

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

KLAYMAN et al.,)
)
 Plaintiffs,)
)
 v.)
)
OBAMA et al.,)
)
 Defendants.)

Civil Action No. 13-0851 (RJL)

FILED
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Clerk, U.S. District & Bankruptcy
Courts for the District of Columbia

KLAYMAN et al.,)
)
 Plaintiff,)
)
 v.)
)
OBAMA et al.,)
)
 Defendants.)

tc
MEMORANDUM OPINION

December 16, 2013 [Dkt. # 13 (No. 13-0851), # 10 (No. 13-0881)]

On June 6, 2013, plaintiffs brought the first of two related lawsuits challenging the constitutionality and statutory authorization of certain intelligence-gathering practices by the United States government relating to the wholesale collection of the phone record metadata of all U.S. citizens.¹ These related cases are two of several lawsuits² arising

¹ Plaintiffs' second suit was filed less than a week later on June 12, 2013, and challenged the constitutionality and statutory authorization of the government's collection of both phone and internet metadata records.

² The complaint in *ACLU v. Clapper*, Civ. No. 13-3994, which was filed in the United States District Court for the Southern District of New York on June 11, 2013, alleges claims similar to

from public revelations over the past six months that the federal government, through the National Security Agency (“NSA”), and with the participation of certain telecommunications and internet companies, has conducted surveillance and intelligence-gathering programs that collect certain data about the telephone and internet activity of American citizens within the United States. Plaintiffs—five individuals in total between No. 13-851 (“*Klayman I*”) and No. 13-881 (“*Klayman II*”)—bring these suits as U.S. citizens who are subscribers or users of certain telecommunications and internet firms. *See* Second Am. Compl. (*Klayman I*) [Dkt. # 37] ¶ 1; Am. Compl. (*Klayman II*) [Dkt. # 30] ¶ 1.³ They bring suit against both federal government defendants (several federal agencies and individual executive officials) and private defendants (telecommunications and internet firms and their executive officers), alleging statutory and constitutional violations. *See generally* Second Am. Compl. (*Klayman I*); Am. Compl. (*Klayman II*).

Before the Court are plaintiffs’ two Motions for Preliminary Injunction [Dkt. # 13 (*Klayman I*), # 10 (*Klayman II*)], one in each case. As relief, plaintiffs seek an injunction “that, during the pendency of this suit, (i) bars [d]efendants from collecting [p]laintiffs’

those in the instant two cases. *See also In re Electronic Privacy Information Center*, No. 13-58 (S. Ct.) (Petition for a Writ of Mandamus and Prohibition, or a Writ of Certiorari filed July 8, 2013; petition denied Nov. 18, 2013); *Smith v. Obama*, Civ. No. 2:13-00257 (D. Idaho) (complaint filed June 12, 2013); *First Unitarian Church of Los Angeles v. NSA*, Civ. No. 13-3287 (N.D. Cal.) (complaint filed July 16, 2013).

³ Plaintiffs’ complaints reflect their intention to bring both suits as class actions on behalf of themselves and “all other similarly situated consumers, users, and U.S. citizens who are customers and users of,” Second Am. Compl. (“*Klayman I*”) ¶ 1, or “who are subscribers, users, customers, and otherwise avail themselves to,” Am. Compl. (“*Klayman II*”) ¶ 1, the telecommunications and internet companies named in the complaints. Plaintiffs have not yet, however, moved to certify a class in either case and in fact have moved for extensions of time to file a motion for class certification four times in each case. *See* Motion for Extension of Time to Certify Class Action (*Klayman I*) [Dkt. ## 7, 14, 27, 40]; (*Klayman II*) [Dkt. ## 6, 11, 23, 33].

call records under the mass call surveillance program; (ii) requires [d]efendants to destroy all of [p]laintiffs' call records already collected under the program; and (iii) prohibits [d]efendants from querying metadata obtained through the program using any phone number or other identifier associated with [p]laintiffs . . . and such other relief as may be found just and proper." Pls.' Mot. for Prelim. Inj. (*Klayman I*) [Dkt. # 13]; Pls.' Mot. for Prelim. Inj. (*Klayman II*) [Dkt. # 10]; *see also* Pls.' Mem. P. & A. in Supp. of Mot. for Prelim. Inj. (*Klayman I*) ("Pls.' Mem.") [Dkt. # 13-1], at 30-31.⁴ In light of how plaintiffs have crafted their requested relief, the Court construes the motions as requesting a preliminary injunction (1) only as against the federal government defendants, and (2) only with regard to the government's bulk collection and querying of phone record metadata. Further, between the two cases, plaintiffs have alleged with sufficient particularity that only two of the five named plaintiffs, Larry Klayman and Charles Strange, are telephone service subscribers.⁵ Accordingly, for purposes of

⁴ Unless otherwise indicated, all citations to "Pls.' Mem." and other docket items hereinafter shall refer to the filings made in *Klayman I*.

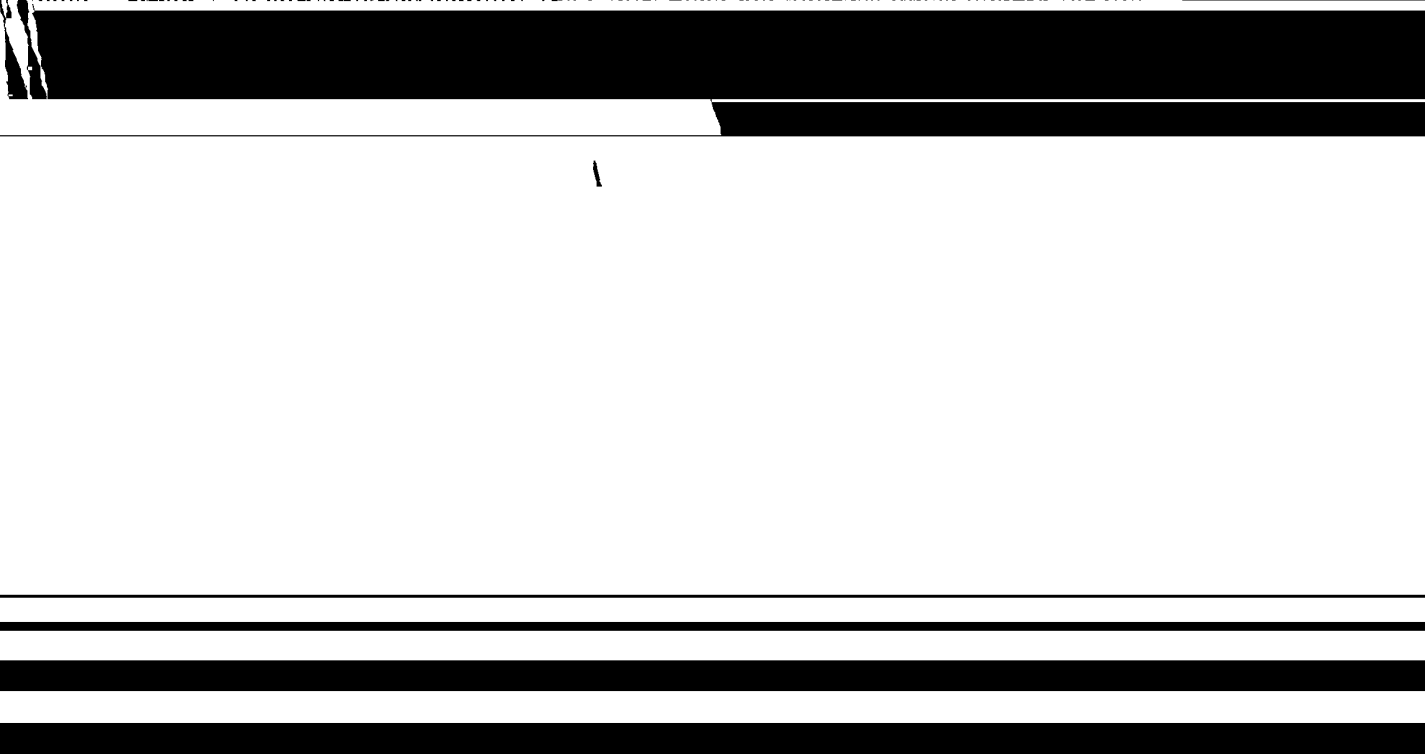
⁵ In *Klayman I*, plaintiffs Larry Klayman and Charles Strange have submitted affidavits stating they are subscribers of Verizon Wireless for cellular phone service, *see* Aff. of Larry Klayman ("Klayman Aff.") [Dkt. # 13-2], at ¶ 3; Suppl. Aff. of Larry Klayman ("Klayman Suppl. Aff.") [Dkt. # 31-2], at ¶ 3; Aff. of Charles Strange ("Strange Aff.") [Dkt. # 13-3], at ¶ 2, but neither the complaint nor the motion affirmatively alleges that Mary Ann Strange is a subscriber of Verizon Wireless or any other phone service, *see* Second Am. Compl. ¶ 10 (describing plaintiff Mary Ann Strange). And in *Klayman II*, where the complaint and motion raise claims regarding the government's collection and analysis of both phone and internet records, the plaintiffs neither specifically allege, nor submit any affidavits stating, that any of them individually is a subscriber of either of the two named telephone company defendants, AT&T and Sprint, *for telephone services*. *See* Aff. of Larry Klayman (*Klayman II*) [Dkt. # 10-2], at ¶ 3 ("I am also a user of internet services by . . . AT&T . . ."); Suppl. Aff. of Larry Klayman (*Klayman II*) [Dkt. # 26-2], at ¶ 3 (same); Aff. of Charles Strange (*Klayman II*) [Dkt. # 10-3], at ¶ 3 ("I am also a user of internet services by . . . AT&T . . ."); Am. Compl. ¶ 14 ("Plaintiff Garrison . . . is a consumer and user of Facebook, Google, YouTube, and Microsoft products."). *Compare* Am. Compl.

resolving these two motions, the Court’s discussion of relevant facts, statutory background, and legal issues will be circumscribed to those defendants (hereinafter “the Government”), those two plaintiffs (hereinafter “plaintiffs”), and those claims.⁶

(*Klayman II*) ¶ 13 (“Plaintiff Ferrari . . . is a subscriber, consumer, and user of *Sprint*, Google/Gmail, Yahoo!, and Apple. As a prominent private investigator, Ferrari regularly communicates, both telephonically and electronically . . .” (emphasis added)), *with Pls.’ Mem. (Klayman II)* [Dkt. # 10-1], at 18 (“Defendants have indisputably also provided the NSA with intrusive and warrantless access to the *internet records* of Plaintiffs Michael Ferrari and Matthew Garrison” (emphasis added)).

⁶ *Klayman I* concerns only the collection and analysis of phone record data, and only with respect to private defendant Verizon Communications. *Klayman II*, by contrast, appears to concern the collection and analysis of both phone and internet record data, and includes both phone companies and internet companies as private defendants. In the latter case, Plaintiffs’ Motion for Preliminary Injunction [Dkt. # 10] and their Memorandum of Points and Authorities in Support [Dkt. # 10-1] suffer from some confusion as a result of its larger scope. On the face of the Motion itself [Dkt. # 10] and their Proposed Order [Dkt. # 10-4], plaintiffs request relief that is identical to that requested in the motion in *Klayman I*—i.e., relief concerning only the collection and querying of phone record data. Throughout the memorandum in support [Dkt. # 10-1], however, plaintiffs intermingle claims regarding the surveillance of phone and internet data, and then in conclusion request relief arguably concerning only internet data. *See Pls.’ Mem. P. & A. Supp. Mot. Prelim. Inj. (Klayman II)* [Dkt. # 10-1], at 4, 32 (requesting an injunction that, in part, “bar[s] Defendants from collecting records pertaining to Plaintiffs’ online communications and internet activities”).

To the extent plaintiffs are, in fact, requesting preliminary injunctive relief regarding any alleged internet data surveillance activity, the Court need not address those claims for two



