

PART 59 APR 08 2024

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

THE PEOPLE OF THE STATE OF NEW YORK,

- against -

DONALD J. TRUMP,

Defendant.

Index No. 71543-23

**PRESIDENT DONALD J.
TRUMP'S OPPOSITION TO
MOTION TO QUASH THE
SUBPOENA TO MARK
POMERANTZ**

President Donald J. Trump respectfully submits this memorandum of law in opposition to the People's April 3, 2024 motion to quash President Trump's subpoena *duces tecum* to former Special Assistant District Attorney Mark Pomerantz (the "Motion"). For the reasons set forth below, the Motion should be denied, and Pomerantz should be ordered to produce materials responsive to Requests 1 through 4 of the subpoena pursuant to the Court's Protective Order.

I. RELEVANT FACTS

A. Pomerantz's Role In The Investigation Of President Trump

Mark Pomerantz joined the District Attorney's Office as a Special Assistant District Attorney ("SADA") on February 2, 2021. Mot. Ex. 2 at ¶ 1 ("3/29/24 Pomerantz Aff."). After being sworn in, Pomerantz received a "data dump" from DANY of "case memos and interview notes that detailed a lot of the investigative work that had been done." MARK POMERANTZ, PEOPLE VS. DONALD TRUMP: AN INSIDE ACCOUNT 35 (2023) ("Pomerantz Inside Account"). Pomerantz "dug into the payment of hush money to Stephanie Clifford," and he did so "sitting at home on [his] computer," as he and other members of the District Attorney's Office worked remotely. *Id.* at 33-35, 84; *see also id.* at 26 ("[On February 2, 2021,] I was at home in the suburbs in front of

PART 59 APR 08 2024

my desktop computer. . . .”); *id.* at 117 (On April 21, 2021, I was working at home. I was in front of my computer as usual, struggling with documents”).

Shortly after becoming a SADA, Pomerantz began meeting with Michael Cohen via Zoom in an effort to advance DANY’s investigation of President Trump. Pomerantz’s first interview with Cohen took place on February 18, 2021; the second took place on February 26, 2021. Pomerantz Inside Account at 48. The focus of the interviews was on the facts of this case, including whether Cohen had spoken to President Trump about Clifford’s “demand for money as extortion.” *Id.* On February 28, 2021, Pomerantz sent a memo to then-District Attorney Cy Vance, Jr. summarizing the status of the investigation, including, *inter alia*, analysis of whether Clifford committed “extortion” and/or “larceny,” and whether President Trump was a “victim of blackmail.” *Id.* at 57. According to Pomerantz:

The memo recommended further investigative steps Step one would be to prove that Trump was, in effect, a blackmail victim. . . . If we established the extortion, we could go on to step two: charging Trump with money laundering The district attorney raised his eyebrows at the notion that we would be claiming that Donald Trump was a victim of blackmail, but he was intrigued by the idea.

Id.

Even after his colleagues “balked” at the notion, Pomerantz apparently set out “to look for more evidence.” Pomerantz Inside Account at 57-58. Pomerantz met with Clifford’s lawyer at the time, Keith Davidson, and made a request for information from the U.S. Attorney’s Office for the Southern District of New York (“USAO-SDNY”). *Id.*¹ Pomerantz also met with Cohen twice

¹ DANY did not acknowledge Pomerantz’s March 4, 2021 request to the USAO-SDNY until March 22, 2024, in response to the Court’s March 15, 2024 order to provide a timeline of all relevant communications. *Compare* 3/14/24 Notice at 2 *and* 3/18/24 Conroy Aff. at ¶¶ 7-21, *with* 3/22/24 Conroy Aff. at ¶¶ 11-12.

more, on March 10 and March 19, 2021. Yet “[t]he ‘zombie’ case went back into the grave” by the end of the month, Pomerantz Inside Account at 61, and Pomerantz resigned from the District Attorney’s Office in February 2022—close to a year before the grand jury was convened. 3/29/24 Pomerantz Aff. at ¶ 1.

B. Pomerantz’s Repeated Failures To Locate And Provide Discoverable Materials

According to the District Attorney’s Office, Pomerantz was asked to turn over all case- and investigation-related materials in his possession when he left DANY. 3/18/24 Colangelo Aff. at ¶ 4. DANY sent Pomerantz a second request and preservation notice in March 2022, in connection with the *People v. Trump Corporation* prosecution before Your Honor, *id.* at ¶ 5, and a third request in June 2023, after the grand jury returned an Indictment in this case, *id.* at ¶ 7.

On July 11, 2023, Pomerantz sent DANY an unspecified number of documents, emails, and text messages that he believed “may . . . not have been preserved on the DANY system.” Mot. Ex. 2-1 at ¶ 1 (“3/18/24 Pomerantz Aff.”). In the course of their “quality control review,” before finalizing the next production, DANY identified [REDACTED] [REDACTED]” 3/18/24 Colangelo Aff. at ¶ 9. So, for a *fourth time*, DANY asked Pomerantz to [REDACTED] [REDACTED]. *Id.* Only then did Pomerantz locate [REDACTED] [REDACTED], which reflected [REDACTED] [REDACTED] [REDACTED]. *Id.* Specifically, the [REDACTED] suggest there were [REDACTED] [REDACTED].

DANY produced [REDACTED] to the defense on July 24, 2023, on a hard drive containing approximately 20,000 pages of discovery. DANY did not alert the defense to their ongoing challenges obtaining discoverable materials from Pomerantz. Rather, on the same day, DANY filed their first certificate of compliance, certifying that, “after exercising due diligence and making reasonable inquiries to ascertain the existence of material and information subject to discovery under CPL § 245.20(1), the People have disclosed and made available to the defendant all known material and information that is subject to discovery” 7/24/23 Certificate of Compliance.

C. Deficiencies Identified By The Defense Prompting Further Disclosure

In January 2024, during preparation for trial and the submission of motions *in limine*, counsel for President Trump contacted DANY concerning heavy redactions made to communications involving Pomerantz and other members of the investigative team. The communications included materials “identified through [DANY’s] review of internal email messages,” produced on July 24, 2023, in an “Email Review” folder. In a series of communications with DANY, we expressed concern that many of the heavily redacted communications related to [REDACTED]

[REDACTED]. See Ex. 1 at 3-8. On January 29, 2024, we explained that “[t]hese communications are significant to our defense and possible cross examination of witnesses,” and so we again requested that the People “confirm that the redactions are appropriate and, if not, to produce unredacted versions.” *Id.* at 4-5. DANY claimed that all of the redactions fell within two categories—*i.e.*, redactions of attorney work product or redactions of names and other identifying information under the Court’s protective order—and that they had specifically “noted” when producing the

communications that they were withholding certain information on work product grounds. *Id.* at 3, 6-7. However, the letter accompanying the July 24, 2023 production stated that, “in some circumstances, we *may* have withheld parent emails or attachments where those documents were not subject to disclosure (on work product or other grounds) or where those documents were separately produced.” Ex. 2 at 1 (emphasis added). The production letter made no reference to redactions and did not include a privilege log.

We also raised in our January 2024 communications with DANY that, although one email showed [REDACTED], we had been unable to locate the corresponding text message in discovery. Ex. 1 at 4. We indicated that “it seems to us that there are responsive text messages [] that have not been produced.” *Id.* DANY filed a supplemental certificate of compliance on the same day, certifying that “the People previously disclosed and made available to the defendant all discoverable material and information known to the People at that time, except for items . . . not in the People’s actual possession despite good faith efforts and the exercise of due diligence.” 1/29/24 Certificate of Compliance at 1. DANY indicated four days later that they were “still following up” on our question concerning the unaccounted-for text message and would get back to us the following week. Ex. 1 at 2.

On the same day, DANY contacted Pomerantz *a fifth time* to request [REDACTED] [REDACTED] 3/18/24 Colangelo Aff. at ¶ 11. Pomerantz thereafter located [REDACTED], and produced them to DANY via counsel on February 8, 2024. *See id.* ¶ 12. DANY produced the communications the next day and sought to minimize their significance:

As you will see, the bulk of the attached text messages are purely administrative or otherwise not discoverable. There are also some references to information that was

previously disclosed, either verbatim or in substance. For example, there are references to calls and meetings where the substance of the call or meeting was memorialized in another document that was previously produced. And there are references to requests for consideration by a potential witness, and discussions of potential promises, rewards and inducements made to a potential witness, that were memorialized elsewhere and previously disclosed. We have not identified any information that differs in nature from information that was previously disclosed.

Ex. 1 at 1.

But the text messages between Pomerantz and Cohen's attorney, spanning more than 13 months, were not "purely administrative," and the substance was not sufficiently memorialized elsewhere in discovery. The communications included discoverable information that was not timely produced concerning DANY's willingness to minimize Cohen's federal felonies and provide Cohen other preferential treatment and benefits:

- On February 22, 2021, Davis informed Pomerantz that [REDACTED] Ex. 1 at DANYDJT00212834.
- On February 25, 2021, Davis wrote to Pomerantz that [REDACTED] *Id.* at DANYDJT00212835. In a subsequent message, Davis expressed interest in [REDACTED] [REDACTED] *Id.* at DANYDJT00212849.
- On March 14, 2021, Davis felt comfortable asserting to Pomerantz that [REDACTED] *Id.* at DANYDJT00212836.
- On March 31, 2021, Pomerantz asked Davis to [REDACTED] [REDACTED]. *Id.* at DANYDJT00212838.
- On April 21, 2021, Pomerantz informed Davis that [REDACTED] [REDACTED]. *Id.* at DANYDJT00212842.
- On July 27, 2021, Davis requested [REDACTED] [REDACTED] [REDACTED] Pomerantz agreed [REDACTED] [REDACTED]

[REDACTED] *Id.*
at DANYDJT00212847-48.

- [REDACTED]
[REDACTED] *Id.* at DANYDJT00212853.

According to DANY, after producing the above referenced [REDACTED] and justification to the defense, they also asked Pomerantz *a sixth time*, through counsel, to conduct another search of his phone and confirm that he had no communications with any witness or attorney for a witness related to the subject matter of this case. 3/18/24 Colangelo Aff. at ¶ 14. This included, supposedly, a specific request [REDACTED]. *Id.* On February 11, 2024, counsel for Pomerantz represented that he had performed such a search and confirmed that he had no other discoverable text messages. *Id.* DANY filed a supplemental certificate of compliance on February 13, 2024, claiming once again that “the People previously disclosed and made available to the defendant all discoverable material and information known to the People at that time, except for items and information . . . not in the People’s actual possession” 2/13/24 Certificate of Compliance at 1.

D. President Trump’s Motion For Discovery Sanctions

On March 8, 2024, the defense submitted a pre-motion letter to the Court seeking permission to file a motion for discovery sanctions. As part of that motion, we raised DANY’s untimely production of Pomerantz’s communications, as well as their efforts to withhold and redact discoverable communications relating to Cohen under the claim of “work product.” *See, e.g.,* Mot. to Dismiss and for Adjournment Based on Discovery Violations at 8-13, 16-17, 33-36, 39-41. The Court still has not resolved this and other aspects of the motion that did not relate to President Trump’s *Touhy* request to the USAO-SDNY concerning Cohen.

E. Cohen's Attorney Alerts DANY To Undisclosed Communications With Pomerantz

On March 13, 2024, as DANY prepared its response to President Trump's discovery motion, an attorney representing Cohen provided DANY with [REDACTED] [REDACTED]. 3/18/24 Colangelo Aff. at ¶ 15. She also provided DANY with [REDACTED], which were made public in connection with Freedom of Information Act litigation despite having never been produced in connection with this case. DANY produced the materials to the defense that evening. *See* Ex. 3.

Upon receiving the [REDACTED] on March 13, 2024, the defense sent a letter to DANY regarding the untimely production of discoverable materials. Ex. 4. We emphasized that their piecemeal productions strongly suggested that DANY had not undertaken a systematic and reliable collection of Pomerantz's communications, including those regarding benefits provided and/or promised to Cohen, a key prosecution witness, despite DANY's repeated certifications regarding the completion of discovery. *Id.* at 1. For example, the newly produced [REDACTED]

[REDACTED] contained [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED].

It is also abundantly clear from [REDACTED]
[REDACTED]
[REDACTED].

DANY apparently contacted Pomerantz *a seventh time*, through counsel the next day, to ask why the text messages provided by Cohen’s attorney were not included in his numerous productions since leaving DANY in 2022. *See* 3/18/24 Colangelo Aff. at ¶ 16. Pomerantz’s counsel informed DANY on March 16, 2024, that Pomerantz had not located the text messages with Cohen’s attorney when he previously searched for them—even after having been asked to specifically look for communications with her. *See id.* at ¶¶ 13, 17. Pomerantz provided DANY a brief affirmation concerning his search on March 18, 2024. Based on his affirmation and those of the prosecution team, it is now abundantly clear that DANY impermissibly relied on Pomerantz to self-disclose discoverable communications on his devices, which he then repeatedly failed to do in a manner consistent with DANY’s disclosure obligations and basic diligence expectations for an experienced former prosecutor and attorney.

F. President Trump’s Subpoena To Pomerantz For Discoverable Materials

On the evening of March 18, 2024, counsel for President Trump issued a subpoena to Pomerantz. *See* Mot. Ex. 1. The subpoena includes four narrowly tailored requests for communications and documents that are relevant and material to this proceeding:

1. All documents relating to the February 28, 2021 memorandum evaluating, *inter alia*, whether (a) Stephanie Clifford, a/k/a “Stormy Daniels,” committed “extortion” and/or “larceny,” and (b) whether President Trump was a “victim of blackmail.”
2. For the period from February 2, 2021, through March 23, 2022, all documents reflecting communications—including communications using personal (non-DANY) electronic devices or personal (non-DANY) email and electronic messaging accounts—with Michael Cohen, Lanny Davis, Danya Perry, or Jeremy Rosenberg relating to:
 - a. Cohen’s recollection of certain events and interactions relevant to the case;
 - b. Any form of bias or animosity toward President Trump; or
 - c. Requests for benefits or other consideration, including requests for submissions to judges presiding over cases in which Cohen was a party or otherwise interested.

3. For the period from February 2, 2021, through March 23, 2022, all documents reflecting communications—including communications using personal (non-DANY) electronic devices or personal (non-DANY) email and electronic messaging accounts—with potential witnesses other than Cohen, or those witnesses' counsel, relating to facts at issue in DANY's investigation of President Trump.
4. For the period from March 23, 2022 through the present, all documents reflecting communications with DANY personnel regarding the collection of materials for purposes of discovery, disclosure, or litigation in this case.

Id.

II. APPLICABLE LAW

The CPL provides that an attorney for a criminal defendant “may issue a subpoena of such court, subscribed by himself, for the attendance in . . . court of any witness whom the defendant is entitled to call in such action or proceeding.” CPL § 610.20(3). A subpoena is appropriate where the “evidence sought is reasonably likely to be relevant and material to the proceedings, and the subpoena is not overbroad or unreasonably burdensome.” CPL § 610.20(4). “The relevant and material facts in a criminal trial are those bearing upon ‘the unreliability of either the criminal charge or of a witness upon whose testimony it depends.’” *People v. Kozlowski*, 869 N.Y.S.2d 848, 903 (2008) (quoting *People v. Gissendanner*, 48 N.Y.2d 543, 550 (1979)). “[A]ccess must be afforded . . . , for example, when a request . . . is directed toward revealing specific biases, prejudices or ulterior motives of the witness as they may relate directly to issues or personalities in the case at hand.” *Gissendanner*, 48 N.Y.2d at 548 (cleaned up). Access must also be afforded to materials that can be used to “attack[] the reliability of the investigation” and argue that it was “shoddy.” *Kyles v. Whitley*, 514 U.S. 419, 442 n.13, 446 (1995).

III. DISCUSSION

A. The Subpoena To Pomerantz Was Properly Issued Pursuant To CPL § 610.20(3)

The People claim that President Trump’s subpoena to Pomerantz violates CPL § 610.20(3), and should be quashed, because it “fails to include the Court’s indorsement despite being directed at a former employee in his capacity as an erstwhile officer or representative of the District Attorney’s Office.” Mot. at 6. This is wrong. CPL § 610.20(3) provides that “[a]n attorney for a defendant may not issue a subpoena duces tecum of the court directed to *any department, bureau or agency of the state or of a political subdivision thereof*, or to *any officer or representative thereof*, unless the subpoena is indorsed by the court and provides at least three days for the production of the requested materials.” *Id.* (emphasis added). Pomerantz is not an officer or representative of DANY or of any other department or bureau of the State. The People cite no case law or statute indicating that he should be treated as one, and the defense is unaware of any such authority. Pomerantz resigned from DANY in February 2022, more than a year before the Indictment was brought in this case. He proceeded then to write and publish a tell-all book concerning his time at DANY—one which District Attorney Bragg and his office have publicly criticized, claimed they had no prior access to, and sought to minimize as an unofficial account of the investigation.²

Moreover, the People appear to have relied on the fact that Pomerantz is *not* an employee of DANY in certifying that they produced all discoverable materials in DANY’s possession, notwithstanding the untimely seriatim production of certain discoverable [REDACTED]

² See, e.g., Molly-Crane Newman, Manhattan DA Alvin Bragg is appalled by book about his office’s Trump probe, N.Y. DAILY NEWS (Feb. 7, 2023, 10:20 p.m.), <https://www.nydailynews.com/2023/02/07/manhattan-da-alvin-bragg-is-appalled-by-book-about-his-offices-trump-probe>.

████████████████████. See 2/13/24 Certificate of Compliance at 2 (“These materials were not in the People’s actual possession when the Certificate of Compliance was filed because they were provided to the People on February 8, 2024”). The People should not be permitted to have it both ways. See CPL § 245.20(7) (requiring a “presumption in favor of disclosure” when interpreting the discovery required by CPL Article 245); see also CPL § 245.20(1) (“The prosecution shall disclose to the defendant . . . all items and information that relate to the subject matter of the case and are in the possession, custody or control of the prosecution or persons under the prosecution’s direction or control . . .”).

B. The Subpoena Seeks Admissible Evidence That is Relevant And Material To The Proceedings

The March 18, 2024 subpoena to Pomerantz properly seeks evidence that is relevant and material to demonstrate witness motives, biases, and hostility toward President Trump, and to attack the integrity of the investigation as authorized by the Supreme Court in *Kyles v. Whitley*, 514 U.S. 419, 447 & n.13 (1995). See, e.g., *Lindsey v. King*, 769 F.2d 1034, 1042 (5th Cir. 1985) (reasoning that evidence “discrediting, in some degree, of the police methods employed in assembling the case against him” should have been disclosed for use at trial).

Request 1 seeks documents relating to a February 28, 2021 memorandum in which Pomerantz posited that Clifford had perpetrated serious crimes against President Trump, such as “extortion” and/or “larceny,” and that President Trump could be considered a “victim of blackmail.” Request 1 is neither speculative nor a fishing expedition because Pomerantz himself discussed the memorandum in his book. See *Pomerantz Inside Account* at 57.

