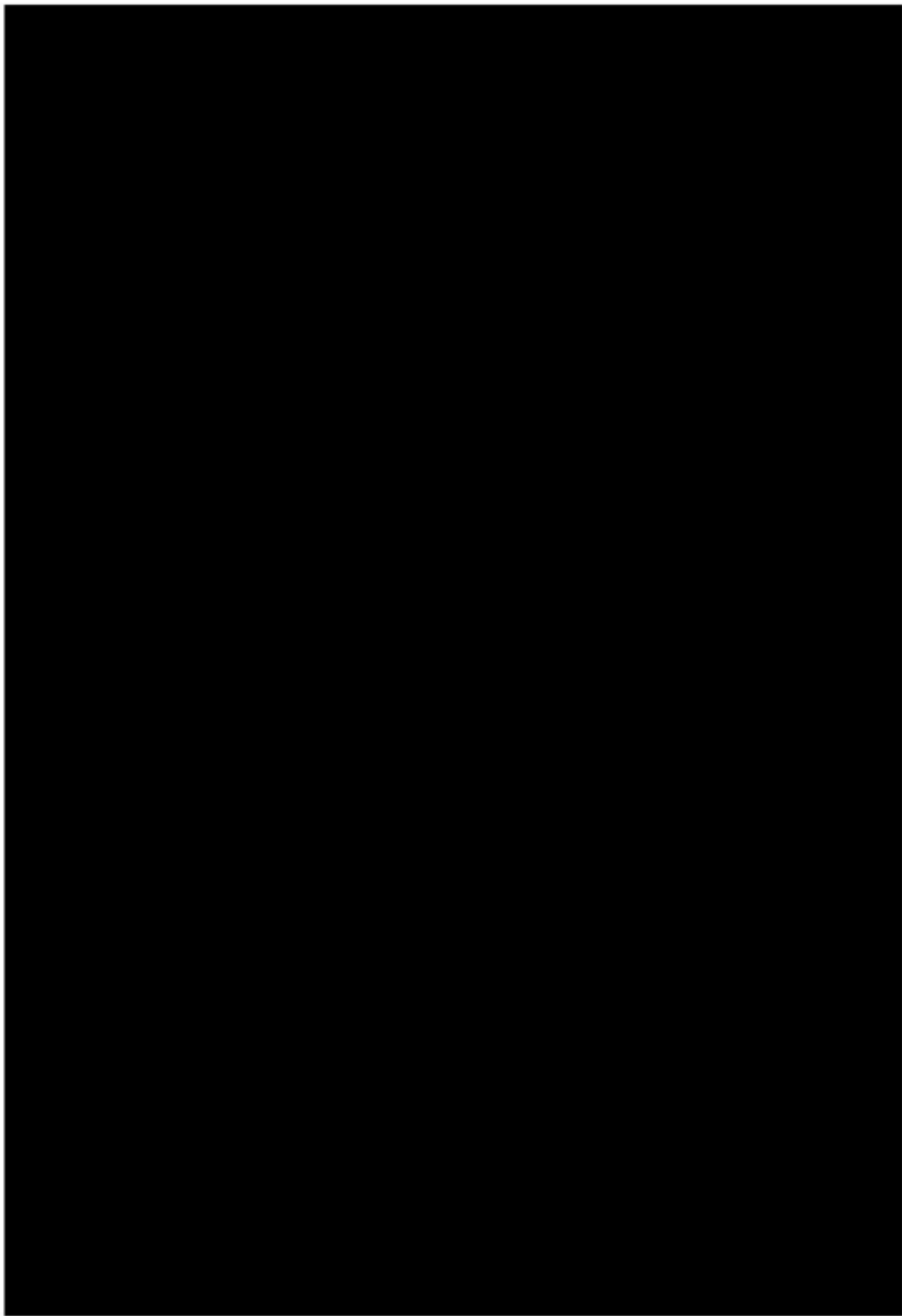


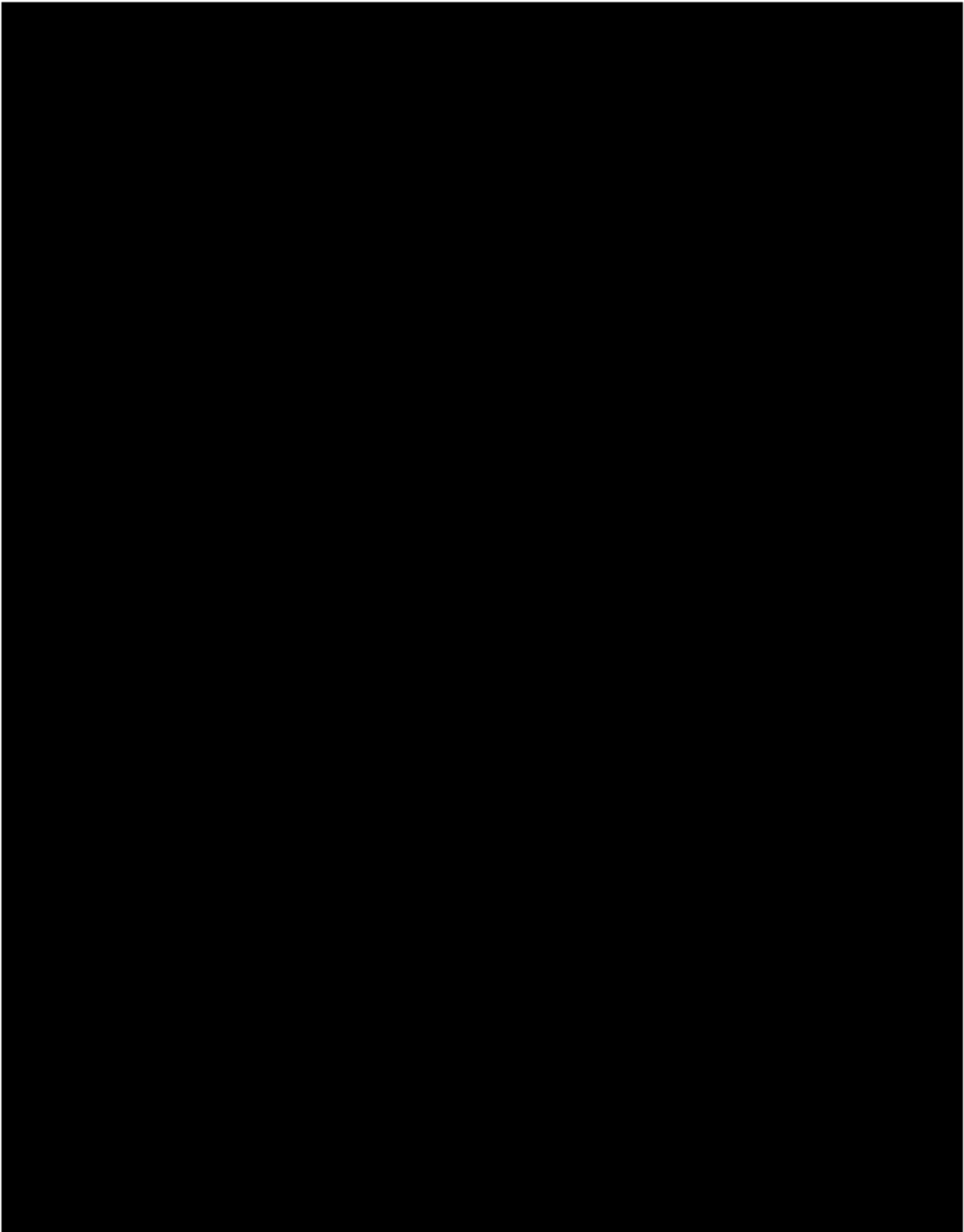


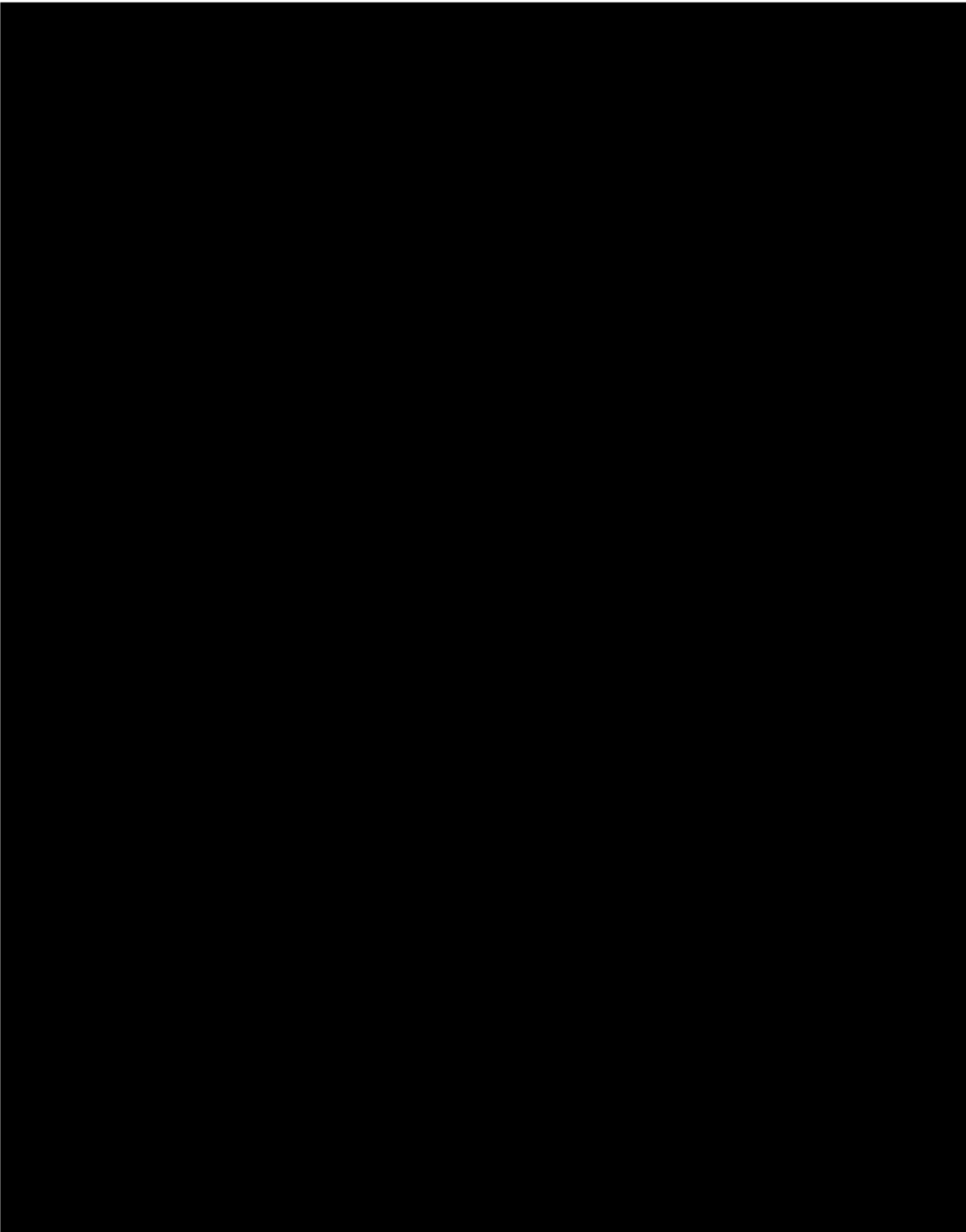


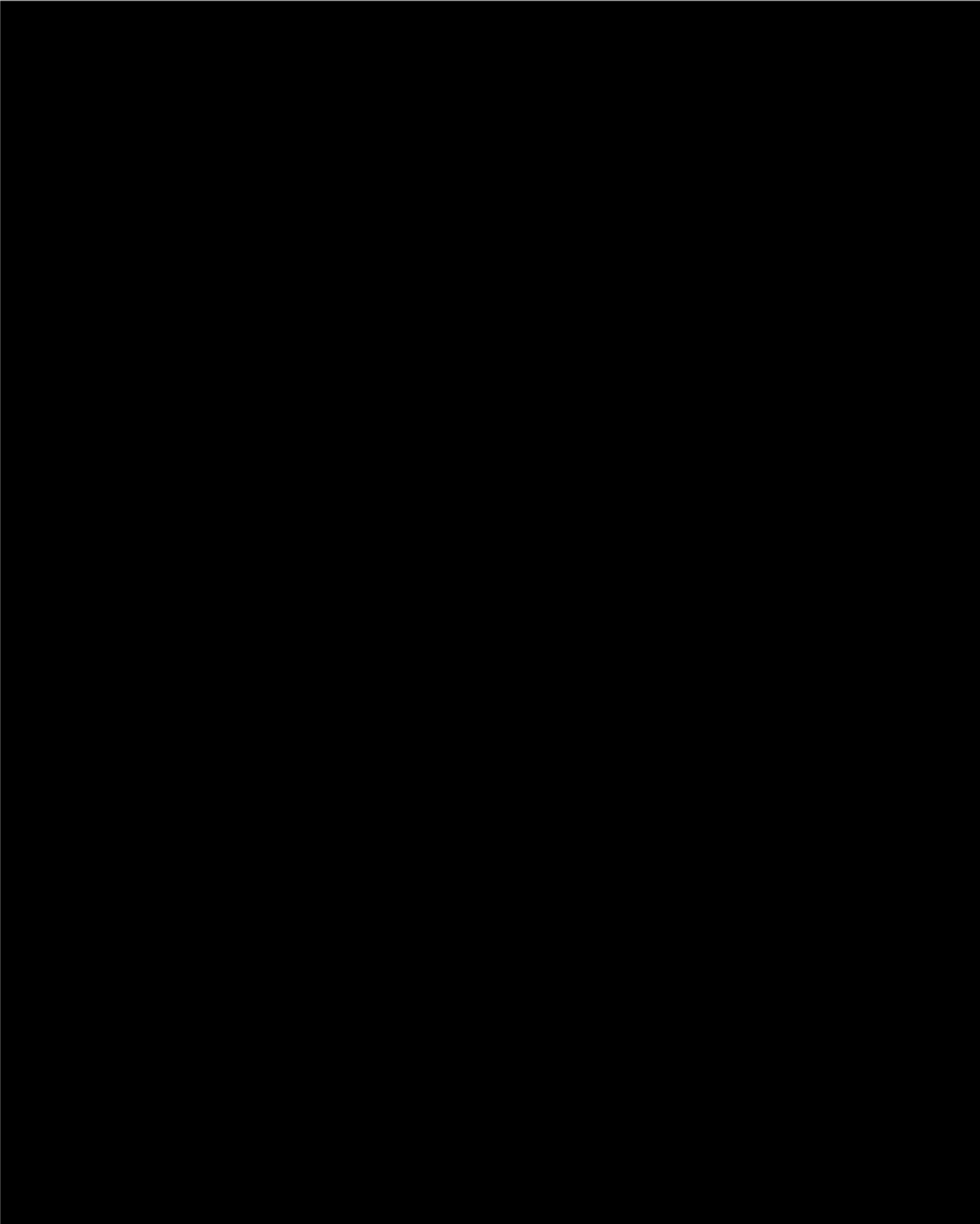


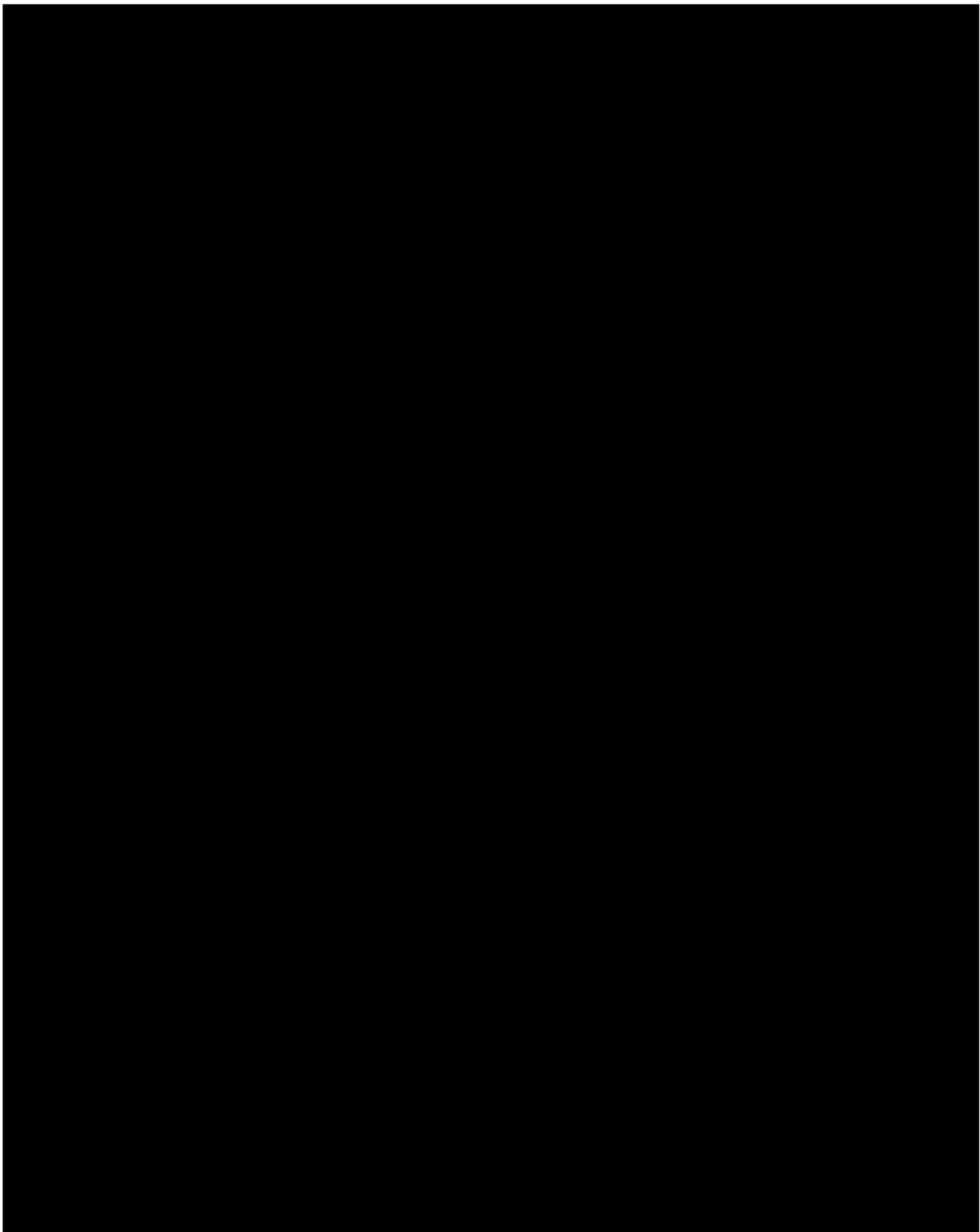


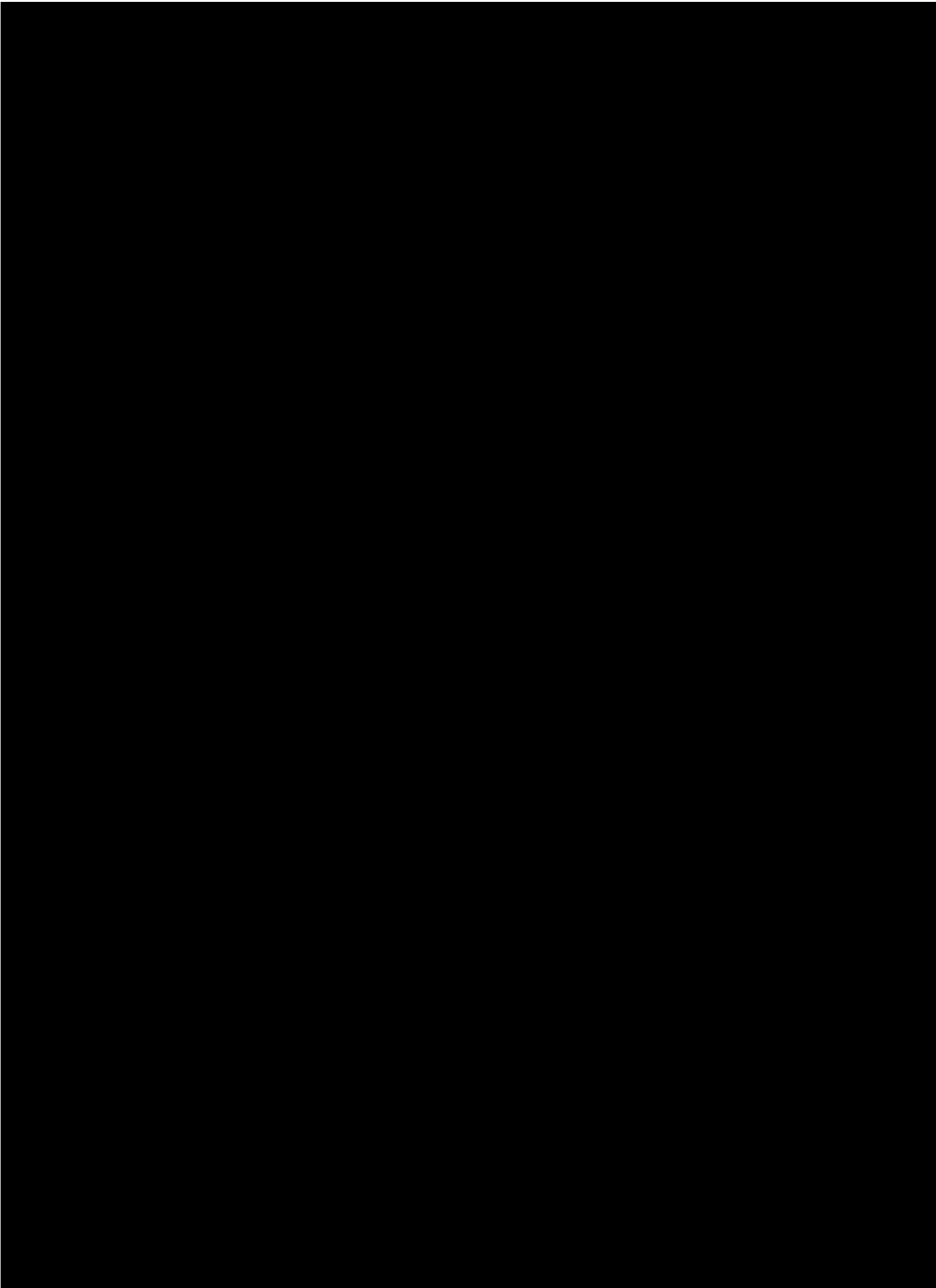