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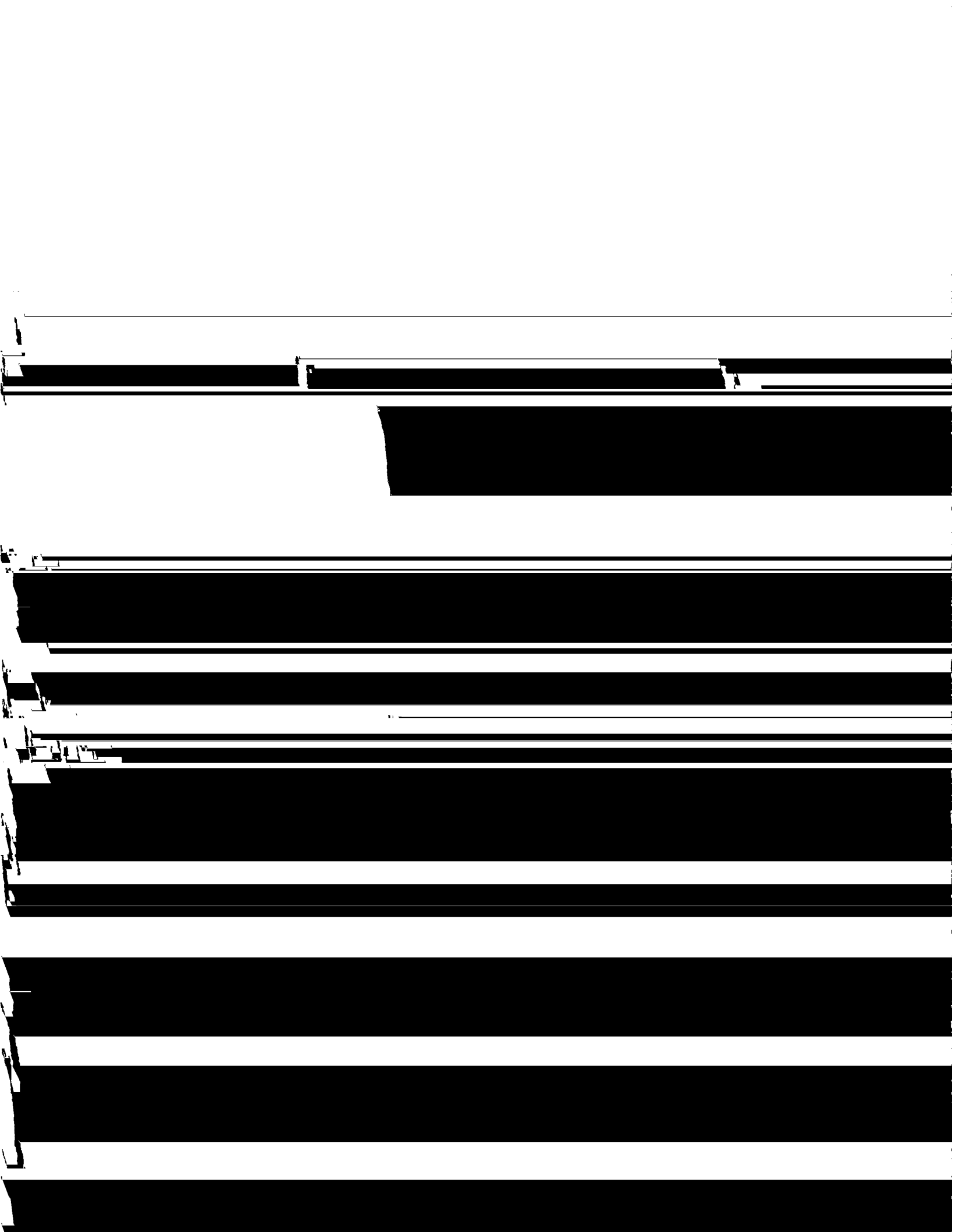
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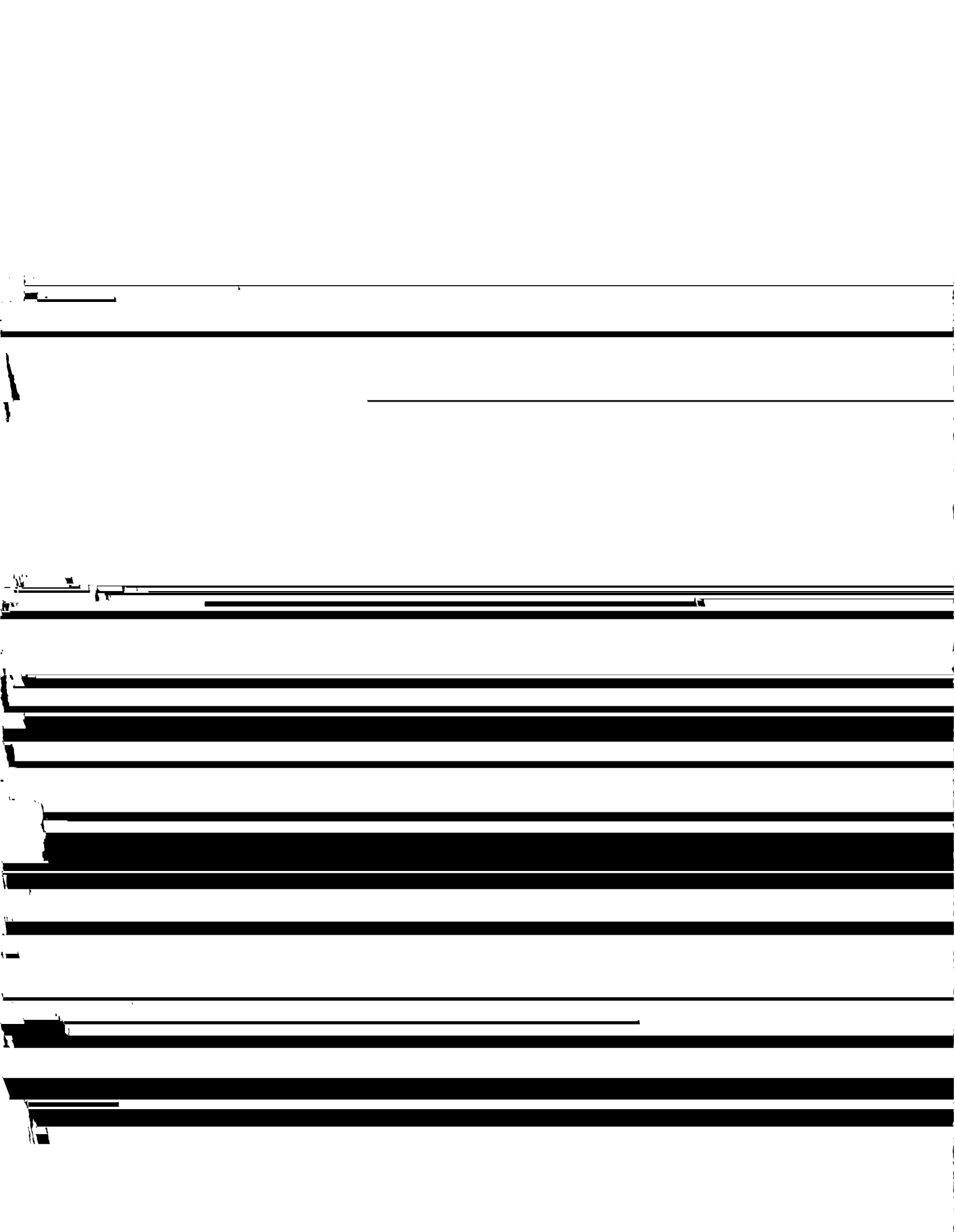
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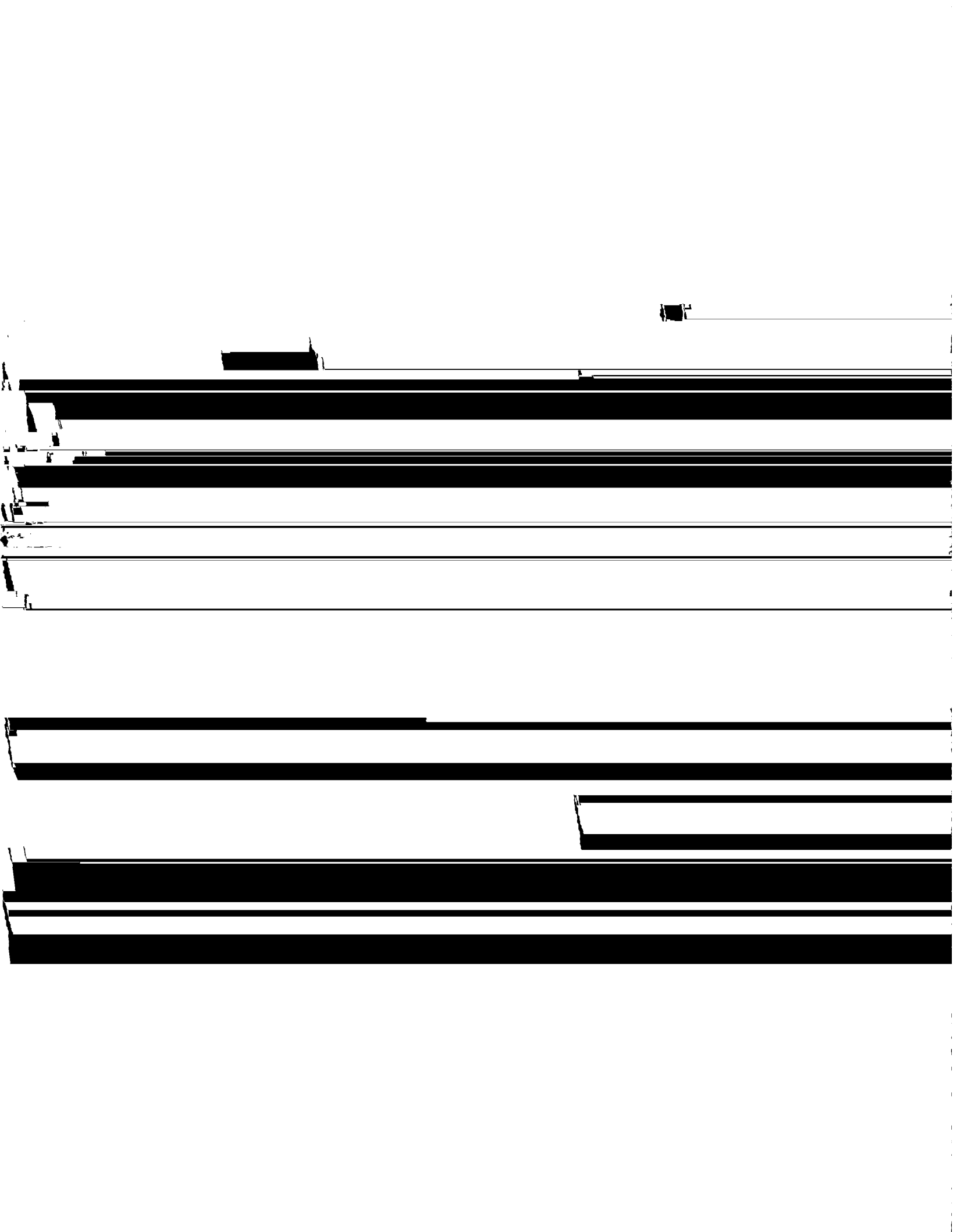
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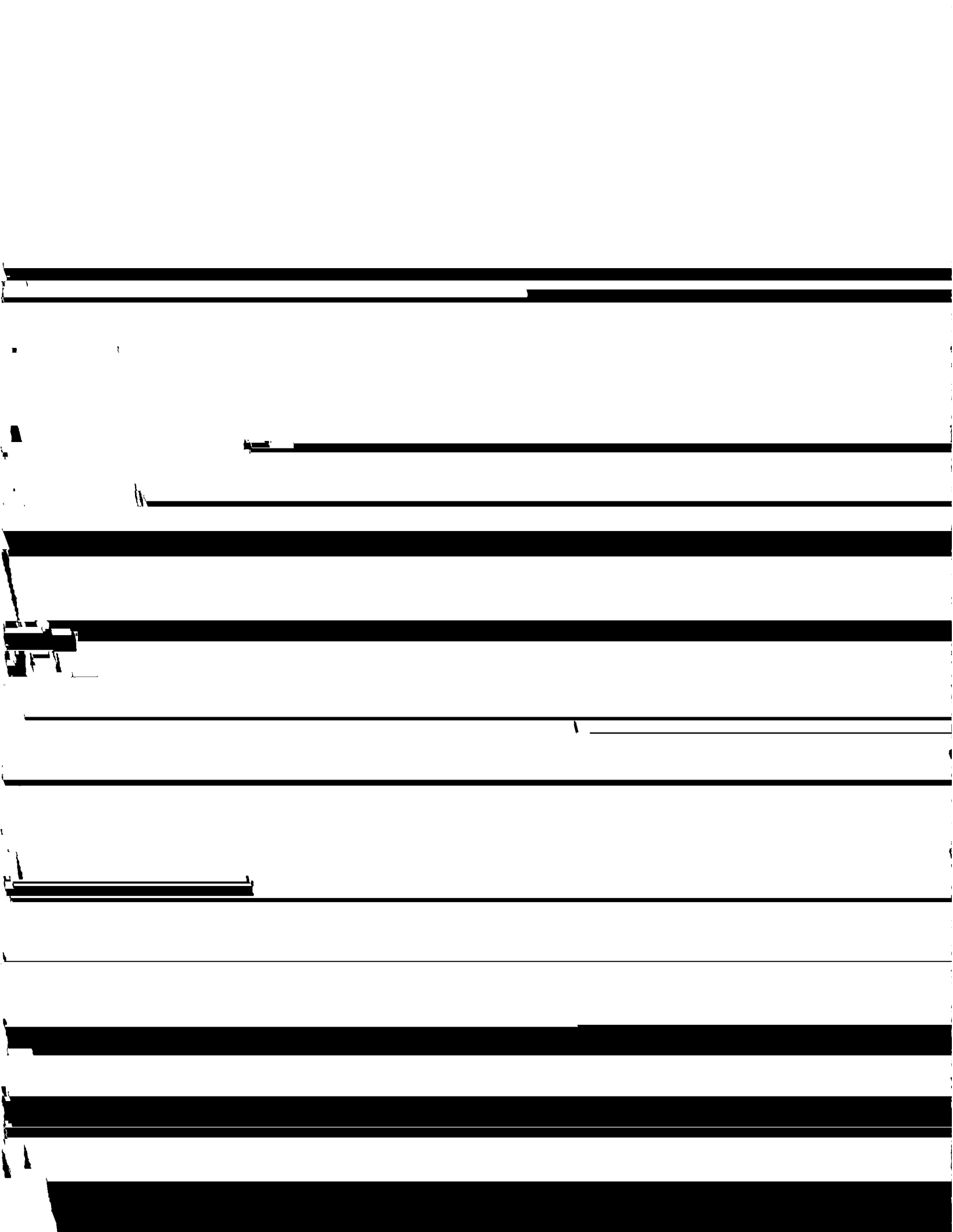
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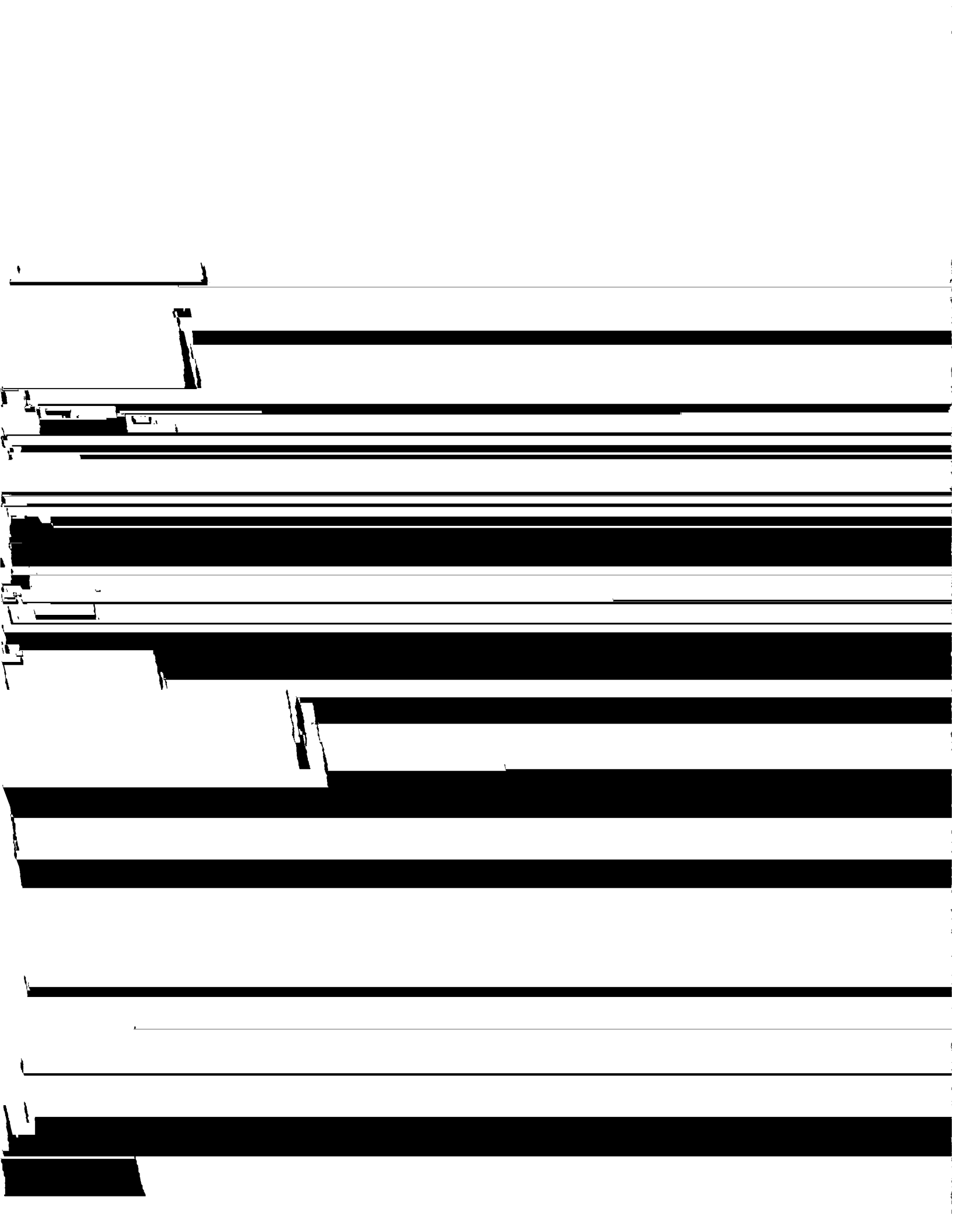
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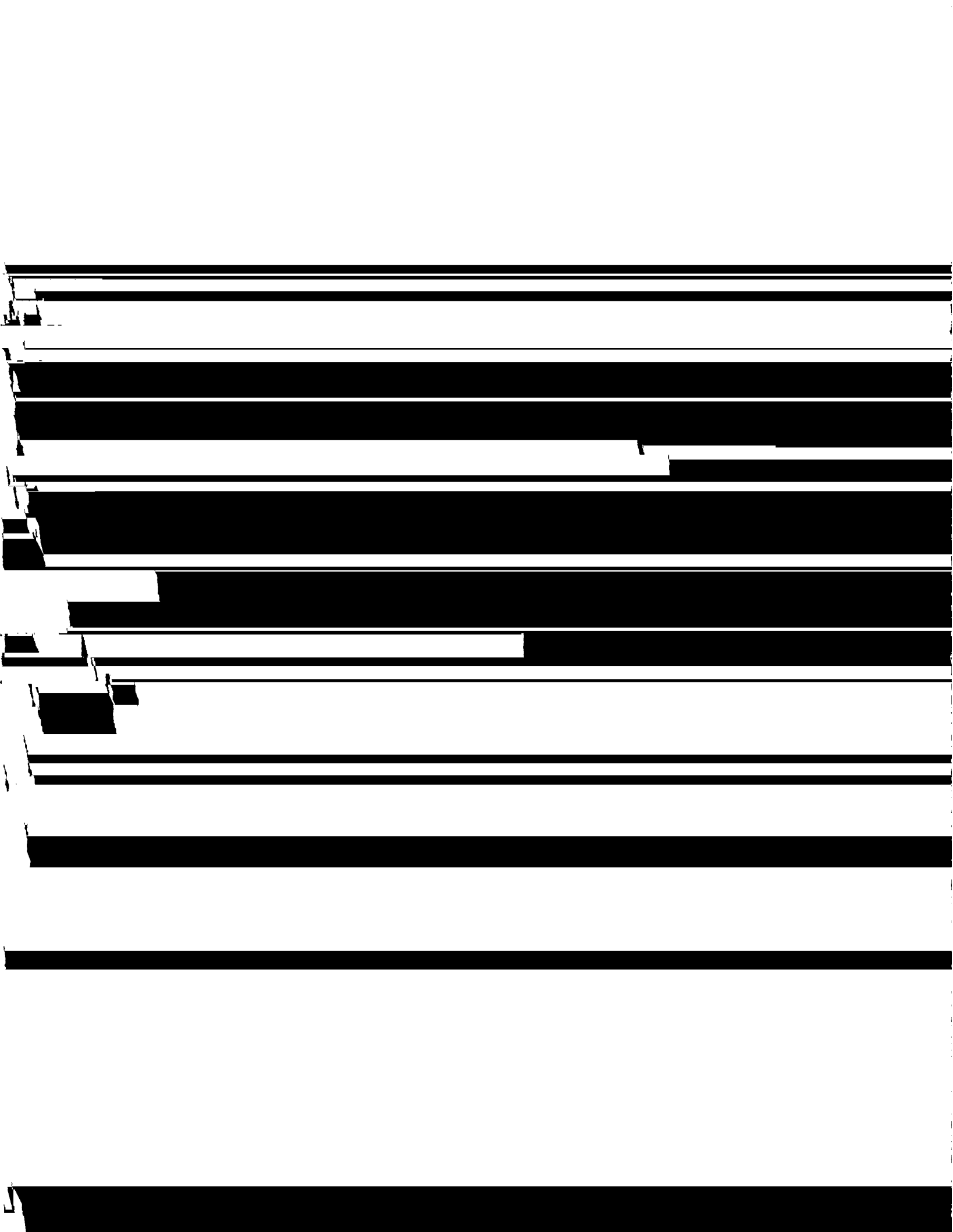