President Trump is entitled to responsive materials. During the investigation, Pomerantz believed that one of the People’s star witnesses had committed serious crimes against President Trump. This theory and the manner in which it was handled at DANY is favorable to the defense

under *Brady* and *Giglio*. For example, the People’s decision not to prosecute Clifford despite Pomerantz’s memorandum regarding Clifford’s criminal exposure supports an inference that the People conferred a benefit on Clifford in exchange for testimony they regard as favorable. Because this benefit is relevant to establish a motive for Clifford to testify in a way the People like, notwithstanding the truth, the memorandum is admissible at trial as extrinsic evidence to support the cross-examination of Clifford. *See* Guide to N.Y. Evid. Rule 6.13; Note to Guide to N.Y. Evid. Rule 6.11 (explaining that “[i]mpeaching evidence is not collateral when . . . independently admissible to impeach the witness, e.g. show the witness’s bias, [or] hostility” (citations omitted)); *see also* Note to Guide to N.Y. Evid. Rule 6.13 (“Illustrative examples of partiality recognized by the Court include a witness’s bias in favor of the party calling the witness . . . or the witness’s interest in the case, personal, financial or other.” (citations omitted)). “In criminal proceedings, both the United States Supreme Court and the Court of Appeals have cautioned that the exercise of discretion to limit or exclude evidence of partiality of witnesses testifying against defendants must be exercised in light of the Sixth Amendment’s right of confrontation guaranteed to the defendant.” Note to Guide to N.Y. Evid. Rule 6.13 (citations omitted).

The People cannot successfully object to Request 1 on the basis that they disagree with President Trump’s theories of bias and motive. *See, e.g., United States v. Agurs*, 427 U.S. 97, 108 (1976) (“[B]ecause the significance of an item of evidence can seldom be predicted accurately until the entire record is complete, the prudent prosecutor will resolve doubtful questions in favor of disclosure.”); *United States v. Edwards*, 887 F. Supp. 2d 63, 68 (D.D.C. 2012) (“It is not for the prosecutor to decide not to disclose information that is on its face exculpatory based on an assessment of how that evidence might be explained away or discredited at trial, or ultimately rejected by the fact finder.” (cleaned up)); *United States v. Stevens*, 2008 WL 8743218, at *5 n.1

(D.D.C. 2008) (“Obviously, a statement may be exculpatory and subject to disclosure to the defense, even if the government believes the statement is untrue . . .”).

Requests 2 and 3 seek specific categories of statements by witnesses: substantive statements by Cohen regarding his recollection of events that are the subject of his testimony, communications reflecting bias or animosity toward President Trump, and communications regarding benefits for witnesses. For example, the all-too-cozy relationship between Pomerantz, Cohen, and his attorneys reflected in text messages and other materials is core impeachment material with respect to benefits to Cohen from that special treatment and the lack of integrity in the investigation demonstrated by Pomerantz’s failure to maintain an arm’s-length relationship with another one of the People’s star witnesses. Request 4 seeks communications between Pomerantz and DANY regarding evidence collection, which is another category of documents that are relevant to the lack of integrity of the investigation under *Kyles* and its progeny.

While the People have been “diligent,” in the sense that they have been forced to request materials from Pomerantz numerous times as additional failures surfaced, their efforts cannot fairly be called “comprehensive.” *See, e.g.*, Mot. at 14. Time and again, objective facts have demonstrated that Pomerantz has not complied with their requests, but they did not do more than repeat the same ineffectual request. As another example, Pomerantz claims to have drawn a distinction between materials stored on his personal electronic devices, and materials he believes DANY “retained” or “preserved on a DANY system.” Mot. Ex. 2 ¶ 5. Based on the repeated failures of Pomerantz to fully comply with DANY’s requests for discoverable materials, an enforceable subpoena from President Trump is necessary.

Specifically, the requests in the subpoena are appropriately directed to Pomerantz in light of his use of a home computer to conduct DANY business, as well as his apparent failure—to this day—to permit careful review of the electronic devices he used during the investigation so that all

discoverable material can be reliably collected and produced. The People are seeking to cloak Pomerantz with the status of a current DANY employee, which he lacks, while Pomerantz has failed to do what is appropriate to ensure CPL Article 245 compliance under the circumstances presented, which is permit a forensic examination of the devices used by Pomerantz during the investigation conducted by a member of the prosecution team without the incentives faced by Pomerantz to hide from public view certain of his communications.

The People were required to disclose *all* of the details of their handling of requests for benefits and favors by Cohen, Clifford, and any other witness. *See* CPL § 245.20(1)(l) (requiring disclosure of, *inter alia*, “requests for consideration by persons who may be called as witnesses and copies of all documents relevant to a promise, reward or inducement”). CPL § 245.20(1)(k) also “contains a listing of information favorable to the defendant that must be disclosed (whether in ‘tangible’ form or not) drawn from *Brady v. Maryland*, 373 U.S. 83 (1963), *Giglio v. United States*, 405 U.S. 150 (1972) and their progeny, as well as New York State Rules of Professional Conduct, Rule 3.8(b); and the New York State Unified Court System’s Administrative Order of Disclosure.” *Practice Commentaries*, CPL § 245.10 (Prosecutor’s Obligations: Items of ‘automatic’ disclosure).

CPL § 245.20(1)(k) is even broader than *Brady*. *See People v. Hamizane*, 80 Misc. 3d 7, 10-11 (2d Dep’t 2023); *see also Pennant*, 73 Misc. 3d at 756 (“Contrary to the People’s argument, this obligation is not merely a codification of their *Brady* and *Giglio* obligations, as they existed prior to the enactment of Article 245.”). It requires disclosure of, for example, “*All evidence and information*” that “tends” to “mitigate the defendant’s culpability as to a charged offense” or “impeach the credibility of a testifying prosecution witness.” CPL § 245.20(1)(k)(ii), (iv) (emphasis added). Subsection (1)(k)(iv), in particular, “broadly requires disclosure of *all*

impeachment evidence.” *Matter of Jayson C.*, 200 A.D.3d 447 (1st Dep’t 2021) (ordering disclosure of all impeachment evidence in juvenile delinquency case (emphasis added)); *see also People v. Rodriguez*, 77 Misc. 3d 23, 25 (1st Dep’t 2022) (dismissing information on statutory speedy trial grounds where “[t]he People failed to provide relevant records to defendant, including underlying impeachment materials pursuant to CPL 245.20(1)(k)” (emphasis added)). This obligation “goes beyond what *Brady* required.” *Hamizane*, 80 Misc. 3d at 11 (citing six cases); *see also People v. Best*, 2022 WL 4231146, at *3 (Crim. Ct. Queens Cnty. Sept. 13, 2022) (“CPL 245.20(1)(k) goes beyond what *Brady* required. For example, this provision jettisons the ‘materiality’ requirement. Furthermore, ‘impeachment evidence and information is not limited to that which is related to the subject matter of the underlying case.’” (cleaned up)); *see also Pennant*, 73 Misc. 3d at 756.

Requests for “all” documents or communications within a particular category are not indicative of general discovery requests or fishing expeditions, *see, e.g.*, Mot. at 7, and they are not unduly burdensome under the circumstances presented, *id.* The Court of Appeals so held in *Kozlowski*, where the challenged subpoena sought “[a]ll memoranda and notes” relating to 19 topics. 11 N.Y.3d at 235; *see also People v. Duran*, 32 Misc.3d 225, 227, 230 (Crim. Ct. Kings Cnty. 2011) (denying motion to quash subpoena seeking “any and all” video surveillance and records); *Ensign Bank, F.S.B. v. Gerald Modell, Inc.*, 163 A.D.2d 149, 149 (1990) (where a discovery request is “specific enough to apprise defendant of the categories of items sought,” use of the term “all” is not overbroad or overly burdensome).

Finally, claims of “work product” and other purported privileges are not a basis for quashing this subpoena or withholding from President Trump discovery that is called for by the state and federal constitutions. In addition to the February 2021 memorandum, there is no basis

for withholding from the defense [REDACTED]. See Ex. 5. The draft is plainly “relevant” to Cohen’s request for a “reward” in the form of a letter to federal authorities. CPL § 245.20(1)(l). Any privilege-related claim regarding the draft is further eviscerated by the [REDACTED], see Ex. 3 at DANYDJT00215212. There is no valid basis for claiming that it is protected work product.

Neither the People nor Pomerantz should be permitted to withhold materials on this basis. See *United States v. Nobles*, 422 U.S. 225, 239 (1975) (“The privilege derived from the work-product doctrine is not absolute.”); *United States v. Armstrong*, 517 U.S. 456, 474-75 (1996) (Breyer, J., concurring) (reasoning that “work-product immunity” under Federal Rules of Criminal Procedure “does not alter the prosecutor’s duty to disclose material that is within *Brady*,” which is “based on the Constitution”). “For example, where there is reason to believe the documents sought may shed light on government misconduct, the privilege is routinely denied, on the grounds that shielding internal government deliberations in this context does not serve the public’s interest in honest, effective government.” *In re Sealed Case*, 121 F.3d 729, 738 (D.C. Cir. 1997) (cleaned up). At minimum, Pomerantz should be required to submit any documents that he is seeking to withhold on the basis of the work product doctrine or a privilege to the Court for *in camera* review. See, e.g., *Kozlowski*, 11 N.Y.3d at 244 n.12 (“A trial court may conduct an *in camera* review of subpoenaed materials to assess an opposing party’s privilege claims.”).

Accordingly, the subpoena meets the requirements of CPL § 610.20.

IV. CONCLUSION

For the foregoing reasons, the Court should deny the People's motion to quash the subpoena and order Pomerantz to produce responsive materials pursuant to the Court's protective order.

Dated: April 5, 2024
New York, New York

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SUPREME COURT OF THE STATE OF NEW YORK
YORK COUNTY OF NEW YORK

THE PEOPLE OF THE STATE OF NEW YORK,

- against -

DONALD J. TRUMP,

Defendant.

Index No. 71543-23

**AFFIRMATION OF TODD
BLANCHE IN SUPPORT OF
PRESIDENT DONALD J.
TRUMP'S OPPOSITION TO
MOTION TO QUASH THE
SUBPOENA TO MARK
POMERANTZ**

Todd Blanche, a partner at the law firm Blanche Law PLLC, duly admitted to practice in the courts of the State of New York, hereby affirms the following to be true under penalties of perjury:

1. I represent President Donald J. Trump in this matter and submit this affirmation and the accompanying memorandum of law in support of President Trump's opposition to the motion to quash President Trump's March 18, 2024 subpoena *duces tecum* to Mark Pomerantz.

2. This affirmation and the accompanying memorandum of law and exhibits are submitted upon my personal knowledge or upon information and belief, the source of which is my communications with prosecutors and with other counsel, my review of the documents in the case file, a review of the available discovery, and an independent investigation into the facts of this case.

3. Attached as Exhibit 1 is a true and accurate copy of defense counsel's January 27, 2024, to February 9, 2024 email communications with the People concerning Pomerantz communications, and [REDACTED] attached to the People's email on February 9, 2024.

4. Attached as Exhibit 2 is a true and accurate copy of the People's July 24, 2023 production cover letter.

5. Attached as Exhibit 3 is a true and accurate copy of the People's March 13, 2024 email concerning the production of [REDACTED] provided in the attached .zip file.

6. Attached as Exhibit 4 is a true and accurate copy of defense counsel's March 13, 2024 letter to the People.

7. Attached as Exhibit 5 is a true and accurate copy of the [REDACTED] produced by the People in discovery.

8. I incorporate by reference all factual statements made in the accompanying memorandum of law.

WHEREFORE, for the reasons set forth in the accompanying memorandum of law, President Trump respectfully submits that the Court should deny the motion to quash the subpoena *duces tecum* to Pomerantz and order Pomerantz to produce responsive materials pursuant to the Court's protective order.

Dated: April 5, 2024
New York, New York

By: /s/ Todd Blanche
Todd Blanche
Blanche Law PLLC
99 Wall Street, Suite 4460
New York, NY 10005
212-716-1250
toddblanche@blanchelaw.com

Attorney for President Donald J. Trump

EXHIBIT 1

From: [Mangold, Rebecca](#)
To: [Todd Blanche](#); [Hoffinger, Susan](#); [Conroy, Christopher](#); [Ellis, Katherine](#); [REDACTED]; [Steinglass, Joshua](#); [Colangelo, Matthew](#)
Cc: [Gedalia Stern](#); [Susan Necheles](#) ([REDACTED]); [Emil Bove](#); [Stephen Weiss](#)
Subject: RE: People v. Trump, 71543-23
Date: Friday, February 9, 2024 4:07:26 PM
Attachments: [image001.png](#)
[image006.png](#)
[image003.png](#)
[image004.png](#)
[REDACTED]

Todd,

Following up on the email below, we are producing today [REDACTED] [REDACTED], which we have also attached here. In an exercise of our discretion pursuant to the presumption of openness specified in CPL § 245.20(7), we went beyond our disclosure obligations under CPL § 245.20(1) and redacted only references to [REDACTED] [REDACTED] from the text chain. We reiterate that the production of any information beyond our disclosure obligations does not constitute a waiver of our rights to withhold work product or material that is not the subject-matter of the case.

As you will see, the bulk of the attached [REDACTED] are purely administrative or otherwise not discoverable. There are also some references to information that was previously disclosed, either verbatim or in substance. For example, there are references to calls and meetings where the substance of the call or meeting was memorialized in another document that was previously produced. And there are references to requests for consideration by a potential witness, and discussions of potential promises, rewards and inducements made to a potential witness, that were memorialized elsewhere and previously disclosed. We have not identified any information that differs in nature from information that was previously disclosed.

We note that these materials were not in the People's actual possession until late in the day yesterday, despite good faith efforts and the exercise of due diligence in making reasonable inquiries to locate and collect these materials, including through multiple collections of potentially-discoverable information before the People's initial discovery deadline, which included the collection of text messages and other materials identified through our own quality-control review.

With this production, we believe that we have addressed all of your questions below. We remain available to discuss if you have any additional questions.

Becky

Rebecca G. Mangold
Assistant District Attorney
New York County District Attorney's Office
80 Centre Street, New York, NY 10013

From: Mangold, Rebecca <[REDACTED]>
Sent: Friday, February 2, 2024 5:22 PM
To: 'Todd Blanche' <[REDACTED]> Hoffinger, Susan <[REDACTED]>
Conroy, Christopher <[REDACTED]> Ellis, Katherine <[REDACTED]>
[REDACTED] <[REDACTED]> Steinglass, Joshua <[REDACTED]> Colangelo,
Matthew <[REDACTED]>
Cc: Gedalia Stern <[REDACTED]> Susan Necheles ([REDACTED])
<[REDACTED]> Emil Bove <[REDACTED]> Stephen Weiss
[REDACTED]
Subject: RE: People v. Trump, 71543-23

Todd,

We re-reviewed the redactions of the documents that you identified below and can confirm that all of the redactions fell into the two categories that we previously described (*i.e.*, redactions of attorney work product or redactions consistent with the Court's protective order). While we cannot describe the substance of the redacted information, we note the following for additional context:

- All of the redacted emails that you identified are purely internal communications among DANY / case team personnel about the case. If any part of an email chain contained external recipients, we left that portion unredacted.
- As you noted, certain internal case team emails contained statements reflecting the team's non-privileged communications with defense counsel (and other external parties). Where non-privileged communications were memorialized in an email chain that was otherwise work product protected, we disclosed those portions of the internal documents reflecting the team's non-privileged communications and redacted the surrounding work product communications.
- In a number of cases, in an exercise of our discretion pursuant to the presumption of openness specified in CPL § 245.20(7), we went beyond our disclosure obligations under CPL § 245.20(1) in unredacting information in the emails. We reiterate that the production of any such information does not constitute a waiver of any of our right to withhold work product under CPL § 245.65.
- Where the unredacted portion of an email referenced a discussion, call, or document relating to a witness, we separately produced the full notes of that discussion or call, and/or the underlying document, if applicable, although we withheld internal work product drafts of documents. With respect to your questions on Mr. Cohen and Mr. Pecker, we confirm that this included all promises, rewards and inducements made to potential witnesses, requests for consideration by potential witnesses, and copies of any documents relevant to a promise, reward or inducement, consistent with CPL § 245.20(1)(l).

We are still following up on your final question on DANYEMAIL00036, and will get back to you on that next week.

Becky

Rebecca G. Mangold
Assistant District Attorney
New York County District Attorney's Office
80 Centre Street, New York, NY 10013

From: Todd Blanche <[REDACTED]>
Sent: Monday, January 29, 2024 9:05 AM
To: Mangold, Rebecca <[REDACTED]> Hoffinger, Susan <[REDACTED]>
Conroy, Christopher <[REDACTED]> Ellis, Katherine <[REDACTED]>
<[REDACTED]> Steinglass, Joshua <[REDACTED]> Colangelo,
Matthew <[REDACTED]>
Cc: Gedalia Stern <[REDACTED]> Susan Necheles ([REDACTED])
<[REDACTED]> Emil Bove <[REDACTED]> Stephen Weiss
<[REDACTED]>
Subject: [EXTERNAL] RE: People v. Trump, 71543-23

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Becky,

Thank you for your detailed response. We are not asking the People to violate the Court's protective order nor are we asking the People to disclose privileged, work product communications that the law protects from disclosure. Our concern is that there are a series of redacted emails produced by the People where the redacted portions appear to contain material that should not have been redacted. Appreciating the effort you indicate below that the People went through prior to production, I highlight a few examples that gave rise to our concerns:

DANYEMAIL00013
DANYEMAIL00015
DANYEMAIL00016
DANYEMAIL00018
DANYEMAIL00036
DANYEMAIL00045
DANYEMAIL00053
DANYEMAIL00070
DANYEMAIL00130

DANYEMAIL00142
DANYEMAIL00153
DANYEMAIL00165
DANYEMAIL00166
DANYEMAIL00174
DANYEMAIL00186
DANYEMAIL00229
DANYEMAIL00343
DANYEMAIL00347
DANYEMAIL00370

Each of these emails have redactions that appear to include non-privileged communications with defense counsel. Obviously, we do not know what was redacted, which is why we asked that the People confirm the redactions were consistent with the law and, if not, to produce unredacted versions.

Many of the emails relate to [REDACTED]
[REDACTED]
[REDACTED]. There are also emails regarding [REDACTED]
[REDACTED]
[REDACTED]. These communications are significant to our defense and possible cross examination of witnesses, and so we again request that the People confirm that the redactions are appropriate and, if not, to produce unredacted versions.

Separately, DANYEMAIL00036 shows that [REDACTED]
[REDACTED]. We have not been able to locate the corresponding text message in discovery. We did, however, find a single text message and reply between them on the same day. So, unless we are missing it, it seems to us that there are responsive text messages from the People that have not been produced.