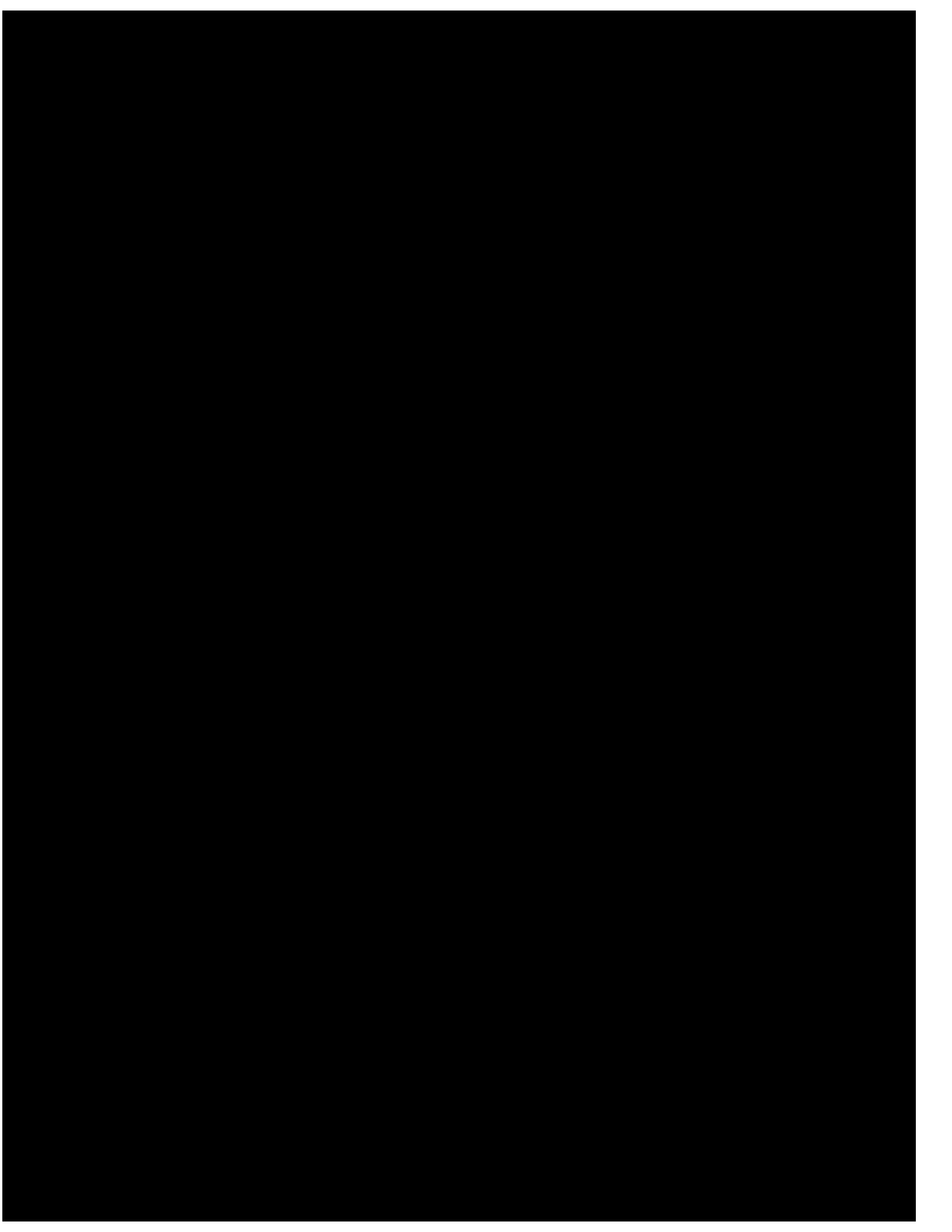












Women's Swimming & Diving -- Senior Exit Interview [REDACTED]

Swimmer V, Diver E, Swimmer D, Swimmer C, Swimmer G, Swimmer A

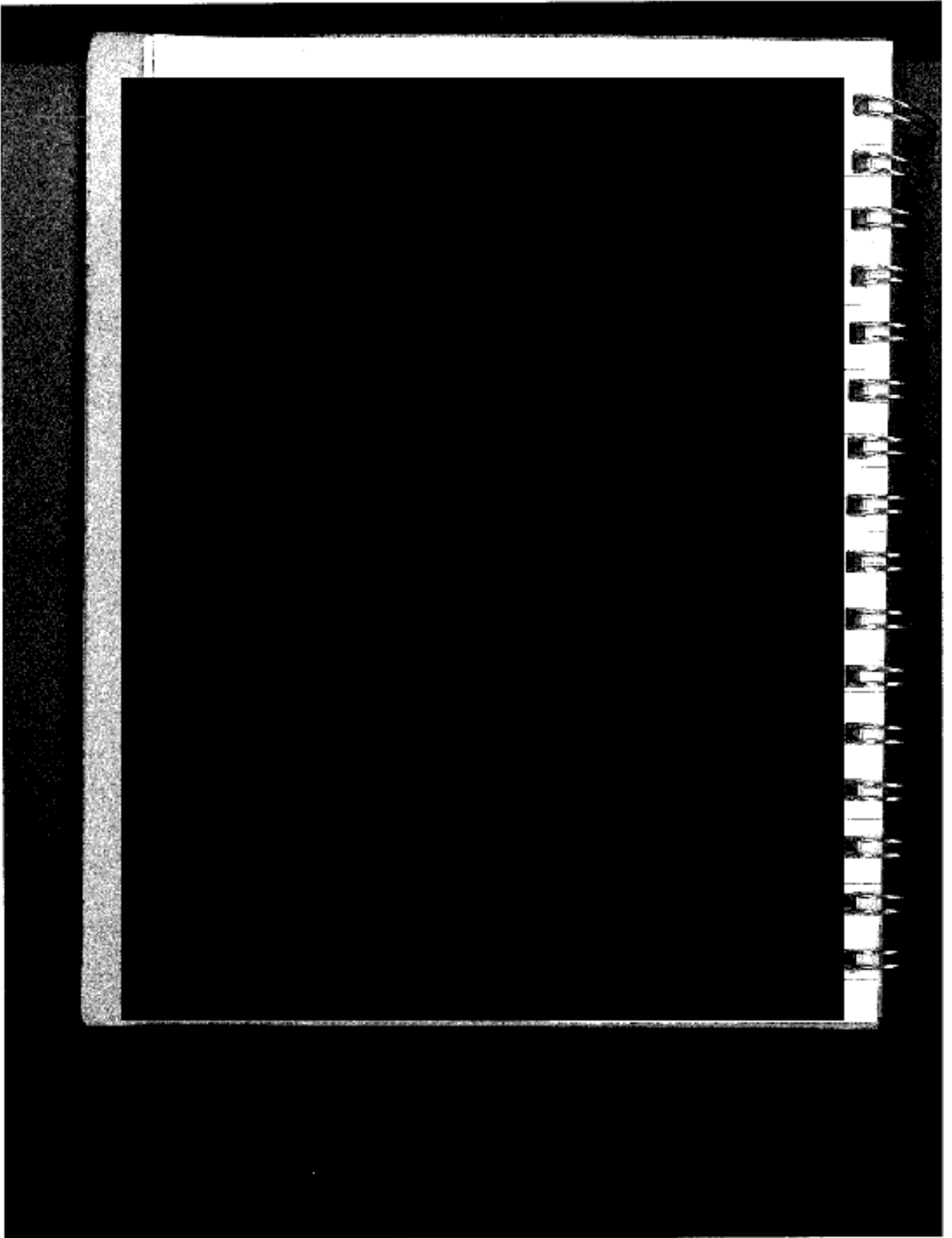
What made being a swimmer at Cal?