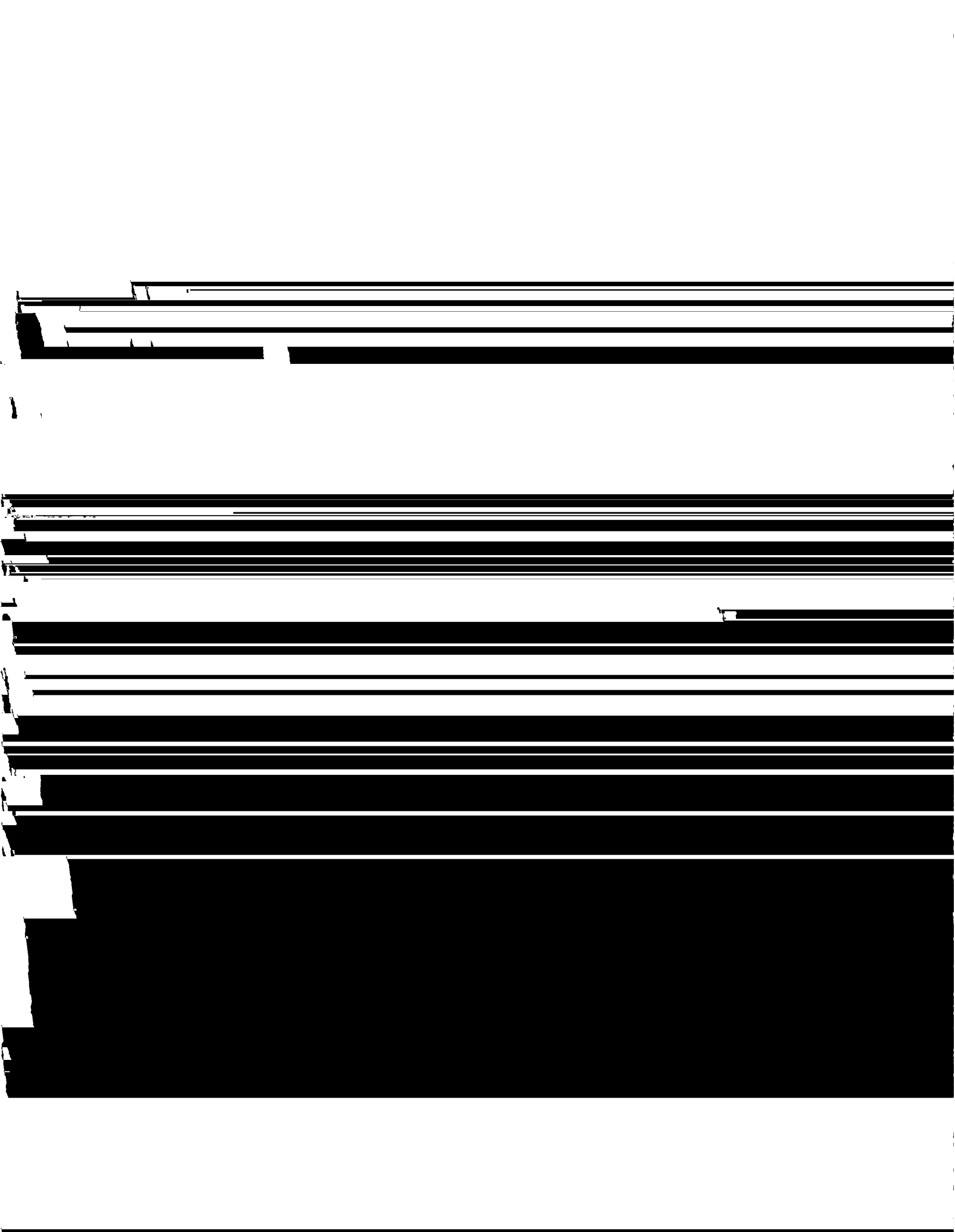


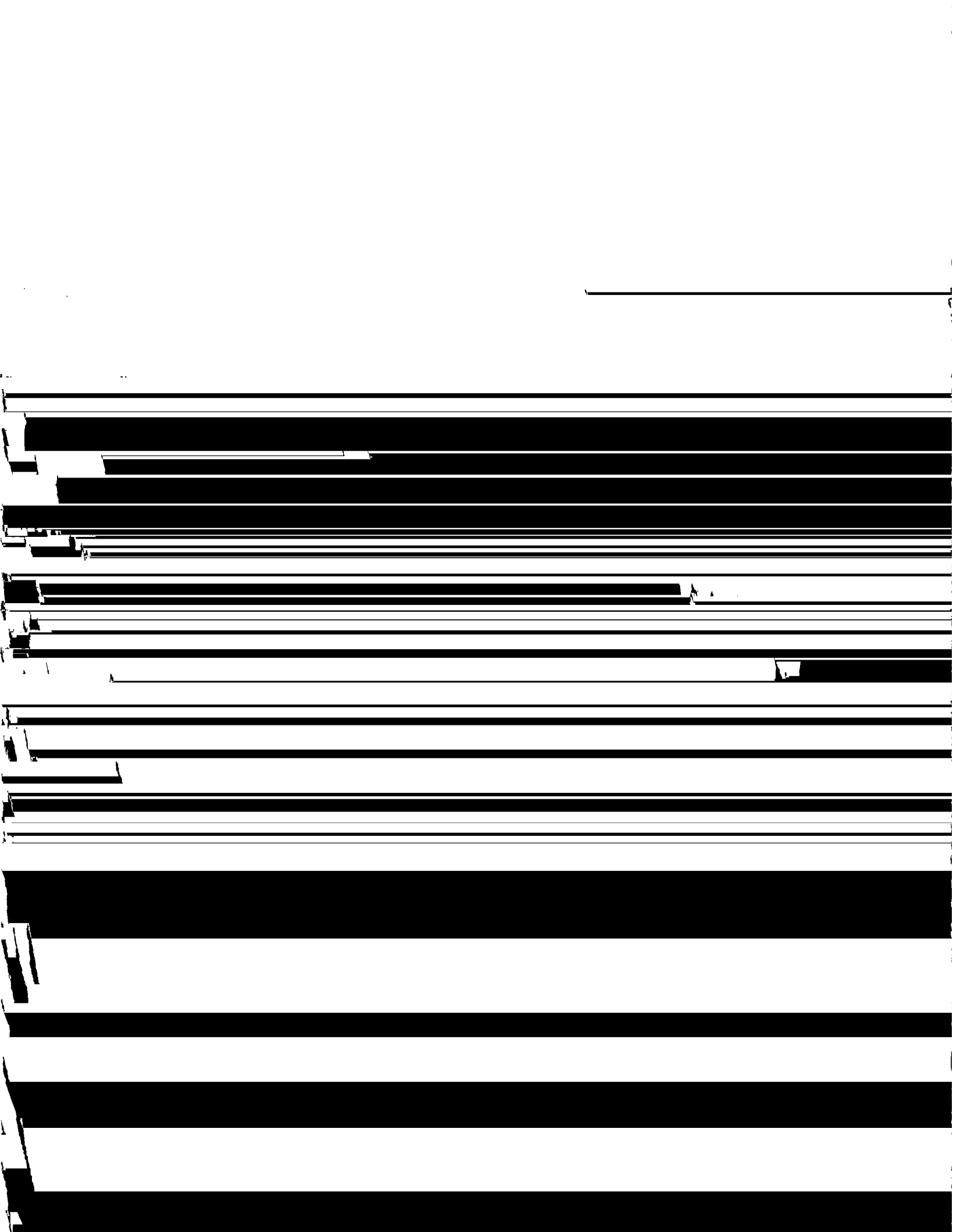




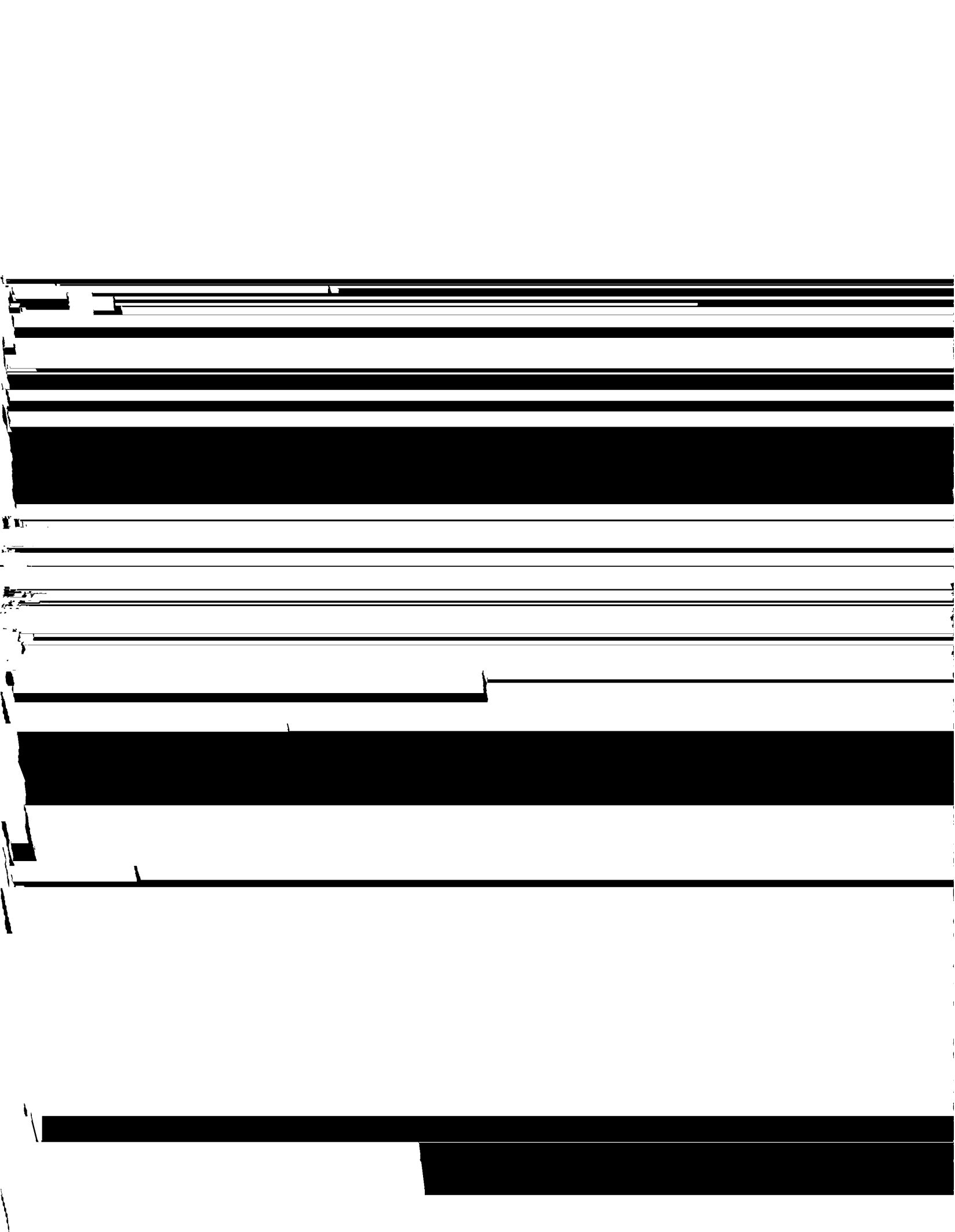


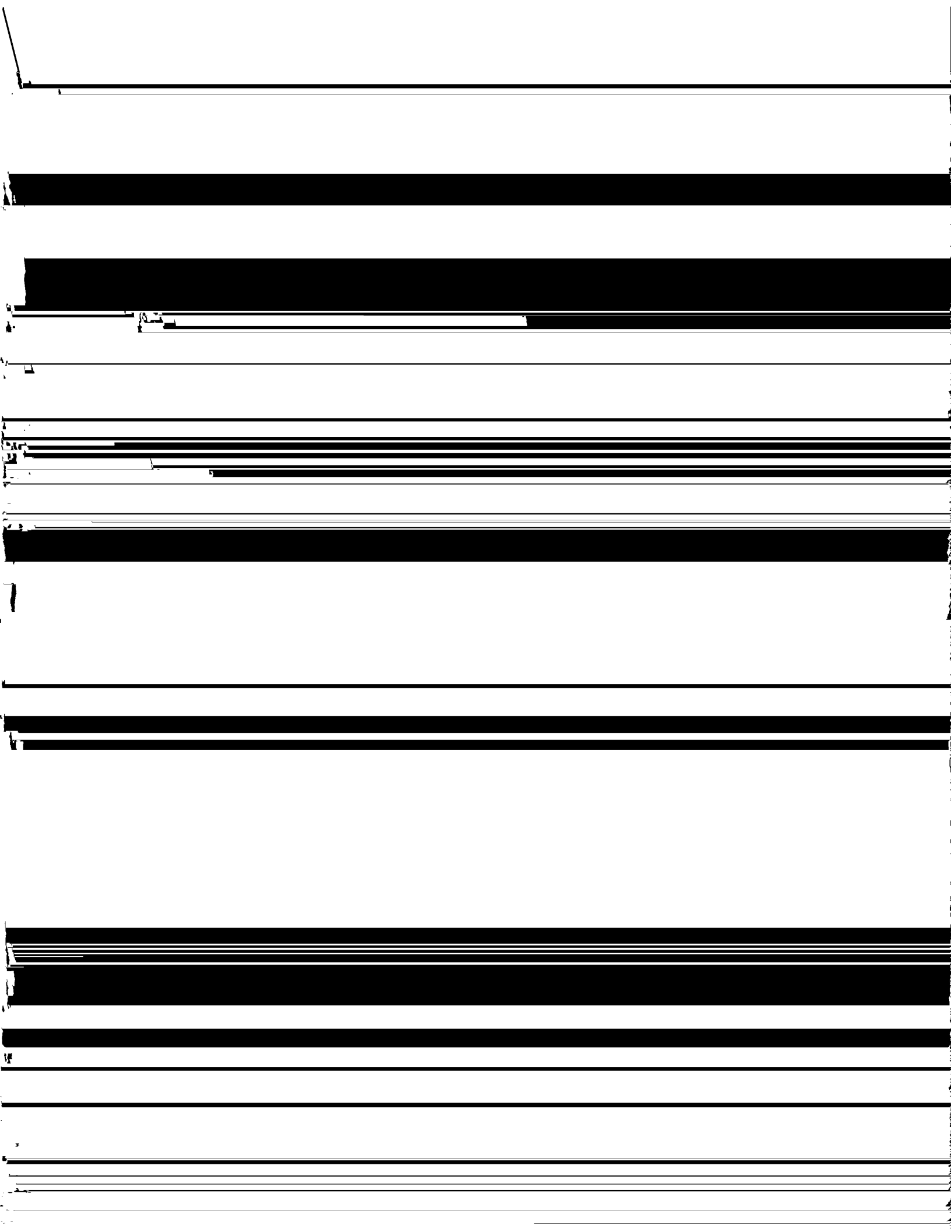


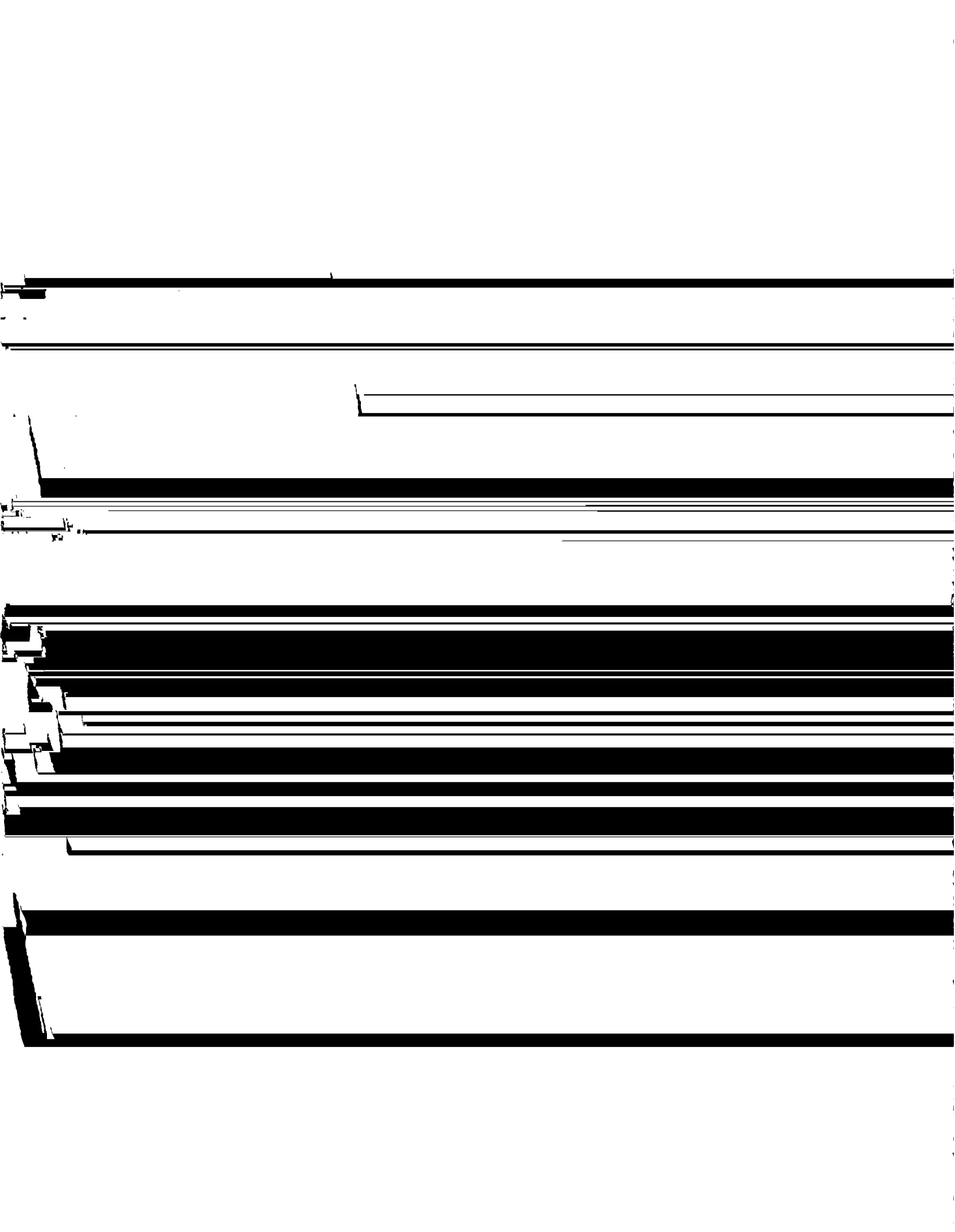


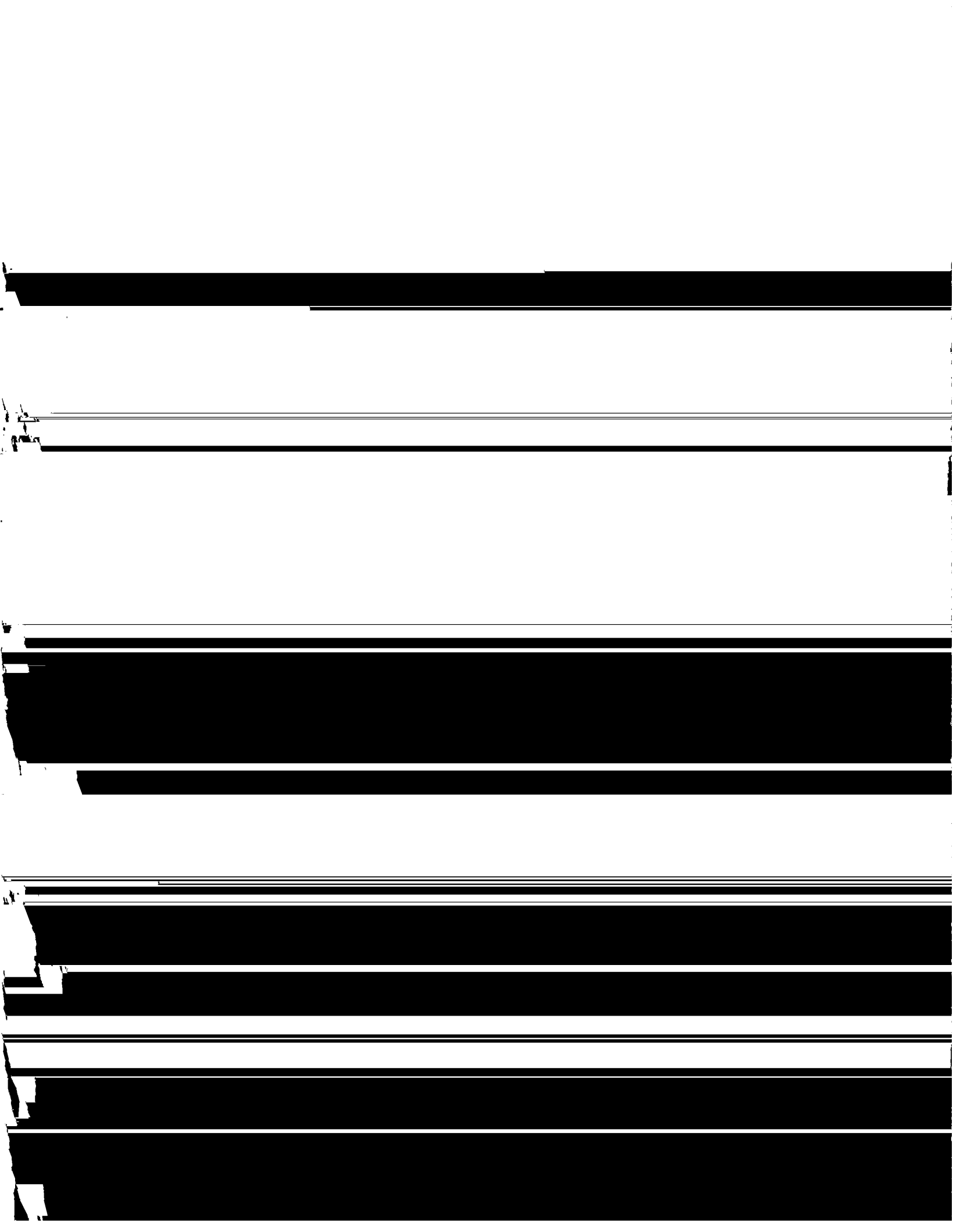


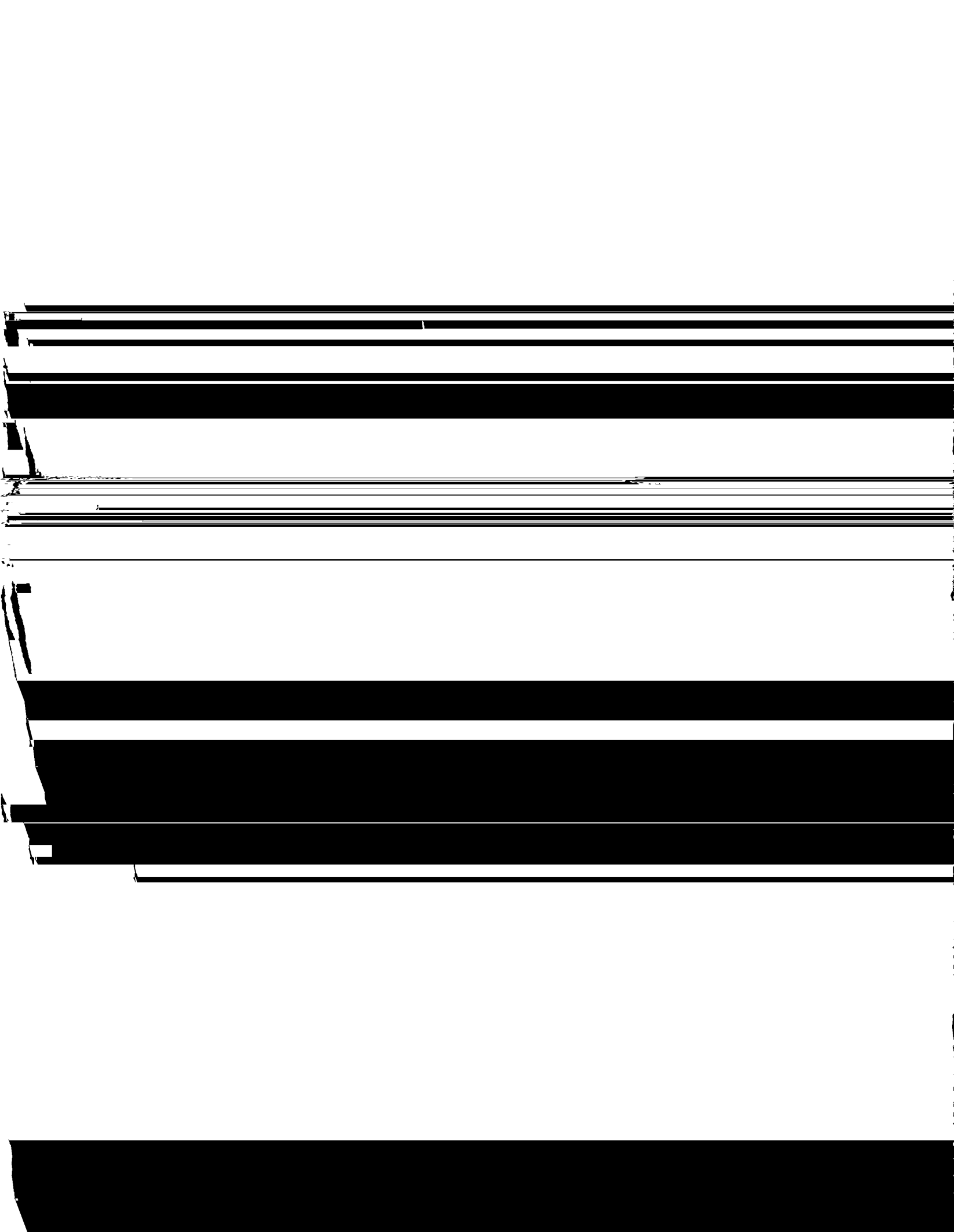




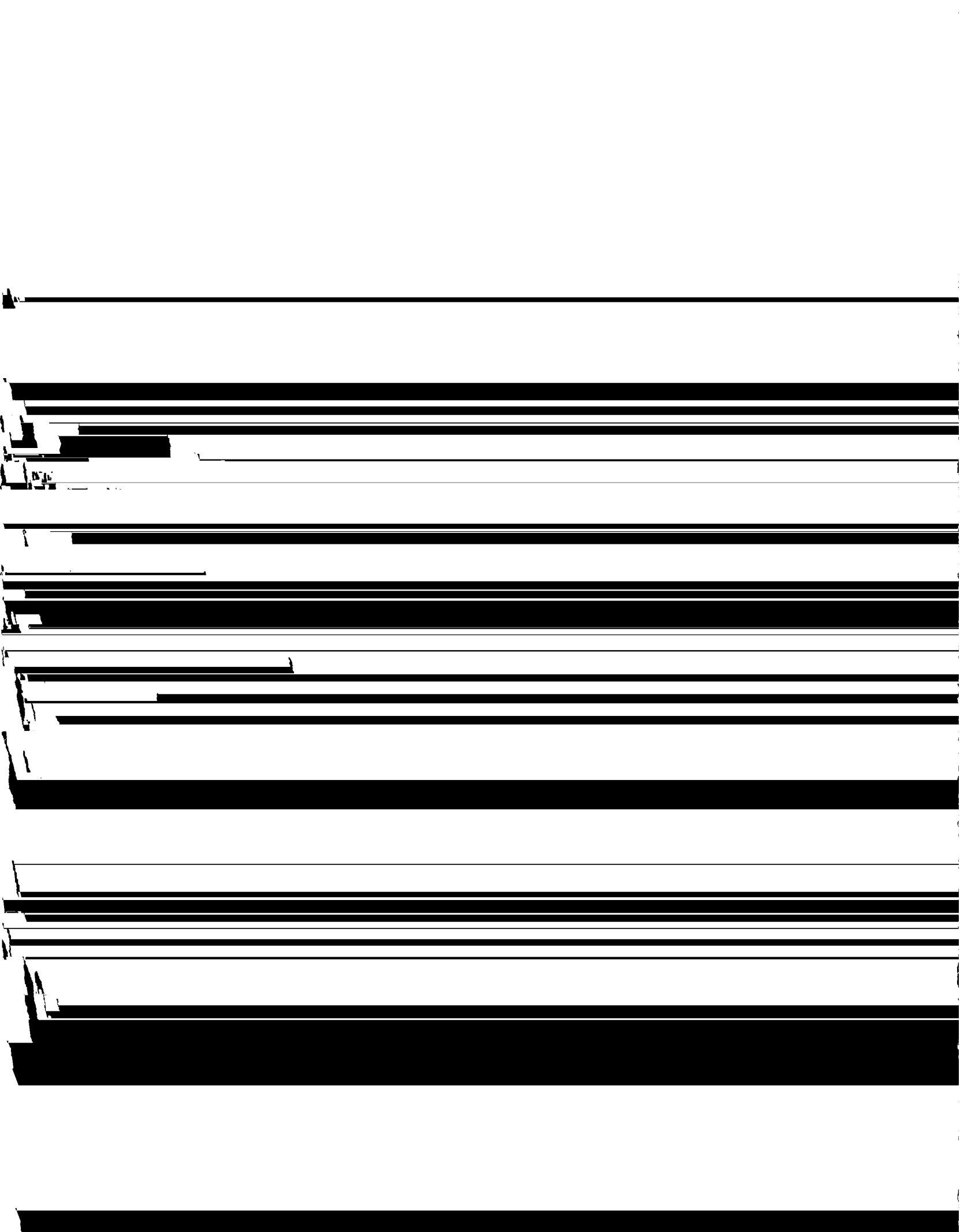


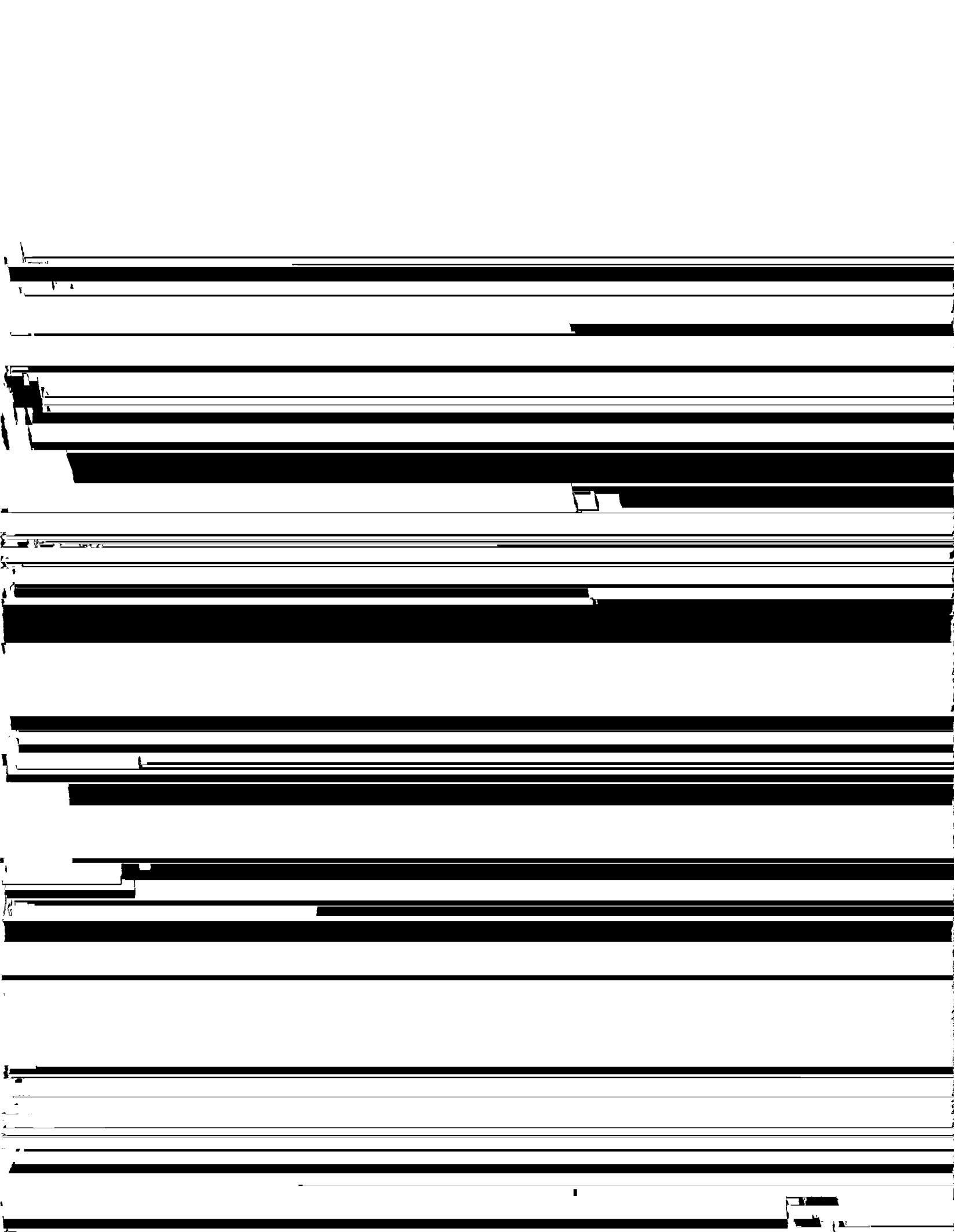