Thank you for your attention to these questions and issues,

Todd
Todd Blanche

Blanche Law

99 Wall Street
Suite 4460
New York NY, 10005
212-716-1250
<https://www.BlancheLaw.com>

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From: Mangold, Rebecca <[REDACTED]>
Sent: Sunday, January 28, 2024 3:47 PM
To: Todd Blanche <[REDACTED]> Hoffinger, Susan <[REDACTED]>
Conroy, Christopher <[REDACTED]> Ellis, Katherine <[REDACTED]>
<[REDACTED]> Steinglass, Joshua <[REDACTED]> Colangelo,
Matthew <[REDACTED]>
Cc: Gedalia Stern <[REDACTED]> Susan Necheles <[REDACTED]>
<[REDACTED]> Emil Bove <[REDACTED]> Stephen Weiss
<[REDACTED]>
Subject: RE: People v. Trump, 71543-23

Hi Todd,

As you know, we have always been happy to review our productions in response to any issues raised by the defense, and we are happy to accommodate defense counsel requests (like removing our standard-issue watermarks from the transcripts) out of professional courtesy, even where we are not obligated to do so.

In this case, we are happy to undertake a review, but we are not clear on what you are asking us to do. Your first email on Saturday morning identified a production folder from last July containing more than 500 records, but did not identify any specific documents or concerns. And in response to Susan's request that you point us to any concerns with that production, you not only declined to do so, but appeared to broaden your request to ask that we re-review all of the materials we have produced in discovery since last May.

If your request is for us to explain the grounds for the redactions again, we are happy to do that. As you correctly note, throughout our discovery productions, certain emails and documents in the "email review" production and elsewhere have been redacted. These redactions fall into two categories, which we have repeatedly disclosed since the beginning of discovery.

First, pursuant to CPL § 245.70 and the Court's May 8, 2023 Protective Order, we have redacted the names and identifying information of DANY personnel other than sworn members of law enforcement, assistant district attorneys, and expert or fact witnesses (other than summary witnesses). We have consistently disclosed in our production cover letters, including our letters dated June 8, June 15, July 24, July 27, August 3, August 11, August 24, September 22, September 28, October 13, October 27, December 1, December 21, 2023 and January 19, 2024, that some information may have been withheld as authorized by CPL § 245.70 and the Court's May 8, 2023 Protective Order. To date, defense counsel has not raised any issues with these types of redactions in discovery.

Second, we have redacted work product, pursuant to CPL § 245.65. In our June 8, 2023 protective order motion, we advised the Court and defense counsel that the production of internal emails required a review to identify and exclude work product. In addition, we have consistently stated in our production cover letters, including our letters dated June 8, June 15, July 24, July 27, August 3, August 11, August 24, September 22, September 28, October 13, October 27, December 1, December 21, 2023 and January 19, 2024, that we erred on the side of disclosing more than what was required under CPL § 245.20(1), but that such disclosure was not a waiver of “the People’s right to withhold work product under CPL 245.65”. And in the July 24, 2023 production cover letter that accompanied our “email review” production, we specifically noted that we were withholding certain information on work product grounds. Defense counsel has never raised an issue with any work product redactions until now.

Our team worked hard to ensure that any redactions we made were appropriate, and to our knowledge, all of the redactions in the productions were proper. If you have a basis to believe that any of the redactions was not proper, or if you have any specific concerns, we remain willing to review in response to issues that you identify. However, if you are raising for the first time an argument that the People may never exclude or redact work product from discovery, we disagree and do not think it is a valuable use of the Court’s time to litigate whether basic legal concepts like work product apply. Likewise, if you are declining to identify any records for our review and intend to seek the Court’s involvement on a general request that the People re-review every redacted document we have produced to defendant since last May, we again think that would be a poor use of the Court’s time. But in either instance, we are of course prepared to argue our position to the Court.

Best,

Becky

Rebecca G. Mangold
Assistant District Attorney
New York County District Attorney's Office
80 Centre Street, New York, NY 10013

From: Todd Blanche <[REDACTED]>
Sent: Saturday, January 27, 2024 6:40 PM
To: Hoffinger, Susan <[REDACTED]> Conroy, Christopher <[REDACTED]>
Ellis, Katherine <[REDACTED]> Mangold, Rebecca <[REDACTED]> [REDACTED]
[REDACTED] <[REDACTED]> Steinglass, Joshua <[REDACTED]> Colangelo,
Matthew <[REDACTED]>
Cc: Gedalia Stern <[REDACTED]> Susan Necheles <[REDACTED]>
<[REDACTED]> Emil Bove <[REDACTED]> Stephen Weiss
<[REDACTED]>
Subject: [EXTERNAL] RE: People v. Trump, 71543-23

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Thanks Susan,

The folder we are generally referring to is titled: "email review" and there are numerous emails/documents that have been redacted, in what appears to be a violation of CPL 245.20(1). To the extent you are suggesting that it is a defendant's obligation to identify violations of CPL 245.20 by specific bates number, we disagree. It is the People's obligation to comply with its discovery obligations, not the defendant. We are also not limiting our request to the particular materials we have reviewed that contain inappropriate redactions, but point you to the folder titled "email review" by way of example of documents that are redacted without apparent justification. We believe it is the People's responsibility to produce discovery in compliance the rules, not our obligation to identify particular redacted documents that appear to violate the rules.

If you are not willing to undergo a review of the materials produced that contain inappropriate redactions without us providing a bates number, please let us know and we will ask the Court to intervene.

Thank you,
Todd

Todd Blanche

Blanche Law

99 Wall Street
Suite 4460
New York NY, 10005
212-716-1250
<https://www.BlancheLaw.com>

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From: Hoffinger, Susan <[REDACTED]>
Sent: Saturday, January 27, 2024 11:25 AM
To: Todd Blanche <[REDACTED]> Conroy, Christopher

<[REDACTED] Ellis, Katherine <[REDACTED] Mangold, Rebecca
<[REDACTED] <[REDACTED] Steinglass, Joshua
<[REDACTED] Colangelo, Matthew <[REDACTED]
Cc: Gedalia Stern <[REDACTED] Susan Necheles ([REDACTED]
<[REDACTED] Emil Bove <[REDACTED] Stephen Weiss
<[REDACTED]
Subject: RE: People v. Trump, 71543-23

Todd,

Please identify by Bates number the specific records with redactions that you would like us to review.

Thanks, Susan

From: Todd Blanche <[REDACTED]
Sent: Saturday, January 27, 2024 10:29 AM
To: Hoffinger, Susan <[REDACTED] Conroy, Christopher <[REDACTED]
Ellis, Katherine <[REDACTED] Mangold, Rebecca <[REDACTED]
[REDACTED] <[REDACTED] Steinglass, Joshua <[REDACTED] Colangelo,
Matthew <[REDACTED]
Cc: Gedalia Stern <[REDACTED] Susan Necheles ([REDACTED]
<[REDACTED] Emil Bove <[REDACTED] Stephen Weiss
<[REDACTED]
Subject: [EXTERNAL] RE: People v. Trump, 71543-23

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Susan,

In connection with our continued review of the People's discovery, we identified internal DANY communications with substantial redactions. These include emails sent by Special ADA Mark Pomerantz, ADA Chris Conroy, and other members of the prosecution team (categorized in discovery as "Email Review") concerning witness statements and other investigative activities.

It appears that the redacted text in these communications is subject to your automatic discovery obligations under CPL 245.20(1). We ask that you provide unredacted copies of the communications as soon as possible, and no later than Friday, February 2.

Best regards,

Todd

Todd Blanche

Blanche Law

99 Wall Street

Suite 4460

New York NY, 10005

212-716-1250

<https://www.BlancheLaw.com>

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From: Hoffinger, Susan <[REDACTED]>
Sent: Friday, January 19, 2024 12:39 PM
To: Todd Blanche <[REDACTED]> Conroy, Christopher
<[REDACTED]> Ellis, Katherine <[REDACTED]> Mangold, Rebecca
<[REDACTED]> [REDACTED] <[REDACTED]> Steinglass, Joshua
<[REDACTED]> Colangelo, Matthew <[REDACTED]>
Cc: Gedalia Stern <[REDACTED]> Susan Necheles <[REDACTED]>
<[REDACTED]> Emil Bove <[REDACTED]> Stephen Weiss
<[REDACTED]>
Subject: RE: People v. Trump, 71543-23

Todd,

Thank you for forwarding your proposed redactions, which we agree are appropriate.

In addition, please also redact ADA McCaw's direct telephone number from Exhibit 1 to your affirmation (attached and highlighted in yellow).

We also ask that you redact from page 5 of your motion papers the clause [REDACTED] (attached and highlighted in yellow) as that reflects the subject matter of interview reports, consistent with the May 8, 2023 Protective Order. Similarly, you appropriately redacted in the same paragraph the clause [REDACTED]

Please let us know if you agree to these two redactions or wish to discuss.

Thank you, Susan

Susan Hoffinger
Executive Assistant DA
New York County District Attorney's Office
1 Hogan Place, [REDACTED]
New York, NY 10013
[REDACTED]

From: Todd Blanche <[REDACTED]>
Sent: Wednesday, January 17, 2024 4:36 PM
To: Hoffinger, Susan <[REDACTED]> Conroy, Christopher <[REDACTED]>
Ellis, Katherine <[REDACTED]> Mangold, Rebecca <[REDACTED]>
[REDACTED] <[REDACTED]> Steinglass, Joshua <[REDACTED]>
Cc: Gedalia Stern <[REDACTED]> Susan Necheles <[REDACTED]>
<[REDACTED]> Emil Bove <[REDACTED]> Stephen Weiss
<[REDACTED]>
Subject: [EXTERNAL] FW: People v. Trump, 71543-23

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Please see attached our proposed redactions and let us know if you agree or if you have any questions.

Thank you,
Todd

Todd Blanche

Blanche Law

99 Wall Street
Suite 4460
New York NY, 10005
212-716-1250
<https://www.BlancheLaw.com>

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the recipient to ensure that it is virus free and no responsibility is accepted by Blanche Law for any loss or damage arising in any way from its use.

From: Todd Blanche
Sent: Wednesday, January 17, 2024 4:34 PM
To: Hon. Juan M. Merchan <[REDACTED]> PART59 <[REDACTED]> Stacy Villanueva <[REDACTED]>
Cc: Latoya B. Thomas <[REDACTED]> Hoffinger, Susan <[REDACTED]> Conroy, Christopher <[REDACTED]> Ellis, Katherine <[REDACTED]> Mangold, Rebecca <[REDACTED]> <[REDACTED]> Susan Necheles <[REDACTED]> <[REDACTED]> Gedalia Stern <[REDACTED]> Stephen Weiss <[REDACTED]> Emil Bove <[REDACTED]> Steinglass, Joshua <[REDACTED]>
Subject: RE: People v. Trump, 71543-23

Dear Judge Merchan,

Please see attached motion to reargue with attached paperwork. Per the usual process, we will work with the People on an agreed-upon redacted version for the public file, and then serve the redacted motion on counsel for Mr. Cohen and file publicly.

Respectfully submitted,
Todd

Todd Blanche

Blanche Law

99 Wall Street
Suite 4460
New York NY, 10005
212-716-1250
<https://www.BlancheLaw.com>

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From: Hon. Juan M. Merchan <[REDACTED]>
Sent: Monday, December 18, 2023 5:12 PM
To: Todd Blanche <[REDACTED]> Alexander Parachini <[REDACTED]> Stacy Villanueva <[REDACTED]> PART59 <[REDACTED]> Hoffinger, Susan <[REDACTED]>

Ellis, Katherine <[redacted]> Mangold, Rebecca <[redacted]>
<[redacted]> Gedalia Stern
<[redacted]> Stephen Weiss <[redacted]> Emil Bove
<[redacted]>
Cc: Danya Perry <[redacted]> Kimberly H. Fleming
<[redacted]> Latoya B. Thomas <[redacted]>
Subject: RE: People v. Trump, 71543-23

Good afternoon,

Please find attached this Court's Decision and Order on the People's Motion to quash the subpoena to Michael Cohen. A copy will be placed in the court file tomorrow morning. Thank you, JMM

Juan M. Merchan
Judge - Court of Claims
Acting Justice - Supreme Court, Criminal Term
Part 59 | Part 59M - Mental Health Court | Part 59V - Veteran's Treatment Court
100 Centre Street
New York, NY 10013
Chambers [redacted] | [redacted]

From: Todd Blanche <[redacted]>
Sent: Wednesday, December 6, 2023 12:19 PM
To: Alexander Parachini <[redacted]> Hon. Juan M. Merchan
<[redacted]> PART59 <[redacted]> Stacy Villanueva
<[redacted]> Hoffinger, Susan <[redacted]>
Ellis, Katherine <[redacted]> Mangold, Rebecca <[redacted]>
<[redacted]> Gedalia Stern
<[redacted]> Stephen Weiss <[redacted]> Emil Bove
<[redacted]>
Cc: Danya Perry <[redacted]> Kimberly H. Fleming
<[redacted]>
Subject: RE: People v. Trump, 71543-23

Danya and Alex,

Attached please find President Trump's opposition to the motions to quash (redacted). This will be filed on the public docket later today.

Thank you,
Todd

Todd Blanche

Blanche Law
99 Wall Street

Suite 4460
New York NY, 10005
212-716-1250
<https://www.BlancheLaw.com>

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From: Alexander Parachini <[REDACTED]>
Sent: Friday, November 17, 2023 12:59 PM
To: [REDACTED]
[REDACTED] Hoffinger, Susan <[REDACTED]>
[REDACTED] Ellis, Katherine <[REDACTED]> Mangold, Rebecca
<[REDACTED]> <[REDACTED]> Todd Blanche
<[REDACTED]> Gedalia Stern
<[REDACTED]> Stephen Weiss <[REDACTED]> Emil Bove
[REDACTED]
Cc: Danya Perry <[REDACTED]> Kimberly H. Fleming
<[REDACTED]>
Subject: People v. Trump, 71543-23

Dear Justice Merchan,

I write on behalf of E. Danya Perry, attorney for non-party Michael Cohen. Mr. Cohen respectfully submits the attached motion to quash Defendant Trump's subpoena to Mr. Cohen, with a supporting memorandum of law, affirmation of E. Danya Perry, and accompanying exhibit. Mr. Cohen will file a hard copy of this submission as instructed by the Court.

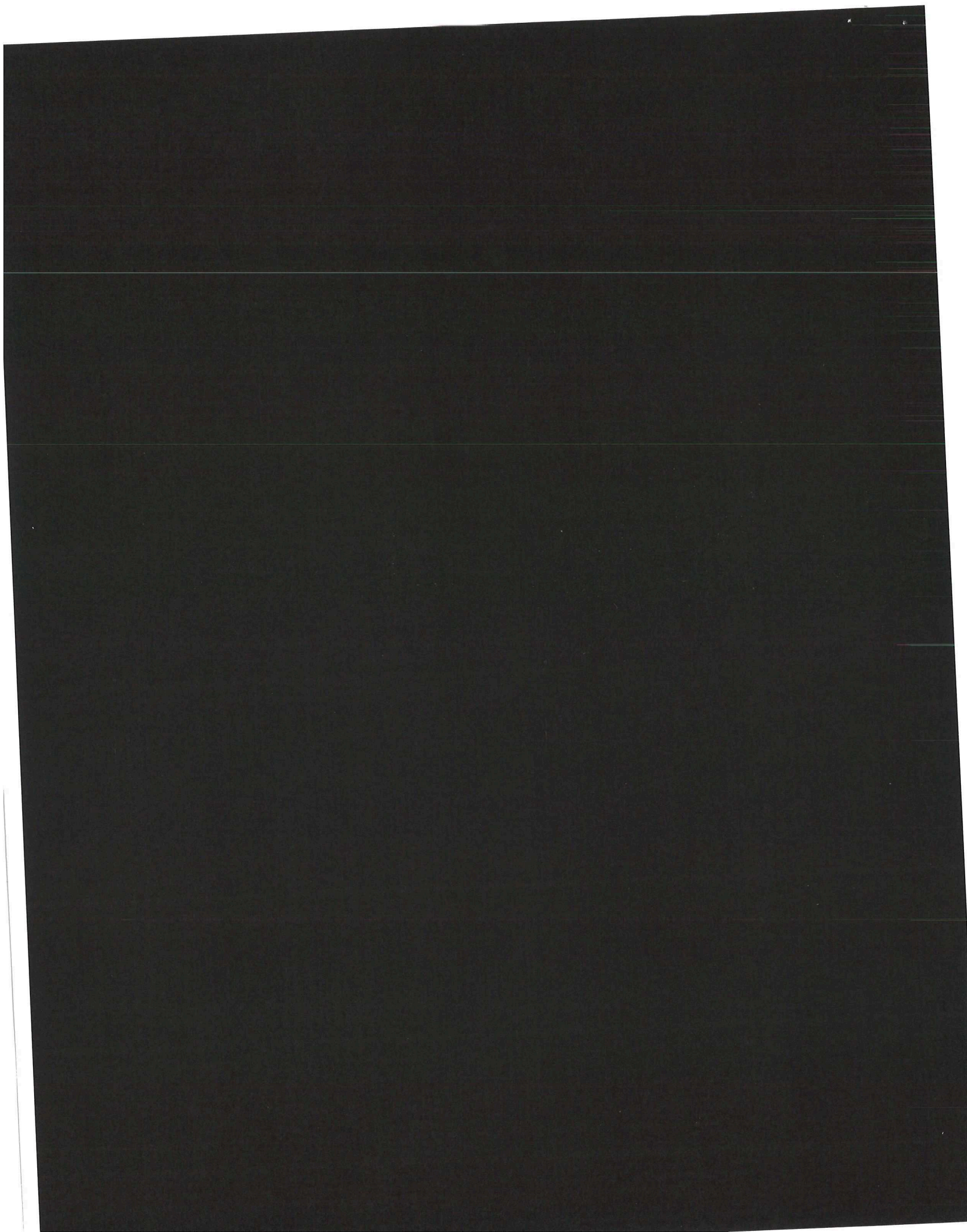
Respectfully submitted,
Alex Parachini

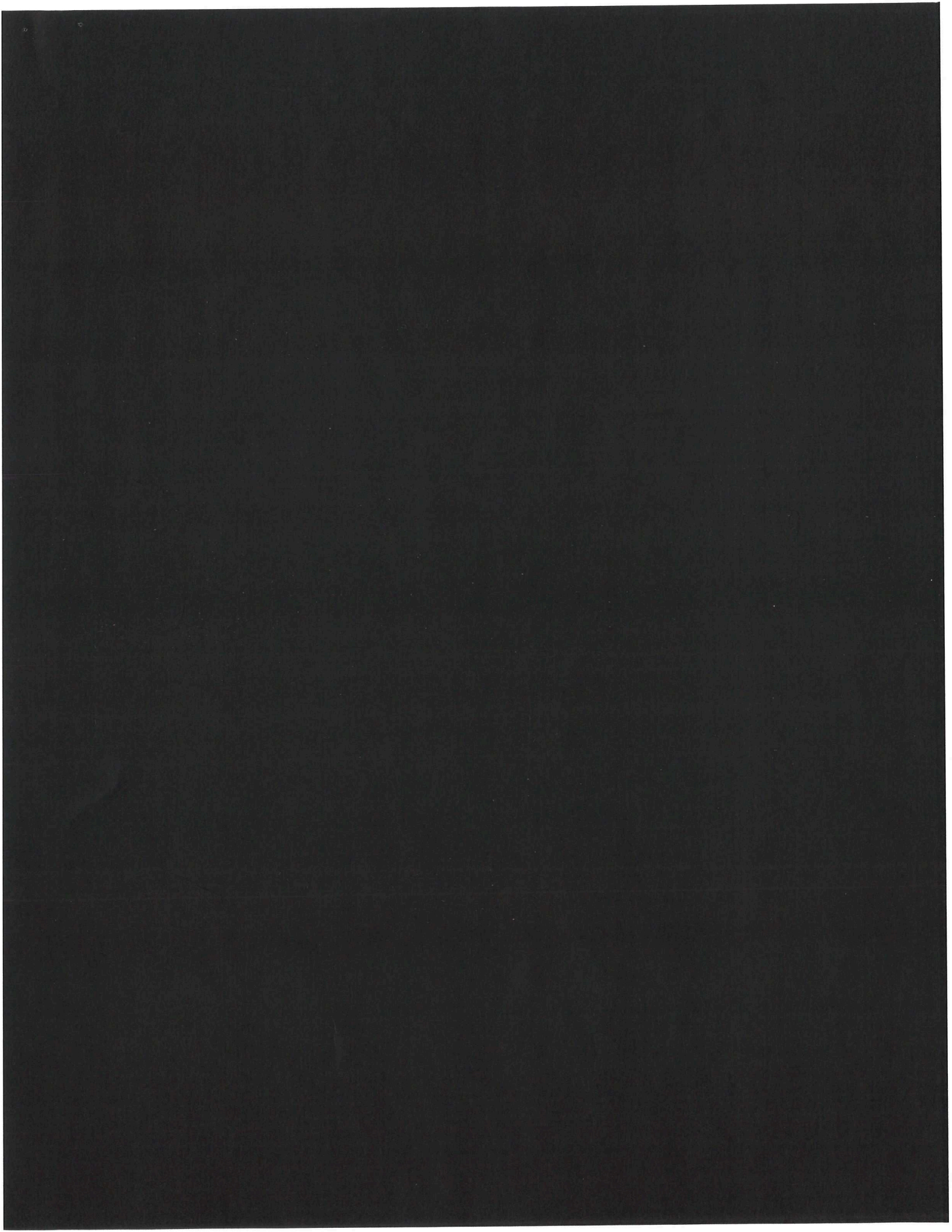
Alexander K. Parachini
Counsel | Perry Law