- Culture of excellence
- Growing in and out of the pool -- public speaking
- Makes her the best version of herself
- Having fun -- growing up doing a sport, regaining the fun piece in college
- Leaving the legacy - want to be a part something way bigger than yourselves
- Each year -- they were learning new things about themselves
- Teri is about developing well-rounded females
- Team here really values the sense of gratitude -- Cal is a unique environment

If you were AD for a day -- where can we do better:

- Having Diving seem like an afterthought
 - Lacking the resources to be successful
 - No Dryland
- Grab n Go has been really successful; really weird in her first two years, watching people eat
- Social media presence -- Football vs. WSW
 - add [REDACTED] -- helps recruiting
- Food -- small issues, coaches fixed it ASAP
- 15/10 for [REDACTED] Staff F
- [REDACTED] Staff G, [REDACTED] Staff V great!
- ASC -- sometimes struggled with [REDACTED] Staff L not being completely on top of things
 - Almost lost her visa because she didn't know certain dates
- [REDACTED] Staff R made a big impact
 - Taking lots of exams on the road -- great experience
 - [REDACTED] academic experience -- marketing class
- Difference between Haas and Simpson

- Sport swap
- Sneaker locker rooms are pretty bad -- grimey, carpet issues
[REDACTED] Staff is awesome -- really invaluable
- Club for [REDACTED] student-athlete
 - It would be neat for [REDACTED] student-athletes come together
- Internship -- in [REDACTED]



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