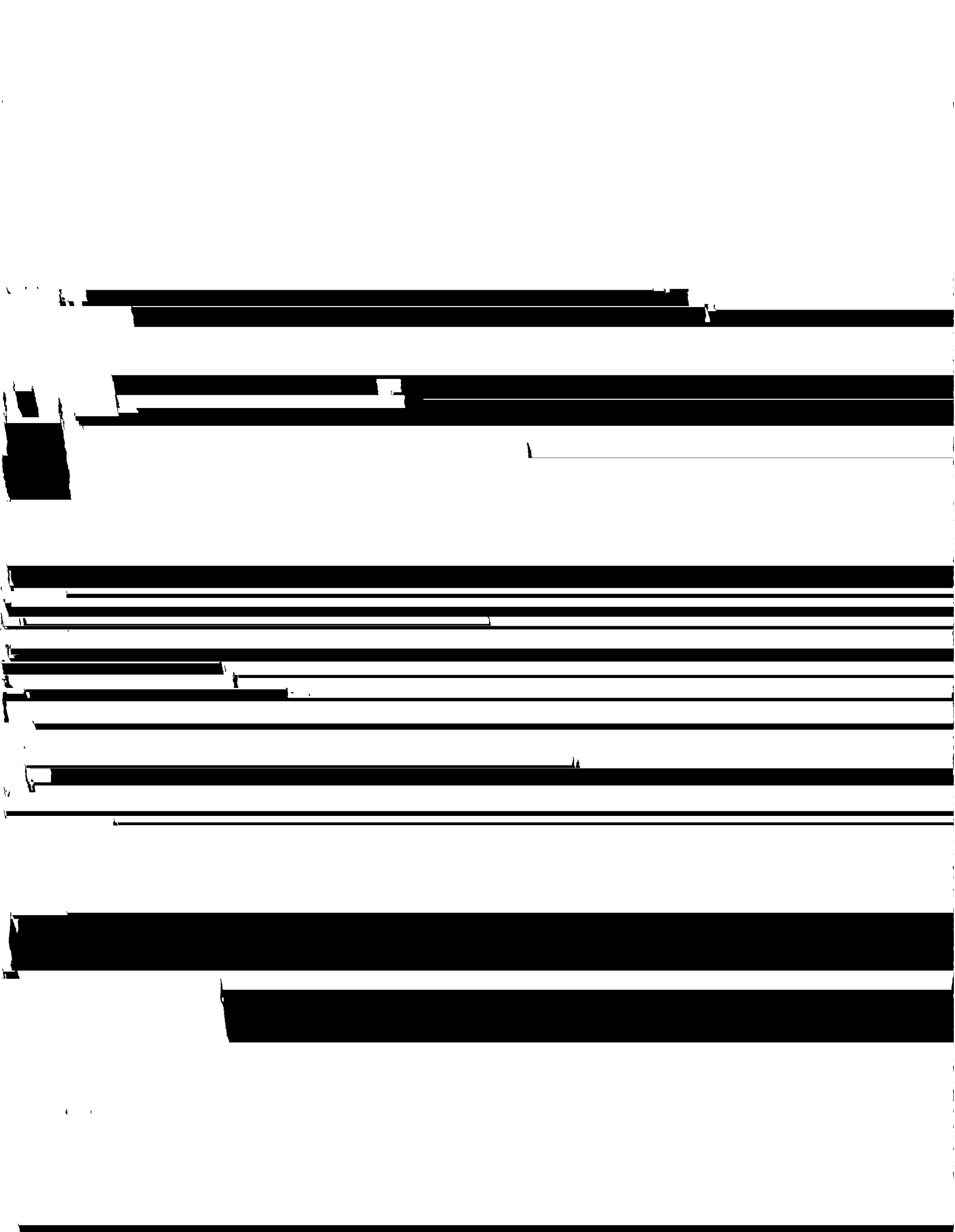


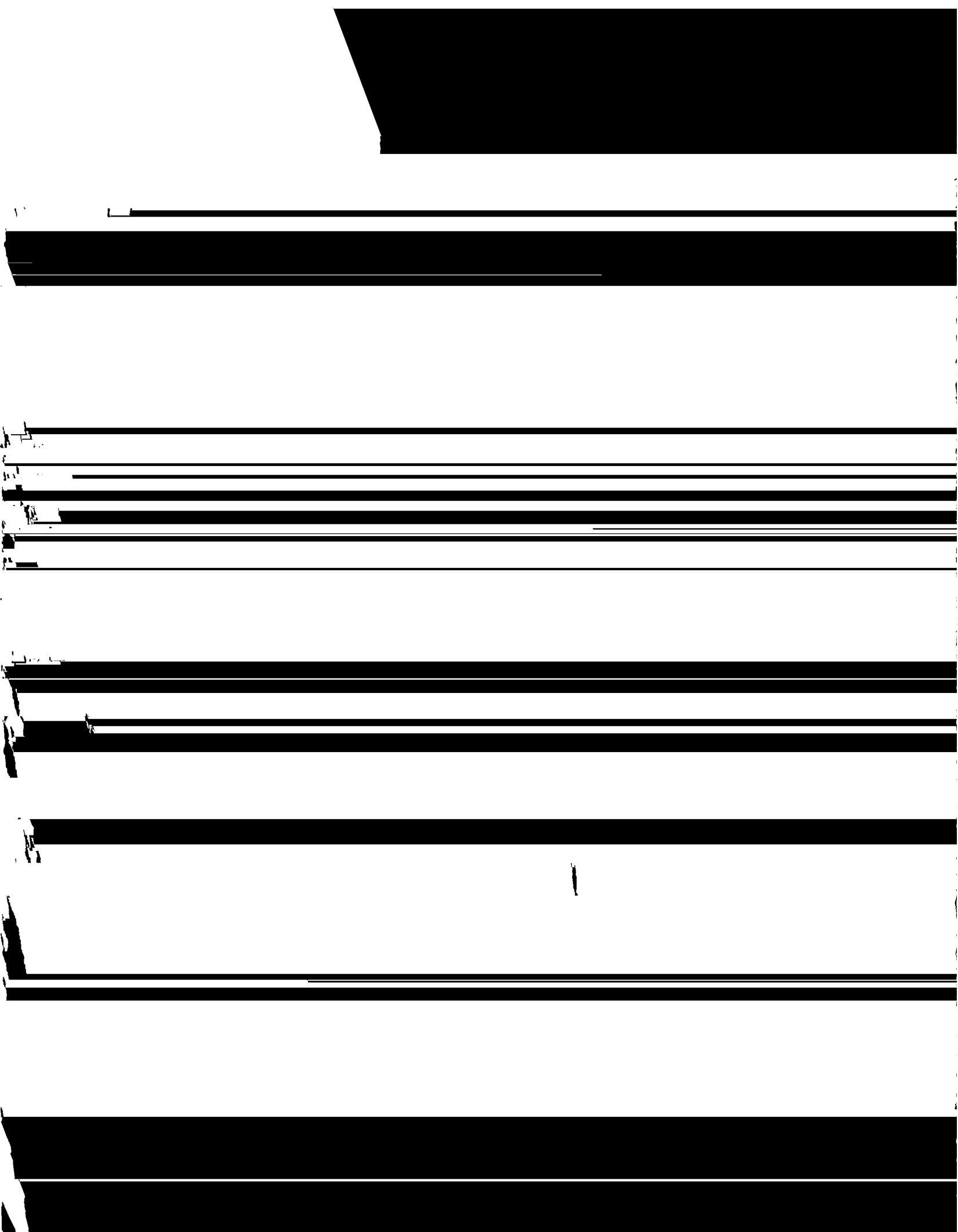












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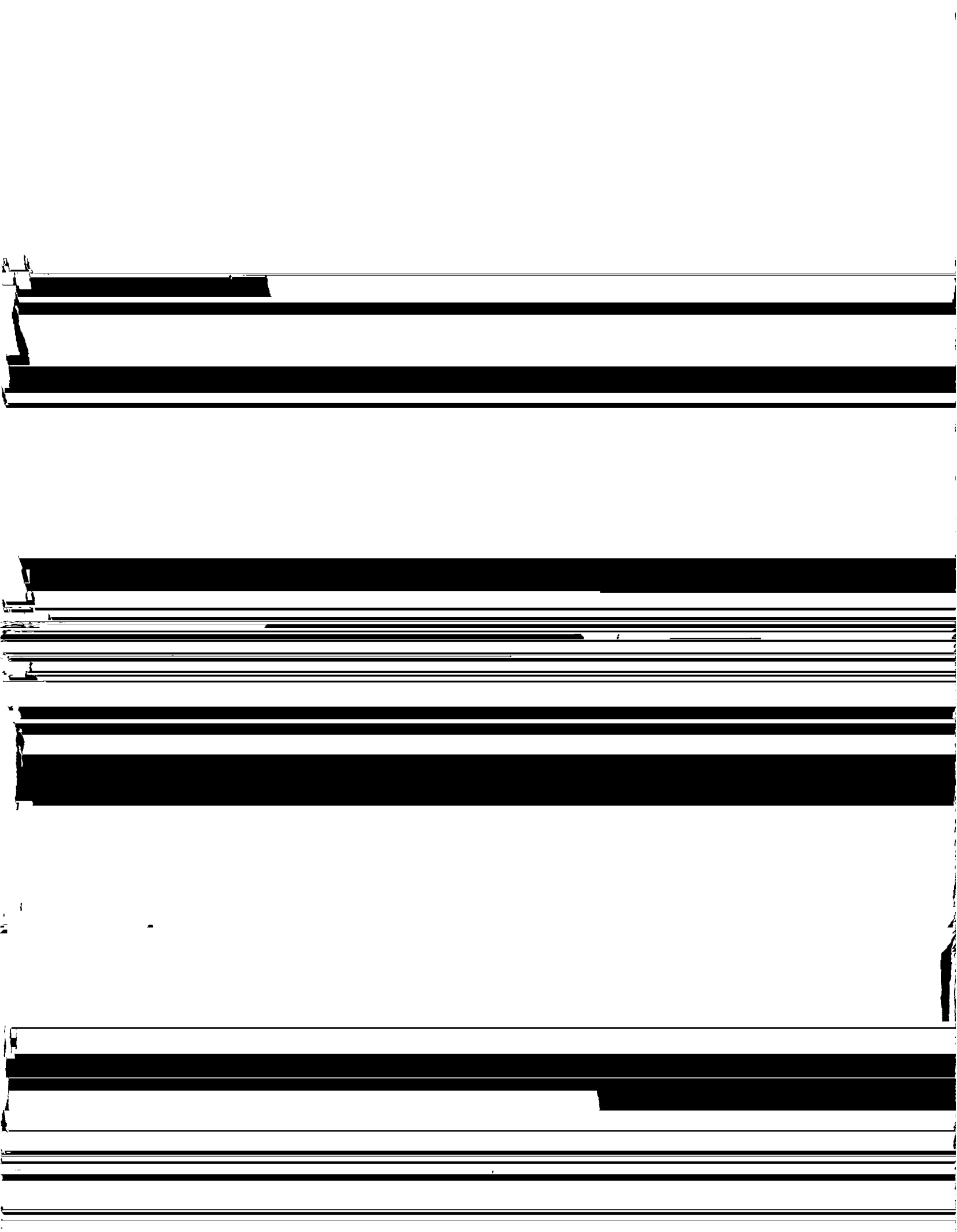
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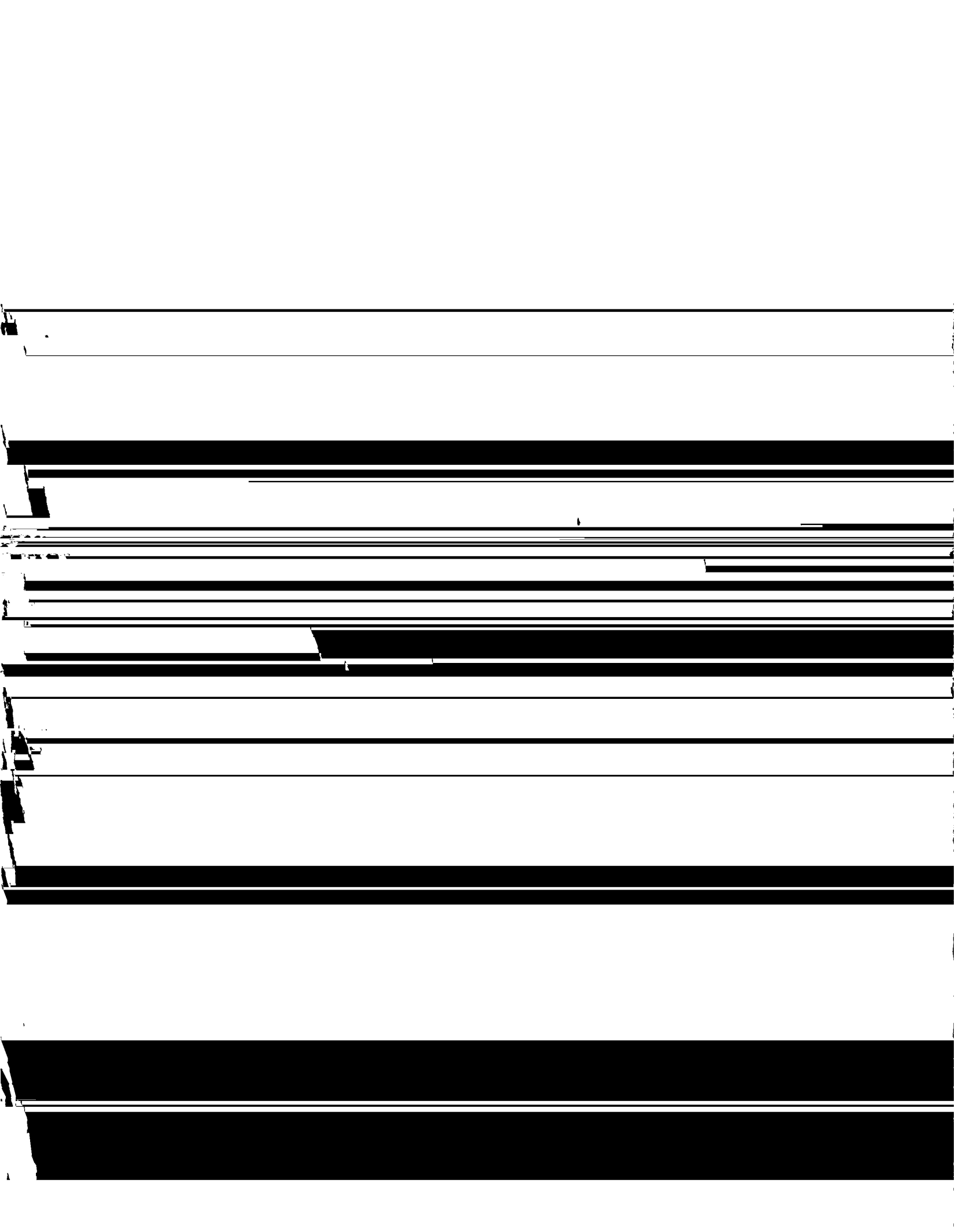
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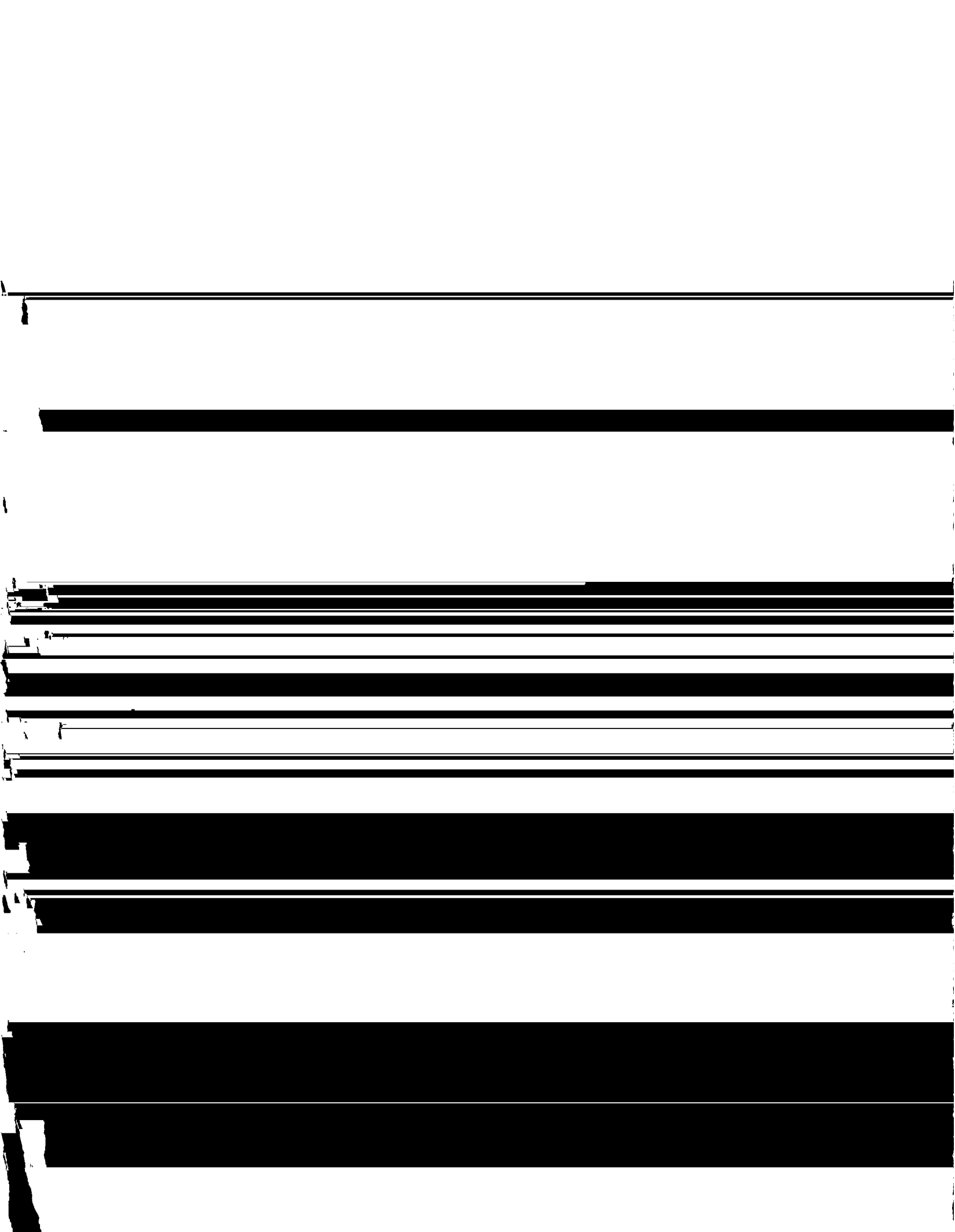