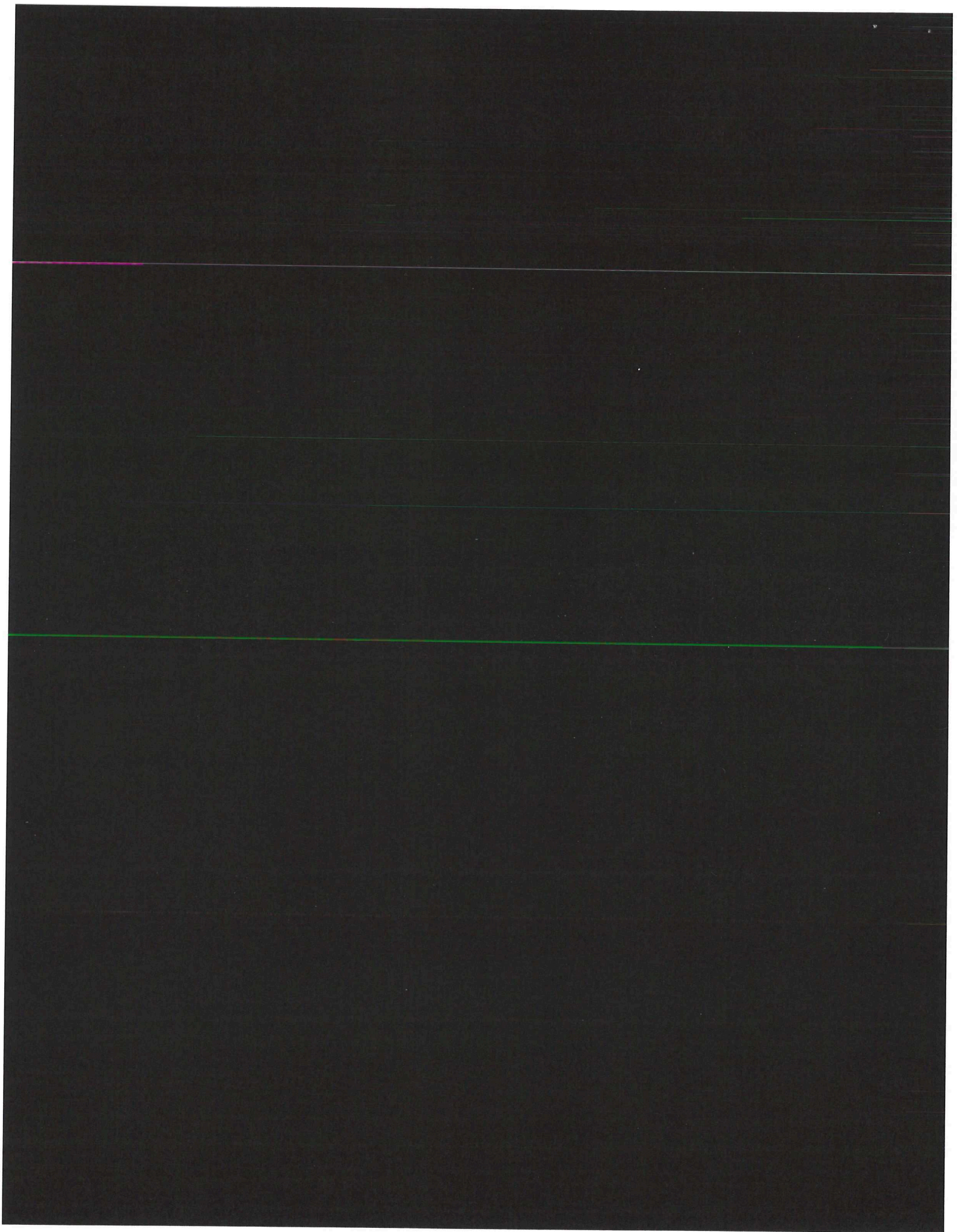
157 East 86th Street, New York, NY 10028
[REDACTED] cell [REDACTED] office
[REDACTED] email
danyaperrylaw.com website

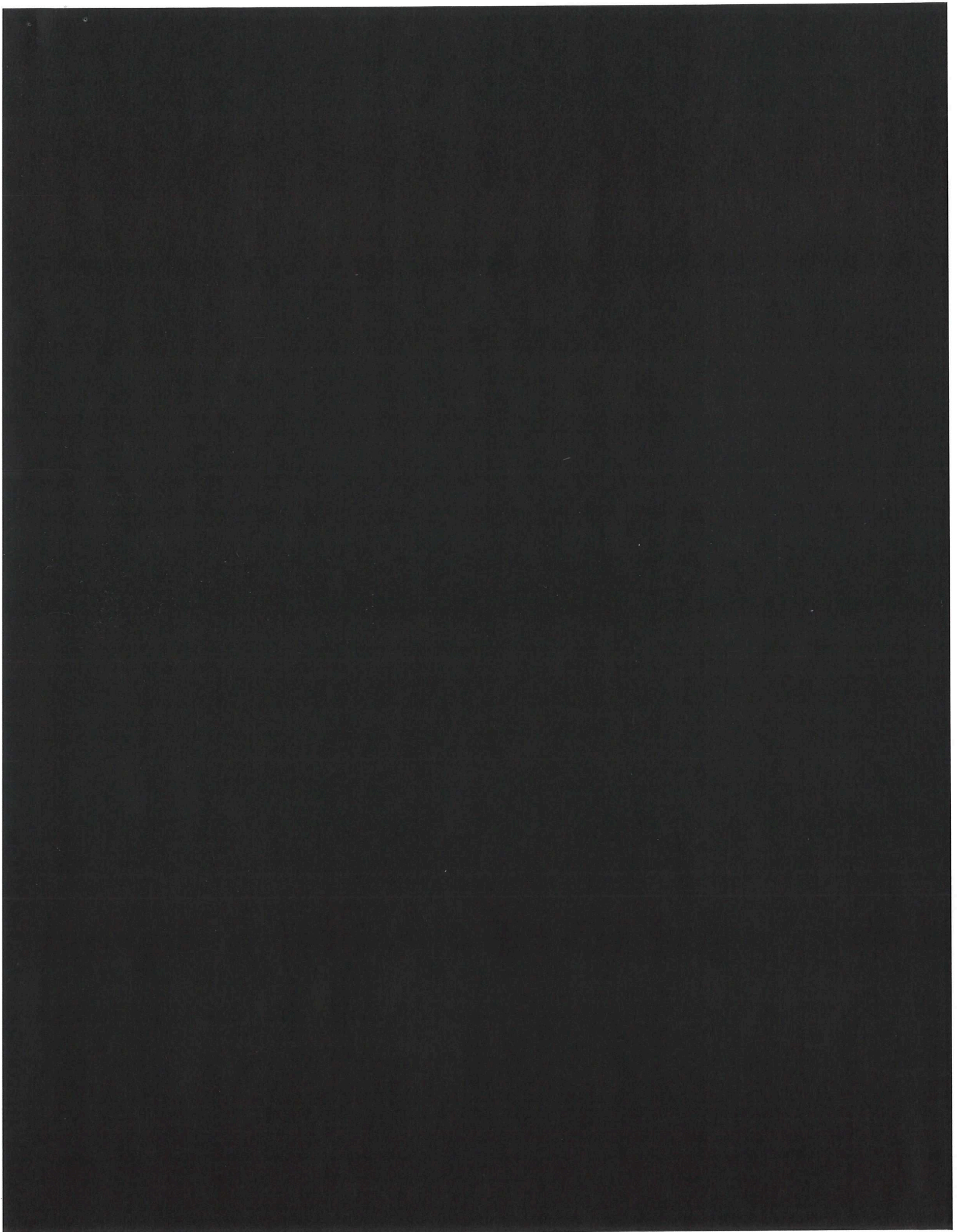
Please be CAREFUL when clicking links or opening attachments from external senders.

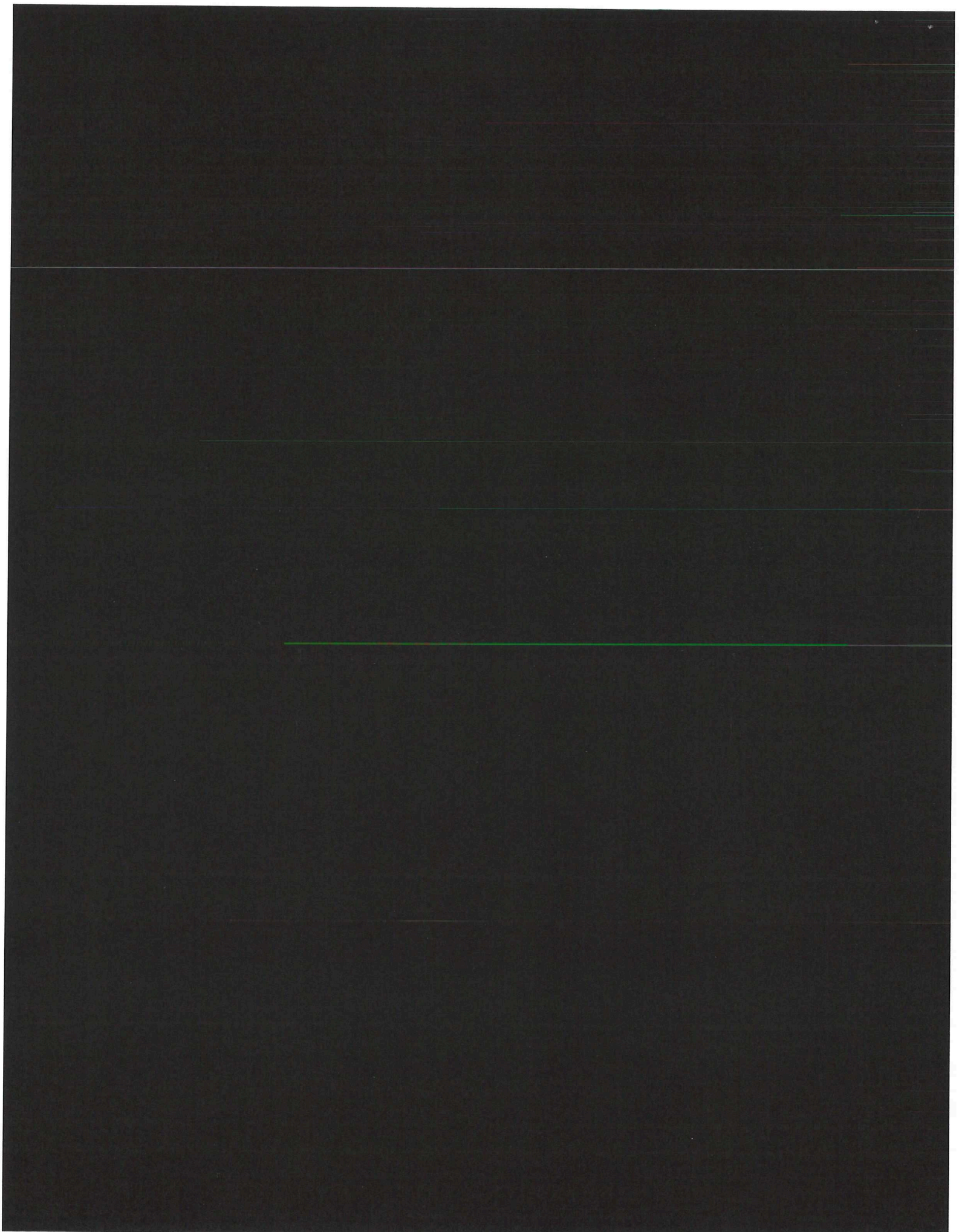
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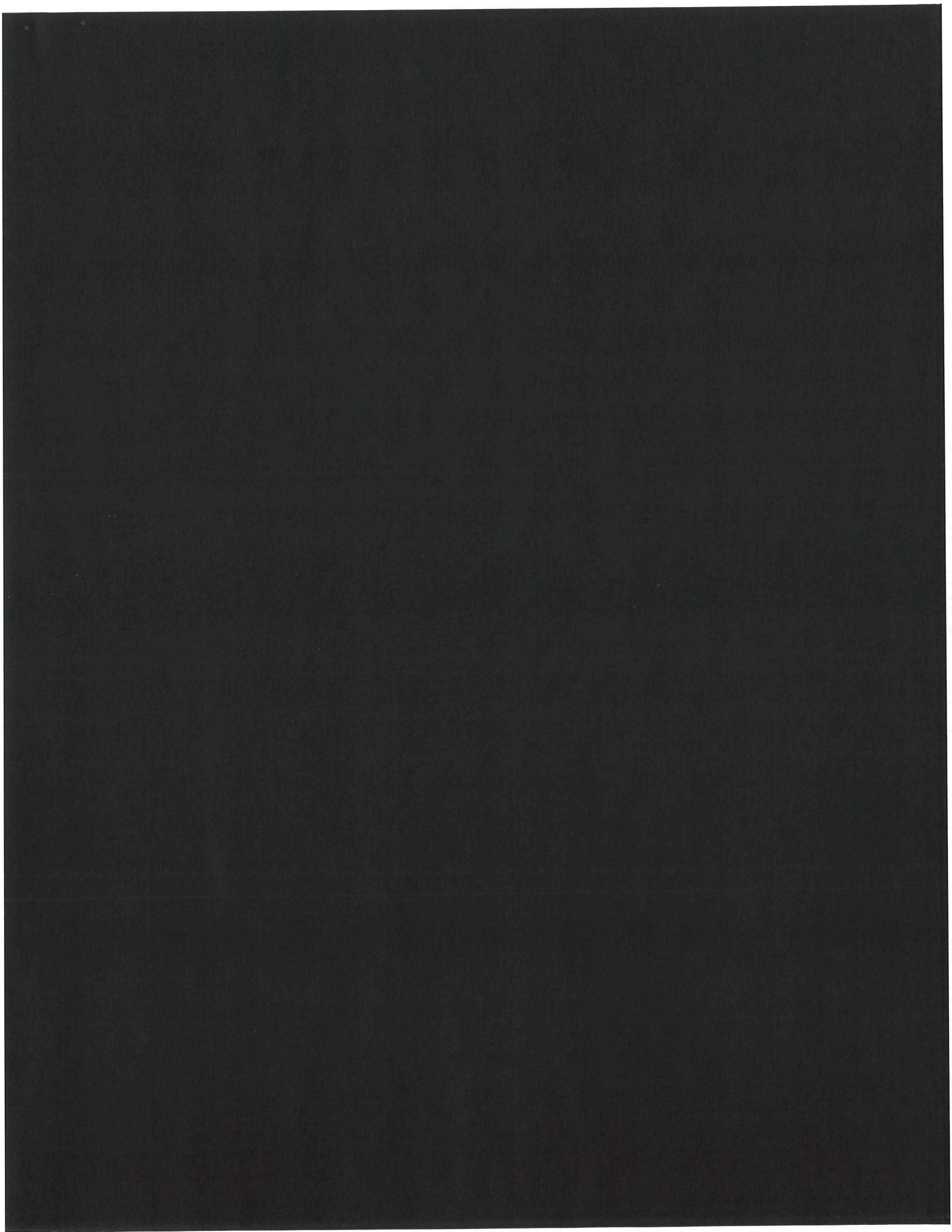


