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TABLE OF AUTHORITIES

CASES

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<i>FTC v. Elders Grain, Inc.</i> , 868 F.2d 901 (7 th Cir. 1989)	
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* <i>FTC v. Whole Foods Market, Inc.</i> , 533 F.3d 869 (D.C. Cir. 2008)	3, 4, 5, 6, 7, 9
<i>FTC v. Whole Foods Market, Inc.</i> , 502 F. Supp. 2d 1 (D.D.C. 2007)	2,
<i>United States v. Baker Hughes, Inc.</i> , 908 F.2d 981 (D.C. Cir. 1990)	

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15 U.S.C. § 53(b)	1, 3, 5
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INTRODUCTION

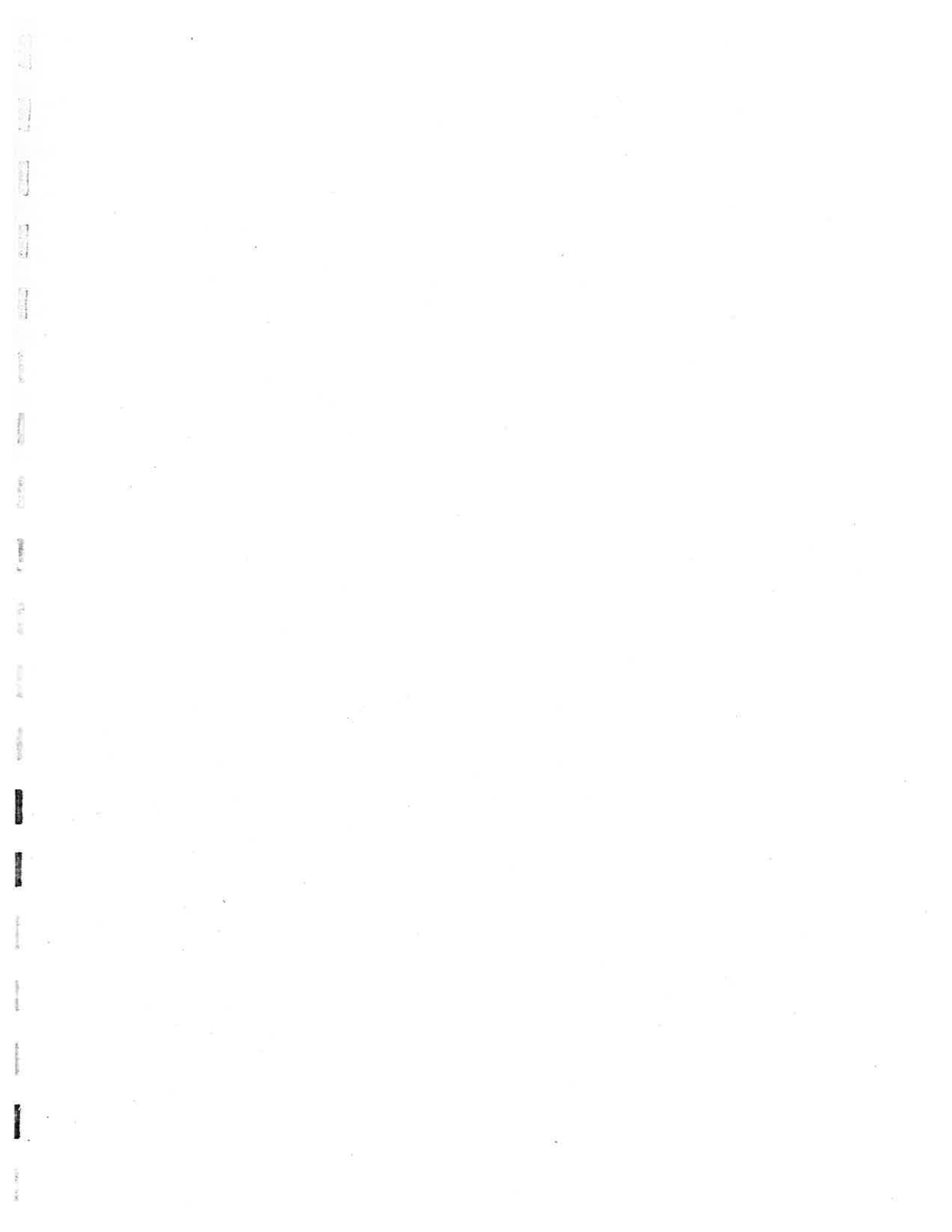
In this case, the Federal Trade Commission (“FTC” or “Commission”) sought a preliminary injunction to stop the merger of the two leading premium natural and organic supermarket (“PNOS”) chains. The district court denied relief, and a panel of this Court reversed. The Panel’s ruling breaks no new legal ground; rather, it reaffirms this Court’s standard for preliminary injunctions under Section 13(b) of the Federal Trade Commission Act (“FTC Act”), 15 U.S.C. § 53(b), as most recently articulated in *FTC v. H.J. Heinz Co.*, 246 F.3d 708, 714-15 (D.C. Cir. 2001). The Panel held that the district court applied that standard erroneously, however, by ignoring abundant evidence showing that the merging parties uniquely constrained one another’s pricing and by analyzing the merger instead according to an unsupported and unduly narrow view of the market dynamic.