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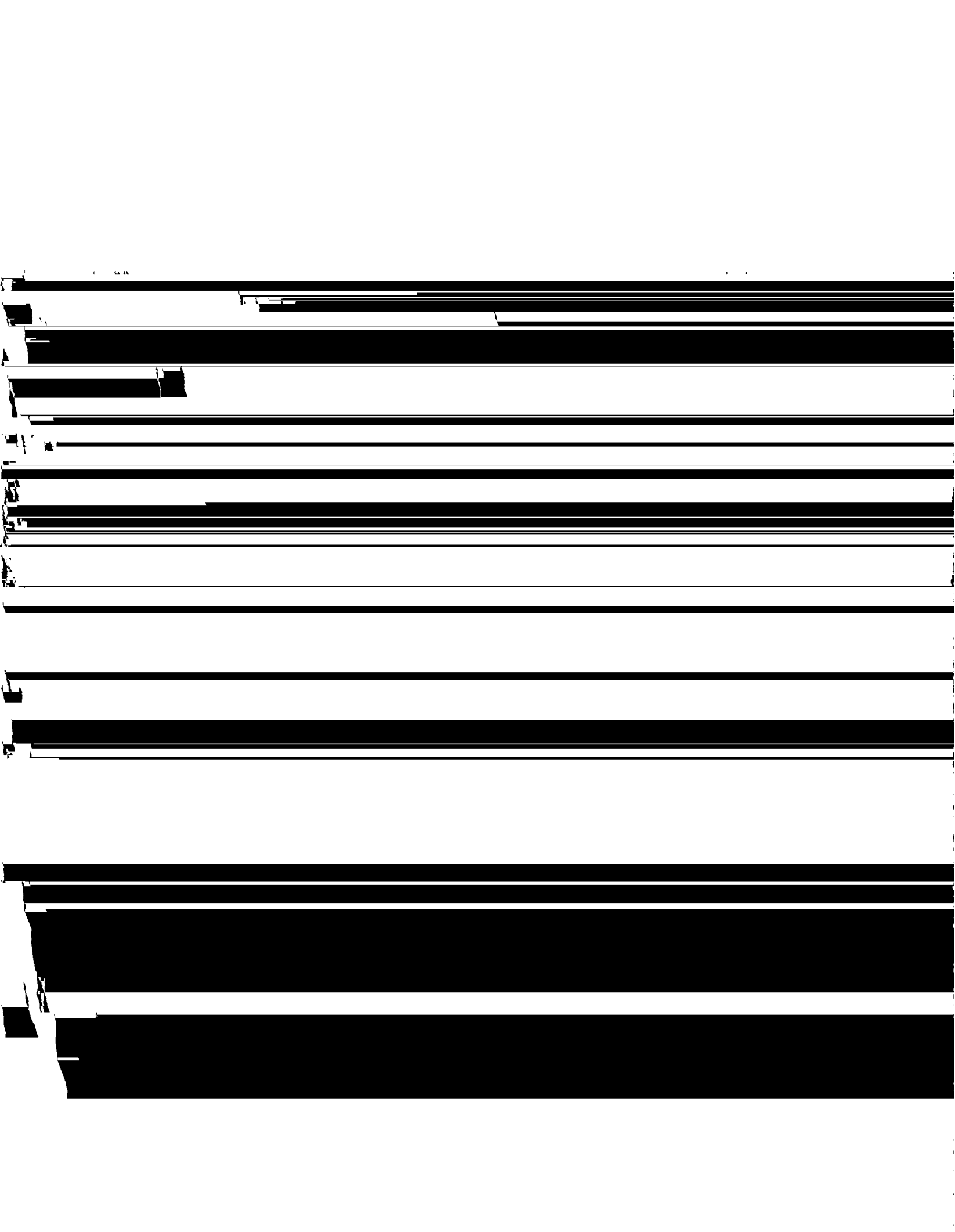
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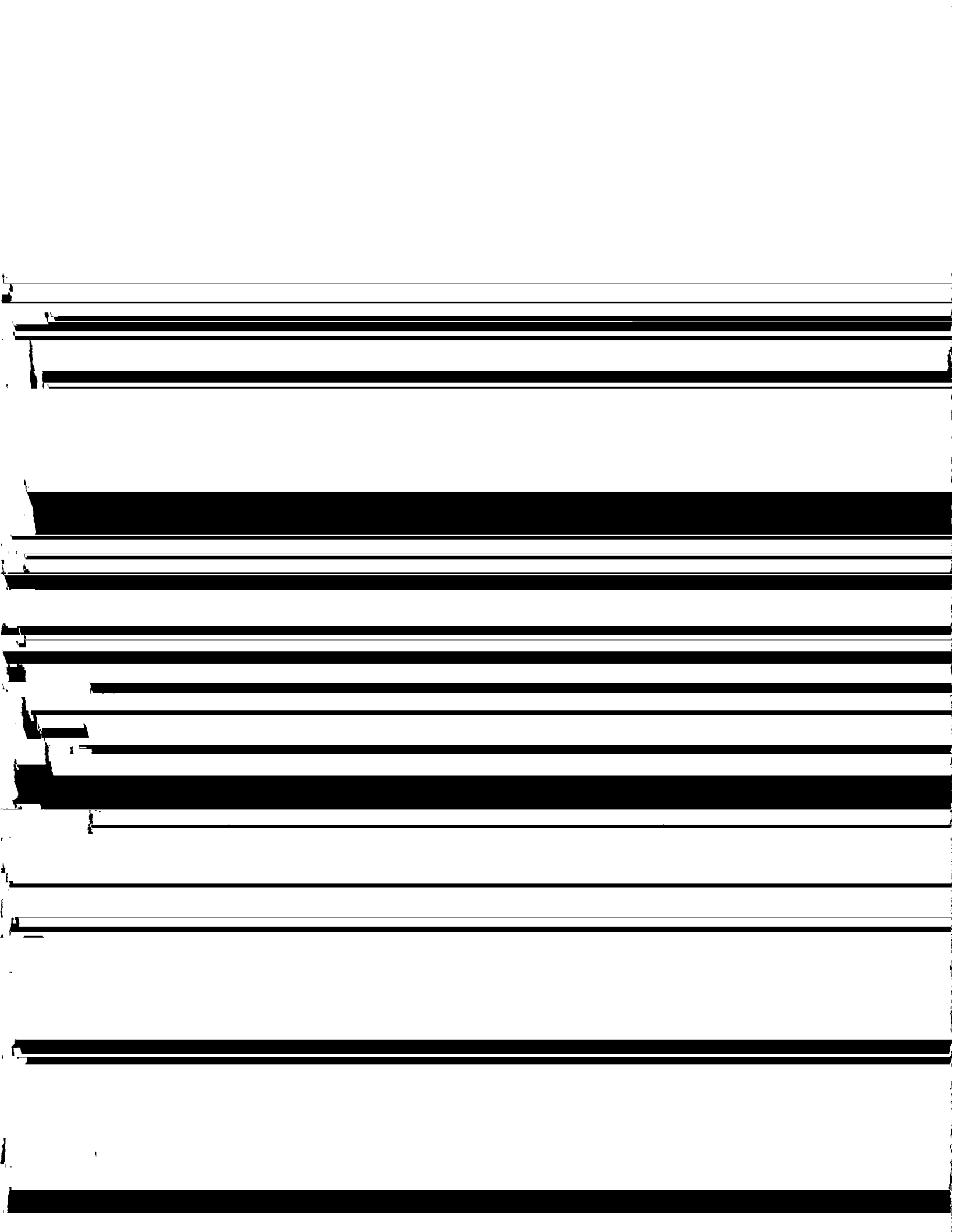
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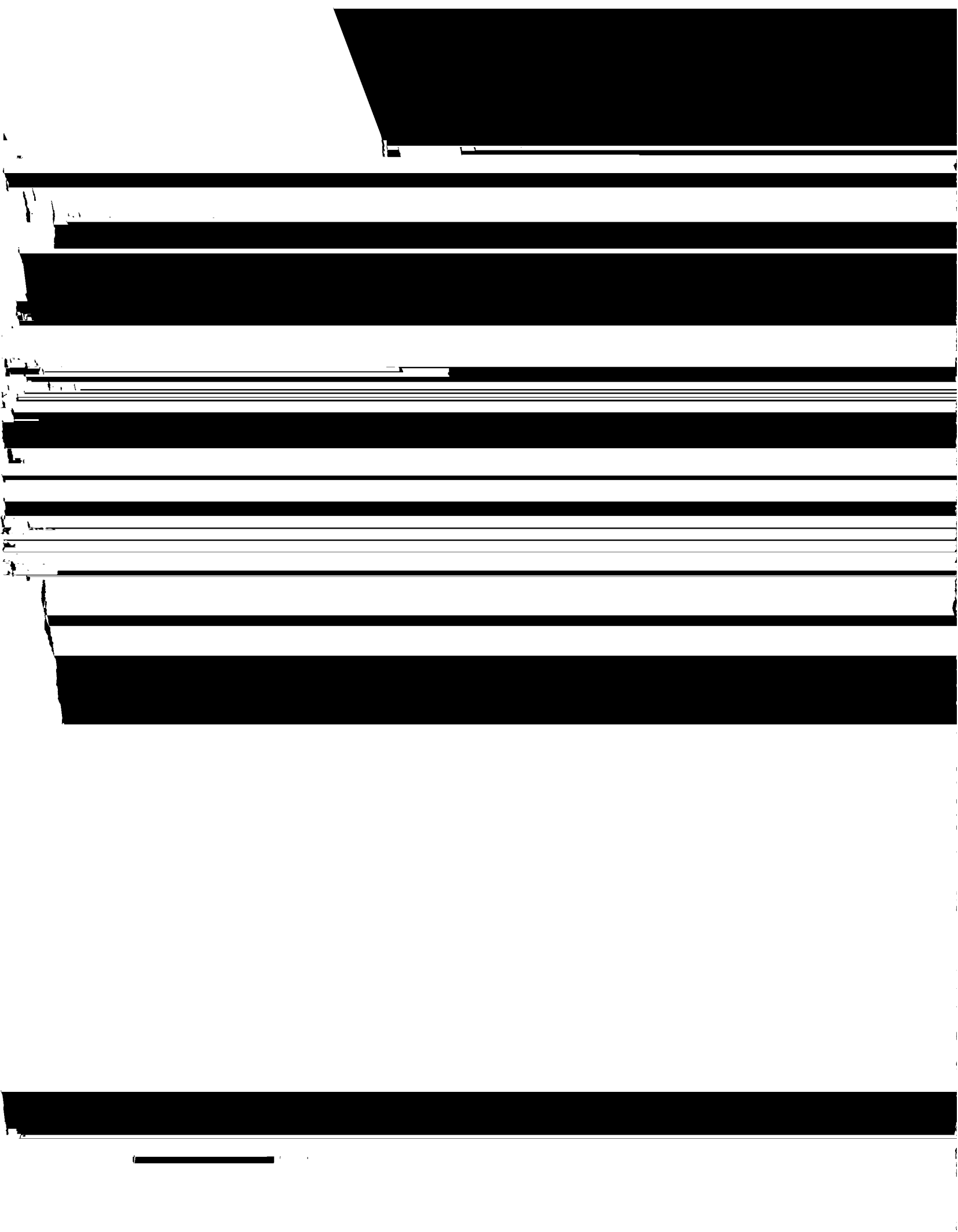
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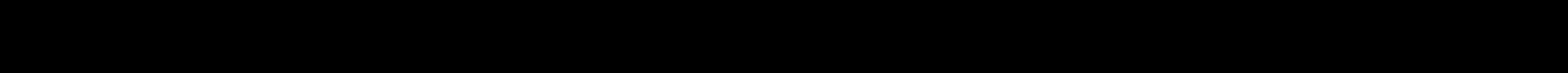