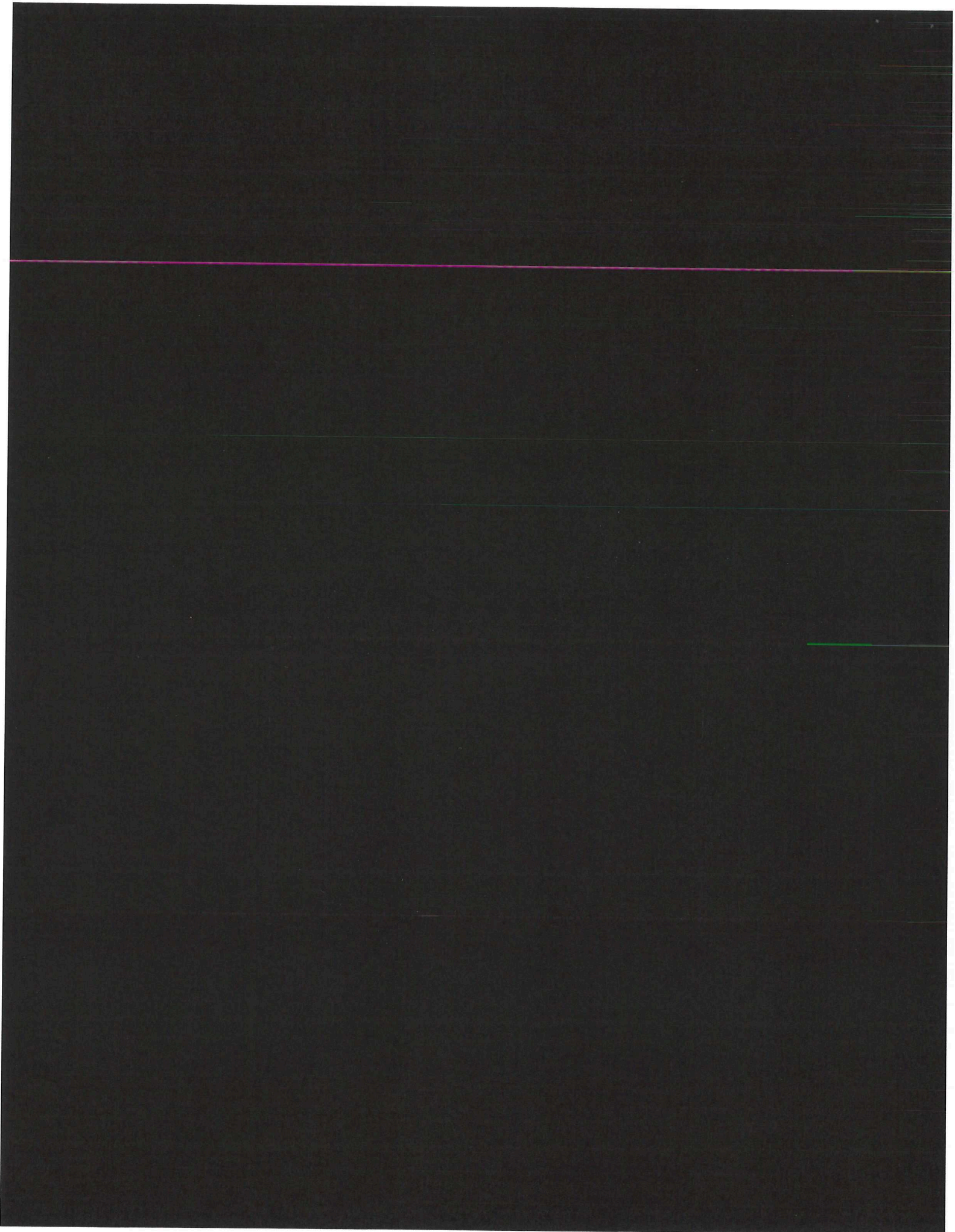


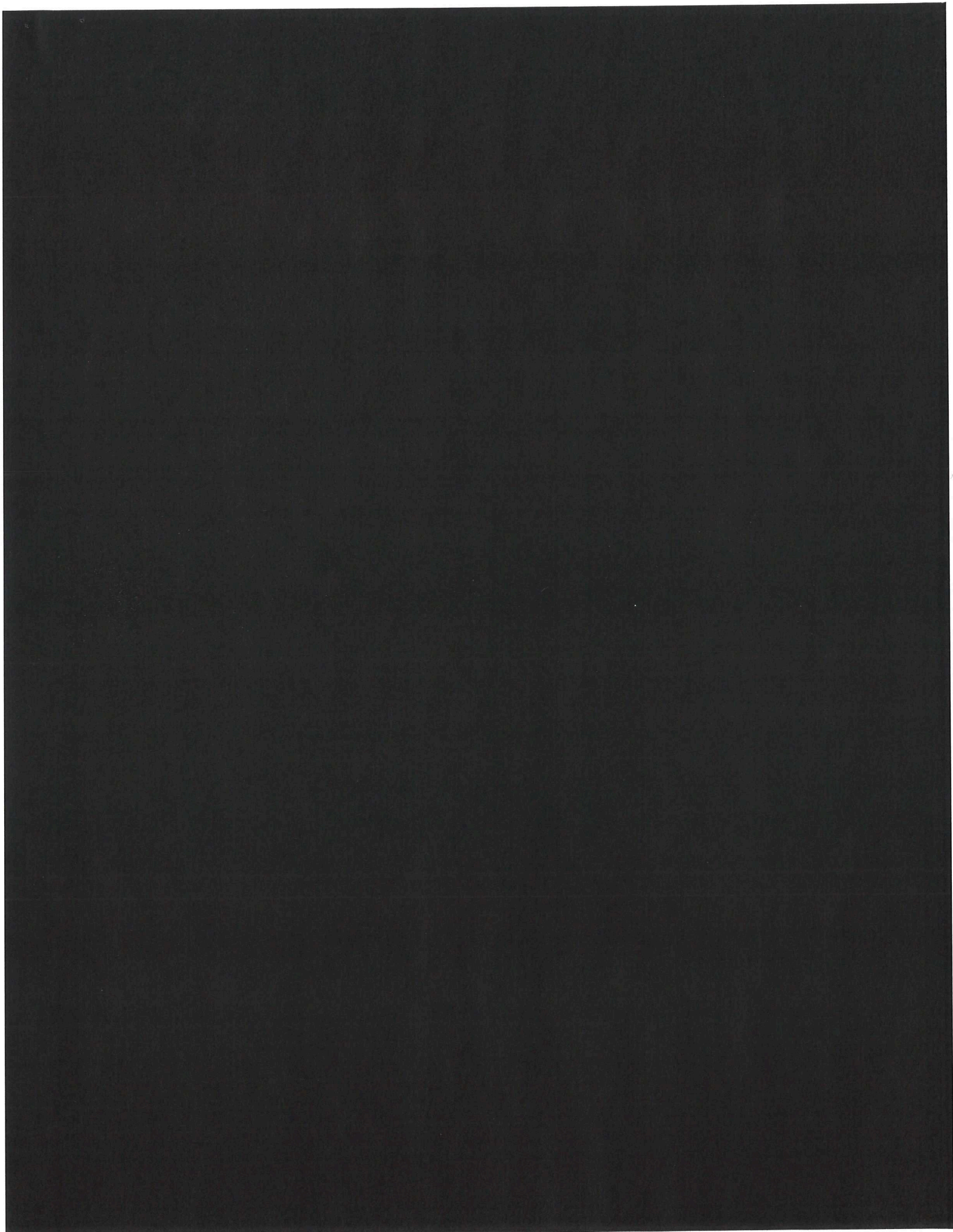


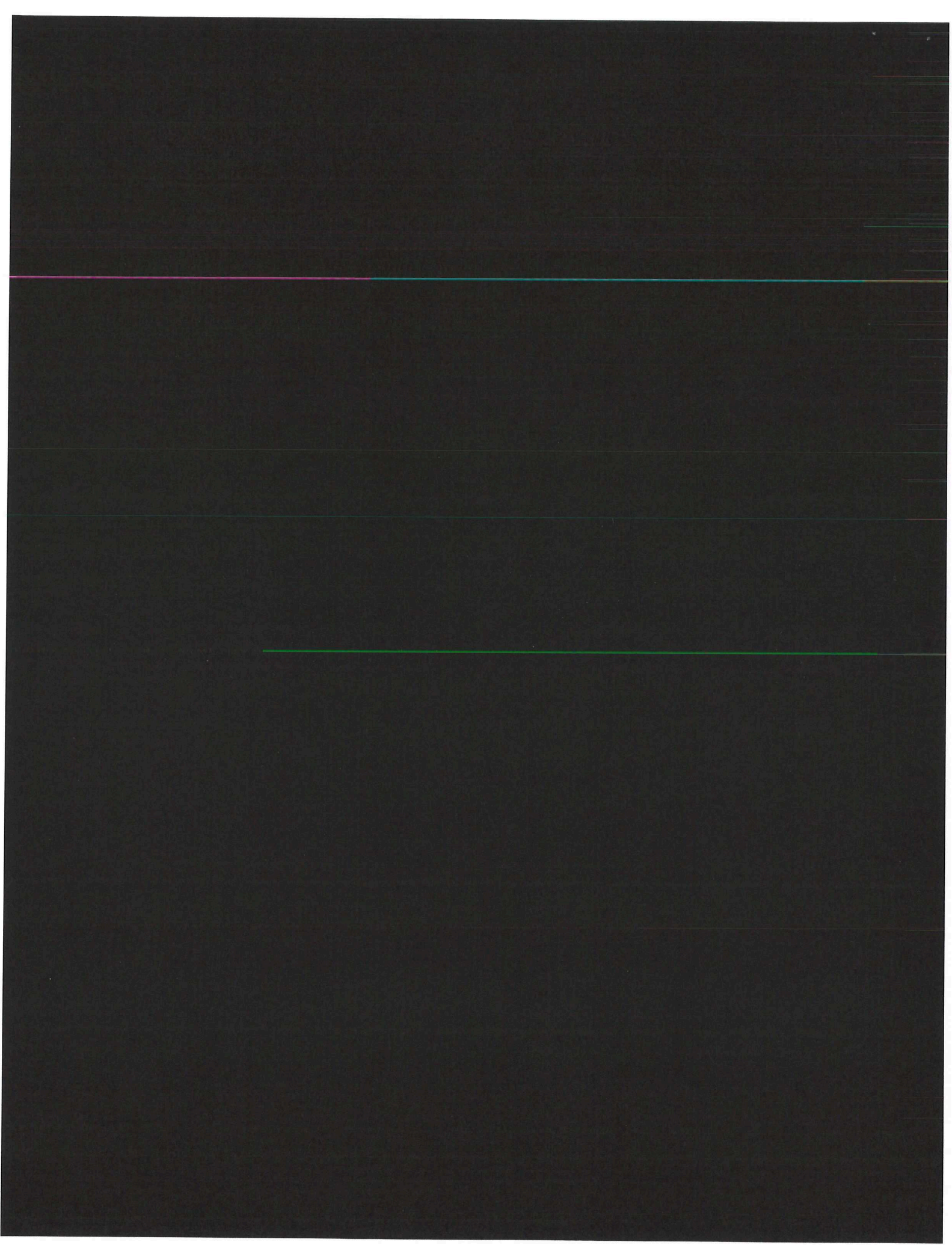


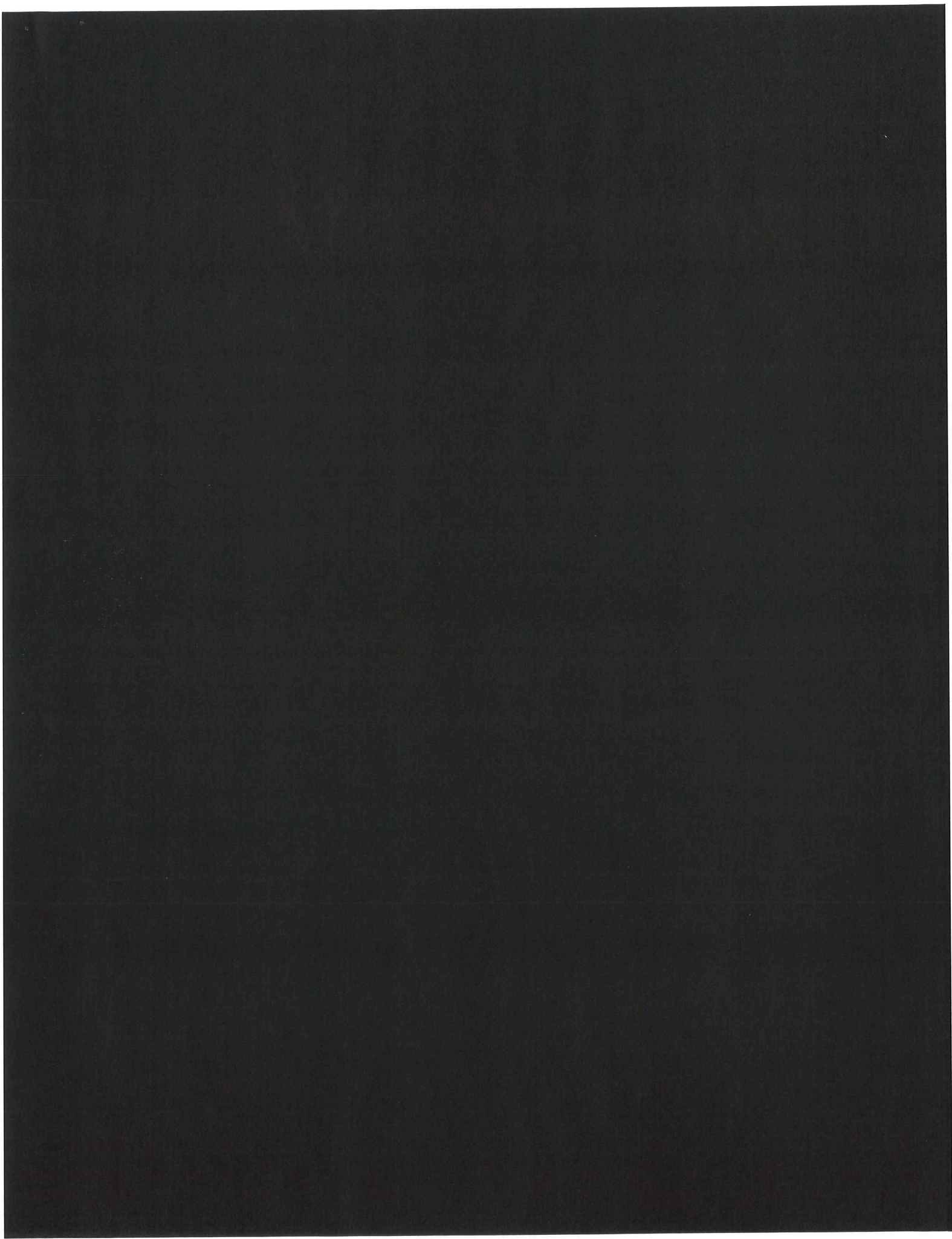


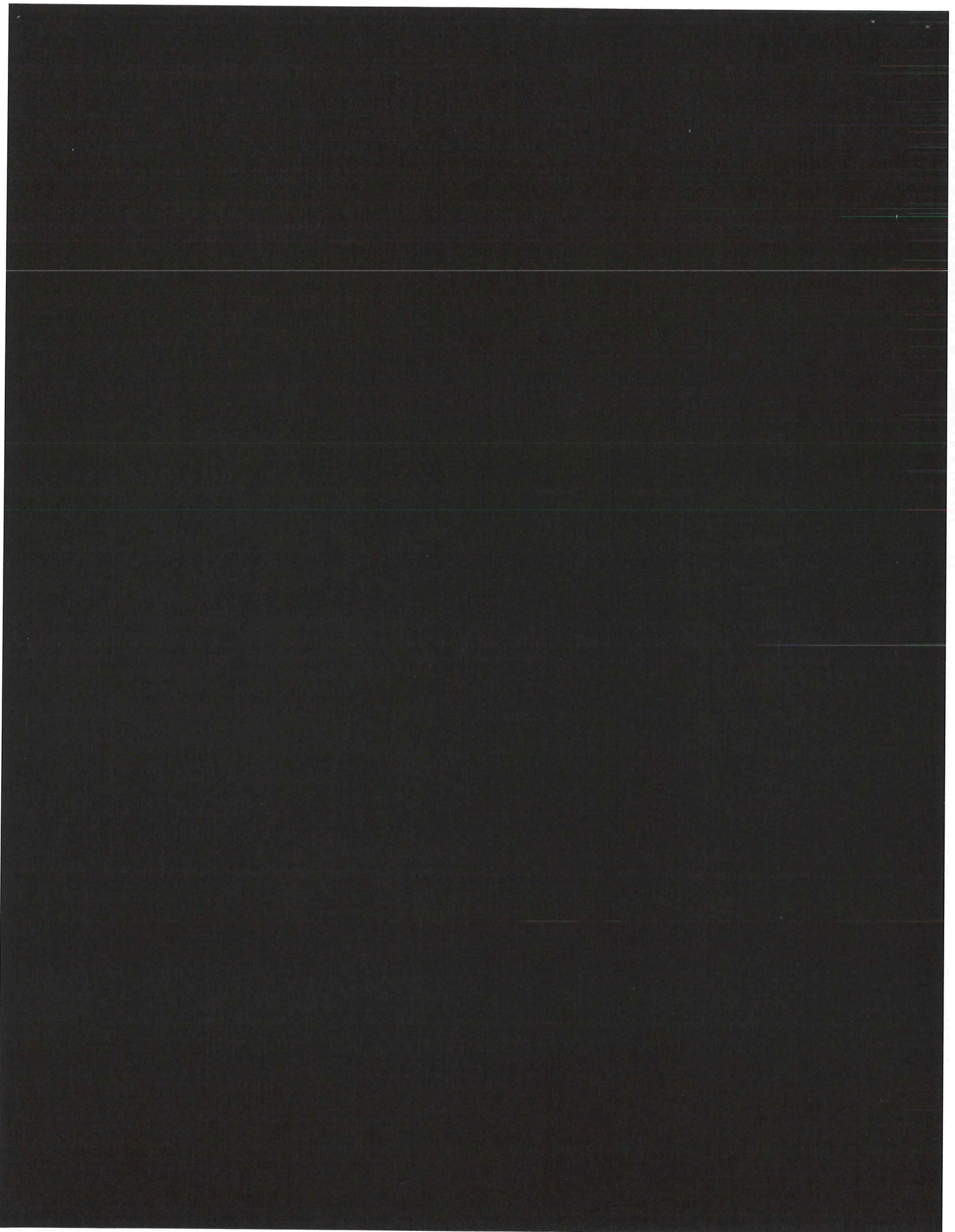


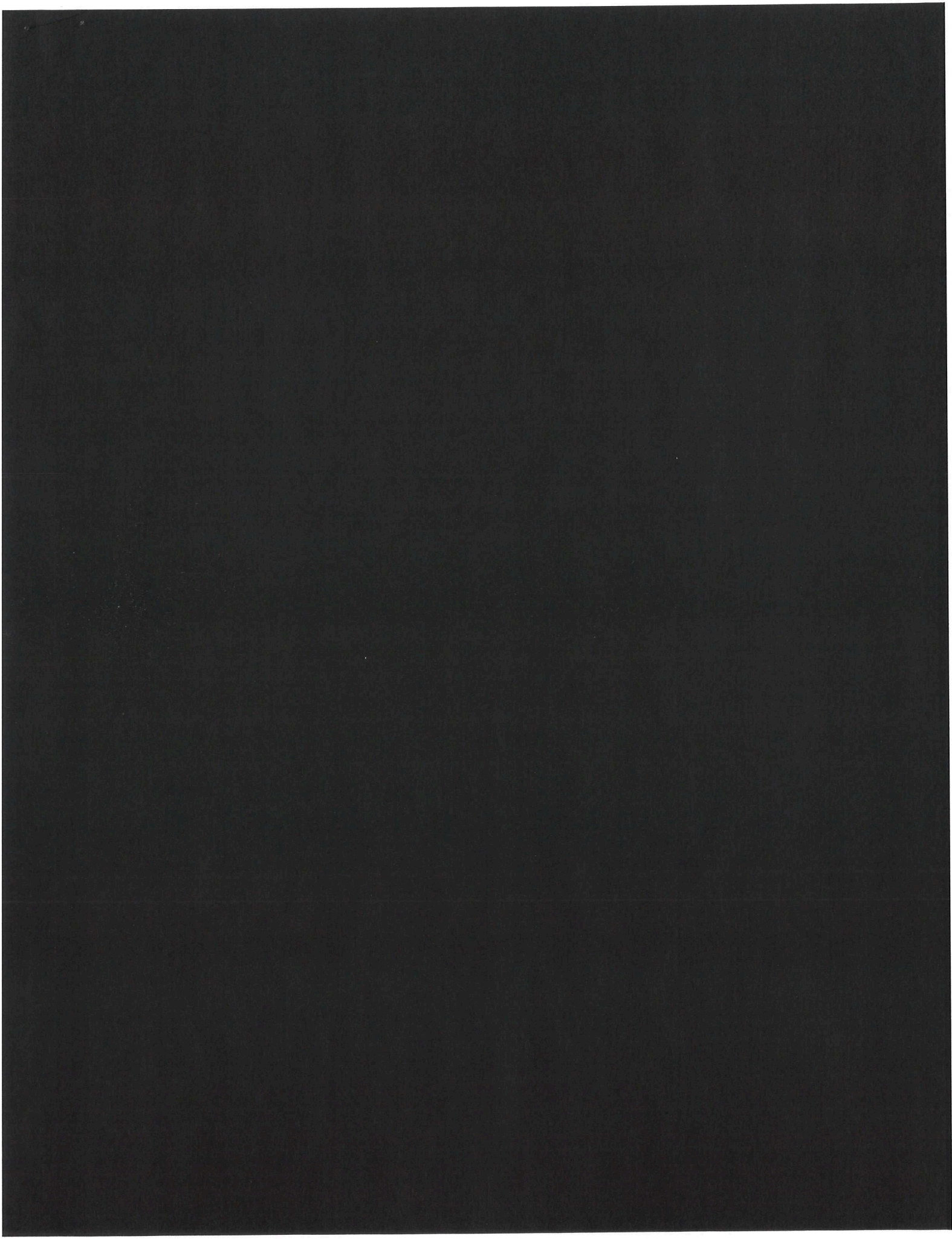


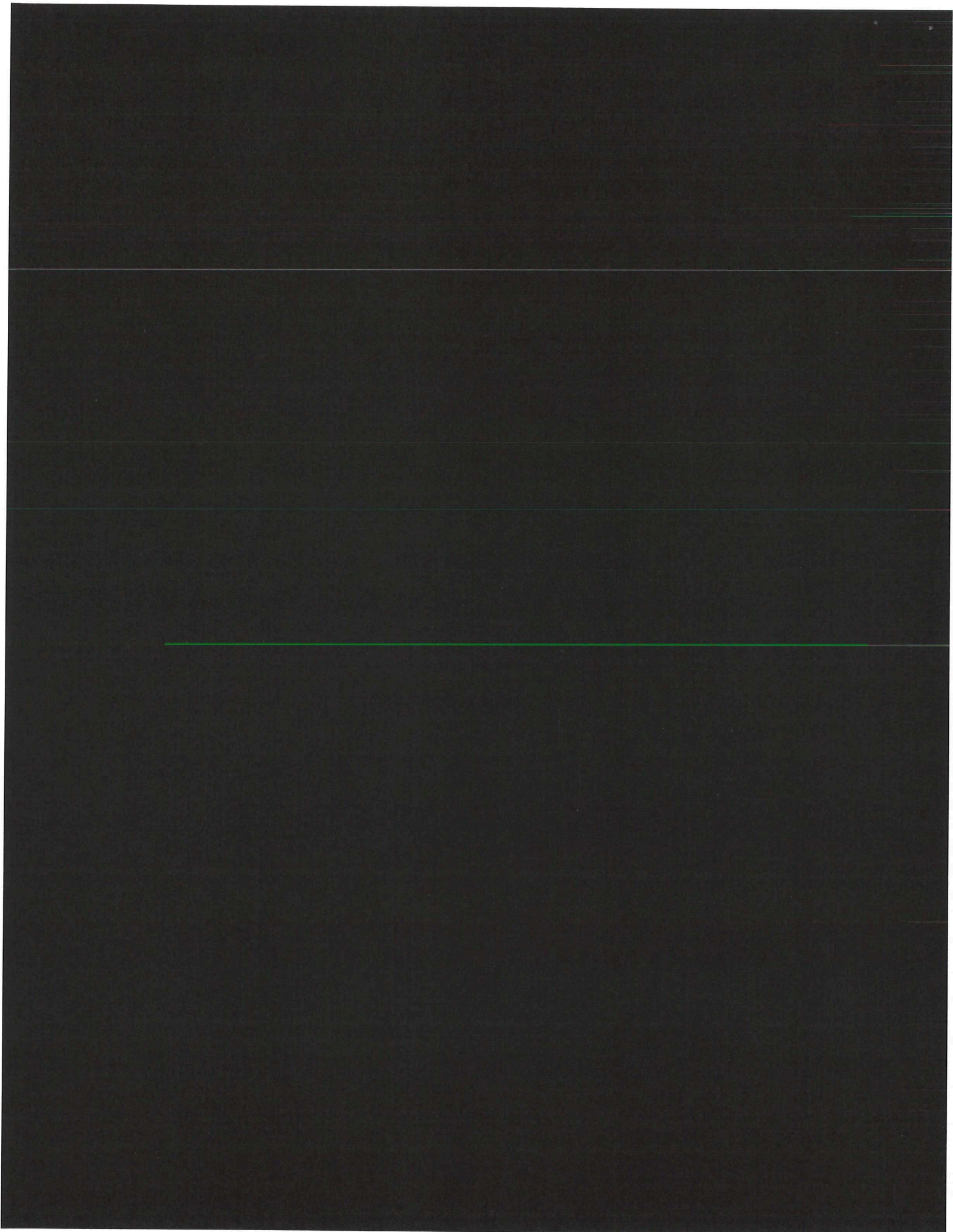


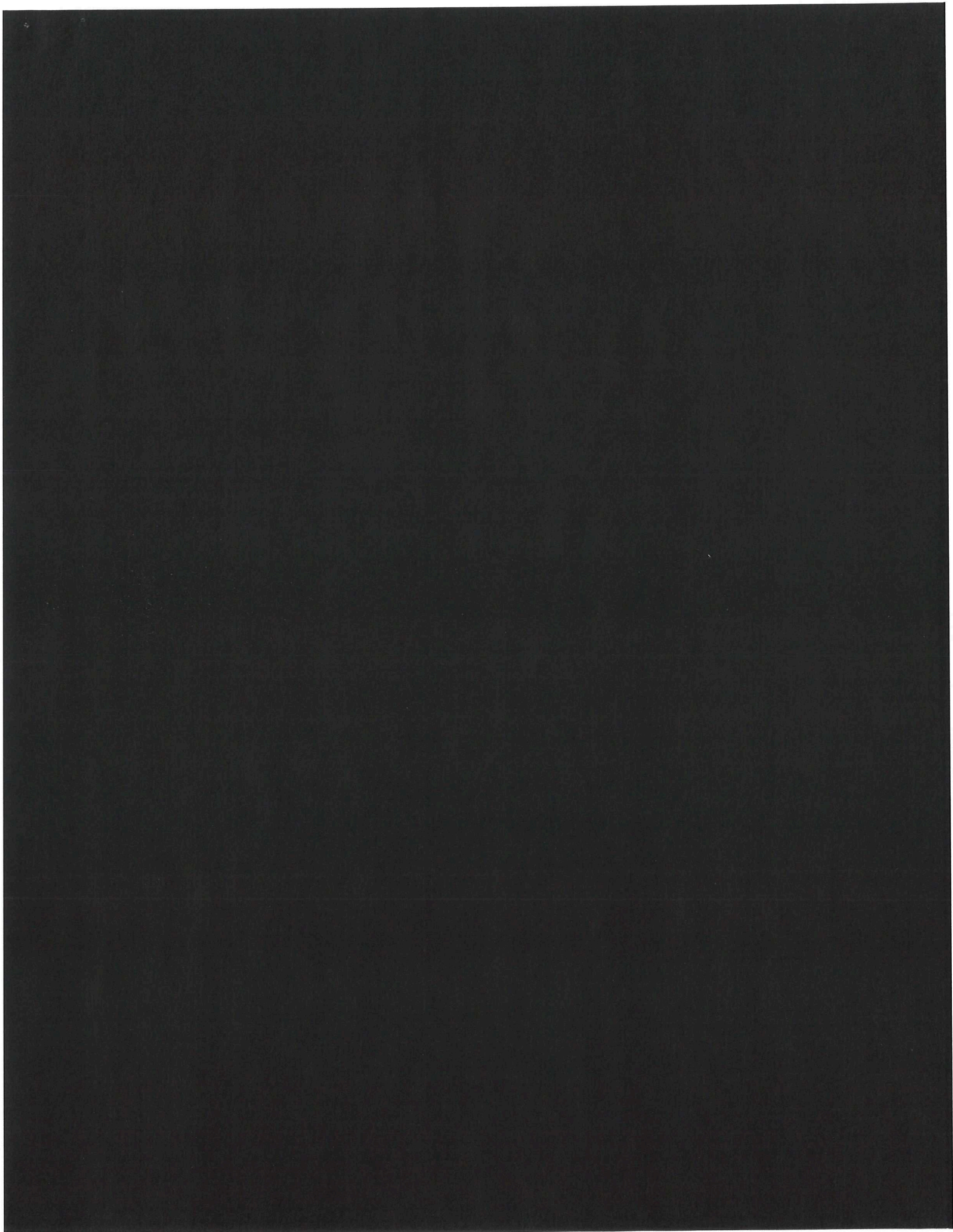


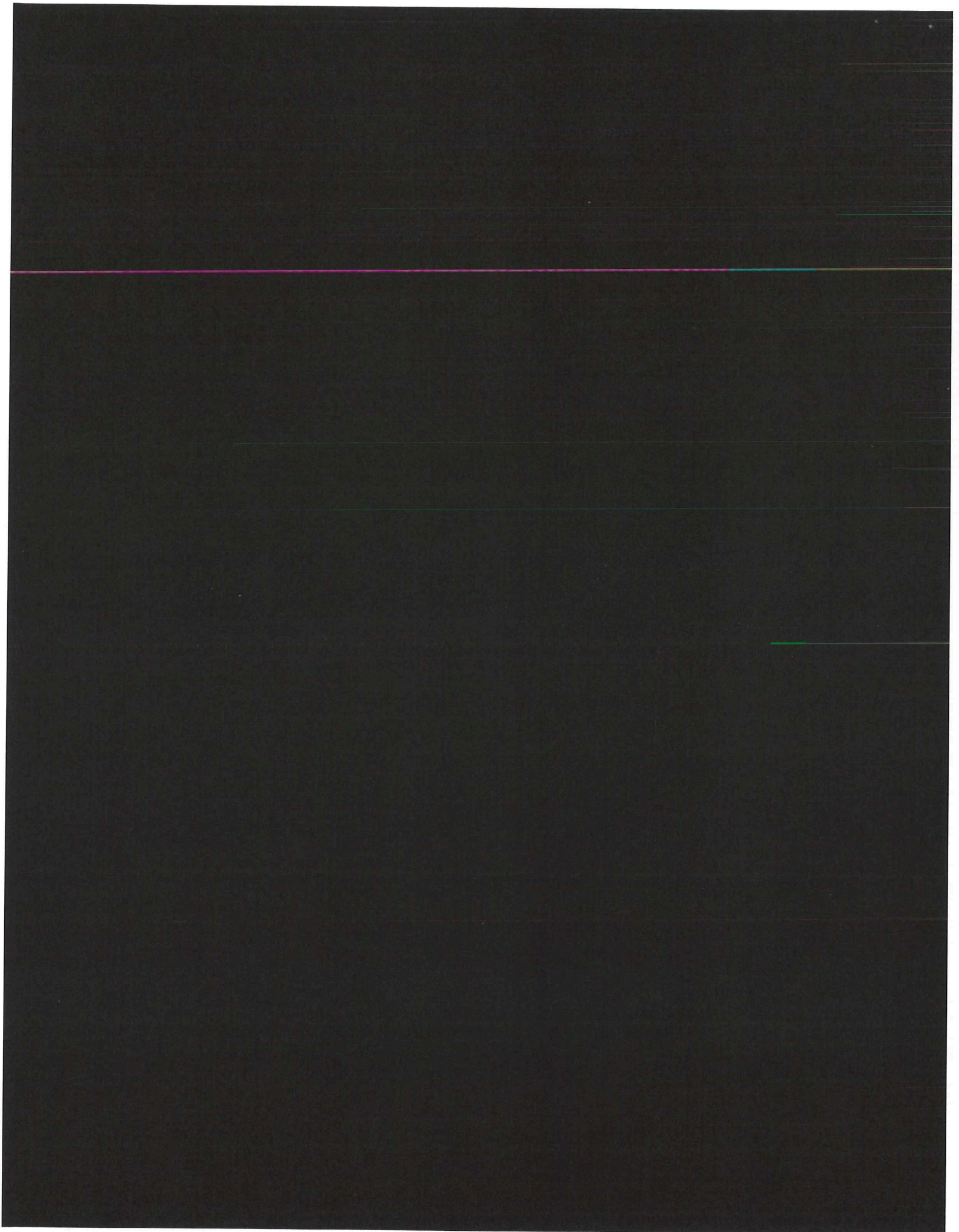


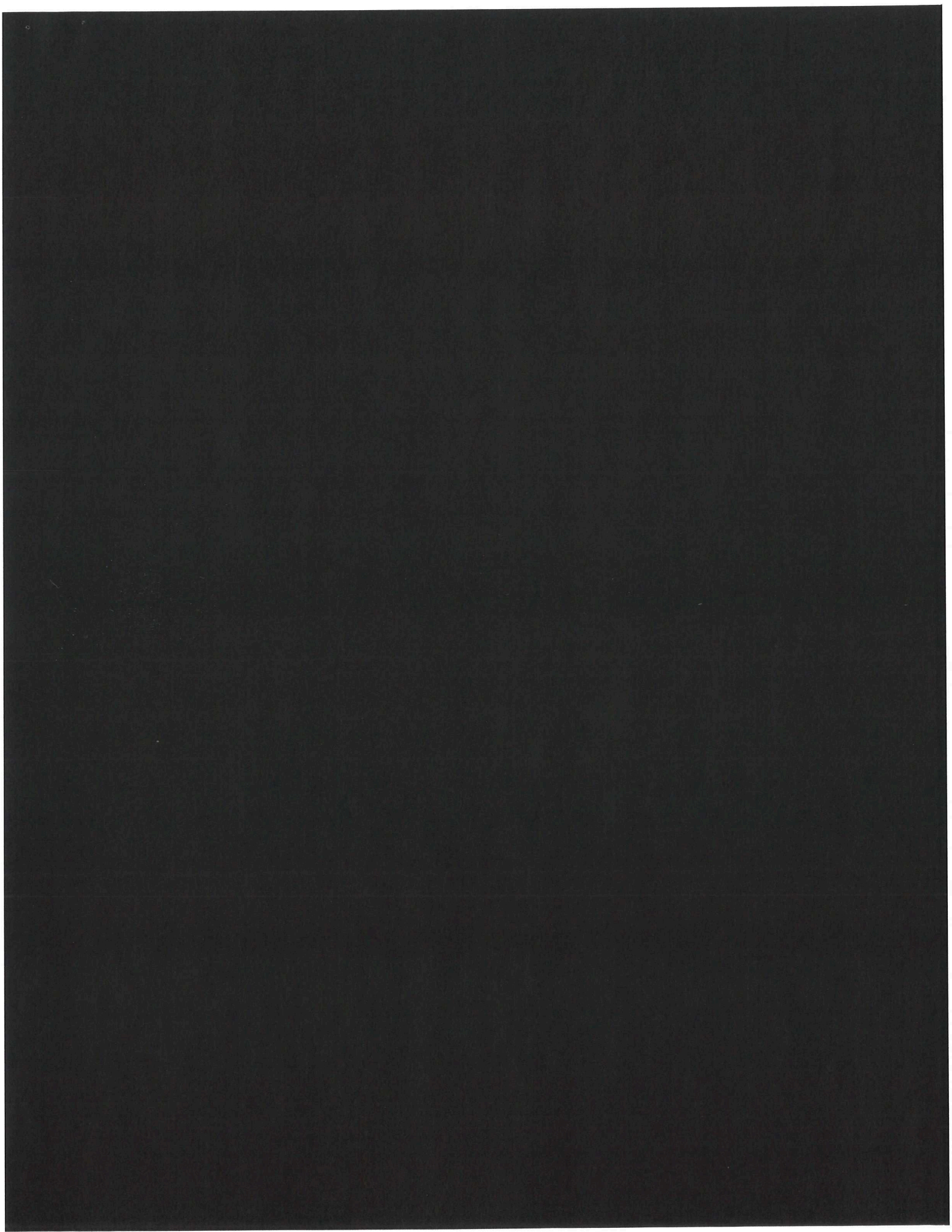


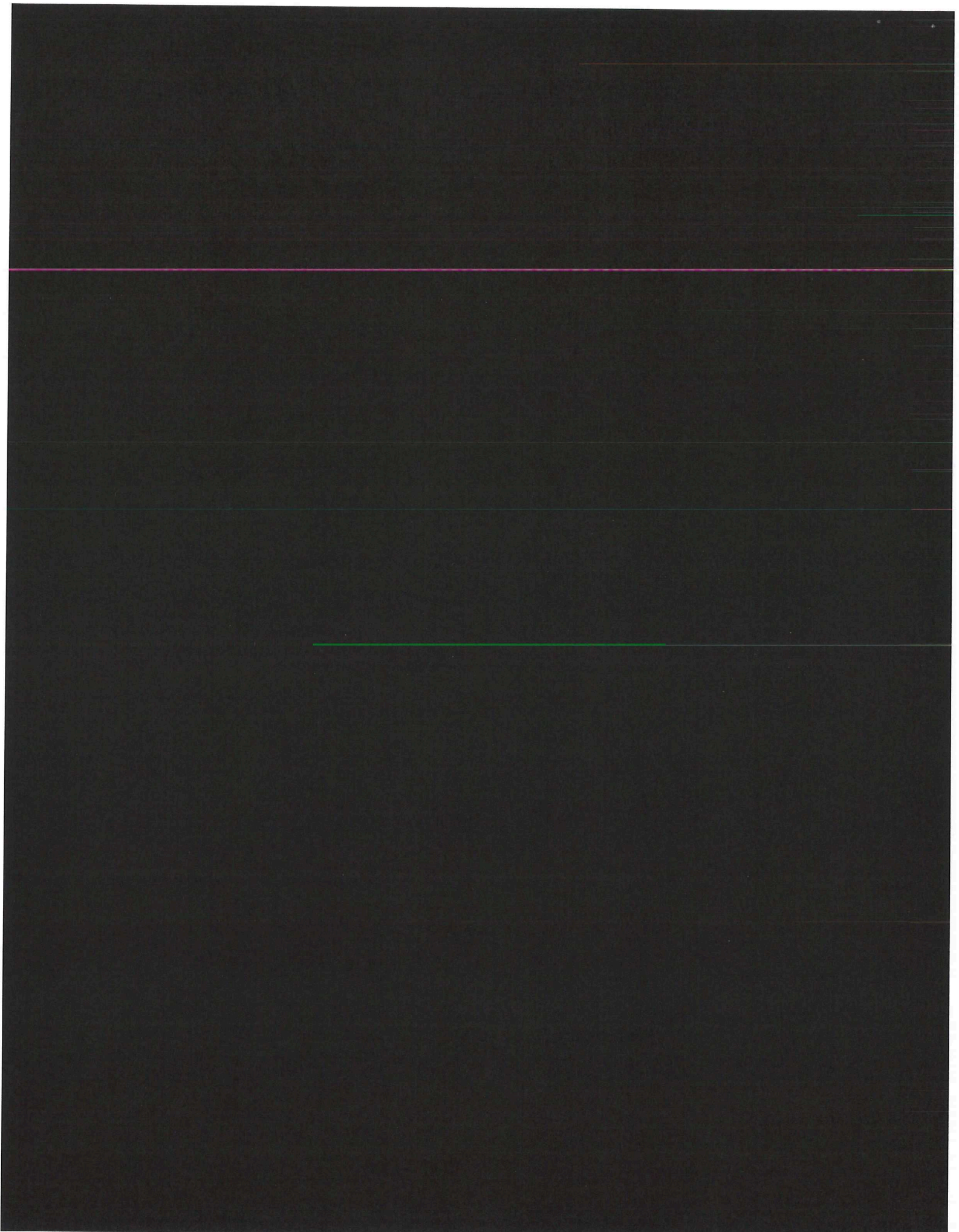


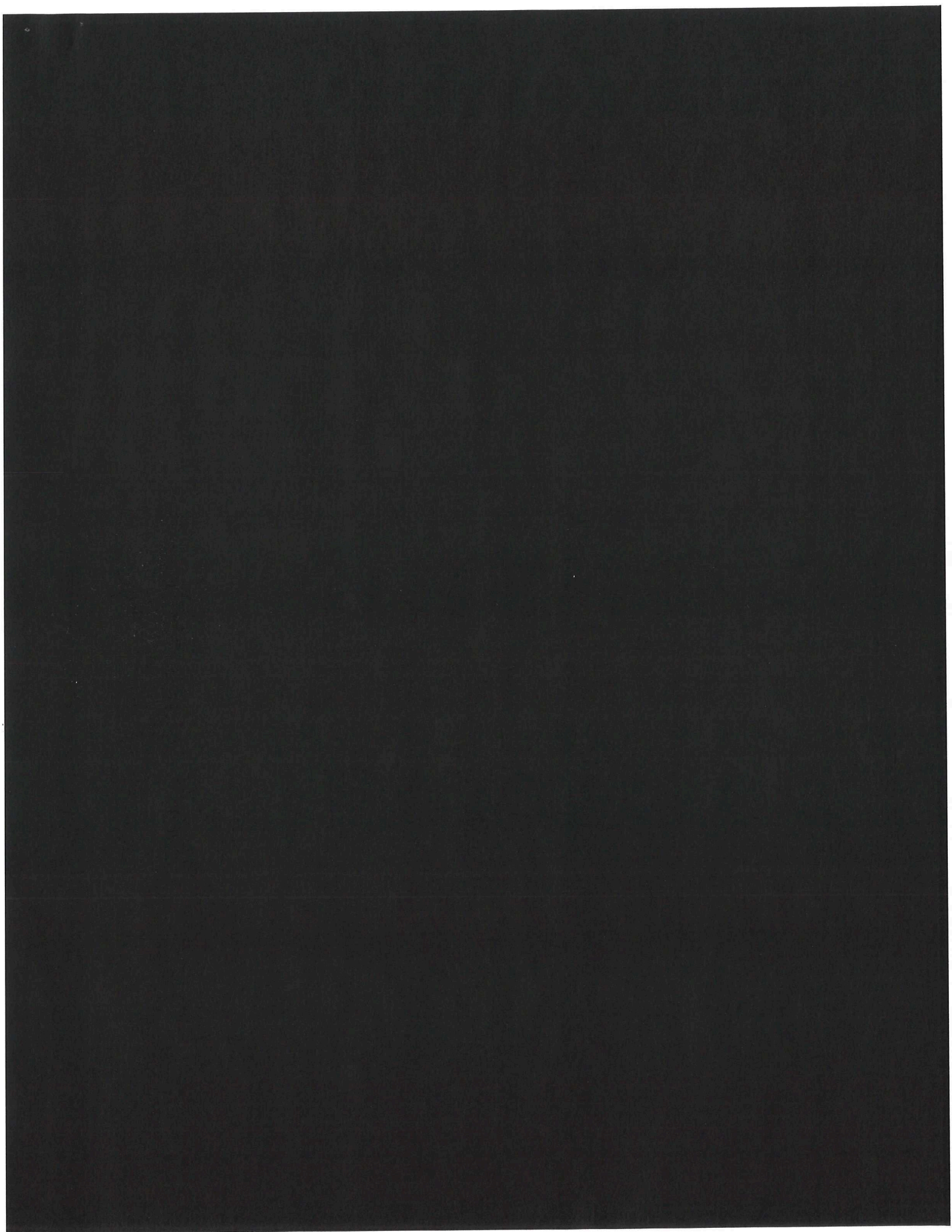


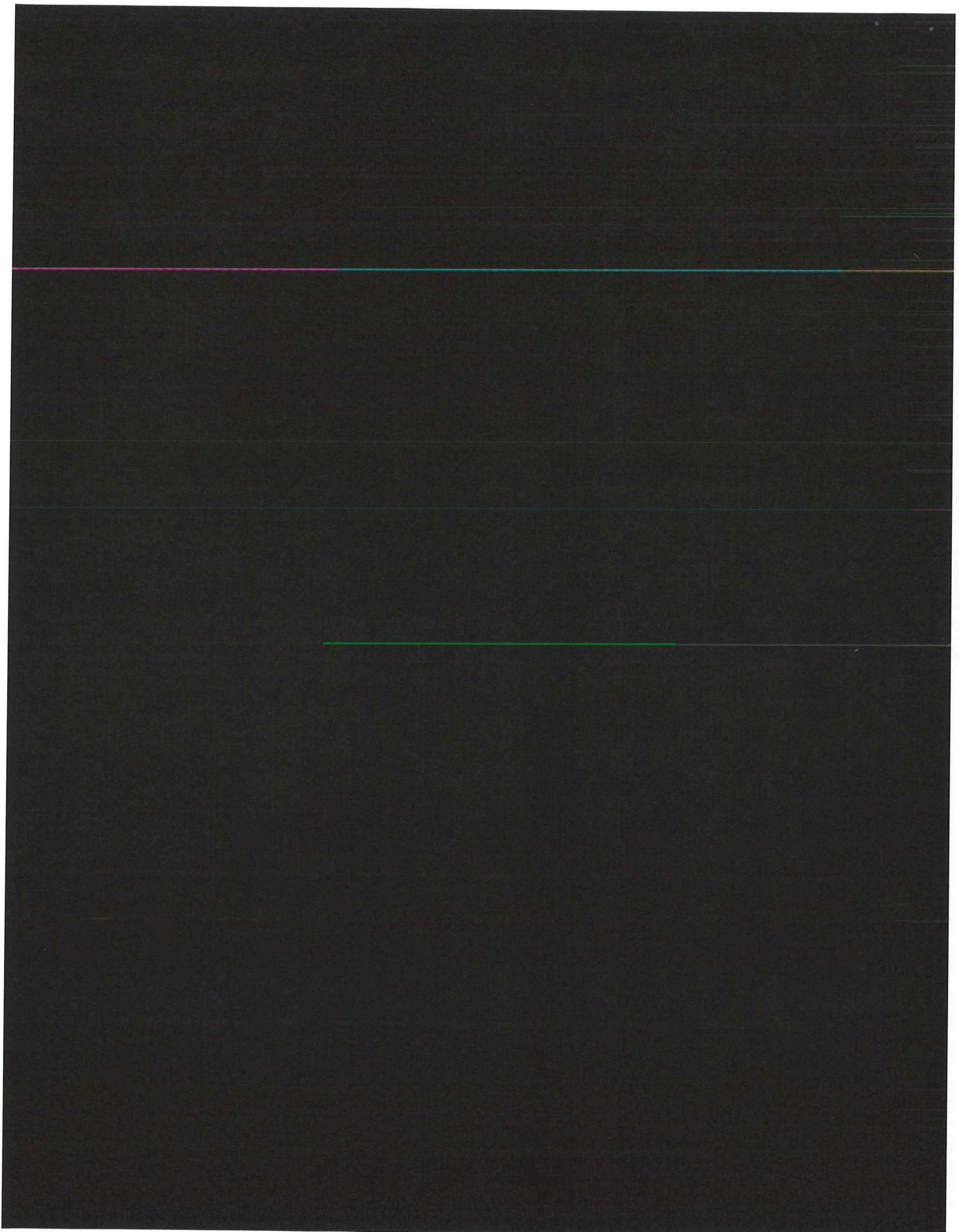












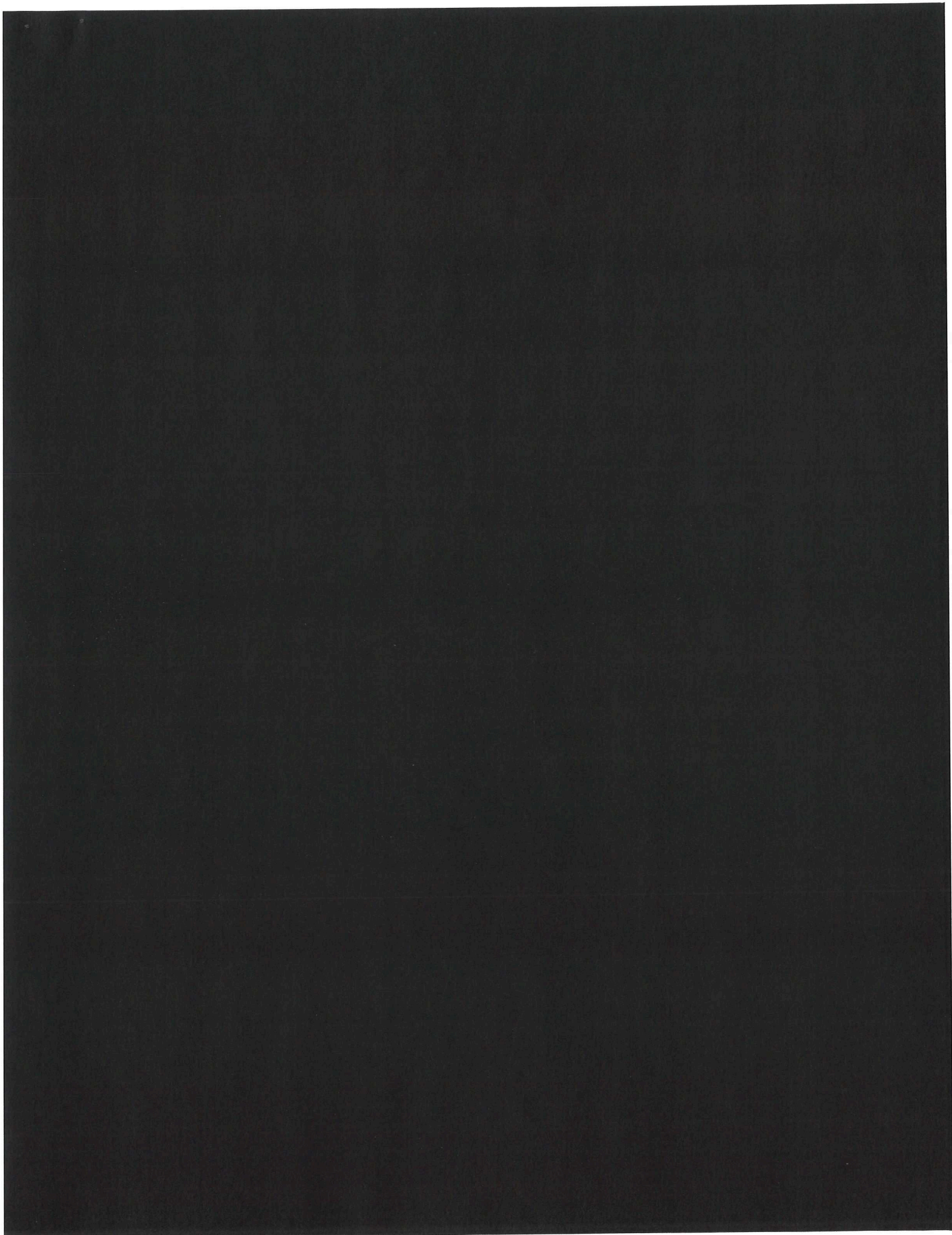


EXHIBIT 2



**DISTRICT ATTORNEY
COUNTY OF NEW YORK
ONE HOGAN PLACE
New York, N. Y. 10013
(212) 335-9000**

ALVIN L. BRAGG, JR.
DISTRICT ATTORNEY

July 24, 2023

VIA HAND DELIVERY

Todd Blanche
99 Wall St., Ste. 4460
New York, NY 10005

Susan R. Necheles
1120 Sixth Ave., 4th Floor
New York, NY 10036

Joseph Tacopina
275 Madison Ave., 39th Floor
New York, NY 10016

Re: People v. Donald J. Trump, Ind. No. 71543-23

Dear Mr. Blanche, Ms. Necheles, and Mr. Tacopina:

We are producing today an external hard drive containing additional materials for the above-referenced case.

As detailed in the attached index, this production includes documents designated as "Covered Materials" under the May 8 protective order, including additional open source research materials and public court filings, as well as documents designated as "Limited Dissemination Materials." The "Limited Dissemination Materials" include