The petition for rehearing fails to identify an issue of law on which the Panel erred, much less one requiring the attention of the *en banc* Court. The Panel applied established standards to the specific factual setting of this case, and rendered a ruling that focused on the evidence adduced by the FTC. In concluding that the FTC had satisfied its burden of raising “serious, substantial” questions on the merits of its claim, the Panel did not rule that merger analysis must focus exclusively on core customers. Rather, it held that the district court should evaluate the FTC’s likelihood of success by considering *all* of the evidence

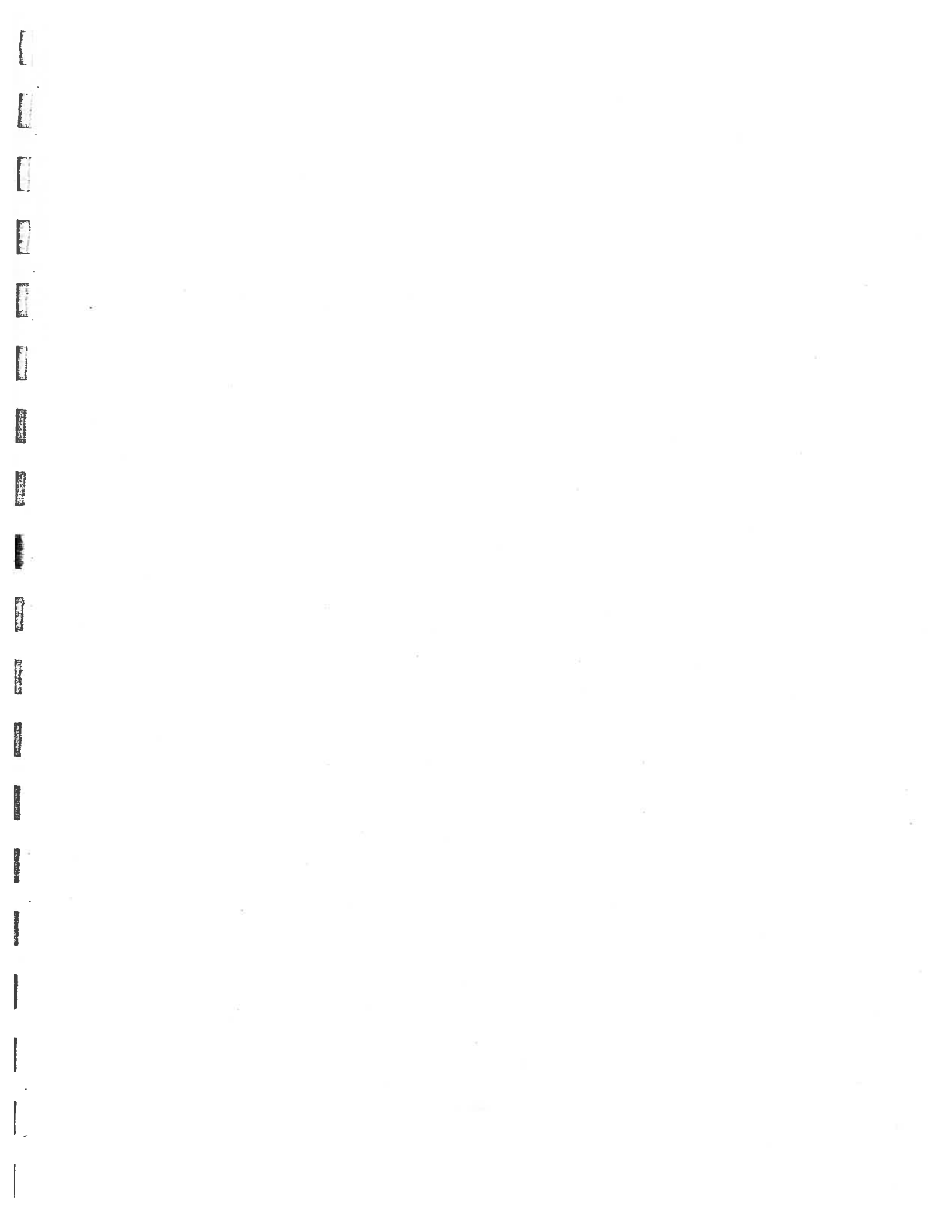


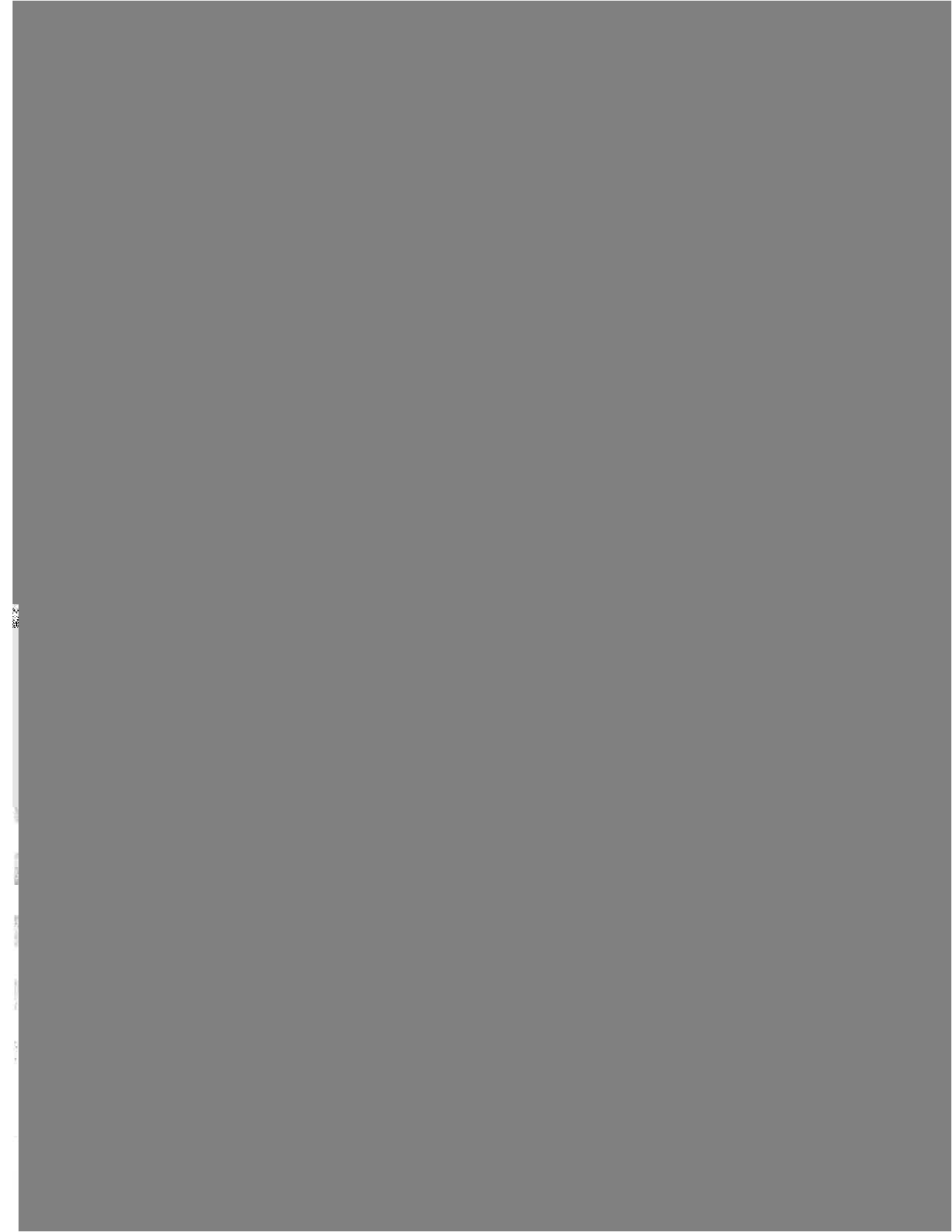
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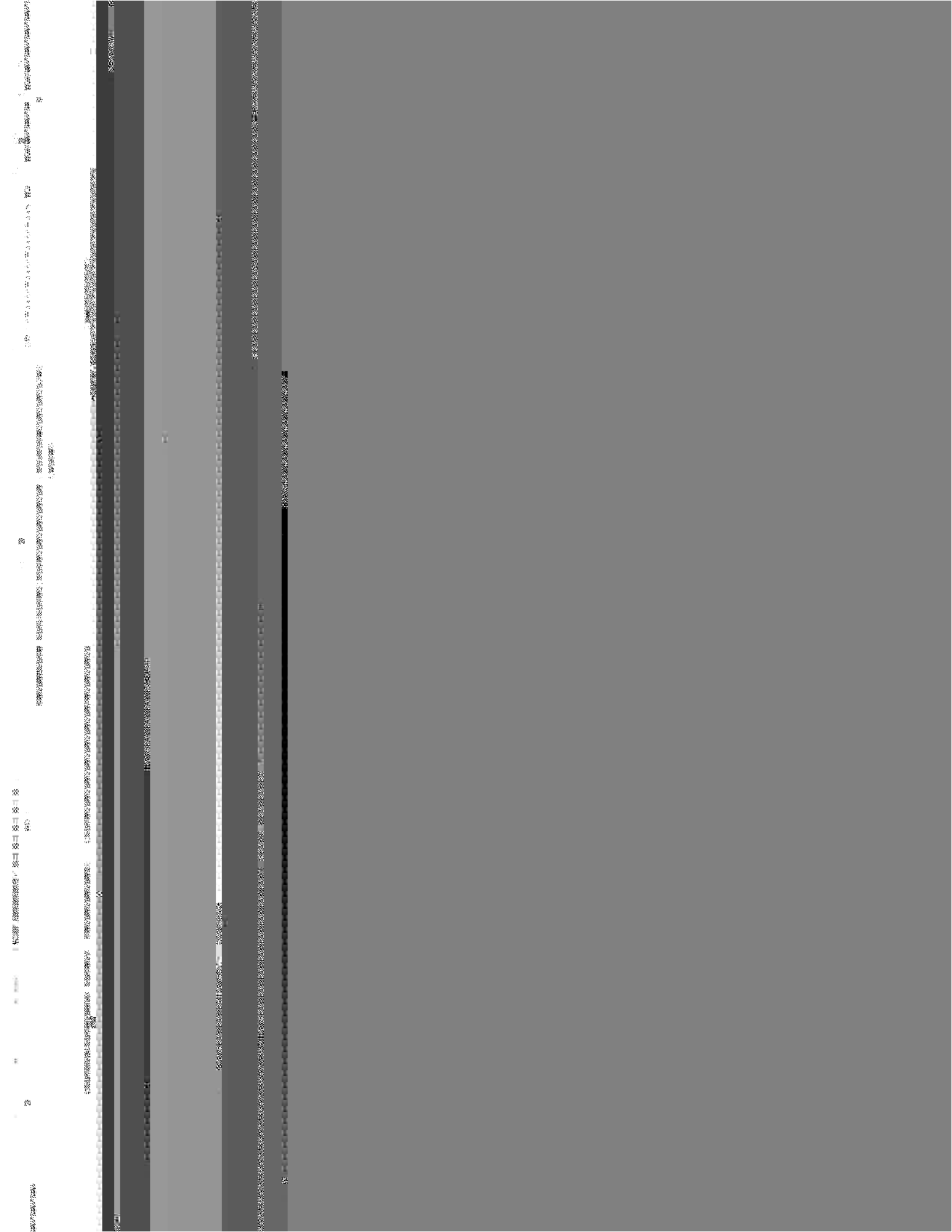




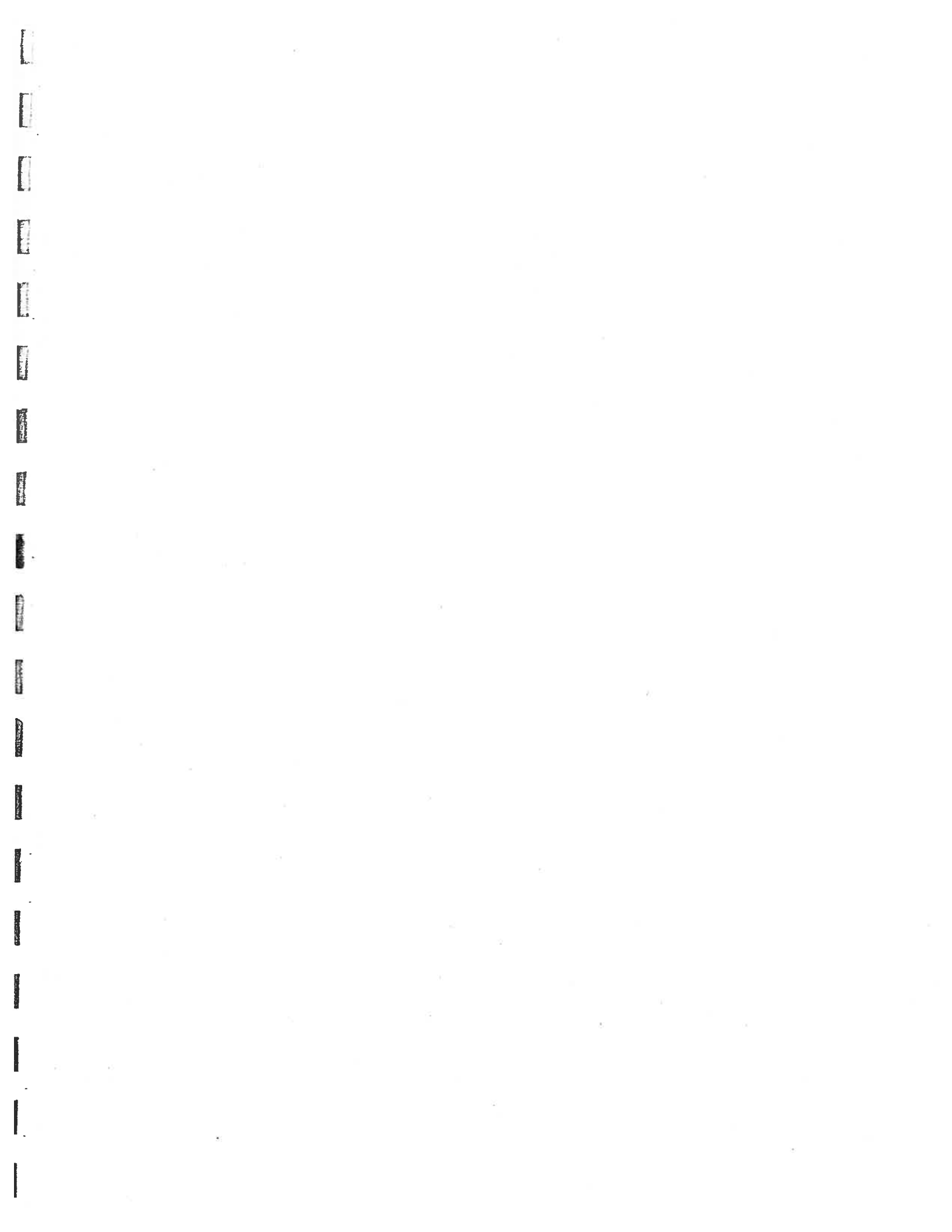