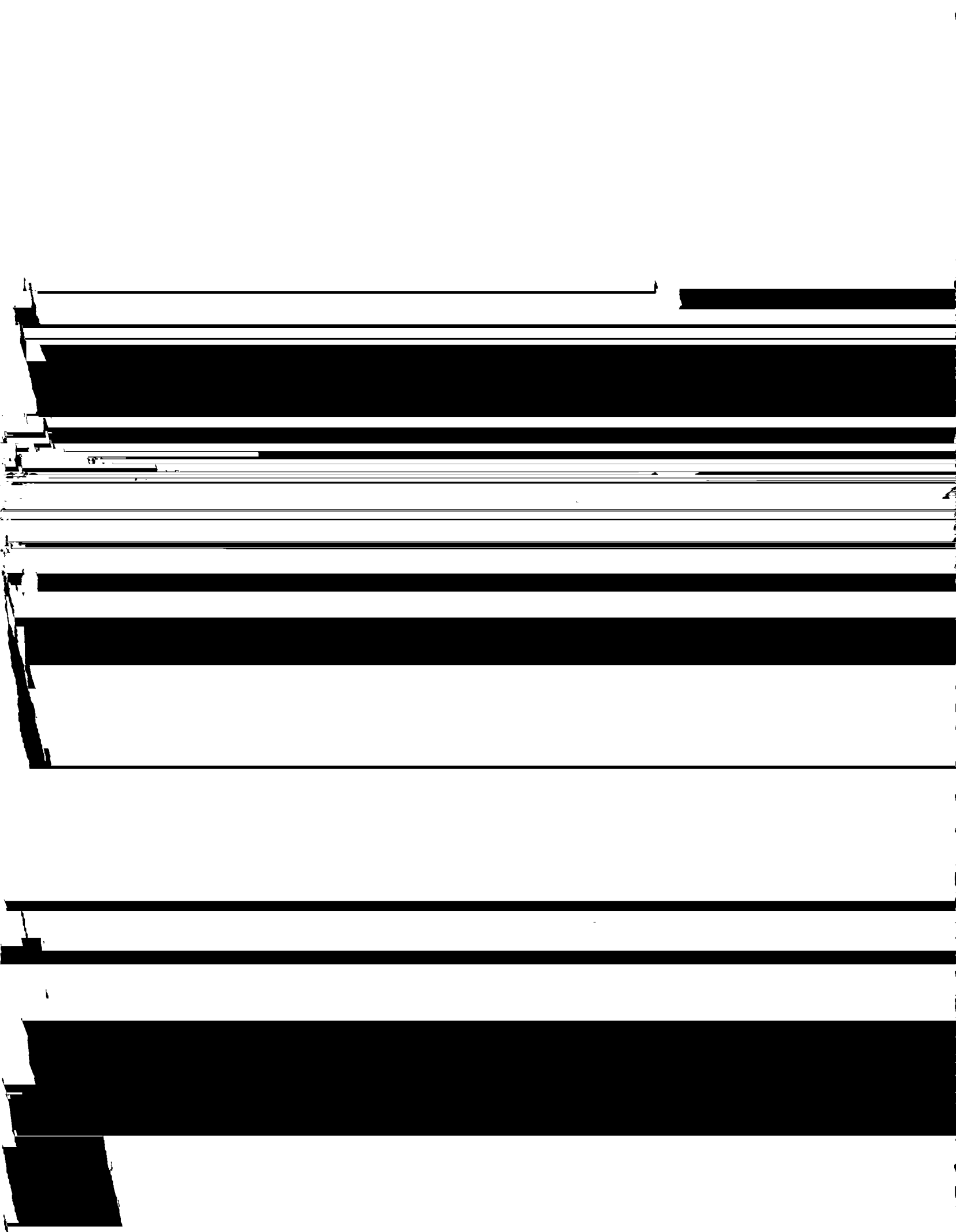


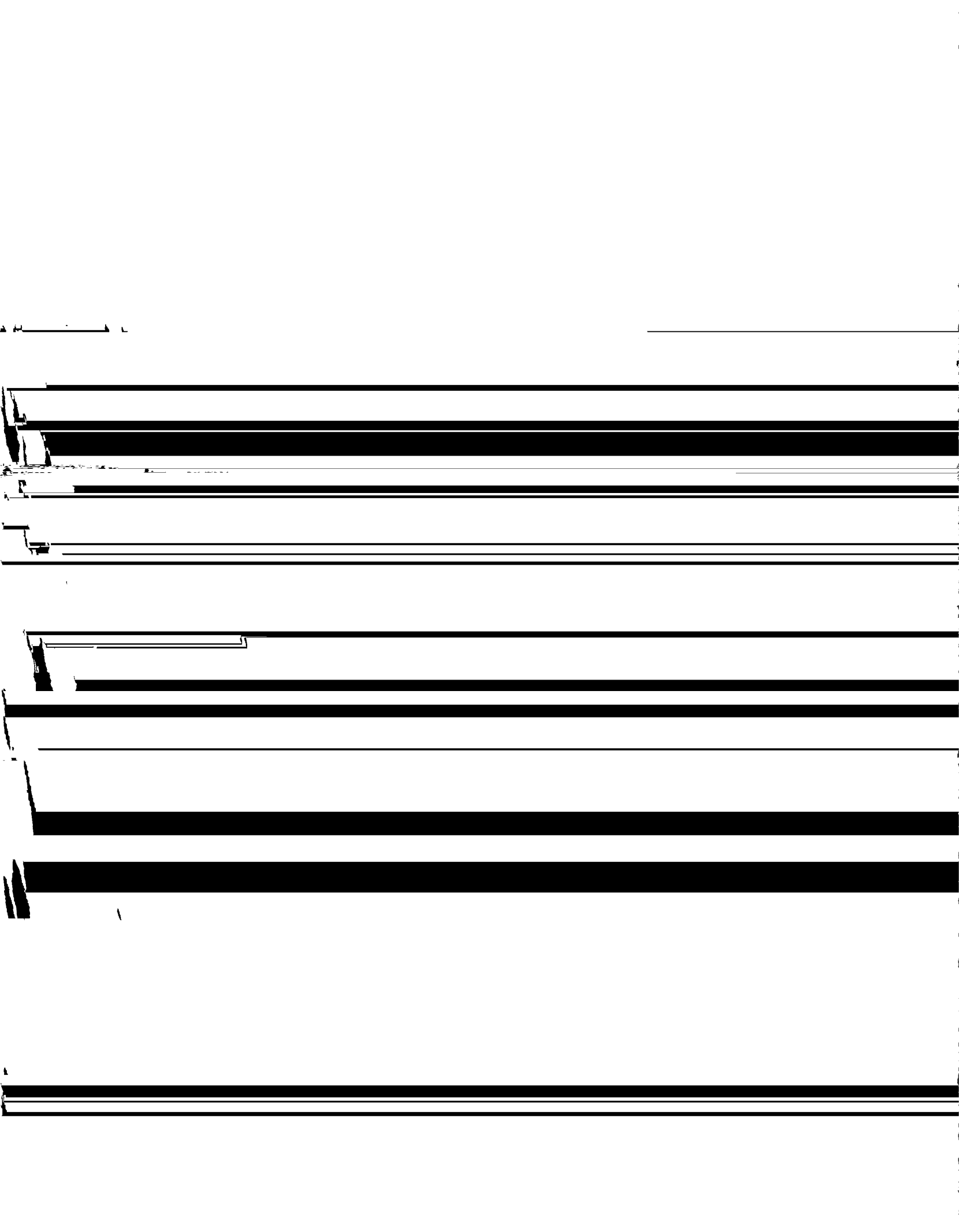




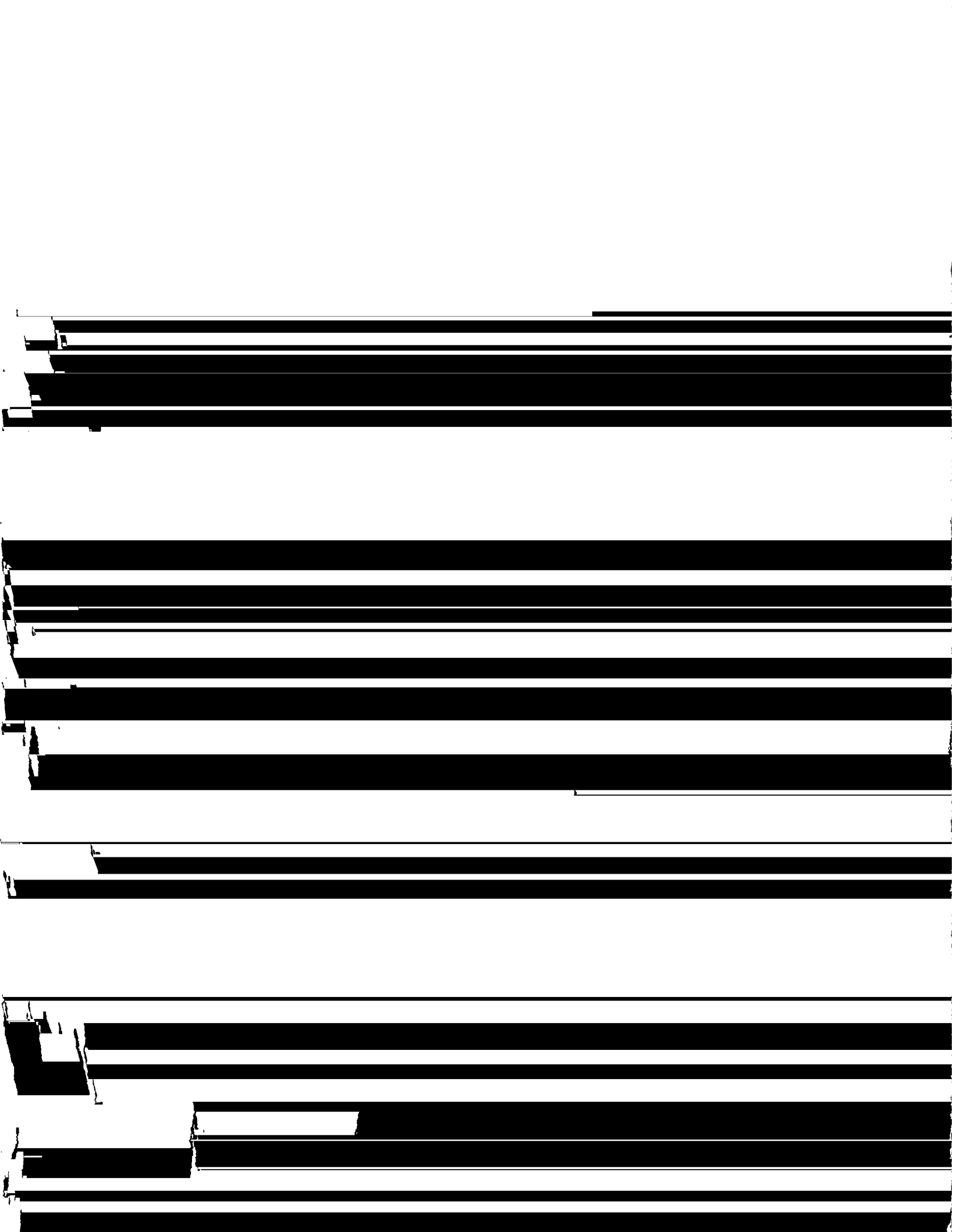


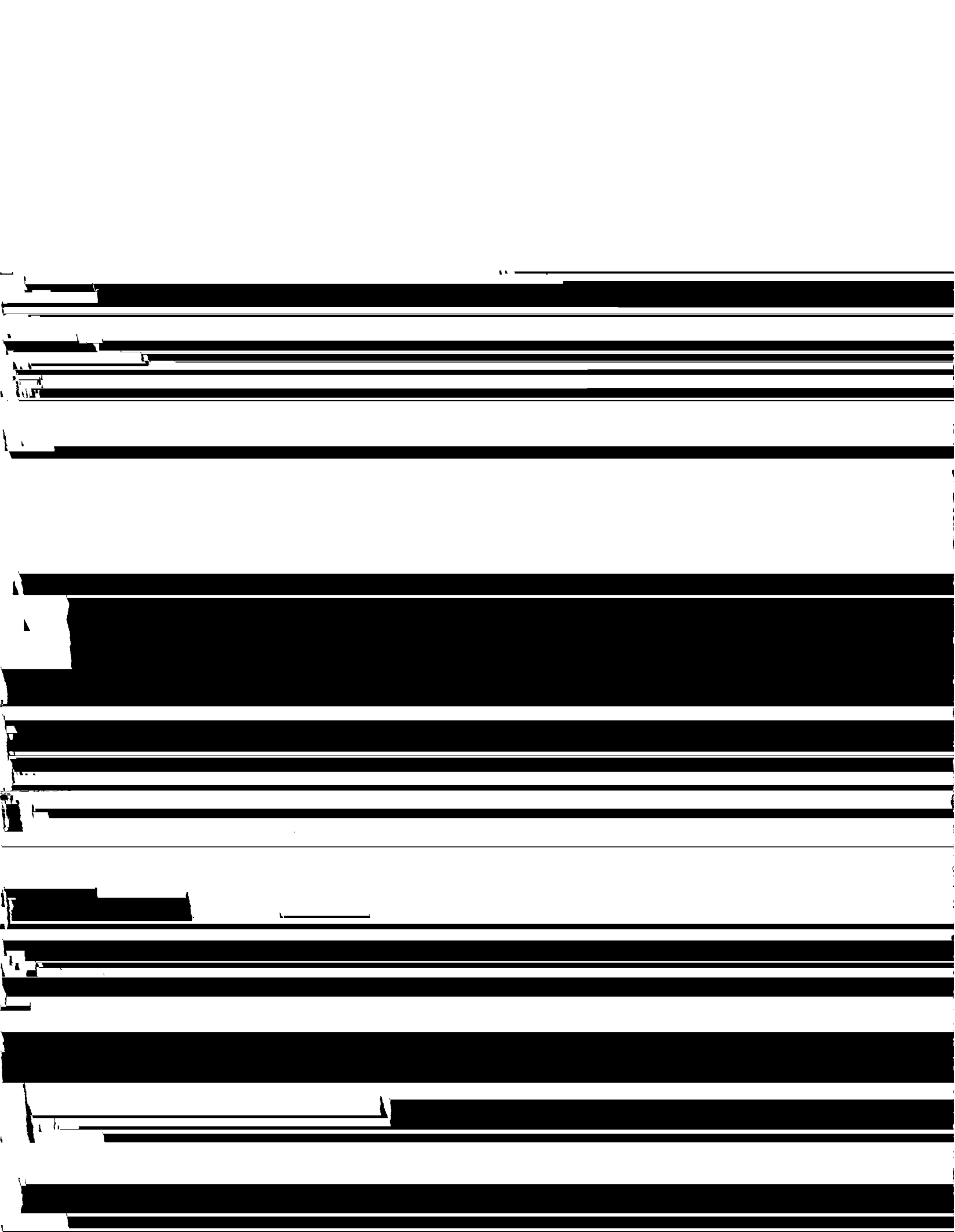


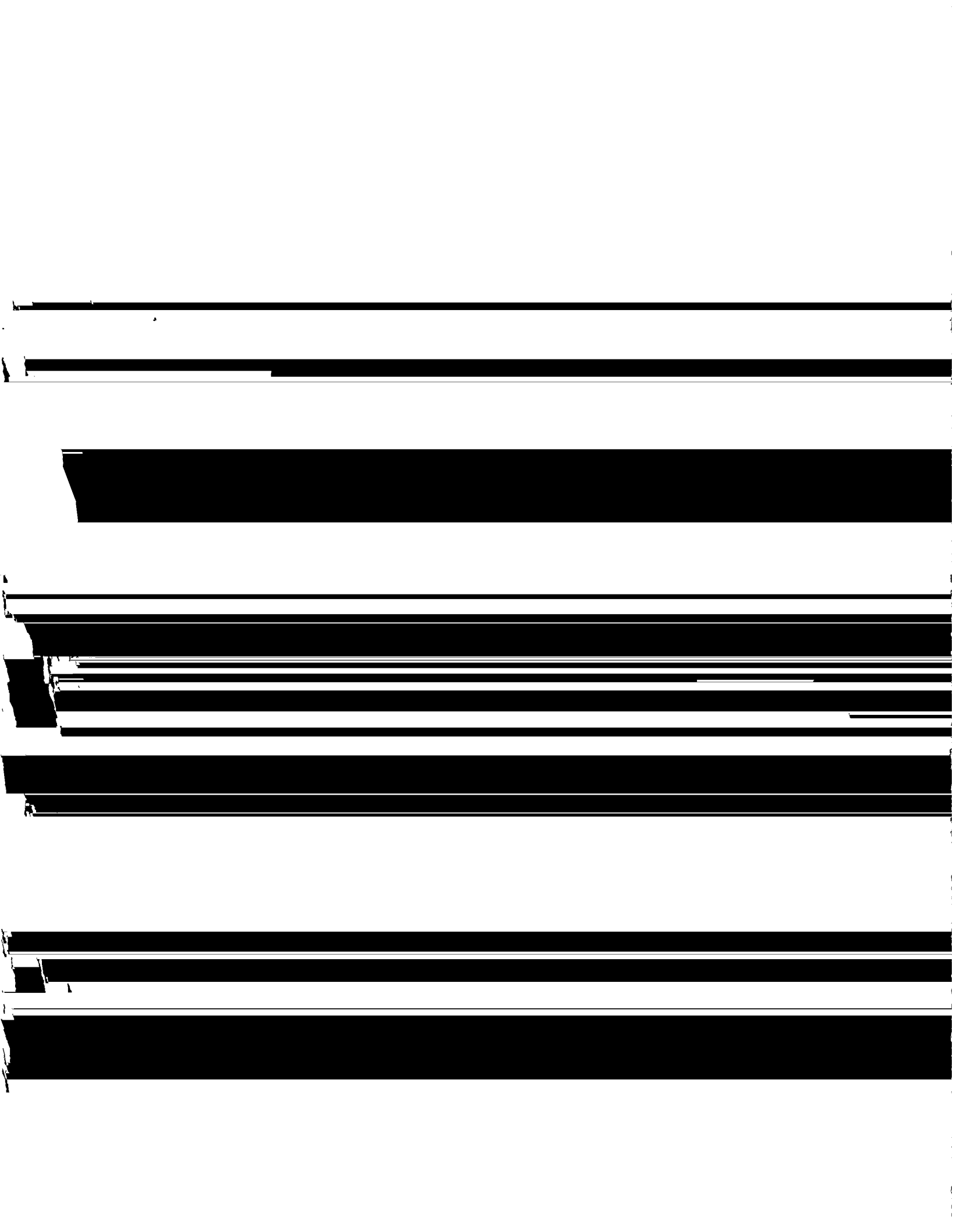