materials identified through our review of internal email messages, including materials identified by the Bates prefixes "DANYEMAIL" and "DANYNEWS." Note that, in some circumstances, we may have withheld parent emails or attachments where those documents were not subject to disclosure (on work product or other grounds) or where those documents were separately produced. Thus, not all emails were produced as a family. Note further that many of the materials provided, including those with the Bates prefix "DANYNEWS," are not required to be disclosed under CPL § 245.20(1), but we are nevertheless making them available to you in an exercise of discretion.

In addition, we are serving today a Certificate of Compliance and a Supplemental Addendum to the Automatic Discovery Form. The Supplemental Addendum includes additional

information in Section D—“Promises, Rewards or Inducements (CPL § 245.20(1)(l))”; Section F—“*Brady/Giglio/Geaslen* Information (CPL § 245.20(1)(k))”; and Addendum A (listing books in the possession of the People which may include witness statements).

With respect to today’s production, please also note the following:

- *First*, all of the materials provided to you are subject to the protective order issued on May 8, 2023;
- *Second*, the People have designated certain of these materials “Limited Dissemination Materials” under the May 8 protective order;
- *Third*, the People’s disclosures may include documents, information, and materials that are not required to be disclosed under CPL § 245.20(1), but which have been disclosed in an exercise of the People’s discretion pursuant to the presumption of openness specified in CPL § 245.20(7). The production of any such material does not constitute a waiver of any of the People’s rights, including the People’s right to withhold work product under CPL § 245.65;
- *Fourth*, some materials or information may have been withheld in connection with protective orders issued pursuant to CPL § 245.70;
- *Finally*, where applicable, the materials provided have been Bates stamped to aid in the organization and digestion of the materials, and the Bates ranges have been noted on the attached index. Please note, however, that the numbering of the Bates stamps is not sequential.

Pursuant to CPL §§ 245.10(1)(a) and 245.60, we will produce additional discoverable materials and information we learn of or come into the possession of.

Sincerely,

/s/ Becky Mangold

Becky Mangold
Assistant District Attorney

Received on July 24, 2023 by:

Name: _____

Signature: _____

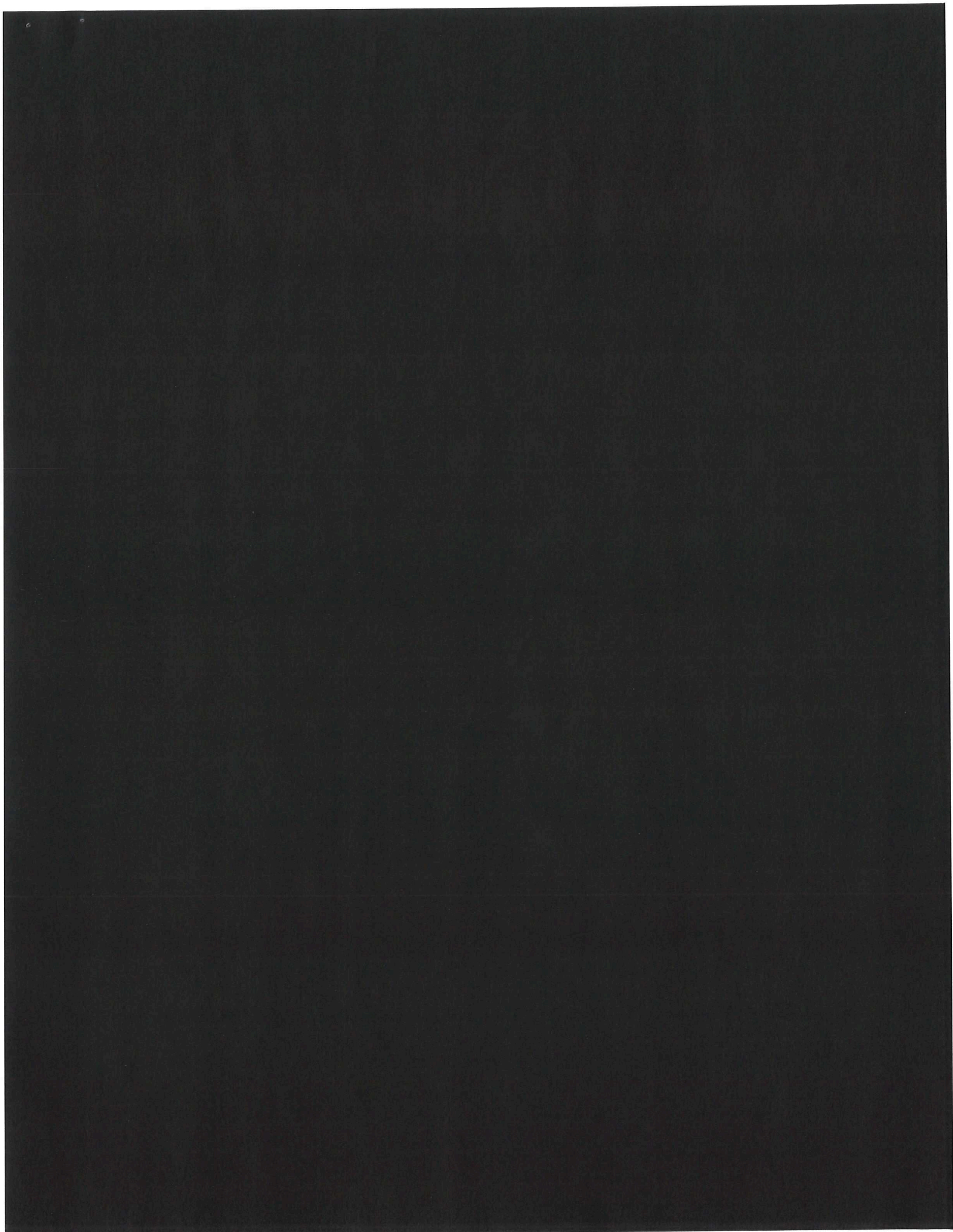


EXHIBIT 3

From: [Mangold, Rebecca](#)
To: [Todd Blanche](#); [Emil Bove](#); [Stephen Weiss](#); [Susan Necheles](#); [Gedalia Stern](#)
Cc: [Colangelo, Matthew](#); [Hoffinger, Susan](#); [Conroy, Christopher](#); [Steinglass, Joshua](#); [REDACTED]
Subject: RE: People v. Trump, No. 71543-23 - Supplemental Discovery
Date: Wednesday, March 13, 2024 8:05:12 PM
Attachments: [image001.png](#)
[image002.png](#)
[2024.03.13.zip](#)