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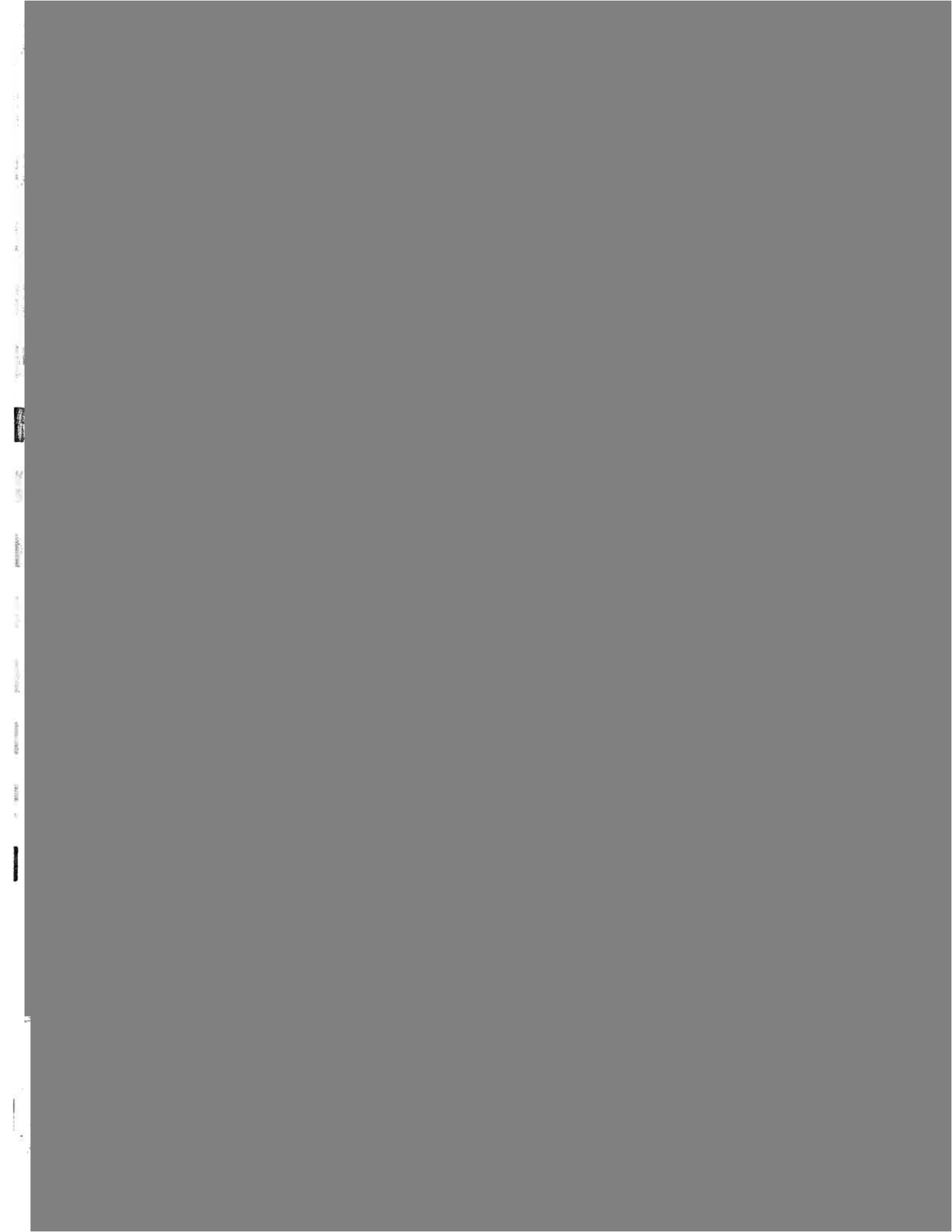
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Respectfully submitted,

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