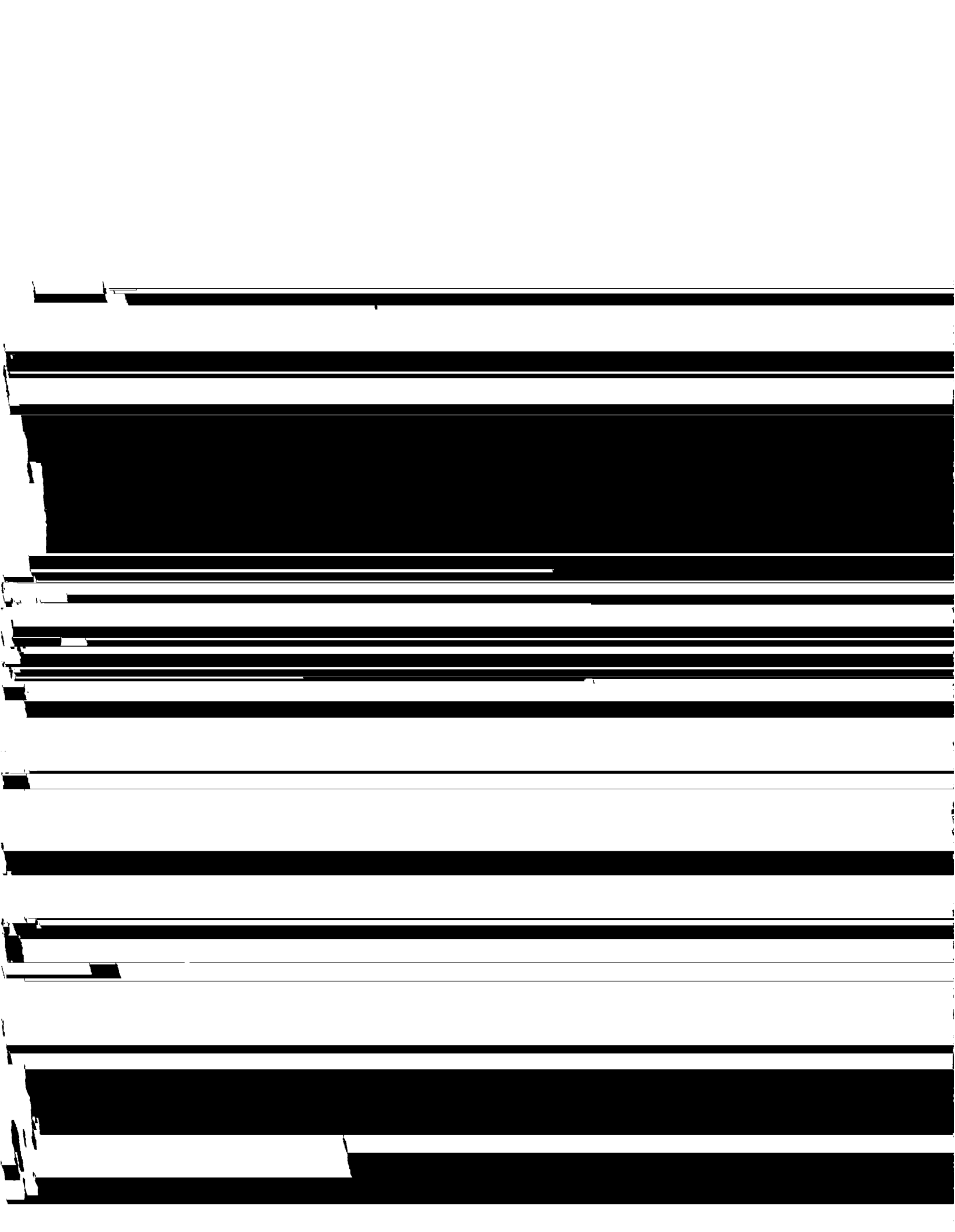


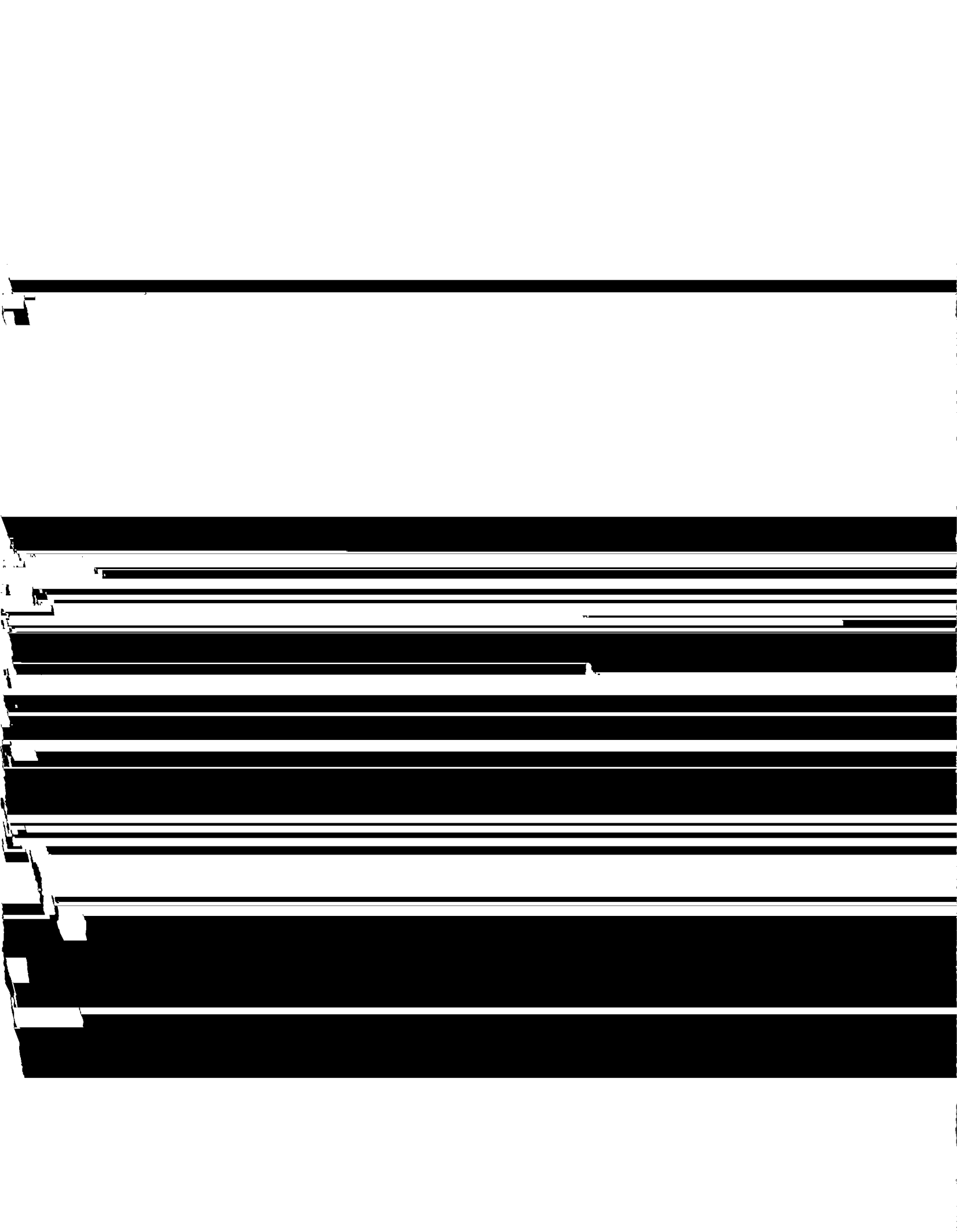


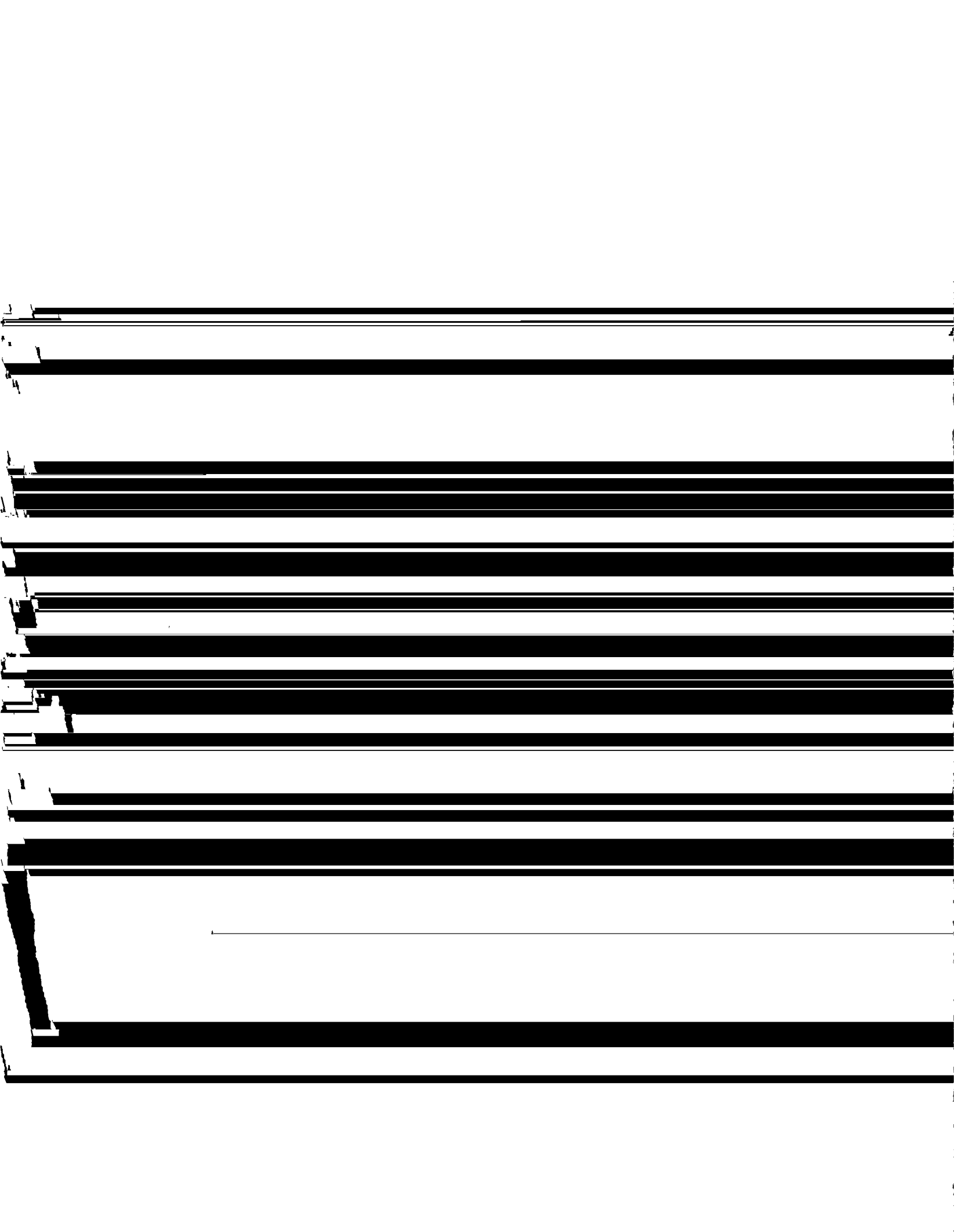


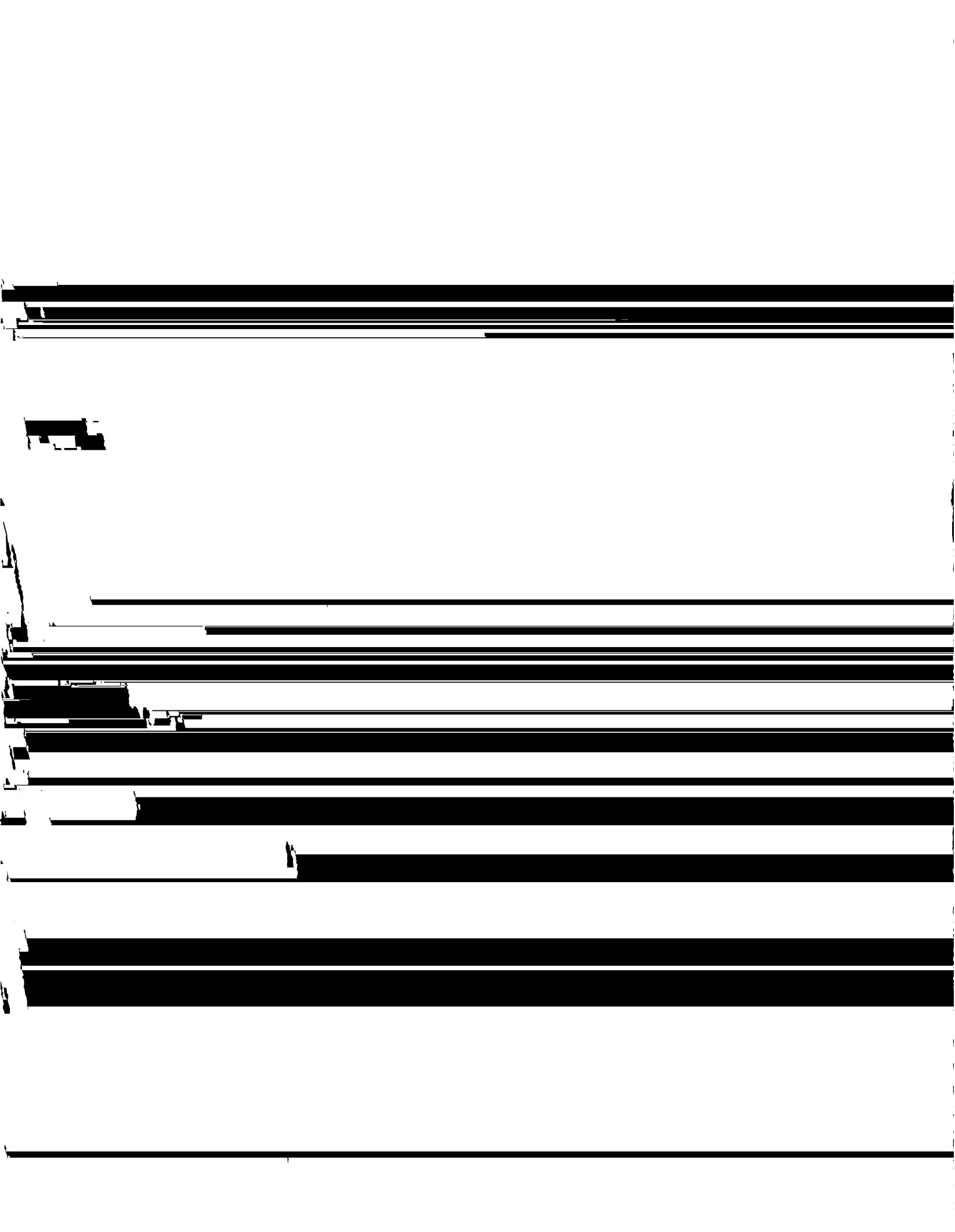




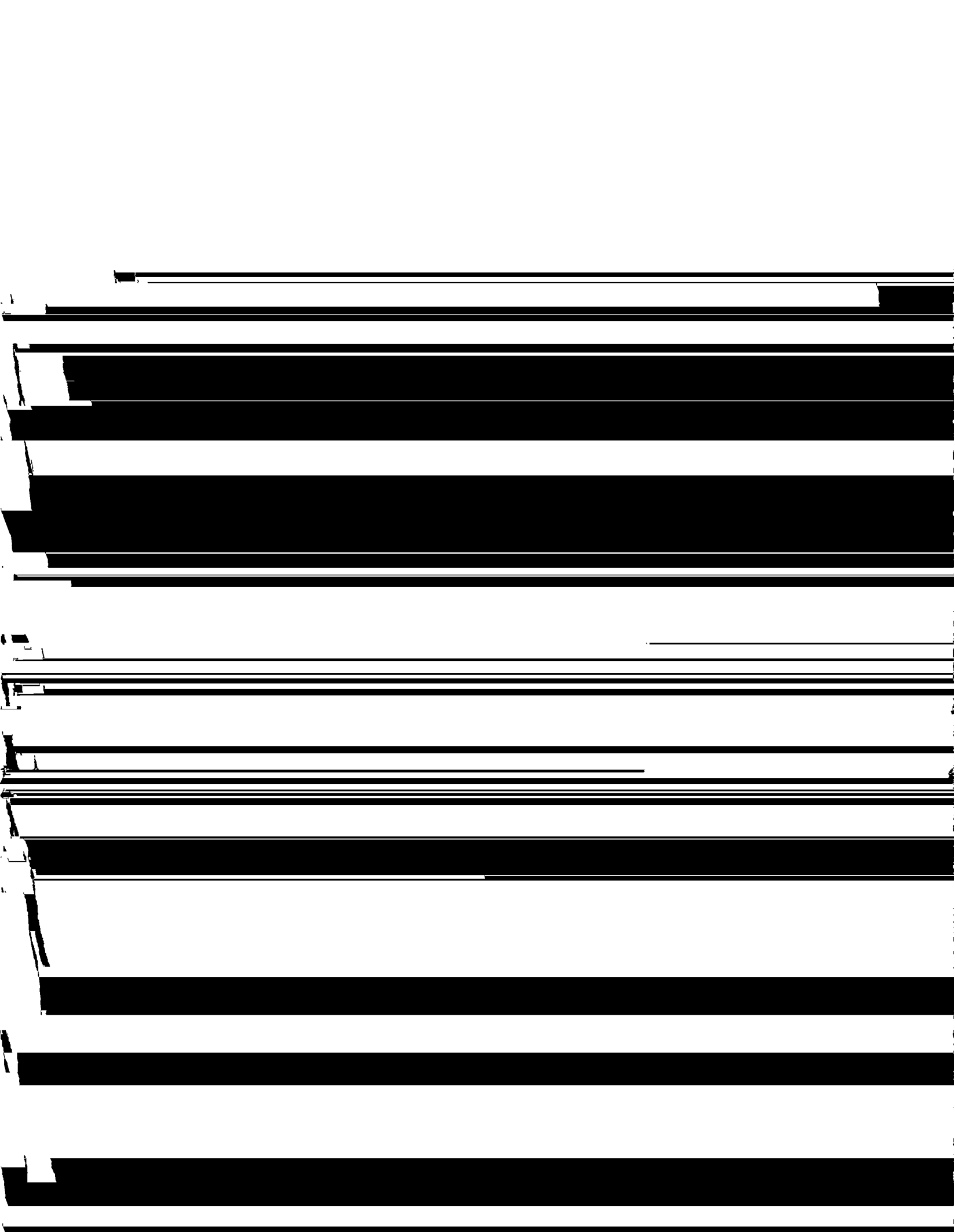