Counsel,

We are producing a supplemental set of discovery materials to you today via the attached zip file. The file contains [REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]. Not all of these materials

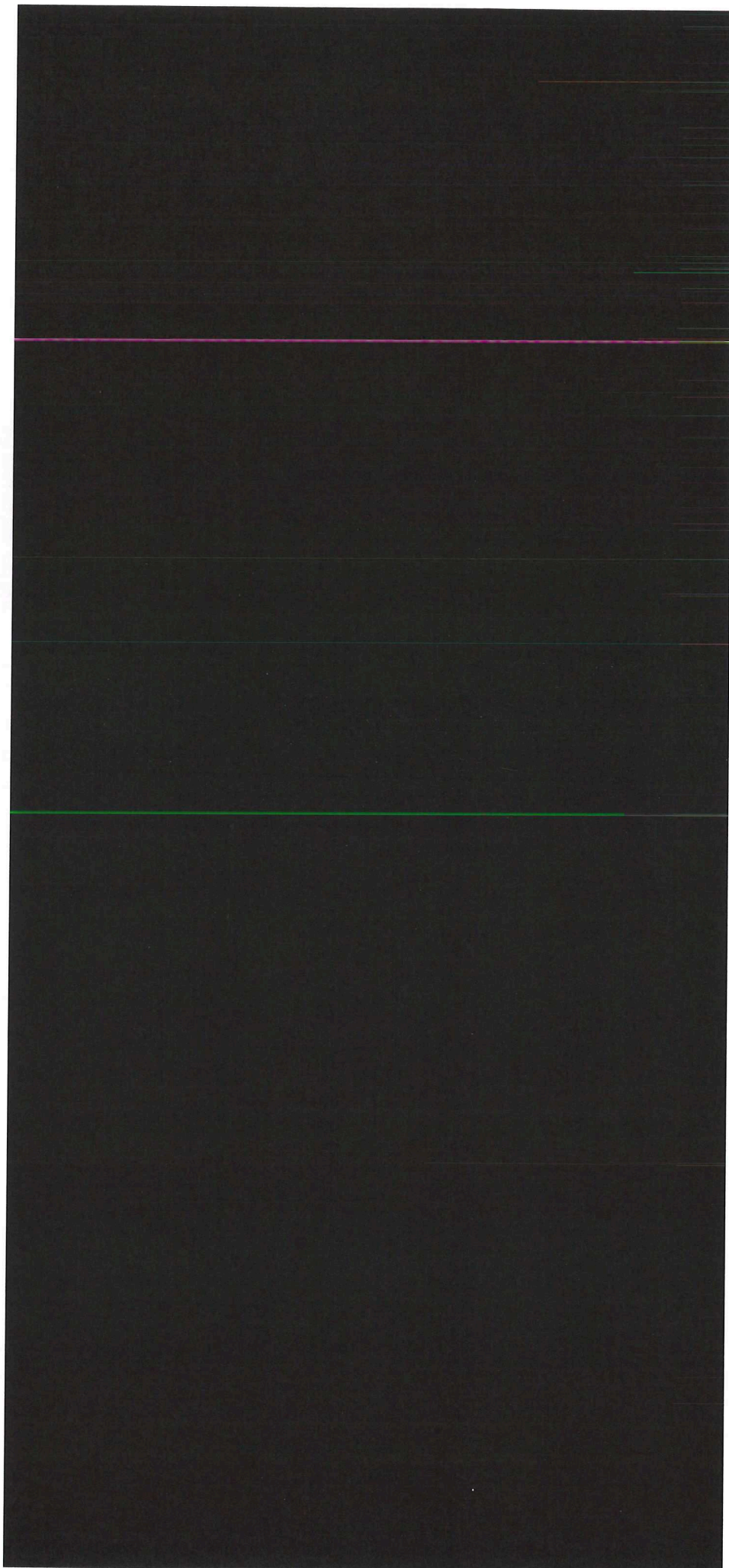
that we received today are required to be disclosed under CPL § 245.20(1), but in an exercise of our discretion pursuant to the presumption of openness specified in CPL § 245.20(7), we went beyond our disclosure obligations under CPL § 245.20(1) and provided all such materials in the People's possession, custody, and control. We reiterate that the production of any information beyond our disclosure obligations does not constitute a waiver of our rights to withhold work product or material that is not the subject-matter of the case.

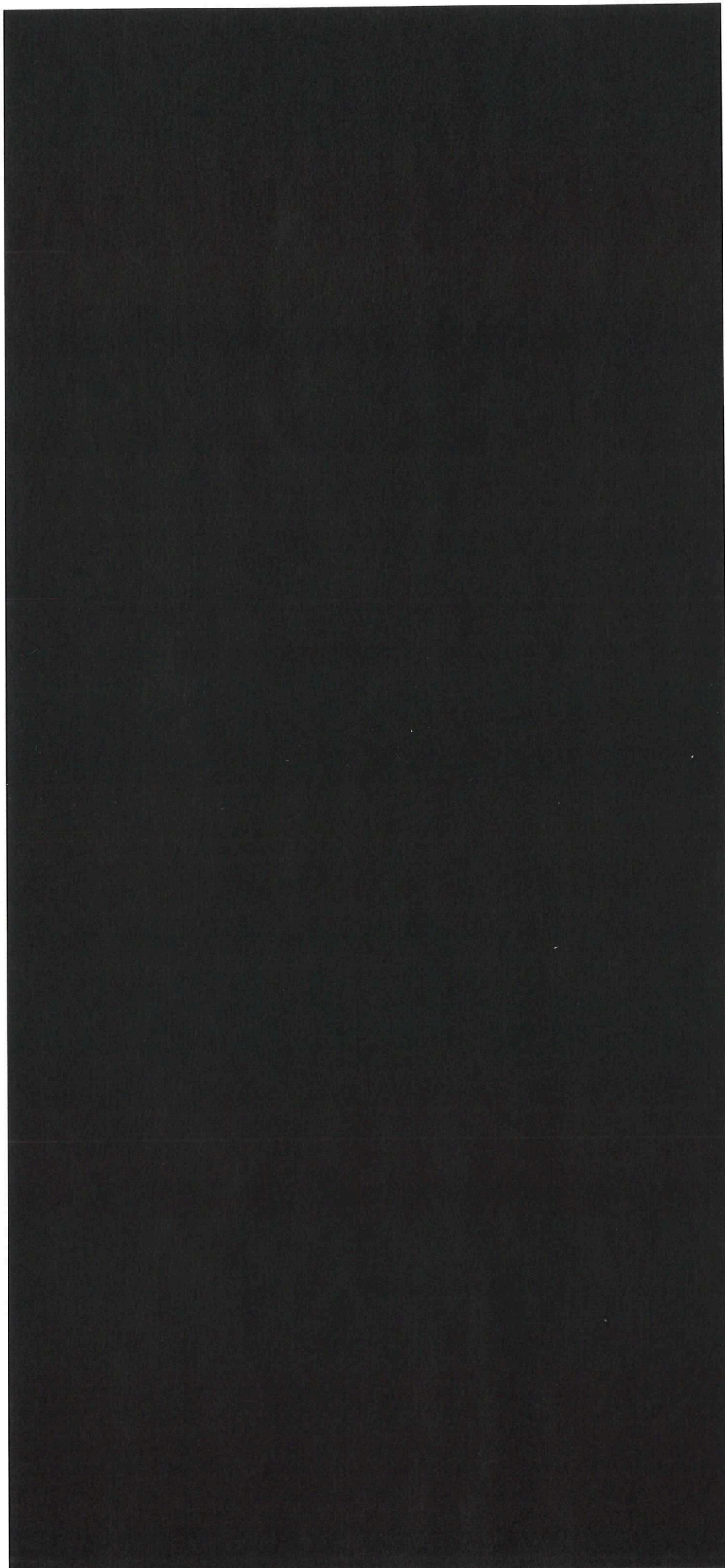
Best,

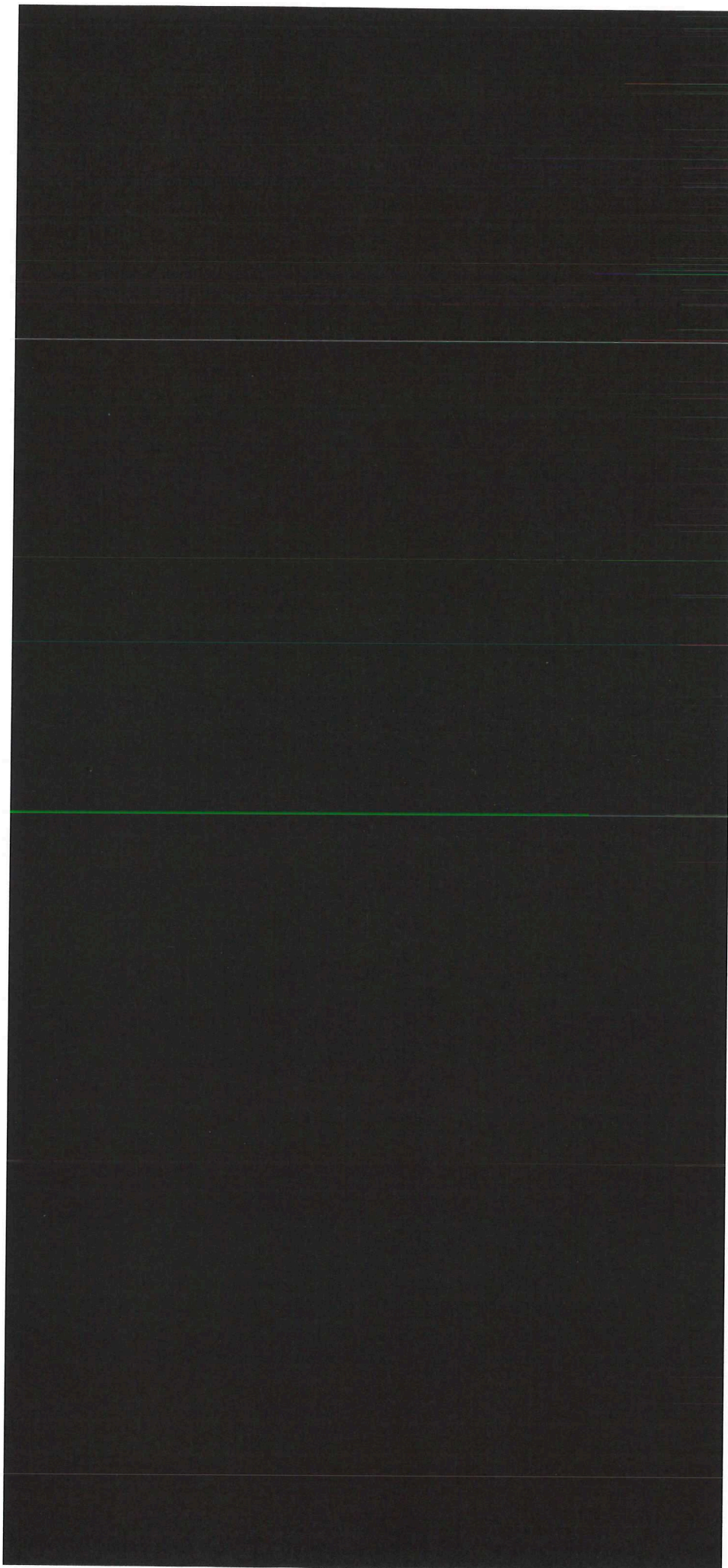
Becky

Rebecca G. Mangold
Assistant District Attorney
New York County District Attorney's Office
80 Centre Street, New York, NY 10013

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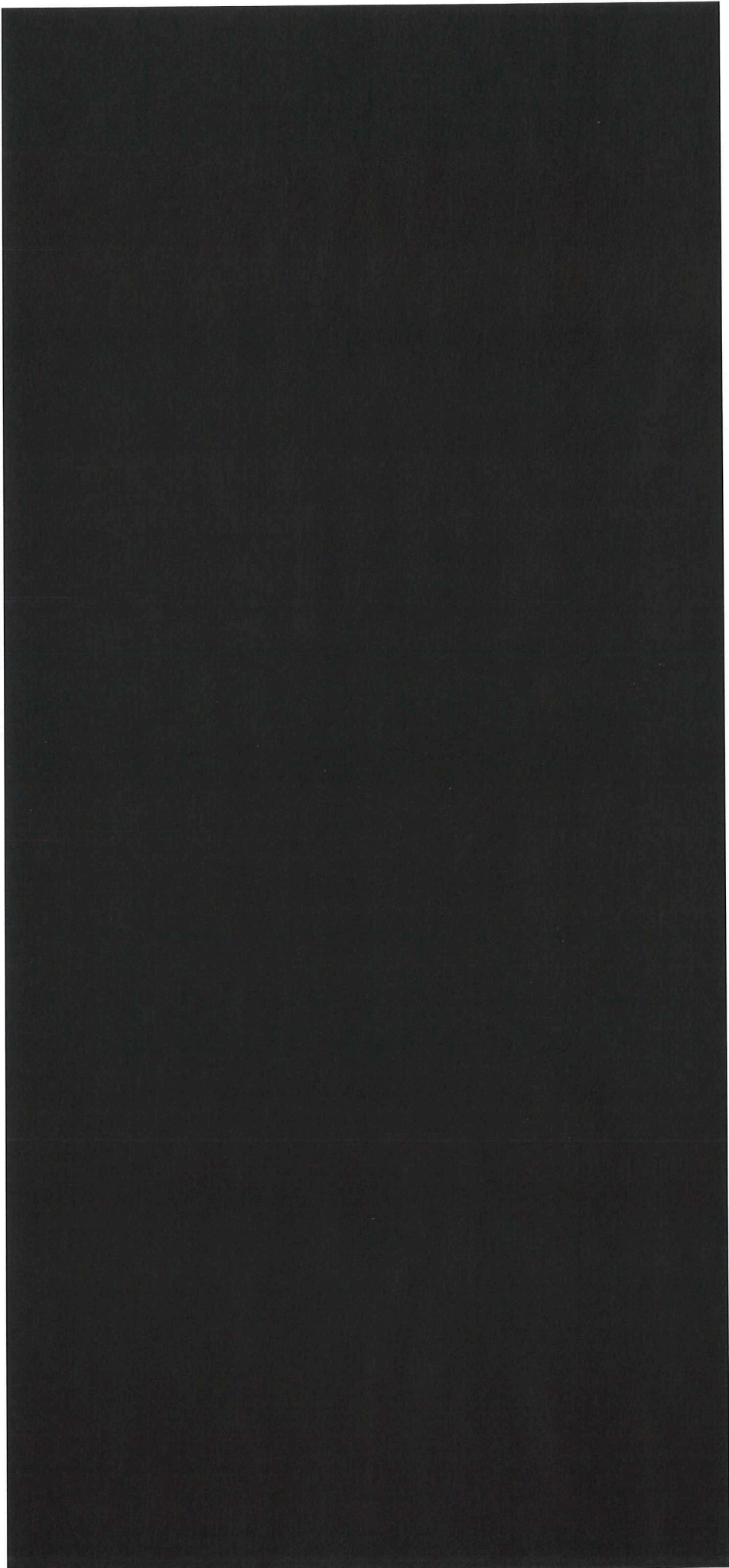


EXHIBIT 4



TODD BLANCHE
ToddBlanche@blanchelaw.com
(212) 716-1250

March 13, 2024

Via Email

Assistant District Attorney Rebecca Mangold
New York County District Attorney's Office
1 Hogan Place
New York, New York 10013

Re: Untimely Discovery Production

Dear Ms. Mangold:

We write in response to the late-produced discovery, provided to President Trump's counsel tonight at 8:04 p.m. Similar to the more than 100,000 pages of [REDACTED] that you have produced over the last two weeks, it is extremely difficult for us to understand how this information could be produced via FOIA, and yet not be produced by DANY in a timely fashion at the outset of this case. Moreover, sending us discoverable [REDACTED] strongly suggests that DANY still has not collected in a systematic fashion all of Mr. Pomerantz's communications regarding benefits, and efforts to obtain benefits, for Michael Cohen. Nor has DANY produced similar communications relating to Stephanie Clifford and the People's other witnesses. We are in no position to be able to tell whether the issue is one or more of (1) DANY not carefully searching the DANY phone that Pomerantz was using to send text messages relating to the investigation; (2) Pomerantz improperly using a private cellphone to conduct DANY business; and/or (3) Pomerantz deleting messages that have been recovered more recently from other sources. Any and all of these options are troubling following last month's untimely production of [REDACTED], and given where we are in this case. Information regarding any and all of these options is also discoverable as impeachment for Cohen and under *Kyles* as to the integrity of the investigation. We require complete disclosures, promptly, regarding all of these issues and what you have done to address them.

Furthermore, these [REDACTED]

[REDACTED]. Either Pomerantz drafted that letter on DANY systems, in which case you have the drafts and must produce them, or he drafted the letter on an outside system, in which case you must disclose that breach and seek to collect the documents directly from him. No privilege can be claimed over the draft letter, as it is obvious from the produced [REDACTED] that the letter was read and/or discussed with Cohen's counsel. It is equally clear that there were communications within DANY regarding whether and to what extent to provide the benefit that Cohen was seeking and that Pomerantz apparently promised to Cohen, Ms. Perry, and Mr. Davis. You have not produced all of those internal communications, either. As we explained in our discovery motion, you have relied, at least in part, on unacceptable and indefensible invocations of the work product privilege to withhold constitutionally mandated discovery. As

March 13, 2024
Page 2

with the text message issue, your failure to do so up to this point is troubling. We require complete disclosure, promptly, regarding drafts of the letter and communications regarding its content.

/s/ Todd Blanche
Todd Blanche
Emil Bove
Stephen Weiss
Blanche Law PLLC

Susan R. Necheles
Gedalia M. Stern
Necheles Law LLP

Attorneys for President Donald J. Trump

Cc: Susan Hoffinger
Joshua Steinglass
Matthew Colangelo
(Via Email)

EXHIBIT 5