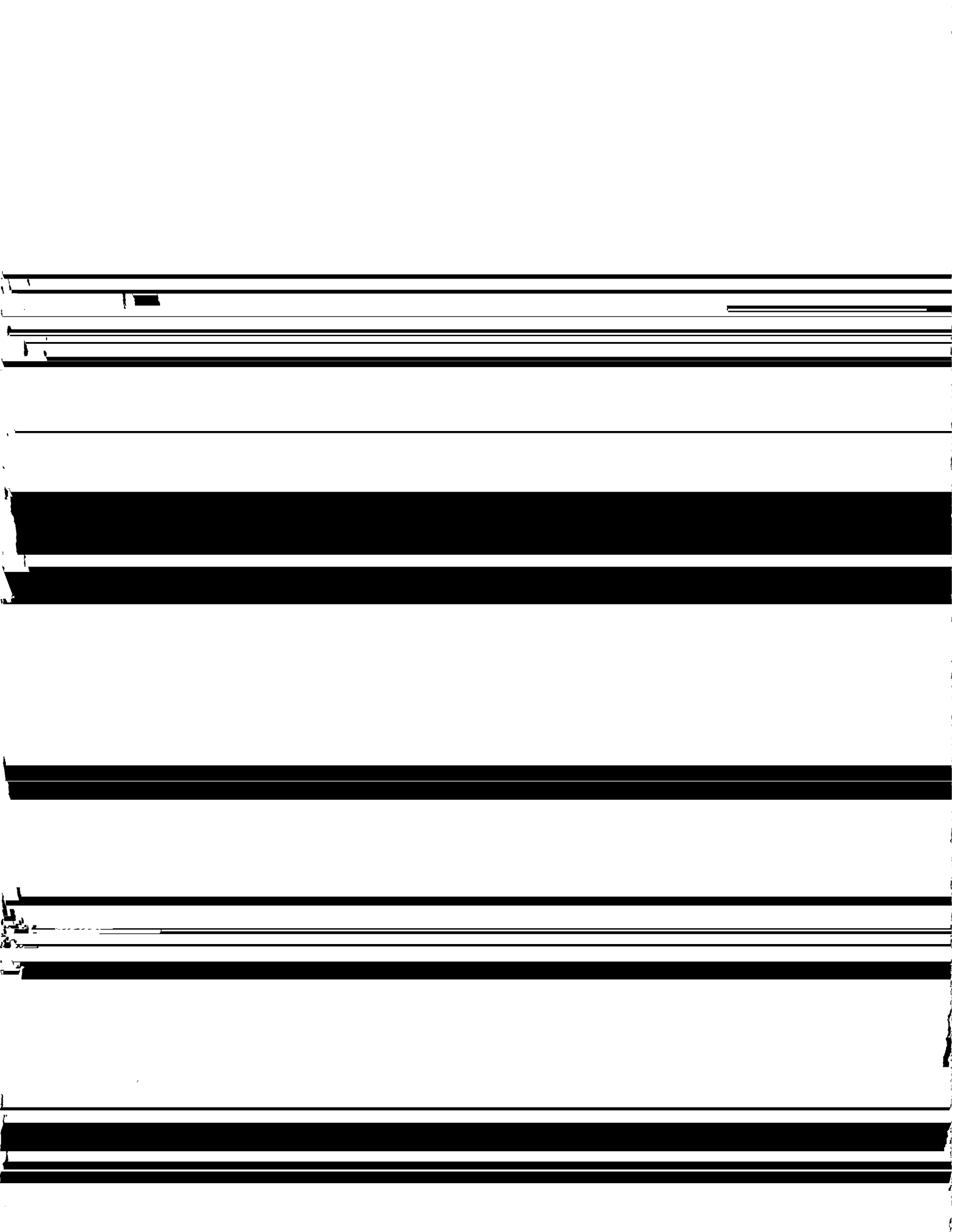






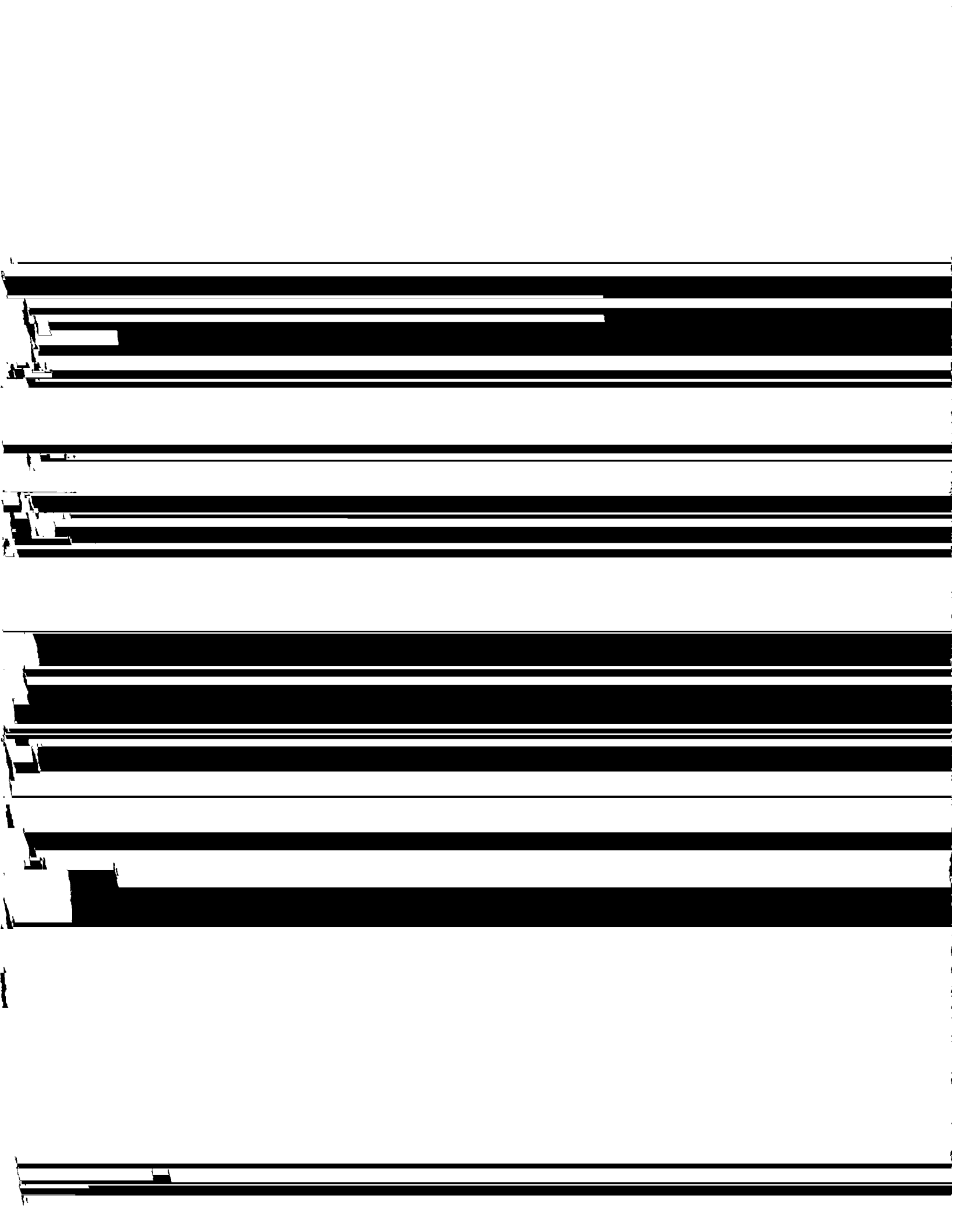


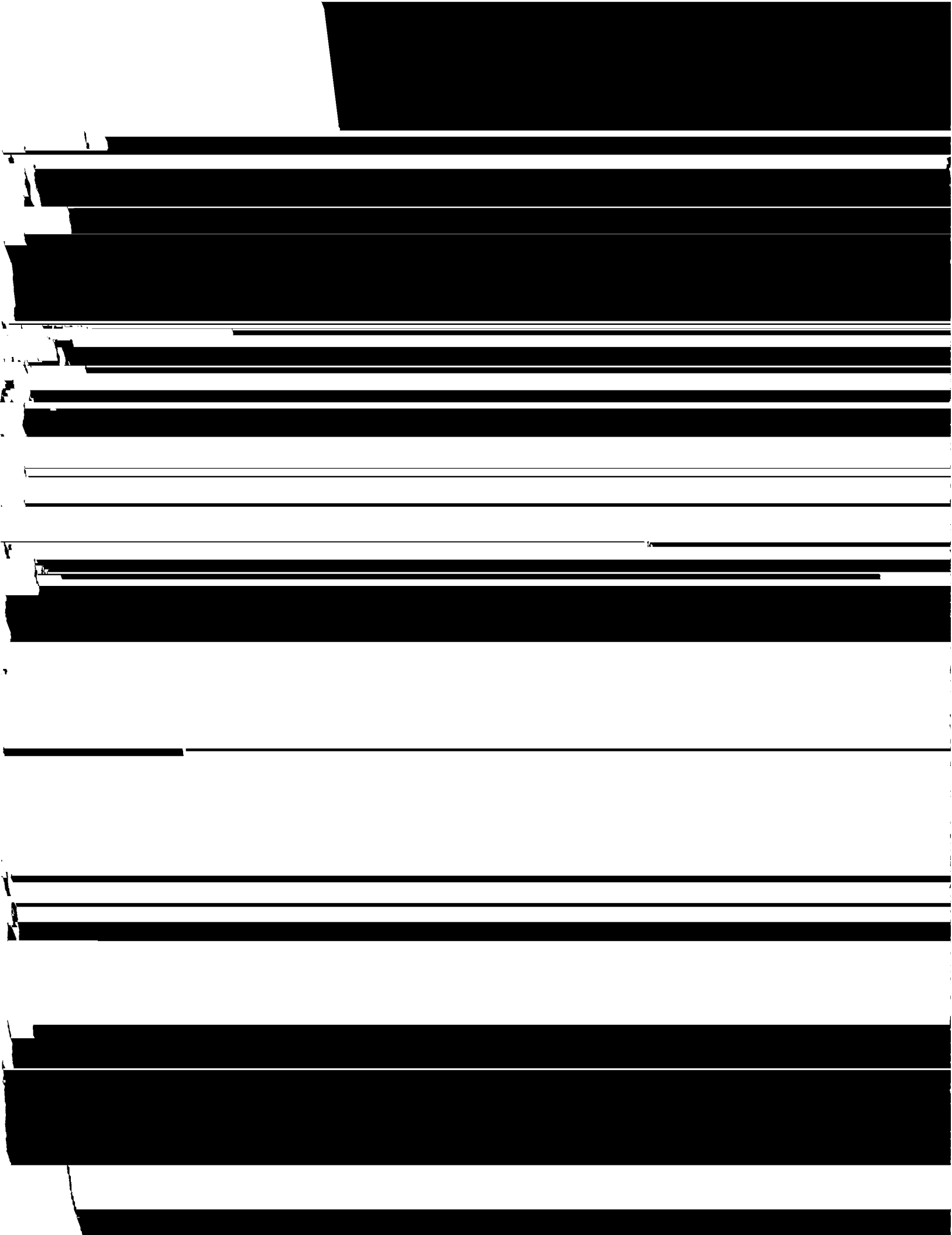


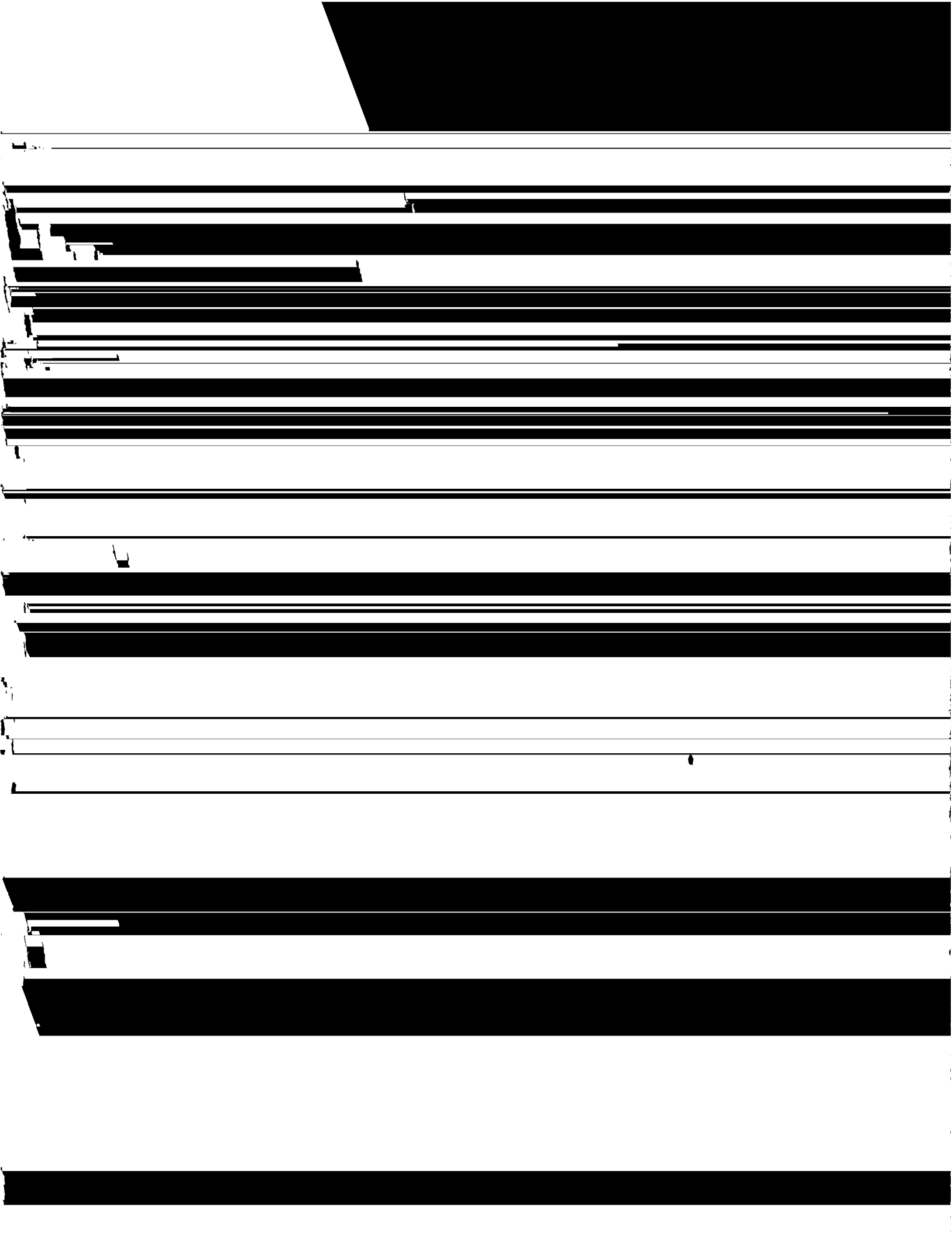












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